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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–250–AD; Amendment 39–12932; AD 2002–22–07]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 767 series airplanes, that currently requires a one-time inspection for missing bolts on the inboard and outboard support of the inboard main flap, and follow-on inspections and corrective actions, if necessary. This amendment adds an inspection that was inadvertently omitted from the existing AD. The actions specified in this AD are intended to detect missing, loose, or cracked bolts on the supports of the inboard main flap and prevent loss of the inboard main flap, which could result in loss of control of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective November 14, 2002.

The incorporation by reference, as listed in the regulations, was approved previously by the Director of the Federal Register as of August 27, 2002 (67 FR 52401, August 12, 2002).

Comments for inclusion in the Rules Docket must be received on or before December 30, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–250–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-iarcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2002–NM–250–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Suzanne Masterson, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2772; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: On August 1, 2002, the FAA issued AD 2002–16–05, amendment 39–12844 (67 FR 52401, August 12, 2002), applicable to certain Boeing Model 767 series airplanes, to require a one-time inspection for missing bolts on the inboard and outboard support of the inboard main flap, and follow-on inspections and corrective actions, if necessary. That action was prompted by a report indicating that an operator found one missing bolt and two loose bolts out of four bolts at the aft attachment locations on the outboard support of the inboard main flap. The actions required by that AD are necessary to detect missing, loose, or cracked bolts on the supports of the inboard main flap and prevent loss of the inboard main flap, which could result in loss of control of the airplane.

Actions Since Issuance of Previous Rule

Since the issuance of AD 2002–16–05, we have found that, for certain airplanes, the one-time inspection to determine if any bolt is missing from the inboard support of the inboard main flap, as specified in the referenced service bulletin, was inadvertently omitted from the current requirements of the AD. That inspection was identified in the preamble of the existing AD.

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of this same type design, this AD supersedes AD 2002–16–05 to continue to require a one-time inspection for missing bolts on the outboard support of the inboard main flap, and follow-on inspections and corrective actions, if necessary. This AD also adds a one-time inspection for missing bolts on the inboard support of the inboard main flap.

Interim Action

This is considered to be interim action. We are currently considering requiring the repetitive inspections for gaps, the torque check for loose bolts, and the replacement of existing titanium bolts with steel bolts described in the referenced service bulletin. However, the compliance time for these actions would be sufficiently long so that notice and opportunity for prior public comment will be practicable.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that

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supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–250–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–12844 (67 FR 52401, August 12, 2002), and by adding a new airworthiness directive (AD), amendment 39–12932, to read as follows:

2002–22–07 Boeing: Amendment 39–12932. Docket 2002–NM–250–AD. Supersedes AD 2002–16–05, amendment 39–12844.

Applicability: Model 767 series airplanes, including Model 767–400ER series airplanes, line numbers 1 through 879 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (g)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect missing, loose, or cracked bolts on the inboard and outboard support of the inboard main flap and prevent loss of the inboard main flap, which could result in loss of control of the airplane, accomplish the following:

Restatement of Requirements of AD 2002–16–05

Group 1 and 2 Airplanes: One-Time Inspection for Missing or Loose Bolts

(a) Within 90 days after August 27, 2002 (the effective date of AD 2002–16–05, amendment 39–12844), do a one-time general visual inspection to determine if any bolt is missing from the outboard support of the inboard main flap, per Part 2 or Part 8, as applicable, of the Accomplishment Instructions of Boeing Alert Service Bulletin 767–27A0176, Revision 1, dated June 6, 2002. Group 1 airplanes may comply with the replacement specified in paragraph (c) of this AD in lieu of the inspection in this paragraph, provided that the replacement per paragraph (c) of this AD is accomplished within the compliance time specified in this paragraph.

Note 2: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

(1) If no bolt is missing, before further flight, do a general visual inspection for a gap between the nut and surrounding structure or between shim and joint (which would indicate a loose bolt), per Part 2 or Part 8, as applicable, of the Accomplishment Instructions of the service bulletin. If no bolt is missing and no gap is found, no further action is required by this paragraph.

(2) If any bolt is missing, before further flight, do paragraph (b) of this AD. In lieu of paragraph (b) of this AD, airplanes in Group 1 may comply with paragraph (c) of this AD.

Group 1 and 2 Airplanes: Missing Bolts or Gaps—Follow-On Actions

(b) For Group 1 or 2 airplanes as listed in Boeing Alert Service Bulletin 767–27A0176, Revision 1, dated June 6, 2002: If any bolt is missing or any gap is found during the inspections per paragraph (a) of this AD, before further flight, remove all of the bolts in the subject area and replace them with new or serviceable bolts, per Figure 6, 7, or 8 of the service bulletin, as applicable. For any attachment hole where the bolt was missing, install a new or serviceable bolt made from the same material as the other bolts, per the Accomplishment Instructions of the service bulletin.

(1) An existing bolt may be reinstalled if a fluorescent dye penetrant inspection for cracking is done per Part 5 of the Accomplishment Instructions of the service bulletin, and the bolt is found to be free of any crack.

(2) Do not intermix BACB30MR*K* bolts with BACB30LE*K* or BACB30US*K* bolts in the joints subject to this AD.

Group 1 Airplanes: Optional Action

(c) For Group 1 airplanes as listed in Boeing Alert Service Bulletin 767–27A0176, Revision 1, dated June 6, 2002: Replacement of all subject titanium bolts with new steel bolts per Part 6 of the Accomplishment Instructions of the service bulletin is acceptable for compliance with paragraphs (a) and (f) of this AD and eliminates the need for the inspections required by those paragraphs. Do not intermix BACB30MR*K* bolts with BACB30LE*K* or BACB30US*K* bolts in the joints subject to this AD.

Model 767–400ER Series Airplanes: Initial Inspection and Corrective Actions

(d) For Model 767–400ER series airplanes: Within 90 days after August 27, 2002, do a one-time general visual inspection to determine if any bolt is missing from the inboard and outboard support of the inboard main flap, and do a detailed inspection for a gap between the nut and surrounding structure or between shim and joint (which would indicate a loose bolt), per Figure 2 of Boeing Alert Service Bulletin 767–27A0176, Revision 1, dated June 6, 2002.

(1) If no bolt is missing and no gap is found: No further action is required by this paragraph.

(2) If any bolt bolt is missing or any gap is found: Do paragraphs (d)(2)(i) and (d)(2)(ii) of this AD.

(i) Before further flight, repair per a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved as required by this paragraph, the approval must specifically refer to this AD.

(ii) Within 10 days after the inspections: Submit a report of inspection findings to the Manager, Boeing Certificate Management Office, FAA, Transport Airplane Directorate, 2500 East Valley Road, Suite C2, Renton, Washington 98055; fax (425) 227–1159. The report must include the airplane's serial number, the total number of flight cycles and flight hours on the airplane, the number and specific location of discrepant bolts, and the nature of the discrepancy (i.e., missing bolt or gap found). Information collection requirements contained in this AD have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

Previously Accomplished Inspections and Bolt Replacements

(e) Inspections and bolt replacements accomplished before the effective date of this AD per Boeing Alert Service Bulletin 767–27A0176, dated November 16, 2001, are acceptable for compliance with the corresponding actions required by this AD.

New Requirements of This AD

Group 1 and 2 Airplanes: One-Time Inspection for Missing or Loose Bolts

(f) Within 90 days after the effective date of this AD: Do the one-time general visual inspection required by paragraph (a) of this AD to determine if any bolt is missing from the inboard support of the inboard main flap, per Part 2 or Part 8, as applicable, of the Accomplishment Instructions of Boeing Alert Service Bulletin 767–27A0176, Revision 1, dated June 6, 2002. Group 1 airplanes may comply with the replacement specified in paragraph (c) of this AD in lieu of the inspection in this paragraph, provided that the replacement per paragraph (c) of this AD is accomplished within the compliance time specified in this paragraph.

Alternative Methods of Compliance

(g)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

(2) Alternative methods of compliance, approved previously in accordance with AD 2002–16–05, amendment 39–12844, are approved as alternative methods of compliance with paragraph (d)(2)(i) of this AD.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(h) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(i) Unless otherwise provided in this AD, the actions shall be done per Boeing Alert Service Bulletin 767–27A0176, Revision 1, dated June 6, 2002. This incorporation by reference was approved previously by the Director of the Federal Register as of August 27, 2002 (67 FR 52401, August 12, 2002). Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(j) This amendment becomes effective on November 14, 2002.

Issued in Renton, Washington, on October 24, 2002.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–27557 Filed 10–29–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 172

Food Additives Permitted for Direct Addition to Food for Human Consumption

CFR Correction

In Title 21 of the Code of Federal Regulations, parts 170 to 199, revised as of April 1, 2002, on page 31, § 172.133 is corrected by revising paragraphs (b)(2) and (b)(3) to read as follows:

§ 172.133 Dimethyl dicarbonate.

* * * * *

(b) * * *

(2) In ready–to–drink teas in an amount not to exceed 250 parts per million.

(3) In carbonated or noncarbonated, nonjuice–containing (less than or equal to 1 percent juice), flavored or unflavored beverages containing added electrolytes (5–20 milliequivalents/liter sodium ion (Na+) and 3–7 milliequivalents/liter potassium ion (K+)) in an amount not to exceed 250 parts per million.

* * * * *

[FR Doc. 02–55523 Filed 10–29–02; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF STATE

22 CFR Part 41

[Public Notice 4181]

Visas: Documentation of Nonimmigrants Under the Immigration and Nationality Act: XIX Olympic Winter Games and VIII Paralympic Winter Games in Salt Lake City, UT, 2002

AGENCY: Department of State, Bureau of Consular Affairs.

ACTION: Removal of interim rule.

SUMMARY: The Department of State is removing its interim rule on special procedures relating to visa documentation and visa processing for the 2002 Winter Olympic and Paralympic Games in Salt Lake City. Now that the 2002 Winter Games are over there is no longer a need for the interim rule.

DATES: This final rule is effective August 1, 2002.

FOR FURTHER INFORMATION CONTACT: For information regarding the publication of this regulation under the Administrative

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Procedures Act Ron Acker, Legislation and Regulations Division, Visa Office, Room L603–D, SA–1, Department of State, Washington, D.C. 20520–0106, (202) 663–1205; or e-mail: *ackerrl@state.gov*. For information regarding the possible effect of this regulation on individual visa applicants or any group of applicants contact the Public Inquiries Division of the Directorate for Visa Services at (202) 663–1225, or by e-mail to *usvisa@state.gov*.

SUPPLEMENTARY INFORMATION:

What Is the Background for This Final Rule?

On July 25, 2001, we published in the **Federal Register** (66 FR 38536) an interim rule entitled, "Visas: Documentation of Nonimmigrants Under the Immigration and Nationality Act; Application for Nonimmigrant Visa: XIX Olympic Winter Games and VIII Paralympic Winter Games in Salt Lake City, UT, 2002." We received no comments on the interim rule.

The interim rule was published to provide the Department of State with legal authority to administer special visa procedures attendant to the 2002 Olympic and Paralympic Games and to issue visas on Olympic and Paralympic Identity/Accreditation Cards through the Olympic Visa Information Database (OVID 2002).

Why Is the Interim Rule Being Removed?

The Winter Olympic and Paralympic Games concluded February 24, and March 16, 2002, respectively. Consequently, the interim rule providing for special visa procedures for these two events no longer serves a practical purpose and is, consequently, hereby being removed.

Final Rule

This final rule amends the Department's regulations at 41.101, 41.102, 41.103, 41.104, 41.107, 41.112, 41.113, and 41.122.

Regulatory Analysis and Notices

Administrative Procedure Act

The Department is publishing this rule as a final rule, based on the "good cause" exceptions set forth at 5 U.S.C. 553(b)(3)(B) and 553(d)(3).

Regulatory Flexibility Act

Pursuant to section 605 of the Regulatory Flexibility Act, the Department has assessed the potential impact of this rule, and the Assistant Secretary for Consular Affairs hereby certifies that is not expected to have a significant economic impact on a substantial number of small entities and will benefit those that engage temporary agricultural workers.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

The Department of State does not consider this rule to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review. Therefore, in accordance with the letter to the Department of State of February 4, 1994 from the Director of the Office of Management and Budget, it does not require review by the Office of Management and Budget.

Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement.

Paperwork Reduction Act

This rule does not impose any new reporting or record-keeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

List of Subjects in 22 CFR Part 41

Aliens, Nonimmigrants, Passports and visas.

Accordingly, the Department amends 22 CFR part 41 as follows:

PART 41—[AMENDED]

1. The authority citation for part 41 continues to read as follows:

Authority: 8 U.S.C. 1104; Public Law 105–277, 112 Stat. 2681 *et seq.*

§ 41.101 [Amended]

2. Remove paragraph (g) of § 41.101.

§ 41.102 [Amended]

3. Remove paragraph (c) of § 41.102.

§ 41.103 [Amended]

4. Remove paragraph (c) of § 41.103.

§ 41.104 [Amended]

5. Remove paragraph (e) of § 41.104.

§ 41.107 [Amended]

6. Remove paragraph (f) of § 41.107.

§ 41.112 [Amended]

7. Remove paragraph (f) of § 41.112.

§ 41.113 [Amended]

8. Remove paragraphs (i), (j) and (k) of § 41.113.

§ 41.122 [Amended]

9. Remove paragraphs (i) and (j) of § 41.122.

Dated: October 25, 2002.

Timothy Egert,

Federal Register Liaison, Department of State.

[FR Doc. 02–27595 Filed 10–29–02; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 250

RIN 1010–AC65

Oil and Gas and Sulphur Operations in the Outer Continental Shelf—Decommissioning Activities

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Corrections to final regulations.

SUMMARY: This document contains corrections to the final regulations published on Friday, May 17, 2002 (67 FR 35398). The final regulations related to decommissioning activities, and included requirements for plugging a well, decommissioning a platform and pipeline, and clearing a lease site. The corrections being made are non-substantive and are necessary for clarification purposes only.

EFFECTIVE DATE: July 16, 2002.

FOR FURTHER INFORMATION CONTACT: Sharon Buffington, (703) 787–1147.

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections add a new subpart Q to the 30 CFR part 250 regulations. They update decommissioning requirements to reflect changes in technology to ensure that lessees and pipeline right-of-way holders conduct decommissioning operations safely and effectively. The new subpart Q supersedes subpart G (Abandonment of Wells) in its entirety and selected sections of subpart J (Pipeline and Pipeline Rights-of-Way), and subpart I (Platforms and Other Facilities). The effective date of the regulations is July 17, 2002, and they affect all operators, lessees, and pipeline right-of-way holders on the Outer Continental Shelf.

Need for Correction

As published, the final regulations contain some non-substantive items which could prove to be misleading and should be clarified. Explanations for the main issues follow:

(1) In several places, we are correcting inaccurate citation references in the preamble and regulatory language.

(2) Our response to a comment recommending that MMS include the requirements for the removal of subsea equipment, indicated that they are "* * * handled case-by-case. * * * Too many variables exist to specify the requirements in regulations." We further stated that, "However, lessees can assume that equipment must be removed *unless* the requirements of §§ 250.1725 through 250.1728. * * *" The word "unless" should have been "under" to indicate that the assumption is that subsea equipment must be removed and any exceptions would need MMS district office approval on a case-by-case basis.

(3) The new subpart Q includes the requirements for both permanent plugging and temporary plugging or abandonment of a well. With respect to the latter, the regulations interchanged the terms temporarily "abandoned" and temporarily "plugged." In order to be as consistent as possible throughout our various regulations and with terms used on our forms and other documents, we are correcting the final regulations to consistently refer to this temporary status of a well as "abandoned."

(4) The table in § 250.1704 was intended as a quick reference listing of when decommissioning applications and reports are submitted. We are correcting the table to redesignate paragraph (f) as (g), and to add a new paragraph (f) to reference the site clearance report for platforms or other facilities. The redesignated paragraph (g) is corrected by adding additional references for when form MMS–124 must be submitted. These were inadvertently omitted from the table. Subsequent to publishing the final 30 CFR 250, subpart Q, regulations, through a separate process, the title of this form is being changed from "Sundry Notices and Reports on Wells" to "Application for Permit to Modify." This change is reflected in this correction document.

(5) In § 250.1712 paragraphs (e) and (f)(14) are corrected to eliminate duplicative language.

(6) In the table in § 250.1715 on permanent well plugging requirements, we are clarifying the requirements to indicate that the "plug(s)" are "set." Also, the line item on "permafrost areas" was inadvertently omitted and is added to the table as item (10).

(7) In §§ 250.1712 and 250.1717, the correction clarifies that the form MMS–124 reports should be submitted to the "appropriate District Supervisor."

(8) The introductory text in § 250.1726 is clarified to include "pipeline rights-of-way" as well as leases.

(9) In § 250.1740, paragraphs (a) and (b) are corrected to allow for options other than trawling to verify site clearance around wells. This was an inadvertent oversight in the final rule and the correction agrees with the proposed rule language.

(10) Sections 1740(c)(3) and 250.1743(b) are corrected to specify "Regional" rather than the "District" Supervisor.

(11) This document also makes other editorial corrections for clarification.

Correction of Publication

The preamble of the final rule published on May 17, 2002, which was the subject of FR Doc. 02–11640, is corrected as follows:

Preamble [Corrected]

On page 35400, in the 1st column, in the 7th paragraph under the heading *Section 250.1715 (Proposed section 250.1710)*, the citation "§ 250.1710(i)" is corrected to read "§ 250.1710(j)".

On page 35401, in the 1st column, in the 4th paragraph, the words " and 250.142" are added after the citation "30 CFR 250.141".

On page 35401, in the 2nd column, in the 1st sentence, the word "unless" is corrected to read "under" and the words "are met" are removed.

PART 250—[CORRECTED]

Part 250 is corrected by making the following correcting amendments:

Subpart Q—Decommissioning Activities [Corrected]

§ 250.1700 [Corrected]

1. In § 250.1700, the 2nd sentence in paragraph (c) is corrected by removing "templates and pilings" and adding in its place "templates, pilings".

2. The table in § 250.1704 is corrected as follows:

A. The heading in the 1st column of the table is revised to read "Decommissioning applications and reports".

B. Paragraph (f) in the 1st column is correctly designated as paragraph (g), and is revised to read as set forth below.

C. A new paragraph (f) is added in the 1st column with corresponding entries in the 2nd and 3rd columns as set forth below.

§ 250.1704 When must I submit decommissioning applications and reports?

* * * * *

Decommissioning applications and reports	When to submit	Instructions
. . .	. . .	. . .
(f) Site clearance report for a platform or other facility.	Within 30 days after you complete site clearance verification activities.	Include information required under § 250.1743(b).
(g) Form MMS–124, Application for Permit to Modify (formerly Sundry Notices and Reports on Wells).	(1) Before you temporarily abandon or permanently plug a well or zone.	Include information required under §§ 250.1712 and 250.1721.
	(2) Within 30 days after you plug a well	Include information required under § 250.1717.

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Decommissioning applications and reports	When to submit	Instructions
	(3) Before you install a subsea protective device.	Refer to § 250.1722(a).
	(4) Within 30 days after you complete a protective device trawl test.	Include information required under § 250.1722(d).
	(5) Before you remove any casing stub or mud line suspension equipment and any subsea protective device.	Refer to § 250.1723.
	(5) Within 30 days after you complete site clearance verification activities.	Include information required under § 250.1743(a).

3. Section 250.1712 is corrected by revising the 1st sentence in the introductory text and paragraphs (e) and (f)(14) to read as follows:

§ 250.1712 What information must I submit before I permanently plug a well or zone?

Before you permanently plug a well or zone, you must submit form MMS–124, Application for Permit to Modify, to the appropriate District Supervisor and receive approval. * * *

* * * * *

(e) A description of the work; and

(f) * * *

(14) Your plans to protect archaeological and sensitive biological features, including anchor damage during plugging operations, a brief assessment of the environmental impacts of the plugging operations, and the procedures and mitigation measures you will take to minimize such impacts.

4. In § 250.1715, in the table in paragraph (a), paragraphs (a)(1) through (a)(4) are revised and paragraph (a)(10) is added to read as follows:

§ 250.1715 How must I permanently plug a well?

(a) * * *

If you have:	Then you must use:
(1) Zones in open hole	Cement plug(s) set from at least 100 feet below the bottom to 100 feet above the top of oil, gas, and fresh-water zones to isolate fluids in the strata.
(2) Open hole below casing	(i) A cement plug, set by the displacement method, at least 100 feet above and below deepest casing shoe; (ii) A cement retainer with effective back-pressure control set 50 to 100 feet above the casing shoe, and a cement plug that extends at least 100 feet below the casing shoe and at least 50 feet above the retainer; or (iii) A bridge plug set 50 feet to 100 feet above the shoe with 50 feet of cement on top of the bridge plug, for expected or known lost circulation conditions.
(3) A perforated zone that is currently open and not previously squeezed or isolated.	(i) A method to squeeze cement to all perforations; (ii) A cement plug set by the displacement method, at least 100 feet above to 100 feet below the perforated interval, or down to a casing plug, whichever is less; or (iii) If the perforated zones are isolated from the hole below, you may use any of the plugs specified in paragraphs (a)(3)(iii)(A) through (E) of this section instead of those specified in paragraphs (a)(3)(i) and (a)(3)(ii) of this section. (A) A cement retainer with effective back-pressure control set 50 to 100 feet above the top of the perforated interval, and a cement plug that extends at least 100 feet below the bottom of the perforated interval with at least 50 feet of cement above the retainer; (B) A bridge plug set 50 to 100 feet above the top of the perforated interval and at least 50 feet of cement on top of the bridge plug; (C) A cement plug at least 200 feet in length, set by the displacement method, with the bottom of the plug no more than 100 feet above the perforated interval; (D) A through-tubing basket plug set no more than 100 feet above the perforated interval with at least 50 feet of cement on top of the basket plug; or (E) A tubing plug set no more than 100 feet above the perforated interval topped with a sufficient volume of cement so as to extend at least 100 feet above the uppermost packer in the wellbore and at least 300 feet of cement in the casing annulus immediately above the packer.
(4) A casing stub where the stub end is within the casing.	(i) A cement plug set at least 100 feet above and below the stub end; (ii) A cement retainer or bridge plug set at least 50 to 100 feet above the stub end with at least 50 feet of cement on top of the retainer or bridge plug; or (iii) A cement plug at least 200 feet long with the bottom of the plug set no more than 100 feet above the stub end.
(10) Permafrost areas	(i) A fluid to be left in the hole that has a freezing point below the temperature of the permafrost, and a treatment to inhibit corrosion; and (ii) Cement plugs designed to set before freezing and have a low heat of hydration.

* * * * *

5. The introductory text in § 250.1717, is revised to read as follows:

§ 250.1717 After I permanently plug a well, what information must I submit?

Within 30 days after you permanently plug a well, you must submit form MMS–124, Application for Permit to Modify (subsequent report), to the appropriate District Supervisor, and include the following information:

* * * * *

Temporary Abandoned Wells

6. The undesignated center heading preceding § 250.1721 is revised to read as set forth above.

§ 250.1721 [Corrected]

7. In § 250.1721, in the section heading and two places in the introductory text of § 250.1721, the word "plug" is revised to read "abandon".

§ 250.1722 [Corrected]

8. Section § 250.1722 is corrected as follows:

A. In the introductory text, the citation "§ 250.1721(f)" is revised to read "§ 250.1721(f)(3)";

B. In paragraph (c), the citation "§ 250.1740(a)" is revised to read " § 250.1741(d) through (h)"; and

C. In paragraph (g), the word "greater" is revised to read "less".

§ 250.1723 [Corrected]

9. In the introductory text of § 250.1723, the words "temporarily plugged" are revised to read "temporary abandoned".

10. In § 250.1726, the introductory text is revised to read as follows:

§ 250.1726 When must I submit an initial platform removal application and what must it include?

An initial platform removal application is required only for leases and pipeline rights-of-way in the Pacific OCS Region or the Alaska OCS Region. It must include the following information:

* * * * *

§ 250.1740 [Corrected]

11. Section 250.1740 is corrected as follows:

A. Paragraph (a) is removed, paragraph (b) is redesignated paragraph (a).

B. The introductory text in newly redesignated paragraph (a) is revised, a new paragraph (b) is added, and the introductory text in paragraph (c) is revised to read as set forth below.

C. In paragraph (c)(3), the word "District" is revisted to read "Regional".

§ 250.1740 How must I verify that the site of a permanently plugged well, removed platform, or other removed facility is clear of obstructions?

* * * * *

(a) For a well site, you must either:

* * * * *

(b) For a platform or other facility site in water depths less than 300 feet, you must drag a trawl over the site.

(c) For a platform or other facility site in water depths 300 feet or more, you must either:

* * * * *

12. Section 250.1741 is corrected as follows:

A. Paragraph (b) is revised to read as set forth below.

B. In the table in paragraph (g), in paragraph (g)(3) the word "active" is added between the words "diameter" and "pipelines" to read "diameter active pipelines".

§ 250.1741 If I drag a trawl across a site, what requirements must I meet?

* * * * *

(b) You must trawl 100 percent of the limits described in paragraph (a) of this section in two directions.

* * * * *

§ 250.1743 [Corrected]

13. In § 250.1743, in paragraph (b), the word "District" is revised to read "Regional".

§§ 250.1721, 250.1722, 250.1723, 250.1743 [Corrected]

14. In addition to the corrections set forth above, remove the words "Sundry Notices and Reports on Wells" and add, in their place, the words "Application for Permit to Modify" in the following places:

A. Section 250.1721(a) and (g);

B. Section 250.1722(a) and (d);

C. Section 250.1723(b); and

D. Section 250.1743(a).

Dated: August 30, 2002.

Rebecca W. Watson,

Assistant Secretary, Land and Minerals Management.

[FR Doc. 02–26643 Filed 10–29–02; 8:45 am]

BILLING CODE 4310–MW–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 110 and 165

[CGD14–02–001]

RIN 2115–AA97

Anchorages and Security Zones; Oahu, Maui, Hawaii, and Kauai, HI

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary security zones in designated waters adjacent to the islands of Oahu, Maui, Hawaii, and Kauai, HI for a period of 6 months. These security zones, which are similar to existing temporary security zones, and a related amendment to regulations for anchorage grounds in Mamala Bay, are necessary to protect personnel, vessels, and facilities from acts of sabotage or other subversive acts, accidents, or other causes of a similar nature during operations and will extend from the surface of the water to the ocean floor. Entry into the zones is prohibited unless authorized by the Coast Guard Captain of the Port Honolulu, HI.

DATES: This rule is effective from 4 p.m. HST October 19, 2002, until 4 p.m. HST April 19, 2003.

ADDRESSES: Coast Guard Marine Safety Office Honolulu maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are available for inspection or copying at Coast Guard Marine Safety Office Honolulu, 433 Ala Moana Blvd., Honolulu, Hawaii 96813, between 7 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LTJG E. G. Cantwell, Coast Guard Marine Safety Office Honolulu, Hawaii at (808) 522–8260.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On September 3, 2002, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled "Anchorages and Security Zones; Oahu, Maui, Hawaii, and Kauai, HI" in the **Federal Register** (67 FR 56245). The Coast Guard proposed to extend the effective period for designated security zones in the waters adjacent to the islands of Oahu, Maui, Hawaii, and Kauai, HI for a period of 6 months. In addition to extending the period of security zones, we also proposed giving

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names to security zones and make a few editorial, non-substantive changes. While we have changed the temporary section number, this temporary final rule effectively extends the temporary security zones established under 33 CFR 165.T14–069.

We also proposed to amend an anchorage grounds regulation by adding the requirement that permission of the Captain of the Port be obtained before entering anchorage grounds in Mamala Bay.

We received one letter of comment for the proposed rule. No public hearing was requested or held.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the change in effective period would be contrary to the public interest since there is a continuing immediate need to protect persons, vessels, and facilities in the various areas on the islands of Oahu, Maui, Hawaii, and Kauai, HI. Under these circumstances, following the normal rulemaking procedures would be impracticable.

Background and Purpose

Terrorist attacks in New York City, New York, and on the Pentagon Building in Arlington, Virginia, on September 11, 2001, have called for the implementation of additional measures to protect national security. National security and intelligence officials warn that future terrorist attacks against civilian targets may be anticipated. This rule is similar to a rule published April 29, 2002, (67 FR 20907) creating security zones in these areas until 4 p.m. October 19, 2002.

Discussion of Comments and Changes

The Coast Guard received one comment following the publication of the notice of proposed rulemaking (67 FR 56245). The commenter addressed four issues as follows.

The first issue revolved around a discussion on the requirements for recreational, commercial fishing and commercial tourism vessels to request permission to transit the various security zones. The commenter indicated that the requirement is burdensome for vessel operators that are not required to carry a VHF–FM marine radio. These vessel operators are unable to contact the Captain of the Port via radio to request permission to transit a security zone and they are unable to hear the Broadcast Notice to Mariners announcing the status of the temporary zones.

The Coast Guard understands that all vessels are not required to carry a VHF–FM marine radio. For those vessels, operators have the option to contact the Coast Guard via telephone. While the Broadcast Notice to Mariners are only transmitted over the VHF–FM marine radio, if a vessel operator calls the Coast Guard on the telephone, they will be able to find out the status of the security zones. Additionally, all Broadcast Notice to Mariners may be viewed on the U.S. Coast Guard Navigation Center Web site at *http://www.navcen.uscg.gov/lnm/d14*. Therefore, the Coast Guard does not agree that the requirement is too burdensome.

The second issue concerns the possible impact of the rule on Small Entities and is discussed in the *Small Entities* section below.

The third issue revolved around the language used to define the security zones around cruise vessels anchored off of Lahaina and Kailua-Kona Harbors. The commenter recommended that wording in paragraph (a)(8) of the security zone temporary section be amended to read that cruise vessels will be anchored in "designated anchorage areas." The commenter also recommended clarification to current wording, which suggests that cruise vessels are actually anchored "in" the referenced Small Boat Harbors.

There are no federally designated anchorages off of Lahaina and Kailua-Kona Harbors. Therefore, any reference to "designated anchorages" within the text of the rule would be inappropriate and thus no change to this wording is warranted. However, the Coast Guard agrees that the wording in paragraph (a)(8) of our new § 165.T14–072 should be clarified to reference cruise vessels anchored "in the vicinity" of Lahaina and Kailua-Kona Harbors, versus cruise vessel "in" these harbors. And we have done so.

The final issue included a request that all the security zones be depicted on nautical charts. The commenter felt that this would improve awareness of and compliance with security zones regulations.

The Coast Guard has considered these comments about publishing the zones on nautical charts and has determined that, due to the temporary nature of the security zones, no change to the proposed rule is required.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This expectation is based on the short duration of the zone and the limited geographic zone affected by it.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities. No small business impacts are anticipated due to the small size of the zones and the short duration of the security zones in any one area.

The one commenter was concerned that the small vessel operators lacking VHF–FM marine radios might be impeded in transiting security zones. Therefore, the commenter felt that this might constitute an economic impact on Small Entities. The commenter stated that "Should requirements of the Security Zones prohibit, or unreasonably impeded these vessels from gaining access to the ocean (and returning), it appears that there would be sufficient cause to consider a full Regulatory Evaluation and reexamination of the position taken by the Coast Guard on the 'Small Entities' section."

The Coast Guard does not believe that any small entities will be significantly impacted by the security zones in this rule. Nearly identical security zones have been in place for more that a year and the Captain of the Port has not received any information regarding negative impacts on small entities or small vessel operators. Furthermore, no comments on this rulemaking were received from any small entities or small vessel operators regarding adverse effects of the zones.

Assistance for Small Entities

Because we did not anticipate any small business impacts, we did not offer assistance to small entities in understanding the rule.

Collection of Information

This rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule would not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. We invite your comments on how this rule might impact tribal governments, even if that impact may not constitute a "tribal implication" under the Order.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES**.

List of Subjects

33 CFR Part 110

Anchorage grounds.

33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reports and recordkeeping requirements, Security measures, Waterways.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR parts 110 and 165 as follows:

PART 110—ANCHORAGE REGULATIONS

1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 1221 through 1236, 2030, 2035, 2071; 49 CFR 1.46 and 33 CFR 1.05–1(g).

2. From 4 p.m. HST October 19, 2002, until 4 p.m. HST April 19, 2003, in § 110.235, add a new paragraph (c) to read as follows:

§ 110.235 Pacific Ocean (Mamala Bay), Honolulu Harbor, Hawaii (Datum: NAD 83).

* * * * *

(c) Before entering in the anchorage grounds in this section you must first obtain permission from the Captain of the Port Honolulu.

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

3. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

4. Add temporary § 165.T14–072 to read as follows:

§ 165.T14–072 Security Zones; Oahu, Maui, Hawaii, and Kauai, HI.

(a) *Location*. The following areas, from the surface of the water to the ocean floor, are security zones—

(1) *Honolulu Harbor*. All waters of Honolulu Harbor and entrance channel, Keehi Lagoon, and General Anchorages A, B, C, and D as defined in 33 CFR 110.235 that are shoreward of a line connecting the following coordinates: A point on the shoreline at 21°17.68′ N, 157°52.0′ W; thence due south to 21°16.0′ N, 157°52.0′ W, thence due west to 21°16.0′ N, 157°55.58′ W, and thence due north to Honolulu International Airport Reef Runway at 21°18.25′ N, 157°55.58′ W.

(2) *Tesoro Single Point Mooring*. The waters around the Tesoro Single Point Mooring extending 1,000 yards in all directions from position 21°16.2′ N, 158°05.3′ W.

(3) *Chevron Conventional Buoy Mooring*. The waters extending 1,000 yards in all directions around vessels moored at the Chevron Conventional Buoy Mooring at approximate position 21°16.7′ N, 158°04.2′ W.

(4) *Kahului Harbor and Entrance Channel, Maui, HI*. All waters in the Kahului Harbor and Entrance Channel, Maui, HI, shoreward of the COLREGS DEMARCATION line defined in 33 CFR 80.1460.

(5) *Nawiliwili Harbor, Kauai, HI*. All waters within the Nawiliwili Harbor, Kauai, HI shoreward of the COLREGS DEMARCATION line defined in 33 CFR 80.1450.

(6) *Port Allen Harbor, Kauai, HI*. All waters of Port Allen Harbor, Kauai, HI shoreward of the COLREGS DEMARCATION line defined in 33 CFR 80.1440.

(7) *Hilo Harbor and Entrance Channel, Hawaii, HI*. All waters in Hilo Harbor and Entrance Channel, Hawaii, HI shoreward of the COLREGS

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DEMARCATION line defined in 33 CFR 80.1480.

(8) *Area Around Cruise Ships in the vicinity of Lahaina Small Boat Harbor, Maui, and Kailua-Kona Small Boat Harbor, Hawaii.* The waters extending out 500 yards in all directions from cruise ship vessels anchored within 3 miles of:

(i) Lahaina Small Boat Harbor, Maui, between Makila Point and Puunoa Point.

(ii) Kailua-Kona Small Boat Harbor, Hawaii, between Keahulolu Point and Puapuaa Point.

(9) *Barbers Point Harbor, Oahu.* All waters contained within the Barbers Point Harbor, Oahu, enclosed by a line drawn between Harbor Entrance Channel Light 6 and the jetty point day beacon at 21°19.5′ N, 158°07.3′ W.

(b) *Designated representative.* A designated representative of the Captain of the Port is any Coast Guard commissioned officer, warrant or petty officer that has been authorized by the Captain of the Port Honolulu to act on his behalf. The following officers have or will be designated by the Captain of the Port Honolulu: The senior Coast Guard boarding officer on each vessel enforcing the security zone.

(c) *Regulations.* (1) In accordance with § 165.33, entry into these zones is prohibited unless authorized by the Coast Guard Captain of the Port, Honolulu or his designated representatives. Section 165.33 also contains other general requirements.

(2) The existence or status of the temporary security zones in this section will be announced periodically by Broadcast Notice to Mariners.

(3) Persons desiring to transit the areas of the security zones may contact the Captain of the Port at command center telephone number (808) 541–2477 or on VHF channel 16 (156.8 Mhz) to seek permission to transit the area. If permission is granted, all persons and vessels shall comply with the instructions of the Captain of the Port or his designated representatives.

(d) *Authority.* In addition to 33 U.S.C. 1231, the authority for this section is 33 U.S.C. 1226; 49 CFR 1.46.

(e) *Effective period.* This section is effective from 4 p.m. HST October 19, 2002, until 4 p.m. HST April 19, 2003.

Dated: October 11, 2002.

R.D. Utley,

Rear Admiral, U.S. Coast Guard, Commander, Fourteenth Coast Guard District.

[FR Doc. 02–27606 Filed 10–25–02; 4:05 pm]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–02–101]

RIN 2115–AE47

Drawbridge Operation Regulations: Dorchester Bay, MA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard has changed the drawbridge operation regulations that govern the operation of the William T. Morrisey Boulevard Bridge, mile 0.0, across Dorchester Bay at Boston, Massachusetts. This final rule will allow the bridge to remain in the closed position from November 1, 2002, through May 10, 2003. This action is necessary to facilitate rehabilitation construction at the bridge.

DATES: This rule is effective November 1, 2002, through May 10, 2003.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket (CGD01–02–101) and are available for inspection or copying at the First Coast Guard District, Bridge Branch Office, 408 Atlantic Avenue, Boston, Massachusetts, 02110, between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. John McDonald, Project Officer, First Coast Guard District, (617) 223–8364.

SUPPLEMENTARY INFORMATION:

Regulatory Information

Pursuant to 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this final rule effective in less than 30 days after publication in the **Federal Register**. Any delay encountered in this regulation's effective date would be unnecessary and contrary to the public interest because the rehabilitation construction is necessary in order to assure continued reliable operation of the bridge.

On September 3, 2002, we published a notice of proposed rulemaking (NPRM) entitled Drawbridge Operation Regulations; Dorchester Bay, Massachusetts, in the **Federal Register** (67 FR 56247). We received no comments in response to the notice of proposed rulemaking. No public hearing was requested and none was held.

Background and Purpose

The William T. Morrisey Boulevard Bridge, at mile 0.0, across Dorchester Bay has a vertical clearance of 12 feet at mean high water and 22 feet at mean low water. The existing regulations at 33 CFR 117.597 require the draw to open on signal from April 16 through October 14; except that, the draw need not open for vessel traffic from 7:30 a.m. to 9 a.m. and from 4:30 p.m. to 6 p.m. except on Saturdays, Sundays, or holidays observed in the locality. From October 15 through April 15, the draw shall open on signal if at least twenty-four hours notice is given.

The bridge owner, the Metropolitan District Commission (MDC), asked the Coast Guard to temporarily change the drawbridge operation regulations to allow the bridge to remain in the closed position from November 1, 2002 through May 10, 2003, to facilitate rehabilitation construction at the bridge. The bridge owner and the Coast Guard contacted all known waterway users to advise them of the proposed closure. No objections or negative comments were received in response to this proposal.

Discussion of Comments and Changes

The Coast Guard received no comments in response to the notice of proposed rulemaking and as a result, no changes have been made to this final rule.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3), of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

This conclusion is based on the fact that the only marine facility effected by this final rule has agreed to the closure dates for the bridge.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b), that this rule will not have a significant economic impact on a substantial number of small entities.

This conclusion is based on the fact that the only marine facility effected by this final rule has agreed to the closure dates for the bridge.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This final rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (32)(e), of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation because promulgation of changes to drawbridge regulations have been found to not have a significant effect on the environment. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

§ 117.597 [Suspended]

2. From November 1, 2002 through May 10, 2003, § 117.597 is suspended.

3. From November 1, 2002 through May 10, 2003, § 117.T602 is temporarily added to read as follows:

§ 117.T602 Dorchester Bay.

The draw of the William T. Morrisey Boulevard Bridge, mile 0.0, at Boston, need not open for the passage of vessel traffic.

Dated: October 17, 2002.

V.S. Crea,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 02–27530 Filed 10–29–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–02–117]

Drawbridge Operation Regulations: Hackensack River, NJ

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations for the NJTRO HX Bridge, mile 7.7, across the Hackensack River at Secaucus, New Jersey.

This temporary deviation will allow the bridge to remain closed to navigation for four weekends beginning October 19, 2002, and ending on November 10, 2002. This temporary deviation is necessary to facilitate maintenance at the bridge.

DATES: This deviation is effective from October 19, 2002, through November 10, 2002.

FOR FURTHER INFORMATION CONTACT: Joe Arca, Project Officer, First Coast Guard District, at (212) 668–7165.

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SUPPLEMENTARY INFORMATION: The bridge owner, New Jersey Transit (NJTRO), requested a temporary deviation from the drawbridge operating regulations to facilitate necessary maintenance, replacement of the timber system, at the bridge. The installation of the timber system require the bridge to remain in the closed position.

Under this temporary deviation the NJTRO HX Bridge may remain closed to vessel traffic for four weekends; October 19 & 20, October 26 & 27, November 2 & 3, and November 9 & 10, 2002. The closures will be in effect from 6 a.m. on Saturday through 6 p.m. on Sunday for each of the above weekends. The bridge shall open in emergency situations in accordance with the provisions listed in 33 CFR 117.31(b).

This deviation from the operating regulations is authorized under 33 CFR 117.35, and will be performed with all due speed in order to return the bridge to normal operation as soon as possible.

Dated: October 18, 2002.

V.S. Crea,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 02–27529 Filed 10–29–02; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD09–02–523]

RIN 2115–AA97

Security Zones; Captain of the Port Detroit Zone, Selfridge Air National Guard Base, Lake St. Clair

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is removing the permanent security zone on the navigable waters of Lake St. Clair around the Selfridge Air National Guard Base. This security zone is no longer necessary to protect the Selfridge Army National Guard Base from possible acts of terrorism. This security zone will no longer restrict vessel traffic from areas of Lake St. Clair in the vicinity of Selfridge Army National Guard Base.

DATES: This rule is effective on October 30, 2002.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD09–02–528 and are available for inspection or copying at U.S. Coast Guard Marine Safety Office, 110 Mt. Elliott Ave, Detroit, Michigan between 8 a.m. and 4 p.m., Monday through Friday, except Federal Holidays. The telephone number is (313) 568–9580.

FOR FURTHER INFORMATION CONTACT: LTJG Brandon Sullivan, U.S. Coast Guard Marine Safety Office Detroit, at (313) 568–9580.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On April 11, 2002, we published a notice of proposed rulemaking (NPRM) entitled "Security Zone; Captain of the Port Detroit Zone, Selfridge Army National Guard Base, Lake St. Clair" in the **Federal Register** (67 FR 17667). Following that on June 7, 2002, we published a final rule with the same title in the **Federal Register** (67 FR 39294). We also published a correction to the final rule with same title in the **Federal Register** updating the section numbers (67 FR 47299, July 18, 2002). We received no letters commenting on either the proposed, final, or correction to the final rule. No public hearing was requested, and none was held.

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM, and, under 5 U.S.C. 553 (d)(3), good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. In response to the terrorist's attacks on September 11, 2001, the Coast Guard implemented security zones around critical facilities throughout the U.S. One such facility was the Selfridge Army National Guard Base. This security zone was established at the request of Commander, Selfridge Air National Guard Base. Due to recent improvements and additions to base security, Commander, Selfridge Air National Guard Base has indicated that the security zone is no longer necessary. As such, the Coast Guard is removing this security zone and thereby reducing the restriction placed on the public of not having access to this portion of Lake St. Clair.

Background and Purpose

On September 11, 2001, the United States was the target of coordinated attacks by international terrorists resulting in catastrophic loss of life, the destruction of the World Trade Center, and significant damage to the Pentagon. National security and intelligence officials warn that future terrorists attacks are likely. To protect from such, we published a NPRM followed by a final rule to establish a permanent security zone off the waters of Selfridge Army National Guard Base in Harrison Township, Michigan.

This security zone was believed to be necessary to ensure the protection of the public, facilities, and the surrounding area from possible sabotage or other subversive acts. All persons other than those approved by the Captain of the Port Detroit, or his authorized representative, were prohibited from entering or moving within this zone. In addition to publication in the **Federal Register**, the public was made aware of the existence of this security zone, exact location and the restrictions involved via the Broadcast Notice to Mariners.

Due to recent improvements and enhancements to base security at Selfridge Air National Guard base, the Commanding Officer of that base no longer believes the security zone is necessary. The security zone provided the necessary barrier while the base improved its security, but now that such improvements have been completed, adequate security can be provided by security personnel. As the request by the U.S. Army Garrison Commander was the primary factor for establishment of the security zone and this justification no longer exists, Captain of the Port Detroit is removing this security zone. The U.S. Army Garrison Commander concurs with the COTP decision.

Discussion of Final Rule

This final rule will remove the security zone from the waters of Lake St. Clair off Selfridge National Guard Base.

Regulatory Evaluation

This Final Rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. The Office of Management and Budget has exempted it from review under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this final rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this final rule would not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this final rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the office listed in **ADDRESSES** in this preamble. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This final rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

Federalism

We have analyzed this final rule under Executive Order 13132, Federalism, and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this final rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This final rule would not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This final rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this final rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This final rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this final rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action.

Environment

We have considered the environmental impact of this final rule and concluded that, under figure 2–1, paragraph (34) (g), of Commandant Instruction M16475.lC, this rule is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

§ 165.908 [Removed]

2. Remove § 165.908.

Dated: October 21, 2002.

P.G. Gerrity,

Commander, U.S. Coast Guard, Captain of the Port Detroit.

[FR Doc. 02–27609 Filed 10–29–02; 8:45 am]

BILLING CODE 4910–15–P

POSTAL SERVICE

39 CFR Part 111

Metal Strapping Materials on Pallets

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This final rule revises the standards for securing pallets of mail, whether an individual pallet of mail, a pallet composed of several individual pallets stacked to form a single unit, or a pallet with a pallet box containing mail, by excluding the use of metal strapping or metal banding material. These revisions will also exclude metal buckles, seals, or other devices used to secure the ends of nonmetal strapping material used on pallets of mail. These revisions will not change current approved methods or other materials for securing the mail to pallets.

EFFECTIVE DATE: May 31, 2003.

FOR FURTHER INFORMATION CONTACT: O.B. Akinwole, (703) 292–3643.

SUPPLEMENTARY INFORMATION: On July 24, 2002, the Postal Service published for public comment in the **Federal Register** a proposed rule (FR 67 48425–48426) that excluded the use of metal strapping or metal banding material to secure pallets of mail, whether an individual pallet of mail, a pallet composed of several individual pallets stacked to form a single unit, or a pallet with a pallet box containing mail. The Postal Service also invited comments on the proposed rule from interested

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parties and accepted comments until August 23, 2002. This final rule contains the DMM standards adopted by the Postal Service after review of the comment that was submitted.

Evaluation of Comments Received

The Postal Service received one piece of correspondence offering comments on the July 24 proposed rule. The respondent is a large business mailer.

Based on additional costs expected to be incurred, due to stock on hand, the mailer proposed a December 31, 2003, implementation date.

Metal straps, bands, buckles, or seals used to secure the ends of other nonmetal strapping material, can create serious safety hazards to personnel and equipment preparing, processing and distributing the mail. In addition, the accumulation and disposal of metal strapping materials can create additional hazardous situations and environmental concerns. It should be noted that current Postal Service standards for packaging mail prohibit the use of metal or wire for securing mail into packages, and the standards for traying mail specify the use of plastic straps for securing tray sleeves and lids.

The Postal Service is committed to integrating safety into all postal operations, not only for its employees but also for its customers. Serious injuries, such as deep cuts, can occur when metal bands are applied, often when removed. In addition, the Postal Service is committed to conservation initiatives and supports environmentally sound practices. In keeping with these two commitments, the Postal Service believes that eliminating the use of metal straps or on palletized mail will improve employee and customer safety and promote better resource conservation.

The *Domestic Mail* Manual is revised as follows. These changes are incorporated by reference in the Code of Federal Regulations. *See* 39 CFR part 111.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR Part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Revise the following sections of the Domestic Mail Manual (DMM) as set forth below:

Domestic Mail Manual (DMM)

* * * * *

M Mail Preparation and Sortation

M000 General Preparation Standards

* * * * *

M040 Pallets

M041 General Standards

* * * * *

1.0 PHYSICAL CHARACTERISTICS

* * * * *

1.3 Securing Pallets

[Revise 1.3 to read as follows:]

Except for stacked pallets under 3.1 and pallet boxes under 4.3, each loaded pallet of mail must be prepared to maintain the integrity of the mail and the entire pallet load during transport and handling using one of the following methods:

a. Securing with at least two straps or bands of appropriate material. Wire or metal bands, straps, buckles, seals, and similar metal fastening devices may not be used.

b. Wrapping with stretchable or shrinkable plastic.

c. Securing with at least two straps or bands of appropriate material and wrapping with stretchable or shrinkable plastic. Wire and metal bands and straps, metal buckles, metal seals, and similar metal fastening devices may not be used.

* * * * *

3.0 STACKING PALLETS

[Revise the heading of 3.1 and the text of item d to read as follows:]

3.1 Physical Characteristics

* * * * *

d. The stack of pallets is secured with at least two straps or bands of appropriate material to maintain the integrity of the stacked pallets during transport and handling. Wire or metal bands, straps, buckles, seals, and similar metal fastening devices may not be used. The stack of pallets may not be secured together with stretchable or shrinkable plastic.

* * * * *

4.0 PALLET BOXES

* * * * *

4.3 Securing

[Revise 4.3 to read as follows:]

Pallet boxes must be secured to the pallet with strapping, banding, stretchable, plastic, shrinkwrap, other material (Wire or metal bands, straps, buckles, seals, and similar metal fastening devices may not be used) that ensures that the pallet can be safely unloaded from vehicles, transported, and processed as a single unit to the point where the contents are distributed with the load intact if: * * *

* * * * *

An appropriate amendment to 39 CFR 111 will be published to reflect the changes.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 02–27499 Filed 10–29–02; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NC 104–200239(a); FRL–7400–4]

Approval and Promulgation of Implementation Plans; North Carolina: Approval of Revisions to Inspection and Maintenance (I/M) Regulations Within the North Carolina State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On August 7, 2002, the North Carolina Department of Environment and Natural Resources submitted revisions to the North Carolina State Implementation Plan (SIP). These revisions are contained within 15A NCAC 2D .1000 Motor Vehicle Emissions Control Standards. North Carolina has submitted these rules for an enhanced inspection and maintenance (I/M) program which is a component of the State's Nitrogen Oxides (NO_X) Budget and Allowance Trading Program. The I/M program establishes reductions which are being utilized by the State as part of their NO_X SIP budget. Approval of these I/M rules allow North Carolina to gain credits ranging from 914 tons in 2004 to 4,385 credits in 2007. These credits are then used to determine the number of credits that will be made available for new growth in North Carolina. This submittal resolves all outstanding issues and allows for EPA's final approval of the State's NO_X Budget and Allowance Trading Program. The final approval of the North Carolina NO_X Budget and Allowance Trading Program, which was proposed for approval in 67 FR 42519 and received no adverse comments, will be processed in a later action. The EPA is approving these revisions.

DATES: This direct final rule is effective December 30, 2002 without further notice, unless EPA receives adverse comment by November 29, 2002. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: All comments should be addressed to: Randy Terry at the EPA, Region 4 Air Planning Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303.

Copies of the State submittal(s) are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960. Randy Terry, 404/562–9032. North Carolina Department of Environment, Health, and Natural Resources, 512 North Salisbury Street, Raleigh, North Carolina 27604.

FOR FURTHER INFORMATION CONTACT: Randy B. Terry, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9032. Mr. Terry can also be reached via electronic mail at *terry.randy@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On August 7, 2002, the North Carolina Department of Environment and Natural Resources submitted revisions to the North Carolina SIP. These revisions involve the amending of multiple rules within Section 15A NCAC 2D .1000 Motor Vehicle Emissions Control Standards to establish an enhanced I/M program. An analysis of each of the major revisions submitted is listed below.

II. Analysis of State's Submittal

15A NCAC 2D

.1001 Purpose

This rule has been amended to change "vehicle exhaust emission standard" to "vehicle emission control standard."

.1002 Applicability This rule is being amended to replace the list of nine counties where tailpipe testing is currently required with a reference to the North Carolina General Statutes that lists the counties covered under the I/M program.

.1004 Tailpipe Emission Standards for CO (Carbon Monoxide) and HC (Hydrocarbon)

This rule is being amended to list the nine counties covered under the tailpipe testing program, to reference the tailpipe testing procedures and to state that the requirements of this Rule expire on January 1, 2006.

.1005 On-board Diagnostic Standards

This rule is being amended to specify that 1996 and later modeled-year vehicles are to be inspected using On Board Diagnostics (OBD) test. The federal procedures are incorporated by reference.

Approval of these I/M rules allow North Carolina to gain credits ranging from 914 tons in 2004 to 4,385 credits in 2007. These credits are then used to determine the number of credits that will be made available for new growth in North Carolina. The total credits obtained from these I/M rules and the credits allocated for new growth are detailed in the North Carolina Nitrogen Oxides (NO_X) Budget and Allowance Trading Program **Federal Register** proposal notice (67 FR 42519).

III. Final Action

EPA is approving the aforementioned changes to the SIP because the revisions are consistent with Clean Air Act and EPA regulatory requirements. The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective December 30, 2002 without further notice unless the Agency receives adverse comments by November 29, 2002.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on December 30, 2002 and no further action will be taken on the proposed rule.

Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from

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Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 30, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: October 21, 2002.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority for citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart II—North Carolina

2. In § 52.1770(c), table 1 is amended under subchapter 2D by revising entries .1001; .1002; .1004; and .1005 to read as follows:

§ 52.1770 Identification of plan.

* * * * *

(c) * * *

TABLE 1.—EPA APPROVED NORTH CAROLINA REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Comments
Subchapter 2D	Air Pollution Control Requirements			
. .	. .	.	.	.
Section .1000	Motor Vehicle Emissions Control Standards			
Sect. .1001	Purpose	7/01/02	10/30/02 and FR page citation.	
Sect. .1002	Applicability	7/01/02	10/30/02 and FR page citation.	
. .	. .	.	.	.
Sect. .1004	Emission Standards	7/01/02	10/30/02 and FR page citation.	
Sect. .1005	Measurement and Enforcement	7/01/02	10/30/02 and FR page citation.	
. .	. .	.	.	.

[FR Doc. 02–27495 Filed 10–29–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MO 165–1165a; FRL–7401–4]

Approval and Promulgation of Implementation Plans; State of KS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking final action to approve a volatile organic compound (VOC) rule applicable to the Kansas portion of the Kansas City maintenance area as a revision to the Kansas State Implementation Plan (SIP). This rule restricts VOC emissions from area sources. The effect of this approval is to ensure Federal enforceability of the state air program rules and to maintain consistency between the state-adopted rules and the approved SIP. This action also determines that Kansas has met the condition of approval of its revised maintenance plan for Kansas City and rescinds the prior conditional approval of the revised maintenance plan.

DATES: This direct final rule will be effective December 30, 2002, unless EPA receives adverse comments by November 29, 2002. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Comments may be mailed to Leland Daniels, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

Copies of documents relative to this action are available for public inspection during normal business hours at the above-listed Region 7 location. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Leland Daniels at (913)551–7651.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This section provides additional information by addressing the following questions:

What is a SIP?
What is the Federal approval process for a SIP?
What does Federal approval of a state regulation mean to me?
What is being addressed in this document?
Have the requirements for approval of a SIP revision been met?
What action is EPA taking?

What Is a SIP?

Section 110 of the Clean Air Act (CAA) requires states to develop air pollution regulations and control strategies to ensure that state air quality meets the national ambient air quality standards established by EPA. These ambient standards are established under section 109 of the CAA, and they currently address six criteria pollutants. These pollutants are: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each state must submit these regulations and control strategies to us for approval and incorporation into the Federally-enforceable SIP.

Each Federally-approved SIP protects air quality primarily by addressing air pollution at its point of origin. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

What Is the Federal Approval Process for a SIP?

In order for state regulations to be incorporated into the Federally-enforceable SIP, states must formally adopt the regulations and control strategies consistent with state and Federal requirements. This process generally includes a public notice, public hearing, public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a state rule, regulation, or control strategy is adopted, the state submits it to us for inclusion into the SIP. We must provide public notice and seek additional public comment regarding the proposed Federal action on the state submission. If adverse comments are received, they must be addressed prior to any final Federal action by us.

All state regulations and supporting information approved by EPA under section 110 of the CAA are incorporated into the Federally-approved SIP. Records of such SIP actions are maintained in the Code of Federal Regulations (CFR) at Title 40, part 52, entitled "Approval and Promulgation of Implementation Plans." The actual state regulations which are approved are not reproduced in their entirety in the CFR outright but are "incorporated by reference," which means that we have approved a given state regulation with a specific effective date.

What Does Federal Approval of a State Regulation Mean to Me?

Enforcement of the state regulation before and after it is incorporated into the Federally-approved SIP is primarily a state responsibility. However, after the regulation is Federally approved, we are authorized to take enforcement action against violators. Citizens are also offered legal recourse to address violations as described in section 304 of the CAA.

What Is Being Addressed in This Document?

Kansas has adopted a regulation to control emission of VOCs from area sources located within the Kansas portion of the Kansas City ozone maintenance area, specifically Johnson and Wyandotte Counties. The rule we are approving is the Kansas Administrative Rule (K.A.R.) 28–19–714, Control of Emissions from Solvent Metal Cleaning. Kansas, in a continuing effort to achieve additional needed emission reductions, has adopted this control regulation. Implementation of this rule is expected to reduce VOC emissions from area sources by 1.97 tons per day (tpd). This new regulation was adopted by the Kansas Department of Health and Environment (KDHE) on July 29, 2002, and became effective September 1, 2002. Today, EPA is taking final action to approve the rule K.A.R. 28–19–714, Control of Emissions from Solvent Metal Cleaning.

In 1999 we conditionally approved (64 FR 28757, May 27, 1999) the new contingency measures in the maintenance plan and gave the State one year to opt-in to the reformulated gasoline (RFG) program or adopt equivalent emission reduction measures. By letter dated July 28, 1999, the Governor of Kansas filed an application to require RFG for the Kansas City, Kansas, area. The State's action to opt-in to the RFG program fulfilled the condition we imposed upon the approval. Before EPA acted on the application to impose RFG, the Court of Appeals for the District of Columbia Circuit first stayed and later vacated an EPA rule which would have allowed former nonattainment areas (like Kansas City) and other areas to opt-in to the RFG program (*American Petroleum Inst. v. U.S. Environmental Protection Agency*, 198 F. 3d 275 (D.C. Cir. 2000)). Subsequently, the State chose to implement a lower volatility gasoline measure (7.0 psi RVP). This measure was approved on February 13, 2002 (67 FR 6655, effective March 15, 2002).

Kansas has worked to establish control measures to provide the additional emissions reductions needed to fulfill the contingency measure requirement. In addition, during 2001 Missouri submitted four additional control measures to limit VOC emissions.

For these reasons, we are determining that Kansas has met the condition of the May 27, 1999, approval of the maintenance plan revision (64 FR 28757), and we are rescinding the prior conditional approval (40 CFR 52.869) and providing full approval of the revision to the maintenance plan.

Have the Requirements for Approval of a SIP Revision Been Met?

The state submittal has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submittal also satisfied the completeness criteria of 40 CFR part 51, appendix V. In addition, as explained above and in more detail in the technical support document which is part of this document, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

What Action Is EPA Taking?

This action approves a VOC rule, K.A.R. 28–19–714, as a revision to Kansas's SIP for the Kansas City, Kansas, area. We are also revoking K.A.R. 28–19–75 as it has been revised and replaced. This action also provides full approval of the revision to the maintenance plan and also removes the prior conditional approval (40 CFR 52.869). We are processing this action as a final action because it adds noncontroversial regulations to the SIP. We do not anticipate any adverse comments. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision is severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is

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not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 30, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: October 18, 2002.

William Rice,

Acting Regional Administrator, Region 7.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart R—Kansas

§ 52.869 [Removed and Reserved]

2. Section 52.869 is removed and reserved.

3. Section 52.870 is amended in the table to paragraph (c) under Volatile Organic Compound Emissions by:

a. Removing the entry for K.A.R. 28–19–75; and

b. Adding in numerical order an entry for "28–19–714," to read as follows:

§ 52.870 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED KANSAS REGULATIONS

Kansas citation	Title	State effective date	EPA approval date	Comments
Kansas Department of Health and Environment Ambient Air Quality Standards and Air Pollution Control				
. . . . .				
Volatile Organic Compound Emissions				
. . . . .				
28–19–714	Control of Emissions from Solvent Metal Cleaning	9/1/02	10/30/02 [FR page citation]	

EPA-APPROVED KANSAS REGULATIONS—Continued

Kansas citation	Title	State effective date	EPA approval date	Comments
. . . . .				

* * * * *

[FR Doc. 02–27492 Filed 10–29–02; 8:45 am]

BILLING CODE 6560–50–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

45 CFR Part 1230

New Restrictions on Lobbying

CFR Correction

In Title 45 of the Code of Federal Regulations, part 1200 to end, revised as of October 1, 2001, Appendix B to part 1230 is correctly revised to read as follows:

Appendix B to Part 1230—Disclosure Form to Report Lobbying

APPENDIX B TO PART 1230—DISCLOSURE FORM TO REPORT LOBBYING

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB 0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action: ☐ a. contract ☐ b. grant ☐ c. cooperative agreement ☐ d. loan ☐ e. loan guarantee ☐ f. loan insurance	2. Status of Federal Action: ☐ a. bid/offer/application ☐ b. initial award ☐ c. post-award
3. Report Type: ☐ a. initial filing ☐ b. material change For Material Change Only: year _____ quarter ____ date of last report _____	
4. Name and Address of Reporting Entity: ☐ Prime ☐ Subawardee Tier ____, if known: Congressional District, if known:	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime: Congressional District, if known
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, if applicable _____
8. Federal Action Number, if known:	9. Award Amount, if known: $
10. a. Name and Address of Lobbying Entity (if individual, last name, first name, MI):	b. Individuals Performing Services (including address if different from No. 10a) (last name, first name, MI):
(attach Continuation Sheet(s) SF-LLL-A, if necessary)	
11. Amount of Payment (check all that apply): $ _____ ☐ actual ☐ planned	13. Type of Payment (check all that apply): ☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other; specify _____
12. Form of Payment (check all that apply): ☐ a. cash ☐ b. in-kind; specify: nature _____ value _____	
14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11: (attach Continuation Sheet(s) SF-LLL-A, if necessary)	
15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No	
16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____
Federal Use Only:	Authorized for Local Reproduction Standard Form - LLL

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INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.
15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET

Approved by OMB 0348-0046

Reporting Entity: _____ Page _____ of _____

Authorized for Local Reproduction
Standard Form - LLL-A

[FR Doc. 02–55525 Filed 10–29–02; 8:45 am]
BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 10, 12, and 15

[USCG–1999–5610]

RIN 2115–AF83

Training and Qualifications for Personnel on Passenger Ships

AGENCY: Coast Guard, DOT.

ACTION: Interim rule with request for comments.

SUMMARY: The Coast Guard is establishing requirements of training and certification for masters, certain licensed officers, and certain crewmembers on any ship inspected under subchapter H, T, or K, other than a roll-on/roll-off (Ro-Ro) passenger ship, carrying more than 12 passengers when on an international voyage. (These requirements do not apply to any passenger ship when it is on a domestic voyage.) Regulation V/3 of the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (STCW), as amended in 1997, mandated that its Parties ensure this training and certification. This interim rule will reduce human error, improve the ability of crewmembers to assist passengers during emergencies, and promote safety.

DATES: This interim rule is effective January 28, 2003. Comments and related material must reach the Docket Management Facility on or before December 30, 2002.

The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register, and effective January 28, 2003.

ADDRESSES: To make sure that your comments and related material do not enter the docket more than once, please submit them (referred to USCG–1999–5610) by only one of the following means:

(1) By mail to the Docket Management Facility, U.S. Department of

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Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at *http://dms.dot.gov.*

The Docket Management Facility maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: For questions on this rule, call Mark Gould, Project Manager, Commandant (G–MSO–1), Coast Guard, telephone 202–267–6890. For questions on viewing the docket, call Dorothy Beard, Chief of Dockets, Department of Transportation, telephone 202–366–5149.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (USCG–1999–5610), indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by mail, delivery, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this rule in view of them.

Public Meeting

We do not plan to hold a public meeting. But you may submit a request for one to the Docket Management Facility at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Regulatory History

On June 15, 2000, we published a notice of proposed rulemaking (NPRM) entitled "Training and Certification for Mariners Serving on Certain Ships Carrying More Than 12 Passengers on International Voyages" in the **Federal Register** [65 FR 37507]. We received two letters commenting on the proposed rule. No public hearing was requested, and none was held. Also on June 15, 2000, we published an Analysis and a Determination of Categorical Exclusion, both of which support the rule.

Background and Purpose

Regulation V/3 of the STCW, as amended, set qualifications for masters, other officers, ratings, and other personnel on passenger ships other than Ro-Ro passenger ships. It applies to a passenger ship ("vessel" under most domestic laws) when it is on an international voyage. This interim rule will not apply to any U.S.-flag passenger ship inspected under 46 CFR subchapter H, T, or K, when it is operating on a domestic voyage.

The purpose of this rule is to incorporate, into domestic rules, the training and certification that the STCW, as amended, mandates internationally. It will amend requirements for the training and certification of masters, certain licensed officers, and certain crewmembers on any ship, other than a Ro-Ro passenger ship, carrying more than 12 passengers when on an international voyage. It will have no impact on the applicability or content of the interim rule in 46 CFR part 10, subpart J; part 12, subpart 12.30; or part 15, subpart J (62 FR 34505, June 26, 1997), all three of which dealt with certain crewmembers on Ro-Ro passenger ships carrying more than 12 passengers on such voyages. It will merely establish appropriate training and documentation for the masters, certain licensed officers, and certain crewmembers on any other ship carrying more than 12 passengers when on an international voyage.

"International voyage" means a voyage from the United States to a port outside the United States or conversely; or a voyage originating and terminating at ports outside the United States. A voyage between the continental United States and Hawaii or Alaska, and a voyage between Hawaii and Alaska, counts as a "international voyage" for the purposes of this rule (compare 46 CFR 199.30 on lifesaving).

If you would like more information on the background of this rulemaking and of the STCW, please refer to the NPRM discussed earlier under *Regulatory History.*

Discussion of Interim Rule

46 CFR Part 10—Licensing of Maritime Personnel

1. Section 10.102 incorporates by reference the STCW (including its Regulation V/3, adopted in 1997, and the corresponding Code) into the rules in part 10 and adjusts the list of rules that refer to the STCW, as amended.

2. Section 10.103 amends the definition of "STCW" to add the words "and 1997 (incorporated by reference in § 10.102)". For continuity, sections 10.205, 10.304, 10.603, 10.901, 10.903, and 10.1005, where STCW or the STCW Code is cited, add the same parenthetic statement.

3. New sections 10.1101, 10.1103, and 10.1105 require certain licensed officers to complete training required by the STCW Regulation V/3 (and elaborated by section A–V/3 of the Code) when serving on a ship, other than a Ro-Ro passenger ship, carrying more than 12 passengers when on an international voyage.

46 CFR Part 12—Certification of Seamen

4. Section 12.01–3 incorporates by reference the STCW (including its Regulation V/3, adopted in 1997, and the corresponding Code) into the rules in part 12 and adjusts the list of rules that refer to the STCW, as amended.

5. Section 12.01–6 amends the definition of "STCW" to add the words "and 1997 (incorporated by reference in § 12.01–3)". For continuity, sections 12.01–1, 12.01–6, 12.02–7, 12.02–11, 12.03–1, 12.05–3, 12.05–7, 12.05–11, 12.10–3, 12.10–5, 12.10–7, 12.10–9, 12.15–3, 12.15–7, 12.25–45, 12.30–5, and 12.35–5, where STCW or the STCW Code is cited, add the same parenthetic statement.

6. New subpart 12.35 requires certain mariners to complete training required by Regulation V/3 (and elaborated by section A–V/3 of the Code) when serving on a ship, other than a Ro-Ro passenger ship, carrying more than 12 passengers when on an international voyage. If we left the wording in § 12.35–5 of the NPRM unchanged, we would inadvertently restrict the training to persons holding merchant mariners' documents. As reflected in the regulatory analysis supporting the NPRM, it was (and remains) our intent to have these requirements apply to all crewmembers (including undocumented deckhands), who, during emergencies, are responsible for the safety of passengers. Consequently, we have modified the wording in § 12.35–5. We are providing a 60-day comment period to allow public review of and comment on this change before we implement it.

46 CFR Part 15—Manning

7. The heading of § 15.1103 is revised so as to clearly indicate that the section also covers undocumented crewmembers. Paragraphs (e), (f), and (g) of § 15.1103 will become paragraphs (f), (g), and (h), respectively; relettered paragraph (f) will undergo no change; and the heading and relettered paragraphs (g) and (h) will undergo slight editorial change.

8. A new paragraph 15.1103(e) will govern any ship, other than a Ro-Ro passenger ship, carrying more than 12 passengers when on an international voyage. Paragraph 15.1103(d) takes on the simpler, clearer form of new paragraph 15.1103(e), without substantive change.

Discussion of Comments

We received two comments on this rulemaking. Both addressed our request in the NPRM for suggestions on whether these requirements should apply to any U.S.-flag passenger ship inspected under 46 CFR subchapter H and operating on a domestic voyage. Both stated that the requirements should not apply. Because there are so few records of casualties, they believe there is no need to impose the requirements on these vessels.

At this time, we do not intend to require any U.S.-flag passenger ship inspected under 46 CFR subchapter H, T, or K, when operating on a domestic voyage, to comply with these requirements. Should the Coast Guard find this to be necessary, a separate rulemaking would also be necessary. The training required by this rule, however, is required for masters, certain licensed officers, and certain crewmembers serving on a vessel inspected under subchapter H, as well as under subchapter T or K, if the vessel is on an international voyage.

Incorporation by Reference

This interim rule incorporates by reference the material listed in 46 CFR 10.102 and 12.01–3. Copies of the material are available from the source listed in those sections. The Coast Guard submitted this material to the Director of the Federal Register for approval of the incorporation by reference and received such approval.

Regulatory Evaluation

This interim rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget (OMB) has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) [44 FR 11040 (February 26, 1979)].

A Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is available in the docket as indicated under **ADDRESSES.** A summary of the Regulatory Evaluation follows:

The Coast Guard is publishing this interim rule to implement Regulation V/3 of the STCW, as amended in 1997. The rule specifies the necessary training and certification for certain mariners serving on any ship, other than a Ro-Ro passenger ship, carrying more than 12 passengers when on an international voyage (the interim rule on the STCW (CGD 95–062, June 26, 1997) covers Ro-Ro passenger ships). The IMO mandated that its Parties ensure this training and certification, which should reduce human error, improve the ability of crewmembers to assist passengers during emergencies, and promote safety.

Costs

The specialized training courses that certain mariners will have to complete are: Crisis Management and Human Behavior, Crowd Management, Special Safety Training (including communication), Training in Passengers' Safety, and Special Familiarization Training (including the operational limitations of the ship). The average cost for the courses, held for 5 days at various training institutions, is $1,215 a person. We estimate that the cost to develop in-house courses will not exceed the cost of courses at these institutions. Either operators of vessels or companies may develop a more cost-effective way to provide in-house training (for less than the cost we estimate). We estimate the costs of first-year training for 1,144 mariners to be $1,389,960.

Union contracts may require some companies to pay for training new hires. We estimate the cost of training for the new hires paid by the companies to be $20,655 a year beginning in 2001 and running through 2010. We estimate the cost paid by the new hires themselves after 2001 to be $117,855 a year.

Certain mariners will have to complete refresher training for Crisis Management and Human Behavior, Crowd Management, and Special Safety every five years. This training is available as a single two-day course at an estimated cost of $330. We estimate the first-year travel cost incurred by the existing staff of mariners that receive training away from their vessels at $406,850. We estimate the cost of travel for the new hires to be $45,030. We estimate that about one-half of the existing staff of mariners receiving training away from their vessels will continue to receive their wages while attending courses, because of their membership in unions. We estimate this one-time cost of wages to be $370,310. We estimate the recurring cost of wages associated with the refresher training to be $183,034 a year. We estimate the one-time cost incurred by the remaining half of the existing staff of mariners (those that don't receive wages while attending initial training) to be $370,310; this is the "opportunity cost" of the mariners' spare time. As with initial training, we believe that owners or operators may develop in-house refresher training at less cost than we estimate.

In summary, the 10-year present value (in 2000 dollars) of the total cost of this rule is $4,345,794. To learn further details concerning the costs associated with this rule, as well as the potential benefits, see the analysis provided in the docket for this rule on the Internet at *http://dms.dot.gov.*

Benefits

Implementing this interim rule will ensure that any U.S. ship carrying more than 12 passengers on an international voyage is in compliance with the Amendments to the International Convention on the STCW, 1978. IMO adopted the Amendments in response to a series of casualties involving passenger ships, such as the *Scandinavian Star, Estonia,* and *Achille Lauro.* During these casualties, the crews did not perform emergency duties in an efficient, coordinated, and effective manner. We reviewed the casualty records for the U.S. ships this rule will affect and found no cases that would have directly benefited from this rule. However, the following narratives briefly describe two of the casualties to these three foreign-flag ships, to show the types of risks this rule addresses.

On March 15, 1988, a fire occurred in the engine room of the *Scandinavian Star.* Two crewmembers were injured,

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and two passengers were transported to a medical facility by helicopter, treated, and released. Costs of damage and repair came to about $3.5 million. According to an excerpt from the marine-accident report of the National Transportation Safety Board, one of the passengers stated that one of the crewmembers did not know how to pull the fire alarm and that the passengers waited from 45 minutes to 2 hours to receive lifejackets and then were given child-size lifejackets.

On November 30, 1994, a fire onboard the *Achille Lauro* proved more costly: It left two persons dead, and eight injured. Afterward, many of the survivors complained of confusion and a lack of leadership by the crew when the fire broke out. They accused some crewmembers of abandoning elderly passengers to save themselves.

While the requirement for all crewmembers to have familiarization or basic safety training or instruction figured in the 1995 amendments to the STCW, the amendments did not adequately address the need for special training of personnel on passenger ships. Further work was necessary at the IMO to reach agreement on the mandatory minimum training and qualifications for these personnel.

Implementing this rule should reduce the risk that passengers will be injured in fires or other emergencies on passenger ships, because crewmembers will be trained to coordinate rapid responses and keep passengers from panicking. The following recent accidents involving passenger ships highlight the continued need for this rule: the fire on the *Universe Explorer* (July 1996) near Juneau, Alaska; the fire on the *Vistafjord* (April 1997) near Grand Bahama Island; and the grounding of the *Monarch of the Seas* (December 1998) off St. Maarten.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this interim rule would have a significant economic impact on a substantial number of small entities. Small entities include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

This rule will affect certain crewmembers on any ship carrying more than 12 passengers when on an international voyage. The Act, however, does not regard individual crewmembers as small entities.

This rule will not require companies to bear the cost of the training. Nonetheless, we estimate that the companies will choose to bear most of it.

During the analysis for the interim rule implementing 1995 Amendments to the STCW, we considered the impact on businesses, organizations, and jurisdictions both defined as small entities and potentially affected by the STCW. Small entities here include owners and operators of some of the STCW-affected ships, training institutions, and businesses offering marine-training courses or supplying assessors or examiners. As that rule does not, this rule will not require any single business to offer or assess all courses required under the STCW. Training institutions or businesses that offer training-course assessors will not have to provide new services. This rule will allow for small entities to remain in and actively compete in maritime training with options to teach and assess as many courses or functions as they choose.

We realize there are issues regarding the lack of approved courses and designated examiners in some remote locations. The Coast Guard will develop guidelines addressing alternative means for the delivery of such courses; these means may involve delivery of such courses on site (*i.e.*, "in-house" training). These courses or other training would be acceptable for officers and crewmembers on vessels inspected under subchapter H, T, or K, when authorized by the cognizant OCMI.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant impact on a substantial number of small entities. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule will have a significant economic impact on it, please submit a comment to the Docket Management Facility at the address under **ADDRESSES**. In your comment, explain why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under subsection 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this interim rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule as applied to persons not holding merchant mariners' documents would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult Mark Gould, project manager, at 202–267–6890. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal rules, to the Small Business and Agriculture Regulatory Enforcement Ombudsman and to the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

As described in the NPRM (65 FR 37505–13) and in the Analysis Documentation (available in the docket as indicated under **ADDRESSES**), this interim rule contains three new requirements that call for collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The three take a single form: holding documentary evidence of compliance with STCW.

STCW Regulation V/3 requires certain seafarers serving on any ship (other than a Ro-Ro passenger ship) carrying more than 12 passengers when on an international voyage to complete specialized training as adopted by IMO in 1997. We didn't receive any comments regarding the collection-of-information burden of this rule.

As required by 44 U.S.C. 3507(d), we submitted a copy of this rule to OMB for its review of the collection of information. The section numbers are 46 CFR 10.1105, 12.35–5, and 15.1103, and the corresponding approval number from OMB will be OMB Control Number 2115–0624. We will publish another notice when OMB approves the collection of information. We expect approval to be valid for three years.

You need not respond to a collection of information unless it displays a currently valid control number from OMB.

Federalism

We have analyzed this interim rule under Executive Order 13132, Federalism. It is well settled that States are precluded from regulating in categories that are reserved for regulation by the Coast Guard. It is also well settled, now, that all of the categories covered in 46 U.S.C. 3306 and 3703(a), 7101, and 8101 (design, construction, alteration, repair, maintenance, operation, equipping, personnel qualification, and manning of vessels to which these sections apply) are within the field foreclosed from regulation by States. (*See* the decision of the Supreme Court in the consolidated cases of *United States* v. *Locke* and *Intertanko* v. *Locke*, 120 S. Ct. 1135 (1999), 2000 U.S. LEXIS 1895 (March 6, 2000).) Because this rule falls into the above-mentioned categories, it precludes States from regulating.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their regulatory actions not specifically required by law. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector, of $100,000,000 or more in any one year.

While two States operate passenger vessels on international voyages, entities in the private sector own and operate most of the vessels with mariners that this interim rule will affect. More important, the total burden of Federal mandates that this rule will impose will not exceed $5 million (during the first 10 years after the effective date of the rule). Therefore, this rule will not impose an unfunded mandate. Although this rule will not result in a $100,000,000 expenditure, we do discuss its effects elsewhere in this preamble.

Taking of Private Property

This interim rule will not effect a taking of private property or otherwise have implications for taking under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Reform of Civil Justice

This interim rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this interim rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not economically significant and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This interim rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

To help the Coast Guard establish regular and meaningful consultation and collaboration with Indian and Alaskan Native tribes, we published a notice in the **Federal Register** (66 FR 36361, July 11, 2001) requesting comments on how to best carry out the Order. We invite your comments on how this rule might affect tribal governments, even if the effect may not constitute a "tribal implication" under the Order.

Energy Effects

We have analyzed this interim rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that Order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this interim rule and concluded that under figure 2–1, paragraph (34)(c), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation. This rule will not result in any significant cumulative impact on the human environment; any substantial controversy or substantial change to existing environmental conditions; any impact, more than minimal, on properties protected under 4(f) of the DOT Act, as superseded by Public Law 97–449 and Section 106 of the National Historic Preservation Act; or any inconsistencies with any Federal, State, or local laws or administrative determinations relating to the environment. A Determination of Categorical Exclusion is available in the docket where indicated under **ADDRESSES**.

List of Subjects

46 CFR Part 10

Incorporation by reference, Marine safety, Seamen, Vessels.

46 CFR Part 12

Incorporation by reference, Marine safety, Seamen, Vessels.

46 CFR Part 15

Marine safety, Navigation (water), Seamen, Vessel manning, Vessels.

For the reasons set out in the preamble, the Coast Guard is amending 46 CFR parts 10, 12, and 15 as follows:

PART 10—LICENSING OF MARITIME PERSONNEL

1. The citation of authority for part 10 continues to read as follows:

Authority: 31 U.S.C. 9701; 46 U.S.C. 2101, 2103, 2110; 46 U.S.C. Chapter 71; 46 U.S.C. 7502, 7505, 7701; Pub. L. 103–206, 107 Stat. 2439; 49 CFR 1.45, 1.46; Sec. 10.107 also issued under the authority of 44 U.S.C. 3507.

2. Revise § 10.102(b) to read as follows:

§ 10.102 Incorporation by reference.

* * * * *

(b) The material incorporated by reference in this part and the sections affected are as follows: *International Maritime Organization (IMO)*, 4 Albert Embankment, London, SE1 7SR, England. The STCW—International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as amended in 1995 and 1997 (the STCW Convention, or the STCW)—and Seafarers' Training, Certification and Watchkeeping Code (the STCW Code), approved for incorporation by reference in sections 10.103; 10.205; 10.304; 10.603; 10.901; 10.903; 10.1005; and 10.1105 of this part.

§ 10.103 [Amended]

3. In § 10.103, to the definition of "STCW," immediately following the words "as amended in 1995", add the words "and 1997 (incorporated by reference in § 10.102)".

§ 10.205 [Amended]

4. In paragraph (l)(1) of § 10.205, immediately following the words "STCW Code", add the words "(incorporated by reference in § 10.102)"; and in paragraphs (l)(2), (3), and (4) of § 10.205, immediately following the words "STCW Code", add the words "(also incorporated by reference in § 10.102)".

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§ 10.304 [Amended]

5. In paragraph (f) of § 10.304, immediately following the words "Chapter III of STCW", add the words "(incorporated by reference in § 10.102)".

§ 10.603 [Amended]

6. In paragraph (c) of § 10.603, immediately following the words "STCW Regulation IV/2", add the words "(incorporated by reference in § 10.102)".

§ 10.901 [Amended]

7. In paragraph (c) of § 10.901, immediately following the words "STCW Regulations", add the words "(incorporated by reference in § 10.102)".

§ 10.903 [Amended]

8. In paragraphs (c) and (d) of § 10.903, immediately following the words "STCW Code", add the words "(incorporated by reference in § 10.102)".

§ 10.1005 [Amended]

9. In § 10.1005, immediately following the words "STCW Code", add the words "(incorporated by reference in § 10.102)".

10. Add Subpart K, consisting of §§ 10.1101 through 10.1105, to read as follows:

Subpart K—Officers on a Passenger Ship, Other Than a Ro-Ro Passenger Ship, When on an International Voyage

Sec.
10.1101 Purpose of rules.
10.1103 Definitions.
10.1105 General requirements for license holders.

Subpart K—Officers on a Passenger Ship, Other Than a Ro-Ro Passenger Ship, When on an International Voyage

§ 10.1101 Purpose of rules.

The rules in this subpart establish requirements for officers serving on passenger ships as defined in § 10.1103.

§ 10.1103 Definitions.

Passenger ship in this subpart means a ship, other than a Ro-Ro passenger ship, carrying more than 12 passengers when on an international voyage.

§ 10.1105 General requirements for license holders.

If you are licensed as a master, mate, chief mate, engineer, or chief engineer, then, before you may serve on a passenger ship, you must—

(a) Meet the appropriate requirements of the STCW Regulation V/3 and of section A–V/3 of the STCW Code (incorporated by reference in § 10.102); and

(b) Hold documentary evidence to show that you meet these requirements through approved or accepted training.

PART 12—CERTIFICATION OF SEAMEN

11. The citation of authority for part 12 continues to read as follows:

Authority: 31 U.S.C. 9701; 46 U.S.C. 2101, 2103, 2110, 7301, 7302, 7503, 7505, 7701; 49 CFR 1.46.

§ 12.01–1 [Amended]

12. In paragraph (a)(2) of § 12.01–1, immediately following the words "required by STCW", add the words "(incorporated by reference in § 12.01–3)".

§ 12.01–3 [Amended]

13. Revise § 12.01–3 to read as follows:

§ 12.01–3 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in paragraph (b) of this section, the Coast Guard must publish notice of change in the **Federal Register** and must ensure that the material is available to the public. All approved material is available for inspection at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC, and at the U.S. Coast Guard, Office of Operating and Environmental Standards, room 1210, 2100 Second Street SW., Washington, DC, and is available from the sources indicated in paragraph (b) of this section.

(b) The material approved for incorporation by reference in this part, and the sections affected, are as follows:

International Maritime Organization (IMO), 4 Albert Embankment, London, SE1 7SR, England. The STCW—International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as amended in 1995 and 1997 (the STCW Convention, or the STCW)—and Seafarers' Training, Certification and Watchkeeping Code (the STCW Code), approved for incorporation by reference in sections 12.01–1; 12.01–6; 12.02–7; 12.02–11; 12.03–1; 12.05–3; 12.05–7; 12.05–11; 12.10–3; 12.10–5; 12.10–7; 12.10–9; 12.15–3; 12.15–7; 12.25–45; 12.30–5; and 12.35–5 of this part.

§ 12.01–6 [Amended]

14. In § 12.01–6, to the definition of "STCW," delete the words "in 1995", and add the parenthetic statement "(incorporated by reference in § 12.01–3)".

§ 12.02–7 [Amended]

15. In paragraph (d) of § 12.02–7, immediately following the words "in accordance with STCW", add the words "(incorporated by reference in § 12.01–3)".

§ 12.02–11 [Amended]

16. In paragraph (h)(1) of § 12.02–11, immediately following the words "the STCW Code", add the words "(incorporated by reference in § 12.01–3)".

§ 12.03–1 [Amended]

17. In paragraph (a)(8) of § 12.03–1, immediately following the words "the STCW Code", add the words "(incorporated by reference in § 12.01–3)".

§ 12.05–3 [Amended]

18. In paragraph (b)(1) of § 12.05–3, immediately following the words "the STCW Code", add the words "(incorporated by reference in § 12.01–3)".

§ 12.05–7 [Amended]

19. In paragraph (a)(5) of § 12.05–7, immediately following the words "the STCW Code", add the words "(incorporated by reference in § 12.01–3)".

§ 12.05–11 [Amended]

20. In paragraph (a) of § 12.05–11, remove the words "STCW endorsement" and replace them with the words "endorsement under the STCW (incorporated by reference in § 12.01–3)".

§ 12.10–3 [Amended]

21. In paragraph (c) of § 12.10–3, immediately following the words "STCW Regulation VI/2", add the words "(incorporated by reference in § 12.01–3)".

§ 12.10–5 [Amended]

22. In paragraph (d) of § 12.10–5, immediately following the words "STCW Regulation VI/2", add the words "(incorporated by reference in § 12.01–3)" and, immediately following the words "STCW Code", add the words "(also incorporated by reference in § 12.01–3)".

§ 12.10–7 [Amended]

23. In § 12.10–7, remove the words "STCW endorsement" and replace them with the words "endorsement under the STCW (incorporated by reference in § 12.01–3)".

§ 12.10–9 [Amended]

24. In paragraph (b)(2) of § 12.10–9, immediately following the words "STCW Regulation VI/2", add the words "(incorporated by reference in § 12.01–3)".

§ 12.15–3 [Amended]

25. In paragraph (d)(1) of § 12.15–3, immediately following the words "the STCW Code", add the words "(incorporated by reference in § 12.01–3)".

§ 12.15–7 [Amended]

26. In paragraph (c) of § 12.15–7, immediately following the words "the STCW Code", add the words "(incorporated by reference in § 12.01–3)".

§ 12.25–45 [Amended]

27. In § 12.25–45, immediately following the words "the STCW Code", add the words "(incorporated by reference in § 12.01–3)".

§ 12.30–5 [Amended]

28. In § 12.30–5, immediately following the words "the STCW Code", add the words "(incorporated by reference in § 12.01–3)".

29. Add new subpart 12.35, consisting of §§ 12.35–1 through 12.35–5, to read as follows:

Subpart 12.35—Crewmembers on a Passenger Ship, Other Than a Ro-Ro Passenger Ship, When on an International Voyage

Sec.
12.35–1 Purpose of rules.
12.35–3 Definition.
12.35–5 General requirements.

Subpart 12.35—Crewmembers on a Passenger Ship, Other Than a Ro-Ro Passenger Ship, When on an International Voyage

§ 12.35–1 Purpose of rules.

The rules in this subpart establish requirements for the certification of seamen serving on passenger ships as defined in § 12.35–3.

§ 12.35–3 Definition.

Passenger ship in this subpart means a ship, other than a Ro-Ro passenger ship, carrying more than 12 passengers when on an international voyage.

§ 12.35–5 General requirements.

If you are an unlicensed person, then, before you may serve on a passenger ship and perform duties that involve safety or care for passengers, you must—

(a) Meet the appropriate requirements of the STCW Regulation V/3 and of section A–V/3 of the STCW Code (incorporated by reference in § 12.01–3); and

(b) Hold documentary evidence to show that you do meet these requirements through approved or accepted training.

PART 15—MANNING REQUIREMENTS

30. The citation of authority for part 15 continues to read as follows:

Authority: 46 U.S.C. 2101, 2103, 3306, 3703, 8101, 8102, 8104, 8105, 8301, 8304, 8502, 8503, 8701, 8702, 8901, 8902, 8903, 8904, 8905(b), 9102; Pub. L. 103–206, 107 Stat. 2439; 49 CFR 1.45 and 1.46.

31. In § 15.1103, revise paragraph (d) to read as set forth below; redesignate paragraphs (e), (f), and (g) as paragraphs (f), (g), and (h), respectively; add a new paragraph (e) to read as set forth below; and revise the section heading and newly redesignated paragraphs (g) and (h) to read as follows:

§ 15.1103 Employment and service within restrictions of a license, document, and STCW endorsement or of a certificate of training.

* * * * *

(d) You must hold documentary evidence to show you meet the requirements of § 10.1005 (if licensed) or § 12.30–5 (if unlicensed) of this chapter if you are a master or crewmember on board a Ro-Ro passenger ship to which a certificate signifying compliance with the International Convention for the Safety of Life at Sea, 1974, as amended (SOLAS), has been issued.

(e) You must hold documentary evidence to show you meet the requirements of § 10.1105 (if licensed) or § 12.35–5 (if unlicensed) of this chapter if you are a master or crewmember on board a vessel that is—

(1) Subject to the STCW;

(2) Not a Ro-Ro passenger ship; and

(3) Carrying more than 12 passengers when on an international voyage.

* * * * *

(g) On board a seagoing vessel required to comply with provisions of the GMDSS in Chapter IV of SOLAS, no person may employ or engage any person to serve, and no person may serve, as the person designated to maintain GMDSS equipment at sea, when the service of a person so designated is used to meet the maintenance requirements of SOLAS Regulation IV/15, which allows for capability of at-sea electronic maintenance to ensure that radio equipment is available for radio communication, unless the person so serving holds documentary evidence that he or she is competent to maintain GMDSS equipment at sea.

(h) After January 31, 2002, on board a seagoing vessel fitted with an Automatic Radar Plotting Aid (ARPA), no person may employ or engage any person to serve, and no person may serve, as the master, chief mate, or officer of the navigational watch, unless the person so serving has been trained in the use of ARPA in accordance with § 10.205 or § 10.209 of this chapter, whichever is appropriate.

Dated: October 18, 2002.

Paul J. Pluta,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety, Security and Environmental Protection.

[FR Doc. 02–27376 Filed 10–29–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 34

Firefighting Equipment

CFR Correction

In Title 46 of the Code of Federal Regulations, Parts 1 to 40, revised as of October 1, 2001, on page 462, in § 34.50–10, paragraph (e) is revised to read as follows:

§ 34.50–10 Location—TB/ALL.

* * * * *

(e) Portable extinguishers and their stations shall be numbered in accordance with § 35.40–25 of this subchapter.

* * * * *

[FR Doc. 02–55524 Filed 10–29–02; 8:45 am]

BILLING CODE 1505–01–D

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 32, 42, 51, and 64

[WC Docket No. 02–269, FCC 02–240]

Federal-State Joint Conference on Accounting Issues

AGENCY: Federal Communications Commission.

ACTION: Final rule.

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SUMMARY: In this document the Commission convenes a Federal-Station Joint Conference on Accounting Issues to provide a forum for an ongoing dialogue between the commission and the states in order to ensure that regulatory accounting data and related information filed by carriers are adequate, truthful, and thorough.

DATES: Effective October 30, 2002.

FOR FURTHER INFORMATION CONTACT: Jane Jackson, Associate Bureau Chief, Wireline Competition Bureau, at (202) 418–1500.

SUPPLEMENTARY INFORMATION: The following is a synopsis of action taken by the Commission that was adopted on August 27, 2002, and released on September 5, 2002, by the Commission: Commissioner Copps issuing a statement.

I. Introduction

In this Order, we convene a Federal-State Joint Conference on Accounting Issues to provide a forum for an ongoing dialogue between the Commission and the states in order to ensure that regulatory accounting data and related information filed by carriers are adequate, truthful, and thorough. The Federal-State Joint Conference on Accounting Issues will further this goal by facilitating cooperative federal and state review of regulatory accounting and related reporting requirements in order to determine their adequacy and effectiveness in the current market and make recommendations for improvements.

II. Background

Section 11 of the Communications Act requires that the Commission review every two years those regulations that are "no longer necessary in the public interest as the result of meaningful economic competition between providers of telecommunications service." To this end, in the *Phase II Accounting Reform* proceeding, the Commission undertook its second comprehensive, biennial review of its Part 32 accounting rules and Automated Reporting Management Information System (ARMIS) reporting requirements. As part of this review, the Commission adopted changes to its accounting and related reporting rules that were intended to "reflect a sharpened focus on ongoing regulatory needs in the areas of competition and universal service[,]" and minimize the regulatory burdens and distortions that could undermine the development of new technology. In addition, in a related Further Notice of Proposed Rulemaking, the Commission sought comment on certain accounting and related reporting requirements it identified for future reform.

The National Association of Regulatory Utility Commissioners (NARUC) recently adopted a resolution concerning regulatory accounting rules and reporting requirements. Among other things, the NARUC resolution requests that the Commission establish a Federal-State Joint Conference "to review regulatory accounting and reporting safeguards to determine their adequacy and effectiveness in current markets and make recommendations as to future accounting and reporting changes.

III. Establishment of the Joint Conference

Accordingly, in order to further the development of improved regulatory accounting and reporting requirements and ensure that data filed by carriers are adequate, truthful, and thorough, we now convene a Federal-State Joint Conference on Accounting Issues (Joint Conference or Conference) pursuant to section 410(b) of the Communications Act. Section 410(b) provides that:

> [T]he Commission may confer with any State commission having regulatory jurisdiction with respect to carriers regarding the relationship between rate structures, accounts, charges, practices, classifications, and regulations of carriers subject to the jurisdiction of such State commission and of the Commission.

We find that the public interest will be furthered by convening an ongoing conference on regulatory accounting safeguards pursuant to this provision. The Joint Conference will provide a focused means by which we and interested state commissions may conduct an open dialogue, collect and exchange information, and consider initiatives that will improve the collection of adequate, truthful, and thorough accounting data for regulatory purposes. We expect the Conference will facilitate the continuing review of federal and state accounting and related reporting requirements.

Section 410(b) and the Commission's policies and procedures for implementing 410(b) Joint Conferences are flexible and will permit the Conference to begin rapidly an open dialogue regarding how best to make recommendations for improvements to existing regulatory accounting and related reporting requirements. Specifically, section 410(b) and our policies state that this Commission may confer with any State commission regarding matters that relate to the regulation of public utilities subject to the jurisdiction of either commission.

We further conclude that the Conference shall be chaired by the Chairman of this Commission or his designee. Any or all of the other Federal commissioners may participate in the Conference, as may representatives from up to five State commissions, whom we will invite following recommendations from NARUC. Meetings will be called by the Conference Chairman, who may establish a regular schedule for meetings after consultations with Conference members. In addition, the Conference at any point may decide to include any of its findings and recommendations in a written report to this Commission. Finally, the Commission shall revisit the need for and utility of the Joint Conference in two years time.

The activities of the Joint Conference will include the reexamination of federal and state regulatory accounting and related reporting requirements. The Joint Conference will have a broad mandate to evaluate accounting requirements that state and federal regulators need to carry out their responsibilities. This analysis could include, among other things, an evaluation of current regulatory accounting rules, consideration of the scope of these rules, and an examination of any additions to or eliminations of accounting requirements. The Conference may utilize existing federal and state data collection procedures and conduct hearings to collect information necessary to further the development of improved regulatory accounting and related reporting requirements and ensure that data filed by carriers are adequate, truthful, and thorough. Moreover, we direct the Conference specifically to consider the impact of its recommendations on local exchange carriers with fewer than 2 percent of the Nation's subscriber lines installed in the aggregate nationwide. The activities of the Joint Conference, however, will not limit the ability of this Commission to take separate, independent action concerning regulatory accounting and related reporting requirements.

Finally, because section 410(b) provides a flexible vehicle for state-federal cooperation, we anticipate that, as appropriate, the Joint Conference will undertake efforts and utilize tools in addition to those discussed herein. We also expect that the Conference will seek the cooperation of private sector representatives, where necessary and appropriate, to assist in identifying appropriate improvements. In sum, it is our expectation that the cooperative efforts of the Conference will help restore public confidence in the telecommunications industry by improving regulatory accounting and related reporting requirements and ensuring that data filed by carriers are adequate, truthful, and thorough.

IV. Ordering Clauses

Pursuant to section 410(b) of the Communications Act of 1934, 47 U.S.C. 410(b), that the Federal-State Joint Conference on Accounting Issues be convened.

Pursuant to section 410(b) of the Communications Act of 1934, 47 U.S.C. 410(b), that the Federal-State Joint Conference shall be chaired by the Honorable Michael K. Powell or his designee and shall be comprised of any or all of the other Federal commissioners and representatives from up to five State commissions, who shall be recommended by the National Association of Regulatory Utility Commissioners.

List of Subjects in 47 CFR Parts 32, 42, 51, and 64

Communications common carriers, Reporting and recordkeeping requirements, Telephone, Uniform System of Accounts.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–27569 Filed 10–29–02; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Transportation Security Administration

49 CFR Part 1511

[Docket No. TSA–2002–11334]

RIN 2110–AA02

Aviation Security Infrastructure Fees

AGENCY: Transportation Security Administration (TSA), DOT.

ACTION: Final waiver of audit submission requirements.

SUMMARY: TSA is issuing this document to inform all air carriers and foreign air carriers that, under certain conditions, it will defer enforcement of the independent audit submission deadline set forth in the regulations on Aviation Security Infrastructure Fees. This will be the final such deferral.

DATES: Under the conditions described in this document, TSA is allowing air carriers and foreign air carriers until December 31, 2002 to finalize and submit to TSA the independent audits required by 49 CFR part 1511.

FOR FURTHER INFORMATION CONTACT: For guidance on technical matters contact Randall Fiertz, Acting Director of Revenue, (202) 385–1209. For guidance on legal or other matters contact Steven Cohen, Office of Chief Counsel, (202) 493–1216.

SUPPLEMENTARY INFORMATION: In order to offset the costs of providing civil aviation security services, TSA published in the **Federal Register** an interim final rule (67 FR 7926; February 20, 2002), codified at 49 CFR part 1511, that imposed the Aviation Security Infrastructure Fee on air carriers and foreign air carriers engaged in air transportation, foreign air transportation, and intrastate air transportation.

Sections 1511.5 and 1511.7 require these carriers to provide TSA with certain information on their costs related to screening passengers and property incurred in 2000. This information was due to be received by TSA by May 18, 2002. Section 1511.9 requires each such carrier to provide for and submit to TSA an independent audit of these costs, which were due to be received by TSA by July 1, 2002.

As reflected in the public docket on the Aviation Security Infrastructure Fee regulation, TSA–2002–11334, as available online at *http://dms.dot.gov*, TSA denied several requests that it alter the audit requirement and extend the July 1, 2002 audit deadline.

However, on three occasions TSA has announced that it would temporarily defer enforcement of the audit submission deadline against carriers that meet certain criteria related to the fees by certain dates. These criteria are that the carriers must make timely and proper fee payments, must submit any necessary revisions to their part 1511 Appendix A submission(s), and must remit all adjusted fee payments retroactive to February 18, 2002. The first announcement appeared in TSA's "Guidance for the Aviation Security Infrastructure Fee," as published in the **Federal Register** on May 1, 2002 (docket item no. 20). The second announcement was in TSA's July 24, 2002, response letter to the Air Transport Association (docket item no. 35). The third such announcement, which extended this conditional waiver of enforcement of the regulation's audit submission deadline until October 31, 2002, was published in the **Federal Register** on September 4, 2002 (docket item no. 39).

TSA's motivation in allowing additional time for the carriers to provide for and submit independent audits of their Appendix A submissions has been twofold. First, the agency was responding to numerous public requests for more time to allow the carriers to conduct proper audits. Second, TSA was allowing for time for the 107th Congress to consider one of the Department of Transportation's proposed technical corrections to Section 118 of the Aviation and Transportation Security Act (Pub. L. 107–71), codified at 49 U.S.C. 44940. Among other changes, this proposed correction would have revised the current fee structure by setting the total fee at a flat amount that would then be apportioned among air carriers and foreign air carriers by TSA according to market share or another appropriate method, beginning in fiscal year 2003. This revision would have eliminated the need for each carrier to provide TSA with an independent audit of its Appendix A submissions regarding their calendar year 2000 costs related to screening passengers and property.

To date, Congress has not acted on this proposal. Because it now appears unlikely that this proposed revision will be enacted during the current session of Congress, TSA is issuing this document to allow time for carriers to finalize and submit to TSA the independent audits required by 49 CFR part 1511. By this document, under the above conditions, TSA extends the current temporary deferral of enforcement for air carriers and foreign air carriers whose independent audits are received by TSA on or before December 31, 2002. TSA is neither waiving nor deferring enforcement of any other requirement set forth in 49 U.S.C. 44940 or 49 CFR part 1511. Absent relevant statutory change prior to December 15, 2002, please note that TSA will not grant further general deferrals or waivers of the independent audit submission requirement. Air carriers and foreign air carriers that are not in compliance after December 31, 2002, will be subject to civil enforcement and other appropriate actions.

Issued in Washington, DC, on October 28, 2002.

James M. Loy,

Acting Under Secretary of Transportation for Security.

[FR Doc. 02–27734 Filed 10–28–02; 3:04 pm]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[I.D. 102202A]

Atlantic Highly Migratory Species Fisheries; Atlantic Bluefin Tuna

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: General category closure.

SUMMARY: NMFS has determined that the 2002 fishing year Atlantic bluefin tuna (BFT) General category quota will be attained by October 25, 2002. Therefore, the General category fishery will be closed effective 11:30 p.m. on October 25, 2002. This action is being taken to prevent overharvest of the total adjusted General category quota of 777.0 metric tons (mt).

DATES: Effective 11:30 p.m. local time on October 25, 2002, through May 31, 2003.

FOR FURTHER INFORMATION CONTACT: Brad McHale or Dianne Stephan, 978–281–9260.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. Section 635.27 subdivides the U.S. BFT quota recommended by the International Commission for the Conservation of Atlantic Tunas among the various domestic fishing categories. The General category landings quota, including time-period subquotas and the New York Bight set-aside, are specified annually as required under § 635.27(a)(1). The 2002 fishing year General category quota and effort control specifications were issued on October 1, 2002 (67 FR 61537).

General Category Closure

NMFS is required, under § 635.28 (a)(1), to file with the Office of the **Federal Register** for publication notification of closure when a BFT quota is reached, or is projected to be reached. On and after the effective date and time of such closure notification, for the remainder of the fishing year or for a specified period as indicated in the notification, fishing for, retaining, possessing, or landing BFT under that quota category is prohibited until the opening of the subsequent quota period or until such date as specified in the notification.

The adjusted 2002 fishing year BFT quota specifications issued pursuant to § 635.27 set a total adjusted coastwide General category quota of 767 mt, excluding the 10 mt New York Bight set-aside, of large medium and giant BFT to be harvested from the regulatory area during the 2002 fishing year. Based on reported landings and effort, NMFS projects that this quota will be reached by October 25, 2002. Therefore, fishing for, retaining, possessing, or landing large medium or giant BFT intended for sale by persons aboard vessels in the General or HMS Charter/Headboat categories must cease at 11:30 p.m. local time October 25, 2002. The intent of this closure is to prevent overharvest of the quota established for the General category.

If it is determined that quota remains uncaught in the General category, or if additional quota can be made available to the General category through an inseason transfer, NMFS will announce the re-opening and/or transfer action in a separate **Federal Register** notice. In addition, NMFS will announce the opening date of the General category New York Bight fishery through a separate **Federal Register** notice if and when it is determined that large medium and giant BFT are available in the New York Bight area. General category permit holders may tag and release BFT while the General category is closed, subject to the requirements of the tag-and-release program at § 635.26.

Vessels permitted in the HMS Charter/Headboat category may continue to fish for and retain BFT under the Angling category regulations. The current Angling category daily retention limit, effective from June 15 through October 31, 2002 is four school, large school or small medium BFT (measuring from 27 to less than 73 inches (from 69 to less than 185 cm) curved fork length). Effective November 1 through May 31, 2003, the daily retention limit in all areas for all vessels fishing under the Angling category quota (67 FR 39869, June 11, 2002) will be adjusted to one large school or small medium BFT (measuring from 47 inches to less than 73 inches (from 119 cm to less than 185 cm) curved fork length). In addition, HMS Charter/Headboat category vessels may continue to retain one large medium or giant "trophy" BFT, measuring 73 inches (185 cm) or greater, per fishing year (June 1 through May 31).

Classification

This action is taken under § 635.28(a) and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: October 24, 2002.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–27560 Filed 10–25–02; 11:57 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 011005244–2011–02; I.D. 102202B]

Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish Fisheries; Closure of Fishery for *Loligo* Squid

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS announces that the directed fishery for *Loligo* squid in the exclusive economic zone (EEZ) will be closed effective November 2, 2002. Vessels issued a Federal permit to harvest *Loligo* squid may not retain or land more than 2,500 lb (1.13 mt) of *Loligo* squid per trip for the remainder of the year. This action is necessary to prevent the fishery from exceeding its 2002 quota and allow for effective management of this stock.

DATES: Effective 0001 hours, November 2, 2002, through 0001 hours, January 1, 2003.

FOR FURTHER INFORMATION CONTACT: Paul H. Jones, Fishery Policy Analyst, 978–281–9273, fax 978–281–9135, e-mail paul.h.jones@noaa.gov.

SUPPLEMENTARY INFORMATION: Regulations governing the *Loligo* squid fishery are found at 50 CFR part 648. The regulations require specifications for maximum sustainable yield, initial optimum yield, allowable biological catch, domestic annual harvest (DAH), domestic annual processing, joint venture processing and total allowable levels of foreign fishing for the species managed under the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan. The procedures for setting the annual initial specifications are described in § 648.21.

The 2002 specification of DAH for *Loligo* squid was set at 16,898 mt (67 FR 3623, January 25, 2002). This amount is allocated by quarter, as shown below.

TABLE 1.—*Loligo* QUARTERLY ALLOCATIONS.

Quarter	Percent	Metric Tons
I (Jan–Mar)	33.23	5,615
II (Apr–Jun)	17.61	2,976
III (Jul–Sep)	17.30	2,923
IV (Oct–Dec)	31.86	5,384
Total	100.00	16,898

Section 648.22 requires NMFS to close the directed *Loligo* squid fishery in the EEZ when 80 percent of the quarterly allocation is harvested in Quarters I, II and III, and when 95 percent of the total annual DAH has been harvested. NMFS is further required to notify, in advance of the closure, the Executive Directors of the Mid-Atlantic, New England, and South Atlantic Fishery Management Councils; mail notification of the closure to all holders of *Loligo* squid permits at least 72 hours before the effective date of the closure; provide adequate notice of the closure to recreational participants in the fishery; and publish notification of the closure in the **Federal Register**. The Administrator, Northeast Region, NMFS, based on dealer reports and other available information, has determined that 95 percent of the total DAH for *Loligo* squid has been harvested. Therefore, effective 0001 hours, November 2, 2002, the directed fishery for *Loligo* squid is closed and vessels issued Federal permits for *Loligo* squid may not retain or land more than 2,500 lb (1.13 mt) of *Loligo*. Such vessels may not land more than 2,500 lb (1.13 mt) of *Loligo* during a calendar day. The directed fishery will reopen effective 0001 hours, January 1, 2003, when the 2003 quota becomes available.

Classification

This action is required by 50 CFR part 648 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 24, 2002.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–27607 Filed 10–25–02; 4:05 pm]

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Proposed Rules

Federal Register
Vol. 67, No. 210
Wednesday, October 30, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 8 and 150

[Docket No. PRM–8–1]

Nuclear Energy Institute; Denial of a Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Denial of a petition for rulemaking.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is denying a petition for rulemaking submitted by the Nuclear Energy Institute (NEI) (PRM–8–1). The petitioner requests that the Commission amend its regulations to supplement a formal opinion by NRC's General Counsel that the Atomic Energy Act of 1954 (AEA) has the effect of preempting to the Federal Government the field of regulation of nuclear facilities and byproduct, source, and special nuclear material. The supplement would state the principles of Federal preemption law and would include criteria governing the determination of when NRC regulations preempt requirements of non-Agreement States and local governments. The petitioner also requests that the Commission add a regulation explicitly stating that no local government or non-Agreement State may license or regulate the radiological hazards of source material, special nuclear material, or byproduct material, and provide procedures whereby any person could request an NRC staff determination as to whether a particular state or local requirement is preempted by NRC's requirements. The NRC is denying the petition because the original General Counsel opinion remains correct and the expenditure of NRC resources that would be involved in granting the petitioner's request is not justified when balanced against the minimal benefits to be anticipated from a supplement to the opinion and the proposed regulations and procedures.

ADDRESSES: Copies of the petition for rulemaking and the NRC's letter to the petitioner are available for public inspection or copying in the NRC Public Document Room, 11555 Rockville Pike, Room 01–F21, Rockville, Maryland.

FOR FURTHER INFORMATION CONTACT: Stuart A. Treby, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–1644, e-mail: *sat@nrc.gov*.

SUPPLEMENTARY INFORMATION:

The Petition

On April 17, 2002, NEI submitted a "Petition for Rulemaking Regarding Amendments to 10 CFR Parts 8 and 150 Relating to the Application of Federal Preemption Law" (Petition). The main thrust of the petition is to request a change to 10 CFR 8.4: "Interpretation by the General Counsel: AEC jurisdiction over nuclear facilities and materials under the Atomic Energy Act." Part 8 of the Commission's regulations contains formal interpretations by NRC's General Counsel of provisions of the AEA or NRC regulations. Section 8.4, published on May 3, 1969 (34 FR 7273), contains an interpretation of the scope of the Atomic Energy Commission's (AEC) regulatory jurisdiction over nuclear facilities and materials under the AEA, as modified by section 274 of the AEA which Congress added to the AEA in 1959.[1] Pub. L. 86–373, 73 Stat. 688. Congress established, in section 274, a program wherein the AEC was permitted to relinquish its authority over byproduct, source and special nuclear material in quantities not sufficient to form a critical mass to States who have established and agreed to maintain adequate and compatible programs for the regulation of these materials. The General Counsel's opinion states, in relevant part:

> It seems completely clear that the Congress, in enacting section 274, intended to preempt to the Federal Government the total responsibility and authority for regulating, from the standpoint of radiological health and safety, the specified nuclear facilities and materials; that it stated that intent unequivocally; and that the enactment of section 274 effectively carried out the Congressional intent, subject to the arrangement for limited relinquishment of AEC's regulatory authority and assumption thereof by states in areas permitted, and subject to conditions imposed, by section 274.

10 CFR 8.4(i) (footnote omitted). Thus, States which have not entered into agreements with the AEC, the General Counsel concluded, "are without authority to license or regulate, from the standpoint of radiological health and safety, byproduct, source, and special nuclear material or production and utilization facilities" (10 CFR 8.4(j)).

The petitioner recognizes that "[s]ection 8.4 generally is accurate as far as it goes," but is concerned that "it does not provide a complete summary of applicable Federal preemption principles." Petition at 13, n.40. The petitioner also notes that the judicial precedents and legal authorities relied upon by the General Counsel in 1969 (see 10 CFR 8.4(k)) are now out-of-date. What is needed, in the petitioner's view, is clarification of the General Counsel's opinion to conform to what the petitioner believes to be the current governing principles of Federal preemption. The petitioner believes that these principles, which the petitioner has culled from an examination of a number of Supreme Court cases and other Federal law, should be placed in a new section of § 8.4 to read as follows:

> Any local or non-Agreement State requirement that: (1) Is established, in whole or in part, for the purpose of regulating the radiological hazards of source material, special nuclear material, or byproduct material; or (2) has a direct and substantial effect on the field of regulation of the radiological hazards of source material, special nuclear material, or byproduct material; or (3) conflicts with, or stands as an obstacle to the full accomplishment of the purposes of the Act; or (4) precludes, or effectively precludes a practice or activity in the national interest on the basis of regulating the radiological hazards of source material, special nuclear material, or byproduct. material, is preempted by the Commission's authority under the Act.

Petition at 25.[2] The Petitioner also requested the NRC to update § 8.4(k) to include more contemporary legal authority as the basis for the opinion.

The petitioner also requested changes to 10 CFR Part 150 "Exemptions and Continued Regulatory Authority in Agreement States and in Offshore Waters Under Section 274." The petitioner requested that a new paragraph be added (10 CFR 150.15(c)), to summarize the General Counsel's opinion as it applies to local governments and non-Agreement States:

> No local government or non-Agreement State may license or regulate the radiological hazards of source material, special nuclear material, or byproduct material. Exclusive authority to regulate such radiological hazards resides with the Commission, except and only to the extent that the Commission has delegated its authority to a state pursuant to an agreement under subsection 274b of the Act. The Commission's interpretation of its jurisdiction over nuclear facilities and materials under the Act is provided in section 8.4 of this chapter.

Petition at 24–25.

Finally, the petitioner requested that a new section be added to Part 150 which would establish procedures by which any person may apply for a determination by the Director of the Office of Nuclear Reactor Regulation (NRR) or the Director of the Office of Nuclear Material Safety and Safeguards, (NMSS) as appropriate, as to whether a Federal [3], State, or local requirement is preempted by the Act or the Commission's regulations promulgated thereunder. Petition at 26–29. The standards for determining preemption would be those set forth in the section added to § 8.4. The procedures would include notice in the **Federal Register** of receipt of an application for a preemption determination and an opportunity for public comment; a potential investigation by the Director of NRR or NMSS of any statement in an application; an opportunity for the applicant to respond to comments; a hearing or conference at the discretion of the Director of NRR or NMSS; a written determination published in the **Federal Register**; a right for an aggrieved person to file a petition for reconsideration and for any persons who have participated in the proceeding to comment on the petition for reconsideration; and a right of a party to the proceeding to seek judicial review of the Director's decision in a district court of the United States.[4]

The petitioner asserts that the General Counsel needs to supplement the interpretation expressed in § 8.4 to include the principles of Federal preemption law because "misunderstandings of the NRC's authority have occurred and can be expected to continue." Petition at 14. The examples of these misunderstandings provided by the petitioner concern a number of States and municipalities which have attempted to regulate, or have actually regulated, the discharge of radioactive materials into sewage systems. For example, the petitioner asserts that the City of Santa Fe, New Mexico, adopted an ordinance in 1997 regulating the discharge of radioactive elements into its sewer system on the mistaken assumption that it could avoid preemption if it enacted the ordinance for the purpose of furthering the economic interests of the City. Ultimately, however, the City consented to a judgment against it on a Federal preemption claim brought by a user of the sewer system. Petition at 15–16; 19–20. The petitioner believes that unauthorized State and local regulation of AEA materials is not an isolated problem and is in need of generic resolution by NRC.[5]

Reasons for Denial

The crux of the petition is the request that the General Counsel clarify the opinion stated in 10 CFR 8.4 that non-Agreement States "are without authority to license or regulate, from the standpoint of radiological health and safety, byproduct, source, and special nuclear material or production and utilization facilities." The petitioner requested the General Counsel to refine this opinion by adding that local governments and non-Agreement States are without such authority when the requirement in question (1) is for the purpose of regulating the radiological hazards of AEA materials and facilities; (2) has a direct and substantial effect on the field of regulation of the radiological hazards; (3) conflicts with, or stands as an obstacle to the full accomplishment of, the purposes of the AEA; or (4) precludes, or effectively precludes, a practice or activity in the national interest on the basis of regulating the radiological hazards. These statements are derived from what the petitioner views as the governing principles of Federal preemption law.

The General Counsel has exercised the authority conferred in the Commission's regulations to issue legal opinions on the meaning of statutes and regulations which will be binding on the Commission very sparingly and only in instances involving major legal or policy questions. The petitioner's request does not involve determining unresolved legal issues; rather it simply involves restating existing law. This is not the type of question that has merited issuance of a formal legal opinion in the past and there are good reasons, explained below, for not departing from past precedent in this case.

First, and most fundamentally, the General Counsel's opinion on AEC/NRC jurisdiction over nuclear facilities and materials under the AEA is correct as it stands. The petitioner does not contend that subsequent Federal case law has rendered any part of the opinion erroneous and in need of correction; rather, the petitioner's concern is that the opinion does not provide a complete summary of applicable Federal preemption principles which have evolved in Federal case law since the opinion was issued in 1969. But case law on a general legal issue such as preemption is constantly being fine-tuned as new fact-specific situations are resolved by the courts. Absent case law rendering a formal General Counsel opinion erroneous, expending resources to update an opinion is not necessary given that developing case law is available to all interested persons, including local and State governments and the attorneys who represent them, from sources outside NRC.

Second, a General Counsel opinion on the governing principles of Federal preemption law would not be definitive and thus would be of limited value to NRC, its licensees, and the general public. The petitioner requested a formal General Counsel opinion not on the proper interpretation of one of NRC's governing statutes, or of an NRC regulation, but rather on "the governing principles of Federal preemption." Petition at 1. The General Counsel is not being asked to reexamine the legislative history of § 274 of the AEA or any other provision of one of NRC's governing statutes to determine whether Congress has spoken more fully to the question of

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[1] The Energy Reorganization Act of 1974 abolished the AEC and transferred to the NRC the AEC's licensing and regulatory authority over the commercial use of nuclear facilities and materials. 42 U.S.C. 5801 *et seq.*

[2] Although petitioner has suggested what petitioner believes to be the governing principles of Federal preemption law, if the petition were to be granted the General Counsel would need to undertake an independent legal review of this subject and reach conclusions which might, or might not, agree with petitioner's proposal.

[3] The petitioner states that "it would be useful to include within the proposed Preemption Determination Process a mechanism for the review of requirements imposed by other federal agencies as well [and therefore] the proposed process also includes references to requirements of 'federal agencies' as well as state and local governments." Petition at 30–31. The petitioner, however, cites no legal authority in support of the proposition that NRC regulations could preempt those of other federal agencies.

[4] The proposed procedures are based on similar procedures in place within the Department of Transportation's (DOT) regulations for the transportation of hazardous materials. *See* 49 CFR 107.201–107.227 (2001). The DOT procedures are explicitly required by statute. *See* 49 U.S.C. 5125(d).

[5] NRC, in conjunction with the Environmental Protection Agency, is in the process of revising draft "Guidance on Radioactive Materials in Sewage Sludge and Ash at Publically Owned Treatment Works," issued in July 2000. NRC anticipates that the final guidance will contain a discussion of Federal preemption case law as it applies to requirements of publicly owned treatment works.

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NRC's preemption of the field of nuclear regulation than is reflected in the present General Counsel opinion. The General Counsel, instead, was asked to render an opinion on the broad question of what present Federal case law points to as the governing principles of Federal preemption. The petitioner acknowledges that "the agency's determinations presumably would not be binding on a court," Petition at 5, and it is not evident that the General Counsel's opinion on this broad question would be entitled to the same weight as would be given to an agency's interpretation of its governing statute. Thus, a General Counsel opinion on this issue is unlikely to obtain for the agency an important benefit that normally would be expected to attach to a formal opinion. Similarly, the procedures for seeking an NRC staff determination as to whether State or local requirements are preempted by NRC's requirements would result only in guidance as to what, given current Federal preemption case law, a court might determine with respect to a State or local requirement challenged on preemption grounds. Agency procedures are wholly unnecessary because those persons subject to State or local requirements are free to take their preemption arguments to a Federal court for definitive resolution regardless of the NRC's views or even without seeking these views.

Finally, while the General Counsel's views on the subject of Federal preemption might provide guidance, this benefit must be balanced against the expenditure of agency resources that would be necessitated by the petitioner's request. In addition to the resources needed to undertake a legal review of judicial case law on the subject of Federal preemption and to undertake a rulemaking proceeding, the resources needed to implement the procedures requested by the petitioner for rendering NRC staff determinations on preemption could be considerable. These procedures include **Federal Register** notices, potential hearings, the need to respond to comments both on the initial application for a determination of preemption and for any petition for reconsideration, a formal written decision, and, potentially, the need to defend the NRC'S decision in court if judicial review is sought. The nature of the problem described by the petitioner does not warrant the expenditure of resources that would likely be involved. Local governments and non-Agreement States might be expected to look to their own counsel for competent advice on the state of Federal preemption law, particularly because a General Counsel opinion would not be definitive on this issue. Persons harmed by the occasional unwarranted assertion of authority by a local government or non-Agreement State into the regulatory field reserved to the NRC have a ready remedy in the judicial system which can strike down requirements which are preempted by NRC regulations. In short, the petitioner's request is likely to require substantial expenditure of NRC resources with little benefit to either NRC or its licensees or the broader public.

For all the reasons stated above, the NRC denies the petition in its entirety.

Dated at Rockville, Maryland, this 24th day of October, 2002.

For the Nuclear Regulatory Commission,

Annette Vietti-Cook,

Secretary of the Commission.

[FR Doc. 02–27590 Filed 10–29–02; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 655

[FHWA Docket No. FHWA–2002–13069]

RIN 2125–AE78

Traffic Control Devices on Federal-Aid and Other Streets and Highways; Standards

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking; request for comments.

SUMMARY: The FHWA proposes to revise its regulation on traffic control devices on Federal-aid and other highways, which prescribes procedures for obtaining basic uniformity of traffic control devices on all streets and highways. Recently, the FHWA underwent agency reorganization and various offices and position title changes were made within the headquarters and field offices. Therefore, we propose to provide nomenclature changes and to remove a reference to an outdated regulation.

DATES: Comments must be received on or before December 30, 2002.

ADDRESSES: Mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590, or submit electronically at *http://dmses.dot.gov/submit*. All comments should include the docket number that appears in the heading of this document. All comments received will be available for examination at the above address from 9 to 5 p.m. e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or print the acknowledgement page that appears after submitting comments electronically.

FOR FURTHER INFORMATION CONTACT: Mr. Ernest Huckaby, Office of Transportation Operations, (202) 366–9064; or Mr. Raymond W. Cuprill, Office of the Chief Counsel, (202) 366–0791, U.S. Department of Transportation, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

You may submit or retrieve comments online through the Document Management System (DMS) at: *http://dmses.dot.gov/submit*. Acceptable formats include: MS Word, MS Word for Mac, Rich Text File (RTF), American Standard Code Information Interchange (ASCII)(TXT), Portable Document Formation (PDF), and WordPerfect (versions 7 to 8). The DMS is available 24 hours each day, 365 days each year. Electronic submission and retrieval help and guidelines are available under the help section of the Web site.

An electronic copy of this document may also be downloaded by using a computer, modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661 by using a computer, modem, and suitable communications software. Internet users may also reach the Office of the Federal Register's home page at: *http://www.archives.gov* and the Government Printing Office's Web page at: *http://www.access.gpo.gov/nara*.

Background

This document proposes to revise the regulation that prescribes procedures for obtaining basic uniformity of traffic control devices on all streets and highways in order to provide nomenclature changes, and to remove the outdated reference to an outdated regulation. The Manual on Uniform Traffic Control Devices (MUTCD) is approved by the Federal Highway Administration and recognized as the national standard for traffic control on all public roads. It is incorporated by reference into the Code of Federal Regulations at 23 CFR part 655. Due to the reorganization of the FHWA and the deletion of 23 CFR 1204.4 by the National Highway Traffic Safety Administration (NHTSA), it is necessary to update 23 CFR 655.603.

The FHWA is issuing this notice to provide an opportunity for public comment on the proposed changes to 23 CFR 655.603. Based on the comments received and its own experience, the FHWA may issue a final rule concerning the proposed changes included in this notice at any time after the close of the comment period.

Discussion of Proposed Amendments

The FHWA underwent restructuring in 1999 and various office and position title changes were made within the Headquarters and field offices. The FHWA regional offices were eliminated, resource centers were established, and additional responsibilities were given to FHWA's division offices (located in each State, Puerto Rico and the District of Columbia) and the Federal Lands Highway offices. These organizational changes require us to update § 655.603(b)(1), and § 655.603(b)(2), to reflect changes that resulted in the restructuring of the FHWA in 1999.

The FHWA proposes to modify the first sentence in § 655.603(b)(2) to delete the phrase "with the concurrence of the Office of Traffic Operations." The deletion of this phrase is based on the similar technical abilities of the Federal Lands Program offices and the FHWA Division offices. Additionally, the FHWA proposes to have the Associate Administrator of Federal Lands Highway Program Office approve the MUTCDs of the other Federal land management agencies (Bureau of Indian Affairs, National Park Service, Forest Service, and U.S. Fish and Wildlife Service).

Section 655.603(d)(1) discusses the systematic upgrading of substandard traffic control devices and installation of devices that conform to the MUTCD. This section refers to a program required by the former Highway Safety Program Standard Number 13, Traffic Engineering Services (23 CFR 1204.4), a National Highway Traffic Safety Administration (NHTSA) regulation and must be amended to remove the reference to 23 CFR part 1204.

The Highway Safety Act of 1966 (Pub. L. 89–564; 80 Stat 731; September 9, 1966), amended title 23, United States Code to add Chapter 4, entitled "Highway Safety." Section 402(a) of the U.S. Code, the Highway Safety program, required that States have a highway safety program designed to reduce traffic accidents and deaths, injuries, and property damage resulting from traffic accidents. These programs were to be in accordance with uniform standards promulgated by the Secretary of transportation. The NHTSA was the agency within the U.S. DOT responsible for promulgating these uniform standards. Originally promulgated in November 1966, these uniform standards were codified in 23 CFR 1204. There were 18 standards in all.

Standard number 13 of the uniform standards, entitled "Traffic Control Devices" required, among other things, that each State's highway safety program have, at a minimum: a method to identify needs and deficiencies of traffic control devices; a method to upgrade all existing traffic control devices on all streets and highways to conform with standards issued by the Federal Highway Administrator; and program for preventive maintenance, repair, and daytime and nighttime inspection of all traffic control devices.[1]

Until the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Pub. L. 100–17; April 2, 1987), it was mandated that the States complied with these 18 standards, as there was financial sanctions imposed for non-compliance. In 1987, Congress revised 23 U.S.C. 402(a) to replace the word "standards" with the word "guidance." This change, combined with the changes made to the Highway Safety Program under the Intermodal Surface Transportation Efficiency Act of 1991 (Pub. L. 102–240; December 18, 1991) lead to the revision of the uniform standards by NHTSA. In 1995, NHTSA revised the standards to make them guidelines and removed them from the code of Federal Regulations.[2] The guidelines, now 21 in all, are published in separate documents made available to the States.

Guideline 21, entitled "Roadway Safety," captures the requirements of former standard number 13 in that the same requirements regarding traffic control devices remain. This Guideline (No. 21) was published as a notice in the **Federal Register** on July 18, 1995 (60 FR 36641, 36665).

Section 655.603(d)(1) discusses the systematic upgrading of substandard traffic control devices and installation of devices to conform to the MUTCD. Currently, it still refers to 23 CFR 1204, which has since been removed from the Code of Federal Regulations; therefore, we proposed to amend § 655.603(d)(1) to reflect this change.

[1] *See* 33 FR 16560. 16564; November 14, 1966. Originally codified in 23 CRF 204, however, it was redesignated as 23 CFR 1204 in 1973 at 38 FR 10810; May 2, 1973.

[2] *See* 60 FR 36641, July 18, 1995.

Rulemaking Analysis and Notices

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable, but the FHWA may issue a final rule at any time after the close of the comment period. In addition to late comments, the FHWA will also continue to file in the docket relevant information that becomes available after the comment closing date, and interested persons should continue to examine the docket for new material.

Executive Order 12866 (Regulatory Planning and Review) and U.S. DOT Regulatory Policies and Procedures

The FHWA has determined preliminarily that this action will not be a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of U.S. Department of Transportation regulatory policies and procedures. It is anticipated that the economic impact of this rulemaking would be minimal. The changes proposed in this notice are intended to clarify 23 CFR 655.603 in light of the FHWA reorganization and to remove the reference to an outdated regulation. The FHWA expects that these proposed changes will provide clarity at little or no additional expense to public agencies or the motoring public. Therefore, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FHWA has evaluated the effects of these proposed changes on small entities. This action proposes to update the authorities of the FHWA, and referenced documents regarding MUTCD compliance on existing highways. Such updates will provide transportation entities with the appropriate points of contact regarding the MUTCD. The FHWA hereby certifies that these proposed revisions would not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This notice of proposed rulemaking would not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 109 Stat. 48, March 22, 1995). This proposed action will not result in the expenditure by State, local, and tribal governments.

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in the aggregate, or by the private sector, of $100 million or more in any one year to comply with these changes as these proposed changes are minor and non-substantive in nature, requiring no additional or new expenditures.

Executive Order 13132 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 dated August 4, 1999, and the FHWA has determined that this proposed action does not have a substantial direct effect or sufficient federalism implications on States that would limit the policymaking discretion of the States and local governments. The FHWA has also determined that this proposed rulemaking will not preempt any State law or State regulation or affect the States' ability to discharge traditional State governmental functions and does not have sufficient federalism implications to warrant the preparation of a Federalism assessment. The proposed amendments are in keeping with the Secretary of Transportation's authority under 23 U.S.C. 109(d), 315, and 402(a) to promulgate uniform guidelines to promote the safe and efficient use of highways.

Executive Order 13175 (Tribal Consultation)

The FHWA has analyzed this proposed action under Executive Order 13175, dated November 6, 2000, and believes that it would not have substantial direct effects on one or more Indian tribes; would not impose substantial direct compliance costs on Indian tribal governments; and would not preempt tribal law. Therefore, a tribal summary impact statement is not required.

Executive Order 13211 (Energy Effects)

The FHWA has analyzed this proposed action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. It has been determined that it is not a significant energy action under that order because it is not a significant regulatory action under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects under Executive Order 13211 is not required.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. The FHWA has determined that this proposed action does not contain collection information requirements for purposes of the PRA.

Executive Order 12988 (Civil Justice Reform)

This proposed action meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

The FHWA has analyzed this proposed action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This is not an economically significant action and does not concern an environmental risk to health or safety that may disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

This proposed action would not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

National Environmental Policy Act

The agency has analyzed this proposed action for the purpose of the national Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that it would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 655

Design standards, Grant programs—transportation, Highways and roads, Incorporation by reference, Signs, Traffic regulations.

Issued on: October 24, 2002.

Mary E. Peters,

Federal Highway Administrator.

In consideration of the foregoing, the FHWA proposes to amend title 23, Code of Federal Regulations, part 655, subpart F as follows:

PART 655—TRAFFIC OPERATIONS

1. The authority citation for part 655 continues to read as follows:

Authority: 23 U.S.C. 101(a), 104, 109, 114(a), 217, 315, and 402; 23 CFR 1.32; and 49 CFR 1.48.

Subpart F—[Amended]

2. Revise § 655.603, paragraphs (b)(1), (b)(2) and (d)(1) to read as follows:

§ 655.603 Standards.

* * * * *

(b) *State of Federal MUTCD.* (1) Where State or other Federal agency MUTCDs or supplements are required, they shall be in substantial conformance with the national MUTCD. Changes to the national MUTCD issued by the FHWA shall be adopted by the States or other Federal agencies within 2 years of issuance. The FHWA Division Administrators shall approve the State MUTCDs and supplements that are in substantial conformance with the national MUTCD.

(2) The FHWA Associate Administrator of the Federal Lands Highway Program shall approve other Federal land management agencies' MUTCDs that are in substantial conformance with the national MUTCD. States and other Federal agencies are encouraged to adopt the national MUTCD as their official Manual on Uniform Traffic Control Devices.

* * * * *

(d) *Compliance*—(1) *Existing highways.* Each State, in cooperation with its political subdivisions, and Federal agency shall have a program as required by 23 U.S.C 402(a), which shall include provisions for the systematic upgrading of substandard traffic control devices and for the installation of needed devices to achieve conformity with the MUTCD.

* * * * *

[FR Doc. 02–27608 Filed 10–29–02; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[Notice No. 960]

RIN: 1512–AC76

Red Hill (Oregon) Viticultural Area (2001R–88P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: ATF received a petition that proposes the establishment of "Red Hill" as a viticultural area within the state of Oregon. Mr. Wayne Hitchings, a vineyard owner in the proposed area, filed the petition. The proposed area consists of approximately 5,500 acres or 8.6 square miles. Mr. Hitchings believes that "Red Hill" is a widely known name for the proposed area and that the area is well defined and distinguishable from other areas by its soil, elevation, climate, and topography.

DATES: Written comments must be received by December 30, 2002.

ADDRESSES: Send written comments to: Chief, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 50221, Washington, DC 20091–0221; (ATTN: Notice No. 960). To comment by facsimile or e-mail, see the "Public Participation" section of this notice.

FOR FURTHER INFORMATION CONTACT: Tim DeVanney, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226; telephone 202–927–8210.

SUPPLEMENTARY INFORMATION:

Background on Viticultural Areas

What Is ATF's Authority To Establish a Viticultural Area?

As the delegate of the Secretary of the Treasury, ATF has authority under the Federal Alcohol Administration Act, 27 U.S.C. 205(e), to prescribe regulations that insure that alcohol beverages are labeled or marked adequately as to product identity information.

ATF published Treasury Decision ATF–53 (43 FR 37672) on August 23, 1978. This decision revised the regulations in 27 CFR part 4, Labeling and Advertising of Wine, to allow the establishment of definitive viticultural areas. The regulations allow the name of an approved viticultural area to be used as an appellation of origin in the labeling and advertising of wine.

On October 2, 1979, ATF published Treasury Decision ATF–60 (44 FR 56692) which added part 9, American Viticultural Areas, the listing of approved viticultural areas, to title 27 of the Code of Federal Regulations. The viticultural area names found in this listing may be used as appellations of origin.

What Is the Definition of an American Viticultural Area?

Title 27 CFR 4.25a(e)(1)(i) defines a viticultural area as a delimited grape-growing region distinguishable by geographical features. Viticultural features such as soil, climate, elevation, topography, etc., distinguish it from surrounding areas.

What Is Required To Establish a Viticultural Area?

Any interested person may petition ATF to establish a grape-growing region as a viticultural area. Under 27 CFR 9.3, the petition must include all of the following items.

- Evidence that the name of the proposed viticultural area is locally and/or nationally known to refer to the area specified in the petition.
- Historical or current evidence that the boundaries of the viticultural area are as specified in the petition.
- Evidence relating to the geographical features (climate, soil, elevation, physical features, etc.) that distinguish the proposed area from surrounding areas.
- A description of the specific boundaries of the viticultural area, based on features that can be found on United States Geological Survey (USGS) maps of the largest applicable scale.
- A copy of the appropriate USGS map(s) with the boundaries prominently marked.

What Impact Will This Have on Current Wine Labels?

If this proposed viticultural area is approved, bottlers with brand names similar to the name of the viticultural area must review existing products to assure that they are eligible to use the viticultural area's name as the appellation of origin (85% of the grapes used to make a wine must be grown within the viticultural area). If a product is not eligible to use the viticultural area as an appellation, the bottler must obtain approval of a label with a different brand name for that wine. (See § 4.39(i))

Red Hill Petition

ATF received a petition from Mr. Wayne Hitchings, a vineyard owner in the proposed area. Mr. Hitchings petitioned ATF to establish a viticultural area within the State of Oregon to be known as "Red Hill." The proposed viticultural area is located entirely within the Umpqua Valley viticultural area near Yoncalla, Oregon, in northeastern Douglas County.

The proposed area encompasses approximately 8.6 square miles or 5,500 acres. Mr. Hitchings, the sole grower within these boundaries, devotes approximately 194 acres to the cultivation of wine grapes. Currently, no bonded wineries exist in the proposed area.

The following chart details Red Hill's current grape varietal breakdown by acres.

Grape varietal	Acreage
Pinot Noir	153
Chardonnay	18
Gewurztraminer	7
Reisling	5
Pinot Blanc	5
Cabernet Sauvignon	2.5
Pinot Gris	2
Zinfandel	1

What Name Evidence Has Been Provided?

Two prominent families of historic importance, the Scotts and the Applegates, established Red Hill in the mid-19th century. Together, they settled the valleys at the foot of this prominent, elongated hill located two miles southeast of Yoncalla, Oregon. According to the petitioner, the name "Red Hill" derives from the color of the soil exclusive to this area.

By 1847, both the Applegates and the Scotts had land claims nearby. By 1850, with Congress passing the Donation Land Law and the large influx of settlers, quality agricultural lands were receiving patents or new filings. With such rapid settlement, pioneers took much of the quality land, including the Red Hill settlements, by the time of statehood in 1859.

By 1879, a school district was established in the Red Hill area, and a schoolhouse was constructed on Red Hill Road. The school's location can be found on a copy of the USGS map of Drain, Oregon, which is printed on a scale of 1:62,500 and dated 1956. The petitioner provided this map, which also shows the school on Red Hill Road as "abandoned." This school district operated until 1943, when it merged with the Pleasant Valley District. The name "Red Hill" also identifies Red Hill

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Road, which appears as a "light duty" road running through sections 34, 35, and 26 of this map.

A copy of a page taken from "Douglas County Schools, A History Outline" by Larry Moulton, October 2000, includes directions to the old school site, which is referred to as "Red Hill (#10)," and a hand-drawn map showing "Red Hill Road" and "Red Hill School Site." In addition, the petitioner provided photographs of various Red Hill signs including a Douglas County road sign, an exit sign from Interstate 5 (exit number 150), and a directional road sign to Red Hill.

In 1969, 7.5 acres of varietal grape vineyards were first planted on a slope that offered southern exposure on Red Hill. Another landowner planted 4 acres of wine grapes in 1970. The present total vineyard area is approximately 194 acres, and other plantings are currently taking place.

The petitioner furnished a variety of documents that use the name "Red Hill" in various capacities. One example is a copy of a Charles Metsker map drawn in 1932 that identifies sections 24 and 25 as "Red Hill." The designation "Red Hill School District 10" also appears in section 26 of this map.

The petitioner states that the name "Red Hill" can also be found at a USGS Internet site that has a database for geographical names. The database can be found at *http://mapping.usgs.gov/www/gnis/*. This database, known as Geographic Names Information System, is the United States' official repository of domestic geographic names information. It contains information on over a million geographic features of physical and cultural importance in the United States. This database uses Federally recognized name references to find a feature's location by State, county, and geographic coordinates. The name "Red Hill" with reference to the proposed area is found in several locations in this database.

What Evidence Relating to Geographical Features Has Been Provided?

Red Hill's geology is part of the Umpqua Formation. It is formed of tholeitic, olivine-bearing basalts similar in composition to the volcanic rocks that are presently on the Pacific Ocean floor. This area, formed during the Eocene Epoch, folded into a complex of synclines and anticlines, with deep, high-iron-content basalt being the underlying structure. The hill has numerous rising domes that present an undulating appearance.

Soil

According to the petitioner, all soils of the proposed Red Hill viticultural area are similar in structure. The petitioner included a soils map with a legend, which is color-coded for various soil types. The Jory series is predominant, as illustrated by the color-coded soils map, and is the deepest soil type. These soils form a uniform reservoir of both texture and depth across Red Hill.

Appearing less often, and mixed within the Jory series, are the Nekia, Philomath, and Dixonville series. These, like the Jory, are formed in residuum (residual soil material) from weathered basalt and possess similar soil color and drainage characteristics. The noticeable difference is found in the depth of soils. The Jory series is 5 to 15 feet deep, while the other series have depths of 3 to 8 feet. These deep, well-drained soils change in structure and depth below the 800-foot contour line delineating Red Hill on the western and southern flanks, with sedimentary rocks being the base.

A typical Jory pedon, the smallest volume of what can be called a soil, can be found at 1,900 feet north and 1,900 feet west of the southeast corner of section 34, Township 23 South, Range 5 West. The petitioner included a soil analysis of this pedon, which segregated into six sections to a depth of 60 inches. The first two sections (0 to 8 inches and 8 to 16 inches) are "moderately acid" silty clay loam of a reddish brown color. The third through sixth sections (16 to 24 inches, 24 to 33 inches, 33 to 48 inches, and 48 to 60 inches, respectively) are all "strongly acid," with the third section a dark reddish brown in color and the fourth through sixth sections dark red. Bedrock is found at 60 inches or deeper.

Mr. Jerry Maul, a former Douglas County extension agent, writes in a letter dated March 2, 2001, about the appellation status of the Red Hill region of Douglas County. He states that Jory soils found in other regions of the State are accepted as the "premier soil[s]" in the production of wine grapes. To some extent, these soils can be found at Dundee Hills, Oregon, and in the foothills west of Corvalis, Oregon.

The petitioner also submitted a letter from Mr. Walt Barton, an engineering technician for the Douglas Soil and Water Conservation District. Mr. Barton states in his letter, "This soil [Jory Series] in Douglas County is unique to the Red Hill District. * * * In contrast, the soils in the surrounding area are shallow or poorly drained and are formed from sedimentary rock." He also states that the Jory series is deep, well drained, and derived from bedrock.

Climate

As stated by the petitioner, elevations of the proposed viticultural area are above 800 feet, with most of the land below 1,200 feet. These elevations have a significant effect on growing conditions and allow grapes to mature at a slower rate. This effect produces small cluster grapes of "high acid" and intense flavors.

According to the petitioner, the Red Hill climate is one of a large number of different microclimates within a relatively short distance. The climate changes are mainly caused by associated landforms and differences in altitude. Within the elevations of Red Hill, the landforms also provide for cold air drainage. This keeps the vineyards in the proposed viticultural area frost-free, while the nearby vineyards on the valley floors are frequently frozen.

In general, the regional climate is largely affected by the coastal weather systems 50 miles to the west. These storm systems are bounded by the Callahans, a group of mountains running north and south in the Coastal Range. The Callahans allow adequate winter precipitation, while combating the cold, continental weather. The result is a moderate winter climate. During the summers, numerous "Pacific highs" replace the winter storm patterns. Dry, warm summers throughout the region result. These climate changes typically occur during May and November.

According to the petitioner, the microclimate is apparent at Red Hill in other ways. Fog occurs occasionally in both the winter and the summer. This condition can be extreme. Frequently, the valley floors of the surrounding area are completely fogged in, while Red Hill experiences full sun (above 900 feet). This condition is often reversed, with Red Hill being totally fogged in while visibility at the valley floors is unlimited.

The petitioner states that the temperatures throughout the Umpqua Valley viticultural area differ greatly, creating numerous microclimates. In the Red Hill area, daytime growing temperatures are moderated by both elevation and surrounding terrain, in comparison to lower elevations that experience daytime temperatures occasionally as high as 105 °F. Red Hill's average daytime temperature during the growing season is 75 °F. Temperature recordings at Oakland, Sutherlin, and Roseburg can differ from Red Hill by as much as 11 °F during the day. Nighttime temperatures are typically 7 degrees lower than those in surrounding areas during the summer months.

In one of the letters referenced previously, Mr. Jerry Maul states that "Bloom and ripening dates may be 12 days later than the rest of the Umpqua [Valley] Appellation and 4 to 7 days ahead of comparable varieties in the Willamette Appellation. Annual precipitation at Red Hill is usually 10 inches less than the Willamette Appellation."

The petitioner provided temperature data based on monthly averages during the annual growing period of April through October. The data were collected at Red Hill and at the Roseburg Regional Airport in 1998, 1999, and 2000. The airport site is approximately 20 miles south of Red Hill. During this 3-year period, the average high temperatures were, as expressed in Fahrenheit degrees, 74.5 for Roseburg and 72.3 for Red Hill; the average low temperatures were 50 for Roseburg and 46.4 for Red Hill.

Precipitation

The petitioner submitted precipitation data from six locations. One site is found on Red Hill Road, and the other five are located at lower elevations outside the proposed area.

The petitioner states that total rainfall in the proposed viticultural area averages 51 inches per year at the 1,000-foot elevation. The valley floor below, which is at a 600-foot elevation, receives approximately 40 inches of rain per year. The petitioner submitted rainfall statistics for the proposed area, as well as for locations outside its boundaries. Mean average annual rainfall is shown by location in the following chart. Latitude and longitude coordinates and elevations are included.

Location name	Elevation (Feet)	Longitude/latitude	Mean average annual rainfall (inches)
Red Hill Road	1,030	123.16° W. 43.31° N.	51.53
Oakland, Oregon	430	123.18° W. 43.25° N.	40.86
Drain, Oregon	290	123.19° W. 43.40° N.	45.70
Sutherlin	600	123.14° W. 43.25° N.	41.81
KQEN, Roseburg	420	123.22° W. 43.13° N.	32.44
Winchester	460	123.22° W. 43.17° N.	34.29

What Boundary Evidence Has Been Provided?

According to the petitioner, the boundaries of the proposed viticultural area are located in the northeastern portion of Douglas County in the State of Oregon. The proposed area is entirely within the Umpqua Valley viticultural area.

Red Hill parallels the east side of the Interstate 5 corridor for approximately 8.5 miles. The hill is readily seen as a dominant geological structure at "Exit Number 150, Red Hill." The hill itself runs in a north-south direction, with most of the slope facing westward. The hill has numerous rising domes that give it an undulating appearance.

The petitioner selected the Red Hill proposed viticultural boundaries based on the preferred vineyard slope, which faces southwest. The prescribed minimum elevation is the 800-foot contour line and the average maximum elevation is 1,200 feet. The petitioner contends that this is the likely altitude limitation for quality grape production at this latitude.

Another factor in establishing boundaries is soil composition. According to the petitioner, the dominant soils found within the proposed boundaries are mostly deep and well drained down to a 15-foot depth. These soils are volcanic in origin and are formed in residuum. Jory soils are exclusive within the proposed boundaries, except at higher, adjacent elevations where climate conditions are not suitable for grape growing.

The boundaries of the proposed Red Hill viticultural area are more particularly discussed in § 9.175(c) of the regulations, as identified at the end of this notice.

Regulatory Analyses and Notices

Is This a Significant Regulatory Action as Defined in Executive Order 12866?

This regulation is not a significant regulatory action as defined in Executive Order 12866. Accordingly, this proposed rule is not subject to the analysis required by Executive Order 12866.

How Does the Regulatory Flexibility Act Apply to This Proposed Rule?

The proposed regulations will not have significant economic impact on a substantial number of small entities. The establishment of a viticultural area is neither an endorsement nor an approval by ATF of the quality of wine produced in the area. Rather, it is an identification of an area distinct from surrounding areas. ATF believes that the establishment of viticultural areas allows wineries to describe the origin of their wines more accurately to consumers and helps consumers identify the wines they purchase. Thus, any benefit derived from the use of a viticultural area name is the result of a proprietor's own efforts and consumer acceptance of wines from that area. No new requirements are proposed. Accordingly, a regulatory flexibility analysis is not required.

Does the Paperwork Reduction Act Apply to This Proposed Rule?

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(j)) and its implementing regulations, 5 CFR part 1320, do not apply to this proposed rule because no requirement to collect information is proposed.

Public Participation

Who May Comment on This Notice?

ATF requests comments from all interested persons. Specifically, ATF requests comments on the potential for name confusion between the proposed Red Hills (plural) viticultural area in Lake County, California, and the proposed Red Hill (singular) viticultural area in Oregon. To resolve this problem, ATF is considering using the names "Red Hills—California" and "Red Hill—Oregon" for these respective viticultural areas. In both cases the State name would appear in direct conjunction with the viticultural area name. Comments on the proposed names and suggestions for other names are encouraged and will be given consideration.

Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so. However, assurance of consideration can only be given to comments received on or before the closing date.

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How May I Review Comments?

Copies of this petition, the proposed regulations, the appropriate maps, and any written comments received may be viewed by appointment at the ATF Reference Library, Room 6480, 650 Massachusetts Avenue, NW., Washington, DC 20226. The library telephone number is 202–927–7890. You may request copies of comments (at 20 cents per page) by writing to the ATF librarian at the address shown above.

For the convenience of the public, ATF will post comments received in response to this notice on the ATF Web site. All comments posted on our Web site will show the name of the commenter. Street addresses, telephone numbers, and e-mail addresses will be removed. We may also omit voluminous attachments or material that we do not consider suitable for posting. In all cases, the full comment will be available in the library as noted above. To access online copies of the comments on this rulemaking, visit *http://www.atf.treas.gov/* and select "Regulations," then "Notices of proposed rulemaking (Alcohol)." Next, select "View Comments" under this notice number.

Will ATF Keep My Comments Confidential?

ATF will not recognize any comment as confidential. All comments and materials will be disclosed to the public. If you consider your material to be confidential or inappropriate for disclosure to the public, you should not include it in the comments. We will also disclose the name of any person who submits a comment.

Will a Public Hearing Be Held?

During the comment period, any person may request an opportunity to present oral testimony at a public hearing. However, the Director reserves the right to determine, in light of all circumstances, whether a public hearing will be held.

How Do I Send Facsimile Comments?

You may submit comments by facsimile transmission to 202–927–8525. Facsimile comments must:

- Be legible;
- Reference this notice number;
- Be on paper 8½ by 11 inches in size;
- Contain a legible, written signature; and
- Be five pages or less.

This length limitation is necessary to assure the public reasonable electronic access to our equipment. We will not accept faxed comments in excess of five pages. We will not acknowledge receipt of facsimile transmissions. We will treat facsimile transmissions as originals.

How Do I Send Electronic Mail (E-mail) Comments?

You may submit comments by e-mail by sending the comments to: *nprm@atfhq.atf.treas.gov*. You must follow these instructions. E-mail comments must:

- Contain your name, mailing address, and e-mail address;
- Reference this notice number;
- Be legible when printed on 8½ x 11-inch paper.

We will not acknowledge receipt of e-mail. We will treat comments submitted by e-mail as originals.

How Do I Send Comments to the ATF Internet Web Site?

You may also submit comments using the comment form provided with the online copy of the proposed rule on the ATF Internet Web site at *http://www.atf.treas.gov*.

Drafting Information

The principal author of this document is Tim DeVanney, Regulations Division, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 9

Wine.

Authority and Issuance

Title 27, Code of Federal Regulations, Part 9, American Viticultural Areas, is proposed to be amended as follows:

PART 9—AMERICAN VITICULTURAL AREAS

1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

2. Subpart C is amended by adding § 9.175 to read as follows:

Subpart C—Approved American Viticultural Areas

* * * * *

§ 9.175 Red Hill.

(a) *Name.* The name of the viticultural area described in this section is "Red Hill".

(b) *Approved Maps.* The appropriate maps for determining the boundaries of the Red Hill viticultural area are three United States Geological Survey topographic maps, with a scale of 1:24,000. They are:

(1) Sutherlin, Oreg. (Provisional Edition 1988);

(2) Scotts Valley, Oreg. (Provisional Edition 1987); and

(3) Yoncalla, Oreg. (Provisional Edition 1987).

(c) *Boundaries.* The Red Hill viticultural area is located in the State of Oregon in the northeastern section of Douglas County and is entirely encompassed by the Umpqua Valley viticultural area. Its boundaries are defined as follows:

(1) The point of beginning, shown on the Yoncalla, Oregon, map, is defined as the intersection of township line T23 South/T24 South with the north-south running pipeline at the south end of section 35. From this point, the boundary line follows the pipeline northeast through sections 35 and 26, to the Scotts Valley, Oregon, map;

(2) On the Scotts Valley map, the boundary follows the pipeline northeasterly through sections 26, 23, 24, 13, and 12 approximately 3.7 miles until the pipeline intersects with the 800-foot contour line in section 1. From this point, the 800-foot contour line is the boundary, and it bears sharply west, then north, then southeast. It crosses the pipeline and continues through section 1, next crossing the Range 5 West/Range 4 West line into section 6. It continues southeast, then northeast, and then northwest until it intersects with a power line and then the pipeline. The line continues northwest to the intersection with the Range 5 West/Range 4 West line, then bears southwest approximately 2.2 miles to section 14, through sections 1, 12, 11, 43, 11, and 14 onto the Yoncalla, Oregon, map;

(3) On the Yoncalla map, the boundary continues through section 14 and crosses an unimproved road in section 44, then through section 14 into section 23. It next crosses Wilson Creek in section 23 and continues southwesterly through sections 23, 22, 46, 22, and 27, back into 22 and through 27 into 34. In 34, it intersects with an improved road and continues west into section 33, crosses a four-wheel-drive trail twice and an unimproved road. It continues southwest through sections 33 and 32, then back through section 33 and across a four-wheel-drive trail to the intersection of sections 32, 33, 4, and 5. The 800-foot contour line continues first southwest, then generally southeast through section 5. Continuing northeast, then generally southeast, then southwest through section 4, the boundary crosses improved roads in three places and two unimproved roads. It then travels generally southwest through section 4, crossing an improved road and two unimproved roads, then continues generally south through sections 5, 8, and 9, and onto the Sutherlin, Oregon, map;

(4) On the Sutherlin map, the boundary continues southwest through section 8, then generally southeast into section 9. It crosses in and out of sections 9 and 16 multiple times in a generally easterly direction into section 10. The boundary, the 800-foot contour line, then alternates directions southeast and northeast through section 10 and back to the Yoncalla, Oregon, map.

(5) On the Yoncalla map, the boundary continues in a generally northern direction through sections 10 and 3 to the intersection of Pollock Creek and township line T23 South/T24 South. From this point, the boundary continues directly east to intersect with the beginning point.

Signed: October 11, 2002.

Bradley A. Buckles,

Director.

[FR Doc. 02–27444 Filed 10–29–02; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[Notice No. 961]

RIN 1512–AC66

Red Hills (California) Viticultural Area (2001R–330P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms has received a petition proposing the establishment of the "Red Hills" viticultural area in Lake County, California. This proposed 31,250-acre viticultural area lies entirely within the current Clear Lake viticultural area in Lake County, which is, in turn, entirely within the multi-county North Coast viticultural area.

DATES: Written comments must be received by December 30, 2002.

ADDRESSES: Send written comments to: Chief, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 50221, Washington, DC 20091–0221, (Attn: Notice No. 961). See the "Public Participation" section of this document for alternative methods of commenting.

Copies of the petition, the proposed regulations, the appropriate maps, and any written comments received will be available for public inspection during normal business hours at the ATF Reference Library, Office of Public Affairs and Disclosure, Room 6480, 650 Massachusetts Avenue, NW., Washington, DC 20226; telephone 202–927–7890.

FOR FURTHER INFORMATION CONTACT: N. A. Sutton, Specialist, Regulations Division (San Francisco, CA), Bureau of Alcohol, Tobacco and Firearms, 221 Main Street, 11th Floor, San Francisco, CA 94105–1906; telephone (415) 947–5192.

SUPPLEMENTARY INFORMATION:

Background

The Federal Alcohol Administration Act (FAA Act) at 27 U.S.C. 205(e) requires that alcohol beverage labels provide the consumer with adequate information regarding a product's identity while prohibiting the use of deceptive information on such labels. The FAA Act also authorizes the Bureau of Alcohol, Tobacco and Firearms (ATF) to issue regulations to carry out the Act's provisions.

Regulations in 27 CFR part 4, Labeling and Advertising of Wine, allow the establishment of definitive viticultural areas. The regulations allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements. A list of approved viticultural areas is contained in 27 CFR Part 9, American Viticultural Areas.

Section 4.25a(e)(1), title 27 CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographic features, the boundaries of which have been delineated in subpart C of part 9.

Section 4.25a(e)(2) outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition should include:

(a) Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;

(b) Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;

(c) *Evidence relating* to the geographical characteristics (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;

(d) A description of the specific boundaries of the viticultural area, based on features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and

(e) A copy (or copies) of the appropriate U.S.G.S. map(s) with the boundaries prominently marked.

Impact on Current Wine Labels

If this proposed viticultural area is approved, bottlers using brand names similar to the name of the viticultural area must review their existing products to insure that they are eligible to use the viticultural area's name as the appellation of origin. To be eligible, 85% of the grapes in a wine must be grown within the viticultural area. If a product is not eligible to use the viticultural area as an appellation, the bottler must obtain approval of a label with a different brand name for that wine. (See 27 CFR 4.39(i).)

Red Hills Petition

The Bureau of Alcohol, Tobacco and Firearms (ATF) has received a petition proposing a new viticultural area to be called "Red Hills." The petition was filed by Sara Schorske of Compliance Service of America on behalf of several grape growers within the proposed viticultural area. Located about 80 miles north of San Francisco, the proposed 31,250 acre viticultural area is located entirely within the Clear Lake viticultural area in Lake County, California, which is, in turn, within the larger multi-county North Coast viticultural area. Approximately 2,500 acres are planted to grapes with another 3,000 to 5,000 acres available for vineyards.

Situated on a large tract of rocky, red-colored volcanic soil, the petitioner contends that the proposed Red Hills viticultural area is distinct from the surrounding region. Steep ridges, volcanic mountains, and a large body of water, Clear Lake, border the proposed area's upland plain. The petitioner states the proposed viticulture area's distinctive microclimate is derived from its gently rolling terrain and its close proximity to a large lake and surrounding mountains.

Evidence That the Name of the Area Is Locally or Nationally Known

The petitioner indicates the area is locally known as Red Hills. The name reflects the area's prevalent red, volcanic soils and gentle hilly terrain. The petitioner submitted evidence documenting the name's current usage, including references to this area as the Red Hills district, Red Hills area, Red Hills walnut district and Red Hills agricultural district in Lake County Planning Department documents. The petitioner also notes the University of California Red Hills weather station and the Red Hills Geothermal Prospect area are both located within the proposed viticultural area. Red Hills Road, which meanders through the proposed area's southwest quadrant, is shown on a Rand McNally county map, the Lake County Travel Atlas, DeLorme's Northern California Atlas, and in a published

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listing of local scenic roads. Red Hills Country Day School is located along this road.

The petitioner also submitted evidence documenting the historical usage of the Red Hills name, including a 1977 description of the area's "rolling red soil" by local historian Henry Mauldin. He emphasized that the name Red Hills defined the area and not a separate prominent point. A 1949 written account of the Red Hills walnut territory indicated its location on both sides of Red Hills Road within the proposed viticultural area.

Historical or Current Evidence That the Boundaries of the Viticultural Area Are as Specified in the Petition

According to the petitioner, the proposed area's boundaries are based on historical and current viticulture, geographical features, and a unique microclimate.

Historically, walnuts have been the major agricultural crop of this area, prospering on the red soil and rolling terrain. Around the time of Prohibition, two small vineyards were replaced with walnut orchards, but in more recent years several old orchards have been replanted to wine grapes. There are now 2,500 acres of vineyards in the proposed viticultural area, and more blocks are planned for future development.

Geographical factors also help define the proposed viticultural area's borders, according to the petitioner. These factors include the self-containment of the area, with its mountain, ridge, and lake boundaries, its hilly terrain, and its blanket of red, volcanic soils. The petitioner also notes the geography and location of the area promote the moderating microclimate and wind patterns that allow for viticulture without damaging frosts. These factors are discussed further below.

Evidence Relating to the Geographical Features Which Distinguish the Proposed Area's Viticultural Features

The petitioner states that the proposed Red Hills viticultural area's boundaries are based on a combination of terrain, soil, and climate factors that contrast with the surrounding area.

Physical Features

Lake County is generally mountainous, with protected fertile valleys and a large lake near its center. Mt. Konocti, a volcano outside the northwest boundary of the proposed area, and Clear Lake are two notable geographical points in the county.

South of Clear Lake is a field of volcanic hills and mountains. The proposed Red Hills viticultural area is within this volcanic field of gently rolling terrain, which is covered with rocky, red volcanic soil. It is bordered on the north by Mt. Konocti and Clear Lake, on the south by the Coast Range mountain chain, and on the east and west by ridges. The petitioner provided photographs to document the contrast between the red, rolling hills of the proposed area with the wider valleys and higher mountains of the surrounding areas.

As described in the petition, the proposed area's northern boundary line excludes Mt. Konocti above its 2,600-foot elevation, Clear Lake at the water line, and all of Anderson Flat with its different soils. The east boundary line excludes the town of Lower Lake, which sits on an alluvial fan, and a steep ridge with older bedrock and different soils. The south boundary generally coincides with the Clear Lake AVA boundary line, but excludes the higher mountains of the Mayacmas Range. The petitioner notes these peaks share a common volcanic heritage with the rolling hills, but contends the steep slopes and high elevations are unsuitable for commercial viticulture. The western boundary excludes Boggs Lake, a large vernal pool, Camelback Ridge, and Mt. Konocti above 2,600 feet.

Soils

Red, volcanic soils cover over 90% of the proposed area, according to the petition, and are composed of Glenview-Bottlerock-Arrowhead, Konocti-Benridge, and Collayomi-Aiken types. All three soil types are red and have a high rock fragment or gravel content. These red, stony soils are a primary factor motivating the recent growth of viticulture within the proposed area, according to the petitioner.

The petition notes that the proposed Red Hills viticultural area's northern boundary is defined by a narrow border of red volcanic soils that lack rock content at Mt. Konocti's 2,600-foot elevation line, Clear Lake's shore line, and a marshy territory with different soils.

The proposed area's eastern boundary follows the edge of the volcanic field. The petitioner contends the red soils outside the field lack rock content.

As petitioned, the proposed viticultural area's southern boundary is defined by the mountainous terrain, which precludes commercial viticulture, even though the volcanic soils extend south past the proposed boundary. Salminas Meadow and Seigler Valley, both within the Clear Lake viticultural area, have been excluded from the proposed Red Hills viticultural area based on their different soils and terrain.

Boggs Lake, some steep ridges, Shaul Valley, and the base of Mt. Konocti mark the proposed area's western boundary. The petitioner states that the ridges outside of the proposed area's southwestern boundary represent the approximate western extent of the prehistoric volcanic flows and mark a change to steeper terrain. The land inside the boundary is geologically younger and has more porous volcanic rocks and soils that contrast with the bedrock of Franciscan formation outside the proposed area. Shaul Valley, a small, bottomland area, has different sandy loam soils. According to the petitioner, Mt. Konocti has never been considered part of the Red Hills area and acts as a dividing point for several distinct areas. Only the low foothills of this mountain are within the proposed area.

Climate

Rainfall in the proposed area is based on its location between the Mayacmas Mountains and Clear Lake. The mountainous region to the south of the proposed gets about 80 inches of rain a year, while Clear Lake to the north averages 22 inches a year. The Red Hills area lies between these two places and receives from 25 to 40 inches of rain a year.

The petitioner contends the proposed Red Hills viticultural area has a distinctive microclimate based on the area's relative lack of coastal influence, at about fifty miles inland, its hilly terrain, and its location between Clear Lake and the Mayacmas Mountains. The unique wind patterns in the Red Hills area result from the lake-land effect, driven by temperature contrasts between the lake and adjacent land, and the mountain-valley effect that pushes air either upward or downward in the valleys depending on temperatures. The petitioner notes that a perpetual motion wind machine is created by the combination of the lake-land and the mountain-valley effects, creating unique wind systems that blow through the Red Hills' open terrain. These constant winds provide natural frost protection for the grapevines. According to the petitioner, local residents confirm that in the early morning hours of cold spring days, when temperatures dip below the freezing point, the naturally generated winds keep frost from forming on grape shoots while other Lake County viticultural areas require frost protection measures.

Proposed Boundaries

The proposed Red Hills viticultural area is in Lake County, California and is entirely within the approved Clear Lake and North Coast viticultural areas. The proposed Red Hills area is an irregular rectangle in shape, with Mt. Konocti to the northwest, Clear Lake to the north, and the Mayacmas Mountains to the south.

The USGS maps required for determining the boundary of the proposed Red Hills viticultural area are: (1) Clearlake Highlands Quadrangle, California—Lake Co., 7.5 Minute Series, edition of 1958, photorevised 1975; (2) Lower Lake Quadrangle, California—Lake Co., 7.5 Minute Series, edition of 1958, photorevised 1975; (3) Whispering Pines Quadrangle, California, 7.5 Minute Series, edition of 1958, photoinspected 1975; and (4) Kelseyville Quadrangle, California—Lake Co., 7.5 Minute Series, edition of 1959, photorevised 1975. A complete description of the proposed area's boundaries is found in the proposed rule text below.

Public Participation

Comments Sought

ATF requests comments from all interested persons. Specifically, ATF requests comments on the potential for name confusion between the proposed Red Hills (plural) viticultural area in Lake County, California, and the proposed Red Hill (singular) viticultural area in Oregon. To resolve this problem, ATF is considering using the names "Red Hills—California" and "Red Hill—Oregon" for these respective viticultural areas. In both cases the State name would appear in direct conjunction with the viticultural area name. Comments on the proposed names and suggestions for other names are encouraged and will be given consideration.

Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so. However, assurance of consideration can only be given to comments received on or before the closing date.

ATF will not recognize any submitted material as confidential and comments may be disclosed to the public. Any material that the commenter considers confidential or inappropriate for disclosure to the public should not be included in the comments. The name of the person submitting a comment is not exempt from disclosure.

Submitting Comments

By U.S. Mail: Written comments may be mailed to ATF at the address listed in the **ADDRESSES** section above.

By Fax: Comments may be submitted by facsimile transmission to (202) 927–8602, provided the comments: (1) Are legible, (2) are 8 ½" x 11" in size, (3) contain a written signature, and (4) are five pages or less in length. This limitation is necessary to assure reasonable public access to the equipment. Comments sent by fax in excess of five pages will not be accepted. Receipt of fax transmittals will not be acknowledged. Facsimile transmitted comments will be treated as originals.

By e-mail: Comments may be submitted by e-mail to *nprm@atfhq.treas.gov*. E-mail comments must contain your name, mailing address, e-mail address, and reference this notice number. We will not acknowledge the receipt of e-mail. We will treat comments submitted by e-mail as originals.

Comments may also be submitted using the comment form provided with the online copy of this proposed rule on the ATF Internet Web site at *http://www.atf.treas.gov*.

Public Hearing: Any person who desires an opportunity to comment orally at a public hearing on the proposed regulation should submit his or her request, in writing, to the Director within the 60-day comment period. The Director, however, reserves the right to determine, in light of all circumstances, whether a public hearing will be held.

Reviewing Comments

Copies of the petition, the proposed regulations, the appropriate maps, and any written comments received will be available for public inspection during normal business hours at the ATF Reference Library, Office of the Liaison and Public Information, Room 6480, 650 Massachusetts Avenue, NW., Washington, DC 20226; telephone 202–927–7890. Copies of comments may be requested by writing the ATF librarian at the above address.

For the convenience of the public, ATF will post comments received in response to this notice on the ATF Web site. All comments posted on our web site will show the name of the commenter, but will have street addresses, telephone numbers, and e-mail addresses removed. We may also omit voluminous attachments or material that we do not consider suitable for posting. In all cases, the full comment will be available in the ATF library as noted above. To access online copies of the comments on this rulemaking, visit *http://www.atf.treas.gov*, and select "Regulations," then "Notices of proposed rulemaking (alcohol)," and then click on the "View Comments" link under this Notice number.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this notice because no requirement to collect information is proposed.

Regulatory Flexibility Act

ATF certifies that this proposed regulation will not have a significant impact on a substantial number of small entities. The establishment of a viticultural area is neither an endorsement nor approval by ATF of the quality of wine produced in the area, but rather an identification of an area that is distinct from surrounding areas. ATF believes the establishment of viticultural areas merely allows wineries to more accurately describe the origin of their wines to consumers, and helps consumers identify the wines they purchase. Thus, any benefit derived from the use of a viticultural area name is the result of the proprietor's own efforts and consumer acceptance of wines from that area.

No new requirements are proposed. Accordingly, a regulatory flexibility analysis is not required.

Executive Order 12866

ATF has determined that this proposed regulation is not a significant regulatory action as defined by Executive Order 12866. Accordingly, this proposal is not subject to the analysis required by this Executive Order.

Drafting Information

The principal author of this document is N.A. Sutton, Regulations Division (San Francisco), Bureau of Alcohol, Tobacco, and Firearms.

List of Subjects in 27 CFR Part 9

Administrative practices and procedures, Consumer protection, Viticultural areas, and Wine.

Authority and Issuance

Title 27, Code of Federal Regulations, part 9, American Viticultural Areas, is proposed to be amended as follows:

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PART 9—AMERICAN VITICULTURAL AREAS

Paragraph 1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. 2. Subpart C is amended by adding § 9.___ to read as follows:

Subpart C—Approved American Viticultural Areas

* * * * *

§ 9.___ Red Hills

(a) *Name.* The name of the viticultural area described in this section is "Red Hills."

(b) *Approved Map.* The appropriate maps for determining the boundary of the Red Hills viticultural area are four 1:24,000 Scale U.S.G.S. topography maps. They are titled:

(1) Clearlake Highlands Quadrangle, CA—Lake Co. 1958, photorevised 1975;

(2) Lower Lake Quadrangle, CA—Lake Co. 1958, photorevised 1975;

(3) Whispering Pines Quadrangle, CA 1958, photoinspected 1975;

(4) Kelseyville Quadrangle, CA—Lake Co. 1959, photorevised 1975.

(c) *Boundary.* The Red Hills viticultural area is located entirely within the Clear Lake viticultural area of Lake County, California, on the south shore of Clear Lake, between the towns of Lower Lake and Kelseyville, CA. The point of beginning is the intersection of the Clear Lake shoreline, south of Slater Island, with the common boundary line between Sections 3 and 4, T12N, R7W (Clearlake Highlands Quadrangle).

(1) Then proceed straight south along the common boundary line of Sections 3 and 4, T12N, R7W to its intersection with the 1,400-foot contour line, Section 3, T12N, R7W (Clearlake Highlands Quadrangle);

(2) Then proceed southeast along the 1,400-foot contour line onto the Lower Lake Quadrangle map south of Anderson Flat, reverse direction with the contour line, and continue west to its intersection with Seigler Canyon Creek, Section 10, T12N, R7W (Clearlake Highlands Quadrangle);

(3) Then proceed west along Seigler Canyon Creek to its confluence with Perini Creek, and continue south along Perini Creek to its intersection with the 1,800-foot contour line, Section 16, T12N, R7W (Clearlake Highlands Quadrangle);

(4) Then proceed in a generally southern direction and then generally west along the 1,800-foot contour line to its intersection with Copsey Creek, Section 28, T12N, R7W (Whispering Pines Quadrangle);

(5) Then proceed west along Copsey Creek to its headwaters in Section 29, and continue straight westerly to the headwaters of Bad Creek at its intersection with the Section 30 east boundary line, T12N, R7W (Whispering Pines Quadrangle);

(6) Then proceed due west to the intersection of Big Canyon Road, Section 30, T12N, R7W (Whispering Pines Quadrangle);

(7) Then proceed north along Big Canyon Road to its intersection with Loch Lomond Road, Section 19, T12N, R7W (Clearlake Highlands Quadrangle);

(8) Then proceed southwest along Loch Lomond Road to its first intersection with the 2,640-foot contour line, Section 25, T12N, R8W (Whispering Pines Quadrangle);

(9) Then proceed northwest in a straight line to Seigler Mountain, elevation 3,692 feet, and continue northwest along the same line of direction to its intersection with Salmina Road, Section 23, T12N, R8W (Clearlake Highlands Quadrangle);

(10) Then proceed north along Salmina Road to its intersection with Highway 175, reverse direction and continue south along Highway 175 to its intersection with the Section 15 south boundary line, T12N, R8W, (Clearlake Highlands Quadrangle);

(11) Then proceed straight northwest to Mt. Hannah, elevation 3,978 feet, Section 16, T12N, R8W, (Clearlake Highlands Quadrangle);

(12) Then proceed straight southwest to the intersection of the 3,000-foot contour line with the Section 17 east boundary line, and continue along the same line of direction to the 2,800-foot contour line east of Boggs Lake, Section 17, T12N, R8W (Kelseyville Quadrangle);

(13) Then proceed north and west along the 2,800-foot contour line around Boggs Lake to its intersection with Harrington Flat Road, Section 18, T12N, R8W (Kelseyville Quadrangle);

(14) Then proceed north along Harrington Flat Road to its intersection with Bottle Rock Road, and continue north along Bottle Rock Road to its intersection with an unnamed unimproved dirt road, just inside Section 1, T12N, R9W (Kelseyville Quadrangle);

(15) Then proceed northwest along the unimproved dirt road to Boundary Marker 2080, Section 1, T12N, R9W (Kelseyville Quadrangle);

(16) Then proceed straight northeast to Mt. Olive, elevation 2,485 feet, and continue along the same line of direction an unnamed peak, elevation 2,295 feet, Section 30, T13N, R8W (Kelseyville Quadrangle);

(17) Then proceed straight northeast to the intersection of the 2,600-foot contour line with the Section 19 east boundary line, T13N, R8W (Kelseyville Quadrangle);

(18) Then proceed northwest along the 2,600-foot contour line to its intersection with an unnamed stream and Section 20 west boundary line, T13N, R8W (Kelseyville Quadrangle);

(19) Then proceed straight northeast to the intersection of Konocti Bay Road and Soda Bay Road, and continue due east to the shore of Clear lake, Section 22, T13N, R8W (Clearlake Highlands Quadrangle);

(20) Then proceed southeast along the shoreline of Clear Lake, returning to the point of beginning at its intersection with the common boundary line between Sections 3 and 4, T12N, R7W (Clearlake Highlands Quadrangle).

Signed: September 4, 2002.

Bradley A. Buckles,

Director.

[FR Doc. 02–27443 Filed 10–29–02; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP San Francisco Bay 02–019]

RIN 2115–AA97

Security Zones; San Francisco Bay, California

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish moving and fixed security zones extending 100 yards around and under all cruise ships and tank vessels that enter, are moored in, anchored in or depart from the San Francisco Bay, California, and Delta ports. These proposed security zones are needed for national security reasons to protect the public and ports from potential terrorist acts. Entry into these zones will be prohibited unless specifically authorized by the Captain of the Port San Francisco Bay.

DATES: Comments and related material must reach the Coast Guard on or before November 29, 2002.

ADDRESSES: You may mail comments and related material to U.S. Coast Guard Marine Safety Office San Francisco Bay, Coast Guard Island, Alameda, California 94501. The Waterways Management Branch maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the Waterways Management Branch between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Diana Cranston, Chief, Waterways Management Branch U.S. Coast Guard Marine Safety Office San Francisco Bay, (510) 437–3073.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (COTP San Francisco Bay 02–019), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8 1/2 by 11 inches, suitable for copying. If you would like to know that your submission reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

In our final rule, we will include a concise general statement of the comments received and identify any changes from the proposed rule based on the comments. If as we anticipate, we make the final rule effective less than 30 days after publication in the **Federal Register**, we will explain our good cause for doing so as required by 5 U.S.C. 553(d)(3).

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the Waterways Management Branch at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a separate notice in the **Federal Register**.

Background and Purpose

Since the September 11, 2001, terrorist attacks on the World Trade Center in New York, the Pentagon in Arlington, Virginia, and Flight 93, the Federal Bureau of Investigation (FBI) has issued several warnings concerning the potential for additional terrorist attacks within the United States. In addition, the ongoing hostilities in Afghanistan and growing tensions in Iraq have made it prudent for U.S. ports to be on a higher state of alert because the Al Qaeda organization and other similar organizations have declared an ongoing intention to conduct armed attacks on U.S. interests worldwide.

In its effort to thwart terrorist activity, the Coast Guard has increased safety and security measures on U.S. ports and waterways. As part of the Diplomatic Security and Antiterrorism Act of 1986 (Pub. L. 99–399), Congress amended section 7 of the Ports and Waterways Safety Act (PWSA), 33 U.S.C. 1226, to allow the Coast Guard to take actions, including the establishment of security and safety zones, to prevent or respond to acts of terrorism against individuals, vessels, or public or commercial structures. The Coast Guard also has authority to establish security zones pursuant to the Magnuson Act (50 U.S.C. 191 *et seq.*) and implementing regulations promulgated by the President in subparts 6.01 and 6.04 of part 6 of Title 33 of the Code of Federal Regulations.

In this particular rulemaking, to address the aforementioned security concerns, and to take steps to prevent the catastrophic impact that a terrorist attack against a cruise ship and/or tank vessel would have on the public interest, the Coast Guard proposes to establish permanent security zones around and under cruise ships and tank vessels entering, departing, or moored within the San Francisco Bay and Delta ports. These security zones will help the Coast Guard prevent vessels or persons from engaging in terrorist actions against cruise ships and tank vessels. Due to these heightened security concerns, and the catastrophic impact a terrorist attack on a cruise ship and/or tank vessel would have on the multiple passengers on board and surrounding area and communities, security zones are prudent for these types of vessels.

On December 21, 2001, we issued a rule under docket COTP San Francisco Bay 01–012, and published that rule in the **Federal Register** (67 FR 7611, February 20, 2002) creating temporary section 165.T11–098 of Title 33 of the Code of Federal Regulations (CFR). Under temporary section 165.T11–098, which expired at 11:59 p.m. PDT on June 21, 2002, the Coast Guard established 100-yard security zones around all cruise ships and tank vessels that entered, were moored in, or departed from the San Francisco Bay and Delta ports.

On June 12, 2002, a change in effective period temporary rule was issued, under docket COTP San Francisco Bay 02–012 and was published in the **Federal Register** (67 FR 42486, June 24, 2002), under the same previous temporary section 165.T11–098, which is set to expire at 11:59 p.m. on December 21, 2002. The Captain of the Port has determined the need for continued security regulations exists. The proposed regulation differs slightly from temporary section 165.T11–098. Although, while implicit in the temporary rule, the security zones proposed here will be described as extending from the water's surface to the sea floor. This more specific description is intended to discourage unidentified scuba divers and swimmers from coming within close proximity of cruise ships and/or tank vessels. Accordingly, this rulemaking proposes to make permanent the temporary security zones established on December 21, 2001, under docket number COTP SFB 01–012, 33 CFR 165.T11–098 published in the **Federal Register** on February 20, 2002 (67 FR 7611). The effective period of that temporary rule was extended until December 21, 2002, by another rule published in the **Federal Register** on June 24, 2002 (67 FR 42486).

Discussion of Proposed Rule

The Coast Guard proposes to establish moving and fixed security zones around all cruise ships and tank vessels that are anchored, moored, or underway within the San Francisco Bay and Delta ports. These proposed security zones are activated when any cruise ship and/or tank vessel passes the line drawn between San Francisco Main Ship Channel buoys 7 and 8 (LLNR 4190 & 4195, positions 37°46′9″ N, 122°35′4″ W and 37°46′5″ N, 122°35′2″ W, respectively). This proposed rule, for security concerns, prohibits entry of any vessel inside the security zone surrounding a cruise ship and/or tank vessel. These security zones are within a 100-yard radius around any cruise ship and/or tank vessel that is anchored at a designated anchorage; that is moored, or in the process of mooring, at any berth within the San Francisco Bay and Delta port areas; and that is underway.

These security zones are needed for national security reasons to protect cruise ships, tank vessels, the public, transiting vessels, adjacent waterfront facilities, and the ports from potential subversive acts, accidents, or other events of a similar nature. Entry into these zones will be prohibited unless specifically authorized by the Captain of the Port or his designated representative. Vessels already moored or anchored when these security zones

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take effect are not required to get underway to avoid either the moving or fixed zones unless specifically ordered to do so by the Captain of the Port or his designated representative.

Vessels or persons violating this section will be subject to the penalties set forth in 33 U.S.C. 1232 and 50 U.S.C. 192.

Pursuant to 33 U.S.C. 1232 and 33 CFR part 27, any violation of the security zone described herein, is punishable by civil penalties (not to exceed $27,500 per violation, where each day of a continuing violation is a separate violation), criminal penalties (imprisonment up to 6 years and a maximum fine of $250,000), and in rem liability against the offending vessel. Any person who violates this section, using a dangerous weapon, or who engages in conduct that causes bodily injury or fear of imminent bodily injury to any officer authorized to enforce this regulation, also faces imprisonment up to 12 years.

Vessels or persons violating this section are also subject to the penalties set forth in 50 U.S.C. 192: seizure and forfeiture of the vessel to the United States; a maximum criminal fine of $10,000; and imprisonment up to 10 years.

The Captain of the Port will enforce these zones and may request the use of resources and personnel of other government agencies to assist in the patrol and enforcement of the regulation. The Captain of the Port retains discretion to initiate Coast Guard civil penalty action against non-compliant parties pursuant to the PWSA, or, refer appropriate cases to the cognizant U.S. Attorney Office for disposition. This regulation is proposed under the authority of 33 U.S.C. 1226 in addition to the authority contained in 33 U.S.C. 1231.

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

The effect of this regulation will not be significant because the zones will encompass only a small portion of the waterway. Furthermore, vessels will be able to pass safely around the zones, and may be allowed to enter these zones on a case-by-case basis with permission of the Captain of the Port, or his designated representative.

The sizes of the zones are the minimum necessary to provide adequate protection for the cruise ships and laden tank vessels, their crews and passengers, other vessels operating in the vicinity of the cruise ships and laden taken ships and their crews, adjoining areas, and the public. The entities most likely to be affected are commercial vessels transiting the main ship channel *en route* the San Francisco Bay and Delta ports and pleasure craft engaged in recreational activities and sightseeing. The security zones will prohibit any commercial vessels from meeting or overtaking a cruise ship and/or a tank ship in the main ship channels, effectively prohibiting use of the channels. However, the moving security zones will only be effective during cruise ship and tank ship transits, which will last for approximately 30 minutes. In addition, vessels are able to safely transit around the zones while a vessel is moored or at anchor in the San Francisco Bay and Delta ports.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. We expect this proposed rule may affect the following entities, some of which may be small entities: The owners and operators of private and commercial vessels intending to transit or anchor in these small portions of the cruise ships and tank ships covered by these security zones. The impact to these entities would not be significant since these zones are proposed to encompass only small portions of the waterway for limited period of times while the cruise ships and/or tank ships are transiting, moored, or in anchorage. Delays, if any, are expected to be less than thirty minutes in duration.

Small vessel traffic can pass safely around the area and vessels engaged in recreational activities, sightseeing and commercial fishing have ample space outside of the security zone to engage in these activities. When a cruise ship or tank ship is at anchor, vessel traffic will have ample room to maneuver around the security zone. The outbound or inbound transit of a cruise ship or tank ship will last about 30 minutes. Although this regulation prohibits simultaneous use of portions of the channel, this prohibition is of short duration. While a cruise ship or tank vessel is moored, commercial traffic and small recreational traffic will have an opportunity to coordinate movement through the security zone with the COTP or his or her designated representative.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lieutenant Diana Cranston, Chief, Waterways Management Division, (510) 437–3073.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires

Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a "tribal implication" under the Order.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation because we are proposing to establish security zones. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; 49 CFR 1.46.

2. Add § 165.1183 to read as follows:

§ 165.1183 Security Zones; Cruise Ships and Tank Vessels, San Francisco Bay and Delta ports, California

(a) *Definition.* "Cruise ship" as used in this section means a passenger vessel, except for a ferry, over 100 feet in length, authorized to carry more than 12 passengers for hire; making voyages lasting more than 24 hours, any part of which is on the high seas; and for which passengers are embarked or disembarked in the San Francisco Bay and Delta ports.

(b) *Location.* The following areas are security zones:

(1) All waters, extending from the surface to the sea floor, within a 100-yard radius around any cruise ship and tank ship that is anchored at a designated anchorage within the San Francisco Bay and Delta port areas shoreward of the line drawn between San Francisco Main Ship Channel buoys 7 and 8 (LLNR 4190 & 4195, positions 37°46.9′ N, 122°35.4′ W and 37°46. 5′ N, 122°35.2′ W, respectively);

(2) The shore area and all waters, extending from the surface to the sea floor, within a 100-yard radius around any cruise ship and tank ship that is moored, or in the process of mooring, at any berth within the San Francisco Bay and Delta port areas shoreward of the line drawn between San Francisco Main Ship Channel buoys 7 and 8 (LLNR 4190 & 4195, positions 37°46.9′ N, 122°35.4′ W and 37°46.5′ N, 122°35.2′ W, respectively); and

(3) All waters, extending from the surface to the sea floor within a 100-yard radius around any cruise ship and/or tank ship that is underway shoreward of the line drawn between San Francisco Main Ship Channel buoys 7 and 8 (LLNR 4190 and 4195, positions 37°46.9′ N, 122°35.4′ W and 37°46.5′ N, 122°35.2′ W, respectively).

(c) *Regulations.* (1) In accordance with the general regulations in § 165.33 of this part, entry into or remaining in this zone is prohibited unless authorized by the Coast Guard Captain of the Port, San Francisco Bay, or his designated representative.

(2) Persons desiring to transit the area of the security zone may contact the Captain of the Port at telephone number 510–437–3073 or on VHF–FM channel 16 (156.8 MHz) to seek permission to transit the area. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or his or her designated representative.

(3) When a cruise ship or tank vessel approaches within 100 yards of a vessel that is moored, or anchored, the stationary vessel must stay moored or anchored while it remains within the cruise ship's or tank vessel's security zone unless it is either ordered by, or given permission from, the COTP San Francisco Bay to do otherwise.

(d) **Authority:** In addition to 33 U.S.C. 1231, the authority for this section includes 33 U.S.C. 1226.

(e) *Enforcement.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the security zone by state and local law enforcement agencies as necessary.

Dated: October 10, 2002.

G.M. Swanson,

Captain, U.S. Coast Guard, Captain of the Port, San Francisco Bay.

[FR Doc. 02–27528 Filed 10–29–02; 8:45 am]

BILLING CODE 4910–15–P

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LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 253

[Docket No. 2002–4 CARP NCBRA]

Noncommercial Educational Broadcasting Compulsory License

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Copyright Office of the Library of Congress is publishing negotiated rate adjustments, under the Copyright Act, for the noncommercial educational broadcasting compulsory license for the period 2003 through 2007. The proposed rate adjustments shall become final unless one or more parties with a significant interest in the rates notifies the Office that it will litigate the rate adjustment before a Copyright Arbitration Royalty Panel ("CARP").

DATES: Notices of Intent to Participate in a CARP proceeding are due on or before December 2, 2002.

ADDRESSES: If sent by mail, an original and five copies of Notices of Intent to Participate should be addressed to: Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, DC 20024. If hand delivered, an original and five copies of Notices of Intent to Participate should be brought to: Office of the Copyright General Counsel, James Madison Memorial Building, Room LM–403, First and Independence Avenue, SE., Washington, DC 20540.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or William J. Roberts, Jr., Senior Attorney, Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, DC 20024. Telephone (202) 707–8380. Telefax: (202) 252–3423

SUPPLEMENTARY INFORMATION:

Background

Section 118 of the Copyright Act, 17 U.S.C., creates a compulsory license for the use of certain copyrighted works in connection with noncommercial broadcasting. Terms and rates for this compulsory license applicable to parties who are not subject to privately negotiated licenses are published in 37 CFR part 253 and are subject to adjustment at five-year intervals. This is a window year for such an adjustment.

On April 1, 2002, the Library of Congress published a notice in the **Federal Register** announcing a voluntary negotiation period for adjustment of the section 118 rates and requested interested parties to submit their Notices of Intent to Participate in a CARP proceeding. The Library also announced the schedule for the precontroversy discovery period should a CARP proceeding be necessary. 67 FR 15414 (April 1, 2002). The Library received Notices of Intent to Participate from the following users of the section 118 license: National Public Radio ("NPR"); the Public Broadcasting System ("PBS"); the Corporation for Public Broadcasting ("CPB"); the American Council on Education ("ACE"); the National Religious Broadcasters Music License Committee ("NRBMLC"); the National Federation of Community Broadcasters ("NFCB"); and WCPE-FM. The Library received Notices of Intent to Participate from the following copyright owners whose works are subject to use under section 118: the American Society of Composers, Authors and Publishers ("ASCAP"); Broadcast Music, Inc. ("BMI"); SESAC, Inc. ("SESAC"); the National Music Publishers Association ("NMPA"); and the Harry Fox Agency, Inc. ("HFA").

Not long after the issuance of the April 1 Notice, representatives of the above-listed parties informed the Library that settlement negotiations were proceeding well and, in the interest of avoiding a CARP proceeding, requested additional time to negotiate. On June 19, 2002, the Library granted their request and issued an order directing them to submit their voluntary agreements and proposals for adjustment of the section 118 rates and terms by July 1, 2002. The Library also requested those not reaching a settlement by this date to identify themselves for purposes of scheduling a CARP proceeding. Fortunately, settlements were reached by all the parties.

This Notice

The Library has received voluntary license agreements for rates and terms under the section 118 license, and proposals to adjust the section 118 rates and terms in 37 CFR part 253. There is a distinction between voluntary agreements and proposals. Section 118(b) of the Copyright Act provides that "any owners of copyright in published nondramatic musical works and published pictorial, graphic, and sculptural works and any public broadcasting entities, respectively, may negotiate and agree upon the terms and rates of royalty payments * * *" provided that "copies of such agreements are filed in the Copright Office within thirty days of execution * * *" 17 U.S.C. 118(b)(1)&(2). A particular copyright owner may negotiate with a particular public broadcasting entity for the use of that copyright owners works, and that agreement governs the royalty fees and terms of payment to be made by the public broadcasting entity provided that the agreement is deposited with the Copyright Office. However such an agreement would not govern the rates to be paid by another public broadcasting entity not party to the agreement.

The statute provides that for those copyright owners and public broadcasting entities not subject to an agreement, the Librarian shall convene a CARP "to determine and publish in the **Federal Register** a schedule of rates and terms which * * * shall be binding on all owners of copyright in works specified by this subsection and public broadcasting entities. * * *" 17 U.S.C. 118(b)(3). Where the parties in this proceeding have not been able to negotiate license agreements, due to the fact that either the copyright owners or the users of the works affected by section 118 have not participated in negotiations (*i.e.* they are not parties to this proceeding), the parties have proposed adjustments to the section 118 rates and terms for these works. These proposals are subject to § 251.63(b) of the CARP rules, which provides that "[i]n the case of a settlement among the parties to a proceeding, the Librarian may, upon the request of the parties, submit the agreed upon rate to the public in a notice-and-comment proceeding. The Librarian may adopt the rate embodied in the proposed settlement without convening an arbitration panel, provided that no opposing comment is received by the Librarian from a party with an intent to participate in a CARP proceeding." 37 CFR 251.63(b).

The Librarian will adopt the negotiated and proposed section 118 rates and terms for the period 2003 through 2007 unless one or persons objects on or before December 2, 2002. However, a simple objection to a proposed rate or term is not sufficient. As provided by § 251.63(b) of the CARP rules, an objecting party must file a Notice of Intent to Participate in a CARP proceeding along with its objection and must be prepared to participate fully in a CARP proceeding to adjust the rates and/or terms to which it objects. Furthermore, the objecting party must have a significant interest in the rates and/or terms to which it is objecting to be eligible to participate in the CARP proceeding.

Summary of Adjustments to 37 CFR Part 253

Part 253 of the CARP rules sets forth the rates and terms for the section 118 license. These regulations are quite lengthy. Rather than republish the entire text of these regulations, the Library is only printing those portions that will be changed as a result of the parties agreements and proposals. The following is a section-by-section summary of the proposed changes.

1. Section 253.1 General

Section 253.1 will be amended to reflect that the rates and terms set forth in part 253 of 37 CFR will apply for the period beginning January 1, 2003, and ending December 31, 2007.

2. Section 253.2 Definition of public broadcasting entity

No change.

3. Section 253.3 Performance of musical compositions in the repertory of ASCAP and BMI by PBS and NPR and other public broadcasting entities engaged in the activities set forth in 17 U.S.C. 118(d).

ASCAP and BMI have negotiated voluntary agreements with PBS, NPR, and CPB pursuant to 17 U.S.C. 118(b). PBS/NPR/CPB represent (a) PBS; (b) PBS member television stations; (c) noncommercial television stations unaffiliated with PBS but eligible for CPB funding; (d) NPR; (e) NPR affiliated radio stations; and (f) noncommercial radio stations unaffiliated with NPR but eligible for CPB funding. Because these organizations are covered by voluntary licenses, there is no longer need for this section, and the Library is proposing that it be deleted.

4. Section 253.4 Performance of musical compositions by PBS, NPR and other public broadcasting entities engaged in the activities set forth in 17 U.S.C. 118(d).

This section sets forth the rates applicable to public broadcasters who perform the musical compositions of copyright owners who are not represented by ASCAP, BMI, SESAC, HFA or the NMPA. For these unaffiliated copyright owners, PBS/NPR/CPB propose the following new rates:

a. For performance of a nondramatic musical composition in a feature presentation of PBS: $224.22, up from $211.53.

b. For performance of a nondramatic musical composition as background or theme music in a PBS program: $56.81, up from $53.59.

c. For performance of a nondramatic musical composition in a feature presentation of a station of PBS: $19.16, up from $18.08

d. For performance of a nondramatic musical composition as background or theme music in a program of a station of PBS: $4.04, up from $3.81.

e. For performance of a nondramatic musical composition in a feature presentation of NPR: $22.73, up from $21.44.

f. For performance of a nondramatic musical composition as background or theme music in a NPR program: $5.51, up from $5.20.

g. For performance of a nondramatic musical composition in a feature presentation of a station of NPR: $1.61, up from $1.52.

h. For performance of a nondramatic musical composition as background or theme music in a program of a station of NPR: $.57, up from $.54.

PBS/NPR/CPB also propose to amend subsection (d) to permit the rates set forth above to be applicable to the performance of a television or radio program for a period of four years after the first performance of the program, rather than the current three-year limitation.

5. Section 253.5 Performance of musical compositions by public broadcasting entities licensed to colleges and universities

This section is applicable to the performance of musical compositions by colleges, universities and other nonprofit educational institutions which are not affiliated with NPR. ASCAP, BMI and SESAC, in negotiation with ACE and NRBMLC, propose the following adjustments for the use of music in their repertories.[1] For ASCAP compositions, the proposal is that the current rate of $244 per year be adjusted by the change in the cost of living as determined by the Consumer Price Index ("CPI") during the period from the most recent Index published prior to December 1, 2002, to the most recent Index published prior to December 1, 2003. A cost of living adjustment would then be performed each year thereafter through 2007. The proposal is the same for BMI compositions: $244 per year adjusted by the annual change in the CPI through 2007. For SESAC compositions, the proposal is $80 per year, up from $66, with the annual CPI adjustment through 2007.

[1] NFCB supports these rates as well.

6. Section 253.6 Performance of musical compositions by other public broadcasting entities

This section applies to the performance of nondramatic musical compositions by radio stations not licensed to colleges, universities or other nonprofit educational institutions and which are not affiliated with NPR. NRBMLC and NFCB have reached an agreement with the copyright owners in this proceeding and propose the following adjustments.

For performance of all the compositions in the repertory of ASCAP: $460 in 2003; $475 in 2004; $495 in 2005; $515 in 2006; and $535 in 2007. The same rates are proposed for the performance of all compositions in the repertory of BMI. For performance of all compositions in the repertory of SESAC: $98 in 2003; $100 in 2004; $102 in 2005; $104 in 2006; and $106 in 2007. NRBMLC also proposes that the rate of $1 for performance of a composition of an unaffiliated copyright owner remain in effect for the 2003–2007 period.

7. Section 253.7 Recording rights, rates and terms

This section establishes rates and terms for the recording of nondramatic performances and displays of musical works on or for the radio and television programs of public broadcasting entities, whether or not in synchronization or timed relationship with the visual or aural content, and for the making, reproduction and distribution of copies and phonorecords of public broadcasting programs containing such nondramatic performances and displays of musical works solely for the purpose of transmission by public broadcasting entities.

PBS/NPR/CPB propose the following rate adjustments:

a. For use of a musical work in a PBS-distributed program

(i) Feature: $112.40, up from $106.04:

(ii) Concert feature (per minute): $33.75, up from $31.84;

(iii) Background: $56.81, up from $53.59;

(iv) Theme:

Single program or first series: $56.81, up from $53.59

Other series program: $23.06, up from $21.75.

b. For use of a musical work other than in a PBS-distributed program

(i) Feature: $9.29, up from $8.76;

(ii) Concert feature (per minute): $2.44, up from $2.30;

(iii) Background: $4.04, up from $3.81;

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(iv) Theme:
Single program or first series program: $4.04, up from $3.81;
Other series program: $1.61, up from $1.52.

c. For use of a musical work in a NPR program
(i) Feature: $12.17, up from $11.48;
(ii) Concert feature (per half hour): $17.86, up from $16.85;
(iii) Background: $6.10, up from $5.75;
(iv) Theme:
Single program or first series program: $6.10, up from $5.75;
Other series program: $2.43, up from $2.29.

d. For use of a musical work other than in a NPR-produced program:
(i) Feature: $.78, up from $.74;
(ii) Feature (concert)(per half hour): $1.63, up from $1.54;
(iii) Background: $.39, up from $.37.

This schedule of fees would cover use of musical works for a period of three years following the first use. Succeeding use would require an additional payment. For an additional use of one year, twenty-five percent of the initial three-year fee. For a second three-year period, fifty percent of the initial three-year fee. For each three-year period thereafter, twenty-five percent of the initial three-year fee.

In addition, PBS/NPR/CPB request that the proposed rates apply to a "use" of a musical work, as opposed to the "broadcast" of a musical work as described in the current regulations.

8. Section 253.8 Terms and rates of royalty payments for the use of published pictorial, graphic, and sculptural works

This section establishes rates and terms for use of published pictorial, graphic and sculptural works by public broadcasting entities. PBS/NPR/CPB propose the following rate adjustments:

a. For use of a work in a PBS-distributed program:
(i) For a featured display of a work: $68.67, up from $64.78;
(ii) For background and montage display: $33.49, up from $31.59;
(iii) For use of a work for program identification or for thematic use: $135.37, up from $127.71;
(iv) For display of an art reproduction copyrighted separately from the work of fine art from which the work was reproduced, irrespective of whether the reproduced work of fine art is copyrighted so as to be subject also to payment of a display fee under the terms of the schedule: $44.47, up from $41.95.

b. For use of a work in other than a PBS-distributed program:
(i) For a featured display of a work: $44.47, up from $41.95;
(ii) For background and montage display: $22.80, up from $21.51;
(iii) For use of a work for program identification or for thematic use: $90.91, up from $85.76;
(iv) For display of an art reproduction copyrighted separately from the work of fine art from which the work was reproduced, irrespective of whether the reproduced work of fine art is copyrighted so as to be subject also to payment of a display fee under the terms of the schedule: $22.80, up from $21.51.

This schedule of fees would cover the use of works for a period of three years from the date of their first use. Succeeding use would require an additional payment. For an additional use of one year, twenty-five percent of the initial three-year fee. For a second three-year period of use, fifty percent of the initial three-year fee. For each three year period thereafter, twenty-five percent of the initial three-year fee.

9. Section 253.9 Unknown copyright owners

No change.

10. Section 253.10 Cost of living adjustment

The dates in this section would be changed to reflect the annual cost of living adjustment for the rates in § 253.5 for the new 2003–2007 period.

11. Section 253.11 Notice of restrictions on use of reproductions of transmission programs

No change.

List of Subjects in 37 CFR Part 253

Copyright, Music, Radio, Television, Rates.

Proposed Regulations

For the reasons set out in the preamble, the Copyright Office proposes amending part 253 of 37 CFR as follows:

PART 253—USE OF CERTAIN COPYRIGHTED WORKS IN CONNECTION WITH NONCOMMERCIAL EDUCATIONAL BROADCASTING

1. The authority citation for part 253 continues to read as follows:

Authority: 17 U.S.C. 118, 801(b)(1) and 803.

2. Section 253.1 is amended by removing the phrase "January 1, 1998 and ending on December 31, 2002" and adding "January 1, 2003 and ending on December 31, 2007" in its place.

3. Section 253.3 is removed and reserved.

4. Section 253.4 is amended as follows:

a. In the introductory text, by removing ", or compositions in the repertories of ASCAP, BMI, or SESAC which are licensed on terms and conditions established by a duly empowered Copyright Arbitration Royalty Panel pursuant to the procedures set forth in subchapter B of 37 CFR, part 251.";

b. by revising paragraph (a);

c. in paragraph (c), by removing the phrase "January 1, 1998, to December 31, 2002" and adding "January 1, 2003, to December 31, 2007" in its place; and

d. in paragraph (d), by removing "three" and adding "four" in its place.

The revisions to § 253.4 read as follows:

§ 253.4 Performance of musical compositions by PBS, NPR and other public broadcasting entities engaged in the activities set forth in 17 U.S.C. 118(d).

* * * * *

(a) Determination of royalty rate. (1) For performance of such work in a feature presentation of PBS:
2003–2007 ..... $224.22
(2) For performance of such a work as background or theme music in a PBS program:
2003–2007 ..... $56.81
(3) For performance of such a work in a feature presentation of a station of PBS:
2003–2007 ..... $19.16
(4) For performance of such a work as background or theme music in a program of a station of PBS:
2003–2007 ..... $4.04
(5) For the performance of such a work in a feature presentation of NPR:
2003–2007 ..... $22.73
(6) For the performance of such a work as background or theme music in an NPR program:
2003–2007 ..... $5.51
(7) For the performance of such a work in a feature presentation of a station of NPR:
2003–2007 ..... $1.61
(8) For the performance of such a work as background or theme music in a program of a station of NPR:
2003–2007 ..... $.57
(9) For purposes of this schedule the rate for the performance of theme music in an entire series shall be double the single program theme rate.
(10) In the event the work is first performed in a program of a station of PBS or NPR, and such program is subsequently distributed by PBS or NPR, an additional royalty payment shall be made equal to the difference between the rate specified in this section for a program of a station of PBS or NPR, respectively, and the rate specified in this section for a PBS or NPR program, respectively.

* * * * *

5. Section 253.5(c)(3) is amended by removing "$66" and adding "$80" in its place.

6. Section 253.6(c) is revised to read as follows:

§ 253.6 Performance of musical compositions by other public broadcasting entities.

* * * * *

(c) *Royalty rate.* A public broadcasting entity within the scope of this section may perform published nondramatic musical compositions subject to the following schedule of royalty rates:
(1) For all such compositions in the repertory of ASCAP, in 2003, $460; in 2004, $475; in 2005, $495; in 2006, $515; in 2007, $535.
(2) For all such compositions in the repertory of BMI, in 2003, $460; in 2004, $475; in 2005, $495; in 2006, $515; in $2007, $535.
(3) For all such compositions in the repertory of SESAC, in 2003, $98; in 2004, $100; in 2005, $102; in 2006, $104; in 2007, $106.
(4) For the performance of any other such compositions, in 2003 through 2007, $1.

* * * * *

7. Section 253.7 is amended as follows:

a. in paragraph (a), by removing "or compositions represented by the Harry Fox Agency, Inc., SESAC, and/or the National Music Publishers Association and which are licensed on terms and conditions established by a duly empowered Copyright Arbitration Royalty Panel pursuant to the procedures set forth in this subchapter,"; and

b. by revising paragraph (b).

The revisions to § 253.7 read as follows:

§ 253.7 Recording rights, rates and terms.

* * * * *

(b) *Royalty rate.* (1)(i) For uses described in paragraph (a) of this section of a musical work in a PBS-distributed program, the royalty fees shall be calculated by multiplying the following per-composition rates by the number of different compositions in that PBS-distributed program:

2003–2007

Feature	$112.40
Concert feature (per minute)	33.75
Background	56.81
Theme:	
Single program or first series program	56.81
Other series program	23.06

(ii) For such uses other than in a PBS-distributed television program, the royalty fee shall be calculated by multiplying the following per-composition rates by the number of different compositions in that program:

2003–2007

Feature	$9.29
Concert feature (per minute)	2.44
Background	4.04
Theme:	
Single program or first series program	4.04
Other series program	1.61

(iii) In the event the work is first recorded other than in a PBS-distributed program, and such program is subsequently distributed by PBS, an additional royalty payment shall be made equal to the difference between the rate specified in this section for other than a PBS-distributed program and the rate specified in this section for a PBS-distributed program.

(2) For uses licensed herein of a musical work in a NPR program, the royalty fees shall be calculated by multiplying the following per-composition rates by the number of different compositions in any NPR program distributed by NPR. For purposes of this schedule "National Public Radio" programs include all programs produced in whole or in part by NPR, or by any NPR station or organization under contract with NPR.

2003–2007

Feature	$12.17
Concert feature (per minute)	17.86
Background	6.10
Theme:	
Single program or first series program	6.10
Other series program	2.43

(3) For purposes of this schedule, a "Concert Feature" shall be deemed to be the nondramatic presentation in a program of all or part of a symphony, concerto, or other serious work originally written for concert performance or the nondramatic presentation in a program of portions of a serious work originally written for opera performance.

(4) For such uses other than in a NPR-produced radio program:

2003–2007

Feature	$.78
Feature (concert) (per half hour)	1.63
Background	.39

(5) The schedule of fees covers use for a period of three years following the first use. Succeeding use periods will require the following additional payment: additional one year period—25 percent of the initial three year fee; second three year period—50 percent of the initial three year fee; each three year fee thereafter—25 percent of the initial three year fee; provided that a 100 percent additional payment prior to the expiration of the first three year will cover use during all subsequent use periods without limitation. Such succeeding uses which are subsequent to December 31, 2007, shall be subject to the royalty rates established in this schedule.

* * * * *

8. Section 253.8 is amended by revising paragraphs (b)(1) and (f)(1) to read as follows:

§ 253.8 Terms and rates of royalty payments for the use of published pictorial, graphic, and sculptural works.

* * * * *

(b) * * * (1) The following schedule of rates shall apply to the use of works within the scope of this section:
(i) For such uses in a PBS-distributed program:

2003–2007

(A) For featured display of a work	$68.67
(B) For background and montage display	33.49
(C) For use of a work for program identification or for thematic use	135.37
(D) For the display of an art reproduction copyrighted separately from the work of fine art from which the work was reproduced irrespective of whether the reproduced work of fine art is copyrighted so as to be subject also to payment of a display fee under the terms of the schedule	44.47

(ii) For such uses in other than PBS-distributed programs:

2003–2007

(A) For featured display of a work	$44.47
(B) For background and montage display	22.80
(C) For use of a work for a program identification or for thematic use	90.91
(D) For the display of an art reproduction copyrighted separately from the work of fine art from which the work was reproduced irrespective of whether the reproduced work of fine art is copyrighted so as to be subject also to payment of a display fee under the terms of this schedule	22.80

* * * * *

(f) * * * (1) The rates of this schedule are for unlimited use for a period of three years from the date of the first use of the work under this schedule. Succeeding use periods will require the following additional payment: additional one year period—25 percent of the initial three year fee; second three year period—50 percent of the initial three year fee; each three year period thereafter—25 percent of the initial three year fee; provided that a 100 percent additional payment prior to the expiration of the first three year period

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will cover use during all subsequent use periods without limitation. Such succeeding uses which are subsequent to December 31, 2007, shall be subject to the rates established in this schedule.

* * * * *

9. In § 253.10, the first sentence in paragraph (a) is revised to read:

§ 253.10 Cost of living adjustment.

(a) On December 1, 2003, the Librarian of Congress shall publish in the **Federal Register** a notice of the change in the cost of living as determined by the Consumer Price Index (all consumers, all items) during the period from the most recent Index published prior to December 1, 2002, to the most recent Index published prior to December 1, 2003. * * *

* * * * *

Dated: October 22, 2002.

David O. Carson,

General Counsel.

[FR Doc. 02–27364 Filed 10–29–02; 8:45 am]

BILLING CODE 1410–33–P

POSTAL SERVICE

39 CFR Part 111

Label Standards for Combined or Copalletized Periodicals Mailings

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: The Postal Service proposes revisions to the *Domestic Mail Manual* (DMM) that would clarify when it is permissible to use the designation "NEWS" rather than the class designation "PER" on Line 2 (the content line) of labels that identify sacks, trays, and pallets containing copies of Periodicals publications or editions in combined mailings or in copalletized mailings.

Current label standards in DMM M031.1.7 provide that "NEWS" may be used on labels for sacks, trays, or pallets for a Periodicals publication only if either one of the following two conditions can be met:

(1) The Periodicals publication is published weekly or more frequently.

(2) The Periodicals publication has been continuously authorized such newspaper treatment since March 1, 1984 or earlier, regardless of publication frequency.

Combined mailings and copalletized mailings, however, often consist of copies that would be eligible for the designation "NEWS" on the container label and other copies that would be eligible only for the designation "PER" on the container label. This proposed rule would provide the following standards for the application of these two designations in such cases:

- If at least 51% of the total number of copies (not number of addressed pieces) in the combined or copalletized mailing can qualify for "NEWS" treatment, then all containers or pallets in such a mailing are labeled "NEWS."
- If less than 51% of the total number of copies in the combined or copalletized mailing can qualify for "NEWS" treatment, then all containers or pallets in such a mailing are labeled "PER."

This proposed revision is prompted by changes to mailing standards evolving since 1991 that have added options so that mailers can prepare and consolidate larger volumes of Periodicals mail into a single production mailstream. These consolidations represent an effective means for Periodicals mailers and the Postal Service to improve customer service, promote greater production efficiencies, reduce the number of containers used to prepare mailings, and stabilize rates by eliminating additional mail processing steps. The Postal Service therefore is proposing a special provision for labeling consolidated Periodicals mailings.

This proposed rule would also clarify DMM E230 to identify the two different methods under which a Periodicals combined mailing may be prepared and to note the requirements for submitting postage statements under each method.

DATES: Submit comments on or before November 29, 2002.

ADDRESSES: Mail or deliver written comments to the Manager, Mail Preparation and Standards, U.S. Postal Service, 1735 N. Lynn Street, Room 3025, Arlington, VA 22209–6038. Written comments may be submitted also via fax to 703–292–4058. Copies of all written comments will be available for inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, at the Postal Service Headquarters Library, 475 L'Enfant Plaza SW., 11th Floor North, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Neil Berger at (703) 292–3645, Jane Stefaniak at (703) 292–3548, or Marc McCrery at (202) 268–2704.

SUPPLEMENTARY INFORMATION:

"NEWS"—a designation for "newspaper"—is printed as part of the information on Line 2 (the content line) of sack, tray, and pallet labels. That information line generally identifies class of mail, mail processing category (such as letter-size mail or flat-size mail), presort level (such as 5-digit or 3-digit), as well as automation or nonautomation status (such as barcoded or nonbarcoded), or type of carrier route sortation, as applicable.

For Periodicals publications, these container labels are affixed by the mailer to pallets or inserted into label holders attached to sacks and trays to identify and distinguish "PER" publications and "NEWS" publications. For those subscribing to "NEWS" publications, the information and articles presented within those publications has an important value that requires both timeliness and predictability of delivery.

Use of "NEWS" and "PER" Designations

For this purpose, the "NEWS" designation helps the Postal Service ensure consistent service and handling for such Periodicals publications from entry into the mailstream, through successive operations in mail processing, to delivery to the intended recipient.

Current label standards in DMM M031.1.7 provide that "NEWS" may be printed on labels for sacks, trays, or pallets for a Periodicals publication only if either one of the following two conditions is met:

(1) The Periodicals publication is published weekly or more frequently.

(2) The Periodicals publication has been continuously authorized such newspaper treatment since March 1, 1984, or earlier, regardless of publication frequency.

"PER"—designation for the class name "Periodicals"—is printed as part of the information on Line 2 (the content line) of mail processing labels. These labels are affixed by the mailer to pallets or inserted into label holders attached to sacks and trays to identify Periodicals publications that do not meet either of the conditions required for the use of the "NEWS" designation.

The use of these two distinct designations is carried forward for all container labeling, with two separate but parallel series of three-digit content identifier numbers (CINs). One series is for those publications qualified to use "NEWS," and the second series is for those publications that must use "PER." Each series contains nearly 50 different CINs to meet all possible rate combinations available and all permitted containers.

Combined and Copalletized Mailings

Mailing standards have been introduced over the years to promote the consolidation of different Periodicals publications or different editions of the same publication into larger volume mailings. These standards, however, have not prevented customers from combining copies labeled as "PER" with copies labeled as "NEWS" as a way to improve the depth of sort and to reduce the overall number of containers prepared.

Although current standards specify when a Periodicals publication may be classified and labeled as "NEWS" and when it must be labeled as "PER," language does not exist to specify the labeling designation to be used when these two types are combined or copalletized.

The Postal Service is proposing use of the designation "NEWS" on the content line for sack, tray, or pallet labels for combined or copalletized mailings when at least 51% of the total number of copies in such mailings can qualify for that designation under DMM M031.1.7.

Although exempt from the notice and comment requirements of the Administrative Procedure Act [5 U.S.C. of 553(b), (c)] regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites public comment on the following proposed revisions to the *Domestic Mail Manual*, incorporated in the *Code of Federal Regulations. See* 39 CFR 111.1.

List of Subject in 39 CFR Part 111

Administrative Practice and Procedure, Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Amend the following sections of the *Domestic Mail Manual* (DMM) as set forth below:

M Mail Preparation and Sortation

M000 General Preparation Standards

* * * * *

M040 Pallets

* * * * *

M045 Palletized Mailings

* * * * *

[Revise heading of 8.0 to read as follows:]

8.0 COPALLETIZED FLAT-SIZE PIECES-PERIODICALS OR STANDARD MAIL

* * * * *

[Amend 8.2 by revising 8.2a, adding new 8.2b, and redesignating current 8.2b as 8.2c to read as follows:]

8.2 Periodicals

Additional standards are as follows:

a. Periodicals eligible for preferred rates (In-County, Nonprofit, Classroom, and Science-of-Agriculture) may be combined with Periodicals eligible for Outside-County rates.

b. All pallets in a copalletized mailing are identified on the content line (Line 2) of the label with only "NEWS" (see M031) or "PER" as the class designation under these conditions:

(1) If at least 51% of the total number of copies in the copalletized mailing can qualify for "NEWS" treatment, then all pallets in such a mailing are labeled "NEWS."

(2) If less than 51% of the total number of copies in a copalletized mailing can qualify for "NEWS" treatment, then all pallets in such a mailing are labeled "PER."

* * * * *

[Revise M230 by amending heading of M230; by amending 1.0; and by redesignating and amending current 2.0 as 2.2, current 3.0 as 2.1, current 4.0 as 2.4, and current 5.0 as 2.5 to read as follows:]

M230 Combining Multiple Editions or Publications

1.0 DESCRIPTION

1.1 Purpose

Periodicals publications may be prepared as a combined mailing by merging copies either during production or after finished copies are produced to achieve the finest presort level possible or to reduce the per piece charge.

1.2 Methods

Periodicals combined mailing may be prepared using either one of these following methods:

a. Individually addressed copies of different editions of a Periodicals publication (one title) or individually addressed copies of different Periodicals publications (more than one title) are merged and sorted together to obtain a finer presort level.

b. Two or more copies of different Periodicals publications (two or more titles) are placed within the same mailing wrapper and presented as one addressed piece to a single recipient to reduce the per piece charge.

2.0 BASIC STANDARDS

2.1 Eligibility and Mail Preparation

Each publication in a combined mailing must meet the basic eligibility standards in E211 and the specific standards for the rate claimed. In addition, the combined mailing must meet the eligibility and mail preparation standards for the rate claimed.

2.2 Minimum Volume

For combined mailings prepared under 1.2a, more than one Periodicals publication, or edition of a publication, may be combined to meet the required minimum volume per package, sack, or tray for the rate claimed. For combined mailings prepared under 1.2b, the minimum volume requirements in M210, M220, M810, or M820 apply, as applicable, for the rate claimed.

2.3 Labeling

All sacks or trays in a combined mailing are labeled the same, as either "NEWS" (see M031) or as "PER," depending on which of the following conditions is met:

a. If at least 51% of the total number of copies in the combined mailing can qualify for "NEWS" treatment, then all sacks or trays in such a mailing are labeled "NEWS."

b. If less than 51% of the total number of copies in a combined mailing can qualify for "NEWS" treatment, then all sacks or trays in such a mailing are labeled "PER."

2.4 Documentation

Presort documentation required under P012 must also show the total number of addressed pieces and total number of copies for each publication, and if applicable, each edition in the combined mailing claimed at the carrier route, 5-digit, 3-digit, and basic rates. The publisher must also provide a list, by 3-digit ZIP Code prefix, of the number of addressed pieces for each publication, and if applicable, each edition claiming any destination entry and pallet discounts.

2.5 Postage Statements

Postage statements for a combined mailing must be prepared as follows:

a. For a combined mailing prepared under 1.2a, a separate postage statement that claims all applicable per piece and per pound charges must be prepared for each publication or edition. The mailer must annotate on, or attach to, each postage statement, the title and issue date of each publication or edition included in the combined mailing and indicate that the pieces were prepared as part of a combined mailing under 1.2a.

b. For mailings prepared under 1.2b, a separate postage statement claiming the applicable per pound charges must be prepared for each publication or edition in the combined mailing. The mailer must annotate on, or attach to, each postage statement, the title and

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issue date of each publication or edition included in the combined mailing and indicate that the copies were prepared as part of a combined mailing under 1.2b. The per piece charges must be claimed as follows:

(1) If all copies in a combined mailing prepared under 1.2b are eligible for the Classroom or Nonprofit discount, the per piece charges must be claimed only on the postage statement for the publication that contains the highest amount of advertising.

(2) If all copies in a combined mailing prepared under 1.2b are not eligible for the Classroom or Nonprofit discount, the per piece charges must be claimed only on the postage statement for the publication that contains the highest amount of advertising.

(3) If a portion of the copies in a combined mailing prepared under 1.2b are eligible for the Classroom or Nonprofit discount and a portion are not eligible for those discounts, the per piece charges must be claimed only on the postage statement for the publication that contains the highest amount of advertising and is not eligible for the Classroom or Nonprofit discount. The Classroom or Nonprofit per piece discount must not be claimed.

* * * * *

An appropriate amendment to 39 CFR 111 to reflect the changes will be published if the proposal is adopted.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 02–27500 Filed 10–29–02; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NC104–200239(b); FRL–7400–5]

Approval and Promulgation of Implementation Plans; North Carolina: Approval of Revisions to Inspection and Maintenance (I/M) Regulations Within the North Carolina State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve the State Implementation Plan (SIP) revision submitted by the State of North Carolina for the purpose of amending regulations within 15A NCAC 2D.1000 Motor Vehicle Emissions Control Standards. North Carolina has submitted these rules for an enhanced inspection and maintenance (I/M) program which is a component of the State's Nitrogen Oxides (NO_X) Budget and Allowance Trading Program. The I/M program establishes reductions which are being utilized by the State as part of their NO_X SIP budget. Approval of these I/M rules allow North Carolina to gain credits ranging from 914 tons in 2004 to 4,385 credits in 2007. These credits are then used to determine the number of credits that will be made available for new growth in North Carolina. This submittal resolves all outstanding issues and allows for EPA's final approval of the State's NO_X Budget and Allowance Trading Program. The final approval of the North Carolina NO_X Budget and Allowance Trading Program, which was proposed for approval in 67 FR 42519 and received no adverse comments, will be processed in a later action. In the Final Rules Section of this **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no significant, material, and adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Written comments must be received on or before November 29, 2002.

ADDRESSES: All comments should be addressed to: Randy Terry at the EPA, Region 4 Air Planning Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303.

Copies of the State submittal(s) are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Randy Terry, 404/562–9032.

North Carolina Department of Environment, Health, and Natural Resources, 512 North Salisbury Street, Raleigh, North Carolina 27604.

FOR FURTHER INFORMATION CONTACT: Randy B. Terry at 404/562–9032.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the Rules Section of this **Federal Register**.

Dated: October 21, 2002.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 02–27496 Filed 10–29–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MO 165–1165; FRL–7401–5]

Approval and Promulgation of Implementation Plans; State of Kansas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the state of Kansas for the purpose of controlling volatile organic compound (VOC) emissions from area sources in Johnson and Wyandotte Counties in the Kansas City, Kansas, area. This action also proposes to provide full approval of the revised maintenance plan and rescinds the prior conditional approval of the revised maintenance plan. In the final rules section of the **Federal Register**, EPA is approving the State's SIP revision and providing full approval of the revised maintenance plan as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision/amendment and anticipates no relevant adverse comments to this action. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this action. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed action. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision is severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

DATES: Comments on this proposed action must be received in writing by November 29, 2002.

ADDRESSES: Comments may be mailed to Leland Daniels, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Leland Daniels at (913) 551–7651.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule which is located in the rules section of the **Federal Register**.

Dated: October 18, 2002.

William Rice,

Acting Regional Administrator, Region 7.

[FR Doc. 02–27493 Filed 10–29–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 86

[AMS–FRL–7401–9]

RIN 2060–AJ90

Control of Emissions From Spark Ignition Marine Vessels and Highway Motorcycles; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Environmental Protection Agency is extending the comment period for a proposed rule addressing new emission standards for spark-ignition marine vessels and highway motorcycles. The proposed rule was published in the **Federal Register** on August 14, 2002 (67 FR 53050). The comment period for the proposed rule is extended by 60 days and thus will end on January 7, 2003.

DATES: Comments on the proposed rule will be accepted through January 7, 2003.

ADDRESSES: *Comments:* You may send written comments in paper form or by e-mail. We must receive them by November 8, 2002. Send paper copies of written comments (in duplicate if possible) to the contact person listed below. You may also submit comments via e-mail to *MCNPRM@epa.gov*. In your correspondence, refer to Docket A–2000–02. *Docket:* Materials relevant to this rulemaking are contained in Public Docket Number A–2000–02 at the following address: EPA Docket Center (EPA/DC), Public Reading Room, Room B102, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, except on government holidays. You can reach the Reading Room by telephone at (202) 566–1742, and by facsimile at (202) 566–1741. The telephone number for the Air Docket is (202) 566–1742. You may be charged a reasonable fee for photocopying docket materials, as provided in 40 CFR part 2.

FOR FURTHER INFORMATION CONTACT: Margaret Borushko, U.S. EPA, National Vehicle and Fuels Emission Laboratory, 2000 Traverwood, Ann Arbor, MI 48105; Telephone (734) 214–4334; FAX: (734) 214–4816; e-mail: *borushko.margaret@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA published a notice of proposed rulemaking (NPRM) in the **Federal Register** of August 14, 2002 (67 FR 53049). That document included a deadline for written comments of November 8, 2002. Since that time, we have received requests for an extension of that deadline to allow additional time to review and comment on the proposed emission standards and related requirements. As a result of such requests, EPA is extending the comment period on the proposed rule to January 7, 2003.

The requests received by the EPA regarding an extension of the comment period have several common concerns. These common concerns involve issues such as: impact on small businesses; technical feasibility of the standards; cost of the standards; the contribution of motorcycles and boats to pollution; and impacts on performance and safety. The EPA continues to study and evaluate these issues and many others, and will consider all relevant information presented by stakeholders. The extended comment period allows stakeholders an increased opportunity to participate in the regulatory process by providing additional information, preferably with supporting data, regarding these and other issues to the EPA.

In the NPRM we requested comment on promulgating standards that would require the use of low permeability fuel tanks and fuel hoses on highway motorcycles. We did not, however, specifically propose such requirements, and although the NPRM preamble language detailed what these requirements might look like and draft regulatory language was placed in the public docket, no proposed regulatory language was included in the NPRM. However, since the NPRM was published, EPA has finalized regulations for recreational vehicles that include requirements for control of permeation emissions from fuel tanks and hoses. If we were to finalize requirements for permeation control from highway motorcycles, it is highly likely that the regulations would be modeled after those in the recently finalized recreational vehicle regulations. Interested parties wishing more detail on the type of regulatory program EPA is considering for highway motorcycle permeation control are encouraged to review the recreational vehicle requirements. The final rule for recreational vehicles is available on the EPA web site at *http://www.epa.gov/otaq/recveh.htm*. When the recreational vehicle final rule is published in the **Federal Register** we will place a copy of it in Docket A–2000–02 so that interested parties may review it during the extended comment period.

Additionally, at the public hearing on the proposed motorcycle provisions testimony was presented that encouraged EPA to ensure that the proposed emission standards be applicable to engine manufacturers as well as motorcycle manufacturers. We request additional comment on this issue. Although the current federal requirements do not specifically apply to motorcycle engines and motorcycle engine manufacturers, the California requirements with which we proposed to harmonize clearly do apply to these entities, and at least one engine manufacturer is currently certifying engines to the California and federal requirements.

The testimony from the public hearings and other materials have been placed in the docket since we published the proposal, and the hearing transcripts have been placed in the docket and on the EPA Office of Transportation and Air Quality web site. Additional information will be placed in the docket as it becomes available. We therefore encourage interested parties to stay abreast of docketed materials and to periodically check the following web pages for updates:

Highway Motorcycles

http://www.epa.gov/otaq/roadbike.htm.

Gasoline Boats and Personal Watercraft

http://www.epa.gov/otaq/marinesi.htm.

Dated: October 22, 2002.

Robert Brenner,

Acting Assistant Administrator, Office of Air and Radiation.

[FR Doc. 02–27616 Filed 10–29–02; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–2002–11652]

RIN 2127–AI47

Federal Motor Vehicle Safety Standards; Hydraulic and Electric Brake Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend the Federal motor vehicle safety standard on hydraulic and electric brake systems to extend the current minimum performance requirements and associated test procedures for parking brake systems to all vehicles with a gross vehicle weight rating (GVWR) greater than 10,000 pounds (4,536 kilograms). Currently, the only vehicles with a GVWR greater than 10,000 pounds to which the standard's parking brake requirements apply are school buses. The agency tentatively concludes that it is in the interest of safety to require all vehicles with a GVWR over 10,000 pounds to have parking brakes that meet the performance requirements currently applicable to heavy school buses. This document also proposes to change the application language of the standard and grants a petition for rulemaking requesting that the agency update a reference to an industry standard for assessing the performance of parking brakes in moving barrier collision tests so that the most recent version of the standard is referenced.

DATES: Comments must be received on or before December 30, 2002.

ADDRESSES: Comments should refer to the docket number above and be submitted to: Docket Section, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Alternatively, you may submit your comments electronically by logging onto the Docket Management System (DMS) Web site at *http://dms.dot.gov*. Click on "Help & Information" or "Help/Info" to view instructions for filing your comments electronically. Regardless of how you submit your comments, you should mention the docket number of this document.

You may call the Docket at 202–366–9324. Docket hours are 9:30 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, Mr. Samuel Daniel, Vehicle Dynamics Division, Office of Vehicle Safety Standards (Telephone: 202–366–4921) (Fax: 202–366–4929).

For legal issues, Mr. Edward Glancy, Office of the Chief Counsel (Telephone: 202–366–2992) (Fax: 202–366–3820).

Both can be reached by mail at the National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Background

Federal Motor Vehicle Safety Standard No. 105, *Hydraulic and electric brake systems*, sets forth minimum performance requirements for a vehicle's service and parking brake systems. Originally, the standard applied exclusively to passenger cars with hydraulic brake systems.[1] On September 2, 1972, the agency published a final rule extending the standard to multipurpose passenger vehicles, trucks, and buses with hydraulic service brake systems (37 FR 17970). Later, however, the agency withdrew its final rule prior to its effective date because data indicated that the costs of extending the standard to such vehicles at that time outweighed the anticipated benefits (40 FR 18411, Apr. 28, 1975).

On January 16, 1976, the agency extended the standard's service and parking brake requirements to school buses with hydraulic service brake systems (41 FR 2391). Then, on October 18, 1979, the agency again published a proposal to extend the standard to multipurpose passenger vehicles, trucks, and all types of buses with hydraulic service brake systems (44 FR 60113). While the agency proposed extending the standard's service brake requirements to all multipurpose passenger vehicles, trucks, and buses, regardless of the vehicle's GVWR, the agency proposed a more limited extension of the standard's parking brake requirements. The agency's proposal excluded all vehicles with a GVWR greater than 10,000 pounds (4,536 kilograms), other than school buses, from the application of Standard No. 105's parking brake requirements.

Although NHTSA did not propose extending the standard's parking brake requirements to multipurpose passenger vehicles, trucks, and buses (other than school buses) with a GVWR greater than 10,000 pounds at that time, the agency did indicate, in the notice of proposed rulemaking, that it intended to establish additional performance requirements for such vehicles in future rulemaking. The final rule extending Standard No. 105's parking brake requirements to multipurpose passenger vehicles, trucks, and buses with a GVWR of 10,000 pounds or less was published on January 2, 1981 (46 FR 55). Among other things, it required parking brakes on multipurpose passenger vehicles, trucks, and buses with a GVWR of 10,000 pounds or less to hold the vehicle stationary, in both forward and reverse directions, for five minutes on a 30 percent grade. In response to three petitions for reconsideration, the agency decided to change the gradient requirement for parking brakes on these vehicles from 30 percent to 20 percent (46 FR 61887, Dec. 21, 1981).

[1] The agency extended Standard No. 105 to vehicles with electric braking systems on September 5, 1997 (62 FR 46907).

The Safety Need

The agency believes that parking brakes are an important operational safety feature and tentatively concludes that it is in the interest of safety to require that all vehicles be equipped with parking brakes that comply with Federal requirements. When properly engaged, parking brakes can prevent driverless roll-away events, which can result in collisions, injuries, and fatalities. A review of the agency's Fatality Analysis Reporting System (FARS) database indicates that a total of three to five fatal vehicle roll-away events involving large, hydraulically-braked, non-school bus vehicles occurred between 1991 and 1999. Additionally, during that same period, there were annually about 574 crashes with 82 injured people resulting from roll-away, heavy duty trucks, according to data from the General Estimates System (GES). The GES data are not sufficiently detailed to determine which of the vehicles were hydraulically-braked and which were air-braked, nor can the data be used to determine if the vehicles were parked prior to the roll-away incident. Therefore, these figures likely represent the upper bound of the number of crashes and injuries caused by the rolling away, due to parking brake problems, of parked, heavy duty, heavy trucks and buses equipped with hydraulic brakes.

Many of the driverless roll-away events may be caused by misapplication or non-use of the parking brake. Requiring all heavy vehicles to meet the same parking brake performance requirements would not affect the non-use problem; however, it might increase the likelihood that operators of these vehicles (particularly fleet drivers who must operate a large number of different heavy vehicles) would be better able to engage their vehicle's parking brake fully because the force required to apply the parking brake would be standardized. This might reduce the incidence of parking brake misapplication. In addition, requiring that all heavy vehicles remain stationary with the parking brake fully engaged, in both forward and reverse directions, when parked on a 20 percent grade, should prevent the occurrence of driverless roll-away events due to parking brake failure on most roads in the United States because most U.S. roads have less than a 20 percent grade. Accordingly, requiring all vehicles to which Standard No. 105 applies to have parking brakes meeting the standard's effort limit and gradient requirements should decrease the likelihood of driverless roll-away events and, therefore, lead to modest collision, injury, and fatality reduction benefits.

As explained more fully below, it is likely that most, if not all, heavy vehicles are already manufactured with parking brakes designed to meet Standard No. 105's requirements. Even if this is true, however, we do not know whether those parking brakes would actually perform successfully when tested under the conditions and according to the test procedures outlined in paragraphs S6 and S7 of the standard because manufacturers are currently not required to certify compliance. Requiring manufacturers to certify the performance of the parking brakes on these heavy vehicles would provide added assurance that they actually meet the standard's requirements. It would also guard against the possibility of a decrease in performance of these parking brakes due to future truck chassis design changes.

Paragraph S5.2 of the standard currently requires that all heavy school buses be manufactured with a parking brake of a friction type with a solely mechanical means to retain engagement. Such parking brakes are required to meet the standard's effort limit and gradient requirements, found in paragraphs S5.2(b) and S5.2.3, respectively. Paragraph S5.2(b) requires that the parking brake be capable of being engaged fully with a force applied to the control of not more than 150 pounds for a foot-operated system and not more than 125 pounds for a hand-operated system. Paragraph S5.2.3 requires that the parking brake system be capable of holding the vehicle stationary for five minutes, in both forward and reverse directions, on a 20 percent grade.

NHTSA believes that it is reasonable to assume that operators of heavy school buses and other heavy vehicles are of similar size and strength. In addition, the agency believes heavy school buses and other heavy vehicles are parked in similar environments. Therefore, the agency tentatively concludes that it is appropriate to apply the same effort limit and gradient requirements (and associated test procedures) to these vehicles as are currently applied to heavy school buses. Nevertheless, the agency requests comments on the appropriateness of applying the heavy school bus effort limit and gradient requirements to other heavy vehicles.

Costs and Benefits

During October and November of 2000, several heavy vehicle manufacturers, including General Motors, Ford Motor Company, and International Truck and Bus Corporation, indicated that they are not aware of any vehicles for sale in the United States that are not equipped with a parking brake system. These manufacturers also expressed the belief that parking brake systems for trucks and buses with a GVWR greater than 10,000 pounds are already designed to meet the requirements specified in Standard No. 105 for heavy school buses. With respect to those trucks and buses with a GVWR greater than 10,000 pounds that are built on the same chassis used to build heavy school buses, it is likely that they are equipped with the same parking brake systems found in heavy school buses.

If this is true, then the agency estimates that the cost of requiring all manufacturers of non-school bus vehicles with a GVWR greater than 10,000 pounds to meet the standard's parking brake requirements would be minimal (less than $10 per vehicle) because few, if any, modifications to the already existing parking brakes would be necessary to bring those brakes into compliance with the standard. The cost of conducting the parking brake compliance test should not be significant when compared to the total cost of FMVSS No. 105 compliance testing. The agency believes that most test facilities already have the 20 percent grade slope we are proposing. The proposed test procedure is straightforward and not time consuming. Accordingly, the agency does not anticipate that the cost of certifying compliance to the proposed requirements would be significant. Nevertheless, the agency is interested in receiving estimates from heavy vehicle manufacturers regarding the anticipated costs of conducting the parking brake certification tests as well as the costs of meeting the proposed requirements. Any cost estimates submitted should include a detailed description of the modifications the commenter considers necessary to bring these vehicles' parking brakes into compliance with the standard and/or a detailed estimate of certification test costs.

Given the likelihood that most vehicles with a GVWR over 10,000 pounds are already equipped with a parking brake system that meets the performance requirements of S5.2 and S5.2.3, NHTSA anticipates only marginal safety benefits from formally extending these requirements. Nevertheless, to the extent that any vehicles with a GVWR over 10,000 pounds do not already comply with these requirements, the agency does expect that the extension of the parking brake effort limit and gradient requirements to such vehicles would reduce the number of collisions, injuries, and fatalities due to driverless roll-away events.

As stated above, NHTSA believes that many roll-away events occur when the parking brake is either not used or misapplied. It is also possible that some roll-away events are caused by parking brake failure, which occurs when the parking brake is properly applied but fails to hold the vehicle stationary, due to catastrophic failure, wear-and-tear, or other factors. While the proposed changes are not likely to have any effect on the non-use problem, the standardization of parking brake effort limit requirements for all heavy vehicles may reduce the incidence of misapplication by making it easier for operators of these vehicles to fully engage the parking brake. In addition, requiring all hydraulically-braked heavy vehicles to have parking brakes that meet the gradient requirement should decrease the likelihood of parking brake failure on most U.S. roads. For these reasons, the agency anticipates modest collision, injury, and fatality reduction benefits from extending Standard No. 105's parking brake requirements to all hydraulically-braked vehicles with a GVWR greater than 10,000 pounds.

Additional Rulemaking

The agency is using this rulemaking proposal to address several other Standard No. 105 issues that have been recently brought to our attention. In addition to the substantive changes outlined above, the agency also proposes to change the language in the application paragraph of the standard (S3. *Application*) to reflect the inapplicability of the standard's requirements to hydraulically-braked vehicles with a GVWR of 3,500 kilograms (7,716 pounds) or less. Standard No. 105 used to apply to these

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vehicles. However, Standard No. 135 now applies instead.

In addition, on June 10, 2002, the agency received a petition for rulemaking from Mr. James E. Stocke of Ann Arbor, Michigan, requesting that NHTSA update a reference to the Society of Automotive Engineers' (SAE) Recommended Practice for Moving Barrier Collision Tests, J972 (SAE J972). A portion of an older (November 1966) version of SAE J972 is referenced in Standard No. 105, paragraph S7.19, as part of the parking brake test procedures for passenger cars and school buses with a GVWR of 10,000 pounds or less. Although there are no changes to the description of the rigid moving barrier in the more recent (May 2000) version of the document, the "Barrier" paragraph has been re-designated as paragraph 4.3 instead of paragraph 3.3, its designation in the November 1966 version of the document.

The agency does not necessarily update references to SAE or other industry standards every time those standards are amended, especially when the standard referenced by the agency is properly identified (and therefore easy to locate) through publication dates or other appropriate information, such as title. However, in this case, Standard No. 105 references a version of the SAE document that is more than 35 years old and may be difficult to locate. Furthermore, the information in the updated reference is substantively identical to the information in the original reference. Accordingly, NHTSA has decided to grant Mr. Stocke's petition and proposes to amend paragraph S7.19 to update the reference to the May 2000 version of SAE J972.

Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), provides for making determinations whether a regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and to the requirements of the Executive Order. The Order defines a "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations or recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

This notice was not reviewed under Executive Order 12866. Further, this notice was determined not to be significant within the meaning of the DOT Regulatory Policies and Procedures.

In this document, NHTSA is proposing to extend the applicability of already existing parking brake requirements to cover vehicles previously excluded. As explained above, anecdotal evidence from heavy vehicle manufacturers suggests that most, if not all, of these vehicles are already manufactured with parking brakes designed to meet the minimum performance requirements that the agency is proposing to apply. For the remaining vehicles, the agency estimates the cost of complying with these requirements to be less than $10 per vehicle. Considering that the total number of such vehicles that would be subject to the proposed requirements is estimated to be about 212,000 annually, the agency estimates that the total annual effect of this proposed rule would be less than $2,120,000. Accordingly, the agency does not believe that this proposal would have any significant economic effects.

The DOT's regulatory policies and procedures require the preparation of a full regulatory evaluation, unless the agency finds that the impacts of a rulemaking are so minimal as not to warrant the preparation of a full regulatory evaluation. Since anecdotal evidence suggests that most, if not all, of these vehicles are already manufactured with parking brakes designed to meet the minimum performance requirements that the agency is proposing to apply, the agency believes that the impacts of this rulemaking would be minimal. Thus, it has not prepared a full regulatory evaluation.

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Small Business Administration's regulations at 13 CFR Part 121 define a small business, in part, as a business entity "which operates primarily within the United States." (13 CFR § 121.105(a)). No regulatory flexibility analysis is required if the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

NHTSA has considered the effects of this rulemaking action under the Regulatory Flexibility Act. As explained above, anecdotal evidence from heavy vehicle manufacturers suggests that most, if not all, of these vehicles are already manufactured with parking brakes designed to meet the minimum performance requirements that the agency is proposing to apply. For the remaining vehicles, the agency estimates the cost of complying with these requirements to be less than $10 per vehicle. Considering that the total number of such vehicles that would be subject to the proposed requirements is estimated to be about 212,000 vehicles annually, the agency estimates that the total annual effect of this proposed rule would be less than $2,120,000. Accordingly, I hereby certify that it would not have a significant economic impact on a substantial number of small entities.

National Environmental Policy Act

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action would not have any significant impact on the quality of the human environment.

Executive Order 13132 (Federalism)

Executive Order 13132 requires NHTSA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." The Executive Order defines "policies that have federalism implications" to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, NHTSA may not issue a regulation with Federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, the agency consults with State and local governments, or the agency consults with State and local officials early in the process of developing the proposed regulation. NHTSA also may not issue a regulation with Federalism implications and that preempts State law unless the agency consults with State and local officials early in the process of developing the proposed regulation.

NHTSA has analyzed this rulemaking action in accordance with the principles and criteria set forth in Executive Order 13132. The agency has determined that this proposed rule would not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. The proposal would not have any substantial effects on the States, or on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various local officials.

Civil Justice Reform

This proposed amendment would not have any retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending, or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid Office of Management and Budget (OMB) control number. This proposed rule would not require any collections of information as defined by the OMB in 5 CFR Part 1320.

National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272) directs NHTSA to use voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies, such as the Society of Automotive Engineers (SAE). The NTTAA directs the agency to provide Congress, through the OMB, explanations when we decide not to use available and applicable voluntary consensus standards.

There are no voluntary consensus standards available at this time. However, NHTSA will consider any such standards if they become available.

Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires Federal agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million in any one year (adjusted for inflation with base year of 1995). Before promulgating a rule for which a written statement is needed, section 205 of the UMRA generally requires NHTSA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows NHTSA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the agency publishes with the final rule an explanation why that alternative was not adopted.

This proposed rule would not result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of more than $100 million annually. The estimated cost of complying with the proposed requirements is less than $10 per vehicle. Considering that the total number of vehicles to which these requirements would apply is estimated to be about 212,000 vehicles annually, the estimated aggregate cost of this proposed rule would be less than $2,120,000. Accordingly, the agency has not prepared an Unfunded Mandates assessment.

Plain Language

Executive Order 12866 requires each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

—Have we organized the material to suit the public's needs?
—Are the requirements in the rule clearly stated?
—Does the rule contain technical language or jargon that is not clear?
—Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
—Would more (but shorter) sections be better?
—Could we improve clarity by adding tables, lists, or diagrams?
—What else could we do to make this rulemaking easier to understand?

If you have any responses to these questions, please include them in your comments on this NPRM.

Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

Comments

How Do I Prepare and Submit Comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long. (49 CFR 553.21). We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES.**

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You may also submit your comments to the docket electronically by logging onto the Dockets Management System website at *http://dms.dot.gov*. Click on "Help & Information" or "Help/Info" to obtain instructions for filing the document electronically.

How Can I Be Sure That My Comments Were Received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How Do I Submit Confidential Business Information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT**. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES**. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation. (49 CFR Part 512.)

Will the Agency Consider Late Comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we will also consider comments that Docket Management receives after that date. If Docket Management receives a comment too late for us to consider it in developing a final rule (assuming that one is issued), we will consider that comment as an informal suggestion for future rulemaking action.

How Can I Read the Comments Submitted by Other People?

You may read the comments received by Docket Management at the address given above under **ADDRESSES**. The hours of the Docket are indicated above in the same location.

You may also see the comments on the Internet. To read the comments on the Internet, take the following steps:

1. Go to the Docket Management System (DMS) Web page of the Department of Transportation (*http://dms.dot.gov/*).
2. On that page, click on "search."
3. On the next page (*http://dms.dot.gov/search/*), type in the four-digit docket number shown at the beginning of this document. Example: If the docket number were "NHTSA–1998–1234", you would type "1234". After typing the docket number, click on "search".
4. On the next page, which contains docket summary information for the docket you selected, click on the desired comments. You may download the comments. Although the comments are imaged documents, instead of word processing documents, the "pdf" versions of the documents are word searchable.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, and Tires.

In consideration of the foregoing, NHTSA proposes to amend 49 CFR part 571 as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30166, and 30177; delegation of authority at 49 CFR 1.50.

2. Section 571.105 is amended by revising S3, S5.2, S5.2.3, S7.7.1, paragraph (b) of S7.7.1.3, and S7.19 as follows:

§ 571.105 Standard No. 105; Hydraulic and electric brake systems.

* * * * *

S3. *Application*. This standard applies to vehicles with a GVWR greater than 3,500 kilograms (7,716 pounds) that are equipped with hydraulic or electric brake systems.

* * * * *

S5.2 *Parking brake system*. Each vehicle shall be manufactured with a parking brake system of a friction type with a solely mechanical means to retain engagement, which shall under the conditions of S6, when tested according to the procedures specified in S7, meet the requirements specified in S5.2.1, S5.2.2, or S5.2.3 as appropriate, with the system engaged—

(a) In the case of a vehicle with a GVWR of 10,000 pounds or less, with a force applied to the control not to exceed 125 pounds for a foot-operated system and 90 pounds for a hand-operated system; and

(b) In the case of a vehicle with a GVWR greater than 10,000 pounds, with a force applied to the control not to exceed 150 pounds for a foot-operated system and 125 pounds for a hand-operated system.

* * * * *

S5.2.3 (a) The parking brake system on a multipurpose passenger vehicle, truck and bus (other than a school bus) with a GVWR of 10,000 pounds or less shall be capable of holding the vehicle stationary for 5 minutes, in both forward and reverse directions, on a 20 percent grade.

(b) The parking brake system on a vehicle with a GVWR greater than 10,000 pounds shall be capable of holding the vehicle stationary for 5 minutes, in both forward and reverse directions, on a 20 percent grade.

* * * * *

S7.7.1 *Test procedure for requirements of S5.2.1 and S5.2.3.*

* * * * *

S7.7.1.3

* * * * *

(b) In the case of a vehicle with a GVWR greater than 10,000 pounds not more than 150 pounds for a foot-operated system, and not more than 125 pounds for a hand-operated system.

* * * * *

S7.19 *Moving barrier test*. (Only for vehicles that have been tested according to S7.7.2.) Load the vehicle to GVWR, release parking brake, and place the transmission selector control to engage the parking mechanism. With a moving barrier as described in paragraph 4.3 of SAE recommended practice J972 "Moving Barrier Collision Tests," May 2000, impact the vehicle from the front at 2½ mph. Keep the longitudinal axis of the barrier parallel with the longitudinal axis of the vehicle. Repeat the test, impacting the vehicle from the rear.

Note: The vehicle used for this test need not be the same vehicle that has been used for the braking tests.

* * * * *

Issued: October 23, 2002.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 02–27526 Filed 10–29–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 102302B]

RIN 0648–AN12

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Summer Flounder, Scup, and Black Sea Bass Fisheries; Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of a fishery managementplan amendment; request for comments.

SUMMARY: NMFS announces that the Mid-Atlantic Fishery Management Council (Council) has submitted Amendment 13 to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP) for Secretarial review and is requesting comments from the public. Amendment 13 is intended to revise the quota management program for the black sea bass commercial fishery in order to manage the fishery more effectively and to consider management measures to minimize the effects of fishing on essential fish habitat (EFH).

DATES: Comments must be received on or before December 30, 2002.

ADDRESSES: Comments on the FMP should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope, "Comments on Amendment 13 to the Summer Flounder, Scup, and Black Sea Bass FMP."

Copies of the FMP, Amendment 13, the Final Environmental Impact Statement (FEIS), Regulatory Impact Review (RIR), and the Initial Regulatory Flexibility Analysis (IRFA) are available from Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Federal Building, Room 2115, 200 S. New Street, Dover, DE 19904–6790.

FOR FURTHER INFORMATION CONTACT: Peter Christopher, Fishery Policy Analyst, 978–281–9288, fax 978–281–9135.

SUPPLEMENTARY INFORMATION: The purpose of Amendment 13 is to rectify problems associated with the black sea bass commercial fishery and to consider management measures to minimize the adverse effects of fishing on EFH. Amendment 13 to the FMP proposes to implement a coastwide annual quota program for the black sea bass commercial fishery to replace the current quarterly quota program. The coastwide annual quota program is proposed because it would best complement state-by-state quota allocations adopted by the Atlantic States Marine Fisheries Commission for black sea bass. Amendment 13 proposes to eliminate the requirement that vessels with both a Northeast Region Black Sea Bass permit and a Southeast Region Snapper/Grouper permit must relinquish their Northeast Region Black Sea Bass permit for 6 months after a fishery closure if they want to continue to fish for black sea bass south of Cape Hatteras under their Southeast Region Snapper/Grouper permit. The Council considered alternatives for minimizing adverse impacts of fishing on EFH, and has determined that current measures are adequate.

A proposed rule that would implement the FMP may be published in the **Federal Register** for public comment, following NMFS' evaluation of the proposed rule under the procedures of the Magnuson-Stevens Fishery Conservation and Management Act. Public comments on the proposed rule must be received by the end of the comment period on the FMP to be considered in the approval/disapproval decision on the FMP. All comments received by December 30, 2002, whether specifically directed to the FMP or the proposed rule, will be considered in the approval/disapproval decision on the FMP. Comments received after that date will not be considered in the decision to approve or disapprove the FMP.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 24, 2002.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–27566 Filed 10–29–02;8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 021016235–2235–01; I.D. 092402E]

RIN 0648–AP87

Fisheries Off West Coast States and in the Western Pacific; Coastal Pelagic Species Fishery; Amendment 10

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule.

SUMMARY: NMFS proposes a regulation to implement Amendment 10 to the Coastal Pelagic Species Fishery Management Plan (FMP), which was submitted by the Pacific Fishery Management Council (Council) for review and approval by the Secretary of Commerce. Amendment 10 addresses the two unrelated subjects of the transferability of limited entry permits and maximum sustainable yield (MSY) for market squid. Only the provisions regarding limited entry permits require regulatory action. The purpose of this proposed rule is to establish the procedures by which limited entry permits can be transferred to other vessels and/or individuals so that the holders of the permits have maximum flexibility in their fishing operations while the goals of the FMP are achieved.

DATES: Comments must be received by December 16, 2002.

ADDRESSES: Send comments on the proposed rule to Rodney R. McInnis, Acting Administrator, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802.

Copies of Amendment 10, which includes an environmental assessment/regulatory impact review, and determination of the impact on small businesses may be obtained from Donald O. McIssac, Executive Director, Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, Oregon, 97220. Comments regarding the collection-of-information requirements contained in this rule should be sent to Rodney R. McInnis, Acting Regional Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213, and to the Office of Information and Regulatory Affairs, Office of Management and Budget

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(OMB), Washington, DC 20503 (ATTN: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: James Morgan, Sustainable Fisheries Division, NMFS, at 562–980–4036.

SUPPLEMENTARY INFORMATION: The Council distributed Amendment 10 for public review on April 22, 2002. At its June 2002 meeting, the Council reviewed written comments, received comments from its advisory bodies, and heard public comments. The Council submitted Amendment 10 for Secretarial review by a letter dated August 19, 2002. On October, 3, 2002, a notice of availability of Amendment 10 and the associated documents was published in the **Federal Register** (67 FR 62001).

Background

On June 10, 1999, Amendment 8 to the Northern Anchovy Fishery Management Plan was partially approved by the Secretary of Commerce. Two of the provisions of Amendment 8 were disapproved. However, these two provisions addressed matters required by the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) to be included in all fishery management plans. As such, the Council was required to revisit these issues in subsequent actions. First, bycatch provisions of Amendment 8 were disapproved because they did not contain a standardized reporting methodology to assess the amount and type of bycatch in the fishery. Bycatch requirements of the Magnuson-Stevens Act were eventually addressed in Amendment 9, which was approved on March 22, 2001. Second, optimum yield for market squid (*Loligo opalescens*) was disapproved because Amendment 8 did not provide an estimate of MSY. The Council is addressing MSY through submission of Amendment 10.

Market Squid

Various approaches to determine an MSY proxy for market squid have been attempted. With little knowledge of the biology of squid and inadequate data available, other than landings, results from all methods used were determined to contain too much uncertainty for management, especially considering the large harvests in the 1990s resulting from new market demand. Amendment 10, which contains a description of these methods, examines such things as historical landings, the range of the species, and the manner in which the fishery is conducted.

Additional data on squid became available from research conducted by the California Department of Fish and Game (CDFG) through a program implemented by State legislation establishing permit fees to fund squid research. With new information on growth, maturity, and fecundity, the Council's Scientific and Statistical Committee (SSC) recommended, and the Council concurred, that the SSC work with NMFS and the CDFG to organize a stock assessment review panel (STAR). The STAR panel met on May 14–17, 2001, at the Southwest Fisheries Science Center in La Jolla, California, and developed what became known as the egg escapement (EE) method. A report was prepared and presented to the Council's Coastal Pelagic Species Management Team (Management Team) in August 2001.

At a public meeting on August 14–15, 2001, the Management Team discussed the STAR panel report and decided on the values to be used in the EE method, making its recommendations to the Council at the Council's November 21, 2001, meeting.

The EE method is based on a modeling approach that addresses the life history of the species, with a focus on the mortality and spawning rates of sexually mature females. Per-recruit analysis theory was used to generate stock parameter estimates, such as mean standing stock of eggs per harvested female, eggs per recruit, and egg escapement. All of the estimates were evaluated across a range of fishing mortality. To gauge the fishery's impact on the squid population, the estimated reproductive output of the harvested population was compared with the population's output in the absence of fishing.

The EE method allows for "real-time" management of the fishery, without an unnecessarily large investment in personnel or regulations. The method would be used as a management tool to assess whether the fleet is fishing above or below a sustainable level of exploitation. A sustainable level of egg escapement can be practically interpreted as a level of reproductive (egg) escapement that is believed to be at or near a minimum level necessary to allow the population to maintain its level of abundance into the future, that is, to allow for sustainable reproduction year after year.

A critical underpinning of the EE approach is that the fishery continues to concentrate strictly on squid spawning grounds. This fishery has the following characteristics: (1) historically, harvests have consisted almost entirely of mature animals that have laid some or all of their eggs before capture; (2) recruitment and future catches in each fishing season largely depend on successful and adequate spawning in the preceding season; (3) the squid are determinate spawners, with potential lifetime fecundity fixed at maturity; (4) the squid die soon after laying their full complement of eggs; and (5) interpretable, anatomical evidence of spawning must be able to be estimated from commercial harvest data, which can be routinely collected through an ongoing port sampling program. The fact that evidence of spawning can be derived from commercially landed specimens offers a unique opportunity to implement an EE method for fisheries management.

The proposed alternative in Amendment 10 is to adopt the EE method to monitor the market squid fishery in compliance with the Magnuson-Stevens Act. This action will require amending the FMP, but will not require implementing rules.

Capacity Goal

Regulations at 50 CFR 660.514 prohibit the transfer of a limited entry permit to a different vessel or a different owner after December 31, 2000. This provision was imposed to allow for attrition in the fleet following an initial period of transfers. Since then, the Council's Management Team has been working on issues related to the harvesting capacity of the fleet by examining the fleet's dependency on a variety of species that exhibit wide variability and by determining the actual physical capacity of the fleet. Amendment 10 would establish a capacity goal for the fleet and set conditions for the transfer of permits to maintain the capacity goal.

The purpose of the capacity goal is to ensure that fishing capacity in the CPS limited entry fishery is in balance with resource availability. The preferred alternative in Amendment 10 is to establish a capacity goal for the limited entry fleet by using a proxy of 5,650.9 mt of the aggregate gross tonnage (GT) of the fleet. Measuring the actual harvesting capacity of a vessel and monitoring each vessel's capacity can be complicated because the amount of fish a vessel can carry depends on many factors; therefore, Amendment 10 proposes to use GT as a proxy for capacity. The aggregate gross tonnage level of 5,650.9 mt would result in a larger, diverse CPS finfish fleet, which also relies on other fishing opportunities such as fishing for squid and tuna. The current fleet of 65 vessels, which totals 5,650.9 mt GT, satisfies this goal. Estimated normal harvesting capacity for the current fleet, which was determined by reviewing historical average and maximum landings per trip, ranged from 60,000 mt to 111,000 mt per year. The physical harvesting capacity of the current fleet ranged from 361,000 to 539,000 mt per year. Physical capacity is a technological or engineering measure of the maximum potential output per unit of time.

Permit Transfers

Under the proposed alternative in Amendment 10, as long as aggregate fleet gross tonnage is not above 5,933.5 mt (fleet gt plus 5 percent) limited entry permits could be transferred with the following restrictions: (1) full transferability of permits only to vessels of comparable capacity (vessel GT +.10 (GT) or less), and (2) permits could be combined up to a greater level of capacity in cases where the vessel to which the permits would be transferred to is of greater harvesting capacity than the vessel from which the permit originated.

Each limited entry permit would have an endorsement based on the currently permitted vessel's calculated GT as defined by the formula in 46 CFR 69.209 for ship-shaped hulls. This formula is used by the U.S. Coast Guard (GT=0.67 (length x breadth x depth)/100).

The original permits and their respective endorsements would remain in effect for the lifetime of each permit, regardless of the GT of a vessel to which it was transferred. In cases where a permit was transferred to a vessel with a smaller GT, the original GT endorsement would remain, and excess GT could not be split out from the original permit configuration and sold. In cases where two or more permits were transferred to a larger vessel, the larger vessel would hold the original permits and could fish for CPS finfish as long as the aggregate GT endorsements, including the 10 percent allowance, as defined by the formula for comparable capacity (vessel GT + .10 (GT) or less) added up to the new vessel's calculated GT. In the event that a vessel with multiple permits leaves the CPS limited entry program, the permits could be sold together or separately, but the original permit endorsement could not be altered.

To ensure manageability of the permit program and stability of the fleet, only one transfer per permit would be allowed during each calendar year. Permits could be used only on the vessel to which they were registered. Catch history would be tied to the vessel and not to the permits.

Maintaining the Capacity Goal

When the upper threshold of aggregate fleet capacity plus 5 percent (5,933.5 mt) is reached, fleet capacity would be restored to the capacity goal (5,650.9 mt) by restricting conditions for permit transfer. When the threshold of 5,933.5 mt is reached or exceeded, permits could only be transferred to vessels with equal or smaller GT, and the 10–percent vessel allowance would be removed. Restoring the 10 percent-allowance could be considered once total aggregate fleet capacity reached the 5,650.9 mt target.

Procedures for Issuing New Limited Entry Permits

Based on positive changes in CPS finfish resources or market conditions, and, if the Council determines, and recommends to NMFS, that new limited entry permits should be issued, the qualifying criteria originally established in the FMP would be used for issuance of these new permits. This would entail continuing down the list of vessels having landings during the 1993–97 window period in order of decreasing window period landings from the original qualifying level of 100 mt. If no vessel meets the qualifying criteria of 100 mt, then the permit would be issued to the vessel with total landings nearest 100 mt during the qualifying period. New permits could be issued on either a temporary or permanent basis, depending on the circumstances surrounding the need for additional fleet capacity.

Classification

At this time, NMFS has not determined that Amendment 10, which this rule would implement, is consistent with the national standards of the Magnuson-Stevens Act and other applicable law. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period.

This proposed rule has been determined to be not significant for the purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities as follows:

There are some fish processors operating in the west coast CPS finfish fishery that would not be considered small businesses, but the vast majority of CPS finfish fishery participants are considered small businesses under the SBA standards. The small entities that could be affected by the proposed regulatory actions would consist exclusively of fish-harvesting businesses, i.e. fishing vessels. All vessels fishing for CPS are considered small business.

The proposed rule would establish a capacity goal for the CPS fleet, maintain the existing fleet of 65 vessels with limited entry permits, allow transfer of permits to new vessels and/or individuals under conditions controlling the size of the vessels, and issue new permits if justified by resource and economic conditions. Establishing a capacity goal sets a limit on the capital that can be invested to harvest a limited resource. Restraining the growth of the capacity of the existing fleet would maintain the capacity goal while allowing fishing vessels to take full advantage of all fishing opportunities, which is important to the economics of CPS vessels because of the wide fluctuations in abundance that occur with many of the individual species. Allowing the transfer of permits gives the holders of limited entry permits flexibility in the management of their individual business operations while maintaining the capacity goal and allows non participants in the fishery to enter the fishery. The payment to the seller for a permit would presumably at least reflect the worth of that permit remaining with the transferring vessel. Issuing new permits would only occur when economic conditions were favorable for adding additional vessels. The procedures for qualifying new vessels would therefore not have an impact on the existing fleet, but the alternatives for issuing new permits could have disproportionate effects on vessels vying for entry. Effects of the regulatory actions under consideration are expected to be neutral, although positive results will likely accrue in the long term by making permits transferable. This will provide some protection to the investments of individual fishermen and reduce the possibility of a declining fleet.

As a result, an Initial Regulatory Flexibility Analysis wasnot prepared.

This proposed rule contains a collection-of-information requirement subject to the Paperwork Reduction Act and which has been approved by OMB under control number 0648–0204. Public reporting burden for an application for transfer of a limited entry permit is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (See **ADDRESSES**) and to OMB at the Office of Information and Regulatory Affairs, OMB, Washington, D.C. 20503 (Attention: NOAA Desk Officer).

Notwithstanding any other provision of the law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

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List of Subject in 50 CFR Part 660

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaiian Natives, Indians, Northern Mariana Islands, Reporting and recordkeeping requirements.

Dated: October 24, 2002.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR part 660 as follows:

PART 660—FISHERIES OFF WEST COAST STATES AND IN THE WESTERN PACIFIC

1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 660.502, definitions for "comparable capacity", and "gross tonnage" are added, in alphabetical order, to read as follows:

§ 660.502 Definitions.

* * * * *

Comparable capacity means gross tonnage plus 10 percent of the vessel's calculated gross tonnage.

* * * * *

Gross tonnage (GT) means gross tonnage as determined by the formula in 46 CFR 69.209(a) for a vessel not designed for sailing (.67 x length x breadth x depth/100). A vessel's length, breadth, and depth are those specified on the vessel's certificate of documentation issued by the U.S. Coast Guard or State.

* * * * *

3. In § 660.512, a new paragraph (h) is added to read as follows:

§ 660.512 Limited entry fishery.

* * * * *

(h) *Issuance of new permits.* (1) When the aggregate gross tonnage of all vessels participating in the limited entry fishery declines below 5,650.9 metric tons (mt), the Council will review the status of the fishery, taking into consideration:

(i) The changes in gross tonnage that have and are likely to occur in the transfer of limited entry permits;

(ii) The actual harvesting capacity as experienced in the current fishery in comparison to the capacity goal;

(iii) Comments of the CPSMT;

(iv) Any other relevant factors related to maintaining the capacity goal.

(2) Following its review, the Council will recommend to NMFS whether additional permit(s) should be issued and if the new permit(s) should be temporary or permanent. The issuance of new permit(s) shall be based on the following:

(i) The qualifying criteria in paragraph (b) of this section, but vessels that were issued a permit before December 31, 2000, are not eligible.

(ii) If no vessel meets the qualifying criteria in paragraph (b), then the permit(s) will be issued to the vessel(s) with total landings nearest 100 mt during the qualifying period of paragraph (b).

(iii) No vessel will be issued a permit under this paragraph (h) that is currently registered for use with a permit.

(3) The Regional Administrator will review the Council's recommendation and determine whether issuing additional permit(s) is consistent with the FMP and with paragraph (h)(2) of this section. If issuing additional permit(s) is appropriate, the Regional Administrator will:

(i) Issue the appropriate number of permits consistent with the Council's recommendation; and

(ii) Publish a document in the **Federal Register** notifying the public that a new permit has been issued, the conditions attached to the permits, and the reasons for the action.

4. Section 660.514 is revised to read as follows:

§ 660.514 Transferability.

(a) *General.* (1) The SFD will process applications for transferring limited entry permits to a different owner and/or to a different vessel according to this section.

(2) After the effective date of the final rule, the SFD will issue a limited entry permit to the owner of each vessel permitted to participate in the limited entry fishery for CPS. This permit will replace the existing permit and will include the gross tonnage of the vessel, which will constitute an endorsement for that vessel for the purpose of regulating the transfer of limited entry permits.

(b) *Criteria.* (1) When the aggregate gross tonnage of all vessels participating the limited entry fishery is at or below 5,650.9 mt, a permit may be transferred to a different owner or to a different vessel in the following circumstances only:

(i) A permit may be transferred to a vessel without a permit if the vessel without a permit has a comparable capacity to the capacity on the permit or is less than comparable capacity on the permit.

(ii) When a permit is transferred to a vessel without a permit that has less gross tonnage than that of the permitted vessel, the excess gross tonnage may not be separated from the permit and applied to a second vessel.

(iii) A permit may be transferred to a vessel without a permit that is of greater than comparable capacity only if two or more permits are transferred to the vessel without a permit to equal the gross tonnage of the vessel. The number of permits required will be determined by adding together the comparable capacity of all permits being transferred. Any gross tonnage in excess of that needed for a vessel remains with the permit.

(2) When a vessel with multiple permits leaves the fishery, the permits may be sold separately and applied to other vessels according to the criteria in this section.

(c) *Stipulations.* (1) The gross tonnage endorsement of a permit is integral to the permit for the duration of the permit, regardless of the gross tonnage of any vessel to which the permit is transferred.

(2) Permits may be used only on the vessel for which they are registered by the SFD. All permits that authorize a vessel to operate in the limited entry fishery must be on board the vessel during any fishing trip on which CPS is harvested or is on board.

(3) A permit may be transferred only once during a calendar year.

(d) *Vessel alterations.* (1) A permitted vessel's length, breadth, or depth may be altered to increase the gross tonnage of the vessel only if the aggregate gross tonnage of all vessels participating the limited entry fishery equals to, or is below 5,650.9 mt, and only under the following conditions:

(i) The gross tonnage of the altered vessel, calculated according to the formula in 46 CFR 69.209(a), does not exceed 110 percent of the vessel's original gross tonnage endorsement, and

(ii) A new certificate of documentation is obtained from the U.S. Coast Guard or State. Modifications exceeding 110 percent of the vessel's gross tonnage endorsement will require registration of the vessel under an additional permit or permits or under a permit with a sufficient gross tonnage endorsement.

(2) A copy of the certificate of documentation indicating changes in length, depth, or breadth must be provided to the SFD.

(3) The revised gross tonnage will not be valid as an endorsement until a revised permit is issued by the SFD.

(e) *Applications.* (1) All requests for the transfer of a limited entry permit will be made to the SFD in writing and shall contain the following information:

(i) Name, address, and phone number of the owner of the permitted vessel.

(ii) Name of the permitted vessel and documentation number of the vessel.

(iii) Name, address, and phone number of the owner of the vessel to which the permit is to be transferred.

(iv) Name and documentation number of the vessel to which the permit is to be transferred.

(v) Signature(s) of the owner(s) of the vessels participating in the transfer.

(vi) Any other information that the SFD may request.

(2) No permit transfer is effective until the transfer has been authorized by the SFD.

(f) *Capacity reduction.* (1) When the aggregate gross tonnage of the limited entry fleet reaches 5,933.5 mt, a permit may be transferred to a vessel without a permit only if the vessel without a permit is of the same or less gross tonnage.

(2) When the aggregate gross tonnage of the limited entry fleet reaches 5,933.5 mt, alterations in the length, depth, or breadth of a permitted vessel may not result in an increase in the gross tonnage of the vessel.

[FR Doc. 02–27613 Filed 10–29–02; 8:45 am]

BILLING CODE 3510–22–S

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Notices

Federal Register
Vol. 67, No. 210
Wednesday, October 30, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Availability of a Finding of No Significant Impact (FONSI)

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of availability of a Finding of No Significant Impact for a project on the Williamson River Delta for review and comment.

SUMMARY: The NRCS has issued a Finding of No Significant Impact (FONSI) for a stream restoration project on the Williamson River Delta. A copy of the FONSI and the final Supplemental Environmental Assessment (SEA) is available for public review at the following locations:

- NRCS Office, 2316 South 6th Street, Suite C, Klamath Falls, OR 97601
- Klamath County Commissioners, 305 Main St, 2nd Floor, Klamath Falls, OR 97601
- Klamath Tribes Natural Resources Department, 501 Chiloquin Blvd., Chiloquin, OR 97624
- Additional copies may be obtained by contacting Shelley Tucker, NRCS, 541–883–6932—extension 113.

DATES: Comments will be received for a 30-day period commencing with this date of publication.

ADDRESSES: Address all requests and comments to Kevin Conroy, Basin Team Leader, Natural Resources Conservation Service (NRCS), 2316 South 6th Street, Suite C, Klamath Falls, OR 97601, 541–882–9044 (FAX).

FOR FURTHER INFORMATION CONTACT: Kevin Conroy, 541–883–6924.

Dated: October 15, 2002.

Bob Graham,

State Conservationist, Portland, OR.

[FR Doc. 02–27594 Filed 10–29–02; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Sicily Island Watershed, Catahoula Parish, LA

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of intent to deauthorize Federal funding.

SUMMARY: Pursuant to the Watershed Protection and Flood Prevention Act, Pub. L. 83–566, and Natural Resources Conservation Service Guidelines (7 CFR 622), the Natural Resources Conservation Service gives notice of the intent to deauthorize Federal funding for the Sicily Island Watershed, Catahoula Parish, Louisiana.

FOR FURTHER INFORMATION CONTACT: Donald W. Gohmert, State Conservationist, Natural Resources Conservation Service, 3737 Government Street, Alexandria, Louisiana, 71302, telephone: 318–473–7751.

SUPPLEMENTARY INFORMATION: A determination has been made by Donald W. Gohmert that the proposed works of improvement for the Sicily Island Watershed will not be installed. The sponsoring local organization(s) have concurred in this determination and agree that Federal funding should be deauthorized for the project. Information regarding this determination may be obtained from Donald W. Gohmert, State Conservationist, at the above address and telephone number.

No administrative action on implementation of the proposed deauthorization will be taken until 60 days after the date of this publication in the **Federal Register**.

Donald W. Gohmert,

State Conservationist.

[FR Doc. 02–27593 Filed 10–29–02; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF COMMERCE

[I.D. 102402D]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Economic Data Collection for the Trap Fishery in the U.S. Caribbean.

Form Number(s): None.

OMB Approval Number: None.

Type of Request Regular submission.

Burden Hours: 150.

Number of Respondents: 100.

Average Hours Per Response: 1.5.

Needs and Uses: Several studies have shown that the haphazard placement of traps damages hard corals and gorgonians. In addition, to physically damaging hard corals and gorgonians traps target various over-exploited reef fish species, which further threaten the health and stability of coral reef habitats. To protect coral reef habitats and ensure the sustainable use of reef fish resources, the Caribbean Fishery Management Council (CFMC) is considering limiting the total number of traps in the fishery. The goal of the proposed survey is to gather socioeconomic information on the Caribbean (Puerto Rico, St. Thomas, St. John, and St. Croix) trap fishery to support the management and conservation efforts of the CFMC. The information collected will be used to satisfy regulatory objectives and analytical requirements, and to assist the CFMC in selecting policies that meet conservation and management goals and minimize, to the extent possible, any adverse economic impacts on fishery participants.

Affected Public: Business or other for-profit organizations.

Frequency: One-time.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at*dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: October 8, 2002.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02–27562 Filed 10–29–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

[Docket No. 010925233–2253–02]

Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements

AGENCY: Department of Commerce (DoC).

ACTION: Notice.

SUMMARY: The notice amends the Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements. On October 1, 2001, the Department of Commerce (DoC) announced in the **Federal Register** (66 FR 49917) Department-wide requirements which pertain to information provided to applicants for funding under grants and cooperative agreements awarded by DoC.

DATES: This amendment is effective October 30, 2002.

FOR FURTHER INFORMATION CONTACT: Elizabeth Dorfman, Office of Executive Assistance Management, Telephone Number—202–482–4115.

SUPPLEMENTARY INFORMATION: The DoC is amending the Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements which was published in the **Federal Register** on October 1, 2001. This amendment updates provisions for review and approval of indirect cost rate proposals for those organizations for which DoC is cognizant or has oversight. In January 2002, the U. S. General Accounting Office issued Amendment No. 3, Independence, to the Government Auditing Standards. These new standards do not allow our Office of Inspector General to continue to perform these services, therefore, the Office of Executive Budgeting and Assistance Management, which is organizationally located under the DoC Chief Financial Officer and Assistant Secretary for Administration, will be responsible for the review of cost allocation procedures and negotiation of indirect cost rates for those organizations for which DoC is cognizant or has oversight. Therefore, DoC procedures for review, negotiation, and approval of indirect cost rates are being revised.

In the first column on page 49919, paragraph B.5.(c)(1) should be replaced with the following:

(1) For those organizations for which DoC is cognizant or has oversight, DoC or its designee either will negotiate a fixed rate for the recipient or, in some instances, will limit its review to evaluating the procedures described in the recipient's cost allocation methodology plan. Indirect cost rates and cost allocation methodology reviews are subject to future audits to determine actual indirect costs. Within 90 days of the award start date, the recipient shall submit to the address listed below documentation (indirect cost proposal, cost allocation plan, etc.) necessary to perform the review. The recipient shall provide the Grants Officer with a copy of the transmittal letter. Office of Executive Assistance Management, Department of Commerce, 14th Street and Constitution Avenue, NW., Room H–6022, Washington, DC 20230.

2. In the second column on page 49919, paragraph B.5.(c)(3) should be replaced with the following:

(3) If the recipient fails to submit the required documentation to DoC or other oversight or cognizant Federal agency within 90 days of the award start date, the Grants Officer may amend the award to preclude the recovery of any indirect costs under the award. If the DoC, oversight, or cognizant Federal agency determines there is a finding of good and sufficient cause to excuse the recipient's delay in submitting the documentation, an extension of the 90-day due date may be approved by the Grants Officer.

Classification Executive Order 12866

This notice has been determined to be "not significant" for purposes of Executive Order 12866, "Regulatory Planning and Review."

Administrative Procedure Act and Regulatory Flexibility Act

Notice and comment are not required under the Administrative Procedure Act (5 U.S.C. 553), or any other law, for this notice relating to public property, loans, grants, benefits, or contracts (5 U.SC. 553(a)). Because notice and comment are not required for this notice, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are not required and has not been prepared for this notice.

Executive Order 13132 (Federalism)

It has been determined that this notice does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

Paperwork Reduction Act

This action does not impose any new reporting or recordkeeping requirements under the Paperwork Reduction Act. Notwithstanding any other provisions of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection-of-information, subject to the requirements of the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, unless that collection of information displays a currently valid Office of Management and Budget (OMB) control number.

List of Subjects

Accounting, Administrative practice and procedures, Grants administration, Grant programs-economic development, Grant programs-oceans, atmosphere and fisheries management, Grant programs-minority businesses, Grant programs-technology, Grant programs-telecommunications, Grant programs-international, Reporting and recordkeeping requirements.

Issued this 22nd day of October, 2002, in Washington, DC.

Robert F. Kugelman,

Director, Office of Executive Budgeting and Assistance Management.

[FR Doc. 02–27546 Filed 10–29–02; 8:45 am]

BILLING CODE 3510–BW–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 49–2002]

Foreign-Trade Zone 38—Spartanburg, SC; Application for Subzone Status SAI Automotive USA d/b/a/ Faurecia Interior Systems (Automotive Interior Components), Fountain Inn, South Carolina

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the South Carolina State Ports Authority, grantee of FTZ 38, requesting special-purpose subzone status for the automotive interior components manufacturing plant of SAI Automotive USA d/b/a/ Faurecia Interior Systems (Faurecia IS) (a subsidiary of Faurecia S.A., of France), located in Fountain Inn, South Carolina. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on October 18, 2002.

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The Faurecia IS plant (35 acres, 326,000 sq.ft.), is located at 101 International Boulevard, Fountain Inn (Laurens County), South Carolina, about 20 miles southeast of Greenville. The facility (670 employees) is used to produce automotive interior components—storage boxes, consoles, glove boxes, instrument panels, dash boards, bolsters, and door panels—for passenger motor vehicles manufactured in the U.S., as well as for export. Production activity involves injection molding, blow molding, painting, and assembly using domestic and foreign-origin inputs. Components and materials purchased from abroad (representing up to 25% of material value) include: polypropylene, PVC foil and sheet, rubber straps and mats, carpet sets, floor mats, fasteners, speakers, switches, airbag straps/frames/brackets, retainers, inserts and related items under HTSUS 8708.99.8080, vents, knobs, air ducts, sun visors, consoles, grab handles, plates, fabrics (Category 229) and sun shades (duty rates: 2.5–8.5%). FTZ procedures would exempt Faurecia IS from Customs duty payments on the foreign items used in production for export to non-NAFTA countries. On domestic shipments transferred in-bond to U.S. automobile assembly plants with subzone status, no duties would be paid on foreign-origin materials and components used in auto production under FTZ procedures until the finished vehicles are entered for domestic consumption, at which time the finished auto duty rate (2.5%) would be applied to the foreign-origin component parts and materials. For the individual interior components withdrawn from the proposed subzone for Customs entry, Faurecia IS would be able to choose the finished auto part duty rate (2.5%) for the foreign-origin items noted above. The application indicates that the savings from FTZ procedures would help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the following addresses:

1. *Submissions via Express/Package Delivery Services:* Foreign-Trade Zones Board, U.S. Department of Commerce, Franklin Court Building-Suite 4100W, 1099 14th Street, NW, Washington, DC 20005; or,

2. *Submissions via the U.S. Postal Service:* Foreign-Trade Zones Board, U.S. Department of Commerce, FCB–4100W, 1401 Constitution Ave., NW, Washington, DC 20230.

The closing period for their receipt is *[December 30, 2002]*. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period *[to January 13, 2003]*.

A copy of the application will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at address No.1 listed above and at the Office of the Port Director, U.S. Customs Service, 150–A West Phillips Road, Greer, SC 29650.

Dated: October 18, 2002.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 02–27632 Filed 10–29–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–803]

Industrial Nitrocellulose from Germany: Notice of Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Rescission of Antidumping Duty Administrative Review.

EFFECTIVE DATE: October 30, 2002

FOR FURTHER INFORMATION CONTACT: Ron Trentham or Tom Futtner, Group II, Office 4, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone (202) 482–6320 or 482–3814, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations as codified at 19 CFR Part 351 (2002).

Background

On July 1, 2002, the Department of Commerce (the Department) published a notice of opportunity to request an administrative review of the antidumping duty order on industrial nitrocellulose (INC) from Germany (67 FR 44172).

On August 27, 2002, pursuant to a request made by Wolff Walstrode AG (Wolff), a producer and exporter of INC, the Department initiated an administrative review of the antidumping duty order on INC from Germany. On October 16, 2002, Wolff withdrew its request for an administrative review of INC from Germany.

Rescission of Review

Section 351.213(d)(1) of the Department's regulations provides that a party that requests an administrative review may withdraw the request within 90 days after the date of publication of the notice of initiation of the requested administrative review. The Department is rescinding the administrative review of the order on INC from Germany for the period July 1, 2001 through June 30, 2002, because the requesting party has withdrawn its request for this administrative review within the 90–day time limit, and no other interested parties have requested a review of INC from Germany for this time period.

This notice is in accordance with section 777(i)(1) of the Act and 19 CFR 251.213(d)(4).

Dated: October 24, 2002.

Bernard T. Carreau,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 02–27628 Filed 10–29–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–489–807]

Certain Steel Concrete Reinforcing Bars From Turkey; Final Results and Partial Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On May 1, 2002, the Department of Commerce published the preliminary results of the administrative review of the antidumping duty order on certain steel concrete reinforcing bars from Turkey (67 FR 21634). This review covers five manufacturers/exporters of the subject merchandise to the United States. The period of review is April 1, 2000, through March 31, 2001. We are rescinding the review with respect to Diler Demir Celik Endustrisi ve Ticaret A.S., Yazici Demir Celik Sanayi ve Ticaret A.S., and Diler Dis Ticaret A.S.; and ICDAS Celik Enerji Tersane ve Ulasim Sanayi, A.S. because these companies had no entries of subject merchandise to the United States during the period of review.

Based on our analysis of the comments received, we have made changes in the margin calculations for one company. Therefore, the final results differ from the preliminary results. The final weighted-average dumping margins for the reviewed firms are listed below in the section entitled "Final Results of Review."

EFFECTIVE DATE: October 30, 2002.

FOR FURTHER INFORMATION CONTACT: Irina Itkin or Elizabeth Eastwood, Office of AD/CVD Enforcement, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC, 20230; telephone (202) 482–0656 and (202) 482–3874, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to 19 CFR Part 351 (2001).

Background

This review covers five manufacturers/exporters (*i.e.*, Colakoglu Metalurji A.S. (Colakoglu), Diler Demir Celik Endustrisi ve Ticaret A.S., Yazici Demir Celik Sanayi ve Ticaret A.S., and Diler Dis Ticaret A.S. (collectively, "Diler"), Ekinciler Holding A.S. and Ekinciler Demir Celik A.S. (collectively, "Ekinciler"), HABAS Sinai ve Tibbi Gazlar Istihsal Endustrisi A.S. (Habas), and ICDAS Celik Enerji Tersane ve Ulasim Sanayi, A.S. (ICDAS)).

On May 1, 2002, the Department published in the **Federal Register** the preliminary results of administrative review of the antidumping duty order on certain steel concrete reinforcing bars (rebar) from Turkey. *See Certain Steel Concrete Reinforcing Bars from Turkey; Preliminary Results of Antidumping Duty Administrative Review*, 67 FR 21634 (May 1, 2002) *(Preliminary Results)*.

In May and August, 2002, respectively, Diler and ICDAS notified the Department that they did not have shipments and/or entries of subject merchandise to the United States. Because we were able to confirm this with the Customs Service, in accordance with 19 CFR 351.213(d)(3) and consistent with our practice, we are rescinding our review for Diler and ICDAS. For further discussion, see the "Partial Rescission of Review" section of this notice, below.

We invited parties to comment on our preliminary results of review. In May and June, 2002, we received case briefs from the petitioner (AmeriSteel Corporation), Colakoglu, and Ekinciler. In June 2002, we received rebuttal briefs from the petitioner, Ekinciler, and Habas. In addition, from June through September 2002, at our request we received supplemental information related to the depreciation expenses reported by Ekinciler.

The Department held a hearing on July 10, 2002, at the request of the petitioner.

On August 19, 2002, the Department postponed the final results of this review, pursuant to 19 CFR 351.213(h)(2). *See Certain Steel Concrete Reinforcing Bars from Turkey; Notice of Extension of Time Limits for Final Results of Antidumping Duty Administrative Review*, 67 FR 53778 (Aug. 19, 2002).

The Department has conducted this administrative review in accordance with section 751 of the Act.

Scope of the Order

The product covered by this order is all stock deformed steel concrete reinforcing bars sold in straight lengths and coils. This includes all hot-rolled deformed rebar rolled from billet steel, rail steel, axle steel, or low-alloy steel. It excludes (i) plain round rebar, (ii) rebar that a processor has further worked or fabricated, and (iii) all coated rebar. Deformed rebar is currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers 7213.10.000 and 7214.20.000. The HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of this proceeding is dispositive.

Period of Review

The period of review (POR) is April 1, 2000, through March 31, 2001.

Partial Rescission of Review

As noted above, Diler and ICDAS notified the Department that they had no shipments and/or entries of subject merchandise to the United States during the POR. We have confirmed this with the Customs Service. Therefore, in accordance with 19 CFR 351.213(d)(3) and consistent with the Department's practice, we are rescinding our review with respect to Diler and ICDAS. (*See, e.g., Certain Welded Carbon Steel Pipe and Tube from Turkey; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 63 FR 35190, 35191 (June 29, 1998); and *Certain Fresh Cut Flowers from Colombia; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 62 FR 53287, 53288 (Oct. 14, 1997).)

Cost of Production

As discussed in the *Preliminary Results*, we conducted an investigation to determine whether the respondents participating in the review made home market sales of the foreign like product during the POR at prices below their costs of production (COPs) within the meaning of section 773(b)(1) of the Act. We performed the cost test for these final results following the same methodology as in the *Preliminary Results*, except as discussed in the accompanying "Issues and Decision Memorandum" (Decision Memo) from Richard W. Moreland, Deputy Assistant Secretary, Import Administration, to Faryar Shirzad, Assistant Secretary for Import Administration, dated October 24, 2002.

We found 20 percent or more of each respondent's sales of a given product during the reporting period were at prices less than the weighted-average COP for this period. Thus, we determined that these below-cost sales were made in "substantial quantities" within an extended period of time and at prices which did not permit the recovery of all costs within a reasonable period of time in the normal course of trade. *See* sections 773(b)(2)(B), (C), and (D) of the Act.

Therefore, for purposes of these final results, we found that Colakoglu, Ekinciler, and Habas made below-cost sales not in the ordinary course of trade. Consequently, we disregarded these sales for each respondent and used the remaining sales as the basis for determining normal value, pursuant to section 773(b)(1) of the Act.

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Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the Decision Memo, which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the Decision Memo, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit, room B–099, of the main Department building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at *http://ia.ita.doc.gov*. The paper copy and electronic version of the Decision Memo are identical in content.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made certain changes in the margin calculations. These changes are discussed in the relevant sections of the Decision Memo.

Final Results of Review

We determine that the following weighted-average margin percentages exist for the period April 1, 2000, through March 31, 2001:

Manufacturer/producer/exporter	Margin percentage
Colakoglu Metalurji A.S.	5.31
Ekinciler Holding A.S./Ekinciler Demir Celik A.S.	0.04
HABAS Sinai ve Tibbi Gazlar Istihsal Endustrisi A.S.	0.27

The Department will determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), for Habas, we have calculated an importer-specific assessment rate based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of those sales. Regarding Colakoglu and Ekinciler, for assessment purposes, we do not have the information to calculate entered value because these companies are not the importers of record for the subject merchandise. Accordingly, we have calculated importer-specific duty assessment rates for the merchandise in question by aggregating the dumping margins calculated for all U.S. sales to each importer and dividing this amount by the total quantity of those sales. To determine whether the duty assessment rates were *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we calculated importer-specific *ad valorem* ratios based on the export prices. We will direct the Customs Service to assess the resulting assessment rates uniformly on all entries of that particular importer made during the POR. Pursuant to 19 CFR 351.106(c)(2), we will instruct the Customs Service to liquidate without regard to antidumping duties any entries for which the assessment rate is *de minimis* (*i.e.*, less than 0.50 percent). The Department will issue appropriate assessment instructions directly to the Customs Service within 15 days of publication of these final results of review.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of rebar from Turkey entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) The cash deposit rates for the reviewed companies will be the rates indicated above; (2) for previously investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, or the less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 16.06 percent, the all others rate established in the LTFV investigation.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as the only reminder to parties subject to APO of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: October 24, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

Appendix—Issues in Decision Memo

Comments

1. Model Matching Hierarchy
2. Clerical Errors in the Preliminary Results
3. Treatment of Ekinciler's U.S. Sales
4. Financing Expenses for Ekinciler
5. Depreciation Expenses for Ekinciler

[FR Doc. 02–27631 Filed 10–29–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–427–817]

Certain Cut-to-Length Carbon-Quality Steel Plate from France: Notice of Court Decision and Suspension of Liquidation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On September 24, 2002, in *GTS Industries S.A. v. United States*, Consol. Court No. 00–03–00118, Slip Op. 02–115 (CIT 2002), a lawsuit challenging the Department of Commerce's ("the Department's") *Final Affirmative Countervailing Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plate from France*, 64 FR 73277 (December 29, 1999) ("*French Plate*"), the Court of International Trade ("CIT") affirmed the Department's second remand redetermination and entered a judgment order. In this redetermination, the Department reviewed the record evidence regarding the facts and circumstances, including the terms of the sale, of the privatization of Usinor (which owned a majority interest in GTS Industries S.A. ("GTS") prior to 1996 and a minority interest during the period of investigation ("POI")), and concluded that no countervailable subsidies were attributable to GTS following the privatization transaction.

As a result of the redetermination, the countervailable subsidy rate for the subject merchandise produced and sold by GTS during the POI was reduced from 6.86 percent to 0.00 percent *ad valorem*.

This redetermination was not in harmony with the Department's original final determination in *French Plate*. Consistent with the decision of the U.S. Court of Appeals for the Federal Circuit ("CAFC") in *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990) ("*Timken*"), the Department will continue to order the suspension of liquidation of the subject merchandise until there is a "conclusive" decision in this case. If the case is not appealed, or if it is affirmed on appeal, the Department will instruct the U.S. Customs Service to terminate the suspension of liquidation for all entries of certain cut-to-length carbon-quality steel plate from France.

EFFECTIVE DATE: October 30, 2002.

FOR FURTHER INFORMATION CONTACT: Jesse Cortes, AD/CVD Enforcement Group I, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone: (202) 482–3986.

SUPPLEMENTARY INFORMATION:

Background

In *French Plate*, using the change-in-ownership methodology in place at that time, the Department determined that countervailable subsidies were being provided to producers and exporters of certain cut-to-length carbon-quality steel plate from France. GTS challenged this determination before the CIT.

On February 2, 2000, the CAFC ruled in *Delverde SRL v. United States*, 202 F.3d 1360 (Fed. Cir. 2000), *reh'g granted in part*, (June 20, 2000) ("*Delverde III*"), that:

> the Tariff Act as amended does not allow Commerce to presume conclusively, pursuant to a *per se* rule, that the subsidies granted to the former owner of Delverde's corporate assets automatically 'passed through' to Delverde following the sale. Rather, the Tariff Act requires that Commerce make such a determination by examining the particular facts and circumstances of the sale and determining whether Delverde directly or indirectly received both a financial contribution and benefit from the government.

202 F.3d at 1364. The methodology analyzing Delverde's change in ownership and struck down by the CAFC in *Delverde III* was similar to that employed in *French Plate*. Accordingly, the Department asked the CIT to remand the *French Plate* proceeding for reconsideration in light of Delverde III. The parties consented to this remand.

On August 9, 2000, the CIT remanded the French Plate proceeding to the Department with instructions to: (1) "determine the applicability, if any, of [*Delverde III*] to this proceeding, and (2) embark upon further fact finding, if appropriate." *GTS Industries S.A. v. United States*, Court No. 00–03–00118, Remand Order August 9, 2000, modified by Order August 24, 2000.

On December 22, 2000, following a comment period, the Department issued the *Final Results of Redetermination Pursuant to Court Remand*. In that redetermination, in light of *Delverde III*, the Department analyzed the facts and circumstances of the privatization transaction to determine whether the person to whom countervailable subsides had been given in the past was essentially the same person after privatization. Among the facts and circumstances considered, the Department examined the continuity of general business operations, the continuity of production facilities, continuity of assets and liabilities, and retention of personnel before and after the privatization. Based on these factors, the Department determined that post-privatization Usinor was essentially the same person as pre-privatization Usinor. Consequently, because the Department had attributed a portion of Usinor's pre-privatization subsidies to GTS, these subsidies remained attributable to GTS following Usinor's privatization.

After briefing and a hearing, the CIT, on January 4, 2002[1], again remanded the *French Plate* proceeding to the Department. *GTS Industries S.A. v. United States*, 182 F. Supp. 2d 1369 (CIT 2002). The court explained that the central question was whether the Department's remand decision was consistent with the statute, as interpreted by the CAFC in *Delverde III*. The court found that *Delverde III's* requirements were as follows:

> 1.Section 1677(5) prohibits the Department from adopting any per se rule that a subsidy passes through, or is eliminated, as a result of a change in ownership. *Id.* at 1377.
> 2.The statute requires that the Department must look at the facts and circumstances of the entire transaction, including the terms of the sale, to determine if the purchaser/new owner received, directly or indirectly, a subsidy for which it did not pay adequate compensation. In other words, the Department must find that the purchaser/new owner indirectly received a subsidy from the government. *Id.* at 1377–1380.

The Court specifically rejected, as contrary to *Delverde III*, the Department's argument that, if the pre and post-privatization companies are, in substance, the same legal person, the Department is not required to determine anew whether that same person has received a subsidy.

On June 3, 2002, following a comment period, the Department issued its *Results of Redetermination Pursuant to Court Remand*. In this second redetermination, the Department re-analyzed certain facts and circumstances of the privatization of Usinor, including the terms of the sale. The Department determined that: 1) some purchasers of Usinor's shares paid full, fair-market value for those shares and, thus, received no subsidy from the privatization transaction; and 2) other purchasers that did not pay full, fair-market value did receive a subsidy from the privatization transaction. However, regarding the purchasers that did not pay full, fair-market value, while they did receive a subsidy, the Department determined that this subsidy was not countervailable because it was conferred on the owners of the company, and not on the company itself. Consequently, the Department concluded that Usinor (and, thus, GTS) received no countervailable subsidies as a result of the privatization transaction. Accordingly, the Department recalculated a subsidy rate of 0.00 percent *ad valorem* for GTS for the POI.

The CIT affirmed the *Results of Redetermination Pursuant to Court Remand* on September 24, 2002. See GTS Industries S.A. v. United States, Consol. Court No. 00–03–00118, Slip Op. 02–115 (CIT 2002).

Suspension of Liquidation

The CAFC, in *Timken*, held that the Department must publish notice of a decision of the CIT or the CAFC which is not "in harmony" with the Department's final determination. Publication of this notice fulfills that obligation. The CAFC also held that the Department must suspend liquidation of the subject merchandise until there is a "conclusive" decision in the case. Therefore, pursuant to *Timken*, the Department must continue to suspend liquidation pending the expiration of the period to appeal the CIT's September 24, 2002, decision or, if that decision is appealed, pending a final decision by the CAFC. The Department will instruct the Customs Service to liquidate relevant entries covering the subject merchandise effective October 30, 2002, in the event that the CIT's

[1] The Court's Memorandum Opinion and Order is dated January 4, 2002, however, the order establishing the time frame for the remand is dated January 7, 2002.

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ruling is not appealed, or if appealed and upheld by the CAFC.

Dated: October 23, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–27630 Filed 10–29–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[C–427–815]

Stainless Steel Sheet and Strip in Coils from France: Notice of Court Decision and Suspension of Liquidation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On September 24, 2002, in *Allegheny Ludlum Corp. v. United States*, Consol. Court No. 99–09–00566, Slip Op. 02–114, a lawsuit challenging the Department of Commerce's ("the Department's") *Final Affirmative Countervailing Duty Determination: Stainless Steel Sheet and Strip in Coils from France*, 64 FR 30774 (June 8, 1999) ("*French Stainless*"), the Court of International Trade ("CIT") affirmed the Department's second remand redetermination and entered a judgment order. In this redetermination, the Department reviewed the record evidence regarding the facts and circumstances of the privatization of Usinor, Ugine S.A., and Uginox Sales Corporation (collectively "Usinor"), including the terms of the sale, and concluded that Usinor received no countervailable subsidies as a result of the privatization transaction.

As a result of the redetermination, the countervailable subsidy rate for the subject merchandise produced and sold by Usinor during the period of investigation ("POI") was reduced from 5.38 percent to 0.00 percent *ad valorem*.

This redetermination was not in harmony with the Department's original final determination in *French Stainless*. Consistent with the decision of the U.S. Court of Appeals for the Federal Circuit ("CAFC") in *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990) ("*Timken*"), the Department will continue to order the suspension of liquidation of the subject merchandise until there is a "conclusive" decision in this case. If the case is not appealed, or if it is affirmed on appeal, the Department will instruct the U.S. Customs Service to terminate the suspension of liquidation for all entries of stainless steel sheet and strip in coils from France.

EFFECTIVE DATE: October 30, 2002.

FOR FURTHER INFORMATION CONTACT: Jesse Cortes, AD/CVD Enforcement Group I, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone: (202) 482–3986.

SUPPLEMENTARY INFORMATION:

Background

In *French Stainless*, using the change-in-ownership methodology in place at that time, the Department determined that countervailable subsidies were being provided to producers and exporters of stainless steel sheet and strip in coils from France. Usinor challenged this determination before the CIT.

On February 2, 2000, the CAFC ruled in Delverde SRL v. United States, 202 F.3d 1360 (Fed. Cir. 2000), *reh'g granted in part*, (June 20, 2000) ("*Delverde III*"), that:

the Tariff Act as amended does not allow Commerce to presume conclusively, pursuant to a per se rule, that the subsidies granted to the former owner of Delverde's corporate assets automatically 'passed through' to Delverde following the sale. Rather, the Tariff Act requires that Commerce make such a determination by examining the particular facts and circumstances of the sale and determining whether Delverde directly or indirectly received both a financial contribution and benefit from the government.

202 F.3d at 1364. The methodology analyzing Delverde's change in ownership and struck down by the CAFC in *Delverde III* was similar to that employed in *French Stainless*. Accordingly, the Department asked the CIT to remand the *French Stainless* proceeding for reconsideration in light of *Delverde III*. The parties consented to this remand.

On August 15, 2000, the CIT remanded the *French Stainless* proceeding to the Department with instructions to issue a determination consistent with United States law, interpreted pursuant to all relevant authority, including the CAFC decision in *Delverde III*. *Allegheny Ludlum Corp., et al v. United States*, Court No. 99–09–00566, Remand Order dated August 15, 2000.

On December 20, 2000, following a comment period, the Department issued the *Final Results of Redetermination Pursuant to Court Remand*. In that redetermination, in light of *Delverde III*, the Department analyzed the facts and circumstances of Usinor's privatization transaction to determine whether the person to whom countervailable subsidies had been given in the past was essentially the same person after privatization. Among the facts and circumstances considered, the Department examined the continuity of general business operations, the continuity of production facilities, continuity of assets and liabilities, and retention of personnel before and after the privatization. Based on these factors, the Department determined that post-privatization Usinor was essentially the same person as pre-privatization Usinor. Consequently, the pre-privatization subsidies remained attributable to Usinor following its privatization.

After briefing and a hearing, the CIT, on January 4, 2002[1], again remanded the *French Stainless* proceeding to the Department. *Allegheny Ludlum Corp. v. United States*, 182 F. Supp. 2d 1357 (CIT 2002). The court explained that the central question was whether the Department's remand redetermination was consistent with the statute, as interpreted by the CAFC in *Delverde III*. The court found that *Delverde III's* requirements were as follows:

1. Section 1677(5) prohibits the Department from adopting any per se rule that a subsidy passes through, or is eliminated, as a result of a change in ownership. *Id.* at 1377.
2. The statute requires that the Department must look at the facts and circumstances of the entire transaction, including the terms of the sale, to determine if the purchaser/new owner received, directly or indirectly, a subsidy for which it did not pay adequate compensation. In other words, the Department must find that the purchaser/new owner indirectly received a subsidy from the government. *Id.* at 1377–1380.

The Court specifically rejected, as contrary to *Delverde III*, the Department's argument that, if the pre- and post-privatization companies are, in substance, the same legal person, the Department is not required to determine anew whether that same person has received a subsidy.

On June 3, 2002, following a comment period, the Department issued its *Results of Redetermination Pursuant to Court Remand*. In this second redetermination, the Department re-analyzed certain facts and circumstances of the privatization of Usinor, including the terms of the sale. The Department determined that: 1) some purchasers of Usinor's shares paid full, fair-market value for those shares and, thus, received no subsidy from the privatization transaction; and 2) other purchasers that did not pay full, fair-market value did receive a subsidy from the privatization transaction. However, regarding the purchasers that did not pay full, fair-market value, while they did receive a subsidy, the Department determined that this subsidy was not countervailable because it was conferred on the owners of the company, and not on the company itself. Consequently, the Department concluded that Usinor received no countervailable subsidies as a result of the privatization transaction, and recalculated a subsidy rate of 0.00 percent *ad valorem* for Usinor for the POI.

The CIT affirmed the *Results of Redetermination Pursuant to Court Remand* on September 24, 2002. *See Allegheny Ludlum Corp., et al. v. United States*, Consol. Court No. 99–09–00566, Slip. Op. 02–114 (CIT 2002).

Suspension of Liquidation

The CAFC, in *Timken*, held that the Department must publish notice of a decision of the CIT or the CAFC which is not "in harmony" with the Department's final determination. Publication of this notice fulfills that obligation. The CAFC also held that the Department must suspend liquidation of the subject merchandise until there is a "conclusive" decision in the case. Therefore, pursuant to *Timken*, the Department must continue to suspend liquidation pending the expiration of the period to appeal the CIT's September 24, 2002, decision or, if that decision is appealed, pending a final decision by the CAFC. The Department will instruct the Customs Service to liquidate relevant entries covering the subject merchandise effective October 30, 2002, in the event that the CIT's ruling is not appealed, or if appealed and upheld by the CAFC.

Dated: October 23, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–27629 Filed 10–29–02; 8:45 am]

BILLING CODE 3510–DS–S

[1] The Court's Memorandum Opinion and Order is dated January 4, 2002, however, the order establishing the time frame for the remand is dated January 7, 2002.

DEPARTMENT OF COMMERCE

International Trade Administration

Notice With Respect to Modification of Tariff Rate Quotas on the Import of Certain Worsted Wool Fabrics

AGENCY: Department of Commerce, International Trade Administration.

ACTION: Notice.

SUMMARY: The Department of Commerce hereby provides notice that it has received no requests for the modification of the limitations on the quantity of imports of certain worsted wool fabric under the 2003 tariff rate quotas established by the Trade and Development Act of 2000, as amended by the Trade Act of 2002. The Department therefore will not consider modification of these limitations.

FOR FURTHER INFORMATION CONTACT: Sergio Botero, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4058.

SUPPLEMENTARY INFORMATION:

Background

Title V of the Trade and Development Act of 2000 (the Act of 2000) creates two tariff rate quotas, providing for temporary reductions in the import duties on two categories of worsted wool fabrics suitable for use in making suits, suit-type jackets, or trousers. For worsted wool fabric with average fiber diameters greater than 18.5 microns (Harmonized Tariff Schedule of the United States (HTS) heading 9902.51.11), the reduction in duty was limited by the Act of 2000 to 2,500,000 square meter equivalents per year. This limitation was amended by Section 5102 of the Trade Act of 2002 to 3,500,000 square meters equivalents in calendar year 2002 and 4,500,000 square meter equivalents in calendar years 2003 through 2005. For worsted wool fabric with average fiber diameters of 18.5 microns or less (HTS heading 9902.51.12), the reduction was limited by the Act of 2000 to 1,500,000 square meter equivalents per year. This limitation was amended by Section 5102 of the Trade Act of 2002 to 2,500,000 square meters equivalents in calendar year 2002 and 3,500,000 square meter equivalents in calendar years 2003 through 2005.

The Act requires the annual consideration of requests by U.S. manufacturers of men's or boys' worsted wool suits, suit-type jackets and trousers for modification of the limitation on the quantity of fabric that may be imported under the tariff rate quotas, and grants the President the authority to proclaim modifications to the limitations not to exceed 1,000,000 square meter equivalents per year for each tariff rate quota. Authority to consider such requests was delegated to the Secretary of Commerce in Presidential Proclamation 7383 (December 1, 2000). On January 22, 2001, the Department published regulations establishing procedures for considering requests for modification of the limitations (66 FR 6459, 15 CFR 340).

On September 25, 2002, the Department published a notice in the Federal Register soliciting requests for modification of the limitation on the quantity of imports under the 2003 tariff rate quotas (67 FR 60224). No requests were received in response to this solicitation. As a result, the Department will not consider modification of these limits.

Dated: October 24, 2002.

D. Michael Hutchinson,

Acting Deputy Assistant Secretary for Textiles, Apparel and Consumer Goods Industries.

[FR Doc.02–27531 Filed 10–29–02; 8:45 am]

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DEPARTMENT OF COMMERCE

Minority Business Development Agency

[Docket No. 000724218–2233–04]

Solicitation of Applications for the Native American Business Development Center (NABDC) Program

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: Subject to the availability of fiscal year 2003 funds, the Minority Business Development Agency (MBDA) is soliciting competitive applications, under its Native American Business Development Center (NABDC) Program, from organizations to operate a NABDC in the State of New Mexico. After reviewing the performance of the current operator of the New Mexico NABDC, MBDA has elected not to continue funding in 2003 for the operator and to re-compete this geographic service area.

DATES: The closing date for applications for the NABDC project is November 29, 2002. MBDA anticipates that the award for the NABDC program will be made with a start date of January 1, 2003. Completed applications for the NABDC program must be (1) mailed (USPS postmark) to the NABDC Program Office (see: **ADDRESSES**); or (2) received by MBDA (see: **ADDRESSES**) no later than 5 p.m. Eastern Time.

ADDRESSES: If the applicant or its representative mails the application, it must be mailed to: Native American Business Development Center Program Office, Office of Executive Secretariat, HCHB, Room 5063, Minority Business Development Agency, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230.

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If the application is hand-delivered by the applicant or its representative, the application must be delivered to Room 1874, which is located at Entrance #10, 15th Street, NW., between Pennsylvania and Constitution Avenues.

To submit an application electronically (see: **SUPPLEMENTARY INFORMATION**), you must go to *http://www.mbda.gov.*

FOR FURTHER INFORMATION CONTACT: For further information, contact MBDA's Dallas Regional Office at (214) 767–8001. This office is located at 1100 Commerce Street, Suite 726, Dallas, Texas 75242.

Pre-Application Conference: A Pre-Application Conference will be conducted on Wednesday, November 6, 2002 at 1 p.m. Central Time. The conference will be conducted at MBDA's Dallas Regional Office, 1100 Commerce Street, Suite 726, Dallas, Texas 75242. Proper identification is required for entrance into any Federal building.

SUPPLEMENTARY INFORMATION:

Applications postmarked later than the closing date or received after the closing date and time will not be considered.

Applicants must submit one signed original plus two (2) copies of the application.

Applicants are encouraged to submit their proposal electronically via the World Wide Web. However, the following paper forms must be submitted with original signatures in conjunction with any electronic submissions by the closing date and time stated above: (1) The SF–424, Application for Federal Assistance; (2) the SF–424B, Assurances-Non-Construction Programs; (3) the SF–LLL (Rev. 7–97) Disclosure of Lobbying Activities (if applicable); (4) the CD–346, Applicant for Funding Assistance (if applicable); and (5) the CD–511, Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying. MBDA's web site address to submit an application on-line is *http://www.mbda.gov.* All required forms are located at this web address.

Failure to submit a signed, original SF–424 with the application, or separately in conjunction with submitting a proposal electronically, by the deadline will result in the application being rejected and returned to the applicant. Failure to sign and submit with the application, or separately in conjunction with submitting a proposal electronically, the other forms identified above by the deadline will automatically cause an application to lose two (2) points. Failure to submit other documents or information may adversely affect an applicant's overall score. MBDA shall not accept any changes, additions, revisions or deletions to competitive applications after the closing date for receiving applications, except through a formal negotiation process.

Authority: Executive Order 11625 and 15 U.S.C. 1512.

Catalog of Federal Domestic Assistance (CFDA): 11.801 Native American Business Development Center Program.

Program Description: In order for the proposals to receive consideration, applicants must comply with all information and requirements contained in this Notice.

The NABDC Program represents a significant programmatic and administrative enhancement of MBDA's traditional NABDC Program. In operation since 1982, the NABDCs provide generalized management and technical assistance and business development services to Native American business enterprises within their designated geographic service areas. The NABDC program described in this Notice updates the traditional NABDC model by leveraging the full benefit of telecommunications technology, including the Internet, and a variety of online computer resources to dramatically increase the level of service which the NABDCs can provide to their Native American business clients.

In addition, the NABDC Program guidelines further increase the impact of the NABDC projects by requiring that project operators not only deploy their business assistance services to the Native American business public directly, but that they also develop a network of strategic partnerships with third-party organizations located within the geographic service area. These strategic partnerships will be used to expand the reach of the NABDC project into communities and market segments that the project would have limited resources to cover otherwise, and are a key component of this program modification.

Individuals eligible for assistance under the NABDC Program are Native Americans, African Americans, Puerto Ricans, Spanish-speaking Americans, Aleuts, Asian Pacific Americans, Asian Indians, Eskimos and Hasidic Jews. References throughout this Notice to providing assistance to Native Americans also include eligible non-Native Americans listed in the preceding sentence. No service will be denied to any member of the eligible groups listed above.

For the past 18 years, MBDA has operated the NABDC Program as its approach for providing general business assistance and counseling to Native American business enterprises. MBDA established NABDCs in numerous cities throughout the country to assist in the development of local Native American firms. The NABDC Program was developed to address the needs of the majority of Native American-owned firms throughout the country at a basic level, and thus the traditional NABDCs are not designed to provide specialized expertise in any specific industry.

MBDA is now providing major enhancements to the NABDC Program, by leveraging the full benefit of telecommunications technology, including the Internet, and a variety of online computer-based resources to dramatically increase the level of service, which the new Centers can provide to their clients.

This approach also increases the reach of the Centers by requiring project operators to develop strategic alliances with public and private sector partners, as a means of reaching out to Native American firms within the project's geographic service area.

Background

MBDA traditionally operated as many as 10 Centers in strategic locations throughout the country, for the benefit of Native American entrepreneurs. MBDA selected locations for the establishment of these Centers based on the size of the population in those markets, and the number of Native American-owned companies, as established by U.S. Census Bureau data.

In addition, the enhanced NABDC Program is a mainstay of MBDA's overall business development efforts. The NABDC Program is at the core of the Agency's comprehensive strategy for addressing the needs of growing Native American firms. Under this strategy, MBDA has identified the following four types of services which an NABDC will generally be expected to provide:

Access to Markets—This involves assisting Minority Business Entrepreneurs (MBE) to identify and exploit opportunities for increased sales and revenue. Activities include conducting market analysis, identifying sales leads, bid preparation assistance, creating market promotions, and assistance in developing joint ventures and strategic alliances.

Access to Capital—This involves assisting MBEs to secure the financial capital necessary to start-up, and thereafter to fuel growth and expansion

of their businesses. Undercapitalization has been a major contributor to the failure of business ventures in the Native American community over the years. Hence the goal of this activity is to help Native American entrepreneurs obtain the amount of financing appropriate to the scope of the proposed business and, thereby, to help ensure the greatest likelihood of success for the Native American venture in the marketplace.

Management and Technical Assistance—This component of MBDA's approach involves assisting Native American firms in establishing, improving and/or successfully maintaining their business and/or to resolve key operational issues within the business. Such issues might include the need for a recruitment and hiring strategy, evaluating a capital equipment purchase, or developing internal operating procedures.

Education and Training—This involves providing basic education and training to Native American entrepreneurs on important business topics. Training should be hands-on, practical, and streamlined in order to reflect the time constraints of the typical small business owner. In addition, given the proliferation of online resources from MBDA as well as others, this training should be designed to educate MBEs in the use of the Agency's electronic business assistance tools and in the use of electronic commerce generally to better access suppliers, customers and information.

The NABDCs will operate through the use of trained professional business counselors who will assist Native American entrepreneurs through direct client engagements. To date, MBDA has served more than 20,000 Native American businesses through its Centers, enabling these companies to grow and expand, creating new jobs, increasing tax revenues, and contributing to the health of the overall economy.

Enhancing the NABDCs Through Technology

Over the past three years, MBDA has developed a variety of new technology tools designed to leverage the benefits of information technology to assist the Native American business community. In addition, the Agency has developed a high-speed network strategy capable of linking all of its Centers into a single virtual organization. The goal of MBDA's NABDC Program strategy is to deploy these technology enhancements to all of the NABDCs, and create a state-of-the-art environment for bringing Native American businesses continuously-updated information, access to resources anywhere in the country, and the best available assistance in any given subject area at any time. The implementation of this strategy is the Minority Business Internet Portal (MBIP).

MBDA's technology tools that will be made available to the NABDCs through MBDA's MBIP site include:

Phoenix/Opportunity—an electronic bid-matching system that alerts participating minority companies of contract and teaming opportunities directly via e-mail or fax. Procurement leads are transmitted to minority firms on a targeted basis according to the company's industry classification and geographic market. Firms seeking to participate in this program need only to transmit their company profile to MBDA online via the Agency's Phoenix application.

Resource Locator—a new and unique software application that allows Native American business enterprises to search for business resources and locate them on a map—interactively on the Internet. The Resource Locator can help Native American firms identify trade associations representing their industries, government licensing and permit offices, management and technical assistance providers, and a host of other resources quickly and efficiently, through Geographic Information Systems (GIS) technology.

Online Commercial Loan Identifier—an Internet-based tool that allows Native American enterprises to shop for commercial loans online, and identify the best available financing terms. The Commercial Loan Identifier is designed to give Native American firms the benefit of a nationwide market for commercial loan products.

Business and Market Planning Software—software packages to streamline and enhance the development of business plans, marketing plans and other strategic business documents.

The MBIP will serve as a very effective vehicle for enhancing the scope and service capability of the NABDC network. Through the portal site, each NABDC will receive a standardized electronic toolkit of business development tools and applications. This "electronic toolkit" will provide important programmatic benefits for the NABDCs.

Specifically:

These electronic tools will help to streamline the process of delivering client assistance to Native American business enterprises, giving the Centers the ability to service greater numbers of clients with existing resources.

In addition, MBDA expects that these electronic tools will be in high demand because of the significant added value that they are able to create for business enterprises. Demand for these tools will further enhance the position of the NABDCs as important resources within their local markets.

Finally, by participating in MBDA's nationwide high-speed network, each NABDC will be able to access the latest information regarding best practices, emerging market trends, success strategies, and other activities in the Native American business development arena.

Current trends in technology, procurement streamlining, globalization, and a host of other market factors have had a dramatic impact on the Native American business community. Native American-owned businesses, regardless of their industry, now find themselves subject to rapidly changing market conditions. To ensure their continued growth, these firms will need access to the best available information and expertise on a continuously updated basis. The new NABDC Program, combined with the MBIP site, directly respond to this need, by leveraging MBDA's traditional business development infrastructure through state-of-the-art technology and communications.

Work Requirements

The work requirements specify the duties and responsibilities of each recipient operating an NABDC.

Although it is not necessary for the applicant to have an office in the geographic service area, the NABDC office must be strategically located in the geographic service area to ensure that it is close to the available public and private sector resources, within a reasonable commuting distance to the minority business community, and accessible to public transportation. The NABDC must be opened and be fully operational within 30 days after receipt of the award. Fully operational means that all staff are hired, all signs are up, all items of furniture and equipment are in place and operational, and the NABDC's doors have been fully opened to the public for service.

An NABDC operator must provide services to all eligible clients within its specified geographic service area. In addition, each operator must contribute its efforts to help support MBDA's online business assistance network as established by Agency policies.

NABDCs are required to perform work in four basic areas:

Market Building—To identify, develop and leverage public and private

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sector resources and business opportunities for their clients;

(a) *Market Research and Development* which systematically investigates the service area market to see what business and capital opportunities exist for Native American business enterprise development; search for sources of capital, sales opportunities, business buy-outs and new start possibilities; bring the research to a practical level of utility to fit the capability and needs of specific MBE client firms of the area. As market research is conducted, the NABDC will make optimum use of the MBDA network to ensure that the information is made available to fellow operators, and to MBEs throughout the country.

(b) *Market Promotion* which promotes Native American business development in the local business community by obtaining support from the community as a whole, leverages resources for minority businesses and informs potential and current minority businesses of the availability of business development services through the NABDC.

The NABDC will promote individual firms to the public and private sectors to make the market aware of the capability, talent and capacity of the local MBE firms. The NABDC may utilize public service announcements and paid advertising.

The NABDC promotes MBEs at local Chambers of Commerce, business and trade associations, corporate and company trade fairs and meetings, state and local government agency purchasing departments, economic development and planning offices and MBE development events. In addition, the NABDC shall promote and participate in MED Week activities involving the full participation of the private and public sectors. MED Week is a major annual event of MBDA on both the local and national levels.

Under this function, the NABDC shall carry out a plan-of-action that may include, but is not limited to, the following actions: (1) Publicize the NABDC and its services throughout the geographic service area; (2) Organize press briefings or distribute press releases for area newspapers; (3) Deliver speeches before key Native American audiences in the NABDC service area; (4) Secure a list of service area Native American vendors who are listed in MBDA's Phoenix System and use them in market promotion activities; (5) Interface with Native American Chambers of Commerce and trade associations for access to their mailing lists; (6) Communicate with bankers and other officers of financial institutions for possible referrals of Native American entrepreneurs as existing prospective Native American clients to the NABDC; (7) Identify existing lists of successful Native American managers, professionals, technical experts and skilled crafts-people, who may have an interest in or exhibit qualifications for business ownership; (8) Develop an NABDC brochure for mail-out and distribution to the public, as well as for inclusion on the MBDA Web site; and (9) E-mail information and/or newsletters to existing and prospective local Native American entrepreneurs.

c. *Resource and Inventory Development* which identifies local opportunities and resources as well as local Native American businesses, qualified to take advantage of them. This requirement will enable the NABDC to support the maintenance of content for the Phoenix/Opportunity application and other online systems as well as to track local market trends and market demand for goods and services. Under this function, the NABDC must (1) Develop and maintain inventories of area opportunities and resources, which should include: *Electronic Commerce*—information technology affecting the marketability of its clients, i.e., access to new markets, access to capital and business opportunities and other resources; *Market Opportunities*—both in the public sector (Federal, state and local) and in the private sector (foreign and domestic); *Capital Opportunities*—*e.g.*, loans, bonds, trade credits, and equity investments; *Business Ownership Opportunities*—*e.g.*, franchises, licensing arrangements, mergers and buy-outs; *Education and Training Opportunities*— e.g., educational institution programs and other training resources; (2) Register eligible local Native American firms in MBDA's Phoenix database, which is a national inventory of Native American vendor firms capable of selling their goods and services to the public and private sector.

(d) *Match Opportunities and Close Transactions* which matches eligible Native American entrepreneurs with specific viable businesses, market and/or capital opportunities. This function contributes to an NABDC's financial packaging and/or procurement performance goals, and is the *only* market development function outside of the standard client business assistance in which a portion of an NABDC's time can be directly associated to *individual* Native American business clients and resource customers. This client specific time, no matter how small, is considered client assistance and may be subject to client fees. Under this function, the NABDC shall match qualified Native American entrepreneurs with identified opportunities and resources by: (1) Accessing vendor information systems, including the Phoenix/Opportunity database; (2) Maintaining a constant awareness of the Native American firms that operate within the geographic service area and their capabilities; (3) Maintaining direct contact with purchasing executives, government procurement officials, banking officials and others so that representatives of the NABDC are in a position to learn about available business opportunities, both formally and informally; (4) Engaging in relationship brokering between purchasing organization and individual Native American firms capable of fulfilling their requirements; and (5) Assisting in direct negotiations between purchasing organization and individual Native American firms, in appropriate cases, in order to help resolve issues, serve as an advocate for the Native American firm, or otherwise assist in bringing the transaction to closure.

Client Services—To provide direct client assistance to Native American business enterprise on the basis of individualized professional engagements. Under these duties, the NABDC shall assist Native American firms and individuals, which have agreed in writing to become clients, in establishing, improving and/or successfully maintaining their businesses. All new clients shall be entered into the Performance database and registered in the Phoenix System. It is required that clients and their service hours should be entered in the Performance database on a regular basis, preferably weekly.

This assistance is defined as the function by which the NABDC provides direct services to its clients. It may range from general counseling to the identification, analysis and resolution of specific business problems. Clients assisted more than once during the funding period may only be counted once in that funding period. Group sessions are one method an NABDC can use to provide business development services to Native American clients. This function may be subject to client fees and directly contributes to an NABDC's performance goals.

Under this function, the NABDC shall provide assistance to eligible Native American firms and individuals (as referenced in Executive Orders 11625 and 12432) seeking assistance from the NABDC, including 8(a) certified and graduate firms. However, the NABDC shall not perform or engage in the operation of a firm. Client services include, but are not limited to, the following types of assistance: (1) *Marketing, e.g.*, market research, promotion, advertising and sales, sales forecasting, market feasibility studies, pricing, procurement assistance, product and customer service, brochure design (excludes mass printing), and general counseling; (2) *Finance and Accounting, e.g.*, capital budgeting, general accounting, break-even analysis, cost accounting, financial planning and analysis budgeting, tax planning, financial packaging, general counseling, and mergers and acquisitions (excludes bookkeeping, tax preparation, and audits); (3) *Manufacturing, e.g.*, plant location and site selection, plant management, materials handling and distribution, total quality management, metrication for world market, and general counseling; (4) *Construction and Assistance, e.g.*, estimating, bid preparation, bonding, take-offs, and general counseling; (5) *International Trade Assistance, e.g.*, exporting, importing, letters of credit, bank draft, dealerships, agencies, distributorship, exporting trading companies, joint ventures, general counseling, and freight forwarding and handling; (6) *Administration, e.g.*, office management, procedures and systems, inventory control, purchasing, total quality management, awareness of metric system, and general counseling; (7) *Personnel, e.g.*, human resource management, job evaluation and rating system, training, and general counseling; (8) *General Management, e.g.*, organization and structure, formulating corporate policy, feasibility studies, reports and controls, public relations, staff scheduling, legal services (excludes litigation), business planning, organizational development, bid preparation, and general counseling.

In order to stay competitive in the increasingly global economy, Native American business owners should consider ISO 9000 or other quality assurance standards. The NABDC must have knowledge of what these standards are, how to properly implement the standards, and how to obtain ISO 9000 Quality System certification for its clients.

The one-on-one assistance to any client shall be limited to no more than 250 hours per funding period unless prior approval is requested from the appropriate MBDA Regional Director, and approved by the Grants Officer of the Department of Commerce.

3. *Operational Quality*—To maintain the efficiency and effectiveness of its overall operations as well as the quality of its client services. These duties are the means by which an NABDC maintains the efficiency and effectiveness of its overall operations as well as the quality of its client services. The function directly contributes to an NABDC's overall qualitative evaluation and rating as well as the successful completion of all work requirements. Under this function, the NABDC shall: (1) Execute signed work plan agreements and engagement letters with clients; (2) Formally describe the methodology that will be used in achieving the work plan objectives for each client; (3) Input progress/results to the performance database in a timely manner; (4) Establish procedures for collecting and accounting for all fees charged to clients; (5) Maintain records/files for all work charged to the program and clients; (6) Obtain *written* acceptance and verification (with client signatures) of services provided to its clients. For services reported, documentation must be in the NABDC's client files within 30 days after the end of every quarter in which a client receives services; (7) Comply with all reporting requirements provided upon award; (8) Cooperate with MBDA in maintaining content for the Phoenix/Opportunity database, Resource Locator, and other online tools located at *http://www.mbda.gov;* and (9) Promote and utilize the services and resources of other MBDA programs, sponsored efforts and/or voluntary activities. The NABDC shall identify MBDA as the funding sponsor by providing signs worded as follows:

_____
(geographic area)
Native American Business Development Center ™ Operated by _____

_____
Funded By:
Minority Business Development Agency (MBDA), U.S. Department of Commerce

These signs should be highly visible to the NABDC clients and general public. They should be prominently displayed on entrances and doors. Include the name of MBDA on all stationery, letterhead, brochures, etc. The NABDC is *not* authorized to use either the Department's official seal or the MBDA logo in any of its publications, documents or materials without specific written approval from the U.S. Department of Commerce. Identify the NABDC immediately when answering the telephone. If the recipient also requires that its organization's name be given, it should be provided only *after* the NABDC has been verbally identified to a caller. Refer to MBDA in all advocacy and outreach efforts such as speaking engagements, news conferences, etc.

The term Native American Business Development Center (NABDC) is a trademark of the Federal Government, and the Government reserves exclusive rights in the term. Permission to use the term is granted to the award recipient for the sole purpose of representing the activities of the award recipient in the fulfillment of the terms of the financial assistance award. The Minority Business Development Agency reserves the right to control the quality of the use of the term by the award recipient. Whenever possible, for example in promotional literature and stationery, use the ™ designation as in Native American Business Development Center™.

Developing and Maintaining a Network of Strategic Partners

The work requirements for an award recipient under the NABDC Program include the development of a network of 3 alliances between the NABDC and key strategic partners selected by the recipient. The NABDC is required to establish the network of 3 Strategic Partners within 120 days after the award. The NABDC is required to maintain these alliances throughout the duration of the award. The NABDC must replace a Strategic Partner within 45 days after termination of a previously established alliance. The Strategic Partners shall be public or private sector organizations located within the project's geographic service area that are positioned to assist the project to achieve its goals for assisting the minority business community established under the terms of the award. Strategic Partners may include:

Minority Business Enterprise (MBE) programs operated by state, county or city governments;

Chambers of Commerce or trade associations focused on the needs of the Native American business community;

Small Business Development Centers, or other college and university entrepreneurial development programs;

Community Development Corporations (CDCs);

Banks and financial institutions; and

Faith organizations having economic development components, whose activities are *not* used for purposes the essential thrust of which is sectarian.

Each Strategic Partner shall be evidenced by a written Memorandum of Understanding (MOU) that expressly sets forth the conditions under which the partners agree to operate. Specifically, the Strategic Partners must agree to serve as a local resource for Native American-owned businesses seeking to obtain NABDC services. The Strategic Partner must at a minimum:

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Provide effective guidance to Native American entrepreneurs in accessing MBDA's computer-based business assistance tools which are available on-site at the Strategic Partner's location;

Examples of other kinds of activities that might be required of the Strategic Partner include, but are not limited to:

Designate appropriate office space within their facilities for providing NABDC services; Establish a library of training materials, how-to guides, business publications and other information, both in print and electronic format, to be made available to Native American entrepreneurs on a walk-in basis;

Provide high-quality business counseling to Native American business enterprises if the Strategic Partner is one that offers direct client counseling;

Provide intake services for the NABDC with respect to Native American firms who approach the Strategic Partner for assistance but require counseling by the NABDC;

Provide Native American firms with high-quality referrals to outside resources where the firm has a need for specialized assistance which is outside the scope of the NABDC Program;

Support the NABDC project in coordinating MED Week activities within the geographic service area;

In selecting Strategic Partners, award recipient should consider establishing a diverse group that appropriately reflects the needs of the Native American business community within the service area. The skills, abilities and areas of concentration on the part of the Strategic Partners should be complementary, and collectively the skills and abilities of the Strategic Partners should complement those of the NABDC project operator.

In exchange for its compliance with the foregoing terms, and such other terms as the parties may seek to establish, the Strategic Partner will be eligible to serve as a host for the MBDA suite of business development tools described in the Enhancing the NABDCs Through Technology subsection of this Notice. The Strategic Partner will also be authorized to make public its relationship with MBDA through the NABDC project, and to refer to the partnership in brochures, advertisements, press releases and other media. Through the MOU relationship, the Strategic Partner will also be entitled to receive direct access to MBDA's information base of case studies, best practices, market research, and statistical data.

Computer Requirements

MBDA requires that all award recipients meet certain requirements related to the acquisition, installation, configuration, maintenance and security of information technology (IT) assets in order to ensure seamless and productive interface between and among all grant recipients, Native American-owned businesses, the MBDA Federal IT system and the public. These required assets and their configuration are hereinafter referred to as the "enterprise." The basic components of the enterprise are the desktop workstations, local area network (LAN) components and a connection to the Internet.

At a minimum, the grantee shall provide one (1) desktop computer for the exclusive use of each employee delivering Native American business assistance to the public under an award from MBDA. All desktop computers shall be connected in a Local Area Network (LAN), enabling communication with all workstations on the network. Adequate provision shall also be made for Internet connectivity from each workstation during business hours. The recipient shall ensure that each of his/her employees, to include management, administrative personnel, contractors, full-time, part-time, and non-paid (volunteer) staff have a unique electronic mail (e-mail) address available to the public. The award recipient shall design, develop and maintain a presence on the World Wide Web, and shall maintain appropriate computer and network security precautions during all periods of funding by MBDA. Web servers, mail servers and/or servers maintained by a third party such as an Internet Service Provider (ISP) shall meet the minimum server specifications as stated herein. All IT requirements, as described herein, shall be met within 30 calendar days after the award.

1. *Network Design:* At all locations where services are delivered to the eligible public as defined by Executive Order 11625, the recipient shall operate a "Client-Server" configured local area network (LAN), providing each staff person delivering services to the eligible public exclusive access to a computer workstation during all business hours. MBDA may, from time to time, designate certain configurations of the enterprise hardware and software to meet interface requirements. The local area network shall include adequate provision for the retention of necessary data in the event of a failure (centralized data storage and regular backups). The network shall be protected in accordance with security best practices, to include the installation and maintenance of a regularly updated antivirus product.

2. *Desktop Workstations:* All desktop systems shall be not more than two (2) calendar years old at time of award and shall contain a processor (CPU) operating at speeds not less than 800 Megahertz (Mhz). Each desktop system shall contain a hard drive with a storage capacity of at least 10 GB. All desktop systems shall have installed software fully compatible with MS Office 97 Professional Edition or higher, and either Microsoft Internet Explorer 5.x or higher or Netscape 6.x or higher. At least 50% of all employee workstations shall be fully operational with a qualified staff person positioned at the keyboard during all business hours to include lunch and break periods.

3. *Maintenance and Security:* Documentation reflecting adherence to the computer and networking requirements set forth herein shall be maintained by the recipient for review by MBDA at any time. Each recipient shall designate and train one administrative person competent in the operation of a relevant PC operating system and local area network (LAN) technology as described herein. While emphasis is placed on the provision of services via the MBDA web portal, from time to time MBDA may require certain software be loaded on servers and desktops. In any given year, the cost of this additional software should not exceed $200.00 per workstation and $500.00 per server.

Every employee of the Center shall be assigned a unique username and password to access the system. Every employee shall be required to sign a written computer security agreement. (A suggested format for the computer security agreement will be provided at the time of award.) Every manager, employee, and contractor and any other person given access to the computer system shall sign the security agreement and an original copy of the signed agreement shall be kept in the Center's files. A photocopy of the agreement shall be sent by fax to MBDA at: (202) 482–2696 no later than 30 days after the award. All subsequent new hires and associations requiring access to Center or MBDA systems shall read, understand and sign the security agreement prior to issuance of a password. No employee shall have access to the MBDA system without a signed security agreement on file at MBDA.

4. *Web site:* Each recipient shall create and maintain a public web site using a unique address (*e.g., www.center-name.com*). The first page (Index page) of the web site shall clearly identify the recipient as a Native American Business Development Center funded by the U.S. Department of Commerce's Minority Business Development Agency. The Index page of the web site shall load on software fully compatible with Microsoft Internet Explorer (5.x or higher) or Netscape 6.x or higher browser software using a 56Kb/s Internet connection in less than ten (10) seconds. The web site shall contain the names of all managers and employees, the business and mailing address of the Center, business phone and fax numbers and email addresses of the Center and employees, a statement referencing the services available at the Center, the hours under which the Center operates and a link to the MBDA web portal *(http://www.mbda.gov)*. For the purpose of electronically directing clients to the appropriate Center staff, the web site shall also contain a short biographical statement for each employee of the Center including management, contractors, part-time, full time, and non-paid (volunteer) personnel, providing services directly to the eligible public under an award from MBDA. This biographical statement shall contain: the full name of the employee, and a brief description of the expertise of the employee to include academic degrees, certifications and any other pertinent information with respect to that employee's qualifications to deliver Native American business assistance services to eligible members of the public.

No third party advertising of commercial goods and services shall be permitted on the site. All links from the site to other than Federal, state or local government agencies and non-profit educational institutions must be requested for approval, in advance and in writing, through the Chief Information Officer, MBDA Office of Information Technology Services, to the Grants Office for written approval. Such approval shall not be unreasonably withheld but approval is subject to withdrawal if MBDA determines the linked site unsuitable. No employee of the Center, nor any other person, shall use the Center web site for any purpose other than that approved under the terms of the agreement between the recipient and MBDA. Every page of the web site shall be reviewed by the recipient for accuracy, currency, and appropriateness every three (3) months. Appropriate privacy notices and compliance with accessibility requirements will be prominently featured. From time to time, MBDA shall audit the recipient's web site and recommend changes in accordance with the guidelines set forth herein.

5. *Time for Compliance:* Within 30 days after the award, the recipient shall report via email to the Chief Information Officer, MBDA Office of Information Technology Services and the Grants Officer that he/she has complied with all technical requirements as specified herein. Within 30 days after the award, the recipient shall report the name, contact telephone numbers and email addresses of the Project Director, Network or System Administrator. As appropriate, the recipient shall also provide the telephone number and email address for the Technical Contact at the Internet Service Provider (ISP) providing Internet hosting and/or access for the grantee, and any other technical information as specified in the Technology Requirements.

6. *Performance System:* All required performance reporting to MBDA shall be conducted via the Internet using the Performance system to be found at the MBDA web portal *(http://www.mbda.gov)*. Within 30 days after the award, each business development specialist (BDS) and/or anyone providing business assistance to the public under the award shall have satisfactorily completed the Performance System Training Course (PSTC). This course is available on-line from the MBDA web portal *(http://www.mbda.gov)*. Only those persons giving direct assistance to the eligible public shall be given passwords and access to enter Performance data into the system. Only trained staff shall enter data into the Performance system. Performance data shall be entered by the person providing service to the client, not by administrative personnel. There shall be no "sharing" of passwords on the Performance system. Although not required, MBDA encourages input of information on a daily basis.

7. *Data Integrity*: The recipient shall take the necessary steps to ensure that all data entered into MBDA systems, and systems operated by the recipient in support of the award, or by any employee of the recipient, is accurate and timely.

Performance Measures

In accordance with 15 CFR Parts 14 and 24, applicants selected will be responsible for the effective management of all functions and activities supported by the financial assistance award. Recipients will be required to use program performance measures in a performance report due thirty (30) days after the end of the second quarter and to provide an end-of-year assessment of the accomplishments of the project using these measures. The end-of-year or final performance report is due 90 days after the end of the budget year. Once the project is awarded, the evaluation criteria, along with the assigned weight value, to be used for measuring the project performance on an ongoing basis are:

The number of completed work products (20);
The dollar value of transactions (40);
The number of Strategic Partners (20);
Operational Quality (20)
Number of new clients (5);
Number of Client Service Hours (5);
Client Satisfaction (5);
Management Score (5)

The minimum performance goals required for the above listed performance measures for the solicited geographic service area is outlined under the Funding Availability sub-heading for the geographic service area. The minimum performance goals are listed on an annual basis and will be broken out into quarterly increments by recipients, within 30 days after the award, for actual evaluation purposes.

Definitions

Completed Work Product—Completed work product consists of work assignments which the project performs under a professional engagement of an eligible client firm. For a task to constitute completed work product it is necessary that the task: Be one requiring the business expertise of the project staff; be agreed to by the client; be fully completed and delivered to the client; and be performed in a high quality and professional manner.

Dollar Value of Transactions—The dollar value of completed financial transactions represents the total principal value of executed contracts, approved loans, equity financing, acquisitions, mergers, or other binding financial agreements secured by clients of the project, with the assistance of project staff. For purposes of this performance element, eligible financial transactions are those which have a specific dollar value, and which increase the revenues of the client firm, expand its capital base, or produce some other direct commercial benefit for client firms. In order to be deemed complete, a financial transaction must be documented by an executed and binding agreement between the client firm and a party capable of performing its obligations under the terms of the agreement.

MBDA recognizes that the financial obligations evidenced by these transactions may be long-term, and

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require performance over an extended period. Consequently it is not necessary that the funds or other financial value specified under the agreements have actually changed hands for the project to receive credit under this performance element, so long as the agreement of the parties is documented and binding.

Operational Quality—Operational quality refers to the quality and effectiveness of the project operator's delivery of client services, as evidenced by the following performance elements relating to the day-to-day management of the project: Number of new clients; number of client service hours; client satisfaction; and management assessment.

Client satisfaction will be determined through a consultation process with clients of the individual NABDC. The consultation will be used to rate the level of quality for client satisfaction.

The management assessment reflects MBDA's own evaluation of the overall management of the project, based on the Agency's internal review of the project's operations. The management assessment reflects such areas as the development of written engagement letters and work plans, proper staffing, adherence to scheduled work hours, recordkeeping, and any other areas which MBDA may deem to be relevant to determining the overall quality of the project's operations.

Strategic Partners—Strategic partners are those organizations with whom the recipient enters into specific agreements for mutual support. Strategic partners may be either public or private sector institutions, must have a clear mission, and must have a permanent organizational structure. Individuals or organizations that have a loosely defined structure or that operate on an ad hoc basis will not be considered as strategic partners for purposes of this performance element. MBDA will have no relationship with or responsibility to strategic partners.

In order to get credit for obtaining a strategic partner, a project operator must prepare a written agreement identifying: The responsibilities and duties which the project and the strategic partner each agree to undertake; the resources which each party agrees to commit to the partnership; the goals which the project and the strategic partner each seek to achieve by entering into the partnership; and the point of contact within the strategic partner organization for issues involving the partnership.

That strategic partners will not be allowed to charge and collect fees for services related to the project.

Performance Standards

The year-to-date performance of an NABDC will be based on the following rating system:

Minimum required percent of goals needed for each rating category	Minimum required points needed for each rating category	Rating categories
100% and above*	Above 100**	Excellent.
At least 90%	90–100	Commendable.
At least 80%	80–90	Good.
At least 75%	75–79	Satisfactory.
At least 70%	70–74	Marginal.
Below 70%	Below 70.0	Unsatisfactory.

*Not to exceed 110%.
**Not to exceed 110 points.

Performance Incentives

MBDA recognizes and rewards those NABDCs that have maintained high performance throughout their award (three funding periods). NABDCs can earn additional 2 bonus funding periods without competition based upon their overall actual year-to-date performance for the duration of the award. The NABDC Performance Standards outlined above allow each NABDC with an overall "excellent" rating for its performance during the initial competitive funding period to qualify for up to 2 additional funding periods without further competition. A year-to-date excellent rating for the first two funding periods and part of the third funding period of an award will result in "bonus funding periods" as follows:

Performance of at least 25% above the minimum goal in each performance element for at least 28 months will allow an NABDC to receive one bonus funding period. Therefore, the award can total up to four funding periods prior to a required competition.

Performance of at least 25% above the minimum goal in each performance element for at least 6 months of the first bonus funding period will allow an NABDC to receive a second bonus funding period. Therefore, the award can total up to five funding periods prior to a required competition.

No award may be longer than five funding periods without competition no matter what an NABDC's performance happens to be.

Funding Availability: MBDA anticipates that a total of approximately $188 thousand will be available in FY 2003 for Federal assistance for the New Mexico NABDC, based upon Native American population, the size of the market and its need for MBDA resources. MBDA issues this notice subject to appropriations made available under the current continuing resolution (CR), H.J. Res. 111, "Making continuing appropriations for the fiscal year 2003, and for other purposes," Public Law 107–229, as amended by H.J. Res. 112, Public Law 107–235, H.J. Res. 122, Public Law 107–240, and H.J. Res. 123, Public Law 107–224. MBDA anticipates making this award provided that funding for the NABDC Program is continued beyond November 22, 2002, the expiration of the current continuing resolution. Issuance of this award, however, is subject to the future availability of fiscal year 2003 funds. In no event will MBDA or the Department of Commerce be responsible for proposal preparation costs if this program fails to receive funding or is canceled because of other agency priorities.

Geographic Service Areas: An operator must provide services to eligible clients within its specified geographic service area. MBDA has defined the service area for the award below. To determine its geographic service areas, MBDA uses states, counties, Metropolitan Areas (MA), which comprise metropolitan statistical areas (MSA), consolidated metropolitan statistical areas (CMSA) and primary metropolitan statistical areas (PMSA) as defined by the OMB Committee on MAs (See: attachment to OMB Bulletin 99–04, Revised Statistical Definitions of Metropolitan Areas (MAs) and Guidance on Uses of MA Definitions found at *http://www.whitehouse.gov/OMB/bulletins/index.html*) and other demographic boundaries as specified herein. Services to eligible clients outside of an operator's specified service area may be requested, on a case-by-case basis, through the appropriate MBDA Regional Director and granted by the Grants Officer.

Application: New Mexico Statewide

Geographic Service Area: State of New Mexico.

Award Number: 06–10–03001–01.

The recipient is required to maintain its NABDC in Albuquerque, New Mexico. Contingent upon the availability of Federal funds, the cost of performance for each of the three 12-month funding periods from January 1, 2003 to December 31, 2005, is estimated at $188,000. The total Federal amount is $564,000. The minimum cost share of 15% is not required.

The minimum goals for the NABDC are:

Completed Work Products: 124.

Dollar Value of Transactions: $13,976,471.

Number of New Clients: 146.

Number of Client Service Hours: 2,475.

Matching Requirements: It is not required that an applicant for an award to operate an NABDC propose a cost-share contribution. Cost sharing is the portion of the project cost not borne by the Federal Government. However, an applicant may propose a cost-share contribution in any of the following four means or a combination thereof: (1) Cash contributions, (2) non-cash applicant contributions, (3) third party in-kind contributions, and (4) client fees for services rendered.

If the NABDC chooses to contribute a cost-share amount by charging fees, there are policy restrictions with which it must comply:

First, client fees charged for one-on-one assistance must be based on a rate of $100 per hour. Second, the NABDC must set fee rates based on the following chart:

Gross receipts of client	Base rate for services rendered	Percent of cost borne by client	Client fee per hour
$0–99,999	$100.00	10	$10.00
$100,000–299,999	100.00	20	20.00
$300,000–999,999	100.00	30	30.00
$1 Million–2,999,999	100.00	40	40.00
$3 Million–4,999,999	100.00	50	50.00
$5 Million and Above	100.00	60	60.00

Third, the NABDC must contribute cash for uncollected fees that were included as part of the cost sharing contribution committed for this award. Fourth, client fees applied directly to the award's cost sharing requirement must be used in furtherance of the program objectives. Fifth, if the NABDC elects to charge fees, they must be charged to all eligible clients, regardless of minority group identification.

Eligibility Criteria: For-profit and non-profit organizations (including sole-proprietorships), state and local government entities, American Indian Tribes, and educational institutions are eligible to operate NABDCs.

Award Period: The total award period is three (3) years. Applicants must submit project plans and budgets for three years. The annual awards must have Scopes of Work that are clearly severable and can be easily separated into annual increments of meaningful work that will produce measurable programmatic objectives. Maintaining the severability of each annual funding request is necessary to ensure the orderly management and closure of a project in the event funding is not available for the second or third year continuation of the project. Projects will be funded for no more than one year at a time. Funding for subsequent years will be at the sole discretion of the Department of Commerce (DoC) and will depend on satisfactory performance by the recipient and the availability of funds to support the continuation of the project. Project proposals accepted for funding will not compete for funding in subsequent funding periods within the approved award period. Publication of this notice does not obligate MBDA or DoC to award any specific cooperative agreement or to obligate all or any part of available funds.

Funding Instrument: Financial assistance awards will be in the form of a cooperative agreement. MBDA's substantial involvement with recipients will include performing the following duties to further the NABDC's objectives:

a. *Post-Award Conference*—MBDA shall conduct a post-award conference for the NABDC award recipient to insure that each NABDC has a clear understanding of the program and its components. The conference will: (1) Provide an MBDA Directory for NABDCs and orient NABDC program officers; (2) Explain program reporting requirements and procedures; (3) Identify available resources that can enhance the capabilities of the NABDC; and (4) Provide detailed information about MBDA's business and other information systems.

b. *Networking, Promotion and Information Exchange*—MBDA shall provide the following: (1) Access to business information systems, which support the work of the NABDC, as described in the Enhancing the NABDCs Through Technology section. This information will be provided by MBDA's Office of Information Technology. The specific information systems and access to them will be provided at the time of the award; (2) Sponsor one national and at least one regional conference; (3) Expand the Phoenix data bank of Native American-owned firms by requiring other MBDA-funded programs to provide additional entries; (4) Promote the exchange of business opportunity information within the MBDA funded system using the Phoenix and Opportunity databases located at *http://www.mbda.gov*; (5) Work closely with the NABDC to establish a system in which procurement and contract opportunities can be shared with the network of NABDCs. This system will include opportunities identified throughout the MBDA network using the Phoenix and Opportunity databases located at *http://www.mbda.gov*; (6) Help promote special events to be scheduled at the local community, state and national levels in celebration of MED Week, which occurs annually; and (7) Identify Federal, state and local governments, and private sector market opportunities to the NABDCs using the Phoenix and Opportunity databases located at *http://www.mbda.gov*.

Project Monitoring—MBDA will systematically monitor the performance of the NABDC. This monitoring includes regular review of data input to the performance database system, assessment of the end of the second quarter progress report, and an on-site review, when deemed necessary and appropriate by the regional office, of the center's client files to verify NABDC performance, reported assistance and

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interviews with clients assisted. In consultation with clients of the individual NABDC, MBDA will assess the Center's effectiveness in providing business development services to their respective Native American business communities. MBDA will then provide a report of findings and recommendations for improvement as a result of evaluations and monitoring visits. MBDA will approve qualifications of key NABDC staff and respond in a timely manner to correspondence requesting MBDA action.

Application Forms and Package: Standard Forms 424, Application for Federal Assistance; 424A, Budget Information-Non-Construction Programs; and 424B, Assurances-Non-Construction Programs, SF–LLL (Rev. 7–97); Department of Commerce forms, CD–346, Applicant for Funding Assistance, CD–511, Certifications Regarding Debarment, Suspension and Other Responsibility matters: Drug-Free Workplace Requirements and Lobbying shall be used in applying for financial assistance. These forms may be obtained by (1) contacting MBDA as described in the **CONTACT** section above; (2) by downloading Standard forms at *http://www.whitehouse.gov/OMB/grants/index.html*; (3) and Department of Commerce forms may be downloaded at *http://www.doc.gov/forms.* or (4) by applying on-line via the World Wide Web at MBDA's Web site located at *http://www.mbda.gov/egrants.*

Project Funding Priorities: MBDA is especially interested in receiving innovative proposals that focus on the following: (1) Identifying and working to eliminate barriers which limit the access of Native American businesses to markets and capital; (2) identifying and working to meet the special needs of Native American businesses seeking to obtain large-scale contracts (in excess of $500,000) with institutional customers; and (3) promoting the understanding and use of Electronic Commerce by the Native American business community.

Proposal Format Requirements: The structure of the proposal should contain the following headings, in the following order:

Table of Contents

Program Narrative
- Applicant Capability
- Resources
- Techniques and Methodologies
- Costs

Forms
- Pages of the proposal should be numbered consecutively.

Evaluation Criteria: Proposals will be evaluated and applicants will be selected based on the following criteria.

Applicant Capability (45 points)

The applicant's proposal will be evaluated with respect to the applicant firm's experience and expertise in providing the work requirements listed. Specifically, the proposals will be evaluated as follows:

Level of experience in and knowledge of the Native American business sector and strategies for enhancing its growth and profitability (10 points);

Extent of resources and professional relationships within the corporate, banking and investment community that may be beneficial to Native American-owned firms (10 points);

Level of experience and expertise in advocating on behalf of Native American businesses, both as to specific transactions in which a Native American business seeks to engage, and as to broad market advocacy for the benefit of the Native American community at large (10 points); and

Assessment of the qualifications, experience and proposed role of staff who will operate the project, including possessing the expertise in utilizing information systems as contemplated under the Computer Requirements section of this Notice. (15 points).

Qualifications of the project director of the NABDC are of particular importance and must be included as part of the application, along with a copy of his/her college transcript and a letter committing to one (1) year's service. Position descriptions and qualification standards for all staff should be included as part of the application. Applicants must provide a copy of their Articles of Incorporation, by-laws and IRS 501(c)(3) non-profit letter or other evidence of non-profit status.

Resources (25 points)

The applicant's proposal will be evaluated according to the following sub-criteria:

Adequacy of the plan to recruit, establish and maintain the network of 3 Strategic Partners (10 points).

Adequacy of your plan to accomplish the computer hardware and software requirements (5 points).

Likelihood of obtaining resources (not included as part of the cost-sharing arrangement) that will be used. Include commitment letters from those resources listed and indicate their willingness to work with the applicant. These resources can include such items as computer facilities, voluntary staff time and space, and financial resources. Three to five letters of support (with telephone numbers) from business or community organizations should be included from those resources willing to work with the applicant (10 points).

Techniques and Methodologies (20 points)

The applicant's proposal will be evaluated with respect to the proposed action plans and operation techniques. Specifically, the proposals will be evaluated as follows:

The applicant's specific plan-of-action detailing *how* each work requirement, except for Strategic Partners which is addressed under Resources, will be met and *how* the techniques to be used will be implemented. The applicant will be evaluated on the effectiveness and efficiency of use of all staff time to achieve the work requirements (10 points).

Fulfillment of performance measures will be evaluated by relating each one to the financial, information and market resources available in the geographic service area to the applicant and how the goals will be met (10 points).

Proposed Budget (10 points)

The applicant's proposal will be evaluated on the following sub-criteria:

Reasonableness, allowability and allocability of costs (10 points).

Bonus Points: Proposed cost sharing, although not a requirement for NABDC application, will be awarded bonus points on the following scale: more than 0–5%—1 point; 6–10%—2 points; 11–15%—3 points; 16–20%—4 points; and over 20%—5 points.

An application must receive an average of at least 70% of the total points available for all four evaluation criterion, in order for the application to be considered for funding.

Management Fee

For-profit as well as not-for-profit organizations may negotiate their management fees, but they shall not exceed 7% of *total* estimated direct costs (Federal plus non-Federal) for the proposed award.

Program Income

Many of MBDA's business development services programs allow their awardees to charge a fee for services rendered to clients. Where applicable, fees are considered program income and shall be accounted for and may be used to finance the non-Federal cost-share of the project. Any excess fee income shall be used to further the program purpose in accordance with the terms and conditions of the award.

Selection Procedures

Prior to the formal paneling process, each application will receive an initial screening to ensure that all required forms, signatures and documentation are present. Each application will receive an independent, objective review by a panel qualified to evaluate the applications submitted. The independent review panel, consisting of at least three federal and/or non-federal individuals, reviews all applications based on the above criteria. Each member of the independent review panel will individually evaluate and rank the proposals and submit their rankings and recommendation to the National Director. The National Director of MBDA makes the final recommendation to the Department of Commerce Grants Officer regarding the funding of applications, taking into account the following selection criteria:

The evaluations and rankings of the independent review panel;

The degree to which applications address MBDA priorities as established under the project funding priorities;

Site Visits. The National Director or his/her designee reserves the right to conduct a site visit to applicant organizations receiving an average of at least 70% of the total points available for all four evaluation criteria. Site visits will be used to confirm the applicant's ability to best fulfill MBDA's funding priorities, particularly identifying and working to meet the needs of minority businesses seeking to obtain large scale contracts with institutional customers.

The availability of funding.

Unsuccessful Competition

On occasion, competitive solicitations or competitive panels may produce less than optimum results, such as competition resulting in the receipt of no applications or competition resulting in all unresponsive applications received. If the competition results in the receipt of only one application, it may or may not require additional action from MBDA depending upon the competitive history of the area, the quality of the application received, and the time and cost limits involved. In the event that any or all of these conditions arise, MBDA shall take the most time and cost-effective approach available that is in the best interest of the Government. The approaches available are: (1) Re-competition or (2) Re-Paneling or (3) Negotiation.

Disposition of Unsuccessful Applications

Upon the execution of an award by the Department of Commerce, MBDA will notify the unsuccessful applicants, in writing, indicating the winner of the award and indicating a 30-day timeframe in which to request return of the unsuccessful application. Once this 30-day notice has lapsed, MBDA will destroy all unsuccessful applications.

Intergovernmental Review

Applications under this program are not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** Notice of October 1, 2001 (66 FR 49917), are applicable to this solicitation.

Executive Order 12866

This notice was determined to be not significant for purposes of E.O. 12866.

Regulatory Flexibility Act

Because notice and comment are not required under 5 U.S.C. 553(a)(2), or any other law, for notices relating to public property, loans, grants, benefits or contracts, a Regulatory Flexibility Analysis, 5 U.S.C. 601 *et seq.*, is not required and has not been prepared for this notice.

Paperwork Reduction Act

This document contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The use of Standard Forms 424, 424A, 424B, SF-LLL, and CD–346 have been approved by OMB under the respective control numbers 0348–0043, 0348–0044, 0348–0040, and 0348–0046, and 0605–0001.

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the Paperwork Reduction Act unless that collection displays a currently valid OMB Control Number.

Dated: October 24, 2002.

Edith Jett McCloud,

Associate Director for Management, Minority Business Development Agency.

[FR Doc. 02–27573 Filed 10–29–02; 8:45 am]

BILLING CODE 3510–21–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Advanced Technology Program Advisory Committee

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Postponement of partially closed meeting.

SUMMARY: The previously scheduled Advanced Technology Program (ATP) Advisory Committee meeting is postponed.

DATES: The meeting previously scheduled for October 29, 2002, from 8:45 a.m. to 3:45 p.m. is postponed. The open portion of the meeting was to occur from 9:50 a.m. to 2:30 p.m.

FOR FURTHER INFORMATION CONTACT: Carolyn J. Peters, National Institute of Standards and Technology, Gaithersburg, Maryland 20899–1004, telephone number (301) 975–5607 or by e-mail at *carolyn.peters@nist.gov.*

SUPPLEMENTARY INFORMATION: On October 15, 2002, NIST announced in the **Federal Register** (67 FR 63622) a partially closed meeting of the ATP Advisory Committee. The meeting was scheduled for October 29, 2002, from 8:45 a.m. to 3:45 p.m. at NIST, Lecture Room B, Administration Building, Gaithersburg, Maryland 20899.

The meeting is being postponed due to budget restraints during the Continuing Resolution and will be rescheduled at a later date.

The purpose of the meeting was to review and make recommendations regarding general policy for the ATP, its organization, its budget, and its programs within the framework of applicable national policies as set forth by the President and the Congress. The agenda included an ATP update, a panel discussion from the international community on technology programs, an update on the ATP competition and a presentation on emerging knowledge about ATP's impact on firm behavior, collaboration, etc.

Dated: October 23, 2002.

Karen H. Brown,

Deputy Director.

[FR Doc. 02–27633 Filed 10–29–02; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 102402C]

Proposed Information Collection; Comment Request; Coastal and Estuarine Land Conservation, Planning, Protection, or Restoration

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506 (c)(2)(A)).

DATES: Written comments must be submitted on or before December 30, 2002.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Elaine Vaudreuil, N/ORM Room 10541, 1305 East-West Highway, Silver Spring MD 20910-3281 (301–713–3155, ext. 103).

SUPPLEMENTARY INFORMATION:

I. Abstract

The FY 2002 Commerce, Justice, State Appropriations Act directed the Secretary of Commerce to establish a Coastal and Estuarine Land Conservation Program (CELCP) to protect important areas that have significant conservation, recreation, ecological, historical, or aesthetic values, or that are threatened by conversion, and to issue guidelines for this program delineating the criteria for grant awards. The guidelines establish procedures for eligible applicants who choose to participate in the program to use when developing state conservation plans, proposing or soliciting projects under this program, applying for funds, and carrying out projects under this program in a manner that is consistent with the purposes of the program. NOAA also has, or is given, authority under the Coastal Zone Management Act, annual appropriations or other authorities, to issue funds to coastal states and localities for planning, conservation, acquisition, protection, restoration, or construction projects. This information collection enables NOAA to implement the CELCP, under its current or future authorization, and facilitate the review of similar projects under different, but related authorities.

II. Method of Collection

The Project Application Checklist is a form. The other information is submitted in accordance with guidance. The information can be submitted in electronic or paper format.

III. Data

OMB Number: 0648–0459.

Form Number: None.

Type of Review: Regular submission.

Affected Public: State, Local, or Tribal Government; not-for-profit institutions.

Estimated Number of Respondents: 50.

Estimated Time Per Response: 30 hours for a CELCP plan; and 10 hours for a project application and checklist.

Estimated Total Annual Burden Hours: 1,520.

Estimated Total Annual Cost to Public: $505.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: October 9, 2002.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02–27561 Filed 10–29–02; 8:45 am]

BILLING CODE 3510–08–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 102402E]

Proposed Information Collection; Comment Request; Alaska Individual Fishing Quota Cost Recovery Program Requirements

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506 (c)(2)(A)).

DATES: Written comments must be submitted on or before December 30, 2002.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Patsy A. Bearden, NMFS Alaska Region, 907–586–7228 or e-mail at *patsy.bearden@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Magnuson-Stevens Fishery Conservation and Management Act requires that the Secretary of Commerce implement a Cost Recovery Program to cover the management and enforcement costs of the Alaska Individual Fishing Quota (IFQ) Program. This Cost Recovery Program requires IFQ permit holders and registered buyers to submit information about the value of landings of IFQ species and for the permit holders to calculate and submit fees.

II. Method of Collection

Forms are used except for appeals, which involve the submission of evidence/documentation.

III. Data

OMB Number: 0648–0398.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations, individuals or households, and not-for-profit institutions.

Estimated Number of Respondents: 4,100.

Estimated Time Per Response: 2 hours for a fee submission form; 2 hours for a Register Buyer Ex-vessel Value and Volume Report; 2 hours for an appeal; and 30 minutes for a prepayment of fees.

Estimated Total Annual Burden Hours: 8,400.

Estimated Total Annual Cost to Public: $17,116.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: October 9, 2002.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02–27563 Filed 10–29–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 102102D]

Endangered and Threatened Species; Issuance of Permit 1094

AGENCY: National Marine Fisheries Service (NOAA Fisheries), National Oceanic and Atmospheric Administration, Commerce.

ACTION: Issuance of amendment to enhancement permit 1094.

SUMMARY: NMFS has amended research and enhancement permit 1094 held by the State of Washington Department of Fish and Wildlife (WDFW), pursuant to the Endangered Species Act of 1973 (ESA).

ADDRESSES: Requests for copies of the decision documents or any of the other associated documents should be directed to the Hatcheries and Inland Fisheries Branch, Sustainable Fisheries Division, NOAA Fisheries, 525 NE Oregon Street, Suite 510, Portland, OR, 97232.

FOR FURTHER INFORMATION CONTACT: Kristine Petersen, Portland, OR at phone number: (503) 230–5409, e-mail: *Kristine.Petersen@noaa.gov*

SUPPLEMENTARY INFORMATION: The following species and evolutionarily significant units (ESUs) are covered in the permit:

Steelhead (*Oncorhynchus mykiss*): endangered Upper Columbia River.

Chinook salmon (*O. tshawytscha*): endangered Upper Columbia River spring run.

Decision

Notice of proposed actions similar in scope to the proposed amendment actions was published on August 1, 2002 (67 FR 49906). A public meeting was held in Wenatchee, WA on August 27, 2002. The amended permit authorizes WDFW to manage adult hatchery steelhead returns that are surplus to recovery and broodstock needs. Permit 1094 authorizes WDFW's activities related to carrying out the steelhead artificial propagation enhancement program in the Upper Columbia River. After evaluating the potential effects of this amendment on listed salmon and steelhead in the Upper Columbia River ESUs and the environmental consequences, NOAA Fisheries issued an amended permit with conditions authorizing takes of the ESA-listed anadromous fish species. NOAA Fisheries' conditions will ensure that the takes of ESA-listed anadromous fish will not appreciably reduce the likelihood of the survival and recovery of the species in the wild. The permit expires May 31, 2003.

Rationale for Decision

Favorable environmental conditions leading to a return of hatchery steelhead surplus to the number needed on spawning grounds precipitate the need to provide additional scope to available techniques for managing these experimental enhancement program fish, responsive to conservation needs of natural spawning populations in the Upper Columbia River basin. This amendment provides additional mitigation measures to avoid, minimize, and/or compensate for the anticipated takes of ESA-listed anadromous fish.

The amended permit was granted only after NOAA Fisheries determined that all permit issuance criteria were met, including the requirement that granting the permit would not jeopardize the continued existence of the species, and that the permit is consistent with the purposes and policies set forth in the Endangered Species Act of 1973, as amended.

Dated: October 24, 2002.

Margaret Lorenz,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–27564 Filed 10–29–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 093002B]

Marine Mammals; File No. 42–1642

AGENCY: National Marine Fisheries Service (NOAA Fisheries), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit amendment.

SUMMARY: Notice is hereby given that Mystic Aquarium, 55 Coogan Blvd., Mystic, CT 06355 (Dr. Lisa Mazarro, Principal Investigator) has been issued a permit amendment to take Steller sea lions for purposes of scientific research and enhancement.

ADDRESSES: The permit amendment and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NOAA Fisheries, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376; and

Northeast Region, NOAA Fisheries, One Blackburn Drive, Gloucester, MA 01930–2298; phone (978)281–9200; fax (978)281–9371.

FOR FURTHER INFORMATION CONTACT: Amy Sloan or Tammy Adams, (301)713–2289.

SUPPLEMENTARY INFORMATION: On July 11, 2002, notice was published in the **Federal Register** (67 FR 45958) that a request for an amendment to scientific research Permit No. 42–1642–01 to take Steller sea lions had been submitted by the above-named organization. The requested permit amendment has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR

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part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

Issuance of this permit amendment, as required by the ESA, was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of this permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

The permit amendment authorizes the permit holder to import one male Steller sea lion from the Vancouver Aquarium, Vancouver, Canada, for breeding with female Steller sea lions currently held by Mystic Aquarium in support of their study of changes in vitamin A and E status in relation to various life history stages in captive Steller sea lions.

Dated: October 24, 2002.

Eugene T. Nitta,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, NOAA Fisheries.

[FR Doc. 02–27565 Filed 10–29–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 102102B]

Endangered Species; File Nos. 1266, 1380, 1388

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of modification, Issuance of permits.

SUMMARY: Notice is hereby given that the following applicant has been issued a permit modification to take sea turtles for purposes of scientific research/enhancement:

REMSA, Inc., 12829 Jefferson Ave., Suite 108, Newport News, VA 23608 (John Glass, Principal Investigator).

Notice is hereby given that the following applicants have been issued a permit to take sea turtles for purposes of scientific research/enhancement:

Coastwise Consulting, 173 Virginia Ave., Athens, GA 30601 (Christopher Slay, Principal Investigator) (File No. 1380); and

Dr. David Nelson, U.S. Army Research and Development Center, Waterways Experiment Station, 4104 Freetown Rd., Vicksburg, MS 39183 (File No. 1388).

ADDRESSES: The modification, permits, and related documents are available for review upon written request or by appointment in the following office(s):

All documents: Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376;

Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298; phone (978)281–9200; fax (978)281–9371; and

Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432; phone (727)570–5301; fax (727)570–5320.

FOR FURTHER INFORMATION CONTACT: Carrie Hubard or Ruth Johnson, 301/713–2289.

SUPPLEMENTARY INFORMATION: On March 27, 2002, notice was published in the **Federal Register** (67 FR 14698) that a modification of Permit No. 1266, issued May 8, 2001 (66 FR 27940), had been requested by REMSA, Inc. The requested modification has been granted under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

Permit 1266 authorizes capturing via trawl, handling, flipper tagging and releasing sea turtles while removing them from the path of hopper dredges. Originally the Permit authorized the take of 30 loggerhead (*Caretta caretta*), 7 green (*Chelonia mydas*), 5 Kemp's ridley (Lepidochelys kempii), 4 hawksbill (*Eretmochelys imbricata*), and 4 leatherback (Dermochelys coriacea) sea turtles. This modification increases the annual take to 350 loggerhead, 150 green, 150 Kemp's ridley, 10 hawksbill and 10 leatherback sea turtles. The applicant will also begin passive integrated transponder (PIT) tagging the sea turtles in addition to the previously authorized activities. Research is conducted in the Atlantic Ocean and the Gulf of Mexico.

On April 24, 2002, notice was published in the **Federal Register** (67 FR 20094) that a request for a scientific research permit to take sea turtles had been submitted by Coastwise Consulting. The requested permit has been issued under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

Permit No. 1380 authorizes the capture of live sea turtles using shrimp trawlers in association with hopper dredge activities along the southeastern U.S. coast and the Gulf of Mexico. Trawling may be conducted prior to dredging to assess the abundance of sea turtles in an area and/or during dredging operations to relocate turtles away from the channel being dredged. Captured turtles will be identified, measured, photographed, tagged with both flipper and PIT tags, and genetically sampled before being released. The annual number of takes authorized are: 800 loggerhead, 235 Kemp's ridley, 155 green, 51 hawksbill, and 24 leatherback turtles.

On July 23, 2002, notice was published in the **Federal Register** (67 FR 48135) that a request for a scientific research permit to take sea turtles had been submitted by Dr. Nelson. The requested permit has been issued under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

Permit No. 1388 authorizes sea turtle research in the northwestern Atlantic Ocean and the Gulf of Mexico. The first project involves relocation trawling in association with hopper dredge activity. A total of 200 loggerhead, 100 green, 30 Kemp's ridley, 2 hawksbill, and 2 leatherback sea turtles are authorized to be captured, handled, measured, flipper and PIT tagged, and released. The second project uses a subset of the turtles caught via relocation trawling to investigate large-scale movements and diving behavior. Twenty loggerhead, 5 Kemp's ridley, and 5 green turtles will be satellite tagged in addition to the above activities before being released. The third project is an abundance and habitat survey of green sea turtles along the shoreline of Cape Canaveral. A total of 75 green sea turtles may be captured, handled, flipper and PIT tagged, and fitted with a radio/sonic transmitter or a time-depth recorder/radio transmitter, before being released.

Issuance of these permits and modification, as required by the ESA, was based on a finding that such modification/permits: (1) were applied for in good faith, (2) will not operate to the disadvantage of the endangered species which are the subject of these permits, and (3) are consistent with the purposes and policies set forth in Section 2 of the ESA.

Dated: October 25, 2002.

Eugene T. Nitta,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–27614 Filed 10–29–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 102102C]

Endangered and Threatened Species; Take of Anadromous Fish

AGENCY: National Marine Fisheries Service (NOAA Fisheries), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of 32 scientific research permit actions.

SUMMARY: Between July 31 and September 27, 2002, NOAA Fisheries' Northwest Region issued 32 permits, permit modifications, and permit amendments allowing endangered and threatened species of Pacific salmon and steelhead to be taken for scientific research purposes under section 10(a)1(A) the Endangered Species Act (ESA) of 1973, as amended. The research actions and the species they affect are listed in the SUPPLEMENTARY INFORMATION section below.

ADDRESSES: The permits, permit applications, and related documents are available for review by appointment at NOAA Fisheries' Protected Resources Division, F/NWO3, 525 NE Oregon Street, Suite 500, Portland, OR 97232–2737 (phone: 503–230–5400, fax: 503–230–5435).

FOR FURTHER INFORMATION CONTACT: Steve Stone, Portland, OR (phone: 503–231–2317, fax: 503–230–5435, e-mail: *steve.stone@noaa.gov*).

SUPPLEMENTARY INFORMATION:

Authority

The ESA requires that permits, permit modifications, and permit amendments be issued based on a finding that such actions: (1) are applied for in good faith; (2) would not operate to the disadvantage of the listed species that are the subject of the actions; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. Authority to take listed species is subject to conditions set forth in the permits. Permits, modifications, and amendments are issued in accordance with, and are subject to, the ESA and NOAA Fisheries regulations governing listed fish and wildlife permits (50 CFR parts 222–226).

Species Covered in This Notice

The ESA-listed species/evolutionarily significant units (ESUs) covered by this notice are identified below and listed in the subsequent table by the numbers that precede each of them in the following text:

(1) Puget Sound chinook salmon (*Oncorhynchus tshawytscha*)
(2) Lower Columbia River chinook salmon
(3) Snake River spring/summer chinook salmon
(4) Snake River fall chinook salmon
(5) Upper Columbia River spring-run chinook salmon
(6) Upper Willamette River chinook salmon
(7) Hood Canal summer-run chum salmon (*O. keta*)
(8) Columbia River chum salmon
(9) Lower Columbia River steelhead (*O. mykiss*)
(10) Middle Columbia River steelhead
(11) Snake River steelhead
(12) Upper Willamette River steelhead
(13) Upper Columbia River steelhead
(14) Southern Oregon/Northern California Coasts coho salmon (*O. kisutch*)
(15) Oregon Coast coho salmon
(16) Snake River sockeye salmon (*O. nerka*)
(17) Ozette Lake sockeye salmon

TABLE 1.—THIRTY-TWO SCIENTIFIC RESEARCH PERMIT ACTIONS AFFECTING THREATENED AND ENDANGERED PACIFIC SALMON AND STEELHEAD

Permit Number	Affected Species/ ESU	Permittee	Federal Register Notice of Application Receipt
1135	2, 9	U.S. Geological Survey (USGS)	April 4, 2002 (67 FR 17970)
1140	1, 15	Northwest Fisheries Science Center (NWFSC)	June 11, 2002 (67 FR 39960)
1141	5	Public Utility District No. 2 of Grant County	April 4, 2002 (67 FR 17970)
1156	14, 15	U.S. Environmental Protection Agency	June 11, 2002 (67 FR 39960)
1177	14	Portland District Corps of Engineers	April 4, 2002 (67 FR 17970)
1256	6, 15	Bureau of Land Management	May 16, 2002 (67 FR 34909)
1291	16	USGS	June 25, 2002 (67 FR 42757)
1309	1	King County Department of Natural Resources and Parks (KCDNRP).	June 11, 2002 (67 FR 39960)
1315	1	U.S. Corps of Engineers Seattle District	April 4, 2002 (67 FR 17970)
1317	10	USGS	April 4, 2002 (67 FR 17970) June 25, 2002 (67 FR 42757)
1318	2, 6, 9, 12, 15	Oregon Department of Fish and Wildlife (ODFW)	May 16, 2002 (67 FR 34909)
1322	3, 6, 5, 8	NWFSC	April 4, 2002 (67 FR 17970) June 25, 2002 (67 FR 42757)
1335	1, 7, 8, 9, 10	U.S. Forest Service	May 16, 2002 (67 FR 34909)
1336	2, 6, 9, 12, 15	Port Blakely Tree Farms	May 16, 2002 (67 FR 34909)
1345	1, 3, 5, 6, 10, 11, 13	Washington Department of Fish and Wildlife	May 16, 2002 (67 FR 34909)
1358	14	ODFW	February 22, 2002 (67 FR 8233)
1359	14	ODFW	February 22, 2002 (67 FR 8233)
1362	11	Idaho Cooperative Fish and Wildlife Research Unit	April 4, 2002 (67 FR 17970)

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TABLE 1.—THIRTY-TWO SCIENTIFIC RESEARCH PERMIT ACTIONS AFFECTING THREATENED AND ENDANGERED PACIFIC SALMON AND STEELHEAD—Continued

Permit Number	Affected Species/ ESU	Permittee	Federal Register Notice of Application Receipt
1363	3, 11	Fish Passage Center	April 4, 2002 (67 FR 17970)
1364	4,11	Idaho Fishery Resource Office of the U.S. Fish and Wildlife Service.	April 4, 2002 (67 FR 17970)
1365	10	Confederated Tribes of the Umatilla Indian Reservation	April 4, 2002 (67 FR 17970)
1366	2, 3, 4, 5, 6, 8, 9 10, 11, 12, 13, 16	Oregon Cooperative Fish and Wildlife Research Unit	April 4, 2002 (67 FR 17970)
1367	10	NWFSC	April 4, 2002 (67 FR 17970)
1369	1	KCDNRP	April 4, 2002 (67 FR 17970)
1370	3	Utah State University (USU)	April 4, 2002 (67 FR 17970) June 11, 2002 (67 FR 39960)
1371	1	Battelle Marine Sciences Center	April 4, 2002 (67 FR 17970)
1372	1	Puget Sound Energy	April 4, 2002 (67 FR 17970)
1376	1	Washington Cooperative Fish and Wildlife Research Unit	April 4, 2002 (67 FR 17970)
1381	1	City of Bellingham	June 11, 2002 (67 FR 39960)
1382	10	USU	June 11, 2002 (67 FR 39960)
1383	1	USGS	June 11, 2002 (67 FR 39960)
1386	1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 13, 17	Washington Department of Ecology	June 25, 2002 (67 FR 42757)

Dated: October 24, 2002.

Margaret Lorenz,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–27615 Filed 10–29–02; 8:45 am]

BILLING CODE 3510–22–S

COMMODITY FUTURES TRADING COMMISSION

Chicago Mercantile Exchange (CME): Proposed Amendments to the Spot Month Speculative Position Limits for the Live Cattle Futures Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of terms and conditions of proposed amendments to the CME's spot month speculative position limits for the live cattle futures contract.

SUMMARY: The Chicago Mercantile Exchange (CME or Exchange) has requested that the Commission approve proposed amendments to the spot month speculative position limits for the live cattle futures contract. The proposal was submitted pursuant to the provisions of section 5c(c)(2) of the Commodity Exchange Act (Act) and Commission Regulation 40.4(a). Under the proposal, the speculative position limit that applies during the period at the close of business on the first business day following the first Friday of the contract month through the business day preceding the last five business days would be reduced to 300 contracts from 600 contracts. The Exchange intends to implement the amendments with respect to positions held in the December 2002 through the October 2003 contract months.

The Director of the Division of Market Oversight (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the Exchange's proposed amendments for comment is in the public interest, and will assist the Commission in considering the views of interested persons.

DATES: Comments must be received on or before November 14, 2002.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. In addition, comments may be sent by facsimile transmission to (202) 418–5521 or by electronic mail to *secretary@cftc.gov*. Reference should be made to the CME's proposed amendments to the spot month speculative position limits for the live cattle futures contract.

FOR FURTHER INFORMATION CONTACT: Please contact Martin G. Murray of the Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC (202) 418–5276. Facsimile number: (202) 418–5527. Electronic mail: *mmurray@cftc.gov*

SUPPLEMENTARY INFORMATION: The CME live cattle futures contract's speculative position limit rules currently specify an individual contract month limit of 3,300 contracts, a "scale down" spot month speculative position limit of 600 contracts that becomes effective at the close of business on the first business day following the first Friday of the contract month, and a 300-contract spot month limit that becomes effective at the close of business on the business day immediately preceding the last five business days of the expiring contract month.[1] The proposed amendments will eliminate the "scale down" limit of 600 contracts, and require that speculative positions be reduced immediately to 300 contracts as of the close of business on the first business day following the first Friday of the contract month.

In support of the proposal, the Exchange states that the proposed level is "more in balance with deliverable supplies" for the live cattle futures contract. In particular, the Exchange states that deliverable supplies of live cattle meeting the futures contract's existing weight specifications have been adversely impacted by the "significant increase in slaughter weights of cattle in the U.S." As a result, "a growing proportion of the U.S. fed steer population is rapidly becoming ineligible for delivery against the Live Cattle contract." In this regard, the futures contract does not permit the delivery on a live-graded basis of individual steers weighing more than 1,350 pounds (or 1,375 pounds effective with the June 2003 contract month). However, the average carcass weight for steers has increased steadily in recent years, and in August 2002 was 837 pounds, for a live-weight equivalent of 1,329 pounds.

The Exchange has proposed to implement the subject proposed amendments only for existing contracts, beginning with the December 2002 contract month through the October 2003 contract month. The Exchange has separately notified the Commission that it will delay listing of the December 2003 contract month, pending its consideration of additional contract changes. In this regard, the Exchange notes that it is contemplating amendments that will increase the weight specifications for the live cattle futures contract to accommodate the higher observed weights in the cash market and will make additional amendments to the spot-month speculative position limits.

The Division is requesting comment on the proposal. Copies of the Exchange's proposed amendments will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Copies of the proposed amendments can also be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 418–5100.

Other materials submitted by the CME in support of the request for approval may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations there under (17 CFR part 145 (2000)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

[1] The last trading day is the last business day of the contract month. Delivery notices may be issued beginning with the first business day following the first Friday of the contract month.

Any person interested in submitting written data, views, or arguments pertaining to the proposed amendments or with respect to other materials submitted by the CME should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre 1155 21st Street, NW., Washington, DC 20581 by the specified date.

Issued in Washington, DC on October 24, 2002.

Michael Gorham,

Director.

[FR Doc. 02–27605 Filed 10–29–02; 8:45 am]

BILLING CODE 6351–01–M

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting

Federal Register Citation of Previous Announcement: Vol. 67, No. 202, Friday, October 18, 2002, page 664354.

Previously Announced Time and Date of Meeting: 10:00 a.m., Thursday, October 24, 2002.

Changes in Meeting: The Commission briefing regarding Petition HP 99–1 requesting a ban of polyvinyl chloride (PVC) in all toys and other products intended for children five years of age and under was canceled.

For a recorded message containing the latest agenda information, call (301) 504–0709.

FOR FURTHER INFORMATION CONTACT: Todd A. Stevenson, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504–0800.

Dated: October 28, 2002.

Todd A. Stevenson,

Secretary.

[FR Doc. 02–27742 Filed 10–28–02; 2:36 pm]

BILLING CODE 6355–01–M

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting

Federal Register Citation of Previous Announcement: Vol. 67, No. 207, Friday, October 25, 2002, page 65538.

Previously Announced Time and Date of Meeting: 10:00 a.m., Friday, November 1, 2002.

Changes in Meeting: The Commission decision meeting regarding Petition HP 99–1 requesting a ban of polyvinyl chloride (PVC) in all toys and other products intended for children five years of age and under is canceled. The briefing also on this subject scheduled for October 24, 2002 was also canceled.

For a recorded message containing the latest agenda information, call (301) 504–0709.

FOR FURTHER INFORMATION CONTACT: Todd A. Stevenson, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504–0800.

Dated: October 28, 2002.

Todd A. Stevenson,

Secretary.

[FR Doc. 02–27743 Filed 10–28–02; 2:36 pm]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0069]

Federal Acquisition Regulation; Submission for OMB Review; Indirect Cost Rates

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0069).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning indirect cost rates. A request for public comments was published at 67 FR 19558 in the **Federal Register** on April 22, 2002 and a correction to dates published at 67 FR 39473 on June 7, 2002. Comments were received. Differences in numbers from previous submissions are the result of revised estimates after considering comments received.

DATES: Submit comments on or before November 29, 2002.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, Regulatory Secretariat (MVA), 1800 F Street, NW, Room 4035, Washington, DC 20405. Please cite OMB Control No. 9000–0069,

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Indirect Cost Rates, in all correspondence.

FOR FURTHER INFORMATION CONTACT: Linda Klein, Acquisition Policy Division, GSA (202) 501–3775.

SUPPLEMENTARY INFORMATION:

A. Purpose

The contractor's proposal of final indirect cost rates is necessary for the establishment of rates used to reimburse the contractor for the costs of performing under the contract. The supporting cost data are the cost accounting information normally prepared by organizations under sound management and accounting practices.The proposal and supporting data is used by the contracting official and auditor to verify and analyze the indirect costs and to determine the final indirect cost rates or to prepare the Government negotiating position if negotiation of the rates is required under the contract terms.

B. Annual Reporting Burden

Respondents: 3,000.
Responses Per Respondent: 1.
Annual Responses: 3,000.
Hours Per Response: 2,188.
Total Burden Hours: 6,564,000.

Burden hours are based on an estimated 3000 business segments that have overhead rates established annually. The hours per response are based on the sum of estimated hours per response for reporting and estimated hours per response for recordkeeping. The estimated total burden hours increased substantially from 2,469 hours to 6,564,000 hours for all respondents because we changed the method of estimating, not because the burden has increased. Prior estimates were based on the time to generate a proposal document. The new estimate is based on the time necessary to keep records, analyze information and generate a proposal document.

Obtaining copies of proposals:

Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVA), Room 4035, 1800 F Street, NW, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0069, Indirect Cost Rates, in all correspondence.

Dated: October 24, 2002.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. 02–27579 Filed 10–29–02; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before November 29, 2002.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Acting Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the Internet address *Lauren_Wittenberg@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: October 24, 2002.

John D. Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Revision of a currently approved collection.
Title: Application for Grants Under the Strengthening Institutions Program, American Indian Tribally Controlled Colleges and Universities Program, and Alaska Native and Native Hawaiian-Serving Institutions Program.
Frequency: Biennially.
Affected Public: Not-for-profit institutions (primary), State, Local, or Tribal Gov't, SEAs or LEAs.
Reporting and Recordkeeping Hour Burden:
Responses: 300.
Burden Hours: 17150.
Abstract: The information is required of institutions of higher education that apply for grants under the Strengthening Institutions Program, the American Indian Tribally Controlled Colleges and Universities Program, and the Alaska Native and Native Hawaiian Serving Institutions Program, authorized under Title III, Part A of the Higher Education Act of 1965, as amended. This information will be used in the peer review and in making funding recommendations.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1890–0001). Therefore, the 30-day public comment period notice will be the only public comment notice published for this information collection.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2179. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivan.reese@ed.gov*. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to SCHUBART at (202) 708–9266. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Office of Postsecondary Education

Type of Review: New Collection.
Title: Application for Grants Under the Developing Hispanic-Serving Institutions Program.

Frequency: Annually.
Affected Public: Not-for-profit institutions (primary), State, Local, or Tribal Gov't, SEAs or LEAs.
Reporting and Recordkeeping Hour Burden:
Responses: 100.
Burden Hours: 850.
Abstract: This information is required of institutions of higher education designated eligible to apply for grants as Hispanic-Serving Institutions under Title V, Part A of the Higher Education Act of 1965, as amended. This information will be used in the evaluation process to determine whether proposed activities are consistent with legislated activities, and to determine the dollar share of the Congressional appropriation.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grants Information Collections (1890–0001). Therefore, this 30-day public comment notice will be the only public comment notice published for this information collection.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2178. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivan.reese@ed.gov*. Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joe Schubart at (202) 708–9266. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–27539 Filed 10–29–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before November 29, 2002.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Acting Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the Internet address *Lauren_Wittenberg@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: October 24, 2002.

John D. Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Federal Student Aid

Type of Review: Revision of a currently approved collection.
Title: Student Aid Report.
Frequency: Annually.
Affected Public: Individuals or household (primary).
Reporting and Recordkeeping Hour Burden:
Responses: 20524631.
Burden Hours: 4871526.
Abstract: The Student Aid Report (SAR) is used to notify all applicants of their eligibility to receive Federal student aid for postsecondary education. The form is submitted by the applicant to the institution of their choice.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2097. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivan.reese@ed.gov*. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joe Schubart at (202) 708–9266. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Office of Postsecondary Education

Type of Review: New Collection.
Title: FIPSE Comprehensive Programs Final Report Guidelines.
Frequency: Other: once, at project period end.
Affected Public: Not-for-profit institutions (primary), State, Local, or Tribal Gov't, SEAs or LEAs.
Reporting and Recordkeeping Hour Burden:
Responses: 75.
Burden Hours: 1500.
Abstract: The Comprehensive program is a discretionary grant award program of the Fund for the improvement of Postsecondary Education (FIPSE). The program supports innovative reform projects that hold promise as models for the resolution of important issues and problems in postsecondary education. Grants made under this program are expected to contribute new information in educational practice that can be shared with others. The Comprehensive Program has established a record of meaningful and lasting improvement to access and quality in postsecondary education. A final report at the end of the grant period is required of all funded projects by Education Department regulations.

Requests for copies of the submission for OMB review; comment request may

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be accessed from *http://edicsweb.ed.gov*, by selecting the Browse Pending Collections link and by clicking on link number 2140. When you access the information collection, click on "Download Attachments " to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivan.reese@ed.gov*. Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joe Schubart at (202) 708–9266. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–27540 Filed 10–29–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Oak Ridge. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, November 13, 2002, 6 p.m.–9:30 p.m.

ADDRESSES: DOE Information Center, 475 Oak Ridge Turnpike, Oak Ridge, TN.

FOR FURTHER INFORMATION CONTACT: Pat Halsey, Federal Coordinator, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–90, Oak Ridge, TN 37831. Phone (865) 576–4025; Fax (865) 576–5333 or e-mail: *halseypj@oro.doe.gov*.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

- Reports from the Environmental Restoration, Stewardship, and Waste Management Committees
- Presentation focusing on the draft EPA report "September 2001 Sampling Report for the Scarboro Community, Oak Ridge, Tennessee"
- Public Comment Period

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Pat Halsey at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments. This federal register notice is being published less than 15 days prior to the meeting date due to programmatic issues that had to be resolved prior to the meeting date.

Minutes: Minutes of this meeting will be available for public review and copying at the Department of Energy's Information Center at 475 Oak Ridge Turnpike, Oak Ridge, TN between 8 a.m. and 5 p.m. Monday through Friday, or by writing to Pat Halsey, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–90, Oak Ridge, TN 37831, or by calling her at (865) 576–4025.

Issued at Washington, DC on October 25, 2002.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 02–27571 Filed 10–29–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[Docket Nos. CP01–409–001, CP01–410–001, CP01–411–001 and CP01–444–001]

Federal Energy Regulatory Commission

September 9, 2002.

Calypso Pipeline, LLC, and Tractebel Calypso Pipeline, LLC; Notice of Filing

Take notice that on August 30, 2002, Calypso Pipeline, LLC (Calypso) and Tractebel Calypso Pipeline, LLC (Tractebel Calypso) jointly filed an amendment in the above-referenced dockets to reflect a change in ownership associated with the applications filed on July 20, 2001, and September 19, 2001, by Calypso (Calypso Application) in the same docketed proceedings. The August 30, 2002 filing requests that the Commission accept a substitution of Tractebel Calypso as the applicant in the pending Calypso Application to reflect the change in ownership and the filed revisions to certain exhibits in the Calypso Application. These revisions reflect only a change in ownership. The application is on file with the Commission and open to public inspection. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call (202) 502–8222 or for TTY, (202) 208–1659.

By the Calypso Application, Calypso requests authorization to construct, own, and operate a new pipeline system consisting of approximately a 36 mile, 24-inch offshore segment and approximately a 5.8 mile, 24-inch onshore segment (Calypso Pipeline Project). The offshore pipeline will extend from the boundary of the U.S. Exclusive Economic Zone (EEZ) and the Bahama EEZ, off the southeast Florida coastline to shore at Port Everglades in Fort Lauderdale, Florida. The proposed onshore pipeline segment will be located in Broward County, Florida. The onshore pipeline segment will connect the offshore pipeline with Florida Gas Transmission Company's ("FGT") existing 24-inch Lauderdale Lateral at Mile Post 1.6 in Broward County, Florida. Calypso's proposed pipeline was designed to transport up to 832,000 MMBtu per day.

Calypso and Tractebel Calypso have executed a Purchase and Sale Agreement (PSA) for the Calypso Pipeline Project. Per the PSA, Tractrebel Calypso will acquire the assets related to the Calypso Pipeline Project. Those assets consist principally of the Calypso Application; the Enron LNG Marketing, LLC Precedent Agreement; and various other surveys, permits, easements, and rights-of-way applications and engineering work product. The sale of the Calypso Pipeline Project to Tractebel Calypso ultimately is subject to the approval of the Bankruptcy Court. Tractebel Calypso will then notify the Commission of the closing of the transaction, and will thereafter be considered the applicant of record under the Calypso Application, with all the rights and responsibilities attached to such status.

Any questions regarding the application are to be directed to Michael J. Zimmer, Esq., Baker & McKenzie, 815 Connecticut Avenue, NW., Washington, DC, 20006.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before September 30, 2002, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project.

This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Magalie R. Salas,

Secretary.

[FR Doc. 02–27655 Filed 10–29–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–432–000]

Clear Creek Storage Company, L.L.C.; Notice of Application

September 9, 2002.

Take notice that on August 30, 2002, Clear Creek Storage Company, L.L.C. (Clear Creek), 180 East 100 South, Salt Lake City, Utah 84111, filed an application pursuant to section 7(c) of the Natural Gas Act (NGA) and Part 157 of the Commission's Rules and Regulations, for authorization to operate withdrawal Well No. 35–4B also as an injection well, all as more fully set forth in the application on file with the Commission and open to public inspection. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202) 502–8222 or for TTY, (202) 219–2157.

Clear Creek states that the purpose of the proposed project is to benefit existing customers by providing necessary optimization and redundancy in reservoir injection capability thereby enhancing the reliability of Clear Creek's storage-transportation system during normal injection and withdrawal activities, and in the event of pipeline failure or routine system maintenance. Clear Creek further states that use of Well No. 35–4B for both currently approved withdrawal, and injection, will not result in any change to the currently authorized maximum inventory of natural gas stored in Clear Creek; 8.0 Bcf at 14.73 psia and 60° F, or the maximum shut-in bottom hole reservoir pressure of 5,500 psig.

Questions regarding the details of this proposed project should be directed to Michael B. McGinley, Vice President, Clear Creek Storage Company, L.L.C., 180 East 100 South Street, P.O. Box 45601, Salt Lake City, Utah 84111 at Phone: (801) 324–2527, Fax: (801) 324–2066, or e-mail: *MikeMcg@Questar.com*.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before September 30, 2002, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as

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possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

The Commission strongly encourages electronic filings. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

If the Commission decides to set the amendment for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Magalie R. Salas,

Secretary.

[FR Doc. 02–27656 Filed 10–29–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–763–003, et al.]

Indigo Generation LLC, et al.; Electric Rate and Corporate Filings

October 23, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Indigo Generation LLC, Larkspur Energy LLC and Wildflower Energy LP (collectively the Wildflower Entities)

[Docket No. ER02–763–003]

Take notice that on October 21, 2002, Indigo Generation LLC, Larkspur Energy LLC and Wildflower Energy LP (collectively the Wildflower Entities) supplemented their June 26, 2002 filing in compliance with the directives of the Commission in a letter order dated June 11, 2002 in the above-captioned dockets.

Comment Date: November 12, 2002.

2. PECO Energy Company

[Docket No. ER02–1779–001]

Take notice that on October 21, 2002, PECO Energy Company (PECO) submitted for filing First Revised Page 32 to the Interconnection Agreement between PECO, and Rock Springs Generation LLC and CED Rock Springs, Inc. (Rock Springs/CED), and requests an effective date of October 21, 2002. The Interconnection Agreement had originally been filed by PECO Energy unexecuted. The unexecuted Interconnection Agreement was designated as Service Agreement No. 669 under PJM Interconnection L.L.C.'s (PJM) FERC Electric Tariff Fourth Revised Volume No. 1, and accepted by the Commission for filing with an effective date of May 10, 2002, subject to PECO Energy making this compliance filing. Original Page 32 has been revised to reflect the electronic signatures of the parties to the Interconnection Agreement.

Other than the addition of the parties' signatures, the Interconnection Agreement remains unchanged. Copies of this filing were served on Rock Springs/CED and PJM.

Comment Date: November 12, 2002.

3. New England Power Pool and ISO New England Inc.

[Docket No. ER02–2330–003]

Take notice that on October 21, 2002, the New England Power Pool (NEPOOL) Participants Committee and ISO New England Inc. submitted revisions to Market Rule 1 in response to requirements of the Commission's September 20, 2002 order in New England Power Pool *et al.*, 100 FERC ¶61,287 (2002).

The NEPOOL Participants Committee states that copies of these materials were sent to all persons identified on the service lists in the captioned proceedings, the NEPOOL Participants and the six New England state governors and regulatory commissions.

Comment Date: November 12, 2002.

4. PPL Electric Utilities Corporation

[Docket No. ER03–3–001]

Take notice that on October 21, 2002, PPL Electric Utilities Corporation (PPL Electric) filed an executed Interconnection Agreement between PPL Electric and Allegheny Electric Cooperative, Inc. for interconnection at the Renovo/Chapman delivery point. The executed Interconnection Agreement replaces the unexecuted version that was filed in this docket on October 1, 2002.

Comment Date: November 12, 2002.

5. PPL Electric Utilities Corporation

[Docket No. ER03–4–001]

Take notice that on October 21, 2002, PPL Electric Utilities Corporation (PPL Electric) filed an executed Interconnection Agreement between PPL Electric and Allegheny Electric Cooperative, Inc. for interconnection at the Fairfield delivery point. The executed Interconnection Agreement replaces the unexecuted version that was filed in this docket on October 1, 2002.

Comment Date: November 12, 2002.

6. PECO Energy Company

[Docket No. ER03–63–000]

Take notice that on October 21, 2002 PECO Energy Company (PECO) submitted for filing an Interconnection Agreement by and between PECO and FPL Energy Marcus Hook, L.P. (FPL) for Generation Interconnection and Parallel Operation, designated as Service Agreement No. 791 under PJM Interconnection, L.L.C."s FERC Electric Tariff, Fourth Revised Volume No. 1, to be effective on October 21, 2002. Copies of this filing were served on Visteon and PJM.

Comment Date: November 12, 2002.

7. PECO Energy Company

[Docket No. ER03–64–000]

Take notice that on October 21, 2002, PECO Energy Company (PECO) submitted for filing a Construction Agreement between PECO and Fairless Energy, LLC (Fairless Energy) related to the Fairless Energy Station, to be located in Fairless Hills, Pennsylvania. The Construction Agreement was designated as Service Agreement 792 under PJM Interconnection L.L.C.'s (PJM) FERC Electric Tariff Fourth Revised Volume No. 1. The proposed effective date for the Construction Agreement is October 21, 2002. Copies of this filing were served on Fairless Energy and PJM.

Comment Date: November 12, 2002.

8. Allegheny Trading Finance Company

[Docket No. ER03–65–000]

Take notice that on October 21, 2002, Allegheny Trading Finance Company (ATF) filed a market rate tariff of general applicability under which it proposes to sell capacity and energy to affiliates and non-affiliates at market-based rates, and to make such sales to franchised public utility affiliates at rates capped by a publicly available regional index price. ATF requests an effective date of October 22, 2002.

Comment Date: November 12, 2002.

9. Idaho Power Company

[Docket No. ER03–66–000]

Take notice that on October 21, 2002, Idaho Power Company filed the Goshen Series Capacitor Replacement Agreement between Idaho Power Company and PacifiCorp.

Comment Date: November 12, 2002.

10. PJM Interconnection, L.L.C.

[Docket No. ER03–67–000]

Take notice that on October 21, 2002 PJM Interconnection, L.L.C. (PJM), submitted for filing thirty-three executed interconnection service agreements and interim interconnection service agreements between PJM and Conectiv Bethlehem, Inc., Industrial Power Generating Corp., PPL Martins Creek, L.L.C., PSEG Nuclear LLC, MM Hackensack Energy L.L.C., Delaware Municipal Electric Corporation, Conectiv Delmarva Generation, Inc., Constellation Power Source Generation, Inc., PPL Holtwood, L.L.C., Energy Systems North East, L.L.C., Conectiv Mid-Merit Inc., Lebanon Methane Recovery, Inc., Williams Generation Company—Hazleton, Somerset Windpower, L.L.C., AES Red Oak, L.L.C., Susquehanna Electric Company, LMB Funding, Limited Partnership, PPL Susquehanna, LLC, AES Ironwood L.L.C., Sight and Sound Ministries, Inc., Motiva Enterprises, L.L.C., Public Service Electric and Gas Company, PSEG Power, L.L.C., PPL Montour, LLC, Mantua Creek Generating Company, LP, and Liberty Electric Power, LLC, and three notices of cancellation of certain ISAs and Interim ISAs that have been superceded.

PJM requests a waiver of the Commission's 60-day notice requirement to permit the effective dates agreed to by the parties. Copies of this filing were served upon each of the parties to the agreements and the state regulatory commissions within the PJM region.

Comment Date: November 12, 2002.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502–8222 or TTY, (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–27658 Filed 10–29–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC03–2–000, et al.]

WPS Empire State, Inc., et al.; Electric Rate and Corporate Regulation Filings

October 22, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. WPS Empire State, Inc

[Docket No. EC03–2–000]

Take notice that on October 17, 2002, WPS Empire State, Inc. (Empire) tendered for filing with the Federal Energy Regulatory Commission (Commission) pursuant to Section 203 of the Federal Power Act and Part 33 of the Commission's regulations, a request for authorization to engage in an internal restructuring whereby Empire transfers its ownership interest in three generating and associated facilities to three limited liability companies that will be wholly-owned by Empire

Copies of the filing were served on the New York Public Service Commission.

Comment Date: November 7, 2002.

2. New England Power Company and Central Vermont Public Service Corporation

[Docket No. EC03–3–000]

Take notice that on October 18, 2002, New England Power Company (NEP) and Central Vermont Public Service Corporation (CVPS) filed with the Federal Energy Regulatory Commission (Commission) an application pursuant to Section 203 of the Federal Power Act for authorization to transfer from NEP to CVPS the ownership of a section of a 0.8 mile long 34.5 kV transmission line associated with electric service provided to American Paper Mills of Vermont, Inc. located in Gilman, Vermont.

Comment Date: November 8, 2002.

3. WPS Beaver Falls Generation, LLC, WPS Niagara Generation, LLC, and WPS Syracuse Generation, LLC

[Docket Nos. EG03–5–000, EG03–6–000, and EG03–7–000]

Take notice that on October 17, 2002, WPS Beaver Falls Generation, LLC (WPS Beaver Falls) WPS Niagara Generation, LLC (WPS Niagara) and WPS Syracuse Generation, LLC (WPS Syracuse) each having a business address of 1088 Springhurst Toad, Green Bay, Wisconsin, 54304, tendered for filing with the Federal Energy

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Regulatory Commission (Commission), an Application for Determination of Exempt Wholesale Generator Status pursuant to part 365 of the Commission's Regulations (18 CFR part 365).

Applicants are each wholly-owned subsidiaries of WPS Empire State, Inc. (WPS Empire), a New York corporation and exempt wholesale generator which owns three generating facilities located in upstate New York: (1) The approximately 95 MW Beaver Falls Generating Facility located in Crogham (Beaver Falls Facility); (2) the approximately 53 MW Niagara Falls Generating Facility located in Niagara Falls (Niagara Facility); (3) and the approximately 108 MW Syracuse Generating Facility located in Solvay (Syracuse Facility). As part of an internal corporate reorganization, WPS Empire will transfer the Beaver Falls Facility to Applicant WPS Beaver Falls Generation, LLC, the Niagara Facility to WPS Niagara Generation, LLC, and the Syracuse Facility to WPS Syracuse Generation, LLC. No operational changes are anticipated as a result of these transactions.

Comment Date: November 12, 2002.

4. FPL Energy Hancock County Wind, LLC

[Docket No. EG03–8–000]

Take notice that on October 18, 2002, FPL Energy Hancock County Wind, LLC (the Applicant), with its principal office at 700 Universe Blvd., Juno Beach, Florida 33408, filed with the Federal Energy Regulatory Commission (the Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Applicant states that it is a Delaware limited liability company engaged directly and exclusively in the business of owning and operating an approximately 98 MW wind-powered generation facility located in Hancock County, Iowa. Electric energy produced by the facility will be sold at wholesale.

Comment Date: November 12, 2002.

5. Arizona Public Service Company v. Idaho Power Company

[Docket No. EL99–44–007]

Take notice that on October 10, 2002, Idaho Power Company tendered for filing with the Federal Energy Regulatory Commission (Commission) compliance filing pursuant to the Commission's September 5, 2002 Order, Opinion No. 460, 100 FERC ¶ 61,253 (2002).

Comment Date: November 12, 2002.

6. City of Azusa, California

[Docket No. EL03–14–000]

Take notice that on October 18, 2002, the City of Azusa, California (Azusa) submitted a Petition for a Declaratory Order (1) determining that Azusa's proffered Transmission Revenue Requirement (TRR) is appropriate under the California Independent System Operator Corporation's Tariff on file at the Commission for purposes of Azusa's becoming a Participating Transmission Owner; (2) approving Azusa's Transmission Owner (TO) Tariff; (3) waiving the filing fee otherwise applicable to a petition for declaratory order; and (4) granting any other relief or waivers necessary or appropriate for approval or implementation of Azusa's TRR and TO Tariff effective as of the later of January 1, 2003 or the effective date of a Transmission Control Agreement acceptable to Azusa.

Comment Date: November 18, 2002.

7. City of Anaheim, California

[Docket No. EL03–15–000]

Take notice that on October 18, 2002, the City of Anaheim, California (Anaheim) tendered for filing with the Federal Energy Regulatory Commission (Commission) a Petition for a Declaratory Order (1) determining that Anaheim's proffered Transmission Revenue Requirement (TRR) is appropriate under the California Independent System Operator Corporation's Tariff on file at the Commission for purposes of Anaheim's becoming a Participating Transmission Owner; (2) approving Anaheim's Transmission Owner (TO) Tariff; (3) waiving the filing fee otherwise applicable to a petition for declaratory order; and (4) granting any other relief or waivers necessary or appropriate for approval or implementation of Anaheim's TRR and TO Tariff effective as of the later of January 1, 2003 or the effective date of a Transmission Control Agreement acceptable to Anaheim.

Comment Date: November 18, 2002.

8. PPL Electric Utilities Corporation

[Docket No. EL03–16–000]

Take notice that on October 18, 2002, PPL Electric Utilities Corporation filed with the Federal Energy Regulatory Commission (Commission) a petition requesting that the Commission issue a declaratory order stating that, in the event that the Borough of Olyphant, Pennsylvania, takes over service to certain PPL's existing retail customers, neither the Settlement Agreement approved in Boroughs of Lansdale, et al., Docket No. SC97–1–000, nor the Commission order approving that Agreement, would affect the existing retail stranded cost charges that such customers would be required to continue paying pursuant to orders of the Pennsylvania Public Utility Commission.

Comment Date: November 18, 2002.

9. Choctaw Generation Limited Partnership

[Docket No. ER98–3774–001]

Take notice that on October 17, 2002, Choctaw Generation Limited Partnership tendered for filing its Triennial Market Power Update.

Comment Date: November 7, 2002.

10. Dighton Power Associates, L.P.

[Docket No. ER99–616–001]

Take notice that on October 18, 2002, Dighton Power Associates, L.P. submitted for filing its triennial market analysis update in compliance with the Commission order issued in this docket on January 7, 1999.

Comment Date: November 8, 2002.

11. WPS Westwood Generation, LLC

[Docket No. ER02–2361–001]

Take notice that on October 17, 2002, WPS Westwood Generation, LLC (Westwood) filed supplementary cost support to its July 24, 2002 filing for recovery of the costs for Reactive Supply and Voltage Control from Generation Sources Service (Reactive Power Service) in response to the Commission's September 20, 2002 deficiency letter in this proceeding.

Comment Date: November 7, 2002.

12. Virginia Electric and Power Company

[Docket No. ER02–2485–001]

Take notice that on October 17, 2002, Virginia Electric and Power Company, doing business as Dominion Virginia Power, tendered for filing a revised first page of its August 21, 2002 transmittal letter filed in these proceedings (Revised First Page) and a revised cover sheet (Revised Cover Sheet) to the Generator Interconnection and Operating Agreement (Interconnection Agreement) between Dominion Virginia Power and CPV Cunningham Creek LLC filed in these proceedings. The Revised First Page and Revised Cover Sheet have been modified to reflect a new proposed effective date in compliance with an informal Commission Staff request.

Dominion Virginia Power respectfully requests that the Commission accept the Revised First Page and the Revised Cover Sheet to the Interconnection Agreement to allow them to become effective on August 20, 2002.

Copies of the filing were served upon parties on the Commission's official service list and the Virginia State Corporation Commission.

Comment Date: November 7, 2002.

13. American Electric Power

[Docket No. ER02–2507–001]

Take notice that on October 17, 2002, American Electric Power Service Corporation (AEPSC) tendered for filing with the Commission a Compliance Filing in the above referenced Docket. On August 28, 2002 AEPSC had filed a Facilities, Operation and Maintenance Agreement (Facility Agreement) dated August 1, 2002, between Columbus Southern Power Company (d/b/a AEP), Consolidated Electric Cooperative, Inc. (hereinafter called CEC) and Buckeye Power, Inc. (hereinafter called Buckeye).

The Facility Agreement provides for the establishment of a new delivery point, pursuant to the provisions of the Power Delivery Agreement between Columbus Southern Power, Buckeye, The Cincinnati Gas & Electric Company, The Dayton Power and Light Company, Monongahela Power Company, Ohio Power Company and Toledo Edison Company, dated January 1, 1968. AEP requested an effective date of October 1, 2002 for the Facility Agreement.

On October 2, 2002 the Commission issued an Order directing AEPSC to correct certain deficiencies in the August 28, 2002 submission. This subsequent filing complies with the Commission's Order of October 2, 2002.

AEPSC states that copies of its Compliance Filing were served upon CEC, Buckeye and the Public Utilities Commission of Ohio.

Comment Date: November 8, 2002.

14. CED Rock Springs, Inc.

[Docket No. ER02–2546–001]

Take notice that on October 18, 2002, CED Rock Springs, Inc. (CEDRS) tendered for filing an Amendment to its Application dated September 6, 2002, which sought an Order accepting CEDRS's FERC Electric Rate Schedule No. 1, granting certain blanket approvals, including the authority to sell electricity at market-base rates, and waiving certain regulations of the Commission. CEDRS also filed its FERC Electric Rate Schedule No. 1, seeking an effective date of October 10, 2002.

Comment Date: November 8, 2002.

15. AES NewEnergy, Inc.,

[Docket No. ER02–2567–001]

Take notice on October 18, 2002, Constellation NewEnergy, Inc. (NewEnergy) submitted for filing a revised market-based tariff (Tariff) reflecting its name change from AES NewEnergy, Inc. to Constellation NewEnergy, Inc., and the elimination of its Code of Conduct with Central Illinois Light Co. and Indianapolis Power & Light Company, which is no longer applicable. NewEnergy requests waiver of the 60-day prior notice requirement to allow its revised Tariff to become effective as of September 9, 2002.

Comment Date: November 8, 2002.

16. MidAmerican Energy Company

[Docket No. ER02–2603–001]

Take notice that on October 18, 2002, MidAmerican Energy Company (MidAmerican), filed with the Federal Energy Regulatory Commission (Commission) a supplement to its September 26, 2002, filing in this docket, consisting of a red-lined version of the Generation Interconnection Contract (Contract), entered into by MidAmerican, as transmission and distribution delivery services provider (Delivery), and MidAmerican, as wholesale merchant (Merchant). The supplement consists of a red-lined version of the Contract, showing revisions to Exhibits A and B, and the addition of Exhibit F.

MidAmerican requests an effective date of May 1, 2002, for the Revised Contract and seeks a waiver of the Commission's notice requirement. MidAmerican has served a copy of the filing on the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment Date: November 8, 2002.

17. Wisconsin Public Service Corporation

[Docket No. ER03–29–000]

Take notice that on October 10, 2002, Wisconsin Public Service Corporation (WPSC) tendered for filing a revised partial requirements service agreement with Washington Island (WIEC). Fourth Revised Service Agreement No. 9 provides WIEC's contract demand nominations for January 2003—December 2007, under WPSC's W–2A partial requirements tariff.

The company states that copies of this filing have been served upon WIEC and to the State Commissions where WPSC serves at retail.

Comment Date: November 4, 2002.

18. Westar Energy, Inc.

[Docket No. ER03–50–000]

Take notice that on October 17, 2002, pursuant to Rule 204 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.204, Westar Energy, Inc. (Westar Energy), tendered for filing an Application for Waiver of the Commission's FAC regulations, 18 CFR 35.14(a)(6). Westar Energy states that the waiver is necessary to enable it to recover its costs related to coal contract buy-down and buy-out payments through its wholesale fuel adjustment clause (FAC).

Comment Date: November 7, 2002.

19. Southern California Edison Company

[Docket No. ER03–52–000]

Take notice that on October 17, 2002, Southern California Edison Company (SCE) tendered for filing a Service Agreement for Wholesale Distribution Service under SCE's Wholesale Distribution Access Tariff and an Interconnection Facilities Agreement (Agreements) between SCE and NM Milliken Genco LLC (NM Milliken Genco). SCE respectfully requests the Agreements become effective on October 18, 2002.

NM Milliken Genco intends to install, own and operate four 1,440 kW reciprocating engines operating on landfill gas (Milliken Landfill Project) at the Milliken Landfill located in Ontario, California. These Agreements specify the terms and conditions under which SCE will interconnect NM Milliken Genco's Milliken Landfill Project to its electrical system and provide Distribution Service for up to 5.44 MW of power produced Milliken Landfill Project.

Copies of this filing were served upon the Public Utilities Commission of the State of California and NM Milliken Genco.

Comment Date: November 7, 2002.

20. Southern California Edison Company

[Docket No. ER03–53–000]

Take notice that on October 17, 2002, Southern California Edison Company (SCE) tendered for filing a Service Agreement for Wholesale Distribution Service under SCE's Wholesale Distribution Access Tariff and an Interconnection Facilities Agreement (Agreements) between SCE and NM Mid Valley Genco LLC (NM Mid Valley Genco). SCE respectfully requests the Agreements become effective on October 18, 2002.

NM Mid Valley Genco intends to install, own and operate three 1,440 kW reciprocating engines operating on landfill gas (Mid Valley Landfill Project) at the Mid Valley Landfill located in Rialto, California. These Agreements specify the terms and conditions under which SCE will interconnect NM Mid Valley Genco's Mid Valley Landfill Project to its electrical system and

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provide Distribution Service for up to 4.08 MW of power produced Mid Valley Landfill Project.

Copies of this filing were served upon the Public Utilities Commission of the State of California and NM Mid Valley Genco.

Comment Date: November 7, 2002.

21. WPS Beaver Falls Generation, LLC, WPS Niagara Generation, LLC, and WPS Syracuse Generation, LLC

[Docket Nos. ER03–54–000, ER03–55–000. and ER03–56–000]

Take notice that on October 17, 2002, WPS Empire State, Inc. (Empire) and its proposed subsidiaries, including WPS Beaver Falls Generation, LLC (WPS Beaver Falls), WPS Niagara Generation, LLC (WPS Niagara) and WPS Syracuse Generation, LLC (WPS Syracuse) (collectively, the Companies), hereby tendered for filing requests for market-based rate authority for each of the Companies. Applicants request that the Commission make the market-based rate tariffs filed for the Companies effective on December 17, 2002, sixty days after the date of this filing.

Comment Date: November 7, 2002.

22. Southern Company Services, Inc.

[Docket No. ER03–57–000]

Take notice that on October 17, 2002, Southern Company Services, Inc. (SCS), acting on behalf of Alabama Power Company (APC), filed an amendment (the Amendment) to the Interconnection Agreement Between mobile Energy Services Company, L.L.C. and APC (the Agreement) (Service Agreement No. 416 under Southern Operating Companies' FERC Electric Tariff, Fourth Revised Volume No. 5). Pursuant to the Amendment, the term of the Agreement will be extended until November 18, 2002.

Comment Date: November 7, 2002.

23. Cinergy Services, Inc.

[Docket No. ER03–58–000]

Take notice that on October 18, 2002. Cinergy Services, Inc. (Cinergy), tendered for filing a form of service agreement for ancillary services to be incorporated into the Cinergy Open Access Transmission Tariff (OATT), Second Revised, Volume No. 5, and contemporaneously submitted for filing an executed electric service agreement for ancillary services, designated as Service Agreement No. 344 under the Cinergy OATT between Cinergy and Midwest Independent System Operator (MISO). Cinergy respectfully requests an effective date November 1, 2002.

Copies of the filing have been served on MISO, the Public Utility Commission of Ohio, the Indiana Utility Regulatory Commission and ancillary service customers under the Cinergy OATT.

Comment Date: November 8, 2002.

24. Entergy Services, Inc.

[Docket No. ER03–59–000]

Take notice that on October 17, 2002, Entergy Services, Inc., on behalf of Entergy New Orleans, Inc., tendered for filing an unexecuted Interconnection and Operating Agreement with Duke Energy Orleans, LLC (Duke Orleans), and a Generator Imbalance Agreement with Duke Orleans.

Comment Date: November 7, 2002.

25. Deseret Generation & Transmission Co-operative, Inc.

[Docket No. ER03–60–000]

Take notice that on October 15, 2002, Desert Generation & Transmission Co-operative, Inc. Submitted an informational filing, providing the exact amount paid as a 2001 Rate Rebate to each of its six member cooperatives under Service Agreement Nos. 1 through 6 of FERC Electric Tariff, Original Volume No. 1.

Comment Date: November 5, 2002.

26. Ameren Services Company

[Docket No.ER03–61–000]

Take notice that on October 18, 2002, Ameren Services Company (ASC) tendered for filing Service Agreements for Firm Point-to-Point Transmission Service and Non-Firm Point-to-Point Transmission Service between ASC and Dominion Energy Marketing, Inc., PLL EnergyPlus, LLC, RWE Trading Americas Inc. and Select Energy, Inc. (the parties). ASC asserts that the purpose of the Agreements is to permit ASC to provide transmission service to the parties pursuant to Ameren's Open Access Transmission Tariff.

Comment Date: November 8, 2002.

27. The New Power Company

[Docket No. ER03–62–000]

Take notice that on October 18, 2002, The New Power Company (NewPower) tendered for filing a Notice of Cancellation of its Rate Schedule, Designated as Rate Schedule FERC No. 1. New Power requests cancellation effective January 31, 2003, which is more than sixty (60) days and less than 120 days after the date of this filing.

Comment Date: November 8, 2002.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–27657 Filed 10–29–02; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting; Notice of Vote, Explanation of Action Closing Meeting and List of Persons to Attend

October 23, 2002.

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. 94–409), 5 U.S.C. 552b:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: October 30, 2002, (within a relatively short time before or after the regular Commission Meeting).

PLACE: Hearing Room 5, 888 First Street, NE., Washington, DC 20426.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Non-Public, Investigations and Inquiries And Enforcement Related Matters.

CONTACT PERSON FOR MORE INFORMATION: Magalie R. Salas, Secretary, Telephone (202) 502–8400.

Chairman Wood and Commissioners Massey, Breathitt and Brownell voted to hold a closed meeting on October 30, 2002. The certification of the General Counsel explaining the action closing the meeting is available for public inspection in the Commission's Public Reference Room at 888 First Street, NE, Washington, DC 20426.

The Chairman and the Commissioners, their assistants, the Commission's Secretary and her assistant, the General Counsel and members of her staff, and a stenographer are expected to attend the meeting. Other staff members from the Commission's program offices who will advise the Commissioners in the matters discussed will also be present.

Magalie R. Salas,

Secretary.

[FR Doc. 02–27669 Filed 10–25–02; 4:16 pm]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting

October 23, 2002.

The following notice of meeting is published pursuant to section 3(A) of the Government in the Sunshine Act (Pub. L. 94–409), 5 U.S.C. 552B:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: October 30, 2002, 10 a.m.

PLACE: Room 2C, 888 First Street, NE., Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda

Note—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Magalie R. Salas, Secretary, Telephone (202) 502–8400, for a recording listing items stricken from or added to the meeting, call (202) 502–8627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Reference and Information Center.

809th—Meeting October 30, 2002, Regular Meeting, 10 a.m.

Administrative Agenda

A–1.
Docket#, AD02–1, 000, Agency Administrative Matters

A–2.
Docket#, AD02–7, 000, Customer Matters, Reliability, Security and Market Operations

A–3.
Docket#, AD02–22, 000, Midwest Energy Infrastructure Assessment

Markets, Tariffs and Rates—Electric

E–1.
Omitted

E–2.
Omitted

E–3.
Docket#, ER02–2541, 000, Midwest Independent Transmission System Operator, Inc.

E–4.
Docket#, ER02–1400, 000, Illinois Power Company
Other#s, ER02–1400, 001, Illinois Power Company
ER02–1400, 002, Illinois Power Company

E–5.
Docket#, OA96–158, 004, Entergy Services, Inc.
Other#s, OA97–657, 001, Entergy Services, Inc.

E–6.
Docket#, ER00–3591, 012, New York Independent System Operator, Inc.
Other#s, EL00–70, 008, New York Independent System Operator, Inc.
ER00–1969, 014, New York Independent System Operator, Inc.
ER00–3038, 007, New York Independent System Operator, Inc.
ER02–2081, 000, New York Independent System Operator, Inc.

E–7.
Docket#, EL00–95, 063, *San Diego Gas & Electric Company*, v. *Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange*
Other#s, EL00–95, 064, *San Diego Gas & Electric Company*, v. *Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange*
EL00–97, 005, Reliant Energy Power Generation, Inc., Dynegy Power Marketing, Inc., and Southern Energy California, L.L.C., v. *California Independent System Operator Corporation*
EL00–97, 006, Reliant Energy Power Generation, Inc., Dynegy Power Marketing, Inc., and *Southern Energy California, L.L.C.*, v. *California Independent System Operator Corporation*
EL00–98, 052, Investigation of Practices of the California Independent System Operator and the California Power Exchange
EL00–98, 053, Investigation of Practices of the California Independent System Operator and the California Power Exchange
EL00–104, 010, *California Electricity Oversight Board* v. *All Sellers of Energy and Ancillary Services Into the Energy and Ancillary Services Markets Operated by the California Independent System Operator and the California Power Exchange*
EL00–104, 011, *California Electricity Oversight Board* v. *All Sellers of Energy and Ancillary Services Into the Energy and Ancillary Services Markets Operated by the California Independent System Operator and the California Power Exchange*
EL00–107, 011, Public Meeting in San Diego, California
EL00–107, 012, Public Meeting in San Diego, California
EL01–1, 011, *California Municipal Utilities Association* v. *All Jurisdictional Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange*
EL01–1, 012, *California Municipal Utilities Association* v. *All Jurisdictional Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange*
EL01–2, 005, *Californians for Renewable Energy, Inc. (CARE)*, v. *Independent Energy Producers, Inc.*, and All Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange; All Scheduling Coordinators Acting on Behalf of the Above Sellers; California Independent System Operator Corporation; and California Power Exchange Corporation
EL01–2, 006, *Californians for Renewable Energy, Inc. (CARE)*, v. *Independent Energy Producers, Inc.*, and All Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange; All Scheduling Coordinators Acting on Behalf of the Above Sellers; California Independent System Operator Corporation; and California Power Exchange Corporation
EL01–68, 015, Investigation of Wholesale Rates of Public Utility Sellers of Energy and Ancillary Services in the Western System Coordinating Council
EL01–68, 016, Investigation of Wholesale Rates of Public Utility Sellers of Energy and Ancillary Services in the Western System Coordinating Council

E–8.
Docket#, ER02–352, 003, Southern Company Services, Inc.

E–9.

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Docket#, ER98–1438, 010, Midwest Independent Transmission System Operator, Inc.
Other#s *et al.*, EL02–65, 000, Alliance Companies, *et al.*
E–10.
Docket#, ER98–1440, 000, Central Vermont Public Service Corporation
E–11.
Docket#, QF92–198, 004, Lake Cogen, Ltd.
Other#s, EL02–124, 000, Lake Cogen, Ltd.
E–12.
Docket#, EC02–71, 000, American Transmission Systems, Inc. and PJM Interconnection, L.L.C.
Other#s, ER02–1865, 000, American Transmission Systems, Inc. and PJM Interconnection, L.L.C.
E–13.
Omitted
E–14.
Docket#, ER99–4462, 001, California Independent System Operator Corporation
E–15.
Omitted
E–16.
Docket#, EC01–156, 001, Alliant Energy Corporate Services, Inc., MidAmerican Energy Company, Xcel Energy Services, Inc., and TRANSLink Transmission Company, L.L.C.
Other#s, ER01–3154, 001, Alliant Energy Corporate Services, Inc., MidAmerican Energy Company, Xcel Energy Services, Inc., and TRANSLink Transmission Company, L.L.C.
E–17.
Omitted
E–18.
Docket#, EL01–122, 003, PJM Interconnection L.L.C.
Other#s, EL01–122, 002, PJM Interconnection L.L.C.
EL01–122, 004, PJM Interconnection L.L.C.
E–19.
Docket#, ER02–1451, 001, Ameren Energy Marketing Company
E–20.
Docket#, ER02–1663, 001, Tampa Electric Company
Other#s, ER02–1663, 002, Tampa Electric Company
E–21.
Docket#, ER02–711, 002, American Electric Power Service Corporation
E–22.
Docket#, ER00–2360, 004, Pacific Gas and Electric Company
E–23.
Docket#, ER02–2064, 002, Choctaw Generation LP
E–24.
Docket#, OA02–8, 000, Allegheny Power Service Corporation, on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company
E–25.
Docket#, RM01–8, 000, Filing Requirements for Electric Utility
E–26.
Docket#, EL00–95, 000, *San Diego Gas & Electric Company* v. *Sellers of Energy and Ancillary Services into Markets Operated by the California Independent System Operator Corporation and the California Power Exchange*
Other#s, EL00–95, 048, *San Diego Gas & Electric Company* v. *Sellers of Energy and Ancillary Services into Markets Operated by the California Independent System Operator Corporation and the California Power Exchange*
EL00–98, 000, Investigation of Practices of the California Independent System Operator and the California Power Exchange
EL00–98, 042, Investigation of Practices of the California Independent System Operator and the California Power Exchange
E–27.
Docket#, EL02–112, 000, *FirstEnergy Solutions Corp.* v. *PJM Interconnection, L.L.C.*
Other#s, EL02–120, 000, *Edison Mission Energy* v. *PJM Interconnection, L.L.C.*
E–28.
Docket#, EL02–125, 000, KeySpan Energy Development Corporation, KeySpan Ravenswood, LLC, New York Power Authority, Electric Power Supply Association, and *Independent Power Producers of New York, Inc.*, v. *New York Independent System Operator, Inc.*
E–29.
Docket#, EL02–122, 000, Sithe Power Marketing, L.P., and *Exelon Generation Company, LLC* v. *ISO New England, Inc.*
E–30.
Docket#, EL02–116, 000, *Cargill Alliant, LLC* v. *New York Independent System Operator, Inc.*
E–31.
Docket#, RM95–8, 006, Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities
Other#s, RM94–7, 007, Recovery of Stranded Costs by Public Utilities and Transmitting Utilities
E–32.
Docket#, PL02–7, 000, Standard of Review for Proposed Changes to Market-Based Rate Contracts for Wholesale Sales of Electric Energy by Public Utilities
E–33.
Docket#, EL00–24, 000, Village of Jackson Center, Ohio, Village of Versailles, Ohio, Village of Arcanum, Ohio, Village of Eldorado, Ohio, Village of Lakeview, Ohio, Village of Mendon, Ohio, Village of Minster, Ohio, Village of New Bremen, Ohio, Village of Waynesfield, Ohio and *Village of Yellow Springs, Ohio* v. *Dayton Power & Light Company*
E–34.
Docket#, ER02–766, 000, Florida Power & Light Company
Other#s, ER02–766, 001, Florida Power & Light Company
ER02–766, 002, Florida Power & Light Company
ER02–766, 003, Florida Power & Light Company
ER02–766, 004, Florida Power & Light Company
E–35.
Docket#, ER97–1523, 063, Central Hudson Gas & Electric Corporation, Consolidated Edison Co., of New York, Inc., Long Island Power Authority, New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation, Orange and Rockland Utilities, Inc., and Rochester Gas and Electric Corporation
Other#s, OA97–470, 058, Central Hudson Gas & Electric Corporation, Consolidated Edison Co., of New York, Inc., Long Island Power Authority, New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation, Orange and Rockland Utilities, Inc., and Rochester Gas and Electric Corporation
ER97–4234, 056, Central Hudson Gas & Electric Corporation, Consolidated Edison Co., of New York, Inc., Long Island Power Authority, New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation, Orange and Rockland Utilities, Inc., and Rochester Gas and Electric Corporation
E–36.
Docket#, EL02–78, 000, *New York State Electric & Gas Corporation* v. *New York State Electric and Gas Corporation*
E–37.
Docket#, EL02–74, 001, *Colton Power L.P., and City of Colton, CA* v. *Southern California Edison Co.*
E–38.
Docket#, ER97–2358, 004, Pacific Gas and Electric Company
Other#s, ER97–2355, 006, Southern California Edison Company
ER97–2364, 005, San Diego Gas & Electric Company
ER97–4235, 003, San Diego Gas & Electric Company
ER97–4235, 004, San Diego Gas & Electric Company
ER98–497, 004, San Diego Gas & Electric Company
ER98–2322, 002, Southern California Edison Company
ER98–2351, 002, Pacific Gas and Electric Company
ER98–2371, 002, San Diego Gas & Electric Company
ER97–2358, 003, Pacific Gas and Electric Company
ER98–2351, 003, Pacific Gas and Electric Company
ER97–2355, 004, Southern California Edison Company
ER98–2322, 001, Southern California Edison Company
ER97–2364, 004, San Diego Gas & Electric Company
ER98–497, 003, San Diego Gas & Electric Company
ER98–2371, 001, San Diego Gas & Electric Company
E–39.
Docket#, EL02–91, 000, *Williams Energy Marketing & Trading Company* v. *Southern Company Services, Inc.*
E–40.
Docket#, ER01–315, 001, Southern California Edison Company
E–41.
Docket#, SC00–1, 000, North Western Energy, LLC
E–42.
Docket#, ER02–2519, 000, PJM Interconnection L.L.C.
Other#s, ER02–2519, 001, PJM Interconnection L.L.C.
ER02–2519, 002, PJM Interconnection L.L.C.
E–43.
Docket#, ER02–2536, 000, Bank of America, N.A.

Miscellaneous Agenda

M–1.
Docket#, RM02–7, 000, Accounting, Financial Reporting and Rate Filing Requirements for Asset Retirement Obligations

Markets, Tariffs and Rates—Gas

G–1.
Omitted
G–2.
Docket#, RP99–301, 055, ANR Pipeline Company
G–3.
Docket#, RP99–301, 056, ANR Pipeline Company
G–4.
Docket#, RP02–568, 000, Black Marlin Pipeline Company
G–5.
Omitted
G–6.
Omitted
G–7.
Docket#, RP03–7, 000, Natural Gas Pipeline Company of America
G–8.
Docket#, RP02–543, 000, Northern Border Pipeline Company
G–9.
Docket#, RP02–532, 000, Guardian Pipeline, L.L.C.
Other#s, RP02–534, 000, Guardian Pipeline, L.L.C.
G–10.
Docket#, RP02–550, 000, Tennessee Gas Pipeline Company
G–11.
Docket#, RP02–331, 000, PG&E Gas Transmission, Northwest Corporation
Other#s, RP02–331, 001, PG&E Gas Transmission, Northwest Corporation
G–12.
Docket#, RP96–200, 087, CenterPoint Energy Gas Transmission Company
G–13.
Docket#, RP03–10, 000, Gulf South Pipeline Company, LP
G–14.
Docket#, RP03–12, 000, Kinder Morgan Interstate Gas Transmission LLC
G–15.
Omitted
G–16.
Omitted
G–17.
Docket#, RP02–515, 000, Texas Gas Transmission Corporation
G–18.
Omitted
G–19.
Docket#, RP03–6, 000, Maritimes & Northeast Pipeline, L.L.C.
G–20.
Docket#, RP03–4, 000, Panhandle Eastern Pipe Line Company
G–21.
Docket#, RP95–197, 045, Transcontinental Gas Pipe Line. Corporation
Other#s, RP97–71, 037, Transcontinental Gas Pipe Line Corporation
G–22.
Omitted
G–23.
Omitted
G–24.
Docket#, RP00–411, 001, Iroquois Gas Transmission System, Inc.
Other#s, RP01–44, 003, Iroquois Gas Transmission System, Inc.
G–25.
Omitted
G–26.
Docket#, RP02–335, 000, ANR Pipeline Company
Other#s, RP02–335, 001, ANR Pipeline Company
G–27.
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Magalie R. Salas,
Secretary.
[FR Doc. 02–27670 Filed 10–25–02; 4:16 pm]
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ENVIRONMENTAL PROTECTION AGENCY

[FRL–7401–3]

Proposed Agency Information Collection Activities: Continuing Collection; Comment Request; Information Collection Request for MACT Reporting and Recordkeeping Requirements for the Hazardous Waste Combustors

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): Information Collection Request for MACT Reporting and Recordkeeping Requirements for the Hazardous Waste Combustors, EPA ICR Number 1773.06, OMB Control Number 2050–0171, expires February 28, 2003. In addition, EPA is also taking into account all subsequent changes to this rule that have been made since its promulgation, and is consolidating these changes under EPA ICR # 1773.06. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before December 30, 2002.

ADDRESSES: Comments must be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I.D. of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: For general information, call the RCRA Call Center 1–(800) 424–9346. For specific information regarding this notice, call Shiva Garg, (703) 308–8459, fax number (703) 308–8433, e-mail *garg.shiva@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Affected Entities

Entities potentially affected by this action are hazardous waste combustors (HWCs) covered by 40 CFR part 63 (Subpart EEE) which generate, treat and store hazardous waste. Examples include hazardous waste incinerators, cement kilns and lightweight aggregate kilns that burn hazardous waste.

B. How Can I Get Copies of This Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this ICR under Docket ID No. RCRA–2002–0030. The official public docket consists of the documents specifically referenced in the ICR, any public comments received, and other information related to this ICR. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the RCRA Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC 20004. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1742, and the telephone number for the RCRA Docket is (202) 566–0270.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*:

You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI, and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket, but will be available only in printed paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public

docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

For additional information about EPA's electronic public docket, visit EPA Dockets online or see 67 FR 38102, May 31, 2002.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, by facsimile, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments in formulating a final decision. However, late comments may be considered if time permits. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. **Note:** Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

(i) *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket*, and follow the online instructions for submitting comments. To access EPA's electronic public docket from the EPA Internet Home Page, select "Information Sources," "Dockets," and "EPA Dockets." Once in the system, select "Search," and then key in Docket ID No. RCRA–2002–0030. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

(ii) *E-mail.* Comments may be sent by electronic mail (e-mail) to *rcra-docket@epa.gov*, Attention Docket ID No. RCRA–2002–0030. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

(iii) *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send one original and two copies of your comments to: RCRA Docket, Environmental Protection Agency, (Mailcode 5305T), 1200 Pennsylvania Ave., NW., Washington, DC, 20460, Attention Docket ID No. RCRA–2002–0030 .

3. *By Hand Delivery or Courier.* Deliver your comments to: RCRA Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC 20004. Attention Docket ID No. RCRA–2002–0030. Such deliveries are only accepted during the Docket's normal hours of operation as identified in Unit I.B.

4. *By Facsimile.* Fax your comments to: (202) 566–0224, Attention Docket ID. No. RCRA–2002–0030.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. An original and two copies of the CBI must be submitted under separate cover to: RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S. Environmental Protection Agency, 1200 Pennsylvania, Avenue NW., Washington, DC 20460. Attention Docket ID No. RCRA–2002–0030. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI. If you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI, and then identify electronically within the disk or CD ROM the specific information that is CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI,

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please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at your estimate.
5. Provide specific examples to illustrate your concerns.
6. Offer alternatives.
7. Make sure to submit your comments by the comment period deadline identified.
8. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

F. What Information Is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of the Paperwork Reduction Act, EPA specifically solicits comments and information to enable it to:

(i) Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.

(ii) Evaluate the accuracy of the Agency's estimates of the burdens for reporting and record Keeping requirements of the proposed collections of information.

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collections of information on those who are to respond, including through the use of appropriate automated or electronic collection technologies or other forms of information technology, *e.g.*, permitting electronic submission of responses.

II. Specific Information About This ICR Renewal

A. *Title:* Information Collection Request for MACT Reporting and Record Keeping Requirements for the Hazardous Waste Combustors (OMB Control No. 2050–0171; EPA ICR No.1773.06), expiring February 28, 2003. This is a request for extension of a currently approved collection.

B. *Abstract:* EPA regulates the burning of hazardous waste by several source categories of hazardous waste combustors under 40 CFR Part 63, Parts 264/265 (Subpart O), and Part 266 (Subpart H). On September 30, 1999, EPA promulgated (64 FR 52828) standards to control emissions of hazardous air pollutants from incinerators, cement kilns and lightweight aggregate kilns that burn hazardous wastes under 40 CFR Part 63. The ICR # 1773.02 pertaining to the provisions of this rule was approved under OMB Control # 2050–0171, expires on February 28, 2003, and is being renewed.

The emission standards of the September 30, 1999 rule updated the earlier rules in effect on these sources under the Resource Conservation and Recovery Act (RCRA) under 40 CFR Parts 264 and 265, and were issued using both Clean Air Act (CAA) and RCRA authorities in a coordinated fashion. Rules under CAA created maximum achievable control technology (MACT) based standards for hazardous air pollutant emissions, assuring that combustion of hazardous waste in these devices is properly controlled, while the RCRA provisions satisfied our obligation to ensure that hazardous waste combustion is conducted in a manner protective of human health and the environment. We thus consolidated regulatory control of hazardous waste combustion into a single set of regulations, thereby minimizing the potential for conflicting or duplicative federal requirements and burden on the regulated community.

A number of parties, representing interests of both industrial sources and of the environmental community, sought judicial review of the September 30, 1999 rule. On July 24, 2001, the United States Court of Appeals for the District of Columbia Circuit (the Court) granted the Sierra Club's petition for review and vacated the challenged portions of the rule. However, the Court invited us and the parties to the proceeding to file a motion to delay issuance of its mandate to request either that the current standards remain in place or that EPA be allowed reasonable time to develop interim standards. EPA and the parties to the proceeding agreed to take several actions, and the Court concurred on them. First, we agreed to issue a one-year extension to the compliance date of September 30, 2002 promulgated in the September 30, 1999 rule. On December 6, 2001 (66 FR 63313), we published a final rule which extended the compliance date to September 30, 2003. Second, we committed to publish an interim rule with revised emission standards and to finalize several compliance and implementation amendments to the rule. These interim standards and compliance and implementation amendments were promulgated on February 13 and 14, 2002 (67 FR 6792 and 67 FR 6968). The interim standards replace the vacated standards, until we finalize final replacement standards that comply with the Court's mandate. Finally, we agreed to issue the final replacement standards by June 14, 2005. EPA also issued three technical correction notices to the rule since the last ICR was approved. They were published at 65 FR 42292 (July 10, 2000), 65 FR 67268 (November 9, 2000), and 66 FR 24270 (May 14, 2001). This ICR revision takes into account the changes to the paperwork burden related to all the above stated changes to the September 30, 1999 rule to-date, as well as to the changes in the hazardous waste combustor universe since the last ICR approval.

During the settlement negotiations, we have had several meetings with all the parties affected by the rule. We collected new information about the operations of the HWCs through these meetings. We also obtained newer test burn and trial burn reports from the EPA Regions and the States, which updated our earlier information on the regulated community. We then published a **Federal Register** notice of data availability (NODA) for these sources at 67 FR 44452 (July 2, 2002) inviting public comments on our updated database. In response, we received over 55 comments, many of which included detailed information about the operation of the HWCs and supplementary test reports. These comments are available for public viewing under Docket # RCRA–2002–0019 and were used in the preparation of this renewal ICR.

The information collection required under this ICR is mandatory for the regulated sources, as it is essential to properly enforce the emission limitation requirements of the rule and will be used to further the proper performance of the functions of EPA. EPA believes that if the minimum requirements specified under the regulations are not met, EPA will not fulfill its Congressional mandate to protect public health and the environment. EPA, however, has made extensive efforts to integrate the monitoring, compliance testing and recordkeeping requirements of the CAA and RCRA, so that the facilities are able to avoid the burden of duplicate and unnecessary submissions. We also ensure, to the fullest extent by law, the confidentiality of the submitted to information. EPA may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

C. *Burden Statement:* The current annual burden to the 171 respondents under this ICR is estimated at 68,269 hours, or an average of 399 hours per respondent. See ICR Numbers 1773.02 thru 1773.06 in the Docket No. RCRA–2002–0030 for details. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: October 23, 2002.

Barnes Johnson,

Acting Director, Office of Solid Waste.

[FR Doc. 02–27621 Filed 10–29–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7401–8]

Request for Applications for Essential Use Exemptions to the Production and Import Phaseout of Ozone Depleting Substances Under the Montreal Protocol for the Years 2004 and 2005

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Through this action, the Environmental Protection Agency (EPA) is requesting applications for essential use allowances for calendar years 2004 and 2005. Essential-use allowances provide exemptions to the production and import phaseout of ozone-depleting substances and must be authorized by the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer. The U.S. government will use the applications received in response to this notice as the basis for its nomination of essential use allowances at the Fifteenth Meeting of the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer (the Protocol), to be held in 2003.

DATES: Applications for essential use exemptions must be submitted to EPA no later than November 29, 2002, in order for the United States (U.S.) Government to complete its review and to submit nominations to the United Nations Environment Programme and the Protocol Parties in a timely manner.

ADDRESSES: Send two copies of application materials to: Scott Monroe, Global Programs Division (6205J), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. (For applications sent via courier service, use the following direct mailing address: 501 3rd Street, NW., Washington, DC 20001.) Send one copy of non-confidential application materials to: Air Docket A–93–39, EPA Docket Center (EPA/DC), EPA West, Mail Code 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

CONFIDENTIALITY: Application materials that are sent to the Air Docket should not contain confidential or proprietary information. Such confidential information should be submitted under separate cover and be clearly identified as "trade secret," "proprietary," or "company confidential." Information covered by a claim of business confidentiality will be disclosed only to authorized government personnel. If no claim of confidentiality accompanies the information when it is received by EPA, the information may be made available to the public by EPA without further notice to the company (40 CFR 2.203).

FOR FURTHER INFORMATION CONTACT: Scott Monroe at the above address, or by telephone at (202) 564–9712, by fax at (202) 565–2155, or by email at *monroe.scott@epa.gov*. General information may be obtained from EPA's stratospheric protection Web site at *http://www.epa.gov/ozone*.

SUPPLEMENTARY INFORMATION:

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I. Background—The Essential Use Nomination Process.
II. Information Required for Essential Use Applications for Production or Importation of Class I Substances in 2004 and 2005.
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I. Background—The Essential Use Nomination Process

As described in previous **Federal Register** (FR) documents,[1] the Parties to the Protocol agreed during the Fourth Meeting in Copenhagen on November 23–25, 1992, to accelerate the phase-out schedules for Class I ozone-depleting substances. Specifically, the Parties agreed that non-Article 5 Parties (developed countries) would phase out the production and consumption of halons by January 1, 1994, and the production and consumption of other class I substances (under 40 CFR part 82, subpart A), except methyl bromide, by January 1, 1996. The Parties also reached decisions and adopted resolutions on a variety of other matters, including the criteria to be used for allowing "essential use" exemptions from the phaseout of production and importation of controlled substances. Decision IV/25 of the Fourth Meeting of the Parties details the specific criteria and review process for granting essential use exemptions.

Decision IV/25 states that "* * * a use of a controlled substance should qualify as "essential" only if: (i) it is necessary for the health, safety or is critical for the functioning of society (encompassing cultural and intellectual aspects); and (ii) there are no available technically and economically feasible alternatives or substitutes that are acceptable from the standpoint of environment and health." In addition, the Parties agreed "that production and consumption, if any, of a controlled substance, for essential uses should be permitted only if: (i) all economically feasible steps have been taken to minimize the essential use and any associated emission of the controlled substance; and (ii) the controlled substance is not available in sufficient quantity and quality from the existing stocks of banked or recycled controlled substances * * *." Decision XII/2 taken at the thirteenth meeting of the Parties states that any CFC metered dose inhaler (MDI) product approved after December 31, 2000, is non-essential unless the product meets the criteria in Decision IV/25 paragraph 1(a).

The first step in obtaining essential use allowances is for the user to consider whether the use of the controlled substance meets the criteria of Decision IV/25. If the essential use request is for an MDI product, that

[1] 58 *FR* 29410, May 20, 1993; 59 *FR* 52544, October 18, 1994; 60 *FR* 54349, October 23, 1995; 61 *FR* 51110, 0 30, 1996, 62 *FR* 51855, October 2, 1997; 63 *FR* 42629, August 10, 1998; 64 *FR* 50083, September 15, 1999; 65 *FR* 65377, November 1, 2000; and 200166 *FR* 56102, November 6, 2001.

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product must also meet the criteria of Decision XII/2. The user should then send a completed application in order to notify EPA of the candidate use and provide information for U.S. government agencies and the Protocol Parties to evaluate that use according to the criteria under the Protocol.

Upon receipt of the essential use exemption application, EPA reviews the information provided and works with other interested Federal agencies to determine whether it meets the essential use criteria and warrants being nominated by the United States for an exemption. In the case of multiple exemption requests for a single use such as for MDIs, EPA aggregates exemption requests received from individual entities into a single U.S. request. An important part of the EPA review of requests for CFCs for MDIs is to determine that the aggregate request for a particular future year adequately reflects the total market need for CFC MDIs and expected availability of CFC substitutes by that point in time. If the sum of individual requests does not account for such factors, the U.S. government may adjust the aggregate request to better reflect true market needs.

Nominations submitted by the United States and other Parties are forwarded from the United Nations Ozone Secretariat to the Montreal Protocol's Technical and Economic Assessment Panel (TEAP) and its Technical Options Committees (TOCs), which review the submissions and make recommendations to the Protocol Parties for essential use exemptions. Those recommendations are then considered by the Parties at their annual meeting for final decision. If the Parties declare a specified use of a controlled substance as essential, and issue the necessary exemption from the production and consumption phaseout, EPA may propose regulatory changes to reflect the decisions by the Parties, but only to the extent such action is consistent with the Clean Air Act (CAA or Act). Applicants should be aware that essential use exemptions granted to the United States for the year 2003 under the Protocol were limited to chlorofluorocarbons (CFCs) for metered dose inhalers (MDIs) to treat asthma and chronic obstructive pulmonary disease, and methyl chloroform for use in manufacturing solid rocket motors.

The timing of this process is such that in any given year the Parties review nominations for essential use exemptions from the production and consumption phaseout intended for the following year and subsequent years. This means that, if nominated, applications submitted in response to today's notice for an exemption in 2004 and 2005 will be considered by the Parties in 2003 for final action.

The quantities of controlled ODSs that are requested in response to this notice, if approved by the Parties to the Montreal Protocol in 2003, will then be allocated as essential-use allowances (EUAs) to the specific U.S. companies through notice and comment rulemaking. EUAs for the year 2004 will be allocated to U.S. companies at the end of 2003, and EUAs for the year 2005 will be made at the end of 2004.

II. Information Required for Essential Use Applications for Production or Importation of Class I Substances in 2004 and 2005

Through this action, EPA requests applications for essential use exemptions for all class I substances, except methyl bromide, for calendar years 2004 and 2005. The Parties to the Montreal Protocol have approved 2,975 metric tons of CFCs for the year 2004; therefore, this notice is the last opportunity to submit new or revised applications for 2004. This notice is also the first opportunity to submit requests for 2005. Companies will have an opportunity to submit new, supplemental, or amended applications for 2005 next year. All requests for exemptions submitted to EPA must present information as prescribed in the current version of the TEAP "Handbook on Essential Use Nominations" (or "handbook"), which was published in June 2001. The handbook is available electronically on the web at *http://www.teap.org*, or at *http://www.epa.gov/ozone*.

In brief, the TEAP Handbook states that applicants must present information on:

- Role of use in society;
- Alternatives to use;
- Steps to minimize use;
- Steps to minimize emissions;
- Recycling and stockpiling;
- Quantity of controlled substances requested; and
- Approval date and indications (for MDIs).

First, in order to obtain complete information from essential use applicants for CFC MDIs, EPA requires that parties (such as the International Pharmaceutical Aerosol Consortium) who request CFCs for multiple pharmaceutical companies make clear the amount of CFCs requested for each member company. Second, all essential use applications for CFCs must provide a breakdown of the quantity of CFCs necessary for each MDI product to be produced. This detailed breakdown of EUAs will allow EPA and the Food and Drug Administration to make informed decisions on the amount of CFC to be nominated by the U.S. Government for the years 2004 and 2005. Third, all new drug application (NDA) holders for CFC MDI products produced in the United States must submit a complete application for essential use allowances either on their own or in conjunction with their contract filler. In the case where a contract filler produces a portion of an NDA holder's CFC MDIs, the contract filler and the NDA holder must determine the total amount of CFCs necessary to produce the NDA holder's entire product line of CFC MDIs. The NDA holder must provide an estimate of how the CFCs would be split between the contract filler and the NDA holder in the allocation year. This estimate will be used only as a basis for determining the nomination amount, and may be adjusted prior to allocation of EUAs. Since the U.S. Government cannot forward incomplete or inadequate nominations to the Ozone Secretariat, it is important for applicants to provide all information requested in the Handbook, including the information specified in the supplemental research and development form (page 45).

The accounting framework matrix in the handbook entitled "Table IV: Reporting Accounting Framework for Essential Uses Other Than Laboratory and Analytical" requests data for the year 2002 on the amount of ODS exempted for an essential use, the amount acquired by production, the amount acquired by import, the amount on hand at the start of the year, the amount available for use in 2002, the amount used for the essential use, the quantity contained in exported products, the amount destroyed, and the amount on hand at the end of 2002. Because the data necessary to complete Table IV will not be available until after January 1, 2003, companies should not include this chart with their EUA applications in response to this action. EPA plans to send letters to each essential use applicant requesting the information in Table IV in the first two weeks of January 2003. Companies will have only fourteen days in which to respond since EPA must compile companies' responses to complete the U.S. CFC Accounting Framework for submission to the Parties to the Montreal Protocol by the end of January.

EPA anticipates that the Parties' review of MDI essential use requests will focus extensively on the United States' progress in developing alternatives to CFC MDIs, including education programs to inform patients and health care providers of the CFC phaseout and the transition to alternatives. Accordingly, applicants are strongly advised to present detailed information on these points, including the scope and cost of such efforts and the medical and patient organizations involved in the work. Applicants should submit their exemption requests to EPA as noted in the Addresses section at the beginning of today's document.

III. Availability of Pharmaceutical Grade CFCs for the Year 2005 and Beyond

The plant that currently produces pharmaceutical grade CFCs for U.S. MDIs is scheduled to close at the end of 2005. As such, it is necessary for MDI manufacturers who wish to continue production after that time to identify a source of pharmaceutical grade CFC past this date. The Parties to the Protocol have identified two possible options. One is to qualify another plant to continue to produce pharmaceutical grade CFCs on a just-in-time basis. A second option is to request that CFCs be produced from the existing plant in a "final campaign" production of CFC to be produced in 2005. The CFCs produced in a final campaign could, in theory, then supply the remainder of the transition to CFC-free MDIs. It is important to note that this second option is under consideration but has not yet been approved by the Parties.

In order for EPA to plan effectively for the future of the essential use process, and in order for the U.S. Government to be fully informed, EPA must gather information about how MDI manufacturers intend to procure CFCs after 2005. Therefore, we request that all essential use applicants for MDIs answer the following two questions as completely as possible.

1. What steps has your company taken to ensure a continued supply of CFCs beyond 2005? Please be specific and explain whether there are plans to qualify a plant to produce pharmaceutical grade CFCs. Please identify the chemical company, the location of the plant, and the date the new plant is expected to begin production.

2. Does your company wish to make an essential use request for final campaign production of pharmaceutical grade CFCs for the year 2005 and beyond? If yes, how much CFCs does your company anticipate requesting?

The answers you provide will be considered confidential business information, and will only be shared with authorized government officials. While we are requesting information related to the possibility of campaign production of CFCs for MDIs in 2005, we are not requesting that companies make an official nomination for campaign production in 2005. If it is determined that campaign production is necessary and allowed under the Montreal Protocol, EPA will issue a separate notice requesting nominations for campaign production.

Dated: October 22, 2002.

Robert Brenner,

Acting Assistant Administrator, Office of Air and Radiation.

[FR Doc. 02–27623 Filed 10–29–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7402–1]

Environmental Laboratory Advisory Board (ELAB) Meeting Date, and Agenda

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of teleconference meeting.

SUMMARY: The Environmental Protection Agency's Environmental Laboratory Advisory Board (ELAB) will have a teleconference meeting on December 18, 2002, at 11:00 AM EDT to discuss the ideas, comments, and suggestions presented at the November 21, 2002, ELAB Meeting and Open Forum. Items to be discussed include: (1) Opinions and comments made at the New Mexico ELAB meetings, (2) restructuring of the National Environmental Laboratory Accreditation Conference (NELAC), (3) discussion on future ELAB recommendations to EPA, and (4) recommendations for increasing the number of States that are Accrediting Authorities. ELAB is soliciting input from the public on these and other issues related to the National Environmental Laboratory Accreditation Program (NELAP) and the NELAC standards. Written comments on NELAP laboratory accreditation and the NELAC standards are encouraged and should be sent to Mr. Edward Kantor, DFO, US EPA, P.O. Box 93478, Las Vegas NV 89193–3478, or faxed to (702) 798–2261, or emailed to *kantor.edward@epa.gov*. Members of the public are invited to listen to the teleconference calls and, time permitting, will be allowed to comment on issues discussed during this and previous ELAB meetings. Those persons interested in attending should call Edward Kantor at 702–798–2690 to obtain teleconference information. The number of lines are limited and will be distributed on a first come, first served basis. Preference will be given to a group wishing to attend over a request from an individual.

Dated: October 23, 2002.

John G. Lyon,

Director, Environmental Sciences Division, National Environmental Research Laboratory.

[FR Doc. 02–27624 Filed 10–29–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0255; FRL–7275–1]

Oxyfluorfen; Availability of Reregistration Eligibility Decision Document for Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces availability and starts a 60–day public comment period on the Reregistration Eligibility Decision (RED) document for the pesticide active ingredient oxyfluorfen. The RED represents EPA's formal regulatory assessment of the health and environmental data base of the subject chemical and presents the Agency's determination regarding which pesticidal uses are eligible for reregistration.

DATES: Comments, identified by docket ID number OPP–2002–0255, must be received on or before December 30, 2002.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Patrick Dobak, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8180; e-mail address: dobak.pat@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to persons who are or may be required to conduct testing of chemical substances under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) or the Federal Food, Drug, and Cosmetic Act (FFDCA); environmental, human health, and

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agricultural advocates; pesticides users; and members of the public interested in the use of pesticides. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of This Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket ID number OPP–2002–0255. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall # 2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at http://www.epa.gov/fedrgstr/. To access RED documents and RED fact sheets electronically, go directly to the REDs table on the EPA Office of Pesticide Programs Home Page, at http://www.epa.gov/pesticides/reregistration/status.htm.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in EPA's Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket, but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at http://www.epa.gov/edocket, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2002–0255. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to opp-docket@epa.gov, Attention: Docket ID number OPP–2002–0255. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency (7502C), 1200 Pennsylvania Ave., NW., Washington, DC 20460. Attention: Docket ID number OPP–2002–0255.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID number OPP–2002–0255. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the notice or collection activity.

7. Make sure to submit your comments by the deadline in this document.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background

A. What Action Is the Agency Taking?

The Agency has issued a RED for the pesticide active ingredient listed in this document. Under FIFRA, as amended in 1988, EPA is conducting an accelerated reregistration program to reevaluate existing pesticides to make sure they meet current scientific and regulatory standards. The data base to support the reregistration of the chemical listed in this document is substantially complete, and the pesticide's risks have been mitigated so that it will not pose unreasonable risks to people or the environment when used according to its approved labeling. In addition, EPA is reevaluating existing pesticides and reassessing tolerances under the Food Quality Protection Act (FQPA) of 1996. The pesticides included in this notice also have been found to meet the FQPA safety standard.

All registrants of pesticide products containing the active ingredient listed in this document have been sent the appropriate RED, and must respond to labeling requirements and product specific data requirements (if applicable) within 8 months of receipt. Products also containing other pesticide active ingredients will not be reregistered until those other active ingredients are determined to be eligible for reregistration.

The reregistration program is being conducted under Congressionally mandated time frames, and EPA recognizes both the need to make timely reregistration decisions and to involve the public. Therefore, EPA is issuing this RED as a final document with a 60–day comment period. Although the 60–day public comment period does not affect the registrant's response due date, it is intended to provide an opportunity for public input and a mechanism for initiating any necessary amendments to the RED. All comments will be considered by the Agency. If any comment significantly affects the RED, EPA will amend the RED by publishing the amendment in the **Federal Register**.

B. What Is the Agency's Authority for Taking This Action?

The legal authority for these REDs falls under FIFRA, as amended in 1988 and 1996. Section 4(g)(2)(A) of FIFRA directs that, after submission of all data concerning a pesticide active ingredient, "the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration," before calling in product-specific data on individual end-use products, and either reregistering products or taking "other appropriate regulatory action."

List of Subjects

Environmental protection, Chemicals, Pesticides and pests.

Dated: October 24, 2002.

Betty Shackleford,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 02–27626 Filed 10–29–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7402–2]

Health Assessment of 1,3-Butadiene

AGENCY: Environmental Protection Agency.

ACTION: Notice of Availability.

SUMMARY: This notice announces the availability of a final report titled, Health Assessment of 1,3-Butadiene (EPA/600/P–98/001F), which was prepared by the U.S. Environmental Protection Agency's (EPA) National Center for Environmental Assessment (NCEA) of the Office of Research and Development (ORD).

DATES: This document will be available on or about October 30, 2002.

ADDRESSES: The document will be made available electronically through the NCEA Web site (*http://www.epa.gov/ncea*). A limited number of paper copies will be available from the EPA's National Service Center for Environmental Publications (NSCEP), P.O. Box 42419, Cincinnati, OH 45242; telephone: 1–800–490–9198 or 513–489–8190; facsimile: 513–489–8695. Please provide your name, your mailing address, the title and the EPA number of the requested publication.

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FOR FURTHER INFORMATION CONTACT: The Technical Information Staff, National Center for Environmental Assessment/ Washington Office (8623D), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Telephone: 202–564–3261; fax: 202–565–0050; e-mail: *nceadc.comment@epa.gov*.

SUPPLEMENTARY INFORMATION: This assessment was conducted to review the new information that has become available since EPA's 1985 health assessment of 1,3-butadiene.

1,3-Butadiene is a gas used commercially in the production of styrene-butadiene rubber, plastics, and thermoplastic resins. The major environmental source of 1,3-butadiene is the incomplete combustion of fuels from mobile sources (*e.g.*, automobile exhaust). Tobacco smoke can be a significant source of 1,3-butadiene in indoor air.

This assessment concludes that 1,3-butadiene is carcinogenic to humans by inhalation, based on the total weight of evidence. The specific mechanisms of 1,3-butadiene-induced carcinogenesis are unknown, however, it is virtually certain that the carcinogenic effects are mediated by genotoxic metabolites of 1,3-butadiene.

Animal data suggest that females may be more sensitive than males for cancer effects; nevertheless, there are insufficient data from which to draw any conclusions on potentially sensitive subpopulations.

The human incremental lifetime unit cancer (incidence) risk estimate is based on extrapolation from leukemias observed in an occupational epidemiologic study. A twofold adjustment to the epidemiologic-based unit cancer risk is then applied to reflect evidence from the rodent bioassays suggesting that the epidemiologic-based estimate may underestimate total cancer risk from 1,3-butadiene exposure in the general population.

1,3-Butadiene also causes a variety of reproductive and developmental effects in mice; no human data on these effects are available. The most sensitive effect was ovarian atrophy observed in a lifetime bioassay of female mice. Based on this critical effect and using the benchmark concentration methodology, an RfC (*i.e.*, a chronic exposure level presumed to be "without appreciable risk" for noncancer effects) was calculated.

Dated: October 23, 2002.

Paul Gilman,

Assistant Administrator, Office of Research and Development.

[FR Doc. 02–27625 Filed 10–29–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7402–4]

Clean Water Act—Notice of Issuance and Opportunity for Public Comment on an Administrative Complaint Filed by the Environmental Protection Agency, Region IX

AGENCY: Environmental Protection Agency ("EPA").

ACTION: Notice.

SUMMARY: On September 25, 2002, the U.S. Environmental Protection Agency, Region IX issued an Administrative Complaint: *In the Matter of Bruce Birch and Future Mountain Development Trust, 3808 Rosecrans Street, #281, San Diego, California 92110.* This Complaint proposes to issue a Final Order to Bruce Birch and Future Mountain Development Trust pursuant to section 309(g) of the Clean Water Act, 33 U.S.C. 1319(g), assessing a civil penalty of up to $137,500 for violations of the Clean Water Act.

The Complaint alleges that Bruce Birch and Future Mountain Development Trust violated the Clean Water Act by authorizing the discharge of dredge and fill material into a federally regulated water course, the San Luis Rey River in San Diego County, on numerous days in 1998 and 1999 without a Clean Water Act section 404 permit issued by the U.S. Army Corps of Engineers.

The U.S. Environmental Protection Agency is required by Clean Water Act section 309(g)(4)(A), 33 U.S.C. 1319(g)(4)(A), to provide public notice of and reasonable opportunity to comment on the proposal to issue an Administrative Order before issuing the final Order.

Any person who comments on the proposal to issue a final Administrative Order shall be given notice of any hearing held in this matter. If a hearing is held, the commenter will be entitled to an opportunity to be heard and to present evidence. If no hearing is held, commenters may petition EPA to set aside any subsequent final Order and to hold a hearing. Commenters may also seek judicial review of the final Order pursuant to Clean Water Act section 309(g)(8), 33 U.S.C. 1319(g)(8).

DATES: Persons wishing to comment on the proposal to issue a final Administrative Order may do so by submitting written comments, postmarked no later than fifteen days from the date this Notice is published, to the address below.

ADDRESSES: U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

FOR FURTHER INFORMATION CONTACT: Requests for copies of the Administrative Complaint or further information on the matter should be directed to Marcela von Vacano at (415) 972–3905, or via mail at the above address, Mail Code ORC–2.

Catherine Kuhlman,

Acting Director, Water Division.

[FR Doc. 02–27618 Filed 10–29–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7402–5]

Clean Water Act—Notice of Issuance and Opportunity for Public Comment on an Administrative Complaint Filed by the Environmental Protection Agency, Region IX

AGENCY: Environmental Protection Agency ("EPA").

ACTION: Notice.

SUMMARY: On September 25, 2002, the U.S. Environmental Protection Agency, Region IX issued an Administrative Complaint: *In the Matter of Al Julian, 29814 Margale Lane, Vista, California 92084.* This Complaint proposes to issue a Final Order to Al Julian pursuant to section 309(g) of the Clean Water Act, 33 U.S.C. 1319(g), assessing a civil penalty of up to $137,500 for violations of the Clean Water Act.

The Complaint alleges that Al Julian violated the Clean Water Act by discharging dredge and fill material into a federally regulated water course, the San Luis Rey River in San Diego County, on numerous days in 1998 and 1999 without a Clean Water Act section 404 permit issued by the U.S. Army Corps of Engineers. Furthermore, Mr. Julian violated section 308(a), 33 U.S.C. 1318(a), which authorizes EPA to require persons subject to the Act to furnish information, by failing to respond to EPA's request.

The U.S. Environmental Protection Agency is required by Clean Water Act section 309(g)(4)(A), 33 U.S.C. 1319(g)(4)(A), to provide public notice of and reasonable opportunity to comment on the proposal to issue an Administrative Order before issuing the final Order.

Any person who comments on the proposal to issue a final Administrative Order shall be given notice of any hearing held in this matter. If a hearing is held, the commenter will be entitled to an opportunity to be heard and to present evidence. If no hearing is held, commenters may petition EPA to set aside any subsequent final Order and to hold a hearing. Commenters may also seek judicial review of the final Order pursuant to Clean Water Act section 309(g)(8), 33 U.S.C. 1319(g)(8).

DATES: Persons wishing to comment on the proposal to issue a final Administrative Order may do so by submitting written comments, postmarked no later than fifteen days from the date this Notice is published, to the address below.

ADDRESSES: U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

FOR FURTHER INFORMATION CONTACT: Requests for copies of the Administrative Complaint or further information on the matter should be directed to Marcela von Vacano at (415) 972–3905, or via mail at the above address, Mail Code ORC–2.

Catherine Kuhlman,

Acting Director, Water Division.

[FR Doc. 02–27620 Filed 10–29–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7402–3; CWA–HQ–2002–6001; EPCRA–HQ–2002–6001; CAA–HQ–2002–6001; RCRA–HQ–2002–6001]

Clean Water Act Class II: Proposed Administrative Settlement, Penalty Assessment and Opportunity To Comment Regarding NEXTEL Communications, Inc., et. al. and NII Holdings, Inc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has entered into a consent agreement with NEXTEL Communications, Inc. and its subsidiaries, and NII Holdings, Inc., collectively referred to as "NEXTEL", to resolve violations of the Clean Water Act ("CWA"), the Clean Air Act ("CAA"), the Resource Conservation and Recovery Act ("RCRA"), and the Emergency Planning and Community Right-to-Know Act ("EPCRA") and their implementing regulations.

The Administrator, as required by CWA section 311(b)(6)(C), 33 U.S.C. 1321(b)(6)(C), is hereby providing public notice of, and an opportunity for interested persons to comment on, this consent agreement and proposed final order. EPA is also providing public notice of, and opportunity for interested parties to comment on, the CAA, RCRA, and EPCRA portions of this consent agreement.

NEXTEL failed to prepare Spill Prevention Control and Countermeasure ("SPCC") plans for forty-eight facilities where they stored diesel oil in above ground tanks. EPA, as authorized by CWA section 311(b)(6), 33 U.S.C. 1321(b)(6), has assessed a civil penalty for these violations.

NEXTEL failed to obtain the appropriate operating permits or exemptions at eight facilities in violation of CAA section 110, 42 U.S.C. 7410, and various state implementation plan ("SIP") requirements for emergency generators. EPA, as authorized by CAA section 113(d)(1), 42 U.S.C. 7413(d)(1), has assessed a civil penalty for these violations.

NEXTEL failed to file an emergency planning notification with the State Emergency Response Commission ("SERC") and to provide the name of an emergency contact to the Local Emergency Planning Committee ("LEPC"). NEXTEL failed to submit Material Safety Data Sheets ("MSDS") or a list of chemicals to the LEPC, the SERC, and the fire department with jurisdiction over each facility for seventy-five facilities in violation of EPCRA section 311, 42 U.S.C. 11021. At sixty-six facilities, NEXTEL failed to submit an Emergency and Hazardous Chemical Inventory form to the LEPC, the SERC, and the fire department with jurisdiction over each facility in violation of EPCRA section 312, 42 U.S.C. 11022. EPA, as authorized by EPCRA section 325, 42 U.S.C. 11045, has assessed a civil penalty for these violations.

NEXTEL failed to make a hazardous waste determination and improperly disposed of hazardous waste at one facility in violation of 9 VAC 20–60–261(A), [40 CFR 261.5(g)(1) and (g)(3)]. NEXTEL violated RCRA section 9003(d), 42 U.S.C. 6991b(d) when the insurance policy for underground storage tanks failed to use the terms "corrective action" or "sudden, non-sudden or accidental release" to describe coverage for four facilities. At one facility NEXTEL failed to notify the State or local agency or department of the existence of an underground storage tank in violation of RCRA section 9002(a), 42 U.S.C. 6991(a)(1). NEXTEL failed to follow all of the relevant underground storage tank regulations in violation of RCRA section 9003, 42 U.S.C. 6991b at one facility.

DATES: Comments are due on or before November 29, 2002.

ADDRESSES: Send written comments to the Docket Office, Enforcement and Compliance Docket and Information Center (2201T), Docket Number EC–2002–021, U.S. Environmental Protection Agency, EPA West, 1200 Pennsylvania Avenue NW., Room B133, Washington, DC 20460 (in triplicate if possible.)

Please use a font size no smaller than 12. Comments may also be sent electronically to *docket.oeca@epa.gov* or faxed to (202) 566–1511. Attach electronic comments as a text file and try to avoid the use of special characters and any forms of encryption. Please be sure to include the Docket Number EC–2002–021 on your document.

In person, deliver comments to U.S. Environmental Protection Agency, EPA West, 1301 Constitution Avenue, NW., Room B133, Washington, DC 20460. Parties interested in reviewing docket information may do so by calling (202) 566–1512 or (202) 566–1513. A reasonable fee may be charged by EPA for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Beth Cavalier, Multimedia Enforcement Division (2248–A), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone (202) 564–3271; fax: (202) 564–9001; e-mail: *cavalier.beth@epa.gov*.

SUPPLEMENTARY INFORMATION: Electronic Copies: Electronic copies of this document are available from the EPA Home Page under the link "Laws and Regulations" at the **Federal Register**—Environmental Documents entry *(http://www.epa.gov/fedrgstr)*.

I. Background

NEXTEL Communications, Inc., its subsidiaries, and NII Holdings, Inc. are telecommunications companies incorporated in the States of Delaware, Georgia, and Texas. NEXTEL is located at 2001 Edmond Halley Drive, Reston, Virginia, 20191 and NII Holdings, Inc. is located at 10700 Parkridge Boulevard, Suite 600, Reston, Virginia, 20191. NEXTEL disclosed, pursuant to the EPA "Incentives for Self-Policing: Discovery, Disclosures, Correction and Prevention of Violations" ("Audit Policy"), 65 FR 19618 (April 11, 2000), that they failed to prepare SPCC plans for forty-eight facilities where they stored diesel oil in above ground storage tanks, in violation of the CWA section 311(b)(3) and 40

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CFR part 112. NEXTEL disclosed that for eight facilities they had failed to obtain operating permits or exemptions in violation of CAA section 110, 42 U.S.C. 7410, and various SIP requirements for emergency generators. Nextel disclosed that at seventy-two facilities they had failed to file emergency planning notifications with the SERC and failed to provide the name of an emergency contact to the LEPC, in violation of EPCRA sections 302 and 393, 42 U.S.C. 7413(a)(1). Nextel further disclosed that at seventy-five facilities they had failed to submit MSDS' or a list of chemicals to the LEPC, SERC, and the fire departments with jurisdiction over the facilities, in violation of EPCRA section 311, 42 U.S.C. 11021; and that at sixty-six facilities had failed to submit an Emergency and Hazardous Chemical Inventory for the LEPC, SERC, and fire departments with jurisdiction over the facilities, in violation of EPCRA section 312, 42 U.S.C. 11022. At four facilities Nextel failed to ensure that the language in their financial assurance insurance policies for underground storage tanks was not exactly as required by regulation, in violation of RCRA section 9003(d), 42 U.S.C. 6991(d). Nextel violated RCRA section 9002(a)(1), 42 U.S.C. 6991(a)(1) when it failed to notify the state of the existence of an underground storage tank at one facility; and Nextel violated RCRA section 9003, 42 U.S.C. 6991b and all of the relevant underground storage tank regulations at one facility. Nextel failed to make a hazardous waste determination and improperly disposed of hazardous waste at one facility in violation of 9–VAC 20–60–261(A).

EPA determined that Nextel met the criteria set out in the Audit Policy for a 100% waiver of the gravity component of the penalty. As a result, EPA waived the gravity based penalty ($1,994,810) and proposed a settlement penalty amount of thirty-five thousand and four dollars ($35,004). This is the amount of the economic benefit gained by Nextel, attributable to their delayed compliance with the CWA, CAA, RCRA, and EPCRA regulations. Nextel Communications, Inc. has agreed to pay this amount. EPA and Nextel negotiated and signed an administrative consent agreement, following the Consolidated Rules of Practice, 40 CFR 22.13(b), on October 18, 2002 (*In Re: Nextel Communications, Inc et. al. and NII Holdings, Inc.*, Docket Nos. CWA–HQ–2002–6001, EPCRA–HQ–2002–6001, CAA–HQ–2002–6001, and RCRA–HQ–2002–6001). This consent agreement is subject to public notice and comment under CWA section 311(b)(6), 33 U.S.C. 1321(b)(6). EPA is expanding this opportunity for public comment to all other aspects of this consent agreement.

Under CWA section 311(b)(6)(A), 33 U.S.C. 1321 (b)(6)(A), any owner, operator, or person in charge of a vessel, onshore facility, or offshore facility from which oil is discharged in violation of the CWA section 311(b)(3), 33 U.S.C. 1321 (b)(3), or who fails or refuses to comply with any regulations that have been issued under CWA section 311(j), 33 U.S.C. 1321(j), may be assessed an administrative civil penalty of up to $137,500 by EPA. Class II proceedings under CWA section 311(b)(6) are conducted in accordance with 40 CFR part 22.

Under CAA section 113(d), the Administrator may issue an administrative order assessing a civil penalty against any person who has violated an applicable implementation plan or any other requirement of the Act, including any rule, order, waiver, permit or plan. Proceedings under CAA section 113(d) are conducted in accordance with 40 CFR part 22.

Under EPCRA section 325, the Administrator may issue an administrative order assessing a civil penalty against any person who has violated applicable emergency planning or right to know requirements, or any other requirement of the Act. Proceedings under EPCRA section 325 are conducted in accordance with 40 CFR part 22.

Under RCRA section 3008, the Administrator may issue an administrative order assessing a civil penalty against any person who has violated applicable underground storage tank or hazardous waste requirements, or any other requirement of the Act. Proceedings under RCRA section 3008 are conducted in accordance with 40 CFR part 22.

The procedures by which the public may comment on a proposed Class II penalty order, or participate in a Clean Water Act Class II penalty proceeding, are set forth in 40 CFR 22.45. The deadline for submitting public comment on this proposed final order is November 29, 2002. All comments will be transferred to the Environmental Appeals Board ("EAB") of EPA for consideration. The powers and duties of the EAB are outlined in 40 CFR 22.4(a).

Pursuant to CWA section 311(b)(6)(C), EPA will not issue an order in this proceeding prior to the close of the public comment period.

List of Subjects

Environmental protection.

Dated: October 24, 2002.

Rosemarie A. Kelley,

Acting Director, Multimedia Enforcement Division, Office of Enforcement and Compliance Assurance.

[FR Doc. 02–27622 Filed 10–29–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collections Approved by Office of Management and Budget

October 22, 2002.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Pub. L. 104–13. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid control number. For further information contact Paul J. Laurenzano, Federal Communications Commission, (202) 418–1359 or via the Internet at *plaurenz@fcc.gov*.

OMB Control No.: 3060–0989.

Expiration Date: 11/30/2002.

Title: Procedures for Applicants Requiring Section 214 Authorization for Domestic Interstate Transmission Lines Acquired Through Corporate Control, 47 CFR Sections 63.01, 63.03, and 63.04.

Form No.: N/A.

Estimated Annual Burden: 35 responses; 1,655 total annual hours; 3–65 hours per respondent.

Needs and Uses: The Implementation of Further Streamlining Measures for Domestic Section 214 Authorizations Report and Order released March 21, 2002, provides presumptive streamlining categories, allows for joint applications for international and domestic transfers of control, clarifies confusion about content of applications, provides timelines for streamlined transaction review, provides a pro forma transaction process, allows asset acquisitions to be treated as transfers of control and deletes obsolete sections of the Commission's rules. The information will be used to ensure that applicants comply with the requirements of 47 U.S.C. section 214.

OMB Control No.: 3060–0793.

Expiration Date: 10/31/2005.

Title: Federal-State Joint Board on Universal Service, CC Docket No. 96–45, Procedures for Self-Certifying as a Rural Carrier.

Form No.: N/A.

Estimated Annual Burden: 10 responses; 10 total annual hours; 1 hour per response.

Needs and Uses: In the Universal Service Order, the Commission determined that rural and non-rural carriers will receive federal universal service support determined by separate mechanisms, at least until January 1, 2001. The Commission stated that it would define rural carriers as those carriers that meet the statutory definition of a rural telephone company in section 153(37) of the Communications Act. In addition, the Commission determined that local exchange carriers (LECs) should self-certify their status as a rural company each year to the Commission and their state commission.

In a Tenth Report and Order (Report and Order) issued on November 2, 1999, the Commission adopted the proposals made that carriers who serve under 100,000 access lines should not have to file the annual rural certification letter unless their status has changed since their last filing. Carriers with more than 100,000 access lines, that seek rural status, need to file rural certifications for their year 2001 status and thereafter, should re-certify only if their status has changed. The Commission found that the relaxed re-certification requirements will reduce administrative burdens for carriers seeking rural certification and for the Commission. Statutory authority for this information collection is section 254 of the Telecommunications Act.

OMB Control No.: 3060–0742.

Expiration Date: 08/31/2005.

Title: Telephone Number Portability (47 CFR part 52, subpart C, Sections 52.21–52.33) and CC docket no. 95–116.

Form No.: N/A.

Estimated Annual Burden: 1,925 responses; 13,613 total annual hours; $77,000 cost burden; .50—149 hours per response.

Needs and Uses: 47 CFR part 52, subpart C implements the statutory requirement that LECs provide number probability. In a MO&O on reconsideration, issued in CC docket no. 95–116, the Commission implements new and/or modified requirements. (1) In order to calculate a multi-region carrier's share of LNP administration costs, the agency needs a certification if that carrier cannot divide its revenue by LNP region and instead chooses to allocate such revenue by subscriber percentages. (2) To ensure that a non-LNP capable incumbent local exchange carrier participating in an extended area service calling plan with an LNP-capable carrier complies with LNP cost recovery law and rules, the agency needs the collection by tariff if such a carrier seeks to recover its query and LNP administration costs.

OMB Control No.: 3060–0540.

Expiration Date: 09/30/2005.

Title: Tariff Filing Requirements for Nondominant Common Carriers.

Form No.: N/A.

Estimated Annual Burden: 2,000 responses; 21,000 total annual burden; $1,260,000 cost burden; 10.5 hours per response.

Needs and Uses: Nondominant carriers must file tariffs pursuant to the requirements contained in 47 CFR sections 61.20–61.23. These tariff filing rules for nondominant carriers were originally adopted to comply with the decision of the United States Court of Appeals for the District of Columbia Circuit, which required all nondominant carriers to file tariffs with the Commission. *See AT&T* v. *FCC*, 978 F.2d 727 (D.C. Cir. 1992). *See also Southwestern Bell Corp.* v. *FCC*, 43 F.3d 1515 (D.C. Cir. 1995).

The information collected pursuant to the nondominant tariff filing rules is used to comply with section 203 of the Communications Act of 1934, which requires that carriers file schedules indicating the rates, terms, and conditions of their service offerings. The information collected pursuant to the tariff filing requirements is used by the Commission to determine whether the rates, terms, and conditions of service offered are just and reasonable as the Act requires. These tariff filing requirements enable the Commission and the public to ensure that the service offerings of communications common carriers comply with the requirements of the Act. If the information were not filed, the Commission would not be able to carry out its responsibilities as required by the Act.

OMB Control No.: 3060–0463.

Expiration Date: 09/30/2005.

Title: Telecommunications Services for Individuals with Hearing and Speech Disabilities and the Americans with Disabilities Act of 1990, 47 CFR Part 64 (Sections 64.601–64.605).

Form No.: N/A.

Estimated Annual Burden: 5,052 responses; 26,831 total annual hours; 6 hours per response.

Needs and Uses: The Americans with Disabilities Act of 1990 (ADA), Pub. L. 101–336, 104 Stat. 327, 366–69, was enacted on July 26, 1990. The purpose of the ADA is to provide a clear and comprehensive national mandate to end discrimination against individuals with disabilities and to bring persons with disabilities into the economic and social mainstream of American life; to provide enforceable standards addressing discrimination against individuals with disabilities; and to ensure that the Federal government play a central role in enforcing these standards on behalf of individuals with disabilities. Title IV of the ADA adds section 225 to the Communications Act of 1934. Section 225 requires the Commission to promulgate regulations that require all domestic telephone common carriers to provide telecommunications relay services (TRS). 47 CFR part 64, subpart F implements certain provisions of the ADA. It contains the operational, technical, and functional standards required of all TRS providers and the procedures for state certification. Although section 225 of the ADA imposes on all common carriers providing interstate or intrastate telephone services an obligation to provide to hearing and speech-impaired individuals telecommunications services that enable them to communicate with hearing individuals, and charges the Commission with regulatory oversight, states may seek to establish intrastate relay services that satisfy federal requirements. Pursuant to section 64.602, any violation of subpart F by any common carrier engaged in intrastate communications will be subject to the same remedies, penalties, and procedures as are applicable to a violation of the Communications Act by a common carrier engaged in interstate communications.

OMB Control No.: 3060–0169.

Expiration Date: 06/30/2005.

Title: Sections 43.51 and 43.53—Reports and Records of Communications Common Carriers and Affiliates.

Form No.: N/A.

Estimated Annual Burden: 374 responses; 6,029 total annual hours; 83–101 hours per response.

Needs and Uses: Sections 211 and 215 of the Communications Act of 1934, as amended, 47 U.S.C. sections 211 and 215 require that the FCC examine transactions of any common carriers relating to the activities of that carrier which may affect the charges and/or services rendered under the Act. The reports required by sections 43.51 and 43.53 are the means by which the FCC gathers information concerning the activities of carriers which it examines. *See* 43.51 also requires carriers to maintain copies of certain contracts, to have them readily accessible to Commission staff and members of the public upon request and to forward individual contracts to the Commission as requested.

OMB Control No.: 3060–0687.

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Expiration Date: 10/30/2005.

Title: Access to Telecommunications Equipment and Services by Persons with Disabilities, CC Docket No. 87–124.

Form No.: N/A.

Estimated Annual Burden: 1,268 responses; 25,000 total annual hours; $272,000 cost burden; 9.86 hours per response.

Needs and Uses: Title II of the Communications Act of 1934, as amended, 47 U.S.C. section 201 *et. al.*, provides the statutory authority for the Commission to promulgate the rules and regulations contained in part 68 of FCC Rules, 47 CFR part 68. Requirements in part 68 are necessary to prevent degradation of the telephone network. The following collections are necessary to inform consumers who purchase and/or use telephone equipment to determine whether the telephone is hearing aid compatible.

Pursuant to section 68.300(b), all registered telephone manufactured in the U.S. or imported for use in the U.S. that are hearing aid compatible must be stamped with the letters HAC. The provision applies to all telephones manufactured or imported as of March 1, 1997 for use in the United States. The provision excludes telephones used with public mobile services or private radio services, and secure telephones.

Section 68.112(b)(3) requires that employers with fifteen or more employees provide emergency telephones for use by employees with hearing disabilities, and that the employers "designate" such telephones for emergency use. The "designation" might be a sign or a written notice to employees, or some other means of designation. The type of designation is left up to the employer.

Section 68.224(a) requires a notice to be contained on the surface of the packaging of a non-hearing aid compatible telephone that the telephone contained therein is not hearing aid compatible, as defined in sections 68.4(a)(3) and 68.316, or if offered for sale without a surrounding package, shall be fixed with a written statement that the telephone is not hearing aid-compatible, as defined by sections 68.4(a)(3) and 68.316. Section 68.224(b) also requires that the telephone equipment be accompanied by instructions in accordance with § 68.218(b)(5) of the rules.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–27568 Filed 10–29–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Submitted to OMB for Review and Approval

October 17, 2002.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before November 29, 2002. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commissions, Room 1–A804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *lesmith@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at *lesmith@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0532.

Title: Scanning Receiver Compliance Exhibit, Section 2.1033 (b)(10) and Section 15.121.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households; Not-for-profit institutions; Business or other for-profit entities; Federal Government; and State, Local or Tribal Government.

Number of Respondents: 40.

Estimated Time per Response: 1 hour.

Frequency of Response: Recordkeeping; On occasion reporting requirement; Third party disclosure.

Total Annual Burden: 40 hours.

Total Estimated Cost: $2,000.

Needs and Uses: The FCC rules under 47 CFR 2.1033(b)(10) require manufacturers of scanning receivers to design their equipment so that: it has 38 dB of image rejection for Cellular Service frequencies, tuning, control, and filtering circuitry are inaccessible, and any attempt to modify the scanning receiver to receive Cellular Service transmissions will likely render the scanning receiver inoperable. The Commission also requires manufacturers to submit information with any application for certification that describes: the testing method used to determine compliance with the 38 dB image rejection ratio, the design features that prevent modification of the scanning receiver to receive Cellular Service transmissions, and the design steps taken to make tuning, control, and filtering circuitry inaccessible. Furthermore, the FCC requires equipment to carry a statement assessing the vulnerability of the scanning receiver to modification and to have a label affixed to the scanning receiver, similar to the following:

Warning: Modification of this device to receive cellular radiotelephone service signals is prohibited under FCC Rules and Federal Law.

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 02–27567 Filed 10–29–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 011831.

Title: Maersk Sealand/Wan Hai Lines Asia-U.S. West Coast Slot Charter Agreement.

Parties: A. P. Moller-Maersk Sealand, Wan Hai Lines Ltd.

Synopsis: The agreement authorizes Maersk Sealand to charter space to Wan Hai in the trades to and from ports of Los Angeles, Long Beach and Oakland, California, on the one hand, and the ports of Yantian, People's Republic of China, Hong Kong, S.A.R., and Kaohsiung, Taiwan, on the other. The parties request expedited review.

By Order of the Federal Maritime Commission.

Dated: October 25, 2002.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 02–27643 Filed 10–29–02; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Revocations

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, effective on the corresponding date shown below:

License Number: 17803N.
Name: Advanced Global Logistics, LLC.
Address: 535 West 34th Street, New York, NY 10001.
Date Revoked: October 5, 2002.
Reason: Failed to maintain a valid bond.

License Number: 4210F.
Name: Air Cargo Expediters Inc.
Address: 167–17 146th Road, Jamaica, NY 11434.
Date Revoked: July 24, 2002.
Reason: Failed to maintain a valid bond.

License Number: 11988N.
Name: All World Services, Inc.
Address: 8348 NW 30th Terrace, Miami, FL 33122.
Date Revoked: April 22, 2002.
Reason: Failed to maintain a valid bond.

License Number: 4383NF.
Name: DGM Services, Inc. dba Dangerous Goods *Management & DG Express.*
Address: 14335–C Interdrive West, Houston, TX 77032.
Date Revoked: August 14, 2002.
Reason: Failed to maintain valid bonds.

License Number: 17642N.
Name: Direct Shipping, Corp. dba Direct Shipping Line.
Address: 9550 Flair Drive, #503, El Monte, CA 91731.
Date Revoked: September 29, 2002.
Reason : Failed to maintain a valid bond.

License Number : 2022F.
Name : Embert Shipping, Inc.
Address : 437 Marmore Avenue, Coral Gables, FL 33146.
Date Revoked : October 23, 2002.
Reason : Surrendered license voluntarily.

License Number : 16321N.
Name : Express Consolidation Systems Corp.
Address : 253 Academy Street, Jersey City, NJ 07306.
Date Revoked : September 28, 2002.
Reason : Failed to maintain a valid bond.

License Number: 10956N.
Name: F.A.R. Freight Services, Inc. dba Principal Container Line.
Address: 215 Montgomery Street, 2nd Floor, Jersey City, NJ 07302.
Date Revoked: September 25, 2002.
Reason: Failed to maintain a valid bond.

License Number : 4235N.
Name : G.S.I. Cargo Systems Inc.
Address : 55 Inip Drive, Inwood, NY 11096.
Date Revoked : June 23, 2002.
Reason : Failed to maintain a valid bond.

License Number : 16698N and 16698F.
Name: Global Total Logistics, LLC.
Address: 18411 Crenshaw Blvd., Suite 210, Torrance, CA 90504.
Date Revoked: June 15, 2002 and August 15, 2002.
Reason: Failed to maintain valid bonds.

License Number: 9867N.
Name: Harro Schumacher dba Schumacher Cargo Lines.
Address: 12821 S. Spring Street, Los Angeles, CA 90061.
Date Revoked: September 29, 2002.
Reason: Failed to maintain a valid bond.

License Number: 17520N.
Name: MedTrans LLC.
Address: 1200 Townline Road, Mundelein, IL 60060.
Date Revoked: April 15, 2002.
Reason: Surrendered license voluntarily.

License Number: 1415F.
Name: Mayflower International, Inc.
Address: One Mayflower Drive, Fenton, MO 63026.
Date Revoked: August 23, 2002.
Reason: Failed to maintain a valid bond.

License Number: 3101F.
Name: Mr. Jong Gil Kim dba Ace Freight System.
Address: 2401 Utah Avenue South, Suite 200, Seattle, WA 98134.
Date Revoked: July 13, 2002.
Reason: Failed to maintain a valid bond.

License Number: 16641NF.
Name: PMG Containerline, Inc.
Address: 7454 Brokerage Drive, Orlando, FL 32809.
Date Revoked: October 5, 2002.
Reason: Failed to maintain valid bonds.

License Number: 4326NF.
Name: Samson Transport (USA) Inc.
Address: 100 Walnut Avenue, Suite 405, Clark, NJ 07066.
Date Revoked: July 11, 2001.
Reason: Surrendered license voluntarily.

License Number: 1294N and 1294F.
Name: U.S. Express, Inc.
Address: 137–44 94th Avenue, Jamaica, NY 11435.
Date Revoked: September 1, 2002 and September 8, 2002.
Reason: Failed to maintain valid bonds.

License Number: 17613N.
Name: Utopia Logistic New York, Inc.
Address: 149–35 177th Street, #104, Jamaica, NY 11434.
Date Revoked: September 26, 2002.
Reason: Failed to maintain a valid bond.

License Number: 17724N.
Name: Vankor Logistics Int'l (U.S.A.), Inc.
Address: 1031 W. Manchester Blvd., Unit D, Inglewood, CA 90301.
Date Revoked: October 16, 2002.
Reason: Surrendered license voluntarily.

License Number: 2629F.
Name: Y.S. International Inc.
Address: 11389 SW 85 Lane, Miami, FL 33173.
Date Revoked: September 24, 2002.
Reason: Surrendered license voluntarily.

Sandra L. Kusumoto,

Director, Bureau of Consumer Complaints and Licensing.

[FR Doc. 02–27646 Filed 10–29–02; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Applicants

Notice is hereby given that the following applicants have filed with the

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Federal Maritime Commission an application for license as a Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel Operating Common Carrier Ocean Transportation Intermediary Applicants

Cargo Alliance, Inc., 436 S. Garfield Avenue, #8, Monterey Park, CA 91754, *Officers:* Li Chen, President, (Qualifying Individual), Linli Yang, Vice President.

D & R Trading and Shipping, Inc., 280 SW 99 Terrace, Pembroke Pines, FL 33025, *Officers:* Dawn Maria Pierce, President, (Qualifying Individual), Rory Pierce, Vice President.

Florida International Forwarders, Inc., 10302 NW South River Drive, Miami, FL 33178, *Officer:* Jose A. Caballero, President, (Qualifying Individual).

Kestrel Liner Agencies L.L.C. dba Kestrel Lines, South American Independent Line, 9505 NW 108th Avenue, Miami, FL 33178, *Officers:* Luanda D. Ventura, Corporate Secretary, (Qualifying Individual), Mark Pattison, President.

Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants

AMC USA AEREO Maritimo Cargo, Inc. dba AMC USA, 266 NW 44 Avenue, Miami, FL 33126–5336, *Officers:* Jesus Alberto Moncada A., Vice President, (Qualifying Individual), Carlos Moncada A., President.

Coastar Freight Services, Inc., 409 E. Diamond Street, #A, Arcadia, CA 91006, *Officer:* Weng Chai Ng, President, (Qualifying Individual).

Global Freight Management GFM, 3690 W. 2100 S., Salt Lake City, UT 84104, *Officers:* Faigata Tulau, Vice President, (Qualifying Individual), Emily M. Young, CEO.

Dated: October 25, 2002.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 02–27644 Filed 10–29–02; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Reissuances

Notice is hereby given that the following Ocean Transportation Intermediary licenses have been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR 515.

License No.	Name/address	Date reissued
17408F	Maraly International, Corp., 7206 NW 84th Avenue, Miami, FL 33166	July 7, 2002.
17413NF	Venture Transport, Inc., dba ASCO Freight Management, 314 North Post Oak Lane, Houston, TX 77024.	September 4, 2002.

Sandra L. Kusumoto,

Director, Bureau of Consumer Complaints and Licensing.

[FR Doc. 02–27645 Filed 10–29–02; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice.

SUMMARY: *Background.*

Notice is hereby given of the final approval of proposed information collections by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83–I's and supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Cindy Ayouch—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3829); OMB Desk Officer—Joseph Lackey—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

SUPPLEMENTARY INFORMATION:

Final approval under OMB delegated authority to revise, without extension, the following reports:

Report title: Financial Statements for Bank Holding Companies

Agency form number: FR Y–9C, FR Y–9LP, FR Y–9SP, and FR Y–9CS

OMB Control number: 7100–0128

Frequency: Quarterly and semiannually

Reporters: Bank holding companies (BHC's)

Annual reporting hours: 321,581 hours

Estimated average hours per response: FR Y–9C: 33.98 hours, FR Y–9LP: 4.55 hours, FR Y–9SP: 3.89 hours, FR Y–9CS: 30 minutes, FR Y–9ES: 30 minutes

Number of respondents: FR Y–9C: 1,859, FR Y–9LP: 2,193, FR Y–9SP: 3,566, FR Y–9CS: 600; FR Y–9ES: 100

Small businesses are affected.

General description of report: This information collection is mandatory (12 U.S.C. 1844(c)). Confidential treatment is not routinely given to the data in these reports. However, confidential treatment for the reporting information, in whole or in part, can be requested in accordance with the instructions to the form.

Abstract: The FR Y–9C consists of standardized consolidated financial statements similar to the Federal Financial Institutions Examination Council (FFIEC) Consolidated Reports of Condition and Income (Call Reports) (FFIEC 031 & 041; OMB No.7100–0036). The FR Y–9C is filed quarterly by top-tier BHC's that have total assets of $150 million or more and by lower-tier BHC's that have total consolidated assets of $1 billion or more. In addition, multibank holding companies with total consolidated assets of less than $150 million with debt outstanding to the general public or engaged in certain nonbank activities must file the FR Y–9C.

The FR Y–9LP includes standardized financial statements filed quarterly on a parent company only basis from each BHC that files the FR Y–9C. In addition, for tiered BHC's, a separate FR Y–9LP must be filed for each lower tier BHC.

The FR Y–9SP is a parent company only financial statement filed semiannually by one-bank holding companies with total consolidated assets of less than $150 million, and multibank holding companies with total consolidated assets of less than $150 million that meet certain other criteria. This report, an abbreviated version of the more extensive FR Y–9LP, is designed to obtain basic balance sheet and income statement information for the parent company, information on intangible assets, and information on intercompany transactions.

The FR Y–9CS is a free form supplement that may be utilized to collect any additional information deemed to be critical and needed in an expedited manner. It is intended to supplement the FR Y–9C and FR Y–9SP reports.

Current actions: On July 30, 2002, the Federal Reserve published a notice soliciting comments for 60 days on proposed revisions to the Financial Statements for Bank Holding Companies (67 FR 49356). The notice described the Federal Reserve proposal to implement the Financial Statements for Employee Stock Ownership Plan Bank Holding Companies (FR Y–9ES). The Federal Reserve Board has approved the implementation of the FR Y–9ES report effective for December 31, 2002. The FR Y–9ES will be filed annually by BHC's that are Employee Stock Ownership Plans (ESOP's) that currently submit either the FR Y–9LP or the FR Y–9SP. The FR Y–9ES will be collected as of December 31 and submitted to the Federal Reserve by July 31.

The Federal Reserve received comments from three financial institutions in response to the initial Federal Register notice. All three commenters were in favor of adopting the FR Y–9ES citing reduction in burden and the collection of data more representative of the activities of an ESOP. The Federal Reserve specifically sought comment on the proposed deadline for the FR Y–9ES. One response specifically addressed the proposed filing extension beyond the July 31 deadline for those institutions that have been granted extension for filing their IRS/DOL Form 5500. The comment strongly recommended that adoption of the extension stating that institutions may be forced to estimate the data to meet the July 31 deadline and amend the report once Form 5500 was filed. The Federal Reserve has decided to grant extensions for respondents that send a copy of their IRS Form 5558 to the appropriate Reserve Bank by July 31.

Board of Governors of the Federal Reserve System, October 23, 2002.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 02–27522 Filed 10–29–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 12, 2002.

A. Federal Reserve Bank of Kansas City (Susan Zubradt, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Nancy Louis Smith and Patrick Allen Brooks, both of Chickasha, Oklahoma; to acquire voting shares of First Independent Bancorp, Inc., Chickasha, Oklahoma, and thereby indirectly acquire voting shares of The First National Bank and Trust Company, Chickasha, Oklahoma, Chickasha, Oklahoma.

Board of Governors of the Federal Reserve System, October 23, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–27523 Filed 10–29–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 22, 2002.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. Herky Hawk Financial Corp., Monticello, Iowa; to acquire 100 percent of the voting shares of Munter Agency, Inc., Strawberry Point, Iowa, and thereby indirectly acquire voting shares of Union Bank and Trust Company, Strawberry Point, Iowa.

Board of Governors of the Federal Reserve System, October 24, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–27525 Filed 10–29–02; 8:45 am]

BILLING CODE 6210–01–S

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BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System

TIME AND DATE: 12 p.m., Monday, November 4, 2002.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

FOR MORE INFORMATION PLEASE CONTACT: Michelle A. Smith, Assistant to the Board; 202–452–2955.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: October 25, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–27673 Filed 10–25–02; 4:27 pm]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–03–08]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404)498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: Racial and Ethnic Approaches to Community Health Information Network (REACH IN)-New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC)The REACH IN is a customized internet-based support system that will allow the Racial and Ethnic Approaches to Community Health 2010 (REACH 2010) Program grantees to perform remote data entry and retrieval of data on the grantees' actions, intervention activities, community/systems change, and change among change agents. This support system is also designed to create on-demand graphs and reports of the grantees' actions and accomplishments. There is no cost to respondents.

Respondents	Number of respondents	Number of responses/ respondent	Avg. burden/ response (in hours)	Total burden (in hours)
REACH 2010 Grantees	37	4	30/60	74
Total				74

Dated: October 24, 2002.

Nancy E. Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 02–27549 Filed 10–29–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–03–09]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Anne O'Connor, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: Outcome Evaluation of CDC's Youth Media Campaign: Follow up Survey to Baseline Data Collection—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background

In FY 2001, Congress established the Youth Media Campaign at the Centers for Disease Control and Prevention (CDC). Specifically, the House Appropriations Language said: "The Committee believes that, if we are to have a positive impact on the future health of the American population, we must change the behaviors of our children and young adults by reaching them with important health messages." CDC, working in collaboration with federal partners, is coordinating an effort to plan, implement, and evaluate a campaign designed to clearly communicate messages that will help youth develop habits that foster good health over a lifetime. The Campaign is based on principles that have been shown to enhance success, including: designing messages based on research; testing messages with the intended audiences; involving young people in all aspects of Campaign planning and implementation; enlisting the involvement and support of parents and other influencers; refining the messages based on research; and measuring the effect of the campaign on the target audiences.

To measure the effect of the campaign on the target audiences, CDC designed a baseline survey for tween and parent dyads (Children's Youth Media Survey and Parents' Youth Media Survey) that assessed aspects of the knowledge, attitudes, beliefs, and levels of involvement in positive activities of tweens and a parent or guardian. The baseline survey was conducted prior to the launch of the campaign from April 8, 2002 through June 21, 2002. The methodology was to use a panel design and to survey 3000 dyads (3000 parents and 3000 tweens) from a nationally representative sample and to survey 3000 dyads (again 3000 parents and 3000 tweens) from the six "high dose" communities for a total of 6000 dyads or 12,000 respondents. The survey was conducted using random digit dial.

The next steps in the measurement of effects of the campaign is to collect follow-up data one year post baseline survey and two years post baseline survey. The same panel members (minus attrition) of 6000 tween/parent dyads used in the baseline survey—nationally and in the six selected metropolitan areas—would be re-contacted to complete a survey that would be similar to that used at baseline. Items on campaign awareness would be added to the survey to enable segmentation of the respondents by awareness of the campaign. Thus, the data collection would be with approximately 6000 tween/parent dyads in spring 2003 and 6000 tween/parent dyads in 2004. There is no cost to respondents.

Respondents	Number of respondents	Number of responses/ respondent	Average burden/ response (in hours)	Total burden (in hours)
Tweens (9 to 13 year olds)	6000	2 (1st 2003) (2nd 2004)	15/60	3000
Parents	6000	2 (1st in 2003) (2nd in 2004)	15/60	3000
Total				6000

Dated: October 24, 2002.

Nancy E. Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 02–27550 Filed 10–29–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–03–07]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404)498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: Intimate Partner Violence Screening: A Randomized Trial Comparing Computerized Questionnaires and Nursing Staff Interviews—New—National Center for Injury Prevention and Control (NCIPC), Centers for Disease Control and Prevention (CDC).

The purpose of this project is to determine effective ways to screen for intimate partner violence (IPV) in clinical settings. The project will compare the sensitivity, specificity and cost of screening for intimate partner violence (IPV) through a randomized trial using two modes of administering the screening questionnaire. Modes to be compared are computer administration and face-to-face interviews by a nurse. Computerized screens will be of two different lengths. Three questions on the face-to-face interview will be identical to a short computer screen; a longer computer

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screen will include those three items and will also ask additional questions. Thus, the evaluation can examine both mode of screening and content of screening questions. The screening modes will be assessed in a primary care clinic in Albany, New York.

IPV.is associated with a variety of physical and psychological problems but despite the high prevalence of IPV among patients seen in primary care and prenatal care, it is infrequently detected and treated in primary care settings. Only one in three abused women has discussed the abuse with her physician. Disclosure of abuse has been found to be associated with direct physician screening, and female IPV victims report that they would be willing to discuss their abuse if asked by their physician. Computer questionnaires hold promise for IPV screening of primary care patients because: (1) There are low continuing costs after initial setup and (2) computer questionnaires have been found useful for obtaining sensitive risk factor information on other topics (*e.g.*, drug use, HIV risk factors).

The U.S. Preventive Services Task Force finds "insufficient evidence to recommend for or against the use of specific screening instruments to detect family violence" because of the absence of studies demonstrating that detection and treatment of IPV improves physical or psychological health, or decreases IPV. This study can provide needed evidence about the detection of IPV, which in turn, can be used in studies evaluating the effectiveness of screening followed by appropriate treatment. There is no cost to respondent.

Respondent	Number of respondents	Number of responses/ respondent	Avg. burden/ response (in hours)	Total burden (in hours)
Patients	300	2	16/60	160
Health Care Providers and Nurses	14	7	6.4/60	10
Health Care Admitting Staff	36	1	15/60	9
Total	350			179

Dated: October 23, 2002.

Nancy E. Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 02–27551 Filed 10–29–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02062]

Diabetes Program; Notice of Award of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the award of fiscal year (FY) 2002 funds for the diabetes program. The purpose of the program is to reduce the disease and economic burden of diabetes, and improve the quality of life for all persons who have or are at risk for diabetes, through prevention programs. This program addresses the "Healthy People 2010" focus area Diabetes.

B. Eligible Applicants

Assistance is provided only to the organizations listed below. No other applications were solicited. Fiscal Year (FY) 2002 Federal Appropriation specifically directs CDC to award funds to these organizations.

1. Clinica Monsenor Oscar A. Romero in Los Angeles, California for a diabetes care program. ($98,899)
2. Oklahoma Center for the Advancement of Science and Technology in Oklahoma City, Oklahoma for a diabetes and diabetic retinopathy demonstration. ($247,247)
3. University of Arizona in Tuscon for a Border Health Initiative for a Border Health Initiative. ($435,154)
4. Center for Diabetes and Prevention Control at Texas Tech University Health Sciences Center to provide a national model of diabetes outreach, education, prevention, and care. ($493,941)
5. Dakota Plains Diabetes Center for the Standing Rock Sioux Tribe and Cheyenne Sioux Tribe. ($1,582,380)
6. Glaucoma Foundation for a Community Health glaucoma screening to develop a model project to test the efficacy of glaucoma screening using mobile units. ($2,613,445)

C. Funds

Approximately $5,471,066 is being awarded in FY 2002. The awards will begin on or about September 1, 2002, and will be made for a 12-month budget period within a project period of one year.

D. Where To Obtain Additional Information

Business management technical assistance may be obtained from: Angela Webb, Grants Management Specialist, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146, Telephone: 770–488–2784, e-mail: *aqw6@cdc.gov*.

For program technical assistance, contact: Dara Murphy, Division of Diabetes Translation, Centers for Disease Control and Prevention, 4770 Burford Highway, NE, MS K–57, Atlanta, GA 30341, Telephone: 770–488–5193, e-mail: *dlm1@cdc.gov*.

Dated: October 21, 2002.

Sandra R. Manning,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 02–27554 Filed 10–29–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Vaccines and Related Biological Products Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Vaccines and Related Biological Products Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on November 18, 2002, from 1 p.m. to 3:30 p.m.

Location: Food and Drug Administration, Bldg 29B, conference room C, 29 Lincoln Dr., Bethesda, MD.

This meeting will be held by a telephone conference call. The public is welcome to attend the open portion of the meeting. A speaker phone will be provided at the specified location.

Contact Person: Jody G. Sachs or Denise H. Royster, Center for Biologics Evaluation and Research (HFM–71), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301 827–0314, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12391. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will review and discuss the intramural research programs of the Laboratory of Enteric and Sexually Transmitted Diseases, Office of Vaccines Research and Review.

Procedure: On November 18, 2002, from 1 p.m. to 3 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by November 1, 2002. Oral presentations from the public will be scheduled between approximately 2 p.m. and 3 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before November 1, 2002, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Closed Committee Deliberations: On November 18, 2002, from 3 p.m. to 3:30 p.m., the meeting will be closed to permit discussion where disclosure would constitute a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)).

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Jody G. Sachs or Denise H. Royster at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: October 23, 2002.

LaJuana D. Caldwell,

Acting Senior Associate Commissioner for External Relations.

[FR Doc. 02–27574 Filed 10–29–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

National Evaluation of the Comprehensive Community Mental Health Services for Children and Their Families Program, Phase Two—(OMB No. 0930–0192, Revision)—SAMHSA's Center for Mental Health Services (CMHS) is conducting Phase II of this national evaluation project. Phase II collects data on child mental health outcomes, family life, and service system development and performance. Child and family outcomes of interest include the following: child symptomatology and functioning, family functioning and material resources, and caregiver strain. Delivery system variables of interest include the following: system of care development, adherence to system of care principles, coordination and linkages among agencies, and congruence between services planned versus those received.

To address the research questions in the national evaluation, a longitudinal quasi-experimental design is being used that includes data collection in all grantee sites and comparison sites (where services are delivered in a more traditional manner). This multi-level evaluation is comprised of several major components. Data collection methods include interviews with caregivers and youth, site visits, case record reviews, service diaries, and provider surveys.

Data collection for this evaluation will be conducted over a six-year period. The length of time that families will participate in the study ranges from 18 to 36 months depending on when they enter the evaluation. The average annual respondent burden is estimated below; this represents an annual average burden reduction of 6,237 hours from the level currently approved by the Office of Management and Budget.

This revision to the currently approved data collection activities involves: (1) Reducing the number of sites where data collection will occur from 27 to 25, (2) extending the time frame for data collection by an additional 18 months, (3) adding a treatment effectiveness study in two sites including assessment of outcomes, treatment fidelity, and interaction of the treatment with the larger system of care, (4) adding a survey of clinicians/practitioners on their use of evidence-based treatments, and (5) adding a study of how systems of care are sustained after program funding ends.

Instrument	Respondent	Number of respondents	Average number of total responses/respondent	Hours per response	Total burden hours	Annual burden hours
System-level Assessment:						
Interview Guides and Data Collection Forms—Round One Sites.	Key site informants	[1]325	[2]5	1.000	1,625	250
Interview Guides and Data Collection Forms—Round Two Sites.	Key site informants	[1]350	[2]4	1.000	1,400	215
Services and Costs Study:						
No respondent burden is associated with this study.	na	na	na	na	na	na
Cross-sectional Descriptive Study:						
Descriptive Interview Questionnaire (DIQ)	Caregiver	[3]5,550	[4]6	0.166	5,528	850
Child and Family Outcome Study:						

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Instrument	Respondent	Number of respondents	Average number of total responses/respondent	Hours per response	Total burden hours	Annual burden hours
Restrictiveness of Living Environment and Placement Stability Scale (ROLES).	Caregiver	5,550	6	0.083	2,764	425
Child and Adolescent Functional Assessment Scale (CAFAS)—subscales or Preschool and Early Childhood Functional Assessment Scale (PECFAS).	Caregiver	5550	6	0.333	11,089	1,706
Education Questionnaire (EQ)—formerly one of the CAFAS subscales.	Caregiver	5,550	6	0.166	5,528	850
Behavioral and Emotional Rating Scale (BERS).	Caregiver	5,550	6	0.166	5,528	850
Child Behavior Checklist (CBCL) or CBCL Ages 2–3.	Caregiver	5,550	6	0.333	11,089	1,706
Family Assessment Device (FAD)	Caregiver	5,550	6	0.166	5,528	850
Family Resource Scale (FRS)	Caregiver	5,550	6	0.166	5,528	850
Caregiver Strain Questionnaire (CGSQ)	Caregiver	5,550	6	0.166	5,528	850
Delinquency Survey (formerly one of CAFAS subscales).	Youth	[5]3,330	6	0.083	1,658	255
Substance Abuse Survey A and B (formerly one of CAFAS subscales).	Youth	3,330	6	0.166	3,317	510
Youth Self-Report (YSR)	Youth	3,330	6	0.333	6,653	1,024
Family Assessment Device (FAD)	Youth	3,330	6	0.166	3,317	510
Intervention-level Assessment:						
Family Satisfaction Questionnaire—Abbreviated (FSQ–A).	Caregiver	5,550	[6]4	0.116	2,575	396
Multi-sector Service Contacts (MSSC)	Caregiver	5,550	4	0.250	5,550	854
Service Experience Questionnaire (SEQ)	Caregiver	[7]1,012	4	0.333	1,348	207
Experience with Service System Questionnaire (ESSQ).	Caregiver	1,012	4	0.250	1,012	156
Service and Support Diary and Interview	Caregiver	[8]200	[9]9	0.500	900	138
Youth Satisfaction Questionnaire—Abbreviated (YSQ–A).	Youth	3,330	4	0.083	1,106	170
Service Experience Questionnaire (SEQ)	Youth	607	4	0.250	607	93
Provider Service Log and Interview	Provider	[10]200	9	0.500	900	138
Provider Attitudes and Practices Survey (PAPS).	Provider	[11]480	[12]2	0.166	159	25
Treatment Effectiveness Study:						
Diagnostic Interview Schedule for Children	Caregiver	[13]300	1	0.500	150	23
DSM–IV Structured Interview for Disruptive Behavior Disorders.	Caregiver	300	[14]4	0.166	199	31
Eyberg Child Behavior Inventory (ECBI)	Caregiver	200	4	0.166	133	20
Dyadic Parent-Child Ineteraction Coding System II (DPICS–II).	Caregiver	200	[15]2	0.250	100	15
Dyadic Parent-Child Interaction Coding System II (DPICS–II).	Child	200	[15]2	0.250	100	15
Sutter-Eyberg Student Behavior Inventory-Revised (SESBI–R).	Teacher	200	4	0.166	133	20
PCIT Caregiver Integrity Checklist	Caregiver	100	12	0.050	60	9
PCIT Therapist Integrity Checklist	Clinician	100	12	0.050	60	9
Caregiver Session Review Form	Caregiver	200	12	0.033	79	12
Therapist Session Review Form	Clinician	200	12	0.033	79	12
Therapy Procedures Checklist (TPC)	Caregiver	200	1	0.083	17	3
Therapy Procedures Checklist (TPC)	Clinician	200	1	0.166	33	5
System of Care Practice Review (SOCPR)	Caregiver	60	1	1.000	60	9
System of Care Practice Review (SOCPR)	Child	60	1	0.750	45	7
System of Care Practice Review (SOCPR)	Clinician	60	1	1.000	60	9
System of Care Practice Review (SOCPR)	Informal Helper	60	1	0.250	15	2
Evidence-based Treatment Survey:						
Evidence-based Treatment Survey	Clinicians	1,000	1	0.250	250	38
Sustainability Survey:						
Sustainability Survey (Web survey)	Local Site Informants.	[16]204	1	0.750	153	23
Sustainability telephone follow-up interview	Local site and State-level Informants.	[17]153	1	1.000	153	24
Total					92,116	14,164

[1] An average of 25 stakeholders per grantee site. Round One has 11 grantee sites (some grantees have multiple service sites that are assessed) and two comparison sites. Round Two has 14 grantee sites (no multiple sites) and no comparison sites. These stakeholders will include site administrative staff, providers, agency representatives, and family representatives.

[2] Round One sites participate in system assessment site visits annually. Round Two sites are assessed every 18 months.

[3] Number of respondents across 23 grantees and 2 comparison sites. Average based on a 5 percent attrition rate at each data collection point. These data are collected as part of the grantees' routine intake processes. Hence, burden is calculated only for the subset of the Cross-sectional Descriptive Study sample that also participates in the Child and Family Outcome Study.

[4] Average number of responses per respondent based on 7 data collection points for children recruited in year 2, 6 for children recruited in year 3, and 4 for children recruited in year 5 (of grantee funding).

[5] Based on Phase I finding that approximately 60 percent of the children in the evaluation were 11 years old or older.

[6] Based on an average length of time in services of 18 months, respondents will complete satisfaction and service measures at intake, 6-month, 12-month, and 18-month data collection points.

[7] Includes respondents in 2 grantee and 2 comparison sites.

[8] Based on 50 families each from 2 grantee and 2 comparison sites.

[9] Data collection will occur once at baseline and then biweekly for 16 weeks.

[10] Providers of 50 families each from 2 grantee and 2 comparison sites.

[11] An estimated 120 providers each from 2 grantee and 2 comparison sites will complete the survey.

[12] Data collection will be conducted in years 5 and 6 (of grantee funding).

[13] Assumes that one-third of children screened will not meet criteria.

[14] Caregivers will complete at intake, 3-month, 6-month, and 9-month data collection points.

[15] Fifteen minute observation of caregiver-child interaction while engaged in 3 five minute tasks at intake and at 3 months (pre- and post-treatment).

[16] Includes four site level respondents (i.e., current or former project director, key mental health representative, family representative, agency representative) at 51 Phase I and Phase II sites.

[17] Includes two site-level and one state-level respondent for all 51 sites included in the sustainability survey from Phase I and Phase II.

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Allison Herron Eydt, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: October 23, 2002.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 02–27558 Filed 10–29–02; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF INTERIOR

Office of the Secretary

Delaware & Lehigh National Heritage Corridor Commission Meeting

AGENCY: Department of Interior, Office of the Secretary.

ACTION: Notice of Meeting.

SUMMARY: This notice announces an upcoming meeting of the Delaware & Lehigh National Heritage Corridor Commission. Notice of this meeting is required under the Federal Advisory Committee Act (Pub. L. 92–463).

MEETING DATE AND TIME: Friday, November 8, 2002, Time 1:30 p.m. to 4 p.m.

ADDRESSES: Bethlehem Steel Learning Center, 1170 Eighth Avenue, Bethlehem, PA 18016–7699.

The agenda for the meeting will focus on implementation of the Management Action Plan for the Delaware and Lehigh Heritage Corridor and State Heritage Park. The Commission was established to assist the Commonwealth of Pennsylvania and its political subdivisions in planning and implementing an integrated strategy for protecting and promoting cultural, historic and natural resources. The Commission reports to the Secretary of the Interior and to Congress.

SUPPLEMENTARY INFORMATION: The Delaware and Lehigh Heritage Corridor Commission was established by Public Law 100–692, November 18, 1988 and extended through Public Law 105–355, November 13, 1998.

FOR FURTHER INFORMATION CONTACT: C. Allen Sachse, Executive Director, Delaware and Lehigh Heritage Corridor Commission, 10 E. Church Street, Room A–208, Bethlehem, PA 18018, (610) 861–9345.

Dated: October 24, 2002.

C. Allen Sachse,

Executive Director, Delaware and Lehigh Heritage Corridor Commission.

[FR Doc. 02–27552 Filed 10–29–02; 8:45 am]

BILLING CODE 6820–PE–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and/or marine mammals.

DATES: Written data, comments or requests must be received by November 29, 2002.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following application(s) for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

Applicant: Randy Miller's Predators In Action, Inc., Big Bear City, CA, PRT—062680 and 063077.

The applicant requests a permit to export and re-import captive-born tigers (*Panthera tigris*) to/from worldwide locations to enhance the survival of the species through conservation education. This notification covers activities conducted by the applicant over a three-year period.

The U.S. Fish and Wildlife Service has information collection approval from OMB through March 31, 2004, OMB Control Number 1018–0093. Federal Agencies may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a current valid OMB control number.

Dated: October 18, 2002.

Michael S. Moore,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 02–27532 Filed 10–29–02; 8:45 am]

BILLING CODE 4310–55–P

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and/or marine mammals.

DATES: Written data, comments or requests must be received by November 29, 2002.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax (703) 358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone (703) 358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following application(s) for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

Applicant: Jack A. Leuenberger, Saginaw, MI, PRT–063371.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Robert John Gallagher, Sugar Land, TX, PRT–063420.

The applicant requests a permit to import the sport-hunted trophy on one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa for the purpose of enhancement of the survival of the species.

Applicant: Edwin Kauffman, Wellsville, PA, PRT–062538.

The applicant requests a permit to import the sport-hunted trophy on one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa for the purpose of enhancement of the survival of the species.

Marine Mammals

The public is invited to comment on the following application(s) for a permit to conduct certain activities with marine mammals. The application(s) was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR Part 18). Written data, comments, or requests for copies of the complete applications or requests for a public hearing on these applications should be submitted to the Director (address above). Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Applicant: Neil Bayley, Glenn Dale, MD, PRT–063291.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Northern Beaufort Sea polar bear population in Canada for personal use.

The U.S. Fish and Wildlife Service has information collection approval from OMB through March 31, 2004, OMB Control Number 1018–0093. Federal Agencies may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a current valid OMB control number.

Date: October 4, 2002.

Monica Farris,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 02–27533 Filed 10–29–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and/or marine mammals.

DATES: Written data, comments or requests must be received by November 29, 2002.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax (703) 358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone (703) 358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following application(s) for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

PRT–063575

Applicant: Charles R. Kokesh, Santa Fe, NM

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

The U.S. Fish and Wildlife Service has information collection approval from OMB through March 31, 2004, OMB Control Number 1018–0093. Federal Agencies may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a current valid OMB control number.

Dated: October 11, 2002.

Michael S. Moore,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 02–27534 Filed 10–29–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permit for Marine Mammals

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permit for marine mammals.

SUMMARY: The following permit was issued.

ADDRESSES: Documents and other information submitted for this application is available for review by any party who submits a written request to the U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax (703) 358-2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone (703) 358–2104.

SUPPLEMENTARY INFORMATION: On April 29, 1999, a notice was published in the **Federal Register** (64 FR 23096), that an application had been filed with the Fish and Wildlife Service by Ronnie Grant May for a permit (PRT–010661) to import one polar bear (*Ursus maritimus*) taken from the Lancaster Sound polar bear population, Canada, for personal use.

Notice is hereby given that on September 24, 2002, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service issued the requested permit subject to certain conditions set forth therein.

Dated: September 27, 2002.

Charles S. Hamilton,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 02–27535 Filed 10–29–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–670–02–1610–JP–064B]

Notice of Availability of an Environmental Assessment and Associated Proposed Amendment to the California Desert Conservation Area Plan for Off-Road Vehicle Trail Designations in the Western Colorado Desert (WECO); Correction of Comment Period

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction of comment period.

SUMMARY: The Bureau of Land Management (BLM) published in the **Federal Register** on October 18, 2002, a notice of availability of an Environmental Assessment and associated proposed amendment to the California Desert Conservation Area Plan for off-road vehicle trail designations in the Western Colorado Desert (WECO) portion of Imperial County, California. This notice erroneously indicated a comment period of 45 days after publication. The correct comment period closes 30 days from the Notice of availability, which is November 18, 2002.

FOR FURTHER INFORMATION CONTACT: Arnold Schoeck, Bureau of Land Management, 1661 South 4th Street, El Centro, CA 92243; (760) 337–4441.

Mary Smelcer,

Acting Assistant Director for Renewable Resources and Planning.

[FR Doc. 02–27677 Filed 10–28–02; 10:24 am]

BILLING CODE 4310–JA–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–910–03–0777–30]

Call for Nominations for Resource Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Resource Advisory Council call for nominations.

SUMMARY: The purpose of this notice is to solicit public nominations for a vacant position on the Bureau of Land Management (BLM) Nevada Northeastern Great Basin Resource Advisory Council (RAC). The RAC provides advice and recommendations to BLM on land use planning and management of the public land within northeastern Nevada. Public nominations will be considered for 45 days after the publication date of this notice.

SUPPLEMENTARY INFORMATION: The Federal Land Policy and Management Act (FLPMA) directs the Secretary of the Interior to involve the public in planning and issues related to management of lands administered by BLM. Section 309 of FLPMA directs the Secretary to select 10 to 15 member citizen-based advisory councils that are established and authorized consistent with the requirements of the Federal Advisory Committee Act (FACA). As required by the FACA, RAC membership must be balanced and representative of the various interests concerned with the management of the public lands. The vacant position for the Northeastern Great Basin RAC is Category Two representing wildlife interest groups.

Individuals may nominate themselves or others. Nominees must be residents of Nevada. Nominees will be evaluated based on their education, training, experience, and their knowledge of northeastern Nevada. Nominees should have demonstrated a commitment to collaborative resource decisionmaking. All nominations must be accompanied by letters of reference from represented interests or organizations, a completed background information nomination form, as well as any other information that speaks to the nominee's qualifications.

Simultaneous with this notice, BLM Elko Field Office will issue a press release providing additional information for submitting nominations. Nominations should be sent to Helen Hankins, BLM Elko Field Office, 3900 East Idaho Street, Elko, NV 89801; (775) 753–0200.

DATES: All nominations should be received by the BLM Elko Field Office by December 16, 2002.

FOR FURTHER INFORMATION CONTACT: Mike Brown, Public Affairs Officer, Elko Field Office, 3900 E. Idaho Street, Elko, NV 89801. Telephone: (775) 753–0386. E-mail: *mbrown@nv.blm.gov*

Dated: October 23, 2002.

David Stout,

Associate Field Manager.

[FR Doc. 02–27553 Filed 10–29–02; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–910–03–0777–30]

Notice of public meeting, Northeastern Great Basin Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Nevada Northeastern Great Basin Resource Advisory Council (RAC), will meet as indicated below.

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DATES: The meeting includes a field tour on December 5, 2002 departing the BLM Elko Field Office, 3900 East Idaho Street, Elko, Nevada, at 1 p.m. and returning at 5 p.m. The business meeting will be held December 6, 2002 at the BLM Elko Field Office beginning at 9 a.m. The public comment period will begin at approximately 1 p.m. and the meeting will adjourn approximately 5 p.m.

FOR FURTHER INFORMATION CONTACT: Mike Brown, Public Affairs Officer, Elko Field Office, 3900 E. Idaho Street, Elko, NV 89801. Telephone: (775) 753–0386. E-mail: *mbrown@nv.blm.gov.*

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in Nevada. The field tour will visit the Conner's Creek and focus on livestock management and restoration issues. In the event of inclement weather, the tour will visit the Maggie Creek area and focus on mining and restoration issues. *At the business meeting, topics we plan to discuss include:*

Off-Highway Vehicle Final Guidelines,

Vegetation Draft Guidelines,

Mining Update,

California National Historic Trail Interpretive Center,

Coordinated Noxious Weed Treatments,

Field Managers' and District Rangers' Reports,

Other topics the Council may raise.

All meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, tour transportation or other reasonable accommodations, should contact Mike Brown, BLM Elko Field Office, 3900 East Idaho Street, Elko, Nevada 89801, telephone (775) 753–0386.

Dated: October 23, 2002.

David Stout,

Associate Field Manager.

[FR Doc. 02–27556 Filed 10–29–02; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Navajo Unit, Colorado River Storage Project, New Mexico and Colorado

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of extension of public comment period for 30 days.

SUMMARY: Notice is hereby given that the comment period for the Navajo Reservoir Operations Draft Environmental Impact Statement is extended an additional 30 days to December 4, 2002. The end of the public comment period, as noted in the September 4, 2002, **Federal Register** (67 FR 56580) was November 4, 2002.

DATES: The public comment period is now extended to December 4, 2002.

ADDRESSES: Written comments on the DEIS should be addressed to Ken Beck, Bureau of Reclamation, Western Colorado Area Office, 835 East Second Avenue, Suite 400, Durango, Colorado 81301; telephone (970) 385–6558; faxogram (970) 385–6539; e-mail: *navcomments@uc.usbr.gov.* Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

FOR FURTHER INFORMATION CONTACT: Ken Beck, Bureau of Reclamation, Western Colorado Area Office, 835 East Second Avenue, Suite 400, Durango, Colorado 81301, telephone (970) 385–6558.

Dated: October 9, 2002.

Errol Bartholomew,

Acting Regional Director, Upper Colorado Region.

[FR Doc. 02–27544 Filed 10–29–02; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of existing safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Speed Mining, Inc.

[Docket No. M–2002–082–C]

Speed Mining, Inc., P.O. Box 1083, Beckley, West Virginia 25802 has filed a petition to modify the application of 30 CFR 75.1700 (oil and gas wells) to its American Eagle Mine (I.D. No. 46–05437) located in Kanawha County, West Virginia. The petitioner requests that its previous petition for modification, docket number M–2001–041–C, be amended as follows: The petitioner will drill out each of the oil wells as already specified in the previous petition. The petitioner will pump the expandable cement to the bottom of the lowest minable seam (Eagle) and pump Portable Class "A" cement on top of the expandable plug to the next Powellton Seam which is approximately 117 feet above. The petitioner states that the Powellton Seam is the anticipated area for broken strata due to subsidence. The petitioner will leave the area from Powellton Seam to the surface open for release of methane from the longwall gob after the longwall has intersected the well. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

2. H&M Coal Company

[Docket No. M–2002–084–C]

H&M Coal Company, 48 Meadowview Road, Pine Grove, Pennsylvania 17663 has filed a petition to modify the application of 30 CFR 75.1400 (Hoisting equipment; general) to its Rocky Top Mine (I.D. No. 36–09072) located in Schuylkill County, Pennsylvania. The petitioner proposes to use a slope conveyance (gunboat) for transporting persons without installing safety catches or other no less effective devices. The petitioner would instead use increased rope strength and secondary safety rope connections in place of such devices. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

3. KenAmerican Resources, Inc.

[Docket No. M–2002–085–C]

KenAmerican Resources, Inc., 881 Corporate Dr., Suite 204, Lexington, Kentucky 40503 has filed a petition to modify the application of 30 CFR 75.380(g) (Escapeways; bituminous and lignite mines) to its Brier Creek Mine (I.D. No. 15–18495) located in Muhlenberg County, Kentucky. The petitioner requests a modification of the existing standard so that the primary escapeway for the #9 Slope would not be required to be separated from the belt entries until initial development stage is completed, that is, when connection is made to the airshaft. The petitioner has listed in this petition specific terms and conditions that would be followed until the initial development stage is completed. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

4. D&F Deep Mine Coal Company

[Docket No. M–2002–086–C]

D&F Mine Coal Company, RD 1 Box 33A, Klingerstown, Pennsylvania 17941 has filed a petition to modify the application of 30 CFR 75.1002–1 (Location of other electric equipment: requirements for permissibility) to its Buck Drift Mine (I.D. No. 36–07456) located in Schuylkill County, Pennsylvania. The petitioner requests a modification of the existing standard to permit the use of non-permissible electric equipment including drags, battery locomotives, communication systems and other electric equipment outby the last crosscut within 150 feet of the pillar line. The petitioner states that operation of this equipment would be suspended anytime methane concentration at the equipment reaches 0.5 percent either during operation or when found during preshift examination. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

5. Peabody Coal Company

[Docket No. M–2002–087–C]

Peabody Coal Company, 202 Laidley Tower, P.O. Box 1233, Charleston, West Virginia 25324–1233 has filed a petition to modify the application of 30 CFR 75.1002 (Location of trolley wires, trolley feeder wires, high-voltage cables and transformers) to its Highland Mine (I.D. No. 15–02709) located in Union County, Kentucky. The petitioner requests that its previous petition for modification, docket number M–2001–040–C, be amended to revise paragraph 14(b), to allow routine use of cable crossovers, and to revise paragraph 43(b), to allow a temporary transformer that is not mounted to the mining machine. The petitioner states that the Highland Mine will be operating with Joy 14CM27 miners that are designed to operate in lower coal. Where clearance between the machine and the roof is smaller, the cable may be better protected with the properly designed crossover specified in the previous petition. The petitioner further states that the 14CM27 miner does not have provisions for tramming with a 995-volt input, and the step up transformer specified in revised paragraph 43(b), which would allow tramming of the 14CM27 machine with better control, may be less subject to damage if it is not mounted on the mining machine. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

6. Coastal Coal Company, LLC

[Docket No. M–2002–088–C]

Coastal Coal Company, LLC, P.O. Box 1578, Coeburn, Virginia 24230 has filed a petition to modify the application of 30 CFR 77.214(a) (Refuse piles; general) to its VICC #8 Mine (I.D. No. 44–06906), and VICC #3 Mine (I.D. No. 44–06853) located in Wise County, Virginia. The petitioner requests a modification of the existing standard to allow construction of a refuse pile over abandoned mine openings. The petitioner proposes to use an existing mine pit as a location for disposal of mine scalp rock. The petitioner states that disposal of the scalp rock at this location will necessitate filling over (2) two mine openings. The petitioner has listed in this petition specific procedures that would be followed when sealing mine openings. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

7. Europa Coal Company, Inc.

[Docket No. M–2002–089–C]

Europa Coal Company, Inc., 430 Harper Park Drive, Beckley, West Virginia 25801 has filed a petition to modify the application of 30 CFR 75.1002 (Location of trolley wires, trolley feeder wires, high-voltage cables and transformers) to its Dry Branch Coalburg Mine (I.D. No. 46–08968) located in Boone County, West Virginia. The petitioner proposes to use a Joy 12CM27 continuous miner which operates at 2,400 volts. The petitioner has listed in this petition specific procedures that would be followed when the proposed alternate method is implemented. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

8. Hunt Midwest Mining, Inc.

[Docket No. M–2002–004–C]

Hunt Midwest Mining, Inc., 8300 NE Underground Drive, Kansas City, Missouri 64161 has filed a petition to modify the application of 30 CFR 57.11052 (Refuge areas) to its Stamper Quarry (I.D. No. 23–02232) located in Platte County, Missouri. The petitioner proposes to provide bottled water to the refuge chamber instead of a water line. The petitioner asserts that an unopened 5 gallon bottle has a shelf life of two years and the date of bottling is stamped on the neck of the bottle. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

Request for Comments

Persons interested in these petitions are encouraged to submit comments via e-mail to *comments@msha.gov*, or on a computer disk along with an original hard copy to the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, 1100 Wilson Boulevard, Room 2352, Arlington, Virginia 22209. All comments must be postmarked or received in that office on or before November 29, 2002. Copies of these petitions are available for inspection at that address.

Dated at Arlington, Virginia this 24th day of October 2002.

Marvin W. Nichols, Jr.,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 02–27572 Filed 10–29–02; 8:45 am]

BILLING CODE 4510–43–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 02–128]

Notice of Information Collection Under OMB Review

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection under OMB review.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted on or before December 30, 2002.

ADDRESSES: All comments should be addressed to Karl Beisel, Code HC, National Aeronautics and Space

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Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Ms. Nancy Kaplan, NASA Reports Officer, (202) 358–1372.

Title: Required Central Contractor Registration.

OMB Number: 2700–0097.

Type of review: Extension.

Need and Uses: The information obtained in this collection will be used to populate the vendor database in the NASA Integrated Financial Management (IFM) System.

Affected Public: Business or other for-profit; Federal Government; Not-for-profit institutions; State, Local, or Tribal Government.

Number of Respondents: 10,200.

Annual Responses: 1,200.

Hours Per Request: Approximately 15 minutes/request.

Annual Burden Hours: 3,130.

Frequency of Report: One time.

Patricia L. Dunnington,

Deputy Chief Information Officer, Office of the Administrator.

[FR Doc. 02–27581 Filed 10–29–02; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 02–127]

Notice of Information Collection Under OMB Review

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection under OMB review.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)). This information collection provides data used in the Agency's accrual accounting and cost-based budgeting systems, maintained as required under Federal law.

DATES: All comments should be submitted or or before November 29, 2002.

ADDRESSES: All comments should be addressed to Desk Officer for NASA; Office of Information and Regulatory Affairs; Office of Management and Budget; Room 10236; New Executive Office Building; Washington, DC, 20503.

FOR FURTHER INFORMATION CONTACT: Ms. Nancy Kaplan, NASA Reports Officer, (202) 358–1372.

Title: NASA Contractor Financial Management Reports.

OMB Number: 2700–0003.

Type of review: Extension.

Need and Uses: The NASA Contractor Financial Management Reporting System is the basic financial medium for contractor reporting of estimated and incurred costs, providing essential data for projecting costs and hours to ensure that contractor performance is realistically planned and supported by dollar and labor resources. The data provided by these reports is an integral part of the Agency's accrual accounting and cost-based budgeting systems required under 31 U.S.C. 3512.

Affected Public: Business or other for-profit, Not-for-profit institutions.

Number of Respondents: 850.

Responses Per Respondent: 12.

Annual Responses: 10,200.

Hours Per Request: 9 hrs.

Annual Burden Hours: 91,500.

Frequency of Report: Quarterly; Monthly.

Patricia Dunnington,

Deputy Chief Information Officer, Office of the Administrator.

[FR Doc. 02–27580 Filed 10–29–02; 8:45 am]

BILLING CODE 7510–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–373 and 50–374]

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing; Exelon Generation Company, LLC, LaSalle County Station, Units 1 and 2

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF–11 and NPF–18 issued to Exelon Generation Company, LLC (the licensee), for operation of the LaSalle County Station, Units 1 and 2, respectively, located in LaSalle County, Illinois.

The proposed amendments would extend the use of the current pressure and temperature (P/T) limit curves in Technical Specification (TS) 3.4.11, "RCS Pressure and Temperature (P/T) Limits," until December 15, 2004. The proposed change will allow sufficient time for the incorporation of the General Electric Topical Report NEDC–32983P, "General Electric Methodology for Reactor Pressure Vessel Fast Neutron Flux Evaluation," methodology into the P/T curves in TS 3.4.11. There are no TS page changes associated with this change.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in title 10 of the Code of Federal Regulations (10 CFR), Section 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change requests for LaSalle County Station, Units 1 and 2, that the current pressure and temperature (P/T) limit curves in TS 3.4.11, "RCS Pressure and Temperature (P/T) Limits," remain acceptable for use until December 15, 2004. The proposed change is to allow sufficient time for the incorporation of the General Electric Topical Report NEDC–32983P, "General Electric Methodology for Reactor Pressure Vessel Fast Neutron Flux Evaluation," methodology into the P/T curves in TS 3.4.11. NEDC–32983P methodology has been previously approved by the NRC for use by licensees. The P/T limits are prescribed during normal operation to avoid encountering pressure, temperature, and temperature rate of change conditions that might cause undetected flaws to propagate and cause nonductile failure of the reactor coolant pressure boundary, a condition that is unanalyzed. Thus, the proposed change does not have any affect on the probability of an accident previously evaluated.

The P/T curves are used as operational limits during heatup or cooldown maneuvering, when pressure and temperature indications are monitored and compared to the applicable curve to determine that operation is within the allowable region. The P/T curves provide assurance that station operation is consistent with previously evaluated accidents. Thus, the radiological consequences of any accident previously evaluated are not increased.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not change the control parameters governing unit operation or the response of plant equipment to transient conditions. The proposed change does not introduce any new equipment, modes of system operation or failure mechanisms.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

The proposed change for LaSalle County Station is to allow sufficient time for the incorporation of the General Electric Topical Report NEDC–32983P methodology into the P/T curves in TS 3.4.11. NEDC–32983P methodology has been previously approved by the NRC for use by licensees. EGC has performed new fluence calculations using NEDC–32983P methodology for LaSalle County Station Units 1 and 2 and compared the results from these calculations to the current TS 3.4.11 P/T curves. The results of the fluence calculation comparisons demonstrate that the current P/T curves in TS 3.4.11 remain valid until at least 15.7 Effective Full Power Years (EFPY). As of June 1, 2002, LaSalle County Station Unit 1 operating time was approximately 11.6 EFPY and Unit 2 was approximately 11.0 EFPY. Considering a 100% capacity factor, 15.7 EFPY will not be reached on either unit until after June 2006.

EGC is currently scheduled to submit to the NRC a proposed change to TS 3.4.11 in November 2002. The proposed changes will utilize NEDC–32983P methodology to calculate the P/T curves in TS 3.4.11 for LaSalle County Station Units 1 and 2.

The request that the current P/T curves remain valid until December 15, 2004, is based on the above information that using NEDC–32983P methodology, the current TS 3.4.11 P/T curves remain valid during this period of time.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

Based upon the above, EGC concludes that the proposed amendment presents no significant hazards consideration under the standards set forth in 10 CFR5O.92(c), and, accordingly, a finding of "no significant hazards consideration" is justified.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By [insert date 30 days from date of publication], the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714,[1] which is available at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, or electronically on the Internet at the NRC Web site *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If there are problems in accessing the document, contact the Public Document Room Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert

[1] The most recent version of Title 10 of the Code of Federal Regulations, published January 1, 2002, inadvertently omitted the last sentence of 10 CFR 2.714(d) and subparagraphs (d)(1) and (2), regarding petitions to intervene and contentions. For the complete, corrected text of 10 CFR 2.714(d), please see 67 FR 20884; April 29, 2002."

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opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. Because of the continuing disruptions in delivery of mail to United States Government offices, it is requested that petitions for leave to intervene and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to hearingdocket@nrc.gov. A copy of the petition for leave to intervene and request for hearing should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and because of continuing disruptions in delivery of mail to United States Government offices, it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. A copy of the request for hearing and petition for leave to intervene should also be sent to Edward J. Cullen, Deputy General Counsel, Exelon BSC—Legal, 2301 Market Street, Philadelphia, PA 19101, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated October 21, 2002, which is available for public inspection at the Commission's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 24th day of October 2002.

For the Nuclear Regulatory Commission.

William A. Macon, Jr.,

Project Manager, Section 2, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–27587 Filed 10–29–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 70–143]

Environmental Statements; Availability, etc.: Nuclear Fuel Services, Inc.

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of docketing, notice of proposed action, revision of notice of Opportunity for Hearing on the amendment of Nuclear Fuel Services, Inc., Materials License SNM–124 to authorize construction and operation of the Uranyl Nitrate Storage Building, and notice of Finding of No Significant Impact.

The U.S. Nuclear Regulatory Commission (NRC) is considering an amendment dated February 28, 2002, of Materials License SNM–124 to authorize construction and operation of a Uranyl Nitrate Storage Building. The staff hereby provides notice of the license amendment request and issues a notice of Opportunity for Hearing. The staff has prepared an Environmental Assessment and Finding of No Significant Impact (FONSI) in support of this action. The Agencywide Documents Access and Management System (ADAMS) accession number for the Environmental Assessment is ML021790068.

By letter dated February 28, 2002, Nuclear Fuel Services, Inc. (NFS) requested an amendment to Materials License SNM–124 to authorize construction and operation of the Uranyl Nitrate Storage Building (ADAMS accession numbers ML02730343 containing the cover letter and affidavit, and ML021720458 containing attachment III, proposed page changes to SNM–124). NFS submitted two revisions to the license amendment application, dated May 9, 2002 (ADAMS accession number ML021350445 containing the nonproprietary version of the Integrated Safety Analysis Summary) and August 23, 2002 (ADAMS accession numbers ML022610016 containing the revised Integrated Safety Analysis cover letter, and ML022610048 containing attachment II, the nonproprietary version of the revised Integrated Safety Analysis Summary, mistakenly dated August 31, 2002, in ADAMS).

This application was docketed under 10 CFR part 70. The docket no. is 70–143.

On July 9, 2002, the NRC issued a notice of Opportunity for Hearing on the amendment of Materials License SNM–124, a notice of Finding of No Significant Impact and a summary of an Environmental Assessment for the amendment of Nuclear Fuel Services, Inc., Materials License SNM–124 to authorize construction and operation of the Uranyl Nitrate Storage Building. (67 FR 45555). The **Federal Register** notice published on July 9, 2002, provided inadequate identification of the license amendment application. The notice neither set forth the date upon which the application had been filed nor supplied any information as to how the content of the application might be located. This revision is intended to correct those deficiencies.

Notice of Availability of Amendment Request

NFS and Framatome ANP, Inc. are designing and are planning to construct a Blended Low Enriched Uranium (BLEU) Complex at the NFS site in Erwin, TN. As part of the BLEU complex, a Uranyl Nitrate Building (UNB) will be constructed to store and process uranyl nitrate. The February 28, 2002, amendment application seeks the authorization to construct and operate the UNB. The amendment application, in accordance with 10 CFR 70.61, contains an Integrated Safety Analysis (ISA) Summary which describes the UNB and its process systems. The ISA Summary encompasses all of the processes which involve handling of Special Nuclear Material (SNM) and any associated equipment and/or off-stream processes that could be impacted or intermingled with SNM. The ISA summary provides general information on the NFS site, and it evaluates the accident sequences which could arise from the operations in the UNB.

This application will be reviewed by the staff using NRC guidance, NUREG–1520 "Standard Review Plan for the Review of a License Application for a Fuel Cycle Facility."

The amendment application, and the two revisions, are available for public inspection and copying at the NRC Public Document Room, U.S. Nuclear Regulatory Commission Headquarters, Room 0–1F21, 11555 Rockville Pike, Rockville, MD 20852, or through the ADAMS system using the accession numbers mentioned above.

Notice of Opportunity for Hearing

The NRC hereby provides notice of an Opportunity for Hearing on the February 28, 2002, license amendment request to construct and operate the Uranyl Nitrate Building (UNB) under the provisions of 10 CFR part 2, subpart L, "Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings." Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing. In accordance with § 2.1205(d), a request for hearing must be filed within 30 days of the publication of this notice in the **Federal Register**. The request for a hearing must be filed with the Office of the Secretary, either:

(1) By delivery to the Docketing and Service Branch of the Office of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852; or

(2) By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch.

In accordance with 10 CFR 2.1205(f), each request for a hearing must also be served, by delivering it personally or by mail, to:

(1) The applicant, Nuclear Fuel Services, 1205 Banner Hill Road, Erwin, Tennessee 37650–9718. A copy of the request for hearing should also be sent to the attorney for the licensee; and

(2) The NRC staff, by delivery to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and because of continuing disruptions in delivery of mail to United States Government offices, it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov*.

In addition to meeting other applicable requirements of 10 CFR part 2 of the NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

(1) The interest of the requestor in the proceeding;

(2) How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in § 2.1205(h);

(3) The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

(4) The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(d).

The request must also set forth the specific aspect or aspects of the subject matter of the proceeding as to which petitioner wishes a hearing.

In addition, members of the public may provide comments on the subject application within 30 days of the publication of this notice in the **Federal Register**. The comments may be provided to Michael Lesar, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington DC 20555.

Summary of Environmental Assessment

Identification of the Proposed Action

The proposed action currently before the U.S. Nuclear Regulatory Commission (NRC) is to allow the licensee to construct and operate a Low-Enriched Uranyl Nitrate Storage Building (UNB) at the Nuclear Fuel Services, Inc. (NFS) site in Erwin, Tennessee, and to increase the ^{235}U possession limit. This action is part of the Blended Low-Enriched Uranium (BLEU) project described below. The other related future activities which were considered to contribute to the environmental impacts for this project are: construction and operation of an Oxide Conversion Building (OCB), construction and operation a new Effluent Processing Building (EPB), and relocation of downblending operations within the NFS protected area in a BLEU Preparation Facility (BPF).

On March 4, 2002, NRC issued a notice of intent to prepare an environmental assessment (EA) for amendment of Special Nuclear Material (SNM) License No. SNM–124 for NFS. To avoid segmentation of the environmental review, NFS has submitted environmental documentation for three proposed license amendments, which will impact the site over the next few years.

The Environmental Assessment (EA) for these actions does not serve as authorization for any proposed activities, rather it assesses the environmental impacts of the actions. As each amendment application is submitted, the NRC staff will perform a separate safety evaluation, which will be the basis for the approval or denial of the application. As part of the safety evaluation, the NRC will perform an environmental review. If the review indicates that this EA appropriately and adequately assesses the environmental effects of the proposed action, then no further assessment will be performed. However, if the environmental review indicates that this EA does not evaluate fully the environmental effects, another EA (or environmental impact statement (EIS)) will be prepared in accordance with the National Environmental Policy Act (NEPA).

Need for the Proposed Action

The Blended Low Enriched Uranium (BLEU) Project is part of a Department of Energy (DOE) program to reduce stockpiles of surplus high enriched uranium (HEU) through re-use or disposal as radioactive waste. Re-use as

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low enriched uranium (LEU) is considered the favorable option by the DOE because (1) weapons grade material is converted to a form unsuitable for nuclear weapons (addressing a proliferation concern), (2) the product can be used for peaceful purposes, and (3) the commercial value of the surplus material can be recovered. An additional benefit of re-use is avoidance of unnecessary use of limited radioactive waste disposal space. Framatome ANP Inc. has contracted with NFS to downblend surplus HEU material to a LEU nitrate and to convert the LEU to an oxide form. The NFS LEU oxide product is expected to be fabricated into commercial reactor fuel at a separate facility, for use in a Tennessee Valley Authority (TVA) nuclear power reactor; however, the NFS proposed action is limited to the production of LEU oxide, receipt and storage of LEU nitrate, down blending of HEU to LEU, and conversion of LEU nitrate to LEU oxide.

Environmental Impacts of the Proposed Action

For the proposed license amendments, construction and processing operations will result in the release of low levels of chemical and radioactive constituents to the environment. Under accident conditions, higher concentrations of materials could be released to the environment over a short period of time.

Normal Operations

Radiological impacts from the proposed BLEU Project operations include release of small quantities of radioactive material to the atmosphere and surface water. Radionuclides that may be released include isotopes and some daughter products of the actinide elements uranium, thorium, plutonium, americium, actinium, and lesser quantities of fission products including technetium, cesium, and strontium. Based on source material properties and processing information, NFS has estimated the quantities of airborne and liquid effluents and used this information to estimate doses to the maximally exposed individual. While some effluents for the proposed action are increasing in relation to current releases, the total annual dose estimate for the maximally exposed individual from all planned effluents is 0.022 mSv (2.2 mrem). This result is well below the annual public dose limit of 1 mSv (100 mrem) in 10 CFR part 20 and the 0.1 mSv (10 mrem) ALARA constraint. The estimated dose for a number of radionuclides is conservative, because the analysis assumed no pollution controls were in place.

Solid wastes generated by BLEU Project operations will be packaged into drums or boxes. Each container will be assayed for uranium content to verify that storage, shipment, and disposal requirements are met.

The potential for increase in dose to workers at NFS due to the BLEU project was evaluated. Operation of the BPF, OCB and UNB is not expected to increase the dose to workers at the NFS facility, because the types and quantity of material, and the processing, will be similar to what is already licensed at the site. NFS is committed to keeping doses as low as reasonable achievable (ALARA) by maintaining a radiation protection program that minimizes radiation exposures and releases of radioactive material to the environment. In order to accomplish this, NFS has procedures for working with radioactive materials and monitoring programs to determine the doses received by employees.

Impacts from non-radiological contaminants to air, surface water, and groundwater were also assessed. Air quality is protected by enforcing emission limits and maintenance requirements for pollution control equipment, as required by several operating permits issued by the Tennessee Air Pollution Control Board, Department of Environment and Conservation. The primary non-radiological emissions are expected to include nitrogen oxides, hydrogen and ammonia. Normal emissions of gaseous effluents from the new processes are not expected to have a significant impact on offsite non-radiological air quality, because the estimated concentrations at the nearest site boundary are below the State of Tennessee primary air quality standards, with the exception of nitrogen oxides. For nitrogen oxides, NFS will exceed the current allowable limit; however, NFS is requesting modification to the existing air pollution control permit for the main stack. Modification of the permit is required because of changes in material input from the BPF and installation of additional process and ventilation equipment. This modified permit for the main stack has not been issued as of this EA; however, NRC expects that the State, under its authority to regulate air quality, will continue to set permit levels to limit environmental impacts from NFS effluents.

The proposed BPF and BLEU Complex are expected to produce liquid effluents. BPF waste streams will be sent to the NFS wastewater treatment facility and discharged into the Nolichucky River in accordance with the National Pollutant Discharge Elimination System (NPDES) permit and NRC radiological effluent limits in 10 CFR part 20. This liquid effluent will consist of raffinate, condensate, scrubber waste solution, and sodium hydroxide. The basic and acidic waste streams will be treated using precipitation and ion exchange processes.

Surface water quality is expected to be protected from future site activities by enforcing release limits and monitoring programs, as required under the NPDES permit. No impact on NPDES permit limits is anticipated with respect to operations at the proposed BLEU Complex or downblending at the BPF. Surface water runoff from the proposed action will generally flow to the northwest across the proposed BLEU Complex. This runoff will drain to culverts at the northwest boundary of the NFS site, and then empty into Martin Creek. A storm water construction permit will be obtained from the Tennessee Department of Environment and Conservation prior to any construction activities that would disturb the land. Erosion and sediment control measures (*e.g.*, straw bales and silt fences) will be employed to mitigate surface runoff into the drainage ditches and Martin Creek, thus reducing the impacts to surface water during the construction of the proposed BLEU Complex. Sluice gates will be installed at collection points within the proposed BLEU Complex for containment of any hazardous spills during the lifetime of BLEU operations.

Previous operation of the plant has resulted in localized chemical and radiological contamination of groundwater, including beneath the BPF. Groundwater monitoring conducted by NFS indicates that plumes of uranium, tetrachloroethylene, trichloroethylene, 1,2-dichloroethylene, and vinyl chloride, from past operations, could migrate offsite in the direction of the Nolichucky River. To address potential environmental impacts from this contamination, NFS has removed much of the source contamination through extensive remediation projects including excavation of contaminated areas in the North Site. In addition, NFS is decommissioning the Radiological Burial Ground and the North Site to remove more of the source of this contamination. NFS also is working with the Tennessee Department of Environment and Conservation and the U. S. Environmental Protection Agency to design remedial strategies and to investigate the off-site extent of existing plumes.

The addition of the BLEU Complex will expand the physical site of the Erwin plant. Current environmental monitoring stations do not provide adequate coverage of the expanded site area. In addition, the current monitoring program lacks adequate coverage for groundwater in the vicinity of the proposed BLEU Complex. NFS plans to expand the existing environmental monitoring program to cover the BLEU Complex. Additional monitoring locations (*e.g.*, air, vegetation, soil, groundwater) will be proposed in a forthcoming license amendment request for the BLEU Project. For groundwater monitoring, NFS has indicated a minimum of one upgradient and three downgradient wells will be installed in the vicinity of the proposed BLEU Complex. NRC review of the proposed environmental monitoring program to determine compliance with 10 CFR part 20 requirements provides assurance that an adequate program will be in place prior to making a decision on the license amendments.

For normal operations, the proposed action will not discharge any effluents to the groundwater; therefore, no adverse impacts to groundwater are expected. Accidental releases of contaminants to groundwater appear unlikely due to design and control measures implemented by NFS.

A field investigation was conducted on the proposed BLEU complex site to determine the absence or presence of rare, threatened, or endangered plants. The survey focused primarily on the twenty federally listed threatened and endangered plants, but the State of Tennessee listing of rare and endangered vascular plants was also used for this survey. The results of the survey were that none of the plants on the federal or state lists were found to be present on this site, and the proposed actions on this site are not likely to adversely affect state and federally listed rare, threatened, or endangered plant species.

Unicoi County, the area in which the NFS site is located, contains one Federally Endangered mussel species, Appalachian elktoe {Alasmidonta raveneliana) near the confluence of the Nolichucky River and South Indian Creek. Because this is upstream of the confluence of the Nolichucky River and Martin Creek and the NFS site, no impact is expected on this species. No other threatened or endangered species listed on the Federal or State Threatened or Endangered Species List for the Region of Interest are known to potentially reside on the NFS site.

No impacts are expected on land use, biotic resources, socioeconomic resources, or cultural resources.

Accident Conditions

The conversion of HEU materials to low-enriched uranium dioxide at the BLEU Project will require the handling, processing, and storage of radioactive material and hazardous chemicals. An uncontrolled release of these materials from accidents could pose a risk to the environment as well as to workers and public health and safety.

The evaluation of potential accidents is carried out at a general level of detail in the EA to establish that the proposed processes, as described by NFS, will function safely with no significant adverse impacts to safety or the environment. A more detailed evaluation of the proposed processes will be carried out by the NFS in its integrated safety analysis, summaries of which will be submitted in the forthcoming BLEU Project license amendment requests.

The dissolution and downblending of HEU feed materials to low-enriched uranyl nitrate (UN) solution will be carried out in the BLEU Processing Facility. Remaining operations will be performed in the BLEU Complex area. This will include the storage of low-enriched UN solution in the UNB followed by further processing into uranium dioxide powder in the OCB, and treatment of the liquid effluent stream from the OCB in the EPB.

The primary chemicals used in the dissolution and downblending processes taking place in the BPF are: Nitric acid (70 percent solution); hydrogen peroxide (30 percent solution); sodium hydroxide (30 percent solution); sodium nitrate (45 percent solution); barium oxide (BaO); tributyl phosphate [$(C_4H_9)_3PO_4$]; normal paraffin fluid (Nopar 12 fluid); sodium carbonate (Na_2CO_3). The radioactive feed materials used include HEU/aluminum alloy, HEU metal (buttons), and natural uranium oxide. Reaction products and intermediates include sodium diuranate and UN solutions.

The main chemicals to be used and stored in the BLEU Complex are: low-enriched UN solution, anhydrous ammonia, aqueous ammonia (23 percent solution), nitric acid (50 percent solution), nitric acid (7 percent solution), liquid nitrogen, sodium hydroxide (50 percent solution), liquified petroleum gas (propane), and diesel fuel.

Many of the proposed process operations are patterned after existing NRC licensed processes, so operational experience and history build confidence that operations can be executed safely. Proposed process operations, such as the downblending of high-enriched UN to low-enriched UN, liquid-liquid extraction to purify UN solution, and HEU storage are very similar to corresponding processes licensed under NRC License SNM–124. The LEU solution will be converted to uranium dioxide powder in the OCB using the Framatome ANP Inc., process that is authorized by NRC License SNM–1227. Potential hazards associated with new operations were evaluated during the NRC review.

Primary hazards associated with the operation of the BLEU Project facilities involve: spill of chemical and or radioactive material in the building, leak in a storage tank or supply piping, release of gaseous and particulate effluents (chemical and/or radioactive materials) due to a malfunction of the process off gas treatment system, and upset in the control of process parameters leading to undesirable reactions and release of hazardous or explosive compounds such as hydrogen, hydrogen peroxide, ammonia, nitrogen oxides, nitric acid vapors. The loss of control of the process may include release of radioactive materials and nuclear criticality. These accidents can potentially impact worker safety, public health and safety, and the environment.

Primary controls relied upon to guard against inadvertent nuclear criticality in processing operations include concentration limits and use of favorable geometry process vessels. Measures to ensure chemical safety and safe handling of radioactive materials include the following:

- Tanks will be bermed for spill control and isolation;
- Tanks will be equipped with level control for overfill protection;
- Process off gases will be treated through scrubbers and HEPA filters prior to stack discharge;
- Process parameters will be controlled, and concentrations of hazardous or explosive chemicals will be maintained at safe levels. For example, sodium nitrate will be used in the HEU aluminum alloy dissolution process to minimize the formation of hydrogen, and air will be used in the dissolver to dilute the small quantities of hydrogen formed to safe levels.

Based on the information furnished in the NFS reports and summarized above, the safety controls to be employed in the processes for the BLEU Project appear to be sufficient to ensure planned processing will be safe.

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Cumulative Impacts

The Studsvick Facility is located adjacent to the NFS property, just south of the proposed BLEU complex. This facility is licensed by the state to process radioactive wastes. Due to the proximity of the two facilities, the staff evaluated cumulative radiological impacts from air effluents, liquid effluents, and direct radiation. The annual average of NFS effluent data from 1996 through 2000 and the most recent effluent data (CY2000) from the operations at Studsvick adequately characterize the impacts from current operations. Foreseeable future impacts of the BLEU Project (including BLEU Preparation facility, additional Waste Water Treatment Facility effluents and BLEU Complex effluents) were also considered.

Future impacts from air emissions from NFS operations are estimated using environmental monitoring data from 1996 through 2000. The air emissions estimate for Studsvick, Inc., is based on year 2000 data. To bound the impacts, the baseline dose from NFS operations and current estimates of doses attributable to Studsvick are added to the foreseeable future impacts of BLEU Project operations. Though it is not likely that the same individual is the maximally-exposed individual for each of the facilities, the sum of these doses are considered to bound future impacts.

As demonstrated in semi-annual effluent reports, current liquid releases from the NFS site are well within the regulatory limits listed in 10 CFR part 20. NFS has provided conservatively-derived estimates of future discharges from the BLEU Project which were estimated using NCRP 123. The dose from these effluents, which are dominated by contributions from the solvent extraction raffinate at the BLEU preparation facility, when added to existing effluents, remain within regulatory limits.

The staff evaluated cumulative impacts to the sewer system of combined NFS, BLEU Project and Studsvick by estimating bounding concentrations that would be present in individual streams. NFS estimated the discharge from the BLEU Complex to be 6,300 gallons per day. This daily discharge volume was used to convert estimated quantities of annual discharges from the BLEU Complex (in units of curies) in terms of liquid concentration. Concentration values for Studsvick were also obtained from a year 2000 inspection report.

The bounding contributions from either NFS baseline operations or future BLEU operations are used to compare against the 10 CFR 20, appendix B sewer discharge limits. These impacts, along with the discharge fractions from Studsvick operations, are summed for comparison using the unity rule. The value of 0.059 is considerably less than 1, which indicates that sewer discharges will remain a low cumulative impact.

Direct radiation monitoring data are available for both Studsvick, Inc. and NFS operations. Both licensees and the State of Tennessee Department of Environment and Conservation monitor direct radiation. Because the direct radiation monitored at the fenceline is a cumulative value (dose from both sites), the monitoring program ensures that this dose will not exceed regulatory limits. Both facilities have successfully demonstrated compliance in the past. Due to the nature of the materials in the BLEU complex, direct radiation is not expected to increase as a result of this project.

Agencies and Persons Consulted

The following agencies were consulted during the preparation of the EA:

- Tennessee Historical Commission, Division of Archaeology,
- U.S. Fish and Wildlife Service, and
- State of Tennessee, Department of Environment and Conservation, Division of Radiological Health.

Conclusion

The NRC has concluded that the proposed action to construct and operate the UNB at the NFS site will not result in significant impact to human health or the environment.

Finding of No Significant Impact

The Commission has prepared an Environmental Assessment, as summarized above, related to the amendment of Special Nuclear Material License SNM–124. On the basis of the assessment, the Commission has concluded that environmental impacts associated with the proposed action would not be significant and do not warrant the preparation of an Environmental Impact Statement. Accordingly, it has been determined that a Finding of No Significant Impact is appropriate.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," the Environmental Assessment and the documents related to this proposed action will be available electronically for public inspection from the Publicly Available Records (PARS) component of NRC's document system (ADAMS), accession number ML021790068. ADAMS is accessible from the NRC Web site at *http://www.nrc.gov/NRC/ADAMS/index.html* (the Public Electronic Reading Room).

Dated in Rockville, Maryland, this 18th day of October, 2002.

For the U.S. Nuclear Regulatory Commission.

Robert Pierson,

Director, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 02–27589 Filed 10–29–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Notice of Public Meeting; Pre-application Early Site Permit Meetings for the Grand Gulf Site

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of public meetings in Port Gibson, Mississippi.

SUMMARY: The U. S. Nuclear Regulatory Commission (NRC) will hold facilitated meetings on November 14, 2002, to provide information to the public on the NRC Early Site Permit review process, as well as the opportunities for public involvement in that process for the Grand Gulf site. Entergy Operations Incorporated (Entergy) is expected to file an early site permit in June 2003 for a new reactor or reactors at the Grand Gulf site. The meetings will also include a discussion of the perspectives, roles, and responsibilities of the NRC in regard to the Grand Gulf site.

DATE/TIME: The meetings will be held on Thursday, November 14, 2002, beginning with the first meeting from 2 p.m. through 4:30 p.m. followed by a later meeting from 7 p.m. through 9:30 p.m. Each meeting will be preceded by an "open house" one hour prior to the meeting to allow for individual discussions with staff members.

LOCATION: Port Gibson City Hall, 1005 College Avenue, Port Gibson, Mississippi.

FOR FURTHER INFORMATION CONTACT: Francis X. Cameron, Special Council for Public Liaison, Office of General Council, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555–0001, or by telephone: (301) 415–1642 or e-mail: *fxc@nrc.gov*. Mr. Cameron will facilitate the meeting.

SUPPLEMENTARY INFORMATION: Additional information can be obtained from the Web site (*http://nrcweb.nrc.gov:300/reactors/new-licensing/license-reviews/esp.html*), or by contacting Mr. Ronaldo Jenkins at (301) 415–2985, or via e-mail at *rvj@nrc.gov*.

Dated at Rockville, Maryland this twenty-fourth day of October 2002.

For the Nuclear Regulatory Commission.

James E. Lyons,

Director, New Reactor Licensing Project Office, Office of Nuclear Reactor Regulation.

[FR Doc. 02–27588 Filed 10–29–02; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Financial Management; Proposed Policy on Use of a Universal Identifier by Grant Applicants

AGENCY: Office of Management and Budget.

ACTION: Notice of Proposed Requirement for Use of a Universal Identifier by Grant Applicants.

SUMMARY: The Office of Management and Budget (OMB) seeks to establish a standard means for tracking Federal grant recipients throughout the entire grant life cycle and to provide the public with a uniform business practice. Currently Federal agencies use multiple and different identifiers for the entities which apply for and receive Federal grant funds, while a single identifier is used by entities which apply for and receive Federal contracts.

The Federal Government is in the process of developing an electronic standard grant application capability, known as E–APPLY, under an E-Grants system which will require each applicant to be uniquely identified. This notice seeks comments on the proposal by OMB's Office of Federal Financial Management (OFFM) to establish a requirement for applicants to register for a Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS)) number for use as the Universal Identifier needed to respond to Federal agency grant or cooperative agreement announcements. The DUNS is already in use by those entities seeking Federal contracts.

DATES: All comments on this proposal should be in writing, and must be received by December 30, 2002.

ADDRESSES: Due to potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, we encourage respondents to submit comments electronically to ensure timely receipt. We cannot guarantee that comments mailed will be received before the comment closing date.

Electronic mail comments may be submitted to *sswab@omb.eop.gov*. Please include "DUNS Comments" in the subject line of the message. If including the comments as an attachment to the e-mail, identify the attachment with "DUNS Comments." Please include your name, title, organization, postal address, telephone number, and e-mail address in the text of the e-mail message. Comments may also be submitted via facsimile to (202) 395–4915.

Comments may be mailed to Sandra R. Swab, Office of Federal Financial Management, Office of Management and Budget, Room 6025, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Sandra R. Swab, Office of Federal Financial Management, Office of Management and Budget, at 202 395–5642 (direct), 202–395–3993 (main office), or via e-mail (*sswab@omb.eop.gov*).

SUPPLEMENTARY INFORMATION: The Federal Government is in the process of developing a government-wide electronic portal that will include grant opportunity announcement (E–FIND) and electronic application (E–APPLY) capabilities. This new system is referred to as E-Grants and is one of the 24 cross-agency electronic government (E-Gov) initiatives referred to in the President's Management Agenda.

The E–Grants system will require that a Universal Identifier be used to verify each applicant. The identifier will be used for grant status tracking purposes, as well as by the Federal agencies as a source of other business information pertaining to the applicant.

OMB expects that with the use of a Universal Identifier, the need for organizations to submit redundant data with each application and report will be significantly reduced. Agencies will be able to use the Universal Identifier to obtain the standard legal name and address of the organization doing business with the government. The use of the Universal Identifier will also make it possible to create a unified, simplified, government-wide grant application and report submission mechanism.

Use of the DUNS number as the Universal Identifier for grants-related business transactions will provide the public with a uniform business practice since the DUNS is already in use by those entities seeking Federal contracts. Furthermore, use of a Universal Identifier will enable applicants and grantees to carry out authenticated and secure electronic interactions with the Federal Government. For Federal agencies, grantee use of the Universal Identifier can facilitate an analysis of grant applications and awards across agencies.

The E-Grants system will be one means of implementing the requirement for a DUNS number for the Federal grant process. Applicants submitting paper applications will also be required to include a DUNS number.

OMB is working to ensure that the Federal Assistance Awards Data System (FAADS) database, the government-wide grant payment systems, and the Federal Audit Clearinghouse (FAC) database will incorporate the Universal Identifier and make grant information more accessible and usable for the public. OMB plans to require use of a Universal Identifier by October 1, 2003 (which is the planned implementation date of the E-Grants Application process, E-APPLY), contingent on the results of our review of the public comments received in connection with this proposed policy.

DUNS Number

Many entities already hold a D&B DUNS number. For those organizations that do not already have a DUNS number, the number is easily obtained by telephone or via the Internet (*http://www.dunandbradstreet.com*). The DUNS number will be assigned by D&B upon request at no charge to the requestor. About 10–12 data elements are required for D&B to assign a DUNS number. Data elements include business name(s), address, telephone numbers, ownership information, legal structure of business, primary line of business, and the number of employees.

Request for Comment

OMB seeks comment from the affected public on the proposal to require use of the DUNS number to conduct grants business with the Federal Government. Questions that you should address include: Are there any barriers that preclude organizations or entities from obtaining a DUNS number by the planned October 1, 2003, implementation date of the E-Grants application process (E-APPLY)? When this requirement is adopted, what outreach and education for the applicant community will be necessary to increase awareness of the requirement for DUNS numbers? What additional barriers or problems could result, if the proposed DUNS number requirement is expanded to require sub-recipients to obtain a DUNS number? Does the policy statement which follows provide sufficient information about the requirement to use a DUNS number?

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Dated: October 17, 2002.

Joseph L. Kull,

Deputy Controller.

Proposed OMB Policy Directive

To the Heads of Executive Departments and Establishments

Subject: Requirement for Use of a Universal Identifier by Grant Applicants.

1. *Purpose.* This policy directive establishes the requirement for any applicant for Federal funds under a grant program to obtain a Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS) number for use as the applicant's Universal Identifier.

2. *Authority.* This policy directive is part of the implementation of the Federal Financial Assistance Management Improvement Act of 1999 (Public Law 106–107).

3. *Background.* Public Law 106–107 requires the Office of Management and Budget (OMB) to direct, coordinate, and assist Executive Branch departments and agencies in establishing an interagency process to streamline and simplify Federal financial assistance procedures for non-Federal entities. It also requires each executive agency to develop, submit to the Congress, and implement a plan for the streamlining and simplification effort that "allows applicants to electronically apply for, and report on the use of, funds from the Federal financial assistance program administered by the agency. . . ".

In response to that requirement, the Federal Government is in the process of developing an electronic standard grant application process under an E-Grants system, which requires each applicant to be uniquely identified by a Universal Identifier. The identifier will be used for grant status tracking purposes and as a source of business information pertaining to the applicant. Use of the Universal Identifier will enable applicants and grantees to carry out authenticated and secure electronic interactions with the Federal Government. Use of the DUNS number as the Universal Identifier for grants-related business transactions will provide the public with a uniform business practice since the DUNS is already in use by those entities seeking Federal contracts.

4. *Policy.* Applicants for Federal funds under any grant program administered by Federal agencies shall seek and obtain a Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS) number for use as the Universal Identifier. A DUNS number is required for any applicant to make use of the E-Grants system. Applicants submitting paper applications are also required to include a DUNS number as their Universal Identifier. The policy does not apply to individuals applying for direct assistance under Federal programs.

5. *Responsibilities.*

a. *Agency Responsibilities.* Executive Branch departments and agencies:

(1) Must issue any needed direction to offices that award grants and cooperative agreements to implement this policy.

(2) Shall also direct recipients to initiate actions to obtain a DUNS number. The number is easily obtained by telephone or via the Internet (*http://www.dunandbradstreet.com*).

b. *OMB Responsibilities.* The Office of Management and Budget will update this policy letter as needed, based on recommendations from interagency work groups.

6. *Information Contact.* Direct any questions regarding this policy directive to Sandra Swab, OFFM, 202–395–5642 (direct) or 202–395–3993 (main office).

7. *Effective Date.* The policy directive is effective 30 days after issuance. All implementing actions other than regulatory revisions must be completed by the Executive departments and agencies within 6 months of issuance, and no later than October 1, 2003, when applicants and grantees must begin using the Universal Identifier.

Date:

Controller

[FR Doc. 02–27542 Filed 10–29–02; 8:45 am]

BILLING CODE 3110–01–P

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Financial Management; Proposed Policy on Common Summary Report of Inventions

AGENCY: Office of Management and Budget (OMB).

ACTION: Notice of proposed policy issuance directive on standard data elements for a common summary report of inventions.

SUMMARY: OMB's Office of Federal Financial Management (OFFM) proposes to issue a policy directive to establish standard data elements and an interactive Internet web form of these elements to facilitate the submittal of a summary report of inventions. The purpose of a single interactive Internet web form is to have a common government-wide system for this report instead of the numerous, agency-unique summary invention reporting forms currently used by the Federal agencies. An interagency work group developed the data elements as part of the implementation of the Federal Financial Assistance Management Improvement Act of 1999 (Pub. L. 106–107). Consistent with the purposes of that Act, a single common web form will simplify and streamline this reporting process.

DATES: All comments on this proposal should be in writing, and must be received by December 30, 2002.

ADDRESSES: Due to potential delays in OMB's receipt and processing of mail sent through the U. S. Postal Service, we encourage respondents to submit comments electronically to ensure timely receipt. We cannot guarantee that comments mailed will be received before the comment closing date.

Electronic mail comments may be submitted to *ghatch@omb.eop.gov.* Please include "Invention Reporting Comments" in the subject line of the message. If including the comments as an attachment to the e-mail, identify the attachment with "Invention Reporting Comments." Please include your name, title, organization, postal address, telephone number, and e-mail address in the text of the message. Comments may also be submitted via facsimile to (202) 395–4915. Comments may be mailed to Garrett Hatch, Office of Federal Financial Management, Office of Management and Budget, Room 6025, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Garrett Hatch, Office of Federal Financial Management, Office of Management and Budget, at 202–395–0786 (direct) or 202–395–3993 (main office) and e-mail: *ghatch@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: This notice proposes, by way of a policy directive, to establish a single interactive Internet web form to submit the summary (interim or final) report of inventions conceived or first actually reduced to practice during the term of an award as required by the Bayh-Dole Act [35 U.S.C. Section 206; 37 CFR Section 401.5(f)(1) and (3)]. The Federal agencies plan to locate this interactive web form on the Interagency Edison extramural invention reporting system called iEdison (*http://iedison.gov*). iEdison is an Internet-based system devoted to Bayh-Dole Act reporting compliance. It was selected because it is currently used by 16 Federal agencies for invention reporting and tracking. To meet reporting requirements, award recipients will be able to complete the web form on the iEdison web site, print a copy, sign, and fax or mail the form to the awarding agency. The use of an electronic signature is not included in this implementation since a government-wide standard for electronic signature has not yet been defined.

Implementation of a common government-wide web form for the summary report of inventions is one outcome of the Federal agencies' streamlining and simplification efforts mandated by the Federal Financial Assistance Management Improvement Act of 1999 (Pub. L. 106–107). Although the standard data elements and web form were developed for financial assistance recipients, the elements are equally applicable to contractors, and contractors can use the web form as an interim or final summary report of inventions, if an agency chooses.

The standard data elements, *i.e.*, data dictionary, and a template of the proposed web form are attached to this notice. The Federal agencies that require a summary invention report believe the proposed data elements are the essential elements needed for such a report. During an informal commenting period, several organizations recommended that a summary report of inventions be required only if there were inventions to report.

However, while the decision to request such reports is optional, most agencies believe that a final report (either positive or negative) is the most efficient way to provide some assurance that the recipient has given appropriate attention to the reporting of inventions. Often times a significant number of inventions are reported when recipients are prompted to complete a final report of inventions prior to close-out. The experience of several agencies has also shown that recipients pay more attention to invention reporting obligations if they are required to indicate if no inventions were made under the award.

We welcome your comments on the standard data elements and the proposed interactive Internet web form. If you receive funds from the Federal Government for research and development, or expect to receive funds in the future, questions that you may wish to address include:

- Do you agree that these data elements represent the minimum set needed? Would you add or delete any elements? If you recommend adding or deleting any elements, please explain.
- Do the data element definitions clearly describe what is required? If not, please provide suggested changes.
- Would you be able to access the iEdison system to complete the web form? Although the interactive Internet web form will not be fully developed until the standard data elements are approved, we welcome suggestions on how to make it more "user friendly".

Dated: October 17, 2002.

Joseph L. Kull,

Deputy Controller.

Proposed OMB Policy Directive

To the Heads of Executive Departments and Establishments

Subject: Standards for Summary Report of Inventions.

(1) *Purpose.* This policy directive establishes a single interactive Internet web form to be used by recipients for their summary report of inventions if such reports are required by the awarding agency.

(2) *Authority.* This policy directive is part of the implementation of the Federal Financial Assistance Management Improvement Act of 1999 (Pub. L. 106–107).

(3) *Background.* The Federal Financial Assistance Management Improvement Act of 1999 requires the Office of Management and Budget (OMB) to direct, coordinate, and assist Executive Branch departments and agencies in establishing an interagency process to streamline and simplify Federal financial assistance procedures for non-Federal entities.

It also required each executive agency to develop, submit to the Congress, and implement a plan for the streamlining and simplification effort. Twenty-six Executive Branch agencies jointly submitted a plan to the Congress in May 2001, as the Act required. The plan described the interagency process through which the agencies would review current policies and practices and seek to streamline and simplify them. The plan also identified substantive areas in which the interagency work groups had begun their review and simplification efforts.

One area identified by the Post-Award Work Group was the development of common data elements for a summary report of inventions. The interagency work group recognized that the development of a common set of information requirements, and adoption of a common web form for this report would reduce the reporting burden on recipients that receive Federal funds for research and development.

(4) *Requirement.* The Bayh-Dole Act requires that any invention conceived or first actually reduced to practice using funds obtained as part of a Federal funding agreement must be reported to the Federal awarding agency [35 U.S.C. Section 202; 37 CFR Section 401.14]. A provision of the law permits agencies, at their option, to require recipients to submit a summary report of inventions, either on an interim basis, or prior to the close-out of a funding agreement listing all subject inventions or stating that there were none [37 CFR Section 401.5(f)(1) & (f)(3)]. Most of the large Federal agencies that fund research and development require at least a final summary report of inventions.

(5) *Policy.* If a Federal agency requires a summary report of inventions prior to the close-out of a grant or a cooperative agreement, the agency must use the common web form and must specify in the award agreement or in the agency's policy directives that recipients must use the common interactive Internet web form on the iEdison Web site at *http://iedison.gov* for such reports.

(6) *Responsibilities.*

a. Agency Responsibilities. Executive Branch departments and agencies:

(1) Must issue any needed direction to offices that award grants and cooperative agreements to implement this policy. Agencies should also direct recipients to complete all the required information on the web form and any optional information required by the agency, print and sign the form, and mail or fax it to the appropriate Federal official.

(2) May request exceptions from this OFFM policy letter for any summary invention reporting that deviates from the government-wide invention reporting system.

b. OMB Responsibilities. OMB will update this policy letter as needed, based on recommendations from interagency work groups.

(7) *Information Contact.* Direct any questions regarding this policy directive to Garrett Hatch, OFFM, 202–395–0786 (direct) or 202–395–3993 (main office).

(8) *Effective Date.* The policy directive is effective 30 days after issuance. All implementing actions other than regulatory revisions must be completed by the Executive departments and agencies within 6 months of issuance; regulatory revisions must be completed within 12 months.

Date:

Controller

Attachments:

1. Data Dictionary for Common Summary Report of Inventions
2. Summary Report of Inventions Web Form Template

Data Dictionary—Common Summary Report of Inventions

The data elements that are represented allow for the summary reporting of all inventions and patents

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that have been made using Federal funds during the term of a Federal funding agreement. The data elements allow for the identification of the agency source of funding, the reporting period, and whether the report is an interim, *i.e.*, for a funding period of fixed duration within a multi-year award, or a final report. Any number of inventions can be reported, including the invention title, inventors' names, and invention docketing numbers and the date upon which the invention was formally reported to the funding agency consistent with Bayh-Dole regulations. A similar set of information is available for summary reporting of patent applications that relate to each invention. Finally, the name, title, and signature of the grantee organization official authorized to submit the information is included. The signature of the official is not captured as part of the interactive form. Instead, once the form is completed and printed, the official can sign the printed form prior to either faxing or sending to the awarding agency via U.S. Postal Service, in accordance with the agency's implementing instructions.

Group	Description	Required?
Document	The Document group represents data elements relevant to the entire Summary Report of Inventions.	Required.
Invention	The Invention group identifies the data elements relevant to one invention listed on this Summary Report of Inventions.	Required. May list more than one.
Inventor	The Inventor group identifies the data elements relevant to one inventor for one invention listed on this Summary Report of Inventions.	Required. May list more than one.
Patent	The Patent group identifies the data elements relevant to one patent listed on this Summary Report of Inventions.	Optional. May list more than one.
Patent Inventor	The Patent Inventor group identifies the data elements relevant to one inventor for one entry patent listed on this Summary Report of Inventions.	At least one required per Patent group. May list more than one.

Tag	Length	Description	Required?	Group
Report Type Code	1	Code specifying the type of report: I=Interim. F=Final.	Required. Identify one only	Document.
Report Period Start Date	8	Month, date, and year that the reporting period starts. Format is MMDDYYYY.	Required	Document.
Report Period End Date	8	Month, date, and year that the reporting period ends. Format is MMDDYYYY.	Required. Identify one only	Document.
Subject Inventions Number	3	Number of subject inventions conceived of or first actually reduced to practice during the entire award period. Valid values are 0–999.	Required. Identify one only	Document.
Subject Inventions Reported	1	Were all the subject inventions reported? Y=Yes. N=No.	Required. Identify one only	Document.
Prime Awardee Name	100	Name of the organization that has been awarded the grant, cooperative agreement, or contract.	Required. Identify one only	Document.
Prime Award Number	30	Agency-specific number assigned to the grant, cooperative agreement, or contract award.	Required. Identify one only	Document.
Awarding Agency	100	Agency that awarded the grant, cooperative agreement, or award.	Required. Identify one only	Document.
Subcontractor Name	100	The name of the organization submitting this Summary Invention Report, if different from the Prime Awardee Name.	Optional. Identify one only	Document.
Subcontractor DUNS	15	The DUNS number of the subcontractor submitting this Summary Invention Report.	Required if Subcontractor Name is present. Identify one only.	Document.
Subcontract Number	30	Contract number assigned to the subcontractor in the context of this grant, cooperative agreement, or contract.	Required if Subcontractor Name is present. Identify one only.	Document.
Signatory Prefix	15	Prefix of the organizational official authorized to submit this report.	Optional. Identify one only	Document.
Signatory First Name	30	First name of the organizational official authorized to submit this report.	Required. Identify one only	Document.

Tag	Length	Description	Required?	Group
Signatory Middle Initial	1	Middle initial of the organizational official authorized to submit this report.	Optional. Identify one only	Document.
Signatory Last Name	30	Last name of the organizational official authorized to submit this report.	Required. Identify one only	Document.
Signatory Suffix	5	Suffix of the organizational official authorized to submit this report.	Optional. Identify one only	Document.
Signatory Title	240	Position title of the organizational official authorized to submit this report.	Required. Identify one only	Document.
Report Submission Date	8	Month, date, and year that this report is submitted to the Federal Government. Format is MMDDYYYY.	Required. Identify one only	Document.
Invention Title	300	Title of the subject invention	Required. Identify one only	Invention.
Invention Docket Number	25	Number by which the grantee/contractor tracks the subject invention.	Optional. Identify one only	Invention.
Invention Report Date	8	Month, date, and year that the subject invention is reported to the Federal Government. Format is MMDDYYYY.	Optional. Identify one only	Invention.
Agency Invention Number	25	Number by which the Awarding Agency tracks the subject invention.	Optional. Identify one only	Invention
Invention Reported By Code	1	Code specifying who reported the subject invention:. A=Awardee. S=Subcontractor.	Optional. Identify one only	Invention.
Inventor First Name	30	First name of the inventor of the subject invention.	Required. Identify one only	Inventor.
Inventor Middle Initial	1	Middle initial of the inventor of the subject invention.	Optional. Identify one only	Inventor.
Inventor Last Name	30	Last name of the inventor of the subject invention.	Required. Identify one only	Inventor.
Patent Title	300	Title of the subject patent	Required. Identify one only	Patent.
Patent ID Number	25	The patent number or patent application serial number.	Required. Identify one only	Patent.
Patent Filing Or Issue Date	8	Month, date, and year that the patent application was filed or the patent was issued. Format is MMDDYYYY.	Required. Identify one only	Patent.
Patent Docket Number	25	Number by which the grantee/contractor tracks the subject patent.	Optional. Identify one only	Patent.
Patent Reported By Code	1	Code specifying who reported the subject patent: A=Awardee. S=Subcontractor.	Optional. Identify one only	Patent.
US Application Filed	1	Has a U.S. patent application been filed? Y=Yes N=No	Required. Identify one only	Patent.
Foreign Application Filed	1	Has a foreign patent application been filed? Y=Yes N=No	Required. Identify one only	Patent.
Foreign Countries Indicated	1	For foreign filings, have all countries been noted in the report?. Y=Yes N=No	Required if Foreign Application Filed is Yes. Identify one only.	Patent.
Patent Inventor First Name	30	First name of the inventor of the subject patent.	Required. Identify one only	Patent Inventor.
Patent Inventor Middle Initial	-1	Middle initial of the inventor of the subject patent.	Optional. Identify one only	Patent Inventor.
Patent Inventor Last Name	30	Last name of the inventor of the subject patent.	Required. Identify one only	Patent Inventor

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Summary Report of Inventions Template

Report for Award No: REQUIRED TEXT

Awardee Organization Name: REQUIRED TEXT

Awarding Agency: REQUIRED FROM PICKLIST ▽

Subcontractor Name (if applicable*): REQUIRED TEXT

*Subcontractor Reports are required for R&D performed under contracts, purchase orders, and subcontract agreements within all awards. See contract or grant award documents when in doubt.

Subcontract Number: REQUIRED

Reporting Period

Starting Date: mm/dd/yyyy Ending Date: mm/dd/yyyy

Type of Report: Interim o Final o

If final report, please answer the following: Required from Picklist

Number of inventions during the total period of award: ▽

Were all the subject invention(s) reported? Yes o No o

[Implementation Note: If Number of inventions = 0, no further information will be required.]

Subject Invention-Related Information

Title of Subject Invention REQUIRED TEXT

Docket No. optional DOE "S" No. REQUIRED (if applicable)

Reported by: Prime Contractor o Subcontractor o

Subject Inventors Names:

Last	First	Middle I.
AT LEAST ONE REQUIRED		

Date Reported: mm/dd/yyyy Link to add Additional Invention

[Implementation Note: The "Link to add Additional Invention" shown above will allow the grantee/ contractor/subcontractor to report on all inventions.]

Patent-Related Information

Title of Patent/Application REQUIRED TEXT

Patent Identifying No. application #, serial #...

Docket No. optional

Reported by: Prime Contractor o Subcontractor o

Patent Inventors Names:

Last	First	Middle I.
AT LEAST ONE REQUIRED		

Date Reported: mm/dd/yyyy Link to add Additional Patent

Please Note: All U.S. and foreign filings must be included in the report. For foreign filings, all countries must be included in the report.

[Implementation Note: The "Link to add additional Patent" shown above will allow the grantee/ Contractor/subcontractor to report on all patents: U.S. AND Foreign. For each patent, the format Of the Patent Identifying No. will identify if the patent application is U.S. or Foreign]

Grantee/Contractor Organization Official Authorized to Submit the Report

Name:

Pfx	Last	First	Mid Init.	Sfx
	REQUIRED	REQUIRED		

Title: REQUIRED TEXT

Signature: REQUIRED

Date Report Submitted: mm/dd/yyyy

[FR Doc. 02–27543 Filed 10–29–02; 8:45 am]
BILLING CODE 3110–01–C

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RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s):

Collection title: Evidence of Marital Relationship—Living with Requirements.

Form(s) submitted: G–124, G–124a, G–237, G–238, and G–238a.

OMB Number: 3220–0021.

Expiration date of current OMB clearance: 1/31/2003.

Type of request: Extension of a currently approved collection.

Respondents: Individuals or households, state, local or tribal government.

Estimated annual number of respondents: 1,100.

Total annual responses: 1,100.

Total annual reporting hours: 196.

Collection description: Under the RRA, to obtain a benefit as a spouse of an employee annuitant or as the widow(er) of the deceased employee, applicants must submit information to be used in determining if they meet the marriage requirements for such benefits. The collection obtains information supporting claimed common-law marriage, termination of previous marriages and residency requirements.

FOR FURTHER INFORMATION CONTACT: Copies of the forms and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312–751–3363).

Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, 60611–2092 and to the OMB Desk Officer for the RRB, at the Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 02–27598 Filed 10–29–02; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46674; File No. SR–OPRA–2002–05]

Options Price Reporting Authority; Notice of Filing and Immediate Effectiveness of Amendment to OPRA Plan Regarding Policies for Device-Based Fees

October 17, 2002.

Pursuant to Rule 11Aa3–2 under the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on October 4, 2002, the Options Price Reporting Authority ("OPRA")[2] submitted to the Securities and Exchange Commission ("SEC" or "Commission") an amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information ("OPRA Plan"). The proposed OPRA Plan amendment would supplement OPRA's form of Professional Subscriber Agreement with a new document entitled "Policies With Respect To Device-Based Fees" (referred to in this filing as the "Device-Based Fees Policies"). The Commission is publishing this notice to solicit comments from interested persons on the proposed OPRA Plan amendment.

I. Description and Purpose of the Amendment

The purpose of the proposed amendment to OPRA's national market system plan is to state in writing certain OPRA policies with respect to the way in which OPRA calculates "device-based fees" that are paid by Professional Subscribers.[3] The policies reflect existing OPRA practice, but OPRA has not previously reduced them to writing. OPRA has developed the Device-Based Fees Policies to make information with respect to its calculation of device-based fees more easily accessible to Professional Subscribers. The Device-Based Fees Policies address four subjects relating to device-based fees:

(a) The Use of "User IDs" as a Surrogate or Supplement for Devices for Purposes of Calculating Device-Based Fees

As the term "device-based" suggests, the basic method for calculating a Professional Subscriber's device-based fees is to determine the number of devices that the Professional Subscriber has that are capable of receiving OPRA information. However, OPRA permits Professional Subscribers to count "User IDs" as a surrogate or supplement for counting devices for purposes of calculating OPRA fees. A Professional Subscriber that wishes to count User IDs must comply with certain requirements, which are described in the Device-Based Fees Policies.

(b) The Manner in Which OPRA Bills for the Use of OPRA Data by Entities That Are Affiliated With Each Other

OPRA's policy is to permit a parent entity's status as a Professional Subscriber to encompass its wholly-owned subsidiaries. In all other situations OPRA's policy is to conduct its relationships with Professional Subscribers and other persons on an "entity-by-entity" basis, and not on a "family of affiliates" basis. The Device-Based Fees Policies describe two specific ways in which these policies may apply to the calculation of device-based fees. The first has to do with the aggregation of devices and/or User IDs across affiliated entities for purposes of determining the applicable device-based rate. The second relates to the availability of OPRA's member rate schedule for OPRA's Basic Service in a situation where either a parent entity is a member of an OPRA Exchange but its wholly-owned subsidiary is not (in this case, the member rate schedule is available for the parent and the subsidiary) or the parent entity is not a member of an OPRA Exchange but its wholly-owned subsidiary is (in this case, the member rate schedule is not available to either the parent or the subsidiary, although it would be available to the subsidiary if it entered into a separate Subscriber Agreement with OPRA in its own name).

(c) Policy With Respect to Devices and User IDs That Are Capable of Receiving OPRA Data From More Than One Source

The Device-Based Fees Policies state OPRA's policy with respect to devices and User IDs that are capable of receiving OPRA data from more than one source; in essence the policy is that OPRA does not require that more than one fee be paid with respect to any device or User ID that is capable of receiving OPRA information, even if the device or User ID is capable of receiving OPRA information from more than one source or "service."

(d) Professional Subscriber's Responsibility to Verify Invoices

The fourth subject addressed in the Device-Based Fees Policies is the responsibility of each Professional Subscriber to verify that the invoices it receives from OPRA are accurate, and particularly to verify that it is not being billed twice for the same device or User ID. The Device-Based Fees Policies state that OPRA's policy is to correct a current invoice if a Professional Subscriber informs OPRA that the invoice is not accurate, and to correct its records so that the inaccuracy does not continue to be reflected in future bills, but not to provide refunds or credits for a double billing or other inaccuracy for any period of time prior to the period covered by the Professional Subscriber's current invoice.

The text of the proposed new document regarding policies with respect to Device-Based Fees is set forth below.

* * * * *

Policies With Respect To Device-Based Fees

Professional Subscribers that enter into Professional Subscriber Agreements directly with OPRA pay fees for the use of OPRA information directly to OPRA. These fees may be calculated using either "device-based" rates or "enterprise" rates. (A Professional Subscriber that enters into a Subscriber Agreement with a Vendor does not pay fees directly to OPRA. Instead, the Vendor pays usage-based fees to OPRA for the Professional Subscriber's use of OPRA information, and the Professional Subscriber pays fees to the Vendor under the financial arrangements that they establish.) The OPRA policies described in this document relate to device-based fees.

As the term "device-based" suggests, the basic method for calculating a Professional Subscriber's device-based fees is to determine the number of devices that the Professional Subscriber has that are capable of receiving OPRA information. However, if a Professional Subscriber complies with the requirements described in the section of this document entitled "System Requirements for Using User IDs to Calculate Device-based Fees," OPRA will permit the Professional Subscriber to count "User IDs" that are capable of receiving OPRA information as a surrogate for counting devices, and to pay fees based on the number of User IDs using the same *Fee Schedule for Professional Subscribers* that is used for device-based counts.

A Professional Subscriber cannot mix device-based counting and User ID-based counting at the same location, but a Professional Subscriber may use one type of counting at one location and the other at another location. If a Professional Subscriber uses both types of counting, OPRA will simply add the totals together for purposes of determining the Subscriber's monthly fee in accordance with the Fee Schedule.

Billing for Affiliates

OPRA's policy is to permit a parent entity to conduct business with OPRA on behalf of its wholly-owned subsidiaries as well as on its own behalf. In all other situations OPRA adheres to a general policy in its contract relationships with Professional Subscribers and other persons of conducting business on an "entity-by-entity" basis, and not on a "family of affiliates" basis. Thus, for example, OPRA would permit a wholly-owned subsidiary of a company that is a Professional Subscriber to receive OPRA information on the subsidiary's devices under the terms of the parent's Professional Subscriber Agreement, *i.e.*, without having a second Professional Subscriber Agreement in effect. But OPRA would require two entities that are "sister" affiliates of each other and that each wants to become a Professional Subscriber and to pay device-based fees to each sign a Professional Subscriber Agreement with OPRA.

This general policy is relevant to determinations of device-based fees in at least two respects:

- OPRA permits a parent entity to aggregate the devices and/or User IDs of its wholly-owned subsidiaries that are under the parent's Professional Subscriber Agreement with its own devices and/or User IDs for purposes of determining the applicable device-based rate, but does not permit any other aggregation of devices or User IDs—even by entities that are in other affiliate relationships with each other—for purposes of determining the applicable device-based rate.
- If a parent entity that has entered into a Professional Subscriber Agreement is entitled to use the "Member" rate schedule for OPRA's Basic Service (because it is a member or associate member in good standing of one of the OPRA Participant Exchanges), then the "Member" rate schedule will also be available to the parent's wholly-owned subsidiaries that are under the parent's Professional Subscriber Agreement. If a parent entity that has entered into a Professional Subscriber Agreement is not entitled to use the "Member" rate schedule, then the "Member" rate schedule would not be available to a wholly-owned subsidiary that is under the parent's Professional Subscriber Agreement even if the subsidiary is a member or associate member in good standing of one of the OPRA Participant Exchanges. (This might be a situation in which the subsidiary should enter into its own Professional Subscriber Agreement, since it would then be entitled to use the "Member" rate schedule.) Except in the case in which a parent entity is entitled to use the "Member" rate schedule for itself and its wholly-owned subsidiaries, the availability of the "Member" rate schedule to any entity may not be extended to any other entity, including any affiliate of the entity that is entitled to use the "Member" rate schedule.

System Requirements for Using User IDs to Calculate Device-Based Fees

If a Professional Subscriber wants to use User ID counts rather than device counts for purposes of determining device-based fees at a particular location, the system(s) that control User ID entitlement at the location must satisfy the following requirements:

- The system(s) must assign a unique User ID to each person who will have access to OPRA information and must be capable of maintaining, for audit purposes, a record of the names of all users with access to the network together with their associated user IDs and their respective entitlements.
- The system(s) must be configured to preclude simultaneous access by the same user ID from more than one terminal on the network.

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[1] 17 CFR 240.11Aa3–2.

[2] OPRA is a national market system plan approved by the Commission pursuant to Section 11A of the Act and Rule 11Aa3–2 thereunder. *See* Securities Exchange Act Release No. 17638 (Mar. 18, 1981). The OPRA Plan provides for the collection and dissemination of last sale and quotation information on options that are traded on the member exchanges. The five participants to the OPRA Plan that operate an options market are the American Stock Exchange LLC, the Chicago Board Options Exchange, Inc., the International Securities Exchange LLC, the Pacific Exchange, Inc., and the Philadelphia Stock Exchange, Inc. The New York Stock Exchange, Inc. is a signatory to the OPRA Plan, but sold its options business to the CBOE in 1997. *See* Securities Exchange Act Release No. 38542 (April 23, 1997), 62 FR 23521 (April 30, 1997).

[3] In essence, an OPRA Professional Subscriber may pay fees for its receipt of OPRA data in one of three ways. The first two ways are available to a Professional Subscriber that enters into a Professional Subscriber Agreement directly with OPRA; such a Subscriber pays fees for the receipt of OPRA data directly to OPRA, with the fees calculated using either "device-based" rates (the subject of the Device-Based Fees Policies) or "enterprise" rates (rates that are calculated on the basis of the number of "registered representatives" that work for the Professional Subscriber, subject to a monthly minimum). The third way is available to a Professional Subscriber that enters into an agreement with an OPRA vendor in a form prescribed by or that is acceptable to OPRA. In that case, the Vendor pays "usage-based" fees to OPRA (fees based on the volume of usage of OPRA data through the Vendor's service) for the Professional Subscriber's use of OPRA information, and the Professional Subscriber pays fees to the Vendor under the financial arrangements that they establish.

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• The system(s) must have the ability to generate reports for the location detailing those persons entitled to access OPRA information, and to retain these reports for a period of three years for audit purposes.

In addition, the Professional Subscriber must have a policy in place prohibiting the sharing of User IDs, and must have procedures in place to assure reasonable compliance with the policy.

If any of these requirements is not satisfied (*e.g.*, if the entitlement control system does not prohibit simultaneous access by the same User ID), device-based fees must be based on counting the devices that are capable of receiving OPRA information rather than on counting User IDs.

Counting Devices and User IDs

OPRA does not require that more than one fee be paid with respect to any device, or any User ID, that is capable of receiving OPRA information, even if the device or User ID is capable of receiving OPRA information from more than one source or "service." Thus, for example, if a particular device is receiving data from both a Vendor A service and a Vendor B service, OPRA does not require that the Professional Subscriber pay two device-based fees for that device. Similarly, if a particular device is receiving data from both a Vendor A service and a datafeed controlled by the Professional Subscriber itself, OPRA does not require that the Professional Subscriber pay two device-based fees for that device.

Professional Subscriber's Responsibility to Verify Invoices

Each Professional Subscriber is responsible for verifying that the invoices it receives from OPRA are accurate. In particular, each Professional Subscriber is responsible for verifying that it is not being billed twice for the same device or User ID. OPRA invoices each Professional Subscriber that has elected to pay device-based fees based on information that OPRA receives from Vendors (with respect to devices and User IDs that are under Vendor control) and from the Professional Subscriber itself (with respect to devices and User IDs that are under the control of the Professional Subscriber). It can be difficult for OPRA to recognize that a device or User ID reported as receiving OPRA information by two different Vendors, or by a Vendor and the Professional Subscriber, is in fact the same device or User ID.

If a Professional Subscriber informs OPRA that a current OPRA invoice double bills for a particular device or User ID or is otherwise inaccurate, OPRA will correct the current invoice and its records so that the double billing or other inaccuracy does not continue. However, OPRA's policy is to not provide refunds or credits for a double billing or other inaccuracy for any period of time prior to the period covered by the Professional Subscriber's current invoice.

* * * * *

II. Implementation of the OPRA Plan Amendment

Pursuant to paragraph (c)(3)(i) of Rule 11Aa3–2 under the Act,[4] OPRA designates this amendment as establishing or changing a fee or other charge collected on behalf of all of the OPRA participants in connection with access to or use of OPRA facilities, thereby qualifying for effectiveness upon filing. The Commission may summarily abrogate the amendment within sixty days of its filing and require refiling and approval of the amendment by Commission order pursuant to Rule 11Aa3–2(c)(2) under the Act,[5] if it appears to the Commission that such action is necessary or appropriate in the public interest; for the protection of investors and the maintenance of fair and orderly markets; to remove impediments to, and perfect the mechanisms of, a national market system; or otherwise in furtherance of the purposes of the Act. Further, OPRA intends to send a copy of the Policies to all current Professional Subscribers with the next monthly invoices that are sent out by OPRA following this filing, and to add the Policies to the package of materials that it supplies to vendors for distribution to persons intending to sign Professional Subscriber Agreements with OPRA. In addition, as soon as practicable OPRA intends to post a copy of the Policies on its website *(www.opradata.com)*.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed OPRA Plan amendment is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, and all written statements with respect to the proposed OPRA Plan amendment that are filed with the Commission, and all written communications relating to the proposed OPRA Plan amendment between the Commission and any person, other than those withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available at the principal offices of OPRA. All submissions should refer to File No. SR–OPRA–2002–05 and should be submitted by November 20, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–27577 Filed 10–29–02; 8:45 am]

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[4] 17 CFR 240.11Aa3–2(c)(3)(i).

[5] 17 CFR 240.11Aa3–2(c)(2).

[6] 17 CFR 200.30–3(a)(29).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46718; File No. SR–CBOE–2002–48]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Granting Accelerated Approval of Proposed Rule Change Relating to Amendments to its Constitution and Rules Pertaining to the Governance of the Exchange

October 24, 2002.

On August 26, 2002, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend CBOE's Constitution and Rules relating to governance of the Exchange. The principal governance proposal increases the public representation on the Exchange's Board of Directors ("Board") and three committees of the Board so that the Board and these three committees will be balanced between industry (member) and public directors. The Exchange also proposed to codify in its Constitution establishment of the Audit Committee, Compensation Committee, and Floor Directors Committee of the Board. It also proposed to amend its Constitution to clarify that the authority of the Vice Chairman of the Board to coordinate the activities of Exchange committees does not extend to the Executive, Audit or Compensation Committees. Finally, the CBOE proposed certain "housekeeping" amendments to its Constitution and Rules.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

The proposed rule change was published for comment in the **Federal Register** on October 2, 2002.[3] The Commission received no comments on the proposal. This order approves the proposed rule change on an accelerated basis.

The Commission finds that the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange[4] and, in particular, the requirements of Section 6 of the Act[5] and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with the requirement of Section 6(b)(5)[6] because it is designed to promote just and equitable principles of trade and to protect investors and the public interest by increasing public representation on the Exchange's Board and certain committees so that the Board and those committees will be balanced between industry (member) and public directors.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after notice of publication in the **Federal Register**, in light of the absence of adverse comments on the proposed rule change. Acceleration of this approval will permit the CBOE to implement the changes without delay.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change (SR–CBOE–2002–48) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–27576 Filed 10–29–02; 8:45 am]

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[3] *See* Securities Exchange Act Release No. 46546 (September 24, 2002), 67 FR 61934.

[4] In approving this proposed rule change, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46706; File No. SR–Phlx–2002–52]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. To Extend the PACE Price Improvement and Order Execution and Price Protection Pilot Programs Until March 31, 2003

October 22, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 26, 2002 the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed a proposed rule change with the Securities and Exchange Commission ("SEC" or "Commission"). The proposed rule change is described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed the proposed rule change pursuant to section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange seeks to extend two PACE (Philadelphia Stock Exchange Automated Communication and Execution System)[5] pilot programs that were introduced with the advent of decimal pricing in the securities industry.[6] The first PACE pilot program, which is found in Supplementary Material .07(c)(i) to Rule 229, consists of an automated price improvement feature that incorporates a percentage of the spread between the bid and the offer (the "price improvement pilot program"). It has been in effect since January 30, 2001.[7]

The second PACE pilot program, which is found in Supplementary Material .05 and .07(c)(ii) to Rule 229, incorporates immediate execution of certain market orders through the Public Order Exposure System ("POES") and mandatory double-up/double-down price protection (the "order execution and price protection pilot program"). It has been in effect since August 25, 2000.[8]

The Exchange is not making any substantive changes to the price improvement or the order execution and price protection pilot programs that have previously been authorized by the Commission, with the exception of amending language that indicates that the pilot programs are extended through March 31, 2003.[9]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6). The Exchange has requested, and the Commission agrees, to waive the pre-filing notice required by Rule 19b–4(f)(6).

[5] PACE is the Exchange's automated order routing, delivery, execution and reporting system for equities.

[6] The Exchange is extending both pilot programs pursuant to a telephone call on September 19, 2002, between Joseph Morra, Division of Market Regulation, Commission, and Jurij Trypupenko, Phlx. The Commission has noticed the Exchange's proposed rule change to make the pilot programs permanent, but has not yet approved the Exchange's request to make the pilot programs permanent. *See* Securities Exchange Act Release No. 45580 (March 18, 2002), 67 FR 13399 (March 22, 2002)(SR–Phlx–2002–18).

[7] The price improvement pilot program was established in SR–Phlx–2001–12. *See* Securities Exchange Act Release No. 43901 (January 30, 2001), 66 FR 8988 (February 5, 2001). It was extended several times, currently through September 30, 2002. *See* Securities Exchange Act Release Nos. 44672 (August 9, 2001), 66 FR 43285 (August 17, 2001)(SR–Phlx–2001–67); 45078 (November 19, 2001), 66 FR 59293 (November 27, 2001) (SR–Phlx–2001–101); 45284 (January 15, 2002), 67 FR 3253 (January 23, 2002)(SR–Phlx–2002–01); and 45889 (May 7, 2002), 67 FR 32076 (May 13, 2002) (SR–Phlx–2002–28).

[8] The order execution and price protection pilot program was established in SR–Phlx–00–08. *See* Securities Exchange Act Release No. 43206 (August 25, 2000), 65 FR 53250 (September 1, 2000). It was extended several times, currently through September 30, 2002. *See* Securities Exchange Act Release Nos. 44185 (April 16, 2001), 66 FR 20511 (April 23, 2001)(SR–Phlx–2001–20); 44818 (September 19, 2001), 66 FR 49240 (September 26, 2001)(SR–Phlx–2001–81); 45079 (November 19, 2001), 66 FR 59292 (November 27, 2001)(SR–Phlx–2001–102); 45295 (January 16, 2002), 67 FR 3624 (January 24, 2002) (SR–Phlx–2002–03); and 45889 (May 7, 2002), 67 FR 32076 (May 13, 2002)(SR–Phlx–2002–28).

[9] Any proposed language changes other than the new date of extension are technical, non-substantive amendments to conform the language of the pilots and clarify that trading is in decimals only and the extension date applies to both pilots. The text of the proposed rule change is available at the Exchange and at the Commission.

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the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to extend two PACE pilot programs—the Exchange's price improvement pilot program and the Exchange's order execution and price protection pilot program.[10]

Price Improvement Pilot Program. Price improvement statistics are often used by order floor providers as a measure of both a specialist's and an Exchange's execution quality. Broker-dealers are subject to the fiduciary duty of best execution respecting their order routing decisions. The Exchange has long sought to encourage the development of features, and specialist participation in such features, that contribute to higher price improvement figures and thus encourage better execution quality for the Exchange. The automatic price improvement pilot based on a percentage of the spread between the bid and offer is intended to, and has enabled, price improvement greater than one penny.[11]

The automatic price improvement pilot program is found in Supplementary Material .07(c)(i) to Rule 229, such that, for equities trading on the PACE System, the price improvement feature automatically executes eligible orders at a price better than the PACE Quote. A specialist may choose to provide automatic price improvement in the form of a percentage of the PACE Quote when an order is received, up to 50%, rounded to the nearest penny. This "percentage price improvement" feature would be available where the PACE Quote is $.02 or greater, in a particular security to all customers. For example, where the PACE Quote is $10.00–$10.50 (a spread of $.50), a specialist electing this feature and choosing a percentage of 30 would provide automatic price improvement of $.15 to an eligible PACE order; thus, an incoming eligible sell order would receive an execution price of $10.15, whereas, absent automatic price improvement, it would be automatically executed at $10.00. If the specialist in this example chooses a percentage of 25, the resulting $.125 (12½ cents) would be rounded down to 12 cents.

Although participation in automatic price improvement (as well as PACE as a whole) is voluntary, the order execution and price protection pilot program requires that if specialists do not provide automatic price improvement, in certain situations they must manually provide double-up/double-down price protection.

Order Execution and Price Protection Pilot Program. The order execution portion of the pilot program is found in Supplementary Material .05 to Rule 229, which establishes that market orders up to a specified number of shares will be "stopped" at the PACE Quote at time of entry into the system and delayed up to thirty seconds to allow for price improvement. However, if the PACE Quote at time of order entry reflects a point spread (the difference between the best bid and offer) of $.05 or less, that order will be executed immediately.

The double-up/double-down price protection portion of the pilot program is found in Supplementary Material .07(c)(ii) to Rule 229, which establishes that if a specialist chooses not to provide automatic price improvement to all customers and all eligible market orders in an equity trading on the PACE System, the specialist has to provide manual double-up/double-down price protection in any instance where the bid/ask of the PACE Quote is $.05 or greater. Double-up/double-down is defined in Supplementary Material .07(c)(ii) as a trade that would be at least $.10 (up or down) from the last regular way sale on the primary market, or, $.10 from the regular way sale that was the previous intra-day change on the primary market.

2. Statutory Basis

The Exchange believes that its proposal is consistent with section 6(b) of the Act,[12] in general, and furthers the objectives of section 6(b)(5),[13] in particular, in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and protect investors and the public interest by extending the pilot programs that provide for automatic price improvement and automatic execution of certain market orders and mandatory double-up/double-down price protection for equities traded over the PACE System.[14]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange did not receive any written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to section 19(b)(3)(A) of the Act[15] and Rule 19b–4(f)(6)[16] thereunder because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which the proposed rule change was filed, or such shorter time as the Commission may designate. At any time within 60 days of the filing of a rule change pursuant to section 19(b)(3)(A) of the Act,[17] the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The Exchange has requested that the Commission waive the 30-day operative date. The Commission believes waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Acceleration of the operative date will permit the Exchange to continue the existing pilot programs without delay. Thus, the foregoing rule change has become effective pursuant to Section 19(b)(3)(A)[18] of the Act and subparagraph (f)(6) of Rule 19b–4.[19] At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is

[10] *See* Securities Exchange Act Release Nos. 43901 (January 30, 2001), 66 FR 8988 (February 5, 2001) (SR–Phlx–2001–12) and 43206 (August 25, 2000), 65 FR 53250 (September 1, 2000)(SR–Phlx–00–08).

[11] Prior to the automatic price improvement pilot program, specialists could choose to provide automatic price improvement of $.01 for equities trading on the PACE System (where the PACE Quote—the NBBO—was either $.05 or greater, or $.03 or greater). *See* Securities Exchange Act Release No. 43206 (August 25, 2000), 65 FR 53250 (September 1, 2000) (SR–Phlx–00–08).

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f)(6).

[17] 15 U.S.C. 78s(b)(3)(A).

[18] 15 U.S.C. 78s(b)(3)(A).

[19] 17 CFR 240.19b–4.

necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to the File No. SR–Phlx–2002–52 and should be submitted by November 20, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[20]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–27537 Filed 10–29–02; 8:45 am]

BILLING CODE 8010–01–P

[20] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–2002–13582]

National Preparedness for Response Exercise Program (PREP)

AGENCY: Coast Guard, DOT.

ACTION: Notice; request for public comments on PREP triennial exercise schedule for 2003, 2004, and 2005.

SUMMARY: The Coast Guard, the Research and Special Programs Administration, the Environmental Protection Agency and the Minerals Management Service, in concert with representatives from various State governments, industry, environmental interest groups, and the general public, developed the Preparedness for Response Exercise Program (PREP) Guidelines to reflect the consensus agreement of the entire oil spill response community. This notice announces the PREP triennial cycle, 2003–2005, requests comments from the public, and requests industry participants to volunteer for scheduled PREP Area exercises.

DATES: Comments and related material must reach the Docket Management Facility on or before December 30, 2002.

ADDRESSES: To make sure that your comments and related material are not entered more than once in the docket, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility, (USCG–2002–13582), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at *http://dms.dot.gov.*

The Docket Management Facility maintains the public docket for this notice. Comments and material received from the public, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, or need general information regarding the PREP Program and the schedule, contact Mr. Robert Pond, Office of Response, Plans and Preparedness Division (G–MOR–2), U.S. Coast Guard Headquarters, telephone 202–267–6603, fax 202–267–4065 or e-mail *rpond@comdt.uscg.mil.* If you have questions on viewing or submitting material to the docket, call Ms. Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202–366–5149.

SUPPLEMENTARY INFORMATION: The PREP Area exercise schedule and exercise design manuals are available on the Internet at *http://www.uscg.mil/hq/nsfcc/nsfweb/.* To obtain a hard copy of the exercise design manual, contact Ms. Melanie Barber at the Research and Special Programs Administration, Office of Pipeline Safety, at 202–366–4560. The 2002 PREP Guidelines booklet is available at no cost on the Internet at *http://www.uscg.mil/hq/nsfcc/nsfweb/* or by writing or faxing the TASC DEPT Warehouse, 33141Q 75th Avenue, Landover, MD 20785, facsimile: 301–386–5394. The stock number of the manual is USCG–X0241. Please indicate the quantity when ordering. Quantities are limited to 10 per order.

Request for Comments

We encourage you to participate by submitting comments and related material. If you do so, please include your name and address, identify the docket number [USCG–2002–13582], indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by mail, hand delivery, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this triennial exercise schedule in view of them.

Background and Purpose

In 1994, the Coast Guard (USCG) and the Research and Special Programs Administration (RSPA) of the Department of Transportation, the U.S. Environmental Protection Agency (U.S. EPA), and the Minerals Management Service (MMS) of the Department of Interior, coordinated the development of the National Preparedness for Response Exercise Program (PREP) Guidelines to provide guidelines for compliance with the Oil Pollution Act of 1990 (OPA 90) pollution response exercise requirements (33 U.S.C. 1321(j)). The guiding principles for PREP distinguish between internal and external exercises. Internal exercises are conducted within the plan holder's organization. External exercises extend beyond the plan holder's organization to involve other members of the response community. External exercises are separated into two categories: (1) Area exercises, and (2) Government-initiated unannounced exercises. These exercises are designed to evaluate the entire response

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mechanism in a given area to ensure adequate pollution response preparedness.

Since 1994, the USCG, U.S. EPA, MMS, and RSPA's Office of Pipeline Safety (OPS) have published a triennial schedule of Area exercises. In short, the Area exercises involve the entire response community (Federal, State, local, and industry participants) and therefore, require more extensive planning than other oil spill response exercises. The PREP Guidelines describe all of these exercises in more detail. This notice announces the next triennial schedule of Area exercises. If a company wants to volunteer for an Area exercise, a company representative may call either the Coast Guard or EPA On-Scene Coordinator (OSC) where the exercise is scheduled.

The following table is the PREP schedule for calendar years 2003, 2004, and 2005.

PREP SCHEDULE—GOVERNMENT-LED AREA EXERCISES

Area	Agency	Date/Qtr[1]	Participant
Calendar Year 2003			
Florida Panhandle (MSO Mobile)	CG	1	
SE Alaska (MSO Juneau)	CG	2	
Philadelphia, PA (MSO Philadelphia)	CG	3	
Region II RCP or Caribbean (EPA Region II)	EPA	3	
Portland, ME (MSO Portland)	CG	4	
Buffalo, NY (MSO Buffalo)	CG	4	
Calendar Year 2004			
SF/LA/LB/San Diego (MSO San Francisco, MSO Los Angeles/Long Beach & MSO San Diego).	CG SONS[2]	1	
Prince William Sound (MSO Valdez)	CG	2	
Charleston, SC (MSO Charleston)	CG	2	
South Texas Coast (MSO Corpus Christi)	CG	3	
Duluth-Superior (MSO Duluth)	CG	3	
Guam (MSO Guam)	CG	4	
Region I RCP (EPA Region I)	EPA	4	
Calendar Year 2005			
Virginia Coastal (MSO Hampton Roads)	CG	2	
Houston-Galveston (MSO Houston)	CG	2	
Alabama (MSO Mobile)	CG	3	
Region V RCP (EPA Region V)	EPA	3	
Providence (MSO Providence)	CG	4	
Western Alaska (MSO Anchorage)	CG	4	

[1] Quarters: 1 (January-March); 2 (April-June); 3 (July-September); 4 (October-December).
[2] SONS: Spill of National Significance.

PREP SCHEDULE—INDUSTRY-LED AREA EXERCISES

Area	Date/Qtr[1]	Participant
Calendar Year 2003		
Region IX RCP (EPA Region IX)	1	
Cleveland, OH (MSO Cleveland)	1	
Detroit (MSO Detroit)	2	
Jacksonville (MSO Jacksonville)	2	
New Orleans (MSO New Orleans)	2	
Northwest Area—Portland (MSO Portland)	2	
Region III RCP (EPA Region III)	3	
North Coast (CA) (MSO San Francisco)	3	
Caribbean Area (MSO San Juan)	3	
Western Lake Erie (MSO Toledo)	3	
Region VI RCP (EPA Region VI)	4	
Northern Marianas—Saipan (MSO Saipan)	4	
Calendar Year 2004		
Region IV RCP (EPA Region IV)	1	
New York, NY (Activities NY)	1	
Maryland Coastal (MSO Baltimore)	2	
Chicago, IL (MSO Chicago)	2	
Morgan City (MSO Morgan City)	2	
Eastern Wisconsin (MSO Milwaukee)	3	
Long Island Sound (MSO Long Island)	3	
Northwest—Puget Sound (MSO Puget Sound)	3	
Savannah (MSO Savannah)	3	
Region VII RCP (EPA Region VII)	4	

PREP SCHEDULE—INDUSTRY-LED AREA EXERCISES—Continued

Area	Date/Qtr[1]	Participant
Calendar Year 2005		
Region VIII (EPA Region VIII)	1	
Boston (MSO Boston)	1	
Buffalo (MSO Buffalo)	2	
Hawaii Islands (MSO Honolulu)	2	
South LA/LB	2	
South Florida (MSO Miami)	2	
S. North Carolina (MSO Wilmington)	3	
Region X or EPA Alaska (EPA Region X)	3	
SW LA/SE Texas (MSO Port Arthur)	3	
San Diego (MSO San Diego)	3	
Tampa (MSO Tampa)	4	
Sault Ste. Marie (MSO Sault Ste. Marie)	4	

[1] Quarters: 1 (January-March); 2 (April-June); 3 (July-September); 4 (October-December).

Dated: October 15, 2002.

Howard L. Hime,

Acting Director of Standards, Marine Safety, Security & Environmental Protection.

[FR Doc. 02–27610 Filed 10–29–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Cass and Crow Wing Counties, Minnesota

AGENCY: Federal Highway Administration (FHWA), DOT

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement (EIS) will be prepared for proposed highway improvements to Trunk Highway (TH) 371 from the intersection of TH 371 and Crow Wing County Road 18 in Nisswa to the intersection of TH 371 and Cass County Road 42 in Pine River, a distance of approximately 16.0 miles, in Cass and Crow Wing Counties, Minnesota.

FOR FURTHER INFORMATION CONTACT: Cheryl Martin, Federal Highway Administration, Galtier Plaza, 380 Jackson Street, Suite 500, St. Paul, Minnesota 55101, Telephone (651) 291–6120; or Tony Hughes, Project Manager, Minnesota Department of Transportation—District 3, 1991 Industrial Park Road, Baxter, Minnesota 56425, Telephone (218) 828–2465; (651) 296–9930 TTY.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Minnesota Department of Transportation (Mn/DOT), will prepare an EIS on a proposal to reconstruct TH 371 from the intersection of TH 371 and Crow Wing County Road 18 in Nisswa to the intersection of TH 371 and Cass County Road 42 in Pine River, a distance of approximately 16.0 miles, in Crow Wing and Cass Counties, Minnesota. The proposed action is being considered to address future transportation demand, safety problems, lack of access control, and design deficiencies.

The EIS will evaluate the social, economic, transportation and environmental impacts of alternatives, including: (1) No-Build and (2) variations of "Build" alternatives involving reconstruction and capacity expansion of TH 371 along the existing highway corridor, including individual or combined bypass alignments around the Cities of Pequot Lakes, Jenkins and Pine River.

It is anticipated that the "Trunk Highway 371 Scoping Document/Draft Scoping Decision Document" will be published in the fall of 2002. A press release will be published to inform the public of the document's availability. Copies of the scoping document will be distributed to agencies, interested persons and libraries for review to aid in identifying issues and analyses to be contained in the EIS. A thirty-day comment period for review of the document will be provided to afford an opportunity for all interested persons, agencies and groups to comment on the proposed action. A public scoping meeting will also be held during the comment period. Public notice will be given for the time and place of the meeting. A Draft EIS will be prepared based on the outcome of the scoping process. The Draft EIS will be available for agency and public review and comment. In addition, a public hearing will be held following completion of the Draft EIS. Public Notice will be given for the time and place of the public hearing on the Draft EIS. Coordination has been initiated and will continue with the appropriate Federal, State and local agencies and private organizations and citizens who have previously expressed or are known to have an interest in the proposed action. To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: October 23, 2002.

Stanley M. Graczyk,

Project Development Engineer, Federal Highway Administration, St. Paul, Minnesota.

[FR Doc. 02–27555 Filed 10–29–02; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Marine Transportation System National Advisory Council

AGENCY: Maritime Administration, DOT.

ACTION: National Advisory Council public meeting.

SUMMARY: The Maritime Administration announces that the Marine Transportation System National Advisory Council (MTSNAC) will hold a meeting to discuss the Council's Team Reports, its SEA–21 proposal, and other issues. A public comment period is

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scheduled for 9 to 9:30 a.m. on Friday, November 15, 2002. To provide time for as many people to speak as possible, speaking time for each individual will be limited to three minutes. Members of the public who would like to speak are asked to contact Raymond Barberesi by November 7, 2002. Commenters will be placed on the agenda in the order in which notifications are received. If time allows, additional comments will be permitted. Copies of oral comments must be submitted in writing at the meeting. Additional written comments are welcome and must be filed by November 22, 2002.

DATES: The meeting will be held on Thursday, November 14, 2002, from 1 p.m. to 5 p.m. and Friday, November 15, 2002, from 8:30 a.m. to 3 p.m.

ADDRESSES: The meeting will be held in the Millennium Broadway Hotel, 145 West 44th Street, New York, NY 10036. The hotel's phone number is (212) 768–4400.

FOR FURTHER INFORMATION CONTACT: Raymond Barberesi, (202) 366–4357; Maritime Administration, MAR 830, Room 7201, 400 Seventh St., SW, Washington, DC 20590; *Raymond.Barberesi@marad.dot.gov.*

(Authority: 5 U.S.C. App 2, Sec. 9(a)(2); 41 CFR 101–6. 1005; DOT Order 1120.3B)

Dated: October 24, 2002.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–27545 Filed 10–29–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket Number NHTSA–2002–13463]

Reports, Forms, and Recordkeeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Request for public comment on a previously approved collection of information.

SUMMARY: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement of previously approved collections.

This document describes one collection of information for which NHTSA intends to seek OMB approval.

DATES: Comments must be received on or before December 30, 2002.

ADDRESSES: Comments must refer to the docket notice numbers cited at the beginning of this notice and be submitted to Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. Please identify the proposed collection of information for which a comment is provided, by referencing its OMB clearance Number. It is requested, but not required, that 2 copies of the comment be provided. The Docket Section is open on weekdays from 9 a.m. to 5 p.m.

FOR FURTHER INFORMATION CONTACT: Complete copies of each request for collection of information may be obtained at no charge from Ms. Carlita Ballard, NHTSA, 400 Seventh Street, SW., Room 5320, Washington, DC 20590. Ms. Ballard's telephone number is (202 366–0307). Please identify the relevant collection of information by referring to its OMB Control Number.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation (at 5 CFR 1320.8(d), an agency must ask for public comment on the following:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) How to enhance the quality, utility, and clarity of the information to be collected;

(iv) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.* permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks for public comments on the following previously approved collection of information:

Title: Insurer Reporting Requirement for 49 CFR Part 544.

OMB Control Number: 2127–0547.

Affected Public: Business or other for-profit.

Form Number: The collection of information uses no standard forms.

Abstract: This information collection supports the Department's strategic goal of Economic Growth and Trade. The Motor Vehicle Theft Law Enforcement Act of 1984, added Title VI to the Motor Vehicle and Information Cost Savings Act (recodified as chapter 331 of Title 49, United States Code) (copy attached) which mandated this information collection. The 1984 Theft act was amended by the Anti Car Theft Act (ACTA) of 1992 (Pub. L. 102–519). NHTSA is authorized under 49 U.S.C. 33112, to collect this information. This information collection supports the agency's economic growth and trade goal through rulemaking implementation developed to help reduce the cost of vehicle ownership by reducing the cost of comprehensive insurance coverage. 49 U.S.C. 33112 requires certain passenger motor vehicle insurance companies and rental/leasing companies to provide information to NHTSA on comprehensive insurance premiums, theft and recoveries and actions taken to address motor vehicle theft.

Estimated Annual Burden: Based on prior years' insurer compilation information, the agency estimates that the time to review and compile information for the reports will take approximately a total of 66,300 burden hours (56,700 man-hours for 28 insurance companies and 9,600 man-hours for 17 rental and leasing companies). Most recent year insurer compilation information estimates that it takes an average cost of $36:00 per hour for clerical and technical staff to prepare the annual reports. Therefore, the agency estimates the total cost associated with the burden hours to be $2,386,800.

The burden hour for rental and leasing companies is significantly less than that for insurance companies because rental and leasing companies comply with fewer reporting requirements than the insurance companies. The reporting burden is based on claim adjusters' salaries, clerical and technical expenses, and labor costs.

Number of Respondents: 45.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued on: October 24, 2002.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 02–27611 Filed 10–29–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket Number NHTSA–02–13556]

Reports, Forms, and Recordkeeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Extension of a currently approved collection.

SUMMARY: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement of previously approved collections.

This document describes one collection of information for which NHTSA intends to seek OMB approval.

DATES: Comments must be received on or before December 30, 2002.

ADDRESSES: Comments must refer to the docket notice numbers cited at the beginning of this notice and be submitted to Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. Please identify the proposed collection of information for which a comment is provided, by referencing its OMB clearance number. It is requested, but not required, that 2 copies of the comment be provided. The Docket Section is open on weekdays from 10 a.m. to 5 p.m.

FOR FURTHER INFORMATION CONTACT: Complete copies of each request for collection of information may be obtained at no charge from Rosalind Proctor, NHTSA 400 Seventh Street, SW., (Room 5320–N and NVS–131), Washington, DC 20590. Ms. Proctor's telephone number is (202) 366–0846. Please identify the relevant collection of information by referring to its OMB Control Number.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation (at 5 CFR 1320.8(d), an agency must ask for public comment on the following:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) How to enhance the quality, utility, and clarity of the information to be collected;

(iv) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.* permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks for public comments on the following proposed collections of information:

Title: 49 CFR part 575 Consumer Information Regulations (sections 103 and 105).

OMB Control Number: 2127–0049.

Affected Public: Motor vehicle manufacturers of light trucks and utility vehicles.

Form Number: Not Applicable.

Abstract: NHTSA must ensure that motor vehicle manufacturers comply with 49 CFR part 575, Consumer Information Regulation part 575.103 Truck-camper loading and part 575.105 Utility Vehicles. Part 575.103, requires that manufacturers of light trucks that are capable of accommodating slide-in campers to provide information on the cargo weight rating and the longitudinal limits within which the center of gravity for the cargo weight rating should be located. Part 575.105, requires that manufacturers of utility vehicles affix a sticker in a prominent location alerting drivers that the particular handling and maneuvering characteristics of utility vehicles require special driving practices when these vehicles are operated.

Estimated Annual Burden: 300 hours.

Number of Respondents: 15.

Based on prior years' manufacturer submissions, the agency estimates that 15 responses will be submitted annually. Currently 13 light truck manufacturers comply with 49 CFR part 575. These manufacturers file one response annually and submit an additional response when they introduce a new model. The light truck manufacturers gather only pre-existing data for the purposes of this regulation. Based on previous years' manufacturer information, the agency estimates that light truck manufacturers use a total of 20 hours to gather and arrange the data in its proper format, to distribute the information to its dealerships, and to print the labels and utility vehicle information in the owner's manual. The estimated annual burden hour is 300 hours. This number reflects the total responses (15) times the total hours (20). Prior years' manufacturer information indicates that it takes an average of $35.00 per hour for professional and clerical staff to gather data, distribute and print material. Therefore, the agency estimates that the cost associated with the burden hours is $10,500 ($35.00 per hour x 300 burden hours).

Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued on: October 24, 2002.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 02–27612 Filed 10–29–02; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34260]

Aliquippa & Ohio River Railroad Co.—Acquisition and Operation Exemption—Lines in Aliquippa, PA

Aliquippa & Ohio River Railroad Co. (AORR),[1] a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire and operate approximately 21 miles of rail line owned by Aliquippa & Southern Railroad (A&S), in the vicinity of Aliquippa, PA.[2] In addition, AORR will purchase from A&S certain parcels of real estate, various items of equipment and shop machinery, three locomotives, and a number of shops, buildings, and vehicles. AORR certifies that its projected revenues as a result of this transaction will not result in the creation of a Class II or Class I rail carrier, and further certifies that its projected annual revenues will not exceed $5 million.

The transaction was expected to be consummated on or shortly after October 10, 2002, the effective date of the exemption (7 days after the notice was filed).

This transaction is related to STB Finance Docket No. 34261, *Summit View, Inc.—Continuance in Control Exemption—Aliquippa & Ohio River Railroad Co.*, wherein Summit has concurrently filed a verified notice of exemption to continue in control of AORR upon its becoming a Class III rail carrier.

AORR will operate as a switching and terminal railroad, interchanging traffic with CSX Transportation, Inc., at Aliquippa. The major commodities to be handled are steel billets and beams, steel slabs and scrap.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34260, must be filed with the Surface Transportation Board, 1925 K Street, NW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Kelvin J. Dowd, Slover & Loftus, 1224 Seventeenth Street, NW., Washington, DC 20036.

Board decisions and notices are available on our Web site at *"www.stb.dot.gov."*

Decided: October 22, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–27481 Filed 10–29–02; 8:45 am]

BILLING CODE 4915–00–P

[1] AORR is controlled by Summit View, Inc. (Summit), a noncarrier, which, at the time of filing this notice, controlled nine Class III carriers.

[2] A&S is a subsidiary of LTV Steel Corp., a company currently under bankruptcy protection.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34268]

Carolina Rail Service, LLC—Acquisition and Operation Exemption—Beaufort & Morehead Railway, Inc.

Carolina Rail Service, LLC (CRS), a Class III rail carrier, has filed a notice of exemption under 49 CFR 1150.41 to acquire by assignment any and all operating authority that the Beaufort & Morehead Railway, Inc. (BMRI) has over a specified rail line in North Carolina. The subject rail line extends from the connection with the Norfolk Southern Railway Company (Atlantic & East Carolina Railway) at milepost 0.0 in Morehead City, NC, to milepost 0.87 at Gallants Channel near Morehead City, a distance of .87 miles in Carteret County, NC, serving the intermediate stations of Marsh Island and Radio Island, and includes all trackage incidental thereto. CRS will operate over those lines pursuant to an operating agreement with the North Carolina State Ports Authority (SPA)[1] and a permanent and exclusive easement granted by the North Carolina Ports Railway Commission (PRC).[2]

CRS states that the impetus for this transaction is new legislation enacted by the State of North Carolina legislature, SB 1115, ratified September 20, 2002. This legislation, among other things, requires the transfer of PRC's assets and liabilities, except its common carrier obligation, to SPA, and abolishes PRC.

CRS also filed a notice of exemption on October 1, 2002, in STB Finance Docket No. 34256, *Carolina Rail Service, LLC—Acquisition and Operation Exemption—North Carolina Ports Railway Commission and North Carolina State Ports Authority*, wherein CRS seeks to acquire a permanent and exclusive easement over this .87-mile line as well as over approximately 4 miles of intra-terminal track at the Morehead City terminal from PRC, and the right to operate over those rail lines pursuant to an operating agreement with SPA.

CRS certifies that its projected revenues as a result of this transaction will not result in the creation of a Class II or Class I rail carrier and that its projected annual revenues will not exceed $5 million.

CRS indicates that it expects to consummate the transaction by November 20, 2002, but not before the October 22, 2002 effective date of the exemption (7 days after the exemption was filed).

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke does not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34268, must be filed with the Surface Transportation Board, 1925 K Street NW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Karl Morell, Ball Janik LLP, 1455 F Street NW., Suite 225, Washington, DC 20005.

Board decisions and notices are available on our Web site at *www.stb.dot.gov*.

Decided: October 24, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–27586 Filed 10–29–02; 8:45 am]

BILLING CODE 4915–00–P

[1] In a related matter, SPA filed a notice of exemption in STB Finance Docket No. 34258, *North Carolina State Port Authority—Acquisition Exemption—North Carolina Ports Railway Commission*, wherein SPA seeks to acquire the right-of-way, trackage, and other rail assets of these rail lines. SPA also filed a motion to dismiss that notice on jurisdictional grounds.

[2] Our predecessor, the Interstate Commerce Commission exempted PRC from regulation under the Interstate Commerce Act, but determined that PRC had a residual common carrier obligation over these lines. *See North Carolina Ports Railway Commission—Petition for Declaratory Order or Prospective Abandonment Exemption*, Finance Docket No. 31248 (ICC served Sept. 30, 1988).

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34256]

Carolina Rail Service, LLC—Acquisition and Operation Exemption—North Carolina Ports Railway Commission and North Carolina State Ports Authority

Carolina Rail Service, LLC (CRS), a Class III rail carrier, has filed a notice of exemption under 49 CFR 1150.41 to acquire a permanent and exclusive easement over approximately 4.87 miles of rail line from the North Carolina Ports Railway Commission (PRC), and to operate over those lines pursuant to an operating agreement with the North Carolina State Ports Authority (SPA).[1] The subject rail line extends from the connection with the Norfolk Southern Railway Company (Atlantic & East Carolina Railway) at milepost 0.0 in Morehead City, NC, to milepost 0.87 at Gallants Channel near Morehead City, a distance of .87 miles in Carteret County, NC, serving the intermediate stations of Marsh Island and Radio Island, and includes all of the railroad tracks on the Port of Morehead City, whether denominated as spurs, side tracks, industrial tracks, or otherwise, together with all of PRC's yard and interchange tracks.[2] The subject lines include approximately 4 miles of intra-terminal track at the Morehead City terminal over which CRS currently operates a terminal switching railroad.

CRS states that the impetus for this transaction is new legislation enacted by the State of North Carolina legislature, SB 1115, ratified September 20, 2002. This legislation, among other things, requires the transfer of PRC's assets and liabilities, except its common carrier obligation, to SPA, and abolishes PRC.

On October 15, 2002, CRS filed a related notice of exemption in STB Finance Docket No. 34268, *Carolina Rail Service, LLC—Acquisition and Operation Exemption—Beaufort & Morehead Railway, Inc.*, wherein CRS seeks to acquire the Beaufort & Morehead Railway, Inc.'s operating authority over the .87 miles of rail line listed above in Carteret County, NC.

CRS certifies that its projected revenues will not exceed those that would qualify it as a Class III rail carrier and that the annual revenues are not projected to exceed $5 million.

CRS indicates that it expects to consummate the transaction by November 20, 2002, but not before the October 8, 2002 effective date of the exemption (7 days after the exemption was filed).

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke does not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34256, must be filed with the Surface Transportation Board, 1925 K Street NW, Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Karl Morell, Ball Janik LLP, 1455 F Street NW, Suite 225, Washington, DC 20005.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: October 24, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–27584 Filed 10–29–02; 8:45 am]

BILLING CODE 4915–00–P

[1] In a related matter, SPA filed a notice of exemption in STB Finance Docket No. 34258, *North Carolina State Port Authority—Acquisition Exemption—North Carolina Ports Railway Commission*, wherein SPA seeks to acquire the right-of-way, trackage, and other rail assets of these rail lines. SPA also filed a motion to dismiss that notice on jurisdictional grounds.

[2] Our predecessor, the Interstate Commerce Commission, exempted PRC from regulation under the Interstate Commerce Act, but determined that PRC had a residual common carrier obligation over these lines. *See North Carolina Ports Railway Commission—Petition for Declaratory Order or Prospective Abandonment Exemption*, Finance Docket No. 31248 (ICC served Sept. 30, 1988).

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34257]

Wilmington Terminal Railroad, L.P.—Acquisition and Operation Exemption—North Carolina Ports Railway Commission and North Carolina State Ports Authority

Wilmington Terminal Railroad, L.P. (WTR), a Class III rail carrier, has filed a notice of exemption under 49 CFR 1150.41 to acquire a permanent and exclusive easement over approximately 18 miles of rail line from the North Carolina Ports Railway Commission (PRC), and to operate over those lines pursuant to an operating agreement with the North Carolina State Ports Authority (SPA).[1] The subject lines are located in Wilmington, New Hanover County, NC, and include the following: (1) The Front Street Spur, from the east line of Third Street at CSX Rail Valuation Station 91+37.3 and extending generally in a northerly direction, a distance of approximately 0.66 miles, to CSX Rail Valuation Station 56+39; (2) the New River Spur, from the CSX Rail Valuation Station 0+00, (also known as Rail Valuation Station 86+20) on the Front Street Spur at the west line of Second Street and extending generally in a southerly direction a distance of approximately 3.5 miles, to CSX Rail Valuation Station 185+00; and (3) the line from the north entrance to the Port of Wilmington at Transit Road, near its intersection with Burnett Blvd., to the south entrance to the Port, at River Road near its intersection with Shipyard Blvd., through and including the classification yards and including all of the railroad tracks on the Port, whether denominated as spurs, side tracks, industrial tracks, or otherwise (but excluding crane rails).[2] WTR currently operates the subject lines.

WTR states that the impetus for this transaction is new legislation enacted by the State of North Carolina legislature, SB 1115, ratified September 20, 2002. This legislation, among other things, requires the transfer of PRC's assets and liabilities, except its common carrier obligation, to SPA, and abolishes PRC.

WTR certifies that its projected revenues will not exceed those that would qualify it as a Class III rail carrier and that the annual revenues are not projected to exceed $5 million.

WTR indicates that it expects to consummate the transaction by November 20, 2002, but not before the October 8, 2002 effective date of the exemption (7 days after the exemption was filed).

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke does not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34257, must be filed with the Surface Transportation Board, 1925 K Street NW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Donald G. Avery, Slover & Loftus, 1224 Seventeenth Street NW., Washington, DC 20036.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: October 24, 2002.

[1] In a related matter, SPA filed a notice of exemption in STB Finance Docket No. 34258, *North Carolina State Port Authority—Acquisition Exemption—North Carolina Ports Railway Commission*, wherein SPA seeks to acquire the right-of-way, trackage, and other rail assets of these rail lines. SPA also filed a motion to dismiss that notice on jurisdictional grounds.

[2] Our predecessor, the Interstate Commerce Commission, exempted PRC from regulation under the Interstate Commerce Act, but determined that PRC had a residual common carrier obligation over these lines. *See North Carolina Ports Railway Commission—Petition for Declaratory Order or Prospective Abandonment Exemption*, Finance Docket No. 31248 (ICC served Sept. 30, 1988).

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By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–27585 Filed 10–29–02; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34261]

Summit View, Inc.—Continuance in Control Exemption—Aliquippa & Ohio River Railroad Co.

Summit View, Inc. (Summit), a noncarrier, has filed a verified notice of exemption to continue in control of Aliquippa & Ohio River Railroad Co. (AORR), upon AORR's becoming a Class III railroad.

The transaction was scheduled to be consummated on October 10, 2002, the effective date of the exemption (7 days after the notice was filed).

This transaction is related to the concurrently filed verified notice of exemption in STB Finance Docket No. 34260, *Aliquippa & Ohio River Railroad Co.,—Acquisition and Operation Exemption—Lines in Aliquippa, PA,* wherein AORR seeks to acquire and operate approximately 21 miles of rail lines currently owned and operated by Aliquippa & Southern Railroad (A&S), in the vicinity of Aliquippa, PA. AORR will interchange with CSX Transportation, Inc., at Aliquippa. AORR will handle freight traffic for the customers formerly served by A&S, without any change in material level or quality of transportation service.

At the time it filed this notice, Summit controlled nine Class III railroads: The Columbus & Ohio River Rail Road Company; Ohio Central Railroad, Inc.; Mahoning Valley Railway Company; Ohio & Pennsylvania Railroad Company; Ohio Southern Railroad, Inc; Youngstown & Austintown Railroad, Inc.; Warren & Trumbull Railroad Company; the Youngstown Belt Railroad Company; and the Pittsburgh & Ohio Central Railroad Company, all operating in the States of Pennsylvania and Ohio.

AORR states that: (1) The railroads do not connect with each other or any railroad in their corporate family; (2) the continuance in control is not part of a series of anticipated transactions that would connect the ten railroads with each other or any railroad in their corporate family; and (3) the transaction does not involve a Class I carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34261, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Kelvin J. Dowd, Slover & Loftus, 1224 Seventeenth Street, NW., Washington, DC 20036.

Board decisions and notices are available on our Web site at *"www.stb.dot.gov."*

Decided: October 22, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–27482 Filed 10–29–02; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Bureau of Transportation Statistics

[Docket BTS–2001–10909]

Agency Information Collection Activities Under OMB Review: OMB No. 2139–0002 and 2139–0004 (Financial and Operating Statistics for Motor Carriers of Property)

AGENCY: Bureau of Transportation Statistics (BTS), DOT.

ACTION: Notice of final disposition.

SUMMARY: BTS has submitted the following two Information Collection Requests (ICRs) described in this notice to the Office of Management and Budget (OMB) for review and approval as required under the Paperwork Reduction Act of 1995 (PRA), Pub. L. 104–13. The agency has issued two previous **Federal Register** notices on related PRA burden estimates. BTS has received additional public comments on the related burden estimates for motor carriers of property (Class I and Class II) subject to BTS regulations, and OMB has asked the agency to conduct a reevaluation of the ICRs and the related burden estimates. Therefore, based on comments received to BTS Docket 10909, BTS is providing a summary of its reevaluation and analysis of the original burden estimates for each ICR and is requesting an extension from OMB through May 31, 2005. The current OMB approval expires on May 31, 2003, for each form.

DATES: Comments must be submitted on or before November 29, 2002.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., Room 10202, Washington, DC 20502, ATTN: Desk Officer for the Bureau of Transportation Statistics. Comments should identify the docket number and be submitted in duplicate. OMB requests comments by November 29, 2002, to process the ICR expeditiously.

FOR FURTHER INFORMATION CONTACT: Paula R. Robinson, Compliance Program Manager, Office of Motor Carrier Information, K–13, Bureau of Transportation Statistics, 400 Seventh Street, SW., Washington, DC 20590–0001; (202) 366–2984; fax: (202) 366–3364; e-mail: *paula.robinson@bts.gov.*

SUPPLEMENTARY INFORMATION:

Title: Financial and Operating Statistics for Motor Carriers of Property.

OMB Approval Numbers: 2139–0002 (Form QFR) and 2139–0004 (Form M).

The Financial and Operating Statistics (F&OS) for Motor Carriers of Property is a collection of annual and quarterly financial and operating statistics data from the motor carrier community. The regulations require motor carriers of property with annual revenues of $3 million or more to file annual reports, and carriers with annual revenues of $10 million or more to file quarterly reports with BTS, as required by 49 CFR 1420, Reports of Motor Carriers. The agency ensures that the data and information collected are made publicly available as mandated by Congress (49 U.S.C. 14123).

In accordance with OMB regulations (5 CFR part 1320), each agency that is renewing an information collection activity must notify the public of its intention to renew the collection activity, provide an opportunity for public comment, and notify the public when the agency has sent its information clearance package to OMB.

Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from OMB for each information collection they conduct or sponsor. BTS solicited public comment on November 5, 2001, on the information collection requirements for OMB 2139–0002 (Form QFR) and OMB 2139–0004 (Form M) contained in BTS regulations, Reports for Motor Carriers (66 FR 55981). The notice received three comments to the docket from the Central Analysis Bureau (CAB), International Brotherhood of Teamsters, and Inland Marine Underwriters Association. Pursuant to OMB requirements, a second notice was published on March 5, 2002, (67 FR 10043), allowing a 30-day comment period. BTS received 18 additional comments to the docket, some after the comment period closed on April 4, 2002.

Sixteen motor carriers, one government agency, and one private insurance organization provided additional comments to the docket. The motor carriers were All-Pro Transport, Inc.; Burns Motor Freight, Inc.; Daggett Truck Line, Inc.; Falcon Transport, Inc.; Fikes Truck Line, Inc.; Howell's Motor Freight, Inc.; Market Transport Ltd.; New Country, Inc.; Olson Carriers, Inc.; Paschall Truck Lines, Inc.; PFT Transport, Inc.; Pioneer Transport, Inc.; RJW Transport, Inc.; Stagecoach Cartage and Distribution, Inc.; USA Truck, Inc.; and Witte Bros. Exchange, Inc. The carriers' comments were virtually identical (similar to form letters) and each opposed the agency's data collection program. CAB and the U.S. Department of Commerce's Bureau of Economic Analysis (BEA) provided comments supporting the program. CAB included supplemental information to comments previously submitted to this docket. All comments have been considered and included as part of the agency's overall reevaluation of the financial reporting requirements for motor carriers of property (Class I and Class II).

On May 13, 2002, OMB approved a provisional clearance for BTS information collection requests for one year and instructed the agency to address concerns expressed by commenters to the previous ICRs. OMB requested that the agency publish a notice containing any revised estimates of the burden hours required to comply with the ICR. BTS is requesting OMB's approval to extend the existing ICR expiration (May 2003) so the data collection instrument may continue being used by motor carriers to report their annual and quarterly financial and operating data. This effort will ensure that decision-making of Federal and private agencies and research activities throughout government, businesses, and academia will continue with benefit to the public. Approval of this request will allow the forms to remain effective for a 3-year period, until May 31, 2005. The results of the agency's reevaluation and analysis are described below.

This notice summarizes the results of the reevaluation and establishes a public comment period of 30 days from the date of publication in the **Federal Register.** The agency is requesting that the OMB extend the 1-year approval to 3 years once it has conducted a review of the agency's information collection requests. All public comments to the agency's reevaluation and analysis should be sent to OMB at the address shown in the **ADDRESSES** section above.

Discussion of Comments

BTS has considered the comments to the docket and believes that the F&OS data and associated information serve a useful purpose for many users engaged in analytical and decision-making activities. The users include trucking companies, insurance companies, trade associations and labor organizations, academics, and Federal agencies where trucking industry policy is evaluated and formed, and others that rely on motor carrier statistics to carry out their mandated statistical programs (*e.g.,* Department of Commerce's Bureau of Economic Analysis). Within these sectors, researchers and analysts benchmark expenses [1] of individual trucking companies; investment analysts provide advice to clients based on industry trends; trade associations and journals use the F&OS data as the basis for analyses on the current economic status of trucking (which itself is used as an indicator of change in economic conditions); and government agencies conduct analysis of F&OS data to anticipate shifts in industry economics and to support policymaking decisions. Trucking company comments assert that the data collected serve no useful purpose. BTS disagrees with that view and invites all users and interested parties to provide BTS with detailed information about the various ways the data are used and the importance of the data to their organizations.

All 16 motor carriers disagreed with the proposed reporting requirements, stating that the regulations in 49 CFR 1420 should be eliminated. However, the motor carriers stated in their remarks that if BTS finds it necessary to continue the reporting requirements, then the data and information should focus on the "financial health of individual motor carriers." The carriers proposed that the Form M be replaced with a postcard that contains only the carrier's name, address, census number, gross and net revenues and gross expenses on an annual basis. They stated that the abbreviated filing would reduce the quantity of the information collected and improve the quality. BTS believes that the data and information currently collected for motor carriers of property subject to BTS regulations are consistent with the requirements of 49 U.S.C. 14123. Given the diversity of the individuals and groups who use BTS data, the agency disagrees with the carriers' suggestion that the Form M be replaced with a "postcard" requesting only limited information about the carrier. BTS does not believe a significant reduction in this reporting requirement would satisfy the statutory requirement or the intentions of Congress. The statute requires that, "at a minimum, such reports shall include balance sheets and income statements." (*See* 49 U.S.C. 14123(a).) The agency believes that this postcard version of the form could not provide meaningful balance sheet and income statement data and thus would fall below the minimum requirements of the statute.

Moreover, the basic financial data contained in balance sheet and income statements are generated in the normal course of business by most trucking companies, permitting managers to assess the results of their operations. In addition, they can form the basis for the income tax returns filed by motor carriers. The financial data are often provided to bankers, vendors, other State and Federal governmental licensing agencies, financial rating agencies like Dun and Bradstreet, insurance companies, *etc.,* to assist in the evaluation of a company's financial results. Further, other government agencies involved in the trucking industry require other Form M information, such as carriers' equipment inventory data (number of trucks) and other operational statistics (*e.g.,* number of employees).

Secondly, the commenters asked that the Form QFR be eliminated because it's not required by the statute and serves no useful purpose. Under the governing legislation in 49 U.S.C. 14123, the agency is allowed to collect other reports, including quarterly reports (Form QFR). The collection of quarterly

[1] A process of comparing a trucking company's expenses, operating statistics, and other characteristics (*e.g.,* aggregates, compilations, or averages for line item data on Form M (annual report) and/or Form QFR (quarterly report)) with those of other trucking companies or groups of them for the purpose of evaluating how one's company differs from the industry generally, with the end of improving one's results.

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data is valuable to researchers analyzing and evaluating F&OS data. In fact, BTS conducts its own motor carrier industry research on the financial health of the industry for DOT decision-makers, and the data are considered an integral part of these evaluations.

The BTS believes that the regulations have not been shown to represent a significant burden on motor carriers and are critical to many users. The total burden hours reported for these collections are a total of 1.8 hours annually per carrier for the four Form QFR (Quarterly) reports and 9 hours for the Form M (Annual Report). The agency's objective is to continue to work with motor carriers, the transportation industry, the financial community, and other public and private organizations to collect F&OS data and conduct and facilitate useful analysis. The carriers believe that the burden hours are underestimated, but do not provide any data that would lead to more accurate estimates. Therefore, BTS, without any additional data from the carriers to support their position as to the extent of the burden or the lack of usefulness of the data, will not implement their recommendations at this time.

However, BTS will continue to seek ways to reduce the burden on the motor carrier industry and welcomes any ideas, suggestions, or comments from interested parties on ways to improve the reporting process. Specifically, BTS is seeking carrier information that includes details on the amount of time required to complete both forms (Forms M and QFR); the type of person the carrier uses or hires to complete the form (*i.e.*, carrier employees, outside accountant, lawyer, *etc.*); any associated costs incurred by the carrier; information on filing methods used, including electronic (*i.e.*, CD, internet, etc.), to complete the forms; and form retention activities. BTS notes that while the agency solicits additional data and clarification from carriers regarding the accuracy of BTS burden estimates for these collections, any action to amend the regulations would require substantial rulemaking efforts and the opportunity for public comment.

The comments of the U.S. Department of Commerce's Bureau of Economic Analysis (BEA) in support of the BTS' data collection program stated specifically that they use the program as a "main data source for key components of BEA economic statistics." Specifically, they reference the BEA's Annual Input-Output Accounts, as well as "essential detail or inputs to supplement the information on motor carriers collected by the Bureau of the Census. * * *"

BTS believes that to continue to benefit the public the decision-making and research activities made possible by the F&OS data collection program must continue in a comprehensive and uninterrupted manner. Some additional public benefits include: government analyses of the business health of the for-hire trucking industry as a basis for policies to facilitate an integral part of the nation's transportation network; continued widespread dissemination and analysis of industry data by trade associations; enabling trucking companies to improve their operations by emulating successful companies as they "benchmark" their operating results against industry averages and assess what improvements they need to make to better serve the public; providing the basis for assessments of profitability by interested parties, including insurance companies and labor unions; allowing shippers and their organizations to make more informed choices among carriers; and supporting the educational process, by providing objective data for academic research, teaching, and training (*e.g.*, of future trucking company managers). Except for publicly-held companies, there are no publicly available individual-carrier-based F&OS other than those from the Form M and Form QFR; these trucking company statistics provide "equal access to data" to benefit the public—regulators and the regulated have the same data upon which to base policy decisions and business planning analyses. In addition, BTS is involved in extensive analyses of the motor carrier industry using QFR data. Results of these analyses are used within the Department of Transportation and will be soon be released and available to the public.

The agency also disagrees that BTS forms are not available for on-line filing. For more than a year, the agency has placed additional resources on BTS' Web site in order to reduce the burden on the industry and to encourage more electronic filing. The agency has determined that there has been a 30% increase in the number of motor carriers filing reports (Form M and Form QFR) using on-line and other electronic methods. In addition, the agency has implemented automated quality control and edit-check (QC/EC) systems to improve the completeness of filed reports and the accuracy of the data. The agency expects these efforts to increase the total number of motor carriers filing on-line reports.

CAB is also in support BTS' efforts to collect financial and operating statistics for motor carriers. CAB submitted comments that were discussed in the agency's second notice published on March 5, 2002 (67 FR 10043). CAB, in its remarks, requested the agency to include additional data items on the Form M. CAB supports BTS' need for the data collection program and, as a major user of the data, believes the Form M can be completed in less than 9 hours, based on motor carriers compiling the same data for corporate and tax purposes. CAB felt the burden estimate for the second ICR, Form QFR, was reasonable.

The CAB provided additional comments to the docket containing supplemental information to support its original comments in the docket. CAB's suggested that its proposal added no discernible impact on the reporting burden. BTS will consider the CAB's comments in future rulemakings associated with these information collections.

As noted above, the BEA is in strong support of the agency's continued collection of F&OS data. BEA commented that the data are essential to its Annual Input-Output Accounts, which are used to prepare estimates of industry output and in understanding the infrastructure of the economy.

Based on the statutory requirements, BTS considered some of the comments in the docket beyond the scope of its data collection program evaluation. Below is a brief summary of the agency reevaluation for each ICR under the appropriate approval number. The estimates that appear in the agency's evaluation are identical to those used in the ICR submission to OMB for renewal of the BTS Forms.

I

OMB Approval Number: 2139–0002 (Form QFR).

Title: Quarterly Report of Class I Motor Carriers of Property.

Estimated annual burden hours: The Quarterly Report of Class I Motor Carriers of Property (Form QFR) imposes 1,800 (27 minutes per quarter) total annual burden hours on motor carriers reporting to BTS. The figures shown on the information collection supporting statement (on file with OMB) for this collection are estimates based on the total number of filers (including new entrants and repeat filers), the frequency of reporting, and the time needed to compile the information and record information on the form (used to comply with the BTS regulations in 49 CFR part 1420).

Reporting: BTS regulations for the Form QFR are applicable to for-hire (common and contract) carriers that generate $10 million or greater in gross annual operating revenues. Motor carriers that meet this requirement must report their quarterly F&OS data to BTS. The data collected include selected income statement information along with information on tonnage, mileage, and number of shipments. These data are contained on a single page and are extracted from normal trucking management reports and accounting information that most carriers have readily available. BTS estimates that approximately 1,000 respondents each take an estimated 1.8 hours (27 minutes per quarter) annually to file quarterly reports with BTS. The total annual burden-hour estimate is 1,800 hours (1.8 hours × 1,000). The total number of respondents is based on the maximum average number of respondents per quarter, including new entrants and repeat filers. New entrants are typically motor carriers that are reporting data on the Form QFR for the first time. This group of carriers normally requires additional time to complete the two-page form with additional assistance from BTS as well as other sources. These estimates were based in part on estimates contained in the last approved ICR.

Agency data show that about 30% of the repeat filers report on the Form QFR through electronic means (*i.e.*, Internet, disk, or CD) while 70% use written reports to file using downloadable forms or forms provided by BTS. The time needed to meet the reporting requirement for this collection is more for the first time filer and less for the repeat. As part of its overall estimate, the agency considered previously reported figures and recalculated the estimates based on the total number of electronic filers.

II

OMB Approval Number: 2139–0004 (Form M).

Title: Annual Report of Class I and Class II Motor Carriers of Property.

Estimated annual burden hours: BTS estimates that the Annual Report of Class I and Class II Motor Carriers of Property (Form M) ($3 million or greater in adjusted operating revenue) imposes 27,000 annual burden hours on motor carriers reporting to BTS. The figures shown in the supporting statement are estimates based on the total number of filers (including new entrants and repeat filers), the frequency of reporting, and the time needed to compile the information (including recording the information on the form).

Reporting: BTS regulations for the Form M are applicable to for-hire (common and contract) carriers that generate $3 million or more gross annual operating revenues. These carriers are required to report their F&OS data to BTS. The data collected include selected balance sheet and income statement data along with information on tonnage, mileage, employees, transportation equipment, and other related data. BTS records show that in FY 2001 approximately 3,000 motor carriers filed a Form M. BTS estimates that each Form M (8 pages) takes about 9 hours (average) to complete. Approximately 30% of the carriers use electronic methods (Internet, CD, or disk), which require less than 9 hours to file; carriers that do not file on-line may require more time. The respondent carriers employ their own staff as well as outside accountants, lawyers, and other experts to complete the forms. BTS data indicate that although a large number of carriers that file the Form M are repeat filers, a substantial number of filers are new entrants, which require additional time to complete the Form M. Although the agency has seen an increase in new entrants over the years due to educational and outreach campaigns to the industry, this increase has been offset somewhat by the number of bankruptcies and firms going out of business (as shown in recent industry financial reports such as Dun and Bradstreet and Standard and Poor's). BTS includes these factors when determining estimates of the time required for this information collection.

Estimated Annual Cost of Burden: The combined estimated cost to the government is $1.2 million dollars for the Form M and Form QFR. This figure includes salary costs based on hours, overhead, printing, and payment to contractors. The agency, having received no supporting data as to the magnitude of the burden on carriers, employs the following estimate of normal costs of motor carriers associated with filing BTS' Form M (annual) and Form QFR (quarterly). The number of burden hours is 9 hours for the Form M and 1.8 hours for the Form QFR. Based on Bureau of Labor Statistics (BLS) data, an accountant's cost is $21.56 per hour with a fringe benefit percentage of 44.4%. If we apply these dollars to the hourly efforts for motor carriers for each form, the result is $895,968 (for Form M) and $55,998 (for Form QFR), for a combined total of $951,966 for the motor carrier industry.

BTS Burden Hours Estimates

	Class II motor carriers (OMB #2139–0002)	Class I & II motor carriers (OMB #2139–0004)
Number of Respondents	1,000	3,000.
Frequency of Responses	Quarterly	Annual.
Estimated Time Per Carrier	1.8 hours (27 minutes per quarter)	9 hours.
Prior Total Annual Burden Hours	1,800	27,000.
Revised Total Annual Burden Hours	No Change	No Change.
Estimated Costs on Motor Carriers	Change: $55,998 (est)	Change: $885,968 (est.).

Data and Sources

1. Mean hourly wage estimate for accountants: $21.56. (Source: 2000 National Industry-Specific Occupational Employment and Wage Estimates, SIC 421—Trucking and Courier Services, Except Air, 13–2011 Accountants and Auditors, 09/06/02; *http://www.bls.gov/oes/2000/oesi3_421.htm)*

2. Mean hourly earnings for accountants: $21.51. (Source: Table 1: Hourly Earnings of Full-time and Weekly and Annual Work Hours, National Compensation Survey, 2000, "Accountants and Auditors," BLS *Monthly Labor Review*, March 2002, p. 49.)

3. Employer costs per hour worked for employee compensation; "total compensation": $20.01 (Source: BLS *News*, USDL: 02–346, June 19, 2002.)

Russell B. Capelle, Jr.,

Assistant BTS Director for Motor Carrier Information, U.S. Department of Transportation.

[FR Doc. 02–27527 Filed 10–29–02; 8:45 am]

BILLING CODE 4910–FE–P

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DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

October 22, 2002.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before November 29, 2002, to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0168.
Form Number: IRS Form 4361.
Type of Review: Extension.
Title: Application for Exemption from Self-Employment Tax for Use by Ministers, Members of Religious Orders and Christian Science Practitioners.

Description: Form 4361 is used by ministers, members of religious orders, or Christian Science practitioners to file for an exemption from self-employment tax on certain earnings and to certify that they have informed the church or order that they are opposed to the acceptance of certain public insurance benefits.

Respondents: Individuals or households.

Estimated Number of Respondents/ Recordkeepers: 10,270.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping	6 min.
Learning about the law or the form.	19 min.
Preparing the form	16 min.
Copying, assembling, and sending the form to the IRS.	16 min.

Frequency of Response: other (one-time).

Estimated Total Reporting/ Recordkeeping Burden: 10,168 hours.

OMB Number: 1545–1002.
Form Number: IRS Form 8621.
Type of Review: Extension.
Title: Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund.

Description: Form 8621 is filed by a U.S. shareholder who owns stock in a foreign investment company. The form is used to report income, make an election to extend the time for payment of tax, and to pay an additional tax and interest amount. The IRS uses Form 8621 to determine if these shareholders have correctly reported amounts of income, made the election correctly, and have correctly computed the additional tax and interest amount.

Respondents: Business or other for-profit, individuals or households.

Estimated Number of Respondents/ Recordkeepers: 2,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping	13 hr., 37 min.
Learning about the law or the form.	6 hr., 27 min.
Preparing and sending the form to the IRS.	6 hr., 57 min.

Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 54,100 hours.

OMB Number: 1545–1029.
Form Number: IRS Form 8693.
Type of Review: Revision.
Title: Low-Income Housing Credit Disposition Bond or Treasury Direct Account Application.

Description: Form 8693 is needed per Internal Revenue Code section 42(j)(6) to post bond or establish a Treasury Direct Account and waive the recapture requirement under section 42(j) for certain dispositions of a building on which the low-income housing credit was claimed. Internal Revenue regulations section 301.7101–1 requires that the posting of a bond must be done on the appropriate form as determined by the Internal Revenue Service.

Respondents: Business or other for-profit, individuals or households.

Estimated Number of Respondents/ Recordkeepers: 1,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping	13 min.
Learning about the law or the form.	22 min.
Preparing, copying, assembling, and sending the form to the IRS.	45 min.

Frequency of Response: On occasion, other (one-time).

Estimated Total Reporting/ Recordkeeping Burden: 1,350 hours.

OMB Number: 1545–1657.
Revenue Procedure Number: Revenue Procedure 99–32.
Type of Review: Extension.
Title: Conforming Adjustments Subsequent to Section 482 Allocations.

Description: This revenue procedure prescribes the applicable procedures for the repatriation of cash by a United States taxpayer via an interest-bearing account receivable or payable in an amount corresponding to the amount allocated under section 482 from, or to, a related person with respect to a controlled transaction.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 180.

Estimated Burden Hours Per Respondent: 9 hours.

Frequency of Response: On occasion

Estimated Total Reporting Burden: 1,620 hours.

Clearance Officer: Glenn Kirkland, Internal Revenue Service, Room 6411–03, 1111 Constitution Avenue, NW., Washington, DC 20224. (202) 622–3428.

OMB Reviewer: Joseph F. Lackey, Jr., Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503. (202) 395–7316.

Mary A. Able,
Departmental Reports Management Officer.
[FR Doc. 02–27538 Filed 10–29–02; 8:45 am]
BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

October 22, 2002.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before November 29, 2002 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1492.
Form Number: IRS Form 10001.
Type of Review: Extension.
Title: Request for Closing Agreement Relating to Advance Refunding Issue Under Sections 148 and 7121 and Revenue Procedure 96–41.

Description: Form 10001 is used in conjunction with a closing agreement program involving certain issuers of tax-exempt advance refunding bonds. Revenue Procedure 96–41 established this voluntary compliance program and prescribed the filing of Form 10001 to request a closing agreement.

Respondents: Not-for-profit institutions, State, Local or Tribal Government.

Estimated Number of Respondents: 100.

Estimated Burden Hours Per Respondent: 3 hours.

Frequency of Response: Other (one-time).

Estimated Total Reporting Burden: 300 hours.

Clearance Officer: Glenn Kirkland, (202) 622–3428, Internal Revenue Service, Room 6411–03, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental PRA Clearance Officer.
[FR Doc. 02–27578 Filed 10–29–02; 8:45 am]
BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–248770–96]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, REG–248770–96 (TD 8725). Miscellaneous Sections Affected by the Taxpayer Bill of Rights 2 and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (§ 301.7430–2(c)).

DATES: Written comments should be received on or before December 30, 2002, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Larnice Mack (202) 622–3179, or through the internet (*Larnice.Mack@irs.gov*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Miscellaneous Sections Affected by the Taxpayer Bill of Rights 2 and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

OMB Number: 1545–1356. *Regulation Project Number:* REG–248770–96.

Abstract: Under Internal Revenue Code section 7430 a prevailing party may recover the reasonable administrative or litigation costs incurred in an administrative or civil proceeding that relates to the determination, collection, or refund of any tax, interest, or penalty. Section 301.7430–2(c) of the regulation provides that the IRS will not award administrative costs under section 7430 unless the taxpayer files a written request in accordance with the requirements of the regulation.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, and business or other for-profit organizations, not-for-profit institutions, farms, and the Federal government.

Estimated Number of Respondents: 38.

Estimated Time Per Respondent: 2 hours, 16 minutes.

Estimated Total Annual Burden Hours: 86.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 23, 2002.

Glenn Kirkland,
IRS Reports Clearance Officer.
[FR Doc. 02–27634 Filed 10–29–02; 8:45 am]
BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 1 Taxpayer Advocacy Panel (Including the States of New York, Connecticut, Massachusetts, Rhode Island, New Hampshire, Vermont and Maine)

ACTION: Notice.

SUMMARY: An open meeting of the Area 1 Taxpayer Advocacy Panel will be conducted in Providence, Rhode Island.

DATES: The meeting will be held Saturday, November 9, 2002.

FOR FURTHER INFORMATION CONTACT: Marisa Knispel at 1–888–912–1227, or 718–488–3557.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 1 Taxpayer Advocacy Panel will be held Saturday, November 9, 2002, from 10 am to 2 pm EST at the Rhode Island Hospital Campus, Ambulatory Patient Center, 593 Eddy Street, 9th floor, Providence, RI 02903. Due to limited conference space, notification of intent to attend the meeting must be made in advance with Marisa Knispel.

Mrs. Knispel may be reached at 1–888–912–1227 or 718–488–3557. The public is invited to make oral comments from 10 am to 2 pm on Saturday, November 9, 2002. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 718–488–3557, or write Marisa Knispel, TAP Office, PO Box R, Brooklyn, NY 11201.

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The agenda will include the following: Various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: October 22, 2002.

Cathy VanHorn,

Director, Communication and Liaison.

[FR Doc. 02–27637 Filed 10–29–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF TREASURY

Internal Revenue Service

Request for Nominations to Advisory Committee on Tax Exempt and Government Entities

AGENCY: Internal Revenue Service (IRS); Tax Exempt and Government Entities Division.

ACTION: Notice.

SUMMARY: The Internal Revenue Service (IRS) is requesting nominations for members to serve on the Advisory Committee on Tax Exempt and Government Entities (ACT). Nominations will be accepted for the following vacancies which will occur in June 2003: two employee plans; two exempt organizations; two government entities. To ensure appropriate balance of membership, final selection from qualified candidates will be determined based on experience, qualifications, and other expertise.

DUE DATE: Written nominations must be received on or before November 29, 2002.

APPLICATION: Nominations should include name; other name(s) used and date(s) (required for FBI check); date of birth (required for FBI check); city and state of birth (required for FBI check); current address; telephone and fax numbers; and E-mail address, if any.

ADDRESSES: Send all applications to: Steven Pyrek, Director, TE/GE Communications and Liaison, 1111 Constitution Ave., NW.—T:CL Penn Bldg, Washington, DC 20224; Fax: (202) 283–9956 (not a toll-free number); E-mail: *steve.j.pyrek@irs.gov*.

FOR FURTHER INFORMATION CONTACT: Rick Trevino, (202) 283–9950 (not a toll-free number), or by e-mail at *rick.trevino@irs.gov*.

SUPPLEMENTARY INFORMATION: The Advisory Committee on Tax Exempt and Government Entities (ACT), governed by the Federal Advisory Committee Act, Pub. L. 92–463, is an organized public forum for discussion of relevant employee plans, exempt organizations, tax-exempt bonds, and state, local, and Indian tribal government issues between officials of the IRS and representatives of the above communities. The ACT also enables the IRS to receive regular input with respect to the development and implementation of IRS policy concerning these communities. ACT members present the interested public's observations about current or proposed IRS policies, programs, and procedures, as well as suggest improvements.

ACT members shall be appointed by the Secretary of the Treasury and shall serve for two-year terms. Terms can be extended in one-year increments, not to exceed two years. ACT members will not be paid for their time or services. ACT members will be reimbursed for their travel-related expenses to attend working sessions and public meetings, in accordance with 5 U.S.C. 5703.

The Secretary of the Treasury invites those individuals, organizations, and groups affiliated with employee plans, exempt organizations, tax-exempt bonds, and state, local or Indian tribal governments, to nominate individuals for membership on the ACT. Nominations should describe and document the proposed member's qualifications for membership on the ACT. Nominations should also specify the vacancy for which they wish to be considered. The Secretary seeks a diverse group of members representing a broad spectrum of persons experienced in employee plans, exempt organizations, tax-exempt bonds, and state, local or Indian tribal governments.

Nominees must go through a clearance process before selection by the Secretary of the Treasury. In accordance with Department of the Treasury Directive 21–03, the clearance process includes, among other things, pre-appointment and annual tax checks, and a Federal Bureau of Investigation criminal and subversive name check and security clearance.

Dated: October 24, 2002.

Steven J. Pyrek,

Designated Federal Official, Tax Exempt and Government Entities Division, Internal Revenue Service.

[FR Doc. 02–27635 Filed 10–29–02; 8:45 am]

BILLING CODE 4830– 01–P

DEPARTMENT OF TREASURY

Internal Revenue Service

Open Meeting of Taxpayer Advocacy Panel, E-Filing Issue Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: A telephone meeting of the Taxpayer Advocacy Panel will be held on November 14, 2002.

DATES: The meeting will be held Thursday, November 14, 2002, from 3 p.m. to 5 p.m. Eastern Daylight Time.

FOR FURTHER INFORMATION CONTACT: Mary Ann Delzer at 1–888–912–1227, or 414–297–1604.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel (TAP) will be held by telephone on Thursday, November 14, 2002, from 3 p.m. to 5 p.m. Eastern Daylight Time. The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service. You can submit written comments to the panel by faxing to (414) 297–1623, or by mail to Taxpayer Advocacy Panel, Mail Stop 1006 MIL, 310 West Wisconsin Avenue, Milwaukee, WI 53203–2221. Public comments will also be welcome during the meeting. Please contact Mary Ann Delzer at 1–888–912–1227, or 414–297–1604 for dial-in information. The Agenda will include the following: Future meeting planning and discussion of E-file use by small businesses.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: October 21, 2002.

Cathy Vanhorn,

Director, Communication and Liaison.

[FR Doc. 02–27636 Filed 10–29–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF TREASURY

Internal Revenue Service

Open Meeting of Taxpayer Advocacy Panel, Area Four

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: A telephone meeting of the Taxpayer Advocacy Panel will be held on November 18, 2002.

DATES: The meeting will be held Monday, November 18, 2002, from 11 a.m. to 1 p.m. Central Time.

FOR FURTHER INFORMATION CONTACT: Mary Ann Delzer at 1–888–912–1227, or 414–297–1604.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section

10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel (TAP) will be held by telephone on Monday, November 18, 2002, from 11 a.m. to 1 p.m. Central Daylight Time. The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service. You can submit written comments to the panel by faxing to (414) 297–1623, or by mail to Taxpayer Advocacy Panel, Mail Stop 1006 MIL, 310 West Wisconsin Avenue, Milwaukee, WI 53203–2221. Public comments will also be welcome during the meeting. Please contact Mary Ann Delzer at 1–888–912–1227, or 414–297–1604 for dial-in information. The Agenda will include the following: Media, marketing, and outreach planning, future meeting planning and the discussion of taxpayer service issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: October 21, 2002.

Cathy VanHorn,

Director, Communications and Liaison.

[FR Doc. 02–27638 Filed 10–29–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF TREASURY

Internal Revenue Service

Open Meeting of the Area 3 Taxpayer Advocacy Panel (Including the States of Florida, Georgia, Alabama, Mississippi, Louisiana, Arkansas and Tennessee)

ACTION: Notice.

SUMMARY: An open meeting of the Area 3 Taxpayer Advocacy Panel will be conducted (via teleconference).

DATES: The meeting will be held Friday, November 15, 2002.

FOR FURTHER INFORMATION CONTACT: Sallie Chavez at 1–888–912–1227, or 954–423–7979.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 3 Taxpayer Advocacy Panel will be held Friday, November 15, 2002, from 1 pm EST to 3 pm EST via a telephone conference call. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 954–423–7979, or write Sallie Chavez, TAP Office, 7771 W. Oakland Park Blvd. Rm. 225, Sunrise, FL 33351, or e-mail *firstcapsfl@mindspring.com*. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Sallie Chavez. Ms. Chavez can be reached at 1–888–912–1227 or 954–423–7979, or e-mail *firstcapsfl@mindspring.com*.

The agenda will include the following: Various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: October 21, 2002.

Cathy VanHorn,

Director, Communication and Liaison.

[FR Doc. 02–27639 Filed 10–29–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel (TAP) Area 2 Committee (Includes the States of Delaware, North Carolina, South Carolina, New Jersey, Maryland, Pennsylvania, Virginia and the District of Columbia)

ACTION: Notice.

SUMMARY: An open meeting of the Area 2 Taxpayer Advocacy Panel (TAP) will be conducted via teleconference.

DATES: The meeting will be held Thursday, November 21, 2002.

FOR FURTHER INFORMATION CONTACT: Inez E. De Jesus at 1–888–912–1227, or 954–423–7977.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel will be held Thursday, November 21, 2002 from 3 pm EST to 5 pm EST via a telephone conference call. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 954–423–7977, or write Inez E. De Jesus, TAP Office, 7771 W. Oakland Park Blvd. Rm. 225, Sunrise, FL 33351, or e-mail *cap_4@mindspring.com*. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Inez E. De Jesus. Ms. De Jesus can be reached at 1–888–912–1227 or 954–423–7977, or e-mail *cap_4@mindspring.com*.

The agenda will include the following: Various IRS/TAP issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: October 23, 2002.

Cathy VanHorn,

Director, Communication and Liaison.

[FR Doc. 02–27640 Filed 10–29–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel (TAP) Multilingual Initiative Issue Committee

ACTION: Notice.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel (TAP) Multilingual Initiative Issue Committee will be conducted (via teleconference).

DATES: The meeting will be held Friday, November 22, 2002.

FOR FURTHER INFORMATION CONTACT: Inez E. De Jesus at 1–888–912–1227, or 954–423–7977.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Multilingual Initiative Issue Committee will be held Friday, November 22, 2002, from 1 pm EST to 2 pm EST via a telephone conference call. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 954–423–7977, or write Inez E. De Jesus, TAP Office, 7771 W. Oakland Park Blvd. Rm. 225, Sunrise, FL 33351, or e-mail *cap_4@mindspring.com*. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Inez E. De Jesus. Ms. De Jesus can be reached at 1–888–912–1227 or 954–423–7977, or e-mail *cap_4@mindspring.com*.

The agenda will include the following: Various IRS/TAP Multilingual issues and related topics.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

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Dated: October 23, 2002.
Cathy VanHorn,
Director, Communication and Liaison.
[FR Doc. 02–27641 Filed 10–29–02; 8:45 am]
BILLING CODE 4830–01–P

Corrections

Federal Register
Vol. 67, No. 210
Wednesday, October 30, 2002

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46580; File No. SR–BSE–2002–14]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Boston Stock Exchange Relating to an Interpretation of its Execution Guarantee Rule

October 1, 2002.

Correction

In notice document 02–25612 beginning on page 62839 in the issue of Tuesday, October 8, 2002 make the following correction:

On page 62841, in the first column, in the first line, "[insert date 21 days from date of publication]." should read "October 29, 2002".

[FR Doc. C2–25612 Filed 10–29–02; 8:45 am]
BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46582; File No. SR–CBOE–2002–53]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Amending its Rules To Provide Notice of Benefits of Membership and Attendant Obligations

October 1, 2002.

Correction

In notice document 02–25610 beginning on page 62841 in the issue of Tuesday, October 8, 2002 make the following correction:

On page 62842, in the third column, under the heading **IV. Solicitation of Comments**, in the second line from the bottom, "[insert date 21 days from date of publication]." should read "October 29, 2002.".

[FR Doc. C2–25610 Filed 10–29–02; 8:45 am]
BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–CE–08–AD; Amendment 39–12914; AD 2002–21–08]

RIN 2120–AA64

Airworthiness Directives; Pilatus Aircraft Ltd. Model PC–6 Airplanes

Correction

In rule document 02–26589 beginning on page 64520 in the issue of Monday, October 21, 2002 make the following correction:

§39.13 [Corrected]

On page 64522, in § 39.13, in the table, under the "Actions" column, in entry (2), in the third line, "modifying" should read "modify".

[FR Doc. C2–26589 Filed 10–29–02; 8:45 am]
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Wednesday,
October 30, 2002

Part II

Securities and Exchange Commission

17 CFR Parts 210, 228, et al.
Disclosure Required by Sections 404, 406 and 407 of the Sarbanes-Oxley Act of 2002; Proposed Rule

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 210, 228, 229, 240, 249, 270 and 274

[Release Nos. 33–8138; 34–46701; IC–25775; File No. S7–40–02]

RIN 3235–AI66

Disclosure Required by Sections 404, 406 and 407 of the Sarbanes-Oxley Act of 2002

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: We propose to require companies to include a number of new disclosures in their Exchange Act filings. First, companies would be required to disclose the number and names of persons that the board of directors has determined to be the "financial experts" serving on the company's audit committee and whether they are independent of management, and if not, an explanation of why they are not. Second, companies would be required to include an annual internal control report of management stating the following: management's responsibilities for establishing and maintaining adequate internal controls and procedures for financial reporting for the company; management's conclusions about the effectiveness of the company's internal controls and procedures for financial reporting as of the end of the company's most recent fiscal year; and that the company's registered public accounting firm has attested to, and reported on, management's evaluation of the company's internal controls and procedures for financial reporting. Third, companies would be required to disclose whether they have adopted a code of ethics that covers their principal executive officers and senior financial officers, or if they have not, an explanation of why they have not, as well as amendments to, and waivers from, the code of ethics relating to any of those officers. These proposed rules would implement the requirements in sections 404, 406 and 407 of the Sarbanes-Oxley Act of 2002. We also propose to make revisions to our recently adopted rules requiring a company's principal executive and financial officers to certify the company's quarterly and annual reports and requiring the company to conduct quarterly evaluations of its disclosure procedures and controls. These rules would be amended to require quarterly and annual certifications and quarterly evaluations of internal controls and procedures for financial reporting. We also would amend the form of the principal officers' certification contained in the quarterly and annual report forms.

DATES: Comments should be received on or before November 29, 2002.

ADDRESSES: To help us process and review your comments more efficiently, comments should be sent by hard copy or e-mail, but not by both methods.

Comments sent by hard copy should be submitted in triplicate to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments also may be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. S7–40–02; if e-mail is used, this file number should be included in the subject line. Comment letters will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549–0102. Electronically submitted comment letters will be posted on the Commission's Internet Web site (*http://www.sec.gov*).[1]

FOR FURTHER INFORMATION CONTACT: Ray Be, Special Counsel, or N. Sean Harrison, Special Counsel, Division of Corporation Finance, at (202) 942–2910, with respect to registered investment companies, Katy Mobedshahi, Senior Counsel, Division of Investment Management, at (202) 942–0721, or with respect to accounting issues, Michael Thompson, Professional Accounting Fellow, Office of Chief Accountant, at (202) 942–4400, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: We are proposing amendments to Form 8–K,[2] Form 10–K,[3] Form 10–KSB,[4] Form 10–Q,[5] Form 10–QSB,[6] Form 20–F,[7] Form 40–F,[8] Form 12b–25,[9] Rule 12b–25,[10] Rule 13a–14,[11] Rule 13a–15,[12] Rule 15d–14,[13] and Rule 15d–15[14] under the Securities Exchange Act of 1934,[15] Regulation S–B,[16] Regulation S–K[17] and Regulation S–X.[18] We are also proposing amendments to Form N–SAR[19] and proposed Form N–CSR[20] under the Securities Exchange Act of 1934 and the Investment Company Act of 1940,[21] and Rule 30a–2[22] and proposed Rule 30a–3 under the Investment Company Act of 1940.

I. Background

The strength of the U.S. financial markets depends on investor confidence. Recent events involving allegations of misdeeds by corporate executives, independent auditors and other market participants have undermined that confidence.[23] In response to this threat to the U.S. financial markets, Congress passed, and the President signed into law, the Sarbanes-Oxley Act of 2002 (the "Sarbanes-Oxley Act"),[24] which effects sweeping corporate disclosure and financial reporting reform.

This release is one of several that the Commission is required to issue to implement provisions of the Sarbanes-Oxley Act. In this release we propose rules to implement the following three provisions of the Sarbanes-Oxley Act:

- Section 407, requiring the Commission to adopt rules: (1) requiring a company to disclose whether its audit committee includes at least one member who is a financial expert; and (2) defining the term "financial expert";
- Section 406, requiring the Commission to adopt rules requiring a company to disclose whether it has adopted a code of ethics for the company's senior financial officers, and if not, the reasons therefor, as well as any changes to, or waiver of any provision of, that code of ethics; and
- Section 404, requiring the Commission to adopt rules requiring a company's management to present an internal control report in the company's annual report containing: (1) A statement of the responsibility of management for establishing and maintaining an adequate internal control structure and procedures for financial reporting; and (2) an assessment, as of the end of the company's most recent fiscal year, of the effectiveness of the company's internal control structure and procedures for financial reporting. Section 404 also requires the company's registered public accounting firm[25] to attest to, and report on, management's assessment.

In connection with our proposed rules to implement the internal control report requirements included in section 404 of the Sarbanes-Oxley Act, we also propose several conforming revisions to our recently adopted certification rules and related requirements.[26]

II. Discussion of Proposals

A. Proposed Disclosure About Financial Experts Serving on a Company's Audit Committee

Many of the recent corporate scandals have centered on the quality of a company's financial disclosure. These events have, among other things, highlighted problems that can occur as a result of inadequate oversight of a company's management and auditors by the company's board of directors or audit committee. The Commission historically has encouraged companies to establish independent audit committees to oversee the work and independence of auditors. For example, in 1972 the Commission recommended that companies establish audit committees composed of outside directors.[27] Others have expressed their support for independent audit committees, including the National Commission on Fraudulent Financial Reporting, also known as the Treadway Commission,[28] and the General Accounting Office.[29] In 1999, we adopted rules requiring companies to disclose whether their audit committee members are independent, as defined by the relevant listing standards.[30]

In 1998, the New York Stock Exchange, Inc. (the "NYSE") and the National Association of Securities Dealers, Inc. (the "NASD") sponsored a committee to study the effectiveness of audit committees. This committee became known as the Blue Ribbon Committee on Improving the Effectiveness of Corporate Audit Committees (the "Blue Ribbon Committee"). In its 1999 report, the Blue Ribbon Committee recognized the importance of the audit committee in overseeing the corporate accounting and financial controls and reporting of companies.[31] The Blue Ribbon Committee noted that, because of this important role, an audit committee has "a more recognizable need for members with accounting and/or related financial expertise." Without some level of financial competence, members of an audit committee may be unable to adequately perform their vital corporate duties. In response to this report, the NYSE, the NASD,[32] the American Stock Exchange, Inc. (the "AMEX") and the Pacific Exchange, Inc. (the "PCX") adopted rules regarding the composition of listed companies" audit committees.[33]

The NYSE's and the PCX's rules require at least one member of a listed company's audit committee to have "accounting or related financial management expertise, as the Board of Directors interprets such qualification in its business judgment."[34] The NASD and the AMEX have similar rules that require each listed company to certify that it has, and will continue to have, at least one member of the audit committee that has past employment experience in finance or accounting, a professional certification in accounting, or comparable experience or background that demonstrates the individual's financial sophistication.[35] These rules provide, by way of example, that a person who is or has been a chief executive officer, chief financial officer or other senior corporate officer with financial oversight responsibilities satisfies this criterion. In addition, all four self-regulatory organizations require all members of the audit committee to be independent and to be (or soon become) financially literate, subject to limited exceptions.[36] While the NYSE and PCX rules permit a company's board of directors to interpret the financial literacy requirements, the NASD and AMEX rules define financial literacy as "the ability to read and understand fundamental financial statements, including a company's balance sheet, income statement, and cash flow statement."[37]

Although the NYSE, NASD, AMEX and PCX already have rules regarding the financial expertise of audit committee members, not all companies that are required to file reports under Sections 13(a) and 15(d) of the Exchange Act are subject to these requirements. Furthermore, the Sarbanes-Oxley Act directs us to adopt rules defining the term "financial expert" and specifies several attributes that we must consider in crafting the definition. These attributes are more detailed and rigorous than those reflected in the current self-regulatory organization rules. Therefore, it is possible that a person who previously qualified as a financial expert under the broader guidelines included in the rules of the self-regulatory organizations may not have sufficient expertise and experience to be considered a financial expert under our proposed rules.[38] In particular, our

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[1] We do not edit personal information, such as names or electronic mail addresses, from electronic submissions. You should submit only information that you wish to make available publicly.

[2] 17 CFR 249.308.

[3] 17 CFR 249.310.

[4] 17 CFR 249.310b.

[5] 17 CFR 249.308a.

[6] 17 CFR 249.308b.

[7] 17 CFR 249.220f.

[8] 17 CFR 249.240f.

[9] 17 CFR 249.322.

[10] 17 CFR 240.12b–25.

[11] 17 CFR 240.13a–14.

[12] 17 CFR 240.13a–15.

[13] 17 CFR 140.15d–14.

[14] 17 CFR 240.15d–15.

[15] 15 U.S.C. 78a *et seq.*

[16] 17 CFR 228.10 *et seq.*

[17] 17 CFR 229.10 *et seq.*

[18] 17 CFR 210.1–01 *et seq.*

[19] 17 CFR 249.330; 17 CFR 274.101.

[20] 17 CFR 249.331; 17 CFR 274.128.

[21] 15 U.S.C. 80a–1 *et seq.*

[22] 17 CFR 270.30a–2.

[23] *See*, for example, John Waggoner and Thomas A. Fogarty, "Scandals Shred Investors" Faith: Because of Enron, Andersen and Rising Gas Prices, the Public Is More Wary Than Ever of Corporate America," USA Today, May 5, 2002, and Louis Aguilar, "Scandals Jolting Faith of Investors," Denver Post, June 27, 2002.

[24] Pub. L. 107–204, 116 Stat. 745 (2002).

[25] The term "registered public accounting firm" is defined in section 2(a)(12) of the Sarbanes-Oxley Act to mean a public accounting firm registered with the Public Company Accounting Oversight Board (the "PCAOB") in accordance with the Sarbanes-Oxley Act.

[26] These include Exchange Act Rules 13a–14, 13a–15, 15d–14, 15d–15, Investment Company Act Rules 30a–2 and 30a–3, Item 307 of Regulations S–B and S–K and the forms of certification included in Forms 10–Q, 10–QSB, 10–K, 10–KSB, 20–F, 40–F, N–SAR and N–CSR.

[27] Accounting Series Release (ASR) 123 (March 23, 1972).

[28] *See* the Report of the National Commission on Fraudulent Financial Reporting (1987). This commission, also known as the Treadway Commission, was sponsored by the AICPA, the American Accounting Association, the Financial Executives Institute (now Financial Executives International), the Institute of Internal Auditor and the National Association of Accountants. Collectively, these groups were known as the Committee of Sponsoring Organizations, or COSO.

[29] GAO, "CPA Audit Quality: Status of Actions Taken to Improve Auditing and Financial Reporting of Public Companies," at 5 (GAO/AFMD–89–38, March 1989).

[30] Release No. 34–42266 (Dec. 22, 1999) [64 FR 73389]. This release addressed numerous issues related to auditor independence.

[31] See Report and Recommendations of the Blue Ribbon Committee on Improving the Effectiveness of Corporate Audit Committees (1999).

[32] The NASD rules referred to herein apply to NASDAQ listed companies.

[33] NYSE Rule 303.01, NASD Rule 4350(d)(2), AMEX Company Guide § 121 and PCX Equities Rule 5.3(b). *See* also Release No. 34–42233 (December 14, 1999) [64 FR 71529], Release No. 34–42231 (December 14, 1999) [64 FR 71523], Release No. 34–42232 (December 14, 1999) [64 FR 71518], and Release No. 34–43941 (February 7, 2001) [66 FR 10545] respectively.

[34] NYSE Rule 303.01 and PCX Rule 5.3(b).

[35] NASD Rule 4350(d)(2) and AMEX Company Guide § 121.

[36] For example, the NASD Manual states that audit committee members must become able to read and understand fundamental financial statements within a reasonable time after being appointed to the audit committee. Similarly, the NYSE listing standard require such appointees to become financially literate, as that term is interpreted by the board of directors, within a reasonable period of time after appointment. Therefore, these rules do not require that members be so qualified at the time of appointment. Also, in general, with respect to foreign private issuers, the self-regulatory organization rules accommodate differences in home country practices regarding, among other things, audit committee composition. The Sarbanes-Oxley Act does not exempt foreign private issuers from the financial expert disclosure requirements. Our proposed rules similarly do not include an exemption for foreign private issuers.

[37] *Id.*

[38] The NYSE has indicated that it will await the Commission's interpretation of the definition of the

Continued

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proposed rules would require a financial expert to have experience preparing or auditing financial statements of a company that files reports with us and experience with internal controls and procedures for financial reporting (or similar expertise and experience in the board of directors' judgment). The proposed disclosure requirements regarding audit committee financial experts are described below.

1. Proposed Disclosure Requirements

We propose to add new Item 309 to Regulations S–K and S–B. In addition, we propose to add new Item 15(b) to Form 20–F and new Instruction B.(8) to Form 40–F. These proposed items would be identical in substance and entitled, "Audit Committee Financial Experts." The proposed items would require companies to disclose:

- The number and names of persons that the board of directors has determined to be the financial experts serving on the company's audit committee; and
- Whether the financial expert or experts are "independent," as that term is used in section 10A(m)(3) of the Exchange Act, and if not, an explanation of why they are not.[39]

If the company does not have a financial expert serving on its audit committee, the company must disclose that fact and explain why it has no financial expert. For purposes of the proposed disclosure, the term "audit committee" would be defined by section 3(a)(58) of the Exchange Act.[40]

Although the Sarbanes-Oxley Act does not specifically require disclosure of the number or names of the financial experts,[41] we believe that it is appropriate to propose these requirements. Investors likely would be interested in knowing how many financial experts a company's board has determined are serving on its audit committee, or whether it has determined that all of the audit committee members are financial experts. Furthermore, disclosure of the names of the company's financial expert or experts would assist investors in evaluating the company's annual report and proxy or information statement disclosure that describes the background and business experience of the company's directors.[42]

The primary benefit of having a financial expert serving on a company's audit committee is that the person, with his or her enhanced level of financial sophistication or expertise, can serve as a resource for the audit committee as a whole in carrying out its functions.[43] The mere designation of the financial expert should not impose a higher degree of individual responsibility or obligation on a member of the audit committee. Nor do we intend for the financial expert designation to decrease the duties and obligations of other audit committee members or the board of directors. Furthermore, in order to avoid any confusion in the context of section 11 of the Securities Act,[44] we do not intend for such a person to be considered an expert for purposes of section 11 solely as a result of his or her designation as a financial expert on the audit committee. The role of the financial expert is to assist the audit committee in overseeing the audit process, not to audit the company. A conclusion that a financial expert is an "expert" for purposes of section 11 might suggest a higher level of due diligence than is consistent with the audit committee's oversight responsibilities.

Section 407 of the Sarbanes-Oxley Act does not require disclosure of whether the financial expert is independent. However, we believe that such disclosure may be important to investors. Investors may be interested to know, for example, if the only financial expert on the audit committee is the company's chief financial officer or another individual who is responsible for, or participates in, the preparation of the company's financial statements. Therefore, we propose to require disclosure of whether the identified financial expert or experts on the audit committee are independent, as that term is used in section 10A(m)(3) of the Exchange Act, and if not, an explanation of why they are not. In addition, we intend to propose rules directing the national securities exchanges and national securities association to require a company to have a completely independent audit committee as a condition to listing.[45]

Some companies do not have boards of directors and therefore do not have board audit committees. For example, some limited liability companies and limited partnerships that do not have a corporate general partner may not have an oversight body that is the equivalent of an audit committee. It may be important to investors to be aware that such entities do not have such oversight bodies. Therefore, we do not propose to exempt these entities from the proposed financial expert disclosure requirements. If a limited liability company or limited partnership does not have a similar oversight body, it must explain that its organizational structure does not provide for such a body and that it therefore does not have an audit committee. We do, however, propose to exempt asset-backed issuers from this proposed disclosure requirement. Because of the nature of these entities, such issuers are subject to substantially different reporting requirements. Most significantly, such issuers are not required to file financial statements like other companies. Therefore, we do not believe disclosure of whether such companies have a financial expert on its audit committee would be of interest to investors.

Request for Comment

- Would investors benefit from disclosure of the number of the financial experts serving on the company's audit committee? Or would it suffice to require disclosure only of whether at least one financial expert serves on the audit committee?
- Do investors need to know the names of the financial experts on the audit committee? Would disclosure of the names discourage people from serving as financial experts on an audit committee?
- Should the Commission specifically address the issue of the degree of individual responsibility, obligation or liability under state or federal law of a person designated as a financial expert as a result of the designation? If the Commission should address this issue, how should it do so?
- Should we use a term other than "financial expert"? For example, would the term "audit committee financial expert" be a more appropriate title?
- Is there other relevant information about the financial expert or experts that a company should have to disclose? For example, should we expand the disclosure required under Item 401(e) of Regulations S–K and S–B, as it relates to directors that the company has determined to be financial experts? If so, how?
- Should we require disclosure of whether the financial experts are independent, as proposed? If so, should we define "independent" in the same manner as the term is used in section 10A(m)(3) of the Exchange Act?
- Should we incorporate an independence requirement into the definition of "financial expert" so that any designated financial expert must be independent to qualify under the definition?

2. Proposed Definition of "Financial Expert"

The Sarbanes-Oxley Act requires the Commission, in defining the term "financial expert," to consider whether a person has, through education and experience as a public accountant or auditor or a principal financial officer, controller,[46] or principal accounting officer of an issuer, or from a position involving the performance of similar functions:

(1) An understanding of generally accepted accounting principles and financial statements;

(2) Experience in: (a) The preparation or auditing of financial statements of generally comparable issuers; and (b) the application of such principles in connection with the accounting for estimates, accruals, and reserves;

(3) Experience with internal accounting controls; and

(4) An understanding of audit committee functions.

The "financial expert" definition included in the proposed rules incorporates these four "attributes" with several modifications.[47] We also propose to require the financial expert's experience to be related to companies that were, at the time he or she held the position, publicly reporting companies. We believe this requirement is appropriate because a person with experience as a principal financial officer or principal accounting officer of a private company may not have been exposed to the reporting requirements of public companies.

Moreover, the proposed definition states that the board of directors can conclude that a person is a financial expert if, in lieu of having experience as a public accountant, auditor, principal financial officer, principal accounting officer, or controller, or experience in a position involving the performance of similar functions, the person has experience in a position that results, in the judgment of the board of directors, in the person having similar expertise and experience. If the board makes such a determination, it would be required to disclose the basis for that determination. To qualify as a financial expert, a person would, in all cases, have to possess all of the attributes listed in the proposed definition.

The instructions to proposed Item 309 of Regulations S–K and S–B would therefore define the term "financial expert" to mean a person who has, through education and experience as a public accountant or auditor or a principal financial officer, controller, or principal accounting officer of a company that, at the time the person held such position, was required to file reports pursuant to section 13(a) or 15(d) of the Exchange Act, or experience in one or more positions that involve the performance of similar functions (or that results, in the judgment of the company's board of directors, in the person's having similar expertise and experience), the following attributes:

a. An understanding of generally accepted accounting principles and financial statements;

b. Experience applying such generally accepted accounting principles in connection with the accounting for estimates, accruals, and reserves that are generally comparable to the estimates, accruals and reserves, if any, used in the registrant's financial statements;

c. Experience preparing or auditing financial statements that present accounting issues that are generally comparable to those raised by the registrant's financial statements;

d. Experience with internal controls and procedures for financial reporting;[48] and

e. An understanding of audit committee functions.

In determining whether a potential financial expert has all of the requisite attributes, the board of directors[49] must evaluate the totality of an individual's education and experience.[50] The company should consider a variety of factors in making that evaluation, including:

- The level of the person's accounting or financial education, including whether the person has earned an advanced degree in finance or accounting;
- Whether the person is a certified public accountant, or the equivalent, in good standing, and the length of time that the person actively has practiced as a certified public accountant, or the equivalent;
- Whether the person is certified or otherwise identified as having accounting or financial experience by a recognized private body that establishes and administers standards in respect of such expertise, whether that person is in good standing with the recognized private body, and the length of time that the person has been actively certified or identified as having this expertise;
- Whether the person has served as a principal financial officer, controller or principal accounting officer of a company that, at the time the person held such position, was required to file reports pursuant to section 13(a) or 15(d) of the Exchange Act, and if so, for how long;

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term "financial expert" before proposing amendments to its rules. *See* File No. SR–NYSE–2002–33 (pending before the Commission). The NASD has indicated that it intends to file rule proposals for the Nasdaq Stock Market with the Commission addressing similar issues. Although we will continue to work with the self-regulatory organizations to reconcile to the extent possible the various definitions of expert.

[39] 15 U.S.C. 78j–1(m)(3). The Sarbanes-Oxley Act amended the Exchange Act to add this section.

[40] Section 3(a)(58) of the Exchange Act, as amended by the Sarbanes-Oxley Act, defines the term "audit committee" as "a committee (or equivalent body) established by and amongst the board of directors of an issuer for the purpose of overseeing the accounting and financial reporting processes of the issuer and audits of the financial statements of the issuer; and * * * if no such committee exists with respect to an issuer, the entire board of directors of the issuer." 15 U.S.C. 78c(a)(58).

[41] The Sarbanes-Oxley Act only directs the Commission to adopt rules requiring disclosure of whether or not the audit committee has at least one member who is a financial expert and, if not, why. *See* section 407 of the Sarbanes-Oxley Act.

[42] *See* Item 401(e) of Regulation S–K and Item 401(a)(4) of Regulation S–B [17 CFR 229.401(e) and 228.401(a)(4)].

[43] *See* Report and Recommendations of the Blue Ribbon Committee on Improving the Effectiveness of Corporate Audit Committees (1999).

[44] 15 U.S.C. 77k.

[45] *See* section 301 of the Sarbanes-Oxley Act.

[46] The Sarbanes-Oxley Act uses the term "comptroller." It is our understanding that a comptroller position generally is the position in a government agency or non-profit organization with oversight responsibilities for the agency's or organization's primary accounting function. We believe that for-profit organizations typically use the term "controller" to describe this function. Therefore, throughout this release, we have used the term "controller" instead of the term "comptroller."

[47] *See* instructions 1–4 to proposed Item 309 of Regulations S–K and S–B. In particular, we propose to break the four attributes into five attributes and several changes to clarify that the required attributes include experience applying generally accepted accounting principles in connection with the accounting for estimates, accruals and reserves that are generally comparable to those, if any, used in the company's financial statements, and experience preparing or auditing financial statements that present accounting issues that are generally comparable to those raised by the company's financial statements.

[48] Section 407 of the Sarbanes-Oxley Act states that, among other attributes, the SEC, in defining the term "financial expert," should consider whether a person has experience with internal accounting controls. This release proposes rules under section 404, which would require an annual report by management evaluating the effectiveness of its internal controls and procedures for financial accounting (a defined term). We believe that this term has substantially the same meaning as "internal accounting controls" in section 407. Therefore, we propose to use the newly defined term for consistency.

[49] *See* section II.A.3., Determination by the Board of Directors of Who Is a Financial Expert, below.

[50] This approach is consistent with the approach taken in NASD and NYSE rules. The NASD requires each issuer to have "at least one member of the audit committee that has past employment experience in finance and accounting, requisite professional certification in accounting, or any other comparable experience or background which results in the individual's financial sophistication, including being or having been a chief executive officer, chief financial officer or other senior officer with financial oversight responsibilities." NASD Rule 4350(d)(2)(A). Similarly, the NYSE requires at least one member who has "accounting or related financial management expertise." NYSE Listed Company Manual 303.01. Both of these provisions focus on the level of expertise without providing any mechanical formula for determining whether an individual has the requisite expertise.

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- The person's specific duties while serving as a public accountant, auditor, principal financial officer, controller, principal accounting officer or position involving the performance of similar functions;
- The person's level of familiarity and experience with all applicable laws and regulations regarding the preparation of financial statements that must be included in reports filed under section 13(a) or 15(d) of the Exchange Act;
- The level and amount of the person's direct experience reviewing, preparing, auditing or analyzing financial statements that must be included in reports filed under section 13(a) or 15(d) of the Exchange Act;
- The person's past or current membership on one or more audit committees of companies that, at the time the person held such membership, were required to file reports pursuant to section 13(a) or 15(d) of the Exchange Act;
- The person's level of familiarity and experience with the use and analysis of financial statements of public companies; and
- Whether the person has any other relevant qualifications or experience that would assist him or her in understanding and evaluating the registrant's financial statements and other financial information and to make knowledgeable and thorough inquiries whether:
- The financial statements fairly present the financial condition, results of operations and cash flows of the company in accordance with generally accepted accounting principles; and
- The financial statements and other financial information, taken together, fairly present the financial condition, results of operations and cash flows of the company.

In the case of a foreign private issuer, the board of directors also should consider the person's experience with public companies in the foreign private issuer's home country, generally accepted accounting principles used by the issuer, and the reconciliation of financial statements with U.S. generally accepted accounting principles.

This is not intended to be an exhaustive list of the factors that the board of directors should consider in assessing whether a person qualifies as a financial expert. Moreover, the proposed rules do not specify the number of listed factors that a financial expert should satisfy; satisfaction of any specific number of factors would be neither necessary nor sufficient for a person to be considered a financial expert. Most of these factors require a qualitative assessment of a potential expert's level of knowledge or experience.

The fact that a person previously has served on an audit committee would not, by itself, justify the board of directors in "grandfathering" that person as a financial expert under our proposed definition. Similarly, the fact that a person has experience as a public accountant or auditor, or a principal financial officer, controller or principal accounting officer or experience in a similar position would not, by itself, justify the board of directors in deeming the person to be a financial expert. The board of directors would have to confirm that these persons have the requisite attributes and the right mix of education and experience.

Some individuals who are particularly knowledgeable and experienced in accounting and financial issues may have the requisite attributes and mix of knowledge and experience to qualify as financial experts, even though they may not have served in one of the specifically identified positions. The board of directors would have to determine whether an individual's qualifications, in the aggregate, satisfy the financial expert definition.

Because of the significant role the audit committee plays in the filing of a public company's financial statement, including the preparation and filing of their own report, we would find it hard to believe that an accountant serving as a financial expert on an audit committee would not be practicing before the Commission.[51] Therefore, any accountant, while suspended or barred from practice under Rule 102(e)[52] of the Commission's Rules of Practice, generally would not be eligible to serve as a financial expert.

Request for Comment

- Should we modify the proposed definition of "financial expert" in any way? If so, how?
- Should we require a financial expert to have direct experience preparing or auditing financial statements of reporting companies? Should experience reviewing or analyzing such financial statements suffice? If so, why?
- Should a financial expert have to possess all of the "attributes" listed in the proposed definition? Should we broaden the scope of individuals who may qualify as such an expert?
- Do the five attributes adequately describe the qualities that a financial expert should have? Should we add any attributes?
- Although we do not intend for the list of factors that a company should consider in assessing a potential financial expert's qualifications to be exhaustive, should we add any factors to the list? If so, what other factors should we include? Conversely, should we delete any proposed factors from the list? If so, which factors should we delete?
- Should the proposed rules provide for a different standard or methodology for assessing a financial expert's qualifications? If so, describe the preferred standard or methodology.

3. Determination by the Board of Directors of Who Is a Financial Expert

The Sarbanes-Oxley Act does not explicitly state who at the company should determine whether any of the audit committee members is a financial expert. Management is responsible for preparing the financial statements. Therefore, it seems inappropriate for management to assess the qualifications of audit committee members. Similarly, it does not seem appropriate for the members of the audit committee, alone, to assess their own qualifications. We believe that the board of directors in its entirety, as the most broad-based body within the company, is best-equipped to make the decision. Therefore, we propose to require the company to disclose the number and names of the persons that the board of directors has determined to be the financial expert or experts serving on the company's audit committee.

Certain foreign private issuers have a two-tier board, with one tier designated as the management board and the other tier designated as the supervisory or non-management board. In this circumstance, we believe that the supervisory or non-management board would be the body within the company that is best-equipped to make the decision.

Request for Comment

- Will investors find this information useful? Is there more useful information on how financial experts are determined?
- Should our rules require the company to disclose the persons who are responsible for making the financial expert determination on behalf of the company? Is the board of directors the appropriate body to make such determination?

4. Impracticability of a "Bright-Line" Test

We considered, but do not propose, a "bright-line" test for making the financial expert determination that eliminates all elements of subjectivity. We do not believe that such a test would best further the purposes of the statute. Our proposed "financial expert" definition requires a qualifying individual to possess all of the specified attributes, and in that respect, does provide somewhat of a "bright-line" by setting forth several fairly specific and objective standards to limit the pool of potential financial expert candidates. The "factors" also provide guidance to assist the board of directors in making the financial expert determination. Clearly, certain factors such as level of education and years spent in a financial position are important indicia of whether an individual has such knowledge and experience.

However, we are not convinced that any bright-line rule or fixed formula that requires a financial expert to have specific academic credentials or a specific number of years of service in a financial or accounting position can ensure that an individual has the level of understanding and experience required by the statute. As the Blue Ribbon Committee stated regarding corporate governance and audit committees, "one size doesn't fit all."[53] Indeed, the more complicated the business, the greater the need for a higher threshold of financial expertise. Therefore, we believe that a bright-line test would be inappropriate for such determinations.

Request for Comment

- Should we create a bright-line test for the definition of "financial expert"? If so, what should the test be?

5. Location of Disclosure

The Sarbanes-Oxley Act expressly states that companies must include the financial expert disclosure in their periodic reports required pursuant to section 13(a) or 15(d) of the Exchange Act. We propose to require companies to include the new disclosure in their annual reports on Forms 10–K[54] and 10–KSB.[55] We do not propose to require companies to also include this disclosure in their quarterly reports because we think that annual disclosure would adequately fulfill investors' informational needs. In this regard, we note that our pending Form 8–K proposals would require a company to disclose the arrival or departure of a director.[56] This information would be included in part III of those forms. Consequently, the company could incorporate this information by reference from its definitive proxy or information statement that involves an election of directors, if the company voluntarily chooses to include this information in its proxy or information statement and then files such statement with the Commission no later than 120 days after the end of the fiscal year covered by the Form 10–K or 10–KSB.[57] We also propose to require this disclosure in annual reports filed by a foreign private issuer on Form 20–F[58] and by a Canadian issuer on Form 40–F.[59]

Request for Comment

- Should we also require the proposed financial expert disclosure to appear in the company's proxy or information statement? Is this information relevant to a security holder's decision to vote for a particular director or to elect, approve or ratify the choice of an independent public accountant?
- Should we require the company to also disclose this information in its quarterly reports?
- Should we also require such disclosure in registration statements filed under the Securities Act?
- Should the company have to disclose specifically the arrival or departure of a financial expert promptly after the occurrence of the event? If so, should we modify our Form 8–K proposed item regarding the arrival and departure of a director to also require a company to disclose whether the departing director was, or arriving director will be, a financial expert serving on the company's audit committee? Should a company make appropriate disclosures if: a financial expert leaves the audit committee, but remains on the board of directors; or an existing director joins the audit committee as a financial expert? Should a company only have to file a Form 8–K if it previously disclosed in its annual report that it had a financial expert and now has none?
- A company currently may not have an audit committee member who qualifies as a financial expert under the proposed definition but may intend to seek one. In such a case, the proposed rules would require a company to disclose that it does not have a financial expert on its audit committee. However, the company could explain that it is searching for a qualified individual to serve on its audit committee. Should we provide companies with a transition period to find such a person? If so, what would be an appropriate transition period?

6. Registered Investment Companies

We are proposing to implement section 407 of the Sarbanes-Oxley Act with respect to registered management investment companies by adding disclosure requirements similar to those in proposed Item 309 of Regulation S–K to proposed Form N–CSR.[60] Proposed Item 4 of Form N–CSR would require a registered management investment company to disclose annually: (i) The number and names of persons that the board of directors has determined to be the financial experts serving on the investment company's audit committee; (ii) whether the financial expert or experts are independent, and if not, an explanation of why they are not; and (iii) if the investment company does not have a financial expert serving on its audit committee, the fact that there is no financial expert and an explanation of why it has no financial expert.[61] In addition, the investment company would be required to disclose the basis for a determination by its board of directors that a person is a financial

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[51] *See* 17 CFR 201.102(f).

[52] *See* 17 CFR 201.102(e).

[53] *See* Report and Recommendations of the Blue Ribbon Committee on Improving the Effectiveness of Corporate Audit Committees, at 7 (1999).

[54] Referenced in 17 CFR 249.310.

[55] Referenced in 17 CFR 249.310b.

[56] Therefore if, for example, a director who is the audit committee financial expert resigned or was removed from the board one month after the company filed its annual report, the company would have to disclose this event on a Form 8–K filed within two business days after the director's departure. *See* Release No. 33–8106 (June 17, 2002) [67 FR 42914]. The proposals in that release have not yet been adopted. The proposals do not require disclosure of whether the departing director is a financial expert. We are seeking comment on whether we should require such disclosure.

[57] *See* General Instruction E(3) to Form 10–KSB [17 CFR 249.310b] and General Instruction G(3) to Form 10–K [17 CFR 249.310].

[58] Referenced in 17 CFR 249.220f.

[59] Referenced in 17 CFR 249.240f.

[60] Referenced in 17 CFR 249.331 and 274.128. A management investment company is an investment company other than a unit investment trust or face-amount certificate company. *See* section 4 of the Investment Company Act [15 U.S.C. 80a–4]. A unit investment trust ("UIT") is "an investment company which (A) is organized under a trust indenture, contract of custodianship or agency, or similar instrument, (B) does not have a board of directors, and (C) issues only redeemable securities, each of which represents an undivided interest in a unit of specified securities; but does not include a voting trust." Section 4(2) of the Investment Company Act [15 U.S.C. 80a–4(2)]. A face-amount certificate company is an investment company that engages or proposes to engage in the business of issuing certain face-amount certificates. Section 4(1) of the Investment Company Act [15 U.S.C. 80a–4(1)].

[61] The proposed amendments would add similar disclosure requirements applicable to small business investment companies ("SBICs") to Item 102P3 of Form N–SAR. Proposed Instruction (b) to Item 102P3 of Form N–SAR (referenced in 17 CFR 249.330 and 274.101). SBICs are investment companies that are licensed as SBICs under the Small Business Investment Act of 1958. We are proposing to add financial expert disclosure requirements for SBICs to Form N–SAR because SBICs would not be required to file reports on proposed Form N–CSR.

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expert if, in lieu of having experience as a public accountant, auditor, principal financial officer, principal accounting officer, or controller, or experience in a position involving the performance of similar functions, the person has experience in a position that results, in the judgment of the board, in the person having similar experience and expertise.[62] We are proposing the same definition of "financial expert" for investment companies as for operating companies, except that we are not including the factor relevant to foreign private issuers.[63]

A financial expert would be considered to be "independent" if he or she: (i) meets the criteria set forth in section 10A(m)(3)(B)(i) of the Exchange Act; and (ii) is not an "interested person" of the investment company as defined in section 2(a)(19) of the Investment Company Act of 1940.[64] We have substituted the section 2(a)(19) test for the criteria set forth in section 10A(m)(3)(B)(ii) of the Exchange Act, which would apply to operating companies and require that the audit committee member not be an affiliated person of the issuer or any subsidiary in order to be considered "independent." The section 2(a)(19) test is more appropriate for registered investment companies because it is tailored to capture the broad range of affiliations with investment advisers, principal underwriters, and others that are relevant to "independence" in the case of investment companies.

The proposed disclosure requirements would apply to all registered management investment companies, regardless of whether they are required to file reports under section 13(a) or 15(d) of the Exchange Act. They would not apply to unit investment trusts, which are unmanaged investment companies that hold specified securities and, unlike managed investment companies, are not required to provide shareholder reports containing audited financial statements.

Request for Comment

- Should the definition of "financial expert" be modified for investment companies? Are the factors that are relevant in determining whether someone is a "financial expert" different for investment companies?
- What definition of "independence" should the disclosure requirements apply with respect to financial experts? Should the definition incorporate the criteria set forth in section 10A(m)(3)(B)(i) of the Exchange Act and section 2(a)(19) of the Investment Company Act, as proposed, or a different test, for example, the test used for operating companies?
- Should disclosure with respect to financial experts on an investment company's audit committee be required annually, as proposed? Should this disclosure be required on each report on Form N–CSR or N–SAR, *i.e.*, semi-annually?
- For investment companies that would be required to file reports on proposed Form N–CSR, should the financial experts disclosure be required on Form N–CSR or Form N–SAR? Should small business investment companies, which otherwise would not be required to file proposed Form N–CSR, be required to use Form N–CSR for this purpose?

B. Proposed Code of Ethics Disclosure

1. Proposed Rules Compared to Section 406 of the Sarbanes-Oxley Act

Section 406(a) of the Sarbanes-Oxley Act directs the Commission to issue rules requiring a company that is subject to the reporting requirements of section 13(a) or 15(d) of the Exchange Act to disclose whether or not the company has adopted a code of ethics for its senior financial officers that applies to the company's principal financial officer and controller or principal accounting officer, or persons performing similar functions. The Sarbanes-Oxley Act states that the rules also must require companies that have not adopted such a code of ethics to explain why they have not done so.

The Act defines the term "code of ethics," as used in section 406, to mean such standards as are reasonably necessary to promote:

- Honest and ethical conduct, including the ethical handling of actual or apparent conflicts of interest between personal and professional relationships;
- Full, fair, accurate, timely and understandable disclosure in the periodic reports required to be filed by the issuer; and
- Compliance with applicable governmental rules and regulations.

Section 406(b) of the Sarbanes-Oxley Act further directs the Commission to require a company subject to the Exchange Act reporting requirements to immediately disclose on Form 8–K, or by Internet or other electronic means of dissemination, any change in, or waiver of, a provision of its code of ethics for its senior financial officers.

Although section 406 of the Sarbanes-Oxley Act focuses on whether or not a company has adopted a code of ethics applicable to its senior financial officers, we believe that it is appropriate to propose rules that also apply to a company's principal executive officer. Investors not only have an interest in knowing whether a public company holds its senior financial officers to certain ethical standards, but also whether a public company holds its principal executive officer to ethical standards as well. Therefore, we believe that it is consistent with the purposes of the Sarbanes-Oxley Act to extend the scope of section 406 to also include a company's principal executive officer. Specifically, we propose to require a company to disclose whether it has adopted a written code of ethics that applies to its principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions. We also propose to broaden the definition of the term "code of ethics" used in section 406 of the Sarbanes-Oxley Act to include three additional factors described in more detail below.

2. Description of the Proposed Code of Ethics Disclosure Requirements

We propose to add new Item 406 to Regulations S–B and S–K, new Item 15(c) to Form 20–F and new Instruction B.(9) to Form 40–F to require a company subject to the Exchange Act reporting requirements to disclose:

- Whether the company has adopted a written code of ethics that applies to the company's principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions;[65] and
- If the company has not adopted such a code of ethics, the reasons it has not done so.

For purposes of this new disclosure item, we would define the term "code of ethics" to mean a codification of standards that is reasonably designed to deter wrongdoing and to promote:[66]

(1) Honest and ethical conduct, including the ethical handling of actual or apparent conflicts of interest between personal and professional relationships;

(2) Avoidance of conflicts of interest, including disclosure to an appropriate person or persons identified in the code[67] of any material transaction or relationship that reasonably could be expected to give rise to such a conflict;

(3) Full, fair, accurate, timely, and understandable disclosure in reports and documents that a company files with, or submits to, the Commission and in other public communications made by the company;

(4) Compliance with applicable governmental laws, rules and regulations;[68]

(5) The prompt internal reporting to an appropriate person or persons identified in the code of violations of the code;[69] and

(6) Accountability for adherence to the code.

The second, fifth and sixth prongs of this proposed definition supplement the requirements specified by section 406 of the Sarbanes-Oxley Act. We believe that these items are consistent with the objectives of that section. A comprehensive code of ethics should set forth guidelines requiring avoidance of conflicts of interests and material transactions or relationships involving potential conflicts of interests without proper approval. Moreover, an effective code of ethics should describe the company's system for the internal reporting of code violations.[70] The code also should state clearly the consequences for non-adherence to code provisions.

In addition to providing the required disclosure, a company also would have to file a copy of its ethics code as an exhibit to its annual report.[71] We believe investors would find such disclosure useful.

Request for Comment

- Should the rules address whether a company has a code of ethics that applies to its principal executive officer, as proposed, or should the rules track the language of section 406 of the Sarbanes-Oxley Act and require a company only to disclose whether it has a code of ethics that applies to its senior financial officers?
- Should we expand the definition of "code of ethics," as proposed, or should the definition adhere to the language in section 406(c) of the Sarbanes-Oxley Act? Are there other ethical principles that should be included in the definition?
- Should the rules cover a broader group of officers? If so, which group of officers should they cover? Should the general counsel be covered? Should all executive officers be covered?[72]
- Should the proposed rules require a company to disclose whether it has a code of ethics that applies to its directors? Do most companies have a code of ethics that applies to the board of directors? Does the same code of ethics generally apply to the company's executive officers and its directors?
- Should we require the company to describe its procedures to ensure compliance with the code of ethics?
- Should we require the company to describe its procedures for granting a waiver from a provision of its code of ethics?
- Should we require the company to disclose the date of adoption of its code of ethics and the date of the most recent update or the company's frequency of review of the code?
- Should the company have to file the code of ethics as an exhibit to its annual report as proposed? If not, should we also require the company to describe the principal topics that the code addresses?
- Should we require disclosure regarding the existence of a code of ethics in our other reports and registration statements, including our Securities Act and Exchange Act registration statements?

3. Content of the Code of Ethics

The proposed rules do not specify every detail that the company must address in its code of ethics, or prescribe any specific language that the code of ethics must include. They further do not specify the procedures that the company should develop, or the types of sanctions that the company should impose, to ensure compliance with its code of ethics. We believe that ethics codes do, and should, vary from company to company and that decisions as to the specific provisions of the code, compliance procedures and disciplinary measures for ethical breaches are best left to the company. In addition, such an approach is consistent with our disclosure-based regulatory scheme.

Many companies already maintain codes of ethics or conduct.[73] These codes often contain specific policies and restrictions addressing, among other things, such issues as insider trading and conflicts of interest. The proposed rules would not require a company to adopt a code of ethics if it has not already done so, or to amend its existing code of ethics, but they would require a company that does not have a code of ethics that meets the definition in the rule for the specified officers to explain why it does not have such a code. A pre-existing ethics code may satisfy the requirements of proposed Item 406, but a company should review its code upon our adoption of final rules to determine whether the code meets all of the standards included in the rules' definition of a "code of ethics." If a company has a code, but it does not satisfy all parts of the definition, the company would not be able to affirm that it has the type of code contemplated by the rules.

4. Types of Companies That Would Be Subject to the Proposed Code of Ethics Disclosure Requirements and Location of the Disclosure

All companies that file Form 10–K or 10–KSB reports would be subject to the proposed disclosure requirement.[74] We

[62] Proposed Instruction 3 to Item 4 of proposed Form N–CSR; proposed Instruction (b)(3) to Item 102P3 of Form N–SAR.

[63] Proposed Instructions 2 and 4 to Item 4 of proposed Form N–CSR.

[64] Proposed Item 4 of proposed Form N–CSR.

[65] We expect that many companies already have a code of ethics that applies to these officers, as well as additional officers, directors and employees. We encourage companies to apply the code of ethics to as broad a spectrum of personnel and affiliates as practicable.

[66] The Sarbanes-Oxley Act section 406(c) definition of the term "code of ethics" does not include the phrase "to deter wrongdoing" that we have incorporated into proposed Item 406 of Regulations S–K and S–B, but we think that it is appropriate to expand the definition in this manner. Although codes of ethics typically are designed to promote high standards of ethical conduct, they also generally seek to instruct those to whom they apply as to improper or illegal conduct or activity and to prohibit such conduct or activity.

[67] Under our proposal, although the company would retain discretion to determine the identity of the appropriate person or persons, such person should not be involved in the matter giving rise to the conflict of interest. Furthermore, we believe the person identified in the code should have sufficient status within the company to engender respect for the code and the authority to adequately deal with the persons subject to the code regardless of their stature in the company.

[68] We propose to add "laws" to this prong of the proposed definition. The Sarbanes-Oxley Act section 406(c) definition refers only to compliance with applicable governmental rules and regulations. This language also is intended to ensure compliance with other provisions of the Sarbanes-Oxley Act, including "up-the-ladder" reporting by lawyers, "whistleblower" protection and the enhanced conflict of interest provisions.

[69] The concerns regarding the identification of appropriate persons for the reporting of potential conflicts of interest discussed above would similarly apply to the reporting of violations of the code.

[70] There are a number of provisions in the Sarbanes-Oxley Act that require internal reporting of events. We believe that it is incumbent upon public companies to coordinate these requirements.

[71] See proposed Item 601(b)(14) of Regulations S–K and S–B. Section 406 of the Sarbanes-Oxley Act does not state that our rules must require a company to file a copy of the code of ethics as an exhibit to its annual report, but we think investors may be interested in examining the actual code itself, given that codes are likely to vary significantly from one company to another.

[72] Exchange Act Rule 3b–7 [17 CFR 240.3b–7] defines the term "executive officer" as a registrant's president, any vice president of the registrant in charge of a principal business unit, division or function (such as sales, administration or finance), any other officer who performs a policy-making function or any other person who performs similar policy-making functions for the registrant. Executive officers of subsidiaries may be deemed executive officers of the registrant if they perform such policy-making functions for the registrant.

[73] On August 16, 2002, NYSE submitted proposed new listing standards that would, among other things, require all NYSE listed companies to adopt a code of business conduct and ethics consistent with the principles enumerated in the listing standards. See File No. SR–NYSE–2002–33. The NASD has indicated that it intends to propose new listing standards that would require a code of conduct for NASDAQ listed companies.

[74] This disclosure would be required by Item 10 of Form 10–K and Item 9 of Form 10–KSB.

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also propose to require this disclosure in annual reports filed by a foreign private issuer on Form 20–F and by a Canadian issuer on Form 40–F.

Request for Comment

- Should we require a company to also provide the proposed code of ethics disclosure in its quarterly reports? Should such disclosure be made in a company's proxy and information statements? Should it be disclosed in Securities Act registration statements?
- Should the requirement apply to foreign private issuers, as proposed? If not, why?

5. Proposed Form 8–K or Internet Disclosure Regarding Changes to, or Waivers From, the Code of Ethics

Section 406(b) of the Sarbanes-Oxley Act directs us to require "immediate disclosure" by a company of any change to, or waiver from, the company's code of ethics for its senior financial officers.[75] As discussed above, we propose to require the basic ethics code disclosure with respect to a company's principal executive officer as well as to its senior financial officers. We therefore also propose to require current disclosure regarding changes to, or the company's grant of a waiver from, a provision of the code of ethics that applies to these same persons.

On June 17, 2002, we proposed amendments to Form 8–K that would expand significantly the number of disclosure items triggering a Form 8–K filing requirement and accelerate the Form 8–K filing deadline.[76] In those proposals, we stated that we were reviewing possible changes by self-regulatory organizations to their corporate governance provisions, including changes that would require a company to promptly disclose any revision that it makes to its code of ethics, or ethics waiver that it grants.

In light of the directive in section 406(b), we propose to add an item to the list of Form 8–K triggering events to require disclosure of the following:

- A change to a company's code of ethics that applies to the specified officers; or
- A grant of a waiver of an ethics code provision to a specified officer.[77]

If choosing to provide the required disclosure on Form 8–K, the company would have to file the report within two business days after it made the change or granted the waiver.[78] As an alternative to reporting this information on Form 8–K, section 406(b) of the Sarbanes-Oxley Act contemplates a company's use of the Internet as a method of disseminating this disclosure.[79] Many companies maintain websites to provide information about themselves to the public. A company's website is often an obvious place for investors to find information about a company.[80] We therefore propose to allow a company to use its own Internet website, if it has a website, as an alternative means of disseminating the proposed required disclosure about changes in, or waivers from, its code of ethics.[81] Under the proposed rules, a company would be able to take advantage of the Internet dissemination option only if it had disclosed in its most recently filed annual report on Form 10–K or 10–KSB:[82]

- That it intends to disclose these events on its Internet website, and
- Its Internet website address.

If a company elects to disclose this information on its website, it would have to do so within the same two-business day time period that we propose to require for Form 8–K filings. In addition, we propose that a company electing to provide disclosure in this manner would have to make the disclosure available on its website for a period of at least 12 months after it initially posts the disclosure. Although the proposed rules would permit a company to remove information from its website after the 12-month posting period, we propose to require the company to retain this disclosure for a period of not less than five years and to make it available to the Commission or its staff upon request.[83] We propose a 12-month period because we believe that it would be inappropriate to allow a company to comply with this provision by only briefly posting the disclosure on its website. Reports on Form 8–K are available to the public indefinitely after filing with the Commission.

Request for Comment

- Are there any privacy concerns that we should consider that would warrant narrowing the disclosure requirements regarding a grant of a waiver from the code?
- Is a "waiver" a sufficiently distinct and formal event that the obligation to disclose will not present any difficulties of interpretation? Should we modify the requirement to ensure that "*de facto, post hoc*" waivers of codes granted or acceded to after the occurrence of the "violation" are reported?
- Should companies that use the Internet for these disclosures also be required to have technology that allows investors to be notified by e-mail when new information is posted to the website?
- Should we require the filing of a Form 8–K regardless of whether a company provides the proposed disclosure on its website? Do investors need access to this information for longer than 12 months? How can we permit Internet disclosure and maintain a lasting public record of the information?
- Should we specify where and how this disclosure should appear on a company's website if the company opts for the website method of dissemination?
- Are there other means of electronic dissemination that our proposed rules should permit?
- Should we require a company choosing to disclose information about ethics code changes or waivers through its Internet website to provide advance notice in the company's annual report of its intent to satisfy the disclosure requirements in this manner, as proposed?
- Should we require all Exchange Act reporting companies to disclose their website addresses? If so, should we specify the location of this disclosure? For example, should it have to appear on the front cover of all periodic and current reports, along with the company's street address? Should a company have to disclose its website address in, or on the front cover of, all of its Exchange reports? Proxy and information statements? Exchange Act registration statements? Securities Act registration statements?

Foreign Private Issuers

Foreign private issuers are not required to file current reports on Form 8–K.[84] Instead, they are required to file under the cover of Form 6–K[85] copies of all information that the foreign private issuer: makes, or is required to make, public under the laws of its jurisdiction of incorporation; files, or is required to file, under the rules of any stock exchange; or otherwise distributes to its security holders.[86] We do not propose to change these reporting requirements. We are proposing changes to Form 20–F and 40–F that would require a foreign private issuer to disclose any change to its code of ethics made during the foreign private issuer's past fiscal year that applies to the foreign private issuer's senior officers. The foreign private issuer additionally would have to file the change as an exhibit to Form 20–F or 40–F. Under the proposals, a foreign private issuer also would have to disclose any grant of a waiver from the code by the company to one of these officers, that occurred during the foreign private issuer's last fiscal year. A foreign private issuer could also make the disclosure under cover of a Form 6–K or on its Internet website. We plan to strongly encourage foreign private issuers to make these disclosures promptly.

Request for Comment

- Should we require foreign private issuers to file disclosure about ethics code changes and waivers within two days under cover of Form 6–K? Should we otherwise require a foreign private issuer to promptly disclose ethics code changes and waivers?

6. Registered Investment Companies

We are proposing to amend Forms N–SAR and N–CSR to require a registered investment company to:

- Disclose annually whether each of the investment company, its investment adviser, and its principal underwriter has adopted a written code of ethics that applies to the principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions of, respectively, the investment company, its investment adviser, and its principal underwriter;[87]
- If the investment company, its investment adviser, or its principal underwriter has not adopted a code of ethics, explain why it has not done so;[88]
- If the investment company, its investment adviser, or its principal underwriter has, during the period covered by the report, amended or granted a waiver from any code of ethics applicable to the investment company's, investment adviser's, or principal underwriter's principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions, provide a brief description of the amendment or waiver in the investment company's report on proposed Form N–CSR or Form N–SAR, as applicable. In the alternative, the investment company may disclose this information on its Internet website within two business days after the occurrence of the amendment or waiver, if the investment company has disclosed in its most recently filed report on Form N–SAR or N–CSR its intention to provide disclosure in this manner and its Internet address, it makes the information available on its website for a 12-month period, and it retains the information for a period of not less than six years following the end of the fiscal year in which the amendment or waiver occurred;[89] and
- Include any written code of ethics and amendment to that code of ethics as an exhibit to the investment company's reports on Form N–CSR or N–SAR.[90]

The proposed disclosure requirements would apply to all registered investment companies, regardless of whether they are required to file reports under section 13(a) or 15(d) of the Exchange Act. Management investment companies generally would provide the required disclosure on proposed Form N–CSR, and small business investment companies and unit investment trusts would provide the required disclosure on Form N–SAR.[91] The proposed amendments would apply the same definition of a code of ethics that we are proposing for operating companies.[92]

We recognize that Investment Company Act Rule 17j–1 currently requires investment companies, and their investment advisers and principal underwriters, to adopt codes of ethics designed to prevent fraud resulting from personal trading in securities by portfolio managers and other employees.[93] The amendments we are proposing today would address a broader range of conduct, including disclosure provided in filings with the Commission; compliance with governmental laws, rules and regulations; and ethical conduct generally, including the handling of actual or apparent conflicts of interest. As a result, we believe that the proposals should apply with equal force to investment companies and operating companies. However, to the extent that an investment company, or its investment adviser or principal underwriter, is considering implementing new or changed code of ethics provisions as a result of today's proposals, it may wish to incorporate these provisions, together with its existing code of ethics under Rule 17j–1, into a single comprehensive code of ethics.[94]

The proposed disclosure requirements would generally cover the same entities covered by Rule 17j–1 (investment companies, investment advisers, principal underwriters) because these are the entities with respect to which conflicts of interest and other ethical issues are most likely to arise. Like Rule 17j–1, the proposed amendments would cover the code of ethics of an

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[75] Under the proposed rules this would also include an implicit waiver due to inaction on the part of the company with respect to a reported or known violation of a code provision.

[76] *See* Release No. 33–8106 (June 17, 2002) [67 FR 42914].

[77] *See* proposed Item 5.05 to Form 8–K. In Release No. 33–8106, we proposed to reorganize and renumber the Form 8–K items as part of our Form 8–K proposals. The proposed Item 5.05 designation is consistent with the renumbering scheme proposed in that release.

[78] A two business day filing period is consistent with the accelerated filing deadline that we proposed in Release No. 33–8106.

[79] Section 406(b) of the Sarbanes-Oxley Act states that our rules should require a company to report this disclosure on Form 8–K or by "dissemination by the Internet or by other electronic means." Our proposed rules would permit optional dissemination of the required disclosure through the company's website; it is not clear whether there are "other electronic means" that would result in widespread dissemination of the disclosure that would be accessible by a company's investors and potential investors. This release seeks comment on that issue.

[80] We are allowing website disclosure in these limited circumstances consistent with the terms of section 406 of the Sarbanes-Oxley Act. The present proposal does not indicate that the Commission deems website postings as sufficient to broadly and simultaneously disseminate information to the public in other contexts.

[81] A company choosing to post proposed disclosure about a change to its code of ethics on its website also would have to post a copy of the amended provision on its website.

[82] *See* proposed Item 406(b) of Regulations S–K and S–B. Because investors may not expect these disclosures to be made on the company's website in lieu of a Form 8–K filing, we are proposing to require a company to provide investors with advance notice that it may choose to use this option. Otherwise, investors may be confused regarding the location of this disclosure.

[83] Proposed Item 406 of Regulations S–B and S–K.

[84] *See* Exchange Act Rules 13a–11 and 15d–11 [17 CFR 240.13a–11 and 15d–11].

[85] Referenced in 17 CFR 249.306.

[86] *See* Exchange Act Rule 13a–16 [17 CFR 240.13a–16].

[87] *See* proposed Instructions (a)(1) and (a)(7) to Item 102P3 of Form N–SAR; proposed Item 3(a) and proposed instruction to Item 3(a) of proposed Form N–CSR. In the case of a UIT, the code of ethics disclosure requirements would apply with respect to the UIT's sponsor, depositor, trustee, and principal underwriter. Proposed Item 133(a) of Form N–SAR.

[88] Proposed Item 133(a) and Instruction (a)(1) to Item 102P3 of Form N–SAR; proposed Item 3(a) of Form N–CSR.

[89] Proposed Item 133(b) and (c), proposed Instructions (a)(2) and (a)(3) to Item 102P3 and proposed Instruction (c) to Item 133 of Form N–SAR; proposed Item 3(b) and 3(c) and proposed Instruction 3 to Item 3 of proposed Form N–CSR.

[90] Item 134(b) and proposed Instruction (a)(4) to Item 102P3 of Form N–SAR; proposed Item 6(b) of proposed Form N–CSR.

[91] *See* proposed Item 3 of proposed Form N–CSR (management investment companies, other than SBICs); proposed Instruction (a) to Item 102P3 of Form N–SAR (SBICs); proposed Items 133 and 134(b) of Form N–SAR (UITs).

[92] Proposed Instruction (a)(6) to Item 102P3 and proposed Instruction (b) to Item 133 of Form N–SAR; proposed Instruction 2 to Item 3 of proposed Form N–CSR. *See* Section II.B.2. above, "Description of the Proposed Code of Ethics Disclosure Requirements."

[93] 17 CFR 270.17j–1.

[94] Proposed General Instruction D to Form N–CSR would permit a registered management investment company to incorporate its code of ethics by reference from another document, such as the fund's registration statement. See Item 23(p) of Form N–1A; Item 24.2.r of Form N–2; Item 28(b)(17) of Form N–3 (requiring codes of ethics required by Rule 17j–1 to be filed as exhibits to registration statements).

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investment company's principal underwriter only if: (i) The principal underwriter is an affiliated person of the investment company or the investment company's investment adviser; or (ii) an officer, director, or general partner of the principal underwriter serves as an officer, director, or general partner of the investment company or of its investment adviser.[95] Unit investment trusts do not have a corporate-type management structure, but rather are created by a sponsor or depositor that accumulates a portfolio of securities and deposits them with a trustee under the terms of a trust indenture. Therefore, a unit investment trust would not be required to disclose whether it has a code of ethics because it has no officers. Rather, for unit investment trusts, we are proposing to require disclosure with respect to codes of ethics of the trust's sponsor, depositor, trustee or principal underwriter.[96] For unit investment trusts, the proposed amendments would cover the code of ethics of a principal underwriter only if: (i) The principal underwriter is an affiliated person of the trust or the trust's sponsor, depositor, or trustee; or (ii) an officer, director, or general partner of the principal underwriter serves as an officer, director, or general partner of the trust's sponsor, depositor, or trustee.[97]

Request for Comment

- Is the proposed definition of a code of ethics appropriate? Are there any modifications that should be made to this definition in the case of investment companies?
- Do the proposed code of ethics disclosure requirements cover the appropriate entities, in addition to the registered investment company itself? Should any entities be removed, or should other entities (e.g., the administrator) be added?
- Do the code of ethics disclosure requirements cover the appropriate individuals at those entities? Should any of these individuals be removed, or should other individuals be added?
- Should we require registered investment companies, like domestic operating companies, to use Form 8–K to disclose amendments to, or waivers of, a code of ethics within two business days? Or is our proposed approach of requiring periodic reporting of this information on Form N–CSR or Form N–SAR appropriate? Should we propose a separate form for prompt reporting of this information? If we require periodic reporting of amendments and waivers on Forms N–CSR and N–SAR, is the proposed alternative option for disclosure of amendments and waivers on the investment company's Internet website within two business days necessary or appropriate?
- For what period of time should we require an investment company to retain information about amendments to, or waivers from, codes of ethics, if it elects to post this information on its website? Should the retention period be not less than six years from the end of the fiscal year in which the amendment or waiver occurred, which would be consistent with the standard retention period for investment company records, or should it be some other period?[98]

C. Management's Internal Controls and Procedures for Financial Reporting

1. Management's Internal Control Report

Section 404 of the Sarbanes-Oxley Act directs the Commission to prescribe rules that would require each annual report that a company, other than a registered investment company,[99] files pursuant to Section 13(a) or 15(d) of the Exchange Act to contain an internal control report: (1) Stating management's responsibilities for establishing and maintaining adequate internal control structure and procedures for financial reporting; and (2) containing an assessment, as of the end of the company's most recent fiscal year, of the effectiveness of the company's internal controls and procedures for financial reporting.[100]

Twice in the past, the Commission has proposed an internal control report requirement. First, in 1979, following enactment of the Foreign Corrupt Practices Act ("FCPA"),[101] we proposed rules that would have required a company to annually disclose certain information about its internal accounting controls.[102] The proposed rules would have required a company's management to state its opinion as to whether the company's systems of internal accounting control provided reasonable assurance that:

- Transactions were executed in accordance with management's general and specific authorization;
- Transactions were recorded as necessary: (a) To permit preparation of financial statements in conformity with generally accepted accounting principles (or other applicable criteria); and (b) to maintain accountability for assets;
- Access to assets was permitted in accordance with management's general or specific authorization; and
- The recorded accountability for assets was compared with the existing assets at reasonable intervals and appropriate action was taken with respect to any differences.

The proposed rules also would have required an independent public accountant to examine and report on management's statement.

Commenters criticized the 1979 proposal for the scope and content of the proposed management statement, and its close correlation to the FCPA requirements. Many commenters viewed the proposal as requiring a report on compliance with the law. Others pointed to the significant voluntary and private-sector initiatives that had been undertaken in this area and urged us not to preempt such efforts by promulgating formal legal requirements. While we did not agree with all of the commenters' concerns, the Commission at that time decided not to proceed with the rulemaking to allow existing voluntary and private-sector initiatives for public reporting on internal accounting control to continue to develop. In 1980, the Commission formally withdrew the proposal.[103]

[95] Proposed Instruction 1 to Item 3 of proposed Form N–CSR; proposed Instruction (a)(5) to Item 102P3 of Form N–SAR. *See also* Investment Company Act Rule 17j–1(c)(3) [17 CFR 270.17j-1(c)(3)].

[96] Proposed Items 133 and 134(b) of Form N–SAR.

[97] Proposed Instruction (a) to Item 133 of Form N–SAR.

[98] *See* Investment Company Act Rule 31a–2 [17 CFR 270.31a–2] (requiring retention by registered investment companies of various types of records for not less than six years).

[99] Section 404 of the Sarbanes-Oxley Act, and any rules of the Commission under section 404, do not apply to any registered investment company. Section 405 of the Sarbanes-Oxley Act. *See* section II.C.4 below "Registered Investment Companies."

[100] Section 404 also requires every registered public accounting firm that prepares or issues an audit report for a company to attest to, and report on, the assessment made by the management of a company.

[101] Title I of Pub. L. 95–213 (1977). Partially codified in 15 U.S.C. 78m(b)(2), these provisions require issuers, with securities registered under section 12 of the Exchange Act, to make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the issuer; and to devise and maintain a system of internal accounting control sufficient to provide reasonable assurances that: (i) transactions are executed in accordance with management's general or specific authorization; (ii) transactions are recorded as necessary (a) to permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements, and (b) to maintain accountability for assets; (iii) access to assets is permitted only in accordance with management's general or specific authorization; and (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

[102] Release No. 34–15772 (April 30, 1979) [44 FR 26702].

[103] Release No. 34–16877 (June 6, 1980) [45 FR 40134].

Following the recommendations of the Treadway Commission, the Commission again proposed rules in 1988 that would have required companies to include in their annual reports a report of management's responsibilities with respect to financial reporting, including its responsibilities for the company's internal control system, and an assessment of the effectiveness of that system.[104] Our 1988 proposal differed from the 1979 proposal in several respects. Under the 1988 proposal, management's report would have been signed on behalf of the company's principal executive, financial, and accounting officers, and would have contained:

- A description of management's responsibilities for the preparation of the company's financial statements and other financial information included in a document containing the financial statements;
- A description of management's responsibilities for establishing and maintaining a system of internal control directly related to, and designed to provide reasonable assurance as to the integrity and reliability of, financial reporting;
- An assessment of the effectiveness of the company's system of internal control that encompassed material matters; and
- A statement of how management responded to any significant recommendations concerning its system of internal controls made by its internal auditors and its independent accountants.

Our 1988 proposal attempted to avoid a direct correlation with the FCPA by including a materiality threshold and focusing on the company's entire system of internal controls, rather than just its internal accounting controls. We received more than 180 comment letters in response to the 1988 proposal, with a majority of commenters supporting it. Many commenters, however, expressed concern over being required to disclose management's response to significant auditor recommendations on the management report. Furthermore, several commenters noted that private sector organizations were working to develop standards for reporting on the effectiveness of a company's internal controls.[105] The Commission did not act on the proposals.

In light of the mandates of the Sarbanes-Oxley Act, we again are proposing to require companies to include a report on their internal controls and procedures for financial reporting in their annual reports.

a. Proposed Disclosure

We propose to amend Item 307 of Regulations S–K and S–B, as well as Forms 20–F and 40–F, to require a company's annual report to include an internal control report of management that includes:

- A statement of management's responsibilities for establishing and maintaining adequate internal controls and procedures for financial reporting;
- Conclusions about the effectiveness of the company's internal controls and procedures for financial reporting based on management's evaluation of those controls and procedures in accordance with Exchange Act Rule 13a–15 or 15d–15, as of the end of the company's most recent fiscal year;[106] and
- A statement that the registered public accounting firm that prepared or issued the company's audit report relating to the financial statements included in the company's annual report has attested to, and reported on, management's evaluation of the company's internal controls and procedures for financial reporting.

The proposed amendments do not specify the exact content of the proposed management report, as this likely would result in boilerplate responses of little value. We believe that management should tailor the report to the company's circumstances.

b. Internal Controls and Procedures for Financial Reporting

A key aspect of management's responsibility for the preparation of financial information is its responsibility to establish and maintain an internal control system.[107] On August 29, 2002, we issued a release adopting new Exchange Act Rules 13a–14 and 15d–14 to implement section 302 of the Sarbanes-Oxley Act. In that release we stated that the term "internal controls" [108] as used in section 302 of the Sarbanes-Oxley Act is a pre-existing concept that pertains to a company's financial reporting and control of its assets.[109] However, because there are a variety of different definitions of the term "internal controls" and its meaning has changed over time, there continues to be confusion regarding the meaning and scope of the term.

One of the first attempts to define internal controls was reflected in 1958 in the Statement on Auditing Procedure No. 29, in which the Committee on Auditing Procedure of the AICPA subdivided the definition of internal control into the following two components: "administrative control" and "accounting control." [110] This statement explained that the term "accounting control" related directly to the safeguarding of assets and the reliability of financial records. Examples included systems of transaction authorization and approval, physical controls over assets, and the plan of organization for separating duties concerned with record-keeping from duties concerned with operations or asset custody. "Administrative control" was defined as mainly concerning operational efficiency or adherence to managerial policies. Examples included statistical analyses, performance reports, training programs, and quality-control procedures.

In 1972, the Statement on Auditing Procedure No. 54 redefined the administrative control and accounting control concepts.[111] SAP No. 54 defined administrative control as the plan of organization, procedures, and records concerned with the decision processes leading to management's authorization of transactions. Accounting control was defined as a plan of organization and the procedures and records that are concerned with the safeguarding of assets and the reliability of financial records and consequently are designed to provide reasonable assurance that:

[104] Release No. 34–25925 (July 19, 1988) [53 FR 28009].

[105] Committee of Sponsoring Organizations of the Treadway Commission, *Internal Control—Integrated Framework*. (August 1992) (the "COSO Report").

[106] A proposed instruction to Item 307 of Regulations S–K and S–B, Item 15(a) of Form 20–F and Instruction B.(7) of Form 40–F states that if the conclusions of the company's principal executive and financial officers are reflected in management's conclusions disclosed in the internal control report, the company does not have to include any separate disclosure required by Item 307(a) (or relevant provision in the foreign forms) regarding the conclusions of those officers about the effectiveness of the company's internal controls and procedures for financial reporting in its report for its fourth fiscal quarter. Another proposed instruction to those provisions states that the company is encouraged, but not required, to include the disclosure required by Item 307(b) (or relevant provision in the foreign forms) for the company's fourth fiscal quarter in the annual internal control report, rather than disclose this information separately.

[107] *See* American Institute of Certified Public Accountants (AICPA), Codification of Statements on Auditing Standards (AU) 319.53, "Internal Control in a Financial Statement Audit."

[108] In this release we use the term "internal controls" and "internal control structure" synonymously.

[109] *See* Release No. 33–8124 (August 29, 2002) [67 FR 57276].

[110] *See* Committee on Auditing Procedure, AICPA, Statement on Auditing Procedure No. 29, "Scope of the Independent Auditor's Review of Internal Control" (1958).

[111] *See* Committee on Auditing Procedure, AICPA, Statement on Auditing Procedure No. 54. The FCPA codified the accounting control provisions of SAP No. 54, *see* note 58.

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- Transactions are executed in accordance with management's general or specific authorization;
- Transactions are recorded as necessary (1) to permit preparation of financial statements in conformity with generally accepted accounting principles; and (2) to maintain accountability for assets;
- Access to assets is permitted only by management's authorization; and
- The recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

In 1992, the Committee of Sponsoring Organizations of the Treadway Commission ("COSO") undertook an extensive study of internal control. COSO defined internal control as "a process, effected by an entity's board of directors, management and other personnel, designed to provide reasonable assurance regarding the achievement of objectives' in three categories—effectiveness and efficiency of operations, reliability of financial reporting, and compliance with applicable laws and regulations. COSO further stated that internal control over each of these objectives consisted of the control environment, risk assessment, control activities, information and communication, and monitoring. In 1995, the AICPA's Auditing Standards Board in Statement on Auditing Standards No. 78 codified this definition of internal controls.[112]

We believe that the purpose of internal controls and procedures for financial reporting is to ensure that companies have processes designed to provide reasonable assurance that:

- The company's transactions are properly authorized;
- The company's assets are safeguarded against unauthorized or improper use; and
- The company's transactions are properly recorded and reported to permit the preparation of the registrant's financial statements in conformity with generally accepted accounting principles. We believe that these objectives are embodied in the definition of the term "internal controls" as the term is defined in AICPA's Codification of Statements on Auditing Standards (AU) section 319 and is consistent with section 103 of the Sarbanes-Oxley Act.[113] Accordingly, we propose to refer to AU section 319 to define currently internal controls and procedures for financial reporting, pending action by the Public Company Accounting Oversight Board.[114] The proposed definition would state that the term "internal controls and procedures for financial reporting" means controls that pertain to the preparation of financial statements for external purposes that are fairly presented in conformity with generally accepted accounting principles as addressed by the Codification of Statements on Auditing Standards 319 or any superseding definition or other literature that is issued or adopted by the Public Company Accounting Oversight Board.

Request for Comment

- Should we propose a definition of internal controls and procedures for financial reporting? If so, is the proposed definition appropriate?
- Should we define the term using AICPA's Codification of Statements on Auditing Standards Section 319 definition? If not, are there any other definitions we should use?
- Should we propose specific disclosure criteria and standards for the management report? If so, what disclosure criteria and standards should we consider?

2. Attestation to, and Report on, Management's Internal Control Report by the Company's Auditor

Section 404(b) of the Sarbanes-Oxley Act requires every registered public accounting firm that prepares or issues an audit report for an issuer other than a registered investment company[115] to attest to, and report on, management's assessment of the issuer's internal controls and procedures for financial reporting. The attestation and report required by section 404(b) must be made in accordance with standards for attestation engagements "issued or adopted" by the Public Company Accounting Oversight Board (the "PCAOB").

We are proposing amendments to Regulation S–X to reference the attestation report that will be prepared by registered public accounting firms and to require a company to file the attestation in annual reports on Forms 10–K, 10–KSB, 20–F and 40–F.[116] Section 404(b) of the Sarbanes-Oxley Act does not require filing of the attestation report, but we believe that it is essential in satisfying the purposes of this provision of the Sarbanes-Oxley Act to require a company to file both the internal control report and auditor's attestation report in its annual report.

Request for Comment

- If we adopt the proposed amendments before the PCAOB is operational, should we delay effectiveness of the rules until such time as attestation engagements standards are issued or adopted by the PCAOB?
- Should the company have to file the attestation report as part of the annual report? If so, should the report have to appear in a particular part of the annual report? Where?

3. Quarterly Evaluation of Internal Controls and Procedures for Financial Reporting

On August 29, 2002, we adopted new Exchange Act Rules 13a–14 and 15d–14 to implement section 302 of the Sarbanes-Oxley Act. These rules require the principal executive and financial officers of reporting companies to certify the information in their companies' quarterly and annual reports. Specifically, new Rules 13a–14 and 15d–14 require each of these officers to disclose that:

- He or she has reviewed the report;
- Based on his or her knowledge, the report does not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by the report;
- Based on his or her knowledge, the financial statements, and other financial information included in the report, fairly present in all material respects the financial condition, results of operations and cash flows of the issuer as of, and for, the periods presented in the report;
- He or she and the other certifying officers:

(1) Are responsible for establishing and maintaining "disclosure controls and procedures" (a newly-defined term reflecting the concept of controls and procedures related to disclosure embodied in section 302(a)(4) of the Sarbanes-Oxley Act) for the issuer;

(2) Have designed such disclosure controls and procedures to ensure that material information is made known to them, particularly during the period in which the periodic report is being prepared;

(3) Have evaluated the effectiveness of the issuer's disclosure controls and procedures as of a date within 90 days prior to the filing date of the report; and

(4) Have presented in the report their conclusions about the effectiveness of the disclosure controls and procedures based on the required evaluation as of that date;

- He or she and the other certifying officers have disclosed to the issuer's auditors and to the audit committee of the board of directors (or persons fulfilling the equivalent function):

(1) All significant deficiencies and material weaknesses in the design or operation of internal controls (a pre-existing term relating to internal controls regarding financial reporting) which could adversely affect the issuer's ability to record, process, summarize and report financial data and have identified for the issuer's auditors any material weaknesses in internal controls; and

(2) Any fraud, whether or not material, that involves management or other employees who have a significant role in the issuer's internal controls; and

- He or she and the other certifying officers have indicated in the report whether or not there were significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of their evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

For purposes of the Exchange Act Rules 13a–14 and 15d–14, "disclosure controls and procedures" are defined as controls and other procedures of an issuer that are designed to ensure that information required to be disclosed by the issuer in the reports filed or submitted by it under the Exchange Act[117] is recorded, processed, summarized and reported, within the time periods specified in the Commission's rules and forms.[118] "Disclosure controls and procedures" include, without limitation, controls and procedures designed to ensure that information required to be disclosed by an issuer in its Exchange Act reports is accumulated and communicated to the issuer's management, including its principal executive and financial officers, as appropriate to allow timely decisions regarding required disclosure.

We also adopted new Item 307 of Regulations S–K and S–B[119] to require disclosure in the company's annual and quarterly reports about the principal officers' evaluation of the company's disclosure controls and procedures and whether or not there have been significant changes to the company's internal controls—disclosure that the principal officers must certify that they have made.

Regarding internal controls and procedures for financial reporting, our recently adopted rules require the company's principal executive and financial officers to disclose "any significant changes in the company's internal controls or in other factors that could significantly affect these controls subsequent to the date of their evaluation, including any corrective actions with respect to significant deficiencies and material weaknesses." Despite the reference to an evaluation in this disclosure requirement, our rules currently do not require the company's principal executive and financial officers, or the company itself, to conduct periodic evaluations of the company's internal controls. New Exchange Act Rules 13a–15 and 15d–15 do, however, require a company to conduct a quarterly evaluation of the company's disclosure controls and procedures.

As explained above, section 404 of the Sarbanes-Oxley Act directs us to propose and adopt rules that would require management to annually assess the company's internal control structure and procedures for financial reporting. Section 404 contemplates only an annual evaluation of the company's internal controls. A company's officers already must certify to significant changes to internal controls as required by section 302 of the Sarbanes-Oxley Act.

To provide a basis for this quarterly disclosure about changes to the company's internal controls and procedures for financial reporting, and to create symmetry between our requirements for periodic evaluations of both the company's disclosure controls and procedures and its internal controls and procedures for financial reporting, we propose to require the company's management to evaluate the effectiveness of the design and operation of the company's internal controls and procedures for financial reporting, as well as its disclosure controls and procedures, with respect to each annual and quarterly report that it is required to file under the Exchange Act.[120] In addition, we propose to modify the requirement in Exchange Act Rules 13a–15 and 15d–15 that the evaluation be conducted within the 90-day period prior to the filing date of the quarterly or annual report, to require that the evaluation be made as of the end of the period covered by the report.[121] We are also proposing conforming changes[122] to Exchange Act Rules 13a–14, 13a–15, 15d–14 and 15d–15 and the form of certification in Forms

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[112] Auditing Standards Board, AICPA, Statement on Auditing Standards No. 78, "Consideration of Internal Control in a Financial Statement Audit: An Amendment to SAS No. 55" (1995).

[113] Among other things, section 103 of the Act [Pub. L. 107–204 103] directs the Public Company Accounting Oversight Board to adopt auditing standards that would require all registered public accounting firms to present in each audit report or in a separate report: (1) The scope of the auditor's testing of the internal control structure and procedures of the issuer; (2) the findings of the auditor from such testing; (3) the auditor's evaluation of whether such internal control structure and procedures include maintenance of records that in reasonable detail accurately and fairly reflect the transactions and dispositions of the assets of the issuer, provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the issuer are being made only in accordance with authorizations of management and directors of the issuer; and (4) a description, at a minimum, of material weaknesses in such internal controls, and of any material noncompliance found on the basis of such testing.

[114] We believe that this definition integrates the various concepts of internal control into a unified concept that is widely understood by the accounting profession and issuers.

[115] *See* section 405 of the Sarbanes-Oxley Act, which states that rules under section 404 of the Act shall not apply to registered investment companies.

[116] *See* proposed Items 210.1–02(b) and 210.2–02(d) of Regulation S–X.

[117] These reports include quarterly reports on Form 10–Q or 10–QSB, annual reports on Form 10–K, 10–KSB, 20–F or 40–F, current reports, definitive proxy materials filed under section 14(a) of the Exchange Act [15 U.S.C. 78n(a)], definitive information statements filed under section 14(c) of the Exchange Act [15 U.S.C. 78n(c)] and amendments to any of these reports or documents.

[118] *See* Exchange Act Rules 13a–14(c) and 15d–14(c).

[119] In addition, we adopted corresponding amendments to Forms 20–F and 40–F for private foreign issuers. *See* 17 CFR 249.220f and 17 CFR 249.240f.

[120] Rules 13a–15(b) and 15d–15(b). As originally adopted, Rules 13a–15 and 15d–15 required the company to carry out this evaluation under the supervision of, and with the participation of the company's management, including the company's principal executive and financial officers. To better reconcile this requirement with the proposed rules under section 404 of the Sarbanes-Oxley Act, we propose to revise these rules to state more directly that company's management, rather than the company itself, must undertake the required evaluations with the participation of the principal executive and financial officers.

[121] Rules 13a–15(b) and 15d–15(b).

[122] We have also made several clarifying amendments. In particular, the current certification would require management to disclose significant deficiencies to the auditors and audit committee, and identify material weaknesses to the auditors. The accounting literature states that a "reportable condition" is one that represents significant deficiencies in the design or operation of internal control. AICPA Codification of Statements on Auditing Standards, section 325. A material weakness is a reportable condition of a magnitude discussed in the literature. *Id.* Therefore, material weaknesses are a subset of significant deficiencies. To clarify, and amplify, that significant weaknesses, including material weaknesses must be disclosed to the auditor and audit committee, we have proposed clarifying language. We have also added language to clarify that the certifying officers need not personally design the company's controls and procedures, and may have such controls and procedures designed under their supervision. In so doing, we recognize that the certifying officers may not have appropriate expertise to do so, and in such case should obtain assistance from third parties. We have also clarified that the reports conclusions must be based on the certifying officers' evaluation as of the end of the period covered by the report.

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10–Q, 10–QSB, 10–K, 10–KSB, 20–F and 40–F.

Request for Comment

• Should we propose changes to Exchange Act Rules 13a–14, 13a–15, 15d–14 and 15d–15 to require periodic evaluations of both the company's disclosure controls and procedures and its internal controls and procedures for financial reporting?

4. Federal Deposit Insurance Act Internal Control Reports

In 1993, the Federal Deposit Insurance Corporation (FDIC) adopted rules implementing section 36 of the Federal Deposit Insurance Act [123] that requires, among other things, an insured depository institution with total assets of $500 million or more to prepare an annual management report that contains:

• A statement of management's responsibilities for preparing the institution's annual financial statements, for establishing and maintaining an adequate internal control structure and procedures for financial reporting, and for complying with designated laws and regulations relating to safety and soundness;[124] and

• Management's assessment of the effectiveness of the institution's internal control structure and procedures for financial reporting as of the end of the fiscal year and the institution's compliance with the designated laws and regulations during the fiscal year.[125]

The FDIC's rules additionally require the institution's independent public accountant to examine, and attest to, management's assertions concerning the effectiveness of the institution's internal controls over financial reporting.[126]

Furthermore, the FDIC's rules permit an insured depository institution that is the subsidiary of a holding company to satisfy its internal control report requirement with an internal control report of the consolidated holding company's management if:

• Services and functions comparable to those required of the subsidiary by section 36 of the Federal Deposit Insurance Act are provided at the holding company level; and

• The subsidiary has, as of the beginning of its fiscal year, total assets of less than $5 billion, or total assets of $5 billion or more and a composite rating of 1 or 2 under the Uniform Financial Institutions Rating System.[127]

Bank and thrift holding companies that are required to file reports under section 13(a) or 15(d) of the Exchange Act would be subject to the internal control reporting requirements that we are proposing today. Although our proposed amendments are similar to the FDIC's internal control report requirements, our proposed rules differ in a few respects.[128]

We are coordinating with the FDIC and other federal banking regulators to eliminate, to the extent possible, any unnecessary duplication between our proposed internal control report and the FDIC's internal control report requirements. We expect to provide further guidance on this subject in our release adopting final rules under section 404 of the Sarbanes-Oxley Act.

5. Registered Investment Companies

Section 404 of the Sarbanes-Oxley Act does not apply to registered investment companies, and we are not proposing to extend any of the requirements that would implement section 404 to registered investment companies.[129] We are, however, proposing to make the following technical changes to our rules and forms implementing section 302 of the Sarbanes-Oxley Act for registered investment companies in order to conform to the rule changes that we are proposing for operating companies and for other reasons.

• *Exchange Act Rules 13a–15(c) and 15d–15(c), Paragraph (b)(4)(iii) of Investment Company Act Rule 30a–2, and proposed Investment Company Act Rule 30a–3(b).* The proposed amendments would specify that an investment company's management must evaluate the effectiveness of its disclosure controls and procedures, with the participation of the principal executive and financial officers, as of the end of the period covered by each report filed on Form N–SAR or Form N–CSR.

• *Paragraph (d) of Investment Company Act Rule 30a–2.* The proposed amendments would include the same definition of "internal controls and procedures for financial reporting" that we are proposing in Exchange Act Rules 13a–14(d) and 15d–14(d).

• *Instruction (a)(i) to Item 77Q3 of Form N–SAR and Item 5(a) of proposed Form N–CSR.* The proposed amendments would require the disclosure about the evaluation of the investment company's disclosure controls and procedures by the investment company's management to be as of the end of the period covered by the report being filed.

• *Paragraph (b)(4)(vi) of Investment Company Act Rule 30a–2, Instruction (a)(ii) of Item 77Q3 of Form N–SAR, and Item 5(b) of proposed Form N–CSR.* The proposed amendments would require disclosure of any significant changes to the registrant's internal controls and procedures for financial reporting made during the period covered by the report.

• *Item 6(a) of proposed Form N–CSR; paragraphs 1, 2, and 3 of the certification in instruction (a)(iii) to Item 77Q3 of Form N–SAR; and paragraphs 1, 2, and 3 of the certification section of proposed Form N–CSR.* The proposed amendments would expressly require the shareholder reports to be filed as an exhibit to proposed Form N–CSR rather than as an Item response,[130] and would also revise the form of certification in Forms N–SAR and N–CSR to make clear that the report being certified includes any exhibits.

• *Paragraph (b)(4) of Investment Company Act Rule 30a–2, paragraph 4 of the certification in Instruction (a)(iii) to item 77Q3 of Form N–SAR, and paragraph 4 of the certification section of proposed Form N–CSR.* The proposed amendments would require the signing officers to state that they are responsible for establishing and maintaining internal controls and procedures for financial reporting, and that they have disclosed to the investment company's auditors and audit committee all significant deficiencies in the design and operation of internal controls and procedures for financial reporting which could adversely affect the investment company's ability to record, process, summarize and report financial information required to be disclosed in the reports that it files or submits under

[123] 12 U.S.C. 1831m.

[124] The designated laws and regulations are federal laws and regulations concerning loans to insiders and federal and state laws and regulations concerning dividend restrictions. *See* 12 CFR part 363, appendix A, guideline 12.

[125] *See* 12 CFR 363.2, adopted in 58 FR 31332.

[126] 12 CFR 363.3.

[127] This rating is more commonly known as the CAMELS rating, which addresses Capital adequacy, Asset quality, Management, Earnings, Liquidity, and Sensitivity to market risk. *See* 12 CFR 363.1(b)(2).

[128] Most notably, proposed Item 307(b) and (c) of Regulations S–K and S–B would not require a statement of compliance with laws and regulations as is required by FDIC Rule 363.2 [12 CFR 363.2].

[129] *See* section 405 of the Sarbanes-Oxley Act ("Nothing in section 401, 402, or 404, the amendments made by those sections, or the rules of the Commission under those sections shall apply to any investment company registered under section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a–8)."). The provisions that would not extend to registered investment companies include proposed amendments to Item 307(a) of Regulation S–K, Exchange Act rules 13a–14(b)(4)(iii) and (iv), 13a–15(b), 15a–14(b)(4)(iii) and (iv), and 15d–15(b) (disclosure of effectiveness of internal controls and procedures for financial reporting); proposed Item 307(c) of Regulation S–K (management report on internal controls); and proposed Item 210.2–02(d) of Regulation S–X (attestation to, and report on, management's internal control report).

[130] The proposed amendments would delete Item 1 of proposed Form N–CSR.

both the Securities Exchange Act and the Investment Company Act.

• *Exchange Act Rule 12b–25(a) and (b)(2)(ii) and Form 12b–25.*[131] The proposed amendments would require an investment company to file a Form 12b–25 if it will not be able to file a report on proposed Form N–CSR in a timely manner. Filing of a Form 12b–25 would provide the investment company with an automatic extension of time to file proposed Form N–CSR of up to 15 calendar days following the prescribed due date.

• *General Instruction E of proposed Form N–CSR.* A proposed technical amendment would clarify that terms used in Form N–CSR have meanings as defined in the Investment Company Act of 1940 and the rules and regulations thereunder.

Request for Comment

• Should any rules regarding internal controls and procedures for financial reporting be applied to registered investment companies? If so, which specific rules and procedures should apply?

• When we adopted the certification rules implementing section 302 of the Sarbanes-Oxley Act, we stated that a single evaluation of the effectiveness of the disclosure controls and procedures for a series fund or family of investment companies could be used in multiple certifications for the funds in the series or family, as long as the evaluation had been performed within 90 days of the date of the certified report.[132] What is the effect of today's proposed changes requiring that the evaluation be as of the end of the period covered by the report on the ability to use a single evaluation for a series fund or family of investment companies where the funds have different fiscal years? Should we adopt the approach of today's proposal, retain the approach that we previously adopted, or adopt a different approach?

6. Transition Period for Compliance With Rules Regarding Evaluations of, and Reports and Attestations on, Internal Controls and Procedures for Financial Reporting

The annual internal controls report by management, as well as the related attestation and report on management's evaluation by auditors are proposed new requirements. Although we believe that management and auditors currently review such controls and procedures in conjunction with a company's annual audit, we understand that in many cases such reviews may not be as thorough or as detailed as the proposed rules would require. We expect that companies and their auditors will require substantial time to develop processes under relevant standards and to train appropriate personnel to ensure compliance with these requirements imposed by the Sarbanes-Oxley Act. Similarly, companies and accounting firms likely will need additional time to actually perform these activities.

The Sarbanes-Oxley Act does not impose a deadline for compliance with section 404. Rather, the wording of this section contemplates action by both the PCAOB as well as registered public accounting firms. Specifically, the statute requires that auditor attestations conform with standards for attestation engagements adopted by the PCAOB. We therefore believe that Congress did not intend for the provisions of this section to take effect until the PCAOB has established the relevant attestation standards.[133] Accordingly, we propose to delay the effectiveness of our rules under section 404 to enable the PCAOB to act and other relevant parties to prepare for compliance.

Specifically, we propose that the rules under section 404, if adopted, would apply to companies whose fiscal years end on or after September 15, 2003. This should provide the PCAOB sufficient time to adopt standards for attestation engagements, as well as for companies and auditors to prepare for the expected increase in workload.

We would not require companies to provide such reports or attestations before the proposed date of effectiveness. However, to the extent that a company desires to provide voluntarily an annual report on the effectiveness of its internal controls and procedures for financial reporting, we believe that existing accounting literature should be followed. Similarly, although we do not require attestations by auditors before the proposed rules become effective, we believe that to the extent such attestations are made, accountants would perform such attestations in conformity with existing accounting literature regarding attestation engagements, including section 501 of the AICPA's Statement on Standards for Attestation Engagements.

Similarly, we believe that the effectiveness of changes to certifications by management in a company's annual and quarterly reports also should be delayed until the company has had the opportunity to perform the comprehensive evaluation of internal controls and procedures for financial reporting contemplated by section 404. Therefore, we propose that management need not provide the proposed amended certifications until the first annual report in which the company includes the internal control report required under section 404. Accordingly, until a company is required to provide such report, it need only provide certifications as adopted on August 29, 2002.[134]

Request for Comment

• What transition period do companies and registered public accounting firms need to prepare to perform these undertakings? Is the compliance date we propose adequate? If not, what date should we adopt?

D. Asset-Backed Securities Issuers

In the release adopting the certification requirements,[135] we noted that issuers of asset-backed securities have a reporting obligation under either sections 13(a) or 15(d) of the Exchange Act, at least for a period of time. Because of the nature of asset-backed issuers, the staff of the Division of Corporation Finance has granted requests allowing asset-backed issuers to file modified reports under the Exchange Act.[136] The modified reporting structure for asset-backed issuers allows issuers or depositors to file modified annual reports on Form 10–K and to file reports on Form 8–K tied to payments on the underlying assets in the trust. These reports include a copy of the servicing or distribution report required by the issuer's governing documents and information on the performance of the assets, payments on the asset-backed securities and any other material developments that affect the issuer. Because the information included in these reports for asset-backed issuers differs significantly from that provided by other issuers, as well as the structure of asset-backed issuers we are proposing to exclude them from the disclosure requirements under proposed Items 307, 309 and 406 of Regulation S–K and S–B.

[131] Referenced in 17 CFR 249.322.

[132] *See* Release No. 33–8124 (Aug. 28, 2002) [67 FR 57276, 57282 n. 86].

[133] Such standards would be subject to approval by the Commission.

[134] *See* Release No. 33–8124 (August 29, 2002) [67 FR 57276].

[135] *Id.*

[136] See, for example, Release No. 34–16520 (January 23, 1980) (order granting application pursuant to section 12(h) of the Exchange Act (15 U.S.C. 78*l*(h)] of Home Savings and Loan Association); Release No. 34–14446 (February 6, 1978) (order granting application pursuant to section 12(h) of Bank of America National Trust and Savings Association); *Bay View Securitization Corporation* (January 15, 1998); and *Key Bank USA, National Association* (May 9, 1997).

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E. General Request for Comment

We request and encourage any interested person to submit comments regarding:

(1) The proposed changes that are the subject of this release,

(2) Additional or different changes, or

(3) Other matters that may have an effect on the proposals contained in this release.

We request comment from the point of view of registrants, investors and other users of information about the proposals. With regard to any comments, we note that such comments are of greatest assistance to our rulemaking initiative if accompanied by supporting data and analysis of the issues addressed in those comments.

III. Paperwork Reduction Act

Form 10–K, Form 10–KSB, Form 20–F, Form 40–F, Form 10–Q, Form 10–QSB, Form 8–K, and Form 12b–25 under the Exchange Act, Regulation S–K, Regulation S–B, and Forms N–SAR and N–CSR under the Exchange Act and the Investment Company Act contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995.[137] We are submitting a request for approval of the proposed revisions to these requirements to the Office of Management and Budget ("OMB") for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Periodic Reporting Requirements

Form 10–K (OMB Control No. 3235–0063) prescribes information that a registrant must disclose annually to the market about its business. Form 10–KSB (OMB Control No. 3235–0420) prescribes information that a registrant that is a "small business issuer" as defined under our rules must disclose annually to the market about its business. Form 20–F (OMB Control No. 3235–0288) prescribes information that a registrant that is a foreign private issuer must disclose annually to the market about its business. Form 40–F (OMB Control No. 3235–0381) prescribes information that a registrant that is eligible to use that form must disclose annually to the market about its business.

Form 10–Q (OMB Control No. 3235–0070) prescribes information that a registrant must disclose quarterly to the market about its business. Form 10–QSB (OMB Control No. 3235–0416) prescribes information that a registrant that is a "small business issuer" as defined under our rules must disclose quarterly to the market about its business.

We are proposing to add several disclosure requirements to these forms relating to: (1) Whether a financial expert serves on a company's audit committee; (2) the existence of a company code of ethics for specified officers, and (3) management's assessment of the effectiveness of a company's internal controls and procedures for financial reporting. These proposals would increase the amount of information that a registrant must compile and disclose in these forms. With respect to the first two items, the information in these required disclosures should be readily available to the management of a registrant. Therefore, we expect the burden to compile and report this information to be minimal. The third item requires management to evaluate the effectiveness of the company's internal controls and procedures for financial reporting. We expect that performing these acts will impose a substantially greater burden than the other two disclosure requirements.

Financial Expert. This proposed disclosure requirement would increase the disclosure burden by requiring a registrant to report the number and names of persons that the board of directors has determined to be financial experts on its audit committee as well as whether the expert is independent, and if not, an explanation of why they are not. It would not require a registrant to have a financial expert on its audit committee. Item 401 of Regulations S–K and S–B already requires registrants to ascertain and disclose the business experience of all of its directors. The inquiry that registrants should make to satisfy this disclosure requirement should assist the registrant in determining whether a particular director is a financial expert under the rules. If the registrant does not have a financial expert, the rule only requires that the registrant explain why it does not have such a person on its audit committee. Therefore, we believe the added burden of the proposed rule would be minimal. For purposes of the PRA, we estimate that the proposed disclosure requirements regarding financial experts will result in a minimal incremental increase of 0.5 burden hours per issuer in connection with preparing each annual report.

Code of Ethics. The proposed rule would require a registrant to disclose whether it has adopted a written code of ethics for its principal executive officer, principal financial officer, principal accounting officer or controller, or persons serving similar functions. If it has not, it must explain why. The proposed rule would not require any company to adopt such a code of ethics. Management should be readily able to determine whether or not its company has adopted a code of ethics. In certain cases, the required disclosure would require minimal analysis regarding why the company does not have a code. In addition, in the first year, registrants must file a copy of the code with the Commission. In the case of large manuals that must be filed, we expect a small added cost to file such a document on EDGAR. In addition, we estimate that the disclosure requirements regarding codes of ethics will also cause a minimal increase of 0.5 burden hours per issuer in connection with each annual report.

Management Assessment of Internal Controls and Procedures for Financial Reporting. The proposed rules would require management to assess its internal controls and procedures for financial reporting every quarter. In addition, registrants must provide an internal control report in its annual report as well as obtain an attestation on that evaluation from the independent accountant that audited its financial statements. The performance of, and report on, the assessment will impose costs on registrants. This requirement would not apply to registered investment companies.

Although we expect such evaluation to impose a burden on companies, they are already required to evaluate on a quarterly basis the company's disclosure controls and procedures. We believe that a significant portion of internal controls and procedures for financial reporting are included in disclosure controls and procedures. We already received OMB approval for the added burden of evaluating disclosure controls and procedures. Therefore, for purposes of this release, we need only consider the added incremental burden imposed on companies by the evaluation of that portion of internal controls and procedures for financial reporting that is not subsumed by the disclosure controls and procedures evaluation. In that submission, we estimated that the evaluation of disclosure controls and procedures would add a burden on each issuer of 5 hours per quarterly and annual report. We estimate that the proposed rules would impose and additional 5 burden hours per issuer in connection with each quarterly and annual report. We do not have any data to support this estimate. However, because much of the burden is subsumed in the previous estimate, we believe an estimate of 5 burden hours per quarter is conservative. In addition, in conjunction with annual reports, a company must provide an internal control report. Although the burden of the evaluation has already been considered, the company must compile its conclusions into a publicly disclosed report. We expect that preparation of this report would add an additional 5 hours in conjunction with the annual report.

For PRA purposes, we do not need to consider the added burden to the company of obtaining an attestation on that internal control report by the company's auditor. The Sarbanes-Oxley Act currently requires companies to obtain such an attestation. Our proposed rules do not establish standards for the contents or format of such attestation. In addition, the proposed rules requiring attestation would not be effective until the PCAOB has had the opportunity to establish such standards. The proposed rules would establish no requirements beyond those required by the Sarbanes-Oxley Act except the requirement that the attestation be filed. We do consider the incremental increase in burden caused by this proposed requirement. We estimate that the costs of filing such an attestation report would be minimal. Similar to our estimates regarding disclosure of readily known information, such as the existence of a code of ethics, we estimate that such filing would create an added burden of 0.5 hours.

The burden hours for complying with these proposed requirements are set forth below in the following table. Estimates regarding burden within the company, for third party services, and for professional costs were obtained by contacting a number of law firms and other persons regularly involved in completing the forms.

	Annual responses	Total hours/form	Total burden [1]	75% company [2]	25% professional	$300 professional cost
10–K	9,384	11.5	107,916	80,937	26,979	8,093,700
10–KSB	3,789	11.5	43,574	32,680.5	10,893.5	3,268,050
20–F	1,096	11.5	12,604	3,151	9,453	2,835,900
40–F	127	11.5	1,461	365.25	1,095.75	328,725
10–Q	26,746	5	133,730	100,297.5	33,432.5	10,029,750
10–QSB	11,608	5	58,040	43,530	14,510	4,353,000

[1] Annual Responses × Total Hours per Form.

[2] The staff estimated the average number of hours each entity spends completing the form, and the average hourly rate for outside securities counsel, by contacting a number of law firms and other persons regularly involved in completing the forms. For Forms 20–F and 40–F, we estimate that 25% of the burden is imposed on the company and 75% of the burden is attributed to costs of third parties.

Our current OMB inventories and requested burden estimates are presented in the following table.

	Current hour burden	Expected hour increase	Total expected burden	Current cost burden	Expected cost increase	Total expected cost
10–K	12,337,614	80,937	12,418,551	1,233,761	8,093,700	1,241,854,700
10–KSB	3,435,676	32,680.5	3,468,356.5	343,568,000	3,268,050	346,836,050
20–F	583,248	3,151	586,399	524,496,000	2,835,900	527,331,900
40–F	175	365.25	440.25	440.5138,500	328,725	467,225
10–Q	3,109,223	100,297.5	3,209,520.5	310,922,000	10,029,750	320,951,750
10–QSB	1,279,782	43,530	1,323.312	127,978,000	4,353,000	132,331.000

Form 8–K

Form 8–K (OMB Control No. 3235–0060) prescribes information about significant events that a registrant must disclose on a current basis. Form 8–K also may be used, at a registrant's option, to report any events that the registrant deems to be of importance to shareholders. Companies also may use the form to disclose the nonpublic information required to be disclosed by Regulation FD.[138] We are proposing to require disclosure in the Form 8–K of any change in, or waiver of any provision of, a company code of ethics for senior executive officers. Alternatively, companies may disclose the required information on their websites.

We currently estimate that Form 8–K results in a total annual compliance burden of 627,300 hours and an annual cost of $81,377,000. We estimate the number of Form 8–K filers to be 13,200, based on the actual number of Form 10–K and 10–KSB filers during the 2001 fiscal year. For purposes of this analysis, we estimate that the number of reports on Form 8–K filed is 276,800.[139] We estimate that each entity spends, on average, approximately 5 hours completing the form. We note that a company need not file a Form 8–K to report these events if it discloses the information on its Internet website. If a company elects to disclose such information only on its website, the proposed rules would require the company to keep such information on its website for 12 months and to keep such disclosure for five years. We estimate that the cost of disclosing and maintaining the information on a company's website would be no more than the cost to file a Form 8–K. Therefore, for a particular reporting event, whether disclosed on Form 8–K or through a company's website, we estimate the burden would be 5 hours. We estimate that 75% of the burden is prepared by the company and that 25% of the burden is prepared by outside counsel retained by the company at an average cost of $300 per hour. The staff estimated the average number of hours each entity spends completing the form, and the average hourly rate for outside securities counsel, by contacting a number of law firms and other persons regularly involved in completing the forms.

Under the proposals, we estimate that, on average, completing and filing a Form 8–K if the proposed new disclosure items are adopted would require the same amount of time currently spent by entities completing the form—approximately 5 hours. We believe that changes to a company's code of ethics and waivers from a code

[137] 44 U.S.C. 3501 *et seq.*

[138] 17 CFR 243.100–103.

[139] This number assumes adoption of the proposals in Release No. 33–8090 (April 12, 2002) [67 FR 19914] If adopted, those proposals would cause companies to file estimated additional 215,500 Form 8–K reports each year.

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will be relatively rare events. Therefore, we expect that on average, a company will file a Form 8–K to report such an event once every three years, resulting in a total increase of 4,400 filings on Form 8–K per year. The additional filings would result in an added annual burden of 16,500 hours (4,400 × 5 × .75 = 16,500) and a total annual burden of 643,800 (627,300 + 16,500). We estimate that, if the proposals are adopted, the additional filings would result in an added annual cost of $1,650,000 (4,400 × 5 × .25 × $300 = $1,650,000) and a total annual cost to issuers of $83,027,000 ($81,377,000 + $1,650,000 = $83,027,000).

Regulation S–K and Regulation S–B

Regulation S–K (OMB Control No. 3235–0071) includes the requirements that a registrant must provide in filings under both the Securities Act and the Exchange Act. Regulation S–B (OMB Control No. 3235–0417) includes the requirements that a small business issuer must provide in filings under the Securities Act and the Exchange Act.

The proposed changes to these items would create new items under Regulation S–K and Regulation S–B. However, the filing requirements themselves are included in Form 10–K, Form 10–KSB, Form 10–Q, Form 10–QSB, Form 20–F, Form 40–F, and Form 8–K. We have reflected the burden for these new requirements in the burden estimate for those forms. These items in Regulation S–K and Regulation S–B do not impose any separate burden. We assign one burden hour each to Regulations S–B and S–K for administrative convenience to reflect the fact that these regulations do not impose any direct burden on companies.

Investment Company Forms

Form N–SAR (OMB Control No. 3235–0330) under the Exchange Act and the Investment Company Act is used by registered investment companies to file periodic reports with the Commission. We estimate that 4500 investment companies, including 798 unit investment trusts and 2 small business investment companies, currently file reports on Form N–SAR. The current estimated total compliance burden of Form N–SAR is 154,450 hours. Unit investment trusts would be required to make the proposed disclosure regarding codes of ethics on Form N–SAR, and small business investment companies would be required to make the proposed disclosure regarding codes of ethics and financial experts on Form N–SAR. We estimate that the proposed disclosure requirements will increase the annual burden of filing Form N–SAR by 0.5 hours per unit investment trust, and by 1.0 hour per small business investment company. Therefore, the new estimated total compliance burden of filing Form N–SAR would be 154,851 hours.

We issued a release proposing Form N–CSR on August 30, 2002, pursuant to section 8(a) of the Investment Company Act [15 U.S.C. 80a–8] and section 13 of the Securities Exchange Act [15 U.S.C. 78m]. Proposed Form N–CSR would be used by registered management investment companies to file certified shareholder reports with the Commission. We estimate that 3700 registered management investment companies would be required to file reports on Form N–CSR, and the total compliance burden for Form N–CSR would be 111,000 hours, excluding the amendments proposed in this release. We estimate that the proposed disclosure requirements would increase the annual burden of filing Form N–CSR by 1.0 hours per management investment company. Therefore, the new estimated total compliance burden of filing Form N–CSR would be 114,700 hours.

Form 12b–25 (OMB Control No. 3235–0058) was adopted pursuant to sections 13, 15, and 23 of the Exchange Act. Form 12b–25 provides notice to the Commission and the marketplace that a public company will be unable to file a required report in a timely manner. If certain conditions are met, the company will be granted an automatic filing extension. The proposed amendments would permit investment companies to use Form 12b–25 for the purpose of obtaining extensions with respect to filing Form N–CSR. We estimate that Form 12b–25 results in a total annual compliance burden currently of 31,750 hours, and that each entity using Form 12b–25 spends, on average, approximately 2.5 hours completing the form. Currently, 168 investment companies use Form 12b–25 to obtain extensions of time for filing Form N–SAR. We estimate that the same number of investment companies annually would use Form 12b–25 to obtain extensions of filing Form N–CSR, resulting in a new total compliance burden of 32,170 hours.

Compliance with the revised disclosure requirements would be mandatory. Responses to the disclosure requirements would not be kept confidential.

Pursuant to 44 U.S.C. 3506(c)(2)(B), we solicit comments to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (ii) evaluate the accuracy of our estimate of the burden of the proposed collection of information; (iii) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and (iv) evaluate whether there are ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology. In addition, we solicit any comments on this analysis.

Persons submitting comments on the collection of information requirements should direct the comments to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and should send a copy to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, with reference to File No. S7–40–02. Requests for materials submitted to OMB by the Commission with regard to these collections of information should be in writing, refer to File No. S7–40–02, and be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services. OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this release. Consequently, a comment to OMB is assured of having its full effect if OMB receives it within 30 days of publication.

IV. Costs and Benefits

The Sarbanes-Oxley Act requires us to propose most of the requirements discussed in this release. These changes will affect all companies reporting under section 13(a) and 15(d) of the Exchange Act, including foreign private issuers and small business issuers, and certain of the proposed changes will affect registered investment companies. We recognize that any implementation of the Sarbanes-Oxley Act will likely result in costs as well as benefits and have an effect on the economy. We are sensitive to the costs and benefits of the proposed rules, if adopted. We discuss these costs and benefits below.

A. Benefits

One of the main goals of the Sarbanes-Oxley Act is to improve investor confidence in the financial markets. These proposals are among many required by the Sarbanes-Oxley Act. They seek to achieve the Sarbanes-Oxley Act's goals by providing greater

transparency regarding issues such as the competency of audit committee members, compliance of senior financial officers with ethics codes of conduct, and the adequacy of a company's internal controls and procedures for financial reporting. By increasing transparency regarding key aspects of corporate activities and conduct, the proposals are designed to improve the quality of information available to investors. Greater transparency should assist the market in properly valuing securities, which leads to more efficient allocation of capital resources.

In addition to the requirements under the Sarbanes-Oxley Act, we are proposing additional requirements. First, the proposal regarding disclosure of whether a company has a financial expert on its audit committee would require disclosure of the names and number of the financial experts on an audit committee and whether those persons are independent of management. We think that investors would benefit from this disclosure by being able to consider it when reviewing the disclosure currently required about all directors' past business experience. The proposal to require companies to file copies of their codes of ethics would allow investors to better understand the ethical principles that guide executives of companies in which they invest. With respect to registered investment companies, these code of ethics disclosure requirements would apply to a registrant's investment adviser and principal underwriter also, and, in the case of a unit investment trust, would apply to the trust's sponsor, depositor and trustee. The proposals also would require companies, other than investment companies, to make quarterly evaluations of their internal controls and procedures for financial reporting. In addition to the above stated benefits of greater transparency, to the extent companies currently do not perform such evaluations, we believe that the proposed requirements would increase the effectiveness of such controls, which would increase the overall quality of financial disclosures in publicly filed reports, as well as companies' internal operations.

B. Costs

The proposals would require companies to disclose additional information about financial experts on a company's audit committee and the existence of a code of conduct for financial executives. This information is readily available to management and the board of directors of a company. Therefore, we expect that the cost of compiling and reporting this information should be minimal. The proposals would also require management to assess its system of controls and the independent public accountant to attest to, and report on, that assessment.

As stated above, in limited instances, we propose to require more disclosure than mandated by the Sarbanes-Oxley Act. For example, if adopted, we expect that companies will incur added costs to disclose the names of financial experts, file codes of ethics in the first year of the rules' effectiveness, and disclose in their periodic reports that they intend to disclose changes in, and waivers from, their codes of ethics via their websites in lieu of publicly filing such disclosure on Form 8–K, or in the case of registered investment companies, Form NSAR or Form N–CSR.

With respect to the additional disclosures related to financial experts, we believe the added burden would be minimal. We do not expect that the disclosure of the names of the financial experts itself would increase the legal obligations or potential liability of such individuals. In addition, for companies other than investment companies, the proposed rules would require a quarterly evaluation of a company's internal controls and procedures for financial reporting. We believe the costs of such evaluations would be mitigated by the fact that companies are already required to perform such evaluations of their disclosure controls and procedures. In several aspects, these disclosure controls and procedures would overlap with internal controls and procedures. To the extent that companies would already be evaluating particular controls and procedures, there would be no added cost.

We also note that we are proposing to require registered investment companies to provide disclosure of any codes of ethics of certain of their principal service providers. This additional disclosure may impose certain costs. We note, however, that investment companies, pursuant to Investment Company Act Rule 17j–1, must already provide disclosure regarding the codes of ethics of their investment advisers and principal underwriters that are required under the rule with respect to the personal trading of their employees. We estimate the additional costs to investment companies in complying with these provisions would be limited. Furthermore, although investment companies are not subject to section 404 of the Sarbanes-Oxley Act, we are proposing certain technical amendments to our rules and forms implementing section 302 of the Sarbanes-Oxley Act. We estimate that these technical amendments will not result in any additional costs to investment companies.

We believe that these additional requirements are necessary to implement the purposes of the Sarbanes-Oxley Act and pose minimal additional burden on companies. Such costs do not include the costs imposed on companies by the Sarbanes-Oxley Act itself. Rather, they reflect the costs of our proposed requirements beyond the requirements of the Sarbanes-Oxley Act. For purposes of the Paperwork Reduction Act, we have estimated that these required activities and reporting will result in an approximate cost of $65,000,000.

We request comment on issues related to this cost-benefit analysis. In particular, are there additional benefits and costs associated with the proposed rules? We are especially interested in obtaining data regarding the estimated cost of the proposed internal control evaluation and auditor attestation requirements, as we expect that these costs could be significant. Please provide any quantitative data on which you rely in formulating your comments.

V. Effect on Efficiency, Competition and Capital Formation

Section 23(a)(2)[140] of the Exchange Act requires us, when adopting rules under the Exchange Act, to consider the impact that any new rule would have on competition. In addition, section 23(a)(2) prohibits us from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

The proposed amendments are intended to increase transparency regarding the competence of the audit committee, the application of ethics codes of conduct to certain of a company's executive officers, and the adequacy of a company's internal controls and procedures for financial reporting. We anticipate that these proposals would enhance the proper functioning of the capital markets by giving investors greater insight into the inner workings of public companies. This increases the competitiveness of companies participating in the U.S. capital markets. However, because only companies subject to the reporting requirements of sections 13 and 15 of the Exchange Act (and all registered investment companies with respect to the financial expert and code of ethics disclosure requirements) would be required to make the disclosures in this proposal, competitors not subject to

[140] 15 U.S.C. 78w(a)(2).

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those reporting requirements potentially could gain an informational advantage.

We request comment on whether the proposed amendments, if adopted, would impose a burden on competition. Commenters are requested to provide empirical data and other factual support for their views if possible.

Section 2(b)[141] of the Securities Act and section 3(f)[142] of the Exchange Act require us, when engaging in rulemaking where we are required to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation. The proposed amendments would enhance our reporting requirements. The purpose of the amendments is to increase transparency of the inner workings of public companies. This should improve investors' ability to make informed investment and voting decisions. Informed investor decisions generally promote market efficiency and capital formation. As noted above, however, the proposals could have certain indirect consequences, which could adversely impact their ability to raise capital. The possibility of these effects and their magnitude if they were to occur are difficult to quantify.

We request comment on whether the proposed amendments, if adopted, would promote efficiency, competition, and capital formation. Commenters are requested to provide empirical data and other factual support for their views if possible.

VI. Initial Regulatory Flexibility Analysis

This Initial Regulatory Flexibility Analysis has been prepared in accordance with 5 U.S.C. 603. It relates to proposed revisions to Exchange Act Form 10–K, Form 10–KSB, Form 10–Q, Form 10–QSB, Form 20–F, Form 40–F, Form 8–K, Form 12b–25, Rule 12b–25, Rule 13a–14, Rule 13a–15, Rule 15d–14 and Rule 15d–15 under the Exchange Act and Regulation S–K and Regulation S–B and Exchange Act and Investment Company Act Form N–SAR and Form N–CSR, Rule 30a–2 and Rule 30a–3 under the Investment Company Act.

A. Reasons for the Proposed Action

We are proposing these disclosure requirements to comply with the mandate of, and fulfill the purposes underlying the provisions of, the Sarbanes-Oxley Act of 2002.

[141] 15 U.S.C. 77b(b).
[142] 15 U.S.C. 78c(f).

B. Objectives

The proposals are intended to enhance investor confidence in the fairness and integrity of the securities markets by increasing transparency regarding the expertise of the audit committee, the ethics codes of that apply to companies' principal executive officer and senior financial officers, and the adequacy of a company's internal controls and procedures for financial reporting. We believe that these proposals would help investors to understand and assess the inner-workings of public companies.

C. Legal Basis

We are proposing the amendments to Form 10–K, Form 10–KSB, Form 10–Q, Form 10–QSB, Form 20–F, Form 40–F, Form 8–K, Form N–SAR, Form N–CSR, Form 12b–25, Rule 12b–25, Rule 13a–14, Rule 13a–15, Rule 15d–14, Rule 15d–15, Rule 30a–2, Rule 30a–3, Regulation S–K and Regulation S–B under the authority set forth in sections 5, 6, 7, 10, 17 and 19 of the Securities Act, sections 12, 13, 15, 23 and 36 of the Exchange Act, sections 8, 30, 31 and 38 of the Investment Company Act, and sections 3(a), 404, 406 and 407 of the Sarbanes-Oxley Act of 2002.

D. Small Entities Subject to the Proposed Revisions

The proposed changes would affect issuers that are small entities. Exchange Act Rule 0–10(a)[143] defines an issuer, other than an investment company, to be a "small business" or "small organization" if it had total assets of $5 million or less on the last day of its most recent fiscal year. As of February 20, 2002, we estimated that there were approximately 2,500 issuers, other than investment companies, that may be considered small entities. We estimate that there are 225 registered investment companies that may be considered small entities. The proposed revisions would apply to any small entity that is subject to Exchange Act reporting requirements.

E. Reporting, Recordkeeping, and Other Compliance Requirements

The proposals would require companies to disclose information regarding whether a financial expert serves on the audit committee, the ethics codes companies have created that apply to certain senior officers, and the adequacy of a company's internal controls and procedures for financial reporting. All small entities that are subject to the reporting requirements of section 13(a) or 15(d) of the Exchange Act (and all small entities that are registered investment companies, with respect to the code of ethics and financial expert disclosure requirements) would be subject to these amendments. Because reporting companies already file the forms proposed to be amended, no additional professional skills beyond those currently possessed by these filers would be necessary to prepare the proposed new disclosure. We expect that reporting information in response to these new disclosure items would increase costs incurred by small entities because they would require these entities to compile and report more information. In addition, to the extent that some small entities may have difficulty attracting qualified financial experts onto their boards, such negative disclosure may have an impact on the market price of their securities. We expect that the added cost of the quarterly evaluations of internal controls and procedures for financial reporting would be mitigated by the fact that such entities currently are required to evaluate their disclosure controls and procedures. In large part, we believe there is significant overlap between these two types of controls and procedures. We have calculated for purposes of the Paperwork Reduction Act that each company, including a small entity, would be subject to an added annual reporting burden of up to 26 hours and an estimated annual average cost of up to $2,650 for disclosure assistance from outside counsel as a result of the amendments.

[143] 17 CFR 240.0–10(a).

F. Duplicative, Overlapping, or Conflicting Federal Rules

The proposed disclosure would not duplicate, overlap, or conflict with other federal rules. The Federal Deposit Insurance Corporation has in place rules that, among other things, require insured depository institutions with total assets of $500 million or more to prepare an annual internal control report of management containing information similar to information that would be required under the proposed rules. Insured depository institutions would not be subject to the proposed disclosure requirements; however, the FDIC's rules permit an insured depository institution that is the subsidiary of a holding company to satisfy its internal control report requirement with an internal control report of the consolidated holding company. Bank and thrift holding companies that are required to file reports under section 13(a) or 15(d) of the Exchange Act would be subject to the disclosure requirements under the proposed rules. We are coordinating with the FDIC and other federal banking regulators to eliminate, to the extent possible, any unnecessary duplication between our proposed disclosure and the FDIC's annual internal control report requirements. There are no other requirements that companies file or provide similar information.

G. Significant Alternatives

The Regulatory Flexibility Act directs the Commission to consider significant alternatives that would accomplish the stated objective, while minimizing any significant adverse impact on small entity issuers. In connection with the proposed revisions, we considered the following alternatives: (a) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (b) the clarification, consolidation, or simplification of the reporting requirements for small entities; (c) the use of performance rather than design standards; and (d) an exemption from coverage of the requirements, or any part thereof, for small entities.

We believe that different compliance or reporting requirements or timetables for small entities would interfere with achieving the primary goal of increasing transparency of corporate activities and internal procedures. We do, however, solicit comment on whether small business issuers, which is a broader category of issuers than small entities,[144] should be subject to fewer disclosure requirements than other issuers. Although we generally believe that an exemption for small entities from coverage of the proposed revisions is not appropriate and inconsistent with the policies underlying the Sarbanes-Oxley Act, we solicit comment on the propriety of a complete or partial exemption from the requirements for small business issuers. We also think that the current and proposed disclosure requirements are clear and straightforward. The proposed new financial expert and code of ethics disclosure requirements would require brief disclosure. The proposed annual internal control requirement would require more. Therefore, it does not seem necessary to develop separate requirements for small entities. We have used design rather than performance standards in connection with the proposed revisions because we want this disclosure to appear in a specific type of disclosure filing so that investors will know where to find the information. We also want the information to be filed electronically with us using the EDGAR filing system. We do not believe that performance standards for small entities would be consistent with the purpose of the proposed revisions.

[144] Item 10 of Regulation S–B (17 CFR 228.10) defines a small business issuer as a company that has revenues of less than $25 million, is a U.S. or Canadian issuer, is not an investment company, and has a public float of less than $25 million. Also, if it is a majority owned subsidiary, the parent corporation also must be a small business issuer. Rule 0–10 of the Exchange Act (17 CFR 240.10) defines a small entity for purposes of the Regulatory Flexibility Act as a company that, on the last day of its most recent fiscal year, had total assets of $5 million or less.

H. Solicitation of Comments

We encourage the submission of comments with respect to any aspect of this Initial Regulatory Flexibility Analysis. In particular, we request comments regarding: (i) The number of small entity issuers that may be affected by the proposed revisions; (ii) the existence or nature of the potential impact of the proposed revisions on small entity issuers discussed in the analysis; and (iii) how to quantify the impact of the proposed revisions. Commenters are asked to describe the nature of any impact and provide empirical data supporting the extent of the impact. Such comments will be considered in the preparation of the Final Regulatory Flexibility Analysis, if the proposed revisions are adopted, and will be placed in the same public file as comments on the proposed amendments themselves.

VII. Small Business Regulatory Enforcement Fairness Act

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA"),[145] a rule is "major" if it has resulted, or is likely to result in:

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers or individual industries; or
- Significant adverse effects on competition, investment or innovation.

Commenters should provide empirical data on (a) the annual effect on the economy; (b) any increase in costs or prices for consumers or individual industries; and (c) any effect on competition, investment or innovation. We request your comments on the reasonableness of this estimate.

VIII. Statutory Basis

We are proposing the amendments to Securities Exchange Act Form 10–K, Form 10–KSB, Form 10–Q, Form 10–QSB, Form 20–F, Form 40–F, Form 8–K, Form 12b–25, Securities Exchange Act and Investment Company Act Form N–SAR and Form N–CSR, Securities Exchange Act Rule 12b–25, Rule 13a–14, Rule 13a–15, Rule 15d–14 and Rule 15d–15, Investment Company Act Rule 30a–2 and Rule 30a–3, and Regulations S–B, S–K and S–X pursuant to sections 5, 6, 7, 10, 17 and 19 of the Securities Act, as amended, sections 12, 13, 15, 23 and 36 of the Securities Exchange Act, as amended, sections 8, 30, 31 and 38 of the Investment Company Act, as amended, and sections 3(a), 404, 406 and 407 of the Sarbanes-Oxley Act of 2002.

[145] Pub. L. 104–121, Title II, 110 Stat. 857 (1996).

Text of the Proposed Amendments

List of Subjects

17 CFR Part 210

Accountants, Accounting, Reporting and recordkeeping requirements, Securities.

17 CFR Part 228

Reporting and recordkeeping requirements, Securities, Small businesses.

17 CFR Parts 229, 240 and 249

Reporting and recordkeeping requirements, Securities.

17 CFR Parts 270 and 274

Investment companies, Reporting and recordkeeping requirements, Securities.

For the reasons set out above, we propose to amend title 17, chapter II of the Code of Federal Regulations as follows:

PART 210—FORM AND CONTENT OF AND REQUIREMENTS FOR FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, INVESTMENT COMPANY ACT OF 1940, INVESTMENT ADVISERS ACT OF 1940, AND ENERGY POLICY AND CONSERVATION ACT OF 1975

1. The authority citation for Part 210 is amended by adding the following citations:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 78c, 78j–1, 78*l*, 78m, 78n, 78o(d), 78q, 78u–5, 78w(a), 78*ll*, 78mm, 79e(b), 79j(a), 79n, 79t(a), 80a–8, 80a–20, 80a–29, 80a–30, 80a–37(a), 80b–3, 80b–11 unless otherwise noted.

Section 210.1–02 is also issued under secs. 3(a) and 404, Pub. L. No. 107–204, 116 Stat. 745.

Section 210.2–02 is also issued under secs. 3(a) and 404, Pub. L. No. 107–204, 116 Stat. 745.

2. Amend § 210.1–02 by:

a. Removing the authority citation following § 210.1–02;

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b. Redesignating paragraphs (a) through (bb) as (b) through (cc); and

c. Adding new paragraph (a) to read as follows:

§ 210.1–02 Definition of terms used in Regulation S–X (17 CFR part 210).

(a) *Accountant's attestation.* The term *accountant's attestation* means a document in which a registered public accounting firm expresses an opinion concerning a registrant's assertion about the effectiveness of its internal controls and procedures for financial reporting in accordance with standards for attestation engagements. The attestation indicates the scope of the accountant's examination and sets forth the accountant's opinion as to whether the registrant's assertion about the effectiveness of its internal controls and procedures for financial reporting is fairly stated, in all material respects, or includes an opinion to the effect that an overall opinion cannot be expressed. When an overall opinion cannot be expressed, the registered public accounting firm must explain why it is unable to express such an opinion.

* * * * *

3. Amend § 210.2–02 by:

a. Revising the section heading;

b. Revising the headings of paragraphs (a), (b), (c) and (d); and

c. Adding new paragraph (f).

The additions and revisions read as follows.

§ 210.2–02 Accountants' reports and attestations.

(a) *Technical requirements for accountants' reports.* * * *

(b) *Representations as to the audit included in accountants' reports.* * * *

(c) *Opinions to be expressed in accountants' reports.* * * *

(d) *Exceptions identified in accountants' reports.* * * *

* * * * *

(f) *Accountants' attestations.* Every registered public accounting firm that issues or prepares an accountant's report for a registrant, other than an investment company registered under section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a–8), must examine, attest to, and report separately on, the internal control report of management concerning the effectiveness of the registrant's internal controls and procedures for financial reporting. The accountant's attestation shall be dated, signed manually, identify the period covered by the report and clearly state the opinion of the accountant as to whether the registrant's disclosure about the effectiveness of its internal controls and procedures for financial reporting is fairly stated in all material respects, or must include an opinion to the effect that an overall opinion cannot be expressed. If an overall opinion cannot be expressed, explain why.

PART 228—INTEGRATED DISCLOSURE SYSTEM FOR SMALL BUSINESS ISSUERS

4. The authority citation for Part 228 is revised to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77jj, 77nnn, 77sss, 78*l*, 78m, 78n, 78o, 78u–5, 78w, 78*ll*, 78mm, 80a–8, 80a–29, 80a–30, 80a–37 and 80b–11.

Section 228.307 is also issued under secs. 3(a), 302 and 404, Pub. L. No. 107–204, 116 Stat. 745.

Section 228.309 is also issued under secs. 3(a) and 407, Pub. L. No. 107–204, 116 Stat. 745.

Section 228.406 is also issued under secs. 3(a) and 406, Pub. L. No. 107–204, 116 Stat. 745.

5. Revise § 228.307 to read as follows:

§ 228.307 (Item 307) Controls and procedures.

(a) *Evaluation of disclosure controls and procedures and internal controls and procedures for financial reporting.* Disclose the conclusions of the small business issuer's principal executive officer or officers and principal financial officer or officers, or persons performing similar functions, about the effectiveness of the small business issuer's disclosure controls and procedures and internal controls and procedures for financial reporting based on management's evaluation of these controls and procedures in accordance with §§ 240.13a–15 or 240.15d–this chapter as of the end of the period covered by the quarterly or annual report that includes the disclosure required by this paragraph.

(b) *Changes to internal controls and procedures for financial reporting.* Disclose any significant changes to the small business issuer's internal controls and procedures for financial reporting made during the period covered by the quarterly or annual report that includes the disclosure required by this paragraph, including any actions taken to correct significant deficiencies and material weaknesses in the small business issuer's internal controls and procedures for financial reporting.

(c) *Report on management's responsibilities.* Furnish an internal control report of management that includes:

(1) A statement of management's responsibilities for establishing and maintaining adequate internal controls and procedures for financial reporting for the small business issuer;

(2) Conclusions about the effectiveness of the small business issuer's internal controls and procedures for financial reporting based on management's evaluation of those controls and procedures in accordance with §§ 240.13a–15 or 240.15d–15 of this chapter as of the end of the small business issuer's most recent fiscal year;

(3) A statement that the registered public accounting firm that prepared or issued the small business issuer's audit report relating to the financial statements included in the report containing the disclosure required by this Item has attested to, and reported on, management's evaluation of the small business issuer's internal controls and procedures for financial reporting; and

(4) The attestation report of the registered public accounting firm that audited or reviewed the financial statements included in the annual report containing the disclosure required by this Item.

Instructions to Item 307

1. A small business issuer that is an Asset-Backed Issuer (as defined in § 240.13a–14(g) and § 240.15d–14(g) of this chapter) is not required to disclose the information required by this Item.

2. For purposes of this Item, the terms "disclosure controls and procedures" and "internal controls and procedures for financial reporting" shall have the meanings specified in § 240.13a–14 and § 240.15d–14 of this chapter.

3. If the conclusions of the small business issuer's principal executive and financial officers are reflected in the conclusions disclosed pursuant to paragraph (c)(2) of this Item, the small business issuer does not have to include any separate disclosure required by paragraph (a) of this Item regarding the effectiveness of the small business issuer's internal controls and procedures for financial reporting as of the end of the small business issuer's most recent fiscal year.

4. The small business issuer is encouraged, but not required, to include the annual report disclosure required by paragraph (b) of this Item in the internal control report required by paragraph (c) of this Item, rather than disclosing it elsewhere in the annual report.

6. Add § 228.309 to read as follows:

§ 228.309 (Item 309) Audit committee financial experts.

Disclose the number and names of the persons that the small business issuer's board of directors has determined to be the financial expert or experts serving on the small business issuer's audit committee, as defined in section 3(a)(58) of the Exchange Act (15 U.S.C. 78c(a)(58)). Also disclose whether the financial expert or experts are independent, as that term is used in section 10A(m)(3) of the Exchange Act (15 U.S.C. 78j–1(m)(3)) and if not, an explanation of why they are not. If the small business issuer's board of directors has not determined that a financial expert is serving on its audit committee, the small business issuer must disclose that fact and explain why it does not have such an expert.

Instructions to Item 309

1. For purposes of the determination by the board of directors under this Item 309, the term "financial expert" means a person who has, through education and experience as a public accountant or auditor, or a principal financial officer, controller, or principal accounting officer, of a company that, at the time the person held such position, was required to file reports pursuant to section 13(a) or 15(d) of the Exchange Act (15 U.S.C. 78m(a) and 78o(d)), or experience in one or more positions that involve the performance of similar functions (or that results, in the judgment of the board of directors, in the person's having similar expertise and experience), the following attributes:

a. An understanding of generally accepted accounting principles and financial statements;

b. Experience applying such generally accepted accounting principles in connection with the accounting for estimates, accruals, and reserves that are generally comparable to the estimates, accruals and reserves, if any, used in the small business issuer's financial statements;

c. Experience preparing or auditing financial statements that present accounting issues that are generally comparable to those raised by the small business issuer's financial statements;

d. Experience with internal controls and procedures for financial reporting; and

e. An understanding of audit committee functions.

2. If the board of directors has determined that a person is a financial expert because, in the board's judgment, he or she has similar expertise and experience to those enumerated, the small business issuer must disclose the basis for that determination.

3. In evaluating the education and experience of a person, the board of directors should consider the following factors in the aggregate:

a. The level of the person's accounting or financial education, including whether the person has earned an advanced degree in finance or accounting;

b. Whether the person is a certified public accountant, or the equivalent, in good standing, and the length of time that the person actively has practiced as a certified public accountant, or the equivalent;

c. Whether the person is certified or otherwise identified as having accounting or financial experience by a recognized private body that establishes and administers standards in respect of such expertise, whether that person is in good standing with the recognized private body, and the length of time that the person has been actively certified or identified as having this expertise;

d. Whether the person has served as a principal financial officer, controller or principal accounting officer of a company that, at the time the person held such position, was required to file reports pursuant to section 13(a) or 15(d) of the Exchange Act, and if so, for how long;

e. The person's specific duties while serving as a public accountant, auditor, principal financial officer, controller, principal accounting officer or position involving the performance of similar functions;

f. The person's level of familiarity and experience with all applicable laws and regulations regarding the preparation of financial statements that must be included in reports filed under section 13(a) or 15(d) of the Exchange Act;

g. The level and amount of the person's direct experience reviewing, preparing, auditing or analyzing financial statements that must be included in reports filed under section 13(a) or 15(d) of the Exchange Act;

h. The person's past or current membership on one or more audit committees of companies that, at the time the person held such membership, were required to file reports pursuant to section 13(a) or 15(d) of the Exchange Act;

i. The person's level of familiarity and experience with the use and analysis of financial statements of public companies;

j. Whether the person has any other relevant qualifications or experience that would assist him or her in understanding and evaluating the small business issuer's financial statements and other financial information and to make knowledgeable and thorough inquiries whether:

i. The financial statements fairly present the financial condition, results of operations and cash flows of the small business issuer in accordance with generally accepted accounting principles; and

ii. The financial statements and other financial information, taken together, fairly present the financial condition, results of operations and cash flows of the small business issuer; and

k. In the case of a foreign private issuer, the person's level of experience in respect of public companies in the foreign private issuer's home country, generally accepted accounting principles used by the issuer, and the reconciliation of financial statements with U.S. generally accepted accounting principles.

4. Although the board of directors should consider the factors listed in Instruction 3, those factors are not replacements for, and a financial expert must satisfy, all of the attributes listed in Instruction 1 to this Item.

5. In the case of foreign private issuers with two-tier boards of directors, for purposes of this Item 309, the term "board of directors" means the supervisory or non-management board.

6. A small business issuer that is an Asset-Backed Issuer (as defined in § 240.13a–14(g) and § 240.15d–14(g) of this chapter) is not required to disclose the information required by this Item.

7. Add § 228.406 to read as follows:

§ 228.406 (Item 406) Code of ethics.

(a) Disclose whether the small business issuer has adopted a written code of ethics that applies to the small business issuer's principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions. If the small business issuer has not adopted such a code of ethics, explain why it has not done so.

(b) If the small business issuer plans to elect to disclose any amendments to, or waivers from, its code of ethics on its Internet website, disclose the small business issuer's Internet address and its intention to disclose these events on its website. If the small business issuer elects to disclose this information through its website, it must make such information available for at least a 12-month period. Following the 12-month period, the small business issuer must retain the information for a period of five years. Upon request, the small business issuer must furnish to the Commission or its staff a copy of any or all information retained pursuant to this requirement.

Instructions to Item 406

1. For purposes of this Item 406, the term "code of ethics" means a codification of such standards that is

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reasonably designed to deter wrongdoing and to promote:

(a) Honest and ethical conduct, including the ethical handling of actual or apparent conflicts of interest between personal and professional relationships;

(b) Avoidance of conflicts of interest, including disclosure to an appropriate person or persons identified in the code of any material transaction or relationship that reasonably could be expected to give rise to such a conflict;

(c) Full, fair, accurate, timely, and understandable disclosure in reports and documents that a registrant files with, or submits to, the Commission and in other public communications made by the small business issuer;

(d) Compliance with applicable governmental laws, rules and regulations;

(e) The prompt internal reporting to an appropriate person or persons identified in the code of violations of the code; and

(f) Accountability for adherence to the code.

2. A small business issuer that is an Asset-Backed Issuer (as defined in § 240.13a–14(g) and § 240.15d–14(g) of this chapter) is not required to disclose the information required by this Item.

8. Amend § 228.601 by:

a. Removing the "No exhibit required" designation for exhibit (14) and adding "Code of ethics" in its place in the Exhibit Table;

b. Removing "N/A" corresponding to exhibit (14) under all captions in the Exhibit Table;

c. Adding an "X" corresponding to exhibit (14) under the caption "Exchange Act Forms," "8–K and "10–KSB" in the Exhibit Table; and

d. Adding the text of paragraph (b)(14).

The addition reads as follows:

§ 228.601 (Item 601) Exhibits.

* * * * *

(b) *Description of exhibits.* * * *

(14) *Code of ethics.* Any written code of ethics, or amendment to that code of ethics, that applies to the small business issuer's principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions, subject to disclosure under Item 406 of Regulation S–B (§ 228.406) or Item 5.05 of Form 8–K (§ 249.308 of this chapter).

* * * * *

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

9. The authority citation for Part 229 is revised to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78*l*, 78m, 78n, 78o, 78u–5, 78w, 78*ll*(d), 78mm, 79e, 79n, 79t, 80a–8, 80a–29, 80a–30, 80a–31(c), 80a–37, 80a–38(a) and 80b–11, unless otherwise noted.

Section 229.307 is also issued under secs. 3(a), 302 and 404, Pub. L. 107–204, 116 Stat. 745.

Section 229.309 is also issued under secs. 3(a) and 407, Pub. L. 107–204, 116 Stat. 745.

Section 229.406 is also issued under secs. 3(a) and 406, Pub. L. 107–204, 116 Stat. 745.

Section 229.601 is also issued under secs. 3(a) and 406, Pub. L. 107–204, 116 Stat. 745.

10. Revise § 229.307 to read as follows.

§ 229.307 (Item 307) Controls and procedures.

(a) *Evaluation of disclosure controls and procedures and internal controls and procedures for financial reporting.* Disclose the conclusions of the registrant's principal executive officer or officers and principal financial officer or officers, or persons performing similar functions, about the effectiveness of the registrant's disclosure controls and procedures and internal controls and procedures for financial reporting based on management's evaluation of these controls and procedures in accordance with §§ 240.13a–15 and 240.15d–15 of this chapter as of the end of the period covered by the quarterly or annual report that includes the disclosure required by this paragraph.

(b) *Changes to internal controls and procedures for financial reporting.* Disclose any significant changes to the registrant's internal controls and procedures for financial reporting made during the period covered by the quarterly or annual report that includes the disclosure required by this paragraph, including any actions taken to correct significant deficiencies and material weaknesses in the registrant's internal controls and procedures for financial reporting.

(c) *Report on management's responsibilities.* Furnish an internal control report of management that includes:

(1) A statement of management's responsibilities for establishing and maintaining adequate internal controls and procedures for financial reporting for the registrant;

(2) Conclusions about the effectiveness of the registrant's internal controls and procedures for financial reporting based on management's evaluation of those controls and procedures in accordance with §§ 240.13a–15 or 240.15d–15 of this chapter as of the end of the registrant's most recent fiscal year;

(3) A statement that the registered public accounting firm that prepared or issued the registrant's audit report relating to the financial statements included in the report containing the disclosure required by this Item has attested to, and reported on, management's evaluation of the registrant's internal controls and procedures for financial reporting; and

(4) The attestation report of the registered public accounting firm that audited or reviewed the financial statements included in the annual report containing the disclosure required by this Item.

Instructions to Item 307

1. A registrant that is an Asset-Backed Issuer (as defined in § 240.13a–14(g) and § 240.15d–14(g) of this chapter) is not required to disclose the information required by this Item.

2. For purposes of this Item, the terms "disclosure controls and procedures" and "internal controls and procedures for financial reporting" shall have the meanings specified in § 240.13a–14 and § 240.15d–14 of this chapter.

3. If the conclusions of the registrant's principal executive and financial officers are reflected in the conclusions disclosed pursuant to paragraph (c)(2) of this Item, the registrant does not have to include any separate disclosure required by paragraph (a) of this Item regarding the effectiveness of the registrant's internal controls and procedures for financial reporting as of the end of the registrant's most recent fiscal year.

4. The registrant is encouraged, but not required, to include the annual report disclosure required by paragraph (b) of this Item in the internal control report required by paragraph (c) of this Item, rather than disclosing it elsewhere in the annual report.

11. Add § 229.309 to read as follows:

§ 229.309 (Item 309) Audit committee financial experts.

Disclose the number and names of the persons that the registrant's board of directors has determined to be the financial experts serving on the registrant's audit committee, as defined in section 3(a)(58) of the Exchange Act (15 U.S.C. 78c(a)(58)). Also disclose whether the financial expert or experts are independent as that term is used in section 10A(m)(3) of the Exchange Act (15 U.S.C. 78j–1(m)(3)), and if not, an explanation of why they are not. If the registrant's board of directors has not determined that a financial expert is serving on its audit committee, the registrant must disclose that fact and explain why it does not have such an expert.

Instructions to Item 309

1. For purposes of the determination by the board of directors under this Item 309, the term "financial expert" means a person who has, through education and experience as a public accountant or auditor, or a principal financial officer, controller, or principal accounting officer, of a company that, at the time the person held such position, was required to file reports pursuant to section 13(a) or 15(d) of the Exchange Act (15 U.S.C. 78m(a) and 78o(d)), or experience in one or more positions that involve the performance of similar functions (or that results, in the judgment of the board of directors, in the person's having similar expertise and experience), the following attributes:

a. An understanding of generally accepted accounting principles and financial statements;

b. Experience applying such generally accepted accounting principles in connection with the accounting for estimates, accruals, and reserves that are generally comparable to the estimates, accruals and reserves, if any, used in the registrant's financial statements;

c. Experience preparing or auditing financial statements that present accounting issues that are generally comparable to those raised by the registrant's financial statements;

d. Experience with internal controls and procedures for financial reporting; and

e. An understanding of audit committee functions.

2. If the board of directors has determined that a person is a financial expert because, in the board's judgment, he or she has similar expertise and experience to those enumerated, the registrant must disclose the basis for that determination.

3. In evaluating the education and experience of a person, the board of directors should consider the following factors in the aggregate:

a. The level of the person's accounting or financial education, including whether the person has earned an advanced degree in finance or accounting;

b. Whether the person is a certified public accountant, or the equivalent, in good standing, and the length of time that the person actively has practiced as a certified public accountant, or the equivalent;

c. Whether the person is certified or otherwise identified as having accounting or financial experience by a recognized private body that establishes and administers standards in respect of such expertise, whether that person is in good standing with the recognized private body, and the length of time that the person has been actively certified or identified as having this expertise;

d. Whether the person has served as a principal financial officer, controller or principal accounting officer of a company that, at the time the person held such position, was required to file reports pursuant to section 13(a) or 15(d) of the Exchange Act, and if so, for how long;

e. The person's specific duties while serving as a public accountant, auditor, principal financial officer, controller, principal accounting officer or position involving the performance of similar functions;

f. The person's level of familiarity and experience with all applicable laws and regulations regarding the preparation of financial statements that must be included in reports filed under section 13(a) or 15(d) of the Exchange Act;

g. The level and amount of the person's direct experience reviewing, preparing, auditing or analyzing financial statements that must be included in reports filed under section 13(a) or 15(d) of the Exchange Act;

h. The person's past or current membership on one or more audit committees of companies that, at the time the person held such membership, were required to file reports pursuant to section 13(a) or 15(d) of the Exchange Act;

i. The person's level of familiarity and experience with the use and analysis of financial statements of public companies;

j. Whether the person has any other relevant qualifications or experience that would assist him or her in understanding and evaluating the registrant's financial statements and other financial information and to make knowledgeable and thorough inquiries whether:

i. The financial statements fairly present the financial condition, results of operations and cash flows of the registrant in accordance with generally accepted accounting principles; and

ii. The financial statements and other financial information, taken together, fairly present the financial condition, results of operations and cash flows of the registrant; and

k. In the case of a foreign private issuer, the person's level of experience in respect of public companies in the foreign private issuer's home country, generally accepted accounting principles used by the issuer, and the reconciliation of financial statements with U.S. generally accepted accounting principles.

4. Although the board of directors should consider the factors listed in Instruction 3, those factors are not replacements for, and a financial expert must satisfy, all of the attributes listed in Instruction 1 to this Item.

5. In the case of foreign private issuers with two-tier boards of directors, for purposes of this Item 309, the term "board of directors" means the supervisory or non-management board.

6. A registrant that is an Asset-Backed Issuer (as defined in § 240.13a–14(g) and § 240.15d–14(g) of this chapter) is not required to disclose the information required by this Item.

12. Add § 229.406 to read as follows:

§ 229.406 (Item 406) Code of ethics.

(a) Disclose whether the registrant has adopted a written code of ethics that applies to the registrant's principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions. If the registrant has not adopted such a code of ethics, explain why it has not done so.

(b) If the registrant plans to elect to disclose any amendments to, or waivers from, its code of ethics on its Internet website, disclose the registrant's Internet address and its intention to disclose these events on its website. If the registrant elects to disclose this information through its website, it must make such information available for at least a 12-month period. Following the 12-month period, the registrant must retain the information for a period of not less than five years. Upon request, the registrant must furnish to the Commission or its staff a copy of any or all information retained pursuant to this requirement.

Instructions to Item 406

1. For purposes of this Item 406, the term "code of ethics" means a codification of such standards that is reasonably designed to deter wrongdoing and to promote:

(a) Honest and ethical conduct, including the ethical handling of actual or apparent conflicts of interest between personal and professional relationships;

(b) Avoidance of conflicts of interest, including disclosure to an appropriate

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person or persons identified in the code of any material transaction or relationship that reasonably could be expected to give rise to such a conflict;

(c) Full, fair, accurate, timely, and understandable disclosure in reports and documents that a registrant files with, or submits to, the Commission and in other public communications made by the registrant;

(d) Compliance with applicable governmental laws, rules and regulations;

(e) The prompt internal reporting to an appropriate person or persons identified in the code of violations of the code; and

(f) Accountability for adherence to the code.

2. A registrant that is an Asset-Backed Issuer (as defined in § 240.13a–14(g) and § 240.15d–14(g) of this chapter) is not required to disclose the information required by this Item.

13. Amend § 229.601 by:

a. Removing the "reserved" designation for exhibit (14) and adding "Code of ethics" in its place in the Exhibit Table;

b. Removing "N/A" corresponding to exhibit (14) under all captions in the Exhibit Table;

c. Adding an "X" corresponding to exhibit (14) under the caption "Exchange Act Forms", "8–K" and "10–K" in the Exhibit Table; and

d. Adding the text of paragraph (b)(14).

The addition reads as follows:

§ 229.601 (Item 601) Exhibits.

* * * * *

(b) *Description of exhibits.* * * *

(14) *Code of ethics.* Any written code of ethics, or amendment to that code of ethics, that applies to the registrant's principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions, subject to disclosure under Item 406 of Regulation S–K (§ 229.406) or Item 5.05 of Form 8–K (§ 249.308 of this chapter).

* * * * *

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

14. The authority citation for Part 240 is amended by revising the specific authority for "Section 240.13a–15" and "Section 240.15d–15" and adding an authority in numerical order to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*, 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

Section 240.13a–15 is also issued under secs. 3(a), 302 and 404, Pub. L. 107–204, 116 Stat. 745.

* * * * *

Section 240.14a–101 is also issued under secs. 3(a) and 407, Pub. L. 107–204, 116 Stat. 745.

* * * * *

Section 240.15d–15 is also issued under secs. 3(a), 302 and 404, Pub. L. 107–204, 116 Stat. 745.

* * * * *

15. As proposed in 67 FR 42914, amend § 240.12b–25 by revising the section heading and paragraphs (a) and (b)(2)(ii) to read as follows:

§ 240.12b–25 Notification of inability to timely file all or any required portion of a Form 10–K, 10–KSB, 20–F, 11–K, N–SAR, N–CSR, 10–Q, 10–QSB or 8–K.

(a) If all or any required portion of an annual or transition report on Form 10–K, 10–KSB, 20–F or 11–K (17 CFR 249.310, 249.310b, 249.220f or 249.311), or a quarterly or transition report on Form 10–Q or 10–QSB (17 CFR 249.308a or 249.308b), or a current report on Form 8–K (17 CFR 249.308) required to be filed pursuant to sections 13 or 15(d) of the Act (15 U.S.C. 78m or 78o(d)) and rules thereunder, or if all or any portion of a semi-annual, annual or transition report on Form N–SAR or N–CSR (17 CFR 274.101 or 274.128 of this chapter) required to be filed pursuant to sections 13 or 15(d) of the Act or section 30 of the Investment Company Act of 1940 (15 U.S.C. 80a–29) and the rules thereunder is not filed within the time period prescribed for such report, the registrant, no later than one business day after the due date for such report, shall file a Form 12b–25 (17 CFR 249.322 of this chapter) with the Commission which shall contain disclosure of its inability to file the report timely and the reasons therefor in reasonable detail.

(b) * * *

(1) * * *

(2) * * *

(i) * * *

(ii) The subject annual report, semi-annual report or transition report on Form 10–K, 10–KSB, 20–F, 11–K, N–SAR, or N–CSR, or portion thereof, will be filed no later than the fifteenth calendar day following the prescribed due date; or the subject quarterly report or transition report on Form 10–Q or 10–QSB, or portion thereof, will be filed no later than the fifth calendar day following the prescribed due date; or the subject current report on Form 8–K, or portion thereof, will be filed no later than the second business day following the prescribed due date and, in the case of Form 8–K, specifying the Item number or numbers to be included in the filing; and

16. Amend § 240.13a–14 by:

a. Revising paragraph (b)(4);

b. Redesignating paragraphs (d), (e), (f) and (g) as paragraphs (e), (f), (g) and (h); and

c. Adding new paragraph (d).

The revisions and additions read as follows:

§ 240.13a–14 Certification of disclosure in annual and quarterly reports.

* * * * *

(b) * * *

(4) He or she and the other certifying officers are responsible for establishing and maintaining disclosure controls and procedures and internal controls and procedures for financial reporting (as such terms are defined in paragraphs (c) and (d) of this section) for the issuer and have:

(i) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under their supervision, to ensure that material information relating to the issuer, including its consolidated subsidiaries, is made known to them by others within those entities, particularly during the period in which periodic reports are being prepared;

(ii) Designed such internal controls and procedures for financial reporting, or caused such internal controls and procedures for financial reporting to be designed under their supervision, to provide reasonable assurances that the registrant's financial statements are fairly presented in conformity with generally accepted accounting principles;

(iii) Evaluated the effectiveness of the registrant's disclosure controls and procedures and internal controls and procedures for financial reporting as of the end of the period covered by the report ("Evaluation Date");

(iv) Presented in the report their conclusions about the effectiveness of the disclosure controls and procedures and internal controls and procedures for financial reporting, in each case based on their evaluation as of the Evaluation Date;

(v) Disclosed to the registrant's auditors and the audit committee of the board of directors (or persons fulfilling the equivalent function):

(A) All significant deficiencies and material weaknesses in the design or operation of internal controls and procedures for financial reporting which could adversely affect the registrant's ability to record, process, summarize and report financial information required to be disclosed by the registrant in the reports that it files or submits under the Act (15 U.S.C. 78a *et seq.*), within the time periods specified in the Commission's rules and forms; and

(B) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls and procedures for financial reporting; and

(vi) Indicated in the report any significant changes in the registrant's internal controls and procedures for financial reporting or in other factors that could significantly affect internal controls and procedures for financial reporting made during the period covered by the report, including any actions taken to correct significant deficiencies and material weaknesses in the registrant's internal controls and procedures for financial reporting.

* * * * *

(d) For purposes of this section and § 240.13a–15, the term *internal controls and procedures for financial reporting* means controls that pertain to the preparation of financial statements for external purposes that are fairly presented in conformity with generally accepted accounting principles as addressed by the Codification of Statements on Auditing Standards § 319 or any superseding definition or other literature that is issued or adopted by the Public Company Accounting Oversight Board.

* * * * *

17. Amend § 240.13a–15 by:

a. Revising the section heading and paragraph (b); and

b. Adding paragraph (c).

The revisions and addition read as follows:

§ 240.13a–15 Controls and procedures.

* * * * *

(b) In connection with each report, including transition reports, filed on Form 10–Q, Form 10–QSB, Form 10–K, Form 10–KSB, Form 20–F or Form 40–F (§§ 249.308a, 249.308b, 249.310, 249.310b, 249.220f or 249.240f of this chapter) under section 13(a) of the Act (15 U.S.C. 78m(a)), other than a report filed by an Asset-Backed Issuer (as defined in § 240.13a–14), the issuer's management must conduct an evaluation, with the participation of the issuer's principal executive officer or officers and principal financial officer or officers, or persons performing similar functions, of the effectiveness, as of the end of the period covered by the report, of the design and operation of the issuer's disclosure controls and procedures and the issuer's internal controls and procedures for financial reporting.

(c) In connection with each report, including transition reports, filed on Form N–CSR (§§ 249.331 and 274.128 of this chapter) or Form N–SAR (§§ 249.330 and 274.101 of this chapter) that requires certification under § 270.30a–2 of this chapter, the issuer's management must conduct an evaluation, with the participation of the issuer's principal executive officer or officers and principal financial officer or officers, or persons performing similar functions, of the effectiveness, as of the end of the period covered by the report, of the design and operation of the issuer's disclosure controls and procedures.

18. Amend § 240.15d–14 by:

a. Revising paragraph (b)(4);

b. Redesignating paragraphs (d), (e), (f) and (g) as paragraphs (e), (f), (g) and (h); and

c. Adding new paragraph (d).

The revisions and additions read as follows:

§ 240.15d–14 Certification of disclosure in annual and quarterly reports.

* * * * *

(b) * * *

(4) He or she and the other certifying officers are responsible for establishing and maintaining disclosure controls and procedures and internal controls and procedures for financial reporting (as such terms are defined in paragraphs (c) and (d) of this section) for the issuer and have:

(i) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under their supervision, to ensure that material information relating to the issuer, including its consolidated subsidiaries, is made known to them by others within those entities, particularly during the period in which periodic reports are being prepared;

(ii) Designed such internal controls and procedures for financial reporting, or caused such internal controls and procedures for financial reporting to be designed under their supervision, to provide reasonable assurances that the registrant's financial statements are fairly presented in conformity with generally accepted accounting principles;

(iii) Evaluated the effectiveness of the registrant's disclosure controls and procedures and internal controls and procedures for financial reporting as of the end of the period covered by the report ("Evaluation Date");

(iv) Presented in the report their conclusions about the effectiveness of the disclosure controls and procedures and internal controls and procedures for financial reporting, in each case based on their evaluation as of the Evaluation Date;

(v) Disclosed to the registrant's auditors and the audit committee of the board of directors (or persons fulfilling the equivalent function):

(A) All significant deficiencies and material weaknesses in the design or operation of internal controls and procedures for financial reporting which could adversely affect the registrant's ability to record, process, summarize and report financial information required to be disclosed by the registrant in the reports that it files or submits under the Act (15 U.S.C. 78a *et seq.*), within the time periods specified in the Commission's rules and forms; and

(B) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls and procedures for financial reporting; and

(vi) Indicated in the report any significant changes in the registrant's internal controls and procedures for financial reporting or in other factors that could significantly affect internal controls and procedures for financial reporting made during the period covered by the report, including any actions taken to correct significant deficiencies and material weaknesses in the registrant's internal controls and procedures for financial reporting.

* * * * *

(d) For purposes of this section and § 240.15d–15, the term *internal controls and procedures for financial reporting* means controls that pertain to the preparation of financial statements for external purposes that are fairly presented in conformity with generally accepted accounting principles as addressed by the Codification of Statements on Auditing Standards § 319 or any superseding definition or other literature that is issued or adopted by the Public Company Accounting Oversight Board.

* * * * *

19. Amend § 240.15d–15 by:

a. Revising the section heading and paragraph (b); and

b. Adding paragraph (c).

The revisions and addition read as follows:

§ 240.15d–15 Controls and procedures.

* * * * *

(b) In connection with each report, including transition reports, filed on

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Form 10–Q, Form 10–QSB, Form 10–K, Form 10–KSB, Form 20–F or Form 40–F (§§ 249.308a, 249.308b, 249.310, 249.310b, 249.220f or 249.240f of this chapter) under section 15(d) of the Act (15 U.S.C. 78o(d)), other than a report filed by an Asset-Backed Issuer (as defined in § 240.15d–14), the issuer's management must conduct an evaluation, with the participation of the issuer's principal executive officer or officers and principal financial officer or officers, or persons performing similar functions, of the effectiveness, as of the end of the period covered by the report, of the design and operation of the issuer's disclosure controls and procedures and the issuer's internal controls and procedures for financial reporting.

(c) In connection with each report, including transition reports, filed on Form N–CSR (§§ 249.331 and 274.128 of this chapter) or Form N–SAR (§§ 249.330 and 274.101 of this chapter) that requires certification under § 270.30a–2 of this chapter, the issuer's management must conduct an evaluation, with the participation of the issuer's principal executive officer or officers and principal financial officer or officers, or persons performing similar functions, of the effectiveness, as of the end of the period covered by the report, of the design and operation of the issuer's disclosure controls and procedures.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

20. The authority citation for Part 249 is revised to read as follows:

Authority: 15 U.S.C. 78a *et seq.*, unless otherwise noted.

Section 249.220f is also issued under secs. 3(a), 302, 404 and 407, Pub. L. 107–204, 116 Stat. 745.

Section 249.240f is also issued under secs. 3(a), 302, 404 and 407, Pub. L. 107–204, 116 Stat. 745.

Section 249.308 is also issued under 15 U.S.C. 80a–29 and secs. 3(a), 302 and 404, Pub. L. 107–204, 116 Stat. 745.

Section 249.308a is also issued under secs. 3(a), 302 and 404, Pub. L. 107–204, 116 Stat. 745.

Section 249.308b is also issued under secs. 3(a), 302 and 404, Pub. L. 107–204, 116 Stat. 745.

Section 249.310 is also issued under secs. 3(a), 302, 404 and 407, Pub. L. 107–204, 116 Stat. 745.

Section 249.310b is also issued under secs. 3(a), 302, 404 and 407, Pub. L. 107–204, 116 Stat. 745.

Section 249.326(T) is also issued under 15 U.S.C. 78m(f)(1).

Section 249.330 is also issued under secs. 3(a), 302, 406, and 407, Pub. L. 107–204, 116 Stat. 745.

Section 249.331 is also issued under secs. 3(a), 302, 406, and 407, Pub. L. 107–204, 116 Stat. 745.

21. As proposed in 67 FR 42914, amend Form 8–K (referenced in § 249.308) by adding Item 5.05 to read as follows:

Note: The text of Form 8–K does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 8–K

Current Report

Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

* * * * *

Item 5.05. Amendments to the Registrant's Code of Ethics, or Waiver of a Provision of the Code of Ethics

If the registrant has amended its code of ethics that applies to its principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions or granted a waiver, including an implicit waiver, from a provision of the code of ethics to one of these officers or persons, the registrant must briefly describe the nature of the amendment or waiver. Disclosure regarding waivers must include the name of the person to whom the waiver was granted, and the date of the waiver.

Instruction

The registrant does not need to provide any information pursuant to this Item if it discloses the required information on its Internet website within two business days following the date of the amendment or waiver and the registrant has disclosed in its most recently filed annual report its Internet address and intention to provide disclosure in this manner. If the registrant elects to disclose the information required by this Item through its website, such information must remain available on the website for at least a 12-month period. Following the 12-month period, the registrant must retain the information for a period of not less than five years. Upon request, the registrant must furnish to the Commission or its staff a copy of any or all information retained pursuant to this requirement.

* * * * *

22. Amend Form 10–Q (referenced in § 249.308a) by:

a. Revising Item 4 in Part I—Financial Information; and

b. Revising the "Certifications" section.

The revisions read as follows:

Note: The text of Form 10–Q does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 10–Q

* * * * *

Part I—Financial Information

* * * * *

Item 4. Controls and Procedures

Furnish the information required by Item 307(a) and (b) of Regulation S–K (§ 229.307(a) and (b) of this chapter).

* * * * *

Certifications*

I, [identify the certifying individual], certify that:

1. I have reviewed this quarterly report on Form 10–Q of [identify registrant];

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures and internal controls and procedures for financial reporting (as defined in Exchange Act Rules 13a–14 and 15d–14) for the registrant and we have:

(a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the issuer, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) Designed such internal controls and procedures for financial reporting, or caused such internal controls and procedures for financial reporting to be designed under their supervision, to provide reasonable assurances that the registrant's financial statements are fairly presented in conformity with generally accepted accounting principles;

(c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and internal controls and procedures for financial reporting as of the end of the period covered by this report ("Evaluation Date");

(d) Presented in this report our conclusions about the effectiveness of the disclosure controls and procedures and internal controls and procedures for financial reporting based on our evaluation as of the Evaluation Date;

(e) Disclosed to the registrant's auditors and the audit committee of the board of directors (or persons fulfilling the equivalent function):

(i) All significant deficiencies and material weaknesses in the design or operation of internal controls and procedures for financial reporting which could adversely affect the registrant's ability to record, process, summarize and report financial information required to be disclosed by the registrant in the reports that it files or submits under the Act (15 U.S.C. 78a *et seq.*), within the time periods specified in the U.S. Securities and Exchange Commission's rules and forms; and

(ii) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls and procedures for financial reporting; and

(f) Indicated in this report any significant changes in the registrant's internal controls and procedures for financial reporting or in other factors that could significantly affect internal controls and procedures for financial reporting made during the period covered by this report, including any actions taken to correct significant deficiencies and material weaknesses in the registrant's internal controls and procedures for financial reporting.

Date: _____

_____

[Signature]

_____

[Title]

* Provide a separate certification for each principal executive officer and principal financial officer of the registrant. See Rules 13a–14 and 15d–14. The required certification must be in the exact form set forth above.

23. Amend Form 10–QSB (referenced in § 249.308b) by:

a Revising Item 3 in Part I—Financial Information; and

b. Revising the "Certifications" section.

The revisions read as follows:

Note: The text of Form 10–QSB does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 10–QSB

* * * * *

Part I—Financial Information

* * * * *

Item 3. Controls and Procedures

Furnish the information required by Item 307(a) and (b) of Regulation S–B (§ 228.307(a) and (b) of this chapter).

* * * * *

Certifications*

I, [identify the certifying individual], certify that:

1. I have reviewed this quarterly report on Form 10–QSB of [identify registrant];

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the small business issuer as of, and for, the periods presented in this report;

4. The small business issuer's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures and internal controls and procedures for financial reporting (as defined in Exchange Act Rules 13a–14 and 15d–14) for the small business issuer and we have:

(a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the issuer, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) Designed such internal controls and procedures for financial reporting, or caused such internal controls and procedures for financial reporting to be designed under their supervision, to provide reasonable assurances that the small business issuer's financial statements are fairly presented in conformity with generally accepted accounting principles;

(c) Evaluated the effectiveness of the small business issuer's disclosure controls and procedures and internal controls and procedures for financial reporting as of the end of the period covered by this report ("Evaluation Date");

(d) Presented in this report our conclusions about the effectiveness of the disclosure controls and procedures and internal controls and procedures for financial reporting based on our evaluation as of the Evaluation Date;

(e) Disclosed to the small business issuer's auditors and the audit committee of the board of directors (or persons fulfilling the equivalent function):

(i) All significant deficiencies and material weaknesses in the design or operation of internal controls and procedures for financial reporting which could adversely affect the small business issuer's ability to record, process, summarize and report financial information required to be disclosed by the small business issuer in the reports that it files or submits under the Act (15 U.S.C. 78a *et seq.*), within the time periods specified in the U.S. Securities and Exchange Commission's rules and forms; and

(ii) Any fraud, whether or not material, that involves management or other employees who have a significant role in the small business issuer's internal controls and procedures for financial reporting; and

(f) Indicated in this report any significant changes in the small business issuer's internal controls and procedures for financial reporting or in other factors that could significantly affect internal controls and procedures for financial reporting made during the period covered by this report, including any actions taken to correct significant deficiencies and material weaknesses in the small business issuer's internal controls and procedures for financial reporting.

Date: _____

_____

[Signature]

_____

[Title]

* Provide a separate certification for each principal executive officer and principal financial officer of the small business issuer. See Rules 13a–14 and 15d–14. The required certification must be in the exact form set forth above.

24. Amend Form 20–F (referenced in § 249.220f) by:

a. Adding Item 15;

b. Redesignating paragraph 10 of "Instructions as to Exhibits" as paragraph 11;

c. Adding new paragraph 10 to "Instructions as to Exhibits"; and

d. Revising the "Certifications" section.

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The additions and revisions read as follows:

Note: The text of Form 20–F does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 20–F

* * * * *

Item 15 Certain Disclosures

(a) Controls and Procedures

(1) *Evaluation of Disclosure Controls and Procedures and Internal Controls and Procedures for Financial Reporting.* Disclose the conclusions of the registrant's principal executive officer or officers and principal financial officer or officers, or persons performing similar functions, about the effectiveness of the registrant's disclosure controls and procedures and internal controls and procedures for financial reporting based on management's evaluation of these controls and procedures in accordance with §§ 240.13a–15 or 240.15d–15 of this chapter as of the end of the period covered by the annual report that includes the disclosure required by this paragraph.

(2) *Changes to Internal Controls and Procedures for Financial Reporting.* Disclose any significant changes to the registrant's internal controls and procedures for financial reporting made during the period covered by the annual report that includes the disclosure required by this paragraph, including any actions taken to correct significant deficiencies and material weaknesses in the registrant's internal controls and procedures for financial reporting.

(3) *Report on management's responsibilities.* Furnish an internal control report of management that includes:

(i) A statement of management's responsibilities for establishing and maintaining adequate internal controls and procedures for financial reporting for the registrant;

(ii) Conclusions about the effectiveness of the registrant's internal controls and procedures for financial reporting based on management's evaluation of those controls and procedures in accordance with §§ 240.13a–15 or 240.15d–15 of this chapter as of the end of the registrant's most recent fiscal year;

(iii) A statement that the registered public accounting firm that prepared or issued the registrant's audit report relating to the financial statements included in the report containing the disclosure required by this Item has attested to, and reported on, management's evaluation of the registrant's internal controls and procedures for financial reporting; and

(iv) The attestation report of the registered public accounting firm that audited or reviewed the financial statements included in the annual report containing the disclosure required by this Item 15(a)(3).

Instructions to Item 15(a)

1. You do not need to provide the information called for by this Item 15(a) unless you are using this form as an annual report.

2. A registrant that is an Asset-Backed Issuer (as defined in § 240.13a–14(g) and § 240.15d–14(g)) is not required to disclose the information required by this Item 15(a).

3. For purposes of this Item, the terms "disclosure controls and procedures" and "internal controls and procedures for financial reporting" shall have the meanings specified in § 240.13a–14 and § 240.15d–14 of this chapter.

4. If the conclusions of the registrant's principal executive and financial officers are reflected in the conclusions disclosed pursuant to paragraph (c)(2) of this Item, the registrant does not have to include any separate disclosure required by paragraph (a) of this Item regarding the effectiveness of the registrant's internal controls and procedures for financial reporting as of the end of the registrant's most recent fiscal year.

5. The registrant is encouraged, but not required, to include the annual report disclosure required by paragraph (a)(2) of this Item in the internal control report required by paragraph (a)(3) of this Item, rather than disclosing it elsewhere in the annual report.

(b) Audit Committee Financial Experts

Disclose the number and names of the persons that the registrant's board of directors has determined to be the financial experts serving on the registrant's audit committee, as defined in section 3(a)(58) of the Exchange Act. Also disclose whether the financial expert or experts are independent as that term is used in section 10A(m)(3) of the Exchange Act, and if not, an explanation of why they are not. If the registrant's board of directors has not determined that a financial expert is serving on its audit committee, the registrant must disclose that fact and explain why it does not have such an expert.

Instructions to Item 15(b)

1. You do not need to provide the information called for by this Item 15(b) unless you are using this form as an annual report.

2. For purposes of the determination by the board of directors under this Item 15(b), the term "financial expert" means a person who has, through education and experience as a public accountant or auditor, or a principal financial officer, controller, or principal accounting officer, of a company that, at the time the person held such position, was required to file reports pursuant to section 13(a) or 15(d) of the Exchange Act, or experience in one or more positions that involve the performance of similar functions (or that result, in the judgment of the board of directors, in the person's having similar expertise and experience), the following attributes:

a. An understanding of financial statements and generally accepted accounting principles used by the registrant in its primary financial statements;

b. Experience applying such generally accepted accounting principles in connection with the accounting for estimates, accruals, and reserves that are generally comparable to the estimates, accruals and reserves, if any, used in the registrant's financial statements;

c. Experience preparing or auditing financial statements that present accounting issues that are generally comparable to those raised by the registrant's financial statements;

d. Experience with internal controls and procedures for financial reporting; and

e. An understanding of audit committee functions.

3. If the board of directors has determined that a person is a financial expert because, in the board's judgment, he or she has similar expertise and experience to those enumerated, the registrant must disclose the basis for that determination.

4. In evaluating the education and experience of a person, the board of directors should consider the following factors in the aggregate:

a. The level of the person's accounting or financial education, including whether the person has earned an advanced degree in finance or accounting;

b. Whether the person is a certified public accountant, or the equivalent, in good standing, and the length of time that the person actively has practiced as a certified public accountant, or the equivalent;

c. Whether the person is certified or otherwise identified as having accounting or financial experience by a recognized private body that establishes and administers standards in respect of such expertise, whether that person is in good standing with the recognized private body, and the length of time that the person has been actively certified or identified as having this expertise;

d. Whether the person has served as a principal financial officer, controller or principal accounting officer of a company that, at the time the person held such position, was required to file reports pursuant to section 13(a) or 15(d) of the Exchange Act, and if so, for how long;

e. The person's specific duties while serving as a public accountant, auditor, principal financial officer, controller, principal accounting officer or position involving the performance of similar functions;

f. The person's level of familiarity and experience with all applicable laws and regulations regarding the preparation of financial statements that must be included in reports filed under section 13(a) or 15(d) of the Exchange Act;

g. The level and amount of the person's direct experience reviewing, preparing, auditing or analyzing financial statements that must be included in reports filed under section 13(a) or 15(d) of the Exchange Act;

h. The person's past or current membership on one or more audit committees of companies that, at the time the person held such membership, were required to file reports pursuant to section 13(a) or 15(d) of the Exchange Act;

i. The person's level of familiarity and experience with the use and analysis of financial statements of public companies;

j. Whether the person has any other relevant qualifications or experience that would assist him or her in understanding and evaluating the registrant's financial statements and other financial information and to make knowledgeable and thorough inquiries whether:

i. The financial statements fairly present the financial condition, results of operations and cash flows of the registrant in accordance with generally accepted accounting principles; and

ii. The financial statements and other financial information, taken together, fairly present the financial condition, results of operations and cash flows of the registrant; and

k. The person's level of experience with reconciliation of financial statements with U.S. generally accepted accounting principles.

5. Although the board of directors should consider the factors listed in Instruction 4, those factors are not replacements for, and a financial expert must satisfy, all of the attributes listed in Instruction 2 to this Item 15(b).

6. In the case of foreign private issuers with two-tier boards of directors, for purposes of this Item 15(b), the term "board of directors" means the supervisory or non-management board.

7. A registrant that is an Asset-Backed Issuer (as defined in § 240.13a–14(g) and § 240.15d–14(g) of this chapter) is not required to disclose the information required by this Item.

(c) Code of Ethics

(1) Disclose whether the registrant has adopted a written code of ethics that applies to the registrant's principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions. If the registrant has not adopted such a code of ethics, explain why it has not done so.

(2) If, during the last fiscal year, the registrant has amended its code of ethics that applies to its principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions, or granted a waiver from a provision of the code of ethics to one of these officers or persons, the registrant must briefly describe the nature of the amendment or waiver. Disclosure regarding waivers must include the name of the person to whom the waiver was granted, and the date of the waiver.

Instructions to Item 15(c)

1. You do not need to provide the information called for by this Item 15(c) unless you are using this form as an annual report.

2. A registrant that is an Asset-Backed Issuer (as defined in § 240.13a–14(g) and § 240.15d–14(g) of this chapter) is not required to disclose the information required by this Item 15(c).

3. For purposes of this Item 15(c), the term "code of ethics" means a codification of such standards that is reasonably designed to deter wrongdoing and to promote:

a. Honest and ethical conduct, including the ethical handling of actual or apparent conflicts of interest between personal and professional relationships;

b. Avoidance of conflicts of interest, including disclosure to an appropriate person or persons identified in the code of any material transaction or relationship that reasonably could be expected to give rise to such a conflict;

c. Full, fair, accurate, timely, and understandable disclosure in reports and documents that a registrant files with, or submits to, the Commission and in other public communications made by the registrant;

d. Compliance with applicable governmental laws, rules and regulations;

e. The prompt internal reporting to an appropriate person or persons identified in the code of violations of the code; and

f. Accountability for adherence to the code.

* * * * *

Certifications*

I, [identify the certifying individual], certify that:

1. I have reviewed this annual report on Form 20–F of [identify registrant];

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures and internal controls and procedures for financial reporting (as defined in Exchange Act Rules 13a–14 and 15d–14) for the registrant and we have:

(a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the issuer, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) Designed such internal controls and procedures for financial reporting, or caused such internal controls and procedures for financial reporting to be designed under their supervision, to provide reasonable assurances that the registrant's financial statements are fairly presented in conformity with generally accepted accounting principles;

(c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and internal controls and procedures for financial reporting as of the end of the period covered by this report ("Evaluation Date");

(d) Presented in this report our conclusions about the effectiveness of

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the disclosure controls and procedures and internal controls and procedures for financial reporting based on our evaluation as of the Evaluation Date;

(e) Disclosed to the registrant's auditors and the audit committee of the board of directors (or persons fulfilling the equivalent function):

(i) All significant deficiencies and material weaknesses in the design or operation of internal controls and procedures for financial reporting which could adversely affect the registrant's ability to record, process, summarize and report financial information required to be disclosed by the registrant in the reports that it files or submits under the Act (15 U.S.C. 78a *et seq.*), within the time periods specified in the U.S. Securities and Exchange Commission's rules and forms; and

(ii) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls and procedures for financial reporting; and

(f) Indicated in this report any significant changes in the registrant's internal controls and procedures for financial reporting or in other factors that could significantly affect internal controls and procedures for financial reporting made during the period covered by this report, including any actions taken to correct significant deficiencies and material weaknesses in the registrant's internal controls and procedures for financial reporting.

Date: _____

_____

[Signature]

_____

[Title]

* Provide a separate certification for each principal executive officer and principal financial officer of the registrant. See Rules 13a–14 and 15d–14. The required certification must be in the exact form set forth above.

Instructions as to Exhibits

* * * * *

10. Any written code of ethics, or amendment to that code of ethics, that applies to the registrant's principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions, subject to disclosure under Item 15(c) of this Form.

* * * * *

25. Amend Form 40–F (referenced in § 249.240f) by:

a. Adding paragraphs (7), (8) and (9) to General Instruction B; and

b. Revising the "Certifications" section.

The additions and revisions read as follows.

Note: The text of Form 40–F does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 40–F

* * * * *

General Instructions

* * * * *

B. Information To Be Filed on This Form

* * * * *

(7) Controls and Procedures

(a) *Evaluation of Disclosure Controls and Procedures and Internal Controls and Procedures for Financial Reporting.* Disclose the conclusions of the registrant's principal executive officer or officers and principal financial officer or officers, or persons performing similar functions, about the effectiveness of the registrant's disclosure controls and procedures and internal controls and procedures for financial reporting based on management's evaluation of these controls and procedures in accordance with §§ 240.13a–15 or 240.15d–15 of this chapter as of the end of the period covered by the annual report that includes the disclosure required by this paragraph.

(b) *Changes to Internal Controls and Procedures for Financial Reporting.* Disclose any significant changes to the registrant's internal controls and procedures for financial reporting made during the period covered by the annual report that includes the disclosure required by this paragraph, including any actions taken to correct significant deficiencies and material weaknesses in the registrant's internal controls and procedures for financial reporting.

(c) *Report on management's responsibilities.* Furnish an internal control report of management that includes:

(1) A statement of management's responsibilities for establishing and maintaining adequate internal controls and procedures for financial reporting for the registrant;

(2) Conclusions about the effectiveness of the registrant's internal controls and procedures for financial reporting based on management's evaluation of those controls and procedures in accordance with §§ 240.13a–15 of 240.15d–15 of this chapter as of the end of the registrant's most recent fiscal year;

(3) A statement that the registered public accounting firm that prepared or issued the registrant's audit report relating to the financial statements included in the report containing the disclosure required by this Instruction B.(7)(c) has attested to, and reported on, management's evaluation of the registrant's internal controls and procedures for financial reporting;

(4) The attestation report of the registered public accounting firm that audited or reviewed the financial statements included in the annual report containing the disclosure required by this Instruction B.(7)(c).

Notes to Instruction B.(7)

1. You do not need to provide the information called for by this Instruction B.(7) unless you are using this form as an annual report.

2. A registrant that is an Asset-Backed Issuer (as defined in § 240.13a–14(g) and § 240.15d–14(g)) is not required to disclose the information required by this Instruction B.(7).

3. For purposes of this Instruction B.(7), the terms "disclosure controls and procedures" and "internal controls and procedures for financial reporting" shall have the meanings specified in § 240.13a–14 and § 240.15d–14 of this chapter.

4. If the conclusions of the registrant's principal executive and financial officers are reflected in the conclusions disclosed pursuant to paragraph (c)(2) of this Instruction B.(7), the registrant does not have to include any separate disclosure required by paragraph (a) of this Item regarding the effectiveness of the registrant's internal controls and procedures for financial reporting as of the end of the registrant's most recent fiscal year.

5. The registrant is encouraged, but not required, to include the annual report disclosure required by paragraph (b) of this Instruction B.(7) in the internal control report required by paragraph (c) of this Instruction B.(7), rather than disclosing it elsewhere in the annual report.

(8) Audit Committee Financial Experts

(a) Disclose the number and names of the persons that the board of directors has determined to be the financial experts serving on the registrant's audit committee, as defined in section 3(a)(58) of the Exchange Act. Also disclose whether the financial expert or experts are independent as that term is used in section 10A(m)(3) of the Exchange Act, and if not, an explanation of why they are not. If the registrant's board of directors has not determined that a financial expert is serving on its audit committee, the registrant must disclose that fact and explain why it does not have such an expert.

Notes to Instruction B.(8)

1. You do not need to provide the information called for by this Instruction B.(8) unless you are using this form as an annual report.

2. For purposes of the determination by the board of directors under this Instruction B.(8), the term "financial expert" means a person who has, through education and experience as a public accountant or auditor, or a principal financial officer, controller, or principal accounting officer, of a company that, at the time the person held such position, was required to file reports pursuant to section 13(a) or 15(d) of the Exchange Act, or experience in one or more positions that involve the performance of similar functions (or that result, in the judgment of the board of directors, in the person's having similar expertise and experience), the following attributes:

a. An understanding of financial statements and generally accepted accounting principles used by the registrant in its primary financial statements;

b. Experience applying such generally accepted accounting principles in connection with the accounting for estimates, accruals, and reserves that are generally comparable to the estimates, accruals and reserves, if any, used in the registrant's financial statements;

c. Experience preparing or auditing financial statements that present accounting issues that are generally comparable to those raised by the registrant's financial statements;

d. Experience with internal controls and procedures for financial reporting; and

e. An understanding of audit committee functions.

3. If the board of directors has determined that a person is a financial expert because, in the board's judgment, he or she has similar expertise and experience to those enumerated, the registrant must disclose the basis for that determination.

4. In evaluating the education and experience of a person, the board of directors should consider the following factors in the aggregate:

a. The level of the person's accounting or financial education, including whether the person has earned an advanced degree in finance or accounting;

b. Whether the person is a certified public accountant, or the equivalent, in good standing, and the length of time that the person actively has practiced as a certified public accountant, or the equivalent;

c. Whether the person is certified or otherwise identified as having accounting or financial experience by a recognized private body that establishes and administers standards in respect of such expertise, whether that person is in good standing with the recognized private body, and the length of time that the person has been actively certified or identified as having this expertise;

d. Whether the person has served as a principal financial officer, controller or principal accounting officer of a company that, at the time the person held such position, was required to file reports pursuant to section 13(a) or 15(d) of the Exchange Act, and if so, for how long;

e. The person's specific duties while serving as a public accountant, auditor, principal financial officer, controller, principal accounting officer or position involving the performance of similar functions;

f. The person's level of familiarity and experience with all applicable laws and regulations regarding the preparation of financial statements that must be included in reports filed under section 13(a) or 15(d) of the Exchange Act;

g. The level and amount of the person's direct experience reviewing, preparing, auditing or analyzing financial statements that must be included in reports filed under section 13(a) or 15(d) of the Exchange Act;

h. The person's past or current membership on one or more audit committees of companies that, at the time the person held such membership, were required to file reports pursuant to section 13(a) or 15(d) of the Exchange Act;

i. The person's level of familiarity and experience with the use and analysis of financial statements of public companies;

j. Whether the person has any other relevant qualifications or experience that would assist him or her in understanding and evaluating the registrant's financial statements and other financial information and to make knowledgeable and thorough inquiries whether:

i. The financial statements fairly present the financial condition, results of operations and cash flows of the registrant in accordance with generally accepted accounting principles; and

ii. The financial statements and other financial information, taken together, fairly present the financial condition, results of operations and cash flows of the registrant; and

k. The person's level of experience with reconciliation of financial statements with U.S. generally accepted accounting principles.

5. Although the board of directors should consider the factors listed in Note 4, those factors are not replacements for, and a financial expert must satisfy, all of the attributes listed in Note 2 to this Instruction B.(8).

6. In the case of foreign private issuers with two-tier boards of directors, for purposes of this Instruction B.(8), the term "board of directors" means the supervisory or non-management board.

7. A registrant that is an Asset-Backed Issuer (as defined in § 240.13a–14(g) and § 240.15d–14(g) of this chapter) is not required to disclose the information required by this Instruction B.(8).

(9) Code of Ethics

(a) Disclose whether the registrant has adopted a written code of ethics that applies to the registrant's principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions. Such code of ethics, or amendment to that code of ethics, must be attached as an exhibit and filed with this Form. If the registrant has not adopted such a code of ethics, explain why it has not done so.

(b) If, during the last fiscal year, the registrant has amended its code of ethics that applies to its principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions, or granted a waiver from a provision of the code of ethics to one of these officers or persons, the registrant must briefly describe the nature of the amendment or waiver. Disclosure regarding waivers must include the name of the person to whom the waiver was granted, and the date of the waiver.

Notes to Instruction B.(9)

1. You do not need to provide the information called for by this Instruction B.(9) unless you are using this form as an annual report.

2. A registrant that is an Asset-Backed Issuer (as defined in § 240.13a–14(g) and § 240.15d–14(g) of this chapter) is not required to disclose the information required by this Instruction B.(9).

3. For purposes of the required disclosures, the term "code of ethics" means a codification of such standards that is reasonably designed to deter wrongdoing and to promote:

(a) Honest and ethical conduct, including the ethical handling of actual or apparent conflicts of interest between personal and professional relationships;

(b) Avoidance of conflicts of interest, including disclosure to an appropriate person or persons identified in the code of any material transaction or relationship that reasonably could be expected to give rise to such a conflict;

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(c) Full, fair, accurate, timely, and understandable disclosure in reports and documents that a registrant files with, or submits to, the Commission and in other public communications made by the registrant;

(d) Compliance with applicable governmental laws, rules and regulations;

(e) The prompt internal reporting to an appropriate person or persons identified in the code of violations of the code; and

(f) Accountability for adherence to the code.

* * * * *

Certifications*

I, [identify the certifying individual], certify that:

1. I have reviewed this annual report on Form 40–F of [identify registrant];

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures and internal controls and procedures for financial reporting (as defined in Exchange Act Rules 13a–14 and 15d–14) for the registrant and we have:

(a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the issuer, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) Designed such internal controls and procedures for financial reporting, or caused such internal controls and procedures for financial reporting to be designed under their supervision, to provide reasonable assurances that the registrant's financial statements are fairly presented in conformity with generally accepted accounting principles;

(c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and internal controls and procedures for financial reporting as of the end of the period covered by this report ("Evaluation Date");

(d) Presented in this report our conclusions about the effectiveness of the disclosure controls and procedures and internal controls and procedures for financial reporting based on our evaluation as of the Evaluation Date;

(e) Disclosed to the registrant's auditors and the audit committee of the board of directors (or persons fulfilling the equivalent function):

(i) All significant deficiencies and material weaknesses in the design or operation of internal controls and procedures for financial reporting which could adversely affect the registrant's ability to record, process, summarize and report financial information required to be disclosed by the registrant in the reports that it files or submits under the Act (15 U.S.C. 78a *et seq.*), within the time periods specified in the U.S. Securities and Exchange Commission's rules and forms; and

(ii) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls and procedures for financial reporting; and

(f) Indicated in this report any significant changes in the registrant's internal controls and procedures for financial reporting or in other factors that could significantly affect internal controls and procedures for financial reporting made during the period covered by this report, including any actions taken to correct significant deficiencies and material weaknesses in the registrant's internal controls and procedures for financial reporting.

Date: _____

_____

[Signature]

_____

[Title]

* Provide a separate certification for each principal executive officer and principal financial officer of the registrant. See Rules 13a–14 and 15d–14. The required certification must be in the exact form set forth above.

26. Amend Form 10–K (referenced in § 249.310) by:

a. Revising Item 10 in Part III;

b. Redesignating Item 15 as Item 16 in Part IV;

c. Adding new Item 15 to Part III; and

d. Revising the "Certifications" section.

The revisions and additions read as follows:

Note: The text of Form 10–K does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 10–K

Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

* * * * *

Part III

* * * * *

Item 10. Directors and Executive Officers of the Registrant

Furnish the information required by Items 401, 405 and 406 of Regulation S–K (§§ 229.401, 229.405 and 229.406 of this chapter).

* * * * *

Item 15. Audit Committee Financial Experts

Furnish the information required by Item 309 of Regulation S–K (§ 229.309 of this chapter).

* * * * *

Certifications*

I, [identify the certifying individual], certify that:

1. I have reviewed this annual report on Form 10–K of [identify registrant];

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures and internal controls and procedures for financial reporting (as defined in Exchange Act Rules 13a–14 and 15d–14) for the registrant and we have:

(a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the issuer, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) Designed such internal controls and procedures for financial reporting, or caused such internal controls and procedures for financial reporting to be designed under their supervision, to provide reasonable assurances that the registrant's financial statements are fairly presented in conformity with generally accepted accounting principles;

(c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and internal controls and procedures for financial reporting as of the end of the period covered by this report ("Evaluation Date");

(d) Presented in this report our conclusions about the effectiveness of the disclosure controls and procedures and internal controls and procedures for financial reporting based on our evaluation as of the Evaluation Date;

(e) Disclosed to the registrant's auditors and the audit committee of the board of directors (or persons fulfilling the equivalent function):

(i) All significant deficiencies and material weaknesses in the design or operation of internal controls and procedures for financial reporting which could adversely affect the registrant's ability to record, process, summarize and report financial information required to be disclosed by the registrant in the reports that it files or submits under the Act (15 U.S.C. 78a *et seq.*), within the time periods specified in the U.S. Securities and Exchange Commission's rules and forms; and

(ii) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls and procedures for financial reporting; and

(f) Indicated in this report any significant changes in the registrant's internal controls and procedures for financial reporting or in other factors that could significantly affect internal controls and procedures for financial reporting made during the period covered by this report, including any actions taken to correct significant deficiencies and material weaknesses in the registrant's internal controls and procedures for financial reporting.

Date: _____

_____

[Signature]

_____

[Title]

* Provide a separate certification for each principal executive officer and principal financial officer of the registrant. See Rules 13a–14 and 15d–14. The required certification must be in the exact form set forth above.

* * * * *

29. Amend Form 10–KSB (referenced in § 249.310b) by:

a. Revising Item 9 in Part III;

b. Adding Item 15 in Part III; and

c. Revising the "Certifications" section.

The revisions and addition read as follows:

Note: The text of Form 10–KSB does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 10–KSB

[ ] Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

* * * * *

Part III

* * * * *

Item 9. Directors and Executive Officers of the Registrant

Furnish the information required by Items 401, 405 and 406 of Regulation S–B (§§ 228.401, 228.405, and 228.406 of this chapter).

* * * * *

Item 15. Audit Committee Financial Experts

Provide the information required by Item 309 of Regulation S–B (§ 228.309 of this chapter).

* * * * *

Certifications*

I, [identify the certifying individual], certify that:

1. I have reviewed this annual report on Form 10–KSB of [identify registrant];

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the small business issuer as of, and for, the periods presented in this report;

4. The small business issuer's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures and internal controls and procedures for financial reporting (as defined in Exchange Act Rules 13a–14 and 15d–14) for the small business issuer and we have:

(a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the issuer, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) Designed such internal controls and procedures for financial reporting, or caused such internal controls and procedures for financial reporting to be designed under their supervision, to provide reasonable assurances that the small business issuer's financial statements are fairly presented in conformity with generally accepted accounting principles;

(c) Evaluated the effectiveness of the small business issuer's disclosure controls and procedures and internal controls and procedures for financial reporting as of the end of the period covered by this report ("Evaluation Date");

(d) Presented in this report our conclusions about the effectiveness of the disclosure controls and procedures and internal controls and procedures for financial reporting based on our evaluation as of the Evaluation Date;

(e) Disclosed to the small business issuer's auditors and the audit committee of the board of directors (or persons fulfilling the equivalent function):

(i) All significant deficiencies and material weaknesses in the design or operation of internal controls and procedures for financial reporting which could adversely affect the small business issuer's ability to record, process, summarize and report financial information required to be disclosed by the small business issuer in the reports that it files or submits under the Act (15 U.S.C. 78a *et seq.*), within the time periods specified in the U.S. Securities and Exchange Commission's rules and forms; and

(ii) Any fraud, whether or not material, that involves management or other employees who have a significant role in the small business issuer's internal controls and procedures for financial reporting; and

(f) Indicated in this report any significant changes in the small business issuer's internal controls and procedures for financial reporting or in other factors that could significantly affect internal controls and procedures for financial reporting made during the period covered by this report, including any actions taken to correct significant deficiencies and material weaknesses in the small business issuer's internal controls and procedures for financial reporting.

Date: _____

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[Signature]

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* Provide a separate certification for each principal executive officer and principal financial officer of the small business issuer. *See* Rules 13a–14 and 15d–14. The required certification must be in the exact form set forth above.

* * * * *

30. Amend § 249.322 by revising paragraph (a) to read as follows:

§ 249.322 Form 12b–25—Notification of late filing.

(a) This form shall be filed pursuant to § 240.12b–25 of this chapter by issuers who are unable to file timely all or any required portion of an annual or transition report on Form 10–K and Form 10–KSB, 20–F, or 11–K (§§ 249.310, 249.310b, 249.220f or 249.311) or a quarterly or transition report on Form 10–Q and Form 10–QSB (§§ 249.308a and 249.308b) or a current report on Form 8–K (§ 249.308) pursuant to section 13 or 15(d) of the Act (15 U.S.C. 78m or 78o(d)) or a semi-annual, annual or transition report on Form N–SAR or Form N–CSR (17 CFR 274.101 or 274.128) pursuant to section 13 or 15(d) of the Act or section 30 of the Investment Company Act of 1940 (15 U.S.C. 80a–29). The filing shall consist of a signed original and three conformed copies, and shall be filed with the Commission at Washington, DC 20549, no later than one business day after the due date for the periodic report in question. Copies of this form may be obtained from "Publications," Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549 and at our Web site at *http://www.sec.gov.*

* * * * *

31. Amend Form 12b–25 (referenced in § 249.322) by:

a. Revising the preamble;

b. Revising paragraph (b) of Part II; and

c. Revising Part III to read as follows:

Note: The text of Form 12b–25 does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 12b–25

Notification of Late Filing

(Check One): __ Form 10–K __ Form 20–F __ Form 11–K __ Form 10–Q __ Form 8–K __ Form N–SAR __ Form N–CSR

* * * * *

Part II—Rules 12b–25(b) and (c)

* * * * *

(b) The subject annual report, semi-annual report, transition report on Form 10–K, Form 20–F, Form 11–K, Form N–SAR or Form N–CSR, or portion thereof, will be filed on or before the fifteenth calendar day following the prescribed due date; or the subject quarterly report or transition report on Form 10–Q, or portion thereof, will be filed on or before the fifth calendar day following the prescribed due date; or the subject current report on Form 8–K will be filed on or before the second business day following the prescribed due date; and

* * * * *

Part III—Narrative

State below in reasonable detail why Forms 10–K, 20–F, 11–K, 10–Q, 8–K, N–SAR, N–CSR, or the transition report or portion thereof, could not be filed within the prescribed time period.

* * * * *

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

32. The general authority citation for part 270 is revised to read as follows:

Authority: 15 U.S.C. 80a–1 *et seq.*, 80a–34(d), 80a–37, and 80a–39, unless otherwise noted;

* * * * *

33. Amend § 270.30a–2 by:

a. Revising paragraph (b)(4);

b. Removing paragraphs (b)(5) and (b)(6); and

c. Adding paragraph (d).

The revisions and additions read as follows:

§ 270.30a–2 Certification of disclosure in annual and semi-annual reports.

* * * * *

(b) * * *

(4) He or she and the other certifying officers are responsible for establishing and maintaining disclosure controls and procedures and internal controls and procedures for financial reporting (as such terms are defined in paragraphs (c) and (d) of this section) for the investment company and have:

(i) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under their supervision, to ensure that material information relating to the investment company, including its consolidated subsidiaries, is made known to them by others within those entities, particularly during the period in which periodic reports are being prepared;

(ii) Designed such internal controls and procedures for financial reporting, or caused such internal controls and procedures for financial reporting to be designed under their supervision, to provide reasonable assurances that the investment company's financial statements are fairly presented in conformity with generally accepted accounting principles;

(iii) Evaluated the effectiveness of the investment company's disclosure controls and procedures as of the end of the period covered by the report ("Evaluation Date");

(iv) Presented in the report their conclusions about the effectiveness of the disclosure controls and procedures based on their evaluation as of the Evaluation Date; and

(v) Disclosed to the investment company's auditors and the audit committee of the board of directors (or persons fulfilling the equivalent function):

(A) All significant deficiencies and material weaknesses in the design or operation of internal controls and procedures for financial reporting which could adversely affect the investment company's ability to record, process, summarize, and report financial information required to be disclosed by the investment company in the reports that it files or submits under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) and the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*), within the time periods specified in the Commission's rules and forms; and

(B) Any fraud, whether or not material, that involves management or other employees who have a significant role in the investment company's internal controls and procedures for financial reporting; and

(vi) Indicated in the report any significant changes in the investment company's internal controls and procedures for financial reporting or in other factors that could significantly affect internal controls and procedures for financial reporting made during the period covered by the report, including any actions taken to correct significant deficiencies and material weaknesses in the investment company's internal controls and procedures for financial reporting.

* * * * *

(d) For purposes of this section, the term *internal controls and procedures for financial reporting* means controls that pertain to the preparation of financial statements for external purposes that are fairly presented in conformity with generally accepted accounting principles as addressed by the Codification of Statements on Auditing Standards § 319 or any superseding definition or other literature that is issued or adopted by the Public Company Accounting Oversight Board.

34. Amend § 270.30a–3 (as proposed in 67 FR 57298 (9/9/02)) by revising paragraph (b) to read as follows:

§ 270.30a–3 Disclosure controls and procedures related to preparation of required filings.

* * * * *

(b) In connection with each report, including transition reports, that requires certification under § 270.30a–2, the registered investment company's management must conduct an evaluation, with the participation of the registered investment company's principal executive officer or officers and principal financial officer or officers, or persons performing similar functions, of the effectiveness, as of the end of the period covered by the report, of the design and operation of the registered investment company's disclosure controls and procedures.

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

35. The authority citation for Part 274 is revised to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78*l*, 78m, 78n, 78o(d), 80a–8, 80a–24, 80a–26, and 80a–29, unless otherwise noted.

Section 274.101 is also issued under secs. 3(a), 302, 406, and 407, Pub. L. No. 107–204, 116 Stat. 745.

Section 274.128 is also issued under secs. 3(a), 302, 406, and 407, Pub. L. No. 107–204, 116 Stat. 745.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

36. Amend Form N–SAR (referenced in §§ 249.330 and 274.101) by:

a. Revising the reference "133" in item 6 to read "134";

b. Redesignating item 133 as item 134;

c. Adding new item 133;

d. Revising newly redesignated item 134;

e. Revising the reference "items 77 and 102" in paragraph (1) of General Instruction D, "Preparation of Report," to read "items 77, 102, and 134(b)";

f. Revising the reference "133" in the fifth paragraph of General Instruction A to read "134";

g. Revising paragraphs (a)(i) and (a)(ii) of sub-item 77Q3 in Instructions to Specific Items;

h. Revising the Certification contained in paragraph (a)(iii) of sub-item 77Q3 in Instructions to Specific Items;

i. Designating the current Instruction to sub-item 102P3 as Instruction (c);

j. Adding Instructions (a) and (b) to sub-item 102P3;

k. Adding an Instruction to item 133;

l. Revising the Instruction to newly redesignated item 134; and

m. Revising the reference "133" in the Instructions to the Signature Page to read "134."

These additions and revisions read as follows:

Note: The text of Form N–SAR does not, and this amendment will not, appear in the Code of Federal Regulations.

Form N–SAR

* * * * *

Item 133: Code of Ethics

(a) Disclose whether each of the registrant's sponsor, depositor, trustee, and principal underwriter has adopted a written code of ethics that applies to the principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions of, respectively, the registrant's sponsor, depositor, trustee, and principal underwriter. If any of the registrant's sponsor, depositor, trustee, and principal underwriter has not adopted such a code of ethics, explain why it has not done so.

(b) If the registrant's sponsor, depositor, trustee, or principal underwriter has amended its code of ethics that applies to its principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions, or granted a waiver, including an implicit waiver, from a provision of the code of ethics to one of these officers or persons, the registrant must briefly describe the nature of the amendment or waiver. Disclosure regarding waivers must include the name of the person to whom the waiver was granted, and the date of the waiver.

(c) If the registrant plans to elect to disclose any amendments to, or waivers from, its sponsor's, depositor's, trustee's, or principal underwriter's codes of ethics on the registrant's Internet website, disclose the registrant's Internet address and its intention to disclose these events on its website.

Item 134

Include the following exhibits:

(a)The certifications required by rule 30a–2 under the Investment Company Act (17 CFR 270.30a–2).

(b) Any written code of ethics, or amendment to that code of ethics, that applies to the principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions of registrant's sponsor, depositor, trustee, or principal underwriter, subject to disclosure under Item 133 of this Form.

* * * * *

Instructions to Specific Items

* * * * *

Sub-Item 77Q3

* * * * *

(a) * * *

(i) Disclose the conclusions of the registrant's principal executive officer or officers and principal financial officer or officers, or persons performing similar functions, about the effectiveness of the registrant's disclosure controls and procedures (as defined in rule 30a–2(c) under the Act (17 CFR 270.30a–2(c))) based on management's evaluation of these controls and procedures in accordance with Rule 13a–15(c) or 15d–15(c) under the 1934 Act (17 CFR 240.13a–15(c) or 15d–15(c)) and Rule 30a–3(b) under the Act (17 CFR 270.30a–3(b)) as of the end of the period covered by the report that includes the disclosure required by this paragraph.

(ii) Disclose any significant changes to the registrant's internal controls and procedures for financial reporting (as defined in rule 30a–2(d) under the Act (17 CFR 270.30a–2(d))) made during the period covered by the report that includes the disclosure required by this paragraph, including any actions taken to correct significant deficiencies and material weaknesses in the registrant's internal controls and procedures for financial reporting.

(iii) * * *

Certifications

I, [identify the certifying individual], certify that:

1. I have reviewed this report on Form N–SAR, including exhibits, of [identify registrant];

2. Based on my knowledge, this report, including exhibits, does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial information included in this report, including exhibits, and the financial statements on which the financial information is based, fairly present in all material respects the financial condition, results of operations, changes in net assets, and cash flows (if the financial statements are required to include a statement of cash flows) of the registrant as of, and for, the periods presented in this report;

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4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures and internal controls and procedures for financial reporting (as defined in rule 30a–2(c) and (d) under the Investment Company Act) for the registrant and we have:

(a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) Designed such internal controls and procedures for financial reporting, or caused such internal controls and procedures for financial reporting to be designed under our supervision, to provide reasonable assurances that the registrant's financial statements are fairly presented in conformity with generally accepted accounting principles;

(c) Evaluated the effectiveness of the registrant's disclosure controls and procedures as of the end of the period covered by this report ("Evaluation Date");

(d) Presented in this report our conclusions about the effectiveness of the disclosure controls and procedures based on our evaluation as of the Evaluation Date;

(e) Disclosed to the registrant's auditors and the audit committee of the board of directors (or persons fulfilling the equivalent function):

(i) All significant deficiencies and material weaknesses in the design or operation of internal controls and procedures for financial reporting which could adversely affect the registrant's ability to record, process, summarize, and report financial information required to be disclosed by the registrant in the reports that it files or submits under the Securities Exchange Act of 1934 and the Investment Company Act of 1940, within the time periods specified in the U.S. Securities and Exchange Commission's rules and forms; and

(ii) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls and procedures for financial reporting; and

(f) Indicated in this report any significant changes in the registrant's internal controls and procedures for financial reporting or in other factors that could significantly affect internal controls and procedures for financial reporting made during the period covered by this report, including any actions taken to correct significant deficiencies and material weaknesses in the registrant's internal controls and procedures for financial reporting.

Date: _____

_____

[Signature]

_____

[Title]

* * * * *

Sub-Item 102P3

* * * * *

Instructions: (a)(1) Disclose whether each of the registrant, its investment adviser, and its principal underwriter has adopted a written code of ethics that applies to the principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions of, respectively, the registrant, its investment adviser, and its principal underwriter. If any of the registrant, its investment adviser, and its principal underwriter has not adopted such a code of ethics, explain why it has not done so.

(2) If the registrant, its investment adviser, or its principal underwriter has amended its code of ethics that applies to its principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions, or granted a waiver, including an implicit waiver, from a provision of the code of ethics to one of these officers or persons, the registrant must briefly describe the nature of the amendment or waiver. Disclosure regarding waivers must include the name of the person to whom the waiver was granted, and the date of the waiver. The registrant does not need to provide any information pursuant to this paragraph (a)(2) if it discloses the required information on its Internet website within two business days following the date of the amendment or waiver and the registrant has disclosed in its most recently filed report on this form its Internet address and intention to provide disclosure in this manner. If the amendment or waiver occurs on a Saturday, Sunday, or holiday on which the Commission is not open for business, then the two business day period shall begin to run on and include the first business day thereafter. If the registrant elects to disclose this information through its website, such information must remain available on the website for at least a 12-month period. The registrant must retain the information for a period of not less than six years following the end of the fiscal year in which the amendment or waiver occurred. Upon request, the registrant must furnish to the Commission or its staff a copy of any or all information retained pursuant to this requirement.

(3) If the registrant plans to elect to disclose any amendments to, or waivers from, its code of ethics, or its investment adviser's or principal underwriter's codes of ethics, on the registrant's Internet website, disclose the registrant's Internet address and its intention to disclose these events on its website.

(4) Include any written code of ethics, or amendment to that code of ethics, that applies to the principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions of the registrant, its investment adviser, or its principal underwriter, subject to disclosure under paragraphs (a)(1) and (a)(2) of this Instruction.

(5) The requirements of paragraphs (a)(1) through (a)(4) of this Instruction do not apply with respect to a code of ethics of any principal underwriter of the registrant unless:

(i) The principal underwriter is an affiliated person of the registrant or the registrant's investment adviser; or

(ii) An officer, director, or general partner of the principal underwriter serves as an officer, director, or general partner of the registrant or of the registrant's investment adviser.

(6) For purposes of this Instruction 102P3(a), the term "code of ethics" means a codification of such standards that is reasonably designed to deter wrongdoing and to promote:

(i) Honest and ethical conduct, including the ethical handling of actual or apparent conflicts of interest between personal and professional relationships;

(ii) Avoidance of conflicts of interest, including disclosure to an appropriate person or persons identified in the code of any material transaction or relationship that reasonably could be expected to give rise to such a conflict;

(iii) Full, fair, accurate, timely, and understandable disclosure in reports and documents that are filed with, or submitted to, the Commission and in other public communications;

(iv) Compliance with applicable governmental laws, rules and regulations;

(v) The prompt internal reporting to an appropriate person or persons identified in the code of violations of the code; and

(vi) Accountability for adherence to the code.

(7) The information required by paragraph (a)(1) of this Instruction is only required for a report on this form filed for the registrant's fiscal year.

(b)(1) Disclose the number and names of the persons that the registrant's board of directors has determined to be the financial experts serving on the registrant's audit committee, as defined in section 3(a)(58) of the 1934 Act, as of the end of the period covered by the report. Also disclose whether the financial expert or experts are "independent," and if not, an explanation of why they are not. For this purpose, a financial expert would be considered to be "independent" if he or she (i) meets the criteria set forth in section 10A(m)(3)(B)(i) of the 1934 Act; and (ii) is not an "interested person" of the investment company as defined in section 2(a)(19) of the Act. If the registrant's board of directors has not determined that a financial expert is serving on its audit committee, the registrant must disclose that fact and explain why it does not have such an expert.

(2) For purposes of the determination by the board of directors under this Instruction 102P3(b), the term "financial expert" means a person who has, through education and experience as a public accountant or auditor, or a principal financial officer, controller, or principal accounting officer, of a company that, at the time the person held such position, was required to file reports pursuant to section 13(a) or 15(d) of the 1934 Act, or experience in one or more positions that involve the performance of similar functions (or that results, in the judgment of the board of directors, in the person's having similar expertise and experience), the following attributes:

(i) An understanding of generally accepted accounting principles and financial statements;

(ii) Experience applying such generally accepted accounting principles in connection with the accounting for estimates, accruals, and reserves that are generally comparable to the estimates, accruals, and reserves, if any, used in the registrant's financial statements;

(iii) Experience preparing or auditing financial statements that present accounting issues that are generally comparable to those raised by the registrant's financial statements;

(iv) Experience with internal controls and procedures for financial reporting; and

(v) An understanding of audit committee functions.

(3) If the board of directors has determined that a person is a financial expert because, in the board's judgment, he or she has similar expertise and experience to those enumerated, the registrant must disclose the basis for that determination.

(4) In evaluating the education and experience of a person, the board of directors should consider the following factors in the aggregate:

(i) The level of the person's accounting or financial education, including whether the person has earned an advanced degree in finance or accounting;

(ii) Whether the person is a certified public accountant, or the equivalent, in good standing, and the length of time that the person actively has practiced as a certified public accountant, or the equivalent;

(iii) Whether the person is certified or otherwise identified as having accounting or financial experience by a recognized private body that establishes and administers standards in respect of such expertise, whether that person is in good standing with the recognized private body, and the length of time that the person has been actively certified or identified as having this expertise;

(iv) Whether the person has served as a principal financial officer, controller, or principal accounting officer of a company that, at the time the person held such position, was required to file reports pursuant to section 13(a) or 15(d) of the 1934 Act, and if so, for how long;

(v) The person's specific duties while serving as a public accountant, auditor, principal financial officer, controller, principal accounting officer or position involving the performance of similar functions;

(vi) The person's level of familiarity and experience with all applicable laws and regulations regarding the preparation of financial statements that must be included in reports filed under section 13(a) or 15(d) of the 1934 Act;

(vii) The level and amount of the person's direct experience reviewing, preparing, auditing, or analyzing financial statements that must be included in reports filed under section 13(a) or 15(d) of the 1934 Act;

(viii) The person's past or current membership on one or more audit committees of companies that, at the time the person held such membership, were required to file reports pursuant to section 13(a) or 15(d) of the 1934 Act;

(ix) The person's level of familiarity and experience with the use and analysis of financial statements of public companies; and

(x) Whether the person has any other relevant qualifications or experience that would assist him or her in understanding and evaluating the registrant's financial statements and other financial information and to make knowledgeable and thorough inquiries whether: (A) the financial statements fairly present the financial condition, results of operations, and cash flows of the registrant in accordance with generally accepted accounting principles; and (B) the financial statements and other financial information, taken together, fairly present the financial condition, results of operations, and cash flows of the registrant.

(5) Although the board of directors should consider the factors listed in paragraph (b)(4) of this Instruction, those factors are not replacements for, and a financial expert must satisfy, all of the attributes listed in paragraph (b)(2) of this Instruction.

(c) * * *

* * * * *

Item 133

* * * * *

Instructions: (a) The requirements of Item 133 do not apply with respect to a code of ethics of any principal underwriter of the registrant unless:

(1) The principal underwriter is an affiliated person of the registrant or the registrant's sponsor, depositor, or trustee; or

(2) An officer, director, or general partner of the principal underwriter serves as an officer, director, or general partner of the registrant's sponsor, depositor, or trustee.

(b) For purposes of Item 133, the term "code of ethics" means a codification of such standards that is reasonably designed to deter wrongdoing and to promote:

(1) Honest and ethical conduct, including the ethical handling of actual or apparent conflicts of interest between personal and professional relationships;

(2) Avoidance of conflicts of interest, including disclosure to an appropriate person or persons identified in the code of any material transaction or relationship that reasonably could be expected to give rise to such a conflict;

(3) Full, fair, accurate, timely, and understandable disclosure in reports and documents that are filed with, or submitted to, the Commission and in other public communications;

(4) Compliance with applicable governmental laws, rules and regulations;

(5) The prompt internal reporting to an appropriate person or persons identified in the code of violations of the code; and

(6) Accountability for adherence to the code.

(c) The registrant does not need to provide any information pursuant to

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paragraph (b) of this Item if it discloses the required information on its Internet website within two business days following the date of the amendment or waiver and the registrant has disclosed in its most recently filed report on this form its Internet address and intention to provide disclosure in this manner. If the amendment or waiver occurs on a Saturday, Sunday, or holiday on which the Commission is not open for business, then the two business day period shall begin to run on and include the first business day thereafter. If the registrant elects to disclose this information through its website, such information must remain available on the website for at least a 12-month period. The registrant must retain the information for a period of not less than six years following the end of the fiscal year in which the amendment or waiver occurred. Upon request, the registrant must furnish to the Commission or its staff a copy of any or all information retained pursuant to this requirement.

Item 134

In responding to sub-item 134(a), include the exhibit required by instruction (a) for sub-item 77Q3. The registrant may omit paragraph 3 of the certification required by instruction (a)(iii).

* * * * *

37. Amend Form N–CSR (referenced in §§ 249.331 and 274.128; as proposed in 67 FR 57298 (9/9/02) and 67 FR 60828 (9/26/02)) by:

a. Revising General Instruction D;
b. Redesignating General Instruction E as General Instruction F;
c. Adding new General Instruction E;
d. Removing Item 1;
e. Redesignating Items 2, 3, and 4 as Items 1, 2, and 5;
f. Adding new Items 3, 4 and 6;
g. Revising newly redesignated Item 5; and
h. Revising the "Certifications" section, to read as follows:

Note: The text of Form N–CSR does not, and this amendment will not, appear in the Code of Federal Regulations

Form N–CSR

* * * * *

General Instructions

* * * * *

D. Incorporation by Reference

A registrant may incorporate by reference information required by Item 6(b), but no other Items of the Form shall be answered by incorporating any information by reference. All incorporation by reference must comply with the requirements of this Form and the following rules on incorporation by reference: Rule 10(d) of Regulation S–K under the Securities Act of 1933 [17 CFR 229.10(d)] (general rules on incorporation by reference, which, among other things, prohibit, unless specifically required by this Form, incorporating by reference a document that includes incorporation by reference to another document, and limits incorporation to documents filed within the last 5 years, with certain exceptions); Rule 303 of Regulation S–T [17 CFR 232.303] (specific requirements for electronically filed documents); Rules 12b–23 and 12b–32 under the Securities Exchange Act of 1934 (additional rules on incorporation by reference for reports filed pursuant to Sections 13 and 15(d) of the Securities Exchange Act of 1934); and Rules 0–4, 8b–23, and 8b–32 under the Investment Company Act of 1940 [17 CFR 270.0–4, 270.8b–23, and 270.8b–32] (additional rules on incorporation by reference for investment companies).

E. Definitions

Unless the context clearly indicates the contrary, terms used in this Form N–CSR have meanings as defined in the Investment Company Act of 1940 and the rules and regulations thereunder. Unless otherwise indicated, all references in the form to statutory sections or to rules are sections of the Investment Company Act of 1940 and the rules and regulations thereunder.

* * * * *

Item 3. Code of Ethics

(a) Disclose whether, as of the end of the period covered by the report, each of the registrant, its investment adviser, and its principal underwriter has adopted a written code of ethics that applies to the principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions of, respectively, the registrant, its investment adviser, and its principal underwriter. If any of the registrant, its investment adviser, and its principal underwriter has not adopted such a code of ethics, explain why it has not done so.

Instruction. The information required by this Item 3(a) is only required in a report on this Form N–CSR that is required by Item 6(a) to include a copy of an annual report transmitted to stockholders.

(b) If the registrant, its investment adviser, or its principal underwriter has, during the period covered by the report, amended its code of ethics that applies to its principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions or granted a waiver, including an implicit waiver, from a provision of the code of ethics to one of these officers or persons, the registrant must briefly describe the nature of the amendment or waiver. Disclosure regarding waivers must include the name of the person to whom the waiver was granted, and the date of the waiver.

(c) If the registrant plans to elect to disclose any amendments to, or waivers from, its code of ethics, or its investment adviser's or principal underwriter's codes of ethics, on the registrant's Internet website, disclose the registrant's Internet address and its intention to disclose these events on its website.

Instructions. 1. The requirements of this Item 3 do not apply with respect to a code of ethics of any principal underwriter of the registrant unless:

(a) The principal underwriter is an affiliated person of the registrant or the registrant's investment adviser; or

(b) An officer, director, or general partner of the principal underwriter serves as an officer, director, or general partner of the registrant or of the registrant's investment adviser.

2. For purposes of this Item 3, the term "code of ethics" means a codification of such standards that is reasonably designed to deter wrongdoing and to promote:

(a) Honest and ethical conduct, including the ethical handling of actual or apparent conflicts of interest between personal and professional relationships;

(b) Avoidance of conflicts of interest, including disclosure to an appropriate person or persons identified in the code of any material transaction or relationship that reasonably could be expected to give rise to such a conflict;

(c) Full, fair, accurate, timely, and understandable disclosure in reports and documents that are filed with, or submitted to, the Commission and in other public communications;

(d) Compliance with applicable governmental laws, rules and regulations;

(e) The prompt internal reporting to an appropriate person or persons identified in the code of violations of the code; and

(f) Accountability for adherence to the code.

3. The registrant does not need to provide any information pursuant to this Item if it discloses the required information on its Internet website within two business days following the date of the amendment or waiver and the registrant has disclosed in its most recently filed report on this Form N–CSR its Internet address and intention to provide disclosure in this manner. If the amendment or waiver occurs on a Saturday, Sunday, or holiday on which the Commission is not open for business, then the two business day period shall begin to run on and include the first business day thereafter. If the registrant elects to disclose this information through its website, such information must remain available on the website for at least a 12-month period. The registrant must retain the information for a period of not less than six years following the end of the fiscal year in which the amendment or waiver occurred. Upon request, the registrant must furnish to the Commission or its staff a copy of any or all information retained pursuant to this requirement.

Item 4. Audit Committee Financial Experts

Disclose the number and names of the persons that the registrant's board of directors has determined to be the financial experts serving on the registrant's audit committee, as defined in section 3(a)(58) of the Securities Exchange Act of 1934, as of the end of the period covered by the report. Also disclose whether the financial expert or experts are "independent," and if not, an explanation of why they are not. For this purpose, a financial expert would be considered to be "independent" if he or she (i) meets the criteria set forth in section 10A(m)(3)(B)(i) of the Securities Exchange Act of 1934; and (ii) is not an "interested person" of the investment company as defined in section 2(a)(19) of the Investment Company Act of 1940. If the registrant's board of directors has not determined that a financial expert is serving on its audit committee, the registrant must disclose that fact and explain why it does not have such an expert.

Instructions. 1. The information required by this Item 4 is only required in a report on this Form N-CSR that is required by Item 6(a) to include a copy of an annual report transmitted to stockholders.

2. For purposes of the determination by the board of directors under this Item 4, the term "financial expert" means a person who has, through education and experience as a public accountant or auditor, or a principal financial officer, controller, or principal accounting officer, of a company that, at the time the person held such position, was required to file reports pursuant to section 13(a) or 15(d) of the Securities Exchange Act of 1934, or experience in one or more positions that involve the performance of similar functions (or that results, in the judgment of the board of directors, in the person's having similar expertise and experience), the following attributes:

a. An understanding of generally accepted accounting principles and financial statements;

b. Experience applying such generally accepted accounting principles in connection with the accounting for estimates, accruals, and reserves that are generally comparable to the estimates, accruals, and reserves, if any, used in the registrant's financial statements;

c. Experience preparing or auditing financial statements that present accounting issues that are generally comparable to those raised by the registrant's financial statements;

d. Experience with internal controls and procedures for financial reporting; and

e. An understanding of audit committee functions.

3. If the board of directors has determined that a person is a financial expert because, in the board's judgment, he or she has similar expertise and experience to those enumerated, the registrant must disclose the basis for that determination.

4. In evaluating the education and experience of a person, the board of directors should consider the following factors in the aggregate:

a. The level of the person's accounting or financial education, including whether the person has earned an advanced degree in finance or accounting;

b. Whether the person is a certified public accountant, or the equivalent, in good standing, and the length of time that the person actively has practiced as a certified public accountant, or the equivalent;

c. Whether the person is certified or otherwise identified as having accounting or financial experience by a recognized private body that establishes and administers standards in respect of such expertise, whether that person is in good standing with the recognized private body, and the length of time that the person has been actively certified or identified as having this expertise;

d. Whether the person has served as a principal financial officer, controller, or principal accounting officer of a company that, at the time the person held such position, was required to file reports pursuant to section 13(a) or 15(d) of the Securities Exchange Act of 1934, and if so, for how long;

e. The person's specific duties while serving as a public accountant, auditor, principal financial officer, controller, principal accounting officer or position involving the performance of similar functions;

f. The person's level of familiarity and experience with all applicable laws and regulations regarding the preparation of financial statements that must be included in reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934;

g. The level and amount of the person's direct experience reviewing, preparing, auditing, or analyzing financial statements that must be included in reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934;

h. The person's past or current membership on one or more audit committees of companies that, at the time the person held such membership, were required to file reports pursuant to section 13(a) or 15(d) of the Securities Exchange Act of 1934;

i. The person's level of familiarity and experience with the use and analysis of financial statements of public companies; and

j. Whether the person has any other relevant qualifications or experience that would assist him or her in understanding and evaluating the registrant's financial statements and other financial information and to make knowledgeable and thorough inquiries whether: (i) the financial statements fairly present the financial condition, results of operations and cash flows of the registrant in accordance with generally accepted accounting principles; and (ii) the financial statements and other financial information, taken together, fairly present the financial condition, results of operations, and cash flows of the registrant.

5. Although the board of directors should consider the factors listed in Instruction 4, those factors are not replacements for, and a financial expert must satisfy, all of the attributes listed in Instruction 2 to this Item.

Item 5. Controls and Procedures

(a) Disclose the conclusions of the registrant's principal executive officer or officers and principal financial officer or officers, or persons performing similar functions, about the effectiveness of the registrant's disclosure controls and procedures (as defined in rule 30a–2(c) under the Investment Company Act of 1940 (17 CFR 270.30a–2(c))) based on management's evaluation of these controls and procedures in accordance with Rule 13a–15(c) or 15d–15(c) under the Securities Exchange Act of 1934 (17 CFR 240.13a–15(c) or 240.15d–15(c)) and Rule 30a–3(b) under the Investment Company Act of 1940 (17 CFR 270.30a–3(b)) as of the end of the period covered

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by the report that includes the disclosure required by this paragraph.

(b) Disclose any significant changes to the registrant's internal controls and procedures for financial reporting (as defined in rule 30a–2(d) under the Investment Company Act of 1940 (17 CFR 270.30a–2(d))) made during the period covered by the report that includes the disclosure required by this paragraph, including any actions taken to correct significant deficiencies and material weaknesses in the registrant's internal controls and procedures for financial reporting.

Item 6. Exhibits

File the exhibits listed below as part of this Form. Letter or number the exhibits in the sequence indicated.

(a) A copy of the report transmitted to stockholders pursuant to Rule 30e–1 under the Investment Company Act of 1940 (17 CFR 270.30e–1).

(b) Any written code of ethics, or amendment to that code of ethics, that applies to the principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions of the registrant, its investment adviser, or its principal underwriter, subject to disclosure under Item 3.

* * * * *

Certifications*

I, [identify the certifying individual], certify that:

1. I have reviewed this report on Form N–CSR, including exhibits, of [identify registrant];

2. Based on my knowledge, this report, including exhibits, does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, including exhibits, fairly present in all material respects the financial condition, results of operations, changes in net assets, and cash flows (if the financial statements are required to include a statement of cash flows) of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures and internal controls and procedures for financial reporting (as defined in rule 30a–2(c) and (d) under the Investment Company Act of 1940) for the registrant and we have:

(a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) Designed such internal controls and procedures for financial reporting, or caused such internal controls and procedures for financial reporting to be designed under our supervision, to provide reasonable assurances that the registrant's financial statements are fairly presented in conformity with generally accepted accounting principles;

(c) Evaluated the effectiveness of the registrant's disclosure controls and procedures as of the end of the period covered by this report ("Evaluation Date");

(d) Presented in this report our conclusions about the effectiveness of the disclosure controls and procedures based on our evaluation as of the Evaluation Date;

(e) Disclosed to the registrant's auditors and the audit committee of the board of directors (or persons fulfilling the equivalent function):

(i) All significant deficiencies and material weaknesses in the design or operation of internal controls and procedures for financial reporting which could adversely affect the registrant's ability to record, process, summarize, and report financial information required to be disclosed by the registrant in the reports that it files or submits under the Securities Exchange Act of 1934 and the Investment Company Act of 1940, within the time periods specified in the U.S. Securities and Exchange Commission's rules and forms; and

(ii) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls and procedures for financial reporting; and

(f) Indicated in this report any significant changes in the registrant's internal controls and procedures for financial reporting or in other factors that could significantly affect internal controls and procedures for financial reporting made during the period covered by this report, including any actions taken to correct significant deficiencies and material weaknesses in the registrant's internal controls and procedures for financial reporting.

Date: _____

_____

[Signature]

_____

[Title]

* Provide a separate certification for each principal executive officer and principal financial officer of the registrant. See Rule 30a–2 under the Investment Company Act of 1940 (17 CFR 270.30a–2). The required certification must be in the exact form set forth above.

By the Commission.

Dated: October 22, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–27302 Filed 10–29–02; 8:45 am]

BILLING CODE 8010–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION 1985

Federal Register

Wednesday,
October 30, 2002

Part III

Environmental Protection Agency

40 CFR Parts 63, 258, et al.
Waste Management System; Testing and Monitoring Activities; Proposed Rule: Methods Innovation Rule; Proposed Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 63, 258, 260, 261, 264, 265, 266, 270, 271, and 279

[FRL–7394–6]

RIN 2050–AE41

Waste Management System; Testing and Monitoring Activities; Proposed Rule: Methods Innovation Rule

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule; notice of availability.

SUMMARY: The Environmental Protection Agency (EPA or Agency) proposes to amend a variety of testing and monitoring requirements throughout the Resource Conservation and Recovery Act (RCRA) regulations. We are proposing to allow more flexibility when conducting RCRA-related sampling and analysis, by removing unnecessary required uses of methods found in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," also known as "SW–846," and only retaining the requirement to use SW–846 methods when the method is the only one capable of measuring a particular property (*i.e.*, it is used to measure a required method-defined parameter). This is an important step towards a performance-based measurement system (PBMS), as part of the Agency's efforts towards *Innovating for Better Environmental Results.* Additionally, we are proposing to: withdraw the reactivity method guidelines from SW–846 Chapter Seven; amend the ignitability and corrosivity hazardous waste characteristic regulations by clarifying the use of certain methods; incorporate by reference Update IIIB to SW–846; add Method 25A for analyses conducted in support of certain RCRA air emission standards; and remove a confidence limit requirement for certain feedstream analyses conducted under the National Emission Standards for Hazardous Air Pollutants (NESHAP). In addition, the Agency is announcing the availability of a new guidance document for public comment entitled "RCRA Waste Sampling Draft Technical Guidance." By making this document available for review and comment, it is our intention to provide draft guidance on waste sampling that would be beneficial to the public. These changes should make it easier and more cost effective to comply with affected regulations, without compromising human health or environmental protection.

DATES: Send your comments to reach us on or before December 30, 2002.

ADDRESSES: Comments may be submitted electronically, by mail, by facsimile, or through hand delivery/courier. Send an original and two copies of your comments to: OSWER Docket, Environmental Protection Agency, Mailcode: 5305–G, 1200 Pennsylvania Avenue, NW, Washington, DC 20460, Attention Docket ID No. RCRA–2002–0025. Follow the detailed instructions as provided in section I.B.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at (800) 424–9346 (toll free) or call (703) 412–9810; or, for hearing impaired, call TDD (800) 553–7672 or TDD (703) 412–3323. For more information on specific aspects of this rulemaking, contact Kim Kirkland, Office of Solid Waste (5307W), U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW, Washington, DC 20460–0002, (703) 308–8855, e-mail address: *kirkland.kim@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. How Can I Get Copies of this Document and Other Related Information?

i. Docket

EPA has established an official public docket for this action under Docket ID No. RCRA–2002–0025. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the OSWER Docket, EPA West Building, Room B102, 1301 Constitution Avenue, NW, Washington DC, 20004. This Docket Facility is open from 9 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (202) 566–1744. To view docket materials, you should call in advance and make an appointment. You may copy a maximum of 100 pages from any regulatory docket at no charge (unless the documents require copyright permission). Additional copies cost $0.15 per page.

ii. Electronic Access

You may access this **Federal Register** document electronically through the EPA Internet under the **Federal Register** listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket identification number. You may also view and download docket information from the Internet at: *http://www.epa.gov/SW–846*.

Certain types of information will not be placed in the EPA public dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. CBI materials will be placed in a separate CBI docket that is not available to the public. Redacted versions of documents containing CBI will be placed in the public dockets. In addition, EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in section I.A. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

For additional information about EPA's electronic public docket visit EPA Dockets online or *see* 67 FR 38102, May 31, 2002.

B. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments, but will make every effort to do so if time and resources permit. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in section I.C. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

i. Electronically

If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

1. EPA Docket

Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket*, and follow the online instructions for submitting comments. To access EPA's electronic public docket from the EPA Internet Home Page, select "Information Sources," "Dockets," and "EPA Dockets." Once in the system, select "search," and then key in Docket ID No. RCRA–2002–0025. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

2. E-mail

Comments may be sent by electronic mail (e-mail) to *RCRA-docket@epamail.epa.gov*, Attention Docket ID No. RCRA–2002–0025. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

3. Disk or CD ROM

You may submit comments on a disk or CD ROM that you mail to the mailing address identified in section I.B.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

ii. By Mail

Send an original and two copies of your comments to: OSWER Docket, Environmental Protection Agency, Mailcode: 5305–G, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, Attention Docket ID No. RCRA–2002–0025.

iii. By Hand Delivery or Courier

Deliver your comments to: OSWER Docket, EPA West Building, Room B102, 1301 Constitution Avenue, NW., Washington, DC 20004, Attention Docket ID No. RCRA–2002–0025. Such deliveries are only accepted during the Docket's normal hours of operation as identified in section I.A.1.

iv. By Facsimile

Fax your comments to (703) 603–9234, Attention Docket ID No. RCRA–2002–0025.

C. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. Send or deliver information identified as CBI only to the following address: RCRA CBI Document Control Officer, Office of Solid Waste, Environmental Protection Agency, Mailcode 5305–W, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, Attention Docket ID No. RCRA–2002–0025. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

D. How Do I Obtain Copies of SW–846?

Proposed Update IIIB and the Third Edition of SW–846, as amended by Final Updates I, II, IIA, IIB, III, and IIIA will be available in pdf format on the Internet at *http://www.epa.gov/SW–846*. A paper copy of Proposed Update IIIB is also located in the docket for this proposal (*see* **ADDRESSES** above). Table 1 below provides sources for both paper and electronic copies of the Third Edition of SW–846 and all of its updates.

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TABLE 1.—SOURCES FOR SW–846, THIRD EDITION, AND ITS UPDATES

Source	Available portions of SW–846
Superintendent of Documents, U.S. Government Printing Office (GPO), Washington, DC 20402, (202) 512–1800.	—Paper copies of the SW–846, Third Edition, basic manual and of certain updates, including Final Updates I, II, IIA, IIB, III; Draft Update IVA; and Proposed Update IIIB. Subscriber must integrate the updates.
National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161, (703) 605–6000 or (800) 553–6847.	—Paper copy of an integrated version of SW–846, Third Edition, as amended by Final Updates I, II, IIA, IIB, and III.
	—Individual paper copies of the SW–846, Third Edition, basic manual and of certain updates, including Final Updates I, II, IIA, IIB, III, IIIA; Draft Updates IVA and IVB; and Proposed Update IIIB.
	—CD–ROM of integrated version of SW–846, Third Edition, as amended by Final Updates I, II, IIA, IIB, and III (pdf and WordPerfect electronic copies).
	—CD–ROM of Draft Update IVA (pdf and WordPerfect electronic copies).
Internet *http://www.epa.gov/SW–846*	—Integrated version of SW–846, Third Edition, as amended by Final Updates I, II, IIA, IIB, III, and IIIA (pdf electronic copy).
	—Proposed Update IIIB (pdf electronic copy).
	—Draft Updates IVA and IVB (pdf electronic copy).

E. What Is the Legal Authority for This Action?

We will promulgate the part 258, 260, 261, 264–266, 270, 271, and 279 regulations under the authority of sections 1006, 2002(a), 3001–3007, 3010, 3013–3018, and 7004 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (commonly known as RCRA), as amended; and sections 101(37) and 114 of the Comprehensive Emergency Response and Compensation and Liability Act of 1980 (commonly known as CERCLA), as amended. We will promulgate the part 63 regulation under the authority of sections 112 and 114 of the Clean Air Act.

F. What Should I Consider as I Prepare My Comments for EPA?

In developing this proposal, we tried to address the concerns of all our stakeholders. Your comments will help us improve this rule. We invite you to provide different views on options we propose, new approaches we have not considered, new data, how this rule may effect you, or other relevant information. We welcome your views on all aspects of this proposed rule, but we request comments in particular on comment topics or questions identified within the preamble. Please note however that we are only proposing revisions to small portions of the various RCRA Program regulations and that this proposal does not re-open other parts of those regulations to public comment or judicial review.

Your comments will be most effective if you follow the suggestions below:

- Explain your views as clearly as possible.
- Provide documented technical information and/or cost data to support your views.
- If you estimate potential burden or costs, explain how you arrived at the estimate.
- Tell us which parts you support, as well as those with which you disagree.
- Provide specific examples to illustrate your concerns.
- Offer specific alternatives.
- Refer your comments to specific sections of the proposal, such as the units or page numbers of the preamble, or the regulatory sections.
- Make sure to submit your comments by the deadline in this proposal.
- Be sure to identify the appropriate docket number in the subject line on the first page of your comment. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

We will respond to both written and electronic comments in a document in the **Federal Register** or in a response to comments document placed in the official record for this rulemaking. Please note that, if you send electronic comments, we will not reply electronically unless to obtain clarification of text that may be garbled in transmission or during conversion to paper form.

G. How Is The Rest of this Preamble Organized?

We list below the order of the major preamble sections which explain our proposed action.

II. Summary of Today's Proposed Rule and Covered Entities
III. Background and Purpose of Proposed Action to Reform RCRA-Related Testing and Monitoring
A. How to Determine if a Method Is Appropriate
B. Why We Selected the Proposed Approach Over Other Approaches
C. Potential Impacts from Removal of Required uses of SW–846 Analyses
IV. Proposed Regulatory Revisions Involving Removal of SW–846 Requirements
A. Removal of Requirements to Use Only SW–846 in § 260.22(d)(1)(i) and Appendix IX to Part 261
B. Removal of Requirements to Use Only SW–846 Method 8290 in § 261.35(b)(2)(iii)(A) and (B)
C. Removal of Requirement to Use Only SW–846 in § 261.38(c)(7)
D. Removal of Requirements to Use Only SW–846 Method 8260 in §§ 264.1034(d)(1)(iii), 264.1063(d)(2), 265.1034(d)(1)(iii), and 265.1063(d)(2)
E. Removal of Requirements to Use Only SW–846 Methods 8260 and 8270 and Revisions to Listing of Method Options in § 265.1084(a)(3)(iii) and (b)(3)(iii); and Revisions to § 265.1084(a)(3)(ii)(C), (b)(3)(ii)(C), and (c)(3)(i)
F. Removal of Requirements to Use Only SW–846 in §§ 266.100(d)(1)(ii) and (g)(2), and 266.102(b)(1)
G. Removal of Requirement to Use Only SW–846 in § 266.106(a)
H. Removal of Requirements to Use Only SW–846 in § 266.112(b)(1) and (b)(2)(i)
I. Removal of Requirements to Use Only SW–846 in Sections 1.0, 3.0, 10.3, and 10.6 of Appendix IX to Part 266
J. Removal of Requirements to Use Only SW–846 Methods in §§ 270.19(c)(1)(iii) and (iv); 270.22(a)(2)(ii)(B); 270.62(b)(2)(i)(C) and (D); and 270.66(c)(2)(i) and (ii)
K. Removal of SW–846 Methods from Incorporation by Reference in § 260.11(a)(11)
V. Proposed Editorial Corrections to SW–846 References in the RCRA Testing and Monitoring Regulations
VI. Proposed Action to Withdraw Reactivity Interim Guidance from SW–846 Chapter Seven and Remove Required SW–846 Reactivity Analyses and Threshold Levels from Conditional Delistings
VII. Proposed Clarifications to Corrosivity and Ignitability Hazardous Waste Characteristics
A. Revision to § 261.22(a)(2) to Clarify That SW–846 Method 1110 Is the SW–846 Standardized Version of the NACE Standard Specified for Corrosivity Characteristic Testing
B. Revisions to § 261.21(a)(1) to Update References to ASTM Standards, to Clarify That SW–846 Methods 1010 and 1020 Reference and Use The ASTM Standards Specified for Ignitability Characteristic Testing, and to Remove an Unnecessary Referral to Method Equivalency Petitions; and Revisions to § 260.11(a)(1) and (2) to Include the Updated References
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II. Summary of Today's Proposed Rule and Covered Entities

We, the Environmental Protection Agency (EPA or Agency), propose to amend our hazardous and nonhazardous solid waste regulations for testing and monitoring activities under the Resource Conservation and Recovery Act (RCRA), and to amend a testing requirement in the National Emission Standards for Hazardous Air Pollutants (NESHAP) from hazardous waste combustors. These changes should make it easier and more cost effective for regulated entities to comply with the respective RCRA and NESHAP regulations. Specifically we are proposing to:

1. Reform RCRA-related testing and monitoring by restricting requirements to use SW–846 to only those situations where the method is the only one capable of measuring the property (*i.e.*, it is used to measure a required method-defined parameter). This will allow more flexibility in RCRA-related sampling and analysis by removing unnecessary required uses of SW–846.

2. Withdraw the cyanide and sulfide reactivity guidance from sections 7.3.3 and 7.3.4 of SW–846 Chapter Seven and withdraw required uses of reactive cyanide and sulfide methods and threshold levels from conditional delistings.

3. Amend the regulations for the ignitability and corrosivity hazardous waste characteristics by clarifying the use of certain methods. As part of this, we are clarifying in § 261.22(a)(2) that SW–846 Method 1110, "Corrosivity Toward Steel," is the standardized SW–846 method to determine the characteristic of corrosivity toward steel. We also propose to incorporate by reference revisions of the ASTM methods used for the determination of flash point under the characteristic of ignitability. Specifically, we propose to replace references to ASTM Methods D 3278–78 and D 93–79 or D 93–80 in § 261.21(a)(1) with more current versions of the methods, to be referenced as ASTM Methods D 3278–96 and D 93–99c.

4. Incorporate by reference Update IIIB to SW–846, which includes four revised chapters, including the revised Chapter Seven, and eleven revised methods, including method revisions to remove unnecessary required uses of SW–846 Chapter Nine, "Sampling Plan," and to update references to the aforementioned ASTM methods.

5. Add Method 25A as an analytical option to analyses conducted in support of air emission standards for process vents and/or equipment leaks at treatment, storage, and disposal facilities.

6. Remove a requirement to demonstrate that feedstream analytes are not present at levels above the 80% upper confidence limit above the mean for sources subject to NESHAP: Final Standards for Hazardous Waste Combustors.

This rule does not propose to add any additional requirements to the regulations. Instead, this rule removes certain existing requirements to use SW–846, and it clarifies what the Agency considers to be other appropriate methods. Our goal is to make it easier and more cost effective to comply with the RCRA regulations by allowing more flexibility in method selection and use. If you prefer, you can still use the SW–846 methods referenced in the regulations to demonstrate compliance.

As noted earlier in this preamble, we are only proposing revisions to small portions of the various RCRA Program regulations and this proposal does not re-open other parts of those regulations to public comment or judicial review.

You may be covered by this action if you conduct waste sampling and analysis for RCRA- or NESHAP-related activities. Covered entities include anyone that generates, treats, stores, or disposes of hazardous or nonhazardous solid waste and are subject to RCRA subtitle C or D sampling and analysis requirements; and entities subject to NESHAP final standards for hazardous waste combustors (40 CFR part 63, subpart EEE). All types of industries, governments, and organizations may have entities that generate or manage RCRA-regulated solid wastes and may be subject to RCRA-related sampling and analysis requirements.

To determine whether your facility, company, business organization, etc., is covered by this action, you should carefully examine the applicability criteria in part 63 and in parts 258 through 299 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

III. Background and Purpose of Proposed Action to Reform RCAA-Related Testing and Monitoring

Currently, either our hazardous and nonhazardous solid waste regulations for testing and monitoring activities (sampling and analysis) under RCRA or the permits or waste analysis plans of facilities regulated by RCRA specify the analytes of concern to be determined in a matrix of concern at a particular regulatory level of concern. Additionally, some recently promulgated regulations specify the confidence level of concern. Most RCRA regulations leave the how (*i.e.*, which test method to use) up to you, a member of the regulated community. However, some RCRA regulations require the use of methods from the EPA publication "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," also known as "SW–846."

We initially issued SW–846 in 1980 soon after the first RCRA regulations were published. At that time, we intended that SW–846 serve two roles.

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First, we intended that it serve as a guidance manual of generally appropriate and reliable analytical methods for RCRA-related testing and monitoring. Second, we intended that it serve as a readily-available source of those few analytical methods which were first required for complying with the RCRA regulations. Over the years, we published regulations that required the use of SW–846 methods in general. Subsequently, members of the regulated public made it clear to EPA that they would like the opportunity to use other reliable methods in compliance with RCRA, and EPA also decided that some of the SW–846 requirements were not necessary.

The requirement to use SW–846 in general (*e.g.*, the delisting regulations at § 260.22) does not identify specific SW–846 methods. These requirements typically include the analyses of many different analytes which can be determined by many different methods. Almost every update to SW–846 includes at least one method that may be applicable to the requirements. Therefore, whenever we update SW–846, we must incorporate by reference the new and revised methods into the RCRA regulations as part of a rulemaking. We have to issue the updates as a proposed rule, request public comment, and then promulgate the update in a final rule. This lengthy process delays the timely use of new analytical technologies.

Also, in order to use a method different from any required SW–846 method, members of the regulated community have to develop and submit an equivalency petition, pursuant to § 260.21. This petition process discourages the timely use of new and innovative methods, and is very rarely used by the public, perhaps because it is time-consuming. When the proposed changes of this rule are implemented, it will not be necessary to submit an equivalency petition in order to use a non-SW–846 method for most sampling and analysis scenarios.

On May 8, 1998 in the **Federal Register** (63 FR 25430), we first announced our intent to remove the unnecessary required uses of SW–846 methods from the RCRA regulations. At that time, we described our reasons for wanting to remove those required uses from the regulations, including our desire to allow more flexibility in method selection and fully implement a performance-based measurement system (PBMS) in the RCRA Program. We also requested public comment on our plan. The public comments were largely favorable, and we therefore decided to proceed with publication of this proposed rule. You may find summaries of the relevant May 8, 1998 **Federal Register** public comments and our responses to those comments in the docket to this proposed rule, docket number RCRA–2002–0025, at the location listed above under **ADDRESSES**.

Therefore, we propose to restrict the requirement to use a specific SW–846 method to only those situations where its particular procedure is the only one that is capable of measuring the property (*i.e.*, a method-defined parameter). For example, to determine compliance with the toxicity characteristic (TC), waste generators must test their waste using SW–846 Method 1311, "The Toxicity Characteristic Leaching Procedure," the TCLP, to determine whether the waste leaching potential is greater than the TC levels specified in § 261.24. The TCLP was developed as a means of simulating the leaching potential of waste material placed in a specific environment. It was the test used to develop the particular regulatory thresholds. No other test is known to yield the same leachate concentrations as Method 1311, the TCLP, and therefore we describe the results obtained from Method 1311 as a required "method-defined parameter."

Examples of other SW–846 methods that will remain required for method-defined parameters (MDPs) include Method 9040, "pH Electrometric Measurement," to demonstrate whether a waste exhibits the corrosivity characteristic based on pH levels, and Method 9095, "Paint Filter Liquids Test," to demonstrate the absence or presence of free liquids in wastes managed in RCRA-regulated treatment, storage, and disposal facilities.

You cannot replace or modify a method if the method is for determination of a RCRA-required method-defined parameter (MDP). However, other MDP methods exist which are not required by the RCRA regulations. It may be possible to modify those methods without adverse regulatory or analytical effects.

To summarize, our reasons for restricting required uses of SW–846 to regulated MDPs include:

1. Allowing the regulated community more flexibility in method use during RCRA-required testing.
2. Stimulating the development and timely use of innovative and more cost-effective monitoring technologies and approaches in the RCRA Program.
3. Allowing more efficient and timely releases of SW–846 methods by decoupling most of the methods from required uses on the RCRA regulations.
4. Making the RCRA Program more effective by focusing on measurement objectives rather than on measurement technologies.

A. How To Determine If A Method Is Appropriate

Our proposed revisions to remove required uses of SW–846 methods include language allowing the use of "appropriate methods such as those found in SW–846 or other reliable sources." Such a method might be one published by EPA in a different manual or regulation or published by another government agency, a voluntary standards setting organization, or other well-known sources. We retained mention of the SW–846 methods in the regulations as guidance and examples of methods that could be appropriate.

There are two primary considerations in selecting an appropriate method, as addressed below.

i. Appropriate Methods Are Reliable and Accepted as Such in the Scientific Community

Methods published by the Agency or other government entities use techniques that have documented reliability and are generally accepted by the scientific community. SW–846 methods are reviewed by a technical workgroup composed of national expert-level chemists who provide peer input and determine whether method reliability is sufficiently documented. The technical reliability and acceptance of methods published by other governmental or non-governmental organizations may also be documented, especially if the methods are subjected to some form of objective scientific review.

ii. Appropriate Methods Generate Effective Data

Effective data are data of sufficiently known and appropriate quality to be used during project-specific decisions. An example of such a decision is whether a particular waste is hazardous because a constituent of concern is present above a level of concern. Before sampling and analysis begins, project planners should identify why the analysis is being done, how the data will be used, and how "good" the data has to be (*e.g.*, the DQOs). Effective data meet any data quality objectives (DQOs) set by the project planners for the specific project. These objectives (further described below) should be rationally and systematically identified during the planning of the project and development of the project-specific Quality Assurance Project Plan (QAPP), Waste Analysis Plan (WAP), or Sampling and Analysis Plan (SAP). Sampling and analysis documentation should be sufficient to confirm that the data are effective.

Data quality objectives or DQOs generally refer to the necessary quality of the overall decision to be made or, in other words, the tolerable error (*i.e.*, acceptable level of uncertainty for the decision). For example, a DQO for waste analysis may be that one must demonstrate that an analyte is not present above the reported level at the 80 percent upper confidence around the mean, and that the method could have detected the presence of the analyte at that level and confidence limit. A DQO may be specified in a regulation, a permit, a corrective action agreement, or other regulatory or enforcement document. Sometimes you must consider a DQO regulatory specification when selecting an appropriate method. For example, the RCRA comparable fuels' provisions include DQOs in lieu of naming the use of specific methods (see 63 FR 33781, June 19, 1998). You can find guidance on the development of DQOs in EPA's "Guidance for the Data Quality Objectives Process" (EPA QA/G–4) found at EPA's Quality Staff's Web site (*http://www.epa.gov/quality/*), in Chapter One, "Quality Control," of SW–846, and in ASTM D 5792, "Standard Practice for Generation of Environmental Data Related to Waste Management Activities: Development of Data Quality Objectives."

You should identify the types of quality control (QC) concepts (*e.g.*, spike recovery analyses, blanks, etc.) you will use to determine if you meet your objectives. For example, selection of an appropriate method is sometimes demonstrated by adequate recovery of spiked or surrogate analytes and reproducible results, or through successful analysis of a standard reference material of a matrix-type analogous to that of the actual sample matrix. The method may not be appropriate for its intended use if your data show inadequate recovery of an analyte at a level that impairs a decision regarding whether the analyte is present at or below its regulatory level. Such a method would not generate effective data. Based on your QC data, you should determine whether the method generates results that are sufficiently sensitive, unbiased, and precise to demonstrate compliance with the subject regulation.

However, you should not focus only on controlling or documenting analytical quality, because regulatory decisions are also susceptible to error due to sampling procedures. If the contaminant variability is not properly addressed during the planning and collection of samples, an incorrect decision could be reached even though the method performed well in terms of laboratory quality control. No matter how accurate or precise the laboratory analysis, the data will provide misleading information if excessive error is introduced by improper sampling procedures. Guidance on identifying the necessary quality control procedures and on minimizing the potential for both analytical and sampling error can be found at the EPA Quality Staff's Web site (*http://www.epa.gov/quality/*) or in Chapters One, Two, and Nine of SW–846, and in some methods.

Finally, you should identify appropriate methods for a specific project before sampling and analysis begins. As the regulated entity, you are ultimately responsible for compliance with a particular regulation. Therefore, you should not rely on the laboratory or other project participant to select an appropriate method. We recommend that you consult with your regulating authority during identification of performance goals and the selection of appropriate methods.

iii. Request for Public Comments on Appropriate Method Selection and Use

We are interested in public comments regarding the selection and use of other appropriate methods in the RCRA regulations, as described above. We are particularly interested in responses to the following questions:

1. What concerns exist regarding the selection of appropriate methods by the regulated community?
2. What other guidance is needed to aid in the selection of appropriate methods by the regulated community?

B. Why We Selected the Proposed Approach Over Other Approaches

We considered several approaches to promoting method use flexibility in the RCRA regulations. We selected the "appropriate method" approach because it is universally applicable to the subject RCRA regulations. It also requires only minimal revisions to the regulations for implementation.

In addition, the option to use "appropriate methods" is not new to the RCRA regulations. For example, use of the TCLP, SW–846 Method 1311, is required for determinations regarding whether a waste is hazardous for the toxicity characteristic (the TC). It generates an extract (the leachate) which is subjected to determinative analysis for comparison with the TC regulatory limits. However, the TCLP procedure does not require specific methods for the leachate determinative analysis, nor does it specify the use of even SW–846 methods in general for the analysis. It allows method flexibility similar to that proposed by this rule by stating in its sec. 7.2.14: "The TCLP extract shall be prepared and analyzed according to appropriate analytical methods."

Before finalizing this rule, we would like the public's opinion of the alternative approaches that we considered, as described below. Please provide specific reasons for your positions regarding the alternative approaches, including perceived advantages or disadvantages.

1. As a variation to the "appropriate method" approach described above, should we remove mention of SW–846 methods as examples of appropriate methods from the subject regulations? We are interested in whether retaining mention of the SW–846 methods offers significant advantages or disadvantages. (For example, one disadvantage could be that it might leave an incorrect impression that the SW–846 methods are still preferred by EPA).
2. In lieu of the "appropriate method" approach, should we instead add performance criteria to each regulation, such as done in the aforementioned comparable fuel rulemaking, and not mention or require the use of an appropriate method (including any SW–846 methods)? We did not select this approach because it might not be directly applicable to some regulations and then might require significant regulatory changes with greater impacts.

C. Potential Impacts From Removal of Required Uses of SW–846 Analyses

If the regulatory revisions of this proposed rule are promulgated, you can use any appropriate analytical test method in demonstrating compliance with the RCRA regulations, except for those demonstrations involving required method-defined parameters. For the reasons given in this section, we believe that this action will not significantly or adversely impact the regulated community or other potentially affected parties. In fact, the primary impact of this rule if adopted will be to result in better analytical results and lower costs. All of the entities involved with the task of waste characterization will pay far greater attention to method performance. In addition, project planners and laboratories will be able to identify methods that are potentially less costly to the regulated community.

i. Expected Impact on Regulated Entities

The use of other appropriate methods will be an option, not a requirement. Regulated entities may continue to use the specified SW–846 methods to demonstrate compliance and thus

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experience no impact from this rulemaking. EPA will also continue to publish and update SW–846 methods and ensure their scientific soundness by following peer review guidelines and requesting public comment on the methods through **Federal Register** notices.

We primarily believe that an entity will choose to use another appropriate method from that listed in the regulations *only* when it is beneficial to do so. Method choice will be based on expected efficiencies in cost and performance. For example, you may use methods that are more appropriate for your particular matrix, and cut the cost of using unnecessary standards.

Also, a demonstration that another method is appropriate is not new to RCRA-related sampling and analysis and will not involve much more than what regulated entities already should be doing. For example, you should already be setting method performance goals in your Quality Assurance Project Plan (QAPP) or Sampling and Analysis Plan (SAP), and evaluating compliance with them based on QC data or other data quality indicators.

Some public comments in response to our notice of May 8, 1998, expressed concern regarding the comparability of data generated by different methods for the same purpose. First, this issue is not new, because some regulations already allow the use of more than one method. We also disagree that this should be a concern, provided that any alternative method is also an appropriate method as defined above. Specifically, if both methods generate effective data and meet the same performance goals of the project, then data from both methods are comparable. This has always been EPA's approach in comparing data by different methods, and it is not affected or changed by this proposal.

As a stakeholder, you may prefer a more prescriptive approach in the regulations because method-specific requirements remove the burden of method-selection decision making. You may believe that this translates into lower costs and better compatibility within a workforce of permit writers and other project participants who may not have method-selection expertise. We are familiar with this argument and would like to better understand its perspective. However, we believe that many method-selection decisions should be project specific and thus, when such an approach is applicable, specific methods should not be required in the regulations. Even before this proposed rulemaking, project planners and other participants should be evaluating the effectiveness of methods during facility or waste evaluations.

You also may be concerned about the impact of this proposal on existing RCRA permits. RCRA permits are typically effective up to ten years. This proposal, if finalized, would only effect new or reissued permits, and only as an option for flexibility in method selection. Therefore, RCRA permits need not be adversely impacted by this action.

Finally, this rule does not propose new information collection or reporting requirements for regulated entities. Sections 260.22(i) (reporting requirements for petitions to exclude wastes) and 264.13(b) and 265.13(b) (reporting requirements for owners and operators of hazardous waste management facilities) provide sufficient reporting requirements to cover RCRA-related testing and analysis documentation regarding the use of other appropriate methods.

ii. Expected Impact on States

Many of the public comments in response to our May 8, 1998, notice favored State adoption of these revisions, but were concerned that this action will impose additional burden on States. In response, we note that the regulatory changes in this rule are equivalent to or less stringent than the existing Federal regulations which they amend. Therefore, authorized States are not required to adopt and seek authorization for this rulemaking. Nevertheless, we encourage the adoption of these or similar revisions by authorized States in order to promote national adoption of PBMS. In addition, if States choose to adopt these revisions, the impact will not be significant since they already conduct method selection and data quality reviews to determine compliance with their testing and monitoring regulations.

iii. Education Efforts by EPA To Facilitate Implementation

Many public comments received on our May 8, 1998 notice expressed a need for communication and training, at all levels, to minimize any adverse impacts and promote implementation. Therefore, we plan to educate and train the States, EPA Regions, and the regulated community regarding the implementation of this rule, through such mechanisms as web and internet training modules, workshops, and fact sheets. Over the past six years, we have offered program-specific training (*e.g.*, "Analytical Strategy for the RCRA Program: A Performance-Based Approach") for EPA Headquarters, Regional, and State personnel involved in RCRA activities that include sampling and analysis. We plan to offer other courses on the evaluation of data and permit writing from a PBMS and effective data standpoint. In addition, we encourage affected entities to contact the Methods Information Communication Service (MICE Service, see **ADDRESSES**) for answers to any questions or concerns regarding the use of other appropriate methods. These communication and training efforts will help ensure consistency in implementation of this rule by the States, Regions, and regulated community and help limit any associated costs.

iv. Request for Public Comment on Impacts and Implementation

We request public comment on the impact of this proposed rule and how we might promote its successful implementation. We are particularly interested in public comment to the following questions:

1. What can we do to remove implementation barriers and maximize the benefits from the flexibility provided by this action?
2. What might be the economic impact on the regulated community and other entities as a direct result of this action?
3. What concerns exist regarding implementation and compliance assessments involving the use of other appropriate methods?
4. Are there any technical or programmatic barriers to the implementation of this approach?
5. What guidance or training is needed to assure successful implementation of this action?
6. What new or uncommon data quality problems might be caused by allowing increased flexibility in method selection?

IV. Proposed Regulatory Revisions Involving Removal of SW–846 Requirements

Sections IV.A through IV.J address revisions to remove the requirement to use only SW–846 methods and add the flexibility to use other appropriate methods. The overall basis for these revisions is explained in section II above.

Table 2—lists the proposed revisions for each regulation to remove SW–846 requirements and allow the flexibility to use other appropriate methods. It also lists the preamble section which describes the revisions. As addressed by section IV.K, we also propose to revise the incorporation by reference of SW–846 in § 260.11 so that it only includes SW–846 methods required for method-defined parameters. Therefore, for each section where we propose to remove the requirement to use only SW–846 methods, we propose to also remove the SW–846 incorporation by reference.

TABLE 2. REVISIONS TO RCRA REGULATIONS TO REMOVE REQUIRED USES OF SW–846 METHODS

Revised regulation	Affected topic or program	Preamble section
§ 260.22(d)(1)(i)	Delisting	IV.A
Appendix IX to part 261	Delisting	IV.A
§§ 261.35(b)(2) (iii)(A) and (B)	Deletion of certain waste codes following equipment cleaning	IV.B
§ 261.38(c)(7)	Comparable/syngas fuel exclusion	IV.C
§§ 264.1034(d)(1) (iii), 264.1063(d) (2), 265.1034(d)(1) (iii), and 265.1063(d)(2).	Air emission standards for process vents and equipment leaks	IV.D
§§ 265.1084(a)(3) (iii) and (b)(3) tanks, (iii), and 265.1084(a)(3)(ii) (C), (b)(3)(ii)(C), and (c)(3)(i).	Air emission control requirements for surface impoundments, and containers.	IV.E
§§ 266.100(d)(1) (ii) and (g)(2), and 266.102(b)(1)	Hazardous wastes burned in boilers and industrial furnaces (BIFs).	IV.F
§ 266.106(a)	Control of metal emissions at BIFs	IV.G
§§ 266.112(b)(1) and (b)(2)(i)	Residues from burning of wastes in BIFs	IV.H
Appendix IX, part 266	Methods Manual for BIF regulations	IV.I
§§ 270.19(c)(1) (iii) and (iv), 270.22(a)(2)(ii)(B), 270.62(b)(2)(i)(C) and (D), 270.66(c) (2)(i)and (ii).	Part B information and trial burn plan requirements for incinerators and BIFs.	IV.J

We request comment on each of the revisions, particularly in response to the following questions:

1. Does the revision provide adequate flexibility in method selection to facilitate the use of new technologies and encourage a greater focus on the performance of monitoring programs during compliance with the regulation?
2. What are the perceived technical and programmatic barriers to implementing the revision?
3. What is the economic impact of the revision?
4. What guidance or training is needed to aid implementation of the revised regulation?

A. Removal of Requirements To Use Only SW–846 in § 260.22(d)(1)(i) and Appendix IX to Part 261

Section 260.22(d)(1)(i) currently states that SW–846 methods must be used as part of a petition to amend part 261 to exclude ("delist") a waste listed with code "T". We believe that the mandatory use of only SW–846 methods for this aspect of a delisting demonstration is not necessary. Therefore, we are proposing to revise § 260.22(d)(1)(i) by removing the requirement to use only SW–846 methods, deleting the incorporation by reference referral to § 260.11, and explicitly allowing the use of appropriate methods from other reliable sources. With this revision, if you submit a delisting petition, you will no longer be required to use only SW–846 methods. We also strongly recommend that you work with your regulating entity (*e.g.*, EPA Region or authorized State) during selection of methods for a delisting demonstration. In this instance, the methods are not being used as required method-defined parameters. (Note: We are not proposing revisions to § 260.22(d)(3) of the delisting petition regulations which address the use of methods for determining whether wastes are characteristic hazardous wastes.)

We also propose to revise certain conditional delistings (hazardous waste exclusions) in appendix IX, to Part 261 "Wastes Excluded Under §§ 260.20 and 260.22." We are revising the delistings to allow the use of appropriate methods besides SW–846 methods during the required waste analysis.

In most cases, we are including the following language in the conditional delistings: "Analyses must be performed according to appropriate methods such as methods found in SW–846 or other reliable sources (with the exception of analyses requiring the use of SW–846 methods incorporated by reference in § 260.11, which must be used without substitution)." With this language, if you are an owner/operator of the facility, you will have the option to use appropriate methods from other reliable sources besides SW–846.

Some conditional delistings require the use of Methods 9010 ("Total and Amenable Cyanide: Distillation") and 9012 ("Total and Amenable Cyanide (Automated Colorimetric, with Off-line Distillation"). These methods, although proposed to be retained in § 260.11(a)(11) as method-defined parameters because of their required use under § 268.44, the universal treatment standards under the land disposal restrictions regulations are not being used in those delistings for that purpose. Therefore, we believe the facilities should be allowed to use another appropriate method, if they choose to do so.

Specifically, we propose to revise the conditional exclusions found in Table 1 of appendix IX of part 261 for the following facilities (listed in order of appearance):

—Aptus, Inc., Coffeyville, Kansas
—Arkansas Department of Pollution Control and Ecology, Vertac Superfund site, Jacksonville, Arkansas
—BMW Manufacturing Corporation, Greer, South Carolina
—Bethlehem Steel Corporation, Sparrows Point, Maryland
—DuraTherm, Inc., San Leon, Texas
—Eastern Chemical Company, Longview, Texas
—Envirite of York, Pennsylvania
—Geological Reclamation Operations and Systems, Inc., Morrisville, Pennsylvania
—McDonnell Douglas Corporation, Tulsa, Oklahoma
—Occidental Chemical, Ingleside, Texas
—Rhodia, Houston, Texas
—Syntex Agribusiness, Springfield, Missouri
—Texas Eastman, Longview, Texas
—Tyco Printed Circuit Group, Melbourne, FL

We also propose to revise, as described above, the conditional exclusions found in Table 2 of appendix IX of part 261 for the following facilities (listed in order of appearance):

—Bethlehem Steel Corporation, Steelton, Pennsylvania
—Bethlehem Steel Corporation, Johnstown, Pennsylvania
—BF Goodrich Intermediates Company, Inc., Calvert City, Kentucky
—CF&I Steel Corporation, Pueblo, Colorado
—Chaparrel Steel Midlothian L.P., Midlothian, Texas
—Conversion System, Inc., Horsham, Pennsylvania
—DOE–RL, Richland, Washington
—Envirite, York, Pennsylvania
—Marathon Oil Co., Texas City, Texas

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—Occidental Chemical Corporation, Muscle Shoals Plant, Sheffield, Alabama
—Occidental Chemical Corporation, Delaware City, Delaware
—Oxy Vinyls, Deer Park, Texas
—Roanoke Electric Steel Corporation, Roanoke, Virginia
—USX Steel Corporation, USS Division, Southworks Plant, Gary Works, Chicago, Illinois

B. Removal of Requirements To Use Only SW–846 Method 8290 in § 261.35(b)(2)(iii)(A) and (B)

Section 261.35(b)(2)(iii) addresses the testing of rinses from equipment cleaning when generators are demonstrating that certain wastes from wood preserving processes do not meet the listing definition of hazardous waste code F032 (wastewaters, process residuals, preservative drippage, and spent formulations from wood preserving processes generated at plants that use chlorophenolic formulations). Paragraph (A) of the section currently includes a requirement to use SW–846 Method 8290, "Polychlorinated Dibenzodioxins (PCDDs) and Polychlorinated Dibenzofurans (PCDFs) by High-resolution Gas Chromatography/High-resolution Mass Spectrometry." The testing of PCDDs and PCDFs using this method does not involve a method-defined parameter. Therefore, we believe that appropriate methods from other reliable sources should be allowed for this determination. In addition, paragraph (B) of § 261.35(b)(2)(iii) defines criteria for "not detected" values based on information found in SW–846 Method 8290. We propose that other appropriate methods should be allowed if they meet those criteria. If you are a generator subject to these regulations, you will still be required to test for PCDDs and PCDFs. However, you will have flexibility in method selection and can consider the use of other methods besides SW–846 Method 8290.

C. Removal of Requirement to Use Only SW–846 in § 261.38(c)(7)

Section 261.38(c)(7) addresses a demonstration for the exclusion of a waste that meets comparable/syngas fuel specifications. The section states that, as the waste generator, you "shall" develop and follow a plan for the sampling and analysis of the waste, and that the plan "shall" be developed in accordance with SW–846. We propose to revise this section by replacing the second "shall" with "should" and allow the use of other sampling and analysis guidance, besides that found in SW–846, during waste analysis plan development, provided the other guidance is appropriate for your demonstration. In this case, other guidance will be appropriate if it addresses procedures needed to meet your sampling and analysis performance goals.

D. Removal of Requirements To Use Only SW–846 Method 8260 in §§ 264.1034(d)(1)(iii), 264.1063(d)(2), 265.1034(d)(1)(iii), and 265.1063(d)(2)

Sections 264.1034(d)(1)(iii), 264.1063(d)(2), 265.1034(d)(1)(iii), and 265.1063(d)(2) collectively provide test methods and procedures applicable to the air emission standards for process vents and/or equipment leaks at treatment, storage, and disposal facilities (TSDFs). SW–846 Method 9060, "Total Organic Carbon," and SW–846 Method 8260, "Volatile Organic Compounds by Gas Chromatography/Mass Spectrometry," are required for the determination of total organic carbon (TOC). Method 9060 is used to directly determine TOC, and thus is used for determination of a method-defined parameter. If the conditions under which organic carbon is converted to carbon dioxide are altered, there is a significant potential that a smaller or greater fraction of the carbonaceous material will be converted. Method 8260 is used to determine the individual analytes that may be components of the TOC. This use of Method 8260 is not for a method-defined parameter.

Therefore, we propose to revise these sections to allow the use of appropriate methods from other reliable sources in lieu of SW–846 Method 8260. If you are a facility owner/operator subject to these regulations, you will still be required to determine the TOC content in your waste. However, if you choose not to directly determine TOC by Method 9060, you will be able to consider the use of appropriate methods other than Method 8260 for the determination of individual analytes.

Also, if this rule is finalized, Method 8260 will no longer be incorporated by reference since it will not be solely required by any RCRA regulation. Therefore, we also propose to move the phrase "(incorporated by reference under § 260.11)" from after Method 8260 to after Method 9060. This revision will correctly indicate which method remains incorporated by reference.

E. Removal of Requirements To Use Only SW–846 Methods 8260 and 8270 and Revisions to Listing of Method Options in §§ 265.1084(a)(3)(iii) and (b)(3)(iii); and Revisions to §§ 265.1084(a)(3)(ii)(C), (b)(3)(ii)(C), and (c)(3)(i)

Sections 264.1083 and 265.1084 address the waste determination procedures for the subpart CC air emission control requirements for tanks, surface impoundments, and containers. Section 265.1084 addresses the requirements for interim status treatment, storage, and disposal facilities (facilities that existed at the time that the regulations were established and which needed time to fully comply with the regulations) and provides the details for such procedures. Section 264.1083 addresses the requirements for treatment, storage and disposal facilities which were constructed after the regulations were promulgated and directly references the regulations in § 265.1084. The Agency fully explained the basis and history of the waste determination procedures in these regulations. (*See* 59 FR 62915, December 6, 1994; 61 FR 4906, February 9, 1996; 61 FR 59942, November 25, 1996; 62 FR 64646, December 8, 1997; and 64 FR 3384, January 21, 1999.)

One purpose for waste determination under these regulations is to determine if a unit is exempt from the air emission control requirements. One way that a unit can be exempt from the subpart CC requirements is if it manages a hazardous waste with an average volatile organic (VO) concentration less than 500 parts per million by weight (ppmw). As the owner or operator of the waste management facility, you can make a direct determination of the VO concentration using waste analysis. For the purpose of such a waste determination, you must evaluate the mass of all VO constituents in the waste that have a Henry's Law value greater than or equal to 0.1 mole-fraction-in-the-gas-phase/mole-fraction-in-the-liquid-phase (0.1 Y/X), which can also be expressed as 1.8×10^{-6} atmospheres/gram-mole/m^3 at 25 degrees Celsius. The compounds exceeding these levels are the constituents (analytes) of concern for this determination. (The Henry's Law constant of a compound is one way that is commonly used to predict the potential of a compound to volatilize.)

Sections 265.1084(a)(3)(iii) and (b)(3)(iii) specify the analytical methods that you must use to determine the VO concentration. The list includes Method 25D ("Determination of the Volatile Organic Content of Waste Samples") found in 40 CFR part 60, appendix A; Methods 624 ("Purgeables"), 625 ("Base Neutrals and Acids"), 1624 ("Volatile Organics by Isotope Dilution GC/MS"), and 1625 ("Semivolatile Organics by Isotope Dilution GC/MS") found in 40 CFR part 136, appendix A; and Methods 8260 ("Volatile Organic Compounds by Gas Chromatography/Mass Spectrometry") and 8270 ("Semivolatile Organic Compounds by Gas Chromatography/Mass Spectrometry") found in SW–846. SW–846 Methods 8260 and 8270 are listed in § 265.1084(a)(3)(iii)(F) and (G) and (b)(3)(iii)(F) and (G).

Method 25D is a nonspecific determinative procedure that provides a total volatile organic concentration. The other methods listed in the subject regulation are analyte-specific determinative procedures. These methods are not being used for method-defined parameters. We originally offered the analyte-specific methods as alternatives to Method 25D in response to public comments regarding the aggressiveness, expense, and repeatability of Method 25D. We added those methods and related conditions for their use so that you would have a range of practical and affordable method options.

However, for consistency with the intent and purpose of this proposed rule, we propose to remove from §§ 265.1084(a)(3)(iii) and (b)(3)(iii) text related to the listing of Methods 624, 625, 1624, 1625, 8260, and 8270 as alternative methods to Method 25D, and add language allowing the use of other appropriate methods from other reliable sources and give Methods 624, 625, 1624, 1625, 8260 and 8270 as examples of such methods. We give our reasons for each revision in the paragraphs to follow.

We are removing the listing of Methods 624, 625, 1624, 1625, 8260 and 8270 as method options because, given the addition of the phrase "or other appropriate methods," a listing of these methods is unnecessary. We have retained them as examples of appropriate methods because they cover many of the analytes of interest, and are approved methods for RCRA-related analyses. By making this change, we are still abiding by our original intent to include methods in the regulations as options to Method 25D. We are not revising that intent; we are only revising how it is expressed in the regulations. This was the original intent of the language added to § 265.1084 in response to public comments.

As an owner or operator subject to these regulations, you will have the flexibility to use one or more different methods, provided that the methods are appropriate for the determination. The target analyte lists of Methods 8260 and 8270 might not cover all organic compounds with a Henry's Law constant equal to or greater than 0.1 Y/X (which can also be expressed as 1.8×10^{-6} atmospheres/gram-mole/m^3 at 25 degrees Celsius) of concern in a given hazardous waste, and other appropriate methods may be necessary to complete the analysis. On the other hand, you may know that your waste contains only a few analytes of concern and a method with a smaller analyte list is more appropriate.

In addition to the above, we propose to correct language in other paragraphs of § 265.1084. First, § 265.1084(a)(3)(ii)(C), (b)(3)(ii)(C), and (c)(3)(i) currently state that an example of an acceptable sampling plan includes a plan incorporating the sampling requirements specified in SW–846. We propose to revise these sections to make it clear that the sampling procedures found in SW–846 are not requirements. We intend that information in SW–846 regarding sampling be only used as guidance. We are not removing the requirements to prepare and maintain an acceptable sampling plan and one which includes the requirements contained in Method 25D.

Second, we propose to remove the incorporation by reference for SW–846 in § 265.1084(a)(3)(ii)(C), (a)(3)(iii), (b)(3)(ii)(C), (b)(3)(iii), and (c)(3)(i) since only required methods for the analysis of method-defined parameters will be retained in § 260.11 should this proposal be finalized, and SW–846 sampling procedures will not be required for compliance with any regulation under RCRA.

F. Removal of Requirements To Use Only SW–846 in §§ 266.100(d)(1)(ii) and (g)(2), and 266.102(b)(1)

Part 266, subpart H, addresses the standards for the management of hazardous wastes burned in boilers and industrial furnaces (BIFs). Sections 266.100(d)(1)(ii) and (g)(2) currently require the use of SW–846 methods "or alternative methods that meet or exceed the SW–846 method performance," when sampling and analyzing feedstocks for a conditional exemption for smelting, melting, and refining furnaces that burn hazardous waste solely for legitimate recovery. Section 266.102(b)(1) contains the same language regarding waste analysis in support of permits. When we finalized this regulation, we added the use of "alternative methods" in response to concerns that SW–846 method detection limits cannot be achieved when analyzing certain feedstream matrices (*see* 56 FR 42504, August 27, 1991). The subject rule noted that we could reject the use of an alternative method because it may not meet or exceed the performance capabilities of the SW–846 methods or the recommended methods.

In this instance, the SW–846 methods are not being used for method-defined parameters. Therefore, we propose to remove from §§ 266.100(d)(1)(ii) and (g)(2) and 266.102(b)(1) the phrase regarding alternative methods and add language allowing the use of "appropriate" procedures from other reliable sources. This change will explicitly allow the use of other appropriate methods and maintain consistency in our language throughout the RCRA regulations regarding the use of other methods. The broad, conforming changes that we are proposing to make throughout the regulations are essentially similar to what is included here. While we are changing specific language here, we are not changing the original intent of the regulation. In fact, we are proposing to use the original intent of this regulation throughout the other RCRA regulations, when applicable.

G. Removal of Requirement To Use Only SW–846 in § 266.106(a)

Section 266.106 provides the standards to control emissions of metals at BIFs. Paragraph (a) of this section states that the owner/operators must comply with the standards for any listed metal of concern that is present at detectable levels using SW–846 methods. The listed metals of concern include antimony, arsenic, barium, beryllium, cadmium, chromium, lead, mercury, thallium, and silver. In this instance, the SW–846 methods are not being used for the analysis of method-defined parameters and their required use is not necessary. Therefore, we propose to revise this section by removing the requirement to use only SW–846 methods, deleting the reference to § 260.11, and explicitly allowing the use of other appropriate methods.

H. Removal of Requirements To Use Only SW–846 in § 266.112(b)(1) and (b)(2)(i)

Section 266.112 of the BIF regulations addresses the regulation of residues resulting from the burning or processing of hazardous wastes in BIFs. Paragraph (b)(1) provides testing requirements for the exclusion of such residues based on comparison of appendix VIII, part 261, constituents in a waste-derived residue to those in a normal residue. It states that sampling and analysis must be in conformance with the procedures of

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SW–846. The section does not specify the use of any SW–846 methods for method-defined parameters. In addition, the preamble to the Hazardous Waste Combustion Maximum Achievable Control Technologies (MACT) rulemaking of September 30, 1999 (64 FR 52828) stated that EPA does not require the use of SW–846 methods for the analysis of feedstreams in order to be consistent with a move toward PBMS. Therefore, we propose to remove the requirement to use only SW–846 procedures during the BIF residue exclusion demonstration, to delete the reference to § 260.11, and to explicitly allow the use of other appropriate methods. If you are an owner/operator subject to this regulation, and you select this option, you will still be required to determine if the residue contains appendix VIII constituents. However, you will have more flexibility in the selection of a method for the determination.

In addition, § 266.112(b)(2)(i) requires the use of only SW–846 procedures during a residue exclusion demonstration based on a comparison of non-metal constituent concentrations in the waste-derived residue with health-based limits provided in appendix VII to part 266. Under this section, the testing of the residue does not involve a method-defined parameter and the required use of only SW–846 methods is not necessary. We propose to revise this section by removing the required use of only SW–846 procedures and explicitly allowing the use of other appropriate methods. If you are an owner/operator subject to this regulation, and you select this option, you will still be required to compare levels of non-metal constituents with the health-based limits of appendix VII. However, you will have more flexibility in the selection of a method for the determination. We are not revising § 266.112(b)(2)(ii), which will continue to require the use of the TCLP for the leaching of metal constituents during the residue exclusion demonstration under § 266.112(b)(2).

I. Removal of Requirements To Use Only SW–846 in Sections 1.0, 3.0, 10.3, and 10.6 of Appendix IX to Part 266

Appendix IX to part 266 contains the methods manual for compliance with the BIF regulations. The last paragraph of section 1.0, "Introduction," currently identifies all SW–846 methods to the BIF manual as required procedures for determining compliance with the BIF regulations. The section text does not specifically reference the method numbers; instead it only refers to the methods of SW–846 in general. However, not all of the SW–846 methods for BIF-related analysis are used for method-defined parameters. Therefore, we propose to revise the last paragraph of section 1.0 to explicitly list those SW–846 methods used for method-defined parameters in BIF-related analyses (*i.e.*, air sampling) and which cannot be substituted with other methods. Those methods will remain required for BIF-related analyses, if this proposal is finalized. These methods include air sampling Methods 0011 ("Sampling for Selected Aldehyde and Ketone Emissions from Stationary Sources"), 0023 ("Sampling Method for Polychlorinated Dibenzo-p-Dioxins and Polychlorinated Dibenzofuran Emissions from Stationary Sources"), 0050 ("Isokinetic HCl/Cl_2 Emission Sampling Train"), 0051 ("Midget Impinger HCl/Cl_2 Emission Sampling Train"), 0060 ("Determination of Metals in Stack Emissions"), and 0061 ("Determination of Hexavalent Chromium Emissions from Stationary Sources").

The following two methods are those BIF methods which do not involve method-defined parameters and which can be substituted with other appropriate methods for BIF-related analyses: SW–846 Method 9057, "Determination of Chloride from HCl/Cl_2 Emission Sampling Train (Methods 0050 and 0051) by Anion Chromatography," and Method 8315, "Determination of Carbonyl Compounds by High Performance Liquid Chromatography (HPLC)." We propose to add sentences to the last paragraph of section 1.0 of appendix IX to part 266 that allows the use of appropriate methods from other reliable sources for these determinations.

[Note: Methods 0050 and 0051, referenced in the title of Method 9057, describe the collection of stack gas emission samples for subsequent determinative analysis of hydrogen chloride and chlorine. Method 9057, an ion chromatography method, is typically used in the determinative analysis of chloride from the samples generated by those methods. During use of Methods 0050 and 0051, Cl- ions are collected in separate solutions for subsequent determinative analysis (*e.g.*, using Method 9057). Methods 0050 and 0051 remain required methods for a method-defined parameter because a change in their sampling procedures (*e.g.*, a change in the nature of the solutions submitted for determinative analysis) could result in different results by the determinative method. However, it is not necessary to exclusively require Method 9057 for the chloride determination because, when appropriate, other determinative methods besides Method 9057 may be used for that determination.]

Given the above, we also propose to revise the "Note" of section 3.0, "Sampling and Analytical Methods," to reflect that the complete SW–846 manual will no longer be incorporated by reference as a source of required methods for BIF-related analyses.

Section 10.3, "Basis," addresses the determination of metal concentrations during BIF-related analyses. Paragraph (2) of this section references SW–846, as incorporated by reference, as the source for methods for the determinations. Methods for such determinations are not used for method-defined parameters. Therefore, we propose to revise the section so that other appropriate methods can be used, and remove the indication that these SW–846 methods are incorporated by reference.

Finally, the fourth bullet of paragraph (5) of section 10.6, "Precompliance Procedures," indicates that daily sample composites must be prepared according to SW–846 procedures. We propose to revise this bullet to allow other appropriate procedures and reflect the intent that SW–846 sampling procedures only be used as guidance.

J. Removal of Requirements To Use Only SW–846 Methods in §§ 270.19(c)(1)(iii) and (iv); 270.22(a)(2)(ii)(B); 270.62(b)(2)(i)(C) and (D); and 270.66(c)(2)(i) and (ii)

Section 270.19 describes the part B information requirements for incinerators. Paragraph (c)(1)(iii) of that section states that, when submitting information in lieu of a trial burn, the applicant must identify any hazardous constituents listed in appendix VIII of part 261 that are present in the waste by using SW–846. Sections 270.62(b)(2)(i)(C) and (D) and 270.66(c)(2)(i) and (ii) provide the same requirements for the trial burn plans submitted by hazardous waste incinerator and BIF permit applicants.

In addition, § 270.22 provides specific part B information requirements for BIFs. Paragraph (a)(2)(ii)(B) of that section states that, when seeking to permit BIFs that burn low risk wastes to waive the DRE trial burn, owner/operators must submit results using SW–846 analytical techniques documenting the concentrations of the nonmetal compounds of appendix VIII of part 261.

Each of the above sections include requirements to use only SW–846 methods during the analyses of appendix VIII, part 261, constituents. These analyses do not involve the use of SW–846 methods for method-defined parameters. We propose to remove these requirements, to delete the references to § 260.11, and to explicitly allow the use of appropriate methods from other reliable sources. If you are an applicant, you will still be required to conduct analyses for the appendix VIII constituents of concern. However, you will have flexibility in the selection of an appropriate method.

K. Removal of SW–846 Methods From Incorporation by Reference in § 260.11(a)(11)

Currently, all methods of SW–846 are incorporated by reference at § 260.11(a)(11) "when used" within the RCRA regulations. All of SW–846 had to be incorporated by reference because some RCRA regulations require in general any SW–846 method (*e.g.*, the delisting regulations). The required methods had to be incorporated by reference because they are too lengthy for publishing directly in the regulations and they are readily available to the public in the SW–846 manual. In this rule, we propose to restrict required uses of SW–846 methods for the analysis of method-defined parameters. Therefore, we propose to revise § 260.11(a)(11) to remove the incorporation by reference of all SW–846 methods except those SW–846 methods that may be required for the analyses of method-defined parameters. Those methods will remain incorporated by reference when used for method-defined parameters and required by the RCRA regulations (a few are not explicitly required by the RCRA regulations at this time).

It is important to note that a method listed in § 260.11(a)(11) because it is used for analysis of a method-defined parameter is sometimes used for non-mandatory purposes. For example, Methods 9010, "Total and Amenable Cyanide: Distillation," and 9012, "Total and Amenable Cyanide (Automated Colorimetric, with Off-line Distillation)" are listed in some conditional delistings and are not being used for a method-defined parameter. Therefore, the facilities can use another appropriate method for those analyses. However, these same methods are used as method-defined parameters under § 268.44, the universal treatment standards under the land disposal restrictions regulations. In that case, the methods cannot be substituted. Therefore, due to the latter scenario, those two methods are incorporated by reference in the regulations at § 260.11(a)(11). It is the application of a method in a regulation that determines whether a method is being used to analyze a required method-defined parameter—not simply whether the method is listed in § 260.11(a)(11).

Given this proposal, the SW–846 methods to remain as incorporated by reference in § 260.11(a)(11) are listed in Table 3.

TABLE 3.—SW–846 METHODS TO REMAIN IN § 260.11(A)(11)

SW–846 method	Method title
0010	Modified Method 5 Sampling Train.
0011	Sampling for Selected Aldehyde and Ketone Emissions from Stationary Sources.
0020	Source Assessment Sampling System (SASS).
0023	Sampling Method for Polychlorinated Dibenzo-*p*-Dioxins and Polychlorinated Dibenzofuran Emissions from Stationary Sources.
0030	Volatile Organic Sampling Train.
0031	Sampling Method for Volatile Organic Compounds (SMVOC).
0040	Sampling of Principal Organic Hazardous Constituents from Combustion Sources Using Tedlar® Bags.
0050	Isokinetic HCl/Cl_2 Emission Sampling Train.
0051	Midget Impinger HCl/Cl_2 Emission Sampling Train.
0060	Determination of Metals in Stack Emissions.
0061	Determination of Hexavalent Chromium Emissions from Stationary Sources.
1010	Pensky-Martens Closed-Cup Method for Determining Ignitability.
1020	Small Scale Closed-Cup Method for Determining Ignitability.
1110	Corrosivity Toward Steel.
1310	Extraction Procedure (EP) and Structural Integrity Test.
1311	Toxicity Characteristic Leaching Procedure.
1312	Synthetic Precipitation Leaching Procedure.
1320	Multiple Extraction Procedure.
1330	Extraction Procedure for Oily Wastes.
3542	Extraction of Semivolatile Analytes Collected Using Method 0010 (Modified Method 5 Sampling Train).
5041	Analysis for Desorption of Sorbent Cartridges from Volatile Organic Sampling Train (VOST).
9010	Total and Amenable Cyanide: Distillation.
9012	Total and Amenable Cyanide (Automated Colorimetric, with Off-line Distillation).
9040	pH Electrometric Measurement.
9045	Soil and Waste pH.
9060	Total Organic Carbon (TOC).
9070	n-Hexane Extractable Material (HEM) for Aqueous Samples.
9071	n-Hexane Extractable Material (HEM) for Sludge, Sediment, and Solid Samples.
9095	Paint Filter Liquids Test.

Please note that we are not adding any new methods to § 260.11(a)(11)—each method listed above is already a part of SW–846 and was incorporated by reference during previous rulemakings. We are only removing from incorporation by reference those methods that will no longer be required should this proposal be finalized. For each method retained as incorporated by reference, we are indicating in § 260.11(a)(11) the promulgated version of the method which was last incorporated by reference and thus which must be used during regulatory compliance.

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V. Proposed Editorial Corrections to SW–846 References in the RCRA Testing and Monitoring Regulations

We also propose to correct inaccurate references to SW–846 (some of which are logical outgrowths to the proposed revision to § 260.11), and clarify method selection flexibility in the RCRA regulations. Table 4 lists and summarizes these proposed changes to the RCRA regulations.

TABLE 4.—PROPOSED CORRECTIONS AND CLARIFICATIONS

Regulation	Correction or clarification
§ 258.28(c)(1)—Liquids restrictions	Correction to add "incorporated by reference in § 260.11" after mention of SW–846 Method 9095, "Paint Filter Liquids Test"
Appendix I to part 258—Constituents for detection monitoring.	Correction to include SW–846 Method 6020 as an example of an appropriate method for detection monitoring.
Appendix II to part 258—List of inorganic and organic hazardous constituents.	Clarification regarding the use of other appropriate methods by removing the "Suggested Methods" and "PQLs (μ g/L)" columns, removing footnotes 1, 5 and 6 and revising and renumbering the remaining footnotes, as appropriate. (As noted in footnote 1, the methods and PQLs were given for informational purposes only; and, as noted in footnote 6, the PQLs were directly related to the indicated methods and not part of a regulation.).
§ 260.21(d)—Petitions for equivalent methods	Clarification that equivalent methods will be added to § 260.11, instead of just added to SW–846.
§§ 261.3(a)(2)(v), 279.10(b)(1)(ii), 279.44(c), 279.53(c), and 279.63(c)—Rebuttable presumption for used oil.	Clarification that other appropriate methods beside the example SW–846 methods can be used in analyses to show that a used oil does not contain hazardous waste.
Appendix III to part 261—Chemical analysis test methods.	Clarification regarding the use of other appropriate methods.
§§ 264.1034(f) and 265.1034(f)—Test methods and procedures.	Clarification that appropriate methods other than SW–846 Method 8260 are allowed to resolve disagreements regarding concentration estimates.
Appendix IX to part 264—Ground-water monitoring list.	Clarification regarding the use of other appropriate methods by removing the "Suggested Methods" and "PQLs (μ g/L)" columns and removing footnotes 1, 5 and 6 and revising and renumbering the subsequent footnotes, as appropriate. (As noted in footnote 1, the methods and PQLs were given for informational purposes only; and, as noted in footnote 6, the PQLs were directly related to the indicated methods and not part of a regulation.).
§ 265.1081—Definitions	Correction to SW–846 reference in definition of "waste stabilization process".
Appendix IX to part 266—Methods manual for compliance with BIF regulations.	Corrections to reflect removal of SW–846 methods from the manual on June 13, 1997 and clarification in existing guidance regarding use of other appropriate methods and SW–846.

VI. Proposed Action To Withdraw Reactivity Interim Guidance From SW–846 Chapter Seven and Remove Required SW–846 Reactivity Analyses and Threshold Levels From Conditional Delistings

We are also proposing to withdraw the reactivity interim threshold levels and reactive cyanide and sulfide methods from Chapter Seven of SW–846 and from certain conditional delistings found in appendix IX to 40 CFR part 261. In particular, July 1985, EPA's Office of Solid Waste (OSW) issued a memorandum entitled "Interim Thresholds for Toxic Gas Generation." This 1985 memorandum contained interim threshold levels for toxic cyanide and sulfide gas generation and draft analytical methods for testing wastes for those levels. This reactive cyanide and reactive sulfide guidance was developed in response to public inquiries about how to evaluate wastes for the characteristic of reactivity under § 261.21(a)(5). In response to subsequent concerns about the effectiveness of the guidance (as explained further below), EPA's OSW reexamined the guidance, and on April 21, 1998, issued a memorandum entitled "Withdrawal of Cyanide and Sulfide Reactivity Guidance" which withdrew the July 1985 guidance. At this time, given the 1998 withdrawal of the reactive cyanide and sulfide interim threshold levels and draft method guidance, EPA proposes to withdraw the same guidance from Chapter Seven, "Characteristics Introduction and Regulatory Definitions," of SW–846 and to withdraw required uses of the interim threshold levels and methods found in certain conditional exclusions (also called delistings) at 40 CFR part 261, appendix IX. The following paragraphs provide background information regarding the 1985 guidance and its withdrawal in 1998, and provide the basis for this proposal. See the docket, number RCRA–2002–0025, of this rulemaking for a copy of the 1985 and 1998 memorandums.

40 CFR 261.23 contains eight narrative descriptions of properties used to identify solid wastes exhibiting the hazardous waste characteristic of reactivity (EPA Hazardous Waste Number D003). The fifth of those properties at § 261.23(a)(5) addresses cyanide- and sulfide-bearing solid wastes. The regulation states that one way a solid waste can be reactive is if "it is a cyanide- or sulfide-bearing waste which, when exposed to pH conditions between 2 and 12.5, can generate toxic gases, vapors or fumes in a quantity sufficient to present a danger to human health or the environment." The regulation does not require that a particular test method be used for determination of this reactive property. Instead, as with each of the reactivity characteristic properties, the regulated public must base their determination on the narrative standard and knowledge of their waste.

Some of the hazardous waste characteristics are defined in terms of properties measurable by standardized testing protocols. However, regarding the reactivity characteristic, EPA noted that available test methods suffered from a number of shortcomings which made it inappropriate to specify a numerically quantified definition with accompanying test protocols (*see* 45 FR 33110, May 19, 1980). In addition, reactive wastes may exist and pose a hazard under a variety of situations and circumstances, and it would be difficult to adequately quantify and test for all of those situations. The Agency noted that a lack of a quantified definition and accompanying test methods would not cause problems because most generators of reactive wastes are aware that their wastes possess the property and require special handling. Consequently, the Agency developed the narrative definitions found at § 261.23 as sufficient information to determine whether a waste is hazardous based on reactivity.

However, the Agency received many public inquires regarding how to evaluate wastes for the reactivity characteristic property at § 261.23(a)(5). The Agency therefore initiated studies on the possible development of numerical limits and test methods for the property. On an interim basis, the Agency issued the memorandum in July 1985 which provided interim threshold levels for "toxic gas generation reactivity." These limits were 250 mg of HCN/kg of waste for total available cyanide and 500 mg of H_2S/kg of waste for total available sulfide. The memorandum provided draft testing methods for measuring the available cyanide and sulfide and noted that ongoing studies may result in changes to the methods. The memorandum also provided a description of the mismanagement scenario used to derive the interim threshold levels. This scenario assumed disposal of cyanide- and sulfide-bearing wastes into an open pit containing acidic wastes, resulting in a rapid and high level release of toxic gas. After issuance of the 1985 memorandum, the guidance threshold levels and draft test methods were included in sections 7.3.3 ("Interim Guidance for Reactive Cyanide") and 7.3.4 ("Interim Guidance for Reactive Sulfide") of Chapter Seven of EPA Publication SW–846, "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods."

The 1985 memorandum contained non-binding interim guidance and was not a regulation. The EPA reactivity threshold limit and method studies mentioned by the document were not successfully completed. No threshold levels or test methods were ever proposed or promulgated and included in § 261.23(a)(5) as numerically quantified definitions of a reactive hazardous waste. The addition of the 1985 interim limits and draft methods to Chapter Seven of SW–846 did not change the guidance status of the levels and methods for purposes of judging if a waste exhibits the characteristic of reactivity because the reactivity characteristic at § 261.23 does not specify the limits or use of the SW–846 methods. EPA intended that the 1985 and Chapter Seven information only be used as guidance of what might be hazardous.

Since cyanide and sulfide reactivity under § 261.23(a)(5) does not specify the use of a SW–846 method and instead relies on a narrative standard, the SW–846 methods are not incorporated by reference at § 260.11 for the purpose of determining whether a waste is hazardous based on that property of the reactivity characteristic. However, as noted above in section III.A ("Removal Of Requirements to Use only SW–846 in §§ 260.22(d)(1)(i) and Appendix IX to Part 261") of this proposal, some conditional delistings were promulgated after 1985 that require the use of SW–846 methods, including use of the reactive cyanide and reactive sulfide test methods found in SW–846 Chapter Seven. Some of these conditional delistings also specify the reactive cyanide and sulfide limits of 250 mg/kg and 500 mg/kg, respectively, as delisting action levels.

In early 1998, the National Enforcement Investigations Center (NEIC) of EPA expressed concerns regarding the effectiveness of the reactivity guidance contained in the 1985 memorandum and Chapter Seven of SW–846, and urged that EPA withdraw the guidance. Consequently, EPA's OSW conducted a review of the 1985 guidance mismanagement scenario, the derivation of the guidance threshold levels, and the relationship of the scenario and thresholds to the test method results. After this careful review, EPA concluded that NEIC's concerns regarding effectiveness of the guidance were well founded. To summarize, EPA concluded that the guidance had the following significant flaws: (1) The test conditions evaluate a single pH condition and not the range of pH conditions (2 to 12.5) specified in the regulation; (2) the test conditions do not adequately recover the analyte and thus the tests predict low percentages of analyte releases in the waste, (3) the mismanagement scenario and test conditions are not correctly scaled between each other, and (4) the mismanagement scenario of an open pit is not the only exposure of concern and may not represent a plausible worst case scenario. (See the April 21, 1998 memorandum at *http://www.epa.gov/SW–846/* for detailed information regarding NEIC's concerns and EPA's conclusions.) EPA consequently withdrew the July 1985 guidance through the aforementioned April 21, 1998 memorandum.

Therefore, in conjunction with the 1998 withdrawal of the 1985 cyanide and sulfide reactivity guidance, we propose to remove sections 7.3.3 and 7.3.4 from Chapter Seven of SW–846. We will include the revised Chapter Seven in Proposed Update IIIB to SW–846.

It is necessary to use a rulemaking to remove sections 7.3.3 and 7.3.4 from Chapter Seven, even though the sections were originally added only as guidance, because as noted above certain conditional delistings found in Tables 1 and 2 of 40 CFR part 261, appendix IX, do require use of the methods in those sections. The 1998 withdrawal of the 1985 guidance did not affect those requirements. Since the delistings require the use of SW–846 methods, the reactive cyanide and sulfide methods found in SW–846 are incorporated by reference for the purpose of implementing those specific delisting provisions. We therefore, propose to remove required uses of the SW–846 Chapter Seven methods for reactive cyanide and sulfide from a number of conditional delistings.

In addition, some of the conditional waste exclusions list the reactive cyanide and sulfide interim threshold levels found in the 1985 memorandum and in Chapter Seven as delisting action limits. Therefore, due to Agency concerns regarding the effectiveness of those levels for determining whether a waste is hazardous, the Agency also proposes to remove those levels from the delistings.

The Agency notes that the exclusions in 40 CFR part 261 appendix IX only apply to listed hazardous wastes. As noted by §§ 260.22(c)(2), (d)(4) and (e)(4), an excluded waste may still be a hazardous waste by operation of subpart C of part 261, which contains the RCRA regulations addressing characteristic hazardous wastes. Therefore, generators of excluded wastes are still required to continue to determine whether their wastes remain non-hazardous based on the four hazardous waste characteristics, including the characteristic of reactivity. (EPA's "RCRA Delisting Program Guidance Manual for the Petitioner," March 23, 2000, affirms this requirement by stating that generators with excluded wastes remain obligated to determine whether their waste remains non-hazardous based on the hazardous waste characteristics.) Therefore, removal of required testing for reactive cyanide and sulfide based on the SW–846 methods and threshold levels does not relieve the generators of delisted wastes from a reactivity characteristic determination. Given the regulatory requirement in § 260.22(c)(2), (d)(4) and (e)(4) it also is not necessary to replace the reactive cyanide and sulfide method requirements or threshold levels in those delistings with language requiring a determination based on the narrative at § 261.23(a)(5),

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or on any other property under the reactivity characteristic.

As noted by the 1998 memorandum, we understand that withdrawal of the reactivity guidance meant that waste generators who relied on this guidance in the past might have somewhat greater uncertainty about determining the regulatory status of their cyanide- and sulfide-bearing wastes. However, the Agency believes that generators of sulfide- and cyanide-bearing wastes can recognize the acute toxicity of sulfides and cyanides without relying on the guidance test methods and threshold levels. Where wastes with high concentrations of soluble sulfides and cyanides are managed, generators have relied on their knowledge of the waste to classify them as D003. Generators should continue to classify their high concentration sulfide- and cyanide-bearing wastes as hazardous based on the narrative standard of 261.23(a)(5), as they always have been required to do.

We are interested in public comments on the removal of the reactivity guidance from Chapter Seven and on the removal of the reactive cyanide and sulfide analytical requirements and threshold levels from the conditional delistings.

VII. Proposed Clarifications to Corrosivity and Ignitability Hazardous Waste Characteristics

Sections VII.A and VII.B address proposed revisions to the corrosivity characteristic and the ignitability characteristic testing requirements. The revisions include changes to references to ASTM standards and SW–846 methods. These revisions are non-substantive updates of the methods presently used in the regulations and will not affect which wastes are determined to be hazardous based on the characteristics. We request public comment on each of the proposed revisions.

A. Revision to § 261.22(a)(2) To Clarify That SW–846 Method 1110 Is the SW–846 Standardized Version of the NACE Standard Specified for Corrosivity Characteristic Testing

Section 261.22(a)(2) defines the hazardous waste characteristic of corrosivity for a liquid which corrodes steel. The required test method for the determination is identified as "the test method specified in NACE * * * Standard TM–01–69 as standardized in * * * SW–846 * * *" As explained in the May 19, 1980 regulations (*see* 45 FR 33084) which added § 261.22 to the RCRA regulations, EPA standardized the NACE Standard TM–01–69 in SW–846. As also explained in the background document to the corrosivity characteristic, NACE Standard TM–01–69 describes a simple immersion test to determine the rate of corrosion, and the procedure is not completely standardized because it was designed to test the suitability of metals for a variety of uses. In 1980, a public commenter was concerned that the incomplete standardization of the NACE Standard permitted undesired variation in test conditions. EPA agreed and, in response to the public comment, put a standardized version of the method in SW–846 so that the procedure more clearly defined the appropriate test conditions. At the time, we did not specify which test method of SW–846 included the standardized version of the NACE method. This SW–846 method has always been Method 1110, "Corrosivity Toward Steel." Therefore, we propose to add the number of this method to § 261.22(a)(2) for clarification of which SW–846 test method is the standardized version of NACE. This revision to § 261.22(a)(2) does not represent a change to the characteristic.

B. Revisions to § 261.21(a)(1) To Update References to ASTM Standards, To Clarify That SW–846 Methods 1010 and 1020 Reference and Use the ASTM Standards Specified for Ignitability Characteristic Testing, and To Remove an Unnecessary Referral to Method Equivalency Petitions; and Revisions to § 260.11(a)(1) and (2) To Include the Updated References

Section 261.21(a)(1) defines the hazardous waste characteristic of ignitability for a liquid which has a flash point less than 60 °C (140 °F). For the determination, the section requires the Pensky-Martens Closed Cup Tester using ASTM Standard D 93–79 or D 93–80, or a Setaflash Closed Cup Tester using ASTM Standard D 3278–78. The American Society for Testing and Materials (ASTM) has revised these standards. We compared the latest versions of the standards with the ones currently referenced by § 261.21(a)(1). We found that the differences between ASTM Standard D 3278–78 and the new version D 3278–96 were not substantive and will not affect whether a waste is identified as hazardous based on the ignitability characteristic. We also compared ASTM Standard D 93–80 with the newer versions D 93–99c and D 93–00. Again, we found that the D 93–99c differences were not substantial. However, we found that the D 93–00 differences may be substantial because that version specifies different sample container volumes for different sample types. Specifically, it requires that all matrices except residual fuel oil be collected in containers not more than 85% or less than 50% full. The revision may significantly affect the characteristic results, since the potential to lose flammable volatile constituents will be greater from sample containers that may now have as much as 50% headspace. We are interested in public comment on this evaluation and conclusion. You can review a copy of our ASTM standard comparisons in the docket (number RCRA–2002–0025) to this proposed rule.

Given the above, we propose to revise § 261.21(a)(1) so that the use of "ASTM Standard D 93–79 or ASTM Standard D 93–80" is replaced by the use of "ASTM Standard D 93–99c" for an ignitability characteristic determination using the Pensky-Martens Closed Cup Tester. We also request comment on whether we should instead replace the older standard with "ASTM Standard D 93–00." Please give detailed reasons for your position.

Likewise, we propose to revise § 261.21(a)(1) whereby the use of "ASTM Standard D 3278–78" is replaced by the use of "ASTM Standard D 3278–96" for a determination using the Small Scale Closed Cup Apparatus (formerly called the Setaflash Closed Cup Tester in ASTM D 3278–78). We also propose to revise the incorporation by reference citations for these methods at § 260.11(a)(1) and (2) to reflect the updated references of these ASTM methods.

In addition, the most current versions of SW–846 Method 1010, "Pensky-Martens Closed-Cup Method for Determining Ignitability," and Method 1020, "Setaflash Closed-Cup Method for Determining Ignitability," use the above ASTM standards as their method procedures. A brief summary of the ASTM procedure is provided by each method and the reader is referred to the appropriate ASTM standard for information on how to conduct the subject test. Therefore, we propose to also revise § 261.21(a)(1) to clarify that the ASTM standards for ignitability characteristic determinations are used and referenced by the subject SW–846 methods.

Finally, regarding § 261.21(a)(1), we propose to remove the end of the last sentence which refers to the equivalent test method demonstration. This information is adequately addressed in §§ 260.20 and 260.21. It is not necessary to repeat the information regarding method equivalency petitions in each section of a RCRA regulation which requires use of a test method. Also, this revision is consistent with similar sections on testing in part 261 and other parts of the RCRA regulations.

None of the above proposed revisions represent a change to the ignitability characteristic.

VIII. Availability of Proposed Update IIIB and Invitation for Public Comment on the Update

SW–846 is a guidance document that changes over time as new information and data are developed. Today, we propose to revise several methods and chapters of SW–846 and release these revisions as an update to the Third Edition of SW–846. To date, EPA has finalized Updates I, II, IIA, IIB, III, and IIIA to the Third Edition of the SW–846 manual. On May 8, 1998 (*see* 63 FR 25430) and on November 27, 2000 (*see* 65 FR 70678), we also respectively announced the availability of Draft Update IVA and Draft Update IVB methods and chapters, which we published for guidance purposes only. The revised methods of today's update (Update IIIB) are used for method-defined parameters and thus, any required uses of those methods will remain in the RCRA regulations (a few of the methods are not explicitly required in the current RCRA regulations). Therefore, we are formally proposing them today as Update IIIB to SW–846. Our reasons for the method revisions follow.

First, as noted earlier, ASTM released Standards D 93–99c, "Flash Point by Pensky-Martins Closed Cup Tester," to replace D 93–80 (which previously replaced D 93–79) and D 3278–96, "Flash Point of Liquids by Small Scale Closed-Cup Apparatus," to replace D 3278–78. The current versions of SW–846 Methods 1010 and 1020 reference the older versions of those standards. We propose to replace these out-of-date references in Methods 1010 and 1020 with references to the newer versions of the subject ASTM standards. We also propose to revise the title of Method 1020 from "Setaflash Closed-Cup Method for Determining Ignitability" to "Small Scale Closed Cup Method for Determining Ignitability" for consistency with the title of ASTM Standard D 3278–96. None of the above revisions to Methods 1010 and 1020 represent a change to the ignitability characteristic.

We also propose to clarify the surface area equation found in Sec. 4.5 of Method 1110, "Corrosivity Toward Steel." We have received questions from the public indicating that the current equation is not sufficiently clear as written, due to the equation font and format. We wish to note that the equation shown in the method can be correctly followed if one uses the rules for mathematical function precedence (addition, subtraction, multiplication, and then division). Nevertheless, we are changing Sec. 4.5 of Method 1110 to a format that is less subject to misinterpretation. This does not represent a significant change to that method or the characteristic because the new presentation does not change the equation or calculation result.

We also propose to include in Update IIIB seven revised methods which will be retained at § 260.11(a)(11) because they might be required for RCRA-related method-defined parameters. We are also revising the text in section 6.0 of most of these methods to remove required uses of Chapter Nine during the required uses of those methods. We are making these revisions to clarify that use of sampling directions found in Chapter Nine of SW–846 is guidance and not required under the RCRA Program. These revisions do not modify any required uses of the methods in the RCRA regulations or the results from using the methods. Regarding Method 9070A, we are adding the suffix "A" and a method title, which were inadvertently left out during its last promulgation as part of Update IIIA.

To address editorial revisions due to the revised methods, Update IIIB will include a revised Table of Contents and revised Chapters Five, Six, and Eight. Chapters Five, Six, and Eight will be revised to include the new method numbers for the revised methods of Proposed Update IIIB. Also, Chapter Seven will be revised to reflect the withdrawal of the reactive cyanide and sulfide guidance in sections 7.3.3 ("Interim Guidance for Reactive Cyanide") and 7.3.4 ("Interim Guidance for Reactive Sulfide"), and to replace certain characteristic explanatory text with referrals to the regulations themselves.

In conclusion, we propose to revise § 260.11(a)(11) to include the eleven Update IIIB revised methods described above. Table 5 provides a listing of the Update IIIB eleven revised SW–846 methods and four revised chapters and Table of Contents. The method numbers in the table reflect the appropriate method revision letter suffix (*e.g.*, A, B, C, etc.). These suffixes are not always reflected in the RCRA regulations themselves (*e.g.*, the regulations typically only cite the method number without a suffix), nor are they reflected at § 260.11(a)(11). However, as noted earlier in this proposal, during compliance with those regulations, the regulated community must only use the latest promulgated revision of those methods as indicated in § 260.11(a)(11).

Table 5 also identifies those sections or parts of each method or chapters which are revised and are open for public comment. We will not consider comments on the other sections or parts of the methods or chapters because those portions are not changed by Proposed Update IIIB.

TABLE 5.—REVISED METHODS AND CHAPTERS

Method No.	Method or chapter title	Sections or parts of methods or chapters open for comment
	Table of Contents	References to the revised methods.
	Chapter Five—Miscellaneous Test	References to the revised methods.
	Chapter Six—Properties	References to the revised methods.
	Chapter Seven—Characteristics Introduction	Secs. 7.1.2, 7.2.2, 7.3.2, and removal of secs. 7.3.3 and 7.3.4.
	Chapter Eight—Methods for Determining Characteristics.	References to the revised methods.
1010A	Pensky-Martens Closed-Cup Method for Determining Ignitability.	Secs. 1.1, 1.2, 2.2, and 3.1 and ref. 4 of sec. 4.0.
1020B	Small Scale Closed Cup Method for Determining Ignitability.	Title and secs. 1.1, 1.3, 2.1, and 2.4 and ref. 4 of sec. 4.0.
1110A	Corrosivity Toward Steel	Sec. 4.5.
1310B	Extraction Procedure (EP) Toxicity Test Method and Structural Integrity Test.	Secs. 1.1 and deleted 6.1
9010C	Total and Amenable Cyanide: Distillation	Secs. 1.1 and deleted 6.1.

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TABLE 5.—REVISED METHODS AND CHAPTERS—Continued

Method No.	Method or chapter title	Sections or parts of methods or chapters open for comment
9012B	Total and Amenable Cyanide (Automated Colorimetric, with Off-line Distillation).	Secs. 1.1 and deleted 6.1.
9040C	pH Electrometric Measurement	Deleted Sec. 6.1.
9045D	Soil and Waste pH	Deleted Sec. 6.1.
9060A	Total Organic Carbon	Deleted Sec. 6.1.
9070A	n-Hexane Extractable Material (HEM) for Aqueous Samples.	Title.
9095B	Paint Filter Liquids Test	Deleted Sec. 6.1.

Note: A suffix of "A" in the method number indicates revision one (the method has been revised once). A suffix of "B" in the method number indicates revision two (the method has been revised twice). A suffix of "C" in the method number indicates revision three (the method has been revised three times).

IX. Proposed Addition of Method 25A to §§ 264.1034(c)(1)(ii) and (iv) and 265.1034(c)(1)(ii) and (iv)

We propose to revise §§ 264.1034(c)(1)(ii) and (iv) and 265.1034(c)(1)(ii) and (iv) to allow use of Method 25A, as well as Method 18, during analyses in support of air emission standards for process vents and/or equipment leaks at hazardous waste management facilities. We added the flexibility to use a method other than Method 18 as a result of feedback from the regulated public. Method 18 is a technique best applied when the test matrix is known and the number of target compounds is limited. It identifies individual components. On the other hand, Method 25A is a total volatile organic compound (VOC) measurement method. Members of the regulated public found it difficult to effectively use Method 18 in compliance with the subject regulation because their sources contain up to hundreds of regulated compounds, and because the test matrix changes daily. The Agency believes that allowing the use of Method 25A will solve this problem. Also, from an environmental protection viewpoint, Method 25A may be more protective than Method 18 because it is a total analysis method and responds to total volatile organic carbon without differentiating among individual components. Therefore, this change will allow the needed method selection flexibility without lessening environmental protection. As part of this change, we added equations for the calculation of total mass flow rates for sources utilizing Method 25A. Both Methods 25A and 18 are located in 40 CFR part 60, appendix A.

X. Proposed Removal of Requirements from § 63.1208(b)(8)(i) and (ii) in the NESHAP Standards to Demonstrate Feedstream Analytes are not Present at Certain Levels

EPA promulgated the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Hazardous Waste Combustors on September 30, 1999 pursuant to section 112 of the Clean Air Act. Sections 63.1208(b)(8)(i) and (ii) require sources, for each feedstream, to demonstrate that: (1) Each analyte is not present above the reported level at the 80% upper confidence limit around the mean; and (2) the analysis could have detected the presence of the constituent at or below the reported level at the 80% upper confidence limit around the mean.

Several stakeholders raised concerns about implementing this requirement. For example, stakeholders questioned the ability to calculate a confidence level around the mean for data distributions that are not "normal." Stakeholders also raised the concern that applying a confidence level criteria to each individual feedstream unnecessarily results in a combined feedstream confidence level that is much higher than 80%. While the original intent of these provisions was to place a greater emphasis on performance rather than protocol, the provisions as written are not clear. For example, the term "reported level" is not defined and is not used elsewhere in the regulations. This makes interpretation and application of these provisions difficult.

Upon re-evaluating this provision, we believe that it is inappropriate to require explicit feedstream analytical DQO requirements for hazardous waste combustors in the regulations. The various questions raised by stakeholders suggest that issues relating to feedstream analytical DQOs need to be addressed on a case-by-case basis. We therefore propose to delete § 63.1208(b)(8)(i) and (ii). We will retain the preceding regulatory language that states "It is your responsibility to ensure that the sampling and analysis procedures are unbiased, precise, and that the results are representative of the feedstream." In addition to the above regulatory language, we note that § 63.1209(c) also addresses general feedstream analysis requirements. In particular, § 63.1209(c)(1) states that a source must, prior to feeding the material, "obtain an analysis of each feedstream that is sufficient to document compliance with the applicable feedrate limits." We believe that sources should develop feedstream analytical DQOs consistent with the general principal of ensuring compliance with their applicable feedstream limits.

We anticipate that hazardous waste combustion sources will establish feedstream analytical DQOs that reflect the site-specific needs at their particular facility, and include these DQOs in their Title V permit (when required by the permitting official) and also in their feedstream analysis plan that is required pursuant to § 63.1209(c). This feedstream analysis plan must be kept on site in the operating record, and is subject to review and approval by the authorized regulatory Agency upon request.

XI. Announcing the Availability of the RCRA Waste Sampling Draft Technical Guidance

A. Why Is the Agency Releasing this Guidance?

As part of the Agency's efforts towards Innovating for Better Environmental Results, we have worked to revise the existing waste sampling guidance in Chapter Nine of SW–846. Many advances in waste sampling strategies have occurred since the existing waste sampling guidance Chapter Nine was initially published in 1986.

The Agency believes that a critical element in a program design is a well-thought out systematic waste sampling or characterization plan for evaluating hazardous wastes. This should include consideration of approaches to address issues regarding evaluating physical and chemical properties of solid waste. We believe it is our obligation to provide current guidance and better tools to address these environmental monitoring issues in accordance with performance based measurement principles.

Several EPA offices have worked closely together to develop this guidance (the Office of Solid Waste, EPA Regions, the Office of Research and Development, and the Office of Enforcement and Compliance Assurance.) In addition, in order to achieve expert external peer review, we have sought and received considerable input from public stakeholders knowledgeable about sampling issues and techniques.

B. What Is Included in the Draft Guidance?

The draft technical guidance contains information on how to develop a sampling plan to determine if (1) a solid waste exhibits any of the characteristics of a hazardous waste, (2) a hazardous waste is prohibited from land disposal regulations, and (3) a numeric treatment standard has been met. The guidance can also be used as a tool for implementing and assessing your program. In addition, the guidance is an excellent resource of information on other guidance documents that may help the user meet other sampling objectives such as site characterization under the RCRA corrective action programs.

Finally, the guidance includes a glossary of terms, information on fundamental statistical concepts and optimizing the design for obtaining the data, examples of how to control variability and bias in sampling, guidance on selecting equipment and conducting sampling analysis, and information on how to assess data.

In addition, we believe the guidance is a good working tool for planning and implementing your sampling program, and assessing sampling information. The guidance includes statistical concepts which can promote the development of scientifically sound and effective data. It is our intention to provide these statistical concepts in a user-friendly manner.

C. Will This Guidance Replace the Existing Chapter Nine of SW–846?

This document will update and replace the original sampling guidance version of Chapter Nine found in EPA publication SW–846 when the Fourth Edition of SW–846 is published. It is our intention to make the guidance available as a stand-alone document titled, "RCRA Waste Sampling Draft Technical Guidance."

After receipt of your comments, EPA will evaluate them and then revise the guidance as appropriate. The document when finalized will replace the existing sampling guidance of Chapter Nine, and SW–846 will reference the separate, stand-alone sampling guidance document.

D. Can the Draft Technical Guidance Be Used Now?

By releasing the guidance, EPA immediately makes available a wealth of new statistical concepts, examples, and approaches to waste sampling and characterizations. The Agency believes the regulated community and others will use the guidance when it is appropriate and beneficial to do so. The guidance has undergone extensive technical and peer review from EPA's Office of Research and Development (ORD), the American Society of Testing and Material (ASTM), and Academia, and is considered a useable tool. The guidance is not required, and does not replace any regulation or impose any regulatory requirement. Through this announcement, we are making it available to assist the public in addressing issues regarding waste sampling and characterization. Users of the guidance will still be obligated to follow regulations which govern any particular program.

Furthermore, the Agency believes the public will be pleased with the information contained in this document and will choose to use it immediately when appropriate to do so, because of the quality of information provided. The guidance promotes flexibility and cost effectiveness in achieving improved technologies in sampling design. Finally, the release of the guidance has been requested by the public for some time.

Therefore, we believe that this guidance will become an important part of the RCRA program, and will be helpful to users in sampling and characterizing waste streams. We are making the draft technical guidance available to the public on the Web and in the RCRA docket. Please see the instructions in section I.A of the proposed rule for obtaining information on the draft technical guidance via the EPA Internet website or the RCRA docket.

E. When Will the Guidance Be Finalized?

The guidance may be finalized through one of two courses of action. The Agency may place this guidance on a separate track of its own and finalize it soon after careful consideration of all comments received under this notice of availability. On the other hand, the Agency may announce the availability of the Final Technical Guidance as part of the Final Methods Innovation Rule (MIR) package. Depending on the extent of comments received, the process may take approximately fifteen months.

F. Request for Comment

The Agency developed the "RCRA Waste Sampling Draft Technical Guidance" for use by members of both the regulated community and regulating authorities. By making it available for public comment, we hope to encourage involvement in its development by all stakeholders. All portions of the document are open to comment. Your comments will help us improve the guidance and ensure that it is most beneficial to users. Follow the directions for submitting public comments given in section I.B of this proposed rule and notice of availability.

XII. State Authorization Procedures

A. Applicability of Federal Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified states to administer the RCRA hazardous waste program within the state. Following authorization, the state requirements authorized by EPA apply in lieu of equivalent Federal requirements and become Federally enforceable as requirements of RCRA. EPA maintains independent authority to bring enforcement actions under RCRA sections 3007, 3008, 3013, and 7003. Authorized states also have independent authority to bring enforcement actions under state law. A state may receive authorization by following the approval process described in 40 CFR part 271. 40 CFR part 271 also describes the overall standards and requirements for authorization.

After a state receives initial authorization, new Federal regulatory requirements promulgated under the authority in the RCRA statute which existed prior to the 1984 Hazardous and Solid Waste Amendments (HSWA) do not apply in that state until the state adopts and receives authorization for equivalent state requirements. The state must adopt such requirements to maintain authorization.

In contrast, under RCRA section 3006(g) (*i.e.*, 42 U.S.C. 6926(g)), new Federal requirements and prohibitions imposed pursuant to HSWA provisions take effect in authorized states at the same time that they take effect in unauthorized states. Although authorized states are still required to

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update their hazardous waste programs to remain equivalent to the Federal program. EPA carries out HSWA requirements and prohibitions in authorized states, including the issuance of new permits implementing those requirements, until EPA authorizes the state to do so.

Finally, authorized states are required to modify their programs only when EPA promulgates Federal requirements that are more stringent or broader in scope than existing Federal requirements. RCRA section 3009 allows the states to impose standards more stringent than those in the Federal program. *See* also § 271.1(i). Therefore, authorized states are not required to adopt Federal regulations, both HSWA and non-HSWA, that are considered less stringent.

B. Authorization of States for Today's Proposal

Today's proposal affects many aspects of the RCRA Program and would be promulgated pursuant to both HSWA and non-HSWA statutory authority. Therefore, when promulgated, the Agency will add the rule to Table 1 in § 271.1(j), which identifies Federal regulations that are promulgated pursuant to the statutory authority that was added by HSWA. States may apply for final authorization for the HSWA provisions, as discussed in the following section of this preamble.

Today's proposed rule language provides standards that are equivalent to or less stringent than the existing provisions in the Federal regulations which they would amend. Therefore, States would not be required to adopt and seek authorization for this rulemaking. EPA would implement this rulemaking only in those states which are not authorized for the RCRA Program, and will implement provisions promulgated pursuant to HSWA only in those states which have not received authorization for the HSWA provision that would be amended. In authorized States, the changes will not be applicable until and unless the State revises its program to adopt the revisions. (Note: Procedures and deadlines for State program revisions are set forth in § 271.21.)

This rule will provide significant benefits to EPA, states, and the regulated community, without compromising human health or environmental protection. Because this rulemaking would not become effective in authorized states until they adopted and are authorized for it, EPA will strongly encourage states to amend their programs and seek authorization for today's proposal, once it becomes final.

C. Abbreviated Authorization Procedures

EPA considers today's proposal to be a minor rulemaking and is proposing to add it to the list of minor or routine rulemakings in Table 1 to § 271.21. Placement in this table would enable states to use the abbreviated procedures located in § 271.21(h) when they seek authorization for today's proposed changes after they are promulgated. These abbreviated procedures were established in the HWIR-media rulemaking (see 63 FR 65927, November 30, 1998). EPA requests comment on this placement in Table 1 to § 271.21.

XIII. Administrative Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), we must determine whether a proposed regulatory action is "significant," and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The order defines a "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

OMB determined that this proposed rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review and the requirements of the Executive Order.

B. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA or the Act), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed rules and final rules with Federal mandates that may result in estimated costs to State, local, and tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed, section 205 of the Act generally requires EPA to identify and consider a reasonable number of regulatory alternatives. Under section 205, EPA must adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule, unless the Administrator explains in the final rule why that alternative was not adopted. The provisions of section 205 do not apply when they are inconsistent with applicable law. Before EPA establishes regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must develop under section 203 of the Act a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements.

First, this proposed rule does not contain a Federal mandate. The proposed rule imposes no enforceable duty on any State, local or tribal governments. This proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments. This is due to the fact that this rule does not add any new regulatory requirements and States need not adopt its revisions. This rule only revises certain regulatory sections to remove required uses of SW–846 methods and allow the use of other appropriate methods or to clarify allowed flexibility in method selection for meeting RCRA-related monitoring requirements. Under RCRA, regardless of the method used—the one specified in the regulation or the "other appropriate method"—regulated entities should be demonstrating that the method is appropriate for its intended use. This rule also does not propose new monitoring or information collection requirements. The additional flexibility allowed by this rule should result in improved data quality at reduced cost. Thus, today's proposed rule is not subject to the requirements of sections 202, 203 and 205 of UMRA.

C. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business that is independently owned and operated and not dominant in its field as defined by Small Business Administration (SBA) regulations under Section 3 of the Small Business Act for SIC; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives "which minimize any significant economic impact of the proposed rule on small entities." 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. Today's proposed rule, if finalized, is specifically intended to reduce economic burden for all entities. The proposed action will provide greater flexibility and utility to all effected entities, including small entities, by providing an increase in choices of appropriate analytical methods for RCRA applications. It does not create any new regulatory requirements or require any new reports beyond those now required by the revised regulations. In addition, its revisions need not be adopted by regulated entities. Such entities can continue to use the methods specified in the regulations instead of choosing the option to use appropriate methods from other reliable sources. We have therefore concluded that today's proposed rule will relieve regulatory burden for small entities. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Environmental Justice (Executive Order 12898)

Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," February 11, 1994, requires that regulatory actions be accompanied by an environmental justice analysis. This analysis must look at potentially disproportionate impacts the action may have on minority and/or low-income communities.

The Agency has determined that the proposed action does not raise environmental justice concerns. The impact of this proposed rule, if finalized, will be to provide increased flexibility in the choice of appropriate analytical methods for RCRA applications. The Agency is not aware of any disproportionate impacts that such flexibility may have on minority and/or low-income communities.

E. Protection of Children from Environmental Health Risks and Safety Risks (Executive Order 13045)

Executive Order 13045, "Protection of Children From Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposed rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866. Also, EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This proposed rule is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks. The action discussed in today's proposed rule is intended to provide regulatory relief, and thus is not strictly subject to Executive Order 13045.

F. Consultation and Coordination With Indian Tribal Governments (Executive Order 13175)

Executive Order 13175 (65 FR 67249) entitled, "Consultation and Coordination with Indian Tribal Governments" requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications. "Policies that have tribal implications" are defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

Today's proposed rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. For many of the same reasons described above under unfunded mandates, the requirements of the Executive Order do not apply to this proposed rulemaking. As stated above, this rule does not propose any new regulatory requirements and governments need not adopt it. It does not impose any direct compliance costs on tribal governments. In the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and tribal governments, EPA specifically solicits additional comment on this proposed rule from tribal officials.

G. Federalism (Executive Order 13132)

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national

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government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. As explained above, today's proposed rule does not impose new requirements on the States and its regulatory changes need not be adopted by the States. Thus, Executive Order 13132 does not apply to this rule. Because these changes are equivalent to or less stringent than the existing Federal program, states would not be required to adopt and seek authorization for them.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

H. National Technology Transfer And Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Pub. L. 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs us to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rule increases flexibility in the use of methods for RCRA-related analyses and does not itself identify or require the use of new methods or other technical standards. In fact, this rule, if finalized, may increase the use of available voluntary consensus standards for some RCRA applications, provided that such methods are appropriate for the regulatory application. The only technical standards included in this rule include the proposed replacement of obsolete references to voluntary consensus standards, in this case ASTM Methods D 3278–78 and D 93–79 or D 93–80 for flash point determinations, with references to the most recent versions of those methods, ASTM Methods D 3278–96 and D 93–99c, in the SW–846 methods (Methods 1010 and 1020). The recent versions of the methods are not significantly different from the older versions. EPA welcomes comments on this aspect of the proposed rulemaking.

I. Energy Effects (Executive Order 13211)

This proposed rule is not a "significant energy action" as defined in Executive Order 13211, "Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use" (66.FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, we have concluded that this proposed rule is not likely to have any adverse energy effects.

J. Paperwork Reduction Act

This action does not impose any new information collection burden. There are no additional reporting, notification, or recordkeeping provisions associated with today's proposed rule. However, the Office of Management and Budget (OMB) has previously approved the information collection requirements contained in some of the existing regulations being revised by this proposed rule, under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and has assigned OMB control numbers for those information collection requirements, as follows:

—40 CFR 258.28: OMB control number 2050–0122
—40 CFR 260.21 and 260.22: OMB control number 2050–0053
—40 CFR 261.3: OMB control number 2050–0085
—40 CFR 261.35: OMB control number 2050–0115
—40 CRF 264.1034, 264.1063, 265.1034, and 265.1063: OMB control number 2050–0050
—40 CFR 266.100, 266.102, 266.106, 266.112, Appendix IX to part 63, and 270.22: OMB control number 2050–0073
—40 CFR 270.19: OMB control number 2050–0009
—40 CFR 270.62: OMB control numbers 2050–0009 and 2050–0149
—40 CFR 270.66: OMB control numbers 2050–0073 and 2050–0149
—40 CFR 279.10, 279.44, 279.53 and 279.63: OMB control number 2050–0124

Copies of the ICR document(s) may be obtained from Sandy Farmer, by mail at the Office of Environmental Information, Collection Strategies Division; U.S. Environmental Protection Agency (2822); 1200 Pennsylvania Ave., NW., Washington, DC 20460, by e-mail at *farmer.sandy@epa.gov*, or by calling (202) 260–2740. A copy may also be downloaded off the Internet at *http://www.epa.gov/icr*. Include the ICR and/or OMB number in any correspondence.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

List of Subjects

40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

40 CFR Part 258

Environmental protection, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control.

40 CFR Part 260

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Incorporation by reference, Reporting and recordkeeping requirements.

40 CFR Part 261

Environmental protection, Comparable fuels, syngas fuels, Excluded hazardous waste, Reporting and recordkeeping requirements.

40 CFR Part 264

Environmental protection, Air pollution control, Hazardous waste, Insurance, Packaging and containers, Reporting and recordkeeping requirements, Security measures, Surety bonds.

40 CFR Part 265

Environmental protection, Air pollution control, Hazardous waste, Insurance, Packaging and containers, Reporting and recordkeeping requirements, Security measures, Surety bonds, Water supply.

40 CFR Part 266

Environmental protection, Energy, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

40 CFR Part 270

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Reporting and recordkeeping requirements, Water pollution control, Water supply.

40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indians-lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

40 CFR Part 279

Environmental protection, Petroleum, Recycling, Reporting and recordkeeping requirements.

Dated: October 9, 2002.

Christine Todd Whitman,

Administrator, U.S. Environmental Protection Agency.

For the reasons set out in the preamble, title 40, Chapter I, of the Code of Federal Regulations EPA proposes to amend as set forth below:

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart EEE—National Emission Standards for Hazardous Air Pollutants From Hazardous Waste Combustors

2. Section 63.1208 is amended by revising paragraph (b)(8) to read as follows:

§ 63.1208 What are the test methods?

* * * * *

(b) * * *

(8) Feedstream analytical methods. You must use any reliable analytical method to determine feedstream concentrations of metals, chlorine, and other constituents. It is your responsibility to ensure that the sampling and analysis procedures are unbiased, precise, and that the results are representative of the feedstream.

* * * * *

PART 258—CRITERIA FOR MUNICIPAL SOLID WASTE LANDFILLS

3. The authority citation for part 258 continues to read as follows:

Authority: 33 U.S.C. 1345(d) and (e); 42 U.S.C 6902(a), 6907, 6912(a), 6944, 6945(c), and 6949a(c).

Subpart C—Operating Criteria

4. Section 258.28 is amended by revising paragraph (c)(1) to read as follows:

§ 258.28 Liquids restrictions.

* * * * *

(c) * * *

(1) Liquid waste means any waste material that is determined to contain "free liquids" as defined by Method 9095 (Paint Filter Liquids Test), included in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (EPA Publication SW–846), incorporated by reference in § 260.11.

* * * * *

5. Appendix I to part 258 is amended by revising footnote 1 to read as follows:

Appendix I to Part 258—Constituents for Detection Monitoring [1]

* * * * *

[1] This list contains 47 volatile organics for which potentially applicable analytical procedures provided in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (EPA Publication SW–846) include Method 8260; and 15 metals for which SW–846 provides Methods 6010, and 6020, or the 7000 series of methods.

* * * * *

6. Appendix II to part 258 is revised as follows:

Appendix II to Part 258—List of Hazardous Inorganic and Organic Constituents

Common name [1]	CAS RN [2]	Chemical abstracts service index name [3]
Acenaphthene	83–32–9	Acenaphthylene, 1,2-dihydro-
Acenaphthylene	208–96–8	Acenaphthylene
Acetone	67–64–1	2-Propanone
Acetonitrile; Methyl cyanide	75–05–8	Acetonitrile
Acetophenone	98–86–2	Ethanone, 1-phenyl-
2-Acetylaminofluorene; 2–AAF	53–96–3	Acetamide, N–9H-fluoren-2-yl-
Acrolein	107–02–8	2-Propenal
Acrylonitrile	107–13–1	2-Propenenitrile
Aldrin	309–00–2	1,4:5,8-Dimethanonaphthalene, 1,2,3,4,10,10-hexachloro-1,4,4a,5,8,8a-hexahydro- (1,4,4a,5,8,8a)-
Allyl chloride	107–05–1	1-Propene, 3-chloro-
4-Aminobiphenyl	92–67–1	[1,1′-Biphenyl]- 4-amine
Anthracene	120–12–7	Anthracene
Antimony	(Total)	Antimony
Arsenic	(Total)	Arsenic
Barium	(Total)	Barium
Benzene	71–43–2	Benzene
Benzo[a]anthracene; Benzanthracene	56–55–3	Benz[a]anthracene
Benzo[b]fluoranthene	205–99–2	Benz[e]acephenanthrylene
Benzo[k]fluoranthene	207–08–9	Benzo[k]fluoranthene
Benzo[ghi]perylene	191–24–2	Benzo[ghi]perylene
Benzo[a]pyrene	50–32–8	Benzo[a]pyrene
Benzyl alcohol	100–51–6	Benzenemethanol
Beryllium	(Total)	Beryllium
alpha-BHC	319–84–6	Cyclohexane, 1,2,3,4,5,6- hexachloro-,(1α,2α,3β,4α,5β,6β)-
beta-BHC	319–85–7	Cyclohexane, 1,2,3,4,5,6- hexachloro-,(1α,2β,3α,4β,5α,6β)-
delta-BHC	319–86–8	Cyclohexane, 1,2,3,4,5,6- hexachloro-,(1α,2α,3α,4β,5α,6β)-
gamma-BHC; Lindane	58–89–9	Cyclohexane, 1,2,3,4,5,6- hexachloro-,(1α,2α,3β,4α,5α,6β)-
Bis(2-chloroethoxy)methane	111–91–1	Ethane, 1,1′-[methylenebis (oxy)]bis [2-chloro-
Bis(2-chloroethyl)ether; Dichloroethyl ether	111–44–4	Ethane, 1,1′-oxybis[2-chloro-

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Common name [1]	CAS RN [2]	Chemical abstracts service index name [3]
Bis(2-chloro-1-methylethyl) ether; 2,2'- Dichlorodiisopropyl ether; DCIP, See note 4.	108–60–1	Propane, 2,2'-oxybis[1-chloro-
Bis(2-ethylhexyl) phthalate	117–81–7	1,2-Benzenedicarboxylic acid, bis(2-ethylhexyl)ester
Bromochloromethane; Chlorobromethane	74–97–5	Methane, bromochloro-
Bromodichloromethane; Dibromochlormethane	75–27–4	Methane, bromodichloro-
Bromoform; Tribromomethane	75–25–2	Methane, tribromo-
4-Bromophenyl phenyl ether	101–55–3	Benzene, 1-bromo-4-phenoxy-
Butyl benzyl phthalate; Benzyl butyl phthalate	85–68–7	1,2-Benzenedicarboxylic acid, butyl phenylmethyl ester
Cadmium	(Total)	Cadmium
Carbon disulfide	75–15–0	Carbon disulfide
Carbon tetrachloride	56–23–5	Methane, tetrachloro-
Chlordane	57–74–9	4,7-Methano-1H-indene, 1,2,4,5,6,7,8,8-octachloro-2,3,3a,4,7,7a- hexahydro-
p-Chloroaniline	106–47–8	Benzenamine, 4-chloro-
Chlorobenzene	108–90–7	Benzene, chloro-
Chlorobenzilate	510–15–6	Benzeneacetic acid, 4-chloro- -(4-chlorophenyl)- -hydroxy-, ethyl ester.
p-Chloro-m-cresol; 4-Chloro-3-methylphenol	59–50–7	Phenol, 4-chloro-3-methyl-
Chloroethane; Ethyl chloride	75–00–3	Ethane, chloro-
Chloroform; Trichloromethane	67–66–3	Methane, trichloro-
2-Chloronaphthalene	91–58–7	Naphthalene, 2-chloro-
2-Chlorophenol	95–57–8	Phenol, 2-chloro-
4-Chlorophenyl phenyl ether	7005–72–3	Benzene, 1-chloro-4-phenoxy-
Chloroprene	126–99–8	1,3-Butadiene, 2-chloro-
Chromium	(Total)	Chromium
Chrysene	218–01–9	Chrysene
Cobalt	(Total)	Cobalt
Copper	(Total)	Copper
m-Cresol; 3-Methylphenol	108–39–4	Phenol, 3-methyl-
o-Cresol; 2-Methylphenol	95–48–7	Phenol, 2-methyl-
p-Cresol; 4-Methylphenol	106–44–5	Phenol, 4-methyl-
Cyanide	57–12–5	Cyanide
2,4-D; 2,4-Dichlorophenoxyacetic acid	94–75–7	Acetic acid, (2,4-dichlorophenoxy)-
4,4'-DDD	72–54–8	Benzene 1,1'-(2,2-dichloroethylidene) bis[4-chloro-
4,4'-DDE	72–55–9	Benzene, 1,1'-(dichloroethenylidene) bis[4- chloro-
4,4'-DDT	50–29–3	Benzene, 1,1'-(2,2,2- trichloroethylidene) bis[4-chloro-
Diallate	2303–16–4	Carbamothioic acid, bis(1- methylethyl)-, S- (2,3-dichloro-2-propenyl) ester.
Dibenz[a,h]anthracene	53–70–3	Dibenz[a,h]anthracene
Dibenzofuran	132–64–9	Dibenzofuran
Dibromochloromethane;Chlorodibromomethane	124–48–1	Methane, dibromochloro-
1,2-Dibromo-3-chloropropane;	96–12–8	Propane, DBCP 1,2-dibromo-3-chloro-
1,2-Dibromoethane; Ethylene dibromide; EDB	106–93–4	Ethane, 1,2-dibromo-
Di-n-butyl phthalate	84–74–2	1,2-Benzenedicarboxylic acid, dibutyl ester
o-Dichlorobenzene; 1,2-Dichlorobenzene	95–50–1	Benzene, 1,2-dichloro-
m-Dichlorobenzene; 1,3-Dichlorobenzene	541–73–1	Benzene, 1,3-dichloro-
p-Dichlorobenzene; 1,4-Dichlorobenzene	106–46–7	Benzene, 1,4-dichloro-
3,3'-Dichlorobenzidine	91–94–1	[1,1'-Biphenyl]-4,4'- diamine, 3,3'-dichloro-
trans-1,4-Dichloro-2-butene	110–57–6	2-Butene, 1,4-dichloro-, (E)-
Dichlorodifluoromethane; CFC 12	75–71–8	Methane, dichlorodifluoro-
1,1-Dichloroethane; Ethylidene chloride	75–34–3	Ethane, 1,1-dichloro-
1,2-Dichloroethane; Ethylene dichloride	107–06–2	Ethane, 1,2-dichloro-
1,1-Dichloroethylene; 1,1-Dichloroethene; Vinylidene chloride	75–35–4	Ethane, 1,1-dichloro-
cis-1,2-Dichloroethylene; cis-1,2-Dichloroethene	156–59–2	Ethene, 1,2-dichloro-(Z)-
trans-1,2-Dichloroethylene; trans-1,2-Dichloroethene	156–60–5	Ethene, 1,2-dichloro-, (E)-
2,4-Dichlorophenol	120–83–2	Phenol, 2,4-dichloro-
2,6-Dichlorophenol	87–65–0	Phenol, 2,6-dichloro-
1,2-Dichloropropane	78–87–5	Propane, 1,2-dichloro-
1,3-Dichloropropane; Trimethylene dichloride	142–28–9	Propane, 1,3-dichloro-
2,2-Dichloropropane; Isopropylidene chloride	594–20–7	Propane, 2,2-dichloro-
1,1-Dichloropropene	563–58–6	1-Propene, 1,1- dichloro-
cis-1,3-Dichloropropene	10061–01–5	1-Propene, 1,3-dichloro-, (Z)-
trans-1,3-Dichloropropene	10061–02–6	1-Propene, 1,3-dichloro-, (E)-
Dieldrin	60–57–1	2,7:3,6-Dimethanonaphth [2,3-b]oxirene, 3,4,5,6,9,9-hexachloro-1a,2,2a,3,6,6a,7,7a- octahydro-, (1aα,2β, 2aα, 3β, 6β, 6aα, 7β,7aα)-
Diethyl phthalate	84–66–2	1,2-Benzenedicarboxylic acid, diethyl ester
O,O-Diethyl O–2-pyrazinyl phosphorothioate; Thionazin	297–97–2	Phosphorothioic acid, O,O- diethyl O-pyrazinyl ester.
Dimethoate	60–51–5	Phosphorodithioic acid, O,O-dimethyl S-[2-(methylamino)-2-oxoethyl] ester
p-(Dimethylamino)azobenzene	60–11–7	Benzenamine, N,N-dimethyl-4-(phenylazo)-
7,12-Dimethylbenz[a]anthracene	57–97–6	Benz[a]anthracene, 7,12- dimethyl-
3,3'-Dimethylbenzidine	119–93–7	[1,1'-Biphenyl]-4,4'-diamine, 3,3'-dimethyl-
alpha, alpha-Dimethylphenethylamine	122–09–8	Benzeneethanamine,α, α-dimethyl-

Common name [1]	CAS RN [2]	Chemical abstracts service index name [3]
2,4-Dimethylphenol; m-Xylenol	105–67–9	Phenol, 2,4-dimethyl-
Dimethyl phthalate	131–11–3	1,2-Benzenedicarboxylic acid, dimethyl ester
m-Dinitrobenzene	99–65–0	Benzene, 1,3-dinitro-
4,6-Dinitro-o-cresol; 4,6-Dinitro-2-methylphenol	534–52–1	Phenol, 2-methyl-4,6-dinitro-
2,4-Dinitrophenol	51–28–5	Phenol, 2,4-dinitro-
2,4-Dinitrotoluene	121–14–2	Benzene, 1-methyl-2,4-dinitro-
2,6-Dinitrotoluene	606–20–2	Benzene, 2-methyl-1,3-dinitro-
Dinoseb; DNBP; 2-sec-Butyl-4,6-dinitrophenol	88–85–7	Phenol, 2-(1-methylpropyl)-4,6- dinitro-
Di-n-octyl phthalate	117–84–0	1,2-Benzenedicarboxylic acid, dioctyl ester
Diphenylamine	122–39–4	Benzenamine, N-phenyl-
Disulfoton	298–04–4	Phosphorodithioic acid, O,O- diethyl S-[2- (ethylthio)ethyl] ester
Endosulfan I	959–98–8	6,9-Methano-2,4,3-benzodiox- athiepin, 6,7,8,9,10,10-hexachloro- 1,5,5a,6,9,9a-hexahydro-, 3-oxide,
Endosulfan II	33213–65–9	6,9-Methano-2,4,3- benzodioxathiepin, 6,7,8,9,10,10-hexachloro- 1,5,5a,6,9,9a-hexahydro-, 3-oxide, (3α, 5aα, 6β, 9β, 9aα)-
Endosulfan sulfate	1031–07–8	6,9-Methano-2,4,3- benzodioxathiepin, 6,7,8,9,10,10-hexachloro- 1,5,5a,6,9,9a-hexahydro-, 3,3-dioxide
Endrin	72–20–8	2,7:3,6-Dimethanonaphth[2,3- b]oxirene, 3,4,5,6,9,9-hexachloro-1a,2,2a,3,6,6a,7,7a- octahydro-, (1aα, 2β, 2aβ, 3α, 6α, 6aβ, 7β, 7aα)-
Endrin aldehyde	7421–93–4	1,2,4-Methe nocyclo- penta[cd] pentalene- 5-carboxaldehyde,2,2a,3,3,4,7- hexa-chlorodecahydro-,(1α, 2β, 2aβ, 4β,4aβ,5β,6aβ,6bβ,7R*)-
Ethylbenzene	100–41–4	Benzene, ethyl-
Ethyl methacrylate	97–63–2	2-Propenoic acid, 2-methyl-, ethyl ester
Ethyl methanesulfonate	62–50–0	Methanesulfonic acid, ethyl ester
Famphur	52–85–7	Phosphorothioic acid, O-[4- [(dimethylamino)sulfonyl]pheny l]-O,O-dimethyl ester
Fluoranthene	206–44–0	Fluoranthene
Fluorene	86–73–7	9H–Fluorene
Heptachlor	76–44–8	4,7-Methano-1H-indene,1,4,5,6,7,8,8-heptachloro-3a,4,7,7a-tetrahydro-
Heptachlor epoxide	1024–57–3	2,5-Methano-2H-indeno[1,2- b]oxirene, 2,3,4,5,6,7,7-heptachloro-1a,1b,5,5a,6,6a,- hexahydro-,(1aα,1bβ,2α,5α,5aβ,6β,6aα)
Hexachlorobenzene	118–74–1	Benzene, hexachloro-
Hexachlorobutadiene	87–68–3	1,3-Butadiene, 1,1,2,3,4,4- hexachloro-
Hexachlorocyclopentadiene	77–47–4	1,3-Cyclopentadiene, 1,2,3,4,5,5-hexachloro-
Hexachloroethane	67–72–1	Ethane, hexachloro-
Hexachloropropene	1888–71–7	1-Propene, 1,1,2,3,3,3- hexachloro-
2-Hexanone; Methyl butyl ketone	591–78–6	2-Hexanone
Indeno(1,2,3-cd)pyrene	193–39–5	Indeno[1,2,3-cd]pyrene
Isobutyl alcohol	78–83–1	1-Propanol, 2-methyl-
Isodrin	465–73–6	1,4,5,8- Dimethanonaphthalene,1,2,3,4,1 0,10-hexachloro-1,4,4a,5,8,8a hexahydro-(1α,4α,4aβ,5β,8β,8aβ)-
Isophorone	78–59–1	2-Cyclohexen-1-one, 3,5,5- trimethyl-
Isosafrole	120–58–1	1,3-Benzodioxole, 5-(1-propenyl)-
Kepone	143–50–0	1,3,4-Metheno-2H-cyclobuta- [cd]pentalen-2-one, 1,1a,3,3a,4,5,5,5a,5b,6- decachlorooctahydro-
Lead	(Total)	Lead
Mercury	(Total)	Mercury
Methacrylonitrile	126–98–7	2-Propenenitrile, 2-methyl-
Methapyrilene	91–80–5	1,2,Ethanediamine, N,N-dimethyl-N'-2- pyridinyl- N'-(2-thienylmethyl)-
Methoxychlor	72–43–5	Benzene, 1,1'- (2,2,2,trichloroethylidene)bis [4-methoxy-
Methyl bromide; Bromomethane	74–83–9	Methane, bromo-
Methyl chloride; Chloromethane	74–87–3	Methane, chloro-
3-Methylcholanthrene	56–49–5	Benz[j]aceanthrylene, 1,2- dihydro-3-methyl-
Methyl ethyl ketone; MEK; 2-Butanone	78–93–3	2-Butanone
Methyl iodide; Iodomethane	74–88–4	Methane, iodo-
Methyl methacrylate	80–62–6	2-Propenoic acid, 2-methyl-, methyl ester
Methyl methanesulfonate	66–27–3	Methanesulfonic acid, methyl ester
2-Methylnaphthalene	91–57–6	Naphthalene, 2-methyl-
Methyl parathion; Parathion methyl	298–00–0	Phosphorothioic acid, O,O-dimethyl
4-Methyl-2-pentanone; Methyl isobutyl ketone	108–10–1	2-Pentanone, 4-methyl-
Methylene bromide; Dibromomethane	74–95–3	Methane, dibromo-
Methylene chloride; Dichloromethane	75–09–2	Methane, dichloro-
Naphthalene	91–20–3	Naphthalene
1,4-Naphthoquinone	130–15–4	1,4-Naphthalenedione
1-Naphthylamine	134–32–7	1-Naphthalenamine
2-Naphthylamine	91–59–8	2-Naphthalenamine
Nickel	(Total)	Nickel

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Common name [1]	CAS RN [2]	Chemical abstracts service index name [3]
o-Nitroaniline; 2-Nitroaniline	88–74–4	Benzenamine, 2-nitro-
m-Nitroaniline; 3-Nitroaniline	99–09–2	Benzenamine, 3-nitro-
p-Nitroaniline; 4-Nitroaniline	100–01–6	Benzenamine, 4-nitro-
Nitrobenzene	98–95–3	Benzene, nitro-
o-Nitrophenol; 2-Nitrophenol	88–75–5	Phenol, 2-nitro-
p-Nitrophenol; 4-Nitrophenol	100–02–7	Phenol, 4-nitro-
N-Nitrosodi-n-butylamine	924–16–3	1-Butanamine, N-butyl-N-nitroso-
N-Nitrosodiethylamine	55–18–5	Ethanamine, N-ethyl-N-nitroso-
N-Nitrosodimethylamine	62–75–9	Methanamine, N-methyl-N-nitroso-
N-Nitrosodiphenylamine	86–30–6	Benzenamine, N-nitroso-N-phenyl-
N-Nitrosodipropylamine; N-Nitroso-N-dipropylamine; Di-n-propylnitrosamine.	621–64–7	1-Propanamine, N-nitroso-N-propyl-
N-Nitrosomethylethalamine	10595–95–6	Ethanamine, N-methyl-N-nitroso-
N-Nitrosopiperidine	100–75–4	Piperidine, 1-nitroso-
N-Nitrosopyrrolidine	930–55–2	Pyrrolidine, 1-nitroso-
5-Nitro-o-toluidine	99–55–8	Benzenamine, 2-methyl-5-nitro-
Parathion	56–38–2	Phosphorothioic acid, O,O- diethyl-O-(4-nitrophenyl) ester
Pentachlorobenzene	608–93–5	Benzene, pentachloro-
Pentachloronitrobenzene	82–68–8	Benzene, pentachloronitro-
Pentachlorophenol	87–86–5	Phenol, pentachloro-
Phenacetin	62–44–2	Acetamide, N-(4-ethoxyphenyl)
Phenanthrene	85–01–8	Phenanthrene
Phenol	108–95–2	Phenol
p-Phenylenediamine	106–50–3	1,4-Benzenediamine
Phorate	298–02–2	Phosphorodithioic acid, O,O-diethyl S-[(ethylthio)methyl] ester
Polychlorinated biphenyls; PCBs	See Note 6	1,1′-Biphenyl, chloro derivatives
Pronamide	23950–58–5	Benzamide, 3,5-dichloro-N-(1,1-dimethyl-2-propynyl)-
Propionitrile; Ethyl cyanide	107–12–0	Propanenitrile
Pyrene	129–00–0	Pyrene
Safrole	94–59–7	1,3-Benzodioxole, 15-(2-propenyl)-
Selenium	(Total)	Selenium
Silver	(Total)	Silver
Silvex; 2,4,5-TP	93–72–1	Propanoic acid, 12-(2,4,5-trichlorophenoxy)-
Styrene	100–42–5	Benzene, ethenyl-
Sulfide	18496–25–8	Sulfide
2,4,5-T; 2,4,5-Trichlorophenoxyacetic acid	93–76–5	Acetic acid, (2,4,5-trichlorophenoxy)-
2,3,7,8-TCDD; 2,3,7,8-Tetrachlorodibenzo-p-dioxin	1746–01–6	Dibenzo[b,e][1,4]dioxin, 2,3,7,8-tetrachloro-
1,2,4,5-Tetrachlorobenzene	95–94–3	Benzene, 1,2,4,5-tetrachloro-
1,1,1,2-Tetrachloroethane	630–20–6	Ethane, 1,1,1,2-tetrachloro-
1,1,2,2-Tetrachloroethane	79–34–5	Ethane, 1,1,2,2-tetrachloro-
Tetrachloroethylene; Tetrachloroethene; Perchloroethylene	127–18–4	Ethene, tetrachloro-
2,3,4,6-Tetrachlorophenol	58–90–2	Phenol, 2,3,4,6-tetrachloro-
Thallium	(Total)	Thallium
Tin	(Total)	Tin
Toluene	108–88–3	Benzene, methyl-
o-Toluidine	95–53–4	Benzenamine, 2-methyl-
Toxaphene	See Note 7	Toxaphene
1,2,4-Trichlorobenzene	120–82–1	Benzene, 1,2,4-trichloro-
1,1,1-Trichloroethane; Methylchloroform	71–55–6	Ethane, 1,1,1-trichloro-
1,1,2-Trichloroethane	79–00–5	Ethane, 1,1,2-trichloro-
Trichloroethylene; Trichloroethene	79–01–6	Ethene, trichloro-
Trichlorofluoromethane; CFC–11	75–69–4	Methane, trichlorofluoro-
2,4,5-Trichlorophenol	95–95–4	Phenol, 2,4,5-trichloro-
2,4,6-Trichlorophenol	88–06–2	Phenol, 2,4,6-trichloro-
1,2,3-Trichloropropane	96–18–4	Propane, 1,2,3-trichloro-
O,O,O-Triethyl phosphorothioate	126–68–1	Phosphorothioic acid, O,O,O-triethyl ester
sym-Trinitrobenzene	99–35–4	Benzene, 1,3,5-trinitro-
Vanadium	(Total)	Vanadium
Vinyl acetate	108–05–4	Acetic acid, ethenyl ester
Vinyl chloride; Chloroethene	75–01–4	Ethene, chloro-
Xylene (total)	See Note 8	Benzene, dimethyl-
Zinc	(Total)	Zinc

[1] Common names are those widely used in government regulations, scientific publications, and commerce; synonyms exist for many chemicals.

[2] Chemical Abstracts Service registry number. Where "Total" is entered, all species in the ground water that contain this element are included.

[3] CAS index names are those used in the 9th Cumulative Index.

[4] This substance is often called Bis(2-chloroisopropyl) ether, the name Chemical Abstracts Service applies to its noncommercial isomer, Propane, 2,2′-oxybis[2-chloro-(CAS RN 39638–32–9).

[5] Chlordane: This entry includes alpha-chlordane (CAS RN 5103–71–9), beta-chlordane (CAS RN 5103–74–2), gamma-chlordane (CAS RN 5566–34–7), and constituents of chlordane (CAS RN 57–74–9 and CAS RN 12789–03–6).

[6] Polychlorinated biphenyls (CAS RN 1336–36–3); this category contains congener chemicals, including constituents of Aroclor-1016 (CAS RN 12674–11–2), Aroclor-1221 (CAS RN 11104–28–2), Aroclor-1232 (CAS RN 11141–16–5), Aroclor-1242 (CAS RN 53469–21–9), Aroclor-1248 (CAS RN 12672–29–6), Aroclor-1254 (CAS RN 11097–69–1), and Aroclor-1260 (CAS RN 11096–82–5).

[7] Toxaphene: This entry includes congener chemicals contained in technical toxaphene (CAS RN 8001–35–2), *i.e.*, chlorinated camphene.

[8] Xylene (total): This entry includes o-xylene (CAS RN 96–47–6), m-xylene (CAS RN 108–38–3), p-xylene (CAS RN 106–42–3), and unspecified xylenes (dimethylbenzenes) (CAS RN 1330–20–7).

PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

7. The authority citation for part 260 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921–6927, 6930, 6934, 6935, 6937, 6938, 6939, and 6974.

Subpart B—Definitions

8. Section 260.11 is amended by revising paragraphs (a)(1) and (2) and (a)(11) to read as follows:

§ 260.11 References.

(a) * * *

(1) "ASTM Standard Test Methods for Flash Point of Liquids by Small Scale Closed-Cup Apparatus," ASTM Standard D 3278–96, available from American Society for Testing and Materials, at 100 Barr Harbor Drive, West Conshohocken, PA 19428, *http://www.astm.org*, or from Global Engineering Documents, 15 Iverness Way East, Englewood, CO 80112, 1–800–854–7179, *http://global.ihs.com*.

(2) "ASTM Standard Test Methods for Flash-Point by Pensky-Martens Closed Cup Tester," ASTM Standard D 93–99c, available from American Society for Testing and Materials, at 100 Barr Harbor Drive, West Conshohocken, PA 19428, *http://www.astm.org*, or from Global Engineering Documents, 15 Iverness Way East, Englewood, CO 80112, 1–800–854–7179, *http://global.ihs.com*.

* * * * *

(11) The following methods found in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW–846, Third Edition, as grouped and identified by date (found in bottom right corner of method) and promulgated updated version: Methods 0010, 0020, 0030, and 1320, dated September 1986 and in the Basic Manual; Methods 1311 and 1330, dated July 1992 and in Update I; Method 1312 dated September 1994 and in Update II; Methods 0011, 0023, 0031, 0040, 0050, 0051, 0060, 0061, 3542, and 5041, dated December 1996 and in Update III; Method 9071 dated April 1998 and in Update IIIA; Methods 1010, 1020, 1110, 1310, 9010, 9012, 9040, 9045, 9060, 9070, and 9095, dated [to be determined at publication of final rule] and in Update IIIB. The Third Edition of SW–846 and Updates I, II, IIA, IIB, III, and IIIB (document number 955–001–00000–1) are available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800. Update IIIA is available through EPA's Methods Information Communication Exchange (MICE) Service. MICE can be contacted by phone at (703) 676–4690. Copies of the Third Edition of SW–846 and its updates are also available from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161, (703) 605–6000 or (800) 553–6847. The above methods are also available on the Internet at *http://www.epa.gov/SW–846/*. Copies of the methods incorporated by reference may be inspected at the Library, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; or at the Office of the Federal Register, 800 North Capitol Street, NW, Suite 700, Washington, DC.

* * * * *

Subpart C—Rulemaking Petitions

9. Section 260.21 is amended by revising paragraph (d) to read as follows:

§ 260.21 Petitions for equivalent testing or analytical methods.

* * * * *

(d) If the Administrator amends the regulations to permit use of a new testing method, the method will be incorporated by reference in § 260.11 and added to "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW–846, U.S. Environmental Protection Agency, Office of Solid Waste, Washington, DC 20460.

10. Section 260.22 is amended by revising paragraph (d)(1)(i) to read as follows:

§ 260.22 Petitions to amend part 261 to exclude a waste produced at a particular facility.

* * * * *

(d) * * *

(1) * * *

(i) Does not contain the constituent or constituents (as defined in Appendix VII of part 261 of this chapter) that caused the Administrator to list the waste, by using appropriate methods such as those found in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW–846, or other reliable sources; or

* * * * *

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

11. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, 6924(y), and 6938.

Subpart A—General

12. Section 261.3 is amended by revising paragraph (a)(2)(v) introductory text to read as follows:

§ 261.3 Definition of hazardous waste.

(a) * * *

(2) * * *

(v) Rebuttable presumption for used oil. Used oil containing more than 1000 ppm total halogens is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in subpart D of part 261 of this chapter. Persons may rebut this presumption by demonstrating that the used oil does not contain hazardous waste (for example, by using appropriate methods such as those found in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW–846, or other reliable sources to show that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in appendix VIII of part 261 of this chapter).

* * * * *

Subpart C—Characteristics of Hazardous Waste

13. Section 261.21 is amended by revising paragraph (a)(1) to read as follows:

§ 261.21 Characteristic of ignitability.

(a) * * *

(1) It is a liquid, other than an aqueous solution containing less than 24 percent alcohol by volume and has flash point less than 60 °C (140 °F), as determined by a Pensky-Martens Closed Cup Tester, using the test method specified in ASTM Standard D 93–99c (incorporated by reference, see § 260.11) which is used and referenced by Method 1010 of "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW–846 (incorporated by reference, see § 260.11), or a Small Scale Closed-Cup Apparatus, using the test method specified in ASTM Standard D 3278–96 (incorporated by reference, see § 260.11) which is used and referenced by Method 1020 of "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW–846 (incorporated by reference, see § 260.11).

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14. Section 261.22 is amended by revising paragraph (a)(2) introductory text to read as follows:

§ 261.22 Characteristic of corrosivity.

(a) * * *

(2) It is a liquid and corrodes steel (SAE 1020) at a rate greater than 6.35 mm (0.250 inch) per year at a test temperature of 55 °C (130 °F) as determined by the test method specified in NACE (National Association of Corrosion Engineers) Standard TM–01–69 as standardized as Method 1110 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW–846, and as incorporated by reference in § 260.11 of this chapter.

* * * * *

Subpart D—Lists of Hazardous Wastes

15. Section 261.35 is amended by revising paragraphs (b)(2)(iii)(A) and (B) to read as follows:

§ 261.35 Deletion of certain hazardous waste codes following equipment cleaning and replacement.

* * * * *

(b) * * *

(2) * * *

(iii) * * *

(A) Rinses must be tested by using appropriate methods such as Method 8290 of "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (EPA Publication SW–846) or appropriate methods from other reliable sources.

(B) "Not detected" means at or below the lower method calibration limit (MCL) in SW–846 Method 8290, Table 1. Other appropriate methods from other reliable sources may be used provided that these criteria are met.

* * * * *

16. Section 261.38 is amended by revising paragraph (c)(7) introductory text to read as follows:

§ 261.38 Comparable/Syngas Fuel Exclusion.

* * * * *

(c) * * *

(7) Waste analysis plans. The generator of a comparable/syngas fuel shall develop and follow a written waste analysis plan which describes the procedures for sampling and analysis of the hazardous waste to be excluded. The waste analysis plan should be developed in accordance with appropriate guidance such as found in the applicable sections of the "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (EPA Publication SW–846) or other reliable sources. The plan shall be followed and retained at the facility excluding the waste.

* * * * *

17. Appendix III to part 261 is revised to read as follows:

Appendix III to Part 261—Chemical Analysis Test Methods

Note: Examples of appropriate analytical procedures to determine whether a sample contains a given toxic constituent are provided in Chapter Two, "Choosing the Correct Procedure," found in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW–846. Prior to final sampling and analysis method selection, the individual should consult the specific section or method described in SW–846, if used, for additional guidance on which methods should be employed for a specific sample analysis situation.

16. Appendix IX to part 261 is amended in Table 1:

a. In the entry for "Aptus, Inc, Coffeyville, Kansas," under the "Waste description" column, by revising paragraphs (2), (3), and (4);

b. In the entry for "Arkansas Department of Pollution Control and Ecology, Vertac Superfund site, Jacksonville, Arkansas," under the "Waste description" column, by revising the introductory text of paragraph (1) and by revising paragraph (3)(C);

c. In the entry for "Bethlehem Steel Corporation, Sparrows Point, Maryland," under the "Waste description" column, by revising the introductory text of paragraph (1);

d. In the entry for "BMW Manufacturing Corporation, Greer, South Carolina," under the "Waste description" column, by revising the introductory text of paragraph (2);

e. In the entry for "DuraTherm, Incorporated, San Leon, Texas," under the "Waste description" column, by revising the introductory text of paragraph (3);

f. In the entry for "Eastman Chemical Company, Longview, Texas," under the "Waste description" column, by revising the introductory text of paragraph (3);

g. In the entry for "Envirite of Pennsylvania (formerly Envirite Corporation), York, Pennsylvania, under the "Waste description" column, by revising paragraph (2);

h. In the entry for "Geological Reclamation Operations and Waste Systems, Inc., Morrisville, PA," under the "Waste description" column by revising the introductory text of paragraph (1);

i. In the entry for "McDonnel Douglas Corporation, Tulsa, Oklahoma," under the "Waste description" column by revising paragraph (3);

j. In the entry for "Occidental Chemical, Ingleside, Texas," under the "Waste description" column, by revising the introductory text of paragraph (3);

k. In the entry for "Rhodia, Houston, Texas," under the "Waste description" column, by revising the introductory text of paragraph (3);

l. In the entry for "Syntex Agribusiness, Springfield, MO," under the "Waste description" column, by revising paragraphs (2), (3), (4), (5), and (6);

m. In the entry for "Texas Eastman, Longview, Texas," under the "Waste description" column, by revising paragraph 3;

n. In the entry for "Tyco Printed Circuit Group, Melbourne Division, Melbourne, Florida," under the "Waste description" column, by revising the introductory text of paragraph 1.

The revisions read as follows:

Appendix IX—Wastes Excluded Under §§ 260.20 and 260.22

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
Aptus, Inc.	Coffeyville, Kansas	* * * * * (1) * * *

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(2) A minimum of four grab samples must be taken from each hopper (or other container) of kiln residue generated during each 24 hour run; all grabs collected during a given 24 hour run must then be composited to form one composite sample. A minimum of four grab samples must also be taken from each hopper (or other container) of spray dryer/baghouse residue generated during each 24 hour run; all grabs collected during a given 24 hour run must then be composited to form one composite sample. Prior to the disposal of the residues from each 24 hour run, a TCLP leachate test must be performed on these composite samples and the leachate analyzed for the TC toxic metals, nickel, and cyanide. If arsenic, chromium, lead or silver TC leachate test results exceed 1.6 ppm, barium levels exceed 32 ppm, cadmium or selenium levels exceed 0.3 ppm, mercury levels exceed 0.07 ppm, nickel levels exceed 10 ppm, or cyanide levels exceed 6.5 ppm, the wastes must be retreated to achieve these levels or must be disposed in accordance with subtitle C of RCRA. Analyses must be performed according to appropriate methods such as those found in EPA Publication SW–846 or other reliable sources (with the exception of analyses requiring the use of SW–846 methods incorporated by reference in 40 CFR 260.11, which must be used without substitution). (3) Aptus must generate, prior to the disposal of the residues, verification data from each 24 hour run for each treatment residue (*i.e.*, kiln residue, spray dryer/baghouse residue) to demonstrate that the maximum allowable treatment residue concentrations listed below are not exceeded. Samples must be collected as specified in Condition (2). Analyses must be performed according to appropriate methods such as those found in EPA Publication SW–846 or other reliable sources (with the exception of analyses requiring the use of SW–846 methods incorporated by reference in 40 CFR 260.11, which must be used without substitution). Any residues which exceed any of the levels listed below must be retreated or must be disposed of as hazardous. Kiln residue and spray dryer/ baghouse residue must not exceed the following levels: Aldrin—0.015 ppm; Benzene—9.7 ppm; Benzo(a)pyrene—0.43 ppm; Benzo(b)fluoranthene—1.8 ppm; Chlordane—0.37 ppm; Chloroform—5.4 ppm; Chrysene—170 ppm; Dibenz(a,h)anthracene—0.083 ppm; 1,2-Dichloroethane—4.1 ppm; Dichloromethane—2.4 ppm; 2,4-Dichlorophenol—480 ppm; Dichlorvos—260 ppm; Disulfaton—23 ppm; Endosulfan I—310 ppm; Fluorene—120 ppm; Indeno(1,2,3,cd)-pyrene—330 ppm; Methyl parathion—210 ppm; Nitrosodiphenylamine—130 ppm; Phenanthrene—150 ppm; Polychlorinated biphenyls—0.31 ppm; Tetrachloroethylene—59 ppm; 2,4,5-TP (silvex)—110 ppm; 2,4,6-Trichlorophenol—3.9 ppm. (4) Aptus must generate, prior to disposal of residues, verification data from each 24 hour run for each treatment residue (*i.e.*, kiln residue, spray dryer/baghouse residue) to demonstrate that the residues do not contain tetra-, penta-, or hexachlorodibenzo-p-dioxins or furans at levels of regulatory concern. Samples must be collected as specified in Condition (2). The TCDD equivalent levels for the solid residues must be less than 5 ppt. Any residues with detected dioxins or furans in excess of this level must be retreated or must be disposed of as acutely hazardous. For this analysis, Aptus must use appropriate methods such as Method 8290 found in EPA Publication SW–846, a high resolution gas chromatography and high resolution mass spectroscopy (HRGC/HRMS) analytical method, or use appropriate methods found in other reliable sources. For tetra- and penta-chlorinated dioxin and furan homologs, the maximum practical quantitation limit must not exceed 15 ppt for the solid residues. For hexachlorinated dioxin and furan homologs, the maximum practical quantitation limit must not exceed 37 ppt for the solid residues. * * * * *
Arkansas Department of Pollution Control and Ecology.	Vertac Superfund site, Jacksonville, Arkansas.	* * * * * (1) *Testing:* Sample collection and analyses (including quality control (QC) procedures) must be performed according to appropriate methods such as those found in EPA Publication SW–846 or other reliable sources (with the exception of analyses requiring the use of SW–846 methods incorporated by reference in 40 CFR 260.11, which must be used without substitution). * * * * * (3) * * *

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TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(C) Chlorinated dioxins and furans: 2,3,7,8-Tetrachlorodibenzo-p-dioxin equivalents, 4 x 10^{7} ppm. The petitioned by-product must be analyzed for the tetra-, penta-, hexa-, and heptachlorodibenzo-p-dioxins, and the tetra-, penta-, hexa-, and heptachlorodibenzofurans to determine the 2,3,7,8-tetra-chlorodibenzo-p- dioxin equivalent concentration. The analysis must be conducted using appropriate methods such as SW–846 Method 8290, a high resolution gas chromatography/high resolution mass spectrometry method, or other appropriate methods found in other reliable sources, and must achieve practical quantitation limits of 15 parts per trillion (ppt) for the tetra- and penta-homologs, and 37 ppt for the hexa- and hepta-homologs. • • • • •
Bethlehem Steel Corporation	Sparrows Point, Maryland	• • • • • (1) *Testing:* Sample collection and analyses (including quality control (QC) procedures) must be performed according to appropriate methods such as those found in EPA Publication SW–846 or other reliable sources (with the exception of analyses requiring the use of SW–846 methods incorporated by reference in 40 CFR 260.11, which must be used without substitution). If EPA judges the stabilization process to be effective under the conditions used during the initial verification testing, BSC may replace the testing required in Condition (1)(A) with the testing required in Condition (1)(B). BSC must continue to test as specified in Condition (1)(A) until and unless notified by EPA in writing that testing in Condition (1)(A) may be replaced by Condition (1)(B) (to the extent directed by EPA). • • • • •
BMW Manufacturing Corporation	Greer, South Carolina	• • • • • (2) *Verification Testing Requirements:* Sample collection and analyses, including quality control procedures, must be performed according to appropriate methods such as those found in EPA Publication SW–846 or other reliable sources (with the exception of analyses requiring the use of SW–846 methods incorporated by reference in 40 CFR 260.11, which must be used without substitution). Methods must meet Performance Based Measurement System Criteria in which the Data Quality Objectives are to demonstrate that representative samples of the BMW Sludge meet the delisting levels in Condition (1). • • • • •
DuraTherm, Incorporated	San Leon, Texas	• • • • • (3) *Verification Testing Requirements:* DuraTherm must perform sample collection and analyses, including quality control procedures, according to appropriate methods such as those found in EPA Publication SW–846 or other reliable sources (with the exception of analyses requiring the use of SW–846 methods incorporated by reference in 40 CFR 260.11, which must be used without substitution). If EPA judges the process to be effective under the operating conditions used during the initial verification testing, DuraTherm may replace the testing required in Paragraph (3)(A) with the testing required in Paragraph (3)(B). DuraTherm must continue to test as specified in Paragraph (3)(A) until and unless notified by EPA in writing that testing in Paragraph (3)(A) may be replaced by Paragraph (3)(B). • • • • •
Eastman Chemical Company	Longview, Texas	• • • • • (3) *Verification Testing Requirements:* Eastman must perform sample collection and analyses, including quality control procedures, according to appropriate methods such as those found in EPA Publication SW–846 or other reliable sources (with the exception of analyses requiring the use of SW–846 methods incorporated by reference in 40 CFR 260.11, which must be used without substitution). After completion of the initial verification period, Eastman may replace the testing required in Condition (3)(A) with the testing required in Condition (3)(B). Eastman must continue to test as specified in Condition (3)(A) until and unless notified by EPA in writing that testing in Condition (3)(A) may be replaced by Condition (3)(B). • • • • •
Envirite of Pennsylvania (formerly Envirite Corporation).	York, Pennsylvania	• • • • •

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(2) Each batch of treatment residue must be tested for leachable cyanide. If the leachable cyanide levels (using the EP Toxicity test without acetic acid adjustment) exceed 1.26 ppm, the waste must be retreated or managed and disposed as a hazardous waste under 40 CFR Parts 262 to 265 and the permitting standards of 40 CFR Part 270. • • • • •
Geological Reclamation Operations and Systems, Inc..	Morrisville, Pennsylvania	• • • • • (1) *Testing:* Sample collection and analyses, including quality control (QC) procedures, must be performed according to appropriate methods such as those found in EPA Publication SW–846 or other reliable sources (with the exception of analyses requiring the use of SW–846 methods incorporated by reference in 40 CFR 260.11, which must be used without substitution). • • • • •
McDonnell Douglas Corporation	Tulsa, Oklahoma	• • • • • (3) *Verification Testing Requirements:* Sample collection and analyses, including quality control procedures, must be performed according to appropriate methods such as those found in EPA Publication SW–846 or other reliable sources (with the exception of analyses requiring the use of SW–846 methods incorporated by reference in 40 CFR 260.11, which must be used without substitution). McDonnell Douglas must stabilize the previously unstabilized waste from the bottom portion of the northwest lagoon of the surface impoundment (which was closed as a landfill) using fly ash, kiln dust or similar accepted materials in batches of 500 cubic yards or less. McDonnell Douglas must analyze one composite sample from each batch of 500 cubic yards or less. A minimum of four grab samples must be taken from each waste pile (or other designated holding area) of stabilized waste generated from each batch run. Each composited batch sample must be analyzed, prior to disposal of the waste in the batch represented by that sample, for constituents listed in Condition (1). There are no verification testing requirements for the stabilized wastes in the upper portions of the northwest lagoon, the entire northeast lagoon, and the entire south lagoon of the surface impoundments which were closed as a landfill. • • • • •
Occidental Chemical	Ingleside, Texas	• • • • • (3) *Verification Testing Requirements:* Sample collection and analyses, including quality control procedures, must be performed according to appropriate methods such as those found in EPA Publication SW–846 or other reliable sources (with the exception of analyses requiring the use of SW–846 methods incorporated by reference in 40 CFR 260.11, which must be used without substitution). If EPA judges the incineration process to be effective under the operating conditions used during the initial verification testing, Occidental Chemical may replace the testing required in Condition (3)(A) with the testing required in Condition (3)(B). Occidental Chemical must continue to test as specified in Condition (3)(A) until and unless notified by EPA in writing that testing in Condition (3)(A) may be replaced by Condition (3)(B). • • • • •
Rhodia	Houston, Texas	• • • • • (3) *Verification Testing Requirements:* Rhodia must perform sample collection and analyses, including quality control procedures, according to appropriate methods such as those found in EPA Publication SW–846 or other reliable sources (with the exception of analyses requiring the use of SW–846 methods incorporated by reference in 40 CFR 260.11, which must be used without substitution). If EPA judges the process to be effective under the operating conditions used during the initial verification testing, Rhodia may replace the testing required in Condition (3)(A) with the testing required in Condition (3)(B). Rhodia must continue to test as specified in Condition (3)(A) until and unless notified by EPA in writing that testing in Condition (3)(A) may be replaced by Condition (3)(B). • • • • •
Syntex Agribusiness	Springfield, MO	• • • • •

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TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(2) Four grab samples of wastewater must be composited from the volume of filtered wastewater collected after each eight hour run and, prior to disposal the composite samples must be analyzed for the EP toxic metals, nickel, and cyanide. If arsenic, chromium, lead, and silver EP leachate test results exceed 0.61 ppm; barium levels exceed 12 ppm; cadmium and selenium levels exceed 0.12 ppm; mercury levels exceed 0.02 ppm; nickel levels exceed 6.1 ppm; or cyanide levels exceed 2.4 ppm, the wastewater must be retreated to achieve these levels or must be disposed in accordance with all applicable hazardous waste regulations. Analyses must be performed according to appropriate methods such as those found in EPA Publication SW–846 or other reliable sources (with the exception of analyses requiring the use of SW–846 methods incorporated by reference in 40 CFR 260.11, which must be used without substitution). (3) One grab sample must be taken from each drum of kiln and cyclone ash generated during each eight hour run; all grabs collected during a given eight hour run must then be composited to form one composite sample. A composite sample of four grab samples of the separator sludge must be collected at the end of each eight hour run. Prior to the disposal of the residues from each eight hour run, an EP leachate test must be performed on these composite samples and the leachate analyzed for the EP toxic metals, nickel, and cyanide (using a distilled water extraction for the cyanide extraction) to demonstrate that the following maximum allowable treatment residue concentrations listed below are not exceeded. Analyses must be performed according to appropriate methods such as those found in EPA Publication SW–846 or other reliable sources (with the exception of analyses requiring the use of SW–846 methods incorporated by reference in 40 CFR 260.11, which must be used without substitution). Any residues which exceed any of the levels listed below must be retreated to achieve these levels or must be disposed in accordance with all applicable hazardous waste regulations. Maximum Allowable Solids Treatment Residue EP Leachate Concentrations (mg/L), Arsenic—1.6, Barium—32, Cadmium—0.32, Chromium—1.6, Lead—1.6, Mercury—0.065, Nickel—16, Selenium—0.32, Silver—1.6, Cyanide—6.5. (4) If Syntex stabilizes any of the kiln and cyclone ash or separator sludge, a Portland cement-type stabilization process must be used and Syntex must collect a composite sample of four grab samples from each batch of stabilized waste. An MEP leachate test must be performed on these composite samples and the leachate analyzed for the EP toxic metals, nickel, and cyanide (using a distilled water extraction for the cyanide leachate analysis) to demonstrate that the maximum allowable treatment residue concentrations listed in Condition (3) are not exceeded during any run of the MEP extraction. Analyses must be performed according to appropriate methods such as those found in EPA Publication SW–846 or other reliable sources (with the exception of analyses requiring the use of SW–846 methods incorporated by reference in 40 CFR 260.11, which must be used without substitution). Any residues which exceed any of the levels listed in Condition (3) must be retreated to achieve these levels or must be disposed in accordance with all applicable hazardous waste regulations. (If the residues are stabilized, the analyses required in this condition supercede the analyses required in Condition (3).)

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(5) Syntex must generate, prior to disposal of residues, verification data from each eight hour run from each treatment residue (*i.e.*, kiln and cyclone ash, separator sludge, and filtered wastewater) to demonstrate that the maximum allowable treatment residue concentrations listed below are not exceeded. Samples must be collected as specified in Conditions (2) and (3). Analyses must be performed according to appropriate methods such as those found in EPA Publication SW–846 or other reliable sources (with the exception of analyses requiring the use of SW–846 methods incorporated by reference in 40 CFR 260.11, which must be used without substitution). Any solid or liquid residues which exceed any of the levels listed below must be retreated to achieve these levels or must be disposed in accordance with Subtitle C of RCRA. Maximum Allowable Wastewater Concentrations (ppm): Benz(a)anthracene—1 x 10^{-4}; Benzo(a)pyrene—4 x 10^{-5}; Benzo(b)fluoranthene—2 x 10^{-4}; Chloroform—0.07; Chrysene—0.002; Dibenz(a,h)anthracene—9 x 10^{-6}; 1,2-Dichloroethane—0.06; Dichloromethane—0.06; Indeno(1,2,3-cd)pyrene—0.002; Polychlorinated biphenyls—1 x 10^{-4}; 1,2,4,5-Tetrachlorobenzene—0.13; 2,3,4,6-Tetrachlorophenol—12; Toluene—120; Trichloroethylene—0.04; 2,4,5-Trichlorophenol—49; 2,4,6-Trichlorophenol—0.02; Maximum Allowable Solid Treatment Residue Concentrations (ppm): Benz(a)anthracene—1.1; Benzo(a)pyrene—0.43; Benzo(b)fluoranthene—1.8; Chloroform—5.4; Chrysene—170; Dibenz(a,h)anthracene—0.083; Dichloromethane—2.4; 1,2-Dichloroethane—4.1; Indeno(1,2,3-cd)pyrene—330; Polychlorinated biphenyls—0.31; 1,2,4,5-Tetrachlorobenzene—720; Trichloroethylene—6.6; 2,4,6-Trichlorophenol—3.9. (6) Syntex must generate, prior to disposal of residues, verification data from each eight hour run for each treatment residue (*i.e.*, kiln and cyclone ash, separator sludge, and filtered wastewater) to demonstrate that the residues do not contain tetra-, penta-, or hexachlorodibenzo-p-dioxins or furans at levels of regulatory concern. Samples must be collected as specified in Conditions (2) and (3). The TCDD equivalent levels for wastewaters must be less than 2 ppq and less than 5 ppt for the solid treatment residues. Any residues with detected dioxins or furans in excess of these levels must be retreated or must be disposed as acutely hazardous. For this analysis, Syntex must use appropriate methods, such as SW–846 Method 8290, a high resolution gas chromatography and high resolution mass spectroscopy (HRGC/HRMS) analytical method, or use appropriate methods found in other reliable sources. For tetra- and pentachloronated dioxin and furan homologs, the maximum practical quantitation limit must not exceed 15 ppt for solids and 120 ppq for wastewaters. For hexachlorinated homologs, the maximum practical quantitation limit must not exceed 37 ppt for solids and 300 ppq for wastewaters. • • • • •
Texas Eastman	Longview, Texas	• • • • • 3. *Verification Testing Requirements:* Sample collection and analyses, including quality control procedures, must be performed according to appropriate methods such as those found in EPA Publication SW–846 or other reliable sources (with the exception of analyses requiring the use of SW–846 methods incorporated by reference in 40 CFR 260.11, which must be used without substitution). If EPA judges the incineration process to be effective under the operating conditions used during the initial verification testing described in Paragraph 4 below, Texas Eastman may replace the testing required in Paragraph 4 with the testing required in Paragraph 5 below. Texas Eastman must, however, continue to test as specified in Paragraph 4 until notified by EPA in writing that testing in Paragraph 4 may be replaced by the testing described in Paragraph 5. • • • • •
Tyco Printed Circuit Group, Melbourne Division.	Melbourne, Florida	• • • • •

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TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(1) *Verification Testing Requirements:* Sample collection and analyses, including quality control procedures must be performed according to appropriate methods such as those found in EPA Publication SW–846 or other reliable sources (with the exception of analyses requiring the use of SW–846 methods incorporated by reference in 40 CFR 260.11, which must be used without substitution). Methods must meet Performance Based Measurement System Criteria in which the Data Quality Objectives are to demonstrate that representative samples of the Tyco Sludge meet the delisting levels in Condition (3). • • • • •

17. Appendix IX to part 261 is amended in Table 2:

a. In the entry for "Bethlehem Steel Corp., Steelton, PA," under the "Waste description" column by revising paragraphs (1) and (2);

b. In the entry for "Bethlehem Steel Corp., Johnston, PA," under the "Waste description" column by revising paragraphs (1) and (2);

c. In the entry for "BF Goodrich Intermediates Company, Inc., Calvert City, Kentucky," under the "Waste description" column by revising the introductory paragraph and by revising paragraphs (1)(B) and (3);

d. In the entry for "CF&I Steel Corporation, Pueblo, Colorado," under the "Waste description" column by revising paragraphs (1) and (2);

e. In the entry for "Chaparral Steel Midlothian L.P., Midlothian, Texas," under the "Waste description" column by revising paragraph (1) and the introductory text of paragraph (3);

f. In the entry for "Conversion Systems, Inc., Horsham, Pennsylvania," under the "Waste description" column by revising the introductory text of paragraph (1);

g. In the entry for "DOE–RL, Richland, Washington," under the "Waste description" column by revising the introductory text of paragraph (1) and by revising paragraph (3);

h. In the entry for "Envirite of Pennsylvania (formerly Envirite Corporation), York, Pennsylvania, under the "Waste description" column, by revising paragraph (2);

i. In the entry for "Heritage Environmental Services, LLC, at the Nucor Steel Facility, Crawfordsville, Indiana," under the "Waste Description" column by revising paragraph (2);

j. In the entry for "Marathon Oil Co., Texas City, Texas," under the "Waste description" column by revising the introductory text of paragraph (1);

k. In the entry for "Occidental Chemical Corp, Muscle Shoals Plant, Sheffield, Alabama," under the "Waste description" column by revising the introductory paragraph and by revising paragraphs (1)(A) and (3);

l. In the entry for "Occidental Chemical Corporation, Delaware City, Delaware," under the "Waste description" column by revising the introductory paragraph and by revising paragraph (1)(A), the introductory text of paragraph (2) and by revising paragraph (3);

m. In the entry for "Oxy Vinyls, Deer Park, Texas," under the "Waste description" column by revising the introductory text of paragraph (3);

n. In the entry for "Roanoke Electric Steel Corp., Roanoke, Virginia," under the "Waste description" column by revising paragraphs (1)(A), (1)(B), and (2);

o. In the entry for "USX Steel Corporation, USS Division, Southworks Plant, Gary Works, Chicago, Illinois," under the "Waste description" column by revising the introductory text of paragraph (1) and by revising paragraphs (1)(A) and (2).

The revisions read as follows:

Appendix IX—Wastes Excluded Under §§ 260.20 and 260.22

* * * * *

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES

Facility	Address	Waste description
Bethlehem Steel Corp	Steelton, PA	• • • • • (1) *Testing:* (A) *Initial Testing:* During the first four weeks of operation of the full-scale treatment system, Bethlehem must collect representative grab samples of each treated batch of the CSEAFD and composite the grab samples daily. The daily composites, prior to disposal, must be analyzed for the EP leachate concentrations of all the EP toxic metals, nickel and cyanide (using distilled water in the cyanide extractions). Analyses must be performed according to appropriate methods such as those found in SW–846 or other reliable sources (with the exception of analyses requiring the use of SW–846 methods incorporated by reference in 40 CFR 260.11, which must be used without substitution). Bethlehem must report the analytical test data obtained during this initial period no later than 90 days after the treatment of the first full-scale batch.

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(B) *Subsequent Testing:* Bethlehem must collect representative grab samples from every treated batch of CSEAFD generated daily and composite all of the grab samples to produce a weekly composite sample. Bethlehem then must analyze each weekly composite sample for the EP leachate concentrations of all the EP toxic metals and nickel. Analyses must be performed according to appropriate methods such as those found in SW–846 or other reliable sources (with the exception of analyses requiring the use of SW–846 methods incorporated by reference in 40 CFR 260.11, which must be used without substitution). The analytical data, including all quality control information, must be compiled and maintained on site for a minimum of three years. These data must be furnished upon request and made available for inspection by any employee or representative of EPA or the State of Pennsylvania. (2) *Delisting Levels:* If the EP extract concentrations resulting from the testing in condition (1)(A) or (1)(B) for chromium, lead, arsenic, or silver exceed 0.315 mg/L; for barium exceeds 6.3 mg/l; for cadmium or selenium exceed 0.063 mg/l; for mercury exceeds 0.0126 mg/l; for nickel exceeds 3.15 mg/l; or for cyanide exceeds 4.42 mg/L; the waste must either be re-treated or managed and disposed in accordance with subtitle C of RCRA. • • • • •
Bethlehem Steel Corp	Johnstown, PA	• • • • • (1) *Testing:* (A) *Initial Testing:* During the first four weeks of operation of the full-scale treatment system, Bethlehem must collect representative grab samples of each treated batch of the CSEAFD and composite the grab samples daily. The daily composites, prior to disposal, must be analyzed for the EP leachate concentrations of all the EP toxic metals, nickel, and cyanide (using distilled water in the cyanide extractions). Analyses must be performed according to appropriate methods such as those found in SW–846 or other reliable sources (with the exception of analyses requiring the use of SW–846 methods incorporated by reference in 40 CFR 260.11, which must be used without substitution). Bethlehem must report the analytical test data obtained during this initial period no later than 90 days after the treatment of the first full-scale batch. (B) *Subsequent Testing:* Bethlehem must collect representative grab samples from every treated batch of CSEAFD generated daily and composite all of the grab samples to produce a weekly composite sample. Bethlehem then must analyze each weekly composite sample for the EP leachate concentrations of all the EP toxic metals and nickel. Analyses must be performed according to appropriate methods such as those found in SW–846 or other reliable sources (with the exception of analyses requiring the use of SW–846 methods incorporated by reference in 40 CFR 260.11, which must be used without substitution). The analytical data, including all quality control information, must be compiled and maintained on site for a minimum of three years. These data must be furnished upon request and made available for inspection by any employee or representative of EPA or the State of Pennsylvania. (2) If the EP extract concentrations resulting from the testing in condition (1)(A) or (1)(B) for chromium, lead, arsenic, or silver exceed 0.315 mg/l; for barium exceed 6.3 mg/l; for cadmium or selenium exceed 0.063 mg/l; for mercury exceed 0.0126 mg/l, for nickel exceed 3.15 mg/l; or for cyanide exceed 4.42 mg/l; the waste must either be retreated until it meets these levels or managed and disposed in accordance with subtitle C of RCRA. • • • • •
BF Goodrich Intermediates Company, Inc.	Calvert City, Kentucky	• • • • •

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TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		Brine purification muds and saturator insolubles (EPA, Hazardous Waste No. K071) after August 18, 1989. This exclusion is conditional upon the collection and submission of data obtained from BFG's full-scale treatment system because BFG's original data was based on data presented by another petitioner using an identical treatment process. To ensure that hazardous constituents are not present in the waste at levels of regulatory concern once the full-scale treatment facility is in operation, BFG must implement a testing program. All sampling and analyses (including quality control procedures) must be performed according to appropriate methods such as those found in SW–846 or other reliable sources (with the exception of analyses requiring the use of SW–846 methods incorporated by reference in 40 CFR 260.11, which must be used without substitution). This testing program must meet the following conditions for the exclusion to be valid: (1) • • • (B) Collect representative grab samples from every batch of treated mercury brine purification muds and treated saturator insolubles on a daily basis and composite the grab samples to produce two separate weekly composite samples (one of the treated mercury brine muds and one of the treated saturator insolubles). Prior to disposal of the treated batches, two weekly composite samples must be analyzed for the EP leachate concentrations of all the EP toxic metals (except mercury), nickel, and cyanide (using distilled water in the cyanide extractions). BFG must report the analytical test data, including all quality control data, obtained during this initial period no later than 90 days after the treatment of the first full-scale batch. (2) • • • (3) If, under condition (1) or (2), the EP leachate concentrations for chromium, lead, arsenic, or silver exceed 0.316 mg/l; for barium exceeds 6.31 mg/l; for cadmium or selenium exceed 0.063 mg/l; for mercury exceeds 0.0126 mg/l; for nickel exceeds 3.16 mg/l; or for cyanide exceeds 4.42 mg/l; the waste must either be retreated until it meets these levels or managed and disposed of in accordance with subtitle C of RCRA. • • • • •
CF&I Steel Corporation	Pueblo, Colorado	• • • • • (1) *Testing:* (A) *Initial Testing:* During the first four weeks of operation of the full-scale treatment system, CF&I must collect representative grab samples of each treated batch of the CSEAFD and composite the grab samples daily. The daily composites, prior to disposal, must be analyzed for the EP leachate concentrations of all the EP toxic metals, nickel, and cyanide (using distilled water in the cyanide extractions). Analyses must be performed according to appropriate methods such as those found in SW–846 or other reliable sources (with the exception of analyses requiring the use of SW–846 methods incorporated by reference in 40 CFR 260.11, which must be used without substitution). CF&I must report the analytical test data obtained during this initial period no later than 90 days after the treatment of the first full-scale batch. (B) *Subsequent Testing:* CF&I must collect representative grab samples from every treated batch of CSEAFD generated daily and composite all of the grab samples to produce a weekly composite sample. CF&I then must analyze each weekly composite sample for the EP leachate concentrations of all of the EP toxic metals and nickel. Analyses must be performed according to appropriate methods such as those found in SW–846 or other reliable sources (with the exception of analyses requiring the use of SW–846 methods incorporated by reference in 40 CFR 260.11, which must be used without substitution). The analytical data, including all quality control information, must be compiled and maintained on site for a minimum of three years. These data must be furnished upon request and made available for inspection by any employee or representative of EPA or the State of Colorado. (2) *Delisting levels:* If the EP extract concentrations determined in conditions (1)(A) or (1)(B) for chromium, lead, arsenic, or silver exceed 0.315 mg/l; for barium exceeds 6.3 mg/l; for cadmium or selenium exceed 0.063 mg/l; for mercury exceeds 0.0126 mg/l; for nickel exceeds 3.15 mg/l; or for cyanide exceeds 4.42 mg/l; the waste must either be retreated or managed and disposed in accordance with Subtitle C of RCRA. • • • • •

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES—Continued

Facility	Address	Waste description
Chaparral Steel Midlothian, L.P	Midlothian, Texas	• • • • • (1) *Delisting Levels:* All concentrations for the constituent total lead in the approximately 2,500 cubic yards (500,000 gallons) per calender year of raw leachate from Landfill No. 3, storm water from the baghouse area, and other K061 wastewaters that is transferred from the storage tank to nonhazardous management must not exceed 0.69 mg/l (ppm). Constituents must be measured in the waste by appropriate methods such as those found in SW–846 or other reliable sources (with the exception of analyses requiring the use of SW–846 methods incorporated by reference in 40 CFR 260.11, which must be used without substitution). (3) *Verification Testing Requirements:* Sample collection and analyses, including quality control procedures, must be performed according to appropriate methods such as those found in SW–846 or other reliable sources (with the exception of analyses requiring the use of SW–846 methods incorporated by reference in 40 CFR 260.11, which must be used without substitution). Chaparral Steel must analyze one composite sample from each batch of untreated wastewater transferred from the hazardous waste storage tank to non-hazardous waste management. Each composited batch sample must be analyzed, prior to non-hazardous management of the waste in the batch represented by that sample, for the constituent lead as listed in Condition (1). Chaparral may treat the waste as specified in Condition (2). If EPA judges the treatment process to be effective during the operating conditions used during the initial verification testing, Chaparral Steel may replace the testing requirement in Condition (3)(A) with the testing requirement in Condition (3)(B). Chaparral must continue to test as specified in (3)(A) until and unless notified by EPA or designated authority that testing in Condition (3)(A) may be replaced with by Condition (3)(B). • • • • •
Conversion Systems, Inc	Horsham, Pennsylvania	• • • • • (1) *Verification Testing Requirements:* Sample collection and analyses, including quality control procedures, must be performed according to appropriate methods such as those found in SW–846 or other reliable sources (with the exception of analyses requiring the use of SW–846 methods incorporated by reference in 40 CFR 260.11, which must be used without substitution). • • • • •
DOE–RL	Richland, Washington	• • • • • (1) *Testing:* Sample collection and analyses (including quality control (QC) procedures) must be performed according to appropriate methods such as those found in SW–846 or other reliable sources (with the exception of analyses requiring the use of SW–846 methods incorporated by reference in 40 CFR 260.11, which must be used without substitution). If EPA judges the treatment process to be effective under the operating conditions used during the initial verification testing, DOE may replace the testing required in Condition (1)(A) with the testing required in Condition (1)(B). DOE must continue to test as specified in Condition (1)(A) until notified by EPA in writing that testing in Condition (1) (A) may be replaced by Condition (1)(B). • • • • • (2) • • • (3) *Delisting Levels:* All total constituent concentrations in the waste samples must be measured using appropriate methods such as those found in "Test Methods for Evaluating Solid Waste: Physical/Chemical Methods," U.S. EPA Publication SW–846, or other reliable sources (with the exception of SW–846 methods incorporated by reference in 40 CFR 260.11, which must be used without substitution). All total constituent concentrations must be equal to or less than the following levels (ppm): *Inorganic Constituents:* Ammonium—10.0; Antimony—0.06; Arsenic—0.5; Barium—20.0; Beryllium—0.04; Cadmium—0.05; Chromium—1.0; Cyanide—2.0; Fluoride—40.0; Lead—0.15; Mercury—0.02; Nickel—1.0; Selenium—0.5; Silver—2.0; Vanadium—2.0; Zinc—100.0.

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TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		Organic Constituents: Acetone—40.0; Benzene—0.05; Benzyl alcohol—100.0; 1-Butyl alcohol—40.0; Carbon tetrachloride—0.05; Chlorobenzene—1.0; Chloroform—0.1; Cresol—20.0; 1,4-Dichlorobenzene—0.75; 1,2-Dichloroethane—0.05; 1,1-Dichloroethylene—0.07; Di-n-octyl phthalate—7.0; Hexachloroethane—0.06; Methyl ethyl ketone—200.0; Methyl isobutyl ketone—30.0; Naphthalene—10.0; Tetrachloroethylene—0.05; Toluene—10.0; Tributyl phosphate—0.2; 1,1,1-Trichloroethane—2.0; 1,1,2-Trichloroethane—0.05; Trichloroethylene—0.05; Vinyl Chloride—0.02.
		• • • • •
Envirite of Pennsylvania (formerly Envirite Corporation).	York, Pennsylvania	• • • • •
		(2) Each batch of treatment residue must be tested for leachable cyanide. If the leachable cyanide levels (using the EP Toxicity test without acetic acid adjustment) exceed 1.26 ppm, the waste must be re-treated or managed and disposed as a hazardous waste under 40 CFR Parts 262 to 265 and the permitting standards of 40 CFR Part 270.
		• • • • •
Heritage Environmental Services, LLC, at the Nucor Steel facility.	Crawfordsville, Indiana	• • • • •
		(2) *Verification Testing:* On a monthly basis, Heritage or Nucor must analyze two samples of the waste using the TCLP, SW–846 Method 1311, with an extraction fluid of ph 12 ± 0.05 standard units and for the mercury determinative analysis of the leachate using an appropriate method such as Method 7470 found in EPA Publication SW–846, or use an appropriate method found in other reliable sources. The constituent concentrations measured must be less then the delisting levels established in Paragraph (1).
		• • • • •
Marathon Oil Co	Texas City, TX	• • • • •
		(1) *Testing:* Sample collection and analyses (including quality control (QC) procedures) must be performed according to appropriate methods such as those found in SW–846 or other reliable sources (with the exception of analyses requiring the use of SW–846 methods incorporated by reference in 40 CFR 260.11, which must be used without substitution). If EPA judges the treatment process to be effective under the operating conditions used during the initial verification testing, Marathon may replace the testing required in Condition (1)(A) with the testing required in Condition (1)(B). Marathon must continue to test as specified in Condition (1)(A), including testing for organics in Conditions (3)(B) and (3)(C), until and unless notified by EPA in writing that testing in Condition (1)(A) may be replaced by Condition (1)(B), or that testing for organics may be terminated as described in (1)(C) (to the extent directed by EPA).
		• • • • •
Occidental Chemical Corp., Muscle Shoals Plant.	Sheffield, Alabama	• • • • •
		Retorted wastewater treatment sludge from the mercury cell process in chlorine production (EPA Hazardous Waste No. K106) after September 19, 1989. This exclusion is conditional upon the submission of data obtained from Occidental's full-scale retort treatment system because Occidental's original data were based on a pilot-scale retort system. To ensure that hazardous constituents are not present in the waste at levels of regulatory concern once the full-scale treatment facility is in operation, Occidental must implement a testing program. All sampling and analyses (including quality control procedures) must be performed according to appropriate methods such as those found in SW–846 or other reliable sources (with the exception of analyses requiring the use of SW–846 methods incorporated by reference in 40 CFR 260.11, which must be used without substitution). This testing program must meet the following conditions for the exclusion to be valid: (1) • • •

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(A) Collect representative grab samples from every batch of retorted material and composite the grab samples to produce a weekly composite sample. The weekly composite samples, prior to disposal or recycling, must be analyzed for the EP leachate concentrations of all the EP toxic metals (except mercury), nickel, and cyanide (using distilled water in the cyanide extractions). Occidental must report the analytical test data, including all quality control data, obtained during this initial period no later than 90 days after the treatment of the first full-scale batch. • • • (2) • • • (3) If, under condition (1) or (2), the EP leachate concentrations for chromium, lead, arsenic, or silver exceed 1.616 mg/l; for barium exceeds 32.3 mg/l; for cadmium or selenium exceed 0.323 mg/l; for mercury exceeds 0.065 mg/l, for nickel exceeds 16.15 mg/l; or for cyanide exceeds 22.61 mg/l; the waste must either be retreated until it meets these levels or managed and disposed of in accordance with subtitle C of RCRA.
		• • • • •
Occidental Chemical Corporation	Delaware City, Delaware	• • • • •
		Sodium chloride treatment muds (NaCl–TM), sodium chloride saturator cleanings (NaCl–SC), and potassium chloride treatment muds (KCl–TM) (all classified as EPA Hazardous Waste No. K071) generated at a maximum combined rate (for all three wastes) of 1,018 tons per year. This exclusion was published on April 29, 1991 and is conditioned upon the collection of data from Occidental's full-scale brine treatment system because Occidental's request for exclusion was based on data from a laboratory-scale brine treatment process. To ensure that hazardous constituents are not present in the waste at levels of regulatory concern once the full-scale treatment system is in operation, Occidental must implement a testing program for the petitioned waste. All sampling and analyses (including quality control (QC) procedures) must be performed according to appropriate methods such as those found in SW–846 or other reliable sources (with the exception of analyses requiring the use of SW–846 methods incorporated by reference in 40 CFR 260.11, which must be used without substitution). This testing program must meet the following conditions for the exclusion to be valid: (1) • • • (A) Collect representative grab samples from each batch of the three treated wastestreams (sodium chloride saturator cleanings (NaCl–SC), sodium chloride treatment muds (NaCl–TM) and potassium chloride treatment muds (KCl–TM)) on an as generated basis and composite the samples to produce three separate weekly composite samples (of each type of K071 waste). The three weekly composite samples, prior to disposal, must be analyzed for the EP leachate concentrations of all the EP toxic metals (except mercury), nickel, and cyanide (using distilled water in the cyanide extractions). Occidental must report the waste volumes produced and the analytical test data, including all quality control data, obtained during this initial period, no later than 90 days after the treatment of the first full-scale batch. • • • (2) *Subsequent Testing:* After the first four weeks of full-scale treatment operations, Occidental must do the following; all sampling and analyses (including quality control procedures) must be performed according to appropriate methods such as those found in SW–846 or other reliable sources (with the exception of analyses requiring the use of SW–846 methods incorporated by reference in 40 CFR 260.11, which must be used without substitution): • • • (3) If, under conditions (1) or (2), the EP leachate concentrations for chromium, lead, arsenic, or silver exceed 0.77 mg/l; for barium exceeds 15.5 mg/l; for cadmium or selenium exceed 0.16 mg/l; for mercury exceeds 0.031 mg/l, or for nickel or total cyanide exceeds 10.9 mg/l; the waste must either be retreated or managed and disposed of in accordance with all applicable hazardous waste regulations. • • • • •
Oxy Vinyls	Deer Park, Texas	• • • • •

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TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(3) *Verification Testing Requirements:* Sample collection and analyses, including quality control procedures, must be performed according to appropriate methods such as those found in SW–846 or other reliable sources (with the exception of analyses requiring the use of SW–846 methods incorporated by reference in 40 CFR 260.11, which must be used without substitution). If EPA judges the incineration process to be effective under the operating conditions used during the initial verification testing, Oxy Vinyls may replace the testing required in Condition (3)(A) with the testing required in Condition (3)(B). Oxy Vinyls must continue to test as specified in Condition (3)(A) until and unless notified by EPA in writing that testing in Condition (3)(A) may be replaced by Condition (3)(B). • • • • •
Roanoke Electric Steel Corp	Roanoke, VA	• • • • • (1) • • • (A) *Initial Testing:* During the first four weeks of operation of the full-scale treatment system, Roanoke must collect representative grab samples of each treated batch of the CSEAFD and composite the grab samples daily. The daily composites, prior to disposal, must be analyzed for the EP leachate concentrations of all the EP toxic metals, nickel and cyanide (using distilled water in the cyanide extractions). Analyses must be performed according to appropriate methods such as those found in SW–846 or other reliable sources (with the exception of analyses requiring the use of SW–846 methods incorporated by reference in 40 CFR 260.11, which must be used without substitution). Roanoke must report the analytical test data obtained during this initial period no later than 90 days after the treatment of the first full-scale batch. (B) *Subsequent Testing:* Roanoke must collect representative grab samples from every treated batch of CSEAFD generated daily and composite all of the grab samples to produce a weekly composite sample. Roanoke then must analyze each weekly composite sample for all of the EP toxic metals and nickel. Analyses must be performed according to appropriate methods such as those found in SW–846 or other reliable sources (with the exception of analyses requiring the use of SW–846 methods incorporated by reference in 40 CFR 260.11, which must be used without substitution). The analytical data, including all quality control information, must be compiled and maintained on site for a minimum of three years. These data must be furnished upon request and made available for inspection by any employee or representative of EPA or the State of Virginia. (2) *Delisting levels:* If the EP extract concentrations for chromium, lead, arsenic, or silver exceed 0.315 mg/l; for barium exceeds 6.3 mg/l; for cadmium or selenium exceed 0.63 mg/l; for mercury exceeds 0.0126 mg/l, for nickel exceeds 3.15 mg/l, or for cyanide exceeds 1.26 mg/l; the waste must either be re-treated or managed and disposed in accordance with subtitle C of RCRA. • • • • •
USX Steel Corporation, USS Division, Southworks Plant, Gary Works.	Chicago, Illinois	• • • • • (1) *Testing:* Sample collection and analyses (including quality control (QC) procedures) must be performed according to appropriate methods such as those found in SW–846 or other reliable sources (with the exception of analyses requiring the use of SW–846 methods incorporated by reference in 40 CFR 260.11, which must be used without substitution). (A) *Initial Testing:* During the first four weeks of operation of the full-scale treatment system, USX must collect representative grab samples of each treated batch of the CSEAFD and composite the grab samples daily. The daily composites, prior to disposal, must be analyzed for the EP leachate concentrations of all the EP toxic metals, nickel, and cyanide (using distilled water in the cyanide extractions). USX must report the analytical test data, including quality control information, obtained during this initial period no later than 90 days after the treatment of the first full-scale batch. • • •

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(2) *Delisting levels:* If the EP extract concentrations for chromium, lead, arsenic, or silver exceed 0.315 mg/l; for barium exceeds 6.3 mg/l; for cadmium or selenium exceed 0.063 mg/l; for mercury exceeds 0.0126 mg/l; for nickel exceeds 3.15 mg/l; or for cyanide exceeds 4.42 mg/l, the waste must either be re-treated until it meets these levels or managed and disposed in accordance with subtitle C of RCRA.

* * * * *

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

20. The authority citation for part 264 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, and 6925.

Subpart AA—Air Emissions Standards for Process Vents

21. Section 264.1034 is amended by revising paragraphs (c)(1)(ii), (c)(1)(iv), (d)(1)(iii) and (f) to read as follows:

§ 264.1034 Test methods and procedures.

* * * * *

(c) * * *

(1) * * *

(ii) Method 18 or Method 25A in 40 CFR part 60, appendix A, for organic content. If Method 25A is used, the organic HAP used as the calibration gas must be the single organic HAP representing the largest percent by volume of the emissions. The use of Method 25A is acceptable if the response from the high-level calibration gas is at least 20 times the standard deviation of the response from the zero calibration gas when the instrument is zeroed on the most sensitive scale.

* * * * *

(iv) Total organic mass flow rates shall be determined by the following equation:

(A) For sources utilizing Method 18.

$$E_h = Q_{2sd}\left\{\sum_{i=1}^{n} C_i MW_i\right\}[0.0416][10^{-6}]$$

Where:

E_h = Total organic mass flow rate, kg/h;

Q_{2sd} = Volumetric flow rate of gases entering or exiting control device, as determined by Method 2, dscm/h;

n = Number of organic compounds in the vent gas;

C_i = Organic concentration in ppm, dry basis, of compound i in the vent gas, as determined by Method 18;

MW_i = Molecular weight of organic compound i in the vent gas, kg/kg-mol;

0.0416 = Conversion factor for molar volume, kg-mol/m3 (@ 293 K and 760 mm Hg);

10^{-6} = Conversion from ppm

(B) For sources utilizing Method 25A.

$E_h = (Q)(C)(MW)(0.0416)(10^{-6})$

Where:

E_h = Total organic mass flow rate, kg/h;

Q = Volumetric flow rate of gases entering or exiting control device, as determined by Method 2, dscm/h;

C = Organic concentration in ppm, dry basis, as determined by Method 25A;

MW = Molecular weight of propane, 44;

0.0416 = Conversion factor for molar volume, kg-mol/m3 (@ 293 K and 760 mm Hg);

10^{-6} = Conversion from ppm.

* * * * *

(d) * * *

(1) * * *

(iii) Each sample shall be analyzed and the total organic concentration of the sample shall be computed using Method 9060 (incorporated by reference under § 260.11) of "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW–846; or analyzed for individual organic constituents by using appropriate methods such as Method 8260 of EPA Publication SW–846, or using appropriate methods from other reliable sources.

* * * * *

(f) When an owner or operator and the Regional Administrator do not agree on whether a distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operation manages a hazardous waste with organic concentrations of at least 10 ppmw based on knowledge of the waste, the dispute may be resolved by using appropriate methods such as Method 8260 of "Test Methods for Evaluating Solid Waste" (EPA Publication SW–846) or by using appropriate methods from other reliable sources.

Subpart BB—Air Emission Standards for Equipment Leaks

22. Section 264.1063 is amended by revising paragraph (d)(2) to read as follows:

§ 264.1063 Test methods and procedures.

* * * * *

(d) * * *

(2) Method 9060 (incorporated by reference under § 260.11) of "Test Methods for Evaluating Solid Waste," EPA Publication SW–846, or analyzed for its individual organic constituents by using appropriate methods such as Method 8260 of EPA Publication SW–846 or using appropriate methods from other reliable sources; or

* * * * *

23. Appendix IX to part 264 is revised as follows:

Appendix IX to Part 264—Ground-Water Monitoring List

GROUND-WATER MONITORING LIST

Common name [1]	CAS RN [2]	Chemical abstracts service index name [3]
Acenaphthene	83–32–9	Acenaphthylene, 1,2-dihydro-
Acenaphthylene	208–96–8	Acenaphthylene
Acetone	67–64–1	2-Propanone
Acetophenone	98–86–2	Ethanone, 1-phenyl-
Acetonitrile; Methyl cyanide	75–05–8	Acetonitrile
2-Acetylaminofluorene; 2-AAF	53–96–3	Acetamide, N-9H-fluoren-2-yl-
Acrolein	107–02–8	2-Propenal

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GROUND-WATER MONITORING LIST—Continued

Common name [1]	CAS RN [2]	Chemical abstracts service index name [3]
Acrylonitrile	107–13–1	2-Propenenitrile
Aldrin	309–00–2	1,4:5,8-Dimethanonaphthalene, 1,2,3,4,10,10-hexachloro-1,4,4a,5,8,8a-hexahydro- (1α,4α, 4aβ,5α,8α,8aβ)-
Allyl chloride	107–05–1	1-Propene, 3-chloro-
4-Aminobiphenyl	92–67–1	[1,1′-Biphenyl]-4-amine
Aniline	62–53–3	Benzenamine
Anthracene	120–12–7	Anthracene
Antimóny	(Total)	Antimony
Aramite	140–57–8	Sulfurous acid, 2-chloroethyl 2-[4-(1,1-dimethylethyl)phenoxy]-1-methylethyl ester
Arsenic	(Total)	Arsenic
Barium	(Total)	Barium
Benzene	71–43–2	Benzene
Benzo[a]anthracene; Benzanthracene	56–55–3	Benz[a]anthracene
Benzo[b]fluoranthene	205–99–2	Benz[e]acephenanthrylene
Benzo[k]fluoranthene	207–08–9	Benzo[k]fluoranthene
Benzo[ghi]perylene	191–24–2	Benzo[ghi]perylene
Benzo[a]pyrene	50–32–8	Benzo[a]pyrene
Benzyl alcohol	100–51–6	Benzenemethanol
Beryllium	(Total)	Beryllium
alpha-BHC	319–84–6	Cyclohexane, 1,2,3,4,5,6-hexachloro-,(1α,2α,3β,4α,5β,6β)-
beta-BHC	319–85–7	Cyclohexane, 1,2,3,4,5,6-hexachloro-,(1α,2β,3α,4β,5α,6β)-
delta-BHC	319–86–8	Cyclohexane, 1,2,3,4,5,6-hexachloro-,(1α,2α,3α,4β,5α,6β)-
gamma-BHC; Lindane	58–89–9	Cyclohexane, 1,2,3,4,5,6-hexachloro-,(1α,2α,3β,4α,5α,6β)-
Bis(2-chloroethoxy)methane	111–91–1	Ethane, 1,1′-[methylenebis (oxy)]bis [2-chloro-
Bis(2-chloroethyl)ether	111–44–4	Ethane, 1,1′-oxybis[2-chloro-
Bis(2-chloro-1-methylethyl) ether; 2,2′-Dichlorodiisopropyl ether	108–60–1	Propane, 2,2′-oxybis[1-chloro-
Bis(2-ethylhexyl) phthalate	117–81–7	1,2-Benzenedicarboxylic acid, bis(2-ethylhexyl)ester
Bromodichloromethane	75–27–4	Methane, bromodichloro-
Bromoform; Tribromomethane	75–25–2	Methane, tribromo-
4-Bromophenyl phenyl ether	101–55–3	Benzene, 1-bromo-4-phenoxy-
Butyl benzyl phthalate; Benzyl butyl phthalate	85–68–7	1,2-Benzenedicarboxylic acid, butyl phenylmethyl ester
Cadmium	(Total)	Cadmium
Carbon disulfide	75–15–0	Carbon disulfide
Carbon tetrachloride	56–23–5	Methane, tetrachloro-
Chlordane	57–74–9	4,7-Methano-1H-indene, 1,2,4,5,6,7,8,8-octachloro-2,3,3a,4,7,7a- hexahydro-
p-Chloroaniline	106–47–8	Benzenamine, 4-chloro-
Chlorobenzene	108–90–7	Benzene, chloro-
Chlorobenzilate	510–15–6	Benzeneacetic acid, 4-chloro-α-(4-chlorophenyl)-α-hydroxy-, ethyl ester
p-Chloro-m-cresol	59–50–7	Phenol, 4-chloro-3-methyl-
Chloroethane; Ethyl chloride	75–00–3	Ethane, chloro-
Chloroform	67–66–3	Methane, trichloro-
2-Chloronaphthalene	91–58–7	Naphthalene, 2-chloro-
2-Chlorophenol	95–57–8	Phenol, 2-chloro-
4-Chlorophenyl phenyl ether	7005–72–3	Benzene, 1-chloro-4-phenoxy-
Chloroprene	126–99–8	1,3-Butadiene, 2-chloro-
Chromium	(Total)	Chromium
Chrysene	218–01–9	Chrysene
Cobalt	(Total)	Cobalt
Copper	(Total)	Copper
m-Cresol	108–39–4	Phenol, 3-methyl-
o-Cresol	95–48–7	Phenol, 2-methyl-
p-Cresol	106–44–5	Phenol, 4-methyl-
Cyanide	57–12–5	Cyanide
2,4-D; 2,4-Dichlorophenoxyacetic acid	94–75–7	Acetic acid, (2,4-dichlorophenoxy)-
4,4′-DDD	72–54–8	Benzene 1,1′-(2,2-dichloroethylidene) bis[4-chloro-
4,4′-DDE	72–55–9	Benzene, 1,1′-(dichloroethenylidene) bis[4-chloro-
4,4′-DDT	50–29–3	Benzene, 1,1′-(2,2,2-trichloroethylidene) bis[4-chloro-
Diallate	2303–16–4	Carbamothioic acid, bis(1-methylethyl)-, S- (2,3- dichloro-2-propenyl) ester
Dibenz[a,h]anthracene	53–70–3	Dibenz[a,h]anthracene
Dibenzofuran	132–64–9	Dibenzofuran
Dibromochloromethane; Chlorodibromomethane	124–48–1	Methane, dibromochloro-
1,2-Dibromo-3-chloropropane; DBCP	96–12–8	Propane, 1,2-dibromo-3-chloro-
1,2-Dibromoethane; Ethylene dibromide	106–93–4	Ethane, 1,2-dibromo-
Di-n-butyl phthalate	84–74–2	1,2-Benzenedicarboxylic acid, dibutyl ester
o-Dichlorobenzene	95–50–1	Benzene, 1,2-dichloro-
m-Dichlorobenzene	541–73–1	Benzene, 1,3-dichloro-
p-Dichlorobenzene	106–46–7	Benzene, 1,4-dichloro-
3,3′-Dichlorobenzidine	91–94–1	[1,1′-Biphenyl]-4,4′-diamine, 3,3′-dichloro-

GROUND-WATER MONITORING LIST—Continued

Common name [1]	CAS RN [2]	Chemical abstracts service index name [3]
trans-1,4-Dichloro-2-butene	110–57–6	2-Butene, 1,4-dichloro-, (E)-
Dichlorodifluoromethane	75–71–8	Methane, dichlorodifluoro-
1,1-Dichloroethane	75–34–3	Ethane, 1,1-dichloro-
1,2-Dichloroethane; Ethylene dichloride	107–06–2	Ethane, 1,2-dichloro-
1,1-Dichloroethylene; Vinylidene chloride	75–35–4	Ethene, 1,1-dichloro-
trans-1,2-Dichloroethylene	156–60–5	Ethene, 1,2-dichloro-, (E)-
2,4-Dichlorophenol	120–83–2	Phenol, 2,4-dichloro-
2,6-Dichlorophenol	87–65–0	Phenol, 2,6-dichloro-
1,2-Dichloropropane	78–87–5	Propane, 1,2-dichloro-
cis-1,3-Dichloropropene	10061–01–5	1-Propene, 1,3-dichloro-, (Z)-
trans-1,3-Dichloropropene	10061–02–6	1-Propene, 1,3-dichloro-, (E)-
Dieldrin	60–57–1	2,7:3,6-Dimethanonaphth [2,3-b]oxirene, 3,4,5,6,9,9-hexachloro-1a,2,2a,3,6,6a,7,7a-octahydro-, (1aα,2β,2aα,3β,6β;,6aα,7β,7aα)-
Diethyl phthalate	84–66–2	1,2-Benzenedicarboxylic acid, diethyl ester
O,O-Diethyl O-2-pyrazinyl phosphorothioate; Thionazin	297–97–2	Phosphorothioic acid, O,O-diethyl O-pyrazinyl ester
Dimethoate	60–51–5	Phosphorodithioic acid, O,O-dimethyl S-[2-(methylamino)-2-oxoethyl] ester
p-(Dimethylamino)azobenzene	60–11–7	Benzenamine, N,N-dimethyl-4- (phenylazo)-
7,12-Dimethylbenz[a]anthracene	57–97–6	Benz[a]anthracene, 7,12- dimethyl-
3,3′-Dimethylbenzidine	119–93–7	[1,1′-Biphenyl]-4.4′-diamine, 3,3′-dimethyl-
alpha, alpha-Dimethylphenethylamine	122–09–8	Benzeneethanamine, α,α-dimethyl-
2,4-Dimethylphenol	105–67–9	Phenol, 2,4-dimethyl-
Dimethyl phthalate	131–11–3	1,2-Benzenedicarboxylic acid, dimethyl ester
m-Dinitrobenzene	99–65–0	Benzene, 1,3-dinitro-
4,6-Dinitro-o-cresol	534–52–1	Phenol, 2-methyl-4,6-dinitro-
2,4-Dinitrophenol	51–28–5	Phenol, 2,4-dinitro-
2,4-Dinitrotoluene	121–14–2	Benzene, 1-methyl-2,4-dinitro-
2,6-Dinitrotoluene	606–20–2	Benzene, 2-methyl-1,3-dinitro-
Dinoseb; DNBP; 2-sec-Butyl-4,6-dinitrophenol	88–85–7	Phenol, 2-(1-methylpropyl)-4,6-dinitro-
Di-n-octyl phthalate	117–84–0	1,2-Benzenedicarboxylic acid, dioctyl ester
1,4-Dioxane	123–91–1	1,4-Dioxane
Diphenylamine	122–39–4	Benzenamine, N-phenyl-
Disulfoton	298–04–4	Phosphorodithioic acid, O,O-diethyl S-[2-(ethylthio)ethyl]ester
Endosulfan I	959–98–8	6,9-Methano-2,4,3- benzodioxathiepin, 6,7,8,9,10,10-hexachloro- 1,5,5a,6,9,9a-hexahydro-, 3-oxide, (3α,5aβ,6α,9α,9aβ)-
Endosulfan II	33213–65–9	6,9-Methano-2,4,3-benzodioxathiepin, 6,7,8,9,10,10-hexachloro- 1,5,5a,6,9,9a-hexahydro-, 3-oxide, (3α,5aα,6β,9β,9aα)-
Endosulfan sulfate	1031–07–8	6,9-Methano-2,4,3-benzodioxathiepin, 6,7,8,9,10,10-hexachloro-1,5,5a,6,9,9a-hexahydro-, 3,3-dioxide
Endrin	72–20–8	2,7:3,6-Dimethanonaphth[2,3- b]oxirene, 3,4,5,6,9,9-hexachloro-1a,2,2a,3,6,6a,7,7a-octahydro-, (1aα,2β,2aβ,3α,6α, 6aβ,7β, 7aα)-
Endrin aldehyde	7421–93–4	1,2,4-Methenocyclopenta[cd]pentalene-5-carboxaldehyde,2,2a,3,3,4,7-hexachlorodecahydro-,(1α,2β,2aβ,4β,4aβ,5β,6aβ, 6bβ,7R*)-
Ethylbenzene	100–41–4	Benzene, ethyl-
Ethyl methacrylate	97–63–2	2-Propenoic acid, 2-methyl-, ethyl ester
Ethyl methanesulfonate	62–50–0	Methanesulfonic acid, ethyl ester
Famphur	52–85–7	Phosphorothioic acid, O-[4-[(dimethylamino)sulfonyl]pheny l]-O,O-dimethyl ester
Fluoranthene	206–44–0	Fluoranthene
Fluorene	86–73–7	9H-Fluorene
Heptachlor	76–44–8	4,7-Methano-1H-indene, 1,4,5,6,7,8,8-heptachloro-3a,4,7,7a-tetrahydro-
Heptachlor epoxide	1024–57–3	2,5-Methano-2H-indeno[1,2-b]oxirene, 2,3,4,5,6,7,7-heptachloro-1a,1b,5,5a,6,6a,-hexahydro-, (1aα,1bβ,2α,5α,5aβ,6β,6aα)
Hexachlorobenzene	118–74–1	Benzene, hexachloro-
Hexachlorobutadiene	87–68–3	1,3-Butadiene, 1,1,2,3,4,4-hexachloro-
Hexachlorocyclopentadiene	77–47–4	1,3-Cyclopentadiene, 1,2,3,4,5,5-hexachloro-
Hexachloroethane	67–72–1	Ethane, hexachloro-
Hexachlorophene	70–30–4	Phenol, 2,2′-methylenebis[3,4,6-trichloro-
Hexachloropropene	1888–71–7	1-Propene, 1,1,2,3,3,3-hexachloro-
2-Hexanone	591–78–6	2-Hexanone
Indeno(1,2,3-cd)pyrene	193–39–5	Indeno[1,2,3-cd]pyrene
Isobutyl alcohol	78–83–1	1-Propanol, 2-methyl-
Isodrin	465–73–6	1,4,5,8-Dimethanonaphthalene,1,2,3,4,1 0,10- hexachloro-1,4,4a,5,8,8a hexahydro-(1α,4α,4aβ,5β,8β,8aβ)-
Isophorone	78–59–1	2-Cyclohexen-1-one, 3,5,5-trimethyl-

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GROUND-WATER MONITORING LIST—Continued

Common name [1]	CAS RN [2]	Chemical abstracts service index name [3]
Isosafrole	120–58–1	1,3-Benzodioxole, 5-(1-propenyl)-
Kepone	143–50–0	1,3,4-Metheno-2H-cyclobuta- [cd]pentalen-2-one, 1,1a,3,3a,4,5,5,5a,5b,6- decachlorooctahydro-
Lead	(Total)	Lead
Mercury	(Total)	Mercury
Methacrylonitrile	126–98–7	2-Propenenitrile, 2-methyl-
Methapyrilene	91–80–5	1,2,Ethanediamine, N,N-dimethyl-N′-2- pyridinyl- N′-(2-thienylmethyl)-
Methoxychlor	72–43–5	Benzene, 1,1′-(2,2,2,trichloroethylidene)bis [4-methoxy-
Methyl bromide; Bromomethane	74–83–9	Methane, bromo-
Methyl chloride; Chloromethane	74–87–3	Methane, chloro-
3-Methylcholanthrene	56–49–5	Benz[j]aceanthrylene, 1,2- dihydro-3-methyl-
Methylene bromide; Dibromomethane	74–95–3	Methane, dibromo-
Methylene chloride; Dichloromethane	75–09–2	Methane, dichloro-
Methyl ethyl ketone; MEK	78–93–3	2-Butanone
Methyl iodide; Iodomethane	74–88–4	Methane, iodo-
Methyl methacrylate	80–62–6	2-Propenoic acid, 2-methyl-, methyl ester
Methyl methanesulfonate	66–27–3	Methanesulfonic acid, methyl ester
2-Methylnaphthalene	91–57–6	Naphthalene, 2-methyl-
Methyl parathion; Parathion methyl	298–00–0	Phosphorothioic acid, O,O- dimethyl O-(4-nitrophenyl) ester
4-Methyl-2-pentanone; Methyl isobutyl ketone	108–10–1	2-Pentanone, 4-methyl-
Naphthalene	91–20–3	Naphthalene
1,4-Naphthoquinone	130–15–4	1,4-Naphthalenedione
1-Naphthylamine	134–32–7	1-Naphthalenamine
2-Naphthylamine	91–59–8	2-Naphthalenamine
Nickel	(Total)	Nickel
o-Nitroaniline	88–74–4	Benzenamine, 2-nitro-
m-Nitroaniline	99–09–2	Benzenamine, 3-nitro-
p-Nitroaniline	100–01–6	Benzenamine, 4-nitro-
Nitrobenzene	98–95–3	Benzene, nitro-
o-Nitrophenol	88–75–5	Phenol, 2-nitro-
p-Nitrophenol	100–02–7	Phenol, 4-nitro-
4-Nitroquinoline 1-oxide	56–57–5	Quinoline, 4-nitro-, 1-oxide
N-Nitrosodi-n-butylamine	924–16–3	1-Butanamine, N-butyl-N-nitroso-
N-Nitrosodiethylamine	55–18–5	Ethanamine, N-ethyl-N-nitroso-
N-Nitrosodimethylamine	62–75–9	Methanamine, N-methyl-N-nitroso-
N-Nitrosodiphenylamine	86–30–6	Benzenamine, N-nitroso-N-phenyl-
N-Nitrosodipropylamine; Di-n-propylnitrosamine	621–64–7	1-Propanamine, N-nitroso-N- propyl-
N-Nitrosomethylethylamine	10595–95–6	Ethanamine, N-methyl-N-nitroso-
N-Nitrosomorpholine	59–89–2	Morpholine, 4-nitroso-
N-Nitrosopiperidine	100–75–4	Piperidine, 1-nitroso-
N-Nitrosopyrrolidine	930–55–2	Pyrrolidine, 1-nitroso-
5-Nitro-o-toluidine	99–55–8	Benzenamine, 2-methyl-5-nitro-
Parathion	56–38–2	Phosphorothioic acid, O,O- diethyl-O-(4-nitrophenyl) ester
Polychlorinated biphenyls; PCBs	See Note 4	1,1′-Biphenyl, chloro derivatives
Polychlorinated dibenzo-p-dioxins; PCDDs	See Note 5	Dibenzo[b,e][1,4]dioxin, chloro derivatives
Polychlorinated dibenzofurans; PCDFs	See Note 6	Dibenzofuran, chloro derivatives
Pentachlorobenzene	608–93–5	Benzene, pentachloro-
Pentachloroethane	76–01–7	Ethane, pentachloro-
Pentachloronitrobenzene	82–68–8	Benzene, pentachloronitro-
Pentachlorophenol	87–86–5	Phenol, pentachloro-
Phenacetin	62–44–2	Acetamide, N-(4-ethoxyphenyl)
Phenanthrene	85–01–8	Phenanthrene
Phenol	108–95–2	Phenol
p-Phenylenediamine	106–50–3	1,4-Benzenediamine
Phorate	298–02–2	Phosphorodithioic acid, O,O- diethyl S- [(ethylthio)methyl] ester
2-Picoline	109–06–8	Pyridine, 2-methyl-
Pronamide	23950–58–5	Benzamide, 3,5-dichloro-N-(1,1- dimethyl-2-propynyl)-
Propionitrile; Ethyl cyanide	107–12–0	Propanenitrile
Pyrene	129–00–0	Pyrene
Pyridine	110–86–1	Pyridine
Safrole	94–59–7	1,3-Benzodioxole, 5-(2- propenyl)-
Selenium	(Total)	Selenium
Silver	(Total)	Silver
Silvex; 2,4,5-TP	93–72–1	Propanoic acid, 2-(2,4,5- trichlorophenoxy)-
Styrene	100–42–5	Benzene, ethenyl-
Sulfide	18496–25–8	Sulfide
2,4,5-T;2,4,5 Trichlorophenoxyacetic acid	93–76–5	Acetic acid, (2,4,5-2,4,5-trichlorophenoxy)-
2,3,7,8-TCDD; 2,3,7,8-Tetrachlorodibenzo-p-dioxin	1746–01–6	Dibenzo[b,e][1,4]dioxin, 2,3,7,8-tetrachloro-
1,2,4,5-Tetrachlorobenzene	95–94–3	Benzene, 1,2,4,5-tetrachloro-
1,1,1,2-Tetrachloroethane	630–20–6	Ethane, 1,1,1,2-tetrachloro-

GROUND-WATER MONITORING LIST—Continued

Common name [1]	CAS RN [2]	Chemical abstracts service index name [3]
1,1,2,2-Tetrachloroethane	79–34–5	Ethane, 1,1,2,2-tetrachloro-
Tetrachloroethylene; Perchloroethylene; Tetrachloroethene	127–18–4	Ethene, tetrachloro-
2,3,4,6-Tetrachlorophenol	58–90–2	Phenol, 2,3,4,6-tetrachloro-
Tetraethyl dithiopyrophosphate; Sulfotepp	3689–24–5	Thiodiphosphoric acid [$(HO)_2P(S)]_2O$, tetraethyl ester
Thallium	(Total)	Thallium
Tin	(Total)	Tin
Toluene	108–88–3	Benzene, methyl-
o-Toluidine	95–53–4	Benzenamine, 2-methyl-
Toxaphene	8001–35–2	Toxaphene
1,2,4-Trichlorobenzene	120–82–1	Benzene, 1,2,4-trichloro-
1,1,1-Trichloroethane; Methylchloroform	71–55–6	Ethane, 1,1,1-trichloro-
1,1,2-Trichloroethane	79–00–5	Ethane, 1,1,2-trichloro-
Trichloroethylene; Trichloroethene	79–01–6	Ethene, trichloro-
Trichlorofluoromethane	75–69–4	Methane, trichlorofluoro-
2,4,5-Trichlorophenol	95–95–4	Phenol, 2,4,5-trichloro-
2,4,6-Trichlorophenol	88–06–2	Phenol, 2,4,6-trichloro-
1,2,3-Trichloropropane	96–18–4	Propane, 1,2,3-trichloro-
O,O,O-Triethyl phosphorothioate	126–68–1	Phosphorothioic acid, O,O,O- triethyl ester
sym-Trinitrobenzene	99–35–4	Benzene, 1,3,5-trinitro-
Vanadium	(Total)	Vanadium
Vinyl acetate	108–05–4	Acetic acid, ethenyl ester
Vinyl chloride	75–01–4	Ethene, chloro-
Xylene (total)	1330–20–7	Benzene, dimethyl-
Zinc	(Total)	Zinc

[1] Common names are those widely used in government regulations, scientific publications, and commerce; synonyms exist for many chemicals.

[2] Chemical Abstracts Service registry number. Where "Total" is entered, all species in the ground water that contain this element are included.

[3] CAS index names are those used in the 9th Cumulative Index.

[4] Polychlorinated biphenyls (CAS RN 1336–36–3); this category contains congener chemicals, including constituents of Aroclor-1016 (CAS RN 12674–11–2), Aroclor-1221 (CAS RN 11104–28–2), Aroclor-1232 (CAS RN 11141–16–5), Aroclor-1242 (CAS RN 53469–21–9), Aroclor-1248 (CAS RN 12672–29–6), Aroclor-1254 (CAS RN 11097–69–1), and Aroclor-1260 (CAS RN 11096–82–5).

[5] This category contains congener chemicals, including tetrachlorodibenzo-p-dioxins (see also 2,3,7,8–TCDD), pentachlorodibenzo-p-dioxins, and hexachlorodibenzo-p-dioxins.

[6] This category contains congener chemicals, including tetrachlorodibenzofurans, pentachlorodibenzofurans, and hexachlorodibenzofurans.

PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

24. The authority citation for part 265 continues to read as follows:

Authority: 42 U.S.C. 6905, 6906, 6912, 6922, 6923, 6924, 6925, 6935, 6936 and 6937, unless otherwise noted.

Subpart AA—Air Emission Standards for Process Vents

25. Section 265.1034 is amended by revising paragraphs (c)(1)(ii), (c)(1)(iv), (d)(1)(iii) and (f) to read as follows:

§ 265.1034 Test methods and procedures.

* * * * *

(c) * * *

(1) * * *

(ii) Method 18 or Method 25A in 40 CFR part 60, appendix A, for organic content. If Method 25A is used, the organic HAP used as the calibration gas must be the single organic HAP representing the largest percent by volume of the emissions. The use of Method 25A is acceptable if the response from the high-level calibration gas is at least 20 times the standard deviation of the response from the zero calibration gas when the instrument is zeroed on the most sensitive scale.

* * * * *

(iv) Total organic mass flow rates shall be determined by the following equation:

(A) For sources utilizing Method 18.

$$E_h = Q_{2sd}\left\{\sum_{i=1}^{n} C_i MW_i\right\}[0.0416][10^{-6}]$$

Where:

E_h = Total organic mass flow rate, kg/h;

Q_{2sd} = Volumetric flow rate of gases entering or exiting control device, as determined by Method 2, dscm/h;

n = Number of organic compounds in the vent gas;

C_i = Organic concentration in ppm, dry basis, of compound i in the vent gas, as determined by Method 18;

MW_i = Molecular weight of organic compound i in the vent gas, kg/kg-mol;

0.0416 = Conversion factor for molar volume, kg-mol/m3 (@ 293 K and 760 mm Hg);

10^{-6} Conversion from ppm

(B) For sources utilizing Method 25A.

$E_h = (Q)(C)(MW)(0.0416)(10^{-6})$

Where:

E_h = Total organic mass flow rate, kg/h;

Q = Volumetric flow rate of gases entering or exiting control device, as determined by Method 2, dscm/h;

C = Organic concentration in ppm, dry basis, as determined by Method 25A;

MW = Molecular weight of propane, 44;

0.0416 = Conversion factor for molar volume, kg-mol/m3 (@ 293 K and 760 mm Hg);

10^{-6} = Conversion from ppm.

* * * * *

(d) * * *

(1) * * *

(iii) Each sample shall be analyzed and the total organic concentration of the sample shall be computed using Method 9060 (incorporated by reference under § 260.11) of "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW–846; or analyzed for its individual organic constituents by using appropriate methods such as Method 8260 of EPA Publication SW–846, or using appropriate methods from other reliable sources.

* * * * *

(f) When an owner or operator and the Regional Administrator do not agree on

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whether a distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operation manages a hazardous waste with organic concentrations of at least 10 ppmw based on knowledge of the waste, the dispute may be resolved using an appropriate method such as Method 8260 of "Test Methods for Evaluating Solid Waste" (EPA Publication SW–846) or using appropriate methods from other reliable sources.

Subpart BB—Air Emission Standards for Equipment Leaks

26. Section 265.1063 is amended by revising paragraph (d)(2) to read as follows:

§ 265.1063 Test methods and procedures.

* * * * *

(d) * * *

(2) Method 9060 (incorporated by reference under § 260.11) of "Test Methods for Evaluating Solid Waste," EPA Publication SW–846 or analyzed for its individual organic constituents by using appropriate methods such as Method 8260 of EPA Publication SW–846 or using appropriate methods from other reliable sources; or

* * * * *

Subpart CC—Air Emission Standards for Tanks, Surface Impoundments, and Containers

27. Section 265.1081 is amended by revising the definition "Waste stabilization process" to read as follows:

§ 265.1081 Definitions.

* * * * *

Waste stabilization process means any physical or chemical process used to either reduce the mobility of hazardous constituents in a hazardous waste or eliminate free liquids as determined by Test Method 9095 (Paint Filter Liquids Test) in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW–846, as incorporated by reference in § 260.11. A waste stabilization process includes mixing the hazardous waste with binders or other materials, and curing the resulting hazardous waste and binder mixture. Other synonymous terms used to refer to this process are "waste fixation" or "waste solidification." This does not include the adding of absorbent materials to the surface of a waste, without mixing, agitation, or subsequent curing, to absorb free liquid.

28. Section 265.1084 is amended by revising paragraphs (a)(3)(ii)(C), (a)(3)(iii), (b)(3)(ii)(C), (b)(3)(iii), and (c)(3)(i) to read as follows:

§ 265.1084 Waste determination procedures.

(a) * * *

(3) * * *

(ii) * * *

(C) All samples shall be collected and handled in accordance with written procedures prepared by the owner or operator and documented in a site sampling plan. This plan shall describe the procedure by which representative samples of the hazardous waste stream are collected such that a minimum loss of organics occurs throughout the sample collection and handling process, and by which sample integrity is maintained. A copy of the written sampling plan shall be maintained on-site in the facility operating records. An example of an acceptable sampling plan includes a plan incorporating sample collection and handling procedures in accordance with the guidance found in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW–846, or in Method 25D in 40 CFR part 60, appendix A.

* * * * *

(iii) Analysis. Each collected sample shall be prepared and analyzed in accordance with Method 25D in 40 CFR part 60, appendix A, or using one or more other appropriate methods from other reliable sources. If Method 25D in 40 CFR part 60, appendix A is not used, then one or more methods should be chosen that are appropriate to ensure that the waste determination accounts for and reflects all organic compounds in the waste with Henry's law constant values at least 0.1 mole-fraction-in-the-gas-phase/mole-fraction-in-the-liquid-phase (0.1 Y/X) [which can also be expressed as 1.8×10^{-6} atmospheres/gram-mole/m^3] at 25 degrees Celsius. Examples of other methods from other reliable sources which might be appropriate include Method 8260 or 8270 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW–846; or Method 624, 625, 1624, or 1625 of 40 CFR part 136, appendix A. At the owner or operator's discretion, the owner or operator may adjust test data obtained by any appropriate method to discount any contribution to the total volatile organic concentration that is a result of including a compound with a Henry's law constant value of less than 0.1 Y/X at 25 degrees Celsius. To adjust these data, the measured concentration of each individual chemical constituent contained in the waste is multiplied by the appropriate constituent-specific adjustment factor (f_{m25D}). If the owner or operator elects to adjust test data, the adjustment must be made to all individual chemical constituents with a Henry's law constant value greater than or equal to 0.1 Y/X at 25 degrees Celsius contained in the waste. Constituent-specific adjustment factors (f_{m25D}) can be obtained by contacting the Waste and Chemical Processes Group, Office of Air Quality Planning and Standards, Research Triangle Park, NC 27711. In addition to the requirement to reflect all organic compounds in the waste with Henry's law constant values greater than or equal to 0.1 Y/X [which can also be expressed as 1.8×10^{-6} atmospheres/gram-mole/m^3] at 25 degrees Celsius, other appropriate methods include:

(A) Any EPA standard method that has been validated in accordance with "Alternative Validation Procedure for EPA Waste and Wastewater Methods", 40 CFR part 63, appendix D.

(B) Any other analysis method that has been validated in accordance with the procedures specified in Section 5.1 or Section 5.3, and the corresponding calculations in Section 6.1 or Section 6.3, of Method 301 in 40 CFR part 63, appendix A. The data are acceptable if they meet the criteria specified in Section 6.1.5 or Section 6.3.3 of Method 301. If correction is required under section 6.3.3 of Method 301, the data are acceptable if the correction factor is within the range 0.7 to 1.30. Other sections of Method 301 are not required.

* * * * *

(b) * * *

(3) * * *

(ii) * * *

(C) All samples shall be collected and handled in accordance with written procedures prepared by the owner or operator and documented in a site sampling plan. This plan shall describe the procedure by which representative samples of the hazardous waste stream are collected such that a minimum loss of organics occurs throughout the sample collection and handling process, and by which sample integrity is maintained. A copy of the written sampling plan shall be maintained on-site in the facility operating records. An example of an acceptable sampling plan includes a plan incorporating sample collection and handling procedures in accordance with the guidance found in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW–846, or in Method 25D in 40 CFR part 60, appendix A.

* * * * *

(iii) Analysis. Each collected sample shall be prepared and analyzed in accordance with Method 25D in 40 CFR part 60, appendix A, or using one or more appropriate methods from other reliable sources. When the owner or operator is making a waste determination for a treated hazardous waste that is to be compared to an average VO concentration at the point of waste origination or the point of waste entry to the treatment system, to determine if the conditions of § 264.1082(c)(2)(i) through (c)(2)(vi) of this part, or § 265.1083(c)(2)(i) through (c)(2)(vi) of this subpart are met, then the waste samples shall be prepared and analyzed using the same method or methods as were used in making the initial waste determinations at the point of waste origination or at the point of entry to the treatment system. If Method 25D in 40 CFR part 60, appendix A is not used, then one or more methods should be chosen that are appropriate to ensure that the waste determination accounts for and reflects all organic compounds in the waste with Henry's law constant values at least 0.1 mole-fraction-in-the-gas-phase/mole-fraction-in-the-liquid-phase (0.1 Y/X) [which can also be expressed as 1.8×10^{-6} atmospheres/gram-mole/m^3] at 25 degrees Celsius. Examples of other methods from other reliable sources which might be appropriate include Method 8260 or 8270 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW–846; or Method 624, 625, 1624, or 1625 of 40 CFR part 136, appendix A. At the owner or operator's discretion, the owner or operator may adjust test data obtained by any appropriate method to discount any contribution to the total volatile organic concentration that is a result of including a compound with a Henry's law constant value less than 0.1 Y/X at 25 degrees Celsius. To adjust these data, the measured concentration of each individual chemical constituent in the waste is multiplied by the appropriate constituent-specific adjustment factor (f_{m25D}). If the owner or operator elects to adjust test data, the adjustment must be made to all individual chemical constituents with a Henry's law constant value greater than or equal to 0.1 Y/X at 25 degrees Celsius contained in the waste. Constituent-specific adjustment factors (f_{m25D}) can be obtained by contacting the Waste and Chemical Processes Group, Office of Air Quality Planning and Standards, Research Triangle Park, NC 27711. In addition to the requirement to reflect all organic compounds in the waste with Henry's law constant values greater than or equal to 0.1 Y/X [which can also be expressed as 1.8×10^{-6} atmospheres/gram-mole/m^3] at 25 degrees Celsius, other appropriate methods include:

(A) Any EPA standard method that has been validated in accordance with "Alternative Validation Procedure for EPA Waste and Wastewater Methods", 40 CFR part 63, appendix D.

(B) Any other analysis method that has been validated in accordance with the procedures specified in Section 5.1 or Section 5.3, and the corresponding calculations in Section 6.1 or Section 6.3, of Method 301 in 40 CFR part 63, appendix A. The data are acceptable if they meet the criteria specified in Section 6.1.5 or Section 6.3.3 of Method 301. If correction is required under section 6.3.3 of Method 301, the data are acceptable if the correction factor is within the range 0.7 to 1.30. Other sections of Method 301 are not required.

* * * * *

(c) * * *

(3) * * *

(i) Sampling. A sufficient number of samples shall be collected to be representative of the waste contained in the tank. All samples shall be collected and handled in accordance with written procedures prepared by the owner or operator and documented in a site sampling plan. This plan shall describe the procedure by which representative samples of the hazardous waste are collected such that a minimum loss of organics occurs throughout the sample collection and handling process and by which sample integrity is maintained. A copy of the written sampling plan shall be maintained on-site in the facility operating records. An example of an acceptable sampling plan includes a plan incorporating sample collection and handling procedures in accordance with the guidance found in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW–846, or in Method 25D in 40 CFR part 60, appendix A.

* * * * *

PART 266—STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES

29. The authority citation for part 266 continues to read as follows:

Authority: 42 U.S.C. 1006, 2002(a), 3001–3009, 3014, 6905, 6906, 6912, 6922, 6924–6927 and 6937.

Subpart H—Hazardous Waste Burned in Boilers and Industrial Furnaces

30. Section 266.100 is amended by revising paragraphs (d)(1)(ii) and (g)(2) to read as follows:

§ 266.100 Applicability.

* * * * *

(d) * * *

(1) * * *

(ii) Sample and analyze the hazardous waste and other feedstocks as necessary to comply with the requirements of this paragraph by using appropriate methods such as those found in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW–846, or other reliable sources. The owner or operator shall use the best available method for the particular determination; and

* * * * *

(g) * * *

(2) Sample and analyze the hazardous waste as necessary to document that the waste is burned for recovery of economically significant amounts of precious metal, by using appropriate methods such as those found in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW–846, or other reliable sources. The owner or operator shall use the best available method for the particular determination; and

* * * * *

31. Section 266.102 is amended by revising paragraph (b)(1) to read as follows:

§ 266.102 Permit standards for burners.

* * * * *

(b) Hazardous waste analysis. (1) The owner or operator must provide an analysis of the hazardous waste that quantifies the concentration of any constituent identified in appendix VIII of part 261 of this chapter that may reasonably be expected to be in the waste. Such constituents must be identified and quantified if present, at levels detectable by using appropriate analytical procedures such as those found in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW–846, or other reliable sources. The owner or operator shall use the best available method for the particular determination. The appendix VIII, part 261 constituents excluded from this analysis must be identified and the basis for their exclusion explained. This analysis will be used to provide all information required by this subpart and §§ 270.22 and 270.66 of this chapter and to enable the permit writer to prescribe such permit conditions as necessary to protect human health and the environment. Such analysis must be included as a portion of the part B permit application, or, for facilities operating under the interim status standards of this subpart, as a portion of

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the trial burn plan that may be submitted before the part B application under provisions of § 270.66(g) of this chapter as well as any other analysis required by the permit authority in preparing the permit. Owners and operators of boilers and industrial furnaces not operating under the interim status standards must provide the information required by §§ 270.22 or 270.66(c) of this chapter in the part B application to the greatest extent possible.

* * * * *

32. Section 266.106 is amended by revising paragraph (a) to read as follows:

§ 266.106 Standards to control metals emissions.

(a) *General.* The owner or operator must comply with the metals standards provided by paragraphs (b), (c), (d), (e), or (f) of this section for each metal listed in paragraph (b) of this section that is present in the hazardous waste at detectable levels by using appropriate analytical procedures such as those found in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (EPA Publication SW–846) or other reliable sources.

* * * * *

33. Section 266.112 is amended by revising paragraph (b)(1), introductory text, and paragraph (b)(2)(i) to read as follows:

§ 266.112 Regulation of residues.

* * * * *

(b) * * *

(1) *Comparison of waste-derived residue with normal residue.* The waste-derived residue must not contain appendix VIII, part 261 constituents (toxic constituents) that could reasonably be attributable to the hazardous waste at concentrations significantly higher than in residue generated without burning or processing of hazardous waste, using the following procedure. Toxic compounds that could reasonably be attributable to burning or processing the hazardous waste (constituents of concern) include toxic constituents in the hazardous waste, and the organic compounds listed in appendix VIII of this part that may be generated as products of incomplete combustion. Sampling and analyses shall be conducted by using appropriate methods such as those found in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW–846, or other reliable sources. For polychlorinated dibenzo-p-dioxins and polychlorinated dibenzofurans, analyses must be performed to determine specific congeners and homologues, and the results converted to 2,3,7,8–TCDD equivalent values using the procedure specified in section 4.0 of appendix IX of this part.

* * * * *

(2) *Comparison of waste-derived residue concentrations with health-based limits*—(i) *Nonmetal constituents.* The concentration of each nonmetal toxic constituent of concern (specified in paragraph (b)(1) of this section) in the waste-derived residue must not exceed the health-based level specified in appendix VII of this part, or the level of detection (which must be determined by using appropriate analytical procedures such as those contained in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW–846, or other reliable sources), whichever is higher. If a health-based limit for a constituent of concern is not listed in appendix VII of this part, then a limit of 0.002 micrograms per kilogram or the level of detection (which must be determined by using appropriate analytical procedures such as those found in EPA Publication SW–846 or other reliable sources), whichever is higher, must be used. The levels specified in appendix VII of this part (and the default level of 0.002 micrograms per kilogram or the level of detection for constituents as identified in Note 1 of appendix VII of this chapter) are administratively stayed under the condition, for those constituents specified in paragraph (b)(1) of this section, that the owner or operator complies with alternative levels defined as the land disposal restriction limits specified in § 268.43 of this chapter for F039 nonwastewaters. In complying with those alternative levels, if an owner or operator is unable to detect a constituent despite documenting use of best good-faith efforts as defined by applicable Agency guidance or standards, the owner or operator is deemed to be in compliance for that constituent. Until new guidance or standards are developed, the owner or operator may demonstrate such good-faith efforts by achieving a detection limit for the constituent that does not exceed an order of magnitude above the level provided by § 268.43 of this chapter for F039 nonwastewaters. In complying with the § 268.43 of this chapter F039 nonwastewater levels for polychlorinated dibenzo-p-dioxins and polychlorinated dibenzo-furans, analyses must be performed for total hexachlorodibenzo-p-dioxins, total hexachlorodibenzofurans, total pentachlorodibenzo-p-dioxins, total pentachlorodibenzofurans, total tetrachlorodibenzo-p-dioxins, and total tetrachlorodibenzofurans. Note to paragraph (b)(2)(i): The administrative stay, under the condition that the owner or operator complies with alternative levels defined as the land disposal restriction limits specified in § 268.43 of this chapter for F039 nonwastewaters, remains in effect until further administrative action is taken and notice is published in the **Federal Register** and the Code of Federal Regulations.

* * * * *

34. Appendix IX of part 266 is amended to:

a. Revise sections 1.0 and section 3.0,

b. Revise the first paragraph of section 4.0,

c. Revise paragraph (2) of section 10.3,

d. Revise the fifth bullet of paragraph (1) of section 10.5,

e. Revise the third dash text under the second bullet of paragraph (2) of section 10.5,

f. Revise the third and fifth bullets of paragraph (5) of section 10.5,

g. Revise the fourth bullet of paragraph (1) of section 10.6,

h. Revise the third and fourth bullets of paragraph (5) of section 10.6.

The revisions read as follows:

Appendix IX—Methods Manual for Compliance with the BIF Regulations

* * * * *

Section 1.0 Introduction

This document presents required methods for demonstrating compliance with U.S. Environmental Protection Agency regulations for boilers and industrial furnaces (BIFs) burning hazardous waste (see 40 CFR part 266, subpart H). The methods included in this document are:

1. Performance Specifications for Continuous Emission Monitoring (CEM) of Carbon Monoxide, Oxygen, and Hydrocarbons in Stack Gases.
2. Procedures for Estimating the Toxicity Equivalency of Chlorinated Dibenzo-p-dioxin and Dibenzofuran Congeners.
3. Hazardous Waste Combustion Air Quality Screening Procedures (HWCAQSP).
4. Simplified Land Use Classification Procedure for Compliance with Tier I and Tier II Limits.
5. Statistical Methodology for Bevill Residue Determinations.
6. Procedures for Determining Default Values for Air Pollution Control System Removal Efficiencies.
7. Procedures for Determining Default Values for Partitioning of Metals, Ash, and Total Chloride/Chlorine.
8. Alternate Methodology for Implementing Metals Controls.

a. Sampling and analytical methods for multiple metals, hexavalent chromium, HCl and chlorine, polychlorinated dibenzo-p-dioxins and dibenzofurans, and aldehydes and ketones can be found in "Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods" (EPA Publication SW–846). Additional methods referenced in subpart H of part 266 but not included in this document can be found in 40 CFR parts 60 and 61, and SW–846.

b. The CEM performance specifications of section 2.0, the relevant sampling Methods 0011, 0023A, 0050, 0051, 0060, and 0061 of SW–846, incorporated by reference in § 260.11, and the toxicity equivalency procedure for dioxins and furans of section 4.0 are required procedures for determining compliance with BIF regulations. For the determination of chloride from HCl/Cl_2 emission sampling train, you must use appropriate methods such as Method 9057 of SW–846 or other appropriate methods from other reliable sources. For the determination of carbonyl compounds by high-performance liquid chromatography, you must use appropriate methods such as Method 8315 of SW–846 or other appropriate methods from other reliable sources. The CEM performance specifications are interim. The finalized CEM performance specifications will be published in 40 CFR parts 60 and 61.

* * * * *

Section 3.0 Sampling and Analytical Methods

Note: The sampling and analytical methods to the BIF manual are published in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW–846.

Section 4.0 Procedure for Estimating the Toxicity Equivalency of Chlorinated Dibenzo-p-Dioxin and Dibenzofuran Congeners

PCDDs and PCDFs must be determined using the most recent version of SW–846 Method 0023A, as identified and incorporated by reference in § 260.11. In this method, individual congeners or homologues[1] are measured and then summed to yield a total PCDD/PCDF value. No toxicity factors are specified in the method to compute risks from such emissions.

* * * * *

Section 10.0—Alternative Methodology for Implementing Metals Controls

* * * * *

10.3 *Basis*

* * * * *

(2) The metal concentrations in the collected kiln dust can be accurately and representatively measured (by using appropriate procedures such as those found in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (EPA Publication SW–846) or other reliable sources).

* * * * *

10.5 *Implementation Procedures*

* * * * *

(1) * * *

• Follow appropriate guidelines such as those described in SW–846 or other reliable sources for preparing test plans and waste analysis plans for the following tests:

* * * * *

(2) * * *

—Follow appropriate sampling and analytical procedures such as those described in SW–846 or other reliable sources and the waste analysis plan as they pertain to the condition and accessibility of the dust.

* * * * *

(5) * * *

• Follow the sampling, compositing, and analytical procedures described in this method and in other appropriate methods such as those found in SW–846 or other reliable sources, as they pertain to the condition and accessibility of the kiln dust.

* * *

• Samples must be collected at least once every 8 hours, and a daily composite must be prepared according to appropriate procedures such as those found in SW–846 or other reliable sources.

* * * * *

10.6 *Precompliance Procedures*

* * * * *

(1) * * *

• Follow appropriate procedures such as those described in SW–846 or other reliable sources for preparing waste analysis plans for the following tasks:

* * * * *

(5) * * *

• Follow the sampling, compositing, and analytical procedures described in this method and in other appropriate methods such as those found in SW–846 or other reliable sources as they pertain to the condition and accessibility of the kiln dust.

• Samples must be collected at least once every 8 hours, and a daily composite must be prepared according to appropriate procedures such as those found in SW–846 or other reliable sources.

* * * * *

PART 270—EPA ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT

35. The authority citation for part 270 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912, 6924, 6925, 6927, 6939, and 6974.

Subpart B—Permit Application

36. Section 270.19 is amended by revising paragraphs (c)(1)(iii) and (iv) to read as follows:

§ 270.19 Specific part B information requirements for incinerators.

* * * * *

(c) * * *

(1) * * *

(iii) An identification of any hazardous organic constituents listed in part 261, appendix VIII, of this chapter, which are present in the waste to be burned, except that the applicant need not analyze for constituents listed in part 261, appendix VIII, of this chapter which would reasonably not be expected to be found in the waste. The constituents excluded from analysis must be identified and the basis for their exclusion stated. The waste analysis must rely on appropriate analytical techniques such as those found in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW–846, or other reliable sources.

(iv) An approximate quantification of the hazardous constituents identified in the waste, within the precision produced by appropriate analytical methods such as those found in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW–846, or other reliable sources.

* * * * *

37. Section 270.22 is amended by revising paragraph (a)(2)(ii)(B) to read as follows:

§ 270.22 Specific part B information requirements for boilers and industrial furnaces burning hazardous wastes.

* * * * *

(a) * * *

(2) * * *

(ii) * * *

(B) Results of analyses of each waste to be burned, documenting the concentrations of nonmetal compounds listed in appendix VIII of part 261 of this chapter, except for those constituents that would reasonably not be expected to be in the waste. The constituents excluded from analysis must be identified and the basis for their exclusion explained. The analysis must rely on appropriate analytical techniques such as those found in Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, EPA Publication SW–846, or other reliable sources.

* * * * *

Subpart F—Special Forms of Permits

38. Section 270.62 is amended by revising paragraphs (b)(2)(i)(C) and (D) to read as follows:

§ 270.62 Hazardous waste incinerator permits.

* * * * *

(b) * * *

(2) * * *

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(i) * * *

(C) An identification of any hazardous organic constituents listed in part 261, appendix VIII of this chapter, which are present in the waste to be burned, except that the applicant need not analyze for constituents listed in part 261, appendix VIII, of this chapter which would reasonably not be expected to be found in the waste. The constituents excluded from analysis must be identified, and the basis for the exclusion stated. The waste analysis must rely on appropriate analytical techniques such as those found in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW–846, or other reliable sources.

(D) An approximate quantification of the hazardous constituents identified in the waste, within the precision produced by appropriate analytical methods such as those found in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW–846, or other reliable sources.

* * * * *

39. Section 270.66 is amended by revising paragraphs (c)(2)(i) and (ii) to read as follows:

§ 270.66 Permits for boilers and industrial furnaces burning hazardous waste.

* * * * *

(c) * * *

(2) * * *

(i) An identification of any hazardous organic constituents listed in appendix VIII, part 261, of this chapter that are present in the feed stream, except that the applicant need not analyze for constituents listed in appendix VIII that would reasonably not be expected to be found in the hazardous waste. The constituents excluded from analysis must be identified and the basis for this exclusion explained. The waste analysis must be conducted in accordance with appropriate analytical techniques such as those found in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW–846, or other reliable sources.

(ii) An approximate quantification of the hazardous constituents identified in the hazardous waste, within the precision produced by appropriate analytical methods such as those found in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW–846, or other source.

* * * * *

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

40. The authority citation for part 271 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a) and 6926.

41. Section 271.1(j) is amended by adding the following entry to Table 1 in chronological order by date of publication in the **Federal Register**, to read as follows:

§ 271.1 Purpose and scope.

(j) * * *

TABLE 1.—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Promulgation date	Title of regulation	Federal Register reference	Effective date
[Date of publication of final rule in the Federal Register (FR)].	Process Vent and Equipment Leak Organic Air Emission Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities.	[FR page numbers]	[Date of publication of final rule].
[Date of publication of final rule in the Federal Register (FR)].	Burning of Hazardous Waste in Boilers and Industrial Furnaces.	[FR page numbers]	[Date of publication of final rule].
[Date of publication of final rule in the Federal Register (FR)].	Air Emission Standards Tanks, Surface Impoundments, and Containers.	[FR page numbers]	[Date of publication of final rule].

42. Section 271.21 is amended by adding the following entry to Table 1 in chronological order by date of publication in the **Federal Register**, to read as follows:

§ 271.21 Procedures for revision of State programs.

* * * * *

TABLE 1 TO SEC. 271.21

Title of regulation	Promulgation date	Federal Register reference
Office of Solid Waste Testing and Monitoring Activities, Methods Innovation Rule.	[Date of publication of final rule in the Federal Register (FR)].	[FR page numbers].
Process Vent and Equipment Leak Organic Air Emission Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities.	[Date of publication of final rule in the Federal Register (FR)].	[FR page numbers].
Burning of hazardous waste in boilers and industrial furnaces.	[Date of publication of final rule in the Federal Register (FR)].	[FR page numbers].
Air Emissions Standards for Tanks, Surface Impoundments, and Containers.	[Date of publication of final rule in the Federal Register (FR)].	[FR page numbers].

PART 279—STANDARDS FOR THE MANAGEMENT OF USED OIL

43. The authority citation for part 279 continues to read as follows:

Authority: Sections 1006, 2002(a), 3001 through 3007, 3010, 3014, and 7004 of the Solid Waste Disposal Act, as amended (42 U.S.C. 6905, 6912(a), 6921 through 6927, 6930, 6934, and 6974); and sections 101(37) and 114(c) of CERCLA (42 U.S.C. 9601(37) and 9614(c)).

Subpart B—Applicability

44. Section 279.10 is amended by revising paragraph (b)(1)(ii) introductory text to read as follows:

§ 279.10 Applicability.

* * * * *

(b) * * *

(1) * * *

(ii) Rebuttable presumption for used oil. Used oil containing more than 1,000 ppm total halogens is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in subpart D of part 261 of this chapter. Persons may rebut this presumption by demonstrating that the used oil does not contain hazardous waste (for example, by using an appropriate analytical method such as those found in "Test Methods for Evaluating Solid Waste, Chemical/Physical Methods," EPA Publication SW–846, or other reliable sources to show that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in appendix VIII of part 261 of this chapter).

* * * * *

Subpart E—Standards for Used Oil Transporter and Transfer Facilities

45. Section 279.44 is amended by revising the introductory text of paragraph (c) to read as follows:

§ 279.44 Rebuttable presumption for used oil.

* * * * *

(c) If the used oil contains greater than or equal to 1,000 ppm total halogens, it is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in subpart D of part 261 of this chapter. The owner or operator may rebut the presumption by demonstrating that the used oil does not contain hazardous waste (for example, by using an appropriate analytical method such as those found in "Test Methods for Evaluating Solid Waste, Chemical/Physical Methods," EPA Publication SW–846, or other reliable sources to show that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in Appendix VIII of part 261 of this chapter).

* * * * *

Subpart F—Standards for Used Oil Processors and Re-Refiners

46. Section 279.53 is amended by revising paragraph (c) introductory text to read as follows:

§ 279.53 Rebuttable presumption for used oil.

* * * * *

(c) If the used oil contains greater than or equal to 1,000 ppm total halogens, it is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in subpart D of part 261 of this chapter. The owner or operator may rebut the presumption by demonstrating that the used oil does not contain hazardous waste (for example, by using an appropriate analytical method such as those found in "Test Methods for Evaluating Solid Waste, Chemical/Physical Methods," EPA Publication SW–846, or other reliable sources to show that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in Appendix VIII of part 261 of this chapter).

* * * * *

Subpart G—Standards for Used Oil Burners Who Burn Off-Specification Used Oil for Energy Recovery

47. Section 279.63 is amended by revising paragraph (c) introductory text to read as follows:

§ 279.63 Rebuttable presumption for used oil.

* * * * *

(c) If the used oil contains greater than or equal to 1,000 ppm total halogens, it is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in subpart D of part 261 of this chapter. The owner or operator may rebut the presumption by demonstrating that the used oil does not contain hazardous waste (for example, by using an appropriate analytical method such as those found in "Test Methods for Evaluating Solid Waste, Chemical/Physical Methods," EPA Publication SW–846, or other reliable sources to show that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in Appendix VIII of part 261 of this chapter).

* * * * *

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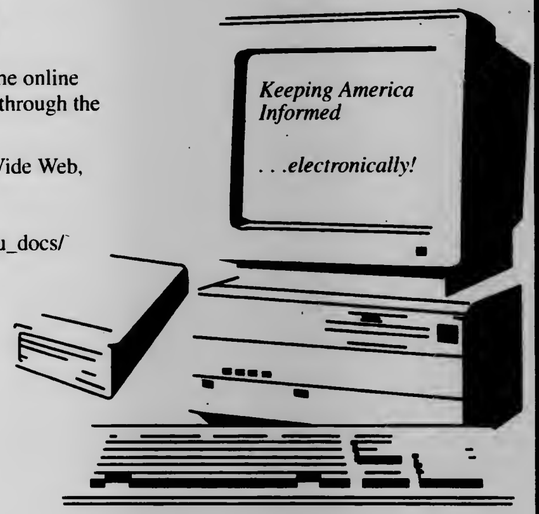

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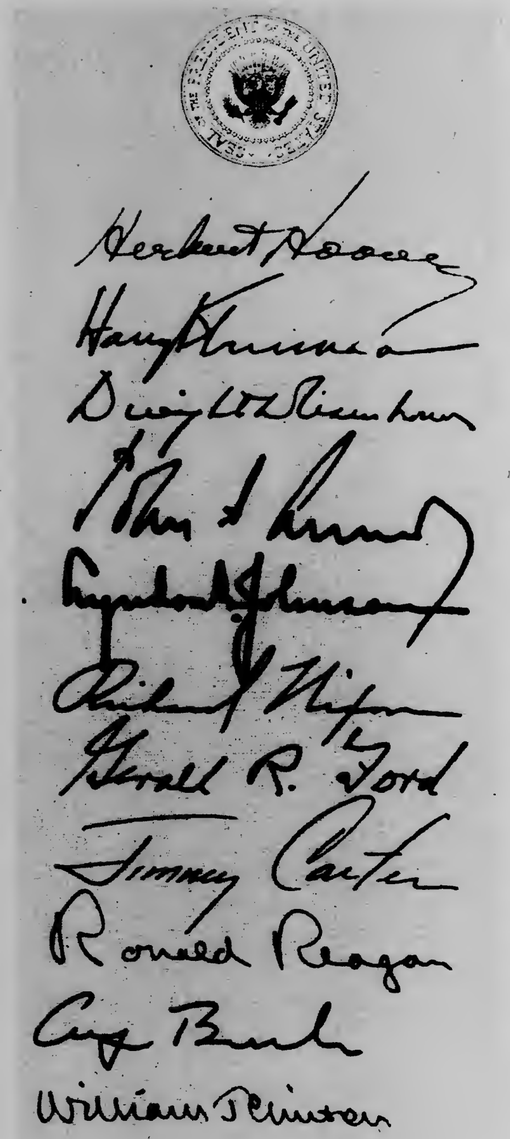

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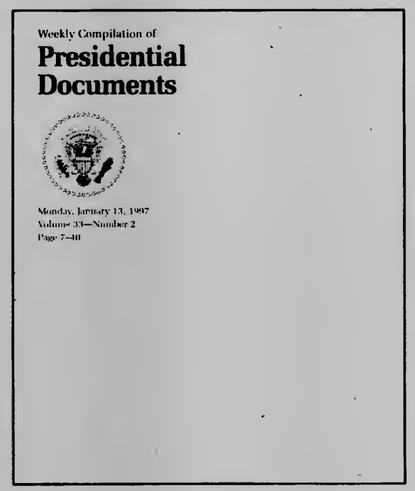

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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 246

RIN 0584–AD34

Special Supplemental Nutrition Program for Women, Infants and Children: Exclusion of Military Housing Payments

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the regulations for the Special Supplemental Nutrition Program for Women, Infants and Children (WIC) to incorporate a non-discretionary provision in the Farm Security and Rural Investment Act of 2002, that affects the WIC application and certification process. In determining an applicant's income eligibility for WIC, this final rule provides WIC State agencies the option to exclude payments to military personnel for privatized housing, whether on or off military installations.

EFFECTIVE DATE: This rule is effective May 13, 2002.

FOR FURTHER INFORMATION CONTACT: Debbie Whitford, Monday through Friday during regular business hours (8:30 a.m.–5 p.m.) at (703) 305–2746.

SUPPLEMENTARY INFORMATION:

1. Why Is This Regulation Necessary?

Section 4306 of the Farm Security and Rural Investment Act of 2002, (Pub. L. 107–171), enacted May 13, 2002, amends section 17(d)(2)(B)(i) of the Child Nutrition Act of 1966 (42 U.S.C. 1786), to allow WIC State agencies the option to exclude housing allowances paid to military personnel for privatized on-base or off-base housing in determining income eligibility for the WIC Program. In accordance with Pub. L. 107–171, this provision became effective May 13, 2002.

2. Why Is This Regulation a Final Rule?

This regulation is a final rule because the Department does not have discretion in how State agencies implement this provision. The provision, as set forth in this final rule, merely reflects the legislation. Thus, it is considered a non-discretionary provision.

3. What Does This Regulation Require of WIC Agencies?

This regulation provides WIC State agencies the option to exclude payments to military personnel for privatized housing, whether on- or off-base. Therefore, in this final rule section 246.7(d)(2)(iv)(A)(*1*) of the WIC Program regulations is revised to include this State agency option. Previously, WIC legislation and regulations provided State agencies the option to exclude military housing allowances provided to military service personnel residing off military installations from consideration as income in determining WIC income eligibility. Since on-base housing has traditionally been provided to families without charge or indication of a cash allowance on their paychecks, WIC has considered this an in-kind benefit that has not been counted as income for WIC eligibility purposes. Therefore, the provision in Pub. L. 107–171 provides State agencies the option to extend the income exclusion to include privatized on-base military housing allowances.

The privatization of military housing is intended to provide improved, quality housing for military families living on base by contracting with private developers. An allowance is paid directly to military personnel that can be used only for rent. The household does not have the discretion to use this allowance for any other purpose, even though it is provided as a cash benefit and reflected as such on the employee's Leave and Earnings Statement (LES) as a Basic Allowance for Housing (BAH). Off-base military housing allowances are also reflected on the LES as BAH.

Since payments for privatized housing are reflected as BAH on military pay stubs, WIC agencies cannot readily determine whether this is an off-base or on-base housing allowance. Further, it is clear based on enactment of this provision that Congress intends WIC State agencies to have the option to provide consistent treatment of military housing allowances in determining WIC income eligibility. Therefore, if a WIC State agency chooses to exclude BAH, in effect, it has chosen to exclude off-base housing allowances and payments for privatized on-base housing.

4. Procedural Matters

Executive Order 12866

This rule has been determined to be not significant and was not reviewed by the Office of Management and Budget under Executive Order 12866.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the **EFFECTIVE DATE** paragraph of this preamble. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). Roberto Salazar, Administrator, Food and Nutrition Service, has certified that this rule will not have a significant economic impact on a substantial number of small entities. This rule modifies WIC application and certification procedures. Therefore, the effect of this change will be primarily on WIC applicants and State and local WIC agencies, some of which are small entities. However, the impact on small entities is not expected to be significant.

Paperwork Reduction Act

This final rule does not contain new reporting or record keeping requirements subject to approval by the Office of Management and Budget under section 3507 of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–20). The information collection burden associated with certification and eligibility of WIC participants is approved under OMB No. 0584–0043.

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Executive Order 13132

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency's considerations in terms of the three categories called for under section (6)(b)(2)(B) of Executive Order 13132. The Food and Nutrition Service has determined that this final rule does not have Federalism implications under Executive Order 13132. This rule makes changes that are required by Pub. L. 107–171, and became effective on May 13, 2002. The Department does not have discretion in how State agencies implement this provision. The provision, as set forth in this final rule, is reproduced verbatim from the legislation.

Executive Order 12372

The Special Supplemental Nutrition Program for Women, Infants and Children (WIC) Program is listed in the Catalog of Federal Domestic Assistance under 10.557. For the reasons set forth in the final rule in 7 CFR part 3015, subpart V and related notice (48 FR 29115), this program is included from the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Public Law 104–4

Unfunded Mandate Reform Act of 1995 (UMRA) Title II of UMRA establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, FNS generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires FNS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule. This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector of $100 million or more in any one year. This rule is, therefore, not subject to the requirements of sections 202 and 205 of the UMRA.

Civil Rights Impact Analysis

FNS has reviewed this final rule in accordance with the Department Regulation 4300–4, "Civil Rights Impact Analysis," to identify and address any major civil rights impacts this rule might have on minorities, women, and persons with disabilities. FNS has no discretion in implementing this change in income eligibility assessment. All data available to FNS indicate that protected individuals have the same opportunity to participate in the WIC Program as non-protected individuals. FNS specifically prohibits the State and local government agencies that administer the WIC Program from engaging in actions that discriminate based on race, color, national origin, sex, age or handicap. Regulations at 7 CFR 246.8 specifically state that "Department of Agriculture regulations on non-discrimination (7 CFR parts 15, 15a and 15b), and FNS instructions ensure that no person shall on the grounds of race, color, national origin, age, sex, or handicap, be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination under the Program." Discrimination in any aspect of program administration is prohibited by these regulations, Department of Agriculture regulations on non-discrimination (7 CFR parts 15, 15a, and 15b), the Age Discrimination Act of 1975 (Pub. L. 94–135), the Rehabilitation Act of 1973 (Pub. L. 93–112, section 504), and title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d). Enforcement action may be brought under any applicable Federal law. Title VI complaints shall be processed in accord with 7 CFR part 15. Where State agencies have options, and they choose to implement a certain provision, they must implement it in such a way that it complies with the regulations at 7 CFR 246.8.

Public Participation

This action is being finalized without prior notice or public comment under authority of 5 U.S.C. 553(b)(3)(A) and (B). This final rule implements a non-discretionary legislative provision in the Farm Security and Rural Investment Act of 2002, Pub. L. 107–171, by providing WIC State agencies the option to exclude payments to military personnel for privatized housing, whether on- or off-base, when determining income eligibility for the WIC Program. Thus, the Department has determined in accordance with 5 U.S.C. 553(b) that notice of proposed rulemaking and opportunity for public comments is unnecessary and contrary to the public interest.

The provisions became effective May 13, 2002. Therefore, we are making this rule effective retroactively to May 13, 2002.

List of Subjects in 7 CFR Part 246

Food assistance programs, Food donations, Grant programs—Social programs, Indians, Infants and children, Maternal and child health, Nutrition education, Public assistance programs, WIC, Women.

Accordingly, 7 CFR Part 246 is amended as follows:

PART 246—SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS AND CHILDREN

1. The authority citation for part 246 continues to read as follows:

Authority: 42 U.S.C. 1786.

2. In § 246.7, revise paragraph (d)(2)(iv)(A)(*1*) to read as follows:

§ 246.7 Certification of participants.

* * * * *

(d) * * *
(2) * * *
(iv) * * *
(A) * * *

(*1*) Basic allowance for housing received by military services personnel residing off military installations or in privatized housing, whether on- or off-base; and

* * * * *

Dated: October 21, 2002.

Roberto Salazar,

Administrator, Food and Nutrition Service.

[FR Doc. 02–27667 Filed 10–30–02; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR 718

RIN 0560–AG80

Equitable Relief From Ineligibility

AGENCIES: Farm Service Agency, Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This rule implements provisions of section 1613 of the Farm Security and Rural Investment Act of 2002 (the 2002 Act) relating to relief to participants in certain cases for certain Farm Service Agency and Commodity Credit Corporation programs. The relief applies to cases where the applicant for relief took action to the applicant's detriment based on bad information from departmental officials. Also, it covers where the applicant simply, but in good faith, failed to fully comply with program requirements. The rule also addresses changes in the so-called "90-day finality rule" that applies to some of the same programs. The rule is intended to implement a statutory requirement that the Agencies provide relief to producers who took action to their detriment based on bad information from officials.

EFFECTIVE DATE: October 30, 2002.

FOR FURTHER INFORMATION CONTACT: Dan McGlynn, Production, Emergencies and Compliance Division, United States Department of Agriculture (USDA), Stop 0517, 1400 Independence Ave, SW., Washington, DC 20250–0517. Phone: (202) 720–3463. E-mail: *Dan_McGlynn@wdc.usda.gov*. Persons with disabilities who require alternative means for communication (Braille, large print, audio tape, etc.) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Notice and Comment

Section 1601(c) of the 2002 Act requires that the regulations needed to implement Title I of the 2002 Act are to be promulgated without regard to the notice and comment provisions of 5 U.S.C. 553 or the Statement of Policy of the Secretary of Agriculture effective July 24, 1971, (36 FR 13804) relating to notices of proposed rulemaking and public participation in rulemaking. These regulations are thus issued as final.

Executive Order 12866

This final rule has been determined to be not significant under Executive Order 12866 and has not been reviewed by the Office of Management and Budget (OMB).

Federal Assistance Programs

This rule has a potential impact on all programs listed in the Catalog of Federal Domestic Assistance in the Agency Program Index under the Department of Agriculture, Farm Service Agency and Natural Resources Conservation Service. Other assistance programs are also impacted.

Regulatory Flexibility Act

The Regulatory Flexibility Act is not applicable to this rule because neither the Secretary of Agriculture nor CCC are required by 5 U.S.C. 553 or any other law to publish a notice of proposed rulemaking for the subject matter of this rule.

Environmental Assessment

The environmental impacts of this rule have been considered in accordance with the provisions of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and FSA's regulations for compliance with NEPA, 7 CFR part 799. FSA has concluded that this rule is categorically excluded from further environmental review and documentation as evidenced by the completion of an environmental evaluation. No extraordinary circumstances or other unforeseeable factors exist which would require preparation of an environmental assessment or environmental impact statement. A copy of the environmental evaluation is available for inspection and review upon request.

Executive Order 12778

The final rule has been reviewed in accordance with Executive Order 12778. This final rule preempts State laws that are inconsistent with its provisions. Before a judicial action may be brought concerning this rule, all administrative remedies must be exhausted.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Unfunded Mandates

The provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) do not apply to this rule because neither the Secretary of Agriculture nor CCC are required by 5 U.S.C. 553 or any other law to publish a notice of proposed rulemaking for the subject matter of this rule. Also, the rule imposes no mandates as defined in UMRA.

Small Business Regulatory Enforcement Fairness Act of 1996

Section 1601(c) of the 2002 Act requires that the regulations necessary to implement Title I of the 2002 Act must be issued within 90 days of enactment and that such regulations shall be issued without regard to the notice and comment provisions of 5 U.S.C. 553. Section 1601(c) also requires that the Secretary use the authority in section 808 of the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. 104–121 (SBREFA), which allows an agency to forgo SBREFA's usual 60-day Congressional Review delay of the effective date of a major regulation if the agency finds that there is a good cause to do so. Accordingly, this rule is effective upon the date of filing for public inspection by the Office of the Federal Register.

Paperwork Reduction Act

Section 1601(c) of the 2002 Act requires that these regulations be promulgated and the programs administered without regard to the Paperwork Reduction Act. This means that the information to be collected from the public to implement these programs and the burden, in time and money, the collection of the information would have on the public does not have to be approved by the Office of Management and Budget or be subject to the normal requirement for a 60-day public comment period.

Government Paperwork Elimination Act

FSA is committed to compliance with the Government Paperwork Elimination Act, and continued pursuit of providing all services electronically when practicable. This rule involves no request for a program eligibility determination, payment of benefits, agreements, or contracts that readily lend themselves to electronic access, submission, receipt, or approval. Thus, the Government Paperwork Elimination Act does not apply.

Background

Section 1613 of the Farm Security and Rural Investment Act of 2002 (2002 Act) addresses relief where bad departmental advice or information is given or where a participating producer of an "agricultural commodity" fails to comply fully with program requirements but otherwise acts in good faith. Section 1613 provides that, under that section, "agricultural commodity" means any agricultural commodity, food, feed, fiber, or livestock that is subject to a "covered program." A "covered program" is defined as (1) a program administered by the Secretary of Agriculture (Secretary) under which price or income support, or production or market loss assistance, is provided to producers of "agricultural commodities;" and (2) a conservation program administered by the Secretary. But, the section specifies, "covered programs" do not include (1) an agricultural credit program carried out under the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 *et seq.*); or (2) the crop insurance program carried out under the Federal Crop Insurance Act (7 U.S.C. 1501 *et seq.*).

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Using those definitions, the law provides that the Secretary may provide relief to any participant that is determined to be not in compliance with the requirements of a covered program, and therefore ineligible for a loan, payment, or other benefit under the covered program, but only if the participant (1) acting in good faith, relied on the action or advice of the Secretary, or an authorized representative, to the detriment of the participant; or (2) failed to comply fully with the requirements of the covered program, but made a good faith effort to do so. In these cases, the statute specifies, the Secretary may authorize a participant in a covered program to (1) retain loans, payments, or other benefits received under the covered program; (2) continue to receive loans, payments, and other benefits under the covered program; (3) continue to participate, in whole or in part, under any contract executed under the covered program; (4) in a conservation program, re-enroll all or part of the land covered by the program; and (5) receive such other equitable relief as they determine appropriate. Section 1613 also specifies that the Secretary may condition the approval of relief under this section on the participant agreeing to remedy their failure to meet the program requirement.

Also, the law provides for special autonomy for State Directors of the Department's Farm Service Agency and State Conservationists of the Department's Natural Resources and Conservation Service in granting equitable relief. In general, section 1613 provides that the StateDirector and the State Conservationist, in the case of programs administered by their respective offices, may grant relief to a participant(subject to certain limitations) if (1) the amount of loans, payments, and benefits for which relief will be provided to the participant under this special authority is less than $20,000; (2) the total amount of loans, payments, and benefits for which relief has been previously provided to the participant under this special authority is not more than $5,000; and (3) the total amount of loans, payments, and benefits for which relief is provided to similarly situated participants is not more than $1,000,000, as determined by the Secretary. This rule addresses only programs administered through FSA and, hence, through State Directors.

Further, the new law provides that such State Director grants of relief (1) shall not require prior approval by the Administrator of the Department of Agriculture's Farm Service Agency, or any other officer or employee of the Agency or Service; (2) shall be made only after consultation with, and the approval of, the Office of General Counsel of the Department of Agriculture; and (3) are subject to reversal only by the Secretary (who may not delegate the reversal authority). Furthermore, the statute specifies that this special State Director authority does not apply to the administration of (1) payment limitations under (i) sections 1001 through 1001F of the Food Security Act of 1985 (7 U.S.C. 1308 *et seq.*), or (ii) a conservation program administered by the Secretary; or to (2) highly erodible land and wetland conservation requirements under subtitle B or C of title XII of the Food Security Act of 1985 (16 U.S.C. 3811 *et seq.*). The State Director authority, the new law specifies, is in addition to any other applicable authority and does not limit other authority provided by law or the Secretary. Under the terms of the new law, a discretionary decision by the Secretary, the State Director, or the State Conservationist under the Section 1613 authority to grant relief in cases of bad information or good faith failures to fully comply with program rules shall be final, and shall not be subject to review under chapter 7 of title 5, United States Code, which provides generally for the relief of agency decisions.

Additionally, the statute requires that, not later than February 1 of each year, the Secretary shall submit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report that describes for the previous calendar year (1) the number of requests to the program agencies for "mis-information" and "failure to fully comply" relief (utilizing the Section 1613 authority) and (2) the number of requests for equitable relief under section 278(d) of the Department of Agriculture Reorganization Act of 1994(7 U.S.C. 6998(d)). Also, information must be submitted regarding the disposition of the requests. The reference to 7 U.S.C. 6998 (d) involves the authority of the Director of the Department's National Appeals Division to grant equitable relief under the same standards as those that apply to FSA.

Section 1613 further states that the authority provided in this section is in addition to any other authority provided in that or any other Act. Also, section 1613 amends section 281(a) of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 7001(a)) with respect to the "90-day finality rule" which exempted two determinations from its coverage. One is decisions involving the administration of the Consolidated Farm and Rural Development Act, and the second, are determinations arising out of conservation programs administered by the Natural Resources Conservation Service. Those exemptions are reflected in new language in this rule.

Section 1613 also repeals provisions for equitable relief which were contained in 7 U.S.C. 1339a and in 16 U.S.C. 3830. Changes to reflect those repeals will be made as needed in other rules. This rule is limited to 7 CFR part 718 which governs these issues generally for programs administered by the Farm Service Agency of the Department.

With the exception of the changes in the coverage of the finality rule noted above, this rule implements the section 1613 provisions on equitable relief in cases involving incorrect information or action by FSA and failure to comply provisions as they apply to FSA programs and to those programs of the Commodity Credit Corporation that are administered through the FSA. Other agencies within the Department, if any, to which these provisions apply may issue separate rules in this regard. With respect to the special State Director relief provisions, such relief is still under the control of the Secretary and subject to uniform rules under this part. The rules are broad in that regard and do not invade the provisions contemplated by the statute as they have been determined to be in this rule.

Under this rule, the statute is read as applying prospectively only. Relief will be allowed only for actions taken by producers to their detriment after enactment of the 2002 Act (May 13, 2002). (This includes any relief granted under the special State Director provisions). Nothing in the statute provides for retroactive application of the new rules and it was not understood that such a result was intended. A different result, opening old disputes, would be chaotic. Presumably, Congress would have specified that such retroactively was intended if it meant to have the statute read that way. In any event, even if retroactively were allowed, it would be rejected because of the unfairness and chaos it would create. Such a rejection would be authorized under the provisions of the statute which make the granting of any relief under section 1613 discretionary. This allows for one uniform set of rules for all types of relief for actions in the same time period. Again, this also applies to the State Directors. They have the authority to grant relief within the confines of the statute, and are not authorized to decide general policy for the granting of relief on such matters as the timing of the actions for which relief may be granted. Obviously it would be improper to have those officials have differing interpretations of which decisions fall within the general scope of the powers granted them by the statute and, in any event, the general exercise of those powers are still subject to the supervision of the Secretary under whose authority these rules are written.

The statute as indicated does set certain dollar limits on the officials granted the special relief authority. However, the dollar limits are not tied, in the words of the statute itself, to a particular time period or official. Believing that tying of dollar amounts to nonetheless be the intent, given the normal yearly orientation of farm programs (as is reflected in the reporting requirements of the statute), such a tie has been made in the rule. The limits are made yearly limits. Special rules are set out for how the computation will be made.

Obviously, the amounts involved would be prohibitively small among the many States. And, the cross-State accounting that would otherwise be required would be difficult. Neither that difficulty, nor the odd race to grant relief that it might produce, appear to be intended. Rather, it appears that this provision was meant to provide a substantive change which would otherwise, within reasonable limits, short circuit the normal review process that might otherwise be required before the producer could enjoy the benefit of relief. Even if the statute were to be read as being not limited to a particular year or a particular official the additional authority that would be created by the rule would be within the general discretion granted the Secretary. However, since there will still be dollar limits, the rule does require that, in addition to the approval by the Office of the General Counsel of the Department, State Directors who use this special power must declare in writing their intent to use that authority. They must also report the use of the authority so that an accounting can be made. Rules issued in this notice cover those matters as well.

List of Subjects in 7 CFR Part 718

Agriculture, Disaster assistance, Government employees, Price support programs, Rural areas.

Accordingly, 7 CFR part 718 is amended as set forth below:

PART 718—PROVISIONS APPLICABLE TO MULTIPLE PROGRAMS

1. The authority for part 718 is revised to read as follows:

Authority: 7 U.S.C. 1311 *et seq.*; 7 U.S.C. 1501 *et seq;* 7 U.S.C. 1921 *et seq.*; 7 U.S.C. 7201 *et seq.*; 7 U.S.C. 7996; 15 U.S.C. 714b; Pub. L. 107–171.

2. Subpart D is added to read as follows:

Subpart D—Equitable Relief From Ineligibility

Sec.

718.301 Applicability.
718.302 Definitions and abbreviations.
718.303 Reliance on incorrect actions or information.
718.304 Failure to fully comply.
718.305 Forms of relief.
718.306 Finality.
718.307 Special relief approval authority for State Executive Directors.

§ 718.301 Applicability.

(a) This subpart is applicable to programs administered by the Farm Service Agency under chapters VII and XIV of this title, except for an agricultural credit program carried out under the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 *et seq.*). Administration of this subpart shall be under the supervision of the Deputy Administrator, except that such authority shall not limit the exercise of authority allowed State Executive Directors of the Farm Service agency as provided for in § 718.307.

(b) Sections 718.303, 718.304, and 718.307 do not apply where the action for which relief is requested occurred before May 13, 2002. In such cases, authority that was effective prior to May 13, 2002, may be applied.

(c) Section 718.306 does not apply to a function performed under either section 376 of the Consolidated Farm and Rural Development Act (7U.S.C. 1921 *et seq.*), or a conservation program administered by the Natural Resources Conservation Service of the United States Department of Agriculture.

§ 718.302 Definitions and abbreviations.

In addition to the definitions provided in § 718.2 of this part, the following terms apply to this subpart:

Agricultural commodity means any agricultural commodity, food, feed, fiber, or livestock that is subject to a covered program.

Covered program means a program specified in § 718.301 of this subpart.

FSA means the Farm Service Agency of the United States Department of Agriculture.

OGC means the Office of the General Counsel of the United States Department of Agriculture.

SED means, for activities within a particular state, the State Executive Director of the United States Department of Agriculture, FSA, for that state.

§ 718.303 Reliance on incorrect actions or information.

(a) Notwithstanding any other law, action or inaction by a participant in a covered program that is to the detriment of the participant, and that is based upon good faith reliance on the action or advice of an authorized representative of a County or State FSA Committee, may be approved by the Administrator, FSA or the Executive Vice President, CCC, as applicable, or their designee, as meeting the requirements of the program, and benefits may be extended or payments made in accordance with § 718.305.

(b) This section applies only to a participant who relied upon the action of, or information provided by, a county or State FSA committee or an authorized representative of such committee and the participant acted, or failed to act, as a result of the Agency action or information. This part does not apply to cases where the participant had sufficient reason to know that the action or information upon which they relied was improper or erroneous or where the participant acted in reliance on their own misunderstanding or misinterpretation of program provisions, notices or information.

§ 718.304 Failure to fully comply.

(a) Under a covered program, when the failure of a participant to fully comply with the terms and conditions of a program authorized by this chapter precludes the providing of payments or benefits, relief may be authorized in accordance with § 718.305 if the participant made a good faith effort to comply fully with the requirements of the covered program.

(b) This section only applies to participants who are determined by the FSA approval official to have made a good faith effort to comply fully with the terms and conditions of the program and rendered substantial performance.

§ 718.305 Forms of relief.

(a) The Administrator of FSA, Executive Vice President of CCC, or their designee, may authorize a participant in a covered program to:

(1) Retain loans, payments, or other benefits received under the covered program;

(2) Continue to receive loans, payments, and other benefits under the covered program;

(3) Continue to participate, in whole or in part, under any contract executed under the covered program;

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(4) In the case of a conservation program, re-enroll all or part of the land covered by the program; and

(5) Receive such other equitable relief as determined to be appropriate.

(b) As a condition of receiving relief under this subpart, the participant may be required to remedy their failure to meet the program requirement, or mitigate its affects.

§ 718.306 Finality.

(a) A determination by a State or county FSA committee made on or after October 13, 1994, becomes final and binding 90 days from the date the application for benefits has been filed, and supporting documentation required to be supplied by the producer as a condition for eligibility for the particular program has been filed, unless one of the following conditions exist:

(1) The participant has requested an administrative review of the determination in accordance with part 780 of this chapter;

(2) The determination was based on misrepresentation, false statement, fraud, or willful misconduct by or on behalf of the participant;

(3) The determination was modified by the Administrator, FSA, or in the case of CCC programs conducted under Chapter XIV of this title, the Executive Vice President, CCC; or

(4) The participant had reason to know that the determination was erroneous.

(b) Should an erroneous determination become final under the provisions of this section, it shall only be effective through the year in which the error was found and communicated to the participant.

§ 718.307 Special relief approval authority for State Executive Directors.

(a) *General nature of the special authority.* Notwithstanding provisions in this subpart providing supervision and relief authority to other officials, an SED without further review by other officials (other than the Secretary) may grant relief to a participant under the provisions of §§ 718.303 and 718.304 as if the SED were the final arbiter within the agency of such matters so long as:

(1) The program matter with respect to which the relief is sought is a program matter in a covered program which is operated within the State under the control of the SED;

(2) The total amount of relief which will be provided to the person (that is, to the individual or entity that applies for the relief) by that SED under this special authority for errors during that year is less than $20,000 (including in that calculation, any loan amount or other benefit of any kind payable for that year and any other year);

(3) The total amount of such relief which has been previously provided to the participant using this special authority for errors in that year, as calculated above, is not more than $5,000;

(4) The total amount of loans, payments, and benefits of any kind for which relief is provided to similarly situated participants by the SED (or the SED's predecessor) for errors for any year under the authority provided in this section, as calculated above, is not more than $1,000,000.

(b) *Report of the exercise of the power.* A grant of relief shall be considered to be under this section and subject to the special finality provided in this section only if the SED grants the relief in writing when granting the relief to the party who will receive the benefit of such relief and only if, in that document, the SED declares that they are exercising that power. The SED must report the exercise of that power to the Deputy Administrator so that a full accounting may be made in keeping with the limitations of this section. Absent such a report, relief will not be considered to have been made under this section.

(c) *Additional limits on the authority.* The authority provided under this section does not extend to:

(1) The administration of payment limitations under part 1400 of this chapter (§§ 1001 to 1001F of 7 U.S.C. 1308 *et seq.*);

(2) The administration of payment limitations under a conservation program administered by the Secretary; or

(3) Highly erodible land and wetland conservation requirements under subtitles B or C of Title XII of the Food Security Act of 1985 (16 U.S.C. 3811 *et seq.*) as administered under 7 CFR part 12.

(d) Relief may not be provided by the SED under this section until a written opinion or written acknowledgment is obtained from OGC that grounds exist for determination that the program participant has, in good faith, detrimentally relied on the guidance or actions of an authorized FSA representative in accordance with the provisions of this subpart, or that the producer otherwise failed, in good faith, to fully comply with the requirements of the program and that the granting of the relief is within the lawful authority of the SED.

(e) *Relation to other authorities.* The authority provided under this section is in addition to any other applicable authority that may allow relief. Generally, the SED may, without consultation other than with OGC, decide all matters under $20,000 but those decisions shall not be subject to modification within the Farm Service Agency to the extent provided for under the rules of this section.

Signed in Washington, DC, on October 28, 2002.

James R. Little,

Administrator, Farm Service Agency, and Executive Vice President, Commodity Credit Corporation.

[FR Doc. 02–27683 Filed 10–30–02; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Rural Business-Cooperative Service

Rural Utilities Service

Farm Service Agency

7 CFR Part 1944

RIN 0575–AC25

Farm Labor Housing Technical Assistance

AGENCY: Rural Housing Service, USDA.

ACTION: Final rule.

SUMMARY: The Rural Housing Service (RHS) is amending its regulations for the Farm Labor Housing (FLH) program. The Housing Act of 1949 authorizes the RHS to provide financial assistance to private and public nonprofit agencies to encourage the development of domestic and migrant farm labor housing projects. The nonprofit agencies that receive this financial assistance, in turn, provide "technical assistance" to other organizations to assist them in obtaining loans and grants for the construction of farm labor housing. The intended effect of this action is to amend the regulations to establish the eligibility requirements that nonprofit agencies must meet to receive technical assistance grants and how the financial assistance will be made available by the RHS.

EFFECTIVE DATE: December 2, 2002.

FOR FURTHER INFORMATION CONTACT: Douglas MacDowell, Senior Loan Specialist, Multi-Family Housing Processing Division, Rural Housing Service, U.S. Department of Agriculture, STOP 0781, 1400 Independence Avenue SW., Washington, DC 20250–0781, Telephone (202) 720–1604.

SUPPLEMENTARY INFORMATION:

Classification

This rule has been determined to be not significant for purposes of Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget (OMB).

Paperwork Reduction Act

The information collection requirements contained in this regulation have been previously approved by OMB under the provisions of 44 U.S.C. chapter 35 and this regulation has been assigned OMB control number 0575–0181, in accordance with the Paperwork Reduction Act of 1995. This rule does not impose any new information collection requirements from those approved by OMB.

Civil Justice Reform

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. In accordance with this rule: (1) All state and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings in accordance with 7 CFR part 11 must be exhausted before bringing suit in court challenging action taken under this rule.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, RHS generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires RHS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of section 202 and 205 of the UMRA.

Executive Order 13132, Federalism

The policies contained in this rule do not have any substantial direct effect on states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Nor does this rule impose substantial direct compliance costs on state and local governments. Therefore, consultation with the states is not required.

Programs Affected

The affected program is listed in the Catalog of Federal Domestic Assistance under Number 10.405, Farm Labor Housing Loans and Grants.

Intergovernmental Consultation

For the reasons contained in the Final Rule related Notice to 7 CFR part 3015, subpart V, this program is subject to Executive Order 12372 which requires intergovernmental consultation with State and local officials. RHS has conducted intergovernmental consultation in the manner delineated in RD Instruction 1940–J.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." It is the determination of RHS that this action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). The undersigned has determined and certified by signature of this document that this rule will not have a significant economic impact on a substantial number of small entities since this rulemaking action does not involve a new or expanded program nor does it require any more action on the part of a small business than required of a large entity.

Background

Farmworkers are among the lowest paid workers in the United States and often lack decent, safe, sanitary, and affordable housing. RHS's FLH program provides loans and grants for farmworker housing and related facilities.

The FLH program is authorized by title V of the Housing Act of 1949 under section 514 (42 U.S.C. 1484) for loans and section 516 (42 U.S.C. 1486) for grants. Section 516 also authorizes the RHS to provide financial assistance (not more than 10 percent of the section 516 funds) to encourage the development of domestic and migrant farm labor housing projects.

RHS's FLH program provides funding for both "on-farm" and "off-farm" housing. The housing may also be for either seasonal or year-round occupancy. Off-farm housing, typically apartment complexes, is open to farmworkers who work at any farming operation. On-farm housing provides housing for the workers of only one farm and is typically designed as single family dwellings. Occupancy of both types of housing is restricted to United States citizens or permanent resident aliens.

Off-farm migrant housing serves farmworkers who perform agricultural work at one or more locations away from their home base throughout the year for periods ranging from a few weeks to several months. Rental assistance is available to many tenants of off-farm housing to make rents affordable. Off-farm housing is financed with section 514 loans and section 516 grants to nonprofit organizations and public agencies such as local housing authorities, and with section 514 loans to limited partnerships in which the general partner is a nonprofit entity.

On-farm housing loans are made to farmers or farm entities to provide housing for farmworker families employed by the farm. On-farm housing is financed with section 514 loans and is not eligible for 516 grants. The tenants (farmworkers) who live in on-farm housing are not eligible for rental assistance.

RHS also provides financial assistance to private and public nonprofit agencies to encourage the development of domestic and migrant farm labor housing projects. The services that are provided by these non-profit agencies pursuant to section 516(i) are commonly referred to as "technical assistance."

Prior to Fiscal Year (FY) 2000, RHS awarded technical assistance "contracts." These contracts were awarded for one year periods with four option periods that could be exercised at the discretion of the Government. In FY 2000, RHS changed the way that FLH technical assistance funds were awarded. During FY 2000, RHS awarded technical assistance "grants" rather than "contracts."

On June 21, 2000, a Request for Proposals (RFP) was published in the **Federal Register** requesting "grant" proposals from private and public nonprofit agencies. The RFP outlined the application requirements and the criteria that would be used to select proposals for funding. The RFP also

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established three FLH technical assistance grant regions (the Eastern, Central, and Western grant regions) and contained the terms of the grants.

On September 27, 2000, three technical assistance grants were awarded. Two of the grants were awarded for the Western grant region and the other was awarded for the Central grant region. No grant proposals were received for the Eastern grant region. Each of the grants has a three year grant period.

When the RFP was published, comments and suggestions were received from interested parties. Some suggested that more than one FY's funding should be made available during the three year grant period. Another issue was that the Central grant region received less funding than the Eastern and Western grant regions. Lastly, one commentor expressed that it was unfair to consider an applicant's experience if such experience was gained outside of the grant region or to give equal weight to an applicant's experience in developing non-farmworker multifamily housing to an applicant's experience in developing farmworker housing.

In the future, RHS intends to periodically publish RFPs that are similar to the one that was published on June 21, 2000. When published, RHS will have the opportunity to make changes to the way funds are distributed, to the minimum performance requirements that must be met, or to other terms of the grants. RHS will at that time consider the suggestions that have been made. However, this revision to the regulation only implements the statutory authority for awarding grants. It does not establish the application requirements, the selection criteria, the performance standards that must be met, or how funds will be distributed when grants are awarded.

On June 1, 2001, the Agency published a proposed rule in the **Federal Register** (66 FR 29739) to establish the eligibility requirements that nonprofit agencies must meet to receive technical assistance grants and to establish how the financial assistance will be made available by RHS. By this final rule, the Agency is also adding a definition of the term "Technical assistance" for clarity.

Discussion of Comments

Two commentors responded during the comment period. The Agency wishes to thank the respondents for their comments and suggestions. The comments we received are summarized and discussed below.

Eligibility Is Limited to Private or Public Nonprofit Agencies

One commentor suggested that "for profit" organizations should be eligible to receive technical assistance grants. However, the statutory authority for awarding technical assistance grants (section 516(i) of the Housing Act of 1949–42 U.S.C.1486(i)) only authorizes assistance to be provided to private or public nonprofit agencies.

Paperwork Requirements and the Application Process

One commentor suggested that RHS had greatly increased the paperwork requirements and the application process. This rule, however, does not set forth the application requirements. As stated in the proposed rule, "Requests for Proposals (RFP) may be periodically published in the Federal Register" and "RFPs will contain the amount of funding, the method of allocating or distributing funds, where to submit proposals, proposal requirements, the deadline for the submission of proposals, the selection criteria, and the grant agreement to be entered into between RHS and the grantee."

List of Subjects in 7 CFR Part 1944

Farm labor housing, Grant programs—Housing and community development, Loan programs—Housing and community development, Migrant labor, Nonprofit organizations, Public housing, Rent subsidies, Rural housing.

Therefore, chapter XVIII, title 7, Code of Federal Regulations is amended to read as follows:

PART 1944—HOUSING

1. The authority citation for part 1944 continues to read as follows:

Authority: 5 U.S.C. 301; 42 U.S.C. 1480.

Subpart D—Farm Labor Housing Loan and Grant Policies, Procedures, and Authorizations

2. Section 1944.151 is revised to read as follows:

§ 1944.151 Purpose.

This subpart contains the policies and procedures and delegates authority for making initial and subsequent insured loans under section 514 and grants under section 516 of the Housing Act of 1949, to provide housing and related facilities for domestic farm labor. This subpart also contains the policies and procedures for making grants under section 516 to encourage the development of farm labor housing. Any processing or servicing activity conducted pursuant to this subpart involving authorized assistance to Rural Housing Service (RHS) employees, members of their families, known close relatives, or business or close personal associates, is subject to the provisions of subpart D of part 1900 of this chapter. Applicants for this assistance are required to identify any known relationship or association with an RHS employee.

3. Section 1944.153 is amended by adding, in alphabetical order, a definition for "technical assistance" to read as follows:

§ 1944.153 Definitions.

* * * * *

Technical assistance. The provision of services by an entity with farm labor housing and real estate development capacity to an applicant entity who lacks such a capacity. Such assistance may include, but is not limited to:

(1) Performing outreach efforts to inform and recruit potential LH applicants.

(2) Conducting site searches, negotiating and executing property acquisitions, and resolving planning and zoning issues.

(3) Preparing market analyses, feasibility analyses, and financial proformas.

(4) Packaging LH loan and grant applications, as well as applications from other funding sources.

(5) Estimating construction costs and providing oversight during construction periods.

* * * * *

4. Section 1944.157 is amended by redesignating paragraph (c) as (d) and by adding a new paragraph (c) to read as follows:

§ 1944.157 Eligibility requirements.

* * * * *

(c) *Eligibility of applicant for an LH technical assistance grant.* To be eligible for an LH technical assistance grant, the applicant must:

(1) Be a private or public nonprofit agency;

(2) Have the knowledge, ability, technical expertise, or practical experience necessary to develop and package loan and grant applications for LH under the section 514 and 516 programs; and,

(3) Possess the ability to exercise leadership, organize work, and prioritize assignments to meet work demands in a timely and cost efficient manner. The grantee may arrange for other nonprofit agencies to provide services on its behalf; however, RHS will expect the grantee to provide the overall management necessary to ensure the objectives of the grant are met.

Nonprofit agencies acting on behalf of the grantee must also meet the above stated eligibility requirements.

* * * * *

5. Section 1944.158 is amended by adding a new paragraph (o) to read as follows:

§ 1944.158 Loan and grant purposes.

* * * * *

(o) Encourage the development of farm labor housing. RHS may award "technical assistance" grants to eligible private and public nonprofit agencies. These grant recipients will, in turn, assist other organizations obtain loans and grants for the construction of farm labor housing. Technical assistance services may not be funded under both this paragraph and paragraph (i) of this section. In addition, technical assistance may not be funded by RHS when an identity of interest exists between the technical assistance provider and the loan or grant applicant. Requests for Proposals (RFP) may be periodically published in the **Federal Register** by RHS inviting eligible nonprofit organizations to submit LH technical assistance grant proposals. RFPs will contain the amount of available funding, the method of allocating or distributing funds, where to submit proposals, proposal requirements, the deadline for the submission of proposals, the selection criteria, and the grant agreement to be entered into between RHS and the grantee.

Dated: October 24, 2002.

Arthur A. Garcia,

Administrator, Rural Housing Service.

[FR Doc. 02–27681 Filed 10–30–02; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

10 CFR Part 26

[NUREG–1600]

Revision of the NRC Enforcement Policy

AGENCY: Nuclear Regulatory Commission.

ACTION: Policy statement: revision.

SUMMARY: The Nuclear Regulatory Commission (NRC) is publishing a revision to its General Statement of Policy and Procedure for NRC Enforcement Actions (NUREG–1600) (Enforcement Policy or Policy) to include an interim enforcement policy regarding enforcement discretion for certain fitness-for-duty issues.

DATES: This revision is effective on December 30, 2002, while comments are being received. Submit comments on or before December 2, 2002.

ADDRESSES: Submit written comments to: Michael T. Lesar, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Mail Stop: T6D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m., Federal workdays. Copies of comments received may be examined at the NRC Public Document Room, Room O1F21, 11555 Rockville Pike, Rockville, MD.

FOR FURTHER INFORMATION CONTACT: Garmon West, Jr., Office of Nuclear Security and Incident Response, Senior Program Manager, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, (301) 415–1044, (*fitnessforduty@nrc.gov*) or Renee Pedersen, Senior Enforcement Specialist, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, (301) 415–2742, e-mail (*RMP@nrc.gov*).

SUPPLEMENTARY INFORMATION: A proposed amendment to the NRC's fitness-for-duty (FFD) regulations (10 CFR Part 26) was published on May 9, 1996 (61 FR 21105). When the NRC sought clearance from the Office of Management and Budget (OMB) to publish a final rule, stakeholders expressed a number of concerns about the rule and its implementation. Given the significance of stakeholder concerns, the NRC concluded on October 3, 2001, that it should: (1) Withdraw the OMB clearance request; (2) request additional public comment on all of the rule's provisions; and (3) conduct stakeholder meetings concerning a combined access authorization and FFD guidance document. As a result of public meetings with stakeholders, the NRC learned of licensee practices in two FFD areas, "suitable inquiry" and "pre-access testing," that did not meet the current Part 26 requirements.

Current FFD Requirements

Among its other provisions, the FFD rule provides drug- and alcohol-related requirements for authorizing individuals for unescorted access to nuclear power plant protected areas or for performing activities related to Strategic Special Nuclear Materials. Under the FFD rule, to grant authorization to an individual who has not been employed in the nuclear industry before, licensees must:

(1) Conduct a "suitable inquiry" into the individual's employment history for the past five years to identify if the individual had any substance abuse problems;

(2) Ask the individual to provide a "self-disclosure" of any substance abuse problems;

(3) Perform a "pre-access" drug and alcohol test and verify that the results are negative; and

(4) Provide training to the individual regarding the effects of drugs and alcohol on job performance and the requirements of the licensee's FFD program.

To maintain authorization, individuals must:

(1) Be subject to "behavioral observation" by supervisors who are trained to detect signs of possible impairment and changes in behavior;

(2) Report any drug- or alcohol-related arrests; and

(3) Be subject to random and "for-cause" drug and alcohol testing with negative test results.

Other requirements for authorizing individuals for unescorted access to nuclear power plant protected areas are defined in 10 CFR 73.56, "Personnel Access Authorization Requirements for Nuclear Power Plant Personnel." NRC Regulatory Guide (RG) 5.66 (1991), "Access Authorization Program for Nuclear Power Plants," provides guidance for implementing § 73.56. One requirement in § 73.56 is that licensees must conduct a background investigation with former employers to determine whether an individual is trustworthy and reliable. Licensees typically ask employers the FFD suitable inquiry questions at the same time.

Although the FFD regulations (10 CFR part 26) and the access authorization regulations (§ 73.56) are intended to assure that nuclear personnel are trustworthy and reliable, there are some differences between them. One important difference is that the access authorization regulations and RG 5.66 address licensees authorizing unescorted access for individuals who are transferring between licensee sites and have interruptions in their authorization. The FFD regulations are less clear on the subject of transfers and short breaks in authorization. For example, the only provision in the current FFD regulations that indirectly addresses these situations allows licensees to rely on a pre-access drug and alcohol test that was performed by another licensee within the past 60 days. Therefore, if the individual had a negative result from another licensee's drug and alcohol test within the past 60

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days, the individual does not have to be tested again before authorization is reinstated at the new licensee's site. Guidance contained in NUREG–1385, "Fitness for Duty in the Nuclear Power Industry: Responses to Implementation Questions," states that licensees may "accept" an authorization granted by a previous licensee for individuals who transfer between licensees with a "short break" in authorization, but the period of time considered to be a "short break" is not defined. As a result, the current FFD regulations have the potential to be interpreted as requiring licensees to treat each individual under consideration for authorization as a new hire, because of the absence of the clear requirements for transfers and reinstatements similar to those found in the access authorization regulations.

Changing Industry Conditions

At the time the FFD regulations were developed (June 7, 1989; 54 FR 24468), the industry structure was different and personnel transfers (*i.e.*, leaving the employment of one licensee to work for another licensee) between licensees with interruptions in authorization were less common. Most licensees operated plants at a single site and maintained a FFD program that applied only to that site. When an individual left employment at one site and began working for another licensee, the individual would be subject to a different FFD program that often had different requirements. Further, because some licensees were reluctant to share information about previous employees with the new employer, licensees often did not have access to the information the previous licensee had gathered about the individual. With relatively few licensee employees changing jobs, the approach in the current FFD regulations caused some delays in granting authorization, but assured that a licensee had complete information upon which to base an authorization decision. The current FFD requirements are particularly burdensome to contractor/vendor (C/V) personnel who more frequently transfer between sites, but, because C/V personnel as a group consistently tested positive for drugs and alcohol at a higher rate than permanent licensee employees (see NRC Information Notice 2001–02), the NRC believed the regulation's requirements were warranted.

Since 1989, the industry has undergone significant consolidation and developed new business practices to use its workforce more efficiently. The FFD regulations that treat all individuals who are transferring between licensees as new hires, and the lack of detailed requirements in the FFD regulations for managing transfers between sites when authorization is interrupted for short periods, have created a number of unnecessary burdens on licensees.

For example, a single nuclear utility may now operate many sites and maintain one corporate FFD program that applies to multiple sites. Thus, an employee at one site operated by the corporation may be transferred to another site operated by the same corporation, and still be subject to the same FFD program. However, the individual is technically transferring to a new licensee and so, under the current regulations, is required again to meet the FFD requirements for authorization at the new site. Although the individual's work history is well documented in the FFD program, if that individual takes an extended vacation, for example, or spends 60 days at corporate headquarters between onsite assignments, the current FFD regulations require that the individual be treated as a new hire. The individual's ability to start work at the new site may be unnecessarily delayed until the suitable inquiry and pre-access drug and alcohol testing requirements of the current FFD regulations are met.

In addition, industry efforts to better use expertise and staffing resources have resulted in the development of a large transient workforce within the nuclear industry that travels from site to site as needed, such as roving outage crews. Although the industry has always relied upon C/Vs for special expertise and to staff for outages, the number of transient personnel who work solely in the nuclear industry has significantly increased and the length of time they are onsite has decreased. Although the employment histories of these individuals are well known within the industry, these individuals also must be treated as new hires under the current FFD regulations.

Because the current FFD regulations were written on the basis that individual licensees would maintain independent, site-specific FFD programs and would share limited information, and that the majority of nuclear personnel would remain at one site for years, the regulations do not adequately address the transfer of personnel between sites with short interruptions in authorization between assignments. As a result, licensees applied the principles of their access authorization programs (under § 73.56 and RG 5.66) to the FFD programs, and developed three practices that do not meet the intent of the current FFD rule's requirements, but are consistent with the NRC's intent that licensees assure that personnel who are authorized to perform activities within the scope of Part 26 are trustworthy and reliable.

Suitable Inquiry Practices

With regard to conducting a suitable inquiry before authorizing unescorted access, many licensees have adopted two practices that are consistent with access authorization requirements for background investigations, but are inconsistent with the FFD requirements regarding suitable inquiries. First, many licensees were not contacting employers when an individual had worked for an employer for less than 30 days. Instead, licensees followed the practice for background investigations set forth in RG 5.66. Licensees only contacted employers for whom the individual had worked for 30 days or more. Second, in many cases, if an individual left one licensee's site and worked at a job that did not require access authorization for two weeks, and then was assigned to another licensee within 30 days of leaving the previous licensee, the receiving licensee would not contact the interim employer for the suitable inquiry. However, if the individual had an interruption in authorization of more than 30 days, the licensee would contact interim employers for suitable inquiry purposes. As is allowed under access authorization guidance, licensees focused the suitable inquiry on the period of interruption, and relied on the information collected by previous licensee(s) to meet the five-year suitable inquiry requirement. Although the requirements for a suitable inquiry under the FFD regulations and those for a background investigation under the access authorization regulations differ, licensees believed that it was reasonable to use the same practices for these regulations.

As a result of initial meetings with stakeholders, the NRC developed an approach, in SECY–01–0134, to address inconsistent implementation with regard to contacting employers for each 30-day period. Specifically, until a final rule that would address this issue became effective, the following approach would be taken under an interim enforcement policy: The NRC normally would not take enforcement action for a licensee's failure to contact all employers when an individual was employed for less than 30 days, provided that the licensee verified at least one period of employment status during that 30-day period. For example, during the month of April, if a transient worker was employed by Employer A for two weeks, Employer B for one week, and unemployed for one week, under this interim policy, it would only

be necessary to verify the individual's status for one of these periods. Because this practice required at least one contact for each 30-day period, the NRC believed, at the time the policy was proposed, that this approach provided adequate safety in a cost-effective manner.

Pre-Access Testing

With regard to pre-access testing, many licensees were not conducting a pre-access test for alcohol and drugs in those cases where an individual was subject to a licensee's FFD program within the past 30 days. However, the fact that an individual was recently subject to a FFD program does not necessarily mean the individual was recently tested for drugs and alcohol. Thus, this practice conflicts with 10 CFR 26.24(a)(1) and the applicable provisions of the NRC's guidance in NUREG–1385. The current regulations require, and the guidance provides, that an applicant be tested for drugs and alcohol "within 60 days prior to the initial granting of unescorted access." They do not provide an exception for a reinstatement or transfer where there is little or no interruption in authorization.

Licensees were not conducting the pre-access test in these cases because they viewed the initial FFD pre-access screening as being the same as initial screening for access authorization under 10 CFR 73.56. Initial screening for access authorization is completed once and, as long as the individual remains subject to behavioral observation and arrest-reporting requirements, the initial screening is not repeated.

The NRC believes that it is reasonable that short interruptions in authorization be treated similarly to continuous coverage under a FFD program. For example, a worker who is subject to a FFD program, but is unavailable for behavioral observation and possible random testing while on vacation for two or three weeks, is generally considered to be under continuous coverage and is not given a pre-access test upon return. Also, the practice of omitting the pre-access test when the interruption in coverage is less than 30 days is similar to NRC's practice in related areas. For example, using the guidance endorsed by RG 5.66 for access authorization programs, licensees generally do not conduct a background investigation for an individual when the interruption in authorization is less than 30 days. In another example, the guidance in NUREG–1385, states that an individual covered by a C/V's FFD program may take a (reasonably short) period of time to transfer from one site to another without invoking the need for a pre-access test.

In SECY–01–0134, the staff proposed the following interim enforcement policy: The NRC normally would not take enforcement action for a licensee's failure to conduct a pre-access test for alcohol and drugs in those cases where an individual has had a short break in FFD coverage, provided certain conditions are met. That is, the individual was subject to a FFD program for at least 30 of the previous 60 days and has not, in the past, tested positive for illegal drugs, been subject to a plan for treating substance abuse, been removed from or made ineligible for activities within the scope of Part 26, been denied unescorted access by any other licensee, or had adverse employment action taken by another employer in accordance with a drug and alcohol policy.

Additional Considerations

The Commission's Staff Requirements Memorandum dated October 3, 2001, directed the staff to request additional public comment on all the proposed rule's provisions and to conduct several stakeholder meetings concerning combined access authorization and FFD guidance. In response to the Commission's direction, the NRC staff has engaged stakeholders in monthly public meetings since November 15, 2001. As a result of these meetings, and as the industry develops new access authorization guidance that is currently under NRC review, the NRC has determined that the enforcement discretion proposed in SECY–01–0134 would not adequately address a number of concerns.

These concerns include:

(1) The proposed approach does not adequately address new information developed subsequent to the events of September 11, 2001;

(2) The proposed approach does not allow a licensee to take credit for the information gathered about an individual during suitable inquiries conducted by previous licensees;

(3) A determination of the number of days in a 60-day period that an individual had been subject to a Part 26 FFD program would create an unnecessary regulatory burden; and

(4) The proposed approach is inconsistent with current and anticipated access authorization guidance and would result in continued discrepancies between access authorization guidance and FFD requirements.

In light of the events of September 11, 2001, and the increased interactions with stakeholders, the NRC now believes that contacting only one employer in each 30-day period in which the individual was employed by more than one employer does not provide a sufficient level of assurance that individuals granted initial authorization are trustworthy and reliable. Short periods of employment could be a warning sign of substance abuse problems. Therefore, in order to increase the likelihood of early detection of any developing substance abuse problems, the NRC has concluded that it is necessary (with one exception noted below) that every employer be contacted to meet the five-year suitable inquiry requirement, as required in the current regulations.

The NRC believes that a suitable inquiry is not necessary for individuals being reinstated or transferred with an interruption in authorization of 30 days or less. Based upon industry experience, the NRC has concluded that there is limited risk from individuals who have established a work history within the nuclear industry, have previously met the access authorization and FFD regulations for granting and maintaining authorization, and have a short break in authorization due to a vacation or a transfer to a different site. Further, these individuals are required to self-disclose any drug- and alcohol-related problems that may have occurred during the period of interruption, and they recognize that a failure to report this information to the licensee may result in permanent revocation of authorization throughout the nuclear power industry. The requirement for a self-disclosure prior to reinstating authorization provides additional assurance that any developing substance abuse problems are detected for the period in which authorization was interrupted.

The NRC has also concluded that it is reasonable for licensees to rely upon the information gathered by previous licensees, and by C/Vs with licensee-approved FFD programs, to meet the suitable inquiry requirement. Because licensees and C/Vs now share the information they have gathered about an individual applicant for authorization, the requirement for each new licensee to independently contact every employer from the past five years is redundant and unnecessary.

The discretion policy proposed in SECY–01–0134 also did not recognize that many licensees and C/Vs now maintain some personnel in a "ready to be authorized" status, although the individuals are not currently working at a site or assigned to perform activities within the scope of the FFD rule. These individuals have met the FFD and access authorization regulations for

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authorization, and are subject without interruption to the licensee's or C/V's FFD program, including FFD training, behavioral observation, for-cause alcohol and drug testing, and are required to report any drug-or alcohol-related arrests. In some cases, they are also subject to random testing for drugs and alcohol. Licensees maintain that they should be able to "take credit" for the elements of the FFD program to which an individual has been subject without interruption when deciding whether to grant authorization for unescorted access to a nuclear power plant protected area.

To illustrate the implications of the current FFD regulations in these cases, consider an individual who has been working at a nuclear utility's corporate headquarters for the past 45 days and has been subject to all of the elements of the licensee's FFD program. This individual is being transferred within the licensee corporation or to a site of a different licensee and will again require unescorted access to the protected area. Because the individual has not been authorized for unescorted access at a site during the past 45 days, the current regulations require the licensee to:

(1) Obtain another self-disclosure (*i.e.*, a self-report of any drug-or alcohol-related arrests), despite the fact that the individual has been continuously obligated to self-report any drug-or alcohol-related arrests under the corporate FFD program;

(2) Conduct a new suitable inquiry of the individual's past five years of employment before granting authorization, despite the fact that a suitable inquiry was conducted when the individual was first granted authorization and the individual has been continuously employed by the same corporation during the 45-day interruption in access authorization at a site; and

(3) Perform a pre-access test for drugs and alcohol if the individual had not been selected for random testing within the past 60 days, despite the fact that the individual was tested as part of the initial authorization process, has been continuously subject to the possibility of being tested, and may have been subject to random testing several times since the first authorization was granted.

These actions represent an unnecessary regulatory burden in such instances.

The NRC further believes that one FFD program element cannot be substituted for another. So, for example, if an individual has been subject to a licensee's or C/V's FFD behavioral observation and arrest-reporting requirements, but was not subject to random testing, then the licensee would be required to conduct a pre-access test for drugs and alcohol. If an individual was not under arrest-reporting and behavioral observation requirements without interruption, but had a drug and alcohol test within the past 60 days, then only the self-disclosure and suitable inquiry would be necessary before granting authorization.

Revised Enforcement Discretion

Based on these considerations, the NRC has revised the enforcement discretion policy proposed in SECY–01–0134 as follows:

Licensees may rely upon the information gathered by previous licensees regarding an individual applicant's past five years of employment to meet the suitable inquiry requirement. Because licensees now share information from the suitable inquiries they have conducted, as well as information about an individual's compliance with the licensee's FFD policy during the period authorization is held at each site, the NRC believes that relying upon the information gathered by previous licensees provides adequate safety.

If an individual's authorization has been interrupted for 30 calendar days or less and the individual's last authorization was terminated favorably (*i.e.*, the individual did not violate the licensee's FFD policy), before granting authorization for unescorted access to the protected area of a nuclear power plant or assigning the individual to perform activities within the scope of part 26, the licensee shall:

(1) Obtain and verify that a self-disclosure (*i.e.*, a report of any drug-or alcohol-related arrests) for the period since the last authorization contains no potentially disqualifying FFD information, unless the individual was subject to a licensee-approved behavioral observation and arrest-reporting program throughout the period of interruption;

(2) Within 5 working days of granting authorization, complete a suitable inquiry for the period since last authorization was terminated by contacting every interim employer, unless the individual was subject to a licensee-approved behavioral observation and arrest-reporting program throughout the period of interruption;

(3) Verify that results of an alcohol test are negative and collect a specimen for drug testing, unless either a drug and alcohol test meeting the standards of part 26 was performed within the past 60 days and results were negative, or the individual was subject to a licensee-approved part 26 FFD program that included random drug and alcohol testing throughout the period of interruption; and

(4) Ensure that the individual has met FFD refresher training requirements.

If an individual's authorization has been interrupted for 31 days to 60 days and the individual's last authorization was terminated favorably, in order to grant authorization for unescorted access to the protected area of a nuclear power plant or assigning the individual to perform activities within the scope of part 26, the licensee shall:

(1) Obtain and verify that a self-disclosure for the period since the last authorization contains no potentially disqualifying FFD information, unless the individual was subject to a licensee-approved behavioral observation and arrest-reporting program throughout the period of interruption;

(2) Within 5 working days of granting authorization, complete a suitable inquiry for the period since last authorization was terminated by contacting every interim employer, unless the individual was subject to a licensee-approved behavioral observation and arrest-reporting program throughout the period of interruption;

(3) Verify that results of an alcohol test are negative and collect a specimen for drug testing, unless either a drug and alcohol test meeting the standards of part 26 was performed within the past 60 days and results were negative, or the individual was subject to a licensee-approved part 26 FFD program that included random drug and alcohol testing throughout the period of interruption; and

(4) Ensure that the individual has met FFD refresher training requirements.

This revised enforcement discretion policy addresses not only short breaks of 30 days or less, but also an interruption of 31 days to 60 days. In SECY–01–0134, the proposed enforcement discretion for reinstatement or transfer indicated that the individual must be subject to a part 26 program for "at least 30 of the previous 60 days" to be exempt from a pre-access test. The revised enforcement discretion policy addresses interruptions up to 60 days, provides a graded approach to pre-access testing, and ensures consistency with the requirement that licensees perform "testing within 60 days prior to the initial granting of unescorted access to protected areas or assignment to activities with the scope" of part 26. In addition, the revised enforcement discretion policy is consistent with the interruption periods that are being used in the draft FFD rule (*http://ruleforum.llnl.gov*).

This revised enforcement discretion policy has several advantages over the enforcement discretion policy proposed in SECY–01–0134. Specifically, this policy:

(1) Provides greater assurance that individuals granted unescorted access to nuclear power plants are trustworthy and reliable;

(2) Provides greater alignment between the interim enforcement discretion policy and the future FFD rule;

(3) Achieves greater consistency between FFD and access authorization guidance;

(4) Allows licensees to take credit for the suitable inquiries conducted by previous licensees;

(5) Reduces the ambiguity in the current rule regarding the NRC's expectations for managing transfers of personnel between sites;

(6) Minimizes the unnecessary burden of redundant regulatory requirements; and

(7) Takes a graded approach to updating and reinstating authorization for individuals whose authorization has been interrupted for up to 60 days.

Further, the revision recognizes that the potential risks of updating or reinstating an individual who has recently held authorization, or has been subject to the majority of the elements of a part 26 FFD program, are less than those presented by an unknown and unmonitored individual, for whom the *current* regulations allow up to 60 unmonitored days between the pre-access test and the authorization to perform activities within the scope of part 26. The NRC believes these measures will maintain safety and increase the overall efficiency and effectiveness of the licensees' part 26 programs, while reducing unnecessary regulatory burden.

The NRC does not intend to pursue past violations for insufficient suitable inquiries (where licensees failed to contact employers when individuals had worked for employers for less than 30 days) and past violations for failures to perform pre-access drug tests (where individuals were subject to a FFD program within the last 30 days). The NRC believes that this exercise of enforcement discretion is appropriate because:

(1) Individuals who currently have authorization under the past suitable inquiry pre-access testing practices have successfully maintained their authorizations while subject to part 26 FFD programs over time;

(2) Pursuing past violations would not be an effective and efficient use of NRC resources; and

(3) Requiring licensees to conduct new suitable inquiries and pre-access tests would represent undue regulatory burden.

In conclusion, the NRC believes that the practices included in this interim enforcement policy will ensure adequate protection of public health and safety and nuclear security.

Accordingly, the proposed revision to the NRC Enforcement Policy reads as follows:

General Statement of Policy and Procedure for NRC Enforcement Actions

* * * * *

Interim Enforcement Policies

Interim Enforcement Policy for Generally Licensed Devices Containing Byproduct Material (10 CFR 31.5)

* * * * *

Interim Enforcement Policy Regarding Enforcement Discretion for Certain Fitness-for-Duty Issues (10 CFR part 26)

This section sets forth the interim enforcement policy that the NRC will follow to exercise enforcement discretion for certain violations of requirements in 10 CFR part 26, Fitness-for-Duty Programs that occur after December 30, 2002. The NRC will also exercise enforcement discretion and normally not pursue past violations for insufficient suitable inquiries (where licensees failed to contact employers when individuals had worked for employers for less than 30 days) and past violations for failures to perform pre-access drug tests (where individuals were subject to a FFD program within the last 30 days) that occurred prior to December 30, 2002. The policy, subject to subsequent Commission-approved associated policy, guidance, or regulation, is in effect until a final revision of 10 CFR part 26 is issued and becomes effective.

Suitable Inquiry

The regulation in 10 CFR 26.3 requires that before granting an individual unescorted access, a licensee must conduct a suitable inquiry consisting of a "best-effort verification of employment history for the past five years, but in no case less than three years, obtained through contacts with previous employers to determine if a person was, in the past, tested positive for illegal drugs, subject to a plan for treating substance abuse, removed from, or made ineligible for activities within the scope of 10 CFR part 26, or denied unescorted access at any other nuclear power plant or other employment in accordance with a fitness-for-duty policy."

The requirement does not provide an exception when an individual is reinstated at a licensee facility or transferred within a licensee corporation or to another licensee where there is little or no interruption in authorization. The term, "authorization," refers to a period during which an individual maintained unescorted access or was assigned to perform activities within the scope of part 26. However, enforcement action will not normally be taken for failure to contact interim employers, if the following practice is adopted:

If the individual applicant's authorization has been interrupted for 30 calendar days or less and the individual's last authorization was terminated favorably, before granting authorization for unescorted access to the protected area of a nuclear power plant or assigning the individual to perform activities within the scope of part 26, the licensee shall obtain and verify that a self-disclosure (i.e., a report of any drug-or alcohol-related arrests) for the period since the last authorization contains no potentially disqualifying FFD information, unless the individual was subject to a licensee-approved behavioral observation and arrest-reporting program throughout the period of interruption. Potentially disqualifying FFD information means information demonstrating that an individual has, during the period authorization was interrupted:

(1) Violated an employer's drug and alcohol testing policy;

(2) Used, sold, or possessed illegal drugs;

(3) Abused legal drugs;

(4) Subverted or attempted to subvert a drug or alcohol testing program;

(5) Refused to take a drug or alcohol test;

(6) Been subjected to a plan for substance abuse treatment (except for self-referral); or

(7) Had legal or employment action taken for alcohol or drug use.

The licensee shall also ensure that the individual has met FFD refresher training requirements.

The requirements also do not provide an exception for each licensee to conduct a suitable inquiry into an individual applicant's past five years of employment when an individual is reinstated at a licensee facility or transferred to another licensee facility. However, enforcement action will not normally be taken for failure to contact employers from the past five years, if the following practice is adopted:

Licensees may rely upon the information gathered by previous licensees regarding an individual applicant's past five years of employment to meet the suitable inquiry requirement.

The NRC may take enforcement action when a licensee does not follow these practices.

Pre-Access Testing

The regulation in 10 CFR 26.24(a)(1) requires that a person be tested for drugs and alcohol "within 60 days prior to the

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initial granting of unescorted access to protected areas."

The requirement does not provide an exception when an individual is reinstated at a licensee facility or transferred within a licensee corporation or to another licensee where there is little or no interruption in authorization. However, enforcement action will not normally be taken for failure to conduct a pre-access test for alcohol and drugs, if the following practice is adopted:

If the individual applicant's authorization has been interrupted for 30 calendar days or less and the individual's last authorization was terminated favorably, in order to grant authorization for unescorted access to the protected area of a nuclear power plant or assigning the individual to perform activities within the scope of part 26, the licensee shall:

(1) Obtain and verify that a self-disclosure for the past 30 days reveals no potentially disqualifying information, unless the individual was subject to a licensee-approved behavioral observation and arrest-reporting program throughout the period of interruption; and

(2) Ensure that the individual has met FFD refresher training requirements.

If the individual applicant's authorization has been interrupted for 31 days to 60 days and the individual's last authorization was terminated favorably, in order to grant authorization for unescorted access to the protected area of a nuclear power plant or assigning the individual to perform activities within the scope of part 26, the licensee shall:

(1) Obtain and verify that a self-disclosure for the period since the last authorization contains no potentially disqualifying FFD information, unless the individual was subject to a licensee-approved behavioral observation and arrest-reporting program throughout the period of interruption;

(2) Within 5 working days of granting authorization, complete a suitable inquiry for the period since last authorization was terminated, unless the individual was subject to a licensee-approved behavioral observation and arrest-reporting program throughout the period of interruption;

(3) Verify that results of an alcohol test are negative and collect a specimen for drug testing, unless either a drug and alcohol test meeting the standards of Part 26 was performed within the past 60 days and results were negative or the individual was subject to a licensee-approved part 26 FFD program that included random drug and alcohol testing throughout the period of interruption; and

(4) Ensure that the individual has met FFD refresher training requirements.

The NRC may take enforcement action when a licensee does not follow these practices.

Dated at Rockville, MD, this 24th day of October, 2002.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 02–27592 Filed 10–30–02; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–214–AD; Amendment 39–12929; AD 2002–22–05]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–100, –200, –200C, –300, –400, and –500 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to all Boeing Model 737–100, –200, –200C, –300, –400, and –500 series airplanes. This action requires repetitive inspections to find cracks, fractures, or corrosion of each carriage spindle of the left and right outboard mid-flaps; and corrective action, if necessary. This action also provides for an optional action of overhaul or replacement of the carriage spindles, which would extend the repetitive inspection interval. This action is necessary to prevent severe flap asymmetry due to fractures of the carriage spindles on an outboard mid-flap, which could result in reduced control or loss of controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective November 15, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 15, 2002.

Comments for inclusion in the Rules Docket must be received on or before December 30, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–214–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-iarcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2002–NM–214–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, PO Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: *Technical Information:* Sue Lucier, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2186; fax (425) 227–1181.

Other Information: Sandi Carli, Airworthiness Directive Technical Editor/Writer; telephone (425) 687–4243, fax (425) 227–1232. Questions or comments may also be sent via the Internet using the following address: *sandi.carli@faa.gov*. Questions or comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

SUPPLEMENTARY INFORMATION: The FAA has received reports indicating fractures of the carriage spindles of the outboard mid-flaps on certain Boeing Model 737 series airplanes. The fractures resulted from stress-corrosion cracking. The most critical section for a fracture is at the forward end of the spindle; two of the thirteen reported fractures occurred in this area on airplanes that had accumulated between 4,198 and 43,919 total flight cycles. In a recent incident, dual failure of the carriage spindles occurred and one of the spindles failed at a location critical for continued flap functionality. If one carriage spindle fractures on a flap, it will affect control of flight of the airplane. If both the inboard and outboard spindles fracture in the critical section on an outboard flap, it could result in loss of controllability of the airplane.

Related Rulemaking

This AD is related to AD 90–17–19, amendment 39–6705 (55 FR 33280, August 15, 1990). That AD is applicable to all Boeing Model 747 series airplanes, except Model 747SP, and requires periodic inspections of both inboard and outboard trailing edge flap carriage spindles for cracks and corrosion, and overhaul or replacement, if necessary. That AD also requires periodic inspections to detect cracks or corrosion of all exposed surfaces of the carriage spindles, including inner bore, and aft links; and overhaul or replacement, if necessary. That AD also shortens certain compliance intervals to ensure continued airworthiness.

This AD requires similar actions for all Boeing Model 737–100, –200, –200C, –300, –400, and –500 series airplanes, because the carriage spindles on the outboard mid-flaps are very similar to the carriage spindles on Model 747 series airplanes.

Explanation of Relevant Service Information

We have reviewed and approved Boeing Alert Service Bulletin 737–57A1277, dated July 25, 2002, which describes procedures for repetitive nondestructive test (NDT) inspections to find cracks, fractures, or corrosion of each carriage spindle of the left and right outboard mid-flaps; and corrective action, if necessary. The corrective action includes overhaul or replacement of the carriage spindle if any cracks, fractures, or corrosion are found. The service bulletin also recommends that a report be sent to the manufacturer if a crack or fracture of any carriage spindle is found. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, the actions in this AD are required to be accomplished in accordance with the service bulletin described previously, except as discussed below.

Differences Between AD and Service Information

The service bulletin explicitly specifies doing a NDT inspection for cracks or fractures of each carriage spindle, and indicates that operators should look for cracking or corrosion of the exposed portion of the spindle. We infer that this description is that of a general visual inspection; therefore, this AD adds a general visual inspection for cracks, fractures, or corrosion of the spindle. We have added a note to this AD to define such an inspection.

Although the service bulletin recommends that operators report inspection findings of any crack or fracture in the carriage spindle to the manufacturer, this AD does not contain such a reporting requirement.

Interim Action

This is considered to be interim action. We are currently considering mandating overhaul or replacement of the carriage spindles, which will extend the interval for the repetitive inspections required by this AD action. This action is similar to that required by AD 90–17–19, discussed above. However, the planned compliance time for the overhaul or replacement action is sufficiently long so that notice and opportunity for prior public comment will be practicable.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–214–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation

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Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2002–22–05 Boeing: Amendment 39–12929. Docket 2002–NM–214–AD.

Applicability: All Model 737–100, –200, –200C, –300, –400, and –500 series airplanes; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent severe flap asymmetry due to fractures of the carriage spindles on an outboard mid-flap, which could result in reduced control or loss of controllability of the airplane, accomplish the following:

Repetitive Inspections

(a) Do general visual and nondestructive test (NDT) inspections of each carriage spindle (two on each flap) of the left and right outboard mid-flaps to find cracks, fractures, or corrosion at the later of the times specified in paragraphs (a)(1) and (a)(2) of this AD, as applicable, per the Work Instructions of Boeing Alert Service Bulletin 737–57A1277, dated July 25, 2002. Repeat the inspection at least every 180 days until paragraph (c) of this AD is done.

(1) Before the accumulation of 12,000 total flight cycles or 8 years in-service on new or overhauled carriage spindles, whichever is first.

(2) Within 90 days after the effective date of this AD.

Note 2: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

Corrective Action

(b) If any crack, fracture, or corrosion is found during any inspection required by paragraph (a) of this AD: Before further flight, do the applicable actions for that spindle as specified in paragraph (b)(1) or (b)(2) of this AD, per the Work Instructions of Boeing Alert Service Bulletin 737–57A1277, dated July 25, 2002. Then repeat the inspections required by paragraph (a) of this AD every 12,000 flight cycles or 8 years, whichever is first; on the overhauled or replaced spindle only.

(1) If any corrosion is found in the carriage spindle, overhaul the spindle.

(2) If any crack or fracture is found in the carriage spindle, replace with a new or overhauled carriage spindle.

Note 3: Although the service bulletin recommends that operators report inspection findings of any crack or fracture in the carriage spindle to the manufacturer, this AD does not contain such a reporting requirement.

Optional Overhaul or Replacement

(c) Overhaul or replacement, as applicable, of all four carriage spindles, per the Work Instructions of Boeing Alert Service Bulletin 737–57A1277, dated July 25, 2002, extends the repetitive inspection interval specified in paragraph (a) of this AD to every 12,000 flight cycles or 8 years, whichever is first.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(f) The actions shall be done in accordance with Boeing Alert Service Bulletin 737–57A1277, dated July 25, 2002. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, PO Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(g) This amendment becomes effective on November 15, 2002.

Issued in Renton, Washington, on October 22, 2002.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–27315 Filed 10–30–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 4, 113 and 178

[T.D. 02–62]

RIN 1515–AD11

Presentation of Vessel Cargo Declaration to Customs Before Cargo Is Laden Aboard Vessel at Foreign Port for Transport to the United States

AGENCY: Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to require the advance and accurate presentation of certain manifest information prior to lading at the foreign port and to encourage the presentation of this information electronically. The document also allows a non-vessel operating common carrier (NVOCC) having an International Carrier Bond to electronically present cargo manifest information to Customs. This information is required in advance and is urgently needed in order to enable Customs to evaluate the risk of smuggling weapons of mass destruction through the use of oceangoing cargo containers before goods are loaded on vessels for importation into the United States, while, at the same time, enabling Customs to facilitate the prompt release of legitimate cargo following its arrival in the United States. Failure to provide the required information in the time period prescribed may result in the delay of a permit to unlade and/or the assessment of civil monetary penalties or claims for liquidated damages.

EFFECTIVE DATE: December 2, 2002.

FOR FURTHER INFORMATION CONTACT:

For Legal matters: Larry L. Burton, Office of Regulations and Rulings, (202–572–8724).

For National Targeting Center issues: David Tipton, (202–927–0108).

For Container Security Initiatives: Adam Wysocki, (202–927–0724).

For Trade Compliance issues: Kimberly Nott, (202–927–0042).

SUPPLEMENTARY INFORMATION:

Background

The Customs laws impose certain requirements upon vessels that will arrive in the United States to discharge their cargo. In particular, vessels destined for the United States must comply with 19 U.S.C. 1431, which requires that every vessel bound for the United States and required to make entry under 19 U.S.C. 1434 have a manifest that meets the requirements that are prescribed by regulation. To this end, under 19 U.S.C. 1431(d), Customs may by regulation specify the form for, and the information and data that must be contained in, the vessel manifest, as well as the manner of production for, and the delivery or electronic transmittal of, the vessel manifest.

Currently, § 4.7, Customs Regulations (19 CFR 4.7), requires: That the master of every vessel arriving in the United States and required to make entry have on board the vessel a manifest in accordance with 19 U.S.C. 1431 and § 4.7; and that an original and one copy of the manifest must be ready for production upon demand and must be delivered to the first Customs officer who demands the manifest. Sections 4.7(a) and 4.7a, Customs Regulations (19 CFR 4.7(a) and 4.7a), set forth the documentary and informational requirements that constitute the vessel manifest.

Pursuant to § 4.7(a), the cargo declaration (Customs Form 1302 or its electronic equivalent) is one of the documents that comprises a vessel manifest. The cargo declaration must list all the inward foreign cargo on board the vessel regardless of the intended U.S. port of discharge of the cargo (§ 4.7a(c)(1)).

Furthermore, 19 U.S.C. 1448 provides, in pertinent part, that no merchandise may be unladen from a vessel which is required to make entry under section 1434 until Customs has issued a permit for its unlading. In addition, under section 1448, Customs possesses a reasonable measure of regulatory discretion as to whether, and under what circumstances and conditions, to issue a permit to unlade incoming cargo from a vessel arriving in the United States. Section 4.30, Customs Regulations (19 CFR 4.30), lists the requirements and conditions under which Customs may issue a permit to unlade foreign merchandise from a vessel arriving in the United States.

In addition, 19 U.S.C. 1436(a)(1) and (a)(4) provide that it is unlawful to fail to comply with sections 1431, 1433 or 1434 or any regulation prescribed under any of those statutory authorities. Moreover, 19 U.S.C. 1436(a)(2) states that it is unlawful to present or transmit, electronically or otherwise, any forged, altered or false document, paper, data or manifest to the Customs Service under 19 U.S.C. 1431, 1433(d) or 1434. Under section 1436(b), the master of a vessel who commits any such violation is liable for a civil penalty of $5,000 for the first violation and $10,000 for each subsequent violation and any conveyance used in connection with any such violation is subject to seizure and forfeiture.

Proposed Rulemaking; Advance Presentation of Vessel Cargo Manifest to Customs; Required Information

By a document published in the **Federal Register** (67 FR 51519) on August 8, 2002, Customs proposed to amend § 4.7 to provide that, pursuant to 19 U.S.C. 1431(d), for any vessel subject to entry under 19 U.S.C. 1434 upon its arrival in the United States, Customs must receive the vessel's cargo manifest (declaration) from the carrier 24 hours before the related cargo is laden aboard the vessel at the foreign port. The proposed rule also enumerated the specific informational elements that would need to be included in the submitted cargo manifest.

Necessity for Advance Presentation of Vessel Cargo Manifest to Customs

As explained in the preamble of the Notice of Proposed Rulemaking (67 FR at 51520), the United States Customs Service recently launched the Container Security Initiative ("CSI"). CSI will secure an indispensable, but vulnerable link in the chain of global trade: Containerized shipping. Approximately 90% of world cargo moves by container; 200 million cargo containers are transported between the world's seaports each year, constituting the most critical component of global trade. Nearly half of all incoming trade to the United States (by value) arrives by ship, and most of that is in sea containers. Annually, nearly 6 million cargo containers are offloaded at U.S. seaports.

There is, however, virtually no security for this critical global trading system. And the consequences of a terrorist incident using a container would be profound. As experts like Dr. Stephen E. Flynn, Senior Fellow, Council on Foreign Relations, have pointed out repeatedly, if terrorists used a sea container to conceal a weapon of mass destruction—a nuclear device, for example—and detonated it on arrival at a port, the impact on global trade and the global economy would be immediate and devastating. All nations would be affected because there would be no mechanism for identifying weapons of mass destruction before they reached our shores and before they posed a threat to the global economy.

Al Qaeda and other terrorist organizations pose an immediate and substantial threat. And the threat is not just to harm and kill American citizens, it is a threat to damage and destroy the U.S. and the world economy.

To address the threat terrorists pose to containerized shipping, Customs developed CSI. Under CSI, U.S. Customs is working with other governments to identify high-risk cargo containers and pre-screen those containers at the foreign ports *before* they are shipped to the U.S. CSI has four core elements:

(1) Identify "high-risk" containers. In connection with its domestic targeting efforts, Customs has already established criteria and automated targeting tools for identifying "high risk" shipments. Indeed, every one of the shipments that arrives in the United States by sea container is *currently* assessed for risk using these tools and advance manifest data. If this data were provided earlier, Customs could use these same tools to detect high risk shipments before they were carried to the United States. Accordingly, to enhance domestic targeting and to enable overseas targeting and screening of containers, Customs has proposed a rule requiring accurate and detailed information to be transmitted before shipments are laden on vessels destined for the United States.

(2) Pre-screen containers *before* they are shipped. As discussed above, to protect the United States and global trade from the risks posed by international terrorists, security screening should be done at the port of departure rather than the port of arrival.

(3) Use technology to screen high-risk containers. Technology enables screening to be done rapidly without slowing down the movement of trade. This technology includes large-scale x-ray and gamma machines and radiation detection devices.

(4) Use more secure containers to ensure the integrity of containers screened overseas.

CSI thus offers real protection, on a day-to-day basis, for the primary system of international trade—a system on which all economies depend. Given the security afforded by CSI, the investments made by ports and

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members of the trade to implement CSI represent relatively inexpensive forms of insurance against the terrorist threat. In the event of an attack using a cargo container, the CSI network of ports will be able to remain operational because those ports will already have an effective security system in place—one that will deter and prevent terrorists from using it. Without such a network, the damage to global trade caused by a terrorist attack involving international shipping would be staggering.

In addition to protecting global trade, CSI should *facilitate* the flow of that trade. When a container has been pre-screened and sealed under CSI, U.S. Customs will not, absent additional information affecting its risk analysis, need to inspect it for security purposes when it reaches the U.S. Moreover, this system could reduce the processing time for certain shipments because the screening at a CSI port will in most cases take place during "down time." Most containers sit on a terminal for an average of several days prior to lading. This window of "down time" will be used to screen containers for security purposes. On arrival at the U.S. seaport, the CSI-screened container should be released immediately by U.S. Customs, which could shave hours, if not days, off of the shipping cycle. In this manner, CSI should increase the speed and predictability for the movement of cargo containers shipped to the U.S.

For these reasons, CSI is a critical component of the President's Homeland Security Strategy. It has also been endorsed by the G–8 as well as the World Customs Organization.

As a result of this broad support, CSI has been expanding rapidly. When Customs launched CSI this past January, the first step was to implement CSI as quickly as possible in Canada and the top 20 ports (by volume) that ship to the United States. When fully implemented in these locations, CSI will substantially increase the security of the United States and the global trading system because the top 20 ports alone account for nearly 70% of all the containers shipped to U.S. seaports. To date, Canada, the Netherlands, Belgium, France, Germany, Singapore, Hong Kong, and Japan have agreed to implement CSI. These countries represent 11 of the top 20 ports. Customs anticipates that several other nations will agree to implement CSI in the near term, and that CSI will expand beyond the top 20 ports during the next year.

CSI is already operational in Canada and the Netherlands. It will be implemented at several additional ports within the next 90 days. Given this explosive growth, it is critical that the information necessary to implement CSI fully be provided to Customs in the near term. For this reason, Customs proposed this rulemaking on August 8, 2002 and, following the comment period, is issuing this final rule today.

Non-Vessel Operating Common Carriers (NVOCCs)

Under the proposed rule, the conditions of the International Carrier Bond (19 CFR 113.64) were proposed to be amended to recognize the status of a Non-Vessel Operating Common Carrier (NVOCC) as a manifesting party and to obligate any NVOCC having such a bond and electing to provide cargo manifest information to Customs electronically under § 4.7 and 4.7a to accurately transmit such information to Customs 24 or more hours before the related cargo is laden aboard the vessel at the foreign port. Breach of these obligations would result in liquidated damages against the NVOCC. For purposes of the proposed rule, a non-vessel operating common carrier (NVOCC) as a common carrier that does not operate the vessels by which the ocean transportation is provided, would be considered a shipper in its relationship with an ocean common carrier.

Penalties or Liquidated Damages for False or Untimely Filing of Manifest Data

If the master of a vessel failed to present or transmit accurate manifest data in the required time period or presented or transmitted any false, forged or altered document, paper, manifest or data to Customs, the proposed regulations specified that monetary penalties could be assessed under the provisions of 19 U.S.C. 1436(b). Likewise, if an NVOCC having an International Carrier Bond elected to transmit such data electronically to Customs and failed to do so in the required time period or transmitted any false, forged or altered document, paper, manifest or data to Customs, the NVOCC could be liable for the payment of liquidated damages for breach of the conditions of the International Carrier Bond, in addition to any other applicable penalties.

Issuance of Permit To Unlade Cargo

The proposed rule also provided that if the carrier did not present cargo declaration information to Customs prior to the lading of the cargo aboard the vessel at the foreign port, Customs could, in addition to assessment of civil monetary penalties, delay issuance of a permit to unlade the entire vessel or a portion thereof until all required information was received.

Preliminary Entry

Finally, it was proposed that § 4.8 be amended to make clear that the granting of preliminary entry by Customs would be conditioned upon the electronic submission of the Cargo Declaration (Customs Form (CF) 1302), as well as the provision to Customs either electronically or in paper form of all other forms required by § 4.7.

Discussion of Comments

A total of 78 commenters responded to the notice of proposed rulemaking. Nearly all of the commenters recognized the need to act immediately to protect the global trading systems, and in particular to protect the most important element in the movement of international trade—containerized cargo. They also recognized the urgency and seriousness of the threat posed by terrorist organizations and the smuggling of weapons of mass destruction, including radiological and nuclear materials. They complimented the Customs Service on newly created programs such as the Customs-Trade Partnership Against Terrorism (C–TPAT) and the Container Security Initiative (CSI), which are designed to address this threat.

Most commenters questioned how the regulation would be implemented. They raised operational issues regarding the movement of containers, the security of containers and the interfaces between the U.S. Customs Service and the trade. They also noted that the regulation would require changes to existing business practices that could take several months to fully implement.

While the aim of this regulation is to better secure containerized cargo from the threat of terrorism, it is important to note that carriers, shippers, importers and others should realize significant benefits from its implementation. Most notably, once a cargo container is pre-screened in a foreign port, in the absence of additional information affecting Customs risk analysis, Customs will rarely need to again screen the container or inspect its contents for security purposes upon arrival in the United States. This offers greater predictability for freight forwarders and importers to arrange for transportation upon discharge of the cargo. This and other benefits, however, will only be fully realized after the Customs Service is able to pre-screen containers overseas, using the accurate and complete information required by this regulation.

We have carefully considered all of the comments, and as a result, we have modified the proposed regulation in many respects. For example, many commenters questioned the need to include bulk shipments under the proposed regulation. After considering these comments, we have modified the proposed regulation to exempt bulk shipments from its requirements. Others requested greater assurances of confidentiality. In response, we will be taking steps appropriately to protect business sensitive information.

In addition, we have considered the comments about the need for additional time to implement the reporting requirements because of potential changes in business practices. Balancing these comments against the pressing need to protect the national security of the United States and to protect the safe and secure movement of international trade, we have decided to not initiate any enforcement actions such as assessing penalties for non-fraudulent violations of this regulation for 60 days after the regulation goes into effect. There is an overriding national security need, however, to move as quickly as possible to protect the United States and the global trading system from terrorism, especially the profound threat of nuclear terrorism.

Though enforcement actions for non-fraudulent violations of this regulation will not be initiated for 60 days after the regulation goes into effect, the U.S. Customs Service is prepared to receive automated manifest information immediately, which would allow Customs to offer facilitation benefits to those customers of carriers and NVOCCs that utilize CSI ports.

We have made a good faith effort to make changes to the rule where appropriate at this time, but we recognize that not all of the modifications suggested by commenters relate to changes in the regulation itself, and that not all potential implementation issues could be foreseen. In the interest of maintaining an open dialogue with affected parties, and consistent with the long-standing Customs practice of working with the trade, Treasury is inviting the Advisory Committee on the Commercial Operations of the U.S. Customs Service (COAC) to convene a special subcommittee to advise the U.S. Customs Service on operational issues arising out of the implementation of this regulation.

A complete description of the various issues raised by the commenters, together with Customs response to these issues, is set forth below.

19 U.S.C. 1431 as Authority for Regulations Notwithstanding Trade Act of 2002

Comment: Twenty-one commenters questioned the validity of the proposed advance cargo manifest regulations under 19 U.S.C. 1431 in light of section 343(a) of the Trade Act of 2002 (Public Law 107–210; 116. Stat. 933), that was enacted on August 6, 2002. Section 343(a) concerns the mandatory filing with Customs of advanced electronic information for cargo being imported into or exported from the United States by vessel, vehicle or aircraft. These commenters contend that the proposed advance cargo manifest regulations are in direct contradiction with the requirements imposed under section 343(a)(3) of the Trade Act of 2002. The underlying premise essentially asserted in this context is that Congress, in enacting section 343 of the Trade Act, effectively repealed any authority that Customs might have had to request advance manifest information under 19 U.S.C. 1431.

Customs Response: Customs has concluded that both 19 U.S.C. 1431 and section 343(a) of the Trade Act of 2002 co-exist within the Customs laws and the enactment of section 343(a) of the Trade Act did not and was not intended by Congress to implicitly repeal Customs authority to collect manifest information under section 1431. Briefly stated, therefore, Customs retains the authority under section 1431(b) and (d) to require the advance presentation of vessel cargo manifest information in accordance with the regulations being issued today.

In addition, Customs will issue regulations, in accordance with section 343(a) of the Trade Act of 2002, that will require the advance electronic transmission of information on cargo destined for importation into the United States by vessel, vehicle or aircraft. In this regard, Customs will reconcile those regulations that are issued under the authority of section 343(a) with the regulations that are being issued today under the authority under 19 U.S.C. 1431.

Bulk and Break Bulk Cargo

Comment: Several commenters inquired as to whether the 24 hour rule would apply to bulk and break bulk cargo. Many commenters requested that only certain data elements be required for such manifest submissions. Others commented that the Coast Guard 96 hour report of arrival requirements should be used for bulk and break bulk carriers for manifest submission to U.S. Customs in the United States.

Customs Response: Customs has determined that the proposed rule will be amended in this final rule to provide that bulk cargo as defined in the rule will be exempt from the 24 hour rule; and, further, that break bulk cargo may be exempted from the 24 hour rule on a case by case basis. Companies that are exempted from the 24 hour rule must submit their cargo declaration information to U.S. Customs 24 hours prior to arrival in the U.S. if they are participants in the vessel AMS program or upon arrival if they are non-automated carriers. In response to the comment that the Coast Guard 96 hour report of arrival requirements should be used, the Coast Guard has merely proposed that requirement at this time. While Customs agrees with the idea, this cannot be implemented until the Coast Guard requirement is adopted.

First, regarding bulk cargo, Customs defines such cargo as homogeneous cargo stowed in bulk, that is to say, loose in the hold and not enclosed in any container such as boxes, bales, bags, casks, and so on. It is also called bulk freight. Reference to a maritime dictionary reveals bulk cargo to be composed of (1) free flowing articles such as oil, grain, coal, ore, and so on, which can be pumped or run through a chute or handled by dumping; (2) articles that require mechanical handling such as bricks, pig iron, lumber, steel beams and so on.

Second, Customs also recognizes that there are concerns that carriers have with other types of cargo known as break bulk. Break bulk is cargo that is not containerized, but which is otherwise packaged or bundled. This type of cargo may raise the same types of concealment and smuggling concerns as containerized cargo. Consequently, as indicated above, a carrier of break bulk cargo may apply for an exemption from the 24 hour rule; Customs will evaluate each application on a case by case basis.

To apply for an exemption, the carrier must submit a written request for exemption to the U.S. Customs Service, National Targeting Center, 1300 Pennsylvania Ave., NW., Washington, DC 20229. Until an application for an exemption is granted, the carrier must comply with the 24 hour advance manifest requirement. The written request for exemption must clearly set forth information such that Customs may assess whether any security concerns exist, such as: The carrier's IRS number; the source, identity and means of the packaging or bundling of the commodities being shipped; the ports of call, both foreign and domestic; the number of vessels the carrier uses to transport break bulk cargo, along with

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the names of these vessels and their International Maritime Organization numbers; and the list of the carrier's importers and shippers, identifying any who are members of C–TPAT (The Customs-Trade Partnership Against Terrorism).

If Customs, by written response, provides an exemption to a break bulk carrier, the exemption is only applicable under the circumstances clearly set forth in the application for exemption. If circumstances set forth in the approved application change, it will be necessary to submit a new application.

Customs may rescind an exemption granted to a carrier at any time.

As noted above, companies receiving exemptions must submit their cargo declaration information to U.S. Customs 24 hours prior to arrival in the U.S. if they are participants in the vessel AMS program or upon arrival if they are non-automated carriers.

Non Vessel Operating Common Carriers Eligible to Participate

Comment: In the August 8, 2002, proposed rule, Customs stated that Non Vessel Operating Common Carriers (NVOCC) licensed by the Federal Maritime Commission (FMC) would be eligible to become bonded with Customs and to electronically transmit manifest information directly to Customs. Several commenters pointed out that a separate category of NVOCC is not licensed by the FMC, but rather is registered with the agency. This latter group, unless identified by Customs as eligible to participate, would be unable to transmit information directly to Customs prior to foreign lading. It is requested that Customs allow registered NVOCCs to participate. In addition, one commenter advocated that shippers' associations, like NVOCCs, should be authorized to present the required manifest information electronically to Customs.

Customs Response: Customs agrees that to the extent that members of the NVOCC community registered with the FMC become bonded with Customs, they should be included in the electronic filing program. Customs in this final rule has amended the proposed regulatory language in this regard to reflect this change. However, shippers' associations may not participate in the electronic filing program. Such associations of shippers are membership-only groups that are not currently regulated under U.S. law, and they are not licensed or registered with the FMC.

Confidentiality of Manifest Information

Comment: A number of commenters addressed the issue of the confidentiality of certain manifest information. The views expressed really concerned two different aspects of the need for confidentiality—that involving business and competitive advantage and that involving the matter of cargo security.

One group, consisting primarily of the Non Vessel Operating Common Carrier (NVOCC) community, expressed concerns that the information which would be supplied to Customs under the proposed new procedures would be subject to release for publication. It was stated that such release would reveal confidential business information which could result in harm to the NVOCC community. It was suggested that NVOCC filers should be permitted to make biennial confidentiality certifications to Customs on behalf of the importers or consignees, pursuant to statute, which allows only the importers or consignees to submit biennial certifications for confidentiality of certain manifest information. It was also suggested that Customs should consider an NVOCC to be an "attorney in fact" for certification filing purposes since our regulations currently allowed an attorney of an importer or consignee to submit a certification on behalf of that importer or consignee.

The second confidentiality concern expressed by commenters involved the matter of the security of the cargo itself. It was suggested that if Customs released certain manifest information shortly after its receipt, information identifying cargoes could be published even before vessels departed foreign ports bound for the United States.

Customs Response: Customs recognizes the confidentiality concerns stated by these commenters. The premature disclosure of information about incoming cargo, particularly sensitive shipments, such as chemicals and the like, could not only undermine business relationships; it could also enable terrorist or criminal organizations, having advance information about incoming cargo, to attempt the theft or destruction of such cargo prior to or upon its arrival in the United States.

Accordingly, in response to these matters, Customs intends to address these concerns to the extent allowable under existing law. To this end, 19 U.S.C. 1431(c) limits the parties eligible to make a necessary confidentiality certification to include only importers and consignees. While our regulations currently allow an attorney of an importer or consignee to file a client's certification, Customs simply cannot designate an NVOCC to be an "attorney in fact" for certification filing purposes. Proposed amendments to Part 103 of the Customs Regulations (19 CFR part 103) would be necessary. Given this fact, Customs will be issuing a separate **Federal Register** Notice of Proposed Rulemaking in the near future to expand upon those parties who may file a biennial certification on behalf of the importer or consignee. An immediately available option, however, is for NVOCC manifest information filers to request appropriate importers and consignees in the United States to file certifications with Customs on their own behalf, thus protecting the same range of information which is sought to be protected here.

With regard to the concern that release of advance information prematurely can raise new security concerns, Customs will not be releasing information from cargo declarations until the complete manifest is filed with Customs. The statutory provision under consideration, 19 U.S.C. 1431(c), provides for the release for public disclosure of information, when contained in a vessel manifest. The statute does not specify when the information must be released to the public pursuant to 19 U.S.C. 1431(c). (Section 4.7 of the Customs Regulations (19 CFR 4.7) specifically identifies those documents comprising a vessel "manifest"; such documents comprising the vessel manifest include the Vessel Entrance or Clearance Statement (CF–1300); Cargo Declaration (CF–1302); Ship's Stores Declaration (CF–1303); Crew's Effects Declaration (CF–1304, or optional INS Form, I–418); Crew List and I–418; and, Passenger List with I–418.)

The August 8, 2002, document published in the **Federal Register**, by proposing to require advance filing of Cargo Declaration information, specifies that only a *portion* of a vessel's manifest, the CF 1302 information, must be presented or transmitted prior to foreign lading. This requirement goes only to certain data which is made part of the larger manifest requirement. The manifest itself is filed with Customs at the time of vessel entry in any of the various ports of the United States. No information can be said to be contained in a "vessel manifest" as provided in section 1431, until the complete manifest is made available to Customs. Therefore, the release of information from manifests must await their filing of the entire and complete manifest with Customs at the time of formal entry of vessels in the United States.

Bonds for Non Vessel Operating Common Carriers (NVOCCs)

Comment: One commenter stated that the proposal to amend provisions of the Customs International Carrier Bond as presently set forth in § 113.64 (19 CFR 113.64) would be inappropriate since an NVOCC did not actually transport merchandise. Concern was also expressed that an NVOCC could be held accountable by Customs for delivery of cargo to an incorrect port of unlading by a carrier. Likewise, there was concern that an NVOCC could incur manifest violation penalties in instances where data was relayed to Customs by the NVOCC at least 24 hours in advance of scheduled vessel sailing time, but the vessel then loaded and departed earlier than scheduled.

Customs Response: It is the current practice that vessel agents in the United States carry continuous International Carrier Bond coverage (19 CFR 113.1). They, likewise, do not transport cargoes. They are bonded in order that Customs may be assured that the revenue is protected and that prompt satisfaction of any liabilities incurred in the course of their dealings with Customs may occur. Likewise, the NVOCC community will be dealing with Customs and will be required to provide the same level of assurance with respect to the correctness of the information they submit. Provided the NVOCC adequately demonstrates that cargo declaration information was timely submitted to Customs and the carrier then loaded the containers prematurely, the NVOCC will not be liable.

Comment: A commenter inquired as to how Customs would set bond amounts for NVOCC activities, and whether guidance to the ports would be forthcoming. The concern was that guidelines be made proportional to any claims for liquidated damages assessed against these parties.

Customs Response: Customs port directors retain discretion for setting bond amounts in their respective jurisdictions. Customs Headquarters does intend to issue policy guidance on bond coverage specific to NVOCC activity. As in the past, such guidance will establish a minimum bond amount to be required. Using their discretion under our regulations, port directors are authorized to set higher amounts based upon their experience in the ports of entry.

The guidelines provided to ports will not include guidance regarding proportionality of liquidated damages claims. Such claims are, as always, dependent upon the factual circumstances involved in any particular transaction relating to the breach of the bond conditions.

Permits To Unlade in United States Ports

Comment: A few commenters addressed the issue of Customs granting permits to unlade merchandise in ports of the United States. The concern was that an entire vessel could be denied permission to unlade in circumstances where only a portion of the cargo was non-compliant with the rule on 24 hour advance notification to Customs. Port Authorities also expressed concern over potential port congestion.

Customs Response: The statute governing the issuance of permits to unlade merchandise in the United States, 19 U.S.C. 1448, expressly provides that no merchandise shall be unladen from any vessel until entry has been made and a permit for the unlading of the same has been issued by the Customs Service. To the extent that Customs has identified a portion of arriving cargo which has not been laden in accordance with the requirements of the regulations, Customs has the authority to process that portion differently from the remainder. Customs will allow unloading of that portion of the cargo that has been laden in accordance with the regulations, unless circumstances require otherwise.

Liability Concerns and Legal Responsibilities

Comment: Several commenters raised questions about various liability issues specifically relating to which party was legally responsible under penalty of law for submitting accurate manifest information to Customs; for any errors and omissions that were contained in submitted manifests; and for the failure to file manifests timely. Additionally, it was asked who would be responsible when manifested freight was left behind and was not delivered to the port for which it was manifested; or when diversions from or changes to the original port of call resulted in freight being delivered to a port other than the one for which the freight was manifested.

Customs Response: Customs may initiate penalty actions against any party responsible for providing the required information. For example, if a non-vessel operating common carrier (NVOCC) elects to participate in the vessel Automated Manifest System (AMS) and transmits its information directly to Customs, the NVOCC is the responsible party and will be held liable for any manifest information found to be untimely presented and/or containing errors or omissions. This would also be the case if the NVOCC manifested cargo and the cargo is left behind. Timely communication between the vessel carrier and the NVOCC is required in order for the NVOCC to amend its manifest information to accurately list the cargo that is on board the vessel. Likewise, effective communication between the vessel carrier and the NVOCC is essential for changes to the ports of call and diversions of the vessel.

If an NVOCC is a participant in the vessel AMS program, the NVOCC will be treated as a carrier for Customs purposes. Vessel operators who currently slot charter to other vessel AMS carriers will utilize the same procedures for notification that the slot charterer has used in providing its manifest to Customs. A slot charterer is a carrier leasing space on a vessel owned or operated by another carrier on a space available basis. The vessel operator is only responsible for ensuring that the NVOCC's Standard Carrier Alpha Code (SCAC), as described in 19 CFR 4.7a(c)(2)(iii), is included on the Customs Form (CF) 3171 that is presented to Customs. Failure to present the SCAC of all NVOCCs and slot charterers on board the vessel will result in a penalty against the vessel carrier under 19 U.S.C. 1436.

Comment: A number of commenters asked for confirmation that Customs would not require containers to be off loaded for examination once clearance to load had been given. It was asked who would be liable for the costs incurred if Customs required unloading of a container at an intermediate foreign port.

Customs Response: Customs will follow the current procedures for the examination of containers. Customs does not anticipate that a container already loaded in compliance with this rule would be required to be unloaded for examination except in exigent circumstances. In these rare instances, the carrier will be assessed the costs.

Automated Commercial Environment (ACE)

Comment: Several commenters questioned how the proposed rule would link to the Automated Commercial Environment (ACE) program and whether partial bill of lading information could be reported to Customs. It was also requested that Customs enlarge the scope of those participants who were eligible to provide manifest information to include brokers, shippers and importers.

Customs Response: The current system that Customs utilizes for electronic transmissions of vessel manifest data is the Vessel Automated Manifest System (AMS) which is a

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component of the Customs Automated Commercial System (ACS). This system will not allow for brokers, importers or shippers to input manifest information. Additionally, this system will not accept partial bill of lading data to be transmitted by the carrier. The carrier will receive a reject message on that bill of lading.

The ACE system is the new automated system being designed by Customs and it is in the developmental stages, consequently a precise answer as to how this will be handled under ACE is not available now. Working groups consisting of representatives from several Government agencies and the trade community have been continually meeting to ensure all issues and concerns are discussed and presented properly. The Trade Support Network (TSN) is one of these working groups and the appropriate subcommittee of the TSN will examine how the ACE program will meet the objectives of this rulemaking. Interested parties can get additional information as to the development of the ACE program at *www.customs.gov*. Users should select the Customs Modernization icon on the website, then type the letters "TSN" into the search box.

Maintaining a Paper Manifest on Board the Vessel

Comment: Several commenters referred to the need for vessel carriers to maintain an original/copy of the manifest on board the vessel.

Customs Response: The requirement to carry the paper manifest on board the vessel was waived during a Vessel Paperless Manifest Test. The test procedures will be amended by the effective date of this rule to state that vessel carriers must submit their cargo declaration information to Customs 24 hours prior to lading at a foreign port. The participants in the Vessel Paperless Manifest Test will not be required to maintain a paper copy of the manifest on board the vessel; however, one must be provided upon request. All carriers not participating in the test must maintain a paper copy of the complete manifest on board the vessel.

Comment: Several commenters inquired whether carriers would be required to submit a final manifest prior to arrival in order to be permitted to unlade or whether the individual manifest reports submitted in advance would suffice.

Customs Response: The distinction between a manifest and a cargo declaration must be appreciated. The cargo declaration is one of several documents which, when taken together, constitute a vessel manifest. In this rulemaking, by requiring the submission of cargo declaration information 24 hours prior to lading, Customs is eliminating the requirement for vessel carriers to submit an additional cargo declaration upon arrival in the United States. However, the remaining documents comprising the vessel manifest must be available for presentation upon entry of the vessel.

Requirements for U.S. Virgin Islands

Comment: Various commenters sought clarification as to whether vessels operating from the U.S. Virgin Islands to the United States were included in the proposal. It was pointed out that shipments from the continental United States to Puerto Rico, Hawaii or Alaska would not be subject to the proposed advance manifest regulations.

Customs Response: Vessels destined to Puerto Rico, Hawaii, and Alaska from the continental United States are considered to be operating between points in the Customs Territory. The U.S. Virgin Islands is located outside the Customs Territory and therefore vessels departing from there to the U.S. are subject to the 24 hour advanced manifest rule.

Military Cargo

Comment: A number of commenters asked if the proposed rule applied to military cargo or other government shipments.

Customs Response: Carriers of military cargo and other U.S. Government shipments are required to comply with the advance manifest regulations.

Clarification of Data Elements

Comment: Several commenters requested clarification of the data elements required to be included on the cargo manifest.

Customs Response: Customs has revised the regulations to include additional explanation and descriptive information, where appropriate, for those data elements that must be contained in the vessel's cargo manifest.

Comment: Several commenters stated that requiring a precise description of the cargo would result in "dummy" information being presented to Customs and that certain data elements were not known until after the lading of containers. Additionally, if shippers were to attempt precise cargo descriptions, the result would be numerous corrections having to be made to the manifest as the vessel approached the United States.

Customs Response: The so called "dummy" cargo descriptions are exactly what Customs cannot accept because they undermine our efforts to target threats to national security. Therefore, Customs is now requiring accurate cargo descriptions. Generic descriptions, specifically those such as "FAK" ("freight of all kinds"), "general cargo," and "STC" ("said to contain") are not acceptable. Moreover, general characterizations such as "chemicals" or "foodstuffs" will be considered overbroad.

Comment: Several commenters requested clarification on whether the proposed rule required the consignee name to be listed, or if it required the consignee name only if one were already provided when cargo was presented for shipment. Clarification was specifically requested on: Whether the owner or owner's representative meant the cargo owner; if there were a consignee, whether the shipper could decline to disclose the consignee by naming the cargo owner; and, whether the owner was to be listed only if there were no consignee indicated.

Customs Response: The only time a consignee name would not be recorded is in the case of "to order" shipments where the merchandise is sold in transit. Many "to order" entities are listed as the consignee. A "to order" consignee is not the true consignee, but rather only an interested party, such as a bank, which is securing payment. Either the party holding title to the goods (the owner) or that party's representative has the real interest in a shipment. Accordingly, the owner or owner's representative is the party that must be listed in place of the consignee in the case of "to order" shipments. If the consignee's name is available, however, the shipper must disclose this information.

Comment: A number of commenters requested that Customs clarify which seal number had to be provided: The seal of the shipper, the seal of the shipping line, or the Customs seal. Other commenters requested clarification on whether all loaded containers had to have an affixed seal.

Customs Response: For all sealed containers, the number that must be identified is the seal number of the last person/company to load the container. Participants in C–TPAT (The Customs-Trade Partnership Against Terrorism) must affix seals to all loaded containers.

Comment: Some commenters asserted that it was impossible to report the "actual boarded quantities" as required by proposed § 4.7a(c)(4)(x) 24 hours before the cargo was "actually" boarded.

Customs Response: Customs recognizes the validity of the comments. Accordingly, we are removing this data element from the final rule. This matter will be addressed in a separate **Federal Register** Notice of Proposed Rulemaking concerning Manifest Discrepancy Report filing.

Co-Loading

Comment: Commenters questioned whether the proposed rulemaking would put an end to "co-loading." Co-loading would occur when several NVOCC firms combined their cargo for movement under one NVOCC's master bill of lading, and each NVOCC had its own sub-set of house bills of lading and related manifests. Specifically, the scenario was presented where an automated NVOCC co-loaded with a non-automated NVOCC and the non-automated NVOCC presented the container to the vessel carrier. The question posed in this context was whether the manifest information would remain confidential and not be provided to the vessel carrier. In addition, clarification was requested as to whether the shipper, consignee, and cargo description information from all NVOCC house bills of lading (Master NVOCC and co-loading NVOCC) had to be included in the advance cargo manifest filing.

Customs Response: The rulemaking will not put an end to co-loading. If an automated NVOCC co-loads with a non-automated NVOCC and the non-automated NVOCC presents the container to the vessel carrier, the automated NVOCC is required to present its own bill of lading for that shipment directly to Customs via vessel AMS. The non-automated NVOCC must fully disclose and present the required manifest information for the related cargo to the vessel carrier for presentation to Customs via vessel AMS. Automated NVOCCs will not be authorized to submit paper manifests to the vessel carrier. The automated NVOCC who is co-loading should be aware, however, that its shipment could be held for examination based on Customs not receiving timely manifest information in the United States.

If the situation is reversed and the non-automated NVOCC co-loads with the automated NVOCC with the automated NVOCC presenting the container to the vessel carrier, the automated NVOCC is required to transmit all bills of lading in the container via vessel AMS. Non-automated NVOCCs that have shipments as part of a co-loaded container must fully disclose and present the required manifest information for their cargo to the automated NVOCC who would be required to present this information to Customs via vessel AMS. Each individual shipment must be input into the vessel AMS program with each individual shipper and consignee being identified along with the cargo description. Bills of lading stating the non-automated NVOCC to be either the shipper or consignee or setting forth the cargo description as "consolidation" is not authorized.

Non-automated NVOCCs thus have two options to submit manifest information to Customs. The options are: (1) Submit manifest information, in paper, directly to the vessel carrier who is required to input all bills of lading from the non-automated NVOCC into the vessel AMS program; or (2) Become a participant in the vessel AMS program and submit manifest information to U.S. Customs either directly or through an automated Service Provider, Port Authority, or Vessel Agent. Only under the second option will the manifest information of a non-automated NVOCC remain confidential (not be disclosed to the vessel carrier). In any case, regardless of the option chosen, the non-automated NVOCC is required to abide by the 24 hour advance manifest rule.

As stated in 19 CFR 4.7a, NVOCCs that receive cargo in sealed containers from the shipper can rely on the shipper's declaration. This section provides specific language to be used with "shippers load and count." However, in vessel AMS the shipper must be identified, not the NVOCC.

Vessel AMS Procedures

Comment: Several commenters indicated that vessel AMS needed to be programmed to allow for the ocean carrier to update certain data elements even if the ocean carrier had not initiated the data transmission. In addition, requests were made to allow for a single transmission of individual bills of lading to Customs.

Customs Response: The AMS program does not allow parties to change, add or delete manifest information on a transaction they have not initiated. Ocean carriers, NVOCCs and slot charterers need to communicate and provide lading information to the responsible parties in order to eliminate the possibilities that either cargo is laden on board without being properly manifested, or without appropriate changes being made to the bills of lading. The vessel AMS program was not designed to allow for the transmission of individual bills of lading, and such transmissions must be sent by batch. This matter is under review for inclusion in the ACE program.

Comment: Several commenters requested clarification of the procedures upon vessel arrival in the first U.S. port relating to manifest filing, and time frames for submitting to Customs a permit to unlade on Customs Form (CF) 3171.

Customs Response: Vessel carriers must submit their CF 3171s 48 hours prior to arrival in the United States. Except for participants in the vessel paperless manifest test, vessel carriers, NVOCCs and slot charterers are required to submit manifests for empty containers on board to U.S. Customs 24 hours prior to arrival in the United States.

Comment: Some commenters requested clarification on the process by which vessel carriers and NVOCCs, who were not automated, would present their paper manifests to Customs for both CSI and non-CSI ports. Clarification was also requested on the process for submitting manifest information to Customs during computer down times and when unsuccessful transmissions occurred.

Customs Response: In presenting paper cargo declaration information to Customs at a CSI port, the authorized representative for the vessel carrier is required to submit directly to U.S. Customs officials at a designated site for that CSI port. The exact procedures for this process will vary from country to country based on various agreements signed under the CSI program. Each CSI location will determine the process based on these agreements. The U.S. Customs Service will provide detailed information to the trade community upon completion of signed agreements in each of the CSI locations.

For those vessel carriers presenting paper cargo declaration information to Customs at non-CSI ports, the companies are responsible for ensuring that their cargo declaration information is provided to Customs in the United States 24 hours prior to lading at the foreign port. Facsimiles and non-AMS electronic messages sent directly to Customs are not authorized. Non-automated vessel carriers may either enlist the automated services of a Vessel Agent, Service Provider, local Port Authority, or a business partner in the U.S. The domestic party in receipt would deliver the cargo declaration information directly to Customs. Paper cargo declaration information must be presented to each intended U.S. port of arrival 24 hours prior to lading at a foreign port. However, due to the fact that the non-automated vessel carrier has elected to submit paper cargo declaration information directly to Customs in the United States, the non-automated carrier is responsible for ensuring that complete cargo

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declaration information for each port of call in the United States (via the paper procedure outlined in the paragraph below) is submitted to each Customs location for review 24 hours prior to lading at the foreign port. Failure to do so could result in penalties or denial of unlading privileges.

In presenting cargo declaration information to Customs, a non-automated vessel carrier may utilize an automated domestic Vessel Agent, Service Provider, or Port Authority; or the non-automated carrier may utilize either an automated or non-automated business partner. Where the carrier utilizes an automated party to present cargo declaration information electronically to Customs, notification of holds will be conducted via the vessel AMS program. However, if a non-automated vessel carrier chooses to submit its information via a domestic representative using paper, Customs will notify the local U.S. representative of any holds. This notification will be indicated on a document that the local representative may pick up at the Customs port offices. It will be the local U.S. representative's responsibility either to provide necessary information to the ocean carrier or to provide a copy of relevant documentation to the foreign entity who in turn must provide a copy to the ocean carrier. Port directors in local ports will provide the details on the location for submitting paper cargo declaration information and the location and time that the notification document can be obtained.

In presenting cargo declaration information to Customs, non-automated NVOCCs may utilize an automated Service Provider, Vessel Agent, or Port Authority; however, a non-automated NVOCC may not utilize a non-automated business partner. U.S. Customs will not accept paper cargo declaration information from any automated party, which has originated from a non-automated NVOCC.

With reference to unsuccessful transmissions through the vessel AMS program, Customs conducts testing programs with the participants prior to their going on-line to ensure that their computers are both sending and receiving accurate messages. Customs will not allow a company to go on-line if they have not successfully completed this testing program.

The down time issues that have been raised are outlined in current Customs Directive 3240–075, Vessel Automated Manifest System, that is available to the trade community. Current acceptable down time is 2 hours; however, it is within the port director's discretion to allow more than the recommended 2 hours if circumstances warrant. Carriers whose systems are down for extended periods of time should notify their assigned client representative and refer to the procedures outlined in the directive on how to submit paper cargo declaration information to Customs.

Comment: Various commenters asked that Customs authorize exemptions for submission of any data elements which were viewed as being out of the control of an NVOCC.

Customs Response: The vessel AMS program will not accept an absence of data elements. If all required information is not entered, the vessel AMS program will send a rejection message to the transmitting party. We note that there are slot charterers who are automated and who have been consistently operating without any difficulty. Vessel carriers, NVOCCs and slot charterers must have procedures in place so that if containers have been manifested by an NVOCC or a slot charterer and subsequently are not laden, the vessel carrier must notify the NVOCC or slot charterer in order that they may amend their manifests to show corrected information.

Comment: Some commenters inquired as to how Customs would know when goods had been laden since the lading process was one that occurred over a period of time.

Customs Response: Customs considered requiring an additional data element for carriers to indicate the estimated time of lading. It was determined that such a requirement would be an additional burden to the carriers, and potentially unnecessary. Carriers understand the logistics of their business, and Customs will rely on them to provide the required information 24 hours prior to lading. Indeed, they have every incentive to do so—in addition to penalties, any carrier that begins the lading process without providing manifest information 24 hours before will be required to remove any containers that are identified for examination and which have already been laden.

Comment: Several commenters asked about the procedures needed to identify the initial manifest transmission to Customs and when amendment transmissions were made to the manifest.

Customs Response: The vessel AMS program has a transaction screen that allows the inspector to view all postings against each bill of lading. This means that each time a bill of lading is changed, added or deleted, Customs receives these transactions.

Comment: A few commenters requested clarification on how the ocean carrier would determine if an automated NVOCC had submitted manifest information directly to Customs.

Customs Response: Vessel AMS has a field identified as the Second Notify Party. The Second Notify Party lets the vessel carrier know when a bill is on file, and gives the vessel carrier the hold messages as well as all associated releases. Although this has not been a mandatory field in the past, Customs will now require this field to be completed by all automated NVOCCs and slot charterers.

Comment: It was asserted that if a hold notification were not sent to the carrier at the port of loading but rather to an NVOCC located in a different time zone from the carrier, it would affect being able to respond rapidly to requests from Customs. It was observed that different time zones could cause confusion as to when the 24 hour period had expired.

Customs Response: Carriers and NVOCCs will have to establish lines of communication for such circumstances. Customs will send notifications of a bill of lading on file to the party that provided the information to Customs in vessel AMS. The bill on file with Customs has a date and time stamp in vessel AMS, using Eastern Standard Time. Additionally, utilization of the Second Notify Party function in vessel AMS will allow for provision of additional information to the vessel carrier when an automated NVOCC or slot charterer receives hold messages on containers.

Load/No Load Messages to the Carriers

Comment: Several commenters requested that carriers be given confirmation for every container or shipment that Customs approved for lading. Some commenters inquired as to whether an absence of notification to carriers by Customs would serve as an authorization for lading. Other commenters requested that carriers be allowed to begin lading after a specified period of time, but prior to the expiration of the 24 hour period.

Customs Response: Customs agrees in principle with the notion of providing electronic confirmation messages to carriers which would authorize the lading of containers. However, the necessary programming cannot be accomplished before the regulations are implemented. Research will be undertaken to determine whether this capability in the vessel AMS program is feasible.

Until the completion of work in vessel AMS allowing confirmation messages, Customs will not allow lading prior to expiration of the 24 hour period and will utilize the current operating procedures under which filers receive hold messages only.

Business Practice Issues

Comment: Numerous commenters questioned the viability of obtaining detailed manifest information 24 hours prior to loading of cargo on board a vessel. In this respect, some commenters expressed concern over the impact of the requirement on the efficiency of their commercial operations, while other commenters focused more on the financial impact of the 24 hour requirement on their operations.

A major concern was that movement of cargo would be disrupted and/or delayed due to the detailed level of manifest information required because the information may not readily be available before cargo is loaded onto a vessel. It was feared that the new requirements could cause cargo to miss sailing dates and remain at docks which did not have adequate security or space available to store containers.

The issue concerning financial impact involved changing business practices such as: Routing of vessels, work practices, personnel increases, automation costs including the cost of acquiring a bond, and the leasing of storage facilities.

Customs Response: With regard to the concern that the proposed rule may adversely affect the efficiency of international shipping operations, Customs recognizes this legitimate concern and has taken at least three steps to address it in the development of the CSI and this rulemaking. First, it is important to note that it is the information about the contents of a shipping container, not the container itself, that must be presented to Customs 24 hours prior to lading at a foreign seaport. Under this rule, so long as the required information is provided to Customs 24 hours in advance of lading, the container itself may be brought to the seaport at a later time. Second, the development of this rule and the CSI have been designed to take advantage of the existing shipping cycle. In most foreign seaports, containers destined for the United States are often stored at terminals for several hours or several days before lading. This provides ample opportunity for Customs and its foreign CSI partners to identify and screen potentially high-risk containers within the normal shipping cycle and without causing any unnecessary delays. Third, as noted above, by screening potentially high-risk containers at foreign seaports during the normal shipping cycle, Customs should be able to significantly expedite the movement of containers upon arrival in the United States. This should not only reduce delays associated with targeting and screening containers upon arrival in the United States, it should also add greater predictability to the movement of containers through domestic seaports.

Customs recognizes that some changes to business practices may be required in order to transmit the manifest data required under this rule. For example, although much, if not all, of the data required by Customs is available prior to lading because it is derived from information in the possession of carriers and NVOCCs or contained in the commercial documents generated prior to lading, Customs recognizes that businesses may not currently be configured to collect and transmit such information in compliance with the rule. This is one of the reasons that Customs has elected to phase-in enforcement of the rule over a 60 day period after the regulation goes into effect—to strike an appropriate balance between the needs of business and the need of the government to address the immediate threat that international terrorist organizations pose to the United States and the global economy.

Customs also recognizes that not all potential changes to supply chain or business practices can be anticipated in the promulgation of a proposed rule or in the comments it generates. Accordingly, Customs will carefully monitor the implementation of the rule and, as noted above, Treasury is inviting COAC to create a subcommittee to advise Customs on operational concerns arising from the implementation.

Comment: It was contended that requiring cargo manifest information to be submitted to Customs 24 hours before lading the cargo aboard the vessel at a foreign port would run counter to the "just in time" inventory practices in wide use today.

Customs Response: Customs is requiring transmissions of cargo declaration information 24 hours in advance. Customs is not requiring that the cargo be ready for inspection or that the cargo be at the dock. However, Customs recognizes that this final rule could cause vessel carriers to change the current practice of sometimes adding last minute loads to vessels, but only if such loads were not manifested 24 hours prior to their lading.

Nonetheless, as noted above, most cargo destined for the United States sits at the foreign port for several hours to several days before lading. This regulation will have no effect on that practice.

Comment: Numerous commenters requested generally that procedures required under the proposed rule be clarified. Many of these commenters addressed issues involving private contractual agreements between trade partners. Other matters where it was stated that further clarification was needed dealt with process and manifesting requirements of carriers, NVOCCs, involved ports, transshipment, and feeder vessels.

Customs Response: To the extent that trade partners may enter into private contractual agreements, Customs would have no involvement. Required information will include the data elements mentioned in the rulemaking along with the information that is required on the cargo declaration (CF 1302). These requirements apply at all foreign ports where an inward foreign vessel carrier lades cargo destined to the U.S., including FROB (Foreign Cargo Remaining On Board) which is not going to be unladen in the United States. The term "inward foreign carrier" applies to all vessels coming from foreign locations to the U.S. A vessel that transships cargo between foreign locations or a vessel that does not call on a U.S. port is not required to submit manifest information under this rulemaking.

The inward foreign vessel carrier that calls on many foreign ports before the U.S. will not have to re-transmit cargo declaration information already provided from previous foreign ports. Multiple original manifest transmissions can be submitted for the same carrier, vessel or voyage so long as AMS vessel arrival has not occurred. Carriers will only be required to transmit new cargo declaration information for each port of lading. Any NVOCCs and slot charterers, who are authorized to transmit manifest data in vessel AMS, will be subject to the same requirements as the vessel carrier to provide manifest information on cargo destined to the U.S., including FROB, as defined later in this document, at each foreign port of lading.

Lead Time

Comment: Several commenters asked about the time frame that would be given to implement the proposed rulemaking. There were two suggested time frames for implementing the advance manifest regulations that were mentioned repetitively by the commenters: one requested a lead time of six months, and the other requested one year to implement a phased-in approach.

Customs Response: This rulemaking responds to an urgent national security

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issue and must be implemented promptly. Customs must begin receiving advanced cargo declaration information to strengthen CSI and to reduce the risk of smuggling weapons of mass destruction and other contraband into the United States. As previously mentioned, however, in recognition of industry concerns, Customs has determined to delay full enforcement for a period of 60 days following the effective date of the new requirements. This, when taken together with the 30-day post publication period generally provided, will allow a total of 90 days from publication date to full enforcement.

Proposed Rule Will Result in Loss of U.S. Ports Business to Canadian Ports

Comment: A number of the commenters were concerned that they would lose business to Canadian ports due to the new regulations. They feared that cargo would initially go to Canada and then come to the U.S. via truck/rail to circumvent the regulations.

Customs Response: Customs has targeting personnel stationed at seaports in Canada and cooperation with Canadian authorities has been excellent. If either Customs administration suspected that goods were being routed in an attempt to evade scrutiny, those goods would be likely to be treated as high risk.

Requirements for "FROB" CARGO and NVOCCs

Comment: Several commenters questioned whether the new regulations would apply to FROB cargo (Foreign Cargo Remaining On Board). They also stated that carriers could refuse U.S. bound cargo once faced with the new requirements.

Customs Response: The definition of "FROB" cargo is cargo that is loaded in a foreign port and which is to be unloaded in another foreign port with an intervening vessel stop in one or more ports in the United States. Customs considers "FROB" cargo a security concern because although the cargo does not have a final destination in the U.S., the cargo is transiting the U.S. Currently, carriers must correctly report FROB cargo upon arrival in the United States. Under the new regulations, FROB cargo must be reported 24 hours in advance of loading.

Request That Carrier Be Exempt From Rule if Participant in C–TPAT

Comment: Several commenters that were participants in C–TPAT (the Customs-Trade Partnership Against Terrorism) requested that they either be exempted from the advance manifest regulations or that they be allowed to present cargo manifest information at some point before the vessel arrived in the United States, rather than before the vessel departed from the foreign country. It was further requested that there be maintained a "known shipper list" which could enable Customs to expedite cargo clearance. These commenters also sought the ability to make changes to manifest information without time constraints being imposed.

Customs Response: While C–TPAT participants will not be excluded from the advance reporting requirements, their participation will be taken into account during the targeting process.

A Denial/Delay in Granting Permit To Unlade Will Cause Port Congestion

Comment: A number of commenters, specifically Port Authorities, were concerned that if permits to unlade were denied the result could be congestion at U.S. ports.

Customs Response: Permits may be granted to unlade properly manifested merchandise on a vessel but denied for the remainder of the cargo for which manifest information has not been accurately and/or timely received by Customs. Thus, depending on the circumstances, only that portion of the cargo for which advance information is not provided may not be unladen. Moreover, if the advance information is not timely provided, the subject cargo should not be laden on the vessel. Therefore, there is no reason to conclude that this final rule will cause congestion at U.S. ports.

Time for Presenting Manifest Should Be When Vessel Departs or Later

Comment: Several commenters stated that the ability to submit their manifest at time of foreign departure or later would be more feasible.

Customs Response: The purpose of this rulemaking is to allow sufficient time for U.S. Customs to review and target cargo that may pose a threat to the U.S., specifically weapons of mass destruction, including nuclear and radiological materials and weapons, and to deny that cargo from being loaded on board vessels before they depart for the U.S. Having to interdict such cargo once it reaches our shores would simply be too late. Customs believes that the 24 hour period specified in the advance cargo declaration regulations is essential to achieving this goal.

Need for Risk Analysis Regarding Implementation of 24 Hour Rule

Comment: Some commenters suggested that Customs conduct a risk analysis before implementing the 24 hour rule.

Customs Response: As noted above, Customs has analyzed the risks that international terrorists pose to the United States and the global trading system. These risks are profound. This analysis led to the development of CSI and the promulgation of this 24 hour advance cargo declaration rule.

The 24 Hour Requirement Is Too Long for Short Voyages/Hauls

Comment: Several commenters indicated that 24 hours was too much time to ask for information in advance for voyages that were less than 24 hours in length.

Customs Response: Customs will not exempt short hauls from the regulation. Cargoes placed aboard vessels on short voyages pose the same potential risks as those laded aboard vessels on longer voyages. Customs recognizes that compliance with the regulations may require certain changes in business practices, as previously discussed, but these changes are necessary to protect the United States and global shipping.

Handling of Empty Containers Aboard Vessels

Comment: Several commenters asked whether the advance manifest regulations required that empty containers be manifested and whether, if so, information would have to be submitted to Customs 24 hours in advance. Additionally, it was stated in this connection that empty containers were used to complete stowage plans and were loaded at the last minute, depending on available space. It was stated that carriers would be faced with additional costs for the storage of empty containers if they did not make the voyage.

Customs Response: Carriers will not be required to submit information on empty containers 24 hours in advance of lading. For vessel AMS participants, information on empty containers must be submitted on a single bill of lading which lists all container numbers. For those carriers that present paper cargo declarations, empty containers must be listed on a single paper bill of lading with all container numbers listed. Submission of the empty container manifest information, whether paper or automated, will be due to U.S. Customs at least 24 hours prior to arrival in the United States, with the exception of those participants in the current vessel paperless manifest test, who must continue to file manifest information for empty containers 48 hours prior to arrival in the United States.

Correction of Manifest Information

Comment: Several commenters raised the question of whether they would be permitted to update information which was provided to Customs prior to lading while they were enroute to the United States.

Customs Response: The main goals of the advance cargo declaration information program are (1) to receive accurate information (2) prior to lading in a foreign port. Only in this way can Customs use all of its targeting tools to identify potentially high risk shipments and prevent them from being placed aboard vessels in the first place. Accurate information is essential if Customs is going to be successful in preventing terrorists from using sea carriers to transport instruments of terrorism to the United States. We recognize, however, that updated or different information may be provided to carriers after lading. As this information would assist in our efforts to assess the risks associated with those shipments, we would expect to be provided with such information, and will ensure that there are mechanisms to do so. It must be understood, however, that an acceptance of certain changes in information after foreign lading will not justify any initial submission which is not, to the best information and belief of the filer, true and complete at the time of submission. Indeed, Customs will not tolerate such practices.

Customs recognizes that to accommodate manifest updates and changes, amendments will be necessary to our regulations governing the filing of Manifest Discrepancy Reports. Such changes will be the subject of a separate **Federal Register** publication as soon as possible.

Comment: Several commenters inquired about manifest discrepancy reports. It was asked whether carriers would be able to rely on the shippers' declaration regarding the contents of sealed containers. In addition, confirmation was requested that carriers would not be subject to penalties for incorrect manifest information provided by shippers.

Customs Response: As indicated in the prior response, Customs will be providing new rules for manifest discrepancy reports. A Notice of Proposed Rulemaking covering that matter will be published in the **Federal Register.** Until such time, carriers must continue to follow the current regulations concerning manifest discrepancy reports. This includes the guidelines for carriers using the shipper's declaration on sealed containers. Customs will not allow the manifest discrepancy report to be utilized in lieu of the provision of accurate and complete manifest information under the 24 hour rule.

Regulatory Flexibility Act; Executive Order 12866

Comment: Three commenters contended that the proposed advance manifest regulations would have a significant economic impact on a substantial number of small businesses, specifically non-vessel operating common carriers (NVOCCs), under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), and thus should be subject to the preparation of a regulatory flexibility analysis as provided under the RFA. Two of these commenters also asserted in this context that the proposed rule constituted a "significant regulatory action" under E.O. 12866.

Customs Response: Customs is requiring advance manifest information in order to improve security at our nation's seaports and to more effectively enforce against all types of smuggling through our nation's borders. The information that Customs is collecting pursuant to this rulemaking is a necessary part of accomplishing these goals. Because the information being requested is information to which the master of the vessel should already have access, there is no indication that providing the additional information on the Customs Form (CF) 1302 to Customs 24 hours in advance of lading at the foreign port would result in a significant economic impact on a substantial number of small businesses.

Moreover, Customs has given the option to any small businesses involved in providing this information of providing the advance manifest information in paper form, rather than electronically, for those businesses that are not yet automated. Likewise, for those businesses that are automated, the advanced electronic filing would ultimately reduce filing costs because of the ability to submit the information electronically directly to Customs. Further, Customs has allowed for a delay of implementation of the new regulations in order to allow time for businesses to adjust to the new filing requirements.

Finally, none of the commenters has submitted evidence to Customs demonstrating the way in which these regulations would have a significant economic impact on small businesses. As such, Customs stands by its initial certification that a regulatory flexibility analysis pursuant to the Regulatory Flexibility Act is not applicable here.

Additionally, whether the Regulatory Flexibility Act applies to certain entities in a rulemaking turns on whether such entities are the "targets" of the rulemaking. To this end, the advance cargo manifest regulations that are the subject of this rulemaking are based upon 19 U.S.C. 1431. In pertinent part, 19 U.S.C. 1431(b) requires the master of a vessel (that is, the vessel carrier) to provide vessel cargo manifest information to Customs. It is thus the vessel carriers themselves to which these regulations are directed, and carriers are ultimately responsible under these regulations for providing mandatory cargo manifest information to Customs.

There is no requirement that NVOCCs participate in these advance manifest regulations; rather, Customs is merely affording NVOCCs the option under these regulations to provide cargo manifest data directly to Customs on behalf of the vessel carrier in order to protect what the NVOCC believes to be confidential business information. If NVOCCs do not wish to participate in the filing of advance cargo manifest information with Customs, the NVOCCs may properly elect to provide such information to the vessel carriers directly, for it is the vessel carriers, as emphasized above, that are obligated under these regulations to furnish this information to Customs. At most, therefore, the NVOCCs referenced in this rule are only indirectly affected by the subject regulations due to the nature of their business relationship with the vessel carriers.

In sum, no specific evidence was submitted by commenters establishing that there are a substantial number of small entities that are "targets" of the rulemaking.

Because Customs recognizes there will be costs involved in businesses changing their practices to comply with these national security-driven regulations, Customs will phase-in full implementation of this advance manifest rule over a period of 90 days. Specifically, these regulations will not be effective until 30 days after the date of publication of this final rule in the **Federal Register.** In addition, Customs will not initiate any enforcement actions such as assessing penalties for non-fraudulent violations of these regulations until 60 days after the effective date of this final rule. This phased-in implementation regime should reduce and minimize costs involved in complying with the new regulations.

Accordingly, the certification set forth in the proposed rule relating to the inapplicability of the Regulatory Flexibility Act in this case is revised in

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this final rule to reflect the foregoing considerations.

Also, we do not believe that this national security-related rule constitutes a "significant regulatory action" under E.O. 12866.

Paperwork Burden

Comment: Several commenters stated that the accuracy of the agency's estimate of the information collection burden published in the proposed rule was vastly understated. It was stated that the numbers did not take into consideration the added time and paperwork, even in an automated environment, that will be required by the need for earlier information as supply chain documentation requirements will need to be overhauled.

Customs Response: Customs agrees with the commenters that the estimate of the information collection burden published in the notice of proposed rulemaking is understated and, accordingly, is upwardly adjusting the estimate of the burden.

Customs notes that the adjustment it is making to the estimated burden hours is not entirely due to the requirement to provide manifest information 24 hours prior to lading. Based upon the comments, Customs reviewed the previously approved information collection burden for preparing the vessel manifest and concluded that those numbers needed an upward adjustment. Accordingly, the upward adjustment stated in this document reflects both an adjustment due to this rule and an adjustment to the numbers that existed for the previous long-standing manifesting requirement.

Regarding any increase in burden due to overhaul of supply chain documentation requirements, Customs agrees that the number of hours spent collecting information may initially be high while business practices are adjusting. Eventually, however, Customs expects that the burden will decrease as the supply chain gets used to the new way of doing business.

Adoption of Proposal

In view of the foregoing, and following careful consideration of the comments received and further review of the matter, Customs has concluded that the proposed regulations with the modifications discussed above should be adopted as a final rule.

Regulatory Flexibility Act and Executive Order 12866

As stated in Customs response above, Customs is requiring advance manifest information in order to improve security at our nation's seaports and to more effectively enforce against all types of smuggling through our nation's borders. The information that Customs is collecting pursuant to this rulemaking is a necessary part of accomplishing these goals. Because the information being requested is information to which the master of the vessel should already have access, there is no indication that providing the additional information on the Customs Form (CF) 1302 to Customs 24 hours in advance of lading at the foreign port would result in a significant economic impact on a substantial number of small businesses.

Moreover, Customs has given the option to any small businesses involved in providing this information of providing the advance manifest information in paper form, rather than electronically, for those businesses that are not yet automated. Likewise, for those businesses that are automated, the advanced electronic filing would ultimately reduce filing costs because of the ability to submit the information electronically directly to Customs. Further, Customs has allowed for a delay of implementation of the new regulations in order to allow time for businesses to adjust to the new filing requirements.

Finally, none of the commenters has submitted evidence to Customs demonstrating the way in which these regulations would have a significant economic impact on small businesses. As such, Customs stands by its initial certification that a regulatory flexibility analysis pursuant to the Regulatory Flexibility Act is not applicable here.

The advance presentation to Customs of vessel manifest information for cargo destined for the United States as prescribed in this final rule is intended to expedite the release of incoming cargo while, at the same time, ensuring maritime safety and protecting national security. To this end, it is the vessel carriers themselves, which are mostly very large concerns, to which these regulations are targeted and that are ultimately responsible under these regulations for providing mandatory cargo manifest information to Customs.

By contrast, regarding non-vessel operating common carriers (NVOCCs), many of which are asserted to be small businesses, there is no requirement whatever that these entities participate in these advance manifest regulations; rather, Customs is merely affording NVOCCs the option under these regulations of providing cargo manifest data directly to Customs on behalf of the vessel carrier in order to protect what the NVOCC believes to be confidential business information. At best, therefore, the NVOCCs referenced in this rule are only indirectly affected by the subject regulations due to the nature of their business relationship with the vessel carriers. Hence, if NVOCCs do not wish to participate in the filing of advance cargo manifest information with Customs, the NVOCCs may properly elect to provide such information to the vessel carriers directly, for it is the vessel carriers, as emphasized above, that are obligated under these regulations to furnish this information to Customs.

Given the above reasons, pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that these final regulations do not have a significant economic impact on a substantial number of small entities. Accordingly, these amendments are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604. Nor do they meet the criteria for a "significant regulatory action" as specified in E.O. 12866.

Paperwork Reduction Act

The collection of information in this final rule document was submitted for review and has been approved by the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1515–0001 (Transportation Manifest (Cargo Declaration)). An agency may not conduct, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by OMB.

The collection of information in this final rule document is contained in § 4.7a(c)(4). This information is required and will be used to deter smuggling by determining the security conditions under which cargo was maintained prior to and following its delivery for lading aboard a vessel for shipment to the United States. The likely respondents and/or recordkeepers are business or other for-profit institutions. The estimated average annual burden associated with this information collection is 49.8 hours per respondent or recordkeeper.

Comments on the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Office of Management and Budget, Attention: Desk Officer of the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503. A copy should also be sent to the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

Part 178, Customs Regulations (19 CFR part 178), containing the list of approved information collections, is revised to reflect this additional information collection.

List of Subjects

19 CFR Part 4

Administrative practice and procedure, Arrival, Cargo vessels, Customs duties and inspection, Declarations, Entry, Freight, Harbors, Hazardous substances, Imports, Inspection, Landing, Maritime carriers, Merchandise, Reporting and recordkeeping requirements, Shipping, Vessels.

19 CFR Part 113

Bonds, Customs duties and inspection, Exports, Foreign commerce and trade statistics, Freight, Imports, Reporting and recordkeeping requirements.

19 CFR Part 178

Administrative practice and procedure, Collections of information, Imports, Paperwork requirements, Reporting and recordkeeping requirements.

Amendments to the Regulations

Parts 4, 113 and 178, Customs Regulations (19 CFR parts 4, 113 and 178), are amended as set forth below:

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

1. The general authority citation for part 4 and the relevant specific authority citations continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1431, 1433, 1434, 1624; 46 U.S.C. App. 3, 91;

* * * * *

Section 4.7 also issued under 19 U.S.C. 1581(a); 46 U.S.C. App. 883a, 883b;

Section 4.7a also issued under 19 U.S.C. 1498, 1584;

Section 4.8 also issued under 19 U.S.C. 1448, 1486;

* * * * *

Section 4.30 also issued under 19 U.S.C. 288, 1446, 1448, 1450–1454, 1490;

* * * * *

2. Section 4.7 is amended by revising its section heading; by redesignating the existing text of paragraph (b) as paragraph (b)(1) and revising the first sentence of newly redesignated paragraph (b)(1); and by adding new paragraphs (b)(2), (b)(3), (b)(4) and (e) to read as follows:

§ 4.7 Inward foreign manifest; production on demand; contents and form; advance filing of cargo declaration.

* * * * *

(b)(1) In addition to any Cargo Declaration that has been filed in advance as prescribed in paragraph (b)(2) of this section, the original and one copy of the manifest must be ready for production on demand. * * *

(2) For any vessel subject to paragraph (a) of this section, except for any vessel exclusively carrying bulk or break bulk cargo as prescribed in paragraph (b)(4) of this section, Customs must receive from the carrier the vessel's Cargo Declaration, Customs Form 1302, or a Customs-approved electronic equivalent, 24 hours before such cargo is laden aboard the vessel at the foreign port (see § 4.30(n)(1)). Participants in the Vessel Automated Manifest System (AMS) are required to provide the vessel's cargo declaration electronically.

(3)(i) Where a non-vessel operating common carrier (NVOCC), as defined in paragraph (b)(3)(ii) of this section, delivers cargo to the vessel carrier for lading aboard the vessel at the foreign port, the NVOCC, if licensed by or registered with the Federal Maritime Commission and in possession of an International Carrier Bond containing the provisions of § 113.64 of this chapter, may electronically transmit the corresponding required cargo manifest information directly to Customs through the Vessel Automated Manifest System (AMS) 24 or more hours before the related cargo is laden aboard the vessel at the foreign port (see § 113.64(c) of this chapter); in the alternative, the NVOCC must fully disclose and present the required manifest information for the related cargo to the vessel carrier which, if automated, is required to present this information to Customs via the vessel AMS system.

(ii) A non-vessel operating common carrier (NVOCC) means a common carrier that does not operate the vessels by which the ocean transportation is provided, and is a shipper in its relationship with an ocean common carrier. The term "non-vessel operating common carrier" does not include freight forwarders as defined in part 112 of this chapter.

(4) Carriers of bulk cargo as specified in paragraph (b)(4)(i) of this section and carriers of break bulk cargo to the extent provided in paragraph (b)(4)(ii) of this section are exempt with respect to that cargo from the requirement set forth in paragraph (b)(2) of this section that a cargo declaration be filed with Customs 24 hours before such cargo is laden aboard the vessel at the foreign port. Any carriers of bulk or break bulk cargo that are exempted from the filing requirement of paragraph (b)(2) of this section must present their cargo declarations to Customs 24 hours prior to arrival in the U.S. if they are participants in the vessel AMS program, or upon arrival if they are non-automated carriers. These carriers must still report 24 hours in advance of loading any containerized or non-qualifying break bulk cargo they will be transporting.

(i) A carrier is exempt from the filing requirement of paragraph (b)(2) of this section with respect to the bulk cargo it is transporting. Bulk cargo is defined for purposes of this section as homogeneous cargo that is stowed loose in the hold and is not enclosed in any container such as a box, bale, bag, cask, or the like. Such cargo is also described as bulk freight. Specifically, bulk cargo is composed of either:

(A) Free flowing articles such as oil, grain, coal, ore, and the like, which can be pumped or run through a chute or handled by dumping; or

(B) Articles that require mechanical handling such as bricks, pig iron, lumber, steel beams, and the like.

(ii) A carrier of break bulk cargo may apply for an exemption from the filing requirement of paragraph (b)(2) of this section with respect to the break bulk cargo it will be transporting. For purposes of this section, break bulk cargo is cargo that is not containerized, but which is otherwise packaged or bundled.

(A) To apply for an exemption, the carrier must submit a written request for exemption to the U.S. Customs Service, National Targeting Center, 1300 Pennsylvania Ave., NW., Washington, DC 20229. Until an application for an exemption is granted, the carrier must comply with the 24 hour advance manifest requirement set out in paragraph (b)(2) of this section. The written request for exemption must clearly set forth information such that Customs may assess whether any security concerns exist, such as: The carrier's IRS number; the source, identity and means of the packaging or bundling of the commodities being shipped; the ports of call, both foreign and domestic; the number of vessels the carrier uses to transport break bulk cargo, along with the names of these vessels and their International Maritime Organization numbers; and the list of the carrier's importers and shippers, identifying any who are members of C–TPAT (The Customs-Trade Partnership Against Terrorism).

(B) Customs will evaluate each application for an exemption on a case by case basis. If Customs, by written

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response, provides an exemption to a break bulk carrier, the exemption is only applicable under the circumstances clearly set forth in the application for exemption. If circumstances set forth in the approved application change, it will be necessary to submit a new application.

(C) Customs may rescind an exemption granted to a carrier at any time.

* * * * *

(e) *Failure to provide manifest information; penalties/liquidated damages.* Any master who fails to provide manifest information as required by this section, or who presents or transmits electronically any document required by this section that is forged, altered or false, or who fails to present or transmit the information required by this section in a timely manner, may be liable for civil penalties as provided under 19 U.S.C. 1436, in addition to penalties applicable under other provisions of law. In addition, if any non-vessel operating common carrier (NVOCC) as defined in paragraph (b)(3)(ii) of this section elects to transmit cargo manifest information to Customs electronically and fails to do so in the manner and in the time period required by paragraph (b)(3)(i) of this section, or electronically transmits any false, forged or altered document, paper, manifest or data to Customs, such NVOCC may be liable for the payment of liquidated damages as provided in § 113.64(c) of this chapter, in addition to any other penalties applicable under other provisions of law.

3. Section § 4.7a is amended by revising the first sentence of paragraph (c)(1), and by adding new paragraphs (c)(4) and (f) to read as follows:

§ 4.7a Inward manifest; information required; alternative forms.

* * * * *

(c) *Cargo Declaration.* (1) The Cargo Declaration (Customs Form 1302 or a Customs-approved electronic equivalent) must list all the inward foreign cargo on board the vessel regardless of the U.S. port of discharge, and must separately list any other foreign cargo remaining on board ("FROB"). For the purposes of this part, "FROB" means cargo which is laden in a foreign port, is intended for discharge in a foreign port, and remains aboard a vessel during either direct or indirect stops at one or more intervening United States ports. * * *

* * * * *

(4) In addition to the cargo manifest information required in paragraphs (c)(1)–(c)(3) of this section, for all inward foreign cargo, the Cargo Declaration, either on Customs Form 1302, or on a separate sheet or Customs-approved electronic equivalent, must state the following:

(i) The last foreign port before the vessel departs for the United States;

(ii) The carrier SCAC code (the unique Standard Carrier Alpha Code assigned for each carrier; see paragraph (c)(2)(iii) of this section);

(iii) The carrier-assigned voyage number;

(iv) The date the vessel is scheduled to arrive at the first U.S. port in Customs territory;

(v) The numbers and quantities from the carrier's ocean bills of lading, either master or house, as applicable (this means that the carrier must transmit the quantity of the lowest external packaging unit; containers and pallets are not acceptable manifested quantities; for example, a container containing 10 pallets with 200 cartons should be manifested as 200 cartons);

(vi) The first foreign port where the carrier takes possession of the cargo destined to the United States;

(vii) A precise description (or the Harmonized Tariff Schedule (HTS) numbers to the 6-digit level under which the cargo is classified if that information is received from the shipper) and weight of the cargo or, for a sealed container, the shipper's declared description and weight of the cargo. Generic descriptions, specifically those such as "FAK" ("freight of all kinds"), "general cargo", and "STC" ("said to contain") are not acceptable;

(viii) The shipper's complete name and address, or identification number, from all bills of lading. (The identification number will be a unique number assigned by U.S. Customs upon the implementation of the Automated Commercial Environment);

(ix) The complete name and address of the consignee or the owner or owner's representative, or identification number, from all bills of lading. (The identification number will be a unique number assigned by U.S. Customs upon implementation of the Automated Commercial Environment);

(x) The vessel name, country of documentation, and official vessel number. (The vessel number is the International Maritime Organization number assigned to the vessel);

(xi) The foreign port where the cargo is laden on board;

(xii) Internationally recognized hazardous material code when such materials are being shipped;

(xiii) Container numbers (for containerized shipments); and

(xiv) The seal numbers for all seals affixed to containers.

* * * * *

(f) *Failure to provide manifest information; penalties/liquidated damages.* Any master who fails to provide manifest information as required by this section, or who presents or transmits electronically any document required by this section that is forged, altered or false, may be liable for civil penalties as provided under 19 U.S.C. 1436, in addition to penalties applicable under other provisions of law. In addition, if any non-vessel operating common carrier (NVOCC) as defined in § 4.7(b)(3)(ii) elects to transmit cargo manifest information to Customs electronically, and fails to do so as required by this section, or transmits electronically any document required by this section that is forged, altered or false, such NVOCC may be liable for liquidated damages as provided in § 113.64(c) of this chapter, in addition to other penalties applicable under other provisions of law.

4. Section 4.8 is amended by revising the second and third sentences of paragraph (b) to read as follows:

§ 4.8 Preliminary entry.

* * * * *

(b) *Requirements and conditions.* * * * The granting of preliminary vessel entry by Customs at or subsequent to arrival of the vessel, is conditioned upon the presentation to and acceptance by Customs of all forms, electronically or otherwise, comprising a complete manifest as provided in § 4.7, except that the Cargo Declaration, Customs Form (CF) 1302, must be presented to Customs electronically in the manner provided in § 4.7(b)(2). Vessels seeking preliminary entry in advance of arrival must do so: By presenting to Customs the electronic equivalent of a complete Customs Form 1302 (Cargo Declaration), in the manner provided in § 4.7(b), showing all cargo on board the vessel; and by presenting Customs Form 3171 electronically no less than 48 hours prior to vessel arrival. * * *

* * * * *

5. Section 4.30 is amended by adding a new paragraph (n) to read as follows:

§ 4.30 Permits and special licenses for unlading and lading.

* * * * *

(n)(1) Customs will not issue a permit to unlade before it has received the cargo declaration information pursuant to § 4.7(b). In cases in which Customs does not receive complete cargo manifest information from the carrier or from the NVOCC, in the manner and format required by § 4.7(b), 24 hours prior to the lading of the cargo aboard the vessel at the foreign port, Customs may delay issuance of a permit to unlade the entire vessel until all required information is received. Customs may also decline to issue a permit to unlade the specific cargo for which a declaration is not received 24 hours before lading in a foreign port. Furthermore, where the carrier does not present an advance cargo manifest to Customs electronically, in the manner provided in § 4.7(b)(2), preliminary entry pursuant to § 4.8(b) will be denied.

(2) In addition, while the advance presentation of the cargo manifest for any vessel subject to § 4.7(b)(2) may be made in paper form or by electronic transmission through a Customs-approved electronic data interchange system, the submission of an electronic manifest for the cargo in this regard, as opposed to a paper manifest, will further facilitate the prompt issuance of a permit to unlade the cargo.

PART 113—CUSTOMS BONDS

1. The general authority citation for part 113 continues to read as follows:

Authority: 19 U.S.C. 66, 1623, 1624.

2. Section 113.64 is amended by revising the first sentence of paragraph (a); and by redesignating paragraphs (c), (d), (e) and (f) as paragraphs (d), (e), (f) and (g), respectively, and adding a new paragraph (c) to read as follows:

§ 113.64 International carrier bond conditions.

(a) *Agreement to Pay Penalties, Duties, Taxes, and Other Charges.* If any vessel, vehicle, or aircraft, or any master, owner, or person in charge of a vessel, vehicle or aircraft, or any non-vessel operating common carrier as defined in § 4.7(b)(3)(ii) of this chapter incurs a penalty, duty, tax or other charge provided by law or regulation, the obligors (principal and surety, jointly and severally) agree to pay the sum upon demand by Customs. * * *

* * * * *

(c) *Non-vessel operating common carrier (NVOCC).* If a non-vessel operating common carrier (NVOCC) as defined in § 4.7(b)(3)(ii) of this chapter elects to provide vessel cargo manifest information to Customs electronically, the NVOCC, as a principal under this bond, in addition to compliance with the other provisions of this bond, also agrees to provide such manifest information to Customs in the manner and in the time period required by §§ 4.7(b) and 4.7a(c) of this chapter. If the NVOCC, as principal, defaults with regard to these obligations, the principal and surety (jointly and severally) agree to pay liquidated damages of $5,000 for each regulation violated.

* * * * *

PART 178—APPROVAL OF INFORMATION COLLECTION REQUIREMENTS

1. The authority citation for part 178 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 1624; 44 U.S.C. 3501 *et seq.*

2. Section 178.2 is amended by adding a new listing in the table in appropriate numerical order to read as follows:

19 CFR section	Description	OMB control No.
• • •	• • •	• • •
§ 4.7a(c)(4) ..	Transportation manifest (cargo declaration).	1515–0001
• • •	• • •	• • •

Robert C. Bonner,
Commissioner of Customs.
Aproved: October 25, 2002.
Timothy E. Skud,
Deputy Assistant Secretary of the Treasury.
[FR Doc. 02–27661 Filed 10–30–02; 8:45 am]
BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 12

[T.D. 02–56]

RIN 1515–AD17

Extension of Import Restrictions Imposed on Archaeological Material From Guatemala; Correction

AGENCY: Customs Service, Treasury.

ACTION: Final rule; correction.

SUMMARY: This document contains corrections to the final rule document (T.D. 02–56) that was published in the **Federal Register** on September 30, 2002, concerning the extension of import restrictions on certain archaeological material from Guatemala. This document corrects two erroneous references to Mali in the final rule document.

EFFECTIVE DATE: September 29, 2002.

FOR FURTHER INFORMATION CONTACT: (Regulatory Aspects) Joseph Howard, Intellectual Property Rights Branch (202) 572–8701; (Operational Aspects) Al Morawski, Trade Operations (202) 927–0402.

SUPPLEMENTARY INFORMATION:

Background

A final rule document published as T.D. 02–56 in the **Federal Register** (67 FR 61259) on September 30, 2002, extended for a period of five years import restrictions that were already in place for certain archaeological material from Guatemala. The final rule amended § 12.104g(a) of the Customs Regulations (19 CFR 12.104g(a)).

In the "Summary" and "Background" sections of the final rule, references to the country "Mali" erroneously appeared. This document corrects those references to read "Guatemala."

Corrections

In rule FR Doc. 02–24895, published on September 30, 2002, make the following corrections:

1. On page 61259, in the second column, in the "Summary" section, remove the word "Mali" in the fourth sentence and add in its place the word "Guatemala."

2. On page 61259, in the third column, in the "Background" section, third paragraph, second sentence, remove the word "Mali" and add in its place the word "Guatemala."

Dated: October 25, 2002.

Harold M. Singer,
Chief, Regulations Branch.
[FR Doc. 02–27660 Filed 10–30–02; 8:45 am]
BILLING CODE 4820–02–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP San Diego 02–022]

RIN 2115–AA97

Safety Zone; Mission Bay, San Diego, CA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the navigable waters of Mission Bay in San Diego, CA, in support of the San Diego Fall Classic, a marine event consisting of 120 rowing shells racing on a marked course. This temporary safety zone is necessary to provide for

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the safety of the participants, crew, spectators, participating vessels and other vessels and users of the waterway. Persons and vessels are prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port, or his designated representative.

DATES: This rule is effective from 6 a.m. (PST) to 12 p.m. (PST) on November 10, 2002.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket [COTP San Diego 02–022] and are available for inspection or copying at Marine Safety Office San Diego, 2716 North Harbor Drive, San Diego, CA 92101–1064 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Petty Officer Austin Murai, USCG, c/o U.S. Coast Guard Captain of the Port, at (619) 683–6495.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a NPRM. Final approval and permitting of this event were not issued in time to engage in full notice and comment rulemaking. Publishing a NPRM and delaying the effective date would be contrary to the public interest since the event would occur before the rulemaking process was complete.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. In addition to the reasons stated above, it would be contrary to the public interest not to publish this rule because the event has been permitted and participants and the public require protection.

Background and Purpose

The San Diego Rowing Club is sponsoring the San Diego Fall Classic, which is held in Mission Bay, San Diego, CA. This temporary safety zone is necessary to provide for the safety of the crews, spectators, and participants of the San Diego Fall Classic and is also necessary to protect other vessels and users of the waterway.

Discussion of Rule

This event begins at the south end of Fiesta Island, proceeds north to Radar Island, south to Vacation Island, and proceeds north to El Carmel Point. The safety zone consists of the navigable waters extending 50 yards to either side of the course line, defined more specifically as follows: Starting at a point 32°46′00″ N; 117°13′00″ W, then northwest to 32°46′10″ N, 117°13′45″ W, then north to 32°47′00″ N, 117°13′30″ W, then south to 32°46′15″ N, 117°14′00″ W, then northwest to 32°46′48″ N, 117°14′40″ W. All coordinates are North American Datum 1983.

The Coast Guard proposes to establish one (1) safety zone that will be enforced from 6 a.m. (PST) to 12 p.m. (PST) on November 10, 2002. This safety zone is necessary to provide for the safety of the crews, spectators, and participants of the San Diego Fall Classic and to protect other vessels and users of the waterway. Persons and vessels will be prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port, or his designated representative.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT)(44 FR 11040, February 26, 1979). We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary because of its limited duration of six (6) hours and the limited geographic scope of the safety zone.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This safety zone would not have a significant economic impact on a substantial number of small entities because this safety zone is limited in scope and duration (in effect for only six (6) hours on November 10, 2002). In addition the Coast Guard will publish local notice to mariners (LNM) before the safety zone is enforced.

Assistance for Small Entities

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that Order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation because we are proposing to establish a safety zone. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

PART 165—[AMENDED]

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. Add new § 165.T11–034 to read as follows:

§ 165.T11–034 Safety Zone; Mission Bay, San Diego, CA.

(a) *Location.* The safety zone consists of the navigable waters extending 50 yards to either side of the course line, defined more specifically as follows: Starting at a point 32°46′00″ N, 117°13′00″ W, then northwest to 32°46′10″ N, 117°13′45″ W, then north to 32°47′00″ N, 117°13′30″ W, then south to 32°46′15″ N, 117°14′00″ W, then northwest to 32°46′48″ N, 117°14′40″ W. All coordinates are North American Datum 1983.

(b) *Effective dates.* This safety zone will be in effect from 6 a.m. (PST) to 12 p.m. (PST) on November 10, 2002. If the need for the safety zone ends before the scheduled termination time, the Captain of the Port will cease enforcement of this safety zone.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into, transit through, or anchoring within this zone by all vessels is prohibited, unless authorized by the Captain of the Port, or his designated representative. Mariners requesting permission to transit through the safety zone may request authorization to do so from the Patrol Commander (PATCOM). The Patrol Commander may be contacted via VHF–FM Channel 16.

Dated: October 4, 2002.

S. P. Metruck,

Commander, U.S. Coast Guard, Captain of the Port, San Diego.

[FR Doc. 02–27666 Filed 10–30–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD13–02–015]

RIN 2115–AA97

Security Zones; Protection of Tank Ships, Puget Sound, WA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: Increases in the Coast Guard's maritime security posture necessitate establishing temporary regulations for the safety or security of tank ships in the navigable waters of Puget Sound and adjacent waters, Washington. This security zone will provide for the regulation of vessel traffic in the vicinity of tank ships in the navigable waters of the United States.

DATES: This temporary rule is effective from October 15, 2002 until April 15, 2003.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket CGD 13–02–015 and are available for inspection or copying at Marine Safety Office Puget Sound, 1519 Alaskan Way South, Seattle, Washington 98134, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LT A. L. Praskovich, c/o Captain of the Port Puget Sound, 1519 Alaskan Way South, Seattle, WA 98134, (206) 217–6232.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B) and 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for not publishing an NPRM and for making this rule effective less than 30 days after publication in the **Federal Register**. Publishing a NPRM would be contrary to public interest since immediate action is necessary to safeguard tank ships from sabotage, other subversive acts, or accidents. If normal notice and comment procedures were followed, this rule would not become effective soon enough to provide immediate protection to tank ships from the threats posed by hostile entities and would compromise the vital national interest in protecting maritime transportation and commerce. The security zone in this regulation has been carefully designed to minimally impact the public while providing a reasonable level of protection for tank ships. For these reasons, following normal rulemaking procedures in this case would be impracticable, unnecessary, and contrary to the public interest.

Background and Purpose

Recent events highlight the fact that there are hostile entities operating with the intent to harm U.S. National Security. The President has continued the national emergencies he declared following the September 11, 2001 terrorist attacks (67 FR 58317 (Sept. 13, 2002) (continuing national emergency with respect to terrorist attacks), 67 FR 59447 (Sept. 20, 2002) (continuing national emergency with respect to persons who commit, threaten to commit or support terrorism)). The President also has found pursuant to

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law, including the Magnuson Act (50 U.S.C. 191 *et seq.*), that the security of the United States is and continues to be endangered following the attacks (E.O. 13,273, 67 FR 56215 (Sept. 3, 2002) (security endangered by disturbances in international relations of U.S and such disturbances continue to endanger such relations).

The Coast Guard, through this action, intends to assist tank ships by establishing a security zone to exclude persons and vessels from the immediate vicinity of all tank ships. Entry into this zone will be prohibited unless authorized by the Captain of the Port or his designee. The Captain of the Port may be assisted by other federal, state, or local agencies.

Discussion of Rule

This rule, for safety and security concerns, controls vessel movement in a regulated area surrounding tank ships. For the purpose of this regulation, a tank ship means a self-propelled tank vessel constructed or adapted primarily to carry oil or hazardous material in bulk as cargo or cargo residue in the cargo spaces. The definition of tank ship does not include tank barges. All vessels within 500 yards of tank ship shall operate at the minimum speed necessary to maintain a safe course, and shall proceed as directed by the official patrol. No vessel, except a public vessel (defined below), is allowed within 100 yards of a tank ship, unless authorized by the official patrol or tank ship master. Vessels requesting to pass within 100 yards of a tank ship shall contact the official patrol or tank ship master on VHF–FM channel 16 or 13. The official patrol or tank ship master may permit vessels that can only operate safely in a navigable channel to pass within 100 yards of a tank ship in order to ensure a safe passage in accordance with the Navigation Rules. Similarly, commercial vessels anchored in a designated anchorage area may be permitted to remain at anchor within 100 yards of passing tank ships. Public vessels for the purpose of this Temporary Final Rule are vessels owned, chartered, or operated by the United States, or by a State or political subdivision thereof.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Although this regulation restricts access to the regulated area, the affect of this regulation will not be significant because: (i) Individual tank ship security zones are limited in size; (ii) the official patrol or tank ship master may authorize access to the tank ship security zone; (iii) the tank ship security zone for any given transiting tank ship will affect a given geographical location for a limited time; and (iv) the Coast Guard will make notifications via maritime advisories so mariners can adjust their plans accordingly.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule may affect the following entities, some of which may be small entities: the owners or operators of vessels intending to operate near or anchor in the vicinity of tank ships in the navigable waters of the United States.

This temporary regulation will not have a significant economic impact on a substantial number of small entities for the following reasons: (i) Individual tank ship security zones are limited in size; (ii) the official patrol or tank ship master may authorize access to the tank ship security zone; (iii) the tank ship security zone for any given transiting tank ship will affect a given geographic location for a limited time; and (iv) the Coast Guard will make notifications via maritime advisories so mariners can adjust their plans accordingly.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact one of the points of contact listed under **FOR FURTHER INFORMATION CONTACT**.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

The Coast Guard recognizes the rights of Native American Tribes under the Stevens Treaties. Moreover, the Coast Guard is committed to working with Tribal Governments to implement local policies to mitigate tribal concerns. Given the flexibility of the Temporary Final Rule to accommodate the special needs of mariners in the vicinity of tank ships and the Coast Guard's commitment to working with the Tribes, we have determined that tank ship security and fishing rights protection need not be incompatible and therefore have determined that this Temporary Final Rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. Nevertheless, Indian Tribes that have questions concerning the provisions of this Temporary Final Rule or options for compliance are encouraged to contact the point of contact listed under **FOR FURTHER INFORMATION CONTACT**.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

The Coast Guard's preliminary review indicates this temporary rule is categorically excluded from further environmental documentation under figure 2–1, paragraph 34(g) of Commandant Instruction M16475.lD. As an emergency action, the Environmental Analysis, requisite regulatory consultations, and Categorical Exclusion Determination will be prepared and submitted after establishment of this temporary tank ship security zone, and will be available in the docket. This temporary rule ensures the safety and security of tank ships. All standard environmental measures remain in effect. The Categorical Exclusion Determination will be made available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; 49 CFR 1.46.

2. From October 15, 2002, until April 15, 2003, temporary § 165.T13–011 is added to read as follows:

§ 165.T13–011 Security Zone Regulations; Tank Ship Protection Zone, Puget Sound and adjacent waters, Washington.

(a) The following definitions apply to this regulation:

Federal Law Enforcement Officer means any employee or agent of the United States government who has the authority to carry firearms and make warrantless arrests and whose duties involve the enforcement of criminal laws of the United States.

Navigable waters of the United States means those waters defined as such in 33 CFR part 2.

Navigation Rules means the Navigation Rules, International-Inland.

Official Patrol means those persons designated by the Captain of the Port to monitor a tank ship protection zone, permit entry into the zone, give legally enforceable orders to persons or vessels with in the zone and take other actions authorized by the Captain of the Port. Persons authorized to enforce this Temporary Final Rule are designated as the Official Patrol.

Public vessel means vessels owned, chartered, or operated by the United States, or by a State or political subdivision thereof.

Tank Ship means a self-propelled tank vessel constructed or adapted primarily to carry oil or hazardous material in bulk as cargo or cargo residue in the cargo spaces. The definition of tank ship does not include tank barges.

Tank Ship Protection Zone is a 500-yard regulated area of water surrounding tank ships that is necessary to provide for the safety or security of these vessels.

Washington Law Enforcement Officer means any General Authority Washington Peace Officer, Limited Authority Washington Peace Officer, or Specially Commissioned Washington Peace Officer as defined in Revised Code of Washington section 10.93.020.

(b) This section applies to any vessel or person in the navigable waters of the United States east of 123 degrees, 30 minutes West Longitude. (Datum: NAD 1983.)

(c) A tank ship protection zone exists around tank ships at all times in the navigable waters of the United States, whether the tank ship is underway, anchored, or moored.

(d) The Navigation Rules shall apply at all times within a tank ship protection zone.

(e) All vessels within a tank ship protection zone shall operate at the minimum speed necessary to maintain a safe course and shall proceed as directed by the official patrol or tank ship master. No vessel or person located in the navigable waters of the United States is allowed within 100 yards of a tank ship, unless authorized by the official patrol or tank ship master.

(f) To request authorization to operate within 100 yards of a tank ship, contact the official patrol or tank ship master on VHF–FM channel 16 or 13.

(g) When conditions permit, the official patrol or tank ship master should:

(1) Permit vessels constrained by their navigational draft or restricted in their ability to maneuver to pass within 100 yards of a tank ship in order to ensure a safe passage in accordance with the Navigation Rules; and

(2) Permit commercial vessels anchored in a designated anchorage area to remain at anchor within 100 yards of passing a tank ship; and

(3) Permit vessels that must transit via a navigable channel or waterway to pass within 100 yards of a moored or anchored tank ship with minimal delay consistent with security.

(h) *Exemption.* Public vessels as defined in paragraph (a) above are

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exempt from complying with this regulation.

(i) *Enforcement.* Any Coast Guard commissioned, warrant or petty officer may enforce the rules in this regulation. In the navigable waters of the United States, when immediate action is required and representatives of the Coast Guard are not present or not present in sufficient force to exercise effect control in the vicinity of a tank ship, any Federal Law Enforcement Officer or Washington Law Enforcement Officer may enforce the rules contained in this regulation pursuant to 33 CFR 6.04–11. In addition, the Captain of the Port may be assisted by other Federal, State or local agencies in enforcing this rule.

Dated: October 15, 2002.

D. Ellis,

Captain, U.S. Coast Guard, Captain of the Port, Puget Sound.

[FR Doc. 02–27723 Filed 10–30–02; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–7400–1]

Massachusetts: Extension of Interim Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: The EPA is proposing to extend the expiration date from January 1, 2003 to January 1, 2006 for the interim authorization under the Resource Conservation and Recovery Act, of the Massachusetts program for regulating Cathode Ray Tubes ("CRTs"). Massachusetts was granted interim authorization to assume the responsibility under the Toxicity Characteristics Rule ("TC Rule") for regulating CRTs, on November 15, 2000. That previously granted interim authorization is due to expire on January 1, 2003 and needs be extended for the reasons explained below. EPA is publishing this rule to authorize the extension without a prior proposal because we believe this action is not controversial and do not expect comments that oppose it. Unless we get written comments which oppose this extension during the comment period, the decision to extend the interim authorization will take effect. If we get comments that oppose this action, we will publish a document in the **Federal Register** withdrawing this rule before it takes effect and the separate document in the proposed rules section of this **Federal Register** will serve as the proposal to authorize the changes.

DATES: This extension of the interim authorization will become effective on December 30, 2002 and remain in effect until January 1, 2006 unless EPA receives adverse written comment by December 2, 2002. If EPA receives such comment, it will publish a timely withdrawal of this immediate final rule in the **Federal Register** and inform the public that this extended authorization will not take immediate effect.

ADDRESSES: Send any written comments to Robin Biscaia, EPA New England, One Congress Street, Suite 1100 (CHW), Boston, MA 02114–2023; telephone: (617) 918–1642. Documents related to EPA's previous decision to grant interim authorization (regarding regulation of CRTs) and the materials which EPA used in now considering the extension (the "Administrative Record") are available for inspection and copying during normal business hours at the following locations: Massachusetts Department of Environmental Protection Library, One Winter Street—2nd Floor, Boston, MA 02108, business hours: 9 a.m. to 5 p.m., telephone: (617) 292–5802; or EPA New England Library, One Congress Street—11th Floor, Boston, MA 02114–2023, business hours: 10 a.m. to 3 p.m., Monday through Thursday, telephone: (617) 918–1990.

FOR FURTHER INFORMATION CONTACT: Robin Biscaia, Hazardous Waste Unit, Office of Ecosystems Protection, EPA New England, One Congress Street, Suite 1100 (CHW), Boston, MA 02114–2023, telephone: (617) 918–1642.

SUPPLEMENTARY INFORMATION:

A. Why Are Revisions to State Programs Necessary?

Pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*, states which have been authorized to administer the Federal hazardous waste program under RCRA section 3006(b), 42 U.S.C. 6926(b), have a continuing obligation to update their programs to meet revised Federal requirements. As the Federal program changes, States must change their programs and ask EPA to authorize the changes. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must revise their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273 and 279. For example, States must revise their programs to regulate the additional wastes determined to be hazardous as a result of using the Toxicity Characteristics Leaching Procedure ("TCLP") test adopted by the EPA on March 29, 1990, in the TC Rule. 55 FR 11798. The EPA may grant final authorization to a State revision if it is equivalent to, consistent with, and no less stringent than Federal RCRA requirements.

In the alternative, as provided by RCRA section 3006(g), 42 U.S.C. 6926(g), for updated Federal requirements promulgated pursuant to the Hazardous and Solid Waste Amendments of 1984 (HSWA), such as the TC Rule, the EPA may grant interim (*i.e.*, temporary) authorization to a State revision so long as it is *substantially* equivalent to Federal RCRA requirements.

B. What Decisions Have We Made in This Rule?

1. Background

The TC Rule grants authority over wastes which first became classified as hazardous as a result of using the "TCLP" test, such as many CRTs. *See* 55 FR 11798, 11847–11849 (March 29, 1990). CRTs are the glass picture tubes found inside television and computer monitors. Because of their high lead content, CRTs generally fail the TCLP test. Thus, under the EPA's current regulations, CRTs generally become hazardous wastes when they are discarded (*e.g.*, when sent for disposal or reclamation rather than being reused). However, the EPA has recognized that certain widely generated wastes may pose lower risks during accumulation and transport than other hazardous wastes. Thus the EPA has listed certain wastes as Universal Wastes which are subject to reduced regulation and has allowed authorized States to add other appropriate wastes as Universal Wastes. *See* 40 CFR part 273.

On August 4, 2000, Massachusetts adopted regulations which revised its regulatory program as it relates to CRTs. The State adopted a three-part approach: (1) Intact CRTs being disposed are subject to full hazardous waste requirements (along with crushed or ground up CRTs); (2) intact CRTs that may still be reused (without reclamation) generally are considered commodities exempt from hazardous waste requirements; and, finally, (3) intact CRTs which will not be reused, but which instead will be crushed and recycled (*i.e.*, as spent materials being reclaimed), are subject to reduced

requirements which track some but not all of the EPA's Universal Waste Rule requirements. As explained in the **Federal Register** on November 15, 2000, 65 FR 68915, and further explained in a legal memorandum contained in the Administrative Record, dated January 21, 2000 entitled "Massachusetts' Regulation of CRTs," the EPA determined that the State program was "substantially equivalent" to Federal RCRA requirements. Therefore, the EPA granted Massachusetts interim authorization to regulate CRTs under the TC Rule. The State program was determined to be only "substantially" rather than fully equivalent to the federal RCRA program because the maximum flexibility allowed under the federal program was to regulate hazardous CRTs being reclaimed as a Universal Waste, whereas Massachusetts regulates intact CRTs heading to reclamation less stringently in certain respects than does the Universal Waste Rule.

2. Today's Decision

There have been no changes in either the Federal or Massachusetts regulations applicable to CRTs since November 15, 2000. Therefore, the State program remains substantially equivalent (but not fully equivalent) to current Federal RCRA requirements, for the reasons previously stated. However, in line with the general deadline for the expiration of interim authorizations set in 40 CFR 271.24, the interim authorization of the Massachusetts CRT program is set to expire on January 1, 2003. Absent further EPA action, the authority to regulate the CRTs would revert to the EPA as of January 1, 2003, and full hazardous waste regulations would become applicable to many CRTs in Massachusetts.

Like Massachusetts, the EPA has recognized that regulating intact CRTs as a fully regulated hazardous waste can discourage recycling of the CRTs and, thus, be counter-productive. Therefore, it is environmentally important not to allow the interim authorization of the Massachusetts regulations to expire.

On June 12, 2002, the EPA proposed to adopt regulations to reduce RCRA regulatory requirements for CRTs. *See* 67 FR 40508. If the proposed rule is adopted, intact CRTs heading for reclamation will no longer be classified as solid or hazardous wastes. Thus, they will no longer need to be handled in accordance with either full hazardous waste or Universal Waste Rule requirements. Therefore, if and when the proposed rule is adopted, the Massachusetts CRT program will no longer be less stringent than the Federal program. It will be equivalent to the Federal program in exempting commodity CRTs from regulations while fully regulating CRTs being disposed, and will be more stringent than the Federal program in partially regulating intact CRTs being reclaimed and in fully regulating crushed or ground up CRTs even when they are recycled. However, the final EPA CRT rule is not expected to be issued until after January 1, 2003.

The EPA believes that extension of the interim authorization of the Massachusetts CRT program beyond the generally applicable deadline of January 1, 2003 is appropriate in the unusual circumstances presented. An extension to January 1, 2006 will enable the Massachusetts program to continue to operate pending the EPA's final decision on its own CRT Rule. This should give the EPA sufficient time to finalize its own CRT Rule. If the final EPA CRT Rule is the same as the proposed rule or otherwise remains at least as flexible as the Massachusetts CRT Rule, then the EPA should be able to later grant final authorization to the Massachusetts CRT Rule, as soon as the EPA CRT Rule is adopted. If the final EPA CRT Rule is more stringent than the Massachusetts CRT Rule, the EPA and State can address the resulting situation at that time. If the final EPA CRT Rule has not been issued by January 1, 2006, the EPA may consider a further extension of the interim authorization of the Massachusetts CRT Rule, but is making no decision on such a further extension at this time.

C. What Is the Effect of Today's Authorization Decision?

The effect of this decision is that for CRTs regulated under the TC Rule, a facility in Massachusetts subject to RCRA will have to continue to comply with the authorized State requirements instead of the Federal requirements in order to comply with RCRA. The Commonwealth of Massachusetts has enforcement responsibilities under its State hazardous and solid waste programs for violations of such programs, but EPA also retains its full authority under RCRA sections 3007, 3008, 3013, and 7003.

This action does not impose additional requirements on the regulated community because the State regulations for which interim authorization to Massachusetts is being extended by today's action are already in effect under State law, and are not changed by today's action.

D. Why Wasn't There a Proposed Rule Before Today's Rule?

EPA did not publish a proposal before today's rule because we view this as a routine program change and do not expect comments that oppose this approval. We are providing an opportunity for public comment now. In addition to this rule, in the proposed rules section of today's **Federal Register** we are publishing a separate document that proposes to authorize the State program changes.

E. What Happens if EPA Receives Comments That Oppose This Action?

If EPA receives comments that oppose this authorization, we will withdraw this rule by publishing a document in the **Federal Register** before the rule becomes effective. EPA will base any further decision on the authorization of the State program changes on the proposal mentioned in the previous paragraph. We will then address all public comments in a later final rule. You may not have another opportunity to comment. If you want to comment on this authorization, you must do so at this time.

F. What Has Massachusetts Previously Been Authorized for?

Massachusetts initially received Final Authorization on January 24, 1985, effective February 7, 1985 (50 FR 3344) to implement its base hazardous waste management program. EPA granted authorization for changes to their program on September 30, 1998, effective November 30, 1998 (63 FR 52180) and October 12, 1999, effective that date (64 FR 55153), in addition to the previously discussed November 15, 2000 authorization of the Massachusetts CRT Rule (65 FR 68915).

G. What Changes Are We Authorizing in Today's Action?

The Massachusetts regulations authorized by today's action are the same as those listed in the chart set forth in the **Federal Register** document dated November 15, 2000 (65 FR 68915, 68918). Today's action simply extends the interim authorization previously granted from January 1, 2003 to January 1, 2006.

H. Where Are the Revised State Rules Different From the Federal Rules?

The differences between the State and Federal regulations with respect to CRTs are discussed in the November 15, 2000 **Federal Register** document. Notwithstanding these differences, the EPA believes that the State regulations are substantially equivalent to the Federal regulations and, thus, the State

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continues to qualify to have interim authorization. During the interim authorization period, for CRTs regulated under the TC Rule, these State regulations will operate in lieu of the Federal hazardous waste regulations.

I. Who Handles Permits After This Authorization Takes Effect?

Massachusetts will issue permits for all the provisions for which it is authorized and will administer the permits it issues. EPA will continue to administer any RCRA hazardous waste permits or portions of permits which we issued prior to the effective date of this authorization. EPA will continue to implement and issue permits for HSWA requirements for which Massachusetts is not yet authorized.

J. How Does Today's Action Affect Indian Country (18 U.S.C. 115) in Massachusetts?

Massachusetts is not authorized to carry out its hazardous waste program in Indian country within the State. Therefore, this action has no effect on Indian country. EPA will continue to implement and administer the RCRA program in these lands.

K. What Is Codification and Is EPA Codifying Massachusetts' Hazardous Waste Program as Authorized in This Rule?

Codification is the process of placing the State's statutes and regulations that comprise the State's authorized hazardous waste program into the Code of Federal Regulations. We do this by referencing the authorized State rules in 40 CFR part 272. We are today authorizing, but not codifying the enumerated revisions to the Massachusetts program. We reserve the amendment of 40 CFR part 272, subpart W for the codification of Massachusetts' program until a later date.

L. Administrative Requirements

The Office of Management and Budget has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993) and, therefore, this action is not subject to review by OMB. This action authorizes State requirements for the purpose of RCRA 3006 and imposes no additional requirements beyond those imposed by State law. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this action authorizes pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this action also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely authorizes State requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks.

Under RCRA section 3006(b), EPA grants a State's application for authorization as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a State authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this document and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This action, nevertheless, will be effective 60 (sixty) days after publication pursuant to the procedures governing immediate final rules.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indians-lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: October 17, 2002.

Robert W. Varney,

Regional Administrator, EPA New Englond.

[FR Doc. 02–27341 Filed 10–30–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–2612; MM Docket No. 00–31; RM–9815, RM–10014, RM–10095]

Radio Broadcasting Services; Nogales, Vail and Patagonia, AZ

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document dismisses an Application for Review filed by Big Broadcast of Arizona, LLC directed to the *Report and Order* in this proceeding. *See* 65 FR 11540, published March 3, 2000. With this action, the proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Media Bureau (202) 418–2177.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Memorandum Opinion and Order* in MM Docket No. 00–31, adopted October 9, 2002, and released October 18, 2002.

The full text of this decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualex International Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 02–27693 Filed 10–30–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–2602; MB Docket No. 02–209, RM–10512; MB Docket No. 02–210, RM–10510; MB Docket No. 02–211, RM–10511]

Radio Broadcasting Services; Greenwood, MS; Hyannis, NE; and Wall, SD

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document grants three proposals that allot new channels to Greenwood, Mississippi; Hyannis, Nebraska; and Wall, South Dakota. The Audio Division, at the request of David P. Garland, allots Channel 277A at Greenwood, Mississippi, as the community's fourth local FM transmission service. *See* 67 FR 52924, August 14, 2002. Channel 277A can be allotted to Greenwood in compliance with the Commission's minimum distance separation requirements with a site restriction 10.1 kilometers (6.3 miles) east of the community to avoid a short-spacing to an application site of Station KZYQ, Channel 278C2, Lake Village, Arkansas. The coordinates for Channel 277A at Greenwood are 33–32–19 North Latitude and 90–04–27 West Longitude. Filing windows for Channel 277A at Greenwood, Mississippi; Channel 250C1 at Hyannis, Nebraska; and Channel 288C at Wall South Dakota, will not be opened at this time. Instead, the issue of opening a filing window for these channels will be addressed by the Commission in a subsequent order. *See* Supplementary Information, *infra*.

DATES: Effective December 2, 2002.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, his counsel, or consultant, as follows: David P. Garland, 1110 Hackney Street, Houston, Texas, 77023; John M. Pelkey, Garvey, Schubert & Barer, 5th Floor, 1000 Potomac Street, NW., Washington, DC 20007 (Counsel for Grant County Broadcasters and Wall Radio Broadcasters).

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket Nos. 02–209, 02–210, 02–211, adopted October 9, 2002, and released October 18, 2002. The full text of this Commission decision is available for inspection and copying during regular business hours at the FCC's Reference Information Center, Portals II, 445 Twelfth Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

The Audio Division, at the request of Grant County Broadcasters, allots Channel 250C1 at Hyannis, Nebraska, as the community's first local FM transmission service. *See* 67 FR 52924, August 14, 2002. Channel 250C1 can be allotted to Hyannis in compliance with the Commission's minimum distance separation requirements at city reference coordinates. The coordinates for Channel 250C1 at Hyannis are 42–00–02 North Latitude and 101–45–41 West Longitude.

The Audio Division, at the request of Wall Radio Broadcasters, allots Channel 288C at Wall, South Dakota, as the community's first local FM transmission service. *See* 67 FR 52924, August 14, 2002. Channel 288C can be allotted to Wall in compliance with the Commission's minimum distance separation requirements at city reference coordinates. The coordinates for Channel 288C at Wall are 43–59–47 North Latitude and 102–13–07 West Longitude.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Mississippi, is amended by adding Channel 277A at Greenwood.

3. Section 73.202(b), the Table of FM Allotments under Nebraska, is amended by adding Hyannis, Channel 250C1.

4. Section 73.202(b), the Table of FM Allotments under South Dakota, is amended by adding Wall, Channel 288C.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 02–27691 Filed 10–30–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–2720; MM Docket No. 01–123, RM–10139, RM–10387; MM Docket No. 01–177, RM–10196, RM–10388 and RM–10389]

Radio Broadcasting Services; Darien, Rincon, Screven and Statesboro, GA; Palatka and Middleburg, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In response to a *Notice of Proposed Rule Making* in MM Docket No. 01–123, 66 FR 33942 (June 26, 2001) and a *Notice of Proposed Rule Making* in MM Docket No. 01–177, 66 FR 42622 (August 14, 2001), this document consolidates MM Docket Nos. 01–123 and 01–177; upgrades Channel 261C2, Station WMCD(FM), Statesboro, Georgia, to Channel 261C1 and changes

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Station WMCD's community of license from Statesboro to Rincon, Georgia; downgrades Channel 260C, Station WGNE–FM, Palatka, Florida, to Channel 260C0 and changes WGNE–FM's community of license from Palatka to Middleburg, Florida; and allows the provision of first local aural transmission services to Rincon, Georgia, and Middleburg, Florida. The coordinates for Channel 261C1 at Rincon, Georgia, are 32–08–35 North Latitude and 81–42–14 West Longitude. The coordinates for Channel C0 at Middleburg, Florida are 29–59–40 North Latitude and 81–19–39 West Longitude.

DATES: Effective December 2, 2002.

FOR FURTHER INFORMATION CONTACT: R. Barthen Gorman, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order in MM Docket Nos. 01–123 and 01–177, adopted October 9, 2002, and released October 18, 2002. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW, Washington, DC. This document may also be purchased from the Commission's duplicating contractors, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863-2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 reads as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Florida, is amended by adding Middleburg, Channel 260C0 and removing Palatka, Channel 260C.

3. Section 73.202(b), the Table of FM Allotments under Georgia, is amended by adding Rincon, Channel 261C1 and removing Channel 261C2 at Statesboro.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 02–27695 Filed 10–30–02; 8:45 am]

BILLING CODE 6712–01–P

ENVIRONMENTAL PROTECTION AGENCY

48 CFR Parts 1509 and 1552

[FRL–7402–8]

Acquisition Regulation: Contractor Performance Evaluations

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is amending the EPA Acquisition Regulation to revise its policy and procedures regarding the evaluation of contractor performance. This action is necessary because EPA's current regulation eliminates the use of the National Institutes of Health (NIH) Contractor Performance System to record contractor performance histories for construction acquisitions. This revision will allow EPA contracting officers to utilize the NIH system for construction type acquisitions in lieu of the Federal Acquisition Regulation prescribed Standard Form 1420, Performance Evaluation (Construction Contracts). The NIH obtained approval from the Civilian Agency Acquisition Council regarding the use of its construction module in lieu of Standard Form 1420.

DATES: This final rule becomes effective December 2, 2002.

FOR FURTHER INFORMATION CONTACT: Frances Smith, U.S. Environmental Protection Agency, Office of Acquisition Management, Mail Code 3802R, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Telephone: (202) 564–4368.

SUPPLEMENTARY INFORMATION: Information on the regulation of contractor performance evaluations is organized as follows:

I. Background

This final rule amends the Environmental Protection Agency Acquisition Regulation Subpart 1509.170 and 1552.209–76 to allow EPA contracting officers to utilize the construction module in the National Institutes of Health's Contractor Performance System. EPA currently uses the services module in the NIH system to evaluate contractor performances of both large and small businesses who are awarded EPA contracts in excess of $100,000.

A proposed rule was published in the **Federal Register** (67 FR 7657–7660) on February 20, 2002, providing for a 30 day comment period. There were no comments received regarding the proposed rule.

II. Final Action

This final rule will allow EPA contracting officers to use either the services module or the construction module in the National Institutes of Health's Contractor Performance System, depending on the type of acquisition.

III. Statutory and Executive Order Reviews

Executive Order 12866

This final rule is not a significant regulatory action for the purposes of Executive Order 12866; therefore, no review is required by the Office of Information and Regulatory Affairs within the Office of Management and Budget (OMB).

Paperwork Reduction Act

The Paperwork Reduction Act applies to this final rule, and the information collection request has been evaluated by the Office of Management and Budget. The Office of Information and Regulatory Affairs within the Office of Management and Budget has issued OMB Clearance No. 9000–0142 for the collection of contractor performance information. Comments regarding Paperwork Reduction Act concerns should be sent to the Office of Management and Budget (Attn: EPA Desk Officer).

Regulatory Flexibility Act (RFA), As Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et Seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impact of today's rule on small entities, small entity is defined as: (1) A small business that meets the definition of a small business found in the Small Business Act and codified at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives "which minimize any significant economic impact of the proposed rule on small entities." 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule.

This final rule requires no reporting or record-keeping by small or large business contractors. Rather, it provides EPA contractors with a formal opportunity, generally once a year per contract, to review and comment on their specific performance evaluations as conducted by the cognizant EPA contracting officer. Therefore, this final rule will have no adverse or significant economic impact on small entities.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess their regulatory actions on State, local, and Tribal governments, and the private sector. This final rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in one year. Any private sector costs for this action relate to paperwork requirements and associated expenditures that are far below the level established for UMRA applicability. Thus, this final rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 13045

Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be economically significant as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final rule is not subject to Executive Order 13045 because it is not an economically significant rule as defined by Executive Order 12866, and because it does not involve decisions on environmental health or safety risks.

Executive Order 13132

Executive Order 13132 entitled "Federalism" (64 FR 43255, August 10, 1999) requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" as defined in the Executive Order include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

Executive Order 13175

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

This rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

National Technology Transfer and Advancement Act of 1995

EPA will use voluntary consensus standards, as directed by section 12(d) of the National Technology Transfer and Advancemept Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note), in its procurement activities. The NTTAA directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This rulemaking does not involve technical standards. Therefore, EPA is not considering use of any voluntary consensus standards.

Executive Order 13211 (Energy Effects)

This final rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rules report, which includes a copy of the rule, to each House of the

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Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 48 CFR Parts 1509 and 1552.

Government procurement.

Dated: October 18, 2002.

Judy S. Davis,

Director, Office of Acquisition Management.

Therefore, 48 CFR Chapter 15 is amended as set forth below:

1. The authority citation for Parts 1509 and 1552 is revised to read as follows:

Authority: 5 U.S.C. 301; Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c); and 41 U.S.C. 418b.

PART 1509—[AMENDED]

2. Section 1509.170–3 is amended by revising paragraphs (a), (c), and adding paragraph (d) to read as follows:

1509.170–3 Applicability.

(a) This subpart applies to all EPA acquisitions in excess of $100,000, except for architect-engineer acquisitions, acquisitions awarded under the Federal Acquisition Regulation (FAR) Subpart 8.6, Acquisitions from Federal Prison Industries, Incorporated, FAR Subpart 8.7, Acquisitions from Nonprofit Agencies Employing People Who Are Blind or Severely Disabled, and FAR 13.5, Test Program for Certain Commercial Items. FAR 36.604 provides detailed instructions for architect-engineer contractor performance evaluations.

* * * * *

(c) EPA Form 1900–26, Contracting Officer's Evaluation of Contractor Performance, and EPA Form 1900–27, Project Officer's Evaluation of Contractor Performance, applies to all performance evaluations completed prior to May 26, 1999. Thereafter, EPA Forms 1900–26 and 1900–27 are obsolete, and contracting officers shall complete all contractor performance evaluations by use of the National Institutes of Health's Contractor Performance System in accordance with EPAAR paragraph (a) of this section.

(d) Construction acquisitions shall be completed by use of the NIH construction module. Performance evaluations for construction acquisitions shall be completed in accordance with EPAAR 1509.170–5.

3. Section 1509.170–4 is amended by revising the last sentence in paragraph (f) to read as follows:

1509.170–4 Definitions.

* * * * *

(f) * * * Performance categories include quality, cost control, timeliness of performance, business relations, compliance with labor standards, compliance with safety standards, and meeting Small Disadvantaged Business subcontracting requirements.

4. Section 1509.170–5 is amended by revising paragraph (b) to read as follows:

1509.170–5 Policy.

* * * * *

(b) For service type acquisitions, contracting officers shall use the National Institutes of Health (NIH) Contractor Performance System to record evaluations for all contract performance periods expiring after May 26, 1999. For construction type acquisitions, contracting officers shall use the NIH system to record evaluations for all contract performance periods expiring after December 2, 2002.

* * * * *

5. Section 1509.170–8 is amended by revising paragraph (b) to read as follows:

1509.170–8 Contractor Performance Report.

* * * * *

(b) The performance categories and ratings used in the evaluation of contractor performance are described in the clause at 1552.209–76. The NIH system provides instructions to assist contracting officers and project officers with completing evaluations.

PART 1552—[AMENDED]

6. Section 1552.209–76 is amended by revising the undesignated text between the section heading and paragraph (a), revising paragraphs (a)(2), (b)(2) and (b)(4) to read as follows:

1552.209–76 Contractor Performance Evaluations.

As prescribed in section 1509.170–1, insert the following clause in all applicable solicitations and contracts.

Contractor Performance Evaluations (October 2002)

The contracting officer shall complete a Contractor Performance Report (Report) within ninety (90) business days after the end of each 12 months of contract performance (interim Report) or after the last 12 months (or less) of contract performance (final Report) in accordance with EPAAR 1509.170–5. The contractor shall be evaluated based on the following ratings: 0 = Unsatisfactory, 1 = Poor, 2 = Fair, 3 = Good, 4 = Excellent, 5 = Outstanding, N/A = Not Applicable.

The contractor may be evaluated based on the following performance categories: Quality, Cost Control, Timeliness of Performance, Business Relations, Compliance with Labor Standards, Compliance with Safety Standards, and Meeting Small Disadvantaged Business Subcontracting Requirements.

(a) * * *

(2) Evaluate contractor performance and assign a rating for quality, cost control, timeliness of performance, compliance with labor standards, and compliance with safety standards performance categories (including a narrative for each rating);

* * * * *

(b) * * *

(2) Assign a rating for the business relations and meeting small disadvantaged business subcontracting requirements performance categories (including a narrative for each rating).

* * * * *

(4) Provide any additional information concerning the quality, cost control, timeliness of performance, compliance with labor standards, and compliance with safety standards performance categories if deemed appropriate for the evaluation or future evaluations (if any), and provide any information regarding subcontracts, key personnel, and customer satisfaction; and

* * * * *

[FR Doc. 02–27617 Filed 10–30–02; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AH73

Endangered and Threatened Wildlife and Plants; Listing the Sacramento Splittail as Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule; reopening of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the comment period for the final rule on the Sacramento splittail (*Pogonichthys macrolepidotus*). Comments previously submitted need not be resubmitted as they will be incorporated into the public record as part of this reopened comment period, and will be fully considered in the final rule. We are reopening the comment period to solicit comments on the revised statistical analysis we have done to examine the available splittail abundance data, as described in our March 21, 2002 document, which also reopened the comment period to seek comments on this analysis. The statistical analyses published on January 12, 2001, May 8, 2001, and August 17, 2001 have been superseded by the March 21, 2002 analysis, on which we are now seeking additional comments.

In addition, we invite any additional comments on the status of the species and the factors affecting the species, as described in our prior documents of January 12, 2001, May 8, 2001, August 17, 2001, and March 21, 2002. Lastly, we point out that our March 21, 2002, document stated a comment period extending to October 15, 2002; this was revised to May 20, 2002, in a correction document published April 1, 2002.

DATES: We will accept public comments until December 2, 2002.

ADDRESSES: *Comment Submission:* If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods:

1. You may submit written comments and information by mail to the Field Supervisor, Sacramento Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2800 Cottage Way, Suite W–2605, Sacramento, CA 95825.

2. You may hand-deliver comments to our Sacramento Fish and Wildlife Office, during normal business hours, at the address given above.

3. You may send comments by electronic mail (e-mail) to: *fw1splittail@fws.gov. See* the Public Comments Solicited section below for file format and other information about electronic filing.

Comments and materials received will be available for inspection, by appointment, during normal business hours at the address under (1) above.

FOR FURTHER INFORMATION CONTACT: For general information, Susan Moore, at the above address (telephone 916/414–6600; facsimile 916/414–6713).

SUPPLEMENTARY INFORMATION:

Background

The Sacramento splittail (hereafter splittail) represents the only extant species in its genus in North America. For a detailed description of the species, see the Recovery Plan for the Sacramento/San Joaquin Delta Native Fishes (Service 1996), references within that plan, and Moyle *et al.* (2001 in prep.).

Splittail are endemic to certain waterways in California's Central Valley, where they were once widely distributed (Moyle 1976, Moyle 2002). Splittail presently occur in Suisun Bay, Suisun Marsh, the San Francisco Bay-Sacramento-San Joaquin River Estuary (Estuary), the Estuary's tributaries (primarily the Sacramento and San Joaquin rivers), the Cosumnes River, the Napa River and Marsh, and the Petaluma River and Marsh. The splittail no longer occurs throughout a significant portion of its former range.

Pursuant to the Endangered Species Act of 1973, as amended (Act), the splittail was listed as a threatened species on February 8, 1999 (64 FR 5963). In this previous listing determination, we found that changes in water flows and water quality resulting from export of water from the Sacramento and San Joaquin rivers, periodic prolonged drought, loss of shallow water habitat, and the effects of agricultural and industrial pollutants were significant factors in the splittail's decline.

Subsequent to the publication of the final rule, plaintiffs in the cases *San Luis & Delta-Mendota Water Authority* v. *Anne Badgley, et al.* and *State Water Contractors, et al.* v. *Michael Spear, et al.* commenced action in Federal Eastern District Court of California, challenging the listing of the splittail as threatened, alleging various violations of the Act and of the Administrative Procedure Act (5 U.S.C 551 *et seq.*). We, as directed by the court, and pursuant to the Act, provided notice of the opening of a comment period regarding the threatened status for the splittail, from January 12, 2001, to February 12, 2001 (66 FR 2828). In addition, we reopened the comment period on three additional occasions; from May 8, 2001, to June 7, 2001 (66 FR 23181); from August 17, 2001, to October 1, 2001 (66 FR 43145); and from March 21, 2002, to October 15, 2002 (67 FR 13095). The October 15, 2002, comment period closing date stated in 67 FR 13095 was corrected to May 20, 2002, via a correction document published on April 1, 2002 (67 FR 15337).

We are now reopening the comment period to solicit comments on the factors affecting the splittail (as first solicited in 66 FR 2828) and on the revised statistical analysis used to analyze the abundance data available for splittail, and to seek public comment on the status of the species (as solicited in 67 FR 13095). Upon the close of this comment period, we will make our determination whether the splittail warrants the continued protection of the Act.

The approach currently used by us to analyze the best scientifically and commercially available splittail abundance data differs from methods employed previously. In the February 8, 1999, final rule and the January 12, 2001, and May 8, 2001, reopenings of the comment periods, we relied primarily on the unstratified Mann-Whitney U-test approach utilized by Meng and Moyle (1995), first published in the *Transactions of the American Fisheries Society*. See 66 FR 2828 for a complete description of the Meng and Moyle (1995) method.

In the August 17, 2001, reopening of the comment period, we employed permutation-based exact calculations of p-values for stratified Mann-Whitney U-tests to analyze data derived from the Meng and Moyle (1995), Sommer *et al.* (1997), and California Department of Fish and Game (CDFG) methodologies. We also employed a polynomial regression model and a crude exponential decay analysis in the August 17, 2001, comment period. See 66 FR 2828 for a complete description of the permutation-based exact calculations of p-values for stratified Mann-Whitney U-tests method.

In the March 21, 2002, reopening, we employed a statistical analysis of an abundance index and Multiple Linear Regression (MLR) model jointly developed and submitted by the CDFG (Rempel 2001) and the United States Bureau of Reclamation (USBR) (Michny 2001). The model, hereafter referred to as the CDFG/USBR MLR model and described in detail in 67 FR 13095, was used to analyze data from: (1) CDFG's Fall Midwater Trawl (Fall MWT) survey; (2) CDFG's San Francisco Bay Midwater Trawl (Bay Study MW); (3) CDFG's San Francisco Bay Otter Trawl (Bay Study OT); (4) the University of California (UC) Davis Suisun Marsh Otter Trawl (Suisun Marsh OT); (5) our Chipps Island Trawl survey (Chipps Is. Trawl); (6) fish salvage operations (which repatriate fish taken from water intake screens) at the CVP Tracy Fish Collection Facility (CVP); and (7) fish salvage at the State Water Project (SWP) Skinner Delta Fish Protective Facility in the south Delta. See Moyle *et al.* 2001 in prep.; Meng and Moyle 1995; and Sommer *et al.* 1997, for descriptions of surveys.

The CDFG/USBR MLR model's four highest, statistically significant (at traditional levels) probabilities of a

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nonzero downward splittail population trend are exhibited by the Suisun Marsh survey (Age-0 and adult) and in the data collected via fish salvage operations at the SWP (Age-1, and Age-2 and greater). The decline evident in the Chipps Island Trawl (Age-2 and greater) is nearly-statistically significant at traditional levels (94.3 percent probability). Two additional probabilities of a nonzero downward splittail population trend are evident at the 80 percent probability level; Chipps Island Trawl (Age-1) and SWP salvage (Age-0). *See* 67 FR 13095 for a complete description of the CDFG/USBR MLR model and our statistical analysis of its results.

We believe that all of the abundance monitoring data for splittail have methodological weaknesses of one sort or another; none of the surveys were designed specifically to rigorously estimate splittail population numbers. However, we believe that these existing data sets constitute the best available scientific information for the species.

Public Comments Solicited

We will accept written comments during this reopened comment period, and comments should be submitted to the Sacramento Fish and Wildlife Office as found in the **ADDRESSES** section.

You may send comments by electronic mail (e-mail) to: fw1splittail@fws.gov. If you submit comments by e-mail, please submit them as an ASCII file and avoid the use of special characters and any form of encryption. Please also include "Attn: [RIN AH73]" and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, contact us directly by calling our Sacramento Fish and Wildlife Office at telephone number 916/414–6600, during normal business hours.

Author

The primary author of this notice is Jason Douglas (*see* **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: October 21, 2002.

Marshall P. Jones Jr.,

Acting Director, Fish and Wildlife Service.

[FR Doc. 02–27648 Filed 10–30–02; 8:45 am]

BILLING CODE 4310–55–P

Proposed Rules

Federal Register

Vol. 67, No. 211

Thursday, October 31, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

[Docket No. PRM–50–78]

Robert H. Leyse; Receipt of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; notice of receipt.

SUMMARY: The Nuclear Regulatory Commission (NRC) has received and requests public comment on a petition for rulemaking filed by Robert H. Leyse. The petition has been docketed by the NRC and has been assigned Docket No. PRM–50–78. The petitioner is requesting that the NRC regulations that govern domestic licensing of production and utilization facilities be amended to address the impact of fouling on the performance of heat transfer surfaces throughout licensed nuclear power plants. The petitioner believes that the fouling of heat transfer surfaces is not adequately considered in the licensing and compliance inspections, testing programs, and computer codes for nuclear power facilities.

DATES: Submit comments by December 16, 2002. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESSES: Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555: Attention: Rulemaking and Adjudications staff.

Deliver comments to 11555 Rockville Pike, Rockville, Maryland, between 7:30 am and 4:15 pm on Federal workdays.

You may also provide comments via the NRC's interactive rulemaking Web site through the NRC home page *(http://ruleforum.llnl.gov)*. At this site, you may view the petition for rulemaking, this **Federal Register** notice of receipt, and any comments received by the NRC in response to this notice of receipt. Additionally, you may upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking website, contact Ms. Carol Gallagher, (301) 415–5905 (e-mail: *CAG@nrc.gov*).

For a copy of the petition, write to Michael T. Lesar, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Documents related to this action are available for public inspection at the NRC Public Document Room (PDR) located at 11555 Rockville Pike, Rockville, Maryland.

FOR FURTHER INFORMATION CONTACT: Michael T. Lesar, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: 301–415–7163 or Toll-Free: 1–800–368–5642 or E-mail: *MTL@NRC.Gov*.

SUPPLEMENTARY INFORMATION:

Background

The Nuclear Regulatory Commission received a petition for rulemaking dated September 2, 2002, submitted by Robert H. Leyse (petitioner). The NRC has determined that the petition meets the threshold sufficiency requirements for a petition for rulemaking under 10 CFR 2.802. The petition has been docketed as PRM–52–78. The NRC is soliciting public comment on the petition for rulemaking.

The Petitioner's Request

The petitioner is requesting that the regulations in 10 CFR part 50 be amended to address the impact of fouling on the performance of heat transfer surfaces throughout nuclear power plants. Specifically, the petitioner requested that the NRC amend 10 CFR part 50 to include fouling considerations in NRC-funded test programs such as the Rod Bundle Heat Transfer (RHBT) at Penn State University and the RELAP and TRAC series NRC computer codes. The petitioner believes that the fouling of heat transfer surfaces is not adequately considered in the licensing and compliance inspections of nuclear power plants.

Justification for the Petition

The petitioner states that the NRC must produce a complete inventory of all significant heat transfer surfaces because regulations are needed to address the impact of fouling on the performance of heat transfer surfaces in all licensed nuclear power plants. The petitioner asserts that NRC regulations must require reporting of the performance of these surfaces including records of degradation, cleaning procedures, and effectiveness, and must address mechanical degradation of heat transfer assemblies, especially in fuel assemblies. The petitioner also states that the amended regulations must require detailed reporting that must be publicly available. The petitioner believes that the current regulations do not address the significance of severe fouling of nuclear fuel elements and that NRC licensing bases and technical specifications do not limit the amount of fouling of fuel elements.

The petitioner cites an Advisory Committee on Reactor Safeguards (ACRS) Subcommittee meeting transcript dated May 31, 2002, stating that the fouling of fuel elements in some cases is sufficient to induce significant oxidation of the fuel cladding that has led to "a debate over (whether) the 17 percent includes the prior oxidation or it's just the oxidation during the ramp-up." Another ACRS Subcommittee transcript dated April 24, 1998, led the petitioner to believe that the fouling issue is not being adequately considered, stating that after axial offset anomalies were traced to fouling of nuclear fuel elements, the ACRS was told this phenomena is "a(n) annoyance. They affect economics, but they are not safety issues."

The petitioner states that severe fouling of nuclear fuel elements also leads to axial growth of the fuel rods beyond design limits because the operating temperatures of fuel rods become greater than allowed for in design. According to the petitioner, the fuel rods may expand sufficiently along their length to become restrained from further axial growth by the fuel assembly end fittings causing the rods to bow and make contact with adjacent rods and control rod guide tubes.

The petitioner cites another instance when one nuclear power plant continued to operate at power, the need for repeated cleaning of an air cooling

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heat exchanger was not recognized as a key indicator of a substantial leak in the primary reactor system. Because this plant's operation remained within the technical specifications, there was no basis for plant operators to perform investigations. The petitioner believes this instance calls for the regulations to address the need for investigating the grossly off-normal performance of this heat exchange equipment. The petitioner states that in several instances, the fouling of steam generator tubes has reduced heat transfer effectiveness enough to force operation at reduced secondary side pressures in order to maintain heat transfer rates. The petitioner believes that this fouling is not only an operating annoyance, but will likely impact safety issues.

The petitioner has concluded that fouling of main condenser heat transfer surfaces has led to degradation of heat transfer effectiveness and that these fouling deposits have occasionally been released into the coolant stream, contributing to the fouling of fuel elements.

The petitioner also has concerns with test programs and states that during the past several decades, the NRC has funded over one billion dollars of heat transfer test programs that have not included any allowance for the fouling of heat transfer surfaces that occurs during operation of nuclear power plants. The petitioner states that these test programs must be thoroughly studied and that allowances must be made for a range of fouling of the heat transfer surfaces. The petitioner believes it is very likely that it will not be possible to produce reliable allowances for a range of degrees of fouling and states that the results of the prior test programs such as FLECHT, LOFT, Semiscale, and others must not be applied to the production of computer codes for reactor heat transfer analyses.

The petitioner also notes that the NRC is currently spending millions of dollars on heat transfer testing at facilities such as the RHBT at Penn State University and believes that "these programs must be realigned to cover the cases of several degrees of fouling."

The petitioner notes that the NRC has also funded several hundred million dollars of computer codes related to heat transfer processes in nuclear power reactors. The petitioner states that these codes (TRAC, RELAP, and others) have not considered the effects of fouling on heat transfer surfaces at nuclear power facilities and must not be applied to the licensing of nuclear power plants until "reliable allowances for a range of degrees of fouling are incorporated in the codes."

The petitioner states that amended regulations will illustrate if conditions similar to those already reported in certain Licensee Event Reports (LERs) will constitute license violations and cites LER 50–458/99–016–00 as a possible example.

The Petitioner's Suggested Codified Text

The petitioner did not provide proposed changes to codified text in presenting issues in the petition that address the impact of fouling on the performance of heat transfer surfaces throughout licensed nuclear power plants.

The Petitioner's Conclusions

The petitioner has concluded that the increased attention to detail in plant design, analysis, and operations that will be effected by the amended regulations will enhance operating effectiveness and safety, discourage incomplete and misleading reporting to regulatory authorities, and reduce opportunities for sabotage by insiders. The petitioner has also concluded that the increased reporting requirements with respect to fouling of heat transfer surfaces at nuclear power facilities will provide improved information to professional risk analysts who advise financial management organizations, to individual investors, and to State agencies that oversee the sale and acquisition of nuclear power plants by utility holding companies that operate within their jurisdiction.

Dated at Rockville, Maryland, this 24th day of October, 2002.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,

Secretary of the Commission.

[FR Doc. 02–27700 Filed 10–30–02; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF JUSTICE

28 CFR Part 16

[AAG/A Order No. 296–2002]

Privacy Act of 1974; Implementation

AGENCY: Department of Justice.

ACTION: Proposed rule.

SUMMARY: The Department of Justice, Office of the Pardon Attorney (OPA), proposes to exempt the Executive Clemency Case Files/Executive Clemency Tracking System (JUSTICE/OPA–001) system of records from subsections (c)(3), (c)(4), (d)(1), (d) (2), (d)(3), (d)(4), and (e)(5) of the Privacy Act, 5 U.S.C. 552a. Information in this system relates to the investigation and evaluation of applicants for executive clemency and case-related correspondence regarding such applicants and the clemency process. The exemptions are necessary to avoid interference with clemency investigations and decision-making, when such interference could impair the Department of Justice's ability to provide candid recommendations to the President for his ultimate decisions on clemency matters, and to prevent unwarranted invasions of the personal privacy of third parties.

DATES: Submit any comments by December 2, 2002.

ADDRESSES: Address all comments to Mary Cahill, Management and Planning Staff, Justice Management Division, Department of Justice, Washington, DC 20530 (Room 1400, National Place Building).

FOR FURTHER INFORMATION CONTACT: Mary Cahill, (202) 307–1823.

SUPPLEMENTARY INFORMATION: In the notice section of today's **Federal Register**, the Department of Justice provides a description of the Executive Clemency Case Files/Executive Clemency Tracking System (JUSTICE/OPA–001).

This Order relates to individuals rather than small business entities. Nevertheless, pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, it is hereby stated that the order will not have "a significant impact on a substantial number of small entities."

List of Subjects in Part 16

Administrative practices and procedures, Courts, Freedom of Information, Sunshine Act, and Privacy.

Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a, and delegated to me by Attorney General Order No. 793–78, it is proposed to delete the current language of 28 CFR 16.79 and substitute the following:

1. The authority citation for part 16 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a, 552b(g), 553; 18 U.S.C. 4203(a)(1); 28 U.S.C. 509, 510, 534; 31 U.S.C. 3717, 9701.

2. Section 16.79 is revised to read as follows:

§ 16.79 Exemption of Pardon Attorney Systems.

(a) The following system of records is exempt from 5 U.S.C. 552a, subsections (c)(3), (c)(4), (d)(1), (d)(2), (d)(3), (d)(4), and (e)(5): Executive Clemency Case Files/Executive Clemency Tracking System (JUSTICE/OPA–001). These exemptions apply only to the extent that

information in this system of records is subject to exemption pursuant to 5 U.S.C. 552a(j)(2).

(b) Exemption from the particular subsections is justified for the following reasons:

(1) From subsection (c)(3) because:

(i) The purpose of the creation and maintenance of the Executive Clemency Case Files/Executive Clemency Tracking System (JUSTICE/OPA–001) is to enable the Justice Department to prepare reports and recommendations to the President for his ultimate decisions on clemency matters, which are committed to exclusive discretion of the President pursuant to Article II, Section 2, Clause 1 of the Constitution.

(ii) Release of the disclosure accounting, for disclosures pursuant to the routine uses published for this system, would permit the requester to obtain valuable information concerning the nature and scope of a clemency investigation, invade the right of candid and confidential communications among officials concerned with making recommendations to the President in clemency matters, and disclose the identity of persons who furnished information to the Government under an express or implied promise that their identities would be held in confidence.

(2) From subsection (c)(4) because the exemption from subsections (d)(1), (d)(2), (d)(3), and (d)(4) will make notification of disputes inapplicable.

(3) From subsections (d)(1), (d)(2), (d)(3), and (d)(4) is justified for the reasons stated in paragraph (1) above.

(4) From subsection (e)(5) is justified for the reasons stated in paragraph (1) above.

Dated: October 22, 2002.

Robert F. Diegelman,

Acting Assistant Attorney General for Administration.

[FR Doc. 02–27596 Filed 10–30–02; 8:45 am]

BILLING CODE 4410–29–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD07–02–122]

RIN 2115–AE46

Special Local Regulations; Winterfest Boat Parade, Broward County, Fort Lauderdale, FL

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish permanent special local regulations for the annual Winterfest Boat Parade held on the first Saturday falling between December 13 and 19, inclusive, each year in Fort Lauderdale, Florida. This proposed rule would create four separate regulated areas and would restrict operations of non-participant vessels in the regulated areas. These regulations are needed to provide for the safety of life on navigable waters during the event.

DATES: Comments and related material must reach the Coast Guard on or before December 2, 2002.

ADDRESSES: You may mail comments and related material to Coast Guard Group Miami, 100 MacArthur Causeway, Miami Beach, Florida, 33139. Coast Guard Group Miami maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Coast Guard Group Miami, 100 MacArthur Causeway, Miami Beach, Florida 33139 between 7:30 a.m. and 3 p.m. Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: BMC Victor Sorensen or BM1 Daniel Vaughn at (305) 535–4317.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking [CGD07–02–122], indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by mail, hand delivery, fax, or electronic means to the Coast Guard at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them. We anticipate making this rule effective less than 30 days after the final rule is published in the **Federal Register** due to the event date in mid-December and to allow the public to comment on this proposed rule.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one to the Coast Guard at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The Winterfest Boat Parade is a nighttime parade of approximately 110 pleasure boats ranging in length from 20 feet to 200 feet decorated with holiday lights. Approximately 1,500 spectator craft typically view the parade. The parade would form in the staging area at the Port Everglades turning basin and on a portion of the ICW south of the turning basin and would proceed north on the ICW to Lake Santa Barbara where the parade would disband.

These regulations would create regulated areas for the staging area, judging area, viewing area, and parade route. Non-participant vessels would be prohibited from entering or anchoring in the staging area. Further, no vessel would be allowed to enter or anchor in the viewing and judging areas. During the parade transit, these regulations would prohibit non-participant vessels from approaching within 175 yards ahead of the lead vessel and 175 yards astern of the last participant vessel in the parade, and within 15 yards on either side of the outboard parade vessels, unless authorized by the Coast Guard Patrol Commander. The event sponsor would have watercraft in the area to guide mariners around the regulated areas.

The staging area of this regulation overlaps with existing security zones established by the Coast Guard Captain of the Port of Miami under 33 CFR 165.T07–054 (67 FR 46389, July 15, 2002). These security zones are activated when passenger vessels, vessels carrying cargoes of particular hazard, or vessels carrying liquified hazardous gas as defined in 33 CFR parts 120, 126, and 127 respectively, enter or moor in Port Everglades. These security zones remain in effect during this event and no person or vessel may enter the security zones without the permission of the Coast Guard Patrol Commander.

Discussion of Rule

The Coast Guard proposes to establish four regulated areas for this event: a staging area, a judging area, a viewing

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area, and a parade route. The staging area consists of all waters of the Port Everglades turning basin, including the North and South extensions, all waters of the Bar Cut west of a line from position 26°05.668′ N, 080°06.491′ W, to position 26°05.557′ N, 080°06.491′ W, and all waters of the ICW, bank to bank, from Dania Sound Light 35 (LLNR 47575) to the Port Everglades turning basin.

The parade route consists of the Intracoastal Waterway, bank to bank, from a line drawn across the ICW at the 17th Street Causeway Bridge between position 26°06.098′ N, 080°07.179′ W and position 26°06.092′ N, 080°07.085′ W, to Pompano Beach Daybeacon 74 (LLNR 47230). The viewing area consists of all waters of the ICW east of the centerline of the charted channel from the Sunrise Boulevard Bridge (26°08.281′ N, 080°06.482′ W) past Hugh Taylor Birch State Park to position 26°09.0′ N, 080°06.3′ W at the north end of Hugh Taylor Birch Park. The judging area consists of an area of the ICW, bank to bank, from a point on the northwest side of the 17th Street Causeway Bridge in position 26°06.098′ N, 080°07.179′ W, north to position 26°06.131′ N, 080°07.19′ W, then east to position 26°06.131′ N, 080°07.10′ W, then back south to position 26°06.092′ N, 080°07.085′ W at the northeast side of the 17th Street Causeway Bridge.

Non-participant vessels are prohibited from entering or anchoring in the staging area, viewing area, and judging area, unless authorized by the Coast Guard Patrol Commander. The Coast Guard Patrol Commander may allow vessels to enter the staging area when the last participant vessel has departed the staging area. The Coast Guard Patrol Commander would notify the public via Marine Safety Radio Broadcast on VHF Marine Band Radio, Channel 16 (157. MHz) if vessels are allowed to enter the staging area.

During the parade transit, non-participant vessels are prohibited from approaching within 175 yards ahead of the lead vessel or 175 yards astern of the last participating vessel in the parade, and within 15 yards either side of the parade unless authorized by the Coast Guard Patrol Commander.

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT)(44 FR 11040, February 26, 1979).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary because this rule would only be in effect for 7 hours each year and the Coast Guard Patrol Commander may allow vessels to enter portions of the regulated areas on a case-by-case basis.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

This rule may affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in a portion of the regulated areas from 4 p.m. to 11 p.m. on the first Saturday falling between December 13 and 19, inclusive, each year. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities because the rule would only be in effect for 7 hours each year and the Coast Guard Patrol Commander may allow vessels to enter portions of the regulated areas on a case-by-case basis.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment to the Coast Guard at the address under **ADDRESSES.** In your comment, explain why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult the person listed under **FOR FURTHER INFORMATION CONTACT** for information on understanding and participating in this rulemaking.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888-REG-FAIR (1–888–734–3247).

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this proposed rule under Executive Order 13132, Federalism, and have determined that it does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their regulatory actions not specifically required by law. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Although this proposed rule would not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Environment

The Coast Guard has considered the environmental impact of this action and has determined that pursuant to figure 2–1, paragraph 34(h) of Commandant Instruction M164751D, that this action is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46.

2. Add § 100.735 to read as follows:

§ 100.735 Winterfest Boat Parade, Broward County, Fort Lauderdale, Florida

(a) *Regulated areas.* (1) *Staging area.* The staging area consists of all waters of the Port Everglades turning basin, including the North and South extensions, all waters of the Bar Cut west of a line from position 26°05.668′ N, 080°06.491′ W, to position 26°05.557′ N, 080°06.491′ W, and all waters of the ICW, bank to bank, from Dania Sound Light 35 (LLNR 47575) to the Port Everglades turning basin.

(2) *Parade route.* The parade route consists of the Intracoastal Waterway, bank to bank, from a line drawn across the ICW at the 17th Street Causeway Bridge between position 26°06.098′ N, 080°07.179′ W and position 26°06.092′ N, 080°07.085′ W, to Pompano Beach Daybeacon 74 (LLNR 47230).

(3) *Viewing area.* The viewing area consists of all waters of the ICW east of the centerline of the charted channel from the Sunrise Boulevard Bridge (26°08.281′ N, 080°06.482′ W) past Hugh Taylor Birch State Park to position 26°09.0′ N, 080°06.3′ W at the north end of Hugh Taylor Birch State Park.

(4) *Judging area.* The judging area consists of an area of the ICW, bank to bank, from a point on the northwest side of the 17th Street Causeway Bridge in position 26°06.098′ N, 080°07.179′ W, north to position 26°06.131′ N, 080°07.19′ W, then east to position 26°06.131′ N, 080°07.10′ W, then back south to position 26°06.092′ N, 080°07.085′ W at the northeast side of the 17th Street Causeway Bridge.

(b) *Special local regulations.* (1) *Staging area.* Non-participant vessels are prohibited from entering or anchoring in the staging area, unless authorized by the Coast Guard Patrol Commander. The Coast Guard Patrol Commander may allow vessels to enter the staging area when the last participant vessel has departed the staging area. The Coast Guard Patrol Commander will notify the public via Marine Safety Radio Broadcast on VHF Marine Band Radio, Channel 16 (157. MHz) if vessels are allowed to enter the staging area.

(2) *Parade route.* During the parade transit, non-participant vessels are prohibited from approaching within 175 yards ahead of the lead vessel and 175 yards astern of the last participating vessel in the parade, and within 15 yards either side of the parade unless authorized by the Coast Guard Patrol Commander.

(3) *Viewing and judging areas.* Vessels are prohibited from entering or anchoring in the viewing and judging areas.

(4) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Group Miami, Florida and is also the designated representative of the Captain of the Port of Miami for purposes of enforcing security zones in Port Everglades during this event.

(c) *Dates.* This section is effective from 4 p.m. until 11 p.m. annually, on the first Saturday falling between December 13 and 19, inclusive.

Dated: October 23, 2002.

James S. Carmichael,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 02–27665 Filed 10–30–02; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–7399–9]

Massachusetts: Extension of Interim Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to extend the expiration date from January 1, 2003, to January 1, 2006, for the interim authorization under the Resource Conservation and Recovery Act, of the Massachusetts program for regulating Cathode Ray Tubes ("CRTs"). Massachusetts was granted interim authorization to assume the responsibility under the Toxicity Characteristics Rule ("TC Rule") for regulating CRTs on November 15, 2000. That previously granted interim authorization is due to expire on January 1, 2003, and needs be extended. Elsewhere in today's **Federal Register**, EPA is publishing a rule to authorize the extension without a prior proposal because we believe this action is not controversial and do not expect comments that oppose it. Unless we get written comments which oppose this extension during the comment period, the decision to extend the interim authorization will take effect. If we get comments that oppose this action, we will publish a document in the **Federal Register** withdrawing this rule before it takes effect and this separate document in this proposed rules section of this **Federal Register** will serve as the proposal to authorize the changes.

DATES: Send your written comments by December 2, 2002.

ADDRESSES: Send any written comments to Robin Biscaia, EPA New England, One Congress Street, Suite 1100 (CHW), Boston, MA 02114–2023; telephone: (617) 918–1642. Documents related to EPA's previous decision to grant interim authorization (regarding regulation of CRTs) and the materials which EPA used in now considering the extension (the "Administrative Record") are available for inspection and copying during normal business hours at the following locations: Massachusetts Department of Environmental Protection Library, One Winter Street—2nd Floor, Boston, MA 02108, business hours: 9 a.m. to 5 p.m., telephone: (617) 292–5802; or EPA New England Library, One Congress Street—11th Floor, Boston, MA 02114–2023, business hours: 10

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a.m. to 3 p.m., Monday through Thursday, telephone: (617) 918–1990.

FOR FURTHER INFORMATION CONTACT: Robin Biscaia, Hazardous Waste Unit, Office of Ecosystems Protection, EPA New England, One Congress Street, Suite 1100 (CHW), Boston, MA 02114–2023, telephone: (617) 918–1642.

SUPPLEMENTARY INFORMATION: For additional information, please see the immediate final rule published in the "Rules and Regulations" section of this **Federal Register**.

Dated: October 17, 2002.

Robert W. Varney,

Regional Administrator, EPA New England.

[FR Doc. 02–27342 Filed 10–30–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

46 CFR Part 540

[Docket No. 02–15]

Passenger Vessel Financial Responsibility

AGENCY: Federal Maritime Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Maritime Commission proposes to amend its rules regarding the establishment of passenger vessel financial responsibility under sections 2 (Casualty) and 3 (Performance) of Pub. L. 89–777. The amendments would: eliminate the current ceiling on required Performance coverage; adjust the amount of coverage required by providing for consideration of the obligations of credit card issuers; provide for the use of Alternative Dispute Resolution ("ADR"), including the Commission's ADR program, in resolving passenger performance claims; revise the application form; and make a number of technical adjustments to the Performance and Casualty rules.

DATES: Submit an original and 15 copies of comments (paper), or e-mail comments as an attachment in WordPerfect 8, Microsoft Word 97, or earlier versions of these applications, no later than January 8, 2003. As the Commission continues to experience some difficulty with mail delivery, commenters are encouraged to use e-mail, courier or express delivery services.

ADDRESSES: Address all comments concerning this proposed rule to: Bryant L. VanBrakle, Secretary, Federal Maritime Commission, 800 North Capitol Street, NW., Room 1046, Washington, DC 20573–0001. E-mail: *secretary@fmc.gov*.

FOR FURTHER INFORMATION CONTACT:

Sandra L. Kusumoto, Director, Bureau of Consumer Complaints and Licensing; 202–523–5787; E-mail: *sandrak@fmc.gov;* or

Ronald D. Murphy, Commission Dispute Resolution Specialist and Deputy Director, Bureau of Consumer Complaints and Licensing; 202–523–5787; E-mail: *ronaldm@fmc.gov;* or

David R. Miles, Acting General Counsel, 202–523–5740; E-mail: *davidm@fmc.gov;* Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573–0001.

SUPPLEMENTARY INFORMATION: Section 3 of Public Law 89–777 ("section 3")[1], 46 U.S.C. app. 817e, requires passenger vessel operators ("PVOs")[2] to establish their financial responsibility to indemnify passengers for nonperformance of transportation. Section 2 of Public Law 89–777 ("section 2"), 46 U.S.C. app. 817d, requires owners and charterers of vessels with berth or stateroom accommodations for fifty or more passengers, and embarking passengers at U.S. ports, to establish financial responsibility to meet liability for death or injury to passengers or other persons on voyages to and from U.S. ports.

Effective August 5, 2002, the Commission amended its section 3 implementing regulations at 46 CFR part 540, subpart A, to eliminate self-insurance as a means of evidencing financial responsibility, to limit those entities acceptable as a guarantor, and to eliminate certain sliding scale provisions as to the amount of coverage required, 67 FR 44774 (July 5, 2002). A number of comments received in that rulemaking proceeding addressed concerns outside the scope of the proceeding. In particular, several commenters suggested that the current $15 million ceiling on the amount of the unearned passenger revenue ("UPR")[3] required to be covered be substantially raised or eliminated completely. Some who advocated lifting the ceiling were concerned about an apparent competitive advantage to larger vessel operators required to cover only a fraction of their total UPR, while smaller operators with less than $15 million UPR must cover all of their UPR. One of the larger operators suggested that coverage requirements adjust upwards as UPR increases, in order to remedy the increasing shortfall in coverage as the larger fleets continue to increase in size. Partially in response to those comments, and in light of industry circumstances more fully described herein, the Commission has reviewed its rules and has determined that a number of changes should be made, including eliminating the ceiling.

The Commission also proposes minor amendments to its section 2 implementing regulations for casualty coverage, 46 CFR part 540, subpart B. Those changes would eliminate references to escrow agreements and make other technical changes.

State of the Industry

The current $15 million ceiling set forth at 46 CFR 540.9(j) has been in existence since 1991, when it was raised from $10 million.[4] In 1994, the Commission proposed to remove the $15 million ceiling, but following receipt of comments, the Commission opted to revise its proposal by imposing a sliding scale requirement that would increase the amount of coverage required for those cruise lines exceeding $15 million in unearned passenger revenues, without requiring coverage of the total amount of UPR. Docket No. 94–06, *Financial Responsibility Requirements for Nonperformance of Transportation;* Proposed Rule, 59 FR 15149 (March 31, 1994); Further Proposed Rule, 61 FR 33059 (June 26, 1996). That proceeding was discontinued earlier this year, without producing changes to the ceiling. *Id.*, Proceeding Discontinued, 67 FR 19535 (April 22, 2002).

Part of the reason the Commission stepped back from its prior efforts to require total coverage protection was the

[1] Section 3 provides, in pertinent part:

(a) No person in the United States shall arrange, offer, advertise, or provide passage on a vessel having berth or stateroom accommodations for fifty or more passengers and which is to embark passengers at United States ports without there first having been filed with the Federal Maritime Commission such information as the Commission may deem necessary to establish the financial responsibility of the person arranging, offering, advertising, or providing such transportation, or, in lieu thereof, a copy of a bond or other security, in such form as the Commission, by rule or regulation, may require and accept, for indemnification of passengers for nonperformance of the transportation.

[2] For the purposes of section 3, a PVO is considered to be any person in the United States that arranges, offers, advertises or provides passage on a vessel having berth or stateroom accommodations for fifty or more passengers and which embarks passengers at U.S. ports.

[3] As currently defined, UPR means "passenger revenue received for water transportation and all other accommodations, services, and facilities relating thereto not yet performed." 46 CFR 540.2(i).

[4] The UPR coverage ceiling initially was set in 1967 at $5 million (Docket No. 66–67, Final Rule, 67 FR 2723 (March 10, 1967)), rose in 1981 to $10 million (Docket No. 79–93, 45 FR 234328, (April 1, 1980)), and rose again in 1990 to $15 million (Docket No. 90–1, Final Rule, 55 FR 34564 (August 23, 1990); Correction, 55 FR 35983 (September 4, 1990)).

experience under the Commission's program at that time. The Commission was not aware of any instance in which passengers had lost funds as a result of cruise line bankruptcies or other failures to perform, and the economy and the cruise industry were thriving. The risk of nonperformance appeared minimal.

The past two years have seen a dramatic shift in that scenario. Since September 2000, five cruise lines that participated in the Commission's program have ceased operations: Premier Cruise Operations Ltd. ("Premier"), New Commodore Cruise Lines Limited ("Commodore"), Cape Canaveral Cruise Lines, Inc. ("Cape Canaveral"), MP Ferrymar, Inc. and American Classic Voyages Company ("AMCV"). In addition, the Commission is aware of at least two other cruise lines that ceased operating. Even though they sold almost all passages to U.S. citizens within the United States, Renaissance Cruises, Inc. ("Renaissance") and Great Lakes Cruises, Inc.[5] did not participate in the Commission's program because they embarked passengers only from ports outside of the U.S. Of those cruise lines, Premier and Renaissance are in the process of being liquidated through bankruptcy proceedings in other countries, Commodore and AMCV filed for reorganization under the U.S. bankruptcy laws, and the remaining lines ceased operations without filing for bankruptcy. Financial coverage under the Commission's program was necessary to meet passenger claims for Premier, Commodore, and, to a small extent, Cape Canaveral.

AMCV had evidenced its financial responsibility by means of self-insurance and thus, most of its passengers received no reimbursement other than through credit cards. Self-insurance is a coverage option that no longer is permitted. *See* Docket No. 02–07, *Financial Responsibility Requirements for Nonperformance of Transportation—Discontinuance of Self-Insurance and the Sliding Scale, and Guarantor Limitations,* 67 FR 44774 (July 5, 2002). Despite Commodore having a surety bond that covered its total UPR at the time it ceased operations, many of its passengers have yet to be reimbursed almost two years later. Premier's $15 million surety bond did not cover the entire amount of its UPR, estimated to have been approximately $22 million. Only by reliance on the obligation of credit card issuers to reimburse those passengers who had charged their purchases will Premier's surety bond be sufficient to satisfy all passenger claims.

The bankruptcies we have seen are symptomatic of the economic circumstances of the past few years and the decline in tourism after the events of September 11, 2001. The environment has changed significantly from that of 1996 when the Commission decided to hold in abeyance its efforts to require coverage for all UPR. The industry continues to consolidate. Large industry conglomerates own a number of cruise lines.[6] Carnival Corporation and Royal Caribbean Cruises Limited each are attempting to purchase P&O Princess Cruises Plc., which operates P&O Cruises and Princess Cruises. The size and number of vessels continue to increase, thus raising capacity. Recent reports indicate that six new vessels are anticipated to be launched in the remainder of 2002, another thirteen vessels in 2003, and still another seven in 2004.[7] Most of those vessels will have a capacity significantly exceeding 2,000 passengers, and three will have a capacity of 3,000 passengers or more.

Another indicator of concern is the number of complaints received by the Commission. For much of the history of the Commission's administration of Pub. L. 89–777, the agency received few complaints from passengers. In recent years, however, the Commission has been receiving several hundred complaints per year. In addition, the Commission now receives an ever-increasing number of inquiries from members of Congress about problems experienced by their constituents.

The $15 Million Ceiling

The Commission has examined its current $15 million ceiling in light of the above-described circumstances. Since 1967, when the ceiling was set at $5 million, the consumer price index has increased more than five-fold. Simply keeping pace with that index would indicate a ceiling of over $25 million. Yet the cruise industry itself and the amount of UPR outstanding at any one time has increased to a much greater degree. A coverage requirement capped at $25 million would be wholly inadequate for some cruise lines whose fleets consistently have outstanding UPR in the hundreds of millions of dollars. In addition, smaller operators may be at a competitive disadvantage vis-à-vis larger operators by having to cover all of their outstanding UPR, a requirement that is not imposed on larger operators under the present rule.

Finally, recent experience has demonstrated that increased coverage requirements must be put in place *before* a PVO begins to experience financial difficulty. Once a PVO is in financial peril, any Commission action to increase coverage requirements could increase the risk of nonperformance to passengers.

For all of these reasons, the Commission proposes to eliminate the ceiling on coverage requirements, and to require coverage based on the total amount of UPR for all PVOs. However, the Commission recognizes this could be costly to many in the industry. Accordingly, it is proposed that coverage of all passenger funds for voyages not yet performed be achieved in part by relying on the obligations of credit card issuers under the Fair Credit Billing Act ("FCBA"), 15 U.S.C. 1666–1666j, thus reducing the amount of coverage that must be filed with the Commission. This combination of credit card responsibilities and the coverage filed with the Commission would protect all UPR within the scope of section 3. Section 540.5 of the rules would be modified to implement this new approach, and will utilize a newly defined term, "excepted passenger revenue," as defined in proposed section 540.3(i)(2), which is described below. UPR would be redefined to exclude excepted passenger revenue ("EPR").

Excepted Passenger Revenue

The Commission is mindful of the tremendous cost and difficulty that may be faced by some PVOs in covering all UPR (as currently defined), and therefore proposes to exclude revenue received from credit card charges made within 60 days of sailing from the computation of UPR. Reliance on the current statutory obligations of credit card issuers to provide protections to their cardholders would substantially reduce coverage requirements for almost all PVOs, while not diminishing passenger protection. Performance bonds, guaranties, and escrow accounts established under the Commission's program will protect passengers not otherwise protected by their credit card issuers. The purpose of these bonds, guaranties, and escrow accounts is to provide passenger protection. They do not represent an asset of the cruise line, but a separate asset available to reimburse passengers.

[5] Great Lakes Cruises, Inc. operated the vessel MTS ARCADIA and is not to be confused with the Great Lakes Cruise Company that markets the vessels COLUMBUS and LE LEVANT.

[6] Carnival Corporation now owns Carnival Cruises, Holland America Line, Windstar Cruises, Cunard Line, Seabourn Cruise Line, and Costa Cruises. Royal Caribbean Cruises Limited owns Celebrity Cruises and Royal Caribbean International. Star Cruises Plc. owns Star Cruises, Norwegian Cruise Line, and Orient Lines.

[7] www.cruise-news.com/coming.html, "Coming Attractions—Index of Future Liners Now Under Construction," August 28, 2002.

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The proposal to exclude certain credit card charges from the computation of UPR is based upon construing Pub. L. 89–777 in a manner consistent with the FCBA. The FCBA requires credit card issuers to refund money for "billing errors" when a purchaser notifies the credit card issuer of the billing error in writing within 60 days after the credit card issuer transmits a statement containing the billing error. The term "billing error" is defined in such a way as to include "goods or services * * * not delivered to the obligor or his designee in accordance with the agreement made at the time of a transaction." 15 U.S.C. 1666(b)(3). The nonperformance of a cruise appears to fit within this statutory definition of a failure to provide goods or services as agreed.

The FCBA was enacted after the passage of Pub. L. 89–777. There is a general presumption in the law that a subsequent statute and a prior statute should be construed in a reasonable manner that "makes sense." *See, e.g., United States* v. *Fausto*, 484 U.S. 439, 453 (1988) ("reconciling many laws enacted over time, and getting them to 'make sense' in combination, necessarily assumes that the implications of a statute may be altered by the implications of a later statute."). In Pub. L. 89–777, Congress intended to protect passengers from nonperformance of transportation by requiring the Commission to ensure that PVOs are able to reimburse passengers if voyages are not performed. In the FCBA, Congress intended to provide protection for consumers from a failure in the delivery of goods or services within 60 days of the transmission of a bill. Both Pub. L. 89–777 and the FCBA are consumer protection statutes, and should be construed so as to maximize the protections available to consumers. Our proposed rule is premised on the notion that the best way to understand the relationship between the two complementary and overlapping statutes is for the Commission to require PVOs to provide proof of adequate financial responsibility for tickets that are purchased by credit card more than sixty days before a passenger is scheduled to embark, and for tickets that are purchased at any time by other means not covered by the FCBA. Passengers will be covered adequately by the FCBA for tickets purchased with a credit card less than 60 days before a cruise takes place, and will have an obligation to inform their credit card issuer in writing in the event of nonperformance of a cruise. It will be incumbent on affected passengers to comply with time or other requirements to obtain compensation from their credit card issuer.

Based on this analysis, it also would appear that requiring PVOs to provide coverage for UPR from tickets purchased by credit card within 60 days of embarkation, given the existence of the FCBA, would be redundant and would impose a needless financial burden. Therefore, pursuant to its statutory authority to determine what is "necessary to establish the financial responsibility of" PVOs, 46 U.S.C. app. 817e(a), the Commission proposes that passenger revenues received within 60 days of embarkation and paid for by a credit card that is subject to the FCBA be excluded from the calculation of UPR. This proposal is located in the "definitions" section of the rule, in such a way that UPR will be defined as passenger revenues received except for revenues received by credit card for a voyage to take place within 60 days.[8]

The proposed rule, however, would not permit a PVO to rely exclusively on excepted passenger revenue and thereby avoid supplying any evidence of financial responsibility. All PVOs would be required to provide, as a minimum, an amount of financial responsibility equal to ten percent of the sum of the highest amount of UPR plus EPR within the two years immediately preceding the filing of the application. This amount would be in addition to the amount required to cover UPR.

Technical Changes

A number of technical changes that are expected to have little, if any, impact also are proposed. They include the elimination of references to insurance as a means of performance coverage and escrow accounts as a means of casualty coverage. Insurance has never been used by any PVO to provide performance coverage, and it appears in any event to be inappropriate as a device for providing such coverage. Similarly, escrow accounts are designed to provide coverage for performance, and not casualty.

The Commission's rules formally require the filing of an application with the Secretary of the Commission in order to obtain a performance or casualty certificate. In practice, however, applications have always been filed with the appropriate operating bureau. Accordingly, the proposed rule reflects this by requiring the filing of documents with the Bureau of Consumer Complaints and Licensing. The proposed rule also would effect changes with respect to the filing of information. Prior requirements to file certain information by certified or registered mail would be replaced with a requirement that service in certain situations be by certified mail or other methods that would provide actual notice. This change would make the requirements consistent with the Commission's requirements in 46 CFR part 515, concerning Ocean Transportation Intermediaries.

Section 540.1 (b) would be modified to emphasize that failure to comply with subpart A may result not only in denial of an application, but also revocation of an existing certificate. The rule's language would be changed slightly to make it consistent with the statutory language. A similar provision applicable to subpart B would also be added to section 540.20.

Section 540.2 would be modified by deleting definitions of "Insurer" and "Evidence of Insurance," for the reasons explained above. In addition, the definition of "whole-ship" charter would be expanded to include "partial-ship" charters. A definition for the term "Principal(s)" would be added. Previously, provisions of subpart A imposed requirements on "Owners or Charterer(s)." However, section 3 of Pub. L. 89–777 imposes performance certificate requirements on "any person" performing a number of functions. The Commission always has insisted on the coverage being in the name of the ticket or passage contract issuer at a minimum, even though that entity may not be the same as an owner or charterer. Accordingly, the term "Principal" will refer to all entities deemed necessary to be covered.

Reporting Requirements

The Commission proposes to create new sections 540.8 and 540.26, consolidating reporting requirements for each subpart within a single section. Previously, reporting requirements have been interspersed within various sections. It is hoped that this consolidation will make it easier for affected entities to understand and comply with reporting requirements. This restructuring of the rules requires renumbering of all sections that follow the new sections in each subpart.

Two other changes have been made with respect to reporting requirements. First, the description of a material change required to be reported within five days would be expanded to include

[8] This proposed rule does not create any right of subrogation to the UPR covered by the Commission's program by credit card issuers that have reimbursed passengers for transactions involving excepted passenger revenue. Whatever means credit card issuers use to cover risks posed by excepted passenger revenue or the FCBA is beyond the scope of this proceeding.

a change in Principal for performance coverage and owner or charterer for casualty coverage. Second, in order for the Commission to have better information on the adequacy of coverage, the frequency of reporting requirements has been increased from semiannually to quarterly in sections 540.8 and 540.26.

Renumbered sections 540.9 and 540.27 have been reworded for clarification purposes. In addition, a new subsection (d) has been added to each section that would provide for automatic suspension or revocation of a certificate upon ten days' notice, for failure to comply in a timely manner with reporting requirements. On occasion, the Commission has experienced significant delays in obtaining information from some certificants. In such circumstances, it is hoped that this change will be more effective in obtaining required reports than the threat of Commission enforcement action.

Resolution of Passenger Claims in the Event of Nonperformance

In order to encourage PVOs to settle claims for nonperformance and to provide protection to passengers who are otherwise unable to obtain relief, the proposed rule would allow passengers to seek arbitration through a private arbitrator or the Commission's Alternative Dispute Resolution ("ADR") program, 46 CFR part 502, subpart U, if after six months their section 3 claims have not been settled by the PVO. In addition, passengers may utilize other means of ADR at any time. The Commission would offer ADR services in such cases since its ADR program is designed to resolve issues which are "material to a decision concerning a program of the Commission and with which there is a disagreement, between," *inter alia*, "the persons who would be substantially affected by the decision." 46 CFR 502.402(f).

ADR provides a variety of means to resolve disputes, some more formal than others. Arbitration, the most formal of the choices, may be used when all parties consent. 46 CFR 502.406(a)(1). "Consent may be obtained either before or after an issue in controversy has arisen." *Id.* Arbitration awards are binding. "It is an adjudicatory process, the scope of which in a particular controversy is defined in an arbitration agreement. Awards in such proceedings are enforceable in federal District Court pursuant to title 9 of the U.S. Code." Notice of Proposed Rulemaking, 46 CFR part 502, 66 FR 27922 (May 21, 2001).

The Commission generally would prefer that parties utilize other, less formal means than arbitration. They include conciliation, facilitation, mediation, fact-finding, and the use of ombudsmen.[9] 46 CFR 502.402(a). These proceedings are not inherently binding; even though the parties may agree to be bound by a determination in one of these proceedings. Participation in any of these processes is also voluntary. 46 CFR 502.403(c).

Most passenger claims presumably would be resolved through mediation or the Commission's ombuds services, with arbitration reserved for those instances where an agreement resolving the dispute cannot be reached between the parties. Should passengers seek to utilize the Commission's ADR services, the Commission's Dispute Resolution Specialist, 46 CFR 501.5(h)(1), will determine the means most useful for each situation, but arbitration would be available only with respect to claims not paid within six months.

The proposed rule would effectuate the availability of ADR by adding provisions consenting to arbitration to the bond, guaranty, and escrow agreement forms in the rule. *See* 46 CFR part 540, subpart A. As proof of financial responsibility PVOs must present to the Commission a bond, guaranty, or escrow agreement.[10] This mechanism to ensure financial responsibility is set in place to protect and reimburse passengers in the event that the PVO does not perform the voyage for which the passenger paid.

The language of Pub. L. 89–777 stipulates that PVOs must supply "a copy of a bond or other security, in such form as the Commission, by rule or regulation, may require and accept, for indemnification of passengers for nonperformance." 46 U.S.C. app. 817e(a). Currently the guaranty and escrow agreement forms contain language requiring the financial responsibility provider to make indemnification payments to the aggrieved passenger if, within 21 days after such passenger has obtained a "final judgment (after appeal, if any) against [the PVO] from a United States Federal or State Court of competent jurisdiction,"[11] the PVO has not paid the claim. However, obtaining such a court judgment is time-consuming and can cost more than the monetary value of the underlying claim. Therefore, the proposed rule would require that payment will also be due if the passenger has received an arbitration award through a private arbitrator or the Commission's ADR program. Moreover, consent to such a proceeding would be provided as part of the PVO's proof of financial responsibility. Thus, if a passenger elects to initiate a request for resolution of its claim, the PVO would be obligated to participate. Passengers who elect to use the Commission's services may request such action directly from the Commission's Dispute Resolution Specialist, who may appoint a third party neutral. Although the third party neutral may be a Commission employee, it is very likely that a neutral from the private sector would be appointed. In such case, fees and expenses would be borne by the parties as they agree, in accordance with 46 CFR 502.404(d).

The proposed rule would enact this requirement by adding a new section 540.10(f). In addition, in the bond (Form FMC–132A) and guaranty (Form-133A) forms and sample escrow agreement in Appendix A, language would be added to obligate the financial responsibility provider to honor arbitration awards, and to provide for consent by the passenger vessel operator to the use of arbitration under the Commission's ADR program.

Forms

The Commission's application form would be revised by the proposed rule to comport more closely with the information needed in an application. Although our rules require submission of the application form, the current version is not very useful to filers or staff reviewing the filing. The new

[9] These procedures were more thoroughly explained in the Notice of Proposed Rulemaking, 66 FR 27922 (May 21, 2001), for the ADR rule as follows:

(1) Mediation "is a process in which a mediator facilitates communication and negotiation between or among parties to a controversy and assists them in reaching a mutually acceptable resolution of the controversy * * *. [T]he key aspect of [mediation] is that the parties control the terms of any agreement to resolve the dispute."

(2) "Conciliation is similar [to mediation], but is relatively informal and unstructured."

(3) Facilitation "is a group process that is usually goal-oriented."

(4) Fact-finding "involves the use of a neutral third party to investigate and determine a disputed fact. It is usually used for technical issues or significant factual issues which are part of a larger dispute. Sometimes, fact-finding is used in conjunction with mediation to resolve a fact which may be important to resolution of the controversy."

(5) The use of ombuds "involves the use of an employee or organization component to whom complaints or problems can be brought with the hopes of quick, informal resolution."

[10] Self-insurance was eliminated in Docket No. 02-07, Financial Responsibility Requirements for Nonperformance of Transportation—Discontinuance of Self-Insurance and the Sliding Scale, and Guarantor Limitations, 67 FR 44774 (July 5, 2002). Insurance would be eliminated by this proposed rule.

[11] This language, and any new language added in this rulemaking, will also be added to the bond form so that all forms of financial responsibility would be consistent.

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application form would be shorter, but include a separate Vessel Schedule (Form FMC–131–VS) for each vessel.

The Commission would add a new form to subpart B, Form FMC–140, Uniform Endorsement. Such a Uniform Endorsement has been in use for a number of years to protect passengers from the application of high deductibles and exclusions that may otherwise exist in insurance policies.

Other Matters

To thoroughly evaluate the impact of this proposed rule, the Commission encourages those commenting to provide cost data reflecting any changes in cost, whether an increase or decrease, to those affected. Any such cost data will be provided confidential treatment to the full extent allowable by law.

The reporting requirements in sections 540.8 and 540.26 and the revised application form FMC–131 with accompanying vessel schedules (Form FMC–131–VS) are being submitted to the Office of Management and Budget for review under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Public burden of this collection of information for 42 respondents is estimated to be 684 hours annually (180 hours for Forms FMC–131 and 131–VS and 504 hours for sections 540.8 and 540.26). Send comments regarding the burden estimate to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention Desk Officer for the Federal Maritime Commission, New Executive Office Building, 725 17th Street, NW., Washington, DC 20503 within 30 days of publication of this Notice of Proposed Rulemaking in the **Federal Register**.

The Chairman certifies, pursuant to 5 U.S.C. 605, that the proposed rule would not have a significant impact on a substantial number of small entities.

List of Subjects in 46 CFR part 540

Insurance, Maritime carriers, Penalties, Reporting and record keeping requirements, Surety bonds, Transportation.

Therefore, pursuant to 5 U.S.C. 553; section 3 Pub. L. 89–777, 80 Stat. 1356–1358 (46 U.S.C. app. 817e); and section 17(a) of the Shipping Act of 1984, as amended (46 U.S.C. app. 1716(a)), and for the reasons stated above, the Federal Maritime Commission proposes to amend 46 CFR part 540 to read as follows:

PART 540—PASSENGER VESSEL FINANCIAL RESPONSIBILITY

Subpart A—Proof of Financial Responsibility, Bonding and Certification of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation

Sec.
540.1 Scope.
540.2 Definitions.
540.3 Proof of financial responsibility, when required.
540.4 Procedure for establishing financial responsibility.
540.5 Guaranties and escrow accounts.
540.6 Surety bonds.
540.7 Evidence of financial responsibility.
540.8 Reporting requirements.
540.9 Denial, revocation, suspension, or modification.
540.10 Miscellaneous.
Form FMC–131
Form FMC–132A
Form FMC–133A
Appendix A—Example of Escrow Agreement for use under 46 CFR 540.5(b)

Subpart B—Proof of Financial Responsibility, Bonding and Certification of Financial Responsibility To Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages

540.20 Scope.
540.21 Definitions.
540.22 Proof of financial responsibility, when required.
540.23 Procedure for establishing financial responsibility.
540.24 Insurance, surety bonds, self-insurance, and guaranties.
540.25 Evidence of financial responsibility.
560.26 Reporting requirements.
540.27 Denial, revocation, suspension, or modification.
540.28 Miscellaneous.
Form FMC–132B
Form FMC–133B
Form FMC–140

Authority: 5 U.S.C. 552, 553; 31 U.S.C. 9701; secs. 2 and 3, Pub. L. 89–777, 80 Stat. 1356—1358, 46 U.S.C. app. 817e, 817d; 46 U.S.C. 1716.

Subpart A—Proof of Financial Responsibility, Bonding and Certification of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation

§ 540.1 Scope.

(a) The regulations contained in this subpart set forth the procedures whereby persons in the United States who arrange, offer, advertise or provide passage on a vessel having berth or stateroom accommodations for 50 or more passengers and embarking passengers at U.S. ports shall establish their financial responsibility or, in lieu thereof, file a bond or other security for obligations under the terms of ticket contracts to indemnify passengers for nonperformance of transportation to which they would be entitled. Included also are the qualifications required by the Commission for issuance of a Certificate (Performance) and the basis for the denial, revocation, modification, or suspension of such Certificates.

(b) Failure to comply with this subpart may result in denial of an application for a certificate or revocation of an existing certificate. Vessels operating without the proper certificate may be denied clearance. In addition, any person who shall violate this part shall be subject to a civil penalty of not more than $6,000 in addition to a civil penalty of $220 for each passage sold, such penalties to be assessed by the Federal Maritime Commission (46 U.S.C. app. 91, 817e).

§ 540.2 Definitions.

As used in this subpart, the following terms shall have the following meanings:

(a) *Person* includes individuals, corporations, partnerships, associations, and other legal entities existing under or authorized by the laws of the United States or any State thereof or the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands or any territory or possession of the United States, or the laws of any foreign country.

(b) *Vessel* means any commercial vessel having berth or stateroom accommodations for 50 or more passengers and embarking passengers at U.S. ports.

(c) *Commission* means the Federal Maritime Commission.

(d) *United States* includes the Commonwealth of Puerto Rico, the Virgin Islands or any territory or possession of the United States.

(e) *Berth or stateroom accommodation* or *passenger accommodations* includes all temporary and all permanent passenger sleeping facilities.

(f) *Certificate (Performance)* means a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation issued pursuant to this subpart.

(g) *Passenger* means any person who is to embark on a vessel at any U.S. port and who has paid any amount for a ticket contract entitling him to water transportation.

(h) *Passenger revenue* means those monies wherever paid by passengers who are to embark at any U.S. port for water transportation and all other accommodations, services and facilities relating thereto.

(i) (1) *Unearned passenger revenue* means that passenger revenue received for water transportation and all other accommodations, services, and facilities relating thereto not yet performed, but does not include excepted passenger revenue.

(2) *Excepted passenger revenue* means that passenger revenue received for transportation and all other accommodations, services, and facilities relating thereto not yet performed, when payment is tendered by the passenger within 60 days of the date the passenger is scheduled to embark through the use of a credit card that is subject to the provisions governing the correction of billing errors at 15 U.S.C. 1666. An extension of credit by the person arranging, offering, advertising or providing passage shall not be considered excepted passenger revenue.

(j) *Whole-ship or partial-ship charter* means an arrangement between a passenger vessel operator and a corporate or institutional entity:

(i) Which provides for the purchase of all, or a significant part of, the passenger accommodations on a vessel for a particular voyage or series of voyages; and

(ii) Whereby the involved corporate or institutional entity provides such accommodations to the ultimate passengers free of charge and such accommodations are not resold to the public.

(k) *Principal(s)* include the ticket or passage contract issuer(s) and all other persons arranging, offering, advertising, or providing passage on a vessel subject to this subpart.

§ 540.3 Proof of financial responsibility, when required.

No person in the United States may arrange, offer, advertise, or provide passage on a vessel unless a Certificate (Performance) has been issued to or covers such person.

§ 540.4 Procedure for establishing financial responsibility.

(a) In order to comply with section 3 of Pub. L. 89–777 (80 Stat. 1357, 1358) enacted November 6, 1966, there must be filed an application on Form FMC–131, Application for Passenger Vessel Certificate, with accompanying Vessel Schedule(s) on Form FMC–131–VS. Copies of Forms FMC–131 and FMC–131–VS may be obtained from the Bureau of Consumer Complaints and Licensing, Federal Maritime Commission, Washington, DC 20573, or the Commission Web site, *http://www.fmc.gov*.

(b) An application for a Certificate (Performance) shall be filed in duplicate with the Bureau of Consumer Complaints and Licensing, Federal Maritime Commission, by the Principal(s) at least 60 days in advance of the arranging, offering, advertising, or providing of any water transportation or tickets in connection therewith. Late filing of the application will be permitted only for good cause shown. All applications and evidence required to be filed with the Commission shall be in English, and any monetary terms shall be expressed in terms of U.S. currency. The Commission shall have the privilege of verifying any statements made or any evidence submitted under the rules of this subpart. An application for a Certificate (Performance), excluding an application for the addition or substitution of a vessel to the applicant's fleet, shall be accompanied by a filing fee remittance of $2,549. An application for a Certificate (Performance) for the addition or substitution of a vessel to the applicant's fleet shall be accompanied by a filing fee remittance of $1,276.

(c) The application shall be signed by a duly authorized officer or representative of the applicant with a copy of evidence of his or her authority. Notice of the application for issuance, denial, revocation, suspension, or modification of any such Certificate shall be published in the **Federal Register**.

§ 540.5 Guaranties and escrow accounts.

The amount of coverage required under this section and § 540.6(b) shall be in an amount determined by the Commission to be no less than 100 percent of the unearned passenger revenue of the applicant on the date within the 2 fiscal years immediately prior to the filing of the application which reflects the greatest amount of unearned passenger revenue, plus an additional fixed amount of ten percent of the sum of the unearned passenger revenue and the excepted passenger revenue on the date within the two fiscal years immediately prior to the filing of the application which reflects the greatest amount of unearned passenger revenue plus excepted passenger revenue. The Commission, for good cause shown, may consider a time period other than the previous two-fiscal-year requirement in this section or other methods acceptable to the Commission to determine the amount of coverage required. Evidence of adequate financial responsibility for the purposes of this subpart may be established by one or a combination (including § 540.6 Surety Bonds) of the following methods:

(a) Filing with the Commission a guaranty on Form FMC–133A, by a shipowners' Protection and Indemnity Association acceptable to the Commission, for indemnification of passengers in the event of nonperformance of water transportation. The requirements of Form FMC–133A, however, may be amended by the Commission in a particular case for good cause.

(1) Termination or cancellation of a guaranty, whether by the assured or by the guarantor, and whether for nonpayment of fees, assessments, or for other cause, shall not be effected:

(i) Until notice in writing has been given to the assured or to the guarantor and to the Bureau of Consumer Complaints and Licensing at its office, in Washington, DC 20573, by certified U.S. mail or other method reasonably calculated to provide actual notice, and

(ii) until after 30 days expire from the date notice is actually received by the Commission, or until after the Commission revokes the Certificate (Performance), whichever occurs first. Notice of termination or cancellation to the assured or guarantor shall be simultaneous to such notice given to the Commission. The guarantor shall remain liable for claims covered by said guaranty arising by virtue of an event which had occurred prior to the effective date of said termination or cancellation. No such termination or cancellation shall become effective while a voyage is in progress.

(2) The insolvency or bankruptcy of the assured shall not constitute a defense to the guarantor as to claims included in said guaranty and in the event of said insolvency or bankruptcy, the guarantor agrees to pay any unsatisfied final judgments obtained on such claims.

(3) No guaranty shall be acceptable under these rules which restricts the liability of the guarantor where privity of the Principal(s) has been shown to exist.

(4) In the case of a guaranty which is to cover an individual voyage, such guaranty shall be in an amount determined by the Commission to equal the passenger revenue for that voyage.

(b) Filing with the Commission evidence of an escrow account, acceptable to the Commission, for indemnification of passengers in the event of nonperformance of water transportation. Parties filing escrow agreements for Commission approval may execute such agreements in the form set forth in Appendix A of Subpart A of this Part.

(c) Revenues derived from whole-ship or partial-ship charters, as defined in section 540.2(1), may be exempted from consideration as unearned passenger revenues, on condition that, in the case of a new operator or within 30 days of

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the execution of the charter if the operator has a Certificate (Performance) for the vessel in question: (1) A certified true copy of the contract or charter is furnished with the application;

(2) the chartering party attests that it will redistribute the vessel's passenger accommodations without charge; and

(3) a document executed by the chartering party's Chief Executive Officer or other responsible corporate officer is submitted by which the chartering party specifically acknowledges that its rights to indemnification under section 3 of Public Law 89–777 are waived by the reduction in section 3, Public Law 89–777, financial responsibility coverage attributable to the exclusion of such funds from the operator's unearned passenger revenue.

§ 540.6 Surety bonds.

(a) Where financial responsibility is not established under § 540.5, a surety bond shall be filed on Form FMC–132A. Such surety bond shall be issued by a bonding company authorized to do business in the United States and acceptable to the Commission for indemnification of passengers in the event of nonperformance of water transportation. The requirements of Form-132A, however, may be amended by the Commission in a particular case for good cause.

(b) In the case of a surety bond which is to cover all passenger operations of the applicant subject to these rules, such bond shall be in an amount calculated as in the introductory text of § 540.5.

(c) In the case of a surety bond which is to cover an individual voyage, such bond shall be in an amount determined by the Commission to equal the passenger revenue for that voyage.

(d) The liability of the surety under the rules of this subpart to any passenger shall not exceed the amount paid by any such passenger, except that, no such bond shall be terminated while a voyage is in progress.

§ 540.7 Evidence of financial responsibility.

Where satisfactory proof of financial responsibility has been given, a Certificate (Performance) covering specified vessels shall be issued evidencing the Commission's finding of adequate financial responsibility to indemnify passengers for nonperformance of water transportation. The period covered by the Certificate (Performance) shall be indeterminate, unless a termination date has been specified thereon.

§ 540.8 Reporting requirements.

(a) In the event of any material change in the facts as reflected in the application, an amendment to the application shall be filed no later than five (5) days following such change. For the purpose of this subpart, a material change shall be one which: (1) Results in a decrease in the amount submitted to establish financial responsibility to a level below that required to be maintained under the rules of this subpart, (2) requires that the amount to be maintained be increased above the amount submitted to establish financial responsibility, or (3) includes a change in Principal(s).

(b) In addition, every person who has been issued a Certificate (Performance) must submit to the Commission a quarterly statement of any changes that have taken place with respect to the information contained in the application or documents submitted in support thereof. Negative statements are required to indicate no change. The quarterly statements must cover each month of the quarter and include a statement of the highest unearned passenger vessel revenue and the highest excepted passenger revenue accrued for each month in the reporting period. In addition, the statements will be due within 30 days after the close of every quarter.

(c) Each applicant, escrow agent, and guarantor shall furnish a written designation of a person in the United States as legal agent for service of process for the purposes of the rules of this subpart. Such designation must be acknowledged, in writing, by the designee. In any instance in which the designated agent cannot be served because of its death, disability, or unavailability, the Secretary of the Federal Maritime Commission, will be deemed to be the agent for service of process. A party serving the Secretary in accordance with the above provision must also serve the Certificant, escrow agent, or guarantor, as the case may be, by certified U.S. mail or other method reasonably calculated to provide actual notice at its last known address on file with the Commission.

(d) Any financial evidence submitted to the Commission under the rules of this subpart shall be written in the full and correct name of the person(s) to whom the Certificate (Performance) is to be issued, and in case of a partnership, all partners shall be named.

(e) Financial data filed in connection with the rules of this subpart shall be confidential except in instances where information becomes relevant in connection with hearings which may be requested by applicant pursuant to § 540.8 (c).

§ 540.9 Denial, revocation, suspension, or modification.

(a) A Certificate (Performance) shall become null and void upon cancellation or termination of the surety bond, guaranty, or escrow account.

(b) A Certificate (Performance) may be denied, revoked, suspended, or modified for any of the following reasons:

(1) Making any willfully false statement to the Commission in connection with an application for a Certificate (Performance);

(2) Circumstances whereby the party does not qualify as financially responsible in accordance with the requirements of the Commission;

(3) Failure to comply with or respond to lawful inquiries, rules, regulations, or orders of the Commission pursuant to the rules of this subpart.

(c) Prior to the denial, revocation, suspension, or modification of a Certificate (Performance), the Commission shall advise the applicant of its intention to deny, revoke, suspend, or modify and shall state the reasons therefor. If the applicant, within 20 days after the receipt of such advice, requests a hearing to show that the evidence of financial responsibility filed with the Commission does meet the rules of this subpart, such hearing shall be granted by the Commission.

(d) Notwithstanding the above provisions, failure to comply timely with the reporting requirements in this part may subject a certificant to automatic suspension or revocation of their Certificate (Performance) upon ten days' notice, without hearing. A certificant may avoid such suspension or revocation by filing within the ten days the required reports or proof that the reports had been timely filed.

§ 540.10 Miscellaneous.

(a) If any evidence filed with the application does not comply with the requirements of this subpart, or for any reason fails to provide adequate or satisfactory protection to the public, the Commission will notify the applicant stating the deficiencies thereof.

(b) The Commission's bond (Form FMC–132A), guaranty (Form FMC–133A), and application (Form FMC–131) forms are hereby incorporated as a part of the rules of this subpart. Any such forms filed with the Commission under this subpart must be in duplicate.

(c) Any securities or assets accepted by the Commission (from applicants, guarantors, escrow agents, or others), under the rules of this subpart must be physically located in the United States.

(d) Every person in whose name a Certificate (Performance) has been issued shall be deemed to be responsible for any unearned passage money or deposits in the hands of its agents or of any other person or organization authorized by the certificant to sell the certificant's tickets. Certificants shall promptly notify the Commission of any arrangements, including charters and subcharters, made by it or its agent with any person pursuant to which the certificant does not assume responsibility for all passenger fares and deposits collected by such person or organization and held by such person or organization as deposits or payment for services to be performed by the certificant. If responsibility is not assumed by the certificant, the certificant also must inform such person or organization of the certification requirements of Pub. L. 89–777 and not permit use of its name or tickets in any manner unless and until such person or organization has obtained the requisite Certificate (Performance) from the Commission.

(e) Passengers with claims for nonperformance under this subpart should file such claims with the appropriate Principal(s) and their providers of financial responsibility. In the event that such a passenger claim has not been resolved within six months after, but no more than three years after, filing with the Principal(s) and providers of financial responsibility, a passenger has the option to request arbitration under 46 CFR 502.406. This six month time requirement may be waived by the Dispute Resolution Specialist for good cause.

Subpart B—Proof of Financial Responsibility, Bonding and Certification of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages

§ 540.20 Scope.

(a) The regulations contained in this subpart set forth the procedures whereby Owners and Charterer(s) having berth or stateroom accommodations for 50 or more passengers and embarking passengers at U.S. ports shall establish their financial responsibility to meet any liability which may be incurred for death or injury to passengers or other persons on voyages to or from U.S. ports. Included also are the qualifications required by the Commission for issuance of a Certificate (Casualty) and the basis for the denial, revocation, suspension, or modification of such Certificates.

(b) Failure to comply with this subpart may result in denial of an application for a certificate or revocation of an existing certificate. Vessels operating without the proper certificate may be denied clearance. In addition, any person who shall violate this part shall be subject to a civil penalty of not more than $6,000 in addition to a civil penalty of $220 for each passage sold, such penalties to be assessed by the Federal Maritime Commission (46 U.S.C. app. 91, 817d).

§ 540.21 Definitions.

As used in this subpart, the following terms shall have the following meanings:

(a) *Person* includes individuals, corporations, partnerships, associations, and other legal entities existing under or authorized by the laws of the United States or any state thereof or the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands or any territory or possession of the United States, or the laws of any foreign country.

(b) *Vessel* means any commercial vessel having berth or stateroom accommodations for 50 or more passengers and embarking passengers at U.S. ports.

(c) *Commission* means the Federal Maritime Commission.

(d) United States includes the Commonwealth of Puerto Rico, the Virgin Islands or any territory or possession of the United States.

(e) *Berth or stateroom accommodations or passenger accommodations* includes all temporary and all permanent passenger sleeping facilities.

(f) *Certificate (Casualty)* means a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages issued pursuant to this subpart.

(g) *Voyage* means voyage of a vessel to or from U.S. ports.

(h) *Insurer* means any insurance company, underwriter, corporation or association of underwriters, ship owners' protection and indemnity association, or other insurer acceptable to the Commission.

(i) *Evidence of insurance* means a policy, certificate of insurance, cover note, or other evidence of coverage acceptable to the Commission.

(j) For the purpose of determining compliance with § 540.22, "passengers embarking at United States ports" means any persons, not necessary to the business, operation, or navigation of a vessel, whether holding a ticket or not, who board a vessel at a port or place in the United States and are carried by the vessel on a voyage from that port or place.

§ 540.22 Proof of financial responsibility, when required.

No vessel shall embark passengers at U.S. ports unless a Certificate (Casualty) has been issued to or covers the Owners and Charterer(s) of such vessel.

§ 540.23 Procedure for establishing financial responsibility.

(a) In order to comply with section 2 of Pub. L. 89–777 (80 Stat. 1357, 1358) enacted November 6, 1966, there must be filed an Application on Form FMC–131, Application for Passenger Vessel Certificate, with accompanying Vessel Schedule(s) on Form FMC–131–VS. Copies of Form FMC–131 and Form FMC–131–VS may be obtained from the Bureau of Consumer Complaints and Licensing, Federal Maritime Commission, Washington, DC 20573.

(b) An application for a Certificate (Casualty) shall be filed in duplicate with the Bureau of Consumer Complaints and Licensing, Federal Maritime Commission, at least 60 days in advance of the sailing. Late filing of the application will be permitted only for good cause shown. All applications and evidence required to be filed with the Commission shall be in English, and any monetary terms shall be expressed in terms of U.S. currency. The Commission shall have the privilege of verifying any statements made or any evidence submitted under the rules of this subpart. An application for a Certificate (Casualty), excluding an application for the addition or substitution of a vessel to the applicant's fleet, shall be accompanied by a filing fee remittance of $1,111. An application for a Certificate (Casualty) for the addition or substitution of a vessel to the applicant's fleet shall be accompanied by a filing fee remittance of $557.

(c) The application shall be signed by a duly authorized officer or representative of the applicant with a copy of evidence of his authority.

§ 540.24 Insurance, surety bonds, self-insurance, and guaranties.

Evidence of adequate financial responsibility for the purposes of this subpart may be established by one of the following methods:

(a) Filing with the Commission evidence of insurance by means of a policy (accompanied by Form FMC–140), issued by an insurer providing coverage for liability which may be incurred for death or injury to passengers or other persons on voyages in an amount based upon the number of

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passenger accommodations aboard the vessel, calculated as follows:

Twenty thousand dollars for each passenger accommodation up to and including 500; plus

Fifteen thousand dollars for each additional passenger accommodation between 501 and 1,000; plus

Ten thousand dollars for each additional passenger accommodation between 1,001 and 1,500; plus

Five thousand dollars for each passenger accommodation in excess of 1,500;

Except that, if the applicant is operating more than one vessel subject to this subpart, the amount prescribed by this paragraph shall be based upon the number of passenger accommodations on the vessel being so operated which has the largest number of passenger accommodations.

(1) Termination or cancellation of the evidence of insurance, whether by the assured or by the insurer, and whether for nonpayment of premiums, calls or assessments, or for other cause, shall not be effected: (i) Until notice in writing has been given to the assured or to the insurer and to the Bureau of Consumer Complaints and Licensing at its office in Washington, DC 20573, by certified U.S. mail or other method reasonably calculated to provide actual notice, and (ii) until after 30 days expire from the date notice is actually received by the Commission, or until after the Commission revokes the Certificate (Casualty), whichever occurs first. Notice of termination or cancellation to the assured or insurer shall be simultaneous to such notice given to the Commission. The insurer shall remain liable for claims covered by said evidence of insurance arising by virtue of an event which had occurred prior to the effective date of said termination or cancellation. No such termination or cancellation shall become effective while a voyage is in progress.

(2) The insolvency or bankruptcy of the assured shall not constitute a defense to the insurer as to claims included in said evidence of insurance and in the event of said insolvency or bankruptcy, the insurer agrees to pay any unsatisfied final judgments obtained on such claims.

(3) No insurance shall be acceptable under these rules which restricts the liability of the insurer where privity of the Owners or Charterer(s) has been shown to exist.

(4) Paragraphs (a)(1) through (a)(3) of this section shall apply to the guaranty as specified in paragraph (d) of this section.

(b) Filing with the Commission a surety bond on Form FMC–132B issued by a bonding company authorized to do business in the United States and acceptable to the Commission. Such surety bond shall evidence coverage for liability which may be incurred for death or injury to passengers or other persons on voyages in an amount calculated as in paragraph (a) of this section, and shall not be terminated while a voyage is in progress. The requirements of Form FMC–132B, however, may be amended by the Commission in a particular case for good cause.

(c) Filing with the Commission for qualification as a self-insurer such evidence acceptable to the Commission as will demonstrate continued and stable passenger operations over an extended period of time in the foreign or domestic trade of the United States. In addition, applicant must demonstrate financial responsibility by maintenance of working capital and net worth, each in an amount calculated as in paragraph (a) of this section. The Commission will take into consideration all current contractual requirements with respect to the maintenance of working capital and/or net worth to which the applicant is bound. Evidence must be submitted that the working capital and net worth required above are physically located in the United States. This evidence of financial responsibility shall be supported by and subject to the following which are to be submitted on a continuing basis for each year or portion thereof while the Certificate (Casualty) is in effect:

(1) A current quarterly balance sheet, except that the Commission, for good cause shown, may require only an annual balance sheet;

(2) A current quarterly statement of income and surplus except that the Commission, for good cause shown, may require only an annual statement of income and surplus;

(3) An annual current balance sheet and an annual current statement of income and surplus to be certified by appropriate certified public accountants;

(4) An annual current statement of the book value or current market value of any assets physically located within the United States together with a certification as to the existence and amount of any encumbrances thereon;

(5) An annual current credit rating report by Dun and Bradstreet or any similar concern found acceptable to the Commission;

(6) A list of all contractual requirements or other encumbrances (and to whom the applicant is bound in this regard) relating to the maintenance of working capital and net worth;

(7) All financial statements required to be submitted under this section shall be due within a reasonable time after the close of each pertinent accounting period;

(8) Such additional evidence of financial responsibility as the Commission may deem necessary in appropriate cases.

(d) Filing with the Commission a guaranty on Form FMC–133B by a guarantor acceptable to the Commission. Any such guaranty shall be in an amount calculated as in paragraph (a) of this section. The requirements of Form FMC–133B, however, may be amended by the Commission in a particular case for good cause.

(e) Filing with the Commission evidence of an escrow account, acceptable to the Commission, the amount of such account to be calculated as in paragraph (a) of this section.

(f) The Commission will, for good cause shown, consider any combination of the alternatives described in paragraphs (a) through (e) of this section for the purpose of establishing financial responsibility.

§ 540.25 Evidence of financial responsibility.

Where satisfactory proof of financial responsibility has been established, a Certificate (Casualty) covering specified vessels shall be issued evidencing the Commission's finding of adequate financial responsibility to meet any liability which may be incurred for death or injury to passengers or other persons on voyages. The period covered by the certificate shall be indeterminate unless a termination date has been specified therein.

§ 540.26 Reporting requirements.

(a) In the event of any material change in the facts as reflected in the application, an amendment to the application shall be filed no later than five (5) days following such change. For the purpose of this subpart, a material change shall be one which: (1) Results in a decrease in the amount submitted to establish financial responsibility to a level below that required to be maintained under the rules of this subpart,

(2) requires that the amount to be maintained be increased above the amount submitted to establish financial responsibility, or

(3) involves a change in Owner(s) or Charterer(s). Notice of the application for, issuance, denial, revocation, suspension, or modification of any such Certificate shall be published in the **Federal Register**.

(b) In addition to reports required under § 540.23(d), every person who has been issued a Certificate (Casualty) must submit to the Commission a quarterly statement of any changes that have taken place with respect to the information contained in the application or documents submitted in support thereof. Negative statements are required to indicate no change. The quarterly statements must cover each month of the quarter. In addition, the statements will be due within 30 days after the close of every quarter.

(c) Each applicant, insurer, and guarantor shall furnish a written designation of a person in the United States as legal agent for service of process for the purposes of the rules of this subpart. Such designation must be acknowledged, in writing, by the designee. In any instance in which the designated agent cannot be served because of death, disability, or unavailability, the Secretary of the Federal Maritime Commission, will be deemed to be the agent for service of process. A party serving the Secretary of the Commission in accordance with the above provision must also serve the certificant, insurer, or guarantor, as the case may be, by certified U.S. mail or other method reasonably calculated to provide actual notice, at its last known address on file with the Commission.

(d) Any financial evidence submitted to the Commission under the rules of this subpart shall be written in the full and correct name of the person to whom the Certificate (Casualty) is to be issued, and in case of a partnership, all partners shall be named.

(e) Financial data filed in connection with the rules of this subpart shall be confidential except in instances where information becomes relevant in connection with hearings which may be requested by applicant pursuant to § 540.26(a) or § 540.26(b).

§ 540.27 Denial, revocation, suspension, or modification.

(a) A Certificate (Casualty) shall become null and void upon cancellation or termination of the surety bond, evidence of insurance, or guaranty.

(b) A Certificate (Casualty) may be denied, revoked, suspended, or modified for any of the following reasons:

(1) Making any willfully false statement to the Commission in connection with an application for a Certificate (Casualty);

(2) Circumstances whereby the party does not qualify as financially responsible in accordance with the requirements of the Commission;

(3) Failure to comply with or respond to lawful inquiries, rules, regulations, or orders of the Commission pursuant to the rules of this subpart.

(c) Prior to the denial, revocation, suspension, or modification of a Certificate (Casualty), the Commission shall advise the applicant of its intention to deny, revoke, suspend, or modify and shall state the reasons therefor. If the applicant, within 20 days after the receipt of such advice, requests a hearing to show that the evidence of financial responsibility filed with the Commission does meet the rules of this subpart, such hearing shall be granted by the Commission.

(d) Notwithstanding the above provisions, failure to comply timely with the reporting requirements in this part may subject a certificant to automatic suspension or revocation of their Certificate (Casualty) upon ten days' notice, without hearing. A certificant may avoid such suspension or revocation by filing within the ten days the required reports or proof that the reports had been filed timely.

§ 540.28 Miscellaneous.

(a) If any evidence filed with the application does not comply with the requirements of this subpart, or for any reason, fails to provide adequate or satisfactory protection to the public, the Commission will notify the applicant stating the deficiencies thereof.

(b) The Commission's bond (Form FMC–132B), guaranty (Form FMC–133B), and application (Form FMC–131 as set forth in Subpart A of this part) forms are hereby incorporated as a part of the rules of this subpart. Any such forms filed with the Commission under this subpart must be in duplicate.

(c) Any securities or assets accepted by the Commission (from applicants, insurers, guarantors, or others) under the rules of this subpart must be physically located in the United States.

(d) In the case of any charter arrangements involving a vessel subject to the regulations of this subpart, the vessel owner (in the event of a subcharter, the charterer shall file) must within 10 days file with the Bureau of Consumer Complaints and Licensing evidence of any such arrangement.

By the Commission.

Bryant L. VanBrakle

Secretary.

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Form FMC-131
APPLICATION FOR PASSENGER VESSEL CERTIFICATE
FEDERAL MARITIME COMMISSION
Washington, DC 20573-0001
(202) 523-5821 • www.fmc.gov

Type of Certificate
☐ Performance
☐ Casualty
☐ Both

1. (a) Applicant's legal business name and trade name(s) used (provide English translation if other than English) :

(b) Street address:

(c) Telephone:

(d) Fax:

(e) U.S. Taxpayer Identification Number (TIN), if applicable:

2. (a) Applicant's form of organization, i.e., corporation, partnership, or other form of business association:

(b) If incorporated, name the state or country in which incorporated and date of incorporation:

(c) If partnership or joint venture, give name and address of each partner or member (attach additional page(s) if necessary):

3. Name and street address of applicant's U.S. agent or other person authorized to accept legal service in U.S.: (Submit statement of acknowledgment from agent.)

Telephone: *Fax:* *E-mail:*

4. Number of vessels included in application: _____. Complete and attach a Vessel Schedule (Form FMC-131-VS) for each vessel.

5. Declaration: I declare under penalty of perjury under the laws of the United States of America that the information provided herein is true, correct, and complete.

X_____ *Date:*
(Signature of authorized official)

Printed Name *Address:*

Title

If not a corporate officer or partner, please submit Power of Attorney to demonstrate your authority to submit this application.

Submit original application and a Vessel Schedule (Form FMC-131-VS) for each vessel to:
Federal Maritime Commission • 800 N. Capitol Street, NW •Washington, DC 20573-0001 • Fax (202)523-5830

Form FMC-131-VS

VESSEL SCHEDULE for _____
(Full Name of Vessel)

☐ New Schedule
☐ Amended Schedule

Submit the following documents: Copy of U.S. cruise itinerary ▪ Specimen copy of passenger ticket/passage contract ▪ Documentation of payment and cancellation policy ▪ Proof of principal(s) names (e.g., corporate charter or partnership agreement) ▪ Copy of all applicable charter agreements ▪ Power of attorney/application signing authority

Applicant:

Previous Vessel Name, if any:

Total passenger capacity: _____ *Total number of passenger berths, including 3rd and 4th berths:* _____

Attach information showing fare structure, i.e., number of passenger berths in each price category.

Payment Policy (percentage of payment due at each of the following intervals before sailing date):

60 or more days: _____ *45-59 days:* _____ *30-44 days:* _____ *Less than 30 days:* _____

Principal(s) Information - Provide information on all principals, indicating which of the following describes each principal. Use the letter code(s) below to identify all that apply to each principal.

A. Owner *D. Parent Company* *G. Time Charterer* *J. Other (describe)*
B. Marketing Agent *E. Operator* *H. Bare-boat Charterer*
C. Ticket/Contract Issuer *F. Technical Manager* *I. Space Charterer*

Legal Name of Principal and Trade Name(s) used (provide English translation if not English):

Enter Principal code(s) from above:

Address:

Telephone: *Fax:* *E-mail:*

U.S. Agent for Service of Process and Street Address (if other than agent designated by applicant in item 3 of Application (Form FMC-131)):

Telephone: *Fax:* *E-mail:*

*Submitted by:*_____ _____
Signature *Date*

_____ _____
Printed Name and Title *Telephone*

Submit this Vessel Schedule (Form FMC-131-VS) for each vessel to:
Federal Maritime Commission • 800 N. Capitol Street, NW •Washington, DC 20573-0001 • fax (202)523-5830

Attach continuation sheet(s) to list additional principals.

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Form FMC-131-VS , Vessel Schedule Continuation Sheet No. ____ of ____ pages. *Continuation Sheet for _____ (Full Name of Vessel)*
Legal Name of Principal and Trade Name(s) used (provide English translation if not English): — *Enter Principal code(s) from above:* *Headquarters Address:* *Telephone:* *Fax:* *E-mail:* *U.S. Agent for Service of Process and Street Address (if other than agent designated by applicant in item 3 of Application (Form FMC-131)):* *Telephone:* *Fax:* *E-mail:*
Legal Name of Principal and Trade Name(s) used (provide English translation if not English): — *Enter Principal code(s) from above:* *Headquarters Address:* *Telephone:* *Fax:* *E-mail:* *U.S. Agent for Service of Process and Street Address (if other than agent designated by applicant in item 3 of Application (Form FMC-131)):* *Telephone:* *Fax:* *E-mail:*
Legal Name of Principal and Trade Name(s) used (provide English translation if not English): — *Enter Principal code(s) from above:* *Headquarters Address:* *Telephone:* *Fax:* *E-mail:* *U.S. Agent for Service of Process and Street Address (if other than agent designated by applicant in item 3 of Application (Form FMC-131)):* *Telephone:* *Fax:* *E-mail:*
Submit this Vessel Schedule (Form FMC-131-VS) for each vessel to: *Federal Maritime Commission • 800 N. Capitol Street, NW •Washington, DC 20573-0001 • fax (202)523-5830*

Form FMC-132A

FEDERAL MARITIME COMMISSION

Surety Co. Bond No. _____

Passenger Vessel Surety Bond
(46 CFR Part 540, Subpart A)

Know all men by these presents, that we _____ (Name of applicant), of _____ (City), _____ (State and country), as Principal (hereinafter called Principal), and _____ (Name of surety), a company created and existing under the laws of _____ (State and country) and authorized to do business in the United States as Surety (hereinafter called Surety) are held and firmly bound unto the United States of America in the penal sum of _____ , for which payment, well and truly to be made, we bind ourselves and our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

Whereas the Principal intends to become a holder of a Certificate (Performance) pursuant to the provisions of Subpart A of Part 540 of Title 46, Code of Federal Regulations and has elected to file with the Federal Maritime Commission ("FMC") such a bond to insure financial responsibility and the supplying transportation and other services subject to Subpart A of Part 540 of Title 46, Code of Federal Regulations, and

Whereas this bond is written to assure compliance by the Principal as an authorized holder of a Certificate (Performance) pursuant to Subpart A of Part 540 of Title 46, Code of Federal Regulations, and shall inure to the benefit of any and all passengers to whom the Principal may be held legally liable for any of the damages herein described in the event that such legal liability has not been discharged by the Principal within 21 days after any such passenger has obtained a final judgment (after appeal, if any) against the Principal from a United States Federal or State Court of competent jurisdiction, or has obtained an arbitration award. By filing this proof of financial responsibility with the FMC, Principal consents to arbitration of passenger claims for nonperformance in an arbitration proceeding under the FMC's Alternative Dispute Resolution program (46 CFR part 502) by an arbitrator selected by the FMC Dispute Resolution Specialist.

Now, therefore, the condition of this obligation is such that if the Principal shall pay or cause to be paid to passengers any sum or sums for which the Principal may be held legally liable by reason of the Principal's failure faithfully to provide such transportation and other accommodations and services while this bond is in effect for the supplying of transportation and other services pursuant to and in accordance with the provisions of Subpart A of Part 540 of Title 46, Code of Federal Regulations, then this obligation shall be void, otherwise, to remain in full force and effect.

The liability of the Surety with respect to any passenger shall not exceed the price paid by or on behalf of such passenger.

The liability of the Surety shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penalty of the bond, but in no event shall the Surety's obligation hereunder exceed the amount of said penalty. The Surety agrees to furnish written notice to the Federal Maritime Commission forthwith of all suits filed, judgments rendered, and payments made by said Surety under this bond.

This bond is effective the _____ day of _____ , 20____ , 12:01 a.m., standard time at the address of the Principal as stated herein and shall continue in force until terminated as hereinafter provided. The Principal or the Surety may at any time terminate this bond by actual written notice sent to the other and to the Federal Maritime Commission at its office in Washington, D.C., such termination to become effective thirty (30) days after actual receipt of said notice by the Commission, except that no such termination shall become effective while a voyage is in progress. The Surety shall not be liable hereunder for any refunds by the Principal for the supplying of

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transportation and other services after the termination of this bond as herein provided, but such termination shall not affect the liability of the Surety hereunder for refunds made by the Principal for the supplying of transportation and other services prior to the date such termination becomes effective.

In witness whereof, the said Principal and Surety have executed this instrument on _____ day of _____ , 20 _____ .

PRINCIPAL

Name _____

By _____
(Signature and title)

Witness _____

SURETY

[SEAL] Name _____

By _____

(Signature and title)

Witness _____

Only corporations or associations of individual insurers may qualify to act as surety, and they must establish to the satisfaction of the Federal Maritime Commission legal authority to assume the obligations of surety and financial ability to discharge them.

Form FMC-133A

FEDERAL MARITIME COMMISSION

Guaranty No. _____

Guaranty in Respect of Liability for Nonperformance, Section 3 of Public Law 89-777

1. Whereas _____ (Name of applicant) (Hereinafter referred to as the "Applicant") is the Operator and/or Ticket Issuer of the passenger Vessel(s) specified in the annexed Schedule ("the Vessels"), which are or may become engaged in voyages to or from United States ports, and the Applicant desires to establish its financial responsibility in accordance with section 3 of Pub. L. 89-777, 89th Congress, approved November 6, 1966 ("the Act") then, provided that the Federal Maritime Commission ("FMC") shall have accepted, as sufficient for that purpose, the Applicant's application, supported by this Guaranty, and provided that FMC shall issue to the Applicant a Certificate (Performance) ("Certificate"), the undersigned Guarantor hereby guarantees to discharge the Applicant's legal liability to indemnify the passengers of the Vessels for nonperformance of transportation within the meaning of section 3 of the Act, in the event that such legal liability has not been discharged by the Applicant within 21 days after any such passenger has obtained a final judgment (after appeal, if any) against the Applicant from a United States Federal or State Court of competent jurisdiction, or has become entitled to payment of a specified sum by virtue of a compromise settlement agreement made with the Applicant, with the approval of the Guarantor, whereby, upon payment of the agreed sum, the Applicant is to be fully, irrevocably and unconditionally discharged from all further liability to such passenger for such nonperformance, or has obtained an arbitration award. By filing this proof of financial responsibility with the FMC, Applicant consents to arbitration of passenger claims for nonperformance in an arbitration proceeding under the FMC's Alternative Dispute Resolution program (46 CFR part 502) by an arbitrator selected by the FMC Dispute Resolution Specialist.

2. The Guarantor's liability under this Guaranty in respect to any passenger shall not exceed the amount paid by such passenger; and the aggregate amount of the Guarantor's liability under this Guaranty shall not exceed $ _____

3. The Guarantor's liability under this Guaranty shall attach only in respect of events giving rise to a cause of action against the Applicant, in respect of any of the Vessels, for nonperformance of transportation within the meaning of Section 3 of the Act, occurring after the Certificate has been granted to the Applicant, and before the expiration date of this Guaranty, which shall be the earlier of the following dates:

(a) The date whereon the Certificate is withdrawn, or for any reason becomes invalid or ineffective; or

(b) The date 30 days after the date of receipt by FMC of notice in writing (including email or facsimile) that the Guarantor has elected to terminate this Guaranty except that:

(i) If, on the date which would otherwise have been the expiration date under the foregoing provisions (a) or (b) of this Clause 3, any of the Vessels is on a voyage whereon passengers have been embarked at a United States port, then the expiration date of this Guaranty shall, in respect of such Vessel, be postponed to the date on which the last passenger on such voyage shall have finally disembarked; and

(ii) Such termination shall not affect the liability of the Guarantor for refunds arising from payments made to the Applicant for the supplying of transportation and other services prior to the date such termination becomes effective.

4. If, during the currency of this Guaranty, the Applicant requests that a vessel not specified in the annexed Schedule, should become subject to this Guaranty, and if the Guarantor accedes to such request and so notifies FMC in writing (including email or facsimile), then, provided that within 30 days of receipt of such notice, FMC shall have granted a Certificate, such Vessel shall thereupon be deemed to be one of the Vessels included in the said Schedule and subject to this Guaranty.

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5. The Guarantor hereby designates _____, with offices at _____, as the Guarantor's legal agent for service of process for the purposes of the Rules of the Federal Maritime Commission, Subpart A of Part 540 of Title 46, Code of Federal Regulations, issued under Section 3 of Pub. L. 89-777 (80 Stat. 1357, 1358), entitled "Security for the Protection of the Public."

_____
(Place and Date of Execution)

_____
(Name of Guarantor)

_____
(Address of Guarantor)

By _____
(Signature and Title)

Schedule of Vessels Referred to in Clause 1

Vessels Added to This Schedule in Accordance With Clause 4

Appendix A - Example of Escrow Agreement for use under 46 CFR 540.5(b)
Escrow Agreement

1. Legal name(s), state(s) of incorporation, description of business(es), trade name(s) if any, and domicile(s) of each party.

2. Whereas, [name of the passenger vessel operator] ("Operator") and/or [name of the issuer of the passenger ticket] ("Ticket Issuer") wish(es) to establish an escrow account to provide for the indemnification of certain of its passengers utilizing [name vessel(s)] in the event of nonperformance of transportation to which such passengers would be entitled, and to establish the Operator's and/or Ticket Issuer's financial responsibility therefor; and

3. Whereas, [name of escrow agent] ("the Escrow Agent") wishes to act as the escrow agent of the escrow account established hereunder.

4. The Operator and/or Ticket Issuer will determine, as of the day prior to the opening date, the total amounts of U.S. unearned passenger revenues ("UPR") which it had in its possession. Unearned passenger revenues are defined as [incorporate the elements of 46 CFR 540.2(i)].

5. The Operator and/or Ticket Issuer shall on the opening date deposit an amount equal to UPR as determined above, plus a cash amount equal to [amount equal to no less than 10% of the Operator's and/or Ticket Issuer's UPR on the date within the 2 fiscal years immediately prior to the filing of the escrow agreement which reflects the greatest amount of UPR, except that the Commission, for good cause shown, may consider a time period other than the previous 2-fiscal-year requirement or other methods acceptable to the Commission to determine the amount of coverage required] ("initial deposit").

6. The Operator and/or Ticket Issuer may at any time deposit additional funds into the account.

7. The Operator and/or Ticket Issuer shall, at the end of each business week, recompute UPR by first computing:

A. the amount by which UPR has decreased due to: (1) Refunds due to cancellations; (2) amount of cancellation fees assessed in connection with (1) above; and (3) the amount earned from completed cruises; and

B. the amount by which UPR has increased due to receipts from passengers for future water transportation and all other related accommodations and services not yet performed.

The difference between the above amounts is the amount by which UPR has increased or decreased ("new UPR"). If the new UPR plus the amount of the initial deposit exceeds the amount in the escrow account, the Operator and/or Ticket Issuer shall deposit the funds necessary to make the account balance equal to UPR plus the initial deposit. If the account balance exceeds new UPR plus the initial deposit, the balance shall be available to the Operator and/or Ticket Issuer. The information computed in paragraph 7 shall be furnished to the Commission and the Escrow Agent in the form of a recomputation certificate signed and certified by a competent officer of the Operator and/or Ticket Issuer. Copies sent to the Commission are to be addressed to the Director, Bureau of Consumer Complaints and Licensing, Federal Maritime Commission, Washington, D.C. 20573.

8. A monthly report shall be prepared by the Escrow Agent and provided to the Operator and/or Ticket Issuer and the Commission within 15 days of the end of each month and shall list the investment assets of the account, their original cost, their current market value, and the beginning and ending balance of the account.

9. The Operator's and/or Ticket Issuer's independent auditors shall prepare quarterly reports, such reports to be furnished to the Escrow Agent and the Commission, and any shortfall is to be covered within one business day.

10. The Escrow Agent shall invest the funds of the account in qualified investments as directed by the Operator and/or Ticket Issuer. Some examples of qualified investments are, to the extent permitted by law:

(a) Government obligations of the United States or its agencies;

(b) Certificates of deposit, time deposits or acceptances of any bank, savings institution or trust company whose debt obligations are in the two highest categories rated by Standard and Poor's or Moody's, or which is itself rated in the two highest categories by Keefe, Bryette and Woods;

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(c) Commercial paper similarly rated;

(d) Certificates or time deposits issued by any bank, savings institution or trust company when fully insured by the FDIC or the FSLIC;

(e) Money market funds utilizing securities of the same quality as above; and/or

(f) Corporate bonds of the three highest categories, as rated by Standard and Poor's or Moody's.

11. Income derived from the investments shall be credited to the escrow account.

12. The purpose of the escrow agreement is to establish the financial responsibility of the Operator and/or Ticket Issuer pursuant to section 3 of Public Law 89 - 777, approved November 5, 1966, and the account is to be utilized to discharge the Operator's and/or Ticket Issuer's legal liability to indemnify passengers for nonperformance of transportation via the [name of vessel(s)]. The Escrow Agent is to make such payments on instructions from the Operator and/or Ticket Issuer, or, in the absence of such instructions, 21 days after final judgment against the Operator and/or Ticket Issuer in a U.S. Federal or State court having jurisdiction, or has obtained an arbitration award. [Operator and/or Ticket Issuer] consents to arbitration of passenger claims for nonperformance in an arbitration proceeding under the FMC's Alternative Dispute Resolution program (46 CFR part 502) by an arbitrator selected by the FMC Dispute Resolution Specialist. The Operator and/or Ticket Issuer will pledge to each passenger holding a ticket for future passage on the Operator's/Ticket Issuer's vessel(s) an interest in the Escrow Account equal to the Fares amount shown on the face of such ticket. The Escrow Agent agrees to act as nominee for each passenger until transportation is performed or until passenger has been compensated.

13. Escrow Agent shall waive right to offset.

14. The Operator and/or Ticket Issuer will indemnify and hold Escrow Agent harmless.

15. Statement of the parties' agreement concerning warranty of *bona fides* by the Operator and/or Ticket Issuer and Escrow Agent.

16. Statement of the parties' agreement concerning fees to be paid by the Operator and/or Ticket Issuer to Escrow Agent, reimbursable expenses to be paid by the Operator and/or Ticket Issuer to Escrow Agent. A statement that fees for subsequent terms of agreement are to be negotiated.

17. Statement of the parties' agreement concerning the term of agreement and renewal/termination procedures.

18. Statement of the parties' agreement concerning procedures for appointment of successor Escrow Agent.

19. Statement that disposition of funds on termination shall be to the Operator and/or Ticket Issuer, if evidence of the Commission's acceptance of alternative evidence of financial responsibility is furnished; otherwise, all passage fares held for uncompleted voyages are to be returned to the passengers. The Operator and/or Ticket Issuer shall pay all fees previously earned to the Escrow Agent.

20. The agreement may be enforced by the passengers, the Escrow Agent, the Operator and/or Ticket Issuer or by the Federal Maritime Commission.

21. All assets maintained under the escrow agreement shall be physically located in the United States and may not be transferred, sold, assigned, encumbered, etc., except as provided in the agreement.

22. The Commission has the right to examine the books and records of the Operator and/or Ticket Issuer and the Escrow Agent, as related to the escrow account, and the agreement may not be modified unless agreed in writing by the Operator and/or Ticket Issuer and Escrow Agent and approved in writing by the Commission.

Form FMC-132B

FEDERAL MARITIME COMMISSION

Surety Co. Bond No. _____

Passenger Vessel Surety Bond
(46 CFR Part 540, Subpart B)

Know all men by these presents, that We _____ (Name of applicant), of _____ (City), _____ (State and country), as Principal (hereinafter called Principal), and _____ (Name of surety), a company created and existing under the laws of _____ (State and country) and authorized to do business in the United States, as Surety (hereinafter called Surety) are held and firmly bound unto the United States of America in the penal sum of _____, for which payment, well and truly to be made, we bind ourselves and our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

Whereas the Principal intends to become a holder of a Certificate (Casualty) pursuant to the provisions of Subpart B of Part 540 of Title 46, Code of Federal Regulations, and has elected to file with the Federal Maritime Commission such a bond to insure financial responsibility to meet any liability it may incur for death or injury to passengers or other persons on voyages to or from U.S. ports, and

Whereas, this bond is written to assure compliance by the Principal as an authorized holder of a Certificate (Casualty) pursuant to Subpart B of Part 540 of Title 46, Code of Federal Regulations, and shall inure to the benefit of any and all passengers or other persons to whom the Principal may be held legally liable for any of the damages herein described.

Now, therefore, the condition of this obligation is such that if the Principal shall pay or cause to be paid to passengers or other persons any sum or sums for which the Principal may be held legally liable by reason of the Principal's failure faithfully to meet any liability the Principal may incur for death or injury to passengers or other persons on voyages to or from U.S. ports, while this bond is in effect pursuant to and in accordance with the provisions of Subpart B of Part 540 of Title 46, Code of Federal Regulations, then this obligation shall be void, otherwise, to remain in full force and effect.

The liability of the Surety with respect to any passenger or other persons shall lin no event exceed the amount of the Principal's legal liability under any final judgment or settlement agreement, except that, if the aggregate amount of such judgments and settlements exceeds an amount computed in accordance with the formula contained in section 2(a) of Public Law 89-777, then the Surety's total liability under this surety bond shall be limited to an amount computed in accordance with such formula.

The Surety agrees to furnish written notice to the Federal Maritime Commission forthwith of all suits filed, judgments rendered, and payments made by said Surety under this bond.

This bond is effective the _____ day of _____, 20___, 12:01 a.m., standard time, at the address of the Principal as stated herein and shall continue in force until terminated as hereinafter provided. The Principal or the Surety may at any time terminate this bond by actual written notice provided to the other and to the Federal Maritime Commission at its Office in Washington, D.C., such termination to become effective thirty (30) days after actual receipt of said notice by the Commission, except that no such termination shall become effective while a voyage is in progress. The Surety shall not be liable hereunder for any liability incurred for death or injury to passengers or other persons on voyages to or from U.S. ports after the termination of this bond as herein provided, but such

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termination shall not affect the liability of the Surety hereunder for such liability incurred for death or injury to passengers or other persons on voyages to or from U.S. ports prior to the date such termination becomes effective.

In witness whereof, the said Principal and Surety have executed this instrument on the _____day of _____, 20____.

PRINCIPAL

Name _____

By _____
(Signature and title)

Witness _____

SURETY

Name _____

By _____
(Signature and title)

Witness _____

Only corporations or associations of individual insurers may qualify to act as Surety, and they must establish to the satisfaction of the Federal Maritime Commission legal authority to assume the obligations of surety and financial ability to discharge them.

Form FMC-133B

FEDERAL MARITIME COMMISSION

Guaranty No. _____

Guaranty in Respect of Liability for Death or Injury, Section 2 of Public Law 89-777

1. Whereas _____ (name of Applicant) (hereinafter referred to as the "Applicant") is the Owner or Charterer of the passenger Vessel(s) specified in the annexed Schedule ("the Vessels"), which are or may become engaged in voyages to or from U.S. ports, and the Applicant desires to establish its financial responsibility in accordance with section 2 of Public Law 89-777, 89th Congress, approved November 6, 1966 ("the Act") then, provided that the Federal Maritime Commission ("FMC") shall have accepted, as sufficient for that purpose, the Applicant's application, supported by this Guaranty, and provided that FMC shall issue to the Applicant a Certificate (Casualty) ("Certificate"), the undersigned Guarantor hereby guarantees to discharge the applicant's legal liability in respect of claims for damages for death or injury to passengers or other persons on voyages of the Vessels to or from U.S. ports, in the event that such legal liability has not been discharged by the Applicant within 21 days after any such passenger or other person, or, in the event of death, his or her personal representative, has obtained a final judgment (after appeal, if any) against the Applicant from a U.S. Federal or State Court of competent jurisdiction, or has become entitled to payment of a specified sum by virtue of a compromise settlement agreement made with the Applicant, with the approval of the Guarantor, whereby, upon payment of the agreed sum, the Applicant is to be fully, irrevocably and unconditionally discharged from all further liability to such passenger or other person, or to such personal representative, with respect to such claim.

2. The Guarantor's liability under this Guaranty shall in no event exceed the amount of the Applicant's legal liability under any such judgment or settlement agreement, except that, if the aggregate amount of such judgments and settlements exceeds an amount computed in accordance with the formula contained in section 2(a) of the Act, then the Guarantor's total liability under this Guaranty shall be limited to an amount computed in accordance with such formula.

3. The Guarantor's liability under ths Guaranty shall attach only in respect of events giving rise to causes of action against the Applicant in respect of any of the Vessels for damages for death or injury within the meaning of section 2 of the Act, occurring after the Certificate has been granted to the Applicant and before the expiration date of this Guaranty, which shall be the earlier of the following dates:

(a) The date whereon the Certificate is withdrawn, or for any reason becomes invalid or ineffective; or

(b) The date 30 days after the date of receipt by FMC of notice in writing (including e-mail or facsimile) that the Guarantor has elected to terminate this Guaranty, except that if, on the date which would otherwise have been the expiration date of this Guaranty under the foregoing provisions of this Clause 3, any of the Vessels is on a voyage in respect of which such Vessel would not have received clearance in accordance with section 2(e) of the Act without the Certificate, then on the expiration date of this Guaranty shall, in respect of such Vessel, be postponed to the date on which the last passenger on such voyage shall have fully disembarked.

4. If, during the currency of this Guaranty, the Applicant requests that a vessel owned or operated by the Applicant, and not specified in the annexed Schedule, should become subject to this Guaranty, and if the Guarantor accedes to such request and so notifies FMC in writing (including e-mail or facsimile), then provided that, within 30 days of receipt of such notice FMC shall have granted a Certificate, such vessel shall thereupon be deemed to be one of the Vessels included in the said Schedule and subject to this Guaranty.

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5. The Guarantor hereby designates _____, with offices at _____, as the Guarantor's legal agent for Service of process for the purposes of the Rules of the Federal Maritime Commission, Subpart B of Part 540 of Title 46, Code of Federal Regulations, issued under section 2 of Public Law 89-777 (80 Stat. 1357, 1358), entitled "Security for the Protection of the Public."

_____
(Place and Date of Execution)

_____
(Name of Guarantor)

_____
(Address of Guarantor)

By _____
(Signature and Title)

Schedule of Vessels Referred to in Clause 1

Vessels Added to this Schedule in Accordance with Clause 4

Form FMC-140

Insurance Policy
Uniform Endorsement

Section 2 of Public Law 89-777

Notwithstanding anything to the contrary herein contained, it is herein understood and agreed:

1. The Association (or other insurer) agrees that the risks covered by this policy include the Assured's losses arising from its legal liability in respect of claims for damages for death or personal injury to passengers or other persons on voyages (of the vessels designated in the annexed schedule) to and from United States ports subject to the provisions of Section 2 of Public Law 89-777 (80 Stat. 1356, 1357) as to which the Federal Maritime Commission shall have issued a Certificate (Casualty).

2. The Association's (or other insurer's) liability as to losses relating to claims defined above in Paragraph 1 of this Endorsement shall in no event exceed the amount of the Assured's legal liability under any final judgement (after appeal, if any) against the Assured from a United States federal or state court of competent jurisdiction or under a compromise settlement agreement made with the approval of the Association (or other insurer), provided, however, that the Association's (or other insurer's) total liability in respect of any one accident or occurrence as to each vessel shall be limited to the amount of the policy as specified therein.

3. Notice of termination or cancellation as provided for by the terms of the policy (Certificate) shall apply as to any and all losses, except those relating to claims for death or personal injury defined above in Paragraph 1 of this Endorsement. As to losses relating to said claims only, termination or cancellation whether for nonpayment of premiums, calls, assessments, or for other cause, shall not be effected (i) until notice in writing (including e-mail or facsimile) has been given to the Assured and to the Federal Maritime Commission at its office in Washington, D.C. and (ii) until after thirty (30) days expire from the date notice is actually received by the Commission or until after the Commission revokes the Certificate (Casualty), whichever occurs first. Such notice of termination or cancellation to the Assured shall be simultaneous to such notice given to the Commission. The Association (or other insurer) shall remain liable for claims covered by this policy arising by virtue of an event which had occurred prior to the effective date of said termination or cancellation. No such termination or cancellation shall become effective while a voyage is in progress.

4. Notwithstanding anything contained herein to the contrary, the insolvency or bankruptcy of the Assured shall not constitute a defense to the Association (or other insurer) as to claims for death or personal injury defined above in Paragraph 1 of this Endorsement. As to said claims only, in the event of insolvency or bankruptcy of the Assured the Association (or other insurer) agrees to pay any unsatisfied final judgements obtained against the Assured on such claims. Provided, however, that such payments shall discharge, to the extend thereof, the insurer's obligations under this policy to the Assured or its trustee in bankruptcy, liquidator, receiver, conservator or statutory successor.

5. Fault, knowledge or privity of the Assured shall not constitute a defense to the Association (or other insurer) nor restrict the Assured's right of recovery under this policy or otherwise lessen the Association's (or other insurer's) obligation in respect of claims for death or personal injury as defined above in Paragraph 1 of this Endorsement.

6. If during the currency of this policy, the Assured requests that a vessel owned or operated by the Assured, and not designated in the annexed schedule, should become subject to this policy (Certificate), and if the Association (or other insurer) accedes to such request and so notifies the Federal Maritime Commission in writing (including e-mail or facsimile), then, provided that within thirty (30) days of receipt of such notice the Federal Maritime Commission grants a Certificate (Casualty) covering such vessel, the vessel shall thereupon be deemed to be one of the vessels included in said schedule and subject to this policy.

7. The Association (or other insurer) hereby designates _____

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_____ with offices at _____ as the Association's (or other insurer's) legal agent for service of process for purposes of the Rules of the Federal Maritime Commission, Subpart B of Part 540 of Title 46 Code of Federal Regulations issued under Section 2 of Public Law 89-777 (80 Stat. 1356, 1357) entitled Security for the Projection of the Public.

All other terms and conditions, not in conflict with this Endorsement, remain unchanged.

Attached to Policy No.: _____

Association/Insurer: _____

____/____/____ _____
Month/Date/Year Signature

_____
Printed Name

_____
Title

Schedule of Vessels Covered by this Endorsement

Vessels Added to this Schedule in Accordance with Paragraph 6

[FR Doc. 02–27642 Filed 10–30–02; 8:45 am]
BILLING CODE 6730–01–C

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–2603; MB Docket No. 02–141; RM–10428]

Radio Broadcasting Services; Exmore and Belle Haven, VA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal.

SUMMARY: At the request of petitioners Commonwealth Broadcasting, LLC, licensee of Station WEXM(FM), Exmore, Virginia, and Sinclair Telecable, d/b/a Sinclair Communications, licensee of Station WROX–FM, Cape Charles, Virginia, this document dismisses the petition for rule making that underlies the *Notice of Proposed Rulemaking* in this proceeding. *See* 67 FR 42524 (June 24, 2002). The Notice proposed that the Commission reallot Channel 291B from Exmore to Belle Haven, Virginia, and reallot Channel 241B from Cape Charles to Exmore, Virginia, and modify the licenses of Stations WEXM(FM) and WROX–FM to reflect the changes. On June 21, 2002, petitioners filed a request for withdrawal of petition and expression of interest in this matter.

FOR FURTHER INFORMATION CONTACT: Victoria M. McCauley, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 02–141, adopted October 2, 2002, and released October 18, 2002. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202 863–2893. facsimile 202 863–2898, or via e-mail *qualexint@aol.com*.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 02–27692 Filed 10–30–02; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–2601; MB Docket No. 02–321, RM–10583; MB Docket No. 02–322, RM–10584]

Radio Broadcasting Services; Oak Grove and Opelousas, LA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Audio Division requests comment on a petition filed Charles Crawford proposing the allotment of Channel 289A at Oak Grove, Louisiana, as the community's second local aural transmission service. Channel 289A can be allotted to Oak Grove in compliance with the Commission's minimum distance separation requirements with a site restriction of 11.3 kilometers (7 miles) east to avoid a short-spacing to the license site of Station KVVP, Channel 289C3, Leesville, Louisiana. The coordinates for Channel 289A at Oak Grove are 29–43–41 North Latitude and 93–00–05 West Longitude. The Audio Division also requests comment on a petition filed by Opelousas Radio Broadcasters proposing the allotment of Channel 297A at Opelousas, Louisiana, as the community's third local aural transmission service. Channel 297A can be allotted to Opelousas in compliance with the Commission's minimum distance separation requirements with a site restriction of 7.3 kilometers (4.6 miles) south of the community. The coordinates for Channel 297A at Opelousas are 30–28–18 North Latitude and 92–03–14 West Longitude.

DATES: Comments must be filed on or before December 9, 2002, and reply comments on or before December 24, 2002.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, his counsel, or consultant, as follows: Charles Crawford, 4553 Bordeaux Avenue, Dallas, Texas 75205 and Opelousas Radio Broadcasters, c/o John M. Pelkey, Garvey, Schubert & Barer, 5th Floor, 1000 Potomac Street, NW., Washington, DC 20007.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket Nos. 02–321, 02–322, adopted October 2, 2002, and released October 18, 2002. The full text of this Commission decision is available for inspection and copying during regular business hours at the FCC's Reference Information Center, Portals II, 445 Twelfth Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Louisiana, is amended by adding Channel 289A at Oak Grove and Channel 297A at Opelousas.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 02–27694 Filed 10–30–02; 8:45 am]
BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AH40

Endangered and Threatened Wildlife and Plants; Listing the Sonoma County Distinct Population Segment of the California Tiger Salamander as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of the comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the comment period for the proposed rule to list the Sonoma County Distinct Population Segment of the California tiger salamander (*Ambystoma californiense*) as endangered under the authority of the Endangered Species Act of 1973, as amended. We are reopening the comment period to allow interested parties additional time to submit information to us for our consideration in making the final determination for this species. Comments already submitted on the proposed rule need not be resubmitted as they will be fully considered in the final determination.

DATES: Comments and information from all interested parties will be accepted until 5 p.m. on December 16, 2002.

ADDRESSES: You may submit written comments and materials concerning the proposed rule to Wayne S. White, Field Supervisor, ATTN: SCCTS, Sacramento Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2800 Cottage Way Room W–2605, Sacramento, CA 95825. Written comments may also be sent by facsimile to 916/414–6713 or through the internet to *fw1sonoma_tiger_salamander@fws.gov*. You may also hand-deliver written comments to our Sacramento Fish and Wildlife Office, at the above address. Comments and materials received, as well as supporting documentation used in the preparation of this proposed rule, will be available for public inspection, by appointment, during normal business hours, at the above address. You may obtain copies of the proposed rule from the above address, by calling 916/414–6600, or from our Web site at *http://sacramento.fws.gov*.

FOR FURTHER INFORMATION CONTACT: Susan Moore or Chris Nagano, Sacramento Fish and Wildlife Office, 2800 Cottage Way Room W–2605, Sacramento, CA 95825 (telephone 916/414–6600, facsimile 916/414–6713 or

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visit our website at *http://sacramento.fws.gov/*).

SUPPLEMENTARY INFORMATION:

Background

This Distinct Population Segment (DPS) of the California tiger salamander is restricted to a portion of the Santa Rosa Plain in Sonoma County, California, extending from approximately Santa Rosa south to the Cotati area. The factors imperiling this animal in Sonoma County include habitat destruction, degradation, and fragmentation, collection, invasive exotic species, and inadequate regulatory mechanisms. Because of its small numbers, this DPS also is highly vulnerable to chance environmental or demographic events such as drought, disease, or fluctuations in mating success.

Pursuant to the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act), we published an emergency rule to list the Sonoma County Distinct Population Segment of the California tiger salamander as endangered on July 22, 2002 (67 FR 47726–47740). The emergency rule provides immediate Federal protection to this DPS for a period of 240 days. We also published a proposed rule on July 22, 2002, to list the Sonoma County DPS of the California tiger salamander as endangered under our normal listing procedures (67 FR 47758–47760). A public hearing on the proposed rule was held on October 1, 2002, in Santa Rosa, California.

For further information regarding background biological information, previous Federal actions, factors affecting the subspecies, and conservation measures available to the Sonoma County DPS of the California tiger salamander, please refer to our emergency and proposed rules published in the **Federal Register** on July 22, 2002.

Public Comments Solicited

We solicit additional information and comments that may assist us in making a final decision on the proposed rule to list the Sonoma County DPS of the California tiger salamander as endangered. We intend that any final listing action resulting from our proposal will be as accurate and effective as possible. Therefore, we are reopening the comment period to solicit additional information from the general public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. Comments are particularly sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to the Sonoma County DPS of the California tiger salamander;

(2) The location of any additional breeding sites of this DPS, and the reasons why any habitat should or should not be determined to be critical habitat pursuant to section 4 of the Act;

(3) Additional information concerning the range, biology, ecology, or population size of this DPS; and

(4) Current or planned activities or land use practices in the subject area and their possible impacts on this species in Sonoma County.

The comment period, which originally closed on September 20, 2002, and was then extended to October 21, 2002 (67 FR 54761, August 26, 2002), will now close on the date specified above in the **DATES** section. Previously submitted written comments on this proposal need not be resubmitted. If you submit comments by e-mail, please submit them in ASCII file format and avoid the use of special characters and encryption. Please include "Attn: SCCTS" and your name and return address in your e-mail message. If you do not receive a confirmation from our system that we have received your e-mail message, contact us directly by calling our Sacramento Fish and Wildlife Office at telephone number 916/414–6600. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the Sacramento Fish and Wildlife Office, at the above address.

Author

The primary author of this notice is Chris Nagano, Deputy Chief, Endangered Species Division (see **ADDRESSES** section).

Authority: The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: October 16, 2002.

Marshall P. Jones, Jr.,

Acting Director, Fish and Wildlife Service.

[FR Doc. 02–27650 Filed 10–30–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AG93

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for *Sidalcea keckii* (Keck's checkermallow)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of availability of draft economic analysis; reopening of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service) announce the availability of the draft economic analysis for the proposed designation of critical habitat for *Sidalcea keckii* (Keck's checkermallow) located in Fresno and Tulare Counties, California. We are reopening the comment period for the proposal to designate critical habitat for this species to allow all interested parties to comment simultaneously on the proposed rule and the associated draft economic analysis. Comments previously submitted need not be resubmitted as they will be incorporated into the public record as part of this extended comment period, and will be fully considered in the final rule.

DATES: We will accept comments on both the draft economic analysis and the proposed critical habitat designation until December 2, 2002.

ADDRESSES: Written comments and information should be submitted to the Field Supervisor, Sacramento Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2800 Cottage Way, Suite W–2605, Sacramento, CA 95825. For the electronic mail address, and further instructions on commenting, refer to Public Comments Solicited section of this notice.

FOR FURTHER INFORMATION CONTACT: Susan Moore, at the address above (telephone 916/414–6600; facsimile 916/414–6710).

SUPPLEMENTARY INFORMATION:

Background

Sidalcea keckii (Keck's checkermallow) is an annual herb of the mallow family (Malvaceae) endemic (native and restricted to) the western foothills of the Sierra Nevada mountains in California. It produces bright pink flowers in April and early May, and likely forms a persistent soil seed bank consisting of viable seeds from numerous years. *S. keckii* was first described in 1940 from samples taken near the town of White River in southern Tulare County, but the plant could not be relocated by botanists for over 50 years. Many botanists had presumed it to be extinct when a new population was discovered near Mine Hill in central Tulare County in 1992. Based on soils information from the new site, surveys were conducted on a previously documented site in the Piedra area of Fresno County, and a population was rediscovered there in 1998. We have recently learned of another population discovered near Piedra in 2002, but we do not yet have details regarding its exact location (John Stebbins, Herbarium Curator, California State University, *in litt.*, 2002). We have also received information that the standing population at Mine Hill may have been extirpated by conversion of the habitat to an orange grove (J. Stebbins, *in litt.*, 2002). Much of the area around the original population at Mine Hill remains potentially viable however, and may contain a seed bank or standing plants.

We listed *Sidalcea keckii* as an endangered species under the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*) on February 16, 2000 (65 FR 7757). On June 19, 2002, we proposed three critical habitat units for the plant totaling approximately 438 hectares (ha) (1,085 acres (ac)) (67 FR 41669). The proposed critical habitat units are located near Piedra in Fresno County, and near Mine Hill and White River in Tulare County. The areas are all privately owned except for 3 ha (7 ac) of Federal land at the Piedra site managed by the U.S. Bureau of Reclamation. Approximately 77 ha (189 ac) of the privately owned land at the Piedra site is on a reserve established by the Sierra Foothill Conservancy for the protection of *S. keckii* and other rare plants.

Critical habitat receives protection from destruction or adverse modification through required consultation under section 7 of the Act with regard to actions carried out, funded, or authorized by a Federal agency. Section 4(b)(2) of the Act requires that the Secretary of the Interior shall designate or revise critical habitat based upon the best scientific and commercial data available, after taking into consideration the economic impact of specifying any particular area as critical habitat.

The public comment period for the June 19, 2002, proposal originally closed on August 19, 2002. We have prepared a draft economic analysis on the effects of the proposed critical habitat designation, and are now announcing its availability for review. The draft analysis estimates the foreseeable economic impacts of the critical habitat designation on government agencies and private businesses and individuals. Reopening of the comment period will provide the public an opportunity to evaluate and comment on both the proposed rule and the draft economic analysis. Comments already submitted on the proposed designation of critical habitat for *Sidalcea keckii* do not need to be resubmitted as they will be fully considered in the final determination.

Public Comment Solicited

The final economic analysis concerning the designation of critical habitat for *Sidalcea keckii* will consider information and recommendations from all interested parties. We will accept written comments and information during this reopened comment period. If you wish to comment, you may submit your comments and materials concerning this proposal by any of several methods:

You may mail or hand-deliver written comments and information to the Field Supervisor, Sacramento Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2800 Cottage Way, Suite W–2605, Sacramento, CA 95825. Hand deliveries must be made during normal business hours.

You may also send comments by electronic mail (e-mail) to *fw1kecks_checkermallow@fws.gov*.

Hand-delivered or mailed comments and information should be submitted to the Sacramento Fish and Wildlife Office, as found in the **ADDRESSES** section. Comments and information submitted by e-mail should be addressed to *fw1kecks_checkermallow@fws.gov*. If you submit comments by e-mail, please submit them as an ASCII file and avoid the use of special characters and any form of encryption. Please also include a return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, contact us directly by calling our Sacramento Fish and Wildlife Office at telephone number 916/414–6600, during normal business hours.

We solicit comments or suggestions from the public, other concerned governmental agencies, tribes, the scientific community, industry, or any other interested parties concerning the proposal or the draft economic analysis. We particularly seek comments concerning:

(1) Plans or potential for development within the area proposed to be designated, notwithstanding the comments of the county employee contacted in preparing the economic analysis;

(2) Plans or potential for conversion of land within the area proposed to be designated to other types of agricultural uses, such as vineyards, which might require a permit under section 404 of the Clean Water Act, or other types of Federal permits;

(3) The likelihood of "stigma effects" and costs associated with the designation; and

(4) The likely effects and resulting costs arising from the California Environmental Quality Act and other State laws as a result of the designation.

Comments and materials received, as well as supporting documentation used in preparation of the proposal to designate critical habitat, will be available for inspection, by appointment, during normal business hours at our office listed in the **ADDRESSES** section. Copies of the draft economic analysis are available on the Internet at *www.r1.fws.gov* or by writing or calling Susan Moore, at the address or telephone number listed above.

Author

The primary author of this notice is Glen Tarr (*see* **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: October 23, 2002.

Paul Hoffman,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 02–27649 Filed 10–30–02; 8:45 am]

BILLING CODE 4310–55–P

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Notices

Federal Register
Vol. 67, No. 211
Thursday, October 31, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 02–100–1]

Notice of Request for Extension of Approval of an Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection in support of regulations issued under the Animal Welfare Act for guinea pigs, hamsters, and rabbits.

DATES: We will consider all comments that we receive on or before December 30, 2002.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 02-100–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 02–100–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 02–100–1" on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: For information regarding the Animal Welfare Act regulations for guinea pigs, hamsters, and rabbits, contact Dr. Barbara Kohn, Senior Staff Veterinarian, Animal Care, APHIS, 4700 River Road Unit 84, Riverdale, MD 20737–1234; (301) 734–7833. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

SUPPLEMENTARY INFORMATION: *Title:* Animal Welfare; Guinea Pigs, Hamsters, and Rabbits.

OMB Number: 0579–0092.

Type of Request: Extension of approval of an information collection.

Abstract: The U.S. Department of Agriculture's (USDA) Animal and Plant Health Inspection Service (APHIS) administers regulations and standards that have been promulgated under the Animal Welfare Act to promote and ensure the humane care and treatment of regulated animals under the Act. The regulations in title 9, part 3, subparts B and C, of the Code of Federal Regulations (CFR) contain specifications for the humane handling, care, treatment, and transportation of guinea pigs, hamsters, and rabbits. The regulations require, among other things, the documentation of specified information concerning the transportation of these animals.

The transportation standards for guinea pigs, hamsters, and rabbits require intermediate handlers and carriers to accept only shipping enclosures that meet the minimum requirements set forth in the regulations (§§ 3.36 and 3.61) or that are accompanied by documentation signed by the consignor verifying that the shipping enclosures comply with the regulations. If guinea pigs, hamsters, or rabbits are transported in cargo space that falls below 45 °F (7.2 °C), the regulations specify that the animals must be accompanied by a certificate of acclimation signed by a USDA-accredited veterinarian.

In addition, all shipping enclosures must be marked with the words "Live Animals" and have arrows indicating the correct upright position of the container. Intermediate handlers and carriers are required to attempt to contact the consignee at least once every 6 hours upon the arrival of any live animals. Documentation of these attempts must be recorded by the intermediate handlers and carriers and maintained for inspection by APHIS personnel.

The above reporting and recordkeeping requirements do not mandate the use of any official government form.

The burden generated by APHIS requirements that all shipping documents be attached to the container has been cleared by the Office of Management (OMB) under OMB control number 0579–0036.

The reporting and recordkeeping requirements of 9 CFR part 3, subparts B and C, are necessary to enforce regulations intended to ensure the humane treatment of guinea pigs, hamsters, and rabbits during transportation in commerce.

We are asking OMB to approve our use of this information collection activity for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.11555 hours per response.

Respondents: Intermediate handlers, carriers, "A" and "B" dealers (as consignors), USDA-accredited veterinarians.

Estimated annual number of respondents: 1,470.

Estimated annual number of responses per respondent: 1.53.

Estimated annual number of responses: 2,240.

Estimated total annual burden on respondents: 260 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 28th day of October, 2002.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–27685 Filed 10–30–02; 8:45 am]
BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 02–098–1]

Giant Salvinia; Availability of an Environmental Assessment

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of availability and request for comments.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has prepared an environmental assessment relative to a proposed field release of the non-indigenous salvinia weevil for the biological control of the aquatic weed giant salvinia. The environmental assessment documents our review and analysis of environmental impacts associated with widespread release of this agent. We are making the environmental assessment available to the public for review and comment.

DATES: We will consider all comments that we receive on or before December 2, 2002.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 02-098–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 02–098–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 02–098–1" in the subject line.

You may read any comments that we receive on the environmental assessment in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: Dr. Tracy A. Horner, Environmental Services, PPD, APHIS, 4700 River Road Unit 149, Riverdale, MD 20737–1228; (301) 734–5213.

SUPPLEMENTARY INFORMATION:

Background

Giant salvinia (*Salvinia molesta*) is a free-floating aquatic fern, native to South America, with a tremendous growth rate and the potential to significantly affect water-reliant agricultural industries and recreation and the ecology of freshwater habitats throughout much of the United States.

Giant salvinia reproduces vegetatively through fragmenting and from dormant buds breaking away. The colonizing or immature stage of giant salvinia is characterized by small leaves that lie flat upon the water. As plant growth accelerates, the leaves become larger, crowding occurs, and the plants are pushed upright. Mats may grow to a meter thick and can cover large areas.

The Animal and Plant Health Inspection Service (APHIS) listed giant salvinia as a noxious weed in 1983. Under APHIS' regulations, no person may move giant salvinia into or through the United States, or interstate, unless he or she obtains a permit for the movement from APHIS.

Because giant salvinia is a free-floating plant, it disperses by passive means (water currents and wind) and by "hitchhiking." Animals may carry the plants over short distances, but humans can spread it widely on fishing gear and boating equipment. Intercontinental dispersal and dispersal within the United States have probably occurred when giant salvinia was sold in the nursery trade, either intentionally as a plant for aquaria or for ponds, or unintentionally when it "hitchhiked" with other aquatic plants collected for academic study or for use in aquaria or ponds. Although native to southeastern Brazil, giant salvinia is now found in North America, South America, Africa, Asia, Australia, New Guinea, and Oceania.

In the past several years, giant salvinia has been detected in the United States, mostly in association with the nursery trade in aquatic plants. Generally, detections have been in small, confined sites and are currently contained or have been eradicated. Such detections have occurred in Alabama, Arizona, Florida, Hawaii, Indiana, Louisiana, Maryland, Missouri, North Carolina, South Carolina, Texas, and Virginia. Most recently, giant salvinia was found in the Toledo Bend Reservoir and the surrounding areas in Louisiana and eastern Texas. As a result of this infestation, APHIS prepared an environmental assessment (EA) and has issued permits for the environmental release of the non-indigenous salvinia weevil (Cyrtobagous salviniae) into the limited area of the Toledo Bend Reservior.

APHIS has now received a permit application for additional releases of the salvinia weevil into other areas of the continental United States beyond the area considered in the existing APHIS EA. The applicant proposes to release the salvinia weevil to reduce the severity and extent of giant salvinia infestation in the United States. The salvinia weevil is native to Brazil, Bolivia, and Paraguay. Salvinia weevil larvae tunnel within the rhizomes of giant salvinia, causing them to disintegrate. They also tunnel in the leaf buds and adults eat leaves and leaf buds, suppressing growth and vegetative propagation of this sterile weed. This insect has successfully controlled giant salvinia in 12 countries over 3 continents.

APHIS' review and analysis of the proposed action and its alternatives are documented in detail in an EA entitled, "Field Release of the Salvinia Weevil, *Cyrtobagous salviniae* Calder and Sands (Curculionidae: Coleoptera) for Control of Giant Salvinia, *Salvinia molesta*

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Mitchell (Hydropteridales: Salviniaceae)" (August 2002). We are making the EA available to the public for review and comment. We will consider all comments that we receive on or before the date listed under the heading DATES at the beginning of this notice.

The EA may be viewed on the Internet at *http://www.aphis.usda.gov/ppq/* by following the link for "Documents/ Forms Retrieval System" then clicking on the triangle beside "6—Permits—Environmental Assessments," and selecting document number 0001. You may request paper copies of the EA by calling or writing to the person listed under **FOR FURTHER INFORMATION CONTACT.** Please refer to the title of the EA when requesting copies. The EA is also available for review in our reading room (information on the location and hours of the reading room is listed under the heading **ADDRESSES** at the beginning of this notice).

The EA has been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Done in Washington, DC, this 28th day of October, 2002 .

Peter Fernandez,

Acting Administrator, Animol and Plant Health Inspection Service.

[FR Doc. 02–27684 Filed 10–30–02; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Types and Quantities of Agricultural Commodities Available for Donation Overseas Under Section 416(b) of the Agricultural Act of 1949, as Amended, in Fiscal Year 2003

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice.

SUMMARY: On October 25, 2002, the President, Commodity Credit Corporation (CCC), who is the Under Secretary of Agriculture for Farm and Foreign Agricultural Services, determined that 200,000 metric tons of nonfat dry milk in CCC inventory will be made available for donation overseas under section 416(b) of the Agricultural Act of 1949, as amended ("section 416(b)"), during fiscal year 2003. This amount will be in addition to the 5,450 metric tons that will be shipped overseas during fiscal year 2003 to fulfill commitments made by CCC in agreements entered into by CCC under section 416(b) during fiscal year 2002.

FOR FURTHER INFORMATION CONTACT: William Hawkins, Director, Program Administration Division, FAS, USDA, (202) 720–3241.

Dated: October 28, 2002.

A. Ellen Terpstra,

Vice President, Commodity Credit Corporation.

[FR Doc. 02–27811 Filed 10–30–02; 8:45 am]

BILLING CODE 3410–10–M

DEPARTMENT OF AGRICULTURE

Forest Service

California Coast Provincial Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The California Coast Provincial Advisory Committee (PAC) will meet on November 21 and 22, 2002, in Ukiah, California. The purpose of the meeting is to discuss issues relating to implementing the Northwest Forest Plan.

DATES: The meeting will be held from 1 p.m. to 5 p.m. on November 21, 2002, and from 8:30 a.m. to 2:30 p.m. on November 22, 2002, at the Ukiah Valley Conference Center in Ukiah, CA.

ADDRESSES: The meeting will be held at the Chenin Blanc Room of the Ukiah Valley Conference Center, 200 South School Street, Ukiah, CA.

FOR FURTHER INFORMATION CONTACT: Phebe Brown, Committee Coordinator, USDA, Mendocino National Forest, 825 N. Humboldt Avenue, Willows, CA, 95988, (530) 934–1137; E-mail *pybrown@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Agenda items to be covered include (1) Presentations on Mendocino and Six Rivers National Forests' Draft Roads Analysis Process reports; (2) Regional Ecosystem Office (REO) update; (3) Presentation on Survey and Manage Supplemental Environmental Impact Statement; (4) Update on planning for a Province fire ecology/fuels treatment workshop; (5) Aquatic Conservation Subcommittee report; (6) Finalize implementation monitoring reports; (7) Discussion of proposed timber harvest issue; (8) Northwest Forest Plan socio-economic monitoring; (9) 2003 committee meeting dates; (10) Reports from agencies and committee members; and (11) Public comment. The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: October 15, 2002.

James Fenwood,

Forest Supervisor.

[FR Doc. 02–27702 Filed 10–30–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

National Infrastructure Advisory Council; Notice of Open Meeting

The National Infrastructure Advisory Council (NIAC) will meet on Friday, November 15, 2002, from 11 a.m. until 1 p.m. The meeting, which will be held telephonically, will be open to the public. Members of the public interested in attending by telephone should call (toll free) 1–888–899–7785 and, when prompted, enter passcode 1468517. In addition, a bridge to the conference call will be provided at the Truman Room of the White House Conference Center, 726 Jackson Place, NW., Washington, DC 20503. Limited seating will be available. Reservations are not accepted.

The Council advises the President of the United States on the security of information systems for critical infrastructure supporting other sectors of the economy, including banking and finance, transportation, energy, manufacturing, and emergency government services. At this meeting, the Council will receive a briefing on the draft National Strategy to Secure Cyberspace and will begin deliberations to formulate comments on the draft to be furnished to the President.

Agenda

I. Introduction of NIAC Members
II. Welcoming remarks—Richard Clarke, Special Advisor to the President for Cyberspace Security; Executive Director, NIAC
III. Welcoming remarks—Richard Davidson, Chairman, NIAC
IV. Briefing on rules and procedures governing Federal advisory committee proceedings and deliberations—Commerce Department, Office of General Counsel Staff
V. Briefing on draft National Strategy to Secure Cyberspace—Critical Infrastructure Protection Board Staff
VI. Discussion of next steps to provide comments on the Strategy and deliberations concerning comments—Mr. Clarke and Mr. Davidson, NIAC

Members

Written comments may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Council members, the Council suggests that presenters forward the public presentation materials, ten days prior to the meeting date, to the following address: Ms. Wanda Rose, Critical Infrastructure Assurance Office, Bureau of Industry and Security, U.S. Department of Commerce, Room 6095, 14th Street & Constitution Avenue, NW., Washington, DC 20230.

For more information contact Wanda Rose on (202) 482–7481.

Dated: October 25, 2002.

Eric T. Werner,

Council Liaison Officer.

[FR Doc. 02–27758 Filed 10–30–02; 8:45 am]

BILLING CODE 3510–JT–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–813]

Notice of Extension of Time Limit of Final Results of New Shipper Review: Stainless Steel Butt-Weld Pipe Fittings From Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit of final results of new shipper review.

EFFECTIVE DATE: October 31, 2002.

FOR FURTHER INFORMATION CONTACT: Fred Baker at (202) 482–2924 or Robert James at (202) 482–0649; Antidumping and Countervailing Duty Enforcement Group III, Office Eight, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Tariff Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce (the Department) regulations refer to the regulations codified at 19 CFR part 351 (April 2001).

Background

On August 31, 2001 the Department received a timely request for a new shipper review, in accordance with section 751(a)(2)(B) of the Tariff Act and section 351.214(c) of the Department's regulations, from TK Corporation, a producer of stainless steel butt-weld pipe fittings. On October 5, 2001, the Department initiated the new shipper review. *See Stainless Steel Butt-Weld Pipe Fittings from Korea: Notice of Initiation of New Shipper Antidumping Duty Review*, 66 FR 51017 (October 5, 2001).

On April 3, 2002 the Department extended the time limit for completion of the preliminary results of new shipper review. *See Notice of Extension of Time Limit of Preliminary Results of New Shipper Review: Stainless Steel Butt-Weld Pipe Fittings from Korea*, 67 FR 15793 (April 3, 2002). We published our preliminary results on July 17, 2002. *See Preliminary Results of New Shipper Review*, 67 FR 46953 (July 17, 2002).

Extension of Time Limit for Final Results

Section 751(a)(2)(B)(iv) of the Tariff Act, requires the Department to make a final determination within 90 days after the date on which the preliminary determination is issued. However, if the Department concludes that the case is extraordinarily complicated, it may extend the 90-day period to 150 days. In this case, questions have arisen regarding the best method of liquidating the respondent's entries. Due to the need to analyze this question, the Department is extending, in accordance with section 751(a)(3)(A) of the Tariff Act, the time limit for the final results by 60 days, until no later than December 7, 2002, or the first workday thereafter.

This notice is published in accordance with section 751(a)(2)(B)(iv) of the Tariff Act.

Dated: October 25, 2002.

Richard O. Weible,

Acting Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 02–27711 Filed 10–30–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free-Trade Agreement (NAFTA), Article 1904 NAFTA Panel Reviews; Decision of the Panel

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of decision of NAFTA Panel.

SUMMARY: On October 15, 2002 the NAFTA Panel issued its decision in the matter of Pure and Alloy Magnesium from Canada, Secretariat File No. USA–CDA–00–1904–07.

FOR FURTHER INFORMATION CONTACT: Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* ("Rules"). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686). The panel review in this matter was conducted in accordance with these Rules.

Background Information: On August 4, 2000, the Government of Quebec filed a First Request for Panel Review with the U.S. Section of the NAFTA Secretariat pursuant to Article 1904 of the North American Free Trade Agreement. Panel review was requested of the Final Results of the Full Sunset Review made by the International Trade Administration respecting Pure Magnesium from Canada. This determination was published in the **Federal Register** on July 5, 2000 (65 FR 41436). The request was assigned File No. USA–CDA–00–1904–07.

Panel Decision: The Panel affirmed the remand determination in part and remanded in part. The panel specifically instructed the DOC on remand to determine whether Magcorp had shown "good cause" for DOC to consider Magcorp's allegations of newly provided counteravailable subsidies made to Magnola pursuant to section 752(b)(2)(B) of the statute, 19 U.S.C. 1675a(b)(2)(B). The panel affirmed the DOC on this issue. The panel also remands the matter to DOC with instructions to amend its determination

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by removing the reporting of an all others subsidy rate.

The Panel ordered the Department to issue a determination on remand consistent with the instructions set forth in the Panel's decision. The determination on remand shall be issued within forty-five (45) days of the date of the Order (not later than November 29, 2002).

Dated: October 17, 2002.

Caratina L. Alston,

U.S. Secretary, NAFTA Secretariat.

[FR Doc. 02–27708 Filed 10–30–02; 8:45 am]

BILLING CODE 3510–GT–M

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free-Trade Agreement (NAFTA), Article 1904 NAFTA Panel Reviews: Decision of the Panel

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of decision of NAFTA Panel.

SUMMARY: On October 15, 2002 the NAFTA Panel issued its decision in the matter of Pure Magnesium from Canada, Secretariat File No. USA–CDA–00–1904–06.

FOR FURTHER INFORMATION CONTACT: Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determinations to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* ("Rules"). These Rules are published in the **Federal Register** on February 23, 1994 (59 FR 8686). The panel review in this matter was conducted in accordance with these Rules.

Background Information: On August 4, 2000, the Government of Quebec filed a First Request for Panel Review with the U.S. Section of the NAFTA Secretariat pursuant to Article 1904 of the North American Free Trade Agreement. Panel review was requested of the Final Results of the Full Sunset Review made by the International Trade Administration respecting Pure Magnesium from Canada. This determination was published in the **Federal Register** on July 5, 2000 (65 FR 41,436). The request was assigned File No. USA–CDA–00–1904–06.

Panel Decision: The Panel remanded this matter back to the Department (i) for further consideration of the record concerning the "other factors" which are required to be taken into account pursuant to our conclusion in Sections 2 and 3 of this opinion; (ii) to reconsider whether the normal preference for the investigation rate should not be followed here.

The Panel ordered the Department to issue a determination on remand consistent with the instructions set forth in the Panel's decision. The determination on remand shall be issued within sixty (60) days of the date of the Order (not later than December 16, 2002).

Dated: October 17, 2002.

Caratina L. Alston,

U.S. Secretary, NAFTA Secretariat.

[FR Doc. 02–27707 Filed 10–30–02; 8:45 am]

BILLING CODE 3510–GT–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 10 a.m., Tuesday, November 19, 2002.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Adjudicatory Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 02–27871 Filed 10–30–02; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0139]

Federal Acquisition Regulation; Submission for OMB Review; Federal Acquisition and Community Right-To-Know

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000–0139).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Federal acquisition and community right-to-know. A request for public comments was published in the **Federal Register** at 67 FR 20743 on April 26, 2002. No comments were received.

DATES: Submit comments on or before December 2, 2002.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of the collection of information, including suggestions for reducing this burden to the General Services Administration, Regulatory Secretariat (MVA), 1800 F Street, NW, Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Laura Smith, Acquisition Policy Division, GSA (202) 208–7279.

SUPPLEMENTARY INFORMATION:

A. Purpose

FAR Subpart 23.9 and its associate solicitation provision and contract clause implement the requirements of E.O. 12969 of August 8, 1995 (60 FR 40989, August 10, 1995), "Federal Acquisition and Community Right-to-Know," and the Environmental Protection Agency's "Guidance Implementing E.O. 12969; Federal Acquisition Community Right-to-Know; Toxic Chemical Release Reporting" (60 FR 50738, September 29, 1995). The FAR coverage requires offerors in competitive acquisitions over $100,000 (including options) to certify that they will comply with applicable toxic chemical release reporting requirements of the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. 11001–11050) and the Pollution Prevention Act of 1990 (42 U.S.C. 13101–13109).

B. Annual Reporting Burden

Respondents: 167,487.
Responses Per Respondent: 1.
Annual Responses: 167,487.
Hours Per Response: 0.50.
Total Burden Hours: 83,744.

Obtaining Copies of Proposals

Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVA), Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0139, Federal Acquisition and Community Right-to-Know, in all correspondence.

Dated: October 28, 2002.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. 02–27710 Filed 10–30–02; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

Department of the Army: Corps of Engineers

Availability Draft Environmental Impact Statement for the Operation and Maintenance of Lake Sidney Lanier, GA

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of availability.

SUMMARY: This notice of availability announces the public release of the Draft Environmental Impact Statement (DEIS) for the Operation and Maintenance of Lake Sidney Lanier, GA. Pursuant to section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969 (as amended), the U.S. Army Corps of Engineers (USACE), Mobile District (Corps), has prepared a DEIS to address activities performed by the Corps to operate and maintain Lake Sidney Lanier which is formed by Buford Dam. The Department of the Army, Corps of Engineers, published a notice of intent in the **Federal Register** (66 FR 20639, April 24, 2001) stating its intent to prepare a DEIS for Operation and Maintenance of Lake Sidney Lanier, GA. This DEIS is being made available for a 45-day public comment period.

DATES: A public meeting for receiving comments on the DEIS and the Shoreline Management Plan addressed by the DEIS will be held on November 25, 2002, at Gainesville College, Continuing Education Building, Gainesville, GA. Written comments on the DEIS should be submitted on or before December 23, 2002.

ADDRESSES: Submit written comments to District Engineer, U.S. Army Corps of Engineers, Mobile District, ATTN: CESAM–PD–E, P.O. Box 2288, Mobile, AL 36628–0001 or by fax (251) 690–2727. Electronic comments can also be submitted via the web site established for the Lake Lanier EIS effort: *http://www.usacelakelaniereis.net.*

FOR FURTHER INFORMATION CONTACT: Questions or comments concerning the DEIS should be addressed to Mr. Glen Coffee, Environment and Resources Branch, P.O. Box 2288, Mobile, AL 36628–0001 telephone 251–690–2729, or e-mail: *glendon.1.coffee@sam.usace.army.mil.*

SUPPLEMENTARY INFORMATION: This DEIS is being prepared to analyze the potential environmental effects of the USACE proposal to continue the ongoing operation and maintenance activities necessary for recreation, natural resources management, and shoreline management, and to implement specific improvements in these operation and maintenance programs to better manage the project on a sustainable basis. These activities will be performed within the context of operations to satisfy the flood control, hydropower generation, navigation, and water supply purposes of the Buford Dam project. The purpose of the proposed action is to accomplish congressionally authorized project purposes while balancing permitted private uses; community, social, and economic needs; and sound environmental stewardship. The proposed action reflects two levels of activity: (1) The minimal measures necessary for operation and maintenance of Lake Lanier to meet current USACE standards and (2) proposed program improvements, which include a large array of actions designed to enhance the environmental quality of the project and to provide for the long-term use and environmental sustainability of project resources.

Public comments can be submitted through a variety of methods. Written comments may be submitted to the Corps by mail, facsimile or electronic methods, comments (written) may also be presented at the public meeting (*see* **DATES**). Additional information on this meeting will be mailed in a public notice to the agencies and public, and announced in news releases.

Robert B. Keyser,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 02–27717 Filed 10–30–02; 8:45 am]

BILLING CODE 3710–CR–M

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Availability for the Final Environmental Impact Statement for the South River, Raritan River Basin, Hurricane and Storm Damage Reduction and Ecosystem Restoration Study, Middlesex County, NJ

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of availability.

SUMMARY: The U.S. Army Corps of Engineers (Corps), New York District, announces the availability of the final Environmental Impact Statement (EIS) for the South River, Raritan River Basin, Hurricane and Storm Damage Reduction and Ecosystem Restoration Study, pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA). The document was prepared following a public review and comment period on the draft EIS, during which a public hearing was held in South River, New Jersey to provide stakeholders with an opportunity to provide oral and written comments.

FOR FURTHER INFORMATION CONTACT: Dr. Josephine R. Axt, Project Restoration Biologist and Team Leader, Planning Division, U.S. Army Corps of Engineers, New York District, 26 Federal Plaza, 21st floor, New York, NY, 10278–0090 at (212) 264–5119 or e-mail: *Josephine.R.Axt@usace.army.mil.*

SUPPLEMENTARY INFORMATION: The South River, Raritan River Basin Multipurpose Final Integrated Feasibility Study/Environmental Impact Statement (IFS/EIS) presents the results of an investigation to determine the feasibility of hurricane and storm damage reduction (HSDR) and ecosystem restoration along the South River in Middlesex County, NJ. The IFS/EIS has been conducted by the Corps in conjunction with the non-Federal project partner, the New Jersey Department of Environmental Protection (NJDEP).

The study area includes flood-prone areas within the Boroughs of South River and Sayreville, the Township of Old Bridge, and the Historic Village of Old Bridge (located within the

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Township of East Brunswick) in New Jersey. The downstream river reaches encompass virtually all the flood-prone structures in the watershed and the areas of greatest ecological degradation (and greatest potential for ecosystem restoration).

The costs of project implementation for the HSDR features and ecosystem restoration features will be shared by the Federal government and the non-Federal project partner (NJDEP) on a 65 percent/35 percent basis. All operations and maintenance costs will be borne by the non-Federal project partner. For the HSDR features, the project implementation costs ($61,066,800) will be shared as follows: $39,693,400 Federal and $21,373,400 non-Federal with annual O&M costs of $221,500 (non-Federal). This includes mitigation costs associated with the implementation of these features ($2,865,300 total with $1,862,400 Federal and $1,002,900 non-Federal). For the ecosystem restoration features, the project implementation costs ($53,097,700) will be shared as follows: $34,513,500 Federal and $12,811,400 non-Federal with O&M costs of $80,000 (non-Federal).

The construction and maintenance of both the HDSR features and the ecosystem restoration features will not adversely affect any Federally or state listed endangered or threatened species, areas of designated critical habitat, or essential fish habitat. By providing increased cover and opportunities for foraging and nesting, the selected plans will also improve habitat for the Federally listed threatened bald eagle thought to utilize habitats in the general vicinity, and for many of the State of New Jersey endangered and threatened species observed in the restoration area (*e.g.*, black skimmer, northern harrier, peregrine falcon, yellow-crowned night heron, osprey, black-crowned night heron, and American bittern).

At this time, there are no known major areas of controversy regarding the study and selected plan among agencies or the public interest. One unresolved issue is an air conformity determination. The General Conformity provisions relating to the Clean Air Act require a conformity demonstration for each pollutant where the total direct and indirect emissions from the Federal action exceed the corresponding de minimis level.

Based on preliminary estimates, using emissions estimates generated from similar activities for other projects, total direct and indirect NO_X emissions appear to exceed the de minimis threshold of 25 tons per year. The preliminary projected total direct and indirect VOC and CO emissions from the proposed project are estimated to be below the de minimis threshold levels. In close consultation with the United States Environmental Protection Agency and the New Jersey Department of Environmental Protection, the Corps will conduct a detailed, comprehensive quantitative analysis in the next project phase (Preconstruction, Engineering and Design, in Fall 2002) to more precisely quantify all emissions from the South River Project and to determine conformity accordingly. Upon completion of the revised emission estimates, a Draft General Conformity Determination will be prepared and undergo formal agency and public review. Results and conclusions of this process will be part of the South River Project's Record of Decision, including, as necessary, detailed analyses of mitigation alternatives, such as emission offsets, emission credits, emission reduction technologies, and operational modifications to reduce emissions.

In sum, the recommended plan will efficiently reduce hurricane and storm damages along the South River and improve the structure and function of degraded ecosystems in the study area. The non-Federal project partner, NJDEP, has indicated its support for the recommended plan and is willing to enter into a Project Cooperation Agreement with the Federal Government for the implementation of the plan.

The public review period for the final IFS/EIS is from November 1, 2002 to December 2, 2002 or 30 days after the Notice of Availability is published in the **Federal Register**. Comments should be directed to Dr. Axt at the address above.

The Final IFS/EIS is available for review at the following locations:

(1) Sayerville Free Public Library, 1050 Washington Road, Parlin, NJ 08859.

(2) Old Bridge Township Library, 1 Old Bridge Plaza #1, Old Bridge, NJ 08857.

(3) South River Library, 55 Appleby Avenue, South River, NJ 08882.

(4) East Brunswick Library, 2 Civic Center Driver, East Brunswick, NJ 08816.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 02–27718 Filed 10–30–02; 8:45 am]

BILLING CODE 3710–06–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement for the PCS Phosphate Mine Continuation, Aurora, Beaufort County, NC

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: PCS Phosphate Company, Inc., has applied for a Department of the Army permit to adversely impact 2,394 acres of wetlands to continue its surface mining operation on Hickory Point, adjacent to South Creek and its tributaries, near Aurora, in Beaufort County, North Carolina. The Draft Environmental Impact Statement (DEIS) will evaluate several alternatives to the proposed action including the No Action alternative. A Public Notice describing the project was issued on October 4, 2001 and was sent to all interested state and Federal resource agencies as well as the general public.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and DEIS can be answered by: Mr. David Lekson, Chief, Washington Regulatory Field Office, U.S. Army Engineer District, Wilmington; Post Office Box 1000; Washington, DC 27889–1000; at (252) 975–1616, extension 22.

SUPPLEMENTARY INFORMATION: On August 27, 1997, PCS Phosphate was issued a Department of the Army (DA) permit to discharge adversely impact 1,268 acres of waters and wetlands to continue its mining operation pursuant to Alternative "E", more fully described in the final Environmental Impact Statement for the project, dated August 1996.

On November 2, 2000, PCS Phosphate applied for DA authorization to continue its mining advance on the Hickory Point peninsula once reserves are depleted within Alternative "E". On January 9, 2001, a Public Notice describing this proposal was circulated. According to the application, 2,530 acres of wetlands and 49 acres of open waters including navigable waters would be adversely impacted by the proposed mining advance. In response to comments received from the January 9, 2001, Public Notice and from the initial scoping comments received from the general public, State, Federal, and local agencies, PCS Phosphate elected to revise their application to reduce impacts to open waters and navigable waters as shown in the following table:

Proposed impacts	Number of acres
1. Creeks/Open Water	4
2. Brackish Marsh Complex	35
3. Bottomland Hardwood Forest	120
4. Disturbed-Herbaceous Assemblage	207
5. Disturbed-Scrub-Scrub Assemblage	581
6. Pine Plantation	745
7. Hardwood Forest	209
8. Mixed Pine-Hardwood Forest	314
9. Pine Forest	100
10. Ponds	19
11. "47% wetland" area	60
Total	2,394

Additionally, 1,028 acres of upland habitat are included in the mine continuation area for a total of 4,422 acres of disturbance.

Preliminary alternatives are currently being identified and include the applicant's proposal, additional avoidance alternatives on Hickory Point and mine blocks located in the area south of Aurora.

The applicant's stated purpose and need for the proposed work is to continue mining its phosphate reserve in an economically viable fashion. More specifically, this is defined as a long term (approximately 20 year) systematic and cost effective mine advance within the project area for the on-going PCS Phosphate mine operation near Aurora, NC. This application is being considered pursuant to Section 10 of the River and Harbor Act of 1899 (33 U.S.C. 403) and Section 404 of the Clean Water Act (33 U.S.C. 1344).

The Wilmington District will periodically issue additional Public Notices soliciting public and agency comment on the proposed action and alternatives to the proposed action as they are developed. It is also anticipated that a Public Hearing will be held to gather additional comment on the project. No date has been identified for the Public Hearing.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 02–27720 Filed 10–30–02; 8:45 am]

BILLING CODE 3710–GN–M

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement for Evaluating the Placement of Dredged and Fill Material in the Jurisdictional Wetlands on the Protected Side of the West Bank Hurricane Protection Levee, Jefferson Parish, LA

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The U.S. Army Corps of Engineers (Corps), New Orleans District, at the request of the Parish of Jefferson, State of Louisiana, is initiating this study under the authority of the Clean Water Act, 33 U.S.C. 1251, *et seq.*, and the National Environmental Policy Act (NEPA), 42 U.S.C. 4321, *et seq.* In May 2000, the Parish of Jefferson, State of Louisiana, applied for a 404 Permit for the development of those areas deemed jurisdictional under the Clean Water Act which lie on the protected side of the West Bank Hurricane Protection Levee. The public notice was issued on June 19, 2001. The public comment period closed on or about July 29, 2001. As a result of the comments received and after consultation between the Corps and Jefferson Parish, it has been determined that an Environmental Impact Statement (EIS) ought to be prepared.

FOR FURTHER INFORMATION CONTACT: Questions concerning the EIS should be addressed to Mr. Michael Salyer at U.S. Army Corps of Engineers, PM-RS, P.O. Box 60267, New Orleans, LA 70160–0267, phone (504) 862–2037, fax number (504) 862–2572 or by E-mail at *michael.r.salyer@mvn02.usace.army.mil.*

SUPPLEMENTARY INFORMATION:

1. *Proposed Action.* The proposed action would authorize the placement of dredged and fill material in the jurisdictional wetlands on the protected side of the West Bank Hurricane Protection Levee, in the area described in the Parish's 404 Permit Application as the Barataria Corridor. This would allow for the implementation of the Parish's Comprehensive Land Use Plan and reduce the need for individual 404 permits to be submitted for every action but expedite the process by covering the entire Barataria Corridor with one permit action.

2. *Alternatives.* The alternative presently being considered is the no action alternative, which would leave in place the current parcel-by-parcel permitting activity.

3. *Scoping.* Scoping is the process for determining the scope of alternatives and significant resources and issues to be addressed in the EIS. For this analysis, a letter will be sent to all parties believed to have an interest in the analysis, requesting their input on alternatives and issues to be evaluated. The letter will also notify interested parties of public scoping meetings that will be held in the local area. Notices will also be sent to local news media. All interested parties are invited to comment at this time, and anyone interested in this study should request to be included in the study mailing list.

A public scoping meeting will be held in November of 2002. The meeting will be held in the vicinity of Marrero, LA. Additional meetings could be held, depending upon interest and if it is determined that further public coordination is warranted.

4. *Significant Resources.* The tentative list of resources and issues to be evaluated in the EIS includes tidal wetlands (marshes and swamps), aquatic resources, commercial and recreational fisheries, wildlife resources, essential fish habitat, water quality, air quality, threatened and endangered species, recreation resources, and cultural resources. Socioeconomic items to be evaluated in the EIS include navigation, flood protection, business and industrial activity, employment, land use, property values, public/community facilities and services, tax revenues, population, community and regional growth, transportation, housing, community cohesion, and noise.

5. *Environmental Consultation and Review.* The U.S. Fish and Wildlife Service (USFWS) will be assisting in the documentation of existing conditions and assessment of effects of project alternatives through Fish and Wildlife Coordination Act consultation procedures. Coordination will be accomplished with the USFWS and the National Marine Fisheries Service (NMFS) concerning threatened and endangered species and their critical habitat. The NMFS will be consulted on the effects of this proposed action on Essential Fish Habitat. The draft EIS (DEIS) or a notice of its availability will be distributed to all interested agencies, organizations, and individuals.

6. *Estimated Date of Availability.* Funding levels will dictate the date when the DEIS is available. The earliest that the DEIS is expected to be available in the spring of 2004.

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Dated: October 15, 2002.

Peter J. Rowan,

Colonel, U.S. Army, District Engineer.

[FR Doc. 02–27721 Filed 10–30–02; 8:45 am]

BILLING CODE 3710–84–P

DEPARTMENT OF DEFENSE

Department of Army; Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement for the Millstone River Basin, New Jersey Flood Control and Ecosystem Restoration Feasibility Study

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The U.S. Army Corps of Engineers (USACE), New York District, announces its intent to prepare a Draft Environmental Impact Statement (DEIS) pursuant to the National Environmental Policy Act (NEPA), in accordance with the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of NEPA and the Department of the Army, USACE Procedures for Implementing NEPA, to assess the environmental impacts of a proposed flood control and ecosystem restoration study in the Millstone River Basin in New Jersey. This study is authorized by a resolution of the Committee on Transportation and Infrastructure, U.S. House of Representatives, adopted August 5, 1999. The purpose of this study is to identify and evaluate possible solutions for flood control and ecosystem restoration and to determine the extent of Federal interest.

DATES: Public scoping meeting on November 14, 2002, 7:30 PM —9:00 PM, to be held at the Borough of Manville Courtroom, 325 North Main Street, Manville, New Jersey, 08835.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and DEIS can be answered by: Ms. Megan B. Grubb, (212) 264–5759, U.S. Army Engineer District, New York, Planning Division, Attn: CENAN–PL–EA, 26 Federal Plaza, New York, NY 10278–0090.

SUPPLEMENTARY INFORMATION:

1. Project Location

This notice announces the initiation of a feasibility phase study for flood control and ecosystem restoration purposes at Millstone River Basin, New Jersey. This study area is located in parts of the New Jersey counties of Mercer, Middlesex, Monmouth, Hunterdom, and Somerset, and is bounded on the north by Morris County, on the east by Middlesex County, on the west by Hunterdon County and on the south by Mercer County. The study area is located in north-central New Jersey halfway between Philadelphia and New York City. The project study area consists of approximately 238 square miles of developed commercial and residential buildings as well as natural habitat.

2. Project Authorization and History

The Millstone River Basin Study is authorized by a resolution of the Committee on Transportation and Infrastructure, U.S. House of Representatives, adopted August 5, 1999. The USACE completed an initial Reconnaissance report entitled "Millstone River Basin, New Jersey—Reconnaissance Study For Flood Control & Ecosystem Restoration" in September 2000. This report determined that there may be potential Federal interest in flood control and ecosystem restoration measures for the Millstone River Basin. Additional investigations have demonstrated Federal interest and the need for further study of the Millstone River Basin area, in the nature of a detailed feasibility study. The non-Federal sponsor, the New Jersey Department of Environmental Protection (NJDEP) signed an agreement on 14 March 2002 to equally share the cost of the feasibility study with the USACE. The NJDEP in turn will act on behalf of all other local municipalities and jurisdictions as the primary non-Federal sponsor.

3. Project Need

The Millstone River Basin has a history of severe flood damages. Low-lying residential and commercial structures in the area are experiencing flooding caused by intense thunderstorms, northeasters, and hurricanes. Evaluation of flooding problems in the Millstone River basin has identified the Borough of Manville as the most significant problem area in the Basin. Manville was selected for detailed consideration in this feasibility investigation. A number of improvement measures would be evaluated during the feasibility study. These may include such measures as: floodwalls, levees, pump stations, gates and ecological enhancement. Non-structural measures such as flood proofing, ring walls, raising or acquisitions will also be considered.

The Millstone River Basin has a significant problem with ecosystem degradation. The structure and function of the natural systems in the Basin and the Millstone River's ability to perform critical local and regional ecological functions have been greatly reduced due to change in land use patterns and practices. A number of improvement measures would be evaluated during the feasibility study. The types of ecosystem restoration projects to be formulated could include: Lake Restoration and Watershed Management, Comprehensive Riparian System Restoration, Disturbed Land Restoration, and Ecological Enhancement in association with a Flood Control Project.

4. DEIS Scope

The intended DEIS will evaluate the potential environmental and cultural resources impacts associated with the proposed alternatives for flood control and ecosystem restoration.

5. Public Involvement

The USACE has scheduled a public environmental scoping meeting for November 14, 2002 (*see* **DATES**) to discuss the scope of the DEIS and data gaps. The public scoping meeting place, date and time will be advertised in advance in local newspapers, and meeting announcement letters will be sent to interested parties. The public will have an opportunity to provide written and oral comments at the public scoping meeting. Written comments may also be submitted via mail and should be directed to Ms. Megan B. Grubb at the address listed above. The USACE plans to issue the DEIS in the spring of 2005. The USACE will announce availability of the draft in the Federal Register and other media, and will provide the public, organizations, and agencies with an opportunity to submit comments, which will be addressed in the final EIS.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 02–27719 Filed 10–30–02; 8:45 am]

BILLING CODE 3710–06–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement for Providing a Deeper and Wider Navigation Channel to the Port of Iberia Through the Enlargement of Existing Access Channels, in Vermilion and Iberia Parishes in the Vicinity of New Iberia and Intracoastal City, LA

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The U.S. Army Corps of Engineers (Corps), New Orleans District, is initiating this study under the authority of section 431 of the Water Resources Development Act of 2000 (Pub. L. 106–541), dated December 11, 2000, to determine the feasibility of deepening and widening the navigation channel to the Port of Iberia (hereafter referred to as "the Port") through the enlargement of existing access channels. Deepwater oil and gas exploration and development in the Gulf of Mexico and other deepwater areas has increased because of growth in demand; depletion of existing oil and gas fields, including those in the shallower areas of the gulf; and advancements in deepwater drilling technologies that include larger platforms. The Port was constructed by Iberia Parish to provide a navigation outlet for trade and transportation of offshore fabrication modules. South Louisiana and the Port have a long association with the development of offshore oil and gas industry worldwide. The Port is primarily a landlocked port with connections to the Gulf of Mexico through the Commercial Canal and the Acadiana Navigation Channel. Additionally, the current project provides a "Harbor of Refuge" during storms and hurricanes. Five major waterways service the Port: the Gulf Intracoastal Waterway, the Atchafalaya River, the Acadiana Navigation Channel, the Vermilion River Cutoff, and the Freshwater Bayou. The Port's access channel, the Commercial Canal is essentially the northernmost portion of the Acadiana Navigation Channel.

FOR FURTHER INFORMATION CONTACT: Questions concerning the Environmental Impact Statement (EIS) should be addressed to Mr. Michael Salyer at U.S. Army Corps of Engineers, PM–RS, PO Box 60267, New Orleans, LA 70160–0267, phone (504) 862–2037, fax number (504) 862–2572 or by E-mail at *michael.r.salyer@mvn02.usace.army.mil.*

SUPPLEMENTARY INFORMATION:

1. Proposed Action. The proposed action would provide for the enlargement of the existing navigation channels to the Port via the Commercial Canal to the Gulf Intracoastal Waterway (GIWW) to Freshwater Bayou to the Gulf of Mexico via a bypass channel at the existing Freshwater Bayou lock. The proposed project bottom depth is to 20 foot MSL from the current 13 feet MSL in Commercial Canal, and to 20 foot MSL from the current 12 foot MSL in the GIWW and Freshwater Bayou. The channel alignments and bottom widths would be increased to 150 feet from the current 115 feet where necessary in the areas of the Port as a result of existing bulkheads. The Commercial Canal, GIWW, and Freshwater Bayou widths would be increased to 200 feet from the current 125 feet. It was assumed that the 250-foot width of the Freshwater Bayou Bar Channel into the Gulf of Mexico would remain the same. The Freshwater By-Pass would be widened to 150 feet from the current 125 feet. A 20-foot project depth was the only depth evaluated for the reconnaissance analysis. The material dredged for the construction and maintenance of the channels would be used for bank-line stabilization and wetlands restoration and construction, to the maximum extent practicable. Economic and environmental analysis would be used to determine the most practical plan, which would provide for the greatest overall public benefit.

2. Alternatives. Alternatives recommended for consideration presently include the construction of deeper and wider channels in the Commercial Canal, GIWW, and Freshwater Bayou. Incremental reaches of those channels with separable benefits and cost would be investigated. Various project depths for navigation channels would also be investigated.

3. Scoping. Scoping is the process for determining the scope of alternatives and significant resources and issues to be addressed in the Environmental Impact Statement. For this process, a letter will be sent to all parties believed to have an interest in the analysis, requesting their input on alternatives and issues to be evaluated. The letter will also notify interested parties of public scoping meetings that will be held in the local area. Notices will also be sent to local news media. All interested parties are invited to comment at this time, and anyone interested in this study should request to be included in the study mailing list.

A public scoping meeting will be held in November of 2002. The meeting will be held in the vicinity of Abbeville, LA. Additional meetings could be held, depending upon interest and if it is determined that further public coordination is warranted.

4. Significant Resources. The tentative list of resources and issues to be evaluated in the EIS includes tidal wetlands (marshes and swamps), aquatic resources, commercial and recreational fisheries, wildlife resources, essential fish habitat, water quality, air quality, threatened and endangered species, recreation resources, and cultural resources. Socioeconomic items to be evaluated in the EIS include navigation, flood protection, business and industrial activity, employment, land use, property values, public/community facilities and services, tax revenues, population, community and regional growth, transportation, housing, community cohesion, and noise.

5. Environmental Consultation and Review. The U.S. Fish and Wildlife Service (USFWS) will be assisting in the documentation of existing conditions and assessment of effects of project alternatives through Fish and Wildlife Coordination Act consultation procedures. The USFWS will provide a Fish and Wildlife Coordination Act report. Coordination will be accomplished with the USFWS and the National Marine Fisheries Service (NMFS) concerning threatened and endangered species and their critical habitat. The NMFS will be consulted on the effects of this proposed action on Essential Fish Habitat. The draft EIS (DEIS) or a notice of its availability will be distributed to all interested agencies, organizations, and individuals.

6. Estimated Date of Availability. Funding levels will dictate the date when the DEIS is available. The earliest that the DEIS is expected to be available is in the spring of 2004.

Dated: October 15, 2002.

Peter J. Rowan,

Colonel, U.S. Army District Engineer.

[FR Doc. 02–27722 Filed 10–30–02; 8:45 am]

BILLING CODE 3710–84–U

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Proposed Information Collection; Commander, Naval Sea Systems Command; Correction

AGENCY: Department of the Navy, DOD.

ACTION: Notice; correction.

SUMMARY: The Naval Sea Systems Command published a document in the **Federal Register** of October 11, 2002, concerning request for comments on a list of facilities available for the construction or repair of ships. The document contained incorrect telephone numbers and an incorrect address.

FOR FURTHER INFORMATION CONTACT: Sherrell Smith, (202) 781–1819.

Correction

In the **Federal Register** of October 11, 2002, in FR Doc. 02–25935, on page 63388, in the second column, correct the **ADDRESS** and **FOR FURTHER INFORMATION CONTACT** captions to read:

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ADDRESS: Send written comments and recommendations on the proposed information collection to Commander, Naval Sea Systems Command (SEA 04X13), 1333 Isaac Hull Ave SE Stop 4030, Washington Navy Yard, DC 20376–4030.

FOR FURTHER INFORMATION CONTACT: Sherrell Smith at (202) 781–1819 or Leonard Thompson at (202) 781–1832, respectively, to request additional information or to obtain a copy of the proposal and associated collection instruments.

Dated: October 22, 2002.

R.E. Vincent II,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 02–27671 Filed 10–30–02; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Exclusive Patent License; Universal Guardian Corporation

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to Universal Guardian Corporation a revocable, non-assignable, exclusive license to practice in the United States, the Government-owned invention described in U.S. Patent No. 6,145,441, entitled "Frangible Payload Dispensing Projectile," issued November 14, 2000, Navy Case No. 78,561.

DATE: Anyone wishing to object to the grant of this license has fifteen (15) days from the date of this notice to file written objections along with supporting evidence, if any.

ADDRESS: Written objections are to be filed with Coastal Systems Station, Dahlgren Div, NSWC, 6703 W. Hwy 98, Code XP01L, Panama City, FL 32407–7001.

FOR FURTHER INFORMATION CONTACT: Mr. Harvey A. Gilbert, Counsel, Coastal Systems Station, 6703 W. Hwy 98, Code XP01L, Panama City, FL 32407–7001, telephone (850) 234–4646, fax (850) 235–5497, or E-Mail at *gilbertha@ncsc.navy.mil.*

SUPPLEMENTARY INFORMATION: The Notice of Intent to grant an exclusive license for this patent, which was previously advertised in the **Federal Register** on July 10, 2002 (67 FR 45709–45710), has been cancelled.

(Authority: 35 U.S.C. 207, 37 CFR Part 404).

Dated: October 22, 2002.

R.E. Vincent, II,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 02–27672 Filed 10–30–02; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

[CFDA NO. 84.031H]

Office of Postsecondary Education; Strengthening Institutions (SIP), American Indian Tribally Controlled Colleges and Universities (TCCU), Alaska Native and Native Hawaiian-Serving Institutions (ANNH) and Hispanic Serving Institutions (HSI) Programs; Notice Inviting Applications for Designation as Eligible Institutions for Fiscal Year (FY) 2003

Purpose of Programs: Under the SIP, TCCU, and ANNH Programs authorized under Part A of Title III of the Higher Education Act of 1965, as amended (HEA), institutions of higher education are eligible to apply for grants if they meet specific statutory and regulatory eligibility requirements. Similarly, HSIs are eligible to apply for grants under the HSI Program, authorized under Title V of the HEA, if they meet specific statutory and regulatory requirements. In addition, an institution that is designated as an eligible institution under those programs may also receive a waiver of certain non-Federal share requirements under the Federal Supplemental Educational Opportunity Grant (FSEOG), the Federal Work Study (FWS), the Student Support Services (SSS) and the Undergraduate International Studies and Foreign Language (UISFL) Programs. The FSEOG, FWS and SSS Programs are authorized under Title IV of the HEA; the UISFL Program is authorized under Title VI of the HEA.

Qualified institutions may receive these waivers even if they are not recipients of grant funds under the Title III Part A or Title V Programs.

Special Note: To become eligible, your institution must satisfy a criterion related to needy student enrollment and one related to Educational and General (E&G) expenditures for a particular base year. Because we changed the collection processes for determining the thresholds for these criteria, we do not have base year data beyond 1999–2000. In order to award FY 2003 grants in a timely manner, we will use threshold data from base year 1999–2000 rather than a later base year. In completing your eligibility application, therefore, you are to use data from the base year 1999–2000.

Eligible Applicants: To qualify as an eligible institution under the Title III Part A or Title V Programs, an accredited institution must, among other requirements, have a high enrollment of needy students, and its E&G expenditures per full-time equivalent (FTE) undergraduate student must be low in comparison with the average E&G expenditures per FTE undergraduate student of institutions that offer similar instruction. The complete eligibility requirements for the HSI Program are found in 34 CFR 606.2–606.5. The complete eligibility requirements for the Title III Part A Programs are found in 34 CFR 607.2–607.5. The regulations may also be accessed by visiting the following Department of Education Web site: *http://www.ed.gov/legislation/FedRegister/finrule/1999–4/121599a.html.*

Enrollment of Needy Students: Under 34 CFR 606.3(a) and 607.3(a), an institution is considered to have a high enrollment of needy students if—(1) at least 50 percent of its degree students received financial assistance under one or more of the following programs: Federal Pell Grant, FSEOG, FWS, and Federal Perkins Loan Programs; or (2) the percentage of its undergraduate degree students who were enrolled on at least a half-time basis and received Federal Pell Grants exceeded the median percentage of undergraduate degree students who were enrolled on at least a half-time basis and received Federal Pell Grants at comparable institutions that offered similar instruction.

To qualify under this latter criterion, an institution's Federal Pell Grant percentage for base year 1999–2000 must be more than the median for its category of comparable institutions provided in the table in this notice.

Educational and Expenditures per Full-Time Equivalent Student: An institution should compare its 1999–2000 E&G expenditures per FTE student to the average E&G expenditure per FTE student for its category of comparable institutions contained in the table in this notice. If the institution's E&G expenditures for the 1999–2000 base year are less than the average for its category of comparable institutions, it meets this eligibility requirement.

An institution's E&G expenditures are the total amount it expended during the base year for instruction, research, public service, academic support, student services, institutional support, operation and maintenance, scholarships and fellowships, and mandatory transfers.

The following table identifies the relevant median Federal Pell Grant percentages and the relevant average E&G expenditures per FTE student for the base year, 1999–2000, for the four categories of comparable institutions:

Type of institution	Median Pell grant percentage	Average E&G per FTE
2-year Public Institutions	18.9	$8,348
2-year Non-Profit Private Institutions	31.0	20,101
4-year Public Institutions	23.5	19,516
4-year Non-Profit Private Institutions	23.4	30,152

Waiver Information: Institutions of higher education that are unable to meet the needy student enrollment requirement or the E&G expenditure requirement may apply to the Secretary for waivers of these requirements, as described in 34 CFR 606.3(b), 606.4(c) and (d), 607.3(b) and 607.4(c) and (d). Institutions requesting a waiver of the needy student or the E&G expenditures requirement must include the detailed information as described in the instructions for completing the application.

The needy student requirement waiver authority, provided in 34 CFR 606.3(b)(2) and (3) and 607.3(b)(2) and (3), refers to "low-income" students and families. The regulations define "low-income" as an amount that does not exceed 150 percent of the amount equal to the poverty level in the 1999–2000 base year as established by the U.S. Bureau of the Census, 34 CFR 606.3(c) and 607.3(c).

For the purposes of this waiver provision, the following table provides the low-income levels for the various sizes of families:

1999 ANNUAL LOW-INCOME LEVELS

Size of family unit	Contiguous 48 States, the District of Columbia and Outlying	Alaska	Hawaii
1	$12,360	$15,480	$14,235
2	16,590	20,760	19,095
3	20,820	26,040	23,955
4	25,050	31,320	28,815
5	29,280	36,600	33,675
6	33,510	41,880	38,535
7	37,740	47,160	43,395
8	41,970	52,440	48,255

For family units with more than eight members, add the following amount for each additional family member: $4,230 for the contiguous 48 states, the District of Columbia and outlying jurisdictions; $5,280 for Alaska; and $4,860 for Hawaii.

The figures shown as low-income levels represent amounts equal to 150 percent of the family income levels established by the U.S. Bureau of the Census for determining poverty status. The Census levels were published by the U.S. Department of Health and Human Services in the **Federal Register** on March 18, 1999 (64 FR 13428–13430).

In reference to the waiver option specified in 606.3(b)(4) and 607.3(b)(4) of the regulations, information about "metropolitan statistical areas" may be obtained by requesting the Metropolitan Statistical Areas, 1999, order number PB99–501538, from the National Technical Information Service, Document Sales, 5285 Port Royal Road, Springfield, Virginia 22161, telephone number 1–800–553–6847. There is a charge for this publication.

Applications Available: November 1, 2002.

Deadline for Transmittal of Eligibility Applications: January 31, 2003 for institutions that wish to apply for FY 2003 new grants under the Title III Part A or the Title V Programs; May 23, 2003 for institutions that wish to apply only for cost-sharing waivers under the FSEOG, FWS, SSS or UISFL Programs; January 31, 2003 for institutions that wish to apply for both a grant under the Title III Part A Programs or the Title V Program and a waiver of the cost sharing requirements under the FSEOG, FWS, SSS or UISFL Programs.

Electronic Submission of Applications: For FY 2003, we are again offering institutions the option of submitting their Designation of Eligibility application in hard copy or sending it electronically to our eligibility Web site at: *http://webprod.cbmiweb.com/Title3and5/index.html.*

To enter the Web site, you must use your institution's unique 8-digit identifier, *i.e.*, your Office of Postsecondary Education Identification Number (OPE ID number). If you receive a hard copy of the eligibility application and instructions from us in the mail, look for the OPE ID number on the address label. Otherwise, your business office or student financial aid office should have the OPE ID number. If your business office or student financial aid office does not have that OPE ID number, contact a Department of Education staff member using the e-mail address located at the end of the web page or the contact persons' telephone numbers or e-mail addresses included in this notice.

You will find detailed instructions for completing the form electronically under the "eligibility 2003" link at either of the following Web sites: *http://www.ed.gov/offices/OPE/HEP/idues/title3a.html* or *http://www.ed.gov/hsi.*

We encourage applicants to complete their form electronically and to complete it as soon as possible. For institutions of higher education that are unable to meet the needy student enrollment requirement or the E&G expenditure requirement and wish to request a waiver of one or both of those

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requirements, you may complete your designation application form on-line, print the form, and attach your narrative waiver request(s) to the printed form and mail both to the address in the next paragraph.

Mail your Designation of Eligibility application request to: Ms. Darlene B. Collins, Team Leader, Institutional Development and Undergraduate Education Service, U.S. Department of Education, 1990 K Street, NW., Room 6032, Request for Eligibility Designation, Washington, DC 20202–8513.

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 74, 75, 77, 79, 82, 85, 86, 97, 98, and 99. (b) The regulations for the Title III Part A Programs in 34 CFR part 607, and for the Title V Program in 34 CFR part 606.

For Applications and Further Information Contact: Thomas M. Keyes, Margaret A. Wheeler or Ellen Sealey, Institutional Development and Undergraduate Education Service, U.S. Department of Education, 1990 K Street, Room 6049, Request for Eligibility Designation, Washington, DC 20202–8513. Mr. Keyes' telephone number is (202) 502–7577. Ms. Wheeler's telephone number is (202) 502–7583. Ms. Sealey's telephone number is (202) 502–7580. Mr. Keyes, Ms. Wheeler and Ms. Sealey may be reached via Internet: *thomas.keyes@ed.gov, margaret.wheeler@ed.gov, ellen.sealey@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audio tape, or computer diskette) on request to the contact persons listed under *For Applications and Further Information Contact.*

Individuals with disabilities may obtain a copy of the application package in an alternative format by contacting those persons. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/legislation/FedRegister.*

To use PDF, you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html*

Program Authority: 20 U.S.C. 1057–1059d, 1101–1103g.

Dated: October 28, 2002.

Sally L. Stroup,

Assistant Secretary, Office of Postsecondary Education.

[FR Doc. 02–27697 Filed 10–30–02; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0218; FRL–7278–2]

Tolerance Petitions for Pesticides on Food/Feed Crops and New Inert Ingredients; Renewal of Pesticide Information Collection Activities and Request for Comments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*) this notice announces that EPA is seeking public comment on the following Information Collection Request (ICR): Tolerance Petitions for Pesticides on Food/Feed Crops and New Inert Ingredients (EPA ICR No. 0597.08, OMB Control No. 2070–0024). This is a request to renew an existing ICR that is currently approved and due to expire January 31, 2003. The ICR describes the nature of the information collection activity and its expected burden and costs. Before submitting this ICR to the Office of Management and Budget (OMB) for review and approval under the PRA, EPA is soliciting comments on specific aspects of the collection.

DATES: Written comments, identified by the docket ID number OPP–2002–0218, must be received on or before December 30, 2002.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit III. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Nancy Vogel, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6475; fax number: (703) 305–5884; e-mail address: vogel.nancy@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

You may be potentially affected by this action if you are a business engaged in the manufacturing of pesticides and other agricultural chemicals. Potentially affected entities may include, but are not limited to:

• Pesticide and other agricultural chemical manufacturing (NAICS 325320), e.g., Businesses engaged in the manufacture of pesticides and who file a petition asking the Agency to take a specific tolerance action.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed above could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), the Food Quality Protection Act of 1996, and section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA). If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

II. How Can I Get Copies of This Document and Other Related Information?

A. Docket

EPA has established an official public docket for this action under docket identification (ID) number OPP–2002–0218. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

B. Electronic Access

You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at http://www.epa.gov/fedrgstr/.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit II.A. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. Fax-on-Demand

Using a faxphone call (202) 564–3119 and select item 6094 for a copy of the ICR.

III. How Can I Respond to this Action?

A. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit III.B. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at http://www.epa.gov/edocket, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2002–0218. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to opp-docket@epa.gov, Attention: Docket ID Number OPP–2002–0218. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit III.A. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency (7502C), 1200 Pennsylvania Ave., NW., Washington, DC, 20460–0001, Attention: Docket ID Number OPP–2002–0218.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA., Attention: Docket ID Number OPP–2002–0218. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit II.A.

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B. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

C. What Should I Consider when I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the collection activity.
7. Make sure to submit your comments by the deadline in this notice.
8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

D. What Information Is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

1. Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.
2. Evaluate the accuracy of the Agency's estimates of the burdens of the proposed collections of information.
3. Enhance the quality, utility, and clarity of the information to be collected.
4. Minimize the burden of the collections of information on those who are to respond, including through the use of appropriate automated or electronic collection technologies or other forms of information technology, e.g., permitting electronic submission of responses.

IV. What Information Collection Activity or ICR Does This Action Apply to?

EPA is seeking comments on the following ICR:

Title: Tolerance Petitions for Pesticides on Food/Feed Crops and New Inert Ingredients.

ICR numbers: EPA ICR No. 0597.08, OMB Control No. 2070–0024.

ICR status: This ICR is a renewal of an existing ICR that is currently approved by OMB and is due to expire January 31, 2003.

Abstract: This information collection will enable EPA to collect adequate data to support the establishment of pesticide tolerances pursuant to section 408 of the FFDCA. A pesticide may not be used on food or feed crops unless EPA has established a tolerance for the pesticide residues on that crop, or established an exemption from the requirement to have a tolerance.

It is EPA's responsibility to ensure that the maximum residue levels likely to be found in or on food/feed crops are safe for human consumption through a careful review and evaluation of residue chemistry and toxicology data. In addition, it must ensure that adequate enforcement of the tolerance can be achieved through the testing of submitted analytical methods. Once the data are deemed adequate to support the findings, EPA will establish the tolerance or grant an exemption from the requirement of a tolerance.

V. What Are EPA's Burden and Cost Estimates for this ICR?

Under the PRA, "burden" means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal Agency. For this collection it includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of this estimate, which is only briefly summarized in this notice. The annual public burden for this ICR is estimated to be 258,900 hours. The following is a summary of the estimates taken from the ICR:

Respondents/affected entities: Businesses engaged in the manufacturing of pesticides and other agricultural chemicals who file a petition asking the Agency to take a specific tolerance action.

Estimated total number of potential respondents: 2,100.

Frequency of response: Annual.

Estimated total/average number of responses for each respondent: 3–5.

Estimated total annual burden hours: 258,900.

Estimated total annual burden costs: $23,435,700.

VI. Are There Changes in the Estimates From the Last Approval?

The total estimated annual respondent cost for this ICR has increased $1,305,700 (from $22,130,000 to $23,435,700), due mainly to the update in the loaded hourly labor rates used to calculate the costs. This increase is explained more fully in the ICR.

VII. What Is the Next Step in the Process for This ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

List of Subjects

Environmental protection, Reporting and recordkeeping requirements.

Dated: October 23, 2002.

Susan B. Hazen,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 02–27704 Filed 10–30–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7402–9]

Notice of Request for Initial Proposals (IPs) for Projects To Be Funded From the Water Quality Cooperative Agreement Allocation (CFDA 66.463—Water Quality Cooperative Agreements)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is soliciting Initial Proposals (IPs) from States, Tribes, local governments, universities, non-profits, and other eligible entities interested in applying for Federal assistance for Water Quality Cooperative Agreements (CFDA 66.463) under the Clean Water Act (CWA) section 104(b)(3). EPA Headquarters intends to award an estimated $3.1 million to eligible applicants through assistance agreements ranging in size from $10,000 up to $500,000 for Water Quality Cooperative Agreements, which are for unique and innovative projects that address the requirements of the National Pollutant Discharge Elimination Systems (NPDES) program with special emphasis on wet weather activities, *i.e.*, storm water, combined sewer overflows, sanitary sewer overflows, and concentrated animal feeding operations as well as projects that enhance the ability of the regulated community to deal with non-traditional pollution problems in priority watersheds. From the IPs received, EPA estimates that 30 to 35 projects may be selected to submit full applications.

The Agency intends to make available at least $200,000 per year of the annual appropriation for Water Quality Cooperative Agreements, from FY 2001 through FY 2005, for projects which address cooling water intake issues to include technical and environmental studies. For FY 2003 it is expected that $250,000 will be available for projects addressing cooling water intake issues.

The Agency reserves the right to reject all IPs and make no awards.

DATES: EPA will consider IPs received on or before 5 p.m. Eastern Time, December 30, 2002. IPs received after the due date, may be reviewed at EPA's discretion.

ADDRESSES: It is preferred that IPs be electronically mailed (E-mailed) to *WQCA2003@EPA.GOV*. If mailed through the postal service or other means, three copies should be sent to: Barry Benroth, 4204M, WQCA2003, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

The following address must be used for delivery of the copies by an overnight delivery or courier service: Barry Benroth, 4204M, WQCA2003, Phone 202–564–0672, U.S. Environmental Protection Agency, Room 7324 J, EPA East, 1201 Constitution Avenue, NW., Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Barry Benroth by telephone at 202–564–0672 or by E-mail at *benroth.barry@epa.gov*.

SUPPLEMENTARY INFORMATION:

Purpose of This Request Is for Initial Proposals

The Office of Wastewater Management, Office of Water at EPA Headquarters is requesting IPs from States, Tribes, local governments, non-profit organizations and other eligible entities under the Clean Water Act section 104(b)(3) for unique and innovative projects that address the requirements of the National Pollutant Discharge Elimination Systems (NPDES) program with special emphasis on wet weather activities, *i.e.*, storm water, combined sewer overflows, sanitary sewer overflows, and concentrated animal feeding operations as well as projects that enhance the ability of the regulated community to deal with non-traditional pollution problems in priority watersheds.

An organization whose IP is selected for possible Federal assistance must complete and EPA Application for Assistance, including the Federal SF–424 form (Application for Federal Assistance, see 40 CFR 30.12 and 31.10).

Organizations who have an existing agreement under this program are eligible to compete with proposals for new awards.

The Office of Wastewater Management, Office of Water, EPA Headquarters Has Identified the Following High Priority Areas for Consideration

WQCAs awarded under section 104(b)(3) may only be used to conduct and promote the coordination and acceleration of activities such as research, investigations, experiments, training, education, demonstrations, surveys, and studies relating to the causes, effect, extent, prevention, reduction, and elimination of water pollution. These activities, while not defined in the statute, advance the state of knowledge, gather information, or transfer information. For instance, "demonstrations" are generally projects that demonstrate new or experimental technologies, methods, or approaches and the results of the project will be disseminated so that others can benefit from the knowledge gained. A project that is accomplished through the performance of routine, traditional, or established practices, or a project that is simply intended to carry out a task rather than transfer information or advance the state of knowledge, however worthwhile the project may be, is not a demonstration. Research projects may include the application of established practices when they contribute to learning about an environmental concept or problem.

The Office of Wastewater Management at EPA Headquarters has identified several subject areas for priority consideration. EPA will award WQCAs for research, investigations, experiments, training, demonstrations, surveys and studies related to the causes, effects, extent, prevention, reduction, and elimination of water pollution in the following subject areas:

Impacts of Wet Weather Flows

- Trends in load reduction due to implementation of storm water
- Best Management Practices (BMPs) including means of measuring effectiveness of BMPs
- Storm water monitoring techniques
- Efficient and effective reduction of Sanitary Sewer Overflows (SSO)
- Impacts of sewage overflows
- Impacts of peak wet weather flows on Publicly Owned Treatment Works (POTW)
- Environmental effectiveness of sewer separation
- Compliance with Storm Water Phase II

National Pollutant Discharge Elimination System (NPDES) Program Strategies To Implement Watershed-Based Efforts

- Watershed Integration of Water Programs under CWA & Safe Drinking Water Act (SDWA)
- Alternative markets or treatments for excess manure
- Nutrient loading reduction through trading

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Ballast Water Treatment

On-board treatment or marine disposal technologies for various ships
Sediments that have collected in ballast tanks
Fate and transport in marine, estuary, and fresh water systems of any use of biocides (*e.g.* chlorine derivatives) to treat ballast water

Onsite/Decentralized Wastewater Treatment Systems

Effective State-level adoption of EPA management guidelines in reducing water pollution
Institutional, regulatory and funding barriers and solutions to implementation of decentralized options
Tools for conducting comprehensive, watershed-wide assessments of risks associated with decentralized wastewater systems

Management Systems for Water Pollution Control Programs Asset Management

Strategic best practice governance and business models of asset management
Methodologies and best practice applications and approaches for asset management
Tools and techniques for incorporating asset management into the day-to-day management of utilities
Municipal water efficiency and water demand management for infrastructure cost reduction or water pollution prevention

Environmental Management Systems for Water Pollution Control

Public Agency and Agriculture EMSs
Integrated utility-wide EMSs that also incorporate asset management, bench marking, and other management tools

Program Innovations

Program and management efficiencies and innovations in such areas as permit issuance, data collection/submission, program integration, water quality standards development, TMDLs, monitoring, inspections, and compliance
Innovative approaches to address operations and maintenance (O&M) issues for small communities, including tribes
Innovative approaches or methods to help communities and tribes build capacity to develop and manage water quality/wastewater programs
Innovative pretreatment tools or pilot projects for program development and implementation for disadvantaged communities, including the Mexican Border
Tools for environmental/public health improvements on the U.S./Mexican Border on a watershed basis

Wastewater Infrastructure Security

Innovative approaches or methods to reduce risk of terrorist or other attacks in: handling and storage of hazardous chemicals used at WWTPs; general WWTP site security at main and remote locations; wireless control systems (SCADA); sanitary or storm sewer collection systems
Early detection of chemical or biological agents which could contaminate or disrupt the WWTP
Ability of conventional or innovative WWTP processes to treat, remove or render harmless biological, chemical, or radiological agents which could be introduced into the collection or treatment system

Cooling Water Intake Structures (Clean Water Act, Section 316(b))

Reduction of impingement and entrainment of aquatic organisms into cooling water intakes
Ecological effects of cooling water intake structures on aquatic environments
Effectiveness of ecological restoration activities in reducing the impact of cooling water intake structures on the aquatic environment

EPA may also consider other project areas for funding to the extent authorized by CWA section 104(b)(3) and to the extent funds are available for such project areas.

Statutory Authority, Applicable Regulations, and Funding Level

Water Quality Cooperative Agreements are awarded under the authority of section 104(b)(3) of the Clean Water Act section 104(b)(3), (33 U.S.C. 1254(b)(3)).

The regulations governing the award and administration of Water Quality Cooperative Agreements are 40 CFR part 30 (for institutions of higher learning, hospitals, and other non-profit organizations) and 40 CFR part 31 and 40 CFR part 35, subparts A and B (for States, Tribes, local governments, intertribal consortia, and interstate agencies).

Intergovernmental Review

Applicants requested to submit a full application will be required to comply with Intergovernmental Review requirements (40 CFR part 29).

Total funding available for award by Headquarters will depend on EPA's appropriation for Fiscal Year 2003; however, it is estimated that $3.1 million will be available for funding approved projects. The average size of an award is anticipated to be approximately $100,000.

Should funding available for award remain reasonably stable or increase in future years, the Agency intends to reserve $200,000 per year of the annual amount available for Fiscal Year 2004 and 2005 to support projects and studies on cooling water intake structures. This is an addition to the $600,000 made available or planned for FY 2001 through FY 2003.

Construction projects, except for the construction required to carry out a demonstration project, and acquisition of land are not eligible for funding under this program. New or on-going programs to implement environmental controls are not eligible for funding under this program.

Request For Initial Proposal Format and Contents

IPs should be limited to three pages. Full application packages should not be submitted at this time. It is recommended that confidential information not be included in the IP. The following format should be used for all IPs:

Name of Project:
Point of contract: (Individual and Organization Name, Address, Phone Number, Fax Number, E-mail Address)
Is This a Continuation of a Previously Funded Project (if so, please provide the number and status of the current grant or cooperative agreement):
Proposed Award Amount:
Proposed Awardee Cost Share: (Cost sharing is not required).
Description of General Budget Proposed to Support Project:
Project Area: (based on areas of interest shown above).
Project Description: (Should not exceed two pages of single-spaced text).
Expected Accomplishments or Product, with Dates, and Interim Milestones: This section should also include a discussion of a communication plan for distributing the project results to interested parties.
Describe How the Project Meets the Evaluation Criteria Specified Below:

EPA IP Evaluation Criteria

EPA will award Water Quality Cooperative Agreements on a competitive basis and evaluate IPs based on the following criteria:

- The relationship of the proposed project to the priorities identified in this notice.
- How well the project proposes to address a nationally important need, issue, or interest.
- Communication plan to transfer results of the project to other potentially interested parties.
- How well the project furthers the goal of the Clean Water Act to prevent, reduce, and eliminate water pollution.
- Leverage of other resources (*e.g.*, cost share, participation by other organizations) as part of the proposed approach.
- Cost effectiveness of the proposal.
- Compliance with directions for submittal contained in this notice.

The IPs will be evaluated by EPA staff on a scale of 1 to 5 with 1 being low and 5 being high. The criteria above will have essentially equal weight. EPA may consider EPs even if all criteria are not fully met, provided the projects meet the applicable statutory and regulatory requirements and funds are available for such projects.

IP Selection

Final selection of IPs will be made by the Director, Office of Wastewater Management. Selected organizations will be notified and requested to submit a full application. It is expected that unsuccessful applicants will be notified by e-mail.

Eligible Applicants

Eligible applicants for assistance agreements under section 104(b)(3) of the Clean Water Act are State water pollution control agencies. Tribal governments, intertribal consortia, interstate agencies, and other public or non-profit private agencies, institutions, and organizations.

Application Procedure

Electronic transmittal of IPs is preferred to facilitate the review process. Hard copies are acceptable. Please send three copies of the IPs if it is not electronically transmitted.

Dispute Resolution Process

Procedures at 40 CFR 30.63 and 40 CFR 31.70 apply.

Type of Assistance

It is expected that all the awards under this program will be cooperative agreements. States, interstate agencies, federally recognized tribes, and intertribal consortia meeting the requirements at 40 CFR 35.504 may include the funds for Water Quality Cooperative Agreements in a Performance Partnership Grant (PPG) in accordance with the regulations governing PPGs at 40 CFR part 35, subparts A and B. For states and interstate agencies that choose to do so, the regulations provide that the work plan commitments that would have been included in the WQCA must be included in the PPG work plan. A description of the Agency's substantial involvement in cooperative agreements will be included in the final agreement.

Schedule of Activities

This is the estimated schedule of activities for submission, review of proposals and notification of selections:

December 30, 2002—RFIPs due to EPA.

February 10, 2003—Initial approvals identified and sponsors of projects selected for funding will be requested to submit a formal application package. Schedule may be modified based on the level of response.

A list of selected projects will be posted on the Office of Wastewater Management Web site *http://www.epa.gov/owm/FY2003WQCA*. This Web site may also contain additional information about this request. Deadline extensions, if any, will be posted on this web site and not in the **Federal Register**.

Dated: October 18, 2002.

James A. Hanlon,

Director, Office of Wastewater Management.

[FR Doc. 02–27705 Filed 10–30–02; 8:45 am]

BILLING CODE 6560–50–M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Sunshine Act Notice

AGENCY: Equal Employment Opportunity Commission.

DATE AND TIME: Tuesday, November 12, 2002 (Two (2) Panels—10 a.m. and 2 p.m. Eastern Time).

PLACE: Clarence M. Mitchell Conference Room on the Ninth Floor of the EEOC Office Building, 1801 L Street, NW., Washington, DC 20507.

STATUS: The meeting will be open to the public

MATTERS TO BE CONSIDERED:

Open Session

1. Announcement of Notation Votes, and
2. Panel Discussions on Federal Sector EEO Complaint Processing Reform.

Note: Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission sessions.).

Please telephone (202) 663–7100 (voice) and (202) 663–4074 (TTD) at any time for information on these meetings.

FOR FURTHER INFORMATION CONTACT: Frances M. Hart, Executive Officer on (202) 663–4070.

This Notice Issued October 29, 2002.

Frances M. Hart,

Executive Officer, Executive Secretariat.

[FR Doc. 02–27905 Filed 10–29–02; 3:37 pm]

BILLING CODE 6750–06–M

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket 98–67; DA 02–2759]

Notice of Telecommunications Relay Service (TRS) Applications for State Certification Accepted Pleading Cycle Established for Comment on TRS Certification Applications

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The purpose of this notice is to notify the public, state Telecommunications Relay Service (TRS) programs, and TRS providers that TRS applications for certification have been accepted and that the pleading cycle for comments and reply comments regarding these applications has been established.

DATES: Interested parties may file comments in this proceeding no later than December 16, 2002. Reply comments may be filed no later than December 31, 2002.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: For further information regarding this public notice, contact Erica Myers, (202) 418–2429 (voice), (202) 418–0464 (TTY), or e-mail *emyers@fcc.gov*.

SUPPLEMENTARY INFORMATION: This notice seeks public comment on the above-referenced applications for TRS certification. Copies of applications for certification are available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The applications for certification are also available on the Commission's Web site at *http://www.fcc.gov/cgb/dro/trs_by_state.html*. They may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 44512th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2898, or via e-mail *qualexint@aol.com*.

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When filing comments, please reference CC Docket No. 98–67 and the relevant state file number of the state application that is being commented upon. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See* Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24,121 (1998). Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html*. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Services mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Room TW–A325 Washington, DC 20554.

Parties who choose to file by paper should also submit their comments on diskette or via email in Microsoft Word. These diskettes should be submitted to: Erica Myers, Federal Communications Commission, 445 12th Street, SW., Room 5–C212, Washington DC 20554. The e-mail should be submitted to Erica Myers at *emyers@fcc.gov*. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using Word 97 or compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labeled with the commenter's name, proceeding (including the lead docket number in this case, CC Docket No. 98–67, type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase "Disk Copy—Not an Original." Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554.

This proceeding shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules. *See* 47 CFR 1.1200 and 1.1206. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. *See* 47 CFR 1.1206(b). Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in section 1.1206(b) of the Commission's rules, 47 CFR 1.1206(b).

Alternative formats (computer diskette, large print, audio recording and Braille) are available to persons with disabilities by contacting Brian Millin, of the Consumer and Governmental Affairs Bureau, at (202) 418–7426, TTY (202) 418–7365, or e-mail at *bmillin@fcc.gov*. This public notice can also be downloaded in Text and ASCII formats at: *http://www.fcc.gov/cgb/dro*.

Synopsis

Notice is hereby given that the states listed below have applied to the Commission for renewal of the certification of their State Telecommunications Relay Service (TRS) program pursuant to Title IV of the Americans with Disabilities Act (ADA), 47 U.S.C. 225 and the Commission's rules, 47 CFR 64.601–605. Current state certifications expire July 25, 2003. Applications for certification, covering the five year period of July 26, 2003 to July 25, 2008, must demonstrate that the state TRS program complies with the ADA and the Commission's rules for the provision of TRS.

File No: TRS–32–01

California Public Utilities Commission, State of California

File No: TRS–43–02

Idaho Public Service Commission, State of Idaho

File No: TRS–07–02

Kansas Corporation Commission, State of Kansas

File No: TRS–59–02

Division of Public Utilities and Carriers, State of Rhode Island

File No: TRS–09–02

Division of Public Utilities, State of Utah

File No: TRS–51–02

Georgia Public Utilities Commission, State of Georgia

File No: TRS–08–02

Indiana Telephone Relay Access, State of Indiana

File No: TRS–15–02

Missouri Public Utilities Commission, State of Missouri

File No: TRS–60–02

Department of Human Services, State of South Dakota

File No: TRS–06–02

West Virginia Public Service Commission, State of West Virginia

Federal Communications Commission.

Margaret M. Egler,

Deputy Chief, Consumer & Governmental Affairs Bureau.

[FR Doc. 02–27688 Filed 10–30–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket 98–67; DA 02–2761]

Notice of Telecommunications Relay Service (TRS) Applications for State Certification Accepted Pleading Cycle Established for Comment on TRS Certification Applications

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The purpose of this notice is to notify the public, state Telecommunications Relay Service (TRS) programs, and TRS providers that TRS applications for certification have been accepted and that the pleading cycle for comments and reply comments regarding these applications has been established.

DATES: Interested parties may file comments in this proceeding no later than December 16, 2002. Reply comments may be filed no later than December 31, 2002.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: For further information regarding this public notice, contact Erica Myers, (202) 418–2429 (voice), (202) 418–0464 (TTY), or e-mail *emyers@fcc.gov*.

SUPPLEMENTARY INFORMATION: This notice seeks public comment on the above-referenced applications for TRS certification. Copies of applications for certification are available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The applications for certification are also available on the Commission's web site at *http:/www.fcc.gov/cgb/dro/trs_by_state.html*. They may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2898, or via e-mail *qualexint@aol.com*.

When filing comments, please reference CC Docket No. 98–67 and the relevant state file number of the state application that is being commented upon. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See* Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24,121 (1998). Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html*. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Services mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Room TW–A325 Washington, DC 20554.

Parties who choose to file by paper should also submit their comments on diskette or via email in Microsoft Word. These diskettes should be submitted to: Erica Myers, Federal Communications Commission, 445 12th Street, SW., Room 5–C212, Washington DC 20554. The e-mail should be submitted to Erica Myers at *emyers@fcc.gov*. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using Word 97 or compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labeled with the commenter's name, proceeding (including the lead docket number in this case, CC Docket No. 98–67, type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase "Disk Copy—Not an Original." Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554.

This proceeding shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules. *See* 47 CFR 1.1200 and 1.1206. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. *See* 47 CFR 1.1206(b). Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in section 1.1206(b) of the Commission's rules, 47 CFR 1.1206(b).

Alternative formats (computer diskette, large print, audio recording and Braille) are available to persons with disabilities by contacting Brian Millin, of the Consumer and Governmental Affairs Bureau, at (202) 418–7426, TTY (202) 418–7365, or e-mail at *bmillin@fcc.gov*. This public notice can also be downloaded in Text and ASCII formats at: *http://www.fcc.gov/cgb/dro*.

Synopsis

Notice is hereby given that the states listed below have applied to the Commission for renewal of the certification of their State Telecommunications Relay Service (TRS) program pursuant to Title IV of the Americans with Disabilities Act (ADA), 47 U.S.C. § 225 and the Commission's rules, 47 CFR § 64.601–605. Current state certifications expire July 25, 2003. Applications for certification, covering the five year period of July 26, 2003 to July 25, 2008, must demonstrate that the state TRS

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program complies with the ADA and the Commission's rules for the provision of TRS.

File No: TRS–02–02

Arizona Council for Hearing Impaired, State of Arizona

File No: TRS–23–02

Colorado Public Utilities Commission, State of Colorado

File No: TRS–32–02

State of Delaware Public Service Commission, State of Delaware

File No: TRS–22–02

Hawaii Public Utilities Commission, State of Hawaii

File No: TRS–03–02

Iowa Utilities Board, State of Iowa

File No: TRS–37–02

Public Utilities Commission of Ohio, State of Ohio

File No: TRS–33–02

Maryland Department of Budget and Management, State of Maryland

File No: TRS–04–02

Virginia Public Service Commission, State of Virginia

File No: TRS–01–02

Wisconsin Department of Administration, State of Wisconsin

File No: TRS–18–02

Wyoming Department of Administration, State of Wyoming

Federal Communications Commission.

Margaret M. Egler,

Deputy Chief, Consumer & Governmentol Affairs Bureau.

[FR Doc. 02–27689 Filed 10–30–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket 98–67; DA 02–2760]

Notice of Telecommunications Relay Service (TRS) Applications for State Certification Accepted Pleading Cycle Established for Comment on TRS Certification Applications

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The purpose of this notice is to notify the public, state Telecommunications Relay Service (TRS) programs, and TRS providers that TRS applications for certification have been accepted and that the pleading cycle for comments and reply comments regarding these applications has been established.

DATES: Interested parties may file comments in this proceeding no later than December 16, 2002. Reply comments may be filed no later than December 31, 2002.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: For further information regarding this public notice, contact Erica Myers, (202) 418–2429 (voice), (202) 418–0464 (TTY), or e-mail *emyers@fcc.gov.*

SUPPLEMENTARY INFORMATION: This notice seeks public comment on the above-referenced applications for TRS certification. Copies of applications for certification are available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The applications for certification are also available on the Commission's web site at *http://www.fcc.gov/cgb/dro/trs_by_state.html.* They may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY–B402, Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2898, or via e-mail *qualexint@aol.com.*

When filing comments, please reference CC Docket No. 98–67 and the relevant state file number of the state application that is being commented upon. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See* Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24,121 (1998). Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html.* Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov,* and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Services mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Room TW–A325 Washington, DC 20554.

Parties who choose to file by paper should also submit their comments on diskette or via email in Microsoft Word. These diskettes should be submitted to: Erica Myers, Federal Communications Commission, 445 12th Street, SW., Room 5–C212, Washington DC 20554. The e-mail should be submitted to Erica Myers at *emyers@fcc.gov.* Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using Word 97 or compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labeled with the commenter's name, proceeding (including the lead docket number in this case, CC Docket No. 98–67, type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase "Disk Copy—Not an Original." Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554.

This proceeding shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules. *See* 47 CFR 1.1200 and 1.1206. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. *See* 47 CFR 1.1206(b). Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in section 1.1206(b) of the Commission's rules, 47 CFR 1.1206(b).

Alternative formats (computer diskette, large print, audio recording and Braille) are available to persons with disabilities by contacting Brian Millin, of the Consumer and Governmental Affairs Bureau, at (202) 418–7426, TTY (202) 418–7365, or e-mail at *bmillin@fcc.gov.* This *Public Notice* can also be downloaded in Text and ASCII formats at: *http://www.fcc.gov/cgb/dro.*

Synopsis

Notice is hereby given that the states listed below have applied to the Commission for renewal of the certification of their State Telecommunications Relay Service (TRS) program pursuant to Title IV of the Americans with Disabilities Act (ADA), 47 U.S.C. 225 and the Commission's rules, 47 CFR 64.601–605. Current state certifications expire July 25, 2003. Applications for certification, covering the five year period of July 26, 2003 to July 25, 2008, must demonstrate that the state TRS program complies with the ADA and the Commission's rules for the provision of TRS.

File No: TRS–52–02

Kentucky Public Service Commission, State of Kentucky

File No: TRS–56–02

Telecommunications Access Service, State of Montana

File No: TRS–25–02

Dept. of Employment, Training and Rehabilitation, State of Nevada

File No: TRS–30–02

Department of Health and Human Services, State of North Carolina

File No: TRS–13–02

Louisiana Relay Administration Board, State of Louisiana

File No: TRS–40–02

Nebraska Public Service Commission, State of Nebraska

File No: TRS–42–02

New Hampshire Public Service Commission, State of New Hampshire

File No: TRS–36–02

Oregon Public Utilities Commission, State of Oregon

File No: TRS–20–02

Tennessee Regulatory Authority, State of Tennessee

File No: TRS–44–02

Department of Public Service, State of Vermont

Federal Communications Commission.

Margaret M. Egler,

Deputy Chief, Consumer & Governmental Affairs Bureau.

[FR Doc. 02–27690 Filed 10–30–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[WT Docket No. 02–46; DA 02–2666]

Report on Technical and Operational Wireless E911 Issues

AGENCY: Federal Communications Commission.

ACTION: Notice; comment invited.

SUMMARY: The Commission seeks comment on a Report on Technical and Operational Issues Impacting the Provision of Wireless Enhanced 911 Services by Dale N. Hatfield (the Hatfield Report). The Commission will use the information in the Hatfield Report and in the comments it receives to assess enhanced emergency 911 services deployment issues and consider methods to overcome any obstacles and accelerate deployment.

DATES: Comments are due on or before November 15, 2002, and reply comments are due on or before December 3, 2002.

ADDRESSES: All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. A copy should also be sent to Jennifer Salhus, Room 3A–131, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Jennifer Salhus and Won Kim, Attorney, (202) 418–1310.

SUPPLEMENTARY INFORMATION:

1. The Wireless Telecommunications Bureau invites the public to comment on a Report on Technical and Operational Issues Impacting the Provision of Wireless Enhanced 911 Services by Dale N. Hatfield filed on October 15, 2002 (the Hatfield Report). The Commission will use the information in the Hatfield Report and in the comments it receives to assess enhanced emergency 911 services (E911) deployment issues and consider methods to overcome any obstacles and accelerate deployment.

2. In a series of orders beginning in 1996, the Commission required wireless carriers to provide both basic and enhanced emergency 911 services. The Commission has recognized that despite substantial progress to date in the development of the technologies to support E911 location capability, much remains to be done to achieve the Commission's fundamental goal of having wireless E911 location capabilities deployed throughout the country.

3. In the fall of 2001, the Commission announced that Dale N. Hatfield, former Chief of the Commission's Office of Engineering and Technology, would conduct an inquiry into technical and operational issues with wireless E911 deployment.

4. On March 5, 2002, the Wireless Telecommunications Bureau (the Bureau) released a Public Notice announcing the details of the inquiry. The Bureau noted that the purpose of the inquiry was to obtain an expert, informed, unbiased assessment of the technical and operational issues that affect wireless E911 deployment. The Bureau stated that information would be gathered and evaluated from many sources, including from technology vendors, network equipment and handset manufacturers, carriers, the public safety community, and other sources concerning technology standards issues, development of hardware and software, and supply conditions. The inquiry was also intended to address the provisioning by Local Exchange Carriers (LECs) of the facilities and equipment necessary to receive and utilize E911 data elements. The Bureau indicated that the focus of the inquiry was on the future of the wireless E911 deployment, including obstacles to deployment and steps that might be taken to overcome or minimize them. The Bureau noted that, at the conclusion of his inquiry, Mr. Hatfield

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would prepare a report of his findings that would be released for public comment.

5. On October 15, 2002, Mr. Hatfield filed a report conveying the results of his inquiry. In his report, Mr. Hatfield notes initially the importance of wireless E911 for emergency services, the progress that has been made in wireless E911 implementation over the past several years, especially in the development and selection of technologies for obtaining location information, and the critical role LECs play in implementation of wireless E911. Mr. Hatfield makes several findings about current E911 implementation efforts and offers a number of recommendations to address some of the principal issues and concerns raised during the course of the inquiry.

6. Mr. Hatfield recommends that a "National 911 Program Office" be established within the proposed Department of Homeland Security to coordinate with local and state public safety first responders and other stakeholders.

7. Because of the importance of E911 to the safety of life and property and to homeland security, Mr. Hatfield recommends that the Commission maintain or even increase its oversight of the rollout of wireless E911 services in the U.S. over the next several years.

8. Mr. Hatfield recommends that the Commission:

—Establish an advisory committee to address the technical framework for the further development and evolution of E911 systems and services including technical standards;

—Continue to urge the creation of organizations at the state, regional, and local levels of government to coordinate the rollout of wireless E911 services; and

—Encourage the creation of a national level clearinghouse to collect, store, and disseminate status information on the rollout of wireless E911.

9. Mr. Hatfield recommends that the Commission actively coordinate with and support the U.S. Department of Transportation's Wireless E911 initiative and other efforts to educate state and local governments and PSAPs on the benefits and importance of wireless E911 services. He also recommends that the Commission continue to support the efforts of the Emergency Services Interconnection Forum (ESIF) to address the issue of PSAP readiness.

10. Mr. Hatfield recommends that the Commission work closely with individual and state regulatory commissions and their association, the National Association of Regulatory Utility Commissioners (NARUC), in resolving issues relating to LEC cost recovery and pricing. In addition, Mr. Hatfield recommends that the Commission urge stakeholders to develop industry-wide procedures for testing and certification of wireless E911 to ensure that they meet the accuracy requirements specified in the Commission's rules.

11. Finally, Mr. Hatfield makes recommendations about several other issues, including the need for end-to-end testing of wireless E911 systems, conveying confidence/uncertainty information associated with position determination and routing choices, accommodating new requirements and requirement "creep," the impact of future technological developments, consumer expectations, the implications of commercial location-based services, and the need for an adaptable regulatory approach. A copy of the report can be found at: *http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6513296239.*

12. Interested parties may file comments on the report on or before November 15, 2002, and reply comments on or before December 3, 2002. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.

13. This is a "permit but disclose" proceeding pursuant to section 1206 of the Commission's Rules. Presentations to or from Commission decision-making personnel are permissible provided that *ex parte* presentations are disclosed pursuant to 47 CFR 1.1206(b). Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html*. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the filing to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic copy by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message: "get form <your email address>." A sample form and directions will be sent in reply. Commenters also may obtain a copy of the ASCII Electronic Transmittal Form (FORM–ET) at *http://www.fcc.gov/e-file/email.html*.

14. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. A copy should also be sent to Jennifer Salhus, 445 12th Street, SW., Room 3–A131, Washington, DC 20554.

15. Regardless of whether parties choose to file electronically or by paper, parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, Qualex International, Portals II, 445 12th Street SW., CY–B402, Washington, DC 20554 (telephone (202) 863–2893; facsimile (202) 863–2898) or via e-mail at *qualexint@aol.com*. In addition, one copy of each submission must be filed with the Chief, Policy Division, Wireless Telecommunications Bureau, 445 12th Street, SW., Washington, DC 20554. Documents filed in this proceeding will be available for public inspection during regular business hours in the Commission's Reference Information Center, 445 12th Street, SW., Washington, DC 20554, and will be placed on the Commission's Internet site.

Federal Communications Commission.

James D. Schlichting,

Deputy Chief, Wireless Telecommunications Bureau.

[FR Doc. 02–27647 Filed 10–30–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Notices

PREVIOUSLY ANNOUNCED DATE: Tuesday, October 29, 2002 the closed meeting scheduled for that day was cancelled.

DATE AND TIME: Tuesday, November 5, 2002 at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 02–27896 Filed 10–29–02; 2:59 pm]

BILLING CODE 6715–01–M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 25, 2002

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. Gravett Bancshares, Inc., Gravette, Arkansas; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Gravett, Gravette, Arkansas.

B. Federal Reserve Bank of Minneapolis (Julie Stackhouse, Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. Merchants Financial Group, Inc., Winona, Minnesota; to acquire 100 percent of the voting shares of Merchants Bank, National Association, La Crescent, Minnesota, a de novo bank, in connection with the relocation of the charter of the existing Merchants Bank, National Association, La Crescent, Minnesota, to Onalaska, Wisconsin.

Board of Governors of the Federal Reserve System, October 25, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–27653 Filed 10–30–02; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Public Health and Science and Food and Drug Administration

[Docket No. 02N–0466]

Solicitation of Public Review and Comment on Research Protocol: A Multicenter, Randomized Dose Response Study of the Safety, Clinical and Immune Response of Dryvax® Administered to Children 2 to 5 Years of Age

AGENCY: Office of Public Health and Science and Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Office for Human Research Protections (OHRP), Office of Public Health and Science, Department of Health and Human Services (HHS) and the Food and Drug Administration (FDA), HHS are soliciting public review and comment on a proposed research protocol entitled "A Multicenter, Randomized Dose Response Study of the Safety, Clinical and Immune Response of Dryvax® Administered to Children 2 to 5 Years of Age." The proposed research would be supported by a contract awarded by the National Institutes of Health (NIH) and conducted under an Investigational New Drug Application (IND) filed with the FDA. Public review and comment is solicited regarding the proposed research protocol pursuant to the requirements of HHS regulations at 45 CFR 46.407 and FDA regulations at 21 CFR 50.54.

DATES: To be considered, written or electronic comments on the proposed research must be received on or before 4:30 p.m. December 2, 2002.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Docket Number 02N–0466, Food and Drug Administration, 5630 Fishers Lane, Room 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. All comments should be identified with the docket number found in brackets in the heading of this document. Received comments may be viewed on the FDA Web site at: *http://www.fda.gov/ohrms/dockets/dockets/02n0466/02n0466.htm* or may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Dr. Leslie K. Ball, Office for Human Research Protection, The Tower Building, 1101 Wootton Parkway, Suite 200, Rockville, MD 20852; telephone

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301–496–7005; fax 301–402–0527; e-mail: *LBall@osophs.dhhs.gov;* or Ms. Patricia M. Beers Block, Office for Good Clinical Practice, OSHC, Office of the Commissioner, Food and Drug Administration, 5600 Fishers Lane, HF–34, Rockville, MD 20857; telephone 301–827–3340; fax 301–827–1169; *e-mail: pbeersblock@oc.fda.gov.*

SUPPLEMENTARY INFORMATION: All studies conducted or supported by HHS which are not otherwise exempt and which propose to involve children as subjects require Institutional Review Board (IRB) review in accordance with the provisions of HHS regulations at 45 CFR part 46, subpart D. Under FDA's Interim Final Rule effective April 30, 2001 (21 CFR part 50, subpart D), FDA adopted similar regulations to provide safeguards for children enrolled in clinical investigations of FDA-regulated products.

Pursuant to HHS regulations at 45 CFR 46.407 and FDA regulations at 21 CFR 50.54, if an IRB reviewing a protocol conducted or supported by HHS for a clinical investigation regulated by FDA does not believe that the proposed research or clinical investigation involving children as subjects meets the requirements of HHS regulations at 45 CFR 46.404, 46.405, or 46.406, and FDA regulations at 21 CFR 50.51, 50.52, or 50.53, respectively, the research or clinical investigation may proceed only if the following conditions are met: (a) The IRB finds and documents that the research or clinical investigation presents a reasonable opportunity to further the understanding, prevention, or alleviation of a serious problem affecting the health and welfare of children; and (b) the Secretary (HHS) and the Commissioner (FDA), respectively, after consultation with a panel of experts in pertinent disciplines (for example: science, medicine, education, ethics, law) and following opportunity for public review and comment determine either:

(1) That the research or the clinical investigation in fact satisfies the conditions of 45 CFR 46.404, 46.405, or 46.406 under HHS regulations, and 21 CFR 50.51, 50.52, or 50.53 under FDA regulations, or (2) that the following conditions are met: (i) The research or clinical investigation presents a reasonable opportunity to further the understanding, prevention, or alleviation of a serious problem affecting the health or welfare of children; (ii) the research or clinical investigation will be conducted in accordance with sound ethical principles; and (iii) adequate provisions are made for soliciting the assent of children and the permission of their parents or guardians, as set forth in 45 CFR 46.408 and 21 CFR 50.55.

HHS received a request from Harbor-UCLA Medical Center to review a protocol entitled "A Multicenter, Randomized Dose Response Study of the Safety, Clinical and Immune Response of Dryvax® Administered to Children 2 to 5 Years of Age" pursuant to the provisions of HHS regulations at 45 CFR 46.407. The sponsor of this research, the National Institute of Allergy and Infectious Diseases (NIAID), NIH, proposes to study the safety and immune response to Dryvax® (vaccinia virus vaccine), when administered to children 2 to 5 years of age. This study proposes to evaluate Dryvax® at its full, licensed strength and at a 1:5 dilution, in children enrolled in a number of sites, including Harbor-UCLA Medical Center and Cincinnati Children's Hospital Medical Center. Use of Dryvax® in this protocol is being performed under an FDA IND primarily because there are no data to support the efficacy of the 1:5 dilution of this product in children. This protocol was developed by NIAID in the context of current HHS bioterrorism preparedness plans, given the potential risk of smallpox being used as a weapon of bioterrorism, and has been approved by two IRBs.

However, after reviewing this research proposal, the Harbor-UCLA Medical Center IRB determined that this study could not be approved under 45 CFR 46.404, 46.405, or 46.406 but was suitable for review under 45 CFR 46.407. Because this clinical investigation is regulated by FDA, FDA's regulations at 21 CFR part 50, subpart D, apply as well. The Harbor-UCLA Medical Center IRB was unable to assess the prospect of direct benefit to the participants but found that the research presented a reasonable opportunity to further the understanding, prevention or alleviation of a serious problem affecting the health or welfare of children. NIAID has not initiated this clinical trial pending the Secretary's and Commissioner's determination. Experts in relevant disciplines have reviewed this protocol (see discussion below regarding access to each expert's report), but prior to the Secretary and Commissioner making a final determination, public review and comment are hereby solicited pursuant to HHS regulations at 45 CFR 46.407 and FDA regulations at 21 CFR 50.54. In particular, comments are solicited on the following questions: (1) What are the potential benefits of the research, if any, to the subjects and to children in general; (2) what are the types and degrees of risk that this research presents to the subjects; (3) are the risks to the subjects reasonable in relation to the anticipated benefits, if any, to the subjects, and the importance of the knowledge that may reasonably be expected to result; and (4) does the research present a reasonable opportunity to further the understanding, prevention, or alleviation of a serious problem affecting the health or welfare of children?

All written comments concerning this matter should be submitted to FDA's Dockets Management Branch pursuant to 21 CFR 10.20. Received comments may be viewed on the FDA Web site at: *http://www.fda.gov/ohrms/dockets/dockets/02n0466/02n0466.htm* or may be seen in the Dockets Management Branch between the 9 a.m. and 4 p.m., Monday through Friday.

Materials available for review on the OHRP Web page (available at *http://ohrp.osophs.dhhs.gov/dpanel/dpindex.htm)* include: The NIH protocol, site-specific protocol application reviewed by the Harbor-UCLA Medical Center IRB, sample parental permission document, relevant package inserts, and reports of each of the experts pursuant to HHS regulations at 45 CFR 46.407 and FDA regulations at 21 CFR 50.54. A paper copy of the information referenced here is available upon request.

Dated: October 23, 2002.

Lester M. Crawford,

Deputy Commissioner, FDA.

Dated: October 24, 2002.

Eve E. Slater,

Assistant Secretary for Health.

[FR Doc. 02–27769 Filed 10–30–02; 8:45 am]

BILLING CODE 4150–28–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0454]

Agency Information Collection Activities; Proposed Collection; Comment Request; Notice of a Claim for Generally Recognized as Safe Exemption Based on a Generally Recognized as Safe Determination

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the procedures used for submitting a generally recognized as safe (GRAS) notice stating that a particular use of a substance is not subject to the premarket approval requirements of the Federal Food, Drug, and Cosmetic Act (the act).

DATES: Submit written or electronic comments on the collection of information by December 30, 2002.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.accessdata.fda.gov/scripts/oc/dockets/edockethome.cfm.* Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Notice of a Claim for GRAS Exemption Based on a GRAS Determination (OMB Control Number 0910–0342)—Extension

Description: Section 409 of the act (21 U.S.C. 348) establishes a premarket approval requirement for "food additives;" section 201(s) of the act (21 U.S.C. 321) provides an exemption from the definition of "food additive" and thus from the premarket approval requirement, for uses of substances that are GRAS by qualified experts. FDA is proposing a voluntary procedure whereby members of the food industry who determine that use of a substance satisfies the statutory exemption may notify FDA of that determination. The notice would include a detailed summary of the data and information that support the GRAS determination, and the notifier would maintain a record of such data and information. FDA would make the information describing the GRAS claim, and the agency's response to the notice, available in a publicly accessible file; the entire GRAS notice would be publicly available consistent with the Freedom of Information Act and other Federal disclosure statutes.

Description of Respondents: Manufacturers of Substances Used in Food and Feed.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
170.36	50	1	50	150	7,500
570.36	10	1	10	150	1,500
Total					9,000

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency of Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
170.36(c)(v)	50	1	50	15	750
570.36(c)(v)	10	1	10	15	150
Total					900

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The reporting requirement is for a proposed rule (62 FR 18937, April 17, 1997) that has not yet been issued as a final rule. In developing the proposed rule, FDA solicited input from representatives of the food industry on the reporting requirements, but could not fully discuss with those representatives the details of the proposed notification procedure. FDA received no comments on the agency's estimate of the hourly reporting requirements, and thus has no basis to revise that estimate at this time. During 1998, FDA received 12 notices that were

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submitted under the terms of the proposed rule. FDA received 23 notices in 1999, 30 notices in 2000, and 28 notices in 2001. To date, the number of annual notices is less than FDA's estimate; however, the number of annual notices could increase when the proposed rule becomes final.

Dated: October 25, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–27741 Filed 10–30–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0206]

Agency Information Collection Activities; Announcement of OMB Approval; State Enforcement Notifications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration is announcingthat a collection of information entitled "State EnforcementNotifications" has been approved by the Office of Management andBudget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Officeof Information Resources Management (HFA–250), Food and DrugAdministration, 5600 Fishers Lane, Rockville, MD 20857,301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 9, 2002 (67 FR 51860),the agency announced that the proposed information collection had beensubmitted to OMB for review and clearance under 44 U.S.C. 3507. An agencymay not conduct or sponsor, and a person is not required to respond to, acollection of information unless it displays a currently valid OMB controlnumber. OMB has now approved the information collection and has assignedOMB control number 0910–0275. The approval expires on October 31,2005. A copy of the supporting statement for this information collectionis available on the Internet at *http://www.fda.gov/ohrms/dockets.*

Dated: October 25, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–27740 Filed 10–30–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: HRSA Grantee Telecommunications and Telehealth Inventory and Database—New

The Health Resources and Services Administration's (HRSA) mission is to improve and expand access to quality health care for all. Through its grant program, HRSA provides funds to ensure the availability of quality health care to low income, uninsured, isolated, vulnerable and special needs populations.

Within HRSA, the Office for the Advancement of Telehealth (OAT) increases access to quality health care services for the underserved by promoting the use of advanced telecommunications and information technologies by health care providers across America. HRSA is a leading national supporter and developer of telehealth, which is the use of electronic information and telecommunications technologies for a wide variety of health-related activities. These include long-distance clinical care, patient and professional education, and health administration.

HRSA provides grant funding to over 8000 recipients to improve healthcare delivery in the United States. Those offices and programs increasingly depend on the emerging technologies and telecommunications systems to deliver healthcare, yet no data is available on grant recipients' access to or utilization of those technologies. The proposed inventory will serve as a model for collecting this type of information across a disparate group of projects nationally and if successful will be ultimately integrated into HRSA's overall data system.

All grantees will be asked to address access to telehealth technologies at their respective institutions. Telehealth activities include the practice of telemedicine, delivery of distance education, health informatics, healthcare staff supervision from remote sites, and the provision of consumer health information using telecommunications technologies. Additionally, grantees will be asked to provide information on their network members or satellite site. For those grantees practicing telemedicine, the survey will include a section on diagnostic tools and clinical capabilities.

The survey will be delivered via the world wide web; hard copy will be made available for those grantees with no Internet access. Substantive questions may be systematically included in the grantees' progress reporting.

Estimated burden hours:

Type of survey	Number of respondents	Number of responses per respondent	Total Number of responses	Hours per response	Total burden hours
Web-based	7,965	1	7,965	.17	1,355
Hard-copy	885	1	885	.20	177
Total	8,850		8,850		1,532

Send comments to Susan G. Queen, Ph. D., HRSA Reports Clearance Officer, Room 11A–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this Notice.

Dated: October 25, 2002.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 02–27678 Filed 10–30–02; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Indian Women's Health Demonstration Program for American Indians and Alaska Natives

AGENCY: Indian Health Service (DHHS), HHS.

ACTION: Notice of availability of funds for competitive grants for Indian Women's Health Demonstration Program for American Indians and Alaska Natives (AI/AN).

SUMMARY: The Indian Health Service (IHS) announces that approximately $700,000 is available for the support of competitive grants to Tribal, Urban and nonprofit Indian organizations for approximately seven demonstration projects under the Indian Women's Health Demonstration Program. These funds have been established under the authority of section 301(a) of the Public Health Service (PHS) Act, as amended. There will only be one funding cycle during Fiscal Year (FY) 2003 (*see* fund availability and period of support). This program is described in section 39.933 of the *Catalog of Federal Domestic Assistance*. Executive Order 12372, which requires intergovernmental review, is not applicable to this program.

The Department's Office of Public Health and Science (OPHS) is committed to achieving the health promotion and disease prevention objectives of *Healthy People 2010*, a PHS-led activity for setting priority areas. This program announcement is related to the priority area designed as Education and Community-Based Programs. Potential applicants may obtain a printed copy of *Healthy People 2010*, (Summary Report No. 017–001–00549–5) or CD–ROM, Stock No. 017–001–00549–5, through the Superintendent of Documents, Government Printing Office, PO Box 371954, Pittsburgh, PA 15250–7945, (202) 512–1800. You may also access this information at the following Web site: *www.health.gov/healthpeople/publication.*

Smoke Free Workplace: The PHS strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

Due Date: An original and two copies of the completed grant application must be submitted with all required documentation, to the Grants Management Branch, Division of Acquisition and Grants Management, 801 Thompson Avenue, Suite 120, Rockville, MD 20852, by close of business December 6, 2002. Close of business is considered to be 5 p.m. Eastern Daylight Savings Time.

Applications shall be considered as meeting the due date if they are either: (1) Received on or before the deadline, with hand-carried applications received by close of business; or (2) postmarked on or before the due date. A legibly dated receipt from a commercial carrier or the U.S. Postal Service will be accepted as proof of timely mailing. Private metered postmarks will not be accepted as proof of timely mailing. Applications received after the due date will be returned to the applicant and will not be considered for funding.

Additional Dates:

(a) Objective Review Date: December 16–17, 2002.

(b) Applicant Notification (approved; recommended for approval, but unfunded; or disapproved): January 3, 2003.

(c) Anticipated Start of Grant Cycle: January 13, 2003.

Contacts for Assistance: For program information, contact Ms. Celissa Stephens, Senior Nurse Consultant for Hospital and Clinic Nursing, Office of Public Health, IHS, 801 Thompson Avenue, Suite 300, Rockville, MD 20852, (301) 443–1840. For grants information, contact Ms. Martha Redhouse, Grants Management Branch, Division of Acquisitions and Grants Management, IHS, 801 Thompson Avenue, Suite 120, Rockville, MD 20852, (301) 443–5204. (The telephone numbers are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: This announcement provides information on the general program goal, eligibility and documentation requirements, programmatic activities, funding availability, period of support, and application procedures.

General Program Goal: The goal of this program is to establish and/or improve AI/AN women's health services. Funded programs will be community-based and culturally appropriate with measurable outcomes related to the following: (1) increased access to health promotion; (2) promotion of disease prevention activities; (3) improvement of existing research data; and (4) fostering of advocacy in policy appropriate to meet *Healthy People 2010* objectives.

Eligibility and Documentation Requirements: Any federally recognized Indian Tribe, Indian Tribal organization or nonprofit organization serving primarily AI/AN is eligible to apply for a demonstration grant from the IHS under this announcement.

Documentation of Support:

(a) Tribal resolutions.

(1) A resolution of the Indian Tribe or Indian Tribal organization supporting this specific program must accompany the application submission.

(2) Applications proposing services that will benefit more than one Indian Tribe must include resolutions from all Tribes to be served.

(3) Applications by Tribal organizations will not require resolution(s) if the current Tribal resolution(s) under which they operate encompass the proposed grant activities. A statement of proof or a copy of the current operational resolution must accompany the application.

(4) If a required resolution or a statement is not submitted, the application will be considered incomplete and will be returned without consideration.

(b) Nonprofit organizations must submit copies of their 501(c)(3) Certificate.

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(c) Letters of cooperation/collaboration/assistance.

(1) Letters included in the application should be specific to this program.

(2) If other related human services programs are to be involved in this program, letters confirming the nature and extent of their cooperation/collaboration/assistance must be submitted.

Programmatic Activities: A grant awarded under this announcement shall establish a demonstration program for improving and enhancing the health services for AI/AN women. The program shall expand on existing services or programs, or build new capacity through activities that integrate or promote collaboration among existing services. The four identified focus areas are health promotion, disease prevention, data/research improvement and advocacy of policy appropriate to meet *Healthy People 2010* objectives.

Specific health priorities within these focus areas are cardiovascular disease; cervical, ovarian and breast cancer; gestational diabetes; breastfeeding; alcohol; smoking; lupus erythematosus; osteoporosis; unintentional injuries; domestic violence; and mental health.

Program objectives should be measurable by objective criteria and should focus on one or more of the following:

(a) Establishing or expanding health risk-reduction programs.

(b) Increasing access to and acceptance of existing preventative/primary health service.

(c) Increasing the awareness of and need for research/data improvements relative to AI/AN women's health status.

(d) Promoting networking and collaboration among existing providers of health services for AI/AN women.

The submission of creative and innovative ideas to enhance service coordination is encouraged.

Fund Availability and Period of Support: In FY 2003 it is anticipated that approximately $700,000 will be available to support seven projects at approximately $100,000 each (including direct and indirect costs). The programs may be funded in annual budget periods for up to five years depending on the defined scope of work. Funding levels beyond the first year will be based upon the availability of appropriations in future years, the continuing need by the IHS for the programs, and satisfactory program performance. The anticipated start date for year one is January 13, 2003.

The Indian Women's Health Demonstration Grant Application Kit: An IHS Grant Application Kit, including form PHS 5161–1 (Rev. 7/00), may be obtained from the Grant Management Branch, Division of Acquisition and Grants Management, 801 Thompson Avenue, Suite 120, Rockville, MD 20852, (301) 443–5204.

Factors for Consideration in Preparing the Application:

(a) Following the outline provided in the announcement will assist in preparing the application and help the reviewers locate required information.

(b) Projects should demonstrate plans to coordinate with other agencies and organizations inside and outside the community that serves the targeted population.

(c) Indian cultural aspects may be considered in program design.

Grant Application Requirements: All applications must be single-spaced, typewritten, and with consecutively numbered pages on only one side of standard size 8½ × 11 paper that can be photocopied. The typeface should be black and at least 12 characters per inch in size. The border margins should be one inch. The application narrative must not exceed 10 typed pages, except that an additional page may be used for each additional year of funding requested.

Excluded from the 10 page limit are the abstract, tribal resolution(s), 501(c)(3) nonprofit certificates, letters of documentation or support, standard forms, table of contents, and the appendix.

All applications must include the following information in the order presented here:

(a) Tribal resolution(s), or 501(c)(3) certificate, and Letters of documentation or support.

(b) Standard form 424, Application for federal assistance.

(c) Standard Form 424A, Budget Information—Non-Construction Programs (pages 1 and 2).

(d) Standard form 424B, assurance—Non-construction programs (front and back).

(e) Checklist (pages 25–26). **Note:** each standard form and checklist are contained in the PHS Grant Application, form PHS 5161–1 (Rev. 7/00).

(f) A project abstract (may not exceed 1 typewritten page) should present a summary view of "who-what-when-where-how-cost" to determine acceptability for review.

(g) A table of contents corresponding to the numbered pages in the text.

(h) Project narrative (10 pages).

(1) Introduction and need for assistance.

(2) Project objective(s), approach, and results and benefits.

(3) Project evaluation.

(4) Organizational capabilities and qualifications.

(5) Budget.

(i) Appendix to include:

(1) Resumes of key staff.

(2) Position descriptions for key staff.

(3) Organizational chart.

(4) Documentation of current certified financial management systems.

(5) Copy of current negotiated indirect cost-rate agreement.

(6) Map of area to benefit from project; and

(7) Application receipt card, IHS–815–1A (Rev. 4/97).

Project Narrative: The project narrative section of the application must include the following:

(a) Justification for need for assistance;

(b) Work plan, program objectives, approach, expected results and evaluation process;

(c) Adequacy of management controls; and

(d) Key personnel.

The work-plan section should be project-specific. These instructions for the preparation of the narrative are to be used in lieu of the instructions on page 21–23 of the PHS 5161–1. The narrative section should be written in a manner that is clear to outside reviewers unfamiliar with prior related activities of the applicant. It should be well organized, succinct, and contain all information necessary for reviewers to understand the project fully. The narrative may not exceed ten single-spaced pages in length, excluding attachments, budget, and Tribal resolutions/non-profit 501(c)(3) certificates/letters of documentation or support.

(**Note:** Pages must be numbered.)

(a) Need for Assistance.

(1) Describe and define the target population at the program location (*e.g.*, identify information sources).

(2) Describe in detail the needs of the target population and what efforts have been made in the past to meet these needs, if any.

(b) Work Plan.

(1) Program Objectives:

(i) State concisely the objectives of the project.

(ii) Describe briefly what the program intends to accomplish.

(iii) Describe how accomplishment of the objectives will be evaluated or measured.

(2) Approach:

(i) Describe the tasks and resources needed to implement and complete this program.

(ii) Provide a task time line (milestones) breakdown or chart.

(3) Expected Results (outcomes).

(4) Program Evaluation:

(i) Describe methods for evaluating program activities, success in achieving objectives, acceptance in the targeted population(s), and workload accomplishments.

(ii) Identify who will conduct the evaluation of the projected outcomes and when the evaluation is to be completed.

(iii) Identify the cost of the evaluation (whether internal or external).

(5) Program Continuance: Discuss how the program's services will be continued after the grant expires.

(6) Experience Sharing: Indicate willingness to share the program experience with IHS Areas, urban programs, Tribes and Tribal organizations.

(c) Adequacy of Management Controls:

(1) Describe where the program will be housed, *i.e.*, facilities and equipment available.

(2) Describe the management controls of the grantee over the directions and acceptability of work to be performed. Discuss personnel and financial systems in use and changes planned for this grant.

(3) Demonstrate that the organization has adequate systems and expertise to manage Federal funds. Also, include a letter from the accounting firm describing results of the most recent organization-wide audit.

(d) Key Personnel:

(1) Provide a biographical sketch (qualifications) and position descriptions for the program director and other key personnel as described on page 22 of the PHS 5161–1. Identify existing personnel and new program staff to be hired.

(2) Provide an organizational chart and indicate how the project will operate within the organization. Describe how this program will interface with other existing available resources.

(3) List the qualifications and experience of consultants or contractors where applicable. Identify who will determine if the work of a contractor is acceptable.

(e) Budget:

(1) Provide an itemized estimate of costs and justification for the proposed program by line item on Form SF 424A of the PHS 5161–1 Application Kit.

(2) Submit a narrative justification for all costs. Clearly specify needs by listing individual items and quantities necessary.

(3) Indicate any special start-up costs.

(4) Multi-Year Projects—Projects requiring two, three, four or five years of funding, include a brief program narrative and budget for each additional year of funding requested. The applicant may use one additional page to describe the developmental plans for each additional year of the project.

(5) Grant funding may not be used to supplant existing public and private resources.

(f) Assurances:

The application shall contain an assurance to the Secretary that the applicant will comply with program regulations, 42 CFR 36, subpart H.

Review Process: Applications meeting eligibility requirements that are complete, responsive, and conform to this program announcement will be reviewed for merit by reviewers appointed by the IHS. The review will be conducted in accordance with PHS review procedures. The review process ensures selection of quality projects in a national competition for limited funding. Applications will be evaluated and rated on the basis of the evaluation criteria listed below. These criteria are used to evaluate the quality of a proposed project, to assign a numerical score to each application, and to determine the likelihood of its success. Applications scoring below 60 points will not be considered for funding.

Evaluation Criteria: Applications will be evaluated against the following criteria and weights:

Weight	Criterion	Description
15	1	*Need*—The demonstration of identified problems and risks in the target population.
50	2	*Work Plan*—The soundness and effectiveness of the applicant's plan for conducting the program, with special emphasis on the objectives and methodology portion of the application.
15	3	*Adequacy of Management Controls*—The apparent capability of the applicant to successfully conduct the program including both technical and business aspects. The soundness of the applicant's budget in relation to the program work plan and for assuring effective utilization of grant funds. Adequacy of facilities and equipment available within the organization or proposed to be purchased under the program.
10	4	*Key Personnel*—Qualifications and adequacy of the staff.
10	5	*Budget*—Clarity and accuracy of program costs, and cost justification for the entire grant period.
100		Total Weight.

Reporting Requirements:

(1) *Progress Report*—Program progress reports will be required semiannually. These reports will include a brief comparison of actual accomplishments to the goals established for the period, reasons for slippage, if applicable, and other pertinent information as required. A final report is due 90 days after expiration of the project/budget period.

(2) *Financial Status Report*—A semiannual financial status report will be submitted 30 days after the end of the half-year. Final financial status reports are due 90 days after expiration of the project/budget period. Standard form 269 (long form) will be used for financial reporting.

Grant Administration Requirements: Grants are administered in accordance with the following documents:

(1) 45 CFR part 92, the HHS, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, or 45 CFR part 74, Uniform Administrative Requirements for Awards and Subawards to Institutions of Higher Education, Hospitals, Other Nonprofit Organizations, and Commercial Organizations; and Certain Grants and Agreements with States, Local Governments and Indian Tribal Governments.

(2) PHS Grants Policy Statement.

(3) Appropriate Cost Principles: OMB Circular A–87, State and Local Governments, or OMB Circular A–122, Nonprofit Organizations.

Results of the Review: Successful applicants will be notified through the official Notice of Grant Award (NOGA) document. The NOGA will state the amount of Federal funds awarded, the purpose of the grant, the terms and conditions of the grant award, the effective date of the award, the project period, and the budget period.

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Dated: October 24, 2002.

Charles W. Grim,

Assistant Surgeon General, Interim Director, Indian Health Service.

[FR Doc. 02–27679 Filed 10–30–02; 8:45 am]

BILLING CODE 4160–16–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Health Professions Preparatory, Pregraduate and Indian Health Professions Scholarship Programs

AGENCY: Indian Health Service, HHS.

ACTION: Notice of Availability of Funds for Health Professions Preparatory, Pregraduate and Indian Health Professions Scholarship Programs for Fiscal Year (FY) 2003.

SUMMARY: The Indian Health Service (IHS) is publishing a Notice of Availability of Funds for Health Professions Preparatory, Pregraduate and Indian Health Professions Scholarship Programs for Fiscal Year (FY) 2003.

The IHS announces the availability of approximately $3,750,000 to fund scholarships for the Health Professions Preparatory, and Pregraduate Scholarship Programs for FY 2003 awards. These programs are authorized by section 103 of the Indian Health Care Improvement Act (IHCIA), Public Law 94–437, as amended by Public Law 100–713, Public Law 102–573, and Public Law 104–313.

The Indian Health Scholarship (Professions), authorized by section 104 of the IHCIA, Public Law 94–437, as amended by Public Law 100–713, by Public Law 102–573, and by Public Law 104–313 has approximately $8,215,500 available for FY 2003 awards.

Full-time and part-time scholarships will be funded for each of the three scholarship programs.

The Indian Health Professions Preparatory Scholarship is listed as No. 93.123 in the Office of Management and Budget *Catalog of Federal Domestic Assistance* (CFDA). The Health Professions Pregraduate Scholarship is listed as No. 93.971, and the Indian Health Scholarship (Professions) is listed as No. 93.972 in the CFDA.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of *Healthy People 2010*, a PHS-led activity for setting priority areas. This program announcement is related to the priority area of Education and Community-Based Programs. Potential applicants may obtain a copy of *Healthy People 2010*, (Full Report, Stock No. 017–001–00474–0) or *Healthy People 2010*, (Summary Report; Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402–9325 (Telephone 202–783–3238).

DATES: The application deadline for both new and continuing applicants is February 28, 2003. If February 28 falls on the week-end, the application will be due on the following Monday. Applications shall be considered as meeting the deadline if they are received by the appropriate Scholarship Coordinator on the deadline date or postmarked on or before the deadline date. (Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be accepted as proof of timely mailing.) Applications received after the announced closing date will be returned to the applicant and will not be considered for funding.

ADDRESSES: Application packets may be obtained by calling or writing to the addresses listed below. The application form number is IHS 856, 856–2 through 856–8, 815, 816, 818 (approved under OMB No. 0917–0006 (expires 12/31/2004)).

IHS Area office and States/locality served:	Scholarship coordinator/address:
Aberdeen Area IHS: Iowa, Nebraska, North Dakota, South Dakota	Ms. Alice LaFontaine, Scholarship Coordinator, Aberdeen Area IHS, Federal Building, Room 309, 115 4th Avenue, SE, Aberdeen, SD 57401, *Tele:* (605) 226–7553.
Alaska Area Native Health Service: Alaska	Ms. Rea Bavilla, Scholarship Coordinator, Alaska Area IHS, 4141 Ambassador Drive, Rm. 349, Anchorage, Alaska 99508, *Tele:* (907) 729–1332.
Albuquerque Area IHS: Colorado, New Mexico	Ms. Alvina Waseta, Scholarship Coordinator, Albuquerque Area IHS, 5300 Homestead Road, NE, Albuquerque, NM 87110, *Tele:* (505) 248–4513.
Bemidji Area IHS: Illinois, Indiana, Michigan, Minnesota, Wisconsin.	Mr. Tony Buckanaga, Scholarship Coordinator, Bemidji Area IHS, 522 Minnesota Avenue, NW, Bemidji, MN 56601, *Tele:* (218) 759–3415.
Billings Area IHS: Montana, Wyoming	Mr. Sandy Macdonald, Scholarship Coordinator, Billings Area IHS, Area Personnel Office, PO Box 36600, 2900 4th Avenue, North, Billings, MT 59103, *Tele:* (406) 247–7210.
California Area IHS: California, Hawaii	Ms. Mona Celli, Scholarship Coordinator, California Area IHS, 650 Capitol Mall, 3rd Floor, Sacramento, CA 95814, *Tele:* (916) 930–3981.
Nashville Area IHS: Alabama, Arkansas, Connecticut, Delaware, Florida, Georgia, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Mississippi, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, West Virginia, District of Columbia.	Ms. Alvina Waseta, Scholarship Coordinator, Nashville Area IHS, 5300 Homestead Road, NE, Albuquerque, NM 87110, *Tele:* (505) 248–4513.
Navajo Area IHS: Arizona, New Mexico, Utah	Ms. Roselinda Allison, Scholarship Coordinator, Navajo Area IHS, P.O. Box 9020, Window Rock, AZ 86515, *Tele:* (520) 871–1358.
Oklahoma City Area IHS: Kansas, Missouri, Oklahoma	Mr. Jim Ingram, Scholarship Coordinator, Oklahoma City Area IHS, HC 67, Box 132, Marietta, OK 73448, *Tele:* (580) 276–5983.
Phoenix Area IHS: Arizona, Nevada, Utah	Lena Fasthorse, Scholarship Coordinator, Phoenix Area IHS, Two Renaissance Square, 40 North Central Avenue, Suite #600, Phoenix, AZ 85004, *Tele:* (602) 364–5220.
Portland Area IHS: Idaho, Oregon, Washington	Ms. Janelle Langland, Scholarship Coordinator, Portland Area IHS, 1220 SW Third Avenue, Rm. 440, Portland, OR 97204–2892, *Tele:* (503) 326–2625.
Tucson Area IHS: Arizona, Texas	Ms. Malinda Paul, Scholarship Coordinator, Tucson Area IHS, 7900 South "J." Stock Rd., Tucson, AZ 85746, *Tele:* (520) 295–2441.

FOR FURTHER INFORMATION CONTACT: Please address application inquiries to the appropriate Indian Health Service Area Scholarship Coordinator. Other programmatic inquiries may be addressed to Capt. Patricia Yee-Spencer, Acting Chief, Scholarship Branch, Indian Health Service, 801 Thompson Avenue, Suite 120, Rockville, Maryland 20852; Telephone (301) 443–6197. (This is not a toll free number.) For grants information, contact Mr. Bernard Covers Up, Grants Scholarship Coordinator, Grants Management Branch, Division of Acquisition and Grants Operations, Indian Health Service, 801 Thompson Avenue, Suite 120, Rockville, Maryland 20852; Telephone (301) 443–5204. (This is not a toll-free number.)

A. General Program Purpose: These grants programs are intended to encourage American Indians and Alaska Natives to enter the health professions and to assure the availability of Indian health professionals to serve Indians.

B. Eligibility Requirements: 1. The Health Professions Preparatory Scholarship awards are made to American Indians or Alaska Natives who meet the criteria in section 4(c) of the IHCIA, as amended, who have successfully completed high school education or high school equivalency and who have been accepted for enrollment in a compensatory, pre-professional general education course or curriculum. Support is limited to 2 years for full-time students and the part-time equivalent of 2 years not to exceed 4 years for part-time students.

2. The Health Professions Pregraduate Scholarship awards are made to American Indians or Alaska Natives who meet the criteria in section 4(c) of the IHCIA, as amended, who have successfully completed high school education or high school equivalency and who have been accepted for enrollment or are enrolled in an accredited pregraduate program leading to a baccalaureate degree in pre-medicine or pre-dentistry. Support is limited to 4 years for full-time students and the part-time equivalent of 4 years not to exceed 8 years for part-time students.

3. The Indian Health Scholarship (Professions) may be awarded only to an individual who is a member of a federally recognized tribe as provided by section 104, 4(c), and 4(d) of the IHCIA. Membership in a Tribe recognized only by a state does not meet this statutory requirement. To receive an Indian Health Scholarship (Professions) an otherwise eligible individual must be enrolled in an appropriately accredited school and pursuing a course of study in a health profession as defined by section 4(n) of the IHCIA. Support is limited to 4 years for full time students and the part-time equivalent of 4 years not to exceed 8 years for part-time students.

Awards for the Indian Health Scholarships (Professions) will be made in accordance with 42 CFR 36.330. Recipients shall incur a service obligation prescribed under section 338C of the Public Health Service Act (43 U.S.C. 244m) which shall be met by service:

(1) In Indian Health Service;

(2) In a program conducted under a contract or compact entered into under the Indian Self-Determination Act;

(3) In a program assisted under Title V of the Indian Health Care Improvement Act (Pub. L. 94–437) and its amendments; and

(4) In private practice of his or her profession, if the practice (a) is situated in a health professional shortage area, designated in regulations promulgated by the Secretary and (b) addresses the health care needs of a substantial number of Indians as determined by the Secretary in accordance with guidelines of the Service;

Pursuant to the Indian Health Amendments of 1992 (Pub. L. 104–313), a recipient of an Indian Health Professions Scholarship may, at the election of the recipient, meet his/her active duty service obligation prescribed under section 338c of the Public Health Service Act (42 U.S.C. 254m) by a program specified in options (1)–(4) above that:

(i) Is located on the reservation of the Tribe in which the recipient is enrolled; or

(ii) Serves the Tribe in which the recipient is enrolled.

In summary, all recipients of the Indian Health Scholarship (Professions) are reminded that recipients of this scholarship incur a service obligation. Moreover, this obligation shall be served at a facility determined by the Director, IHS, consistent with IHCIA, Pub. L. 94–437, as amended by Pub. L. 100–713, and Pub. L. 102–573.

C. Fund Availability: Both part-time and full-time scholarship awards will be made in accordance with regulations at 42 CFR part 36.320, incorporated in the application materials, for Health Professions Preparatory Scholarship Program for Indians and 42 CFR part 36.370, incorporated in the application materials, for Health Professions Pregraduate Scholarship Program for Indians. Approximately 238 awards, 100 of which are continuing, will be made under the Health Professions Preparatory and Pregraduate Scholarship Programs for Indians. The awards are for 10 months in duration and the average award to a full-time student is approximately $18,000. In FY 2003, approximately $1,500,000 is available for continuation awards and approximately $2,250,000 is available for new awards.

Approximately 393 awards, 179 of which are continuing, will be made under the Indian Health Scholarship (Professions) Program. Awards will be made to both full-time and part-time students. The awards are for 12 months in duration and the average award to a full-time student is for approximately $23,000. In FY 2003, approximately $3,410,000 is available for continuation awards, and $4,485,000 is available for new awards.

No more than 5% of available funds will be used for part-time scholarships this fiscal year. Students are considered part-time if they are enrolled for a minimum of 6 hours of instruction and are not considered in full-time status by their college/university. Documentation must be received from part-time applicants that their school and course curriculum allows less than full-time status.

D. Criteria for Evaluation: Applications will be evaluated against the following criteria:

1. Needs of the IHS. Applicants are considered for scholarship awards based on their desired career goals and how these goals relate to current Indian health manpower needs. Applications for each health career category are reviewed and ranked separately.

2. Academic Performance. Applicants are rated according to their academic performance as evidenced by transcripts and faculty evaluations. In cases where a particular applicant's school has a policy not to rank students academically, faculty members are

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asked to provide a personal judgment of the applicant's achievement. Health Professions applicants with a cumulative GPA below 2.0 are not eligible to apply.

3. Faculty/Employer Recommendations. Applicants are rated according to evaluations by faculty members and current and/or former employers regarding the applicant's potential in the chosen health related professions.

4. Stated Reasons for Asking for the Scholarship and Stated Career Goals. Applicants must provide a brief written explanation of reasons for asking for the scholarship and of career goals. The applicant's narrative will be judged on how well it is written and content.

5. Applicants who are closest to graduation or completion are awarded first. For example, senior and junior applicants under the Health Professions Pregraduate Scholarship receive funding before freshmen and sophomores.

E. *Priority Categories:* Regulations at 42 CFR part 36.304 provide that the IHS shall, from time to time, publish a list of health professions eligible for consideration for the award of Indian Health Professions Preparatory and Pregraduate scholarships and Indian Health Scholarships (Professions). Section 104(b)(1) of the IHCIA, as amended by the Indian Health Care Amendment of 1988, Pub. L. 100–713, authorizes the IHS to determine specific health professions for which Indian Health Scholarships will be awarded. The list of priority health professions that follow, by scholarship program, and based upon the needs of the IHS as well as upon the needs of the American Indians and Alaska Natives for additional service by specific health profession.

1. Health Professions Preparatory Scholarship Scholarships. (Below is the list of disciplines to be supported and priority is based on academic level.)

A. Pre-Dietetics.
B. Pre-Engineering.
C. Pre-Medical Technology.
D. Pre-Nursing.
E. Pre-Pharmacy.
F. Pre-Physical Therapy (Jr and Sr undergraduate years).
G. Pre-Social Work (Jr and Sr undergraduate years).

2. Health Professions Pregraduate Scholarships. (Below is the list of disciplines to be supported and priority is based on academic level: Senior, Junior, Sophomore, Freshman.)

A. Pre-Dentistry.
B. Pre-Medicine.

3. Indian Health Scholarships (Professions). (Below is a list of disciplines to be supported and priority is based on academic level, unless specified: Graduate, Senior, Junior, Sophomore, Freshman.)

A. Associate Degree Nurse.
B. *Chemical Dependency Counseling:* Baccalaureate and Masters level.
C. *Clinical Psychology:* Ph.D. only
D. *Coding Specialist:* Certificate
E. *Counseling Psychology:* Ph.D. only
F. *Dental Hygiene:* B.S.
G. *Dentistry:* B.S, and M.S.
H. *Diagnostic Radiology Technology:* Certificate, Associate, and B.S.
I. *Dietitian:* B.S.
J. *Engineering (Civil and Environmental):* B.S.
K. *Environmental Health (Sanitarian):* B.S.
L. *Health Care Administration:* B.S. and M.S.
M. *Health Education:* Masters level only.
N. *Health Records:* R.H.I.T and R.H.I.A.
O. Injury Prevention Specialist
P. *Medical Social Work:* Masters level only.
Q. *Medical Technology:* B.S.
R. *Medicine:* Allopathic and Osteopathic
S. *Nurse:* B.S.*
T. *Nurse: M.S.**
U. *Nurse:* R.N.A.

*(Priority consideration will be given to registered Nurses employed by the Indian Health Service; in a program assisted under a contract entered into under the Indian Self-Determination Act; or in a program assisted under Title V of the Indian Health Care Improvement Act).

V. Optometry.
W. *Pharmacy:* B.S., Pharm D.
X. Physician Assistant.
Y. *Physical Therapy:* M.S. and D.P.T.
Z. *Podiatry:* D.P.M.
AA. *Public Health:* M.P.H. only (Applicants must be enrolled or accepted in a school of public health in specialty areas such as Dietetics and Community Development in health).
BB. *Public Health Nutrition:* Masters level only.
CC. *Respiratory Therapy:* Associate
DD. *Ultrasonography (Prerequisite:* Diagnostic Radiology Technology)

Interested individuals are reminded that the list of eligible health and allied health professions is effective for applicants for the 2003–2004 academic year. These priorities will remain in effect until superseded. Applicants for health and allied health professions not on the above priority list will be considered pending the availability of funds and dependent upon the availability of qualified applicants in the priority areas.

Dated: October 24, 2002.

Charles W. Grim,

Assistant Surgeon General, Interim director, Indian Health Service.

[FR Doc. 02–27680 Filed 10–30–02; 8:45 am]

BILLING CODE 4160–16–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Drug and Alcohol Services Information System (DASIS)—(OMB No. 0930–0106, Revision)—The DASIS consists of three related data systems: The Inventory of Substance Abuse Treatment Services (I–SATS); the National Survey of Substance Abuse Treatment Services (N–SSATS), and the Treatment Episode Data Set (TEDS). The I–SATS includes all substance abuse treatment facilities known to SAMHSA. The N–SSATS is an annual survey of all substance abuse treatment facilities listed in the I–SATS. The TEDS is a compilation of client-level admission data and discharge data submitted by States on clients treated in facilities that receive State funds. Together, the three DASIS components provide information on the location, scope and characteristics of all known drug and alcohol treatment facilities in the United States, the number of persons in treatment, and the characteristics of clients receiving services at publicly-funded facilities. This information is needed to assess the nature and extent of these resources, to identify gaps in services, to provide a database for treatment referrals, and to assess demographic and substance-related trends in treatment.

The request for OMB approval includes only modest changes to the 2003 N–SSATS questionnaire, including the addition of buprenorphine to the pharmacotherapies list, the addition of beds for children of clients in treatment to the "other services'" list, and the addition of a question to obtain outpatient treatment capacity to the outpatient treatment section. The remaining sections of the N–SSATS questionnaire will remain unchanged except for minor modifications to wording.

Approval is also being requested for an additional component, the Mini-N–SSATS. The Mini-N–SSATS is a procedure for collecting services data from newly identified facilities between main cycles of the survey and will be used to improve the listing of treatment facilities in the on-line treatment facility Locator. The between-survey telephone calls to newly identified facilities allow facilities to be added to the Locator in a more timely manner.

Estimated annual burden for the DASIS activities is shown below:

Type of respondent and activity	Number of respondents	Responses per respondent	Hours per response	Total burden hours
States:				
TEDS Admission Data	52	4	6	1,248
TEDS Discharge Data	35	4	6	840
TEDS Discharge Crosswalks	5	1	10	50
I–SATS Update	56	67	0.08	300
State Subtotal	56			2,438
Facilities				
N–SSATS Questionnaire	19,000	1	.6	11,400
Pretest of N–SSATS revisions	50	1	1	50
Augmentation Screener	500	1	.08	40
Mini N–SSATS	700	1	.4	280
Facility Subtotal	20,250			11,770
Total	20,306			14,208

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Allison Herron Eydt, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: October 23, 2002.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 02–27675 Filed 10–30–02; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Preparation of an Environmental Impact Statement for Issuance of Incidental Take Permits Associated With a Habitat Conservation Plan for the Kern Valley Floor, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent.

SUMMARY: Pursuant to the National Environmental Policy Act, the Fish and Wildlife Service (Service) advises the public that we intend to gather information necessary to prepare, in coordination with Kern County, a joint Environmental Impact Statement /Environmental Impact Report (EIS/EIR) on the Kern County Valley Floor Habitat Conservation Plan (Plan). The Plan covers an area of 3,110 square miles (1,990,400 acres) of the Valley Floor in Kern County, California. Kern County and others intend to request Endangered Species Act permits for 11 species federally listed as threatened or endangered and 17 unlisted species that may become listed during the term of the permits. The permits are needed to authorize take of listed species that could occur as a result of urban and oil field development, and associated facilities.

The Service provides this notice to: (1) Describe the proposed action and possible alternatives; (2) advise other Federal and State agencies, affected Tribes, and the public of our intent to prepare an EIS/EIR; (3) announce the initiation of a public scoping period; and (4) obtain suggestions and information on the scope of issues to be included in the EIS/EIR. While written comments are encouraged, we will accept both written and oral comments at the meetings. In addition, you may submit written comments by mail or facsimile transmission.

DATES: Public meetings will be held on the following dates: (1) November 19, 2002, 2 p.m. to 4 p.m., Taft, California; and (2) November 19, 2002, 7 p.m. to 9 p.m., Bakersfield, California. Written comments should be received on or before December 2, 2002.

ADDRESSES: The meeting locations are: (1) Taft-218 Taylor Street, Taft Veteran's Hall, Room #1; and (2) Bakersfield-2700 M Street, Kern County Public Services Building, First Floor Conference Room. Information, written comments, or questions related to the preparation of the EIS/EIR and the National Environmental Policy Act process should be submitted to Vicki Campbell, Division Chief, Conservation Planning, U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 2800 Cottage Way, W–2605, Sacramento, California 95825; FAX (916) 414–6713.

FOR FURTHER INFORMATION CONTACT: Sheila Larsen, Fish and Wildlife Biologist, or Vicki Campbell, Division Chief, Conservation Planning, at the Sacramento Fish and Wildlife Office at (916) 414–6600.

SUPPLEMENTARY INFORMATION:

Reasonable Accommodation

Persons needing reasonable accommodations in order to attend and participate in the public meetings should contact Vicki Campbell at (916) 414–6600 as soon as possible. In order to allow sufficient time to process requests, please call no later than one week before the hearing. Information regarding this proposed action is available in alternative formats upon request.

Background

Section 9 of the Act and Federal regulation prohibit the "take" of animal species listed as endangered or threatened. Take is defined under the Act as harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect listed animal species, or attempt to engage in such conduct (16 U.S.C, 1538). However, under limited circumstances, the Service may issue permits to authorize "incidental take" of

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listed animal species. "Incidental take" is defined by the Act as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Regulations governing permits for threatened species and endangered species, respectively, are at 50 CFR 17.32 and 50 CFR 17.22.

The Plan will address incidental take of 28 covered species (species for which incidental take authorization is requested). These include the federally listed as endangered blunt-nosed leopard lizard *(Gambelia sila)*, Tipton kangaroo rat *(Dipodomys nitratoides nitratoides)*, giant kangaroo rat *(Dipodomys ingens)*, San Joaquin kit fox *(Vulpes macrotis mutica)*, Buena Vista Lake shrew *(Sorex ornatus relictus)*, California jewelflower *(Caulanthus californicus)*, Kern mallow *(Eremalche kernensis)*, San Joaquin woolly threads *(Monolopia congdonii)*, Bakersfield cactus *(Opuntia basilaris var. treleasei)*, and the threatened Hoover's eriastrum *(Eriastrum hooveri)*, San Joaquin Adobe Sunburst *(Pseudobahia peirsonii)*, and 17 currently unlisted species and their habitats.

The proposed geographic area to be included in the Plan can be generally described as that portion of the San Joaquin Valley floor within Kern County, bounded by San Luis Obispo County to the west, Kings and Tulare counties to the north, and the 2,000-foot elevation contour to the east and south. On the west side, portions of the Plan area are at elevations greater than 2,000 feet. The project area includes approximately 3,110 square miles (1,990,400 acres). The Plan excludes several areas that are covered under separate conservation planning efforts. Excluded areas include the Coles Levee Ecosystem Preserve, Elk Hills (formerly Naval Petroleum Reserve in California No. 1), Buena Vista Naval Petroleum Reserve in California No. 2, and the area covered by the existing Metropolitan Bakersfield Habitat Conservation Plan. However, the Plan will include oil and gas production activities within the Metropolitan Bakersfield Habitat Conservation Plan area, as those activities were not authorized for take under the Metropolitan Bakersfield Habitat Conservation Plan. Oil and gas production activities will occur within 497,176 acres in the Plan area, as well as 90,083 acres in the Metropolitan Bakersfield Habitat Conservation Plan area.

Under the Plan, effects of urbanization and other activities are expected to be minimized and mitigated through participation in the conservation program, which will be described in the Plan. The focus of this conservation program is to provide long-term protection of covered species by protecting biological communities in the Plan area, including nonnative grasslands, valley saltbush scrub, and valley sink scrub. The proposed major conservation components are described below.

Habitat Zones. The valley floor is broken up into three zones: Red Zone (128,594 acres), Green Zone (774,348 acres), and White Zone (1,087,241 acres). These habitat zones establish conservation priority of lands within the Plan area based on the relative conservation value of the habitat found in each zone. There are eight individual Red Zones ranging from 480 to 50,160 acres. The Red Zones contain the highest quality habitat for covered species. A number of rare plant occurrences are also found in the Red Zones. The Green Zone has the second highest habitat quality and generally includes areas around the western, southern, and eastern edges of the Plan area. The White Zone contains approximately 55 percent of the total Plan area. The White Zone generally has less valuable habitat and occurs throughout the central and eastern portions of the valley floor and is composed mostly of lands in active agriculture. These habitat zones serve as the basis for the Compensation Framework.

Compensation Framework and Options. The Compensation Framework is a compensate-as-you-go approach that encourages conservation of Red Zone and Green Zone habitats and creates a system of conservation credits based on habitat quality. Credits are created by willing landowners and purchased by project proponents on a free market basis. Except in limited circumstances, White Zone land will not qualify for conservation preserves.

Several compensation options are described in the Plan. The first option, Direct Fee Payment, would allow project proponents to pay a predetermined fee to Kern County to purchase conservation credits. The County would then pool those fees to obtain conservation lands through either fee title, purchase of conservation easements, or a combination of both.

The second option, Industry/Agency Conservation Strategy, would address incidental take of covered species that may occur as a result of certain activities associated with major land uses (*e.g.*, oil and gas, water systems, urban development, and public infrastructure). Within this option, three strategies are proposed for dealing with oil field development, urban development, and public infrastructure development. Within the Red Zone all cumulative development cannot exceed 10 percent. The oil strategy proposes an up-front, one-time compensation for continued oil field development within the administrative boundaries of the California Division of Oil, Gas, and Geothermal Resources (DOGGR) defined oil fields. The one-time compensation would provide 3,000 acres of compensation for future oil activities associated with 1,000 new wells (approximate 3 acres of disturbance per oil well) within the "step out" areas defined by DOGGR. The urban development strategy would allow certain permitted activities, and place a limit on the size of individual projects. Permitted activities would include residential development, commercial development; industrial development, private recreational facilities; miscellaneous facilities associated with urbanization, and electrical generating facilities supplying urban power. The strategy for public infrastructure would include certain activities undertaken by various departments of Kern County and special districts. The Water District Strategy allows operating and maintenance activities, and certain Water District development projects to be undertaken.

The third option, Direct Negotiation, would allow a project proponent to address compliance, under the Endangered Species Act of 1973, as amended, and the California Endangered Species Act, independent of this Plan.

The Plan also contains take avoidance and minimization measures that include, but are not limited to, relocation of individuals from the project site, avoidance of active San Joaquin kit fox natal dens, hand excavation of San Joaquin kit fox non-natal dens, and avoidance of active kangaroo rat burrow complexes by 50 feet. Safety Nets would also be established to ensure that no more than 10 percent disturbance would be allowed in each Red Zone; disturbance in the Green Zone would not exceed 25 percent; and a minimum width of 1 mile of connection between occurrences of contiguous natural habitat would be maintained throughout the Red and Green Zones. Safety Nets are also part of the Rare Plant Conservation Strategy designed to protect specific plant species with localized and restricted distributions.

Environmental Impact Statement/ Report

Kern County and the Service have selected URS Corporation to prepare the Draft EIS/EIR. The joint document will be prepared in compliance with the National Environmental Policy Act and the California Environmental Quality Act. Although URS Corporation will prepare the EIS/EIR, the Service will be responsible for the scope and content of the document for National Environmental Policy Act purposes, and the County will be responsible for the scope and content of the document for California Environmental Quality Act purposes.

The EIS/EIR will consider the proposed action (issuance of section 10(a)(1)(B) Endangered Species Act permits), and a reasonable range of alternatives. Potential alternatives may include a compensation ratio unique to each of the three zones for habitat disturbance, assigning a relative conservation credit value per acre within each habitat zone, and a no action alternative. Under the compensation ratio alternative, the Red Zone lands would have a compensation ratio of 9:1; the Green Zone, 6:1; and the White Zone, 3:1. Compensation, in the form of habitat protection, would be in place prior to impacts. Under the conservation credit value alternative, a compensation ratio of not more than 3:1, based on conservation credits, would be used to determine compensatory requirements. Credits would be generated by the permanent preservation of habitat, restoration, granting of conservation easements, and other measures. The value of the credits and the amount of required compensation would be based on the conservation value of the land preserved and impacted, respectively. Under the no action alternative, the Service would not issue section 10(a)(1)(B) permits.

Potentially significant impacts on biological resources, land use, air quality, water quality, mineral resources (oil and gas), water resources (treatment, storage, and conveyance systems), and economics could occur directly or indirectly with implementation of the proposed action and alternatives. Land development could cause incidental take of federally listed species for which the Plan proposes to provide a method of compensation that could achieve protection of covered species through habitat conservation. Also, the proposed Habitat Zones could potentially influence development patterns and associated land use decisions, oil and gas activities, and development of water systems within the affected area. For all potentially significant impacts, the EIS/EIR will identify mitigation measures where feasible.

Environmental review of the Plan will be conducted in accordance with the requirements of the 1969 National Environmental Policy Act, as amended (42 U.S.C. 4321 *et seq.*), its implementing regulations (40 CFR parts 1500–1508), other applicable regulations, and Service procedures for compliance with those regulations. This notice is being furnished in accordance with Section 1501.7 of the National Environmental Policy Act to obtain suggestions and information from other agencies and the public on the scope of issues to be addressed in the EIS/EIR. We invite written comments from interested parties to ensure that the full range of issues related to the permit requests are addressed and that all significant issues are identified. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

The primary purpose of the scoping process is to identify, rather than to debate, significant issues related to the proposed action. Interested persons are encouraged to provide comments on the scope of issues and alternatives to be addressed in the Draft EIS/EIR.

Dated: October 24, 2002.

David G. Paullin,

Acting Deputy Manager, Region 1, California/Nevada Operations Office, Sacramento, California.

[FR Doc. 02–27659 Filed 10–30–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[BC–621–1830–PF–24 1A]

OMB Approval Number 1004–0187; Information Collection Submitted to the Office of Management and Budget Under the Paperwork Reduction Act

The Bureau of Land Management (BLM) has submitted a request to the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) to extend the currently approved information collection listed below. On August 7, 2002, the BLM published a notice in the **Federal Register** (67 FR 51291) requesting comment on this information collection. The comment period ended on October 7, 2002. BLM received no comments. You may obtain copies of the collection of information and related forms and explanatory material by contacting the BLM Information Collection Clearance Officer at the telephone number listed below.

the OMB must respond to this request within 60 days but may respond after 30 days. For maximum consideration your comments and suggestions on the requirement should be made within 30 days directly to the Office of Management and Budget, Interior Department Desk Officer (1004–0187), Office of Information and Regulatory Affairs, Washington, DC 20503. Please provide a copy of your comments to the Bureau Information Collection Clearance Officer (WO–630), Bureau of Land Management, Eastern States Office, 7450 Boston Blvd., Springfield, Virginia 22153.

Nature of Comments: We specifically request your comments on the following:

1. Whether the collection of information is necessary for the proper functioning of the BLM, including whether the information will have practical utility;

2. The accuracy of the BLM's estimate of the burden of collecting the information, including the validity of the methodology and assumptions used;

3. The quality, utility and clarity of the information to be collected; and

4. How to minimize the burden of collecting the information on those who are to respond, including the use of appropriate automated electronic, methanical, or other forms of information technology.

Title: Social Security Number/ Taxpayer Identification Number Request.

OMB Approval Number: 1004–0187.

Bureau Form Number: 1372–6.

Abstract: We require the information to identify individuals or entity who do business with the BLM and to determine debt collection. We also collect this information for use by the Treasury Department to collect debts from individuals or entities who are 180 days or more late in payments owed the Federal Government.

Frequency: Once.

Description of Respondents: Those entities who do business with BLM which include licensees, permittees, lessees, and contract holders. Individuals who pay one-time recreation fees are not affected.

Estimated Completion Time: 1 minute.

Annual Responses: 5,000.

Application Fee Per Response: $0.

Annual Burden Hours: 83.

Bureau Clearance Officer: Michael Schwartz, (202) 452–5033.

Dated: October 18, 2002.

Michael H. Schwartz,

Bureau of Land Management, Information Collection Clearance Officer.

[FR Doc. 02–27676 Filed 10–30–02; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Minerals Management Service (MMS)

Notice on Outer Continental Shelf Oil and Gas Lease Sales

AGENCY: Minerals Management Service, Interior.

ACTION: List of restricted joint bidders.

SUMMARY: Pursuant to the authority vested in the Director of the Minerals Management Service by the joint bidding provisions of 30 CFR 256.41, each entity within one of the following groups shall be restricted from bidding with any entity in any other of the following groups at Outer Continental Shelf oil and gas lease sales to be held during the bidding period November 1, 2002, through April 30, 2003.

Group I. Exxon Mobil Corporation and ExxonMobil Exploration Company.

Group II. Shell Oil Company, Shell Offshore Inc., Shell Frontier Oil & Gas Inc., Shell Consolidated Energy Resources Inc., Shell Land & Energy Company, Shell Onshore Ventures Inc., Shell Offshore Properties and Capital II, Inc., Shell Rocky Mountain Production LLC, and Shell Gulf of Mexico Inc.

Group III. BP America Production Inc., BP Products North America Inc., BP Exploration & Production Inc., and BP Exploration (Alaska) Inc.

Group IV. TotalFinaElf E&P USA, Inc.

Group V. ChevronTexaco Corporation, Chevron U.S.A. Inc., Texaco Inc., and Texaco Exploration and Production Inc.

Dated: October 7, 2002.

R.M. Burton,

Director, Minerals Management Service.

[FR Doc. 02–27668 Filed 10–30–02; 8:45 am]

BILLING CODE 4310–MR–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–472]

In the Matter of Certain Semiconductor Devices and Products Containing Same; Notice of a Commission Determination Not To Review an Initial Determination Terminating the Investigation on the Basis of a Settlement Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's ("ALJ's") initial determination ("ID") granting a joint motion to terminate the above-captioned investigation on the basis of a settlement agreement.

FOR FURTHER INFORMATION CONTACT: Timothy P. Monaghan, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–3152. Copies of all nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS-ON-LINE) at *http://dockets.usitc.gov/eol/public.*

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation, which concerns allegations of unfair acts in violation of section 337 of the Tariff Act of 1930 in the importation and sale of certain semiconductor devices and products containing same on May 22, 2002, based on a complaint filed by Toshiba Corporation ("Toshiba") of Japan. 67 FR 37439–40. The respondents named in the notice of investigation are Samsung Electronics Co., Ltd., of Seoul, Korea; Samsung Semiconductor, Inc., of San Jose, California; and Samsung Electronics America, Inc., of Ridgefield Park, New Jersey (collectively "Samsung"). Toshiba's complaint alleged that Samsung's products infringed claims of three U.S. patents held by Toshiba. On October 1, 2002, Toshiba and Samsung entered into a settlement agreement, and on September 19, 2002, Toshiba and Samsung filed a joint motion to terminate the investigation on the basis of the settlement agreement. The Commission investigative attorney supported the joint motion. On September 30, 2002, the presiding ALJ issued the ID (Order No. 10) granting the joint motion of Toshiba and Samsung to terminate the investigation on the basis of a settlement agreement. No party filed a petition to review the subject ID. The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.42 of the Commission's rules of practice and procedure (19 CFR 210.42).

By order of the Commission.

Issued: October 28, 2002.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 02–27703 Filed 10–30–02; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Responsibility, Compensation, and Liability Act

In accordance with 28 CFR 50.7, notice is hereby given that on October 17, 2002, a proposed consent decree (the "Bruno consent decree" in *United States* v. *Union Pacific Railroad Company and Bruno Cooperative Association*, Civil Action No. 8:02-cv-483, was lodged with the United States District Court for the District of Nebraska.

In this action the United States sought injunctive relief and recovery of costs incurred and to be incurred by the United States responding to releases and threatened releases of hazardous substances from the Bruno Agricultural Coop/Associated Properties Site in Bruno, Nebraska. The proposed consent decree memorializes a settlement by which Union Pacific and Bruno Coop (the "Settling Defendants"), both past owners of the Site (the Coop continues to own the Site), will implement and maintain a remedy chosen by the United States Environmental Protection Agency ("EPA") to address groundwater contamination and restore a municipal drinking water well in Bruno, Nebraska. Settling Defendants also agree to fund one-half of the remedy cost and to reimburse a specified amount of the Site response costs provides that the United States Department of Agriculture ("USDA"), which formerly operated at the Site, also will fund one-half of the remedy cost and reimburse specified costs previously incurred by EPA.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Bruno consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Union Pacific Railroad Company and Bruno Cooperative Association*, D.J. Ref. 90–11–3–06101.

The Bruno consent decree may be examined at the Office of the United States Attorney, District of Nebraska, 1620 Dodge Street, Suite 1400, Omaha, NE 68102–1506, and at U.S. EPA Region 7, 901 N. 5th Street, Kansas City, KS 66101. A copy of the Bruno consent decree may also be obtained by mail from the Consent Decree Library, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611. In requesting a copy, please enclose a check in the amount of $50.75 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Alternatively, you may request a copy of only the consent decree, without the attached appendices, by enclosing a check in the amount of $13.00 (25 cents per page reproduction cost). Please make checks payable to the Consent Decree Library.

Robert E. Maher, Jr.,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–27654 Filed 10–30–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

[AAG/A Order No. 295–2002]

Privacy Act of 1974; System of Records

Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), notice is given that the Department of Justice proposes to modify a system of records entitled "Executive Clemency Case Files/Executive Clemency Tracking System," JUSTICE/OPA–001. The purpose of publishing this notice is to document the functions of the Attorney General or his designee in receiving, investigating, and evaluating requests for executive clemency, preparing the necessary reports and recommendations from the Department of Justice to the President in clemency matters, serving as liaison with clemency applicants and the public on clemency matters, and advising the President on the historical exercise of the clemency power.

In accordance with 5 U.S.C. 552a(e)(4) and (11), the public is given a 30-day period in which to comment; and the Office of Management and Budget (OMB), which has oversight responsibility under the Act, requires a 40-day period in which to conclude its review of the system. Therefore, please submit any comments by December 2, 2002. The public, OMB, and the Congress are invited to submit any comments to Mary E. Cahill, Management and Planning Staff, Justice Management Division, Department of Justice, Washington, DC, 20530 (Room 1400, National Place Building).

In accordance with 5 U.S.C. 552a(r), the Department has provided a report to OMB and the Congress.

Dated: October 22, 2002.

Robert F. Diegelman,

Acting Assistant Attorney General for Administration.

JUSTICE/OPA–001

SYSTEM NAME:

Executive Clemency Case Files/ Executive Clemency Tracking System.

SYSTEM LOCATION:

Office of the Pardon Attorney (OPA), U.S. Department of Justice, 500 First Street, NW., Suite 400, Washington, DC 20530.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have applied for or been granted executive clemency.

CATEGORIES OF RECORDS IN THE SYSTEM:

Paper Files: The system contains the individual case files of persons who have applied for or been granted executive clemency, which may include the following: The clemency petition; character affidavits; investigatory material; court-related documents (*e.g.*, presentence reports, judgments of conviction, and court opinions); official court-martial documents (in military cases); prison progress reports and U.S. Parole Commission notices of action; media reports (*e.g.*, newspaper and magazine articles); official and other correspondence (both generated and received, whether solicited or unsolicited); and inter-agency and intra-agency reports and recommendations and decisional documents relating to individual clemency matters.

Computerized Records: The system also includes an automated database for tracking the handling of clemency cases from filing to final action. Information used to track such progress may include, but is not limited to, the petitioner's name, social security number, birth date, the date the petition was received, offense and sentencing information, the date of final action by the President, and other case-related information. Clemency case file notes may also be summarized and stored in an automated format, and may include any relevant information that would assist OPA in formulating clemency recommendations to the President or otherwise performing its duties more efficiently.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The system is established and maintained in order to carry out the duties assigned by the President, pursuant to the power granted him under United States Constitution, Article II, section 2, to the Department of Justice in Executive Order of the President 30–1, dated June 16, 1893; and Executive Order of the President No. 11878 (published at 40 FR 42731), as delegated by the Attorney General to OPA in 28 CFR 0.35 and 0.36 (Attorney General Order No. 1012–83, published at 48 FR 22290), and as described in 28 CFR 1.1 through 1.11 (Attorney General Order No. 1798–93, published at 58 FR 53658; as amended at 65 FR 48381 and 65 FR 58223).

PURPOSE(S) OF THE SYSTEM:

Executive clemency case files are maintained by the Attorney General or his designee to facilitate and document the functions of the Attorney General or his designee in receiving, investigating, and evaluating requests for executive clemency; preparing the necessary reports and recommendations from the Department of Justice to the President in clemency matters; serving as liaison with clemency applicants and the public on clemency matters; and advising the President on the historical exercise of the clemency power. In addition, OPA or the Attorney General may provide other Departmental components records and information from clemency case files to the extent it is necessary to perform their functional responsibilities. For example, following a Presidential decision to grant clemency (and occasionally when clemency is denied), the Department's Office of Public Affairs typically makes appropriate disclosures of information to the public, including the name of the person granted clemency, the date of the grant of clemency, the nature of the relief granted (*e.g.*, commutation of sentence, remission of fine, reprieve, or pardon after completion of sentence), the date, sentence, and district of the conviction for which clemency was sought, the city and state of the applicant's current place of residence, and the names of his attorney and character affiants, if any. Automated tracking and retrieval systems enhance OPA's ability to maintain and use the information contained in clemency case files.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES.

Disclosure of records in the clemency file of an individual who has applied for or been granted clemency, and

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information contained in such documents, may be made to the following parties when it has been determined by OPA that such a need exists:

(a) The President, and members of his staff, in order to assist him in the exercise of his constitutional clemency power.

(b) Current and former government employees, including law enforcement and judicial authorities, whose comments on a particular clemency matter are solicited by OPA in connection with its investigation and review of a case, in order to enable such persons to formulate a response to the request.

(c) Contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal Government, when necessary to accomplish an agency function related to this system of records.

(d) A private contractor or federal agency for the purpose of preparing bound and indexed volumes containing originals and/or photocopies of the official warrant of clemency granted each recipient of clemency as a public and official record of Presidential action.

(e) An appropriate federal, state, local, foreign, or tribal law enforcement authority or other appropriate agency charged with the responsibility for investigating or prosecuting a violation or potential violation of law (whether civil, criminal, or regulatory in nature), in the event that a record in this system, either alone or in conjunction with other information, indicates a violation or potential violation of law.

(f) A federal, state, local, or tribal agency, including prosecution, corrections, sentencing, or parole authorities, in order to assist it in the execution of appropriate actions necessary to implement a Presidential clemency decision or in the performance of its official duties.

(g) A federal, state, local, or tribal agency or regulatory authority where OPA determines that the agency requires information relevant to a decision concerning the issuance, renewal, revocation, or suspension of a license, permit, grant, or other benefit, or other need for the information in the performance of its official duties.

(h) A court, administrative, or regulatory body when the records, or information derived therefrom, are determined by OPA to be arguably relevant to the litigation or proceeding, and when one of the following is a party to or has an interest in the litigation or proceeding: (1) OPA; (2) any employee of OPA in his or her official capacity; (3) any employee of OPA in his or her individual capacity where the Department of Justice has agreed to represent the employee; or (4) the United States.

(i) The news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

(j) A Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

(k) The National Archives and Records Administration and the General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

(l) A member of the public who has requested information concerning a specific, named person, provided that such a disclosure shall be limited to: whether a clemency application has been filed, and if so, the date on which it was filed, the type of clemency sought, the offense(s) for which clemency is sought, the date and court of conviction, the sentence imposed, the decision of the President to grant or deny clemency and the date of that decision, the administrative closure of a clemency request and the date of such closure.

(m) Former employees of the Department for purposes of: Responding to an official inquiry by a federal, state, or local government entity or professional licensing authority, in accordance with applicable Department regulations; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the Department requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Data is stored in electronic media via a client/server configuration. Computerized records are stored on hard disk, floppy diskettes, compact disks, magnetic tape, and/or on OPA's local area network. Paper records are stored in individual file folders and a secure file room or file cabinets with controlled access, and/or other appropriate GSA approved security containers.

RETRIEVABILITY:

Individual case files are retrieved primarily by the name of the person who applied for or was granted executive clemency. Case files also may be retrieved by a case file number assigned to each file. Information stored in the computerized case-tracking system is retrieved primarily by searching under the name of the person who applied for or was granted clemency, or on whose behalf clemency was sought. Information stored in the computerized case-tracking system may also be retrieved by the clemency case file number, or the applicant's Bureau of Prisons register number (if he was incarcerated at the time he applied for or was granted clemency).

SAFEGUARDS:

Paper records are secured through the use of safes, locked file cabinets, and/or restricted access to the space in which they are located. Electronic records are safeguarded in accordance with DOJ rules and policies governing automated systems security and access, including the maintenance of technical equipment in restricted areas and the required use of individual passwords and user identification codes to access the system.

RETENTION AND DISPOSAL:

Individual case files are stored in OPA's work area while the clemency request is pending, and generally for up to two years after the date of final decision. Closed case files are transferred to the Washington National Records Center in Suitland, Maryland one full year after the calendar year in which the case was closed. Except for copies of reports furnished to the President on particular clemency matters, clemency warrants and other documents reflecting the President's action in clemency cases, case files in any cases in which clemency is granted, case files in any other cases designated by the Pardon Attorney as having significant public interest, and notices issued by OPA to the Office of Public Affairs of the Department of Justice, case files at the Washington National Records Center are destroyed no sooner than 25 years after the case is closed, in accordance with Records Disposition Authority NC1–204–95–1, or successor Records Disposition Authority.

SYSTEM MANAGER(S) AND ADDRESSES:

Pardon Attorney, Office of the Pardon Attorney, U.S. Department of Justice, 500 First Street, NW., Suite 400, Washington, DC 20530.

NOTIFICATION PROCEDURE:

Address inquiries to Office of the Pardon Attorney, U.S. Department of Justice, 500 First Street, NW., Suite 400, Washington, DC 20530.

RECORD ACCESS PROCEDURES:

While the Attorney General has exempted executive clemency case files from the access provisions of the Privacy Act, requests for discretionary releases of records shall be made in writing to the system manager listed above with the envelope and letter clearly marked "Privacy Access Request." Include in the request the general subject matter of the document. Provide full name, current address, date and place of birth, signature (which must be either notarized or submitted under penalty of perjury) and a return address for transmitting the information.

CONTESTING RECORD PROCEDURES:

While the Attorney General has exempted executive clemency case files from the correction (contest and amendment) provisions of the Privacy Act, requests for the discretionary correction (contest and amendment) of records should be directed to the system manager listed above, stating clearly and concisely what information is being contested, the reasons for contesting it and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Sources of information include: individual applicants for clemency, their representatives, and persons who write, confer with, or orally advise OPA concerning those applicants; investigatory reports of the Federal Bureau of Investigation, the Drug Enforcement Administration, the Internal Revenue Service, and the Immigration and Naturalization Service, and other appropriate government agencies; records of the Bureau of Prisons; reports of the Armed Forces; presentence reports provided by the Bureau of Prisons or the federal Probation Offices; reports of the U.S. Parole Commission; comments and recommendations from current and former federal and state officials; and employees of the Department of Justice and the White House.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsections (c)(3), (c)(4), (d)(1), (d)(2), (d)(3), (d)(4), and (e)(5) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c), and (e) and have been published in the **Federal Register**.

[FR Doc. 02–27597 Filed 10–30–02; 8:45 am]

BILLING CODE 4410–29–P

DEPARTMENT OF JUSTICE

Antitrust Division

Public Comments and Response on Proposed Final Judgment in United States v. Computer Associates International, Inc., et al. Exhibit

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), the United States hereby publishes below the comment received on the proposed Final Judgment in *United States of America* v. *Computer Associates International Inc. and Platinum* technology *International*, inc., Civil Action No. 1:01CV02062 (GK), filed in the United States District Court for the District of Columbia, together with the United States' response to the comment.

Copies of the comment and response are available for inspection at Room 200 of the Department of Justice, Antitrust Division, 325 Seventh Street, NW., Washington, DC 20530, telephone (202) 514–2481, and at the Office of the Clerk of the United States District Court for the District of Columbia, E. Barrett Prettyman United States Courthouse, 333 Constitution Avenue, NW., Washington, DC 20001. Copies of any of these materials may be obtained upon request and payment of a copying fee.

Constance K. Robinson,

Director of Operations.

United States' Response to Public Comments

Pursuant to Section 5(d) of the Clayton Act, as amended by Section 2 of the Antitrust Procedures and Penalties Act (codified at 15 U.S.C. 16(b)–(h)(the "Tunney Act")), the United States responds to public comments received regarding the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Background

On September 28, 2001, the United States filed a civil antitrust Complaint alleging that the Merger Agreement between Defendants Computer Associates International, Inc. ("CA") and Platinum *technology* International, *inc.* ("Platinum") had the effect of lessening or eliminating competition between them in the sale of certain software products in violation of Section 1 of the Sherman Act, 15 U.S.C. 1. The Complaint alleged that, prior to March 1999, Platinum aggressively competed with CA in the development and sale of numerous software products, including mainframe systems management software products. On March 29, 1999, CA and Platinum entered into a Merger Agreement pursuant to which CA would purchase all issued and outstanding shares of Platinum through a $3.5 billion cash tender offer.[1]

The Merger Agreement set forth numerous covenants made by Platinum, as part of the agreement to be acquired, regarding how it would conduct its business during the period between the signing of the Merger Agreement and the closing of the acquisition transaction (the pre-consummation period). Under the Merger Agreement, CA and Platinum agreed that Platinum would not offer discounts greater than 20% off list prices for its software products and consulting services unless CA approved the discount. Before the merger announcement, Platinum commonly gave discounts over 20% for its software products and consulting services. In furtherance of this Agreement, CA installed one of its vice presidents at Platinum's headquarters to review Platinum's proposed customer contracts and exercise authority to approve or reject proposed contracts offering discounts greater than 20%. CA also obtained prospective, customer-specific information regarding Platinum's bids, including the name of the customer, products and services offered, list price, discount, and the justification for any discount. Platinum placed no limits with respect to CA's use of this information. CA used this information to monitor Platinum's adherence to the Merger Agreement's limitation on discounts and to exercise its authority to approve or reject any proposed contract that offered discounts over 20%.

The United States filed a Complaint on September 28, 2001, alleging that the provisions of the Merger Agreement relating to CA's approval of Platinum discounts prior to consummation of the merger violated section 1 of the

[1] On May 25, 1999, the United States filed a Complaint alleging that CA's proposed acquisition of Platinum would eliminate substantial competition and result in higher prices in certain mainframe systems management software markets. *See United States* v. *Computer Associates International Inc., et al.* (D.D.C. 99–01318 (GK)). Simultaneously with the filing of the Complaint, the parties reached an agreement that allowed CA and Platinum to go forward with the merger, provided that CA sell certain Platinum mainframe systems management software products and related assets. Thereafter, CA accepted for payment all validly tendered Platinum shares and the Defendants consummated their merger.

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Sherman Act. On April 23, 2002, the United States filed a Stipulation and proposed Final Judgment designed to prevent the recurrence of the alleged Sherman Act section 1 violation.[2] The proposed Final Judgment prohibits CA and future merger partners from agreeing to establish the price of any product or services offered in the United States to any customer during the pre-consummation period. The proposed Final Judgment also would prevent the repetition of the conduct CA employed to facilitate its agreement with Platinum to establish prices. Specifically, the proposed Final Judgment prohibits CA from entering into an agreement to review, approve or reject customer contracts during the pre-consummation period, and prohibits CA from entering into an agreement that requires a party to provide "non-material" bid information to another party.

The proposed Final Judgment identifies certain price-related agreements that will not violate the Final Judgment. The proposed Final Judgment does not prohibit agreements that the to-be-acquired party, during the pre-consummation period, act in the ordinary course of business and not engage in conduct that would cause a material adverse change in the to-be-acquired party's business. CA and a merger partner may also conduct reasonable due diligence and may exchange "material" bit information, subject to appropriate use and confidentiality restrictions. Finally, the proposed Final Judgment permits certain joint pricing and bidding activities, provided that such conduct would be lawful independent of the proposed merger.

The Court may enter the proposed Final Judgment following compliance with the Tunney Act.[3] Pursuant to the Tunney Act, the proposed Final Judgment and CIS were filed with the Court on April 23, 2002. A summary of the terms of the proposed Final Judgment and CIS were published for seven consecutive days in *The Washington Post* from June 6, 2002 through June 12, 2002. The proposed Final Judgment and CIS were published in the **Federal Register** on June 18, 2002 at 67 14472 (2002). the 60-day period for public comments on the proposed Final Judgment began on June 18, 2002 and expired on August 19, 2002. During that period, one comment was received.

II. Response to Public Comment

The only comment was filed by The Center for the Advancement of Capitalism ("CAC"), a non-profit organization with the mission of providing analysis based on Ayn Rand's philosophy of objectivism.[4] A true and correct copy of CAC's comment is attached as Exhibit 1. CAC states that the antitrust laws represent a "system where the federal government has assumed the unconstitutional role of dictating which business practices are permitted, without having to actually show that a business's actions violate the *rights* of another party." CAC Comment at 2. CAC further argues that the enforcement of the antitrust laws "completely ignores the principle of individual rights which animate our Constitution and republican form of government." *Id.* at 6. In a similar vein, CAC argues that the antitrust laws, to the extent they protect consumers, violate the rights of property owners and producers. *Id.* at 3, 6–8. According to CAC, the antitrust laws should permit businesses to take any action, "[s]o long as the actions are voluntary, and do not constitute an act of force against another individual or corporation" *Id.* at 7.

CAC, in essence, challenges the constitutionality of the Sherman Act and advocates for a form of laissez-faire capitalism unregulated by the Government. The United States disagrees with CAC's position. The Supreme Court has, on numerous occasions upheld the constitutionality of the Sherman Act and the prohibition of section 1 of the Act against any contract, combination or conspiracy that "unreasonably" deprives consumers of the benefits of competition or that would otherwise result in higher prices or inferior products and services. *See Standard Oil Co.* v. *United States*, 221 U.S. 1, 50, 58 & 68–70 (1911); *see also United States* v. *Joint Traffic Ass'n*, 171 U.S. 505, 570–73 (1898). In any event, challenging the constitutionality of the Sherman Act is far beyond the scope of this Tunney Act proceeding. *See United States* v. *Microsoft Corp.*, 56 F.3d 1448, 1459 (D.C. Cir. 1995) (Court's role under the Tunney Act is limited to reviewing the remedy in relationship to the violations that the United States alleges in its Complaint).

CAC also argues that the proposed Final Judgment constitutes a "fraud" because it is based on the premise that "merging companies should continue to act independently of one another even when that is not the case in actual reality." CAC Comment at 5. CAC further argues that the proposed Final Judgment will prevent CA from entering into merger agreements for the 10-year term of the Final Judgment because any joint pre-consummation conduct would be "*per se*" illegal conduct in the eyes of the DOJ." *Id.* at 6. CAC misconstrues the allegations in the Complaint and the proposed remedy.

The United States, of course, recognizes that the relationship between two formerly independent firms changes when they announce plans to merge. The fact that two firms have signed a merger agreement, however, does not excuse them from their obligation to comply with the antitrust laws during the pre-consummation period. Section 1 of the Sherman Act prohibits pre-merger agreements among competitors that restrain competition. Thus, the Complaint alleges that CA and Platinum entered into an agreement to limit Platinum's discounts during the pre-consummation period and that this agreement lessened competition in certain software markets. Moreover, neither the Complaint nor the proposed Final Judgment stand for the proposition that all pre-consummation agreement are "*per se*" illegal. The Final Judgment only prohibits agreements on price that are likely to restrict competition.

III. Conclusion

CAC urges the Court to find that the proposed Final Judgment is not in the public interest and requests that the Court deny entry of the proposed Final Judgment. The United States has concluded that the proposed Final Judgment reasonably and appropriately addresses the harm alleged in the Complaint. Therefore, following publication of this Response To Comments and submission of the United States' Certification of Compliance with the Tunney Act, the United States intends to request entry of the proposed Final Judgment upon the Court's determination that entry is in the public interest.

Dated: September 19, 2002.
Respectfully submitted.

[2] The proposed Final Judgment also requires CA and Platinum to pay a civil penalty to resolve the allegation in the Complaint that the defendants violated Title II of the Hart-Scott-Rodino Antitrust Improvement Act of 1976 ("HSR Act"), 15 U.S.C. 18a. For the reasons stated in the Competitive Impact Statement ("CIS"), filed on April 23, 2002, the United States does not believe that the payment of civil penalties under the HSR Act is subject to the Tunney Act. CIS at 11 n.1. Consequently, the civil penalties component of the proposed Final Judgment is not open to public comment.

[3] The CIS sets out the standard to be applied by the Court in determining whether entry of the proposed Final Judgment is in the public interest. CIS at 21–24.

[4] Ayn Rand, a novelist-philosopher, first expressed her philosophy of objectivism in the best-selling novels. *The Fountainhead* (1943) and *Atlas Shrugged* (1957). On the issue of capitalism, she has stated: "When I say 'capitalism,' I mean a pure, uncontrolled, unregulated laissez-faire capitalism with a separation of economics, in the same way and for the same reasons as a separation of state and church." "The Objectivist Ethics" in *The Virtue of Selfishness* (1964).

Renata B. Hesse, N. Scott Sacks, James J. Tierney, Jessica N. Butler-Arkow, David E. Bleke-Thomas,
Attorneys, U.S. Department of Justice, Antitrust Division, Networks and Technology Section, 600 E Street, NW., Suite 9500, Washington, DC 20530. 202/307–0797.

Certificate of Service

I hereby certify that a copy of the foregoing United States; Response To Public Comments was hand delivered this 19th day of September, 2002 to: Counsel for Computer Associates International, Inc. and Platinum *technology* International, *inc.* Richard L. Rosen, Esquire, Arnold & Porter, 555 Twelfth Street, NW, Washington, DC 2004–1206. Fax: 202/547–5999.

James J. Tierney.

The Center for the Advancement of Capitalism

August 9, 2002.

Ms. Renata B. Hesse,
Chief, Networks and Technology Section, United States Department of Justice, Antitrust Division, 600 E Street, NW., Suite 9500, Washington, DC 20530.

Re: Proposed Final Judgment in *United States of America* v. *Computer Associates International, Inc., et al.*, Civil No. 1:01CV02062 (GK)

Dear Ms. Hesse: On behalf of the Center for the Advancement of Capitalism [1] ("CAC"), I hereby transmit to you the following public comments with respect to the above captioned matter now pending in the United States District Court for the District of Columbia. In accordance with 15 U.S.C. 16(d), CAC requests that its comments in this matter be included in the appropriate public record, and that they be considered by the Department of Justice and the Court in determining whether the proposed Final Judgment is in the public interest.

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CAC is a non-profit corporation organized under the laws of the District of Columbia and exempt from taxation under 26 U.S.C. 501(c)(4). The mission of CAC is to provide analysis and commentary to policymakers, the judiciary, and the general public on matters relevant to individual rights and economic freedom. CAC presents an integrated approach to contemporary issues by applying Ayn Rand's philosophy of Objectivism.

For the past four years, CAC has provided a consistent and principled opposition to the continued enforcement of the antitrust laws of the United States.[2] We have argue that the antitrust laws violate the individual rights of businessmen, the protection of which is mandated by the United States Constitution. Instead, what now exists in the United State—and in this particular case—is a system where the federal government has assumed the unconstitutional role of dictating which business practices are permitted, without having to actually show that a business's actions violate the *rights* of another party. Indeed, as the case against Computer Associates and Platinum Technology ("defendants") demonstrate, most antitrust cases have no actual victim, save for perhaps the ego of the attorneys representing the Department of Justice ("DOJ").

After a careful review of the public record in this case, CAC believes that the United States has failed to demonstrate why this prosecution was justified in the first instance. Furthermore, we believe the terms of the proposed Final Judgment have been falsely represented to the public as being injunctive and remedial in nature, when in fact they are punitive. Since the public interest cannot possibly be served by punishing a company which has committed no crime and for other reasons outlined below, CAC concludes that entry of the proposed Final Judgment is not in the public interest, and that the DOJ should withdraw from its agreement and dismiss the complaint against the defendants with prejudice. In the alternative, CAC would request the District Court to deny entry of the proposed Final Judgment under 15 U.S.C. 16(e).

II

The central claim of the DOJ's complaint is that the defendants entered into a merger agreement which denied consumers the benefit of full competition during the "pre-consummation period," that is to say, prior to the closing of the actual merger. The DOJ defines the pre-consummation period as ending either with the closing date, or earlier if termination is granted by the DOJ under the Hart-Scott-Rodino Act.[3] Under the government's antitrust regimen, it seems, companies have an "obligation to compete independently" [4] even after they've agreed to stop competing out of mutual self-interest. What this case deals with then is how companies are to be permitted going about the task of combining their operations without running afoul of the DOJ's pathological (and statutory) need to control every aspect of private commerce.

Under the merger agreement voluntarily entered into by the defendants. Platinum technology officials agreed to not offer their customers a discount of more than 20% off list prices without the prior written consent of Computer Associates.[5] Since this provision applied during the pre-consummation period (but after the agreement itself was signed and made known to the public), the DOJ claims that the defendants denied customers "the benefit of free and open competition" in violation of 15 U.S.C. 1.

CAC disagrees. For one thing, the DOJ is employing a very static definition of "competition" to support its thesis. Under the DOJ's theory of antitrust, competition is a synonym for low prices—any action which might lead to a rise in out-of-pocket cost to the consumer is deemed anticompetitive, and thus illegal under the Sherman Act. This theory violates the property rights of producers. The DOJ is arguing that consumers have an automatic 'right' to any item which a producer puts on the market, and that this interest should trump any property right claimed by the producer.

Unlike the corner the DOJ has put itself into here, competition in the free market is a far more complex and dynamic entity that does not wholly revolve around retail prices. Competition incorporates all activities by which a business seeks to increase its profitability. These activities include the development of new or improved products, reduction of operating costs, increasing efficiency in the production process, marketing, and hiring of talented personnel. None of these activities were incorporated into the DOJ's analysis relevant to this case, or if they were, the United States has declined to specify how the defendants' alleged actions compromised competition in the integrated sense of the term. The complaint focuses solely on the issue of prices charged to consumers.

Section IV of the proposed Final Judgment would prohibit Computer Associates, in any potential future merger, from establishing price discount policies for a to-be-acquired company during the pre-consummation period. This requirement does nothing to promote competition. It simply creates a temporary, artificial price support for products sold by the hypothetical other company pending the closing of the merger. Section IV does not prevent such potential mergers from taking place, nor does it govern the conduct of the companies following consummation of the merger. If the DOJ were genuinely concerned about minimizing the potential for higher consumer prices in the marketplace, they could have sought to prevent the merger itself from ever taking place through civil litigation before the District Court, or at a minimum attempted to require Computer Associates and Platinum Technology to divest certain portions of their business to third parties as a precondition of government approval. Such efforts would have rendered the need for the present action moot, since competition—or at least the DOJ's bastardized version of competition—would be maintained on a more tangible and permanent basis.

III

The answer to our inquiry, interestingly enough, is that the DOJ did pursue a previous civil action to dictate the conditions of the Computer Associates-Platinum Technology merger.[6] Yet not content to rest on its laurels, the DOJ went on to initiate the current action as a means of further securing the public interest, or so they would have us believe. In fact, based on the government's earlier success, it seems more likely that the United States is seeking to make an example out of Computer Associates to serve as a warning to other companies. Such a punitive motive, CAC believes, is not consistent with serving the public interest.

Because the DOJ's hands were less than clean in reaching the proposed consent order.

[1] Prior to August 1, 2002, CAC was known as the Center for the Moral Defense of Capitalism.

[2] *See, generally*, 15 U.S.C. 1–2.

[3] 15 U.S.C. 18a.

[4] Competitive Impact Statement, 67 FR 41472 at 41477 (2002).

[5] *Id.* at 41475.

[6] *United States* v. *Computer Associates, et al.*, No. 99–01318 (D.D.C.).

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Computer Associates is left with a very disturbing prospect. In acceding to the relief terms of the proposed final judgment, Computer Associates is undermining its own ability to successfully compete in the marketplace by acknowledging, then perpetuating for the ten-year term of the agreement, an outright fraud. The fraud we refer to is the premise of the DOJ's prosecution—that merging companies should continue to act independently of one another even when that is not the case in actual reality.

No matter how much it wishes otherwise, the DOJ cannot alter reality, although it can certainly use its compulsory force to evade it, as is the case here. When two companies agree to merge, the very culture of their previously exclusive operations are altered at a fundamental level. The extent to which this is reflected in the pre-consummation or post-consummation period varies from company to company, but the essential principle is the same. In entering into its pre-consummation agreement with Platinum, Computer Associates acted in the honest interest of its shareholders, employees and customers, by openly acknowledging its new relationship with Platinum, and working to bring the two companies together in an efficient and rational manner.

In contrast, the new standards imposed by the DOJ in the consent agreement practically requires Computer Associates to never enter into another merger agreement except by fraud and duplicity. Since to acknowledge a coming together of companies before consummation is now *per se* illegal conduct in the eyes of the DOJ, there is no incentive for Computer Associates to act with integrity or honesty. Alternatively, of course, Computer Associates could simply choose not to merger with any company for the duration of the consent agreement, in which case they would potentially defraud their own stockholders by refusing to act in a manner which could increase the company's profitability and productive capacity. In either case, CAC sees no benefit to subscribing to the DOJ's delusional view of corporate mergers.

IV

Finally, CAC objects to the DOJ's construction of rights in this case. As with all antitrust litigation shepherded by the United States, the DOJ can only make sense of its argument when it completely ignores the principle of individual rights which animate our Constitution and republican form of government.

The DOJ defines the public interest, for purposes of antitrust litigation, as being one-in-the-same with the "rights" of consumers, the nebulous class of individuals who consume (or attempt to consume) the goods and services provided by economic producers. In this case, CA and Platinum's activities were deemed unlawful because the companies pre-consummation activities had the effect of "denying" the companies' customers "the *benefits* of free and open competition" (emphasis added). In the eyes of DOJ and the judiciary, "benefits" gets elevated to the status of "rights", and they are given such weight as to render the actual economic rights of producers to be virtually non-existent.

As has been discussed, *infra*, trade does involve, and indeed require, a voluntary exchange of goods and services which benefit all parties to the transaction. If nobody received benefits, then there would be no incentive to trade in the first place. But a benefit should never be confused with a "right." Actual rights are "moral principles which define and protect a man's freedom of action, but impose no obligation on other men.[7]" A right is something which all individuals inherently possess as part of their humanity. A benefit, in contrast, is something which an individual receives at the behest of another, for whatever reason or motive: A will confers benefits on a beneficiary; a company provides health insurance for its employees; the local sports arena permits children to use the facility a few days a week. None of these things result from the beneficiary's right to enjoy the benefit. The right is that of the owner to dictate the use of his property, not of an outside party to demand use of property which is not his.

Computer Associates and Platinum had no obligation to "provide" competition for consumers. They chose to do so voluntarily for a number of years, and, when the companies decided it was in their self-interest to cease one-on-one competition, they did so. They did not consider their obligations to the consumer, because they had none, outside of pre-existing contracts (which presumably were honored). What was considered, as in any merger, was the benefits that would be generated by the combination of the two companies. The DOJ's fault lies in considering "benefits" to be limited to the price paid by a consumer at a given moment in time. The government's analysis failed to account for the potential benefits generated by the merger, including the actions of CA and Platinum during the pre-consummation period.

But even if no benefits could be demonstrated consequential to the merger, the United States would still be wrong to block the efforts of CA and Platinum, because it is not morally incumbent upon a corporation to positively demonstrate the benefits of their actions to a government agency. So long as the actions are voluntary, and do not constitute an act of force against another individual or corporation, a transaction between private parties is an extension of their right to own and use property.

The alternative theory, presented by DOJ's enforcement of antitrust law, suggests the opposite: That property is not truly privately held, and that the interests of the "consumer" are paramount in any economic relationship with a producer. Under a capitalist system, the producers are the property owners who leverage their holdings to create wealth. Under the consumerist model enforced by DOJ, in contrast, producers hold and create wealth as part of a "public trust", and the consumer has the ultimate right to dictate how the wealth is distributed. This is why the DOJ spends an inordinate amount of time focusing on prices, and why any increase that takes place is immediately suspect under the Sherman Act.

Consumers, of course, do have certain "rights" in the marketplace. They have a right to buy or not buy the goods and services of their choosing. They have a right to contract free of coercion, and the right to seek redress of grievances before the law if that contract is breached. What consumers do not have the "right" to, however, is to unilaterally dictate the terms by which a producer offers his goods and services for sale. The DOJ advocates the opposite, as a result, it routinely intervenes in the acts of producers in an attempt to secure prices and conditions that are more favorable to the consumer, regardless of how this interference violates the property rights of the producers.

CAC believes that the people of the United States are better off living in a capitalist economy than in a consumerist system. Therefore, we find the terms of the proposed Final Judgment are not in the public interest, because the injunctive relief provided would recognize non-existent consumer rights at the expense of the legitimate rights of Computer Associates, and that in turn compromises the rights of all Americans.

For the foregoing reasons, CAC believes the public interest here would best be served by the DOJ withdrawing from the proposed final judgment and dismissing the compliant against Computer Associates and Platinum Technology with prejudice.

Respectfully Submitted,

S.M. Oliva,

Director of Federal Affairs, The Center for the Advancement of Capitolism.

[FR Doc. 02–27222 Filed 10–30–02; 8:45 am]

BILLING CODE 4410–11–M

[7] Ayn Rand, *Man's Rights*, in Capitalism: the Unknown Ideal (1966).

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Meeting of the CJIS Advisory Policy Board

AGENCY: Federal Bureau of Investigation (FBI), Justice.

ACTION: Meeting notice.

SUMMARY: The purpose of this notice is to announce the meeting of the Criminal Justice Information Services (CJIS) Advisory Policy Board (APB). The CJIS APB is responsible for reviewing policy issues, uniform crime reports, and appropriate technical and operational issues related to the programs administered by the FBI's CJIS Division, and thereafter, make appropriate recommendations to the FBI Director. The topics to be discussed will include proposed changes to the definition of Administration of Criminal Justice in part 20 of title 28, Code of Federal Regulations; the proposal to establish a public website for National Crime Information Center "Property and Wanted Person Files"; and DNA Indicator in the Interstate Identification Index segment of the Integrated Automated Fingerprint Identification System (IAFIS). Discussion will also include the status on the National Crime Prevention and Privacy Compact, status of the Joint Task Force on Rap Sheet Standardization, the question of whether the Crime Index is a True Indicator of Crime, Immigration and Naturalization Service Alien Initiative, the Department of Justice Global and Information Sharing Project, and other issues related to the IAFIS, NCIC, Law Enforcement Online, National Instant Criminal Background Check System and Uniform Crime Reporting programs.

The meetign will be open to the public on a first-come first-seated basis. Any member of the public wishing to file a written statement concerning the FBI's CJIS Division programs or wishing to address this session should notify the Designated Federal Employee, Mr. Roy G. Weise, at (304) 625–2730, at least 24 hours prior to the start of the session.

The notification should contain the requestor's name, corporate designation, and consumer affiliation or government designation along with a short statement describing the topic to be addressed and the time needed for the presentation. A requestor will ordinarily be allowed no more than 15 minutes to present a topic.

DATES AND TIMES: The APB will meet in open session from 9 a.m. until 5 p.m. on December 4–5, 2002.

ADDRESSES: The meeting will take place at the Inter-Continental Houston, 2222 West Loop South, Houston, Texas, telephone (713) 627–7600.

FOR FURTHER INFORMATION CONTACT: Inquiries may be addressed to Mrs. Diane M. Shaffer, Management Analyst, Advisory Groups Management Unit, Programs Development Section, FBI CJIS Division, Module C3, 1000 Custer Hollow Road, Clarksburg, West Virginia 26309–0149, telephone (304) 625–2615, facsimile (304) 625–5090.

Roy G. Weise,

Designated Federal Employee, Criminal Justice Information Services Division, Federal Bureau of Investigation.

[FR Doc. 02–27706 Filed 10–30–02; 8:45 am]

BILLING CODE 4410–02–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 2237–02; AG Order No. 2624–2002]

Extension of the Designation of Sierra Leone Under the Temporary Protected Status Program

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: The Attorney General's most recent extension of the designation of Sierra Leone under the Temporary Protected Status (TPS) program expires on November 2, 2002. This notice announces the Attorney General's decision to extend the TPS designation for Sierra Leone for an additional period of 12 months, as provided by law, and contains information regarding the 12-month extension of TPS.

DATES: The TPS designation for Sierra Leone is extended for a period of 12 months, from November 2, 2002, through November 2, 2003. The re-registration period commences on October 31, 2002, and will remain in effect until December 30, 2002 (inclusive of such end date).

FOR FURTHER INFORMATION CONTACT: Naheed A. Qureshi, Office of Adjudications, Residence and Status Branch, Immigration and Naturalization Service, Room 3040, 425 I Street, NW., Washington, DC 20536, telephone (202) 514–4754.

SUPPLEMENTARY INFORMATION:

What Is the Statutory Authority for the Designation and Extension of TPS?

Under section 244 of the Immigration and Nationality Act (Act), 8 U.S.C. 1254a, the Attorney General is authorized to designate a foreign state (or part thereof) for TPS. The Attorney General may then grant TPS to eligible nationals of that foreign state (or aliens having no nationality who last habitually resided in that state).

Section 244(b)(3)(A) of the Act requires the Attorney General to review, at least 60 days before the end of the TPS designation, the conditions in a foreign state designated under the TPS program to determine whether the conditions for a TPS designation continue to be met and, if so, the length of an extension of TPS that is granted on the basis of such a determination. 8 U.S.C. 1254a(b)(3)(A). If the Attorney General determines that the foreign state no longer meets the conditions for TPS designation, the Attorney General shall terminate the designation, as provided in section 244(b)(3)(B) of the Act. 8 U.S.C. 1254a(b)(3)(B). Finally, if the Attorney General does not make the required determination prior to the 60-day period prescribed by statute, section 244(b)(3)(C) of the Act provides for an automatic extension of TPS for an additional period of 6 months (or, in the discretion of the Attorney General, a period of 12 or 18 months). 8 U.S.C. 1254a(b)(3)(C).

Why Is the Sierra Leone TPS Designation Being Extended?

The Administration, including the Departments of State and Justice, as well as the National Security Council, is actively and closely monitoring conditions in and developments relating to Sierra Leone. The United States Government recognizes that there has been considerable progress toward renewed stability in Sierra Leone. In January 2002, the country's decade-long war was declared over. More than 45,000 combatants have been demobilized. In May 2002, violence-free elections were successfully completed. More recently, on September 24, 2002, the United Nations Security Council voted unanimously to adopt a resolution extending the mandate of the United Nations Assistance Mission in Sierra Leone (UNAMSIL) for six months, while implementing the Secretary General's recommendation for a phased, gradual draw-down of UNAMSIL. The resolution urges UNAMSIL to carry out Phases 1 and 2 of the draw-down over the next eight months, which would reduce UNAMSIL's troop strength from 17,500 to 13,000 (a reduction of approximately 25%). In addition, the situation in Liberia, which affects regions of neighboring Sierra Leone, remains unstable. On October 1, 2002, the Attorney General designated Liberia under the TPS program.

The Attorney General consulted with appropriate agencies of the Government, but due to the nature of the situation in Sierra Leone, has not made a determination whether the conditions for TPS designation continue to be met. Accordingly, this Federal Register notice does not contain the Attorney General's determination regarding whether or not the conditions in Sierra Leone continue to satisfy the statutory standards for an extension of TPS under section 244(b)(3)(A) of the Act. Instead, as a result of the 60-day requirement prescribed by statute, this notice provides that the previous TPS designation for Sierra Leone has been extended pursuant to section 244(b)(3)(C) of the Act. 8 U.S.C. 1254a(b)(3)(C). As an exercise of discretion, the Attorney General has decided to extend TPS for 12 months, as

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allowed under that provision, rather than the minimum period of six months in order to allow a sufficient period of time to monitor further developments in Sierra Leone.

No later than 60 days prior to the November 2, 2003, expiration of this extension, the Attorney General will determine whether the conditions for TPS designation continue to be met in Sierra Leone at that time, or whether TPS should be terminated at the time the current extension of TPS expires. Notice of that determination, including the basis for the determination, will be published in the **Federal Register**.

If I Currently Have TPS Benefits Through the Sierra Leone TPS Program, Must I Still Re-Register for TPS?

Yes. If you already have received TPS benefits through the Sierra Leone TPS program, your benefits will expire on November 2, 2002. While the designation of Sierra Leone under the TPS program was extended automatically by virtue of statute, individual TPS beneficiaries must still comply with the re-registration requirements described below in order to maintain their TPS benefits through November 2, 2003. TPS benefits include temporary protection against removal from the United States, as well as work authorization, during the TPS designation period and any extension thereof. 8 U.S.C. 1254a(a)(1).

If I Am Currently Registered for TPS, How Do I Re-Register for an Extension?

All persons previously granted TPS benefits under the Sierra Leone TPS program who wish to maintain such benefits must apply for an extension by filing (1) Form I–821, Application for Temporary Protected Status, without the filing fee; (2) Form I–765, Application for Employment Authorization; and (3) two identification photographs (1½ inches x 1½ inches). See the chart below to determine whether you must submit the one hundred and twenty dollar ($120) filing fee with the Form I–765. Children beneficiaries of TPS, who have reached the age of 14 but were not previously fingerprinted, must pay the fifty dollar ($50) fingerprint fee upon their next application for extension.

Submit the re-registration package to the Service district office that has jurisdiction over your place of residence during the 60-day re-registration period that begins October 31, 2002, and will remain in effect until December 30, 2002.

If	Then
You are applying for an Employment Authorization Document that is valid through November 2, 2003. . .	You must complete and file Form I–765, Application for Employment Authorization, with the $120 fee.
You already have an Employment Authorization Document or do not require such a document. . .	You must complete and file Form I–765 with no fee.

Employment authorization documentation: An applicant who seeks employment authorization documentation must submit Form I–765 with the $120 fee. An applicant who does not seek employment authorization documentation does not need to submit the $120 fee, but must still complete and submit Form I–765 for data gathering purposes.

Fee waiver: Applicants may request that certain fees be waived, in accordance with the regulations at 8 CFR 244.20.

How Does an Application for TPS Affect My Application for Asylum or Other Immigration Benefits?

An application for TPS does not affect an application for asylum or any other immigration benefit, and vice versa. Denial of an application for asylum or any other immigration benefit does not affect an applicant's TPS eligibility, although the grounds for denying one form of relief may also be grounds for denying TPS. For example, a person who has been convicted of a particularly serious crime is not eligible for asylum or TPS. 8 U.S.C. 1158(b)(2); 8 U.S.C. 1254a(c)(2)(B)(i).

Does This Extension Allow Nationals of Sierra Leone (or Aliens Having No Nationality Who Last Habitually Resided in Sierra Leone) Who Entered the United States After November 9, 1999, To Apply for TPS?

No. This is a notice of an extension of TPS, not a notice of re-designation of Sierra Leone under the TPS program. An extension of TPS does not change the required dates of continuous residence and continuous physical presence in the United States. This extension does not expand TPS availability to those who are not already TPS class members. To be eligible for benefits under this extension, nationals of Sierra Leone (or aliens having no nationality who last habitually resided in Sierra Leone) must have been continuously physically present and continuously resided in the United States since November 9, 1999.

What Is Late Initial Registration?

Some persons may be eligible for late initial registration under 8 CFR 244.2(f)(2). To apply for late initial registration an applicant must:

(1) Be a national of Sierra Leone (or an alien who has no nationality and who last habitually resided in Sierra Leone);

(2) Have been continuously physically present in the United States since November 9, 1999;

(3) Have continuously resided in the United States since November 9, 1999; and,

(4) Be both admissible as an immigrant, except as otherwise provided under section 244(c)(2)(A) of the Act, and also not ineligible under section 244(c)(2)(B) of the Act. 8 U.S.C. 1254a(c)(2)(A), 8 U.S.C. 1254a(c)(2)(B).

Additionally, the applicant must be able to demonstrate that, during the re-designation registration period from November 9, 1999, through November 2, 2000, he or she:

(1) Was a nonimmigrant or had been granted voluntary departure status or any relief from removal;

(2) Had an application for change of status, adjustment of status, asylum, voluntary departure, or any relief from removal or change of status pending or subject to further review or appeal;

(3) Was a parolee or had a pending request for reparole; or

(4) Was the spouse or child of an alien currently eligible to be a TPS registrant. 8 CFR 244.2(f)(2).

An applicant for late initial registration must file an application for late registration within a 60-day period immediately following the expiration or termination of the conditions described above. 8 CFR 244.2(g).

What Happens When This Extension of TPS Expires on November 2, 2003?

At least 60 days before this extension of TPS expires on November 2, 2003, the Attorney General will review conditions in Sierra Leone and determine whether the conditions for designation under the TPS program continue to be met at that time, or whether the TPS designation should be terminated. Notice of that determination, including the basis for the determination, will be published in the **Federal Register**.

If the TPS designation is extended at that time, an alien who has received TPS benefits must re-register under the extension in order to maintain TPS benefits. If, however, the Attorney General terminates the TPS designation, TPS beneficiaries will return to the same immigration status they maintained before TPS (unless that status had since expired or been terminated) or to any other status they may have acquired while registered for TPS. Accordingly, if an alien had no lawful immigration status prior to receiving TPS and did not obtain any status during the TPS period, he or she will revert to that unlawful status upon termination of the TPS designation.

Notice of Automatic Extension of the Designation of Sierra Leone Under the TPS Program

Pursuant to section 244(b)(3)(C) of the Act, I order as follows:

(1) The designation of Sierra Leone for TPS under section 244(b) of the Act is extended for a period of 12 months, from November 2, 2002 through November 2, 2003.

(2) I estimate that there are approximately 2,209 nationals of Sierra Leone (and aliens having no nationality who last habitually resided in Sierra Leone) who currently receive TPS benefits and who are eligible to re-register for benefits under this extension.

(3) To maintain TPS, a national of Sierra Leone (or an alien having no nationality who last habitually resided in Sierra Leone) who previously has applied for or received TPS benefits must re-register for TPS during the 60-day re-registration period from October 31, 2002 until December 30, 2002.

(4) To re-register, the applicant must file the following: (1) Form I–821, Application for Temporary Protected Status; (2) Form I–765, Application for Employment Authorization; and (3) two identification photographs (1½ inches by 1½ inches). There is no fee for a Form I–821 filed as part of the re-registration application. If the applicant requests employment authorization documentation, he or she must submit one hundred and twenty dollars ($120) or a properly documented fee waiver request, pursuant to 8 CFR 244.20, with the Form I–765. An applicant who does not request employment authorization documentation must nonetheless file Form I–765 along with Form I–821, but is not required to submit the fee. The fifty-dollar ($50) fingerprint fee is required only for children beneficiaries of TPS who have reached the age of 14 but were not previously fingerprinted. Failure to re-register without good cause will result in the withdrawal of TPS. 8 CFR 244.17(c). Some persons who had not previously applied for TPS may be eligible for late initial registration under 8 CFR 244.2.

(5) At least 60 days before this extension terminates on November 2, 2003, the Attorney General will review conditions in Sierra Leone and determine whether the conditions for TPS designation continue to be met. Notice of that determination, including the basis for the determination, will be published in the **Federal Register**. 8 U.S.C. 1254a(b)(3).

(6) Information concerning the extension of the TPS program for Sierra Leone will be available at local Service offices upon publication of this notice and through the Immigration and Naturalization Service National Customer Service Center at 1–800–375–5283. This information will also be published on the INS web site at *http://www.ins.usdoj.gov*.

Dated: October 28, 2002.

John Ashcroft,

Attorney General.

[FR Doc. 02–27796 Filed 10–30–02; 8:45 am]

BILLING CODE 4410–10–P

MORRIS K. UDALL SCHOLARSHIP AND EXCELLENCE IN NATIONAL ENVIRONMENTAL POLICY FOUNDATION

Notice of Federal Advisory Committee Meeting

AUTHORITY: 5 U.S.C. Appendix; 20 U.S.C. 5601–5609.

AGENCY: U.S. Institute for Environmental Conflict Resolution, Morris K. Udall Foundation

ACTION: Notice of meeting.

SUMMARY: The National Environmental Conflict Resolution (ECR) Advisory Committee, of the U.S. Institute for Environmental Conflict Resolution, will conduct a public meeting on Tuesday and Wednesday, November 19–20, 2002, at the Pima-Catalina meeting rooms of the Windmill Inn of Tucson, 4250 N. Campbell Avenue, Tucson, AZ 85718. The meeting will occur from 8 a.m. to approximately 5 p.m. on November 19, and from 8 a.m. to approximately 3 p.m. on November 20.

Members of the public may attend the meeting in person. Seating is limited and is available on a first-come, first-served basis. During this meeting, the Committee will discuss: Committee organizational details; background on the Institute; opportunities and challenges for the Institute; use of ECR processes and collaborative decision making in relation to National Environmental Policy Act requirements; best practices for ECR; and follow-up work for the Committee and Institute staff. A site visit and discussion of natural resource management and NEPA during the afternoon of November 19, 2002, is anticipated. The location of the site visit will be announced at the meeting.

Members of the public may make oral comments at the meeting or submit written comments. In general, each individual or group making an oral presentation will be limited to five minutes, and total oral comment time will be limited to one-half hour each day. Written comments may be submitted by mail or by e-mail to *memerson@ecr.gov*. Written comments received in the Institute office far enough in advance of a meeting may be provided to the Committee prior to the meeting; comments received too near the meeting date to allow for distribution will normally be provided to the Committee at the meeting. Written comments may be provided to the Committee until the time of the meeting. Comments submitted during or after the meeting will be accepted but may not be provided to the Committee until after that meeting.

FOR FURTHER INFORMATION: Any member of the public who desires further information concerning the meeting or wishes to submit oral or written comments should contact Melanie Emerson, Program Associate, U.S. Institute for Environmental Conflict Resolution, 110 S. Church Avenue, Suite 3350, Tucson, AZ 85701; phone (520) 670–5299, fax (520) 670–5530, or e-mail at *memerson@ecr.gov*. Requests to make oral comments must be in writing (or by e-mail) to Ms. Emerson and be received no later than 5 p.m. Mountain Standard Time on Tuesday, November 12, 2002. Copies of the draft meeting agenda may be obtained from Ms. Emerson at the address, phone and e-mail address listed above.

Dated: October 24, 2002.

Christopher L. Helms,

Executive Director, Morris K. Udall Scholarship and Excellence in National Environmentol Policy Foundation, and Federal Register Liaison Officer.

[FR Doc. 02–27651 Filed 10–30–02; 8:45 am]

BILLING CODE 6820–FN–P

NUCLEAR REGULATORY COMMISSION

[IA 02–018]

In the Matter of Mr. Kenneth M. Baab; Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately)

I

Mr. Kenneth M. Baab (Mr. Baab) is Vice President of Advanced Medical

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Imaging and Nuclear Services (AMINS). AMINS is the holder of Byproduct Nuclear Material License No. 37–30603–01 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 30. The license authorizes AMINS to possess and use any byproduct material listed in 10 CFR 35.100 and 10 CFR 35.200. The license was issued on February 16, 2001, and is due to expire on February 28, 2011.

II

On November 30, 2001, the NRC conducted an inspection at AMINS. During the inspection, violations of NRC requirements were identified. The most significant violations involved the receipt, possession, and use of NRC licensed material between March 2001 and November 2001, without an Authorized User (AU) and Radiation Safety Officer (RSO) at the facility, contrary to 10 CFR 35.11(a) and 10 CFR 35.21. As a result of this finding, the NRC issued a Confirmatory Action Letter (CAL) on December 3, 2001, confirming AMINS commitment, in part, to: (1) Immediately place all byproduct material in its possession in secured storage; and (2) cease all licensed activities until AMINS retained an AU and RSO, and received approval (via a license amendment from the NRC) for the changes to bring the licensee's program into full compliance with 10 CFR part 35. The NRC subsequently issued an Order Suspending the license on December 14, 2001, as well as a Demand for Information on December 21, 2001, requesting information, in part, as to why the license should not be revoked.

Between December 5, 2001 and March 27, 2002, the NRC Office of Investigations conducted an investigation of activities at the AMINS facility. During the investigation, the NRC determined that, (1) Mr. Babb, the AMINS Vice President (VP), and another individual (the Chief Operating Officer (COO)) operated the AMINS facility with the knowledge that the facility did not have an AU and RSO in deliberate violation of NRC regulations; (2) Mr. Babb and the COO knowingly caused false and misleading information to be provided to a radiopharmaceutical company to acquire the radiopharmaceuticals needed for diagnostic testing of AMINS patients; and (3) the records maintained by AMINS were inaccurate, since they named a physician as the AU, when, in fact, the individual was not acting as the AU. The evidence to support these conclusions include:

- The AMINS VP prepared the NRC license application in October 2000, with the aid of a consulting physicist, and named an individual as the AU and RSO on the application; however, the individual named on the application stated that he was never employed by AMINS and never performed the duties of the AU and RSO at AMINS.
- In March 2001, AMINS staff began performing licensed activities, including ordering and administering radiopharmaceuticals to patients on approximately 590 occasions between June 2001 and November 2001, using the name of an individual as the requesting AU who, in fact, was not the AU and had never been hired by AMINS.
- In October 2001, a consulting physicist conducted an audit that revealed that the duties of the AU/RSO had not been performed, and he briefed Mr. Babb and the COO regarding the problem at the end of the audit, yet NRC licensed activities continued until the NRC inspection on November 30, 2001.
- Mr. Babb, when interviewed by the OI investigator, admitted that he knew the facility was required to have an AU and RSO and knew that it was a problem in June 2001, but Mr. Babb did not take action to cease all licensed activities. In addition, he admitted to the OI investigator that there were financial considerations associated with keeping the facility open.

III

The NRC's requirements in 10 CFR 30.10(a)(1) prohibit an employee of a licensee from engaging in deliberate misconduct that causes or, but for detection, would have caused, a licensee to be in violation of any rule, regulation, or order, or any term, condition, or limitation of any license, issued by the Commission. 10 CFR 35.11 requires, in part, that a person shall not use byproduct material for medical use except in accordance with a specific license or under the supervision of an authorized user as provided in 10 CFR 35.25. 10 CFR 35.21(a) requires that a licensee shall appoint a Radiation Safety Officer responsible for implementing the radiation safety program. Further, 10 CFR 30.9 requires, in part, that information required to be maintained by the license shall be complete and accurate in all material respects.

Based on the inspection and investigation, the NRC has concluded that Mr. Baab, as the VP of AMINS, violated 10 CFR 30.10. Specifically, Mr. Baab violated 10 CFR 30.10(a)(1) in that he engaged in deliberate misconduct that caused the Licensee to violate NRC requirements by: (1) Operating the AMINS facility without an AU, contrary to 10 CFR 35.11; (2) operating the AMINS facility without an RSO, contrary to 10 CFR 35.21(a); and (3) maintaining inaccurate records, contrary to 10 CFR 30.9, in that the records (which were used to order the radioactive material from a radiopharmacy) indicated that the material was being ordered by a physician listed as the AU, when in fact, the individual had never been employed by the licensee. The violations are significant because, by allowing licensed activities to continue even though he knew that AMINS did not have an AU and RSO, Mr. Babb's actions created the potential for unnecessary radiation exposures to workers and members of the public.

IV

The NRC must be able to rely on the Licensee, and Licensee employees, to comply with NRC requirements, including the requirement to provide information that is complete and accurate in all material respects. Mr. Baab's deliberate violation of Commission regulations raises serious questions as to whether he can be relied upon to comply with NRC requirements including the maintenance of complete and accurate information.

Consequently, I lack the requisite reasonable assurance that licensed activities can be conducted in compliance with the Commission's requirements and that the health and safety of the public would be protected if Kenneth M. Baab were permitted at this time to be involved in NRC-licensed activities. Therefore, the NRC has determined that the public health, safety and interest require that Kenneth M. Baab be prohibited from any involvement in NRC-licensed activities for a period of one year. Since licensed activities at AMINS ceased on December 14, 2001, with the NRC issuance of the Order Suspending License, and since Mr. Babb has not been involved in licensed activities since that time, the one-year prohibition period will retroactively begin on December 14, 2001, and end on December 14, 2002. However, if Kenneth M. Baab is currently involved in NRC-licensed activities at any NRC licensed facility, Mr. Baab must immediately cease such activities, and inform the NRC of the name, address and telephone number of the employer, and provide a copy of this Order to the employer. Additionally, Mr. Baab is required to notify the NRC of his first employment in NRC-licensed activities following the one-year prohibition period.

Pursuant to 10 CFR 2.202, I find that the significance of Mr. Baab's conduct described above is such that the public health, safety and interest require that this Order be immediately effective.

V

Accordingly, pursuant to Sections 81, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR 30.10, and 10 CFR 150.20, it is hereby ordered, effective immediately, that:

1. Kenneth M. Baab is prohibited from engaging in NRC-licensed activities for one year effective from December 14, 2001. NRC-licensed activities are those activities that are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20.

2. If Kenneth M. Baab is currently involved in NRC-licensed activities, Mr. Baab must immediately cease such activities, and inform the NRC of the name, address and telephone number of the employer, and provide a copy of this Order to the employer.

3. For a period of one year after the one-year period of prohibition has expired, Mr. Baab shall, within 20 days of his acceptance of each employment offer involving NRC-licensed activities, as defined in Paragraph V.1 above, provide notice to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, of the name, address, and telephone number of the employer or the entity where he is, or will be, involved in the NRC-licensed activities. In the first notification, Mr. Baab shall include a statement of his commitment to compliance with regulatory requirements and the basis why the Commission should have confidence that he will now comply with applicable NRC requirements.

The Director, Office of Enforcement, may, in writing, relax or rescind any of the above conditions upon demonstration by Mr. Baab of good cause.

VI

In accordance with 10 CFR 2.202, Kenneth M. Baab must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Mr. Baab or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Attn: Chief, Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, to the Regional Administrator, NRC Region I, U.S. Nuclear Regulatory, 475 Allendale Road, King of Prussia, Pennsylvania 19406, and to Mr. Baab if the answer or hearing request is by a person other than Mr. Baab. Because of continuing disruptions in delivery of mail to United States Government offices, it is requested that answers and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov* and also to the Assistant General Counsel either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. If a person other than Mr. Baab requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).[1]

If a hearing is requested by Mr. Baab or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), the licensee may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section V above shall be final twenty (20) days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section V shall be final when the extension expires if a hearing request has not been received. An answer or a request for hearing shall not stay the immediate effectiveness of this order.

Dated: Dated this 22nd day of October 2002.

For the Nuclear Regulatory Commission.

Carl J. Paperiello,

Deputy Executive Director for Materials, Research, and State Programs.

[FR Doc. 02–27698 Filed 10–30–02; 8:45 am]

BILLING CODE 7590–01–P

[1] The most recent version of Title 10 of the Code of Federal Regulations, published January 1, 2002, inadvertently omitted the last sentence of 10 CFR 2.714(d) and paragraphs (d)(1) and (2), regarding petitions to intervene and contentions. For the complete, corrected text of 10 CFR 2.714(d), please see 67 FR 20884; April 29, 2002.

NUCLEAR REGULATORY COMMISSION

[IA 02–019]

In the Matter of Mr. Chitranjan Patel; Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately)

I

Mr. Chitranjan Patel (Mr. Patel) is the Chief Operating Officer of Advanced Medical Imaging and Nuclear Services (AMINS). AMINS is the holder of Byproduct Nuclear Material License No. 37–30603–01 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR part 30. The license authorizes AMINS to possess and use any byproduct material listed in 10 CFR 35.100 and 10 CFR 35.200. The license was issued on February 16, 2001, and is due to expire on February 28, 2011.

II

On November 30, 2001, the NRC conducted an inspection at AMINS. During the inspection, violations of NRC requirements were identified. The most significant violations involved the receipt, possession, and use of NRC licensed material between March 2001 and November 2001, without an Authorized User (AU) and a Radiation Safety Officer (RSO) at the facility, contrary to 10 CFR 35.11(a) and 10 CFR 35.21. As a result of this finding, the NRC issued a Confirmatory Action Letter (CAL) on December 3, 2001, confirming AMINS commitment, in

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part, to: (1) Immediately place all byproduct material in its possession in secured storage; and (2) cease all licensed activities until AMINS retained an AU and RSO, and received approval (via a license amendment from the NRC) for the changes to bring the licensee's program into full compliance with 10 CFR part 35. The NRC subsequently issued an Order Suspending the license on December 14, 2001, as well as a Demand for Information on December 21, 2001, requesting information, in part, as to why the license should not be revoked.

Between December 5, 2001 and March 27, 2002, the NRC Office of Investigations conducted an investigation of activities at the AMINS facility. During the investigation, the NRC determined that: (1) Mr. Patel, the Chief Operating Officer (COO), and another individual (the Vice President (VP)) operated the AMINS facility with the knowledge that the facility did not have an AU and RSO in deliberate violation of NRC regulations; (2) Mr. Patel and the VP knowingly caused false and misleading information to be provided to a radiopharmaceutical company to acquire the radiopharmaceuticals needed for diagnostic testing of AMINS patients; and (3) the records maintained by AMINS were inaccurate, since they named a physician as the AU, when, in fact, the individual was not acting as the AU. The evidence to support these conclusions include:

- In March 2001, AMINS staff began performing licensed activities including ordering and administering radiopharmaceuticals to patients on approximately 590 occasions between June 2001 and November 2001, using the name of an individual as the requesting AU who, in fact, was not the AU and had never been hired by AMINS.
- In October 2001, a consulting physicist conducted an audit that revealed that the duties of the AU/RSO had not been performed, and he briefed Mr. Patel and the VP regarding the problem at the end of the audit, yet NRC licensed activities continued until the NRC inspection on November 30, 2001.
- Mr. Patel, when interviewed by the OI investigator, admitted that he knew the facility was required to have an AU and RSO and knew that it was a problem in June 2001, but Mr. Patel did not take action to cease all licensed activities. In addition, he admitted to the OI investigator that there were financial considerations associated with keeping the facility open.

III

The NRC's requirements in 10 CFR 30.10(a)(1) prohibit an employee of a license from engaging in deliberate misconduct that causes or, but for detection, would have caused, a licensee to be in violation of any rule, regulation, or order, or any term, condition, or limitation of any license, issued by the Commission. 10 CFR 35.11 requires, in part, that a person shall not use byproduct material for medical use except in accordance with a specific license or under the supervision of an AU as provided in 10 CFR 35.25. 10 CFR 35.21(a) requires that a licensee shall appoint an RSO responsible for implementing the radiation safety program. Further, 10 CFR 30.9 requires, in part, that information required to be maintained by the license shall be complete and accurate in all material respects.

Based on the inspection and investigation, the NRC has concluded that Mr. Patel, as the COO of AMINS, violated 10 CFR 30.10. Specifically, Mr. Patel violated 10 CFR 30.10(a)(1) in that he engaged in deliberate misconduct that caused the Licensee to violate NRC requirements by: (1) Operating the AMINS facility without an AU, contrary to 10 CFR 35.11; (2) operating the AMINS facility without an RSO, contrary to 10 CFR 35.21 (a); and (3) maintaining inaccurate records, contrary to 10 CFR 30.9, in that the records (which were used to order the radioactive material from a radiopharmacy) indicated that the material was being ordered by a physician listed as the AU, when in fact, the individual had never been employed by the licensee. These violations are significant because, by allowing licensed activities to continue even though he knew that AMINS did not have an AU and RSO, Mr. Patel's actions created the potential for unnecessary radiation exposures to workers and members of the public.

IV

The NRC must be able to rely on the Licensee, and Licensee employees, to comply with NRC requirements, including the requirement to provide information that is complete and accurate in all material respects. Mr. Patel's deliberate violation of Commission regulations, raises serious questions as to whether he can be relied upon to comply with NRC requirements, including the maintenance of complete and accurate information.

Consequently, I lack the requisite reasonable assurance that licensed activities can be conducted in compliance with the Commission's requirements and that the health and safety of the public would be protected if Chitranjan Patel were permitted at this time to be involved in NRC-licensed activities. Therefore, the NRC has determined that the public health, safety and interest require that Chitranjan Patel be prohibited from any involvement in NRC-licensed activities for a period of one year. Since licensed activities at AMINS ceased on December 14, 2001, with the NRC issuance of the Order Suspending License, and since Mr. Patel has not been involved in licensed activities since that time, the one-year prohibition period will retroactively begin on December 14, 2001, and end on December 14, 2002. However, if Chitranjan Patel is currently involved in NRC-licensed activities at any NRC licensed facility, Mr. Patel must immediately cease such activities, and inform the NRC of the name, address and telephone number of the employer, and provide a copy of this Order to the employer. Additionally, Mr. Patel is required to notify the NRC of his first employment in NRC-licensed activities following the one-year prohibition period.

Pursuant to 10 CFR 2.202, I find that the significance of Mr. Patel's conduct described above is such that the public health, safety and interest require that this Order be immediately effective.

V

Accordingly, pursuant to Sections 81, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR 30.10, and 10 CFR 150.20, It Is Hereby Ordered, Effective Immediately, That:

1. Chitranjan Patel is prohibited from engaging in NRC-licensed activities for one year effective from December 14, 2001. NRC-licensed activities are those activities that are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20.

2. If Chitranjan Patel is currently involved in NRC-licensed activities, Mr. Patel must immediately cease such activities, and inform the NRC of the name, address and telephone number of the employer, and provide a copy of this Order to the employer.

3. For a period of one year after the one-year period of prohibition has expired, Mr. Patel shall, within 20 days of his acceptance of each employment offer involving NRC-licensed activities, as defined in Paragraph V.1 above, provide notice to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, of the name, address, and telephone number of the employer or the entity where he is, or will be, involved in the NRC-licensed activities. In the first notification, Mr. Patel shall include a statement of his commitment to compliance with regulatory requirements and the basis why the Commission should have confidence that he will now comply with applicable NRC requirements.

The Director, Office of Enforcement, may, in writing, relax or rescind any of the above conditions upon demonstration by Mr. Patel of good cause.

VI

In accordance with 10 CFR 2.202, Chitranjan Patel must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Mr. Patel or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, *Attn:* Chief, Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, to the Regional Administrator, NRC Region I, U.S. Nuclear Regulatory, 475 Allendale Road, King of Prussia, Pennsylvania 19406, and to Mr. Patel if the answer or hearing request is by a person other than Mr. Patel. Because of continuing disruptions in delivery of mail to United States Government offices, it is requested that answers and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to (301) 415–1101 or by e-mail to hearingdocket@nrc.gov and also to the Assistant General Counsel either by means of facsimile transmission to (301) 415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. If a person other than Mr. Patel requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).[1]

If a hearing is requested by Mr. Patel or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), the licensee may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final twenty (20) days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received. An Answer or a Request for Hearing Shall Not Stay the Immediate Effectiveness of This Order.

Dated this 22nd day of October, 2002.

For the Nuclear Regulatory Commission.

Carl J. Paperiello,

Deputy Executive Director for Materials, Research, and State Programs.

[FR Doc. 02–27699 Filed 10–30–02; 8:45 am]

BILLING CODE 7590–01–P

[1] The most recent version of Title 10 of the Code of Federal Regulations, published January 1, 2002, inadvertently omitted the last sentence of 10 CFR 2.714(d) and paragraphs (d)(1) and (2), regarding petitions to intervene and contentions. For the complete, corrected text of 10 CFR 2.714(d), please see 67 FR 20884; April 29, 2002.

COMMISSION ON OCEAN POLICY

Public Meeting

AGENCY: Commission on Ocean Policy.

ACTION: Notice.

SUMMARY: The U.S. Commission on Ocean Policy will hold a meeting to discuss the development of recommendations for a coordinated national ocean policy. This will be the thirteenth public Commission meeting.

DATES: The public meeting will be held Friday, November 22, 2002, from 8:30 a.m. to 6 p.m.

ADDRESSES: The meeting location is the Amphitheater, Ronald Reagan Building and International Trade Center, 1300 Pennsylvania Ave, NW., Washington DC 20004.

FOR FURTHER INFORMATION CONTACT: Terry Schaff, U.S. Commission on Ocean Policy, 1120 20th Street, NW., Washington, DC, 20036, 202–418–3442, *schaff@oceancommission.gov*.

SUPPLEMENTARY INFORMATION: This meeting is being held pursuant to requirements under the Oceans Act of 2000 (Public Law 106–256, section 3(e)(1)(E)). The agenda will include discussions of policy options, presentations by invited speakers, a public comment session, and any required administrative discussions and executive sessions. Invited speakers and members of the public are requested to submit their statements for the record electronically by Wednesday, November 13, 2002 to the meeting Point of Contact. The meeting agenda, including the specific time for the public comment period, and guidelines for making public comments will be posted on the Commission's website at *http://www.oceancommission.gov* prior to the meeting.

Dated: October 25, 2002.

Thomas R. Kitsos,

Executive Director, U.S. Commission on Ocean Policy.

[FR Doc. 02–27738 Filed 10–30–02; 8:45 am]

BILLING CODE 6820–WM–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–25788]

Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

October 25, 2002.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of October 2002. A copy of each application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth St., NW, Washington, DC 20549–0102 (tel. (202) 942–8090). An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any

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application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 19, 2002, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary, SEC, 450 Fifth Street, NW, Washington, DC 20549–0609. For Further Information Contact: Diane L. Titus at (202) 942–0564, SEC, Division of Investment Management, Office of Investment Company Regulation, 450 Fifth Street, NW., Washington, DC 20549–0506.

Lepercq-Istel Trust [File No. 811–631]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On July 9, 2002, applicant transferred its assets to The Tocqueville Trust, based on net asset value. Expenses of $37,735 incurred in connection with the reorganization were paid by Tocqueville Asset Management L.P., investment adviser to the acquiring fund.

Filing Dates: The application was filed on August 20, 2002, and amended on October 9, 2002.

Applicant's Address: 1675 Broadway, New York, NY 10019.

Pioneer Global Financials Fund [File No. 811–10107]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On August 23, 2002, applicant made a liquidating distribution to its shareholders based on net asset value. Expenses of $19,050 incurred in connection with the liquidation were paid by Pioneer Investment Management, Inc., applicant's investment adviser.

Filing Date: The application was filed on October 3, 2002.

Applicant's Address: 60 State St., Boston, MA 02109.

Tax Free Money Portfolio [File No. 811–6074]

Summary: Applicant, a master fund in a master-feeder structure, seeks an order declaring that it has ceased to be an investment company. On April 27, 2001, applicant distributed its portfolio securities in-kind to the Tax Free Money Fund, applicant's single corresponding feeder fund, thereby dissolving the master-feeder structure. Expenses of $2,000 incurred in connection with the conversion were paid by the Tax Free Money Fund.

Filing Date: The application was filed on October 3, 2002.

Applicant's Address: One South St., Baltimore, MD 21202.

Pioneer Gold Shares [File No. 811–8661]

Pioneer Global Telecoms Fund [File No. 811–10105]

Pioneer Global Health Care Fund [File No. 811–10109]

Summary: Each applicant seeks an order declaring that it has ceased to be an investment company. On October 29, 1999, August 23, 2002, and August 23, 2002, respectively, each applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of $22,100, $19,050 and $19,050, respectively, incurred in connection with the liquidations were paid by Pioneer Investment Management, Inc., investment adviser to each applicant.

Filing Date: The applications were filed on October 4, 2002.

Applicants' Address: 60 State St., Boston, MA 02109.

Mosaic Focus Fund Trust [File No. 811–7473]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On July 1, 2002, applicant transferred its assets to The Investors Fund series of Mosaic Equity Trust, based on net asset value. Expenses of $8,000 incurred in connection with the reorganization were paid by Madison Mosaic, LLC, applicant's investment adviser.

Filing Date: The application was filed on October 1, 2002.

Applicant's Address: 550 Science Dr., Madison, WI 53711.

GAM Avalon Multi-Technology, LLC [File No. 811–10243]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On July 24, 2002, applicant made a final liquidating distribution to its shareholders, based on net asset value. Applicant incurred no expenses in connection with the liquidation.

Filing Date: The application was filed on September 20, 2002.

Applicant's Address: c/o Global Asset Management (USA) Inc., 135 East 57th St., New York, NY 10022.

Merrill Lynch Municipal Strategy Fund, Inc. [File No. 811–7203]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On November 19, 2001, applicant transferred its assets to MuniYield Fund, Inc., based on net asset value. Senior security holders were issued a liquidation preference of $25,000 per share, and the remaining net assets were distributed to the holders of common stock on a pro rata basis. Expenses of $141,755 incurred in connection with the reorganization were paid by applicant and the acquiring fund.

Filing Date: The application was filed on September 25, 2002.

Applicant's Address: Merrill Lynch Investment Managers, L.P., 800 Scudders Mill Rd., Plainsboro, NJ 08536.

Putnam Balanced Retirement Fund [File No. 811–4242]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On September 23, 2002, applicant transferred its assets to The George Putnam Fund of Boston, based on net asset value. Expenses of approximately $432,107 incurred in connection with the reorganization were paid by applicant and the acquiring fund.

Filing Date: The application was filed on September 27, 2002.

Applicant's Address: One Post Office Sq., Boston, MA 02109.

Putnam Global Equity Fund [File No. 811–7615]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On September 23, 2002, applicant transferred its assets to Putnam Global Growth Fund, based on net asset value. Expenses of approximately $570,523 incurred in connection with the reorganization were paid by applicant, the acquiring fund and Putnam Investment Management, LLC, applicant's investment adviser.

Filing Date: The application was filed on September 27, 2002.

Applicant's Address: One Post Office Sq., Boston, MA 02109.

Credit Suisse International Small Company Fund, Inc. [File No. 811–8737]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On May 10, 2002, applicant transferred its assets to Credit Suisse International Focus Fund, Inc., based on net asset value. Expenses of approximately $115,024 incurred in connection with the reorganization were paid by Credit Suisse Asset Management, LLC, applicant's investment adviser, or its affiliates.

Filing Date: The application was filed on September 27, 2002.

Applicant's Address: 466 Lexington Ave., New York, NY 10017.

Credit Suisse International Equity Fund, Inc. [File No. 811–5785]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On April 26, 2002, applicant transferred its assets to Credit Suisse International Focus Fund, Inc., based on net asset value. Expenses of approximately $278,728 incurred in connection with the reorganization were paid by Credit Suisse Asset Management, LLC, applicant's investment adviser, or its affiliates.

Filing Date: The application was filed on September 27, 2002.

Applicant's Address: 466 Lexington Ave., New York, NY 10017.

Credit Suisse Balanced Fund, Inc. [File No. 811–7517]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On April 12, 2002, applicant transferred its assets to Credit Suisse Large Cap Value Fund, a series of Credit Suisse Capital Funds, based on net asset value. Expenses of approximately $139,749 incurred in connection with the reorganization were paid by Credit Suisse Asset Management, LLC, applicant's investment adviser, or its affiliates.

Filing Date: The application was filed on September 27, 2002.

Applicant's Address: 466 Lexington Ave., New York, NY 10017.

Credit Suisse Japan Small Cap Fund, Inc. [File No. 811–8686]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On April 26, 2002, applicant transferred its assets to Credit Suisse Japan Growth Fund, Inc., based on net asset value. Expenses of approximately $322,167 incurred in connection with the reorganization were paid by Credit Suisse Asset Management, LLC, applicant's investment adviser, or its affiliates.

Filing Date: The application was filed on September 27, 2002.

Applicant's Address: 466 Lexington Ave., New York, NY 10017.

NY Tax Free Money Portfolio [File No. 811–6075]

Summary: Applicant, a master fund in a master-feeder structure, seeks an order declaring that it has ceased to be an investment company. On April 27, 2001, applicant distributed its portfolio securities in-kind to NY Tax Free Money Fund, applicant's single corresponding feeder fund, thereby dissolving the master-feeder structure. Expenses of $2,000 incurred in connection with the conversion were paid by NY Tax Free Money Fund.

Filing Dates: The application was filed on September 3, 2002, and amended on October 3, 2002.

Applicant's Address: One South Street, Baltimore, MD 21202.

Capital Appreciation Portfolio [File No. 811–7408]

Summary: Applicant, a master fund in a master-feeder structure, seeks an order declaring that it has ceased to be an investment company. On March 28, 2002, applicant distributed its portfolio securities in-kind to Mid Cap Fund, applicant's single corresponding feeder fund, thereby dissolving the master-feeder structure. Expenses of $2,000 incurred in connection with the conversion were paid by Mid Cap Fund.

Filing Dates: The application was filed on September 3, 2002, and amended on October 3, 2002.

Applicant's Address: One South Street, Baltimore, MD 21202.

MuniHoldings Michigan Insured Fund II, Inc. [File No. 811–9483]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On June 14, 2002, applicant transferred its assets to MuniYield Michigan Insured Fund II, Inc. (formerly MuniYield Michigan Fund, Inc.) based on net asset value. Applicant's shareholders who held auction market preferred stock ("AMPS") received the equivalent number of newly issued shares of an existing series of AMPS of the acquiring fund. Expenses of $487,030 incurred in connection with the reorganization were paid by the acquiring fund.

Filing Dates: The application was filed on August 7, 2002, and amended on October 4, 2002.

Applicant's Address: Merrill Lynch Investment Managers, L.P., 800 Scudders Mill Rd., Plainsboro, NJ 08536.

Merrill Lynch KECALP L.P. 1991 [File No. 811–6287]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. By July 17, 2002, all assets of applicant had been distributed to the partners of applicant, based on net asset value. Applicant has retained $35,400 in cash to pay the expenses incurred in connection with the liquidation.

Filing Dates: The application was filed on August 16, 2002, and amended on October 10, 2002, and October 22, 2002.

Applicant's Address: 4 World Financial Center, 23rd Floor, New York, NY 10080.

Transamerica Variable Insurance Fund, Inc. [File No. 811–09126]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On April 30, 2002, pursuant to an agreement approved by the Applicant's shareholders, Applicant transferred all of the assets of each of its three portfolios to a corresponding successor portfolio of AEGON/Transamerica Series Fund (the "Trust"), based on net asset value. Expenses of approximately $105,632 were incurred in connection with the merger and were paid by AEGON/Transamerica Fund Advisers, the investment adviser of the Trust.

Filing Date: The application was filed on August 30, 2002.

Applicant's Address: 1150 South Olive Street, Los Angeles, California 90015–2211.

Endeavor Series Trust [File No. 811–5780]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On April 30, 2002, pursuant to an agreement approved by the Applicant's shareholders, Applicant transferred all of the assets of each of its fourteen portfolios to a corresponding successor portfolio of AEGON/Transamerica Fund (the "Trust"), based on net asset value. Expenses of approximately $162,593 were incurred in connection with the merger and were paid by AEGON Advisers, the investment adviser of the Trust.

Filing Date: The application was filed on July 17, 2002.

Applicant's Address: 4333 Edgewood Road NE, Cedar Rapids, IA 52499–4520.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–27664 Filed 10–30–02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–25785; 812–12824]

MLIG Variable Insurance Trust, et al.; Notice of Application

October 24, 2002.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of application for an order under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from section 15(a) of the Act and rule 18–2 under the Act.

SUMMARY OF APPLICATION: Applicants request an order that would permit them to enter into and materially amend subadvisory agreements without shareholder approval.

APPLICANTS: MLIG Variable Insurance Trust (the "Trust") and Roszel Advisors, LLC (the "Adviser").

FILING DATES: The application was filed on May 15, 2002 and amended on October 23, 2002.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on November 18, 2002 and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, Barry G. Skolnick, Esq., Merrill Lynch Insurance Group, Inc., 7 Roszel Road, Princeton, NJ 08540.

FOR FURTHER INFORMATION CONTACT; Jaea F. Hahn, Senior Counsel, at (202) 942–0614, or Todd F. Kuehl, Branch Chief, at (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION; The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street NW., Washington, DC 20549–0102 (tel. (202) 942–8090).

Applicants' Representations

1. The Trust is a Delaware business trust registered under the Act as an open-end management investment company. The Trust is comprised of twenty-seven separate series (each a "Portfolio", and collectively, the "Portfolios"), each with its own investment objectives and policies.[1] Shares representing interests in each Portfolio are offered solely to separate accounts of Merrill Lynch Life Insurance Company ("MLLIC") and Merrill Lynch Life Insurance Company of New York ("MLLICNY") as funding vehicles for certain variable annuity insurance contracts issued by them, and may, in the future, be offered as funding vehicles to separate accounts for variable annuity contracts or variable life insurance contracts issued by MLLIC, MLLICNY or other insurance companies.

2. The Adviser, a Delaware limited liability company, is registered as an investment adviser under the Investment Advisers Act of 1940 ("Advisers Act"). The Trust has entered into an investment advisory agreement with the Adviser with respect to each of the Portfolios (the "Management Agreement"), which was approved by the board of trustees of the Trust ("Board"), including a majority of the trustees who are not "interested persons" as defined in section 2(a)(19) of the Act (the "Independent Trustees"), and by each Portfolio's shareholders. Under the terms of the Management Agreement, the Adviser manages the assets of the Portfolios and may hire one or more subadvisers ("Subadvisers") to exercise day-to-day portfolio management of each of the Portfolios pursuant to separate investment advisory agreements ("Subadvisory Agreements"). All current and future Subadvisers will be registered or exempt from registration under the Advisers Act. The Adviser selects each Subadviser, subject to approval by the respective Board, and compensates each Subadviser out of the fees paid to the Adviser by the Portfolio.

3. The Adviser monitors the performance of each Subadviser and the Portfolio as a whole and makes recommendations to the Board regarding allocation, and reallocation, of assets between Subadvisers. The Adviser also is responsible for recommending the hiring, termination and replacement of Subadvisers. The Adviser recommends Subadvisers based on a number of factors used to evaluate their skills in managing assets pursuant to particular investment objectives.

4. Applicants request an order to permit the Adviser, subject to the oversight of the Board, to enter into and materially amend Subadvisory Agreements without shareholder approval. The requested relief will not extend to a Subadviser that is an "affiliated person" (as defined in section 2(a)(3) of the Act) of the Trust or the Adviser, other than by reason of serving as a Subadviser to one or more of the Portfolios ("Affiliated Subadviser").

Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in relevant part, that it is unlawful for any person to act as an investment adviser to a registered investment company except under a written contract that has been approved by the vote of a majority of the company's outstanding voting securities. Rule 18f-2 under the Act provides that each series or class of stock in a series company affected by a matter must approve such matter if the Act requires shareholder approval.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provision of the Act, or from any rule thereunder, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants believe the requested relief meets this standard for the reasons discussed below.

3. Applicants assert that each Portfolio's shareholders are relying on the Adviser's experience to select, monitor and replace Subadvisers. Applicants assert that, from the perspective of the shareholder, the role of the Subadvisers is comparable to that of individual portfolio managers employed by other investment advisory firms. Applicants contend that requiring shareholder approval of Subadvisory Agreements would impose costs and unnecessary delays on the Portfolios, and may preclude the Adviser from acting promptly in a manner considered advisable by the Board. Applicants note that the Management Agreement will remain subject to the shareholder approval requirements of section 15(a) of the Act and rule 18f-2 under the Act.

Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. Before a Portfolio may rely on the requested order, the operation of the Portfolio in the manner described in the application will be approved by a majority of the Portfolio's outstanding voting securities (or, if the Portfolio serves as a funding medium for any sub-account of a registered separate account, pursuant to voting instructions provided by the owners of variable annuity and variable life insurance contracts ("Owners") who have allocated assets to that sub-account), or in the case of a Portfolio whose public shareholders (or Owners through a sub-account of a registered separate account) purchase shares on the basis of a prospectus containing the disclosure contemplated by condition 2 below, by the sole initial shareholder(s) before the shares of such Portfolio are offered to the public (or to Owners through a sub-account of a registered separate account).

2. Each Portfolio relying on the requested order will hold itself out to the public as employing the management structure described in the application. In addition, each Portfolio will disclose in its prospectus the existence, substance and effect of any order granted pursuant to the application. The prospectus will prominently disclose that the Adviser has ultimate responsibility (subject to oversight by the Board) to oversee the Subadvisers and recommend their hiring, termination and replacement.

3. Within 90 days of the hiring of any new Subadviser, the Adviser will furnish the shareholders of the relevant Portfolio (or, if the Portfolio serves as a funding medium for a sub-account of a registered separate account, the Owners who have allocated assets to that sub-account) all information about the new Subadviser that would be included in a proxy statement. To meet this condition, the Adviser will provide the shareholders (or Owners, if the Portfolio serves as a funding medium for any sub-account of a registered separate account) with an information statement meeting the requirements of Regulation 14C and Schedule 14C under the Securities Exchange Act of 1934, as well as the requirements of Item 22 of Schedule 14A under that Act.

4. The Adviser will not enter into a Subadvisory Agreement with an Affiliated Subadviser without such Subadvisory Agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Portfolio (or, if the Portfolio serves as a funding medium for any sub-account of a registered separate account, then pursuant to voting instructions of the Owners who have allocated assets to that sub-account).

5. At all times, a majority of the Board will be Independent Trustees, and the nomination of new or additional Independent Trustees will be placed within the discretion of the then existing Independent Trustees.

6. When a change of Subadviser is proposed for a Portfolio with an Affiliated Subadviser, the Board, including a majority of the Independent Trustees, will make a separate finding, reflected in the Board minutes, that such change of Subadviser is in the best interests of the Portfolio and its shareholders (or, if the Portfolio serves as a funding medium for any sub-account of a registered separate account, in the best interests of the Portfolio and the Owners who have allocated assets to the sub-account) and that the change does not involve a conflict of interest from which the Adviser or the Affiliated Subadviser derives an inappropriate advantage.

7. The Adviser will provide general management services to each Portfolio, including overall supervisory responsibility for the general management and investment of each Portfolio's assets, and, subject to review and approval by the Board, will: (a) Set each Portfolio's overall investment strategies; (b) evaluate, select and recommend Subadvisers to manage all or a part of a Portfolio's assets; (c) when appropriate, allocate and reallocate a Portfolio's assets among multiple Subadvisers; (d) monitor and evaluate the performance of Subadvisers; and (e) implement procedures reasonably designed to ensure Subadvisers comply with the related Portfolio's investment objectives, policies and restrictions.

8. No trustee or officer of the Trust or director or officer of the Adviser will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by such director, trustee or officer) any interest in a Subadviser except for ownership of (a) interests in the Adviser or any entity that controls, is controlled by, or is under common control with the Adviser; or (b) less than 1% of the outstanding securities of any class of equity or debt of a publicly-traded company that is either a Subadviser or an entity that controls, is controlled by, or is under common control with a Subadviser.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–27662 Filed 10–30–02; 8:45 am]

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[1] Applicants request that any relief granted pursuant to the application also apply to future Portfolios of the Trust, and any other registered open-end management investment company or series thereof that: (a) is advised by the Adviser or a person controlling, controlled by, or under common control with the Adviser; (b) is managed in a manner consistent with the application; and (c) complies with the terms and conditions of the requested order ("Future Portfolios", included in the term "Portfolios"). All entities that currently intend to rely on the requested relief are named as applicants. If the name of any Portfolio should, at any time, contain the name of a Subadviser (as defined below), it will also contain the name of the Adviser, which will appear before the name of the Subadviser.

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: [67 FR 65617, October 25, 2002]

STATUS: Open Meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE AND TIME OF PREVIOUSLY ANNOUNCED MEETING: Wednesday, October 30, 2002 at 10 a.m., and Thursday, October 31, 2002 at 10 a.m.

CHANGE IN THE MEETING: Cancellation of Meeting/Additional Meetings.

The Open Meeting scheduled for Thursday, October 31, 2002, has been cancelled, and rescheduled for Wednesday, November 6, 2002, at 10 a.m., in Room 6600. In addition to the Open Meeting scheduled for Wednesday, November 6, 2002, at 10 a.m., the Commission will hold Closed Meetings on Monday, November 4, 2002, at 10 a.m., and on Wednesday, November 6, 2002, immediately following the Open Meeting.

Commissioner Goldschmid, as duty officer, determined that no earlier notice thereof was possible.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meetings. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(5), (7), (9)(A), (9)(B), and (10) and 17 CFR 200.402(a)(5), (7), 9(i), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meetings.

The subject matter of the Closed Meeting scheduled for Monday, November 4, 2002 will be: formal orders of investigation; institution and settlement of injunctive actions; and institution and settlement of administrative proceedings of an enforcement nature.

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The following item previously scheduled for the Open Meeting on Thursday, October 31, 2002, at 10 a.m. is now scheduled for the Open Meeting on Wednesday, October 30, 2002, at 10 a.m.:

The Commission will consider whether to propose amendments to the definition of terms used in the exception from the definition of dealer for banks under Section 3(a)(5) of the Securities Exchange Act of 1934. The Commission will consider whether to propose amendments to the related exemption for banks, savings associations, and savings banks as well as propose a new exemption concerning securities lending. These proposals relate to the implementation of the specific exceptions for banks from the definitions of "broker" and "dealer" that were amended by the Gramm-Leach-Bliley Act.

The following item previously scheduled for the Open Meeting on Thursday, October 31, 2002, at 10 a.m., is now scheduled for the Open Meeting on Wednesday, November 6, 2002 at 10 a.m.

The Commission will consider proposed rules establishing standards of professional conduct for attorneys who appear and practice before the Commission in any way in the representation of issuers, as required by Section 307 of the Sarbanes-Oxley Act of 2002. These standards would include a rule requiring an attorney to report "evidence of a material violation of securities laws or breach of fiduciary duty or similar violation by the company or any agent thereof" to the chief legal counsel or the chief executive officer of the company (or the equivalent); and, if they do not respond appropriately to the evidence, requiring the attorney to report the evidence to the audit committee, another committee of independent directors, or the full board of directors.

The subject matter of the Closed Meeting scheduled for Wednesday, November 6, 2002 will be: settlement of injunctive actions; and adjudicatory matter.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942–7070.

Dated: October 28, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–27774 Filed 10–28–02; 5:01 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46716; File No. SR–CBOE–2002–59]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Margin Requirements for Broker-Dealer Accounts

October 24, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 25, 2002, the Chicago Board Options Exchange, Inc. ("CBOE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend its margin rule pertaining to the accounts of broker-dealers in order to establish parity with the requirements for Joint Back Office ("JBO") participants.[3] The text of the proposed rule change appears below. New text is in italics; deletions are in [brackets].

* * * * *

Chicago Board Options Exchange, Inc. Rules

CHAPTER XII

Margins

No change to Rules 12.1 and 12.2.

Rule 12.3 Margin Requirements

(a) through (f)—(no change).

(g)(i) Broker-Dealer Account. A member organization may carry the proprietary account of another broker-dealer, which is registered with the SEC, upon a margin basis which is satisfactory to both parties, provided the requirements of Regulation T of the Board of Governors of the Federal Reserve System are adhered to and the account is not carried in a deficit equity condition. The amount of any deficiency between the equity maintained in the account and the [margin required by the other provisions of this Rule] *haircut requirements calculated pursuant to Rule 15c3–1 (Net Capital) of the Exchange Act* shall be deducted in computing the Net Capital of the member organization under Rule 15c3–1 of the Exchange Act.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

CBOE is proposing a change to CBOE Rule 12.3(g)—Margin Requirements (Broker-Dealer Account). When a member organization carries the proprietary account of another broker-dealer, CBOE Rule 12.3(g)(i), in effect, exempts the account from the minimum maintenance margin requirements imposed by CBOE Rule 12.3 and allows the member organization to carry the account on a margin basis that is satisfactory to both parties. However, the rule currently requires that if account equity is below the minimum maintenance margin requirements of CBOE Rule 12.3, the carrying member organization must deduct the amount of the deficiency in computing its net capital under Rule 15c3–1 under the Act.[4] The CBOE proposes to change the amount that must be deducted for net capital purposes under Rule 12.3(g)(i) to the amount, if any, by which the equity maintained in the account is below the haircut requirements prescribed by Rule 15c3–1.

The New York Stock Exchange, Inc. ("NYSE") has a comparable rule (Rule 431(e)(6)(A)) that was amended in February 2000[5] to eliminate the maintenance margin standard and implement the haircut standard as the equity benchmark. Thus, the CBOE believes that the proposed rule change would make CBOE Rule 12.3(g) consistent with NYSE Rule 431(e)(6)(A).

NYSE Rule 431(e)(6)(A) was changed to gain consistency with NYSE Rule 431(e)(6)(B)—Joint Back Office Arrangements. In 2000, both the CBOE and NYSE instituted similar margin and net capital requirements for member organizations that carry accounts on a JBO basis. In addition, certain requirements were imposed on JBO participants, which included a broker-dealer registration requirement. The CBOE and NYSE JBO rules do not impose exchange maintenance margin requirements on JBO accounts, but instead require that the carrying firm, in computing its net capital, deduct any amount by which equity in the JBO account is below the haircut requirement. At the same time, the NYSE amended NYSE Rule 431(e)(6)(A) on the grounds that, since a JBO participant is a broker-dealer, a broker-dealer account (non-JBO) should receive the same treatment accorded the JBO account for computing a deduction to net capital. Likewise, the CBOE believes that the proposed rule change would make the treatment of broker-dealers under CBOE Rule 12.3(g) consistent with the treatment of JBO participants under the CBOE's JBO rules.[6]

2. Statutory Basis

The proposed rules are intended to harmonize the margin treatment across types of broker-dealer accounts, as well as between CBOE's rule and the analogous NYSE rule. As such, the CBOE believes that the proposed rule change is consistent with, and furthers the objectives of, Section 6(b)(5) of the Act,[7] in that it is designed to perfect the mechanism of a free and open market and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] A JBO participant purchases an ownership interest in a clearing broker-dealer. Regulation T of the Board of Governors of the Federal Reserve System permits a clearing broker-dealer to finance transactions of its JBO owners on a good faith basis rather than pursuant to the margin otherwise required by Regulation T.

[4] 17 CFR 240.15c3–1.

[5] *See* Securities Exchange Act Release No. 42453 (February 24, 2000), 65 FR 11620 (March 3, 2000) (SR–NYSE–97–28).

[6] *See* CBOE Rule 13.4(b)(3).

[7] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b-4(f)(6) thereunder[9] because the proposed rule change (1) Does not significantly affect the protection of investors or the public interest, (2) does not impose any significant burden on competition, and (3) does not become operative for 30 days from the date of filing, or such shorter time that the Commission may designate if consistent with the protection of investors and the public interest, provided that the CBOE has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the filing date of the proposed rule change.[10] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in the furtherance of the purposes of the Act.[11]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of all such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to the File No. SR–CBOE–2002–59 and should be submitted by November 21, 2002.

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b-4(f)(6).

[10] As required under Exchange Act Rule 19b-4(f)(6)(iii), the CBOE provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date.

[11] 15 U.S.C. 78s(b)(3)(C).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–27687 Filed 10–30–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46717; File No. SR–DTC–2002–12]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Enhancements to DTC's Memo Segregation Procedures

October 24, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on September 3, 2002, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of enhancements to the Memo Segregation ("Memo Seg") procedures of DTC.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change makes enhancements to DTC's existing Memo

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified parts of these statements.

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Seg process. The enhancements are as follows. First, a special reclaim reasons code will be created for free and valued deliver orders that will not affect Memo Seg. Therefore, free and valued reclaims processed with this code will not reduce the deliverer's Memo Seg. Second, a special reclaim reason code will be created for free and valued deliver orders that will reduce Memo Seg. Therefore, free and valued reclaims processed with this code will always reduce the deliverer's Memo Seg. Third, reason codes will be added to the list of exception reason codes for non-optional Memo Seg procedures. Therefore, free deliveries processed with these codes will not automatically reduce Memo Seg. Fourth, additional reason codes will be added to Memo Seg indicators. Fifth, same-day Matched Reclaims will automatically increase the Memo Seg of the receiver of the reclaim if the original delivery decreased Memo Seg regardless of the reclaim reason code. Sixth, pledges will reduce Turnaround position. All enhancements are further described in DTC's Important Notice No. 3733, Memo Segregation Enhancement, which was made available to participants starting September 5, 2002. Important Notice No. 3733 is attached as an exhibit to DTC's proposed rule change.

The proposed rule change is consistent with the requirements of section 17A of the Act and the rules and regulations thereunder applicable to DTC because it will give participants additional options in using DTC's Memo Seg procedures. The proposed rule change will be implemented consistently with the safeguarding of securities and funds in DTC's custody or control or for which it is responsible since the proposed rule change will modify DTC's existing Memo Seg procedures.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC perceives no adverse impact on competition by reason of the proposed rule change.

(C)Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments from DTC's participants have not been solicited nor received on the proposed rule change.

II. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(iii) of the Act [3] and Rule 19b–4(f)(4)[4] promulgated thereunder because the proposal effects a change in an existing service of DTC that (A) does not adversely affect the safeguarding of securities or funds in the custody or control of DTC or for which it is responsible and (B) does not significantly affect the respective rights or obligations of DTC or persons using the service. At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the DTC. All submissions should refer to the File No. SR–DTC–2002–12 and should be submitted by November 21, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–27663 Filed 10–30–02; 8:45 am]

BILLING CODE 8010–01–P

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(4).

[5] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 4187]

Office of Defense Trade Controls; Notifications to the Congress of Proposed Commercial Export Licenses

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Department of State has forwarded the attached Notifications of Proposed Export Licenses to the Congress on the dates shown on the attachments pursuant to sections 36(c) and 36(d) and in compliance with section 36(e) of the Arms Export Control Act (22 U.S.C. 2776).

EFFECTIVE DATE: As shown on each of the twenty-four letters.

FOR FURTHER INFORMATION CONTACT: Mr. William J. Lowell, Director, Office of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State (202 663–2700).

SUPPLEMENTARY INFORMATION: Section 38(e) of the Arms Export Control Act mandates that notifications to the Congress pursuant to sections 36(c) and 36(d) must be published in the **Federal Register** when they are transmitted to Congress or as soon thereafter as practicable.

Dated: November 23, 2002.

William J. Lowell,

Director, Office of Defense Trade Controls, Department of State.

U.S. Department of State

Washington, DC 20520
September 5, 2002
The Honorable J. Dennis Hastert,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the proposed permanent export of two (2) Landing Craft Air Cushion (LCAC) vessels, plus spares, warranty items and technical data for use by the Maritime Self Defense Force of the Japan Defense Agency.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 210–02.

U.S. Department of State

Washington, DC 20520
September 5, 2002
The Honorable J. Dennis Hastert,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 9001(e) of Public Law 106–79 and consistent with Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles to India.

The President made a determination in a manner consistent with Title IX of the Department of Defense Appropriations Act, Fiscal Year 2000 (Pub. L. 106–79) to waive sanctions on India in connection with the Glenn Amendment and related provisions, as reported to you by separate letter. Under Title IX, the issuance of a license for the export of defense articles or defense services to India pursuant to the waiver authority of that Title is subject to the same requirements as are applicable to the export of items described in Section 36(c) of the Arms Export Control Act and the Administration is treating authorization for the requested export consistent with these provisions.

The transaction described in the attached certification involves the export of one hundred twelve thousand (112,000) 1DT160 microdetonators for production of detonating fuses to India.

The United States Government is prepared to authorize the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 18–02.

U.S. Department of State

Washington, DC 20520
September 6, 2002
The Honorable J. Dennis Hastert,
Speaker of the House of Representatives.

Dear Mr. Speaker: Consistent with Section 36(c) of the Arms Export Control Act and Title IX of Public Law 106–79, I am transmitting, herewith, certification of a proposed license for the export of defense articles to India.

The President made a determination in a manner consistent with Title IX of the Department of Defense Appropriations Act, Fiscal Year 2000 (Pub. L. 106–79) to waive sanctions on India in connection with the Glenn Amendment and related provisions, as reported to you by separate letter. Under Title IX, the issuance of a license for the export of defense articles or defense services to India pursuant to the waiver authority of that Title is subject to the same requirements as are applicable to the export of items described in Section 36(c) of the Arms Export Control Act, and the Administration is treating authorization for the requested export consistent with these provisions.

The transaction described in the attached certification involves the employment of Indian nationals at a ground station for remote sensing satellites located in the United Arab Emirates.

The United States Government is prepared to authorize the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 37–02.

U.S. Department of State

Washington, DC 20520
September 6, 2002
The Honorable J. Dennis Hastert,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 9001(e) of Public Law 106–79 and consistent with Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles to India.

The President made a determination in a manner consistent with Title IX of the Department of Defense Appropriations Act, Fiscal Year 2000 (Pub. L. 106–79) to waive sanctions on India in connection with the Glenn Amendment and related provisions, as reported to you by separate letter. Under Title IX, the issuance of a license for the export of defense articles or defense services to India pursuant to the waiver authority of that Title is subject to the same requirements as are applicable to the export of items described in Section 36(c) of the Arms Export Control Act and the Administration is treating authorization for the requested export consistent with these provisions.

The transaction described in the attached certification involves the export of technical data, defense services, and hardware pertaining to traveling wave tubes, traveling wave tube amplifiers, electronic power conditioners, bus power electronics and electric propulsion products for satellite and satellite earth station applications to India.

The United States Government is prepared to authorize the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 45–02.

U.S. Department of State

Washington, DC 20520
September 6, 2002
The Honorable J. Dennis Hastert,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 9001(e) of Public Law 106–79 and consistent with Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles to Pakistan.

The President made a determination in a manner consistent with Title IX of the Department of Defense Appropriations Act, Fiscal Year 2000 (Pub. L. 106–79) to waive sanctions on Pakistan in connection with the Glenn Amendment and related provisions, as reported to you by separate letter. Under title IX, the issuance of a license for the export of defense articles or defense services to Pakistan pursuant to the waiver authority of that Title is subject to the same requirements as are applicable to the export of items described in Section 36(c) of the Arms Export Control Act and the Administration is treating authorization for the requested export consistent with these provisions.

The transaction described in the attached certification involves the export of miscellaneous spare parts for C–130 aircraft to Pakistan.

The United States Government is prepared to authorize the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 70–02.

U.S. Department of State

Washington, DC 20520
September 6, 2002
The Honorable J. Dennis Hastert,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 9001(e) of Public Law 106–79 and consistent with Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles to Pakistan.

The President made a determination in a manner consistent with Title IX of the Department of Defense Appropriations Act, Fiscal Year 2000 (Pub. L. 106–79) to waive sanctions on Pakistan in connection with the Glenn Amendment and related provisions, as reported to you by separate letter. Under Title IX, the issuance of a license for the export of defense articles or defense services to Pakistan pursuant to the waiver authority of that Title is subject to the same requirements as are applicable to the export of items described in Section 36(c) of the Arms Export Control Act and the Administration is treating authorization for

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the requested export consistent with these provisions.

The transaction described in the attached certification involves the re-establishment of Pakistan as an approved sales territory for depot level maintenance facilities for the Phalanx Close-In Weapon System.

The United States Government is prepared to authorize the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.
Enclosure: Transmittal No. DTC 79–02.

U.S. Department of State

Washington, DC 20520
September 6, 2002
The Honorable J. Dennis Hastert,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 9001(e) of Public Law 106–79 and consistent with Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles to Pakistan.

The President made a determination in a manner consistent with Title IX of the Department of Defense Appropriations Act, Fiscal Year 2000 (Pub. L. 106–79) to waive sanctions on Pakistan in connection with the Glenn Amendment and related provisions, as reported to you by separate letter. Under Title IX, the issuance of a license for the export of defense articles or defense services to Pakistan pursuant to the waiver authority of that Title is subject to the same requirements as are applicable to the export of items described in Section 36(c) of the Arms Export Control Act and the Administration is treating authorization for the requested export consistent with these provisions.

The transaction described in the attached certification involves the employment of a Pakistani national, to work with technical data and services related to flight simulators.

The United States Government is prepared to authorize the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.
Enclosure: Transmittal No. DTC 86–02.

U.S. Department of State

Washington, DC 20520
September 6, 2002
The Honorable J. Dennis Hastert,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Sections 36(c) and (d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement with France that also involves the export of defense articles and defense services in the amount of $50,000,000 or more.

The transaction described in the attached certification involves the export of defense services and defense articles for the production of the VT–1 missile system in France for end-use by the Governments of Austria, Australia, Belgium, Canada, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Luxembourg, the Netherlands, Norway, Poland, Portugal, Singapore, Slovenia, South Korea, Spain, Sweden, Switzerland, Turkey and the United Kingdom.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.
Enclosure: Transmittal No. DTC 126–02.

U.S. Department of State

Washington, DC 20520
September 6, 2002
The Honorable J. Dennis Hastert,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of four Landing Craft Air Cushions (LCAC) and associated technical data and technical assistance to South Korea for repair information for the LCAC Service Life Extension Program (SLEP) for end-use by the Republic of Korea.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs:
Enclosure: Transmittal No. DTC 127–02.

U.S. Department of State

Washington, DC 20520
September 9, 2002
The Honorable J. Dennis Hastert,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement with the United Kingdom.

The transaction described in the attached certification involves export to the United Kingdom of technical data and assistance in the manufacture of the Cordless Communication System with an authorized sales territory of: The United Kingdom, Australia, Austria, Bahrain, Brazil, Canada, Chile, Czech Republic, Denmark, Egypt, Ethiopia, Finland, France, Germany, Greece, Hungary, Ireland, Israel, Italy, Japan, Jordan, Kuwait, Mexico, Morocco, Mozambique, the Netherlands, New Zealand, Norway, Oman, Philippines, Portugal, Poland, Saudi Arabia, Singapore, Slovakia, South Africa, South Korea, Spain, Sri Lanka, Sweden, Switzerland, Taiwan, Thailand, Tunisia, Turkey, United Arab Emirates, Uruguay, Venezuela, and the United States.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.
Enclosure: Transmittal No. DTC 145–02.

U.S. Department of State

Washington, DC 20520
September 10, 2002
The Honorable J. Dennis Hastert,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction described in the attached certification involves the temporary export of one (1) 601 HP Commercial Communications Satellite (Galaxy VIII–IR), spare parts/ground support equipment, and fuel to international waters in the Pacific Ocean for Sea Launch or to Kourou, French Guiana for launch on an Ariane.

The United States Government is prepared to license the re-export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.
Enclosure: Transmittal No. DTC 214–02.

U.S. Department of State

Washington, DC 20520
September 13, 2002
The Honorable J. Dennis Hastert,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 9001(e) of Public Law 106–79 and consistent with Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles to India.

The President made a determination in a manner consistent with Title IX of the Department of Defense Appropriations Act, Fiscal Year 2000 (Pub. L. 106–79) to waive sanctions on India in connection with the Glenn Amendment and related provisions, as reported to you by separate letter. Under Title IX, the issuance of a license for the export of defense articles or defense services to India pursuant to the waiver authority of that Title is subject to the same requirements as are applicable to the export of items described in Section 36(c) of the Arms Export Control Act and the Administration is treating authorization for the requested export consistent with these provisions.

The transaction described in the attached certification involves the export of fifty (50) plate mother boards for line of sight computer units for integration into pilot helmet systems to India.

The United States Government is prepared to authorize the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.
Enclosure: Transmittal No. DTC 117–02.

U.S. Department of State,

Washington, DC 20520
September 13, 2002.
The Honorable Henry J. Hyde,
Chairman, Committee on International Relations, House of Representatives.

Dear Mr. Chairman: Pursuant to Section 9001(e) of Public Law 106–79 and consistent with Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles to India.

The President made a determination in a manner consistent with Title IX of the Department of Defense Appropriations Act, Fiscal Year 2000 (Pub. L. 106–79) to waive sanctions on India in connection with the Glenn Amendment and related provisions, as reported to you by separate letter. Under Title IX, the issuance of a license for the export of defense articles or defense services to India pursuant to the waiver authority of that Title is subject to the same requirements as are applicable to the export of items described in Section 36(c) of the Arms Export Control Act and the Administration is treating authorization for the requested export consistent with these provisions.

The transaction described in the attached certification involves the export of unclassified technical data related to the marketing of the MK 39 Mod 3A Inertial Navigation System for use aboard surface vessels of the Indian Navy.

The United States Government is prepared to authorize the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.
Enclosure: Transmittal No. DTC 118–02.

U.S. Department of State,

Washington, DC 20520
September 13, 2002.
The Honorable J. Dennis Hastert,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 9001(e) of Public Law 106–79 and consistent with Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles to India.

The President made a determination in a manner consistent with Title IX of the Department of Defense Appropriations Act, Fiscal Year 2000 (Pub. L. 106–79) to waive sanctions on India in connection with the Glenn Amendment and related provisions, as reported to you by separate letter. Under Title IX, the issuance of a license for the export of defense articles or defense services to India pursuant to the waiver authority of that Title is subject to the same requirements as are applicable to the export of items described in Section 36(c) of the Arms Export Control Act and the Administration is treating authorization for the requested export consistent with these provisions.

The transaction described in the attached certification involves the export of ten (10) cathode ray tubes for integration into pilot helmet display systems to India.

The United States Government is prepared to authorize the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.
Enclosure: Transmittal No. DTC 119–02.

U.S. Department of State,

Washington, DC 20520
September 13, 2002.
The Honorable J. Dennis Hastert,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 9001(e) of Public Law 106–79 and consistent with Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles to India.

The President made a determination in a manner consistent with Title IX of the Department of Defense Appropriations Act, Fiscal Year 2000 (Pub. L. 106–79) to waive sanctions on India in connection with the Glenn Amendment and related provisions, as reported to you by separate letter. Under Title IX, the issuance of a license for the export of defense articles or defense services to India pursuant to the waiver authority of that Title is subject to the same requirements as are applicable to the export of items described in Section 36(c) of the Arms Export Control Act and the Administration is treating authorization for the requested export consistent with these provisions.

The transaction described in the attached certification involves the temporary export of one (1) unit of single-tube night vision goggles with a goggle-mounted military configuration infrared zoom laser illuminator for demonstration to India.

The United States Government is prepared to authorize the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.
Enclosure: Transmittal No. DTC 120–02.

U.S. Department of State,

Washington, DC 20520
September 13, 2002.
The Honorable J. Dennis Hastert,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 9001(e) of Public Law 106–79 and consistent with Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for India.

The President made a determination in a manner consistent with Title IX of the Department of Defense Appropriations Act, Fiscal Year 2000 (Pub. L. 106–79) to waive sanctions on India in connection with the Glenn Amendment and related provisions, as reported to you by separate letter. Under Title IX, the issuance of a license for the export of defense articles or defense services to India pursuant to the waiver authority of that Title is subject to the same requirements as are applicable to the export of items described in Section 36(c) of the Arms Export Control Act and the Administration is treating authorization for the requested export consistent with these provisions.

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The transaction described in the attached certification involves the transfer of technical data, defense services and hardware necessary to provide a manufacturing company in India the capability to evaluate potential composite replacement materials for metal parts of gas turbine engines for combat aircraft.

The United States Government is prepared to authorize the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.
Enclosure: Transmittal No. DTC 175–02.

U.S. Department of State,

Washington, DC 20520
September 13, 2002.
The Honorable J. Dennis Hastert,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 9001(e) of Public Law 106–79 and consistent with Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for India.

The President made a determination in a manner consistent with Title IX of the Department of Defense Appropriations Act, Fiscal Year 2000 (Pub. L. 106–79) to waive sanctions on India in connection with the Glenn Amendment and related provisions, as reported to you by separate letter. Under Title IX, the issuance of a license for the export of defense articles or defense services to India pursuant to the waiver authority of that Title is subject to the same requirements as are applicable to the export of items described in Section 36(c) of the Arms Export Control Act and the Administration is treating authorization for the requested export consistent with these provisions.

The transaction described in the attached certification involves the export of twenty-three (23) 11Cx4E-synchro controlled transmitters for incorporation into shipboard surveillance sonars to India.

The United States Government is prepared to authorize the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.
Enclosure: Transmittal No. DTC 179–02.

U.S. Department of State,

Washington, DC 20520
September 13, 2002.
The Honorable J. Dennis Hastert,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of defense services, technical data and defense articles to Greece to support the maintenance and upgrade of Greek Armed Forces UH–1 Helicopters.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.
Enclosure: Transmittal No. DTC 205–02.

U.S. Department of State,

Washington, DC 20520
September 13, 2002.
The Honorable J. Dennis Hastert,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export to Algeria of technical data, defense services and defense articles for the installation, training, operation, test, repairs and calibration of the Algerian Maritime Surveillance System and Air Defense Automated Radar Coverage System.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.
Enclosure: Transmittal No. DTC 211–02.

U.S. Department of State

Washington, DC 20520
September 13, 2002
The Honorable J. Dennis Hastert,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to section 36(d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed Manufacturing License Agreement with Japan.

The transaction contained in the attached certification involves the export to Japan of technical data and assistance in the manufacture of the Conex Gyro Mod I for end-use by Japan.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.
Enclosure: Transmittal No. DTC 212–02.

U.S. Department of State

Washington, DC 20520
September 16, 2002
The Honorable J. Dennis Hastert,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 9001(e) of Public Law 106–79 and consistent with Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of technical data and defense services to India.

The President made a determination in a manner consistent with Title IX of the Department of Defense Appropriations Act, Fiscal Year 2000 (Pub. L. 106–79) to waive sanctions on India in connection with the Glenn Amendment and related provisions, as reported to you by separate letter. Under Title IX, the issuance of a license for the export of defense articles or defense services to India pursuant to the waiver authority of that Title is subject to the same requirements as are applicable to the export of items described in Section 36(c) of the Arms Export Control Act and the Administration is treating authorization for the requested export consistent with these provisions.

The transaction contained in the attached certification involves an amendment to an existing technical assistance agreement to add Antrix Corporation Ltd., the commercial and marketing arm of the Indian Space Research Organization (ISRO), and to export to Antrix technical data and defense services in support of marketing activities for the sale of commercial communications satellites to the Malaysian firm Binariang Satellite Systems for the MEASAT program.

The United States Government is prepared to authorize these defense services having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.
Enclosure: Transmittal No. DTC 168–02

U.S. Department of State

Washington, DC 20520
September 16, 2002
The Honorable J. Dennis Hastert,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 9001(e) of Public Law 106–79 and consistent with Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for India.

The President made a determination in a manner consistent with Title IX of the Department of Defense Appropriations Act, Fiscal Year 2000 (Pub. L. 106–79) to waive sanctions on India in connection with the Glenn Amendment and related provisions, as reported to you by separate letter. Under Title IX, the issuance of a license for the export of defense articles or defense services to India pursuant to the waiver authority of that Title is subject to the same requirements as are applicable to the export of items described in Section 36(c) of the Arms Export Control Act and the Administration is treating authorization for the requested export consistent with these provisions.

The transaction described in the attached certification involves the export of multiple sets of main seal bearings, runners and spare carbon sets for the development and manufacture of the Kaveri-IV jet engine to India.

The United States Government is prepared to authorize the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.
Enclosure: Transmittal No. DTC 171–02.

U.S. Department of State

Washington, DC 20520
September 16, 2002
The Honorable J. Dennis Hastert,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 9001(e) of Public Law 106–79 and consistent with Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for India.

The President made a determination in a manner consistent with Title IX of the Department of Defense Appropriations Act, Fiscal Year 2000 (Pub. L. 106–79) to waive sanctions on India in connection with the Glenn Amendment and related provisions, as reported to you by separate letter. Under Title IX, the issuance of a license for the export of defense articles or defense services to India pursuant to the waiver authority of that Title is subject to the same requirements as are applicable to the export of items described in Section 36(c) of the Arms Export Control Act and the Administration is treating authorization for the requested export consistent with these provisions.

The transaction described in the attached certification involves unclassified technical data in the form of engine integration and installation/performance manuals, performance decks and engine model specification related to the marketing of the T800 family of helicopter engines to India.

The United States Government is prepared to authorize the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.
Enclosure: Transmittal No. DTC 206–02.

U.S. Department of State

Washington, DC 20520
September 24, 2002
The Honorable J. Dennis Hastert,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 9001(e) of Public Law 106–79 and consistent with Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles to Pakistan.

The President made a determination in a manner consistent with Title IX of the Department of Defense Appropriations Act, Fiscal Year 2000 (Pub. L. 106–79) to waive sanctions on Pakistan in connection with the Glenn Amendment and related provisions, as reported to you by separate letter. Under Title IX, the issuance of a license for the export of defense articles or defense services to Pakistan pursuant to the waiver authority of that Title is subject to the same requirements as are applicable to the export of items described in Section 36(c) of the Arms Export Control Act and the Administration is treating authorization for the requested export consistent with these provisions.

The transaction described in the attached certification involves the export of granular activated carbon to Pakistan.

The United States Government is prepared to authorize the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.
Enclosure: Transmittal No. DTC 84–02.

[FR Doc. 02–27714 Filed 10–30–02; 8:45 am]
BILLING CODE 4710–25–U

DEPARTMENT OF STATE

[Public Notice 4182]

The Office of Citizen Exchanges of the Bureau of Educational and Cultural Affairs Request for Grant Proposals (RFGPs): Eurasia Professional Exchanges and Training Program for Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, the Kyrgyz Republic, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine and Uzbekistan

SUMMARY: The Office of Citizen Exchanges of the Bureau of Educational and Cultural Affairs (the Bureau) invites applicants to submit proposals that encourage the growth of democratic institutions in Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyz Republic, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan. U.S.-based public and private non-profit organizations meeting the provisions described in Internal Revenue code section 26 U.S.C. 501(c)(3) may submit proposals that support international projects in the United States and overseas involving current or potential leaders.

Interested applicants should read the complete **Federal Register** announcement before addressing inquiries to the Office of Citizen Exchanges or submitting proposals. Once the RFGP deadline has passed, Office of Citizen Exchanges staff may not discuss this competition with applicants until after the Bureau program and project review process has been completed.

Announcement Name and Number: All correspondence with the Bureau concerning this RFGP should reference the "Eurasia Professional Exchanges and Training Program" and reference number: ECA/PE/C/EUR–03–22. Please refer to title and number in all correspondence or telephone calls to the Office of Citizen Exchanges.

FOR FURTHER INFORMATION CONTACT: Interested organizations/institutions may contact the Office of Citizen Exchanges, Room 220, SA–44, U.S. Department of State, 301 4th Street, SW., Washington, DC 20547, Attention: Eurasia Professional Exchanges and Training Program, telephone number 202/205–3003, fax number 202/619–4350, or *KTurner@pd.state.gov* to request a Solicitation Package. The Solicitation Package contains detailed award criteria, required application

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forms, specific budget instructions, and standard guidelines for proposal preparation.

For specific inquiries, please contact Bureau program officers by phone: Henry Scott (202) 619–5327 (*hscott@pd.state.gov*); Michael George (202) 619–5330 (*mdgeorge@pd.state.gov*); Brent Beemer (202) 401–6887 (*bbeemer@pd.state.gov*). Please specify Henry Scott, Michael George or Brent Beemer on all other inquiries and correspondence.

To Download a Solicitation Package Via Internet

The entire Solicitation Package may be downloaded from the Bureau's website at *http://exchanges.state.gov/education/RFGPs*. Please read all information before downloading the package.

General Program Guidelines

Applicants should identify the local organizations and individuals in the counterpart country with whom they are proposing to collaborate and describe in detail previous cooperative programming and/or contacts. Specific information about the counterpart organizations' activities and accomplishments should be included in the section on Institutional Capacity. Proposals should contain letters of support tailored to the project being proposed from foreign-country partner organizations.

Exchanges and training programs supported by institutional grants from the Bureau should operate at two levels: They should enhance institutional partnerships, and they should offer practical information and experience to individuals and groups to assist them with their professional responsibilities. Strong proposals usually have the following characteristics:

- A proven track record of working in the proposed issue area and country;
- Experienced staff with language facility and a commitment by the staff to monitor projects locally to ensure implementation;
- A clear, convincing plan showing how permanent results will be accomplished as a result of the activity funded by the grant; and
- A follow-on plan that includes activities beyond the conclusion and scope of the Bureau grant.

Proposal narratives should clearly demonstrate an organization's commitment to consult closely with the Public Affairs Section and when required other officers at the U.S. Embassy. Proposal narratives must confirm that all materials developed for the project will acknowledge Bureau funding for the program as well as a commitment to invite representatives of the Embassy and/or Consulate to participate in various program sessions/site visits. Please note that this will be a formal requirement in all final grant awards.

Suggested Program Designs

Bureau-supported exchanges may include internships; study tours; short-term, non-technical experiential learning, extended and intensive workshops and seminars taking place in the United States or overseas. Examples of program activities include:

1. A U.S.-based program that includes: orientation to program purposes and to U.S. society; study tour/site visits; professional internships/placements; interaction and dialogue; hands-on training; professional development; and action plan development. Proposals that include U.S.-based training will receive the highest priority.
2. Capacity-building/training-of-trainer (TOT) workshops to help participants to identify priorities, create work plans, strengthen professional and volunteer skills, share their experience with committed people within each country, and become active in a practical and valuable way.
3. Site visits by U.S. facilitators/experts to monitor projects in the region and to provide additional training and consultations as needed.

Activities ineligible for support: The Office does not support proposals limited to conferences or seminars (*i.e.*), one to fourteen-day programs with plenary sessions, main speakers, panels, and a passive audience). It will support conferences only when they are a small part of a larger project in duration that is receiving Bureau funding from this competition. The Office will only support workshops, seminars and training sessions that are an integral part of a larger project. No funding is available exclusively to send U.S. citizens to conferences or conference-type seminars overseas; nor is funding available for bringing foreign nationals to conferences or to routine professional association meetings in the United States.

Selection of Participants

All grant proposals should clearly describe the type of persons who will participate in the program as well as the participant selection process. For programs that include U.S. internships, applicants should submit letters of support from host institutions. In the selection of foreign participants, the Bureau and U.S. Embassies retain the right to review all participant nominations and to accept or refuse participants recommended by grantee institutions. When American participants are selected, grantee institutions must provide their names and brief biographical data to the Office of Citizen Exchanges. Priority in two-way exchange proposals will be given to foreign participants who have not previously traveled to the United States. (See section below on requirements for maintenance of and provision to the Bureau of data on participants and program activities.)

Programs must comply with J–1 visa regulations. Please refer to Solicitation Package for further information.

Evaluation

In general, evaluation should occur throughout the project. The evaluation should incorporate an assessment of the program from a variety of perspectives. Specifically, project assessment efforts will focus on: (a) Determining if objectives are being met or have been met, (b) identifying any unmet needs, and (c) assessing if the project has effectively identified resources, advocates, and financial support for the sustainability of future projects. Informal evaluation through discussions and other sources of feedback will be carried out throughout the duration of the project. Formal evaluation must be conducted at the end of each component, should measure the impact of the activities and should obtain participants' feedback on the program content and administration. A detailed evaluation will be conducted at the conclusion of the project and a report will be submitted to the Department of State Bureau of Educational and Cultural Affairs. When possible, the evaluation should be conducted by an independent evaluator.

Program Data Requirements

Organizations awarded grants will be required to maintain specific data on program participants and activities in an electronically accessible database format that can be shared with the Bureau as required. As a minimum, the data must include the following:

(1) Name, address, contact information and biographic sketch of all persons who travel internationally on funds provided by the grant or who benefit from the grant funding but do not travel.

(2) Itineraries of international and domestic travel, providing dates of travel and cities in which any exchange experiences take place.

Adherence to All Regulations Governing the J Visa

The Bureau of Educational and Cultural Affairs is placing renewed emphasis on the secure and proper administration of Exchange Visitor (J visa) Programs and adherence by grantees and sponsors to all regulations governing the J visa. Therefore, proposals should demonstrate the applicant's capacity to meet all requirements governing the administration of Exchange Visitor Programs as set forth in 22 CFR 6Z, including the oversight of Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, record-keeping, reporting and other requirements. ECA will be responsible for issuing DS–2019 forms to participants in this program.

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from:

United States Department of State, Office of Exchange Coordination and Designation, ECA/EC/ECD—SA–44, Room 734, 301 4th Street, SW., Washington, DC 20547, Telephone: (202) 401–9810, FAX: (202) 401–9809.

Program Information

Overview

The Bureau welcomes proposals that respond directly to the themes and countries listed below. Given budgetary considerations, projects in countries and for themes other than those listed will not be eligible for consideration and will be ruled technically ineligible. The themes listed below are important to the Office of Citizen Exchanges, but no guarantee is made or implied that grants will be awarded in all categories.

For this competition, single country projects only are eligible for support. In order to prevent duplication of effort, proposals should reflect an understanding of the work of international agencies so that projects complement—not duplicate—other assistance programs.

Two-way exchanges will be given the highest priority. Applicants should carefully review the following recommendations for proposals in Eurasian countries.

To be eligible for a grant award under this competition, the proposed professional training and exchange projects must address one of the following specific themes for single country projects. Multi-country projects are not eligible for this competition.

Media Training (Armenia or Kazakhstan or Russia or Uzbekistan)
Prevention of Trafficking in Persons (Armenia or Azerbaijan or Belarus or Georgia or Kyrgyz Republic or Tajikistan)
Tolerance (Georgia or Russia)
Intellectual Property Rights (Russia)
Professional Association Building for Political Scientists and Economists (Ukraine)
Tourism and Economic Development (Moldova)
Religion in a Democracy (Kazakhstan)
Business Development (Turkmenistan)
Community and Local Government Relations (Armenia)
Public Health Awareness (Armenia)
Training in NGO Law Making (Turkmenistan)
Library Exchange (Kyrgyz Republic)

Professional Training for Media Professionals

Single Country Projects for Armenia or Kazakhstan or Russia or Uzbekistan

The Bureau is interested in proposals from applicants who possess a thorough understanding of the current state and needs of the media in Armenia, Kazakhstan, Russia or Uzbekistan. Proposals should include in-country and U.S.-based training activities for journalists and/or media outlet managers. When proposing U.S.-based training, the program should include relevant meetings with media experts and a hands-on internship training component at an appropriate media outlet. For internships, letters of support from media outlets willing to host participants should be provided, and the applicant should describe why these media establishments have been chosen. Internships may be developed for individuals or small groups consisting of not more than three persons. If the small group format is used, the internships must have a practical program component with hands-on experience. If participants who do not speak English are nominated for the U.S.-based program, the applicant must explain how the interpreting needs of those participants would be met. In-country activities may include workshops and seminars. These may be led by the participants themselves, or by U.S. trainers, or a combination of both. In addition to group events, training activities should take place throughout the grant period. Applicants should describe in detail these activities and how they will create and sustain long-term relationships between international participants and their home media outlets and their U.S. hosts. Such activities may include virtual mentoring and e-mail consultations between U.S.-based trainers/hosts and participants. Training should not duplicate the work done under recent or existing USG-sponsored programs, but should complement those efforts. Applicants should expect to work closely with the Public Affairs Sections of the U.S. embassies to coordinate all activities, including participant selection.

Preference will be given to projects that do not exceed $150,000.

For Armenia

Media training for Armenia should include a two-way exchange and offer hands-on internships in the U.S. that emphasize a commitment to objective reporting. Applicants should propose to include the Association of Investigative Journalists of Armenia (AIJA) (*http://www.hetq.am/en/index.html*), in program activities.

AIJA is a non-governmental organization whose goal is to provide assistance in the development of investigative journalism and freedom of speech in Armenia. Applicants should explain in detail activities and components that will create and sustain long-term relationships between Armenian participants and their home media outlets and their U.S. hosts.

For Kazakhstan or Uzbekistan

Note: Requirements for proposals for Kazakhstan and Uzbekistan are the same, but applicants must submit single-country proposals only.

Media training projects for Kazakhstan or Uzbekistan should include a two-way exchange and should offer hands-on internships in the U.S. that emphasize methods of income generation, better fiscal management practices, and a commitment to objective reporting. Programs designed for Kazakhstan or Uzbekistan should also emphasize the role of media in reporting on minority and conflict issues. Applicants should explain in detail activities and components that will create and sustain long-term relationships between Kazakh or Uzbek participants and their home media outlets and their U.S. hosts.

For Russia

The program should address one or more of the four issues identified by the Russian-American Media Entrepreneurship Dialogue. (For more information about this, please visit the site <*http://www.whitehouse.gov/news/releases/2002/05/20020524-14.html*>).

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Participants on the U.S.-based training program should be outlet owners. Recruitment efforts should be focused on the cities outside of Moscow and St. Petersburg. Programs should complement media training projects that are or were supported by USAID and other USG funders. Applicants should explain in detail activities and components that will create and sustain long-term relationships between participating Russian and American media outlets.

Prevention of Trafficking in Persons

Single Country Projects for Armenia or Azerbaijan or Belarus or Georgia or Kyrgyz Republic or Tajikistan

Human trafficking is a significant problem in many countries in Eurasia. In June 2002 the State Department released its second annual Trafficking in Persons Report to Congress, on the status of severe forms of trafficking in persons worldwide. Through the annual report, the United States seeks to bring international attention to the practice of trafficking in persons worldwide. (Please see *http://www.state.gov/g/tip/rls/tiprpt/2002/.*)

Many governments in Eurasia are currently included in the two lowest tiers of the State Department report. The need to educate and inform communities, lawmakers and media representatives has become imperative to prevent more women and girls from falling victim to trafficking in Eurasia.

The Bureau seeks proposals that provide training and capacity building to individuals and communities in Armenia, Azerbaijan, Belarus, Georgia, the Kyrgyz Republic or Tajikistan to help combat trafficking in persons. Programs should be single county projects and should not duplicate the efforts of other U.S. or European organizations working on the issue. Priority will be given to programs that propose to reach risk groups where anti-trafficking initiatives have been limited or nonexistent. Applicants should expect to work closely with the Public Affairs Sections of the U.S. Embassies in the target countries to coordinate all activities, including participant selection and proposed training modules.

Areas of focus:

1. Training and exchanges of media representatives Armenia or Azerbaijan or Belarus or Georgia or Tajikistan

The Bureau seeks proposals that will provide hands-on training to journalists to ensure widespread, accurate media coverage on the issue of trafficking, to raise media professionals' awareness of the issue, and to train journalists to cover the issue of trafficking without stigmatizing victims. Workshops and on-site consultations at media outlets in the target country are encouraged. U.S.-based training should also be proposed when appropriate. Participants may include media managers, editors and journalists. Successful proposals will include plans for interactive training, as well as the development of action plans, publications, web-based information and/or other results-oriented products that media representatives may access. In-country workshops should include NGO representatives working on trafficking issues.

2. Training and exchanges of parliamentarians and other government officials Armenia or Azerbaijan or Georgia or Kyrgyz Republic or Tajikistan

The Bureau welcomes proposals that will encourage members of parliament and other government officials to take an active stand against trafficking in their countries. Proposals should focus on how government should enforce and/or improve laws against trafficking. Proposals should also address how training will encourage cooperative and complementary efforts to prevent and combat trafficking among government, NGO and media communities. Government officials should be exposed to successful public awareness campaigns in other Eurasian countries and should be encouraged to work with NGOs on adaptable models. Two-way exchanges and follow-up, in-country workshops are strongly encouraged. Participants in U.S.-based programs may include NGO leaders, though the majority of participants should be government officials. NGO leaders and media representatives should be included in all in-country workshops, however. The Bureau is interested in results-oriented proposals that include action plans, publications and other work products that will serve to educate government officials regarding trafficking.

Funding for the above initiatives should not be used to establish job training centers and shelters or to provide victim assistance, but should focus on training and education.

The Bureau anticipates awarding one proposal for each country. Preference will be given to projects that do not exceed $150,000.

Tolerance

Single Country Projects for Georgia or Russia

Note: Requirements for proposals for Georgia and Russia are the same, but applicants must submit a single-country proposal.

The Bureau welcomes proposals that will focus on promoting constructive dialogue and the reduction of stereotyping, violence and hatred among diverse groups. Projects may be designed and implemented through media outlets, educational institutions, NGOs or other partners. Projects should build a valued working relationship between U.S. and overseas professionals and should develop, test, and result in a training program that can continue after grant support concludes. Proposals should focus on redefining inter-communal conflict in specific situations and facilitating dialogue—among teachers, professionals, businesspersons, journalists, community activists—in order to promote better understanding among parties in conflict. Programming should also introduce the evolution of U.S. laws designed to protect minority rights and promote tolerance. Travel in both directions, including a hands-on, U.S.-based program with a train the trainer component, should be proposed. Continuous communication, mentoring, and consultations between overseas participants and trainers/mentors, should be described in detail and conducted throughout the life of the grant.

Preference will be given to projects that do not exceed $150,000.

Intellectual Property Rights

Single Country Projects for Russia

Proposals for this project should focus on intellectual property rights (IPR), with a special concentration on copyright protection for films/videos, music recordings, computer software and similar products subject to piracy. Participants should include: (1) Government officials responsible both for drafting and enforcing laws and regulations; (2) lawyers, judges and distributors or licensing organizations involved with presenting and deciding infringement cases; and (3) press and media, to engage them in raising public consciousness about IPR protection. The first phase of the project would bring U.S. project staff to Russia in order to become familiar with the particular legal regime and market environment in Russia and to meet with the principal players in the copyright enforcement arena. The second phase of the project would bring 10–12 copyright lawyers and lawmakers to the U.S. so that they could meet with their colleagues, copyright protection agencies, video and music producers, and other professionals. A third phase should include workshops in Russia that would reach out to a wider audience.

Preference will be given to projects that do not exceed $150,000.

Professional Association Building for Political Scientists and Economists

Single Country Projects for Ukraine

In Ukraine, there are few cohesive efforts to link political scientists—practitioners, educators, and students—into a network that can improve communication and interaction both within Ukraine and with the outside world. The situation is the same in the field of economics.

The Bureau is seeking proposals that will provide for the creation of two professional associations: one for political scientists and one for economists. By cooperating together within the framework of a professional association, political scientists and economists will be better able to coordinate research and analysis activities in Ukraine. Professional associations would also be able to positively impact public policy creation in Ukraine. Further, these professional associations will provide their members with the opportunity to make a positive impact on how these subjects are taught and how research is conducted at Ukrainian institutions of higher learning.

Proposals should provide for the establishment of a professional association for Ukrainian political scientists and a professional association for Ukrainian economists. Activities should provide access to and linkages between similar professional associations in the United States and Europe, and with departments of political science and economics at American institutions of higher learning. Ukrainian participants should be shown how similar American professional associations conduct research and analysis, and how they foster discussion that affect public policy formation in the United States. Applicants should provide for the establishment and maintenance of a website for each association. The websites will facilitate communication among and serve the needs of faculty, students, researchers, and practitioners.

Both in-country and U.S.-based training activities should be proposed. Continuous communication, mentoring, and consultations between overseas participants and trainers/mentors, should be described in detail and conducted throughout the life of the grant.

Preference will be given to projects that do not exceed $200,000.

Tourism and Economic Development

Single Country Projects for Moldova

The Bureau is seeking proposals that will allow U.S. communities to share tourism and economic development strategies with Moldovan local governments, NGOs and business leaders from small cities. Proposals should provide an opportunity for local government and business leaders from Moldova to examine the experience of U.S. towns and cities, where preservation of cultural heritage and historic sites has been combined with tourism infrastructure development. Strategies that have led to reversing economic decline (*i.e.* aggressive marketing and the incorporation of heritage tourism into local economic development plans) should be examined. Multiple trips in both directions, including a hands-on, U.S.-based internship or study tour, should be proposed. Continuous communication, mentoring, and consultations between Moldovan participants and trainers/mentors, should be described in detail and conducted throughout the life of the grant.

Preference will be given to projects that do not exceed $150,000.

Religion In a Democracy

Single Country Projects for Kazakhstan

The Bureau welcomes proposals that will build a better understanding of the role religion plays in Kazakhstan and the United States, with emphasis on how Islamic groups and institutions participate in a democratic, secular society in which the separation of church and state and tolerance are the guiding principles. Participants may be religious as well as lay leaders. Activities should illustrate how American religious institutions and individuals (including Islamic) interact with governmental bodies and other public and private institutions, contribute to society at large, and provide spiritual and ethical guidance. Balanced, two-way exchanges will be given priority.

Preference will be given to projects that do not exceed $150,000.

Business Development

Single Country Projects for Turkmenistan

The Bureau welcomes proposals that will foster the development of small and medium-sized businesses in Turkmenistan. Topics to be addressed may cover management, marketing, employee relations, advertising, public relations, business ethics, negotiation skills, customer service, and dealing with a diverse workplace. Programs may include a variety of training opportunities such as U.S.-based internships, hands-on workshops and case studies. Turkmen participants should be linked with U.S. counterparts with similar work responsibilities, in order to ensure ongoing professional interaction.

Preference will be given to projects that do not exceed $150,000.

Community and Local Government Relations

Single Country Projects for Armenia

The Bureau seeks projects that will facilitate collaboration between NGOs and local government bodies. Proposals should include partnerships between U.S. and Armenian NGOs and government officials in order to share experiences on how to improve government responsiveness and effectiveness at the local level. Project activities should focus on how municipal teams, including government officials, educational leaders, NGOs, business leaders, etc. join forces to address major problems (environment, crime, drug use, etc). Proposals should provide practical, hands-on training on how NGOs influence political processes, collaborate with other organizations to achieve common goals, and develop collaborative relationships with government bodies for community action. Programs should consist of a two-way exchange that may include shadowing opportunities, internships, interactive workshops, and case studies. Ideally, participants will be local leaders who will share ideas, successes, and challenges from their communities. Preference will be given to projects that do not exceed $150,000.

Public Health Awareness

Single Country Projects for Armenia

Armenia's difficult transition to a market economy has weakened the government's ability to raise awareness of serious public health issues, such as tuberculosis, HIV/AIDS, alcoholism, and sexually transmitted diseases. The Bureau is seeking projects that are designed to improve public health awareness throughout Armenia. Specifically, the Bureau is interested in training and exchange programs that will improve the capacity of political, community, and other leaders responsible for developing public health policy and disease control and prevention. Proposals should focus on creative, community-based initiatives that will promote greater awareness of health problems. Proposals should

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provide practical, hands-on training on how to promote disease prevention strategies, overcome social attitudes that limit public discussion of health issues, and manage grassroots mobilization and advocacy. Programs may consist of a two-way exchange that includes shadowing opportunities, internships, interactive workshops, and exposure to appropriate U.S. public health education models. Formal medical education and the provision of healthcare services or medication are outside the purview of this theme and will not be accepted activities for funding.

Preference will be given to projects that do not exceed $150,000.

Training in NGO Law Making

Single Country Projects for Turkmenistan

The Bureau is seeking proposals that provide Turkmen NGO leaders training in drafting a comprehensive, effective NGO law for their country. Applicants should be familiar with USAID's current work with Turkmen legislators on this topic and should clearly demonstrate expertise in the subject area. Projects should offer opportunities for participants to learn how laws are made in the U.S. and how community engagement can lead to the development of new laws. Training should include a visit to the U.S. by Turkmen participants, as well as follow-up workshops in-country. U.S.-based training should focus on law making at the state level with some focus on the federal level. Training should provide participants hands-on exposure to laws governing NGO taxation, licensing and incorporation and should include a combination of case studies, action planning and site visits. Close consultation with the U.S. Embassy's Public Affairs Section in Ashgabat is critical during all project components.

Preference will be given to projects that do not exceed $150,000.

Library Exchanges

Single Country Projects for the Kyrgyz Republic

Libraries serve as resources for scholarship, proving grounds for new technologies, and gateways for community access to information. In the Kyrgyz Republic, where libraries face severe financial limits, greater collaboration and resource sharing could enhance these institutions' capacity to serve their communities. The Bureau is interested in proposals that will nurture cooperative relationships among Kyrgyz library professionals, government officials, and community leaders and assist participants to manage resources cooperatively and engage their communities in library activities. Proposals should include practical, hands-on in-country training for approximately 100 Kyrgyz participants nationwide given that one of the primary goals of this component should be to initiate a nationwide network of library professionals. Projects should match Kyrgyz library professionals with U.S. colleagues and include appropriate U.S. models for library collaboration and professional development. Continuous activities, including mentoring and consultations between partnered libraries, should be conducted throughout the life of the grant. Proposals for this theme may not exceed $170,000.

Central and Eastern Europe

Requests for grant proposals for the following countries will be announced in separate competitions: Albania, Bosnia-Herzegovina, Bulgaria, Croatia, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Macedonia, Poland, Romania, Serbia-Montenegro/Kosovo, Slovak Republic and Slovenia. Proposals involving Central and Eastern Europe WILL NOT be accepted under this competition, and if received, will be technically ineligible.

Western Europe

Proposals involving Western Europe will not be accepted under this competition, and if received, will be technically ineligible.

Budget Guidelines and Cost-Sharing Requirements

Grants awarded to eligible organizations with less than four years of experience in conducting international development or exchange programs will be limited to $60,000. Applicants must submit a comprehensive budget for the entire program. Applicants must provide a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification. Please refer to the Proposal Submission Instructions (PSI) for complete budget guidelines and formatting instructions.

Since Bureau grant assistance constitutes only a portion of total project funding, proposals should list and provide evidence of other anticipated sources of financial and in-kind support. While there is no minimum requirement, applicants are encouraged to provide cost sharing to the fullest extent possible. State Department Review Panels will consider cost sharing seriously when evaluating all proposals.

The following program costs are eligible for funding consideration:

1. *Travel Costs.* International and domestic airfares (per the Fly America Act), transit costs, ground transportation costs, and visas for U.S. participants (J–1 visas for Bureau-supported participants from Eurasia to travel to the U.S. are issued at no charge).

2. *Per Diem.* For U.S.-based programming, organizations should use the published Federal per diem rates for individual U.S. cities. For activities in Eurasia, the Bureau strongly encourages applicants to budget realistic costs that reflect the local economy. Domestic per diem rates may be accessed at: *http://www.policyworks.gov/* and foreign per diem rates can be accessed at: *http://www.state.gov/www/perdiems/index.html.*

3. *Interpreters.* Local interpreters with adequate skills and experience may be used for program activities. The Bureau strongly encourages applicants to use local interpreters, if possible. Salary costs for local interpreters must be included in the budget. Costs associated with using their services may not exceed rates for U.S. Department of State interpreters. Typically, one interpreter is provided for every four visitors who require interpreting, with a minimum of two interpreters. Bureau grants do not pay for foreign interpreters to accompany delegations from their home country. U.S. Department of State Interpreters may be used for highly technical programs with the approval of the Office of Citizen Exchanges. Proposal budgets should contain a flat $170/day per diem for each U.S. Department of State interpreter, as well as home-program-home air transportation of $400 per interpreter, reimbursements for taxi fares, plus any other transportation expenses during the program. Salary expenses are covered centrally and should not be part of an applicant's proposed budget.

4. *Book and cultural allowance.* Foreign participants are entitled to a one-time cultural allowance of $150 per person, plus a book allowance of $50. Interpreters should be reimbursed up to $150 for expenses when they escort participants to cultural events. U.S. program staff, trainers or participants are not eligible to receive these benefits.

5. *Consultants.* Consultants may be used to provide specialized expertise or to make presentations. Daily honoraria cannot exceed $250 per day. Subcontracting organizations may also be used, in which case the written agreement between the prospective grantee and subcontractor should be included in the proposal. Subcontracts should be itemized in the budget.

6. *Room rental.* Room rental may not exceed $250 per day.

7. *Materials development.* Proposals may contain costs to purchase, develop and translate materials for participants. The Bureau strongly discourages the use of automatic translation software for the preparation of training materials or any information distributed to the group of participants or network of organizations. Costs for high-quality translation of materials should be anticipated and included in the budget. Grantee organizations should expect to submit a copy of all program materials to the Bureau.

8. *Equipment.* Proposals may contain costs to purchase equipment for Eurasia-based programming such as computers, fax machines and copy machines. Costs for furniture are not allowed. Equipment costs must be kept to a minimum.

9. *Working meal.* Only one working meal may be provided during the program. Per capita costs may not exceed $5–8 for a lunch and $14–20 for a dinner, excluding room rental. The number of invited guests may not exceed participants by more than a factor of two-to-one. Interpreters must be included as participants.

10. *Return travel allowance.* A return travel allowance of $70 for each foreign participant may be included in the budget. The allowance may be used for incidental expenses incurred during international travel.

11. *Health Insurance.* Foreign participants will be covered under the terms of a Bureau-sponsored health insurance policy. The premium is paid by the Bureau directly to the insurance company. Applicants are permitted to include costs for travel insurance for U.S. participants in the budget.

12. *Wire transfer fees.* When necessary, applicants may include costs to transfer funds to partner organizations overseas.

13. *Administrative Costs.* Costs necessary for the effective administration of the program may include salaries for grantee organization employees, benefits, and other direct and indirect costs per detailed instructions in the Application Package. While there is no rigid ratio of administrative to program costs, priority will be given to proposals whose administrative costs are less than twenty-five (25) per cent of the total requested from the Bureau. Proposals should show strong administrative cost-sharing contributions from the applicant, the in-country partner and other sources.

Announcement Title and Number: All correspondence with the Bureau concerning this RFGP should reference the above title and number ECA/PE/C/EUR–03–22.

Deadline for Proposals

All proposal copies must be received at the Bureau of Educational and Cultural Affairs by 5 p.m. Washington, D.C. time on January 10, 2003. Faxed documents will not be accepted at any time. Documents postmarked the due date but received on a later date will not be accepted. Each applicant must ensure that the proposals are received by the above deadline.

Applicants must follow all instructions in the RFGP and the Proposal Submission Instructions. Please remember that proposals must be double-spaced. The original and ten (10) unbound copies (secured with a binder clip) of the proposal should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: ECA/PE/C/EUR–03–22, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW, Washington, DC 20547.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy," the Bureau "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Public Law 106—113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

Review Process

The Bureau will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy section overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance award grants resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Program Planning and Ability to Achieve Program Objectives:* Program objectives should be stated clearly and should reflect the applicant's expertise in the subject area and region. Objectives should respond to the priority topics in this announcement and should relate to the current conditions in the target countries. A detailed agenda and relevant work plan should explain how objectives will be achieved and should include a timetable for completion of major tasks. The substance of workshops, internships, seminars and/or consulting should be described in detail. Sample training schedules should be outlined. Responsibilities of in-country partners should be clearly described.

2. *Institutional Capacity:* The proposal should include (1) the U.S. institution's mission and date of establishment (2) detailed information about the in-country partner institution's capacity and the history of the U.S. and in-country partnership (3) an outline of prior awards—U.S. government and private support received for the target theme/region (4) descriptions of experienced staff members who will implement the program. Proposed personnel and institutional resources should be adequate and appropriate to achieve the program's goals. The proposal should

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reflect the institution's expertise in the subject area and knowledge of the conditions in the target country. Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau grants as determined by Bureau Grant Staff. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants.

3. *Cost Effectiveness and Cost Sharing:* Overhead and administrative costs for the proposal, including salaries, honoraria and subcontracts for services, should be kept to a minimum. Priority will be given to proposals whose administrative costs are less than twenty-five (25) per cent of the total funds requested from the Bureau. Applicants are encouraged to cost share a portion of overhead and administrative expenses. Cost-sharing, including contributions from the applicant, the in-country partner, and other sources should be included in the budget request.

4. *Support of Diversity:* Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (selection of participants, program venues and program evaluation) and program content (orientation and wrap-up sessions, program meetings, resource materials and follow-up activities). Applicants should refer to the Bureau's Diversity, Freedom and Democracy Guidelines in the Proposal Submission Instructions (PSI).

5. *Follow-on Activities:* Proposals should provide a plan for continued follow-on activity (without Bureau financial support) ensuring that Bureau supported programs are not isolated events.

6. *Evaluation:* Proposals should include a detailed plan to monitor and evaluate the program. A draft survey questionnaire plus a description of a methodology to use to link outcomes to original project objectives should be included. Successful applicants will be expected to submit intermediate reports after each project component concludes or on a quarterly basis, whichever is less frequent.

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries* * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations* * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding authorities for this program are provided through the Fulbright-Hays Act and the FREEDOM Support Act (FSA).

Notice

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures.

Dated: October 24, 2002.

Patricia S. Harrison,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 02–27712 Filed 10–30–02; 8:45 am]

BILLING CODE 4710–05–U

DEPARTMENT OF STATE

[Public Notice 4186]

Bureau of Oceans and International Environmental and Scientific Affairs; Public Meeting to Discuss the United Nations Environment Program (UNEP) Global Mercury Assessment

SUMMARY: The Department of State will host two public meetings on November 7, 2002 for interested parties, one for environmental non-governmental organizations and one for industry representatives. The non-governmental organization and the industry meetings will take place at the Ariel Rios North Building in room 1332 at 1200 Pennsylvania Avenue NW, Washington DC at 10 am and 11:30 am respectively. Attendees must bring picture identification with them to gain entry to the building and should RSVP to Audrey Slayton at 202–564–7426 or *slayton.audrey@epa.gov.*

SUPPLEMENTARY INFORMATION: UNEP Chemicals undertook a process to develop a global assessment of mercury and its compounds. This report, which includes options for addressing mercury's adverse impacts, will be presented to the UNEP Governing Council at its twenty-second session in February 2003.

To complete the global mercury assessment, UNEP established a working group with participants from governments, non-governmental organizations and the private sector. This working group, which met in September 2002, concluded that in their view there was sufficient evidence of significant adverse impacts to human health and the environment from mercury to warrant international action of some type. The working group developed an outline of possible options to address mercury impacts on a local, national, regional, and global level. The UNEP Governing Council is likely to use this report as the basis for a decision on the appropriate role of UNEP in addressing the issue of mercury. The outline of options and other meeting documents can be found at *http://irptc.unep.ch/mercury/WG-meeting1.htm.* For further information, please contact John Thompson, U.S. Department of State, Office of Environmental Policy (OES/ENV), Room 4325, 2201 C Street NW, Washington DC 20520, phone 202–647–9799, fax 202–647–5947, *ThompsonJE2@state.gov.*

Timetable and Point of Contact

The public meetings will be held on November 7, 2002 in room 1332 at the U.S. Environmental Protection Agency in the Ariel Rios North Building at 1200 Pennsylvania Avenue. The entrance to the building is at street level directly adjacent to the Federal Triangle Metro escalator. The meetings for non-governmental organizations and industry will be held at 10 am and 11:30 am respectively. The U.S. Department of State is issuing this notice to help ensure interested parties are aware of the UNEP Governing Council discussions on mercury, and have an opportunity to offer comments to the U.S. Government on the issues raised in UNEP's Global Mercury Assessment. Those organizations or individuals which cannot attend the meeting, but wish to either submit a written comment or to remain informed, should provide Margaret Wilson of the U.S. Department Of State with a statement and their name, organization, address, phone number, and e-mail. Margaret Wilson can be contacted at the U.S. Department of State, Office of Environmental Policy (OES/ENV), Room 4325, 2201 C Street NW., Washington DC 20520, phone 202–647–4833, fax 202–647–5947, *WilsonMA2@state.gov.*

Dated: October 25, 2002.

Jeff Lunstead,

Director, Office of Environmental Policy, Bureau of Oceans, International Environment, & Scientific Affairs, Department Of State.

[FR Doc. 02–27713 Filed 10–30–02; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Revision to Advisory Circular 21–19A, Installation of Used Engines in New Production Aircraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: This notice announces the availability of proposed Advisory Circular (AC) 21–19A, Installation of Used Engines in New Production Aircraft, for review and comments.

The proposed AC 21–19A provides information and guidance concerning an acceptable means, but not the only means, of demonstration compliance with the requirements Title 14, Code of Federal Regulations part 21, Certification Procedures for Products and Parts.

DATES: Comments submitted must identify the proposed AC 21–19A and be received by December 30, 2002.

ADDRESSES: Copies of the proposed AC 21–19A can be obtained from and comments may be returned to the following: Federal Aviation Administration, Production Certification Branch, AIR–210, Production and Airworthiness Division, AIR–200, Aircraft Certification Service, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Johnnie Smith, Production Certification Branch, AIR–210, Production and Airworthiness Division, Room 815, Aircraft Certification Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. (202) 267–8361.

SUPPLEMENTARY INFORMATION:

Background

The proposed revised AC 21–19A provides information and guidance to FAA Production approval applicants or holders allowing the use of used engines in new production aircraft under certain specified criteria. This revision updates the guidance in accordance with current formatting and plain language standards. It also updates all cited references, and provides definitions relevant to the guidance provided. Additional guidance is also provided to the manufacturer who wants to install a used aircraft engine.

Comments Invited

Interested persons are invited to comment on the revised AC 21–19A listed in this notice by submitting such written data, views, or arguments as they desire to the aforementioned specified address. All communications received on or before the closing date for comments specified above will be considered by the Director, Aircraft Certification Service, before issuing the final AC.

Comments received on the proposed AC 21–19A may be examined before and after the comments closing date in Room 815, FAA headquarters building (FOB–10A), 800 Independence Avenue, SW., Washington, DC 20591, between 8:30 a.m. and 4:30 p.m.

Issued in Washington, DC, on October 4, 2002.

Frank Paskiewicz,

Manager, Production and Airworthiness Division.

[FR Doc. 02–27730 Filed 10–30–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Revised Notice of Intent to Prepare Draft and Final Environmental Impact Statements for a Replacement Airport at St. George, UT

AGENCY: Federal Aviation Administration, DOT.

ACTION: Revision to October 7, 2002, Federal Register Notice.

Background

In the October 7, 2002, issue of the **Federal Register** Vol. 67, No. 194, at page 62513, the Northwest Mountain Region, Airports Division, Federal Aviation Administration (FAA), announced it intends to prepare Draft and Final Environmental Impact Statements (EIS) for the construction of a replacement airport at St. George, Utah. The following quote was included in that notice: "the FAA must evaluate the cumulative impact of noise pollution on the Park as a result of construction of the proposed replacement airport in light of air traffic near and over the Park, from whatever airport, air tours near or in the Park, and the acoustical data collected by the NPS in the Park in 1995 and 1998 mentioned in comments on the draft Environmental Assessment (EA)". The FAA wishes to clarify that the referenced "Park" is Zion National Park.

In order to insure that all significant issues related to the proposed action are identified and given consideration, letters containing environmental concerns must be received by Dennis Ossenkop, 1601 Lind Ave. SW., Suite 315, Renton, WA 98055–4056 by November 14, 2002.

Point of Contact for Information

Dennis Ossenkop, 1601 Lind Ave., SW., Suite 315, Renton, WA 98055–4056, *Telephone:* (425) 227–2611.

Dated: October 24, 2002.

Lowell H. Johnson,

Manager, Airports Division Northwest Mountain Region.

[FR Doc. 02–27728 Filed 10–30–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2002–61]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption, part 11 of title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of a certain petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before November 20, 2002.

ADDRESSES: Send comments on the petition to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400

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Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2002–12344 at the beginning of your comments. If you wish to receive confirmation that the FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to *http://dms.dot.gov*. You may review the public docket containing the petition, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office (telephone (1–800–647–5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Annette Kovite (425–227–1262), Transport Airplane Directorate (ANM–113), Federal Aviation Administration, 1601 Lind Ave SW., Renton, WA 98055–4056; or Vanessa Wilkins (202–267–8029), Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on October 24, 2002.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: FAA–2002–12344.

Petitioner: J.R.G. Design, Inc.

Section of 14 CFR Affected: 14 CFR 25.785(h)(2), 25.813(e), and 25.785(j).

Description of Relief Sought: To permit flight attendant seats that do not provide a direct view of the cabin area, installation of interior doors between passenger compartments, and relief from requirements for firm handholds along each aisle and additional passenger areas on a Boeing 747SP–68 airplane.

[FR Doc. 02–27733 Filed 10–30–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Commercial Space Transportation Advisory Committee—Closed Session

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Commercial Space Transportation Advisory committee special closed session.

SUMMARY: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App. 2), and 5 U.S.C. 552b(c), notice is hereby given of a special closed session of the Commercial Space Transportation Advisory Committee (COMSTAC). The special closed session will be a briefing by a representative from the National Security Council and will take place on Thursday, October 31, 2002, from 12 noon until 1:20 p.m. at the Holiday Inn-Capitol, 500 C Street SW., Washington, DC, in the Apollo Room.

FOR FURTHER INFORMATION CONTACT: Brenda Parker (AST–200), Office of the Associate Administrator for Commercial Space Transportation (AST), 800 Independence Avenue SW, Room 331, Washington, DC 20591, telephone (202) 385–4713; E-mail *Brenda.parker@faa.dot.gov*.

Issued in Washington, DC, October 24, 2002.

Patricia G. Smith,

Associate Administrator for Commercial Space Transportation.

[FR Doc. 02–27716 Filed 10–28–02; 3:12 pm]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 201: Aeronautical Operational Control (AOC) Message Hazard Mitigation (AMHM)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 201 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 201: Aeronautical Operational Control.

DATES: The meeting will be held on November 19–21, 2002 from 9 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at Boeing Company, Boeing Field, Bldg. 2–122, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: (1) RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036–5133; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca,org*, (2) Boeing Company, Rich Rawls, *Richard.c.rawls@boeing.com*.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 201 meeting. *NOTE: Name and citizenship information for attendees must be e-mailed to the Boeing POC.* The agenda will include:

- November 19:
- Opening Session (Welcome, Introductory and Administrative Remarks, Review Federal Advisory Committee Act and RTCA Procedures, Review Agenda, Background)
- Review Terms of Reference per the August 27 RTCA Program Management Committee
- Identify Existing Aeronautical Operational Control messages under consideration
- Review proposed Phase I document outline
- Collect input from airlines on current procedures for verifying weight and balance and takeoff data after it reaches the cockpit
- Draft other sections of Phase I Document
- Closing Session (Other Business, Date and Place of Next Meeting, Closing Remarks, Adjourn)

Note: This agenda will be followed as appropriate over the course of 3 days.

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on October 22, 2002.

Janice L. Peters,

FAA Special Assistant, RTCA Advisory Committee.

[FR Doc. 02–27732 Filed 10–30–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 02–01–C–00–JLN To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Joplin Regional Airport, Joplin, MO

AGENCY: Federal Aviation Administration, (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Joplin Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before December 2, 2002.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Central Region, Airports Division, 901 Locust, Kansas City, MO 64106.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Steve Stockam, Airport Manager, Joplin Regional Airport, at the following address: 303 E. 3rd Street, Joplin, MO 64802.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of Joplin, Joplin Regional Airport, under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Lorna Sandridge, PFC Program Manager, FAA, Central Region, 901 Locust, Kansas City, MO 64106, (816) 329–2641. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at the Joplin Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On October 11, 2002, the FAA determined that the application to impose and use the revenue from a PFC submitted by the City of Joplin, Missouri, was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than January 17, 2003.

The following is a brief overview of the application.

Level of the proposed PFC: $.50.

Proposed change effective date: April, 2003.

Proposed change expiration date: July 2, 2008.

Total estimated PFC revenue: $889,663.

Brief description of proposed project(s): Airport Rescue and Fire Fighting (ARFF) vehicle acquisition; runway and taxiway sign installation; Runway 18/36 extension and parallel taxiway site preparation (Phase 1); Runway 18/36 extension and parallel taxiway site preparation (Phase 2); pave, mark and light Runway 18 extension, partial parallel taxiway and connecting taxiways to Runway 18, install deer fence, purchase a medium-intensity approach light system and runway alignment indicator lights (MALSR); purchase handicap lift; install runway 18 navigational aids; construct Taxiway K; construct apron expansion; construct access road; Runway 13/31 safety area improvements and airport signage/lighting enhancements; new passenger terminal building (Phase 1) design.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Joplin Regional Airport.

Dated: Issued in Kansas City, Missouri, on October 11, 2002.

George A. Hendon,

Manager, Airports Division, Central Region.

[FR Doc. 02–27729 Filed 10–30–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 03–06–C–00EYW, Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Key West International Airport, Key West, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Key West International Airport under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before December 2, 2002.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Orlando Airports District Office, Suite 400, 5950 Hazeltine National Drive, Orlando, Florida 32822.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Peter Horton, Airport Manager for the Monroe County Board of County Commissioners, Key West International Airport, 3491 South Roosevelt Boulevard, Key West Florida 33040.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Monroe County Board of County Commissioners under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Susan Moore, Program Manager, Orlando Airports District Office, Suite 400, 5950 Hazeltine National Drive, Orlando, Florida 32822, (407) 812–6331, extension 20. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Key West International Airport under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On [K—insert date of SC Letter), the FAA determined that the application to impose and use the revenue from a PFC submitted by Monroe County Board of County Commissioners was complete was substantially complete within the requirements of section 158.25 part 158. The FAA will approve or disapprove the application, in whole or in part, no later than January 28, 2003.

The following is a brief overview of the application.

Proposed charge effective date: June 1, 2003.

Proposed charge expiration date: January 1, 2004.

Level of the proposed PFC: $4.50.

Total estimated PFC revenue: $263,000.

Brief description of proposed project(s): PFC Application and Administration Costs, Master Plan (Airport Utilities), Soundproof 25 Homes in 65 LDN, Design Noiseproofing of 50 Homes, Security Items (required by Part 139), Runway 9/27 Safety Area and Extension Feasibility Study, Install West General Aviation Apron Lighting, Install Airfield Guidance Signs (11), Drainage for Runway 9/27 and Taxiway A, and Noise Contour Update of Part 150 Map.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi/Commercial Operators filing FAA Form 1800–31 and Commercial Air Carriers filing DOT Form 298–C T1 or E1.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

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In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Monroe County Board of County Commissioners.

Issued in Orlando, Florida, on October 22, 2002.

W. Dean Stringer,

Manager, Orlando Airports District Office, Southern Region.

[FR Doc. 02–27731 Filed 10–30–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Raleigh-Durham International Airport, Raleigh, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Raleigh-Durham International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before December 2, 2002.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Atlanta Airports District Office, 1701 Columbia Avenue, Suite 2–260, College Park, Georgia.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to John C. Brantley, III, Airport Director, of the Raleigh-Durham Airport Authority at the following address: 1000 Trade Drive, Post Office Box 80001, Raleigh, NC 27623.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Raleigh-Durham Airport Authority under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Tracie D. Kleine, Program Manager, Atlanta Airports District Office, 1701 Columbia Avenue, Suite 2–260, College Park, Georgia 30337, (404) 305–7148. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invited public comment on the application to impose and use the revenue from a PFC at Raleigh-Durham International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On October 21, 2002, the FAA determined that the application to impose and use the revenue from a PFC submitted by Raleigh-Durham Airport Authority was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than February 12, 2002.

The following is a brief overview of the application.

PFC Application No.: 03–01–C–00–RDU.

Level of the proposed PFC: $3.00.

Proposed charge effective date: April 1, 2003.

Proposed charge expiration date: September 1, 2008.

Total estimated net PFC revenue: $69,903,473.

Brief description of proposed project(s):

Impose and Use:

- Surface Movement Guidance and Control System Plan and Improvements;
- Construct Taxiway J (includes International Drive Bridge);
- Design Runway 5R–23L Safety Area;
- Prepare PFC Application;
- Expand Terminal C Apron (includes relocating Taxiway "D")

Impose and Use:

- Construct Runway 5R–23L Safety Area.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Non-scheduled/On-Demand Air Carriers.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Raleigh-Durham Airport Authority.

Issued in College Park, Georgia, on October 21, 2002.

Scott L. Seritt,

Manager, Atlanta Airports District Office, Southern Region.

[FR Doc. 02–27727 Filed 10–30–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–13686]

Information Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Maritime Administration's (MARAD's) intentions to request extension of approval for three years of a currently approved information collection.

DATES: Comments should be submitted on or before December 30, 2002.

FOR FURTHER INFORMATION CONTACT: Joe Strassburg, Maritime Administration, 400 Seventh St., SW., Washington, DC 20590. Telephone: 202–366–4161; FAX 202–366–7901 or E-MAIL: *joe.strassburg@marad.dot.gov.*

Copies of this collection can also be obtained from that office.

SUPPLEMENTARY INFORMATION:

Title of Collection: Seamen's Claims; Administrative Action and Litigation.

Type of Request: Extension of currently approved information collection.

OMB Control Number: 2133–0522.

Form Numbers: None.

Expiration Date of Approval: Three years from date of approval.

Summary of Collection of Information: The information is submitted by claimants seeking payments for injuries or illnesses they sustained while serving as masters or members of a crew on board a vessel owned or operated by the United States. The Maritime Administration (MARAD) reviews the information and makes a determination regarding agency liability and payments.

Need and Use of the Information: The information obtained will be evaluated by MARAD officials to determine if the claim is fair and reasonable. If the claim is allowed and settled, payment is made to the claimant.

Description of Respondents: Officers or members of a crew who suffered death, injury, or illness while employed on vessels owned or operated by the United States. Also included in this description of respondents are surviving dependents, beneficiaries, and/or legal representatives of officers or crew members.

Annual Responses: 150.

Annual Burden: 1,875 hours.

Comments: Comments should refer to the docket number that appears at the top of this document. Written comments may be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. Comments may also be submitted by electronic means via the Internet at *http://dmses.dot.gov/submit.* Specifically address whether this information collection is necessary for proper performance of the functions of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance the quality, utility, and clarity of the information to be collected. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m. EDT (or EST), Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web at *http://dms.dot.gov.*

By Order of the Maritime Administrator,

Dated: October 25, 2002.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–27674 Filed 10–30–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2002–13019; Notice 2]

Decision that Nonconforming 2003 Harley Davidson VRSCA Motorcycles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of decision by NHTSA that nonconforming 2003 Harley Davidson VRSCA motorcycles are eligible for importation.

SUMMARY: This document announces the decision by NHTSA that 2003 Harley Davidson VRSCA motorcycles that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to vehicles that were originally manufactured for sale in the United States and that were certified by their manufacturer as complying with the safety standards (the U.S. certified versions of the 2003 Harley Davidson VRSCA motorcycles), and they are capable of being readily altered to conform to the standards.

DATE: This decision is effective as of the date of its publication in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Luke Loy, Office of Vehicle Safety Compliance, NHTSA (202–366–5308).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register.**

Milwaukee Motorcycle Imports, Inc. of Milwaukee, Wisconsin ("MMI")(Registered Importer 99–192) petitioned NHTSA to decide whether non-U.S. certified 2003 Harley Davidson VRSCA motorcycles are eligible for importation into the United States. NHTSA published notice of the petition on August 26, 2002 (67 FR 54839) to afford an opportunity for public comment. The reader is referred to that document for a thorough description of the petition.

One comment was received in response to the notice of petition, from Harley-Davidson Motor Company, the manufacturer of the vehicles in question. In this comment, Harley-Davidson stated that it agreed with the petitioner's claims that non-U.S. certified 2003 Harley Davidson VRSCA motorcycles are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 106 *Brake Hoses,* 111 *Rearview Mirrors,* 116 *Brake Fluid,* 119 *New Pneumatic Tires for Vehicles other than Passenger Cars,* 122 *Motorcycle Brake Systems,* and 205 *Glazing Materials.* Harley-Davidson also expressed agreement with the petitioner's statement that vehicle identification number plates that meet the requirements of 49 CFR part 565 are already affixed to non-U.S. certified 2003 Harley Davidson VRSCA motorcycles and that each vehicle's 17-digit VIN is stamped onto its headstock at the time of manufacture.

Harley-Davidson also agreed with the petitioner's description of modifications that would have to be performed on the vehicles to bring them into compliance with Standard Nos. 120 *Tire Selection and Rims for Vehicles other than Passenger Cars,* and 123 *Motorcycle Controls and Displays.* With respect to the latter standard, Harley-Davidson noted that the installation of a new odometer on the vehicles would trigger the odometer disclosure requirements of 49 CFR part 580. After it was accorded an opportunity to address this comment, MMI informed the agency that after the new odometer is installed, an odometer disclosure label is permanently affixed to the frame of the motorcycle. MMI further observed that the person selling the vehicle would be responsible for completing the odometer disclosure statement required by the regulations in 49 CFR part 580.

Harley-Davidson directed the bulk of its comments to the petitioner's description of modifications that would need to be performed to conform the vehicles to Standard No. 108 *Lamps, Reflective Devices and Associated Equipment.* The petition stated that these modifications would include: (a) Installation of U.S. model headlamp assemblies which incorporate headlamps that are certified to meet the standard; (b) replacement of all stop lamp and directional signal bulbs with bulbs that are certified to meet the standard; (c) replacement of all lenses with lenses that are certified to meet the standard; and (d) replacement of all rear reflectors with red reflectors that are certified to meet the standard. The petition further stated that although there are no daytime running lights on non-U.S. certified versions of the vehicle, their headlamps and tail lamps are activated when the ignition is turned on.

In its comment, Harley-Davidson stated that the full headlamp assembly (lens, bulbs, and reflector) and the full stop/tail lamp unit (lens, bulb, and reflector) for non-domestic vehicles, other than those intended for sale in Canada, are not compliant with Standard No. 108. Harley-Davidson further observed that the directional signals on non-U.S. certified versions of the vehicle are slightly different than those on its U.S. certified counterpart. Harley-Davidson remarked that although the lenses for all vehicles are

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the same, the reflectors and bulbs on non-domestic vehicles, except those intended for sale in Canada, are not. Harley-Davidson also agreed that all rear reflectors on non-domestic vehicles, except those intended for sale in Canada, will have to be replaced with red reflectors that are certified to meet the standard. Harley-Davidson further remarked that the license plate/rear reflector component mounting unit for non-domestic models, except those intended for sale in Canada, do not meet the illumination requirements of the standard. With respect to daytime running lights, Harley-Davidson stated that it does not market vehicles anywhere that are capable of meeting requirements for that equipment, but that the headlamps and tail lamps on its vehicles do burn when then the ignition is on. Harley-Davidson stated that all of its domestic and Canadian-market vehicle have amber positioning lamps incorporating the lower filament of the two-filament front directional signal bulbs.

In its response to these comments, MMI noted that it had already stated in the petition that the a U.S.-model headlamp assembly, which includes a lens, bulb, and reflector, will have to be installed on non-U.S. certified versions of the vehicle to comply with Standard No. 108. MMI further asserted that insofar as the stop/tail lamp, directional signals, and lenses are concerned, replacement of these units with U.S.-model parts will meet the requirements of the standard. MMI further contended that replacement of the non-domestic license plate/rear reflector with U.S.-model components will meet the illumination requirements of the standard.

In consideration of the foregoing, NHTSA has decided to grant the petition.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final decision must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP–394 is the vehicle eligibility number assigned to vehicles admissible under this notice of final decision.

Final Decision

Accordingly, on the basis of the foregoing, NHTSA hereby decides that 2003 Harley Davidson VRSCA motorcycles that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are substantially similar to 2003 Harley Davidson VRSCA motorcycles originally manufactured for sale in the United States and certified under 49 U.S.C. 30115, and are capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: October 28, 2002.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 02–27724 Filed 10–30–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2002–13018; Notice 2]

Decision That Nonconforming 2003 Harley Davidson FX, FL, and XL Motorcycles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of decision by NHTSA that nonconforming 2003 Harley Davidson FX, FL, and XL motorcycles are eligible for importation.

SUMMARY: This document announces the decision by NHTSA that 2003 Harley Davidson FX, FL, and XL motorcycles that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to vehicles that were originally manufactured for sale in the United States and that were certified by their manufacturer as complying with the safety standards (the U.S. certified versions of the 2003 Harley Davidson FX, FL, and XL motorcycles), and they are capable of being readily altered to conform to the standards.

DATES: This decision is effective as of the date of its publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Luke Loy, Office of Vehicle Safety Compliance, NHTSA (202–366–5308).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Milwaukee Motorcycle Imports, Inc. of Milwaukee, Wisconsin ("MMI") (Registered Importer 99–192) petitioned NHTSA to decide whether non-U.S. certified 2003 Harley Davidson FX, FL, and XL motorcycles are eligible for importation into the United States. NHTSA published notice of the petition on August 26, 2002 (67 FR 54840) to afford an opportunity for public comment. The reader is referred to that document for a thorough description of the petition.

One comment was received in response to the notice of petition, from Harley-Davidson Motor Company, the manufacturer of the vehicles in question. In this comment, Harley-Davidson stated that it agreed with the petitioner's claims that non-U.S. certified 2003 Harley Davidson FX, FL, and XL motorcycles are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 106 *Brake Hoses*, 111 *Rearview Mirrors*, 116 *Brake Fluid*, 119 *New Pneumatic Tires for Vehicles other than Passenger Cars*, 122 *Motorcycle Brake Systems*, and 205 *Glazing Materials*. Harley-Davidson also expressed agreement with the petitioner's statement that vehicle identification number plates that meet the requirements of 49 CFR part 565 are already affixed to non-U.S. certified 2003 Harley Davidson FX, FL, and XL motorcycles and that each vehicle's 17-digit VIN is stamped onto its headstock at the time of manufacture.

Harley-Davidson also agreed with the petitioner's description of modifications that would have to be performed on the vehicles to bring them into compliance with Standard Nos. 120 *Tire Selection and Rims for Vehicles other than Passenger Cars*, and 123 *Motorcycle Controls and Displays*. With respect to the latter standard, Harley-Davidson noted that the installation of a new odometer on the vehicles would trigger the odometer disclosure requirements of 49 CFR part 580. After it was accorded an opportunity to address this comment, MMI informed the agency that after the new odometer is installed, an odometer disclosure label is permanently affixed to the frame of the motorcycle. MMI further observed that the person selling the vehicle would be responsible for completing the odometer disclosure statement required by the regulations in 49 CFR part 580.

Harley-Davidson directed the bulk of its comments to the petitioner's description of modifications that would be performed to conform the vehicles to Standard No. 108 *Lamps, Reflective Devices and Associated Equipment*. The petition stated that these modifications would include: (a) Installation of U.S. model headlamp assemblies which incorporate headlamps that are certified to meet the standard; (b) replacement of all stop lamp and directional signal bulbs with bulbs that are certified to meet the standard; and (c) replacement of all lenses with lenses that are certified to meet the standard.

In its comment, Harley-Davidson stated that headlamps on vehicles manufactured for sale outside the United States may not incorporate bulbs meeting Standard No. 108. Harley-Davidson also stated that non-U.S. certified stop and directional signals contain lenses, reflectors, and bulbs that do not meet the standard, and would have to be replaced. Harley-Davidson further observed that motorcycles manufactured for sale outside the United States may incorporate amber rear side reflectors that do not meet the requirements of the standard, and be equipped with license plate brackets that do not meet the illumination requirements of the standard. In its response to these comments, MMI stated that U.S.-model headlamp assemblies, stop/tail lamp assemblies, directional signals, lenses, license plate lamps, and rear amber reflectors would be installed on the vehicles to replace any non-conforming components originally installed.

In consideration of the foregoing, NHTSA has decided to grant the petition.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final decision must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP–393 is the vehicle eligibility number assigned to vehicles admissible under this notice of final decision.

Final Decision

Accordingly, on the basis of the foregoing, NHTSA hereby decides that 2003 Harley Davidson FX, FL, and XL motorcycles that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are substantially similar to 2003 Harley Davidson FX, FL, and XL motorcycles originally manufactured for sale in the United States and certified under 49 U.S.C. 30115, and are capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: October 28, 2002.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 02–27725 Filed 10–30–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

October 25, 2002.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11100, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

Dates: Written comments should be received on or before December 2, 2002 to be assured of consideration.

Bureau of Alcohol, Tobacco and Firearms (BATF)

OMB Number: New.
Form Number: None.
Type of Review: New collection.
Title: Evaluation of Training, Arson for Prosecutors Training Program (Follow-up Survey).
Description: The information collected on the survey will enable ATF to determine the effectiveness of the training program. The Kirkpatrick 4-level model is used to evaluate ATF training programs. The survey is designed to measure at Level 3. This level determines whether the training program has changed the behavior of the participants. Specifically, is what they have learned being applied on the job. This is also called transfer of learning.
Respondents: State, Local, or Tribal Government.
Estimated Number of Respondents: 125.
Estimated Burden Hours Per Respondent: 15 minutes.
Estimated Total Reporting Burden: 63 hours.

OMB Number: New.
Form Number: ATF F 5013.2.
Type of Review: New.
Title: COLAs Online Access Request.
Description: The information on this form will be used by ATF to authenticate end users in the system to electronically file Certificates of Label Approval (COLAs). The system will authenticate end users by comparing information submitted to records in multiple databases.
Respondents: Business or other for-profit.
Estimated Number of Respondents: 1,000.
Estimated Burden Hours Per Respondent: 18 minutes.
Frequency of Response: Other (One-time).
Estimated Total Reporting Burden: 300 hours.

OMB Number: 1512–0199.
Form Number: ATF F 5110.30.
Type of Review: Extension.
Title: Drawback on Distilled Spirits Exported.
Description: ATF F 5110.30 is used by persons who export distilled spirits and wish to claim a drawback of taxes already paid in the United States (US). The form describes the claimant, spirits for tax purposes, amount of tax to be refunded, and a certification by the U.S. Government agent attesting to exportation.
Respondents: Business or other for-profit.
Estimated Number of Respondents: 100.
Estimated Burden Hours Per Respondent: 2 hours.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 10,000 hours.

OMB Number: 1512–0214.
Form Number: ATF F 5110.74.
Type of Review: Extension.
Title: Application and Permit Under 26 U.S.C. 5181—Alcohol Fuel Producer.

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Description: This form is used by persons who wish to produce and receive spirits for the production of alcohol fuels as a business or for their own use and for State and local registration where required. The form describes the person(s) applying for the permit, location of the proposed operation, type of material used for production and amount of spirits to be produced.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 734.

Estimated Burden Hours Per Respondent: 1 hour, 48 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 1,321 hours.

Clearance Officer: Jacqueline White (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, Room 3200, 650 Massachusetts Avenue, NW., Washington, DC 20226.

OMB Reviewer: Joseph F. Lackey, Jr. (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Mary A. Able,

Departmental Reports Management Officer.

[FR Doc. 02–27709 Filed 10–30–02; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Quarterly Publication of Individuals, Who Have Chosen To Expatriate, as Required by Section 6039G

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: This notice is provided in accordance with IRC section 6039G, as amended, by the Health Insurance Portability and Accountabiliy Act (HIPPA) of 1996. This listing contains the name of each individual losing United States citizenship (within the meaning of section 877(a)) with respect to whom the Secretary received information during the quarter ending September 30, 2002.

Last name	First name	Middle name
Delaney	Louanne	Claire
Morrish	William	Fraser
Carvais	Jean	
Kruse	Peter	
Bonifaci	Federica	
Nielsen	Erik	Helmuth
Ramsdell	Roger	Keith
Park	Andrew	Lee
Chow	Chun	Yin
Kwan	Ivy	Kin Han
Boller	Jean	Evelyn
Rask	Joan	Louise
Liguori	Michael	
Dragomer	Peter	Andrew
Purvis	Robert	Kenneth Berry
Minjares	Jesse	Vega
Koch	JoAnn	
Byrne Jr	Harry	Edward
Rasmussen	Steen	Thorsted
Al-Ghanem	Thunayan	Khalid
Silver	Maria	Erecinska
Cannell	Robert	Q.
Valentini	Malvin	J.
Cevallos	Gaston	D.
Moinian	Shahrokh	
Navon	Jonathan	
Jean-Loup	Parier	
Dessaulles	Georges	H.
Wang	Walter	H.
McNair	Elizabeth	Louise
Person	John	Michael
Person	Linda	Jane
Bezold	Karolyn	Jean
Rauchensteiner	Leopold	
Matschulat	Helen	Elizabeth
Thomas	Mark	Russell
Breen	James	William
Breen	Elizabeth	Evelyn
Arseneau	Diana	Elizabeth
Jones	Uwe	Manfred
Tsay	Ting	Kuei
Urrutia	Maria	Del Dulce Nombre
Urrutia Ybarra	Juan	Ramon
Varsavsky	Martin	
Fletcher	Frank	Robert
Avaznia	Tatiana	
Marguardt	Agatha	
Ho	Chung	Hung
Gillery	Scott	Murray
Dixon	Richard	Franklin
Price	Stephen	
Bouffier	Carolina	Yvonne
Al-Granem	Shareefah	Khaled
Bengali	Raahil	Razak
Davis	Mary	Catherine
Mallatratt	Gail	
Carlson	James	Edward
Nielsen	Asta	Elisabeth
Cohen	Paul	Harder
Griffin	Ketty	Lillian
Dychin	David	Sebastain
Armstrong	Jennifer	Diane
Schultz	Kent	Joseph
Jekabsons	Eriks	
Leccese	Arthur	Philip
Caruthers	Lawrence	Constant
De St Sauveur	Michelle	
Howard	Gail	Patricia
Hanrahan	Coleen	Mary
Green	Cornelia	Ward
Staub	Carmen	Sharon
Schuschnig	Daniel	
Tedeschi	Giorgio	
Petersen	Gudrun	Richter
Hijazi	Ali	Nabil
Dvorsky	Bronislaw	Naum
Harries	Boyce	Marquis Allen
Teh	Hau	Fung
Flesher	Sonja	Victoria
James	Myfanwy	Iona
Lewis	Ruth	Hope
De Vlugt	Caroline	Elizabeth
Hung	Jocelyn	Hui Po Wang
Trinchitella	Janel	Denise
Smith	Stephanie	Lynn
Bell Jr	Harry	Robert
Isaac	Reiko	
Leung	Jacqueline	Alee
Kaegi	Joan	Lorraine
McMurrich	James	Ronald
Holmes	John	James Mitchell
Jamison	Britton	Swarte
Hovannisian	Raffi	K.
Werklund	David	Paul
Farquher	Marcia	Fay
Harris	Pok	Nam
Hamasaka	Kentoku	
Watson	Tong	Pun
Ho	Anthony	Ka King
Miao	Ki	Hong
Shan	Weijian	
Wai	Mirian	Shum
Shimada	Ryosuke	
Tsujigami	Namie	
Kato	David	Hiroyuki
Aldwinckle	David	Christopher
Wada	Takehiko	
Sylvester	Anthony	Brooke
Wells	Kwi	Ye
Likins	Oyo	
Yon	Samuel	Geun-Sung
Yates	Cha	Chun
Jinks	Tae	Sun
Lin	Heng-Yeh	
Gasser	Corinne	Esther
Gudefin	Antoine	Julien
Wettstein-Gasser.	Claudia	
Ritter	Eric	Max
Constant	John	C
Hatchek	Steve	Erick
Paulsen	Kattiya	Thaweephol
Nguyen	Thong	Duc
Johannessen	Ellen	
Robinson III	Frank	Bentley
Von Holtzbrinck	Georg	Andreas
Essary	Roscoe	James
Lehbruner	Maximillian	Josef
Devlin	Amanda	Boon Ee
Gurwicz	Oleg	David
Tuttle	Gene	Lyle (A.K.A. Iriel Even-Pinah)
Price	Stephen	J.
Basrawy	Ruth	J.
Egnal	Marc	Matthew
Bang	Peter	Frithjof
Frith	Healther	Allison
Shurman	Mary	Seamans
Samhoun	Steve	Mustafa
Moore	Donald	Ashton
Zeeb	Thomas	Richard Bernd
Berty	Jean-Benoit	Marie-Gael
Golob	James	Stephen
Karolchyk	Darrell	
Ojjeh	Anne-Marie	Hagerty
Allen (Babb)	Thelma	Jean
Sulzer	Maily	Ellen
Williams	Michael	
Poto	Alfred	Pietro
Ebright	Stephen	Arthur
Jordi	Veronika	
Wingerter	Roseanne	Gloria
Weinberger	Christiane	Eva Elisabeth
Lee	Phillip	Hyon
Schweizer	Scott	Michael
Park	Charles	Chan
Cron	Bonita	Marie
Cron	James	Maxwell
Aagaard	Aase	
Patton	Martha	Ann
Shim	Sang	Ho
Park	Seung	Hyub
Park	Byung	Chun
Lee	Hyun	Jean
Fock	Ee-Ling	
Robins	Peter	Dwight
Cox	Michael	Anthony
George	Frederick	Walter
Ngiratregd	Hayes	
Kessler	Mitchel	Jay
Blackmore	Marian	Wynn
Gerrish	Jacqueline	S.
Botero	Carolina	Barco
Jenkins	John	Andrew

Last name	First name	Middle name
Heyden	Hendrik	Leslie
Koehler	Victor	
Diehl	John	Charles
Karsten	Andreas	Hermann
Shahryar	Ishaq	
Fletcher	Douglas	Elmo
Mansfield Skierka.	Alice	May
Schumacher	Gayle	Elaine
McCarthy	Suzanne	Joyce
Van Der Merwe	Philip	Anton
Quraeshi	Shoaib	
Cowles	Thomas	Michael
Clay	Ravida	
Hale-Byrne	Andrew	James
Astor	Daphne	Warburg
Pratt	Christopher	Stephen
Hubbard	John	Eaton
Lobo-Schweikert.	Maria	Eugenia
Martinez Pelayo	Humberto	Agustin
Boyce Jr	Franklin	Delano
Liu	Yung-Pin	
Yin	Lesamna	Chung-En
Yin	Samuelson	Chung Yao
Ruegemer	Joan	Florence
Fleck	Monica	Annette
Gozolits	Stefan	Norbert
Guthier	Alois	
Martinez	Josef	Ronaldo Hermann
Gowland	Carolyn	Anne
Galindo	Richardo	Alberto
Hutter	Tonya	Marie
Admoni	Nina	Wertans
Mess	Vera	Annette
Wenkstern	Danielle	
Grant	Gordon	David
Clunes	Nigel	
Corser	Patrick	J.B.
Gill	Brendan	
Boote	David	R.D.
Delgado	Paloma	
Reid	Bruce	Hunter
Chen	Fu-Mei	
Lui	Alexander	Yiu Wah
Rechenberg	Dorothea	
Middleton	Mary	Megan
Middleton	Joseph	Leslie
Maher	Mary	Christine
Pillet	Patrick	
Hensler	Guenter	
McKenna	Joanne	
Kessler	Susanne	M.
Grant	David	R.
Hooper	Charles	W. (deceased)

Dated: October 9, 2002.

Samuel Brown,

Team Manager-Examination Operation, Philadelphia Compliance Services.

[FR Doc. 02–27736 Filed 10–30–02; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; System of Records

AGENCY: Department of Veterans Affairs.

ACTION: Notice of new system of records.

SUMMARY: The Privacy Act of 1974 (5 U.S.C. 552(e)(4)) requires that all agencies publish in the **Federal Register** a notice of the existence and character of their systems of records. Notice is hereby given that the Department of Veterans Affairs (VA) is adding a new system of records entitled "Patient Representation Program Records—VA" (100VA10NS10).

DATES: Comments on the establishment of the new system of records must be received no later than December 2, 2002. If no public comment is received during the period allowed for comment or unless otherwise published in the **Federal Register** by the VA, the system will become effective December 2, 2002.

ADDRESSES: You may mail or hand-deliver written comments concerning the proposed new system of records to the Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; or fax comments to (202) 273–9289; or email comments to *OGCRegulations@mail.va.gov*. All relevant material received before December 2, 2002, will be considered. Comments will be available for public inspection at the above address in the Office of Regulations Management, Room 1158, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Veterans Health Administration (VHA) Privacy Act Officer, Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420, at (727) 320–1839.

SUPPLEMENTARY INFORMATION:

I. Description of the Proposed System of Records

The primary function of the Patient Representation Program is to serve as a direct channel of communication and mediation between VA healthcare facility management and individual patients, veterans who have applied for care, their friends, their families, VA healthcare providers and members of the community. A VA healthcare provider is anyone hired by VA and working at a VA facility be it a VA medical center (VAMC), Outpatient Clinic or Community-Based Outpatient Clinic. An employee may be full-time, part-time, or intermittent and includes temporary workers. Members of the community include congressional liaisons, veterans service organizations and attorneys. The program functions as the liaison between the patient and the healthcare system, ensures that patients receive entitled healthcare benefits and services in a dignified and compassionate manner, and ensures that healthcare facility policies and practices are in conformance with the VA Patients' Bill of Rights. The program is the primary source for response when veteran patients' expectations are not met within the VA healthcare system. The Patient Representatives' activities cross all organizational lines of authority at the healthcare facilities for the purpose of expressing patient concerns and resolution of patient complaints. Information collected from the program is integrated into the overall quality improvement plans and activities of the healthcare facility. The purpose of the system of records is to establish a repository for the information that is collected to accomplish the purposes described. Records are maintained at the local VA level on behalf of the veteran making the complaint or compliment so improvements may be made at the VA healthcare facility. Patient contacts are coded in order to facilitate tracking of these contacts to show where improvements might be made. Aggregate data are maintained at the Network and Headquarters levels for the development of reports to make systemwide changes. Records are collected and stored electronically for ease of retrieval by individual patient names and ease in compiling aggregate data.

II. Proposed Routine Use Disclosures of Data in the System

We are proposing to establish the following routine use disclosures of information maintained in the system:

1. To a member of Congress or staff person acting for the member when the member or staff person requests the records on behalf of and at the request of that individual.

Individuals sometimes request the help of a member of Congress in resolving some issues relating to a matter before VA. The member of Congress then writes to VA, and VA must be able to give sufficient information to be responsive to the inquiry.

2. To the National Archives and Record Administration (NARA) in records management inspections conducted under authority of Title 44, United States Code.

NARA is responsible for archiving old records no longer actively used but which may be appropriate for preservation; it is responsible in general for the physical maintenance of the Federal Government's records. VA must be able to turn records over to this agency in order to determine the proper disposition of such records.

3. Disclosure may be made to the Department of Justice and United States Attorneys in defense or prosecution of litigation involving the United States,

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and to Federal agencies upon their request in connection with review of administrative tort claims filed under the Federal Tort Claims Act, 28 U.S.C. 2672.

4. Disclosure may be made to any facility regarding the hiring, performance, or other personnel-related information with which there is, or there is proposed to be, an affiliation, sharing agreement, contract, or similar arrangement for purposes of establishing, maintaining, or expanding any such relationship.

Federal, State, or local facilities with which VA healthcare facilities wish to enter sharing agreements or affiliations may require information regarding VA personnel, information on hiring and performance before entering into such relationships.

5. Disclosure may be made to a Federal agency or to a State or local government licensing board and/or to the Federation of State Medical Boards or a similar non-government entity which maintains records concerning individual employment histories or concerning the issuance, retention or revocation of licenses, certifications, or registrations necessary to practice an occupation, profession or specialty, in order for the Department to obtain information relevant to a Department decision concerning the hiring, retention or termination of an employee or to inform a Federal agency or licensing board or the appropriate non-government entities about the healthcare practices of employees who resigned, were terminated or retired and whose professional healthcare activity so significantly failed to conform to generally accepted standards of professional medical practice as to raise reasonable concern for the health and safety of patients receiving medical care in the private sector or from another Federal agency. These records may also be disclosed as part of an ongoing computer-matching program to accomplish these purposes.

VA must be able to report information regarding the care a healthcare practitioner provides to agencies and boards charged with maintaining the health and safety of patients.

6. For program review purposes and the seeking of accreditation and/or certification, disclosure may be made to survey teams of the Joint Commission on Accreditation of Healthcare Organizations (JCAHO), College of American Pathologists, American Association of Blood Banks, and similar national accreditation agencies or boards with whom VA has a contract or agreement to conduct such reviews, but only to the extent that the information is necessary and relevant to the review.

VA healthcare facilities undergo certification and accreditation by several national accreditation agencies or boards to comply with regulations and good medical practices. VA must be able to disclose information for program review purposes and the seeking of accreditation and/or certification of healthcare facilities and programs.

7. Disclosure may be made to a State or local government entity or national certifying body which has the authority to make decisions concerning the issuance, retention or revocation of licenses, certifications or registrations required to practice a healthcare profession, when requested in writing by an investigator or supervisory official of the licensing entity or national certifying body for the purpose of making a decision concerning the issuance, retention or revocation of the license, certification or registration of a named healthcare professional.

8. Disclosure of information to the Federal Labor Relations Authority (FLRA) (including its General Counsel) when requested in connection with the investigation and resolution of allegations of unfair labor practices, in connection with the resolution of exceptions to arbitrator awards when a question of material fact is raised, in connection with matters before the Federal Service Impasses Panel, and to investigate representation petitions and conduct or supervise representation elections.

The release of information to the FLRA from this Privacy Act system of records is necessary to comply with the statutory mandate under which FLRA operates. It has also been determined that the release of information for this purpose is a necessary and proper use of the information in this system of records.

9. Disclosure of relevant information may be made to individuals, organizations, private or public agencies, etc., with whom VA has a contract or agreement to perform such services as VA may deem practicable for the purposes of laws administered by VA, in order for the contractor or subcontractor to perform the services of the contract or agreement.

VA occasionally contracts out certain of it functions when this would contribute to effective and efficient operations. VA must be able to give a contractor whatever information is necessary for the contractor to fulfill their duties. In these situations, safeguards are provided in the contract prohibiting the contractor from using or disclosing the information for any purpose other than that described in the contract.

10. Disclosure may be made to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance or continuance of a license, grant or other benefit given by that agency to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

VA must be able to provide information to agencies conducting background checks on applicants for employment or licensure.

11. Disclosure may be made to a Federal, State, or local agency maintaining civil or criminal violation records, or other pertinent information in order for VA to obtain information relevant to the hiring or retention of an employee, letting of a contract, granting of a security clearance, or the issuance of a grant.

VA needs to obtain information from other agencies in order to conduct background and security clearance checks on applicants for employment to VA, contractors, or persons requesting a grant.

12. Disclosure of information may be made to the next-of-kin and/or the person(s) with whom the patient has a meaningful relationship to the extent necessary and on a need-to-know basis consistent with good medical-ethical practices.

13. A record containing the name(s) and address(es) of present or former members of the armed services and/or their dependents may be disclosed under certain circumstances: (1) To any non-profit organization if the release is directly connected with the conduct of programs and the utilization of benefits under Title 38 U.S.C.; and, (2) to any criminal or civil law enforcement governmental agency or instrumentality charged under applicable law with the protection of the public health or safety if a qualified representative of such organization, agency or instrumentality has made a standing written request that such name(s) or address(es) be provided for a purpose authorized by law; provided, further, that the record(s) will not be used for any purpose other than that stated in the request and that organization, agency or instrumentality is aware of the penalty provision of 38 U.S.C. 5701(f).

14. On its own initiative, VA may disclose information, except for the names and home addresses of veterans and their dependents, to a Federal, State, local, tribal or foreign agency charged with the responsibility of investigating or prosecuting civil, criminal or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, rule or order issued pursuant thereto. On its own initiative, VA may also disclose the names and addresses of veterans and their dependents to a Federal agency charged with the responsibility of investigating or prosecuting civil, criminal or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, rule or order issued pursuant thereto.

VA must be able to comply with the requirements of agencies charged with enforcing the law and conducting investigations. VA must also be able to provide information to State or local agencies charged with protecting the public's health as set forth in State law.

III. Compatibility of the Proposed Routine Uses

The Privacy Act permits VA to disclose information about individuals without their consent for a routine use when the information will be used for a purpose that is compatible with the purpose for which VA collected the information. In all of the routine use disclosures described above, the recipient of the information will use the information in connection with a matter relating to one of VA's programs, will use the information to provide a benefit to VA, or disclosure is required by law.

The notice of intent to publish and an advance copy of the system notice have been sent to the appropriate Congressional committees and to the Director of the Office of Management and Budget (OMB) as required by 5 U.S.C. 552a(r) (Privacy Act) and guidelines issued by OMB (65 FR 77677), December 12, 2000.

Approved: October 11, 2002.

Anthony J. Principi,

Secretary of Veterans Affairs.

100VA10NS10

SYSTEM NAME:

Patient Representation Program Records—VA.

SYSTEM LOCATION:

Records are maintained at each Department of Veterans Affairs' (VA) healthcare facility (in most cases, back-up computer tape information is stored at off-site locations). Address locations for VA facilities are listed in VA appendix 1. In addition, information from these records or copies of records may be maintained at the Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington DC, 20420; Veterans Integrated Service Networks (VISNs); and, Austin Automation Center (AAC), Austin, Texas.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The records include information concerning individual patients, veterans who have applied for care, their friends, their families, VA healthcare providers and members of the community. Members of the community include congressional liaisons, veterans service organizations and attorneys.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records may include information maintained in paper records, and entered into the Veterans Health Information Systems and Technology Architecture (VistA), related to concerns and complaints regarding an individual's medical care, VA benefits, and/or encounters with healthcare facility personnel. The records include information that is compiled to review, investigate, and resolve these issues.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 38, United States Code, chapter 73, section 7301 (b).

PURPOSE(S):

The records may be used for such purposes as producing various management and patient follow-up reports; responding to patient and other inquiries; conducting healthcare-related studies, statistical analysis, and resource allocation planning; providing clinical and administrative support to patient medical care; audits, reviews and investigations conducted by the staff of the healthcare facility, VISN, VHA Headquarters, and VA's Office of Inspector General (OIG); law enforcement investigations; quality improvement reviews and investigations; personnel management and evaluation; employee ratings and performance evaluations; employee disciplinary or other adverse action, including discharge; advising healthcare professional licensing or monitoring bodies or similar entities or activities of VA and former VA healthcare personnel; accreditation of a facility by an entity such as the Joint Commission on Accreditation of Healthcare Organizations (JCAHO); and, notifying medical schools of medical students' performance. The information is integrated into the overall quality improvement plans and activities of the facility and used to improve services and communications, as well as, to track categories of complaints and the locations of complaints in order to improve the delivery of healthcare.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the written request of that individual.

2. Disclosure may be made to the National Archives and Record Administration (NARA) for records management inspections conducted under authority of Title 44, United States Code.

3. Disclosure may be made to the Department of Justice and United States Attorneys in defense or prosecution of litigation involving the United States, and to Federal agencies upon their request in connection with review of administrative tort claims filed under the Federal Tort Claims Act, 28 U.S.C. 2672.

4. Disclosure may be made to any facility regarding the hiring, performance, or other personnel-related information with which there is, or there is proposed to be, an affiliation, sharing agreement, contract, or similar arrangement for purposes of establishing, maintaining, or expanding any such relationship.

5. Disclosure may be made to a Federal agency or to a State or local government licensing board and/or to the Federation of State Medical Boards or a similar non-government entity which maintains records concerning individual employment histories or concerning the issuance, retention or revocation of licenses, certifications, or registration necessary to practice an occupation, profession or specialty, in order for the Department to obtain information relevant to a Department decision concerning the hiring, retention or termination of an employee or to inform Federal agencies, licensing boards or the appropriate non-government entities about the healthcare practices of employees who resigned, were terminated, or retired and whose professional healthcare activity so significantly failed to conform to generally accepted standards of professional medical practice as to raise reasonable concern for the health and safety of patients receiving medical care in the private sector or from another Federal agency. These records may also be disclosed as part of an ongoing computer-matching program to accomplish these purposes.

6. For program review purposes and the seeking of accreditation and/or certification, disclosure may be made to survey teams of JCAHO, College of American Pathologists, American Association of Blood Banks, and similar

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national accreditation agencies or boards with whom VA has a contract or agreement to conduct such reviews, but only to the extent that the information is necessary and relevant to the review.

7. Disclosure may be made to a State or local government entity or national certifying body which has the authority to make decisions concerning the issuance, retention or revocation of licenses, certifications or registrations required to practice a healthcare profession, when requested in writing by an investigator or supervisory official of the licensing entity or national certifying body for the purpose of making a decision concerning the issuance, retention or revocation of the license, certification or registration of a named healthcare professional.

8. Disclosure of information to the Federal Labor Relations Authority (FLRA) (including its General Counsel) when requested in connection with the investigation and resolution of allegations of unfair labor practices, in connection with the resolution of exceptions to arbitration awards when a question of material fact is raised, in connection with matters before the Federal Service Impasses Panel, and to investigate representation petitions and conduct or supervise representation elections.

9. Disclosure of relevant information may be made to individuals, organizations, private or public agencies, etc., with whom VA has a contract or agreement to perform such services as VA may deem practicable for the purposes of laws administered by VA, in order for the contractor or subcontractor to perform the services of the contract or agreement.

10. Disclosure may be made to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

11. Disclosure may be made to a Federal, State or local agency maintaining civil, criminal or other relevant information such as current licenses, if necessary to obtain information relevant to any agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other health, educational or welfare benefit.

12. Disclosure of information may be made to the next-of-kin and/or the person(s) with whom the patient has a meaningful relationship to the extent necessary and on a need-to-know basis consistent with good medical-ethical practices.

13. A record containing the name(s) and address(es) of present or former members of the armed services and/or their dependents may be disclosed under certain circumstances: (1) To any non-profit organization if the release is directly connected with the conduct of programs and the utilization of benefits under Title 38 U.S.C.; and (2) to any criminal or civil law enforcement governmental agency or instrumentality charged under applicable law with the protection of the public's health or safety, if a qualified representative of such organization, agency or instrumentality has made a standing written request that such name(s) or address(es) be provided for a purpose authorized by law; provided that the record(s) will not be used for any purpose other than that stated in the request and that organization, agency or instrumentality is aware of the penalty provision of 38 U.S.C. 5701(f).

14. VA may disclose on its own initiative any information in this system, except the names and home addresses of veterans and their dependents, which is relevant to a suspected or reasonably imminent violation of law, whether civil, criminal or regulatory in nature and whether arising by general or program statute or by regulation, rule or order issued pursuant thereto, to a Federal, State, local or foreign agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, regulation, rule or order. On its own initiative, VA may also disclose the names and addresses of veterans and their dependents to a Federal agency charged with the responsibility of investigating or prosecuting civil, criminal or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, rule or order issued pursuant thereto.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on paper, magnetic tape, disk, or laser optical media. Information on automated storage media includes record information stored in the VistA system. In most cases, copies of back-up computer files are maintained at off-site locations.

RETRIEVABILITY:

Records are retrieved by the names and social security numbers or other assigned identifiers of the individuals on whom they are maintained.

SAFEGUARDS:

1. Access to VA working and storage areas is restricted to VA employees on a "need-to-know" basis; strict control measures are enforced to ensure that disclosure to these individuals is also based on this same principle. Generally, VA file areas are locked after normal duty hours and the facilities are protected from outside access by the Federal Protective Service or other security personnel.

2. Access to VistA at healthcare facilities is generally limited by appropriate locking devices and restricted to authorized VA employees and vendor personnel. Peripheral devices are placed in secure areas (areas that are locked or have limited access) or are otherwise protected. Information in the VistA system may only be accessed by authorized VA employees and vendor personnel. Access to file information is controlled at two levels: the systems recognize authorized employees by series of individually unique passwords/codes as part of each data message, and the employees are limited to only that information in the file which is needed in the performance of their official duties. Information that is downloaded from VistA and maintained on personal computers is afforded similar storage and access protections as the data that is maintained in the original files. Access to information stored on automated storage media at other VA locations is controlled by individually unique passwords/codes.

3. Data maintained at the AAC can only be updated by authorized AAC personnel. Access is limited to authorized employees by individually unique access codes that are changed periodically. Physical access to the AAC is generally restricted to AAC staff, VA Headquarters' employees, custodial personnel, Federal Protective Service and authorized operational personnel through electronic locking devices. All other persons gaining access to the computer rooms are escorted.

RETENTION AND DISPOSAL:

Paper records and information stored on electronic storage media are maintained and disposed of in accordance with the records disposition authority approved by the Archivist of the United States.

SYSTEM MANAGER(S) AND ADDRESS:

Official responsible for policies and procedures: Program Manager, National VA Patient Representation Program (10NS10), VA Medical Center, 1900 E. Main, Danville, Illinois 61832. Officials maintaining the system: Director at the facility where the individuals made contact.

NOTIFICATION PROCEDURE:

Individuals who wish to determine whether this system of records contains information about them should contact the VA facility location where they made or have contact. Inquiries should include the person's full name, social security number, date(s) of contact and return address.

RECORD ACCESS PROCEDURE:

Individuals seeking information regarding access to and contesting of records in this system may write, call or visit the VA facility location where they made contact.

RECORD SOURCE CATEGORIES:

The patient, family members, and friends, employers or other third parties when otherwise unobtainable from the patient or family; Patient Medical Records—VA (24VA136); private medical facilities and healthcare professionals; State and local agencies; other Federal agencies; VISNs, Veterans Benefits Administration automated record systems (including Veterans and Beneficiaries Identification and Records Location Subsystem—VA (38VA23) and the Compensation, Pension, Education and Rehabilitation Records—VA (58VA21/22); and various automated systems providing clinical and managerial support at VA healthcare facilities.

[FR Doc. 02–27686 Filed 10–30–02; 8:45 am]

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Federal Register

Thursday,
October 31, 2002

Part II

Department of the Interior

Fish and Wildlife Service

Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES); Twelfth Regular Meeting; Tentative U.S. Negotiating Positions for Agenda Items and Species Proposals Submitted by Foreign Governments and the CITES Secretariat; Extension of Comment Period; Notice

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES); Twelfth Regular Meeting; Tentative U.S. Negotiating Positions for Agenda Items and Species Proposals Submitted by Foreign Governments and the CITES Secretariat; Extension of Comment Period

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; extension of comment period.

SUMMARY: This notice announces the provisional agenda for the twelfth regular meeting of the Conference of the Parties (COP12) to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). The description of each agenda item is followed by a brief explanation of the tentative U.S. negotiating position for that item. Proposals submitted by the United States are only covered in this notice to a limited extent. This notice contains primarily summaries of the tentative U.S. negotiating positions on agenda items, resolutions, and species proposals submitted by other countries and the CITES Secretariat for COP12. We are also extending the comment period on these issues, which was announced in our **Federal Register** notice of August 20, 2002 (67 FR 53962).

DATES: In developing U.S. negotiating positions on these issues, we will now consider information and comments that you submit if we receive them by October 31, 2002. Our previous comment period was announced (August 20, 2002 (67 FR 53962)) to run through October 4, 2002. This extension is being made in order to give the public every opportunity to provide comments in development of our tentative negotiating positions.

ADDRESSES: *Comments:* You should send comments pertaining to resolutions and agenda items to the Division of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 700, Arlington, VA 22203, or via e-mail at: *cites@fws.gov*. You should send comments pertaining to species proposals to the Division of Scientific Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 750, Arlington, VA 22203, or via e-mail at: *scientificauthority@fws.gov*. Comments and materials that we receive will be available for public inspection, by appointment, from 8 a.m. to 4 p.m., Monday through Friday, at either the Division of Management Authority or the Division of Scientific Authority.

FOR FURTHER INFORMATION CONTACT: (1) For information pertaining to resolutions, discussion papers, and agenda items for the 12th meeting of the CITES Conference of the Parties: Peter O. Thomas, Ph.D., Chief, U.S. Fish and Wildlife Service, Division of Management Authority, tel. 703–358–2095, fax 703–358–2298, e-mail at: *cites@fws.gov*. (2) For information pertaining to species proposals for the 12th meeting of the CITES Conference of the Parties: Robert R. Gabel, Chief, U.S. Fish and Wildlife Service, Division of Scientific Authority, tel. 703–358–1708, fax 703–358–2276, e-mail at: *scientificauthority@fws.gov*.

SUPPLEMENTARY INFORMATION:

Background

The Convention on International Trade in Endangered Species of Wild Fauna and Flora, TIAS 8249, referred to below as CITES or the Convention, is an international treaty designed to control and regulate international trade in certain animal and plant species that are now or potentially may become threatened with extinction. These species are listed in appendices to CITES, copies of which are available from the Division of Management Authority or the Division of Scientific Authority at the above addresses, from our World Wide Website *http://international.fws.gov*, or from the official CITES Secretariat Website at *http://www.cites.org/*. Currently, 158 countries, including the United States, are Parties to CITES. CITES calls for biennial meetings of the Conference of the Parties (COP), which review issues pertaining to CITES implementation, make provisions enabling the CITES Secretariat in Switzerland to carry out its functions, consider amendments to the list of species in appendices I and II, consider reports presented by the Secretariat, and make recommendations for the improved effectiveness of CITES. Any country that is a Party to CITES may propose and vote on amendments to appendices I and II (species proposals), resolutions, decisions, discussion papers, and agenda items for consideration by the Conference of the Parties. Accredited nongovernmental organizations may participate in the meeting as approved observers, and may speak during sessions when recognized, but may not vote or submit proposals. COP12 will be held in Santiago, Chile, November 3–15, 2002.

This is our sixth in a series of **Federal Register** notices that, together with announced public meetings, provide you with an opportunity to participate in the development of U.S. tentative negotiating positions for COP12. We published our first **Federal Register** notice on June 12, 2001 (66 FR 31686), and with it we requested information and recommendations on potential species proposals for the United States to consider submitting for discussion at COP12, and we also presented biological and trade status information on several species that we were already considering. You may obtain information on that **Federal Register** notice, and on species amendment proposals, from the Division of Scientific Authority at the above address. We published our second **Federal Register** notice on July 25, 2001 (66 FR 38739), and with it we requested information and recommendations on potential resolutions, decisions, and agenda items for the United States to consider submitting for discussion at COP12. You may obtain information on that **Federal Register** notice, and on proposed resolutions, decisions, and agenda items, from the Division of Management Authority at the above address. We published our third **Federal Register** notice on March 27, 2002 (67 FR 14728), and with it we announced a public meeting to discuss proposed amendments to the CITES appendices (species proposals), resolutions, decisions, and agenda items that the United States was considering submitting for consideration at COP12, and we provided information on how non-governmental organizations based in the United States can attend COP12 as observers. You may obtain information on that **Federal Register** notice from the Division of Management Authority (for information pertaining to proposed resolutions and agenda items) or the Division of Scientific Authority (for information pertaining to proposed amendments to the appendices) at the above addresses.

We published our fourth **Federal Register** notice on April 18, 2002 (67 FR 19207), and with it we described the U.S. approach for COP12; described resolutions, decisions, and agenda items that the United States was considering submitting for consideration at COP12; described proposed amendments to the CITES Appendices (species proposals) that the United States was considering submitting for consideration at COP12; invited your comments and information on these potential proposals; and, reminded you of a public meeting to discuss these potential submissions, which was announced in our **Federal Register** notice of March 27, 2002. You may obtain information on that notice from the Division of Management Authority (for information pertaining to proposed resolutions and agenda items) or the Division of Scientific Authority (for information pertaining to proposed amendments to the Appendices) at the above addresses.

We published our fifth **Federal Register** notice on August 20, 2002 (67 FR 53962). With this notice we announced a public meeting on September 10, 2002, which took place as scheduled (*see* **DATES** and **ADDRESSES**, from the August 20 **Federal Register** notice). That public meeting was held in the Sidney Yates Auditorium of the Department of the Interior. The U.S. discussed a variety of logistical and policy issues, heard views of the public on a number of COP12 species proposals and resolutions, and answered a number of questions from the public.

We also posted a notice on our Internet website (*http://international.fws.gov/*) "Potential Species Proposals, Resolutions, Decisions, and Agenda Items the U.S. is Considering Submitting for Consideration at CITES COP12" on April 1, 2002. At the time this notice was prepared, we were also planning to post two abbreviated tables on tentative U.S. negotiating positions for resolutions, decisions, other agenda items, and species proposals on our website.

You may locate our regulations governing this public process in 50 CFR 23.31–23.39. Before COP12, we will announce any changes to the tentative negotiating positions contained in this notice and any undecided negotiating positions by posting a notice on our Internet website (*http://international.fws.gov/*). Pursuant to 50 CFR 23.38 (a), the Director has decided to suspend the procedure for publishing a notice of final negotiating positions in the **Federal Register**, because time and resources needed to prepare a **Federal Register** notice would detract from essential preparation for COP12, and because the information on negotiating positions will otherwise be available on the Internet. After COP12, we will announce the amendments to CITES appendices I and II and resolutions and decisions that were adopted by the Parties at the meeting, and request comments on whether the United States should enter reservations on any of the species amendments.

At our public meeting on April 17, 2002, we discussed species proposals, resolutions, discussion papers, and agenda items submitted by the United States to COP12. We discussed species amendments and resolutions submitted by other CITES Parties and the Secretariat, and other agenda items leading up to COP12, at the public meeting on September 10, 2002.

Tentative Negotiating Positions

In this notice we summarize the tentative U.S. negotiating positions on agenda items, resolutions, and proposals to amend the Appendices, that have been submitted by other countries and the CITES Secretariat. (Proposals submitted by the United States are covered in the Internet website posting (*http://international.fws.gov/*, "Potential Species Proposals, Resolutions, Decisions, and Agenda Items the U.S. is Considering Submitting for Consideration at CITES COP12") of April 1, 2002 (*see* Background, above). We will not cover most of those issues in this notice. However, for those U.S. submissions not fully explained in the Internet website posting of April 1, 2002, we provide additional information in this notice.

In this notice, numerals next to each agenda item or resolution correspond to the numbers used in the agenda for CITES COP12, and posted on the CITES Secretariat's Internet website (*http://cites.org/eng/cop/12/docs/index.shtml*). However, when we completed this notice, the Secretariat had not yet made available documents for a number of the agenda items and resolutions on the agenda for COP12. Tentative negotiating positions in this notice do not include documents posted to the Secretariat's website after August 1, 2002.

In the discussion that follows below, we have included a brief description of each proposed resolution, agenda item, or species proposal submitted by other countries or the CITES Secretariat, followed by a brief explanation of the tentative U.S. negotiating position for that item. However, new information that may become available at COP12 could lead to modifications of these positions. The U.S. delegation will fully disclose changes in our negotiating positions and the explanations for those changes during public briefings at COP12. The United States is also very concerned about the budgetary implications and workload burden that will be placed upon the Parties, the Committees, and the Secretariat and intends to review all suggested changes in view of these concerns.

Agenda (Provisional) (Doc. 11.3)

Opening Ceremony and Welcoming Addresses

The Secretariat will not prepare a document on these agenda items. According to tradition, as the host country for COP12, Chile will conduct an opening ceremony and make welcoming remarks.

Strategic and administrative matters

1. (a) Rules of Procedure (Doc. 1.1)

Tentative U.S. negotiating position: Support, with exceptions described below.

A draft version of the Rules of Procedure, which describe the manner in which a meeting of the COP is conducted, is distributed prior to all CITES meetings of the COP by the Secretariat. The Secretariat prepared document COP12 Doc. 1.1, which includes a draft of the Rules of Procedure for COP12, and proposes the Conference of the Parties adopt these draft Rules. At the 46th meeting of the Standing Committee (Geneva, March 2002), the Secretariat presented a draft version of the Rules of Procedure for COP12, which included a number of proposed changes to the Rules adopted by the Parties for COP11. The Standing Committee discussed this draft document and concerns were raised, including by the United States, over a number of the changes to the Rules proposed by the Secretariat. The Standing Committee agreed to a number of amendments to the Secretariat's version of the draft Rules of Procedure, and the Secretariat included these amendments in its draft Rules of Procedure in document COP12 Doc. 1.1. In addition to the Standing Committee's amendments, the Secretariat proposed a change to Rule 28.4, on submission of informative documents and exhibitions, to simplify the Rule's text.

Most of the concerns raised by the United States at the 46th meeting of the Standing Committee to the draft Rules of Procedure for COP12 presented there have been addressed and incorporated into the draft version in document COP12 Doc. 1.1. As such, the United States tentatively proposes to support most aspects of the draft version of the Rules of Procedure in document COP12 Doc. 1.1, with the following exceptions: With respect to Rule 17 on the right to speak at meetings of the COP, the United States tentatively does not oppose the proposed changes to this Rule about the order on which the Presiding Officer calls on speakers, as long as every effort is made to allow delegates and observers time to speak or

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make interventions; with respect to Rule 20 on submission of draft Resolutions and other documents, the United States tentatively supports in part the changes proposed by Chile in document COP12 Doc. 1.2 (*see* below); with respect to Rules 22 and 23 on proposals for amendment of Appendices I and II, although the United States tentatively agrees with the proposed changes to the text in these Rules, it believes that the term "scope," which appears in both, should be clearly defined; and, with respect to Rule 25 on methods of voting at meetings of the COP, the United States historically has not supported the use of secret ballots, believing that the CITES process at meetings of the COP should be as transparent as possible. As such, the United States is tentatively considering support of the changes to Rule 25 proposed by Chile in document COP12 Doc. 1.2 (*see* below).

(b) Revision of the Rules of Procedure (Doc. 1.2; Chile)

This document was prepared by Chile, and it proposes changes to Rules 20 and 25 of the Rules of Procedure. Tentative U.S. negotiating position: Support, with exceptions described below.

In Rule 20, Chile proposes a change to paragraph 3, regarding circulation to the Parties of urgent draft Resolutions and other documents arising after the 150-day submission deadline. Rule 20.3, as drafted by the Secretariat, states that such documents be circulated "no later than during the session preceding the session at which they are to be discussed." Chile proposes that these kinds of documents should be circulated at least 24 hours preceding the session at which they are to be discussed, as 24 hours is the minimum amount of time necessary to review such documents. Although the United States agrees with Chile that at least 24 hours is necessary to review these documents, it recognizes that it is not always possible for the Secretariat to circulate them 24 hours in advance, particularly in the final days of the COP. The United States recommends that every effort be made to have these documents available 24 hours in advance but does not support changing the rule to make this a requirement.

Chile also proposes several changes to Rule 25, on methods of voting, designed to reduce the use of secret ballots. As discussed above under agenda item 1. (a), the United States historically has not supported the use of secret ballots, believing that the CITES process at meetings of the COP should be as transparent as possible. Therefore, the United States tentatively supports the changes to Rule 25 proposed by Chile in document COP12 Doc. 1.2.

2. Election of Chairman and Vice-Chairman of the Meeting and of Chairman of Committees I and II and of the Budget Committee (no document)

Tentative U.S. negotiating position: Undecided.

The Secretariat will not prepare a document for this agenda item. The United States will support the election of a highly qualified Conference Chair, Vice-Chair, and Committee Chairs representing the geographic diversity of CITES.

The Chair of the CITES Standing Committee (United States) will serve as temporary Chair of the meeting of the COP until a permanent Conference Chair is elected. According to tradition, the host country, which will be Chile in this case, provides the Conference Chair.

The major technical work of CITES is done in the two simultaneous Committees, thus, Committee Chairs must have great technical knowledge and skill. In addition, CITES benefits from active participation and leadership of representatives of every region of the world. The United States will support the election of Committee Chairs and a Vice-Chair of the Conference having the required technical knowledge and skills and also reflecting the geographic and cultural diversity of CITES Parties.

3. Adoption of the Agenda (Doc. 3)

Tentative U.S. negotiating position: Support, with additions described below.

This document is prepared for each CITES COP by the Secretariat. The United States has reviewed the Provisional Agenda for COP12 provided by the Secretariat and supports its adoption with the addition of several species proposals submitted by the new CITES Management Authority of Madagascar. At previous meetings of the CITES COP, the United States has supported adoption of the provisional agenda as circulated to the Parties. However, the provisional agenda for COP12 reflects an issue of concern for the United States; specifically, the exclusion of species proposals submitted by Madagascar. It is our understanding that the proposals were not initially accepted by the Secretariat because the Secretariat was unable to verify the lawful status of the new CITES Management Authority of Madagascar at the time the proposals were received by the Secretariat. However, political events in Madagascar since that time have demonstrated that the office submitting the proposals was, at that time, the lawful Management Authority of Madagascar. Therefore, the United States supports the addition of Madagascar's species proposals to the Conference agenda. The species proposals in question covered tortoises, chameleons, frogs, the whale shark, orchids, and several palms.

4. Adoption of the Working Programme (Doc. 4)

Tentative U.S. negotiating position: Undecided.

Prior to the a meeting of the CITES COP, working programmes distributed by the Secretariat are provisional. It is possible that changes may be made to this document prior to the start of COP12, or at the meeting of the Conference of the Parties. The United States generally supports the COP12 Provisional Working Programme posted at the time this notice was prepared. However, The United States remains concerned that the species proposals submitted by Madagascar be considered by the Parties, as discussed above, under Adoption of the Agenda.

Furthermore, pending our review of any forthcoming changes to the Working Programme, we will remain undecided on those potential modifications.

5. Establishment of the Credentials Committee (Doc. 5)

Tentative U.S. negotiating position: Undecided, until documents are available for review.

The establishment of the Credentials Committee is a standardized matter. The Credentials Committee approves the credentials of delegates to the meeting of the COP by confirming that they are official representatives of their governments, giving them the right to vote in Committee and Plenary sessions. The Credentials Committee consists of representatives from no more than five CITES Party governments nominated by the Standing Committee. The United States was a member of the Credentials Committee at COPs 10 and 11.

6. Report of the Credentials Committee (Doc. 6)

Tentative U.S. negotiating position: Undecided, until documents are available for review.

The United States will support adoption of the report of the Credentials Committee if it does not recommend the exclusion of legitimate representatives of countries that are Parties to CITES. The United States will encourage timely production of Credentials Committee reports at COP12.

Adoption of the report of the Credentials Committee is generally a standardized exercise. Representatives

whose credentials are not in order should be given observer status as provided for under Article XI of the Convention. If evidence is provided that credentials are forthcoming but have been delayed, representatives can be allowed to vote on a provisional basis. A liberal interpretation of the Rules of Procedure on credentials should be adhered to in order to permit clearly legitimate representatives to participate. Exclusion of clearly legitimate representatives whose credentials are not in order could undermine essential cooperation among Parties. However, vigilance is necessary in cases of close votes, or decisions to be made by secret ballot.

7. Admission of Observers (Doc. 7)

Tentative U.S. negotiating position: Undecided, until documents are available for review.

A document for this agenda item, prepared by the Secretariat, is not normally distributed prior to the start of a CITES COP. The United States supports admission to the meeting of all technically qualified non-governmental organizations, and the United States opposes unreasonable limitations on their full participation as observers at COP12. Non-governmental organizations (NGOs) are admitted as observers if their headquarters are located in a CITES Party country, and if the national government of that Party approves their attendance at the COP. International NGOs are admitted by approval of the CITES Secretariat. After being approved as an observer, an NGO is admitted to the meeting of the COP, unless one-third of the Parties objects.

Non-governmental organizations representing a broad range of viewpoints and perspectives play a vital and important role in CITES activities and have much to offer to the debates and negotiations at a meeting of the COP. Their participation is specifically provided by Article XI of the Convention. The United States supports the opportunity for all technically qualified observers to fully participate at meetings of the COP, as is standard CITES practice. The United States also supports flexibility and openness in the process of disseminating documents produced by NGOs to Party delegates. This information sharing is vital to decision-making and scientific and technical understanding at a CITES meeting.

8. Matters Related to the Standing Committee

Tentative U.S. negotiating position: Undecided, until documents are available for review.

The United States is the North American regional representative and the Chair of the Standing Committee. The Forty-seventh Meeting of the Standing Committee will meet on November 1–2, 2002, before COP12 begins, to nominate the chairs of COP committees, provide guidance needed to conduct the meeting of the COP, and follow-up on outstanding committee issues. The Financial Sub-Committee will also meet to finalize the budget for the COP Budget Sub-Committee. The Forty-eighth meeting of the Standing Committee will tentatively meet at the end of the COP.

(a) Report of the Chairman (Doc. 8)

When we completed this notice, we still had not received a document for this agenda item from the Secretariat. The United States, as Chair of the Committee, will prepare this requisite report on the execution of the Committee's responsibilities and its activities between COP11 and COP12 to accurately reflect the discussions and decisions of the Committee.

(b) Election of New Regional and Alternate Regional Members (No Document)

At the time this notice was prepared, a document was not yet available from the Secretariat.

Tentative U.S. negotiating position: Undecided, until documents are available for review.

The Regional Representative for North America from COP11 through COP13 has been, and will be, the United States. Under Resolution Conf.11.1, "terms of office of the regional members shall commence at the close of the regular meeting at which they are elected and shall expire at the close of the second regular meeting thereafter."

9. Financing and Budgeting of the Secretariat and of Meetings of the Conference of the Parties

Tentative U.S. negotiating position: Undecided.

At each meeting of the COP, the CITES Secretariat submits its financial report and budget for approval. The Parties may modify the budget before approving it. Financial support for the Secretariat comes from a Trust Fund consisting of voluntary annual contributions from Party governments, based on a United Nations scale. Additional support for CITES activities is provided through extra contributions from governments and nongovernmental organizations, and is used for projects approved by the Standing Committee. This "external funding" is not part of the Secretariat's budget.

The United States is currently reviewing the Secretariat's budget documents. The United States advocates fiscal responsibility and accountability on the part of the Secretariat and the Conference of the Parties. The United States plans to be an active participant in the budget discussions at COP12 and at the Finance Sub-Committee meetings of the Standing Committee just before COP12. The United States strongly supports a budget that represents zero-growth in Parties' voluntary contributions.

(a) Budget for 2003–2005 (Doc. 9.1)

The Parties will fully discuss issues associated with the anticipated expenditures of the Secretariat for the triennium 2003–2005 at COP12. The United States will review the documents carefully, bearing in mind the need to balance tasks assigned to the Secretariat with available resources.

(b) Procedure for Approval of Externally Funded Projects (Doc. 9.2)

External funding is financial support provided by Parties and nongovernmental organizations for projects approved as CITES priorities by the Standing Committee. The external funding procedure is designed to avoid conflicts of interest (real or apparent) when approving projects and channeling funds between the provider and the recipient. At SC46, the Parties did agree to a revised procedure to allow more flexibility to the Secretariat in approving external funds. The United States, through the Department of the Interior and the Department of State, contributes external funding to Standing Committee-approved projects including delegate travel to the meetings of the COP, support for Committee meetings, CITES enforcement and implementation training, and biological studies of significantly traded species.

10. Committee Reports and Recommendations

(a) Animals Committee

Tentative U.S. negotiating position: Undecided, until documents are available for review.

(i) Report of the Chairman (Doc. 10.1)

The current Chair (Mr. Marinus Hoogmoed of the Netherlands) will report on the activities of the Animals Committee since COP11. Since April 15, 2001, the Animals Committee has met three times: the sixteenth meeting (AC16) was held on December 11–15, 2000, in Shepherdstown, West Virginia; the seventeenth meeting (AC17) was held on July 30–August 3, 2001, in Hanoi, Vietnam, and the eighteenth

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meeting (AC18) was held on April 8–12, 2002, in San Jose, Costa Rica. The Regional Representative from North America on the Animals Committee is Dr. Kurt Johnson of our Division of Scientific Authority, who replaced Dr. Susan Lieberman when she ended her employment with the U.S. Fish and Wildlife Service between COPs 11 and 12. The United States is an active participant in Animals Committee meetings, working groups, and activities. When we completed this notice, we still had not received a copy of the Chair's Report. You may obtain information regarding Animals Committee meetings from the Division of Scientific Authority at the address above (*see* **FOR FURTHER INFORMATION CONTACT**).

(ii) Election of New Regional and Alternate Regional Members (No Document)

The six CITES regions are represented on the Animals Committee by one or two persons, according to the number of countries in each region. This process was established in CITES Resolution Conf. 11.1, which is available on the Secretariat's web page. The representatives are individuals, and not governments. Parties within each CITES region meet during the meeting of the COP to elect new Animals Committee members to represent them. The current North American regional representative on the Animals Committee is Dr. Kurt Johnson, of our Division of Scientific Authority, on behalf of the United States. Dr. Johnson also serves as Chair of the Animals Committee working groups on Significant Trade and Review of the Appendices. The United States, Mexico, and Canada have discussed our representation for the interval between COP12 and COP13, and we will meet to finalize the region's selections for representative and alternate during the first week of COP12.

(b) Plants Committee

Tentative U.S. negotiating position: Undecided, until documents are available for review.

(i) Report of the Chairman (Doc. 10.2)

The current Chair (Dr. Margarita Clemente of Spain) will report on the activities of the Plants Committee since COP11. Since COP11, the Plants Committee has met three times: the tenth meeting of the Plants Committee (PC10) was held in Shepherdstown, West Virginia (December 11–15, 2000); the eleventh meeting (PC11) was held in Langkawi, Malaysia (September 3–7, 2001); and the twelfth meeting (PC12) was held in Leiden, the Netherlands (May 13–17, 2002). The United States sent a delegation to those Plants Committee meetings and has participated actively in Plants Committee activities. When we completed this notice, we still had not received a copy of the Chair's Report. You may obtain information regarding the Plants Committee from the Division of Scientific Authority at the address above (*see* **FOR FURTHER INFORMATION CONTACT**).

(ii) Election of New Regional and Alternate Regional Members (No Document)

The six CITES regions are represented on the Plants Committee by one or two persons, according to the number of countries in each region. This process was established in CITES Resolution Conf. 11.1, which is available on the Secretariat's web page. The representatives are individuals, and not governments. Party countries within each CITES region meet during the meeting of the COP to elect new Plants Committee members to represent them. The current North American regional representative on the Plants Committee is Dr. Bertrand von Arx from Canada. The United States, Mexico, and Canada have discussed our representation for the interval between COPs 12 and 13 and will meet to finalize the region's selections for representative and alternate during the first week of COP12.

(c) Nomenclature Committee Report (Doc. 10.3)

Tentative U.S. negotiating position: Undecided, until documents are available for review

The Nomenclature Committee reviews nomenclature (scientific name) and taxonomic (scientific classification) issues that apply to species listed in the CITES Appendices. The Committee also prepares and adopts checklists for the various taxa (classifications) listed in the CITES Appendices.

The Nomenclature Committee does not have regional representatives and meets only as needed, usually during the meetings of the Plants and Animals Committee. The United States participates in all activities of the Nomenclature Committee. The current Co-chairs are Dr. Marinus Hoogmoed (of the Scientific Authority of the Netherlands) for fauna (animals), and Dr. Noel McGough (of the Scientific Authority of the United Kingdom) for flora (plants). Drs. Hoogmoed and McGough had not submitted their report for consideration at COP12 by the time this notice was completed.

11. Identification Manual (Doc. 11)

Tentative U.S. negotiating position: Support.

This document describes the ongoing production of material for the CITES Identification Manual. This manual contains information necessary to identify specimens of CITES-listed plants and animals in trade, and is often used by Parties' law enforcement agencies. Since COP11, the Secretariat has been responsible for updating the Identification Manual with new material on newly listed species. Proponents of successful listing proposals are supposed to provide identification material within one year of the proposal's adoption.

This document specifies identification material that is currently under production, being translated, or delinquent from Parties. According to this list, the United States must still submit material for identifying eight taxa that we proposed for listing in previous meetings of the Conference of the Parties. We pledge to develop this material as time and resources allow, and we will inform the Secretariat and the other Parties at COP12. The United States completed and submitted identification materials to the CITES Secretariat for several plant species in May 2002. In addition, the United States volunteered to submit a new identification manual on Indo-Pacific corals in trade, which is scheduled for completion in the near future.

12. Revision of the Action Plan of the Convention (Doc. 12)

Tentative U.S. negotiating position: Support, with the exceptions and amendments described below.

The United States has been an active member and sometimes Chair of the Standing Committee working group on the Action Plan. The United States continues to support the execution of the Action Plan and support the recommendations of the working group. The United States would, however, like the Parties to direct the Standing Committee working group to focus on the periodic review and evaluation of the progress of the Action Plan rather than on continuing to revise and update it. The United States believes that the Parties, the Secretariat, and Committees will be unable to develop their own work plans to implement the Strategic and Action plans if these plans continue to be updated and revised. The United States is also concerned that the Action Plan is not being implemented overall and that it holds the Committees and Secretariat to a higher level of responsibility than many of the Parties.

The United States suggests that the Parties direct the Committees and Secretariat to report to COP13 on progress of the implementation of their work plans and provide a schedule for their completion under the Action Plan. The United States, while recognizing that some Parties lack the capacity to take on the task of implementing the Action Plan, would also like the Parties to, at a minimum, include national implementation of the objectives of the Action Plan in their future biennial reports.

13. Establishment of Committees

(a) Revision of Resolution Conf. 11.1 on Establishment of Committees (Doc. 13.1; Chile)

Tentative U.S. negotiating position: Oppose.

Chile proposes to revise the current resolution that sets the level of regional representation in the Animals and Plants Committees so that representation in these committees is the same as the Standing Committee. Currently, regional representation in the Animals and Plants Committees consists of 10 individuals in each committee as follows: one each chosen by North America and Oceania, and two chosen by each of the major geographic regions of Africa, Asia, Europe, and South and Central America and the Caribbean. Regional representation in the Standing Committee consists of 14 individuals as follows: 1 for regions with up to 15 Parties; 2 for regions with 16 to 30 Parties; 3 for regions with 31 to 45 Parties; or 4 for regions with more than 45 Parties.

The United States tentatively plans to oppose this revision of the resolution on establishment of committees. The addition of 8 new representatives (4 in each committee) would have significant financial implications at a time when funds are insufficient to conduct all the priority tasks identified in the Strategic Plan. Also, representatives to the Animals and Plants Committees are chosen by the geographic region for their scientific expertise, not as representatives of governments. Thus, the need for additional individuals with scientific expertise from regions is unclear.

(b) Enhancing Implementation of the Convention (Doc. 13.2; United States)

Tentative U.S. negotiating position: Support.

We think the Parties need to identify an ongoing forum within the Convention to discuss implementation issues. Such a forum needs to include technical experts on implementation within the Parties and be led by the Parties. An in-depth discussion of implementation issues is constrained by the current committee structure and corresponding budget allocations. The United States thinks that it is important to look beyond this structure in exploring ways to address critical implementation problems.

(c) Review of the Committee Structure (Doc. 13.3)

Tentative U.S. negotiating position: Undecided, until documents are available for review.

At the time this notice was prepared, a document was not yet available from the Secretariat. Once we receive a document on this agenda item, we will review it closely and develop a tentative negotiating position for COP12. As noted for the previous agenda item (13 b), we think the current committee structure fails to address numerous important implementation issues, particularly with regard to certain CITES species listings or types of parts and derivatives in trade.

14. Title of the Convention (Doc. 14)

Tentative U.S. negotiating position: Undecided, until documents are available for review.

At the time this notice was prepared, the document for this issue was not yet available from the Secretariat. Once we receive the document, we will review it closely and develop a tentative negotiating position for COP12.

15. Outcome of the World Summit on Sustainable Development and the Discussion on International Environmental Governance: Consequences for CITES (Doc. 15)

Tentative U.S. negotiating position: Undecided, until documents are available for review.

At the time this notice was prepared, the document for this issue was not yet available from the Secretariat. Once we receive the document, we will review it closely and develop a tentative negotiating position for COP12.

16. Cooperation With Other Organizations

(a) Cooperation between CITES and the Commission for Conservation of Antarctic Marine Living Resources (CCAMLR) regarding the trade in toothfish (Doc. 16.1; Chile)

Tentative U.S. negotiating position: Undecided.

CCAMLR is responsible for the conservation and management of Antarctic marine living resources in waters between the Antarctic continent and the Antarctic Convergence, a line of latitudes between 45 and 60 degrees South where the colder, fresher Antarctic waters meet the warmer, saltier waters from the Atlantic, Indian and Pacific Oceans. In response to concerns over illegal, unreported, and unregulated (IUU) fishing for toothfish (*Dissostichus spp.*) in these waters, CCAMLR members have adopted conservation measures, including a Catch Documentation Scheme (CDS) introduced in May 2000 for tracking and monitoring the harvest and trade in toothfish.

Chile indicates that the 30 Member countries and acceding States to CCAMLR represent the main harvesting, processing, and consuming countries for toothfish, and that CCAMLR has made progress in controlling IUU fishing. In fact, only about half of this number of Members and acceding States are engaged in toothfish harvest and trade. Chile also states that there is no doubt that cooperation on the part of countries that are not parties to CCAMLR, but are parties to CITES, would be helpful in supporting CCAMLR's conservation measures.

The resolution calls for all CITES Parties that fish for or trade in toothfish to, (a) comply with CCAMLR conservation measures regarding toothfish (including adopting use of the CCAMLR *Dissostichus* Catch Document (DCD) for toothfish that are imported, exported, or in transit through their territories) if they are not already doing so, (b) be vigilant in examining toothfish in trade, particularly its geographic origin, (c) cooperate with the CCAMLR Secretariat in the collection of trade data, and (d) take measures to ensure that their flag vessels are not used to undermine CCAMLR conservation measures or those adopted by States in whose territorial waters *Dissostichus* is found. The resolution urges CCAMLR to keep CITES Parties informed, directs the CITES Secretariat to provide CCAMLR with any available information on illicit trade, and invites all interested States, the United Nations Food and Agriculture Organization (FAO) and others to cooperate in efforts to prevent illicit trade.

Australia has submitted a proposal for including Patagonian and Antarctic toothfish in CITES appendix II (Prop. 39) and provided a discussion paper on how CCAMLR and CITES permitting regimes may work together to monitor trade. (*See* number 66 of this notice). Chile is urging CITES Parties to voluntarily adhere to CCAMLR conservation measures as an alternative approach to an appendix-II listing. As with all papers concerning trade in *Dissostichus spp.*, in order to determine

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a position on Chile's proposed resolution, U.S. government agencies will evaluate the many complex aspects of the trade and how CITES might be useful as an adjunct to traditional fisheries management. This includes how our position would affect or be affected by the proposed cooperation with FAO (*see* Doc. 16.2.2, discussed below) regarding international trade in marine fish species. At this time, the United States is undecided as to our positions on issues related to the role of CITES in international toothfish trade.

(b) CITES and FAO

(i) Synergy and Cooperation Between CITES and FAO (Doc. 16.2.1; Japan)

Tentative U.S. negotiating position: Oppose.

Japan has submitted a draft resolution calling on the CITES Secretariat to work with the FAO Secretariat toward developing a Memorandum of Understanding (MOU) that would establish a framework for cooperation between CITES and FAO. Japan states that the MOU would enhance cooperation and exchange of information and establish a process to ensure FAO involvement in the scientific evaluation of proposals for listing and down-listing of commercially exploited aquatic species.

A set of recommendations for strengthening cooperation between CITES and FAO with respect to commercially exploited fish species was agreed to in Bremen, Germany at the 8th session of the FAO Committee on Fisheries Subcommittee on Fish Trade held during February 2002. The United States was pleased to work closely with Japan and others at the meetings in Bremen and has also submitted a document endorsing an MOU between FAO and CITES (*see* Doc. 16.2.2).

We agree that FAO and the mandated regional fisheries management organizations (RFMOs) are appropriate inter-governmental bodies responsible for fisheries management (under Article XV, 2b). The United States, however, believes that regulation of international trade under CITES can serve as a useful adjunct to traditional fisheries management for species that might be listed in the CITES Appendices. The United States supports the expert process outlined in the Bremen recommendations but does not believe that action in FAO does not require a parallel response in CITES. The Bremen recommendations call for both CITES and FAO to make the political commitment necessary to ensure improved cooperation on commercial fish species; for CITES, this means through action at the COP.

(ii) FAO Collaboration With CITES Through a Memorandum of Understanding (Doc. 16.2.2; United States)

Tentative negotiating position: Support.

The Eighth Session of the FAO (Food and Agriculture Organization of the United Nations) Committee on Fisheries, Sub-Committee on Fish Trade, held in February 2002 (Bremen, Germany), sent forward a recommendation supporting the implementation of a Memorandum of Understanding (MOU) between FAO and CITES. The United States has submitted this document requesting that the CITES Parties review this recommendation and suggesting that the Standing committee determine a course of action and time-frame for initiating and finalizing such an MOU. The MOU would cover all CITES-specific issues under review by FAO, and could be established between the CITES Standing Committee and the comparable FAO committee. The United States recognizes the contributions FAO has made in evaluating the CITES listing criteria for marine fish and supports a formal MOU between CITES and FAO to facilitate exchange of information and technical advice regarding commercially exploited fish species.

(c) Cooperation and Synergy With the Inter-American Convention for the Protection and Conservation of Sea Turtles (Doc. 16.3; Ecuador)

Tentative U.S. negotiating position: Support.

This draft resolution directs the CITES Secretariat to investigate opportunities for cooperation and coordination between CITES and the Inter-American Convention for the Protection and Conservation of Sea Turtles (IAC) (including Parties to the IAC and its Secretariat).

As a Party to the IAC, which entered into force May 2, 2001, the United States supports this draft resolution. We also note that a draft resolution developed at the second CITES wider Caribbean range States hawksbill turtle dialogue meeting (May 21–23, 2002, Cayman Islands, United Kingdom), with the support of the United States, urges the participation of relevant regional and international multilateral environmental agreements, such as UNEP–CEP, the IAC and other relevant bodies, to promote joint collaboration to recover hawksbill sea turtles throughout the Wider Caribbean. CITES, IAC, and UNEP–CEP all have important roles in the conservation of sea turtles in the region. Therefore, we intend to support this draft resolution and to recognize these organizations' roles in the conservation of marine turtles.

(d) CITES and the International Whaling Commission

(i) Cooperation Between CITES and the International Whaling Commission (Doc. 16.4.1; Mexico)

Tentative U.S. negotiating position: Support.

If adopted, this resolution would reaffirm the complementary relationship between CITES and the IWC as a crucial element for the conservation of whale stocks. The resolution encourages the IWC to inform CITES of its decisions regarding whale stocks. It proposes retaining whale species listed in the CITES appendices in which they are currently listed because it is premature to downlist these species while work is continuing to develop a Revised Management Scheme. Maintaining this listing would strengthen the ability of IWC to enforce its current moratorium on commercial whaling, as communicated to CITES by IWC in 1978, through listing in CITES appendix I.

(ii) Matters Relating to the International Whaling Commission (Doc. 16.4.2; United States)

The United States notified the CITES Secretariat that we will not be submitting this document at this time. However, the United States does plan to submit an information document at COP12 detailing the status of efforts by the International Whaling Commission (IWC) to adopt a Revised Management Scheme (RMS) to manage commercial whaling, should it resume. This information paper will also include a summary of actions taken at the October 14–17, 2002, meeting of the IWC (Cambridge, United Kingdom), which is intended to make further progress on the Revised Management Scheme. The United States believes that no great whale species should be considered for downlisting from appendix I until the IWC adopts an effective Revised Management Scheme.

(e) Statements From Representatives of Other Conventions and Agreements (No Document)

Tentative U.S. negotiating position: Undecided, until documents are available for review.

The Secretariat will not produce a document for this issue. The United States supports ongoing dialogue between CITES and other relevant and related conventions and agreements and

believes statements from them could be valuable at meetings of the COP.

17. Sustainable Use and Trade in CITES Species (Doc. 17; Norway)

Tentative negotiating position: Oppose, with some exceptions.

Norway addresses concerns it has regarding sustainable use and the amendment of the CITES appendices. Norway thinks there are difficulties with delisting or downlisting a CITES species even when warranted by the CITES criteria, and warns against the use of trade restrictions as "protectionistic measures under cover of scientific uncertainty." Norway proposes: (a) the development of CITES guidelines for the interpretation of the principle of sustainable use, in cooperation with the Convention on Biological Diversity (CBD) and the Food and Agriculture Organization (FAO); (b) the preparation of a proposal by COP13 to revise the listing criteria so as to include the principle of sustainable use; and (c) the development of a 5-year review process or a "sunset clause" to ensure that the CITES appendices reflect accurately the conservation status of a species.

Although the United States fully supports the sustainable use of wildlife as a means for the economic development of local communities as well as an incentive for the conservation of species and ecosystems, we do not believe there is a need to develop a CITES definition of sustainable use. From its inception, CITES has been an effective tool for the promotion of sustainable use of appendix-II species through the issuance of non-detriment findings as required under Article IV, paragraph 2(a), of the Convention. There would be difficulties in the practical application of many elements in the Norwegian proposal. We believe the development of CITES guidelines for the interpretation of the principle of sustainable use would be potentially problematic. Guidelines would likely vary considerably depending on the species, ecosystems, and/or socio-economic or political systems involved.

Failure to adopt a proposal for the delisting of an appendix-II species or the transfer of a species from appendix I to II does not mean that there are widespread difficulties related to the delisting and downlisting processes. It simply means that the majority of Parties have not been persuaded to adopt a given proposal. Furthermore, we disagree with the assertion that listing of species in the CITES Appendices is used to conceal scientific uncertainty. To the contrary, the United States believes that it is important to acknowledge the importance of the precautionary approach to wildlife management and that failure to do so would constitute a greater risk than if no trade restrictions were in place for wild populations for which there is uncertainty. In fact, the United States and Norway both subscribe to the precautionary approach in the case of fisheries management. As Parties to the 1995 United Nations Fish Stocks Agreement, both have agreed to be "more cautious when information is uncertain, unreliable or inadequate," and further that "the absence of adequate scientific information shall not be used as a reason for postponing or failing to take conservation and management measures" (UNFSA Article 6, paragraph 2).

Through Decision 11.2, the Parties established a specific protocol for examining the current listing criteria contained in Resolution Conf. 9.24. Since COP11, a Criteria Working Group has been reviewing the listing criteria. A report of the working group will be presented at COP12 (*see* Doc. 58, below). Comments on the criteria included in Norway's resolution should have taken place through this process. If not, Norway still has an opportunity to present their comments during discussion of the listing criteria at COP12.

Finally, there is already a process in place for periodic review of the appendices. The Plants and Animals Committees review listings that may no longer be appropriate, utilizing the listing criteria in Resolution Conf. 9.24. Within the Animals Committee, the species reviews are conducted on a voluntary basis by Parties. As a result, relatively few reviews have been completed thus far. The Animals Committee is currently developing guidelines for improving the periodic review process. Without an adequate budget that is specifically allocated for conducting species reviews, it is unlikely that all listed species can be reviewed properly every 5 years as recommended by Norway. In addition, establishment of a sunset clause is troublesome given that it could result in the delisting of species that continue to require the trade controls afforded by CITES.

Although the United States does not plan to support this resolution on sustainable use and trade in CITES species as currently drafted, we would consider support for a dialogue on the concept of sustainable use within CITES that could further clarify its meaning, particularly in high-volume or high-value species. Furthermore, the United States supports closer collaboration between CITES and FAO, CBD, or other appropriate inter-governmental organizations in areas where work can be complementary (see item 16b, above).

18. Economic Instruments and Trade Policy (Doc. 18)

Tentative U.S. negotiating position: Undecided, until documents are available for review.

At the time this notice was prepared, the document for this issue was not yet available from the Secretariat. Once we receive the document, we will review it closely and develop a tentative negotiating position for COP12.

19. Financing of the Conservation of Species of Wild Fauna and Flora (Doc. 19)

Tentative U.S. negotiating position: Undecided, until documents are available for review.

At the time this notice was prepared, a document was not yet available from the Secretariat. Once we receive a document on this agenda item, we will review it closely and develop a tentative negotiating position for COP12. In response to Decision 11.78, the Secretariat distributed Notification to the Parties No. 2001/016, in which it requested information on national funding mechanisms for the conservation of wild fauna and flora. The United States provided information on four such mechanisms, but noted in its response that it would be unable to provide information on all relevant U.S. funding mechanisms due to the enormity of the task. The United States supports efforts to provide information on the broad array of mechanisms available to support wildlife conservation.

20. Reports of Dialogue Meetings

(a) Results of the African Elephants Dialogue Meeting (Doc. 20.1)

Tentative U.S. negotiating position: Undecided, until documents are available for review.

At the time this notice was prepared, a document was not yet available from the Secretariat as the African elephants dialogue meeting is scheduled to be held in Santiago, Chile, immediately prior to the start of COP12. Once we receive a document on this agenda item, presumably at COP12, we will review it closely and develop a tentative negotiating position for COP12.

(b) Results of the Wider Caribbean Hawksbill Turtle Dialogue Meeting (Doc. 20.2)

Tentative U.S. negotiating position: Undecided, until documents are available for review.

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At the time this notice was prepared, the document for this issue was not yet available from the Secretariat. Once we receive the document, we will review it closely and develop a tentative negotiating position for COP12.

We expect that this will provide an update on the two CITES wider Caribbean range states hawksbill turtle dialogue meetings held since the eleventh meeting of the CITES Conference of the Parties (COP11). At COP11, Cuba submitted two proposals to transfer the hawksbill turtle (*Eretmochelys imbricata*) population inhabiting Cuban waters from appendix I to appendix II (Proposals 40 and 41), but they were rejected, partly because there was no regional consensus among hawksbill range countries in the Caribbean. After COP11, the Secretariat convened two technical workshops of Caribbean hawksbill turtle range states and territories to discuss and, if possible, reach consensus on the many difficult issues raised at COP11 regarding the conservation and management of hawksbill sea turtles. The first CITES wider Caribbean range states hawksbill turtle dialogue meeting was held in Mexico May 15–17, 2001. This was followed by a second hawksbill turtle dialogue meeting held May 21–23, 2002, in the Cayman Islands, United Kingdom. The United States provided financial support for and participated actively in both hawksbill turtle dialogue meetings. At the second hawksbill turtle dialogue meeting, working groups drafted a communique and a draft resolution for submission at COP12, with the participation and full support of the United States. Among other things, the draft resolution urges Caribbean states and territories to develop a regional conservation strategy for hawksbill turtles. It also urges Parties to adopt and implement standard protocols for the monitoring of hawksbill turtles developed at the second hawksbill dialogue meeting. The United States will work for adoption of the draft resolution.

Interpretation and Implementation of the Convention

Review of Resolution and Decisions

21. Review of Resolutions and Decisions

(a) Review of Resolutions

(i) Resolutions To Be Repealed (Doc. 21.1.1)

Tentative U.S. negotiating position: Undecided, until documents are available for review.

At the time this notice was prepared, the document for this issue was not yet available from the Secretariat. Once we receive the document, we will review it closely and develop a tentative negotiating position for COP12.

Decision 11.136, adopted at COP11, directed the Secretariat to analyze information it receives from the Parties regarding problems in the implementation of existing Resolutions and prepare a document for the Standing Committee. Based on its own analysis of the implementation of existing Resolutions and on information it received from several CITES Party countries (including the United States), the Secretariat prepared and presented document SC46 Doc. 10 at the 46th meeting of the Standing Committee (Geneva, March 2002). This document provided a list of those Resolutions for which the Secretariat was planning to prepare proposals for COP12 to either repeal or revise. The Standing Committee requested that the Secretariat notify all Parties of the Resolutions for which it intends to prepare amendment proposals for COP12, and to provide a brief explanation of the reasons for the proposed amendments.

At the time this notice was prepared, the Secretariat had not yet notified the United States of the Resolutions for which it intends to prepare proposals for COP12.

(ii) Resolutions To Be Revised (Doc. 21.1.2)

Tentative U.S. negotiating position: Undecided, until documents are available for review.

At the time this notice was prepared, the document for this issue was not yet available from the Secretariat. Once we receive the document, we will review it closely and develop a tentative negotiating position for COP12.

This issue, "Resolutions to be revised," is part of the same analysis by the Secretariat that is described above for agenda item 21. (a) (i), entitled "Resolutions to be repealed." As with that agenda item, at the time this notice was prepared, the Secretariat had not yet notified the United States of the Resolutions for which it intends to prepare proposals for COP12.

(b) Review of Decisions (Doc. 21.2)

Tentative U.S. negotiating position: Undecided, until documents are available for review.

At the time this notice was prepared, the document for this issue was not yet available from the Secretariat. Once we receive the document, we will review it closely and develop a tentative negotiating position for COP12.

In addition to providing a list of those Resolutions for which the Secretariat was planning to prepare proposals for COP12 to either repeal or revise, document SC46 Doc. 10, presented by the Secretariat at the 46th meeting of the Standing Committee (Geneva, March 2002), included a statement that the Secretariat was planning to prepare proposals to put into Resolutions the texts of existing Decisions that are not time-limited.

In principle, the United States supports the concept of moving the text of Decisions that are not time-limited into Resolutions. Decisions are supposed to provide immediate instructions that are more short-term in nature than the guidance found in Resolutions. They are usually intended to be carried out between two meetings of the COP.

Regular and Special Reporting Requirements

22. Report on national reports required under Article VIII, paragraph 7, of the Convention

(a) Annual reports (Doc. 22.1)

Tentative U.S. negotiating position: Undecided, until documents are available for review.

At the time this notice was prepared, the document for this issue was not yet available from the Secretariat. Once we receive the document, we will review it closely and develop a tentative negotiating position for COP12.

The United States supports efforts to encourage all Parties to submit annual reports, for all species of fauna and flora, consistent with their domestic legislation. Each Party is required by CITES to submit an annual report containing a summary of the permits it has granted and the types and numbers of specimens of species in the CITES Appendices that it has imported and exported. Accurate annual report data are essential to measure the impact of international trade on CITES-listed species, and can also be an effective enforcement tool, particularly when imports into a given country are compared to export quotas from other countries. The United States has submitted all of its CITES annual reports through 2000, and intends to meet its obligation to submit its 2001 annual report by the October 31, 2002, submission deadline.

(b) Biennial reports (Doc. 22.2)

Tentative U.S. negotiating position: Undecided, until documents are available for review.

At the time this notice was prepared, the document for this issue was not yet available from the Secretariat. Once we receive the document, we will review it closely and develop a tentative negotiating position for COP12.

The United States supports efforts to encourage all Parties to submit biennial reports on legislative, regulatory, and administrative measures taken to enforce the provisions of CITES. Each Party is required by CITES to submit such biennial reports. Due to staffing shortages for the past several years, and work priorities involving timely preparation of the U.S. annual reports, we have been unable to prepare and submit U.S. biennial reports since 1987–1988. However, the United States intends to meet its obligation to submit its 2000–2001 biennial report before the opening of COP12 in November 2002.

23. Appendix-I Species Subject to Export Quotas

(a) Leopard

(i) Report on implementation of Resolution Conf. 10.14 on quotas for leopard hunting trophies and skins for personal use (Doc. 23.1.1)

Tentative U.S. negotiating position: Oppose, with exceptions described below.

This document, with a proposed amendment to an existing resolution (Resolution Conf. 10.14), was marked "provisional" by the CITES Secretariat when this notice was prepared. If we receive a new version of this document in the future, we will review it closely to determine whether our tentative negotiating position for COP12, outlined here, needs to be changed.

Resolution Conf. 10.14 establishes annual export quotas for leopard hunting trophies and skins and requires that Parties with such a quota submit a special annual report, in addition to the annual report required by Article VIII, paragraph 7, of the Convention, that identifies particular information about the exports. Conf. 10.14 also established the tagging requirements for leopard trophies. The Secretariat submitted a proposed amendment to Conf. 10.14 that, at a minimum, would remove the special annual reporting requirements called for under the Resolution and would allow the Parties with leopard quotas to submit the required information solely in their CITES annual report. However, the Secretariat's proposed amendment also recommends that Conf. 10.14 be repealed, in its entirety, on the basis that none of the Parties with leopard quotas have exceeded them in the past, that sustainable quotas can be established under existing national voluntary quotas, and that tagging leopard skins and trophies does not provide any benefit in controlling illegal trade.

The United States agrees that requiring a special annual report would not be necessary, provided that the Parties include the same information regarding the annual leopard exports that is called for in Conf. 10.14 in the CITES annual report and the Parties have a consistent record of submitting their annual reports. However, a large number of the leopard trading countries have failed to submit their annual reports either in a timely manner or at all. Because this species is included in appendix I, the United States does not agree with the Secretariat that Conf. 10.14 should be repealed. The Parties have identified leopard as a species of particular concern by placing it in appendix I. As such, it is important for the Parties to be actively involved in the establishment of quotas. It is also important to maintain the tagging program to assist in the control of illegal trade and to properly identify legitimate trophy specimens that enter international trade.

(ii) Amendment to the quota of the United Republic of Tanzania (Doc. 23.1.2)

Tentative U.S. negotiating position: Undecided.

This document proposes to amend the leopard export quota established in Conf. 10.14. Currently, the annual quota for Tanzania is 250 leopards. This document requests that the quota be raised to 500 leopards annually. The United States, as reflected in the document we submitted for COP12 on establishing scientifically based quotas, is very interested in ensuring that annual export quotas are established on strong biological data. Tanzania's request does not go into sufficient detail about the leopard review to determine at this time whether the proposed increase is based on sound science that would ensure sustainable harvesting of leopards or is market-driven to increase the level of tourism within Tanzania. Therefore, we have not been able to develop a tentative negotiating position for COP12 at this time.

(b) Markhor (Doc. 23.2)

Tentative U.S. negotiating position: Undecided, until documents are available for review.

At the time this notice was prepared, a document was not yet available from the Secretariat. Once we receive a document on this agenda item, we will review it closely and develop a tentative negotiating position for COP12.

The document submitted for this agenda item at the previous COP (COP11) covered the use of annual export quotas for *Capra falconeri* (markhor) granted to Pakistan at COP10 under the provisions of Resolution Conf. 10.15. In that document the Secretariat made four comments/recommendations: (1) That the deadline to May 31st be accepted; (2) that Resolution Conf. 10.15 makes no reference to management of revenues and that this matter should be addressed at the national level; (3) the Secretariat commends Pakistan for reporting its first successful hunts since a markhor quota was approved and the implementation of its community-based conservation program for markhor; and (4) the Secretariat notes that no information was provided on the status of markhor in the 1998 annual report; the Secretariat suggests that Pakistan should provide information to the COP on a sustainable monitoring program at an appropriate frequency that would cover all important subpopulations of markhor.

At COP11, Resolution Conf. 10.15 was amended to include most of these recommendations. At COP11, the United States was concerned about the poor reporting and lack of adequate population survey data presented by Pakistan. We remain concerned about these issues, and await the document for COP12 to see how they have been addressed. We have heard from reliable sources that Pakistan might request an increase in their quota to 20 animals. We do not support such an increase. In fact, if the forthcoming document demonstrates that Pakistan has continued a poor record of reporting, or has not conducted adequate surveys, the United States will consider recommending a quota reduction or suspension.

24. Exports of Vicuna Wool and Cloth (Doc. 24)

Tentative U.S. negotiating position: Undecided, until documents are available for review.

At the time this notice was prepared, the document for this issue was not yet available from the Secretariat. Once we receive the document, we will review it closely and develop a tentative negotiating position for COP12.

25. Transport of Live Animals (Doc. 25)

Tentative U.S. negotiating position: Undecided, until documents are available for review.

At the time this notice was prepared, we were still reviewing the document posted by the Secretariat. We will continue to do so as we develop a tentative negotiating position for COP12.

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The United States has been supportive and actively involved in the Transport Working Group (TWG) of the Animals Committee since its inception. We expect to continue that level of support after COP12, and we support the COP re-authorizing the TWG through COP13. At the 18th meeting of the Animals Committee (San Jose, Costa Rica, April 2002), the Chair of the TWG reported on the group's continuing efforts to recommend revisions to the Live Animals Regulations of the International Air Transport Association (IATA) and to evaluate mortality levels in traded CITES-listed wildlife. The United States supported the TWG's efforts in this area, and we expect to continue our general support of the group's activities.

General Compliance Issues

26. Compliance With the Convention (Doc. 26)

Tentative U.S. negotiating position: Undecided, until documents are available for review.

At the time this notice was prepared, the document for this issue was not yet available from the Secretariat. Once we receive the document, we will review it closely and develop a tentative negotiating position for COP12.

27. Enforcement Matters (Doc. 27)

Tentative U.S. negotiating position: Undecided, until documents are available for review.

At the time this notice was prepared, we were still reviewing the document posted by the Secretariat, which was marked Provisional at that time. The document was later posted in a final form, and we will continue to review it as we develop a tentative negotiating position for COP12. However, while the United States feels that there is merit in the major recommendation presented in the document, we remain officially undecided pending additional review and consultation.

This document, prepared by the Secretariat, covers a wide range of issues related to the enforcement of the Convention, including: communication by Parties with the Secretariat, enforcement alerts issued by the Secretariat, the confidentiality of information received by the Secretariat, allegations of corruption in CITES management authorities and enforcement agencies, national interagency enforcement cooperation, specialized enforcement units and personnel, regional and international interagency enforcement cooperation, dealing with offenders, forensic science, courier and postal services, domestic enforcement, fraudulent use of CITES permits and certificates, and designation of scientific authorities by the Parties.

The document also contains a draft decision in which the Secretariat suggests that the COP authorize the Secretariat to convene an experts meeting to discuss enforcement-related issues before the Convention.

The United States is generally very supportive of the Secretariat's efforts to provide enforcement assistance and coordination with the Parties, and the United States frequently requests the Secretariat's assistance in contacting other Parties for enforcement-related issues.

28. National Laws for Implementation of the Convention (Doc. 28)

Tentative U.S. negotiating position: Undecided, until documents are available for review.

At the time this notice was prepared, the document for this issue was not yet available from the Secretariat. Once we receive the document, we will review it closely and develop a tentative negotiating position for COP12.

We expect that this document, prepared by the Secretariat, will cover progress on implementation of Decisions 11.15, 11.17, 11.18, and 11.19. The most recent action on these matters took place at the 46th meeting of the Standing Committee (March 12–15; Geneva, Switzerland) in which the Committee reached agreement on a variety of actions or recommendations directed to a large number of Parties deemed by the Secretariat to have inadequate domestic legislation to effectively implement the Convention.

29. Verification of the Authenticity and Veracity of CITES Permits and Certificates (Doc. 29; Chile)

Tentative U.S. negotiating position: Support, noting budgetary concerns.

This document and draft resolution are intended to address concerns about the authenticity of CITES documents. The document identifies the unfortunate fact that fraudulent CITES documents have been discovered in use. With the improvements in technology, false documents can be created that are very difficult to distinguish from valid CITES documents issued by an appropriate CITES Management Authority. Chile proposes that all Parties establish an Internet website where copies of all CITES documents that a Party issues would be available for comparison purposes. The United States agrees that a concise and secure method of verifying the authenticity of CITES documents would be very beneficial. However, substantial logistical and legal ramifications must be considered prior to any type of website being established. Logistical concerns include the security of the site, the level of access available to Parties, and the cost of establishing the websites. For the United States, if not other Parties, there is the question of whether making such data available is in compliance with current domestic laws and regulations. Therefore, the United States would recommend that this proposal be reviewed further by the Parties and, if desirable and funding can be obtained, a working group be formed to address this particular proposal and other means to allow the verification of CITES documents.

30. Implementation of CITES in the European Community (Doc. 30; Denmark)

Tentative U.S. negotiating position: Undecided.

The United States supported the amendment in 1983 and submitted it to Congress, but it was not ratified. There were concerns because the amendment is not specific to the European Community and would allow accession of other regional economic integration organizations to CITES. In addition, at that time not all European Community members were Parties to CITES. The United States has not ratified the Gaborone amendment, and the United States is uncertain whether it will support this draft decision.

Species Trade and Conservation Issues

31. Trade in Bear Specimens (Doc. 31)

Tentative U.S. negotiating position: Oppose unless an alternative solution to address the ongoing illegal trade in some appendix I species is developed by the Parties.

This report was prepared by the CITES Secretariat, and also serves as the report of the Standing Committee as required in Decision 11.80. The report summarizes information provided or actions taken in response to five Decisions adopted at COP11 relating to trade in bear specimens. The Parties, including the United States, that have provided information to the Secretariat all report that they have adequate national legislation and enforcement measures in place to implement the Convention with regard to bears. The Secretariat concludes that the actions called for in Decisions 11.43, 11.44, 11.45, 11.46 and 11.80 have been achieved, and those Decisions can be deleted. The Secretariat further asserts that the Parties should have in place legislative and enforcement measures to effectively implement the Convention for CITES-listed species, and that those

measures need not be species-specific. Subsequently, it recommends repealing the six points listed under URGES in Resolution Conf. 10.8. The United States is hesitant to do this without having alternate options available to eliminate the illegal trade in and strengthen law enforcement efforts for appendix I bears.

32. Conservation of Leopard, Snow Leopards and Clouded Leopard (Doc. 32; India)

Tentative U.S. negotiating position: Undecided, until documents are available for review.

At the time this notice was prepared, a document was not yet available from the Secretariat. Once we receive a document on this agenda item, we will review it closely and develop a tentative negotiating position for COP12.

33. Conservation of and Trade in Tigers (Doc. 33)

Tentative U.S. negotiating position: Undecided, until documents are available for review.

At the time this notice was prepared, a document was not yet available from the Secretariat. Once we receive a document on this agenda item, we will review it closely and develop a tentative negotiating position for COP12.

In January 1999, we hosted the CITES Tiger Missions Technical Team in Los Angeles, California, as part of its investigations of tiger range and consumer states. This visit provided us, as well as other relevant Federal agencies, an opportunity to meet with the members of the technical team and outline law enforcement and public outreach efforts with regard to tiger conservation in the United States. The team prepared a report of its mission, which was presented at the 42nd meeting of the Standing Committee.

In October 1998, Congress amended the Rhinoceros and Tiger Conservation Act (RTCA) of 1994. The amendments allow for penalties for actual or even the attempted import, export, or sale of products labeled or purporting to contain rhino or tiger products, items, or derivative substances. The Act also directs the U.S. Fish and Wildlife Service to develop and implement an educational outreach program in the United States for the conservation of rhinoceros and tiger species. In April 2000, we hosted two public meetings to review and take comments on a proposed outreach plan, which was published in the **Federal Register** (65 FR 21206). Since that time, we have been active in forming partnerships with other organizations to carry out the activities of the plan. The Service also continues to be active in providing funding for tiger conservation worldwide through the Rhinoceros and Tiger Conservation Fund, authorized by the RTCA of 1994.

34. Conservation of Elephants and Trade in Elephant Specimens

(a) Illegal Trade in Ivory and Other Elephant Specimens (Doc. 34.1)

Tentative U.S. negotiating position: Undecided, until documents are available for review.

At the time this notice was prepared, the document for this issue was not yet available from the Secretariat. Once we receive the document, we will review it closely and develop a tentative negotiating position for COP12.

(b) Illegal Hunting in Elephant Range States (Doc. 34.2)

Tentative U.S. negotiating position: Undecided, until documents are available for review.

At the time this notice was prepared, the document for this issue was not yet available from the Secretariat. Once we receive the document, we will review it closely and develop a tentative negotiating position for COP12.

(c) Revision of Resolution Conf. 10.10 (Rev.) on Trade in Elephant Specimens (Doc. 34.3; India and Kenya)

Tentative U.S. negotiating position: Undecided.

The document for consideration was submitted by Kenya and India. The document emphasizes a need to revise Resolution Conf. 10.10 to reflect new information regarding the sale of illegal ivory and the need to educate consumers, the deletion of paragraphs which address the detection of links between poaching trends and changes in the CITES Appendices, and adding a requirement that Parties receive annual updated information on illegal ivory collected by the Elephant Trade Information System (ETIS).

The United States is undecided on whether it will support the proposed resolution from Kenya and India. The United States is continuing to evaluate this issue, and plans to develop a policy position on this proposed resolution once all the documents on ETIS and the range states' dialogue are available for review.

35. Conservation of and Trade in Rhinoceroses (Doc. 35)

Tentative U.S. negotiating position: Oppose unless an alternative solution to address the ongoing illegal trade in some appendix I species is developed by the Parties.

Resolution Conf. 9.14 (Rev.) establishes a series of standard measures that all rhinoceros range countries should implement to improve the conservation status of rhinoceros. It also directs the Standing Committee to take appropriate actions to address illegal trade in rhinoceros specimens, and it establishes a reporting system for providing information on rhinoceros activities in various range and non-range countries to the Conference of the Parties. The Secretariat proposes in this document to repeal Conf. 9.14 (Rev.) because they believe it contains generic recommendations that the Parties should be implementing for all species, and because the Parties have failed to report on their activities related to rhinoceros conservation. Whereas we understand the Secretariat's frustration with the lack of response by the Parties, we believe that rhinoceros species warrant special attention from the Parties. Some of the recommendations, such as those for tracking rhinoceros horn stocks, are specific to rhinoceros, and we believe these species, and other high-profile appendix-I species with significant ongoing conservation problems, continue to deserve special attention under CITES. In addition, we believe that range countries have demonstrated a keen interest in rhinoceros conservation at past COPs. Therefore, we are not sure that repeal of Conf. 9.14 (Rev.) is appropriate, but we would welcome recommendations to improve its effectiveness. We will be particularly looking to range countries on this issue at COP12.

36. Conservation of and Trade in Musk Deer (Doc. 36)

Tentative U.S. negotiating position: Undecided, until documents are available for review.

At the time this notice was prepared, the document for this issue was not yet available from the Secretariat. Once we receive the document, we will review it closely and develop a tentative negotiating position for COP12.

This document is likely to resemble the document submitted by the Secretariat to the last meeting of the Standing Committee (SC46). Our position on that document was that there had been a lack of significant progress on the musk deer conservation actions called for in the relevant Resolution and Decisions from COP11, and that such lack of progress was of great concern to us. The existing Resolution and Decision were adopted at COP11 as a compromise to an appendix-I listing for the entire genus *Moschus*. As such, they should have formed the basis for priority action on this taxon by the Secretariat. However, adequate effort has not been devoted to

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raising the funds necessary to address the needs of this genus, and other activities have been insufficient to advance the recommendations by the Parties specified in the Resolution and Decisions.

37. Conservation of and Control of Trade in Tibetan Antelope (Doc. 37)

Tentative U.S. negotiating position: Oppose unless an alternative solution to address the ongoing illegal trade in some appendix I species is developed by the Parties.

The Secretariat reported on Tibetan Antelope activities at SC46. At that time, the United States was already disappointed by the lack of real progress made on implementation of Resolution Conf. 11.8. As the current report indicates, little has been done since then. The Secretariat has assisted in the production of an identification kit, and requested China and India to inform it of any assistance they may need related to Tibetan antelope conservation (although the Secretariat just made contact with these two States almost two years after COP 11). There is no mention of activities undertaken by China, India, or Nepal for Tibetan antelope conservation. Because China is the principal range State for Tibetan antelope, its actions are critical to the long-term survival of the species. India, as the main destination for raw shahtoosh, is also a key player. This taxon deserves greater attention, but the United States suggests that the Parties might consider developing a more comprehensive approach to address this species and other appendix I species that continue to be traded illegally and commercially.

38. Controlled Trade in Specimens of Abundant Cetacean Stocks (Doc. 38; Japan)

Tentative U.S. negotiating position: Oppose.

If adopted, this resolution would support trade in whale products originating from stocks transferred from appendix I to appendix II among those Parties that are also signatories to the International Convention for the Regulation of Whaling and that have established DNA register systems to monitor such trade.

The United States believes that CITES should continue to honor the request for assistance in enforcing the moratorium on commercial whaling, which was communicated by the IWC to CITES in 1978. This request was answered by the CITES Parties in Resolution Conf. 2.9, which call on the Parties to "agree not to issue any import or export permit or certificate" for introduction from the sea under CITES for primarily commercial purposes "for any specimen of a species or stock protected from commercial whaling by the International Convention for the Regulation of Whaling." While the scientific committee of the IWC has developed the Revised Management Procedure (RMP) for setting quotas if commercial whaling were to resume, the IWC has not completed the development of a Revised Management Scheme (RMS) for monitoring the catch of whales. The United States believes that any type of commercial whaling or trade should not resume until the RMS is completed and the current moratorium on commercial whaling is lifted for any stocks that enter into international trade.

39. Conservation of and Trade in Freshwater Turtles and Tortoises (Doc. 39)

Tentative U.S. negotiating position: Undecided, until documents are available for review.

At the time this notice was prepared, the document for this issue was not yet available from the Secretariat. Once we receive the document we will review it closely and develop a tentative negotiating position for COP12.

The United States has been actively involved in, and supportive of, CITES efforts in recent years regarding the trade in tortoises and freshwater turtles, and associated conservation and management issues. The United States funded and participated in the technical workshop on tortoise and freshwater turtle trade and conservation hosted by China in March 2002, and we supported adoption of the workshop's recommendations and findings. For COP12 we have co-sponsored a number of appendix II species proposals for Asian freshwater turtles with China and India, and we support other proposals submitted by China and Germany.

40. Conservation of and Trade in Pancake Tortoise *Malacochersus tornieri* (Doc. 40; Kenya)

Tentative U.S. negotiating position: Oppose because of budgetary concerns.

The pancake tortoise ranges from central Kenya southward through central Tanzania. Within that range, the species is discontinuously distributed because of its strict habitat requirements; the species is found only where suitable rock crevices and outcroppings exist in thorn-scrub and savannah vegetation (Somalia-Masai floristic region). The pancake tortoise was listed in appendix II in 1975. Kenya enacted stricter domestic measures to prohibit commercial export of the species in 1981, although the United Republic of Tanzania permits the export of farmed specimens. The pancake tortoise is a desirable and valuable species in the pet trade, and although it is captive bred with some regularity, demand for wild caught specimens remains high.

Kenya submitted a proposal to transfer the species from appendix II to appendix I at COP11. The COP11 proposal (Doc. 11.59.3, Prop. 11.39) was withdrawn by Kenya after the United Republic of Tanzania provided oral assurances that it would not permit the export of wild caught specimens. However, there appears to be ongoing illegal trade in pancake tortoises, although it is difficult to determine the origin of specimens that appear to have been collected in the wild; in 2000 and 2001 the United States received several shipments of adult pancake tortoises with permits indicating that they were born in captivity.

The Pancake Tortoise Working Group proposed by Kenya would be tasked to develop recommendations on measures to improve conservation, control trade in live specimens of the species, and analyze whether existing breeding operations for the species conform to certain conditions. Management of the trade in pancake tortoises has been problematic for many years, but we note that it might be more appropriate for the COP to authorize addressing this issue through an existing CITES mechanism, rather than through the formation of a species-specific working group. Two potential ways to address these issues in a cooperative setting, and develop consensus recommendations, are either through the Animals Committee significant trade review process in Resolution Conf. 8.9 (Rev.) (under which the pancake tortoise has previously been reviewed), or through the Animals Committee working group on the conservation of and trade in freshwater turtles and tortoises, which the United States hopes will be re-authorized at COP12.

The United States believes that either of these two Animals Committee mechanisms are appropriate, and could be productive venues to address and resolve the issues highlighted in Doc. 40. We note that the creation of new working groups is administratively and financially burdensome and it is preferable to take advantage of existing systems to address trade and implementation concerns when available.

41. Conservation of Sharks

(a) Conservation and Management of Sharks (Doc. 41.1; Australia)

(b) Conservation of and Trade in Sharks (Doc. 41.2; Ecuador)

Tentative U.S. negotiating position: Support but have budgetary and workload concerns,

Australia and Ecuador have submitted separate documents on the role of CITES in international shark conservation. Although slightly different in objective, both papers recite the history of how CITES Parties got engaged in shark conservation and prescribe a series of future initiatives to help promote adequate management for vulnerable stocks. The Australian document suggests that the CITES Animals Committee could, among other things, regularly review the conservation status of various shark populations and recommend listing priorities to the Parties. The Ecuadorean document recommends tighter cooperation between CITES and FAO to ensure that national management plans are developed and implemented. Both documents recommend an ongoing review of shark conservation by CITES bodies beyond COP12.

A series of Decisions and Resolutions since COP9 have prompted international discussion on sharks in both CITES and FAO fora. The net result of this activity has been FAO's adoption in 1999 of an International Plan of Action for Sharks (IPOA-Sharks), and ongoing monitoring by the CITES Parties of FAO success in this endeavor. Although the IPOA lays out specific elements for National Plans of Action (NPOA's) to conserve sharks (data collection, monitoring, stock assessment, *etc.*), it is purely a voluntary measure that has met with limited success in FAO member nations. Out of 87 shark-fishing nations, most of which are CITES Parties, only two (the United States and Japan) have adopted NPOA's. Fifteen other member nations have committed to developing NPOA's, but often have made this contingent on external assistance and funding.

We agree that national implementation of the IPOA for sharks has been thus far disappointing but the blame lies with the Parties, not FAO. However, we are reluctant to endorse the idea of increasing the workload of the Animals Committee to include intensive monitoring and review of non-listed species. However, it is completely within the terms of reference and the history of the Animals Committee for the Committee to review and promote listings for specific shark taxa and monitor and review the trade of listed shark species.

42. Conservation of Sturgeons and Labeling of Caviar

(a) Implementation of Resolution Conf. 10.12 (Rev.) on Conservation of Sturgeons (Doc. 42.1)

Tentative U.S. negotiating position: Undecided, until documents are available for review.

This document is the report from the Animals Committee on the Implementation of Resolution Conf. 10.12 (Rev). At the time this notice was prepared, this document was not yet available from the Secretariat. Once we receive a document on this agenda item, we will review it closely and develop a tentative negotiating position for COP12.

At COP11, Decision 11.59 was adopted by the Parties which requested that all Parties trading in sturgeon and paddlefish report to the Secretariat on the progress made in implementing Resolution Conf. 10.12 (Rev.), Conservation of sturgeons, before the 18th meeting of the Animals Committee. Based on the information provided by the Parties, the Secretariat submitted a report to the 18th meeting of the Animals Committee. Decision 11.96 directs the Animals Committee to review the Secretariat's report, decide upon actions to be taken, and report at COP12.

(b) Consolidation of Resolutions Relating to Sturgeons and Trade in Caviar (Doc. 42.2)

Tentative U.S. negotiating position: Undecided, until documents are available for review.

At the time this notice was prepared, this document was not yet available from the Secretariat. Once we receive the document, we will review it closely and develop a tentative negotiating position for COP12.

Parties are just beginning to implement Conf. 11.13 requirements that are in addition to any domestic requirements. The proposed revisions to Conf. 11.13 presented at the 18th Animals Committee meeting include provisions covering the labeling of re-exported caviar. The United States maintains that there should be a system in place for exports that can be evaluated and modified as needed to ensure it is working effectively before moving forward with labeling of re-exports.

43. Conservation of Seahorses and Other Members of the Family Syngnathidae (Doc. 43)

Tentative U.S. negotiating position: Undecided, until documents are available for review.

At the time this notice was prepared, the document for this issue was not yet available from the Secretariat. Once we receive the document, we will review it closely and develop a tentative negotiating position for COP12.

As per the requirements of Decisions 11.97 and 11.153, the Secretariat convened a technical workshop on the conservation of seahorses and other fishes in the family Syngnathidae (*e.g.*, pipefish and sea dragons). This workshop was held May 27–29, 2002 (Cebu, Philippines), and the United States sent a representative. One aspect of the workshop was to evaluate a draft proposal written by the United States to include seahorses in appendix II of CITES (*see* Proposal 37, below). The workshop participants spent three days examining current trade data, evaluating national and regional management approaches for seahorses, and considering the efficacy of a potential appendix-II listing proposal. We expect Doc. 43 to summarize the workshop findings, which includes an endorsement of the U.S. listing proposal, recommendations for an 18-month delayed implementation of the listing if adopted, and suggestions for minimizing the impact on fishing communities that harvest seahorses. The United States is pleased to have our seahorse listing proposal endorsed by this body of scientists and trade experts, and will consider the other recommendations found in Doc. 43 once we have had a chance to fully review and evaluate the document.

44. Conservation of and Trade in *Dissostichus* Species (Doc. 44; Australia)

Tentative U.S. negotiating position: Undecided.

Australia submitted this draft resolution as a companion to its proposal to list *Dissostichus* spp. (both Patagonian and Antarctic toothfish) on CITES appendix II (*see* section 66, Prop. 39 of this notice). These species are currently managed under the Convention for the Conservation of Antarctic Marine Living Resources (CCAMLR) in designated waters surrounding the Antarctic continent. This draft resolution offers details on how an appendix-II listing for toothfish might be implemented. It recommends, among other provisions, that CITES Parties agree that the advice of the CCAMLR Scientific Committee

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concerning annual catch limits be considered a non-detriment finding for *Dissostichus* spp. within the CCAMLR Convention Area for CITES purposes. It also asks that Parties accept that a *Dissostichus* Catch Document (DCD) is equivalent to, and an acceptable substitute for, a certificate of introduction from the sea or an export permit under CITES.

Under Australia's proposal, Parties to CITES whose trade in *Dissostichus* is conducted using CCAMLR's Catch Documentation Scheme (CDS) within the CCAMLR Convention Area will be considered as having met the requirements of CITES. However, trade in toothfish harvested outside the CCAMLR Convention Area would be subject to CITES permitting requirements.

If agreed to by the Parties, this would be the first appendix-II listing for a commercially-traded marine fish species. The effect of this listing proposal, if adopted, would combine the regulatory regime of a regional fishery management organization (RFMO) with that of CITES. The Parties would need to resolve a number of implementation issues, including how the two permitting systems might work side by side, and the difficulties in making scientific non-detriment findings for high seas species. These matters, and others related to potential listings of high seas marine fish species, have not been fully explored by the Parties. In addition to considering how the two regulatory regimes would work in concert, the United States has not yet determined how our position would affect or be affected by the proposed cooperation with the United Nations Food and Agriculture Organization (FAO) regarding international trade in marine fish species. At this time, the United States is undecided as to our positions on issues related to CITES's role in international toothfish trade.

45. Trade in Sea Cucumbers in the Families Holothuridae and Stichopodidae (Doc. 45; United States)

Tentative U.S. negotiating position: Support.

In our **Federal Register** notice of April 18, 2002 (67 FR 19207), we stated that we were seeking additional information (particularly on abundance, identification techniques, trade volumes, and other range country interest in CITES listing) while considering submitting an appendix-II listing proposal for sea cucumbers. Based primarily on our consultations with other range countries for these species, we believed the most appropriate approach for COP12 was to submit a discussion paper on the issue of trade in these species, similar to what has been done in the past for other taxa, such as Syngnathidae (seahorses and their relatives). Rather than submit a proposal while significant questions exist about the trade in these species and the impact on them, we believed it would be more prudent to submit a discussion paper containing the information we have been able to gather at this point in time. The Conference of the Parties can then decide how to proceed and whether to further consider the listing of these species in the CITES Appendices.

46. Biological and Trade Status of *Harpagophytum* (Doc. 46)

Tentative U.S. negotiating position: Undecided, until documents are available for review.

At the time this notice was prepared, the document for this issue was not yet available from the Secretariat. Once we receive the document we will review it closely and determine whether our tentative negotiating position for COP12 needs to be changed.

The genus *Harpagophytum*, comprises two species, *H. procumbens* and *H. zeyheri*, native to southern Africa. The common name, devil's claw, is derived from the tough, thorny barbs, that grow on the woody fruits. Neither species is currently listed in the CITES appendices. The natural habitat of these perennial herbs are steppe-like arid zones of Angola, Botswana, Namibia and South Africa and, to a lesser extent, in Mozambique, Zambia and Zimbabwe. Flowers and leaves of the plant can only be found during the short rainy season. To survive the dry period, the plant forms water-storing secondary root tubers branching off horizontally from the primary taproot. These secondary storage tubers contain chemical compounds which have medicinal applications. Devil's claw is used in western and traditional medicine as an analgesic and anti-inflammatory. European countries have used it for years to treat rheumatic problems. The tubers are collected and sliced into thin disks and dried before export. A main threat to *H. procumbens* is the large-scale harvest of its secondary storage tubers using detrimental harvesting techniques, to meet international market demand.

Germany proposed *Harpagophytum procumbens* and *H. zeyheri* for inclusion in appendix II at COP11. However, due mainly to the objections of the range nations of these species, the proposal was not adopted. Instead, the Parties adopted two Decisions (11.63 and 11.111) designed to gather and analyze biological and trade information on the genus *Harpagophytum*. The Plants Committee was tasked with preparing a report on the biological and trade status of the genus for COP12. As a result of these Decisions, Dr. John Donaldson, African Regional Representative on the Plants Committee, prepared a report summarizing the available information on the trade, management, and biological status of *Harpagophytum*, which he presented at the 12th meeting of the Plants Committee (PC12; Leiden, The Netherlands, May 2002). Also, a regional devil's claw conference was held in Namibia in February 2002. Participants included representatives of the various stakeholders in the range countries. A report on the outcome of the conference was presented at the PC12. Finally, Germany, a major importer of *Harpagophytum*, presented a report at PC12 on imports of the genus into Germany.

The Plants Committee supported the recommendations made in the reports presented at PC12, and the Regional Representative on the Plants Committee from Africa was tasked with preparing a report on the issue for COP12. We expect the document (COP12 Doc. 46) to be this report. The United States supports the efforts of the Regional Representative for Africa, the Namibian devil's claw working group, and Germany in reviewing biological and trade data and improving regional cooperation to ensure the sustainable management of *Harpagophytum*, and anticipates tentatively supporting document COP12 Doc. 46.

47. Conservation of *Swietenia macrophylla:* Report of the Mahogany Working Group (Doc. 47)

Tentative U.S. negotiating position: Support with the exception of extending the group terms of reference through COP13 which would depend on the success of the appendix II listing proposal.

Decision 11.4 regarding conservation of *Swietenia macrophylla* called for a mahogany working group to meet to consider, among other things, the effectiveness of the current and potential appendix-III listings, the status of the species, legal and illegal trade, and ways to increase the number of range states listing mahogany in appendix III. This meeting was convened as the Mahogany Working Group meeting in October 2001 in Bolivia. As a participant of the Working Group and a financial supporter of the meeting, the United States generally supports the conclusions and recommendations of the Working Group.

48. Implementation of Resolution Conf. 8.9 (Rev.) on Trade in Specimens of Appendix-II Species Taken From the Wild

(a) Revision of Resolution Conf. 8.9 (Rev.) (Doc. 48.1)

Tentative U.S. negotiating position: Support.

Resolution Conf. 8.9 (Rev.) and Decisions 11.106 and 11.108 of the COP outline a process to review the implementation of Article IV of the Convention *vis-a-vis* appendix-II species that are traded in significant quantities. At AC17, the Secretariat introduced document AC17 7.4, drafted by the African Resources Trust (ART). The document highlighted problems with the Significant Trade Process, including discrepancies between Resolution Conf. 8.9 (Rev.) and Decisions 11.106 and 11.108, and suggested ways to correct such problems. Based on this document drafted by ART and discussions of a working group at AC17, the Secretariat prepared for AC18 document AC18 Doc. 7.3, which contained a revised draft version of Resolution Conf. 8.9 (Rev.). The revised draft resolution integrated all pertinent decisions dealing with the Significant Trade Process with Resolution Conf. 8.9 (Rev.). At AC18, a working group, of which the United States was a member, reviewed and amended the draft resolution. This revised draft resolution was then forwarded to PC12 for further review and comment prior to its submission at COP12. As an active member of the working groups involved in the revision of Resolution Conf. 8.9 (Rev.) at AC18 and PC12, the United States supports the submission of this document by the Secretariat.

(b) *Saiga tatarica:* Summary of the CITES-sponsored Workshop in Kalmykia in May 2002 and Presentation of the Draft Conservation Action Plan (Doc. 48.2; United States)

The United States withdrew this agenda item.

49. Nationally Established Export Quotas for Appendix-II Species: the Scientific Basis for Quota Establishment and Implementation (Doc. 49; United States)

Tentative U.S. negotiating position: Support.

This document focuses on the scientific basis for establishment and implementation of nationally established export quotas for appendix-II species (*i.e.*, appendix-II export quotas established voluntarily by individual Parties to the Convention) reported to the CITES Secretariat. The purpose of this discussion paper is to outline these concerns, and provide a basis for further discussion and possible action. We have highlighted five principal issues of concern: (1) Lack of a common understanding of the relationship between non-detriment findings and nationally established quotas for appendix-II species; (2) lack of a common understanding of the relationship between non-detriment findings and revisions to nationally established quotas for appendix-II species; (3) lack of a mechanism to review the biological basis of quotas; (4) lack of an agreed-upon mechanism for addressing quota overages; and (5) lack of specific requirements in reporting quotas. These issues are complex, particularly when viewed from a variety of perspectives, such as those of an exporting Party, importing Party, or from elsewhere. We believe they could best be addressed in a working group at COP12, potentially followed by an inter-sessional Export Quota Working Group, as proposed in Annex 3 of the companion document (Doc. 50.2).

Trade Control and Marking Issues

50. Management of Export Quotas

(a) Improving the Management of Annual Export Quotas and Amendment of Resolution Conf. 10.2 (Rev.) Annex 1 on Permits and Certificates (Doc. 50.1; Germany)

Tentative U.S. negotiating position: Support, with the exceptions described below.

We believe this document constitutes a positive contribution to discussions at COP12 on the establishment and implementation of appendix II export quotas. The United States has also submitted two documents in this area (Docs. 49 and 50.2). We believe the basic assumptions and findings underpinning this document and those submitted by the United States are very similar. While we believe that a modification to Resolution Conf. 10.2 (Rev.), as proposed in Doc. 50.a, could be part of a solution to address shortcomings in the current export quota system, the United States hopes that these issues will be openly discussed at COP12 in a working group so that an inclusive approach to this issue can be developed, one that can be implemented and enforced by all CITES Parties.

(b) Implementation and Monitoring of Nationally Established Export Quotas for Species Listed in Appendix II of the Convention (Doc. 50.2; United States)

Tentative U.S. negotiating position: Support.

This document discusses trade records for appendix II species covered by nationally established export quotas, and includes discussion of problems implementing these quotas, such as permit issuance, interpretation of reported quotas, and monitoring and reporting the use of export quotas. Doc. 50.(b) also includes a discussion of other types of export quota systems used in CITES, and contains text for two Decisions for the consideration of the Parties at COP12. The issues associated with the administration and implementation of nationally established export quotas are complex, particularly when viewed from the perspectives of affected stakeholders, such as that of an exporting Party, an importing Party, or from elsewhere. Due to the complexity of the issues involved, the variety of different perspectives and interests associated with these issues, and the submission of related documents by Germany (see Doc. 50.1, above) and the United States (Doc. 49, above), we believe it would be best to address them in a working group at COP12. Assuming that all issues could not be addressed and resolved at COP12, this working group could be followed by an inter-sessional "Export Quota Working Group," as proposed in Annex 3 of this document (Doc. 50.2).

51. Trade in Time-Sensitive Research Samples (Doc. 51)

Tentative U.S. negotiating position: Undecided, until documents are available for review.

At the time this notice was prepared, a document was not yet available from the Secretariat. Once we receive a document on this agenda item, we will review it closely and develop a tentative negotiating position for COP12.

The agenda item refers to the ongoing review of trade in biological samples by the CITES Parties. At COP11, Switzerland, Germany, and the United Kingdom submitted a draft resolution (Doc. 11.45.1) to amend Resolution Conf. 9.6 to exempt certain tissue samples as not readily recognizable parts and derivatives. The draft resolution was not adopted. Instead, a number of decisions were adopted that directed the Animals Committee (Decision Nos. 11.103–105) to identify and evaluate certain aspects of biological samples, and directed the Standing Committee (Decision Nos.

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11.87–11.88) to consult with the Secretariat of the Convention on Biological Diversity and to make recommendations on enforcement and implementation of trade in these types of samples for COP12. The United States participated in a working group of the Standing Committee. We think it is important to find simplified permitting and inspection procedures to allow for the timely movement of biological samples, both for scientific research and for commercial trade in high-volume appendix-II specimens.

52. Movements of Collections of Samples

(a) Movement of Sample Reptile Skins and Other Related Products (Doc. 52.1)

Tentative U.S. negotiating position: Undecided, until documents are available for review.

At the time this notice was prepared, a document was not yet available from the Secretariat. Once we receive a document on this agenda item, we will review it closely and develop a tentative negotiating position for COP12.

This document proposes the establishment of procedures that would allow shipments of sample products, such as shoes or belts, to be moved across international borders for the purpose of displaying the samples at trade shows or exhibitions. The United States is interested in developing a system that would allow for easier movement of such samples in cases where the sample would be used to generate legitimate sustainable trade in appendix II species, where the sample is not for sale while outside of its originating country, and would be returned to the originating country at the conclusion of the trade show or exhibition.

(b) Use of Certificates for Movements of Sample Collections, Covered by an ATA or TIR Carnet and Made of Parts or Derivatives of Species Included in Appendices II and III (Doc. 52.2; Italy and Switzerland)

Tentative negotiating position: Support, if changes can be made to adapt the system so it can be implemented in Parties like the United States.

The United States recognizes the need to streamline the administrative procedures required for the cross-border movement of these sample products. In addition, adoption of this proposal could potentially be beneficial to exporting countries, and the United States, in terms of showcasing their products and fostering trade in products harvested from sustainable ranching or sound management practices, while still adhering to the conservation requirements for CITES-listed species. The current version of this draft document and resolution contains some proposed items that are not compatible with U.S. regulations and permitting and enforcement procedures. The United States intends to address these issues with the proposing Parties during a working group at COP12 in an attempt to find a workable solution and adopt a resolution that will meet the needs of all of those that can legally implement such a system.

53. Trade Regimes for Timber Species (Doc. 53)

Tentative U.S. negotiating position: Undecided, until documents are available for review.

At the time this notice was prepared, the document for this issue was not yet available from the Secretariat. Once we receive the document, we will review it closely and develop a tentative negotiating position for COP12.

At COP11, the Parties directed the Secretariat in Decision 11.155 to investigate the potential for silvicultural techniques to provide useful bases for establishing trade regimes for timber species. At its 10th meeting (Shepherdstown, West Virginia, December 2000), the Plants Committee agreed that timber coming from managed natural forests should be regarded as "wild," because the current CITES definition of "artificially propagated" could not be applied, owing to the absence of "controlled conditions." It was also agreed that the Secretariat should further explore the subject and consider the possibility of creating a special source code for timber from silviculturally managed forests. At the 11th meeting of the Plants Committee (Langkawi, September 2001), it was agreed that the Secretariat would collate information on the definition of different production systems, source codes for silvicultural techniques, and certification of sustainably managed forests and the certification's compatibility with the scientific approach to making a non-detriment finding. The United States did not support the Secretariat's proposal, and cautioned that Scientific Authorities should not consider certification or eco-labeling as a substitute for conducting rigorous reviews of all available information in making non-detriment findings. At the 12th meeting of the Plants Committee (Leiden, The Netherlands, May 2002), TRAFFIC International presented a proposal to conduct a study to assess the existing schemes for certification of sustainably managed forests and their compatibility with the scientific requirements of making a non-detriment finding for trade in appendix-II tree species. The Plants Committee did not agree to fund the proposed study, concluding that the evaluation of certification schemes should be postponed until such schemes are better defined. We expect that Doc. 53 will be the report of the Secretariat on the progress of the issue of trade regimes for timber species since the eleventh meeting of the CITES Conference of the Parties.

Exemptions and Special Trade Provisions

54. Trade in Personal Effects

(a) Trade in Personal Effects (Doc. 54.1)

Tentative U.S. negotiating position: Undecided, until documents are available for review.

At the time this notice was prepared, a document was not yet available from the Secretariat. Once we receive a document on this agenda item, we will review it closely and develop a tentative negotiating position for COP12.

The United States would like to see the Parties address the issue of trade in personal effects. Currently, there is not a uniform approach to handling personal effects, even though Article VII, paragraph 3, of the Convention identifies an exemption for such items. The United States recognizes the personal effects exemption, as do many other Parties, but not every Party is implementing the exemption.

(b) Personal Effects Made of Crocodilian Leather (Doc. 54.2; Venezuela)

Tentative U.S. negotiating position: Oppose.

This document identifies the problem of Parties implementing Article VII, paragraph 3, in an inconsistent manner, or not implementing it at all. The document points out that failing to allow the personal effects exemption may, in certain circumstances, have a negative effect on conservation efforts that have been put in place for crocodilian species. Venezuela has submitted a draft resolution that would define "personal and household effects" and stresses that Parties should amend their domestic laws and regulations to allow for the exemption outlined in Article VII, paragraph 3. The United States agrees with encouraging Parties to implement the exemption for personal effects. This document and Doc. 54.1 both address the same issue, however, this document focuses only on crocodilian products. The United States feels that if a resolution is adopted at COP12 it should address all personal and household effects, not just crocodilian products.

55. Operations That Breed appendix-I Species in Captivity for Commercial Purposes

(a) Revision of Resolutions Conf. 8.15 and Conf. 11.14 on Guidelines for a Procedure To Register and Monitor Operations That Breed appendix-I Animal Species for Commercial Purposes (Doc. 55.1)

Tentative U.S. negotiating position: Undecided, until documents are available for review.

At the time this notice was prepared, a document was not yet available from the Secretariat. Once we receive a document on this agenda item, we will review it closely and develop a tentative negotiating position for COP12.

This document will probably consist of a report from the AC on its activities on preparation of Annex 3 of Resolution Conf. 11.14, which is to replace Resolution Conf. 8.15. At COP11, Parties adopted a resolution for the registration of commercial captive-breeding facilities for appendix-I animal species (Conf. 11.14). In addition, Decision 11.101 requested the AC to compile a list of appendix-I species that are critically endangered in the wild and/or known to be difficult to breed or keep in captivity (*i.e.*, Annex 3).

Under Conf. 11.14, facilities breeding appendix-I species for commercial purposes and included in Annex 3 must become registered with the CITES Secretariat, thus providing all Parties with an opportunity to comment on whether or not these operations should be registered. Facilities breeding appendix-I species not included in Annex 3 must register with their country's management authority, but are not required to be registered with the Secretariat or subject to consultation with other Parties, including range States. Once Annex 3 is compiled, Conf. 11.14 will replace Conf. 8.15.

At AC16, a working group produced by general consensus definitions for the terms "critically endangered in the wild," "difficult to keep," and "difficult to breed." However, the members of the AC did not reach consensus about the proposed definition for "critically endangered in the wild," so the matter was deferred to AC17.

At AC17, the members of the AC agreed to conduct a pilot project to compile three alternative lists of appendix-I species that may be considered difficult to keep or breed in captivity, *i.e.*, species that are categorized in the IUCN Red List 2000 as (1) critically endangered in the wild, (2) critically endangered or endangered in the wild, and (3) critically endangered, endangered, or vulnerable in the wild. The AC decided to initially limit this exercise to the Reptilia, and to review the outcome of the project at AC18. The IUCN Crocodile Specialist Group (CSG) was later contracted by the Secretariat to conduct this review.

At AC18, the CSG presented its report, which found that the alternative lists of Appendix-I reptiles difficult to keep or maintain in captivity would not differ significantly from the list of all reptile species currently listed in Appendix I. Furthermore, in a working group at AC18, most delegates agreed on the right of range States to place species in Annex 3. The working group concluded that further work was needed on the registration of Appendix-I breeding facilities for commercial purposes.

(b) Applications To Register Operations That Breed appendix-I Species in Captivity for Commercial Purposes (Doc. 55.2)

Tentative U.S. negotiating position: Undecided, until documents are available for review.

At the time this notice was prepared, a document was not yet available from the Secretariat. Once we receive a document on this agenda item, we will review it closely and develop a tentative negotiating position for COP12.

This document may include a proposal from the United Kingdom to register a green turtle (*Chelonia mydas*) captive-breeding operation on Grand Cayman, Cayman Islands (United Kingdom). The Service is currently reviewing that application as requested by CITES Notification to the Parties No. 2002/039 ("Control of operations that breed Appendix-I species in captivity for commercial purposes") issued by the Secretariat on June 24, 2002. We believe that the Parties may be asked to vote on this proposal at COP12 if any Party objects to the registration of the facility through the notification process, as described in Resolution Conf. 8.15.

56. Non-commercial Loan, Donation or Exchange of Museum and Herbarium Specimens (Doc. 56; United States)

Tentative U.S. negotiating position: Support.

Please see our **Federal Register** notice of April 18, 2002 (67 FR 19207) for a discussion of why we submitted this document.

57. Traveling Live-animal Exhibitions (Doc. 57; Russian Federation)

Tentative U.S. negotiating position: Oppose.

The document addresses concerns that the Russian Federation has about the current Resolution Conf. 8.16 and why this resolution does not cover all of the animals that the Federation would like to be covered by an exemption. The United States supported and continues to support the current resolution (Conf. 8.16). We believe that the resolution provides Parties with a mechanism to allow the international movement of animals that fall within the exemption provided by Article VII, paragraph 7, of the Convention. While there may be a need for better clarification of some aspects of the current resolution to assist Parties in the implementation of the resolution, we do not feel that any substantial changes are required. The revised resolution proposed by the Russian Federation goes beyond what is allowed under the Convention by giving an exemption to all animals within a traveling exhibition, including animals that were recently removed from the wild. The proposed revision would allow the exporting country to issue a document for any animal without addressing the no detriment criterion of Article III or IV. The United States could not support such a resolution.

Amendment of the Appendices

58. Criteria for Amendment of appendices I and II (Doc. 58)

Tentative U.S. negotiating position: Undecided.

This document and its associated annexes were submitted by the Secretariat. This agenda item prompts the COP to decide on what should occur regarding review of Resolution Conf. 9.24, which contains the criteria for inclusion of species in appendices I and II. This document consists of five Annexes:

Annex 1: Explanation of why the criteria review process concluded that the current Resolution Conf. 9.24 should be amended;

Annex 2: The timeline for the review of the listing criteria from COP11 onwards;

Annex 3: Explanation of the proposed amendments to Resolution Conf. 9.24;

Annex 4: A "clean" version of the amended Resolution; and,

Annex 5: The report on the review of Conf. 9.24 from the Chairmen of the Animals Committee and the Criteria Working Group (CWG) submitted to the Standing Committee (Annex 5a); and the report on the review of Conf. 9.24 from the Chairman of the Plants Committee (Annex 5b) submitted to the Standing Committee.

The terms of reference for the review of the listing criteria (Decision 11.2)

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specifically called for a consensus report to be developed by the Chairs of the Animals and Plants Committees for COP12. However, the Chairs of the Animals and Plants Committees did not reach consensus on the appropriate revisions to the listing criteria. In Annex 5b, the Chair of the Plants Committee explains why she believes the terms of reference for the review of the listing criteria have been violated and why she, therefore, does not endorse the current revisions shown in Annex 4. The Chairs of the Animals Committee and the CWG provide their rebuttal to these arguments in Annex 5a.

The terms of reference for the review of the listing criteria laid out a specific protocol for the Animals and Plants Committees to choose taxa (both listed and non-listed under CITES), evaluate them, and decide whether Conf. 9.24 was applicable and useful for analyzing their conservation status. This analysis was intended to guide the CWG in revising Annexes 1, 2, 5, and 6 to Conf. 9.24. The Chair of the Plants Committee claims that this process has largely been ignored, and is proposing that the COP advocate a process to continue the criteria review beyond COP12. The Animals Committee and CWG Chairs claim that the review complied with all the terms of reference. Their Chairs' rebuttal focuses largely on how Parties' comments were accommodated, timetable adherence, and the inclusion of the viewpoints of the fisheries experts in the final revisions. However, they do not discuss the issue of the missing taxon reviews.

In our comments on CITES Notification to the Parties No. 2001/37 and our interventions at the 46th meeting of the Standing Committee (SC46), we concurred with the Chair of the Plants Committee in that the taxon-specific reviews called for in the terms of reference had not occurred, excepting the standard review of the appendices (called for in Conf. 9.24) and the FAO work on marine species. In addition, Decision 11.2 specifically calls for examination of Annexes 1 and 2 (appendix-I and appendix-II listing criteria), the definitions in Annex 5, and the species proposal format shown in Annex 6. There is no mandate to the CWG for revision of the precautionary principle nor the "special cases" described in Annexes 3 and 4 of Conf. 9.24. However, the Chairs of the CWG and the Animals Committee have twice proposed substantial changes to these Annexes. There has been no formal discussion in the Animals and Plants Committees of how the criteria and the terminology of Conf. 9.24 specifically apply to various taxa of plants and animals (except for one presentation on fisheries methodology made at the December 2000 joint meeting of the two committees in Shepherdstown, West Virginia). This places the Parties in the uncomfortable position of changing the criteria without an analysis of their current strengths and weaknesses.

Nonetheless, the United States has invested significant amounts of time and money in the criteria review process, including participation in both CWG meetings, hosting the joint Animals and Plants Committee meeting, reviewing several taxa in the periodic Review of the Appendices, and critically evaluating Conf. 9.24 for marine species. We believe that the reports now available to the COP reflect significant effort and thought on behalf of the Chairmen and the Parties, and explore many important aspects of the current listing criteria. Furthermore, we believe that the fundamental principles and precautionary approaches laid down by the Parties in Conf. 9.24 remain intact in the final revisions. The current suggested revisions (with noted exceptions) serve mainly to clarify terminology and harmonize Conf. 9.24 with other resolutions. It is our position that the Parties should seek to retain the aspects of the review that appear to have the support of a majority of Parties, but consider continuing the review of Resolution Conf. 9.24 to fulfill the original terms of reference.

59. Amendment of the Appendices With Regard to Populations (Doc. 59)

Tentative U.S. negotiating position: Undecided, until documents are available for review.

At the time this notice was prepared, a document was not yet available from the Secretariat. Once we receive a document on this agenda item, we will review it closely and develop a tentative negotiating position for COP12.

60. Annotations for Medicinal Plants in the Appendices (Doc. 60)

Tentative U.S. negotiating position: Undecided, until documents are available for review.

At the time this notice was prepared, a document was not yet available from the Secretariat. Once we receive a document on this agenda item, we will review it closely and develop a tentative negotiating position for COP12.

Annotations of the listings of medicinal plants in the Appendices have been a topic of discussion at recent meetings of the Plants Committee, and we anticipate that this agenda item may be related to these proceedings. The focus of these discussions is the accuracy of terms used in the annotations and the lack of consistency of terminology used in the annotations. At the eleventh meeting of the Plants Committee, the United States prepared a document containing definitions of various terms used in medicinal plant annotations. This work was continued to the twelfth meeting of the Plants Committee, but was not completed. The United States will support any effort to ensure that annotations of medicinal plants listed in the Appendices are accurate as to the parts or products referred to, and will also support efforts to harmonize terms used for different plants when the same part or product is covered by annotations.

Other Themes and Issues

61. Establishment of a Working Group To Analyse Relevant Aspects of the Application of CITES to Marine Species (Doc. 61; Chile)

Tentative U.S. negotiating position: Support but note budgetary concerns and possible duplication of effort if an implementation committee or sub-committee is formed.

This draft resolution proposes that a Working Group on Marine Species be established by the CITES Animals Committee to provide technical procedures and recommendations to promote the effective application of CITES for marine species. Chile proposes that the group could develop a definition of "introduction from the sea" in accordance with provisions of international laws or agreements, including the United Nations Convention on the Law of the Sea of 1982 (UNCLOS). This group would be a venue for discussion of technical questions from the FAO Committee on Fisheries, and could recommend a procedure for effective collaboration with other international organizations responsible for marine species.

The United States recognizes the need for input into the CITES process from fisheries resource managers and has submitted a document (Doc. 16.2.2) asking the CITES Parties to suggest means for developing and finalizing a Memorandum of Understanding (MOU) between CITES and FAO. Such an MOU would facilitate exchange of information and technical advice on CITES provisions and requirements related to any listed commercially traded fish species.

The United States supports the goal of Chile's resolution, although we have not developed clear positions on all of the specifics and implications of such a group. The United States believes that such a Working Group should report to the Standing Committee, as did the Timber Working Group, rather than to the Animals Committee. The United States believes that if such a working group were to be established, its subject matter should be limited to marine fish and invertebrate species only. Finally, the United States is concerned about the budgetary implications of such a Working Group and whether it would impose additional work burdens on the Secretariat.

62. Bushmeat (Decision 11.166)

Tentative U.S. negotiating position: Support.

This document was prepared by the CITES Secretariat, and summarizes the activities of the CITES Bushmeat Working Group (CBWG) since COP11. Decision 11.166 called for the establishment of a working group of interested range and donor States to examine issues raised by the trade in bushmeat, with the aim of identifying solutions that can be implemented by the range States. The CBWG consists of representatives from Cameroon, the Central African Republic, the Congo, Democratic Republic of Congo, Equatorial Guinea and Gabon. Supported in part by grants from the U.S. Fish and Wildlife Service, the CBWG has met several times since COP11 to review the status of the bushmeat trade and develop a framework for implementing priority actions. The document contains a draft Decision calling for the maintenance of the CBWG until COP13. In light of the impressive accomplishments of the CBWG since COP11, the United States supports the maintenance of the working group until COP13.

63. The Rescue of Dependent Apes From War Zones (Doc. 63; Kenya)

Tentative U.S. negotiating position: Support as long as the countries involved in such trade ensure such an exemption does not allow or encourage illegal trade of primates.

The document proposes an exemption to CITES permitting requirements in order to evacuate captive great apes from war zones to other countries when no alternative refuges are available in the country where they are being kept. Evacuated apes would be transferred to the nearest available government-approved and professionally accredited sanctuary on a temporary basis until long-term welfare of the animal can be assured in the country of export. To be eligible for this exemption the animal must be in captivity and need human care that may become unavailable due to wartime conditions, the transfer must be completely non-commercial, and the transfer must be carried out under the direction of the CITES Management and Scientific Authorities of both countries under a system established by the CITES Secretariat. At this time, the proposal only directs the Secretariat to establish a system by which Parties could implement this procedure. This system would then be incorporated into a proposal to be presented at a later COP for final approval. The United States suggests that if a permanent implementation body is formed within the Convention that this issue be referred to that body for resolution.

The United States agrees that great apes, which are all listed in appendix I of CITES, should be afforded the maximum protection available. The United States supports the proposed resolution to direct the Secretariat to establish a system, to be presented at a later COP, to temporarily transfer imperiled captive great apes out of war zones to nearby institutions. The United States suggests that the Parties have final approval to ensure that CITES safeguards are being enforced and that the specifications for transfer of specimens detailed above are met.

64. Trade in Traditional Medicines (Doc. 64)

Tentative U.S. negotiating position: Undecided, until documents are available for review.

At the time this notice was prepared, a document was not yet available from the Secretariat. Once we receive a document on this agenda item, we will review it closely and develop a tentative negotiating position for COP12.

Both the Plants and Animals Committees were directed to review the trade in CITES-listed species for traditional medicines. Neither committee was able to fully carry out this investigation, due to a lack of basic information on the many ingredients and uses of CITES-listed species parts and derivatives in traditional medicines, worldwide. Decision 11.165, adopted at COP11, directed the Secretariat to compile an inventory of operations where artificial propagation or captive breeding of CITES species is conducted for medicinal purposes, and to continue developing the list of species of plants and animals and their parts traded for medicinal purposes.

65. Publicity Materials (Doc. 65)

Tentative U.S. negotiating position: Support.

This document provides a review of Decision 11.131 and actions that have been taken since COP11 to meet its requirements. This decision directed the Secretariat to develop a work plan to prepare publicity materials for animal and plant species included in the Appendices. In addition to serving in an advisory capacity to Parties wishing to develop outreach materials, the Secretariat has taken other actions to fulfill its duties in regard to this decision. The Secretariat has produced a brochure for public distribution and for use in workshops to create general awareness of the aims of CITES and animals and plants included in its Appendices. The Secretariat has also changed the focus of its newsletter, *CITES World*, to provide articles that highlight initiatives taken by Parties on issues of importance to all Parties. In future outreach materials, the Secretariat plans to highlight the positive effects of CITES on the conservation and sustainable utilization of wild species. The United States supports efforts by the Secretariat and all Parties to increase public awareness of the animals and plants listed in the CITES Appendices and the functioning of CITES.

Consideration of Proposals for Amendment of Appendices I and II

66. Proposals to Amend appendices I and II (Doc. 66)

Prop. 1. Amendment of Annotation 607 to read: "The following are not subject to the provisions of the Convention: (a) synthetically derived DNA that does not contain any part of the original; (b) urine and feces; (c) synthetically produced medicines and other pharmaceutical products such as vaccines that do not contain any part of the original genetic material from which they are derived; and (d) fossils. Submitted by Switzerland.

Tentative U.S. negotiating position: Support.

The United States was a member of a working group established by the CITES Standing Committee at its 45th meeting. The working group was charged, in part, with identifying types of samples that may be considered as not subject to the provisions of the Convention. This proposal from Switzerland reflects the agreement reached by that working group. We believe that exempting these four classes of specimens will have no impact on the conservation of CITES-listed species. However, we also believe that there may be a need to clearly define some of these terms, such as "fossil," to ensure that such an exemption is uniformly applied by the Parties.

Prop. 2. Annotation of taxa *Agapornis* spp. (lovebirds), *Platycercus* spp. (rosellas and parakeets), Barnardius spp. (rosellas and parakeets), *Cyanoramphus auriceps* (yellow-crowned parakeet),

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Cyanoramphus novaezelandiae (New Zealand parakeet), *Psittacula eupatria* (Alexandrine parakeet), *Psittacula krameri* (ring-necked parakeet), and *Padda oryzivora* (Java sparrow) with the following text: Color morphs produced by captive breeding are considered as being of a domesticated form and are therefore not subject to the provisions of the Convention. Submitted by Switzerland.

Tentative U.S. negotiating position: Undecided.

The species listed in this proposal are frequently bred in captivity to produce color morphs (*i.e.*, mutations). Switzerland submitted a discussion paper at the first European Regional Meeting of the CITES Animals Committee (November 2001) noting that managing the trade in these birds requires significant resources and has little or no relevance to conservation of wild populations of these species. The United States seeks input on whether or not some color morphs in the proposed species might be difficult to distinguish from normal-colored wild stock as well as on whether the proposal is permissible given the definition of specimen in Article I of the Convention. We also question the rationale for referring to these as "domesticated," since normal-colored specimens of these species might actually have been bred in captivity for more generations than color morphs, but under this proposal would not be exempted as "domesticated."

Prop. 3. Transfer of Black Sea bottlenose dolphin (*Tursiops truncatus ponticus*) from appendix II to appendix I. Submitted by Georgia.

Tentative U.S. negotiating position: Support.

Bottlenose dolphins (*Tursiops truncatus*) were included in appendix II on June 28, 1979, and are distributed worldwide in temperate and tropical waters. The subspecies *Tursiops truncatus ponticus* is endemic to the Black Sea, isolated from other populations of bottlenose dolphins in the Mediterranean and other waters. Black Sea bottlenose dolphins look almost identical to those from other regions, and their genetic distinctness is unknown. At COP11, the United States withdrew a proposal to transfer the subspecies to appendix I when Georgia (co-sponsor and range country) could not attend. It is believed that overall abundance of dolphins in the Black Sea has declined greatly due to over-exploitation into the 1980s for human consumption and industrial products. A large purse-seine fishery conducted by the former Soviet Union, Bulgaria, and Romania collapsed in the 1960s due to over-harvest, and large takes by rifle continued by Turkey until a ban in 1983. The proponents state that the population meets two of the biological criteria for inclusion in appendix I from CITES Resolution Conf. 9.24, Annex 1:

Criteria B: The wild population has a restricted area of distribution and is characterized by (iii) a high vulnerability due to the species' biology or behavior, and (iv) an observed, inferred or projected decrease in the number of individuals, area or quality of habitat, and reproductive potential.

Criteria C (iii): A decline in the number of individuals in the wild, which has been inferred or projected on the basis of levels of patterns of exploitation, and threats from extrinsic factors such as the effects of pathogens, competitors, parasites, predators, hybridization, introduced species, and the effects of toxins and pollutants.

In our **Federal Register** notice of April 18, 2002 (67 FR 19207), we generally agreed with this assessment, noting the multitude of threats to wild Black Sea bottlenose dolphins. The exact size of the Black Sea population is unknown, and no estimates exist of sustainable levels of take. As signatories to the Bern Convention, range countries Bulgaria, Romania, Turkey, and Ukraine have all banned possession and internal trade in *T. truncatus*. In addition, the Parties to the Bern Convention adopted a resolution in November 2001 urging that this subspecies be transferred to appendix I of CITES. The Agreement on the Conservation of Cetaceans of the Black Sea, Mediterranean Sea, and Contiguous Atlantic Area (ACCOBAMS) adopted a similar resolution at a meeting in February 2002, and both of these resolutions were forwarded to the CITES Animals Committee. The Animals Committee could not agree on the biological status of the Black Sea population, and has not endorsed or rejected the idea of listing in appendix I. Furthermore, the genetic distinctiveness of Black Sea bottlenose has yet to be determined. Geneticists with the National Marine Fisheries Service are currently working to obtain Black Sea bottlenose dolphin tissue specimens from range countries, and will make genetic comparisons between these samples and those from other bottlenose dolphin populations during the summer of 2003. Listing subspecies in any CITES appendix is discouraged by Resolution Conf. 9.24 (Criteria for amendment of appendices I and II), unless the taxon in question is highly distinctive and use of the subspecies name would not lead to enforcement problems.

The United States will strive to obtain samples to complete genetic analysis on Black Sea bottlenose dolphins to help bolster the biological rationale for listing the population separately in appendix I. This issue notwithstanding, the other factors and criteria mentioned above suggest that the Black Sea bottlenose dolphin qualifies for uplisting to appendix I.

Props. 4 and 5. Prop. 4: Northern hemisphere minke whale (*Balaenoptera acutorostrata*)—Proposal for transfer from appendix I to appendix II (except the Yellow Sea, East China Sea, and Sea of Japan populations) with annotation. Prop. 5: Bryde's whale (*Balaenoptera edeni*)—Proposal for transfer from appendix I to appendix II of the western North Pacific population, with annotation. Both proposals submitted by Japan.

Tentative U.S. negotiating positions: Oppose.

Japan has proposed to downlist these populations of minke and Bryde's whales in accordance with Resolution Conf. 9.24, Annex 4. Japan has also submitted lengthy annotations for each downlisting, which would among other things: (1) restrict trade to International Whaling Commission (IWC) signatory governments that also have "an effective DNA register system" for whale products; (2) govern catch levels by using the International Whaling Commission Revised Management Procedure; (3) establish export quotas; and (4) require DNA profiles to accompany specimens in trade. The following discussion addresses both proposals.

The United States opposes the downlisting of these populations of whales, which are subject to IWC moratorium on commercial whaling. The United States continues to believe that it is inappropriate to consider these species for downlisting until the IWC completes its revised management scheme in order to implement a monitoring and inspection program for commercial whaling, as discussed below. The United States also believes that these species do not qualify for transfer to appendix II. The discussion that follows relates to all four of these proposals.

The United States believes that CITES should honor the request for assistance in enforcing the moratorium that the IWC communicated to the CITES Parties in a resolution passed at the Special Meeting of the IWC in Tokyo in December 1978. This request was answered by the CITES Parties in Resolution Conf. 2.9 ("Trade in Certain Species and Stocks of Whales Protected by the International Whaling Commission from Commercial Whaling"), which calls on the Parties to "agree not to issue any import or export permit or certificate" for introduction from the sea under CITES for primarily commercial purposes "for any specimen of a species or stock protected from commercial whaling by the International Convention for the Regulation of Whaling." Resolution Conf. 2.9 was overwhelmingly reaffirmed by the Parties at COP10, by the defeat of a draft resolution proposed by Japan to repeal this resolution. At the 50th meeting of the IWC subsequent to COP10, the IWC passed a resolution that expressed its appreciation for the reaffirmation of this link between the IWC and CITES. IWC Resolution IWC/51/43 also welcomes the CITES COP10 decision "to uphold CITES Resolution Conf. 2.9." Support for these requests of the IWC necessitate opposition to any proposal to transfer whale stocks to appendix II.

Additionally, according to Resolution Conf. 9.24, Annex 4, Precautionary Measures, paragraph 2.B. a. "[e]ven if such species do not satisfy the relevant criteria in Annex 1, they should be retained in Appendix I unless * * * the species is likely to be in demand for trade, but its management is such that the Conference of the Parties is satisfied * * * with (i) implementation by the range States of the requirements of the Convention, in particular Article IV; and (ii) appropriate enforcement controls and compliance with the requirements of the Convention." Unfortunately, these "appropriate enforcement controls," as part of a Revised Management Scheme, have not yet been adopted by the IWC. Therefore, these whale stocks do not qualify for transfer to appendix II under Resolution Conf. 9.24.

The assumption in the downlisting proposal for these populations of minke and Bryde's whales is that there are discrete genetic differences within species and between individuals, and that species stocks and individuals can be readily differentiated by forensic DNA methods. The United States disagrees scientifically with the statement that the precautionary measures of Resolution Conf. 9.24 Annex 4 are fulfilled because DNA analysis techniques allow for the identification of whale stocks, and even individual whales. This is not the case, as the experts who have developed these methods will attest and the scientific literature reinforces. While clear markers differentiate species, finding forensic markers for all individuals within a population or stock is much more problematic. Doing so is usually possible only when the population distinctiveness approaches that of species. Thus, a DNA analysis would not distinguish between minke whales listed in appendix I and minke whales listed in appendix II. Appropriate safeguards to prevent trade in whales listed in appendix I would not exist, if some whales of that species could be traded under appendix II.

Moreover, the use of Japanese and Norwegian DNA registers that are not available for scrutiny by other whale DNA experts is counter to all principles of forensic identification. Only when there is agreement on DNA markers, tested against adequate sample sizes of the whale stocks in question, could they be utilized for verification purposes. This research may show significant evolutionary units within some stocks, and it may also show significant gene flow between stocks, thus, making forensic identification of meat samples to particular stocks impossible. Full transparency, accuracy, and availability of all DNA markers is essential to the IWC, and the United States does not believe these are available at this time. The lack of public scrutiny of Japanese and Norwegian DNA registries renders them an ineffective tool for monitoring whale catches.

The previous IWC management regime was not effective in managing the whaling industry. While it was in place, the whaling industry drastically depleted whale stocks until many became threatened with extinction. There has been illegal, unregulated, and unreported harvesting of whale stocks by certain IWC member nations. Since the establishment of the worldwide moratorium on commercial whaling, coupled with the CITES appendix-I listings, the Commission has continued to work on activities that the United States believes must be completed before commercial whaling can even be considered. This management regime must include devising an observation and monitoring program to ensure that quotas are not exceeded and whale products are legally obtained. Thus, the United States opposes even considering the downlisting of any whale species until the IWC has taken steps to create and institutionalize a revised management regime that brings all whaling under effective IWC monitoring and control.

Prop. 6. Maintain the Botswana population of the African elephant (*Loxodonta africana*) in appendix II, with annotations for trade. Submitted by Botswana.

Tentative U.S. negotiating position: Undecided.

Botswana's African elephant population was transferred to appendix II at COP10, with an annotation that, among other aspects, allowed for a one-time sale of ivory stocks to Japan. Botswana has proposed to amend that annotation to allow for commercial trade in government-owned stocks of ivory to "CITES-approved trading partners who will not re-export ivory," with a one-off quota of 20,000 kg of ivory and an annual quota of 4,000 kg of ivory. Other amendments to the annotation include allowing export of hides, leather goods, and ivory carvings. We are continuing to evaluate this proposal, in the context of all proposals relevant to the African elephant (Proposals 6–11), and relevant documents (Documents 20.1, 34.1, 34.2, 34.3). All of the relevant documents to be evaluated at COP12 dealing with ivory trade have not yet been received, and we are continuing to evaluate the impact of decisions and proposals adopted at COP10 and COP11. Recent reports indicate that illegal trade in ivory is continuing and may pose a significant threat to some elephant populations. Because the monitoring systems have not yet provided significant data on the effects of this trade, we remain very concerned about the potential effects a legal trade could have on poaching in other countries in Africa and Asia.

Prop. 7. Maintain the Namibian population of the African elephant (*Loxodonta africana*) in appendix II, with annotations for trade. Submitted by Namibia.

Tentative U.S. negotiating position: Undecided.

Namibia's population of African elephants was transferred to appendix II at COP10, with an annotation that, among other aspects, allowed for a one-time sale of ivory stocks to Japan. Namibia has proposed to amend that annotation to allow for commercial trade in government-owned registered stocks of raw ivory (whole tusks and pieces), to "trading partners that have been verified by the CITES Secretariat to have sufficient national legislation and domestic trade controls to ensure that ivory imported from Namibia will not be re-exported and will be managed according to all requirements of Resolution Conf. 10.10 (Rev.) concerning domestic manufacturing and trade," with a one-time export quota of 10,000 kg of ivory and an annual quota of 2,000 kg of ivory. The proposal also includes allowing trade in leather and ivory carvings for non-commercial purposes and trade in hides. We are continuing to evaluate this proposal, in the context of all proposals relevant to

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the African elephant (12.6–12.11), and relevant documents (Documents 20.1, 34.1, 34.2, 34.3). All of the relevant documents to be evaluated at COP12 dealing with ivory trade have not yet been received, and we are continuing to evaluate the impact of decisions and proposals adopted at COP10 and COP11. Recent reports indicate that illegal trade in ivory is continuing and may pose a significant threat to some elephant populations. Because the monitoring systems have not yet provided significant data on the effects of the ivory trade, we remain very concerned about the potential effects any legal trade could have on poaching in other countries in Africa and Asia.

Prop. 8. Maintain the South African population of the African elephant (*Loxodonta africana*) in appendix II, with annotations for trade. Submitted by South Africa.

Tentative U.S. negotiating position: Undecided.

The South African population of African elephant was transferred from appendix I to appendix II in 1997, subject to Annotation 604. The latter allows for trade in live animals for reintroduction purposes, trade in hides and leather goods, non-commercial trade in hunting trophies, and a zero quota for government-owned raw ivory originating from Kruger National Park. This proposal allows for an initial sale of the Kruger National Park stockpile of ivory (30,000 kg of whole tusks and cut pieces) and a subsequent annual quota of two tons. We are continuing to evaluate this proposal, in the context of all proposals relevant to the African elephant (Proposals 6–11), and relevant documents (Documents 20.1, 34.1, 34.2, 34.3). All of the relevant documents to be evaluated at COP12 dealing with ivory trade have not yet been received at the time this notice was prepared, and we are continuing to evaluate the impact of decisions and proposals adopted at COP10 and COP11. Recent reports indicate that illegal trade in ivory is continuing and may pose a significant threat to some elephant populations. Because the monitoring systems have not yet provided significant data on the effects of the ivory trade, we remain very concerned about the potential effects any legal trade could have on poaching in other countries in Africa and Asia.

Prop. 9. Downlist the Zambian population of the African elephant (*Loxodonta africana*) from appendix I to appendix II, with annotations for trade. Submitted by Zambia.

Tentative U.S. negotiating position: Undecided.

Zambia proposes to downlist its population of African elephant to appendix II with an annotation to permit trade in up to 17,000 kg of whole tusks owned by Zambia's Wildlife Authority and live sales under special circumstances. Revenue would be used for conservation purposes. We are continuing to evaluate this proposal, in the context of all proposals relevant to the African elephant (Proposals 6–11), and relevant documents (Documents 20.1, 34.1, 34.2, 34.3). All of the relevant documents to be evaluated at COP12 dealing with ivory trade have not yet been received, and we are continuing to evaluate the impact of decisions and proposals adopted at COP10 and COP 11.

Prop. 10. Maintain the Zimbabwe population of the African elephant (*Loxodonta africana*) in appendix II, with annotations for trade. Submitted by Zimbabwe.

Tentative U.S. negotiating position: Undecided.

Zimbabwe's population of African elephant was transferred to appendix II at COP10, with an annotation that, among other aspects, allowed for a one-time sale of ivory stocks to Japan. Zimbabwe has proposed to amend that annotation to allow for commercial trade in stocks of raw ivory (whole tusks and pieces) "to trading partners that have been verified by the CITES Secretariat to have sufficient national legislation and domestic trade controls," with a one-time export quota of 10,000 kg of ivory and an annual export quota of 5,000 kg of ivory. We are continuing to evaluate this proposal, in the context of all proposals relevant to the African elephant (Proposals 6–11), and relevant documents (Documents 20.1, 34.1, 34.2, 34.3). All of the relevant documents to be evaluated at COP12 dealing with ivory trade have not yet been received at the time this notice was prepared, and we are continuing to evaluate the impact of decisions and proposals adopted at COP10 and COP11. Recent reports indicate that illegal trade in ivory is continuing and may pose a significant threat to some elephant populations. Because the monitoring systems have not yet provided significant data on the effects of the ivory trade, we remain very concerned about the potential effects any legal trade could have on poaching in other countries in Africa and Asia.

Prop. 11. Transfer to appendix I all populations of African elephant (*Loxodonta africana*) currently listed in appendix II. Submitted by India and Kenya.

Tentative U.S. negotiating position: Undecided.

We are continuing to evaluate this proposal, in the context of all proposals relevant to the African elephant (Proposals 6–11), and relevant documents (Documents 20.1, 34.1, 34.2, 34.3). These issues are very complex. All of the relevant documents to be evaluated at COP12 dealing with ivory trade have not yet been received at the time this notice was prepared, and we are continuing to evaluate the impact of decisions and proposals adopted at COP10 and COP11. We note that this proposal has a wider scope of effect than the other proposals (see Proposals 6–11, above), since it would return all African elephant populations to appendix I and obviate any of the extant annotations. Since its adoption would make the other proposals (Proposals 6–10) moot, and it has a wider scope of effect, we note that the COP should discuss this one prior to discussing the other African elephant-related proposals.

Prop. 12. Transfer from appendix I to appendix II of the population of vicuna (*Vicugna vicugna*) of the Province of Catamarca, Argentina, for the exclusive purpose of allowing international trade in wool sheared from live animals, cloth, derived manufactured products, and other handicraft artifacts bearing the label "VICUNA—ARGENTINA." Submitted by Argentina.

Tentative U.S. negotiating position: Support.

Although the United States has several concerns about this proposal, our tentative position is to support it. The United States has longstanding concerns about the so-called "semi-captive" management of vicuna in Argentina, and we are not particularly supportive of its proliferation. (Although the so-called "semi-captive" populations of Catamarca Province were downlisted at a previous COP, the CITES community has never seen an actual list of all such populations in Catamarca or elsewhere in Argentina for that matter. It may be the first instance where CITES actually agreed to downlist a taxon without a complete description of what was actually being down-listed.) This concern notwithstanding, we believe that the best way to counteract the proliferation of this management approach is to encourage the management of wild vicuna populations. This proposal does that. We are also concerned with the piecemeal approach that Argentina has taken in approaching down-listing of its vicuna populations. While this approach may be considered "precautionary," it is in conflict with Annex 3 of Resolution Conf. 9.24 with regard to split-listings. There are

obvious enforcement problems associated with subnational split listings. We would encourage Argentina to pursue an approach and timetable that would allow the remainder of its national population to be down-listed at a future COP.

Prop. 13. Transfer to appendix II of the Bolivian populations of vicuna (*Vicugna vicugna*) in appendix I, in accordance with Article II, paragraph 2 (a), of the Convention, with the exclusive purpose of allowing international trade in products made from wool sheared from live animals and bearing the label "VICUNA—BOLIVIA." Submitted by Bolivia.

Tentative U.S. negotiating position: Undecided.

The United States has several concerns about this proposal. We note that 73% of Bolivia's vicuna population occurs in areas that have already been downlisted to appendix II. There has been very little growth in the vicuna population of other management units. In fact, only one other area has had a clear population increase, based on data in Table 2 of the proposal. Only 15,500 vicunas occur outside these three units. We further note that Bolivia has not yet exported any cloth produced from vicuna, although this has been legal for more than two years. This is not an encouraging sign. Finally, we note that Bolivia has established a so-called "semi-captive" population for investigative purposes. In its proposal submitted to COP 11, Bolivia stated that it would only manage its vicuna as wild populations. We would like Bolivia to clarify its intention with regard to this "semi-captive" population. Finally, we have consistently received reports that poaching is a problem in Bolivia, and that poaching by Bolivian nationals is a problem in adjacent countries, especially Argentina and Chile. Our tentative position is that the proposal needs to be amended before it can be supported. Bolivia needs to establish a cautious national quota that emphasizes harvest from the three populations already in appendix II. Therefore, the U.S. negotiating position is currently undecided.

Prop. 14. Transfer from appendix I to appendix II of the population of vicuna (*Vicugna vicugna*) in the Primera Region of Chile through a modification of annotations −106 and + 211. Submitted by Chile.

Tentative U.S. negotiating position: Undecided.

The United States also has concerns about this proposal. As with the Argentinian proposal, we are concerned about so-called "semi-captive" management of vicuña, and we are not particularly supportive of its proliferation. The Chilean proposal does not adequately address how so-called "semi-captive" management will contribute to the conservation of wild vicuna populations in Chile. Without such an explanation, it is difficult to support this proposal. Therefore, the U.S. negotiating position is undecided at the time this notice was prepared.

Prop. 15. Transfer of the Chilean populations of lesser rhea (*Rhea pennata pennata = Pterocnemia pennata pennata*) from appendix I to appendix II. Submitted by Chile.

Tentative U.S. negotiating position: Support.

This subspecies is found in southern Chile and southern Argentina. Based on survey data conducted since 1996, Chile estimates that around 50,000 lesser rheas currently exist in the entire country. Density estimates have increased from 1.55 adults per square kilometer in 1997 to 5.13 in 2000. Illegal trade in the subspecies does not constitute a threat to the subspecies. Under the Chilean Hunting Law, the ownership, transport, and trade of any part, product, or specimen of lesser rhea is prohibited, unless it originates from an authorized breeding facility. If its proposal is adopted, Chile would allow trade only in lesser rhea specimens originating from captive-breeding operations registered with Chilean authorities. All captive-bred animals will be individually identified with microchips. Other subspecies of the rhea appear to be distinguishable through physical traits. Therefore, the United States believes that this species qualifies for transfer to appendix II according to Resolution Conf. 9.24, as well as the precautionary measures of Annex 4, B.2.b. Argentina, the only other range state, with over 1.6 million wild specimens of this subspecies and whose lesser rhea population was downlisted to appendix II at COP11, supports Chile's proposal.

Prop. 16. Transfer of the yellow-naped amazon (*Amazona auropalliata*) from appendix II to appendix I. Submitted by Costa Rica.

Tentative U.S. negotiating position: Undecided.

This species is considered threatened or endangered by its six range countries (Mexico, Guatemala, Honduras, El Salvador, Nicaragua, and Costa Rica). Whereas international trade of the species is legally prohibited in all range countries, except Nicaragua where it is under a quota system, wild populations continue to decline due to intense habitat loss, illegal international pet trade, and domestic use as a popular pet species. In some areas, wild populations have been completely extirpated. The United States seeks range country input and additional data on the status of wild populations and trade before reaching a decision on this proposal.

Prop. 17. Transfer of yellow-headed amazon (*Amazona oratrix*) from appendix II to appendix I. Submitted by Mexico.

Tentative U.S. negotiating position: Support.

This species is found in Belize, Guatemala, Honduras, and Mexico, with the largest segment of its range occurring along the southern coasts of Mexico. This species may number fewer than 7,000 birds and is considered endangered by IUCN. It may have declined by over 90% throughout its range since the 1970s. Over 70% of its subtropical habitat has been lost due to deforestation. Nestlings are usually captured for domestic and international trade, often resulting in the felling of trees that contain nest cavities. This species was the most confiscated parrot species between 1998 and 2000 at the U.S.-Mexican border. All of the range countries have either prohibited or restricted international trade. However, domestic and illegal trade of this popular pet species continues. Because its continued decline is linked to trade, and the proposal originates from the range country that contains the largest populations of this species, the United States supports this proposal. We also note that the United States has considered submitting a similar proposal in the past.

Prop. 18. Transfer of blue-headed macaw (*Ara couloni*) from appendix II to appendix I. Submitted by the Federal Republic of Germany on behalf of the Member States of the European Community.

Tentative U.S. negotiating position: Undecided.

The species is distributed in Peru, western Brazil, and north-western Bolivia. The last global population estimate was about 10,000 birds in 1990. More recent reports indicate that the species is local and erratic in occurrence, but locally common, and perhaps expanding its range. However, the species does have a low rate of reproduction, and an increase in legal and illegal trade throughout the range may be contributing to its decline. Habitat destruction is also a threat in Bolivia. Brazil is evaluating this species to determine whether or not it qualifies as endangered fauna and, thus, should receive strict national protection. It is not protected in Peru and Bolivia. There appears to be little population monitoring and management in the range countries. The Brazilian

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Management and Scientific Authorities and the Bolivian Scientific Authority support this proposal. The Brazilian Management Authority is also a co-proponent. Because of the support of the range countries and the increase in commercial trade, the United States may support this proposal, but would like more information on the status of the species to determine whether it qualifies for Appendix I biologically.

Prop. 19. Transfer of the South African population of the Cape parrot (*Poicephalus robustus*) from appendix II to appendix I. Submitted by the Republic of South Africa.

Tentative U.S. negotiating position: Support.

The Cape parrot is locally distributed in the Eastern Cape, KwaZulu-Natal, and Limpopo provinces of South Africa. It is dependent on afromontane yellowwood forest for feeding, breeding, and nesting. Due to logging pressure, afromontane yellowwood forests have become fragmented, reduced, or eliminated. Lack of nesting sites and foraging opportunities have resulted in population declines. An annual census throughout the range identified only 396 birds in 2000 and 358 in 2001. The birds are also vulnerable to capture and shooting when natural food abundance is low and birds move into pecan orchards. Domestic trade for pets and traditional medicines is greater than international trade in this species; there is no legal international trade from South Africa. There is, however, some illegal trade due to the value of the species to collectors because of its rarity. Poaching for the illegal trade may be a greater risk to the remaining flocks in the short-term than habitat loss. Because the population of this species is small and fragmented, habitat loss and illegal trade threaten the survival of the species, and the range country has issued the proposal, the United States supports this proposal.

Props. 20–29, 31, and 32. Inclusion in appendix II of several species of Asian freshwater turtles: Prop. 20—*Platysternon megacephalum* (submitted by China and the United States); Prop. 21—*Annamemys annamensis* (submitted by China and Germany); Prop. 22—*Heosemys* spp. (submitted by China and Germany); Prop. 23—*Hieremys annandalii* (submitted by China and the United States); Prop. 24—*Kachuga* spp., except *K. tecta*, (submitted by India and the United States); Prop. 25—*Leucocephalon yuwonoi* (submitted by China and Germany); Prop. 26—*Mauremys mutica* (submitted by China and the United States); Prop. 27—*Orlitia borneensis* (submitted by China and Germany); Prop. 28—*Pyxidea mouhotii* (submitted by China and the United States); Prop. 29—*Siebenrockiella crassicollis* (submitted by China and the United States); Prop. 31—*Chitra* spp. (submitted by China and the United States); and Prop. 32—*Pelochelys* spp. (submitted by China and the United States).

In the **Federal Register** notice of April 18, 2002 (67 FR 19207), we indicated that we were considering proposals to list a number of Asian freshwater turtle and tortoise taxa in appendix I or II of CITES because of over-exploitation for the food and pet trades. We decided to defer a decision on these proposals until after a CITES-sponsored Workshop on Conservation of Freshwater Turtles and Tortoises, which was scheduled for March 25–28 in Kunming, China. The Workshop was held, and many Asian range countries attended. The consensus recommendation from the Workshop was that 11 turtle taxa are top priorities for CITES listings at COP 12: *Heosemys* spp., *Leucocephalon yuwonoi*, *Orlitia borneensis*, *Mauremys* (*Annamemys*) *annamensis*, *Kachuga* spp., *Playsternon megacephalum*, *Mauremys mutica*, *Chinemys* spp., *Chitra* spp., *Pyxidea mouhotii*, *Pelochelys* spp., and *Hieremys annandalii*. Of these, Germany submitted proposals for the first four taxa, and the United States submitted the remainder, with the exception of *Chinemys* spp. (instead, the United States submitted a proposal for *Siebenrockiella crassicollis*). China is a co-sponsor of both the German and U.S. proposals.

Prop. 30. Transfer of the population of hawksbill sea turtle (*Eretmochelys imbricata*) in Cuban waters from appendix I to appendix II, pursuant to Resolution Conf. 9.24, for the exclusive purpose of allowing the Government of Cuba to export its stockpile of shell plates (7,800 kg), accumulated legally from its national conservation and management program between 1993 and 2002, annotated as follows: (a) the export will not take place until the CITES Secretariat has verified, within 12 months of the decision, that the importing country has adequate internal trade controls and will not re-export and the CITES Standing Committee accepts this verification; and (b) the wild population in Cuban waters will continue to be managed as an appendix-I species. Submitted by Cuba.

According to the CITES web site, Cuba withdrew this proposal on August 19, 2002.

Prop. 33. Inclusion of the genera *Hoplodactylus* and *Naultinus* (New Zealand geckos) in appendix II. Submitted by New Zealand.

Proposed U.S. position: Support.

All gecko species are fully protected in New Zealand. They have been heavily impacted by human activity, including habitat modification and destruction, poaching, and most importantly, by introduced mammalian predators. Illegal trade in New Zealand geckos is occurring; the extent of which has yet to be fully known. This trade primarily supports the European and U.S. pet markets, where these species are in high demand and are fetching prices as high as $15,000 per individual. Recent information has shown that New Zealand gecko species are appearing on the international market at numbers far exceeding the breeding capacity of the captive population. Species are being advertised for sale for which there are no captive populations and no documented export from New Zealand. The ability of New Zealand gecko populations to recover is limited by their low reproductive potential. Even low levels of trade can have significant effects on wild populations. The species in these two genera satisfy the criteria of Annex II (2a and 2b) of Resolution Conf. 9.24. Within *Hoplodactylus* and *Naultinus*, identification to species level can be very difficult. However, the genera are distinct from other geckos and each other.

Prop. 34. Deletion of the orange-throated whiptail lizard (*Cnemidophorus hyperythrus*) from appendix II. Submitted by the United States.

Tentative U.S. negotiating position: Support.

Our proposed negotiating position is discussed in the **Federal Register** notice of April 18, 2002 (67 FR 19207). The United States will actively work towards adoption of this proposal at COP 12.

Prop. 35. Inclusion of the whale shark (*Rhincodon typus*) in appendix II. Submitted by India and The Philippines.

Tentative U.S. negotiating position: Support.

The whale shark is the largest fish and is a sluggish pelagic filter feeder often seen swimming on the surface. It occurs in tropical and subtropical waters worldwide. The United States unsuccessfully proposed the species for inclusion in appendix II at COP11. The primary threat to the species is directed commercial harvest, exacerbated by a vulnerable life history. Harvest is facilitated by seasonal aggregations in known areas and driven by a lucrative international market for fins and meat. Population size is unknown, but the species is considered to be rare. Local seasonal populations and catch per unit effort have apparently declined drastically in some places, whereas fishing effort and price have increased. It is not known to what degree fishing in one area affects populations in other areas, although the fact that at least some of the sharks migrate long distances within ocean basins suggests that the effects may not be purely local. The proponents believe the species meets the criteria for appendix II as shown in Resolution Conf. 9.24, Annex 2a, B(i).

Whale sharks are currently protected in Australia, the Maldives, Honduras, Malaysia, the U.S. Atlantic coast and Gulf of Mexico, India, South Africa, and the Phillippines, leaving Taiwan as the only jurisdiction with a significant legal commercial fishery. Illegal trade may be growing and compromises the domestic protection mentioned above. In our April 18, 2002, **Federal Register** (67 FR 19207) notice, we expressed concern that only limited data were available on trade volumes and the impact of remaining fisheries. However, the proponents have provided additional trade and harvest data, and preliminary analysis suggests that the proposal is defensible.

Prop. 36. Inclusion of the basking shark (*Cetorhinus maximus*) in appendix II. Submitted by the United Kingdom on behalf of the member States of the European Community.

Tentative U.S. negotiating position: Support.

The basking shark is widely distributed in coastal waters and on the continental shelves of temperate zones in the Northern and Southern Hemispheres. The species is currently listed in appendix III (fins and whole carcasses) by the United Kingdom. The main threat to basking shark populations is from fishing operations, both targeted on basking sharks and through incidental or by-catch in other fisheries. The biology of the species makes it especially vulnerable to exploitation: it has a slow growth rate, a long time to sexual maturity (ca. 12–20 years), a long gestation period (1–3 years) and a similar interval between pregnancies, low fecundity (the only recorded litter was of just six very large pups), and probable small populations. There are a few well-documented fisheries for *C. maximus* (especially from the Northeastern Atlantic), and these suggest stock reductions of 50–90 percent over short periods (typically a few decades or less). These declines have persisted into the long term, with no apparent recovery several decades after exploitation has ceased. Other data, based on sightings and less well-recorded fisheries, suggest similar declines. The proponents state that this species meets the criteria listed in Resolution Conf. 9.24, Annex 2a, (B)(i).

In our April 18, 2002, **Federal Register** (67 FR 19207) notice, we noted increasing demand for basking shark fins in international trade. Given the convincing biological data, excellent identification manuals, and trade documentation provided by the proponents, the United States intends to support this proposal at COP12.

Prop. 37. Inclusion of seahorses (*Hippocampus* spp.) in appendix II. Submitted by the United States.

Tentative U.S. negotiating position: Support.

Our position is discussed in the **Federal Register** notice of April 18, 2002 (67 FR 19207).

Prop. 38. Inclusion of humphead wrasse (*Cheilinus undulatus*) in appendix II. Submitted by the United States.

Tentative U.S. negotiating position: Support.

Our position is discussed in the **Federal Register** notice of April 18, 2002 (67 FR 19207).

Prop. 39. Inclusion of the Patagonian and Antarctic toothfishes (*Dissostichus eleginoides* and *D. mawsoni*) in appendix II. Submitted by Australia.

Tentative U.S. negotiating position: Undecided.

The Patagonian toothfish (*Dissostichus eleginoides*) is the largest finfish with any economic importance inhabiting the Southern Ocean. The Antarctic toothfish (*D. mawsoni*) is a similar-looking species that partially overlaps the range of the Patagonian toothfish, and is occasionally harvested in conjunction with the latter species. Toothfish have been fished commercially for about 20 years, and management of the species is under the competence of the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR). There are several characteristics of the life history of *D. eleginoides* that make the species vulnerable to over-exploitation. The production of large yolky eggs implies that fecundity of Patagonian toothfish is comparatively low. In addition, *D. eleginoides* matures at a relatively late age, with age at first spawning from 8–10 years of age. The species is relatively slow growing and long lived, likely surviving to a minimum of 40–50 years old. In our April 18, 2002, **Federal Register** notice (67 FR 19207), we provided the latest harvest and trade data for toothfish, and restated our concerns about suspected high levels of illegal, unreported, or misreported landings.

Given the available biological information, trade data, and regulatory regimes in CCAMLR, the proponents state that *Dissostichus eleginoides* (Patagonian toothfish) qualifies for listing in appendix II as per Resolution Conf. 9.24: it is known that the accumulated harvesting from the wild of this species for international trade (by illegal, unregulated, and unreported fishing operations) has a detrimental impact on the species due to these activities, thus making the annual harvest continually exceed the level that can be continued in perpetuity. Australia proposes listing of the Antarctic toothfish (*Dissostichus mawsoni*) in appendix II in accordance with Article II 2(b) (*i.e.*, due to similarity of appearance) because the species resembles *D. eleginoides* so closely that a non-expert with reasonable effort is unlikely to be able to distinguish between them.

CCAMLR adopted a conservation measure to track and monitor trade in *Dissostichus* spp. (Patagonian and Antarctic toothfish), known as the Catch Documentation Scheme (CDS), which became effective in May 2000, but has been implemented slowly. Since then, the United States and other countries have worked to improve the efficiency and coverage of the CDS among CCAMLR parties and non-Parties. Details of this work can be found in our April 18, 2002, **Federal Register** notice (67 FR 19207) on COP12. In conjunction with the current listing proposal, Australia has offered a discussion paper on how the CDS and CITES permitting regimes may work together to monitor the international toothfish trade while minimizing duplicative paperwork (see section 44, above).

The United States has seized 5 shipments of illegally caught toothfish since the summer of 2001, most recently in May 2002 with assistance from Australia. Given such successes under CCAMLR's regime and continuing improvements to its CDS system, the United States sees CCAMLR as a viable management institution for toothfish. However, the proponents describe innovative approaches to synchronizing CITES and CCAMLR documents, minimizing industry burdens under a listing, and expanding the coverage of CCAMLR's management regime. These warrant serious consideration. As in the case of all proposals concerning trade in *Dissostichus* spp., in order to determine a position on Australia's proposal, U.S. government agencies will evaluate the many complex aspects of this international trade and how CITES might be useful as an adjunct to traditional fisheries management. This

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includes how our position would affect or be affected by the proposed cooperation with the United Nations Food and Agriculture Organization (FAO) regarding international trade in marine fish species. At this time, the United States is undecided as to our positions on issues related to CITES's role in international toothfish trade.

Props. 40 and 41. Prop. 40—Inclusion of the butterflies *Atrophaneura jophon* and *A. pandiyana* in appendix II (the latter included due to similarity of appearance with the former species); Prop. 41—Inclusion of the butterflies *Papilio aristophontesis, P. nireus,* and *P. sosia* in appendix II (the latter two included due to similarity of appearance with the former species). Both proposals submitted by Germany on behalf of the member states of the European Community.

Tentative U.S. negotiating position: Support.

Atrophaneura jophon is a swallowtail butterfly known only from the rain forests in south-western Sri Lanka. It is classified as critically endangered by the IUCN due to its extremely limited extent of occurrence and a decline in habitat availability. *Papilio aristophontesis* is a forest species endemic to the Comoros Islands and is classified as endangered by the IUCN due to a decline in habitat availability. A few specimens of both *A. jophon* and *P. aristophontesis* have been offered for sale at insect trade fairs in Central Europe. Whereas small-scale collection is not normally harmful to butterfly populations, for those already threatened by habitat loss even small amounts of collecting by individuals may cause harm and commercial collecting even greater harm still. Species that are demonstrably rare tend to be desirable and command high prices. With the apparent rarity of *A. jophon* and *P. aristophontesis,* existing small-scale trade is possibly unsustainable. Sri Lanka strongly supports the proposal for *A. jophon* and *A. pandiyana.*

Prop. 42. Inclusion of the entire species *Araucaria araucana* in appendix I, replacing the annotation limiting the appendix-I listing to the populations of Argentina and Chile, and eliminating the annotation to include all other populations in appendix II. Submitted by Argentina.

Tentative U.S. negotiating position: Support.

At COP11, Argentina had submitted a similar proposal, in which they had proposed to transfer the Argentine population of *Araucaria araucana* from appendix II to appendix I. This species has a restricted range and is highly threatened in Argentina. Over-collection of seeds is a serious threat to wild populations; inclusion of the species in appendix I assists in regulating trade in seeds. Because Chile's population was already included in appendix I, transfer of the Argentine population to appendix I was intended to provide greater protection to Argentina's population of this species, to harmonize trade controls for the species, and to eliminate the possibility of having appendix-I seed of the species traded as appendix-II. Placing the entire species in appendix I, which was the intent of Argentina, would have also conformed to the recommendation of Resolution Conf. 9.24, which states that split-listings should be avoided wherever possible. Argentina's proposal on *Araucaria araucana* was adopted at COP11.

Following COP11, the CITES Secretariat advised the Parties that the wording of Argentina's proposal only transferred the Argentine population of *Araucaria araucana* to appendix I, but that populations outside of Argentina and Chile remained listed in appendix II. This is contrary to the intent of Argentina, which was to include the entire species in appendix I. Based on discussions conducted in the Plants Committee at its tenth meeting in Shepherdstown (December 11–15, 2000), it was clear that the Chairman and members of the Plants Committee, as well as other Parties, also believed that was the purpose of the proposal. Subsequently, Argentina prepared another proposal to be submitted to the Parties for a vote by postal procedures, which was done in CITES Notification to the Parties No. 2001/080 (December 21, 2001). However, this proposal failed due to a failure of the minimum number of Parties to vote.

Argentina has submitted the current proposal for consideration at COP12 to redress the difficulties with getting the entire species included in appendix I. The United States is concerned about any interpretation of a listing that would consider populations outside of the range countries as separately listed entities, unless specifically considered and designated as such by the Conference of the Parties. An interpretation of the appendices to allow for separate treatment of populations outside of range countries undermines the basic intent of the Convention, which is to control global trade in listed species as a means of conserving wild populations in their range countries. We have discussed this issue with other Parties and believe it is universally understood that, unless otherwise specified by the Conference of the Parties, all populations worldwide are considered to conform to the listing status of the populations of the range countries. Therefore, in addition to supporting this proposal from Argentina, the United States proposes to include this issue in further discussions of the listing criteria and the possible revision of Resolution Conf. 9.24.

Prop. 43. Amend annotation 608 to include all *Cactaceae* lacking chlorophyll and grafted on *Harrisia* "Jusbertii," *Hylocereus trigonus,* or *Hylocereus undatus.* Submitted by Switzerland.

Tentative U.S. negotiating position: Support.

This proposal expands the current exemption under annotation 608 for grafted cacti. The three grafting stock species remain unchanged, but the grafted species have now been expanded to include all cacti, but only if they are specimens (cultivars) lacking in chlorophyll. We believe the rationale provided in the proposal provides a sound basis to support this proposal, since the types of specimens that would be exempted are not relevant to the conservation of the species from which they are derived. We understand that the current exemption contained in annotation 608 presents some difficulties in implementation, since the trade in grafted cacti usually involves mixtures of specimens, some covered by the exemption and some that are not. It is also our sense that some foreign enforcement officials may already treat all grafted cacti as exempt in practice, since they occur as mixed shipments, represent a negligible conservation risk, and are difficult to distinguish in large shipments.

Prop. 44. Delisting from appendix II of prickly pear cacti: *Cactaceae,* Subfamily *Opuntiodeae* (all species). Submitted by Switzerland.

Tentative U.S. negotiating position: Oppose.

In this proposal, Switzerland proposes to delete opuntioid cacti from CITES appendix II. The United States has advised Switzerland, in writing and orally at the twelfth meeting of the Plants Committee (Leiden, The Netherlands, May 2002), that we are opposed to the delisting of these species at this time because of the documented illegal trade in *Opuntia* species between the United States and Mexico, and because the United States is a range country for over 80 species of Opuntia, with one species listed as endangered under the Endangered Species Act. In its comments to Switzerland, the United States provided data on the extent of known illegal trade in these species, as evidenced through seizures. It is reasonable to assume that the actual level of illegal trade exceeds this amount, since actual documented illegal trade is generally believed to be a fraction of the total illegal trade.

The Swiss proposal recognizes that Chile, Mexico, and the United States all have species classified as rare or endangered (12 species in all). However, Switzerland attempts to negate the value of these classifications on taxonomic grounds, some of which are valid, although we believe that the questionable status of some of these species is grounds for being cautious until their actual status is resolved. The proposal also questions whether we should be concerned about the documented trade, because it is not documented to the species level, and therefore we cannot determine that rare species are actually being affected. Again, we believe this is reason for maintaining these species in the appendices until we can be certain that rare species are not being affected by collection for trade, rather than assuming that they are not.

Prop. 45. Delisting from appendix II of leaf-bearing cacti (Cactaceae): Subfamily Pereskioideae (all species in the genera *Pereskia* and *Maihuenia*) and two genera in the subfamily Opuntioideae (all species in the genera *Pereskiopsis* and *Qiabentia*). Submitted by Switzerland.

Tentative U.S. negotiating position: Undecided.

Like the previous proposal, this was submitted to the Plants Committee for its consideration at its twelfth meeting. Although we had voiced our opposition to this proposal at that meeting, we are reconsidering our position, and may remain undecided until COP12, where we will base our final decision on any additional information provided to us and the comments of the range countries. We will also be consulting with range countries in the interim, particularly Mexico. The United States is not a range country for these genera. However, two species in the genus *Pereskia (P. aculeata,* and *P. grandifolia*) have naturalized in Florida and Texas. We have observed only limited trade in the four genera covered by the proposal. However, we are uncertain as to what information range countries may have on trade impacts on their species.

Props. 46 and 47. Transfer of *Sclerocactus nyensis* and *S. spinosior* spp. *blaneii* from appendix II to appendix I. Submitted by the United States.

Our proposed negotiating position is discussed in the **Federal Register** notice of April 18, 2002 (67 FR 19207). The United States will actively work for adoption of this proposal at COP 12.

Prop. 48. Transfer of the Santa Barbara Island dudleya (*Dudleya traskiae*) from appendix I to appendix II. Submitted by the United States.

Tentative U.S. negotiating position: Support.

Our proposed negotiating position is discussed in the **Federal Register** notice of April 18, 2002 (67 FR 19207).

Prop. 49. Transfer of *Aloe thorncroftii* from appendix I to appendix II. Submitted by the Republic of South Africa.

Tentative U.S. negotiating position: Support.

Aloe thorncroftii is restricted in its distribution to the mountains of the Barbeton and Carolina districts in Mpumalanga Province, South Africa. The species grows predominantly on rocky outcrops in a grassland vegetation type known as Mountain Sourveld. Satellite images show that 48 percent of this habitat type has been converted to commercial forestry. Invasion by nonnative plant species is also a threat to the habitat of this plant. The total survey population for this taxon was 7,906 plants in 2000.

According to a TRAFFIC analysis of CITES trade data, there was no trade in *A. thorncroftii* between 1981 and 1995, and there is no recent evidence of legal international trade in this species. Additionally, there is no evidence of illegal trade in this species. Given the small amount of horticultural interest in this species, it is considered highly unlikely that the proposed amendment will affect demand levels for this species. According to the proposal, it is much easier and cheaper to grow *A. thorncroftii* from seed than to collect plants from the wild.

Prop. 50. Inclusion in appendix II of the neotropical populations of bigleaf mahogany (*Swietenia macrophylla*), including logs, sawn timber, veneer, and plywood. Submitted by Guatemala and Nicaragua.

Tentative U.S. negotiating position: Undecided.

The proponents state that they are proposing this amendment to the appendices in accordance with Article II, paragraph 2.(a) of the Convention and Resolution Conf. 9.24, Annex 2a, which states that the harvesting of specimens from the wild for international trade has, or may have, a detrimental impact on the species by *either:* (i) exceeding, over an extended period, the level that can be continued in perpetuity; or (ii) reducing it to a population level at which its survival would be threatened by other influences. They further state that the purpose of the proposal is to promote sustainable management of *S. macrophylla* in order to help ensure its further conservation and trade.

Bigleaf mahogany is currently listed in appendix III by several range countries, in the Americas only: by Costa Rica in November 1995 (including its saw-logs, sawn wood, and veneer sheets, although other derivatives such as furniture are exempt from CITES requirements); by Bolivia in March 1998; by Brazil in July 1998; by Mexico in April 1999; by Peru in June 2001; and by Colombia in October 2001. Species listed in appendix III can be traded commercially. Once a species is added to appendix III, the countries that list the species are required to issue permits and ensure that specimens are legally acquired; non-listing range countries must issue certificates of origin; and importing countries are required to ensure that all shipments are accompanied by the appropriate CITES documents. The issuance of appendix-III documentation is dependent on legal findings and does not include biological determinations for export.

Proposals to include this species in CITES appendix II were submitted at COP8 and COP10 with the United States as a co-sponsor with Costa Rica and Bolivia, respectively, and at COP9 by the Netherlands. In our April 18, 2002, **Federal Register** notice (67 FR 19207), we indicated that we did not plan to submit a proposal for this species, although we had received a recommendation to do so. This decision was taken after extensive discussion within the U.S. government, and in light of the previously unsuccessful efforts to list the species in appendix II. We would therefore be interested in comments regarding the usefulness of including bigleaf mahogany in appendix II, especially with respect to any advantages that might be gained beyond the current listing of the species in appendix III.

Prop. 51. Annotation of Orchidaceae in appendix II to exempt the artificially propagated hybrids of six genera under certain conditions. Submitted by the United States.

Tentative U.S. position: Support.

As described in our April 18, 2002, **Federal Register** notice, our Division of Scientific Authority and the American Orchid Society prepared a draft proposal for consideration by the Plants Committee at its twelfth meeting in May 2002. This proposal is for the annotation of the listing of orchids in appendix II to exempt the artificially propagated hybrids of six genera: *Cattleya, Cymbidium, Dendrobium, Oncidium, Phalaenopsis,* and *Vanda.* The proposed annotation provides clear restrictions on this exemption so that it applies only to

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large-volume commercial shipments that are highly uniform and otherwise characteristic of artificially propagated specimens. Exempted shipments also may not contain a mixture of genera, or even different hybrids, within a container. This proposal received strong support from the Plants Committee, as well as from other countries that attended the meeting, and the United States was asked to submit the proposal for COP12.

Prop. 52. Deletion of the annotation to the desert-living cistanche (*Cistanche deserticola*) in appendix II. Submitted by China.

Tentative U.S. negotiating position: Support.

At COP11, the Parties adopted a proposal from China to include the desert-living cistanche (*Cistanche deserticola*) in CITES appendix II with the annotation "designates whole and sliced roots and parts of roots, excluding manufactured parts or derivatives such as powders, pills, extracts, tonics, teas and confectionary." However, after COP11 it was discovered that the reference to roots in the annotation was incorrect because *C. deserticola* is a parasitic plant and does not have roots. The parts of the plant that are traded are the stems, which are harvested either subterranean or above ground. The proposal is to delete the current annotation for the listed species.

Prop. 53. Deletion of Maguire's bitterroot (*Lewisia maguirei*). Submitted by the United States.

Tentative U.S. negotiating position: Support.

Our proposed negotiating position is discussed in the **Federal Register** notice of April 18, 2002 (67 FR 19207).

Prop. 54. Inclusion of *Guaiacum* spp. in appendix II, with annotation designating all parts and derivatives, including wood, bark and extract. Submitted by Germany on behalf of the member states of the European Community.

Tentative U.S. negotiating position: Support.

The genus *Guaiacum* consists of 4–6 different species of New World evergreen trees and shrubs distributed throughout Mesoamerica and the Caribbean. The current taxonomy of the different *Guaiacum* species is still not unanimously accepted. However, the following species are discussed in the proposal: *G. angustifolium, G. coulteri, G. guatemalense, G. officinale, G. sanctum,* and *G. unijugum. G. coulteri* is most likely endemic to Mexico.

Guaiacum sanctum and *G. officinale,* which are internationally traded for their wood and medicinal resin, are already listed in appendix II of CITES. The remaining species of *Guaiacum* are not regulated by CITES. *Guaiacum sanctum* (timber only) was listed in appendix II in 1975. In 1985, an annotation (#1) was added to the listing of *G. sanctum.* In 2000, the species was proposed to be transferred from appendix II to appendix I at COP11. However, the proposal was later withdrawn. Since 2001, the Mexican CITES Authorities have significantly reduced exports of *G. sanctum* from Mexico. At PC12 (Leiden, The Netherlands, May 13–17, 2002) the Mexico announced that an export quota for *G. sanctum* would be established in due course.

There is no detailed species population information available. With the existing CITES trade controls for both *G. sanctum* and *G. officinale,* collection and export of *G. coulteri* may be expanding and thus its population decreasing. International trade data are usually only listed as "lignum-vitae" and usually do not distinguish among *Guaiacum* species. *G. sanctum* and *G. coulteri* look very similar in the wild and cannot be readily and clearly distinguished by non-experts. However, information on the ranges of the various species indicates that a control system could be instituted whereby species could be identified by their origin and tracked in trade. *Guaiacum coulteri* does have special legal protection in Mexico, and permission is required to harvest, use, possess, or export this species. Despite insufficient identification of *Guaiacum* species exported from Mexico, most exports from Mexico to the United States are likely to be *G. coulteri* or *G. sanctum.* The proposed listing of the remaining taxa of *Guaiacum* is supported by the Mexican authorities and would eliminate such problems as deliberate mislabeling of wood to avoid CITES permit controls.

Conclusion of the Meeting

67. Determination of the Time and Venue of the Next Regular Meeting of the Conference of the Parties (no document)

The Secretariat does not normally circulate a document on the time and venue of the next regular meeting of the COP. We anticipate receiving information on this at COP12, at which time we will develop a negotiating position. The United States favors holding COP13 in a country where all Parties and observers will be admitted without political difficulties. The United States normally supports holding meetings of the COP on a biennial basis, or, as in the case of COPs 10, 11, and 12, after an interval of approximately 2½ years.

68. Closing remarks (no document)

Future Actions

Before COP12, we will announce any changes to the tentative negotiating positions contained in this notice and any undecided negotiating positions by posting a notice on our Internet website (*http://international.fws.gov/*). After the meeting of the COP, we will publish a notice announcing the amendments to CITES appendices I and II and resolutions and decisions that were adopted by the Parties at the meeting, and requesting comments on whether the United States should enter reservations on any of the amendments to the appendices.

Reminder of Extension of Comment Period

We remind you that with this notice we have extended the comment period on tentative U.S. negotiating positions on species proposals, proposed resolutions and decisions, and agenda items submitted by other Parties and the CITES Secretariat for consideration at COP12 through October 31, 2002.

Dated: October 23, 2002.

Marshall P. Jones, Jr.,

Acting Director, Fish and Wildlife Service.

[FR Doc. 02–27682 Filed 10–30–02; 8:45 am]

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Federal Register

Thursday,
October 31, 2002

Part III

Department of Labor

Occupational Safety and Health Administration

29 CFR Parts 1910, 1915, and 1926

Standards Improvement Project-Phase II; Proposed Rule

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DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910, 1915, and 1926

[Docket No. S–778–A]

RIN 1218–AB 81

Standards Improvement Project-Phase II

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Proposed rule; request for comment.

SUMMARY: The Occupational Safety and Health Administration ("OSHA" or "the Agency") is continuing to remove and revise provisions of its standards that are outdated, duplicative, unnecessary, or inconsistent. The Agency completed the first phase of this process with the publication of a final rule in the **Federal Register** in June 1998. In this second phase, OSHA is proposing to revise a number of health provisions in its standards for general industry, shipyard employment, and construction. The Agency believes that the proposed revisions would streamline these provisions; in some cases, OSHA is making substantive revisions to provisions that would reduce regulatory requirements for employers while maintaining employee protection.

DATES: Submit written comments and any request for a hearing by December 30, 2002.

ADDRESSES: Submit three copies of written comments to the Docket Office, Docket No. S–778–A, Room N–2625, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 (telephone: (202) 693–2350). Commenters may transmit written comments of 10 pages or less by fax to the Docket Office at (202) 693–1648.

You may submit comments electronically through OSHA's Homepage at *http://www.osha.gov*. Please note that you may not attach materials such as studies or journal articles to your electronic comments. If you wish to include such materials, you must submit three copies to the OSHA Docket Office at the address listed above. When submitting such materials to the OSHA Docket Office, you must clearly identify your electronic comments by name, date, and subject, so that we can attach the materials to your electronic comments.

Send requests for a hearing to Ms. Veneta Chatmon, Office of Information and Consumer Affairs, Room N–3647, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 (telephone: (202) 693–1999). Submit comments on the reduction of paperwork burden described in section VII of this notice to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street, NW., Washington, DC 20530 (Attention: OSHA Desk Officer).

FOR FURTHER INFORMATION CONTACT: For general information and press inquiries, contact Ms. Bonnie Friedman, Director, OSHA Office of Information and Consumer Affairs, Room N–3647, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 (telephone: (202) 693–1999). For technical inquiries, contact Mr. Robert Manware, Office of Physical Hazards, Room N–3718, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 (telephone: (202) 693–2299; fax: (202) 693–1678). For additional copies of this **Federal Register** notice, contact the Office of Publications, Room N–3101, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington DC 20210 (telephone: (202) 693–1888). Electronic copies of this **Federal Register** notice, as well as news releases and other relevant documents, are available at OSHA's website on the Internet at *http://www.osha.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

In 1995, the Agency identified a number of provisions in its regulations and standards that were inconsistent, duplicative, outdated, or in need of being rewritten in plain language. In 1998, as part of the process of correcting such provisions, OSHA made several substantive revisions to its health and safety standards that reduced the regulatory obligations of employers while maintaining the safety and health protection afforded to employees (63 FR 33450, June 18, 1998). During and after this rulemaking, the Agency identified several other regulatory provisions in its safety and health standards involving notification of use, frequency of exposure monitoring and medical surveillance, and similar provisions that it believes are unnecessary or ineffective in protecting employee safety and health. Today, OSHA is proposing to make substantive revisions to a number of the health standard provisions identified in this process.

The Agency plans to propose similar revisions to several of its safety and other standards in a future Federal Register notice. In addition, OSHA requests comments on possible similar revisions to outdated provisions in safety or health standards which could be included in the next or subsequent Standards Improvement proposal.

The Agency has made a preliminary finding that the revisions to the health standards proposed herein would reduce the regulatory burden of employers without reducing the health protection that these standards currently provide to employees. OSHA also believes that the changes set forth in this proposal would simplify and clarify the requirements of these provisions, thereby facilitating employer compliance, improving employee protection and reducing paperwork.

This notice-and-comment rulemaking is necessary because a number of the proposed revisions are substantive. The Agency will base its final decisions regarding these proposed revisions on the record developed in this rulemaking through public comment.

This action will affect a number of standards included in Parts 1926 and 1915. In accordance with Agency procedures therefore, the Advisory Committee on Construction Safety and Health, and the Advisory Committee on Maritime Safety and Health have been advised of the standards which affect the construction and maritime industries. This information was presented to the Construction Committee at their meeting in Washington, DC, on September 2, 2000, and to the Maritime Committee on December 6, 2000, in Baltimore, Maryland.

II. Summary and Explanation

The proposed revisions address: Methods of communicating illness outbreaks (temporary labor camps standard (§ 1910.142)); first-aid kits for the general industry (standards for medical services and first aid (§ 1910.151) and telecommunications (§ 1910.268)); laboratory licensing (vinyl chloride standard (§ 1910.1017); periodic exposure monitoring (vinyl chloride, 1,2-dibromo-3-chloropropane (DBCP) (§ 1910.1044), and acrylonitrile (§ 1910.1045) standards); reporting the use of alternative control methods (asbestos standards for shipyards and construction (§§ 1915.1001 and 1926.1101, respectively)); evaluating chest x-rays (inorganic arsenic and coke oven emissions standards (§§ 1910.1018 and 1910.1029, respectively)); signing medical opinions (asbestos standards for general industry and the cadmium standards for general industry and construction (§§ 1910.1027 and 1926.1127, respectively)); and semiannual medical examinations

(vinyl chloride, inorganic arsenic, and coke oven emissions standards).

Also included in the proposed revisions are requirements to notify OSHA of certain events (13 carcinogens (§ 1910.1003), vinyl chloride, inorganic arsenic, DBCP, and acrylonitrile standards); semiannual updating of compliance plans (vinyl chloride, inorganic arsenic, lead for general industry and construction (§§ 1910.1025 and 1926.62, respectively), DBCP, and acrylonitrile standards); and employee-notification requirements in general-industry standards (asbestos, vinyl chloride, inorganic arsenic, lead, cadmium, benzene, coke oven emissions, cotton dust (§ 1910.1043), DBCP, acrylonitrile, ethylene oxide (§ 1910.1047), formaldehyde (§ 1910.1048), methylenedianiline (§ 1910.1050), butadiene (§ 1910.1051), and methylene chloride (§ 1910.1052)), and construction standards (methylenedianiline (§ 1910.1051), and methylene chloride (§ 1910.1052)), and construction standards (methylenedianiline (§ 1926.60), lead, asbestos, and cadmium). The Agency is also seeking comment on the need to include social security numbers in the exposure-monitoring and medical-surveillance records required by a number of its substance-specific standards.

The Agency emphasizes that the scope of this rulemaking is limited to revising provisions that are outdated, duplicative, unnecessary, or inconsistent with the provisions in other standards. In regard to the last item, the Agency is specifically proposing to revise a number of OSHA's older standards (vinyl chloride, acrylonitrile, coke ovens, arsenic, DBCP) to be consistent with the frequencies of exposure monitoring, medical surveillance, and compliance plan updates that are required in the majority of more recently promulgated rules. Comment is being solicited on whether it is appropriate to revise these older standards to be consistent with the newer standards. The scope of the rulemaking does not include a review of the appropriateness of the frequencies in exposure monitoring, medical surveillance, and compliance plan updating that is required by the newer standards.

It should be noted that certain sections in 29 CFR part 1910 that are being addressed in this document are incorporated by reference in 29 CFR parts 1915 and 1926. Thus, changes to those sections in part 1910 will also apply to parts 1915 and 1926.

A. Temporary Labor Camps (§ 1910.142)

Paragraph (1)(2) of this standard requires camp superintendents to report immediately to local health authorities "by telegram or telephone" the outbreak of specific illnesses and medical conditions among employees. OSHA believes that the requirement to use a telegram or telephone to notify health authorities is too restrictive in this age of computers and the internet, and that other forms of communication should be permitted for this purpose. Thus, the Agency is proposing to delete the requirement to use a telegram or telephone for notification. However, OSHA is retaining the requirement that camp superintendents immediately notify local health authorities of the outbreak of any of the illnesses or medical conditions specified by this provision.

B. Reference to First-Aid Supplies in Appendix A to the Standard on Medical Services and First Aid (§ 1910.151)

Paragraph (b) § 1910.151, the Agency's standard regulating medical services and first-aid supplies, requires employers to ensure that "[a]dequate first aid supplies shall be readily available [at the workplace]." To assist employers in meeting this requirement, OSHA added a nonmandatory appendix to this standard. (63 FR 33450, June 18, 1998). This appendix refers to the American National Standards Institute (ANSI) consensus standard (ANSI Z308.1–1978, "Minimum requirements for industrial unit-type first aid kits", referred to hereafter as the "1978 edition"), which specifies basic first-aid supplies for the workplace. The Agency believes that this appendix provides employers with helpful information they can use in selecting first-aid supplies and containers that are appropriate to the medical emergencies and environmental conditions that they may encounter in their workplaces. In discussing the addition of Appendix A to this standard, OSHA noted that ANSI was developing a new edition of this consensus standard (63 FR 33461). The Agency then stated that, once ANSI completed this project, it would propose revising Appendix A to reference the new edition. However, OSHA stated that it would propose such a revision only if it had first determined that "the new edition is as effective [in protecting employees] as the earlier edition," and that it would also "consider adding other consensus standards on first aid kits as references to the Appendix."

ANSI subsequently completed the new edition of the consensus standard and published it as ANZI Z308.1–1998 ("Minimum requirements for workplace first aid kits", referred to hereafter as "the 1998 edition"). In reviewing the 1998 edition, the Agency found that:

- Regarding container requirements, the 1998 edition permits more compliance flexibility than the 1978 edition. For example, the 1998 edition identifies three types of first-aid containers, types I, II, and III, designed for stationary indoor use, mobile indoor use, and mobile outdoor use, respectively, while the 1978 edition includes only two types of containers, (standard and special purpose, with special-purpose containers designed for use under extreme conditions such as example, corrosive, nonsparking, nonmagnetic, or dielectric conditions.
- Requirements for the three types of containers identified in the 1998 edition are performance based, while the 1978 edition provides extensive specifications for each type of container.
- Unlike the 1978 edition, the conditioning and drop-test procedures described in the 1998 edition for types II and III containers, and the procedures for testing type III containers for corrosion and moisture resistance, specify the minimum number of containers required for testing.
- The 1998 edition specifies that each type III container subjected to drop testing must also undergo corrosion and moisture-resistance testing to ensure the structural integrity of the container under severe moisture conditions. The 1978 edition appears to allow testing of different special-purpose containers under the drop- and moisture-testing conditions.
- Corrosion and moisture-resistance testing of type III containers under the 1998 edition requires exposure of the containers to simulated salt spray for 20 days in accordance with the provisions of American Society for Testing and Materials (ASTM) consensus standard B117 ("Operating salt spray (fog) operations"). The 1978 edition only requires exposure of a special-purpose container to fresh water for 15 minutes.
- Regarding the content (fill items) of the containers, the 1998 edition provides a short list of basic items needed to disinfect and cover wounds, including special items for treating burns. However, the 1998 edition lists optional fill items for use if an employer identifies workplace hazards that may inflict injuries not covered by the basic fill items. The 1978 edition has a single list of fill items, some of which are unnecessary for many emergencies (for example, forceps, metal splints, tourniquets). Additionally, the 1978 edition is missing several important

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items (for example, medical-examination gloves, cold packs).

• The 1998 edition requires color coding of unit packages that contain specific types of fill items (for example, yellow for bandages, blue for antiseptics), while the 1978 edition has no such requirement.

• The 1998 edition, more often than the 1978 edition, identifies fill items according to standardized testing and quality-control methods. For example, the 1998 edition requires that absorbent compresses meet the water-absorbency criteria of ASTM consensus standard D117 ("Nonwoven fabrics"), and that antiseptics conform to the requirements specified by the Food and Drug Administration in 21 CFR part 333 ("Topical antimicrobial drug products for over-the-counter human use"). The 1978 edition provides no absorbency criteria for absorbent gauze compresses, while the antiseptic solution used for antiseptic swabs is required only to be "acceptable to the consulting physician."

The Agency's review of the two editions demonstrates that, compared with the 1978 edition, the 1998 edition: Increases compliance flexibility by emphasizing performance-based requirements, including a choice of three containers and a list of basic and optional fill items; improves the procedures for conditioning and testing first-aid containers; and ensures the reliability and efficacy of the fill items by basing the selection of these items on standardized testing and quality-control methods. Based on this review, OSHA preliminarily finds that the provisions of the 1998 edition would provide employers with the information they need to select first-aid containers and fill items appropriate to the hazards in their workplaces that could injure employees. Accordingly, the 1998 edition would protect employees at least as well as the requirements of the 1978 edition. Thus, the Agency is proposing to replace the reference to the 1978 edition in appendix A of § 1910.151 with a reference to the 1998 edition. This revision would not impose any additional cost on employers because appendix A is nonmandatory.

OSHA welcomes comment on the extent to which the newer editions of the ANSI Z308.1 consensus standard would provide equivalent or better protection to employees. The Agency would also appreciate receiving information on the availability of other consensus standards and guidelines for first-aid kits. Responses to this request for information should include, if possible, a detailed description of these consensus standards and guidelines, as well as a rationale for including them in the proposed revision to appendix A of § 1910.151.

C. First-aid Supplies in the Telecommunications Standard (§ 1910.268)

Paragraph (b)(3) of OSHA's telecommunication standard (§ 1910.268) requires an employer to: Provide first-aid supplies (fill items) recommended by a consulting physician; ensure that the fill items are readily accessible and housed in weatherproof containers if used outdoors; and inspect the fill items at least once a month and replace expended items. With this rulemaking, the Agency is proposing to revise paragraph (b)(3) to read, "Employers must provide employees with readily accessible, and appropriate first-aid supplies. A nonmandatory example of appropriate supplies is listed in appendix A to § 1910.151."

In an earlier rulemaking on June 18, 1998, 63 FR 33461, OSHA removed from paragraph (b) of § 1910.151 the requirement that a consulting physician approve first-aid supplies. In proposing to remove paragraph (b) (61 FR 37850, July 22, 1996), the Agency found that "[c]ommercial first-aid kits are readily available and will meet the needs of most employers * * *," (Ex. 4–23, Docket No. S–778). In addition, OSHA noted that it expected employers to modify commercial first-aid kits in response to special or unusual workplace hazards, and to consult with a medical professional as necessary when doing so. To provide employers with helpful information for selecting first-aid kits, and to assist them in modifying the kits, the Agency added a nonmandatory appendix A to § 1910.151 (63 FR 33461); this appendix refers to the American National Standards Institute (ANSI) consensus standard (ANSI Z308.1–1978, "Minimum requirements for industrial unit-type first aid kits") that specifies basic first-aid supplies for the workplace. (**Note:** Section B above discusses OSHA's proposal to update this ANSI reference.)

The Agency preliminarily concludes that substituting the guidance of nonmandatory appendix A to § 1910.151 for the requirements specified in paragraph (b)(3) of § 1910.268 would reduce the regulatory burden on employers in the telecommunications industry by increasing their flexibility in meeting OSHA's requirements for first-aid kits, and would facilitate their compliance by making the requirements to provide first-aid kits consistent across the two standards. In addition, the Agency believes that the proposed revision would afford telecommunication employees with at least the same level of protection they currently receive because nonmandatory appendix A to § 1910.151, including the reference to the ANSI consensus standard, provides more extensive guidelines for selecting appropriate medical supplies than paragraph (b)(3) of § 1910.268 and, in addition, provides the recommendation that these supplies include personal protective equipment to prevent employee exposure to bloodborne pathogens. Accordingly, OSHA requests comments that discuss the proposed revision updating the nonmandatory recommendations for first-aid supplies.

D. 13 Carcinogens (4-Nitrobiphenyl, etc.) (§ 1910.1003)

In the 13 carcinogens standard, paragraph (f)(2) of the standard requires employers to provide the nearest OSHA Area Director with two reports on the occurrence of any incident that results in the release, into any area where employees may be potentially exposed, of any of the 13 carcinogenic substances regulated by the standard. These reports consist of an abbreviated preliminary report submitted within 24 hours of the chemical release, followed by a detailed report submitted within 15 calendar days of the incident. OSHA believes that these reports may be of little of no utility in view of the fact that recent substance-specific standards developed by the Agency do not contain this (or any other) reporting requirement. Accordingly, OSHA is proposing to delete this provision from the 13 carcinogens standard to reduce reporting requirements, as required by the Paperwork Reduction Act. OSHA requests comment on the extent to which this proposed revision would reduce reporting burden on employers and on the effect of such a deletion (if any) on employee health.

E. Vinyl Chloride (§ 1910.1017)

Paragraph (k)(6) of the vinyl chloride standard specifies that laboratories licensed by the U.S. Public Health Service (USPHS) under 42 CFR part 74 "Clinical laboratories") must analyze biological samples collected during medical examinations. However, 42 CFR part 74 is outdated, and the USPHS now addresses laboratory-licensing requirements under 42 CFR part 493 ("Laboratory requirements"). Therefore, the Agency is proposing to delete the reference to 42 CFR part 74 from paragraph (k)(6) of this standard. OSHA is seeking comment on the need to specify a licensing or quality-control

requirement, the extent to which the requirements specified in 42 CFR part 493 would be a suitable substitute for the requirements of former 42 CFR part 74, and whether any other reference or criteria are available that could serve this purpose.

F. Monthly and Quarterly Exposure Monitoring

Several of the Agency's older standards retain provisions that require employers to monitor employee exposures either monthly or quarterly, depending on the level of the toxic substance found in the workplace. These provisions include: Paragraphs (d)(2)(i) and (d)(2)(ii) of the vinyl chloride standard (§ 1910.1017), which require employers to conduct exposure monitoring at least monthly if employee exposures are in excess of the permissible exposure limit (PEL) and not less than quarterly if employee exposures are above the action level (AL); paragraphs (f)(3)(i) and (f)(3)(ii) of the standard regulating 1,2-dibromo-3-chloropropane (DBCP) (§ 1910.1044), specifying that employers must perform exposure monitoring at least quarterly if employee exposures are below the PEL and no less than monthly if employee exposures exceed the PEL,[1] and paragraphs (e)(3)(ii) and (e)(3)(iii) of the acrylonitrile standard (§ 1910.1045), which contain requirements for employers to conduct exposure monitoring at least quarterly for employees exposed at or above the AL, but below the PEL, and at least monthly for employees having exposures above the PEL. There is little discussion in the preambles to these standards explaining the basis for adopting these monitoring frequencies, which suggests that OSHA may have relied on prevailing practice in establishing these frequencies.

In the substance-specific standards published by the Agency after these standards, exposure monitoring is required no more often than semiannually if employee exposures are at or above the AL, and no more than quarterly if exposures are above the PEL. Thus, OSHA is proposing to amend the exposure monitoring requirements specified in paragraphs (d)(2)(i) and (d)(2)(ii) of the vinyl chloride standard, paragraphs (e)(3)(ii) and (e)(3)(iii) of the acrylonitrile standard and paragraphs (f)(3)(i) and (f)(3)(ii) of the DBCP standard because they are inconsistent with the exposure monitoring protocols established by OSHA in its later substance-specified standards and no substantive reason for the increased monitoring frequency is apparent. OSHA is proposing to revise these paragraphs to require that employers conduct exposure monitoring at least quarterly if the results of initial exposure monitoring show that employee exposures are above the PEL, and no less than semiannually if these results indicate exposures that are at or above the AL. The Agency solicits comment on the extent to which, if any, this proposed revision would reduce the protection afforded by the existing standards to employees exposed to vinyl chloride, acrylonitrile and DBCP, and the extent to which the proposed revisions would reduce employer burdens, including cost and paperwork reductions.

OSHA notes that two of its standards (benzene, 1910.1028 and 1,3-butadiene, 1910.1051) provide for exposure monitoring frequency different from the quarterly/semiannual monitoring contained in other standards. The Agency is not revising benzene or 1,3-butadiene with respect to monitoring frequency. The exposure monitoring provisions in those standards have specific basis in their respective rulemaking records that preclude changing them for consistency under this standard improvement action.

G. Alternative Control Methods for Class 1 Asbestos Removal

Provisions in OSHA's asbestos standards for shipyard employment and construction (§§ 1915.1001, paragraph (g)(6)(iii), and 1926.1101, paragraph (g)(6)(iii), respectively) address alternative control methods used to perform Class I asbestos work. Specifically, these provisions require an employer to send the evaluation and certification of the alternative control method to OSHA's Directorate of Technical Support before removing more than 25 linear feet or 10 square feet or thermal-system insulation or surfacing material. The intent of this provision was the development of a database of alternative control methods for use in future rulemaking. However, in practice, this provision has been little used and no database has been developed. OSHA thus believes that this requirement is of little utility.

Current OSHA regulatory policy requires that paperwork provisions, such as this, be a benefit to employee health or serve some other useful regulatory purpose. Since certification of alternative control methods does not appear to meet this requirement, the Agency is proposing to delete it from the shipyard-employment and construction asbestos standards. OSHA invites comment on any regulatory benefit or purpose that removal of this provision would jeopardize.

H. Evaluating Chest X-rays Using the ILO U/C Rating

OSHA is proposing to amend paragraph (n)(2)(ii)(A) of the inorganic arsenic standard (§ 1910.1018) and paragraph (j)(2)(ii) of the coke oven emissions standard (§ 1910.1029); these provisions require that employees' chest x-rays receive an International Labor Office UICC/Cincinnati (ILO U/C) rating. Subsequent to the promulgation of these provisions, the Agency received information from two physicians that the ILO U/C rating is not suitable to evaluate chest x-rays for lung cancer. Regarding the use of the ILO U/C ratings specified by the inorganic arsenic standard, Stephen Wood, MD, MSPH, Corporate Medical Director for the Kennecott Corporation, states in a letter to OSHA (Ex. 1–1), "This method of x-ray interpretation was designed specifically for use in pneumoconiosis or dust related disease. Arsenic does not cause pneumoconiosis. This classification system is unnecessary for cancer surveillance and represents a substantial cost and logistical burden to industry." Later, Steven R. Smith, MD, Director of Occupational Health and Occupational Medicine, Community Hospitals Indianapolis, wrote to the Agency (Ex. 1–2) addressing the ILO U/C rating required by the coke oven emissions standard:

> I am sure you know that the main pulmonary problem with coke oven emission exposure is carcinoma of the lung and not pneumoconiosis. The main merit of the ILO U/C rating system is that it standardizes the reading of films where there are parenchymal opacities[,] either round nodules or linar densities. For the problem of carcinoma of the lung this system really has little to add over the proper interpretation of films by skilled radiologists. * * * I think it is of much more importance that the chest films done as part of the coke oven emissions exposure surveillance be interpreted by expert radiologists who are aware of the fact the films are being done primarily for pulmonary carcinoma. To require that an ILO U/C rating system be employed as well seems to me as though it is going to necessitate an additional expense[,] as well as to greatly limit the number of radiologists who are able to interpret such films.

Based on the information provided in these letters, and on the opinion of the Agency's Office of Occupational Medicine, OSHA believes that the ILO U/C rating may not be a suitable method to use in evaluating chest x-rays for lung cancer. Therefore, the Agency is

[1] This standard does not specify an action level, so employers must continue to monitor employee DBCP exposures on a continuing basis. See section O ("Additional Issues for Comment") of this Summary and Explanation for a discussion of this issue.

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proposing to remove the ILO U/C rating requirements specified in the inorganic arsenic and coke oven emissions standards, thereby permitting the examining physician to determine the most effective procedure for evaluating these chest x-rays. The proposed approach would be similar to that taken in recent Agency standards that require the evaluation of chest x-rays for cancer (for example, paragraph (l)(4)(ii)(C) of the cadmium standard (§ 1910.1027)). In this regard, OSHA solicits comment and other information regarding the suitability of the ILO U/C ratings for evaluating chest x-rays for cancer, the identity of any other available method or procedure that could effectively substitute for ILO U/C ratings, and the safety and efficacy of the proposed elimination of the requirement.

I. Signed Medical Opinion

Paragraph (l)(7)(i) of the asbestos standard (§ 1910.1001), and paragraph (l)(10)(i) of the cadmium standard for general industry (§ 1910.1027) and construction (§ 1926.1127), require that the examining physician sign the written medical opinion provided as part of the medical-surveillance requirements of these standards. The preamble to the cadmium standards states that "the [purpose of the]" requirement that the physician sign the opinion is to ensure that the information that is given to the employer has been seen and read by the physician and that the physician has personally determined whether the employee may continue to work in cadmium-exposed jobs" (57 FR 42366). The requirement that a medical opinion be obtained by the employer is not affected by this proposed revision. No other substance-specific standard promulgated by OSHA requires that the physician sign the medical opinion.

The Agency believes that the requirement to sign a medical opinion written by a physician is unnecessary, precludes electronic transmission of the opinion from the physician to the employer, and provides no additional benefit to employees. Accordingly, OSHA is proposing to remove this requirement from these paragraphs. In this regard, the Agency requests comment on whether or not a signed medical opinion is necessary to ensure that the examining physician has reviewed it prior to submitting it to the employer.

J. Providing Semiannual Medical Examinations to Employees Experiencing Long-Term Toxic Exposures

Three of the Agency's oldest health standards specify that employers provide semiannual medical examinations to employees having long-term exposures to the toxic substances regulated by these standards. However, these standards, which regulate employee exposures to vinyl chloride (§ 1910.1017), inorganic arsenic (§ 1910.1018), and coke oven emissions (§ 1910.1029), only require that other employees (i.e., those exposed for lesser periods) be given annual medical examinations.

Under paragraph (k)(2)(i) of the vinyl chloride standard, employers must provide a semiannual medical examination to employees exposed to vinyl chloride or polyvinyl chloride manufacturing above the action level for at least 10 years. The preamble to this standard provides no rationale for this requirement.

Paragraph (n)(3)(ii) of the inorganic arsenic standard specifies that employers must offer semiannual medical examinations to employees who are 45 years or older or have been exposed above the action level to inorganic arsenic for at least 10 years. In justifying this requirement, the Agency stated in the preamble to this standard that "[l]ong-term employees who have exposures now or in the near future below the action level, but have had exposure above the action level now or in the recent past, are quite likely to have had substantially greater exposures in the more distant past * * * the epidemiological studies indicate that risk increases with both *degree* and *duration* of exposure" (43 FR 19620). [Italics in original.] OSHA notes that this statement addressed high exposures that occurred prior to the 1970's.

Paragraphs (j)(3)(ii) and (j)(3)(iii) of the coke oven emissions standard require that employers provide semiannual medical examinations for: Employees who are at least 45 years of age or have five or more years of employment in a regulated area, and for an employee in this age/experience group who "transfers or is transferred from employment in a regulated area * * * [for] as long as that employee is employed by the same employer or a successor employer." In the preamble to this standard, the Agency explains this requirement by stating that "the high risk population requires more frequent and more comprehensive testing than the remainder of the population" (41 FR 46779).

OSHA believes that the available evidence does not support the requirements for semiannual medical examinations offered to employees with long-term exposures to vinyl chloride, inorganic arsenic, and coke oven emissions. Based on a review of the existing medical research literature, the Agency recently amended the inorganic arsenic and coke oven emissions standards by reducing the frequency of chest x-rays from semiannually to annually, and by removing the requirement for sputum cytology entirely from these standards (63 FR 33450). This review indicated that semiannual chest x-rays did not increase employee protection through early detection of lung cancer, while sputum cytology did not provide additional protection to employee health, over and above that provided by an annual chest x-ray. Semiannual medical examinations are less useful when the frequency of x-ray has been reduced. In addition, no other substance-specific standards promulgated by OSHA require semiannual medical examinations.

Based on the available evidence, the Agency believes that semiannual medical examinations are unnecessary, and that annual medical examinations are sufficient to detect cancer and other medical impairments caused by exposure to vinyl chloride, inorganic arsenic, and coke oven emissions. OSHA also believes that current industry practice with regard to employees occupationally exposed to toxic substances is to screen these employees annually. Therefore, the Agency is proposing to revise the standards regulating these toxic substances to be consistent with its other substance-specific standards, which require that employers provide annual medical examinations for covered employees regardless of the duration of their exposures. The Agency request comment and other information comparing the effectiveness of annual and semiannual medical examinations in detecting cancer and other medical impairments caused by exposure to vinyl chloride, inorganic arsenic, and coke oven emissions.

The proposed revisions to paragraphs (j)(3)(ii) and (j)(3)(iii) of the coke oven emissions standard do not include removing the requirement to conduct semiannual urinary cytology examinations. However, OSHA is raising this issue for comment and may include such removal in the final rule if warranted, based on comments. The coke oven emissions standard (29 CFR 1910.1029) requires that employers provide urinary cytology examinations

(paragraph (j)(2)(vii)) semiannually to certain exposed employees (paragraph (j)(3)(ii)). OSHA adopted this requirement based on the belief, at the time, that urinary cytology would serve as a useful tool in screening for cancer.

The Agency believes that the utility of urinary cytology as a screening tool for cancer should be reexamined. OSHA's Office of Occupational Medicine (OOM) reviewed data pertaining to the benefits of urinary cytology in the detection of bladder cancer (Ex. 1–3). The literature indicates that the sensitivity (*i.e.*, ability to detect bladder cancer in those who have it) of urine cytology is not very powerful and, thus, not a particularly effective screening test for this disease. Although there may be views to the contrary, on balance OOM recommends that urinary cytology testing be eliminated from the coke oven standard. However, OOM does recommend retaining dipstick urinalysis an inexpensive means of maintaining the urologic screening program until more effective technology is developed, despite its low sensitivity for detecting cancer. Comment is requested on the issue and on the OOM recommendation retaining dipstick urinalysis.

K. Notifying OSHA Regarding Use or Regulated Areas

The Agency is proposing to delete paragraph (d) of the 1,2-dibromo-3-chloropropane (DBCP) standard (§ 1910.1044). This paragraph requires employers to submit a report to the nearest OSHA Area Office that describes their use of DBCP, and to do so within 10 days of introducing the substance into the workplace. The preamble to the standard does not provide a rationale for this requirement, and no other substance-specific standard published by the Agency has a similar requirement. OSHA has not found this provision of the standard useful for its inspectors.

Accordingly, OSHA finds that the provision has little utility in practice and thus, it may be appropriate to remove this provision to reduce paperwork. OSHA requests comment on this issue and the proposed deletion of paragraph (d) of the DBCP standard.

A number of OSHA standards dating from the 1970s require employers to notify the nearest OSHA Area Director/Office if they are required by the standard to establish regulated areas in their workplaces. The following standards have such a requirement: 13 carcinogens (§ 1910.1003, paragraph (f)(1)), vinyl chloride (§ 1910.1017, paragraph (n)(1)), inorganic arsenic (§ 1910.1018, paragraph (d)(1)), and acrylonitrile (§ 1910.1045, paragraph (d)(1)).

The preamble to the vinyl chloride standard explains that the purpose of this notification requirement is to "enable the Agency to obtain information on control technology" (39 FR 35890), while the preamble to the acrylonitrile standard notes that the requirement is designed to enable OSHA to Abe aware of facilities where substantial exposure * * * exists" (43 FR 45762). Further, in the years since these standards were promulgated, OSHA has not found the notification provision useful for the purposes described or for inspection purposes. In addition, recent substance-specific standards promulgated by OSHA do not require such notification. Accordingly, the Agency is proposing to delete this notification requirement from the 13 carcinogens, vinyl chloride, inorganic arsenic, and acrylonitrile standards to reduce paperwork. OSHA invites comment on the effect this deletion would have in general, and specifically on employee protection, employer burden, and paperwork reduction.

L. Reporting Emergencies to OSHA

Paragraph (n)(2) of the vinyl chloride standard (§ 1910.1017) and paragraph (d)(2) of the acrylonitrile standard (§ 1901.1045) require employers to report the occurrence of emergencies involving these substances to the nearest OSHA Area Director/Office. The preambles to these standards are silent on the reason for this reporting requirement and OSHA has not found such reporting, which has occurred only rarely, useful. In addition, other Agency substance-specific standards do not have such a requirement. Accordingly, OSHA is proposing to delete these reporting provisions of the vinyl chloride and acrylonitrile standards as unnecessary and to reduce paperwork. OSHA asks for comment on the proposed deletions and for information on any impact such an action might have.

M. Semiannual Updating of Compliance Plans

The Agency's substance-specific standards typically require employers to develop compliance plans to meet the exposure-control objectives of the standard. Most of these standards specify that employers must update these plans at least annually, and OSHA believes that annual updating is sufficient to ensure the continued effectiveness of the plans. However, several older substance-specific standards promulgated by the Agency require semiannual updating; these standards include: Vinyl chloride (§ 1910.1017, paragraph (f)(3)); inorganic arsenic (§ 1910.1018, paragraph (g)(2)(iv)); lead (§ 1910.1025, paragraph (e)(3)(iv)); coke oven emissions, paragraph (f)(6)(iv); 1,2-dibromo-3-chloropropany (DBCP)(§ 1910.1044, paragraph (g)(2)(ii)); acrylonitrile (§ 1910.1045, paragraph (g)(2)(v)); and lead in construction (§ 1926.62, paragraph (e)(2)(v)).

The preambles to the standards containing this requirement present no evidence pointing to the need for such a requirement in facilities handling these substances, and OSHA believes that current industry practice considers annual updating sufficient. In particular, there is no evidence to suggest that employee health protections would be lessened by this proposed change. Therefore, the Agency is proposing to revise its older substance-specific standards to require annual, instead of semiannual, updating of compliance plans. OSHA believes that the proposed revisions would make this requirement consistent across its standards without diminishing employee protection and will reduce paperwork. The Agency solicits comment on any impact, particularly on employee health that the proposed revision might have.

N. Notifying Employees of Their Exposure Monitoring Results

Many of OSHA's substance-specific standards require employers to notify employees of their exposure monitoring results. These standards require the employer to provide written notification to each employee included in the monitoring program. However, some of these standards also require the employer to post the monitoring results, while others allow posting in lieu of individual notification. In addition, the number of days that may elapse between receipt of an employee's exposure monitoring results and employee notification varies across the standards. These periods range from "as soon as possible" to 20 working days after receipt of the monitoring results. Table 1 below describes the methods employers are required to use when notifying employees and the amount of elapsed time permitted by 15 substance-specific standards for general industry, one such standard for shipyard employment, and four such standards for construction.

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TABLE 1.—NOTIFYING EMPLOYEES OF THEIR EXPOSURE RESULTS

Standard [1]	Method of notification	Maximum period for notification
Part 1910 (General Industry):		
Asbestos (§ 1910.1001(d)(7)(i))	Individually in writing *or* posting	15 working days.
Vinyl Chloride (§ 1910.1017(n)(3))	Individually in writing only	10 working days.
Inorganic Arsenic (§ 1910.1018(e)(5)(i))	Individually in writing only	5 working days.
Lead (§ 1910.1025(d)(8)(i))	Individually in writing only	5 working days.
Cadmium (§ 1910.1027(d)(5)(i))	Individually in writing *and* posting	15 working days.
Benzene (§ 1910.1028(e)(7)(i))	Individually in writing only	15 working days.
Coke Oven Emissions (§ 1910.1029(e)(3)(i))	Individually in writing only	5 working days.
Cotton Dust (§ 1910.1043(d)(4)(i))	Individually in writing only	20 working days.
1,2–Dibromo-3-Chloropropane (§ 1910.1044(f)(5)(i))	Individually in writing only	5 working days.
Acrylonitrile (§ 1910.1045(e)(5)(i))	Individually in writing only	5 working days.
Ethylene Oxide (§ 1910.1047(d)(7)(i))	Individually in writing *or* posting	15 working days.
Formaldehyde (§ 1910.1048(d)(6))	Individually in writing *or* posting	15 working days.
Methylenedianiline (§ 1910.1050(e)(7)(i))	Individually in writing *or* posting	15 working days.
Butadiene (§ 1910.1051(d)(7)(i))	Individually in writing *or* posting	5 working days.
Methelene Chloride (§ 1910.1052(d)(5)(i))	Individually in writing *or* posting	15 working days.
Part 1915 (Shipyard Employment):		
Asbestos (§ 1915.1001(f)(5)(i) and (f)(5)(ii))	Individually in writing *or* posting	As soon as possible.
Part 1926 (Construction):		
Methylenedianiline (§ 1926.60(f)(7)(i))	Individually in writing *or* posting	15 working days.
Lead (§ 1926.62(d)(8)(i))	Individually in writing only	5 working days.
Asbestos (§ 1926.1101(f)(5)(i) and (f)(5)(ii))	Individually in writing *or* posting	As soon as possible.
Cadmium (§ 1926.1127(d)(5)(i))	Individually in writing *and* posting	5 working days.

[1] Includes the paragraphs containing the requirements.

The preambles to these standards generally do not identify substance-specific or record-based reasons for these differences in notification methods and timing. Further, there is no evidence to suggest that differences in timing, within the ranges reflected in these standards, have an effect on employee health. Accordingly, OSHA believes that making the notification and timing requirements consistent across standards will reduce regulatory confusion and facilitate compliance without diminishing employee protection. The Agency is therefore proposing to allow employees to provide employees with their exposure monitoring results either individually in writing or by posting the employees' results in a readily accessible location.

In the case of notification there are a number of considerations. Individual notification gives employees a permanent record, employees may take the notification more seriously, and there are no privacy concerns. However, the paperwork burden is increased for employers and employees will have less knowledge of overall trends. Posting has the converse strengths and weaknesses. OSHA is proposing to give the employer the option of either individual notification or posting, or both. The Agency requests comments on these issues.

The point of notification is to ensure that employees are aware of their exposures to OSHA-regulated substances, and the Agency preliminarily concludes that this goal can be met either through individual written notification or through posting in a location that is readily accessible to all employees whose results are being posted. OSHA requests comment on this preliminary finding, particularly with respect to any impact the proposed changes might have on employee protection.

The Agency is also proposing to require employers regulated by the 15 substance-specific standards for general industry (see Table 1 above) to notify their employees of their exposure monitoring results within 15 working days of receiving the results. OSHA believes consistency of period will simplify compliance and that 15 days is a reasonable time frame.

For employers covered by the four substance-specific standards for construction and the asbestos standard for shipyard employment listed in the table, OSHA is proposing to require notification as soon as possible but no later than five working days after the employer receives the results of the exposure monitoring performed under these standards. Both the asbestos and cadmium standards established different notification intervals based on the industries affected: the asbestos standards requires notification within 15 days for general-industry employers and "as soon as possible" for construction and shipyard employers which may be involved in more short-term and intermittent activities, while the cadmium standards specified a maximum period of 15 working days for general-industry employers and five working days for construction employers. The preamble to the cadmium standard for construction states that the five working-day notification period is appropriate "in light of the short term nature of many construction jobs" (57 FR 42383).

OSHA is requesting comment on whether a 5 working day or 15 working day notification period is more appropriate for the shipyard standard due to the nature of the work in that industry.

The Agency finds that these factors, short-term or intermittent projects, may justify retaining the shorter notification period for construction activities. OSHA believes that five days is a reasonable interval for notification. However, both shipyards and construction are covered by the 15 working day requirement for other health standards. OSHA is not proposing to change those other standards because they do not have as much impact in the construction or shipyard industry and they may result in an increase in burden.

OSHA invites comment and other information on these proposed revisions to the notification requirements in OSHA health standards, particularly on the differences proposed for employers in different industries and any

reduction in employee protection that may result from the proposed revisions.

O. Additional Issue for Comment

Social Security Numbers

Most of OSHA's substance-specific standards require that records, especially exposure monitoring and medical-surveillance records, include the employee's social security number (SSN). In the preamble to the final methylene chloride standard (62 FR 1598), OSHA justified the requirement for employers to document social security numbers by stating: "Social security number * * * are correlated to employee identity in other types of records. These numbers are a more useful differentiation among employees [than other possible methods] since each number is unique to an individual for a lifetime and does not change as an employee changes employers." In a letter of interpretation regarding the use of social security numbers in the asbestos standard for construction (April 16, 1999), the Agency provided the following rationale for requiring SSNs: "[M]any employees have identical or similar names; identifying employees solely by name makes it difficult to determine to which employee a particular record pertains. The present system avoids this problem because Social Security numbers are unique to the individual."

Based on privacy concerns, the Office of Management and Budget recently requested OSHA to examine alternatives to requiring social security numbers for employee identification. Although the Agency is not specifically proposing to delete the requirement for SSNs from its standards at this time, OSHA is requesting the public to submit comments on: The necessity, usefulness, and effectiveness of social security numbers as a means of identifying employee records, notably exposure monitoring and medical-surveillance records, and any privacy concerns or issues raised by this requirement, as well as the availability of other equally effective methods of uniquely identifying employees for OSHA recordkeeping purposes.

III. Legal Considerations

The Agency believes that the proposed rule would not reduce the employee protections put into place by the rules being revised; the intent of the present rulemaking is to remove outdated, unnecessary or duplicative provisions from these older rules and makes them more consistent. It is therefore unnecessary to determine significant risk, or the extent to which the proposed rule would reduce that risk, as would be required by *Industrial Union Department, AFL–CIO* v. *American Petroleum Institute*, 448 U.S. 607 (1980), the Supreme Court ruling applying to standards addressing new hazards, setting more stringent standards, or reducing employee protection. Accordingly, no finding of significant risk is necessary.

IV. Preliminary Economic Analysis

Introduction

This proposed rule deletes or revises a number of provisions in OSHA standards that are duplicative, unnecessary, or potentially in conflict with the rules of other Federal agencies. All of the changes OSHA is making are expected to benefit the regulated community by reducing burden and confusion, enhancing occupational safety and health to employees, and improving compliance by employers. For most of these changes, economic benefits can be quantified.[2] By deleting and revising these provisions, this Phase II Proposed Revision Standard will lessen the burden employers currently experience, which will, in turn, generate cost savings. OSHA estimates annual savings of $6.57 million from these revisions (Table 3). Total burden hours would fall by 207892. (The estimates in this Economic Analysis may differ very slightly from the estimates in the Paperwork Reduction Analysis because of rounding.)

TABLE 3.—ESTIMATED ANNUAL COST SAVINGS DUE TO THE STANDARDS IMPROVEMENT PROJECT—PHASE 2.

	Provision	Annual cost savings
A	§ 1910.42, Temporary Labor Camps	$0
B	§ 1910.151(b), Reference to First Aid Supplies in Appendix A	0
C	§ 1910.268, First Aid Supplies Telecom	5,603
D	§ 1910.1003(f)(2) Incident Reports, 13 Carcinogens	27,284
E	§ 1910.1017(k)(6), Vinyl Chloride	0
F:		
	§ 1910.1017(d)(2)(i), Exposure Monitoring, Vinyl Chloride	102,750
	§ 1910.1017(d)(2)(ii), Exposure Monitoring, Vinyl Chloride	25,687
	§ 1910.1044(f)(3)(i) & f(3)(ii), Exposure Monitoring, 1,2–DBCP	0
	§ 1910.1045(e)(3)(ii), Exposure Monitoring, Acrylonitrile	22,446
	Subtotal	150,883
G:		
	§ 1915.1001(g)(6)(iii), Alt. Control Methods, Asbestos Removal	39
	§ 1926.1101(g)(6)(iii), Alt. Control Methods, Asbestos Removal	39
	Subtotal	78
H:		
	§ 1910.1018(n)(2)(ii)(A), ILO/UC Rating, Inorganic Arsenic	0
	§ 1910.1029(j)(2)(ii), ILO/UC Rating, Coke Oven Emissions	0
I:		
	§ 1910.1001(1)(7)(i), Signed Opinion, Asbestos	0
	§ 1910.1027(1)(10)(i), Signed Opinion, Cadmium Gen. Industry	0
	§ 1926.1127(1)(10)(i), Signed Opinion, Cadmium Con. Industry	0

[2] OSHA estimates that a few of these revised provisions may not have any readily quantifiable reductions in burden hours and/or costs, although they normally increase employer flexibility.

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TABLE 3.—ESTIMATED ANNUAL COST SAVINGS DUE TO THE STANDARDS IMPROVEMENT PROJECT—PHASE 2.—Continued

Provision	Annual cost savings
J:	
§ 1910.1017(k)(2)(i), Semiannual Medical Exams, Vinyl Chloride	31,064
§ 1910.1018(n)(3)(ii), Semiannual Medical Exams, Inorganic Arsenic	164,238
§ 1910.1029(j)(3)(ii–iii), Semiannual Medical Exams, Coke Oven emissions	362,443
Subtotal	557,745
K:	
§ 1910.1044(d), Notifying OSHA Regarding Regulated Areas, 1,2–DBCP	0
§ 1910.1003(f)(1) Notifying OSHA Regarding Regulated Areas, 13 Carcinogens	5,457
§ 1910.1017(n)(1) Notifying OSHA Regarding Regulated Areas, Vinyl Chloride	656
§ 1910.1018(d)(1) Notifying OSHA Regarding Regulated Areas, Inorganic Arsenic	117
§ 1910.1045(d)(1) Notifying OSHA Regarding Regulated Areas, Acrylonitrile	647
Subtotal	6,876
L:	
§ 1910.1017(n)(2) Reporting Emergencies, Vinyl Chloride	22,503
§ 1910.1045(d)(2) Reporting Emergencies, Acrylonitrile	2,588
Subtotal	25,090
M:	
§ 1910.1017(f)(3) Semiannual Updating Compliance Plans, Vinyl Chloride	7,614
§ 1910.1018(g)(2)(iv), Semiannual Updating Compliance Plans, Inorganic Arsenic	2,284
§ 1910.1029(f)(6)(iv), Semiannual Updating Compliance Plans, Coke Oven Emissions	1,332
§ 1910.1044(e)(3)(iv), Semiannual Updating Compliance Plans, 1,2–DCBP	0
§ 1910.1045(g)(2)(ii), Semiannual Updating Compliance Plans, Acrylonitrile	448
§ 1926.1025(e)(2)(v), Semiannual Updating Compliance Plans, Lead, Con.	4,209,657
Subtotal	4,221,334
N:	
§ 1910.1017(n)(3) Notify Employees of Expos. Monitoring Results, Vinyl Chloride	2,741
§ 1910.1018(e)(5)(i) Notify Employees of Expos. Monitoring Results, Inorganic Arsenic	9,393
§ 1910.1025(d)(8)(i) Notify Employees of Expos. Monitoring Results, Lead, Gen Ind.	891,293
§ 1910.1027(d)(5)(i) Notify Employees of Expos. Monitoring Results, Cadmium, Gen Ind	50,540
§ 1910.1029(e)(3)(i) Notify Employees of Expos. Monitoring Results, Coke Oven	25,765
§ 1910.1043(d)(4)(i) Notify Employees of Expos. Monitoring Results, Cotton Dust	68,102
§ 1910.1044(f)(5)(i) Notify Employees of Expos. Monitoring Results, 1,2–DBCP	0
§ 1910.1045(e)(5)(i) Notify Employees of Expos. Monitoring Results, Acryonitrile	8,255
§ 1926.62(d)(8)(i) Notify Employees of Expos. Monitoring Results, Lead Construction	494,063
§ 1926.1127(d)(5)(i) Notify Employees of Expos. Monitoring Results, Cadmium, Con.	27,189
Subtotal	1,454,431
Total	6,572,236

This notice-and-comment rulemaking is necessary because a number of the proposed revisions are substantive. The Agency will base its final decisions regarding these proposed revisions on the record developed through public comment. The following paragraphs discuss the Preliminary Economic Analysis in detail.

Methodology

This section describes OSHA's development of the total annual paperwork requirements for a provision or standard, then presents a methodology for aggregating these costs into industry-specific estimates of total one-time costs, annualized costs (one-time or intermittent costs amortized over a specific number of years), or annual costs. For the purposes of this Preliminary Economic Analysis, one-time or intermittent costs have been annualized using a discount rate of 7 percent[3], as required by the U.S. Office of Management and Budget (OMB), over a specified period of time using the formula:

$$a = (i \times (1 + i)^n)/((1 + i)^n - 1),$$

where

a=annualization factor,

i=discount rate, and

n=economic life of the one-time or intermittent investment

OSHA uses average hourly earnings, including benefits, to represent the cost of employee time. For the relevant occupational categories, mean hourly earnings from the Year 2000 National Compensation Survey by the Bureau of Labor Statistics have been adjusted to reflect the fact that fringe benefits comprise about 27.1 percent[4] of total employee compensation in the private sector.[5] The costs of labor used in this analysis are therefore estimates of total hourly compensation. These average hourly costs are: $38.92 for managers; $27.39 for production supervisors; $24.68 for chemical technicians; $18.40 for production workers; and $17.34 for clerical workers.

Estimates of the number of establishments and the number of employees affected by a proposed change are usually either from a statement in support of information collection requirements (ICR) or from an economic analysis. The number of employees affected and their hourly total wages are used to calculate costs. The changes proposed in the Phase II Standards Improvement Project pertain to approval of equipment, reporting incidents, exposure monitoring, laboratory analysis, medical examinations, and employee notification requirements.

Most of the proposed revised standards reduce costs related to a percentage of affected employees in the industry and the number of labor hours required to monitor a specific activity. Usually, the frequency of an activity, the number of employees requiring the activity, and the cost of the activity per employee were used to arrive at the estimated costs. In some instances, the costs of the activity were calculated according to the number of affected establishments.

A. Temporary Labor Camps (§ 1910.42)

Paragraphs (1) and (2) of § 1910.42 require that the camp superintendent immediately report the outbreak of certain diseases to the local health authority "by telegram or telephone." OSHA believes that because other forms of communication are readily available, the requirement for notification via "telegram or telephone" is unnecessarily restrictive. Thus, the Agency proposes deleting the requirements specifying notification by telegram or telephone. The Agency believes the revision would give more flexibility to employers that can result in cost savings. However, the Agency has not calculated the value of such savings.

B. Reference to First-Aid Supplies in Appendix A to the Standard on Medical Services and First Aid (§ 1910.151)

Paragraph (b) of § 1910.151, the Agency's standard regulating medical services and first-aid supplies, requires employers to ensure that "[a]dequate first aid supplies shall be readily available [in the workplace]." OSHA added a nonmandatory appendix to this standard in a recent rulemaking (63 FR 33460) to help employers meet this requirement. OSHA is proposing to update this appendix. This revision would not impose any additional cost on employers because appendix A is non-mandatory.

C. First-Aid Supplies in the Telecommunications Standard (§ 1910.268)

The proposed rule revises Paragraph (b)(3) of OSHA's Telecommunications Standard (§ 1910.268) that requires an employer to: provide first-aid supplies recommended by a consulting physician; ensure that the items are readily accessible and housed in weatherproof containers if used outdoors; and inspect the items at least once a month and replace expended items. The Agency is proposing to revise paragraph (b)(3) to read, "Employers must provide employees with readily accessible first-aid supplies in accordance with Appendix A to (§ 1910.151)."

The propose rule eliminates the requirements in § 1910.268(b)(3) that employers must have certain first-aid supplies approved by a consulting physician before they are used. This requirement applied only in cases where no infirmary, clinic, or hospital was in close proximity to the worksite and the employer intended to treat first-aid injuries at the site. OSHA's analysis here relies on the assumptions in the Final Economic Analysis in an earlier rulemaking (63 FR 33461).[6] Based on the ICR to that rulemaking, the Agency estimates that 10 percent of the establishments would meet these criteria. OSHA also estimates that five minutes of a physician's time, valued at $100/hr[7] ($8.33 for five minutes), would be required to approve the contents of the first-aid kit at these establishments.

OSHA assumes that the physician would need to approve the first aid supplies once every 10 years, considering the possibility of the development of new kinds of medical supplies and of new hazards at the worksite. The cost of five minutes of a physician's time annualized over a 10 year period at 7 percent interest is $1.19 per year (5/60 × $100 × annualization factor of 0.1424).

The Agency estimates that there were approximately 47,217 employers in the telecommunications industry in 1998 [*County Business Patterns*, 1998]. The major sector in the telecommunications industry is telephone communications, which consists of establishments that operate both wireline and wireless networks. The wireline networks use wires and cables to connect customers' premises to central offices maintained by the telecommunications companies. The wireless networks on the other hand operate through the transmission of signals over networks of radio towers and communications satellites [Career Guide to Industries 2000–01 Edition, Telecommunications (SIC's 481, 482, 489)]. Since first-aid supplies have to be approved once every 10 years, each year approximately 10 percent of the establishment incur costs to comply with the current requirement. Thus, current annualized cost is approximately $5,603 ((47,217 × 10%) × $1.19). Eliminating the requirement for a physician's approval of an establishment's first-aid kit would eliminate this burden of $5,603.

D. 13 Carcinogens (4-Nitrobiphenyl, etc.) (§ 1910.1003)

The proposed rule would delete provision § 1910.1003(f)(2) that requires reporting of releases of a regulated carcinogen to the nearest OSHA Area Director. Deleting this provision results in savings in burden hours and associated costs.

Based on the ICR, the Agency estimates that reportable incidents occur once per year at each facility and that about 97 employers fall under OSHA jurisdiction and will be affected by the rule. A manager and a clerical worker will each take five hours to collect information and to report a release of a regulated carcinogen to the nearest OSHA Area Director, for a total of 10 hours per employer. Thus, 970 burden hours are attributed to this provision (485 burden hours each by a manager and a clerk), at an annual cost of $27,286.[8] By eliminating the requirement to report releases of a regulated carcinogen to the nearest OSHA Area Director, OSHA will eliminate annual cost burdens to employers of $27,286.

E. Vinyl Chloride (§ 1910.1017)

Paragraph (k)(6) of the Vinyl Chloride Standard (§ 1910.1017) specifies that

[3] Office of Management and Budget, "Guidelines and Discount Rates for Benefit-Cost Analysis of Federal Programs," Circular No. A–94 Revised (Transmittal Memo No. 64). October 29, 1992.
Office of Management and Budget, "Economic Analysis of Federal Regulations Under Executive Order 12866." January 11, 1996, p. 9.

[4] Straight-time hourly wages and salaries were estimated to be 72.9 percent of total compensation in 2000. Thus, total compensation, including benefits, for workers with average hourly earnings of $13.41 would be $13.41/.729 = $18.40.

[5] U.S. Department of Labor, Bureau of Labor Statistics, "Employer Costs for Employee Compensation—March 2001, June 29, 2001, p. 5."

[6] 29 CFR parts 1910 and 1926 Standards Improvement (Miscellaneous Changes) For General Industry and Construction Standards; Paperwork Collection for Coke Oven Emissions and Inorganic Arsenic; Final Rule—63:3350–33469.

[7] Opportunity cost is estimated by the market price for occupational physical exams, i.e., at the rate of about $100 an hour.

[8] Annual cost saving ($27,286) due to revision of this standard is obtained by multiplying 485 burden hours by each wage rate and adding the products, i.e. [485 × ($38.92 + $17.34)].

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laboratories licensed by the U.S. Public Health Service (PHS) under 42 CFR part 74 ("Clinical laboratories") must analyze biological samples collected during medical examinations. however, 42 CFR part 74 is outdated, and the PHS now addresses laboratory licensing requirements under 42 CFR part 493 ("Laboratory requirements"). Therefore, the Agency is proposing to delete the reference to 42 CFR part 74 from paragraph (k)(6) of this standard. There are no cost applications to the proposed change since the requirements are almost the same.

F. Monthly and Quarterly Exposure Monitoring (§ 1910.1017)(§ 1910.1044) (§ 1910.1045)

Several of the Agency's older standards retain provisions that require employers to monitor employee exposures either monthly or quarterly, depending on the level of the toxic substance found in the workplace. These include: paragraphs (d)(2)(i) and (d)(2)(ii) of the Vinyl Chloride Standard (§ 1910.1017), requiring employers to conduct exposure monitoring at least monthly if employees exposure are above the permissible exposure limit (PEL), and not less than quarterly if employee exposures are above the action level (AL); paragraphs (f)(3)(i) and (f)(3)(ii) of the 1,2-dibromo-3-chloropropane (DBCP) (§ 1910.1044) Standard, requiring exposure monitoring at least quarterly if employee exposures are below the PEL, and no less than monthly if employee exposures exceed the PEL [9]; and paragraphs (e)(3)(ii) and (e)(3)(iii) of the Acrylonitrile Standard (§ 1910.1045), requiring monitoring at least quarterly for employees exposed at or above the AL, but below the PEL, and at least monthly for employees exposed above the PEL. Little discussion exists in the preambles to these standards regarding the basis for adopting these monitoring frequencies, indicating that OSHA relied on prevailing practice in making those determinations.

For substance-specific standards published by the Agency subsequent to these standards, the most frequent exposure monitoring requirement is semiannually if employee exposures are at or above the AL, and quarterly if they are above the PEL. Thus, OSHA is proposing to amend the previously mentioned exposure monitoring requirements because they are inconsistent with the exposure monitoring protocols established by OSHA in its later substance-specific standards. OSHA is proposing to require that employers conduct exposure monitoring at least quarterly if the results of initial exposure monitoring show that the employee exposures are above the PEL, and no less than semiannually if these results are at or above the AL.

This economic analysis relies on the following assumptions and facts of employee exposure to vinyl chloride. The Agency estimates, based on OSHA sampling data, that one percent of all employees are exposed between the AL and the permissible exposure level (PEL), and another one percent are exposed above the PEL. Employees exposed between the AL and the PEL must be monitored quarterly, while those exposed above the PEL must be monitored monthly. OSHA assumes that employers use an organic vapor badge for monitoring because these badges do not interfere with employees' work activity. A supervisor, earning $27.39 per hour, will spend five minutes to administer, and five minutes to collect, each vapor badge, for a total of 0.17 hour. A clerical worker, earning $17.34 per hour, will spend five minutes (.08 hour) to maintain each record of a monitoring event.

The proposed rule revises the Vinyl Chloride Standard § 1910.1017(d)(2)(i) to require quarterly rather than monthly exposure monitoring if above the PEL. Under monthly monitoring prior to revision, burden hours would be 393 hours, assuming that 131 employees are monitored 12 times a year, with a supervisor spending 0.17 hour and a clerical spending .08 hour each event to administer and collect vapor badges. The cost of monitoring would be $9,500 (267 hours × $27.39 per hour plus 126 hours times $17.34 per hour). Under the revised rule, burden hours would be 131 hours, since the 131 employees would be monitored only four times a year. Costs would be reduced to $3,167 (89 hours × $27.39 plus 42 hours times $17.34). Savings due to the revision from monthly to quarterly monitoring thus would be 262 burden hours, worth $6,334. There would also be savings of 2/3 of the current cost $144,624 for badges and laboratory analysis; that is, $96,416. Thus, total annual savings attributed to this provision would be $102,750 ($6,334 + $96,416).

The proposed rule also revises the Vinyl Chloride Standard § 1910.1017(d)(2)(ii) to require semiannual rather than quarterly exposure monitoring if exposure is at or above the AL. With quarterly exposure monitoring, burden hours would be 131 hours, costing $3,167. Revising the provision to allow for semiannual monitoring would cut burden hours to 66 hours, as 131 employees would be monitored only two times a year. The costs of monitoring would be $1,583 (45 hours × $27.39 plus 21 hours times $17.34). There would be a saving of 66 burden hours (quarterly burden hours of 131 hours − semiannual burden hours of 66 hours) and a corresponding cost saving of $1,583 (quarterly costs of $3,167 − semiannual costs of $1,583). The cost of badges and laboratory analysis would fall by one-half, or from $48,208 to $24,104. Thus, total annual cost savings due to this revision would be $25,687 ($1,583 + $24,104.

OSHA is of the opinion that revision of paragraphs (f)(3)(i) and (f)(3)(ii) of the standard regulating, 1,2-dibromo-3-chloropropane (DBCP) (§ 1910.1044), would have no effect on cost or burden hours since no U.S. employers currently produce DBCP-based end products.

The proposed revision of paragraphs (e)(3)(ii) and (e)(3)(iii) of the Acrylonitrile Standard (§ 1910.1045) would require semiannual monitoring if employee exposures were at or above the AL, and quarterly monitoring if these exposures were above the PEL. OSHA estimates that a chemical technician, earning $24.68 per hour, requires 30 minutes (0.5 hour) to obtain and analyze each charcoal-sampling tube, and that each exposure monitoring sample represents the exposures of 2 employees (*i.e.*, on average, there are two employees involved in the same or similar tasks).[10]

The revision from quarterly to semiannual monitoring would save 282 burden hours and $6,947. The revision from monthly to quarterly monitoring would save 628 burden hours and $15,499. Thus, revision of the Acrylonitrile Standard would reduce total annual burden by 910 hours and $22,446.

G. Alternative Control Methods for Class I Asbestos Removal (§ 1915.1001(g)(6)(iii) and § 1926.1101(g)(6)(iii))

OSHA is proposing to delete provisions in OSHA's Asbestos Standards for shipyard employment and for construction (§ 1915.1001, paragraph (g)(6)(iii), and 1926.1101, paragraph (g)(6)(iii), respectively) that require that employers submit, to the Directorate of Technical Support, alternative control methods used to perform Class I asbestos work. OSHA believes that this requirement is unnecessary because the Agency can obtain this information from the public through an advanced notice of proposed rulemaking. Current OSHA regulatory policy requires that paperwork provisions such as this requirement demonstrate a benefit to employees or serve some other useful regulatory purpose.

To submit alternative control methods to the Directorate of Technical Support, OSHA estimates would require 1 hour and cost $39. These estimates are based on the assumption that OSHA would receive 7 notifications from employers who choose new or modified control technology to reduce exposure in Class I asbestos for shipyards. A manager, earning $38.92 per hour, would spend on average 10 minutes to develop and transmit the information to the Agency for each employer. Thus removing this requirement would result in annual cost savings of $39.

For the Asbestos Standard for construction, OSHA again assumes the Agency would receive 7 notifications from employers who choose new or modified control technology to reduce exposures in Class I asbestos work. OSHA estimates a manager, earning $38.92 an hour, would need 10 minutes to develop and transmit the information to OSHA. Thus, 1 burden hour would be spent, at a cost of $39, to submit alternative method information to OSHA.

Total annual savings of $78 would result from deleting these two asbestos-related provisions, since the information would no longer have to be submitted.

H. Evaluating Chest X-rays Using the ILO U/C Rating (§ 1910.1018(n)(2)(ii)(A) and § 1910.1029(j)(20(ii))

OSHA is proposing to amend paragraph (n)(2)(ii)(A) of the Inorganic Arsenic Standard (§ 1910.1018) and paragraph (j)(2)(ii) of the Coke Oven Emissions Standards (§ 1910.1029); these provisions require that employees' chest x-rays receive an International Labor Office UICC/Cincinnati (ILO U/C) rating. Subsequent to the promulgation of these provisions, the Agency received information from two physicians that the ILO U/C rating is not suitable to evaluate chest x-rays for lung cancer. Based on this information, OSHA believes that the ILO U/C rating may not be a suitable method to use in evaluating chest x-rays for lung cancer. Therefore, the Agency is proposing to remove the ILO U/C rating requirements specified in the Inorganic Arsenic and Coke Oven Emissions Standards, thereby permitting the examining physician to determine the most effective procedure for evaluating these chest x-rays. Deleting the ILO/UC rating would provide cost savings since it allows the examining physician to determine the most effective procedure for evaluating chest x-rays. However, the Agency has not calculated the value of such savings.

I. Signed Medical Opinions (§ 1910.1001(l)(7)(i), § 1910.1027(l)(10)(i), and § 1926.1127,(l)(10)(i))

Paragraph (l)(7)(i) of the Asbestos Standard (§ 1910.1001) and paragraph (l)(10)(i) of the Cadmium Standards for both general industry (§ 1910.1027) and construction (§ 1926.1127), require that the examining physician sign the written medical opinion provided as part of the medical surveillance requirements of these standards. The Preamble to the Cadmium standards states that "the requirement that the physician sign the opinion is to ensure that the information that is given to the employer has been seen and read by the physician and that the physician has personally determined whether the employee may continue to work in cadmium-exposed jobs" (57 FR 42366). No other substance-specific standard promulgated by OSHA requires a signed medical opinion.

The Agency believes that the requirement to sign a medical opinion written by a physician is unnecessary, precludes electronic transmission of the opinion from the physician to the employer, and provides no benefit to employees. Accordingly, OSHA is proposing to remove this requirement from these paragraph.

Removal of the requirement that a physician sign the written medical opinion provided as part of the medical surveillance requirement of these standards would provide more flexibility, but does not appear to provide any significant savings in time or burden for most employers.

J. Semiannual Medical Examinations (§ 1910.1017(k)(2)(i), § 1910.1018(n)(3)(ii), and § 1910.1029(j)(3)(i))

Three revisions geared toward reducing burdens are proposed for semiannual medical examinations: changing the requirement to an annual exam requirement for the Vinyl Chloride, Arsenic, and Coke Oven Standards. This analysis presents the burden hours and costs associated with the current provisions and then presents estimates of cost savings of the proposed revisions.

The proposed revision of the semiannual requirement for medical exams in the Vinyl Chloride Standard § 1910.1017(k)(2)(i) to an annual one (for employees working in vinyl chloride or polyvinyl manufacturing for 10 years or longer) would generate annual cost savings in several ways: less employees' time; fewer medical exams; and less clerical time providing the physicians' opinions to the affected employees and maintaining medical records.

Based on estimates in the ICR of the number of facilities, the number of employees per facility, and the distribution of employee exposures, OSHA estimates that 890 burden hours are incurred for medical surveillance under the semiannual examination requirement, with 183 employees monitored twice a year for two hours and 79 employees once a year for two hours at a cost of $16,376 (890 hours × $18.40, the wage rate of a production worker). With annual examinations, OSHA estimates that 324 burden hours would be required, as 262 employees would be monitored only once a year, taking two hours. The cost would be $9,642 (524 hours × $18.40). Annual savings of $6,734 would result.

The revision from semiannual to annual medical exams would result in annual savings of $23,790 in the cost of the medical exams themselves, at $130 per exam, as 183 employees would have only one, as opposed to two, medical exams per year. The change in frequency from semiannual to annual medical exams also reduces the number of hours of clerical time required from 76 to 45, resulting in annual savings of $539.

When annual savings are combined for the cost of employees' time ($6,734), medical exams ($23,790), and clerical costs of medical records ($539), the revision of the Vinyl Chloride Standard generates annual savings of $31,064. Thus, revision of the Vinyl Chloride Standard results in reduced burden hours and substantial annual cost savings.

The proposed rule also revises the semiannual medical exam requirement in the Arsenic Standard, § 1910.1018(n)(3)(ii), for employees who are 45 years old or older with 10 or more years of exposure to Inorganic Arsenic (IA) above the AL. Based on the ICR, the burden for medical surveillance was estimated to be 5,317 hours. OSHA assumes each exam would take one hour and forty minutes and that 50 percent of the 1,900 employees would require two examinations per year, 50 percent of 1,990 employees would undergo only one exam per year, and an

[9] This standard does not specify an action level, so employers must continue to monitor employee DBCP exposures on a continuing basis. See section O ("Additional Issues for Comment") of this Summary and Explanation for a discussion of this issue.

[10] Supporting Statement for the Information Collection Requirements of the Acrylonitrile (AN) Standard (29 CFR 1910.1045), OMB# 1218–0126 (2000), p. 16.

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additional 10 percent would be subject to one exam per year. The cost of the employees' time would be $97,838 (5,317 hours × $18.40 hourly wage rate). Requiring only annual medical exams would result in 3,656 burden hours. The cost of the employees being away from the job would be $67,264 (3,565 hours × $18.40 per hour). Thus, replacing semiannual medical exams by annual medical exams would result in annual savings of 1,661 burden hours and $30,574.

The change in frequency from semiannual to annual contributes $129,350 in annual cost savings for the medical exams themselves, at $130 per exam. Semiannual medical exams cost $413,920 while annual medical exams would cost an estimated $284,570. In addition, the clerical costs of medical records would drop by $4,313 ($13,803–$9,489). Total annual savings resulting from revision of the Inorganic Arsenic Standard would be $164,238 ($30,574 + $4,313) and would consist of savings in costs of employees' time, medical exams, and clerical time for medical records.

The proposed rule revises the semiannual medical exams requirement except for the urinary cytology examination, to annual medical exams in the Coke Oven Standard, § 1910.1029(j)(3)(i), for employees who are 45 years of age or older with five or more years of exposure in regulated areas. However, these employees still receive semiannual urinary cytology examinations. The proposed revision would generate annual cost savings in employees' time, medical exams, and physicians' medical opinions. Based on the ICR, medical exams currently require 14,903 burden hours as 84 percent of the 4,600 employees who work in regulated areas require semiannual medical exams, 16 percent require an annual medical exam, and 10 percent require an additional medical exam per year. Each exam requires an employee to be away from his or her job for one hour and 40 minutes, at $18.40 per hour, for a total annual cost of $274,217. After the proposed revision, annual medical exams and semiannual urinary cytology exams would require 12,005 burden hours at a cost of $220,893. Cost savings in employees' time would thus be $53,323.

At a cost of $130 per medical exam and $50 for urinary cytology exams per employee, replacing semiannual medical exams (estimated cost of $1,425,384) with annual medical exams plus semiannual urinary cytology exams (estimated cost of $1,126,264) would result in annual cost savings of $309,120. There would be no savings in clerical costs of medical records.

OSHA estimates that revision of the Coke Oven Standard would generate total annual savings of $362,443 when the savings in the costs of employees' time and medical exams.

K. Notification of Regulated Area (§ 1910.1003(f)(1)(i), 1910.1017(n)(1)(i), 1910.1018(n)(2)(i), and 1910.1045(d)(1)(1))

The proposed rule would delete the "13 carcinogens" provision, § 1910.1003(f)(1), that requires employers to notify the nearest OSHA Area Director of the established of Regulated Areas. Deleting this provision results in savings in burden hours and associated costs. As in the ICR, OSHA assumes that changes in operation requiring a report to the nearest OSHA Area Director currently occur once a year per facility and require one hour each of managerial and clerical time, a total of two hours per employer, to report the necessary information. OSHA estimates that 97 employers would be affected. Burden hours are thus estimated to total 194 hours to report the information. The cost is estimated to be $5,457 (97 employers × ($38.92 × 1 hour + $17.34 × 1 hour)), where $38.92 is the wage rate of a manager and $17.34 is the wage rate of a clerical worker. Thus, savings due to deleting this provision would be 194 burden hours and $5,457.

The proposed rule would eliminate the vinyl chloride provision, § 1910.1017(n)(1), that requires employers to notify the nearest OSHA Area Director of the establishment of Regulated Areas. Based on the ICR, the Agency estimates that 13 new regulated areas are established each year, and that a manager, at an hourly rate of $38.92, takes 15 minutes (0.25 hour) to notify the Area Director of the address and the location of the establishment, and the number of employees in a new regulated area. Thus, for new regulated areas, OSHA estimates a current burden of 3.25 hours at a cost of $126.

For existing facilities, OSHA assumes that each employer experiences one change in a regulated area each year, and that a supervisor requires 10 minutes (0.17 hour) to inform the Area Director of this change. OSHA estimates that there are 80 facilities, resulting in 14 burden hours and a cost of $529 (14 burden hours × $38.92).

Total burden of the current rules, for new and existing facilities, is 17 hours, costing $656. The proposed revision would, thus, save 17 hours and $656.

The proposed rule would delete the requirement in the Inorganic Arsenic Standard, 1910.1018(d)(1), that employers notify the nearest OSHA Area Director of the establishment of Regulated Areas. An OSHA report titled "Sampling Activity by Substance" determined that 14.1 percent of establishments had Inorganic Arsenic exposures that exceeded the PEL. Based on the Agency's estimate that 42 facilities are covered by the standard, six facilities would have employees with IA exposures that exceed the PEL (14.1% × 42 = 6). OSHA assumes that these six employers have already notified the Agency about establishing regulated areas; therefore, only significant changes to existing regulated areas or establishments of new regulated areas must be reported to OSHA. The Agency assumes that one significant change occurs in, or a new regulated area is added to, each of these facilities annually, and that a manager, earning $38.92 an hour, will take 30 minutes (0.5 hours) to notify the Agency of the significant change or addition. Thus, OSHA estimates it would require three burden hours for six employers to notify the Area Director about establishment of regulated areas. Estimated cost would be $117 (three burden hours × $38.92 an hour). By deleting this provision, savings of three burden hours and $117 would be realized.

The proposed rule would delete the provision in the Acrylonitrile Standard, § 1910.1045 (d)(1), that requires employers notify the nearest OSHA Area Director of the establishment of Regulated Areas. Since there are no new establishments, OSHA assumes that employers will not establish new regulated areas during this clearance period, and estimates that each of the 23 facilities will make one significant change annually in a regulated area. The Agency estimates that reporting a significant change to the nearest OSHA Area Office currently takes a manager 0.5 hour and a clerical worker 0.5 hour each, for a total of one hour for each of the 23 facilities. Thus, it costs $647 for the 23 facilities to report a significant change, at $38.92 an hour for a manager and $17.34 an hour for a clerical. Savings due to deleting this provision would thus be 23 burden hours and $647.

L. Reporting Emergencies and Incidents (§ 1910.1017(n)(2) and 1910.1045(d)(2)(i))

The proposed rule would delete the provision in the Vinyl Chloride Standard, § 1910.1017(n)(2), that requires employers to report emergencies, and available facts regarding each emergency, to the nearest OSHA Area Director. On request of the

Area Director, the employer must submit additional information in writing describing the nature and extent of employee exposures, and measures taken to prevent similar emergencies in the future. OSHA estimates that each employer experiences one reportable emergency per year, and that a manager and a secretary will each spend five hours, for a total of 10 hours, reporting the emergency. OSHA assumes there are 80 affected employers; a manager and a secretary would each spend five hours to report an emergency for a total of 800 burden hours. The cost to the employers would be $22,504 (80 employess × ($38.92 × 5 hours + $17.34 × 5 hours)), since a manager earns $38.92 an hour and a secretary earns $17.34 an hour. Hence, there would be savings of 800 burden hours and $22,503 by deleting this provision.

The proposed rule would delete the provision in the Acrylonitrile Standard, § 1910.1045(d)(2), that requires employers to report an emergency to OSHA within 72 hours and to provide additional information in writing to the nearest OSHA Area Office if requested to do so. OSHA estimates that two emergencies will occur in each facility annually, and that a professional and a secretary each requires one hour for a total of two hours to compile and report the necessary information for each emergency. OSHA estimates 92 burden hours would be attributed to this provision because 23 facilities would report two emergencies per year and a manager and a secretary would each spend one hour to compile and report the necessary information. The cost of this provision would be $2,588, since a manager earns $38.92 per hour and a secretary earns $17.34 an hour. Savings due to deleting this requirement would be 92 burden hours, worth $2,588.

M. Semiannual Updating of Compliance Plans (§ 1910.1017(f)(3), 1910.1018(g)(2)(iv), 1910.1025(e)(3)(iv), 1910.1029(f)(6)(iv), 1910.1044(g)(2)(ii), 1910.1045(g)(2)(v) and 1926.62(e)(2)(v))

The Agency's substance-specific standards typically require employers to develop compliance plans to meet the exposure-control objectives of the standard. Most of these standards specify that employers must update these plans at least annually, and OSHA believes that annual updating is sufficient to ensure the continued effectiveness of the plans. However, several older substance-specific standards promulgated by the Agency require semiannual updating, including: Vinyl Chloride (§ 1910.1017, paragraph (f)(3)), Inorganic Arsenic (§ 1910.1018, paragraph (g)(2)(iv)); Lead (§ 1910.1025, paragraph (e)(3)(iv)); Coke Oven Emissions (§ 1910.1029(f)(6)(iv)); 1,2-dibromo-3-chloropropane (DBCP) (§ 1910.1044, paragraph (g)(2)(ii)); Acrylonitrile (§ 1910.1045, paragraph (g)(2)(v)); and Lead in Construction (§ 1926.62, paragraph (e)(2)(v)).

A review of the Preambles to OSHA's substance-specific standards found no compelling argument that updating compliance plans semiannually provides employees with more health protection than updating these plans annually. Therefore, the Agency is proposing to revise its older substance-specific standards to require annual, instead of semiannual, updating of compliance plans. OSHA believes that the proposed revisions would make this requirement consistent across its standards without diminishing employee protection. Accordingly, the proposal would eliminate a significant paperwork requirement that has no demonstrated benefit to employees. The following discussion estimates the cost savings of the proposed revisions.

The proposed rule revises the Vinyl Chloride Standard to require that employers update compliance plans at least annually, instead of semiannually. As in the ICR, the Agency estimates that semiannual updates require 480 burden hours (20 facilities, each needing eight hours from a manager and four hours from a secretary) to update the compliance plans, at a cost of $15,229. On average, a manager earns $38.92 an hour while a secretary earns $17.34 an hour. Annual updates on the other hand, would require 240 burden hours at a cost of $7,614. Thus, revising the standard to allow for annual updates of compliance plans instead of semiannual updates would result in savings of $7,614.

Modifying the Inorganic Arsenic Standard (§ 1910.1018) to require that employers update compliance plans at least annually likewise would reduce burden hours and cost. OSHA estimates there are six employers affected by this standard and that a manager and a secretary need eight hours and four hours, respectively, to update the compliance plans. With semiannual updates, the standard would require 144 burden hours at a cost of $4,569. Revising the standard to require annual compliance updates would entail 72 burden hours at a cost of $2,284, thereby resulting in savings of $2,284.

The proposed revision of the Lead Standard for General Industry (§ 1910.1025(e)(3)(iv)) would reduce the frequency for updating the compliance plan from semiannually to annually for areas with exposures over the PEL. OSHA's information on areas over the PEL in general industry is relatively old and the standard is almost 25 years old. Therefore, a substantial amount of time has gone by to achieve exposures below the PEL. Accordingly, OSHA has not assigned a cost saving for this provision at this time. Instead, OSHA requests comments on the approximate number of general industry lead facilities that still have areas over the PEL. Based on such comments and other information OSHA may be able to gather, OSHA will attempt to make a current estimate of the cost savings from this provision.

Revision of the Coke Oven Standard (§ 1910.1029, paragraph (f)(6)(iv)) would allow employers to update their compliance plans annually instead of semiannually. OSHA estimates that each of the 14 plants takes 3 hours to review and update its compliance plan semiannually for a total of 84 burden hours. OSHA estimates that a manager earning $32.92 takes two hours to update the compliance semiannually; and that a clerk earning $17.34 will take one hour semiannually to update the plans. Therefore the cost for the 14 plants to update their compliance plans semiannually is $2,665. Revising semiannual updating to annual the 14 plants would take 42 hours annually costing a total of $1,333. The burden hour savings would be 42 hours and cost saving would be $1,332.

The proposed revision of the 1,2-dibromo-3-chloropropane (DBCP) Standard (§ 1910.1044) would have no cost or burden hours to employers since no U.S. employers currently produce DBCP-based end products.

Revision of the Acrylonitrile Standard (§ 1910.1045, paragraph (g)(2)(v)) would require that employers update compliance plans annually instead of semiannually. OSHA assumes that a manager earning $38.92 an hour would devote 0.5 hour to update a compliance plan at each facility. With semiannual updating of compliance plans, employers would require 23 burden hours at a cost of $895 (23 hours × $38.92). Revision of the standard to require annual updates would lower this to 11.5 burden hours at a cost of $448 (11.5 × $38.92). Savings due to this revision would thus be $448.

The proposed revision of the Lead in Construction Standard (§ 1926.62, paragraph (e)(2)(v)) would require employers to update compliance plans annually instead of semiannually. Based on the Lead In Construction Paperwork Package, which in turn drew upon the Economic Analysis for the current rule, OSHA estimates it requires 216,344 burden hours at a cost of $8,419,313 (216,272 hours × $38.92) to update compliance plans semiannually.

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Revising the standard to require annual updates would cut the burden in half, to 108,172 hours at a cost of $4,209,657 (108,172 hours × $38.92). Thus, the savings due to changing from semiannual to annual compliance updates would be $4,209,657.

N. Notifying Employees of Their Exposure Monitoring Results (§ 1910.1017(n)(3), 1910.1018(e)(5)(i), 1910.1025(d)(8)(i), 1910.1027(d)(5)(i), 1910.1029(e)(3)(i), 1910.1043(d)(4)(i), 1910.1044(f)(5)(i), 1910.1045(e)(5)(i), 1926.62(d)(8)(i), and 1926.1127(d)(5)(i))

Many of OSHA's substance-specific standards require employers to notify employees of their exposure monitoring results. However, the standards specify several different methods for providing this notice. Accordingly, the standards state that an employer must provide such notification to employees individually in writing or by posting the results in a readily accessible location, or both. In addition, the maximum period for notifying employees of their exposure monitoring results after the employer receives them varies across the standards. These periods range from "as soon as possible" to 20 working days after receipt of the monitoring results.

A review of the Preambles to each of the above standards indicates that the final choice of notification method and maximum period for notification was a matter of convenience and feasibility; none of the Preambles provided objective evidence that the final requirements were most effective in protecting employees. In view of this finding, OSHA believes that making the requirements consistent among the standards would reduce confusion and facilitate compliance without diminishing employee protection. As a result, the Agency is proposing to revise the standards by requiring employers to provide employees with their exposure monitoring results individually in writing or by posting the employees' results in a readily accessible location. Although the posting option would reduce employers' paperwork burden to some extent, they must still maintain individual exposure monitoring records for employees under §§ 1910.1020, 1915.1020, and 1926.33, OSHA's records-access standards for general industry, shipyard employment, and construction, respectively. Thus, employees could still get subsequent access to their exposure monitoring results.

OSHA is proposing to standardize the period of time for notifying employees of their exposure monitoring results after the employer receives them across 20 pertinent standards. Currently, the notification period ranges from "as soon as possible" to 20 working days after receipt of the monitoring results. The Agency is proposing to standardize the notification period to 15 days for general industry and no later than 5 days for construction and shipyards. Making these requirements consistent will reduce confusion and facilitate compliance with the provisions. However, it will not result in any significant cost savings.

OSHA assumes that the employers will choose to post the employees' results in a readily accessible location for all the standards that give the option of providing the results individually in writing or by posting. This would generate savings in burden hours and costs.

The proposed rule would revise the Vinyl Chloride Standard (§ 1910.1017 (n)(3)) to require employers to provide employees with their exposure monitoring results individually in writing or by posting the employees' results in a readily accessible location. Based on the ICR, under the present standard for exposure above the AL, but below the PEL, 42 burden hours are required at a cost of $727 as 131 employees would be notified quarterly by a secretary earning $17.34 an hour who would spend 5 minutes per notification. For exposures above the PEL, 126 burden hours at a cost of $2,181 are required, as the same number of employees would be notified monthly by the secretary. Additional monitoring involves another 6 burden hours, at a cost of $111. Thus, the present Vinyl Chloride Standard requires a total of 174 burden hours and a cost of $3,019.

With the revised standard, for exposure above the AL but below the PEL, 3 burden hours at a cost of $55 would be incurred as a secretary of each of 20 employers would post monitoring results semiannually at a readily accessible location. For exposure above the PEL, a secretary would quarterly post monitoring results at 20 facilities in a readily accessible location, requiring 6 burden hours at a cost of $111. Additional monitoring would require 6 burden hours at a cost of $111. Thus, the revised standard would require 15 burden hours at a cost of $277. Cost savings would amount to $2,741.

The proposed rule revises the Inorganic Arsenic Standard (§ 1910.1018(e)(5)(i)) to require employers to provide employees with their exposure monitoring results individually in writing or by posting the employees' results in a readily accessible location. OSHA assumes the employers would prefer to post the employees' results in a readily accessible location.

The present Arsenic Standard requires employers to notify employees individually in writing of their exposure monitoring results. As in the Inorganic Arsenic Paperwork Package, OSHA estimates that 7,400 employees are exposed to IA, 14.1 percent or 1,043 of these are exposed above the PEL and will be monitored quarterly, 12.8 percent or 947 of these employees are exposed above the AL but below the PEL and will receive semiannual monitoring, while the employers must provide 10 percent or 740 of these employees with the results obtained to meet the additional monitoring requirement. OSHA estimates that a secretary, earning $17.34 per hour, will take 5 minutes (.08 hour) to prepare each notification. Thus, 545 burden hours estimated to cost $9,444 are attributed to the present Inorganic Arsenic Standard.

With the revised standard, employers would have to post monitoring results in a readily accessible location, which is cheaper than writing to employees individually. For estimating the burden, the assumptions would remain the same as under the present standard except employers or facilities would post monitoring results. OSHA estimates there are 42 facilities: 14.1 percent or 6 of these have employees exposed above the PEL and will be monitored quarterly; 12.8 percent or 5 of these have employees that are exposed above the AL but below the PEL and will be monitored semiannually, and an additional 10 percent or 4 facilities will be monitored yearly. Thus, the revised standard would require 3 burden hours at a cost of $51. Cost savings due to changing from writing employees individually to employers posting monitoring results in a readily accessible location would amount to $9,393.

The proposed rule revises the Lead General Industry Standard (§ 1910.1025(d)(8)(i)) to require employers to provide employees with their exposure monitoring results individually in writing or by posting the employees' results in a readily accessible location. OSHA assumes the employees would post the employees' results in a readily accessible location.

Currently, monitoring is required initially to determine if any employees are exposed to lead at or above the action level, and every six months if employees are exposed above the AL but below the PEL and quarterly if employees are exposed to lead above the PEL. OSHA assumes zero burden hours for quarterly monitoring based on the assumption in the paperwork burden analysis that no industry sectors have working conditions in which employees are being exposed above the PEL. The Agency has estimated that about 11,508 employees would receive initial monitoring and 377,859 employees may be exposed to lead at levels between the AL and the PEL, which would require periodic monitoring at six-month intervals. OSHA estimates that a secretary earning $17.34 an hour will require five minutes (.08 hour) to prepare each of 767,226 employee notifications (11,508 initial notifications and 377,859 employees × 2 semiannual notifications).

Developing 767,226 employees monitoring results to comply with the present Lead Standard will take 61,378 burden hours, at a total cost of $1,064,296.

Under the revised standard 9,997 burden hours, at a cost of $173,001, would be required for employee notification (secretaries at each of the 62,357 employers, spending five minutes each, at $17.34 per hour, to post initial and semiannual monitoring results). Cost savings would amount to $891,293.

The proposed rule would revise the Cadmium General Industry Standard (§ 1910.1027(d)(5)(i)) to require employers to provide employees with their exposure monitoring results individually in writing or by posting the employees' results in a readily accessible location. As posting the monitoring results is cheaper than individually writing employees, OSHA assumes the employers would prefer to post the monitoring results.

The present standard requires employers to notify employees individually in writing and to post in a centralized location their exposure monitoring results. As in the Cadmium General Industry Paperwork Package, the Agency estimates that 71,306 employees may need periodic monitoring when exposed to cadmium above the AL. OSHA estimates that a secretary, earning $17.34 per hour, will take 5 minutes (.08 hour) semiannually to individually inform the employees in writing of exposure monitoring results and to also post a copy of the results in a centralized location. Included in this five minutes is the time to maintain the record as required in paragraph (n)(1). The Agency also estimates that the 143 additional samples will occur in 143 plants. Thus, 11,420 burden hours would be required at a cost of $198,030 as 71,306 employees are notified individually in writing and 143 plants post notices of the employees' exposure monitoring results in centralized locations.

Under the revised standard, 8,517 burden hours at a cost of $147,685 would be required (secretaries at each of the 53,161 employers, and for posting 143 additional samples spending five minutes, at $17.34 per hour, to post monitoring results). Cost savings due to changing from individually writing employees and posting notices in centralized location to employers posting notices in a readily accessible location would amount to $50,341.

The proposed rule would revise the Coke Oven Emissions Standard (§ 1910.1029 (e)(3)(i)) to require employers to provide employees with their monitoring results individually in writing or by posting the employees' results in a readily accessible location. OSHA assumes the employees would prefer to post the employees' results in a readily accessible location.

The present standard requires employers to notify employees individually in writing to their exposure monitoring results. As in the ICR, the Agency estimates that 4,600 employees receive exposure measurements (i.e., are "covered employees" because they work in regulated areas). These measurements include 184,400 quarterly measurements (4,600 employees × 4 measurements) and 230 resamplings (5% of 4,600 employees), for a total of 18,630 samples. The agency also assumes that a secretary, at a wage rate of $17,34 per hour, will take 5 minutes (.08 hour) to notify each employee of his or her sampling results. Thus, 1,490 burden hours would be required at a cost of $25,844 at 4,830 employees would be notified individually in writing of their exposure monitoring results.

With the revised standard, 5 burden hours at a cost of $79 would be attributed to secretaries at each of the 14 employers who earn $17.34 per hour and would spend five minutes each to post monitoring results at a readily accessible location. Cost savings would amount to $25,765.

The proposed rule revises the Cotton Dust Standard (§ 1910.1043(d)(4)(i)) to require employers to provide employees with their exposure monitoring results individually in writing or by posting the employees' results in a readily accessible location. OSHA assumes the employers would prefer to post the employees' results in a readily accessible location.

OSHA estimated the numbers of exposed employees and the number of facilities in the industry by utilizing data from Employment and Earnings and County Business Patterns. The Agency estimates that 49,628 employees would be notified in writing of their exposure monitoring results. OSHA estimates that a secretary, earing $17.34 per hour, will take 5 minutes (.08 hour) to prepare each notification. Thus, 3,970 burden hours are required at a cost of $68,844 as 53,938 employees are notified individually in writing of their exposure monitoring results.

Under the revision, 43 burden hours at a cost of $742 would be required (a secretary at each of the 535 plants, earning $17.34 per hour, would spend five minutes (.08 hour) to post monitoring results. Cost savings would amount to $68,102.

The proposed rule would revise the 1,2-Dibro-3-Chloropropane (§ 1910.1044(f)(5)(i)) to require employers to provide employees with their exposure monitoring results individually in writing or by posting the employees' results in a readily accessible location. No cost or burden hours accrue to employers under this standard since OSHA has determined that no U.S. employers currently produce DBCP or DBCP-based end-use products.

The proposed rule would revise the Acrylonitrile Standard (§ 1910.1045(e)(5)(i)) to require employers to provide employees with their exposure monitoring results individually in writing or by posting the employees' results in a readily accessible location. OSHA assumes the employers would prefer to post the employees' results in a readily accessible location.

The Agency estimates that under the present standard 923 employees must be informed of sampling results in writing. OSHA estimates that a secretary, earning $17.34 per hour, will take 5 minutes (.08 hour) to prepare each notification. Thus, 485 burden hours are required at a cost of $8,415.

Under the revision, 9 burden hours at a cost of $160 would be attributed to secretaries at each of the 23 plants, earning $17.34 per hour, spending five minutes (.08 hour) each to post quarterly monitoring results and one additional monitoring result. Cost savings would amount to $8,255.

The proposed rule would revise the Lead in Construction Standard (§ 1926.62(d)(8)(i)) to require employers to provide employees with their exposure monitoring results individually in writing or by posting the employees' results in a readily accessible location. OSHA assumes the employers would prefer to post the employees' results in a readily accessible location.

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As in the Lead in Construction Paperwork Package, the Agency estimates that under the present standard, 177,194 employees are notified two times a year in writing of their exposure monitoring results. OSHA estimates that a secretary, earning $17.34 per hour, will take 6 minutes (.10 hour) to prepare each notification. Thus, 38,678 burden hours are required at a cost of $670,671.

The revised standard would require that employers post monitoring results at readily accessible locations at each facility. Thus, 10,185 burden hours at a cost of $176,608 would be required in Lead in Construction as secretaries of each of 147,073 firms, earning $17.34 per hour, would spend six minutes (.10 hour) to post monitoring results two times a year. Cost savings would amount to $494,063.

The proposed rule revises the Cadmium in Construction Standard (§ 1926.1127(d)(5)(i)) to require employers to provide employees with their exposure monitoring results individually in writing or by posting the employees' results in a readily accessible location. OSHA assumes the employers would prefer to post the employees' results in a readily accessible location.

The Agency estimates that under the present standard 7,500 employees need monitoring when exposed to cadmium above the AL. OSHA estimates that a secretary, earning $17.34 per hour, will take 5 minutes (.08 hour) to individually inform the employees in writing of exposure monitoring results and to also post a copy of the results in a centralized location. The Agency assumes that the time associated with posting a copy of the result is minimal after already completing the individual notification; thus no additional time is assumed. Included in this five minutes is the time to maintain the record as required in paragraph (n)(1). The present standard requires 1,720 burden hours at a cost of $32,044.

With the revised standard, 280 burden hours at a cost of $4,855 would be required (secretaries at 1000 employers, earning $17.34 per hour, would spend 5 minutes each to post monitoring results. The revision would result in cost savings of $27,189.

V. Costs, Economic Feasibility, and Technological Feasibility

The analysis described above indicates that the cost savings associated with this rule are $6.7 million per year. Since this is far less than $100 million, the proposed rule will not be economically significant under Executive Order 12866. The proposed rule is technologically feasible because it always involves reducing requirements on employers. Because this rule provides only cost savings, and no costs to affected employers, it is economically feasible.

VI. Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (as amended), OSHA examined the regulatory requirements of the proposed rule to determine if they would have a significant economic impact on a substantial number of small entities. As indicated in section IV ("Economic Analysis") of this preamble, the proposed rule is expected to reduce compliance costs and regulatory burden for all employers, large and small. The reduction in compliance costs is under $100 million. Accordingly, the Agency certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities.

VII. Environmental Impact Assessment

OSHA has reviewed the proposed rule in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*), the regulations of the Council on Environmental Quality (40 U.S.C. part 1500), and the Department of Labor's NEPA procedures (29 CFR part 11). The Agency finds that the revisions included in the proposal do not directly involve the control of hazardous materials. Therefore, the proposed rule would have no additional impact on the environment, including no impact on the release of materials that contaminate natural resources or the environment, beyond the impact imposed by the existing requirements these proposed revisions would amend.

VIII. OMB Review Under the Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3507(d), and 5 CFR 1320.11) requires Federal agencies to submit collections of information (i.e., on provisions requiring paperwork) contained in proposed rules to the Office of Management and Budget (OMB) for review. PRA–95 defines a "collection of information" to mean, "[O]btaining, causing to be obtained, soliciting, or requiring the disclosure to third parties or the public, of facts or opinions by or for an agency regardless of form or format." (44 U.S.C. 3502(3)(A)). The paperwork burden-hour estimate and cost analysis that an agency submits to OMB is termed an "Information Collection Request" (ICR).

The proposed revisions that reduce paperwork burden hours and/or costs are contained in the following 12 ICRs currently approved by OMB, (OMB approval numbers are in parenthesis): asbestos in construction (1218–0134); asbestos in shipyards (1218–0195); 13 carcinogens (1218–0085); vinyl chloride (1218–0010); inorganic arsenic (1218–0104); lead in general industry (1218–0092); lead in construction (1218–0189); cadmium in general industry (1218–0185); cadmium in construction (1218–0186); coke over emissions (1218–0128); cotton dust (1218–0061); and acrylonitrile (1218–0126).

For six ICRs, the proposed revisions do not affect burden hours or costs. The six ICRs are: Temporary Labor Camps (1218–0096); 1,2-dibromo-3-chloropropane (1218–0101); 1,3-Butadiene (1218–0170); Asbestos in General Industry (1218–0133); Formaldehyde (1218–0145); Methylenedianline in construction (1218–0183).

This proposal will result in a 207,892 burden hour reduction, from 357,749 hours to 149,857 hours. The paperwork burden hour reduction estimates may differ from the Preliminary Economic Analysis as a result of rounding.

As required by 5 CFR 1320.5(a)(1)(iv) and 1320.8(d)(2), the Agency is providing the following information for the ICRs having reductions in burden hours and costs resulting from the proposed revisions: Title and section number of the standard covered by the ICR; OMB control number; a brief description of the proposed collection-of-information revisions, including changes in frequency; total number of respondents being impacted by the revision; and an estimate of the reduced annual reporting (hour) and cost burdens for the information-collection requirements in the standard.[11] The costs below account for only capital, maintenance, and purchasing revision. Hourly wage rate savings are fully discussed in the preliminary economic analysis section of this proposal.

The Agency has a particular interest in comments on the following issues regarding the proposed revisions to the paperwork requirements:

- The extent to which the proposed revisions to the information-collection requirements are necessary for the proper performance of the Agency's functions, including the usefulness of the information;

[11] In determining these reporting and cost burdens, the Agency considers, as appropriate, the time for reviewing instructions, gathering and maintaining the required data, and completing and reviewing the collection of information.

- The accuracy of the Agency's estimate of the burden (time and costs) of the proposed revisions, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information-collection and -transmission techniques.

Accordingly, OSHA is proposing to revise the following ICRs in the manner described:

Title: Temporary labor camps (§ 1910.142).

OMB control number: 1218–0096.

Proposed revision: Delete the requirement for camp superintendents to sue a telegram or telephone when notifying local health authorities of the outbreak of specific illnesses and medical conditions among employees (§ 1910.142 (1)(2)).

Number of respondents: 838.

Burden hours and costs (operation and maintenance): The proposed revision does to affect burden hours or costs.

Title: Asbestos in General Industry (§ 1910.1001).

OMB control number: 1218–0133.

Proposed revisions: Remove the requirement that the physician sign the physician's written opinion (§ 1910.1001(l)(7)(i)).

Number of respondents: 233.

Burden hours and costs (operation and maintenance): The proposed revision does not affect burden hours or costs.

Title: 13 carcinogens (§ 1910.1003).

OMB control number: 1218–0085.

Proposed revisions: Remove the requirements that employers notify OSHA area directors of regulated areas (§ 1910.1003(f)(1)) and the incidental release of a specified carcinogen (§ 1910.1003(f)(2)).

Number of respondents: 97.

Burden hours and costs (operation and maintenance): Removing these two provisions result in a burden hour reduction of 1,164 hours. There are no operation and maintenance costs associated with these revisions.

Title: Vinyl chloride (§ 1910.1017).

OMB control number: 1218–0010.

Proposed revisions: Lower the frequency of employee exposure monitoring from monthly to quarterly (§ 1910.1017(d)(2)(i)), and from quarterly to semiannually (§ 1910.1017(d)(2)(ii)); reduce the frequency of updating compliance plans from semiannually to annually (§ 1910.1017(f)(3)); reduce the administration of medical examinations from semiannually to annually (§ 1910.1017(k)(2)(i)) (The reduction in the number of medical examinations results in fewer instances that employers must provide a copy of a physician's statement to the employee (§ 1910.1017(k)(4)) and fewer medical records (§ 1910.1017(m)(iii)); remove the requirement that employers notify OSHA of regulated areas (§ 1910.1017(n)(1)) and of emergencies (§ 1910.1017(n)(2)); and allow employers to post employee exposure monitoring results instead of individually informing each employee and extend the time for employers to provide exposure-monitoring results to employees from 10 working days to 15 working days (§ 1910.1017(n)(3)).

Number of respondents: 80.

Burden hours and costs (operation and maintenance): These proposed revisions result in a reduction of 1,938 burden hours. Less frequent exposure monitoring results in a cost savings of $120,520. The reduction in the number of medical examinations results in a cost savings of $133,790.

Title: Inorganic arsenic (§ 1910.1018).

OMB control number: 1218–0104.

Proposed revisions: Remove the requirement that employers notify OSHA of regulated areas (§ 1910.1018(d)(1)); allow employers to post employee exposure monitoring results instead of individually informing each employee and extend the time for employers to provide exposure-monitoring results to employees from 5 working days to 15 working days (§ 1910.1018(e)(5)(i)); reduce the frequency of updating compliance plans from semiannually to annually (§ 1910.1018(g)(2)(iv)); reduce the administration of medical examinations from semiannually to annually (§ 1910.1018(n)(3)(ii)). (The reduction in the number of medical examinations results in fewer instances that employers must provide information to the physician (§ 1910.1018(n)(5)) and fewer instances that employers must provide a copy of the physician's written opinion to the employee (§ 1910.1018(n)(6)). Also fewer medical records (§ 1910.1018(q)(2)) will be maintained.)

Number of respondents: 42.

Burden hours and costs (operation and maintenance): These proposed revisions result in a reduction of 2,517 burden hours. The reduction in the number of medical examinations results in a cost savings of $124,375.

Title: Lead in general industry (§ 1910.1025).

OMB control number: 1218–0092.

Proposed revisions: Allow employers to post employee exposure monitoring results instead of individually informing each employee and extend the time for employers to provide exposure-monitoring results to employees from 5 working days to 15 working days (§ 1910.1025(d)(8)(i)); reduce the frequency of up-dating compliance plans from semi-annually to annually (§ 1910.1025(e)(3)(iv)).

Number of respondents: 61,535.

Burden hours and costs (operation and maintenance): These proposed revisions result in a reduction of 51,401 burden hours. There are no operation and maintenance costs associated with these revisions.

Title: Cadmium in general industry (§ 1910.1027).

OMB control number: 1218–0185.

Proposed revisions: Remove the requirement that the physician's written opinion be signed (§ 1910.1027(l)(10)(i)); allow employers to either post or individually inform employees of their exposure monitoring results (§ 1910.1027(d)(5)(i)). (The current exposure monitoring notification requirement requires employers to both post and individually inform employees of their exposure monitoring results.)

Number of respondents: 53,161.

Burden hours and costs (operation and maintenance): Allowing employers to notify employees by posting employee monitoring results reduces the burden by 2,902 burden hours. There are no operation and maintenance costs associated with these revisions.

Title: Coke oven emissions (§ 1910.1029).

OMB control number: 1218–0128.

Proposed revisions: Allow employers to post employee exposure monitoring results instead of individually informing each employee and extend the time for employers to provide exposure-monitoring results to employees from 5 working days to 15 working days (§ 1910.1029(e)(3)(i)); remove the requirement for semi-annual medical examinations, except for urinary cytology examinations, for employees 45 years of age or older, or for employees with five or more years employment in a regulated area (§ 1910.1029(j)(3)(i)); reduce the frequency from semiannual to annual review of the employers compliance plan.

Number of respondents: 14.

Burden hours and costs (operation and maintenance): These proposed revisions result in a reduction of 4,425 burden hours. the reduction in the number of medical examinations results in a cost savings of $502,320.

Title: Cotton dust (§ 1910.1043).

OMB control number: 1218–0061.

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Proposed revisions: Allow employers to post employee exposure monitoring results instead of individually informing each employee and reduce the time for employers to provide exposure-monitoring results to employees from 20 working days to 15 working days (§ 1910.1043(d)(4)(i)).

Number of respondents: 535.

Burden hours and costs (operation and maintenance): The proposed revision results in a reduction of 3,927 burden hours. There are no operation and maintenance costs associated with these revisions.

Title: 1,2-Dibromo-3-chlolropropane (DBCP) (§ 1910.1044).

OMB control number: 1218–0101

Proposed Revisions: Remove the provision requiring employers to notify OSHA when DBCP is introduced into the workplace (§ 1910.1044 (d)(4)); modify monthly exposure monitoring to quarterly when DBCP exposure is above the PEL and quarterly exposure monitoring to semi-annual when exposures are below the PEL (§ 1910.1044 (f)(3(ii)); extend the time for employers to provide exposure-monitoring results to employees from 5 working days to 15 working days and allow employers to inform employees of their exposure monitoring results by posting instead of individually informing employees (§ 1910.1044 (f)(5)(i)) and reduce the frequency of updating compliance plans from semi-annually to at least annually (§ 1910.1044 (g)(2)(il)).

Number of respondents: 0.

Burden hours and costs (operation and maintenance): There are no establishments that are currently using DBCP; therefore, there are no reductions in burden hours and costs on the public.

Title: Acrylonitrile (AN) (§ 1910.1045).

OMB control number: 1218–0126.

Proposed revisions: Remove the reporting provisions requiring employers to notify OSHA when a regulated area is established (§ 1910.1045 (d)(1)) and report to the OSHA Area Office within 72 hours the occurrence of an emergency (§ 1910.1045 (d)(2)); lower the frequency of employee exposure monitoring from monthly/quarterly/semiannually (§ 1910.1045 (e)(3)(ii) and (e)(3)(iii); extend the time for employers to provide exposure-monitoring results to employees from 5 working days to 15 days and permit employers to post employee exposure monitoring results (§ 1910.1045 (e)(5)); and, reduce the frequency of updating compliance plans from semiannually to annually (§ 1910.1045(g)(2)).

Number of respondents: 23.

Burden hours and cost (operation and maintenance): These proposed revisions result in a reduction of 1,511 burden hours. There are no operation and maintenance costs associated with these revisions.

Title: 1,3 Butadiene (§ 1910.1045).

OMB control number: 1218–0170.

Proposed revisions: Extend the time for employers to provide exposure-monitoring results to employees from 5 working days to 15 working days (§ 1910.1051 (d)(7)(ii).

Number of respondents: 255.

Burden hours and cost (operation and maintenance): The proposed revision does not affect burden hours or costs.

Title: Asbestos in shipyards(§ 1910.1001).

OMB control number: 1218–0195.

Proposed revisions: Extend the maximum time for employers to provide exposure-monitoring results to employees from as soon as possible to 5 working days (§ 1915.1001 (f)(5)(i)); remove the requirement that employers submit their alternative control methods to OSHA (§ 1915.1001(g)(6)(iii)).

Number of respondents: 7

Burden hours and cost (operation and maintenance): These proposed revisions result in a reduction of burden hour. There are no operation and maintnace costs associated with these revisions.

Title: MDA in Construction (§ 1926.60).

OMB control number: 1218–0183.

Proposed Revisions: Reduce the time for employers must provide exposure-monitoring results to employers from 15 working days to 5 working days (§ 1926.60(f)(7)).

Number of respondents: 66.

burden hours and cost (operation and maintenance): The proposed revision does not affect burden hours or costs.

Title: Lead in construction (§ 1926.62).

OMB control number: 1218–0189.

Proposed revisions: Allow employers to post employee exposure monitoring results instead of individually informing each employee (§ 1926.62 (d)(8)(i)); reduce the frequency of updating compliance plans from semi-annually to annually (§ 1926.62 (e)(2)(v)).

Number of respondents: 147,073.

Burden hours and cost (operation and maintenance): These proposed revisions result in a reduction of 136,665 burden hours. These are no operations and maintenance cost associated with these revisions.

Title: Asbestos in construction (§ 1926.1101).

OMB control number: 1218–0134.

Proposed revisions: Increase the maximum time for employers to provide exposure-monitoring results to employees from as soon as possible to 5 working days (§ 1926.1101 (f)(5)(i)) and remove the requirement that employers submit their alternative control methods to OSHA (§ 1926.1101 (g)(6)(iii)).

Number of respondents: 7.

Burden hours and cost (operation and maintenance): These proposed revisions result in a reduction of 1 burden hour. There are no operation and maintenance costs associated with these revisions.

Title: Cadmium in construction (§ 1926.1127).

OMB control number: 1218–0186.

Proposed revisions: Allow employers to either post or individually inform employees of their exposure monitoring results (§ 1926.1127 (d)(5)(i)). The current exposure monitoring notification requirement requires employers to both post and individually inform employees of their exposure monitoring results. Remove the requirement that the physician's written opinion be signed (§ 1926.1127 (l)(10)(i)).

Number of respondents: 1,000.

Burden hours and cost (operation and maintenance): These proposed revisions result in a reduction of 1,440 burden hours. These are no operation and maintenance costs associated with these revisions.

The Agency has submitted a copy of the above ICRs to OMB for their review and approval. Members of the public who wish to provide comments on these proposed revisions must submit comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street, NW., Washington, DC 20530 (Attention: OSHA Desk Officer).

The Agency will summarize the comments submitted by the public in response to this notice and will include the summaries in its request to OMB for approval for the revisions to the 17 final information collection requests that result from this proposal. These comments will also become part of the record, and will be available for public inspection and copying in the OSHA Docket Office.

Copies of the individual ICR's detailing the revisions are available for inspection and copying in the OSHA or OMB docket offices. Members of the public may also receive a copy of one, or all of the ICRs, through the mail by contacting Mr. Todd Owen at (202) 639–2444, or electronically via OSHA's Web site on the Internet at *http://www.osha.gov/*.

IX. Unfunded Mandates

OSHA has reviewed the proposed rule in accordance with the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1501 *et seq.*, and Executive Order 12875. As discussed above in section III ("Legal Considerations") of this preamble, OSHA has preliminarily determined that the proposed rule is likely to reduce the regulatory burdens imposed on public and private employers by the existing requirements these proposed revisions would amend. The proposal would not expand existing regulatory requirements or increase the number of employers who are covered by the existing rules. Consequently, compliance with the proposed rule would require no additional expenditures by either public or private employers. In sum, the proposed rule does not mandate that state, local, and tribal governments adopt new, unfunded regulatory obligations.

X. Federalism

The Agency has reviewed the proposed rule in accordance with the Executive Order on Federalism (Executive Order 13132, 64 FR 43255, August 10, 1999), which requires that Federal agencies, to the extent possible, refrain from limiting state policy options, consult with states before taking actions that restrict state policy options, and take such actions only when clear constitutional authority exists and the problem is of national scope. The Executive Order provides for preemption of state law only when Congress expresses an intent that a Federal agency do so. The Federal agency must limit any such preemption to the extent possible.

With respect to states that do not have occupational safety and health plans approved by OSHA under section 18 of the Occupational Safety and Health Act of 1970 (the "Act") (29 U.S.C. 667), the Agency finds that the proposed rule conforms to the preemption provisions of the Act. These provisions authorize OSHA to preempt state promulgation and enforcement of requirements dealing with occupational safety and health issues covered by Agency standards, unless the state has a state occupational safety and health plan approved by the Agency. (See *Gade* v. *National Solid Wastes Management Association*, 112 S.Ct. 2374 (1992).) The provisions of 29 U.S.C. 667 prohibit states without such programs from issuing citations for violations of requirements covered by Agency standards. The proposed rule would not expand this limitation.

Regarding states that have OSHA-approved occupational safety and health plans ("State-plan states"), the Agency finds that the proposed rule complies with Executive Order 13132 because the proposal addresses a problem (i.e., health hazards) that is national in scope. After OSHA adopts final revisions based on this proposal, section 18(c)(2) of the Act (29 U.S.C. 667(c)(2)) would not preempt any alternative revisions made by State-plan states if these revisions are at least as affective as the final revisions developed by the Agency from this proposal.

OSHA invites the states to submit comments and information regarding the proposed revisions. In addition to addressing the impact of the proposal on employee protection and employer burden, the Agency requests the states, especially State-plan states, to identify any enforcement issues they believe may result of OSHA adopts the proposed revisions.

XI. State-Plan States

The 24 states and two territories with their own federally-approved occupational safety and health plans must develop revisions that are at least as effective as the final revisions adopted by the Agency from this proposal within six months after OSHA publishes the final rule. These states and territories are: Alaska, Arizona, California, Connecticut (State and local government employees only), Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Jersey (State and local government employees only), New Mexico, New York (State and local government employees only), North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Virgin Islands, Washington, and Wyoming.

XII. Public Participation

The Agency requests members of the public to submit written comments and other information concerning this proposal. These comments may include comments and data that endorse or support or object to the proposed revisions set forth in this notice. OSHA welcomes such comments and information so that the record of this rulemaking will represent a full public response on the issues involved. See the sections above titled **DATE** and **ADDRESSES** for information on sending these submissions to the Agency. Submissions received within the specified comment period will become part of the record, and will be available for public inspection and copying in the OSHA Docket Office.

Under section 6(b)(3) of the OSHA Act and 29 CFR 1911.11, members of the public may request an informal hearing by filing a request as specified above under the section titled **ADDRESSES.** However, section 6(b)(7) of the Occupational Safety and Health Act ("the Act") in conjunction with the Administrative Procedures Act does not require the Agency to hold a public hearing on proposed revisions involving medical-surveillance or exposure monitoring requirements. Requests for hearings must include the objections to the proposal that warrant a hearing. The party making objections that are part of a hearing request must:

- Include their name and address;
- Ensure that the request has a postmark date no later than December 30, 2002;
- Separately number each objection;
- Specify with particularity the grounds for each objection; and

Include a detailed summary of the evidence supporting each objection that they plan to offer at the requested hearing.

Interested parties may file objections with their comments and they will be fully considered by the Agency. Formal objections pursuant to the preceding paragraph are only required if a party is requesting a hearing.

Submit three copies of written comments to the Docket Office, Docket No. S–778–A, Room N–2625, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 (telephone: (202) 693–2350). Commenters may transmit written comments of 10 pages or less by fax to the Docket Office at (202) 693–1648.

You may submit comments electronically through OSHA's Homepage at *http://www.osha.gov*. Please note that you may not attach materials such as studies or journal articles to your electronic comments. If you wish to include such materials, you must submit three copies to the OSHA Docket Office at the address listed above. When submitting such materials to the OSHA Docket Office, you must clearly identify your electronic comments by name, date, and subject, so that we can attach the materials to your electronic comments.

Send requests for a hearing to Ms. Veneta Chatmon, Office of Information and Consumer Affairs, Room N–3647, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 (telephone: (202) 693–1999). Submit comments on the reduction of paperwork burden described in section VII of this notice to the Office of Information and Regulatory Affairs, Office of Management and Budget, New

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Executive Office Building, Room 10235, 725 17th Street, NW., Washington, DC 20530 (Attention: OSHA Desk Officer).

XIII. Authority

John L. Henshaw, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, directed the preparation of this document.

Signed at Washington, DC, on October 15, 2002.

John L. Henshaw,

Assistant Secretary of Labor.

List of Subjects

29 CFR Part 1910

Hazardous substances; Occupational safety and health; Reporting and recordkeeping requirements.

29 CFR Part 1915

Hazardous substances; Shipyard employment; Occupational safety and health; Reporting and recordkeeping requirements; Vessels.

29 CFR Part 1926

Construction industry; Hazardous substances; Occupational safety and health; Reporting and recordkeeping requirements.

In accordance with sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, and 657)), section 41 of the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941), section 107 of the Contract Work and Safety Standards Act (40 U.S.C. 333), section 4 of the Administrative Procedures Act (5 U.S.C. 553) and Secretary of Labor's Order No. 3–2000 (65 FR 50017), the Agency proposes to amend 29 CFR parts 1910, 1915, and 1926 as follows:

PART 1910—OCCUPATIONAL SAFETY AND HEALTH STANDARDS

Subpart J—General Environmental Controls

1. The authority citation for subpart J is revised to read as follows:

Authority: Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970, 29 U.S.C. 653, 655, and 657; Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), or 3–2000 (65 FR 50017), as applicable.

Sections 1910.141, 1910.142, 1910.145, 1910.146, and 1910.147 also issued under 29 CFR part 1911.

§ 1910.142 [Amended]

2. In § 1910.142, remove the words "by telegram or telephone" at the end of paragraph (l)(2).

Subpart K—Medical and First Aid

3. The authority citation for subpart K is revised to read as follows:

Authority: Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970, 29 U.S.C. 653, 655, and 657; Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), or 3–2000 (65 FR 50017), as applicable, and 29 CFR part 1911.

Sections 1910.141, 1910.142, 1910.145, 1910.146, and 1910.147 also issued under 29 CFR part 1911.

4. In the first paragraph of Appendix A to § 1910.151, remove the words "American National Standard (ANSI) Z308.1–1978, "Minimum Requirements for Industrial Unit-Type First-aid Kits" and add, in their place, "American National Standard (ANSI) Z308.1–1998 "Minimum Requirements for Workplace First-aid Kits."

Subpart R—Special Industries

5. The authority citation for subpart R is revised to read as follows:

Authority: Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970, 29 U.S.C. 653, 655, and 657; Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), or 3–2000 (65 FR 50017), as applicable, and 29 CFR part 1911.

§ 1910.268 [Amended]

6. In § 1910.268, revise paragraph (b)(3) to read as follows:

§ 1910.268 Telecommunications.

* * * * *

(b) * * *

(3) Employers must provide employees with readily accessible, and appropriate first aid supplies. A nonmandatory example of appropriate supplies is listed in appendix A to 29 CFR 1910.151.

* * * * *

Subpart Z—Toxic and Hazardous Substances

7. The authority citation for subpart Z is revised to read as follows:

Authority: Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, and 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), I–90 (55 FR 9033), 6–96 (62 FR 111), and 3–2000 (65 FR 50017), as applicable, and 29 CFR part 1911.

All of subpart Z issued under section 6(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653), except those substances that have exposure limits in Tables Z–1, Z–2, and Z–3, of 29 CFR1910.1000. Section 1910.1000 also issued under section (6)(a) of the Act (29 U.S.C. 655(a)).

Section 1910.1000, Tables Z–1, Z–2, and Z–3 also issued under 5 U.S.C. 553, but not under 29 CFR part 1911, except for the inorganic arsenic, benzene, and cotton dust listings.

Section 1910.1000 also issued under section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333) and 5 U.S.C. 553.

Section 1910.1002 also issued under 5 U.S.C. 553, but not under 29 U.S.C. 655 and 29 CFR part 1911.

Sections 1910.1018, 1910.1029, and 1910.1200 also issued under 29 U.S.C. 653.

8. in § 1910.1001, revise paragraph (d)(7)(i) to read as set forth below and remove the word "signed" from the first sentence of the introductory text of paragraph (1)(7)(i).

§ 1910.1001 Asbestos.

* * * * *

(d) * * *

(7) Employee notification of monitoring results. (i) The employer must, within 15 working days after the receipt of the results of any monitoring performed under this section, notify each affected employee of these results either individually in writing or by posting the results in an appropriate location that is accessible to affected employees.

* * * * *

§ 1910.1003 [Amended]

9–10. Section 1910.1003 is amended by removing and reserving paragraph (f).

11. Section 1910.1017 is amended by:

a. Revising paragraphs (d)(2)(i), (d)(2)(ii), the last sentence of paragraph (f)(3) and paragraph (k)(2);

b. Removing and reserving paragraph (k)(6);

c. Redesignating paragraph (k)(7) as (k)(6); and

d. Removing paragraphs (n)(1) and (n)(2) and redesignating paragraph (n)(3) as new paragraph (n) and revising it.

The revisions read as follows:

§ 1910.1017 Vinyl chloride.

* * * * *

(d) * * *

(2) * * * (i) Must be repeated at least quarterly for any employee exposed, without regard to the use of respirators, in excess of the permissible exposure limit.

(ii) Must be repeated not less than every 6 months for any employee exposed without regard to the use of respirators, at or above the action level.

* * * * *

(f) * * *

(3) * * * Such plans must be updated at least annually.

* * * * *

(k) * * *

(2) Examinations must be provided in accordance with this paragraph at least annually.

* * * * *

(n) *Employee notification of monitoring results.* The employer must, within 15 working days after the receipt of the results of any monitoring performed under this section, notify each affected employee of these results and the steps being taken to reduce exposures within the permissible exposure limit either individually in writing or by posting the results in an appropriate location that is accessible to affected employees.

* * * * *

12. Section 1910.1018 is amended by:

a. Removing and reserving paragraph (d)

b. Revising paragraphs (e)(5)(i), (g)(2)(iv), (n)(2)(ii)(A), (n)(3)(i);

c. Removing paragraph (n)(3)(ii) and redesignating paragraph (n)(3)(iii) as new (n)(3)(ii); and

d. Removing in appendix C section I, second paragraph, item (2), the words "and an International Labor Office UICC/Cincinnati (ILO U/C rating".

The revisions read as follows:

§ 1910.1018 Inorganic arsenic.

* * * * *

(e) * * *

(5) * * * (i) The employer must, within 15 workin gdays after the receipt of the results of any monitoring performed under this section, notify each affected employee of these results either individually in writing or by posting the results in an appropriate location that is accessible to affected employees.

* * * * *

(g) * * *

(3) * * *

(iv) The plans required by this paragraph must be revised and updated at least annually to reflect the current status of the program.

* * * * *

(n) * * *

(3) * * *

(ii) * * *

(A) A standard posterior-Anterior chest x-ray;

* * * * *

(n) * * *

(e) * * * (i) Examinations must be provided in accordance with this paragraph at least annually.

* * * * *

§ 1910.1025 [Amended]

13. In § 1910.1025, revise paragraphs (d)(8)(i) and (e)(3)(iv) to read as follows:

§ 1910.1025 Lead.

* * * * *

(d) * * *

(8) * * *

(i) The employer must, within 15 working days after the receipt of the results of any monitoring performed under this section, notify each affected employee of these results either individually in writing or by posting the results in an appropriate location that is accessible to affected employees.

* * * * *

(e) * * *

(3) * * *

(iv) Written programs must be revised and updated at least annually to reflect the current status of the program.

* * * * *

14. In § 1910.1027 remove the word "signed" from the first sentence of the introductory text of paragraph (l)(10)(i) and revise paragraph (d)(5)(i) to read as follows:

§ 1910.1027 Cadmium.

* * * * *

(d) * * *

(5) * * * (i) The employer must, within 15 working days after the receipt of the results of any monitoring performed under this section, notify each affected employee of these results either individually in writing or by posting the results in an appropriate location that is accessible to employees.

* * * * *

§ 1910.1028 [Amended]

15–16. In § 1910.1028 revise paragraph (e)(7)(i) to read as follows:

§ 1910.1028 Benzene.

* * * * *

(e) * * *

(7) * * * (i) The employer must, within 15 working days after the receipt of the results of any monitoring performed under this section, notify each affected employee of these results either individually in writing or by posting the results in an appropriate location that is accessible to employees.

17. Section § 1910.1029 is amended by:

a. Revising paragraphs (e)(3)(i), (f)(6)(iv), (j)(2)(ii), (j)(3)(ii) and (j)(3)(iii);

b. Removing paragraph (j)(3)(iv);

c. Redesignating paragraph (j)(3)(v) as (j)(3)(iv); and

d. Removing the words "and a ILO/UC rating to assure some standardization of x-ray reading" from the third sentence of Appendix B.II. A.

The revisions read as follows:

§ 1910.1029 Coke oven emissions.

* * * * *

(e) * * *

(3) * * * (i) The employer must, within 15 working days after the receipt of the results of any monitoring performed under this section, notify each affected employee of these results either individually in writing or by posting the results in an appropriate location that is accessible to employees.

* * * * *

(f) * * *

(6) * * *

(iv) Written plans for such programs shall be submitted, upon request, to the Secretary and the Director, and shall be available at the worksite for examination and copying by the Secretary, the Director, and the authorized employee representative. The plans required under paragraph (f)(6) of this section shall be revised and updated at least annually to reflect the current status of the program.

* * * * *

(j) * * *

(2) * * *

(ii) A standard posterior-anterior chest x-ray;

* * * * *

(3) * * *

(ii) The employer must provide the examinations specified in paragraphs (j)(2)(i) through (j)(2)(vi) of this section at least annually and provide the examination specified in paragraph (j)(2)(vii) at least semi-annually for employees 45 years of age or older or with five (5) or more years employment in the regulated area.

(iii) Whenever an employee who is 45 years of age or older or with five (5) or more years employment in a regulated area transfers or is transferred from employment in a regulated area, the employer must continue to provide the examinations specified in paragraphs (j)(2)(i) through (j)(2)(vii) of this section at the frequencies specified in paragraph (j)(3)(ii) as long as that employee is employed by the same employer or a successor employer.

* * * * *

18–19. In § 1910.1043, revise paragraph (d)(4)(i) to read as follows:

§ 1910.1043 Cotton dust.

* * * * *

(d) * * *

(4) * * * (i) The employer must, within 15 working days after the receipt of the results of any monitoring performed under this section, notify each affected employee of these results either individually in writing or by posting the results in an appropriate location that is accessible to employees.

* * * * *

20. In § 1910.1044, remove and reserve paragraph (d) and revise paragraphs (f)(3)(i), (f)(3)(ii), (f)(5)(i) and the last sentence of paragraph (g)(2)(ii) to read as follows:

§ 1910.1044 1,2-Dibromo-3-chloropropane.

* * * * *

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(f) * * *

(3) * * * (i) if the monitoring required by this section reveals employee exposures to be at or below the permissible exposure limit, the employer must repeat these measurements at least every 6 months.

(ii) If the monitoring required by this section reveals employee exposures to be in excess of the permissible exposure limit, the employer must repeat these measurements for each such employee at least quarterly. The employer must continue quarterly monitoring until at least two consecutive measurements, taken at least seven (7) days apart, are at or below the permissible exposure limit. Thereafter the employer must monitor at least every 6 months.

* * * * *

(5) * * * (i) The employer must, within 15 working days after the receipt of the results of any monitoring performed under this section, notify each employee of these results either individually in writing or by posting the results in an appropriate location that is accessible to employees.

* * * * *

(g) * * *

(2) * * *

(ii) * * * These plans must be revised at least annually to reflect the current status of the program.

* * * * *

21.–22. In § 1910.1045, remove and reserve paragraph (d) and revise paragraphs (e)(3)(ii), (e)(3)(iii), (e)(5)(i) and (g)(2)(v) to read as follows:

§ 1910.1045 Acrylonitrile.

* * * * *

(e) * * *

(3) * * *

(ii) If the monitoring required by this section reveals employee exposure to be at or above the action level but at or below the permissible exposure limits, the employer must repeat such monitoring for each such employee at least every 6 months. The employer must continue these measurements every 6 months until at least two consecutive measurements taken at least seven (7) days a part, are below the action level, and thereafter the employer may discontinue monitoring for that employee.

(iii) If the monitoring required by this section reveals employee exposure to be in excess of the permissible exposure limits, the employer must repeat these determinations for each such employee at least quarterly. The employer must continue these quarterly measurements until at least two consecutive measurements, taken at least seven (7) days apart, are at or below the permissible exposure limits, and thereafter the employer must monitor at least every 6 months.

* * * * *

(5) * * * (i) The employer must, within 15 working days after the receipt of the results of any monitoring performed under this section, notify each affected employee of these results either individually in writing or by posting the results in an appropriate location that is accessible to employees.

* * * * *

(g) * * *

(2) * * *

(v) The plans required by this paragraph must be revised and updated at least annually to reflect the current status of the program.

* * * * *

23.–24. In § 1910.1047, revise (d)(7)(i) to read as follows:

§ 1910.1047 Ethylene oxide.

* * * * *

(d) * * *

(7) * * * (i) The employer must, within 15 working days after the receipt of the results of any monitoring performed under this section, notify each affected employee of these results either individually in writing or by posting the results in an appropriate location that is accessible to employees.

* * * * *

25. In § 1910.1048, revise (d)(6) to read as follows:

§ 1910.1048 Formaldehyde.

* * * * *

(d) * * *

(6) * * * The employer must, within 15 working days after the receipt of the results of any monitoring performed under this section, notify each affected employee of these results either individually in writing or by posting the results in an appropriate location that is accessible to employees. If employee exposure is above the PEL, affected employees shall be provided with a description of the corrective actions being taken by the employer to decrease exposure.

26. In § 1910.1051, revise paragraph (d)(7)(i) to read as follows:

§ 1910.1051 1,3-Butadiene.

* * * * *

(d) * * *

(7) * * * (i) The employer must, within 15 working days after the receipt of the results of any monitoring performed under this section, notify each affected employee of these results either individually in writing or by posting the results in an appropriate location that is accessible to employees.

* * * * *

PART 1915—OCCUPATIONAL SAFETY AND HEALTH STANDARDS FOR SHIPYARD EMPLOYMENT

27. The authority citation for Part 1915 is revised to read as follows:

Authority: Section 41, Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941); sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 ("the Act"), 29 U.S.C. 653, 655, and 657; Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), and 3–2000 (65 FR 50017), as applicable.

Sections 1915.120 and 1915.152 also issued under 29 CFR part 1911.

Subpart Z—Toxic and Hazardous Substances

28. In § 1915.1001, revise paragraph (f)(5) to read as set forth below and remove paragraph (g)(6)(iii).

§ 1915.1001 Asbestos

* * * * *

(f) * * *

(5) *Employee notification of monitoring results.* The employer must, as soon as possible but no later than 5 days after the receipt of the results of any monitoring performed under this section, notify each affected employee of these results either individually in writing or by posting the results in an appropriate location that is accessible to employees.

PART 1926—SAFETY AND HEALTH REGULATIONS FOR CONSTRUCTION

Subpart D—Occupational Health and Environmental Controls

29.–30. The authority citation for subpart D is revised to read as follows:

Authority: Section 107, Contract Work Hours and Safety Standards Act (40 U.S.C. 333); sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (the "Act"), 29 U.S.C. 653, 655, and 657; Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), and 3–2000 (65 FR 50017), as applicable; and 29 CFR part 1911.

31. In § 1926.60, revise paragraph (f)(7)(i) to read as follows:

§ 1926.60 Methylenedianiline.

* * * * *

(f) * * *

(7) * * *(i) The employer must, as soon as possible but no later than 5 working days after the receipt of the results of any monitoring performed under this section, notify each affected employee of these results either individually in writing or by posting the results in an appropriate location that is accessible to employees.

* * * * *

32. In § 1926.62, revise paragraphs (d)(8)(i) and (e)(2)(v) to read as follows:

§ 1926.62 Lead.

* * * * *

(d) * * *

(8) * * *(i) The employer must, as soon as possible but no later than 5 working days after the receipt of the results of any monitoring performed under this section, notify each affected employee of these results either individually in writing or by posting the results in an appropriate location that is accessible to employees.

* * * * *

(e) * * *

(2) * * *

(v) Written programs must be revised and updated at least annually to reflect the current status of the program.

Subpart Z—Toxic and Hazardous Substances

33. The authority citation for subpart Z is revised to read as follows:

Authority: Section 107, Contract Work Hours and Safety Standards Act (40 U.S.C. 333); sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 ("the Act"), 29 U.S.C. 653, 655, and 657; Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), and 3–2000 (65 FR 50017), as applicable; and 29 CFR part 1911.

Section 1926.1102 also issued under 5 U.S.C. 553, but not under 29 U.S.C. 655 or 29 CFR part 1911.

34. In § 1926.1101, revise paragraph (f)(5) to read as set forth below and remove paragraph (g)(6)(iii).

§ 1926.1101 Asbestos

* * * * *

(f) * * *

(5) *Employee notification of monitoring results.* The employer must, as soon as possible but no later than 5 working days after the receipt of the results of any monitoring performed under this section, notify each affected employee of these results either individually in writing or by posting the results in an appropriate location that is accessible to employees.

* * * * *

35–36. In § 1926.1127 revise paragraph (d)(5)(i) to read as set forth below and remove the word "signed" from the first sentence of the introductory text of paragraph (1)(10)(i).

§ 1926.1127 Cadmium.

* * * * *

(d) * * *

(5) * * *(i) The employer must, as soon as possible but no later than 5 working days after the receipt of the results of any monitoring performed under this section, notify each affected employee of these results either individually in writing or by posting the results in an appropriate location that is accessible to employees.

* * * * *

[FR Doc. 02–27541 Filed 10–30–02; 8:45 am]

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Federal Register

Thursday,
October 31, 2002

Part IV

Department of Education

34 CFR Part 668
Student Assistance General Provisions;
Final Rule

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DEPARTMENT OF EDUCATION

34 CFR Part 668

Student Assistance General Provisions

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the Student Assistance General Provisions regulations to reflect changes made to the Higher Education Act of 1965, as amended (HEA), by the Campus Sex Crimes Prevention Act and to make a technical correction. The regulations clarify that institutions must include a new disclosure in their annual security reports that are due by October 1, 2003.

DATES: These regulations are effective October 31, 2002.

FOR FURTHER INFORMATION CONTACT: David Bergeron, U.S. Department of Education, 1990 K Street, NW. (8th Floor), Washington, DC 20006. Telephone: (202) 502–7815.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION: The final regulations add a new paragraph, § 668.46(b)(12), to reflect a self-implementing change to section 485(f)(1) of the HEA that was made by the Campus Sex Crimes Prevention Act (section 1601 of Public Law 106–386). The Campus Sex Crimes Prevention Act adds a new disclosure to the list of disclosures an institution must provide in its annual security report to students and staff. In this new disclosure, an institution must inform members of the campus community of the means by which they can obtain information about registered sex offenders who may be present on campus. This change to the HEA is effective on October 28, 2002. The regulations clarify that institutions must include this new disclosure in their annual security reports that are due by October 1, 2003.

The final regulations correct an error in the definition of "Referred for campus disciplinary action", in § 668.46(a), to reflect the language of the HEA, by changing the word "student" to "person".

Waiver of Proposed Rulemaking and Negotiated Rulemaking

Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these regulations merely reflect statutory changes to the HEA and needed technical corrections. The changes do not establish or affect substantive policy. The Secretary has concluded that these regulations are technical in nature and do not necessitate public comment. Therefore, under 5 U.S.C. 553(b)(B) the Secretary finds that such a solicitation would be unnecessary and contrary to the public interest. In addition, the Secretary also has decided to waive the 30-day delay in the effective date of these regulatory changes under 5 U.S.C. 553(d)(3).

For the same reasons, the Secretary has determined, under section 492(b)(2) of the Higher Education Act of 1965, as amended, that these regulations should not be subject to negotiated rulemaking.

Regulatory Flexibility Act Certification

The Secretary certifies that these regulations will not have a significant economic impact on a substantial number of small entities. These regulations will affect certain institutions of higher education that participate in Title IV, HEA programs. The U.S. Small Business Administration (SBA) Size Standards define these institutions as "small entities" if they are for-profit or nonprofit institutions with total annual revenue below $5,000,000 or if they are institutions controlled by governmental entities with populations below 50,000. A relatively small number of the 6,000 institutions of higher education participating in the Title IV, HEA programs meet the SBA definition of "small entities." The technical corrections and changes will not have a significant economic impact on any of the institutions affected.

Paperwork Reduction Act of 1995

These regulations do not contain any information collection requirements.

Assessment of Educational Impact

Based on our own review, we have determined that these final regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

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List of Subjects in 34 CFR Part 668

Administrative practice and procedure, Colleges and universities, Consumer protection, Education, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Student aid, Vocational education.

Dated: October 25, 2002.

Sally L. Stroup,

Assistant Secretary, Office of Postsecondary Education.

For the reasons discussed in the preamble, the Secretary amends part 668 of title 34 of the Code of Federal Regulations as follows:

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

1. The authority citation for part 668 continues to read as follows:

Authority: 20 U.S.C. 1001, 1002, 1003, 1085, 1091, 1091b, 1092, 1094, 1099c, and 1099c–1, unless otherwise noted.

2. Section 668.46 is amended—

A. In paragraph (a), in the definition of "Referred for campus disciplinary action", by removing the word "student" and adding, in its place, "person".

B. By adding a new paragraph (b)(12).

The addition reads as follows:

§ 668.46 Institutional security policies and crime statistics.

* * * * *

(b) * * *

(12) Beginning with the annual security report distributed by October 1, 2003, a statement advising the campus community where law enforcement agency information provided by a State under section 170101(j) of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 14071(j)), concerning registered sex offenders may be obtained, such as the law

enforcement office of the institution, a local law enforcement agency with jurisdiction for the campus, or a computer network address.

* * * * *

[FR Doc. 02–27599 Filed 10–30–02; 8:45 am]

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Part V

The President

Notice of October 29, 2002—Continuation of the National Emergency With Respect to Sudan

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Presidential Documents

Title 3—

The President

Notice of October 29, 2002

Continuation of the National Emergency With Respect to Sudan

On November 3, 1997, by Executive Order 13067, the President declared a national emergency with respect to Sudan pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States constituted by the actions and policies of the Government of Sudan, including continuing concern about the presence and activities of certain terrorist groups, including Hamas and Palestinian Islamic Jihad, and the prevalence of human rights violations, including slavery, restrictions on religious freedom, and restrictions on political freedom. Because the actions and policies of the Government of Sudan continue to pose an unusual and extraordinary threat to the national security and foreign policy of the United States, the national emergency declared on November 3, 1997, and the measures adopted on that date to deal with that emergency must continue in effect beyond November 3, 2002. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency with respect to Sudan.

This notice shall be published in the **Federal Register** and transmitted to the Congress.

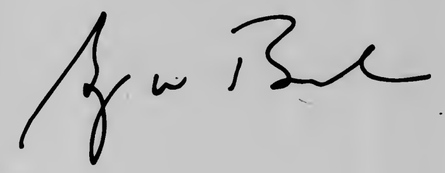

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 905

[Docket No. FV02–905–3 FIR]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Removing Dancy and Robinson Tangerine Varieties From the Rules and Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule that removed the Dancy and Robinson varieties of tangerines from the regulated varieties of Florida citrus prescribed under the marketing order covering oranges, grapefruit, tangerines, and tangelos grown in Florida (order). The order is administered locally by the Citrus Administrative Committee (committee). This rule also continues in effect the removal of a section of the rules and regulations dealing with handling procedures for Dancy and Robinson tangerines. Production of these varieties has declined and is expected to continue to decline. Removing these varieties will not have a significant impact on the tangerine market.

EFFECTIVE DATE: December 2, 2002.

FOR FURTHER INFORMATION CONTACT: William G. Pimental, Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 799 Overlook Drive, Suite A, Winter Haven, Florida 33884–1671; telephone: (863) 324–3375, Fax: (863) 325–8793; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 84 and Marketing Order No. 905, both as amended (7 CFR part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

USDA is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

The order provides for the establishment of grade and size requirements for Florida citrus, with the concurrence of USDA. These grade and size requirements are designed to provide fresh markets with citrus fruit of acceptable quality and size. This helps create buyer confidence and contributes to stable marketing conditions. This is in the interest of growers, handlers, and consumers, and is designed to increase returns to Florida citrus growers.

This rule continues in effect the removal of Dancy and Robinson tangerines from the regulated varieties of Florida citrus fruit prescribed under the marketing order covering oranges, grapefruit, tangerines, and tangelos grown in Florida. Production of these varieties has declined, and it is expected that production will continue to decline. Removing these varieties from the minimum grade and size requirements will not have a significant impact on the overall quality of tangerines. This action was unanimously recommended by the committee at its meeting on May 22, 2002.

Section 905.52 of the order, in part, authorizes the committee to recommend minimum grade and size regulations to USDA. Section 905.306 of the order's rules and regulations specifies the regulation period and the minimum grade and size requirements for different varieties of fresh Florida citrus. Such requirements for domestic shipments are specified in § 905.306 in Table I of paragraph (a), and for export shipments in Table II of paragraph (b).

This rule continues to modify § 905.306 by deleting Dancy tangerines and Robinson tangerines from the list of entries in Table I of paragraph (a), and in Table II of paragraph (b). In its deliberations, the committee realized that Dancy tangerines and Robinson tangerines no longer significantly impact the citrus market. During the 2001–02 season, total shipments of Dancy tangerines were 12,798 cartons. Florida Department of Agriculture statistics show that in 2000–01, 23,000 cartons were shipped. This is down from 94,000 cartons shipped during the 1997–98 season. During 2001–02, only 124,249 cartons of Robinson tangerines were shipped. Florida Department of Agriculture statistics show that in 2000–01, 165,000 cartons were shipped. This is down from 262,000 cartons shipped in 1997–98. Production of these varieties has declined as newer varieties

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have been developed and planted. The decline is expected to continue. Shipments of these varieties represented less than 3 percent of fresh shipments of early tangerines during the 2001–02 season. Consequently, the committee believes that the current market share and shipment levels justify removal of minimum grade and size requirements for these varieties.

Section 905.152 sets forth procedures for determining handlers' permitted quantities of Dancy and Robinson tangerine varieties when a portion of the 210 size of these varieties was restricted. Because Dancy and Robinson tangerines no longer have to meet size requirements, § 905.152 is unnecessary and the removal of this section is continued.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 11,000 producers of Florida citrus in the production area and approximately 75 tangerine handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000.

Based on industry and committee data, the average annual F.O.B. price for fresh early Florida tangerines during the 2000–01 season was around $10.00 per 4/5-bushel carton, and total fresh shipments of early tangerines for the 2001–02 season were approximately 5.2 million cartons.

Approximately 20 percent of all handlers handled 77 percent of Florida tangerine shipments. Using tangerine shipments and the average F.O.B. prices, it can be determined that the majority of Florida tangerine handlers could be considered small businesses under SBA's definition. In addition, the majority of Florida citrus growers may be classified as small entities.

This rule continues in effect the removal of Dancy and Robinson tangerines from the varieties of citrus regulated under the order. These varieties are no longer required to meet the minimum grade and size requirements. Production of these varieties has declined and it is expected that production will continue to decline. Removing these varieties from the list of regulated varieties will not have a significant impact on the tangerine market.

Section 905.52 of the order, in part, authorizes the committee to recommend minimum grade and size regulations to the USDA. Section 905.306 of the order's rules and regulations specifies the regulation period and the minimum grade and size requirements for different varieties of fresh Florida citrus. This rule continues in effect modifications to § 905.306 of the rules and regulations concerning covered varieties and minimum grade and size requirements, respectively. This rule also continues to remove § 905.152.

This rule is expected to have a positive impact on affected entities because these varieties are being removed from the handling requirements. Because this rule continues to relax the handling requirements by removing two varieties from the list of varieties regulated, handlers will be able to market these varieties free from the order's requirements. There are no additional costs imposed on growers and handlers with this rule.

Only a total of approximately 137,000 cartons of these tangerines were shipped during the 2001–02 season. Florida Department of Agriculture statistics show that in 2000–01, a total of 188,000 cartons of these varieties were shipped. This is down from a total of 356,000 cartons of Dancy and Robinson tangerines shipped during the 1997–98 season. Shipments of these varieties accounted for less than 3 percent of the overall 5.2 million cartons of early Florida tangerines shipped during the 2001–02 season. Production of these varieties has declined as newer varieties have been developed and planted. The decline in production of these varieties is expected to continue. Most producers have already discontinued growing these varieties and handlers find it easier to sell the newer varieties that have been developed. The benefits derived from this change are expected to benefit both large and small entities equally.

One alternative discussed was to make no change to the order's handling regulations. The committee saw this alternative as being of no benefit to the industry because of the declining production and minimal market share of these varieties. The committee believes these varieties have no significant impact on the tangerine market and agreed that action should be taken to remove these varieties from the handling regulations, so this alternative was rejected.

Another alternative was to also remove the Ambersweet variety from the regulations. However, the committee determined that annual shipments of this variety are at a level that impacts the market and, therefore, this alternative was rejected.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large Florida tangerine handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. In addition, as noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Further, the committee's meeting was widely publicized throughout the citrus industry and all interested persons were invited to attend the meeting and participate in the committee's deliberations. Like all committee meetings, the May 22, 2002, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue.

An interim final rule concerning this action was published in the **Federal Register** on July 23, 2002. Copies of the rule were mailed or sent via facsimile to all Committee members and handlers. In addition, the rule was made available through the Internet by the Office of the Federal Register and USDA. That rule provided for a 60-day comment period which ended September 23, 2002. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the committee's recommendation, and other information, it is found that finalizing the interim final rule, without change, as published in the **Federal Register** (67 FR 48015, July 23, 2002) will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 905

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements, Tangelos, Tangerines.

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

Accordingly, the interim final rule amending 7 CFR part 905 which was published at 67 FR 48015 on July 23, 2002, is adopted as a final rule without change.

Dated: October 28, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–27764 Filed 10–31–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 945 and 980

[Docket No. FV00–945–2 FR]

Irish Potatoes Grown in Certain Designated Counties in Idaho, and Malheur County, Oregon, and Irish Potatoes Imported into the United States; Modification of Handling and Import Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule removes the reference to Norgold variety potatoes from the handling regulation issued under the marketing order for Idaho-Eastern Oregon potatoes. The Norgold variety was specifically referenced to establish less restrictive maturity requirements for early season shipments. However, Norgold variety potatoes are no longer produced in the production area covered under the marketing order and the less restrictive requirements are not needed. As required under section 608e of the Agricultural Marketing Agreement Act of 1937, the maturity requirements for potato imports are changed accordingly.

EFFECTIVE DATE: This final rule becomes effective December 2, 2002.

FOR FURTHER INFORMATION CONTACT: Robert Curry, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, suite 385, Portland, Oregon 97204; telephone: (503) 326–2724, Fax: (503) 326–7440; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–5698.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–5698, or e-mail: *Jay.Guerber@usda.gov*.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement No. 98 and Marketing Order No. 945, both as amended (7 CFR part 945), regulating the handling of Irish potatoes grown in certain designated counties in Idaho, and Malheur County, Oregon, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

This rule also is issued under section 608e of the Act, which provides that whenever certain specified commodities, including potatoes, are regulated under a Federal marketing order, imports of these commodities into the United States are prohibited unless they meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodities.

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of import regulations issued under section 608e of the Act.

Sections 945.51 and 945.52 of the order provide authority for the establishment and modification of regulations applicable to the handling of potatoes. Section 945.341 establishes minimum maturity and pack requirements for potatoes handled subject to the order. Requirements in effect prior to this final rule provided, in part, that all potatoes packed in cartons were to be inspected and certified as meeting U.S. No. 1 grade or better. All varieties were to meet the maturity requirement of slightly skinned (except the Norgold variety from August 1–15, and the White Rose and red skinned varieties from August 1–December 31 were allowed to be moderately skinned). During other periods of the year, the White Rose and red skinned varieties are not subject to maturity requirements. Size is to be conspicuously marked on all cartons (except when used as a master container). The grade requirements are based on the U.S. Standards for Grades of Potatoes (7 CFR 51.1540–51.1566), and the size must be marked consistent with section 51.1545 of these standards.

The Idaho-Eastern Oregon Potato Committee (Committee), the agency responsible for local administration of the order, met on November 9, 1999, and unanimously recommended the removal of reference to Norgold variety potatoes from the handling regulations.

Prior to this final rule, the Norgold variety of potatoes was specifically referenced in the handling regulations so a less restrictive maturity requirement (moderately skinned) could be applied during a 15-day period (August 1–August 15) at the beginning of each shipping season. This rule removes the reference to Norgold potatoes as a separate variety from the minimum maturity requirements of the handling regulations. As required under section 608e of the Act, the maturity requirements for potato imports are changed accordingly. This rule also removes outdated language and makes other conforming changes to the handling and import regulations. The Committee recommended this change in the regulations because Norgold variety

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potatoes are no longer produced in the production area.

Production of this long type variety was discontinued due in part to the Norgold variety's inherent propensity to have lighter, thinner skin early in the season compared to the varieties produced today. Newer replacement varieties are less prone to early season maturity problems, which enables the industry to maintain a consistent maturity level throughout the entire shipping season.

In addition, buyers are accustomed to long type potatoes having a higher maturity level than this minimum requirement allowed. To meet buyer expectations, all varieties of long type potatoes currently produced are required to be of a higher maturity level (slightly skinned) throughout the marketing year. The degree of skinning or maturity is differentiated by the amount of loss of the outer surface or skin layer. "Slightly skinned" means that up to 10 percent of the potatoes in any inspected lot can have one-fourth of the outer skin missing, while "moderately skinned" potatoes can have one-half of the skin missing.

This change will not have any economic impact upon producers or handlers, as it simply updates the handling regulations to recognize that the Norgold variety is no longer being produced within the production area.

As mentioned earlier, section 608e of the Act requires that when certain domestically produced commodities, including Irish potatoes, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, or maturity requirements. Section 608e also provides that whenever two or more marketing orders regulating the same commodity produced in different areas of the United States are concurrently in effect, a determination must be made as to which of the areas produces the commodity in most direct competition with the imported commodity. Imports must then meet the minimum requirements established for that particular area.

Grade, size, quality, and maturity regulations have been issued regularly under the order since it was established. The import regulation in § 980.1 specifies that import requirements for long type potatoes be based on those in effect for potatoes grown in certain designated counties in Idaho, and Malheur County, Oregon, during each month of the marketing year. This rule removes reference to Norgold variety potatoes from the maturity requirements of the handling regulation.

While no changes are required in the language of § 980.1, any potential imports of long type potatoes, including the Norgold variety, during the period from August 1–15 will be required to meet the modified maturity requirement of "slightly skinned."

This rule is not expected to have any economic impact upon importers. Nearly all potato imports come from Canada, and representatives of USDA's Market News Service have indicated that their contacts in Canada have reported that Norgold variety potatoes are no longer commercially produced in Canada.

This rule also removes § 945.130 of the rules and regulations which is obsolete, and revises and updates language in § 980.1, Import regulations; Irish potatoes. Sections 945.22 and 945.23 of the order, regarding committee membership districts within the production area and redistricting and committee reapportionment, were amended on June 5, 1995 (60 FR 29724), and § 945.130 is no longer needed. In addition, this rule removes references in the potato import regulation to the terminated marketing orders for Red River Valley and Maine potatoes, removes outdated language regarding import regulations in effect during 1970 and 1971, updates the list and addresses of inspection offices for imports, and updates the references in the import regulation to government agencies.

Final Regulatory Flexibility Analysis

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility. Import regulations issued under the Act are based on those established under Federal marketing orders.

There are approximately 63 handlers of Idaho-Eastern Oregon potatoes subject to regulation under the order and about 1,600 potato producers in the regulated area. There are approximately 161 importers of potatoes. Small agricultural service firms, which include potato handlers and importers, are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those whose annual receipts are less than $750,000. A majority of these handlers, importers, and producers may be classified as small entities.

This rule removes the reference to Norgold variety potatoes from the maturity requirements in the handling regulation. The Norgold variety was specifically referenced to establish less restrictive maturity requirements for early season shipments. However, Norgold variety potatoes are no longer produced in the production area covered under the marketing order. As required under section 608e of the Act, the maturity requirements for potato imports are also changed.

The Committee met on November 9, 1999, and unanimously recommended the removal of the reference to Norgold variety potatoes from the handling regulations.

Prior to this final rule, the Norgold variety of potatoes was specifically referenced in the handling regulations so a less restrictive maturity requirement (moderately skinned) could be applied during a 15-day period (August 1–15) at the beginning of each shipping season. This final rule removes the reference to Norgold potatoes as a separate variety from the minimum maturity requirements of the handling regulations. As earlier stated, the Committee recommended this change in the regulations because Norgold variety potatoes are no longer produced in the production area. In addition, buyers have become accustomed to long type potatoes (such as Norgold variety potatoes) having a higher maturity level than this minimum requirement allowed. To meet buyer expectations, all varieties of long type potatoes currently produced are required to be of a higher maturity level (slightly skinned) throughout the marketing year. "Slightly skinned" means that up to 10 percent of the potatoes in any inspected lot can have one-fourth of the outer skin missing, while "moderately skinned" potatoes can have one-half of the skin missing. This change will not have any economic impact upon producers or handlers, as it simply updates the handling regulations to recognize that the Norgold variety is no longer being produced within the production area.

As mentioned earlier, section 608e of the Act requires that when certain domestically produced commodities, including Irish potatoes, are regulated under a Federal marketing order, imports of that commodity must meet

the same or comparable grade, size, quality, or maturity requirements. The current import regulation specifies that import requirements for long type potatoes be based on those in effect for potatoes grown in certain designated counties in Idaho, and Malheur County, Oregon, during each month of the marketing year. This rule removes reference to Norgold variety potatoes from the maturity requirements of the handling regulation. While no changes are required in the language of § 980.1, all potential imports of long type potatoes, including the Norgold variety, during the period from August 1–15 would be required to meet the modified maturity requirement of "slightly skinned."

This rule is not expected to have an economic impact upon importers as there are currently no potato imports during the period of August 1–15. In addition, representatives of the USDA Market News Service have indicated that their contacts in Canada have reported that Norgold variety potatoes are no longer commercially produced in Canada. Nearly all potato imports come from Canada, but there are no shipments until the latter part of September.

The removal of the references to Norgold variety potatoes is not expected to impose any additional costs on handlers, importers, or producers.

As an alternative to this rule, the Committee discussed leaving the handling regulations unchanged. The Committee rejected this idea because it would have left outdated language in the rules and regulations.

This rule does not impose any additional reporting or recordkeeping requirements on either small or large potato handlers and importers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sectors. USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this final rule.

Further, the Committee's meeting was widely publicized throughout the potato industry, and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the November 9, 1999, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue.

A proposed rule concerning this action was published in the **Federal Register** on July 23, 2002 (67 FR 48051). A copy of the rule was mailed to the Committee's manager who in turn provided copes to all Committee members. The proposed rule was also made available through the Internet by the Office of the Federal Register and USDA. A 60-day comment period ending September 23, 2002, was provided to allow interested persons the opportunity to respond to the proposal as well as to submit information on the regulatory and informational impacts of the action on small businesses. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at the following Web site: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant matter presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

In accordance with section 608e of the Act, the United States Trade Representative has concurred with the issuance of this rule.

List of Subjects

7 CFR Part 945

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

7 CFR Part 980

Food grades and standards, Imports, Marketing agreements, Onions, Potatoes, Tomatoes.

For the reasons set forth above, 7 CFR parts 945 and 980 are amended as follows:

1. The authority citation for 7 CFR parts 945 and 980 continues to read as follows:

Authority: 7 U.S.C. 601–674.

PART 945—IRISH POTATOES GROWN IN CERTAIN DESIGNATED COUNTIES IN IDAHO, AND MALHEUR COUNTY, OREGON

§ 945.130 [Removed]

2. Section 945.130 is removed.

§ 945.341 [Amended]

3. In § 945.341, paragraph (b)(2) is removed, and paragraphs (b)(3) and (b)(4) are redesignated as paragraphs (b)(2) and (b)(3), respectively.

PART 980—VEGETABLES; IMPORT REGULATIONS

4. Section 980.1 is amended as follows:

a. Revise paragraphs (a)(1)(i), (a)(2)(ii), (b)(2), (e), (f), and (g)(1)(ii).

b. Redesignate paragraph (i) as paragraph (j).

c. Redesignate paragraphs (h)(1) and (h)(2) as paragraphs (i)(1) and (i)(2) and revise newly designated paragraphs (i)(1) and (i)(2). The revisions read as follows:

§ 980.1 Import regulations; Irish potatoes.

* * * * *

(a) * * *

(1) * * *

(i) Grade, size, quality, and maturity regulations have been issued from time to time pursuant to the following marketing orders: No. 945 (part 945 of this chapter), No. 948 (part 948 of this chapter), No. 947 (part 947 of this chapter), No. 946 (part 946 of this chapter), and No. 953 (part 953 of this chapter).

* * * * *

(2) * * *

(ii) Imports of all other round type potatoes during the period June 5 through July 31 are in most direct competition with the marketing of the same type of potatoes produced in the Southeastern States covered by Order No. 953 (part 953 of this chapter); and during the period of August 1 through June 4 of the following year they are in most direct competition with all other round type potatoes produced in Area No. 3, Colorado (Northern Colorado) covered by Marketing Order No. 948, as amended (part 948 of this chapter).

* * * * *

(b) * * *

(2) During the period June 5 through July 31 of each marketing year, the grade, size, quality, and maturity requirements of Marketing Order No. 953 (part 953 of this chapter) applicable to potatoes of the round type shall be the respective grade, size, quality, and maturity requirements for imports of other round type potatoes; and during the period August 1 through the following June 4 of each year the grade, size, quality, and maturity requirements of Area No. 3, Colorado (Northern Colorado) covered by Marketing Order No. 948, as amended (part 948 of this chapter) shall be the respective grade, size, quality, and maturity requirements for imports of all other round type potatoes.

* * * * *

(e) *Certified seed.* Certified seed potatoes shall include only those

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potatoes which are officially certified and tagged as seed potatoes by the Plant Health and Production Division, Plant Products Directorate, Canadian Food Inspection Agency, and which are subsequently used as seed.

(f) *Designation of governmental inspection services.* The Federal or Federal-State Inspection Service, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture and the Food of Plant Origin Division, Plant Products Directorate, Canadian Food Inspection Agency, are hereby designated as governmental inspection services for the purpose of certifying the grade, size, quality, and maturity of Irish potatoes that are imported, or to be imported, into the United States under the provisions of § 608e of the Act.

(g) * * *

(1) * * *

(ii) Since inspectors may not be stationed in the immediate vicinity of a port, or point of entry, an importer of uninspected and uncertified Irish potatoes should make advance arrangements for inspection. Each importer should give at least the specified advance notice to one of the following applicable inspection offices prior to the time the Irish potatoes will be imported.

Ports and points	Inspection offices	Advance notice (days)
All Maine ports and points of entry	In-Charge, Post Office Box 1058, Presque Isle, ME 04767 (PH 207–764–2100)	1
Port of Boston, MA	In-Charge, Boston Market Terminal Building, Room 1, 34 Market Street, Everett, MA 02149 (PH 617–389–2480).	1
Port of New York, NY	In-Charge, 465B New York City Terminal Market, Bronx, NY 10474 (PH 718–991–7665).	1
Port of Philadelphia, PA	In-Charge, 210 Produce Building, 3301 South Galloway Street, Philadelphia, PA 19148 (PH 215–336–0845.	1
All other ports and points of entry	Head, Field Operations Section, Fresh Products Branch, Fruit and Vegetable Programs, AMS, USDA, Washington, DC 20250–0240 (PH 1–800–811–2373).	3

* * * * *

(i) *Definitions.* (1) For the purpose of this part potatoes meeting the requirements of Canada No. 1 grade and Canada No. 2 grade shall be deemed to comply with the requirements of the U.S. No. 1 grade and U.S. No. 2 grade, respectively, and the tolerances for size, as set forth in the U.S. Standards for Grades of Potatoes (§§ 51.1540 to 51.1556, inclusive of this title) may be used.

(2) *Importation* means release from the custody of the U.S. Customs Service.

* * * * *

Dated: October 28, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–27767 Filed 10–31–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 100, 103, 236, 245a, 274a and 299

[INS No. 2115–01; AG Order No. 2588–2002]

RIN 1115–AG06

Adjustment of Status Under Legal Immigration Family Equity (LIFE) Act Legalization Provisions and LIFE Act Amendments Family Unity Provisions; Corrections

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule: Corrections.

SUMMARY: The Department of Justice published in the **Federal Register** of June 4, 2002 (67 FR 38341), a final rule which amended the Immigration and Naturalization Service (Service) regulations to provide definitive regulations for all applicants under section 1104 the Legal Immigration Family Equity (LIFE) Act, and section 1504 of the LIFE Act Amendments. The final rule contains technical errors that are corrected in this document.

EFFECTIVE DATES: November 1, 2002.

FOR FURTHER INFORMATION CONTACT: Elizabeth N. Lee or Suzy Nguyen, Assistant Directors, Residence and Status Branch, Office of Adjudications, Immigration and Naturalization Service, 425 I Street NW., Room 3040, Washington, DC 20536, telephone (202) 514–3228.

SUPPLEMENTARY INFORMATION:

Need for Correction

As published in the **Federal Register** on June 4, 2002 (67 FR 38341), the final rule amending parts 100, 103, 236, 245a, 274a and 299 contains technical errors that are in need of correction.

Correction of Publication

Accordingly, the publication on June 4, 2002 (67 FR 38341), of the final rule that was the subject of FR Doc. 02–13918 is corrected as follows:

PART 245a—ADJUSTMENT OF STATUS TO THAT OF PERSONS ADMITTED FOR LAWFUL TEMPORARY OR PERMANENT RESIDENT STATUS UNDER SECTION 245A OF THE IMMIGRATION AND NATIONALITY ACT

§ 245a.10 [Corrected]

1. On page 38350, in the second column, amendment 3a should be revised to read: "Revising the introductory text for the definition 'eligible alien'; and by"

PART 299—IMMIGRATION FORMS

§ 299.1 [Corrected]

2. On page 38352, in the third column, in the table for § 299.1 the edition date for Form I–485 Supplement D should read: "06–05–02"

Dated: October 21, 2002.

James W. Ziglar,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 02–27798 Filed 10–31–02; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 02–072–2]

Change in Disease Status of Israel Because of BSE

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the regulations by adding Israel to the list of regions where bovine spongiform encephalopathy exists because the disease had been detected in a native-born animal in that region. The effect of the interim rule was a restriction on the importation of ruminants, meat, meat products, and certain other products of ruminants that had been in Israel. The interim rule was necessary to help prevent the introduction of bovine spongiform encephalopathy into the United States.

EFFECTIVE DATE: The interim rule became effective on June 4, 2002.

FOR FURTHER INFORMATION CONTACT: Dr. Gary Colgrove, Chief Staff Veterinarian, Sanitary Trade Issues Team, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737–1231; (301) 734–4356.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR parts 93, 94, 95, and 96 (referred to below as the regulations) govern the importation of certain animals, birds, poultry, meat, other animal products and byproducts, hay, and straw into the United States in order to prevent the introduction of various animal diseases, including bovine spongiform encephalopathy (BSE).

In an interim rule effective June 4, 2002, and published in the **Federal Register** on July 18, 2002 (67 FR 47243–47244, Docket No. 02–072–1), we amended the regulations in § 94.18 (a)(1) by adding Israel to the list of regions where BSE exists due to the detection of BSE in a native-born animal in that region.

Comments on the interim rule were required to be received on or before September 16, 2002. We did not receive any comments. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule.

This action also affirms the information contained in the interim rule concerning Executive Orders 12866 and 12988 and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived its review under Executive Order 12866.

Regulatory Flexibility Act

This action affirms an interim rule that amended the regulations by adding Israel to the list of regions where BSE exists. The effect of the interim rule was a restriction on the importation of ruminants, meat, meat products, and certain other products of ruminants that had been in Israel. The interim rule was necessary to help prevent the introduction of BSE into the United States.

The following analysis addresses the economic effects of the interim rule on small entities, as required by the Regulatory Flexibility Act.

The interim rule's restrictions on the importation of ruminants and ruminant products and byproducts from Israel are not expected to have a significant impact on a substantial number of small entities due to the fact that the restricted items are either not imported from Israel or are imported in very small amounts. There are three categories of imports that may be affected, but Israel's share of U.S. imports is small in each case.

The first category of affected imported commodities is "Meat and edible meat offal, salted in brine, dried or smoked; edible flours and meals of meat or meat offal." Average total yearly imports of these products by the United States over the 3-year period 1999–2001 were valued at $24.6 million. Imports from Israel in 1999 were valued at $26,000. No imports of these products from Israel were reported for 2000 or 2001.

The second category of affected commodities is "Preparations of a kind used in animal feeding." Average total yearly imports of these products, 1999–2001, were valued at $93.5 million. Imports from Israel had an average yearly value over this period of about $76,000.

The final category of affected commodities is "Other prepared or preserved meat, meat offal or blood." Average yearly imports of these products, 1999–2001, were valued at $101.2 million. Imports from Israel had an average yearly value over this period of about $2.7 million.

It is apparent that Israel is a minor supplier to the United States of the ruminant products and byproducts affected by the BSE-related restrictions resulting from the interim rule. Therefore, we do not expect that the interim rule's restrictions on ruminants and ruminant products and byproducts from Israel will substantially affect any U.S. importers, large or small, of those commodities.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 9 CFR part 94 and that was published at 67 FR 47243–47244 on July 18, 2002.

Authority: 7 U.S.C. 450, 7711–7714, 7751, 7754, 8303, 8306, 8308, 8310, 8311, and 8315; 21 U.S.C 136 and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332; 7 CFR 2.22, 2.80, and 371.4.

Done in Washington, DC, this 28th day of October, 2002.

Bobby R. Acord,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–27812 Filed 10–31–02; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Federal Housing Enterprise Oversight

12 CFR Part 1750

RIN 2550–AA26

Risk-Based Capital; Technical Amendment

AGENCY: Office of Federal Housing Enterprise Oversight, HUD.

ACTION: Final rule.

SUMMARY: The Office of Federal Housing Enterprise Oversight (OFHEO) is adopting technical amendments to Appendix A to Subpart B of 12 CFR part 1750 Risk-Based Capital. The amendments are intended to enhance the accuracy of the calculation of the

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risk-based capital requirement for the Enterprises.

EFFECTIVE DATE: November 1, 2002.

FOR FURTHER INFORMATION CONTACT: Jeannine Schroeder, Manager of Operations, Office of Risk Analysis and Model Development, telephone (202) 414–8881 or Jamie Schwing, Associate General Counsel, telephone (202) 414–3787 (not toll free numbers), Office of Federal Housing Enterprise Oversight, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The telephone number for the Telecommunications Device for the Deaf is (800) 877–8339.

SUPPLEMENTARY INFORMATION:

Background

OFHEO published a final regulation setting forth a risk-based capital stress test on September 13, 2001, 12 CFR part 1750 (the Rule), which formed the basis for determining the risk-based capital requirement for the federally sponsored housing enterprises—Federal National Mortgage Association (Fannie Mae) and Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, the Enterprises).[1]

On September 12, 2002, OFHEO published a notice of proposed rulemaking (NPRM), 67 FR 57760, which proposed twelve technical and corrective amendments to the Rule. One commenter, Freddie Mac, expressed concern regarding the appropriate effective date for a proposed technical amendment that corrected a table that utilized original loan-to-value ratios rather than amortized original loan-to-value ratios (amendment number eight in the list of 12 amendments in the preamble of the NPRM). Freddie Mac also requested a delay in the effective date for two amendments relating to the implementation of Financial Accounting Standard 133 (FAS 133) in the Rule (amendments numbered 11 and 12 in the list of 12 amendments in the preamble of the NPRM).[2] OFHEO also received comments requesting additional time to comment upon these two amendments. Subsequently, OFHEO reopened and extended the comment period regarding the two FAS 133-related proposed amendments, noting that it might move to final action on any of the other ten.[3] OFHEO is also reviewing, and will delay action on, a proposed technical amendment regarding the definition of "unamortized balance" (amendment number seven in the list of 12 amendments in the preamble of the NPRM). OFHEO has determined to adopt as final immediately, the following eight proposed amendments as to which there were no issues remaining and to defer final action on the other four proposed amendments until after the extended comment period closes on October 29, 2002.

(1) Provisions relating to new activities are updated to cross-reference the Prompt Supervisory Response and Corrective Action regulation, 12 CFR part 1777, in paragraph 3.11.3[c] and to correct a typographical error in paragraph 3.11.2[a];

(2) Out-of-date third party sources of information related to interest rate indexes (*e.g.* 30-year CMT, Bloomberg Tickers) are updated to reflect currently available indexes and to update the Rule to incorporate a reference to the applicable U.S. Treasury Department methodology. Specifically, the 30-year constant maturity yield is no longer reported by the Federal Reserve in the H.15 Release. In its place, the U.S. Treasury Department has developed a methodology using its "Long-Term Average Rate" and "Extrapolation Factors" designed to generate a substitute for the 30-year CMT yield series discontinued in February 2002. Similarly, the Bloomberg tickers for the Federal Agency Cost of Funds are being updated. Table 3–18 and paragraphs 3.3.1[b] and 3.3.2 are amended to reflect these changes;

(3) Credit Ratings in Table 3–30 are updated to include certain credit ratings used in the marketplace that were not listed in the original table. Specifically, Moody's assigns an additional rating from VMIG1 through VMIG3 to quantify the risks of the demand feature of variable-rate demand obligations and Standard & Poor's rates short term issuances as SP–1+, SP–1, SP–2, and SP–3;

(4) Paragraph 3.6.3.4.3.1 [a] 3. a. on single family default and prepayment explanatory variables is replaced in full, including equations, to correct the parenthetical (q= −7, −6,...0, 1,...40);

(5) Table 3–35, in which the explanatory variable categories for Relative Spread (RS_q) in the explanatory variable column were identified incorrectly, is replaced and a typographical error in paragraph 3.6.3.6.3.3[a]1. is corrected;

(6) The equation related to mortgage credit enhancement procedures at paragraph 3.6.3.6.4.3 is corrected to reflect the fact that in extreme circumstances (*i.e.*, when defaults are zero), an equation in section 3.6.3.6.4.3 Mortgage Credit Enhancement Procedures produces "divide by zero" errors in the computer code;

(7) A typographical error in the equation in 3.7.3.1[g]2. for calculating haircuts for mortgage backed securities is corrected by changing a specified addition sign (+) to a multiplication sign (×); and

(8) Table 3–68 is revised to reflect that the Table relates to long caps and floors.

In order to make these eight adjustments applicable to the first fully enforceable risk-based capital calculation for each Enterprise, OFHEO has determined that the amendments shall be effective immediately and shall apply to any data submissions from the Enterprises received after the effective date. Waiver of the normal 30-day delay in effective date is in the public interest because these changes rectify errors in the code and in the language of the rule that could mislead the public if left unamended. In some cases they simply reflect changes that have already been implemented in the computer software used to implement the stress test and are necessary for the stress test to be operational. Moreover, both Enterprises have participated in data and software validation processes with OFHEO for the past year and have been aware of the pendency of these technical changes, which have no material impact on capital requirements, for many months.

Regulatory Impact

Executive Order 12866, Regulatory Planning and Review

This document contains amendments to the Rule, which was designated a major rule by the Office of Management and Budget (OMB). The amendments address provisions of the Rule that are out-of-date, incorrect or contain typographical errors. OFHEO has determined that the amendments to the Rule are not economically significant for purposes of Executive Order 12866. Further, they implement technical changes and do not involve novel policy issues. Therefore, these amendments are not a "significant rule" under Executive Order 12866.

Paperwork Reduction Act

These amendments do not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that a regulation that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations must include an initial regulatory flexibility analysis describing the regulation's impact on small entities. Such an analysis need not be undertaken if the agency has certified that the regulation does not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). OFHEO has considered the impact of the regulation under the Regulatory Flexibility Act. The General Counsel of OFHEO certifies that this regulation is not likely to have a significant economic impact on a substantial number of small business entities because the regulation is applicable only to the Enterprises, which are not small entities for purposes of the Regulatory Flexibility Act.

List of Subjects in 12 CFR Part 1750

Capital classification, Mortgages, Risk-based capital.

Accordingly, for the reasons stated in the preamble, OFHEO amends 12 CFR part 1750 as follows:

PART 1750—CAPITAL

1. The authority citation for part 1750 continues to read as follows:

Authority: 12 U.S.C. 4513, 4514, 4611, 4612, 4614, 4615, 4618.

2. Amend Appendix A to subpart B of part 1750 as follows:

a. Revise Table 3–18 in paragraph 3.1.3.1[c];

b. Revise paragraph 3.3.1[b];

c. In paragraph 3.3.2, add the following sentence after the word "Appendix.": "Inputs for the 30-year CMT yield after February 15, 2002 are estimated according to the Department of Treasury methodology using long-term average rates and extrapolation factors."

d. Revise Table 3–30 in paragraph 3.5.3[a]2.a.;

e. Revise paragraph 3.6.3.4.3.1[a]3.a.;

f. Revise Table 3–35 in paragraph 3.6.3.4.3.2[a]1.;

g. In paragraph 3.6.3.6.3.3[a]1., remove the term "GL_m" both places it appears and replace it with the term "GLS_m";

h. In paragraph 3.6.3.6.4.3[a]5., after the words "Defaulted UPB:" and before the equation, add the following equation:

$$\text{If } DEF_m = 0, \text{then } ALPD_m^{DCC} = 0$$

i. Revise paragraph 3.7.3.1[g]2.;

j. Revise Table 3–68 in paragraph 3.8.3.6.1[e]2.;

k. In paragraph 3.11.2[a], remove the cross-reference "1750.2(c)" and replace it with the cross-reference "1750.12(c)"; and

l. Revise paragraph 3.11.3[c].

The revisions and additions read as follows:

Appendix A to Subpart B of Part 1750—Risk-Based Capital Test Methodology and Specifications

* * * * *

3.1.3.1 * * *

[c] * * *

TABLE 3–18—INTEREST RATE AND INDEX INPUTS

Interest Rate Index	Description	Source
1 MO Treasury Bill	One-month Treasury bill yield, monthly simple average of daily rate, quoted as actual/360	Bloomberg Generic 1 Month U.S. Treasury bill Ticker: GB1M (index).
3 MO CMT	Three-month constant maturity Treasury yield, monthly simple average of daily rate, quoted as bond equivalent yield	Federal Reserve H.15 Release.
6 MO CMT	Six-month constant maturity Treasury yield, monthly simple average of daily rate, quoted as bond equivalent yield	Federal Reserve H.15 Release.
1 YR CMT	One-year constant maturity Treasury yield, monthly simple average of daily rate, quoted as bond equivalent yield	Federal Reserve H.15 Release.
2 YR CMT	Two-year constant maturity Treasury yield, monthly simple average of daily rate, quoted as bond equivalent yield	Federal Reserve H.15 Release.
3 YR CMT	Three-year constant maturity Treasury yield, monthly simple average of daily rate, quoted as bond equivalent yield	Federal Reserve H.15 Release.
5 YR CMT	Five-year constant maturity Treasury yield, monthly simple average of daily rate, quoted as bond equivalent yield	Federal Reserve H.15 Release.
10 YR CMT	Ten-year constant maturity Treasury yield, monthly simple average of daily rate, quoted as bond equivalent yield	Federal Reserve H.15 Release.
20 YR CMT	Twenty-year constant maturity Treasury yield, monthly simple average of daily rate, quoted as bond equivalent yield	Federal Reserve H.15 Release.

[1] Risk-based Capital, 66 FR 47730 (September 13, 2001), 12 CFR part 1750, *as amended*, 67 FR 11850 (March 15, 2002), 67 FR 19321 (April 19, 2002).

[2] Financial Account Standards Board Statement of Financial Accounting Standard 133, "Accounting for Derivative Instruments and Hedging Activities," June 1998.

[3] Risk-Based Capital, 67 FR 61300 (September 20, 2002).

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TABLE 3–18—INTEREST RATE AND INDEX INPUTS—Continued

Interest Rate Index	Description	Source
30 YR CMT	Thirty-year constant maturity Treasury yield, monthly simple average of daily rate, quoted as bond equivalent yield; after February 15, 2002, estimated according to the Department of Treasury methodology using long-term average rates and extrapolation factors as referenced in OFHEO guideline 402	Federal Reserve H.15 Release, Extrapolation Factors used for estimation, U.S. Dept. of Treasury.
Overnight Fed Funds (Effective)	Overnight effective Federal Funds rate, monthly simple average of daily rate	Federal Reserve H.15 Release.
1 Week Federal Funds	1 week Federal Funds rate, monthly simple average of daily rates	Bloomberg Term Fed Funds U.S. Domestic Ticker: GFED01W(index).
6 Month Fed Funds	6 month Federal Funds rate, monthly simple average of daily rates	Bloomberg Term Fed Funds U.S. Domestic Ticker: GFED06M(index).
Conventional Mortgage Rate	FHLMC (Freddie Mac) contract interest rates for 30 YR fixed-rate mortgage commitments, monthly average of weekly rates	Federal Reserve H.15 Release.
FHLB 11th District COF	11th District (San Francisco) weighted average cost of funds for savings and loans, monthly	Bloomberg Cost of Funds for the 11th District Ticker: COF11 (index).
1 MO LIBOR	One-month London Interbank Offered Rate, average of bid and asked, monthly simple average of daily rates, quoted as actual/360	British Bankers Association. Bloomberg Ticker: US0001M (index).
3 MO LIBOR	Three-month London Interbank Offered Rate, average of bid and asked, monthly simple average of daily rates, quoted as actual/360	British Bankers Association. Bloomberg Ticker: US0003M (index).
6 MO LIBOR	Six-month London Interbank Offered Rate, average of bid and asked, monthly simple average of daily rates, quoted as actual/360	British Bankers Association. Bloomberg Ticker: US0006M (index).
12 MO LIBOR	One-year London Interbank Offered Rate, average of bid and asked, monthly simple average of daily rates, quoted as actual/360	British Bankers Association. Bloomberg Ticker: US0012M (index).
Prime Rate	Prevailing rate as quoted, monthly average of daily rates	Federal Reserve H.15 Release.
1 MO Federal Agency COF	One-month Federal Agency Cost of Funds, monthly simple average of daily rates, quoted as actual/360	Bloomberg Generic 1 Month Agency Discount Note Yield. Ticker: AGDN030Y (index).
3 MO Federal Agency COF	Three-month Federal Agency Cost of Funds, monthly simple average of daily rates, quoted as actual/360	Bloomberg Generic 3 Month Agency Discount Note Yield. Ticker: AGDN090Y (index).
6 MO Federal Agency COF	Six-month Federal Agency Cost of Funds, monthly simple average of daily rates, quoted as actual/360	Bloomberg Generic 6 Month Agency Discount Note Yield. Ticker: AGDN180Y (index).
1 YR Federal Agency COF	One-year Federal Agency Cost of Funds, monthly simple average of daily rates, quoted as actual/360	Bloomberg Generic 12 Month Agency Discount Note Yield. Ticker: AGDN360Y (index).
2 YR Federal Agency COF	Two-year Federal Agency Fair Market Yield, monthly simple average of daily rates	Bloomberg Generic 2 Year Agency Fair Market Yield. Ticker: CO842Y (index).
3 YR Federal Agency COF	Three-year Federal Agency Fair Market Yield, monthly simple average of daily rates	Bloomberg Generic 3 Year Agency Fair Market Yield. Ticker: CO843Y (index).
5 YR Federal Agency COF	Five-year Federal Agency Fair Market Yield, monthly simple average of daily rates	Bloomberg Generic 5 Year Agency Fair Market Yield. Ticker: CO845Y (index).

TABLE 3–18—INTEREST RATE AND INDEX INPUTS—Continued

Interest Rate Index	Description	Source
10 YR Federal Agency COF	Ten-year Federal Agency Fair Market Yield, monthly simple average of daily rates	Bloomberg Generic 10 Year Agency Fair Market Yield. Ticker: CO8410Y (index).
30 YR Federal Agency COF	Thirty-year Federal Agency Fair Market Yield, monthly simple average of daily rates	Bloomberg Generic 30 Year Agency Fair Market Yield. Ticker: CO8430Y (index).
15 YR fixed-rate mortgage	FHLMC (Freddie Mac) contract interest rates for 15 YR fixed-rate mortgage commitments, monthly average of FHLMC (Freddie Mac) contract interest rates for 15 YR	Bloomberg FHLMC 15 YR, 10 day commitment rate. Ticker: FHCR1510 (index).
7-year balloon mortgage rate	Seven-year balloon mortgage, equal to the Conventional Mortgage Rate less 50 basis points	Computed.

* * * * *

3.3.1 * * *

[b] The process for determining Interest Rates is as follows: first, identify the values for the necessary Interest Rates at time zero; second, project the ten-year CMT for each month of the Stress Period as specified in the 1992 Act; third, project the 1-month Treasury yield, the 3-month, 6-month, 1-, 2-, 3-, 5-, 20-year, and 30-year CMTs; fourth, project non-treasury Interest Rates, including the Federal Agency Cost of Funds Index; and fifth, project the Enterprises Cost of Funds Index, which provides borrowing rates for the Enterprises during the Stress Period, by increasing the Agency Cost of Funds Index by 10 basis points for the last 108 months of the Stress Test. Guidance in determining interest rates is available under OFHEO Guideline No. 402, "Risk Based Capital Process for Capturing and Utilizing Interest Rates Files," which is available on OFHEO's Web site, *http://www.OFHEO.Gov.*

* * * * *

3.5.3 * * *

[a] * * *

2. * * *

a. * * *

TABLE 3–30—RATING AGENCIES MAPPINGS TO OFHEO RATINGS CATEGORIES

OFHEO Ratings Category	AAA	AA	A	BBB	Below BBB and Unrated
Standard & Poor's Long-Term	AAA	AA	A	BBB	Below BBB and Unrated
Fitch Long-Term	AAA	AA	A	BBB	Below BBB and Unrated
Moody's Long-Term	Aaa	Aa	A	Baa	Below Baa and Unrated
Standard & Poor's Short-Term	A–1+ SP–1+	A–1 SP–1	A–2 SP–2	A–3	SP–3, B or Below and Unrated
Fitch Short-Term	F–1+	F–1	F–2	F–3	B and Below and Unrated
Moody's [1]	Prime-1 MIG1 VMIG1	Prime-1 MIG1 VMIG1	Prime-2 MIG2 VMIG2	Prime-3 MIG3 VMIG3	Not Prime, SG and Unrated
Fitch Bank Individual Ratings	A	B A/B	C B/C	D C/D	E D/E
Moody's Bank Financial Strength Rating	A	B	C	D	E

[1] Any rating that appears in more than one OFHEO category column is assigned the lower OFHEO rating category.

* * * * *

3.6.3.4.3.1 * * *

[a] * * *

3. * * *

a. Compare mortgage rates for each quarter of the Stress Test and for the eight quarters prior to the start of the stress test (q = −7, −6,...0, 1,...40):

$$b_q = 1 \text{ if } MCON_m + 0.02 \le MIR_m$$

for all three months in quarter q (i.e., m = 3q − 2, 3q − 1, 3q),

$$b_q = 0 \text{ otherwise}$$

Note: For this purpose, $MCON_m$ is required for the 24 months (eight quarters) prior to the start of the Stress Test. Also, $MIR_m = MIR_0$ for $m < 0$.

* * * * *

3.6.3.4.3.2. * * *

[a] * * *

1. * * *

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TABLE 3–35—COEFFICIENTS FOR SINGLE FAMILY DEFAULT AND PREPAYMENT EXPLANATORY VARIABLE

Explanatory Variable (V)	30-Year Fixed-Rate Loans		Adjustable-Rate Loans (ARMs)		Other Fixed-Rate Loans	
	Default Weight (β_v)	Prepayment Weight (γ_v)	Default Weight (β_v)	Prepayment Weight (γ_v)	Default Weight (β_v)	Prepayment Weight (γ_v)
A_q						
$0 \le A_q \le 4$	−0.6276	−0.6122	−0.7046	−0.5033	−0.7721	−0.6400
$5 \le A_q \le 8$	−0.1676	0.1972	−0.2259	0.1798	−0.2738	0.1721
$9 \le A_q \le 12$	−0.05872	0.2668	0.01504	0.2744	−0.09809	0.2317
$13 \le A_q \le 16$	0.07447	0.2151	0.2253	0.2473	0.1311	0.1884
$17 \le A_q \le 20$	0.2395	0.1723	0.3522	0.1421	0.3229	0.1900
$21 \le A_q \le 24$	0.2773	0.2340	0.4369	0.1276	0.3203	0.2356
$25 \le A_q \le 36$	0.2740	0.1646	0.2954	0.1098	0.3005	0.1493
$37 \le A_q \le 48$	0.1908	−0.2318	0.06902	−0.1462	0.2306	−0.2357
$49 \le A_q$	−0.2022	−0.4059	−0.4634	−0.4314	−0.1614	−0.2914
LTV_{ORIG}						
$LTV_{ORIG} \le 60$	−1.150	0.04787	−1.303	0.08871	−1.280	0.02309
$60 < LTV_{ORIG} \le 70$	−0.1035	−0.03131	−0.1275	−0.005619	−0.06929	−0.02668
$70 < LTV_{ORIG} \le 75$	0.5969	−0.09885	0.4853	−0.09852	0.6013	−0.05446
$75 < LTV_{ORIG} \le 80$	0.2237	−0.04071	0.1343	−0.03099	0.2375	−0.03835
$80 < LTV_{ORIG} \le 90$	0.2000	−0.004698	0.2576	0.004226	0.2421	−0.01433
$90 < LTV_{ORIG}$	0.2329	0.1277	0.5528	0.04220	0.2680	0.1107
$PNEQ_q$						
$0 < PNEQ_q \le 0.05$	−1.603	0.5910	−1.1961	0.4607	−1.620	0.5483
$0.05 < PNEQ_q \le 0.1$	−0.5241	0.3696	−0.3816	0.2325	−0.5055	0.3515
$0.1 < PNEQ_q \le 0.15$	−0.1805	0.2286	−0.1431	0.1276	−0.1249	0.2178
$0.15 < PNEQ_q \le 0.2$	0.07961	−0.02000	−0.04819	0.03003	0.07964	−0.02137
$0.2 < PNEQ_q \le 0.25$	0.2553	−0.1658	0.2320	−0.1037	0.2851	−0.1540
$0.25 < PNEQ_q \le 0.3$	0.5154	−0.2459	0.2630	−0.1829	0.4953	−0.2723
$0.3 < PNEQ_q \le 0.35$	0.6518	−0.2938	0.5372	−0.2075	0.5979	−0.2714
$0.35 < PNEQ_q$	0.8058	−0.4636	0.7368	−0.3567	0.7923	−0.3986
B_q	1.303	−0.3331	0.8835	−0.2083	1.253	−0.3244
RLS						
$0 < RLS_{ORIG} \le 0.4$	.....	−0.5130	.....	−0.4765	.....	−0.4344
$0.4 < RLS_{ORIG} \le 0.6$	.....	−0.3264	.....	−0.2970	.....	−0.2852
$0.6 < RLS_{ORIG} \le 0.75$	.....	−0.1378	.....	−0.1216	.....	−0.1348
$0.75 < RLS_{ORIG} \le 1.0$	.....	0.03495	.....	0.04045	.....	0.01686
$1.0 < RLS_{ORIG} \le 1.25$	.....	0.1888	.....	0.1742	.....	0.1597
$1.25 < RLS_{ORIG} \le 1.5$	.....	0.3136	.....	0.2755	.....	0.2733
$1.5 < RLS_{ORIG}$	.....	0.4399	.....	0.4049	.....	0.4045

TABLE 3–35—COEFFICIENTS FOR SINGLE FAMILY DEFAULT AND PREPAYMENT EXPLANATORY VARIABLE—Continued

Explanatory Variable (V)	30-Year Fixed-Rate Loans		Adjustable-Rate Loans (ARMs)		Other Fixed-Rate Loans	
	Default Weight (β_v)	Prepayment Weight (γ_v)	Default Weight (β_v)	Prepayment Weight (γ_v)	Default Weight (β_v)	Prepayment Weight (γ_v)
IF	0.4133	−0.3084	0.6419	−0.3261	0.4259	−0.3035
RS_q						
$RS_q \le -0.20$	.....	−1.368	.....	−0.5463	.....	−1.195
$-0.20 < RS_q \le -0.10$	.....	−1.023	.....	−0.4560	.....	−0.9741
$-0.10 < RS_q \le 0$	.....	−0.8078	.....	−0.4566	.....	−0.7679
$0 < RS_q \le 0.10$	.....	−0.3296	.....	−0.3024	.....	−0.2783
$0.10 < RS_q \le 0.20$	.....	0.8045	.....	0.3631	.....	0.7270
$0.20 < RS_q \le 0.30$	.....	1.346	.....	0.7158	.....	1.229
$0.30 < RS_q$	.....	1.377	.....	0.6824	.....	1.259
PS_q						
$PS_q \le -0.20$	.....	.....	0.08490	0.6613	.....	.....
$-0.20 < PS_q \le -0.10$	.....	.....	0.3736	0.4370	.....	.....
$-0.10 < PS_q \le 0$	.....	.....	0.2816	0.2476	.....	.....
$0 < PS_q \le 0.10$	.....	.....	0.1381	0.1073	.....	.....
$0.10 < PS_q \le 0.20$	.....	.....	−0.1433	−0.3516	.....	.....
$0.20 < PS_q \le 0.30$	.....	.....	−0.2869	−0.5649	.....	.....
$0.30 < PS_q$	.....	.....	−0.4481	−0.5366	.....	.....
YCS_q						
$YCS_q < 1.0$	.....	−0.2582	.....	−0.2947	.....	−0.2917
$1.0 \le YCS_q < 1.2$	.....	−0.02735	.....	−0.1996	.....	−0.01395
$1.2 \le YCS_q < 1.5$	.....	−0.04099	.....	0.03356	.....	−0.03796
$1.5 \le YCS_q$	.....	0.3265	.....	0.4608	.....	0.3436
$IREF_q$	.....	.....	0.1084	−0.01382	.....	.....
PROD						
ARMs	.....	.....	0.8151	0.2453	.....	.....
Balloon Loans	.....	.....	.....	.....	1.253	0.9483
15 – Year FRMs	.....	.....	.....	.....	−1.104	0.07990
20 – Year FRMs	.....	.....	.....	.....	−0.5834	0.06780
Government Loans	.....	.....	.....	.....	0.9125	−0.5660
$BCal_{LTV}$						
$LTV_{ORIG} \le 60$	2.045	.....	2.045	.....	2.045	.....
$60 < LTV_{ORIG} \le 70$	0.3051	.....	0.3051	.....	0.3051	.....
$70 < LTV_{ORIG} \le 75$	−0.07900	.....	−0.07900	.....	−0.07900	.....
$75 < LTV_{ORIG} \le 80$	−0.05519	.....	−0.05519	.....	−0.05519	.....
$80 < LTV_{ORIG} \le 90$	−0.1838	.....	−0.1838	.....	−0.1838	.....
$90 < LTV_{ORIG}$	0.2913	.....	0.2913	.....	0.2913	.....
Intercept (β_0, γ_0)	−6.516	−4.033	−6.602	−3.965	−6.513	−3.949

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3.7.3.1 * * *

[g] * * *

2. Compute:

$$HctAmt_m = (TPR_m + TIR_m) \times HctFac_m$$

* * * * *

3.8.3.6.1 * * *

[e] * * *

2. * * *

TABLE 3–68—CALCULATION OF MONTHLY CASH FLOWS FOR LONG CAPS AND FLOORS

Instrument	Cash Flows
Cap	(I − K) × N × D if I > K; O if I ≤ K
Floor	(K − I) × N × D if I < K; O if I ≥ K

* * * * *

3.11.3 * * *

[c] OFHEO will provide the Enterprise with its estimate of the capital treatment as soon as possible after receiving notice of the New Activity. In any event, the Enterprise will be notified of the capital treatment in accordance with the notice of proposed capital classification provided for in § 1777.21 of this chapter.

* * * * *

Dated: October 17, 2002.

Armando Falcon, Jr.

Director, Office of Federal Housing Enterprise Oversight.

[FR Doc. 02–26863 Filed 10–31–02; 8:45 am]

BILLING CODE 4220–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–CE–71–AD; Amendment 39–12925; AD 2002–22–01]

RIN 2120–AA64

Airworthiness Directives; MORAVAN a.s. Models Z–143L and Z–242L Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain MORAVAN a.s. (Moravan) Models Z–143L and Z–242L airplanes. This AD requires you to modify the engine secondary vent line. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for the Czech Republic. The actions specified by this AD are intended to prevent the engine crankcase ventilation lines from freezing during flight in cold weather (winter) conditions, which could result in oil leaking from the engine. Such a condition could lead to engine failure.

DATES: This AD becomes effective on December 13, 2002.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of December 13, 2002.

ADDRESSES: You may get the service information referenced in this AD from Moravan, Inc., 765 81 Otrokovice, Czech Republic; telephone: +420 67 767 3940; facsimile: +420 67 792 2103. You may view this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–CE–71–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

What Events Have Caused This AD?

The Civil Aviation Authority (CAA), which is the airworthiness authority for the Czech Republic, notified FAA that an unsafe condition may exist on certain Moravan Models Z–143L and Z–242L airplanes. The CAA reports that during a production delivery flight of a Model Z–242L airplane, smoke accumulated in the cockpit of the airplane, and engine oil pressure dropped significantly. As a result of this situation, the pilot was forced to make an emergency landing.

Investigation analysis revealed that the engine crankcase ventilation lines became frozen while flying in low ambient air temperature (winter) conditions. When the engine crankcase ventilation lines freeze, the front crankcase seal ring slips out, which allows oil to leak from the engine.

What Is the Potential Impact if FAA Took No Action?

This condition, if not corrected, could result in the engine crankcase ventilation lines freezing during flight in cold weather (winter) conditions. Such a condition could lead to engine failure.

Has FAA Taken Any Action to This Point?

We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Moravan Models Z–143L and Z–242L airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on August 14, 2002 (67 FR 52899). The NPRM proposed to require you to modify the engine secondary vent line.

Was the Public Invited To Comment?

The FAA encouraged interested persons to participate in the making of this amendment. We did not receive any comments on the proposed rule or on our determination of the cost to the public.

FAA's Determination

What Is FAA's Final Determination on This Issue?

After careful review of all available information related to the subject presented above, we have determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. We have determined that these minor corrections:

—Provide the intent that was proposed in the NPRM for correcting the unsafe condition; and

—Do not add any additional burden upon the public than was already proposed in the NPRM.

Cost Impact

How Many Airplanes Does This AD Impact?

We estimate that this AD affects 39 airplanes in the U.S. registry.

What Is the Cost Impact of This AD on Owners/Operators of the Affected Airplanes?

We estimate the following costs to accomplish the modification:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
1 workhour × $60 per hour = $60	No parts required	$60	$60 × 39 = $2,340.

Regulatory Impact

Does This AD Impact Various Entities?

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

Does This AD Involve a Significant Rule or Regulatory Action?

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new AD to read as follows:

Actions	Compliance	Procedures
Modify the engine vent lines	Within the next 100 hours time-in-service after December 13, 2002 (the effective date of this AD).	In accordance with Moravan Mandatory Service Bulletin Z 242L/19a—Rev. 3, Z 143L/20a, dated April 30, 1999.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Small Airplane Directorate, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 1: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with Moravan Inc. Mandatory Service Bulletin Z 242L/19a—Rev. 3, Z 143L/20a, dated April 30, 1999. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You may get copies from Moravan, Inc., 765 81 Otrokovice, Czech Republic; telephone: +420 67 767 3940; facsimile: +420 67 792 2103. You may view copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 2: The subject of this AD is addressed in Czech Republic AD Number CAA–AD–042/1999, August 18, 1999.

(i) *When does this amendment become effective?* This amendment becomes effective on December 13, 2002.

Issued in Kansas City, Missouri, on October 18, 2002.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–27201 Filed 10–31–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–CE–28–AD; Amendment 39–12927; AD 2002–22–03]

RIN 2120–AA64

Airworthiness Directives; PILATUS Aircraft Ltd. Model PC–7 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain PILATUS Aircraft Ltd. (Pilatus) Model PC–7 airplanes. This AD requires you to repetitively inspect the main landing gear front attachment brackets for cracks, and, if cracks are found, install improved-design brackets. Installing the improved-design brackets terminates the required inspections. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Switzerland. The actions specified by this AD are intended to detect and correct cracks in the main landing gear front attachment brackets,

2002–22 01 Moravan A.S.: Amendment 39–12925; Docket No. 99–CE–71–AD.

(a) *What airplanes are affected by this AD?* This AD affects the following airplane models and serial numbers that are certificated in any category:

Model	Serial Nos.
Z–143L	All serial numbers up to and including 0029, except 0025 and 0027.
Z–242L	All serial numbers up to and including 0733.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to prevent the engine crankcase ventilation lines from freezing during flight in cold weather (winter) conditions, which could result in oil leaking from the engine. Such a condition could lead to engine failure.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

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which could result in failure of the brackets. Such failure could lead to the main landing gear leg detaching from the wing main spar.

DATES: This AD becomes effective on December 20, 2002.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of December 20, 2002.

ADDRESSES: You may get the service information referenced in this AD from Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6371 Stans, Switzerland; telephone: +41 41 619 63 19; facsimile: +41 41 619 6224; or from Pilatus Business Aircraft Ltd., Product Support Department, 11755 Airport Way, Broomfield, Colorado 80021; telephone: (303) 465–9099; facsimile: (303) 465–6040. You may view this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, *Attention:* Rules Docket No. 2002–CE–28–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

What Events Have Caused This AD?

The Federal Office for Civil Aviation (FOCA), which is the airworthiness authority for Switzerland, recently notified FAA that an unsafe condition may exist on certain Pilatus Model PC–7 airplanes. The FOCA reports that an operator of a similar aircraft type design, which uses identical main landing gear support brackets, reported a single crack in one bracket. A fleet inspection of the operator's aircraft revealed stress corrosion cracking in more than 20 aircraft.

What Is the Potential Impact if FAA Took No Action?

Cracks in the main landing gear front attachment brackets could result in failure of the brackets. Such failure could lead to the main landing gear leg detaching from the wing main spar.

Has FAA Taken Any Action to This Point?

We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Pilatus Model PC–7 airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on August 9, 2002 (67 FR 51794). The NPRM proposed to repetitively inspect the main landing gear front attachment brackets for cracks, and, if cracks are found, install improved-design brackets. Installing the improved-design brackets terminates the required inspections.

Was the Public Invited To Comment?

The FAA encouraged interested persons to participate in the making of this amendment. We did not receive any comments on the proposed rule or on our determination of the cost to the public.

FAA's Determination

What Is FAA's Final Determination on This Issue?

After careful review of all available information related to the subject presented above, we have determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. We have determined that these minor corrections:

—Provide the intent that was proposed in the NPRM for correcting the unsafe condition; and

—Do not add any additional burden upon the public than was already proposed in the NPRM.

Cost Impact

How Many Airplanes Does This AD Impact?

We estimate that this AD affects 14 airplanes in the U.S. registry.

What Is the Cost Impact of This AD on Owners/Operators of the Affected Airplanes?

We estimate the following costs to accomplish the inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operator
4 workhours × $60 = $240	No parts required	$240	$240 × 14 = $3,360.

The FAA has no method of determining the number of repetitive inspections each owner/operator would incur over the life of each of the affected airplanes so the cost impact is based on the initial inspection.

We estimate the following costs to accomplish any necessary replacements that would be required based on the results of the inspection. We have no way of determining the number of airplanes that may need such replacement:

Labor cost	Parts cost	Total cost per airplane
80 workhours × $60 = $4,800 per side	$2,500 per side	$4,800 + $2,500 = $7,300 per side.

Regulatory Impact

Does This AD Impact Various Entities?

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

Does This AD Involve a Significant Rule or Regulatory Action?

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new AD to read as follows:

2002–22–03 Pilatus Aircraft LTD.: Amendment 39–12927; Docket No. 2002–CE–28–AD.

(a) *What airplanes are affected by this AD?* This AD affects Model PC–7 airplanes, serial numbers 101 through 618, that are certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to detect and correct cracks in the main landing gear front attachment brackets, which could result in failure of the brackets. Such failure could lead to the main landing gear leg detaching from the wing main spar.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Compliance	Actions	Procedures
(1) *Initial Inspection:* At whichever of the following occurs later, unless already accomplished: (i) Upon the accumulation of 3,000 hours time-in-service (TIS) on the attachment brackets or 10 years after installation of the brackets, whichever occurs first; or (ii) within 90 days after December 20, 2002 (the effective date of this AD).	Inspect, using the Impedance-Plane Eddy-Current Inspection, both main landing gear front attachment brackets, part number (P/N) 111.34.07.105 and P/N 111.34.07.106 for cracks.	In accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Pilatus PC–7 Service Bulletin No. 57–004, Revision No. 1, dated June 17, 2002; the ACCOMPLISHMENT INSTRUCTIONS section of Pilatus PC–7 Service Bulletin No. 57–005, dated September 10, 2001; and Pilatus PC–7 Maintenance Manual, Temporary Revision No. 05–10, dated September 10, 2001.
(2) *Repetitive Inspections:* Within 12 calendar months after the initial inspection required in paragraph (d)(1) of this AD and thereafter at intervals not to exceed 12 calendar months.	Inspection, using the Impedance-Plane Eddy-Current Inspection, both main landing gear front attachment brackets, P/N 111.34.07.105 and P/N 111.34.07.106 for cracks.	In accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Pilatus PC–7 Service Bulletin No. 57–004, Revision No. 1, dated June 17, 2002; the ACCOMPLISHMENT INSTRUCTIONS section of Pilatus PC–7 Service Bulletin No. 57–005, dated September 10, 2001; and Pilatus PC–7 Maintenance Manual, Temporary Revision No. 05–10, dated September 10, 2001.
(3) Prior to further flight after the inspection in which the damage was found.	If a crack is found in any main landing gear front attachment bracket during any inspection required in this AD, replace with an improved bracket, P/N 557.10.09.045, P/N 557.10.09.046, or FAA-approved equivalent P/N. Repetitive inspections are still required on any P/N 111.34.07.105 and P/N 111.34.07.106 for cracks.	In accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Pilatus PC–7 Service Bulletin No. 57–005, dated September 10, 2001.
(4) At any time as terminating action for the repetitive inspections. However, you must replace prior to further flight if you find cracks during any inspections required by this AD.	You may terminate the inspections required in paragraphs (d)(1) and (d)(2) of this AD when improved design main landing gear front attachment brackets, P/N 557.10.09.045, P/N 557.10.09.046, or FAA-approved equivalent P/Ns, are installed on both sides of the airplane.	In accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Pilatus PC–7 Service Bulletin No. 57–005, dated September 10, 2001.
(5) As of December 20, 2002 (the effective date of this AD).	Only install main landing gear brackets that are P/N 557.10.09.045, P/N 557.10.09.046, or FAA-approved equivalent P/Ns.	Not Applicable.

Note 1: If you find cracks on one side only, you are only required to replace the damaged side with the new improved-design bracket and continue the repetitive inspections required by paragraph (d)(2) of this AD. Repetitive inspections are still required on any installed bracket with either P/N 111.34.07.105 or P/N 111.34.07.106.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Standards Office Manager, Small Airplane Directorate, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Standards Office Manager.

Note 2: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Doug Rudolph, Aerospace Engineer, FAA, Small Airplane

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Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with Pilatus PC–7 Service Bulletin No. 57–004, Revision No. 1, dated June 17, 2002; Pilatus PC–7 Service Bulletin No. 57–005, dated September 10, 2001; and Pilatus PC–7 Maintenance Manual, Temporary Revision No. 05–10, dated September 10, 2001. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You may get copies from Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6371 Stans, Switzerland; telephone: +41 41 619 63 19; facsimile: +41 41 619 6224; or from Pilatus Business Aircraft Ltd., Product Support Department, 11755 Airport Way, Broomfield, Colorado 80021; telephone: (303) 465–9099; facsimile: (303) 465–6040. You may view copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Swiss AD HB 2002–270, dated June 24, 2002.

(i) *When does this amendment become effective?* This amendment becomes effective on December 20, 2002.

Issued in Kansas City, Missouri, on October 22, 2002.

David R. Showers,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–27418 Filed 10–31–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–CE–21–AD; Amendment 39–12926; AD 2002–22–02]

RIN 2120–AA64

Airworthiness Directives; Pilatus Britten-Norman Limited BN–2, BN–2A, BN–2B, BN–2T, and BN2A MK. III Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to all Pilatus Britten-Norman Limited (Pilatus Britten-Norman) BN–2, BN–2A, BN–2B, BN–2T, and BN2A MK. III series airplanes. This AD requires you to repetitively inspect the bottom corner of the engine mount bracket for cracks and replace any cracked bracket with a new one. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for the United Kingdom. The actions specified by this AD are intended to detect and correct cracks in the engine mount bracket. Such a condition could cause the engine mount assembly to fail, which could result in the engine separating from the airplane and lead to loss of control of the airplane.

DATES: This AD becomes effective on December 20, 2002.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of December 20, 2002.

ADDRESSES: You may get the service information referenced in this AD from B–N Group Limited, Bembridge, Isle of Wight, United Kingdom PO35 5PR; telephone: +44 (0) 1983 872511; facsimile: +44 (0) 1983 873246. You may view this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–CE–21–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

What Events Have Caused This AD?

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified FAA that an unsafe condition may exist on all Pilatus Britten-Norman BN–2, BN–2A, BN–2B, BN–2T, and BN2A MK. III series airplanes. The CAA reports two occurrences of extensive cracks being found on the bottom corner of the engine mount bracket between the attachment flange and the main bracket. The cracks were found during regular scheduled maintenance.

The manufacturer has determined that this condition is a result of the reinforcing doubler being too close to the flange.

What Is the Potential Impact if FAA Took No Action?

This condition, if not detected and corrected, could result in failure of the engine mount. Such failure could result in the engine separating from the airplane and lead to loss of control of the airplane.

Has FAA Taken Any Action to This Point?

We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all Pilatus Britten-Norman BN–2, BN–2A, BN–2B, BN–2T, and BN2A MK. III series airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on August 22, 2002 (67 FR 54384). The NPRM proposed to require you to repetitively inspect the bottom corner of the engine mount bracket for cracks, replace any cracked bracket, return the removed bracket(s) to Pilatus Britten-Norman, and report the return to FAA.

Are There Differences Between This AD, the Service Information, and the CAA AD?

The CAA AD and the service information allow continued flight if cracks are found in the engine mount bracket that do not exceed certain limits. The applicable service bulletin specifies replacement of the engine mount bracket only if cracks are found exceeding this limit, as does CAA AD 005–11–2001. This AD does not allow continued flight if any crack is found. FAA policy is to disallow airplane operation when known cracks exist in primary structure, unless the ability to sustain ultimate load with these cracks is proven. The engine mount bracket is considered primary structure, and the FAA has not received any analysis to prove that ultimate load can be sustained with cracks in this area.

Is There a Modification I Can Incorporate Instead of Repetitively Inspecting the Engine Mount Brackets?

The FAA has determined that long-term continued operational safety will be better assured by design changes that remove the source of the problem rather than by performing repetitive inspections. With this in mind, we will continue to work with Pilatus Britten-Norman in collecting information to determine whether a future design change may be necessary.

Was the Public Invited To Comment?

The FAA encouraged interested persons to participate in the making of this amendment. We did not receive any

comments on the proposed rule or on our determination of the cost to the public.

FAA's Determination

What is FAA's Final Determination on This Issue?

After careful review of all available information related to the subject presented above, we have determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. We have determined that these minor corrections:

—Provide the intent that was proposed in the NPRM for correcting the unsafe condition; and

—Do not add any additional burden upon the public than was already proposed in the NPRM.

Cost Impact

How Many Airplanes Does This AD Impact?

We estimate that this AD affects 126 airplanes in the U.S. registry.

What Is the Cost Impact of This AD on Owners/Operators of the Affected Airplanes?

We estimate the following costs to accomplish the inspection for BN–2, BN–2A, BN–2B, and BN2A MK. III series airplanes:

Labor cost	Parts cost	Total cost per airplane
4 workhours × $60 per hour = $240	$10	$250

We estimate the following costs to accomplish the inspection for BN–2T series airplanes:

Labor cost	Parts cost	Total cost per airplane
8 workhours × $60 per hour = $480	$10	$490

We estimate the following costs to accomplish any necessary replacements for BN–2, BN–2A, BN–2B, and BN–2T series airplanes that will be required based on the results of the inspection. We have no way of determining the number of airplanes that may need such replacement:

Labor cost	Parts cost per bracket	Total cost per bracket
48 workhours × $60 per hour = $2,880 per bracket (2 brackets per engine, 2 engines per airplane).	$1,295	$2,880 + $1,295 = $4,175.

We estimate the following costs to accomplish any necessary replacements for BN2A MK. III series airplanes that will be required based on the results of the inspection. We have no way of determining the number of airplanes that may need such replacement:

Labor cost	Parts cost per bracket	Total cost per bracket
48 workhours × $60 per hour = $2,880 per bracket (2 brackets per engine, 2 engines per airplane).	$714	$2,880 + $714 = $3,594.

What Is the Compliance Time of This AD?

The compliance time of this AD is "within the next 500 hours time-in-service (TIS) or within the next 24 calendar months after the effective date of this AD, whichever occurs first."

Why Is The Compliance Time of This AD Presented in Both Hours TIS and Calendar Time?

We have established the compliance time of this AD in both hours TIS and calendar time. The unsafe condition is dependent upon repetitive airplane operation. However, the recommended maintenance program specifies other actions in this area at intervals not to exceed 2 years. Therefore, the compliance time will ensure that high-time airplanes are inspected within a certain amount of hours TIS and the lower time airplanes would be inspected at the next maintenance event in the affected area. We have determined that this compliance time:

—Will ensure that the unsafe condition is addressed in a timely manner on all affected airplanes; and

—Will not inadvertently ground any of the affected airplanes.

Regulatory Impact

Does This AD Impact Various Entities?

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

Does This AD Involve a Significant Rule or Regulatory Action?

For the reasons discussed above, I certify that this action (1) is not a significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final

evaluation prepared for this action is

PART 39—AIRWORTHINESS

2A–21, BN–2A–26, BN–2A–27, BN–2B–20,

DEPARTMENT OF TRANSPORTATION

49.33.41.31.11.73. You may view this

part 39 of the Federal Aviation

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evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new AD to read as follows:

2002–22–02 Pilatus Britten-Norman Limited: Amendment 39–12926; Docket No. 2002–CE–21–AD.

(a) *What airplanes are affected by this AD?* This AD affects the following airplane models, all serial numbers, that are certificated in any category:

Models

BN–2, BN–2A, BN–2A–2, BN–2A–3, BN–2A–6, BN–2A–8, BN–2A–9, BN–2A–20, BN–2A–21, BN–2A–26, BN–2A–27, BN–2B–20, BN–2B–21, BN–2B–26, BN–2B–27, BN–2T, BN–2T–4R, BN2A MK. III, BN2A MK. III–2, BN2A MK. III–3

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to detect and correct cracks in the engine mount bracket. Such a condition could cause the engine mount assembly to fail, which could result in the engine separating from the airplane and lead to loss of control of the airplane.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) Inspect the bottom corner of the engine mount bracket between the attachment flange and the main part of the bracket for cracks: (i) If cracks are found during any inspections, replace the bracket with a new bracket and continue with the repetitive inspection requirements of this AD; (ii) If no cracks are found during any inspection, continue with the repetitive inspection requirements of this AD.	Initially inspect within the next 500 hours time-in-service (TIS) or within the next 24 calendar months after December 20, 2002 (the effective date of this AD), whichever occurs first, and repetitively inspect thereafter at intervals not-to-exceed 500 hours TIS or 1,000 landings, whichever occurs first. Replace cracked bracket prior to further flight after the inspection in which the crack is found.	In accordance with Pilatus Britten Norman Service Bulletin SB 275, Issue 1, dated November 30, 2001.
(2) Send the removed brackets to the Engineering and Design Authority, B–N Group Ltd. and report the return to FAA. The Office of Management and Budget (OMB) approved the information collection requirements contained in this regulation under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and assigned OMB Control Number 2120–0056.	Within 10 days after removing the bracket or within 10 days after December 20, 2002 (the effective date of this AD), whichever occurs later.	Send the removed brackets to B–N Group Limited, Bembridge, Isle of Wight, United Kingdom P035 5PR, and report the return to Doug Rudolph, FAA, at the address in paragraph (f) of this AD.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Standards Office Manager, Small Airplane Directorate, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Standards Office Manager.

Note 1: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with Pilatus Britten Norman Service Bulletin SB 275, Issue 1, dated November 30, 2001. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You may get copies from B–N Group Limited, Bembridge, Isle of Wight, United Kingdom PO35 5PR; telephone: +44 (0) 1983 872511; facsimile: +44 (0) 1983 873246. You may view copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street; NW, suite 700, Washington, DC.

Note 2: The subject of this AD is addressed in the United Kingdom CAA–AD Number 005–11–2001, not dated.

(i) *When does this amendment become effective?* This amendment becomes effective on December 20, 2002.

Issued in Kansas City, Missouri, on October 22, 2002.

David R. Showers,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–27419 Filed 10–31–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–CE–29–AD; Amendment 39–12928; AD 2002–22–04]

RIN 2120–AA64

Airworthiness Directives; Stemme GmbH & Co. KG Model S10–VT Sailplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Stemme GmbH & Co. KG (Stemme) Model S10–VT sailplanes. This AD requires you to modify the engine compartment fuel and oil system and firewall. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. The actions specified by this AD are intended to reduce the potential for a fire to ignite in the engine compartment and increase the containment of an engine fire in the engine compartment. A fire in the engine compartment could lead to loss of control of the sailplane.

DATES: This AD becomes effective on December 20, 2002.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of December 20, 2002.

ADDRESSES: You may get the service information referenced in this AD from Stemme GmbH & Co. KG, Gustav-Meyer-Allee 25, D–13355 Berlin, Germany; telephone: 49.33.41.31.11.70; facsimile: 49.33.41.31.11.73. You may view this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–CE–29–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4144; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

What events have caused this AD? The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, recently notified FAA that an unsafe condition may exist on certain Stemme Model sailplanes. The LBA reports an incident of an in-flight fire on a Model sailplane. The accident investigation revealed that the fire was not contained in the engine compartment. The manufacturer conducted a design review and determined that modifications to the fuel and oil system and the firewall design will significantly reduce the potential for a fire to ignite in the engine compartment and increase the containment of an engine fire in the engine compartment.

What is the potential impact if FAA took no action? If this condition is not corrected, there is potential for a fire to ignite in the engine compartment and spread into the cockpit. Such a condition could lead to loss of control of the sailplane.

Has FAA taken any action to this point? We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Stemme Model sailplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on August 2, 2002 (67 FR 50383). The NPRM proposed to require you to modify the engine compartment fuel and oil system and modify the firewall by sealing all gaps.

Was the public invited to comment? The FAA encouraged interested persons to participate in the making of this amendment. We did not receive any comments on the proposed rule or on our determination of the cost to the public.

FAA's Determination

What is FAA's final determination on this issue? After careful review of all available information related to the subject presented above, we have determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. *We have determined that these minor corrections:*

—Provide the intent that was proposed in the NPRM for correcting the unsafe condition; and

—Do not add any additional burden upon the public than was already proposed in the NPRM.

Cost Impact

How many sailplanes does this AD impact? We estimate that this AD affects 41 sailplanes in the U.S. registry.

What is the cost impact of this AD on owners/operators of the affected sailplanes? We estimate the following costs to accomplish the modifications:

Labor cost	Parts cost	Total cost per sailplane	Total cost on U.S. operators
10 workhours × $60 per hour = $600	$620	$1,220	$1,220 × 41 = $50,020.

Compliance Time of This AD

What will be the compliance time of this AD? The compliance time of this AD is "within the next 50 hours time-in-service (TIS) or 3 months after the effective date of this AD, whichever occurs first."

Why is the compliance time of this AD presented in both hours TIS and calendar time? The unsafe condition on these sailplanes is not a result of the number of times the sailplane is operated. Sailplane operation varies among operators. For example, one operator may operate the sailplane 50 hours TIS in 3 months while it may take another operator 12 months or more to accumulate 50 hours TIS. For this reason, the FAA has determined that the compliance time of this AD should be specified in both hours time-in-service (TIS) and calendar time in order to ensure this condition is not allowed to go uncorrected over time.

Regulatory Impact

Does this AD impact various entities? The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

Does this AD involve a significant rule or regulatory action? For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic

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impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new AD to read as follows:

2002–22–04 Stemme GmbH & Co. KG: Amendment 39–12928; Docket No. 2002–CE–29–AD.

Actions	Compliance	Procedures
Modify the firewall by sealing all gaps and modify the fuel and oil lines in the engine compartment.	Within the next 50 hours time-in-service (TIS) or 3 months after December 20, 2002 (the effective date of this AD), whichever occurs first.	Modify the firewall in accordance with Stemme Service Bulletin A31–10–057, dated June 7, 2001, as specified in Stemme Service Bulletin A31–10–061, dated April 22, 2002. Modify the fuel oil lines in accordance with Stemme Service Bulletin A31–10–061, dated April 22, 2002, and Stemme Installation Instruction A34–10–061E, dated April 22, 2002.

(a) *What sailplanes are affected by this AD?* This AD affects Model S10–VT sailplanes, serial numbers 11–002 through 11–072, that are certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the sailplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to reduce the potential for a fire to ignite in the engine compartment and increase the containment of an engine fire in the engine compartment. A fire in the engine compartment could lead to loss of control of the sailplane.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Standards Office, Small Airplane Directorate, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standards Office.

Note 1: This AD applies to each sailplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For sailplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4144; facsimile: (816) 329–4090.

(g) *What if I need to fly the sailplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your sailplane to a location where you can accomplish the requirements of this AD.

(h) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with Stemme Service Bulletin A31–10–057, dated June 7, 2001, Stemme Service Bulletin A31–10–061, dated April 22, 2002, and Stemme Installation Instruction A34–10–061E, dated April 22, 2002. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You may get copies from Stemme GmbH & Co. KG, Gustav-Meyer-Allee 25, D–13355 Berlin, Germany; telephone: 49.33.41.31.11.70; facsimile: 49.33.41.31.11.73. You may view copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 2: The subject of this AD is addressed in German AD 2002–156, dated June 13, 2002.

(i) *When does this amendment become effective?* This amendment becomes effective on December 20, 2002.

Issued in Kansas City, Missouri, on October 22, 2002.

David R. Showers,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–27420 Filed 10–31–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NE–21–AD; Amendment 39–12931; AD 2002–22–06]

RIN 2120–AA64

Airworthiness Directives; Honeywell International, Inc., (Formerly AlliedSignal, Inc. and Textron Lycoming) LF507 and ALF502R Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Honeywell International, Inc., (formerly AlliedSignal, Inc. and Textron Lycoming) LF507 and ALF502R series turbofan engines with combustion chamber liner assembly part number (P/N) 2–131–520–03 installed. This action requires initial and repetitive borescope inspections of the combustion chamber liner assembly to determine if the combustion liner assembly condition is acceptable for continued operation, requires the removal from service of certain serial number (SN) combustion chamber liner assemblies, and provides an optional terminating action to the repetitive borescope inspections. This amendment is prompted by three reports of separation of the combustor dome baffle from the combustion chamber liner assembly resulting in engine combustion chamber liner assembly burn through. The actions specified in this AD are intended to prevent separation of the combustor dome baffle from the combustion chamber liner assembly and the flow of hot combustor gases on oil and fuel lines which could result in engine fire, in-flight shutdown, and damage to the airplane.

DATES: Effective November 18, 2002. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of November 18, 2002.

Comments for inclusion in the Rules Docket must be received on or before December 31, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, *Attention:* Rules Docket No. 2002–NE–21–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location, by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Comments may also be sent via the Internet using the following address: *"9-ane-adcomment@faa.gov"*. Comments sent via the Internet must contain the docket number in the subject line.

The service information referenced in this AD may be obtained from Honeywell International, Inc. (formerly AlliedSignal, Inc. and Textron Lycoming), *Attn:* Data Distribution, M/S 64–3/2101–201, PO Box 29003, Phoenix, AZ 85038–9003, *telephone:* (602) 365–2493; fax: (602) 365–5577. This information may be examined, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the *Office of the Federal Register*, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert Baitoo, Aerospace Engineer, Los Angeles Aircraft Certification Office (LAACO), FAA, Transport Airplane Directorate, 3960 Paramount Blvd., Lakewood, CA 90712–4137; telephone (562) 627–5245; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: The FAA has received three reports of combustion liner assemblies that have been found with burned and missing material. One combustion chamber liner assembly that burned through was found at routine maintenance, one manifested itself as a low thrust condition, and one resulted in an engine in-flight shutdown. Some combustion liner assemblies may have inferior baffle attachment welds. To date, there have been no in-flight engine fires due to separation of the combustor dome baffle from the combustion chamber liner assembly. However, the FAA has determined that LF507 and ALF502R series turbofan engines with combustion chamber liner assembly part number (P/N) 2–131–520–03 installed could experience burn through due to separation of the combustor dome baffle and the flow of hot combustor gases on oil and fuel lines. This condition, if not corrected, could result in engine fire, in-flight shutdown, and damage to the airplane.

Manufacturer's Service Information

The FAA has reviewed and approved the technical contents of Honeywell International, Inc., (formerly AlliedSignal, Inc. and Textron Lycoming) alert service bulletin (ASB).

- ALF/LF A72–1076, Revision 1, dated August 30, 2002. That ASB describes initial and repetitive borescope inspection procedures of the combustion chamber liner assembly part number (P/N) 2–131–520–03. That ASB also lists combustion chamber liner assembly SN's that require removal within 250 cycles from date of receipt of that service bulletin revision (Revision 1).

FAA's Determination of an Unsafe Condition and Required Actions

Since an unsafe condition has been identified that is likely to exist or develop on other Honeywell International, Inc., (formerly AlliedSignal, Inc. and Textron Lycoming) LF507 and ALF502R series turbofan engines of the same type design, this AD is being issued to prevent separation of the combustor dome baffle from the combustion chamber liner assembly and the flow of hot combustor gases on oil and fuel lines which could result in an engine fire, an in-flight shutdown, and damage to the airplane. The actions are required to be done in accordance with the alert service bulletin described previously.

Immediate Adoption of This AD

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NE–21–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Analysis

This final rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this final rule.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation

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under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2002–22–06 Honeywell International, Inc., (formerly AlliedSignal, Inc. and Textron Lycoming): Amendment 39–12931. Docket No. 2002–NE–21–AD.

Applicability: This airworthiness directive (AD) is applicable to Honeywell International, Inc., (formerly AlliedSignal, Inc. and Textron Lycoming) LF507 and ALF502R series turbofan engines with combustion chamber liner assembly part number (P/N) 2–131–520–03 installed. These engines are installed on, but not limited to, BAE Systems Avro 146 and BAE 146 series aircraft.

Note 1: This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Compliance with this AD is required as indicated, unless already done.

To prevent separation of the combustor dome baffle from the combustion chamber liner assembly and the flow of hot combustor gases on oil and fuel lines which could result in an engine fire, an in-flight shutdown, and damage to the airplane, do the following:

Removal Requirements

(a) Within 250 cycles-in-service (CIS) after the effective date of this AD, remove from service engines that have combustion chamber liner assemblies, P/N 2–131–520–03, listed by serial number (SN) in Table 1 of this AD. Replace that SN combustion chamber liner assembly with a serviceable part. Table 1 follows:

TABLE 1.—AFFECTED COMBUSTION CHAMBER LINER ASSEMBLIES

Serial Nos. to be removed from service
990992700016.
990992700018 thru 990992700028.
990992700077 thru 990992700078.
990992700081.
990992700083.
990992700085 thru 990992700090.

Initial and Repetitive Inspections

(b) On engines that have combustion chamber liner assemblies with more than 2,000 CIS on the effective date of this AD, perform an initial borescope inspection of combustion chamber liner assembly P/N 2–131–520–03 within 500 CIS after the effective date of this AD in accordance with paragraphs 2(A)(1) through 2(A)(8) of the Accomplishment Instructions of Honeywell alert service bulletin (ASB) ALF/LF A72–1076, Revision 1, dated August 30, 2002.

(c) Thereafter, at each successive 500 CIS, perform a borescope inspection of combustion chamber liner assembly P/N 2–131–520–03 in accordance with paragraphs 2(A)(1) through 2(A)(8) of the Accomplishment Instructions of Honeywell ASB ALF/LF A72–1076, Revision 1, dated August 30, 2002.

Optional Terminating Action

(d) Replacement of combustion chamber liner assembly, P/N 2–131–520–03, with the new improved durability combustion chamber liner assembly, P/N 2–131–520–04, constitutes terminating action to the borescope inspection requirements of paragraph (c) of this AD. Information regarding the replacement of combustion chamber liner assembly P/N 2–131–520–03 with P/N 2–131–520–04 can be found in Honeywell service bulletin ALF/LF 72–1078, dated June 28, 2002.

Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (LAACO). Operators must submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, LAACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the LAACO.

Special Flight Permits

(f) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be done.

Documents That Have Been Incorporated by Reference

(g) The initial and repetitive borescope inspections of combustion chamber liner assembly, PN 2–131–520–03, must be done in accordance with the Honeywell International, Inc. ASB ALF/LF A72–1076, Revision 1, dated August 30, 2002. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Honeywell International, Inc. (formerly AlliedSignal, Inc. and Textron Lycoming), *Attn:* Data Distribution, M/S 64–3/2101–201, P.O. Box 29003, Phoenix, AZ 85038–9003, telephone: (602) 365–2493; fax: (602) 365–5577. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Effective Date

(h) This amendment becomes effective on November 18, 2002.

Issued in Burlington, Massachusetts, on October 22, 2002.

Francis A. Favara,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 02–27433 Filed 10–31–02; 8:45 am]

BILLING CODE 4910–13–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1700

Poison Prevention Packaging Requirements; Exemption of Hormone Replacement Therapy Products

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: The Commission is amending its child-resistant packaging requirements to exempt hormone replacement therapy ("HRT") products containing one or more progestogen or estrogen substances. Current exemptions cover some HRT products, but not others. This rule would uniformly exempt from child resistant packaging requirements all HRT products that rely solely on the activity of one or more progestogen or estrogen substances.

DATES: The rule is effective November 1, 2002, and applies to products packaged on or after that date.

FOR FURTHER INFORMATION CONTACT: Geri Smith, Office of Compliance and Enforcement, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0608 ext. 1160.

SUPPLEMENTARY INFORMATION:

A. Background

The Poison Prevention Packaging Act of 1970 ("PPPA"), 15 U.S.C. 1471–1476, authorizes the Commission to issue standards for the special packaging of household substances, such as drugs, when (1) Child resistant packaging is necessary to protect children from serious personal injury or illness due to the substance and (2) the special packaging is technically feasible, practicable, and appropriate for the substance. Accordingly, a Commission rule requires that oral prescription drugs be in child resistant ("CR") packaging. 16 CFR 1700.14(a)(10).

The Commission's regulations allow exemptions from this requirement for substances that have low acute toxicity. 16 CFR 1702.1(b) and 1702.7. Current regulations provide four PPPA exemptions for sex hormones: (1) Oral contraceptives in mnemonic packages containing one or more progestogen or estrogen substances; (2) conjugated estrogen tablets in mnemonic packages; (3) norethindrone acetate tablets in mnemonic packaging; and (4) medroxyprogesterone acetate tablets. 16 CFR 1700.14(a)(10)(iv), (xvii), (xviii) and (xix). Some HRT products fall within these exemptions, but because of the way these exemptions are written, other HRT products currently require CR packaging.

On February 19, 2002, the Commission published a notice of proposed rulemaking ("NPR") proposing to exempt from the special packaging requirements HRT products containing one or more progestogen or estrogen substances. 67 FR 7319. This rule will make the exemption of HRT products more uniform by exempting all HRT products that rely solely on the activity of one or more progestogen or estrogen substances.[1]

B. HRT Products

HRT is used to replace the estrogen and progesterone that normally decline following menopause (the cessation of menstruation). Women may experience a range of menopausal symptoms. Additionally, menopause accelerates bone depletion that commonly occurs with aging, leading to osteoporosis.

HRT has been used to relieve a number of menopausal symptoms and help to prevent osteoporosis. HRT consists of using estrogen alone or various combinations of estrogens and progestins, similar to oral contraceptives. Some are natural hormones (*e.g.*, estradiol) and others are semi-synthetic or synthetic (*e.g.*, norgestimate). Since available HRT products contain estrogen/progestin combinations similar to oral contraceptives, it is reasonable and consistent to exempt them similarly.

Recently, studies have raised questions about the health effects of HRT. A Women's Health Initiative study indicated that women treated for about 5 years with a combination of estrogen and progestin had an increased risk of breast cancer, heart disease, stroke and blood clots compared to placebo. While this study suggests that HRT may not be indicated for long term use, it did not examine different doses, different estrogen or progestins or alternative formulations. It is likely that physicians may consider prescribing short term hormone therapy for menopausal symptoms after evaluating the risks and benefits for individual patients. Because the acute toxicity of HRT is low and its use is likely to continue even with the questions raised about its long term use, the Commission believes that a rule uniformly exempting HRT products from CR packaging requirements is appropriate.

C. Toxicity Data

Human toxic doses for estrogens or progestins have not been defined. Exposure summaries in the Poisindex® for estrogens, progestins, and oral contraceptives state that acute toxicity is unlikely following overdosage. Gastrointestinal effects (*e.g.*, nausea, vomiting, abdominal cramps) may occur after an acute overdose, but typically no treatment is necessary.

The medical literature provides little information concerning acute overdosage of progestins or estrogens. One case mentioned in the NPR showed that a single dose of 160 mg estradiol valerate (80 tablets/2 mg each), ingested by a 19-year-old woman in a suicide attempt, produced little toxicity. The woman slept easily during the night of the ingestion and the next evening presented in the emergency clinic in generally good condition with nausea and a headache.

For the NPR, the staff reviewed poisoning data from the American Association of Poison Control Centers ("AAPCC") Toxic Exposure Surveillance System ("TESS") showing acute exposures in children less than five years old to estrogens, progestins, and oral contraceptives from 1993 to 1998. There were no deaths and most of the exposures were non-toxic.

For this final rule, the staff reviewed available AAPCC data since the NPR was published, and found no major outcomes or deaths in any of the hormone categories in 1999 and 2000 (the most recent data available).

D. Public Comment on the NPR

The Commission received one comment in response to the NPR. It came from Berlex Laboratories, which wrote that it currently markets estrogen replacement therapy, long-acting contraception, and oral contraception products and plans to market an oral HRT product in the near future. Berlex states that the proposed exemption is "beneficial in terms of cost and efficiency" and provides "drug producers greater flexibility in meeting the needs of the HRT patient population."

E. Effective Date

With this rule, the Commission issues an exemption from the child-resistant packaging requirements generally applicable to oral prescription drugs. Thus, the rule imposes no new requirements, but lifts requirements currently in existence for some HRT products (some HRT products are already exempt from CR packaging requirements). Under these circumstances the Commission believes it is appropriate for the rule to become effective on the date it is published in the **Federal Register**.

F. Impact on Small Business

As discussed in the NPR, the Commission preliminarily concluded that the proposed amendment exempting HRT products from special packaging requirements would not have a significant impact on a substantial number of small businesses or other small entities. This conclusion was based on the fact that the exemption would actually increase the packaging options for manufacturers because it would allow them to package the affected HRT products in non-CR packages. Thus, the exemption is not likely to have a significant impact on a substantial number of companies, regardless of size.

G. Environmental Considerations

In the NPR, the Commission also discussed possible impact on the environment as required by the National

[1] Commissioner Thomas H. Moore issued a statement, which is on file in the Commission's Office of the Secretary, Room 501, 4330 East-West Highway, Bethesda, Maryland 20814.

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Environmental Policy Act, and in accordance with the Council on Environmental Quality regulations and CPSC procedures for environmental review. The Commission found that, because the rule would have no adverse effect on the environment, neither an environmental assessment nor an environmental impact statement is required.

H. Executive Orders

According to Executive Order 12988 (February 5, 1996), agencies must state in clear language the preemptive effect, if any, of new regulations.

The PPPA provides that, generally, when a special packaging standard issued under the PPPA is in effect, "no State or political subdivision thereof shall have any authority either to establish or continue in effect, with respect to such household substance, any standard for special packaging (and any exemption therefrom and requirement related thereto) which is not identical to the [PPPA] standard." 15 U.S.C. 1476(a). A State or local standard may be excepted from this preemptive effect if (1) the State or local standard provides a higher degree of protection from the risk of injury or illness than the PPPA standard; and (2) the State or political subdivision applies to the Commission for an exemption from the PPPA's preemption clause and the Commission grants the exemption through a process specified at 16 CFR part 1061. 15 U.S.C. 1476(c)(1). In addition, the Federal government, or a State or local government, may establish and continue in effect a non-identical special packaging requirement that provides a higher degree of protection than the PPPA requirement for a household substance for the Federal, State or local government's own use. 15 U.S.C. 1476(b).

Accordingly, with the exceptions noted above, the rule exempting HRT products from special packaging requirements would preempt non-identical state or local special packaging standards for those products.

The Commission has also evaluated the rule in light of the principles stated in Executive Order 13132 concerning federalism, even though that Order does not apply to independent regulatory agencies such as CPSC. The Commission does not expect that the rule will have any substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among various levels of government.

List of Subjects in 16 CFR Part 1700

Consumer protection, Drugs, Infants and children, Packaging and containers, Poison prevention, Toxic substances.

For the reasons given above, the Commission amends 16 CFR part 1700 as follows:

PART 1700—[AMENDED]

1. The authority citation for part 1700 continues to read as follows:

Authority: Pub. L. 91–601, secs. 1–9, 84 Stat. 1670–74, 15 U.S.C. 1471–76. Secs 1700.1 and 1700.14 also issued under Pub. L. 92–573, sec. 30(a), 88 Stat. 1231. 15 U.S.C. 2079(a).

2. The introductory text of paragraphs (a) and (a)(10) is republished. Section 1700.14 is amended by adding new paragraph (a)(10)(xxi) to read as follows:

§ 1700.14 Substances requiring special packaging.

(a) *Substances.* The Commission has determined that the degree or nature of the hazard to children in the availability of the following substances, by reason of their packaging, is such that special packaging meeting the requirements of § 1700.20(a) is required to protect children from serious personal injury or serious illness resulting from handling, using, or ingesting such substances, and the special packaging herein required is technically feasible, practicable, and appropriate for these substances:

* * * * *

(10) *Prescription Drugs.* Any drug for human use that is in a dosage form intended for oral administration and that is required by Federal law to be dispensed only by or upon an oral or written prescription of a practitioner licensed by law to administer such drug shall be packaged in accordance with the provisions of § 1700.15(a),(b), and (c), except for the following:

* * * * *

(xxi) Hormone Replacement Therapy Products that rely solely upon the activity of one or more progestogen or estrogen substances.

* * * * *

Dated: October 28, 2002.

Todd Stevenson,

Secretary, Consumer Product Safety Commission.

List of Relevant Documents

1. Briefing memorandum from Jacqueline Ferrante, Ph.D., Directorate for Health Sciences, to the Commission, "Final Rule to Exempt Hormone Replacement Therapy Products from the Special Packaging Requirements of the Poison Prevention Packaging Act," October 9, 2002.

2. Memorandum from Robert Franklin, Directorate for Economic Analysis, to Jacqueline Ferrante, Ph.D., Project Manager, "Small Business and Environmental Considerations Related to Exempting HRT Products from PPPA Requirements," September 9, 2002.

[FR Doc. 02–27745 Filed 10–31–02; 8:45 am]
BILLING CODE 6355–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–02–118]

Drawbridge Operation Regulations: Danvers River, MA

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations for the Kernwood Bridge, mile 1.0, across the Danvers River in Massachusetts. This temporary deviation will allow the bridge to remain in the closed position from 7 a.m. on November 12, 2002 through 8 p.m. on November 14, 2002. This temporary deviation is necessary to facilitate structural repairs at the bridge.

DATES: This deviation is effective from November 12, 2002 through November 14, 2002.

FOR FURTHER INFORMATION CONTACT: John McDonald, Project Officer, First Coast Guard District, at (617) 223–8364.

SUPPLEMENTARY INFORMATION: The Kernwood Bridge has a vertical clearance in the closed position of 8 feet at mean high water and 17 feet at mean low water. The existing regulations are listed at 33 CFR 117.595.

The bridge owner, Massachusetts Highway Department, requested a temporary deviation from the drawbridge operating regulations to facilitate structural maintenance, replacement of the pinion bearing and support frame, at the bridge. The bridge must remain closed during these repairs. The bridge opening records indicate this bridge has received few requests to open during the requested closure time during past years.

This deviation from the drawbridge operation regulations will allow the bridge to remain in the closed position from 7 a.m. on November 12, 2002 through 8 p.m. on November 14, 2002.

This deviation from the drawbridge operation regulations is authorized

under 33 CFR 117.35, and will be performed with all due speed in order to return the bridge to normal operation as soon as possible.

Dated: October 23, 2002.

V.S. Crea,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 02–27851 Filed 10–31–02; 8:45 am]
BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–02–100]

RIN 2115–AE47

Drawbridge Operation Regulations: Connecticut River, CT

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary final rule governing the operation of the Route 82 Bridge, at mile 16.8, across the Connecticut River at East Haddam, Connecticut. This temporary final rule allows the bridge to operate on fixed opening schedule from November 1, 2002 through October 31, 2003. This action is necessary to facilitate major rehabilitation of the bridge.

DATES: This temporary final rule is effective from November 1, 2002 through October 31, 2003.

ADDRESSES: Material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket (CGD01–02–100) and are available for inspection or copying at the First Coast Guard District, Bridge Branch Office, 408 Atlantic Avenue, Boston, Massachusetts 02110, 6:30 a.m. to 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Schmied, Project Officer, First Coast Guard District, (212) 668–7165.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On September 10, 2002, we published a notice of proposed rulemaking (NPRM) entitled Drawbridge Operation Regulations; Connecticut River, Connecticut, in the **Federal Register** (67 FR 57355). We received no comments in response to the notice of proposed rulemaking. No public hearing was requested and none was held.

Pursuant to 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this final rule effective in less than 30 days after publication in the **Federal Register**. Any delay encountered in this regulation's effective date would be unnecessary and contrary to the public interest because the rehabilitation construction is necessary in order to assure continued reliable operation of the bridge.

Background and Purpose

The Route 82 Bridge has a vertical clearance of 22 feet at mean high water, and 25 feet at mean low water in the closed position. The existing drawbridge operating regulations listed at 33 CFR 117.205(c), require the bridge to open on signal at all times; except that, from May 15 to October 31, 9 a.m. to 9 p.m., the bridge is required to open for recreational vessels on the hour and half hour only. The bridge is required to open on signal at all times for commercial vessels.

The Route 82 Bridge was scheduled for major repairs in the summer of 2001, but due to a funding shortfall the work was delayed. Subsequent to that, the bridge has continued to deteriorate. Funding has now been made available and the necessary repairs should be performed with due speed to assure safe reliable continued operation of the bridge.

The bridge owner, Connecticut Department of Transportation, has requested a temporary final rule to allow the bridge to open for recreational and commercial vessels at specific times; however, commercial vessels may obtain unscheduled openings at any time provided they give a twenty-four hour notice with a two-hour confirmation to the bridge tender.

The bridge owner has also requested one seven day bridge closure, two eight-hour closures and one twenty-four hour bridge closure required to facilitate the bridge repairs. The exact dates for the above closures are not known at this time. The Coast Guard plans to publish the exact times and dates in the Local Notice to Mariners at least thirty-days in advance of the anticipated occurrence to assist mariners in their planning.

The operating schedule that would be in effect at the Route 82 Bridge from November 1, 2002 through October 31, 2003, is as follows:

From November 1 through July 6, the draw shall open on signal at 5:30 a.m., 1:30 p.m., and 8 p.m., daily.

From July 7 through October 31 the draw shall open on signal Monday through Thursday at 6:30 a.m., 1:30 p.m., and 8 p.m., with one additional opening on Friday at 11:30 p.m., three additional openings on Saturday at 9:30 a.m., 4 p.m., and 11:30 p.m., two additional openings on Sunday at 9:30 a.m. and 4 p.m.

The draw shall open on signal at any time for Commercial vessels provided a twenty-four hour notice with a two-hour confirmation is given to the drawtender at the bridge.

The Coast Guard and the bridge owner have successfully coordinated the above temporary operating schedule with the mariners. The Coast Guard believes this temporary final rule is reasonable as a result of the above information.

Discussion of Comments and Changes

We received no comments in response to the notice of proposed rulemaking.

The effective dates of this temporary final rule have been changed to be effective from November 1, 2002 through October 31, 2003. The notice of proposed rulemaking listed the effective dates as October 15, 2002 through April 30, 2004.

We changed the effective dates of this temporary final rule because the new dates depict the actual time period that the operating schedule of the bridge will be changed.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3), of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

This conclusion is based on the fact that vessel traffic will not be prevented from transiting the bridge as a result of this temporary final rule.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b), that this rule will not have a significant economic impact on a substantial number of small entities.

This conclusion is based on the fact that vessel traffic will not be prevented

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from transiting the bridge as a result of this temporary final rule.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This final rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (32)(e), of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation because promulgation of changes to drawbridge regulations have been found to not have a significant effect on the environment. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. From November 1, 2002 through October 31, 2003, § 117.205 is temporarily amended by suspending paragraph (c) and adding a new paragraph (d) to read as follows:

§ 117.205 Connecticut River.

* * * * *

(d) The draw of the Route 82 Bridge, mile 16.8, shall operate as follows:

(1) From November 1 through July 6 the draw shall open on signal at 5:30 a.m., 1:30 p.m., and 8 p.m., daily.

(2) From July 7 through October 31, Monday through Thursday, the draw shall open on signal at 6:30 a.m., 1:30 p.m., and 8 p.m., with one additional opening on Friday at 11:30 p.m., three additional openings on Saturday at 9:30 a.m., 4 p.m., and 11:30 p.m., and two additional openings on Sunday at 9:30 a.m., and 4 p.m.

(3) The draw shall open on signal for commercial vessels at all times provided a twenty-four hour advance notice with a two-hour confirmation is given.

Dated: October 24, 2002.

V.S. Crea,

Rear Admiral, Coast Guard, Commander, First Coast Guard District.

[FR Doc. 02–27850 Filed 10–31–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AK89

Civilian Health and Medical Program of the Department of Veterans Affairs (CHAMPVA)

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document affirms amendments to VA's medical regulations to extend CHAMPVA eligibility to persons age 65 and over who would have otherwise lost their CHAMPVA eligibility due to attainment of entitlement to hospital insurance benefits under Medicare Part A, implement coverage of physical examinations required in connection with school enrollment for beneficiaries through age 17, and reduce the catastrophic cap for CHAMPVA dependents and survivors (per family) from $7,500 to $3,000 for each calendar year. These amendments were made by an interim final rule and were necessary to implement provisions of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 and the Veterans' Survivor Benefits Improvements Act of 2001.

DATES: *Effective Date:* This document is effective on November 1, 2002.

FOR FURTHER INFORMATION CONTACT: Susan Schmetzer, Chief, Policy & Compliance Division, VA Health Administration Center, P.O. Box 65020, Denver, CO 80206–9020, telephone (303) 331–7552.

SUPPLEMENTARY INFORMATION: An interim final rule amending VA's medical regulations to extend CHAMPVA eligibility to persons age 65 and over who would have otherwise lost their CHAMPVA eligibility due to attainment of entitlement to hospital insurance benefits under Medicare Part A, implement coverage of physical examinations required in connection with school enrollment for beneficiaries through age 17, and reduce the catastrophic cap for CHAMPVA dependents and survivors (per family) from $7,500 to $3,000 for each calendar year was published in the **Federal Register** on January 30, 2002 (67 FR 4357). A correction to the interim final rule was published in the **Federal Register** on February 14, 2002 (67 FR 6874).

We provided a 60-day comment period that ended April 1, 2002. No comments have been received. Based on the rationale set forth in the interim final rule, we now affirm as a final rule the changes made by the interim final rule.

Administrative Procedure Act

The changes made by this final rule in large part reflect statutory changes. Moreover, we have found good cause to dispense with the notice-and-comment and delayed effective date provisions of the Administrative Procedure Act (5 U.S.C. 553). Compliance with such provisions would be impracticable, unnecessary, and contrary to the public interest. To avoid significant administrative confusion, it was in the public's interest to provide these benefits within approximately the same period as similar benefits were provided to DoD's TRICARE beneficiaries.

Unfunded Mandates

The Unfunded Mandates Reform Act requires at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more in any given year. This rule would have no consequential effect on State, local, or tribal governments.

Paperwork Reduction Act

This final rule will not impose additional information collection requirements on the public under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3511).

Regulatory Flexibility Act

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Based on a more recent projection, the number of potential beneficiaries over age 65 has increased from 89,500 as estimated in the interim final rule to approximately 135,209 potential beneficiaries that will use the benefit of coverage secondary to Medicare. The interim final rule estimates of approximately 2,000 beneficiaries impacted by the inclusion of school-required physical examination benefit and approximately 2,500 families benefiting from the reduction of the catastrophic cap remain unchanged. Since these beneficiaries are widely geographically diverse, the health care provided to them would not have a significant impact on any small businesses. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Catalog of Federal Domestic Assistance Numbers

There are no Catalog of Federal Domestic Assistance program numbers for the programs affected by this document.

List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs-health, Grant programs-veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Reporting and recordkeeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.

Approved: September 25, 2002.

Anthony J. Principi,

Secretary of Veterans Affairs.

PART 17—MEDICAL

Accordingly, the interim final rule amending 38 CFR part 17 that was published at 67 FR 4357 on January 30, 2002, and corrected at 67 FR 6874 on February 14, 2002, is adopted as a final rule without change.

[FR Doc. 02–27877 Filed 10–31–02; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[Docket # WA–01–006; FRL–7267–8]

Approval and Promulgation of Air Quality Implementation Plans; State of Washington; Yakima Carbon Monoxide Redesignation to Attainment and Designation of Areas for Air Quality Planning Purposes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On September 26, 2001, the State of Washington requested EPA to redesignate the Yakima "not classified" carbon monoxide (CO) nonattainment area to attainment for the CO National Ambient Air Quality Standard (NAAQS) and submitted a CO maintenance plan for Yakima. In this action, EPA is approving the maintenance plan and redesignating the Yakima CO nonattainment area to attainment.

DATES: This direct final rule will be effective December 31, 2002, unless EPA receives adverse comments by December 2, 2002. If relevant adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Written comments may be mailed to: Steve Body, State and Tribal Programs Unit, Office of Air Quality, EPA Region 10, 1200 Sixth Avenue, Seattle, WA 98101.

Copies of the documents relevant to this action are available for public inspection during normal business hours at the United States Environmental Protection Agency, Region 10, Office of Air Quality, 1200 Sixth Avenue, Seattle WA.

FOR FURTHER INFORMATION CONTACT: Steve Body, State and Tribal Programs Unit, Office of Air Quality, EPA Region 10, 1200 Sixth Avenue, Seattle WA, Telephone number: (206) 553–0782.

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I. What Is the Purpose of This Action?

EPA is redesignating the Yakima "not classified" CO nonattainment area from nonattainment to attainment and approving the maintenance plan that will keep the area in attainment for the next 10 years.

EPA originally designated the Yakima area as nonattainment for CO under the provisions of the 1977 Clean Air Act (CAA) Amendments (see 43 FR 8962, March 3, 1978). On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted (Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q). Under section 107(d)(1)(C) of the CAA, the Yakima area was designated nonattainment for CO by operation of law because the area had been designated as nonattainment before November 15, 1990. The Yakima area is classified as an unclassified, or "not classified" CO nonattainment area.

Nonattainment areas can be redesignated to attainment after the area has measured air quality data showing it has attained the NAAQS and when certain planning requirements are met. Section 107(d)(3)(E) of the CAA provides the requirements for redesignation. These are:

(i) The Administrator determines that the area has attained the national ambient air quality standard;

(ii) The Administrator has fully approved the applicable implementation plan for the area under section 110(k) of the Act;

(iii) The Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable implementation plan, applicable Federal air pollution control regulations, and other permanent and enforceable reductions;

(iv) The Administrator has fully approved a maintenance plan for the area as meeting the requirements of CAA section 175A; and,

(v) The State containing the area has met all requirements applicable to the area under section 110 and part D of the CAA.

Before an area can be redesignated to attainment, all applicable State Implementation Plan (SIP) elements must be fully approved.

II. What Is the State's Process To Submit These materials to EPA?

The CAA requires States to follow certain procedural requirements for submitting SIP revisions to EPA. Section 110(a)(2) of the CAA requires that each SIP revision be adopted by the State after reasonable notice and public hearing. The State then submits the SIP revision to EPA for approval.

The Yakima Regional Clean Air Authority (YRCAA), which has regulatory authority for sources of air pollution in the Yakima CO nonattainment area, developed the CO maintenance plan. They released the draft maintenance plan for public review on August 21, 2000. On February 14, 2001, the Board of Directors for the YRCAA adopted the *Yakima Carbon Monoxide Nonattainment Area Limited Maintenance Plan and Redesignation Request*. On July 11, 2001, the State of Washington held a public hearing on the plan. On October 3, 2001, the State of Washington adopted the plan. On September 26, 2001, the State submitted the SIP to EPA. EPA has evaluated the State's submittal and determined that the State met the requirements for reasonable notice and public hearing under section 110(a)(2) of the CAA.

III. EPA's Evaluation of the Redesignation Request and Maintenance Plan

EPA has reviewed the State's maintenance plan and redesignation request and is approving the maintenance plan and redesignating the area to attainment consistent with the requirements of CAA section 107(d)(3)(E). The following is a summary of EPAs evaluation and a description of how each requirement is met.

(a) The Area Must Have Attained the Carbon Monoxide NAAQS

Section 107(d)(3)(E)(i) requires that the Administrator determine that the area has attained the applicable NAAQS. The primary NAAQS for CO is 9 parts per million (10 milligrams per cubic meter) for an 8-hour average, not to be exceeded more than once per year. CO in the ambient air is measured by a reference method based on 40 CFR part 50, Appendix C. EPA considers an area as attaining the CO NAAQS when all of the CO monitors in the area have one or less exceedance of the CO standard each calendar year over a two calendar year period. (See 40 CFR 50.8 and 40 CFR part 50, Appendix C.) EPA's interpretation of this requirement is that an area seeking redesignation to attainment must show attainment of the CO NAAQS for at least two consecutive calendar years (September 4, 1992, John Calcagni policy memorandum "Procedures for Processing Requests to Redesignate Areas to Attainment" ("Calcagni Memorandum")). In addition, the area must continue to show attainment through the date that EPA promulgates redesignation to attainment.

Washington's CO redesignation request for the Yakima area is based on valid ambient air quality data. Ambient air quality monitoring data for calendar years 1988 through 2001 show a measured exceedance rate of the CO NAAQS of 1.0 or less per year at all monitoring sites. These data were collected and analyzed as required by EPA (see 40 CFR 50.8 and 40 CFR part 50, Appendix C) and have been stored in EPA's Aerometric Information and Retrieval System (AIRS). These data have met minimum quality assurance requirements and have been certified by the State as being valid before being included in AIRS. Further information on CO monitoring is presented in Section 2.3 and 2.4 of the Yakima maintenance plan. EPA has analyzed the ambient air quality data and determined that the Yakima area has not violated the CO standard since January 1988 and continues to attain through 2001.

(b) The Area Must Have Met All Applicable Requirements Under Section 110 and Part D

Section 107(d)(3)(E)(v) requires that an area must meet all applicable requirements under section 110 and part D of the CAA. EPA interprets this requirement to mean the State must meet all requirements that applied to the area prior to, or at the time of, the submission of a complete redesignation request.

1. CAA Section 110 Requirements

On May 31, 1972, EPA approved the original Washington SIP as meeting the requirements of section 110(a)(2) of the CAA (see 37 FR 10900). Although section 110 of the CAA was amended in 1990, the changes to the implementation plan requirements of section 110(a)(2) were not substantial. Thus, EPA has determined that the SIP revisions approved in 1972 along with subsequent revisions that were previously approved, continue to satisfy the requirements of section 110(a)(2) of the CAA. EPA has analyzed the SIP elements that are being approved as part of this action and has determined they comply with the requirements of section 110(a)(2) of the CAA and that the area meets all applicable requirements under section 110 of the CAA.

2. Part D Requirements

The Yakima area was originally designated as nonattainment for CO on March 3, 1978 (see 43 FR 8962). On May 20, 1983, (48 FR 22716) EPA approved an extension of the attainment date to December 31, 1982. Washington's original CAA Part D plan for the Yakima CO nonattainment area was submitted and approved by EPA on June 5, 1980.

Prior to the 1990 CAA Amendments, EPA had begun development of its post-1987 policy for carbon monoxide; however, EPA did not finalize the post-1987 policy for CO because the Clean Air Act (CAA) was amended on November 15, 1990. Under section 107(d)(1)(C) of the CAA, the Yakima area was by operation of law designated nonattainment for CO because the area had been previously designated nonattainment before November 15, 1990. In the November 6, 1991, **Federal Register**, (56 FR 56694) the Yakima area was classified as a "not classified" CO nonattainment area as the area had not violated the CO NAAQS in 1988 or 1989.

Before the Yakima "not classified" CO nonattainment area may be redesignated to attainment, the State must have fulfilled the applicable requirements of part D. Under part D, an area's classification indicates the requirements to which it will be subject. Subpart 1 of part D sets forth the basic nonattainment requirements applicable to all nonattainment areas, whether classified or nonclassifiable.

The relevant Subpart 1 requirements are contained in sections 172(c) and 176. The April 16, 1992, General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990 (see 57 FR 13498) ("General Preamble of April 16, 1992") provides EPAs interpretation of the CAA requirements for not classified CO areas (see specifically 57 FR 13535). The General Preamble reads, "Although it seems clear that the CO-specific requirements of subpart 3 of part D do not apply to CO "not classified" areas, the 1990 CAAA are silent as to how the requirements of subpart 1 of part D, which contains general SIP planning requirements for all designated nonattainment areas, should be interpreted for such CO areas. Nevertheless, because these areas are designated nonattainment, some aspects of subpart 1 necessarily apply."

Under section 172(b), the applicable section 172(c) requirements, as determined by the Administrator, were due no later than three years after an area was designated as nonattainment under section 107(d) of the amended CAA (see 56 FR 56694, November 6, 1991). In the case of the Yakima area, the due date was November 15, 1993. Since the Yakima CO redesignation request and maintenance plan were not submitted by Washington until September 26, 2001, the General Preamble of April 16, 1992, provides that the applicable requirements of CAA section 172 are: 172(c)(3) (emissions inventory), 172(c)(5)(new source review permitting program), and 172(c)(7)(the section 110(a)(2) air quality monitoring requirements)). See 57 FR 13535, April 16, 1992.

EPA has determined that the Part D requirements for Reasonably Available Control Measures (RACM), an attainment demonstration, reasonable further progress (RFP), and contingency measures (CAA section 172(c)(9)) are not applicable to "not classified" CO nonattainment areas. See 57 FR 13535, April 16, 1992. EPA has also interpreted the requirements of sections 172(c)(1) (reasonably available control measures—RACM), 172(c)(2) (reasonable further progress—RFP), 172(c)(6) (other measures), and 172(c)(9) (contingency measures) as being irrelevant to a redesignation request because they only have meaning for an area that is not attaining the standard. See the General Preamble of April 16, 1992, and the Calcagni Memorandum. Finally, the State has not sought to exercise the options that would trigger sections 172(c)(4) (identification of certain emissions increases) and 172(c)(8) (equivalent techniques). Thus, these provisions are also not relevant to this redesignation request.

Section 176 of the CAA contains requirements related to conformity. Although federal regulations (see 40 CFR 51.396) require that states adopt transportation conformity provisions in their SIPs for areas designated nonattainment or that are subject to a federally approved maintenance plan, EPA has decided that a transportation conformity SIP is not an applicable requirement for purposes of evaluating a redesignation request under section 107(d) of the CAA. This decision is reflected in the 1996 approval of the Boston carbon monoxide redesignation. (See 61 FR 2918, January 30, 1996.)

The remaining applicable requirements of CAA section 172 are discussed below.

A. Section 172(c)(3)—Emissions Inventory

Section 172(c)(3) of the CAA requires a comprehensive, accurate, current inventory of all actual emissions from all sources in the Yakima CO nonattainment area. The emission inventory requirement for "not classified" CO nonattainment areas is detailed in the General Preamble of April 16, 1992. EPA has determined that an emissions inventory is required by CAA section 172(c)(3) regardless of air quality levels. An emissions inventory must be included as a revision to the SIP and was due three years from the time of the area's designation. For "not classified" CO areas, this date is November 15, 1993. To address the section 172(c)(3) requirement for a "current" inventory, EPA interpreted "current" to mean calendar year 1990 (see 57 FR 13502, April 16, 1992).

On March 4, 1994, Washington submitted a 1992 emission inventory for the Yakima CO nonattainment area. EPA deferred action on that inventory pending submittal of a maintenance plan. A 1996 emission inventory was prepared by YRCAA but it was never submitted to EPA. A new 1999 emission inventory was prepared for the CO maintenance plan. EPA believes this 1999 inventory meets the emission inventory obligation. EPA has reviewed the emission inventory and determined it is current, accurate, and comprehensive at the time and it continues to represent emissions in the area that provide for attainment with a 1998–1999 design value of 5.1 ppm CO.

B. Section 172(c)(5)—New Source Review (NSR)

The CAA requires all nonattainment areas to meet several requirements regarding NSR. The State must have an approved NSR program that meets the requirements of section 172(c)(5) of the Act. The State of Washington has an approved NSR program (see 60 FR 28726, June 2, 1995) that is applicable in Yakima CO nonattainment area. The requirements of the Part D, NSR program will be replaced by the Prevention of Significant Deterioration (PSD) program upon the effective date of this redesignation. The Federal PSD regulations found at 40 CFR 52.21 are the PSD rules in effect in Washington.

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C. Section 172(c)(7)—Compliance With CAA Section 110(a)(2): Air Quality Monitoring Requirements

According to the General Preamble of April 16, 1992, "not classified" CO nonattainment areas should meet the "applicable" air quality monitoring requirements of section 110(a)(2) of the CAA. The State of Washington has operated a CO monitor in the Yakima area since the early 1970's. EPA previously approved the SIP for monitoring on April 15, 1981 (46 FR 21994). This SIP revision does not change that monitoring provision and it remains approved and in effect.

(c) The Area Must Have A Fully Approved SIP Under Section 110(k) of the CAA

Section 107(d)(3)(E)(ii) of the CAA states that for an area to be redesignated to attainment, it must be determined that the Administrator has fully approved the applicable implementation plan for the area under section 110(k).

Based on the approval into the SIP of provisions under the pre-1990 CAA, EPA's prior approval of a SIP revision required under the 1990 amendments to the CAA, and it's approval of the State's commitment to maintain an adequate monitoring network, EPA has determined that, as of the date of this action, Washington has a fully approved CO SIP under section 110(k) for the Yakima CO nonattainment area.

(d) The Area Must Show the Improvement in Air Quality Is Due to Permanent and Enforceable Emission Reductions

Section 107(d)(3)(E)(iii) of the CAA provides that for an area to be redesignated to attainment, the Administrator must determine that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable implementation plan, implementation of applicable Federal air pollutant control regulations, and other permanent and enforceable reductions.

The CO emissions reductions for the Yakima area were achieved through a number of control measures. The primary emission reductions are the result of the Federal Motor Vehicle Emission Standards and fleet turnover. These reductions will continue into the maintenance period for the Yakima area. In addition, there is a State requirement for commute trip reduction within the city of Yakima. The Yakima CO nonattainment area is a geographic area contained within the City boundary. This measure covers six employers in the nonattainment area and six additional employers within the City of Yakima, but outside the nonattainment area. And lastly there are three local measures that reduce CO emissions in the area: control of outdoor and agricultural burning, prohibition of installation of uncertified wood stoves, and wood stove curtailment program. While these local control measures are aimed at controlling particulate matter emissions, they concurrently reduce CO emissions especially during wintertime inversion conditions that are conducive to both PM and CO pollutant build-up. These local control measures have previously been approved by EPA in the PM–10 SIP for Yakima.

EPA has evaluated the various State and Federal control measures, and the 1999 emission inventory, and have concluded that the improvement in air quality in the Yakima nonattainment area has resulted from emission reductions that are permanent and enforceable.

(e) The Area Must Have A Fully Approved Maintenance Plan Under CAA Section 175A

Section 107(d)(3)(E)(iv) of the CAA provides that for an area to be redesignated to attainment, the Administrator must have fully approved a maintenance plan for the area meeting the requirements of section 175A of the CAA.

Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. For areas such as Yakima that are utilizing EPA's limited maintenance plan approach, as detailed in the EPA guidance memorandum, "Limited Maintenance Plan Option for Nonclassifiable CO Nonattainment Areas" from Joseph Paisie, Group Leader, Integrated Policy and Strategies Group, Office of Air Quality and Planning Standards, dated October 6, 1995 ("Paisie Memorandum"), the maintenance plan demonstration requirement is considered to be satisfied for "not classified" areas if the monitoring data show the design value is at or below 7.65 ppm, or 85% of the level of the 8 hour CO NAAQS. The design value must be based on the 8 consecutive quarters of data. There is no requirement to project emissions or air quality over the maintenance period. EPA believes if the area begins the maintenance period at, or below, 85 percent of the level of the CO 8 hour NAAQS, the applicability of PSD requirements, the control measures already in the SIP, and Federal measures, should provide adequate assurance of maintenance over the initial 10-year maintenance period. In addition, the design value for the area must continue to be at or below 7.65 ppm until the time of final EPA action on the redesignation. The method for calculating the design value is presented in the June 18, 1990, EPA guidance memorandum entitled "Ozone and Carbon Monoxide Design Value Calculations", from William G. Laxton, Director of the OAQPS Technical Support Division, to Regional Air Directors (hereafter referred to as the "Laxton Memorandum".)

In the case of a "not classified" area applying for a limited maintenance plan, all the monitors must have a separate design value calculated and the highest design value must be at or below 7.65 ppm. Should the design value for the area exceed 7.65 ppm prior to final EPA action on the redesignation, then the area no longer qualifies for the limited maintenance plan and must instead submit a full maintenance plan as described in the Calcagni Memorandum.

Eight years after redesignation to attainment, the State must submit a revised maintenance plan that demonstrates continued maintenance of the CO NAAQS for an additional 10 years following the initial ten-year maintenance period. To address the possibility of future NAAQS violations, the maintenance plan must contain contingency measures, with a schedule for adoption and implementation, that are adequate to assure prompt correction of a violation. In this direct final rulemaking action, EPA is approving the limited maintenance plan for the Yakima nonattainment area because EPA has determined, as detailed below, that the State's maintenance plan submittal meets the requirements of section 175A of the CAA.

The analysis of the pertinent maintenance plan requirements follows:

1. Emissions Inventory—Attainment Year

The plan must contain an attainment year emissions inventory to identify the level of emissions in the area which is sufficient to attain the CO NAAQS. This inventory is to be consistent with EPA's most recent guidance on emissions inventories for nonattainment areas available at the time [1] and should represent emissions during the time period associated with the monitoring data showing attainment. The Yakima CO maintenance plan contains an accurate, current, and comprehensive emission inventory for calendar year 1999 which coincides with the year that the design value of 5.1 ppm CO was calculated. Therefore the Yakima maintenance plan meets the emission inventory requirement.

2. Demonstration of Maintenance

As described in the October 6, 1995, limited maintenance plan guidance memorandum (Paisie Memorandum), the maintenance plan demonstration requirement is considered to be satisfied for "not classified" CO areas if the design value for the area is equal to, or less than 7.65 ppm. The CO design value for 1998–1999 period for the Yakima area is 5.1 ppm, which is below the limited maintenance plan requirement of 7.65 ppm. Therefore, the Yakima area has adequately demonstrated that it will maintain the CO NAAQS into the future.

3. Monitoring Network and Verification of Continued Attainment

Continued ambient monitoring of an area is required over the maintenance period. Sections 5.3 and 5.4 of the Yakima CO maintenance plan provide for continued ambient monitoring in the area.

4. Contingency Plan

Section 175A(d) of the CAA requires that a maintenance plan include contingency provisions. As discussed above, this requirement is not relevant to the redesignation request, but a contingency measure has been included in the plan. The plan contains a measure that requires the City of Yakima to change the timing of intersection stop lights in the downtown core to increase the speed of traffic on the heavily traveled streets. The change in speed is estimated to be from an average of 14 mph to 16 mph resulting in a 17% reduction in CO emissions. The City will adjust the stop light timing to achieve the reductions when CO levels reach 7.1 ppm and levels continue to increase.

IV. Conformity

Because Yakima submitted a limited maintenance plan, special conformity provisions apply. The transportation conformity rule (58 FR 62188; November 24, 1993) and the general conformity rule (58 FR 63214; November 30, 1993) apply to nonattainment areas and maintenance areas operating under maintenance plans. Under either rule, one means of demonstrating conformity of Federal actions is to indicate that expected emissions from planned actions are consistent with the emissions budget for the area. Emissions budgets in limited maintenance plan areas may be treated as essentially not constraining for the length of the initial maintenance period because there is no reason to expect that such an area will experience so much growth in that period that a violation of the CO NAAQS would result. In other words, emissions need not be capped for the maintenance period. Therefore, in areas with approved limited maintenance plans, Federal actions requiring conformity determination under the transportation conformity rule could be considered to satisfy the "budget test" required in sections 93.118, 93.119, and 93.120 of the rule. Similarly, in these areas, Federal actions subject to the general conformity rule could be considered to satisfy the "budget test" specified in section 93.158(a)(5)(i)(A) of the rule."

V. Final Action

EPA approves the maintenance plan and request to redesignate the Yakima CO nonattainment area to attainment.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective December 31, 2002 without further notice unless the Agency receives adverse comments by December 2, 2002.

If EPA receives such comments, then EPA will publish a timely withdrawal of the direct final rule informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this rule. Any parties interested in commenting on this rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on December 31, 2002 and no further action will be taken on the proposed rule.

Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority

[1] The October 6, 1995, limited maintenance plan guidance memorandum states that current guidance on the preparation of emissions inventories for CO areas is contained in the following documents: "Procedures for the Preparation of Emission Inventories for Carbon Monoxide and Precursors of Ozone: Volume I" (EPA–450/4–91–016), and "Procedures for Emission Inventory Preparation: Volume IV, Mobile Sources" (EPA–450/4–81–026d revised).

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to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 31, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Carbon Monoxide, Intergovernmental relations, Reporting and recordkeeping requirements.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Dated: August 13, 2002.

Ronald A. Kreizenbeck,

Acting Regional Administrator, Region 10.

Parts 52 and 81, chapter I, title 40 of the Code of Federal Regulations are amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart WW–Washington

2. Subpart WW is amended by adding § 52.2475 to read as follows:

§ 52.2475 Approval of plans.

(a) Carbon Monoxide.

(1) Yakima.

(i) EPA approves as a revision to the Washington State Implementation Plan, the Yakima Carbon Monoxide maintenance plan submitted by the State on August 31, 2001.

(ii) [Reserved]

(2) Spokane. [Reserved]

(b) Lead. [Reserved]

(c) Nitrogen Dioxide. [Reserved]

(d) Ozone. [Reserved]

(e) Particulate Matter. [Reserved]

(f) Sulfur dioxide. [Reserved]

PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. In § 81.348, the table entitled "Washington-Carbon Monoxide" is amended by revising the entry for "Yakima Area" to read as follows:

§ 81.348 Washington.

* * * * *

WASHINGTON—CARBON MONOXIDE

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
Yakima Area:				
Yakima County (part)	12–31–2002	[Attainment].		
Portion of the Central Business District Street intersections: S. 16th Ave. & W Mead Ave, S. 16th Ave & Hathaway Ave., E "I" St. & N 1st St., N 1st St & E "G" St., E "G" St & N 8th St., N 8th St. & Pitcher St., Pitcher St. & I–82 Interchange, Nob Hill Blvd & I–82 Interchange, Rudkin Rd & I–82 Interchange, S 1st St. & Old Town Rd., Old Town Rd & Main St., W Washington & S 1st St., E Mead Ave & S 1st St., S 16th Ave & W Mead Ave.				

[1] This date is November 15, 1990, unless otherwise noted.

* * * * *

[FR Doc. 02–27833 Filed 10–31–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2002–0298; FRL–7279–6]

Thiamethoxam; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for combined residues of thiamethoxam and its metabolite in or on corn forage, corn stover and popcorn, corn grain and sweet corn (kernal and cob with husk removed). Syngenta Crop Protection, Inc. requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA) , as amended by the Food Quality Protection Act of 1996 (FQPA).

DATES: This regulation is effective November 1, 2002. Objections and requests for hearings, identified by docket ID number OPP–2002–0298, must be received on or before December 31, 2002.

ADDRESSES: Written objections and hearing requests may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Dani Daniel, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW.,Washington, DC 20460–0001; telephone number: 703 305–5409; e-mail address: daniel.dani@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS	Examples of Potentially Affected Entities
Industry	111	Crop production
	112	Animal production
	311	Food manufacturing
	32532	Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of This Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2002–0298. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at http://www.epa.gov/fedrgstr/. A frequently updated electronic version of 40 CFR part 180 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html, a beta site currently under development. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at http://www.epa.gov/opptsfrs/home/guidelin.htm.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

II. Background and Statutory Findings

In the **Federal Register** of June 27, 2002 (67 FR 43310–43314) (FRL–7183–2), EPA issued a notice pursuant to section 408 of FFDCA, 21 U.S.C. 346a, as amended by FQPA (Public Law 104–170), announcing the filing of a pesticide petition (PP 0F6142) by Syngenta Crop Protection, Inc., P.O. Box 18300 Greensboro, NC 27419–8300. That notice included a summary of the petition prepared by Syngenta Crop Protection, Inc., the registrant. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR 180.565 be amended by establishing tolerances for combined residues of the insecticide thiamethoxam, 3-[(2-chloro-5-thiazolyl)methyl] tetrahydro-5-methyl-*N*-nitro-4H-1,3,5-oxadiazin-4-imine and its metabolite (*N*-(2-chloro-thiazol-5-ylmethyl)-*N'*-methyl-*N'*-nitro-guanidine) in or on the raw agricultural commodities: field corn forage at 0.10 parts per million (ppm), sweet corn forage at 0.10 ppm, popcorn forage at 0.10 ppm, field corn stover at 0.05 ppm, sweet corn stover at 0.05 ppm, field corn grain at 0.07 ppm, popcorn grain at 0.02 ppm, and sweet corn (kernal and cob with husk removed) at 0.02 ppm.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) of the FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of the FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue...."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 of the FFDCA and a complete description of

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the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of the FFDCA, for a tolerance for combined residues of thiamethoxam and its metabolite on field corn forage at 0.10 parts per million (ppm), sweet corn forage at 0.10 ppm, popcorn forage at 0.10 ppm, field corn stover at 0.05 ppm, sweet corn stover at 0.05 ppm, field corn grain at 0.07 ppm popcorn grain at 0.02 ppm, and sweet corn (kernal and cob with husk removed) at 0.02 parts per million (ppm). EPA's assessment of exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by thiamethoxam are discussed in Table 1 of this unit as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies reviewed.

TABLE 1.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY

Guideline No.	Study Type	Results
870.3100	90–day oral toxicity - rat	NOAEL = 1.74 (males), 92.5 (females) mg/kg/day LOAEL = 17.64 (males), 182.1 (females) mg/kg/day based on increased incidence of hyaline change of renal tubular epithelium (males), fatty change in adrenal gland of females, liver changes in females, all at the LOAEL.
870.3100	90–Day oral toxicity-mouse	NOAEL = 1.41 (males), 19.2 (females) mg/kg/day LOAEL = 14.3 (males), 231 (females) mg/kg/day based on increased incidence of hepatocellular hypertrophy. At higher dose levels: decrease in bodyweight and bodyweight gain, necrosis of individual hepatocytes, pigmentation of Kupffer cells, and lymphocytic infiltration of the liver in both sexes; slight hematologic effects and decreased absolute and relative kidney weights in males; and ovarian atrophy, decreased ovary and spleen weights and increased liver weights in females.
870.3150	90– oral toxicity - dog	NOAEL = 8.23 (males), 9.27 (females) mg/kg/day LOAEL = 32.0 (males), 33.9 (females) mg/kg/day based on slightly prolonged prothrombin times and decreased plasma albumin and A/G ratio (both sexes); decreased calcium levels and ovary weights and delayed maturation in the ovaries (females); decreased cholesterol and phospholipid levels, testis weights, spermatogenesis, and spermatic giant cells in testes (males).
870.3200	28– dermal toxicity - rat	NOAEL = 250 (males), 60 (females) mg/kg/day LOAEL = 1,000 (males), 250 (females) mg/kg/day based on increased plasma glucose, triglyceride levels, and alkaline phosphatase activity and inflammatory cell infiltration in the liver and necrosis of single hepatocytes in females and hyaline change in renal tubules and a very slight reduction in body weight in males. At higher dose levels in females, chronic tubular lesions in the kidneys and inflammatory cell infiltration in the adrenal cortex were observed.
870.3700	Prenatal developmental - rat	Maternal NOAEL = 30 mg/kg/day LOAEL = 200 mg/kg/day based on decreased body weight, body weight gain, and food consumption. Developmental NOAEL = 200 mg/kg/day LOAEL = 750 mg/kg/day based on decreased fetal body weight and an increased incidence of skeletal anomalies.
870.3700	Prenatal developmental - rabbit	Maternal NOAEL = 50 mg/kg/day LOAEL = 150 mg/kg/day based on maternal deaths, hemorrhagic uterine contents and hemorrhagic discharge, decreased body weight and food intake during the dosing period. Developmental NOAEL = 50 mg/kg/day LOAEL = 150 mg/kg/day based on decreased fetal body weights, increased incidence of post-implantation loss and a slight increase in the incidence of a few skeletal anomalies/variations.

TABLE 1.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY—Continued

Guideline No.	Study Type	Results
870.3800	Reproduction and fertility effects - rat	Parental/Systemic NOAEL = 1.84 (males), 202.06 (females) mg/kg/day LOAEL = 61.25 (males), not determined (females) mg/kg/day based on increased incidence of hyaline change in renal tubules in F_0 and F_1 males. Reproductive NOAEL = 0.61 (males), 202.06 (females) mg/kg/day LOAEL = 1.84 (males), not determined (females) mg/kg/day based on increased incidence and severity of tubular atrophy observed in testes of the F_1 generation males. Offspring NOAEL = 61.25 (males), 79.20 (females) mg/kg/day LOAEL = 158.32 (males), 202.06 (females) mg/kg/day based on reduced body weight gain during the lactation period in all litters .
870.4100	Chronic toxicity - dog	NOAEL = 4.05 (males), 4.49 (females) mg/kg/day LOAEL = 21.0 (males), 24.6 (females) mg/kg/day based on increase in creatinine in both sexes, transient decrease in food consumption in females, and occasional increase in urea levels, decrease in ALT, and atrophy of seminiferous tubules in males.
870.4200	Carcinogenicity - mouse	NOAEL = 2.63 (males), 3.68 (females) mg/kg/day LOAEL = 63.8 (males), 87.6 (females) mg/kg/day based on hepatocyte hypertrophy, single cell necrosis, inflammatory cell infiltration, pigment deposition, foci of cellular alteration, hyperplasia of Kupffer cells and increased mitotic activity; also, an increase in the incidence of hepatocellular adenoma (both sexes). At higher doses, there was an increase in the incidence of hepatocellular adenocarcinoma (both sexes) and the number of animals with multiple tumors. evidence of carcinogenicity
870.4300	Combined chronic carcinogenicity - rat	NOAEL = 21.0 (males), 50.3 (females) mg/kg/day LOAEL = 63.0 (males), 155 (females) mg/kg/day based on increased incidence of lymphocytic infiltration of the renal pelvis and chronic nephropathy in males and decreased body weight gain, slight increase in the severity of hemosiderosis of the spleen, foci of cellular alteration in liver and chronic tubular lesions in kidney in females. no evidence of carcinogenicity
870.5100 870.5265	Gene mutation in *S. typhimurium* and *E. coli*	No evidence of gene mutation when tested up to 5,000 µg/plate. There was no evidence of cytotoxicity.
870.5265	Gene mutation in *S. typhimurium*	No evidence of gene mutation when tested up to 5,000 µg/plate. The S9 fraction was from non-induced mouse liver, Aroclor 1254 induced mouse liver, or thiamethoxam induced mouse liver, following dietary administration of thiamethoxam for 14 days at concentrations up to 2,500 ppm.
870.5300	Gene mutation in chinese hamster V79 cells at HGPRT locus	No evidence of gene mutation when tested up to solubility limit.
870.5375	CHO cell cytogenetics	No evidence of chromosomal aberrations when tested up to cytotoxic or solubility limit concentrations.
870.5395	*In vivo* mouse bone marrow micronucleus	Negative when tested up to levels of toxicity in whole animals; however no evidence of target cell cytotoxicity.
870. 5550	UDS assay	Negative when tested up to precipitating concentrations
870.6200	Acute neurotoxicity screening battery - rat	NOAEL = 100 mg/kg/day LOAEL = 500 mg/kg/day based on drooped palpebral closure, decrease in rectal temperature and locomotor activity and increase in forelimb grip strength (males only). At higher dose levels, mortality, abnormal body tone, ptosis, impaired respiration, tremors, longer latency to first step in the open field, crouched-over posture, gait impairment, hypo-arousal, decreased number of rears, uncoordinated landing during the righting reflex test, slight lacrimation (females only) and higher mean average input stimulus value in the auditory startle response test (males only).

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TABLE 1.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY—Continued

Guideline No.	Study Type	Results
870.6200	Subchronic neurotoxicity screening battery - rat	NOAEL = 95.4 (males), 216.4 (females) mg/kg/day, both highest dose tested. LOAEL = not determined. No treatment-related observations at any dose level. LOAEL was not achieved. May not have been tested at sufficiently high dose levels; however, new study not required because the weight of the evidence from the other toxicity studies indicates no evidence of concern.
870.7485	Metabolism and pharmacokinetics - rat	Absorbed rapidly and extensively, widely distributed, followed by very rapid elimination, mostly in urine. Highest tissue concentrations in skeletal muscle: 10–15% of administered dose. Half life times from tissues ranged from 2–6 hours. Tissue residues after 7 days extremely low. Approximately 84–95% of administered dose excreted in urine and 2.5–6% excreted in feces within 24 hours. Greater than 0.2% detected in expired air. Most excreted as unchanged parent: 70–80% of dose. The major biotransformation reaction is cleavage of oxadiazine ring to corresponding nitroguanidine compound. Minor pathways: (1) cleavage of nitroguanidine group yielding guanidine derivative, (2) hydrolysis of guanidine group to corresponding urea, (3) demethylation of guanidine group, and (4) substitution of the chlorine of the thiazole ring by glutathione. Cleavage between thiazole- and oxadiazine ring occurs to a small extent. Glutathione derivatives prone to further degradation of the glutathione moiety resulting in various sulfur-containing metabolites (e.g. mercapturates, sulfides, and sulfoxides). Both the thiazole and oxadiazine moiety susceptible to oxidative attack. Small but measurable amounts exhaled, most probably as CO_2. Metabolites eliminated very rapidly. Enterohepatic circulation negligible.
870.7485	Metabolism and pharmacokinetics - mouse	Approximately 72% of administered dose excreted in the urine; 19% excreted in feces. Small but measurable amount detected in expired air (approximately 0.2% of dose). Predominant metabolites: unchanged parent (33–41% of administered dose; 2 other metabolites: 8–12% and 9–18% of administered dose. These are the same structures that were most commonly observed in rat excreta, however the proportions are quite different in mouse excreta. One additional significant metabolite (mouse R6) was isolated from feces samples. Between 30–60% of the administered dose was excreted as metabolites.
870.7600	Dermal penetration - rat	Estimates of dermal absorption were based on the sum of radioactivity in skin test site, urine, feces, blood, and carcass. Percentage dermal absorption is 27.0, highest mean dermal absorption value across all groups. This value is considered to represent the potential cumulative dermal absorption of test material that might occur after a 10 hour dermal exposure. As the study design did not permit analysis of the fate of skin bound residues, residues at skin site were included in determination of dermal absorption.
	Hepatic cell proliferation study - mouse	NOAEL = 16 (males), 20 (females) mg/kg/day LOAEL = 72 (males), 87 (females) mg/kg/day based on proliferative activity of hepatocytes. At higher dose levels, increases in absolute and relative liver wts, speckled liver, hepatocellular glycogenesis/fatty change, hepatocellular necrosis, apoptosis and pigmentation were observed.
	Replicative DNA synthesis in 28–day teeding study - male rat	NOAEL = 711 mg/kg/day (highest dose tested) LOAEL = not established. Immunohistochemical staining of liver sections from control and high-dose animals for proliferating cell nuclear antigen gave no indication for a treatment-related increase in the fraction of DNA synthesizing hepatocytes in S-phase. CGA 293343 did not stimulate hepatocyte cell proliferation in male rats.
	Special study to assess liver biochemistry in mouse	NOAEL = 17 (males), 20 (females) mg/kg/day LOAEL = 74 (males), 92 (females) mg/kg/day based on marginal to slight increases in absolute and relative liver weights, a slight increase in the microsomal protein content of the livers, moderate increases in the cytochrome P450 content, slight to moderate increases in the activity of several microsomal enzymes, slight to moderate induction of cytosolic glutathione S-transferase activity. Treatment did not affect peroxisomal fatty acid βoxidation.

B. Toxicological Endpoints

The dose at which no adverse effects are observed (the NOAEL) from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological level of concern (LOC). However, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. An UF of 100 is routinely used, 10X to account for interspecies differences and 10X for intraspecies differences.

For dietary risk assessment (other than cancer) the Agency uses the UF to calculate an acute or chronic reference dose (acute RfD or chronic RfD) where the RfD is equal to the NOAEL divided by the appropriate UF (RfD = NOAEL/UF). Where an additional safety factors (SF) is retained due to concerns unique to the FQPA, this additional factor is applied to the RfD by dividing the RfD by such additional factor. The acute or chronic Population Adjusted Dose (aPAD or cPAD) is a modification of the RfD to accommodate this type of FQPA SF.

For non-dietary risk assessments (other than cancer) the UF is used to determine the LOC. For example, when 100 is the appropriate UF (10X to account for interspecies differences and 10X for intraspecies differences) the LOC is 100. To estimate risk, a ratio of the NOAEL to exposures (margin of exposure (MOE) = NOAEL/exposure) is calculated and compared to the LOC.

The linear default risk methodology (Q^*) is the primary method currently used by the Agency to quantify carcinogenic risk. The Q^* approach assumes that any amount of exposure will lead to some degree of cancer risk. A Q^* is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (e.g., risk is expressed as 1×10^{-6} or one in a million). Under certain specific circumstances, MOE calculations will be used for the carcinogenic risk assessment. In this non-linear approach, a "point of departure" is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure (MOE_{cancer} = point of departure/exposures) is calculated. A summary of the toxicological endpoints for thiamethoxam used for human risk assessment is shown in Table 2 of this unit:

TABLE 2.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR THIAMETHOXAM FOR USE IN HUMAN RISK ASSESSMENT

Exposure Scenario	Dose Used in Risk Assessment, UF	FQPA SF* and Level of Concern for Risk Assessment	Study and Toxicological Effects
Acute Dietarygeneral population including infants and children	NOAEL = 100 mg/kg/day UF = 100 Acute RfD = 1 mg/kg/day	FQPA SF = 10 aPAD = acute RfD/FQPA SF = 0.1 mg/kg/day	Acute mammalian neurotoxicity study in the rat LOAEL = 500 mg/kg/day based on treatment-related neurobehavioral effects observed in the FOB and LMA testing (drooped palpebral closure, decreased rectal temperature and locomotor activity, increased forelimb grip strength)
Chronic Dietary all populations	NOAEL= 0.6 mg/kg/day UF = 100 Chronic RfD = 0.006 mg/kg/day	FQPA SF = 10 cPAD = chronic RfD/FQPA SF = 0.0006 mg/kg/day	2-Generation reproduction study LOAEL = 1.8 mg/kg/day based on increased incidence and severity of tubular atrophy in testes of F1 generation males.
Oral Nondietary (all durations)	NOAEL= 0.6 mg/kg/day	LOC for MOE = 1,000 (Residential)	2-Generation reproduction study LOAEL = 1.8 mg/kg/day based on increased incidence and severity of tubular atrophy in testes of F1 generation males.
Dermal (all durations)(Residential)	Oral study NOAEL= 0.6 mg/kg/day(dermal absorption rate = 27%)	LOC for MOE = 1,000 (Residential) LOC for MOE = 100 (Occupational)	2-Generation reproduction study LOAEL = 1.8 mg/kg/day based on increased incidence and severity of tubular atrophy in testes of F_1 generation males.
Inhalation (all durations)(Residential)	Oral study NOAEL= 0.6 mg/kg/day (inhalation absorption rate = 100%)	LOC for MOE = 1,000 (Residential) LOC for MOE = 100 (Occupational)	2-Generation reproduction study LOAEL = 1.8 mg/kg/day based on increased incidence and severity of tubular atrophy in testes of F1 generation males.
Cancer (oral, dermal, inhalation)	Likely carcinogen for humans based on increased incidence of hepatocellular adenomas and carcinomas in male and female mice. Quantification of risk based on most potent unit risk: male mouse liver adenoma and/or carcinoma combined tumor rate. The upper bound estimate of unit risk, $Q1^*$ $(mg/kg/day)^{-1}$ is 3.77×10^{-2} in human equivalents.		

*The reference to the FQPA SF refers to any additional SF retained due to concerns unique to the FQPA.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.565) for the combined residues of thiamethoxam and its metabolite, in or on a variety of raw agricultural commodities. The following raw agricultural commodities have established tolerances: barley, canola, cotton, sorghum, wheat, tuberous and corm vegetables crop subgroup, fruiting vegetables, crop group, tomato paste, cucurbit vegetables crop group, pome fruits crop group,

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milk and the meat and meat by products of cattle, goats, horses, and sheep. Risk assessments were conducted by EPA to assess dietary exposures from thiamethoxam in food as follows:

i. *Acute exposure.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. The Dietary Exposure Evaluation Model (DEEM®) analysis evaluated the individual food consumption as reported by respondents in the USDA 1994–1996 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the acute exposure assessments: tolerence level residues and 100% crop treated.

ii. *Chronic exposure.* In conducting this chronic dietary risk assessment the Dietary Exposure Evaluation Model (DEEM®) analysis evaluated the individual food consumption as reported by respondents in the USDA 1994–1996 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: percent crop treated (based on projected market shares) and anticipated residues (tier 3).

iii. *Cancer.* The dietary exposure for determining cancer risk is based on the chronic exposure explained in the previous paragraph using the same assumptions.

Section 408(b)(2)(E) of the FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide chemicals that have been measured in food. If EPA relies on such information, EPA must require that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. Following the initial data submission, EPA is authorized to require similar data on a time frame it deems appropriate. As required by section 408(b)(2)(E) of the FFDCA, EPA will issue a data call-in for information relating to anticipated residues to be submitted no later than 5 years from the date of issuance of this tolerance.

Section 408(b)(2)(F) of the FFDCA states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if the Agency can make the following findings: Condition 1, that the data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain such pesticide residue; Condition 2, that the exposure estimate does not underestimate exposure for any significant subpopulation group; and Condition 3, if data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by section 408(b)(2)(F) of the FFDCA, EPA may require registrants to submit data on PCT.

The Agency used percent crop treated (PCT) information as follows in Table 3.

TABLE 3.—THIAMETHOXAM USES AND ESTIMATES OF PERCENT CROP TREATED

Crop	Percent Crop Treated
Tuberous and Corm Vegetables - Crop Subgroup 1 C	9
Fruiting Vegetables (Except Cucurbits - Crop Group 8	15
Cucumbers	5
Melons	13
Casabas	44
Crenshaws	44
Squash	44
Pumpkin	44
Apples	5
Crabapples	53
Pears	9
Quinces	53
Loquats	53
Field, corn	6
Pop, sweet corn	100

Since the May 23, 2001 Final Rule establishing tolerances for thiamethoxam, the Agency has updated the percent crop-treated value for apples. The registrant is voluntarily restricting use of thiamethoxam on apples to only three states, Michigan, New York and Pennsylvania. These three states account for 28% of the U.S. apple production (122,000 out of 430,200 bearing acres). After consultation with experts in the field, EPA believes that no more than 10% of the apple acreage in these states will be treated with thiamethoxam. Thus, using a percent crop-treated value of 5% for the U.S. apple acreage is expected to be an over-estimate of the acres which will actually be treated with thiamethoxam.

The Agency used 6% CT for field corn since this is the percent crop-treated value for the market leader. Sweet corn exposure estimates, which currently make up the bulk of the exposure for the cereal grains, assume 100% crop treated.

As to Conditions 2 and 3, regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and regional populations.

2. *Dietary exposure from drinking water.* The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for thiamethoxam in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of thiamethoxam.

The Agency uses the Generic Estimated Environmental Concentration (GENEEC) or the Pesticide Root Zone/Exposure Analysis Modeling System (PRZM/EXAMS) to estimate pesticide concentrations in surface water and SCI-GROW, which predicts pesticide concentrations in groundwater. In general, EPA will use GENEEC (a tier 1 model) before using PRZM/EXAMS (a tier 2 model) for a screening-level assessment for surface water. The GENEEC model is a subset of the PRZM/EXAMS model that uses a specific high-end runoff scenario for pesticides. GENEEC incorporates a farm pond scenario, while PRZM/EXAMS incorporate an index reservoir environment in place of the previous pond scenario. The PRZM/EXAMS model includes a percent crop area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin.

None of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a coarse screen for sorting out pesticides for which it is highly unlikely that drinking water concentrations would ever exceed human health levels of concern.

Since the models used are considered to be screening tools in the risk assessment process, the Agency does not use estimated environmental concentrations (EECs) from these models to quantify drinking water exposure and risk as a %RfD or %PAD. Instead, drinking water levels of comparison (DWLOCs) are calculated and used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, and from residential uses. Since DWLOCs address total aggregate exposure to thiamethoxam they are further discussed in the aggregate risk sections below.

Based on the PRZM/EXAMS and SCI-GROW models the estimated environmental concentrations (EECs) of thiamethoxam for acute exposures are estimated to be 11.4 parts per billion (ppb) for surface water and 1.94 ppb for ground water. The EECs for chronic exposures are estimated to be 0.77 ppb for surface water, and 1.94 ppb for ground water.

3. *From non-dietary exposure.* The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Thiamethoxam is not registered for use on any sites that would result in residential exposure. Although such uses have been requested, they are not being assessed at this time.

4. *Cumulative exposure to substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA does not have, at this time, available data to determine whether thiamethoxam has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, thiamethoxam does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that thiamethoxam has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

D. Safety Factor for Infants and Children

1. *Safety factor for infants and children—*i. *In general.* FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

ii. *Prenatal and postnatal sensitivity.* The developmental toxicity studies indicated no quantitative or qualitative evidence of increased susceptibility of rat or rabbit fetus to *in utero* exposure based on the fact that the developmental NOAELs are either higher than or equal to the maternal NOAELs. However, the reproductive studies indicate effects in male rats in the form of increased incidence and severity of testicular tubular atrophy. These data are considered to be evidence of increased quantitative susceptibility for male pups when compared to the parents.

iii. *Conclusion.* Based on: a. Effects on endocrine organs observed across species.

b. The significant decrease in alanine amino transferase levels in the companion animal studies and in the dog studies.

c. The mode of action of this chemical in insects (interferes with the nicotinic acetyl choline receptors of the insect's nervous system) thus a developmental neurotoxicity study is required.

d. The transient clinical signs of neurotoxicity in several studies across species.

e. The suggestive evidence of increased quantitative susceptibility in the rat reproduction study, the Agency is retaining the FQPA factor which is 10X.

E. Aggregate Risks and Determination of Safety

To estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses, the Agency calculates DWLOCs which are used as a point of comparison against the model estimates of a pesticide's concentration in water (EECs). DWLOC values are not regulatory standards for drinking water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and residential uses. In calculating a DWLOC, the Agency determines how much of the acceptable exposure (i.e., the PAD) is available for exposure through drinking water [e.g., allowable chronic water exposure (mg/kg/day) = cPAD - (average food + residential exposure)]. This allowable exposure through drinking water is used to calculate a DWLOC.

A DWLOC will vary depending on the toxic endpoint, drinking water consumption, and body weights. Default body weights and consumption values as used by the EPA are used to calculate DWLOCs: 2L/70 kg (adult male), 2L/60 kg (adult female), and 1L/10 kg (child). Default body weights and drinking water consumption values vary on an individual basis. This variation will be taken into account in more refined screening-level and quantitative drinking water exposure assessments. Different populations will have different DWLOCs. Generally, a DWLOC is calculated for each type of risk assessment used: acute, short-term, intermediate-term, chronic, and cancer.

When EECs for surface water and groundwater are less than the calculated DWLOCs, EPA concludes with reasonable certainty that exposures to the pesticide in drinking water (when considered along with other sources of exposure for which EPA has reliable data) would not result in unacceptable levels of aggregate human health risk at this time. Because EPA considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of comparison in drinking water may vary as those uses change. If new uses are added in the future, EPA will reassess the potential impacts of residues of the pesticide in drinking water as a part of the aggregate risk assessment process.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary

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exposure from food to thiamethoxam will occupy 3% of the aPAD for the U.S. population, 2% of the aPAD for females 13–49 years old, 7% of the aPAD for all infants less than 1 year old and 9% of the aPAD for children 1–2 years old. In addition, there is potential for acute dietary exposure to thiamethoxam in drinking water. The surface water EEC is 11.4 µg/L and the ground water EEC is 1.94 µg/L. Since the surface water value is greater than the ground water value, the surface water value will be used for comparison purposes and will protect for any concerns for ground water concentrations. After calculating DWLOCs and comparing them to the EECs for surface water, EPA does not expect the aggregate exposure to exceed 100% of the aPAD.

TABLE 4.—AGGREGATE RISK ASSESSMENT FOR ACUTE EXPOSURE TO THIAMETHOXAM

Population Subgroup	aPAD, mg/kg/day	% aPAD (Food)	Ground Water EEC, µg/L	Surface Water EEC, µg/L	DWLOC, µg/L
U.S. Population	0.1	3	1.94	11.4	3,400
All Infants (0–1 yr)	0.1	7	1.94	11.4	930
Children (1–2 yr)	0.1	9	1.94	11.4	910
Children (3–5 yr)	0.1	7	1.94	11.4	940
Children (6–12 yr)	0.1	4	1.94	11.4	960
Youth (13–19 yr)	0.1	2	1.94	11.4	980
Adult (20–49 yr)	0.1	2	1.94	11.4	3,400
Adult (50+ yr)	0.1	2	1.94	11.4	3,400
Females (13–49 yr)	0.1	2	1.94	11.4	2,900

[a] Population subgroups shown include the U.S. general population and the maximally exposed subpopulation of adults, infants and children, and women of child-bearing age for each exposure scenario.
[b] DWLOC = Maximum Water Exposure (mg/kg/day) H 1,000 µg/mg body weight (70 kg general population/males 13+, 60 kg females 13+, 10 kg infants and children) Water Consumption (2 L/day adults, 1 L/day infants and children). Maximum water exposure = aPAD - dietary exposure (mg/kg/day)

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to thiamethoxam from food will utilize 5% of the cPAD for the U.S. population, 13% of the cPAD for all infants < 1 year old and 19% of the cPAD for children 1–2 years old. Proposed residential uses are not being addressed in this risk assessment. In addition to chronic dietary exposure, there is potential for chronic dietary exposure to thiamethoxam in drinking water. The surface water EEC is 0.6 µg/L and the groundwater EEC is 1.94 µg/L. Since the groundwater value is greater than the surface water value, the groundwater value will be used for comparison purposes and will protect for any concerns for surface water concentrations. After calculating the DWLOCs and comparing them to the EECs for groundwater, EPA does not expect the aggregate exposure to exceed 100% of the cPAD.

TABLE 5.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO THIAMETHOXAM

Population Subgroup	cPAD, mg/kg/day	% cPAD (Food)	Surface Water EEC, µg/L	Ground Water EEC, µg/L	DWLOC µg/L
U.S. Population	0.0006	5	0.77	1.9	20
All Infants (0–1 yr)	0.0006	13	0.77	1.9	5.3
Children (1–2 yr)	0.0006	19	0.77	1.9	4.9
Children (3–5 yr)	0.0006	14	0.77	1.9	5.2
Children (6–12 yr)	0.0006	7	0.77	1.9	5.6
Youth (13–19 yr)	0.0006	4	0.77	1.9	5.8
Adult (20–49 yr)	0.0006	4	0.77	1.9	20
Adult (50+ yr)	0.0006	4	0.77	1.9	20
Females (13–49 yr)	0.0006	4	0.77	1.9	17

3. *Short-term risk.* Short-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Thiamethoxam is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which does not exceed the Agency's level of concern.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Thiamethoxam is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which does not exceed the Agency's level of concern.

5. Aggregate cancer risk for U.S. population. The cancer aggregate dietary risk estimate was calculated, using the Agency's 6% estimated market share for treatment of field corn. The dietary cancer risk from residues in food is 0.9 x 10^{-6}. For risk management purposes, EPA considers a cancer risk to be greater than negligible when it exceeds the range of 1 in 1 million. EPA has generally treated cancer risks up to 3 in 1 million as within the range of 1 in 1 million. The DWLOC for cancer aggregate risk (no residential uses) is calculated using the following equations:

DWLOCcancer(µg/L) = [chronic water exposure(mg/kg/day) x (body weight (kg))] + [consumption (L) x 10^{-3} mg/µg]

chronic water exposure (mg/kg/day)=negligible risk + Q* - [(chronic food exposure)(mg/kg/day)]

Assuming that the negligible risk value could be as high as 3 x 10^{-6}, the chronic water exposure value is estimated to be:

3 x 10^{-6} + 3.77 x 10^{-2} - 0.0000245 = 0.0000551 mg/kg/day

The $DWLOC_{cancer}$ = 0.0000551 mg/kg/day x 70 kg + 2L x 10^{-3} mg/µg = 1.9 µg/L

The surface water EEC is 0.6 µg/L and the ground water EEC is 1.9 µg/L. Since the ground water value is greater than, the surface water value it will be used for comparison purposes and will protect for any concerns for surface water concentrations. The estimated chronic ground water value for thiamethoxam (1.9 µg/L) is essentially at the $DWLOC_{cancer}$ level for the general population using the 6% market share for treated field, corn seed.

The Agency used a screening level model designed to estimate pesticide concentrations in shallow ground water. A number of factors lead EPA to believe that the actual lifetime exposure through drinking water will be less than the $DWLOC_{cancer}$. These reasons are as follows:

a. Thiamethoxam is systemic. EPA's Tier 1 ground water model assumes that all of the product that is applied to the crop is available for runoff. The registrant has submitted data to show that a percentage (15–25%) of the product is absorbed by the plant, resulting in that much less product available to leach into ground water. Although the registrant has submitted data on only 2 crops, beans and cucumbers, it is likely that the total amount of thiamethoxam that is available to leach into ground water is less than the amount EPA uses as an input into its model. Due to limited data on the amount absorbed, EPA is unable to quantify this.

b. Although the Agency model is based on aerobic soil half lives, EPA's risk assessment for cancer estimate is for lifetime exposure. Data indicate the anaerobic aquatic half life for thiamethoxam is shorter than the aerobic soil half life and longer than the aerobic aquatic half life. Although EPA is unable to predict with a high degree of certainty about what happens to thiamethoxam over time in ground water, this does provide some support for an expectation that concentrations in ground water will decline between annual applications.

c. Shallow ground water modeling is not the perfect model for representing all drinking water from ground water sources. It is likely to be an overestimate of most drinking water, which tends to originate from deeper sources. EPA's experience is that the model is reasonably accurate for shallow drinking water, but the Agency believes that it is less accurate for drinking water from deeper sources.

d. The Agency has established conditions of registration for the previous uses which include two prospective ground water studies and a retrospective monitoring study, so that the reasonable certainty of no harm finding will be sustained. Preliminary results have indicated no detections of thiamethoxam in ground water.

e. The cancer risk from the food uses alone is 0.9 x 10^{-6}. The dietary risk is based on residue data derived from the average of field trials, which were performed at a higher applied-on rate than were accepted by the EPA. It is not unusual in the Agency's experience for field trial data to be an order of magnitude above actual monitoring. Since thiamethoxam has only recently been registered, actual monitoring data is not yet available. It is likely that the actual risk contribution from food will be much lower than current data indicate, which would result in a larger $DWLOC_{cancer}$. EPA expects that this refined $DWLOC_{cancer}$ would be larger than the EECs for the proposed uses. It should be noted that there are no detectable residues in the subject corn commodities.

Thus, EPA does not expect that the general population would be exposed to levels exceeding the $DWLOC_{cancer}$ over a lifetime.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to thiamethoxam residues.

A. Analytical Enforcement Methodology

Adequate enforcement methodology High Performance Liquid Chromatography using ultra violet or mass spectrometry (HPLC/UV or MS) is available to enforce the tolerance expression. The method may be requested from: Calvin Furlow, PIRIB, IRSD (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460; telephone number: (703) 305–5229; e-mail address: furlow.calvin@epa.gov.

B. International Residue Limits

There are no international residue limits for thiamethoxam.

V. Conclusion

Therefore, the tolerances are established for combined residues of thiamethoxam, 3-[(2-chloro-5-thiazolyl)methyl]tetrahydro-5-methyl-*N*-nitro-4H-1,3,5-oxadiazin-4-imine and its metabolite *N*-(2-chloro-thiazol-5-ylmethyl)-*N'*-methyl-nitro-guanidine, in or on field corn forage at 0.10 ppm, sweet corn forage at 0.10 ppm, popcorn forage at 0.10 ppm, field corn stover at 0.05 ppm, sweet corn stover at 0.05 ppm, field corn grain at 0.07 ppm, popcorn grain at 0.02 ppm, and sweet corn (kernal and cob with husk removed) at 0.02 ppm.

VI. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) of the FFDCA provides essentially the same process

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for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d) of FFDCA, as was provided in the old sections 408 and 409 of the FFDCA. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2002–0298 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before December 31, 2002.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. You may also deliver your request to the Office of the Hearing Clerk in Rm.104, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (703) 603–0061.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.1. Mail your copies, identified by docket ID number OPP–2002–0298, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.1. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VII. Regulatory Assessment Requirements

This final rule establishes a tolerance under section 408(d) of the FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of the FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism*(64 FR 43255, August 10, 1999). Executive Order 13132 requires

EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VIII. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticide and pests, Reporting and recordkeeping requirements.

Dated: October 24, 2002.

Debra Edwards,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

2. Section 180.565 is amended by alphabetically adding commodities to the table in paragraph (a) to read as follows:

§ 180.565 Thiamethoxam; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * *	*
Corn, field, forage	0.10
Corn, pop, forage	0.10
Corn, sweet, forage	0.10
Corn, field, grain	0.020
Corn, pop, grain	0.02
Corn, field, stover	0.05
Corn pop, stover	0.05
Corn, sweet, stover	0.05
Corn, sweet, kernal plus cob with husks removed	0.02
* * *	*

* * * * *

[FR Doc. 02–27830 Filed 10–31–02; 8:45 am]

BILLING CODE 6560–50–S

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 172, 174, 175, 176, and 177

[Docket No, RSPA–01–10568 (HM–207B)]

RIN 2137–AC64

Hazardous Materials: Retention of Shipping Papers

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule; response to appeals.

SUMMARY: In this final rule, RSPA is making changes to a final rule published on July 12, 2002, in which RSPA amended the Hazardous Materials Regulations (HMR) to require shippers and carriers to retain a copy of each hazardous material shipping paper, or an electronic image thereof, for a period of 375 days after the date the hazardous material is accepted by a carrier. This final rule responds to five appeals of the July 12, 2002 final rule.

EFFECTIVE DATES: This final rule is effective on November 1, 2002. Voluntary compliance is authorized as of August 12, 2002.

FOR FURTHER INFORMATION CONTACT: Deborah Boothe of the Office of Hazardous Materials Standards, (202) 366–8553, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

I. Background

On July 12, 2002, The Research and Special Programs Administration (RSPA, we) published a final rule under Docket HM–207B (67 FR 46123) amending the Hazardous Materials Regulations (HMR; 49 CFR parts 171–180) to require shippers and carriers to retain a copy of each hazardous material shipping paper, or an electronic image thereof, for a period of 375 days after the date the hazardous material is accepted by a carrier. The July 12, 2002 final rule incorporates into the HMR the requirements in the Federal hazardous material transportation law (Federal hazmat law) to require that, after a hazardous material "is no longer in transportation," each offeror and carrier of a hazardous material must retain the shipping paper "or electronic image thereof for a period of 1 year to be accessible through their respective principal places of business." 49 U.S.C. 5110(e), added by Public Law 103–311, Title I, section 115, 108 Stat. 1678 (Aug. 26, 1994). That section also provides that the offeror and carrier "shall, upon request, make the shipping paper available to a Federal, State, or local government agency at reasonable times and locations."

The July 12, 2002 final rule requires each person who offers or transports a hazardous material in commerce to retain a copy of the shipping paper for 375 days after the date the shipment is accepted by the initial carrier. To facilitate enforcement of this requirement, the final rule requires each

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shipping paper copy to include the date of initial acceptance. For rail shipments, the date of acceptance may be the date on the shipment waybill or bill of lading. The final rule also requires that copies of shipping papers must be made immediately available, if requested, to an authorized government official.

II. Appeals Received in Response to the Final Rule

We received five appeals of the July 12, 2002 final rule from the following industry associations involved in the transportation of hazardous materials: (1) American Trucking Associations (ATA), (2) Dangerous Goods Advisory Council (DGAC), (3) Truckload Carriers Association (TCA), (4) National Propane Gas Association (NPGA), and (5) International Vessel Operators Hazardous Materials Association (VOHMA). The appellants raise two major issues of concern, and they request clarification or revision of the final rule to provide for easier compliance. All the appellants expressed concern about the final rule requirement for shipping papers to be made "immediately" available, upon request, to an authorized official. In addition, VOHMA requests us to modify the final rule to permit a date on a bill of lading or waybill to be used as the shipment acceptance date for vessel shipments.

A. "Immediately Available"

All appellants request that we remove the words "immediately available" in §§ 172.201(e), 174.24(b), 175.30(a)(2), 176.24(b), and 177.817(f), as modified in the July 12, 2002 final rule. Appellants argue that requiring a copy of a shipping paper, or an electronic image thereof, to be made immediately available upon request could be unreasonable and burdensome. Appellants note that we did not define the term "immediately"; thus, appellants expressed concern that enforcement personnel may be unreasonable in the way that they interpret the requirement. DGAC provides a definition for "immediately" as taken from the American Heritage Dictionary of the English Language. According to DGAC, the dictionary definition "states these words '* * * imply no delay whatever, as between request and response.' * * * The word 'immediately' does not appear in 49 U.S.C. 5110(e) * * * In fact, its use appears to conflict with the congressional intent for Paragraph 5110(e) * * *" Appellants suggest that 48 hours is a reasonable time frame to provide an authorized official with requested documents for review and inspection. According to appellants, the final rule as written is different from the Federal Motor Carrier Safety Administrations's (FMCSA) definition of a "principal place of business" which allows motor carriers to make records available for inspection at its principal place of business within 48 hours (excluding weekends and holidays). Therefore, they contend that allowing 48 hours as a time frame would more closely resemble the FMCSA regulations in 49 CFR 390.5 concerning the definition of a "principal place of business."

In response to the appeals, we are revising §§ 172.201(e), 174.24(b), 175.30(a)(2), 176.24(b), and 177.817(f) in this final rule by removing the word "immediately." Persons subject to the shipping paper retention requirement must make copies available, upon request, "at reasonable times and locations." This change aligns the language in the regulations with the statutory language establishing the shipping paper retention requirement in § 5110(d) of Federal hazmat law. Generally, we expect that the requested documents will be made available to an inspector some time on the day that he or she is at the inspection site. However, the words "at reasonable times and locations" also take into account the fact that, in some instances, the principal place of business may be in a different time zone. VOHMA notes that "some of the provisions of [the final rule] do not address international business considerations. For cargo originating at a terminal operated by the carrier in the Far East where the shipping documents are maintained in the carriers files as required by the IMDG code, there may be a delay of 12 or more hours due to time zones and international date lines." VOHMA, therefore, asks us to amend the final rule language to account for differences in time zones.

We do not agree with appellants' suggestion to allow 48 hours for compliance with an authorized official's request for the shipping document copies. As we stated in the preamble to the July 12, 2002 final rule, electronic capabilities such as facsimile machines and email permit companies to transmit copies of shipping papers from shipping locations to a principal place of business very quickly. We also do not believe that appellants have any basis for their fears about unreasonable enforcement of this requirement.

B. Shipment Acceptance Date

The July 12, 2002 final rule permits rail carriers to use the date on the shipment waybill or bill of lading as the date of acceptance required to be included on shipping papers. VOHMA requests a similar provision for shipments by vessel: "The interlining of freight containers in the intermodal transportation system and similarity in booking and transfer practices should mean that the acceptability of the last modified version of the shipping paper should extend to the water mode as well. The date of the booking for a voyage corresponds to the date of booking for rail carriage and is currently captured in the electronic system." As we stated in the preamble to the July 12, 2002 final rule, it was not our intention to require shippers and carriers to implement new systems for preparing and dating shipping documentation. Shipping paper retention requirements should be sufficiently flexible to accommodate current transportation practices concerning acceptance dates for shipments. We understand that air carrier systems for completing and transmitting shipping documentation are similar to those for rail and vessel shipments. Therefore, in this final rule, we are revising §§ 172.201, 175.30, and 176.24 to permit use of the date on a waybill, airbill, or bill of lading for the date of acceptance required on a shipping paper.

C. Miscellaneous Clarification

VOHMA notes that a shipping paper prepared in accordance with the International Maritime Organization's Dangerous Goods Code (IMDG Code) may be used for further transportation within the United States. VOHMA suggests that § 176.24 of the HMR should be modified to reflect the provisions of § 171.12 authorizing transportation of shipments prepared in accordance with the IMDG Code. We agree, and are making the suggested change in this final rule.

III. Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not considered a significant regulatory action under Executive Order 12866 and was not reviewed by the Office of Management and Budget. This final rule is not considered significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11034).

This final rule implements a statutory requirement that has been in effect since 1994. We do not anticipate any additional costs on offerors and carriers of hazardous materials. Therefore, preparation of a regulatory evaluation is not warranted.

B. Executive Order 13132

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"). Federal hazardous materials transportation law preempts any State, local, or Indian tribe requirement on the preparation, execution, and use of shipping documents related to hazardous materials that is not substantively the same as this final rule, 49 U.S.C. 5125(b)(1)(B), but this final rule does not have substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. The consultation and funding requirements of Executive Order 13132 do not apply.

Federal hazardous materials transportation law, 49 U.S.C. 5101–5127, contains an express preemption provision (49 U.S.C. 5125(b)) preempting state, local, and Indian tribe requirements that are not substantively the same as Federal requirements on certain subjects. These subjects are:

(1) The designation, description, and classification of hazardous materials;

(2) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials;

(3) The preparation, execution, and use of shipping documents related to hazardous materials and requirements related to the number, contents, and placement of those documents;

(4) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material; or

(5) The design, manufacture, fabrication, marking, maintenance, recondition, repair, or testing of a packaging or container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

This final rule addresses item 3 above and preempts State, local, and Indian tribe requirements not meeting the "substantively the same as" standard. This final rule is necessary to assure that the HMR requirements for retention of shipping papers are consistent with Federal hazardous materials transportation law.

Federal hazardous materials transportation law provides at § 5125(b)(2) that, if DOT issues a regulation concerning any of these subjects, DOT must determine and publish in the **Federal Register** the effective date of federal preemption. The effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. The effective date of federal preemption of this final rule is 90 days from publication of this final rule in the **Federal Register**.

C. Executive Order 13175

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 ("Consultation and Coordination with Indian Tribal Governments"). Because this final rule does not have tribal implications, does not impose substantial direct compliance costs, and is required by statute, the funding and consultation requirements of Executive Order 13175 do not apply.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to assess the impact of its regulations on small entities unless the agency determines that a rule is not expected to have a significant impact on a substantial number of small entities. This final rule implements a statutory requirement that has been in effect since 1994. This final rule will not impose additional costs on offerors and carriers of hazardous material. I hereby certify that, while the final rule applies to a substantial number of small entities, there will not be a significant economic impact on those small businesses.

E. Unfunded Mandates Reform Act of 1995

This final rule imposes no mandates and thus does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995.

F. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, no person is required to respond to an information collection unless it displays a valid OMB control number. No new burdens are proposed under this final rule. RSPA has a current information collection approval under OMB No. 2137–0034, "Shipping Papers and Emergency Response Information" which includes the shipping paper retention requirement in the burden estimates.

G. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

H. Environmental Assessment

This final rule does not affect packaging or hazard communication requirements for shipments of hazardous materials transported in commerce. We find that there are no significant environmental impacts associated with this final rule.

List of Subjects

49 CFR Part 172

Hazardous materials transportation, Hazardous waste, Labeling, Markings, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 174

Hazardous materials transportation, Radioactive materials, Railroad safety.

49 CFR Part 175

Air Carriers, Hazardous materials transportation, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 176

Hazardous materials transportation, Maritime carriers, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 177

Hazardous materials transportation, Motor carriers, Radioactive materials, Reporting and recordkeeping requirements.

In consideration of the foregoing, we are amending 49 CFR Parts 172, 174, 175, 176, and 177, as follows:

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, AND TRAINING REQUIREMENTS

1. The authority citation for part 172 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

2. In § 172.201, paragraph (e) as added in the July 12, 2002 final rule, 67 FR 46127, is revised to read as follows:

§ 172.201 Preparation and retention of shipping papers.

* * * * *

(e) Each person who provides a shipping paper must retain a copy of the shipping paper required by § 172.200(a), or an electronic image thereof, that is accessible at or through its principal place of business and must make the

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shipping paper available, upon request, to an authorized official of a Federal, State, or local government agency at reasonable times and locations. For a hazardous waste, the shipping paper copy must be retained for three years after the material is accepted by the initial carrier. For all other hazardous materials, the shipping paper copy must be retained for 375 days after the material is accepted by the initial carrier. Each shipping paper copy must include the date of acceptance by the initial carrier, except that, for rail, vessel, or air shipments, the date on the shipment waybill, airbill, or bill of lading may be used in place of the date of acceptance by the initial carrier. A motor carrier (as defined in § 390.5 of Subchapter B of Chapter III of Subtitle B) that uses a shipping paper without change for multiple shipments of a single hazardous material (*i.e.*, one having the same shipping name and identification number) may retain a single copy of the shipping paper, instead of a copy for each shipment made, if the carrier also retains a record of each shipment made, to include shipping name, identification number, quantity transported, and date of shipment.

PART 174—CARRIAGE BY RAIL

3. The authority citation for part 174 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

4. Section 174.24(b) as added by the July 12, 2002 final rule, 67 FR 46128, is revised to read as follows:

§ 174.24 Shipping papers.

* * * * *

(b) Each person receiving a shipping paper required by this section must retain a copy or an electronic image thereof, that is accessible at or through its principal place of business and must make the shipping paper available, upon request, to an authorized official of a Federal, State, or local government agency at reasonable times and locations. For a hazardous waste, each shipping paper copy must be retained for three years after the material is accepted by the initial carrier. For all other hazardous materials, each shipping paper copy must be retained for 375 days after the material is accepted by the initial carrier. Each shipping paper copy must include the date of acceptance by the initial carrier. The date on the shipping paper may be the date a shipper notifies the rail carrier that a shipment is ready for transportation, as indicated on the waybill or bill of lading, as an alternative to the date the shipment is picked up, or accepted, by the carrier.

PART 175—CARRIAGE BY AIRCRAFT

5. The authority citation for part 175 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

6. In § 175.30, paragraph (a)(2) as amended in the July 12, 2002 final rule, 67 FR 46128, is revised to read as follows:

§ 175.30 Accepting and inspecting shipments.

(a) * * *

(1) * * *

(2) Described and certified on a shipping paper prepared in duplicate in accordance with part 172 of this subchapter or as authorized by § 171.11 of this subchapter. Each person receiving a shipping paper required by this section must retain a copy or an electronic image thereof, that is accessible at or through its principal place of business and must make the shipping paper available, upon request, to an authorized official of a federal, state, or local government agency at reasonable times and locations.

For a hazardous waste, each shipping paper copy must be retained for three years after the material is accepted by the initial carrier. For all other hazardous materials, each shipping paper copy must be retained for 375 days after the material is accepted by the carrier. Each shipping paper copy must include the date of acceptance by the carrier. The date on the shipping paper may be the date a shipper notifies the air carrier that a shipment is ready for transportation, as indicated on the airbill or bill of lading, as an alternative to the date the shipment is picked up or accepted by the carrier. Only an initial carrier must receive and retain a copy of the shipper's certification, as required by § 172.204 of this subchapter.

* * * * *

PART 176—CARRIAGE BY VESSEL

7. The authority citation for part 176 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

8. Section 176.24 as amended in the July 12, 2002 final rule, 67 FR 46128,is revised to read as follows:

§ 176.24 Shipping papers.

(a) A person may not accept a hazardous material for transportation or transport a hazardous material by vessel unless that person has received a shipping paper prepared in accordance with part 172 of this subchapter, or as authorized by § 171.12 of this subchapter, unless the material is excepted from shipping paper requirements under this subchapter.

(b) Each person receiving a shipping paper required by this section must retain a copy or an electronic image thereof, that is accessible at or through its principal place of business and must make the shipping paper available, upon request, to an authorized official of a Federal, State, or local government agency at reasonable times and locations. For a hazardous waste, each shipping paper copy must be retained for three years after the material is accepted by the initial carrier. For all other hazardous materials, each shipping paper copy must be retained for 375 days after the material is accepted by the carrier. Each shipping paper copy must include the date of acceptance by the carrier. The date on the shipping paper may be the date a shipper presents a booking for carriage with the carrier as an alternative to the date the shipment is picked up, accepted, or loaded on the vessel by the carrier.

PART 177—CARRIAGE BY PUBLIC HIGHWAY

9. The authority citation for part 177 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

10. In § 177.817, paragraph(f) as added in the July 12, 2002 final rule, 67 FR 46128, is revised, to read as follows:

§ 177.817 Shipping papers.

* * * * *

(f) *Retention of shipping papers.* Each person receiving a shipping paper required by this section must retain a copy or an electronic image thereof, that is accessible at or through its principal place of business and must make the shipping paper available, upon request, to an authorized official of a Federal, State, or local government agency at reasonable times and locations. For a hazardous waste, the shipping paper copy must be retained for three years after the material is accepted by the initial carrier. For all other hazardous materials, the shipping paper copy must be retained for 375 days after the material is accepted by the carrier. Each shipping paper copy must include the date of acceptance by the carrier. A motor carrier (as defined in § 390.5 of Subchapter B of Chapter III of Subtitle B) that uses a shipping paper without change for multiple shipments of a single hazardous material (*i.e.*, one having the same shipping name and identification number) may retain a single copy of the shipping paper, instead of a copy for each shipment made, if the carrier also retains a record of each shipment made, to include shipping name, identification number, quantity transported, and date of shipment.

Issued in Washington, DC, on October 25, 2002, under authority delegated in 49 CFR part 1.

Ellen G. Engleman,

Administrator.

[FR Doc. 02–27735 Filed 10–31–02; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 011218304–1304–01; I.D. 102802E]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Vessels Using Trawl Gear in Bering Sea and Aleutian Islands Management Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing directed fishing for Pacific cod by vessels using trawl gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2002 Pacific halibut bycatch allowance specified for the trawl Pacific cod fishery.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), October 29, 2002, until 2400 hrs, A.l.t., December 31, 2002.

FOR FURTHER INFORMATION CONTACT: Andrew Smoker, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2002 halibut bycatch allowance specified for the BSAI trawl Pacific cod fishery, which is defined at § 679.21(e)(3)(iv)(E), is 1,434 metric tons (67 FR 956, January 8, 2002).

In accordance with § 679.21(e)(7)(v), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2002 halibut bycatch allowance specified for the trawl Pacific cod fishery in the BSAI has been caught. Consequently, the Regional Administrator is closing directed fishing for Pacific cod by vessels using trawl gear in the BSAI.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds that the need to immediately implement this action to avoid exceeding the halibut bycatch allowance for the trawl Pacific cod fishery constitutes good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B). These procedures are unnecessary and contrary to the public interest because the need to implement these measures in a timely fashion to avoid exceeding the halibut bycatch allowance for the trawl Pacific cod fishery constitutes good cause to find that the effective date of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d)(3), a delay in the effective date is hereby waived.

This action is required by 50 CFR 679.21 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 28, 2002.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–27853 Filed 10–29–02; 2:47 pm]

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Proposed Rules

Federal Register
Vol. 67, No. 212
Friday, November 1, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 54

[Docket Number LS–02–06]

RIN 0581–AC13

Changes in Fees for Federal Meat Grading and Certification Services

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Agricultural Marketing Service (AMS) proposes to increase the hourly fees charged for voluntary Federal meat grading and certification services performed by the Meat Grading and Certification (MGC) Branch. The hourly fees would be adjusted by this action to reflect the increased cost of providing service and to ensure that the MGC Branch operates on a financially self-supporting basis.

DATES: Comments must be received on or before December 31, 2002.

ADDRESSES: Interested persons are invited to submit written comments to Larry R. Meadows, Chief; USDA, AMS, LS, MGC Branch, STOP 0248, Room 2628–S, 1400 Independence Avenue, SW., Washington, DC 20250–0248. Telephone number (202) 720–1246. Comments may also be submitted electronically to *Larry.Meadows@usda.gov* or faxed to (202) 690–4119.

All comments should reference docket number LS–02–06 and note the date and page number of this issue of the **Federal Register**.

Comments received may be inspected at the above address, between 8 a.m. and 4:30 p.m., e.s.t., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Larry R. Meadows, Chief, MGC Branch, (202) 720–1246.

SUPPLEMENTARY INFORMATION:

Background

The Secretary of Agriculture is authorized by the Agricultural Marketing Act of 1946 (AMA), as amended (7 U.S.C. 1621, *et seq.*), to provide voluntary Federal meat grading and certification services to facilitate the orderly marketing of meat and meat products and to enable consumers to obtain the quality of meat they desire. The AMA also provides for the collection of fees from users of the Federal meat grading and certification services that are approximately equal to the cost of providing these services. The hourly fees are established by equitably distributing the program's projected operating costs over the estimated hours of service—revenue hours—provided to users of the service on a yearly basis. Program operating costs include employee salaries and benefits, which account for nearly 80 percent of the operating costs, and travel, training, and administrative costs. Periodically, the fees must be adjusted to ensure that the program remains financially self-supporting.

AMS regularly reviews its user-fee-financed programs to determine if the fees are adequate. The most recent review determined that the existing fee schedule for the MGC Branch would not generate sufficient revenues to recover operating costs for current and near-term periods while maintaining an adequate reserve balance. The operating loss for fiscal year (FY) 2002 is projected to total $1.6 million. Without a fee increase, the operating loss for FY 2003 is projected to reach $2.9 million. These combined losses will deplete MGC Branch's operating reserve and place the MGC Branch in an unstable financial position that will adversely affect its ability to provide meat grading and certification services.

This proposal is necessary to offset decreased revenue hours and increased program operating expenses incurred since the last fee increase. The MGC Branch has lost revenue due to the implementation of more efficient audit-based and pilot certification programs and the continued consolidation within the livestock and meat industry. Audit-based and pilot certification programs employ fewer personnel and, therefore, generate fewer revenue hours as compared to traditional certification services.

MGC Branch operating expenses have increased due to (1) information system upgrades mandated by changes in information system technology; (2) congressionally mandated salary increases for all Federal Government employees in 2001, 2002, and 2003; (3) inflation of nonsalary operating costs; and (4) accumulated increases in continental United States (CONUS) per diem rates, mileage rates, and office maintenance costs. In the past 9 years, the MGC Branch has made efforts to control operating costs by closing 3 field offices, reducing mid-level supervisory staff by over 50 percent, and reducing the number of support staff by 38 percent. At the same time, the MGC Branch has utilized automated information management systems for data collection, retrieval, and dissemination, applicant billing, and disbursement of employee entitlements. The reduction in field offices, supervisory staff, and support personnel and the increased use of automated systems has enabled the MGC Branch to absorb a substantial portion of the operating costs and minimize hourly fee increases during these years.

Despite these cost reduction efforts and hourly fee increases in 1998 and 2000, the MGC Branch incurred a $657,000 operating loss in FY 2001. Furthermore, AMS projects that without an hourly fee increase, the MGC Branch will lose approximately $8.6 million from FY 2002 through FY 2004 and totally deplete program reserves to the point of deficit operations (*i.e.* FY 2002, $1.6 million; FY 2003, $2.9 million; and FY 2004, $4.1 million).

In view of these increased costs, AMS proposes to increase the hourly fees. The base hourly fee for commitment applicants would increase from $45 to $55. A commitment applicant is a user of meat grading and certification services who agrees to pay for five continuous 8 hour days, Monday through Friday between the hours of 6 a.m. and 6 p.m., excluding legal holidays. The base hourly fee for noncommitment applicants would increase from $52 to $64. A noncommitment applicant is a user of meat grading and certification services, who agrees to pay an hourly fee without committing to a certain number of service hours. The premium hourly fee would increase from $57 to $70. The premium hourly fee is charged to applicants when meat grading and certification services (1) exceed 8 hours per day, (2) are performed before 6 a.m. and after 6 p.m. Monday through Friday, and (3) any time on Saturday or Sunday, except on legal holidays. The legal holiday fee would increase from $90 to $110 and is charged to applicants for meat grading and certification services provided on legal holidays.

Executive Order 12866

This action has been determined to be not significant for purposes of Executive Order 12866, and has not been reviewed by the Office of Management and Budget.

Regulatory Flexibility Act

Pursuant to the requirements set forth in the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*), the Administrator of AMS considered the economic impact of this proposed action on small entities and determined that it will not have a significant economic effect on a substantial number of small entities.

AMS, through its MGC Branch, provides voluntary Federal meat grading and certification services to 450 businesses, including 152 livestock slaughterers, 79 facilities that process federally donated products, 74 meat processors, 46 livestock producers and feeders, 28 brokers, 26 organic certifying companies, 25 trade associations, 17 State and Federal entities, and 3 distributors. Seventy-two percent of these businesses qualify as small entities, a company that employs less than 500 employees. Small entities generate approximately 17 percent of the MGC Branch's revenues and are under no obligation to use voluntary Federal meat grading and certification services provided under the authority of the AMA.

Federal meat grading and certification services facilitate the orderly marketing of meat and meat products and enable consumers to obtain the quality of meat they desire. Grading services consist of the evaluation of carcass beef, lamb, pork, veal, and calf for compliance with the grades of the appropriate official U.S. Standard. The MGC Branch grades approximately 21.1 billion pounds of meat each year. Certification services consist of the evaluation of meat and meat products for compliance with specification and contractual requirements. Certification services are regularly used by meat purchasers to ensure that the quality and yields of the products they purchase comply with their stated requirements. The MGC Branch certifies approximately 18.1 billion pounds of meat and meat products each year.

This action would raise the hourly fees charged to users of Federal meat grading and certification services. AMS estimates that this action would provide the MGC Branch an additional $401,000 per month in FY 2003. Since small entities account for 17 percent of MGC Branch revenues, they would pay an average of $212 per month per applicant. This action and the projected increase in revenue hours would increase revenues by $4.8 million per year and replenish operating revenues for the projected losses of $2.6 million in FY 2002 and $2.3 million in FY 2003. Even with this action, the unit cost for MGC Branch service (revenue/total pounds graded and certified) would remain unchanged at approximately $0.0006 per pound.

This action is necessary to offset decreased revenue hours and increased program operating costs incurred since the last fee increase. The MGC Branch has lost revenue due to the implementation of more efficient audit-based and pilot certification programs and the continued consolidation within the livestock and meat industry. Audit-based and pilot certification programs employ fewer personnel and, therefore, generate fewer revenue hours as compared to traditional certification services.

MGC Branch operating expenses have increased due to (1) information system upgrades mandated by the information system technology; (2) congressionally mandated salary increases for all Federal Government employees in 2001, 2002, and 2003; (3) inflation of nonsalary operating costs; and (4) accumulated increases in continental United States (CONUS) per diem rates, mileage rates, and office maintenance costs. Since 1993, the MGC Branch has made efforts to control operating costs by closing 3 field offices, reducing mid-level supervisory staff by over 50 percent, and reducing the number of support staff by 38 percent. At the same time, the MGC Branch has utilized automated information management systems for data collection, retrieval, and dissemination, applicant billing, and disbursement of employee entitlements. The reduction in field offices, supervisory staff and support personnel and the increased use of automated systems has enabled the MGC Branch to absorb a substantial portion of the operating costs and minimize hourly fee increases over the past 9 years.

Despite these cost reduction efforts and hourly fee increases in 1998 and 2000, the MGC Branch incurred a $657,000 operating loss in FY 2001. Furthermore, AMS projects that without an hourly fee increase; the MGC Branch would lose approximately $8.6 million from FY 2002 through FY 2004 and totally deplete program reserves to the point of deficit operations.

In view of these increased costs, AMS proposes to increase the hourly fees for Federal meat grading and certification services. The base hourly fee for commitment applicants would increase from $45 to $55. A commitment applicant is a user of meat grading and certification services who agrees to pay for five continuous 8 hour days, Monday through Friday between the hours of 6 a.m. and 6 p.m., excluding legal holidays. The base hourly fee for noncommitment applicants would increase from $52 to $64. A noncommitment applicant is a user of meat grading and certification services, who agrees to pay an hourly fee without committing to a certain number of service hours. The premium hourly fee would increase from $57 to $70. The premium hourly fee is charged to applicants when meat grading and certification services (1) exceed 8 hours per day, (2) are performed before 6 a.m. and after 6 p.m. Monday through Friday, and (3) any time on Saturday or Sunday, except on legal holidays. The legal holiday fee would increase from $90 to $110 and is charged to applicants for meat grading and certification services provided on legal holidays.

Civil Justice Reform

This action has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have retroactive effect and would not pre-empt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Paperwork Reduction Act

This action would not impose any additional reporting or recordkeeping requirements on users of Federal meat grading and certification services.

List of Subjects in 7 CFR Part 54

Food grades and standards, Food labeling, Meat and meat products.

For the reasons set forth in the preamble, it is proposed that 7 CFR part 54 be amended as follows:

PART 54—MEATS, PREPARED MEATS, AND MEAT PRODUCTS (GRADING, CERTIFICATION, AND STANDARDS)

1. The authority citation for 7 CFR part 54 continues to read as follows:

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Authority: 7 U.S.C. 1621–1627.

§ 54.27 [Amended]

2. Section 54.27 is amended as follows:

a. In paragraph (a), remove "$52" and add "$64" in its place, remove "$57" and add "$70" in its place, remove "$90" and add "$110" in its place.

b. In paragraph (b), remove "$45" and add "$55" in its place, remove "$57" and add "$70" in its place, remove "$90" and add "$110" in its place.

Dated: October 28, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–27766 Filed 10–31–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 956

[Docket No. FV02–956–1 PR]

Sweet Onions Grown in the Walla Walla Valley of Southeast Washington and Northeast Oregon; Reopening of Comment Period on Establishment of Grade and Inspection Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Reopening of the comment period.

SUMMARY: Notice is hereby given that the comment period on the establishment of grade and inspection requirements for Walla Walla sweet onions is reopened.

DATES: Comments must be received by November 22, 2002.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20090–0237, Fax: (202) 720–8938, or e-mail: *moab.docketclerk@usda.gov*. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html*.

FOR FURTHER INFORMATION CONTACT: George Kelhart, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20090–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on compliance with this proposed regulation by contacting: Jay Guerber, Marketing Order Information Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20090–0237; Telephone: (202) 720–2491, Fax: (202) 720–5698, or e-mail: *Jay.Guerber@usda.gov*.

SUPPLEMENTARY INFORMATION: A proposed rule was published in the **Federal Register** on July 22, 2002 (67 FR 47741). The proposed rule invited comments on the establishment of grade and inspection requirements for Walla Walla sweet onions. The rule would require that all Walla Walla sweet onions handled prior to June 10 of each marketing season be inspected and be at least U.S. Commercial grade. By establishing minimum standards early in the season, the rule is expected to improve producer returns by ensuring that early-season sweet onions are mature and marketable. The cost of the required inspection would be fully funded by the Walla Walla Sweet Onion Marketing Committee (Committee), the agency responsible for local administration of the marketing order regulating sweet onions grown in the Walla Walla Valley of Southeast Washington and Northeast Oregon. The rule also proposed that there would be no minimum quantity exemption from inspection requirements prior to June 10. The comment period ended September 20, 2002.

One comment was received. After evaluating that comment, USDA determined that additional information could clarify certain aspects of the proposal and provide further guidance to USDA in making a final decision on the proposal. The commenter's primary objection with the proposal is that the June 10 date is too early. The commenter stated that inspections should be required on all sweet onions shipped prior to June 15, at the earliest, because, contrary to the proposal's premise, any earlier date would not prevent immature onions from being marketed.

The commenter noted that there were no shipments of Walla Walla sweet onions during the 2002 season prior to June 10, and that this indicates the proposal could be ineffective. Further analysis of the impact the proposed June 10 date would have on early-season immature onion shipments would be useful to the USDA in making a final determination on this matter.

Further, regarding the higher potential cost of inspections to the Committee if a later date were to be used rather than June 10, the commenter suggested some alternatives, including not requiring all sweet onions shipped prior to an established date to be inspected. These alternatives were not discussed by the Committee prior to its submission of the proposed rule and further information regarding such alternatives also would be useful to USDA in making a final determination on this matter.

Although providing an additional period of time for comments would delay the final decision on this proposal, it would not delay the decision so as to negatively affect its effectiveness for the 2003 marketing season. Therefore, before proceeding further on the recommendation to establish grade and inspection requirements, USDA is reopening the comment period to allow the Committee, as well as other interested persons, more time to review the proposed rule and to submit additional information. Accordingly, the period in which to file written comments is reopened until November 22, 2002. This notice is issued pursuant to the Agricultural Marketing Agreement Act of 1937.

Authority: 7 U.S.C. 601–674.

Dated: October 28, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–27765 Filed 10–31–02; 8:45 am]

BILLING CODE 3410–02–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

RIN 3150–AG48

Voluntary Fire Protection Requirements for Light Water Reactors; Adoption of NFPA 805 as a Risk-Informed, Performance-Based Alternative

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is proposing to amend its fire protection requirements for nuclear power reactor licensees. The proposed rule would permit reactor licensees to voluntarily adopt a set of fire protection requirements contained in the National Fire Protection Association (NFPA) Standard 805, "Performance-Based Standard for Fire Protection for Light Water Reactor Electric Generating Plants, 2001 Edition" (NFPA 805). The proposed rule would provide existing nuclear power plant licensees with an alternative set of risk-informed, performance-based fire protection requirements.

DATES: Submit comments by January 15, 2003. Comments received after this date will be considered if it is practical to do so, but the Commission is only able to ensure consideration of comments received on or before this date.

ADDRESSES: Submit written comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff. Written comments may also be hand-delivered to 11555 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

Documents related to this rulemaking may be examined and copied for a fee at the NRC's Public Document Room (PDR), One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland (NFPA standards and copyrighted NFPA 805 may only be examined in the PDR). Copies of NFPA 805 may be purchased from the NFPA Customer Service Department, 1 Batterymarch Park, P.O. Box 9101, Quincy, MA 02269–9101 and in PDF format through the NFPA Online Catalog (*www.nfpa.org*) or by calling 1–800–344–3555 or 617–770–3000.

The NRC maintains an Agencywide Documents Access and Management System (ADAMS), which provides text and image files of the agency's public documents. These documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/NRC/ADAMS/index.html*. If you do not have access to ADAMS, or if you encounter any problems in accessing the documents stored in ADAMS, contact the NRC's Public Document Room (PDR) Reference Staff by telephone at 1–800–397–4209, or 301–415–4737, or via email to *pdr@nrc.gov*. Certain documents (other than NFPA 805) may also be accessed electronically via the NRC's interactive rulemaking Web site: *http://ruleforum.llnl.gov*.

FOR FURTHER INFORMATION CONTACT: Leon E. Whitney, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001. Mr. Whitney can also be reached by telephone 301–415–3081, or via email at: *lew1@nrc.gov*.

SUPPLEMENTARY INFORMATION:

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I. Background and Rulemaking Initiation

In 1971, the NRC promulgated General Design Criterion (GDC) 3, "Fire protection," of Appendix A to 10 CFR part 50. Subsequently (largely as a result of the fire at Browns Ferry Nuclear Plant in 1975), the NRC developed specific guidance for implementing GDC 3, as provided in Branch Technical Position (BTP) Auxiliary Power Conversion Systems Branch (APCSB) 9.5–1, "Guidelines for Fire Protection for Nuclear Power Plants," dated May 1, 1976, and Appendix A to BTP APCSB 9.5–1, "Guidelines for Fire Protection for Nuclear Power Plants Docketed Prior to July 1, 1976," dated February 24, 1977. In the late 1970s, the NRC worked with licensees to establish configurations that meet this guidance, reaching closure on most issues. However, to resolve the remaining contested issues, the NRC published the final fire protection rule (10 CFR 50.48, "Fire Protection") and Appendix R to 10 CFR part 50 on November 10, 1980 (45 FR 76602).

Light water reactor licensees are currently required to have fire protection programs that comply with 10 CFR 50.48 and Criterion 3 of Appendix A to 10 CFR part 50 (GDC 3). A fire protection program that satisfies Criterion 3 is required for all operating nuclear power plants by 10 CFR 50.48(a). Criterion 3—"Fire protection," requires that structures, systems, and components (SSCs) important to safety shall be designed and located to minimize, consistent with other safety requirements, the probability and effects of fires and explosions. Further it requires that fire detection and fighting systems of appropriate capacity and capability be provided and designed to minimize the adverse effects of fires on SSCs important to safety. These fire protection requirements are deterministic.

As stated in 10 CFR 50.48(b)(1), with the exception of Sections III.G, III.J, and III.O of Appendix R, nuclear power plants that were licensed to operate before January 1, 1979, are exempt from the requirements of Appendix R to 10 CFR part 50, to the extent that features meeting the provisions of Appendix A to Branch Technical Position (BTP) APCSB 9.5–1 had been accepted by the NRC staff. These reactor plants otherwise must meet 10 CFR 50, Appendix R, as well as any requirements contained in plant specific fire protection license conditions and/or technical specifications. Nuclear power plants that were licensed to operate after January 1, 1979, must comply with 10 CFR 50.48(a) as well as any plant-specific fire protection license conditions and/or technical specifications. Their fire protection license conditions typically reference Safety Evaluation Reports (SERs) generated by the NRC as the product of initial licensing reviews against either Appendix A to BTP APCSB 9.5–1 and the criteria of certain sections of 10 CFR 50, Appendix R, or against NUREG 0800, the NRC's Standard Review Plan (SRP) for fire protection (which closely follows the structure of 10 CFR 50, Appendix R).

The NRC has issued approximately 900 exemptions from the technical requirements specified in Appendix R. These exemptions were granted to licensees that submitted a technical evaluation demonstrating that an alternative fire protection approach satisfied the underlying safety purpose of Appendix R. During the initial implementation period for "Pre-1979 Appendix R plants," the NRC granted exemptions under the provisions of 10 CFR 50.48(c)(6), which has since been deleted. For exemptions requested by "Pre-1979" plants after the licensee's initial Appendix R implementation period, the NRC has conducted its reviews in accordance with the provisions specified in 10 CFR 50.12 "Specific exemptions." "Post-1979" plants have also requested and, when deemed acceptable by the staff, received approval to deviate from their licensing requirements. The processing of exemption and deviation requests has placed a significant burden on the resources of the NRC and the nuclear industry.

Industry representatives and some members of the public have described the current deterministic fire protection requirements as "prescriptive" and an "unnecessary regulatory burden." Beginning in the late 1990s, the Commission provided the NRC staff with guidance for identifying and

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assessing performance-based approaches to regulation (see SECY–00–0191, "High-Level Guidelines for Performance-Based Activities," dated September 1, 2000, and Staff Requirements Memorandum (SRM) entitled "White Paper on Risk-Informed and Performance-Based Regulation," dated March 1, 1999, issued subsequent to SECY–98–144). This guidance augmented the risk-related guidance in the NRC's Probabilistic Risk Assessment (PRA) Policy Statement and Regulatory Guide 1.174, "An Approach for Using Probabilistic Risk Assessment in Risk-Informed Decisions on Plant-Specific Changes to the Licensing Basis," dated July 1998.

In SECY–00–0009 dated January 13, 2000, the NRC staff requested and received Commission approval for proceeding with a rulemaking to permit reactor licensees to adopt NFPA 805 as a voluntary alternative to existing fire protection requirements. On February 24, 2000, in a Staff Requirements Memorandum (SRM) titled "Rulemaking Plan, Reactor Fire Protection Risk-Informed, Performance-Based Rulemaking," the Commission directed the staff to proceed with this rulemaking.

The NFPA Standards Council approved 2001 Edition of NFPA 805 as a performance-based American National Standard for light water nuclear power plants, effective February 9, 2001. The NRC cooperatively participated in the development of NFPA 805. The standard specifies the minimum fire protection requirements for existing light water nuclear power plants during all modes ("phases" in NFPA 805) of plant operation, including, shutdown, degraded conditions, and decommissioning.

The Nuclear Energy Institute (NEI) expressed support for the rulemaking in a letter dated September 13, 2001. The staff prepared a memorandum, dated October 9, 2001, informing the Commission that the staff had revised the rulemaking plan such that the staff would submit the proposed rule revision to the Commission by July 2002, and the final rule revision 12 months after the NRC published the proposed rule revision for public comment. Additionally, the staff informed the Commission that it was pursuing development of the implementation guidance to be endorsed by a regulatory guide. NEI is currently developing this guidance.

Draft Rule Language and Public Comment

On December 20, 2001 (66 FR 65661), the NRC published in the **Federal Register** draft rule language proposing to endorse NFPA 805, and posted this draft language on the NRC's interactive Rulemaking Forum Web site at *http://ruleforum.llnl.gov*. The NRC requested public comment on the draft rule language.

The comment period on the draft rule language ended on February 4, 2002. In response to the **Federal Register** notice the NRC received five sets of comments from the NRC staff, industry consultants, licensees and industry organizations, as summarized below:

An NRC staff member pointed out that the draft rule language inadvertently overlooked an entire class of licensees (i.e., the so-called "post January 1, 1979 licensees"). The NRC agrees with this comment and has corrected this oversight in the proposed rule by including this class of licensee.

The Nuclear Energy Institute (NEI) disagreed with a proposed NRC exception to NFPA 805 which would not endorse the italicized exception contained in Section 3.3.5.3 of NFPA 805. This italicized exception had the effect of permitting existing electrical cable which does not comply with a flame propagation test acceptable to the NRC to remain as is. Compliance with an electrical cable flame propagation test has been in NRC guidance since 1981 (NUREG 0800, the NRC's Standard Review Plan or SRP). The largest single contributor to combustible fire loading in most areas of a nuclear power plant is electrical cable insulation in open cable trays. This was demonstrated by the cable fire at Brown's Ferry in 1975. The electrical cable insulation safety hazard in nuclear power plants should be mitigated by successful completion of a cable insulation fire propagation test (or the application of a fire retardant coating or the installation of fixed, automatic fire suppression, as stated in the rule language). Therefore, the NRC cannot endorse the italicized exception contained in Section 3.3.5.3 of NFPA 805.

NEI submitted a number of other specific comments, which were endorsed as a group by the Tennessee Valley Authority (TVA), none of which resulted in the NRC choosing to make changes to the draft rule language. These comments regarded: (1) Appropriate radiological limits for fire suppression activities; (2) licensee freedom to establish secondary fire protected safe shutdown paths; (3) the standing of "docketed licensing-basis information" within Chapter 3 of NFPA 805; (4) the need for the NFPA 805 Section 3.5.4 seismic/Class 1E emergency power buses fire pump requirements; (5) the need for seismically designed fire hose station standpipes in lieu of a plan for manual fire capabilities following an earthquake (see Section 3.6.4 of the standard); (6) the degree of flexibility in the deterministic 3-hour fire area boundary rating requirement of Section 4.2.3.2 of NFPA 805; (7) the use of recovery actions within the deterministic approach of the standard.

An industry consultant commented that the NRC should endorse, as part of the rulemaking, NFPA 805, Appendix B, "Nuclear Safety Analysis," and its post-fire safe shutdown circuit analysis methodology for use by licensees in meeting the standard. Appendix B is now endorsed as discussed in section II below.

Another comment from an industry consultant stated that the rule should permit licensees to adopt only those NFPA 805 requirements that relate to post-fire safe shutdown, without meeting NFPA 805 requirements related to combustible/ignition control, and detection and suppression. This comment did not result in the NRC choosing to make any changes to the draft rule language.

II. Discussion

Discussion of Proposed Rule

The NRC has conducted a review of the technical requirements contained in NFPA 805, related to nuclear safety and radiological release, and has concluded that NFPA 805, taken as a whole, provides an acceptable alternative for satisfying General Design Criterion 3 (GDC 3) of Appendix A to 10 CFR Part 50. The standard contains a number of changes to the character of fire protection features when compared to current fire protection requirements (e.g., no cold shutdown requirement, no specific requirement for emergency lighting; and no provision for an alternative shutdown capability). However, the NRC participated in the development of the standard, and has determined that NFPA 805, as excepted, when taken as an integrated whole, meets the underlying intent of the NRC's existing fire protection regulations and guidance, and achieves defense-in-depth and the goals, performance objectives, and performance criteria specified in Chapter 1 of the standard.

To determine that NFPA 805 contains the elements of an acceptable fire protection program, the NRC uses Regulatory Guide 1.189, "Fire Protection for Operating Nuclear Power Plants". Section C, "Regulatory Position," contains a description of the eight elements of an acceptable fire protection program. The NRC determined that all eight elements are adequately addressed in NFPA 805:

1. The delineation of organization, staffing, and responsibilities.

Section 3.2.2 of the standard defines the management authorities and responsibilities and establishes the general policy for the fire protection program. This section adequately meets the intent of this element in RG 1.189.

2. A fire hazards analysis sufficient to perform safe shutdown functions and minimize radioactive material releases in the event of a fire.

Within the standard, nuclear safety goals and performance criteria are defined in Chapter 1. Section 2.4.2 defines the methodology for performing a nuclear safety capability assessment necessary to meet these goals and criteria. The criteria in the standard is adequate to meet the intent of this element of RG 1.189.

3. The limitation of damage to structures, systems, and components important to safety so that the capability to safely shut down the reactor is ensured.

Within the standard, Chapters 4 & 5 establish the methodologies to determine the fire protection elements needed to limit fire damage and protect structures, systems, and components important to safety. The criteria in the standard is adequate to meet the intent of this element of RG 1.189.

4. Evaluation of fire test reports and fire data to ensure they are appropriate and adequate for ensuring compliance with regulatory requirements.

Section 3.11.2 establishes fire test qualifications for fire barriers to be in accordance with NFPA 251, Standard Methods for Tests of Fire Endurance of Building Construction and Materials or E–119, Standard Test Methods for Fire Tests of Building Construction and Materials. These standards are adequate and meet the intent of this element in RG 1.189.

5. Evaluation of compensatory measures for interim use for adequacy and appropriate length of use.

The standard has an adequate definition of compensatory actions and requires procedures to be established to accomplish these compensatory actions and limit the duration, Sections 1.6.8 and 3.2.3(2) respectfully. The criteria in the standard is adequate to meet the intent of this element of RG 1.189.

6. Training and qualification of fire protection personnel appropriate for their level of responsibility.

Section 2.7.3.4 discusses the qualification of personnel who apply engineering analysis and numerical models. Section 3.4 discusses the training and qualifications of the fire brigade and those plant personnel who will respond to a fire. The criteria in the standard is adequate to meet the intent of this element of RG 1.189.

7. Quality assurance.

Throughout the standard and in particular, Section 2.7, discusses the requirements for program documentation, configuration control, and quality. The NRC considers the standard adequate to meet the quality assurance guidance in RG 1.189.

8. Control of fire protection program changes.

Chapter 2 discusses plant change evaluations and configuration control of design basis documents. These sections will assist in maintaining compliance with the fire protection regulatory requirements and are adequate to meet the change control guidance in RG 1.189.

For these reasons, the NRC believes that NFPA 805 adequately provides requirements to meet the elements of an acceptable fire protection program.

Public Health and Safety Considerations: The NRC has determined that public health and safety and the common defense and security would continue to be adequately protected under NFPA 805. This determination is based, in part, on the goals, objectives, and performance criteria specified in Chapter 1 of NFPA 805. Those goals, objectives, and performance criteria provide for defense-in-depth to control fires; prevention of radioactive releases that adversely affect the public; and control of plant reactivity, inventory, and pressure, as well as decay heat removal, vital auxiliaries, and process monitoring.

The overall approach of NFPA 805 is consistent with the key principles for evaluating licensing basis changes, as described in NRC Regulatory Guide (RG) 1.174. Namely, the proposed change is consistent with defense-in-depth philosophy, maintains sufficient safety margins, and when the proposed change results in an increase in core damage frequency (CDF) or risk, the increase is small and consistent with the intent of the Commission's Safety Goal Policy Statement. In Section 2.2.9 of the standard, objective criteria for plant change evaluations are set forth: "a risk-informed plant change evaluation shall be performed and the results used * * * to ensure that the public risk associated with fire-induced nuclear fuel damage accidents is low and that adequate defense-in-depth and safety margins are maintained. Therefore, the concepts and processes in NFPA 805 comprise a risk-informed, integrated, performance-based decision making process for evaluating plant changes related to fire protection systems and features. In accordance with 10 CFR 50.59(c)(4), because NFPA 805 contains its own change control process, reactor plant changes conducted under NFPA 805 therefore will not be subject to the requirements of 10 CFR 50.59.

As stated in Section 2.4.4 of NFPA 805, the Standard's general methodology requires that the plant change evaluation process must consist of an integrated assessment of the acceptability of change in risk, defense-in-depth, and safety margins. This approach requires engineering evaluations to assess the adequacy of the fire protection elements (*e.g.*, combustible and ignition control, fire detection and suppression, and fire confinement) and the nuclear safety element (*e.g.*, post-fire safe shutdown capability), to ensure that defense-in-depth philosophy is maintained.

The NFPA 805 approach also includes requirements, Section 2.4.3, for the application of acceptable codes and standards to assess the calculated margin between designed and qualified fire protection features versus specified nuclear safety and radioactive release performance criteria, as well as provisions for evaluating acceptable change in risk in terms of small increases in Core Damage Frequency (CDF) and Large Early Release Frequency (LERF) based on risk acceptance guidelines, as presented in NRC Regulatory Guide 1.174.

Chapters 1 and 2 of NFPA 805 specify performance criteria, nuclear safety objectives, and radioactive release performance criteria; provide flexibility for the program, processes, and analytical approach; and ensure that a performance failure will not result in an immediate safety concern (through application of the fire protection defense-in-depth philosophy and the assurance of adequate safety margins). Potential performance failures are assessed in advance to ensure that the licensee is capable of detecting the performance failure, and that adequate time is available to take the needed corrective actions upon detection.

NFPA 805 achieves the risk principles of the Commission's PRA Policy Statement (60 FR 42622) in the following manner:

PRA Policy Statement 1: The use of PRA technology should be increased in all regulatory matters to the extent supported by the state-of-the-art in PRA methods and data and in a manner that complements the NRC's deterministic approach and supports the

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NRC's traditional defense-in-depth philosophy.

NFPA 805 Appendices B, C, and D providing methodologies for nuclear safety analysis (which includes post-fire safe shutdown circuit analysis), fire modeling, and PSA methods respectively, are state-of-the-art analytical approaches representing a consensus of members of a diverse national standards committee (the NFPA Technical Committee on Fire Protection for Nuclear Facilities).

The NFPA 805 deterministic approach (Section 4.2.3) was derived from existing NRC deterministic requirements.

In Section 4.2.4.1.5 of NFPA 805, the alternative NFPA performance-based approach includes the requirement that "the effectiveness of fire protection systems and features shall demonstrate that the circuits and components required to achieve the nuclear safety performance criteria are maintained free of fire damage." Combined with the deterministic requirements of Section 3.3.1.2 (Control of Combustible Materials) and Section 3.3.1.3 (Control of Ignition Sources), Sections 3.4 (Industrial Fire Brigade), 3.5 (Water Supply), 3.6 (Standpipe and Hose Stations), 3.7 (Fire Extinguishers), 3.8 (Fire Alarm and Detection Systems), 3.9 (Automatic and Manual Water-based Fire Suppression Systems), 3.10 (Gaseous Fire Suppression Systems) and 3.11 (Passive Fire Protection Features), and the Nuclear Safety Goal, Objective and Performance Criteria of Chapter 1 of NFPA 805, NFPA strongly supports the NRC's traditional fire protection defense-in-depth and nuclear safety defense-in-depth philosophies.

PRA Policy Statement 2: PRA and associated analyses (*e.g.* sensitivity studies, uncertainty analyses, and importance measures) should be used in regulatory matters, where practical within the bounds of the state-of-the-art, to reduce unnecessary conservatism associated with current regulatory requirements, license commitments, and staff practices * * *

The performance-based approach of NFPA 805 (Section 4.2.4) would utilize the concepts of: Damage threshold; minimum damage threshold; fire scenario for the fire area under consideration; and sufficient margin between the maximum expected fire scenario and the limiting fire scenario in the context of protection of required nuclear safety success paths. These performance-based approach concepts reduce the conservatisms associated with the current largely deterministic reactor plant fire protection requirements, license commitments and NRC staff practices.

PRA Policy Statement 3: PRA evaluations in support of regulatory decisions should be as realistic as practicable and appropriate supporting data should be publicly available for review.

Section 2.7.1.1 of NFPA 805 says: "The analyses performed to demonstrate compliance with this standard shall be documented for each nuclear power plant (NPP). The intent of the documentation is that the assumptions be clearly defined and that the results be easily understood, that results be clearly and consistently described, and that sufficient detail be provided to allow future review of the entire analyses. Documentation shall be maintained for the life of the plant and be organized carefully so that it can be checked for adequacy or accuracy either by an independent reviewer or by the AHJ [authority having jurisdiction]."

Section 2.7.2 of NFPA 805 addresses configuration control, and Section 2.7.3 addresses the quality of the calculational or numerical models, the appropriateness of their application, and the qualifications of the personnel who apply them.

Therefore, there would be a well-founded expectation that licensee NFPA 805 analyses would be readily available for review by the NRC or independent reviewers supporting licensee quality assurance activities.

PRA Policy Statement 4: The Commission's safety goals for nuclear power plants and subsidiary numerical objectives are to be used with appropriate consideration of uncertainties in making regulatory judgements on the need for proposing and backfitting new generic requirements on nuclear power plant licensees.

As a voluntary regulation, the proposed rule does not represent a new generic requirement on nuclear power plant licensees, and could be considered to not be bound by PRA Policy Statement 4. However, the following two qualitative safety goals and two supporting quantitative objectives would be met by licensees meeting Section 1.3.1 of NFPA 805 (Nuclear Safety Goal) and Section 1.3.2 of NFPA 805 (Radioactive Release Goal), and their supporting NFPA 805 nuclear and radioactive release objectives and performance criteria.

The NRC's two qualitative safety goals are: (1) Individual members of the public should be provided a level of protection from the consequences of nuclear power plant operation such that individuals bear no significant additional risk to life and health, and (2) Societal risks to life and health from nuclear power plant operation should be comparable to or less than the risks of generating electricity by viable competing technologies and should not be a significant addition to other societal risks.

Two quantitative objectives are used in determining achievement of the above safety goals: (1) The risk to an average individual in the vicinity of a nuclear power plant of prompt facilities that might result from reactor accidents should not exceed one-tenth of one percent (0.1 percent) of the sum of prompt fatality risks resulting from other accidents to which members of the U.S. population are generally exposed, and (2) The risk to the population in the area near a nuclear power plant of cancer fatalities that might result from nuclear power plant operation should not exceed one-tenth of one percent (0.1 percent) of the sum of cancer fatality risks resulting from all other causes.

As an outgrowth of the Commission's PRA Policy Statement, the NRC has embarked upon an effort to risk-inform 10 CFR Part 50. In SECY–99–264 (later endorsed in a Staff Requirements Memorandum (SRM) dated February 3, 2000) the NRC staff informed the Commission that it would conduct its work applying the set of safety principles established in Regulatory Guide (RG) 1.174. The NRC staff stated that it expects that changes to requirements would be consistent with the defense-in-depth philosophy, would maintain sufficient safety margins, would be performance-based to the extent possible, and would result in safety improvements or only small increases in risk, and would reduce any unnecessary burden. The NRC staff also stated that their approach would also ensure that adequate protection continues to be maintained. These considerations are addressed individually below:

Defense-in-Depth: This topic is fully discussed in connection with PRA Policy Statement 1 above.

Sufficient Safety Margins: Plant change evaluations are required by Section 2.4.4 of the standard. Section 2.4.4.3 of the standard states that plant change evaluations shall ensure that sufficient safety margins are met. Section A.2.4.4.3 of the standard explains safety margins in theory and in the contexts of fire modeling and fire PSA. Section 4.2.4.1.4 of the standard requires sufficient safety margin between the maximum expected fire scenarios and the limiting fire scenarios for required equipment and cables.

Performance-Based: NFPA 805 is inherently performance-based in that it requires the achievement of performance criteria.

Safety Improvements or Small Increases in Risk: NFPA has provisions

for evaluating acceptable change in risk in terms of CDF (core damage frequency) and LERF (large early release frequency). NFPA 805 Section 2.4.4.1 of the standard provides that "The change in public health risk from any plant change shall be acceptable to the AHJ (NRC). CDF and LERF shall be used to determine the acceptability of the change." The NRC bases its risk acceptance guidelines on the information provided in NRC Regulatory Guide 1.174, An Approach for Using Probabilistic Risk Assessment in Risk-Informed Decisions on Plant Specific Changes to the Licensing Basis. In RG 1.174, "small" is defined in relation to total CDF (*e.g.*, when the calculated increase in risk is calculated to be in the range of 10E–6 per reactor year to 10E–5 per reactor year, the risk increase is acceptable if it can be reasonably shown that the total CDF is less than 10E–4 per reactor year).

Unnecessary Burden: The proposed rule is expected to reduce the need for licensee developed exemption requests targeted at relief from the existing deterministic, prescriptive fire protection requirements. Additionally, the proposed rule is expected to result in net reduced operating, training, and maintenance costs (through the elimination of conservatively required deterministic barriers and fire protection features) over the remaining life of the reactor plants and during their decommissioning.

Adequate Protection: Licensees which adopt NFPA 805 will be required by Section 2.4.4.1 of the standard to monitor the cumulative risk changes. Therefore, a series of small increases in public health risk (see "Safety Improvements or Small Increases in Risk" above) will not be allowed to accumulate into a significant total increase in fire risk. Therefore, adequate protection of the public from the effects of nuclear power plant fires will be maintained.

The NRC has considered the regulatory practicality of the proposed rule. The areas considered are as follows:

Change Control Processes: NFPA 805 Sections 2.2(h), 2.2(i), 2.2(j), 2.2.9, 2.2.10, 2.4.4, 2.6, and 2.7 contain direction relating to change control processes. The major change control process features addressed in these sections are plant change evaluations (assessment of changes in public health risk against risk acceptance criteria, defense-in-depth and safety margins), a plant fire risk performance monitoring program (addressing availability, reliability and performance and including corrective action), and fire protection program documentation adequacy, analysis quality, and configuration control. Under 10 CFR 50.59(c)(4), the existence of these change control process features would therefore mean that the provisions of 10 CFR 50.59 would not apply to licensees which have adopted NFPA 805. Therefore, the NRC expects no difficulties in licensee efforts to control and document plant changes under this rule.

Licensee Implementation: Sufficient methodologies are provided in NFPA 805 and adequate risk, fire and nuclear safety data are available to implement them. In Section III of this **Federal Register** notice (FRN), NFPA 805 analytical processes for plant-wide reviews are summarized. Therefore, the NRC expects no difficulties in licensee's efforts to implement this rule.

Inspectability: NFPA 805 Section 2.7.1.1 states: "The analyses performed to demonstrate compliance with this standard shall be documented for each nuclear power plant (NPP). The intent of the documentation is that the assumptions be clearly defined and that the results be easily understood, that results be clearly and consistently described, and that sufficient detail be provided to allow future review of the entire analyses. Documentation shall be maintained for the life of the plant and be organized carefully so that it can be checked for adequacy and accuracy either by an independent reviewer or by the AHJ." Therefore, the NRC expects no difficulties in inspector efforts to review licensee implementation of this rule.

Enforcability: The proposed rule does not affect the existing requirements of 10 CFR 50.48(a), which include fire protection plan compliance with General Design Criterion (GDC) 3—"Fire Protection," seven specific fire protection plan requirements and features, the requirement to retain fire protection plan changes "until the Commission terminates the reactor license" and fire protection procedures for three years after they are superceded. Section (c)(3) of the proposed rule requires adopting licensees to maintain a fire protection program which complies with NFPA 805. Therefore, all requirements of that standard would be subject to enforcement, including the nuclear and radiological goals, performance objectives and performance criteria of Chapter 1 of NFPA 805. Therefore, the NRC expects no difficulties in enforcing against licensee failures to comply with 10 CFR 50.48(a), (f) or the main body of NFPA 805.

Quality Assurance: Section 2.7.3 of NFPA 805 requires that each analysis, calculation or evaluation performed shall be independently verified, calculational models and numerical methods shall be verified and validated, engineering methods and numerical models shall be used only within the scope, limitations and assumptions prescribed for them, personnel applying engineering analyses and numerical models shall be competent in their field and experienced in the application of these methods as they relate to nuclear power plants, nuclear power plant fire protection, and power plant operations. Therefore, the NRC expects no difficulties in licensee efforts to maintain the quality of their application of NFPA 805 requirements.

Section-by-Section Analysis

Section 50.48(c) National Fire Protection Standard NFPA 805

The proposed rule would add a new Paragraph (c) to 10 CFR 50.48. Paragraph (c) would permit reactor licensees to voluntarily adopt NFPA 805, with certain exceptions stated in the rule language, as an alternative set of fire protection requirements for the operation and/or decommissioning of light-water reactors. NFPA 805, when and if adopted by licensees, would constitute an acceptable means for operating reactors to comply with 10 CFR 50.48(a), and would be an alternative to meeting their existing fire protection requirements, and for decommissioning reactors would be an acceptable method for meeting 10 CFR 50.48(f).

Section 50.48(c)(1) Approval of Incorporation by Reference; 50.48(c)(2) Exceptions, Modifications and Supplementation of NFPA 805

Appendices B, C, and D of NFPA 805 constitute methodologies for conducting nuclear safety circuit analyses, nuclear power plant fire hazard modeling, and fire probabilistic safety assessments, respectively. At a number of locations within the standard appendices are referred to as "acceptable methods," and at other locations within the standard the reader is directed to them for "considerations when performing analyses." Although each of the three appendices begins with a disclaimer in the form "Appendix (letter B, C or D) is not a part of the requirements of this NFPA document but is included for informational purposes only," the methodologies contained therein are nevertheless considered by the NRC to be "specified in NFPA 805" within the meaning of section (c)(4) of the proposed rule language, and therefore their use by licensees need not be

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preceded by NRC approval of a license amendment request.

Section 50.48(c)(2)(*i*) Life Safety Goal; 50.48(c)(2)(*ii*) Plant Damage/Business Interruption Objectives

The Life Safety Goal and Plant Damage/Business Interruption Objectives of NFPA 805 are not within the regulatory charter of the NRC (see the Energy Reorganization Act of 1974) and, therefore, the NRC does not endorse them.

Section 50.48(c)(2)(iii) Use of Feed-and-Bleed

This paragraph does not accept the use of a high-pressure charging/injection pump coupled with the pressurizer PORVs as the sole fire protected shutdown path for maintaining reactor coolant inventory, pressure control, and decay heat removal capability (*i.e.*, feed-and-bleed) for PWRs.

Section 50.48(c)(2)(iv) Uncertainty Analysis

This paragraph makes clear that licensees need not prepare uncertainty analyses when conducting deterministic analyses under Section 2.2.6 and Chapter 4 of NFPA 805.

Section 50.48(c)(2)(v) Existing Cables

In lieu of installing cables meeting flame propagation tests as required by Section 3.3.5.3 of the standard, a flame retardant coating may be applied to the electric cables, or alternatively an automatic fixed fire suppression system may be installed. Either alternative would establish an equivalent level of fire protection to that provided by the presence of flame propagation test compliant cables. The italicized exception to Section 3.3.5.3 is not endorsed.

Electrical flame propagation test compliance has been in NRC guidance since 1981 (NUREG 0800, the NRC's Standard Review Plan or SRP). The NRC is unaware of any licensees which are using electrical cable which does not comply with flame propagation tests where an alternate means of protection (*e.g.*, fire retardant coating or automatic fixed suppression) has not been provided. Accordingly, the NRC does not expect any licensee to be adversely affected by this proposed exception.

Section 50.48(c)(2)(vi) Water Supply and Distribution

The italicized exception to Section 3.6.4 is not endorsed.

This paragraph would not allow a standpipe/hose station system in place of seismically qualified standpipes and hose stations unless previously approved in the licensing basis. Seismically qualified standpipes and hose stations have been in NRC guidance since 1976 (Appendix A to Branch Technical Position (BTP) APCSB 9.5–1. The NRC is unaware of any licensees using a non-seismically qualified standpipe/hose station system in place of a seismically qualified standpipe/hose station system. Accordingly, the NRC does not expect any licensee to be adversely affected by this proposed exception.

Section 50.48(c)(3) Compliance With NFPA 805

The use of the term "Authority Having Jurisdiction" (AHJ) within the standard, for the purposes of this rulemaking, means the U.S. Nuclear Regulatory Commission.

For purposes of transitioning to NFPA 805, the NRC expects that licensees will be able to treat existing reactor plant fire protection elements as "previously approved" for the purposes of the Chapter 3 delineation of fundamental program elements. This approach would normally be acceptable because licensees should either be in compliance with regulatory requirements or should have obtained approval from the NRC for exemptions or deviations from those requirements. Fire protection elements that have not been previously reviewed and approved would continue to be subject to normal NRC inspection and enforcement.

Section 50.48(c)(3)(i). A licensee may maintain a fire protection program that complies with NFPA 805 as an alternative to complying with paragraph (b) of this section for plants licensed to operate before January 1, 1979; or the fire protection license conditions for plants licensed to operate after January 1, 1979. The licensee shall submit a request to comply with NFPA 805 in the form of an application for license amendment under § 50.90. The application must identify any orders and license conditions that must be revised or superseded, and contain any necessary revisions to the plant's technical specifications and the bases thereof. The Director of the Office of Nuclear Reactor Regulation, or a designee of the Director, may approve the application if the Director or designee determines that the licensee has identified orders, license conditions, and the technical specifications that must be revised or superseded, and that any necessary revisions are adequate. Any approval by the Director or the designee of the Director shall be in the form of a license amendment approving the use of NFPA 805 together with any necessary revisions to the technical specifications.

This paragraph of the proposed rule language would allow licensees to adopt NFPA 805 as an acceptable means of meeting the fire protection program and GDC 3 requirements of 10 CFR 50.48(a). This section also describes the methods by which the licensees will submit their requests to adopt NFPA 805. If the NRC approves a licensee's request to use NFPA 805, the Director of NRR (or a designee of the Director) will issue a license amendment that: (1) removes superseded license conditions, and (2) includes a license condition imposing the use of NFPA 805. In addition, the NRC will issue an order revoking unnecessary and superseded exemptions and orders.

Licensees who are approved under paragraph (c)(3)(i) to use NFPA 805 are permitted to later return to compliance with paragraph (b) and their previous licensing basis. However, each licensee must comply with all applicable requirements, including submitting an application for a license amendment, and, as applicable, a request for exemption if the licensee wishes to reinstate a revoked exemption.

Section 50.48(c)(3)(ii). The licensee shall complete its implementation of the methodology in Chapter 2 of NFPA 805 (including all required evaluations and analyses) and, upon completion, modify the fire protection plan required by paragraph (a) of this section to reflect the licensee's decision to comply with NFPA 805, before changing its fire protection program or nuclear power plant as permitted by NFPA 805.

This section of the proposed rule language requires licensees to complete all of the NFPA 805 evaluations and analyses, and also modify their fire protection plan to indicate that they are adopting NFPA 805 as an alternative set of fire protection requirements. This is to ensure that the changeover to an NFPA 805 configuration is conducted in a complete, controlled, integrated, and organized manner. This also ensures that the NRC reactor oversight (inspection) process can effectively identify and monitor the changeover. This requirement of the proposed rule has the effect of precluding licensees from implementing NFPA 805 on a partial or selective basis (*e.g.*, in some fire areas and not others, or truncating the methodology within a given fire area).

50.48(c)(4) Alternative Methods and Analytical Approaches. A licensee may submit a request to use alternative methods and analytical approaches, including alternatives to the fundamental fire protection program

and minimum design requirements identified in Chapter 3 of NFPA 805, in lieu of those methods and approaches specified in NFPA 805. The request must be in the form of an application for license amendment under § 50.90. The Director of the Office of Nuclear Reactor Regulation, or a designee of the Director, may approve the application if the Director or designee determines that the alternative methods and analytical approaches:

This section of the proposed rule language provides licensees with a mechanism to gain plant-specific NRC approval of alternative methods and analytical approaches to those specified in NFPA 805. It allows licensees maximum flexibility to identify and apply new methods of analysis that may be appropriately used within NFPA 805. This approval mechanism is broad enough to allow licensees to apply risk-informed, performance-based methods to establish the (deterministic) fundamental elements of a fire protection program and the minimum design requirements for fire protection systems and features.

Section 50.48(c)(4)(i). Satisfy the goals, performance objectives, and performance criteria specified in NFPA 805 related to nuclear safety and radiological release.

Section 50.48(c)(4)(ii). Maintain safety margins.

Section 50.48(c)(4)(iii). Maintain fire protection defense-in-depth (fire prevention, fire suppression, and post-fire safe shutdown capability).

50.48(f) Licensees that have submitted the certifications required under Section 50.82(a)(1) shall maintain a fire protection program to address the potential for fires that could cause the release or spread of radioactive materials (*i.e.*, that could result in a radiological hazard). A fire protection program that complies with NFPA 805 shall be deemed to comply with the requirements of this paragraph.

III. Analytical Processes for Plant-Wide Reviews

This section describes how a licensee choosing to comply with NFPA 805 would conduct a plant-wide review in accordance with the NFPA 805 analytical process (under paragraphs (c)(3)(ii) of the proposed rule). The discussion first addresses the actions of licensees for operating light water reactors, and then addresses the actions of licensees for light water reactors that are undergoing decommissioning.

A. Operating Reactors

Section 2.2.1: Licensee establishes fundamental fire protection elements in accordance with Chapter 3 of NFPA 805 on a plant-wide basis, taking credit for alternatives that have been "previously approved" by the authority having jurisdiction (AHJ) (NRC).

Section 2.2.2: Licensee identifies fire area boundaries and fire hazards (possibly unchanged from the previous fire protection licensing basis).

Sections 2.2.3, 2.2.4, and 2.2.5: Licensee evaluates plant design on a fire area basis against the nuclear safety and radiation release performance criteria of Chapter 1, using either a deterministic or performance-based approach. A result of this analysis is the identification of the structures, systems, and components that are necessary to meet the two criteria (analogous to the "protected systems" identification process of Appendix R analyses).

Sections 2.2.6, 2.2.7, and 2.2.8: For a deterministic nuclear safety analysis, the licensee compares the existing fire protection licensing basis (*e.g.*, exemptions granted under Appendix R to 10 CFR part 50, SERs, approved deviations, and licensee-developed generic letter (GL) 86–10 engineering evaluations [*see GL 86–10 Paragraph C:* "Documentation Required to Demonstrate Compliance"]) against the deterministic approach criteria of Section 4.2.3 of NFPA 805. A licensee may demonstrate compliance with Section 4.2.3 using existing engineering equivalency evaluations (*e.g.*, licensee-developed GL 86–10 engineering evaluations, or NRC approved exemption requests) if the licensee ensures that the reactor plant meets the threshold of Section 2.2.7 (that "these existing engineering evaluations shall clearly demonstrate an equivalent level of fire protection compared to the deterministic requirements").

For a performance-based nuclear safety analysis, the licensee will perform the engineering analyses (*e.g.*, using fire modeling or probabilistic safety analysis (PSA) methods) under either Section 4.2.4.1 or 4.2.4.2 of NFPA 805. For a deterministic or performance-based radiation release analysis, the licensee performs the analytical method in Section 4.3 to assess the fulfillment of Chapter 1 criteria.

Section 2.2.9: In the event of a change to a fire protection program element during the above analytical steps, the licensee will evaluate the risk impact to ensure that the public risk associated with fire-induced nuclear fuel damage accidents is low, and that adequate defense-in-depth and safety margins are maintained.

Section 2.2.10: The licensee shall establish a monitoring program to assess the performance of the fire protection program in meeting NFPA performance criteria.

Section 2.2.11: The fire protection program documentation must be developed and maintained in such a manner that facility design and procedural changes that could affect the fire protection engineering analysis assumptions can be identified and analyzed (see Section 2.3).

Section 2.7 of the standard has adequate requirements for the retention of licensee NFPA 805 analyses and evaluations so that NRC inspectors may effectively monitor the conduct and effect of licensee fire protection program changes.

B. *Decommissioning Reactors:* A licensee of a light water reactor that is being decommissioned or has permanently ceased operations would comply with the requirements of Chapter 5 of NFPA 805.

IV. Licensee Impact

Licensees may voluntarily adopt the NFPA 805 standard, and any additional burden associated with adopting the standard will be at their discretion. The NRC anticipates that significant additional analysis, beyond that currently documented by licensees, may be elected by licensees that choose to adopt NFPA 805. The level of effort required for each plant will depend upon the degree to which risk-informed and performance-based approaches have already been adopted for the subject reactor plant (*e.g.*, within the exemption or deviation processes for 10 CFR 50.48 and Appendix R to 10 CFR part 50), and the degree to which the licensee initiates changes to the reactor plant.

V. Benefits

The current fire protection requirements (10 CFR 50.48) were developed before the NRC or industry had the benefit of probabilistic risk assessments (PRAs) for fires, and before there was a significant body of operating experience. A revised fire protection rule could provide flexibility in achieving adequate fire protection. In addition, as discussed in SECY 96–134, "Options for Pursuing Regulatory Improvement in Fire Protection Regulations for Nuclear Power Plants," dated June 21, 1996, a revised fire protection rule that would facilitate the use of alternative approaches may reduce the need for exemptions.

VI. Additional Issue for Public Comment

As well as seeking public comment on the proposed rule itself, the NRC is also seeking public comment regarding any other alternative consensus standards

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that the agency should consider as voluntary alternatives to the current fire protection regulations. The NRC expects that once adopting the new licensing basis that provides additional flexibility above that provided by Appendix R, licensees will not return to an Appendix R licensing basis. Nevertheless, the NRC requests a response to the following specific questions: (1) Is there any likelihood that licensees who are approved to use NFPA 805 would later decide that they would like to comply with paragraph (b) and the licensing basis that existed immediately prior to approval of NFPA 805? and (2) Do you agree that a license amendment would be required to revert to compliance with Section 50.48(b), and if not, why not?

VII. Availability of Documents

The NRC is making the documents identified below available to interested persons through one or more of the following methods, as indicated.

Public Document Room (PDR). The NRC's Public Document Room is located at One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

Rulemaking Forum Web Site. The NRC's interactive Rulemaking Forum Web site is located at *http://ruleforum.llnl.gov.* These documents may be viewed and downloaded electronically via this Web site.

NRC's Public Electronic Reading Room (PERR). The NRC's Public Electronic Reading room is located at *http://www.nrc.gov/reading-rm.html.* The subject document may be accessed using the ADAMS accession number (e.g., "ML#########") provided below.

The NRC staff contact. The NRC's task manager for this rulemaking in the Office of Nuclear Reactor Regulation (NRR) is Leon Whitney. Mr. Whitney can be reached by telephone at 301–415–3081, or via email to *lew1@nrc.gov.*

Document	PDR	Web	PERR	NRC staff
Regulatory Analysis	X	X	ML021300034	X
Environmental Assessment	X	X	ML021300039	X
NFPA 805 Rule Language	X	X	ML021300030	X
Comments Received	X	X	ML020360038	
Comments Received	X	X	ML020360039	
Comments Received	X	X	ML020360043	
Comments Received	X	X	ML020390248	
Comments Received	X	X	ML020630629	

VIII. Electronic Access for Comment Submission

In addition to the addresses previously provided (see **ADDRESSES** section above) for submitting written comments, interested parties may submit comments via the NRC's interactive Rulemaking Forum Web site (*http://ruleforum.llnl.gov*). The Rulemaking Forum enables the industry and public to transmit comments as files (in any format), provided that your web browser supports that function. Information on the use of the Rulemaking Forum is available on the site. For additional assistance on the use of the interactive Rulemaking Forum Web site, contact Ms. Carol A. Gallagher by telephone at (301) 415–5905 or via email to *cag@nrc.gov.*

IX. Plain Language

The Presidential memorandum entitled, "Plain Language in Government Writing," dated June 1, 1998, directed that the Government must write in plain language. This memorandum was published in the **Federal Register** on June 10, 1998 (63 FR 31883). In complying with this directive, the NRC has made editorial changes to improve the readability of the proposed rule language. The NRC requests comment on the proposed rule specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the addresses listed under either the **ADDRESSES** or "Electronic Access for Comment Submission" sections above.

X. Voluntary Consensus Standards

The National Technology Advancement and Transfer Act of 1995, Public Law 104–113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies, unless the use of such standards is inconsistent with applicable law or otherwise impractical. Under this proposed rule, the NRC would provide holders of operating licenses for nuclear power plants with the option to voluntarily adopt NFPA 805, as excepted, as an alternative set of fire protection requirements. The NRC is not aware of any consensus standard that could be adopted instead of NFPA 805, but will consider using an alternative standard if identified. If an alternative consensus standard is identified, the notifying submittal from the member of the public or industry should explain how it is comparable to, and how it could be used in addition to or instead of, NFPA 805 in the proposed rule.

XI. Environmental Assessment and Finding of No Significant Environmental Impact

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in Subpart A of 10 CFR part 51, that this proposed rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. The NRC determined that there would not be significant radiological or non-radiological impacts. Under NFPA 805, the environment would continue to be adequately protected because the methods used for fire detection, suppression, and mitigation are the same as those used under the existing fire protection requirements. Further there will be no change in the release of radiological or nonradiological effluents to the environment.

This determination is based on an evaluation of the goals, objectives and performance criteria in NFPA 805. These provide for defense-in-depth to control fires; control of plant reactivity, coolant inventory, and pressure; decay heat removal; vital auxiliaries; and process monitoring to minimize radioactive releases. The NRC has determined that the environmental impacts of the proposed action, the no-action alternative, and an alternative in which the NRC would develop its own risk-informed standard, were similar. Further, the NRC determined that the proposed action does not involve the use of any different resources than those considered in the current rule.

The general public should note that the NRC is seeking public participation. Comments on any aspect of the environmental assessment may be submitted to the NRC as indicated under either the **ADDRESSES** or "Electronic Access for Comment Submission" sections above.

The NRC has sent a copy of the draft environmental assessment and this proposed rule to every State Liaison Officer and requested their comments on the environmental assessment.

XII. Paperwork Reduction Act Statement

This proposed rule contains information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq*). This rule has been submitted to the Office of Management and Budget for review and approval of the information collection requirements.

The burden to the public for these information collections is estimated to average four hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information collection. In addition, there is a one-time estimated burden of 20,000 to 65,000 hours for each licensee, who chooses to use NFPA 805, to complete the required one-time plant-wide re-analysis of the reactor's fire protection systems, equipment, features, and procedures. The U.S. Nuclear Regulatory Commission is seeking public comment on the potential impact of the information collections contained in the proposed rule and on the following issues:

1. Is the proposed information collection necessary for the proper performance of the functions of the NRC, including whether the information will have practical utility?
2. Is the estimate of burden accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the information collection be minimized, including the use of automated collection techniques?

Send comments on any aspect of these proposed information collections, including suggestions for reducing the burden, to the Records Management Branch (T–6 E6), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by Internet electronic mail at *INFOCOLLECTS@NRC.GOV;* and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–10202, (3150–0011), Office of Management and Budget, Washington, DC 20503.

Comments to OMB on the information collections or on the above issues should be submitted by December 2, 2002. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

XIII. Regulatory Analysis

The Commission has prepared a draft regulatory analysis of this proposed regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The draft regulatory analysis may be examined and/or copied for a fee at the NRC's Public Document Room, located at One White Flint North, Room 01–F15, 11555 Rockville Pike, Rockville, Maryland.

The Commission requests public comment on the draft regulatory analysis. Comments on the draft analysis may be submitted to the NRC as indicated in either the **ADDRESSES** or "Electronic Access for Comment Submission" sections above.

XIV. Regulatory Flexibility Act Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. This proposed rule would affect only the licensing and operation of nuclear power plants. The companies that own these plants do not fall within the definition of "small entities" found in the Regulatory Flexibility Act or within the size standards established by the NRC in 10 CFR 2.810.

XV. Backfit Analysis

The NRC has determined that a backfit analysis is not required for this proposed rule, because the rule does not involve any provisions that would impose backfits as defined in 10 CFR 50.109(a)(1). The proposed rule will establish voluntary alternative fire protection requirements for licensees with construction permits prior to January 1, 1979 (all existing LWR reactor plants). Licensees may adopt NFPA 805 as an alternative set of fire protection requirements by submitting a license amendment. However, current licensees may continue to comply with existing requirements. Any additional burden incurred by adopting NFPA 805 would be at the licensee's discretion. The proposed rule does not impose any new requirements, and therefore, does not constitute a backfit as defined in 10 CFR 50.109(a)(1).

List of Subjects in 10 CFR Part 50

Antitrust, Classified information, Criminal penalties, Fire protection, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, and Reporting and recordkeeping requirements.

For the reasons given in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR Part 50:

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. The authority citation for Part 50 continues to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951, as amended by Pub. L. 102–486, sec. 2902, 106 Stat. 3123 (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 936, 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54(dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80–50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

2. In § 50.48, paragraph (c) is added and paragraph (f) is revised to read as follows:

§ 50.48. Fire protection.

* * * * *

(c) National Fire Protection Standard NFPA 805—(1) Approval of incorporation by reference. National Fire Protection Association (NFPA) Standard 805, "Performance-Based for Fire Protection for Light Water Reactor Electric Generating Plants, 2001 Edition" (NFPA 805), which is referenced in this section, was approved for incorporation by reference by the Director of the Federal Register. A notice of any changes made to the material incorporated by reference will

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be published in the **Federal Register**. Copies of NFPA 805 may be purchased from the NFPA Customer Service Department, 1 Batterymarch Park, P.O. Box 9101, Quincy, MA 02269–9101 and in PDF format through the NFPA Online Catalog (*www.nfpa.org*) or by calling 1–800–344–3555 or 617–770–3000. Copies are also available for inspection at the NRC Library, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland 20852–2738, and at the NRC Public Document Room, Building One White Flint North, Room O1–F15, 11555 Rockville Pike, Rockville, Maryland 20852–2738. Copies are also available at the Office of the Federal Register, 800 N. Capitol Street, Suite 700, Washington, DC.

(2) Exceptions, modifications, and supplementation of NFPA 805. As used in this section, references to NFPA 805 are to the 2001 Edition, with the following exceptions, modifications, and supplementations:

(i) Life Safety Goal. The Life Safety Goal of Section 1.3.3 is not endorsed.

(ii) Plant Damage/Business Interruption Objectives. The Plant Damage/Business Interruption Objectives of Section 1.3.4 of NFPA 805 are not endorsed.

(iii) Use of feed-and-bleed. In demonstrating compliance with the performance criteria of Sections 1.5.1(b) and (c) of NFPA 805, a high pressure charging/injection pump coupled with the pressurizer power-operated relief valves (PORVs) as the sole fire-protected safe shutdown path for maintaining reactor coolant inventory, pressure control, and decay heat removal capability (*i.e.*, feed-and-bleed) for pressurized-water reactors (PWRs) is not permitted.

(iv) Uncertainty analysis. An uncertainty analysis performed in accordance with Section 2.7.3.5 is not required to support deterministic approach calculations.

(v) Existing cables. In lieu of installing cables meeting flame propagation tests as required by Section 3.3.5.3 of the standard, a flame retardant coating may be applied to the electric cables, or an automatic fixed fire suppression system may be installed to provide an equivalent level of protection. In addition, the italicized exception to Section 3.3.5.3 is not endorsed.

(vi) Water supply and distribution. The italicized exception to Section 3.6.4 is not endorsed.

(3) Compliance with NFPA 805. (i) A licensee may maintain a fire protection program that complies with NFPA 805 as an alternative to complying with paragraph (b) of this section for plants licensed to operate before January 1, 1979; or the fire protection license conditions for plants licensed to operate after January 1, 1979. The licensee shall submit a request to comply with NFPA 805 in the form of an application for license amendment under § 50.90. The application must identify any orders and license conditions that must be revised or superseded, and contain any necessary revisions to the plant's technical specifications and the bases thereof. The Director of the Office of Nuclear Reactor Regulation, or a designee of the Director, may approve the application if the Director or designee determines that the licensee has identified orders, license conditions, and the technical specifications that must be revised or superseded, and that any necessary revisions are adequate. Any approval by the Director or the designee of the Director shall be in the form of a license amendment approving the use of NFPA 805 together with any necessary revisions to the technical specifications.

(ii) The licensee shall complete its implementation of the methodology in Chapter 2 of NFPA 805 (including all required evaluations and analyses) and, upon completion, modify the fire protection plan required by paragraph (a) of this section to reflect the licensee's decision to comply with NFPA 805, before changing its fire protection program or nuclear power plant as permitted by NFPA 805.

(4) Alternative methods and analytical approaches. A licensee may submit a request to use alternative methods and analytical approaches, including fundamental fire protection program and minimum design requirements identified in Chapter 3 of NFPA 805, in lieu of those methods and approaches specified in NFPA 805. The request must be in the form of an application for license amendment under § 50.90. The Director of the Office of Nuclear Reactor Regulation, or designee of the Director, may approve the application if the Director or designee determines that the alternative methods and analytical approaches:

(i) Satisfy the goals, performance objectives, and performance criteria specified in NFPA 805 related to nuclear safety and radiological release.

(ii) Maintain safety margins.

(iii) Maintain fire protection defense-in-depth (fire prevention, fire suppression, and post-fire safe shutdown capability).

* * * * *

(f) Licensees that have submitted the certifications required under § 50.82(a)(1) shall maintain a fire protection program to address the potential for fires that could cause the release or spread of radioactive materials (*i.e.*, that could result in a radiological hazard). A fire protection program that complies with NFPA 805 shall be deemed to comply with the requirements of this paragraph.

Dated at Rockville, Maryland, this 25th day of October, 2002.

For the U.S. Nuclear Regulatory Commission.

Annette Vietti-Cook,

Secretary of the Commission.

[FR Doc. 02–27701 Filed 10–31–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

[Docket No. PRM–50–79]

Lawrence T. Christian, et. al.; Receipt of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; notice of receipt.

SUMMARY: The Nuclear Regulatory Commission (NRC) is publishing for public comment a notice of receipt of a petition for rulemaking, dated September 4, 2002, which was filed with the Commission by Lawrence T. Christian, et al. The petition was docketed by the NRC on September 23, 2002, and has been assigned Docket No. PRM–50–79. The petition requests that the NRC amend its regulations regarding offsite emergency plans for nuclear power plants to insure that all day care centers and nursery schools in the vicinity of nuclear power facilities are properly protected in the event of a radiological emergency.

DATE: Submit comments by January 15, 2003. Comments received after this date will be considered if it is practical to do so, but assurance of consideration can only be given to comments received on or before this date.

ADDRESSES: Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff.

Deliver comments to: 11555 Rockville Pike, Rockville, Maryland between 7:30 a.m. and 4:15 p.m. on Federal workdays.

For a copy of the petition, write to Michael T. Lesar, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

You may also provide comments via the NRC's interactive rulemaking website at *http://ruleforum.llnl.gov*. This site allows you to upload comments as files in any format, if your web browser supports the function. The petition and any public comments received are available on the site. For information about the interactive rulemaking website, contact Carol Gallagher at (301) 415–5905 or via e-mail at *CAG@nrc.gov*.

The petition and copies of comments received may be inspected, and copied for a fee, at the NRC Public Document Room, (first floor) 11555 Rockville Pike, Rockville, Maryland. These same documents may be accessed via the NRC's Agencywide Documents Access and Management System (ADAMS) on the Internet at *http://www.nrc.gov/reading-rm/adams.html*. The ADAMS accession number for the petition is ML022590350.

FOR FURTHER INFORMATION CONTACT: Michael T. Lesar, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone: 301–415–7163 or Toll-free: 1–800–368–5642. E-mail: *MTL@nrc.gov*.

SUPPLEMENTARY INFORMATION:

Background

The Nuclear Regulatory Commission received a petition for rulemaking dated September 4, 2002, submitted by Lawrence T. Christian, et al. (the petitioners). The petition was docketed by the NRC on September 23, 2002, and assigned Docket No. PRM–50–79.

The Petitioners

Lawrence T. Christian submitted a letter and attachments stating the substance of the petition. Mr. Christian identified himself as a resident of the evacuation zone around the Three Mile Island Nuclear Power Station (TMI) and as the father of two preschool-aged children, including a four-year-old daughter who attends a nursery school within eyesight of TMI. Attached to the petition are pages bearing the signatures of over 3,000 public co-signers. Most of the co-petitioners indicated that they were residents of the State of Pennsylvania.

The Petitioners' Interest in the Requested Action

According to the petitioners, there are currently no Federally-mandated requirements specifically designed to protect daycare centers and nursery schools located in the evacuation zones around nuclear power stations. They believe that this regulatory deficiency puts preschool children at risk in the event of a nearby radiological accident and undermines FEMA requirements that offsite plans adequately protect the public health and safety.

The petition states that Mr. Christian became aware of this situation after he contacted several daycare centers and nursery schools in his York County, Pennsylvania, community, and learned that none of them has an adequate emergency evacuation plan in case of a radiological emergency at the nearby TMI plant. Mr. Christian conducted an informal survey of local daycare and nursery school directors, and learned that most of them do not know what to do in case of a radiological emergency. Mr. Christian found that most daycare and nursery school directors in his area:

1. Do not believe that they have been given adequate information or training to handle an evacuation of children in their care during a radiological emergency.

2. Do not have copies of radiological emergency evacuation plans for their localities.

3. Are frequently uncertain or mistaken as to how an evacuation of their own institution would proceed. Some directors assume that parents would pick up their own children; others assume that center or school staff would have to transport the children, but have no clear plan for executing a staff-run evacuation. Some mistakenly believe that York County would provide emergency bus service and relocation centers if an evacuation were necessary.

4. Do not know where children would or should be taken in the event of an emergency evacuation in response to a radiological accident.

5. Do not know whether the children in their charge would be transported in approved child-safety seats during an evacuation.

6. Assume that, if no organized mass transportation were provided for the children in their charge, daycare center and nursery school employees would be required to stay in the workplace until every child had been safely picked up by their parents.

7. Believe that the question of evacuation plans for their institutions needs to be addressed in a systematic way.

The petition states that Mr. Christian reported his findings to the York County Board of Commissioners and the York County Director of Emergency Management, expressing his alarm at this gap in emergency planning. Mr. Christian received responses from the York County Director of Emergency Management and the Executive Director of York County's Department of Emergency Services indicating that Pennsylvania State law did not require licensed daycare centers and nursery schools to plan for radiological emergencies, and that the county did not have the authority to mandate such planning. Mr. Christian was advised by York County emergency management officials to ask municipal government officers in his community for emergency planning assistance concerning local daycare and nursery schools.

According to the petition, municipal government officials advised Mr. Christian to have the director of his daughter's nursery school work with Exelon Corporation, which owns and operates TMI, to develop an evacuation plan for the school. The school director requested Exelon's assistance, but had received no response after 30 days. Moreover, the school director informed Mr. Christian that her institution did not have the resources to arrange for bus or van transportation for students in the event of an emergency, and that, should an accident occur at TMI, the school would have to request that parents pick up their children individually.

The petitioners note that Federal Emergency Management Agency (FEMA) regulations pertaining to Radiological Emergency Readiness Planning (RERP) mandate that emergency offsite plans protect the public health and safety, and they stress that preschool-aged children are members of the public covered by that mandate. The petitioners believe that voluntary, ad hoc emergency evacuation plans that rely on parents to enter an evacuation zone to pick up preschool students during a radiological emergency are inadequate to protect the health and safety of the children at risk. The petitioners claim that Federally-required RERPs already mandate that public and private elementary, middle, junior, and high schools located in evacuation zones around nuclear power plants be provided with designated relocation centers, designated emergency transportation, rosters of emergency bus drivers, and educational materials about radiological emergency procedures. These institutions are also required to undergo state of readiness checks and must be included in local radiological emergency preparedness exercises. The petitioners contend that because no corresponding standard measure of adequate protection currently exists for daycare centers and nursery schools in the vicinity of nuclear power facilities, Federal, state and county emergency plans do not properly take these preschool institutions into account.

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The Petitioners' Request

The petitioners request that the NRC immediately establish a standard measure of adequate protection by creating new rules requiring that emergency planning for daycare centers and nursery schools located in evacuation zones be included in the offsite emergency plans of all NRC nuclear power facility licensees. The petitioners request that the NRC amend its regulations to insure that all children attending daycare centers and nursery schools within the evacuation zone are:

1. Assigned to designated relocation centers established safely outside the evacuation zone.

2. Provided with designated transportation to relocation centers in the event of an emergency evacuation.

3. Transported in approved child-safety seats that meet State and Federal laws as they pertain to the transportation of children and infants under 50 pounds in weight or 4'9" in height.

The petitioners also request that the following be mandated by NRC regulations:

4. The creation and maintenance of working rosters of emergency bus drivers and back-up drivers for nursery school and daycare center evacuation vehicles, and the establishment of a system for notifying these individuals in the event of a radiological emergency. These rosters should be regularly checked and updated, with a designated back-up driver listed for each vehicle and route.

5. Notification of emergency management officials by individual preschools as to the details of each institution's radiological emergency plan.

6. Annual site inspections of daycare centers and nursery schools within the evacuation zone by emergency management officials.

7. Participation of daycare centers and nursery schools within the evacuation zone in radiological emergency preparedness exercises designed to determine each institution's state of readiness.

8. Creation of identification cards, school attendance lists, and fingerprint records for all children who are to be transported to a relocation center, to insure no child is left behind or is unable, due to age, to communicate his or her contact information to emergency workers.

9. Development by emergency management officials of educational materials for parents informing them what will happen to their children in case of a radiological emergency, and where their children can be picked up after an emergency evacuation.

10. Stocking of potassium iodide (KI) pills and appropriate educational materials at all daycare centers and nursery schools within the evacuation zone.

11. Radiological emergency preparedness training for all daycare center and nursery school employees within the evacuation zone.

12. Listing of designated relocation centers for daycare centers and nursery schools in area phone directories so that parents can quickly and easily find where their children will be sent in case of a radiological emergency.

13. Establishment of toll-free or 911-type telephone lines to provide information about radiological emergency plans and procedures for daycare centers and nursery schools within the evacuation zone.

14. Creation of written scripts for use by the local emergency public broadcast system that include information about evacuation plans and designated relocation centers for daycare centers and nursery schools.

The Petitioners' Justification

In support of their request, the petitioners detail their reasons for asking the NRC to change its regulations to include the aforementioned protective measures aimed at securing the health and safety of preschoolers in evacuation zones surrounding nuclear power plants. The petitioners stated reasons for requesting that the NRC amend its rules to mandate these emergency planning measures are as follows:

Establishment of Designated Relocation Centers

The petitioners note that FEMA emergency planning regulations require that the health and safety of the general public be protected in the event of a radiological accident at a nuclear power plant. Preschoolers are part of the general population and their well-being must be provided for. The petitioners claim that the designation of emergency relocation centers for all elementary, middle school and high school students is already standard practice, and contend that the establishment of such centers for preschoolers is no less vital. Because the thyroid glands of young children are highly susceptible to damage by exposure to radiation, the petitioners stress that children attending daycare centers and nursery schools in the evacuation zone should be moved to safety as quickly and as efficiently as possible. If parents are forced to backtrack into the evacuation zone to fetch their preschool-aged children and carry them to safety one-by-one, frantic parents will clog evacuation routes. The petitioners conclude that radiological emergency plans should provide for the mass evacuation of children from daycare centers and nursery schools located in the evacuation zone to relocation centers situated at a safe distance from the nuclear power facility.

Provision of Designated Transportation; Creation of Working Rosters of Emergency Bus Drivers

The petitioners note that most daycare centers and nursery schools currently have no access to public school buses or school bus drivers. If frantic parents must drive personal vehicles into the evacuation zone to pick up their children during a radiological emergency, evacuation routes will be clogged with private cars, the evacuation will be impeded, and the health and well-being of preschool children will not be adequately protected. Therefore, the petitioners conclude that the NRC should require that offsite emergency plans provide for designated busses or vans, manned by designated emergency drivers, to transport children from daycare centers and nursery schools located in the evacuation zone to designated relocation centers.

Use of Assigned and Installed, Approved Child-Safety Seats in the Evacuation of Preschoolers

The petitioners note that newborns and infants cannot safely be placed on a standard bus seat and transported out of the evacuation zone. Unrestrained children could roll or fall off the seats and be injured or killed en route to designated relocation centers. Federal law requires all children under 50 lbs or under the height of 4'9" to be placed in federally-approved child safety seats when riding in motor vehicles. The use of approved child-safety seats is the only safe and legal way to transport small children. The petitioners conclude that NRC regulations should require that infants and young children being evacuated during a radiological emergency be properly secured in approved child safety seats.

Notification to Emergency Management Officials; Annual Site Inspections; Inclusion of Daycare Centers and Nursery Schools in Radiological Preparedness Exercises

The petitioners maintain that these measures are necessary to insure that daycare centers and nursery schools properly comply with the requested regulations and implement the suggested emergency planning provisions.

Use of Identification Cards, School Attendance Lists and Fingerprinting To Keep Track of Children During an Emergency Evacuation

The petitioners note that most children under the age of three do not know their parents' legal names, but will simply identify them as "Mommy" or "Daddy". Preschool children are also typically unable to state their home address or phone number. Young children therefore have no effective means of communicating their parents' names or contact information to teachers, caregivers, or emergency workers. The petitioners conclude that identifying and tracking young children through the use of ID cards, school attendance lists, and fingerprinting is necessary to ensure that no preschool-aged child is left behind in a radiological emergency.

Preparation of Educational Materials for the Parents of Preschoolers

The petitioners contend that such materials are necessary in order to properly inform parents about procedures for evacuating their preschool-aged children from the danger zone in case of a radiological emergency.

Stocking of KI Tablets and the Preparation of Relevant Educational Materials for the Parents of Preschoolers

The petitioners note that preschool-aged children are particularly susceptible to thyroid damage due to exposure to radiation. Since the ingestion of KI protects against this damage, the petitioners contend that KI should be stocked by daycare centers and nursery schools in the evacuation zone for distribution to the children their charge in case of radiological emergency. However, because parents may be unaware of a young child's allergy to iodine, the petitioners believe that daycare centers and nursery schools should prepare for possible future radiological emergencies by having parents sign release forms giving daycare and nursery school workers standing permission to administer KI to their children, in the proper children's dose, in case of radiological emergency.

Radiological Emergency Preparedness Training for Employees of Daycare Centers and Nursery Schools

The petitioners maintain that radiological emergency preparedness training is necessary to equip employees of daycare centers and nursery schools to properly respond in case of a radiological accident.

Phone Listings for Designated Relocation Centers Assigned to Local Daycare Centers and Nursery Schools; Toll-free and 911 Information Lines

The petitioners claim that many parents are not acquainted with, or may not even have access to information about emergency procedures for evacuating their preschool-aged children from the danger zone following a radiological accident. Moreover, even if parents are well-informed, in the event of a radiological emergency, someone other than a parent (*e.g.*, a grandparent, neighbor or friend) may be called upon to pick up a child from a designated relocation center. These individuals will need quick access to information about emergency plans and designated relocation centers for local preschools. Finally, the general public should have access to this information. The petitioners conclude that dedicated information lines and easy-to-find phone listings should be set up in order to avoid confusion in case of an emergency.

Creation of Written Scripts for the Public Emergency Broadcast System Which Include Information About Emergency Plans and Designated Relocation Centers for Daycare Centers and Nursery Schools

The petitioners believe that, during an emergency, parents might panic if they cannot locate their children and do not have timely information about their movements in the event of an evacuation. The emergency broadcast system could be used to inform parents that their preschool-aged children have left their buildings and are en route to designated relocation centers. The petitioners contend that this will free parents to redirect their efforts toward escaping the danger zone themselves, rather than further exacerbating traffic problems by trying to move back into the evacuation zone to fetch their children from daycare centers or nursery schools. Finally, the petitioners say, the general public should have access to such information during a radiological emergency. The petitioners conclude that the public emergency broadcast system should prepare to disseminate information about the evacuation of daycare centers and nursery schools in the event of a radiological accident.

Specialized Evacuation Needs of Preschool-aged Children

The petitioners also offer a statement in support of their request which focuses on the specialized evacuation needs of preschool-aged children. They note that very young children are more difficult to safely transport than school-aged children and would require more and different kinds of care from emergency workers. The petition makes the following points in this connection:

1. Most children under the age of three have no effective way of communicating their parents legal names, but identify them only as "Mommy" and "Daddy".

2. Most children under the age of three cannot tell you their home address or phone number, and therefore have no effective means of communicating their contact information.

3. Infants and newborns are usually unable to walk, so they are completely dependent on others for their safe relocation during an emergency evacuation.

4. Infants and newborns have special dietary and sanitary needs.

5. Infants and newborns can be easily injured if not properly handled, due to the weakness in their young spines and necks.

6. Preschool children must be transported in approved child-safety seats when being evacuated. Young children cannot ride unsecured in bus seats, as they might fall off and be injured or killed.

7. Unlike public school teachers, nursery school teachers and daycare center employees have little or no emergency evacuation training.

8. Infants, newborns, toddlers, and preschoolers are physically and emotionally dependent on adults for their overall well-being. During an emergency, these needs are greatly amplified. Planning and training for, and providing proper supervision of the emergency evacuation of such young children is a therefore a necessity.

9. Very young children have an especially high susceptibility to damage and health risks caused by radiation exposure. Because they are especially vulnerable, children in daycare centers and nursery schools require special protection in a radiological emergency.

The Petitioners' Conclusion

The petitioners maintain that without new NRC requirements concerning offsite emergency plans no standard measure of adequate protection will ever exist for daycare centers and nursery schools located within evacuation zones surrounding nuclear power facilities. The petitioners note that a FEMA fact sheet concerning emergency radiological planning states that Federal law mandates that "plans and preparedness must be determined

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to adequately protect the public health and safety by providing reasonable assurance that appropriate measures can be taken offsite in the event of a radiological emergency." The petitioners add that society as a whole has a moral obligation to make sure that every possible measure is in place to insure the safety and well-being of young children.

The petitioners contend that, if the NRC refuses to require the basic protections for preschoolers laid out in the petition, the agency will be perpetuating an improper implementation of FEMA regulations as they pertain to properly protecting the public in the event of a radiological emergency. The petitioners stress that the NRC's principal duty is to safeguard the public, and maintain that, barring the adoption of the provisions requested by the petitioners, the NRC will be guilty of negligence in the fulfillment of its duty.

Dated at Rockville, Maryland, this 28th day of October, 2002.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 02–27861 Filed 10–31–02; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 02–AEA–18]

Establishment of Class E Airspace; Crisfield, MD

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to establish Class E airspace at Crisfield Municipal Airport, Crisfield, MD. The development of a Standard Instrument Approach Procedure (SIAP) to serve flights operating into Crisfield Municipal Airport under Instrument Flight Rules (IFR) makes this action necessary. Controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain aircraft executing the approach. The area would be depicted on aeronautical charts for pilot reference.

DATES: Comments must be received on or before December 2, 2002.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace Branch, AEA–520, Docket No. 02–AEA–18, FAA Eastern Region, 1 Aviation Plaza, Jamaica, NY, 11434–4809.

The official docket may be examined in the Office of the Regional Counsel, AEA–7, FAA Eastern Region, 1 Aviation Plaza, Jamaica, NY, 11434–4809.

An informal docket may also be examined during normal business hours in the Airspace Branch, AEA–520, FAA Eastern Region, 1 Aviation Plaza, Jamaica, NY, 11434–4809.

FOR FURTHER INFORMATION CONTACT: Mr. Francis T. Jordan, Jr., Airspace Specialist, Airspace Branch, AEA–520 FAA Eastern Region, 1 Aviation Plaza, Jamaica, NY 11434–4809: telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 02–AEA–18". The postcard will be date/time stamped and returned to the commenter. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket closing both before and after the closing date for comments. A report summarizing each substantive public contact with the FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Regional Counsel, AEA–7, FAA Eastern Region, 1 Aviation Plaza, Jamaica, NY, 11434–4809. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish Class E airspace area at Crisfield, MD. The development of a SIAP to serve flights operating IFR into the airport makes this action necessary. Controlled airspace extending upward from 700 feet AGL is needed to accommodate the SIAP. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that would only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002 and effective September 16, 2002, is proposed to be amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

AEA MD E5, Crisfield [NEW]

Crisfield Municipal Airport
(Lat. 38°01'01" N., long. 75°49'44" W.)

That airspace extending upward from 700 feet above the surface within a 6.0-mile radius of Crisfield Municipal Airport, Crisfield, MD.

Issued in Jamaica, New York on October 23, 2002.

John G. McCartney,

Acting Assistant Manager, Air Traffic Division, Eastern Region.

[FR Doc. 02–27844 Filed 10–31–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 314

[Docket No. 85N–0214]

180–Day Generic Drug Exclusivity for Abbreviated New Drug Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; withdrawal.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal of a proposed rule published in the **Federal Register** of August 6, 1999 (64 FR 42873) (the August 1999 proposed rule). FDA proposed to amend its regulations governing 180-day exclusivity and the timing of certain abbreviated new drug application (ANDA) approvals under the Federal Food, Drug, and Cosmetic Act (the act). The proposed amendments to the regulations were made in response to court decisions that affected the agency's previous interpretation of relevant provisions of the act. Since the proposed rule was published, there have been additional court decisions that address FDA's interpretation of the act, including the interpretation described in portions of the proposed rule. In light of these decisions, FDA is withdrawing the August 1999 proposed rule and will reevaluate its interpretation of the act. FDA will continue to regulate directly from the statute and applicable regulations and make regulatory decisions on an issue-by-issue basis.

DATES: The proposed rule is withdrawn November 1, 2002.

FOR FURTHER INFORMATION CONTACT: J. Kenneth Borgerding, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of August 6, 1999 (64 FR 42873), FDA proposed to amend its regulations governing 180-day generic drug exclusivity under the act. The August 1999 proposed rule was an effort to clarify existing eligibility requirements for 180-day generic drug exclusivity and to describe new eligibility requirements for ANDA sponsors. The August 1999 proposed rule described a number of challenges to FDA's previous interpretations of relevant statutory provisions and proposed a new approach to implementing 180-day generic drug exclusivity. The publication of the proposed amendments was FDA's response to then-recent court decisions affecting portions of its regulations. (See *Mova Pharmaceutical Corp.* v. *Shalala*, 140 F.3d 1060 (D.C. Cir. 1998), and *Granutec, Inc.* v. *Shalala*, 139 F.3d 889, 1998 WL 153410 (4th Cir. Apr. 3, 1998)).

The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) (the Hatch-Waxman Amendments) created section 505(j) of the act (21 U.S.C. 355(j)). The ANDA approval program established by section 505(j) of the act permits a generic version of a previously approved innovator drug to be approved without submission of a full new drug application (NDA). An ANDA references a previously approved drug product (the "listed drug") and relies on the agency's prior finding of safety and effectiveness for that drug product.

Applicants seeking approval for an NDA must include in their NDA information about patents for the drug that is the subject of the NDA. FDA publishes this patent information as part of the agency's publication "Approved Drug Products with Therapeutic Equivalence Evaluations" (the Orange Book).

Under section 505(j)(2)(A)(vii) of the act, generic drug applicants must include in an ANDA a patent certification for each patent listed in the Orange Book for the listed drug. The applicant must certify to one of the following for each listed patent: (1) That no patent information on the listed drug has been submitted to FDA; (2) that such patent has expired; (3) the date on which such patent will expire; or (4) that such patent is invalid, unenforceable, or will not be infringed by the manufacture, use, or sale of the drug product for which the ANDA is submitted. These certifications are referred to as "paragraph I," "paragraph II," "paragraph III," and "paragraph IV" certifications, respectively. The ANDA applicant must also provide notice of a paragraph IV certification to each owner of the patent that is the subject of the certification and to the holder of the approved NDA to which the ANDA refers.

Section 505(j)(5)(B)(iv) of the act provides an incentive for ANDA applicants to file paragraph IV certifications challenging patents that may be invalid, unenforceable, or not infringed by the drug product that is the subject of the ANDA. In certain circumstances, the first ANDA applicant with a paragraph IV certification is granted 180-day exclusivity. The 180-day exclusivity gives the first ANDA applicant protection from market competition by subsequent generic versions of the same drug product for a 180-day period from either the date the first ANDA applicant begins commercially marketing its drug product or from the date of a court decision holding the patent that is the subject of the paragraph IV certification invalid, unenforceable, or not infringed.

In 1994, FDA issued its final rule implementing the patent and marketing exclusivity provisions of the Hatch-Waxman Amendments. The requirements for 180-day exclusivity are contained in § 314.107(c)(1) (21 CFR 314.107(c)(1)).

In 1998, two appellate courts found that FDA's interpretation of section 505(j)(5)(B)(iv) of the act as expressed in § 314.107(c)(1) was not supported by the act (*Mova*, 140 F.3d at 1077; *Granutec*, 139 F.3d at 889). The *Mova* and *Granutec* courts concluded that the "successful defense" requirement imposed by § 314.107(c)(1) which required an ANDA applicant to be sued for patent infringement and to win before it could qualify for 180-day exclusivity was invalid. They held that 180 days of marketing exclusivity should be granted to the first ANDA applicant that files a paragraph IV certification, regardless of whether the applicant is subsequently sued for patent infringement.

Shortly after these decisions, the agency published a guidance for industry entitled "180–Day Generic Drug Exclusivity Under the Hatch-Waxman Amendments to the Federal

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Food, Drug, and Cosmetic Act" (June 1998) (63 FR 37890, July 14, 1998), detailing its new approach to 180-day exclusivity in response to the *Mova* and *Granutec* court decisions. The agency also published an interim rule revoking the "successful defense" requirement of § 314.107(c)(1) (63 FR 59710, November 5, 1998). Since that time, the agency has regulated directly from the statute on issues not specifically addressed by the remaining regulations governing 180-day exclusivity.

In the August 1999 proposed rule, the agency described a new approach to implementing the 180-day generic drug exclusivity consistent with the act. The August 1999 proposed rule addressed the issues resulting from the *Mova* and *Granutec* court decisions and responded to other 180-day exclusivity issues not currently addressed by the regulations.

Since publication of the August 1999 proposed rule, there has been extensive litigation of issues relating to ANDA approvals and 180-day exclusivity. Among these litigated issues was whether 180-day exclusivity would begin to run with the first district or other court decision finding the patent invalid, unenforceable, or not infringed or with a final court decision from which no appeal has been or can be taken.

FDA's interpretation of the words "the court" contained in section 505(j)(5)(B)(iii) of the act was initially challenged and reviewed by the court in *TorPharm, Inc.* v. *Shalala*, No. 97–1925, 1997 U.S. Dist. LEXIS 21983 (D.D.C. Sep. 15, 1997), *appeal withdrawn and remanded*, 1998 U.S. App. LEXIS 4681 (D.C. Cir. Feb. 5, 1998); *vacated* No. 97–1925 (D.D.C. Apr. 9, 1998). This provision of the act governs the approval of ANDAs when the NDA holder has brought a timely patent infringement action in response to the ANDA applicant's notice of filing a paragraph IV certification to a listed patent. The district court found that "the court," as stated in section 505(j)(5)(B)(iii) of the act, refers to the first court that decides that the patent is invalid or not infringed. Hence, the court found that under the act, the agency must make the ANDA approval effective on the date of the first relevant court decision, regardless of appeal status.

In another case decided after the proposed rule was published, the agency's interpretation of the phrase "a decision of a court" contained in section 505(j)(5)(B)(iv) of the act was successfully challenged in Mylan *Pharmaceuticals, Inc.* v. *Shalala*, 81 F. Supp.2d 30 (D.D.C. Jan. 4, 2000) (*Mylan I*). Section 505(j)(5)(B)(iv) of the act governs the eligibility for and timing of 180-day exclusivity. In the regulations in § 314.107 implementing this provision of the act, FDA interpreted "court" to mean the court that enters final judgment from which no appeal can be or has been taken (21 CFR 314.107(e)(1) (1999)). The *Mylan I* court found that this interpretation was not consistent with the plain language of the act, and concluded that "court" in the phrase "a decision of a court" means the first court that renders a decision finding the patent which is the subject of the certification to be invalid, unenforceable, or not infringed.

In response to the litigation and in an effort to provide guidance to the pharmaceutical industry regarding the timing of approval of ANDAs following an unsuccessful patent infringement action by the NDA holder and the start of 180-day generic drug exclusivity, the agency issued a guidance for industry entitled "Court Decisions, ANDA Approvals, and 180-day Exclusivity Under the Hatch-Waxman Amendments to the Federal Food, Drug, and Cosmetic Act" (March 2000) (the March 2000 guidance for industry). FDA announced that it would interpret the term "court" as found in section 505(j)(5)(B)(iii)(I) and (j)(5)(B)(iv) of the act to mean the first court that renders a decision finding the patent at issue invalid, unenforceable, or not infringed. FDA also announced that it would apply the new guidance policy prospectively. In the case of a district court decision, FDA may approve the ANDA as of the date the district court enters its decision. Also, for eligible applicants, 180-day exclusivity will begin to run on that date.

After the March 2000 guidance for industry was issued, the agency's interpretation of the meaning of "court decision" was again litigated in a consolidated case, *Mylan Pharmaceuticals, Inc.* v. *Henney*, 94 F.Supp.2d. 36 (D.D.C. 2000) (*Mylan II*). The court in *Mylan II* found that "a decision of a court" contained in section 505(j)(5)(B)(iv)(II) of the act means all court decisions, whether subsequently vacated, settled, appealed, or otherwise mooted. *Id.* at 54.

In the **Federal Register** of July 13, 2000 (65 FR 43233), FDA issued an interim rule to amend its regulations governing the definition of "court decision" as detailed in the March 2000 guidance for industry and consistent with the *TorPharm* and *Mylan* court decisions.

The opinion of the United States Court of Appeals for the D.C. Circuit in *Teva Pharmaceuticals, USA, Inc.* v. *FDA*, 182 F.3d 1003 (D.C. Cir. 1999) also rejected the agency's interpretation of the act. The *Teva* court found that under the facts of that case, a dismissal of a declaratory judgment action for lack of subject matter jurisdiction was a court decision triggering the running of exclusivity. In *Teva*, the underlying dismissal was based on an express finding that the plaintiff lacked a reasonable apprehension of a patent infringement suit, and thus there was no case or controversy concerning infringement of the patent to give the court jurisdiction. Under these circumstances, the court held that, although the court did not opine directly on the question of infringement, the dismissal for lack of subject matter jurisdiction was a decision of a court finding the patent invalid or not infringed that triggered 180-day exclusivity. This holding was directly at odds with the approach the agency proposed in the August 1999 proposed rule to deal with dismissals of declaratory judgment actions under section 505(j)(5)(B)(iii) of the act. (See 64 FR 42873 at 42881.)

II. Comments on the Proposed Rule

FDA received several comments on the August 1999 proposed rule. Comments were received from pharmaceutical companies, attorneys, trade associations, generic companies, the Federal Trade Commission, and chemical companies. The comments addressed a wide variety of issues described in the August 1999 proposed rule. Some comments favored and some opposed all or parts of the August 1999 proposed rule.

III. Withdrawal of the Proposed Rule

After careful consideration of the comments on the August 1999 proposed rule and the multiple court decisions affecting the agency's interpretation of the provisions of the act relating to 180-day exclusivity and ANDA approvals, FDA has concluded that it is appropriate to withdraw the August 1999 proposed rule at this time. The agency will continue to regulate directly from the statute and applicable FDA regulations to make 180-day exclusivity decisions on an issue-by-issue basis. The agency will also carefully evaluate possible options for future rulemaking addressing 180-day exclusivity and the timing of ANDA approvals.

Dated: October 23, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–27797 Filed 10–31–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP San Diego 02–026]

RIN 2115–AA97

Security Zones; Port of San Diego, CA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish moving and fixed security zones around and under all cruise ships that are located in the Port of San Diego. These proposed security zones are needed for national security reasons to protect the public and ports from potential terrorist acts. Entry into these zones will be prohibited, unless specifically authorized by the Captain of the Port San Diego.

DATES: Comments and related material must reach the Coast Guard on or before November 29, 2002.

ADDRESSES: You may mail comments and related material to Coast Guard Marine Safety Office San Diego, 2716 North Harbor Drive, San Diego, California, 92101. The Port Operations Department maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the Port Operations Department, 2716 North Harbor Drive, San Diego, California, 92101, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Rick Sorrell, Chief, Port Operations Department, Marine Safety Office San Diego, (619) 683–6495.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (COTP San Diego 02–026), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know your submission reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

In our final rule, we will include a concise general statement of the comments received and identify any changes from the proposed rule based on the comments. If as we anticipate, we make the final rule effective less than 30 days after publication in the **Federal Register**, we will explain our good cause for doing so as required by 5 U.S.C. 553(d)(3).

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Marine Safety Office San Diego at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a separate notice in the **Federal Register**.

Background and Purpose

Since the September 11, 2001, terrorist attacks on the World Trade Center in New York, the Pentagon in Arlington, Virginia, and Flight 93, the Federal Bureau of Investigation (FBI) has issued several warnings concerning the potential for additional terrorist attacks within the United States. In addition, the ongoing hostilities in Afghanistan and growing tensions in Iraq have made it prudent for U.S. ports to be on a higher state of alert because the Al Qaeda organization and other similar organizations have declared an ongoing intention to conduct armed attacks on U.S. interests worldwide.

In its effort to thwart terrorist activity, the Coast Guard has increased safety and security measures on U.S. ports and waterways. As part of the Diplomatic Security and Antiterrorism Act of 1986 (Pub. L. 99–399), Congress amended section 7 of the Ports and Waterways safety Act (PWSA), 33 U.S.C. 1226, to allow the Coast Guard to take actions, including the establishment of security and safety zones, to prevent or respond to acts of terrorism against individuals, vessels, or public or commercial structures. The Coast Guard also has authority to establish security zones pursuant to the Magnuson Act (50 U.S.C. 191 *et seq.*) and implementing regulations promulgated by the President in subparts 6.01 and 6.04 of part 6 of Title 33 of the Code of Federal Regulations.

In this particular rulemaking, to address the aforementioned security concerns, and to take steps to prevent the catastrophic impact that a terrorist attack against a cruise ship would have on the public interest, the Coast Guard proposes to establish security zones around and under cruise ships entering, departing, or moored within the port of San Diego. These security zones will help the Coast Guard prevent vessels or persons from engaging in terrorist actions against cruise ships. The Coast Guard believes the establishment of security zones is prudent for cruise ships because they carry multiple passengers.

On November 4, 2001, we issued a rule under docket COTP San Diego 01–022 which was published in the **Federal Register** (67 FR 6648, Feb. 13, 2002) under temporary section 165.T11–030 of Title 33 of the Code of Federal Regulations (CFR). In that rulemaking, the Coast Guard established a rule creating 100 yard security zones around cruise ships that enter, are moored in, or depart from the Port of San Diego.

On June 12, 2002, a change in effective period temporary rule was issued, under docket COTP SD 02–013, and was published in the **Federal Register** (67 FR 41845, June 20, 2002) under the same previous temporary section 165.T11–030, which is set to expire at 11:59 pm on December 21, 2002. The Captain of the Port has determined the need for continued security regulations exists. The proposed regulation differs slightly from temporary section 165.T11–030 in one way. Although, while implicit in the temporary rule, the security zones proposed here will be described as extending from the water's surface to the sea floor. This more specific description is intended to discourage unidentified scuba divers and swimmers from coming within close proximity of a cruise ship.

Accordingly, this rulemaking proposes to make permanent the temporary security zones established on November 4, 2001, under docket COTP San Diego 01–022, 33 CFR 165.T11–030 published in the **Federal Register** at 67 FR 6648 (February 13, 2002). This temporary rulemaking effective period was extended until December 21, 2002 by a notice in the **Federal Register** published June 20, 2002 (67 FR 41845).

Discussion of Proposed Rule

The Coast Guard proposes to establish moving and fixed security zones around all cruise ships that are anchored, moored, or underway within the port of San Diego. These proposed security zones will take effect upon the entry of any cruise ship into the waters within the San Diego sea buoy and will remain into effect until the cruise ship passes the San Diego sea buoy on its departure

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from the Port of San Diego. This proposed rule, for security concerns, prohibits entry of any vessel inside the security zone surrounding a cruise ship. These security zones are within a 100 yard radius around any cruise ship that is anchored at a designated anchorage; that is moored, or in the process of mooring, at any berth within the San Diego port; and that is underway.

These security zones are needed for national security reasons to protect cruise ships, the public, transiting vessels, adjacent waterfront facilities, and the port from potential subversive acts, accidents, or other events of a similar nature. Entry into these zones will be prohibited unless specifically authorized by the Captain of the Port or his designated representative. Vessels already moored when these security zones take effect are not required to get underway to avoid either the moving or fixed zones unless specifically ordered to do so by the Captain of the Port or his designated representative.

This zone will be enforced by the official patrol, (Coast Guard commissioned, warrant or petty officers) onboard Coast Guard vessels and patrol craft. The official patrol may also be onboard patrol craft and resources of any government agency that has agreed to assist the Coast Guard in the performance of its duties. The Captain of the Port will enforce these zones and may request the use of resources and personnel of other government and private agencies to assist in the patrol and enforcement of the regulation. This regulation is proposed under the authority of 33 U.S.C. 1226 in addition to the authority contained in 33 U.S.C. 1231 and 50 U.S.C. 191.

Vessels or persons violating this section will be subject to the penalties set forth in 33 U.S.C. 1232. Pursuant to 33 U.S.C. 1232 and 33 CFR part 27, any violation of the security zone described herein, is punishable by civil penalties (not to exceed $27,500 per violation, where each day of a continuing violation is a separate violation), criminal penalties (imprisonment up to 6 years and a maximum fine of $250,000), and in rem liability against the offending vessel. Any person who violates this section, using a dangerous weapon, or who engages in conduct that causes bodily injury or fear of imminent bodily injury to any officer authorized to enforce this regulation, also faces imprisonment up to 12 years.

Vessels or persons violating this section are also subject to the penalties set forth in 50 U.S.C. 192: seizure and forfeiture of the vessel to the United States; a maximum criminal fine of $10,000; and imprisonment up to 10 years.

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

The effect of this regulation will not be significant due to the minimal time that vessels will be restricted from the area. Also, the zones will encompass only a small portion of the waterway. The Port of San Diego can accommodate only a few cruise ships moored at the same time. Most cruise ship calls at each location occur on only one day each week, and are generally less than 18 hours in duration. Furthermore, vessels will be able to pass safely around the zones, and vessels and people may be allowed to enter these zones on a case-by-case basis with permission of the Captain of the Port.

The sizes of the zones are the minimum necessary to provide adequate protection for the cruise ships, their crews and passengers, other vessels operating in the vicinity of the cruise ships and their crews, adjoining areas, and the public. The entities most likely to be affected are commercial vessels transiting the main ship channel en route the Port of San Diego and pleasure craft engaged in recreational activities and sightseeing. The security zones will prohibit any commercial vessels from meeting or overtaking a cruise ship in the main ship channels, effectively limiting the use of the channel. However, the moving security zones will only be effective during cruise ship transits, which will last for approximately 60 minutes. In addition, vessels are able to safely transit around the zones while a vessel is moored or at anchor in the Port of San Diego.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. We expect this proposed rule may affect the following entities, some of which may be small entities: The owners and operators of private and commercial vessels intending to transit or anchor in these small portions near the cruise ships covered by these security zones, of the port of San Diego. The impact to these entities would not be significant since these zones are proposed to encompass only small portions of the waterway for limited period of times (while the cruise ships are transiting, moored). Delays, if any, are expected to be less than sixty minutes in duration. Small vessel traffic can pass safely around the area and vessels engaged in recreational activities, sightseeing and commercial fishing have ample space outside of the security zone to engage in these activities. When a cruise ship is at anchor, vessel traffic will have ample room to maneuver around the security zone. The outbound or inbound transit of a cruise ship will last about 60 minutes. Although this regulation prohibits simultaneous use of portions of the channel, this prohibition is of short duration. While a cruise ship is moored, commercial traffic and small recreational traffic will have an opportunity to coordinate movement through the security zone with the patrol commander.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (*see* **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact LTJG Joseph Brown, Marine Safety Office San Diego, (619) 683–6495

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a "tribal implication" under the Order.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation because we are proposing to establishing a security zone. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; 49 CFR 1.46.

2. Add § 165.1108 to read as follows:

§ 165.1108 Security Zones; Cruise Ships, Port of San Diego, California.

(a) *Definition.* "Cruise ship" as used in this section means a passenger vessel, except for a ferry, over 100 feet in length, authorized to carry more than 12 passengers for hire; capable of making international voyages lasting more than 24 hours, any part of which is on the high seas; and for which passengers are embarked, disembarked or at a port of call in the San Diego port.

(b) *Location.* The following areas are security zones:

(1) All waters, extending from the surface to the sea floor, within a 100 yard radius around any cruise ship that is anchored at a designated anchorage within the San Diego port area inside the sea buoys bounding the port of San Diego.

(2) The shore area and all waters, extending from the surface to the sea floor, within a 100 yard radius around any cruise ship that is moored at any berth within the San Diego port area inside the sea buoys bounding the Port of San Diego; and

(3) All waters, extending from the surface to the sea floor, within a 100 yard radius around any cruise ship that is underway on the waters inside the sea buoys bounding the Port of San Diego.

(c) *Regulations.* (1) In accordance with the general regulation in § 165.33 of the part, entry into or remaining in this zone is prohibited unless authorized by the Coast Guard Captain of the Port, San Diego or his designated representative.

(2) Persons desiring to transit the area of the security zone may contact the Captain of the Port at telephone number (619) 683–6495 or on VHF–FM channel 16 (156.8 MHz) to seek permission to transit the area. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or his or her designated representative.

(d) **Authority:** In addition to 33 U.S.C. 1231, the authority for this section includes 33 U.S.C. 1226.

(e) *Enforcement.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the security zone by the San Diego Port Police.

Dated: October 11, 2002.

S.P. Metruck,

Commander, US Coast Guard, Captain of the Port, San Diego, California.

[FR Doc. 02–27849 Filed 10–31–02; 8:45 am]

BILLING CODE 4910–15–P

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[Docket #WA–01–006; FRL–7267–9]

Approval and Promulgation of Air Quality Implementation Plans; State of Washington; Yakima Carbon Monoxide Redesignation to Attainment and Designation of Areas for Air Quality Planning Purposes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On September 26, 2001, the State of Washington submitted a request to redesignate the Yakima "not classified" carbon monoxide (CO) nonattainment area to attainment for the CO National Ambient Air Quality Standard (NAAQS). The State also submitted a CO maintenance plan for Yakima. In this action, EPA is proposing to approve the Yakima CO redesignation request and the maintenance plan. In the Final Rules Section of this Federal Register, EPA is approving the State's redesignation request and State Implementation Plan (SIP) revision, involving the maintenance plan, as a direct final rule without prior proposal because the Agency views the redesignation and SIP revision as noncontroversial and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed rule must be received in writing by December 2, 2002.

ADDRESSES: *Written comments may be mailed to:* Steven K. Body, Office of Air Quality, EPA Region 10, 1200 Sixth Ave., Seattle, WA 98101.

Copies of the documents relevant to this action are available for public inspection between 8 a.m. and 4 p.m., Monday through Friday at the following office: United States Environmental Protection Agency, Region 10, Office of Air Quality, 1200 Sixth Ave., Seattle WA 98101.

FOR FURTHER INFORMATION CONTACT: Steven K. Body, Office of Air Quality, EPA Region10, 1200 Sixth Ave. Seattle WA 98101. Telephone at (206) 553–0782.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule, of the same title, published in the rules section of this Federal Register.

Dated: August 12, 2002.

Ronald A. Kreizenbeck,

Acting Regional Administrator, Region 10.

[FR Doc. 02–27834 Filed 10–31–02; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 171

[Docket No. RSPA–99–5013 (HM–229)]

RIN 2137–AD21

Hazardous Materials: Revisions to Incident Reporting Requirements and the Hazardous Materials Incident Report Form

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of proposed rulemaking; status.

SUMMARY: In a notice of proposed rulemaking (NPRM) published on July 3, 2001, RSPA (we) proposed changes to RSPA's Hazardous Materials Incident Report (DOT Form F 5800.1). This notice is to inform the public that we have contracted with a professional form development contractor to provide recommendations for the layout of the form consistent with RSPA's goals outlined in the NPRM. Also, the contractor will provide a web-based form to fulfill RSPA's goal of electronic, internet-based reporting and will draft detailed instructions to assist in completing the forms. Members of the regulated community may be contacted to participate in focus groups to test the proposed form and subsequent alternative layouts developed by the contractor. The contract is expected to be completed by December 31, 2002.

FOR FURTHER INFORMATION CONTACT: For comments or questions concerning the contract discussed in this update, contact Ron DiGregorio at the Office of Hazardous Materials Planning and Analysis, telephone (202) 366–4484, Research and Special Programs Administration. For comments or questions concerning the NPRM or rulemaking, contact Michael Johnsen at the Office of Hazardous Materials Standards, telephone (202) 366–8553 or Kevin Coburn, at the Office of Hazardous Materials Planning & Analysis, telephone (202) 366–4555, Research and Special Programs Administration.

SUPPLEMENTARY INFORMATION:

I. Background

On July 3, 2001, RSPA ("we") published an NPRM (66 FR 35155) proposing revisions to the incident reporting requirements of the Hazardous Materials Regulations and the hazardous materials incident report form, DOT Form F 5800.1. Our intent is to improve the clarity of the form to make it more user-friendly and to allow for electronic scanning of the form.

We included a proposed revision to DOT Form F 5800.1 in the NPRM that incorporated elements found in recent versions of the U.S. Census form and other government forms that are subjected to scanning for electronic data storage, retrieval and analysis. We received several comments concerning the layout of the form, which will be addressed in the final rule. However, we believe that the recommendations of a company well experienced in developing these types of forms could further improve the usefulness of the form. The contractor will consider incorporating recommendations on the format from commenters into its suggested layouts. RSPA will review the suggestions submitted by the contractor in addition to comments received in response to the NPRM, during the development of the revised form that will be part of the final rule.

It is important to note that the final content (*i.e.*, specific information which will be reported) of the form will be determined by RSPA. The contractor will use the content of the proposed form as published in the NPRM and will maintain the data elements as they appear in the proposed form, though wording and order of the questions may vary.

RSPA seeks to compile an accurate database of incidents meeting the criteria specified in § 171.16. A form that can be completed easily and accurately will assist us in compiling accurate data and reduce the information collection burden on the regulated community.

A comprehensive set of instructions for completing the form will answer questions a filer may have without requiring the filer to contact us directly. Clear and concise instructions will also improve the accuracy of the data submitted by providing examples and explanations for each of the questions posed on the form.

We believe that a web-based DOT Form F 5800.1 that can be completed online is essential to our efforts for reducing burden on members of the regulated community and obtaining accurate reporting data. It also assists us in meeting our obligations under the Government Paperwork Elimination Act to accept electronic documents for transactions conducted with the public and regulated communities. In addition to reducing paperwork and postage costs, the on-line version of the form will include logic patterns to minimize accidental errors and remove non-required questions, as the form will "respond" to the data entered into it. This will reduce the time required to complete the form.

RSPA retains final authority as to the format and content of the incident report form.

Issued in Washington, DC, on October 28, 2002.

Robert A. McGuire,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 02–27852 Filed 10–31–02; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AG96

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for *Delphinium bakeri* and *Delphinium luteum* (Baker's and Yellow Larkspur)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of availability of draft economic analysis; reopening of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of the draft economic analysis for the proposed designation of critical habitat for *Delphinium bakeri* (Baker's larkspur) and *Delphinium luteum* (yellow larkspur) located in Marin and Sonoma counties, California. We are reopening the comment period for the proposal to designate critical habitat for these species to allow all interested parties to comment simultaneously on the proposed rule and the associated draft economic analysis. Comments previously submitted need not be resubmitted as they will be incorporated into the public record as part of this extended comment period, and will be fully considered in the final rule.

DATES: We will accept comments on both the draft economic analysis and the proposed critical habitat designation until December 2, 2002.

ADDRESSES: Written comments and information should be submitted to the Field Supervisor, Sacramento Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2800 Cottage Way, Suite W–2605, Sacramento, CA 95825. For the electronic mail address, and further instructions on commenting, refer to Public Comments Solicited section of this notice.

FOR FURTHER INFORMATION CONTACT: Glen Tarr, at the address above (telephone 916/414–6600; facsimile 916/414–6710).

SUPPLEMENTARY INFORMATION:

Background

Delphinium bakeri and *Delphinium luteum* (Baker's and yellow larkspur) are perennial herbs in the buttercup family (Ranunculaceae) endemic to (native and restricted to) Sonoma and Marin counties in California. *Delphinium bakeri* produces dark blue or purplish flowers in April and May, while *D. luteum* produces bright yellow flowers from March to May.

We listed both plants as endangered species under the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*) on January 6, 2000 (65 FR 4156). On June 18, 2002, we proposed six critical habitat units for the plants, totaling 1,786 hectares (ha) (4,412 acres (ac)) (67 FR 41367). For *Delphinium bakeri*, we proposed two units in Sonoma and Marin counties, California totaling 740 ha (1,828 ac), while for *D. luteum*, we proposed four units in Sonoma and Marin counties totaling 1,046 ha (2,584 ac). All of the area proposed as critical habitat is in private ownership.

Critical habitat receives protection from destruction or adverse modification through required consultation under section 7 of the Act with regard to actions carried out, funded, or authorized by a Federal agency. Section 4(b)(2) of the Act requires that the Secretary of the Interior shall designate or revise critical habitat based upon the best scientific and commercial data available, after taking into consideration the economic impact of specifying any particular area as critical habitat.

The public comment period for the June 18, 2002, proposal originally closed on August 19, 2002. We have prepared a draft economic analysis on the effects of the proposed critical habitat designation, and are now announcing its availability for review. The draft analysis estimates the foreseeable economic impacts of the critical habitat designation on government agencies and private businesses and individuals. Reopening of the comment period will provide the public an opportunity to evaluate and comment on both the proposed rule and the draft economic analysis. Comments already submitted on the proposed designation of critical habitat for *Delphinium bakeri* and *D. luteum* do not need to be resubmitted as they will be fully considered in the final determinations.

Public Comment Solicited

The final economic analysis concerning the designation of critical habitat for *Delphinium bakeri* and *D. luteum* will consider information and recommendations from all interested parties. We will accept written comments and information during this reopened comment period. If you wish to comment, you may submit your comments and materials concerning this proposal by any of several methods:

You may mail or hand-deliver written comments and information to the Field Supervisor, Sacramento Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2800 Cottage Way, Suite W–2605, Sacramento, CA 95825. Hand deliveries must be made during normal business hours.

You may also send comments by electronic mail (e-mail) to: *fw1bakers_yellow_larkspur@fws.gov.*

Hand-delivered or mailed comments and information should be submitted to the Sacramento Fish and Wildlife Office, as found in the **ADDRESSES** section. Comments and information submitted by e-mail should be addressed to *fw1bakers_yellow_larkspur@fws.gov.* If you submit comments by e-mail, please submit them as an ASCII file and avoid the use of special characters and any form of encryption. Please also include a return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, contact us directly by calling our Sacramento Fish and Wildlife Office at telephone number 916/414–6600, during normal business hours.

We solicit comments or suggestions from the public, other concerned governmental agencies, tribes, the scientific community, industry, or any other interested parties concerning the proposal or the draft economic analysis. We particularly seek comments concerning:

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(1) Plans or potential for development within the area proposed to be designated, notwithstanding the comments of the county employee contacted in preparing the economic analysis;

(2) Plans or potential for conversion of land within the area proposed to be designated to other types of agricultural uses, such as vineyards, which might require a permit under section 404 of the Clean Water Act, or other types of Federal permits;

(3) The likelihood of "stigma effects" and costs associated with the designation; and

(4) The likely effects and resulting costs arising from the California Environmental Quality Act and other State laws as a result of the designation.

Comments and materials received, as well as supporting documentation used in preparation of the proposal to designate critical habitat, will be available for inspection, by appointment, during normal business hours at our office listed in the **ADDRESSES** section. Copies of the draft economic analysis are available on the Internet at *www.r1.fws.gov* or by writing or calling Glen Tarr or Susan Moore, at the address or telephone number listed above.

Author

The primary author of this notice is Glen Tarr (*see* **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: October 23, 2002.

Paul Hoffman,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 02–27872 Filed 10–31–02; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register

Vol. 67, No. 212

Friday, November 1, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc. # TM–02–08]

Notice of Farm Security and Rural Investment Act of 2002 National Organic Certification Cost-Share Program

AGENCY: Agricultural Marketing Services, USDA.

ACTION: Notice.

SUMMARY: This Notice invites all States of the United States of America, its territories, the District of Columbia, and the Commonwealth of Puerto Rico (collectively hereinafter called States) to submit a Standard Form 424, Application for Federal Assistance, and to enter into a Cooperative Agreement with the Agricultural Marketing Service for the Allocation of National Organic Certification Cost-Share Funds. The Agricultural Marketing Service (AMS) has allocated $5.0 million for this organic certification cost-share program in Fiscal Year 2002. Funds will be available under this program to all interested States to assist organic producers or organic handlers certified to the National Organic Program. States interested in obtaining cost-share funds for their organic producers or organic handlers will have to submit an Application for Federal Assistance, and will have to enter into a cooperative agreement with AMS for the allocation of such funds.

DATES: Completed applications for federal assistance along with signed cooperative agreements must be received by December 31, 2002 in order to participate in the program.

ADDRESSES: Applications for federal assistance and cooperative agreements shall be requested from and submitted to: Robert Pooler, Marketing Specialist, National Organic Program, USDA/AMS/TMP/NOP, Room 4008-South, Ag Stop 0268, 1400 Independence Avenue, SW., Washington, DC 20250–0264; Telephone: (202) 720–3252; Fax: (202) 205–7808; E-mail: *bob.pooler@usda.gov*. Additional information may be found through the National Organic Program's homepage at *http://www.ams.usda.gov/nop*.

FOR FURTHER INFORMATION CONTACT: Robert Pooler, Marketing Specialist, National Organic Program, USDA/AMS/TM/NOP, Room 4008-South, Ag Stop 0268, 1400 Independence Avenue, SW., Washington, DC 20250–0264; Telephone: (202) 720–3252; Fax: (202) 205–7808; E-mail: *bob.pooler@usda.gov*.

SUPPLEMENTARY INFORMATION: This National Organic Certification Cost-Share Program is part of the Farm Security and Rural Investment Act of 2002 (Act) Public Law 107–171, 116 Stat. 134, 7 U.S.C. § 6523. Under this Act, USDA is authorized to provide certification cost share assistance to producers or handlers of organic agricultural products in all States. This National Organic Certification Cost-Share Program provides financial assistance to organic producers or organic handlers of agricultural products in obtaining certification under the National Organic Program authorized under the Organic Foods Production Act of 1990, as amended (7 U.S.C. 6501 *et seq.*). To participate in the program, interested States must complete a Standard Form 424, Application for Federal Assistance, and enter into a written cooperative agreement with AMS. The program will provide cost-share assistance, through participating States, to organic producers or organic handlers who have been certified by a USDA accredited certifying agent to the National Organic Program beginning April 29, 2002. Sections 10606 (b)(1) and (2) 7 U.S.C. 6523, of the Act requires that payments be limited to 75 percent of the costs incurred by a producer or handler in obtaining certification under the National Organic Program as certified to and approved by the Secretary, up to a maximum of $500.00 per year.

Producers who participate in the Organic Certification Cost-Share Program authorized under Section 1524 of the Federal Crop Insurance Act, as amended, (7 U.S.C. 1501–1524) are not eligible to participate in the producer portion of the National Organic Certification Cost-Share Program.

Authority: Pub. L. No. 107–171–116 Stat. 134, 7 U.S.C. § 6523.

Dated: October 28, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–27768 Filed 10–31–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 02–038N]

National Advisory Committee on Meat and Poultry Inspection

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of public meeting.

SUMMARY: The National Advisory Committee on Meat and Poultry Inspection (NACMPI) will hold a public meeting on November 6–7, 2002, to review and discuss three issues: Education and Training of the Field Workforce to Achieve a Public Health Vision, Escherichia coli 0157:H7 Developments, and Procedures for Evaluating State Meat and Poultry Inspection Programs. Three subcommittees of the full committee will also meet on November 6, 2002, to work on the issues discussed during the full Committee session.

DATES: The full Committee will hold a public meeting on Wednesday, November 6, and Thursday, November 7, 2002 from 8:30 a.m. to 5 p.m. Subcommittees will hold open meetings on Wednesday, November 6, 2002 from 7 p.m. to 9 p.m. Note: FSIS was not able to publish notification of this public meeting in the **Federal Register** at least 15 days prior to the meeting, as required by Departmental Regulation 1041–001, due to late changes to the agenda.

ADDRESSES: All Committee meetings will take place at the Holiday Inn Capitol at the Smithsonian, located at 550 C Street SW., Washington, DC 20024. The full committee meeting will be held in the "Columbia Ballroom" and Sub-Committee 1 will meet in break out room "Apollo (second floor)," subcommittee 2 will meet in the "Mercury" (second floor), and Subcommittee 3 will meet in the "Mars (first floor)." A meeting agenda is available on the Internet at *http://*

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www.fsis.usda.gov/OPPDE/nacmpi, which is a sub-web page of the FSIS home page at *http://www.fsis.usda.gov*. Submit one original and two copies of written comments to the FSIS Docket Room, reference docket #02–038N, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 102 Cotton Annex, 300 12th Street SW., Washington, DC 20250–3700. Comments may also be sent by facsimile (202) 205–0381. The comments and the official transcript of the meeting, when they become available will be kept in the FSIS Docket Room at the address provided above. All comments received in response to this notice will be considered part of the public record and will be available for reviewing in the FSIS Docket Room between 8:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Charles L. Gioglio for technical information at (202) 205–0010 and Sonya L. West for meeting information at (202) 720–2561, FAX (202) 205–0157, or e-mail *sonya.west@usda.gov*. Persons requiring a sign language interpreter or other special accommodations should notify Ms. West by October 30, 2002, at the above numbers or by e-mail. Information is also available on the Internet at *http://www.fsis.usda.gov/OPPDE/nacmpi*.

SUPPLEMENTARY INFORMATION:

Background

On January 19, 2001, the Secretary of Agriculture renewed the charter for the NACMPI. The Committee provides advice and recommendations to the Secretary of Agriculture pertaining to the Federal and State meat and poultry inspection programs pursuant to sections 301(a)(4), 7(c), 24, 205, 301(a)(3), and 301(c) of the Federal Meat Inspection Act and sections 5(a)(3), 5(a)(4), 5(c), 8(b), and 11(e) of the Poultry Products Inspection Act. The Administrator of FSIS is the chairperson of the Committee. Membership of the Committee is drawn from representatives of consumer groups; producers, processors, and marketers from the meat and poultry industry; State government officials; and academia. The current members of the NACMPI are: Dr. Gladys Base, Spelman College; Nancy Donley, Safe Tables Our Priority; Sandra Eskin, American Association of Retired Persons; Dr. James Denton, University of Arkansas; Carol Tucker Foreman, Food Policy Institute, Consumer Federation of America; Michael Govro, Oregon Department of Agriculture; Martin Holmes, North American Meat Processors; Dr. Lee C. Jan, Texas Department of Health; Dr. Alice Johnson, National Food Processors Association; Collette Schultz Kaster, Premium Standard Farms; Dr. Daniel E. Lafontaine, South Carolina Meat Poultry Inspection Department; Dr. Irene Leech, Virginia Tech; Charles Link, Cargill Turkey Products; Dr. Catherine Logue, North Dakota State University; Dr. Dale Morse, New York Department of Health; John Neal, Courseys Smoked Meats, and Michael Mamminga, Iowa Department of Agriculture and Land Stewardship.

The Committee has three subcommittees to deliberate on specific issues and make recommendations to the whole Committee.

All interested parties are welcome to attend the meetings and to submit written comments and suggestions concerning issues the Committee will review and discuss.

Members of the public will be required to register before entering the meeting.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this notice, FSIS will announce it and make copies of this **Federal Register** publication available through the FSIS Constituent Update. FSIS provides a weekly Constituent Update, which is communicated via Listserv, a free e-mail Subscription service. In addition, the update is used to provide information regarding FSIS policies, procedures, regulations, Federal Register notices, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents/stakeholders. The constituent Listserv consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals that have requested to be included. Through the Listserv and Web page, FSIS is able to provide information to a much broader, more diverse audience. For more information contact the Congressional and Public Affairs Office, at (202) 720–9113. To be added to the free e-mail subscription service (Listserv) go to the "Constituent Update" page on the Internet at *http://www.fsis.usda.gov/oa/update/update.htm*. Click on the "Subscribe to the Constituent Update Listserv" link, then fill out and submit the form.

Done at Washington, DC, on: October 29, 2002.

Dr. Garry L. McKee,

Administrator.

[FR Doc. 02–27841 Filed 10–29–02; 2:40 pm]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

Boise National Forest; Idaho; Upper Middle Fork Payette River Project

AGENCY: Forest Service, USDA.

ACTION: Revised notice of intent to prepare an environmental impact statement.

SUMMARY: The Cascade Ranger District of the Boise National Forest will prepare an environmental impact statement (EIS) for a resource management project in the Middle Fork of the Payette River drainage. The project involves 864 acres of timber stand treatment in the 15,881-acre project area, less than a mile of road construction, nearly 3 miles of road reconstruction, and less than a mile of road decommissioning. The entire project area is located within watersheds that drain directly into the Middle Fork of the Payette River or its tributaries. The project area is located 12 miles east of Cascade, Idaho, and about 100 miles north of Boise, Idaho.

DATES: Comments concerning the scope of the analysis should be postmarked within 30 days following publication of this announcement in the **Federal Register**. The draft environmental impact statement is expected in January 2003 and the final environmental impact statement is expected in April 2003.

ADDRESSES: Send written comments to Keith Dimmett, Cascade Ranger District, P.O. Box 696, Cascade, ID 83611.

FOR FURTHER INFORMATION CONTACT: Keith Dimmett, Project Leader, Cascade Ranger District at the address mentioned above or by calling (208)382–7430.

SUPPLEMENTARY INFORMATION: The NFMA planning for this project was initiated in the spring of 2001 with the Upper Middle Fork Payette River Ecosystem Analysis at the Watershed Scale (EAWS). A letter announcing plans to complete the EAWS and soliciting comments was mailed to interested individuals and/or groups in March of 2001.

A notice of intent to prepare an EIS for a similar project in the same location appeared on page 24097 of the **Federal Register** on May 11, 2001. This revised notice is being provided due to minor changes since the original notification,

changed on-the-ground conditions, and because of the time that has elapsed since the original notice of intent. In July 2001 the Forest Supervisor elected to delay the Upper Middle Fork Payette River Project until a variety of road restoration measures aimed at reducing road-related sedimentation and enhancing bull trout habitat in the project area were implemented. A large portion of those restoration activities were implemented in the summer of 2002 as part of the Middle Fork Roads Restoration Project, with the remaining activities scheduled for implementation in the summer of 2003.

Roughly 70 percent of the project area occurs within one of two inventoried roadless areas (IRA's). A portion of the Peace Rock IRA occupies an estimated 8,947 acres, and a section of the Stony Meadows IRA another 2,357 acres of the project area. A large portion of the project area also occurs within Management Area 43 (Peace Rock). The Proposed Action does not include any management activities within either IRA or within Management Area 43. Instead, management activities associated with the Proposed Action have been confined to the roaded portion of the project area, consisting of roughly 4,302 acres. The Middle Fork Payette River originates within, and runs through the center of the project area. The Forest Plan discloses that that segment of the river from Railroad Pass to the Middle Fork Bridge on the #409 road is potentially eligible for inclusion in the National Wild and Scenic River system as a "wild" river. However, in June of 1991 the Forest Plan corrected to show that this segment of the river is potentially eligible as a "recreational" river.

Purpose and Need for Action

Two primary objectives have been identified for the project: (1) Reduce current and future stand susceptibility to western spruce budworm, Douglas-fir beetle, and/or mountain pine beetle, and; (2) improve long-term stand growth to or near levels indicative of healthy, sustainable forests.

Proposed Action

The Proposed Action would treat an estimated 864 acres in the 15,881 acre project area. Proposed activities would occur within a portion of the 67,637 acre Gold Fork/Clear Creek Management Area 53. An estimated 4.0 MMbf of timber would be harvested using ground-based (683 acres), skyline (24 acres), and helicopter (157 acres) yarding systems. The Proposed Action would employ a variety of silvicultural prescriptions including commercial thin (169 acres), improvement cut/sanitation (427 acres), seed cut shelterwood (92 acres), final removal shelterwood (141 acres), and clearcut with reserve trees (35 acres). The existing transportation system would be improved to facilitate log haul and reduce sedimentation with individual sections of 2.9 miles of road being reconstructed. An estimated 0.7 miles of specified road and 0.2 miles of temporary road would be constructed to facilitate harvest. In addition, 0.9 miles of the #409F road, currently closed year-round would be decommissioned.

Possible Alternatives

One alternative to the Proposed Action, a No Action Alternative, has been discussed thus far. Other alternatives will likely be developed as issues are identified and information received.

Responsible Official

Suzanne C. Rainville, Acting Forest Supervisor, Boise National Forest, 1249 South Vinnell Way, Boise, ID 83709.

Nature of Decision To Be Made

The Boise National Forest Supervisor will decide the following. Should roads be built and timber harvested within the project area at this time, and if so; where within the project area, and how many miles of road should be built; and which stands should be treated and what silvicultural systems should be used? What design features and/or mitigation measures should be applied to the project? Should the decommissioning of existing roads be implemented at this time?

Scoping Process

The agency invites written comments and suggestions on the scope of the analysis. In addition to this notice, a proposed action letter will be sent to interested government officials, agencies, groups, and individuals. No public meetings are currently planned.

Preliminary Issues

Preliminary concerns with the Proposed Action include: (1) Potential impacts on sediment delivery to area streams; (2) potential impacts on bull trout, and; (3) potential impacts on the visual quality of the area.

Comment Requested

This notice of intent initiates the scoping process which guides the development of the environmental impact statement. Specific written comments on the proposed action will be most helpful.

Early Notice of Importance of Public Participation in Subsequent Environmental Review

A draft environmental impact statement will be prepared for comment. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRCD*, 435 U.S. 519, 533 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 409 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

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(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21)

Dated: October 21, 2002.

Suzanne C. Rainville,

Acting Forest Supervisor.

[FR Doc. 02–27737 Filed 10–31–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Toolbox Fire Recovery Project, Fremont National Forest, Lake County, OR

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA, Forest Service will prepare an environmental impact statement (EIS) on a proposal to assist the recovery of areas burned in 2002 by the Toolbox Complex Fires (includes Toolbox Fire, Silver Fire and small portion of Winter Fire). This will include proposals to salvage burned timber, implement re-forestation and implement projects to alleviate the potential for future damage to riparian and aquatic resources as a result of the Toolbox Complex Fires. The 48,000 acre project area is located on the Silver Lake Ranger District and is centered approximately 13 miles south of Silver Lake, Oregon, within the Silver Creek, Silver Lake and Summer Lake Watersheds.

DATES: Comments concerning the scope of the analysis must be received by December 2, 2002.

ADDRESSES: Send written comments to Carolyn Wisdom, District Ranger, Silver Lake Ranger District, PO Box 129, Silver Lake, OR 97638.

FOR FURTHER INFORMATION CONTACT: Rick Elston, Toolbox Fire Recovery Project Interdisciplinary Team Leader, Silver Lake Ranger District, *Phone:* (541) 576–7569. E-mail *relston@fs.fed.us.*

SUPPLEMENTARY INFORMATION: In July 2002 the Toolbox Complex Fires burned approximately 85,000 acres, of which 49,500 occur on the Fremont National Forest. The remainder of the fire includes approximately 8,000 acres of Bureau of Land Management Administered lands and 27,500 acres of private land. The 48,000 acre decision area for the Toolbox Fire Recovery Projects includes those portions of the Toolbox Complex Fires that occurred within the Silver Creek, Silver Lake and Summer Lake Watersheds on National Forest System lands.

Purpose and Need for Action

The purpose and need for action in the project planning area is to create conditions that would facilitate our efforts to:

—Recover habitat lost and soil damaged as a result of intense fire and reduce the likelihood of future loss or damage from reburn;
—Restore damaged riparian areas resulting from the Toolbox Complex Fire;
—Protect remaining live stands from insect infestations associated with fire-killed trees;
—Develop a long term sustainable forest through re-forestation and fuels reduction; and
—Salvage burned timber, while it retains some merchantable value.

Proposed Action

The proposed project would include the following activities:

—Reforestation of areas that sustained high tree mortality including existing plantations that were affected by the fire;
—Re-vegetation of burned riparian areas;
—Reconstruction of roads open to the public and repair of roads closed to the public but still required for administrative use; decommissioning of degraded roads;
—Riparian Restoration including adding large wood to deficient stream channels; and
—Salvage harvest of approximately 21,500 acres in the Silver Creek, Silver Lake and Summer Lake Watersheds and removal of hazardous trees along open roads and at recreational facilities.

Most of the proposed timber salvage units would be harvested using ground-based logging systems. Access for salvage would require reconstruction of about 9 miles of existing roads, primarily by adding surfacing, and construction of approximately 12 miles of new temporary roads and 14 miles of temporary roads located on old road locations. The temporary roads would be closed and obliterated after completion of project activities. Approximately 10 to 15% of the area to be salvaged would be harvested using helicopter based logging systems, including areas salvaged within Riparian Habitat Conservation Areas (RHCAs). All activities within RHCAs would be in accordance with Fremont National Forest Land and Resource Management Plan (LRMP) Standards and Guidelines, as amended by the Inland Native Fish Strategy (INFISH). Other connected actions in association with salvage include water barring and erosion control measures such as scattering of slash on skid trails and treatment of slash.

Planting of tree seedlings following site preparation would occur on approximately 28,500 acres, including areas that are salvage harvested and existing plantations or young stands in which fire damage occurred. Most or all seedlings would be ponderosa pine. Reduction of fuels, including those created by the fire, by salvage activity and by site preparation would occur throughout the project area. A variety of fuel treatment methods would be used, including removing marketable timber through salvage harvest, burning in place, piling and burning, yarding tops to landings to be burned, or lopping and scattering to speed decay. In order to meet desired fuels conditions some areas may be "pretreated" (by thinning very small diameter trees) and prescribed burned. In some instances this may require a Forest Plan amendment.

Additional proposed activities include:

—Approximately 35 miles of road decommissioning to promote watershed recovery;
—Approximately 880 acres of aspen stand protection;
—Placement of large woody debris or other in-stream structures to meet Riparian Management Objectives in approximately 8 miles of Silver Creek and 6 miles of West Fork Silver Creek;
—Approximately 10 acres of riparian area deciduous plantings;
—Approximately 1,300 acres of contour falling (using dead trees) on steep slopes to protect water quality;
—Culvert replacement where Forest Road 27 crosses West Fork Silver Creek to improve fish passage;
—Approximately 2,500 acres of plantation thinning; and
—Re-routing sections of the Fremont National Recreation Trail if necessitated by salvage activity.

All proposed activities are responsive to the stated purpose and need for this project.

Possible Alternatives

A full range of alternatives will be considered, including a "no-action" alternative in which none of the activities proposed above would be implemented. Based on the issues gathered through scoping, the action alternatives would differ in (1) The silvicultural and post-harvest treatments prescribed (2) the amount and location of harvest (3) the amount and location of fuels reduction activity. Tentative alternatives to the proposed action include an alternative that does not require the construction of additional temporary or permanent roads, other than temporary re-opening of existing roads, and that does not consider salvage removal from RHCAs. Another alternative would emphasize removal (or other fuels treatment options) of dead timber in the size classes most likely to reburn. Currently available science on snag and coarse woody debris dependent species habitat will be a factor in alternative development and could result in a proposal of a site-specific Forest Plan amendment to update standards and guidelines for these species. Consideration of various regeneration strategies including planting at relatively low stocking levels could also be a factor that differentiates alternatives.

Scoping Process

Public participation will be sought at several points during the analysis, including listing of this project in the Fall 2002 and subsequent issues of the Fremont-Winema National Forest's Schedule of Proposed Activities; letters to agencies, organizations, and individuals who have previously indicated their interest in such activities; and a legal notice in the *Klamath Herald and News.* Public meetings may be scheduled during the fall/winter of 2002–2003. The scoping process will include: Identifying potential issues, identifying major issues to be analyzed in depth, eliminating non-significant issues or those previously covered by a relevant environmental analysis, considering additional alternatives based on themes which will be derived from issues recognized during scoping activities, and identifying potential environmental effects of this proposed action and alternatives (*i.e.*, direct, indirect and cumulative effects and connected actions).

Preliminary Issues

Preliminary issues include: Snag and downed wood habitat; big game thermal cover; disturbance of cultural resources; potential noxious weed expansion; effects of proposed activities on soils exposed by the fire; effects of proposed activities on the recovery of water quality and resident fisheries resource; ability of proposed activities to contribute to restoration of historic vegetation composition, structures, and patterns; potential loss of commercial timber value; and economic viability of timber salvage.

Public comments about this proposal are requested in order to assist in properly scoping issues, determining how to best manage the resources, and fully analyzing environmental effects. Comments received to this notice, including names and addresses of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR parts 215 and 217. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that, under FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within a specified number of days.

Early Notice of Importance of Public Participation in Subsequent Environmental Review

The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register.** The draft EIS is expected in June 2003 and the final EIS is expected in October 2003.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

The Forest Service is the lead agency. The Responsible Official is the Forest Supervisor, Fremont National Forest, 1301 South "G" Street, Lakeview, Oregon 97630–9701. The Responsible Official will decide which, if any, of the proposed projects will be implemented. The Responsible Official may also decide on site-specific Forest Plan amendments regarding standards and guidelines for snag and coarse woody debris, as well as big game habitat, if warranted by the analysis of those components in light of recent science.

The Responsible Official will document the Toolbox Fire Recovery Project decision and reasons for the decision in the Record of Decision. That decision will be subject to Forest Service Appeal Regulations (36 CFR part 215).

Dated: October 21, 2002.

Charles R. Graham,

Forest Supervisor.

[FR Doc. 02–27786 Filed 10–31–02; 8:45 am]

BILLING CODE 3410–11–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletions from Procurement List.

SUMMARY: This action adds to the Procurement List services to be

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furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List products and a service previously furnished by such agencies.

EFFECTIVE DATE: December 1, 2002.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION:

Additions

On August 30, 2002, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (67 FR 55776) of proposed additions to the Procurement List. After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the services and impact of the additions on the current or most recent contractors, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services of the Government.

2. The action will result in authorizing small entities to furnish the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

Accordingly, the following services are added to the Procurement List:

Services

Service Type/Location: Janitorial/Custodial, EPA, Standard Chlorine Site, Delaware City, New Castle, Delaware.
NPA: The Chimes, Inc., Baltimore, Maryland.
Contract Activity: Environmental Protection Agency, Philadelphia, Pennsylvania.

Service Type/Location: Janitorial/Custodial, Stewart Newburgh USARC, New Windsor, New York.
NPA: Occupations, Inc., Middletown, New York.
Contract Activity: 77th Regional Support Command, Fort Totten, New York.

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and service the Government.

2. The action will result in authorizing small entities to furnish the products and service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and service proposed for deletion to the Procurement List.

After consideration of the relevant matter presented, the committee has determined that the products and service listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Accordingly, the following products and service are deleted from the Procurement List:

Products

Product/NSN: Pocket Planning Set—2000.
7510–01–450–5423.
Product/NSN: Pocket Planning Set—2001
7510–01–450–5428.
Product/NSN: Pocket Planning Set—2002
7510–01–450–5435.
Product/NSN: Organizer, Day Planner, Travel Size
7530–00–D16–0057.
Product/NSN: 2000 Tabbed Monthly—3 hole
7510–01–463–0798.
Product/NSN: 2000 Tabbed Monthly—7 hole
7510–01–463–0799.
Product/NSN: Daymax Tabbed Monthly—7 hole
7510–01–463–0801.
Product/NSN: Daymax Tabbed Monthly—3 hole
7510–01–463–0803.
Product/NSN: Executive/Personal Time Management System—LE Black
7530–01–458–3130.
NPA: The Easter Seal Society of Western Pennsylvania, Pittsburgh, PA
Contract Activity: Office Supplies & Paper Products Acquisition Center, New York, New York.

Service

Service Type/Location: Janitorial/Custodial, U.S. Federal Building, Minneapolis, Minnesota.
NPA: Tasks Unlimited, Inc., Minneapolis, Minnesota.
Contract Activity: GSA, Public Buildings Service.

Sheryl D. Kennerly,
Director, Information Management.
[FR Doc. 02–27824 Filed 10–31–02; 8:45 am]
BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List products and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

Comments must be received on or before: December 1, 2002.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, the entities of the Federal Government identified in the notice for each product or service will be required to procure the products and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the Government.

2. If approved, the action will result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following products and services are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Products

Product/NSN: Bag, Trash, Cloth
2090–01–478–3561.
NPA: West Texas Lighthouse for the Blind, San Angelo, Texas.
Contract Activity: Defense Supply Center Columbus, Columbus, Ohio.
Product/NSN: Can, Friction Top
8110–00–178–8291
8110–00–178–8292.
NPA: East Texas Lighthouse for the Blind, Tyler, Texas.
Contract Activity: Defense Supply Center Philadelphia, Philadelphia, Pennsylvania.
Product/NSN: Container Fuel Sample
8110–01–371–8315.
NPA: East Texas Lighthouse for the Blind, Tyler, Texas.
Contract Activity: Defense Supply Center Philadelphia, Philadelphia, Pennsylvania.
Product/NSN: Cushion Seat, Vehicular
2540–01–107–3371.
NPA: Work Services Corporation, Wichita Falls, Texas.
Contract Activity: Defense Supply Center Columbus, Columbus, Ohio.
Product/NSN: Highlighter, Fluorescent, Flat
7520–00–NIB–1620
7520–01–238–1728.
NPA: Winston-Salem Industries for the Blind, Winston-Salem, North Carolina.
Contract Activity: Office Supplies & Paper Products Acquisition Center, New York, New York.
Product/NSN: Highlighters, Free-Ink, Flat
7520–00–NIB–1625
7520–00–NIB–1630
7520–00–NIB–1631.
NPA: Winston-Salem Industries for the Blind, Winston-Salem, North Carolina.
Contract Activity: Office Supplies & Paper Products Acquisition Center, New York, New York.
Product/NSN: Windsock
8345–00–NSH–0001 (NFES–308).
NPA: Development Workshop, Inc., Idaho Falls, Idaho.
Contract Activity: BLM National Interagency Fire Center, Boise, Idaho.

Services

Service Type/Location: Office Supply Center, Richard Bolling Federal Building, Kansas City, Missouri.
NPA: Alphapointe Association for the Blind, Kansas City, Missouri.
Contract Activity: U.S. Army Corps of Engineers, Kansas City, Missouri.

Sheryl D. Kennerly,
Director, Information Management.
[FR Doc. 02–27825 Filed 10–31–02; 8:45 am]
BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

Office of the Secretary

[Docket No.: 021018240–2240–01]

Privacy Act of 1974; System of Records

AGENCY: Office of Administration, Office of the Secretary, Department of Commerce.

ACTION: Notice.

SUMMARY: In accordance with the Privacy Act (5 U.S.C. 552a(e) (4) and (11)), the Department of Commerce is issuing notice of our intent to delete the system of records entitled "Agriculture Census Records for 1974 and 1978, Commerce/Census—1." This system of records is no longer collected or maintained by the U.S. Census Bureau.

DATES: *Effective Date:* The deletion will become effective as proposed without further notice on December 2, 2002. *Comment Date:* To be considered, written comments must be submitted on or before December 2, 2002.

ADDRESSES: Comments may be mailed to Gerald W. Gates, Chief, Policy Office, U.S. Census Bureau, Washington, DC 20233.

SUPPLEMENTARY INFORMATION: This Privacy Act System of Records is being deleted because the records are no longer collected or maintained by the U.S. Census Bureau.

Dated: October 29, 2002.

Brenda Dolan,
Department of Commerce, Freedom of Information/Privacy Act Officer.
[FR Doc. 02–27817 Filed 10–31–02; 8:45 am]
BILLING CODE 3510–07–U

DEPARTMENT OF COMMERCE

Office of the Secretary

[Docket No.: 021023246–2246–01]

Privacy Act of 1974; System of Records

AGENCY: Office of Administration, Office of the Secretary, Department of Commerce.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Privacy Act (5 U.S.C. 552a(e)(4) and (11)), the Department of Commerce is issuing notice of our intent to amend the system of records entitled Commerce/Census-2, "Employee Productivity Measurement Records." We invite public comment on the proposed change in this publication.

DATES: The amendments will become effective as proposed without further notice on December 2, 2002.

Comment Date: To be considered, written comments must be submitted on or before December 2, 2002.

ADDRESSES: Comments may be mailed to Gerald W. Gates, Chief, Policy Office, U.S. Census Bureau, Washington, DC 20233.

SUPPLEMENTARY INFORMATION: The amendment updates administrative information concerning the locations of the system files, the categories of individuals covered by the system, the purpose of the system of records, and the disposal of the records in the system in addition to other minor administrative updates.

Accordingly, the Employee Productivity Measurement Records system notice originally published at 45 FR 82105, December 12, 1980, is amended by the addition of the following information updates.

Commerce/Census-2

SYSTEM LOCATION:

Strike "and Bureau of the Census, Personal Census Service Branch, Pittsburg, Kansas 66762." Before "1201" insert "National Processing Center,". Strike the remainder of the paragraph after "Also at the following Census Regional Offices:" and insert "101 Marietta Street, NW., Suite 3200, Atlanta, Georgia 30303–2700; 2 Copley Place, Suite 301, P.O. Box 9108, Boston, Massachusetts 02117–9108; 901 Center Park Drive, Suite 106, Charlotte, North Carolina 28217–2935; 2255 Enterprise Drive, Suite 5501, Chicago, Illinois 60154; 6303 Harry Hines Boulevard, Suite 210, Dallas, Texas 75235–2569; 6900 West Jefferson Avenue, Suite 100,

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Denver, Colorado 80235–2032; 1395 Brewer Park Boulevard, Detroit, Michigan 48207; Gateway Tower II, 400 State Avenue, Suite 600, Kansas City, Kansas 66101–2410; 15359 Sherman Way, Suite 300, Van Nuys, California 91406–4224; Jacob K. Javits Federal Building, 26 Federal Plaza, Room 37–130, New York, New York 10278–0044; 21st Floor, 1601 Market Street, Philadelphia, Pennsylvania 19103–2395; 700 5th Avenue, Suite 5100, Seattle, Washington, 98104–5018."

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Insert "Bureau" between "Census" and employees."

CATEGORIES OF RECORDS IN THE SYSTEM:

After "percent performance," insert "percent of time or standard (incentive coverage),".

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:*

PURPOSE(S):

Add "The purpose of this system of records is to determine employee performance and work group productivity, to improve workforce performance, and to evaluate the cost effectiveness of the programs that the Bureau manages."

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) In the event that a system or records maintained by the Department to carry out its functions indicates a violation or potential violation of law or contract, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute or contract, or rule, regulation, or order issued pursuant thereto, or the necessity to protect an interest of the Department, the relevant records in the system of records may be referred to the appropriate agency, whether Federal, state, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute or contract, or rule, regulation or order issued pursuant thereto, or protecting the interest of the Department.

(2) A record from this system of records may be disclosed to a Federal, state or local agency maintaining civil, criminal or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to a Department decision concerning the assignment, hiring or retention of an individual, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefit.

(3) A record from this system of records may be disclosed to a Federal, state, local or international agency, in response to its request, in connection with the assignment, hiring or retention of an individual, the issuance of a security clearance, the reporting of an investigation of an individual, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

(4) A record from this system of records may be disclosed in the course of presenting evidence to a court, magistrate or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.

(5) A record in this system of records may be disclosed to a Member of Congress submitting a request involving an individual when the individual has requested assistance from the Member with respect to the subject matter of the record.

(6) A record in this system of records may be disclosed to the Office of Management and Budget in connection with the review of private relief legislation as set forth in OMB Circular No. A–19 at any stage of the legislative coordination and clearance process as set forth in that Circular.

(7) A record in this system of records may be disclosed to the Department of Justice in connection with determining whether disclosure thereof is required by the Freedom of Information Act (5 U.S.C. 552).

(8) A record in this system of records may be disclosed to a contractor of the Department having need for the information in the performance of the contract, but not operating a system of records within the meaning of 5 U.S.C. 552a(m).

(9) A record in this system may be transferred to the Office of Personnel Management: for personnel research purposes; as a data source for management information; for the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained; or for related manpower studies.

(10) A record from this system of records may be disclosed to the Administrator, General Services, or his designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (*i.e.* GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

After "paper copy" add: "and electronic records'.

RETRIEVABILITY:*

SAFEGUARDS:

Insert "s" at the end of the word "Tape"; insert "and" after "Tapes"; insert "and" before "sensitive"; insert "are" between "materials" and "held".

RETENTION AND DISPOSAL:

Change "Records" to "records", and insert before "records" the following: "In accordance with the General Records Schedule and Census Bureau records control schedules that are approved by the National Archives and Records Administration,".

SYSTEMS MANAGER(S) AND ADDRESS:

Delete "Administration." Insert "Field Operations".

NOTIFICATION PROCEDURE:

Insert "Privacy Act" between "Department's" and "rules."

RECORD ACCESS PROCEDURES:*

CONTESTING RECORD PROCEDURES:*

RECORDS SOURCE CATEGORIES:*

* Indicates that there are no changes to that paragraph of the notice.

Dated: October 29, 2002

Brenda Dolan,

Department of Commerce, Freedom of Information/Privacy Act Officer.

[FR Doc. 02–27818 Filed 10–31–02; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Office of the Secretary

[Docket No.: 021023247–2247–01]

Privacy Act of 1974; System of Records

AGENCY: Office of Administration, Office of the Secretary, Department of Commerce.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Privacy Act (5 U.S.C. 552a(e)(4) and (11)), the Department of Commerce is issuing notice of our intent to amend the system of records entitled Commerce/Census-3, "Individual and Household Statistical Survey Records and Special Studies Records." We invite public comment on the proposed change in this publication.

DATES: The amendments will become effective as proposed without further notice on December 2, 2002.

Comment Date: To be considered, written comments must be submitted on or before December 2, 2002.

ADDRESSES: Comments may be mailed to Gerald W. Gates, Chief, Policy Office, U.S. Census Bureau, Washington, DC 20233.

SUPPLEMENTARY INFORMATION: The amendment updates administrative information concerning the locations of the system files, the categories of individuals covered by the system, the categories of records in the system, the purpose of the system of records, and the disposal of the records in the system in addition to other minor administrative updates. Accordingly, the Individual and Household Statistical Surveys and Special Studies Records system notice originally published at 45 FR 82105, December 12,1980, is amended by the addition of the following information updates.

Commerce/Census-3

SYSTEM LOCATION:

Insert after "20233;" "Bureau of the Census, Bowie Computer Center 1701, Melford Boulevard, Bowie, Maryland 20717". Insert before "1201 East 10th Street" "National Processing Center,".

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete the sentence and insert the following information. "This system contains information on households and individuals designated for statistical sample surveys. It includes:

(1) Household respondents age 15 year old or over selected for participation in the Current Population Survey, a survey with monthly interviewing and monthly supplements.

(2) Household members 15 years old and over who participate in the Survey of Income and Program Participation, a survey with monthly interviewing.

(3) Household respondents 15 years old or older selected for participation in the Survey of Program Dynamics, a longitudinal survey conducted on a yearly basis.

(4) Household respondents age 16 years or over selected for participation in the American Housing Surveys, conducted on a yearly basis.

(5) All household members age 12 and over who participate in the National Crime Victimization Survey, a monthly survey with supplements that include the Police Public Contact Survey and the School Crime Supplement.

(6) Household respondents selected for participation in the National Survey of Fishing, Hunting, and Wildlife-Associated Recreation, a survey conducted every five years.

(7) Women selected for participation in the National Longitudinal Survey of Women, a longitudinal survey conducted every two years.

(8) College graduates in science and engineering selected for participation in the National Survey of College Graduates, conducted biennially.

(9) Household respondents selected for participation in the New York City Housing and Vacancy Survey, conducted triennially.

(11) Household respondents age 15 year or over selected for participation in the American Community Survey, a survey with monthly interviewing.

(12) Persons age 16 years old or over selected to provide information for the consumer unit for the Consumer Expenditure Survey, which includes a quarterly interview and a diary survey.

(13) Owners of nonfarm, privately owned residential properties selected to provide information on the characteristics of homeowner and rental properties for the Residential Finance Survey, conducted decennially."

PURPOSE(S):

Add "The purpose of this system of records is to conduct research on the methodology associated with various aspects of surveys, such as data quality checks and review during post data collection processing because of an unusual inconsistency or other data problem. Special studies' data maintained by the Bureau of the Census are collected in order to conduct research on the methodology associated with various aspects of surveys (*e.g.*, cognitive testing of questionnaires, usability testing of computer software and equipment, nonresponse research, questionnaire design, etc.). These data are used solely for statistical purposes."

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete all citations. Add "13 U.S.C. 8, 141, and 182".

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM:

Delete paragraph (1). Renumber "(2)" as "(1)" and "(3)" as "(2)".

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

After "hard disk" insert "local area network, audio and video tape, CD-ROM, and DVD".

RETRIEVABILITY:

Change "Unique" to "unique" and before "unique" insert "Name, address, Social Security number, and".

SAFEGUARDS:

At the end of the paragraph add "Computer systems processing sensitive information meet the basic security requirements for discretionary access control as defined by DOD 5200.28 STD, commonly referred to as C2-level security. This level of security controls through use of specific security features, access to information such that only properly authorized individuals, or processes operating on their behalf, will have access to read, write, create, or delete information."

RETENTION AND DISPOSAL:

Strike "approved GSA Schedules" and insert "the General Records Schedule and Census Bureau records control schedules that are approved by the National Archives and Records Administration."

SYSTEMS MANAGER(S) AND ADDRESS:

Strike "Privacy Officer, Program and Policy Development Office," and add "Associate Director for Demographic Programs and Associate Director for Methodology and Standards".

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Insert "system of" between "this" and "records" in the first sentence.

Dated: October 29, 2002.

Brenda Dolan,

Department of Commerce, Freedom of Information/Privacy Act Officer.

[FR Doc. 02–27819 Filed 10–31–02; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Office of the Secretary

[Docket No.: 021023248–2248–01]

Privacy Act of 1974; System of Records

AGENCY: Office of Administration, Office of the Secretary, Department of Commerce.

ACTION: Notice and request for comments.

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SUMMARY: In accordance with the Privacy Act (5 U.S.C. 552a(e) (4) and (11)), the Department of Commerce is issuing notice of our intent to amend the system of records entitled Commerce/Census-4, "Minority-Owned Business Enterprises Survey Records." We invite public comment on the proposed change in this publication.

DATES: The amendments will become effective as proposed without further notice on December 2, 2002.

Comment Date: To be considered, written comments must be submitted on or before December 2, 2002.

ADDRESSES: Comments may be mailed to Gerald W. Gates, Chief, Policy Office, U.S. Census Bureau, Washington, DC 20233.

SUPPLEMENTARY INFORMATION: The amendment updates administrative information concerning the locations of the system files, the categories of individuals covered by the system, the categories of records in the system, the purpose of the system of records, safeguards, and the disposal of the records in the system in addition to other minor administrative updates. Accordingly, the Minority-Owned Business Enterprises Survey Records system notice originally published at 45 FR 82105, December 12, 1980, is amended by the addition of the following information updates.

Commerce/Census-4

TITLE:

Add "Women-and" before Minority-Owned.

SYSTEM LOCATION:

After the last zip code add: "Bureau of the Census, Bowie Computer Center, 17101 Melford Boulevard, Bowie, Maryland 20715; Bureau of the Census, National Processing Center, 1201 East 10th Street, Jeffersonville, Indiana 47132."

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Strike "Female and minority" and insert "Ethnicity, race, and gender of".

CATEGORIES OF RECORDS IN THE SYSTEM:

After "race," insert "ethnicity," and after "geographic area," insert "place of birth, and". Strike "Name and social security number are deleted from partners and stockholders once other data are coded." Strike "of minority business enterprises.".

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:*

PURPOSE(S):

Add "The purpose of this system of records is to conduct research on the methodology associated with various aspects of surveys, such as data quality checks and review during post data collection processing because of an unusual inconsistency or other data problem."

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM*

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

After "tape" add: "and CD–ROM."

RETRIEVABILITY:

Delete "Filed" and insert "Retrieved".

SAFEGUARDS:

After the last sentence add: "Computer systems processing sensitive information meet the basic security requirements for discretionary access control as defined by DOD 5200.28 STD, commonly referred to as C2-level security. This level of security controls through use of specific security features, access to information such that only properly authorized individuals, or processes operating on their behalf, will have access to read, write, create, or delete information."

RETENTION AND DISPOSAL:

Delete "unit's Records Control Schedule" and insert "Census Bureau's records schedule approved by the National Archives and Records Administration".

SYSTEMS MANAGER(S) AND ADDRESS:

Strike "Administration" and insert "Economic Programs".

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Insert "system of" between "this" and "record" in the first sentence and change "record" to "records".

* Indicates that there are no changes to that paragraph of the notice.

Dated: October 29, 2002.

Brenda Dolan,

Department of Commerce, Freedom of Information/Privacy Act Officer.

[FR Doc. 02–27820 Filed 10–31–02; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Office of the Secretary

[Docket No.: 021023249–2249–01]

Privacy Act of 1974; System of Records

AGENCY: Office of Administration, Office of the Secretary, Department of Commerce.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Privacy Act (5 U.S.C. 552a(e) (4) and (11)), the Department of Commerce is issuing notice of our intent to amend the system of records entitled Commerce/Census—6, "Population Census Personal Service Records for 1900 and All Subsequent Decennial Censuses." We invite public comment on the proposed change in this publication.

DATES: The amendments will become effective as proposed without further notice on December 2, 2002. *Comment date:* To be considered, written comments must be submitted on or before December 2, 2002.

ADDRESSES: Comments may be mailed to Gerald W. Gates, Chief, Policy Office, U.S. Census Bureau, Washington, DC 20233.

SUPPLEMENTARY INFORMATION: The amendment updates administrative information concerning the locations of the system files, the categories of individuals covered by the system, the categories of records in the system, the purpose of the system of records, retrievability, safeguards, and the disposal of the records in the system in addition to other minor administrative updates. Accordingly, the Population Census Records Personal Service Records for 1900 and All Subsequent Decennial Censuses system notice originally published at 45 FR 82105, December 12, 1980, is amended by the addition of the following information updates.

Commerce/Census—6

TITLE:

Delete "Personal Service" and change "1900" to "1910".

SYSTEM LOCATION:

Strike "Personal Census Services Branch, Pittsburg, Kansas 66762" and add "National Processing Center, 1201 East 10th Street, Jeffersonville, Indiana 47132."

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Strike "(1900–1970)" and add "(1910 and all subsequent decennial censuses)".

CATEGORIES OF RECORDS IN THE SYSTEM:

After "head of household" strike "date of birth" and insert "age (at time of census) or month/year of birth (depending on census year),". Before "education" insert "limited".

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:*

PURPOSE(S):

Add "The 1910–1990 decennial census records are searched and official census transcripts of the results are provided to the named persons(s), their heirs, or legal representatives, upon receipt of a signed Application for Search of Census Records (Form BC–600). Census transcripts provide proof of age for Social Security or other retirement benefits. They can also be used in making passport applications, to prove relationship in settling estates, in limited genealogy research or to satisfy other situations where a birth certificate or other legal documentation is needed but not available."

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM:

Change "15 CFR part 60" to "15 CFR part 50".

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:*

RETRIEVABILITY:

Delete the entire sentence and add: "Some census records are indexed by the SOUNDEX system—a numerical coding of the surname. The majority of census records are arranged on a geographic basis where the address must be known to determine which roll of microfilm contains the name(s) for which a search is requested."

SAFEGUARDS:

After the last sentence add: "Details from confidential records can only be released to the named persons, their heirs, or legal representatives upon submission of a notarized transcript application. Individual records are confidential for 72 years (Title 44, U.S.C. 2108(b))."

RETENTION AND DISPOSAL:

Add: "Records are stored at the Census Bureau's National Processing Center in Jeffersonville, Indiana, and also are provided to the National Archives and Records Administration for permanent retention. Records stored at the National Archives and Records Administration are not made public for 72 years."

SYSTEMS MANAGER(S) AND ADDRESS:

Strike "Administration" and insert "Economic Programs".

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Insert "system of" between "this" and "record" in the first sentence and change "record" to "records".

* Indicates that there are no changes to that paragraph of the notice.

Dated: October 29, 2002.

Brenda Dolan,

Department of Commerce, Freedom of Information/Privacy Act Officer.

[FR Doc. 02–27821 Filed 10–31–02; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Office of the Secretary

[Docket No.: 021023250–2250–01]

Privacy Act of 1974; System of Records

AGENCY: Office of Administration, Office of the Secretary, Department of Commerce.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Privacy Act (5 U.S.C. 552a(e) (4) and (11)), the Department of Commerce is issuing notice of our intent to amend the system of records entitled Commerce/Census 7, "Special Censuses of Population Conducted for State and Local Government." We invite public comment on the proposed change in this publication.

DATES: The amendments will become effective as proposed without further notice on December 2, 2002. *Comment Date:* To be considered, written comments must be submitted on or before December 2, 2002.

ADDRESSES: Comments may be mailed to Gerald W. Gates, Chief, Policy Office, U.S. Census Bureau, Washington, DC 20233.

SUPPLEMENTARY INFORMATION: The amendment updates administrative information concerning the categories of individuals covered by the system, the authority for maintenance of the system, the purpose of the system of records, safeguards, the retention and disposal of the records in the system, and the system manager in addition to other minor administrative updates. Accordingly, the Special Censuses of Population Conducted for State and Local Government system notice originally published at 45 FR 82105, December 12, 1980, is amended by the addition of the following information updates.

Commerce/Census—7

SYSTEM LOCATION:

Insert before "1210 East 10th Street," "National Processing Center,". Delete "47102" and insert "47132".

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Strike "requesting a census" and insert after "the" "geographical boundaries of local units of government requesting a special census during non-decennial years".

CATEGORIES OF RECORDS IN THE SYSTEM:*

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Strike "8" and insert "196". Add "These collections are conducted under procedures published at 15 CFR, Part 50".

PURPOSE(S):

Add "The purpose of this system of records is to verify the accuracy and quality of data collection and processing."

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM:*

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:*

RETRIEVABILITY:*

SAFEGUARDS:

After the last sentence add: "Computer systems processing sensitive information meet the basic security requirements for discretionary access control as defined by DOD 5200.28 STD, commonly referred to as C2-level security. This level of security controls through use of specific security features, access to information such that only properly authorized individuals, or processes operating on their behalf, will have access to read, write, create, or delete information."

RETENTION AND DISPOSAL:

Insert at the beginning "In accordance with the Census Bureau records control schedule approved by the National Archives and Records Administration," change "Tapes" to "tapes" insert "are" after "tapes". Strike "2" and insert "three".

SYSTEMS MANAGER(S) AND ADDRESS:

Strike "Administration" and insert "Field Operations".

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SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Insert "system of" between "this" and "record" in the first sentence and change "record" to "records".

* Indicates that there are no changes to that paragraph of the notice.

Dated: October 29, 2002.

Brenda Dolan,

Department of Commerce, Freedom of Information/Privacy Act Officer.

[FR Doc. 02–27822 Filed 10–31–02; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of opportunity to request administrative review of antidumping or countervailing duty order, finding, or suspended investigation.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended, may request, in accordance with § 351.213 (2002) of the Department of Commerce (the Department) Regulations, that the Department conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Opportunity to Request a Review: Not later than the last day of November 2002, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in November for the following periods:

	Periods
Antidumping Duty Proceedings	
ARGENTINA: A–357–405—Barbed Wire & Barbless Fencing Wire	11/1/01–10/31/02
BRAZIL: A–351–809—Circular Welded Non-Alloy Steel Pipe	11/1/01–10/31/02
KAZAKHSTAN: A–834–806—Certain Hot-Rolled Carbon Steel Flat Products	5/3/01–10/31/02
MEXICO: A–201–805—Circular Welded Non-Alloy Steel Pipe	11/1/01–10/31/02
NETHERLANDS: A–421–807—Certain Hot-Rolled Carbon Steel Flat Products	5/3/01–10/31/02
REPUBLIC OF KOREA: A–580–809—Circular Welded Non-Alloy Steel Pipe	11/1/01–10/31/02
ROMANIA: A–485–806—Certain Hot-Rolled Carbon Steel Flat Products	5/3/01–10/31/02
TAIWAN: A–583–835—Certain Hot-Rolled Carbon Steel Flat Products	5/3/01–10/31/02
TAIWAN: A–583–814—Circular Welded Non-Alloy Steel Pipe	11/1/01–10/31/02
TAIWAN: A–583–826—Collated Roofing Nails	11/1/01–10/31/02
THAILAND: A–549–817—Certain Hot-Rolled Carbon Steel Flat Products	5/3/01–10/31/02
THE PEOPLE'S REPUBLIC OF CHINA: A–570–865—Certain Hot-Rolled Carbon Steel Flat Products	5/3/01–10/31/02
THE PEOPLE'S REPUBLIC OF CHINA: A–570–850—Collated Roofing Nails	11/1/01–10/31/02
THE PEOPLE'S REPUBLIC OF CHINA: A–570–831—Fresh Garlic	11/1/01–10/31/02
THE PEOPLE'S REPUBLIC OF CHINA: A–570–826—Paper Clips	11/1/01–10/31/02
THE PEOPLE'S REPUBLIC OF CHINA: A–570–864—Pure Magnesium in Granular Form	4/30/01–10/31/02
UKRAINE: A–823–811—Certain Hot-Rolled Carbon Steel Flat Products	5/3/01–10/31/02
Countervailing Duty Proceedings	
None.	
Suspension Agreements	
MEXICO: A–201–820—Fresh Tomatoes	11/1/01–10/31/02
UKRAINE: A–823–808—Certain Cut-to-Length Carbon Steel	11/1/01–10/31/02

In accordance with § 351.213(b) of the regulations, an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. For both antidumping and countervailing duty reviews, the interested party must specify the individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order or suspension agreement for which it is requesting a review, and the requesting party must state why it desires the Secretary to review those particular producers or exporters. If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which were produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Six copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room 1870, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping/Countervailing Enforcement, Attention: Sheila Forbes, in room 3065 of the main Commerce Building. Further, in accordance with § 351.303(f)(1)(i) of the regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the **Federal Register** a notice of "Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation" for requests received by the last day of November 2002. If the Department does not receive, by the last day of November 2002, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute but is published as a service to the international trading community.

Dated: October 25, 2002.

Holly A. Kuga,

Senior Office Director, Group II, Office 4, AD/CVD Enforcement.

[FR Doc. 02–27857 Filed 10–31–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–848]

Notice of Extension of Time Limit of Preliminary Results of New Shipper Review: Freshwater Crawfish Tail Meat From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

SUMMARY: The Department of Commerce is extending the time limit of the preliminary results of the new shipper review of the antidumping duty order on freshwater crawfish tail meat from the People's Republic of China until no later than February 13, 2003. The period of review is September 1, 2001, through February 28, 2002. This extension is made pursuant to section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended.

EFFECTIVE DATE: November 1, 2002.

FOR FURTHER INFORMATION CONTACT: Douglas Kirby or Thomas Gilgunn, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230; telephone: (202) 482–3782 or (202) 482–4236, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statutes and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended (the Act). In addition, unless otherwise indicated, all citations to the Department's regulations are to the provisions codified at 19 CFR Part 351(2002).

Statutory Time Limits

Section 751(a)(2)(B)(iv) of the Act requires the Department to issue the preliminary results of a new shipper review within 180 days after the date on which the new shipper review was initiated, and final results of review within 90 days after the date on which the preliminary results were issued. However, if the Department determines the issues are extraordinarily complicated, section 751(a)(2)(B)(iv) of the Act allows the Department to extend the deadline for the preliminary results to up to 300 days after the date on which the new shipper review was initiated.

Background

On March 29, 2002 the Department received a timely request from Weishan Zhenyu Foodstuff Co., Ltd. (Zhenyu), in accordance with section 751(a)(2)(B) of the Act and section 351.214(c) of the regulations, for a new shipper review of the antidumping duty order on freshwater crawfish tail meat from the People's Republic of China ("PRC"), which has a September anniversary date. On April 23, 2002 the Department initiated this new shipper review covering the period September 1, 2001, through February 28, 2002. *See Freshwater Crawfish Tail Meat From the People's Republic of China: Initiation of New Shipper Antidumping Review* (67 FR 21218). On September 26, 2002, the Department extended the preliminary results of this review by 33 days until November 22, 2002. *See Freshwater Crawfish Tail Meat From the People's Republic of China: Notice of Extension of Time Limit of Preliminary Results of New Shipper Review* (67 FR 60640).

Extension of Time Limits for Preliminary Results

Pursuant to section 751(a)(2)(B)(iv) of the Act, the Department may extend the deadline for completion of the preliminary results of a new shipper review if it determines that the case is extraordinarily complicated. The Department has determined that this case is extraordinarily complicated, and the preliminary results of this new shipper review cannot be completed within the statutory time limit of 180 days. The Department finds that this new shipper review is extraordinarily complicated because of the issues that must be addressed. The Department is now analyzing the respondent's supplemental questionnaire response containing additional information concerning affiliation, date of sale, and factor value data. Given the issues in this case, the Department may find it necessary to request further information in this new shipper review. Therefore, in accordance with section 351.214(i)(2) of the regulations, the Department is extending the time limit for the completion of preliminary results for an additional 83 days. The preliminary results will now be due no later than February 13, 2003.

This notice is published pursuant to sections 751(a)(2)(B) and 777(i)(1) of the Act.

Dated: October 25, 2002.

Richard O. Weible,

Acting Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 02–27855 Filed 10–31–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–810]

Mechanical Transfer Presses from Japan: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review, and Preliminary Rescission, in Part, of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce is extending the time limit for the preliminary results of the administrative review of mechanical transfer presses (MTPs) from Japan until no later than February 28, 2003. The period of review is February 1, 2001 through January 31, 2002. This extension is made pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act).

EFFECTIVE DATE: November 1, 2002.

FOR FURTHER INFORMATION CONTACT: Jacqueline Arrowsmith, Office of AD/CVD Enforcement VII, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230; telephone: (202) 482–5255.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR Part 351 (2001).

Background

On February 19, 2001, the Department of Commerce (the Department) received a timely request for administrative review of the antidumping duty order on MTPs from Japan from respondent Hitatchi Zosen Corporation (HZC), and its subsidiary Hitatchi Zosen Fukui Corporation d/b/a H&F Corporation (H&F). *See Antidumping Duty Order: Mechanical Transfer Presses from*

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Japan, 55 FR 5642 (February 16, 1990). On February 28, 2001, the Department received a timely request from the petitioner, IHI-Verson Press Technology, LLC, for an administrative review of HZC, H&F, Komatsu, Ltd., and Komatsu American Industries, LLC. On March 27, 2002, the Department published a notice of initiation of this administrative review, covering the period of February 1, 2001 through January 31, 2002 (*see* 67 FR 14696), for HZC and its subsidiary H&F, and Komatsu, Ltd. On May 22, 2002, we published *Mechanical Transfer Presses from Japan: Final Results of Antidumping Duty Administrative Review and Revocation, in-Part*, in which we revoked this antidumping duty order, in part, with respect to Komatsu, Ltd. The revocation was effective for subject merchandise entered, or withdrawn from warehouse, for consumption on or after February 1, 2001. *See* 67 FR 35958. Therefore, we are preliminarily rescinding this review with respect to Komatsu, Ltd. The preliminary results for HZC/H&F are currently due no later than October 31, 2002.

Extension of Time Limits for Preliminary Results

Due to several complex issues involving normal value, it is not practicable to complete this review within the time limits mandated by section 751(a)(3)(A) of the Act. The Department is therefore extending the time period for issuing the preliminary results of this review by 120 days, from October 31, 2002, until no later than February 28, 2003, in accordance with section 751(a)(3)(A) of the Act. The final results continue to be due 120 days after the publication of the preliminary results. This notice is published pursuant to sections 751(a)(3)(A) and 777(i)(1) of the Act.

Dated: October 25, 2002.

Richard O. Weible,

Acting Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 02–27854 Filed 10–31–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–501]

Notice of Extension of Time Limit of Preliminary Results of Administrative Review: Natural Bristle Paint Brushes From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

SUMMARY: The Department of Commerce is extending the time limit of the preliminary results of the administrative review of the antidumping duty order on natural bristle paint brushes from the People's Republic of China until no later than January 23, 2003. The period of review is February 1, 2001, through January 31, 2002. This extension is made pursuant to section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended.

EFFECTIVE DATE: November 1, 2002.

FOR FURTHER INFORMATION CONTACT: Douglas Kirby or Sean Carey, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230; telephone: (202) 482–3782 or (202) 482–3964, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statutes and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended (the Act). In addition, unless otherwise indicated, all citations to the Department's regulations are to the provisions codified at 19 CFR Part 351 (2002).

Statutory Time Limits

Section 351.213(h)(1) of the Department's regulations requires the Department to issue the preliminary results of an administrative review within 245 days after the last day of the anniversary month of the order or suspension agreement for which the administrative review was requested, and final results of review within 120 days after the date on which notice of the preliminary results was published in the Federal Register. However, if the Department determines that it is not practicable to complete the review within this time period, section 351.213(h)(2) of the Regulations allows the Department to extend the 245–day period to 365 days and may extend the 120–day period to 180 days.

Background

On February 1, 2002, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on natural bristle paint brushes and brush heads from the People's Republic of China (PRC) (67 FR 4945). On February 28, 2002, the Department received a timely request from petitioner for administrative reviews of Hunan Provincial Native Produce and Animal By-Products Import and Export Corporation (Hunan) and Hebei Founder Import and Export Company (Hebei). On March 27, 2002, the Department initiated an administrative review of the antidumping duty order on natural bristle paintbrushes and brush heads, for the period from February 1, 2001 through January 31, 2002, in order to determine whether merchandise imported into the United States is being sold at less than fair value with respect to these two companies. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocations in Part* (67 FR 14696).

On May 1, 2002 the Department issued antidumping questionnaires to Hebei and Hunan. In its reply to Section A of the questionnaire, Hebei stated that it had made no sales or shipments of subject merchandise to the United States during the POR. The Department also performed a U.S. Customs Service (Customs) query for entries of natural bristle paintbrushes and brush heads, classified under the Harmonized Tariff Schedule of the United States (HTSUS) item number 9603.40.40.40, from the PRC during the POR. We found no entries or shipments from Hebei during the POR. Thus, the Department rescinded the review with respect to Hebei. *See Natural Bristle Paintbrushes and Brush Heads From the People's Republic of China; Notice of Rescission, In Part, of Antidumping Administrative Review*, 67 FR 58018 (September 13, 2002). The Department's preliminary results in the review of Hunan are currently due October 31, 2002.

Extension of Time Limits for Preliminary Results

Pursuant to section 751(a)(2)(B) of the Act, the Department may extend the deadline for completion of the preliminary results of an administrative review if it determines that it is not practicable to complete the review within the time specified in section 351.213(h)(2) of the Department's regulations. The Department has determined that the preliminary results of this administrative review cannot be completed within the statutory time limit of 245 days. The Department finds that it is not practicable to complete the preliminary results of this administrative review because there are a number of issues that must be addressed. For example, the Department has prepared a supplemental questionnaire requesting additional information on the respondent's questionnaire responses concerning affiliation and date of sale. Given the issues in this case, the Department may find it necessary to request even more information in this administrative review, as well as to conduct verification. Therefore, in accordance with section 351.213(h)(2) of the Department's regulations, the Department is extending the time limit for the completion of preliminary results by 85 days. The preliminary results will now be due no later than January 23, 2003. The final results continue to be due within 120 days of the publication of the preliminary results.

This notice is published pursuant to sections 751(a)(2)(B) and 777(i)(1) of the Act.

Dated: October 25, 2002.

Richard O. Weible,

Acting Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 02–27856 Filed 10–31–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 101102B]

Fraser River Sockeye and Pink Salmon Fisheries; Inseason Orders

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: 2002 inseason orders.

SUMMARY: NMFS publishes the Fraser River salmon inseason orders regulating salmon fisheries in U.S. waters. The orders were issued by the Fraser River Panel (Panel) of the Pacific Salmon Commission (Commission) and subsequently approved and issued by NMFS during the 2002 sockeye and pink salmon fisheries within the U.S. Fraser River Panel Area. These orders established fishing times, areas, and types of gear for U.S. treaty Indian and all-citizen fisheries during the period the Commission exercised jurisdiction over these fisheries. Due to the frequency with which inseason orders are issued, publication of individual orders is impracticable. The 2002 orders are therefore being published in this document to avoid fragmentation.

DATES: Each of the following inseason actions was effective upon announcement on telephone hotline numbers as specified at 50 CFR 300.97(b)(1); those dates and times are listed under **SUPPLEMENTARY INFORMATION.**

Comments will be accepted through November 18, 2002.

ADDRESSES: Comments may be mailed to D. Robert Lohn, Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way N.E., BIN C15700–Bldg. 1, Seattle, WA 98115–0070. Information relevant to this document is available for public review during business hours at the office of the Regional Administrator, Northwest Region, NMFS.

FOR FURTHER INFORMATION CONTACT: David Cantillon, 206–526–4140.

SUPPLEMENTARY INFORMATION: The treaty between the Government of the United States of America and the Government of Canada concerning Pacific Salmon was signed at Ottawa on January 28, 1985, and subsequently was given effect in the United States by the Pacific Salmon Treaty Act (Act) at 16 U.S.C. 3631–3644. Under authority of the Act, Federal regulations at 50 CFR part 300 subpart F provide a framework for implementation of certain regulations of the Commission and inseason orders of the Commission's Panel for U.S. sockeye and pink salmon fisheries in the Fraser River Panel Area.

The regulations close the Fraser River Panel Area (U.S.) to U.S. sockeye and pink salmon fishing unless opened by Panel regulation or by inseason regulations published by NMFS that give effect to Panel orders. During the fishing season, NMFS may issue regulations that establish fishing times and areas consistent with the Commission agreements and inseason orders of the Panel. Such orders must be consistent with domestic legal obligations. The Regional Administrator, Northwest Region, NMFS, issues the inseason orders. Official notification of these inseason actions of NMFS is provided by two telephone hotline numbers described at 50 CFR 300.97(b)(1). Inseason orders must be published in the **Federal Register** as soon as practicable after they are issued. Due to the frequency with which inseason orders are issued, publication of individual orders is impractical. Therefore, the 2002 orders are being published in this document to avoid fragmentation.

The following inseason orders were adopted by the Panel and issued for U.S. fisheries by NMFS during the 2002 fishing season. The times listed are local times, and the areas designated are Puget Sound Management and Catch Reporting Areas as defined in the Washington State Administrative Code at Chapter 220–22.

Order No. 2002–01: Issued 4 p.m., July 19, 2002

Treaty Indian Fisheries

Areas 4B, 5 and 6C: Open for drift gillnets from 12 p.m. (noon) Sunday, July 21, 2002, to 12 p.m. (noon) Wednesday, July 24, 2002.

Order No. 2002–02: Issued 4 p.m., July 23, 2002

Treaty Indian Fisheries

Areas 4B, 5 and 6C: Extended for drift gillnets from 12 p.m. (noon) Wednesday, July 24, 2002, to 12 p.m. (noon) Saturday, July 27, 2002.

Order No. 2002–03: Issued 3 p.m., July 29, 2002

Treaty Indian Fisheries

Areas 4B, 5 and 6C: Open for drift gillnets from 4 p.m. Monday, July 29, 2002, to 12 p.m. (noon) Friday, August 2, 2002.

Areas 6, 7 and 7A: Open for net fishing from 4 a.m to 8 p.m. Wednesday, July 31, 2002.

Order No. 2002–04: Issued 3 p.m., August 1, 2002

All-Citizen Fisheries

Areas 7 and 7A: Purse Seines open from 9 a.m. to 3 p.m. on Friday, August 2, 2002.

Drift Gillnets open from 4 p.m. to 10 p.m. on Friday, August 2, 2002.

Order No. 2002–05: Issued 3 p.m., August 2, 2002

Treaty Indian Fisheries

Areas 4B, 5 and 6C: Open for drift gillnets from 4 p.m. Friday, August 2 to 12 p.m. (noon) Monday, August 5, 2002.

Areas 6, 7 and 7A: Open for net fishing from 6 a.m to 11 p.m. Saturday, August 3, 2002.

All-Citizen Fisheries

Areas 7 and 7A Reef Net: Open for net fishing 5 a.m. Saturday, August 3, 2002, until 9 p.m. Saturday, August 3, 2002, and then again 5 a.m. Sunday, August 4, 2002, until 9 p.m. Sunday, August 4, 2002, and then again 5 a.m. Monday, August 5, 2002, until 9 p.m. Monday, August 5, 2002.

Order No. 2002–06: Issued 3 p.m., August 6, 2002.

Treaty Indian Fisheries

Areas 4B, 5 and 6C: Open for drift gill nets from 4 p.m. Tuesday, August 6, 2002 to 12 p.m. (noon) Friday, August 9, 2002.

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All-Citizen Fisheries

Areas 7 and 7A Purse Seine: Open for purse seine in that portion of Area 7 and Area 7A south and east of a line from Iwersen's Dock on Point Roberts to Georgina Point Light at the entrance to Active Pass in British Columbia, from 2 p.m. Thursday, August 8, 2002 to 3 p.m Thursday, August 8, 2002.

Areas 7 and 7A Gill Net: Open for gill net in that portion of Area 7 and Area 7A south and east of a line from Iwersen's Dock on Point Roberts to Georgina Point Light at the entrance to Active Pass in British Columbia, from 4 p.m. Thursday, August 8, 2002 to 8 p.m. Thursday, August 8, 2002.

Order No. 2002–07: Issued 4 p.m., August 9, 2002

Treaty Indian Fisheries

Areas 4B, 5 and 6C: Open for drift gill nets from 4 p.m. Friday, August 9, 2002 to 12 p.m. (noon) Tuesday, August 13, 2002.

Areas 6, 7 and 7A: Open for that portion of Area 6, Area 7 and Area 7A south and east of a line from Iwersen's Dock on Point Roberts to Georgina Point Light at the entrance to Active Pass in British Columbia for net fishing from 5 a.m. to 5 p.m. on Sunday, August 11, 2002.

All-Citizen Fisheries

Non-Treaty Gill Net: Open for that portion of Area 7 and Area 7A south and east of a line from Iwersen's Dock on Point Roberts to Georgina Point Light at the entrance to Active Pass in British Columbia for gill net from 4 p.m. to 8 p.m. on Monday, August 12, 2002.

Non-Treaty Reef Net: Open for that portion of Area 7 and Area 7A south and east of a line from Iwersen's Dock on Point Roberts to Georgina Point Light at the entrance to Active Pass in British Columbia for reef net from 5 a.m. to 9 p.m. on Saturday, August 10, 2002.

Order No. 2002–08: Issued 4 p.m., August 12, 2002

Treaty Indian Fisheries

Areas 4B, 5 and 6C: Open for drift gill nets from 4 p.m. Friday, August 9, 2002, to 6 p.m. Monday, August 12, 2002.

All-Citizen Fisheries

Non-Treaty Gill Net: Open for that portion of Area 7 and Area 7A south and east of a line from Iwersen's Dock on Point Roberts to Georgina Point Light at the entrance to Active Pass in British Columbia for gill net from 4 p.m. to 8 p.m. on Monday, August 12, 2002.

Inseason Order 2002–08 supersedes all previous inseason orders implementing 2002 orders of the Fraser River Panel.

Order No. 2002–09: Issued 5 p.m., August 23, 2002

All-Citizen Fisheries

Non-Treaty Gill Net: Open for that portion of Areas 7 and 7A south and east of a line from Iweresen's Dock on Point Roberts to Georgina Point Light at the entrance to Active Pass in British Columbia as follows:

Area 7A: Open from 8 a.m. to 8 p.m. on Saturday, August 24, 2002, and from 8 a.m. to 8 p.m. on Sunday, August 25, 2002.

Areas 7 and 7A: Open from 8 a.m. to 8 p.m. on Monday, August 26, 2002.

The Assistant Administrator for Fisheries NOAA (AA), finds that good cause exists for the inseason orders to be issued without affording the public prior notice and opportunity for comment under 5 U.S.C. 553(b)(B) as such prior notice and opportunity for comment is impracticable and contrary to the public interest. Prior notice and opportunity for public comment is impracticable because NMFS has insufficient time to allow for prior notice and opportunity for pubic comment between the time the stock abundance information is available to determine how much fishing can be allowed and the time the fishery must open and close in order to harvest the appropriate amount of fish while they are available.

Moreover, such prior notice and opportunity for public comment is contrary to the public interest because not closing the fishery upon attainment of the quota would allow the quota to be exceeded and thus compromise the conservation and allocation objectives established preseason, and it does not allow fishers appropriately controlled access to the available fish at the time they are available.

The AA also finds good cause to waive the 30–day delay in the effective date, required under 5 U.S.C. 553(d)(3), of the inseason orders. A delay in the effective date of the inseason orders would not allow fishers appropriately controlled access to the available fish at that time they are available.

This review is authorized by 50 CFR 300.97, and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 3636(b).

Dated: October 25, 2002.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–27874 Filed 10–31–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 102202C]

Marine Mammals; File No. 881–1443

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit amendment.

SUMMARY: Notice is hereby given that the Alaska SeaLife Center, P.O. Box 1329, Seward, AK 99664 has been issued an amendment to scientific research Permit No. 881–1443–05.

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376;

Regional Administrator, Alaska Region, National Marine Fisheries Service, NOAA, P.O. Box 21668, Juneau, AK 99802–1668 (907/586–7221).

FOR FURTHER INFORMATION CONTACT: Amy Sloan or Ruth Johnson, (301)713–2289.

SUPPLEMENTARY INFORMATION: The requested amendment has been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the provisions of § 216.39 of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened fish and wildlife (50 CFR part 222).

Issuance of this amendment, as required by the ESA was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of this permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

The amendment extends the expiration date of the permit from March 31, 2003, to March 31, 2004.

Dated: October 28. 2202.

Eugene T. Nitta,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–27875 Filed 10–31–02; 8:45 am]

BILLING CODE 3510–22–S

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting

TIME AND DATE: Friday, November 8, 2002, 10 a.m.

LOCATION: Room 420, East West Towers, 4330 East West Highway, Bethesda, Maryland.

(This meeting was previously scheduled for Thursday, October 24, 2002.)

STATUS: Open to the public.

MATTER TO BE CONSIDERED:

Petition HP 99 1 Polyvinyl Chloride (PVC).

The staff will brief the Commission on Petition HP 99–1 requesting a ban of polyvinyl chloride (PVC) in all toys and other products intended for children five of age and under.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Todd A. Stevenson, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504–0800.

Dated: October 30, 2002.

Todd A. Stevenson,

Secretary.

[FR Doc. 02–27984 Filed 10–30–02; 11:20 am]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0154]

Federal Acquisition Regulation; Information Collection; Davis Bacon Act-Price Adjustment (Actual Method)

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning the Davis-Bacon Act price adjustment (actual method). The clearance currently expires on January 31, 2003.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before December 31, 2002.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the General Services Administration, FAR Secretariat (MVP), 1800 F Street, NW, Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Linda Nelson, Acquisition Policy Division, GSA (202) 501–1900.

SUPPLEMENTARY INFORMATION:

A. Purpose

The clause at 52.222–32, Davis-Bacon Act-Price Adjustment (Actual Method), requires that a contractor must submit at the exercise of each option to extend the term of the contract, including a statement of the amount claimed for incorporation of the most current wage determination by the Department of Labor, and any relevant supporting data, including payroll records, that the contracting officer may reasonably require.

The contracting officer may include this clause in fixed-price solicitations and contracts, subject to the Davis-Bacon Act, that will contain option provisions to extend the term of the contract. Generally, this clause is only appropriate if contract requirements are predominantly services subject to the Service Contract Act and the construction requirements are substantial and segregable.

B. Annual Reporting Burden

Respondents: 900.
Responses Per Respondent: 1.
Annual Responses: 900.
Hours Per Response: 90.
Total Burden Hours: 81,000.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (MVP), Room 4035, 1800 F Street, NW, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0154, Davis-Bacon Act-Price Adjustment (Actual Method), in all correspondence.

Dated: October 28, 2002.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. 02–27762 Filed 10–31–02; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

Department of the Army

Performance Review Boards Membership

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: Notice is given of the names of members of a Performance Review Board for the Department of the Army.

EFFECTIVE DATE: October 28, 2002.

FOR FURTHER INFORMATION CONTACT: Marilyn Ervin, U.S. Army Senior Executive Service Office, Assistant Secretary of the Army, Manpower & Reserve Affairs, 111 Army, Washington, DC 20310–0111.

SUPPLEMENTARY INFORMATION: Section 4314(c)(1) through (5) of Title 5, U.S.C., requires each agency to establish, in accordance with regulations, one or more Senior Executive Service performance review boards. The boards shall review and evaluate the initial appraisal of senior executives' performance by supervisors and make recommendations to the appointing authority or rating official relative to the performance of these executives.

The members of the Performance Review Board for the U.S. Army Communications-Electronics Command (CECOM), U.S. Army Materiel Command are:

1. BG Michael R. Mazzucchi, Program Executive Officer, Command, Control and Communications (Tactical).
2. Mr. Edward Bair, Program Executive Officer, Intelligence, Electronic Warfare and Sensors.
3. Mr. Edward Thomas, Director, CECOM Software Engineering Center, U.S. Army Communications-Electronics Command.
4. Mr. John Perrapato, Deputy Program Executive Officer, Command and Control Systems.
5. Mr. Edward Elgart, Director, CECOM Acquisition Center, U.S. Army Communications-Electronics Command.

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The members of the Performance Review Board for the U.S. Army Aviation and Missile Command (AMCOM), U.S. Army Materiel Command are:

1. Ms. L. Marlene Cruze, Director, Acquisition Center, U.S. Army Aviation and Missile Command.
2. Dr. Richard Amos, Acting Associated Director (Systems), Research, Development and Engineering Center, U.S. Army Aviation and Missile Command.
3. Mr. John Chapman, Executive Director of Integrated Materiel Management Center, U.S. Army Aviation and Missile Command.
4. Mr. Bill Reeves, Assistant to the Deputy Commanding General for Research, Development and Acquisition, U.S. Army Space and Missile Defense Command.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 02–27823 Filed 10–31–02; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

National Assessment Governing Board; Meeting

AGENCY: National Assessment Governing Board; Education.

ACTION: Notice of open meeting and partially closed meetings.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Assessment Governing Board. This notice also describes the functions of the Board. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. The document is intended to notify the general public of their opportunity to attend. Individuals who will need accommodations for a disability in order to attend the meeting (i.e. interpreting services, assistive listening devices, materials in alternative format) should notify Munira Mwalimu at 202–357–6938 or at *Munira.Mwalimu@ed.gov* no later than November 8, 2002. We will attempt to meet requests after this date, but cannot guarantee availability of the requested accommodation. The meeting site is accessible to individuals with disabilities.

DATES: November 14–November 16, 2002.

Times: November 14: Assessment Development Committee: Open Session—1 p.m. to 3 p.m.; Ad Hoc Committee on Background Questions: Open Session—3 p.m. to 4:30 p.m.; Ad Hoc Committee on NAEP Sampling Studies: Open Session—3 p.m. to 4:30 p.m.; Executive Committee Meeting: Open Session—5 p.m.–6:30 p.m.; Closed Session 6:30 p.m. to 7 p.m.

November 15: Full Board Meeting: Open Session 8:15 a.m.–10:15 a.m.; Committee Meetings: Assessment Development Committee 10:30 a.m.–12:30 p.m.; Committee on Standards, Design and Methodology, 10:30 a.m.–12:30 p.m.; Reporting and Dissemination Committee, 10:30 a.m.–12:30 p.m.; Full Board—Open Meeting 12:30 p.m.–2:30 p.m.; Closed Meeting 2:30 p.m.–4 p.m.

November 16: Full Board Meeting: Open Session 9 a.m.–12 p.m.

Location: Holiday Inn Select Old Town, 480 King Street, Alexandria, VA 22314.

FOR FURTHER INFORMATION CONTACT: Munira Mwalimu, Operations Officer, National Assessment Governing Board, 800 North Capitol Street, NW, Suite 825, Washington, DC, 20002–4233, Telephone: (202) 357–6938.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 412 of the National Education Statistics Act of 1994 (Title IV of the Improving America's Schools Act of 1994, as amended by the No Child Left Behind Act of 2001 (Public Law 107–110).

The Board is established to formulate policy guidelines for the National Assessment of Educational Progress (NAEP). The Board's responsibilities include selecting subject areas to be assessed, developing assessment objectives, developing appropriate student achievement levels for each grade and subject tested, developing guidelines for reporting and disseminating results, and developing standards and procedures for interstate and national comparisons.

The Executive Committee will meet in partially closed session on November 14 from 6:30–7 p.m. to receive independent cost estimates on contract initiatives for NAEP. The meeting must be conducted in closed session because public disclosure of this information would likely have an adverse financial effect on the NAEP program. The discussion of this information would be likely to significantly impede implementation of a proposed agency action if conducted in open session. Such matters are protected by exemption 9(B) of 552b(c) of Title 5 U.S.C.

On November 15, 2002 the full board will convene in open session from 8:15 a.m.–10:15 a.m. The Board will approve the agenda and introduce new Board Members. Secretary Paige will administer the oath of office for new Board members and address the Board. The Board will then receive the Executive Director's report and a NAEP Update from the Deputy Commissioner of NCES, Gary Phillips. From 10:30 a.m. to 12:30 p.m., the Board's standing committees—the Assessment Development Committee, the Committee on Standards, Design, and Methodology, and the Reporting and Dissemination Committee will meet in open session.

The full Board will reconvene in open session on November 15, 2002 from 12:30 p.m.–1:30 p.m. to discuss the work of a proposed Commission to study 12th grade NAEP. From 1:30 p.m. to 2 p.m. the Board will receive an update on NAEP/NAGB reauthorization and on the new reading framework project. From 2:30 p.m. to 4 p.m. the full board will meet in closed session to review and discuss test items from the upcoming 2003 Main Reading Assessment. Disclosure of the specific test items for the NAEP Reading Assessment would significantly impede implementation of the NAEP program, and is therefore protected by exemption 9(B) of Section 552b(c) of Title 5 U.S.C.

On November 16, the full Board will meet in open session from 9 a.m. to 12 p.m. The Board will receive a briefing from the National Urban League on efforts to reduce achievement gaps. This presentation will be followed by Board actions on policies and Committee reports. The November 16, 2002 session of the Board meeting will adjourn at 12 noon.

Summaries of the activities of the closed session and related matters, which are informative to the public and consistent with the policy of section 5 U.S.C. 552b (c), will be available to the public within 14 days of the meeting. Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, Suite #825, 800 North Capitol Street, NW, Washington, DC, from 9 a.m. to 5 p.m. Eastern Standard Time.

Dated: October 29, 2002.

Roy Truby,

Executive Director, National Assessment Governing Board.

[FR Doc. 02–27783 Filed 10–31–02; 8:45 am]

BILLING CODE 4000–1–M

DEPARTMENT OF ENERGY

Proposed Agency Information Collection Submitted for OMB Review and Comment

AGENCY: Department of Energy.

ACTION: Notice and request for OMB review and comment.

SUMMARY: The Department of Energy (DOE) has submitted the proposed collection of information described in this Notice to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). These forms will certify to DOE that respondents were advised of the requirements for occupying or continuing to occupy a Human Reliability Program (HRP) position. The HRP is a new program which merges the Personnel Security Assurance Program (PSAP) and the Personnel Assurance Program (PAP) into one DOE human reliability program. The HRP forms will be identical to the OMB approved PSAP forms, just changing the name of the program. In addition to the above, the DOE has requested approval of two new forms, the HRP Certification form and the HRP Alcohol Testing form. The HRP Certification form is used internally to assure that an individual in an HRP position has met all of the annual program requirements. The HRP Alcohol Testing form is identical to the Department of Transportation (DOT) alcohol testing form with the only change being the insertion of the HRP in place of the DOT.

DATES: Comments regarding this collection must be received on or before December 2, 2002. If you anticipate that you will be submitting comments, but find it difficult to do so within the time period allowed by this Notice, please advise the OMB Desk Officer of your intention to make a submission as soon as possible. The Desk Officer may be telephoned at (202) 395–7318. In addition, please notify the DOE contact listed in this Notice.

ADDRESSES: Address comments to the DOE Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10102, 735 17th Street, NW., Washington, DC 20503. (Comments should also be addressed to Susan L. Frey, Director, Records Management Division [IM–11], Office of Records and Business Management, Office of the Chief Information Officer, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–1290.

SUPPLEMENTARY INFORMATION: *This package contains:* (1) OMB No. 1910–1800.

Current and proposed titles are listed below:

Current—Refusal of Consent [for Personnel Security Assurance Program (PSAP)].

New—Refusal of Consent [for Human Reliability Program (HRP)].

Current—Authorization and Consent To Release Personnel Security Assurance Program (PSAP) Records in Connection with PSAP.

New—Authorization and Consent To Release Human Reliability Program (HRP) Records in Connection with HRP.

Current—Acknowledgment and Agreement To Participate in the Personnel Security Assurance Program (PSAP).

New—Acknowledgment and Agreement To Participate in the Human Reliability Program (HRP).

(2) *New forms:*

U. S. Department of Energy Human Reliability Program (HRP) Certification.

Human Reliability Program (HRP) Alcohol Testing Form (identical to DOT OMB No. 2105–0529).

(3) *Purpose:* To merge the PSAP and PAP into one Department of Energy Human Reliability Program, therefore, using the already OMB approved forms, just changing the name of the program on the forms. Two new forms are being initiated. One will certify that an individual in an HRP position has met all annual program requirements; and the other follows an identical Department of Transportation Alcohol Testing Form that is approved under OMB Control No. 2105–0529.

(4) *Type of Respondents:* DOE, management and operating contractors, and offsite contractors.

(5) *Estimated Number of Burden Hours:* 54,500.

Statutory Authority: Paperwork Reduction Act of 1995, P.L. No. 104–13, U.S.C. section 3507(h)(1).

Issued in Washington, DC on October 25, 2002.

Susan L. Frey,

Director, Records Management Division, Office of Records and Business Management, Office of the Chief Information Officer.

[FR Doc. 02–27802 Filed 10–31–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Science Financial Assistance Program Notice 03–07; Low Dose Radiation Research Program—Basic Research

AGENCY: Department of Energy.

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Biological and Environmental Research (OBER) of the Office of Science (SC), U.S. Department of Energy (DOE) and the Office of Biological and Physical Research (OBPR), National Aeronautics and Space Administration (NASA), hereby announce their interest in receiving grant applications for new research to develop a better scientific basis for understanding exposures and risks to humans from low dose and low fluence radiation. Topics of high priority include endogenous oxidative damage versus low dose radiation-induced damage, radio-adaptive responses, bystander effects, and individual genetic susceptibility to low dose radiation exposure. Research should employ genome-wide or proteome-wide high-throughput screening methods whenever possible, and priority will also be given to the use of three-dimensional biological models. Research should support the DOE/OBER Low Dose Radiation Research Program, and may include complementary research of direct interest to the NASA/OBPR Space Radiation Health Program of sufficient scientific merit to qualify for partial NASA support. Please review the **SUPPLEMENTARY INFORMATION** section below for further discussion of programmatic needs.

The Office of Biological and Environmental Research of the Office of Science, U.S. Department of Energy also announces its interest in receiving smaller applications for grants to support collaborative work between two or more laboratories, one or more of which should be funded to do low dose-related research. Please review the **SUPPLEMENTARY INFORMATION** section on Glue Grants, below, for further details.

In addition, we anticipate a separate request for modeling projects in the near future.

DATES: Preapplications (letters of intent), including information on collaborators, areas of research, and a one-page summary of the proposed research, should be submitted by December 6, 2002.

Formal applications submitted in response to this notice must be received by 4:30 p.m., E.S.T., Thursday, February 27, 2003, in order to be accepted for merit review and to permit timely consideration for award in Fiscal Year 2003.

ADDRESSES: Preapplications referencing Program Notice 03–07, should be sent to Ms. Joanne Corcoran by E-mail: *joanne.corcoran@science.doe.gov*, with a copy to Dr. Noelle Metting at: *noelle.metting@science.doe.gov*.

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Formal applications in response to this solicitation are to be electronically submitted by an authorized institutional business official through DOE's Industry Interactive Procurement System (IIPS) at: *http://e-center.doe.gov/*. IIPS provides for the posting of solicitations and receipt of applications in a paperless environment via the Internet. In order to submit applications through IIPS your business official will need to register at the IIPS website. The Office of Science will include attachments as part of this notice that provide the appropriate forms in PDF fillable format that are to be submitted through IIPS. Color images should be submitted in IIPS as a separate file in PDF format and identified as such. These images should be kept to a minimum due to the limitations of reproducing them. They should be numbered and referred to in the body of the technical scientific application as Color image 1, Color image 2, etc. Questions regarding the operation of IIPS may be E-mailed to the IIPS Help Desk at: *HelpDesk@e-center.doe.gov* or you may call the help desk at: (800) 683–0751. Further information on the use of IIPS by the Office of Science is available at: *http://www.sc.doe.gov/production/grants/grants.html*.

If you are unable to submit an application through IIPS please contact the Grants and Contracts Division, Office of Science at (301) 903–5212 in order to gain assistance for submission through IIPS or to receive special approval and instructions on how to submit printed applications.

FOR FURTHER INFORMATION CONTACT: Dr. Noelle Metting, telephone: (301) 903–8309, E-mail: *noelle.metting@science.doe.gov*, Office of Biological and Environmental Research, U.S. Department of Energy, SC–72/Germantown Building, 1000 Independence Avenue SW., Washington, DC 20585–1290. For specific information on NASA/OBPR interests, contact Dr. Walter Schimmerling, telephone (202) 358–2205, E-mail: *wschimmerling@hq.nasa.gov*, NASA Headquarters, Mail Code UB, Washington, DC 20546–0001.

SUPPLEMENTARY INFORMATION:

(1) Specifics for the Low Dose Radiation Research Program (DOE)

The DOE/OBER Low Dose Radiation Research Program has the challenge of conducting research that can be used to inform the development of future national radiation risk policy for the public and the workplace. For the present solicitation, DOE/OBER is chiefly concerned with very low doses of low Linear Energy Transfer (LET) radiation (electrons, x- and gamma-rays). The focus of research should be on doses of low LET radiation that are at or near current workplace exposure limits. In general, research in this program should focus on total radiation doses that are less than or equal to 10 rads. Some experiments will likely involve selected exposures to higher doses of radiation for comparisons with previous experiments or for determining the validity of extrapolation methods previously used to estimate the effects of low doses of radiation from observations made at high doses. This research program will be a success if the science it generates is useful to policy makers, standard setters, and the public. Successful applicants will be expected to effectively communicate research results through publication in peer-reviewed journals. They will also be encouraged to communicate with the wider community of concerned persons, so that current thinking and the public debate is better able to reflect sound science.

Research projects utilizing the systems biology or discovery science approach, including the tools of comparative genomics and proteomics are especially sought. Research projects that use experimental protocols or cell microenvironments that will lead to an understanding of radiobiological responses in intact human tissue are also strongly encouraged.

Not all research on the biological effects of low doses of radiation will be equally useful for the development of radiation risk policy, though the path from basic radiation biology research to radiation risk policy is admittedly not clear at this time. In the present context, the research considered to be most useful will focus on biological responses that are known to be induced at low doses of radiation, have the potential to directly impact (*i.e.*, increase or decrease) subsequent development of cancer or other harmful health impacts, are quantifiable, could potentially be linked to the development of a biologically based model for radiation risk, and could potentially lead to the development of biological predictors (biomarkers) of individual risk.

Alternatively, a biological response of interest could meet all of the above criteria only at high doses but may actually be absent (as opposed to simply undetectable) at low doses of radiation. Since evidence is accumulating that the mechanisms of action are different after high versus low doses of radiation, such studies would help define these mechanisms. Defining the doses where these mechanisms shift is of critical importance.

Endogenous oxidative damage in relation to low dose radiation induced damage. A key goal of this research program will remain the elucidation of similarities and differences between endogenous oxidative damage and damage induced by low levels of ionizing radiation, as well as understanding the health risks from both. This information will underpin our interpretation of the biological effects of exposure to low doses of ionizing radiation. Although qualitative descriptions of differences and/or similarities between the types of damage induced under both conditions will be useful in the design and interpretation of experiments in other parts of the program, there is a need for quantification of the levels of damage induced by normal oxidative processes and incremental increases due to low dose irradiation.

Living organisms are subject to a daily plethora of environmental insults. Carcinogenesis in an individual occurs as a function of all the forces and phenomena that go into the production of that individual's phenotype. These include (but are not limited to) individual genotype, as well as current and historical aspects of diet, physical exercise, and exposures to chemicals and radiation. To understand all factors responsible for individual responses to radiation, we are also soliciting research on key factors that influence the extent of metabolic, endogenously produced oxidative damage and, concomitantly, affect susceptibility to low doses of radiation.

Radio-Adaptive Response—The ability of a low dose of radiation to induce cellular changes that alter the level of subsequent radiation-induced or spontaneous damage. If low doses of radiation regularly and predictably induce a protective response in cells exposed to subsequent low doses of radiation or to spontaneous damage, this could have a substantial impact on estimates of adverse health risk from low dose radiation. The generality and extent of the induction process need to be quantified, and the responsible genes and proteins discovered. By "generality" is meant its applicability to different cell tissue types and species; by "extent" is meant quantification over a range of priming doses, dose rates, and time constants of action.

Bystander effects—Biological responses observed in cells that are not directly traversed by radiation but are neighbors of an irradiated cell. Research is sought to characterize and determine mechanisms of low LET radiation induced bystander effect, and to quantify its induction and extent as a function of dose. Bystanders in cell monolayers have already been shown to respond with gene induction and/or production of clastogenic changes. A detrimental bystander effect, in essence, "amplifies" the biological effects (and the effective radiation dose) of a low dose exposure by effectively increasing the number of cells that experience adverse effects to a number greater than the number of cells directly exposed to radiation. Conversely, bystander cells may exert a protective effect on the irradiated cell or cells, although very few studies to detect this effect have been tried. More importantly, entirely different types or levels of bystander effects may be occurring in three-dimensional tissues, organs, and intact organisms. Hence, only those applications that address effects in tissues, or in tissue-like models, will be considered for funding. New research projects studying bystander effects in isolated cells or cell monolayers will not be considered.

Because applications to study bystander effects are limited to three-dimensional biological models, investigators are also encouraged to propose novel bioimaging protocols for the purpose of *in situ* quantification.

The DOE Low Dose Program is currently funding several projects to develop micro-irradiation devices capable of delivering low doses of low LET radiation to individual cells or to specific parts of individual cells. Investigators are encouraged to use these irradiators, as appropriate, through collaborative means, and funds are available to assist in the collaborative use of these or comparable tools. Information on the microbeam irradiators can be found at: *http://lowdose.tricity.wsu.edu*.

Individual genetic susceptibility to low dose radiation. The Low Dose Radiation Research Program is interested in determining if genetic differences exist that result in increased risk for radiation-induced cancer in sensitive individuals or sub-populations. It may prove to be of value to address the three previously discussed research areas of interest (endogenous damage, radio-adaptive responses, and bystander effects) from the standpoint of genetic susceptibility. A major goal for this solicitation is to support additional work that seeks to identify patterns of genetic polymorphisms significantly impacting radiation sensitivity or resistance and characterizes their mechanism of action. Research should employ genome-wide or proteome-wide high-throughput screening methods that have a chance of ultimately detecting complex, multi-gene patterns indicative of or related to susceptibility. New studies focused only on a single or even a few hundred genes will not be funded.

A new resource that is now available to all Low Dose Program investigators, but might be of particular interest to those proposing research in the area of genetic susceptibility, is a tissue repository containing cells from patients who developed second cancers following total body irradiation and hematopoietic stem cell transplantation (HSCT). Presently there are EBV-transformed cell lines from 25 individuals exposed to radiation who subsequently developed a skin tumor, and an equal number from exposed individuals that have not yet developed a second cancer. A much larger tissue resource will be available in the future. Please contact directly Dr. Jeffrey L. Schwartz, Associate Professor of Radiation Oncology, University of Washington, (206) 598–4091, E-mail: *jschwart@u.washington.edu*, for collaborative opportunities.

General information resources. Information on the Low Dose Radiation Research Program can be found on the web site: *http://lowdose.tricity.wsu.edu*. Prospective proposers are also encouraged to visit the National Center for Biotechnology Information (NCBI) website: *http://www.ncbi.nlm.nih.gov/*, for information on techniques and resources, and especially its Science Primer web site: *http://www.ncbi.nlm.nih.gov/About/primer/snps.html*, for an introduction to single nucleotide polymorphisms (SNPs).

(2) Specifics for the Space Radiation Health Program (NASA)

The NASA/OBPR Space Radiation Health Program is charged with providing input for the determination of health risks to humans visiting the space radiation environment. NASA is especially interested in human exposure to low fluences of high-energy particulate ionizing radiation (protons and heavy ions). Applications whose principal focus is on low LET radiation are encouraged to include complementary research with high-energy particulate ionizing radiation that leverages progress, resources, and technology used for the low LET radiation research. Investigators with currently funded low dose projects may also apply for supplementary funding to address closely related research of interest to NASA.

The primary area of emphasis of the NASA/OBPR Space Radiation Health Program is the development of mechanistic insights into biological effects of space radiation that account for radiation risks. Applications are required to be hypothesis-driven and are expected to obtain their data in ground-based experimental radiobiology studies with protons and high-energy heavy ion beams in the energy range corresponding to space radiation. This is mainly a ground-based program using accelerator facilities to simulate space radiation. In addition to the research topics already described above this includes research on non-phenomenological predictors of late cell and tissue effects and the control and modification of radiation effect mechanisms

A short description of the current Space Radiation Health Strategic Program may be found at: *http://spaceresearch.nasa.gov/common/docs/1998_radiation_strat_plan.pdf*. Activities of OBPR, including research opportunities, descriptions of previous tasks, and other relevant information can be found at: *http://SpaceResearch.nasa.gov*. A description of the ground-based facilities and experimental program at Brookhaven National Laboratory can be found at: *http://www.bnl.gov/medical/NASA/NASA%20Page.htm*. The proton therapy facilities at Loma Linda University Medical Center are described at: *http://www.llu.edu/llu/ci/nasa/*. Finally, a description of the NASA Specialized Center of Research and Training at the Lawrence Berkeley National Laboratory may be found at: *http://www.lbl.gov/lifesciences/NSCORT*.

Scientists working in rapidly developing areas of biological sciences not necessarily associated with the study of radiation are particularly encouraged to consider the contributions that their field of study can make to Radiation Health. Applications are required to provide evidence for expertise in radiation, either by reference to the Principal Investigator's work or by inclusion of active collaborators expert in radiation research. Hypotheses should be substantiated by presentation of preliminary data wherever feasible, or by adequate references to the published literature. Experimental applications should include a clear discussion of the relevant aspects of the required radiation dosimetry and an estimate of the statistical power of the expected results.

Research applications to which NASA will assign high priority:

a. Studies that increase the confidence in the accuracy of extrapolating the probability of radiation-induced genetic

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alterations or carcinogenesis from rodents to humans.

b. Determination of carcinogenic risks following irradiation by protons and HZE particles.

c. Determination if exposure to heavy ions at the level that would occur in deep space poses a risk to the integrity and function of the central nervous system.

d. Studies likely to result in the development of biological countermeasures in humans that could lead to prevention or intervention (including genetic or pharmacological agents) against effects of radiation damage in space.

Research that can lead to future space flight investigations will be welcome, and should take into account the impact of gender, age, nutrition, stress, genetic predisposition, or sensitivity to other factors of importance in managing space radiation risks.

NASA envisions that the selected applications will be structured and operated in a manner that supports the country's educational initiatives and goals (including historically black colleges and universities and other minority universities), and in particular the need to promote scientific and technical education at all levels. NASA envisions that the selected applications will support the goals for public awareness and outreach to the general public. The selected investigators are invited to participate in NASA-funded educational programs.

The applications represent an opportunity to enhance and broaden the public's understanding and appreciation of radiation effects, as specified in the DOE Low Dose Program emphasis on communication of research results and the OBPR Policy for Education and Public Outreach. Therefore, all investigators are strongly encouraged to promote general scientific literacy and public understanding of radiation induced health risk research through formal and/or informal education opportunities. If appropriate, applications should include a clear and concise description of the education and outreach activities proposed. Examples include such items as involvement of students in the research activities, technology transfer plans, public information programs that will inform the general public of the benefits being gained from the research, and/or plans for incorporation of scientific results obtained into educational curricula consistent with educational standards.

Where appropriate, the supported institution will be required to produce, in collaboration with NASA, a plan for communicating to the public the value and importance of their work.

The particles of interest to the Space Radiation Health Program are protons with energies between 20 and 1000 MeV, and nuclei of He, C, N, O, Ne, Si, Ar, Ca, Mn, and Fe, with energies between 50 and 3000 MeV/nucleon. Fluences of interest are of the order of 1–2 particles per cell; studies with higher fluences will need to be justified by compelling arguments, including an explanation of how the results can be applied in the low fluence regime. NASA has developed facilities for use of protons at Loma Linda University Medical School and high-energy heavy ion beams at the Brookhaven National Laboratory Alternating Gradient Synchrotron (AGS). A dedicated irradiation facility, using the Booster Synchrotron at Brookhaven, is under construction and is expected to be operational in 2003. Applications should not budget for the use of beams at these facilities, which is paid by NASA. NASA will cooperate with DOE to expand the range of technical resources available for experimentation and analysis of experimental results at Brookhaven.

(3) Specifics for Glue Grants

The Low Dose Radiation Research Program also announces its interest in receiving applications for the purpose of supporting collaborative work between two or more laboratories, one or more of which should be funded to do low dose-related research. These small grants are primarily designed to support post-doctoral or graduate-student research that will enable laboratories with complementary expertise to develop and apply innovative new approaches to low dose research. Comparative studies between laboratories already using similar experimental approaches are also encouraged. At least one of the applicants must hold a grant focusing on low dose issues. All applicants must have at least 1 year (and preferably 2 years) of support remaining on their core grants at the time of award. Collaborative glue grants can be set up between laboratories funded by such diverse agencies as DOE, NIH/NCI, NASA, DOD, EPA, the European Union, Canada, France, and Japan, but in any case preference will be given to proposed research that is of interest to the DOE Low Dose Radiation Research Program. The proposed collaborative research should add a new dimension or approach to at least one of the studies it is linking. Applications for these small grants must follow the instructions in IIPS for electronic submission. Please note: the Project Description should not exceed five pages.

Program Funding

It is anticipated that up to $4 million will be available from DOE/OBER for new basic research awards during FY 2003, contingent upon the availability of funds. Multiple year funding of grant awards is expected, and is also contingent upon the availability of appropriated funds, progress of the research, and continuing program need. Up to ten 3-year Glue Grants may be awarded, each averaging $60,000 total costs per year. Up to $0.5M will be available from NASA for joint funding of new research in Fiscal Year 2003, also contingent upon the availability of funds. Funds will be available from DOE to assist in the collaborative use of certain microbeam irradiators. NASA provides beam time at the Brookhaven AGS and the Loma Linda proton accelerator; investigators will not be required to pay for the beam time. It is expected that most awards will be from 1 to 3 years and will range from $100,000 to $500,000 per year (total costs).

Collaboration

Applicants are encouraged to collaborate with researchers in other institutions, such as universities, industry, non-profit organizations, federal laboratories and Federally Funded Research and Development Centers (FFRDCs), including the DOE National Laboratories, where appropriate, and to incorporate cost sharing and/or consortia wherever feasible. Additional information on collaboration is available in the Application Guide for the Office of Science Financial Assistance Program that is available via the Internet at: *http://www.sc.doe.gov/production/grants/Colab.html.*

Merit and Relevance Review

Applications will be subjected to scientific merit review (peer review) and will be evaluated against the following evaluation criteria listed in descending order of importance as codified at 10 CFR 605.10(d):

1. Scientific and/or Technical Merit of the Project.
2. Appropriateness of the Proposed Method or Approach.
3. Competency of Applicant's Personnel and Adequacy of Proposed Resources.
4. Reasonableness and Appropriateness of the Proposed Budget.

The evaluation will include program policy factors such as.the relevance of the proposed research to the terms of the announcement and the Department's programmatic needs. External peer reviewers are selected with regard to both their scientific expertise and the absence of conflict-of-interest issues. Non-federal reviewers may be used, and submission of an application constitutes agreement that this is acceptable to the investigator(s) and the submitting institution. Applications found to be scientifically meritorious and programmatically relevant will be selected in consultation with DOE and NASA selecting officials depending upon availability of funds in each agency's budget. In the course of the selection process, projects will be identified as addressing DOE requirements, NASA requirements, or both. The selected projects will be required to acknowledge support by one or both agencies, as appropriate, in all public communications of the research results.

The Application

(Please Note Information Below on Page Limits)

Information about the development and submission of applications, eligibility, limitations, evaluation, selection process, and other policies and procedures may be found in the Application Guide for the Office of Science Financial Assistance Program and 10 CFR part 605. Electronic access to the Guide and required forms is made available via the World Wide Web: *http://www.science.doe.gov/production/grants/guide.html.* DOE is under no obligation to pay for any costs associated with the preparation or submission of applications if an award is not made.

Adherence to type size and line spacing requirements is necessary for several reasons. No applicants should have the advantage of providing more text in their applications by using small type. Small type may also make it difficult for reviewers to read the application. Applications must have 1-inch margins at the top, bottom, and on each side. Type sizes must be 10 point or larger. Line spacing is at the discretion of the applicant but there must be no more than 6 lines per vertical inch of text. Pages should be standard 8½″ × 11″ (or metric A4, *i.e.*, 210 mm × 297 mm). Applications must be written in English, with all budgets in U.S. dollars.

Applicants are asked to use the following ordered format:

- *Face Page* (DOE F 4650.2 (10–91)).
- *Project Abstract Page;* single page only, should contain:
  - —Title,
  - —PI name,
  - —Abstract text should concisely describe the overall project goal in one sentence, and limit background/significance of project to one sentence. Short descriptions of each individual aim should focus on what will actually be done
- *Relevance Statement;* single page only, should identify DOE- or NASA-relevant research that each specific aim is intended to address.
- *Budget pages* for each year and a summary budget page for the entire project period (using DOE F 4620.1).
- *Budget Explanation.*
- Budget pages and budget explanation for each collaborative subproject, if any.
- *Project Description, 20 pages or less,* exclusive of attachments.

Applications with Project Descriptions longer than 20 pages will be returned to applicants and will not be reviewed for scientific merit. (Project Descriptions for Glue Grants should not exceed 5 pages.) The Project Description should contain the following five parts:

- —Goals,
- —Background (concisely-stated, relevant),
- —Experimental Approach,
- —Preliminary Studies (or Progress, if this is a renewal application),
- —Statistical Design and Methodologies
- *Literature Cited.*
- *Collaborative Arrangements* (if applicable).
- *Biographical Sketches* (limit 2 pages per senior investigator, consistent with NIH guidelines).
- *Facilities and Resources* description.
- *Current and Pending Support* for each senior investigator.
- *Letters of Intent* from collaborators (if applicable).

The Office of Science, as part of its grant regulations, requires at 10 CFR 605.11(b) that a recipient receiving a grant to perform research involving recombinant DNA molecules and/or organisms and viruses containing recombinant DNA molecules shall comply with the National Institutes of Health "Guidelines for Research Involving Recombinant DNA Molecules", which is available via the World Wide Web at: *http://www.niehs.nih.gov/odhsb/biosafe/nih/rdna-apr98.pdf,* (59 FR 34496, July 5, 1994), or such later revision of those guidelines as may be published in the **Federal Register**.

DOE requirements for reporting, protection of human and animal subjects and related special matters can be found on the World Wide Web at: *http://www.science.doe.gov/production/grants/Welfare.html.*

The Catalog of Federal Domestic Assistance number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR part 605.

Issued in Washington, DC on October 28, 2002.

John Rodney Clark,

Associate Director of Science for Resource Management.

[FR Doc. 02–27800 Filed 10–31–02; 8:45 am]

BILLING CODE 6450–03–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Idaho National Engineering and Environmental Laboratory

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Idaho National Engineering and Environmental Laboratory. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Tuesday, November 19, 2002, 8 a.m.–6 p.m., Wednesday, November 20, 2002, 8 a.m.–5 p.m.

Public participation sessions will be held on: Tuesday, November 19, 2002, 12:15–12:30 p.m., 5:45–6 p.m., Wednesday, November 20, 2002, 11:45–12 noon, 4–4:15 p.m.

These times are subject to change as the meeting progresses. Please check with the meeting facilitator to confirm these times.

ADDRESSES: West Coast Downtown, 1800 Fairview Avenue, Boise, Idaho 83702, *Reservations:* (208) 344–7691.

FOR FURTHER INFORMATION CONTACT: Ms. Wendy Lowe, Idaho National Engineering and Environmental Laboratory (INEEL) Citizens' Advisory Board (CAB) Facilitator, Jason Associates Corporation, 545 Shoup Avenue, Suite 335B, Idaho Falls, ID 83402, Phone (208) 522–1662 or visit the Board's Internet Home page at *http://www.ida.net/users/cab.*

SUPPLEMENTARY INFORMATION: *Purpose of the Board:* The purpose of the Board is to make recommendations to DOE and its regulators in the areas of future use, cleanup levels, waste disposition and cleanup priorities at the INEEL.

Tentative Agenda Topics: (Agenda topics may change up to the day of the

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meeting. Please contact Jason Associates for the most current agenda or visit the CAB's Internet site at *www.ida.net/users/cab/*.)

- Transition in INEEL's mission to Nuclear Energy
- Possible remedial actions to reduce risks associated with the buried waste at the Radioactive Waste Management Complex
- Performance Management Plan for Accelerating Cleanup and recent activities under the Environmental Management program
- Design for Stage II of the Pit 9 removal action
- Fiscal Year 2003 funding allocation for the INEEL cleanup program
- Final Idaho High-Level Waste and Facilities Disposition Environmental Impact Statement
- Consolidation of spent nuclear fuel into dry storage
- Remediation approach for the V Tanks in Waste Area Group 1 (Test Area North)
- The Draft Remedial Action Work Plan for the Sorting, Sizing and Staging Treatment Facility and the waste acceptance criteria for the INEEL Comprehensive Environmental Response, Compensation, and Liability Act Disposal Facility
- Status of the Waste Incidental to Reprocessing Determination if the lawsuit has been resolved
- Completion of the 3,100 Cubic Meter Project
- Status of Advanced Mixed Waste Treatment Project
- Values and priorities that should inform decisions related to decontamination and decommissioning of facilities at INEEL
- Possible changes in how the CAB issues press releases proposed by the Public Communications Committee
- Possible evaluation of presentations delivered to the CAB

Public Participation: This meeting is open to the public. Written statements may be filed with the Board facilitator either before or after the meeting. Individuals who wish to make oral presentations pertaining to agenda items should contact the Board Chair at the address or telephone number listed above. Request must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer, Jerry Bowman, Assistant Manager for Laboratory Development, Idaho Operations Office, U.S. Department of Energy, is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Every individual wishing to make public comment will be provided equal time to present their comments. Additional time may be made available for public comment during the presentations. This **Federal Register** notice is being published less than 15 days prior to the meeting date due to programmatic issues that had to be resolved prior to the meeting date.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday through Friday except Federal holidays. Minutes will also be available by writing to Ms. Wendy Lowe, INEEL CAB Facilitator, Jason Associates Corporation, 545 Shoup Avenue, Suite 335B, Idaho Falls, ID 83402 or by calling (208) 522–1662.

Issued at Washington, DC on October 28, 2002.

Belinda G. Hood,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 02–27801 Filed 10–31–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL03–7–000, et al.]

Cities of Anaheim, et al.; Electric Rate and Corporate Regulation Filings

October 10, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Cities of Anaheim, Azusa, Banning, and Riverside, California

[Docket No. EL03–7–000]

Take notice that on October 4, 2002, the Cities of Anaheim, Azusa, Banning, and Riverside, California (Southern Cities) filed a Petition for Declaratory Order, Request for Expedited Procedures, and Request for Waiver of Filing Fee. Southern Cities seek a determination of the propriety of a withdrawal provision in the Transmission Control Agreement that will enable them to participate in the California ISO as Participating Transmission Owners.

Comment Date: October 31, 2002.

2. LMB Funding, Limited Partnership

[Docket No. EL03–8–000]

Take notice that on October 4, 2002, LMB Funding, Limited Partnership (Petitioner) filed a Petition for Declaratory Order Disclaiming Jurisdiction and Request for Expedited Consideration. Petitioner is seeking a disclaimer of jurisdiction in connection with a lease financing involving a generating plant of approximately 600 MW to be located in Lower Mount Bethel Township, Northampton County, Pennsylvania.

Comment Date: November 4, 2002.

3. Westar Generating, Inc.

[Docket Nos. ER01–1305–004]

Take notice that on October 7, 2002, in compliance with the Commission's September 5, 2002 "Order Conditionally Approving Uncontested Settlement," 100 FERC ¶ 61,255 (2002), in the above-referenced dockets, Westar Generating, Inc. (Westar) submitted a new Order 614 designation for the Purchase Power Agreement between Westar and Western Resources, Inc. (Western), and changes to Section 3.2 of Article III of the Settlement Agreement as required by the Order in the above-referenced proceedings.

A copy of this filing was served on every participant to the proceedings.

Comment Date: October 28, 2002.

4. Southwest Power Pool, Inc.

[Docket Nos. ER02–1705–003]

Take notice that on October 7, 2002, Southwest Power Pool, Inc. (SPP) submitted for filing the compliance filing required by the Federal Energy Regulatory Commission's September 5, 2002 issued in the proceeding listed above. Southwest Power Pool, Inc., 100 FERC ¶ 61,248.

Comment Date: October 28, 2002.

5. Duke Energy Corporations

[Docket No. ER02–2008–002]

Take notice that on October 7, 2002, in compliance with the Commission's order in Docket Nos. ER02–2008–000 and ER02–2008–001 issued September 5, 2002, Duke Energy Corp., 100 FERC 61,251, Duke Energy Corporation, on behalf of Duke Electric Transmission, filed a revised Interconnection and Operating Agreement by and between Duke Electric Transmission and GenPower Anderson, LLC. The Interconnection and Operating Agreement was made effective as of September 9, 2002 by the Commission.

Comment Date: October 28, 2002.

6. New England Power Pool and ISO New England Inc.

[Docket Nos. ER02–2330–001 and EL00–62–052]

Take notice that on October 7, 2002, New England Power Pool and ISO New England Inc. tendered for filing with the Federal Energy Regulatory Commission (Commission) a Compliance Filing in response to the Commission's September 20, 2002 Order issued in the above proceedings. Copies of these materials were sent to the NEPOOL

Participants, Non-Participant Transmission Customers and the New England state governors and regulatory commission.

Comment Date: October 28, 2002.

7. Pinnacle West Capital Corporation

[Docket No. ER02–2385–001]

Take notice that on October 8, 2002, Pinnacle West Capital Corporation (PWCC) tendered for filing a refund report for the time value of revenues received from Phelps Dodge Energy Services (PDES).

A copy of this filing has been served on PDES.

Comment Date: October 29, 2002.

8. Westar Energy, Inc.

[Docket No. ER03–9–001]

Take notice that on October 8, 2002, Westar Energy, Inc. (Westar Energy) filed an errata to its Notification of Change in Status and Petition for Acceptance of Revised Market Rate Schedules. The errata corrects the proposed tariff sheets to comply with Order No. 614.

Comment Date: October 29, 2002.

9. El Paso Electric Company

[Docket No.ER03–23–000]

Take notice that on October 8, 2002, El Paso Electric Company (EPE) tendered for filing eight umbrella service agreements for firm transmission service, two umbrella service agreements for non-firm transmission service, and seven service agreements and accompanying specification sheets for firm transmission service transactions of exactly one year (collectively, TSAs) between EPE and nine of its customers. The rates, terms, and conditions of the TSAs are those of EPE's Open Access Transmission Tariff (OATT). EPE seeks effective dates for the TSAs in accordance with their service commencement dates.

Comment Date: October 29, 2002.

10. Los Esteros Critical Energy Facility, LLC

[Docket No. ER03–24–000]

Take notice that on October 8, 2002, Los Esteros Critical Energy Facility, LLC (Los Esteros) tendered for filing, under section'205 of the Federal Power Act, a request for authorization to make wholesale sales of electric energy, capacity and ancillary services at market-based rates, to reassign transmission capacity, and to resell firm transmission rights. Los Esteros proposes to own and operate an approximately 180 megawatt simple cycle natural gas-fired generation facility located in Santa Clara County, California.

Comment Date: October 29, 2002.

11. Blue Spruce Energy Center, LLC

[Docket No. ER03–25–000]

Take notice that on October 8, 2002, Blue Spruce Energy Center, LLC (the Applicant) tendered for filing, under section'205 of the Federal Power Act (FPA), a request for authorization to make wholesale sales of electric energy, capacity, replacement reserves, and ancillary services at market-based rates, to reassign transmission capacity, and to resell firm transmission rights. Applicant proposes to own and operate a 300 MW gas fired, simple cycle electric generating facility in Aurora, Colorado.

Comment Date: October 29, 2002.

12. Wisconsin Electric Power Company

[Docket No. ER03–26–000]

Take notice that on October 8, 2002, Wisconsin Electric Power Company (Wisconsin Electric) tendered for filing revisions to the Wisconsin Corporation Operating Companies (WEC Operating Companies) Joint Ancillary Services Tariff. (WEC Operating Companies FERC Electric Tariff, Original Volume No. 2) Wisconsin Electric respectfully requests an effective date October 15, 2002.

Comment Date: October 29, 2002.

13. Edison Sault Electric Company

[Docket No. ES03–3–000]

Take notice that on October 2, 2002, Edison Sault Electric Company (Edison Sault) filed an application pursuant to section 204 of the Federal Power Act seeking authorization to issue, over a two-year period, long-term and short-term debt to its parent company, Wisconsin Energy Corporation, and/or short term debt to other third-party lenders, with no more than $50 million outstanding at any one time. Edison Sault also requests a waiver of the Commission's competitive bidding and negotiated placement requirements at 18 CFR 34.2.

Comment Date: October 23, 2002.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–27903 Filed 10–31–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–2227–001, et al.]

Creed Energy Center, LLC, et al.; Electric Rate and Corporate Regulation Filings

October 15, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Creed Energy Center, LLC

[Docket No. ER02–2227–001]

Take notice that on October 10, 2002, Creed Energy Center, LLC tendered for filing a revised rate schedule to correct an error in the name of the company.

Comment Date: October 31, 2002

2. RockGen Energy LLC

[Docket No. ER02–2314–001]

Take notice that on October 10, 2002, RockGen Energy LLC (the Applicant) tendered for filing with the Federal Energy Regulatory Commission (Commission), under section'205 of the Federal Power Act, a compliance filing pursuant to the Commission's September 10, 2002 Order in the above-captioned proceeding.

Comment Date: October 31, 2002.

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3. Allegheny Energy Service Corporation, on behalf of Monongahela Power Company, The Potomac Edison Company, and West Penn Power Company (Allegheny Power)

[Docket No. ER02–2561–001]

Take notice that on October 10, 2002, Allegheny Energy Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company, and West Penn Power Company (Allegheny Power), filed an amendment to its Interconnection Agreement (Agreement) with Mill Run Windpower LLC as First Revised Sheet No. 12 to First Revised Service Agreement No. 345 under Allegheny Power's Open Access Transmission Tariff. The proposed effective date for First Revised Sheet No.12 to First Revised Service Agreement No. 345 is September 20, 2002.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, and the West Virginia Public Service Commission.

Comment Date: October 31, 2002.

4. NorthWestern Energy, L.L.C.

[Docket No. ER02–2569–000]

Take notice that on October 4, 2002 NorthWestern Energy, L.L.C. (NWE) filed with the Federal Energy Regulatory Commission (Commission) pages of Exhibit No. NWE–3 that were inadvertently omitted from NWE's September 20, 2002 filing with the Commission. On October 7, 2002, NWE filed a few more pages to Exhibit No. NWE–3 that were inadvertently omitted from the October 4, 2002 filing.

Comment Date: October 28, 2002.

5. CP Power Sales Eighteen, L.L.C.

[Docket No. ER03–30–000]

Take notice that on October 10, 2002, CP Power Sales Eighteen, L.L.C. tendered for filing a Notice of Succession. Effective September 10, 2002, CP Power Sales Eighteen, L.L.C. changed its name to Midwest Generation Energy Services, LLC.

Comment Date: October 31, 2002.

6. The United Illuminating Company

[Docket No. ER03–31–000]

Take notice that on October 10, 2002, The United Illuminating Company (The United Illuminating Company) tendered for filing with the Federal Energy Regulatory Commission (Commission) an Interconnection Agreement between UI and Cross-Sound Cable Company, LLC , executed pursuant to UI's Open Access Transmission Tariff, FERC Electric Tariff, Original Volume No. 4, as amended.

Comment Date: October 31, 2002.

7. Virginia Electric and Power Company

[Docket Nos. ER03–32–000]

Take notice that on October 10, 2002 Virginia Electric and Power Company (Dominion Virginia Power), tendered for filing revisions to its Amended and Restated Interconnection and Operating Agreement (I&O Agreement), First Revised Rate Schedule FERC No. 126, between Dominion Virginia Power and Old Dominion Electric Cooperative (Old Dominion). The revisions address generation reserves in Section 8.05(a), operating costs in Section 11.01, reserve capacity charges in Appendix I and the appropriate billing format in Appendix L.

Dominion Virginia Power respectfully requests that the Commission allow the revised I&O Agreement to become effective on January 1, 2001 and allow the revisions in Section 8.05(a) and Appendix I to become effective as of January 1, 2002.

Copies of the filing were served upon Old Dominion, the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment Date: October 31, 2002.

8. Duquesne Light Company

[Docket No. ER03–33–000]

Take notice that on October 11, 2002, Duquesne Light Company (DLC) filed a Service Agreement for Retail Network Integration Transmission Service and a Network Operating Agreement for Retail Network Integration Transmission Service dated October 11, 2002 with Constellation NewEnergy, Inc. under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement and Network Operating Agreement adds Constellation NewEnergy, Inc. as a customer under the Tariff. DLC requests an effective date of October 11, 2002 for the Service Agreement.

Comment Date: November 1, 2002.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–27904 Filed 10–31–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7403–2]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; NSPS for Glass Manufacturing Plants (40 CFR Part 60, Subpart CC)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Title: NSPS for Glass Manufacturing Plants (40 CFR part 60, subpart CC), OMB Control Number 2060–0054, expiration date October 31, 2002. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before December 2, 2002.

ADDRESSES: Send comments, referencing EPA ICR Number 1131.07 and OMB Control Number 2060–0054, to the following addresses: Susan Auby, United States Environmental Protection Agency, Collection Strategies Division (Mail Code 2822T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0001; and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR, contact Susan Auby at EPA by phone at: (202) 566–1672, by E-Mail to: *auby.susan@epa.gov*, or download from the Internet at: *http://www.epa.gov/icr*, and refer to EPA ICR Number 1131.07. For technical questions about the ICR, contact Gregory Fried, Air, Hazardous Waste and Toxics Branch, at (202) 564–7016.

SUPPLEMENTARY INFORMATION:

Title: NSPS for Glass Manufacturing Plants (40 CFR part 60, subpart CC), OMB Control Number 2060–0054, EPA ICR Number 1131.07, expiration date October 31, 2002. This is a request for extension of a currently approved collection.

Abstract: The NSPS for Glass Manufacturing Plants (40 CFR part 60, subpart CC) were proposed on June 15, 1979 and promulgated on October 7, 1980, and amended October 19, 1984. Approximately 45 sources are currently subject to the standard, and it is estimated that no additional sources will become subject to the standard in the next three years. The standards do not apply to hand glass melting furnaces, glass melting furnaces designed to produce less than 4,550 kilograms of glass per day, or all-electric melters. Experimental furnaces are not subject to the emission standards at 40 CFR 60.292. The standards set particulate matter emission limits. There are separate limits for sources using "modified-process" glass melting furnaces. Modified-process is defined as any technique designed to minimize emissions without add-on controls. Emission limits are specific for the type of glass produced, and are listed at 40 CFR 60.292(a) and 60.293(b).

Owners or operators of the affected facilities described must make initial notifications, conduct and report on a performance test, demonstrate and report on continuous monitor performance, maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility. Semiannual reports of excess emissions are required. These notifications, reports, and records are required, in general, for all sources subject to NSPS. The recordkeeping and reporting requirements specific to glass manufacturing plants are detailed in the CFR. This information is being collected to assure compliance with 40 CFR part 60, subpart CC.

Any owner or operator subject to the provisions of this part shall maintain a file of these measurements, and retain the file for at least two years following the date of such measurements, maintenance reports, and records. All reports are sent to the delegated State or local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA Regional Office.

In the Administrator's judgment, particulate matter emissions from glass manufacturing plants cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. Therefore, NSPS were promulgated for this source category at 40 CFR part 60, subpart CC.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on October 29, 2001. Comments were not received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 7 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Glass manufacturing plants.

Estimated Number of Respondents: 45.

Frequency of Response: Initial, semiannual, and on occasion.

Estimated Total Annual Hour Burden: 590.

Estimated Total Annualized Capital, O&M Cost Burden: $261,000.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the addresses listed above. Please refer to EPA ICR Number 1131.07 and OMB Control Number 2060–0054 in any correspondence.

Dated: October 24, 2002.

Doreen Sterling,

Acting Director, Collection Strategies Division.

[FR Doc. 02–27835 Filed 10–31–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7403–3]

Agency Information Collection Activities: Submission for OMB Review; Comment Request, Reporting Requirements Under EPA's Voluntary Aluminum Industrial Partnership

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Title: Reporting Requirements under EPA's Voluntary Aluminum Industrial Partnership. OMB Control Number 2060–0411, expiration date 10/31/02. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before December 2, 2002.

ADDRESSES: Send comments, referencing EPA ICR No. 1867.02 and OMB Control No. 2060–0411, to the following addresses: Susan Auby, U.S. Environmental Protection Agency, Collection Strategies Division (Mail Code 2822T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0001; and to Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR contact Susan Auby at EPA by phone at (202) 566–1672, by E-Mail at *Auby.Susan@epamail.epa.gov* or download off the Internet at *http://www.epa.gov/icr* and refer to EPA ICR No. 1867.02. For technical questions about the ICR contact Jerome Blackman

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at (202) 564–8995; email at *Blackman.jerome@epa.gov.*

SUPPLEMENTARY INFORMATION:

Title: Reporting Requirements under EPA's Voluntary Aluminum Industrial Partnership, OMB Control Number 2060–0411, EPA ICR Number 1867.02, expiration date 10/31/02. This is a request for extension of a currently approved collection.

Abstract: EPA's Voluntary Aluminum Industrial Partnership (VAIP) was initiated in 1995 and is an important voluntary program contributing to the overall reduction in emissions of greenhouse gases. This program focuses on reducing per fluorocarbon (PFC) emission from the production of primary aluminum. Eight of the nine U.S. producers of primary aluminum participate in this program. PFCs are very potent greenhouse gases with global warming potentials several thousand times that of carbon dioxide and they persist in the atmosphere for thousands of years. EPA has developed this ICR to renew authorization to collect information from companies in the VAIP. Participants voluntarily agree to the following: designating a VAIP liaison; undertaking technically feasible and cost-effective actions to reduce PFC emissions; and reporting to EPA, on an annual basis, the PFC emissions or production parameters used to estimate emissions. The information contained in the annual reports of VAIP members is used by EPA to assess the success of the program in achieving its goals. The information contained in the annual reports may be considered confidential business information and is maintained as such.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on August 12, 2002. No comments were received.

Burden Statement: The annual track reporting and recordkeeping burden for this collection of information is estimated to be roughly 73 hours per respondent. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

- *Estimated Number of Respondents:* 8.
- *Frequency of Response:* Annually.
- *Estimated Total Annual Hour Burden:* 584.
- *Estimated Total Annualized Capital, O& M Cost Burden:* $0.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the addresses listed above. Please refer to EPA ICR No. 1867.02 and OMB Control No. 2060–0411 in any correspondence.

Dated: October 24, 2002.

Doreen Sterling,

Acting Director, Collection Strategies Division.

[FR Doc. 02–27836 Filed 10–31–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7403–1]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; NPDES Storm Water Program Phase II

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: NPDES Storm Water Program Phase II, OMB Control Number 2040–0211, expiration date October 31, 2002. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before December 2, 2002.

ADDRESSES: Send comments, referencing EPA ICR No. 1820.03 and OMB Control No. 2040–0211, to the following addresses: Susan Auby, U.S. Environmental Protection Agency, Collection Strategies Division (Mail Code 2822T), 1200 Pennsylvania Avenue, NW, Washington, DC 20460–0001; and to Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR contact Susan Auby at EPA by phone at (202) 566–1672, by E-Mail at *auby.susan@epa.gov* or download off the Internet at *http://www.epa.gov/icr* and refer to EPA ICR No. 1820.03. For technical questions about the ICR contact Jack Faulk at (202) 564–0768 or via E-Mail at *faulk.jack@epa.gov.*

SUPPLEMENTARY INFORMATION:

Title: NPDES Storm Water Program Phase II, OMB Control Number 2040–0211, EPA ICR Number 1820.03, expiration date October 31, 2002. This is a request for extension of a currently approved collection.

Abstract: This ICR addresses Phase II of the NPDES storm water program. Under the Phase II rule, EPA regulates storm water discharges from construction sites with activities disturbing equal to or greater than one acre and less than five acres of land, and small municipal separate storm sewer systems (MS4s) located in Bureau of the Census-designated "urbanized areas." Additional construction sites and small MS4s may be designated by the NPDES permitting authority. NPDES permits provide the mechanism for establishing appropriate controls on these Phase II sources. The Phase II rule also includes a provision that allows industrial facilities regulated under Phase I of the NPDES storm water program to obtain an exclusion from NPDES permitting requirements if they can certify to a condition of "no exposure" on their site.

Permits were not required for small construction sites and regulated small MS4s during the first three years of the program. The data collection effort during this first three-year period was limited to the submittal and review of no exposure certifications and some preliminary Agency work in developing specific program elements. A significant increase in burden for this ICR is the product of that fact.

After general permits for small MS4s and small construction sites are issued in December of 2002, NPDES permitting authorities, including the Water Permits Division of the EPA Office of Wastewater Management, intend to use the data contained in storm water permit applications, construction waiver certifications, storm water pollution prevention plans (SWPPPs), no exposure certifications, and reports to set appropriate permit conditions, track discharges covered by storm water permits, and assess permit compliance. Other organizations, including EPA's Office of Enforcement and Compliance Assurance environmental groups, will most likely use the same collected information to assess the regulated community's level of compliance and to measure the overall effectiveness of the NPDES storm water program.

It is expected that respondents will submit information in hard copy form. The information from them will be entered into a computer database and the original document will be filed. The information will be submitted by the respondents directly to each NPDES-authorized State or Territory, or to EPA in areas where EPA is the NPDES permitting authority. Plans are underway to allow electronic submission of much of the required information but these options are not included in the ICR. At the time those options become available, EPA will update this information collection to reflect a revised burden estimate.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on July 16, 2002; no comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 21 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: NPDES permittees, including operators of small municipal separate storm sewer systems, small construction activity, and industrial facilities identified in 40 CFR 122.26(b)(14)(i)–(ix) and (xi) that qualify for a no exposure exemption.

Estimated Number of Respondents: 327,163.

Frequency of Response: Varies.

Estimated Total Annual Hour Burden: 3,873,197.

Estimated Total Annualized Capital, O&M Cost Burden: $0.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the addresses listed above. Please refer to EPA ICR No. 1820.03 and OMB Control No. 2040–0211 in any correspondence.

Dated: October 22, 2002.

Doreen Sterling,

Acting Director, Collection Strategies Division.

[FR Doc. 02–27837 Filed 10–31–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6634–5]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/compliance/nepa/.*

Weekly receipt of Environmental Impact Statements.

Filed October 21, 2002, through October 25, 2002.

Pursuant to 40 CFR 1506.9.

EIS No. 020438, DRAFT EIS, NPS, NC, Carl Sandburg Home National Historic Site, General Management Plan, implementation, located in the Village of Flat Rick, Henderson County, NC, comment period ends: December 16, 2002, contact: Tim Bemisderser (404) 562–3124 ext.693.

EIS No. 020439, DRAFT EIS, FRC, ID, Bear River Hydroelectric Project, application for a new license (relicense) for three existing hydroelectric projects: Soda (FERC No. 20–019), Grace-Cove (FERC No. 2401–007) and Oneida (FERC No. 472–017), Bear River Basin, Caribou and Franklin Counties, ID, comment period ends: December 31, 2002, contact: Susan O'Brien (202) 502–8449.

EIS No. 020440, FINAL EIS, IBR, AZ, Reach 11 Recreation Master Plan, Central Arizona Project (CAP) Canal, between Cave Creek and Scottsdale Roads, for recreational purposes, Flood Detention Basin, city of Phoenix, Maricopa County, AZ, wait period ends: December 2, 2002, contact: Sandra Eto (602) 216–3857. This document is available on the Internet at: (*http://www.apo.lc.usbr.gov.*)

EIS No. 020441, DRAFT EIS, FRC, WV, NC, VA, Greenbrier Pipeline Project, (Docket Nos. CPO 2–396–000 and PF 01–1–000), propose to construct and operate a natural gas pipeline and associated above ground facilities, extending from east of Clendenin, Kanawha County, WV, VA and Granville County, NC, comment period ends: December 16, 2002, contact: Magalie R. Salas (202) 502–8659. This document is available on the Internet at: (*http://www.ferc.gov.*)

EIS No. 020442, DRAFT EIS, COE, FL, Ona Mine Project, proposes to construct and operate a surface mine for the recovery of phosphate rock, in Western Hardee County, FL, comment period ends: December 16, 2002, contact: Charles A. Schnepel (813) 840–2908. This document is available on the Internet at: *www.saj.usace.army.mil/permit/hot-topies/hot-topics.htm.*

EIS No. 020443, DRAFT EIS, NRC, FL, Generic EIS–License renewal of nuclear plants for the St. Lucie Units 1 and 2, Supplement 11, NUREG–1437, implementation, Hutchinson Island, St. Lucie County, FL, comment period ends: January 15, 2003, contact: Dr. Michael T. Masnik (301) 415–1191. This document is available on the Internet at: *http://www.nrc.gov/Reading-rm.html.*

EIS No. 020444, DRAFT EIS, FTA, NC, South Corridor Light Rail Project, to provide light rail service between the town of Pineville and Charlotte's downtown, city of Charlotte, Charlotte-Mecklenburg County, NC, comment period ends: December 16, 2002, contact: Alex McNeil (404) 564–3511.

Amended Notices

EIS No. 010305, DRAFT SUPPLEMENT, FAA, MN, Flying Cloud Airport, substantive changes to alternatives and new information, extension of the runways 9R/27L and 9L/27R, long-term comprehensive development, in the city of Eden Prairie, Hennepin County, MN, due: January 22, 2003, contact: Glen Orcutt (612) 713–4354. Revision of FR notice published on 8/30/2002: CEQ comment period ending

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10/25/2002 has been extended to 1/22/2003.

EIS No. 220343, DRAFT EIS, SFW, CA, Natomas Basin Habitat Conservation Plan, issuance of incidental take permit and the adoption of an implementing agreement or agreements, Natomas Basin, Sacramento and Sutter Counties, CA, due: October 28, 2002, contact: Vicki Campbell (916) 414–6600. Revision of FR notice published on 10/11/2002: CEQ comment period ending on 10/28/2002 has been extended to 12/2/2002.

Dated: October 29, 2002.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 02–27826 Filed 10–31–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6634–6]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 12, 2002 (67 FR 17992).

Draft EISs

ERP No. D–AFS–K65245–AZ Rating EC2, Kachina Village Forest Health Project, forest health improvements and wildfire reduction potentials on national forest system land, implementation, Coconino National Forest, Mormon Lake Ranger District, Coconino County, AZ.

Summary: EPA expressed environmental concerns related to transportation system planning, fire risk conditions on adjacent private lands, ecological justification for harvesting large trees, funding for mitigation and details of road decommissioning. EPA requested this information be included in the final EIS.

ERP No. D–AFS–K65246–AZ Rating LO, Flagstaff/Lake Mary ecosystem analyses area, amendment to the Coconino Forest Plan, implementation, Coconino National Forest, Peaks and Mormon Lake Ranger Districts, Coconino County, AZ.

Summary: EPA has no objections to the proposed action.

ERP No. D–AFS–K65364–CA Rating LO, Red Star Restoration Project, removal of fire-killed trees, fuel reduction, road reconstruction and decommissioning and associated restoration, Tahoe National Forest, Foresthill Ranger District, Placer County, CA.

Summary: EPA had no objections to the proposed project, given that the ecological restoration activities, including road decommissioning, mitigation measures, and monitoring are implemented as described in the Draft EIS.

ERP No. D–BLM–K65242–CA Rating LO, Coachella Valley California Desert Conservation Area Plan Amendment, Santa Rosa and San Jacinto Mountains Trails Management Plan, implementation, Riverside and San Bernardino Counties, CA.

Summary: EPA had no objections to the proposed plan, and requested that additional information concerning adaptive management and monitoring be provided in the Final EIS.

ERP No. D–BPA–L08062–WA Rating EC2, Grand Coulee-Bell 500–kV Transmission Line Project, construction and operation, U.S. Army COE section 10 permit issuance, Douglas, Lincoln, Grant Spokane Counties, WA.

Summary: EPA expressed environmental concerns regarding the alternatives, air quality, cultural resources, water quality, characterization of expected effects and threatened and endangered species. EPA requested additional information be added to the EIS to more fully discuss alternative actions, how the project will comply with existing TMDLs, clearly define resources at risk and include a biological assessment.

ERP No. D–COE–G01015–TX Rating LO, Three Oaks Mine Project, construction and operation of a surface lignite mine, U.S. Amry COE section 404 permit issuance, Lee and Bastrop Counties, TX.

Summary: EPA has no objections to the selection of the preferred alternative. EPA requested that clarification information be added to several items to strengthen the Final EIS.

ERP No. D–NPS–K65244–CA Rating LO, Yosemite Fire Management Plan, alternative for carrying out the fire management program, implementation, Yosemite National Park, Sierra Nevada, Mariposa, Tuolumne, Madera and Mono Counties, CA.

Summary: EPA had no objections to the proposed plan and commended the Park Service for its thorough and user friendly Draft EIS.

ERP No. DS–AFS–J65314–MT Rating LO, Meadow Smith Project, new and additional information concerning management actions designed to maintain the presence of and protect the unique characteristics of open-grow, large-tree ponderosa pine and western larch forest communities, Flathead National Forest, Swan Lake Ranger District, Lake and Missoula Counties, MT.

Summary: EPA expressed lack of objections and noted opportunities for increased mitigation measures with no more than minor changes to the proposed action resulting in improved aquatic health, especially improved fish passage.

Final EISs

ERP No. F–BLM–K65231–CA, Northern and Eastern Mojave Planning Area (NEMO), California Desert Conservation Area Plan Amendments, implementation Mojave Desert, CA.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–BLM–K65330–CA, Northern and Eastern Colorado Desert Plan (Plan), implementation, comprehensive framework for managing species and habitats (BLM), Joshua Tree National Park (JTNP) and Chocolate Mountains Aerial Gunnery Range, California Desert, Riverside, Imperial and San Bernardino Counties, CA.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–NPS–K65229–CA, Santa Cruz Island Primary Restoration Plan, implementation, Channel Island National Park, Santa Cruz Island, Santa Barbara County, CA.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. FA–NOA–E91007–00, South Atlantic Region Shrimp Fishery Management Plan, amendment 5, additional information concerning rock shrimp in the Exclusive Economic Zone (EEZ), NC, SC, FL and GA.

Summary: EPA's previous issues have been resolved. Therefore, EPA has no objection to the proposed action and supports additional future amendments describing actions intended to generate data on bycatch and characteristics of rock shrimp essential habitats.

Dated: October 29, 2002.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 02–27827 Filed 10–31–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7392–3]

Asthma Research Strategy

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability of a final document.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is announcing the availability of a final document, *Asthma Research Strategy*, EPA 600/R–01/061. The *Asthma Research Strategy* serves to guide the planning of EPA research efforts led by the Office of Research and Development (ORD) to address the significant issues of exposures, effects, risk assessment, and risk management of environmental pollutants relevant to asthma.

ADDRESSES: A limited number of copies of the *Asthma Research Strategy* are available from EPA's National Service Center for Environmental Publications (NSCEP) in Cincinnati, Ohio (telephone: 1–800–490–9198 or 513–489–8190). Please provide the title and the EPA number when ordering from NSCEP. Internet users may download a copy from EPA's ORD home page at *http://www.epa.gov/ORD.*

FOR FURTHER INFORMATION CONTACT: James Raub, National Center for Environmental Assessment/Research Triangle Park Office (MD–B–243–01), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; telephone: 919–541–4157; facsimile: 919–541–1818; e-mail: *raub.james@epa.gov.*

SUPPLEMENTARY INFORMATION: The *Asthma Research Strategy* was developed in light of increasing rates of asthma, particularly in children, in the United States. Since the EPA is required to set pollutant standards to protect susceptible populations, a coordinated research effort is needed to study environmental pollutants that influence the incidence and severity of asthma. EPA has developed a plan to coordinate research efforts aimed at addressing the following issues: Factors contributing to the induction and exacerbation of asthma (*e.g.*, combustion-related products, bioaerosols, and air toxics); susceptibility factors contributing to asthma (*e.g.*, genetics, health status, socioeconomic status, residence and exposure history, and lifestyle and activity patterns); and risk assessment and risk management of environmental pollutants relevant to asthma. The *Asthma Research Strategy* identifies and prioritizes the research needed to provide information to close the gaps in our knowledge of asthma and to control environmental factors that contribute to the prevalence and severity of asthma. The Strategy supplements and expands on other U.S. agency efforts to better understand this complex disease.

Asthma is characterized by chronic airway inflammation, mucus secretion, airway remodeling, and reversible airway obstruction. The disease has a definite genetic component, and can be caused by a variety of factors. In susceptible individuals, the inflammation causes recurrent episodes of wheezing, breathlessness, chest tightness, and cough particularly at night and/or early morning. Airflow obstruction usually associated with these symptoms is partly reversible either spontaneously or with treatment. Inflammation also causes an increase in airway responsiveness to a variety of stimuli. Most types of asthma are linked to allergic responses to common aeroallergens present in the indoor and outdoor environment. Common allergens include: house-dust mites, cockroaches, animal secretions, pollens, and molds. Exacerbation of asthma may occur with subsequent re-exposure to allergens or by exposure to a number of nonspecific triggers such as respiratory viruses, tobacco smoke, or certain air pollutants.

EPA has prepared the *Asthma Research Strategy* to strengthen the scientific foundation of the EPA risk assessments and risk management decisions. Agency research strategies provide a framework of research needs and priorities to guide its programs over the next 5 to 10 years. The Strategy includes a stable, long-term, core program of research in hazard identification, dose-response and exposure assessment, and risk reduction, as well as problem-oriented research that addresses current critical needs identified by EPA program offices and regions.

This *Asthma Research Strategy* was subjected to external peer review by independent scientific experts. The final Strategy reflects the comments of both internal and external peer review.

Dated: October 2, 2002.

Paul Gilman,

Assistant Administrator for Research and Development.

[FR Doc. 02–27829 Filed 10–31–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7375–2]

Proposed CERCLA Section 122(h) Administrative Settlement; Martin Young And the Martin Young Trust, Yonkelowitz Junkyard Site, Hoopeston, Vermilion County, Illinois

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement for recovery of past response costs concerning the Yonkelowitz Junkyard Site in Hoopeston, Vermilion County, Illinois with the following settling parties: Martin Young and the Martin Young Trust. The settlement requires Martin Young to pay $50,000 to the Hazardous Substance Superfund. Also, the settlement requires the Martin Young Trust to pay to the Hazardous Substance Superfund, within 60 days of receipt, all proceeds received from the sale, lease, transfer, mortgage, grant of, or conveyance of any interest, etc. in property located at the northwest corner of the intersection of First Avenue and Main Street, Hoopeston, Vermilion County, Illinois. The settlement includes a covenant not to sue the settling parties pursuant to section 107(a) of CERCLA, 42 U.S.C. 9607(a), with respect to past response costs. For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at the United States Environmental Protection Agency, Region 5, 77 West Jackson Blvd., Chicago, Illinois 60604–3590.

DATES: Comments must be submitted on or before December 2, 2002.

ADDRESSES: The proposed settlement is available for public inspection at the United States Environmental Protection Agency, Region 5, 77 West Jackson Blvd., Chicago, Illinois 60604–3590. A copy of the proposed settlement may be

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obtained from Sally Jansen, Environmental Specialist, United States Environmental Protection Agency, Region 5, 77 West Jackson Blvd. (SE–5J), Chicago, Illinois 60604–3590, (312) 353–9046. Comments should reference the Yonkelowitz Junkyard Site, Hoopeston, Vermilion County, Illinois and EPA Docket No. V–W–'02–C–690 and should be addressed to Diana Embil, Associate Regional Counsel, United States Environmental Protection Agency, Region 5, 77 West Jackson Blvd. (C–14J), Chicago, Illinois 60604–3590, (312) 886–7889.

FOR FURTHER INFORMATION CONTACT: Diana Embil, Associate Regional Counsel, United States Environmental Protection Agency, Region 5, 77 West Jackson Blvd. (C–14J), Chicago, Illinois 60604–3590, (312) 886–7889.

Dated: April 29, 2002.

William E. Muno,

Director, Superfund Division, Evionmental Protection Agency, Region 5.

[FR Doc. 02–27832 Filed 10–31–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7403–4]

Clean Water Act Class II: Proposed Administrative Penalty Assessments and Opportunities To Comment Regarding Pick Your Part Auto Wrecking—Chula Vista; Pick Your Part Auto Wrecking—Help Yourself; Pick Your Part Auto Wrecking—Santa Paula; Pick Your Part Auto Wrecking—Sun Valley; Pick Your Part Auto Wrecking—Wilmington

AGENCY: Environmental Protection Agency ("EPA").

ACTION: Notice.

SUMMARY: EPA is providing notice of five proposed administrative penalty assessments for alleged violations of the Clean Water Act ("Act"). EPA is also providing notice of opportunity to comment on the proposed assessments.

EPA is authorized under section 309(g) of the Act, 33 U.S.C. 1319(g), to assess a civil penalty after providing the person subject to the penalty notice of the proposed penalty and the opportunity for a hearing, and after providing interested persons notice of the proposed penalty and a reasonable opportunity to comment on its issuance. Under section 309(g), any person who has violated the conditions of a National Pollutant Discharge Elimination System permit may be assessed a penalty in a "Class II" administrative penalty proceeding. Class II proceedings under section 309(g) are conducted in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits," 40 CFR part 22 ("Consolidated Rules"), published at 64 FR 40138, 40177 (July 23, 1999).

On September 30, 2002, EPA commenced the following Class II proceedings for the assessment of penalties by filing with Danielle Carr, Regional Hearing Clerk, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, California 94105, (415) 972–3871, the following Complaints:

In the Matter of Pick Your Part Auto Wrecking—Chula Vista, Docket No. CWA–9–2002–01; Pick Your Part Auto Wrecking—Help Yourself, Docket No. CWA–9–2002–07; Pick Your Part Auto Wrecking—Santa Paula, Docket No. CWA–9–2002–08; Pick Your Part Auto Wrecking—Sun Valley, Docket No. CWA–9–2002–09; Pick Your Part Auto Wrecking—Wilmington, Docket No. CWA–9–2002–10.

Each Complaint proposes a penalty of up to One Hundred Thirty Seven Thousand, Five Hundred Dollars ($137,500) for violations of NPDES Permit No. CAS000001 (issued by the California State Water Resources Control Board (Order No. 97–03–DWQ)) and sections 301(a) and 308(a) of the Act, 33 U.S.C. 1311(a), 1318(a), at Pick Your Part facilities in Chula Vista, Santa Paula, Sun Valley, and Wilmington, California.

The procedures by which the public may comment on a proposed Class II penalty or participate in a Class II penalty proceeding are set forth in the Consolidated Rules. The deadline for submitting public comment on a proposed Class II penalty is thirty (30) days after issuance of public notice. The Regional Administrator of EPA, Region 9, may issue an order upon default if the respondent in the proceeding fails to file a response within the time period specified in the Consolidated Rules.

FOR FURTHER INFORMATION CONTACT: Persons wishing to receive a copy of EPA's Consolidated Rules, review one or more of the Complaints, or other documents filed in these proceedings, comment upon the proposed assessments, or otherwise participate in the proceedings should contact Danielle Carr, Regional Hearing Clerk, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, California 94105, (415) 972–3871. The administrative record for this proceeding is located in the EPA Regional Office identified above, and the file will be open for public inspection during normal business hours. All information submitted by Pick Your Part is available as part of the administrative record, subject to provisions of law restricting public disclosure of confidential information. In order to provide opportunity for public comment, EPA will issue no final order assessing a penalty in these proceedings prior to thirty (30) days after the date of publication of this notice.

Cat Kuhlman,

Acting Director, Water Division.

[FR Doc. 02–27831 Filed 10–31–02; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Regular Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), that the November 14, 2002 regular meeting of the Farm Credit Administration Board (Board) will not be held. The FCA Board will hold a special meeting at 9 a.m. on Thursday, November 7, 2002. An agenda for this meeting will be published at a later date.

FOR FURTHER INFORMATION CONTACT: Jeanette C. Brinkley, Acting Secretary to the Farm Credit Administration Board, (703) 883–4009, TTY (703) 883–4056.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

Dated: October 29, 2002.

Jeanette C. Brinkley,

Acting Secretary, Farm Credit Administration Board.

[FR Doc. 02–27914 Filed 10–29–02; 4:21 pm]

BILLING CODE 6705–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. AUC–01–32–H (Auction No. 32); DA 02–2623]

Auction No. 32 Construction Permits for New AM Broadcast Stations Scheduled for December 10, 2002; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Procedural Issues

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces the procedures and minimum opening bids for the upcoming auction of construction permits for new AM broadcast stations (Auction No. 32) scheduled to begin December 10, 2002. This document is intended to familiarize prospective bidders with the procedures and minimum opening bids for this auction.

DATES: Auction No. 32 is scheduled to begin on December 10, 2002.

FOR FURTHER INFORMATION CONTACT: Auctions and Industry Analysis Division: Kenneth Burnley, Legal Branch, at (202) 418–0660; Linda Sanderson, or Roy Knowles, Auctions Operations Branch at (717) 338–2888. Media Contact: Meribeth McCarrick at (202) 418–0654. Audio Division: Lisa Scanlan or Edward DeLaHunt at (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a summary of the *Auction No. 32 Procedures Public Notice* released on October 15, 2002. The complete text of the *Auction No. 32 Procedures Public Notice*, including attachments, is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The *Auction No. 32 Procedures Public Notice* may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2898, or via e-mail to *qualexint@aol.com*.

I. General Information

A. Introduction

1. By the *Auction No. 32 Procedures Public Notice*, the Wireless Telecommunications Bureau ("WTB") and the Media Bureau ("MB") (collectively, the "Bureaus") announce the procedures and minimum opening bids for the upcoming auction of construction permits for new AM broadcast stations ("Auction No. 32").[1] On September 16, 2002, in accordance with the Balanced Budget Act of 1997, the Bureaus released the *Auction No. 32 Comment Public Notice*, seeking comment on the establishment of reserve prices and/or minimum opening bids for Auction No. 32. In addition, the Bureaus sought comment on a number of procedures to be used in Auction No. 32. The Bureaus received two comments and one reply comment in response to the *Auction No. 32 Comment Public Notice*.

[1] These procedures were adopted following actual notice and an opportunity to comment provided to all of the parties in this closed auction.

i. Construction Permits To Be Auctioned

2. Auction No. 32 will include construction permits for three new AM broadcast stations. These construction permits are the subject of pending, mutually exclusive short-form applications (FCC Form 175) filed on or before February 1, 2000, and participation in this auction is limited to the applicants identified in Attachment A of the *Auction No. 32 Procedures Public Notice*. All applications within a mutually exclusive applicant group ("MX Group") are directly mutually exclusive with one another, and therefore a single AM construction permit will be auctioned for each MX Group identified in Attachment A of the *Auction No. 32 Procedures Public Notice*. The minimum opening bids and upfront payments for these construction permits are also included in Attachment A of the *Auction No. 32 Procedures Public Notice*.

3. *MX Group AM 38:* Applicants Alvin Lou Media, Inc. ("ALM") and Victor A. Michael ("Michael") filed comments in response to the *Auction No. 32 Comment Public Notice*. Both request that the auction be held in abeyance pending resolution of their respective Applications for Review, in which ALM and Michael challenge the Media Bureau's finding that ALM and Powell Meredith Communications Company ("PMCC") should proceed to auction. ALM and Michael both argue that PMCC's technical proposal is unacceptable, and thus PMCC should not be allowed to proceed to auction.

4. The Bureaus will not delay the auction for MX Group AM 38 as requested by the commenters. In the *Broadcast First Report and Order*, 63 FR 48615 (September 11, 1998), the Commission directed the Bureaus to defer technical review until the post-auction submission of long-form applications by the winning bidders. This is consistent with Congress and the Commission's overall objective of minimizing delay in the award of construction permits, and promoting deployment of new broadcasting service to the public as expeditiously as possible. Further, to the extent ALM and Michael rely on pending challenges to the determination that ALM and PMCC should proceed to auction, they have not shown irreparable harm or that the public interest would be served by delaying the auction schedule. Any grant of a construction permit won in competitive bidding remains subject to Commission or judicial review and the ultimate disposition of issues presented on appeal.

5. As stated in the *Broadcast First Report and Order* all pending mutually exclusive applications for broadcast services must be resolved through a system of competitive bidding. When two or more short-form applications are accepted for filing within an MX Group, mutual exclusivity exists for auction purposes. Once mutual exclusivity exists for auction purposes, even if only one applicant within an MX Group submits an upfront payment, that applicant is required to submit a bid in order to obtain the construction permit.

B. Rules and Disclaimers

i. Relevant Authority

6. Prospective bidders must familiarize themselves thoroughly with the Commission's rules relating to the AM broadcast service contained in title 47, part 73 of the Code of Federal Regulations. Prospective bidders must also be familiar with the rules relating to broadcast auctions and competitive bidding proceedings in title 47, part 1, subpart Q and part 73, subpart I of the Commission's rules. Prospective bidders must also be thoroughly familiar with the procedures, terms and conditions contained in the *Auction No. 32 Procedures Public Notice*, the *Auction No. 32 Comment Public Notice*, the *Broadcast First Report and Order*, the *Broadcast Reconsideration Order*, 64 FR 24523 (May 7, 1999), and the *New Entrant Bidding Credit Reconsideration Order*, 64 FR 44856 (August 18, 1999).

7. The terms contained in the Commission's rules, relevant orders, and public notices are not negotiable. The Commission may amend or supplement the information contained in our public notices at any time, and will issue public notices to convey any new or supplemental information to bidders. It is the responsibility of all prospective bidders to remain current with all Commission rules and with all public notices pertaining to this auction. Copies of most Commission documents, including public notices, can be retrieved from the FCC Auctions Internet site at *http://wireless.fcc.gov/auctions*. Additionally, documents are available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC, 20554 or may be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or

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via e-mail qualexint@aol.com. When ordering documents from Qualex, please provide the appropriate FCC number (for example, FCC 98–194 for the *Broadcast First Report and Order* and FCC 99–74 for the *Broadcast Reconsideration Order*).

ii. Prohibition of Collusion

8. Bidders are reminded that § 1.2105(c) of the Commission's rules prohibits competing applicants from communicating with each other during the auction about bids, bidding strategies, or settlements unless they have identified each other as parties with whom they have entered into agreements under § 1.2105(a)(2)(viii). For further details regarding the anti-collusion rule, refer to the *AM Auction Filing Window and Application Freeze Public Notice*, released November 19, 1999. For Auction No. 32, this prohibition became effective at the short-form application deadline (February 1, 2000) and will end on the down payment due date after the auction (to be announced in a future public notice). Applicants certified compliance with § 1.2105(c) when they signed their short-form applications. However, the Bureaus caution that merely filing a certifying statement as part of an application will not outweigh specific evidence that collusive behavior has occurred, nor will it preclude the initiation of an investigation when warranted.

9. Bidders in Auction No. 32 are encouraged not to use the same individual acting as an authorized bidder for any other applicant. A violation of the anti-collusion rule could occur if an individual acts as the authorized bidder for two or more competing applicants, and conveys information concerning the substance of bids or bidding strategies between the bidders he/she is authorized to represent in the auction. A violation could similarly occur if the authorized bidders are different individuals employed by the same organization (*e.g.*, law firm or consulting firm).

10. In addition, § 1.65 of the Commission's rules requires an applicant to *maintain* the accuracy and completeness of information furnished in its pending application and to notify the Commission within 30 days of any substantial change that may be of decisional significance to that application. Thus, § 1.65 requires an auction applicant to notify the Commission of any violation of the anti-collusion rules immediately upon learning of such violation. Bidders therefore are required to make such notification to the Commission immediately upon discovery.

11. A summary listing of documents from the Commission and the Bureaus addressing the application of the anti-collusion rules may be found in Attachment D of the *Auction No. 32 Procedures Public Notice*.

iii. Due Diligence

12. Potential bidders are reminded that they are solely responsible for investigating and evaluating all technical and market place factors that may have a bearing on the value of the AM broadcast facilities in this auction. The FCC makes no representations or warranties about the use of this spectrum for particular services. Applicants should be aware that an FCC auction represents an opportunity to become an FCC permittee in the broadcast service, subject to certain conditions and regulations. An FCC auction does not constitute an endorsement by the FCC of any particular service, technology, or product, nor does an FCC construction permit or license constitute a guarantee of business success. Applicants should perform their individual due diligence before proceeding as they would with any new business venture.

13. Potential bidders are strongly encouraged to conduct their own research prior to Auction No. 32 in order to determine the existence of pending proceedings that might affect their decisions regarding participation in the auction. Participants in Auction No. 32 are strongly encouraged to continue to conduct due diligence examinations regarding pending proceedings and other legal developments with respect to the construction permits for which they may bid during the course of the auction. Bidders should be aware that certain applications (including those for modification), petitions for rulemaking, requests for special temporary authority ("STA"), waiver requests, petition to deny, petitions for reconsideration, and applications for review may be pending before the Commission and relate to particular applicants or the construction permits available in Auction No. 32. In addition, certain judicial proceedings that may relate to particular applicants or the construction permits available in Auction No. 32 may be commenced or may be pending or subject to further review. We note that resolution of these matters could have an impact on the availability of spectrum in Auction No. 32. Some of these matters (whether before the Commission or the courts) may not be resolved at the time of the auction. In the event that a final determination reached in a pending proceeding requires a winning bidder to surrender a construction permit(s) won in Auction No. 32, the Commission will return payments relating to such construction permit(s) to the payor of record. The Commission, however, will not pay interest on the returned payment(s) as it lacks the legal authority to do so.

14. Bidders are solely responsible for identifying associated risks and for investigating and evaluating the degree to which such matters may effect their ability to bid on, otherwise acquire, or make use of the construction permits available in Auction No. 32.

iv. Bidder Alerts

15. By submitting an FCC Form 175 application, applicants have certified under penalty of perjury that they are legally, technically, financially and otherwise qualified to hold a license, and not in default on any payment for Commission licenses or construction permits (including down payments) or delinquent on any non-tax debt owed to any Federal agency. Prospective bidders are reminded that submission of a false certification to the Commission is a serious matter that may result in severe penalties, including monetary forfeitures, license revocations, exclusion from participation in future auctions, and/or criminal prosecution.

16. As is the case with many business investment opportunities, some unscrupulous entrepreneurs may attempt to use Auction No. 32 to deceive and defraud unsuspecting investors. Common warning signals of fraud include the following:

- The first contact is a "cold call" from a telemarketer, or is made in response to an inquiry prompted by a radio or television infomercial.
- The offering materials used to invest in the venture appear to be targeted at IRA funds, for example by including all documents and papers needed for the transfer of funds maintained in IRA accounts.
- The amount of the minimum investment is less than $25,000.
- The sales representative makes verbal representations that: (a) The Internal Revenue Service ("IRS"), Federal Trade Commission ("FTC"), Securities and Exchange Commission ("SEC"), FCC, or other government agency has approved the investment; (b) the investment is not subject to state or federal securities laws; or (c) the investment will yield unrealistically high short-term profits. In addition, the offering materials often include copies of actual FCC releases, or quotes from FCC personnel, giving the appearance of FCC knowledge or approval of the solicitation.

Information about deceptive telemarketing investment schemes is available from the FTC at (202) 326–2222 and from the SEC at (202) 942–7040. Complaints about specific deceptive telemarketing investment schemes should be directed to the FTC, the SEC, or the National Fraud Information Center at (800) 876–7060. Consumers who have concerns about specific proposals may also call the FCC Consumer Center at (888) CALL–FCC ((888) 225–5322).

v. National Environmental Policy Act (NEPA) Requirements

17. Permittees must comply with the Commission's rules regarding the National Environmental Policy Act (NEPA). The construction of a broadcast antenna facility is a federal action and the permittee must comply with the Commission's NEPA rules for each such facility. The Commission's NEPA rules require, among other things, that the permittee consult with expert agencies having NEPA responsibilities, including the U.S. Fish and Wildlife Service, the State Historic Preservation Office, the Army Corp of Engineers and the Federal Emergency Management Agency (through the local authority with jurisdiction over floodplains). The permittee must prepare environmental assessments for facilities that may have a significant impact in or on wilderness areas, wildlife preserves, threatened or endangered species or designated critical habitats, historical or archaeological sites, Indian religious sites, floodplains, and surface features. The permittee must also prepare environmental assessments for facilities that include high intensity white lights in residential neighborhoods or excessive radio frequency emission.

C. Auction Specifics

i. Auction Date

18. Auction No. 32—will begin on Tuesday, December 10, 2002. The initial schedule for bidding will be announced by public notice at least one week before the start of the auction. Unless otherwise announced, bidding on all construction permits will be conducted on each business day until bidding has stopped on all construction permits.

ii. Auction Title

19. Auction No. 32—New AM Broadcast Stations.

iii. Bidding Methodology

20. The bidding methodology for Auction No. 32 will be simultaneous multiple round bidding. The Commission will conduct this auction over the Internet. Telephonic bidding will also be available. As a contingency, the FCC Wide Area Network will be available as well. Qualified bidders are permitted to bid telephonically or electronically.

iv. Pre-Auction Dates and Deadlines

21. Listed are important dates associated with Auction No. 32:

Auction Seminar—November 6, 2002
Upfront Payments (via wire transfer)—November 15, 2002; 6 p.m. ET
Mock Auction—December 5, 2002
Auction Begins—December 10, 2002

v. Requirements for Participation

22. Those wishing to participate in the auction must:

- Be listed on Attachment A of the *Auction No. 32 Procedures Public Notice*.
- Submit a sufficient upfront payment and an FCC Remittance Advice Form (FCC Form 159) by 6 p.m. ET, November 15, 2002.
- Comply with all provisions outlined in this public notice and applicable Commission rules.

vi. General Contact Information

23. The following is a list of general contact information relating to Auction No. 32.

General Auction Information: General Auction Questions, Seminar Registration
FCC Auctions Hotline, (888) 225–5322, Press Option #2, or direct (717) 338–2888, Hours of service: 8 a.m.—5:30 p.m. ET
Auction Legal Information: Auction Rules, Policies, Regulations
Auctions and Industry Analysis Division, Legal Branch (202) 418–0660
Licensing Information: Rules, Policies, Regulations, Licensing Issues, Due Diligence, Incumbency Issues
Audio Division, (202) 418–2700
Technical Support: Electronic Filing, Automated Auction System
FCC Auctions Technical Support Hotline, (202) 414–1250 (Voice), (202) 414–1255 (TTY), Hours of service: Monday through Friday 8 a.m. to 6 p.m. ET
Payment Information: Wire Transfers, Refunds
FCC Auctions Accounting Branch, (202) 418–1995, (202) 418–2843 (Fax)
Telephonic Bidding:
Will be furnished only to qualified bidders
FCC Copy Contractor: Additional Copies of Commission Documents
Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, (202) 863–2893, (202) 863–2898, (Fax) *qualexint@aol.com* (E-mail)
Press Information:
Meribeth McCarrick (202) 418–0654
FCC Forms:
(800) 418–3676 (outside Washington, DC), (202) 418–3676 (in the Washington Area) *http://www.fcc.gov/formpage.html*
FCC Internet Sites:
http://www.fcc.gov, http://wireless.fcc.gov/auctions

II. Short-Form (FCC Form 175) Application Requirements

A. Maintaining the Accuracy of FCC Form 175 Information

24. As noted in the *Auction No. 32 Comment Public Notice*, and under 47 CFR 1.65, applicants have an obligation to maintain the completeness and accuracy of information in their short-form applications. Amendments reporting substantial changes of possible decisional significance in information contained in short-form applications, as defined by 47 CFR 1.2105(b)(2), will not be accepted and may in some instances result in the dismissal of the short-form application. Applicants should report these modifications to their FCC Form 175 by electronic mail and submit a letter, briefly summarizing the changes, to the attention of Margaret Wiener, Chief, Auctions and Industry Analysis Division, at the following address: *auction32@fcc.gov*. The electronic mail summarizing the changes must include a subject or caption referring to Auction No. 32. The Bureaus request that parties format any attachments to electronic mail as Adobe® Acrobat® (pdf) or Microsoft® Word documents.

25. A separate copy of the letter should be faxed to the attention of Kathryn Garland at (717) 338–2850. Questions about other changes should be directed to Kenneth Burnley of the Auctions and Industry Analysis Division at (202) 418–0660.

26. In addition, applicants should make these changes to their FCC Form 175 applications on-line after release of the public notice explaining the status of the applications.

B. Requirements for Logging on to the FCC Auction 175 Application & Search System

27. Although applicants submitted their original FCC Form 175 applications by using a Taxpayer Identification Number (TIN), any review of and updates to these applications will require the use of an FCC Registration Number (FRN). On August 24, 2001, the

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FCC adopted a rule requiring all persons and entities doing business with the FCC to acquire a unique identifying number called the FRN and to provide it with all applications or feeable filings as well as other transactions involving payment of money. This requirement became effective on December 3, 2001. Use of an FRN is mandatory for all filers logging on to the FCC Auctions 175 Application & Search system.

28. To obtain an FRN, an applicant must register their TIN using the CORES. To access CORES, point web browser to the FCC Auctions page at *http://wireless.fcc.gov/auctions/* and click the CORES link under Related Sites. Next, follow the directions provided to register and receive your FRN. Applicants need to be sure to retain this number and password and keep such information strictly confidential.

29. A filing window for review and resubmission of FCC Form 175 applications will open after the future release of a public notice announcing the status of applications. This public notice announcing the status of applications will contain additional information for reviewing and accessing applications.

30. *Very Important:* Before logging on to the FCC Form 175 Applications & Search system, *all* applicants must send their FRN to the FCC Operations Group. To do this, include entity name, TIN, and FRN in an e-mail to *auction32@fcc.gov* or fax to Kathryn Garland at (717) 338–2850. This information *must* be received by 5 p.m. ET, Friday, October 25, 2002. For further information, contact: FCC Technical Support at (202) 414–1250. Hours of service: Monday through Friday 8 a.m. to 6 p.m. ET.

C. Electronic Review of Short-Form Applications (FCC Form 175)

31. As noted in the *Auction Filing Window Public Notice*, 66 FR 33699 (June 25, 2001), applicants may review their own and other applicants' completed FCC Form 175s after the FCC has issued a public notice concerning the status of the applications. The FCC Form 175 electronic review system will be available at that time, and may be used to locate and print applicants' FCC Form 175 information. Applicants will also be able to view other applicants' completed FCC Form 175 applications. There is no fee for accessing this system. Instructions for electronic review of FCC Form 175 applications will be discussed in the public notice concerning the status of the applications.

D. Installment Payments

32. Installment payment plans will not be available in Auction No. 32.

III. Pre-Auction Procedures

A. Application Processing and Minor Corrections

33. The FCC will process all timely submitted applications to determine which are acceptable for filing, and subsequently will issue a public notice identifying: (i) Those applications accepted for filing; (ii) those applications rejected; and (iii) those applications which have minor defects that may be corrected, and the deadline for filing such corrected applications.

34. As described more fully in the Commission's rules, after the short-form filing deadline, applicants may make only minor corrections to their FCC Form 175 applications. For example, permissible minor changes include deletion and addition of authorized bidders (to a maximum of three) and certain revision of exhibits. Applicants will not be permitted to make major modifications to their applications (*e.g.*, change their construction permit selections, change the engineering information submitted with the FCC Form 175, change the certifying official, changes in ownership of the applicant that would constitute a change of control of the applicant, or changes affecting eligibility for the new entrant bidding credit).

B. Auction Seminar

35. On November 6, 2002, the FCC will sponsor a free seminar for Auction No. 32 at the Federal Communications Commission, located at 445 12th Street, SW. (Room 4–B516), Washington, DC. The seminar will provide attendees with information about pre-auction procedures, conduct of the auction, FCC Automated Auction System, and the broadcast service and auction rules. The seminar will also provide an opportunity for prospective bidders to ask questions of FCC staff.

36. To register, complete the registration form included as Attachment B of the *Auction No. 32 Procedures Public Notice* and submit it by Monday, November 4, 2002. Registrations are accepted on a first-come, first-served basis.

C. Upfront Payments—Due November 15, 2002

37. In order to be eligible to bid in the auction, applicants must submit an upfront payment accompanied by an FCC Remittance Advice Form (FCC Form 159). After the FCC Form 175 becomes available electronically, filers will have access to an electronic version of the FCC Form 159 that can be printed and faxed to Mellon Bank in Pittsburgh, PA. All upfront payments must be received at Mellon Bank by 6 p.m. ET on November 15, 2002.

Please note that:

- All payments must be made in U.S. dollars.
- All payments must be made by wire transfer.
- Upfront payments for Auction No. 32 go to a lockbox number different from the ones used in previous FCC auctions, and different from the lockbox number to be used for post-auction payments.
- Failure to deliver the upfront payment by the November 15, 2002 deadline will result in dismissal of the application and disqualification from participation in the auction.

i. Making Auction Payments by Wire Transfer

38. Wire transfer payments must be received by 6 p.m. ET on November 15, 2002. To avoid untimely payments, applicants should discuss arrangements (including bank closing schedules) with their banker several days before they plan to make the wire transfer, and allow sufficient time for the transfer to be initiated and completed before the deadline. Applicants will need the following information:

ABA Routing Number: 043000261
Receiving Bank: Mellon Pittsburgh
BENEFICIARY (BNF): FCC/Account # 910–1203
OBI Field: (Skip one space between each information item)
"AUCTIONPAY"
FCC REGISTRATION NUMBER (FRN): (same as FCC Form 159, block 11 and/or 21)
PAYMENT TYPE CODE (same as FCC Form 159, block 24A: A32U)
FCC CODE 1 (same as FCC Form 159, block 28A: "32")
PAYER NAME (same as FCC Form 159, block 2)
LOCKBOX NO. # 358425

Note: The BNF and Lockbox number are specific to the upfront payments for this auction; do not use BNF or Lockbox numbers from previous auctions.

39. Applicants must fax a completed FCC Form 159 (Revised 2/00) to Mellon Bank at (412) 209–6045 at least one hour before placing the order for the wire transfer (but on the same business day). On the cover sheet of the fax, write "Wire Transfer—Auction Payment for Auction Event No. 32." Bidders should confirm receipt of their upfront payment at Mellon Bank by contacting their sending financial institution.

ii. FCC Form 159

40. A completed FCC Remittance Advice Form (FCC Form 159, Revised 2/00) must be faxed to Mellon Bank in order to accompany each upfront payment. Proper completion of FCC Form 159 (Revised 2/00) is critical to ensuring correct credit of upfront payments. Detailed instructions for completion of FCC Form 159 are included in Attachment C of the *Auction No. 32 Procedures Public Notice*. An electronic version of the FCC Form 159 will be accessible after the FCC Form 175 becomes available electronically. The FCC Form 159 can be completed electronically, but must be filed with Mellon Bank via facsimile.

iii. Amount of Upfront Payment

41. The Commission delegated to the Bureaus the authority and discretion to determine appropriate upfront payment(s) for each auction. In addition, in the *Part 1 Fifth Report and Order*, 65 FR 52323 (August 29, 2000), the Commission ordered that "former defaulters," *i.e.*, applicants that have ever been in default on any Commission licenses or have ever been delinquent on any non-tax debt owed to any Federal agency, be required to pay upfront payments fifty percent greater than non-former defaulters."

42. In the *Auction No. 32 Comment Public Notice*, we proposed translating bidders' upfront payments to bidding units to define a bidder's maximum initial eligibility. In order to bid on a construction permit, otherwise qualified bidders who applied for that construction permit on Form 175 must have an eligibility level that meets the number of bidding units assigned to that construction permit. An applicant's total upfront payment must be enough to establish eligibility to bid on the construction permit applied for on Form 175, or else the applicant will not be eligible to participate in the auction. No comments were received; therefore, we adopt our proposal. The specific upfront payments and bidding units for each construction permit are set forth in Attachment A of the *Auction No. 32 Procedures Public Notice*.

43. Former defaulters should calculate their upfront payment for all construction permits by multiplying the number of bidding units they wish to purchase by 1.5. In order to calculate the number of bidding units to assign to former defaulters, the Commission will divide the upfront payment received by 1.5 and round the result up to the nearest bidding unit.

Note: An applicant's actual bidding in any round will be limited by the bidding units reflected in its upfront payment, in conjunction with the selections made on the FCC Form 175.

iv. Applicant's Wire Transfer Information for Purposes of Refunds

44. The Commission will use wire transfers for all Auction No. 32 refunds. To ensure that refunds of upfront payments are processed in an expeditious manner, the Commission is requesting that all pertinent information as listed be supplied to the FCC. Applicants can provide the information electronically after the FCC Form 175 becomes available for review. Wire Transfer Instructions can also be manually faxed to the FCC, Financial Operations Center, Auctions Accounting Group, ATTN: Tim Dates or Gail Glasser, at (202) 418–2843 by November 15, 2002. All refunds will be returned to the payer of record as identified on the FCC Form 159 unless the payer submits written authorization instructing otherwise. For additional information, please call (202) 418–1995.

Name of Bank
ABA Number
Contact and Phone Number
Account Number to Credit
Name of Account Holder
FCC Registration Number (FRN)
Taxpayer Identification Number
Correspondent Bank (if applicable)
ABA Number
Account Number

(Applicants should also note that implementation of the Debt Collection Improvement Act of 1996 requires the FCC to obtain a Taxpayer Identification Number (TIN) before it can disburse refunds.) Eligibility for refunds is discussed in section V.D.

D. Auction Registration

45. Approximately ten days before the auction, the FCC will issue a public notice announcing all qualified bidders for the auction. Qualified bidders are those applicants whose FCC Form 175 applications have been accepted for filing and have timely submitted upfront payments sufficient to make them eligible to bid on the construction permit for which they applied.

46. All qualified bidders are automatically registered for the auction. Registration materials will be distributed prior to the auction by two separate overnight mailings, one containing the confidential bidder identification number (BIN) required to place bids and the other containing the SecurID cards. These mailings will be sent only to the contact person at the contact address listed in the FCC Form 175.

47. Applicants that do not receive both registration mailings will not be able to submit bids. Therefore, any qualified applicant that has not received both mailings by noon on Tuesday, December 3, 2002, should contact the Auctions Hotline at 717–338–2888. Receipt of both registration mailings is critical to participating in the auction and each applicant is responsible for ensuring it has received all of the registration material.

48. Qualified bidders should note that lost bidder identification numbers or SecurID cards can be replaced only by appearing *in person* at the FCC Auction Headquarters located at 445 12th Street, SW., Washington, DC 20554. Only an authorized representative or certifying official, as designated on an applicant's FCC Form 175, may appear in person with two forms of identification (one of which must be a photo identification) in order to receive replacements. Qualified bidders requiring replacements must call Technical Support prior to arriving at the FCC.

E. Electronic Bidding

49. The Commission will conduct this auction over the Internet. Telephonic bidding will also be available. As a contingency, the FCC Wide Area Network will be available as well. The telephone number through which the backup FCC Wide Area Network may be accessed will be announced in a later public notice. Qualified bidders are permitted to bid telephonically or electronically, *i.e.*, over the Internet or the FCC's Wide Area Network. In either case, each authorized bidder must have its own Remote Security Access SecurID card, which the FCC will provide at no charge. Each applicant with less than three authorized bidders will be issued two SecurID cards, while applicants with three authorized bidders will be issued three cards. For security purposes, the SecurID cards and the FCC Automated Auction System user manual are only mailed to the contact person at the contact address listed on the FCC Form 175. Please note that each SecurID card is tailored to a specific auction, therefore, SecurID cards issued for other auctions or obtained from a source other than the FCC will not work for Auction No. 32. The telephonic bidding phone number will be supplied in the first overnight mailing of the confidential bidder identification number. Each applicant's bidding preference has been defaulted to electronic. Applicants should modify this preference during the FCC Form 175 resubmit window if they intend to bid telephonically.

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50. Please note that the SecurID cards can be recycled, and we encourage bidders to return the cards to the FCC. We will provide pre-addressed envelopes that bidders may use to return the cards once the auction is over.

F. Mock Auction

51. All qualified bidders will be eligible to participate in a mock auction on Thursday, December 5, 2002. The mock auction will enable applicants to become familiar with the FCC Automated Auction System prior to the auction. Participation by all bidders is strongly recommended. Details will be announced by public notice.

IV. Auction Event

52. The first round of bidding for Auction No. 32 will begin on Tuesday, December 10, 2002. The initial bidding schedule will be announced in the public notice listing the qualified bidders, which is released approximately 10 days before the start of the auction.

A. Auction Structure

i. Simultaneous Multiple Round Auction

53. In the *Auction No. 32 Comment Public Notice*, we proposed to award all construction permits in a simultaneous multiple round auction. We received no comments on this issue. We therefore conclude that it is operationally feasible and appropriate to auction the new AM broadcast station construction permits through a simultaneous multiple round auction. Unless otherwise announced, bids will be accepted from eligible bidders on all construction permits in each round of the auction.

ii. Maximum Eligibility and Activity Rules

54. In the *Auction No. 32 Comment Public Notice*, we proposed that the amount of the upfront payment submitted by a bidder would determine the maximum initial eligibility (as measured in bidding units) for each bidder. We received no comments on this issue.

55. For Auction No. 32, we adopt our proposal. The amount of the upfront payment submitted by a bidder determines the maximum initial eligibility (in bidding units) for each bidder. Note again that each construction permit is assigned a specific number of bidding units equal to the upfront payment listed in Attachment A of the *Auction No. 32 Procedures Public Notice* on a bidding unit per dollar basis. The total upfront payment defines the maximum number of bidding units on which the applicant will be permitted to bid and hold high bids. As there is no provision for increasing a bidder's maximum eligibility during the course of an auction, prospective bidders are cautioned to calculate their upfront payments carefully. The total upfront payment does not affect the total dollars a bidder may bid on any given construction permit.

56. In addition, we received no comments on our proposal for a single stage auction. Therefore, in order to ensure that the auction closes within a reasonable period of time, we adopt our proposal with the following activity requirements: a bidder must either, place a valid bid and/or be the standing high bidder during each round of the auction rather than wait until the end before participating. A bidder is required to be active on 100 percent of their bidding eligibility. Failure to maintain the requisite activity level will result in the use of an activity rule waiver, if any remain, or a reduction in the bidder's bidding eligibility, thus eliminating them from the auction.

iii. Activity Rule Waivers and Reducing Eligibility

57. In the *Auction No. 32 Comment Public Notice*, we proposed that each bidder in the auction would be provided three activity rule waivers. Bidders may use an activity rule waiver in any round during the course of the auction. We received no comments on this issue.

58. Based upon our experience in previous auctions, we adopt our proposal that each bidder be provided three activity rule waivers that may be used in any round during the course of the auction. Use of an activity rule waiver preserves the bidder's current bidding eligibility despite the bidder's activity in the current round being below the required minimum level. An activity rule waiver applies to an entire round of bidding. We are satisfied that our practice of providing three waivers over the course of the auction provides a sufficient number of waivers and flexibility to the bidders, while safeguarding the integrity of the auction.

59. The FCC Automated Auction System assumes that bidders with insufficient activity would prefer to use an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver (known as an "automatic waiver") at the end of any bidding period where a bidder's activity level is below the minimum required. If a bidder has no waivers remaining and does not satisfy the required activity level, the bidder's eligibility will be permanently reduced, eliminating them from the auction.

60. A bidder may proactively use an activity rule waiver as a means to keep the auction open without placing a bid. If a bidder submits a proactive waiver (using the proactive waiver function in the bidding system) during a bidding period in which no bids are submitted, the auction will remain open and the bidder's eligibility will be preserved. An automatic waiver invoked in a round in which there are no new valid bids will not keep the auction open. Note: Once a proactive waiver is placed during a round, that waiver cannot be unsubmitted.

iv. Auction Stopping Rules

61. For Auction No. 32, the Bureaus proposed to employ a simultaneous stopping rule. Under this rule, bidding will remain open on all construction permits until bidding stops on every construction permit. The auction will close for all construction permits when one round passes during which no bidder submits a new acceptable bid on any construction permit, or applies a proactive waiver. After the first such round, bidding closes simultaneously on all construction permits.

62. The Bureaus also proposed retaining discretion to implement a modified version of the simultaneous stopping rule. The modified version will close the auction for all construction permits after the first round in which no bidder submits a proactive waiver, or a new bid on any construction permit on which it is not the standing high bidder. Thus, absent any other bidding activity, a bidder placing a new bid on a construction permit for which it is the standing high bidder will not keep the auction open under this modified stopping rule.

63. The Bureaus further proposed retaining the discretion to keep the auction open even if no new acceptable bids or proactive waivers are submitted in a round. In this event, the effect will be the same as if a bidder had submitted a proactive waiver. Thus, the activity rule will apply as usual, and a bidder with insufficient activity will either lose bidding eligibility or use an activity rule waiver (if any remain).

64. In addition, the Bureaus proposed that they reserve the right to declare that the auction will end after a designated number of additional rounds ("special stopping rule"). If the Bureaus invoke this special stopping rule, it will accept bids in the final round(s) only for construction permits on which the high bid increased in at least one of the preceding specified number of rounds. The Bureaus proposed to exercise this option only in circumstances such as where the auction is proceeding very slowly, where there is minimal overall bidding activity or where it appears likely that the auction will not close within a reasonable period of time. Before exercising this option, the Bureaus are likely to attempt to increase the pace of the auction by, for example, increasing the number of bidding rounds per day, and/or adjusting the amount of the minimum bid increments for the construction permits.

65. The Bureaus received no comments on these issues, therefore, we adopt all of the proposals concerning the auction stopping rules. Auction No. 32 will begin under the simultaneous stopping rule, and the Bureaus will retain the discretion to invoke the other versions of the stopping rule. The Bureaus believe that these stopping rules are most appropriate for Auction No. 32, because their experience in prior auctions demonstrates that the auction stopping rules balance the interests of administrative efficiency and maximum bidder participation.

v. Auction Delay, Suspension, or Cancellation

66. In the *Auction No. 32 Comment Public Notice*, the Bureaus proposed that, by public notice or by announcement during the auction, the Bureaus may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair conduct of competitive bidding.

67. Because this approach has proven effective in resolving exigent circumstances in previous auctions, we adopt our proposed auction cancellation rules. By public notice or by announcement during the auction, the Bureaus may delay, suspend or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair and competitive conduct of competitive bidding. In such cases, the Bureaus, in their sole discretion, may elect to resume the auction starting from the beginning of the current round, resume the auction starting from some previous round, or cancel the auction in its entirety. Network interruption may cause the Bureaus to delay or suspend the auction. We emphasize that exercise of this authority is solely within the discretion of the Bureaus, and its use is not intended to be a substitute for situations in which bidders may wish to apply their activity rule waivers.

B. Bidding Procedures

i. Round Structure

68. The initial bidding schedule will be announced in the public notice listing the qualified bidders, which is released approximately 10 days before the start of the auction. The round structure for each bidding round contains a single bidding round followed by the release of the round results. Multiple bidding rounds may be conducted in a given day. Details regarding round result formats and locations will also be included in the qualified bidders public notice referenced.

69. The Bureaus have the discretion to change the bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their bidding strategies. The Bureaus may increase or decrease the amount of time for the bidding rounds and review periods, or the number of rounds per day, depending upon the bidding activity level and other factors.

ii. Reserve Price or Minimum Opening Bid

70. *Background.* The Balanced Budget Act calls upon the Commission to prescribe methods by which a reasonable reserve price will be required or a minimum opening bid established when FCC licenses or construction permits are subject to auction (*i.e.*, because mutually exclusive applications have been accepted), unless the Commission determines that a reserve price or minimum opening bid is not in the public interest. Consistent with this mandate, the Commission directed the Bureaus to seek comment on the use of a minimum opening bid and/or reserve price prior to the start of each auction. Among other factors, the Bureaus must consider the amount of spectrum being auctioned, levels of incumbency, the availability of technology to provide service, the size of the geographic service areas, the extent of interference with other spectrum bands, and any other relevant factors that could have an impact on valuation of the spectrum being auctioned. The Commission concluded that the Bureaus should have the discretion to employ either or both of these mechanisms for future auctions.

71. In the *Auction No. 32 Comment Public Notice*, the Bureaus proposed to establish minimum opening bids for Auction No. 32 and to retain discretion to lower the minimum opening bids. Specifically, for Auction No. 32, the Bureaus proposed calculating the minimum opening bid based on the potential value of the spectrum, including the type of service, market size, industry cash flow data and recent broadcast transactions. The Bureaus received no comments on this issue, therefore, they adopt their proposal. The specific minimum opening bids for each construction permit are set forth in Attachment A of the *Auction No. 32 Procedures Public Notice.*

iii. Minimum Accepted Bids and Bid Increments

72. In the *Auction No. 32 Comment Public Notice*, the Bureaus proposed to use a fixed percentage to calculate minimum acceptable bids. They further proposed to retain the discretion to change the minimum acceptable bids and bid increments if circumstances so dictate. The Bureaus received no comment on this issue.

73. In each round, each eligible bidder will be able to place a bid on the particular construction permit for which it applied in any of nine different amounts. The Auctions Bidding System interface will list the nine acceptable bid amounts for each construction permit.

74. For Auction No. 32, the Bureaus proposed to use a fixed 10 percent bid increment. This means that the minimum acceptable bid for a construction permit will be approximately 10 percent greater than the previous standing high bid received on the construction permit. The minimum acceptable bid amount will be calculated by multiplying the standing high bid times one plus the fixed percentage—*i.e.*, minimum acceptable bid amount = (standing high bid) * (1.10){rounded}. We will round the result using our standard rounding procedure for minimum acceptable bid calculations: results above $10,000 are rounded to the nearest $1,000; results below $10,000 but above $1,000 are rounded to the nearest $100; and results below $1,000 are rounded to the nearest $10.

75. At the start of the auction and until a bid has been placed on a construction permit, the minimum acceptable bid for that construction permit will be equal to its minimum opening bid. Corresponding additional bid amounts will be calculated using bid increments defined as the difference between the minimum opening bid times one plus the percentage increment, rounded as described, and the minimum opening bid—*i.e.*, bid increment = (minimum opening bid)(1 + percentage increment){rounded} − (minimum opening bid). At the start of

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the auction and until a bid has been placed on a construction permit, the nine acceptable bid amounts for each construction permit consist of the minimum opening bid and additional amounts are calculated using multiple bid increments (*i.e.*, the second bid amount equals the minimum opening bid plus the bid increment, the third bid amount equals the minimum opening bid plus two times the bid increment, etc.).

Example bid amount calculation for construction permits at the start of the auction and without standing high bids:

1st bid amount = minimum opening bid
2nd bid amount = minimum opening bid + (bid increment)
3rd bid amount = minimum opening bid + 2(bid increment)
* * * * *
9th bid amount = minimum opening bid + 8(bid increment)

76. Once there is a standing high bid on the construction permit, the Auctions Bidding System will calculate a minimum acceptable bid for that construction permit for the following round, as described. The difference between the minimum acceptable bid and the standing high bid for each construction permit will define the bid increment—*i.e.*, bid increment = (minimum acceptable bid)—(standing high bid). The nine acceptable bid amounts for each construction permit consist of the minimum acceptable bid (the standing high bid plus one bid increment) and additional amounts calculated using multiple bid increments (*i.e.*, the second bid amount equals the standing high bid plus two times the bid increment, the third bid amount equals the standing high bid plus three times the bid increment, etc.).

Example bid amount calculation for construction permits with standing high bids:

1st bid amount = standing high bid + bid increment
2nd bid amount = standing high bid +2(bid increment)
3rd bid amount = standing high bid +3(bid increment)
* * * * *
9th bid amount = standing high bid +9(bid increment)

77. The Bureaus retain the discretion to change the minimum acceptable bids and bid increments and the methodology for determining the minimum acceptable bids and bid increments if they determine circumstances so dictate. The Bureaus will do so by announcement in the FCC Automated Auction System. The Bureaus may also use its discretion to adjust the minimum bid increment without prior notice if circumstances warrant.

iv. High Bids

78. At the end of each round, the FCC Automated Auction System determines the standing high bid for each construction permit based on the gross dollar amounts of the bids received for each construction permit.

79. In the case of tied high bids, a random number generator will be used to determine the standing high bid. A random number will be assigned to each bid. The tie bid having the highest random number will become the standing high bid.

v. Bidding

80. During a bidding round, a bidder may submit a bid, subject to its eligibility, as well as remove a bid placed in the same bidding round. Bidders also have the option of making multiple submissions in each bidding round. If a bidder submits multiple bids for a construction permit in the same round, the system takes the last bid entered as that bidder's bid for the round. Bidders should note that the bidding units associated with the construction permit for which the bidder has removed its bid do not count towards the bidder's activity at the close of the round.

81. Please note that all bidding will take place remotely either through the FCC Automated Auction System or by telephonic bidding. (Telephonic bid assistants are required to use a script when entering bids placed by telephone. Telephonic bidders are therefore reminded to allow sufficient time to bid by placing their calls well in advance of the close of a round. Normally, four to five minutes are necessary to complete a bid submission.) There will be no on-site bidding during Auction No. 32.

82. A bidder's ability to bid on a specific construction permit in the first round of the auction is determined by two factors: (i) The construction permit applied for on FCC Form 175 and (ii) the upfront payment amount deposited. The bid submission screens will allow bidders to submit bids on only the construction permit for which the bidder applied on its FCC Form 175.

83. The FCC Automated Auction System requires each bidder to be logged in during the bidding round using the bidder identification number provided in the registration materials, and the generated SecurID code. Bidders are strongly encouraged to print bid confirmations *after* they submit their bids.

84. In each round, eligible bidders will be able to place bids on a given construction permit in any of nine different amounts. For each construction permit, the FCC Automated Auction System interface will list the nine acceptable bid amounts in a drop-down box. Bidders may use the drop-down box to select from among the nine acceptable bid amounts. The FCC Automated Auction System also includes an import function that allows bidders to upload text files containing their bid information.

85. Until a bid has been placed on a construction permit, the minimum acceptable bid for that construction permit will be equal to its minimum opening bid. Once there is a standing high bid on a construction permit, the FCC Automated Auction System will calculate a minimum acceptable bid for that construction permit for the following round, as described in section IV.B.iii.

vi. Bid Removal and Bid Withdrawal

86. In the *Auction No. 32 Comment Public Notice*, we proposed bid removal and bid withdrawal procedures. With respect to bid withdrawals, we proposed that bidders not be permitted to withdraw bids in any round. We received no comments on this issue. Therefore, the Bureaus adopt their proposal and will not permit bidders to withdrawal bids in any round during the auction.

87. Bid Removal Procedures. Before the close of a bidding round, a bidder has the option of removing any bids placed in that round. By using the "remove bid" function in the bidding system, a bidder may effectively "unsubmit" any bid placed within that round. Removing a bid will affect a bidder's activity for the round in which it is removed, *i.e.*, a bid that is subsequently removed does not count toward the bidder's activity requirement. Once a round closes, a bidder may no longer remove a bid. No comments were received on this issue, therefore, we adopt these procedures for Auction No. 32.

vii. Round Results

88. Bids placed during a round will not be published until the conclusion of that bidding period. After a round closes, the Bureaus will compile reports of all bids placed, current high bid, new minimum accepted bid, and bidder eligibility status (bidding eligibility and activity rule waivers), and post the reports for public access. Reports reflecting bidders' identities and bidder identification numbers for Auction No. 32 will be available before and during the auction. Thus, bidders will know in advance of this auction the identities of the bidders against which they are bidding.

viii. Auction Announcements

89. The FCC will use auction announcements to announce items such as schedule changes. All FCC auction announcements will be available by clicking a link on the FCC Automated Auction System.

V. Post-Auction Procedures

A. Down Payments

90. After bidding has ended, the Commission will issue a public notice declaring the auction closed, identifying the winning bidders and winning bids for each construction permit, and any down payments due.

91. Within ten business days after release of the auction closing notice, each winning bidder must submit sufficient funds (in addition to its upfront payment) to bring its total amount of money on deposit with the Government to 20 percent of its net winning bids (actual bids less any applicable bidding credit).

B. Long-Form Application

92. Within thirty days after release of the auction closing public notice, winning bidders must electronically submit a properly completed long-form application and required exhibits for the construction permit won through Auction No. 32. Winning bidders that are claiming new entrant status must include an exhibit demonstrating their eligibility for the bidding credit. Further filing instructions will be provided to the auction winners at the close of the auction.

C. Default and Disqualification

93. Any high bidder that defaults or is disqualified after the close of the auction (*i.e.*, fails to remit the required down payment within the prescribed period of time, fails to submit a timely long-form application, fails to make full payment, or is otherwise disqualified) will be subject to the payments described in 47 CFR 1.2104(g)(2). In such event the Commission may re-auction the construction permit or offer it to the next highest bidder (in descending order) at their final bid. In addition, if a default or disqualification involves gross misconduct, misrepresentation, or bad faith by an applicant, the Commission may declare the applicant and its principals ineligible to bid in future auctions, and may take any other action that it deems necessary, including institution of proceedings to revoke any existing licenses or construction permits held by the applicant.

D. Refund of Remaining Upfront Payment Balance

94. All applicants that submitted upfront payments but were not winning bidders for a construction permit in Auction No. 32 will be entitled to a refund of their upfront payment balance after the conclusion of the auction. All refunds will be returned to the payer of record, as identified on the FCC Form 159, unless the payer submits written authorization instructing otherwise.

95. Qualified bidders that have exhausted all of their activity rule waivers and have no remaining bidding eligibility must submit a written refund request. If you have completed the refund instructions electronically, then only a written request for the refund is necessary. If not, the request must also include wire transfer instructions, Taxpayer Identification Number (TIN) and FCC Registration Number (FRN). Send refund request to: Federal Communications Commission, Financial Operations Center, Auctions Accounting Group, Gail Glasser or Tim Dates, 445 12th Street, SW., Room 1–C863, Washington, DC 20554.

96. Bidders are encouraged to file their refund information electronically using the refund information portion of the FCC Form 175, but bidders can also fax their information to the Auctions Accounting Group at (202) 418–2843. Once the information has been approved, a refund will be sent to the party identified in the refund information.

Note: Refund processing generally takes up to two weeks to complete. Bidders with questions about refunds should contact Gail Glasser at (202) 418–0578 or Tim Dates at (202) 418–0496.

Federal Communications Commission.

Margaret Wiener,

Chief, Auctions and Industry Analysis Division, WTB.

[FR Doc. 02–27816 Filed 10–31–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 15, 2002.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303-B4470:

1. *Lee Investments, LLLP*, Lakeland, Georgia, including William Larry Lee, Ann S. Lee, William Alexander Lee, and Mary Carol Lee Green; to acquire voting shares of FMB Bancshares, Inc., Lakeland, Georgia, and thereby indirectly acquire voting shares of Farmers & Merchants Bank, Lakeland, Georgia.

Board of Governors of the Federal Reserve System, October 28, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–27858 Filed 10–31–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise

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noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center Web site at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 25, 2002.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 3030-B4470:

1. Pinnacle S–Corp, Inc., Elberton, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of Pinnacle Financial Corporation, Elberton, Georgia, and thereby indirectly acquire voting shares of Pinnacle Bank, Elberton, Georgia.

Board of Governors of the Federal Reserve System, October 28, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–27859 Filed 10–31–02; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Prospective Grant of Exclusive License: Pharmaceutical Methods of Delivering Folic Acid In a Hormonal Replacement or Contraceptive Composition

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: This is a notice in accordance with 35 U.S.C. 209(e) and 37 CFR 404.7(a)(1)(i) that the Centers for Disease Control and Prevention (CDC), Technology Transfer Office, Department of Health and Human Services (DHHS), is contemplating the grant of a worldwide, limited field of use, exclusive license to practice the inventions embodied in the patent and patent applications referred to below to Johnson & Johnson Pharmaceutical Research & Development, L.L.C., having a place of business in Raritan, New Jersey. The patent rights in these inventions relate to the administration of folic acid in a contraceptive or hormonal replacement composition and have been assigned to Ortho-McNeil Pharmaceutical, Inc. (Raritan, New Jersey) and the government of the United States of America. The patent and patent applications to be licensed are:

Title: Pharmaceutical Methods of Delivering Folic Acid in a Hormonal Replacement or Contraceptive Composition,
U.S. Patent Application Serial No. 09/292,027.
Filing Date: 04/16/1999.
Domestic Status: Patent No.: 6,190,693.
Issue Date: 02/20/2001.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within 60 days from the date of this published Notice, CDC receives written evidence and argument that the grant of this license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Folic acid is a vitamin. It plays a crucial role in DNA synthesis, and in hematopoiesis (although the details of this role remain undefined). Folic acid is involved, for example, in single carbon transfers (such as those required for purine and pyrimidine metabolism), and in the re-methylation of homocysteine to methionine. Numerous disorders can result from insufficient intake of folic acid. Enhanced effects of risk factors for cervical dysplasia (*e.g.* HPV infection) have been linked to decreased folic acid levels. Sub-optimal body stores of folic acid, as measured by red cell folic acid concentrations, may amplify oncogenic risk. Administering folic acid can reduce the onset of disorders such as cardiovascular disease and cervical dysplasia. This invention provides a pharmaceutical composition comprising (a) an oral contraceptive for preventing pregnancy in a subject, and (b) folic acid in an amount sufficient to treat or prevent a disorder which (c) afflicts subjects for whom the oral contraceptive is indicated at a higher-than-normal incidence, and (d) is treatable or preventable by folic acid administration.

ADDRESSES: Requests for a copy of this patent, inquiries, comments, and other materials relating to the contemplated license should be directed to Andrew Watkins, Director, Technology Transfer Office, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, Mailstop K–79, Atlanta, GA 30341, telephone: (770) 488–8610; facsimile: (770) 488–8615. Applications for a license filed in response to this notice will be treated as objections to the grant of the contemplated license. Only written comments and/or applications for a license which are received by CDC within sixty days of this notice will be considered. Comments and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552. A signed Confidential Disclosure Agreement will be required to receive a copy of any pending patent application.

Dated: October 26, 2002.

James D. Seligman,

Associate Director for Program Services, Centers for Disease Control and Prevention (CDC).

[FR Doc. 02–27788 Filed 10–31–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–2141–FN]

Medicare and Medicaid Programs; Approval of the American Osteopathic Association for Deeming Authority for Ambulatory Surgical Centers

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final notice.

SUMMARY: This final notice announces the approval of the American Osteopathic Association (AOA) for recognition as a national accreditation program for ambulatory surgical centers (ASCs) that request certification to participate in the Medicare or Medicaid programs. We have found that accreditation of ASCs by this organization will demonstrate that all Medicare ASC Conditions for Coverage are met or exceeded, and, thus, ASCs accredited by AOA will be granted deemed status to participate in the Medicare program.

EFFECTIVE DATE: This final notice is effective January 30, 2003.

FOR FURTHER INFORMATION CONTACT: Laura A. Weber, (410) 786–0227.

SUPPLEMENTARY INFORMATION: *Copies:* To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954. Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 512–1800 or by

faxing to (202) 512–2250. The cost for each copy is $9. As an alternative, you can view and photocopy the **Federal Register** document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**.

This **Federal Register** document is also available from the **Federal Register** online database through *GPO Access*, a service of the U.S. Government Printing Office. The website address is: *http://www.access.gpo.gov/nara/index.html*.

I. Background

Determining Compliance of Ambulatory Surgical Centers-Surveys and Deeming

Under the Medicare program, eligible beneficiaries may receive covered services in an ambulatory surgical center (ASC) provided that the ASC meets certain requirements. Section 1832(a)(2)(F)(i) of the Social Security Act (the Act) includes requirements that an ASC have an agreement in effect with the Secretary and that it meet health, safety, and other standards specified by the Secretary in regulations. Requirements concerning supplier agreements are located in 42 CFR part 489, and those pertaining to the survey and certification of facilities are set forth in 42 CFR part 488.

In 42 CFR part 416, we specify the conditions that an ASC must meet in order to participate in the Medicare program, the scope of covered services, and the conditions for Medicare payment for facility services.

For an ASC to enter into an agreement, a State survey agency must first certify that the ASC complies with our conditions or requirements. Following that certification, the ASC is subject to routine monitoring by a State survey agency to ensure continuing compliance. As an alternative to surveys by State agencies, section 1865(b)(1) of the Act provides that, if the Secretary finds that, through accreditation by a national accreditation body, a provider entity demonstrates that all of our applicable conditions and requirements are met or exceeded, the Secretary will deem that the provider entity has met the applicable Medicare requirements.

In making our finding as to whether the accreditation organization demonstrates that all Medicare conditions or requirements are met or exceeded, we consider factors such as the organization's accreditation requirements, its survey procedures, its ability to provide adequate resources for conducting required surveys and supplying information for us in enforcement activities, its monitoring procedures for providers entities found to be out of compliance with conditions or requirements, and its ability to provide us with necessary data for validation.

It has been brought to our attention that some ASCs are under the mistaken impression that, once we have granted deeming authority to an accreditation organization, then ASCs must be accredited by such an organization to receive Medicare certification. Accreditation by an accreditation organization is voluntary, and we do not require that accreditation for Medicare certification.

The American Osteopathic Association (AOA) was the fourth accreditation organization to apply for deeming authority for ASCs. The three other accreditation organizations already granted deeming authority are the Joint Commission on the Accreditation of Healthcare Organizations (JCAHO), the Accreditation Association of Ambulatory Health Care (AAAHC), and The American Association for the Accreditation of Ambulatory Surgery Facilities, Inc. (AAAASF).

The AOA is defined as a national accrediting body in section 1865(b)(1) of the Act, and was granted deeming authority by us for hospitals (65 FR 8727, published February 22, 2000). This was taken into consideration in the evaluation of this application for ASC deeming authority.

The AOA previously applied to us for deeming authority, which we announced in the **Federal Register** on March 14, 2001 (66 FR 14906). However, the organization withdrew its application before a final decision was made. We received a revised complete application from AOA on April 18, 2002 and published notice of that receipt on May 24, 2002 (67 FR 36611).

II. Determining Compliance—Surveys and Deeming

A national accrediting organization may request the Secretary to recognize its program as employing standards that meet or exceed Medicare's standards. The Secretary then examines the national accreditation organization's requirements to determine if they meet or exceed Medicare standards. If the Secretary recognizes an accreditation organization in this manner, any provider accredited by the national accrediting body's program that we have approved for that service will be "deemed" to meet the Medicare Conditions for Coverage.

The regulations specifying the Medicare Conditions for Coverage for ASCs are located in 42 CFR part 416. These conditions implement section 1832(a)(2)(F)(i) of the Act, which provides for Medicare Part B coverage of facility services furnished in connection with surgical procedures specified by the Secretary under section 1833(i)(1)(a) of the Act.

III. Provisions of the Proposed Notice

The proposed notice, published on May 24, 2002 (67 FR 36611), announced the application of AOA for deemed status for its accreditation program for ASCs. Under section 1865(b)(2) of the Act and our regulations in § 488.8 (Federal review of accreditation organizations), our review and evaluation of a national accreditation organization was conducted in accordance with, but not necessarily limited to, the following factors:

- The equivalency of an accreditation organization's requirements for an entity to our comparable requirements for that entity.
- The organization's survey process to determine the following:
  —The composition of the survey team, surveyor qualifications, and the ability of the organization to provide continuing surveyor training.
  —The comparability of its processes to those of State agencies, including survey frequency, and the ability to investigate and respond appropriately to complaints against accredited facilities.
  —The organization's procedures for monitoring providers or suppliers found by the organization to be out of compliance with program requirements. These monitoring procedures are used only when the organization identifies noncompliance. If noncompliance is identified through validation reviews, the survey agency monitors corrections as specified in § 488.7(d).
  —The ability of the organization to report deficiencies to the surveyed facilities and respond to the facility's plan of correction in a timely manner.
  —The ability of the organization to provide us with electronic data in ASCII comparable code, and reports necessary for effective validation and assessment of the organization's survey process.
  —The adequacy of staff and other resources, and its financial viability.
  —The organization's ability to provide adequate funding for performing required surveys.
  —The organization's policies with respect to whether surveys are announced or unannounced.
- The accreditation organization's agreement to provide us with a copy of the most current accreditation survey together with any other information

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related to the survey as we may require (including corrective action plans).

IV. Analysis of and Responses to Public Comments

We did not receive any comments to the proposed notice published in the **Federal Register** (67 FR 36611) on May 24, 2002.

V. Provisions of the Final Notice

A. Deeming Approval Review and Evaluation

We evaluated the AOA's standards and survey process to determine if facilities accredited by AOA met Medicare Conditions for Coverage. We did a standard-by-standard comparison of the applicable conditions or requirements to determine which of them met or exceeded Medicare requirements.

We compared the standards contained in the AOA's "Ambulatory Surgical Center (ASC) Manual" and its survey process in the "Ambulatory Surgical Center Surveyor Handbook" with the Medicare ASC Conditions for Coverage and our State and Regional Operations Manual. Our review and evaluation of AOA's deeming application, which were conducted as described in this notice, yielded the following clarifications:

- AOA provided an updated listing of its accredited ASC facilities.
- AOA adjusted language to refer consistently to the entities as ASCs as opposed to hospitals in its documents.
- AOA modified its standards to meet fully the requirements of the Medicare Conditions for Coverage.
- AOA modified its survey policy to ensure that ASC surveys are unannounced.
- AOA modified its requirements to indicate that any ASC seeking to participate in Medicare by virtue of an AOA accreditation must meet the "Accreditation with Medicare Certification," which requires that all State licensure requirements are satisfied in addition to meeting all AOA standards.
- AOA adjusted its standards to require written confirmation of primary source verifications with regard to medical staff credentialing.
- AOA adjusted its standard to conform with all applicable requirements of each State Nurse Practice Act to specify what duties a registered nurse may be allowed to perform in the area of pharmaceutical services.
- AOA agrees to notify us of all accreditation decisions made.

Review of AOA's application raised issues concerning the comparability of the AOA's ASC accreditation standards with the Medicare Conditions for Coverage for ASCs. We requested that the AOA demonstrate compliance with the Medicare ASC Conditions for Coverage and submit supplemental information to clarify its policies and procedures. Upon our final review of this information, we have determined that the AOA's ASC accreditation program meets the Medicare Conditions for Coverage for ASCs.

B. Term of Approval

Based on the review and observations described in this final notice, we have determined that AOA's requirements for ASCs meet or exceed our requirements. We reserve the right to observe an AOA ASC survey to determine the compliance of AOA surveyors to the policies and procedures, as there were none scheduled during the review of this application. In addition, the AOA must seek approval of all standards pertaining to the Life Safety Code (LSC) when we move to the LSC 2000 Edition, which we intend to implement in Spring 2003. We therefore recognize the AOA as a national accreditation organization for ASCs that request participation in the Medicare program, effective for a 6-year period beginning January 30, 2003.

VI. Collection of Information Requirements

This final notice does not impose any information collection and record keeping requirements subject to the Paperwork Reduction Act (PRA). Consequently, it does not need to be reviewed by the Office of Management and Budget (OMB) under the authority of the PRA. The requirements associated with granting and withdrawal of deeming authority to national accreditation organizations, codified in 42 CFR part 488, "Survey, Certification, and Enforcement Procedures," are currently approved by OMB under OMB approval number 0938–0690.

VII. Regulatory Impact Statement

We have examined the impact of this notice as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 16, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132.

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity).

The RFA requires agencies to analyze options for regulatory relief for small businesses, nonprofit organizations, and government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $6 million to $29 million or less in any 1 year (for details, see the Small Business Administration's publication that set forth size standards for health care industries at 65 FR 69432). Approximately 73 percent of ASCs are considered small businesses with total revenues of $8.5 million or less according to the Small Business Administration's data. For purposes of the RFA, States and individuals are not considered small entities.

Also, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis for any notice that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we consider a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds.

This notice merely recognizes AOA as a national accreditation organization that has requested approval for deeming authority for ASCs that are participating in the Medicare program. Since these provider entities must be routinely monitored to determine compliance with Medicare requirements, we believe that this organization's accreditation program has the potential to reduce both the regulatory and administrative burdens associated with the Medicare program requirements.

This notice is not a major rule as defined in Title 5, United States Code, section 804(2) and is not an economically significant rule under Executive Order 12866.

Therefore, we have determined, and the Secretary certifies, that this final notice will not result in a significant impact on small entities and will not have an effect on the operations of small rural hospitals. Therefore, we are not preparing analyses for either the RFA or section 1102(b) of the Act.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditure in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. This notice will have no consequential effect on State, local, or tribal governments. We believe the private sector costs of this notice will fall below this threshold as well.

In accordance with Executive Order 13132, this notice will not significantly affect the rights of States and will not significantly affect State authority.

In accordance with the provisions of Executive Order 12866, this notice was reviewed by the Office of Management and Budget.

Authority: Section 1865(b)(3)(A) of the Social Security Act (42 U.S.C. 1395bb(b)(3)(A)).

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program; and No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: October 7, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 02–27782 Filed 10–31–02; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: DHHS/ACF Rural Welfare-to-Work Strategies Demonstration Evaluation Project 18-Month Survey.

OMB No.: New Collection.

Description: the Rural Welfare-to-Work Strategies Demonstration Evaluation Project, which was developed and funded by the Administration for Children and Families (ACF) of the U.S. Department of Health and Human Services (HHS), is a national evaluation to determine the benefits and cost-effectiveness of methods designed to aid current or former Temporary Assistance for Needy Families (TANF) recipients or other low-income families as they transition from welfare to the employment arena. This evaluation chiefly attempts to address four research questions:

- What are the issues and challenges associated with operating the new welfare-to-work services and policy approaches being studied?
- How effective are the welfare-to-work programs under the project in increasing employment and earnings and in improving other measures?
- What are the net costs of the welfare-to-work programs, and do the programs' benefits outweigh the costs?
- What approaches should policymakers and program managers consider in designing strategies to improve the efficacy of welfare-to-work strategies for families in rural areas?

The evaluation employs a multi-pronged approach to answer the research questions. These approaches include: (1) An impact study, which will examine the differences between control and intervention groups with respect to factors such as employment rates, earnings, and welfare receipt; (2) a cost-benefit analysis, which will calculate estimates of net program cost-effectiveness; and (3) an in-depth process study, which will identify implementation issues and challenges, examine program costs, and provide details on how programs achieve observed results. The data collected during the conduct of this study will be used for the following purposes:

- To study rural welfare-to-work programs' effects on factors such as employment, earnings, educational attainment, family composition;
- To collect data on a wider range of outcome measures—such as job acquisition, retention, and advancement, job quality, educational attainment, and employment barriers—than is available through welfare or unemployment insurance records, in order to understand how individuals are being affected by the demonstration programs;
- To support research on the implementation of welfare-to-work programs across sites;
- To obtain program participation and service use information important to the evaluation's cost-benefit component; and
- To obtain contact information for a future follow-up survey that will be important to achieving high response rates for that survey.

Respondents: The respondents of the 18-month follow-up survey are current and former TANF recipients, or individuals in families at risk of needing TANF benefits (working poor, hard-to-employ) from the three states participating in the evaluation (Illinois, Nebraska, and Tennessee). The survey will be administered to both intervention and control groups in each participating site. The estimated sample size for the survey is 3,400 individuals, including projected samples of 2,200 in Tennessee, and 600 each in Illinois and Nebraska. The survey will be conducted primarily by telephone, with field interviews conducted with those individuals who cannot be interviewed by telephone.

Respondents of the process study data collection efforts (interviews, case studies, and focus groups) include State and local-level agency staff from welfare agencies and other organizations. These individuals include program directors and site managers, program line staff, workforce development staff, TANF agency staff, and community partners and employers. Approximately 105 staff members per site are expected to participate in semi-structured interviews, 21 in case conferences, and 108 in focus groups, across the three demonstration sites.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
18-Month Follow-up Survey	963	1	45 minutes or .75 hours	723
Process Study Data Collection Staff Interviews	105	1	75 minutes or 1.15 hours	120.8
Process Study Data Collection Staff Case Conferences	21	1	30 minutes or .5 hours	10.5
Process Study Data Collection Staff Focus Groups	108	1	90 minutes or 1.5 hours	162

Estimated Total Annual Burden Hours: 1016.3.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration Office of Information Services, 370 L'Enfant Promenade, SW., Washington,

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DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: October 23, 2002.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 02–27759 Filed 10–31–02; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Women's Health Initiative Subcommittee of the Advisory Committee for Reproductive Health Drugs; Notice of Postponement of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is postponing the meeting of the Women's Health Initiative Subcommittee of the Advisory Committee for Reproductive Health Drugs scheduled for November 12 and 13, 2002. The meeting was announced in the **Federal Register** of October 21, 2002 (67 FR 64651). FDA's Center for Drug Evaluation and Research is going to evaluate additional data relevant to the topic. Future meeting dates will be announced in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Jayne E. Peterson, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7001, FAX 301–827–6776, or e-mail: *PETERSONJ@CDER.FDA.GOV*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12537. Please call the Information Line for up-to-date information on this meeting.

Dated: October 24, 2002.

LaJuana D. Caldwell,

Acting Senior Associate Commissioner for External Relations.

[FR Doc. 02–27884 Filed 10–31–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02D–0427]

Guidance for Industry on Antiretroviral Drugs Using Plasma Human Immunodeficiency Virus Ribonucleic Acid Measurements—Clinical Considerations for Accelerated and Traditional Approval; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry entitled "Antiretroviral Drugs Using Plasma HIV RNA Measurements—Clinical Considerations for Accelerated and Traditional Approval." This guidance is intended to assist sponsors in the clinical development of drugs for the treatment of human immunodeficiency virus (HIV) infection. Specifically, this guidance addresses the agency's current thinking regarding designs of clinical trials that use HIV ribonucleic acid (RNA) measurements to support accelerated and traditional approvals of antiretroviral drug products.

DATES: Submit written or electronic comments on agency guidances at any time.

ADDRESSES: Submit written requests for single copies of this guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Jeffrey S. Murray, Center for Drug Evaluation and Research (HFD–530), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2330.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled "Antiretroviral Drugs Using Plasma HIV RNA Measurements—Clinical Considerations for Accelerated and Traditional Approval." This guidance is intended to assist sponsors in the clinical development of drugs for the treatment of HIV infection. Specifically, this guidance addresses the agency's current thinking regarding designs of clinical trials that use HIV RNA measurements to support accelerated and traditional approvals of antiretroviral drug products. It is also intended to serve as a focus for continued discussions among the Division of Antiviral Drug Products (DAVDP), pharmaceutical sponsors, the academic community, and the public.

The draft version of this document, first issued in August 1999, was based on a DAVDP advisory committee meeting, convened in July 1997, to discuss the use of HIV RNA endpoints for traditional approval of antiretroviral drugs. This document has been updated to address public comments to the draft version and to include pertinent information from a DAVDP advisory committee meeting held in January 2001 that addressed issues relating to trial design in HIV-infected patients who have already been heavily treated for the disease. The guidance summarizes the rationale for using HIV RNA as a primary endpoint in clinical trials to support both accelerated and traditional approval. It describes the amount and type of safety and efficacy data recommended for new drug applications. The guidance also reviews pertinent clinical trial design issues including choice of control arms, study procedures, and statistical considerations. An appendix addresses the use of experimental HIV RNA assays in phase 3 studies.

This guidance does not address specific phase-1 and -2 development issues, development of alternate dosing regimens, or the use of HIV–1 resistance testing. These issues will be addressed in separate future guidance documents.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the agency's current thinking on clinical considerations for accelerated and traditional approval of antiretroviral drugs using plasma HIV RNA measurements. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may, at any time, submit written or electronic comments on the guidance to the Dockets Management Branch (see **ADDRESSES**). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/cder/guidance/index.htm* or *http://www.fda.gov/ohrms/dockets/default.htm*.

Dated: October 28, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–27885 Filed 10–31–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02D–0407]

Diagnostic X-Ray Field Size; Revocation of Compliance Policy Guide 7133.17; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration is correcting a notice that appeared in the **Federal Register** of October 10, 2002 (67 FR 63108). The document revoked the compliance policy guide entitled "Sec. 398.475 Minimum X-Ray Field Size for Spot-Film Operation of Fluoroscopic Systems with Fixed SID and Without Stepless Adjustment of the Field Size (CPG 7133.17)." The document was published with an inadvertent error. This document corrects that error.

FOR FURTHER INFORMATION CONTACT: Joyce Strong, Office of Policy (HF–27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7010.

SUPPLEMENTARY INFORMATION: In FR Doc. 02–25881, appearing on page 63108 in the **Federal Register** of Thursday, October 10, 2002, the following correction is made:

1. On page 63108, in the third column, at the end of the document, the phrase "Dated: October 1, 2022" is corrected to read "Dated: October 1, 2002".

Dated: October 25, 2002.

John M. Taylor,

Senior Associate Commissioner for Regulatory Affairs.

[FR Doc. 02–27886 Filed 10–31–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01D–0177]

Guidance for Industry on Immunotoxicology Evaluation of Investigational New Drugs; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry entitled "Immunotoxicology Evaluation of Investigational New Drugs." This guidance provides recommendations for sponsors of investigational new drugs (INDs) on what parameters to routinely assess in toxicology studies to determine effects on immune function, when to conduct additional immunotoxicity studies, and when additional mechanistic information could better characterize a given effect on the immune system.

DATES: Submit written or electronic comments on agency guidances at any time.

ADDRESSES: Submit written requests for single copies of this guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Kenneth L. Hastings, Center for Drug Evaluation and Research (HFD–590), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2489.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled "Immunotoxicology Evaluation of Investigational New Drugs." The human immune system is a complex set of cells and organs that can be adversely affected by drugs. Impairment of the immune system can result in increased susceptibility to infections and tumors, allergic responses to drugs, autoimmune reactions, or other forms of immune system disease. Immunotoxicology studies can be conducted in animals to determine the potential of an investigational drug to adversely affect the immune system. This guidance provides advice on: (1) When to conduct immunotoxicology studies, (2) what types of effects can be observed in standard nonclinical toxicology studies that would indicate that a drug has immunotoxic potential, and (3) what types of studies could be useful in determining the nature of the immunotoxicity. It is expected that this guidance will provide sponsors with useful information for proper assessment of the immunotoxic potential of drugs.

In the **Federal Register** of May 11, 2001 (66 FR 24145), FDA published a draft guidance entitled "Immunotoxicology Evaluation of Investigational New Drugs." The notice gave interested persons an opportunity to submit comments. Based on the comments, FDA has revised the guidance.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the agency's current thinking on immunotoxicology evaluation of INDs. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may, at any time, submit written comments on the guidance to the Dockets Management

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Branch (see **ADDRESSES**). Two copies of mailed comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at either http://www.fda.gov/cder/guidance/index.htm or http://www.fda.gov/ohrms/dockets/default.htm.

Dated: October 28, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–27883 Filed 10–31–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; Special Emphasis Panel to Review Two R25, Two K12 and One K23 Grant Applications.

Date: November 19, 2002.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: 6116 Executive Blvd, Room 8137, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Raymond A. Petryshyn, PhD, Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Blvd., 8th Fl., Room 8109, Bethesda, MD 20892, 301/594–1216, *petryshr@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, Natural Institutes of Health, HHS)

Dated: October 24, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–27754 Filed 10–31–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Eye Institute Special Emphasis Panel; NEI Clinical Applications (U10 clinical trials, R03, R01, R21, K08, K23).

Date: December 10, 2002.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Anne E. Schaffner, PhD, Scientific Review Administrator, Division of Extramural Research, National Eye Institute, 6120 Executive Blvd., Suite 350, Bethesda, MD 20892, 301–451–2020.

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: October 24, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–27753 Filed 10–31–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the pubic in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; Fragile X Research Center.

Date: November 18–29, 2002.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Madison Hotel, 15th and M Street, NW., Washington, DC 20005.

Contact Person: Norman Chang, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, National Institutes of Health, 6100 Executive Blvd., Room 5E03, Bethesda, MD 20892, (301) 496–1485.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: October 24, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–27748 Filed 10–31–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice

is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel; ZAA1 DD (02) Review Applications.

Date: November 12, 2002.

Time: 4:30 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: 6000 Executive Boulevard, Suite 409, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Sathasiva B. Kandasamy, PhD, Scientific Review Administrator, Extramural Project Review Branch, Office of Scientific Affairs, National Institute on Alcohol, Abuse and Alcoholism, 6000 Executive Blvd, Suite 409, Bethesda, MD 20892–7003, (301) 443–2926. *skandasa@mail.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel; ZAA1 FF (02) Review K05 Application.

Date: November 18, 2002.

Time: 9 a.m. to 10 a.m.

Agenda: To review and evaluate grant applications.

Place: Willco Building, Suite 409, 6000 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Sean N. O'Rourke, Scientific Review Administrator, Extramural Project Review Branch, Office of Scientific Affairs, National Institute on Alcohol, Abuse and Alcoholism, Suite 409, 6000 Executive Blvd, Bethesda, MD 20892–7003, (301) 443–2861.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel; ZAA1 FF (05) Review R21 Applications.

Date: November 19, 2002.

Time: 4 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Willco Building, Suite 409, 6000 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Sean N. O'Rourke, Scientific Review Administrator, Extramural Project Review Branch, Office of Scientific Affairs, National Institute on Alcohol, Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Blvd, Bethesda, MD 20892–7003, (301) 443–2861.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel; ZAA1 CC (02) Review of Application.

Date: November 26, 2002.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: 6000 Executive Boulevard, Rockville, MD 20892 (Telephone Conference Call).

Contact Person: Sandra Camman, Grants Technical Assistant, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Boulevard, Bethesda, MD 20892, 301–443–9419, *scamman@willco.niaaa.nih.gov*.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel; ZAA1 FF (04) Review R03 Application.

Date: November 18, 2003.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Willco Building, Suite 409, 6000 Executive Boulevard, Rockville, MD 20892 (Telephone Conference Call).

Contact Person: Sean N. O'Rourke, Scientific Review Administrator, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Boulevard, Bethesda, MD 20892–7003, 301–443–2861.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel; ZAA1 FF (03) Review R01 Application.

Date: November 19, 2003.

Time: 11 a.m. to 11:45 a.m.

Agenda: To review and evaluate applications.

Place: Willco Building, Suite 409, 6000 Executive Boulevard, Rockville, MD 20892 (Telephone Conference Call).

Contact Person: Sean N. O'Rouke, Scientific Review Administrator, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Boulevard, Bethesda, MD 20892–7003, 301–443–2861.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs, 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: October 24, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–27749 Filed 10–31–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel; Review of P01 Supplemental Applications.

Date: November 14, 2002.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: NIEHS-East Campus, 79 TW Alexander Drive, Building 4401, Room 3446, Research Triangle Park, NC 27709 (Telephone Conference Call).

Contact Person: Leroy Worth, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–30/Room 3171, Research Triangle Park, NC 27709, 919/541–0670. *worth@niehs.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel; Review of P01 Supplemental Applications.

Date: November 14, 2002.

Time: 3 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: NIEHS-East Campus, 79 TW Alexander Drive, Building 4401, Room 3446, Research Triangle Park, NC 27709 (Telephone Conference Call).

Contact Person: Leroy Worth, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–30/Room 3171, Research Triangle Park, NC 27709, 919/541–0670. *worth@niehs.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing

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limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel; Review of Conference Grant Applications.

Date: December 10, 2002.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: NIEHS, 79 T.W. Alexander Drive, Building 4401, Conference Room 122, Research Triangle Park, NC 27709 (Telephone Conference Call).

Contact Person: RoseAnne M McGee, Associate Scientific Review Administrator, Scientific Review Branch, Office of Program Operations, Division of Extramural Research and Training, Nat. Inst. of Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, 919/541–0752.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel; Review of Grant Applications.

Date: December 10, 2002.

Time: 3 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: NIEHS, 79 T.W. Alexander Drive, Building 4401, Conference Room 122, Research Triangle Park, NC 27709 (Telephone Conference Call).

Contact Person: RoseAnne M McGee, Associate Scientific Review Administrator, Scientific Review Branch, Office of Program Operations, Division of Extramural Research and Training, Nat. Inst. of Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, 919/541–0752.

(Catalogue of Federal Domestic Assistance Program Nos. 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences, National Institutes of Health, HHS)

Dated: October 24, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–27750 Filed 10–31–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, National Institute of Mental Health. The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Mental Health, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Institute of Mental Health.

Date: November 18, 2002.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, 9000 Rockville Pike, Building 36, Room 1B07, Bethesda, MD 20892.

Contact Person: Susan Koester, PhD, Executive Secretary, Associate Director for Science, Intramural Research Program, National Institute of Mental Health, NIH, Building 10, Room 4N222, MSC 1381, Bethesda, MD 20892–1381, 301–496–3501.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the intramural research review cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: October 24, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–27751 Filed 10–31–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel; Predoctoral Research Training Grant Applications.

Date: November 14–15, 2002.

Time: 8:30 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Ave., Chevy Chase, MD 20815.

Contact Person: Laura K. Moen, PhD, Scientific Review Administrator, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 1AS–13H, Bethesda, MD 20892, (301) 594–3998, *moenl@nigms.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes, of Health, HHS)

Dated: October 24, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–27755 Filed 10–31–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, Special Emphasis Panel—Review Application—Dr. Ira B. Black.

Date: November 12, 2002.

Time: 1 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Residence Inn, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Gopal M. Bhatnagar, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, National Institutes of Health, PHS, DHHS, 9000 Rockville Pike, 6100 Bldg., Room 5E01, Bethesda, MD 20892, (301) 496–1485.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: October 24, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–27756 Filed 10–31–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, Special Emphasis Panel: Review Application—Dr. Hannah Kinney.

Date: November 12, 2002.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Residence Inn, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Gopal M. Bhatnagar, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, National Institutes of Health, PHS, DHHS, 9000 Rockville Pike, 6100 Bldg., Room 5E01, Bethesda, MD 20892, (301) 496–1485.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: October 24, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–27757 Filed 10–31–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Immunology Small Business.

Date: November 12–13, 2002.

Time: 8:30 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: The River Inn, 924 Twenty-Fifth Street, NW., Washington, DC 20037.

Contact Person: Stephen M. Nigida, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4112, MSC 7812, Bethesda, MD 20892, (301) 435–3565.

Name of Committee: AIDS and Related Research Integrated Review Group; AIDS and Related Research 2.

Date: November 14, 2002.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Mayflower Hotel, 1127 Connecticut Avenue NW., Washington, DC 20036.

Contact Person: Abraham P. Bautista, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5102, MSC 7852, Bethesda, MD 20892, (301) 435–1506.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Occupational Safety and Health: Quorum.

Date: November 14–15, 2002.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites Hotel, 1900 Diagonal Road, Alexandria, VA 22314.

Contact Person: Charles N. Rafferty, PhD, NIOSH Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4114, MSC 7816, Bethesda, MD 20892, 301–435–3562, *rafferte@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Diagnosis and Treatment of Cancer.

Date: November 14–15, 2002.

Time: 8:30 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Shen K. Yang, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4138, MSC 7804, Bethesda, MD 20892, (301) 435–1213, *yangsh@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; ZRG1 F09 (20) L Fellowships and AREA Oncological Sciences.

Date: November 14–15, 2002.

Time: 8:30 a.m. to 5 p.m.,

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036–3305.

Contact Person: Syed M. Quadri, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge.Drive, Room 4144, MSC 7804, Bethesda, MD 20892, (301) 435–1211, *quadris@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; ZRG 1SSS–5 (10) Small Business Rehabilitation Medicine.

Date: November 14–15, 2002.

Time: 10 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Silver Spring, 8727 Colesville Road, Silver Spring, MD 20910.

Contact Person: Nancy Shinowara, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of

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Health, 6701 Rockledge Drive, Room 4208, MSC 7814, Bethesda MD 20892–7814, (301) 435–1173, *shinowan@drg.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; ZRG1 BDCN 5 03M: Hippocampus.

Date: November 14, 2002.

Time: 11 a.m. to 11:45 a.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Sherry L. Stuesse, PhD, Scientific Review Administrator, Division of Clinical and Population-Based Studies, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5188, MSC 7846, Bethesda, MD 20892, (301) 435–1785, *stuesses@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Breast Cancer Biology.

Date: November 14, 2002.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Victor A. Fung, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4120, MSC 7804, Bethesda, MD 20814–9692, (301) 435–3504, *fungv@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; ZRG1 PTHB 02M: Member Conflict: Chemoprevention of Cancer.

Date: November 14, 2002.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Martin L. Padarathsingh, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4146, MSC 7804, Bethesda, MD 20892, (301) 435–1717.

Name of Committee: Center for Scientific Review Special Emphasis Panel; ZRG1 VACC 10—Small Business: Vaccines.

Date: November 14–15, 2002.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Hyatt Regency Hotel, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Mary Clare Walker, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5104, MSC 7852, Bethesda, MD 20892, (301) 435–1165.

Name of Committee: Center for Scientific Review Special Emphasis Panel; ZRG1 IFCN1 (2) Sleep, Stress & Feeding Behavior.

Date: November 14, 2002.

Time: 2 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Gamil C. Debbas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5170, MSC 7844, Bethesda, MD 20892, (301) 435–1247, *eskayr@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Reproductive Behavior.

Date: November 14, 2002.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Weijia Ni, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3190, MSC 7848 (for overnight mail use room # and 20817 zip), Bethesda, MD 20892, (301) 435–1507, *niw@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Behavioral Research on Smoking.

Date: November 14, 2002.

Time: 3 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Weijia Ni, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3190, MSC 7848 (for overnight mail use room # and 20817 zip), Bethesda, MD 20892, (301) 435–1507, *niw@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; ZRG1 SSS2 (01) Syndecan-2 in Matrix Assembly.

Date: November 14, 2002.

Time: 3 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Prabha L. Atreya, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5156, MSC 7842, Bethesda, MD 20892, (301) 435–8367, *atreyap@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Cancer Therapy.

Date: November 14, 2002.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Philip Perkins, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4148, MSC 7804, Bethesda, MD 20892, (301) 435–1718, *perkins@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Cognitive Functioning in Parkinson's Disease.

Date: November 14, 2002.

Time: 3:15 p.m. to 5:15 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Jeffrey W. Elias, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3170, MSC 7848, Bethesda, MD 20892, (301) 435–0913, *eliasj@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Innovations Grants in AIDS Research and Human Immunology.

Date: November 14–15, 2002.

Time: 4:15 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Mayflower Hotel, 1127 Connecticut Avenue NW., Washington, DC 20036.

Contact Person: Abraham P. Bautista, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5102, MSC 7852, Bethesda, MD 20892, (301) 435–1506, *bautista@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; ZRG1 GRM (04) Oral Biology.

Date: November 15, 2002.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Jo Pelham, BA, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4102, MSC 7814, Bethesda, MD 20892, (301) 435–1786.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Cancer Genetics.

Date: November 15, 2002.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Victor A. Fung, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4120, MSC 7804, Bethesda, MD 20814–9692, 301–435–3504, *fungv@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; SNEM 1—Member Applications.

Date: November 15, 2002.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Yvette M. Davis, VMD, MPH, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3152, MSC 7770, Bethesda, MD 20892, 301–435–0906.

Name of Committee: Center for Scientific Review Special Emphasis Panel; ZRG1 HEM–1(02): Heart Development.

Date: November 15, 2002.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Robert T. Su, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4134, MSC 7802, Bethesda, MD 20892, (301) 435–1195, *sur@csr.nih.gov*.

Name of Committee: AIDS and Related Research Integrated Review Group, AIDS and Related Research 5.

Date: November 18–19, 2002.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Mayflower Hotel, 1127 Connecticut Avenue NW., Washington, DC 20036.

Contact Person: Abraham P. Bautista, PhD, Scientist Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5102, MSC 7852, Bethesda, MD 20892, (301) 435–1506, *bautista@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; ZRG1: SSS–7(11): Small Business Applications on Imaging Technologies A.

Date: November 18, 2002.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Tracy E. Orr, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Dr., Room 5112, Bethesda, MD 20892, (301) 435–1259, *orrt@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Brain Disorders and Clinical Neuroscience/ZRG1 BDCN–2(12).

Date: November 18–19, 2002.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Ramada Inn Rockville, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: William C. Benzing, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5190, MSC 7846, Bethesda, MD 20892, (301) 435–1254, *benzingw@mail.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; ZRG1–F01–20–L Brain Disorders and Clinical Neurosciences Fellowships.

Date: November 18–19, 2002.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Monarch Hotel, 2400 M Street, NW., Washington, DC 20037.

Contact Person: Sherry L. Stuesse, PhD, Scientific Review Administrator, Division of Clinical and Population-Based Studies, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5188, MSC 7846, Bethesda, MD 20892, 301–435–1785, *stuesses@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Developmental Disabilities, Communication and Science Education.

Date: November 18–19, 2002.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Wyndam Washington Hotel, 1400 M Street NW., Washington, DC 20005–2750.

Contact Person: Thomas A. Tatham, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3114, MSC 7848, Bethesda, MD 20892, (301) 594–6836, *tathomt@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Cancer Molecular Pathobiology.

Date: November 18, 2002.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Sharon K. Gubanich, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4140, MSC 7804, Bethesda, MD 20892, (301) 435–1767.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Pain: Cellular and Molecular Biology.

Date: November 18, 2002.

Time: 2 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: John Bishop, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5180, MSC 7844, Bethesda, MD 20892, (301) 435–1250.

Name of Committee: Center for Scientific Review Special Emphasis Panel; ZRG1 MEPO2M: DNA Replication & Repair.

Date: November 18, 2002.

Time: 4 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Angela Y. Ng, PhD, MBA, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4142, MSC 7804 (For courier delivery, use MD 20817), Bethesda, MD 20892, 301–435–1715, *ngo@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; ZRG1: SSS–7 (50): BISTI Applications on Imaging Technologies.

Date: November 18, 2002.

Time: 4 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Tracy E. Orr, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Dr., Room 5112, Bethesda, MD 20892, (301) 435–1259, *orrt@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 24, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–27752 Filed 10–31–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of Subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (59 FR 29916, 29925). A notice listing all currently certified laboratories is published in the **Federal Register** during the first week of each month. If any laboratory's certification is suspended or revoked, the laboratory will be omitted from subsequent lists until such time as it is restored to full certification under the Guidelines.

If any laboratory has withdrawn from the National Laboratory Certification Program during the past month, it will be listed at the end, and will be omitted from the monthly listing thereafter.

This notice is also available on the internet at the following Web sites: *http://workplace.samhsa.gov* and *http://www.drugfreeworkplace.gov*.

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh or Dr. Walter Vogl, Division of Workplace Programs, 5600 Fishers Lane, Rockwall 2 Building, Room 815, Rockville, Maryland 20857; Tel.: (301) 443–6014, Fax: (301) 443–3031.

SUPPLEMENTARY INFORMATION:

Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Public Law 100–71. Subpart C of the Guidelines, "Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies," sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal

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agencies. To become certified an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection.

To maintain that certification a laboratory must participate in a quarterly performance testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are not to be considered as meeting the minimum requirements expressed in the HHS Guidelines. A laboratory must have its letter of certification from SAMHSA, HHS (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Guidelines, the following laboratories meet the minimum standards set forth in the Guidelines:

ACL Laboratories
8901 W. Lincoln Ave.
West Allis, WI 53227
414–328–7840/800–877–7016
(Formerly: Bayshore Clinical Laboratory)

ACM Medical Laboratory, Inc.
160 Elmgrove Park
Rochester, NY 14624
716–429–2264

Advanced Toxicology Network
3560 Air Center Cove, Suite 101
Memphis, TN 38118
901–794–5770/888–290–1150

Aegis Analytical Laboratories, Inc.
345 Hill Ave.
Nashville, TN 37210
615–255–2400

Alliance Laboratory Services
3200 Burnet Ave.
Cincinnati, OH 45229
513–585–9000
(Formerly: Jewish Hospital of Cincinnati, Inc.)

American Medical Laboratories, Inc.
14225 Newbrook Dr.
Chantilly, VA 20151
703–802–6900

Associated Pathologists Laboratories, Inc.
4230 South Burnham Ave., Suite 250
Las Vegas, NV 89119–5412
702–733–7866/800–433–2750

Baptist Medical Center—Toxicology Laboratory
9601 I–630, Exit 7
Little Rock, AR 72205–7299
501–202–2783
(Formerly: Forensic Toxicology Laboratory Baptist Medical Center)

Clinical Reference Lab
8433 Quivira Rd.
Lenexa, KS 66215–2802
800–445–6917

Cox Health Systems, Department of Toxicology
1423 North Jefferson Ave.
Springfield, MO 65802
800–876–3652/417–269–3093
(Formerly: Cox Medical Centers)

Diagnostic Services Inc., dba DSI
12700 Westlinks Drive
Fort Myers, FL 33913
941–561–8200/800–735–5416

Doctors Laboratory, Inc.
P.O. Box 2658, 2906 Julia Dr.
Valdosta, GA 31602
912–244–4468

DrugProof, Divison of Dynacare
543 South Hull St.
Montgomery, AL 36103
888–777–9497/334–241–0522
(Formerly: Alabama Reference Laboratories, Inc.)

DrugProof, Division of Dynacare/Laboratory of Pathology, LLC
1229 Madison St., Suite 500, Nordstrom Medical Tower
Seattle, WA 98104
206–386–2672/800–898–0180
(Formerly: Laboratory of Pathology of Seattle, Inc., DrugProof, Division of Laboratory of Pathology of Seattle, Inc.)

DrugScan, Inc.
P.O. Box 2969, 1119 Mearns Rd.
Warminster, PA 18974
215–674–9310

Dynacare Kasper Medical Laboratories *
10150–102 Street, Suite 200
Edmonton, Alberta
Canada T]5 5E2
780–451–3702 / 800–661–9876

ElSohly Laboratories, Inc.
5 Industrial Park Dr.
Oxford, MS 38655
662–236–2609

Express Analytical Labs
3405 7th Avenue, Suite 106
Marion, IA 52302
319–377–0500

Gamma-Dynacare Medical Laboratories *
A Division of the Gamma-Dynacare Laboratory Partnership
245 Pall Mall St.
London, ONT
Canada N6A 1P4
519–679–1630

General Medical Laboratories
36 South Brooks St.
Madison, WI 53715
608–267–6267

Kroll Laboratory Specialists, Inc.
1111 Newton St.
Gretna, LA 70053
504–361–8989 / 800–433–3823
(Formerly: Laboratory Specialists, Inc.)

LabOne, Inc.
10101 Renner Blvd.
Lenexa, KS 66219
913–888–3927 / 800–728–4064
(Formerly: Center for Laboratory Services, a Division of LabOne, Inc.)

Laboratory Corporation of America Holdings
7207 N. Gessner Road
Houston, TX 77040
713–856–8288 / 800–800–2387

Laboratory Corporation of America Holdings
69 First Ave.
Raritan, NJ 08869
908–526–2400 / 800–437–4986
(Formerly: Roche Biomedical Laboratories, Inc.)

Laboratory Corporation of America Holdings
1904 Alexander Drive
Research Triangle Park, NC 27709
919–572–6900 / 800–833–3984
(Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group)

Laboratory Corporation of America Holdings
10788 Roselle Street
San Diego, CA 92121
800–882–7272
(Formerly: Poisonlab, Inc.)

Laboratory Corporation of America Holdings
1120 Stateline Road West
Southaven, MS 38671
866–827–8042 / 800–233–6339
(Formerly: LabCorp Occupational Testing Services, Inc., MedExpress/National Laboratory Center)

Marshfield Laboratories
Forensic Toxicology Laboratory
1000 North Oak Ave.
Marshfield, WI 54449
715–389–3734 / 800–331–3734

MAXXAM Analytics Inc.*
5540 McAdam Rd.
Mississauga, ON
Canada L4Z 1P1
905–890–2555
(Formerly: NOVAMANN (Ontario) Inc.)

Medical College Hospitals Toxicology Laboratory, Department of Pathology
3000 Arlington Ave.
Toledo, OH 43699
419–383–5213

MedTox Laboratories, Inc.
402 W. County Rd. D
St. Paul, MN 55112
651–636–7466 / 800–832–3244

MetroLab-Legacy Laboratory Services
1225 NE 2nd Ave.
Portland, OR 97232
503–413–5295 / 800–950–5295

Minneapolis Veterans Affairs Medical Center
Forensic Toxicology Laboratory
1 Veterans Drive
Minneapolis, Minnesota 55417
612–725–2088

National Toxicology Laboratories, Inc.
1100 California Ave.
Bakersfield, CA 93304
661–322–4250 / 800–350–3515

Northwest Drug Testing, a division of NWT Inc.
1141 E. 3900 South
Salt Lake City, UT 84124
801–293–2300 / 800–322–3361
(Formerly: NWT Drug Testing, NorthWest Toxicology, Inc.)

One Source Toxicology Laboratory, Inc.
1705 Center Street
Deer Park, TX 77536
713–920–2559
(Formerly: University of Texas Medical Branch, Clinical Chemistry Division; UTMB Pathology-Toxicology Laboratory)

Oregon Medical Laboratories
P.O. Box 972, 722 East 11th Ave.
Eugene, OR 97440–0972
541–687–2134

Pacific Toxicology Laboratories
6160 Variel Ave.
Woodland Hills, CA 91367
818–598–3110 / 800–328–6942
(Formerly: Centinela Hospital Airport Toxicology Laboratory

Pathology Associates Medical Laboratories
110 West Cliff Drive
Spokane, WA 99204
509–755–8991 / 800–541–7891x8991

PharmChem Laboratories, Inc.
4600 N. Beach
Haltom City, TX 76137
817–605–5300
(Formerly: PharmChem Laboratories, Inc., Texas Division; Harris Medical Laboratory)

Physicians Reference Laboratory
7800 West 110th St.
Overland Park, KS 66210
913–339–0372 / 800–821–3627

Quest Diagnostics Incorporated
3175 Presidential Dr.
Atlanta, GA 30340
770–452–1590
(Formerly: SmithKline Beecham Clinical Laboratories, SmithKline Bio-Science Laboratories)

Quest Diagnostics Incorporated
4770 Regent Blvd.
Irving, TX 75063
800–842–6152
(Moved from the Dallas location on 03/31/01; Formerly: SmithKline Beecham Clinical Laboratories, SmithKline Bio-Science Laboratories)

Quest Diagnostics Incorporated
400 Egypt Rd.
Norristown, PA 19403
610–631–4600 / 877–642–2216
(Formerly: SmithKline Beecham Clinical Laboratories, SmithKline Bio-Science Laboratories)

Quest Diagnostics Incorporated
506 E. State Pkwy.
Schaumburg, IL 60173
800–669–6995 / 847–885–2010
(Formerly: SmithKline Beecham Clinical Laboratories, International Toxicology Laboratories)

Quest Diagnostics Incorporated
7600 Tyrone Ave.
Van Nuys, CA 91405
818–989–2520 / 800–877–2520
(Formerly: SmithKline Beecham Clinical Laboratories)

Scientific Testing Laboratories, Inc.
463 Southlake Blvd.
Richmond, VA 23236
804–378–9130

S.E.D. Medical Laboratories
5601 Office Blvd.
Albuquerque, NM 87109
505–727–6300 / 800–999–5227

South Bend Medical Foundation, Inc.
530 N. Lafayette Blvd.
South Bend, IN 46601
219–234–4176

Southwest Laboratories
2727 W. Baseline Rd.
Tempe, AZ 85283
602–438–8507 / 800–279–0027

Sparrow Health System
Toxicology Testing Center, St. Lawrence Campus
1210 W. Saginaw
Lansing, MI 48915
517–377–0520
(Formerly: St. Lawrence Hospital & Healthcare System)

St. Anthony Hospital Toxicology Laboratory
1000 N. Lee St.
Oklahoma City, OK 73101
405–272–7052

Sure-Test Laboratories, Inc.
2900 Broad Avenue
Memphis, Tennessee 38112
901–474–6028

Toxicology & Drug Monitoring Laboratory
University of Missouri Hospital & Clinics
2703 Clark Lane, Suite B, Lower Level
Columbia, MO 65202
573–882–1273

Toxicology Testing Service, Inc.
5426 N.W. 79th Ave.
Miami, FL 33166
305–593–2260

US Army Forensic Toxicology Drug Testing Laboratory
Fort Meade, Building 2490
Wilson Street
Fort George G. Meade, MD 20755–5235
301–677–7085

The following laboratory voluntarily withdrew from the National Laboratory Certification Program, on October 28, 2002:

Clinical Laboratory Partners, LLC
129 East Cedar St.
Newington, CT 06111
860–696–8115
(Formerly: Hartford Hospital Toxicology Laboratory)

* The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. DHHS, with the DHHS' National Laboratory Certification Program (NLCP) contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, the DHHS will recommend that DOT certify the laboratory (Federal Register, 16 July 1996) as meeting the minimum standards of the "Mandatory Guidelines for Workplace Drug Testing" (59 FR, 9 June 1994, Pages 29908–29931). After receiving the DOT certification, the laboratory will be included in the monthly list of DHHS certified laboratories and participate in the NLCP certification maintenance program.

Richard Kopanda,
Executive Officer, SAMHSA.
[FR Doc. 02–27785 Filed 10–31–02; 8:45 am]
BILLING CODE 4160–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4737–N–08]

Notice of Proposed Information Collection for Public Comment: Data Collection Techniques for Identifying the Housing Subsidy Status of Survey Respondents

AGENCY: Office of Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comment Due Date:* December 31, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Reports Liaison Officer, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street, Room 8228, SW., Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Harold R. Holzman, Program Evaluation Division, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street, SW., Room 8140, Washington, DC 20410, telephone 202–708–3700, extension 5709. This is not a toll-free number. E-mail: *Harold_R._Holman@hud.gov*. Copies of the proposed forms and other available documents may be obtained from Harold Holzman.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper

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performance of functions to the agency, including if the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; (4) Minimize the burden of the collection of information on those who respond, including through the use of appropriate automated collection techniques or other forms of information technology that will reduce respondent burden (*e.g.*, permitting electronic submission of responses).

This notice also provides the following information:

Title of Proposal: Data Collection Techniques for Identifying the Housing Subsidy Status of Survey Respondents.

Description of the Need for Information and Proposed Use: The Department is conducting under contract a study to develop techniques to more accurately identify respondents' housing subsidy status in the American Housing Survey (AHS). The AHS provides information about the Nation's housing needs, with emphasis on the condition of the housing of low income households, as required by the Housing and Urban/Rural Recovery Act of 1983. The AHS data are also the basis of an annual report on housing quality that Congress requires of the President. Further, AHS data allow the Department to evaluate the housing needs of low-income families.

Accuracy of the results has been an issue in past versions of the AHS. Specifically, a substantial proportion of respondents misidentify their housing subsidy status in the survey. This threatens the accuracy of information that is reported to Congress, and it also can lead the Department to provide inadequate amounts of housing assistance to low-income families.

Some housing subsidy misidentifications in the AHS involve a 'false positive' pattern: individuals who do not receive a housing subsidy based on program records indicate that they do receive a subsidy in the AHS. The present investigation is an attempt to determine whether alternative survey questions would reduce the number of false positives in the AHS.

To identify false positives, it is necessary to first identify individuals who believe themselves in receipt of a housing subsidy, then use program records to determine whether they are actually receiving a subsidy. In the present study, screening interviews matched with program records will be used to identify individuals who fit the false positive pattern. Alternative questions designed to more effectively identify false positives will be tested in a second interview with a sample of such individuals.

Members of the Affected Public: (1) Randomly selected individuals will participate in screening interviews; and (2) a subset of the randomly selected individuals will participate in a second interview.

Estimation of the Total Number of Hours Needed With Those Surveyed to Conduct the Information Collection, Including Number of Respondents, Frequency of Response, and Hours of Response: The researchers will complete screening interviews with 800 individuals. The individuals will be interviewed by telephone, in their homes, or in another place that is convenient for them. The screening interviews will involve questions about housing subsidies, to identify individuals who believe themselves in receipt of a subsidy but who are not according to program records will participate in a second interview. This second interview will test alternative questions designed to more accurately identify individuals' housing subsidy status.

Estimation of the Total Number of Hours Needed With Those Surveyed to Conduct the Information Collection, Including Number of Respondents, Frequency of Response, and Hours of Response:

Types of respondents	Number of respondents	Number of responses	Minutes per respondent	Total burden hours
Randomly selected individuals	800	1	5	67
Low-income individuals who incorrectly believe that they are receiving a housing subsidy	15	1	60	15
Total	815			82

Status of the Proposed Information Collection: Pending OMB for approval.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: October 23, 2002.

Harold L. Bunce,

Deputy Assistant Secretary for Economic Affairs.

[FR Doc. 02–27747 Filed 10–31–02; 8:45 am]

BILLING CODE 4210–62–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4734–N–63]

Notice of Submission of proposed information Collection to OMB: Public Housing Assessment System (PHAS) Management Operations Certification

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* December 2, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2535–0106) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; E-mail *Lauren_Wittenberg@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Wayne_Eddins@HUD gov;* telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) The office of the agency to collect the information; (3) The OMB approval number, if applicable; (4) The description of the need for the information and its proposed use; (5) The agency form number, if applicable; (6) What members of the public will be affected by the proposal; (7) How frequently information submissions will be required; (8) An estimate of the total number of hours to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) Whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) The name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Public Housing Assessment system (PHAS) Management Operations Certification.

OMB Approval Number: 2535–0106.

Form Numbers: HUD–50072.

Description of the Need for the Information and Its Proposed Use: Public Housing Assessment Systems (PHAS) indicators will be used to assess the management performance of PHAS designated troubled PHAs and troubled with respect to the program, for assistance from the Capital Fund.

Respondents: Not-for profit institutions, state, Local or Tribal Government.

Frequency of Submission: Annually.

	Number of respondents	x	Annual responses	x	Hours per response	=	Burden hours
Reporting Burden	3,169		1		1.95		6,202

Total Estimated Burden Hours: 6,202.

Status: Revision of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: October 22, 2002.

Wayne Eddins,

Departmentol Reports Monagement Officer, Office of the Chief Information Officer.

[FR Doc. 02–27746 Filed 10–31–02; 8:45 am]

BILLING CODE 4210–72–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4730–N–44]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: November 1, 2002.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, Department of Housing and Urban Development, Room 7262, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired, (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless.

Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: October 24, 2002.

John D. Garrity,

Director, Office of Special Needs Assistance Programs.

[FR Doc. 02–27536 Filed 10–31–02; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Natural Gas Pipeline Right-of-Way Permit Application To Cross Roanoke River National Wildlife Refuge

AGENCY: Fish and Wildlife Service, Department of the Interior.

ACTION: Notice.

SUMMARY: This Notice advises the public that Eastern North Carolina Natural Gas, has applied for a right-of-way permit for the installation of a twelve (12)-inch outer-diameter natural gas pipeline across 8.5 acres of Roanoke River National Wildlife Refuge in Bertie County, North Carolina, described as follows: A right-of-way with a total width of twenty (20) feet on, over, across, and through that part of the Roanoke River National Wildlife lying and being in Bertie County, North Carolina. The proposed route is within the existing Department of Transportation right-of-way.

The proposed pipeline will cross approximately 3.5 miles of refuge lands between Windsor and Williamston, North Carolina. Commencing at the Northern entrance to the refuge running along the highway to the Roanoke River.

The purpose of the notice is to inform the public that the United States Fish and Wildlife Service is currently considering the merits of approving this application.

DATES: Interested persons desiring to comment on this application should do so within thirty (30) days following the date of publication of this notice.

ADDRESSES: If you wish to comment, you may submit comments by any one of several methods. You may mail comments to Regional Director, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Room 400, Atlanta, Georgia 30345. You may also comment via the Internet to *Roger__Beckham@fws.gov.* Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include "Attn: Roger Beckham" and your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact us at U.S. Fish and Wildlife Service, Division of Realty, Roger Beckham, 1–800–419–9582. Finally, you may hand deliver comments to Regional Director, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 400, Atlanta, Georgia 30345. Our practice is to make comments, including names and home

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addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Roger Beckham, Chief, Realty Branch-East, at the above Atlanta, Georgia, address or call (404) 679–7204 or FAX (404) 679–7273.

Right-of-way applications are filed in accordance with section 28 of the Mineral Leasing Act of 1920 (41 Stat. 449:30 U.S.C. 185), as amended by Public Law 93–153. Additionally, 50 CFR 29.21–9f requires this Agency to publish Notices in the **Federal Register**.

Dated: October 15, 2002.

Sam D. Hamilton,

Regional Director.

[FR Doc. 02–27793 Filed 10–31–02; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Proposed Collection, Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of an extension of a currently approved information collection (OMB Control Number 1010–0103).

SUMMARY: To comply with the Paperwork Reduction Act (PRA) of 1995, we are inviting comments on a collection of information that we will submit to the Office of Management and Budget (OMB) for review and approval. The information collection request (ICR) is titled "30 CFR part 206, subpart E—Indian Gas (Form MMS–4411, Safety Net Report)."

DATES: Submit written comments on or before December 31, 2002.

ADDRESSES: Submit written comments to Sharron L. Gebhardt, Regulatory Specialist, Minerals Management Service, Minerals Revenue Management, PO Box 25165, MS 320B2, Denver, Colorado 80225. If you use an overnight courier service, our courier address is Building 85, Room A–614, Denver Federal Center, Denver, Colorado 80225. You may also email your comments to us at *mrm.comments@mms.gov*. Include the title of the information collection and the OMB control number in the "Attention" line of your comment. Also include your name and return address. Submit electronic comments as an ASCII file avoiding the use of special characters and any form of encryption. If you do not receive a confirmation we have received your email, contact Ms. Gebhardt at (303) 231–3211.

FOR FURTHER INFORMATION CONTACT: Sharron L. Gebhardt, telephone (303) 231–3211, FAX (303) 231–3385 or email *sharron.gebhordt@mms.gov*.

SUPPLEMENTARY INFORMATION: *Title:* 30 CFR part 206, subpart E—Indian Gas (Form MMS–4411, Safety Net Report).

OMB Control Number: 1010–0103.

Bureau Form Number: Form MMS–4411.

Abstract: The Department of the Interior (DOI) is responsible for matters relevant to mineral resource development on Federal and Indian lands and the Outer Continental Shelf (OCS). The Secretary of the Interior (Secretary) is responsible for managing the production of minerals from Federal and Indian lands and the OCS, collecting royalties from lessees who produce minerals, and distributing the funds collected in accordance with applicable laws. The Secretary has an Indian trust responsibility to manage Indian lands and seek advice and information from Indian beneficiaries. MMS performs the royalty management functions and assists the Secretary in carrying out DOI's Indian trust responsibility.

On August 10, 1999, MMS published in the **Federal Register** (64 FR 43506) a final rulemaking titled "Amendments to Gas Valuation Regulations for Indian Leases," with an effective date of January 1, 2000. These regulations are codified at 30 CFR part 206, subpart E. Form MMS–4411, Safety Net Report, governs the valuation for royalty purposes of natural gas produced from Indian leases. In 30 CFR 206.172(e), MMS requires that lessees submit Form MMS–4411 when gas production from an Indian lease is sold beyond the first index pricing point. The gas regulations apply to all gas production from Indian (tribal or allotted) oil and gas leases (except leases on the Osage Indian Reservation).

Form MMS–4411 ensures Indian mineral lessors receive the maximum revenues from mineral resources on their land consistent with the Secretary's trust responsibility and lease terms. It permits lessees to comply with the regulatory requirements at the time that royalties are due.

The safety net calculation establishes the minimum value, for royalty purposes, of natural gas production from Indian leases. This reporting requirement will assist the Indian lessor in receiving all the royalties that are due and aid MMS in its compliance efforts. The safety net price is calculated using prices received for gas sold downstream of the first index pricing point. It will include only the lessee's or the lessee's affiliate's arm's-length sales price, and it will not require detailed calculations for the costs of transportation. By June 30 following any calendar year, the lessee calculates a safety net price for each month of the previous calendar year. Lessees must calculate the safety net prices for each index zone where the lessee has an Indian lease. The safety net price will capture the significantly higher values for sales occurring beyond the index point. The lessee will submit its safety net prices to MMS annually (by June 30) using Form MMS–4411.

We are also revising this ICR to include reporting requirements that were inadvertently overlooked when the final rule was published. See the chart below for these requirements and associated burden hours. These reporting requirements are rare and unusual circumstances where the standard valuation procedures set out in the Indian gas valuation rule are not appropriate.

MMS is requesting OMB's approval to continue to collect this information. Not collecting this information would limit the Secretary's ability to discharge his/her duties and may also result in loss of royalty payments to the Indian lessor due to royalties not being collected on prices received under higher priced long-term sales contracts. Proprietary information submitted is protected, and there are no questions of a sensitive nature included in this information collection.

We have also changed the title of this ICR from "Safety Net Report" to "30 CFR part 206, subpart E—Indian Gas (Form MMS–4411, Safety Net Report)," to clarify the regulatory language we are covering under 30 CFR part 206.

Frequency: Annually.

Estimated Number and Description of Respondents: 29 Indian lessees/lessors.

Estimated Annual Reporting and Record keeping "Hour" Burden: 1,012 hours.

The following chart shows the breakdown of the burden hours by CFR section and paragraph:

30 CFR section	Reporting requirement	Burden hours per response	Annual number of responses	Annual burden hours
206.172(e)(6)(i) and (iii)	You must report the safety net price for each index zone to MMS on Form MMS–4411, Safety Net Report, no later than June 30 following each calendar year * * * MMS may order you to amend your safety net price within one year from the date your Form MMS–4411 is due or is filed, whichever is later.	25	24	600
206.172(f)(1), (2), and (3)	An Indian tribe may ask MMS to exclude some or all of its leases from valuation under this section. . . . If an Indian tribe requests exclusion from an index zone for less than all of its leases, MMS will approve the request only if the excluded leases may be segregated into one or more groups based on separate fields within the reservation. . . . An Indian tribe may ask MMS to terminate exclusion of its leases from valuation under this section. . . . The Indian tribe's request to MMS under either paragraph (f)(1) or (2) of this section must be in the form of a tribal resolution.	40	1	40
206.174(f)	You may ask MMS for guidance in determining value. You may propose a valuation method to MMS. Submit all available data related to your proposal and any additional information MMS deems necessary.	40	1	40
206.175(d)(4)	You may request MMS approval of other methods for determining the quantity of residue gas and gas plant products allocable to each lease.	20	1	20
	Transportation Allowances			
206.178(a)(1)(i)	You are required to submit to MMS a copy of your arm's-length transportation contract(s) and all subsequent amendments to the contract(s) within 2 months of the date MMS receives your report which claims the allowance on the Form MMS–2014.	8	2	16
206.178(a)(2)(ii)	As an alternative to paragraph (a)(2)(i) of this section, you may propose to MMS a cost allocation method based on the values of the products transported.	20	1	20
206.178(a)(3)(i) & (ii)	If your arm's-length transportation contract includes both gaseous and liquid products and the transportation costs attributable to each cannot be determined from the contract, you must propose an allocation procedure to MMS. You are required to submit all relevant data to support your allocation proposal.	40	1	40
206.178(b)(2)(iv)	After you have elected to use either method [depreciation with a return on under appreciated capital investment or a return on depreciable capital investment] for a transportation system, you may not later elect to change to the other alternative without MMS approval.	20	1	20
206.178(b)(2)(iv)(A)	Once you make an election [depreciation or unit of production method], you may not change methods without MMS approval.	20	1	20
206.178(b)(3)(I)	Except as provided in this paragraph, you may not take an allowance for transporting a product that is not royalty bearing without MMS approval.	40	1	40
206.178(b)(3)(ii)	As an alternative to the requirements of paragraph (b)(3)(i) of this section, you may propose to MMS a cost allocation method based on the values of the products transported.	See 206.178(a)(2)(ii)		
206.178(b)(5)	If you transport both gaseous and liquid products through the same transportation system, you must propose a cost allocation procedure to MMS. . . . You are required to submit all relevant data to support your proposal.	See 206.178(a)(3)(i)(ii) and		
	Processing Allowances			
206.180(a)(1)(i)	You are required to submit to MMS a copy of your arm's-length processing contract(s) and all subsequent amendments to the contract(s) within 2 months of the date MMS receives your first report which deducts the allowance on the Form MMS–2014.	8	2	16
206.180(a)(3)	If your arm's-length processing contract includes more than one gas plant product and the processing costs attributable to each product cannot be determined from the contract, you must propose an allocation procedure to MMS. . . . You are required to submit all relevant data to support your proposal.	40	1	40
206.180(b)(2)(iv)	After you elect to use either method [depreciation with a return on undepreciable capital investment or a return on depreciable capital investment] for a processing plant, you may not later elect to change to the other alternative without MMS approval.	20	1	20
206.180(b)(2)(iv)(A)	Once you make an election, you may not change [depreciation or unit of production] methods without MMS approval.	20	1	20

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30 CFR section	Reporting requirement	Burden hours per response	Annual number of responses	Annual burden hours
206.180(b)(3)	Your processing allowance under this paragraph (b) must be determined based upon a calendar year or other period if you and MMS agree to an alternative.	20	1	20
206.181(c)	A proposed comparable processing fee submitted to either the Tribe and MMS (for tribal leases) or MMS (for allotted leases) with your supporting documentation submitted to MMS. If MMS does not take action on your proposal within 120 days, the proposal will be deemed to be denied and subject to appeal to the MMS Director under 30 CFR part 290.	40	1	40
Total			41	1,012

Estimated Annual Reporting and Record-keeping "Non-hour Cost" Burden: We have identified no "non-hour" cost burdens.

Comments: The PRA (44 U.S.C. 3501, *et seq.*) provides an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Before submitting an ICR to OMB, PRA Section 3506(c)(2)(A) requires each agency "* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *." Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

The PRA also requires agencies to estimate the total annual reporting "non-hour cost" burden to respondents or record keepers resulting from the collection of information. We have not identified non-hour cost burdens for this information collection. If you have costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information; monitoring, sampling, testing equipment; and record storage facilities. Generally, your estimates should not include equipment or services purchased: (i) Before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

We will summarize written responses to this notice and address them in our ICR submission for OMB approval, including appropriate adjustments to the estimated burden. We will provide a copy of the ICR to you without charge upon request and the ICR will also be posted on our Web site at *http://www.mrm.mms.gov/Laws_R_D/FRNotices/FRInfColl.htm*.

Public Comment Policy: We will post all comments in response to this notice on our Web site at *http://www.mrm.mms.gov/Laws_R_D/FRNotices/FRInfColl.htm*. We will also make copies of the comments available for public review, including names and addresses of respondents, during regular business hours at our offices in Lakewood, Colorado. Individual respondents may request we withhold their home address from the public record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you request that we withhold your name and/or address, state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach, (202) 208–7744.

Dated: October 25, 2002.

Cathy J. Hamilton,

Acting Associate Director for Minerals Revenue Management.

[FR Doc. 02–27715 Filed 10–31–02; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

Kaloko-Honokohau National Historical Park, Advisory Commission; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Na Hoapili O Kaloko Honokohau, Kaloko-Honokohau National Historical Park Advisory Commission will be held at 9 a.m., November 16, 2002 at Kaloko-Honokohau National Historical Park headquarters, 73–4786 Kanalani St. Suite 14, Kailua-Kona, Hawaii.

The agenda will include Status on Park Brochure, Report on Alu Like Training Program, and FY2003 Budget Plans.

The meeting is open to the public. Minutes will be recorded for documentation and transcribed for dissemination. Minutes of the meeting will be available to the public after approval of the full Advisory Commission. Transcripts will be available after 30 days of the meeting.

For copies of the minutes, contact Kaloko-Honokohau National Historical Park at (808) 329–6881.

Dated: October 8, 2002.

Geraldine K. Bell,

Superintendent, Kaloko-Honokohau National Historical Park.

[FR Doc. 02–27878 Filed 10–31–02; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before October 12, 2002. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by the United States Postal Service, to the National Register Historic Places, National Park Service, 1849 C St. NW, NC400, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service,1201 Eye St. NW, 8th floor, Washington, DC 20005; or by fax, 202–343–1836. Written or faxed comments should be submitted by November 18, 2002.

Carol D. Shull,

Keeper of the National Register of Historic Places.

ARIZONA

Navajo County

Hubbell, Lorenzo, Trading Post and Warehouse, 523 W. Second St., Winslow, 02001383

Pinal County

Picacho Pass Skirmish Site—Overland Mail Co. Stage Station at Picacho Pass, 1 mi. NW of I–10, Interchange #219, Picacho, 02001384

CALIFORNIA

Modoc County

Nelson Springs, Address Restricted, Likely, 02001393

Mono County

Dry Lakes Plateau, Address Restricted, Bodie Hills, 02001394

Placer County

Stevens Trail, Roughly bounded by Iowa Hill, canyon of North fork of American R., until at Secret Ravine, top of ridge of Colfax, Colfax, 02001391

San Francisco County

Central Embarcadero Piers Historic District, Piers 1, 1½, 3 and 5, The Embarcadero, San Francisco, 02001390

Santa Barbara County

Point Sal Ataje, Address Restricted, Point Sal Highlands, 02001392

GEORGIA

Fulton County

Reynoldstown Historic District, Roughly bounded by the CSX rail line, Memorial Dr., Pearl St., and Moreland, Atlanta, 02001405

Putnam County

Rockville Academy and St. Paul Methodist Church Historic District, E of Eatonton and S of GA 16, Rockville Rd., Eatonton, 02001382

ILLINOIS

Cook County

Automatic Electric Company Building, 1001 W. Van Buren, Chicago, 02001386

Berwyn Health Center, 6600 W. 26th St., Berwyn, 02001352

Fuller Park, (Chicago Park District MPS) 331 W. 45th St., Chicago, 02001347

Maxwell—Briscoe Automobile Company Showroom, (Motor Row, Chicago, Illinois MPS) 1737 S. Michigan Ave., Chicago, 02001349

Motor Row Historic District, (Motor Row, Chicago, Illinois MPS) Roughly bounded by 22nd St., Indiana St., 24th Place, and Wabash St., Chicago, 02001387

Norwood Park Historical District, Roughly bounded by Harlem Ave., Nagle Ave., Bryn Mawr Ave., and Avondale St., Chicago, 02001350

Scoville Place, Jct. of Lake St. and Oak Park Ave., Oak Park, 02001351

Lake County

Waukegan Building, 4 S. Genesee St., Waukegan, 02001355

Madison County

Collins, Daniel Dove, House, 621 W. Main St., Collinsville, 02001385

Norodni Sin, 209–211 E. Vandalia, Edwardsville, 02001353

Ogle County

Buffalo Grove Lime Kiln, Galena Trail Rd., Polo, 02001348

Williamson County

Stotlar, Ed. M., House, 1304 W. Main St., Marion, 02001354

MISSISSIPPI

Greene County

Vernal Presbyterian Church, 455 McInnis—Vernal Rd., Lucedale, 02001389

Hinds County

Welty, Eudora, House, 1119 Pinehurst St., Jackson, 02001388

MISSOURI

Cole County

Kaullen Mercantile Company, 900 and 902 E. High St., Jefferson City, 02001402

Jackson County

Kansas City Club Building, 1228 Baltimore Ave., Kansas City, 02001401

TWA Corporate Headquarters' Building, 1735–1741 Baltimore Ave.—1740 Main St., Kansas City, 02001403

Marion County

Maple Avenue Historic District, Roughly bounded by Broadway and Center St., Alley to North St., Dulany to Section, Hannibal, 02001404

NEW YORK

Albany County

First Reformed Dutch Church of Bethlehem, US 9W, Bethlehem, 02001398

Delaware County

Congregation Bnai Israel Synagogue, Wagner Ave., Fleischmanns, 02001396

Queens County

Congregation Tifereth Israel, 109–18 and 109–20 54th Ave., Corona, 02001357

Rensselaer County

Lansingburgh Village Burial Ground, Third Ave. and 107th St., Troy, 02001358

Richmond County

Calvary Presbyterian Church, 909 Castleton Ave., Staten Island, 02001356

Schuyler County

Watkins Glen Grand Prix Course, 1948–1952, Franklin St., NY 329, NY 409, Watkins Glen, 02001397

Sullivan County

St. John's Episcopal Church and Rectory, 15 St. John's St., Monticello, 02001359

Ulster County

K. WHITTELSEY (Tugboat), 3 North St. at Rondout Creek, Kingston, 02001395

Ulster House Hotel, Main St. at Academy Rd., Pine Hill, 02001399

Westchester County

Peekskill Presbyterian Church, 705 South St., Peekskill, 02001400

OHIO

Cuyahoga County

Weizer Building, 11801 Buckeye Rd., Cleveland, 02001360

TENNESSEE

Madison County

New Souther Hotel, 112–120 E. Baltimore St., Jackson, 02001378

Rutherford County

Lytle Cemetery, 739 NW Broad St., Murfreesboro, 02001376

Shelby County

Martin Memorial Temple CME Church, 65 S. Parkway West, Memphis, 02001379

Warren County

City Cemetery, South High St., McMinnville, 02001377

VERMONT

Addison County

Brooksville Advent Church, (Religious Buildings, Sites and Structures in Vermont MPS) 1338 Dog Team Tavern Rd., New Haven, 02001380

Dog Team Tavern, 1338 Dog Team Tavern Rd., New Haven, 02001381

VIRGINIA

Augusta County

Bare House and Mill, 157 Wilda Rd., Stuarts Draft, 02001364

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Carroll County

Carter Hydraulic Rams, Off Grayson St. and U.S. 221, Hillsville, 02001373

Franklin County

Bleak Hill, Address Restricted, Callaway, 02001374

Greene County

Powell—McMullan House, 233 McMullen Mill Rd., Stanardsville, 02001367

Hanover County

Hanover Wayside, 8225 Hanover Wayside Rd., Hanover, 02001365

Henry County

Old Turner Place, 7643 Henry Rd., Henry, 02001371

Lynchburg Independent city

Court House Hill—Downtown Historic District (Boundary Increase), Roughly along Madison St., Harrison St., 7th St., 6th St., Lynchburg (Independent City), 02001361

Page County

Wall Brook Farm, 967 Longs Rd., Luray, 02001375

Richmond Independent city

Bryan, Joseph, Park, 4308 Hermitage Rd., Richmond (Independent City), 02001369

Church of the Sacred Heart, 1401 Perry St., Richmond (Independent City), 02001368

New Pump House, 1708 Pump House Dr., Richmond (Independent City), 02001366

Rockbridge County

Hamilton Schoolhouse, VA 611, S. Buffalo Rd., Lexington, 02001372

Tazewell County

Moore, Capt. James, Homestead, VA 644, Boissevain, 02001363

Sanders, Walter McDonald, House, College Ave., Bluefield, 02001370

Wise County

Southwest Virginia Museum Historical State Park, 10 W. Street N, Big Stone Gap, 02001362

A request for REMOVAL has been made for the following resources:

IOWA

Washington County

Rubio Bridge, (Highway Bridges in Iowa MPD) Over Skunk R. Rubio vicinity, 98000471

PENNSYLVANIA

Lackawanna County

Dalton House E. Main St. Dalton, 78002410

[FR Doc. 02–27880 Filed 10–31–02; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Information Quality Guidelines pursuant to Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001

AGENCY: Department of Interior, National Park Service.

ACTION: Notice of availability of Information Quality Guidelines.

SUMMARY: The National Park Service is announcing the availability of Information Quality Guidelines in order to comply with the guidelines issued by the Office of Management and Budget in the **Federal Register**, Vol., 2, No. 67, dated January 2, 2002, and reissued February 2, 2002, Vol., 67, No. 36, for implementing Section 515(a) of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; HR 5658).

FOR FURTHER INFORMATION CONTACT: Persons interested in reviewing the final Information Quality Guidelines are encouraged to access the guidelines at website *http://data2.itc.nps.gov/npspolicy/Dorders.cfm* Individuals are also encouraged to contact the National Park Service, Washington Administrative Program Center, (Attn: Deke Cripe) 1849 C Street, NW, Mail Stop 2605, Washington, DC 20240: Phone 202–354–1927.

SUPPLEMENTARY INFORMATION: The National Park Service disseminates a wide variety of information to the public, including organizational information, natural and cultural resource information, and budget information. Organizational information includes general descriptive information about the NPS and its component parks and offices. Examples include the parks' history, functions, and legislative authorities; organizational charts, the offices within the parks and their functions; the parks' strategic and performance plans and their budgetary information; and information pertaining to the parks' history, natural and cultural resources and administrative processes. This document is the basis for National Park Service policy to assure the quality of the information it disseminates.

Richard G. Cripe,

Manager, Washington Administrative Program Center.

[FR Doc. 02–27879 Filed 10–31–02; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–417–419 and 731–TA–953, 954, 956–959, 961, and 962 (Final)]

Carbon and Certain Alloy Steel Wire Rod From Brazil, Canada, Germany, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission determines, pursuant to section 705(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)) (the Act), that an industry in the United States is materially injured by reason of imports from Brazil and Canada of carbon and certain alloy steel wire rod [2] that have been found by the Department of Commerce (Commerce) to be subsidized by the Governments of Brazil and Canada. The Commission also determines, pursuant to section 735(b) of the Act (19 U.S.C. 1673d(b)), that an industry in the United States is materially injured by reason of imports from Brazil, Canada, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine of carbon and certain alloy steel wire rod that have been found by Commerce to be sold in the United States at less than fair value (LTFV).[3]

[1] The record is defined in 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] The merchandise covered by these investigations is certain hot-rolled products of carbon steel and alloy steel, in coils, of approximately round cross section, 5.0 mm or more but less than 19.0 mm, in solid cross-sectional diameter. Specifically excluded are steel products possessing the above-noted physical characteristics and meeting the *Harmonized Tariff Schedule of the United States (HTS)* definitions for (a) stainless steel, (b) tool steel, (c) high nickel steel, (d) ball bearing steel, and (e) concrete reinforcing bars and rods. Also excluded are (f) free machining steel products (*i.e.*, products that contain by weight one or more of the following elements: 0.03 percent or more of lead, 0.05 percent or more of bismuth, 0.08 percent or more of sulfur, more than 0.04 percent of phosphorus, more than 0.05 percent of selenium, or more than 0.01 percent of tellurium). Also excluded from the scope are grade 1080 tire cord and tire bead quality wire rod that comport with the specifications, definitions, and applications set forth in Commerce's revised scope language (see, for example, Commerce's final determination of sales at LTFV concerning Canada, 67 FR 55782, August 30, 2002). All products meeting the physical description of subject merchandise that are not specifically excluded are included in the scope of these investigations. The subject merchandise is provided for in HTS subheadings 7213.91, 7213.99, 7227.20, and 7227.90.60.

[3] Chairman Deanna Tanner Okun determines that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports from Trinidad and Tobago of carbon and certain alloy steel wire rod that have been found by Commerce to be sold in the United States at LTFV.

The Commission further determines, pursuant to section 771(24)(A) of the Act (19 U.S.C. 1677(24)(A)) that imports of carbon and certain alloy steel wire rod from Germany that have been found by Commerce to be subsidized by the Government of Germany and sold in the United States at LTFV are negligible, and its investigations with regard to that country are thereby terminated pursuant to sections 705(b) and 735(b) of the Act.[4] With regard to imports of the subject merchandise from Moldova and Ukraine that were subject to affirmative critical circumstances determinations by Commerce, the Commission determines that critical circumstances do not exist.[5]

Background

The Commission instituted these investigations effective August 31, 2001, following receipt of petitions filed with the Commission and Commerce by counsel on behalf of Co-Steel Raritan, Inc., Perth Amboy, NJ; GS Industries, Inc., Charlotte, NC; Keystone Consolidated Industries, Inc., Dallas, TX; and North Star Steel Texas, Inc., Edina, MN. The final phase of the investigations was scheduled by the Commission following notification of preliminary determinations by Commerce that imports of carbon and certain alloy steel wire rod from Canada and Germany were being subsidized within the meaning of section 703(b) of the Act (19 U.S.C. 1671b(b))[6] and imports of carbon and certain alloy steel wire rod from Brazil, Canada, Germany, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the scheduling of the final phase of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of May 2, 2002 (67 FR 22105).[7] The hearing was held in Washington, DC, on August 27, 2002, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on October 15, 2002. The views of the Commission are contained in USITC Publication 3546 (October 2002), entitled *Carbon and Certain Alloy Steel Wire Rod From Brazil, Canada, Germany, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine: Investigations Nos. 701–TA–417–419 and 731–TA–953, 954, 956–959, 961, and 962 (Final).*

Issued: October 16, 2002.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 02–27860 Filed 10–31–02; 8:45 am]

BILLING CODE 7020–02–P

[4] Commissioner Lynn M. Bragg determines that an industry in the United States is threatened with material injury by reason of imports from Germany of carbon and certain alloy steel wire rod that have been found by Commerce to be subsidized by the Government of Germany and sold in the United States at LTFV.

[5] Commissioner Lynn M. Bragg makes affirmative determinations with regard to critical circumstances in the investigations concerning Germany, Moldova, and Ukraine.

[6] Although Commerce made a preliminary negative countervailing duty determination with respect to Brazil, it subsequently made a final affirmative countervailing duty determination with respect to that country.

[7] The Commission's schedule was subsequently revised on May 22, 2002 (67 FR 36022) and on September 12, 2002 (67 FR 57849).

INTERNATIONAL TRADE COMMISSION

[USITC SE–02–034]

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: International Trade Commission.

TIME AND DATE: November 14, 2002 at 10 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. *Agenda for future meeting:* none.
2. Minutes.
3. Ratification List.
4. Inv. No. 731–TA–1020 (Preliminary) (Barium Carbonate from China)—briefing and vote. (The Commission is currently scheduled to transmit its determination to the Secretary of Commerce on November 14, 2002; Commissioners' opinions are currently scheduled to be transmitted to the Secretary of Commerce on or before November 21, 2002).
5. *Outstanding action jackets:* none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carrier over to the agenda of the following meeting.

Issued: October 29, 2002.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 02–27980 Filed 10–30–02; 11:19 am]

BILLING CODE 7020–02–M

DEPARTMENT OF JUSTICE

Office of the Attorney General; Certification of the Attorney General; Titus County, TX

In accordance with section 6 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973d, I hereby certify that in my judgment the appointment of examiners is necessary to enforce the guarantees of the Fourteenth and Fifteenth Amendments of the Constitution of the United States in Titus County, Texas. This county is included within the scope of the determinations of the Attorney General and the Director of the Census made under section 4(b) of the Voting Rights Act of 1965 and published in the **Federal Register** on September 23, 1975 (40 FR 43746).

Dated: October 29, 2002.

John Ashcroft,

Attorney General of the United States.

[FR Doc. 02–27985 Filed 10–31–02; 8:45 am]

BILLING CODE 4410–13–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[DEA # 237P]

Controlled Substances: Proposed Aggregate Production Quotas for 2003

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Notice of proposed year 2003 aggregate production quotas.

SUMMARY: This notice proposes initial year 2003 aggregate production quotas for controlled substances in Schedules I and II of the Controlled Substances Act (CSA).

DATES: Comments or objections must be received on or before November 22, 2002.

ADDRESSES: Send comments or objections to the Deputy Administrator, Drug Enforcement Administration, Washington, DC 20537, Attn.: DEA Federal Register Representative (CCR).

FOR FURTHER INFORMATION CONTACT: Frank L. Sapienza, Chief, Drug and Chemical Evaluation Section, Drug Enforcement Administration,

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Washington, DC 20537, Telephone: (202) 307–7183.

SUPPLEMENTARY INFORMATION: Section 306 of the CSA (21 U.S.C. 826) requires that the Attorney General establish aggregate production quotas for each basic class of controlled substance listed in Schedules I and II. This responsibility has been delegated to the Administrator of the DEA by Section 0.100 of Title 28 of the Code of Federal Regulations. The Administrator, in turn, has redelegated this function to the Deputy Administrator, pursuant to § 0.104 of Title 28 of the Code of Federal Regulations.

The proposed year 2003 aggregate production quotas represent those quantities of controlled substances that may be produced in the United States in 2003 to provide adequate supplies of each substance for: The estimated medical, scientific, research, and industrial needs of the United States; lawful export requirements; and the establishment and maintenance of reserve stocks. These quotas do not include imports of controlled substances for use in industrial processes.

In determining the proposed year 2003 aggregate production quotas, the Deputy Administrator considered the following factors: Total actual 2001 and estimated 2002 and 2003 net disposals of each substance by all manufacturers; estimates of 2002 year-end inventories of each substance and of any substance manufactured from it and trends in accumulation of such inventories; product development requirements of both bulk and finished dosage form manufacturers; projected demand as indicated by procurement quota applications filed pursuant to Section 1303.12 of Title 21 of the Code of Federal Regulations; and other pertinent information.

Pursuant to Section 1303 of Title 21 of the Code of Federal Regulations, the Deputy Administrator of the DEA will, in early 2003, adjust aggregate production quotas and individual manufacturing quotas allocated for the year based upon 2002 year-end inventory and actual 2002 disposition data supplied by quota recipients for each basic class of Schedule I or II controlled substance.

Therefore, under the authority vested in the Attorney General by Section 306 of the CSA of 1970 (21 U.S.C. 826), and delegated to the Administrator of the DEA by § 0.100 of Title 28 of the Code of Federal Regulations, and redelegated to the Deputy Administrator pursuant to § 0.104 of Title 28 of the Code of Federal Regulations, the Deputy Administrator hereby proposes that the year 2003 aggregate production quotas for the following controlled substances, expressed in grams of anhydrous acid or base, be established as follows:

Basic class	Proposed year 2003 quotas
Schedule I	
2,5–Dimethoxyamphetamine	9,501,000
2,5–Dimethoxy-4-ethylamphetamine (DOET)	2
3–Methylfentanyl	4
3–Methylthiofentanyl	2
3,4–Methylenedioxyamphetamine(MDA)	15
3,4–Methylenedioxy-N-ethylamphetamine (MDEA)	10
3,4–Methylenedioxymethamphetamine (MDMA)	19
3,4,5–Trimethoxyamphetamine	2
4–Bromo-2,5–Dimethoxyamphetamine (DOB)	2
4–Bromo-2,5–Dimethoxyphenethylamine (2–CB)	2
4–Methoxyamphetamine	7
4–Methylaminorex	2
4–Methyl-2,5–Dimethoxyamphetamine (DOM)	2
5–Methoxy-3,4–Methylenedioxyamphetamine	2
Acetyl-alpha-methylfentanyl	2
Acetyldihydrocodeine	2
Acetylmethadol	2
Allylprodine	2
Alphacetylmethadol	7
Alpha-ethyltryptamine	2
Alphameprodine	2
Alphamethadol	2
Alpha-methylfentanyl	2
Alpha-methylthiofentanyl	2
Aminorex	17
Benzylmorphine	2
Betacetylmethadol	2
Beta-hydroxy-3-methylfentanyl	2
Beta-hydroxyfentanyl	2
Betameprodine	2
Betamethadol	2
Betaprodine	2
Bufotenine	2
Cathinone	12
Codeine-N-oxide	52
Diethyltryptamine	2
Difenoxin	9,000
Dihydromorphine	1,101,000
Dimethyltryptamine	3
Gamma-hydroxybutyric acid	45,566,000
Heroin	5
Hydromorphinol	2
Hydroxypethidine	2
Lysergic acid diethylamide (LSD)	61

Basic class	Proposed year 2003 quotas
Marihuana	840,000
Mescaline	7
Methaqualone	9
Methcathinone	9
Methyldihydromorphine	2
Morphine-N-oxide	52
N,N–Dimethylamphetamine	7
N–Ethyl-1–Phenylcyclohexylamine (PCE)	5
N–Ethylamphetamine	7
N–Hydroxy-3,4–Methylenedioxyamphetamine	2
Noracymethadol	2
Norlevorphanol	52
Normethadone	7
Normorphine	57
Para-fluorofentanyl	2
Phenomorphan	2
Pholcodine	2
Propiram	415,000
Psilocybin	2
Psilocyn	2
Tetrahydrocannabinols	131,000
Thiofentanyl	2
Trimeperidine	2
Schedule II	
1–Phenylcyclohexylamine	12
1–Piperidinocyclohexanecarbonitrile (PCC)	10
Alfentanil	700
Alphaprodine	2
Amobarbital	12
Amphetamine	10,987,000
Cocaine	171,000
Codeine (for sale)	43,494,000
Codeine (for conversion)	43,251,000
Dextropropoxyphene	167,365,000
Dihydrocodeine	741,000
Diphenoxylate	501,000
Ecgonine	31,000
Ethylmorphine	12
Fentanyl	733,000
Glutethimide	2
Hydrocodone (for sale)	29,243,000
Hydrocodone (for conversion)	3,800,000
Hydromorphone	1,409,000
Isomethadone	12
Levo-alphacetylmethadol (LAAM)	12
Levomethorphan	2
Levorphanol	8,600
Meperidine	9,649,000
Metazocine	1
Methadone (for sale)	11,657,000
Methadone Intermediate	14,693,000
Methamphetamine: 734,000 grams of levo-desoxyephedrine for use in a non-controlled, non-prescription product; 1,220,000 grams for methamphetamine for conversion to a Schedule III product; and 1,000 grams for methamphetamine (for sale)	1,955,000
Methylphenidate	20,967,000
Morphine (for sale)	18,218,000
Morphine (for conversion)	110,774,000
Nabilone	2
Noroxymorphone (for sale)	40,000
Noroxymorphone (for conversion)	4,400,000
Opium	700,000
Oxycodone (for sale)	34,482,000
Oxycodone (for conversion)	700,000
Oxymorphone	454,000
Pentobarbital	27,728,000
Phencyclidine	16
Phenmetrazine	2
Phenylacetone	21,975,000
Secobarbital	1,100
Sufentanil	2,000
Thebaine	43,292,000

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The Deputy Administrator further proposes that aggregate production quotas for all other Schedules I and II controlled substances included in §§ 1308.11 and 1308.12 of Title 21 of the Code of Federal Regulations be established at zero.

All interested persons are invited to submit their comments and objections in writing regarding this proposal. A person may object to or comment on the proposal relating to any of the above-mentioned substances without filing comments or objections regarding the others. If a person believes that one or more of these issues warrant a hearing, the individual should so state and summarize the reasons for this belief.

In the event that comments or objections to this proposal raise one or more issues which the Deputy Administrator finds warrant a hearing, the Deputy Administrator shall order a public hearing by notice in the **Federal Register**, summarizing the issues to be heard and setting the time for the hearing.

The Office of Management and Budget has determined that notices of aggregate production quotas are not subject to centralized review under Executive Order 12866.

This action does not preempt or modify any provision of state law; nor does it impose enforcement responsibilities on any state; nor does it diminish the power of any state to enforce its own laws. Accordingly, this action does not have federalism implications warranting the application of Executive Order 13132.

The Deputy Administrator hereby certifies that this action will have no significant impact upon small entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* The establishment of aggregate production quotas for Schedules I and II controlled substances is mandated by law and by international treaty obligations. The quotas are necessary to provide for the estimated medical, scientific, research and industrial needs of the United States, for export requirements and the establishment and maintenance of reserve stocks. While aggregate production quotas are of primary importance to large manufacturers, their impact upon small entities is neither negative nor beneficial. Accordingly, the Deputy Administrator has determined that this action does not require a regulatory flexibility analysis.

This action meets the applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988 Civil Justice Reform.

This action will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

This action is not a major rule as defined by Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This action will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

The Drug Enforcement Administration makes every effort to write clearly. If you have suggestions as to how to improve the clarity of this regulation, call or write Frank L. Sapienza, Chief, Drug and Chemical Evaluation Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 307–7183.

Dated: October 28, 2002.

John B. Brown, III,

Deputy Administrator.

[FR Doc. 02–27882 Filed 10–31–02; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

October 22, 2002.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Darrin King on 202–693–4129 or e-mail: *King-Darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for ETA, Office of Management and Budget, Room 10235, Washington, DC 20503 (202–395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Employment and Training Administration (ETA).

Type of Review: Extension of a currently approved collection.

Title: MIS Requirements for Youth Opportunity Grants.

OMB Number: 1205–0414.

Affected Public: State, Local, or Tribal Government and Not-for-profit institutions.

Type of Response: Reporting.

Cite/Reference	Total respondents	Frequency	Total responses	Average response time per form (hours)	Annual burden hours
ETA–9086	36	Monthly	432	104	44,928
ETA–9087	36	Quarterly	144	48	
					6,912

Cite/Reference	Total respondents	Frequency	Total responses	Average response time per form (hours)	Annual burden hours
Totals			576		51,840

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: The Department of Labor (DOL) has obligated roughly $750 million over the first three years on Youth Opportunity Grants and will spend approximately $250 million more over the remaining two years on the original 36 grants to high-poverty communities. To manage these grants both at the Federal and local levels and to report to OMB and Congress on the effective use of these funds, DOL will need to continue to collect information on characteristics of youth enrolled, services provided, and program outcomes. Further section 169 of the Workforce Investment Act requires the use of performance measures to evaluate the performance of Youth Opportunity Grantees.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 02–27866 Filed 10–31–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

October 25, 2002.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Marlene Howze at (202) 693–4158 or e-mail *Howze-Marlene@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for ESA, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register.**

The OMB is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Type of Review: Revision of a currently approved collection.

Agency: Employment Standards Administration (ESA).

Title: Application for Authority for an Institution of Higher Education to Employ Its Full-Time Students at Subminimum Wages Under Regulations Part 519.

OMB Number: 1215–0080.

Affected Public: Business or other-for-profit and individuals or households.

Frequency: Annually.

Estimated Time Per Response and Total Burden Hours:

Description	Total respondents	Total annual responses	Average minutes per response	Total burden (hours)
Initial Applications	2	2	30	1.00
Renewal Applications	13	13	15	3.25
Reporting Burden				4.25
Record-keeping	15	15	1	.25
Total Reporting and Record-keeping				5.00

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: Section 14(b)(3) of the Fair Labor Standards Act (FLSA) authorizes the Secretary of Labor to provide certificates authorizing the employment of full-time students at sub-minimum wages in institutions of higher education to the extent necessary in order to prevent curtailment of opportunities for employment. The WH–201 application form provides the information necessary to ascertain whether the requirements of section 14(b) have been met. If this information were not collected, it would be difficult to ensure that use of a certificate has not curtailed full-time employment opportunities for other workers.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 02–27867 Filed 10–31–02; 8:45 am]

BILLING CODE 4510–27–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

October 22, 2002.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork

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Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Marlene Howze at (202) 693–4158 or e-mail *Howze-Marlene@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for ESA, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register.**

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Type of Review: Extension of a currently approved collection.

Agency: Employment Standards Administration (ESA).

Title: Representative Fee Request.

OMB Number: 1215–0078.

Affected Public: Business or other-for-profit and individuals or households.

Frequency: On Occasion.

Estimated Time Per Response and Total Burden Hours:

Fee requests	Total respondents	Total annual responses	Minutes per response (average)	Estimated total burden (hours)
Longshore	9,700	9,700	30	4,850
FECA	3,000	3,000	60	3,000
Total	12,700	12,700		7,850

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $17,215.

Description: Individuals filing for compensation benefits with the Office of Workers' Compensation Programs (OWCP) may be represented by an attorney or other representative. The representative is entitled to request a fee for services under the Federal Employees' Compensation Act (FECA), Regulations 20 CFR 10.702, and under the Longshore and Harbor Workers' Compensation Act (LSHWC), 20 CFR 702.132. The fee must be approved by the OWCP before the representative can make any demand for payment. If the information were not collected, OWCP would be unable to properly evaluate applications for representatives' fees.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 02–27869 Filed 10–31–02; 8:45 am]

BILLING CODE 4510–CH–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

October 21, 2002.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Marlene Howze at ((202) 693–4158) or e-mail *Howze-Marlene@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for PWBA, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register.**

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Type of Review: Extension of a currently approved collection.

Agency: Pension and Welfare Benefits Administration (PWBA).

Title: Furnishing Documents to the Secretary of Labor on Request under ERISA Section 104(a)(6).

OMB Number: 1210–0112.

Affected Public: Business or other for-profit; individuals or households; and not-for-profit institutions.

Frequency: On occasion.

Estimated Time Per Response: 30 minutes preparation and 5 minutes distribution.

Number of Respondents: 1,000.

Number of Annual Responses: 1,000.

Total Burden Hours: 95.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $4,000.

Description: ERISA Section 104(a)(6) and related regulations at 29 CFR 2520.104a–8 require the administrator of an employee benefit plan covered by Title I of ERISA to furnish certain documents relating to the plan on request to the Secretary of Labor. The Department collects documents related to the establishment or operation of an employee benefit plan in order to provide participants with plan information that they have requested

and to which they are entitled under the disclosure requirements of ERISA.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 02–27870 Filed 10–31–02; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Collection; Comment Request

AGENCY: Employment Standards Adminstration, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning the proposed collection: Work Experience and Career Exploration Programs (WECEP), Regulations, 29 CFR part 570.35a (Fair Labor Standards Act). A copy of the proposed information collection request can be obtained by contacting the office listed below in the addresses section of this Notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before December 31, 2002.

ADDRESSES: Ms. Patricia A. Forkel, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0339, fax (202) 693–1451, e-mail *pforkel@fenix2.dol-esa.gov.* Please use only one method of transmission for comments (mail, fax, or e-mail).

SUPPLEMENTARY INFORMATION:

I. Background

Section (3)(1) of the Fair Labor Standards Act (FLSA) establishes a minimum age of 16 for most nonagricultural employment, but allows the employment of 14 and 15 year olds in occupations other than manufacturing and mining if the Secretary of Labor determines such employment is confined to periods which will not interfere with their health and well-being. Subpart C of Regulations, 29 CFR Part 570, Child Labor Regulations, Orders and Statements of Interpretation, sets forth the employment standards for 14 and 15 year olds (Child Labor Reg. 3). Section 570.35a of these regulations permits employment of 14 and 15 year olds under conditions otherwise prohibited by Child Labor Reg. 3 pursuant to a school-supervised and school-administered Work Experience and Career Exploration Program (WECEP) which meets the stated requirements. In order to utilize the WECEP provisions of Child Labor Reg. 3, section 570.35 of the regulations require a State Educational Agency to file an application for approval of a State WECEP program as one not interfering with schooling or with the health and well-being of the minors involved and therefore not constituting oppressive child labor. Section 57.35a(b)(vi) of the regulations requires each student participating in a WECEP to execute a written training agreement signed by the teacher-coordinator, the employer, and the student and signed or otherwise consented to by the student's parent or guardian. This information collection is currently approved for use through February 28, 2003.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions

State educational agencies are required to file applications for WECEP which provide exceptions to the child labor regulations issued under the FLSA. State educational agencies are also required to maintain certain records with respect to approved WECEP programs. The Department of Labor seeks the extension of the collection of information in order to carry out its responsibility to determine that regulatory tests for approval of the program have been met, and to document the validity of the WECEP program as one which is structured to provide training for the student. There is no change in the substance or method of collection since the last OMB approval.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: Work Experience and Career Exploration Programs (WECEP), 29 CRF Part 570.35a.

OMB Number: 1215–0121.

Affected Public: State, Local or Tribal government, Individuals or households.

Total Respondents/Responses: 14,014.

Frequency: Recordkeeping, Biennial reporting.

Average Time per Response:

Reporting, WECEP Application—2 hours.

Reporting, Written Training Agreement—1 hour.

Recordkeeping, WECEP Program Information—1 hour.

Recordkeeping, Filing of WECEP Record and Training Agreement—one-half minute.

Total Burden Hours: 7,145.

Estimated Total Annual Reporting and Recordkeeping

Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $2.80.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: October 25, 2002.

Margaret J. Sherrill

Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. 02–27868 Filed 10–31–02; 8:45 am]

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DEPARTMENT OF LABOR

Employment Standards Administration Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor is accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department.

Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 202010.

Modification to General Wage Determination Decisions

The number of the decisions listed to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

New Jersey
NJ020002 (Mar. 01, 2002)
NJ020003 (Mar. 01, 2002)

Volume II

Pennsylvania
PA020001 (Mar. 01, 2002)
PA020002 (Mar. 01, 2002)
PA020003 (Mar. 01, 2002)
PA020004 (Mar. 01, 2002)
PA020005 (Mar. 01, 2002)
PA020006 (Mar. 01, 2002)
PA020007 (Mar. 01, 2002)
PA020008 (Mar. 01, 2002)
PA020010 (Mar. 01, 2002)
PA020012 (Mar. 01, 2002)
PA020016 (Mar. 01, 2002)
PA020017 (Mar. 01, 2002)
PA020019 (Mar. 01, 2002)
PA020020 (Mar. 01, 2002)
PA020021 (Mar. 01, 2002)
PA020023 (Mar. 01, 2002)
PA020024 (Mar. 01, 2002)
PA020026 (Mar. 01, 2002)
PA020027 (Mar. 01, 2002)
PA020028 (Mar. 01, 2002)
PA020029 (Mar. 01, 2002)
PA020030 (Mar. 01, 2002)
PA020031 (Mar. 01, 2002)
PA020040 (Mar. 01, 2002)
PA020042 (Mar. 01, 2002)
PA020060 (Mar. 01, 2002)

Volume III

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AL020018 (Mar. 01, 2002)
Florida
FL020014 (Mar. 01, 2002)
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Illinois
IL020001 (Mar. 01, 2002)
IL020019 (Mar. 01, 2002)
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KS020007 (Mar. 01, 2002)
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ND020004 (Mar. 01, 2002)
ND020007 (Mar. 01, 2002)
ND020008 (Mar. 01, 2002)
ND020015 (Mar. 01, 2002)
ND020016 (Mar. 01, 2002)

Volume VII

None

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and related Acts are available electronically at no cost on the Government Printing Office site at *www.access.gpo.gov/davisbacon*. They are also available electronically by subscription to the Davis-Bacon Online Service *(http://davisbacon.fedworld.gov)* of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068. This subscription offers value-added features such as electronic delivery of modified wage decisions directly to the user's desktop, the ability to access prior wage decisions issued during the year, extensive Help desk Support, etc.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate Volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, D.C. this 24th day of October 2002.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 02–27652 Filed 10–31–02; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–1218–0096(2003)]

Temporary Labor Camps; Extension of the Office of Management and Budget's (OMB) Approval of the Information-Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Request for comment.

SUMMARY: The Occupational Safety and Health Administration (OSHA) requests comments concerning the proposed extension of information-collection requirements contained in the Temporary Labor Camps Standard (29 CFR 1910.142).

DATES: Comments must be submitted by the following dates:

Hard copy: Your comments must be submitted (postmarked or sent) by December 31, 2002.

Facsimile and electronic transmission: Your comments must be sent by December 31, 2002.

(Please see the **SUPPLEMENTARY INFORMATION** below for additional information on submitting comments.)

ADDRESSES:

I. Submission of Comments

Regular mail, express delivery, hand-delivery, and messenger service: Submit your comments and attachments to the OSHA Docket Office, Docket No. ICR–1218–0096(2003), Room N–2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. OSHA Docket Office and Department of Labor hours of operation are 8:15 a.m. to 4:45 p.m., EST.

Facsimile: If your comments, including any attachments, are 10 pages or fewer, you may fax them to the OSHA Docket Office at (202) 693–1648. You must include the docket number of this document, Docket No. ICR–1218–0096(2003), in your comments.

Electronic: You may submit comments, but not attachments, through the Internet at *http://ecomments.osha.gov/*.

(Please see the **SUPPLEMENTARY INFORMATION** below for additional information on submitting comments.)

II. Obtaining Copies of Supporting Statement for the Information Collection

The Supporting Statement for the Information Collection is available for downloading from OSHA's Web site at *www.osha.gov*. The supporting statement is available for inspection and copying in the OSHA Docket Office, at the address listed above. A printed copy of the supporting statement can be obtained by contacting Todd Owen at (202) 693–1941.

FOR FURTHER INFORMATION CONTACT: Todd Owen, Directorate of Standards and Guidance, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3631, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 693–1941.

SUPPLEMENTARY INFORMATION:

I. Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document by (1) hard copy, (2) FAX transmission (facsimile), or (3) electronically through the OSHA webpage. Please note that you cannot attach materials such as studies or journal articles to electronic comments. If you have additional materials, you must submit three copies of them to the OSHA Docket Office at the address above. The additional materials must clearly identify your electronic comments by name, date, subject and docket number so we can attach them to your comments. Because of security-related problems there may be a significant delay in the receipt of comments by regular mail. Please contact the OSHA Docket Office at (202) 693–2350 for information about security procedures concerning the delivery of materials by express delivery, hand delivery and message service.

II. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burdens, conducts a pre-clearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). OSHA will be requesting approval from the Office of Management and Budget (OMB) for certain information collection requirements contained in the Temporary Labor Camps Standard (29 CFR 1910.142). This notice initiates the process for OSHA to request OMB approval. The purpose of the Temporary Labor Camps Standards is to eliminate the incidence of communicable disease among temporary labor camp residents. The Standard requires camp superintendents to report immediately to the local health officer (1) the name and address of any individual in the camp known to have or suspected of having a communicable disease or suspected food poisoning, or (2) an unusual prevalence of any illness in which fever, diarrhea, sore throat, vomiting or jaundice is a prominent symptom.

III. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed collection of information is necessary for the proper performance of the Agency's functions, including whether the information will have practical utility;
- The accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used, especially the number of temporary labor camps in the United States; and
- The quality, utility, and clarity of the information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

IV. Proposed Actions

OSHA proposes to extend OMB's approval of the collection of information requirements specified in 5 CFR

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1320.8(d). OSHA will summarize the comments submitted in response to this notice, and will include this summary in its request to OMB to extend the approval of the information-collection requirements for the Temporary Labor Camps Standard.

Type of Review: Extension of a currently approved information-collection requirement.

Title: Temporary Labor Camps (29 CFR 1910.142).

OMB Number: 1218–0096.

Affected Public: Business or other for-profit; not-for-profit institutions; Federal government; State, local or tribal governments.

Number of Respondents: 838.

Frequency: On occasion.

Average time per Response: Five minutes response.

Estimating Total Burden Hours: 67 hours.

Authority and Signature

This document was prepared under the direction of John L. Henshaw, Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue, NW., Washington, DC 20210.

This action is taken pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)).

Signed at Washington, DC, this 28th day of October 2002.

John L. Henshaw,

Assistant Secretary of Labor.

[FR Doc. 02–27772 Filed 10–31–02; 8:45 am]

BILLING CODE 4510–26–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–443]

North Atlantic Energy Service Corporation, et al.; (Seabrook Station, Unit No. 1); Order Approving Transfer of License and Conforming Amendment

I

Facility Operating License No. NPF–86 authorizes the operation of Seabrook Station, Unit No. 1 (Seabrook Station or the facility), at steady-state power levels not in excess of 3,411 megawatts thermal. The facility is located in Seabrook Township, Rockingham County, New Hampshire, on the southeast coast of the State of New Hampshire. The license authorizes North Atlantic Energy Service Corporation (NAESCO) to possess, use, and operate the facility, and certain other entities discussed below to possess the facility.

II

Under cover of a letter dated May 17, 2002, NAESCO, on its own behalf and on the behalf of certain licensees owning interests in Seabrook Station—North Atlantic Energy Corporation (NAEC), The United Illuminating Company, Great Bay Power Corporation, New England Power Company, The Connecticut Light and Power Company, Canal Electric Company, Little Bay Power Corporation, and New Hampshire Electric Cooperative, Inc.—and FPL Energy Seabrook, LLC (FPLE Seabrook) jointly submitted an application requesting approval of the transfer of Facility Operating License No. NPF–86 for Seabrook Station, to the extent held by the foregoing licensees, to FPLE Seabrook. The applicants also requested approval of a conforming amendment to reflect the transfer. The application was supplemented by submittals dated June 28, July 1, July 24, August 29, and October 11, 2002 (collectively referred to as the "application" herein unless otherwise indicated).

FPLE Seabrook is an indirect, wholly owned subsidiary of FPL Energy, LLC (FPLE), which is a wholly owned subsidiary of FPL Group Capital Inc., which, in turn, is a wholly owned subsidiary of FPL Group Inc. (FPL Group). According to the application, the current licensees owning interests in the facility listed above will sell their ownership interests in Seabrook Station to FPLE Seabrook. In addition, NAESCO will transfer its operating authority under the license to FPLE Seabrook which will assume title to the acquired interests in the facility and operate and maintain Seabrook Station. While the transfer of operating authority and the ownership interests identified in the application is expected to occur at one time, it is possible that certain ownership interests proposed to be transferred will be transferred in a second phase, depending upon the timing of the receipt of other regulatory approvals. Current licensees which own interests in Seabrook Station but are not involved in this license transfer are Massachusetts Municipal Wholesale Electric Company, Taunton Municipal Lighting Plant, and Hudson Light and Power Department, all of which will remain licensees.

The conforming license amendment would remove from the license references to NAESCO and the licensees transferring their interests in the facility and add references to FPL Energy Seabrook, LLC, as a licensee, and make other administrative changes to reflect the proposed transfer.

The application requested approval of the subject transfer of the license and a conforming license amendment pursuant to 10 CFR 50.80 and 50.90. Notice of the requests for approval and an opportunity to request a hearing or submit written comments was published in the **Federal Register** on June 14, 2002 (67 FR 40972). The Commission received no requests for hearing or written comments.

Under 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. After reviewing the information submitted in the application and other information before the Commission, and relying upon the representations and agreements contained in the application, the Nuclear Regulatory Commission (NRC) staff has determined that FPLE Seabrook is qualified to be the holder of the license to the extent proposed in the application, and that the transfer of the license to FPLE Seabrook is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission, subject to the conditions set forth below. The NRC staff has further found that the application for the proposed license amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations set forth in 10 CFR Chapter I; the facility will operate in conformity with the application, the provisions of the Act, and the rules and regulations of the Commission; there is reasonable assurance that the activities authorized by the proposed license amendment can be conducted without endangering the health and safety of the public and that such activities will be conducted in compliance with the Commission's regulations; the issuance of the proposed license amendment will not be inimical to the common defense and security or the health and safety of the public; and the issuance of the proposed license amendment will be in accordance with 10 CFR part 51 of the Commission's regulations and all applicable requirements have been satisfied. The findings set forth above are supported by the staff's safety evaluation dated October 25, 2002.

III

Accordingly, pursuant to sections 161b, 161i, and 184 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2201(b), 2201(i), and 2234; and 10 CFR 50.80, *it is hereby ordered* that

the transfer of the license as described herein to FPLE Seabrook is approved, subject to the following conditions:

(1) Before the transfer of operating authority and completion of the sale and transfer of any interest in Seabrook Station to FPLE Seabrook, FPLE Seabrook shall provide the Director of the Office of Nuclear Reactor Regulation satisfactory documentary evidence that FPLE Seabrook has obtained the appropriate amount of insurance required of licensees under 10 CFR part 140 of the Commission's regulations.

(2) On the closing date(s) of the transfer of any ownership interests in Seabrook Station covered by this Order, FPLE Seabrook shall obtain from each respective transferring owner all of the accumulated decommissioning trust funds for the facility, and ensure the deposit of such funds and additional funds, if necessary, into a decommissioning trust or trusts for Seabrook Station established by FPLE Seabrook, such that the amount of funds deposited meets or exceeds the amount required under 10 CFR 50.75 with respect to the interest in Seabrook Station FPLE Seabrook acquires on such dates(s).

(3) With respect to the decommissioning trust(s) established by FPLE Seabrook,

(i) The decommissioning trust agreement must be in a form acceptable to the NRC.

(ii) Investments in the securities or other obligations of FPL Group Inc. or its affiliates, successors, or assigns shall be prohibited. In addition, except for investments tied to market indexes or other non-nuclear-sector mutual funds, investments in any entity owning one or more nuclear power plants shall be prohibited.

(iii) The decommissioning trust agreement must provide that no disbursements or payments from the trust(s), other than for ordinary administrative expenses, shall be made by the trustee unless the trustee has first given the NRC 30 days prior written notice of payment. The decommissioning trust agreement shall further provide that no disbursements or payments from the trust(s) shall be made if the trustee receives prior written notice of objection from the Director of the Office of Nuclear Reactor Regulation.

(iv) The decommissioning trust agreement must provide that the agreement cannot be amended in any material respect without 30 days prior written notification to the Director of the Office of Nuclear Reactor Regulation.

(v) The appropriate section of the decommissioning trust agreement shall provide that the trustee, investment advisor, or anyone else directing the investments made in the trust(s) shall adhere to a "prudent investor" standard, as specified in 18 CFR 35.32(a)(3) of the Federal Energy Regulatory Commission's regulations.

(4) FPLE Seabrook shall take all necessary steps to ensure that the decommissioning trust(s) are maintained in accordance with the application and the requirements of this Order, and consistent with the safety evaluation supporting this Order.

(5) FPLE Seabrook shall take no action to cause FPL Group Capital, Inc. or its parent companies to void, cancel, or modify the Support Agreement to provide funding of up to $110 million for FPLE Seabrook as represented in the application without prior written consent of the Director of the Office of Nuclear Reactor Regulation.

(6) After receipt of all required regulatory approvals of the transfer of the subject interests in Seabrook Station, NAESCO and FPLE Seabrook shall inform the Director of the Office of Nuclear Reactor Regulation in writing of such receipt within 5 business days, and of the closing date(s) of the transfer no later than 2 business days prior to the date of closing. If the transfer of the license as approved by this Order is not completed by October 31, 2003, this Order shall become null and void, provided, however, on written application and for good cause shown, this date may be extended in writing.

It is further ordered that, consistent with 10 CFR 2.1315(b), changes to the license, as indicated in Enclosure 2 to the cover letter forwarding this Order, to conform the license to reflect the subject license transfer are approved. An amendment, or amendments should the transfer of the interests in Seabrook Station occur in more than one phase, incorporating the approved changes as appropriate to reflect the transfer of interests occurring, shall be issued and made effective at the time the proposed transfer of interests in the facility occurs.

This Order is effective upon issuance.

For further details with respect to this Order, see the initial application dated May 17, 2002, the supplemental letters dated June 28, July 1, July 24, August 29, and October 11, 2002, and the safety evaluation dated October 25, 2002, which are available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (*http://www.nrc.gov*).

Dated at Rockville, Maryland, this 25th day of October 2002.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 02–27862 Filed 10–31–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–17]

Notice of Issuance of Amendment to Materials License SNM–2509 Trojan Independent Spent Fuel Storage Installation

The U.S. Nuclear Regulatory Commission (NRC or the Commission) has issued Amendment 2 to Materials License No. SNM–2509 held by Portland General Electric Company (PGE) for the receipt, possession, storage, and transfer of spent fuel at the Trojan Independent Spent Fuel Storage Installation (ISFSI), located in Columbia County, Oregon. The amendment is effective as of the date of issuance.

By application dated October 26, 2001, PGE requested an amendment to its ISFSI license to permit the use of the Holtec International Multi-Purpose Canister (MPC) to store spent fuel.

This amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. An Environmental Assessment and Finding of No Significant Impact regarding this amendment has been issued (67 FR 63458, October 11, 2002).

In accordance with 10 CFR 72.46(b)(2), a determination has been made that the amendment does not present a genuine issue as to whether public health and safety will be significantly affected. Therefore, the publication of a notice of proposed action and an opportunity for hearing or a notice of hearing is not warranted. Notice is hereby given of the right of interested persons to request a hearing on whether the action should be rescinded or modified.

For further details with respect to this amendment, see the application dated October 26, 2001, which is available for

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public inspection at the Commission's Public Document Room, One White Flint North Building, 11555 Rockville Pike, Rockville, MD or from the publicly available records component of NRC's Agencywide Documents Access and Management System (ADAMS) under Accession No. ML013060075. The NRC maintains ADAMS, which provides text and image files of NRC's public documents. These documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading__rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by email to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 23rd day of October 2002.

For the Nuclear Regulatory Commission.

E. William Brach,

Director, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 02–27863 Filed 10–31–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–335 and 50–389]

Florida Power and Light Co., St. Lucie, Units 1 and 2; Notice of Availability of the Draft Supplement 11 to the Generic Environmental Impact Statement and Public Meeting for the License Renewal of St. Lucie, Units 1 and 2

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission) has published a draft plant-specific supplement to the Generic Environmental Impact Statement (GEIS), NUREG–1437, regarding the renewal of operating licenses DPR–67 and NPF–16 for an additional 20 years of operation at St. Lucie, Units 1 and 2 (St. Lucie). St. Lucie nuclear power station is located on Hutchinson Island in St. Lucie County, Florida. Possible alternatives to the proposed action (license renewal) include no action and reasonable alternative energy sources.

The draft supplement to the GEIS is available for public inspection in the NRC Public Document Room (PDR) located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, or, electronically, from the Publicly Available Records (PARS) component of NRC's Agencywide Documents Access and Management System (ADAMS). ADAMS is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm.html* (the Public Electronic Reading Room). Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC's PDR reference staff at 1–800–397–4209 or 301–415–4737, or by e-mail to *pdr@nrc.gov*. In addition, the Indian River Community College Library, located at 3209 Virginia Avenue, Ft. Pierce, Florida, has agreed to make the draft supplement to the GEIS available for public inspection.

Any interested party may submit comments on the draft supplement to the GEIS for consideration by the NRC staff. To be certain of consideration, comments on the draft supplement to the GEIS and the proposed action must be received by January 15, 2003. Comments received after the due date will be considered if it is practical to do so, but the NRC staff is able to assure consideration only for comments received on or before this date. Written comments on the draft supplement to the GEIS should be sent to: Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Mailstop T–6D 59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Comments may be hand-delivered to the NRC's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, between 7:45 a.m. and 4:15 p.m. on Federal workdays. Submittal of electronic comments may be sent by Internet to the NRC at *StLucieDSEIS@nrc.gov*. All comments received by the Commission, including those made by Federal, State, and local agencies, Indian tribes, or other interested persons, will be made available electronically at the Commission's PDR in Rockville, Maryland, or from the PARS component of ADAMS.

The NRC staff will hold a public meeting to present an overview of the draft plant-specific supplement to the GEIS and to accept public comments on the document. The public meeting will be held at the Council Chambers, Port St. Lucie City Hall, 121 SW Port St. Lucie Boulevard, Port St. Lucie, Florida, on December 3, 2002. There will be two sessions to accommodate interested parties. The first session will commence at 1:30 p.m. and will continue until 4:30 p.m. The second session will commence at 7 p.m. and will continue until 10 p.m. Both meetings will be transcribed and will include: (1) A presentation of the contents of the draft plant-specific supplement to the GEIS, and (2) the opportunity for interested government agencies, organizations, and individuals to provide comments on the draft report. Additionally, the NRC staff will host informal discussions one hour prior to the start of each session at the Port St. Lucie City Hall. Persons may pre-register to attend or present oral comments at the meeting by contacting Dr. Michael T. Masnik by telephone at 1–800–368–5642, extension 1191, or by Internet to the NRC at *StLucieDSEIS@nrc.gov* no later than November 22, 2002. Members of the public may also register to provide oral comments within 15 minutes of the start of each session. Individual, oral comments may be limited by the time available, depending on the number of persons who register. If special equipment or accommodations are needed to attend or present information at the public meeting, the need should be brought to Dr. Masnik's attention no later than November 22, 2002, to provide the NRC staff adequate notice to determine whether the request can be accommodated.

For further information, contact: Dr. Michael T. Masnik, License Renewal and Environmental Impacts Program, Division of Regulatory Improvement Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Dr. Masnik may be contacted at the aforementioned telephone number or e-mail address.

Dated at Rockville, Maryland, this 2nd day of October, 2002.

For the Nuclear Regulatory Commission.

Pao-Tsin Kuo,

Program Director, License Renewal and Environmental Impacts Program, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 02–27864 Filed 10–31–02; 8:45 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Privacy Act of 1974; System of Records

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of a new routine use of records for PBGC–6, Plan Participant and Beneficiary Data—PBGC.

SUMMARY: The Pension Benefit Guaranty Corporation is proposing a new routine use of records for a system of records maintained pursuant to the Privacy Act of 1974, as amended, entitled PBGC–6, Plan Participant and Beneficiary Data—PBGC. The new routine use permits PBGC to disclose to the Department of Treasury and the Department of Labor

the names, addresses, social security numbers, and dates of birth of eligible PBGC pension recipients to implement the income tax credit for health insurance costs and to implement the program for advance payment of the tax credit under the Trade Act of 2002, Pub. L. 107–210, 116 Stat. 933, 954 (Aug. 6, 2002).

DATES: Comments on the new routine use must be received by December 2, 2002. The new routine use will become effective December 3, 2002, without further notice, unless comments result in a contrary determination and a notice is published to that effect.

ADDRESSES: Comments may be mailed to the Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, or delivered to Suite 340 at the above address. Comments also may be sent by Internet e-mail to *regcomments@pbgc.gov*. Copies of comments may be obtained by writing to the PBGC's Communications and Public Affairs Department at Suite 240 at the above address or by visiting that office or calling 202–326–4040 during normal business hours.

FOR FURTHER INFORMATION CONTACT: D. Bruce Campbell, Attorney, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4016, 202–326–4020 (extension 3672). (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4020.)

SUPPLEMENTARY INFORMATION: The Trade Act of 2002 amended the Internal Revenue Code to create an income tax credit for health insurance costs of eligible individuals. Pub. L. 107–210, sec. 201, 116 Stat. 933, 954 (Aug. 6, 2002) (to be codified at 26 U.S.C. 35). The legislation also requires the Department of Treasury to establish a program for making advance payment to eligible individuals of the income tax credit. Pub. L. No. 107–210, sec. 202, 116 Stat. at 960 (to be codified at 26 U.S.C. 7527). The income tax credit and advance payment program are open to, among others, any individual who is an "eligible PBGC pension recipient." 26 U.S.C. 35(c) and 26 U.S.C. 7527(d)(2). An eligible PBGC pension recipient is defined to mean, with respect to any month, an individual "who has attained age 55 as the first day of such month, and * * * is receiving a benefit for such month any portion of which is paid by the (PBGC)." 26 U.S.C. 35(c)(4).

The income tax credit and advance payment program are also open to any individual who is an "eligible TAA recipient" 26 U.S.C. 35(c) and 26 U.S.C. 7527(d)(2). The term eligible TAA recipient is defined to include, for any month, an individual who is receiving "a trade readjustment allowance under * * * the Trade Act of 1974." The Department of Labor, with the states, is responsible for implementing the trade readjustment assistance program for eligible workers. 19 U.S.C. 2271–2296. The Trade Act of 2002 also amended the Workforce Investment Act of 1988 to permit a state to use funds made available by the Department of Labor to provide qualified health insurance assistance to eligible individuals and to pay the administrative expenses associated with implementing the income tax credit and advance payment program. Pub. L. 107–210, sec. 203, 116 Stat. 933, 963 (to be codified at 29 U.S.C. 2918(a) and (f)).

The new routine use permits the PBGC to disclose the names, addresses, social security numbers, and dates of birth of eligible PBGC pension recipients to the Department of Treasury and the Department of Labor to implement the income tax credit for health insurance costs and the advance payment program for eligible individuals.

For the convenience of the public, PBGC–6, as amended, is published in full below with new routine 14 italicized.

Issued in Washington, DC, this 30th day of October, 2002.

Steven A. Kandarian,

Executive Director, Pension Benefit Guaranty Corporation.

PBGC–6

SYSTEM NAME:

Plan Participant and Beneficiary Data—PBGC.

SECURITY CLASSIFICATION:

Not applicable.

SYSTEM LOCATION:

Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026 and/or field benefit administrator, plan administrator, and paying agent worksites.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Participants and beneficiaries in terminating and terminated pension plans covered by Title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA").

CATEGORIES OF RECORDS IN THE SYSTEM:

Names, addresses, telephone numbers, sex, social security numbers and other Social Security Administration information, dates of birth, dates of hire, salary, marital status, domestic relations orders, time of plan participation, eligibility status, pay status, benefit data, health-related information, insurance information where plan benefits are provided by private insurers, initial and final PBGC determinations (29 CFR § 4003.21 and 4003.59). The records listed herein are included only as pertinent or applicable to the individual plan participant or beneficiary.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

29 U.S.C. 1055, 1056(d)(3), 1302, 1321, 1322, 1322a, 1341, 1342 and 1350.

PURPOSE(S):

This system of records is maintained for use in determining whether participants and beneficiaries are eligible for benefits under plans covered by Title IV of ERISA, the amounts of benefits to be paid, making benefit payments, and collecting benefit overpayments. Names, addresses, and telephone numbers are used to survey customers to measure their satisfaction with the PBGC 's benefit payment services and to track (for follow up) those who do not respond to surveys.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. A record from this system of records may be disclosed to third parties, such as banks, insurance companies, or trustees, to make benefit payments to plan participants and beneficiaries.

2. A record from this system of records may be disclosed, in furtherance of proceedings under Title IV of ERISA, to a contributing sponsor (or other employer who maintained the plan), including any predecessor or successor, and any member of the same controlled group.

3. A record from this system of records may be disclosed, upon request for a purpose authorized under Title IV of ERISA, to an official of a labor organization recognized as the collective bargaining representative of the individual about whom a request is made.

4. Names, addresses, and telephone numbers of participants and beneficiaries and information pertaining to debts owed by such participants and beneficiaries to the PBGC may be disclosed to a debt collection agency or firm to collect a claim. Disclosure shall be made only under a contract that binds any such contractor or employee of such contractor to the criminal penalties of the Privacy Act. The

information so disclosed shall be used

to obtain current addresses under the

13. Information from a participant's

RETENTION AND DISPOSAL:

affiliated person of an affiliated person

information collected; and (d) ways to

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information so disclosed shall be used exclusively pursuant to the terms and conditions of such contract and shall be used solely for the purposes prescribed therein. The contract shall provide that the information so disclosed shall be returned at the conclusion of the debt collection effort.

5. The name and social security number of a participant employed or formerly employed as a pilot by a commercial airline may be disclosed to the Federal Aviation Administration ("FAA") to obtain information relevant to the participant's eligibility or continued eligibility for disability benefits.

6. Names and social security numbers of plan participants and beneficiaries may be disclosed to the Internal Revenue Service ("IRS") to obtain current addresses from tax return information and to the Social Security Administration ("SSA") to obtain current addresses. Such information will be disclosed only if the PBGC has no address for an individual or if mail sent to the individual at the last known address is returned as undeliverable.

7. Names and last known addresses may be disclosed to an official of a labor organization recognized as the collective bargaining representative of participants for posting in union halls or for other means of publication to obtain current addresses of participants and beneficiaries. Such information will be disclosed only if the PBGC has no address for an individual or if mail sent to the individual at the last known address is returned as undeliverable.

8. Names, social security numbers, last known addresses, and dates of birth and death may be disclosed to private firms and agencies that provide locator services, including credit reporting agencies and debt collection firms or agencies, to locate participants and beneficiaries. Such information will be disclosed only if the PBGC has no address for an individual or if mail sent to the individual at the last known address is returned as undeliverable. Disclosure shall be made only under a contract that binds the firm or agency providing the service and its employees to the criminal penalties of the Privacy Act. The information so disclosed shall be used exclusively pursuant to the terms and conditions of such contract and shall be used solely for the purposes prescribed therein. The contract shall provide that the information so disclosed shall be returned at the conclusion of the locating effort.

9. Names and last known addresses may be disclosed to licensees of the United States Postal Service ("USPS") to obtain current addresses under the USPS's National Change of Address Program. Such information will be disclosed only if the PBGC has no address for an individual or if mail sent to the individual at the last known address is returned as undeliverable. Disclosure shall be made only under a contract that binds the licensee of the Postal Service and its employees to the criminal penalties of the Privacy Act. The information so disclosed shall be used exclusively pursuant to the terms and conditions of such contract and shall be used solely for the purposes prescribed therein. The contract shall provide that the information so disclosed shall be returned at the conclusion of the locating effort.

10. Names and last known addresses may be disclosed to other participants in, and beneficiaries under, a pension plan to obtain the current addresses of individuals. Such information will be disclosed only if the PBGC has no address for an individual or if mail sent to the individual at the last known address is returned as undeliverable.

11. Names and last known addresses of participants and beneficiaries, and the names and addresses of participants' former employers, may be disclosed to the public to obtain current addresses of the individuals. Such information will be disclosed to the public only if the PBGC is unable to make benefit payments to the participants and beneficiaries because the address it has does not appear to be current or correct.

12. The name of a participant's pension plan, the actual or estimated amount of a participant's benefit under Title IV of ERISA, the form(s) in which the benefit is payable, and whether the participant is currently receiving benefit payments under the plan or (if not) the earliest date(s) such payments could commence may be disclosed to the participant's spouse, former spouse, child, or other dependent solely to obtain a qualified domestic relations order under 29 U.S.C. 1056(d) and 26 U.S.C. 414(p). The PBGC will disclose the information only upon the receipt of a notarized, written request by a prospective alternate payee that describes the requester's relationship to the participant and states that the information will be used solely to obtain a qualified domestic relations order under state domestic relations law. The PBGC will notify the participant of any information disclosed to a prospective alternate payee under this routine use. Any person who knowingly and willfully requests or obtains any record concerning an individual under false pretenses is subject to a criminal penalty under 5 U.S.C. 552a(i)(3).

13. Information from a participant's initial determination under 29 CFR 4003.1(b) (excluding the participant's address, telephone number, social security number, and any sensitive medical information) may be disclosed to a participant's spouse, former spouse, child, or other dependent who is an alternate payee under a qualified domestic relations order issued pursuant to 29 U.S.C. 1056(d) and 26 U.S.C. 414(p) to explain how the PBGC determined the benefit due the alternate payee so that the alternate payee can pursue an administrative appeal of the benefit determination under 29 CFR 4003.51. The PBGC will notify the participant of the information disclosed to an alternate payee under this routine use.

14. *The names, addresses, social security numbers, and dates of birth of eligible PBGC pension recipients may be disclosed to the Department of Treasury and the Department of Labor to implement the income tax credit for health insurance costs under 26 U.S.C. 35 and the program for advance payment of the tax credit under 26 U.S.C. 7527.*

General Routine Uses G1 and G4 through G7 (see Prefatory Statement of General Routine Uses) apply to this system of records.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Information may be disclosed to a consumer reporting agency in accordance with 31 U.S.C. 3711(f) (5 U.S.C. 552a(b)(12)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in paper and electronic form.

RETRIEVABILITY:

Records are indexed by plan and participant and/or beneficiary name. Customer satisfaction survey responses are aggregated for statistical purposes after they have been received by the PBGC and are not retrievable by a participant or beneficiary's name or other assigned identifier.

SAFEGUARDS:

Paper records are kept in file folders in areas of restricted access that are locked after office hours. Electronic records are stored on computer networks and protected by assigning user identification numbers to individuals needing access to the records and by passwords set by authorized users that must be changed periodically.

RETENTION AND DISPOSAL:

Records for plan participants are transferred to the Washington National Federal Records Center 6 months after either the final payment to a participant and/or beneficiary or the PBGC's final determination that a participant or beneficiary is not entitled to any benefits and are destroyed 7 years after such payment or determination.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Insurance Operations Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026.

NOTIFICATION PROCEDURE:

Procedures are detailed in the PBGC's regulations: 29 CFR part 4902.

RECORD ACCESS PROCEDURES:

Same as notification procedure.

CONTESTING RECORDS PROCEDURE:

Same as notification procedure.

RECORD SOURCE CATEGORIES:

Plan administrators, participants and beneficiaries, the FAA, the SSA, labor organization officials, firms or agencies providing locator services, and USPS licensees.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 02–27991 Filed 10–31–02; 8:45 am]

BILLING CODE 7708–01–P

SECURITIES AND EXCHANGE COMMISSION

Existing Collection; Comment Request

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission (the "Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget ("OMB") for extension and approval.

Rule 17a–7 [17 CFR 270.17a–7] under the Investment Company Act of 1940 (the "Act") is entitled "Exemption of certain purchase or sale transactions between an investment company and certain affiliated persons thereof." It provides an exemption from section 17(a) of the Act for purchases and sales of securities between registered investment companies, which are affiliated persons or affiliated persons of affiliated persons of each other, or between a registered investment company and an affiliated person or an affiliated person of an affiliated person, when the affiliation arises solely because of a common adviser, director, or officer. Rule 17a–7 requires investment companies to keep various records in connection with purchase or sale transactions affected by the rule. The rule requires the board of directors of an investment company to establish procedures reasonably designed to ensure that all conditions of the rule have been satisfied. If an investment company enters into a purchase or sale transaction with an affiliated person, the rule requires the investment company to compile and maintain written records of the transaction.[1] In addition, under the rule, the board is required to determine, at least on a quarterly basis, that all affiliated transactions made during the preceding quarter were made in compliance with these established procedures. The Commission's examination staff uses these records to evaluate transactions between affiliated investment companies for compliance with the rule.

The Commission estimates that approximately 1,000 investment companies enter into transactions affected by rule 17a–7 each year and, therefore, are subject to the rule's information collection requirements.[2] The average annual burden for rule 17a–7 is estimated to be approximately two burden hours per respondent, for an annual total of 2,000 burden hours for all respondents. The estimates of burden hours are made solely for the purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules.

Written comments are invited on: (a) Whether the collections of information are necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burdens of the collections of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burdens of the collections of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Kenneth A. Fogash, Acting Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: October 24, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–27775 Filed 10–31–02; 8:45 am]

BILLING CODE 8010–01–P

[1] The written records are required to set forth a description of the security purchased or sold, the identity of the person on the other side of the transaction, and the information or materials upon which the board of directors' determination that the transaction was in compliance with the procedures was made.

[2] These estimates are based on conversations with the examination and inspections staff of the Commission and fund representatives. Based on these conversations, the Commission staff estimates that most investment companies (4,000 of the estimated 4,500 registered investment companies) have adopted procedures for compliance with rule 17a–7. Of these 4,000 investment companies, the Commission staff estimates that each year approximately 25% (1,000) enter into transactions affected by rule 17a–7.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27586]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

October 25, 2002.

Notice is hereby given that the following filing has been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application/declaration for a complete statements of the proposed transaction summarized below. The application/declaration is available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application/declaration should submit their views in writing by November 18, 2002, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant/declarant at the address specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After November 18, 2002, the application/declaration, as filed or as amended, may be granted and/or permitted to become effective.

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Ameren Corporation, et al. (70–10078)

Ameren Corporation ("Ameren"), a registered public utility holding company, Ameren Energy Fuels and Services Company ("Ameren Fuels"), Ameren's indirect wholly owned nonutility subsidiary, both located at 1901 Chouteau Avenue, St. Louis, Missouri 63103; and CILCORP Inc. ("CILCORP"), an exempt holding company under section 3(a)(1) of the Act and a wholly owned subsidiary of The AES Corporation ("AES"), an exempt holding company under section 3(a)(5) of the Act, CILCORP's direct wholly owned public utility subsidiary, Central Illinois Light Company ("CILCO"), and CILCO's wholly owned nonutility subsidiary, Central Illinois Generation, Inc. ("CIGI"), all located at 300 Liberty Street, Peoria, Illinois 61602 (collectively, and together with Ameren and Ameren Fuels, "Applicants"), have filed an application-declaration under sections 3(a)(1), 6(a), 7, 8, 9(a), 9(c)(3), 10, 11(b), 12(b), 12(c), 12(d), 12(f), 13(b) and 32 of the Act and rules 45, 46, 51, 54, 87, 90 and 91 under the Act ("Application").

I. Introduction

Applicants request authority for the acquisition of CILCORP by Ameren and associated transactions (collectively, "Transaction"). The Transaction will be effected through a stock purchase agreement ("Stock Purchase Agreement") entered into by Ameren and The AES Corporation ("AES"), CILCORP's parent company, under which Ameren has agreed to purchase, for cash, all of the issued and outstanding shares of common stock of CILCORP. As a result of the Transaction, Ameren will indirectly acquire all of the common stock of CILCO and CIGI, which will become additional public utility subsidiaries of Ameren,[1] and the nonutility subsidiaries and investments held directly and indirectly by CILCORP. The Transaction is subject to, among other usual and customary conditions precedent, receipt by the parties of approvals by the Commission as well as the FERC and the Illinois Commerce Commission ("ICC") and filing of pre-merger notification statements under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and the expiration or termination of the according statutory waiting period.

In conjunction with the Transaction, Ameren states that it has also agreed to purchase from AES all of the membership interests in AES Medina Valley (No. 4), LLC, which indirectly through intermediate subsidiaries holds all of the membership interests of AES Medina Valley Cogen, L.L.C. ("AES Medina Valley"), an EWG. AES Medina Valley owns a 40 MW gas-fired cogeneration facility in Mossville, Illinois that produces electricity, steam and chilled water that is sold to CILCO for resale to CILCO's largest customer, Caterpillar Inc.

II. Summary of Requests

In addition to authorization of the Transaction, CILCORP, CILCO and CIGI are requesting authorization through March 31, 2006 ("Authorization Period") for a program of long-term and short-term financing. CILCORP is requesting authorization to issue guarantees and provide other forms of credit support on behalf of its subsidiaries, and to pay dividends out of capital and unearned surplus, subject to certain limitations. Applicants are requesting authorization to permit Ameren Services to enter into separate service agreements with CILCORP, CILCO, CIGI and certain of CILCORP's other subsidiaries. Ameren Fuels is requesting authorization to enter into a fuel services agreement with CILCO and CIGI. Ameren is requesting authority to retain certain of CILCORP's nonutility subsidiaries and investments. To the extent required, Applicants are requesting authorization to maintain in place a tolling agreement with AES Medina Valley, a fuel supply and services agreement between a gas marketing subsidiary of CILCORP and AES Medina Valley and a FERC-approved interconnection agreement between CILCO and AES Medina Valley. Finally, CILCORP and CILCO are requesting an order granting to each of them an exemption under section 3(a)(1) of the Act.

III. Parties to the Transaction

A. Ameren

Ameren's primary operating subsidiaries are AmerenCIPS and AmerenUE, which are electric and gas utility companies, and Ameren Energy Generating Company ("Ameren Energy Generating"), which is an EWG. Together, AmerenCIPS and AmerenUE provide electric service to approximately 1.5 million customers in Missouri and Illinois and natural gas service to approximately 300 customers, also in Missouri and Illinois. Ameren Energy Generating, an indirect wholly owned subsidiary of Ameren, was organized to facilitate the restructuring of AmerenCIPS in accordance with the Illinois Electric Service Customer Choice and Rate Relief Law of 1997 ("Customer Choice Law"). In May 2000, Ameren Energy Generating acquired all of the existing generating assets of AmerenCIPS.

AmerenUE and Ameren Energy Generating together own and operate about 12,600 MW of electric generating capacity, all of which is located in Missouri and Illinois. As of December 31, 2001, AmerenUE and AmerenCIPS owned and operated, or partially owned, a total of approximately 5,400 circuit miles of electric transmission lines and approximately 7,800 miles of natural gas transmission and distribution mains, substantially all of which are located in Missouri and Illinois.

Ameren's directly owns CIPSCO Investment Company, Ameren Services Company ("Ameren Services"), Ameren Energy, Inc., Ameren Development Company and Ameren Energy Resources Company, all nonutility subsidiaries. CIPSCO Investment Company holds various nonutility businesses, including passive investments in low income housing projects and investments in equipment leases. Ameren Services is a service company subsidiary that provides administrative, accounting, legal, engineering, executive, and other corporate support services to Ameren and its associate companies. Ameren Energy, Inc. is an energy-related company under rule 58 that primarily serves as the short-term energy trading and marketing agent for AmerenUE and Ameren Energy Generating and provides a range of energy and risk management services. Ameren Development Company is an intermediate nonutility holding company that directly and indirectly owns all of the outstanding stock of two energy-related companies under rule 58 (Ameren ERC, Inc., which provides energy management services, and Missouri Central Railroad, a fuel transportation subsidiary) and of Ameren Energy Communications, Inc., an exempt telecommunications company within the meaning of section 34 of the Act. Ameren Energy Resources Company, also an intermediate nonutility holding company, holds all of the outstanding common stock of Ameren Energy Development Company, an EWG, as well as of two energy-related companies under rule 58, Ameren Energy Marketing Company, a power marketer, and Ameren Fuels, which brokers and markets energy commodities and owns and manages fuel procurement and delivery assets. Ameren Energy Generating is a wholly owned subsidiary of Ameren Energy Development Company.

In addition, Ameren indirectly owns 60% of the common stock of Electric Energy, Inc. ("EEI"), an EWG. EEI owns and/or operates electric generation and transmission facilities in Illinois that supply electric power primarily to a uranium enrichment plant located in Paducah, Kentucky.[2]

Ameren also indirectly owns all of the common stock of Ameren Fuels, an "energy-related company" under rule 58 that brokers and markets energy commodities and owns and manages fuel procurement and delivery assets.

For the twelve months ended December 31, 2001, Ameren reported total operating revenues of $4,505,867,000, operating income of $664,987,000, and net income of $468,545,000. On a consolidated basis, approximately 92.2% of Ameren's 2001 operating revenues were derived from sales of electricity, 7.6% from sales of gas and gas transportation service, and .2% from other sources. At December 31, 2001, Ameren had $10,400,575,000 in total assets, including net property and plant of $8,426,562,000. As of August 9, 2002, Ameren had issued and outstanding 144,946,829 shares of common stock, $.01 par value. Ameren's common stock is listed and traded on the New York Stock Exchange.

B. CILCORP, CILCO and CIGI

CILCORP, an Illinois corporation, directly owns all of the issued and outstanding common stock of CILCO, its predominant subsidiary. CILCO is engaged in the generation, transmission, distribution and sale of electric energy in an area of approximately 3,700 square miles in central and east-central Illinois, and the purchase, distribution, transportation and sale of natural gas in an area of approximately 4,500 square miles in central and east-central Illinois. CILCO furnishes electric service to approximately 201,000 retail customers in 136 Illinois communities (including Peoria, East Peoria, Pekin, Lincoln and Morton). CILCO owns and operates two coal-fired base load generating plants, a natural gas-fired cogeneration plant, two natural gas combustion turbine generators and 16 diesel-fueled power modules and leases 14 diesel-fueled power modules, all of which are located in Illinois. These facilities had an available summer capability of 1,172 MW in 2001 and 1,197 MW in 2002. CILCO's transmission system (all of which is located in Illinois) includes approximately 285 circuit miles operating at 138 kV, 48 circuit miles operating at 345 kV and 18 principal substations with an installed capacity of approximately 3,724 megavolt-amperes. CILCO's electric distribution system (all of which is located in Illinois) includes approximately 6,516 circuit miles of overhead pole and tower lines and 1,933 miles of underground distribution cables. The distribution system also includes approximately 108 substations with an installed capacity of 1,766 megavolt-amperes.

CILCO has a power purchase agreement with AmerenCIPS for the purchase of 100 MW of capacity and firm energy for the months of June through September through 2003. The agreement also provides for CILCO to purchase 100 MW of firm energy for the month of January through 2003. CILCO and Ameren also make short-term sales of power to each other from time to time under market-based rate tariffs as authorized by the FERC.

Applicants state that CILCO intends to transfer substantially all of its generating assets and certain associated transmission facilities to CIGI in exchange for all of CIGI's common stock and CIGI's assumption of certain liabilities.[3] Applicants expect to complete this transfer prior to the closing of the Transaction, but state that the transfer could possibly be delayed until after closing. The transferred assets will remain subject to the lien of CILCO's Indenture of Mortgage and Deed of Trust, which secures CILCO's first mortgage bonds ("CILCO Mortgage").[4] This choice of reorganization is being undertaken pursuant to the Customer Choice Law. CILCO will retain all of its other electric transmission and distribution assets and operations. As part of this reorganization, CILCO and CIGI will also enter into a power supply agreement and an interconnection agreement under which CIGI will supply the full requirements of CILCO's customers through at least December 31, 2004.

CILCO's electric service territory is adjacent to AmerenCIPS' service territory. The transmission systems of the two companies are directly interconnected via a 345 kV line that runs approximately 21.3 miles between CILCO's Duck Creek station, which is southwest of Peoria, to a 345/138 kV transformer owned by AmerenCIPS near Ipava, Illinois.

CILCO also provides gas service to approximately 204,000 customers in 128 Illinois communities (including Peoria, East Peoria, Pekin, Lincoln and Springfield). CILCO's gas system includes approximately 3,632 miles of transmission and distribution mains (all of which are located in Illinois) and associated gas storage facilities.

CILCO is regulated by the ICC with respect to retail electric and gas rates and other matters and by the FERC with respect to the transmission service and wholesale electric rates. CIGI is not a public utility company under the laws of Illinois and is therefore not subject to regulation by the ICC. However, CIGI is subject to regulation by the FERC with respect to wholesale electric rates and other matters.

CILCORP directly owns all of the common stock of three nonutility subsidiaries: CILCORP Investment Management Inc., CILCORP Ventures Inc., and QST Enterprises Inc. The assets of these companies consist primarily of investments in affordable housing projects that qualify for federal tax credits and in leveraged leases of equipment and commercial real estate. Applicants maintain that other direct and indirect subsidiaries of CILCORP provide energy-related services. CILCO's nonutility subsidiaries engage in the exploration and development of gas, oil, coal and other mineral resources and research and development activities relating to new sources of energy, including the conversion of coal and other minerals into gas. With certain exceptions, Ameren is requesting approval to retain CILCORP's nonutility subsidiaries and investments.

[1] Applicants state CIGI, which has been determined by the Federal Energy Regulatory Commission ("FERC") to be an "exempt wholesale generator" ("EWG"), as defined under section 32 of the Act, will relinquish its EWG status upon completion of Ameren's acquisition of CILCORP. Accordingly, in the Application, Ameren is treating CIGI as a public utility company for all purposes under the Act.

[2] Applicants state the remaining 40% of the stock of EEI is held equally by two unaffiliated electric utility companies.

[3] Applicants state CILCO will transfer generating facilities representing 1,136 MW of its total generating capacity. These include the Duck Creek and E.D. Edwards coal-fired units and certain peaking units. CILCO will continue to own and maintain a natural gas-fired cogeneration plant and 26 MW of capacity provided by 16 diesel-fueled power modules located at various substations, which will be managed by CIGI.

[4] Applicants state CILCO does not have sufficient unfunded property additions at this time to obtain a complete release of the generation assets under the CILCO Mortgage. Under the CILCO Mortgage, CILCO does not require the trustee's approval to transfer the generating assets to CIGI (although CILCO has notified the trustee of its intent to do so) and also would not require the trustee's approval to transfer CIGI's common stock to CILCORP or another subsidiary of Ameren after the Transaction closes. In general, the CILCO Mortgage permits CILCO to transfer a portion of its assets, subject to the lien. However, even after the transfer of the assets to CIGI, CILCO will continue to have certain ongoing obligations with respect to the transferred property, such as ensuring that the lien is maintained, taxes are paid and the property is insured. The trustee under the CILCO Mortgage will continue to have recourse against the transferred assets in the event of a CILCO default under the CILCO Mortgage.

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For the twelve months ended December 31, 2001, CILCORP reported consolidated revenues of $814,870,000, of which $391,811,000 (48.1%) were derived from sales of electricity, $271,434,000 (33.3%) from sales of gas and gas transportation service, and $151,625,000 (18.6%) from CILCORP's nonutility operations. At December 31, 2001, CILCORP had $1,811,698,000 in total assets, including total net property, plant and equipment of $857,987,000.

IV. The Transaction

Applicants request approval for the acquisition by Ameren of all of the issued and outstanding common stock of CILCORP pursuant to the Stock Purchase Agreement. Under the Stock Purchase Agreement, Ameren will pay AES, in consideration for all of the issued and outstanding common stock of CILCORP, cash in an amount equal to $1,340,000,000, less certain "assumed obligations" [5] (which includes long-term debt, short-term debt and preferred stock of CILCORP and its subsidiaries), increased or decreased, as appropriate, by the amount, if any, by which "working capital" [6] of CILCORP as of the closing date exceeds or is less than the "base working capital" [7] of CILCORP, and increased or decreased, as appropriate, by the amount of the "cap ex adjustment," [8] the net amount of the foregoing being the "purchase price." Applicants state if the closing date under the Stock Purchase Agreement had occurred on March 31, 2002, and assuming no change in the base working capital amount and no cap ex adjustment amount, the cash paid by Ameren at closing for the common stock of CILCORP would have been approximately $522 million. Ameren states that it will finance the cash portion of the purchase price using cash on hand and/or proceeds of debt and/or equity financings previously authorized in SEC File No. 70–9877.[9]

The Stock Purchase Agreement further provides that, in the event that the closing date does not occur by the "Trigger Date," then the "purchase price" shall be increased by $33,699 per day from the Trigger Date through the closing date, subject to certain limitations. The Trigger Date is the later of (a) December 31, 2002, (b) the date on which AES is capable (without further action by any third party) of completing performance in all material respects of its obligations required to be performed on or prior to closing, and (c) the date which is 90 days following the date on which the ICC grants its approval of the Transaction. Subject to certain limitations and exceptions, either party may terminate the Stock Purchase Agreement if closing has not occurred by March 27, 2003.

Following the acquisition of CILCORP, Ameren proposes to retain CILCORP as a direct subsidiary for the foreseeable future, and CILCORP will continue to own all of the common stock of CILCO. CILCO, in turn, will continue to hold all of the common stock of CIGI for the foreseeable future. CILCO will maintain its headquarters in Peoria for a period of at least five years and will maintain a local management team and adequate staffing levels to operate its utility system. CILCO will continue to operate as a separate control area. CILCO's generating plants (which CILCO intends to transfer to CIGI by the time of the closing) will not be jointly dispatched with the generating plants owned by AmerenUE and Ameren Energy Generating.

V. Agreements for Sale of Goods and Services

Applicants state that Ameren Services intends to enter into separate service agreements with CILCORP, CILCO, CIGI and certain of CILCORP's other subsidiaries that are identical in all material respects with an existing general service agreement between Ameren Services, Ameren, AmerenUE, AmerenCIPS and certain other associate companies. Thus, Ameren Services will provide to the new client companies the same administrative, management, and technical services that it now provides to Ameren system companies under the general services agreement, utilizing the same work order procedures and the same methods of allocating costs that are specified in that agreement. In connection with the Transaction, certain employees of CILCORP and its subsidiaries may be transferred to and become employees of Ameren Services.

Applicants state that historically, CILCO has provided certain administrative, management and technical services at cost to CILCORP and all of its other associate companies under a service agreement that has been approved by the ICC.[10] Although Applicants expect Ameren Services will assume the responsibility for providing these services after the Transaction closes under new service agreements, there may be a period, not to exceed two years, during the transition in which CILCO will continue to provide certain corporate support services, such as accounting, tax, cash management and billing and sales services, to the same associate companies to which these services were provided prior to the Transaction. In addition, following the transfer of its generating assets to CIGI, CILCO and CIGI request authorization to provide to each other, on a permanent basis, certain technical services relating to the operation and maintenance of generating assets located at CILCO substations and the equipment connecting CIGI's generation facilities with CILCO's transmission facilities. Applicants state that all of these services will be performed at cost in accordance with rules 90 and 91 under a services and facilities agreement to be executed when the generating assets are transferred to CIGI.

To the extent required, Applicants request authorization to maintain in place (a) a tolling agreement under which AES Medina Valley sells electricity, steam and chilled water to CILCO, (b) a fuel supply and services agreement between CILCORP Energy Services Inc. ("CESI"), a nonutility gas marketing subsidiary of CILCORP, and AES Medina Valley, under which CESI supplies AES Medina Valley's gas requirements and also provides certain ancillary services relating to the supply of gas to the Mossville facility, and (c) a FERC-approved interconnection agreement between CILCO and AES Medina Valley, under which CILCO provides metering and other ancillary services to AES Medina Valley, at cost.

In addition, Ameren Fuels requests authorization to enter into separate fuel services agreements with CILCO and CIGI under which Ameren Fuels will manage gas supply resources for CILCO and manage fuel procurement for CIGI. These services will be provided at cost, in accordance with rule 90 and 91.[11]

[5] Applicants state the term "assumed obligations" means the amounts required to be included on CILCORP's balance sheet as of the closing date as long-term debt (including the current portion), short-term debt, capital lease obligations, preferred stock of subsidiaries, and other obligations for borrowed money.

[6] Applicants state the term "working capital" means the current assets of CILCORP less current liabilities (not counting in current liabilities any short-term debt or current maturity of long-term debt that is included in Assumed Obligations) as of the closing date.

[7] Applicants state that, as agreed to in the Stock Purchase Agreement, "base working capital" is $75 million.

[8] Applicants state the term "cap ex adjustment" amount represents the amount, if any, by which expenditures by CILCORP for certain capital improvements prior to closing are less or greater than the amounts agreed to under the Stock Purchase Agreement.

[9] See, Ameren Corporation, HCAR No. 27449 (Oct. 5, 2001). On September 10, 2002, Ameren sold 8.05 million new shares of common stock in a public offering at $42.00 per share. Net proceeds (after underwriting discount) to Ameren were $327 million.

[10] Applicants state that, with one exception, CILCO's nonutility associate companies do not have employees of their own.

[11] By order dated April 5, 2001 in File No. 70–9775 (HCAR No. 27374), the Commission authorized Ameren Fuels to provide AmerenUE and AmerenCIPS with the same fuel management services that Ameren Fuels is now proposing to provide to CILCO and CIGI.

VI. Financing by CILCORP, CILCO and CIGI

The existing equity and long-term and short-term debt securities of CILCORP, CILCO and CIGI will remain outstanding after the Transaction closes.[12] In addition, CILCORP, CILCO and CIGI are requesting authority, to the extent these transactions are not exempt, to engage in certain ongoing external and intrasystem financing transactions from time to time during the Authorization Period. Any securities issued by CILCORP, CILCO or CIGI to third parties may be issued directly, or may be issued indirectly through one or more special purpose entities formed solely for this purpose ("Financing Subsidiaries").

A. Financing Parameters

The financing authorizations requested in the Application will be subject to the following parameters:

- CILCORP, CILCO and CIGI state that they will not engage in any financing transactions for which approval is sought unless, on a pro forma basis to take into account the amount and types of the financing and the subsequent application of the proceeds, common equity as a percentage of capitalization (including short-term debt and current maturities of long-term debt) of each company is at least 30%;
- Except in accordance with a further order of the Commission in this proceeding, CILCORP and CIGI will not publicly issue any Long-term Securities (defined below) unless the securities are rated at the investment grade level as established by at least one nationally recognized statistical rating organization, as that term is used in paragraphs (c)(2)(vi)(E), (F) and (H) of Rule 15c3–1 under the Securities Exchange Act of 1934.
- The effective cost of money on all external short-term borrowings by CILCORP will not exceed at the time of issuance the greater of (1) 300 basis points over the six-month London Interbank Offered Rate ("LIBOR"), or (2) a gross spread over LIBOR that is consistent with similar securities of comparable credit quality and maturities issued by other companies;
- The maturity date of any new series of long-term notes issued by CILCORP will be not later than October 15, 2029, which is the maturity date of the longest of the two series of outstanding Senior Notes;
- Any new long-term notes issued by CILCORP in a refinancing transaction will bear interest at a rate not to exceed at the time of issuance the greater of (1) 500 basis points over the yield to maturity of a U.S. Treasury security having a remaining term equal to the average life of the new notes (or, if no such Treasury security is outstanding, then the yield to maturity of a 30-year U.S. Treasury Bond), or (2) a gross spread over U.S. Treasuries that is consistent with similar securities of comparable credit quality and maturities issued by other companies;
- The effective cost of money on all external short-term borrowings by CILCO and CIGI will not exceed at the time of issuance the greater of (1) 300 basis points over the six-month LIBOR, or (2) a gross spread over LIBOR that is consistent with similar securities of comparable credit quality and maturities issued by other companies;
- Any preferred stock or other types of preferred securities issued by CIGI will be redeemed no later than 50 years after issuance;
- The dividend rate on any series of preferred stock or other preferred securities issued by CIGI will not exceed at the time of issuance the greater of (1) 700 basis points over the yield to maturity of a U.S. Treasury security having a remaining term equal or closest to the term of the securities (or, if no such Treasury security is outstanding, then the yield to maturity of a 30-year U.S. Treasury Bond), or (2) a gross spread over U.S. Treasuries that is consistent with similar securities of comparable credit quality and maturities issued by other companies;
- Long-term debt issued by CIGI will have a maturity ranging from one to 50 years; and
- Long-term debt issued by CIGI will bear interest at a rate not to exceed at the time of issuance the greater of (1) 600 basis points over the yield to maturity of a U.S. Treasury security having a remaining term equal or closest to the average life of the series (or, if no such U.S. Treasury security is outstanding, then the yield to maturity of a 30-year U.S. Treasury Bond), or (2) a gross spread over U.S. Treasuries that is consistent with similar securities of comparable credit quality and maturities issued by other companies.

B. External Financing Transactions

1. CILCORP

(a) Short-Term Debt

CILCORP requests authorization to issue and sell commercial paper and/or establish and make unsecured short-term borrowings (*i.e.*, less than one year) under credit facilities with banks or other institutional lenders on terms that are generally available to borrowers with a comparable credit rating as CILCORP as CILCORP deems appropriate in light of its needs and existing market conditions, provided that the aggregate amount of borrowings by CILCORP at any time outstanding under all credit facilities, when added to the amount of any direct short-term borrowings by CILCORP from Ameren will not exceed $250 million.

(b) Refinancing of CILCORP Senior Notes

CILCORP also requests authorization to issue, in one or more transactions from time to time during the Authorization Period, long-term notes for the purpose of refinancing or acquiring $475 million principal amount of senior notes ("Senior Notes") that are currently outstanding at or prior to their scheduled maturity. The principal amount of any new long-term notes issued will not exceed the unpaid principal amount of the Senior Notes, plus any "make whole" premium required to be paid in connection with any prepayment and/or the premium, if any, that is paid in connection with any acquisition of the Senior Notes in open market purchases. In connection with any issuance, Ameren requests authorization to guaranty any new CILCORP notes issued in a refinancing transaction or to issue a guarantee of the outstanding CILCORP Senior Notes in order to obtain a termination and release of the pledge of CILCO's common stock [13] or for other corporate purposes.

[12] CILCORP currently has issued and outstanding 1,000 shares of common stock, no par value, all held by AES. In addition, CILCORP has outstanding $225 million of 8.7% senior notes, due 2009, and $250 million of 9.375% senior notes, due 2029 (the "Senior Notes"), which are secured by a pledge of the common stock of CILCO. CILCORP also had committed bank lines totaling $35 million at December 31, 2001, under which it had outstanding borrowings of $20 million.

At March 31, 2002, CILCO had issued and outstanding 13,563,871 shares of common stock, no par value, all of which are held by CILCORP; 191,204 shares of cumulative preferred stock, $100 par value, and 220,000 shares of Class A preferred stock, no par value, totaling $41,120,000; and $242,250,000 of long-term debt. In addition, at December 31, 2001, CILCO had issued and outstanding $43,000,000 of commercial paper, and had in place bank lines totaling $100,000,000 which are used to backstop its commercial paper.

[13] Applicants state CILCORP has outstanding $225 million of 8.7% senior notes, due 2009, and

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2. CILCO and CIGI

(a) Short-Term Debt

CILCO and CIGI are requesting authorization to issue commercial paper and establish and make unsecured short-term borrowings (*i.e.*, less than one year) under credit lines from time to time during the Authorization Period, provided that the aggregate amount of external short-term borrowings by CILCO at any time outstanding under all credit facilities, when added to the amount of any direct short-term borrowings by CILCO from Ameren (see part VI.C.1., "Intrasystem Financing Transactions" below), will not exceed $250 million, and that the aggregate amount of borrowings by CIGI at any time outstanding under all credit facilities, when added to the amount of any direct short-term borrowings by CIGI from Ameren (see part VI.C.1., "Intrasystem Financing Transactions" below), will not exceed $250 million.

(b) Long-Term Securities of CIGI

CIGI is also requesting authorization to issue and sell from time to time during the Authorization Period long-term securities consisting of any combination of preferred stock or other forms of preferred securities and long-term debt ("Long-term Securities"). Preferred stock or other types of preferred securities may be issued in one or more series with rights, preferences, and priorities as may be designated in the instrument creating each series provided that the aggregate amount of all such securities at any time outstanding, when added to the amount of any direct long-term borrowings by CIGI from Ameren (see part VI.C.1., "Intrasystem Financing Transactions" below), will not exceed $500 million.

Long-term debt of a particular series (i) may be secured or unsecured, (ii) may be subject to optional and/or mandatory redemption, in whole or in part, at par or at various premiums above the principal amount, (iii) may be entitled to mandatory or optional sinking fund provisions, (iv) may provide for reset of the coupon under a remarketing or auction arrangement, and (v) may be called from existing investors by a third party.

CILCORP and CIGI request authority to issue Long-term Securities that are rated below investment grade. Applicants request the Commission reserve jurisdiction over CILCORP and CIGI in connection with the issuance of any Long-term Securities that are rated below investment grade.

$250 million of 9.375% senior notes, due 2029 that are secured by a pledge of the common stock of CILCO

3. Interest Rate and Anticipatory Hedging Transactions

To the extent not exempt under rule 52, CILCORP, CILCO and CIGI also request authorization to enter into interest rate hedging transactions with respect to outstanding indebtedness ("Interest Rate Hedges"), subject to certain limitations and restrictions, in order to reduce or manage the effective interest rate cost. In no case will the notional amount of any Interest Rate Hedge exceed the principal amount of the underlying debt instrument. Transactions will be entered into for a fixed or determinable period. Thus, the applicants will not engage in speculative transactions. Interest Interest Rate Hedges would only be entered into with counterparties ("Approved Counterparties") whose senior debt ratings, or the senior debt ratings of any credit support providers who have guaranteed the obligations of the Approved Counterparties, as published by S&P, are equal to or greater than BBB, or an equivalent rating from Moody's or Fitch, Inc. In addition, CILCORP, CILCO and CIGI request authorization to enter into interest rate hedging transactions with respect to anticipated debt offerings (the "Anticipatory Hedges"), subject to certain limitations and restrictions.

Applicants state that Each Interest Rate Hedge and Anticipatory Hedge will qualify for hedge accounting treatment under the current Financial Accounting Standards Board ("FASB") guidelines in effect and as determined at the time entered into. Further, the Applicants will comply with the Statement of Financial Accounting Standards ("SFAS") 133 ("Accounting for Derivatives Instruments and Hedging Activities") and SFAS 138 ("Accounting for Certain Derivative Instruments and Certain Hedging Activities") or other standards relating to accounting for derivative transactions as are adopted and implemented by the FASB.[14]

C. Intrasystem Financing Transactions

1. Long-Term and Short-Term Securities of CILCORP, CILCO and CIGI

Ameren may from time to time during the Authorization Period acquire additional shares of CILCORP's common stock, make additional capital contributions or non-interest bearing cash advances to CILCORP, and/or make loans to CILCORP, CILCO and CIGI (and acquire unsecured promissory notes of CILCORP, CILCO and CIGI evidencing the loans) in order to enable CILCORP to fund additional investments in CILCO and its other existing subsidiaries, to redeem or retire the outstanding Senior Notes, and to fund working capital. Accordingly, CILCORP requests authority to issue, and Ameren requests authority to acquire, from time to time during the Authorization Period, (a) up to $1 billion at any time outstanding of additional common stock and/or promissory notes having maturities of one year or more, and (b) up to $250 million at any time outstanding of promissory notes having maturities of less than one year. Any promissory note issued by CILCORP to Ameren evidencing a loan will be unsecured and will bear interest at a rate and have a maturity date designed to parallel the effective cost of capital and maturity date of a similar debt instrument issued by Ameren.

Ameren requests authorization to make long-term and short-term loans to CIGI (and acquire promissory notes of CIGI evidencing the loans) in order to fund CIGI's capital improvements and working capital requirements. Accordingly, CIGI requests authority to issue, and Ameren requests authority to acquire, from time to time during the Authorization Period, (a) up to $500 million at any time outstanding of promissory notes having maturities of one year or more, and (b) up to $250 million at any time outstanding of promissory notes having maturities of less than one year.

Ameren requests authorization to make short-term loans to CILCO (and acquire promissory notes of CILCO evidencing the loans) in order to fund CILCO's capital improvements and working capital requirements. Accordingly, CILCO requests authority to issue, and Ameren requests authority to acquire, from time to time during the Authorization Period, up to $250 million at any time outstanding of promissory notes having maturities of less than one year.

2. Guarantees Issued by CILCORP and Its Subsidiaries

CILCORP and certain of its nonutility subsidiaries request authorization to maintain, renew and extend all guarantees and other forms of credit support that they have issued and which are outstanding at the time that the Transaction closes. In addition, CILCORP requests authorization to provide additional guarantees and other forms of credit support (collectively, "Guarantees") from time to time during the Authorization Period on behalf of or for the benefit of any of its subsidiaries, provided that the aggregate amount of all CILCORP guarantees at any time outstanding shall not exceed $500 million. Any Guarantee outstanding on March 31, 2006 will expire or terminate in accordance with its terms.

[14] Applicants state the authority sought for interest rate hedging transactions in this Application is identical to the authorization previously granted to Ameren in SEC File No. 70–9877.

D. Organization and Acquisition of Financing Subsidiaries

In connection with the issuance of any securities for which authorization is requested in the application/declaration, or (in the case of CILCO) under rule 52(a), CILCORP, CILCO and CIGI request authorization to acquire, directly or indirectly, the common stock or other equity securities of one or more entities (each a "Financing Subsidiary") formed exclusively for the purpose of facilitating the issuance of long-term debt and/or preferred securities and the loan or other transfer of the proceeds to the parent company of a Financing Subsidiary. The proceeds of any financing carried out through a Financing Subsidiary will be counted against the limits proposed in the Application for the securities issued by CILCORP or CIGI, as the case may be, and the terms, conditions and other limitations applicable to any securities issued by a Financing Subsidiary will conform to those proposed for the specified type of security (*e.g.*, long-term debt, preferred securities, etc.). In connection with any of these financing transactions, CILCORP or CIGI, as the case may be, may enter into one or more guarantees or other credit support agreements in favor of its Financing Subsidiary. CILCORP, CILCO and CIGI also request authorization to enter into an expense agreement with its respective Financing Subsidiary, under which each company would agree to pay all expenses of the Financing Subsidiary.

In addition, CILCORP and CIGI also request authority to issue and sell to any Financing Subsidiary, at any time or from time to time in one or more series, unsecured debentures, unsecured promissory notes or other unsecured debt instruments (individually, a "Note" and, collectively, the "Notes") governed by an indenture or indentures or other documents, and the Financing Subsidiary will apply the proceeds of any external financing by the Financing Subsidiary plus the amount of any equity contribution made to it from time to time to purchase Notes. The terms (*e.g.*, interest rate, maturity, amortization, prepayment terms, default provisions, etc.) of any Notes would generally be designed to parallel the terms of the securities issued by the Financing Subsidiary to which the Notes relate. The principal amount of Notes issued to a Financing Subsidiary by its parent will not be counted against the limits proposed in this Application on securities issued by CILCORP or CIGI to third parties or to Ameren.[15]

Applicants state that any Financing Subsidiary organized under the authority granted by the Commission in this proceeding shall be organized only if, in management's opinion, the creation and utilization of a Financing Subsidiary will likely result in tax savings, increased access to capital markets and/or lower cost of capital for CILCORP, CILCO or CIGI, as applicable.[16]

E. Payment of Dividends by CILCORP Out of Capital Surplus

CILCORP requests authorization to declare and pay dividends on its common stock and/or redeem or repurchase its outstanding shares of common stock from time to time through the Authorization Period out of capital surplus (including revaluation reserve) to the extent permitted under applicable corporate law and the terms of any applicable covenants in its financing documents (including the CILCORP Indenture) in an amount equal to CILCORP's retained earnings at the time that the Transaction is consummated plus the amount, if any, recorded as an impairment to goodwill on the books of CILCORP in accordance with SFAS Nos. 141 and 142.[17]

VII. Exemption of CILCORP and CILCO as Holding Companies

Finally, in its capacity as a holding company over CILCO and CIGI, CILCORP states that it will continue to be entitled to an exemption under section 3(a)(1) because CILCORP, CILCO and CIGI are all incorporated in Illinois, the state in which all of CILCO's and CIGI's public utility operations are conducted. Likewise, Applicants state that CILCO will be entitled to an exemption under section 3(a)(1) by nature of its capacity as a holding company over CIGI. Accordingly, CILCORP and CILCO request that the Commission issue an order exempting them from the registration requirements of section 5 under section 3(a)(1).

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–27776 Filed 10–31–02; 8:45 am]

BILLING CODE 8010–01–P

[15] "Mirror image" Notes issued by CILCO to any Financing Subsidiary will be exempt under rule 52(a) if the conditions of rule 52(a) are satisfied.

[16] Applicants state the creation of any Financing Subsidiary, issuance of securities through these entities, and the use of financing proceeds to make investments will be subject to a comprehensive set of formal internal controls that Ameren has adopted. These include delegation of authority limits on expenditures, board of director budget approvals and comparison of budgets against actual financial results on a monthly basis, daily reconciliations of disbursements from major accounts by the Treasurer's group, monthly review of financial statements of each legal entity in the Ameren system by Ameren's Accounting Manager, Controller and Vice President of Finance, external auditor review of financial statements for each legal entity filing reports under the Securities Exchange Act of 1934 on a quarterly basis, internal audits, and corporate compliance procedures that are applicable to all management employees.

[17] See, E.ON AG, *et al.*, HCAR No. 27539 (June 14, 2002).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27587]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

October 28, 2002.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by November 22, 2002, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After November 22, 2002, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Great Plains Energy Incorp., et al. (70–10064)

Great Plains Energy Incorporated ("GPE"), a registered holding company;

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Kansas City Power & Light Company ("KCPL"), an electric utility company and a wholly-owned subsidiary of GPE; and Great Plains Energy Services Incorporated ("GPES"), a to-be formed service company subsidiary, all located at 1201 Walnut, Kansas City, Missouri 64106; and Wolf Creek Nuclear Operating Corporation ("WCNOC"), 1550 Oxen Lane N.E., Burlington, Kansas 66839, a nonutility subsidiary of KCPL, which provides goods and services to the owners of Wolf Creek Generating Station; (collectively, "Applicants") have filed an application-declaration under sections 6(a), 7, 9(a), 10, 12(b), and 13(b) under the Act and rules 45, 88, 90 and 91 under the Act.

I. Prior Authorizations

By Commission order dated September 7, 2001 (HCAR No. 27436) ("September Order") GPE was authorized, among other things, to effectuate a reorganization by GPE forming another Missouri subsidiary and merging KCPL into the Missouri subsidiary that resulted in KCPL becoming a wholly owned subsidiary of GPE. In addition, financing was authorized for the new system. Specifically, related to the intrasystem provision of services, KCPL and GPE were given until April 30, 2002 to file an application-declaration seeking authority to create a service company and implement the final support service structure for the new GPE holding company system ("Service Company Application"). Until the Service Company Application is made effective, KCPL and GPE requested authority under section 13(b) and the rules for an interim period ("Interim Period") for KCPL and the nonutility subsidiaries to provide support services and to sell goods to each other and to GPE. Existing and future nonutility, intermediate subsidiaries of GPE were also authorized during the Interim Period to provide management, administrative, project development and operating services at fair market prices to certain classes of nonutility subsidiaries.

II. Request to Form the Service Company and Provide Services

A. Summary of Requests

Applicants filed the Service Company Application by April 30, 2002, as directed by the Commission in September Order. The Service Company Application seeks the authorization and approval by the Commission of the provision of intrasystem services and goods following the expiration of the Interim Period, under section 13 of Act and the rules. Applicants request that the Commission: (1) Approve the designation of GPES as a subsidiary service company in accordance with the provisions of rule 88 under the Act and find that GPES is so organized and will conduct its operations so as to meet the requirements of section 13 and the rules under the Act; (2) approve the service agreement (as attached in S.E.C. File No. 70–10064, Exhibit B–1 filed April 19, 2002) ("Service Agreement"); (3) authorize to the extent not exempt under rules 81 and 87, for GPE's subsidiaries to provide certain services and goods to each other and to GPE; and (4) authorize extensions of credit or guarantees under section 12(b) and rule 45 for GPES or KCPL to assume responsibility to counterparties in leases, licenses, or other arrangements for the associates' compliance under those leases, licenses, or other arrangements.

B. Services provided by GPES

GPE requests authorizations with respect to the activities of GPES, which will be incorporated in Missouri as a wholly-owned subsidiary of GPE to serve as the service company for the GPE system. GPES will:

- Have a minimal equity capitalization of not more than 1,000 shares with total equity capitalization of not more than $10,000.
- Finance it business through the issuance of debt securities exempted under rule 52(b) to associate companies or unaffiliated parties or as otherwise authorized by the Act, rules, and Commission orders.
- Provide companies [1] in the GPE system with a variety of administrative, management and support services.
- Be staffed by a transfer of personnel from KCPL, and in addition, KCPL will transfer personal property from KCPL to GPES.[2]
- Be assigned certain leases and licenses currently held by KCPL, or in the alternative the leases and licenses may continue to be held by KCPL and a portion of the goods and services may be provided to other system companies. (To the extent that current leases, licenses, and other arrangements respecting goods and services used by KCPL and one or more associate companies cannot be reasonably transferred to GPES, or in situations in which KCPL is the predominant user of such goods and services, or in the event Missouri Public Service Commission approval of the proposed asset transfer is not obtained before the establishment of GPES,[3] KCPL may make available a portion of the associated goods and services to associate companies through leases, licenses or similar arrangements.)
- Be responsible to counterparties of the underlying leases, licenses, or other arrangements for the associates' compliance with the terms and conditions of those agreements.
- Comply with the Commission's standards for cost allocation methods and procedures for service companies in registered holding company systems;
- Use the Commission's "Uniform System of Accounts for Mutual Service Companies and Subsidiary Service Companies" for GPES's billing system.
- Provide classes of services through departments and more than one class of services. Both corporate services and shared services may be offered. Corporate services are required, but shared services will be a choice subject to the terms and conditions of the service agreement.
- Provide all services by GPES to affiliated companies on an "at cost" basis as determined by rules 90 and 91 of the Act, except as permitted by the Act or the Commission.

C. Services Provided by the Subsidiaries

1. KCPL

KCPL may provide to associate companies services incidental to its utility business, including but not limited to leases [4] or subleases of office or other space with associate companies, services of personnel with specialized expertise and usage of KCPL's integrated voice and data communications system. In addition, to

[1] GPE currently has four direct subsidiaries: KCPL; Innovative Energy Consultants, Inc.; KLT, Inc.; and Great Plains Power Incorporated ("GPP"). KCPL is the only public utility company in the GPE system, and provides electricity at retail in portions of Kansas and Missouri and at wholesale.

[2] The net book value of the property proposed to be transferred to GPES is approximately $4.9 million. Of this amount, approximately $815,000 is related to leasehold improvements in leased office space which will be occupied by GPES. Approximately $2.9 million of this amount is related to general office equipment (such as chairs, desks, furniture, cubicle partitions and other items) which will be used by GPES employees. The remainder is related to the capitalized costs of software which will be used by GPES in providing services to its Clients. GPES will pay to KCPL the net book value of the property, under rule 90. The payment by GPES to KCPL for the transferred property may be in the form of either cash or a promissory note in the principal amount of the purchase price, bearing interest at the effective cost of capital of KCPL. Applicants represent that none of the property proposed to be transferred constitutes "utility assets" as defined by section 2(18) of the Act, and to the extent the property constitutes "goods" of KCPL, the Applicants state the transfer is permitted by rule 87(b)(4).

[3] Section 393.190, RSMo.

[4] KCPL leases transmission facilities and railcars, and has entered into lease arrangements for five combustion turbines.

the extent that current leases, licenses and other arrangements respecting goods and services used by KCPL and one or more associate companies cannot be reasonably transferred to GPES, or in situations in which KCPL is the predominant user of such goods and services, or in the event Missouri Public Service Commission approval of the proposed asset transfer is not obtained before the establishment of GPES, KCPL may make available a portion of the associated goods and services to associate companies through leases, licenses or similar arrangements. All such goods and services will be provided to associate companies in accordance with rules 87, 90 and 91. To the extent such matters do not fall within the exception provided in rule 87(a)(3), Applicants request authorization for KCPL to engage in such activities.

KCPL may have responsibility for GPES's compliance under assigned leases, licenses, and other arrangements. In situations where KCPL makes available goods and services to associate companies under leases, licenses, or other arrangements between KCPL and third parties, KCPL may have responsibility for those associate companies' compliance with such leases, licenses, or other arrangements. To the extent such responsibility is deemed to be an extension of credit or guaranty by KCPL under section 12(b) of the Act, Applicants request authority for KCPL to incur such responsibility.

2. WCNOC

Applicants request authorization for WCNOC, as a nonutility subsidiary of KCPL, to provide services and goods to the owners of Wolf Creek Generating Station at cost under existing agreements (as attached in S.E.C. File No. 70–10064, Exhibit B–3) ("WCNOC Existing Agreements"). Applicants also request authorization for KCPL to provide goods and services to WCNOC at cost under WCNOC Existing Agreements. WCNOC, KCPL, and Kansas Gas and Electric Company (an owner of Wolf Creek Generating Station) also have entered into a service reciprocity agreement dated June 20, 1986 (as attached in S.E.C. File No. 70–10064, Exhibit B–6) ("Service Reciprocity Agreement"), providing for the recognition of pension service credits earned by employees who transfer to or from WCNOC. To the extent the Service Reciprocity Agreement may be deemed jurisdictional, Applicants request authorization for KCPL and WCNOC to continue with such agreement.

D. Request for an Exemption From At Cost

Applicants request that GPES and all other nonutility subsidiaries of GPE be authorized to enter into agreements to provide construction, goods or services to certain associate companies enumerated below at fair market prices determined without regard to cost, and request an exemption (to the extent that rule 90(d) of the Act does not apply) under section 13(b) from the cost standards of rules 90 and 91:

- A foreign utility company ("FUCO") or foreign exempt wholesale generator that derives no part of its income, directly or indirectly, from the generation, transmission or distribution of electric energy for sale within the United States;
- An exempt wholesale generator (EWG) that sells electricity at market-based rates which have been approved by the Federal Energy Regulatory Commission ("FERC"), provided that the purchaser is not KCPL;
- A "qualifying facility" ("QF") within the meaning of the Public Utility Regulatory Policies Act of 1978, as amended ("PURPA") that sells electricity exclusively (i) at rates negotiated at arms' length to one or more industrial or commercial customers purchasing the electricity for their own use and not for resale, and/or (ii) to an electric utility company at the purchaser's "avoided cost" as determined in accordance with the regulations under PURPA;
- A domestic EWG or QF that sells electricity at rates based upon its cost of service, as approved by FERC or any state public utility commission having jurisdiction, provided that the purchaser is not KCPL; or
- A rule 58 subsidiary or any other nonutility subsidiary that (i) is partially-owned, directly or indirectly, by GPE, provided that the ultimate purchaser of such goods or services is not KCPL (or any other entity that GPE may form whose activities and operations are primarily related to the provision of goods and services to KCPL), (ii) is engaged solely in the business of developing, owning, operating and/or providing services or goods to nonutility subsidiaries described in clauses (a) through (e) immediately above, or (iii) does not derive, directly or indirectly, any material part of its income from sources within the United States and is not a public utility company operating within the United States.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–27807 Filed 10–31–02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46729; File No. S7–24–89]

Joint Industry Plan; Order Granting Partial Temporary Approval of Amendment No. 13 of the Reporting Plan for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privilege Basis, Submitted by the National Association of Securities Dealers, Inc., the Boston Stock Exchange, Inc., the Chicago Stock Exchange, Inc., the Cincinnati Stock Exchange, Inc., the Pacific Exchange, Inc., the American Stock Exchange LLC, and the Philadelphia Stock Exchange, Inc.

October 25, 2002.

I. Introduction

On May 31, 2002, the Cincinnati Stock Exchange, Inc. ("CSE") on behalf of itself and the National Association of Securities Dealers, Inc. ("NASD"), the American Stock Exchange LLC ("Amex"), the Boston Stock Exchange, Inc. ("BSE"), the Chicago Stock Exchange, Inc. ("CHX"), the Pacific Exchange, Inc. ("PCX"), and the Philadelphia Stock Exchange, Inc. ("PHLX") (hereinafter referred to collectively as "Participants"),[1] as members of the operating committee ("Operating Committee" or "Committee")[2] of the Plan submitted to the Securities and Exchange Commission ("SEC" or "Commission") a proposal to amend the Plan, pursuant to Rule 11Aa3–1 and Rule 11Aa3–2 [3] under the Securities Exchange Act of 1934 ("Act" or "Exchange Act"). The proposal represents the 13th amendment ("13th Amendment") made

[1] The CSE was elected chair of the Operating Committee for the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privilege Basis ("Nasdaq UTP Plan" or "Plan") by the Participants.

[2] Among other things, the 13th Amendment proposes to add the Nasdaq Stock Market, Inc. ("Nasdaq") as a Participant. The Committee is made up of all the Participants. As discussed below, the Category 1 amendments of the 13th Amendment propose adding Nasdaq as a Participant and this approval order does not take action with respect to the Category 1 amendments.

[3] 17 CFR 240.11Aa3–1 and 17 CFR 240.11Aa3–2.

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to the Plan and reflects changes unanimously adopted by the Committee. Notice of the proposed 13th Amendment was published in the **Federal Register** on July 5, 2002.[4]

Through the 13th Amendment Notice, the Commission granted temporary summary effectiveness to a portion of the 13th Amendment, granted an exemption under Rule 11Aa3–2(f)[5] from compliance with Section VI.C.1. of the Plan as required by Rule 11Aa3–2(d),[6] and published the 13th Amendment Notice to solicit comments from interested persons. The Commission received one comment on the proposed 13th Amendment.[7]

As discussed in the 13th Amendment Notice, proposed amendments to the Plan have been segregated into four categories: (1) Category 1, "Effective Upon Nasdaq's Exchange Registration;" (2) Category 2, "Effective Upon Launch of the Internal SIP;" (3) Category 3, "Effective Upon End of Parallel Period—Elimination of the Legacy SIP;" and (4) Category 4, "Timing Not An Issue." The amendments detailed in Category 2 were granted summary effectiveness through the 13th Amendment Notice so as to allow the target launch date for the new Internal Securities Information Processor ("SIP") data feeds to be met.[8] The summary effectiveness expires on October 26, 2002.[9]

In addition, the Commission granted partial temporary approval to the 13th Amendment only with respect to extension of the expiration date of the Plan itself. The partial temporary approval extended the expiration date of the Plan through August 19, 2003.[10] As explicitly noted in the Date Extension Approval Order, the Commission was not approving the Category 1, 2, 3, or 4 amendments, but would address such amendments through separate action.

This order approves the amendments detailed in Categories 2, 3, and 4 on a pilot basis through August 19, 2003 to be coterminous with the expiration date set by the Date Extension Approval Order. In addition, this order continues the exemption under Rule 11Aa3–2(f)[11] from compliance with Section VI.C.1. of the Plan as required by Rule 11Aa3–2(d),[12] which exemption was granted through the 13th Amendment Notice.

This order does not approve those amendments detailed in Category 1. The Commission intends to address those amendments detailed in Category 1 through separate action when the Commission acts on the Nasdaq exchange registration application.[13]

II. Background

The Plan governs the collection, consolidation, and dissemination of quotation and transaction information for Nasdaq/National Market ("Nasdaq/NM") and Nasdaq SmallCap securities listed on Nasdaq and traded on an exchange pursuant to unlisted trading privileges ("UTP").[14] The Plan provides for the collection from Plan Participants, and the consolidation and dissemination to vendors, subscribers and others, of quotation and transaction information in "eligible securities." The Plan contains various provisions concerning its operation, including: Implementation of the Plan; Manner of Collecting, Processing, Sequencing, Making Available and Disseminating Last Sale Information; Reporting Requirements (including hours of operation); Standards and Methods of Ensuring Promptness, Accuracy and Completeness of Transaction Reports; Terms and Conditions of Access; Description of Operation of Facility Contemplated by the Plan; Method and Frequency of Processor Evaluation; Written Understandings of Agreements Relating to Interpretation of, or Participation in, the Plan; Calculation of the Best Bid and Offer ("BBO"); Dispute Resolution; and Method of Determination and Imposition, and Amount of Fees and Charges.

The Commission originally approved the Plan on a pilot basis on June 26, 1990.[15] The parties did not begin trading until July 12, 1993, accordingly, the pilot period commenced on July 12, 1993. The Plan has since been in operation on an extended pilot basis.[16]

III. Description and Purpose of the Category 2, 3, and 4 Amendments

The complete text of the Plan, as amended, was published in the **Federal Register**.[17] The following is a summary of the changes made by the 13th Amendment to the Plan by the Category 2, 3, and 4 amendments. As discussed above, only those amendments described in Categories 2, 3, and 4 are being approved on a pilot basis by this order.

Category 2 Amendments: Effective Upon Launch of the Internal SIP

1. Section III.I. of the Plan, which defines "UTP Quote Data Feed," is amended to reflect that the Processor will replace the Level 1 Service as it currently exists. In its place, the Processor will disseminate a data feed containing the National Best Bid and Offer quotations, size and market center identifier, as well as the Best Bid and Offer quotations, size and market center identifier from each individual Participant in Eligible Securities.

2. Section III.N. of the Plan defines the "OTC Montage Data Feed," which will be launched as a new data feed for the dissemination of NASD ADF Participant quotations with the launch of the Internal SIP. However, as stated above in Category 1.7, NQDS will not be fully eliminated as a data feed disseminated by the Processor until Nasdaq is registered as an exchange.

3. Section III.K. of the Plan changes the name of the Nasdaq Last Sale Information Service to "UTP Trade Data Feed," but makes no changes to the data elements contained in that data feed. While this change was effective upon launch of the Internal SIP, the Processor continues to disseminate the current Nasdaq Last Sale Information Service for a three-month parallel period to enable market data vendors to have a smooth transition to the new feed.[18]

4. Section III.R. of the Plan, which defines "Quotation Information" is amended to reflect that the NASD ADF will send individual market participant information to the Processor. It is also amended to clarify that only displayed quotation sizes are included in the definition and that market center identifiers are also included.

5. Section VI.B. (Collection and Consolidation of Information) has been amended to clarify the devices available for sending information to the Processor and the data feeds which the Processor shall disseminate, for as long as Nasdaq remains the Processor. While this change was effective upon launch of the Internal SIP, the Processor will continue to disseminate the legacy data feeds for a three-month parallel period to enable market data vendors to have a smooth transition to the new feed.[19]

6. Section VI.C. (Dissemination of Information) has been amended to identify the data feeds that the Processor shall disseminate. While this change was effective upon launch of the Internal SIP, the Processor continues to disseminate the current data feeds to enable market data vendors to have a smooth transition to the new feed.[20] In addition, the Processor will continue to disseminate Nasdaq individual market center quotes until Nasdaq registers as an exchange.

7. Section VI.C.1. (Best Bid and Offer) is amended to change the method of calculating the national best bid and offer from price/time/size to price/size/time and to establish a precise methodology for calculation.

8. Section VI.C.3. is renamed "Quotation Data Stream," and amended to reflect the change in definition of the UTP Quote Data Feed contained in Section III.I. of the Plan. While this change was effective upon launch of the Internal SIP, the Processor continues to disseminate the current Level 1 service ("Legacy SIP") to enable market data vendors to have a smooth transition to the new feed.[21]

9. Section VI.C.4. (Transaction Reports) is amended to reflect the change in name of the UTP Trade Data Feed contained in Section III.K. of the Plan.

10. Section XI (Hours of Operation) has been amended to change the reporting procedures for Participants that execute transactions in Eligible Securities outside of the normal trading hours of 9:30 a.m. to 4:00 p.m. EST.

Category 3: Effective Upon End of Parallel Period—Elimination of the Legacy SIP

1. Section VI.C.1. is amended to reflect that the Processor shall no longer carry quotation information from one trading day to the next, and that the Processor shall not calculate the best bid and offer for any individual Participant, including the NASD.

2. Section VI.C.1. is also amended to reflect that the Processor shall disseminate an internally locked or crossed quotation submitted by a single Participant.

3. Section XVIII.D.3, regarding Price Checks, is eliminated to reflect the Operating Committee's agreement that the Processor should no longer perform these functions.

4. Plan Exhibit 1, Paragraph 3(d)(5) is eliminated to reflect that MarketWatch costs are no longer eligible Processor Operating Costs, contingent upon the elimination of the Processor's ability to perform price checks on Participant's trade reports.

Category 4: Timing Not an Issue

1. Section III.S. of the Plan, which defines "Regulatory Halt," is amended to include halts that are called for regulatory problems relating to an Eligible Security that should be clarified before trading therein is permitted to continue.

2. Section IV.A. (Operating Committee: Composition) has been amended to permit entities that are actively pursuing registration as a national securities exchange to participate in Operating Committee meetings in limited capacities.

3. Section IV.C. (Operating Committee: Voting) has been amended to eliminate references to events and contingencies that occurred when the Plan was first adopted. It also is clarified to reflect the Participants' agreement that neither the Plan nor the Operating Committee shall have authority in any respect over any Participant's proprietary systems.

4. Section IV.D. (Operating Committee: Meetings) will permit the Operating Committee to waive the advance notice requirement contained therein.

5. Section IV.E. has been added to establish an Advisory Committee and to define its composition and authority.

6. Section V.A. (Selection and Evaluation of the Processor: Generally) has been amended to eliminate references to events and contingencies that occurred when the Plan was first adopted.

7. Section VI.C. is amended to eliminate references to agreements between the NASD and certain foreign exchanges.

8. Section VI.D. (Immediate Hard Copy Confirmations) is eliminated and the remaining subsections of Section VI. are re-lettered.

9. Section VIII.B. (Transaction Reports) is amended to clarify that this Section applies only to transactions between Plan Participants pursuant to the Plan, and to eliminate reference to shared computer-to-computer interfaces.

10. Section X. is amended to include halts that are called for regulatory problems relating to an Eligible Security that should be clarified before trading therein is permitted to continue and to state that during a halt the Processor shall collect and disseminate Transaction Information but shall cease collection and dissemination of all Quotation Information.

11. Section XI.C. is amended to reflect that late trades can be reported between the hours of 8:00 a.m. and 6:30 p.m. on the same trading day that the transaction occurred.

12. Section XI.E. governing changes to operating hours, is eliminated.

13. Section XIII (Undertakings by NASD) is eliminated, and subsequent sections re-numbered.

14. Section XXI (Depth of Book Display) is added to reflect the Operating Committee's determination that the entity that succeeds Nasdaq as the Processor, upon certain specific conditions being met through a further

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[4] Securities Exchange Act Release No. 46139 (June 28, 2001 [sic]), 67 FR 44888 ("13th Amendment Notice").

[5] 17 CFR 240.11Aa3–2(f).

[6] 17 CFR 240.11Aa3–2(d).

[7] *See* letter from Sam Guidetti, Senior Vice President & Chief Compliance Officer, BrokerageAmerica, to Jonathan Katz, Secretary, Commission, dated September 17, 2002.

[8] In November of 2001, Nasdaq began implementing the "Internal SIP" project. The Internal SIP is a separate technology infrastructure within Nasdaq that will perform the functions of the SIP for Nasdaq-listed securities. When the Internal SIP is in place, Nasdaq will be able to separate its functions as a stock market from its functions as a SIP for the Plan.

[9] Pursuant to Rule 11Aa3–2(c)(4), 17 CFR 240.11Aa3–2(c)(4), summary effectiveness granted to national market system plans (or provisions thereof) may not exceed 120 days in length.

[10] Securities Exchange Act Release No. 46381 (August 19, 2002), 67 FR 54687 (August 23, 2002) ("Date Extension Approval Order").

[11] 17 CFR 240.11Aa3–2(f).

[12] 17 CFR 240.11Aa3–2(d).

[13] Pursuant to Rule 11Aa3–2(c), 17 CFR 240.11Aa3–2(c), the Commission must take action within 120 days of the date of publication of notice of filing of amendment in the **Federal Register** unless the sponsors of such amendment consent to an extension. The Commission notes that the sponsors of the 13th Amendment have given such consent with respect to amendment Category 1 based upon the Category 1 amendments being contingent upon a subsequent trigger event. *See* letter from Jeffrey T. Brown, Chairman, Operating Committee, to Jonathan G. Katz, Secretary, Commission, dated May 30, 2002 ("13th Amendment Filing").

[14] Section 12 of the Act generally requires an exchange to trade only those securities that the exchange lists, except that Section 12(f) of the Act permits UTP under certain circumstances. For example, Section 12(f) of the Act, among other things, permits exchanges to trade certain securities that are traded over-the-counter ("OTC/UTP"), but only pursuant to a Commission order or rule. For a more complete discussion of the Section 12(f) requirement, *see* November 1995 Extension Order, *infra* note 16.

[15] *See* Securities Exchange Act Release No. 28146, 55 FR 27917 (July 6, 1990) ("1990 Plan Approval Order").

[16] *See* Securities Exchange Act Release Nos. 34371 (July 13, 1994), 59 FR 37103 (July 20, 1994); 35221 (January 11, 1995), 60 FR 3886 (January 19, 1995); 36102 (August 14, 1995), 60 FR 43626 (August 22, 1995); 36226 (September 13, 1995), 60 FR 49029 (September 21, 1995); 36368 (October 13, 1995), 60 FR 54091 (October 19, 1995); 36481 (November 13, 1995), 60 FR 58119 (November 24, 1995) ("November 1995 Extension Order"); 36589 (December 13, 1995), 60 FR 65696 (December 20, 1995); 36650 (December 28, 1995), 61 FR 358 (January 4, 1996); 36934 (March 6, 1996), 61 FR 10408 (March 13, 1996); 36985 (March 18, 1996), 61 FR 12122 (March 25, 1996); 37689 (September 16, 1996), 61 FR 50058 (September 24, 1996); 37772 (October 1, 1996), 61 FR 52980 (October 9, 1996); 38457 (March 31, 1997), 62 FR 16880 (April 8, 1997); 38794 (June 30, 1997), 62 FR 36586 (July 8, 1997); 39505 (December 31, 1997), 63 FR 1515 (January 9, 1998); 40151 (July 1, 1998), 63 FR 36979 (July 8, 1998); 40896 (December 31, 1998), 64 FR 1834 (January 12, 1999); 41392 (May 12, 1999), 64 FR 27839 (May 21, 1999) ("May 1999 Approval Order"); 42268 (December 23, 1999), 65 FR 1202 (January 6, 2000); 43005 (June 30, 2000), 65 FR 42411 (July 10, 2000); 44099 (March 23, 2001), 66 FR 17457 (March 30, 2001); 44348 (May 24, 2001), 66 FR 29610 (May 31, 2001); 44552 (July 13, 2001), 66 FR 37712 (July 19, 2001); 44694 (August 14, 2001), 66 FR 43598 (August 20, 2001); 44804 (September 17, 2001), 66 FR 48299 (September 19, 2001); 45081 (November 19, 2001), 66 FR 59273 (November 27, 2001).

[17] *See* 13th Amendment Notice, *supra* note 4.

[18] *See* note 24 *infra*.

[19] *Id.*

[20] *Id.*

[21] *Id.*

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Plan amendment should have the ability to collect, consolidate, and disseminate quotations at multiple price levels beyond the best bid and best offer from any Participant that voluntarily chooses to submit such quotations. Section XXI states that implementing the depth of book display functionality will require a plan amendment that addresses all pertinent issues.

15. Within the body of the 13th Amendment, there are numerous "house-keeping" corrections, including punctuation and renumbering changes.

IV. Summary of Comments

The Commission received one comment letter on the 13th Amendment from BrokerageAmerica ("BA").[22] BA raised several concerns regarding the current Plan-mandated access requirements for Nasdaq market makers attempting to access the quotes of exchange specialists trading Nasdaq securities pursuant to UTP. BA generally stated its belief that exchange specialists trading Nasdaq securities pursuant to UTP should be required to provide the same level of connectivity as that provided among Nasdaq market makers—electronic auto-execution. To support that main point, BA noted five reasons why the Plan-mandated connectivity dichotomy is deficient.

First, BA stated that the connectivity dichotomy between Nasdaq market makers and exchange specialists causes fragmentation and inefficiencies that conflict with Congress' intent in establishing the national market system ("NMS"). Second, BA argued that the dichotomy results in unfair and disorderly functioning of the NMS with respect to Nasdaq securities. Third, BA averred that the use of multiple execution functionalities for the trading of Nasdaq securities (*i.e.*, the Plan-mandated telephone access and Nasdaq's proprietary system, SuperSOES) conflicts with the unification of the NMS as desired by Congress. Fourth, BA argued that the human element in the auction market format causes delays in quote updating, which increase Nasdaq market makers' market exposure. Finally, BA contended that exchange specialists that trade pursuant to UTP are not consistently subject to the Firm Quote Rule.[23] Further, BA argued that, because such specialists are not subject to automatic execution, they will act in a manner that disrupts the fair and orderly market for trading NNM securities by causing extended locked and crossed markets. BA generally states that such specialists have the capacity to and as a matter of rational market behavior will act in such a disruptive manner.

V. Discussion

The Commission finds that the Category 2, 3,[24] and 4 amendments of the 13th Amendment are consistent with the requirements of the Act and the rules and regulations thereunder, and, in particular, Section 11A(a)(1)[25] of the Act and Rules 11Aa3–1 and 11Aa3–2 thereunder.[26] Section 11A of the Act directs the Commission to facilitate the development of a national market system for securities, "having due regard for the public interest, the protection of investors, and the maintenance of fair and orderly markets," and cites as an objective of that system the "fair competition . . . between exchange markets and markets other than exchange markets."[27] When the Commission first approved of the Plan on a pilot basis, it found that the Plan "should enhance market efficiency and fair competition, avoid investor confusion, and facilitate surveillance of concurrent exchange and OTC trading."[28]

The Commission finds that amending the Plan to incorporate the amendments detailed in Categories 2, 3, and 4 above furthers these goals. The Commission believes the Category 2 and 3 amendments should, among other things, further the satisfaction of requirements of the SuperMontage approval order[29] by establishing an Internal SIP that is distinct from Nasdaq's other proprietary systems.

The SuperMontage Approval Order imposed certain requirements upon the Participants in order for the Commission to extend the Plan. Specifically, the Participants were charged with engaging in good faith negotiations to revise the Plan to provide for (i) a fully viable alternative exclusive SIP for all Nasdaq securities, or (ii) a fully viable alternative non-exclusive SIP.

Moreover, the Commission imposed a presumption that, if the revised Plan provided for an exclusive consolidating SIP, such SIP should not be a Plan Participant. The Commission stated that, if a Plan Participant were selected to operate such exclusive SIP, there should be a further presumption that the Participant-operated SIP must operate completely separate from any order matching facility operated by that Participant. Such an order matching facility must interact with the exclusive SIP on the same terms and conditions as any other market center trading Nasdaq listed securities.

The Commission understands that the Participants are negotiating to select a non-Participant technology vendor to serve as an alternative exclusive SIP. In the event that a non-Participant technology vendor is selected, the Commission notes that the Plan may require further amendment.

The Commission also believes that the Category 4 amendments further the goals of the Act by making clarifying changes, deleting provisions that no longer apply, and making certain "house-keeping" corrections. Moreover, the Commission believes that the Category 4 amendments should further the satisfaction of requirements of the SuperMontage approval order by establishing an Advisory Committee. Finally, the Commission believes that the Depth of Book Display provision added by the Category 4 amendments is a beneficial addition to the Plan as it would increase the amount of data disseminated by the SIP for the benefit of investors generally.

The Commission has carefully considered all the issues raised by the sole commenter, BA, and is not persuaded. BA essentially argued the point that there are fundamental differences between the trading of Nasdaq securities by Nasdaq market makers and by human exchange specialists trading pursuant to UTP in the traditional auction format. BA generally argued that exchange specialists trading Nasdaq securities pursuant to UTP should be required to provide the same level of connectivity as that provided among Nasdaq market makers—electronic automatic execution. To support its main argument, BA described why it perceives the Plan-mandated telephone connectivity as being deficient and detrimental to the operation of the NMS.

The Commission notes that a market participant providing automatic execution against that market participant's quote is not (and has never been) a requirement for exchanges to trade Nasdaq issues. Moreover, the Commission has not required competitors to participate in a Nasdaq trading facility or required Nasdaq to provide access to its trading facilities to its competitors. Each of the UTP participants has independently decided whether to participate in Nasdaq's automatic execution facility. The Commission also notes that providing automatic executions—rather than operating an auction market—is not a precondition to competing in Nasdaq securities. The very essence of UTP is to permit competition among markets and market structures. Requiring one market structure for trading Nasdaq securities would defeat this purpose.

BA argued that the trading of Nasdaq securities pursuant to UTP by exchange specialists causes inconsistent application of the Firm Quote Rule, 11Ac1–1.[30] While compliance with the Firm Quote Rule is easier to monitor in an automatic execution environment, the Firm Quote Rule does not require market participants to be subject to automatic execution. Indeed, the Firm Quote Rule has always applied to exchange trading as well as over-the-counter trading, and exchanges must monitor and enforce compliance with the Firm Quote Rule.

BA also argued that the delay in updating quotes by human UTP exchange specialists' quotes to be "not real" when compared to the quotes of Nasdaq market makers that are subject to automatic execution and electronic quote updating. The Commission notes that UTP exchange specialists must comply with the Firm Quote Rule. It may take longer to receive a fill from an exchange specialist trading pursuant to UTP and for such specialist's quote to be updated than it takes to receive a fill from a Nasdaq member that is subject to automatic execution and for the Nasdaq member's quote to be updated. This does not, however, make trading pursuant to UTP under the Plan impermissible under the Act and the rules and regulations thereunder.

VI. Conclusion

It is therefore ordered, pursuant to Section 11A of the Act[31] and paragraph (c)(2) of Rule 11Aa3–2,[32] thereunder, that those amendments to the Plan detailed in Category 2, Category 3, and Category 4 above be, and hereby are, approved on a pilot basis until August 19, 2003. The Commission also has determined to continue the exemption from Rule 11Aa3–2,[33] regarding the dissemination of multiple BBOs from a single Plan Participant[34] until such time as Nasdaq is registered as a national securities exchange.[35]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[36]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–27806 Filed 10–31–02; 8:45 am]

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[22] *See* note 7 *supra*.

[23] 17 CFR 240.11Ac1–1.

[24] Nasdaq plans to sunset the current SIP application ("Legacy SIP"), which will trigger specific technical changes in the operation of the Internal SIP and the resulting data feeds. At such time, the Legacy SIP will no longer function and the Internal SIP will be the sole remaining SIP. *See* 13th Amendment Filing. This order approves the Category 3 amendments, but such amendments will not be effective and operative until such time as the Legacy SIP is no longer operative and the Internal SIP becomes the sole remaining SIP. The Commission understands that Nasdaq expects to end the parallel period no later than January 5, 2003.

[25] 15 U.S.C. 78k–1(a)(1).

[26] 17 CFR 240.11Aa3–1 and 17 CFR 240.11Aa3–2.

[27] 15 U.S.C. 78k–1(a).

[28] 1990 Plan Approval Order, *see supra* note 17.

[29] Securities Exchange Act Release No. 43863 (January 19, 2001), 66 FR 8020 (January 26, 2001) (File No. SR–NASD–99–53) ("SuperMontage Approval Order").

[30] 17 CFR 240.11Ac1–1.

[31] 15 U.S.C. 78k–1.

[32] 17 CFR 240.11Aa3–2(c)(2).

[33] 17 CFR 240.11Aa3–2.

[34] *See* 13th Amendment Notice for a more detailed discussion of the referenced exemption.

[35] The Commission notes that it is not continuing the exemption provided under Rule 11Ac1–2, 17 CFR 240.11Ac1–2, regarding calculation of the BBO in the 12th Amendment approval order because the 13th Amendment has converted the method of calculation of the BBO by the Plan SIP from price/time/size to price/size/time methodology consistent with Rule 11Ac1–2, 17 CFR 240.11Ac1–2.

[36] 17 CFR 200.30–3(a)(27).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46719; File No. SR–CBOE–2002–41]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Board Options Exchange, Inc. Relating to an Interpretation of Paragraph (b) of Article Fifth of Its Certificate of Incorporation and an Amendment to Rule 3.16(b)

October 25, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 29, 2002, the Chicago Board Options Exchange, Inc. ("CBOE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the CBOE. On September 20, 2002, the CBOE filed an amendment to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons, and to approve the proposed rule change, as amended, on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of an interpretation of paragraph (b) of Article Fifth of the Certificate of Incorporation of the CBOE ("Article Fifth (b)") pertaining to the right of 1,402 full members of the Board of Trade of the City of Chicago ("CBOT") to become members of CBOE without having to purchase a CBOE membership (the "Exercise Right"). This provision has previously been interpreted by the CBOE, including an interpretation reflected in an agreement between the CBOE and CBOT dated September 1, 1992 (the "1992 Agreement").[4] The interpretation provided, among other things, that in order to become a member of the CBOE pursuant to the Exercise Right, a full member of the CBOT must be in possession of all the trading rights and privileges appurtenant to a CBOT full membership.

It has recently come to the attention of the CBOE that starting in 1999, the CBOT implemented expedited membership approval procedures applicable only to those individuals who wished to become CBOE members pursuant to the Exercise Right, but did not wish to trade as members on the CBOT itself. Under the rules of the CBOT, individuals approved for CBOT membership pursuant to these expedited procedures do not have any rights to trade as members on the CBOT, and thus the CBOE believes that these individuals do not satisfy the interpretation reflected in the 1992 Agreement as described above.

On April 17, 2002, the CBOE informed the CBOT that individuals approved for CBOT membership pursuant to these expedited procedures are not entitled to become exerciser members of the CBOE. In response, on April 22, 2002, the CBOT began advising applicants for membership on the CBOT for the purpose of becoming exerciser members of the CBOE that such individuals must complete regular CBOT membership approval procedures. All individuals exercising since that date have complied with this requirement. The CBOE represents that during the several years that CBOT's

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Arthur B. Reinstein, Deputy General Counsel, CBOE, to Elizabeth King, Associate Director, Division of Market Regulation, Commission, dated September 19, 2002 ("Amendment No. 1"). Amendment No. 1 designates the proposed rule change as filed pursuant to Section 19(b)(2) of the Act, 15 U.S.C. 78s(b)(2). The CBOE also requests that the proposed rule change be given accelerated effectiveness, pursuant to 19(b)(2) of the Act, 15 U.S.C. 78s(b)(2).

[4] The CBOE believes that the 1992 Agreement and an amendment to Rule 3.16 referring to the 1992 Agreement were approved by the Commission. *See* Securities Exchange Act Release No. 32430 (June 8, 1993), 58 FR 32969 (June 14, 1993).

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expedited membership approval procedures were in place, many individuals that were approved as CBOT members under expedited procedures did in fact exercise to become members of the CBOE. According to the CBOE, approximately 330 such individuals are currently engaged in activities as exerciser members of the CBOE. If the CBOE were now to revoke the good standing of these individuals, unless and until they are re-approved as CBOT members under regular procedures, this would be likely to impose significant hardships on these individuals and cause disruption to the CBOE's market.

To avoid these results, the CBOE now proposes a further interpretation of its prior interpretation of the Exercise Right as reflected in the 1992 Agreement to provide that each individual who would have been a member in good standing of the CBOE on April 17, 2002, pursuant to the Exercise Right, but for the fact that he or she was approved as a CBOT full member or full member delegate under expedited procedures and therefore does not possess the trading rights of a full member of CBOT, will nevertheless be recognized as a member of the CBOE in good standing, so long as that individual would possess all trading rights and privileges appurtenant to a CBOT full membership upon satisfaction of the CBOT's regular (not expedited) application process. Satisfaction of CBOT full membership would also include examination and approval requirements necessary for an individual to be in actual possession of all trading rights and privileges appurtenant to a CBOT full membership as defined in the 1992 Agreement.

Any CBOE member in good standing who subsequently ceases to be a CBOE member in good standing for any reason and who thereafter reapplies to become a CBOE member pursuant to the Exercise Right, and any other individual who applies to become a member of CBOE pursuant to the Exercise Right after April 17, 2002, will be required to satisfy all applicable CBOT application, examination and approval requirements necessary for such individual to be in actual possession of all trading rights and privileges appurtenant to a CBOT full membership as defined in the 1992 Agreement. Notwithstanding the foregoing, if a CBOE exerciser member in good standing subsequently ceases to be a member of the CBOE in good standing, and he or she reapplies to become a member of the CBOE pursuant to the Exercise Right within six months of the date he or she ceased to a CBOE exerciser member, the individual may be reinstated as a member of the CBOE in good standing without having to satisfy the requirements of the CBOT necessary for such individual to be in actual possession of all trading rights and privileges appurtenant to a CBOT full membership as defined in the 1992 Agreement. The CBOE intends to provide a limited exception to the CBOE Rule 3.16(b). The proposed interpretation, together with a proposed amendment to CBOE Rule 3.16 (b), constitutes the proposed rule change that is the subject of this filing. Below is the text of the proposed rule change. Additions are *italicized.*

* * * * *

Rule 3.16 Special Provisions Regarding Chicago Board of Trade Exerciser Memberships

(a) *Termination of Nontransferable Memberships.* [No change]

(a) *Board of Trade Exercisers.* For the purpose of entitlement to membership on the Exchange in accordance with Paragraph (a) of Article Fifth of the Certificate of Incorporation of the Exchange ("Article Fifth(b)") the term "member of the Board of Trade of the City of Chicago" (the "CBOT"), as used in Article Fifth(b), is interpreted to mean an individual who is either an "Eligible CBOT Full Member" or an "Eligible CBOT Full Member Delegate," as those terms are defined in the Agreement entered into on September 1, 1992 (the "*1992* Agreement") between the CBOT and the Exchange, *as further interpreted in accordance with that certain proposed rule change filed with the Securities and Exchange Commission as File No. SR–CBOE–2002–41*, and shall not mean any other person. In order to permit Eligible CBOT Full Members and Eligible CBOT Full Member Delegates to participate in an offer, distribution or redemption of the kind referred to in the last two sentences of Paragraph 3(a) of the *1992* Agreement, and solely for such purpose, the Exchange agrees to waive all membership dues, fees and other charges and all qualification requirements, other than those that may be imposed by law, that may be applicable to the application for membership on the Exchange of each Eligible CBOT Full Member and Eligible CBOT Full Member Delegate who wishes to exercise the Exercise Right during the period commencing on the date the Exchange gives notice to the CBOT pursuant to Paragraph 3(b) of the *1992* Agreement and ending on the date such individual participates in such offer, distribution or redemption (as the case may be); provided, however, that (i) no Exerciser Member (as defined in the *1992* Agreement) for whom dues, fees and other charges and qualification requirements are waived in accordance with the foregoing shall have any rights as a member of the Exchange other than to participate in such offer, distribution or redemption, and (ii) the membership on the Exchange of each such Exerciser Member shall terminate immediately following the time such individual participates in such offer, distribution or redemption.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The CBOE has prepared summaries set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to provide a further interpretation of a prior interpretation of Article Fifth (b). Article Fifth (b) governs the right of all 1,402 full members of the CBOT to become members of the CBOE without having to purchase a separate CBOE membership. Article Fifth (b) has previously been interpreted on several occasions, including an interpretation made pursuant to an agreement between the CBOT and CBOE dated September 1, 1992. According to the CBOE, the 1992 Agreement states that only an individual who is an "Eligible CBOT Full Member" or an "Eligible CBOT Full Member Delegate" constitutes a CBOT member within the meaning of Article Fifth (b) and thus would be eligible to have an Exercise Right—that is, a right to be an exerciser member of the CBOE.

The 1992 Agreement defines the terms "Eligible CBOT Full Member" and "Eligible CBOT Full Member Delegate" to require in each case that the individual must be in possession of "all trading rights and privileges appurtenant to such CBOT Full Membership."[5] The 1992 Agreement defines the term "all trading rights and privileges appurtenant to such CBOT Full Membership" to mean "(1) the rights and privileges of a CBOT Full Membership which entitle a holder or delegate to trade as principal and broker for others in all contracts traded on the CBOT, whether by open outcry, by electronic means, or otherwise, during any segment of a trading day when trading is authorized; and (2) every trading right or privilege granted, assigned or issued by CBOT after the effective date of this Agreement to holders of CBOT Full Memberships, as a class, but excluding any right or privilege which is the subject of an option granted, assigned or issued by CBOT to a CBOT Full Member and which is not exercised by such CBOT Full Member."

[5] According to the CBOE, the reference to "such" CBOT Full Membership describes the CBOT Full Membership owned or leased by the individual.

These provisions of the 1992 Agreement are reflected in the CBOT's rules and were adopted by the CBOT as required by the 1992 Agreement (referred to in that Agreement as the "CBOT Rule Change"). The CBOT Rule Change may not be amended without the consent of CBOE. The CBOT Rule Change has not been amended, and is currently set forth in CBOT Rules 210.00 and 221.00(g).

In 1999, without the knowledge or approval of the CBOE, the CBOT implemented certain expedited membership approval procedures applicable to those individuals who wished to become CBOT members for the sole purpose of exercising the right to become members of the CBOE pursuant to the Exercise Right, but who did not wish to be able to trade as members on the CBOT itself. Under these expedited procedures, the CBOT waived its normal application procedures and examination requirements for these individuals, and has relied on special delegated authority to approve their membership applications. Individuals approved for CBOT membership pursuant to these expedited procedures do not have any rights to trade as a member of the CBOT in any of the contracts traded on that exchange. Accordingly, such individuals cannot qualify as Eligible CBOT Full Members or Full Member Delegates for purposes of the interpretation of the Exercise Right reflected in the 1992 Agreement, and thus are not eligible to become exerciser members of the CBOE.

The CBOE did not become aware of the expedited membership approval procedures until late 2001. On April 17, 2002, the CBOE informed the CBOT that individuals approved for CBOT membership pursuant to these expedited procedures would not be entitled to become exerciser members of the CBOE because they did not satisfy the requirements of Article Fifth(b) as it had previously been interpreted under the 1992 Agreement. In response, on April 22, 2002, the CBOT began advising individuals who apply to become members of CBOT for the purpose of exercising to be members of the CBOE that such individuals must complete regular CBOT membership approval procedures in order to be able to exercise. The CBOE believes that all individuals exercising since that date have complied with this requirement.

During the several years that the CBOT's expedited membership approval procedures were in place, many CBOT members, pursuant to the expedited procedures, exercised to become members of the CBOE. Without the CBOE having been aware of the adoption of these expedited membership procedures by the CBOT or having focused on the fact that these individuals did not meet the requirements of a valid exercise, these individuals were then approved by the CBOE as exerciser members. According to the CBOE, approximately 330 individuals who were approved as CBOT members under expedited procedures are currently engaged in conducting business as exerciser members of the CBOE. If the CBOE now refused to recognize these individuals as members of the CBOE in good standing, unless and until they are re-approved as CBOT members under procedures that give them full trading rights on the CBOT, the result would impose significant hardships on these individuals. Likewise, the CBOE believes that the removal of these individuals from the CBOE trading floor, even if only for a temporary period while they are re-approved as members of the CBOT, would be disruptive to the CBOE itself.

To avoid these harmful results, the CBOE has determined to interpret its prior interpretation of Article Fifth (b) of its Certificate of Incorporation so as to allow each individual who would have been an exerciser member in good standing of the CBOE on April 17, 2002, but for the fact that he or she was approved as a CBOT member or delegate under expedited procedures, to be recognized as a member of CBOE in good standing so long as that individual would be able to have all trading rights and privileges appurtenant to a CBOT membership, including satisfying full CBOT membership or delegate application, examination and approval requirements. Any such individual who subsequently ceases to be an exerciser member in good standing for any reason and who thereafter reapplies to become an exerciser member, and any other individual who applies to become an exerciser member of the CBOE after April 17, 2002, as a condition of becoming an exerciser member of the CBOE, will be required to satisfy all applicable CBOT application, examination and approval requirements necessary for such individual to be in actual possession of "all trading rights and privileges appurtenant to such CBOT Full Membership" as defined in the 1992 Agreement. Notwithstanding the foregoing, if an individual who was an exerciser member of the CBOE in good standing pursuant to the first sentence of this paragraph subsequently ceases to be an exerciser member in good standing, and if the same individual reapplies to become an exerciser member of the CBOE within six months of the date he or she ceased to be an exerciser member in good standing, the individual may be reinstated as an exerciser member in good standing without having to satisfy the requirements of the CBOT necessary for such individual to be in actual possession of all trading rights and privileges appurtenant to a CBOT full membership as defined in the 1992 Agreement.

This interpretation will provide a limited exception to the requirement of the interpretation reflected in the 1992 Agreement that all exercisers must be in possession of "all trading rights and privileges appurtenant to such CBOT Full Membership." It has the effect of "grandfathering" those individuals who were exerciser members of the CBOE in good standing on April 16, 2002, to the extent described above, notwithstanding that they were approved as members of the CBOT under expedited procedures and thus do not possess the right to trade as members on the CBOT. The CBOE represents that this interpretation will have no effect on the application of the requirements of the 1992 Agreement to individuals who were not exerciser members on April 17, 2002, and who seek to become exerciser members after that date.

2. Statutory Basis

The CBOE believes that the proposed rule change is consistent with and furthers the objectives of section 6(b)(5) of the Act[6] in particular, in that it constitutes an interpretation of and an amendment to the rules of the Exchange that are designed to promote just and equitable principles of trade, to perfect the mechanisms of a free and open

[6] 15 U.S.C. 78f(b)(5).

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market, and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act.

Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–2002–41 and should be submitted by November 22, 2002.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of section 6(b)(5) of the Act,[7] and the rules and regulations thereunder applicable to a national securities exchange.[8] Specifically, the Commission believes that this proposal, which provides a further interpretation of the Exercise Right, as provided in Article Fifth (b) and CBOE Rule 3.16(b), should clarify that the approximately 330 exerciser members of the CBOE, who became CBOT members pursuant to the CBOT's expedited membership approval procedures, will continue to be recognized by the CBOE as exerciser members in good standing of the CBOE, so long as these exerciser members would posses all trading rights and privileges appurtenant to a CBOT membership, including satisfying full CBOT membership or delegate application, examination, and approval requirements. Further, the Commission believes that the proposal also clarifies that the CBOE will reinstate as an exerciser member in good standing any CBOE exerciser member, who became a CBOT member by the CBOT's expedited membership approval procedures and who subsequently ceases to be an exerciser member in good standing for any reason but thereafter reapplies to become an exerciser member of the CBOE, pursuant to the Exercise Right within six months of the date he or she ceased to be a CBOE exerciser member.

The Commission notes that this proposed interpretation as described above by the CBOE provides a limited exception to CBOE Rule 3.16(b), which interprets Article Fifth (b) to include "Eligible CBOT Full Member[s]" and "Eligible CBOT Full Member Delegate[s]," as defined in the 1992 Agreement between the CBOE and CBOT. The Commission believes that the proposed interpretation has no investor protection implications because all CBOE members, including exerciser members, must nevertheless comply with the requirements of the Act and CBOE rules in order to utilize their trading privileges on the CBOE floor. Also, although the CBOT granted expedited approval to these 330 individuals, the CBOE conducted a full review of these 330 members before they were permitted to trade on the CBOE. In addition, the Commission believes that refusing to recognize these certain individuals as exerciser members of the CBOE in good standing unless and until they were re-approved as CBOT members under its regular membership procedures would impose significant hardship on these individuals and cause disruption to the CBOE itself. In order to avoid such harmful results, the Commission believes that the proposed interpretation described herein and the proposed rule change are appropriate, in that the CBOE is interpreting its requirements for certain CBOT members (exerciser members) to become and remain members of the CBOE. For these reasons, the Commission finds good cause for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice in the **Federal Register**.

It is Therefore Ordered, pursuant to section 19(b)(2) of the Act,[9] that the proposed rule change (SR–CBOE–2002–41), as amended, is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to the delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–27805 Filed 10–31–02; 8:45 am]

BILLING CODE 8010–01–P

[7] 15 U.S.C. 78f(b)(5).

[8] In approving this rule, the Commission notes that it has also considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46727; File No. SR–CBOE–2002–44]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Chicago Board Options Exchange, Incorporated To Amend Its Rules To Eliminate the "Book Indicator"

October 25, 2002.

On August 19, 2002, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its rules to eliminate the "Book Indicator."[3] The proposed rule change was published for comment in the **Federal Register** on August 28, 2002.[4] The Commission received no comments on the proposed rule change.

The Commission has reviewed carefully the CBOE's proposed rule change and finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange,[5] and with the requirements of section 6(b).[6] In particular, the Commission finds the proposed is consistent with section 6(b)(5)[7] of the Act in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission notes that the Book Indicator was adopted as part of the CBOE's initiative to provide split-price Retail Automatic Execution System ("RAES") executions for incoming customer orders when the prevailing best bid (offer) is generated by a existing customer order in the CBOE book.[8] At the time split-price execution functionality was adopted, CBOE's disseminated quote did not display size. Thus, the Book Indicator served to alert a customer that a RAES eligible order might not be executed in its entirety at CBOE's displayed price, and that he might receive a split-price execution. Now that CBOE disseminates quotes with size, the Commission believes that the Book Indicator is no longer necessary. Therefore, the Commission believes that it is appropriate for the Exchange to eliminate the Book Indicator, and remove all references to the Book Indicator from the CBOE rules. The Commission believes that the proposed rule change will streamline and clarify the Exchange rules by eliminating reference to an indicator that no longer is necessary.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[9] that the proposed rule change (SR–CBOE–2002–44) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Secretary.

[FR Doc. 02–27808 Filed 10–31–02; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] This indicator is affixed to the CBOE disseminated quotation when an order in the Exchange's book represents the best bid or offer on the Exchange.

[4] *See* Securities Exchange Act Release No. 46397 (August 21, 2002), 67 FR 55443 (August 29, 2002).

[5] In approving this rule proposal, the Commission notes that it has also considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] *See* Securities Exchange Act Release No. 43932 (February 6, 2001), 66 FR 10332 (February 14, 2001).

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46723; File No. SR–ISE–2002–24]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the International Securities Exchange, Inc. Relating to Quotation Size

October 25, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 11, 2002, the International Securities Exchange, Inc. ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the ISE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes that all ISE's quotations would be firm for all incoming orders for their full disseminated size. The ISE would retain a one-contract minimum size for quotations when they interact with quotations entered by other ISE market makers. The proposed rule change would be implemented when the Commission approves the proposal and grants the Exchange an exemption from Rule 11Ac1–1 (the "Firm Quote Rule") under the Act, and when the Exchange implements technical enhancements to its system necessary to support this change. Below is the text of the proposed rule change. Additions are italicized. Brackets indicate deletions.

* * * * *

Rule 804.—Market Maker Quotations

(a) Options Classes. A quotation only may be entered by a market maker, and only in the options classes to which the market maker is appointed under Rule 802.

(b) Size Associated with Quotes. A market maker's bid and offer for a series of options contracts shall be accompanied by the number of contracts at that price the market maker is willing to buy [from] or sell *(i) upon receipt of an order ("Order Execution Size") and (ii) upon interaction with a quotation entered by another market maker on the Exchange ("Quotation Execution Size")* [to (i) Public Customers (the "Public Customer Size") and (ii) Non-Customers (the "Non-Customer Size")]. Unless the Exchange has declared a fast market pursuant to Rule 704, a market maker may not initially enter *an Order Execution Size* [a bid or offer with a Public Customer] of less than ten (10) contracts. Where the size associated with a market maker's bid or offer falls below ten (10) contracts due to executions at that price and consequently the size of the best bid or offer on the Exchange would be for less than ten (10) contracts, the market maker shall enter a new bid or offer for at least ten (10) contracts, either at the same or a different price. Every market maker bid or offer must have a *Quotation Execution* [a Non-Customer] Size of at least one (1) contract.

(c) Two-Sided Quotes. A market maker that enters a bid (offer) on the Exchange must enter an offer (bid) within the spread allowable under Rule 803(b)(4).

(d) Firm Quotes. (1) Market maker bids and offers are firm for *orders and Exchange market maker quotations* [Public Customer Orders and Non-Customer Orders] both under this Rule and Rule 11Ac1–1 under the Exchange Act ("Rule 11Ac1–1") for the number of contracts specified [for each] according to the requirements of paragraph (b) above. Market maker bids and offers are not firm under this Rule and Rule 11Ac1–1 if:

(i) a system malfunction or other circumstance impairs the Exchange's ability to disseminate or update market quotes in a timely and accurate manner;

(ii) the level of trading activities or the existence of unusual market conditions is such that the Exchange is incapable of collecting, processing, and making available to quotation vendors the data for the option in a manner that accurately reflects the current state of the market on the Exchange, and as a result, the market in the option is declared to be "fast" pursuant to Rule 704;

(iii) during trading rotations; or

(iv) any of the circumstances provided in paragraph (c)(3) of Rule 11Ac1–1 exist.

(2) Within thirty seconds of receipt of *an order* [a Public Customer Order (Non-Customer Order)] to buy or sell an option in an amount greater than the *Order Execution Size, or within thirty seconds of another Exchange market maker entering a quotation at a price executable against the market maker's quotation* [Public Customer Size (Non-Customer Size)], that portion of the order equal to the *Order Execution Size, or the Quotation Execution Size, as the case may be,* [Public Customer Size

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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(Non-Customer Size)] will be executed and the bid or offer price will be revised.

[Supplementary Material to Rule 804

.01 Notwithstanding the provisions of paragraph (b), for the "Enhanced Size Pilot" described in .02 below, a Primary Market Maker may not initially enter a bid or offer for a Public Customer of less than 100 contracts, and a bid or offer for Non-Customers (except for other market makers) of less than 50 contracts. Also for the purposes of the Enhanced Size Pilot, a Competitive Market Maker may not initially enter a bid or offer for a Public Customer of less than 50 contracts, and a bid or offer for Non-Customers (except for other market makers) of less than 25 contracts. Where the size associated with a market maker's bid or offer falls below such specified size, the market maker shall enter a new bid or offer for at least the specified size, either at the same or a different price.

.02 The Enhanced Size Pilot shall operate as follows:

(1) The Enhanced Size Pilot shall operate until October 31, 2002;

(2) Securities included in the Enhanced Size Pilot are options on: Nasdaq 100 Trust; Sun Microsystems; EMC Corp.; Qualcomm; Wells Fargo &Co.; Oracle; Lucent; Juniper Networks; Intel; AOL Time Warner; Tyco; Citigroup; Cisco; Applied Materials; Microsoft; General Electric; Broadcom; Nokia; Siebel Systems; Banc of America; Ciena; Dell; Fannie Mae; Motorola; Merrill Lynch; Nvidia; Xilinx; Amazon.com; Halliburton; Nextel Communications; J.P. Morgan Chase; ADC Telecommunication; Best Buy; Calpine; General Motors; and Hewlett Packard; and

(3) The size requirements in the Enhanced Size Pilot will not apply:

(a) To options that expire beyond the nearest three expiration months;

(b) To "Deep-in-the-Money" options; or

(c) On an option's last three trading days prior to expiration.

03. For the purpose of this Rule, "Deep-in-the-Money" means all options with strike prices that are in the money by 12 percent or more in relation to the at-the-money strike price.]

* * * * *

Rule 805.—Market Maker Orders

* * * * *

(c) *Limitations on Orders. A market maker shall not enter more than one order every fifteen (15) seconds for its own account in options on the same underlying security; provided, however, that this shall not apply to multiple orders in different series of options on the same underlying security if such orders are part of a spread.*

[Exemptive Authority. Until the earlier of (1) one year from the date on which the Exchange commences operations or (2) the date on which the Exchange opens all options Groups for trading, an Exchange official designated by the Board may grant market makers exemptions from the requirements of subparagraphs (b)(2) and (3) of this rule, subject to the following:

(1) If a market maker has only one Membership, and thus is assigned to only one Group, any exemption would end when the assigned Group is open for trading, regardless of the number of options classes that begin trading in the assigned Group;

(2) If a market maker has multiple Memberships, and thus is assigned to trading in more than one Group, the exemption would end when all the market maker's Groups are open for trading, again regardless of the number of options classes that begin trading in the assigned Groups; as the market maker's assigned Groups open for trading, the amount of trading the market maker would be permitted to execute outside of its assigned Groups would be reduced;

(3) Any exemption would be conditioned on the member performing market maker functions in the classes they trade;

(4) An exemption could be revoked by the Exchange at any time if the market maker is not acting in accordance with the terms of the exemption; and

(5) No exemption would have a term of more than one month, but would be renewable on a monthly basis until the market maker's group(s) was open for trading.]

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the ISE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The ISE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to provide that all ISE quotations would be firm for all incoming orders for their full disseminated size. This would be the first time that any options exchange provides non-customers (that is, broker-dealers) with full access to the entire disseminated size of the exchange's quotations for all their orders. The specifics of the proposal are as follows:

- Each ISE Primary Market Maker and Competitive Market Maker would enter a quotation with a single size, available in full for all incoming orders, whether from customers, broker-dealers, ISE market makers or market makers on other exchanges.
- Each market maker also would be able to establish a second quotation size that would be available when its quotation interacts with another ISE market maker quotation. This would limit an ISE market maker's exposure when it establishes a quotation at the same price as an existing ISE market maker quotation in the system. While this interaction of quotations is beneficial from a price-discovery standpoint, there is significant risk in this situation because execution can occur simultaneously in multiple series. While market makers would be able to limit this risk by setting their size to a smaller number of at least one contract, ISE market makers would be able to access the full size of another market maker's quotation by sending an order in that series.[3]
- The ISE also proposes to prohibit market makers from sending more than one order every 15 seconds in options on the same underlying security. ISE Rule 717(h) currently imposes this limitation on orders that Electronic Access Members send to the Exchange. This limitation reduces a market maker's exposure across multiple series of options.[4] This restriction, however, does not currently apply to market maker orders since market makers generally have established nominal quotations for other market makers. Because ISE market makers now would be able to enter orders accessing another market maker's full size, ISE proposes to extend this 15-second limitation to ISE market maker orders.
- Finally, the ISE proposes two technical "clean up" changes to its rules. First, the Exchange proposes to delete language from Rule 804 regarding the "enhanced size pilot" that would expire on October 31, 2002. Second, the Exchange proposes to delete language from Rule 805 regarding limited exemptive authority that expired a year after the Exchange commenced trading.

2. Statutory Basis

The basis for this proposed rule change is the requirement under section 6(b)(5) of the Act[5] to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The ISE believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the ISE. All submissions should refer to File No. SR–ISE–2002–24 and should be submitted by November 22, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–27809 Filed 10–31–02; 8:45 am]

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[3] Implementing this aspect of the proposal would require the Commission to grant an exemption from the Firm Quote Rule. While that rule permits market makers to set smaller sizes for all non-customer orders, it does not permit different quotation sizes for different categories of professionals. Simultaneously with submitting this proposed rule change, the ISE submitted a separate exemption request.

[4] *See* Securities Exchange Act Release No.44017 (February 28, 2001), 66 FR 13820 (March 7, 2001) (File No. SR–ISE–2000–20).

[5] 15 U.S.C. 78f(b)(5).

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46732; File No. SR–NASD–2002–137]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc. Relating to Technical Corrections to the Trade or Move Process in the Nasdaq Order Collection and Display Facility ("SuperMontage")

October 28, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4[2] thereunder, notice is hereby given that on October 4, 2002, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq"), submitted to the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. On October 21, 2002, Nasdaq filed an amendment to the proposed rule change.[3] The proposed rule change, as amended, has been filed by Nasdaq as a "non-controversial" rule change under Rule 19b–4(f)(6)[4] under the Act. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq is filing with the Commission technical rule changes to NASD Rule 4613(e)(1) to harmonize the language with recent approved rule proposals.

The text of the proposed rule change is available at the Office of the Secretary, the Nasdaq and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change, as amended, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq has filed numerous rule proposals relating to NASD Rule 4613(e), and also has filed numerous rule proposals relating to SuperMontage. In the process of compiling the changes to Rule 4613(e), Nasdaq has discovered several

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Jeffrey S. Davis, Associate General Counsel, Nasdaq to Terri Evans, Assistant Director, Division of Market Regulation, Commission dated October 18, 2002 ("Amendment No. 1"). In Amendment No. 1, Nasdaq redesignated certain provisions in NASD Rule 4613(e)(1) to correct erroneous references to NASD Rule 4613(e)(2). In addition, the rule text was amended to replace all uses of the word "message" with the word "order" to eliminate inadvertent inconsistencies within Rule 4613(e)(1).

[4] 17 CFR 240.19b–4(f)(6). For purposes of determining the effective date and calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers that period to commence on October 21, 2002, the date Nasdaq filed Amendment No. 1. *See* 15 U.S.C. 78s(b)(3)(C).

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grammatical and technical errors in Rule 4613(e) that must be fixed.

First, Nasdaq is changing the acronym "MMID" to "MPID" to be consistent with its use of those terms throughout the rules governing usage of the SuperMontage system. Second, Nasdaq is replacing references to "messages" to "orders" or "Directed Orders," as appropriate. This change makes consistent the use of such terms across NASD Rule 4613(e)(1). In addition, Nasdaq is adding the word "for" when describing the minimum number of shares for which a Trade or Move Directed Order is required to be sent. Finally, Nasdaq is changing Rule 4613(e)(1)(c)(ii)(a) to reflect that an ECN that wishes to lock or cross the market between 9:20:00 and 9:29:29 must send a Trade or Move Directed Order. The current rule language erroneously indicates that ECNs are obligated to send such Directed Orders up until 9:29:59. This technical change conforms the rule to the clear intent of SR–NASD–2002–56, which was approved on August 23, 2002.[5]

2. Statutory Basis

Nasdaq believes that the proposed rule change, as amended, is consistent with section 15A of the Act in general,[6] and section 15A(b)(6) of the Act in particular,[7] in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. Nasdaq believes that the proposed rule change, as amended, should enhance the interaction of the Trade or Move Rule with the SuperMontage opening, and that such enhancements would ensure a smooth opening of daily trading for the ultimate benefit of investors.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change, as amended, will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

[5] *See* Securities Exchange Act Release No. 46410 (August 23, 2002), 67 FR 55897 (August 30, 2002).

[6] 15 U.S.C. 78*o*–3.

[7] 15 U.S.C. 78*o*–3(b)(6).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change, as amended, (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms, does not become operative until 30 days from the date on which it was filed, or such shorter time as the Commission may designate. The proposed rule change, as amended, has therefore become effective pursuant to section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6)[9] thereunder.

Nasdaq has requested that the Commission waive the usual five-day notice and 30-day pre-operative waiting periods. The Commission believes that it is consistent with the protection of investors and the public interest to accelerate the operative date and to waive the five-day notice period since the proposed rule change, as amended, makes only technical corrections to the rule text. For these reasons, the Commission designates the proposal, as amended, to be effective and operative upon filing with the Commission.[10]

At any time within 60 days of the filing of the proposed rule change, as amended, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[11]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2002–137 and should be submitted by November 22, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–27804 Filed 10–31–02; 8:45 am]

BILLING CODE 8010–01–P

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6).

[10] For purposes of determining the effective date and calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers that period to commence on October 21, 2002, the date Nasdaq filed Amendment No. 1. *See* 15 U.S.C. 78s(b)(3)(C). For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46720; File No. SR–NSCC–2002–03]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Revising the Fee Schedule

October 25, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on May 30, 2002, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will establish a base participation fee for NSCC participants using NSCC's Mutual Fund Services Profile service.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.[2]

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to establish a base participation fee for NSCC participants using NSCC's Mutual Fund Services Profile service ("Profile service").[3] The Profile service was introduced in 1997 and in 2000 was made accessible through the internet via NSCC's PC WebDirect system. Since its introduction, NSCC has provided the service without charge.

However, consistent with its goal to align fees with costs and to reflect the numerous enhancements that NSCC has made to the service, NSCC is establishing a Profile membership fee payable by the users of the service. Accordingly, participating settling members and fund members will now be charged a $325 monthly membership fee to use the Profile service, regardless of usage.[4] This fee was effective July 1, 2002.

NSCC believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder because it provides for the equitable allocation of dues, fees, and other charges among NSCC's participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will have an impact on or impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments relating to the proposed rule change have been solicited or received. NSCC has notified participants who use the Profile service of the new fee charges and will notify the Commission of any written comments it receives.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act[5] and Rule 19b–4(f)(2)[6] thereunder because the proposed rule change is changing a due, fee, or other charge. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, U.S. Securities and Exchange Commission, 450 Fifth Street NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the rule proposal that are filed with the Commission, and all written communications relating to the rule proposal between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room in Washington, DC. Copies of such filing will also be available for inspection and copying at NSCC's principal office. All submissions should refer to File No. SR–NSCC–2002–03 and should be submitted by November 22, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–27803 Filed 10–31–02; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by NSCC.

[3] The Profile service is a data base system that enables mutual fund industry participant to exchange accurate and timely information on daily prices and dividend rates, firm and fund members, individual security identifications and processing capabilities, and projected and actual distribution declarations.

[4] Because the Profile service is not a transaction-based execution system but rather an informational data base resource, NSCC believes that a monthly usage fee is the most practical way to allocate the costs of the service.

[5] 15 U.S.C. 78s(b)(3)(A)(ii).

[6] 17 CFR 240.19b–4(f)(2).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46721; File No. SR–Phlx–2002–63]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. To Increase Maintenance and Transfer Registration Fees for Registered Representatives

October 25, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4[2] thereunder, notice is hereby given that on October 15, 2002, the Philadelphia Stock Exchange, Inc. ("Exchange" or "Phlx") submitted to the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Phlx. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx, pursuant to Section 19(b)(1) of the Act[3] and Rule 19b–4 thereunder,[4] proposes to amend its schedule of dues, fees and charges to increase from $50.00 to $55.00 both the maintenance and transfer registration fees for registered representatives.[5] The initial registered representative registration fee will remain at $55.00.[6] In addition, the Exchange proposes to make a minor change to its schedule of dues, fees and charges by changing the word "Maintenance" that appears under Registered Representative Registration to "Renewal."

The proposed fee of $55.00 for maintenance and transfer registration for registered representatives will apply to 2003 registered representative registrations.[7] Consistent with current

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(1).

[4] 17 CFR 240.19b–4.

[5] These fees are not eligible for the monthly credit of up to $1,000 to be applied against certain fees, dues and charges and other amounts owed to the Exchange by certain members. *See* Securities Exchange Act Release No. 44292 (May 11, 2001), 66 FR 27715 (May 18, 2001) (SR–Phlx–2001–49).

[6] *See* Securities Exchange Act Release No. 44947 (October 17, 2001), 66 FR 53822 (October 24, 2001) (SR–Phlx–2001–90).

[7] Registered representative categories include registered options principals, general securities representatives, general securities sales supervisors and United Kingdom-limited general securities registered representatives.

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practice, the Phlx intends that, on its behalf, the National Association of Securities Dealers, Inc. ("NASD") will bill for year 2003 registered representative renewal registration fees in November, 2002 and will thereafter collect the maintenance fee for the Exchange.[8]

The text of the proposed rule is available at the Office of the Secretary, the Phlx, and the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to generate additional revenue for the Exchange by increasing the maintenance (renewal) and transfer registered representative registration fees from $50.00 to $55.00.[9] In addition, the Exchange believes that this fee increase is warranted based upon the Exchange's increased costs relating to its regulatory oversight and enforcement programs.

The Exchange is also amending its schedule of dues, fees and charges by changing the word "Maintenance" that appears under Registered Representative Registration to "Renewal." The Exchange believes that the word "Renewal" more readily reflects how the fee is implemented.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act [10] in general, and Section 6(b)(4) of the Act [11] in particular, in that the proposal is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among Exchange members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change establishes or changes a due, fee or other charge, it has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [12] and subparagraph (f)(2) of Rule 19b–4 [13] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Phlx–2002–63 and should be submitted by November 22, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–27810 Filed 10–31–02; 8:45 am]

BILLING CODE 8010–01–P

[8] In addition, the Exchange intends that, on its behalf, the NASD will bill and collect the initial and transfer fees in 2003, consistent with current practice.

[9] Two other exchanges recently increased their maintenance (also referred to as "annual") and transfer registration fees for registered representatives. *See* Securities Exchange Act Release Nos. 46266 (July 25, 2002), 67 FR 49969 (August 1, 2002) (SR–CBOE–2002–37) and 46239 (July 19, 2002), 67 FR 48962 (July 26, 2002) (SR–PCX–2002–38).

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(4).

[12] 15 U.S.C. 78s(b)(3)(A)(ii).

[13] 17 CFR 240.19b–4(f)(2).

[14] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Public Federal Regulatory Enforcement Fairness Hearing; Small Business Administration Region IX Regulatory Fairness Board

The Small Business Administration Region IX Regulatory Fairness Board and the SBA Office of the National Ombudsman will hold a Public Hearing on Tuesday, November 12, 2002 at 1 p.m. at the Small Business Administration, District Office Training Room, 455 Market Street, 6th Floor, San Francisco, CA 94105, to receive comments and testimony from small business owners, small government entities, and small non-profit organizations concerning regulatory enforcement and compliance actions taken by federal agencies.

Anyone wishing to attend or to make a presentation must contact Judy Ishizu in writing or by fax, in order to be put on the agenda. Judy Ishizu, U.S. Small Business Administration, San Francisco District Office, 455 Market Street, 6th floor, Suite 2200, San Francisco, CA 94105, phone (415) 744–6801, fax (415) 744–6812, e-mail *judy.ishizu@sba.gov*.

For more information, see our Web site at *http://www.sba.gov/ombudsman*.

Dated: October 23, 2002.

Michael L. Barrera,

National Ombudsman.

[FR Doc. 02–27794 Filed 10–31–02; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Public Federal Regulatory Enforcement Fairness Roundtable; Small Business Administration Region VII Regulatory Fairness Board

The Small Business Administration Region VII Regulatory Fairness Board and the SBA Office of the National Ombudsman will hold a Public Roundtable on Thursday, November 7, 2002 at 9 a.m. at the Exchange Bank, 132 E. High Street, Jefferson City, MO 65102, to provide small business owners and representatives of trade associations

with an opportunity to share information concerning the federal regulatory enforcement and compliance environment.

Anyone wishing to attend or to make a presentation must contact Rose Garland in writing or by fax, in order to be put on the agenda. Rose Garland, U.S. Small Business Administration, St. Louis District Office, 815 Olive Street, Room 242, St. Louis, MO 63101, phone (314) 539–6600 ext. 232, fax (314) 539–3785, e-mail: *rose.garland@sba.gov*.

For more information, see our Web site at *http://www.sba.gov/ombudsman*.

Dated: October 23, 2002.

Michael L. Barrera,

National Ombudsman.

[FR Doc. 02–27795 Filed 10–31–02; 8:45 am]

BILLING CODE 8025–01–P

OFFICE OF SPECIAL COUNSEL

SES Performance Review Board

AGENCY: U.S. Office of Special Counsel

ACTION: Notice.

SUMMARY: Notice is hereby given of the appointment of a member of the OSC Performance Review Board. The following person has been appointed to the SES Performance Review Board in the U.S. Office of Special Counsel: Bernestine Allen, Director, Office of International Transportation and Trade, Department of Transportation.

FOR FURTHER INFORMATION CONTACT: M. Marie Glover, Director of Human Resources, U.S. Office of Special Counsel, 1730 M Street, NW., Suite 218, Washington, D.C. 20036–4505, (202) 653–9485.

SUPPLEMENTARY INFORMATION:

Section 4314(c)(1) through (5) of Title 5, U.S.C., requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more SES performance review boards. The board reviews and evaluates the initial appraisal of a senior executive's performance by the supervisor, and considers recommendations to the appointing authority regarding the performance of the senior executive.

Dated: October 25, 2002.

Elaine D. Kaplan,

Special Counsel.

[FR Doc. 02–27763 Filed 10–31–02; 8:45 am]

BILLING CODE 7405–01–S

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Generalized System of Preferences (GSP); Deadline for Submission of Petitions for the 2002 Annual GSP Product and Country Eligibility Practices Review and Status of 2001 Annual GSP Review

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: This notice announces the initiation of the 2002 Annual GSP Product and Country Eligibility Practices Review and sets the deadline for the submission of petitions on December 2, 2002. The notification of which petitions have been accepted for the 2002 and 2001 Annual GSP Reviews and other relevant dates will be issued in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Contact the GSP Subcommittee, Office of the United States Trade Representative (USTR), 1724 F Street, NW., Room F–220, Washington, DC 20508. The telephone number is (202) 395–6971 and the facsimile number is (202) 395–9481.

SUPPLEMENTARY INFORMATION: The GSP provides for the duty-free importation of designated articles when imported from designated beneficiary developing countries. The GSP is authorized by title V of the Trade Act of 1974 (19 U.S.C. 2461, *et seq.*), as amended (the "Trade Act"), and is implemented in accordance with Executive Order 11888 of November 24, 1975, as modified by subsequent Executive Orders and Presidential Proclamations.

2002 Annual GSP Review

The GSP regulations (15 CFR Part 2007) provide the schedule of dates for conducting an annual review unless otherwise specified by a **Federal Register** notice. Notice is hereby given that, in order to be considered in the 2002 Annual GSP Product and Country Eligibility Practices Review, all petitions to modify the list of articles eligible for duty-free treatment under GSP or to review the GSP status of any beneficiary developing country must be received by the GSP Subcommittee of the Trade Policy Staff Committee no later than 5 p.m., December 2, 2002. Petitions submitted after the deadline will not be considered for review.

Interested parties or foreign governments may submit petitions to: (1) Designate additional articles as eligible for GSP; (2) withdraw, suspend or limit GSP duty-free treatment accorded either to eligible articles under the GSP or to individual beneficiary developing countries with respect to specific GSP eligible articles; (3) waive the "competitive need limits" for individual beneficiary developing countries with respect to specific GSP eligible articles; and (4) otherwise modify GSP coverage. As specified in 15 CFR 2007.1, all product petitions must include a detailed description of the product and the subheading of the Harmonized Tariff Schedule (HTS) of the United States under which the product is classified.

Interested parties may also submit petitions to have the GSP status of any eligible beneficiary developing country reviewed with respect to any of the designation criteria listed in sections 502(b) or 502(c) of the Trade Act (19 U.S.C. 2462(b) and (c)). Such petitions must comply with the requirements of 15 CFR 2007.0(b).

Requirements for Submissions

All such submissions must conform to the GSP regulations set forth at 15 CFR part 2007, except as modified below. These regulations are also included in "A Guide to the U.S. Generalized System of Preferences (GSP)" (August 1991) ("GSP Guidebook"), available at *www.ustr.gov*. Petitioners are strongly advised to review the GSP regulations. Submissions that do not provide all information required by sections 2007.0 and 2007.1 of the GSP regulations will not be accepted for review, except upon a detailed showing in the submission that the petitioner made a good faith effort to obtain the information required. Petitions with respect to waivers of the "competitive need limitations" must meet the information requirements for product addition requests in section 2007.1(c) of the GSP regulations. A model petition format is available from the GSP Subcommittee and is included in the GSP Guide. Petitioners are requested to use this model petition format so as to ensure that all information requirements are met. Furthermore, interested parties submitting petitions that request action with respect to specific products should list on the first page of the petition the following information: (1) The requested action; (2) the United States HTS subheading in which the product is classified; and (3) if applicable, the beneficiary country.

Petitions and requests must be submitted, in English, to the Chairman of the GSP Subcommittee, Trade Policy Staff Committee and must be received no later than December 2, 2002. Submissions in response to this notice will be subject to public inspection by appointment with the staff of the USTR

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Public Reading Room, except for information granted "business confidential" status pursuant to 15 CFR 2003.6. If the submission contains business confidential information, a non-confidential version of the submission must also be submitted that indicates where confidential information was redacted by inserting asterisks where material was deleted. In addition, the confidential submission must be clearly marked "BUSINESS CONFIDENTIAL" at the top and bottom of each and every page of the document. The public version which does not contain business confidential information must also be clearly marked at the top and bottom of each and every page (either "PUBLIC VERSION" or "NON-CONFIDENTIAL").

In order to facilitate prompt consideration of submissions, USTR strongly urges and prefers electronic e-mail submissions in response to this notice. In the event that an e-mail submission is impossible, submissions should be made by facsimile. These submissions should be single copy transmissions in English with the total submission not to exceed 50 single-spaced pages and 3 megabytes as a digital file attached to an e-mail transmission. Persons making submissions by e-mail should use the following subject line: "2002 Annual GSP Review—Petition." Documents must be submitted as either WordPerfect (".WPD"), MSWord (".DOC"), or text (".TXT") files. Documents should not be submitted as electronic image files or contain imbedded images (for example, ".JPG", "PDF", ".BMP", or ".GIF") as these type files are generally excessively large. E-mail submissions containing such files may not be accepted. Supporting documentation submitted as spreadsheets are acceptable as Quattro Pro or Excel, pre-formatted for printing on 8½ x 11 inch paper. To the extent possible, any data attachments to the submission should be included in the same file as the submission itself, and not as separate files. Facsimile submissions should include, among other identifying information specified in the regulations, the following information at the top of the first page: "2002 Annual GSP Review."

For any document containing business confidential information submitted as an electronic attached file to an e-mail transmission, the file name of the business confidential version should begin with the characters "BC-", and the file name of the public version should begin with the characters "P-". The "P-" or "BC-" should be followed by the name of the party (government, company, union, association, etc.) which is submitting the petition. Parties who make submissions by e-mail should not provide separate cover letters or messages in the message area of the e-mail; information that might appear in any cover letter should be included directly in the attached file containing the submission itself. The e-mail address for these submissions is *FR0052@USTR.GOV*. Documents not submitted in accordance with these instructions might not be considered in this review.

Public versions of all documents relating to this review will be available for review approximately three weeks after the due date by appointment in the USTR Public Reading Room, 1724 F Street NW., Washington, DC. Availability of documents may be ascertained, and appointments may be made from 9:30 a.m. to noon and 1 p.m. to 4 p.m., Monday through Friday, by calling (202) 395–6186.

Status of 2001 Annual GSP Review

The GSP program expired on September 30, 2001, and was not reauthorized until August 6, 2002. Consequently, the announcement of which petitions were to be accepted for the 2001 Annual GSP Review was not made, except for the announcement in the August 28, 2002 **Federal Register** of those petitions accepted for the Special Three Country Review for Argentina, the Philippines and Turkey. Because of this delay, the schedule for completing the 2002 and 2001 Annual GSP Reviews will be merged to the extent practicable. The notification of which petitions have been accepted for the 2002 and 2001 Annual GSP Reviews and other relevant dates, including the review schedule, will be issued in the **Federal Register**.

Steven Falken,

Executive Director for GSP, Chairman, GSP Subcommittee.

[FR Doc. 02–27773 Filed 10–31–02; 8:45 am]

BILLING CODE 3901–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Request for Public Comment With Respect to the Annual National Trade Estimate Report on Foreign Trade Barriers

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: Pursuant to section 303 of the Trade and Tariff Act of 1984, as amended, USTR is required to publish annually the National Trade Estimate Report on Foreign Trade Barriers (NTE). With this notice, the Trade Policy Staff Committee (TPSC) is requesting interested parties to assist it in identifying significant barriers to U.S. exports of goods, services and overseas direct investment for inclusion in the NTE. Particularly important are impediments materially affecting the actual and potential financial performance of an industry sector. The TPSC invites written comments that provide views relevant to the issues to be examined in preparing the NTE. In order to ensure the most timely processing of submissions, the Department of Commerce will receive comments in response to this Notice. Commenters should review carefully the written comments section of this Notice for special procedures for filing comments this year.

DATES: Public comments are due not later than Friday, December 13, 2002. This deadline is firm. No submissions will be accepted after December 13.

ADDRESSES: *Paper submissions:* NTE Comments, Office of Trade and Economic Analysis, Room H–2815, U.S. Department of Commerce, Washington, DC 20230.

Submissions by electronic mail: ntecomments@ita.doc.gov.

FOR FURTHER INFORMATION CONTACT: Procedural questions about transmitting comments or viewing public submissions should be directed to Ms. Marva Thompson (202–482–2185) or Mr. Howard Schreier (202–482–4180), U.S. Department of Commerce. Questions regarding the report or its subject matter should be directed to Ms. Gloria Blue, Office of Policy Coordination, Office of the United States Trade Representative (202–395–3475).

SUPPLEMENTARY INFORMATION: Last year's report may be found on USTR's Internet Home Page (*www.ustr.gov*) under the section on Reports. In order to ensure compliance with the statutory mandate for reporting foreign trade barriers that are significant, we will focus particularly on those restrictions where there has been active private sector interest.

The information submitted should relate to one or more of the following ten categories of foreign trade barriers:

(1) Import policies (*e.g.*, tariffs and other import charges, quantitative restrictions, import licensing, and customs barriers);

(2) Standards, testing, labeling, and certification (including unnecessarily restrictive application of phytosanitary standards, refusal to accept U.S. manufacturers' self-certification of conformance to foreign product standards, and environmental restrictions);

(3) Government procurement (*e.g.*, "buy national" policies and closed bidding);

(4) Export subsidies (*e.g.*, export financing on preferential terms and agricultural export subsidies that displace U.S. exports in third country markets);

(5) Lack of intellectual property protection (*e.g.*, inadequate patent, copyright, and trademark regimes);

(6) Services barriers (*e.g.*, limits on the range of financial services offered by foreign financial institutions, regulation of international data flows, restrictions on the use of data processing, quotas on imports of foreign films, and barriers to the provision of services by professionals (*e.g.*, lawyers, doctors, accountants, engineers, nurses, etc.);

(7) Investment barriers (*e.g.*, limitations on foreign equity participation and on access to foreign government-funded R&D consortia, local content, technology transfer and export performance requirements, and restrictions on repatriation of earnings, capital, fees and royalties);

(8) Anticompetitive practices with trade effects tolerated by foreign governments (including anticompetitve activities of both state-owned and private firms that apply to services or to goods and that restrict the sale of U.S. products to any firm, not just to foreign firms that perpetuate the practices);

(9) Trade restrictions affecting electronic commerce (*e.g.*, tariff and non-tariff measures, burdensome and discriminatory regulations and standards, and discriminatory taxation); and

(10) Other barriers (*i.e.*, barriers that encompass more than one category, *e.g.* bribery and corruption, or that affect a single sector).

As in the case of last year's NTE, we are asking that particular emphasis be placed on any practices that may violate U.S. trade agreements. We are also interested in receiving any new or updated information pertinent to the barriers covered in last year's report as well as new information. Please note that the information not used in the NTE will be maintained for use in future negotiations.

It is most important that your submission contain estimates of the potential increase in exports that would result from the removal of the barrier, as well as a clear discussion of the method(s) by which the estimates were computed. Estimates should fall within the following value ranges: Less than $5 million; $5 to $25 million; $25 million to $50 million; $50 million to $100 million; $100 million to $500 million; or over $500 million. Such assessments enhance USTR's ability to conduct meaningful comparative analyses of a barrier's effect over a range of industries.

Please note that interested parties discussing barriers in more than one country should provide a separate submission (*i.e.*, one that is self-contained) for each country.

Written Comments: In order to ensure the most timely receipt and consideration of comments submitted in response to this Notice, the following guidelines and special procedures have been established:

(1) All comments will be received at the U.S. Department of Commerce rather than the Office of the United States Trade Representative;

(2) The Department of Commerce has arranged to accept non-confidential, public submissions by electronic mail (e-mail). An automatic reply confirming receipt of e-mail submissions will be sent. E-mail submissions in Microsoft Word or Corel WordPerfect are preferred. If a word processing application other than those two is used, please advise us in your submission of the specific application used;

(3) In order to facilitate prompt processing of submissions, the Department of Commerce strongly urges and prefers e-mail submission of non-confidential, public comments;

(4) To ensure security, submissions containing business confidential information should not be sent by e-mail, but via the U.S. Postal Service or commercial express delivery (see paragraph 6 and 7 below for special requirements applying to such submissions). If a submission contains business confidential information, a non-confidential public version must also be submitted along with the business confidential version.

(5) Business-confidential submissions must be accompanied by a justification as to why the information contained in the submission should be treated confidentially. In addition, any submissions containing business confidential information must be clearly marked "Confidential" at the top and bottom of the cover page (or letter) and of each succeeding page of the submission. The version that does not contain confidential information should also be clearly marked, at the top and bottom of each page, "public version" or "non-confidential".

(6) When comments are submitted using the U.S. Postal Service or commercial couriers, it is strongly recommended that submitters notify the Department of Commerce by e-mail as to the date of transmittal and method of delivery (U.S. Postal Service or name of courier company).

(7) All submissions must be in English and should conform to the information requirements of 15 CFR 2003. If submissions are made via U.S. Postal Service or commercial express delivery, a party must provide five copies of its submission and the submission should be accompanied by a computer disk containing a machine-readable version. The disk should have a label identifying the software used, the submitter and the title of the submission. In addition, business confidential and public or non-confidential submissions should be submitted on separate disks which are clearly marked "business confidential" or "non-confidential", as appropriate.

Submissions must be received at the Department of Commerce no later than Friday, December 13, 2002.

Written comments submitted in connection with this request, except for information granted "business confidential" status pursuant to 15 CFR 2003.6, will be available for public inspection shortly after the filing deadline in the Foreign Trade Reference Room (Room 2233) in the U.S. Department of Commerce. The Department of Commerce is located at 14th St. and Constitution Ave., NW., in Washington, DC. Customary hours of operation for the Foreign Trade Reference Room are from 9 a.m. to 4 p.m., Monday through Friday. Call (202) 482–2185 to confirm. Questions regarding the operation of the Reference Room should be directed to Ms. Marva Thompson at 202–482–2185. Non-proprietary public comments will also be available for review on the web at: *http://web.ita.doc.gov/otea/ntecomments.nsf.*

Carmen Suro-Bredie,

Chairman, Trade Policy Staff Committee.

[FR Doc. 02–27744 Filed 10–31–02; 8:45 am]

BILLING CODE 3190–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Privacy Act of 1974: System of Records

AGENCY: Office of the Secretary, DOT.

ACTION: Notice to establish a system of records.

SUMMARY: DOT intends to establish a system of records under the Privacy Act of 1974.

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EFFECTIVE DATE: December 11, 2002. If no comments are received, the proposal will become effective on the above date. If comments are received, the comments will be considered and, where adopted, the documents will be republished with changes.

FOR FURTHER INFORMATION CONTACT: Yvonne L. Coates, Department of Transportation, Office of the Secretary, 400 7th Street, SW., Washington, DC 20590, (202) 366–6964 (telephone), (202) 366–7024 (fax), *Yvonne.Coates@ost.dot.gov* (Internet address).

SUPPLEMENTARY INFORMATION: The Department of Transportation system of records notice subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, has been published in the **Federal Register** and is available from the above mentioned address.

DOT/ALL 014

SYSTEM NAME:

Docket Management System (DMS).

SECURITY CLASSIFICATION:

Unclassified, non-sensitive.

SYSTEM LOCATION:

The system is located in Department of Transportation (DOT), Dockets and Media Management Center, Transportation Administrative Service Center, 400 7th Street, SW., Room PL–401, Washington, DC, 20590.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who participate in proceedings at the DOT that are covered by the Administrative Procedure Act (APA), and who provide information about their identities.

CATEGORIES OF RECORDS IN THE SYSTEM:

DOT rulemaking and related documents issued in informal rulemakings, and public comments thereon; non-rulemaking and related documents, and public comments thereon; in formal rulemakings, motions, petitions, complaints, and related documents and formal responses thereto.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 551 et seq.

PURPOSE(S):

To facilitate involvement of the public in APA and related proceedings.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronically on a publicly-accessible website.

RETRIEVABILITY:

Documents are retrievable through DMS by name and by docket number.

SAFEGUARDS:

Records are freely available to anyone.

RETENTION AND DISPOSAL:

Paper copies are returned to the originating office upon transfer to electronic medium. Electronic version is retained indefinitely at the discretion of the DOT.

SYSTEM MANAGER(S) AND ADDRESS:

U.S. Department of Transportation, Chief, Dockets and Media Management Center (SVC–124), 400 7th Street, SW., Room PL–401, Washington, DC 20590.

NOTIFICATION PROCEDURE:

Same as "System Manager."

RECORD ACCESS PROCEDURES:

Same as "System Manager."

CONTESTING RECORD PROCEDURES:

Same as "System Manager."

RECORD SOURCE CATEGORIES:

Individuals participating in DOT APA proceedings.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Dated: October 18, 2002.

Yvonne L. Coates,

Privacy Act Coordinator.

[FR Doc. 02–27168 Filed 10–31–02; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2002–62]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption, part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of a certain petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before November 21, 2002.

ADDRESSES: Send comments on the petition to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2002–13062 at the beginning of your comments. If you wish to receive confirmation that the FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to *http://dms.dot.gov*. You may review the public docket containing the petition, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office (telephone 1–800–647–5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Susan Boylon (425–227–1152), Transport Airplane Directorate (ANM–113), Federal Aviation Administration, 1601 Lind Ave. SW., Renton, WA 98055–4056; or Vanessa Wilkins (202–267–8029), Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on October 29, 2002.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: FAA–2002–13062.

Petitioner: Lockheed Martin Aircraft.

Section of 14 CFR Affected: SFAR 88.

Description of Relief Sought: To permit Lockheed Model L–11011–385 airplanes to operate without meeting the requirements of SFAR–88.

[FR Doc. 02–27845 Filed 10–31–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Brownsville/South Padre Island International Airport, Brownsville, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Brownsville/South Padre Island International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before December 2, 2002.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate copies to the FAA at the following address: Mr. G. Thomas Wade, Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–611, Fort Worth, Texas 76193–0610.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Larry Brown, Acting Manager of Brownsville/South Padre Island International Airport at the following address: Mr. Larry Brown, Acting Manager, Brownsville/South Padre International Airport, 700 S. Minnesota Avenue, Brownsville, TX 78521.

Air carriers and foreign air carriers may submit copies of the written comments previously provided to the Airport under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. G. Thomas Wade, Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–611, Fort Worth, Texas 76193–0610, (817) 222–5613.

The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Brownsville/South Padre Island International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On October 25, 2002, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Airport was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than February 20, 2003.

The following is a brief overview of the application.

Level of the proposed PFC: $4.50.

Proposed charge effective date: May 1, 2003.

Proposed charge expiration date: June 1, 2008.

Total estimated PFC revenue: $1,421,192.

PFC application number: 03–02–C–BRO.

Brief description of proposed project(s):

Projects To Impose and Use PFC's

1. Acquire and Install Two Loading Bridges and an Aircraft Loading Walkway
2. Construct ARFF Facility and Acquire Two ARFF Vehicles
3. Acquire Security Access Control System with Finger Print Equipment
4. Conduct Planning Studies
5. Reconstruct Taxiway H
6. Reconstruct and Expand Terminal Apron
7. Rehabilitate Taxiways B, D and E Edge Lighting
8. Expand Cargo Apron
9. Seal Coat Taxiways B, D, E, E–1 and G
10. Drainage Improvements
11. Acquire Land
12. PFC Application and Administrative Fees

Proposed class or classes of air carriers to be exempted from collecting PFC's: None.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–610, 2601 Meacham Blvd., Fort Worth, Texas 76137–4298.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at Brownsville/South Padre Island International Airport.

Issued in Fort Worth, Texas, on October 25, 2002.

William J. Flanagan,

Acting Manager, Airports Division.

[FR Doc. 02–27846 Filed 10–31–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Opportunity To Participate, Criteria Requirements and Change of Application Procedure for Participation in the Military Airport Program (MAP)

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of criteria and application procedure for designation or redesignation, for the fiscal year 2003 MAP.

SUMMARY: This notice announces the criteria, application procedures and schedule to be applied by the Secretary of Transportation in designating or redesignating, and funding capital development annually for 15 current (joint-use) or former military airports seeking designation or redesignation to participate in the MAP. This Notice reflects and incorporates changes made to MAP in the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century.

The MAP allows the Secretary to designate current (joint-use) or former military airports for which grants may be made under the Airport Improvement Program (AIP). The Secretary is authorized to designate an airport (other than an airport so designated before August 24, 1994) if: (1) The airport is a former military installation closed or realigned under the Title 10 U.S.C. 2687 announcement of closures of large Department of Defense installations after September 30, 1977, or under section 201 or 2905 of the Defense Authorization Amendments and Base Closure and Realignment Acts; or (2) the airport is a military installation with both military and civil aircraft operations. The Secretary shall consider for designation only those current or former military airports, at least partly converted to civilian airports as part of the national air transportation system, that will reduce delays at airports with more than 20,000 hours of annual delays in commercial passenger aircraft takeoffs and landings, or will enhance

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airport and air traffic control system capacity in metropolitan areas or reduce current and projected flight delays (49 U.S.C. 47118(c)).

DATES: Airport sponsors should address written applications for new designation and redesignation in the MAP to the FAA Regional Airports Division or Airports District Office that serves the airport. That office of the FAA must receive applications on or before December 6, 2002.

ADDRESSES: Submit an original and two copies of Standard Form (SF) 424, "Application for Federal Assistance," prescribed by the Office of Management and Budget Circular A–102, available at *http://www.whitehouse.gov/OMB/grants/index.html*, along with any supporting and justifying documentation. Applicant should specifically request to be considered for designation or redesignation to participate in the fiscal year 2003 MAP. Submission should be sent to the Regional FAA Airports Division or Airports District Office that serves the airport. Applicants may find the proper office on the FAA web site *http://www.faa.gov/arp/arphome.htm* or may contact the office below.

FOR FURTHER INFORMATION CONTACT: Mr. Murdock (*oliver.murdock@faa.gov*) or Leonard C. Sandelli (*len.sandelli@faa.gov*), Military Airport Program Branch (APP–420), Office of Airport Planning and Programming, Federal Aviation Administration (FAA), 800 Independence Avenue, SW., Washington, DC, 20591, (202) 267–8244, or (202) 267–8785, respectively.

SUPPLEMENTARY INFORMATION:

General Description of the Program

The MAP provides capital development assistance to civil airport sponsors of designated current (joint-use) military airfields or former military airports that are included in the FAA's National Plan of Integrated Airport Systems (NPIAS). Airports designated under the program may obtain funds from a set-aside (currently four percent) of AIP discretionary funds to undertake eligible airport development, including certain types of projects not otherwise eligible for AIP assistance. Such airports may also be eligible to receive grants from other categories of AIP funding.

Number of Airports

A maximum of 15 airports per fiscal year may participate in the MAP at any time. There are 5 slots available for designation or redesignation in FY 2003. One airport may be designated as a general aviation airport.

Term of Designation

The maximum period of eligibility for any airport to participate in the MAP is five fiscal years following designation. An airport sponsor having previously been in the program may apply for redesignation and, if found to satisfy the designation criteria upon reapplication, may have the opportunity to participate for subsequent periods, each not to exceed five fiscal years. The FAA can designate airports for a period less than five years. The FAA will evaluate the conversion needs of the airport in its five-year capital development plan to determine the appropriate length of designation.

Redesignation

Title 49 of the United States Code 47118(d), permits previously designated airports to apply for redesignation. Applicants reapplying need to meet current eligibility criteria set forth at 49 U.S.C. 47118(a). Redesignation will be considered largely in terms of warranted projects fundable under AIP solely through the MAP, such as utility systems, surface parking, hangars, fuel farms, and air cargo terminals up to 50,000 square feet. The airport must have MAP eligible projects and the airport must continue to satisfy the designation criteria for the MAP. The FAA will carefully scrutinize applications for redesignation, since redesignation candidates tend to have lesser conversion needs than new candidates. The FAA desires that MAP airports graduate to regular AIP participation.

Eligible Projects

In addition to other eligible AIP projects, passenger terminal facilities, fuel farms, utility systems, surface automobile parking lots, hangars, and air cargo terminals up to 50,000 square feet of floor space are all eligible to be funded from the MAP. Designated or redesignated military airports can receive not more than $7,000,000 each fiscal year for projects to construct, improve, or repair terminal building facilities. Also, designated or redesignated military airports can receive not more than a total of $7,000,000 for MAP eligible projects that include hangars, cargo facilities, fuel farms, automobile surface parking, and utility work.

Designation Considerations

In making designations of new candidate airports, the Secretary of Transportation may only designate an airport (other than an airport so designated before August 24, 1994) if it meets the following general requirements:

(I)(1) The airport is a former military installation closed or realigned under—

(A) Section 2687 of title 10;

(B) Section 201 of the Defense Authorization Amendments and Base Realignment and Closure Act (BRAC) (10 U.S.C. 2687 note); or

(C) Section 2905 of the Defense Base Realignment and Closure Act of 1990 (10 U.S.C. 2687 note); or

(2) The airport is a military installation with both military and civil aircraft operations.

(II) The airport is classified as a commercial service or reliever airport in the NPIAS. One of the designated airports, if included in the NPIAS, may be a general aviation (GA) airport (public airport other than an air carrier airport, 14 CFR 152.3) that was a former military installation closed or realigned under BRAC, as amended, or 10 U.S.C. 2687 (49 U.S.C. 47118(g)). A general aviation airport must qualify under (1) above.

(III) In designating new candidate airports, the Secretary shall consider if a grant would:

(1) Reduce delays at an airport with more than 20,000 hours of annual delays in commercial passenger aircraft takeoffs and landings; or

(2) Enhance airport and air traffic control system capacity in a metropolitan area or reduce current and projected flight delays.

The application for new designations will be evaluated in terms of how the proposed airport and associated projects would contribute to congestion relief and/or how the airport would enhance air traffic or airport system capacity and provide adequate user services.

Project Evaluation

Recently approved Base Realignment and Closure Acts or Title 10 U.S.C. 2678 military airports as well as active military airfields with new joint use agreements will be in the greatest need of funding to convert to or to incorporate civil airport operations successfully. Newly converted airports and new joint-use locations frequently have minimal capital development resources and will therefore receive priority consideration for designation and MAP funding. The FAA will evaluate the need for eligible projects based upon information in the candidate airport's five year Airport Capital Improvement Plan (ACIP). Of particular concern is whether these projects are related to development of that airport and/or the air traffic control system. It is the intent of the Secretary of Transportation to fund those airport projects where the benefits to the capacity of the air traffic control or airport systems can be maximized, and/or where the contribution to reducing congestion can be maximized.

1. The FAA will evaluate the candidate airports and/or the airports such candidate airports would relieve based on the following specific factors:

- Compatibility of airport roles and the ability of the airport to provide an adequate airport facility;
- The capability of the candidate airport and its airside and landside complex to serve aircraft that otherwise must use the relieved airport;
- Landside surface access;
- Airport operational capability, including peak hour and annual capacities of the candidate airport;
- Potential of other metropolitan area airports to relieve the congested airport;
- Ability to satisfy, relieve or meet air cargo demand within the metropolitan area;
- Forecasted aircraft and passenger levels, type of commercial service anticipated, *i.e.*, scheduled and/or charter commercial service;
- Type and capacity of aircraft projected to serve the airport and level of operations at the relieved airport and the candidate airport;
- The potential for the candidate airport to be served by aircraft or users, including the airlines, serving the congested airport;
- Ability to replace an existing commercial service or reliever airport serving the area; and
- Any other documentation to support the FAA designation of the candidate airport.

2. The FAA will evaluate the development needs that, if funded, would make the airport a viable civil airport that will enhance system capacity or reduce delays. Newly closed installations or airport sponsors with new joint-use agreements with existing military aviation facilities will be strongly considered for designation since they tend to have the greatest conversion needs.

Application Procedures and Required Documentation

Airport sponsors applying for designation or redesignation must complete and submit an SF 424, "Application for Federal Assistance," and supporting documentation to the appropriate FAA office serving that airport. In Item 15a of the SF 424, the applicant must indicate the total amount of funding requested from the MAP during the entire term for which it is applying. The SF 424 must indicate whether it is an initial application or reapplication for the MAP, and must be accompanied by the documentation and justification listed below:

(A) Identification as Current or Former Military Airport

The application must identify the airport as either a current or former military airport and indicate whether it was:

(1) Closed or realigned under section 201 of the Defense Authorization Amendments and Base Realignment and Closure Act, and/or section 2905 of the Defense Base Realignment and Closure Act of 1990 (Installations Approved for Closure by the Defense Base Realignment and Closure Commissions), or

(2) Closed or realigned pursuant to 10 U.S.C. 2687 as excess property (bases announced for closure by DOD pursuant to this title after September 30, 1977 (this is the date of announcement for closure and not the date of the deed to the airport sponsor)), or

(3) A military installation with both military and civil aircraft operations. The general aviation airport may be joint use but must qualify under (1) or (2) above.

(B) Qualifications for MAP

For (1) through (7) below the applicant does not need to resubmit any unchanged documentation that has been previously submitted to the Regional Airports Division or Airports District Office.

(1) Documentation that the airport meets the definition of a "public airport" as defined in 49 U.S.C. 47102(16).

(2) Documentation indicating that the required environmental review process for civil reuse or joint-use of the military airfield has been completed. This environmental review need not include review of the individual projects to be funded by the MAP. Rather, the documentation should reflect that the environmental review necessary to convey the property, enter into a long-term lease, or sign a joint use agreement has been completed. The military department conveying or leasing the property, or entering into a joint use agreement, generally has the lead responsibility for this environmental review. The environmental review and approvals must indicate that the operator or owner of the airport has good title, satisfactory to the Secretary, or gives assurance that good title will be acquired, to meet AIP requirements.

(3) In the case of a former military airport, documentation that the eligible airport sponsor holds or will hold satisfactory title, a long-term lease in furtherance of conveyance of property for airport purposes, or a long-term interim lease for 25 years or more, to the property on which the civil airport is being located. Documentation that an application for surplus or BRAC airport property has been accepted by the Government is sufficient to indicate the eligible airport sponsor holds or will hold adequate title or a long-term lease.

(4) In the case of a current military airport documentation that the airport sponsor has an existing joint-use agreement with the military department having jurisdiction over the airport. This is necessary so the FAA can legally issue grants to the sponsor. In (3) and (4) above, the airport must possess the necessary property rights in order to accept a grant for its proposed projects during FY 2003.

(5) Documentation that the airport is classified as a "commercial service airport" or a "reliever airport" as defined in 49 U.S.C. 47102(7) and 47102(18), unless it is applying for the general aviation slot.

(6) Documentation that the airport owner is an eligible airport "sponsor" as defined in 49 U.S.C. 47102(19).

(7) Documentation that the airport has an approved airport layout plan (ALP) and a five-year Airport Capital Improvement Program (ACIP) indicating all eligible grant projects proposed to be funded either from the MAP or other portions of the AIP.

(8) Information identifying the existing and potential levels of visual or instrument operations and aeronautical activity at the current or former military airport and, if applicable, the relieved airport. Also, if applicable, information on how the airport contributes to air traffic system or airport system capacity. If served by commercial air carriers, the revenue passenger and cargo levels should be provided.

(9) A description of the airport's projected civil role and development needs for transitioning from use as a military airfield to a civil airport, including how development projects would serve to reduce delays at an airport with more than 20,000 hours of annual delays by commercial passenger aircraft takeoffs and landings or enhance capacity in a metropolitan area.

(10) A description of the existing airspace capacity. Describe how anticipated new operations would affect the surrounding airspace and air traffic flow patterns in the metropolitan area in or near which a current or former military airport is located. Include a discussion of the level to which operations at this airport create airspace conflicts that may cause congestion or

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whether air traffic works into the flow of other air traffic in the area.

(11) A description of the airport's five-year ACIP, including a discussion of major projects, their priorities, projected schedule for project accomplishment, and estimated costs. The ACIP must specifically identify the safety, capacity and conversion related projects, associated costs, and projected five-year schedule of project construction, including those requested for consideration for MAP funding.

(12) A description of those projects that are consistent with the role of the airport and effectively contribute to the joint use or conversion of the airfield to a civil airport. The projects can be related to various improvement categories depending on what is needed to convert from military to civil airport use, to meet required civil airport standards, and/or to provide capacity to the airport and/or airport system. The projects selected; *i.e.*, safety-related, conversion-related, and/or capacity-related, must be identified and fully explained based on the airport's planned use. Those projects that may be eligible under MAP, if needed for conversion or capacity-related purposes, must be clearly indicated, and include the following information:

Airside

- Modification of airport or military airfield for safety purposes, including airport pavement modifications (*i.e.* widening), marking, lighting, strengthening, drainage or modifying other structures or features in the airport environs to meet civil standards for airport imaginary surfaces as described in 14 CFR part 77.
- Construction of facilities or support facilities such as passenger terminal gates, aprons for passenger terminals, taxiways to new terminal facilities, aircraft parking, and cargo facilities to accommodate civil use.
- Modification of airport or military utilities (electrical distribution systems, communications lines, water, sewer, storm drainage) to meet civil standards. Also, modifications that allow utilities on the civil airport to operate independently, where other portions of the base are conveyed to entities other than the airport sponsor or retained by the Government.
- Purchase, rehabilitation, or modification of airport and airport support facilities and equipment, including snow removal, aircraft rescue, fire fighting buildings and equipment, airport security, lighting vaults, and reconfiguration or relocation of eligible buildings for more efficient civil airport operations.
- Modification of airport or military airfield fuel systems and fuel farms to accommodate civil aviation use.
- Acquisition of additional land for runway protection zones, other approach protection, or airport development.
- Cargo facility requirements.
- Modifications which will permit the airfield to accommodate general aviation users.

Landside

- Construction of surface parking areas and access roads to accommodate automobiles in the airport terminal and air cargo areas and provide an adequate level of access to the airport.
- Construction or relocation of access roads to provide efficient and convenient movement of vehicular traffic to, on, and from the airport, including access to passenger, air cargo, fixed base operations, and aircraft maintenance areas.
- Modification or construction of facilities such as passenger terminals, surface automobile parking lots, hangars, air cargo terminal buildings, and access roads to cargo facilities to accommodate civil use.

(13) An evaluation of the ability of surface transportation facilities (road, rail, high-speed rail, maritime) to provide intermodal connections.

(14) A description of the type and level of aviation and community interest in the civil use of a current or former military airport.

(15) One copy of the FAA-approved ALP for each copy of the application. The ALP or supporting information should clearly show capacity and conversion related projects. Also, other information such as project costs, schedule, project justification, other maps and drawings showing the project locations, and any other supporting documentation that would make the application easier to understand should be included. These maps and ALP's should be cross-referenced with the project costs and project descriptions.

Redesignation of Airports Previously Designated and Applying for up to an Additional Five Years in the Program

Airports applying for redesignation to the Military Airport Program should submit the same information required by new candidate airports applying for a new designation. On the SF 424, Application for Federal Assistance, prescribed by the Office of Management and Budget Circular A–102, airports must indicate their application is for redesignation to the MAP. In addition to the above information, they must explain:

(1) Why a redesignation and additional MAP eligible project funding is needed to accomplish the conversion to meet the civil role of the airport and the preferred time period for redesignation;

(2) Why funding of eligible work under other categories of AIP or other sources of funding would not accomplish the development needs of the airport;

(3) Why, based on the previously funded MAP projects, the projects and/or funding level were insufficient to accomplish the airport conversion needs and development goals; and

(4) The term of the redesignation, not to exceed five years, for which the airport is applying.

This notice is issued pursuant to Title 49 U.S.C. 47118.

Issued in Washington, DC, on October 24, 2002.

Benito De Leon,

Deputy Director, Office of Airport Planning and Programming.

[FR Doc. 02–27726 Filed 10–31–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34262]

Illinois Indiana Development Company, LLC—Acquisition and Operation Exemption—Chicago SouthShore & South Bend Railroad Co.

Illinois Indiana Development Company, LLC (IIDC), a Class III carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to acquire and operate approximately 6.2 miles of rail line from Chicago SouthShore & South Bend Railroad Co. (CSS). The rail line extends approximately from 115th Street in Chicago, IL (milepost 0.0) to the Illinois-Indiana state line in Burnham, IL, opposite Hammond, IN (milepost 6.2). IIDC certifies that its projected revenues as a result of this transaction will not result in the creation of a Class II or Class I rail carrier.

The transaction was scheduled to be consummated on or after October 9, 2002, the effective date of the exemption (7 days after the exemption was filed).

This transaction is related to STB Finance Docket No. 34263, *Chicago SouthShore & South Bend Railroad Co.—Operation Exemption—Illinois Indiana Development Company, LLC,* wherein CSS has concurrently filed a verified notice of exemption to conduct freight operations over the line being acquired by IIDC.[1]

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34262, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Rose-Michele Weinryb, Weiner Brodsky, Sidman Kider, PC, 1300 19th Street, NW., 5th Floor, Washington, DC 20036.

Board decisions and notices are available on our Web site at "*www.stb.dot.gov.*"

Decided: October 24, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–27582 Filed 10–31–02; 8:45 am]

BILLING CODE 4915–00–P

[1] The parties state that CSS will have a nonexclusive right to conduct freight operations over the described line, and that IIDC will retain the right to operate over the line contemporaneously with CSS.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34263]

Chicago SouthShore & South Bend Railroad Co.—Operation Exemption—Illinois Indiana Development Company, LLC

Chicago SouthShore & South Bend Railroad (CSS), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to operate approximately 6.2 miles of rail line from Illinois Indiana Development, LLC (IIDC). The line extends approximately from 115th Street in Chicago, IL (milepost 0.0) to the Illinois-Indiana state line in Burnham, IL, opposite Hammond, IN (milepost 6.2). CSS certifies that its projected revenues as a result of this transaction will not result in the creation of Class II or Class I rail carrier.

The transaction was scheduled to be consummated on or after October 9, 2002, the effective date of the exemption (7 days after the exemption was filed).

This transaction is related to a concurrently filed verified notice of exemption in STB Finance Docket No. 34262, *Illinois Indiana Development Company, LLC—Acquisition and Operation Exemption—Chicago SouthShore & South Bend Railroad Co.,* wherein IIDC seeks to acquire and operate the above-described line.[1]

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34263, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Rose-Michele Weinryb, Weiner Brodsky, Sidman Kider, PC, 1300 19th Street, NW., 5th Floor, Washington, DC 20036.

Board decisions and notices are available on our Web site at "*www.stb.dot.gov.*"

Decided: October 24, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–27583 Filed 10–31–02; 8:45 am]

BILLING CODE 4915–00–P

[1] CSS will have a nonexclusive right to operate over the line. IIDC will retain the right over the line as well.

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Additional Designations of Terrorism-Related Blocked Persons

AGENCIES: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control is publishing the name of one additional person whose property and interests in property has been blocked pursuant to Executive Order 13224 of September 23, 2001, pertaining to persons who commit, threaten to commit, or support terrorism.

DATES: The designation by the Secretary of the Treasury of the one additional person identified in this notice whose property and interests in property have been blocked pursuant to Executive Order 13224 is effective as of September 6, 2002.

FOR FURTHER INFORMATION CONTACT: Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, *tel.:* (202) 622–2520.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document is available as an electronic file on The Federal Bulletin Board the day of publication in the **Federal Register.** By modem, dial (202) 512–1387 and type "/GO FAC," or call (202) 512–1530 for disk or paper copies. This file is available for downloading without charge in ASCII and Adobe Acrobat® readable (*.PDF) formats. For Internet access, the address for use with the World Wide Web (Home Page), Telnet, or FTP protocol is: *fedbbs.access.gpo.gov.* This document and additional information concerning the programs of the Office of Foreign Assets Control are available for downloading from the Office's Internet Home Page: *http://www.treas.gov/ofac,* or in fax form through the Office's 24-hour fax-on-demand service: call (202) 622–0077 using a fax machine, fax modem, or (within the United States) a touch-tone telephone.

Background

On September 23, 2001, President Bush issued Executive Order 13224 (the "Order") imposing economic sanctions on persons who commit, threaten to commit, or support certain acts of terrorism. In an annex to the Order, President Bush identified 12 individuals and 15 entities whose assets are blocked pursuant to the Order (66 FR 49079, September 25, 2001). Additional persons have been blocked pursuant to authorities set forth in the Order since that date and notice of such blockings have been published in the **Federal Register.**

Further Designation. On September 6, 2002, the Secretary of the Treasury, in consultation with the Secretary of State and the Attorney General, acting pursuant to authorities set forth in the Order designated one additional person whose property and interests in property are blocked. The name of this additional person is set forth below. Persons, and their known aliases, will be added to appendix A to 31 CFR chapter V, through a separate **Federal Register** document, as "specially designated global terrorists" identified by the initials "[SDGT]". Appendix A lists the names of persons with respect to whom transactions are subject to the various economic sanctions programs administered by the Office of Foreign Assets Control.

The designation by the Secretary of the Treasury pursuant to Executive Order 13224 of this additional person listed below is effective on September 6,

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2002. All property and interests in property of any designated person, including but not limited to all accounts, that are or come within the United States or that are or come within the possession or control of United States persons, including their overseas branches, are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in, and all transactions or dealings by U.S. persons or within the United States in property or interests in property of any designated person are prohibited, unless licensed by the Office of Foreign Assets Control or exempted by statute.

In Section 10 of the Order, the President determined that because of the ability to transfer funds or assets instantaneously, prior notice to persons listed in the Annex to, or determined to be subject to, the Order who might have a constitutional presence in the United States, would render ineffectual the blocking and other measures authorized in the Order. The President further determined that no prior notification of a determination need be provided to any person who might have a constitutional presence in the United States. In furtherance of the objectives of the Order, the Secretary of the Treasury has determined that no prior notice should be afforded to the subjects of the determinations reflected in this notice because to do so would give the subjects the opportunity to evade the measures described in the Order and, consequently, render those measures ineffectual toward addressing the national emergency declared in the Order.

The additional designation follows:

JULAIDAN, Wa'el Hamza (a.k.a. "Abu Al-Hasan al Madani;" a.k.a. JALADIN, Wa'el Hamza; a.k.a. JALADIN, Wa'il Hamza; a.k.a. JALAIDAN, Wa'el Hamza; a.k.a. JALAIDAN, Wa'il Hamza; a.k.a. JULAIDAN, Wa'il Hamza; a.k.a. JULAYDAN, Wa'el Hamza; a.k.a. JULAYDAN, Wa'il Hamza); DOB 22 Jan 1958; POB Al-Madinah, Saudi Arabia; Passport No. A–992535 (Saudi Arabia) (individual) [SDGT]

Dated: September 13, 2002.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: October 10, 2002.

Kenneth Lawson,

Assistant Secretary (Enforcement), Department of the Treasury.

[FR Doc. 02–27813 Filed 10–31–02; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Additional Designations of Terrorism-Related Blocked Persons

AGENCIES: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control is publishing the names of 25 additional persons whose property and interests in property have been blocked pursuant to Executive Order 13224 of September 23, 2001, pertaining to persons who commit, threaten to commit, or support terrorism.

DATES: The designations by the Secretary of the Treasury of additional persons identified in this notice whose property and interests in property have been blocked pursuant to Executive Order 13224 are effective on August 29, 2002.

FOR FURTHER INFORMATION CONTACT: Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: 202/622–2520.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

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Background

On September 23, 2001, President Bush issued Executive Order 13224 (the "Order") imposing economic sanctions on persons who commit, threaten to commit, or support certain acts of terrorism. In an annex to the Order, President Bush identified 12 individuals and 15 entities whose assets are blocked pursuant to the Order (66 FR 49079, September 25, 2001). Additional persons have been blocked pursuant to authorities set forth in the Order since that date and notice of these additional blockings have been published in the **Federal Register**.

Further Additional Designations. On August 29, 2002, the Secretary of the Treasury, in consultation with the Secretary of State and the Attorney General, acting pursuant to authorities set forth in the Order designated 25 additional persons whose property and interests in property are blocked. The names of these additional persons are set forth in the list below. Persons, and their known aliases, will be added to appendix A to 31 CFR chapter V, through a separate **Federal Register** document, as "specially designated global terrorists" identified by the initials "[SDGT]". Appendix A lists the names of persons with respect to whom transactions are subject to the various economic sanctions programs administered by the Office of Foreign Assets Control.

The designations by the Secretary of the Treasury pursuant to Executive Order 13224 of these additional persons listed below are effective on August 29, 2002. All property and interests in property of any designated person, including but not limited to all accounts, that are or come within the United States or that are or come within the possession or control of United States persons, including their overseas branches, are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in, and all transactions or dealings by U.S. persons or within the United States in property or interests in property of any designated person are prohibited, unless licensed by the Office of Foreign Assets Control or exempted by statute.

In Section 10 of the Order, the President determined that because of the ability to transfer funds or assets instantaneously, prior notice to persons listed in the Annex to, or determined to be subject to, the Order who might have a constitutional presence in the United States, would render ineffectual the blocking and other measures authorized in the Order. The President further determined that no prior notification of a determination need be provided to any person who might have a constitutional presence in the United States. In furtherance of the objectives of the Order, the Secretary of the Treasury has determined that no prior notice should be afforded to the subjects of the determinations reflected in this notice because to do so would give the subjects the opportunity to evade the measures described in the Order and, consequently, render those measures ineffectual toward addressing the national emergency declared in the Order.

The list of additional designations follow:

1. Adel Ben Soltane, Via Latisana n. 6, Milan, Italy, DOB: July 14, 1970; POB: Tunis, Tunisia; Italian Fiscal Code: BNSDLA70L14Z352B
2. Nabil Benattia, DOB: May 11, 1966; POB: Tunis, Tunisia
3. Yassine Chekkouri, DOB: October 6, 1966; POB: Safi, Morocco
4. Riadh Jelassi, DOB: December 15, 1970; POB: Tunisia
5. Mehdi Kammoun, Via Masina n.7, Milan, Italy; DOB: April 3, 1968; POB: Tunis, Tunisia; Italian Fiscal Code: KMMMHD68D03Z352N
6. Samir Kishk, DOB: May 14, 1955; POB: Gharbia, Egypt
7. Tarek Ben Habib Maaroufi, DOB: November 23, 1965; POB: Ghardimaou, Tunisia
8. Abdelhalim Remadna, DOB: April 2, 1966; POB: Bistra, Algeria
9. Mansour Thaer, DOB: March 21, 1974; POB: Baghdad, Iraq
10. Lazhar Ben Mohammed Tlili, Via Carlo Porta n. 97, Legnano, Italy; DOB: March 26, 1969; POB: Tunis, Tunisia; Italian Fiscal Code: TLLLHR69C26Z352G
11. Habib Waddani, Via unica Borighero n. 1, San Donato M.se (MI), Italy; DOB: June 10, 1970; POB: Tunis, Tunisia; Italian Fiscal Code: WDDHBB70H10Z352O
12. AKIDA BANK PRIVATE LIMITED, (f.k.a. AKIDA ISLAMIC BANK INTERNATIONAL LIMITED); (f.k.a. IKSIR INTERNATIONAL BANK LIMITED); c/o Arthur D. Hanna & Company; 10 Deveaux Street, Nassau, Bahamas; PO Box N–4877, Nassau, Bahamas
13. AKIDA INVESTMENT CO. LTD., (a.k.a. AKIDA INVESTMENT COMPANY LIMITED); (f.k.a. AKIDA BANK PRIVATE LIMITED); c/o Arthur D. Hanna & Company; 10 Deveaux Street, Nassau, Bahamas; PO Box N–4877, Nassau, Bahamas
14. NASREDDIN GROUP INTERNATIONAL HOLDING LIMITED, (a.k.a. NASREDDIN GROUP INTERNATIONAL HOLDINGS LIMITED); c/o Arthur D. Hanna & Company; 10 Deveaux Street, Nassau, Bahamas; PO Box N–4877, Nassau, Bahamas
15. NASCO NASREDDIN HOLDING A.S., Zemin Kat, 219 Demirhane Caddesi, Zeytinburnu, Istanbul, Turkey
16. NASCOTEX S.A., (a.k.a. INDUSTRIE GENERALE DE FILATURE ET TISSAGE); (a.k.a. INDUSTRIE GENERALE DE TEXTILE); KM 7 Route de Rabat, BP 285, Tangiers, Morocco; KM 7 Route de Rabat, Tangiers, Morocco
17. NASREDDIN FOUNDATION, (a.k.a. NASREDDIN STIFTUNG); c/o Rechta Treuhand-Anstalt, Vaduz, Liechtenstein
18. BA TAQWA FOR COMMERCE AND REAL ESTATE COMPANY LIMITED, Vaduz, Liechtenstein; (formerly c/o Asat Trust reg.)
19. MIGA-MALAYSIAN SWISS, GULF AND AFRICAN CHAMBER, (f.k.a. GULF OFFICE ASSOC. PER LO SVILUPPO COMM. IND. E TURIS. FRA GLI STATI ARABI DEL GOLFO E LA SVIZZERA); Via Maggio 21, 6900 Lugano TI, Switzerland
20. GULF CENTER S.R.L., Corso Sempione 69, 20149 Milan, Italy; Fiscal Code: 07341170152; V.A.T. Number: IT 07341170152
21. NASCOSERVICE S.R.L., Corso Sempione 69, 20149 Milan, Italy; Fiscal Code: 08557650150; V.A.T. Number: IT 08557650150
22. NASCO BUSINESS RESIDENCE CENTER SAS DI NASREDDIN AHMED IDRIS EC, Corso Sempione 69, 20149 Milan, Italy; Fiscal Code: 01406430155; V.A.T. Number: IT 01406430155
23. NASREDDIN COMPANY NASCO SAS DI AHMED IDRIS NASREDDIN EC, Corso Sempione 69, 20149 Milan, Italy; Fiscal Code: 03464040157; V.A.T. Number: IT 03464040157
24. NADA INTERNATIONAL ANSTALT, Vaduz, Liechtenstein; (formerly c/o Asat Trust reg.)
25. NASREDDIN INTERNATIONAL GROUP LIMITED HOLDING, (a.k.a. NASREDDIN INTERNATIONAL GROUP LTD. HOLDING); c/o Rechta Treuhand-Anstalt, Vaduz, Liechtenstein; Corso Sempione 69, 20149, Milan, Italy

Dated: September 9, 2002.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: October 10, 2002.

Kenneth Lawson,

Assistant Secretary (Enforcement), Department of the Treasury.

[FR Doc. 02–27814 Filed 10–31–02; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Additional Designations of Terrorism-Related Blocked Persons

AGENCIES: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control is publishing the names of four additional persons whose property and interests in property have been blocked pursuant to Executive Order 13224 of September 23, 2001, pertaining to persons who commit, threaten to commit, or support terrorism.

DATES: The designations by the Secretary of the Treasury of additional persons identified in this notice whose property and interests in property have been blocked pursuant to Executive Order 13224 are effective on September 30, 2002.

FOR FURTHER INFORMATION CONTACT: Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: 202/622–2520.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

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Background

On September 23, 2001, President Bush issued Executive Order 13224 (the "Order") imposing economic sanctions on persons who commit, threaten to commit, or support certain acts of terrorism. In an annex to the Order, President Bush identified 12 individuals and 15 entities whose assets are blocked pursuant to the Order (66 FR 49079, September 25, 2001). Additional persons have been blocked pursuant to authorities set forth in the Order since that date and notice of these additional blockings have been published in the **Federal Register**.

Additional Designations. On September 30, 2002, the Secretary of the

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Treasury, in consultation with the Secretary of State and the Attorney General, acting pursuant to authorities set forth in the Order designated four additional persons whose property and interests in property are blocked. The names of these additional persons are set forth in the list below. Persons, and their known aliases, will be added to appendix A to 31 CFR chapter V, through a separate Federal Register document, as "specially designated global terrorists" identified by the initials "[SDGT]". Appendix A lists the names of persons with respect to whom transactions are subject to the various economic sanctions programs administered by the Office of Foreign Assets Control.

The designations by the Secretary of the Treasury pursuant to Executive Order 13224 of these additional persons listed below are effective on September 30, 2002. All property and interests in property of any designated person, including but not limited to all accounts, that are or come within the United States or that are or come within the possession or control of United States persons, including their overseas branches, are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in, and all transactions or dealings by U.S. persons or within the United States in property or interests in property of any designated person are prohibited, unless licensed by the Office of Foreign Assets Control or exempted by statute.

In Section 10 of the Order, the President determined that because of the ability to transfer funds or assets instantaneously, prior notice to persons listed in the Annex to, or determined to be subject to, the Order who might have a constitutional presence in the United States, would render ineffectual the blocking and other measures authorized in the Order. The President further determined that no prior notification of a determination need be provided to any person who might have a constitutional presence in the United States. In furtherance of the objectives of the Order, the Secretary of the Treasury has determined that no prior notice should be afforded to the subjects of the determinations reflected in this notice because to do so would give the subjects the opportunity to evade the measures described in the Order and, consequently, render those measures ineffectual toward addressing the national emergency declared in the Order.

The list of additional designations follow:

1. BAHAJI, Said, Bunatwiete 23, 21073 Hamburg, Germany; DOB 15 Jul 1975; POB Haselunne, Lower Saxony, Germany (individual).
2. BINALSHIBH, Ramzi Mohammed Abdullah (a.k.a. BIN AL SHIBH, Ramzi; a.k.a. BINALSHEIDAH, Ramzi Mohamed Abdullah; a.k.a. OMAR, Ramzi Mohammed Abdellah), Schleemer Ring 2, 22117 Hamburg, Germany; DOB 1 May 1972; POB Hadramawt, Yemen (individual).
3. EL MOTASSADEQ, Mounir, Goschenstasse 13, 21073 Hamburg, Germany; DOB 3 Apr 1974; POB Marrakesh, Morocco (individual).
4. ESSABAR, Zakarya (a.k.a. ESSABAR, Zakariya), Dortmunder Strasse 38, 22419 Hamburg; DOB 3 Apr 1977; POB Essaouria, Morocco (individual).

Dated: October 9, 2002.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: October 15, 2002.

Kenneth Lawson,

Assistant Secretary (Enforcement), Department of the Treasury.

[FR Doc. 02–27815 Filed 10–31–02; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0121]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to determine the insured's eligibility for continued disability insurance benefits.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before December 31, 2002.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: *irmnkess@vba.va.gov*. Please refer to "OMB Control No. 2900–0121" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Obtaining Supplemental Information from Hospital or Doctor, VA FL 29–551b.

OMB Control Number: 2900–0121.

Type of Review: Extension of a currently approved collection.

Abstract: This form letter is used to request medical evidence from an insured's attending physician or hospital in connection with continuing disability insurance benefits.

Affected Public: Individuals or households.

Estimated Annual Burden: 61 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 244.

Dated: October 22, 2002.

By direction of the Secretary.

Ernesto Castro,

Director, Records Management Service.

[FR Doc. 02–27777 Filed 10–31–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0132]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to determine a veteran's eligibility for specially adapted housing or for a special home adaptation grant.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before December 31, 2002.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: *irmnkess@vba.va.gov*. Please refer to "OMB Control No. 2900–0132" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Veteran's Application in Acquiring Specially Adapted Housing or Special Home Adaptation Grant, VA Form 26–4555.

OMB Control Number: 2900–0132.

Type of Review: Extension of a currently approved collection.

Abstract: The form is used to gather the necessary information to determine the veteran's eligibility for specially adapted housing or the special home adaptation grant.

Affected Public: Individuals or households.

Estimated Annual Burden: 250 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 1,500.

Dated: October 22, 2002.

By direction of the Secretary.

Ernesto Castro,

Director, Records Management Service.

[FR Doc. 02–27778 Filed 10–31–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0004]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before December 2, 2002.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov*. Please refer to "OMB Control No. 2900–0004."

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0004" in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Application for Dependency and Indemnity Compensation, Death Pension and Accrued Benefits by a Surviving Spouse or Child (Including Death Compensation if Applicable), VA Form 21–534.

OMB Control Number: 2900–0004.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 21–534 is used to gather the necessary information to determine the spouse's and/or children's eligibility, dependency and income, as applicable, for death benefit sought.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on August 23, 2002, at page 54697.

Affected Public: Individuals or households.

Estimated Annual Burden: 79,125 hours.

Estimated Average Burden Per Respondent: 1 hour and 15 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 63,300.

Dated: October 22, 2002.

By direction of the Secretary.

Ernesto Castro,

Director, Records Management Service.

[FR Doc. 02–27779 Filed 10–31–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0016]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995

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(44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before December 2, 2002.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov*. Please refer to "OMB Control No. 2900–0016."

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0016" in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Claim for Disability Insurance Benefits, Government Life Insurance, VA Form 29–357.

OMB Control Number: 2900–0016.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 29–357 is used by policyholder to claim disability insurance on National Service Life Insurance and the United States Government Life Insurance policies. The information collected is used to determine the insured person's eligibility for disability insurance benefits.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on August 23, 2002, at pages 54696–54697.

Affected Public: Individuals or households.

Estimated Annual Burden: 14,175 hours.

Estimated Average Burden Per Respondent: 1 hour and 45 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 8,100.

Dated: October 22, 2002.

By direction of the Secretary.

Ernesto Castro,

Director, Records Management Service.

[FR Doc. 02–27780 Filed 10–31–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; System of Records

AGENCY: Department of Veterans Affairs (VA).

ACTION: Notice of establishment of new system of records.

SUMMARY: The Privacy Act of 1974 (5 U.S.C. 552(e) (4)) requires that all agencies publish in the **Federal Register** a notice of the existence and character of their systems of records. Notice is hereby given that the Department of Veterans Affairs (VA) is establishing a new system of records entitled "Employee Incentive Scholarship Program—VA" (110VA10).

DATES: Comments on the establishment of this system of records must be received no later than December 2, 2002. If no public comment is received, the new system will become effective December 2, 2002.

ADDRESSES: You may mail or hand-deliver written comments concerning the proposed new system of records to the Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; or fax comments to (202) 273–9289; or email comments to *OGCRegulations@mail.va.gov*. All relevant material received before December 2, 2002 will be considered. Comments will be available for public inspection at the above address in the Office of Regulations Management, Room 1158, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Veterans Health Administration (VHA) Privacy Act Officer, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, telephone (727) 320–1839.

SUPPLEMENTARY INFORMATION:

I. Description of Proposed System of Records

The Employee Incentive Scholarship Program (EISP) allows VA to award scholarships to employees pursuing degrees or training leading to appointment or retention in the following health professions: physician, dentist, podiatrist, pharmacist, licensed practical/vocational nurse, expanded-function dental auxiliary, registered nurse, certified registered nurse anesthetist, physician assistant, optometrist, physical therapist, occupational therapist, certified respiratory therapy technician, and registered respiratory therapist. The purpose of the program is to help VA meet its needs for qualified healthcare staff.

The Employee Incentive Scholarship Program—VA (110VA10) system of records contains personal identification information related to the application material, to award processes, to employment status, and to obligated service such as name, address, Social Security number, employing facility name, job title, grade, education level, degree sought, award amounts, obligated service incurred, and name and address of the educational institution. It also contains individual information about applicants who have been denied scholarships, program participants who have been terminated from VA employment, program participants who have breached their program contracts and any amount of indebtedness arising from a scholarship and owed back to VA. Additionally, it may contain information about why an applicant declined to accept a scholarship if the applicant furnished such information. Since applicants typically are denied scholarships because they do not meet the eligibility requirements to participate in the program, the specific nature of an applicant's ineligibility would be another element of information contained in the system of records. Scholarship recipients may request that a payment or service obligation be waived or suspended if circumstances beyond their control make it impossible to comply with the terms and conditions of the educational assistance program. The system of records would include information about the specific nature of the request and the related decision.

Any information in this system may be used by local VA supervisory officials and program coordinators to ensure that individual data in the system of records is accurate and up to date and that award recipients are in compliance with the terms of the scholarship program contract. Data about individual award recipients may change (e.g., adjustments to academic course load) and could impact certain terms of their scholarships such as the amounts of the awards and/or the beginning and ending dates of their periods of obligated service. Data changes may also impact assessments of the effectiveness of the scholarship program. Accordingly, local supervisory officials and program coordinators must periodically review individual data in the system of records to ensure its accuracy.

The information in this system of records is maintained in electronic and hard copy format and is periodically updated through recurring reports, provided by local VA facilities, about the progress of their program participants. This information is necessary to effectively administer the scholarship program. It is used to determine and document individual applicants' initial eligibility for scholarship awards, calculate the service commitments for scholarship recipients, ensure program financial accountability which means that award amounts are consistent with applicable law, regulations and policy, monitor individual applicant educational progress, monitor the employment status of scholarship recipients during their periods of obligated service, and evaluate and report program results and effectiveness. The information would be used to determine the financial liability of individuals who breach their EISP contracts.

II. Proposed Routine Use Disclosures of Data in the System

We are proposing to establish the following routine use disclosures of information which will be maintained in the system:

- Any information in this system that is necessary to verify accuracy and completeness of the application information may be disclosed to educational institutions and other relevant organizations or individuals.

Employees must meet certain requirements to be eligible to participate in the scholarship program. For example, the applicants must have been formally accepted to or enrolled in authorized education or training programs as of the date that they submit their official applications for scholarship awards. Some schools may offer students who do not meet all of the requirements for formal (unconditional) acceptances into their academic programs (typically, Grade Point Average (GPA) or standardized test scores that are below established cutoff points), conditional acceptances. These students may be granted formal or unconditional acceptances once they meet certain requirements such as completing specified coursework and earning a minimum GPA. Students who have been conditionally or informally accepted into an academic program are not eligible to participate in the EISP. VA may need to disclose applicant information in order to verify that candidates for scholarship awards meet applicable program requirements.

- Any information in this system may be disclosed to a Federal agency in order to determine if an applicant has an obligation for service under another Federal program, thus rendering the applicant ineligible for a VA Employee Incentive Scholarship Program Award.

Scholarship program participants are required to serve a period of obligated service after completing their VA-sponsored courses of education or training. Employees are ineligible to receive scholarships if their VA periods of obligated service conflict with obligations to perform service under any other Federal educational program(s). VA may need to disclose applicant information to other Federal agencies to verify that employees do not have obligations to perform service that would render them ineligible to participate in the scholarship program.

- Any information in the system may be used to evaluate and report program results and effectiveness to appropriate officials including members of Congress on a routine and ad hoc basis.

The purpose of the scholarship program is to assist in meeting the staffing needs of VHA for health professional occupations for which recruitment or retention of qualified personnel is difficult. Top-level VA officials and Congress must have access to information from the system to assess how effectively the program accomplishes its purpose and to support decisions to continue, to modify or curtail its use.

- The record of an individual who is covered by this system may be disclosed to a member of Congress or staff person acting for the member when the member or staff person requests the record on behalf of and at the request of that individual.

Individuals sometimes request the help of a member of Congress in resolving some issues relating to a matter before VA. The member of Congress then writes VA, and VA must be able to give sufficient information to be responsive to the inquiry.

- Disclosure of information may be made to the National Archives and Record Administration (NARA) in records management inspections conducted under authority of Title 44 United States Code.

NARA is responsible for archiving old records no longer actively used but which may be appropriate for preservation; they are responsible in general for the physical maintenance of the Federal government's records. VA must be able to turn records over to this agency in order to determine the proper disposition of such records.

- Disclosure of information to the Federal Labor Relations Authority (FLRA) (including its General Counsel) when requested in connection with the investigation and resolution of allegations of unfair labor practices, in connection with the resolution of exceptions to arbitrator awards when a question of material fact is raised, in connection with matters before the Federal Service Impasses Panel, and to investigate representation petitions and conduct or supervise representation elections.

The release of information to FLRA from this Privacy Act system of records is necessary to comply with the statutory mandate under which FLRA operates.

- Disclosure may be made to officials of labor organizations recognized under 5 U.S.C. chapter 71 when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions.

- Disclosure may be made to the VA-appointed representative of an employee, including all notices, determinations, decisions, or other written communications issued to the employee in connection with an examination ordered by VA under medical evaluation (formerly fitness-for-duty) examination procedures or Department-filed disability retirement procedures.

- Disclosure may be made to officials of the Merit Systems Protection Board, including the Office of the Special Counsel, when requested in connection with appeals, special studies of the civil service and other merit systems, review of rules and regulations, investigation of alleged or possible prohibited personnel practices, and such other functions, promulgated in 5 U.S.C. 1205 and 1206, or as may be authorized by law.

- Disclosure may be made to the Equal Employment Opportunity Commission when requested in connection with investigations of alleged or possible discrimination practices, examination of Federal affirmative employment programs, compliance with the Uniform Guidelines of Employee Selection Procedures, or other functions vested in the Commission by the President's Reorganization Plan No. 1 of 1978.

III. Compatibility of the Proposed Routine Uses

The Privacy Act permits VA to disclose information about individuals without their consent for a routine use when the information will be used for

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a purpose that is compatible with the purpose for which we collected the information. In all of the routine use disclosures described above, either the recipient of the information will use the information in connection with a matter relating to one of VA's programs, will use the information to provide a benefit to VA, or disclosure is required by law.

The notice of intent to publish and an advance copy of the system notice have been sent to the appropriate Congressional committees and to the Director of the Office of Management and Budget (OMB) as required by 5 U.S.C. 552a(r) (Privacy Act) and guidelines issued by OMB (65 FR 77677), December 12, 2000.

Approved: October 21, 2002.

Anthony J. Principi,

Secretary of Veterans Affairs.

110VA10

SYSTEM NAME:

Employee Incentive Scholarship Program (EISP)–VA.

SYSTEM LOCATION:

Active records will be maintained at the Health Care Staff Development and Retention Office (HCSDRO/10A2D), Veterans Health Administration (VHA), Department of Veterans Affairs (VA), 1555 Poydras Street, Suite 1971, New Orleans, Louisiana 70112; the Austin Automation Center (AAC), Department of Veterans Affairs, 1615 East Woodward Street, Austin, Texas 78772; and the VA healthcare facilities and VISN offices where scholarship recipients are employed. Address locations for VA healthcare facilities are listed in VA Appendix 1 of the Biennial Publication of Privacy Act Issuances. Complete records will be maintained only at the HCSDRO address.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

VA employees who apply for and are denied or granted educational assistance awards under the provisions of the VA Employee Incentive Scholarship Program (EISP) in a field leading to appointment or retention in a position listed in 38 U.S.C., Section 7401.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records (or information contained in records) in this system may include personal identification information related to the application material, to award processes, to employment, to obligated service, and to requests for waivers or suspensions of obligated service or financial indebtedness to VA such as (1) name, (2) employing facility number, (3) telephone number(s), (4) Social Security number, (5) award amount, (6) obligated service incurred, and (7) name and address of the educational institution; or any amount of indebtedness (accounts receivable) arising from the scholarship and owed to VA. The application for an EISP award includes the applicant's full name, employing facility number, home and work telephone numbers, Social Security number, job title, current education level, degree sought, description of the academic program covered by the scholarship, the starting and completion dates of the employee's academic program, the name and address of the academic institution, the number of credits in the student's academic program plan and the cost of the education covered by the academic program plan. Records may include memoranda submitted by the employees, calculations for the service obligations, copies of letters and/or memoranda from employees making the requests and in correspondence to employees and appropriate local program officials delineating the decisions on such requests.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 38, U.S.C., Sections 501, 503, 7451, 7452, and 7431–7440.

PURPOSE(S):

The records and information may be used for determining and documenting individual applicant eligibility for scholarship awards, calculating the service commitments for scholarship recipients, ensuring program financial accountability, monitoring individual applicant educational progress, monitoring the employment status of scholarship recipients during their periods of obligated service, terminating the employee from the program, and evaluating and reporting program results and effectiveness. The information would be used to determine the financial liability of individuals who breach their EISP contracts.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure of any information in this system that is necessary to verify authenticity and completeness of the application may be made to educational institutions and other relevant organizations or individuals.

2. Disclosure of any information in this system may be made to a Federal agency in order to determine if an applicant has an obligation for service under another Federal program, thus rendering the applicant ineligible for a VA Employee Incentive Scholarship Program Award.

3. Disclosure of any information in this system may be made to the local supervisory officials and program coordinators to ensure that individual data in the system of records is up to date and that award recipients are in compliance with the terms of the scholarship program contract.

4. Any information in the system may be used to evaluate and report program results and effectiveness to appropriate officials including members of Congress on a routine and ad hoc basis.

5. Disclosure of information in this system may be made to a member of Congress or staff person acting for the member when the member or staff person requests the records on behalf of and at the request of that individual.

6. Disclosure of information may be made to the National Archives and Record Administration (NARA) in records management inspections conducted under authority of Title 44, United States Code.

7. Disclosure of information to the FLRA (including its General Counsel) when requested in connection with the investigation and resolution of allegations of unfair labor practices, in connection with the resolution of exceptions to arbitrator awards when a question of material fact is raised, in connection with matters before the Federal Service Impasses Panel, and to investigate representation petitions and conduct or supervise representation elections.

8. Disclosure may be made to officials of labor organizations recognized under 5 U.S.C. chapter 71 when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions.

9. Disclosure may be made to officials of the Merit Systems Protection Board, including the Office of the Special Counsel, when requested in connection with appeals, special studies of the civil service and other merit systems, review of rules and regulations, investigation of alleged or possible prohibited personnel practices, and such other functions, promulgated in 5 U.S.C. 1205 and 1206, or as may be authorized by law.

10. Disclosure may be made to the Equal Employment Opportunity Commission when requested in connection with investigations of alleged or possible discrimination practices, examination of Federal affirmative employment programs, compliance with the Uniform Guidelines of Employee Selection Procedures, or other functions vested in the Commission by the President's Reorganization Plan No. 1 of 1978.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Pursuant to 5 U.S.C. 552a(b)(12), VA may disclose records from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on paper, electronic media and computer printouts.

RETRIEVABILITY:

Records are retrieved by use of the award number or an equivalent participant account number assigned by HCSDRO, social security number and the name of the individual.

SAFEGUARDS:

Access to the basic file in HCSDRO is restricted to authorized VA employees and vendors. Access to the office spaces where electronic media is maintained within HCSDRO is further restricted to specifically authorized employees and is protected by contracted building security services. Records (typically computer printouts) at HCSDRO will be kept in locked files and made available only to authorized personnel on a need-to-know basis. During non-working hours the file is locked and the building is protected by contracted building security services. Records stored on electronic media are maintained on a VA-approved and managed, password-protected, secure local area network (LAN) located within HCSDRO office spaces and safeguarded as described above. Records stored on electronic media at Veterans Integrated Service Network (VISN) Offices, VA healthcare facilities, and the AAC in Austin, Texas are provided equivalent safeguards subject to local policies mandating protection of information subject to federal safeguards.

RETENTION AND DISPOSAL:

Records will be maintained and disposed of in accordance with records disposition authority approved by the Archivist of the United States.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Health Care Staff Development and Retention Office (10A2D), Veterans Health Administration, Department of Veterans Affairs, 1555 Poydras Street, Suite 1971, New Orleans, Louisiana 70112.

NOTIFICATION PROCEDURE:

Any individual who wishes to determine whether a record is being maintained in this system under his or her name or other personal identifier, or wants to determine the contents of such records, should submit a written request or apply in person to the Director, Health Care Staff Development and Retention Office, Veterans Health Administration, Department of Veterans Affairs, 1555 Poydras Street, Suite 1971, New Orleans, Louisiana 70112.

RECORD ACCESS PROCEDURES:

Individuals seeking information regarding access to and contesting of VA records in this system may write, call or visit the Director, Health Care Staff Development and Retention Office (10A2D), Veterans Health Administration, Department of Veterans Affairs, 1555 Poydras Street, Suite 1971, New Orleans, Louisiana 70112. The telephone number is (504) 589–5267.

CONTESTING RECORD PROCEDURES:

(*See Records Access Procedures* above.)

RECORD SOURCE CATEGORIES:

Information contained in the records is obtained from the individual, references given in application material, educational institutions, VA medical facilities, the VA AAC, other Federal agencies, State agencies and consumer reporting agencies.

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Federal Register

Friday,
November 1, 2002

Part II

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Parts 405 and 419

Medicare Program; Changes to the Hospital Outpatient Prospective Payment System and Calendar Year 2003 Payment Rates; and Changes to Payment Suspension for Unfiled Cost Reports; Final Rule

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 405 and 419

[CMS–1206–FC and CMS–1179–F]

RIN 0938–AL19 and 0938–AK59

Medicare Program; Changes to the Hospital Outpatient Prospective Payment System and Calendar Year 2003 Payment Rates; and Changes to Payment Suspension for Unfiled Cost Reports

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule with comment period.

SUMMARY: This final rule with comment period revises the Medicare hospital outpatient prospective payment system to implement applicable statutory requirements and changes arising from our continuing experience with this system. In addition, it describes changes to the amounts and factors used to determine the payment rates for Medicare hospital outpatient services paid under the prospective payment system. These changes are applicable to services furnished on or after January 1, 2003. This rule also allows the Secretary to suspend Medicare payments "in whole or in part" if a provider fails to file a timely and acceptable cost report.

In addition, this rule responds to public comments received on the November 2, 2001 interim final rule with comment period (66 FR 55850) that set forth the criteria the Secretary will use to establish new categories of medical devices eligible for transitional pass-through payment under the Medicare's hospital outpatient prospective payment system. Finally, this rule responds to public comments received on the August 9, 2002 proposed rule for revisions to the hospital outpatient prospective payment system and payment rates (67 FR 52092). CMS finds good cause to waive proposed rulemaking for the assignment of new codes to Ambulatory Payment Classifications and for the payment of influenza and pneumococcal vaccines under reasonable cost; justification for the waiver will follow in a subsequent **Federal Register** notice.

DATES: *Effective date:* This final rule is effective January 1, 2003.

Comment date: We will consider comments on the ambulatory payment classification assignments of Healthcare Common Procedure Coding System codes identified in Addendum B with condition code NI, and on § 419.23(d)(3), if we receive them at the appropriate address, as provided below, no later than 5 pm on December 31, 2002.

FOR FURTHER INFORMATION CONTACT: Anita Heygster, (410) 786–0378—outpatient prospective payment issues; Lana Price, (410) 786–4533—partial hospitalization and end-stage renal disease issues; Gerald Walters, (410) 786–2070—payment suspension issues.

SUPPLEMENTARY INFORMATION:

Availability of Copies and Electronic Access

Copies: To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954. Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 512–1800 (or toll-free at 1–888–293–6498) or by faxing to (202) 512–2250. The cost for each copy is $10. As an alternative, you can view and photocopy the **Federal Register** document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**.

This **Federal Register** document is also available from the **Federal Register** online database through *GPO Access*, a service of the U.S. Government Printing Office. The Web site address is: *http://www.access.gpo.gov/nara/index.html*. To assist readers in referencing sections contained in this document, we are providing the following table of contents.

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Alphabetical List of Acronyms Appearing in the Final Rule

ACEP—American College of Emergency Physicians
AMA—American Medical Association
APC—Ambulatory payment classification
AWP—Average wholesale price
BBA—Balanced Budget Act of 1997
BIPA—Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000
BBRA—Balanced Budget Refinement Act of 1999
CCR—Cost center specific cost-to-charge ratio
CMHC—Community mental health center
CMS—Centers for Medicare & Medicaid Services (Formerly known as the Health Care Financing Administration)
CPT (Physician's) Current Procedural Terminology, Fourth Edition, 2002, copyrighted by the American Medical Association
CSW Clinical social worker
CY Calendar year
DRG Diagnosis-related group
DSH Disproportionate Share Hospital
EACH Essential Access Community Hospital
E/M Evaluation and management
ERCP Endoscopic retrograde cholangiopancreatography
ESRD End-stage renal disease
FACA Federal Advisory Committee Act
FY Federal fiscal year
HCPCS Healthcare Common Procedure Coding System
HIPAA Health Insurance Portability and Accountability Act of 1996
ICU Intensive care unit
ICD–9–CM International Classification of Diseases, Ninth Edition, Clinical Modification
IME Indirect Medical Education
IPPS (Hospital) inpatient prospective payment system
LTC Long Term Care
MedPAC Medicare Payment Advisory Commission
MDH Medicare Dependent Hospital
MSA Metropolitan statistical area
NECMA New England County Metropolitan Area
OCE Outpatient code editor
OMB Office of Management and Budget
OPD (Hospital) outpatient department
OPPS (Hospital) outpatient prospective payment system
OT Occupational therapist
PHP Partial hospitalization program
PPS Prospective payment system
PPV Pneumococcal pneumonia (virus)
PRA Paperwork Reduction Act
RFA Regulatory Flexibility Act
RRC Rural Referral Center
RVUs Relative value units
SCH Sole Community Hospital
TEFRA Tax Equity and Fiscal Responsibility Act
USPDI United States Pharmacopoeia Drug Information

I. Background

A. Authority for the Outpatient Prospective Payment System (OPPS)

When the Medicare statute was originally enacted, Medicare payment for hospital outpatient services was based on hospital-specific costs. In an effort to ensure that Medicare and its beneficiaries pay appropriately for services and to encourage more efficient delivery of care, the Congress mandated replacement of the cost-based payment methodology with a prospective payment system (PPS). The Balanced Budget Act of 1997 (BBA) (Pub. L. 105–33), enacted on August 5, 1997, added section 1833(t) to the Social Security Act (the Act) authorizing implementation of a PPS for hospital outpatient services. The Balanced Budget Refinement Act of 1999 (BBRA) (Pub. L. 106–113), enacted on November 29, 1999, made major changes that affected the hospital outpatient PPS (OPPS). The Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA) (Pub. L. 106–554), enacted on December 21, 2000, made further changes in the OPPS. The OPPS was first implemented for services furnished on or after August 1, 2000.

B. Summary of Rulemaking for the Outpatient Prospective Payment System

- On September 8, 1998, we published a proposed rule (63 FR 47552) to establish in regulations a PPS for hospital outpatient services, to eliminate the formula-driven overpayment for certain hospital outpatient services, and to extend reductions in payment for costs of hospital outpatient services. On June 30, 1999, we published a correction notice (64 FR 35258) to correct a number of technical and typographic errors in the September 1998 proposed rule including the proposed amounts and factors used to determine the payment rates.
- On April 7, 2000, we published a final rule with comment period (65 FR 18434) that addressed the provisions of the PPS for hospital outpatient services scheduled to be effective for services furnished on or after July 1, 2000. Under this system, Medicare payment for hospital outpatient services included in the PPS is made at a predetermined, specific rate. These outpatient services are classified according to a list of ambulatory payment classifications (APCs). The April 7, 2000 final rule with comment period also established requirements for provider departments and provider-based entities and prohibited Medicare payment for nonphysician services furnished to a hospital outpatient by a provider or supplier other than a hospital unless the services are furnished under arrangement. In addition, this rule extended reductions in payment for costs of hospital outpatient services as required by the BBA and amended by the BBRA. Medicare regulations governing the hospital OPPS are set forth at 42 CFR part 419.

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• On June 30, 2000, we published a notice (65 FR 40535) announcing a delay in implementation of the OPPS from July 1, 2000 to August 1, 2000. We implemented the OPPS on August 1, 2000.

• On August 3, 2000, we published an interim final rule with comment period (65 FR 47670) that modified criteria that we use to determine which medical devices are eligible for transitional pass-through payments. The August 3, 2000 rule also corrected and clarified certain provider-based provisions included in the April 7, 2000 rule.

• On November 13, 2000, we published an interim final rule with comment period (65 FR 67798). This rule provided for the annual update to the amounts and factors for OPPS payment rates effective for services furnished on or after January 1, 2001. We implemented the 2001 OPPS on January 1, 2001. We also responded to public comments on those portions of the April 7, 2000 final rule that implemented related provisions of the BBRA and public comments on the August 3, 2000 rule.

• On August 24, 2001, we published a proposed rule (66 FR 44672) that would revise the OPPS to implement applicable statutory requirements, including relevant provisions of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2002 (BIPA) and changes arising from our continuing experience with this system. It also described proposed changes to the amounts and factors used to determine the payment rates for Medicare hospital outpatient services paid under the PPS. The changes applied to services furnished on or after January 1, 2002.

• On November 2, 2001, we published a final rule (66 FR 55857) that announced the Medicare OPPS conversion factor for calendar year 2002. In addition, it described the Secretary's estimate of the total amount of the transitional pass-through payments for CY 2002 and the implementation of a uniform reduction in each of the pass-through payments for that year.

• On November 2, 2001, we also published an interim final rule with comment period (66 FR 55850) that set forth the criteria the Secretary will use to establish new categories of medical devices eligible for transitional pass-through payments under Medicare's OPPS.

• On November 30, 2001, we published a final rule (66 FR 59856) that revised the Medicare OPPS to implement applicable statutory requirements, including relevant provisions of BIPA, and changes resulting from continuing experience with this system. It addition, it described the CY 2002 payment rates for Medicare hospital outpatient services paid under the PPS. This final rule also announced a uniform reduction of 68.9 percent to be applied to each of the transitional pass-through payments for certain categories of medical devices and drugs and biologicals.

• On December 31, 2001, we published a final rule (66 FR 67494) that delayed, until no later than April 1, 2002, the effective date of CY 2002 payment rates and the uniform reduction of transitional pass-through payments that were announced in the November 30, 2001 final rule. In addition, this final rule indefinitely delayed certain related regulatory provisions.

• On March 1, 2002, we published a final rule (67 FR 9556) that corrected technical errors that affected the amounts and factors used to determine the payment rates for services paid under the Medicare OPPS and corrected the uniform reduction to be applied to transitional pass-through payments for CY 2002 as published in the November 30, 2001 final rule. These corrections and the regulatory provisions that had been delayed became effective on April 1, 2002.

• On August 9, 2002, we published a proposed rule (67 FR 52092) that would revise the OPPS to implement applicable statutory requirements and changes arising from our continuing experience with this system. The changes would be applicable to services furnished on or afterJanuary 1, 2003. This rule also proposed to allow the Secretary to suspend Medicare payments "in whole or in part" if a provider fails to file a timely and acceptable cost report.

C. Authority for Payment Suspensions for Unfiled Cost Reports

Authority for the provision regarding payment suspensions for unfiled cost reports is contained within the authority for subpart C of 42 CFR part 405, that is, sections 1102, 1815, 1833, 1842, 1866, 1870, 1871, 1879, and 1892 of the Social Security Act (42 U.S.C. 1302, 1395g, 1395l, 1395u, 1395cc, 1395gg, 1395hh, 1395pp, and 1395ccc) and 31 U.S.C. 3711.

D. Summary of Changes in the August 9, 2002 Proposed Rule

1. Changes Relating to the OPPS

On August 9, 2002, we published a proposed rule (67 FR 52092) that set forth proposed changes to the Medicare hospital OPPS and CY 2003 payment rates including changes used to determine these payment rates. The following is a summary of the major changes that we proposed and the issues we addressed in the August 9, 2002 proposed rule.

a. *Changes Required By Statute*

We proposed the following changes to implement statutory requirements:

• Add APCs, delete APCs, and modify the composition of some existing APCs.

• Recalibrate the relative payment weights of the APCs.

• Update the conversion factor and the wage index.

• Revise the APC payment amounts to reflect the APC reclassifications, the recalibration of payment weights, and the other required updates and adjustments.

• Cease transitional pass-through payments for drugs and biologicals (including blood and blood products) and devices (including brachytherapy), that will, on January 1, 2003, have been paid under transitional pass-through methodology for at least 2 years.

b. *Additional Changes to OPPS*

We proposed the following additional changes to the OPPS and Payment Suspension Provisions:

• Creation of new evaluation and management service codes for outpatient clinic and emergency department encounters for implementation no earlier than January 1, 2004.

• Changes to the list of services that we do not pay in outpatient departments because we define them as inpatient only procedures.

• Changes to our policy of nonpayment for procedures on the inpatient only list in special cases involving death or transfer before inpatient admission.

• Changes to our policy governing observation in cases of direct admission to observation.

• Changes to status indicators for Healthcare Common Procedure Coding System (HCPCS) codes.

• Changes to our policies governing dialysis for end-stage renal disease (ESRD) patients and regarding partial hospitalization.

C. Changes to the Regulations Text

A. We proposed to make the following changes to our regulations:

Amend § 419.66(c)(1) to specify that we must establish a new category for a medical device if it is not described by any category previously in effect as well as an existing category.

2. Changes Relating to Payment Suspension for Unfiled Cost Reports

We proposed to revise § 405.371(c) to specify that we may suspend Medicare payments "in whole or in part" if a provider has failed to timely file an acceptable cost report. This provision is consistent with the existing provisions in § 405.371(a) governing the suspension of Medicare payments "in whole or in part" under certain conditions. We believe the Medicare program would benefit because immediate complete payment suspension can be disruptive to providers and may negatively affect the care of Medicare patients.

E. Summary of the November 2, 2001 Interim Final Rule with Comment Period

On November 2, 2001, we published an interim final rule with comment period in the **Federal Register** (66 FR 55850) that set forth the criteria for establishing new categories of medical devices eligible for transitional pass-through payments under Medicare's hospital OPPS as required by section 1833(t)(6)(B)(ii) of the Act, as amended by BIPA.

In the April 7, 2000 final rule with comment period (65 FR 18480), we defined new or innovative devices using eight criteria, three of which were revised in our August 3, 2000 interim final rule with comment period (65 FR 47673–74). These criteria remained applicable when defining a new category for devices, (that is, devices to be included in a category must meet all previously established applicable criteria for a device eligible for transitional pass-through payments) but we revised the definition of an eligible device to conform the requirements of amended section 1833(t)(6)(B)(ii) of the Act.

We also clarified our criterion that states that a device must be approved or cleared by the Food and Drug Administration (FDA).

In establishing the criteria for establishing additional categories, the Act mandates that new categories be established for devices that were not being paid for as an outpatient hospital service as of December 31, 1996 and for which no categories in effect (or previously in effect) are appropriate, in such a way that no device is described by more than one category and the average cost of devices to be included in the category is not insignificant in relation to the APC payment amount for the associated service. Based on these requirements, we used the following criteria to establish a category of devices:

• *Substantial clinical improvement.* The category describes devices that demonstrate a substantial improvement in medical benefits for Medicare beneficiaries compared to the benefits obtained by devices in previously established categories or other available treatments, as described in regulations at new § 419.66(c)(1).

• *Cost.* We determine that the estimated cost to hospitals of the devices in a new category (including any candidate devices and the other devices that we believe will be included in the category) is "not insignificant" relative to the payment rate for the applicable procedures.

We received five timely items of correspondence on the November 2, 2001 interim final rule with comment period. Summaries of the public comments and our responses to those comments are set forth below under the appropriate section heading of this final rule with comment period.

F. Public Comments and Responses to the August 9, 2002 Proposed Rule

We received approximately 1,000 timely items of correspondence containing multiple comments on the August 9, 2002 proposed rule. Of that total, we received eight comments relating to the payment suspension provision described in section I.D.2. Summaries of the public comments received on other provisions and our responses to those comments are provided below in section I.F.2 of this preamble.

1. OPPS

We received comments from various sources including but not limited to health care facilities, physicians, drug and device manufacturers, and beneficiaries. Hospital associations and the Medicare Payment Advisory Commission (MedPAC) generally supported our proposed approach to revising the relative weights and incorporating the drugs and devices into payment for APCs. Pharmaceutial and medical device manufacturers and some individual hospitals that furnish particular devices or drugs were concerned with the proposed reductions in payment for medical devices and drugs. We received many thoughtful comments from a wide range of commenters with regard to methodological issues in OPPS. In addition, several comments provided data to support their assertions. The following are the major OPPS related issues addressed by the commenters:

• Expiration of pass-through payment for most devices and drugs/biologicals.

• Extent of reduction in payments for devices compared to payments in 2002.

• Potential impact on access to care of proposed payments.

• The proposal to package drugs with a per line cost less than $150 and to pay separately for others.

• Assignment and reassignment of codes to APCs (including assignments to procedural APCs from new tech APCs).

• Quality, quantity and content of claims data used to set payment weights.

• Continuation of a list of procedures that are not paid under OPPS because we believe that they should be performed as inpatient services.

• Policy on payment for outpatient observation care.

• Creation of evaluation and management codes for OPPS use.

Summaries of the public comments received and our responses to those comments are set forth below under the appropriate headings of this final rule with comment period.

2. Payment Suspension for Unfiled Cost Reports

Comments and Responses

Comment: All of the commenters stated that the rule provides for increased flexibility and a reduction in the financial impact of payment suspensions on providers. They indicated the increased flexibility would allow providers to receive partial payments from Medicare, which would lessen the financial impact of payment suspensions.

Response: We appreciate the hospital associations supporting this change.

Comment: One commenter suggested that payment suspension be limited to those payments directly determined by the cost report.

Response: We believe that immediate suspension of all payments when a cost report is not filed timely may not always be the appropriate response. However, if we require a provider to file a cost report, it is important for the cost report to be filed in a timely manner regardless of the amount of payment that is determined based on the cost report. We need flexibility in determining the amount of a provider's payments to suspend if its cost report is not filed timely. This could include the potential suspension of payments that are not determined by the cost report. Thus, we will retain § 405.371 of the regulation as set forth in the proposed rule.

II. Changes to the Ambulatory Payment Classification (APC) Groups and Relative Weights

Under the OPPS, we pay for hospital outpatient services on a rate-per-service basis that varies according to the APC group to which the service is assigned. Each APC weight represents the median

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hospital cost of the services included in that APC relative to the median hospital cost of the services included in APC 601, Mid-Level Clinic Visits. The APC weights are scaled to APC 601 because a mid-level clinic visit is one of the most frequently performed services in the outpatient setting.

Section 1833(t)(9)(A) of the Act requires the Secretary to review the components of the OPPS not less often than annually and to revise the groups and related payment adjustment factors to take into account changes in medical practice, changes in technology, and the addition of new services, new cost data, and other relevant information. Section 1833(t)(9)(A) of the Act requires the Secretary, beginning in 2001, to consult with an outside panel of experts when annually reviewing and updating the APC groups and the relative payment weights.

Finally, section 1833(t)(2) of the Act provides that, subject to certain exceptions, the items and services within an APC group cannot be considered comparable with respect to the use of resources if the highest median or mean cost item or service in the group is more than 2 times greater than the lowest median cost item or service within the same group (referred to as the "2 times rule").

We use the median cost of the item or service in implementing this provision. The statute authorizes the Secretary to make exceptions to the 2 times rule "in unusual cases, such as low volume items and services."

For purposes of the proposed rule and for this final rule with comment period, we analyzed the APC groups within this statutory framework.

A. Recommendations of the Advisory Panel on APC Groups

1. Establishment of the Advisory Panel

Section 1833(t)(9)(A) of the Act, requires that we consult with an outside panel of experts when annually reviewing and updating the APC groups and the relative weights. The Act specifies that the panel will act in an advisory capacity. The expert panel, which is to be composed of representatives of providers, is to review and advise us about the clinical integrity of the APC groups and their weights. The panel is not restricted to using our data and may use data collected or developed by organizations outside the Department in conducting its review.

On November 21, 2000, the Secretary signed the charter establishing an "Advisory Panel on APC Groups" (the Panel). The Panel is technical in nature and is governed by the provisions of the Federal Advisory Committee Act (FACA) as amended (Pub. L. 92–463). To establish the Panel, we solicited members in a notice published in the **Federal Register** on December 5, 2000 (65 FR 75943). We received applications from more than 115 individuals nominating either themselves or a colleague. After carefully reviewing the applications, we chose 15 highly qualified individuals to serve on the Panel. The first APC Panel meeting was held on February 27, February 28, and March 1, 2001, to discuss the 2001 APCs in anticipation of the 2002 OPPS.

We published a notice in the **Federal Register** on December 14, 2001, to announce the location and time of the second Panel meeting, a list of agenda items, and that the meeting was open to the public. We also provided additional information through a press release and on our Web site. We convened the second meeting of the Panel on January 22 through January 24, 2002.

2. General Issues Considered by the Advisory Panel

In the proposed rule, we summarized the Panel's discussion of a recommendation by the Panel's Research Subcommittee concerning the format of written submissions and oral presentations to the Panel and of several general OPPS payment issues.

Content for Future Presentations to the Panel

During the 2001 meeting, the Panel members felt that requiring consistency for all presentations with regard to format, data submission, and general information would assist them in analyzing the submissions and presentations and making recommendations. Therefore, upon the Panel's recommendation, the Research Subcommittee was established during the 2001 meeting.

The Panel began its 2002 meeting by considering the Research Subcommittee's recommendation to the Panel on requirements for written submissions and oral presentations. The Research Subcommittee recommended that all future oral presentations and written submissions contain the following:

- Name, address, and telephone number of the proposed presenter.
- Financial relationship(s), if any, with any company whose products, services, or procedures are under consideration.
- CPT codes involved.
- APC(s) affected.
- Description of the issue.
- Clinical description of the service under discussion, with comparison to other services within the APC.
- Description of the resource inputs associated with the service under discussion, with a comparison to resource inputs for other services within the APC.
- Recommendations and rationale for change.
- Expected outcome of change and potential consequences of no change.

The Panel adopted the Subcommittee s recommendation. Presentations for the 2003 meeting must contain, at a minimum, this information.

Inpatient Only List

At its February 2001 meeting, the Panel discussed the existence of the inpatient list. The Panel favored its elimination. At the January 2002 meeting, Panel members noted that hospitals receive no payment for a service performed in an outpatient department that appears on the inpatient list, even though the physician performing that service will receive payment for his or her services. The Panel believes the physician should determine what procedure to perform and that both the hospital and the physician should receive payment for the procedure. We continue to disagree with the position taken by the Panel regarding the inpatient list for reasons that we discuss in detail in the April 7, 2000 final rule (65 FR 18456).

Prior to the 2002 Panel meeting, we received requests from hospital and surgical associations and societies to remove certain procedures from the inpatient list. We reviewed those requests and presented to the Panel the requests for which we were unable to make a determination based on the information submitted with the request.

The Panel considered removing the following procedures from the inpatient list:

CPT	Description
21390	Treat eye socket fracture
27216	Treat pelvic ring fracture
27235	Treat thigh fracture

CPT	Description
32201	Drain, precut, lung lesion
33967	Insert a precut device
47490	Incision of gallbladder
62351	Implant spinal canal cath
64820	Remove sympathetic nerves
92986	Revision of aortic valve
92987	Revision of mitral valve
92990	Revision of pulmonary valve
92997	Pul art balloon repr, precut
92998	Pul art balloon repr, precut

As the Panel recommended, we solicited comments and additional information from hospitals and medical specialty societies that have an interest in these procedures. At their 2003 meeting, the Panel also recommended that we present to them any such comments that we receive to assist in their evaluation of whether to recommend removing the codes from the inpatient list.

The Panel did recommend that we remove from the inpatient list CPT code 47001, Biopsy of liver, needle; when done for indicated purpose at time of other major procedure. We agreed with the Panel's recommendation and we proposed to remove 47001 from the inpatient list. We further proposed to assign it status indicator "N" so that costs associated withCPT code 47001 would be packaged into the APC payment for the primary procedure performed during the same operative session.

In section II.B.5 of the proposed rule, we discussed additional procedures, which were not considered by the Panel, that we proposed to remove from the inpatient list. We discussed in detail our reasons for proposing these additional changes, and we proposed two new criteria that we would adopt in the future when evaluating whether to make a procedure on the inpatient list payable under the OPPS. Table 6 in section II.B.5 of the proposed rule lists all the procedures we proposed to remove from the inpatient list, including those discussed by the Panel. We considered the removal of CPT code 33967, Insertion of intra-aortic balloon assist device, percutaneous from the inpatient list, but did not include it in Table 6. The Panel considered this code for removal from the inpatient list and had concerns about whether performing this procedure in an outpatient setting is appropriate. Further, we were not able to confirm that this procedure is being performed on Medicare beneficiaries in an outpatient setting. We solicited comments, including clinical data and specific case reports, which would support payment for CPT 33967 under the OPPS.

Our discussion of the comments we received on this issue, our response and the statement of final action regarding what services to remove from the inpatient list is contained in section II.B.5.

Multiple Bills

During its February 2001 meeting, the Panel received oral testimony identifying CMS exclusive use of single procedure claims to set relative weights for APCs as a potential problem in setting appropriate payment rates for APCs. Therefore, the panel asked its Research Subcommittee to work with CMS staff, using the Endoscopic Retrograde Cholangiopancreatography (ERCP) code family as a case study, to explore the use of multiple procedure claims data for setting relative weights.

The Subcommittee made the following recommendations to the Panel, which the Panel approved:

- We should continue to explore the use of multiple procedure claims data for setting payment rates but should continue to use only single procedure claims data to determine relative payment weights for CY 2003.
- We should work with the APC Panel to explore the use of multiple claims data drawn from OPPS claims for services such as radiation oncology in time for the next APC Panel meeting.
- We should educate hospitals on appropriate coding and billing practices to ensure that claims with multiple procedures are properly coded and that costs are properly allocated to each procedure.

One presenter to the panel suggested a method to increase the number of claims that could be considered as single claims. Currently, we consider any claim submitted with two or more primary codes (that is, a code assigned to an APC for separate payment) to be a multiple procedure claim. When these claims contain line items for revenue centers without an accompanying Healthcare Common Procedure Coding System (HCPCS) code there is no way to determine the appropriate primary code with which to package the revenue center. The presenter suggested that we consider all claims where every line contains a separately payable HCPCS code as a single procedure claim, reasoning that on such claims we do not have to determine how and where to "package" line items not identified by a separately payable HCPCS code. Where every line item contains a separately payable HCPCS code, every cost can easily be allocated to a separately payable HCPCS code on the line item and all costs for each HCPCS code can then be accurately and completely determined.

We agreed with that suggestion. In section II.B.4 of the proposed rule, we described how we determined the number of single claims used to set the APC relative weights proposed for 2003 using this methodology. We requested comments on our methodology.

Discussion of the comments we received on this issue, our responses, and the statement of final action are contained in section III.A.

Packaging

We sought the Panel's guidance on whether we should package the costs of HCPCS codes for radiologic guidance and radiologic supervision and interpretation services whose descriptors require that they only be performed in conjunction with a surgical procedure.

In the proposed rule, we discussed why we package the costs of certain procedures. We specified for example, that "add-on" procedures and radiologic guidance procedures should never be billed on a claim without the code for an associated procedure. A facility should not submit a claim for ultrasound guidance for a biopsy unless the claim also includes the biopsy procedure, because the guidance is necessary only when a biopsy is performed. A claim for a packaged guidance procedure (or a supervision and interpretation procedure whose descriptor requires it be performed in association with a surgical procedure)

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would be returned to the provider for correction and resubmission.

Also, we explained that we use packaging because billing conventions allow hospitals to report costs for certain services using only revenue center codes (that is, hospitals are not required to specify HCPCS codes for certain services). Packaging allows these costs to be captured in the data used to calculate median costs for services with an APC.

After hearing the requests of several presenters, (details discussed at 66 FR 52098 of the proposed rule) the Panel concluded that, even though we could be setting relative weights based on error claims, we should not package additional radiologic guidance and supervision and interpretation procedures and should continue to explore methodologies that would allow these procedures to be recognized for separate payment. The Panel also recommended that radiology guidance codes that were in APC 268 for CY 2001 but that were designated with status indicator "N" as packaged services in 2002, be restored as separately payable services for CY 2003. The Panel requested that this topic be placed on the agenda for the next Panel meeting.

Our discussion of the comments we received on this issue, our responses and a statement of final action is contained in section III.B.

Add-On Codes

As discussed in the proposed rule (66 FR 52098), we presented for the Panel's consideration several options for payment of add-on codes, including assignment of status indicator "N" to package them into the payment for the base procedure. After thorough review, the Panel concluded that we should continue to pay for add-on codes separately, setting relative weights with the use of single procedure claims in spite of the fact that these were error claims. The Panel asked us to continue exploring ways to most appropriately pay for these services. They requested that this item also be placed on the agenda for the next Panel meeting.

We proposed to accept the recommendations of the APC Panel both for packaging radiology guidance and supervision and interpretation codes and for payment of add-on codes. We proposed to pay separately in 2003 for radiology guidance codes that were paid in APC 268 in CY 2001 but that were packaged in 2002.

3. Recommendations of the Advisory Panel and Our Responses

In the proposed rule, we summarized the issues considered by the Panel, the Panel's APC recommendations and our subsequent action with regard to the Panel's recommendations. The most recent data available for the Panel to review in considering specific APC groupings were the 1999–2000 pre-OPPS claims data that were the basis of the CY 2002 relative payment weights. In the proposed rule, we provided a detailed summary of the Panel discussion and recommendations (67 FR 52098–52102). See the proposed rule for more details regarding these discussions. The APC titles are shown in this discussion of the APC Panel recommendations as they existed when the APC Panel met in January 2002. In a few cases the APC titles were changed for the proposed 2003 OPPS and therefore some APCs do not have the same title in Addendum A as they have in this section.

As discussed below, the Panel sometimes declined to recommend a change in an APC even though the APC violated the 2 times rule. In section II.B.1 of this preamble, we discuss our proposals regarding the 2 times rule based on the CY 2001 data we are using to recalibrate the 2003 APC relative weights. Section II.B.1 also details the criteria we use in deciding to make an exception to the 2 times rule. We asked the Panel to review many of the exceptions we implemented in 2001 and 2002. We refer to the exceptions as "violations of the 2 times" rule in the following discussion.

APC 215: Level I Nerve and Muscle Tests
APC 216: Level III Nerve and Muscle Tests
APC 218: Level II Nerve and Muscle Tests

We presented this agenda item because APC 215 appeared to violate the 2 times rule. In order to remedy this violation, we asked the Panel to consider the following changes:

- Move CPT codes 95858, 95921, and 95922 from APC 215 to APC 218.
- Move CPT code 95930 from APC 216 to APC 218.
- Move CPT code 92275 from APC 216 to APC 231.
- Move CPT code 95920 from APC 218 to APC 216.

The Panel recommended that the changes we asked them to consider be made, that is, to move CPT codes 95921 and 95922 to APC 218. However, if the calendar year 2001 data support a move of 95921 to APC 216, the Panel recommended that we consider that move.

APC 600: Low Level Clinic Visits
APC 601: Mid Level Clinic Visits
APC 602: High Level Clinic Visits
APC 610: Low Level Emergency Visits
APC 611: Mid Level Emergency Visits
APC 612: High Level Emergency Visits

We discussed the Panel's recommendations related to facility coding for clinic and emergency department visits are discussed below, in (section X.A of this rule).

APC 296: Level I Therapeutic Radiologic Procedures
APC 297: Level II Therapeutic Radiologic Procedures
APC 263: Level I Miscellaneous Radiology Procedures
APC 264: Level II Miscellaneous Radiology Procedures

APCs 296, 263, and 264 appear to violate the 2 times rule. We asked the Panel to consider three options for reconfiguring these APCs so that they would conform with the 2 times rule.

Option 1: Create a new APC, Level III Therapeutic Radiology Procedures, by moving CPT code 75984 from APC 296 and 74475 from APC 297. Also, move CPT codes 76101, 70390, and 71060 from APC 263 to APC 264 and move CPT code 75980 from APC 297 to APC 296.

Option 2: Move CPT codes 76101, 703690, and 71060 from APC 263 to APC 264 and move CPT code 75984 from APC 296 to APC 264. Move CPT code 75980 from APC 297 to APC 296.

Option 3: Create a new APC, Level III Miscellaneous Radiology Procedures, by moving CPT codes 76080, 7036736, 76101, 70390, 74190, and 71060 from APC 263. Move CPT-code 74327 from APC 296 to APC 263 and move CPT code 75980 from APC 297 to APC 296. APC 264 remains unchanged.

The Panel noted that none of the options that we presented resolve all of the 2 times violations. However, the Panel agreed that Option 2 would create more clinically coherent APCs without creating a new APC based on anticipated device costs that would be billed in 2002. In addition, the Panel invited the American College of Radiology and other interested parties to proposed further changes for the Panel's consideration next year.

We proposed to accept the Panel's recommendations that option 2 be implemented.

APC 230: Level I Eye Tests and Treatments
APC 231: Level III Eye Tests and Treatments
APC 232: Level I Anterior Segment Eye Procedures
APC 233: Level II Anterior Segment Eye Procedures
APC 234: Level III Anterior Segment Eye Procedures

APC 235: Level I Posterior Segment Eye Procedures
APC 236: Level II Posterior Segment Eye Procedures
APC 237: Level III Posterior Segment Eye Procedures
APC 238: Level I Repair and Plastic Eye Procedures
APC 239: Level II Repair and Plastic Eye Procedures
APC 240: Level III Repair and Plastic Eye Procedures
APC 241: Level IV Repair and Plastic Eye Procedures
APC 242: Level V Repair and Plastic Eye Procedures
APC 247: Laser Eye Procedures Except Retinal
APC 248: Laser Retinal Procedures
APC 698: Level II Eye Tests and Treatments
APC 699: Level IV Eye Tests and Treatments

We asked the Panel to review these APCs to address clinical inconsistencies and violations of the 2 times rule. We suggested creating a new level for posterior segment eye procedures and other changes in order to make the groups more clinically coherent, as follows:

- Move CPT codes 65260 and 67218 from APC 237 to 236.
- Create a new APC (Level IV Posterior Segment Eye Procedures) by moving CPT codes 67107, 67112, 67040, and 67108 from APC 237.
- Move CPT codes 67145, 67105, and 67210 from APC 247 to APC 248.
- Move CPT code 66999 from APC 247 to APC 232.
- Move CPT code 67299 from APC 248 to APC 235.
- Move CPT codes 65855, 66761, and 66821 from APC 248 to APC 247.
- Move CPT code 67820 from APC 698 to APC 230.
- Move CPT code 67208 from APC 231 to APC 235.
- Move CPT codes 92226, 92284, 65205, 92140 from APC 231 to APC 698.
- Move CPT code 92235 from APC 231 to APC 699.
- Move CPT code 68100 from APC 233 to APC 232.
- Move CPT code 65180 from APC 233 to APC 234.
- Create a new APC (Level IV Anterior Segment Eye Procedures) by moving CPT codes 66172, 66185, 66180, 66225 from APC 234.
- Move CPT code 92275 from APC 216 to APC 231.

No presenters commented on these APCs, and, after brief discussion, the Panel recommended concurrence with our suggested changes. We proposed to accept the Panel's recommendations. We noted in the proposed rule that when we were able to use 2001 claims data to re-evaluate the changes recommended by the Panel for these APCs, we found violations of the 2 times rule in the reconfigured APCs. Nonetheless, we proposed to accept the Panel's recommendations because they result in more clinically coherent APCs. We solicited comments on further changes that would address the violations of the 2 times rule.

APC 110: Transfusion
APC 111: Blood Product Exchange
APC 112: Apheresis, Photopheresis, and Plasmapheresis

We presented these APCs to the Panel in 2001 because of their low payment rates and concern that our cost data were inaccurate. These APCs were on the 2002 agenda in order to obtain further comment on our cost data. We suggested no changes in the structure of these APCs.

The Panel recommended that plasma derivatives be placed in their own APCs and classified in the same manner as whole blood products. In addition, the Panel observed that hospitals incur additional costs with each unit of blood product transfused and, therefore, recommended that APC 110 be revised to allow for the costs of additional units of blood product and clinical services.

In section IV.D of this rule, we discussed our payment proposals for drugs and biologicals for which pass-through payments are scheduled to expire in 2003. Those proposals would affect payment for blood and blood products. We proposed not to accept the Panel's recommendation to change current OPPS payment policy for transfusions.

Panel Recommendations to Defer Changes Pending Availability of 2001 Claims Data

Regarding the remaining APC groups that are addressed below, the Panel recommended that we make no changes until data from claims billed in 2001 under the OPPS become available for analysis. The Panel further requested that we place the APC groups in this section on the agenda for consideration at its meeting in 2003. The changes that we proposed for the APCs in this section are based upon our review of the 2001 claims data, which did not become available until March 2002.

APC 203: Level V Nerve Injections
APC 204: Level VI Nerve Injections
APC 206: Level III Nerve Injections
APC 207: Level IV Nerve Injections

Several presenters to the Panel suggested changes in the configuration of these APCs because of concerns that the current classifications result in payment rates that are too low relative to the resource costs associated with certain procedures in the APCs. Several of these APCs include procedures associated with drugs or with device categories for which pass-through payments are scheduled to expire in 2003. The Panel recommended that we not change the structure of these APCs at this time. Because the structure of these APCs was substantially changed for 2002, and 2002 cost data was not yet available, the Panel felt it would be appropriate to review 2002 cost data prior to making further structural changes to these APCs. We proposed to accept the Panel's recommendation.

We will place these APCs on the Panel's agenda when 2002 cost data becomes available.

APC 43: Closed Treatment Fracture Finger/Toe/Trunk
APC 44: Closed Treatment Fracture/Dislocation, Except Finger/Toe/Trunk

On the basis of 1999–2000 claims data, these APCs violate the 2 times rule. The Panel reviewed these APCs and recommended no changes.

Our subsequent review of 2001 OPPS cost data shows continuing violations of the 2 times rule and that costs within these APCs are virtually identical. Therefore, we proposed to combine APCs 43 and 44 into APC 43. The procedures in the consolidated APC are clinically homogeneous.

APC 58: Level I Strapping and Cast Application
APC 59: Level II Strapping and Cast Application

The Panel reviewed these APCs and recommended that no changes be made pending analysis of 2001 claims data. The Panel did recommend that billing instructions be developed on the appropriate use of the codes in these APCs. We agreed with the Panel's recommendation regarding the need for billing instructions, and we expect to develop such instructions for hospitals to use in 2003.

Our subsequent review of 2001 claims data reveals that, in some cases, costs for short casts and splints are greater than costs for long casts and splints. Moreover, the proposed payments for these two APCs, based on 2001 OPPS data, would not differ significantly from each other. Therefore, we proposed to combine the codes in APC 58 and APC 59 into a single APC, APC 58. Combining these APCs does not compromise clinical homogeneity. The relative weight of the proposed single APC is virtually identical to the relative weight of each of the two current APCs. We proposed to continue to work with hospitals to develop appropriate coding

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for these services and will review the appropriate APC structure for these services next year.

APC 279: Level I Angiography and Venography Except Extremity
APC 280: Level II Angiography and Venography Except Extremity

Without the benefit of 2001 OPPS claims data, it was difficult for the Panel to determine whether the apparent violation of the 2 times rule in APCs 279 and 280 was attributable to underreporting of procedures or inaccurate coding. Therefore, the Panel recommended no changes pending the availability of the more recent claims data. After subsequently reviewing the 2001 claims data, we proposed to move CPT codes 75978, Transluminal balloon angioplasty, venous, radiological supervision and interpretation, and 75774, Angiography, selective, each additional vessel studied after basic examination, radiological supervision and interpretation, to new APC 0668. This would resolve violations of the 2 times rule and result in clinically coherent APCs.

APC 115: Cannula/Access Device Procedures

We proposed to move CPT code 36860, External Cannula Declotting; without balloon catheter, to APC 103, Miscellaneous Vascular Procedures. We believe this makes both APC 115 and APC 103 more clinically homogeneous and it resolves a violation of the 2 times rule in APC 115 that was caused by the presence of CPT code 36860.

APC 93: Vascular Repair/Fistula Construction
APC 140: Esophageal Dilation without Endoscopy
APC 141: Upper GI Procedures
APC 142: Small Intestine Endoscopy
APC 143: Lower GI Endoscopy
APC 144: Diagnostic Anoscopy
APC 145: Therapeutic Anoscopy
APC 146: Level I Sigmoidoscopy
APC 147: Level II Sigmoidoscopy
APC 148: Level I Anal/Rectal Procedure
APC 149: Level II Anal/Rectal Procedure

Our subsequent review of 2001 claims data suggests that the cost data for APCs 144 and 145 are aberrant. The cost data for these APCs yield relative weights and payments that are significantly higher than the relative weights for APCs 146 and 147, which consist of similar procedures performed through a sigmoidoscope rather than an anoscope. As currently arranged, the APC configuration for these services could provide a financial incentive for hospitals to perform unnecessary anoscopic procedures, either alone or with a sigmoidoscopy. To rectify this problem, we proposed to move the procedures in APCs 144 and 145 to APC 147 with the exception of CPT code 46600, Anoscopy; diagnostic, which we proposed to assign to APC 340, Minor Ancillary procedures. We believe these changes would result in clinically coherent APCs with appropriate relative weights and payment rates.

APC 363: Otorhinolaryngologic Function Tests

Based on 2001 claims data, we proposed to move CPT codes 92543, 92588, 92520, 92546, 92516, 92548, and 92584 to new APC 0660 (Level III Otorhinolaryngolgic Function Tests). This change would resolve a 2 times rule violation and create clinically coherent APCs.

APC 96: Non-Invasive Vascular Studies
APC 265: Level I Diagnostic Ultrasound Except Vascular
APC 266: Level II Diagnostic Ultrasound Except Vascular
APC 267: Vascular Ultrasound
APC 269: Level I Echocardiogram Except Transesophageal
APC 270: Transesophageal Echocardiogram

The APC Panel recommended making no changes in the configuration of these APCs. Based on 2001 claims data, we proposed to make several changes in order to resolve 2 times rule violations and to make these APCs more clinically coherent. Specifically, we proposed to move CPT code 43499 from APC 0140 to APC 141; CPT code 93721 from APC 0096 to APC 368; CPT code 93740 from APC 0096 to APC 367; CPT code 93888 from APC 0267 to APC 266; and CPT code 93931 from APC 0267 to APC 266. We also proposed to move CPT codes 78627, 76825, and 93320 from APC 0269 to new APC 0671 to achieve more clinical coherence. We also proposed to create new APC 0670 for intravascular ultrasound and intracardiac echocardiography consisting of CPT codes 37250, 37251, 92978, 92979, and 93662.

APC 291: Level I Diagnostic Nuclear Medicine Excluding Myocardial Scans
APC 292: Level II Diagnostic Nuclear Medicine Excluding Myocardial Scans

Subsequent to the APC Panel meeting, we received comments on these APCs from the Nuclear Medicine Task Force. After a thorough review of that proposal within the context of the 2001 claims data, we proposed to accept the recommendations of the Nuclear Medicine Task Force, which would result in a complete reconfiguration of APCs 290, 291, and 292. Although the reconfiguration would create violations of the 2 times rule, we agree with the Task Force that the reconfigured APCs are more clinically coherent. We note that APCs 290, 291, and 292 as currently configured would also violate the 2 times rule. Therefore, we solicited comments on the proposed reconfiguration of APCs 290, 291, and 292 and on alternative groupings that would achieve clinical coherence without violating the 2 times rule.

APC 274: Myleography
APC 179: Urinary Incontinence Procedures
APC 182: Insertion of Penile Prosthesis
APC 19: Level I Excision/Biopsy
APC 20: Level II Excision/Biopsy
APC 21: Level IV Excision/Biopsy
APC 22: Level V Excision/Biopsy
PC 694: Level III Excision/Biopsy

Based on 2001 claims data, we proposed to move several codes from APC 19 to APC 20 and several codes from ACP 20 to APC 21. Additionally, we proposed to move CPT codes 11770, 54105, and 60512 to APC 22. We also proposed to move CPT code 58999 to APC 191 and CPT code 37799 to APC 35. These changes would result in clinically coherent APCs that do not violate the 2 times rule.

APC 24: Level I Skin Repair
APC 25: Level II Skin Repair
APC 26: Level III Skin Repair
APC 27: Level IV Skin Repair
APC 686: Level V Skin Repair

Based on 2001 claims data, we proposed to move CPT code 43870 from APC 0025 to APC 141; and CPT codes with high costs from APC 26 to APC 27. We also proposed to move the codes remaining in APC 26 to APC 25. APC 26 would then be deleted. These changes would result in a more compact APC structure without compromising the clinical homogeneity of the reconfigured APCs and without violating the 2 times rule. See Table 1 for the final list of codes to be moved from APC 26 to APC 25 or APC 27.

TABLE 1.—HCPCS CODES TO BE MOVED FROM APC 26 INTO APC 25 OR APC 27

2002 APC 26	2003 APC 25	2003 APC 27
11960		11960
11970		11970
12037	12037	
12047	12047	
12057	12057	
13150	13150	
13160		13160
14000		14000
14001		14001

TABLE 1.—HCPCS CODES TO BE MOVED FROM APC 26 INTO APC 25 OR APC 27—Continued

2002 APC 26	2003 APC 25	2003 APC 27
14020		14020
14021		14021
14040		14040
14041		14041
14060		14060
14061		14061
14300		14300
14350		14350
15000	15000	
15001	15001	
15050	15050	
15101		15101
15120		15120
15121		15121
15200		15200
15201	15201	
15220		15220
15221	15221	
15240		15240
15241	15241	
15260		15260
15261	15261	
15351		15351
15400	15400	
15401	15401	
15570		15570
15572		15572
15574		15574
15576		15576
15600		15600
15610		15610
15620		15620
15630		15630
15650		15650
15775	15775	
15776	15776	
15819	15819	
15820		15820
15821		15821
15822		15822
15823		15823
15825		15825
15826		15826
15829		15829
15835	15835	
20101		20101
20102		20102
20910		20910
20912		20912
20920		20920
20922		20922
20926		20926
23921	23921	
25929		25929
33222		33222
33223		33223
44312		44312
44340		44340
15580—Code Deleted		
15625—Code Deleted		

APC 77: Level I Pulmonary Treatment
APC 78: Level II Pulmonary Treatment
APC 251: Level I ENT Procedures
APC 252: Level II ENT Procedures
APC 253: Level III ENT Procedures
APC 254: Level IV ENT Procedures
APC 256: Level V ENT Procedures

Based on 2001 claims data, we proposed to address violations of the 2 times rule by moving CPT codes 40812, 42330, and 21015 from APC 0252 to APC 253 and by moving CPT codes 41120 and 30520 to APC 254.

We are adopting the changes discussed in the proposed rule as final except as noted in our discussion of specific APC changes in section II.B, below.

B. Other Changes Affecting Ambulatory Payment Classification (APC) Assignments

1. Limit on Variation of Costs of Services Classified Within a Group

Section 1833(t)(2) of the Act provides that the items and services within an APC group cannot be considered comparable with respect to the use of resources if the highest cost item or service within a group is more than 2 times greater than the lowest cost item or service within the same group. However, the statute authorizes the Secretary to make exceptions to this limit on the variation of costs within each group in unusual cases such as low-volume items and services. No exception may be made, however, in the case of a drug or biological that has been designated as an orphan drug under section 526 of the Federal Food, Drug, and Cosmetic Act.

Taking into account the APC changes discussed in relation to the APC panel recommendations in this section of this preamble and the use of 2001 claims data to calculate the median cost of procedures classified to APCs, we reviewed all APCs to determine which of them would not meet the 2 times limit. We use the following criteria when deciding whether to make exceptions to the 2 times rule for affected APCs:

- Resource homogeneity.
- Clinical homogeneity.
- Hospital concentration.
- Frequency of service (volume).
- Opportunity for upcoding and code fragmentation.

For a detailed discussion of these criteria, refer to the April 7, 2000, final rule (65 FR 18457).

We received several comments on this proposal. A summary of these comments and our responses are provided below.

Comment: One commenter recommended that we move CPT code 47556 (Biliary endoscopy with dilation of biliary stricture with stent) from APC 0152 to APC 0153 because its placement in APC 0152 violated the 2 times rule.

Response: We will not make any changes at this time, but we will present this issue to the APC Advisory Panel. We do not use low-volume procedures in determining whether an APC violates the 2 times rule because there is a high potential for miscoding of such procedures and because our cost data is less reliable. The cost data that we do have for CPT 47556 indicates that APC 0152 is appropriate.

Comment: Several commenters thanked us for creating a separate APC for Computed Tomographic Angiography (CTA) but requested that we not use claims data to develop a payment rate. These commenters asserted that our claims data was faulty because hospitals had not developed specific charges for CTA and were using charges for other Computed Tomography (CT) when billing for CTA. They recommended that we use either the relative ratio of charges from hospitals that billed CTA at a higher rate than CT and use that ratio to determine a payment rate for CTA, or use a proxy model that the commenter had developed.

Response: Our payment rates for CT and CTA are different and our claims data indicates that CTA costs more than CT. Using claims data only from hospitals that charge more for CTA than CT is inappropriate, and the proxy model has not been validated. Therefore, we will update our payment for CTA next year based on 2002 claims data.

Table 2 contains the final list of APCs that we exempt from the 2 times rule based on the criteria cited above. In cases in which compliance with the 2 times rule appeared to conflict with a recommendation of the APC Advisory Panel, we generally accepted the Panel recommendation. This was because Panel recommendations were based on explicit consideration of resource use, clinical homogeneity, hospital specialization, and the quality of the data used to determine payment rates.

The median cost for hospital outpatient services for these and all other APCs can be found at Web site: *http://www.cms.hhs.gov.*

TABLE 2.—TABLE OF APCS EXEMPTED FROM 2 TIMES RULE

APC	Description
0012	Level I Debridement & Destruction
0019	Level I Excision/ Biopsy
0020	Level II Excision/ Biopsy
0025	Level II Skin Repair
0032	Insertion of Central Venous/Arterial Catheter
0043	Closed Treatment Fracture Finger/ Toe/Trunk
0046	Open/Percutaneous Treatment Fracture or Dislocation

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TABLE 2.—TABLE OF APCS EXEMPTED FROM 2 TIMES RULE—Continued

APC	Description
0058	Level I Strapping and Cast Application
0074	Level IV Endoscopy Upper Airway
0080	Diagnostic Cardiac Catheterization
0081	Non-Coronary Angioplasty or Atherectomy
0093	Vascular Repair/Fistula Construction
0097	Cardiac and Ambulatory Blood Pressure Monitoring
0099	Electrocardiograms
0103	Miscellaneous Vascular Procedures
0105	Revision/Removal of Pacemakers, AICD, or Vascular
0121	Level I Tube changes and Repositioning
0140	Esophageal Dilation without Endoscopy
0147	Level II Sigmoidoscopy
0148	Level I Anal/Rectal Procedure
0155	Level II Anal/Rectal Procedure
0165	Level III Urinary and Anal Procedures
0170	Dialysis
0179	Urinary Incontinence Procedures
0191	Level I Female Reproductive Proc
0192	Level IV Female Reproductive Proc
0203	Level VI Nerve Injections
0204	Level I Nerve Injections
0207	Level III Nerve Injection
0218	Level II Nerve and Muscle Tests
0225	Implantation of Neurostimulator Electrodes
0230	Level I Eye Tests & Treatments
0231	Level III Eye Tests & Treatments
0233	Level II Anterior Segment Eye Procedures
0235	Level I Posterior Segment Eye Procedures
0238	Level I Repair and Plastic Eye Procedures
0239	Level II Repair and Plastic Eye Procedures
0252	Level II ENT Procedures
0260	Level I Plain Film Except Teeth
0274	Myelography
0286	Myocardial Scans
0290	Level I Diagnostic Nuclear Medicine Excluding Myocardial Scans
0291	Level II Diagnostic Nuclear Medicine Excluding Myocardial Scans
0294	Level I Therapeutic Nuclear Medicine
0297	Level II Therapeutic Radiologic Procedures
0303	Treatment Device Construction
0304	Level I Therapeutic Radiation Treatment Preparation
0330	Dental Procedures
0345	Level I Transfusion Laboratory Procedures
0354	Administration of Influenza/Pneumonia Vaccine
0356	Level II Immunizations
0367	Level I Pulmonary Test
0368	Level II Pulmonary Tests
0370	Allergy Tests
0373	Neuropsychological Testing
0600	Low Level Clinic Visits

TABLE 2.—TABLE OF APCS EXEMPTED FROM 2 TIMES RULE—Continued

APC	Description
0602	High Level Clinic Visits
0660	Level III Otorhinolaryngologic Function Tests
0692	Electronic Analysis of Neurostimulator Pulse Generators
0694	Mohs Surgery
0698	Level II Eye Tests & Treatments

2. Procedures Moved From New Technology APCs to Clinically Appropriate APCs

In the November 30, 2001 final rule, we made final our proposal to change the period of time during which a service may be paid under a new technology APC (66 FR 59903), initially established in the April 7, 2000 final rule. That is, beginning in 2002, we will retain a service within a new technology APC group until we have acquired adequate data that allow us to assign the service to a clinically appropriate APC. This policy allows us to move a service from a new technology APC in less than 2 years if sufficient data are available, and it also allows us to retain a service in a new technology APC for more than 3 years if sufficient data upon which to base a decision for reassignment have not been collected.

Effective in 2003, we will move several procedures from new technology APCs to clinical APCs. Those procedures and the clinical APCs to which we are assigning the procedures for payment in 2003 are identified in Table 3. Based upon our review of the 2001 outpatient prospective payment system (OPPS) claims data, we believe that we have sufficient information upon which to base assignment of these procedures to clinical APCs. In making this determination, we reviewed both single and multiple procedure claims. In the proposed rule at 67 FR 52103, we discuss the procedures that we followed to make this determination. In some cases we proposed classification of a new technology procedure in an APC with procedures that are similar both clinically and in terms of resource consumption. In other cases, we proposed to create a new APC for a new technology procedure because we do not believe any of the existing APCs contain procedures that are clinically similar and similar in terms of resource consumption. We solicited comments on our proposed reassignment of the new technology procedures listed in Table 3 of the proposed rule (67 FR 52103–52104).

We received several comments on this proposal which are summarized below.

Comment: Several commenters brought to our attention that, as a result of moving codes for proton beam radiation therapy out of APC 0710 and APC 0712 (new technology codes) and into APC 0664 (Proton beam radiation therapy), simple treatments would receive a higher payment while intermediate and complex treatments would receive a lower payment. Commenters requested that these codes remain in APCs 0710 and 0712 or be split into separate APCs.

Response: We thank the commenters for bringing this to our attention, and we agree that codes for simple proton beam radiation therapy (CPT 77522 and CPT 77520) should be placed in a different APC than codes for intermediate (CPT 77523) and complex (CPT 77525) radiation therapy. However, it would be inappropriate to return these codes to their previous new technology APCs (0712 and 0712) due to our having sufficient claims data to place them in their own APCs. Therefore, we will place codes for simple radiation therapy (CPTs 77522 and 77520) in APC 0664 and codes for intermediate (CPT 77523) and complex (CPT 77525) therapy in the newly created APC 0650.

Comment: Numerous commenters expressed concern over the movement of HCPC G0173 (Stereo radiosurgery, complete) from APC 0721 (New Technology Level XV $5,000–$6,000) to APC 0663 (Stereotactic radiosurgery), resulting in lower payment. Commenters requested that HCPCS G0173 be returned to APC 0721 (New Technology Level XV $5,000–$6,000) because our current data includes both linear accelerator and multi source treatments.

Response: We agree with commenters and have returned HCPC G0173 (Stereotactic radiosurgery, complete) to APC 0721 (New Technology Level XV $5,000–$6,000). We will review our claims data for next year's proposed rule to determine appropriate placement for all stereotactic radiosurgery procedures.

Comment: Many commenters brought to our attention that G0251 (Stereotactic radiotherapy, multisession) was erroneously omitted from the proposed rule. Commenters asserted that G0251 differs substantially from G0173 and G0243, and they requested that G0251 be reinstated and placed in an APC that pays more than APC 0721 (New Technology Level XV $5,000–$6,000).

Response: We thank the commenters for bringing this to our attention, and we agree that the elimination of G0251 in the proposed rule was in error. However, we do not agree with the

placement of G0251 in an APC that pays more than APC 0721 (New Technology Level XV $5,000–$6,000). Although there are significant fixed costs for all stereotactic radiosurgery procedures, our review of cost data does not show that our current APC assignment for G0251 (APC 713) is inappropriate. We will review the APC assignments for all stereotactic radiosurgery procedures next year when we have 2002 claims data available.

Comment: A commenter expressed concern over the bundling of payments for CPT 77370 (Special medical radiation physics consultation) and CPT 77336 (Continuing medical physics consultation) into code G0242 (Multisource photon stereotactic plan) based on the understanding that G0242 is unrelated to CPT 77370 and CPT 77336. The commenter requested that CPT 77370 and CPT 77336 be unbundled from G0242.

Response: We want hospitals to bill all resources associated with G0242 in one code. G0242 includes the work of a physicist and other staff, therefore it is appropriate that the resources used for CPT 77370 and CPT 77336 remain bundled with G0242. Separate payment for 77370 and 77336 would result in duplicate payment.

Comment: Many commenters expressed concern that FDG PET procedures are moving to a new clinical APC 0667 (Nonmyocardial positron emission tomography) with a payment of $971—a reduction of $404. The commenters asserted that although the proposed rule would continue separate pass-through payment for FDG (in APC 1775), the proposed new payment would not cover the cost of the PET procedure and would undermine access to care.

Response: We agree that our claims data may not accurately reflect the cost of FDG PET procedures.

On June 29, 2001, CMS announced its intention to issue a national coverage determination (NCD) limiting the type of technology that can be used to perform Medicare-covered PET scans. This NCD became effective January 1, 2002. We believe that our claims data includes a significant number of PET scans performed on coincidence cameras that are no longer covered by Medicare. This could have the effect of lowering the median cost as compared to our future claims data that will reflect (due to the NCD) only the use of full-ring or partial-ring PET scanners. For this reason, until we are confident that our claims data reflects the predominant use of dedicated PET scanners, we will continue to pay for FDG PET in APC 714 (New Technology—Level IX $1250–$1500) until further review of claims data for the 2004 final rule.

Comment: A commenter expressed concern about our proposal to reassign digital mammography from New Technology APC 0707 to a clinical APC (0699). Commenters recommended that we retain the assignment to New Technology APC 0707 for 1 more year until further data analysis can be performed.

Response: We disagree with the commenter. Hospitals billed for approximately 7,000 occurrences of digital mammography in 2001, providing us with sufficient data upon which to calculate a median cost.

New Technology APC Issues

Comment: A manufacturer was pleased that we designated endometrial cryoablation as eligible for new technology service APC payment, but was displeased at the delay in reaching our decision as well as the specific new technology service APC in which the service was placed. We proposed to place endometrial cryoablation into new technology service APC 980, which has a payment rate of $1,875. The commenter contended that endometrial cryoablation has similar resource costs as cryoablation of the prostate and should be assigned to new technology service APC 984, at $4,250, which would cover the cost of a cryoablation probe also. It provided a brief cost analysis from a single major medical center.

Response: We assigned endometrial cryoablation into new technology service APC 980 based on cost data submitted.

New Technology APC for Preview Planning Software

Comment: A manufacturer commented on our proposal to reassign the procedure related to Preview Treatment Planning Software (C9708) from its current APC 975, which pays $625, to APC 973, which pays $250. The manufacturer of Preview asserted that its sales records, which it provided, demonstrate that the cost to hospitals of providing Preview support the assignment of APC 975. It contended that we must have based the new APC assignment on faulty claims data.

Response: For the final rule, we had access to a larger number of claims for C9708, and we have moved it back to APC 975.

Comment: A manufacturer was pleased that we designated endometrial cryoablation as eligible for new technology service APC payment, but was displeased at the delay in reaching our decision as well as the specific new technology service APC in which the service was placed. We proposed to place endometrial cryoablation into new technology service APC 980, which has a payment rate of $1,875. The commenter contended that endometrial cryoablation has similar resource costs as cryoablation of the prostate and should be assigned to new technology service APC 984, at $4,250, which would cover the cost of a cryoablation probe also. It provided a brief cost analysis from a single major medical center.

Response: We assigned endometrial cryoablation into new technology service APC 980 based on cost data submitted.

Table 3 below is the final list of Healthcare Common Procedure Coding System (HCPCS) reassignments of new technology procedures.

TABLE 3.—CHANGES IN HCPCS ASSIGNMENTS FROM NEW TECHNOLOGY APCS TO PROCEDURE APCS FOR 2003

HCPCS	Description	2002 SI	2003 SI	2002 APC	2003 APC
19103	Bx breast precut w/device	S	T	0710	0658
33282	Implant pat-active ht record	S	S	0710	0680
36550	Declot vascular device	T	T	0972	0677
53850	Prostatic microwave thermotx	T	T	0982	0675
53852	Prostatic rf thermotx	T	T	0982	0675
55873	Cryoablate prostate	T	T	0982	0674
76075	Dual energy x-ray study	S	S	0707	0288
76076	Dual energy x-ray study	S	S	0707	0665
77520	Proton trmt, simple w/o comp	S	S	0710	0664
77522	Proton trmt, simple w/comp	S	S	0710	0664

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TABLE 3.—CHANGES IN HCPCS ASSIGNMENTS FROM NEW TECHNOLOGY APCS TO PROCEDURE APCS FOR 2003—Continued

HCPCS	Description	2002 SI	2003 SI	2002 APC	2003 APC
77523	Proton trmt, intermediate	S	S	0712	0664
77525	Proton treatment, complex	S	S	0712	0664
92586	Auditor evoke potent, limit	S	S	0707	0218
95965	Meg, spontaneous	T	S	0972	0717
95966	Meg, evoked, single	T	S	0972	0714
95967	Meg, evoked, each addl	T	S	0972	0712
C1300	Hyperbaric oxygen	S	S	0707	0659
C9708	Preview Tx Planning Software	T	T	0975	0973
G0125	PET img WhBD sgl pulm ring	T	S	0976	0667
G0166	Extml counterpulse, per tx	T	T	0972	0678
G0168	Wound closure by adhesive	T	X	0970	0340
G0173	Stereo radoisurgery, complete	S	S	0721	0663
G0204	Diagnostic mammography digital	S	S	0707	0669
G0206	Diagnostic mammography digital	S	S	0707	0669
G0210	PET img whbd ring dxlung ca	S	S	0714	0667
G0211	PET img whbd ring init lung	S	S	0714	0667
G0212	PET img whbd ring restag lun	S	S	0714	0667
G0213	PET img whbd ring dx colorec	S	S	0714	0667
G0214	PET img whbd ring init colre	S	S	0714	0667
G0215	PET img whbd restag col	S	S	0714	0667
G0216	PET img whbd ring dx melanom	S	S	0714	0667
G0217	PET img whbd ring init melan	S	S	0714	0667
G0218	PET img whbd ring restag mel	S	S	0714	0667
G0220	PET img whbd ring dx lymphom	S	S	0714	0667
G0221	PET img whbd ring init lymph	S	S	0714	0667
G0222	PET img whbd ring resta lymp	S	S	0714	0667
G0223	PET img whbd reg ring dx hea	S	S	0714	0667
G0224	PET img whbd reg ring ini hea	S	S	0714	0667
G0225	PET img whbd ring restag hea	S	S	0714	0667
G0226	PET img whbd dx esophag	S	S	0714	0667
G0227	PET img whbd ring ini esopha	S	S	0714	0667
G0228	PET img whbd ring restg esop	S	S	0714	0667
G0229	PET img metabolic brain ring	S	S	0714	0667
G0230	PET myocard viability ring	S	S	0714	0667
G0231	PET WhBD colorec; gamma cam	S	S	0714	0667
G0232	PET WhBD lymphoma; gamma cam	S	S	0714	0667
G0233	PET WhBD melanoma; gamma cam	S	S	0714	0667
G0234	PET WhBD pulm nod, gamma cam	S	S	0714	0667

3. APC Assignment for New Codes Created During Calendar Year (CY) 2002 and Selected Codes and APC Assignments for 2003

During CY 2002, we created several HCPCS codes to describe services newly covered by Medicare and payable under the hospital OPPS. While we have assigned these services to APCs for CY 2002, we opened the assignments to public comment in the proposed rule. In addition, in the proposed rule, we proposed to create several new HCPCS codes and APC assignments with an effective date of January 1, 2003 and we solicited comments on these proposed codes and proposed APC assignments. Table 4 below includes new procedural HCPCS codes either created for implementation in July 2002, which we intend to implement in October 2002, or which we will implement in January 2003.

Table 4 does not include new codes for drugs and devices for which we established or intend to establish pass-through payment eligibility in July or October 2002.

TABLE 4.—NEW G CODES FOR 2002 AND 2003 FOR WHICH THERE ARE FINAL APC ASSIGNMENTS

Code	Long descriptor	Effective	Final APC	SI
G0245	Initial physician evaluation and management of a diabetic patient with diabetic sensory neuropathy resulting in a loss of protective sensation (LOPS) which must include: 1. The diagnosis of LOPS, 2. A patient history, 3. A physical examination that consists of at least the following elements: (a) Visual inspection of the forefoot, hindfoot, and toe web spaces, (b) Evaluation of a protective sensation, (c) Evaluation of foot structure and biomechanics, (d) Evaluation of vascular status and skin integrity, and (e) Evaluation and recommendation of footwear. 4. Patient education.	7/1/2002	0600	V

TABLE 4.—NEW G CODES FOR 2002 AND 2003 FOR WHICH THERE ARE FINAL APC ASSIGNMENTS—Continued

Code	Long descriptor	Effective	Final APC	SI
G0246	Follow-up physician evaluation and management of a diabetic patient with diabetic sensory neuropathy resulting in a LOPS to include at least the following: 1. A patient history. 2. A physical examination that includes: (a) Visual inspection of the forefoot, hindfoot, and toe web spaces, (b) Evaluation of protective sensation, (c) Evaluation of foot structure and biomechanics, (d) Evaluation of vascular status and skin integrity, and (e) Evaluation and recommendation of footwear. 3. Patient education.	7/1/2002	0600	V
G0247	Routine foot care by a physician of a diabetic patient with diabetic sensory neuropathy resulting in a loss of protective sensation (LOPS) to include if present, at least the following: (1) local care of superficial wounds, (2) debridement of corns and calluses, and (3) trimming and debridement of nails.	7/1/2002	0009	T
G0248	Demonstration, at initial use, of home INR monitoring for patient with mechanical heart valve(s) who meets Medicare coverage criteria, under the direction of a physician; includes: demonstrating use and care of the INR monitor, obtaining at least one blood sample, provision of instructions for reporting home INR test results, and documentation of patient ability to perform testing.	7/1/2002	0708	S
G0249	Provision of test materials and equipment for home INR monitoring to patient with mechanical heart valve(s) who meets Medicare coverage criteria. Includes provision of materials for use in the home and reporting of test results to physician; per 4 tests.	7/1/2002	0708	S
G0250	Physician review, interpretation and patient management of home INR testing for a patient with mechanical heart valve(s) who meets other coverage criteria; per 4 tests (does not require face-to-face service).	7/1/2002	N/A	E
G0252	PET imaging, full and partial-ring PET scanners only, for initial diagnosis of breast cancer and/or surgical planning for breast cancer (e.g., initial staging of axillary lymph nodes).	10/1/2002	0714	S
G0253	PET imaging for breast cancer, full and partial-ring PET scanners only, staging/restaging of local regional recurrence or distant metastases (i.e., staging/restaging after or prior to course of treatment).	10/1/2002	0714	S
G0254	PET imaging for breast cancer, full and partial-ring PET scanners only, evaluation of response to treatment, performed during course of treatment.	10/1/2002	0714	S
G0255	Current perception threshold/sensory nerve conduction test, (sNCT) per limb, any nerve	10/1/2002	N/A	E
G0258	Intravenous infusion during separately payable observation stay, per observation stay (must be reported with G0244).	1/1/2003	0340 Deleted with 90-day grace period	X
G0257	Unscheduled or emergency dialysis treatment for an ESRD patient in a hospital outpatient department that is not certified as an ESRD facility.	1/1/2003	0170	S
G0259	Injection procedure for sacroiliac joint; arthrography	1/1/2003	N/A	N
G0260	Injection procedure for sacroiliac joint; provision of anesthetic, steroid and/or other therapeutic agent and arthrography.	1/1/2003	0204	T
G0256	Prostate brachytherapy using permanently implanted palladium seeds, including transperitoneal placement of needles or catheters into the prostate, cystoscopy and application of permanent interstitial radiation source.	1/1/2003	0649	T
G0261	Prostate brachytherapy using permanently implanted iodine seeds, including transperitoneal placement of needles or catheters into the prostate, cystoscopy and application of permanent interstitial radiation source.	1/1/2003	684	T
G0263	Direct admission of patient with diagnosis of congestive heart failure, chest pain or asthma for observation.	1/1/2003	N/A	N
G0264	Initial nursing assessment of patient directly admitted to observation with diagnosis other than congestive heart failure, chest pain, or asthma.	1/1/2003	0600	S
G0290	Transcatheter placement of a drug eluting intracoronary stent(s), percutaneous, with or without other therapeutic intervention, any method; single vessel.	1/1/2003	0656	E
G0291	Transcatheter placement of a drug eluting intracoronary stent(s), percutaneous, with or without other therapeutic intervention, any method; each additional vessel.	1/1/2003	0656	E

HCPCS Codes Created During CY 2002

The G codes G0245 through G0250 were created to implement payment for newly covered Medicare services due to national coverage determinations. The G codes G0252–G0255 were established October 1, 2002, as a result of national coverage policies that became effective October 1, 2002. These codes were created to accurately describe the services covered, to ensure that they were reported correctly, to track their utilization, and to establish payment.

We solicited comments on the APC assignment of these services. The codes describing evaluation and management services were assigned to clinic visit APCs containing similar services, and the codes describing procedural services were assigned to new technology APCs or to APCs containing procedures requiring similar resource consumption. Because G0250 is a professional service furnished by a physician, it is not payable under OPPS.

We did not receive any comments on the codes or APC assignments for G0245, G0246, G0247, G0248, G0249, G0250, or G0255. Therefore, we are finalizing them as shown.

We are also finalizing APC assignments for G0252, G0253, and G0254. The comments and responses for these services are discussed elsewhere in this preamble.

We implemented HCPCS code G0258 (Intravenous Infusion(s) During Separately Payable Observation Stay)

effective October 1, 2002, to describe

CPT code 37096 describes two distinct

final action, comments, and responses is

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effective October 1, 2002, to describe infusion therapy given during a separately payable observation stay. We assigned it to APC 0340 because we believed APC 0340 appropriately accounts for the resources used for infusion during observation. As discussed in section X.B, we received many comments opposing creation of this code. Therefore, we will delete it effective January 1, 2003.

New HCPCS Codes for January 1, 2003, for Which We Proposed APC Assignments in the August 9, 2002 Proposed Rule

In the August 9, 2002, proposed rule, we proposed to create several new HCPCS codes for 2003 to address issues that have come to our attention, to describe new technology procedures, to implement policy proposals discussed in the rule, and to allow more appropriate reporting of procedures currently described by (physician's) current procedural terminology (CPT) (HCPCS Level I) codes. The codes we proposed are as follows:

(1) G0FFF—Bone Marrow Aspiration and Biopsy Services—we proposed to create this code to describe bone marrow aspiration and biopsy performed through the same incision. We proposed to place this code in APC 0003. This code also appears in the proposed rule for the physician fee schedule, published in the June 28, 2002, issue of the **Federal Register** (67 FR 43846). This code would facilitate proper reporting of this procedure.

As discussed under general comments and responses below, we received many comments that objected to the proliferation of G codes for the services for which the CPT or HCPCS level II process could be used to create a code. After review of the comments, we agree that this code should go through the CPT process. Therefore, we have not implemented the G code we proposed. We will instead, submit a code for "Bone Marrow Biopsy and Aspiration Performed in the Same Bone" to CPT in time for the 2004 CPT code cycle.

(2) G0257—Unscheduled and Emergency Treatment for ESRD Patients—we proposed this code to facilitate payment for dialysis provided to ESRD patients in the outpatient department of a hospital that does not have a certified ESRD facility. The comments, responses, and final action regarding these services are discussed in section X.F of this rule.

(3) G0259 and G0260—Sacroiliac Joint Injections—we proposed to create these two codes to replace CPT code 27096, Injection procedure for sacroiliac joint, arthrography and/or anesthetic steroid. CPT code 27096 describes two distinct procedures requiring different resource consumption. Moreover, our policy of packaging injection procedures for imaging required packaging of this procedure even when it was used to report injection of a steroid or anesthetic. In these cases, it was appropriately billed without another procedure and should have been payable. Therefore, in order to facilitate appropriate reporting and payment for the procedures described by CPT code 27096, we proposed to create G0259, Injection procedure for sacroiliac joint, arthrography, and G0260, Injection procedure for sacroiliac joint, provision of anesthetic and/or steroid. We proposed to give G0259 status indicator N, and we proposed to assign G0260 to APC 0204.

Comment: Many commenters raised concern over nonpayment for sacroiliac joint injections. The commenter brings to our attention that when a sacroiliac joint injection. CPT code 27096 (Injection procedure for sacroiliac joint, arthrography and/or anesthetic steroid), is performed for anesthetic/steroid purposes, the procedure is not being paid since the costs are only packaged into the arthrography imaging component.

Response: We appreciate this concern and agree with the commenter that payment should be made for sacroiliac joint injections when administered for anesthetic/steroid purposes. Therefore, in order to facilitate appropriate reporting and payment for the procedures described by CPT code 27096 (Injection procedure for sacroiliac joint, arthrography and/or anesthetic steroid), we have created the following new G-codes to replace CPT code 27096: G0259 (Injection procedure for sacroiliac joint, arthrography) and G0260 (Injection procedure for sacroiliac joint, provision of anesthetic and/or steroid). G0259 has been given status indicator N, and G0260 has been assigned to APC 0204.

(4) G0KKK—Prostate Brachytherapy—we proposed this code to implement our policy decision discussed in section III.C.3 of the proposed rule (section IV.E of this rule). As a result of comments we created two new codes G0256 and G0261. See section IV.E. for the discussion of prostate brachytherapy.

(5) G0263 and G0264—Observation Care—we proposed to create these codes to describe observation care provided to a patient who is directly admitted from a physician's office to a hospital for observation care. We discussed these codes in detail in section VIII.B of the proposed rule. Our discussion of the final action, comments, and responses is contained in section X.B of this rule.

(6) G0290, G0291; Drug Eluting Stents—We discuss these codes in the immediately following section.

Drug-Eluting Stents

In the August 9, 2002 proposed rule, we discussed the exceptional circumstances that led us to propose a departure from our standard OPPS payment methodology as we have done under the inpatient PPS for Federal fiscal year (FY) 2003 (67 FR 50003–50005). We made this unusual proposal to ensure consistent payment for drug-eluting stents in both the inpatient and outpatient settings; to ensure that hospital resources are not negatively affected by a sudden surge in demand for this new technology if FDA approval is received; and to ensure that Medicare payment does not impede beneficiary access to what appears to be a potentially landmark advance in the treatment of coronary disease. Consistent with the special approach we implemented in the inpatient PPS final rule, we proposed to create two new HCPCS codes and a new APC that may be used to pay for the insertion of coronary artery drug-eluting stents under the OPPS to be effective if these stents receive FDA approval for general use. Of course, as with other new procedures, FDA approval does not mean that Medicare will always cover the approved item. Medicare coverage depends upon whether an item or service is medically necessary to treat an illness or injury as determined by Medicare contractors based on the specifics of individual cases.

The new HCPCS codes that we proposed are as follows:

G0290—Transcatheter placement of a drug eluting intracoronary stent(s), percutaneous, with or without other therapeutic intervention, any method; single vessel

G0291—Transcatheter placement of a drug eluting intracoronary stent(s), percutaneous, with or without other therapeutic intervention, any method; each additional vessel

We proposed to assign G0290 and G0291 to new APC 0656, Transcatheter Placement of Drug-Eluting Coronary Stents, with a status indicator of T.

To establish a payment amount for the proposed new APC, we proposed to apply the same assumptions that we used in establishing the weights for diagnosis-related group (DRG) 526 (Percutaneous Cardiovascular Procedure with Drug-Eluting Stent with AMI) and DRG 527 (Percutaneous Cardiovascular Procedure With Drug-Eluting Stent Without AMI) as described in the final

rule implementing the FY 2003 inpatient PPS. That is, we assume a price differential of approximately $1,200 when drug-eluting stents are used. We assumed an average of 1.5 stents per procedure, and we proposed to add $1,200 to the median costs established for APC 0104 based on 2001 claims data to determine the payment rate for APC 656. We proposed to calculate a relative payment weight and payment rate for APC 0656 in accordance with the methodology that we discuss in section III.B. of this preamble.

We proposed to implement payment under APC 0656 effective April 1, 2003, consistent with the effective date for implementation of the drug-eluting DRGs under the OPPS and contingent upon FDA approval by that date. If the FDA grants approval prior to April 1, 2003, hospitals would be paid for insertion of coronary artery drug-eluting stents under APC 104. Such claims may qualify for outlier payments.

We proposed to establish the new HCPCS codes and APC group for coronary artery drug-eluting stents to allow close tracking of the utilization and costs associated with these services. In the proposed rule, we invited comments on this proposed methodology for recognizing the additional costs of drug-eluting stents under the OPPS.

Comment: All of the commenters who addressed our payment proposal for drug-eluting stents supported our taking proactive steps to create an APC for this new technology in anticipation of FDA approval by April 2003. However, most of the commenters expressed concern about the level of payment proposed for APC 656, stating that $1,200 significantly understates the added cost of the drug-eluting stents. One commenter suggested that indications from the market are projecting a cost of $2,000 per stent. Another commenter cited vendors who indicate that drug-eluting stents will cost 3 times the cost of the current stent for an approximate cost of $3,360 each. Several commenters stated that the incremental cost between a bare metal and a drug-eluting stent is expected to be $2,000. Two commenters urged us to set the rate for APC 656 based on the actual price difference between the current and drug-eluting stents, and one commenter recommended setting the initial payment amount at a level that is 60 percent above the probable hospital acquisition cost. One commenter asked why we added $1,200 to APC 656 rather than $1,800. The basis for this request was that the incremental payment for inpatient care was $1,800 for an average of 1.5 stents per procedure.

Response: To establish a payment rate for APC 656, we proposed to add $1,200 to the median cost of stent insertion procedures in APC 104, based on assumptions that we applied to establish the weights for DRGs involving drug-eluting stents under the inpatient PPS. Based on the median cost established for APC 104 using the 2001 claims data that were reflected in the August 9, 2002 proposed rates, we determined that an additional $1,200 would offset the incremental cost of an average of 1.5 drug-eluting stents per procedure.

We do not agree that the incremental payment should be $1,800. Although it is true that 1.5 stents are typically placed per procedure, it is rare for two stents to be placed in one coronary artery in an outpatient setting. Furthermore, hospitals can bill under the OPPS a separate code for each vessel in which a stent is placed, unlike the inpatient PPS. Because hospitals will in most cases be able to report each stent placement separately in the outpatient setting, making an incremental payment of $1800 would significantly overpay for each stent.

As we explain elsewhere in this preamble, the payment rates that this final rule implements are based on more current data than those that were available when we set the rates proposed in the August 9, 2002 rule. The rates in this final rule also reflect adjustments intended to level the transition from rates based on pre-OPPS data and estimated pass-through device and drug costs to rates based entirely on OPPS data that reflect actual device and drug costs reported by hospitals.

Comment: One commenter expressed concern about our expectation that a new technology must "transform" medical care and be the object of substantial demand in order to justify making an exception to our standard OPPS payment methodology. The commenter believes that our rationale for making an exception for drug-eluting stents establishes an almost unattainable threshold for other technologies to reach in order to receive similar treatment in the future. Conversely, another commenter expressed concern that by establishing codes and payment rates for drug-eluting stents, we are setting a precedent that will likely increase the pressure to create new temporary codes for non-breakthrough technologies. This commenter encouraged us to maintain highly selective criteria when creating new codes for new technologies in the future.

Response: As we explain at length in the August 9, 2002 proposed rule, we believe that drug-eluting stents are potentially a revolutionary approach to the treatment of coronary disease. Ordinarily, we would expect a new technology like the drug-eluting stent to qualify for a pass-through payment or for payment under a new technology APC.

However, because the drug-eluting stent does not meet the criteria established for these two methods of payment for new technology under the OPPS, we were compelled to seek an alternative approach in order to ensure beneficiary access to this extraordinary new treatment, once it receives FDA approval, without placing an extraordinary burden on hospital resources. We expect that either a pass-through payment or assignment to a new technology APC will, in the overwhelming preponderance of cases, provide adequate and timely payment under the OPPS for new technology. We agree with the commenter who supported maintaining highly selective standards when establishing codes for new technology. The threshold for such an approach must be exceptionally high and applicable only in the most extraordinary and unusual cases.

Comment: One commenter asked that we clarify how we will adjust the 2003 OPPS payment rates if FDA approval is not given for drug-eluting stents by April 1, 2003. The commenter is concerned about the adverse effect on the rates for other services that would result from our having recalibrated and scaled the relative payment weights for all services, taking into account additional payment for drug-eluting stents that turns out not to be an expenditure.

Response: We have reviewed the impact of the drug-eluting stents on the total recalibration exercise and determined that excluding the additional allowance for the drug-eluting stents would not result in a significant redistribution of funds for other services if FDA approval were not issued by April 1, 2003, triggering payment under the OPPS. We estimated that slightly fewer than one-third of the cases paid under APC 104 (approximately 5,400 procedures) would be performed using drug-eluting stents during the three quarters of 2003 when payment would be made for APC 656, assuming FDA approval is issued by April 1, 2003. Payment for the use of drug-eluting stents represents approximately 0.17 percent of the total APC weights. Restoration of these payments to the pool of weights for other services would not measurably

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change the weights of the other APCs. Therefore, we would not revise the 2003 APC weights if payment for drug-eluting stents were not allowed beginning April 1, 2003.

Comment: One commenter expressed concern that the general use of data from other countries to set the national payment rate for a new device in the absence of hospital claims and cost data raises long term issues regarding the impact this approach would have on manufacturers' investment and pricing strategies, both abroad and in the United States. The commenter recommended that we consider these issues in more depth.

Response: We respond to this issue in our discussion of MedPAC comments in section XI.

Comment: One commenter recommended that we carefully monitor the use of APCs for which the national payment rate is established based on pricing in countries other than the United States and the costs reported by hospitals for those APCs. Another commenter stated that the new HCPCS codes for the drug-eluting stent procedures should be temporary and that we should ask the CPT Editorial Board to develop national CPT codes as soon as possible.

Response: As we indicated in the August 9, 2002 proposed rule, we intend to closely track the utilization and costs associated with the drug-eluting stents. We established the G-codes for the use of drug-eluting stents precisely in order to permit us to collect these data. However, the cost data taken from hospital claims associated with the use of the drug-eluting stents will ultimately be incorporated into the current CPT codes for coronary stent placement. We believe that the current CPT codes describe the procedure adequately and that separate permanent codes specific to the use of drug-eluting stents are not necessary based on the expectation that drug-eluting stents will eventually become the standard of care.

Effective for services furnished on or after April 1, 2003, contingent upon FDA approval of the drug-eluting stents, we are implementing payment under APC 656, Transcatheter Placement of Drug-Eluting Coronary Stents, for two temporary HCPCS codes:

G0290 Transcatheter placement of a drug-eluting intracoronary stent(s), percutaneous, with or without other therapeutic intervention, any method; single vessel.

G0291 Transcatheter placement of a drug-eluting intracoronary stent(s), percutaneous, with or without other therapeutic intervention, any method; each additional vessel.

Note that Table 6 and Addendum B show status indicator E for HCPCS codes G0290 and G0291 since payment under these codes will not be effective before April 1, 2001. However, we include the APC for drug eluting stent procedures (APC 0656) in Addendum A with the payment rate and status indicator of T to identify how these new codes will be paid once they are implemented.

If the FDA grants approval before April 1, 2003, hospitals will be paid for placement of drug-eluting stents under APC 104. If the FDA does not grant approval by April 1, 2003, we will announce a new effective date for APC 0656 and for HCPCS codes G0290 and G0291 by Program Memorandum.

G codes for Outpatient Services Under National Clinical Trials

We have created three new G codes for use in reporting services furnished in hospital outpatient departments under national clinical trials: G0292 Administration(s) of experimental drug(s) only in a Medicare qualifying clinical trial (includes administration for chemotherapy and other types of therapy via infusion and/or other than infusion), per day.

G0293 Noncovered surgical procedure(s) using conscious sedation, regional, general or spinal anesthesia in a Medicare qualifying clinical trial, per day.

G0294 Noncovered surgical procedure(s) using either no anesthesia or local anesthesia only, in a Medicare qualifying clinical trial, per day.

On September 19, 2000, Medicare issued a national coverage decision stating that Medicare will pay for the routine costs of clinical trials. This policy is published as section 30–1 of Medicare's Coverage Issues Manual. Because the experimental intervention is not covered but items and services required solely because of the intervention are covered, we needed to identify ways to properly code for and pay for the routine costs when delivered in a hospital outpatient department.

We believe that to accurately pay for the covered services associated with the administration of drugs as part of a clinical trial, we need to create a new code to allow for correct billing and payment for routine costs, as defined by the national coverage determination. Therefore, the code G0292, "Administration(s) of experimental drug(s) only in a Medicare qualifying clinical trial (includes administration for chemotherapy and other types of therapy via infusion and/or other than infusion), per day," should be billed when only experimental drugs are administered as part of a Medicare qualifying clinical trial. When an experimental drug is being administered in conjunction with payable drugs or on the same day as payable drugs, G0292 should not be used. Instead, the appropriate drug administration code should be billed.

There are also procedures that may be performed in the hospital outpatient department as part of a qualifying clinical trial. Because the intervention is not covered under Medicare's clinical trial policy, we need a mechanism to pay the hospital for its covered fixed costs associated with providing the service under the clinical trial. We have created two codes to allow for correct billing of procedures performed as the focus of qualifying clinical trials, G0293 and G0294. G0293 is defined as "Noncovered surgical procedure(s) using conscious sedation, regional, general or spinal anesthesia in a Medicare qualifying clinical trial, per day," and G0294 is defined as "Noncovered surgical procedure(s) using either no anesthesia or local anesthesia only, in a Medicare qualifying clinical trial, per day."

All three of these codes are for OPPS use only. Other provider types may not bill these codes.

The interim APC assignments for G0292, G0293, and G0294 are APC 0708, 0710, and 0707, respectively. The status indicator for these three codes is S. As discussed below, this APC assignment is subject to comment during the comment period discussed in section I of this rule.

General comments on creation and use of G codes

Comment: Several commenters were concerned about the creation of G codes with long descriptors that appear complex and specific to OPPS rules. In addition, we received comments indicating that the hospital coding community was less familiar with G codes and requesting that CMS consider other existing code sets.

Response: Prior to the creation of any G code, we examine alternative mechanisms for implementing coverage and payment policy in a timely fashion. In the event no other appropriate mechanism exists, we create a G code to allow accurate payment given applicable statutory and regulatory requirements. After the creation of a G code, we work with the American Medical Association's Current Procedural Terminology (CPT) Editorial Panel whenever possible to create a replacement CPT code. We are deleting 25 G codes this year as a result of this process. However, there are instances where G codes cannot be converted to CPT codes due to the unique nature of the statutory and regulatory requirements. In these situations, we work to educate the provider community as to the appropriate use of these codes. Part of this educational effort includes the development of comprehensive descriptors at the time the G code is created.

Comment: Two commenters indicated they would like to see a shorter timeframe between the FDA approval for a new drug and the development of a HCPCS code for that drug.

Response: The FDA approval process is one source of information we use in reviewing new drugs. However, the FDA process does not address the statutory and regulatory requirements of the Medicare program. We perform our review of new drugs as expeditiously as possible given these requirements. We are conscious of the need to streamline this process and we will continue to seek ways to do so.

Public Comments on Interim APC Assignments for Codes New for 2003

As discussed in section I, we are accepting public comment on the interim APC assignments for the new codes shown in Addendum A with the indicator NI. These codes are new for 2003 and the APC assignment was not subjected to public comment in the August 9, 2002 proposed rule. We are not accepting comment on APC assignments that were proposed in the August 9, 2002 proposed rule and are being shown as NF in Addendum B since they have already been subjected to public comment and are made final in this rule.

Comment: Several commenters expressed concern about the increasing frequency of G codes issued by CMS. Commenters asserted that, in the interest of coding standardization, clarity, and accuracy, G codes should be developed only as a last resort. Commenters also stated that G codes sometimes overlap or duplicate other code sets. One commenter recommended a single, standardized process for establishment of temporary HCPCS Level II codes, ensuring that a duplicate or overlapping code is not anticipated in another coding set (for example, CPT).

Response: We agree that, where appropriate, G codes should be temporary. Unfortunately, it is sometimes necessary to develop G codes to accommodate changes in legislation, regulation, coverage, and payment policy. Not only is the timetable for such changes inconsistent with the timetable for CPT publication, but frequently these changes must be made on a quarterly basis.

In 2002, CMS and CPT staff, working together, reviewed all existing G codes and agreed to transition over 20 of them to CPT codes. Therefore, for 2003 many G codes will be deleted in favor of newly created CPT codes. We believe that an annual review of G codes by CMS and CPT staff is the best way to determine which G codes should be transitioned to CPT codes and the process to use for such a transition. Therefore, we plan to continue working with CPT staff on an annual basis to continue transitioning existing G codes to CPT codes. We believe such an annual, comprehensive review will address the commenters' concerns. However, we do wish to emphasize that CMS, where appropriate, does consult with interested providers prior to the creation of G codes in order to facilitate coding clarity and minimize the coding burden on hospitals.

4. Other Public Comments on APC Assignments and Payment Rates

Comment: One commenter asked us to create three new tech APCs for cardiac resynchronization therapy, or, alternatively, to establish a new tech APC payment for placement of the left ventricular lead used in cardiac resynchronization therapy.

Response: We have placed the CPT codes for left ventricular lead placement in new tech APCs. We believe the APC placement accounts for the cost of the procedure and for the lead. The cost of the guidewires and catheters used in the procedure will be captured in the code used to report placement of the pacemaker or cardioverter defibrillator and other leads.

Comment: Several commenters were concerned about bundling payment of radiopharmaceuticals into procedures and about payment reductions for myocardial perfusion scanning.

Response: Payment for most myocardial perfusion scans will increase in 2003 and the payment reduction for scans in APC 666 is commensurate with the costs of performing those procedures. The issue of packaging radiopharmaceuticals is discussed elsewhere in this preamble.

Comment: A commenter expressed concern about CMS's decision to discontinue the pass-through category C1780 (New Technology Intraocular Lens (IOLs)). The commenter stated that the proposal to eliminate this code from pass through status and separate payment contradicts existing regulations.

Response: We do not agree that our proposal contradicts existing regulations. We believe the commenter is referring to § 141 (b) of the Social Security Act Amendments of 1994 (Public Law 103–432) that requires us to implement a process under which interested parties may request a review of the appropriateness of payment for IOLs furnished by ambulatory surgical centers (ASCs). In compliance with this statutory change, we published regulations concerning payment for IOLs in ASCs (42 CFR 416). Those regulations do not apply to the payment for such lenses furnished to patients of hospital outpatient departments. As described elsewhere in the final rule, the cost of IOLs, along with the costs of other sunsetting pass through devices, is reflected in the median cost and thus the payment for the procedures with which IOLs are used.

Comment: A commenter asserted that the current description of HCPCS code J2790 is flawed. According to the commenter, the description of "1 dose package" does not accurately describe the two sizes of dosage units available in the marketplace for different indications (50 mcg and 300 mcg). The commenter expressed hope that an application for new HCPCS codes would be approved, and the commenter also requested that we establish separate payment rates for this product based upon the distinction between the two dosages. The commenter noted that current "Redbook" average wholesale price (AWP) for the 50 mcg dose is $53.90; for the 300 mcg dose, it is $126.14.

Response: We reviewed the hospital charge data upon which the payment amount for this code must be based. In the absence of separate codes for two different product sizes, we are unable to determine a separate median cost per encounter for the two sizes. We can only base our determination about this product on existing data that represents the current descriptor of this code. We note that, in using the latest set of OPPS claims data available for the final rule, the median cost per encounter of this code was below the $150 threshold. Therefore, this code will be packaged in 2003.

Comment: A commenter requested that we create new HCPCS codes, one for digital-based computer-aided detection (CAD) with screening mammography and one for digital-based CAD with diagnostic mammography.

Response: When the computer-aided detection codes were originally assigned, there was minimal use of CAD in conjunction with direct digital mammography. The current descriptors of both HCPCS G0236 and CPT code 76085 do not explicitly state that these

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services can be billed in conjunction with either direct digital images or standard film images converted to digital images for this reason. We agree with the commenter that use of CAD with direct digital images should be reportable. Therefore, we have revised the descriptor of HCPCS code G0236 to include conversion of both direct digital images and standard film images converted to digital images. Additionally, we will request that the CPT editorial panel review the current definition associated with the screening computer-aided detection code (CPT code 76085) for future revision. Until any such revision is made to CPT code 76085, hospitals should use CPT code 76085 for reporting application of CAD to both direct digital screening images and standard film images.

The descriptor for G0236 has been revised to read as follows: digitalization of film radiographic images with computer analysis for lesion detection, or computer analysis of digital mammogram for lesion detection, and further physician review for interpretation, diagnostic mammography (list separately in addition to code for primary procedure). We believe that we have sufficient claims data to use in assigning digital mammography to an APC.

Comment: Several commenters expressed concern over the payment rate reduction for CPT 52353 (Cystoureteroscopy with lithotripsy) in APC 0163 (Level IV Cystourethroscopy and other genitourinary procedures). Commenters also requested that we place CPT 52353 in APC 0169 (Lithotripsy).

Response: Movement of CPT 52353 to APC 0169 would result in APC 0169 no longer being clinically homogenous, therefore CPT 52353 (Cystoureteroscopy with lithotripsy) will remain in APC 0163 (Lithotripsy) with other similar procedures.

Comment: Several commenters brought to our attention that placing CPT 52234 (removal of small tumors) and CPT 52235 (removal of medium tumors) in APC 163 (Level IV Cystourethroscopy) instead of APC 0162 (Level III Cystourethroscopy) would adversely affect the payment rate for APC 0163, which contains several more costly procedures. Furthermore, commenters stated that it seemed illogical for CPT 52234 (removal of small tumors) and CPT 52235 (removal of medium tumors) to be placed in APC 0163 while CPT 52224 (removal of minor tumors) and CPT 52240 (removal of large tumors) were placed in APC 0162 (Level III Cystourethroscopy). These commenters requested that these four codes be placed together in APC 0162 (Level III Cystourethroscopy).

Response: We agree with commenters and have placed CPT codes 52234 and 52235 in APC 0162 (Level III Cystourethroscopy). This result is a significant increase in payment for APC 0163 while maintaining an appropriate payment rate for CPT codes 52234 and 52235.

Comment: A commenter stated that APC 0100 (Cardiac stress tests) carries a proposed payment rate of $69.69, which the commenter believes does not sufficiently cover the cost of CPT 93025 (Microvolt t-wave alternans). The commenter requested that CPT 93025 be assigned to an APC that pays in the $250 range.

Response: CPT 93025 (Microvolt t-wave assessment) is frequently performed simultaneously with CPT 93017 (Cardiovascular stress test) (that is, the patient is placed on a treadmill once and data for the stress test and Microvolt t-wave alternans are obtained simultaneously), achieving significant economies of scale. Therefore we will keep CPT 93025 (Microvolt t-wave assessment) in APC 0100 (Cardiac stress tests). However, we will review this request again next year when we have more claims data for 93025.

Comment: We received several comments urging that CPT 52647 (Laser surgery of prostate) be placed in a higher paying APC than APC 0163 (Level IV Cystourethroscopy and other genitourinary procedures) in order to cover the cost of a new laser source involved in this procedure.

Response: We have significant claims for this procedure. Any costs associated with new technology developed to perform this procedure should be reflected in future claims data, insofar as the new technology is used, and will be reflected in our updated payment rates. Because we have sufficient claims data indicating the appropriate placement of this service is in APC 0163, CPT 52647 (Laser surgery of prostate) will remain in APC 0163.

Comment: A commenter urged that we maintain a separate APC for items currently billed under C1784 (Ocular device, intraoperative, detached retina). The commenter stated that separate coding and payment would ensure that the procedure groupings maintain their clinical homogeneity and remain similar with respect to resource consumption.

Response: We do not agree that a separate APC for items currently billed under C1784 (Ocular device, intraoperative, detached retina) is necessary to maintain clinical homogeneity or to remain similar with respect to resource consumption. Therefore, items currently billed under C1784 will not remain in a separate APC. However, we will present this issue to the Advisory Panel on Ambulatory Payment Classification Groups (the APC Advisory Panel) next year for further review.

Comment: A commenter expressed concern over the movement of CPT 15000 (surgical debridement) from APC 0026 (Level III Skin repair) to APC 0025 (Level II Skin repair) due to the consolidation of these APCs. The commenter believed that if CPT 15000 and CPT 15342 (Cultured skin graft, 25 cm) were placed in the same APC that separate payment would not be made for both procedures.

Response: The commenter is incorrect. Separate payment will be made for both procedures even if they are in the same APC. Because this APC has a status indicator of "T," payment of the full APC amount will be made for the first procedure and 50 percent of the APC amount will be paid for the second procedure. Furthermore, we believe that the codes within APC 0025 are clinically homogeneous and do not violate the 2 times rule. Therefore, we will not move either of these procedures into a different APC.

Comment: Several commenters stated that autonomic nervous system (ANS) services (HCPCS 95921 and 95922) are incongruent with the services grouped in APC 0218. The commenter asserted that ANS tests are more appropriately grouped in APC 0216 when evaluated on the basis of complexity and resources used.

Response: The APC Advisory Panel reviewed this issue and recommended that we move HCPCS 95921 and 95922 to APC 0216 only if our claims data supported such a move. Since our claims data did not support such a move, HCPCS 95921 and 95922 will remain in APC 0218. However, we will present this concern to the APC Advisory Panel again next year.

Comment: A commenter expressed concern over the combination of skin tests and miscellaneous red blood cell tests in APC 0341. The commenter asserted that the services within this group cannot be considered comparable with respect to the resources used. The commenter recommended the creation of a new APC titled, "Miscellaneous Red Blood Cell Tests" and suggested that the new APC contain the following HCPCS codes: 86880, 86885, 86886, 86900, and 86901.

Response: We do not agree with the commenter's assertion that the skin tests and miscellaneous red blood cell tests in APC 0341 are not comparable with respect to the resources used. However, we will present this issue to the APC Advisory Panel.

Comment: A commenter asserts that HCPCS 86915 (Bone marrow/stem cell prep) does not fit within APC 346 (Level II Transfusion Laboratory Procedures) and should be moved to the highest paying Transfusion Laboratory Procedures APC 347(Level III Transfusion Laboratory Procedures). Similarly HCPCS 86932 (Frozen blood freeze/thaw) is more properly categorized with its sister codes (HCPCS 86930 and 86931) in APC 347.

Response: We thank the commenter and agree that CPT code 86915 (Bone marrow/stem cell prep) is not appropriately placed in APC 0346 (Level II Transfusion Laboratory Procedures). Therefore, we have moved HCPC 86915 to APC 0110 (Transfusion). This change maintains the clinical homogeneity of APC 110 and allows a more appropriate payment for CPT code 86915. We also agree with the commenter that CPT code 86932 is more appropriately assigned to APC 0347 based on resource consumption; therefore, we have assigned HCPC 86932 to APC 0347.

Comment: Several commenters asserted that the placement of all prosthetic urological procedures and devices in APC 0182 (Insertion of penile prosthesis) does not adequately reflect the difference in cost between inflatable and non-inflatable penile prostheses. These commenters suggested that CPTs 54401, 54405, and 54410 (codes for inflatable penile prosthesis) be separated from CPTs 54400, 54402, and 54416 (codes for insertion of penile prosthesis) and that the status indicator for APCs 0182 (Insertion of penile prosthesis) and 0179 (Insertion of artificial urinary sphincters) be changed from "T" to "S."

Response: To the extent that no facility specializes in implanting inflatable penile prostheses, the APC payment should, on average, be appropriate. Therefore, we will not make any changes in APC 182 at this time. However, we will present this issue to the APC Advisory Panel next year. In addition, the status indicator for APCs 0182 (Insertion of penile prosthesis) and 0179 (Insertion of artificial urinary sphincters) will remain a "T." These APCs will rarely, if ever, be reported with a higher paying APC and thus rarely subject to reduction.

Comment: Several commenters were concerned about the large reduction in payment for APC 0222 (Implantation of Neurological Device) and APC 0225 (Implantation of Neurostimulator). They suggested that we continue the use of pass through codes or use manufacturer submitted device cost data, or hospital invoice data, to determine payment rates for these procedures. One commenter also suggested creating a new APC specifically to capture the costs of one brand of devices.

Response: We are also concerned about the payment reduction to these APCs (and other APCs) and have taken steps to address these reductions. Such steps are discussed elsewhere in this rule. For these APCs, we developed relative weights using only claims that contained C codes for devices and in addition we limited the absolute payment reduction. Furthermore, because APCs 0022 and 0225 may be billed together, we have changed the status indicator of APC 0225 to "S." This means that APC 0225 will not be subject to a 50 percent reduction in payment when billed with APC 0222. We believe that the measures we have taken should address the concerns of the commenters.

Comment: Several commenters agreed with our proposal to make separate payment for radiological guidance procedures.

Response: We thank these commenters and are finalizing our proposal.

Comment: One commenter, who performs digital reconstruction of computed tomographic angiography images, stated that the claims data upon which we based our proposed payment rate for C9708 was flawed and that we should use other data sources in determining a payment rate for this code.

Response: In developing the final rule, we had access to a larger number of claims for C9708 and have concluded our proposed payment rate was inappropriate. Accordingly, we will not finalize our proposal, and C9708 will continue to be paid in APC 0975.

Comment: One commenter requested that guidance be provided on proper use of codes for strapping and casting (APCs 58 and 59).

Response: We agree with the commenter and will work with appropriate experts to provide such guidance. In view of the similar costs for all of these procedures in our current data, we will combine these two APCs (as we proposed), as this is administratively easier for hospitals.

Comment: One commenter disagreed with our proposal to combine APCs 0043 and 0044, as more work is involved in treating a fractured leg than a fractured toe.

Response: Our claims data indicates that the hospital resources involved in all of these procedures are very similar. Therefore, we are finalizing our proposal.

Comment: One commenter agreed with our moving all procedures in APCs 0144 and 0145 into APC 0147 but disagreed with our moving CPT code 46600 (diagnostic anoscopy) into APC 0340.

Response: We disagree. We had a substantial number of single procedure claims for CPT 46600, and the median cost for CPT 46600 makes it appropriate for placement in APC 0340. We are finalizing our proposal.

Comment: One commenter objected to our placement of impedence cardiography in APC 0099. The commenter stated that even though APC 0099 was clinically homogeneous, the resources required for impedence cardiography were greater than the resources required to perform other procedures in the APC.

Response: We disagree. The resources used for the procedures in this APC are similar, and it is clinically homogeneous. We are not making any changes in this APC at this time.

Comment: One commenter requested that we move CPT code 95955 (EEG during non intracranial surgery) to APC 213 and that we move CPT code 95904 (Sensory nerve conduction) to APC 0218.

Response: We are not making any changes at this time because our claims data indicates that these procedures are appropriately placed. However, we will present these concerns to the APC Advisory Panel.

Comment: One commenter requested that we move CPT code 0009T (Endometrial cryoablation) to APC 0984 because it should have a payment rate similar to prostate cryoablation (CPT code 55873).

Response: We have placed CPT code 0009T in APC 0980. Based on the information that we have reviewed, we believe that is an appropriate assignment. CPT 0009T is a significantly shorter procedure than CPT 55873 and requires the use of fewer resources. The main cost of CPT 0009T is a disposable probe, the cost of which is appropriately accounted for in APC 0980.

Comment: One commenter requested that we change the status indicator for CPT code 92974 (Coronary brachytherapy) to S.

Response: We are not making any changes at this time, but we will present this to the APC Advisory Panel next year to obtain its input.

Comment: A commenter requested that we move CPT code 57288 (Sling operation for stress incontinence) from APC 202 into its own APC. This is because it is the only procedure in the

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APC that requires use of a device. The commenter also believed our claims data was flawed and did not reflect the true cost of the sling used for the procedure. The commenter also asked us to create a special APC payment for the sling.

Response: We are not making any changes at this time but will present this to the APC Advisory Panel. We note that we had many single procedure claims for 57288 and that 57288 was by far the most common procedure performed in APC 202. This means that 57288 determined the payment rate for the APC. Therefore, moving 57288 into its own APC would not change its payment rate. Furthermore, we do not create APCs for devices.

Comment: Two commenters were concerned about reduced payment for echocardiography.

Response: Review of payment rates for echocardiography does not show a significant decrease in payment from 2002 for the most commonly performed echocardiograms. The reduction in payment for echocardiograms in APC 671 appropriately reflects the costs of performing those procedures.

Comment: One commenter asked us to clarify the payment rate for Zevalin.

Response: As discussed elsewhere in this rule we have created G codes that describe the diagnostic and therapeutic administration of Zevalin. These two G codes are placed in APCs with payment rates that account for the procedure and the cost of Zevalin. We will use claims data to update the payment rates of these services when such data becomes available.

Comment: One manufacturer of medical devices submitted comments on a large number of APCs (76, 81, 83, 85, 86, 87, 93, 109, 141, 147, 151, 163, 229, 656, and 670). In general the commenter was concerned about seeming violations of the two times rule, use of improperly coded claims, lack of use of multiple procedure claims, and our use of medians to determine payment rates. The commenter also asked us to use outside cost data in setting payment rates and made some specific requests to move codes to differentAPCs.

Response: Many of this commenter's concerns have been addressed in other responses to APC issues. We did use properly coded claims where appropriate. Specifically, for procedures that required use of a device we only used claims that contained C codes. We also took other measures to mitigate steep reductions in payment for device related APCs and we increased the number of claims we used to set payment rates (as discussed in the proposed rule). We believe that many of the commenter's concerns have been addressed by these measures. However, we will review these comments and present several of the specific requests concerning APC changes to the APC Advisory Panel.

Comment: We received many comments from physicians, freestanding breast imaging centers, and others who believed that the proposed OPPS payment amounts for percutaneous breast biopsy (CPT codes 19102 and 19103) would affect the payments made for physician services and in freestanding breast imaging centers and who objected to reduced payments to physicians and to freestanding breast imaging centers.

Response: These commenters are mistaken. The proposed rates affect only hospital outpatient department payment. Payment to physicians and to freestanding facilities is addressed in the Physician Fee Schedule.

Comment: We received comments from hospitals and others who understood that the proposed payments would be limited to hospital outpatient department services. Some of these commenters indicated that the proposed payments for percutaneous breast biopsy (CPT codes 19102 and 19103) would be substantially below payments to hospitals for open breast biopsy (CPT code 19101) and that the proposed rule proposed reductions in payment for percutaneous breast biopsy while it proposed increases in payment for open breast biopsy. They believe that the proposed payment changes would create incentives for performing open breast biopsies instead of less invasive procedures such as percutaneous biopsies. This may result, they asserted, in an increased frequency of open breast biopsies and a decreased frequency of percutaneous breast biopsies, resulting in poorer quality of care and increased costs to Medicare and to beneficiaries. One commenter believed that our claims data do not appropriately account for the costs of CPT code 19103 because CPT code 19103 was a new CPT code in 2001 and hospitals were slow to transition from using CPT code 19101 for these procedures.

Response: We thank the commenters for their comments. We note that CPT codes 19102 and 19103 are never performed alone. They are always performed, at minimum, in conjunction with an imaging guidance procedure. Therefore, the true payment rate for CPT codes 19102 and 19103 is the sum of the APC payments for CPT codes 19102 or 19103 and of the APC payments for procedures billed with CPT codes 19102 and 19103. In order to determine the true payments for these procedures, we examined our claims data and determined the most common combination of CPT codes billed when CPT codes 19102 and 19103 were on the claim. Our claims data verified that CPT codes 19102 and 19103 are rarely performed alone.

Furthermore, we looked at the 10 most frequent combinations of codes billed with CPT codes 19102 and 19103 and summed the proposed APC payments that would be made for these combinations of codes. This represents the true Medicare payment for CPT codes 19102 and 19103. For CPT code 19102 (for which the proposed rule proposed payment under APC 0005 of $157.01), total payment by Medicare would range from $181.45 to $549.16 when the 10 most common combinations of services are provided. Similarly for CPT code 19103 (for which the proposed rule proposed payment under APC 0658 of $289.69), total payment by Medicare would range from $532.05 to $681.84. These combination totals are less than the proposed payment for open breast biopsy (APC 0028, CPT codes 19105, 19120 and 19125, for which we proposed to pay $908.04); however, as the commenters themselves asserted, the resources required for an open surgical procedure are greater than those used for a percutaneous procedure. We agree with the commenters that the costs to the Medicare program of an open breast biopsy are greater than the cost of a percutaneous biopsy. We also believe that the relative total payment rates, as discussed above, for open and percutaneous procedures are appropriate.

With regard to hospital miscoding, even if hospitals took time to transition from using CPT code 19101 to CPT codes 19102 and 19103, the cost data for CPT codes 19102 and 19103 should be accurate. While it is possible that the cost data for CPT code 19101 could be high as it may include some percutaneous procedures, this would not be true for cost data from CPT codes 19102 and 19103. Further, we would note that each of CPT codes 19102 and 19103 were reported over 20,000 times by hospital outpatient departments and that we had several thousand single claims for each code upon which to base relative weights.

We do not believe that the proposed payments will create incentives to perform inappropriate open breast biopsies. We believe that physicians will select the procedure that best meets the needs of the patient and that the hospital will provide the services needed to support the procedure that the physician provides.

5. Procedures That Will Be Paid Only as Inpatient Procedures

Section 1833(t)(1)(B)(i) of the Act gives the Secretary broad authority to determine the services to be covered and paid for under the OPPS. In the April 7, 2000, final rule, we identified procedures that are typically provided only in an inpatient setting and, therefore, would not be paid by Medicare under the OPPS (65 FR 18455). These procedures comprise what is referred to as the "inpatient list." The inpatient list specifies those services that are only paid when provided in an inpatient setting. As we discussed in the April 7, 2000, and the November 30, 2001, final rules, we use the following criteria when reviewing procedures to determine whether or not they should be moved from the inpatient list and assigned to an APC group for payment under the OPPS:

- Most outpatient departments are equipped to provide the services to the Medicare population.
- The simplest procedure described by the code may be performed in most outpatient departments.
- The procedure is related to codes we have already moved off the inpatient list.

We last updated the inpatient list in the November 30, 2001 final rule. As we discuss in section II.A.2 above, the APC Panel at its January 2002 meeting reviewed certain procedures on the inpatient list for which we had received requests that they be made payable under the OPPS. As the Panel members recommended, we solicited comments and further information about all of these procedures except for CPT code 47001, which they recommended to be removed from the inpatient list.

In addition to considering the comments of the APC Panel, we compared procedures with status indicator "C" (status indicator "C" is assigned to inpatient procedures that are not payable under the OPPS) to the list of procedures that are currently on the ambulatory surgical center (ASC) list of approved procedures, to procedures that we proposed to add to the ASC list in a proposed rule published in the **Federal Register** on June 12, 1998 (63 FR 32291), and to procedures recommended for addition to the ASC list by commenters in response to the June 12, 1998, proposed rule. We concluded that it was appropriate to propose removal of procedures from the OPPS inpatient list that are being performed on an outpatient basis and/or that we had determined could be safely and appropriately performed on a Medicare beneficiary in an ASC under the applicable ASC rules, which are set forth in 42 CFR 416.22. Therefore, we proposed to add the following criteria for use in reviewing procedures to determine whether they should be removed from the inpatient list and assigned to an APC group for payment under the OPPS:

- We have determined that the procedure is being performed in numerous hospitals on an outpatient basis; or
- We have determined that the procedure can be appropriately and safely performed in an ASC and is on the list of approved ASC procedures or proposed by us for addition to the ASC list.

In addition to the procedures considered by the APC Panel for removal from the inpatient list, Table 6 in the proposed rule includes other procedures that we proposed to remove from the inpatient list for payment under the OPPS for 2003. We applied the criteria discussed above in order to be consistent with the ASC list of approved procedures and with utilization data that indicate the procedures are being performed on an outpatient basis. We solicited comments on whether the procedures listed in Table 6 of the proposed rule should be paid under the OPPS. We also solicited comments on the APC assignment that we proposed for these procedures in the event we determine in the final rule, based on comments, that these procedures would be payable under the OPPS in 2003. We asked that commenters recommending reclassification of a procedure to an APC include evidence (preferably from peer-reviewed medical literature) that the procedure is being performed on an outpatient basis in a safe and appropriate manner.

Following our review of the comments, we either assigned a CPT code for a service formerly on the inpatient list to an APC for payment under the OPPS or, if the comments did not provide sufficient information and data to enable us to make a decision, we chose to keep the service on the inpatient list for 2003 and to present the comments to the APC Panel at its 2003 meeting. Table 6 identifies codes that were on the inpatient list in 2002 but are not on the inpatient list in 2003 and which, therefore, will be payable under the OPPS on and after January 1, 2003.

We received numerous comments on this proposal, which we summarize below.

Comment: In addition to the APC Advisory Panel, numerous hospital associations, hospitals, and other organizations recommended that we eliminate the inpatient list. They asserted that the inpatient list interferes with the practice of medicine and is unnecessarily intrusive. Most of these commenters argued that it is the physician, not the hospital, who determines what procedures should be performed and whether a patient's condition warrants an inpatient admission. Numerous commenters asserted that if CMS insists on retaining the inpatient list, then the same payment rules should apply to physicians as well as to hospitals. These commenters argued that if CMS believes Medicare beneficiaries are at risk for safety and quality issues, then Medicare should not pay for the professional services of the physician who performs a procedure on the inpatient list when payment for the hospital services is denied. In addition, several commenters noted that because the physician receives payment when a procedure on the inpatient list is performed on an outpatient basis, there is no incentive for the physician to heed whether Medicare will pay the hospital for the procedure. A few commenters noted that the inpatient list sometimes conflicts with the policy of private payers, creating confusion among physicians, patients, and hospitals. One commenter recommended that it should be left to medical review to monitor site of service. Several commenters viewed the inpatient list as an attempt to punish hospitals for a decision over which they have no real control. One commenter objected to the inpatient list because it places an unfair financial burden on beneficiaries, who are liable for payment if a procedure on the inpatient list is performed in the outpatient setting, and because the beneficiary normally relies on the physician to determine where a procedure is to be performed.

Response: Since implementation of the OPPS in August 2000, we have engaged in an ongoing review of the procedures on the inpatient list. In the August 9, 2002 proposed rule (67 FR 52092), we proposed APC assignments for 41 procedures that have a current status indicator designation of "C". We continue to move procedures from the inpatient list to an APC for payment under the OPPS in response to comments and recommendations from hospitals, surgeons, professional societies, and hospital associations which demonstrate that a procedure on the inpatient list meets our criteria for determining that a procedure can be performed on an outpatient basis in a

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safe and effective manner. In spite of the assertions made by commenters, we have received very few requests since publication of the November 30, 2001 final rule.

Hospitals or associations representing hospitals submitted the overwhelming majority of comments recommending elimination of the inpatient list. Their comments expressed considerable frustration resulting from apparent conflicts with physicians over which procedures Medicare will pay for under the OPPS. Although we understand the frustration that exists in the hospital community about the inpatient list, we believe that appropriate education of physicians and other hospital staff by CMS, hospitals, and organizations representing hospitals is the best way to minimize any existing confusion. We are prepared to remove procedures from the inpatient list as part of the quarterly OPPS updates. If a physician believes that a procedure should be payable under the OPPS, we urge the hospital and physician to provide operative reports about specific procedures on the inpatient list are being performed on Medicare beneficiaries who are outpatients. In the meantime, we are reviewing with CMS provider education staff ways that we can support carrier and fiscal intermediary efforts to clarify the reasons for the OPPS inpatient list and its billing and payment implications. Also, in section X.C. of this preamble, we explain how hospitals can receive payment under certain conditions for procedures on the inpatient list that are performed on an emergency basis when the status of a patient is that of an outpatient.

Comment: We received a number of comments regarding the criteria that we use in reviewing procedures to determine whether they should be removed from the inpatient list and assigned to an APC group for payment under the OPPS, including the two new criteria that we proposed in the August 2002 proposed rule to add to the current criteria. One commenter asked what we meant by "numerous" hospitals. Several commenters commended CMS for recognizing that surgical procedures payable in the ambulatory surgical center (ASC) setting should also be payable in an outpatient hospital setting and for removing a number of codes from the inpatient list that are currently payable in an ASC. Several commenters urged CMS to closely monitor and coordinate the OPPS inpatient list and the ASC list for consistency and to ensure that changes in medical practice are reflected within both lists as expeditiously as possible. Commenters expressed concern that more than 60 CPT codes remain on the inpatient list in Addendum E even though they are currently on the approved ASC list and urged CMS to reconcile the disparity between the two lists.

Response: The criterion that a procedure is being performed in "numerous" hospitals on outpatients means that the procedure is being performed nationally in hospitals other than a few large teaching hospitals that specialize in innovative surgery. We intend to continue monitoring for consistency the procedures that Medicare pays for in a hospital outpatient setting with those that are payable in an ASC as we prepare a final rule to update the ASC list based on the additions and deletions that we proposed in the June 12, 1998 **Federal Register** (63 FR 32290).

Comment: One commenter recommended that CMS remove from the inpatient list those procedures that routinely show a one-day inpatient stay.

Response: We believe this recommendation has merit and we will endeavor to conduct a study to explore the issue in preparation for the 2004 OPPS update.

Comment: One commenter stated that CMS should have a formal process to solicit and act on suggestions to remove procedures where community medical standards and practice can demonstrate the safety and efficacy of performing the procedure in an outpatient setting. Another commenter stated that physician comments, outcome data, post-procedure care data, and medical literature would be better criteria for determining which procedures are outpatient.

Response: As we stated above, anyone interested in having a particular code or group of codes on the inpatient list reviewed for payment under the OPPS need only submit a request to the Director, Division of Outpatient Care, Centers for Medicare & Medicaid Services, Mailstop C4–05–17, 7500 Security Boulevard, Baltimore, MD 21244–1850. The request should include supporting information and data to demonstrate that the code meets the five criteria discussed above. We ask that evidence be submitted, including operative reports of actual cases and peer-reviewed medical literature, to demonstrate that the procedure is being performed on an outpatient basis in a safe and appropriate manner in a variety of different types of hospitals. We agree with the commenters suggestions, and encourage, in addition to medical literature, the submission of community medical standards and practice as well physician comments, outcome data, and post-procedure care data to reinforce the point.

When this information is received, it is thoroughly reviewed by our medical advisors within the context of the criteria we have established. Further information or clarification may be requested. If, following this review, we determine that there is sufficient evidence to confirm that the code can be safely and appropriately performed on an outpatient basis, we will assign the procedure to an APC and include it as a payable procedure in the next OPPS quarterly update. The change in payment status will be subject to public comment as part of the subsequent annual OPPS update.

Interested parties may also submit a request to change the payment status of a code on the inpatient list for consideration as an agenda item at the next meeting of the APC Advisory Panel.

Comment: One commenter expressed concern about the inpatient list becoming a "self-fulfilling prophecy" because hospitals cannot be paid for procedures on the list, therefore no data become available to show that the procedure is safely done on an outpatient basis.

Response: Information may be available on non-Medicare patients receiving a procedure on the list. Further, this is not the sole criterion upon which a change is based, as we note above.

Comment: One commenter recommended that CMS establish a transitional methodology for estimating appropriate hospital costs for CPT codes on the inpatient list that are proposed for payment under the OPPS. The commenter expressed particular concern about payment for CPT codes 92986, 92987, and 92990.

Response: The APC assignments for the CPT codes in Table 6 of the August 2002 proposed rule (67 FR 52115) for which we propose to make payment under the OPPS take into account the expectation that the simplest procedure described by the codes, and therefore, relatively, the least resource intensive, would be performed on an outpatient basis. Also, we identify APCs that consist of procedures that are similar both in terms of clinical characteristics and in terms of resource consumption. Finally, we invited comments on the proposed APC assignment. Over time, claims data for the newly assigned codes will confirm either that the procedures belong in the designated APC or that they should be moved to different APC.

Comment: Two commenters supported our proposal to remove CPT code 47001, Biopsy of liver, needle; when done for indicated purpose at time of other major procedure, from the inpatient list. Several commenters supported generally our proposal to pay under the OPPS for the procedures in Table 6 of the proposed rule, but did not comment on our proposed APC assignments. One commenter urged that CPT code 92986, Percutaneous balloon valvuloplasty; aortic valve, not be assigned to APC 0083, asserting that this procedure cannot be performed safely in an outpatient setting. We received no other comments opposing payment under the OPPS for the procedures listed in Table 6 of the August 9 proposed rule.

Response: We agree with the commenters and with the APC Panel's recommendations that CPT code 47001 be payable under the OPPS beginning in 2003. Because this is an add-on code, payment will be packaged with the payment for the surgical procedure with which it is billed.

We are making final our proposal to remove this code from the inpatient list, but we will consider presenting this concern to the APC Panel. In the absence of comments disagreeing with our proposal to pay under the OPPS for the 41 CPT codes listed in Table 6 of the August 2002 proposed rule (67 FR 52115), we are making these proposed changes final.

Comment: One commenter favored removing CPT 33967, insertion of intra-aortic balloon assist device, percutaneous, from the inpatient list, but did not submit any information to support this position.

Response: We discussed in the proposed rule our uncertainty, and that of the APC Advisory Panel, about whether or not this procedure should be removed from the inpatient list. We also indicated that we were having difficulty finding data to confirm that the procedure is being performed on Medicare beneficiaries in an outpatient setting. We asked for comments and clinical data and case reports that would support payment for CPT 33967 under the OPPS. No commenters submitted data in any form to support removing the procedure from the inpatient list. Therefore, we have decided not to remove CPT 33967 from the inpatient list in 2003.

Comment: One commenter recommended payment for CPT codes 22612, 22614, 33243, 49000, and 49062 under the OPPS.

Response: Our medical advisors reviewed these codes and have determined that CPT 22612, Arthrodesis, posterior or posterolateral technique, single level; lumbar (with or without lateral transverse technique), and CPT 22614, Arthrodesis, posterior or posterolateral technique, single level; each additional vertebral segment (list separately in addition to code for primary procedure), are safely and appropriately being performed on an outpatient basis. We are assigning these codes to APC 0208.

We did not propose to remove the other codes suggested by the commenter from the inpatient list, and the commenter submitted no evidence to support payment for these codes under the OPPS. Nor could we find any information to indicate that these codes meet the criteria for moving them off the inpatient list. Therefore, we will continue to designate these CPT codes with status indicator "C" in 2003.

- We are adopting two additional criteria to guide our determination of whether a procedure should be removed from the inpatient list:
- The procedure is being performed in numerous hospitals on an outpatient basis; or
- The procedure can be appropriately and safely performed in an ASC and is on the list of approved ASC procedures or proposed by us for addition to the ASC list.
- We are adding CPT codes 22612 and 22614 to APC 0208 effective for services furnished on or after January 1, 2003.
- We are making final our proposal in the August 2002 rule to pay under the OPPS for the CPT codes listed in Table 5, below.

TABLE 5.—PROCEDURES ON THE 2002 INPATIENT LIST WHICH ARE PAYABLE UNDER THE OPPS IN CY 2003

CPT Code	Status Indicator	APC	Description
21390	T	0256	OPEN TREATMENT OF ORBITAL FLOOR BLOWOUT FRACTURE; PERIORBITAL APPROACH, WITH ALLOPLASTIC OR OTHER IMPLANT.
22100	T	0208	PARTIAL EXCISION OF POSTERIOR VERTEBRAL COMPONENT (EG, SPINOUS PROCESS, LAMINA OR FACET) FOR INTRINSIC BONY LESION, SINGLE VERTEBRAL SEGMENT; CERVICAL.
22101	T	0208	PARTIAL EXCISION OF POSTERIOR VERTEBRAL COMPONENT (EG, SPINOUS PROCESS, LAMINA OR FACET) FOR INTRINSIC BONY LESION, SINGLE VERTEBRAL SEGMENT; THORACIC.
22102	T	0208	PARTIAL EXCISION OF POSTERIOR VERTEBRAL COMPONENT (EG, SPINOUS PROCESS, LAMINA OR FACET) FOR INTRINSIC BONY LESION, SINGLE VERTEBRAL SEGMENT; LUMBAR.
22103	T	0208	PARTIAL EXCISION OF POSTERIOR VERTEBRAL COMPONENT (EG, SPINOUS PROCESS, LAMINA OR FACET) FOR INTRINSIC BONY LESION, SINGLE VERTEBRAL SEGMENT; EACH ADDITIONAL SEGMENT (LIST SEPARATELY IN ADDITION TO CODE FOR PRIMARY PROCEDURE).
22612	T	0208	ARTHRODESIS, POSTERIOR OR POSTEROLATERAL TECHNIQUE, SINGLE LEVEL; LUMBAR (WITH OR WITHOUT LATERAL) TRANSVERSE TECHNIQUE).
22614	T	0208	ARTHODESIS, POSTERIOR OR POSTEROLATERAL TECHNIQUE, SINGLE LEVEL; EACH, ADDITIONAL VERTEBRAL SEGMENT (LIST, SEPARATELY IN ADDITION TO CODE FOR PRIMARY PROCEDURE).
23035	T	0049	INCISION, BONE CORTEX (EG, OSTEOMYELITIS OR BONE ABSCESS), SHOULDER AREA.
23125	T	0051	CLAVICULECTOMY; TOTAL.
23195	T	0050	RESECTION, HUMERAL HEAD.
23395	T	0051	MUSCLE TRANSFER, ANY TYPE, SHOULDER OR UPPER ARM; SINGLE.
23397	T	0052	MUSCLE TRANSFER, ANY TYPE, SHOULDER OR UPPER ARM; MULTIPLE.
23400	T	0050	SCAPULOPEXY (EG, SPRENGELS DEFORMITY OR FOR PARALYSIS).
24150	T	0052	RADICAL RESECTION FOR TUMOR, SHAFT OR DISTAL HUMERUS;
24151	T	0052	RADICAL RESECTION FOR TUMOR, SHAFT OR DISTAL HUMERUS; WITH AUTOGRAFT (INCLUDES OBTAINING GRAFT).
24152	T	0052	RADICAL RESECTION FOR TUMOR, RADIAL HEAD OR NECK;
24153	T	0052	RADICAL RESECTION FOR TUMOR, RADIAL HEAD OR NECK; WITH AUTOGRAFT (INCLUDES OBTAINING GRAFT).
25170	T	0052	RADICAL RESECTION FOR TUMOR, RADIUS OR ULNA.

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TABLE 5.—PROCEDURES ON THE 2002 INPATIENT LIST WHICH ARE PAYABLE UNDER THE OPPS IN CY 2003—Continued

CPT Code	Status Indicator	APC	Description
25390	T	0050	OSTEOPLASTY, RADIUS OR ULNA; SHORTENING.
25391	T	0051	OSTEOPLASTY, RADIUS OR ULNA; LENGTHENING WITH AUTOGRAFT.
25392	T	0050	OSTEOPLASTY, RADIUS AND ULNA; SHORTENING (EXCLUDING 64876).
25393	T	0051	OSTEOPLASTY, RADIUS AND ULNA; LENGTHENING WITH AUTOGRAFT.
25420	T	0051	REPAIR OF NONUNION OR MALUNION, RADIUS AND ULNA; WITH AUTOGRAFT (INCLUDES OBTAINING GRAFT).
27035	T	0052	DENERVATION, HIP JOINT, INTRAPELVIC OR EXTRAPELVIC INTRA-ARTICULAR BRANCHES OF SCIATIC, FEMORAL, OR OBTURATOR NERVES.
27216	T	0050	PERCUTANEOUS SKELETAL FIXATION OF POSTERIOR PELVIC RING FRACTURE AND/OR DISLOCATION (INCLUDES ILIUM, SACROILIAC JOINT AND/OR SACRUM).
27235	T	0050	PERCUTANEOUS SKELETAL FIXATION OF FEMORAL FRACTURE, PROXIMAL END, NECK, UNDISPLACED, MILDLY DISPLACED, OR IMPACTED FRACTURE.
31582	T	0256	LARYNGOPLASTY; FOR LARYNGEAL STENOSIS, WITH GRAFT OR CORE MOLD, INCLUDING TRACHEOTOMY.
31785	T	0254	EXCISION OF TRACHEAL TUMOR OR CARCINOMA; CERVICAL.
32201	T	0070	PNEUMONOSTOMY; WITH PERCUTANEOUS DRAINAGE OF ABSCESS OR CYST.
38700	T	0113	SUPRAHYOID LYMPHADENECTOMY.
42842	T	0254	RADICAL RESECTION OF TONSIL, TONSILLAR PILLARS, AND/OR RETROMOLAR TRIGONE; WITHOUT CLOSURE.
43030	T	0253	CRICOPHARYNGEAL MYOTOMY.
47490	T	0152	PERCUTANEOUS CHOLECYSTOSTOMY.
47001	N	.....	BIOPSY OF LIVER, NEEDLE; WHEN DONE FOR INDICATED PURPOSE AT TIME OF OTHER MAJOR PROCEDURE.
62351	T	0208	IMPLANTATION, REVISION OR REPOSITIONING OF TUNNELED INTRATHECAL OR EPIDURAL CATHETER, FOR LONG-TERM MEDICATION ADMINISTRATION VIA AN EXTERNAL PUMP OR IMPLANTABLE RESERVOIR/INFUSION PUMP; WITH LAMINECTOMY.
64820	T	0220	SYMPATHECTOMY; DIGITAL ARTERIES, EACH DIGIT.
69150	T	0252	RADICAL EXCISION EXTERNAL AUDITORY CANAL LESION; WITHOUT NECK DISSECTION.
69502	T	0254	MASTOIDECTOMY; COMPLETE.
92986	T	0083	PERCUTANEOUS BALLOON VALVULOPLASTY; AORTIC VALVE.
92987	T	0083	PERCUTANEOUS BALLOON VALVULOPLASTY; MITRAL VALVE.
92990	T	0083	PERCUTANEOUS BALLOON VALVULOPLASTY; PULMONARY VALVE.
92997	T	0081	PERCUTANEOUS TRANSLUMINAL PULMONARY ARTERY BALLOON ANGIOPLASTY; SINGLE VESSEL.
92998	T	0081	PERCUTANEOUS TRANSLUMINAL PULMONARY ARTERY BALLOON ANGIOPLASTY; EACH ADDITIONAL VESSEL (LIST SEPARATELY IN ADDITION TO CODE FOR PRIMARY PROCEDURE).

C. Partial Hospitalization

Payment Methodology

As we discussed in the proposed rule, partial hospitalization is an intensive outpatient program of psychiatric services provided to patients in the place of inpatient care. A partial hospitalization program (PHP) may be provided by a hospital to its outpatients or by a Medicare-certified community mental health center (CMHC). In the August 1, 2000 final rule (65 FR 18452), we established a per diem payment methodology for the PHP APC based on hospital data. The current per diem payment amount is $212.27. This amount represents the hospital or CMHC overhead costs associated with the program.

In the August 9, 2002 OPPS proposed rule, we proposed to revise the PHP APC using 2001 claims data from hospitals and CMHCs and computed a median per diem using the same methodology as that used for all other APCs. As we explained in the August 9, 2002 proposed rule, we adjusted the CMHC costs to account for the difference between settled and as-filed cost reports. We proposed that the resulting per diem is $256.96, of which $51.39 is the beneficiary's coinsurance.

In addition, to facilitate proper billing and ensure comparable reporting of costs by hospitals and CMHCs, we proposed to revise § 410.43 (Partial hospitalization services: Conditions and exclusions) to add CSW services that meet the requirements of section 1861(hh)(2) of the Act to the list of professional services not considered to be PHP services. Such revision would mean that hospitals and CMHCs could bill the carrier for CSW services furnished to PHP patients.

Comment: One commenter indicated that the proposed methodology for ratesetting is appropriate.

Response: As we indicated in the April 7, 2000 OPPS final rule, payment to providers under OPPS represents the facility costs, that is, overhead, support staff, equipment, and supplies. The physician and nonphysician practitioner services excluded from the definition of PHP services are those professional services paid through the physician fee schedule. The facility continues to incur the overhead costs associated with provision of the professional service, for example, room, heat, lights, mental health technicians, and nurses. The OPPS is intended to pay providers for the resource costs associated with their outpatient programs, including outpatient psychiatric programs and PHPs.

As part of our analysis of current billing instructions for PHP, we discovered that Addendum B of the November 30, 2001, CY 2002 OPPS final rule does not clearly identify all the HCPCS codes that may be billed for PHP patients. We plan to revise this addendum in the 2004 update so that all PHP services are identified. However, in order to avoid billing errors, we are providing the following list of the current HCPCS codes for PHPs:

Revenue codes	Description	HCPCS codes
43X	Occupational Therapy	G0129.
904	Activity Therapy	G0176.
910	Psychiatric General Services	90801, 90802, 90875, 90876, 90899.
914	Individual Psychotherapy	90816, 90817, 90818, 90819, 90821, 90822, 90823, 90824, 90826, 90827, 90828, 90829.
915	Group Therapy	90849, 90853, 90857.
916	Family Psychotherapy	90846, 90847, 90849.
918	Psychiatric Testing	96100, 96115, 96117.
942	Education/Training	G0177.

Comment: Two national behavioral health care organizations commented that the proposed PHP rate for CY 2003 more adequately represents the resources needed to provide PHP; however, they expressed concern that providers continue to have difficulty in receiving reimbursement for PHP services as a result of intermediary medical review (MR) of claims.

Response: As noted in the comment, we have issued a program memorandum to intermediaries regarding medical review of PHP claims. While we recognize that MR can have a financial impact on PHP claims, there is no direct relationship between MR and the level of reimbursement for individual claims.

III. Recalibration of APC Weights for 2003

Section 1833(t)(9)(A) of the Act requires that the Secretary review and revise the relative payment weights for APCs at least annually, beginning in 2001 for application in 2002. In the April 7, 2000 final rule (65 FR 18482), we explained in detail how we calculated the relative payment weights that were implemented on August 1, 2000 for each APC group. Except for some reweighting due to APC changes, these relative weights continued to be in effect for 2001. (See the November 13, 2000, interim final rule (65 FR 67824 to 67827).)

To recalibrate the relative APC weights for services furnished on or after January 1, 2003, and before January 1, 2004, we proposed to use the same basic methodology that we described in the April 7, 2000 final rule. That is, we would recalibrate the weights based on claims and cost report data for outpatient services. We proposed to use the most recent available data to construct the database for calculating APC group weights. For the purpose of recalibrating APC relative weights for CY 2003, the most recent available claims data are more than 90 million final action claims for hospital outpatient department services furnished on or after April 1, 2001, and before March 31, 2002, and processed through July 2002. In the proposed rule, we proposed to base the 2003 OPPS on claims for services furnished January 1, 2001 through December 31, 2001. However, after issuance of the proposed rule we determined that coding and charges for the period of April 1, 2001 thru March 31, 2002 would be a better base for recalculation of weights.

We believe that using claims data from this period is consistent with section 1833(t)(9)(A) of the Act, which directs us to take into account "new cost data" in our annual review and adjustment of components of the OPPS. This is also consistent with our proposal in the August 9, 2002 proposed rule (67 FR 52108) to use the most recent available claims data to set the weights. We had several reasons for using claims from this period: claims from this period provide the most recent charge data available to us. Since we did not implement the 2002 OPPS until April 1, 2002, we can use the claims for the period from January 1, 2002, through and including March 31, 2002, together with claims data from the period of April 1, 2001 to December 31, 2001 to set weights. Using claims data for services furnished during this period of time also provides the most reliable charge data for devices and services that use medical devices because the device category codes were in effect for the entire period. Hence, we believe that claims from this period are the most reliable basis for setting relative weights for CY 2003 OPPS.

Many of the claims from hospitals were for services that are not paid under OPPS (such as clinical laboratory tests). We matched the claims that are paid under OPPS to the most recent cost report filed by the individual hospitals represented in our claims data. The APC relative weights would continue to be based on the median hospital costs for services in the APC groups.

A. Data Issues

1. Treatment of "Multiple Procedure" Claims

In the August 9, 2002 proposed rule, we discussed in detail the circumstances in which we had difficulty with using the data from claims that had multiple procedures (67 FR 52108). We solicited public comment on the methods we considered for apportioning the total charges to individual HCPCS codes as described above. These possible methods included: dividing the total charges in a revenue center, or for a packaged HCPCS code, by the number of payable HCPCS codes for the multiple procedures on the claim; apportioning the charges among the codes based on physician work relative value units (RVUs); apportioning the charges among the codes based on physician nonfacility practice expense RVUs; or requiring the hospital to apportion all charges currently shown in revenue centers to the HCPCS codes billed so that we could use all multiple services claims in the calculation of relative weights. We also invited suggestions of other alternative means of apportioning the total costs on multiple procedure claims to the HCPCS codes for the procedures so that we can use more data from multiple procedure claims in the 2004 update of the OPPS.

We also solicited information on existing studies that would provide comparative hospital outpatient resource inputs by HCPCS code. In addition, we welcomed suggestions for studies that we might undertake either to determine the relative value of OPD resources by HCPCS code or to provide a valid means of apportioning the charges among HCPCS codes when multiple surgical procedures are billed on the same claim with a single total charge for all services.

Finally, we solicited information regarding the extent to which efficiencies are realized when multiple services are furnished during the same visit or operative session.

The discussion of recalibration of relative weights in section III.B of this final rule summarizes the process that we used to determine the claims that could be used to set the weights.

Comments and our responses are summarized below:

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Low Numbers of Services Used To Set Weights and Failure To Use Multiple Procedure Claims

Comment: Many commenters indicated that we used very few of the claims that were submitted for a particular service and that using so few claims resulted in lower weights than would have occurred if we had used all claims. Some commenters indicated that by using only single procedure claims and data from multiple procedure claims that met the criteria we set (see section III.A.I. of this final rule), we significantly reduced the validity of the cost data. Some commenters stated that by using median costs for procedures that can only be done as an add-on to other procedures, we had based the payment for the add-on procedure on data which, by definition, were faulty. Some commenters suggested that we needed to develop an allocation strategy that would enable us to use all multiple procedure claims, either based on a study of relative resource allocation or an arbitrary allocation that could be refined over the years. Some commenters asked that we reconsider our data trimming strategy to examine each claim that is eliminated by trimming for validity and to determine if it should be used. They asked that any claim that represents new technology be returned to the data set and used, notwithstanding its aberrancy.

Response: For 2003, we made great strides by increasing the number of claims used to set the OPPS weights from 39.9 million (66 FR 59885) for the 2002 OPPS to 62.2 million for the 2003 OPPS. We intend to review other means of using data from multiple claims for 2004. We recognize that it would be preferable to use data from all claims, including those with multiple procedures, in development of the weights, as long as we can ensure that the data recovered from those claims are valid. We were not able to develop and test a strategy for allocating undifferentiated charges to multiple HCPCS codes on a claim for the 2003 final rule. Therefore, in some cases, we continued to use data from small numbers of claims because many claims did not meet the tests for inclusion in the data set. As discussed in section II, the APC Panel recommended that we continue to rely on data from single procedure claims until we were able to validly allocate charges to multiple procedures, even in establishing payments for add-on codes. In addition, as requested by some commenters, we excluded claims for procedures that could not be performed without a device when the claim did not contain the device. This gave us a more valid base of claims on which to set the weight for that service but reduced the number of claims used for these APCs. It became clear from this activity that basing the weights on more claims does not necessarily result in more valid data because in the cases of these APCs, deleting claims from the set was necessary to arrive at a more valid relative weight.

With regard to the trimming methodology, it is a routine and accepted statistical practice that is well established in inpatient PPS data examination and has served well in the past to eliminate anomalies that could further skew the data. We will consider whether it is useful and to what extent it is practical to examine all trimmed claims to determine if they represent the first claims for a new technology and should remain in the body of claims.

Recommendations for Including More Multiple Procedure Claims

Comment: We received a number of comments that contained ideas for allocating charges to multiple procedures where they exist on the claim. Some commenters recommended that we allocate the charges to HCPCS codes in proportion to the relative weight of the HCPCS codes or the relative charges for the HCPCS codes. Some commenters suggested that we survey hospitals with regard to the most common combinations of procedures that appear on claims to determine which services and, therefore, which charges go with which HCPCS code. Some commenters suggested that we research the relative resources for each HCPCS code individually and then create an algorithm by which we would allocate charges to HCPCS codes on multiple procedure claims. One commenter provided a study that addressed the efficiency of resource usage when multiple procedures are performed on the same day that the commenter recommended could be useful in allocating charges for the second and subsequent procedures on a claim. One commenter also suggested that we ensure that the claim assesses services on the same date of service, since in many cases, the claim can have services that are spread over a period of time and, therefore, are not really multiple procedures provided at the same time. Several commenters submitted detailed descriptions of ways by which we could allocate charges to HCPCS codes. Many hospitals objected to any requirement that hospitals do the allocation of all charges to HCPCS codes to show the charges that go with each HCPCS code; they noted that doing so would require massive accounting and cost report changes and thus impose a burden and cost on hospitals, which would exist for no purpose other than to improve the Medicare OPPS claims data.

Response: We expect to explore a number of strategies for allocating charges to HCPCS codes on multiple procedure claims for the development of the 2004 OPPS and beyond.

Impact on Data of a Visit and Drug Administration the Same Day

Comment: Several commenters applauded our attempt to include some multiple procedure claims in the calculation of OPPS payment rates. They were, however, concerned whether some properly coded claims, which included both an administration code and a J code or claims that included an evaluation and management visit in addition to an administration code and a J code, were eliminated as multiple procedure claims.

Response: Where an evaluation and management visit and an administration code and J code were billed on the same claim, they would have been considered to be a multiple procedure claim and would not be used because there would be no way of knowing how to allocate the charges in revenue centers to the visit versus the administration code. As we explained in detail in the August 9, 2002 proposed rule, there would be no way to know to what extent charges in revenue centers, such as sterile supplies, were associated with the visit versus the administration code. We are concerned about this problem and are exploring ways to do an allocation of charges that would enable us to use all multiple procedure claims. However, we were not able to do it for this final rule.

2. Calendar Year 2002 Charge Data for Transitional Pass-Through Device Categories

In the August 9, 2002 proposed rule, we discussed our concerns with the claims data for the devices losing eligible for transitional pass-through status in CY 2003 (67 FR 52110). We had been advised that during the period in which the 2001 OPPS was in effect, hospitals may not have billed properly for devices eligible for transitional pass-through payments. We acknowledged in the 2002 proposed rule that changes in billing format and systems for implementation of the OPPS may have compounded the problems of billing using the device-specific codes during the first 9 months of the OPPS. We had been informed that these problems were further compounded by the creation and requirement to use category codes on and after April 1, 2001. In general, we had been advised that hospitals may have been underpaid for transitional pass-through devices (because they did not bill separately for them and, therefore, did not get the pass-through payment) and that our data will not correctly show the charges associated with the devices (because the devices were not coded with device-category codes on the claim).

We proposed to package payment for devices into payment for the procedure in which they were furnished because doing so is consistent with the concept of a prospective payment system and because we believed that it would give us the best data on which to pay devices once they ceased to be paid at cost via the pass-through methodology. We thought that by packaging the cost of the devices into the cost of the procedure with which they were used, we would capture the charges for the devices whether billed in revenue centers or with the HCPCS code for the device.

Our subsequent review of the data for the period of April 1, 2001, through March 31, 2002, indicated that there was a notable absence of hospital billing for devices category codes, even when the procedure billed could not be done without a pass-through device. We calculated the median costs for the APCs containing procedures that we believed required use of devices (including both claims with and claims without device C codes on the claim) and compared them to the median costs for the procedures from only claims that were billed with devices. We found that the median costs on claims billed with devices were more consistent with the median costs that we would expect to see for these APCs. Hence, for these APCs, we used the median costs calculated from claims that reported a device C code in place of the median costs calculated from all claims (claims billed both with devices and without device C codes). We did not eliminate claims that did not contain a device C code where HCPCS codes within an APC indicated that the procedure did not require a pass-through device. In such cases, HCPCS codes were, appropriately, rarely reported with C codes. The APCs for which we used the medians from claims with device C codes billed are listed in Table 6. This methodology resulted in higher median costs and, therefore, higher weights for these APCs than would have occurred had we included claims that did not contain coding for a device. The medians we used for all APCs are contained in Addendum C, which is on our Web site at *http://www.cms.hhs.gov*.

TABLE 6.—APC RATES WHICH ARE SET BASED ONLY ON CLAIMS THAT CONTAINED CODES FOR DEVICES

APC	Description
0032	Insertion of Central Venous/Arterial Catheter.
0048	Arthroplasty with Prosthesis.
0080	Diagnostic Cardiac Catheterization.
0081	Non-Coronary Angioplasty or Atherectomy.
0082	Coronary Atherectomy.
0083	Coronary Angioplasty and Percutaneous Valvuloplasty.
0085	Level II Electrophysiologic Evaluation.
0086	Ablate Heart Dysrhythm Focus.
0087	Cardiac Electrophysiologic Recording/Mapping.
0089	Insertion/Replacement of Permanent Pacemaker and Electrodes.
0655	Insertion/Replacement of Permanent Dual Chamber Pacemaker.
0090	Insertion/Replacement of Pacemaker Pulse Generator.
0680	Insertion of Patient Activated Event Recorders.
0653	Vascular Reconstruction/Fistula Repair with Device.
0104	Transcatheter Placement of Intracoronary Stents.
0106	Insertion/Replacement/Repair of Pacemaker and/or Electrodes.
0107	Insertion of Cardioverter-Defibrillator.
0108	Insertion/Replacement/Repair of Cardioverter-Defibrillator Leads.
0115	Cannula/Access Device Procedures.
0119	Implantation of Devices.
0122	Level II Tube changes and Repositioning.
0652	Insertion of Intraperitoneal Catheters.
0167	Level III Urethral Procedures.
0179	Urinary Incontinence Procedures.
0182	Insertion of Penile Prosthesis.
0202	Level VIII Female Reproductive Proc.
0222	Implantation of Neurological Device.
0225	Implantation of Neurostimulator Electrodes.
0226	Implantation of Drug Infusion Reservoir.
0227	Implantation of Drug Infusion Device.
0229	Transcatheter Placement of Intravascular Shunts.
0259	Level VI ENT Procedures.
0670	Intravenous and Intracardiac Ultrasound.
0680	Insertion of Patient Activated Event Recorders.
0681	Knee Arthroplasty.
0693A	Breast Reconstruction with Prosthesis.

Application of Cost-to-Charge Ratio to Charges Not Resulting in Costs

Comment: Many commenters stated that the application of a departmental cost-to-charge ratio to the high cost of devices would not result in the true cost of the device because hospitals would have to mark up the cost by 300 percent or more for that to be the result.

Response: See the discussion of the comments on cost to charge ratios and charge compression in section III.B of this final rule.

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Absence of Devices on Claims

Comment: Many commenters indicated that hospitals did not bill for the devices that were paid under the pass-through mechanism in 2001, and therefore the median costs for the APCs for which most of the cost is a device are grossly understated.

Response: As discussed previously, we believe the commenters have a point. For the APCs for which the service cannot be furnished without a pass-through device, we eliminated claims that were not billed with a device C code from the claims used to calculate the median cost for those APCs. By taking these steps as well as packaging the device cost billed with both revenue centers and device category codes, we believe our final rates for these procedures are more appropriate. The APCs for which we used only claims with devices are identified in Table 6 above.

B. Description of How Weights Were Calculated for CY 2003

As discussed previously in this section, we first selected claims for services provided from April 1, 2001 through March 31, 2002. The methodology we followed to calculate the final APC relative payment weights for CY 2003 is as follows:

- We excluded from the data claims for those bill and claim types that would not be paid under the OPPS (for example, bill type 72X for dialysis services for patients with ESRD).
- We eliminated 1.6 million claims from hospitals located in Maryland, Guam, and the U. S. Virgin Islands.
- Using the most recent available cost report from each hospital, we converted billed charges to costs and aggregated them to the procedure or visit level first by identifying the cost-to-charge ratio specific to each hospital's cost centers ("cost center specific cost-to-charge ratios" or CCRs) and then by matching the CCRs to revenue centers used on the hospital's 2001 outpatient bills. The CCRs include operating and capital costs but exclude items paid on a reasonable cost basis.
- We eliminated from the hospital CCR data 301 hospitals that we identified as having reported charges on their cost reports, which were not actual charges (for example, a uniform charge applied to all services).
- We calculated the geometric mean of the total operating CCRs of hospitals remaining in the CCR data. We removed from the CCR data 67 hospitals whose total operating CCR exceeded the geometric mean by more than 3 standard deviations.
- We excluded from our data approximately 3.6 million claims submitted by the hospitals that we removed or trimmed from the hospital CCR data.
- We matched revenue centers from the remaining universe of approximately 92.9 million claims to CCRs for remaining hospitals.
- We separated the 92.9 million claims that we had matched with a cost report into the following three distinct groups:

(1) Single-procedure claims.

(2) Multiple-procedure claims.

(3) Claims on which we could not identify at least one OPPS covered service.

Single-procedure claims are those that include only one HCPCS code (other than laboratory and incidentals such as packaged drugs and venipuncture), which could be grouped to an APC. Multiple-procedure claims include more than one HCPCS code that could be mapped to an APC. Dividing the claims in this manner yielded approximately 30.7 million single-procedure claims and 20.4 million multiple-procedure claims. Approximately 41.8 million claims without at least one covered OPPS service were set aside.

We converted 10.8 million multiple-procedure claims to single-procedure claims using the following criteria:

(1) If a multiple-procedure claim contained lines with a HCPCS code in the pathology series (that is, CPT 80000 series of codes), we treated each of those lines as a single claim.

(2) For multiple procedure claims with a packaged HCPCS code (status indicator "N") on the claim, we ignored line items for chest X-rays (HCPCS codes 71010 and/or 71020) and/or EKGs (HCPCS code 93005) on these claims. If only one procedure (other than HCPCS codes 71010, 71020, and 93005) existed on the claim, we treated it as a single-procedure claim.

(3) If the claim had no packaged HCPCS codes and if there were no packaged revenue centers on the claim, we treated each line with a procedure as a single claim if the line item was billed as a single unit.

(4) If the claim had no packaged HCPCS codes on the claim but had packaged revenue centers for the procedure, we ignored the line item for chest X-rays and/or EKG codes (as identified above) and if only one HCPCS code remained, we treated the claim as a single procedure claim. We created an additional 31.5 million single-procedure bills through this process, which enabled us to use these data from multiple-procedure claims in calculation of the APC relative payment weights.

- To calculate median costs for services within an APC, we used only single-procedure bills and those multiple procedure bills that we converted into single claims. If a claim had a single code with a zero charge (that would have been considered a single-procedure claim), we did not use it. As we discussed in section III.A.1 of this final rule, we did not use multiple-procedure claims that included more than one separately payable HCPCS code with charges for packaged items and services such as anesthesia, recovery room, or supplies that could not be reliably allocated or apportioned among the primary HCPCS codes on the claim. We have not yet developed what we regard as an acceptable method of using other multiple-procedure bills to recalibrate APC weights that minimizes the risk of improperly assigning charges to the wrong procedure or visit.
- For each single-procedure claim, we calculated a cost for every billed line item charge by multiplying each revenue center charge by the appropriate hospital-specific departmental CCR. If an appropriate cost center did not exist for a given hospital, we crosswalked the revenue center to a secondary cost center when possible, or we used the hospital's overall cost-to-charge ratio for outpatient department services. We excluded from this calculation all charges associated with HCPCS codes previously defined as not paid under the OPPS (for example, laboratory, ambulance, and therapy services). We included all charges associated with HCPCS codes that are designated as packaged services (that is, HCPCS codes with the status indicator of "N").
- To calculate per-service costs, we used the charges shown in revenue centers that contained items integral to performing the service. We observed the packaging provisions set forth in the April 7, 2000 final rule with comment period that were in effect during 2001 (65 FR 18484). For instance, in calculating the cost of a surgical procedure, we included charges for the operating room; treatment rooms; recovery; observation; medical and surgical supplies; pharmacy; anesthesia; casts and splints; and donor tissue, bone, and organs. To determine medical visit costs, we included charges for items such as medical and surgical supplies, drugs, and observation in those instances where they are still packaged. Table 7 lists packaged services by revenue center that we proposed to use to calculate per-service costs for outpatient services furnished in CY 2003.

TABLE 7.—PACKAGED SERVICES BY REVENUE CODE

Revenue code	Description
	SURGERY
250	PHARMACY.
251	GENERIC.
252	NONGENERIC.
257	NONPRESCRIPTION DRUGS.
258	IV SOLUTIONS.
259	OTHER PHARMACY.
260	IV THERAPY, GENERAL CLASS.
262	IV THERAPY/PHARMACY SERVICES.
263	IV THERAPY/DRUG SUPPLY/DELIVERY.
264	IV THERAPY/SUPPLIES.
269	OTHER IV THERAPY.
270	M&S SUPPLIES.
271	NONSTERILE SUPPLIES.
272	STERILE SUPPLIES.
274	PROSTHETIC/ORTHOTIC DEVICES.
275	PACEMAKER DRUG.
276	INTRAOCULAR LENS SOURCE DRUG.
278	OTHER IMPLANTS.
279	OTHER M&S SUPPLIES.
280	ONCOLOGY.
289	OTHER ONCOLOGY.
290	DURABLE MEDICAL EQUIPMENT.
370	ANESTHESIA.
379	OTHER ANESTHESIA.
390	BLOOD STORAGE AND PROCESSING.
399	OTHER BLOOD STORAGE AND PROCESSING.
560	MEDICAL SOCIAL SERVICES.
569	OTHER MEDICAL SOCIAL SERVICES.
624	INVESTIGATIONAL DEVICE (IDE).
630	DRUGS REQUIRING SPECIFIC IDENTIFICATION, GENERAL CLASS.
631	SINGLE SOURCE.
632	MULTIPLE.
633	RESTRICTIVE PRESCRIPTION.
700	CAST ROOM.
709	OTHER CAST ROOM.
710	RECOVERY ROOM.
719	OTHER RECOVERY ROOM.
720	LABOR ROOM.
721	LABOR.
762	OBSERVATION ROOM.
810	ORGAN ACQUISITION.
819	OTHER ORGAN ACQUISITION.
	MEDICAL VISIT
250	PHARMACY.
251	GENERIC.
252	NONGENERIC.
257	NONPRESCRIPTION DRUGS.
258	IV SOLUTIONS.
259	OTHER PHARMACY.
270	M&S SUPPLIES.
271	NONSTERILE SUPPLIES.
272	STERILE SUPPLIES.
279	OTHER M&S SUPPLIES.
560	MEDICAL SOCIAL SERVICES.
569	OTHER MEDICAL SOCIAL SERVICES.
630	DRUGS REQUIRING SPECIFIC IDENTIFICATION, GENERAL CLASS.
631	SINGLE SOURCE DRUG.
632	MULTIPLE SOURCE DRUG.
633	RESTRICTIVE PRESCRIPTION.
637	SELF-ADMINISTERED DRUG (INSULIN ADMIN. IN EMERGENCY DIABETIC COMA.
700	CAST ROOM.
709	OTHER CAST ROOM.
762	OBSERVATION ROOM
942	EDUCATION/TRAINING.

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TABLE 7.—PACKAGED SERVICES BY REVENUE CODE—Continued

Revenue code	Description
	OTHER DIAGNOSTIC
254	PHARMACY INCIDENT TO OTHER DIAGNOSTIC.
280	ONCOLOGY.
289	OTHER ONCOLOGY.
372	ANESTHESIA INCIDENT TO OTHER DIAGNOSTIC.
560	MEDICAL SOCIAL SERVICES.
569	OTHER MEDICAL SOCIAL SERVICES.
622	SUPPLIES INCIDENT TO OTHER DIAGNOSTIC.
624	INVESTIGATIONAL DEVICE (IDE). .
710	RECOVERY ROOM.
719	OTHER RECOVERY ROOM.
762	OBSERVATION ROOM.
	RADIOLOGY
255	PHARMACY INCIDENT TO RADIOLOGY.
280	ONCOLOGY.
289	OTHER ONCOLOGY.
371	ANESTHESIA INCIDENT TO RADIOLOGY.
560	MEDICAL SOCIAL SERVICES.
569	OTHER MEDICAL SOCIAL SERVICES.
621	SUPPLIES INCIDENT TO RADIOLOGY.
624	INVESTIGATIONAL DEVICE (IDE).
710	RECOVERY ROOM.
719	OTHER RECOVERY ROOM.
762	OBSERVATION ROOM.
	ALL OTHER APC GROUPS
250	PHARMACY.
251	GENERIC.
252	NONGENERIC.
257	NONPRESCRIPTION DRUGS.
258	IV SOLUTIONS.
259	OTHER PHARMACY.
260	IV THERAPY, GENERAL CLASS.
262	IV THERAPY PHARMACY SERVICES.
263	IV THERAPY DRUG/SUPPLY/DELIVERY.
264	IV THERAPY SUPPLIES.
269	OTHER IV THERAPY.
270	M&S SUPPLIES.
271	NONSTERILE SUPPLIES.
272	STERILE SUPPLIES.
279	OTHER M&S SUPPLIES.
560	MEDICAL SOCIAL SERVICES.
569	OTHER MEDICAL SOCIAL SERVICES.
630	DRUGS REQUIRING SPECIFIC IDENTIFICATION, GENERAL CLASS.
631	SINGLE SOURCE DRUG.
632	MULTIPLE SOURCE DRUG.
633	RESTRICTIVE PRESCRIPTION.
762	OBSERVATION ROOM.
942	EDUCATION/TRAINING.

• We standardized costs for geographic wage variation by dividing the labor-related portion of the operating and capital costs for each billed item by the FY 2003 hospital inpatient prospective payment system (IPPS) wage index published in the **Federal Register** on August 1, 2002 (67 FR 49982). We used 60 percent to represent our estimate of that portion of costs attributable, on average, to labor. We have used this estimate since the inception of the OPPS and continue to believe that it is appropriate. (See the April 7, 2000 final rule (65 FR 18496) for a complete description of how we derived this percentage).

• We summed the standardized labor-related cost and the nonlabor-related cost component for each billed item to derive the total standardized cost for each procedure or medical visit.

• We removed extremely unusual costs that appeared to be errors in the data using a trimming methodology analogous to what we use in calculating the diagnosis-related group (DRG) weights for the hospital IPPS. That is, we eliminated any bills with costs outside of three standard deviations from the geometric mean.

• After trimming the procedure and visit level costs, we mapped each procedure or visit cost to its assigned APC, including the proposed APC changes described in section II.A of this final rule.

• We calculated the median cost for each APC by using the claims for services included in the APC. In the case of APCs for which we eliminated the claims that did not contain device

C codes, we used only the claims that contained device codes to set the median cost for the APC. See section III.A.2 of this final rule for a complete discussion of why we used the device code medians for these codes (which are identified in Table 6).

• Using these median APC costs, we calculated the relative payment weights for each APC. As in prior years, we scaled all the relative payment weights to APC 0601, mid-level clinic visit, because it is one of the most frequently performed services in the hospital outpatient setting. This approach is consistent with that used in developing RVUs for the Medicare physician fee schedule. We assigned APC 0601 a relative payment weight of 1.00 and divided the median cost for each APC by the median cost for APC 0601 to derive the relative payment weight for each APC. Using the 2001 through 2002 data, the median cost for APC 0601 is $57.56.

Section 1833(t)(9)(B) of the Act requires that APC reclassification and recalibration changes and wage index changes be made in a manner that ensures that aggregate payments under the OPPS for 2003 are neither greater than nor less than, the aggregate payments that would have been made without the changes. To comply with this requirement concerning the APC changes, we compared aggregate payments using the CY 2002 relative weights to aggregate payments using the CY 2003 final weights. Based on this comparison, in this final rule, we are making an adjustment of .969 to the weights. The final weights for CY 2003, which incorporate the recalibration adjustments explained in this section, are listed in Addendum A and Addendum B of this final rule with comment period. The final weights are rounded to 4 decimals for greater precision.

We received many comments on the issues related to calculation of the OPPS payment weights, which we summarize and address below:

Changes in Payment Rates from 2002 to 2003

Comment: We received many comments expressing concern with the amount of decreases in payments for many services, in particular those that will include drugs and devices that will cease to be eligible for pass-through payment in 2003. Many commenters said that the costs for drugs and devices derived from claims data, on which we based weights for these APCs, were considerably below the acquisition price hospitals pay for the drugs and devices. Many commenters said that the proposed payments would result in hospitals ceasing to provide services that require expensive devices and drugs because they could no longer afford to furnish them under the proposed rates.

Response: We are concerned that our payments not compromise access of Medicare beneficiaries to high quality services involving new technologies. Accordingly, we have adopted a number of changes in our estimating procedures, as described in more detail below and elsewhere in this final rule, designed to better ensure that the payment rates we establish in this rule are as accurate and reasonable as possible.

Comment: Many commenters, in particular hospital organizations, supported the significant increases in payments for primary care and preventive services that were proposed. They strongly stated that we should rely only on Medicare claims data to ensure that these services would not be reduced in payment by increases to payments for device and drug related services, as happened in 2002 when external price data were used in the absence of Medicare claims data. They noted that the services that received increases in payments using 2001 claims data are furnished by all hospitals and that rural hospitals and small urban hospitals in particular are heavily dependent on adequate payment for these services to be able to continue to offer services to Medicare patients in their communities.

Response: We also are concerned that our payments not compromise access of Medicare beneficiaries to high quality services that may not involve new technologies; these services in fact represent the bulk of services in all hospitals. Accordingly, we have been mindful that increases in the payment on some services will result in decreases in others.

Comment: Many commenters shared with us data from various sources outside our claims data (for example, manufacturers' prices, prices reported by group purchasing organizations, and amounts from invoices as proof of acquisition price). Many of these commenters suggested we use these data as a substitute for or supplement to claims data for particular APCs or where particular drugs or devices are used.

Response: We appreciate the data that these commenters provided to us. We carefully reviewed all the data that were furnished to us and used the data to guide us in analysis of claims data and in making decisions regarding how to generate the final payment weights.

We note that the OPPS is not designed to pay hospitals their full accounting costs for delivery of particular services. The system was set up to be budget neutral to the prior system, which, under several provisions of the statute, paid approximately 82 percent of reported hospital outpatient department costs as shown on the cost reports. Payment rates for individual services are set, in essence, to reflect relative resource use within a payment system that pays at what was a discount of approximately 18 percent. Thus, for us to make changes to ensure that a particular service receives what observers believe is its "full" cost is difficult, partly because determination of "full" cost for a particular service is an uncertain exercise and partly because such a service could only be paid "full" cost at the expense of all other services, which in principle would be paid at an even greater discount than that already implied by the operation of the system. Accordingly, while we have used data from external sources to evaluate the reasonableness of our payment rates and to guide us in choice of methods that would achieve results as reasonable as possible, we have not directly substituted such data into our estimates.

Comment: Many commenters suggested that we use only claims on which pass-through devices had been coded to set medians for APCs containing procedures that required devices to be furnished.

Response: We agree that this suggestion presents a useful way to edit our data, and adopted it in calculating the rates presented in this rule. We calculated medians from our most current set of claims data using all claims, (that is, using claims with no device C code, and using claims with device C code) and compared the medians. We found that, in many APCs because the procedures require use of a pass-through device, the medians that resulted from using any claims on which device C codes were billed were more similar to the device and procedure costs provided by external data than were the medians calculated using all claims. For these APCs, shown in Table 6, we used the median calculated using only claims on which a device had been coded.

Comment: Many of the commenters asked that we adjust the weights so that no service, or at least no service for which a commenter had objected to a decrease, would receive a decrease in payment of more than 10 percent from 2002 to 2003.

Response: We agree that the substantial fall in payment rates for some APCs suggests the need for some approach to moderate the changes.

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Many of these decreases appear to be linked to one or more of the following:

- Changes in the payment methodology for those drugs and devices that will no longer be eligible for pass-through payments,
- Miscoding,
- Restructuring of APCs (in which movement of a single code from one APC to another may change the median cost of both APCs), or
- Use of data from the period following implementation of the OPPS.

In the interest of using a method that could be employed simply and that could ensure that all APCs were treated similarly regardless of whether interested parties had identified them as sources of concern, we adopted a method that we applied to all APCs except new technology APCs, and APCs for drugs and devices that will receive pass-through payments in 2003.

We considered a number of different ways of moderating the reductions in payment that would have occurred under the August 9, 2002 proposed rule. We considered options that would have limited both significant increases and significant decreases in some fashion. However, we rejected these options because they would have reduced payments for those services that would otherwise have significant increases. Inspection of APCs that would have significant increases suggested that many of these increases were reasonable, and we did not want to reduce them more than necessary.

We considered options that would have created a fixed corridor that would have limited any reduction to some fixed value, such as 10 or 15 percent, as suggested by some commenters. However, we rejected this option, because it would have reduced the role of the claims data to a minimum, even though these data do reflect hospital charging behavior and are likely to have some degree of accuracy. In addition, setting an absolute floor on reductions would have shifted significant resources away from all other APCs.

We considered targeting those APCs that would experience a reduction in median costs beyond a threshold and limiting the reduction in median costs to half of the difference between the threshold level and the total reduction. Because of budget neutrality constraints, the costs of this approach must be met by reductions in other services. We concluded that setting a threshold at a 15 percent reduction and decreasing the reduction in median costs by half of the difference between the total proposed reduction and the threshold provided an appropriate balance, reflecting our assessment of the relative quality of claims data, other information from commenters, and the effects on services overall.

Thus, we adopt the following procedure. For any APC where the median cost would have fallen by 15 percent or more from between 2002 to 2003 from the values that would be otherwise applicable for 2003, after the data and method improvements noted above, we first decreased the reduction in median cost by one half of the difference between the value derived from the claims data and 15 percent. This methodology was applied to all APCs, not just those involving drugs or devices losing pass-through eligibility. We then assessed the results of this procedure with information from comments and concluded that several additional but more targeted steps were appropriate.

We examined further those APCs containing procedures involving devices where the device represented a very large portion of the overall costs. Noting that the overall reduction from cost discussed elsewhere in this section would mean that services where devices represented 80 percent or more of the total costs would leave virtually no margin to cover hospital costs in performing the procedure, we limited our attention to those APCs with device costs of 80 percent of more. We then calculated adjusted APC median costs for these APCs by determining the portion of the cost that was attributable to the procedure and summing it with a weighted average of the cost of the device. We determined the weighted average of the cost of the device by giving a weight of 3 to the median acquisition cost of the device as provided by external data and a weight of 1 to the median cost from our claims data. We then added the adjusted cost of the device to the unadjusted cost of the procedure to calculate the total cost of the procedure. Our dampening policy was then applied to the adjusted total cost of the procedure.

We believe that this process gave us credible adjusted medians for APCs 107, 108, 222 and 259. We gave external acquisition cost data a weight 3 times that of the adjusted claims median data because these APCs are disproportionately highly weighted with device costs and we recognize that our device data have weaknesses that would otherwise result in payments that are so low as to limit beneficiary access to these services.

We also examined further those APCs involving blood and blood products, and vaccines. Information from comments raised significant concerns about the payment reductions that would result, even after improvements in data and methods and the adjustments described above were applied, on blood and certain blood products (including antihemophilia factors). Considering the importance of these products to ongoing operation of hospitals, the short shelf life of many of them, other peculiarities of their distribution, and possible adverse effects on public health, we concluded that these products should be further protected from decreases. Accordingly, we limited the reduction in the median cost from 2002 to 2003 for these products to 11 percent, which resulted in limiting the reduction in payment from 2002 to 2003 to about 15 percent. We did this for the APCs listed in Table 8.

We also adopted specific changes relating to vaccines and certain orphan drugs, as described elsewhere in this final rule.

We created unscaled weights for all APCs by dividing the adjusted medians by the median cost for APC 601 (mid level visit). We then scaled the weights for budget neutrality. The budget neutrality scaler that we applied to the weights was .968969.

TABLE 8.—BLOOD AND BLOOD PRODUCTS WITH SPECIAL LIMITS

APC	Description
0949	Plasma, Pooled Multiple Donor, Solvent/Detergent T.
0950	Blood (Whole) For Transfusion.
0952	Cryoprecipitate.
0954	RBC leukocytes reduced.
0955	Plasma, Fresh Frozen.
0956	Plasma Protein Fraction.
0957	Platelet Concentrate.
0958	Platelet Rich Plasma.

TABLE 8.—BLOOD AND BLOOD PRODUCTS WITH SPECIAL LIMITS—Continued

APC	Description
0959	Red Blood Cells.
0960	Washed Red Blood Cells.
0966	Plasmaprotein fract,5%,250ml.
1009	Cryoprecip reduced plasma.
1010	Blood, L/R, CMV-neg.
1011	Platelets, HLA-m, L/R, unit.
1013	Platelet concentrate, L/R, unit.
1016	Blood, L/R, froz/deglycerol/washed.
1017	Platelets, aph/pher, L/R, CMV-neg, unit.
1018	Blood, L/R, irradiated.
1019	Platelets, aph/pher, L/R, irradiated, unit.
9500	Platelets, irradiated.
9501	Platelets, pheresis.
9502	Platelet pheresis irradiated.
9503	Fresh frozen plasma, ea unit.
9504	RBC deglycerolized.
9505	RBC irradiated.
9506	Granulocytes, pheresis.
0925	Factor viii per iu.
0926	Factor VIII (porcine) per iu.
0927	Factor viii recombinant per iu.
0928	Factor ix complex per iu.
0929	Anti-inhibitor per iu.
0931	Factor IX non-recombinant, per iu.
0932	Factor IX recombinant, per iu.
1409	Factor viia recombinant, per 1.2 mg.
1618	Vonwillebrandfactrcmplx, per iu

Comment: Many commenters, while indicating appreciation for our efforts to use data from multiple claims in determining relative weights as described in the August 9, 2002 proposed rule, believe that we have not done enough. Although we have significantly increased the number and proportion of claims that enter the calculation for relative weights, commenters asserted that, in particular, clinical areas, our mobility to draw on multiple claims distorts the relative weights assigned to services, because in normal circumstances certain services would always be performed with other particular services. If packaged services also appear on such claims, the claims would not be used in our current methodology, and relative weight calculations may not be as accurate as desired as a result. These commenters urged us to do more to include data from multiple claims.

Response: We appreciate the recognition of the methodological improvements that we have been able to accomplish this year. Although intend to continue the gains achieved for 2003, the development of appropriate methods is difficult. Further methodological development may be very detailed and involve clinical review of particular areas of services. We have been unable to develop any further methodological changes at present, so for 2003, we are adopting the same methods we proposed. We wish to develop further methods of allocation that will permit use of more multiple claims in the future, particularly in problem areas identified by commenters, and we hope to be able to make further progress in this area in time for the 2004 update.

Comment: Several commenters raised questions about our editing procedures relating to which claims were used in analysis. On one hand, some questioned whether our standard method of trimming claims with values over three standard deviations above the median was appropriate, or whether it might leave out reasonable claims involving newly disseminating, high cost technologies. Other commenters suggested that we edit the claims more restrictively, removing from analysis claims with values outside a clinically relevant range (of drug dosages, for instance).

Response: While we think the suggestions made by these commenters deserve further consideration, we have made no changes in developing the estimates for the final rule. Our procedure for trimming claims with values above three standard deviations, an exceedingly small proportion of claims, is a standard procedure we use in estimates for several payment systems. This procedure prevents undue influence on the estimates by claims that have a high probability of coding errors, and we have no particular indication that this procedure is inappropriately applied in this system. Establishing clinically relevant ranges would be difficult. The most obvious method would involve establishment of norms of particular services based on the judgment of clinicians, but these judgments might not be validated by actual experience in the field. We would have to develop this idea more thoroughly before adopting it. Accordingly, for 2003 we are using the trimming and editing procedures rules described in the August 9, 2002 proposed rule.

Comment: Several commenters noted that hospital coding appeared to improve over the course of 2001, based on quarter-by-quarter examination of claims data.

Response: We agree that hospital coding practices appear to have improved during the early months of the implementation of the OPPS. Because accurate coding now has definite implications for payment that it lacked in the past, this change was expected and comports with our experience in implementing other payment systems. To improve the quality of estimates for this final rule, we changed the reference period of the data used for the final rule by one quarter. The August 9, 2002 proposed rule was based on data from calendar year 2001; for the final rule, we dropped data from the first quarter of 2001 and added data from the first quarter of 2002. We were thus able to draw on data from a more recent period

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while maintaining approximately the same number of claims for analysis. This change was possible in this instance because the implementation of the 2002 update on April 1, 2002 meant that the coding during the first quarter of calendar year 2002 was unchanged from the prior year. We believe that this change has improved the quality of our estimates.

Comment: Commenters asked a number of very detailed questions about our data and methods of calculation.

Response: Within a few weeks of the publication of this rule, we expect to invite interested parties to a meeting at our headquarters in Baltimore to discuss these and other questions regarding methods and estimates with our technical staff.

Use of Cost-to-Charge Ratios and Charge Compression

Comment: A number of commenters raised concerns about our use of cost-to-charge ratios in determining median costs of items and services. Of particular concern is the effect of our procedure on the costs we calculate for high-cost drugs and devices. These commenters asserted that hospitals markup their acquisition costs of drugs and devices by different percentages depending on the cost of the item. If so, application of cost-to-charge ratios that do not take this effect into account would result in a relative weight (and hence payment) for a high-cost item that was inappropriately low. Commenters asserted that differential mark-up behavior, sometimes referred to as "charge compression," is common among hospitals, at least on purchased inputs such as implantable devices.

To illustrate, assume cost-to-charge ratios are about generally 50 percent. That would imply that an item that cost, for example, $100, would be marked up by 100 percent to $200. ($100/$200 = .5) If the hospital decided to mark up the cost of a high cost item by only 50 percent, the charge for an item that cost $1,000 would be $1,500, and the cost-to-charge ratio would be 67 percent. ($1,000/$1,500 = .67) On the other hand, the hospital might choose to mark up a low cost item by 150 percent: The charge for an item that cost $10 would be $25, and the cost-to-charge ratio would be 40 percent ($10/$25 = .4).

Commenters did not provide any useful empirical information on issues such as those above. One commenter presented results of a statistical analysis of the relation of average wholesale price (AWP) of some drugs to our proposed payments, but we do not know if average wholesale prices vary uniformly in proportion to the acquisition costs of hospitals and consequently do not find this analysis particularly informative.

Response: We calculate OPPS payment rates based on the charges made by the hospitals on OPD claims, reduced to costs by application of a cost-to-charge ratio that is either specific to each of the various departments of each hospital or, in cases where data are inadequate, to the individual hospital as a whole. Costs are not available on a service-specific basis, but are reported on each hospital's cost report by revenue center, which can in turn be grouped by department. Thus, the service-specific amount claimed is multiplied by the departmental cost-to-charge ratio to convert it into a measure of the cost on a service-specific basis. We then use these costs to adjust the relative weights for the various APCs as part of the annual update process.

In making this calculation, we are assuming that the ratio of cost to charges is constant across all services to which it is applied. This assumption has proved workable in the inpatient setting for almost 20 years. The calculations may not perfectly capture the costs identified for particular services, but as long as we use them in a set of relative calculations, any deviations should largely cancel out. However, if hospitals do not mark-up services in a uniform fashion within departments, the payment rates resulting from application of this assumption would be too low for some services (and too high for others), and the rates would create incentives for hospitals to avoid (or favor) particular services.

This postulated behavior of hospitals is not implausible, as they may attempt to avoid adverse reactions to high prices among consumers and to reduce coinsurance burden on high cost items used infrequently. However, the possibility of differential mark-up behavior is not well documented empirically. We do not know if differential mark-ups are common across many hospitals or across many services. Further, we do not know the size of any differential that may exist. Do hospitals apply differential mark-ups to all services or only to certain purchased inputs? Do they apply differential mark-ups only above some threshold (such as $1,000), or does the mark-up vary in some uniform fashion with the cost of the service?

In the face of the paucity of reliable empirical information on this issue, we find that we cannot move quickly to revise our current methodology. We are adopting our proposed methodology for calculating cost-to-charge ratios for 2003. We believe this issue merits further study, and we expect to address it further in the future.

Use of Means Rather Than Medians To Set Weights

Comment: Some commenters suggested that CMS use means rather than medians to set rates because means will result in higher values for device-related APCs than using medians. Some commenters noted that means are a better measure of central tendency because medians are so sensitive to the atypical distribution of new technology services within an APC. Some commenters recommended that if we use medians, we should revise the data set by deleting claims for services that require a device if the device was not billed.

Response: We will explore the possibility and potential impact of using means rather than medians for the 2004 OPPS. We lacked the resources and time to explore the impact of this change for the final rule with comment. However, since the purpose of these measures is to create relative payment weights, it does not necessarily follow that basing the relative weights of services on means will cause a change to the weights in a manner that would satisfy the commenter. We did, however, revise the data set by deleting claims for procedures that required a device if the device was not billed.

Collect at Least 3 Years' Data for Pass-Through Devices Before Setting Rates Based on Claims Data

Comment: Commenters recommended that we not use claims data to set weights for pass-through devices unless they have at least 3 years of claims data for the device. They argued that this was the minimum amount of time needed to allow stability in the hospitals' coding and charges for the items.

Response: We cannot ensure that we will wait for 3 years to pass before we will set payments based on data for new devices. The statute provides for no less than 2 years and no more than 3 years payment under pass-through for items that do not fit a previously existing device category. Hence, in most cases, items will not have received 3 years of transitional pass-through payment before they are priced based on costs. Moreover, many new devices do not receive pass-through status because they fit in a category that previously met the criteria and, once pass-through payment is no longer permitted for the category, these devices will be paid through payment for the procedure in which they are used from their first use.

In general, the statute requires us to use costs as the basis for the weights. Claims data are the single national uniform basis of cost data for all OPD items and services. Other data sources are fragmented and are not national in scope, and may be biased in various ways. We believe that 2 years provides a sufficient time for hospitals to establish coding practices and to determine what charges to impose for items and services paid under the OPPS and that this will be even more true in the future as hospital coders and billers become more accustomed to HCPCS coding and the impact of charges on future payments.

Continue 2002 Weights for 2003 and Train Hospital Staff Coders and Billers Because Claims Data Are Flawed

Comment: Some commenters asserted that Medicare 2001 claims data are so badly flawed that the weights should be left untouched for 2003. They requested that we should initiate training of hospital staff billers and coders to ensure that future data accurately reflect the codes of the services furnished and that the charges accurately reflect the costs of drugs and devices.

Response: We have decided to revise the weights for 2003 based on the best available information. We believe that the adjustments and moderations we have made to the median costs for the services that would have been most adversely affected under the methodology used in the August 9, 2002 proposed rule have enabled us to establish a valid set of relative weights for the 2003 OPPS. This comports with the requirement of section 1833(t)(9)(A) of the Act that we review and revise the relative weights annually to take into account new cost data and other relevant information, and factors. Regarding training of hospital staff, we have greatly expanded our efforts to assist providers in complying with all Medicare rules, including creation of the Medlearn Web site, issuance of specialized articles and provider seminars. However, the fundamental responsibility for correct coding and billing for services lies with the hospitals who are paid under the OPPS system and who have every incentive to bill correctly to ensure that they are paid for all the services they furnish to Medicare beneficiaries.

Release of Crosswalk for Packaging Costs to Specific APCs

Comment: Some commenters asked that we release the crosswalk used to assign pass-through device costs to specific APCs. They indicated that without this crosswalk, they are unable to make specific comments and they urged the Congress to fund an additional activity to correct APCs they determine to be severely underfunded after they perform this analysis.

Response: There is no CMS-generated crosswalk that was used to assign pass-through device costs to APCs. We relied upon the coding of hospitals in their packaging of devices, drugs, and other items and services into the payment for the procedure in which they were used. We will make a public use file available that containing the claims data used to set the final payment weights. By examination of these data, interested parties can determine what was packaged into the medians for the APCs. While we recognize that the claims may contain errors, we believe that the probability of making errors in crosswalking services to procedures is reduced by accepting what providers bill as the items and services furnished with the procedure.

Impact of Medical Education on OPPS Payment Adequacy

Comment: Several commenters noted that payment under OPPS does not take into account the time and cost components associated with providing teaching services in teaching hospitals and thereby puts teaching hospitals at a disadvantage. Moreover, teaching hospitals are typically on the cutting edge of development and implementation of new innovations, technological and otherwise and would therefore be underpaid by the low payments proposed for APCs that use expensive devices. The commenters asked that Medicare provide an indirect medical education (IME) payment percentage add-on for all outpatient APCs similar to the IME factor used to adjust DRG payments for inpatient services.

Response: We have not developed an IME add-on for payments made under the OPPS because the statute does not provide for this adjustment, and we are not unconvinced that it would be appropriate in a budget-neutral system in which such changes would result in reduced payments to all other hospitals. Moreover, in the final rule, we have developed payment weights that we believe resolve many of the issues with payments for devices for which payment is packaged into the payment for the procedure in which the device is used. These and other payment changes should help ensure equitable payment for all hospitals as provided within the constraints of the statute.

Elimination of Payment for Cochlear Implants and Vagus Nerve Stimulators

Comments: A number of commenters objected to what they believed was a proposal to eliminate payment for cochlear implants and vagus nerve stimulators. Those who had the implant indicated that these devices had greatly improved their lives, or others who were expected to have the device implanted objected to what they believed was a proposal to no longer pay for them.

Response: We did not propose to cease payment for these devices under Medicare or to cease payment for services needed to implant them. We did propose payment amounts for 2003, and, in this final rule, we provide the payment rates that will determine payments under the OPPS in 2003. The establishment of payment amounts does not constitute a Medicare determination that these items and services are or are not covered in any particular case.

Underfunding of OPPS in General

Comment: Some commenters stated that OPPS was severely underfunded when it was established and it will never result in adequate payment of costs under its current budget neutrality requirements. They asked that we support their efforts to seek increased funding for outpatient services since hospital care is increasingly furnished in the outpatient setting and because continued absence of adequate funding will result in reduced access to services. Some commenters indicated that since the budget neutrality scaler is determined on the basis of estimates, we have considerable latitude to ensure that payments are as close to costs as possible, notwithstanding that the base was set at 82 percent of cost when the system was established.

Response: We do not believe that the OPPS system is severely underfunded, nor do we believe that the statute gives us flexibility in the determination of budget neutrality. Congress set the OPPS system to be budget neutral to the total payments under prior payment methods; those methods, as result of several statutory provisions dating back to FY 1990 and FY 1991, paid for hospital outpatient department services at approximately 82 percent of costs. We understand that observers at the time believed that hospitals had shifted accounting costs that might otherwise have been attributed to inpatient cost centers to the outpatient setting because the inpatient PPS limited hospital payment on the inpatient side while the outpatient side was not similarly constrained. Congress had thus reduced payments for outpatient department services below nominal costs, and the OPPS was set to be budget neutral relative to total payments under the prior system. Whether this situation

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implies that hospital outpatient departments are underfunded under the OPPS is hard to judge.

With respect to budget neutrality, section 1833(t)(9)(B) of the Act makes clear that any adjustments to the OPPS made by the Secretary may not cause estimated expenditures to increase or decrease. We do not believe the statute provides us authority to depart from budget neutrality simply because it uses the word "estimated."

Data Issues Peculiar to Radiopharmaceuticals

Comment: Commenters stated various reasons why it would be inappropriate to use the 2001 claims data to calculate the median cost of radiopharmaceuticals. They claimed that additional costs unique to radiopharmaceuticals, such as overhead costs for nuclear pharmacies and safety/regulatory costs, were not reported in the 2001 claims. Also, they believe not all hospitals billed for their costs, particularly costs for overhead items, to the appropriate revenue codes. Therefore, they argue this misallocation of charges resulted in an underestimate of the cost-to-charge ratios that were used to set the payment rates. The low volume of claims for radiopharmaceuticals in the 2001 dataset may be attributed to the use of HCPCS A4641, which many hospitals used for radiopharmaceutical billing, instead of more specific coding. Also, they suggested that we did not receive reliable reporting data from the hospitals because of significant descriptor and payment rate changes in 2001. Thus, they recommended that we not implement the proposed changes until more accurate data on hospital costs could be collected.

Response: As discussed elsewhere in this section, we believe that we have satisfactorily resolved the data issues in the claims data for 2001 to enable us to create an appropriate set of relative weights for OPPS services for 2003. We find no justification for delaying the update of the 2003 OPPS. Moreover, we see nothing unique in the issues raised in the context of data for radiopharmaceuticals. As with other services, the costs in revenue centers and for A4641 were packaged into the procedure with which the items were billed. Similarly, we do not believe that the problem with multiple procedure claims is more of a problem for radiopharmaceuticals than for other services that are commonly provided in combinations. Lastly, there were significant descriptor and payment rate changes for all services paid under OPPS in 2001, and the extent of the changes for radiopharmaceuticals did not differ significantly from the extent of changes for other items and services.

Methodological Reasons That the Data for Drugs Are Flawed

Comment: Many commenters asserted that there are significant methodological problems in the 2001 claims data for drugs and biologicals, especially the high cost items. They said that the 2001 claims data do not reflect appropriate codes and charges for separately paid drugs and biologicals and that the proposed payment rate does not take into account additional pharmacy overhead costs. They indicated that when we process a claim, we reject the second and subsequent line if it is identical to a previously billed line as a duplicate claim and that, therefore, the subsequent lines are not included in the claims data. They maintained that the methodology of analyzing single line-items on drug claims is not consistent with how hospitals bill for particular drugs and biologicals. They stated that claims reported by hospitals for certain drugs and biologicals showed unit amounts that fell outside a therapeutic range and therefore should have been excluded from the body of claims used to set the rates. They said that many drugs and biologicals have a low HCPCS code dose that skews the computation of the relative weights, and thus the payment rates for these products.

Response: We recognize that not all hospitals billed properly for drugs and biologicals in 2001. However, since most payment for drugs and biologicals was made on a pass-through basis at 95 percent of AWP in 2001, hospitals had a significant incentive to bill properly and we believe that in most cases they billed properly for the services they furnished so as to receive payment for them. We recognize that if a claim was submitted in a manner that caused it to be rejected by duplicate claims edits, it would not appear in the data. However, we expect that in those cases, hospitals would submit an adjustment bill to secure payment for the full service and that the costs for the drugs or biologicals as shown in the adjustment bill would be reflected in the data. We also recognize that some claims reflect that the drugs were furnished in amounts that were outside of therapeutic ranges. However, we have no reason to believe that those claims do not represent what actually was furnished to the patient. Should a physician deviate from standard therapeutic ranges in particular a case, it is reasonable to expect the claim to reflect what was administered. With regard to the low dose of the HCPCS code, the payment is set based on the definition of the code and so to the extent that the drug or biological is correctly coded on the claim, the claims data would reflect the cost of the drug or biological.

Elimination of Data for Hospitals Without Actual Charges

Comment: Several commenters raised concerns regarding the elimination of about 3 million claims from 301 hospitals because their reported charges were not actual charges. The commenters requested the following information from us on the effect of eliminating these claims: Did the elimination of this information create more bias against higher cost drugs and biologicals? Were the claims from certain specialty hospitals?

Response: There is no way for us to determine what effect would have taken place if these hospitals had reported charges as other hospitals did. However, because we know that the reported charges for these hospitals are not actual charges, we know that the information provided by these hospitals is meaningless for the purpose of calculating payment rates under OPPS.

Impact of Rounding of Relative Weights for Drugs

Comment: Commenters stated that the rounding of relative weights down to only two decimal places causes a significant reduction in payment. For example, rounding a unit down to a relative weight of 0.01 from a greater amount (for example, 0.01433) can substantially decrease the payment amount of a therapeutic dose.

Response: We rounded relative weights to 4 decimal places in the final rule.

Comment: A commenter indicated that we included data from the 11 PPS-exempt cancer hospitals that should have been excluded from the rate-setting calculations.

Response: We disagree with the commenter's concern. According to 42 CFR 412.23(f), cancer hospitals that meet specific criteria are excluded from the inpatient PPS; however, these hospitals are not excluded from OPPS. Rather, under OPPS, cancer hospitals are held harmless. The hold harmless provision is set forth in our existing regulations at 42 CFR 419.70(d)(2). Therefore, we do not exclude claims for services furnished in these hospitals in our rate setting calculations.

Need for a Special Exceptions Process

Comment: Some commenters said that CMS should have a process by which hospitals should be able to submit special documentation to indicate that

unusual conditions exist and be paid an additional amount set by the contractor for the unusual conditions or costs that the hospital is incurring. They suggested this as a means of being assured of recouping costs where the APC payment would not otherwise reimbursement for full costs.

Response: We did not accept the comment because the OPPS already has an outlier system that provides for an additional payment when costs are incurred that meet the outlier criteria.

Claims Process

Comment: One commenter said that the implementation of OPPS was extremely daunting to providers because it was so different from prior billing and coding for these services and because CMS processes and rules changed so frequently. They indicated that software vendors often lagged behind CMS requirements and that errors in either provider billing or intermediary processing often required a hospital to detect a problem and resubmit claims. Moreover, the volume of claims can cause a small problem to become a large problem in very little time. They ask that CMS do whatever it can to simplify the processes they must undertake to achieve submission of a "clean" claim.

Response: We recognize that implementation of CMS was difficult for providers and we have tried to do all that we can to simplify billing and payment rules and to respond to problems as they arise. Most recently, the hospital open door forum calls have provided a means for hospitals to bring problems to the attention of the CMS staff as quickly as possible so that they can be resolved.

Reduced Quality of Care for Gamma Knife Services

Comment: A commenter said that reducing payment for hospital services for G0242 will force hospitals to reduce the hours of work for medical physicists in the hospital and will therefore decrease quality by increasing the opportunity for errors in the calculations that must be done before treatment.

Response: We believe that hospitals would not jeopardize themselves by decreasing the extent to which they ensure that errors are not made.

We are finalizing our rate methodology for PHP, including data from hospital outpatient and CMHC programs. The national unadjusted rate for CY 2003 will be $240.03, of which $48.17 is the beneficiary's national unadjusted coinsurance. Upon further review we have determined that we will not include the issue of separate billing for clinical social worker services provided to PHP patients in this final rule but will address it in future rulemaking.

IV. Transitional Pass-Through and Related Payment Issues

A. Background

Section 1833(t)(6) of the Act provides for temporary additional payments or "transitional pass-through payments" for certain medical devices, drugs, and biologicals.

For those drugs, biologicals, and devices referred to as "current," the transitional pass-through payment began on the first date the hospital OPPS was implemented (before enactment of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act (BIPA), Public Law 106–554, enacted December 21, 2000).

Transitional pass-through payments are also required for certain "new" medical devices, drugs, and biological agents that could not be described as current, that were not being paid for as a hospital outpatient service as of December 31, 1996 and whose cost is "not insignificant" in relation to the OPPS payment for the procedures or services associated with the new device, drug, or biological. Under the statute, transitional pass-through payments are to be made for at least 2 years but not more than 3 years.

Section 1833(t)(6)(B)(i) of the Act required that we establish, by April 1, 2001, initial categories to be used for purposes of determining which medical devices are eligible for transitional pass-through payments. Section 1833(t)(6)(B)(i)(II) of the Act explicitly authorized us to establish initial categories by program memorandum. On March 22, 2001, we issued two Program Memoranda, Transmittals A–01–40 and A–01–41 that established the initial categories. We posted them on our Web site at *http://cms.hhs.gov.*

Transmittal A–01–41 includes a list of the initial device categories and a crosswalk of all the item-specific codes for individual devices that were approved for transitional pass-through payments as of January 21, 2001 to the initial category code by which the device is to be billed beginning April 1, 2001. Items eligible for transitional pass-through payments are generally coded using a Level II HCPCS code with an alpha prefix of "C." Pass-through device categories are identified by status indicator "H" and pass-through drugs and biologicals are identified by status indicator "G." Subsequently, we added two additional categories and made clarifications to some of the categories' long descriptors found in transmittal A–01–73. A current list of device category codes in effect as of July 1, 2002 can be found in Transmittal A–02–050, which was issued on June 17, 2002. This Program Memorandum can be accessed on our Web site at *http://cms.hhs.gov.* The list is also included in this preamble in Table 7.

Section 1833(t)(6)(B)(ii) of the Act also requires us to establish, through rulemaking, criteria that will be used to create additional device categories. The criteria for new categories are the subject of a separate interim final rule with comment period that we published in the **Federal Register** on November 2, 2001 (66 FR 55850). We respond to public comments on that interim final rule in this final rule with comment that implements the 2003 OPPS update.

Transitional pass-through categories are for devices only; they do not apply to drugs or biologicals. The regulations at § 419.64 governing transitional pass-through payments for eligible drugs and biologicals are unaffected by the creation of categories.

The processes to apply for transitional pass-through payment for eligible drugs and biological agents or for additional device categories can be found on respective pages on our Web site at *http://cms.hhs.gov.* If we revise the application instructions in any way, we will post the revisions on our Web site and submit the changes for approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). Notification of new drug, biological, or device category application processes are generally posted on the OPPS Web site at *http://cms.hhs.gov/Medicare/hopps/default.asp.*

As we indicated in the NPRM (67FR52130), Determining that a drug or biological is eligible for a pass-through payment or making a decision to pay a drug or biological on a separate APC basis (rather than packaging payment into payment for a procedure) does not represent a determination that the drug or biological is covered by the Medicare program.

CMS and its contractors make coverage determinations and the FDA makes premarket approval decisions under different statutory standards. Whereas the FDA must determine that a product is safe and effective as a condition of approval, CMS must determine that the product is reasonable and necessary as a condition of coverage under section 1862(a)(1)(A) of the Social Security Act. Under a premarket approval review, the FDA determines whether or not the product is safe and effective for its intended use that is

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stated in its proposed labeling. Medicare evidence-based NCD reviews consider the medical benefit and clinical utility of an item or service in determining whether the item or service and its expenses are reasonable and necessary under the Medicare program. Unlike the FDA safety and effectiveness evaluation, CMS determines whether or not the product is clinically effective, that is, does the item or service improve net health outcomes in the Medicare population as compared to other covered technologies or procedures. CMS and its contractors do require that a drug or biological first be approved by the FDA, although not necessarily for the indication for which coverage is sought. CMS and its contractors also strongly consider the FDA's evaluation when making a coverage determination for a product and do not substitute their judgment for that of the FDA's regarding safety and effectiveness. Instead, we focus our review on the issues that are unique to Medicare's reasonable and necessary determination. (We note that approval of a product by the FDA as a drug or biological does not automatically assure that Medicare payment for the product will be as a drug or biological. The product must still be placed into the most appropriate Medicare benefit category before Medicare can make appropriate payments.)

In the case of an FDA-approved indication for drugs and biologicals, CMS and its contractors have generally considered that use to be reasonable and necessary, without performing a separate review, although Medicare has always retained the right to perform a separate evaluation. (See, for example, 54 FR 4302, 4306, January 30, 1989) (Proposed Rule-Coverage Criteria) ("Questions regarding coverage of drugs and biologicals are rarely referred to PHS since we have determined as a matter of national policy that drugs or biologicals approved for marketing by FDA are safe and effective when used for indications specified in their labeling.") (emphasis added); Medicare Carriers Manual section 2049.4 ("Use of the drug or biological must be safe and effective *and otherwise reasonable and necessary*. Drugs or biologicals approved for marketing by the Food and Drug Administration are considered safe and effective for purposes of this requirement when used for indications specified on the labeling." (emphasis added). Under section 2049.4, our contractors "*may* pay for the use of an FDA approved drug or biological, if: (1) It was injected on or after the date of the FDA's approval; (2) It is reasonable and necessary for the individual patient; and (3) All other applicable coverage requirements are met." (emphasis added).

CMS developed this approach, because, in the past, it was a more efficient mechanism for coverage and the impact of drugs and biologicals on the Medicare program was relatively small. Now, as a result of the increasing number of novel therapies on the market and the impact of new drugs and biologicals on the Medicare program, it is prudent for Medicare to perform its traditional coverage analysis for appropriate drugs and biologicals as it does for all other items and services to ensure that it only pays for those products that are clinically effective. For drugs and biologicals, Medicare will continue to use FDA approval as a default for a reasonable and necessary determination of an FDA-approved indication unless CMS decides otherwise. CMS may choose to perform a reasonable and necessary determination in several circumstances, including, but not limited to the following: the drug or biological in question represents a novel, complex or controversial treatment, may be costly to the Medicare program, may be subject to overutilization or misuse, or received marketing approval based on the use of surrogate outcomes.

B. Discussion of Pro Rata Reduction

Section 1833(t)(6)(E) of the Act limits the total projected amount of transitional pass-through payments for a given year to an "applicable percentage" of projected total payments under the hospital OPPS. For a year before 2004, the applicable percentage is 2.5 percent; for 2004 and subsequent years, we specify the applicable percentage up to 2.0 percent. If we estimate before the beginning of the calendar year that the total amount of pass-through payments in that year would exceed the applicable percentage, section 1833(t)(6)(E)(iii) of the Act requires a (prospective) uniform reduction in the amount of each of the transitional pass-through payments made in that year to ensure that the limit is not exceeded. We make an estimate of pass-through spending to determine not only whether pass-through payments will exceed the applicable percentage but also to determine the appropriate reduction to the conversion factor.

In the August 9, 2002 proposed rule, we describe in detail the methodology we would use to make an estimate of pass-through spending in 2003 (67 FR 52117 through 52118). Very generally, after projecting 2003 pass-through spending for the groups of devices, drugs, biologicals, and radiopharmaceuticals as described in the proposed rule, we would calculate total projected 2003 pass-through spending as a percentage of the total (that is, Medicare and beneficiary payments) projected payments under OPPS to determine if the pro rata reduction would be required.

Below is a table showing our current estimate of 2003 pass-through spending based on information available at the time the table was developed. In the August 9, 2002 proposed rule we indicated that we were uncertain whether pass-through spending in 2003 will exceed $467 million or 2.5 percent of total estimated OPPS spending because we had not yet completed the estimate of pass-through spending for a number of drugs. We invited comments on the methodology we proposed to use to determine if a pro rata reduction would be necessary as well as the assumptions shown in Table X of the August 9, 2002 proposed rule that included anticipated utilization and utilization not yet determined.

We received several comments on this proposal, which are summarized below.

Estimates of Pass-Through Spending

Comment: A device manufacturer stated that it would be premature to impose pro rata reductions before we accurately account for an APC's device offset amount.

Response: Where applicable we have applied offset amounts to APCs with device categories for determining the final estimate of 2003 pass-through spending.

Comment: Many commenters said that there should be no pro rata reduction because we did not present the cost and utilization data that would be used to determine if the criteria for a reduction were met. Some commenters said that the pro rata reduction is discretionary and that we should not impose one because of the magnitude of the decreases for APCs that require expensive devices and the decreases in APCs for drugs (as compared to the pass-through payment). Some commenters said that our proposed projections overestimated the volumes that could be expected to occur in 2003.

Response: Section 1833(t)(6)(E)(i) of the Act requires that the Secretary estimate the total pass-through payments to be made for the forthcoming year (which allows us to determine the amount of the conversion factor for the forthcoming year) and to the extent the estimate exceeds the statutory limit, reduce the amount of each pass-through payment. For 2003, the statutory limit is 2.5 percent of total estimated program payments. In the August 9, 2002 proposed rule, we provided our best estimate at that time of pass-through payments for the drugs and devices for which we expected to make pass-through payments in 2003, and we explained our methodology for determining the estimate for the final rule. We provided a list of the devices and drugs we either knew would be paid under pass-through next year or which we believed may be paid as pass-through items in 2003.

We have refined and finalized our estimate of pass-through spending in 2003 and, for the reasons discussed below, we have determined that no pro rata reduction will be required in 2003. Moreover, as discussed below the estimate falls under the statutory limit of 2.5 percent. Therefore, the conversion factor has been increased.

Comment: A commenter disagreed with the 2003 payment estimates in Table X of the August 9, 2002 proposed rule for the diagnostic and therapeutic radiopharmaceutical agents, IN–111 Zevalin and Y–90 Zevalin. The commenter estimated the number of patients receiving this therapy in the outpatient department setting in 2003 at approximately 2,500 for both the diagnostic and therapeutic portions, instead of the 9,000 that we projected in our August 9, 2002 proposed rule. The commenter further stated that the payment per patient for the Y–90 Zevalin therapy should be based on 40 mCi, the amount required in the preparation of the dose.

Response: Since publication of the August 9, 2002 proposed rule, we have determined that the appropriate payment mechanism for IN–111 Zevalin and Y–90 Zevalin is through the new technology APCs, rather than through the transitional pass-through payment methodology. Zevalin began receiving pass-through payment as a hospital outpatient service in 2002 as a radiopharmaceutical drug. After careful reexamination of Zevalin, we have determined that Zevalin is not a drug and therefore does not qualify for a pass-through payment.

Section 1861(t)(1) provides that the terms drugs and biologicals "include only such drugs (including contrast agents) and biologicals, respectively, as are included (or approved for inclusion) in [one of several pharmacopoeias] (except for any drugs and biologicals unfavorably evaluated therein), or as are approved by the pharmacy and drug therapeutics committee (or equivalent committee) of the medical staff of the hospital furnishing such drugs and biologicals for use in such hospital." A careful reading of this statutory language convinces us that inclusion of an item in, for example, the USPDI (as Zevalin is included, as a biological), does not necessarily mean that the item is a drug or biological. Inclusion in such reference (or approval by a hospital committee) is a necessary condition for us to call a product a drug or biological, but it is not enough. Rather, if we are to call a product a drug or a biological for our purposes, CMS must still make its own determination that the product is a drug or biological. In the case of Zevalin, we have determined that Zevalin is not a drug or a biological.

Zevalin consists of a radioactive isotope that is delivered to its target tissue by a monoclonal antibody. Because of the specific requirements associated with delivery of radioactive isotope therapy, any product containing a therapeutic radioisotope, including Y–90 Zevalin, will be considered to be in the category of benefits described under section 1861(s)(4) of the Act. Similarly, the appropriate benefit category for all diagnostic radiopharmaceuticals, including IN–111 Zevalin, is 1861(s)(3). We will consider neither diagnostic nor theraputic radiopharmaceuticals to be drugs as described in section 1861(t).

Thus, we have determined that the most appropriate Medicare benefit categories for IN–111 Zevalin and Y–90 Zevalin are as provided in sections 1861(s)(3) and (4) of the Act because they are a new diagnostic test and new radioactive isotope therapy, respectively. We will pay for IN–111 Zevalin under the New Technology APC 718 and for Y–90 Zevalin under the New Technology APC 725 until we have sufficient hospital charge data upon which to use in assigning these services to clinical APCs. Because we have decided that Zevalin does not qualify for transitional pass-through payments, we have not included the estimated payments for Zevalin in our revised estimates of total 2003 transitional pass-through payments.

We have based the determination of New Technology APCs for IN–111 Zevalin and Y–90 Zevalin on information received from the manufacturer and invoices made available to us, and we believe the resulting payment rates to hospitals should be adequate. We note that had we found it necessary to pay for these products as drugs, the average wholesale price alone could have exceeded $28,000 per treatment. We believe his pricing is excessive and that it would have placed an unnecessarily large burden on the Medicare Trust Funds. Had we found it necessary to treat these products as drugs, however, we could have invoked the authority of section 1833(t)(2)(E) to establish a more equitable payment rate.

A hospital may bill for the number of millicuries billed to them by a radiopharmacy or, if the hospital prepares Zevalin itself, the number of millicuries prepared for administration to the patient but, in either case, no more than 40 millicuries.

CMS has also undertaken a national coverage determination (NCD) for Zevalin, which has been approved by the Food and Drug Administration (FDA) to treat certain types of non-Hodgkin's lymphoma, to assure that the product is appropriately used in the Medicare program. A decision memorandum addressing the clinical uses of Zevalin to be covered by Medicare will appear on the CMS coverage Web site (*http://www.cms.hhs.gov/coverage*) soon after publication of this rule.

Comment: A drug company raised concerns about the relationship of epoetin alpha and darbepoetin alpha, two competing biologicals used for treatment of anemia. The commenter urged that CMS determine that the two products are substitutes with the same clinical effects and argued that the two should be paid, subject to an appropriate conversion ratio, at the same rate.

Response: Erythropoietin, a protein produced by the kidney, stimulates the bone marrow to produce red blood cells. In severe kidney disease, the kidney is not able to produce normal amounts of erythropoietin, and this leads to the anemia. Additionally, certain chemotherapeutic agents used in the treatment of some cancers suppress the bone marrow and cause anemia. Treatment with exogenous erythropoietin can increase red blood cell production in these patients and treat their anemia.

In the late 1980's, scientists used recombinant DNA technology to produce an erythropoietin-like protein called epoetin alpha. Epoetin alpha has exactly the same amino acid structure as the erythropoietin humans produce naturally, and, when given to patients with anemia, stimulates red blood cell production.

Two commercial epoetin-alpha products are currently marketed in the United States: Epogen™ (marketed by Amgen) and Procrit™ (marketed by Ortho Biotech). These products are exactly the same but are marketed under two different trade names. Both Epogen™ and Procrit™ are approved by FDA for marketing for the following conditions: (1) Treatment of anemia of chronic renal failure (including patients

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on and not on dialysis), (2) treatment of Zidovudine-related anemia in HIV patients, (3) treatment of anemia in cancer patients on chemotherapy, and (4) treatment of anemia related to allogenic blood transfusions in surgery patients. Both products are given either intravenously or subcutaneously up to three times a week.

Amgen has recently developed a new erythropoietin-like product, darbepoetin alpha, which it markets as Aranesp™. Also produced by recombinant DNA technology, darbepoetin alpha differs from epoetin alpha by the addition of two carbohydrate chains. The addition of these two carbohydrate chains affects the biologic half-life. This change, in turn, affects how often the biological can be administered, which yields a decreased dosing schedule for darbepoetin alpha by comparison to epoetin alpha. Amgen has received FDA approval to market Aranesp™ for treatment of anemia related to chronic renal failure (including patients on and not on dialysis) and for treatment of chemotherapy-related anemia in cancer patients.

Because darbepoetin alpha has two additional carbohydrate side-chains, it is not structurally identical to epoetin alpha. However, the two products are functionally equivalent: In this case, both products use the same biological mechanism to produce the same clinical result, stimulation of the bone marrow to produce red blood cells. Thus, Epogen™, Procrit™, and Aranesp™ are all functionally equivalent.

These biologicals are dosed in different units. Epoetin alpha is dosed in Units per kilogram (U/kg) of patient weight and darbepoetin alpha in micrograms per kilogram (mcg/kg). The difference in dosing metric is due to changes in the accepted convention at the time of each product's development. At the time epoetin alpha was developed, biologicals (such as those developed through recombinant DNA) were typically dosed in International Units (or Units for short), a measure of the product's biologic activity. They were not dosed by weight (for example, micrograms) because of a concern that weight might not accurately reflect their standard biologic activity. The biologic activity of such products can now be accurately predicted by weight, however, and manufacturers have begun specifying the doses of such biologicals by weight. No standard formula exists for converting amounts of a biologic dosed in Units to amounts of a drug dosed by weight.

In clinical practice, CMS recognizes that no strict method of converting an epoetin alpha dose to a darbepoetin alpha dose exists. There are general guidelines for conversion, and clinicians modify the dose based on the patient's hematopoietic response. For developing a payment policy, however, it is feasible to establish a method of converting the dose of each of these drugs to the other.

As part of the process to define a conversion ratio between these biologicals, CMS held a series of meetings with both Amgen and Ortho Biotech. Both companies provided substantial written and published information. We reviewed the Food and Drug Administration labeling for each product (Epogen™, Procrit™, and Aranesp™). We also hired an independent contractor to review the available clinical evidence, and we performed an internal review of this evidence as well. The body of literature reviewed included 40 scientific articles culled from references submitted by the companies as well as a Medline literature search. CMS took into consideration both published and unpublished studies as well as abstracts, conference reports, and materials provided by the two companies.

In selecting articles for review, CMS sought studies that (1) provided a "head-to-head" comparison of epoetin alpha to darbepoetin alpha either in patients with chronic kidney disease (on or not on dialysis) or in cancer patients with chemotherapy-induced anemia, and (2) in which an appropriate outcome measure was used. In the absence of such data, we also considered clinical studies that either compared both products to each other or that linked the dose of a particular product with an appropriate health outcome measure.

CMS's identification of a conversion ratio between the dosages of these two products, darbepoetin alpha and epoetin alpha, is solely for the purpose of developing a Medicare payment policy. It is not meant to imply or suggest what should be done for individual patients in clinical practice. In addition, by using a conversion ratio CMS is not attempting to establish a lower or upper limit on the amount of either biological a physician can prescribe to a patient. CMS expects that physicians will continue to prescribe these biologicals based on the needs of individual patients. In terms of payment, however, CMS considers these biologicals to be functionally equivalent (even if structurally different), and, therefore, will establish an equitable payment policy that relates dosage of the agents to each other.

In our review, we placed the greatest emphasis on published, high quality clinical studies and looked for the best possible estimates based on an evaluation of the dosing of each product that, on average, produced the same clinical response. Based on our own review of the evidence, our consultation with the independent contactor who also reviewed the evidence, and our discussions with Amgen and Ortho Biotech, CMS concludes that an appropriate conversion ratio for the purposes of a payment policy is to 260 International Units of epoetin alpha to one microgram of darbepoetin alpha (260:1).

We think that improved information from clinical trials involving "head-to-head" comparisons of these two products could help us insure our policy is correct and if necessary update this policy in the future. In this vein, the National Cancer Institute has been directed to work with CMS to quickly develop and sponsor a trial or trials to evaluate the appropriate conversion ratio between these products for the purpose of Medicare pricing. We expect this project to be completed during the cycle for development of the 2004 OPPS update regulation. If we can estimate a more accurate conversion ratio based on this study or from our review of our own payment data, we will make a change to reflect this ratio so as soon as practicable.

We proposed that transitional pass-through payments for epoetin alpha end at the end of this calendar year, and that payment be made in calendar year 2003 in a separate, unpackaged APC. We are adopting these policies for the final rule.

We had proposed to continue transitional pass-through payments for darbepoetin alpha. We accept, however, the comment suggesting that these two biologicals should be paid at the same rate. As noted above, the products are almost identical; nevertheless there is a great disparity in their costs. In this situation, we believe it is appropriate for us to rely on our authority in section 1833(t)(2)(E) of the Social Security Act to make an adjustment we determine "necessary to ensure equitable payments." We do not believe it would be equitable or an efficient use of Medicare funds to pay for these two functionally equivalent products at greatly different rates. We would package these two biologicals into the same APC, but the difference in dosage metrics makes this step technically impossible if we are to maintain the ability to pay on the basis of the actual dose used. Consequently, they will be in separate APCs but paid at equivalent rates. The 2003 payment rate for non-ESRD epoetin alpha is established as $9.10 per 1000 Units elsewhere in this rule. We employ the conversion ratio of 260:1 to establish the 2003 payment rate for darbepoetin alpha as $2.37 per 1 microgram. Because this payment rate equals the payment rate for epoetin alpha (albeit expressed in different units), we reduce the transitional pass-through payment for darbepoetin alpha to zero.

An alternative line of reasoning would produce the same result. Section 1833(t)(6)(A) of the Social Security Act distinguishes between "current" and "new" biologicals. Epoetin alpha is a "current" biological. Since April 2002, we have treated darbepoetin alpha as a "new" biological. However, section 1833(t)(6)(A)(iv) sets forth the criteria that must be met for a biological to be considered "new." One criterion is that the biological is not described by any item described in clauses (i), (ii) or (iii) of section 1833(t)(6)(A) of the Act, which define "current" drugs, biologicals, and devices. Given the determination stated above that these products are functionally equivalent, we believe that darbepoetin alpha is already described by epoetin alpha, a "current" biological. Because darbepoetin alpha is functionally equivalent to epoetin alpha, we believe we could conclude that it would be most appropriate to consider darbepoetin alpha a "current" biological. In that event, it would not qualify for a pass-through payment as a "new" biological. Accordingly, under this analysis, we would terminate the duration of transitional pass-through payment eligibility for darbepoetin alpha on December 31, 2002, and pay for it in a fashion comparable to other products that lose eligibility for transitional pass-through status on that date. More particularly, we would pay it equivalently to epoetin alpha.

Beneficiary copayments are unchanged as a result of the change in payment for darbepoetin alpha, because under this rule the copayment amount for both biologicals would have equaled that calculated for epoetin alpha in any case.

This change is budget neutral. As a result of this change, our estimate of total transitional pass-through payments is smaller than it would otherwise have been. The percentage we have reduced the conversion factor to compensate for transitional pass-through spending is accordingly smaller, and in a budget neutral fashion payment rates for other services are correspondingly higher.

We do not expect to make nationally-applicable determinations of similarity of drugs or biologicals, such as that discussed above, on a routine basis. We regard this situation as unusual, distinguished by the very strong similarity of the two products and by the size of the potential effects on the Medicare program. We thus believe that making this determination and insuring comparable payment is justified in this particular instance.

Comment: Commenters from pharmaceutical manufacturers, trade associations, and a provider of oncology services raised concern over the methods used to estimate 2003 pass-through payments for drugs. The primary concern was that we overestimated pass-through spending for 2003, and as a result would trigger pro rata reductions in pass-through payments for drugs appearing on Table X.

Some commenters suggested that we refine our estimation procedures by utilizing alternative modeling techniques and by using data from claims experience. Several of the comments included, in depth, data analysis along with models used to predict pass-through drug spending for calendar year 2003. Spending estimates ranged from $213 million to $441 million dollars.

Other commenters objected to the techniques used to estimate pass-through spending for future products, those items first eligible for pass-though payments in April 2003 or later. A manufacturer's association objected to the use of drugs eligible for pass-through payment beginning in January 1, 2003 as the basis of a forecast of drugs likely to acquire pass-through statusthroughout the remainder of the year. This objection stems from what the association views as the lack of similarities between drugs first eligible for pass-through payments on January 1, 2003 and those eligible later in the year. Further, they object to estimating any additional pass-through payments when it is not clear whether or not a product will be added to the list during 2003.

Another commenter proposed the use of a more sophisticated model based on drugs currently in the FDA pipeline to be used to project spending of drugs first eligible for pass-through payment between April and December 2003.

Other commenters objected to our estimates for specific drugs.

Response: We have made a number of changes in response to these comments and in the course of our efforts to complete and refine our preliminary estimates. We have removed several items from the list of 2003 pass-through items that appeared in our August 9, 2002 proposed rule and thus from our final estimates of 2003 pass-through payments. These include IN–111 Zevalin and Y–90 Zevalin, as noted above. FDG (HCPCS C1775; APC 1775) meets the statutory definition of a current radiopharmaceutical and has been receiving pass-through payments. Because we have decided that the pass-through status of current radiopharmaceuticals will not continue past December 31, 2002, pass-through payment status for FDG will end on January 1, 2003. Because a separate code for FDG did not exist until April 2002, we do not have discrete hospital charge data upon which to calculate a median cost for FDG. For transition purposes in 2003, we will pay separately for this supply based on an estimated acquisition cost of 71 percent applied to the 2002 payment rate.

We address below several other issues that arose during our refinement of Table X in the proposed rule. We proposed to continue pass-through payment status for TC 99M oxidronate under HCPCS C1058. However, following publication of the August 9, 2002 proposed rule, we determined that this drug was also represented by HCPCS code Q3009. Under HCPCS code Q3009, this radiopharmaceutical agent has received pass-through payment status for at least 2 years, and will no longer be eligible for pass-through payment under either HCPCS code Q3009 or C1058 beginning on January 1, 2003. As proposed, we are packaging the cost of Q3009 into the procedures with which the code was billed.

Two other HCPCS codes representing radiopharmaceutical agents were inadvertently included in the list of 2003 pass-through drugs in the proposed rule. HCPCS codes C1064 and C1065 were add-on codes used to bill for an additional mCi of I–131. These codes, along with the related HCPCS code C1188 and C1348, which are used to report an initial 1–5 or 1–6 mCi, respectively, will no longer be eligible for pass-through payment on January 1, 2003.

Table 9 contains the final list of items that are eligible for pass-through payments in 2002 and will remain eligible in 2003. Table 9 also contains items that have been approved for pass-through payments beginning in 2003.

It does not contain categories of devices or drugs for which pass-through applications are still pending at the time of issuance of this final rule or for which applications have yet to be received.

We used the following methodology to estimate the pass-through payments for 2003.

1. Devices eligible in 2002 [Device categories beginning July 1, 2002 (C1783, C1888, C1900)] that will continue in 2003: We used manufacturers' retail prices along with

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claims utilization estimated for 2003 by our clinical staff, based on our claims data and coding and projected utilization information supplied in the applications. No device offsets were applicable.

2. Drugs eligible in 2002 that will continue in 2003: We used the July 2002 Redbook prices to determine the AWP, which we used in combination with our ratios for establishing estimated acquisition costs to derive pass-through payments for drugs in 2003. We determined the volume for pass-through drugs by soliciting manufacturer estimates of volume for the Medicare population where possible and relying upon a commenter's estimates for the volumes of other drugs.

3. Devices eligible in January 2003: We used manufacturers' retail prices along with claims utilization estimated for 2003 by our clinical staff, based on our claims data and coding and projected utilization information supplied in the applications. We applied offsets to procedures associated with devices that mapped to APCs with offsets.

4. Drugs eligible in January 2003: We used the July 2002 Redbook prices to determine the AWP which we used in combination with our ratios for establishing estimated acquisition costs to derive pass-through payments for drugs in 2003. We determined the volume for pass-through drugs by soliciting manufacturer estimates of volume for the Medicare population where possible and relying upon a commenter's estimates for the volumes of other drugs.

5. Devices eligible in 2001 and will continue in 2003: We used manufacturers' retail prices along with claims utilization for the 12 months that ended March 31, 2002, increased to 2003 by the growth rate provided by our actuary.

Our final estimate of transitional pass-through spending for 2003 also includes projected spending for items that have not yet been approved for 2003. We had proposed to base our estimate of spending for such items on items that have been newly approved for January 1, 2003. In response to comments, we have based our projection for items that will be approved later in 2003 on items that were newly approved for October 1, 2002 and January 1, 2003. We have based our estimate on the two most recent quarters of approval because we anticipate a higher volume of pass-through approvals compared to early 2002 for two reasons. First, we began paying for categories of devices on April 1, 2001. The vast majority of items in use at that time, as well as newly FDA approved items, could receive pass-through payments under a category code. We received, and subsequently approved, a relatively small number of pass-through applications in the first half of 2002. Consequently, we based our projection of spending for items that will be determined eligible for pass-through status in 2003 based on items determined eligible for October 1, 2002 and items determined eligible or expected to be determined eligible for January 1, 2003.

In summary, we estimate that pass-through spending in 2003 will approximate $427.4 million. We believe that pass-through spending in 2003 will break out into the following categories for 2003:

TABLE 9.—ESTIMATE OF PASS-THROUGH SPENDING IN 2003

HCPC	APC	Drug Biological	2003 Pass-through payment portion	2003 Estimated utilization	2003 Anticipated pass-through payment
Existing Pass-through Drugs/biologicals					
A9700	9016	Echocardiography Contrast	$30.00	423,220	12,696,607
J9017	9012	Arsenic Trioxide	$7.92	4,047	32,054
J0587	9018	Botulinum toxin type B	$2.22	350,000	777,000
J0637	9019	Caspofugen acetate, 5 mg	$8.64	98,950	854,928
J9010	9110	Alemtuzumab, per 10mg/ml	$129.15	11249.19861	1,452,834
C9111	9111	Injectin Bivalrudin, 250 mg vial	$100.50	38,549	3,874,219
C9112	9112	Perflutren lipid micro, 2 ml	$1.25	12,676,293	15,845,366
C9113	9113	Inj Pantoprazole sodium, vial	$5.76	20,000	115,200
J2324	9114	Nesiritide, per 1.5 mg vial	$36.48	48,000	1,751,040
J3487	9115	Zoledronic acid, 2 mg	$102.77	228,000	23,431,560
C9200	9200	Orcel, per 36 cm2	$286.80	1,000	286,800
C9201	9201	Dermagraft, per 37.5 sq cm	$145.92	4,770	696,038
C9116	9116	Ertapenum sodium	$11.45	8,902	101,928
C9119	9119	Pegfilgrastim	$708.00	102,645	72,672,864
J9219	7051	Leuprolide acetate implant	$1,364.16	373	508,493
Pass-through Drugs/Biologicals Effective January 2003					
C9120	9120	Faslodex	$22.13	9,690	214,440
C9121	9121	Argatroban	$3.60	50,000	180,000
Existing Pass-through Devices					
C1765	1765	Adhesior barrier		224	110,880
C2618	2618	Probe, cryoablation		752	150,400
C1783	1783	Ocular implant, aqueous drainage dev		2,042	1,327,300
C1888	1888	Endovascular non-cardiac ablation catheter		208	150,800
C1900	1900	Lead, left ventricular coronary venous		2,042	4,084,000
Pass-through Devices Effective January 2003					
C2614	2614	Brachytherapy solution/liquid,I–125		100	840,000
C2632	2632	Percutaneous Lumbar Discectomy Probe		612	1,190,340

TABLE 9.—ESTIMATE OF PASS-THROUGH SPENDING IN 2003—Continued

HCPC	APC	Drug Biological	2003 Pass-through payment portion	2003 Estimated utilization	2003 Anticipated pass-through payment
Other Items Expected to Be Determined Eligible for 2003					
		Spending for future approved drugs			234,581,267
		Spending for future approved devices			49,519,559
		Total Spending for Pass-through Drugs/biologicals, and devices 2003.			427,445,917

Our total 2003 estimate of $427.4 million is 2.3 percent of total estimated program payment. We proposed to reduce the conversion factor by 2.5 percent to account for pass-through spending. Since our estimate is now below 2.5 percent, we have adopted a reduction of 2.3 percent to the conversion factor in accord with our estimate of pass-through payments. Our final assumptions used to create the estimate are shown in Table 9 above.

C. Expiration of Transitional Pass-Through Payments in Calendar Year 2003 for Devices

Section 1833(t)(6)(B)(iii) of the Act requires that a category of devices be eligible for transitional pass-through payments for at least 2, but not more than 3, years. This period begins with the first date on which a transitional pass-through payment is made for any medical device that is described by the category. We proposed that 95 device categories currently in effect will expire effective January 1, 2003. Our proposed payment methodology for devices that have been paid by means of pass-through categories, but for which pass-through status will expire effective January 1, 2003, is discussed in the section below.

Although the device category codes became effective on April 1, 2001, many of the item-specific C-codes for pass-through devices that were crosswalked to the new category codes were approved for pass-through payment in CY 2000, or as of January 1, 2001. (The crosswalk for item-specific C-codes to category codes was issued in Transmittals A–01–41 and A–01–97,) To establish the expiration date for the category codes listed in Table 10, we determined when item-specific devices that are described by the categories were first made effective for pass-through payment before the implementation of device categories. These dates are listed in Table 7 in the column entitled "Date First Populated." We proposed to base the expiration date for a device category on the earliest effective date of pass-through status for any device that populates that category. Thus, the 95 categories for devices that will have been eligible for pass-through payments for at least 2 years as of December 31, 2002 would not be eligible for pass-through payments effective January 1, 2003.

Below is Table 7, which includes a comprehensive list of all pass-through device categories effective on or before July 1, 2002 with the date that devices described by the category first became effective for payment under the pass-through provisions and their respective proposed expiration dates.

TABLE 10.—LIST OF PASS-THROUGH DEVICE CATEGORIES WITH EXPIRATION DATES

	HCPCS codes	Category long descriptor	Date first populated	Expiration date
1	C1883	Adaptor/extension, pacing lead or neurostimulator lead (implantable).	8/1/00	12/31/02
2	C1765	Adhesion barrier	10/01/00–3/31/01; 7/1/01	12/31/03
3	C1713	Anchor/screw for opposing bone-to-bone or soft tissue-to-bone (implantable).	8/1/00	12/31/02
4	C1715	Brachytherapy needle	8/1/00	12/31/02
5	C1716	Brachytherapy seed, Gold 198	10/1/00	12/31/02
6	C1717	Brachytherapy seed, High Dose Rate Iridium 192	1/1/01	12/31/02
7	C1718	Brachytherapy seed, Iodine 125	8/1/00	12/31/02
8	C1719	Brachytherapy seed, Non-High Dose Rate Iridium 192	10/1/00	12/31/02
9	C1720	Brachytherapy seed, Palladium 103	8/1/00	12/31/02
10	C2616	Brachytherapy seed, Yttrium-90	1/1/01	12/31/02
11	C1721	Cardioverter-defibrillator, dual chamber (implantable)	8/1/00	12/31/02
12	C1882	Cardioverter-defibrillator, other than single or dual chamber (implantable).	8/1/00	12/31/02
13	C1722	Cardioverter-defibrillator, single chamber (implantable)	8/1/00	12/31/02
14	C1888	Catheter, ablation, non-cardiac, endovascular (implantable)	7/1/02	12/31/04
15	C1726	Catheter, balloon dilatation, non-vascular	8/1/00	12/31/02
16	C1727	Catheter, balloon tissue dissector, non-vascular (insertable)	8/1/00	12/31/02
17	C1728	Catheter, brachytherapy seed administration	1/1/01	12/31/02
18	C1729	Catheter, drainage	10/1/00	12/31/02
19	C1730	Catheter, electrophysiology, diagnostic, other than 3D mapping (19 or fewer electrodes).	8/1/00	12/31/02
20	C1731	Catheter, electrophysiology, diagnostic, other than 3D mapping (20 or more electrodes).	8/1/00	12/31/02
21	C1732	Catheter, electrophysiology, diagnostic/ablation, 3D or vector mapping.	8/1/00	12/31/02
22	C1733	Catheter, electrophysiology, diagnostic/ablation, other than 3D or vector mapping, other than cool-tip.	8/1/00	12/31/02

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TABLE 10.—LIST OF PASS-THROUGH DEVICE CATEGORIES WITH EXPIRATION DATES—Continued

	HCPCS codes	Category long descriptor	Date first populated	Expiration date
23	C2630	Catheter, electrophysiology, diagnostic/ablation, other than 3D or vector mapping, cool-tip.	10/1/00	12/31/02
24	C1887	Catheter, guiding (may include infusion/perfusion capability)	8/1/00	12/31/02
25	C1750	Catheter, hemodialysis/peritoneal, long-term	8/1/00	12/31/02
26	C1752	Catheter, hemodialysis/peritoneal, short-term	8/1/00	12/31/02
27	C1751	Catheter, infusion, inserted peripherally, centrally or midline (other than hemodialysis).	8/1/00	12/31/02
28	C1759	Catheter, intracardiac echocardiography	8/1/00	12/31/02
29	C1754	Catheter, intradiscal	10/1/00	12/31/02
30	C1755	Catheter, intraspinal	8/1/00	12/31/02
31	C1753	Catheter, intravascular ultrasound	8/1/00	12/31/02
32	C2628	Catheter, occlusion	10/1/00	12/31/02
33	C1756	Catheter, pacing, transesophageal	10/1/00	12/31/02
34	C2627	Catheter, suprapubic/cystoscopic	10/1/00	12/31/02
35	C1757	Catheter, thrombectomy/embolectomy	8/1/00	12/31/02
36	C1885	Catheter, transluminal angioplasty, laser	10/1/00	12/31/02
37	C1725	Catheter, transluminal angioplasty, non-laser (may include guidance, infusion/perfusion capability).	8/1/00	12/31/02
38	C1714	Catheter, transluminal atherectomy, directional	8/1/00	12/31/02
39	C1724	Catheter, transluminal atherectomy, rotational	8/1/00	12/31/02
40	C1758	Catheter, ureteral	10/1/00	12/31/02
41	C1760	Closure device, vascular (implantable/insertable)	8/1/00	12/31/02
42	L8614	Cochlear implant system	8/1/00	12/31/02
43	C1762	Connective tissue, human (includes fascia lata)	8/1/00	12/31/02
44	C1763	Connective tissue, non-human (includes synthetic)	10/1/00	12/31/02
45	C1881	Dialysis access system (implantable)	8/1/00	12/31/02
46	C1764	Event recorder, cardiac (implantable)	8/1/00	12/31/02
47	C1767	Generator, neurostimulator (implantable)	8/1/00	12/31/02
48	C1768	Graft, vascular	1/1/01	12/31/02
49	C1769	Guide wire	8/1/00	12/31/02
50	C1770	Imaging coil, magnetic resonance (insertable)	1/1/01	12/31/02
51	C1891	Infusion pump, non-programmable, permanent (implantable)	8/1/00	12/31/02
52	C2626	Infusion pump, non-programmable, temporary (implantable)	1/1/01	12/31/02
53	C1772	Infusion pump, programmable (implantable)	10/1/00	12/31/02
54	C1893	Introducer/sheath, guiding, intracardiac electrophysiological, fixed-curve, other than peel-away.	10/1/00	12/31/02
55	C1766	Introducer/sheath, guiding, intracardiac electrophysiological, steerable, other than peel-away.	1/1/01	12/31/02
56	C1892	Introducer/sheath, guiding, intracardiac electrophysiological, fixed-curve, peel- away.	1/1/01	12/31/02
57	C1894	Introducer/sheath, other than guiding, other than intracardiac electrophysiological, non-laser.	8/1/00	12/31/02
58	C2629	Introducer/sheath, other than guiding, other than intracardiac electrophysiological, laser.	1/1/01	12/31/02
59	C1776	Joint device (implantable)	10/1/00	12/31/02
60	C1895	Lead, cardioverter-defibrillator, endocardial dual coil (implantable).	8/1/00	12/31/02
61	C1777	Lead, cardioverter-defibrillator, endocardial single coil (implantable).	8/1/00	12/31/02
62	C1896	Lead, cardioverter-defibrillator, other than endocardial single or dual coil (implantable).	8/1/00	12/31/02
63	C1900	Lead, left ventricular coronary venous system	7/1/02	12/31/04
64	C1778	Lead, neurostimulator (implantable)	8/1/00	12/31/02
65	C1897	Lead, neurostimulator test kit (implantable)	8/1/00	12/31/02
66	C1898	Lead, pacemaker, other than transvenous VDD single pass	8/1/00	12/31/02
67	C1779	Lead, pacemaker, transvenous VDD single pass	8/1/00	12/31/02
68	C1899	Lead, pacemaker/cardioverter-defibrillator combination (implantable).	1/1/01	12/31/02
69	C1780	Lens, intraocular (new technology)	8/1/00	12/31/02
70	C1878	Material for vocal cord medialization, synthetic (implantable)	10/1/00	12/31/02
71	C1781	Mesh (implantable)	8/1/00	12/31/02
72	C1782	Morcellator	8/1/00	12/31/02
73	C1784	Ocular device, intraoperative, detached retina	1/1/01	12/31/02
74	C1783	Ocular implant, aqueous drainage assist device	7/1/02	12/31/04
75	C2619	Pacemaker, dual chamber, non rate-responsive (implantable)	8/1/00	12/31/02
76	C1785	Pacemaker, dual chamber, rate-responsive (implantable)	8/1/00	12/31/02
77	C2621	Pacemaker, other than single or dual chamber (implantable)	1/1/01	12/31/02
78	C2620	Pacemaker, single chamber, non rate-responsive (implantable).	8/1/00	12/31/02
79	C1786	Pacemaker, single chamber, rate-responsive (implantable)	8/1/00	12/31/02
80	C1787	Patient programmer, neurostimulator	8/1/00	12/31/02
81	C1788	Port, indwelling (implantable)	8/1/00	12/31/02

TABLE 10.—LIST OF PASS-THROUGH DEVICE CATEGORIES WITH EXPIRATION DATES—Continued

	HCPCS codes	Category long descriptor	Date first populated	Expiration date
82	C2618	Probe, cryoablation	4/1/01	12/31/03
83	C1789	Prosthesis, breast (implantable)	10/1/00	12/31/02
84	C1813	Prosthesis, penile, inflatable	8/1/00	12/31/02
85	C2622	Prosthesis, penile, non-inflatable	10/1/01	12/31/02
86	C1815	Prosthesis, urinary sphincter (implantable)	10/1/00	12/31/02
87	C1816	Receiver and/or transmitter, neurostimulator (implantable)	8/1/00	12/31/02
88	C1771	Repair device, urinary, incontinence, with sling graft	10/1/00	12/31/02
89	C2631	Repair device, urinary, incontinence, without sling graft	8/1/00	12/31/02
90	C1773	Retrieval device, insertable	1/1/01	12/31/02
91	C2615	Sealant, pulmonary, liquid (implantable)	1/1/01	12/31/02
92	C1817	Septal defect implant system, intracardiac	8/1/00	12/31/02
93	C1874	Stent, coated/covered, with delivery system	8/1/00	12/31/02
94	C1875	Stent, coated/covered, without delivery system	8/1/00	12/31/02
95	C2625	Stent, non-coronary, temporary, with delivery system	10/1/00	12/31/02
96	C2617	Stent, non-coronary, temporary, without delivery system	10/1/00	12/31/02
97	C1876	Stent, non-coated/non-covered, with delivery system	8/1/00	12/31/02
98	C1877	Stent, non-coated/non-covered, without delivery system	8/1/00	12/31/02
99	C1879	Tissue marker (implantable)	8/1/00	12/31/02
100	C1880	Vena cava filter	1/1/01	12/31/02

We considered a number of options on how to pay for devices after their pass-through payment status expires effective January 1, 2003. We held a Town Hall Meeting on April 5, 2002, to solicit recommendations on how to pay for drugs, biologicals, and devices once their eligibility for transitional pass-through payments expires in accordance with the time limits set by the statute. Interested parties representing hospitals, physician specialty groups, device and drug manufacturers and trade associations, and other organizations presented their views on these issues.

After carefully considering all the comments, concerns, and recommendations submitted to us regarding payment for devices and drugs and biologicals that would no longer be eligible for pass-through payments in 2003, we proposed to package the costs of medical devices no longer eligible for pass-through payment in 2003 into the costs of the procedures with which the devices were billed in 2001. (Our proposal to pay for pass-through drugs and biologicals whose pass-through status expires in 2003 is discussed below, in section IV.D.)

The methodology that we proposed to use to package pass-through device costs is consistent with the methodology for packaging that we describe in section III.B of this preamble. That is, to calculate the total cost for a service on a per-service basis, we included all charges billed with the service in a revenue center in addition to packaged HCPCS codes with status indicator "N." We also packaged the 2001 charges for devices that will cease to be eligible for pass-through payment in 2003 into the changes for the HCPCS codes with which the devices were billed. We relied on the hospitals to correctly code their bills for all costs, including pass-through devices, using HCPCS codes and revenue centers as appropriate to describe the services that they furnished.

To prevent the loss of the device costs billed by hospitals through revenue centers in developing our relative weights for APCs, we proposed to package the costs of both the device "C" codes and the billed revenue centers, whichever appeared on the claim. At the time, we believed that this method would allow us to capture all device related costs billed by hospitals. See our discussion of charges for devices in section III.A.2 of the preamble for this issue.

We customarily allow a grace period for HCPCS codes that are scheduled for deletion. When we allow a grace period for deleted codes, we permit deleted codes to continue to be billed and paid for 90 days after the effective date of the changes that require their deletion. However, we proposed to not allow a grace period for expiring pass-through codes because permitting a grace period would result in pass-through payment for the items for which we proposed to cease pass-through payment effective with services furnished on or after January 1, 2003. Effective for services furnished on or after January 1, 2003, hospitals would submit charges for all surgically inserted devices in the supply, implant, or device revenue center that most appropriately describes the implant. Device costs will thus be packaged into and reflected in the costs for the procedure with which they are associated. Therefore, effective for services furnished on or after January 1, 2003, we proposed to reject line items containing a "C" code for a device category scheduled to expire effective January 1, 2003.

We received several comments on this proposal, which are summarized below.

General

Comment: A number of hospital organizations indicated they were pleased with our handling of the transitional pass-through payment provisions. The commenters supported our proposal to package into procedural APCs the costs of devices that are no longer eligible for pass-through payment. The commenters asserted that packaging of device costs into base APC payments minimized the confusion and complication of identifying pass-through codes for certain devices and eliminates special payment incentives to use pass-through devices. Provider organizations emphasized the difficult and complicated task of appropriate coding of pass-through items, especially during the transition from a brand-specific to device category system. These commenters also supported our proposal to include device costs from revenue centers in packaging device costs into APCs, to include all device costs.

Response: We appreciate these comments. We are adopting our proposed policy in this area as final for 2003.

Comment: A hospital organization proposed that we release the crosswalk we used to assign pass-through device costs to specific APCs, so that it can study the assignments made, out of concern that some APCs may receive inadequate payment rates.

Response: Our methodology did not involve a cross-walk, so we do not have

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one available. Claims files we have made publicly available may be used to analyze where device costs were allocated.

Comment: A device manufacturer stated it conceptually agreed that costs of devices should be packaged into "base" APC rates of related procedures. However, it viewed as critical that 2003 payment rates appropriately and adequately capture device costs.

Response: We agree. As described elsewhere, we are adopting a number of changes in our methodology to help insure appropriate payments for procedures whose payment rates would otherwise have fallen significantly from 2002.

Comment: A hospital provider organization urged us to remain committed to the averaging process inherent in a prospective payment system, rather than seek to pay actual cost for elements of total costs, such as new technology. It opposed the imposition of additional administrative costs, for example, any required reporting of acquisition costs on claims, in order to "fine tune" pass-through payments or relative weights. It preferred a sample survey to any reporting of acquisition costs. It also preferred that hospitals be permitted to establish their charge structures separately from our payment policies. It recommended that we avoid overriding the hospital-specific cost-to-charge ratio in order to alter the ratios for new technology devices and not distort the PPS to pay for selected items.

Response: We appreciate this comment. We have no plans to require reporting of acquisition costs on claims. Although we intend to consider further improvements in our methods for determining OPPS payment rates in the future, we recognize that the importance of maintaining a well developed and coherent methodology.

Comment: A hospital provider organization recommended that we furnish a regulatory impact analysis that reflects the total change in payments that are estimated to occur that include outlier, pass-through and corridor payments and each of these items should be separately identifiable.

Response: We regret that we are unable to provide the level of detail the commenter requests in the impact analysis. We discuss the extent of our knowledge of accuracy of the pro rata reduction and fold in impact in 2002 in section VIII.

Comment: A commenter requested that we disclose how much the "fold-in" of device costs into procedure APC payments for 2002 and the pro rata reduction imposed during 2002 over or under compensated hospitals for the new technology devices and drugs. This organization contended that we overestimated the amount of pass-through payments in 2002, when compared to actual payments, and thus arbitrarily removed some $400 million from an already underfunded OPPS.

Response: We do not have a revised estimate of transitional pass-through spending for 2002 available at this time. We note that the lack of a pro rata reduction in 2001 may have resulted in higher than expected spending in that year. In either case, the statute does not provide for any retrospective adjustments, either up or down, if the Secretary's estimate of transitional pass-through spending made in advance of the start of the relevant calendar year, and which is used to determine whether a pro rata reduction is necessary and if so how large it must be, later proves too high or too low.

Expiration of Device Categories

Comment: A large number of commenters questioned the adequacy of rates proposed for 2003 for APCs involving devices now paid transitional pass-through payments in instances where the device categories expire. Many of these commenters provided information about manufacturers' prices for these devices.

Response: We are also concerned about the adequacy of these payment rates. We have reviewed the information provided, and it has helped guide us in determining our final policies for 2003. As discussed elsewhere in this preamble, we have used more recent data, carefully selected appropriate claims for use in relative weight calculations, and adopted dampening provisions to mitigate the reduction in payment rates that might otherwise have occurred.

Comment: Some commenters recommended that we delay expiration of transitional pass-through device categories until we collect more accurate data. A device manufacturer suggested that we extend the pass-through payment period for another year to allow time to study ways of capturing hospital costs, to improve accuracy of APC rates.

Response: For devices that have been paid in 2000, we cannot extend the pass-through payment as suggested, because this would violate the statutory provision that limits pass-through payments for at least 2 but not more than 3 years. Section 1833(t)(6)(B)(iii)(II) states that a category of devices shall be in effect for a period of at least 2 but not more than 3 years, which begins in the case of the categories initially implemented on April 1, 2001, "on the first date on which payment was made * * * for any device described by such category (including payments made during the period before April 1, 2001." We cannot extend the transitional pass-through payments in order to collect more data.

Comment: A number of organizations recommended that we continue transitional pass-through payment status for an additional year for one or more of several categories that were first populated with devices on January 1, 2001. One commenter recommended that we continue pass-through payments for all current device categories until July 31, 2003 and through December 31, 2003 for items in categories first populated as of January 1, 2001, stating that we make mid-year changes to billing requirements and HCPCS codes. The commenter acknowledged that this may be burdensome, but stated that the benefit of paying appropriately outweighs the cost of revising rates in mid-year.

Response: We have reviewed these categories and do not see a marked difference between these categories and the other categories the eligibility of which is expiring. As a result, we do not believe it would be appropriate to continue transitional pass-through payment status for them beyond December 31, 2002.

Revising rates in mid-year is not generally part of Medicare rate-making policy and is not appropriate in this instance either. It is not only burdensome for this agency, it also burdens the providers and fiscal intermediaries, and it would add confusion to an already complex system.

Comment: Organizations recommended that we continue pass-through payment status for cardiac resynchronization ICDs devices through category C1882. We indicated that this category contains devices that first received transitional pass-through payments as of August 1, 2000. The commenter is concerned that this category, which is described as "cardioverter-defibrillator, other than single or dual chamber," also includes a cardiac resynchronization ICD that was first eligible for transitional pass-through payments on January 1, 2001. The commenter suggested that in order to avoid any unfair competitive advantage among categories with competing technologies, we should extend pass-through payments for both C1882 and C2621, "pacemaker, other than single or dual chamber," which includes cardiac pacemakers.

Response: We cannot extend the pass-through payment status for C1882. We believe the most appropriate step is to end these categories in tandem. Therefore, we will terminate transitional pass-through payments for these 2 categories simultaneously as of January 1, 2003.

Comment: A hospital organization requested clarification regarding the expiration of transitional pass-through device categories effective January 1, 2003. This commenter was confused by our stated proposal to delete 95 pass-through category codes as of January 1, 2003, yet Addendum B of the proposed rule shows these 95 codes as active codes with an OPPS status indicator of "N" (packaged). A number of commenters recommended that hospitals retain the option to code them and have the "N" status drive the payment, or in order to continue to report and track those devices.

Response: We intend on deleting these codes, with the line item use of the codes rejected. We clarify the status indicator in this final rule.

Comment: A hospital provider organization requested clarification on our proposal that hospitals submit charges for all surgically inserted devices in the supply, implant, or device revenue center that most appropriately describes the implant and that the device costs will then be packaged into and reflected in the costs for the procedure with which they are associated. It noted that we published clear requirements on what revenue codes were appropriate for reporting medical devices that had been granted pass-through status in Program Memorandum A–01–50. The organization stated that that this would constitute the appropriate revenue center list to use for these devices even though they are now packaged.

Response: In the proposed rule we indicated that effective for services furnished on or after January 1, 2003, hospitals would not bill a "C" code for devices that no longer qualify for pass-through payment, but would submit charges for surgically inserted devices in the supply, implant or device revenue center that most appropriately describes the implant. We agree with the commenter that the revenue codes listed in Program Memorandum A–01–50 will continue to constitute the appropriate revenue codes under which such devices must be billed, even when the devices are no longer eligible for pass-through payments.

Use of Codes for Expiring Categories After January 1, 2003

Comment: A commenter asked us to clarify the use of device HCPCS codes after their expiration dates. Commenters expressed concern that our proposed deletion of the pass-through codes of drugs and devices as of January 1, 2003 without a grace period would place a burden on hospitals. One commenter recommends that we change the status indicator to "N", that is, packaged with other services. One commenter stated that we should keep all C-codes in effect permanently, even without reimbursement. The commenter argues that this step would provide better tracking for providers and payers and eliminates the coding burden caused by deletion of codes.

Response: We proposed to delete the pass-through category codes for devices when the eligibility of the category for pass-through payments expires. Therefore, any claims that use these codes will be returned to providers. We proposed to reject the line item in the proposed rule. However, on further consideration and discussion within CMS, we decided that we must return the claim to the provider so that the provider may correctly place the charges for the device in a revenue center. This is important to ensure that the hospital receives any hold harmless, corridor or outlier payments that it is due. If we were to line item reject the deleted code and process the rest of the claim, then the hospital could be underpaid by the absence of payments that would result if the charges for the device were correctly reported. Given the frequency with which our data shows that providers fail to bill for the device (even when they could receive pass-through payment for it as discussed in section III.A.2 of the preamble), we believe that it is important that the claim be returned to the provider so that it can be corrected and resubmitted for payment.

Comment: A hospital organization agreed with our proposal not to have a 90-day grace period for C-codes scheduled for deletion, to prevent additions to the pass-through payment pool, which could then contribute to a pro rata reduction to other services.

Response: We agree. We believe it is necessary in this instance to forgo a grace period to prevent incorrect payments.

New Device Categories

Comment: A number of commentersprovided both supportive and critical comments to the August 9, 2002 proposed rule on our criteria for establishing new device categories for transitional pass-through payment. One commenter indicated that we have been reviewing and evaluating applications for new device categories even though we have not issued a final rule on this subject.

Response: We have summarized comments that we received timely in response to the November 2, 2001 interim final rule on the criteria, and these are addressed in section V of this final rule. We will take note of all comments as we evaluate the new device category process and any modifications to the process we might propose in the future. Our review of applications for device categories has been done under authority of the November 2, 2001 interim final rule.

Stent Categories C1874 and C1875

Comment: A number of commenters took issue with our interpretation of existing category limitation in evaluating applications for new pass-through device categories. They cited our discussion on drug-eluting stents, that is, that this new technology was described by existing categories C1874, stent, coated/covered with delivery system, and C1875, stent, coated/covered without delivery system. These commenters asserted that neither of the existing categories appropriately describes the drug-eluting stent technology. While they indicated that creating a new APC for drug-eluting stents is appropriate, they expressed concern that many existing categories are described in broad terms, thus potentially excluding other new technologies from additional categories. Examples of applications for ICDs and total joint implants were provided.

Response: We are making final our proposal for separate, procedure APCs for procedures involving drug-eluting stents. These stents will not be in a transitional pass-through category nor receive transitional pass-through payments. In the case of breakthrough therapies that may quickly achieve widespread distribution and that are sufficiently expensive to have a significant effect on hospitals, we may propose to create appropriate APCs, as we have done in this instance. The existing transitional pass-through device categories were deliberately specified in fairly broad terms in order to provide an appropriate balance between specificity and the reporting burden on hospitals.

DME Payment for Implantable Devices

Comment: One commenter, concerned about reduced payments for implantable devices, suggested that we define certain implantable devices as durable

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medical equipment and/or prosthetics, for payment under the durable medical equipment fee schedule instead of the OPPS.

Response: The BBRA of 1999 changed the OPPS and durable medical equipment fee schedule (see sections 1833(t)(1)(B)(iii) and 1834(h)(4)(B) of the Act) so that implantable prosthetic devices delivered in the hospital outpatient setting must be paid through the OPPS, rather than on the durable medical equipment fee schedule.

Category C1765, Adhesion Barrier

Comment: A commenter claimed that one of our categories that we propose to continue pass-through payment in 2003, Adhesion Barrier (C1765), contains a product that was manufactured by a single company. The FDA asked the company to recall the product, and it has been off the market for more than a year. This commenter suggested that C1765 be removed from the APC system for 2003, since neither this nor equivalent products are on the market. If and when this or another similar product is reintroduced to the market, it should be considered for pass-through payment at that time.

Response: We will not remove category C1765 from active pass-through payment, which is scheduled to continue through December 31, 2003. C1765 is open to any product that fits the category description of adhesion barrier in accordance with the definition in Program Memorandum A–02–050, not only the product of the stated manufacturer.

Cochlear Implants

Comment: Numerous providers, including hospitals, ENT clinics, physicians, clinical audiologists and other commenters, protested our proposed payment rates for cochlear implant services. They questioned our data for 2001, saying insufficient claims data appear to be reported for the procedure or that the charges appear inappropriately low. Some providers requested an average payment of $3,000 for the surgery, plus the invoice cost of the device, some offering to include the manufacturer's invoice with their claims. Comments also included recommendations that we continue to pay for cochlear implants as pass-through payments for another year or more to develop more accurate claims data . A group of manufacturers also recommended that we issue written guidance to hospitals regarding the correct billing procedures for cochlear implants.

Response: We have attempted to mitigate the proposed reductions in payment rates resulting from the expiration of transitional pass-through device categories, of which cochlear implant is one . Transitional pass-through payments were first made for cochlear implants on August 1, 2000, before pass-through category L8614 was established. Therefore, we cannot provide another year or more of pass-through payments, because the statute limits pass-through payments to a period of at least 2 years but not more than 3 years. We feel the recommendation that we issue guidance to hospitals regarding the correct billing procedures for device related procedures, such as cochlear implants, may have merit, and we will consider providing further guidance in this area.

IOLs

Comment: A number of commenters expressed concern that the expiration of the transitional pass-through device category for new technology intraocular lenses (IOLs) on January 1, 2003 would result in inadequate payment for new technology lenses. These commenters recommended that a new APC be created to pay for the provision of these lenses, even though the incremental cost is low. These commenters also recommended that we create new categories of new technology IOL "for additional payment similar to the provision applicable in ambulatory surgical centers. One commenter was concerned that we not allow the broad description of the current category C1780, "lens, intraocular (new technology)" to interfere with future intraocular lenses being eligible for pass-through payment.

Response: Regarding the adequacy of payment after the new technology IOL category expires, no specific data were provided by any commenters. However, we believe that the incremental cost of such lenses is low. We do not believe a change the APC for implanting new technology IOLs is warranted at this time.

Implantation of Neurostimulator (APC 222) and Electrode (APC 225)

Comment: A manufacturer and a number of medical centers commented that the proposed payments for implantation of a neurostimulator generator (APC 222) and electrode (APC 225) are inadequate. One of these commenters recommended that we delay the expiration of these pass-through categories for another year or two.

Response: The implantations of a neurostimulator generator and electrode have been paid via pass-through payment for devices since August 2000, and we proposed to retire the pass-through categories as of January 1, 2003. For devices that have been paid since August 2000, we cannot extend the pass-through payment for another year or two, as suggested, because this would violate the statutory provision that limits pass-through payments for at least 2 but not more than 3 years. Therefore, we are moving to prospective payment for these devices from the charge-based pass-through payments.

Dialysis Access Systems

Comment: A manufacturer of a dialysis access system asserted that the 2003 proposed reduction in payment rates for dialysis access would curtail patient access.

The commenter provided two suggestions regarding the expiring category code for dialysis access systems, C1881. One option suggested is for us to assign a unique HCPCS code for placement of the manufacturer's brand specific dialysis system and place it in a new or existing APC that has appropriate payment. This commenter contended that bundling C1881 within APC 115 will result in inadequate payment, because the device will be bundled with standard hemodialysis catheters and chemotherapy ports. The second option suggested is to extend pass-through payment status for category C1881. This commenter stated its dialysis system was approved for pass-through payment in August 2000, and there were limited sales and therefore claims in 2000 and the first half of 2001. Thus, this commenter expressed the opinion that there is approximately 1 year of data for this category, not the 2 to 3 years required.

Response: Regarding the option proposed by this commenter for assignment of a unique product-specific HCPCS code, we do not assign unique HCPCS codes for brand-specific devices. Section 1833(t)(6)(B) of the Act indicates that transitional pass-through status of devices is to be determined based on categories. HCPCS codes are generally assigned for procedures that are not adequately described by existing HCPCS codes. This device has had a temporary category code for roughly two and one-half years, and we believe there are sufficient data to measure its utilization and cost. Regarding this commenter's proposal to extend pass-through payment status for category C1881, we cannot, by law, extend the pass-through payment period beyond the 2 to 3 year period. Although the commenter asserted that there were only limited claims for pass-through payment for the device in 2000 and the first half of 2001, section 1833(t)(6)(B)(iii) of the Act explicitly indicates that the 2 to 3 year period for which categories of devices may be in effect applies from the first date on which payment was made under the OPPS for any device described by the category, which was August 2000.

Specific Category Applications

Comment: Several commenters commented on specific pass-through device category applications which we had open as of the time of the comment or applications which we had previously denied as eligible for pass-through payment.

Response: We evaluate all pass-through device category applications individually and respond to applicants directly.

D. Expiration of Transitional Pass-Through Payments in Calendar Year 2003 for Drugs and Biologicals (Including Radiopharmaceutical Agents, Blood, and Blood Products)

Under the OPPS, we currently pay for drugs and biologicals, including radiopharmaceutical agents, blood, and blood products, in one of three ways: packaged payment, separate APCs and transitional pass-through payment.

Drugs as Packaged Supplies

As we explained in the April 7, 2000 final rule, we generally package the cost of drugs and biologicals into the APC payment rate for the primary procedure or treatment with which the drugs are usually furnished (65 FR 18450). Hospitals do not receive separate payment from Medicare for packaged items and supplies, and hospitals may not bill beneficiaries separately for any such packaged items and supplies whose costs are recognized and paid for within the national OPPS payment rate for the associated procedure or service. (Transmittal A–01–133, a Program Memorandum issued to Intermediaries on November 20, 2001, explains in greater detail the rules regarding separate payment for packaged services.) Hospitals bill for costs directly related and integral to performing a procedure or furnishing a service using a revenue center or packaged HCPCS code (status indicator "N"). As discussed earlier in section III.A.2 of the preamble, we list the packaged services, by revenue center, that we use to calculate per-service costs.

As specified in the regulations at § 419.2(b), costs directly related and integral to performing a procedure or furnishing a service on an outpatient basis are included in the determination of OPPS payment rates for the procedure or service. In the August 9, 2002 proposed rule, we provided some illustrations of situations in which drugs are considered to be supplies. For example, sedatives administered to patients while they are in the preoperative area being prepared for a procedure are supplies that are integral to being able to perform the procedure. Similarly, mydriatic drops instilled into the eye to dilate the pupils, anti-inflammatory drops, antibiotic ointments, and ocular hypotensives that are administered to the patient immediately before, during, or immediately following an ophthalmic procedure are considered an integral part of the procedure without which the procedure could not be performed. The costs of these items are packaged into and reflected within the OPPS payment rate for the procedure. Likewise, barium or low osmolar contrast media are supplies that are integral to a diagnostic imaging procedure as is the topical solution used with photodynamic therapy furnished at the hospital to treat non-hyperkeratotic actinic keratosis lesions of the face or scalp. Local anesthetics such as marcaine, lidocaine (with or without epinephrine) and antibiotic ointments such as bacitracin, placed on a wound or surgical incision at the completion of a procedure, are other examples we cited in the proposed rule. The hospital furnishes these items while the patient is in the hospital and registered as an outpatient for the purpose of receiving a therapy, treatment, procedure, or service. These and other such supplies may be furnished pre-operatively, while the patient is being prepared for a procedure; intra-operatively, while the procedure is being performed; or post-operatively, while the patient is in the recovery area prior to discharge. Or, these items may be part of an E/M service furnished during a clinic visit or in the emergency department. All of these supplies are directly related and integral to the performance of a separately payable therapy, treatment, procedure, or service with which they are furnished. Therefore, we do not generally recognize them as separately payable services. We package their cost into the cost of the primary procedure, and we pay for them as part of the APC payment.

We received several comments concerning the treatment of drugs as supplies, which are summarized below, along with our responses.

Comment: Several commenters asked for clarification of CMS's policy with respect to self-administered drugs, claiming the discussion in the preamble which lists examples of drugs, including self-administered drugs, that are packaged and paid as integral to an outpatient service conflicts with section 1861(s)(2) of the Act and CMS manuals which consider self-administered drugs to be non-covered.

Response: Our policy is based on the premise that certain drugs are so integral to a treatment or procedure that the treatment or procedure could not be performed without them. Because such drugs are so clearly a component part of the procedure or treatment, we believe that they are more appropriately considered as supplies and should be packaged as supplies into the APC payment for the procedure or treatment. Moreover, the payment for packaged supplies is included in the APC payment for the procedure or treatment, so beneficiaries should not be separately billed for them.

Comment: A commenter stated that virtually all drugs furnished in the outpatient setting are integral to an outpatient service and asked that CMS clarify those circumstances when usually self-administered drugs would not be considered integral to a service and therefore, non-covered.

Response: A drug would be treated as a packaged supply in cases where, although the drug is not separately payable, it is directly related and integral to a procedure or treatment and is required to be provided to a patient in order for a hospital to perform the procedure or treatment during a hospital outpatient encounter. A drug would not be treated as a packaged supply if it failed to meet these conditions. For example, we would not treat as packaged supplies any drugs that are given to a patient for their continued use at home after leaving the hospital. Another example would be a situation where a patient who is receiving an outpatient chemotherapy treatment develops a headache. Any medication given the patient for the headache would not meet the conditions necessary to be treated as a packaged supply. Similarly, if a patient who is undergoing surgery needs his or her daily insulin or hypertension medication, the medication would not be treated as a packaged supply.

Comment: A commenter from a teaching hospital indicated that revenue code 819, which is required for the acquisition of bone marrow or blood-derived peripheral stem cells, is bundled into the charge for the transplantation procedure, CPT 38240. The commenter noted that the transplant CPT code pays approximately $350–$400; however, charges for acquiring stem cells are generally $25,000–$35,000 each. Therefore, the commenter recommended that we create

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a new biological pass-through code for the stem cells until we can build the cost of the acquisition into the procedure, and the code should be retroactive to January 1, 2002.

Comment: A commenter from a teaching hospital indicated that revenue code 819, which is required for the acquisition of bone marrow or blood-derived peripheral stem cells, is bundled into the charge for the transplantation procedure, CPT 38240. The commenter noted that the transplant CPT code pays approximately $350–$400; however, charges for acquiring stem cells are generally $25,000–$35,000 each. Therefore, the commenter recommended that we create a new biological pass-through code for the stem cells until we can build the cost of the acquisition into the procedure, and the code should be retroactive to January 1, 2002.

Response: We understand the commenter's concern. Pass-through payments, after December 31, 2002, will only be made for medical devices, drugs, or biologicals in accordance with section 1833(t)(6)(A)(iv) of the Act. Stems cells are not medical devices nor do they meet the statutory prerequisite for calling these items "drugs and biologicals," as stated in sections 1861(t)(A) and (B) of the Act. For example, stems cells do not receive FDA approval and are not listed in the United States Pharmacopoeia.

The commenter indicates that the hospital is not being paid adequately for stem cell acquisition costs. However, the commenter should note that hospitals should be reporting all charges associated with the purchase of stem cells under Revenue Code 819. Therefore, to the extent that hospitals are billing a charge for the cost of acquiring stem cells under Revenue Code 819, those costs would be packaged into the median cost of CPT 38240 and be reflected in the APC payment rate. These services may also qualify for outlier payments.

Separate APCs for Drugs Not Eligible for Transitional Pass-Through Payment

There are certain new technology drugs and biologicals that are not eligible for transitional pass-through payments but for which we have made separate payment. Beginning with the April 7, 2000 rule (65 FR 18476), we created separate APCs for these drugs and biologicals as well as devices. We proposed to create temporary individual APC groups for the various drugs classified as tissue plasminogen activators and other thromobolytic agents that are used to treat patients with myocardial infarctions as well as certain vaccines to allow separate payment so as not to discourage their use where appropriate. In the case of blood and blood products, wide variations in patient requirements convinced us that we should pay for these items separately rather than packaging their costs into the procedural APCs. Moreover, the Secretary's Advisory Council on Blood Safety and Access recommended that blood and blood products be paid separately to ensure that to minimize incentives that would be inconsistent with the promotion of blood safety and access.

In the case of the other drugs and vaccines that we proposed not package into payment for visits or procedures, we paid separately for them because we wanted to avoid creating an incentive to cease providing these drugs when they were medically indicated.

We based the payment rate for the APCs for these drugs and biologicals on median hospital acquisition costs using 2001 claims data. We set beneficiary copayment amounts for these drug and biological APCs at 20 percent of the payment amount. In 2003 we will use status indicator "K" to denote the APCs for drugs and biologicals (including blood and blood products) and certain brachytherapy seeds that are paid separately from and in addition to the procedure or treatment with which they are associated but that are not eligible for transitional pass-through payment.

General

BBRA provided for special transitional pass-through payments for a period of 2 to 3 years for the following drugs and biologicals (pass-through payments for devices are addressed in section IV.C. of the preamble):

- Current orphan drugs, as designated under section 526 of the Federal Food, Drug, and Cosmetic Act.
- Current drugs and biologic agents used for treatment of cancer.
- Current radiopharmaceutical drugs and biological products.
- New drugs and biological agents.

In this context, "current" refers to those items for which hospital outpatient payment was being made on August 1, 2000, the date on which the OPPS was implemented. A "new" drug or biological is a product that is not paid under the OPPS as a "current" drug or biological, was not paid as a hospital outpatient service before January 1, 1997, and for which the cost is not insignificant in relation to the payment for the APC with which it is associated.

Section 1833(t)(6)(D)(i) of the Act sets the payment rate for pass-through eligible drugs as the amount by which the amount determined under section 1842(o) of the Act, that is, 95 percent of the applicable average wholesale price (AWP), exceeds the difference between 95 percent of the applicable AWP and the portion of the otherwise applicable fee schedule amount (that is, the APC payment rate) that the Secretary determines is associated with the drug or biological. Therefore, in order to determine the pass-through payment amount, we first had to determine the cost that was packaged for the drug or biological within its related APC. In order to determine this amount, we used data on hospital acquisition costs for drugs from a survey that is described more fully in the April 7, 2000 and the November 30, 2001 final rules. The ratio of hospital acquisition cost, on average, to AWP that we used is as follows:

- For sole-source drugs, the ratio of acquisition cost to AWP equals 0.68.
- For multisource drugs, the ratio of acquisition cost to AWP equals 0.61.
- For multisource drugs with generic competitors, the ratio of acquisition cost to AWP equals 0.43.

Section 1833(t)(6)(C)(i) of the Act specifies that the duration of transitional pass-through payments for current drugs and biologicals must be no less than 2 years nor any longer than 3 years beginning on the date that the OPPS is implemented. Therefore, the latest date for which current drugs that have been in transitional pass-through status since August 1, 2000 will be eligible for transitional pass-through payments is July 31, 2003. We proposed to remove these drugs from transitional pass-through status effective January 1, 2003 because the statute gives us the discretion to do so and because we generally implement annual OPPS updates on January 1 of each year. We would be in violation of the law if we were to not remove these drugs and biologicals from transitional pass-through status by August 1, 2003. The next update of the OPPS that will go into place will not be effective until January 1, 2004, at which time the statute's 3-year limit on pass-through payments for these drugs would have been exceeded. We further proposed to remove from transitional pass-through status, beginning January 1, 2003, those drugs for which transitional pass-through payments were made effective on or prior to January 1, 2001 because the law gives us the discretion to do so and we believe that, to the extent possible, payments should be made under the OPPS, without pass-through payment, when the law permits, as it does in this case.

As explained above, our policy has been to package payment for drugs and biologicals into the payment for the procedure or service to which the drug is integral and directly related. In general, packaging the costs of items and services into the payment for the primary procedure or service with which it is associated encourages hospital efficiencies and also enables hospitals to manage their resources with maximum flexibility. Packaging costs into a single aggregate payment for a service procedure or episode of care is a fundamental principle that distinguishes a prospective payment system from a fee schedule. Our proposal to package the costs of devices that we discuss in section IV.C of this preamble is based on this principle. As we refine the OPPS in the future, we intend to continue to package, to the maximum possible extent, the costs of any items and services that are furnished with an outpatient procedure or service into the APC payment for services with which it is billed.

In spite of our commitment to package as many costs as possible, we are aware of concerns that were presented at the April 5, 2002 Town Hall meeting and that have been brought to our attention by various interested parties, that packaging payments for certain drugs, especially those that are particularly expensive or rarely used, might result in insufficient payments to hospitals, which could adversely affect beneficiary access to medically necessary services.

The options that we considered included packaging the costs of all drugs and biologicals, both those with status indicator "K" in 2002 and those that would no longer receive pass-through payments in 2003, or continuing to make separate payment for both categories of drugs and biologicals through separate APCs. After careful consideration of the various options for 2003, we proposed to package the cost of many drugs for which separate payment is made currently. But we also proposed to continue making separate payment for certain orphan drugs (as discussed below), blood and blood products, vaccines that are paid under a benefit separate from the outpatient hospital benefit (that is, influenza, pneumococcal pneumonia, and hepatitis B), and certain higher cost drugs as explained below. The payment rates for those drugs for which we would make separate payment in 2003 would be an APC payment rate based on a relative weight calculated in the same way that relative weights for procedural APCs are calculated.

Comments on this proposal and our responses are summarized below:

Comment: We received many comments regarding the significant reduction in the payment rates for numerous drugs and biologicals that are sunsetting from their transitional pass-through status. The commenters asserted that proposed payment rates are significantly lower than the costs hospitals incur in acquiring and dispensing these products. As a result, inadequate payment may drive hospitals to discontinue stocking these products, and thus threaten beneficiary access to important drugs and biologicals. The commenters attributed the dramatic reduction in payment rates on the flaws in the 2001 claims data and deficiencies in the methodology that was used to derive the APC median costs. Commenters suggested numerous ways to correct the payment rates until reliable and sufficient claims data became available. Commenters proposed the following suggestions: maintain separate pass-through payments for APCs whose proposed payment rates decreased; pay a flat amount per item on a per patient basis; develop a rate setting methodology that does not depend upon the hospital's ability to record the proper number of units of a drug utilized; use information provided by commenters to set the 2003 payment rates; revise payment rates to include payment for the drug and related pharmacy overhead costs; pay 90 to 100 percent of AWP for non-pass-through drugs; use an appropriate ratio of acquisition cost to AWP as estimated in the proposed rule; conduct a new external survey of hospitals' drug acquisition costs to obtain more current data; or pay according to the median hospital cost for the item.

Response: As discussed elsewhere in this rule, in order to lessen the impact of the dramatic reduction in the proposed payment rates for many of the drugs and biologicals from 2002 to 2003, we decided that the most appropriate mechanism is to apply a dampening option to all of the APCs that decreased in median costs by more than 15 percent. For these APCs, we limited the reduction in median costs from 2002 median costs to half of the difference between the total proposed reduction and 15 percent. However, budget neutrality adjustments needed to compensate for the effects of this dampening subsequently reduced payment rates of all APCs by an additional percentage. Also, we applied a special dampening option to all blood and blood products and hemophilia clotting factors that limited the decrease in their payment rates to about 15 percent. These adjustments yielded significant moderation in the reduction of the final 2003 payment rates. These adjustments are described in detail in section III.B of the preamble.

After carefully reviewing all of the comments, a dampening option seemed most plausible and practical for us to undertake. Most of the recommendations proposed by the commenters were not feasible or not suitable for the purposes of OPPS.

Comment: Many commenters indicated that the median costs derived from the claims data was not reflective of the hospitals' true costs for acquiring and dispensing these drugs and biologicals.

Response: We agree with this point; however, the commenters should note that we intend to pay only for the cost of acquiring the drug under a drug APC and not for costs associated with the administration of the drug. Costs associated with administering the drug and with other pharmacy overhead are captured in pharmacy revenue cost centers and reflected in the median cost of APCs involving drug administration. Therefore, we believe that it is not appropriate for us to duplicate these costs in both the administration and drug APCs.

Comment: Several commenters noted that many drugs and biologicals were packaged into administration APCs; however, they were surprised to see decreases in the proposed payment rates for several of the administration APCs. The commenters stated that the addition of the costs of the packaged products should have caused the APC median cost levels to increase, thus their payment rates should have also increased compared to 2002. However, the commenters assert that the proposed payment rates for several administration APCs in which the drugs were packaged does not adequately cover the acquisition cost of the drugs themselves. Thus, they recommended that we reevaluate our data to ensure that costs of the packaged drug were included with the data for the applicable administration APCs, or otherwise explain how we plan to reimburse hospitals for the costs of the packaged drugs; retain the 2002 payment rates for administration services and pay for the drugs separately; or use our authority to limit any payment reductions for certain services. One commenter suggested that we conduct a survey of cancer centers to determine the true cost of infusion procedures and make an adjustment to the APC rates based on our finding.

Response: After reanalyzing our data, we were able to verify that the median costs of the drugs were indeed packaged into the median costs of the

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administration APCs. We acknowledge that the median costs of several administration APCs before we packaged drug costs declined between those median costs used to set the 2002 rates and those median costs developed from the 2001 claims for the 2003 rates. This decline occurred because, in setting the 2002 rates, we packaged in 75 percent of the cost of pass through devices we projected would be billed with the administration codes, based on manufacturer prices. The 2001 claims data, however, did not reflect the charges that we predicted would be billed for such devices. An increase in the median cost of a service does not guarantee that the payment rate for the service will increase because payment rates under the OPPS are based on relative costs and the budget neutrality adjustment. If the relative cost of a service increases at a lower rate than other services, the payment rate may actually decline. In addition, all rates are affected by the budget neutrality adjustment that has lowered rates over the past several years. (We note that it is possible for the budget neutrality adjustment to increase rates as occurred in the proposed rates.) As noted elsewhere, for APCs whose median costs decreased by more than 15 percent from 2002 to 2003, the dampening option described elsewhere in this rule limits the decreases in their payment rates.

Comment: A commenter requested that we describe the methodology used to calculate the payment rates for sunsetting pass-through drugs that are being assigned to separate APCs.

Response: We have provided a detailed description of the methodology we used in the calculation of the APC payment rates for sunsetting drugs and biologicals in section III.B of the preamble.

Comment: A major hospital association supported our proposal to incorporate pass-through drugs into APC rates. However, the commenter was concerned that many of these same drugs would continue to receive 95 percent of AWP in other settings, and differential payments may result in patient care being directed out of the hospital outpatient setting and into physician offices for non-clinical reasons.

Response: We believe that the payment rates for sunsetting pass-through drugs and biologicals reflect hospital acquisition cost to a sufficient extent so that hospitals will not, in general, stop furnishing these products to beneficiaries. While Medicare payment in other settings will be higher, the extent of response that may be expected to these payment differentials is unclear. We note that the same differentials prevailed for years prior to the introduction of the outpatient prospective payment system. We believe that the appropriate policy response is to address the use of AWP as a basis for payment in non-hospital sites.

Comment: A state hospital association indicated that confusion exists among hospitals over which drugs can be self-administered and that instructions from fiscal intermediaries are inconsistent and/or confusing. The commenter requested that we publish a definitive list of drugs that are to be considered to be self-administrable, and thus is not part of covered services. Another commenter from a hospital urged us to clarify whether self-administrable drugs (both those that are integral and non-integral to the patient's procedure) in outpatient and observation settings are the patient's responsibility or should be packaged under procedure APCs. Another commenter from a hospital organization suggested that we exempt hospitals from determining which drugs should be classified as self-administered or allow hospitals to classify drugs based on the dosing form and pursue payment from the beneficiary.

Response: On May 15, 2002, we issued Transmittal AB–02–072 entitled "Medicare Payment for Drugs and Biologicals Furnished Incident to a Physician's Service." The program memorandum gives instructions to the fiscal intermediaries for applying the exclusion to drugs that are usually self-administered by the patient. Each fiscal intermediary makes its determination on each drug based on whether the drug meets all of the program requirements for coverage. The payment rates that we are finalizing in this rule only indicate the Medicare payment amounts under OPPS when a drug is covered by Medicare; therefore, determination of a payment amount does not represent a determination that the Medicare program covers the drug. We discuss elsewhere in this preamble how Medicare makes payments for drugs that are considered to be supplies.

Comment: Several commenters suggested that we publish various sorts of additional information about the methodology we used to calculate the payment rates, including technical details of the methodology used in analysis of the 2001 claims.

Response: We do not believe the final rule is the appropriate vehicle for conveying the extensive background technical detail that may be of interest to the analytical community. However, we plan to hold a meeting in December 2002 or January 2003 to address the questions these commenters or other interested parties may have about our methodology.

Comment: Several commenters were concerned that fiscal intermediaries have addressed the issue of drug units of service with respect to billing and waste differently, and requested that we provide clear and consistent guidance to the fiscal intermediaries as well to providers on how to define "waste."

Response: In the fall of 1996, we issued a memorandum to our regional offices with guidance regarding our current policy on drug and biological product wastage. Although this memorandum focused on guidance for carriers, it overall reflects our current policy for drug and biological product wastage.

We recognize that some drugs may be available only in packaged amounts that exceed the needs of an individual patient. Once the drug is reconstituted in the hospital's pharmacy, it may have a limited shelf life. Since an individual patient may receive less than the fully reconstituted amount, we encourage hospitals to schedule patients in such a way that the hospital can use the drug most efficiently. However, if the hospital must discard the remainder of a vial after administering part of it to a Medicare patient, the provider may bill for the amount of drug discarded along with the amount administered.

Example 1: Drug X is available only in a 100-unit size. A hospital schedules three Medicare patients to receive drug X on the same day within the designated shelf life of the product. An appropriate hospital staff member administers 30 units to each patient. The remaining 10 units are billed to Medicare on the account of the last patient. Therefore, 30 units are billed on behalf of the first patient seen and 30 units are billed on behalf of the second patient seen. Forty units are billed on behalf of the last patient seen because the hospital had to discard 10 units at that point.

Example 2: An appropriate hospital staff must administer 30 units of drug X to a Medicare patient, and it is not practical to schedule another patient who requires the same drug. For example, the hospital has only one patient who requires drug X, or the hospital sees the patient for the first time and did not know the patient's condition. The hospital bills for 100 units on behalf of the patient, and Medicare pays for 100 units.

Comment: A few commenters urged us to provide a crosswalk identifying which drugs are being associated with which APCs and in what amounts, to help ensure that costs are being appropriately transferred to and allocated among APCs.

Response: Our methodology did not rely on a crosswalk, and we do not have one available. In our methodology, we

packaged drugs and biologicals that fell below the $150 median cost per line threshold into the procedure APCs they were billed from April 1, 2001 to March 31, 2002. Interested parties may analyze the claims data that is available to the public to determine the extent to which the costs of specific drugs and biologicals were included in payment rates of the procedure APCs.

Comment: A commenter expressed concern related to the adenosine products J0150 and J0151. The commenter stated that although these two codes reflect different uses and doses of the adenosine products, OPPS only recognizes billing only under the lowest dose of J0150 and J0151 is assigned a status indicator of E. Consequently, the hospitals have been billing for both products under code J0150. The commenter requested that we clear the confusion that exists among hospitals when billing for these products by reinstating J0151 under a separately paid APC with an adequate payment rate and revising J0150 so that the code is specific to its actual use.

Response: After reviewing the comment, we assigned a status indicator of N to J0150 to indicate that J0150 will be packaged in 2003; and changed the status indicator for J0151 from E to K and assigned it to APC 0917.

Comment: One commenter requested that we update the HCPCS description for all drugs to accurately report all medications in the way manufacturers currently package them. The commenter claimed that our current use of codes causes confusion and has the potential to create reimbursement problems for providers and the Medicare program.

Response: To the extent possible, when creating the "C" codes used to report drugs and biologicals eligible for transitional pass-through payment under OPPS, we employ the lowest common measurement of dosage for each drug so that hospitals can bill the number of units that are required to treat the patient by using multiple units of a single code. As drugs and biologicals retire from pass-through status, we expect to retire the "C" codes for these items. We expect these items will receive appropriate "non-C" HCPCS codes.

Comment: Several commenters claimed that our proposal to package many of the non-pass-through, lower cost drugs and biologicals with HCPCS codes for therapeutic administration is a violation of the "two-times" rule. Therefore, they recommended that we continue to pay for all drugs and biologicals separately or by revising the APCs in which the drugs are packaged.

Response: We do not agree with the commenters' assertion that packaging of drugs and biologicals results in violations of the two-times rule, stated in section 1833(t)(2) of the Act. We understand the commenters' confusion and attempt to provide a clarification on how we apply the "two-times" rule to determine APC structures. Most APC's consist of one or more services, which reported with CPT or HCPCS G codes, that are similar clinically and in terms of resource use. Many individual items (for example, sterile supplies or pharmaceuticals such as anesthetic agents) are integral to the procedure, and thus we have packaged them with the procedure. In some instances, such as APCs for transitional pass-through drugs and devices, the APC includes no procedure, and the APC is used only to pay for a specific item.

The "two times" rule requires that the highest median cost of a service or item within an APC cannot be more than two times greater than the lowest median cost of a service or item within that APC. We apply the "two-times" rule to the total cost of each procedure (which includes items that are packaged within that procedure). In the case of APCs containing only items, we apply the rule to the cost of each item that is grouped in the APC. We do not apply the two times rule to the variation in cost of individual items or ancillary services we attribute to a single HCPCS code.

If we were to attempt to apply the rule to all items within the various procedures, accounting for the variation in cost of supplies such as bandages, reusable instruments, and other medical supplies would be a practical impossibility. It would lead to a highly fragmented set of payment cells and a greatly more complex payment system that would reduce the incentives for effective management by hospitals. We do not believe the Congress would have intended such a result.

Consistent with the principles of prospective payment, we package the cost of as many items as possible into the median cost of a procedure. Therefore, our payment methodology for 2003 includes packaging the costs of drugs and biologicals with median costs below $150 per line into the costs of the procedures with which they were billed. We reviewed the median cost of the procedures used for administration of drugs and biologicals, before and after we packaged the costs of drugs and biologicals. Our review indicates that the final median cost appropriately accounts for the administration procedure and the cost of the administered drug and/or biologic.

Comment: Numerous commenters were concerned about the proposed reduction in payment rates for several radiopharmaceutical products. They asserted that hospitals would not be reimbursed adequately for these products, and thus, beneficiary access could be negatively impacted. They recommended that we should not base payments on the 2001 claims data and use a different methodology instead. They suggested that we estimate acquisitions costs using the proposed ratios for acquisition cost to AWP based on analysis conducted by the agency; maintain the 2002 payment levels; or create new APCs using cost ranges and assign radiopharmaceuticals to APCs based on their costs, as determined by AWP plus overhead fees, or another proxy for actual hospital costs.

Response: We are concerned about the possible effects of payment reductions on beneficiary access, and accordingly, we have included radiopharmaceuticals in the dampening policy described section III.B. of the Preamble.

Comment: Several commenters were concerned with our proposal to package numerous radiopharmaceutical products. They claimed that given the problems with the claims data and the great variation in the cost and use of radiopharmaceuticals for the same procedure, all radiopharmaceuticals should be paid under their own APCs, in addition to their associated nuclear medicine procedures. This would assure appropriate reimbursement for both the product and procedure, and would be the best way to capture hospital costs for radiopharmaceuticals in future claims data.

Response: While we acknowledge the commenters' concerns, we believe that the most appropriate payment structure is one that packages services together to the extent it is reasonable to do so, and thus presents hospitals with bundled payments that permit them to effectively manage resource allocation in the treatment of particular patients. Accordingly, we have not adopted this suggestion.

Comment: A manufacturer and a trade association suggested that we could improve the accuracy of the APC payment rates by establishing new revenue codes to accurately capture data and calculate costs for radiophamaceuticals in future years.

Response: While we do want to improve the accuracy of APC payment rates, we are reluctant to impose new requirements on hospital cost reports. In addition, the creation of new revenue centers must be made through a process that includes other payers as well as representatives of various providers.

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Therefore, we will not adopt this suggestion for 2003. As discussed in section III. B of this final rule, we expect to address the issue of improving the accuracy of our data further in the future.

Comment: A hospital organization indicated that there is a competitive disadvantage between different types of providers (clinic, Independent Diagnostic Testing Facilities (IDTF), and outpatient hospital) and their payment policies for Low Osmolar Contrast Media (LOCM). The commenter stated that in a clinic or IDTF, LOMC receives separate payment when clinical conditions are met. However, when LOCM is administered in an outpatient hospital without an intrathecal procedure or if one of the Medicare coverage conditions is non-covered, hospitals are expected to issue an ABN to the patient. The commenter recommended that we allow hospitals to bill for LOCM even when the patient does not meet conditions, or instruct the clinics and IDTFs to seek ABNs for LOCM in non-covered circumstances. A state hospital association suggested that we eliminate the medical necessity requirement for LOCM since it is not applicable to hospital outpatient services.

Response: These suggestions involve several different Medicare payment systems, and appropriate resolution of this concern will require further analysis. We will consider this issue further in the future.

Comment: One commenter requested clarification on whether there will be any more changes to the payment calculation for HCPCS C1775 (FDG, per dose) other than what is proposed in Table X of the proposed rule.

Response: According to our new policy for radiopharmaceuticals, as described elsewhere in this final rule, FDG will no longer be granted pass-through status in 2003. It will instead be paid separately under its own APC and be assigned to a status indicator of K.

Comment: Another commenter requested that we describe our waste policy on whether a hospital may bill for a medication that is ordered and mixed, but not administered to the patient due to a change in patient status or a no-show by the patient for that day's visit. If the drug cannot be used later or on another patient, the hospital would still incur the costs.

Response: If the drug is not administered to a Medicare beneficiary, then payment may not be made by the Medicare Program.

Packaging Issue

Comment: Several commenters indicated that our methodology of analyzing single line-items on drug claims is not consistent with how hospitals bill for certain particular drugs and biologicals. This inconsistency particularly affects whether a drug or biological falls below the $150 median cost per line threshold or not. They claimed that we incorrectly assumed "that a single administration of a drug was billed as a single line item on a claim and that the correct number of units was placed in the 'units' field of the claim form." Commenters noted that this was not always true because hospitals often bill for certain drugs using multiple lines in a claim that represents one patient encounter. They indicated that in our calculation of the median cost per line for a drug, we multiplied the median cost per unit of the drug by the average number of units billed per line. Thus, our methodology does not take into account all of the units of a drug administered during one encounter if the units were billed in multiple lines on the claim, and consequently, may not reflect the full cost of delivering the drug.

Response: For 2003, we chose to use the $150 median cost per line threshold level to determine whether to package a drug, as opposed to another packaging criterion, for the reasons of administrative simplicity, administrability, and responsiveness. However, in our analysis of the data, we observed that instances where a drug was billed on multiple lines in a claim were rare (less than 1 percent of total billings for drugs). We reiterate that our intent is to review and refine the packaging methodology in the future and will take the commenters' concern into account.

Orphan Drugs

We recognize that orphan drugs that are used solely for an orphan condition or conditions are generally expensive and, by definition, are rarely used. We believe that if the cost of these drugs were packaged into the payment for an associated procedure or visit, the payment for the procedure might be insufficient to compensate a hospital for the typically high cost of this special type of drug. Therefore, we proposed to establish separate APCs to pay for those orphan drugs that are used solely for orphan conditions.

To identify the orphan drugs for which we would continue to make separate payment, we applied the following criteria:

- The drug must be designated as an orphan drug by FDA and approved by FDA for the orphan condition.
- The current United States Pharmacopoeia Drug Information (USPDI) shows that the drug had neither an approved use for other than an orphan condition nor an off label use for conditions other than the orphan condition. There are three orphan drugs that are used solely for orphan conditions for which we proposed to make separate payment: J0205 Alglucerase injection; J0256 Alpha 1 proteinase inhibitor; and J09300 Gemtuzumab ozogamicin.

Comment: Several commenters stated that the proposed payment rates for the orphan drugs would grossly underpay hospitals for providing these drugs to patients. They recommended that we pay for orphan drugs according to current year acquisition and actual total costs of providing the products; maintain the 2002 payment levels; or remove from them from the OPPS system and set payment according to the methodology used in the physician office and other non-inpatient settings.

Response: After reviewing the comments, we have decided to remove the three orphan drugs that do not have any other non-orphan indications from the OPPS system and will pay for them on a reasonable cost basis. Other drugs that have orphan status according to the FDA will be partly protected by the dampening options described in section III.B of this final rule.

Comment: Several commenters objected to what they characterized as our definition of "orphan drug." These commenters believe we should treat comparably all drugs and biologicals that have been designated as under section 526 of the Federal Food, Drug, and Cosmetic Act.

Response: We emphasize that we are not creating a new definition of orphan drugs; instead, we continued to rely on the definition stated in the Federal Food, Drug, and Cosmetic Act. However, within the set of drugs that the FDA has identified as orphan drugs, we have identified a subset of three drugs that have only orphan indications and decided to remove them from the outpatient prospective payment system. We have distinguished these drugs from other orphan drugs because of their low volume of patient use and their lack of other indications, which means they can rely on no other source of payment. Many orphan drugs are approved for multiple indications, including non-orphan indications that have significant patient use that provide the drugs with financial support. For example, epoetin alfa was originally identified as an orphan drug for use in ESRD patients; however, currently it is being used extensively in patients with chemotherapy-induced anemia. Once a drug is granted orphan status, no further effort is made to update this status, even though indications for use may change substantially with experience. After consulting with our clinical advisors, we have decided to remove from OPPS the three orphan drugs that have no other non-orphan indications. We recognize the importance of all orphan drugs, however, and accordingly we have applied the dampening policies described in section III.B of the preamble to the other orphan drugs.

Blood and Blood Products

From the onset of the OPPS, we have made separate payment for blood and blood products either in APCs with status indicator "K" or as pass-through drugs and biologicals with status indicator "G" rather than packaging them into payment for the procedures with which they were administered. As we explained in the April 7, 2000 final rule (65 FR 18449), the high degree of variability in blood use among patients could result in payment inequities if the costs of blood and blood products were packaged with their administration. We also want to ensure that costs associated with blood safety testing are fully recognized. The safety of the nation's blood supply continues to be among the highest priorities of the Secretary's council on Blood Safety and Access. Therefore, we proposed to continue to pay separately for blood and blood products.

Comment: Several major blood collection organizations, specialty physician groups, a large trade association, hospital associations, and individual hospitals supported our decision to maintain separate APCs for blood and blood products; however, the commenters were concerned with the reduction in payment rates for these products in the proposed rule.

The commenters provided several suggestions. They recommended that we base the payment rates for blood products on current year acquisition costs and actual total costs rather than on hospital claims from previous years, and use industry data on the current hospital costs of blood and blood products that have been submitted to us; consider costs related to additional costs that hospitals incur in storing and preparing units for transfusion when assigning APC relative weights to blood and blood products; continue the 2002 payment rates until more accurate information on the actual costs of blood and blood products are gathered; or reimburse hospitals on a reasonable cost basis for blood and blood products.

Response: After carefully reviewing the comments and comparing the industry data against our data, we were convinced that the proposed reduction in payment rates for many of the blood and blood products would result in payment that is significantly lower than hospital acquisition costs. Thus, inadequate reimbursement may compromise access to beneficiaries and the safety of these products. We continue to be aware of the variability in the use of blood and blood products in various procedures, and by our desire to recognize costs of new tests being performed on blood, we have decided to apply a special dampening option to blood and blood products that had significant reductions in payment rates from 2002 to 2003. For these products, as described in section III.B of the preamble, we limited the decrease in their median costs by 11 percent, which limited the decrease in payment rates to approximately 15 percent. We note that the APCs for these products are intended to cover product costs; costs for storage, etc., are packaged into the APCs for the procedures with which the products are used.

Comment: A commenter from an individual hospital disagreed with our proposal to not change the current OPPS payment policy for transfusions. The commenter stated that their hospital has more than the average number of cases that require more than one unit of blood, and thus, averaging the payment would adversely affect specialty hospitals.

Response: For transfusion services that are paid under OPPS, hospitals can bill for the administration of the transfusion and the number of units of blood transfused. With the payment rates for transfusion and blood and blood products that are in the final rule, we believe that hospitals, including those that specialize in the transfusion of multiple units of blood, will receive adequate payment for transfusion services. The hospitals will receive separate payment for the blood in addition to the APC payment for the transfusion service. Even though we will not change our payment policy for transfusions for 2003, this is an issue that we will continue to monitor in the future.

Comment: Two commenters requested that we provide special comprehensive billing and coding guidelines in the area of blood, blood processing, and transfusion medicine, and the proper use or non-use of the transfusion medicine codes. They stated that Transmittal A–01–50 does not clarify all of the confusing issues that hospitals currently experience in billing and coding for blood-related services.

Response: We acknowledge that need for comprehensive billing and coding guidelines in the areas mentioned by the commenters and agree that the program memorandum that was issued previously may require further clarification. Therefore, this is an area that we expect to focus on during the upcoming year.

Comment: Several hospitals, advocacy organizations, manufacturers, and beneficiaries were concerned that the proposed decrease in reimbursement for certain clotting factors would not enable hospitals to recover the acquisition costs of the products. They indicated that inadequate reimbursement would create incentives for hospitals to not provide these products at all or to provide only those clotting factors that limit financial loss. Commenters also indicated that given the high cost of the clotting factors, the average cost to charge ratio methodology that might apply to other drugs does not apply to clotting factors, and the proposal would shift patients to the inpatient setting where costs of care are higher. Their recommendations were that we adjust the proposed payment with a rate consistent with the average acquisition cost of the drugs; maintain the 2002 payment rates; use current hospital inpatient payment rates in place of the proposed rates; or remove from the OPPS system and set payment according to the methodology used in the physician office and other non-inpatient settings.

Response: We recognize the importance of insuring adequate reimbursement and access to hemophilia clotting factors for our beneficiaries, as did the Congress when it created a separate benefit category for clotting factors in section 1861(s)(2)(I) of the Act. Accordingly, we have adopted a provision to insure that the payment rates for these products does not decrease by more than approximately 15 percent from 2002 to 2003.

Comment: Several commenters were very concerned with the proposed payment rates for plasma products and their recombinant analogs therapies. They argued that reduction in payments would create significant patient access problems since the hospitals will be unable to recoup costs incurred in acquiring and dispensing such therapies. They recommended that we pay for these products on a reasonable cost basis; revise the payment rates significantly to allow hospitals to recover their acquisition and dispensing costs; base payment on current acquisition costs and actual total costs

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of the products in outpatient settings; maintain payment at the 2002 level; or establish an add-on payment to be based on a national formula derived outside of OPPS.

Response: We recognize the importance of these drugs, and consequently included them in the dampening procedure described section III.B of the preamble.

Comment: Several commenters urged us to clarify the category of "blood and blood products" to include drugs and biologicals that are derived from plasma fractionation and their biotechnology analogs. They stated that the rationale for creating separate APCs for blood and blood products also equally apply to plasma-based products and their recombinant therapies. These commenters recommended that we continue to pay for all plasma-derived and recombinant analog therapies in separate APCs and include them in the category of "blood and blood products" as it is done under the FDA's definition of "blood and blood products."

Response: We acknowledge that plasma-based products and their recombinant therapies are derived from blood however, these products are highly processed and not manufactured by local blood banks. Upon consultation with our clinical advisors, we have determined that these products do not have the same access and safety concerns as other blood and blood products. Thus, it is reasonable for us to distinguish these products from other blood and blood products. For the purposes of OPPS, we will not consider any plasma-derived products and their recombinant analogs, including albumin and immune globulins and except for hemophilia clotting factors, to fall under the category of "blood and blood products". Accordingly, we apply to these products the same packaging procedures applicable to other drugs and biologicals.

Vaccines Covered Under a Benefit Other Than OPPS

Outpatient hospital departments administer large numbers of the vaccines for influenza (flu), pneumococcal pneumonia (PPV), and hepatitis B, typically by participating in immunization programs encouraged by the Secretary because these vaccinations greatly reduce death and illness in vulnerable populations. In recent years, the availability and cost of the vaccines (particularly the flu vaccine) have varied considerably. We want to avoid creating any disincentives to provide these important preventative services that might result from packaging their costs into those of primary procedures, visits, or administration codes. Therefore, we proposed to pay for these vaccines under OPPS through the establishment of separate APCs.

We received no comments on our proposal to pay for these vaccines under separate APCs. However, we have had considerable discussion with providers in the past about the cost to hospitals of influenza and pneumococcal pneumonia vaccines in particular. In particular, we have had many discussions in which we were advised by providers that OPPS payment was insufficient for them to be able to guarantee that they would be able to offer these important vaccines to Medicare patients they treat. They cited the timing of updates to OPPS rates as well as volatility of costs as a result of irregular supplies of these vaccines as their major concern. Public health officials encourage high risk individuals, including Medicare beneficiaries, to receive flu immunitions beginning each September. Each flu season, a new vaccine is produced; the cost of the vaccine is also typically higher than the previous year's vaccine cost. Thus, from September through December, providers paid under the OPPS for administering flu vaccines do not receive the benefit of the update that occurs in January. In recent years, the cost of the vaccine has been volatile because of irregular supplies.

Therefore, we have decided to pay hospitals for influenza and pneumococcal pneumonia vaccines under reasonable cost methodology. Section 1833(t)(2)(A)(i) of the Act gives the Secretary discretion to define outpatient hospital services for purposes of payment under the OPPS. Until now we have defined it to include influenza and pneumococcal pneumonia vaccines. However, in view of the importance of these vaccines to the public health and our strong desire to ensure that hospitals are paid appropriately for these vaccines, we have decided to exclude them from OPPS.

We are therefore revising regulations at § 419.21(d)(3) to remove the words "influenza" and "pneumococcal pneumonia." As a result of this change, hospitals, HHAs and hospices which were paid for these vaccines under OPPS will be paid reasonable cost for these vaccines. We will issue further instructions regarding how CORFs will be paid for these vaccines in 2003 and will issue implementation instructions for hospitals, HHAs and hospices.

Higher Cost Drugs

While our preferred policy is to package the cost of drugs and other items into the cost of the procedures with which they are associated, we are concerned that beneficiary access to care may be affected by packaging certain higher cost drugs. For this reason, we proposed to allow payment under separate APCs for high cost drugs for an additional year while we further study various payment options. Specifically, we proposed to pay separately for drugs for which the median cost per line (cost per unit multiplied by the number of units billed on the claim) exceeded $150, as we briefly describe below. We provide more detail in the proposed rule regarding the methodology we used to determine this threshold (67 FR 52124–52125).

To establish a reasonable threshold for determining which drugs we would pay under separate APCs rather than through packaging, we calculated the median cost per unit using 2001 claims data for each of the drugs for which transitional pass-through payment ceases January 1, 2003 and for those additional drugs that we have paid separately (status indicator "K") since the outset of OPPS.

We excluded from these calculations the orphan drugs, vaccines, and blood and blood products discussed above. Because many drugs are used and billed in multiple unit doses, we then multiplied the median cost per unit for the drug by the average number of units that were billed per line. Once we calculated an approximate median cost per line for the drug, we then arrayed the median cost per line in ascending order and examined the distribution. A natural break occurs at $150 per line, the midpoint of a $10 span between the drug immediately above and below the $150 point. Within the array, approximately 61 percent of the drugs fall below the $150 point and 39 percent of the array are above the point. Among the drugs that we proposed to package are some radiopharmaceuticals, vaccines, anesthetics, and anticancer agents. After including the costs of packaged drugs in the services with which they were provided, we noted that the median costs of those services increased. We solicited comments that address specific alternative protocols we might use when several packaged drugs whose total cost significantly exceeds the applicable APC payment amount may be administered to a patient on the same day (for example, multiple agent cancer chemotherapy).

We requested comments on the factors we considered in determining which drugs to package in 2003. We were particularly interested in comments for the exclusion of high cost drugs from packaging. We added that we would continue to analyze the effect of our drug-packaging proposal to assess whether the $150 threshold should be adjusted to avoid significant overpayments or underpayments for the base APCs relative to the median costs of the individual drugs packaged into the APCs. Depending on this analysis, we stated that we may revise our threshold or criteria for packaging in the final rule for 2003. We expect to further consider each of these exclusions for packaging when we develop our proposals for the 2004 OPPS.

Although we expect to expand packaging of drugs to package payment for more drugs into the APC for the services with which they are billed, we nonetheless, requested comments on alternatives to packaging. One example of an alternative approach is to use different criteria from those we propose in this proposed rule to identify the drugs to package into procedure APCs and the drugs to pay separately. Another alternative approach would be to create APCs for groups of drugs based on their costs. Still another approach would be to create separate APCs for each drug. We emphasized in the proposed rule that we welcomed a full discussion of the alternatives as we determine the best way to ensure that hospitals are paid appropriately for the drugs they administer to the Medicare beneficiaries whom they treat in their outpatient departments.

Drugs that we pay for separately in 2003 are designated in Addendum B by status indicator "K" or "G."

A summary of the comments we received on this proposal and our responses to them are summarized below.

Comment: Numerous national trade associations, drug manufacturers, consultants, and other commenters opposed our proposal to package sunsetting drugs and biologicals that fell below a threshold of $150 median cost per line into procedure APCs. These commenters urged us to continue to pay separately for drugs and biologicals that were paid separately in 2002, including those for which pass-through status has expired. Some recommended that we maintain the 2002 payment levels until more accurate data could be obtained.

In contrast, one national hospital organization recommended that we adopt a much higher threshold of $1,000 for a drug to warrant separate payment and package all other drugs that fall below the threshold. Furthermore, another national hospital association encouraged us to expeditiously incorporate into APCs both low and high cost drugs that will lose their eligibility for transitional pass-through payments, while limiting separate APC payment only to orphan drugs, blood and blood products, certain vaccines and extremely costly drugs. The commenter also stated that integrating payments for packaged services will be less burdensome for hospitals and will eliminate incentives for higher costs that might be created by special additional reimbursement. As noted in section XI, the Medicare Payment Advisory Committee also urged CMS to incorporate more drugs into the base APCs.

Response: We appreciate all of the comments regarding the various aspects we should consider in making our decision to package lower-cost drugs and biologicals into procedure APCs. After carefully considering all recommendations submitted by the commenters regarding how we should treat these drugs and biologicals, we concluded that the packaging methodology we proposed is appropriate. We believe that we have sufficient data on drugs and biologicals to allow us to make a reasonable decision on whether to package individual items. We further believe that our decision to package these costs is consistent with the concept of a prospective payment system and we expect to continue incorporating additional drugs into the base APCs in future years.

Comment: Several commenters stated that the $150 threshold established for separate APC payment is arbitrary and such a packaging rule would create confusion among hospitals. One national hospital association was concerned that the policy would create incentives for pharmaceutical companies to increase their prices so their drugs will receive separate payment, and, potentially, for physicians to choose one drug over a clinically appropriate substitute.

Response: We acknowledge the concerns for using a median cost per line threshold level when the cost of a particular drug may fluctuate over time. However, we must set the rates prospectively. We will consider these issues further as we determine our policy for the criteria for packaging as we develop our proposed rule for the 2004 update.

Comment: Several commenters supported our decision to pay separately for higher-cost drugs, clotting factors, and orphan drugs in 2003, but recommended that we delay packaging higher-cost drugs until more accurate data is available. Other commenters suggested that we collect at least 2 more years of data on all drugs and biologicals before contemplating bundling them with other APCs. They stated that once a drug or biological is bundled, hospitals will have no incentive to code for it, and there will be no means of collecting data on the product in the future. Thus, by not packaging, we would be able to determine appropriate payment rates that reflect variations in hospital expenses for these products and continue to collect product-specific information.

Response: We agree with the commenters who stated that we should not package higher cost drugs until we have more data on those products; however, we disagree with the other commenters who suggested that we should not consider packaging any drugs and biologicals until we have collected data for two more years. We believe that at this time we have sufficient data to determine which drugs and biologicals should be packaged and which products we will pay separately for in 2003. While some hospitals may fail to separately report codes that represent packaged items, we have repeatedly instructed hospitals to submit all charges related to covered outpatient services, including those for packaged items. The total charges submitted by hospitals for each service will be used to set future rates. For that reason, and because of the possible impact on their ability to receive outlier payments for which they might qualify, it is extremely important that hospitals report all appropriate charges for their covered outpatient services.

Comment: Several commenters suggested that, at minimum, we should continue to pay separately for drugs and biologicals that typically cost more than $150 per administration, regardless of whether the median cost per line exceeds $150 using the 2001 claims data. In addition, a trade association suggested that we reflect the common practice of combining radiopharmaceuticals and others drugs used in performing nuclear medicine procedures by qualifying for separate payment those drug combinations which exceed the agency's $150 threshold.

Response: We appreciate the commenters' suggestions regarding methodologies that would refine the $150 threshold level used in making packaging determinations for 2003. We believe our proposed policy strikes a reasonable balance of simplicity, administrability, and responsiveness. We intend to review and refine our methodology in the future, and the proposals submitted by commenters will be taken into consideration at that time.

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Comment: Several commenters claimed that our proposal to package many of the non-pass-through, lower cost drugs and biologicals with HCPCS codes for therapeutic administration is a violation of the "two-times" rule. Therefore, they recommended that we continue to pay for all drugs and biologicals separately or by revising the APCs in which the drugs are packaged.

Response: We do not agree with the commenters' assertion that packaging of drugs and biologicals results in violations of the two-times rule, stated in section 1833(t)(2) of the Act. We understand the commenters' confusion and attempt to provide a clarification on how we apply the "two-times" rule to determine APC structures. Most APC's consist of one or more services, which we refer to as "procedures" and code with CPT or HCPCS G codes, that are similar clinically and in terms of resource use. Many individual items (for example, sterile supplies or pharmaceuticals such as anesthetic agents) or ancillary services (for example, nursing or recovery room services) are integral to the procedure, and thus we have packaged them with the procedure. In some instances, such as APCs for transitional pass-through drugs and devices, the APC includes no procedure, and the APC is used only to pay for a specific item.

The "two times" rule requires that the highest median cost of a within an APC cannot be more than two times greater than the lowest median cost of a procedure within that APC. We apply the "two-times" rule to the total cost of each procedure (which includes items and services that are packaged within that procedure). In the case of APCs containing only items, we apply the rule to the cost of each item that is grouped in the APC. We do not apply the two times rule to the variation in cost of individual items or ancillary services we attribute to a single HCPCS code.

If we were to attempt to apply the rule to all items and ancillary services within the various procedures, accounting for the variation in cost of supplies such as bandages, reusable instruments, and other medical supplies would be a practical impossibility. It would lead to a highly fragmented set of payment cells and a greatly more complex payment system that would reduce the incentives for effective management by hospitals. We do not believe Congress would have intended such a result.

Consistent with the principles of prospective payment, we package the cost of as many items and ancillary services as possible into the median cost of a procedure. Therefore, our payment methodology for 2003, includes packaging the costs of drugs and biologicals with median costs below $150 per line into the costs of the procedures with which they were billed. We reviewed the median cost of the procedures used for administration of drugs and biologicals, before and after we packaged the costs of drugs and biologicals. Our review indicates that the final median cost appropriately accounts for the administration procedure and the cost of the administered drug and/or biologic.

Comment: A commenter requested that we include a statement in the final rule that was included in the preamble of the September 8, 1998 proposed rule (63 FR 47563–47564) that stated "We propose to allow hospitals to provide drugs to patients without requiring that the hospital bill the patient, and without Medicare paying the hospital. Normally, hospitals are not allowed to waive such billing, since not charging a patient could be seen as an inducement to the patient to use other services at the hospital, for which the hospital would be paid. However, if the benefit is not advertised, we believe that provision of the self-administered drugs at no charge to the beneficiary need not constitute an inducement in violation of the anti-kickback rules. The hospital may not advertise this to the public or in any other way induce patients to use the hospital's service in return for forgoing payment."

Response: We are not making final the proposal in the September 8, 1998 rule (63 FR 47563–64) that the commenter quotes. Medicare policy affecting how payment is made under the OPPS has evolved considerably since that rule. In the intervening years, CMS, providers, contractors, and beneficiaries all have acquired considerable experience under the OPPS that has added perspective and substance to a broad range of policy issues, including what is and is not payable under the OPPS. The following points summarize our current policy related to the issue posed by the commenter:

- In accordance with the in section 1861(s)(2)(B) of the Act and related Medicare regulations and program issuances, drugs and biologicals that are not usually self-administered by the patient are payable under the OPPS. As we explain elsewhere in this final rule, Medicare makes separate payment for certain drugs and biologicals and packages payment for others into the procedure with which they are billed.
- The fact that a drug has a HCPCS code and a payment rate under the OPPS does not imply that the drug is covered by the Medicare program, but only indicates how the drug may be paid if it is coyered by the program.
- A code and payment amount does not represent a determination that the Medicare program covers a drug. Contractors must determine whether the drug meets all program requirements for coverage; for example, that the drug is reasonable and necessary to treat the beneficiary's condition and whether it is excluded from payment because it is usually self-administered.
- Certain drugs are so integral to a treatment or procedure that the treatment or procedure could not be performed without them. Because such drugs are so clearly an integral component part of the procedure or treatment, they are packaged as supplies under the OPPS into the APC for the procedure or treatment. Consequently, payment for them is included in the APC payment for the procedure or treatment of which they are an integral part.
- Under the OPPS, hospitals may not separately bill beneficiaries for items whose costs are packaged into the APC payment for the procedure with which they are used (except for the copayment that applies to the APC).

In short, neither the OPPS nor other Medicare reimbursement rules regulate the provision or billing by hospitals of non-covered drugs to Medicare beneficiaries. Accordingly, it would be inappropriate to include the statement in the 1998 rule. However, in some circumstances, such practices potentially implicate other statutory and regulatory provisions, including the prohibition on inducements to beneficiaries, section 1128A(a)(5) of the Act, or the anti-kickback statute, section 1128B(b) of the Act.

E. Expiration of Transitional Pass-Through Payments in Calendar Year 2003 for Brachytherapy

Section 1833(t)(6) of the Act requires us to establish transitional pass-through payments for devices of brachytherapy. As of August 1, 2000, we established item-specific device codes including codes for brachytherapy seeds, needles, and catheters. Effective April 1, 2001, we established category codes for brachytherapy seeds on a per seed basis (one for each isotope), brachytherapy needles on a per needle basis, and brachytherapy catheters on a per catheter basis. Because initial payment was made for a device in each of these categories in August 2000, we proposed that these categories (and the transitional pass-through payments) will be discontinued as of January 1, 2003. Furthermore, as discussed above, we proposed that there will be no grace period for billing these category codes.

We received comments, both in writing and at the April 2002 Town Hall meeting, recommending that we continue to make separate payment for brachytherapy seeds. The basis for this recommendation is that the number of brachytherapy seeds implanted per procedure is variable. These commenters stated that the number and type of seeds implanted in a given patient depends on the type of tumor, its size, extent, and biology, and the amount of radioactivity contained in each seed. To further complicate the matter, the HCPCS codes used to report implantation of brachytherapy seeds are not tumor-specific. Instead, they are defined based on the number of sources, that is, the number of seeds or ribbons used in the procedure. This means that the treatment of many different tumors requiring implantation of widely varying numbers of seeds is described by a single HCPCS code. Therefore, it has been argued that given the costs of seeds and the variety of treatments described by a single HCPCS code, the cost of brachytherapy billed under a single HCPCS code could vary by as much as $3,000.

In determining whether to package seeds into their associated procedures, we considered all these factors as well as our claims data. Consistent with our proposed policy for other device costs and the cost of many drugs, as well as with the principles of a prospective payment system, our preferred policy is to package the cost of brachytherapy devices into their associated procedures. For 2003, in the case of remote afterloading high intensity brachytherapy and prostate brachytherapy, which we discuss below, weproposed to package the costs into payment for the procedures with which they are billed.

For other uses of brachytherapy, we proposed to defer packaging of brachytherapy seeds for at least 1 year. In those cases, when paying separately in 2003 for brachytherapy seeds, we proposed to continue payment on a per seed basis. The payment amount would be based on the median cost of brachytherapy seeds, per seed, as determined from our claims data.

We solicited comments on methodologies we might use to package all brachytherapy seeds beginning in CY 2004. For example, creation of tumor-specific brachytherapy HCPCS codes would reduce the variability in seed implantation costs associated with the current HCPCS codes used for seed implantation.

As stated above, beginning January 1, 2003, we proposed to package payment for brachytherapy seeds into the payment for the following two types of brachytherapy services:

Remote Afterloading High Intensity Brachytherapy

Participants in the April 5, 2002 Town Hall meeting expressed concern about packaging single use brachytherapy seeds into payment for procedures.

Remote afterloading high intensity brachytherapy treatment does not involve implantation of seeds. Instead, it utilizes a single radioactive "source" of high dose iridium with a 90-day life span. This single source is purchased and used multiple times in multiple patients over its life. One or more temporary catheters are inserted into the area requiring treatment, and the radioactive source is briefly inserted into each catheter and then removed. Because the source never comes in direct contact with the patient, it may be used for multiple patients. We note that the cost of the radioactive source, per procedure, is the same irrespective of how many catheters are inserted into the patient. We believe that the costs of this type of source should be amortized over the life of the source. Therefore, each hospital administering this type of therapy should include its own charge for the radiation source in the charge for the procedure. Therefore, we proposed to package the costs associated with high dose iridium into the HCPCS codes used to describe this procedure. Those codes are: 77781, 77782, 77783, and 77784.

Prostate Brachytherapy

The preponderance of brachytherapy claims under OPPS to date is for prostate brachytherapy. Brachytherapy is administered in several other organ systems, but the claims volume for non-prostate brachytherapy is very small, and hence our base of information on which to make payment decisions is slim. Furthermore, prostate brachytherapy uses only two isotopes, which are similar in cost, while brachytherapy on other organs involves a variety of isotopes with greater variation in cost. Consequently, we believe it would be prudent to wait for further experience to develop before proceeding to package non-prostate brachytherapy seeds.

A number of commenters at the April 5, 2002, Town Hall Meeting and elsewhere have stressed to us their views that brachytherapy seeds should remain unpackaged. The principle argument put forth in favor of this approach is that the number of seeds used is highly variable across patients. We do not find this argument compelling. Payments in the OPPS, as in other prospective payment systems, are based on averages. We believe the service volume at hospitals providing prostate brachytherapy is likely to be large enough for a payment reflecting average use of seeds to be appropriate.

Additionally, appropriate payment for prostate brachytherapy has been of concern to many commenters since implementation of the OPPS because facilities must use multiple HCPCS codes on a single claim to accurately describe the entire procedure. Because we determine APC relative weights using single procedure claims, commenters have argued that payments for prostate brachytherapy are, in part, based on error claims, resulting in underpayment for this important service. We agree that basing the relative weights for APCs reported for prostate brachytherapy services on only the small number of claims related to this service that are single procedure claims may be problematic. To increase the number of claims we could use to develop the proposed 2003 relative payment weights for prostate brachytherapy, we began by identifying all claims billed in 2001 for prostate brachytherapy. Unfortunately, closer analysis of these claims revealed that hospitals do not report prostate brachytherapy using a uniform combination of codes. Of the more than 12,000 claims for prostate brachytherapy that we identified in the 2001 claims data, no single combination of HCPCS codes occurred more than 25 times.

Therefore, in order to facilitate tracking of this service, we proposed to establish a G code for hospital use only that will specifically identify prostate brachytherapy. We proposed as the descriptor for this G code the following: "Prostate brachytherapy, including transperineal placement of needles or catheters into the prostate, cystoscopy, and interstitial radiation source application." This G code would be used by hospitals instead of HCPCS codes 55859 and 77778 to bill for prostate brachytherapy. Hospitals would continue to use HCPCS codes 55859 and 77778 when reporting services other than prostate brachytherapy. We would also instruct hospitals to continue to report separately other services provided in conjunction with prostate brachytherapy, such as dosimetry and ultrasound guidance. These additional services would be paid according to the APC payment rate established by our usual methodology.

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This G code will allow us to package brachytherapy seeds into the procedures for administering prostate brachytherapy while permitting us to pay separately for brachytherapy seeds which are administered for other procedures. Therefore, we proposed to package the costs of the brachytherapy seeds, catheters, and needles into the payment for the prostate brachytherapy G code. In order to develop a payment amount for this G code, we used all claims where both HCPCS codes 55859 and 77778 appeared. We packaged all revenue centers and appropriate HCPCS codes, that is, HCPCS with status indicator "N." We then determined median costs of the line items for HCPCS codes 55859 and 77778 and added the two. Next, we packaged the costs of all C codes, whether an item-specific or a device category code, into the payment amount. We proposed to assign APC 0684 with status indicator "T." We believe the payment rate proposed for this G code appropriately reflects the costs of the procedures, the brachytherapy seeds, and any other devices associated with these procedures. We solicited comments on this proposal.

Packaging of Other Device Costs Associated With Brachytherapy

We proposed to package the costs of brachytherapy needles and catheters with whichever procedures they are reported, similar to our proposal for packaging the costs of other devices that will no longer be eligible for a transitional pass-through payment in 2003. Because the HCPCS code descriptors for brachytherapy are based on the number of catheters or needles used, we believe the costs of these devices would be appropriately reflected within the costs of the associated procedure.

Brachytherapy

Comment: One commenter believed that assigning CPT Code 77799 to APC 313 was inappropriate because it was the highest paying brachytherapy APC and it violated the two times rule.

Response: We thank the commenter for bringing this to our attention. The CPT code 77799 should be assigned to APC 312, the lowest paying brachytherapy APC, which is consistent with our policy of assigning unspecified codes to the lowest paying similar APC because we do not know what procedures are being performed. However, we do not apply the two times rule to unspecified codes like 77799 for that same reason. We are assigning 77799 to APC 312.

Comment: Several commenters were concerned that the proposed payment rates for APCs 1718, for iodine seeds, and 1720, for palladium seeds were significantly lower than the 2002 payment rates for these brachytherapy sources. The commenters stated that the new rates do not reflect hospital acquisition costs and recommended that we continue pass-through status for these seeds in 2003 or refine the claims data used to set payment rates.

Response: Our payment rates for 1718 and 1720 are based on the median costs for these seeds in our 2001 claims data. We are confident that these data reflect actual hospital acquisition costs. By statutory mandate, the OPPS system, in aggregate, does not pay hospitals full costs for services. Therefore, it should not be expected that payment rates (which involve turning median costs into relative weights and applying scaling factors) will always reflect 100 percent of hospital acquisition cost.

Comment: Several commenters urged us to identify all sources currently used in brachytherapy and cover those sources on an interim basis. They suggested we retain a C code for "unlisted" brachytherapy sources to allow hospitals to bill for sources not on the current pass through list.

Response: We only create C codes for items based on formal applications for a specific device. We do not create C codes for unlisted devices. Interested parties may submit an application for a pass through device using the process described in the April 7, 2000 final rule (65 FR 18481–18482).

Comment: A commenter suggested continuing the pass-through categories for brachytherapy seeds, needles, and catheters for one year in order to collect more data.

Response: Statutory provisions preclude us from continuing these categories for an additional year.

Comment: One commenter asked us to refer to brachytherapy "sources" instead of brachytherapy "seeds."

Response: We agree and will do so.

Comment: One commenter responded to our solicitation of comments regarding the advisability of creating tumor specific brachytherapy HCPCS codes in the future. The commenter did not favor this idea because of the variability in number and type of brachytherapy devices used to treat a single disease. Additionally, it would create an overly complex coding system.

Response: We thank the commenter and are continuing to review this issue.

Comment: Several commenters were concerned about the proposed payment reduction for APC 313 (High Dose Afterloading Brachytherapy). The commenters stated that hospitals were coding incorrectly for these services because many claims did not use C codes for the sources or catheters. Therefore, our data did not reflect actual hospital costs. The commenters recommended that we increase the payment rate, use only claims that were correctly coded, or continue to pay separately for the sources.

Response: As described elsewhere in this rule, we have taken steps to mitigate the severe payment decreases that were proposed for several APCs including APC 313. Therefore the final payment rate for APC 313 will be higher than the proposed payment rate. We will continue to review the issues raised by the commenters. It is unclear how we should address the issue of coding for APC 313 because high dose brachytherapy sources are reusable whose costs must be amortized per use over a 90 day period. Furthermore, hospitals have been using these sources for many years; therefore, we would expect their charges would reflect this amortized cost even in the absence of using a C code. Additionally, it is likely we over estimated device costs for this APC because of the methodology we used for folding in device costs insetting 2002 payment rates. Lastly, we are unable to continue pass-through payments for devices used in APC 313 and do not think it is appropriate to pay separately for high dose brachytherapy sources for the reasons discussed.

Comment: Several commenters were concerned about the "N" status indicator assigned to Yttrium-90 brachytherapy sources. They stated that it is an implantable seed used in treating liver cancer. They also claimed that its median cost was much higher than the cost reflected in our claims data.

Response: We will place Yttrium-90 in an APC. Assigning status indicator "N" was an error. We will use our claims data to set the payment rate. We will continue to review our claims data and external data sources as we update the payment rate in 2004.

Comment: Several commenters suggested that we create HCPCS codes and APCs for high dose implantable brachytherapy sources. They explained that sources such as iodine-125 and palladium-103 may be "high" intensity or 'low" intensity (that is, emit different amounts of radiation) and that our payment for these sources account for the cost variation associated with sources of different intensities. Another commenter requested that we create three levels of APCs for brachytherapy needles and catheters to account for cost variation of those devices. Lastly, another commenter suggested we create three APCs to reflect levels of seed utilization (for example, simple for less than 85 seeds, intermediate for 85–99 seeds and complex for more than 100 seeds).

Response: We disagree. Our median cost data should reflect the cost variation among seeds of different intensity. For example if low intensity seeds cost $40 and are used 80 percent of the time, and high intensity seeds cost $50 and are used 20 percent of the time, then our cost data should reflect a cost of $42 per seed. Insofar as no hospital specializes in administering high intensity seeds, on average, hospitals should be paid appropriately for both types of seeds. Furthermore it would be administratively burdensome and make accurate coding very difficult, if we created APCs for every variation in seeds. We believe devices other than seeds should be packaged into procedure APCs, as we have done with all other devices. Because we pay for sources on a "per seed" basis there is no reason to create APCs for simple, intermediate, and complex seed utilization.

Comment: One commenter requested that we set up a system to account for the variability in use of brachytherapy devices. Another commenter said that brachytherapy codes were not well understood so all supplies and sources should be paid separately.

Response: We disagree and are finalizing our proposal to package all devices except for seeds in cases of non-prostate cancer brachytherapy. Doing what the commenters requested would create an extremely burdensome system with no discernable benefit.

Comment: Many commenters disagreed with our proposal to create a G code describing prostate brachytherapy with packaged implantable sources, needles, and catheters. They cited the following as reasons:

- The high variability in the number of sources used per treatment.
- The difference in cost between iodine and palladium seeds.
- Packaging of seeds violates the two times rule.
- Some hospitals specialize in complex cases requiring high numbers of seeds and would always be underpaid.
- A single payment rate would provide incentives to use cheaper (iodine) seeds when more expensive seeds (palladium) were clinically appropriate.
- A single payment rate would provide an incentive to use fewer, higher activity seeds even if use of more lower activity seeds was clinically appropriate.
- Underpayment for prostate brachytherapy will create an incentive to use more invasive, riskier, and costly treatments for prostate cancer.
- The proposed payment rate is too low as a result of using improperly coded claims.
- Creating a new G code is administratively burdensome.

Most commenters recommended that we continue to pay separately for brachytherapy sources used for prostate cancer, as we proposed to do for other forms of cancer. Some commenters requested that we withdraw our proposal for the G code describing brachytherapy and continue to recognize CPT codes 55859 and 77778 while other commenters agreed with our proposal to create the G code with packaged needles and catheters but asked that we not package brachytherapy sources into it. Some commenters requested that, if we finalize our G code, that it be paid as least as much as combined payment rate for the APCs containing CPT codes 55859 and 77778.

A few commenters agreed with our proposed G code approach but asked that we create 2 G codes, one for prostate brachytherapy using iodine seeds and another for prostate brachytherapy using palladium seeds. They also suggested that if CMS finalizes one or more G codes, coding edits should be developed to ensure proper coding of these procedures.

Response: We thank all the commenters. After review of all the comments we have decided to create 2 G codes describing prostate brachytherapy. G0256, Prostate brachytherapy using permanently implanted palladium seeds, including transperitoneal placement of needles or catheters into the prostate, cystoscopy and application of permanent interstitial radiation source, and G0261, Prostate brachytherapy using permanently implanted iodine seeds, including transperitoneal placement of needles or catheters into the prostate, cystoscopy and application of permanent interstitial radiation source. These codes package the costs of needles, catheters, and sources. In developing payment rates for these codes we used only correctly coded claims. For example, for G0256 we used only claims that included CPT codes 55859, 77778, and a C code for palladium sources. We did not use any claims where there was no C code for a brachytherapy source or a claim where there were C codes for more than one source (for example, palladium and iodine sources). Analysis of the claims we used in setting payment rates revealed that the median number of seeds packaged into both codes is 85. We believe that the median costs of these codes reflect the resources required to perform these procedures.

We believe that implementation of these G codes should address the clinical concerns of the commenters. We do not believe these codes will create an incentive to use one type of source rather than another. Additionally, because of the number of seeds packaged we do not believe there will be an incentive to use fewer seeds inappropriately. Furthermore, we believe the number of packaged seeds addresses the concerns about seed variability as we are not aware of facilities that specialize in using more palladium or iodine than are packaged in these codes. Finally, we do not have evidence that implementation of these G codes and their payment rates will create an incentive to treat prostate cancer with more invasive, more costly treatments.

For non-clinical concerns, we think that implementation of the G codes will actually decrease administrative burden as it will now be easier for hospitals to properly code for prostate brachytherapy procedures, and we believe that the methodology we used to develop median costs addresses the concerns about underpayment.

When performing prostate brachytherapy hospitals should use G0256 and G0261 and should not report CPT codes 55859 and 77778. Furthermore hospitals should not report the APCs for iodine and palladium brachytherapy sources. CMS will create edits to prevent billing of these items and services with prostate brachytherapy. However, other services provided during the provision of prostate brachytherapy such as intraoperative ultrasound, dosimetry, etc., are separately payable and should be reported on the claim if performed.

F. Payment for Transitional Pass-Through Drugs and Biologicals for Calendar Year 2003

As discussed in the November 13, 2000 interim final rule (65 FR 67809) and the November 30, 2001 final rule (66 FR 59895), we update the payment rates for pass-through drugs on an annual basis. Therefore, as we have done for prior updates, we proposed to update the APC rates for drugs that are eligible for pass-through payments in 2003 using the most recent version of the Red Book, the July 2002 version in this case. The updated rates effective January 1, 2003 would remain in effect until we implement the next annual

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update in 2004, when we would again update the AWPs for any pass-through drugs based on the latest quarterly version of the Red Book. This retains the update of pass-through drug prices on the same calendar year schedule as the other annual OPPS updates.

As described in our final rule of November 30, 2001 (66 FR 59894), in order to establish the applicable beneficiary copayment amount and the pass-through payment amount, we must determine the cost of the pass-through eligible drug or biological that would have been included in the payment rate for its associated APC had the drug or biological been packaged. We used hospital acquisition costs as a proxy for the amount that would have been packaged, based on data from an external survey of hospital drug costs (see the April 7, 2000 final rule (65 FR 18481)). That survey concluded that—

- For drugs available through only one source drugs, the ratio of acquisition cost to AWP equals 0.68;
- For multisource drugs, the ratio of acquisition cost to AWP equals 0.61;
- For drugs with generic competitors, the ratio is 0.43.

As we stated in our final rule of November 30, 2001 (66 FR 59896), we considered the use of the study-derived ratios of drug costs to AWP to be an interim measure until we could obtain data on hospital costs from claims. We stated that we anticipated having this data to use in setting payment rates for 2003.

As described elsewhere in this preamble, we used 2001 claims data to calculate a median cost per unit of drug for each drug for which we are currently paying separately. We compared the median per unit cost of each drug to the AWP to determine a ratio of acquisition cost to AWP. Using the total units billed for each drug, we then calculated a weighted average for each of the above three categories of drugs. These calculations resulted in the following weighted average ratios:

- For sole-source drugs, the ratio of cost to AWP equals 71.0 percent.
- For multisource drugs, the ratio of cost to AWP equals 68.0 percent.
- For drugs with generic competitors, the ratio of cost to AWP equals 46.0 percent.

We proposed to use these percentages for determining the applicable beneficiary copayment amount and the pass-through payment amount for most drugs eligible for pass-through payment in 2003. However some drugs may fall into two other classes. The first class includes a drug that is new and for which no cost is yet included in an associated APC. For such a drug, because there is no cost for the drug yet included in an associated APC, the pass-through amount will be 95 percent of the AWP and there would be no copayment. The second class includes a drug that is new and is a substitute for only one drug that is recognized in the OPPS through an unpackaged APC. For drugs in this second class, the pass-through amount would be the difference between 95 percent of the AWP for the pass-through drug and the payment rate for the comparable dose of the associated drug's APC. The copayment would be based on the payment rate of its associated APC. We believe that using this methodology will yield a more accurate payment rate.

We have received questions for our definition of multisource drugs. In determining whether a drug is available from multiple sources, we consider repackagers to be among the sources. This is consistent with the findings of the survey cited above which indicated a lower ratio of acquisition cost to AWP from multiple sources including repackagers.

We note that determining that a drug is eligible for a pass-through payment or assigning a status indicator "K" to a drug or biological (indicating that the drugs or biologicals is paid based on a separate APC rate) indicates only the method by which the drug or biological is paid if it is covered by the Medicare program. It does not represent a determination that the drug is covered by the Medicare program. For example, Medicare contractors must determine whether the drug or biological is: (1) Reasonable and necessary to treat the beneficiary's conditions; and (2) excluded from payment because it is usually self-administered by the patient.

We received several comments on this proposal, which are summarized below.

Comment: A commenter stated that the payments for pass-through drugs were too generous compared to those for the devices.

Response: We calculated payments for pass-through drugs and devices in accordance with the statute in sections 1833(t)(6)(D)(i) and (ii) of the Act.

Comment: Numerous commenters were concerned with the time required to incorporate new drugs and biologicals into the APC system. Some commenters indicated that we frequently depart from our own timeframe of 4 to 7 months from the date of submission of an application to the potential effective data for pass-through status. Thus, they urged us to follow one of the following recommendations: Expedite the processing of pass-through applications and the creation of C codes; develop C codes for products pending FDA approval, or permit retroactive dates for new codes to allow for retroactive reimbursement for hospitals. Another commenter suggested that we create a centralized on-line listing of all current pass-through drugs, biologicals, and devices along with all of the new applications under review.

Response: We understand the commenters' concerns, and we would like to clarify the operation of our quarterly deadlines. We establish deadlines for submission of transitional pass-through applications that are 4 months in advance of the next quarterly update to the claims-payment system in order to accommodate time for review and decision and for revisions to the claims-payment systems. Thus an applicant submitting by the deadline can be assured we will consider the application for possible inclusion in the next quarterly update. However, we cannot guarantee that we will be able to make a decision regarding the application within that period of time. Incomplete applications or the need to answer technical questions that arise during review may extend the period of review.

We have instructed hospitals through our fiscal intermediaries that hospitals may bill for new drugs following FDA approval using an unspecified HCPCS code until a permanent HCPCS is established for the drug and/or we have approved pass-through payment for the drug. Payment for a new drug, if determined by the fiscal intermediary to be a covered drug, would be packaged. However inclusion of the drug charges for the procedure will be considered in determining outlier payments and will be used in future rate setting for the procedure and/or the drug once its pass-through status expires. Hospitals should note that we have lowered the threshold for outlier payments for 2003, and this new threshold requirement is described in section IX of the preamble.

We intend to minimize the delays in the review process as much as possible so that we can facilitate access to new products and services for our beneficiaries, which is why we review new pass-through applications on a quarterly basis. We disagree with the commenters who suggested that we allow retroactive reimbursement for hospitals to the date of FDA approval. Moving to such a policy would greatly increase the burden on our and hospitals' computer systems in programming, testing, and implementing updates to the payment system. We do not provide for retroactive changes in reimbursement because this is a prospectively

determined payment system and because retroactive payment rate changes are administratively burdensome and confusing for beneficiaries and providers.

We appreciate the suggestion to create an on-line listing of all transitional pass-through items and applications that are under review, and will consider it for the future.

Comment: Several national trade associations and drug companies were concerned with our proposal to consider drugs and biologicals that were subject to repackaging as multisource drugs. They indicated that repackagers do not manufacture the products; instead, they purchase the products from the manufacturers, package them differently, and then sell the products. The manufacturer of the product continues to be the sole source of the product; therefore, we should regard repackaged products as sole source drugs. Also, they recommended that we utilize the "Orange Book" to determine whether a drug should considered single source, multisource, or generic for OPPS purposes.

Response: We acknowledge that we treat certain drugs that have only one manufacturer as a multisource drug. Our rationale behind regarding a repackaged drug as a multisource product is that, even though there may be only one manufacturer of a repackaged drug, there is more than one party selling the repackaged drug in the market. Therefore, a repackager may charge a different price to hospitals for the same product sold by its manufacturer. Our intention in the payment system is to account for the economic relationship between market prices for repackagers, multisource drugs, and sole source drugs. From our analysis, we judged the drugs sold by repackagers to be similar to drugs available from more than one manufacturer in terms of price differentials and estimated hospital acquisition costs. We also note that if we were to recategorize these drugs as single source, we would have to recalculate the average values for acquisition costs for the three categories of drugs.

Comment: Several commenters suggested that we use the October 2002 Red Book information to set the final pass-through payment rates for 2003. Also, the commenters urged us to update the pass-through payment rates quarterly since there will be significantly fewer pass-through drugs in 2003.

Response: Upon considering the commenters' suggestions in using the October 2002 Red Book to set the pass-through payment rates for drugs and biologicals, we decided to continue using the July 2002 Red Book as we proposed since it is most consistent with our publication schedule. In the future, for all of our final rules that must be published by November, we will continue to use the July edition of the Red Book for that year.

We carefully considered the proposal to update the pass-through payments on a quarterly basis and decided to continue with only annual updates of the rates. From previous experience, we know that doing a quarterly update of the prices for all the pass-through drugs and biologicals would be burdensome on our contractors and disruptive to both our computer systems and pricing software. Although we make other updates on a quarterly basis, we do not include revision of rates in these updates unless an error was made in the calculation of the rate. We see no compelling reason to update the transitional pass-through drug prices under the OPPS more frequently than the other payment rates in the outpatient system.

Comment: Several commenters indicated that in the proposed rule we appeared intent on estimating pass-through expenditures that will exceed the statutory cap and trigger a pro-rata reduction of pass-through payments in 2003.

Response: Frankly, we find it puzzling that commenters would believe we would manipulate the estimates of pass-through spending with the intention of ensuring that a pro-rata reduction would be imposed. Our estimate of transitional pass-through spending indicates that no pro-rata reduction will be necessary in 2003.

Comment: A commenter urged us to develop a process for acknowledgement and payment adjustment when it is determined that the rates published in the Red Book are incorrect.

Response: As stated elsewhere in this final rule, we update payment rates for pass-through drugs and biologicals only on an annual basis using the information published in the July edition of the Red Book. We rely on information supplied by manufacturers to the Red Book to be accurate.

V. Criteria for New Device Categories As Implemented in the November 2, 2001 Interim Final Rule With Comment

The Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999 (BBRA), Public Law 106–113, amended section 1833(t) of the Act to make major changes that affected the new PPS for hospital outpatient services. Section 1833(t)(6) of the Act, which was added by section 201(b) of the BBRA, provided for temporary additional payments, referred to as "transitional pass-through payments," for certain drugs, biologicals, and devices. Section 1833(t)(b) of the Act provided for payment of new medical devices, as well as new drugs and biologicals, in instances in which the item was not being paid as a hospital outpatient service as of December 31, 1996, and when the cost of the item is "not insignificant" in relation to the OPPS payment amount. Section 402 of BIPA, which amends section 1833(t)(6) of the Act, requires us to use categories in determining the eligibility of devices for transitional pass-through payments effective April 1, 2001. Section 1833(t)(6)(B)(ii)(IV) of the Act, as added by section 402(a) of BIPA, requires us to establish a new category for a medical device when—

- The cost of the device is not insignificant in relation to the OPPS payment amount;
- No existing or previously existing device category is appropriate for the device; and
- Payment was not being made for the device as an outpatient hospital service as of December 31, 1996. However, section 1833(t)(6)(B)(iv) of the Act, also added by section 402(a) of BIPA, provides that a medical device shall be treated as meeting the first and third requirements if either—
  - The device is described by one of the initial categories established and in effect or
  - The device is described by one of the additional categories we established and in effect, and—
    - —An application under section 515 of the Federal Food, Drug, and Cosmetic Act has been approved; or
    - —The device has been cleared for market under section 510(k) of the Federal Food, Drug, and Cosmetic Act; or
    - —The device is exempt from the requirements of section 510(k) of the Federal Food, Drug, and Cosmetic Act under section 510(l) or section 510(m) of that Act.

Thus, otherwise covered devices that are described by a currently existing category may be eligible for transitional pass-through payments even if they were paid as part of an outpatient service as of December 31, 1996. At the same time, no categories will be created on the basis of devices that were paid on or before December 31, 1996.

Section 1833(t)(6)(B)(i)(I) of the Act, as amended by BIPA, required us to establish, by April 1, 2001, an initial set of categories based on device by type in such a way that specific devices eligible

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for transitional pass-through payments under sections 1833(t)(A)(ii) and (iv) of the Act as of January 1, 2001 would be included in a category. We developed this initial set of categories in consultation with groups representing hospitals, manufacturers of medical devices, and other affected parties, as required by section 1833(t)(6)(B)(i)(II) of the Act. We issued the list of initial categories on March 22, 2001, in Program Memorandum (PM) No. A–01–41. Subsequently, an additional two categories and clarifications of some of the categories' long descriptors were made. The latest PM that lists all the existing device categories (including three additional categories that became effective July 1, 2002) is Transmittal No. A–02–050, issued June 17, 2002, which can be accessed on our Web site, *http://cms.hhs.gov*.

Section 1833(t)(6)(B)(ii)(III) of the Act, as amended by BIPA, requires us to establish criteria by July 1, 2001 that will be used to create additional categories. Section 1833(t)(6)(B)(ii)(II) of the Act requires that no medical device is described by more than one category. In addition, the criteria must include a test of whether the average cost of devices that would be included in a category is "not insignificant" in relation to the APC payment amount for the associated service.

On November 2, 2001, we set forth in an interim final rule (66 FR 55850) the criteria for establishing new (that is, additional) categories of medical devices eligible for transitional pass-through payments under the OPPS as required by section 1833(t)(6)(B)(ii) of the Act. We received five comments regarding our criteria published in the November 2, 2001 interim final rule with comment period. We summarize and respond to these comments below.

A. Criteria for Eligibility for Pass-Through Payment of a Medical Device

As noted above, in our April 7, 2000 final rule with comment period (65 FR 18480), we defined new or innovative devices using eight criteria, three of which were revised in our August 3, 2000 interim final rule with comment period (65 FR 47673 through 47674). These criteria were set forth in regulations at § 419.43(e)(4). For the most part, these criteria remained applicable when defining a new category for devices. That is, devices to be included in a category must meet all previously established applicable criteria for a device eligible for transitional pass-through payments. The definition of an eligible device, however, needed to change to conform to the requirements of the amended section 1833(t)(6)(B)(ii) of the Act, that is, the requirement to establish additional categories, which we accomplished in our November 2, 2001 interim final rule.

In addition, we clarified our criterion that states that a device must be approved or cleared by the FDA. The approval or clearance criterion applies only if FDA approval or clearance is required for the device as specified at new § 419.66(b)(1). For example, a device that has received an FDA investigational device exemption (IDE) and has been classified as a Category B device by the FDA in accordance with § 405.203 through § 405.207 and § 405.211 through § 405.215 is exempt from this requirement. A device that has received an FDA IDE and is classified by the FDA as a Category B device is eligible for a transitional pass-through payment if all other requirements are met.

B. Criteria for Establishing Additional Device Categories

As described above, in determining the criteria for establishing additional categories, section 1833(t)(6)(B)(ii) of the Act mandates that new categories must be established for devices that were not being paid for as an outpatient hospital service as of December 31, 1996, and for which no category in effect (or previously in effect) is appropriate in such a way that no device is described by more than one category and the average cost of devices to be included in a category is not insignificant in relation to the APC payment amount for the associated service. Based on these requirements, we announced in the November 2, 2001 interim final rule that we will use the following criteria to establish a category of devices:

- *Substantial clinical improvement.* The category describes devices that demonstrate a substantial improvement in medical benefits for Medicare beneficiaries compared to the benefits obtained by devices in previously established (that is, existing or previously existing) categories or other available treatments, as described in regulations at new § 419.66(c)(1).

We stated our belief that this criterion ensures that no existing or previously existing category contains devices that are substantially similar to the devices to be included in the new category. This criterion is consistent with the statutory mandate that no device is described by more than one category.

In addition, we said that this criterion limits the number of new categories, and consequently transitional pass-through payments, to those categories containing devices that offer the prospect of substantial clinical improvement in the care of Medicare beneficiaries. Section 1833(t)(6)(E)(iii) of the Act, requires that, if the Secretary estimates before the beginning of the year that the total estimated amount of pass-through payments would exceed a specified percentage of total program payments (2.5 percent before 2004 and no more than 2 percent thereafter), we must uniformly reduce (prospectively) each pass-through payment in that year by an amount adequate to ensure that the limit is not exceeded.

We established this criterion because it is important for hospitals to receive pass-through payments for devices that offer substantial clinical improvement in the treatment of Medicare beneficiaries to facilitate access by beneficiaries to the advantages of the new technology. Conversely, the need for additional payments for devices that offer little or no clinical improvement over a previously existing device is less apparent. These devices can still be used by hospitals, and hospitals will be paid for them through the appropriate APC payment. To the extent these devices are used, the hospitals' charges for the associated procedures will reflect their use. We will use data on hospital charges to update the APC payment rates as part of the annual update cycle. Thus, the payment process will provide an avenue to reflect appropriate payments for devices that are not substantial improvements.

We are currently evaluating requests for a new category of devices against the following criteria in order to determine if it meets the substantial clinical improvement requirement:

- The device offers a treatment option for a patient population unresponsive to, or ineligible for, currently available treatments.
- The device offers the ability to diagnose a medical condition in a patient population where that medical condition is currently undetectable or offers the ability to diagnose a medical condition earlier in a patient population than allowed by currently available methods. There must also be evidence that use of the device to make a diagnosis affects the management of the patient.
- Use of the device significantly improves clinical outcomes for a patient population as compared to currently available treatments. Some examples of outcomes that are frequently evaluated in studies of medical devices are the following:

—Reduced mortality rate with use of the device.
—Reduced rate of device-related complications.
—Decreased rate of subsequent diagnostic or therapeutic interventions (for example, due to reduced rate of recurrence of the disease process).
—Decreased number of future hospitalizations or physician visits.
—More rapid beneficial resolution of the disease process treated because of the use of the device.
—Decreased pain, bleeding, or other quantifiable symptom.
—Reduced recovery time.

As part of the application process (described in section V.B.1 of this final rule), we require the requesting party to submit evidence that the category of devices meets one or more of these criteria. We noted that the requirements set forth above will be used only for determining whether a device is eligible for a new category under section 1833(t)(6)(B) of the Act, which authorizes transitional pass-through payments for categories of devices. These criteria are not intended for use in making coverage decisions under section 1862(a)(1)(A) of the Act. We noted that adoption of these criteria is consistent with the recommendation of the Medicare Payment Advisory Commission, in its March 2001 Report to Congress, that pass-through payments for specific technologies be made only when a technology is new or substantially improved.

We stated that we determine which devices represent a substantial clinical improvement over existing devices by using a panel of Federal clinical and other experts, supplemented if appropriate by individual consultation with outside experts. These decisions are, in general, based on information submitted by the requester about the clinical benefit of the devices as described in the above criteria, including, where available, evidence from clinical trials or other clinical investigations. A panel of clinical experts from CMS has thus far made all of our decisions on eligibility for an additional device category.

As indicated in the November 2, 2001 interim final rule, we believe that almost all substantial clinical improvements in technology that are appropriately paid for under the transitional pass-through provisions result in measurable improvements in care from the perspective of the beneficiary. Nevertheless, there may be some improvements in the medical technology itself that are so significant that we may wish to recognize them for separate payment (as opposed to packaged payments) even though they do not directly result in substantial clinical improvements. For example, improvements in such factors as the strength of materials, increased battery life, miniaturization, might so improve convenience, durability, ease of operation, etc., that such an improvement in medical technology might be considered as a separate factor from "substantial clinical improvement" in beneficiary care.

We invited public comment on this issue and particularly asked for examples of medical technologies for which pass-through payments might be appropriate even though they would not also pass a test based on substantial improvement in beneficiary outcomes. Although we received a number of comments on this criterion, only one attempted to provide an example of new medical technology that might not also pass a test based on substantial improvement in beneficiary outcomes. This example is described in our summary of comments and responses below.

As we noted in the November 2, 2001 interim final rule, we will continue to evaluate these criteria as we gain experience in applying them, and we will consider revisions and refinements to them over time as appropriate.

Comment: Most commenters expressed concerns regarding our criterion that new device categories demonstrate substantial clinical improvement to be eligible for pass-through payment. Device manufacturers and representatives felt that evidence of clinical outcomes should not be part of the device category evaluation and eligibility process. Some maintained that we already have standards for determining clinical benefit as part of the Medicare coverage process and we should not have such requirements in payment determination. One commenter claimed that we would be unable to determine substantial clinical improvement for pass-through categories separately from national coverage decisions, since we will be reviewing the same types of evidence for both processes. This commenter held that a payment policy decision using clinical improvement criteria is a de facto coverage decision that our Coverage Analysis Group and carriers would feel compelled to go along with.

One device manufacturer was concerned that any employment of inappropriate evidentiary standards in evaluating improvement in diagnosis or treatment when applying this criterion could be a barrier to pass-through payment for some new technologies.

Yet, some manufacturers agree that pass-through payment should be limited to technologies that represent significant advancements in providing beneficial new therapy options. A number of commenters felt we should take into account improvements in devices' technology per se, for example, material, power source, size, etc., and not limit our criterion of improvement to clinical improvement. Some commenters held that only technological aspects of new medical devices should be analyzed to determine whether there are advancements over existing pass-through devices to determine whether a device should be considered for an additional category. A manufacturer stated that if we feel that a criterion based on clinical benefits is needed, we should employ a "substantially different" criterion to determine eligibility for a new category. Under this suggestion, any difference in therapeutic effect, indication, surgical approach, safety or side effects, mechanics or function that offers a "new beneficial therapeutic alternative" would be considered "substantial."

One manufacturer also stated that a "substantial clinical improvement" criterion may be unnecessary, because we already have a criterion that addresses costs that are "not insignificant."

Response: Although the information required for pass-through category applications is similar for coverage determinations, the information is used differently. The purpose of the "reasonable and necessary" condition in evaluating coverage is different than the OPPS purpose of determining appropriate pass-through payment for new technology items. We are not attempting to determine coverage under the OPPS, only whether a payment under the pass-through mechanism is warranted. We adopted the "substantial clinical improvement" criterion to help us identify those devices that are not adequately described by any previously established device categories.

Those who argue that we should employ a "substantially different" or a "clinical benefit" criterion rather than the "substantial clinical improvement" do not answer the question as to how different a new technology should be to be considered eligible for a new device category. It seems to us that many of the differences listed in the suggestion to base a criterion on "substantial differences" noted above may not reflect qualitatively meaningful differences and such devices could be adequately described by the existing or previously existing categories. If a new device technology were adequately described by a category of devices in terms of its clinical application and benefits, then an additional category would not seem

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warranted. Still, as we have stated in the November 2, 2001 interim final rule and again above, there may be some improvements in the medical technology itself that are so significant that we may wish to recognize them for separate payment even though they do not directly result in substantial clinical improvements. We will continue to allow the flexibility in our evaluation process to consider such items for new categories.

We believe it is harder to make a determination of substantial difference than it is to make a determination as to substantial clinical benefit. Furthermore, we believe that, in general, transitional pass through payments should be made only for technologies that benefit beneficiaries beyond the technologies currently available."

We believe it is harder to make a determination of substantial difference than it is to make a determination as to substantial clinical benefit. Furthermore, we believe that, in general, transitional pass-through payments should be made only for technologies that benefit beneficiaries beyond the technologies currently available.

The notion that a "substantial clinical improvement" criterion may be unnecessary, because we already have a criterion that addresses "not insignificant cost," is misplaced. The cost of the new technology may or may not directly address a nominated device's clinical benefits. Payment for a costly device may be related to a number of factors, such as Medicare payment policy for a technology or the cost of raw materials or manufacturing process, irrespective of substantial clinical improvement. We established the clinical improvement criterion in addition to the cost significance criterion mandated under statute because one cannot accurately infer that a high relative cost is indicative that a device cannot be described by an existing or previous category of devices. Nor can we automatically infer that a substantially clinically improved device necessarily bears significantly higher cost than what we are currently paying for pass-through devices and procedural payments through the APC payment rates. Therefore, both criteria are needed.

Comment: In the November 2, 2001 interim final rule, we invited public comment on the issue of substantial improvement, saying we would be interested in examples of medical technologies for which pass-through payments might be appropriate even though they would not pass a test based on substantial improvement in clinical outcomes. Several commenters pointed to differences in brachytherapy devices as examples. These commenters said that differences in devices should be reflected by establishing separate device categories by: different chemical substances/radioisotope, therapeutic radiation activity levels, implantation arrays of brachytherapy devices, and mechanisms of injecting brachytherapy devices that improve safety and function.

Response: We have reviewed many applications for brachytherapy devices and believe that there is a congruence between new technologies that might be eligible for transitional pass-through payments in the absence of producing substantial clinical benefit and new technologies that do produce substantial clinical benefit.

Comment: Commenters requested that we clarify the process that is employed by Federal and external experts to evaluate substantial clinical improvement on the part of nominated devices. One commenter expressed concern that a Federal panel of experts may slow down decision-making and suggested a flexible process in reviewing category applications. The commenter suggested that we rely on our internal clinical staff to make decisions not requiring outside assistance. The commenter also suggested that our review process should be open and allow the manufacturer the opportunity to present information to the panel. The list of panelists, agendas, proceedings and decisions should be made public.

Response: Our panel consists of CMS clinical experts. We consult with outside experts as appropriate. We believe that this process results in making appropriate, timely decisions while allowing for maximum flexibility. Public meetings would inevitably slow the process. We give ample opportunity for manufacturers to provide information, and we frequently meet with manufacturers to discuss their applications.

Comment: One commenter felt that the language of the statute does not support our criterion that devices show evidence of substantial clinical improvement in order to be considered for an additional category. The commenter stated that the statutory standard that no medical device be described by more than one category does not support the substantial clinical improvement criterion.

Response: The statute explicitly requires us to establish criteria that will be used for creation of additional categories. (Section 1833(t)(6)(B)(ii)(I) of the Act) This statutory requirement permits the criteria that we have established, including demonstration of substantial clinical improvement.

We are continuing to review the issue of technological change that is not associated with substantial clinical benefit to beneficiaries. We will continue to review applications for such devices on a case by case basis and work with applicants to understand exactly what technological changes were made to a device that would make the device eligible for transitional pass through payments. We solicit further examples of such devices so that, in the future, we may establish a more definite criterion for when such changes make a device eligible for transitional pass through payments.

Comment: Associations representing manufacturers stated that our assertion in the preamble of the November 2, 2001 interim final rule that says MedPAC's recommendation that pass-through payments for specific technologies be made only when a technology is new or substantially improved is a misinterpretation. The commenters asserted that MedPAC considers the concepts of improvements in devices themselves and substantial improvement to be separate, and that either of the two should be required for a criterion related to device improvement for pass-through eligibility.

Response: While we continue to believe that, in general, new technologies without a demonstrated substantial clinical benefit to beneficiaries should not receive transitional pass-through payments, we do review nominated devices for technological changes that are not associated with substantial clinical benefit to beneficiaries.

Comment: An association representing device manufacturers stated that our substantial clinical improvement criterion would significantly increase the time between FDA approval to market the device and recognition of the device for pass-through payment. The commenter claimed that this is counter to an objective of the pass-through payment mechanism as a means to promote rapid payment in the OPPS for new technology. This commenter, therefore, recommended replacing the criterion to demonstrate substantial clinical improvement with a requirement to demonstrate "potential improvement."

Similarly, another manufacturers' association asserted that clinical outcomes information should not be required for eligibility for a new pass-through category. This commenter suggested that our rules should request information that is appropriate and

relevant for the product and related procedures, which should include information other than published clinical trials.

Response: We are making every effort to minimize the time lag between FDA approval and establishment of a device category. We believe that we have succeeded in making timely decisions in this regard.

We will consider other information in addition to clinical outcomes that is available when clinical trial data are not yet available.

We do not know how one can demonstrate "potential" clinical improvement. "Potential" refers to the anticipated or possible capability, belief, or expectation for clinical improvement, without the evidentiary demonstration yet.

We do not believe potential improvement is an appropriate criterion. First, it would be difficult to prove; second, we would be in the position of potentially making extra payments for technologies that actually harmed beneficiaries. Thus using "potential" clinical improvement would assure that all new devices would meet such a criteria if the manufacturer asserted that the device in question offers a "potential" clinical improvement."

Comment: Some commenters expressed concern with our rule that devices that are described by an existing category are not eligible for new categories. Some call for flexibility in applying this criterion, claiming that some of our category descriptors are too broad and confusing. One manufacturer was particularly concerned that newer technology pacemakers, internal cardioverter-defibrillators (ICDs), and pacemaker and ICD leads would be precluded from achieving new categories because they could be described by widely defined existing categories. The commenter stated that we should revise definitions of existing categories whenever necessary in order to accommodate the creation of new categories. Revising category descriptions to make them less broadly worded was one such example provided, including categories related to pacemakers, ICDs, and pacemaker and ICD leads.

Some commenters felt that new categories would need to be created in order to track cost of newer devices, even if they are described by existing categories. These commenters asserted that device costs eventually must be placed into APCs that appropriately reflect costs for future payment. Some commenters claimed that investigational devices that attained pass-through status have low procedural volumes and therefore they are underrepresented in the cost data.

Response: We believe that broadly defined categories are appropriate. Such categories are easier for coders to understand and allow devices to immediately receive transitional pass-through payments upon being marketed (instead of going through an application process). We have applied this criterion appropriately. There are devices that have been deemed eligible for a new category because the clinical applications are substantially different than devices of existing categories.

Some category descriptions have been modified when it has been brought to our attention that the descriptor is unclear. We first revised the descriptors of device categories in Program Memorandum A–01–73, effective July 1, 2001, in order to clarify the devices covered by categories. However, we do not intend to revise descriptors solely to allow the creation of new categories. If a device or class of devices is described by the categories we initially created, we will apply the criteria we implemented to determine whether an additional category is warranted. If we determine that an additional category is needed to adequately describe and pay for new devices, we will create a category. If in the course of that determination, we find that clarification of an existing or previously existing category is needed so that only one category describes the device, as required by statute, then we will modify the description of the existing or previously existing category or categories, in order to achieve that clarification.

We are maintaining our criteria to establish a new category of devices for pass-through payment.

Cost. We determine that the estimated cost to hospitals of the devices in a new category (including any candidate devices and the other devices that we believe will be included in the category) is "not insignificant" relative to the payment rate for the applicable procedures. The estimated cost of devices in a category is considered "not insignificant" if it meets the following criteria found in regulations at new § 419.66(d):

- The estimated average reasonable cost of devices in the category exceeds 25 percent of the applicable APC payment amount for the service associated with the category of devices.
- The estimated average reasonable cost of devices in the category exceeds the cost of the device-related portion of the APC payment amount for the service associated with the category of devices by at least 25 percent.
- The difference between the estimated average reasonable cost of the devices in the category and the portion of the APC payment amount determined to be associated with the device in the associated APC exceeds 10 percent of the total APC payment.

Of these three cost criteria, the latter two remain unchanged from the existing thresholds for individual devices (however, as discussed below, their effective date was revised). The first criterion, however, represents a change in the percentage threshold.

In the April 7, 2000 final rule, we provided that a device's expected reasonable cost must exceed 25 percent of the applicable APC payment for the associated service as the criterion for determining when the cost of a specific device is "not insignificant" in relation to the APC payment (65 FR 18480). In the August 3, 2000 interim final rule, we lowered the threshold to 10 percent because we believed the 25 percent limit was too restrictive based on the brand specific approach at the time (65 FR 47673; § 419.43(e)(1)(iv)(C)). However, given our payment experience in 2001 using the 10 percent threshold, including our information on the estimated amount of pass-through payments in CY 2002, we determined a higher threshold was warranted. We believed that setting a higher cost threshold ensures that new categories are created only in those instances where they are most valuable to beneficiaries and hospitals, given the overall limits on pass-through payments. That is, pass-through payments will be targeted only to those devices where cost considerations might be most likely to interfere with patient access.

We found that once we lowered the threshold to 10 percent, a very small minority (less than 10 percent) of devices that met all other criteria for the pass-through payment was rejected on the basis of this criterion. Partly as a result, the list of devices qualified for pass-through payments increased to well over 1,000 devices by the end of 2000. Although the extensive number of qualified devices allowed hospitals to receive additional payment for many devices, we estimated that the overall pass-through payment amount for calendar year 2002 would exceed the 2.5 percent cap. Therefore, for that year, a substantial reduction in the amount of each pass-through payment, as required by section 1833(t)(6)(E)(iii) of the Act, was established. Thus, allowing a large number of marginally costly devices to qualify for the pass-through payment

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would reduce the amount of additional payment a hospital would receive for any one device. We believe raising the threshold for this criterion benefits hospitals by focusing the pass-through payments on those devices that represent a substantial loss to the hospital. We believe this change also preserves beneficiary access to especially expensive devices.

In addition, once a category is established, devices included in the category are eligible for pass-through payments regardless of the cost of the devices. Therefore, we determined that it is reasonable to set a higher threshold than 10 percent to establish a new category. While the cost of most devices described by a category may equal or exceed the threshold we use in establishing a category, the cost of individual devices could easily fall below the threshold. Therefore, we believe that it is reasonable to use a higher threshold in establishing a category than in qualifying individual devices.

Concerning the latter two criteria for determining that the estimated cost of a category of devices is not insignificant, we intended to apply these criteria to devices for which a pass-through payment is first made on or after January 1, 2003, as we provided in the August 3, 2000 interim final rule (65 FR 47673). We stated that the delay would allow us sufficient time to gather and analyze data needed to determine the current portion of the APC payment associated with the devices.

Based on the outpatient claims data we have been using for analysis, we have been able, in many cases, to use these criteria as of the November 2, 2001 interim final rule. Although the 1996 data did not provide a level of information that allowed us to determine the portion of the APC payment that was related to the device (except in a very few cases such as pacemakers), the later data have generally provided this level of detail. Therefore we applied the second and third cost criteria for the purpose of determining eligibility of proposed new categories, as described in regulations at § 419.66(d)(2) and § 419.66(d)(3), as soon after the implementation of the November 2, 2001 interim final rule as we had data to do so rather than on January 1, 2003. Although in some instances the lack of specific data prevented the application of these criteria, we believed that should not delay our use of these criteria in those situations in which the data have been available.

In order to implement these second and third criteria for the purpose of creating new device categories, it is necessary to obtain the cost of the device-related portion of the APC payment amount. For evaluations of device category applications in 2002, we used the device-offset amounts published in our March 1, 2002 final rule (67 FR 9557 through 9558), which are used to calculate the subtractions to device pass-through payments. For 2003, we will use the device-offset amounts found in Table 11 in this rule as the device-related portion of the APC payment needed for cost criteria 2 and 3. The device-offset amounts represent the device costs that have been folded into the respective APC payment rates. In those cases where an application is received in which the service-related HCPCS codes for the device is mapped to no APC that has a device offset amount, we apply only the first cost criterion.

Comment: Some commenters wrote that while we need to limit pass-through payments for new categories to those devices that are clearly underpaid relative to the APC rates, our "not insignificant" cost tests set the bar too high. Some held that this is particularly the case for APCs with high relative weights and consequent payments, in which our 25 percent minimum percentage of the APC as well as the device offset represent a significant cost to the hospital in absolute terms. Commenters proposed alternate percentage thresholds with specific dollar caps (for example, 20 percent of the APC payment or $1,000, whichever is less).

Response: In the cases of APCs with high relative weights and payment rates, such payments already encompass much of the costs of devices. The thresholds in dollar terms in those cases should be set higher to test for cost significance. We have heard from many commenters to our August 9, 2002 proposed rule that many device costs consist of a large percentage of the APC cost. The ratio method (for example, 25 percent) therefore equitably accounts for APC payment differences for devices.

We do not see any compelling reason to adopt the proposed alternate percentages of the APC amount as the threshold of using as an alternative to our current cost significance threshold of 25 percent for device portions related to any respective APC. Moreover, the initial pass-through categories were based on devices that achieved pass-through status with a lower 10 percent threshold.

Comment: Another commenter claimed that the statutory language demonstrates the congressional intent that only the cost of the devices in a category be compared to the applicable APC payment. Therefore, only the first of our three prongs to test cost significance of a new device should be used. This commenter claimed that section 1833(t)(6) of the Act states that we shall provide pass-through payments only for categories of devices when "the average cost of the category of devices is not insignificant in relation to the OPD fee schedule amount * * * ." The commenter further advocated that our criteria be amended to reflect that a proposed category of devices be required to meet any one of the three prongs, to give some weight to the potential benefits of the second and third prongs.

Response: The statute requires that the average cost of a new device category is not insignificant in relation to the OPD fee schedule amount payable for the service or group of services involved. The statute further requires the Secretary to establish criteria for creating additional categories, including criteria for cost significance. Beyond those requirements, the statute allows the Secretary the discretion to determine how to apply the cost significant criterion.

In developing the specific criteria for meeting the statutory cost significance requirement, we established thresholds which we believe ensure that new categories are created where they are most valuable to beneficiaries and hospitals, given the overall limits on pass-through payments. Our goal is to target pass-through payments at those devices where cost considerations might be most likely to interfere with patient access.

To properly target the pass-through payments at devices that could represent a substantial loss to the hospital, it is important to both assess the incremental cost of performing the procedure using the new device as well as to compare the cost of the new device against the costs of existing devices already packaged into the APC payment for the procedure.

The first prong of our three prong criterion tests only the relationship of the new device to the cost of the entire procedure whereas the second and third prongs test for the relationship to device costs already incorporated into the payment rate for the procedure.

Comment: A hospital organization supported our two major criteria for establishing an additional device category for pass-through payment, that is, that a category of devices must demonstrate substantial clinical improvement and have costs that are "not insignificant" in relation to the APC payment. In particular, the organization supported our decision to raise the threshold that device costs for a new category must exceed 25 percent of the related APC payment, as well as our re-institution of the two additional prongs of the not-insignificant cost test. However, the commenter noted that we had previously delayed the implementation of these latter two prongs of the "not insignificant" cost criterion until January 1, 2003, so that we could ensure reliable and accurate data to make the cost estimates. The organization would support the reinstitution of these cost prongs that establish that costs are not insignificant only when CMS has sufficiently accurate and reliable data to make such estimates. The commenter also believes that the data and methodology should be made available to the public for review.

This organization also felt that the (then) current number of initial categories is appropriate. It urged us to make application information regarding any proposed new categories public for comment before final creation of a new category.

Response: Based on the outpatient claims data we have been using for analysis, we have been able, in many cases, to use the second and third cost criteria since the November 2, 2001 interim final rule became effective. Although the 1996 data did not provide a level of information that allowed us to determine the portion of the APC payment that was related to the device (except in a very few cases such as pacemakers), the later data we have used has generally provided this level of detail. Therefore, we applied the second and third cost criteria. As noted earlier, for 2002, we have used the device offsets we calculated for subtracting the cost of existing devices in APCs as the portion of the APC payment related to the device. We feel the offsets have been appropriate as this portion of the APC payment, and we will use them for 2003 as well. We therefore feel this commenter's concerns have been addressed.

We will continue to use the three prongs of the not insignificant cost test as published in the November 2, 2001 interim final rule.

1. Application Process for Creation of a New Device Category

Device manufacturers, hospitals, or other interested parties may apply for a new device category for transitional pass-through payments. Details regarding the informational requirements, deadlines for quarterly review, and other aspects of the application process are available on our Web site, *http://cms.hhs.gov.*

We will accept applications at any time. However, we will establish new categories only at the beginning of a calendar quarter, in deference to our computer systems needs and those of our contractors and hospitals. We must receive applications in sufficient time before the beginning of the calendar quarter in which a category would be established to allow for decision-making and programming. For now, we will require that applications be received at least 4 months before the beginning of the quarter. Moreover, we have found, that, due to the complexity of the information and review process for additional categories, we cannot always complete our review within that time frame. Review of applications involving devices with new technologies often involves requesting additional information from the applicants, as well as consultation with experts in certain clinical specialties (usually here at CMS) or with other clinical personnel at CMS with expertise in Medicare coverage issues, as needed (for example, the hearing aid issue).

We may change the details of this application process in the future to reflect experience in evaluating applications and programmatic needs. If we revise these instructions, we will submit the revisions to the Office of Management and Budget under the Paperwork Reduction Act. We will also post the revisions on our Web site.

Comment: One commenter recommended that we post draft new categories and any draft changes to existing categories to our Web site for public review and comment before final publication, as a collaborative, informal process to be accomplished within the 4-month quarterly application evaluation and update time frame.

Response: Such process could not be accomplished within the 4-month time frame. We note that the greater part of the four month period is consumed in systems changes, not review of the application, so little time is available for further information. Thus, further consultation would result in longer timeframes for action. We have listened and met with many parties concerning recommendations for additional categories and heard their concerns related to our existing and new categories and will continue to do so. However, we believe that the review, evaluation, and decision process and publication process for new category applications to meet the closest feasible quarterly updates is already compact. However, we will continue to consider informal comments or feedback from hospitals, manufacturers, and other parties regarding our decisions.

Comment: An association of manufacturers of brachytherapy sources and other brachytherapy devices recommended that we establish several specific new categories.

Response: We have established a uniform method for evaluating applications for new categories, based on the application information published on our Web site. We evaluate the necessity of new categories based on the specific information we receive, such as clinical differences between items nominated for the new categories and the existing or previously existing categories. We therefore are not able to react to the specific categories recommended through public comments by this commenter without complete applications on the subject brachytherapy sources.

We are making no change to our application process at this time.

2. Announcing a New Device Category

When we determine a new category is warranted, we issue a Program Memorandum specifying a new Healthcare Common Procedure Coding System (HCPCS, formerly known as HCFA Common Procedure Coding System) code and short and long descriptors for the category. We may also include additional clarifying or definitional information to help distinguish the new category from other existing or previously existing categories. It may be necessary to redefine, or make other changes to, existing or previously existing categories to accommodate a new category and ensure that no medical device is described by more than one category, though we attempt to keep these changes to a minimum. We will post these Program Memoranda on our Web site on a quarterly basis. We may find it necessary occasionally to correct or amend the list of (and clarifying information associated with) pass-through device categories. We do not expect this step will be needed often, but if it is necessary, we will issue any changes in a Program Memorandum.

VI. Wage-Index Changes for Calendar Year 2003

Section 1833(t)(2)(D) of the Act requires that we determine a wage adjustment factor to adjust for geographic wage differences, in a budget-neutral manner, the portion of the OPPS payment rate and copayment amount that is attributable to labor and labor-related costs.

We used the proposed Federal fiscal year (FY) 2003 hospital inpatient PPS

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wage index to make wage adjustments in determining the proposed payment rates set forth in the proposed rule. We also proposed to use the final FY 2003 hospital inpatient wage index to calculate the final CY 2003 payment rates and coinsurance amounts for OPPS. We used the final Federal FY 2003 hospital inpatient PPS wage index to make wage adjustments in determining the final payment rates set forth in this final rule with comment. The final FY 2003 hospital inpatient wage index published in the August 1, 2002 **Federal Register** (67 FR 39858) is reprinted in this final rule with comment as Addendum H—Wage Index for Urban Areas; Addendum I—Wage Index for Rural Areas; and Addendum J— Wage Index for Hospitals That Are Reclassified. We use the final FY 2003 hospital inpatient wage index to calculate the payment rates and coinsurance amounts published in this final rule with comment to implement the OPPS for CY 2003. We note, however, that from time to time, there are mid-year corrections to these wage indices and that our contractors will adopt and implement the mid-year charges for OPPS in the same manner that they made mid-year changes for inpatient hospital prospective payment.

Comment: A commenter asked for an explanation of the rationale behind applying the area wage index to the device component of an APC. Also, another commenter urged us to clarify that APCs for drugs and biologicals would not be subject to geographic wage adjustment since the APC payment rates primarily reflect drug acquisition costs, not labor costs.

Response: Our rationale for applying the area wage index to the device component of an APC is that once a device cost is packaged into a procedure APC, we do not differentiate between which costs in the APC should or should not have the area wage index applied. We believe that it would be complicated and prone to error to segment out a device component of the APC and determine the appropriate portion of the APC payment amount that consists of device cost only. To address the second issue, we would like to clarify that we do not apply the area wage index to payment rates for drugs and biologicals that are assigned to the status indicator G or K.

VII. Copayment for Calendar Year 2003

Section 1833(t)(8)(C)(ii) of the Act accelerates the reduction of beneficiary copayment amounts, providing that, for services furnished on or after April 1, 2001, and before January 1, 2002, the national unadjusted coinsurance for an APC cannot exceed 57 percent of the APC payment rate. The statute provides that the national unadjusted coinsurance for an APC cannot exceed 55 percent in 2002 and 2003. The statute provides for further reductions in future years so that the national unadjusted coinsurance for an APC cannot exceed 55 percent of the APC payment rate in 2002 and 2003, 50 percent in 2004, 45 percent in 2005, and 40 percent in 2006 and thereafter.

For 2003, we determined copayment amounts for new and revised APCs using the same methodology that we implemented for 2002 (see the November 30, 2001 final at 66 FR 59888). See Addendum B for national unadjusted copayments for 2003. Our regulations at § 419.41 conform to this provision of the Act.

VIII. Conversion Factor Update for Calendar Year 2003

Section 1833(t)(3)(C)(ii) of the Act requires us to update the conversion factor used to determine payment rates under the OPPS on an annual basis.

Section 1833(t)(3)(C)(iv) of the Act provides that for 2003, the update is equal to the hospital inpatient market basket percentage increase applicable to hospital discharges under section 1886(b)(3)(B)(iii) of the Act.

The most recent forecast of the hospital market basket increase for FY 2003 is 3.5 percent. To set the proposed OPPS conversion factor for 2003, we increased the 2002 conversion factor of $50.904 (the figure from the March 1, 2002 final rule (67 FR 9556)) by 3.5 percent.

In accordance with section 1833(t)(9)(B) of the Act, we further adjusted the conversion factor for 2003 to ensure that the revisions we made to update the wage index are made on a budget-neutral basis. We calculated the proposed budget-neutrality factor of .98778 for wage-index changes by comparing total payments from our simulation model using the proposed FY 2003 hospital inpatient PPS wage-index values to those payments using the current (FY 2002) wage-index values.

The increase factor of 3.5 percent for 2003 and the required wage-index budget-neutrality adjustment of .98715 resulted in a proposed conversion factor for 2003 of 52.009.

In determining the proposed conversion factor of 52.009, we projected 2.5 percent pass-through payments based on our preliminary estimates of pass-through payments for CY 2003. As described in the section IV discussion of the pro-rata provisions, our final estimate of pass-through payments in CY 2003 is 2.3 percent of the total program payments for covered OPD services. Therefore, we have increased the final conversion factor to reflect the projected change in pass-through spending from 2.5 percent to 2.3 percent. After applying this adjustment, the 3.5 percent update factor and the final budget-neutrality adjustment of .98778 to account for changes due to the final FY 2003 hospital inpatient wage-index values, we establish the final conversion factor for 2003 at $52.151 (or 52.152).

We received several comments concerning the conversion factor update for 2003, which are summarized below along with our responses.

Comment: Several commenters contended that CMS imposed excessive pro-rata reductions in 2002, which exacerbated the inadequacy of Medicare payments and urged CMS to use its statutory authority under section 1833(t)(3)(C)(iii) to adjust the 2003 conversion factor for the unexpectedly low pass-through payments made in 2002.

Response: The commenters' estimates are based on 2001 claims. We do not know yet whether there will be excessive pro-rata reductions in 2002 because at the time of this rule, we do not have more than first-quarter 2002 claims data available. Therefore, it would not be appropriate to make such an adjustment. Furthermore, we do not believe that the statute permits us to make retroactive adjustments.

Comment: One commenter stated that the statute requires the conversion factor to be updated by the full increase in the hospital inpatient market basket of 3.5 percent, but the application of a budget-neutrality factor of .987156 results in an update factor of only 2.17 percent. Another commenter indicated the belief that the amount of reduction from the 3.5 percent market basket update is excessive and beyond what is required to achieve statutory goals. The commenter recommended that the 2003 conversion factor be increased.

Response: Statute requires us to ensure that a conversion factor for covered OPD services in subsequent years is an amount equal to the conversion factor applicable to the previous year before any increases due to the market-basket increase. In order to ensure that we maintain budget neutrality (except for the market-basket increase), we must make an adjustment to account for changes in the wage index. To do so, we calculate the total payments for 2002, using the 2002 wage index and weights, and compare that result to total payments calculated by applying the new 2003 wage index to the 2002 APC weights. For 2003, that comparison resulted in the .969 adjustment.

IX. Outlier Policy for Calendar Year 2003

For OPPS services furnished between August 1, 2000, and April 1, 2002, we calculated outlier payments in the aggregate for all OPPS services that appear on a bill in accordance with section 1833(t)(5)(D) of the Act. In the November 30, 2001 final rule (66 FR 59856, 59888), we specified that beginning with 2002, we will calculate outlier payments based on each individual OPPS service. We revised the aggregate method that we had used to calculate outlier payments and began to determine outliers on a service-by-service basis.

As explained in the April 7, 2000 final rule (65 FR 18498), we set a target for outlier payments at 2.0 percent of total payments. For purposes of simulating payments to calculate outlier thresholds, we proposed to set the target for outlier payments at 2.0 percent. The target was 2.0 percent for CY 2001 and 1.5 percent for 2002. For 2002, the outlier threshold is met when costs of furnishing a service or procedure exceed 3.5 times the APC payment amount, and the current outlier payment percentage is 50 percent of the amount of costs in excess of the threshold. Based on our simulations for 2003, we proposed to set the threshold for 2003 at 2.75 times the APC payment amounts, and the proposed 2003 payment percentage applicable to costs over the threshold at 50 percent.

In this final rule we are setting the target amount for outlier payments at 2 percent of total payments. Based on revised simulations performed for the final rule, in order to pay outlier payments at the target amount, we are adopting the proposed outlier threshold of 2.75 but decreasing the outlier payment percentage to 45 percent. Simulations using the final APC rates and projecting outlier payments for 2003 using a different set of claims than we used for the proposed rule (claims for the period April 1, 2001 through March 31, 2002 instead of claims for calendar year 2001) resulted in outlier payments that were in excess of the 2 percent outlier payment target. In order to meet, but not exceed, the target we found it necessary to either increase the proposed outlier threshold of 2.75 or reduce the proposed outlier payment percentage of 50 percent. Because we wanted to make it easier for more for high cost services to qualify for outlier payments, we chose to adopt the proposed outlier threshold but reduce the outlier payment percentage to 45 percent. For 2003, the outlier threshold will be met when costs of furnishing a service or procedure exceed 2.75 times the APC payment amount, and the outlier payment percent will be 45 percent of the amount of costs in excess of the threshold.

We received a number of comments concerning our proposed threshold and percentages for outlier payments, which are summarized below along with our responses. We also received comments concerning the changes that we proposed and finalized in 2002 with respect to the calculation of outliers on a service-by-service basis. Because we have not proposed any changes to the current policy, we do not summarize those comments in this preamble.

Comment: A number of commenters commended CMS on lowering the outlier threshold, but they urged CMS to reduce the threshold even further. The commenters also said that the outlier payment percentage of 50 percent of costs in excess of the outlier threshold was not sufficient to offset the losses hospitals incur in high-cost cases. Some of these commenters urged CMS to adopt the same marginal payment rate of 80 percent that is used for calculating outliers under the inpatient PPS.

Response: Under the OPPS, CMS must address two needs: the need to balance payment for high-cost cases with the need to ensure that appropriate payments are made for basic services for the average patient population. By setting our outlier target of 2 percent, we believe that we have struck the right balance to accomplish these goals.

Comment: According to one commenter, new technologies and drugs are expanding too rapidly for CMS to appropriately account for the costs in the APCs, which is a particular concern at larger hospitals that provide a wide scope of services and access to new technologies and drugs. The commenter said that outliers can help defray the costs of new technologies until adequately reflected in the APC payments and urged CMS to consider expanding the outlier target from 2 percent to 2.5 percent. Another commenter contended that the transition of expiring pass-through items into APCs will result in dramatic payment reductions and urged CMS to reduce the outlier threshold to 2.5 times the APC payment amount for 2003 and increase the outlier target as close as possible to the statutory maximum of 2.5 percent of total payments.

Response: As described elsewhere in this final rule, the recalibration of weights based on newer data and the additional steps that we have taken to limit the payment reductions should decrease the need for outliers. Also, the pass-through provisions for new drugs and devices and our payment mechanism for new technology procedures provide hospitals with an additional mechanism to defray costs for emerging technologies.

Comment: A number of commenters said that CMS does not provide sufficient data to support how outlier payments and thresholds are determined and to ensure that outlier payments are being made in the range of 2 percent to 2.5 percent. Additional outlier data that the commenters requested include information such as the actual outlays as compared to forecasted outlays 2001, estimated outlays for 2002, the historical outlier percentage of total OPPS payments, and information on the types of cases that are qualifying for outlier payments. The commenters wanted CMS to provide supporting information in the final rule, just as it does for the inpatient PPS.

Response: We agree with the commenters that we should provide this data. However, due to the time constraints in producing this final rule, we are unable to add this information to this preamble. Nonetheless, we will post this information to our Web site shortly after publication of the rule. We will notify the public through the CMS listserv when the information is available. To subscribe to this listserv, please go to the following Web site: *www.cms.hhs.gov/medlearn/listserv*. Follow the directions for subscribing to the OPPS listserv to get the most up-to-date information on OPPS directly from CMS.

Comment: One commenter expressed concern that CMS has made significant changes to the outlier target and eligibility thresholds in 2002 and 2003, in opposite directions, without sufficiently supporting the changes with experiential data. The commenter maintained that, in aggregate, outlier payments as a percentage of total payments should remain relatively predictable and, therefore, questions whether the experience in 2001 and 2002 would support the significant swings in funding and thresholds.

Response: It is too early for us to tell what the 2002 experience has been like in order to compare it to the 2001 experience. Nevertheless, as indicated in the previous response, we will also notify the public and share the 2001 data on our Web site.

Comment: One commenter urged CMS to provide clarification regarding the rationale to decrease the cost threshold that permits more items to qualify for outlier payments, rather than

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to increase the payment percentage from its current level of 50 percent, which would provide more payments for high-cost cases.

Response: We apply an iterative process in which we try different combinations of thresholds and payment percentages until an appropriate combination results in outlier payments under our simulation that is equal to the target percentage of total OPPS payments. While some fluctuation is expected each year due to the use of newer and better data and policy changes, we attempt both to strike a balance and to prevent (to the extent possible) large changes in the outlier payments to hospitals. A significant increase in the threshold would limit the number of services and hospitals that qualify for outlier services.

Comment: One commenter expressed concern that without correcting for the significant reductions proposed for a number of high-cost APCs, those services may unnecessarily qualify for outlier payments because the costs that go into the outlier calculation are calculated using a hospital's overall cost-to-charge ratio (CCR), which may be higher than the departmental CCRs used to determine costs for payment-rate calculations. The commenter contends that, if this occurs, it will result in outlier payments that are higher than anticipated, which could unduly raise thresholds in the future and affect the integrity of the outlier policy.

Response: As described elsewhere in this rule, we believe that the adjustments we have made to many APC rates for this final rule will address the commenter's concerns about services unnecessarily qualifying for outlier payments.

X. Other Policy Decisions and Changes

A. Hospital Coding for Evaluation and Management (E/M) Services

Background

Currently, facilities code clinic and emergency department visits using the same current procedural terminology (CPT) codes as physicians. For both clinic and emergency department visits, there are five levels of care. While there is only one set of codes for emergency visits, clinic visits are differentiated by new patient, established patient, and consultation visits. CPT codes 99201 through 99205 are used for new patients, CPT codes 99211 through 99215 are used for established patients, and CPT codes 99281 through 99285 for emergency patients.

Physicians determine the proper code for reporting their services by referring to CPT descriptors and our documentation guidelines. The descriptors and guidelines are helpful to physicians because they reference taking a history, performing an examination, and making medical decisions. The lower levels of service (for example, CPT codes 99201, 99211, and 99281) are used for shorter visits and for patients with uncomplicated problems, and the higher levels of service (for example, CPT codes 99205, 99215, and 99285) are used for longer visits and patients with complex problems.

These codes were defined to reflect the activities of physicians. It is generally agreed, however, that they do not describe well the range and mix of services provided by facilities to clinic and emergency patients (for example, ongoing nursing care, preparation for diagnostic tests, and patient education).

Before the implementation of the OPPS, facilities were paid on the basis of charges reduced to costs. In that system, because use of a correct HCPCS code did not influence payment, there was little incentive to correctly report the level of service. In fact, many facilities reported all clinic and emergency visits with the lowest level of service (for example, CPT codes 99211, 99201, and 99281) simply to minimize administrative burden (for example, charge-masters might include only one level of service).

This situation changed with the implementation of the OPPS. The OPPS requires correct reporting of services using HCPCS codes as a prerequisite to payment. For emergency and clinic visits, the OPPS distinguishes three levels of service for payment purposes. These are referred to as "low-level," "mid-level," and "high-level" emergency or clinic visits. Payment rates for low-level visits are less than for mid-level visits, which are less than rates for high-level visits.

In the April 7, 2000 final rule (65 FR 18434), we stated that to pay hospitals properly, it was important that emergency and clinic visits be coded properly. To facilitate proper coding, we required each hospital to create an internal set of guidelines to determine what level of visit to report for each patient. We stated in the rule, that if hospitals set up these guidelines and follow them, they would be in compliance with OPPS coding requirements for the visits. Furthermore, we announced that we would be reviewing this issue and planned to set national guidelines for coding clinic and emergency visits in the future. In the August 24, 2001 proposed rule (66 FR 44672), we asked for public comments regarding national guidelines for hospital coding of emergency and clinic visits. We also announced that we would compile these comments and present them to our APC Panel at the January 2002 meeting. We also announced that we planned to propose uniform national facility coding guidelines in the proposed rule for the 2003 OPPS.

During its January 2002 meeting, the APC Panel reviewed written comments, heard oral testimony, discussed the issue, and made recommendations concerning establishment of facility coding guidelines for emergency and clinic visits. Among those who submitted oral and written comments to us and to the Panel were national hospital organizations, national physician organizations, hospital systems, individual hospitals, coding organizations, and consultants.

APC Panel Recommendations

The APC Panel reviewed the comments that we received, reviewed background material we prepared, and heard oral testimony. Most commenters recommended that we adopt the ACEP guidelines. However, one organization representing cancer centers stated that the most appropriate proxy for facility resource consumption in cancer care is staff time and asked that we consider basing our guidelines on staff time. Commenters agreed that we needed to address this problem in the proposed rule for CY 2003. They also agreed that to address potential HIPAA compliance issues, we should develop new HCPCS codes for facility visits; and that we should maintain five levels of service for emergency and clinic visits until data are available to show that only three levels of service are required to ensure accurate payments. Commenters also agreed that, for the same level of service, clinic resource consumption should be similar for new, established, and consultation patients. Therefore, we need only create a single set of five codes for clinic visits.

After a thorough discussion, the APC technical panel made the following recommendations:

1. Propose and make final facility coding guidelines for E/M services for calendar year 2003.
2. Create a series of G codes with appropriate descriptors for facility E/M services.
3. Maintain a single set of codes, with five levels of service, for emergency department visits.
4. Develop a single set of codes, with five levels of service, for clinic visits.

The Panel specifically recommended that we not differentiate among visit types (for example, new, established, and consultation visits) for the purposes of facility coding of clinic visits.

5. Adopt the ACEP facility coding guidelines as the national guidelines for facility coding of emergency department visits.
6. Develop guidelines for clinic visits that are modeled on the ACEP guidelines but are appropriate for clinic visits.
7. Implement these guidelines as interim and continue to work with appropriate organizations and stakeholders to develop final guidelines.

Proposed Rule

We reviewed the written comments, the oral testimony before the APC Panel, and the Panel's recommendations; we agreed that facility-coding guidelines should be implemented as soon as possible. We were particularly concerned that facilities be able to comply with HIPAA requirements. We announced that we have worked, and will continue to work, on this issue with hospitals, organizations representing hospitals, physicians, and organizations representing physicians. We noted that the AMA CPT Editorial Panel is not currently considering the issue of facility coding guidelines for clinic visits and that the earliest any CPT guidelines could be implemented would be in January 2004. Additionally, consistent with the intent of the outpatient prospective payment system, we wanted to ensure that reporting of hospital emergency and clinic visits is resource based.

After careful review and consideration of written comments, oral testimony and the APC Panel's recommendations, we proposed the following (for implementation no earlier than January 2004):

1. To develop five G codes to describe emergency department services: GXXX1—Level 1 Facility Emergency Services, GXXX2—Level 2 Facility Emergency Services, GXXX3—Level 3 Facility Emergency Services, GXXX4—Level 4 Facility Emergency Services, and GXXX5—Level 5 Facility Emergency Services.
2. To develop five G codes to describe clinic visits: GXXX6—Level 1 Facility Clinic Services, GXXX7—Level 2 Facility Clinic Services, GXXX8—Level 3 Facility Clinic Services, GXXX9—Level 4 Facility Clinic Services, and GXXX10—Level 5 Facility Clinic Services.
3. To replace CPT Visit Codes with the 10 new G codes for OPPS payment purposes.
4. To establish separate documentation guidelines for emergency visits and clinic visits.

With regard to the documentation guidelines, our primary concerns were to make appropriate payment for medically necessary care, to minimize the information collection and reporting burden on facilities, and to minimize any incentive to provide unnecessary or low quality care. We realized that many facilities use complaint or diagnosis driven care protocols and that current documentation standards do not include documentation of staff time or the complexity of diagnostic and therapeutic services provided. Therefore, in the interest of facilitating the delivery of medically necessary care in a clinically appropriate way, we believed that the potential drawbacks of each of the recommended sets of guidelines outweighed the potential benefits of creating uniformity and reproducibility. For example, any documentation system requiring counting or quantification of resource use has the potential to be burdensome, require clinically unnecessary documentation, and be susceptible to upcoding and gaming. Documentation systems using coding grids or a series of clinical examples for each level of service are subject to interpretation, may induce variability, may be overly complex and burdensome, and may result in disagreements with medical reviewers. We were also concerned that all the proposed guidelines allow counting of separately paid services (for example, intravenous infusion, x-ray, EKG, lab tests, and so forth) as "interventions" or "staff time" in determining a level of service. We believe that, within the constraints of clinical care and management protocols, the level of service for emergency and clinic visits should be determined by resource consumption that is not otherwise separately payable.

To address these concerns, in addition to reviewing written comments, oral comments, and the APC Panel recommendations, we also reviewed, for the proposed rule, the current distribution of paid emergency and clinic visit codes in the OPPS. With regard to emergency visits, we observed that well over 50 percent of the visits were considered "multiple procedure claims" because the claim includes services such as diagnostic tests (for example, EKGs and x-rays) or therapeutic interventions (for example, intravenous infusions). The distribution of all emergency services was in a bell-shaped curve with a slight left shift because there were more claims for CPT codes 99281 and 99282 than for CPT codes 99284 and 99285. This pattern of coding is significantly different from physician billing for emergency services, which is skewed and peaks at CPT code 99284. We also noted that the median costs for successive levels of emergency visits show an expected increase across APCs.

With regard to clinic visits, we observed that more than 50 percent of the services were considered "single claims" meaning that they were billed without any other significant procedures such as diagnostic tests or therapeutic interventions. We also noted that the distribution of clinic visits is skewed with the majority being low-level clinic visits. This distribution was consistent with pre-OPPS billing patterns where many facilities billed all clinic visits as low level visits. However, the median costs for different levels of clinic services, while similar within an APC, did not show the expected increase across the clinic visit APCs.

Based on our review, on the current distribution of coding for emergency and clinic visits, and on our understanding that hospitals set charges for services based on the resources used to provide those services, we believed that an incremental approach to developing and implementing documentation guidelines for emergency and clinic visits was appropriate. For example, as hospitals became more familiar with the OPPS and with the need to differentiate emergency and clinic visits based on resource consumption, we would continue to review the advantages and disadvantages of detailed, uniform documentation guidelines. We planned to begin the development of uniform guidelines over the next year. If we were ready, we would propose the guidelines for comments in our **Federal Register** document for the CY 2004 update. For CY 2003, we proposed the following new codes:

Emergency Visits

Because, our data indicated that, in general, hospitals under the OPPS were reporting emergency visits appropriately, we believed that insofar as hospitals have existing guidelines for determining the level of emergency service, those guidelines reflected facility resource consumption. Therefore, we proposed that GXXX1—Level 1 Facility Emergency Services be reported when facilities deliver, and document, basic emergency department services. These services included registration, triage, initial nursing assessment, minimal monitoring in the emergency department (for example,

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one additional set of vital signs), minimal diagnostic and therapeutic services (for example, rapid strep test, urine dipstick), nursing discharge (including brief home instructions), and exam room set up/clean up. We expected that these services would be delivered to patients who present with minor problems of low acuity.

With regard to GXXX2 through GXXX5, we proposed to require that facilities develop internal documentation guidelines based on hospital resource consumption (for example, staff time). These guidelines would be appropriate for the type of services provided in the hospital and also clearly differentiate the relative resource consumption for each level of service so that a medical reviewer could easily infer the type, complexity, and medical necessity of the services provided and validate the level of service reported. Because of the great variability in available facility resources, staff, and clinical protocols among facilities, we did not believe that it is advisable to require a single set of guidelines for all facilities. Instead, we believed it is appropriate for each facility to develop its own documentation guidelines that took into account the facility's clinical protocols, available facility resources, and staff types. As stated above, we did not propose any specific requirements with regard to the basis of these guidelines. However, the guidelines were to be tied to actual resource consumption in the emergency department such as number and type of staff interventions, staff time, clinical examples, or patient acuity. We also proposed to require that facilities have documentation guidelines available for review upon request. The guidelines had to emphasize relative resource consumption and not, to the extent possible, set minimal requirements as a basis for determining the level of service (for example, require 30 minutes of staff time or five staff interventions to bill a level three emergency visit).

We proposed that these requirements, if made final, would be interim. We proposed to work with interested parties to revise these requirements and to propose any revision to these requirements in a future proposed rule.

Clinic Visits

We believed that the current distribution of codes for clinic visits were due to a facility's continued use of pre-OPPS coding policies for clinic visits. We believed that over time facilities would become as experienced differentiating levels of clinic visits as they were at differentiating levels of emergency visits. Therefore, we proposed a set of guidelines for clinic visits that paralleled the requirements for emergency visits. We proposed that GXXX6—Level 1 Facility Clinic Services, be reported when facilities deliver, and document, basic clinic services. These services included registration, triage, initial nursing assessment, minimal monitoring in the clinic (for example, one additional set of vital signs), minimal diagnostic and therapeutic services (for example, rapid strep test, urine dipstick), nursing discharge (including brief home instructions), and exam room set up/clean up. Our proposal for GXXX7 through GXXX10 was the same as for GXXX2 through GXXX5 except that the facility-specific guidelines were tied to actual resource consumption in the clinic such as number and type of staff intervention, staff time, clinical examples, or patient acuity. The guidelines had to differentiate the relative resource consumption in the clinic for each level of service sufficiently so that a medical reviewer could easily infer the type, complexity, and medical necessity of the services provided to validate the level of service provided.

We proposed that, if made final, these requirements would be interim. Any changes would be proposed in a future proposed rule.

We proposed to make final, in the 2003 OPPS final rule, changes in coding for clinic and emergency department visits and requirements related to the development of documentation guidelines for the new codes. However, we proposed to implement the new codes and documentation guidelines no earlier than January 1, 2004. This would have given hospitals time to develop documentation guidelines for the new codes and prepare their internal billing systems to accommodate the changes. We proposed to continue to work with hospitals throughout CY 2003 as they developed the documentation guidelines. In the proposed rule, we solicited comments on this proposal overall as well as the specific components of the proposal.

Comment: Many commenters recommended that CMS should keep the current E/M coding system until national coding guidelines with standard definitions can be established. Commenters also recommended that CMS convene a panel of experts to develop standard code definitions and guidelines that are simple to understand and implement and that allow for compliance with HIPAA requirements. Commenters generally recommended that code definitions and guidelines be established and implemented in 2003.

Response: We agree with many of the commenters concerns. While we agree that standard code definitions and guidelines should be implemented as soon as possible, we want to ensure that those definitions and guidelines are developed using an open process involving a variety of experts (for example, clinicians, coders, and compliance officers) in the field. Furthermore, the process should include adequate time for the education of clinicians and coders and for hospitals to make the necessary changes in their systems to accommodate the codes and guidelines.

In view of the comments received we believe that the most appropriate forum for development of code definitions and guidelines is an independent expert panel that makes recommendations to CMS in time for CMS to propose specific code definitions in the next year's proposed rule. Organizations such as the American Hospital Association (AHA) and the American Health Information Management Association (AHIMA) have such expertise and are particularly well equipped to provide the ongoing education of providers. We believe it is critically important to the development, acceptance, and implementation of code definitions and guidelines for the organizations that develop the guidelines to also maintain them, update them, and provide ongoing education to providers concerning them. We would be happy to work with such an expert panel as code definitions and guidelines are developed.

We encourage any independent expert panel sending recommendations to CMS concerning guidelines to carefully review the principles and requirements for codes and guidelines that we announced in the proposed rule. We still believe that any set of national guidelines must adhere to those principles and requirements (for example, guidelines must be resource-based). Moreover, we encourage any such panel to address our concerns about existing guidelines (for example, potential for upcoding) in its recommendations to CMS. For example, our Advisory Panel on APC Groups recommended that CMS adopt the facility coding guidelines developed by the American College of Emergency Physicians (ACEP). While we understand that those guidelines have widespread support in the hospital community and that an independent panel may review them while developing guidelines, we would encourage such a panel to review the ACEP guidelines in light of the principles, requirements, and concerns we enunciated in the proposed rule.

CMS hopes to receive recommendations on code definitions in time to include them in the notice of proposed rulemaking for 2004. We agree with the commenters who were concerned about implementing code definitions without national guidelines, and we will not propose or finalize code definitions until national guidelines for them have been developed.

Comment: Several commenters believed that use of G codes to describe facility visits would cause problems with payment by non-Medicare payers for these services. They believed this problem would worsen if the G codes were not accompanied by guidelines.

Response: G codes are national codes and must be recognized by other payers, though other payers do not need to use these codes for payment. We are unsure if the commenters' assertions are true. However, as stated in the previous response, we do not plan to finalize new codes for these services until guidelines for their use have been developed. Moreover, we will work with CPT, as appropriate, to develop CPT codes for these services once we have finalized and implemented them.

Comment: One commenter asked that CMS provide protection for hospitals against fraud and abuse allegations stemming from the current ambiguous guidelines.

Response: We are unsure if the commenter is referring to the CPT guidelines as being ambiguous for facilities or if the concern is over allowing facilities to develop and implement facility-specific guidelines until national codes and guidelines are implemented. In any case, we believe that written facility guidelines-developed in accordance with the principles (which we enunciated in the proposed rule and reaffirmed in this final rule) and which are widely disseminated in the facility, accompanied by appropriate education of clinicians and coders, and made available to reviewers-should address the concerns of the commenters.

Comment: Several commenters voiced concerns about what activities should be described in possible guidelines (*e.g.*, use of time as a criterion for selecting a level of service), the burden on facilities of having to adapt to a new set of codes for visits, and any requirements for facilities to develop their own guidelines. One commenter listed several principles for the development of facility codes and descriptors (that is, codes and guidelines should: focus on resource use, be supported by medical record documentation, support code assignment by the chargemaster, and provide a means for benchmarking medical-visit data across the industry).

Response: We believe that having an independent panel develop guidelines and make recommendations to CMS will address the concerns of these commenters. With regard to requiring facilities to develop internal guidelines for visit services, we believe that development of internal guidelines is critical for ensuring appropriate medical review and for enabling facilities to prove that billing for services were actually rendered.

Comment: One commenter asked CMS to clarify the terms "nursing assessment" and "nursing discharge" when assigning a level of service to a visit.

Response: Because we expect to receive recommendations from an independent panel regarding coding guidelines, we will not finalize the proposal describing what constitutes a level one emergency or clinic visit. Instead, we will continue to allow hospitals to develop their own internal guidelines for such visits until we finalize codes and guidelines.

Comment: One commenter asked that we create five payment rates for emergency and clinic visits, one for each level of service—instead of the three payment rates that we currently use.

Response: We review the relative weights of each APC on a yearly basis, and we would consider such a change if our claims data indicated such a change is appropriate.

Comment: One commenter asked that we craft a surgical global package for facilities to provide guidance for facility billing of surgical procedures and visits.

Response: The current APC structure and coding edits already do this. Payment for surgical procedures includes payment for all services related to the procedure (for example, postoperative care, preoperative valuation). Facilities may bill for visits in addition to surgical procedures when the visit is a separately identifiable service unrelated to the procedure. In such cases, the facilities attest to this by appending the –25 modifier to the line item for the visit.

Comment: One commenter said that CMS should provide guidance as to when it is appropriate to add together levels of service from two visits, and bill one visit at a higher level. Another commenter requested that CMS stop using the GO condition code in favor of the –27 modifier.

Response: We disagree. Each clinic visit should be coded separately. It is important to track utilization and for each clinic visit to be reported separately. This is critical for determining proper payment rates in the OPPS. Clinic visits should never be added together and billed as a single service with a higher level of service. We plan to continue using the GO modifier as it specifically addresses coding issues arising in the OPPS.

Comment: One commenter asked us to reconsider our G code descriptors for clinic and emergency visits.

Response: We will propose and finalize G code descriptors after we receive recommendations from an independent expert panel.

Comment: Several commenters asked us to develop guidelines based on a point or acuity system.

Response: The divergence of opinion in the hospital community makes it imperative that an independent expert panel be convened and that such a panel should make recommendations to CMS on these issues.

Comment: Several commenters were concerned about disparities between physician and facility coding for the same service. One commenter asked that hospitals be allowed to code a different level of service than the physicians.

Response: We do not believe that facilities and physicians would be expected to bill similar levels of service for the same encounter. The resources used by a facility for a visit may be quite different from the resources used by a physician for the same visit. Facilities should code a level of service based on facility resource consumption, not physician resource consumption. This includes situations where patients may see a physician only briefly, or not at all.

However, if a visit and another service is also billed (that is, chemotherapy, diagnostic test, surgical procedure) the visit must be separately identifiable from the other service because the resources used to provide non-visit services including staff time, equipment, supplies, and so forth, are captured in the line item for that service. Billing a visit in addition to another service merely because the patient interacted with hospital staff or spent time in a room for that service is inappropriate.

Comment: One commenter asked CMS to clarify proper billing for E/M services when a visit and another service, such as chemotherapy, have been provided.

Response: If a visit and another service is also billed (that is, chemotherapy, diagnostic test, or surgical procedure) the visit must be separately identifiable from the other

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service. This is because the resources used to provide non-visit services (including staff time, equipment, supplies and so forth) are captured in the line item for that particular service. However, billing a visit in addition to another service—merely because the patient interacted with hospital staff or spent time in a room for that service—is inappropriate.

B. Observation Services

Coding and Billing Instructions

On November 30, 2001, we published a final rule updating changes to the OPPS for 2002. We implemented provisions that allow separate payment for observation services under certain conditions. That is, a hospital may bill for a separate APC payment (APC 0339) for observation services for patients with diagnoses of chest pain, asthma, or congestive heart failure when certain criteria are met. The criteria discussed in the November 30, 2001 final rule and as corrected in the March 1, 2002 final rule are also explained in detail in section XI of a Program Memorandum to intermediaries issued on March 28, 2002 (Transmittal A–02–026). Payment for HCPCS code G0244, observation care provided by a facility to a patient with congestive heart failure, chest pain or asthma, minimum eight hours, maximum 48 hours, was effective for services furnished on or after April 1, 2002.

Section XI of Transmittal A–02–026 that was issued on March 28, 2002, provides additional billing and coding instructions and requirements that flow from the basic criteria that we implemented in the November 30, 2001 and the March 1, 2002 final rules. Although we do not address them explicitly in the final rules, the additional instructions and requirements in Transmittal A–02–026 were developed to implement the basic observation criteria within the programming logic of the outpatient code editor (OCE), which is used to process claims submitted by hospitals for payment under the OPPS. For example, in the November 30, 2001 final rule, we state that an emergency department visit (APC 0610, 0611, or 0612) or a clinic visit (APC 0600, 0601, or 0602) must be billed in conjunction with each bill for observation services (66 FR 59879). In section XI of Transmittal A–02–026, we state that an E/M code (referred to, incorrectly, in Transmittal A–02–026 as an "Emergency Management" code), for the emergency room, clinic visit, or critical care is required to be billed on the day before or the day that the patient is admitted to observation. That is, unless one of the CPT codes assigned to APCs 0600, 0601, 0602, 0610, 0611, 0612, or 0620 is billed on the day before or the day that the patient is admitted to observation, separate payment for G0244 is not allowed. The codes assigned to these APCs are categorized by CPT as E/M codes. Although we did not include APC 0620, Critical Care, among the APCs that must be billed in order to receive separate payment for observation services, we added it in the program memorandum because critical care is an E/M service that can be furnished in a clinic or an emergency department. Critical care may appropriately precede admission to observation for chest pain, asthma, or congestive heart failure. We clarify in Transmittal A–02–026 that both the associated E/M code and G0244 are paid separately if the observation criteria are met. We also specify that the E/M code associated with observation must be billed on the same claim as the observation service.

Similarly, in the November 30, 2001 and the March 1, 2002 final rules, we require that certain diagnostic tests be performed in order to bill for separate payment for observation services. In Transmittal A–02–026, in section XI.B.2, we list the diagnostic tests that the OCE looks for on a bill for G0244. This list, which amplifies what we published in the November 30, 2001 and March 1, 2002 final rules, is incomplete and should read as follows to reflect the current OCE logic that is applied to claims for G0244:

- For chest pain, at least two sets of cardiac enzymes [either two CPK (82550, 82552, or 82553), or two troponin (84484 or 84512)], and two sequential electrocardiograms (93005);
- For asthma, a peak expiratory flow rate (94010) or pulse oximetry (94760, 94761, or 94762);
- For congestive heart failure, a chest x-ray (71010, 71020, or 71030) and an electrocardiogram (93005) and pulse oximetry (94760, 94761, or 94762).
- Note: Pulse oximetry codes 94760, 94761, and 94762 are treated as packaged services under the OPPS. Although no separate payment is made for packaged codes, hospitals must separately report the HCPCS code and a charge for pulse oximetry in order to establish that observation services for congestive heart failure and asthma diagnoses meet the criteria for separate payment.

Transmittal A–02–026 also provides specific coding instructions that hospitals must use when billing for observation services that do not meet the criteria for separate payment under APC 0339. In addition, Transmittal A–02–026 addresses the use of modifier –25 with the E/M code billed with G0244.

Comment: A few commenters requested clarification of the requirement that CPT 94010 (peak flow) be billed to establish a diagnosis of asthma. The commenter noted that CPT 94010 is the code for spirometry with recording and that it would be erroneous to bill peak flow, which is all that is relevant for asthma, as a spirometry, which requires a record and should include such elements as vital capacity and flow-volume loops. The commenter is concerned that we are instructing hospitals to bill incorrectly if our intention is solely to require peak flow.

Response: We are reviewing this comment and if we determine that a modification of the current requirement for peak flow is appropriate, we will revise the requirement in the program memorandum that implements the 2003 OPPS update effective January 1, 2003.

Comment: One commenter asked whether bedside services other than infusion, such as CVP placement, arterial punctures, and IV injections, can be billed when furnished to observation patients or whether these services are considered to be packaged into the observation payment.

Response: We would not expect that placement of a CVP line would be billed for a patient in observation. However, in general, any service that is separately payable under the OPPS, that is, procedures with status indicators S, X, K, G, V, or H, can be billed with G0244 and paid separately, although services with status indicator "T" (with the exception of Q0081), as we explain below, are *not* separately payable with G0244.

Direct Admissions to Observation

Since implementation of the provision for separate payment for observation services under APC 0339, a number of hospitals, hospital associations, and other interested parties have asked if separate payment for observation services would be allowed for a patient with chest pain, asthma, or congestive heart failure who is admitted directly into observation by order of the patient's physician but without having received critical care or E/M services in a hospital clinic or the emergency department on the day before or the day of admission to observation. We have responded during monthly CMS hospital open forum calls that, consistent with the criteria in the November 30, 2001 final rule, effective for services furnished on or after April 1, 2002, separate payment for observation services requires that an admission to observation be made by order of a physician in a hospital clinic or in a hospital emergency department. If a patient is directly admitted to observation but without an associated E/M service (including critical care) shown on the same bill, the hospital should bill observation services using revenue code 762 alone or revenue code 762 with one of the HCPCS codes for packaged observation services (CPT codes 99218, 99219, 99220, 99234, 99235, or 99236).

A related question has arisen in connection with a policy interpretation that was posted as a response to a "Frequently Asked Question" (FAQ) on our Web site on September 12, 2000. The FAQ follows:

"Q.97: If a patient is admitted from the physician's office to the observation room, will there be no reimbursement?

"A.97: Since observation is a packaged service, payment cannot be made if it is the only OPPS service on a claim. However, we believe that the "admission" of a patient to observation involves a low-level visit billed by the hospital, as well as whatever office visit the physician who arranged for the admission billed. Thus, when a patient arrives for observation arranged for by a physician in the community (that is, "direct admit to observation"), and is not seen or assessed by a hospital-based physician, the hospital may bill a low-level visit code. This low-level visit code will capture the baseline nursing assessment, the creation of a medical record, the recording and initiation of telephone orders, and so forth. This visit may be coded only once during the period of observation. The observation charges should be shown in revenue code 762. The number of hours the patient was in observation status should be shown in the units field. Payment for those services is packaged into the APC for the visit. Other services performed in connection with observation, such as lab, radiology, and so forth, should be billed for as well. * * *"

We have been asked to clarify whether or not the low-level visit code suggested in the FAQ for patients directly admitted for observation services would satisfy the requirement that a line item for a hospital emergency visit, hospital clinic visit, or critical care appear on the same bill as HCPCS code G0244. Our response is that when we established the final criteria effective for services furnished on or after April 1, 2002, we did not contemplate that the low-level visit described in the FAQ would satisfy the requirement for the E/M code that a hospital must bill to show a hospital clinic visit or hospital emergency department visit was performed before observation services for asthma, congestive heart failure, or chest pain to bill and receive payment for G0244 under APC 0339.

In light of these questions, we have reviewed the criteria for separate payment for observation services under APC 0339, and we proposed to modify the criteria and coding for observation services furnished on or after January 1, 2003. Specifically, we proposed to create two new codes. These additional codes would allow us to collect data on the extent to which patients are directly admitted to hospital observation services without an associated hospital clinic visit or emergency department visit. The proposed codes were as follows:

G0LLL-Initial nursing assessment of patient directly admitted to observation with diagnosis of congestive heart failure, chest pain, or asthma.

G0MMM-Initial nursing assessment of patient directly admitted to observation with diagnosis other than congestive heart failure, chest pain, or asthma.

If a hospital directly admits to observation from a physician's office a patient with a diagnosis of congestive heart failure, asthma, or chest pain, we proposed to require that G0LLL be billed with G0244. The current requirement that the hospital bill an emergency department visit (APC 0600, 0601, or 0602) or a clinic visit (APC 0610, 0611, or 0612) or a critical care service (APC 0620) in order to receive separate payment for observation services for patients not admitted directly from a physician's office would remain in effect. However, because the initial nursing assessment is part of any observation service, we proposed not to make separate payment for G0LLL. Rather, we proposed to assign status indicator "N" to G0LLL, to designate that charges submitted with G0LLL would be packaged into the costs associated with APC 0339. If G0LLL is billed, we would require that the medical record show that the patient was admitted directly from a physician's office for purposes of evaluating and treating chest pain, asthma, or congestive heart failure.

G0MMM describes the initial nursing assessment of a patient directly admitted to observation with a diagnosis other than chest pain, asthma, or congestive heart failure. We proposed to assign G0MMM for payment under APC 0706, New Technology—Level I. We proposed to require hospitals to bill G0MMM instead of the low level clinic visit referred to in the FAQ above to describe the initial nursing assessment of a patient directly admitted to observation with a diagnosis other than chest pain, asthma, or congestive heart failure. Separate payment would not be made for observation services billed with G0MMM. Rather, when billing G0MMM, hospitals would be required to use revenue code 762 alone or revenue code 762 with one of the HCPCS codes for packaged observation services (99218, 99219, 99220, 99234, 992335, or 99236). We proposed to create G0MMM to establish a separately payable code into which costs for observation care for patients directly admitted for diagnoses other than asthma, chest pain, or congestive heart failure can be packaged and recognized.

We would use billing data for G0LLL and G0MMM in reviewing the provisions for payment of observation services in future updates of the OPPS. In the proposed rule, we invited comment on the extent to which these codes address the concerns that have been raised in connection with patients who are directly admitted to observation services.

Comment: Everyone who commented on our proposed refinements of the requirements to enable separate payment for observation services supported the proposal to allow separate payment for patients admitted to observation directly from physicians' offices. However, the majority of commenters opposed the coding and payment methodology that we proposed to implement this change.

Commenters stated that having to use G0LLL and G0MMM, combined with the other requirements that have to be met in order to receive separate payment for observation of patients with asthma, congestive heart failure, and chest pain, would be burdensome and confusing, and would create operational inconsistencies and problems for hospitals. Several commenters urged CMS to simplify, the observation rules in order to reduce their complexity and lessen the burden they currently impose on hospitals. Some commenters were concerned that other payors might not accept the proposed new codes and that the codes would not be HIPAA compliant.

A number of commenters recommended alternatives to the establishment of G0LLL and G0MMM that would utilize information already being reported by hospitals on the UB–92 within the existing coding system for revenue centers, diagnoses, and source and type of admission. One commenter suggested a single G code for "Intake into observation after outside evaluation" supported by appropriate diagnosis coding and claims edits. One

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commenter recommended instituting a "per visit" payment logic in the OCE and PRICER similar to that used for mental health and PHP services. Several commenters suggested returning observation to a time-based charging and coding methodology based on hours. Several commenters supported using existing E/M codes instead of creating new codes.

Response: We agree with many of the commenters that our proposal for direct admissions to observation seems administratively burdensome. However, we believe that the importance of creating a payment mechanism for direct admissions to observation outweighs the administrative burden at this time. We also believe it is vital that we be able to track the utilization of these services so we will have data upon which to base policy decisions in the future.

A number of the alternatives suggested by commenters are promising and merit further analysis and review. However, our preliminary inquiries revealed that most of the suggested alternatives would require systems changes that could take six months or longer to develop and install, and that such changes could not be implemented effective January 1, 2003. Therefore, we have decided to implement the proposed G codes as follows:

G0263, Direct admission of patient with diagnosis of congestive heart failure, chest pain or asthma for observation.

G0264, Initial nursing assessment of patient directly admitted to observation with diagnosis other than congestive heart failure, chest pain, or asthma.

These codes would be HIPPA compliant. Other payers would make their own decisions about whether to use these codes for their own payment purposes.

Comment: One commenter asked that we instruct Fiscal Intermediaries to accept another revenue code in the 76X range for G0263 and G0264 because RC 762 may only be used to report observation charges.

Response: We are reviewing with our coding and claims processing experts to determine if there is a more appropriate revenue code to use when billing G0263 and G0264. We will provide specific instructions in the program memorandum issued to implement the January 2003 OPPS update.

Comment: Cancer centers urged CMS to expand the conditions for which we would make separate payment for observation to include febrile neutropenia, electrolyte disorders, chemotherapy hypersensitivity reaction, pulmonary embolisms, acute GI hemorrhage, and seizures presented by cancer patients under treatment at Cancer Centers. Other commenters suggested psychiatric conditions, acute abdominal pain, post-transplant threat of rejection, and pneumonia as appropriate for separate payment for observation.

Response: As we indicate in the November 30, 2001 final rule, we will review the indications for separately payable observation after we have acquired sufficient experience under the current system to make an informed decision as to whether an expansion is appropriate.

Comment: Most commenters asserted that our proposed payment for G0MMM for initial nursing assessment of a patient directly admitted to observation with a diagnosis other than chest pain, asthma, or congestive heart failure (APC 706) is too low and does not recognize the substantial type, level, and quality of the initial nursing services being provided. Commenters urged CMS either to set a higher payment rate for G0MMM or to allow an E/M code to be billed with G0MMM. Another commenter suggested assigning G0MMM to APC 0600 to be consistent with what CMS says in the FAQ 97. One commenter noted that it is inappropriate to assign G0MMM to a new technology APC because the code describes an E/M service, not a new technology service.

Response: We agree. We have therefore assigned G0264 for payment in APC 600, Low Level Clinic Visits.

Comment: One commenter wanted to know if G0LLL and G0MMM could be used for patients admitted from their homes, either (1) based solely upon a telephone call from the patient to the community physician and that physician's call to the hospital to order a direct admission for observation management, or (2) when directly admitted by the physician after going home following a visit to the physician's office, the patient's condition having deteriorated after seeing the physician.

Response: As long as the physician notifies the hospital that he/she is ordering the direct admission of the patient for observation and supports that order with the appropriate suspected diagnosis, we believe this would constitute a direct admission. Either G0263 or G0264 would be billed, depending on the final diagnosis supporting the direct admission observation services.

C. Billing Intravenous Infusions With Observation

Based on questions and concerns raised by hospitals since implementation of payment for APC 0339 effective April 1, 2002, we have also reviewed the current status of billing intravenous infusions with observation. Several hospitals have noted that claims for G0244 when billed with intravenous infusion services reported with HCPCS code Q0081 are denied because of the "T" status indicator assigned to HCPCS code Q0081. Our current payment rules for G0244 require that G0244 be denied if a service with status indicator "T" is performed the day before, the day of, or the day after observation care. Because patients in observation may require intravenous infusions of fluid, we proposed to create code G0EEE, Intravenous infusion during separately payable observation stay, per observation, payable under APC 0340 with status indicator "X." When observation services that otherwise meet the billing requirements for separate payment under APC 0339 include an intravenous infusion administered as part of the observation care, G0EEE would be used to report the infusion service. We included instructions on the use of G0258 in the program memorandum issued to implement OPPS coding changes for the October 1, 2002 OCE. In the proposed rule, we solicited comment on the use of this code.

Comment: While appreciative of our recognizing the need for a mechanism that permits hospitals to bill for infusion therapy during observation, most commenters did not support our proposal to introduce a new code for the service. One commenter recommended terminating G0258 effective 12/31/02 because it creates operational burdens for the hospital and does not accurately reflect the resources used. Several commenters urged CMS to change the SI for APC 120 to which Q0081 is assigned to S. This would solve the problem and permit payment of Q0081 with G0244 and would also align the status indicators for the infusion of non-chemotherapy drugs with the infusion of chemotherapy drugs.

Commenters asked if CMS intends hospital to use G0258 instead of Q0081 when the infusion therapy is provided to the patient in the emergency department or clinic prior to patient's placement in observation when the observation stay ultimately qualifies for separate payment. The commenters pointed out that the hospital may not know when the patient is in the emergency department or clinic and the infusion therapy is initiated that the patient will subsequently be placed in an observation stay that qualifies for payment under G0244. Commenters asked CMS to clarify how G0258 is to be used.

One commenter recommended, that we install an OCE edit to ignore Q0081 when checking for the presence of a procedure with SI=T.

Many commenters stated that the payment for G0248 should be the same as the payment for Q0081 because the resources expended for infusion therapy performed during a packaged observation stay are the same as those required for Q0081 furnished. These commenters disagreed with CMS's assertion that payment for G0258 should be discounted to equal 50 percent of the payment for Q0081 because Q0081 is invariably billed with a higher-paying procedure and is, therefore, discounted. Another commenter advocated adjusting the payment for G0244 to include the cost of infusion and eliminating a separate new code. The same commenter supported payment at 50 percent of the rate set for Q0081 because Q0081 would always be discounted because it is always billed with another procedure.

Response: Having reviewed the numerous concerns raised by commenters in connection with the use of HCPCS code G0258, Intravenous infusion during separately payable observation stay, per observation stay (must be reported with G0244), and our proposed payment for G0258, we agree with commenters that requiring the use of this code is problematic. We have determined that the OCE logic can be modified to allow payment for G0244, even though Q0081 is assigned to an APC with status indicator T. Therefore, effective for services furnished on or after January 1, 2003, we are withdrawing G0258. Instead hospitals may submit claims for G0244 with Q0081 when infusion therapy is provided, and the claim will be paid if all other requirements and conditions are met. The status indicator for G0081 will not change.

Annual Update of ICD–9 Diagnosis Codes

To receive payment for G0244, we require hospitals to bill specified ICD–9–CM diagnosis code(s). Because ICD–9–CM codes are updated effective October 1 of each year, we proposed to issue by Program Memorandum any changes in the diagnosis codes required for payment of G0244 resulting from the ICD–9–CM annual update.

In the March 1, 2002 final rule (67 FR 9559) and in Transmittal A–02–026 issued on March 28, 2002, we listed the diagnosis codes required in order for separate payment of observation services under APC 0339 to be made for patients with congestive heart failure. We added by program memorandum the following new ICD–9–CM codes to the list of allowed diagnosis codes for separate payment for observation of patients with congestive heart failure, effective for services furnished on or after October 1, 2002:

428.20 Unspecified systolic heart failure
428.21 Acute systolic heart failure
428.22 Chronic systolic heart failure
428.23 Acute on chronic systolic heart failure
428.30 Unspecified diastolic heart failure
428.31 Acute diastolic heart failure
428.32 Chronic diastolic heart failure
428.33 Acute on chronic diastolic heart failure
428.40 Unspecified combined systolic and diastolic heart failure
428.41 Acute combined systolic and diastolic heart failure
428.42 Chronic combined systolic and diastolic heart failure
428.43 Acute on chronic combined systolic and diastolic heart failure

In the August 9, 2002 proposed rule, we invited comment on the addition of these diagnosis codes to the criteria for separate payment for observation services under APC 0339.

Comment: One commenter recommended adding the following codes to the list of diagnoses for asthma: 493.00, 493.10, 493.20, and 493.90

Response: We are not including these diagnoses because they would not be appropriate for use with patients requiring observation services because they are experiencing acute exacerbations of asthma.

- Effective for services furnished on or after January 1, 2003, hospitals may bill for patients directly admitted for observation services using the following codes:

G0263, Direct admission of patient with diagnosis of congestive heart failure, chest pain or asthma for observation.

G0264, Initial nursing assessment of patient directly admitted to observation with diagnosis other than congestive heart failure, chest pain, or asthma.

- Payment for G0264 will be made under APC 600.
- Payment for G0263 will be packaged into the payment for APC 339
- Payment for G0244 will be allowed when billed with Q0081, Infusion therapy other than chemotherapy, when furnished to patients with asthma, congestive heart failure, or chest pain, subject to all other conditions for payment having been met.

C. Payment Policy When a Surgical Procedure on the Inpatient List Is Performed on an Emergency Basis

As we state in section II.B.5 of this preamble, the inpatient list specifies those services that are only paid when provided in an inpatient setting. The inpatient list proposed for 2003 is printed as Addendum E. In Addendum B, status indicator C designates a HCPCS code that is on the inpatient list.

Over the past year, some hospitals and hospital associations have asked how a hospital could receive Medicare payment for a procedure on the inpatient list that had to be performed to resuscitate or stabilize a patient with an emergent, life-threatening condition who was transferred or died before being admitted as an inpatient. We reviewed within the context of our current policy the cases brought to our attention for which payment under the OPPS was denied because a procedure with status indicator C was on the bill. Based on that review, we proposed to clarify our policy regarding Medicare payment when a procedure with status indicator C is performed under certain life-threatening, emergent conditions. In the proposed rule, we solicited comments on the extent to which the payment policy described below addresses hospitals' concerns. We stated it would be most helpful if commenters provided specific examples of cases when hospitals have, in these instances, submitted bills for a procedure with OPPS status indicator C that were not paid.

1. Current Policy

In the April 7, 2000 final rule (65 FR 18451), in response to comments about the appropriate level of payment for patients who die in the emergency department, we set forth the following guidelines for fiscal intermediaries to use in determining how to make payment when a patient dies in the emergency department or is sent directly to surgery and dies there.

- If the patient dies in the emergency department, make payment under the outpatient PPS for services furnished.
- If the emergency department or other physician orders the patient to the operating room for a surgical procedure, and the patient dies in surgery, payment will be made based on the status of the patient. If the patient had been admitted as an inpatient, pay under the hospital inpatient PPS (a DRG-based payment).
- If the patient was not admitted as an inpatient, pay under the outpatient PPS (an APC-based payment).
- If the patient was not admitted as an inpatient and the procedure is

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designated as an inpatient-only procedure (payment status indicator C), no Medicare payment will be made for the procedure, but payment will be made for emergency department services.

The OPPS outpatient code editor (OCE) currently has an edit in place that generates a "line item denial" for a line on a claim that has a status indicator C. A line item denial means that the claim can be processed for payment but with some line items denied for payment. A line item denial can be appealed under the provisions of section 1869 of the Act. The OCE includes another edit that denies all other line items furnished on the same day as a line item with a status indicator C. The rationale for this edit is that all line items for services furnished on the same date as the procedure with status indicator C would be considered inpatient services and paid under the appropriate DRG.

As part of the definition of line item denial in the program memorandum that we issue quarterly to update the OCE specifications (for example, see Program Memorandum/Intermediaries, Transmittal A–02–052, June 18, 2002, which is available on our Web site at *http://cms.hhs.gov/manuals/pm_trans/A02052.pdf*), we state that a line item denial cannot be resubmitted except for an emergency room visit in which a patient dies during a procedure that is categorized as an inpatient procedure: "Under such circumstances, the claim can be resubmitted as an inpatient claim."

In Addendum D of the March 1, 2002 final rule, we designate payment status indicator "C" as follows: "Admit patient; bill as inpatient."

2. Hospital Concerns

Hospitals have requested clarification regarding billing and payment in certain situations that our current policy does not seem to explicitly address. The following scenarios synthesize cases described by hospitals for which they have encountered problems when billing for a procedure with status indicator C.

Scenario A: A procedure assigned status indicator C under the OPPS is performed to resuscitate or stabilize a beneficiary who appears with or suddenly develops a life-threatening condition. The patient dies during surgery or postoperatively before being admitted.

Scenario B: An elective or emergent surgical procedure payable under the OPPS is being performed. Because of sudden, unexpected intra-operative complications, the physician must alter the surgical procedure and perform a procedure with OPPS status indicator C. The patient dies during the operation before he or she is admitted as an inpatient.

Scenario C: A procedure with status indicator C is performed to resuscitate or stabilize a beneficiary who appears with or suddenly develops a life-threatening condition. After the procedure, the patient is transferred to another facility for postoperative care.

3. Clarification of Payment Policy

We proposed the following policy for fiscal intermediaries and providers to use in determining the appropriate Medicare payment in cases such as those described in the section above.

A procedure assigned status indicator C under the OPPS is never payable under the OPPS. Therefore, for a hospital to receive payment when a procedure with OPPS status indicator C is performed and: (1) The patient dies during or after the procedure, before being admitted, or (2) the patient survives the procedure and is transferred following the procedure, the patient's medical record must contain all of the following information:

- Either orders to admit written by the physician responsible for the patient's care at the hospital to which the patient was to be admitted following the procedure for the purpose of receiving inpatient hospital services and occupying an inpatient bed, or written orders to admit and transfer the patient to another hospital following the procedure.
- Documentation that the reported HCPCS code for the surgical procedure with OPPS payment status indicator C (such as CPT code 61345) was actually performed.
- Documentation that the reported surgical procedure with status indicator C was medically necessary.
- If the patient is admitted and subsequently transferred to another facility, documentation that the transfer was medically necessary, such as the patient requiring postoperative treatment unavailable at the transferring facility.

In the case of a patient who dies during performance of a procedure with OPPS status indicator C before being admitted, the hospital would submit a claim for all services provided, including a line item for the status indicator C procedure. The claim would be rejected for payment under the OPPS and returned to the hospital. The hospital would resubmit the claim for payment as an inpatient stay under the appropriate DRG.

In the case of a patient who is admitted and transferred, the transferring hospital would be paid a per diem DRG rate if all the above conditions are met. (We proposed to revise § 3610.5 of the Medicare Intermediary Manual accordingly.) Because these services would be paid according to the appropriate DRG or per diem (see below), all services that were furnished before admission that would otherwise be payable under the OPPS would be paid in accordance with the provisions of § 3610.3 of the Medicare Intermediary Manual ("3-day rule") and § 415.6 of the Medicare Hospital Manual.

Note that a physician's order to admit a patient to an observation bed following a procedure designated with OPPS status indicator C would not constitute an inpatient admission and, therefore, would not qualify the procedure with status indicator C for payment. In this instance, the only allowable Medicare payment would be for a code payable under APC 0610, 0611, or 0612 if those services were provided. Payment would not be allowed for either the procedure with status indicator C or for any ancillary services furnished on the same date.

Comment: Commenters agreed that the current policy on billing and payment when procedures on the inpatient list are performed on an outpatient basis requires clarification and modification. However, commenters stated that our proposals, if implemented, would be burdensome and create extra work for hospitals. Commenters opposed our proposal that an outpatient claim be submitted for rejection and then resubmitted as an inpatient claim. Commenters asserted that this would be unwieldy and create an unacceptable delay in payment. Many commenters were concerned that it would be difficult to expect a physician to write an order to admit a patient who expired during emergency surgery, and that asking physicians to do so to satisfy a billing requirement would not be appropriate. Some commenters were concerned that submitting an inpatient claim that is inconsistent with medical records documentation could create problems with medical review. However, commenters did not provide illustrations of actual cases when hospitals have submitted outpatient bills for a procedure with status indicator C that was performed in an emergency situation and not paid which would have added specificity to the general comments.

Commenters offered several alternatives to our proposal. Several commenters suggested that these cases be initially billed as inpatient stays, supported by documentation that the procedure was performed and was medically necessary, and that a presumption of admission be made for payment purposes. Several commenters suggested that a reduced DRG-related amount be established as payment in these special cases. Several commenters suggested the use of a condition code that would allow submission of an outpatient claim when procedures on the inpatient list are performed in emergency situations.

Response: We appreciate commenters' reactions and suggestions of ways to make payment under the OPPS in emergency situations when procedures on the inpatient list are performed on a beneficiary who is not admitted as an inpatient. After careful review and consideration of the comments and recommendations, we have decided to modify certain aspects of our proposed policy, while retaining certain others. We are also taking steps to ensure that OCE edits are consistent with our policy.

The underlying principle is our policy that procedures on the inpatient list performed on patients whose status is that of outpatient are not payable as outpatient services.

However, we recognize that there are occasions when a procedure on the inpatient list must be performed to resuscitate or stabilize a patient with an emergent, life-threatening condition whose status is that of an outpatient. To receive payment in those cases, hospitals admit the patient and submit an inpatient claim.

In cases where a procedure on the inpatient list must be performed to resuscitate or stabilize a patient with an emergent, life-threatening condition whose status is that of an outpatient, the patient may be admitted and transferred to another hospital. In these cases, the transferring hospital is paid a per diem DRG rate. We shall revise section 3610.5 of the Medicare Intermediary Manual to reflect this policy.

On rare occasions, a procedure on the inpatient list must be performed to resuscitate or stabilize a patient with an emergent, life-threatening condition whose status is that of an outpatient and the patient dies before being admitted as an inpatient. For those rare and unusual cases, we are instructing hospitals to submit an outpatient claim for all services furnished, including the procedure code with status indicator C to which a new modifier is attached. The exact modifier that is to be used in these cases had not been issued by the HCPCS alpha-numeric workgroup in time for publication in this final rule. The modifier and instructions for its use will be included in the program memorandum for the January 2003 update. We believe that such patients would typically receive services such as those provided during a high-level emergency visit, appropriate diagnostic testing (X-ray, CT scan, EKG, and so forth), and administration of intravenous fluids and medication prior to the surgical procedure. Because these combined services constitute an episode of care, we will pay claims with a procedure code on the inpatient list that are billed with the new modifier under new technology APC 977. Separate payment will not be allowed for other services furnished on the same date. This approach allows hospitals to submit an outpatient claim and receive payment without additional paperwork, it results in consistency between the medical record and patient status, and it allows us to collect data on the costs associated with these very unusual and infrequent cases for future use in updating the OPPS.

Procedures with status indicator C but without the new modifier that are submitted on an outpatient bill will receive a line item denial, and no other services furnished on the same date are payable.

If an outpatient has a procedure that is on the inpatient list performed, and is subsequently admitted to an observation bed, the procedure with status indicator C submitted on an outpatient bill will receive a line item denial. Further, we have decided not to make final our proposal to make payment for APC 610, 611 or 612 under such circumstances. Rather, in such cases no other services furnished on the same date are payable.

We did not receive any comments on the documentation that we proposed to require in the patient's medical record when a procedure with status indicator C is performed and: (1) The patient dies before being admitted as an inpatient, or (2) the patient survives the procedure and is admitted and transferred. Therefore, we are making those requirements final.

4. Orders To Admit

Some hospitals have raised questions about the timing of a physician's order to admit a patient. The requirements for authenticating physician orders and the standards for medical record keeping fall outside the scope of this rule and OPPS payment policy. The payment provisions that we are making final in this rule are to assist hospitals and contractors in determining how to bill and pay for services appropriately under Medicare. The patient's admission status, as documented by the medical records, determines what Medicare payment is appropriate. Medical record keeping and documentation requirements are addressed in the Medicare hospital conditions of participation at § 482.24, and are governed by applicable State law and State licensing rules and hospital accreditation standards.

Comment: A few commenters requested clarification on what is meant by "admit" and the documentation that CMS would expect to see in order to substantiate that a patient was admitted as an inpatient. One commenter expressed concern about the variability in fiscal intermediaries' policies regarding the changing of an admission status after the service has been provided.

Response: As we have indicated, these issues are addressed in the Medicare hospital conditions of participation at § 482.24, and are governed by applicable State licensing rules and hospital accreditation standards. Questions and concerns related to these issues should be addressed to the parties who are responsible for these rules, regulations, and standards.

When a procedure on the inpatient list must be performed to resuscitate or stabilize a patient with an emergent, life-threatening condition whose status is that of an outpatient and the patient dies before being admitted as an inpatient, the hospital should submit an outpatient claim for all services furnished, including the procedure with status indicator C to which a new modifier, which will be announced by program memorandum is attached. Claims with a procedure code on the inpatient list that are billed with the new modifier will be paid under APC 977.

We are making final the requirement that information specified in the proposed rule be included in the medical record to support payment when a procedure with status indicator C is performed on an outpatient and the patient dies or is admitted and transferred.

D. Status Indicators

The status indicators we assign to HCPCS codes and APCs under the OPPS have an important role in payment for services under the OPPS because they indicate if a service represented by a HCPCS code is payable under the OPPS or another payment system and also if particular OPPS policies apply to the code. We are providing our status indicator assignments for APCs in Addendum A, HCPCS codes in

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Addendum B, and definitions of the status indicators in Addendum D.

The OPPS is based on HCPCS codes for medical and other health services. These codes are used for a wide variety of payment systems under Medicare, including, but not limited to, the Medicare fee schedule for physician services, the Medicare fee schedule for durable medical equipment and prosthetic devices, and the Medicare clinical laboratory fee schedule. For purposes of making payment under the OPPS, we need a way to signal the claims processing system which HCPCS codes are paid under the OPPS and those codes to which particular OPPS payment policies apply. We accomplish this identification in the OPPS through the establishment of a system of status indicators with specific meanings. Addendum D defines the meaning of each status indicator for purposes of the OPPS.

We assign one and only one status indicator to each APC and to each HCPCS code. Each HCPCS code that is assigned to an APC has the same status indicator as the APC to which it is assigned.

Specifically, in 2003, we proposed to use the status indicators in the following manner:

- "A" to indicate services that are paid under some payment method other than OPPS, such as the durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS) fee schedule or the physician fee schedule. Some but not all—of these other payment systems are identified in Addendum D.
- "C" to indicate inpatient services that are not payable under the OPPS.
- "D" to indicate a code that was deleted effective with the beginning of the calendar year.
- "E" to indicate services for which payment is not allowed under the OPPS or that are not covered by Medicare.
- "F" to indicate acquisition of corneal tissue, which is paid at reasonable cost.
- "G" to indicate drugs and biologicals that are paid under OPPS transitional pass-through rules.
- "H" to indicate devices that are paid under OPPS transitional pass-through rules.
- "K" to indicate drugs and biologicals (including blood and blood products) and certain brachytherapy seeds that are paid in separate APCs under the OPPS, but that are not paid under OPPS transitional pass-through rules.
- "N" to indicate services that are paid under the OPPS for which payment is packaged into another service or APC group.
- "P" to indicate services that are paid under the OPPS but only in partial hospitalization programs.
- "S" to indicate significant procedures that are paid under OPPS but to which the multiple procedure reduction does not apply.
- "T" to indicate significant services that are paid under the OPPS and to which the multiple procedure payment discount under OPPS applies.
- "V" to indicate medical visits (including clinic or emergency department visits) that are paid under the OPPS.
- "X" to indicate ancillary services that are paid under the OPPS.

The software that controls Medicare payment looks to the status indicators attached to the HCPCS codes and APCs for direction in the processing of the claim. Therefore, the assignment of the status indicators has significance for the payment of services. We sometimes change these indicators in the course of a year through program memoranda. Moreover, indicators are established for new codes that we establish in the middle of the year, either as a result of a national coverage decision or otherwise. A status indicator, as well as an APC, must be assigned so that payment can be made for the service identified by the new code.

Our proposed status indicators identified for each HCPCS code and each APC appear in Addenda A and B of the proposed rule. We requested comments on the appropriateness of the indicators we have assigned.

We received several comments on this proposal, which are summarized below:

Comment: Some commenters said that our proposed payment for influenza and pneumococceal pneumonia vaccines and orphan drugs were inadequate to ensure the provision of these drugs and biologicals.

Response: As discussed in section III.B, we will pay reasonable cost for these drugs and biologicals in 2003. Therefore, we have assigned orphan drugs a status indicator of F and have redefined the status indicator F to mean that the item or service is paid on a reasonable cost basis. Until now, only corneal tissue acquisition has been paid as reasonable cost under OPPS and, therefore, the status indicator was specific to corneal tissue. However, beginning January 1, 2003, the "F" status indicator will apply to any item or service paid at reasonable cost.

With regard to influenza and pneumococcal pneumonia vaccine, which we will also pay on a reasonable cost basis, effective January 1, 2003, we have created a new status indicator "L" "Influenza vaccine; pneumococcal pneumonia vaccine" to indicate that these vaccines are paid on a reasonable cost basis but deductible and coinsurance do not apply to the payment. We show the new status indicator in Addendum D and we show it for these services in Addendum B. We are doing the following:

- Redefining status F to indicate an item or service that is paid on a reasonable-cost basis.
- Changing the status indicator for influenza and pneumococceal pneumonia vaccines to status indicator L and change orphan drugs to status indicator F.
- Changing the status indicator for APC 225 to S.

E. Other Policy Issues Relating to Pass-Through Device Categories

1. Reducing Transitional Pass-Through Payments To Offset Costs Packaged Into APC Groups

In the November 30, 2001 final rule, we explained the methodology we used to estimate the portion of each APC rate that could reasonably be attributed to the cost of associated devices that are eligible for pass-through payments (66 FR 59904). Effective with implementation of the 2002 OPPS update on April 1, 2002, we deduct from the pass-through payments for those devices an amount that offsets the portion of the otherwise applicable APC payment amount that we determined is associated with the device, as required by section 1833(t)(6)(D)(ii) of the Act. In the March 1, 2002 final rule, we published the applicable offset amounts for 2002, which we had recalculated to reflect certain device cost assignments that were corrected in the same final rule (67 FR 9557).

For the 2003 OPPS update, we proposed to estimate the portion of each APC rate that could reasonably be attributed to the cost of an associated pass-through device that is eligible for pass-through payment using claims data for services furnished between July 1, 2001, through December 31, 2001. We proposed to use only the last 6 months of 2001 claims data because bills for pass-through devices submitted during this time period would use only device category codes, allowing a more consistent analysis than would result were we to include pre-July 1 claims that might still show item-specific codes for pass-through devices. Using these claims, we would calculate a median cost for every APC without packaging the costs of associated C-codes for device categories that were billed with the APC. We would then calculate a median cost for every APC with the

costs of associated C-codes for device categories that were billed with the APC packaged into the median. Dividing the median APC cost minus device packaging by the median APC cost including device packaging would allow us to determine the percentage of the median APC cost that is attributable to associated pass-through devices. By applying these percentages to the APC payment amount, we would determine the applicable offset amount. Table 11 shows the offsets that we applied in 2003 to each APC that contains device costs. APCs were included for offsets if their device costs comprised at least 1 percent of the APC's costs. (However, if any APC's calculated offset had been less than 1 dollar, that APC and offset would not have been included.)

For this final rule, we used the device data for the 12 months ended March 31, 2002 to calculate the device and non-device portions of APCs median costs. We began with the same APCs that were listed on Table 9 of our proposed rule, with two additions. We added APCs 0648 and 0651, because they showed appreciable device percentages using our methodology. We again applied these percentages to the APC payment amounts and excluded any APC's percentage of device costs less than one percent and calculated offset amounts less than one dollar.

We received some comments on this proposal, which are summarized below:

Comment. A commenting party contended that our list of device offsets in our proposed rule is incorrect since it includes many computed offsets to APC payments for devices that will no longer receive pass-through payments. The commenter recommended that we exclude the offsets of all devices in categories that are bundled, since there is no separate pass-through payment to be offset.

Response. The offset list is a list of potential offsets. We, of course, do not know in advance which procedures and APCs will be mapped into new categories as the new categories are created and become effective. Yet, we are required to subtract the amount of similar devices in pass-through payment under section 1833(t)(6)(D)(ii) of the Act. Therefore, for the proposed rule, we calculate the device costs in each APC and include APCs on the offset list if their device costs were at least 1 percent of the APC's cost. We use a similar list for this final rule.

Comment. One commenter expressed concern about the difference in offset amounts proposed for APC 0107, Insertion of Cardioverter-Defibrilator, and APC 0108, Insertion/Replacement/Repair of Cardioverter-Defibrilator Leads. The commenter wondered why, when the cost of the cardioverter-defibrilator is 2 to 3 times the cost of the leads, the offset amount for APC 0107 is less than the offset amount for APC 0108.

Response. The commenter is incorrect that we proposed an offset amount for 0107 (83.18 percent) that is less than for 0108 (82.18 percent). Moreover, the commenter mistakenly believes that APC 0107 is for insertion/replacement/repair of cardioverter-defibrilator leads when, in fact, the definition of CPT code 33249 (the only CPT code in APC 0108) is "Insertion or repositioning of electrodeleads for single or dual chamber pacing cardioverter-defibrilator and insertion of pulse generator." Hence, CPT code 33249 is for the insertion of a pulse generator and insertion or repositioning of leads. It is not, as the commenter indicates, for insertion or repositioning of leads alone. As shown in Table 11, the offset percent for APC 0107 is 93.29 and the offset percent for APC 0108 is 92.99.

Comment. A commenting party contended that the offsets appear to be computed using departmental cost-to-charge ratios (CCRs), yet pass-through payments for devices were computed using an overall hospital CCR. The party contended that in cases in which the hospital CCR is higher than the departmental CCR, there is effectively a zero pass-through payment for devices. Therefore, the party recommended that the offsets should be calculated using the same CCRs used to compute pass-through payments.

Response: Although the commenter states that calculating a device pass-through payment using a hospital CCR that is higher than the departmental CCR used to determine the applicable offset amount results in effectively no payment for a device, it appears to us that the opposite result would occur. That is, in the situation described, a lower offset amount would be applied to a higher calculated device cost, resulting in a higher net device payment. Offset amounts represent device costs that are included in the median costs of a procedure. The median cost of the procedure is determined, as we determine median costs for all services, by totaling all the procedure's component costs calculated using department-specific CCRs. We use department-specific CCRs to calculate the cost of the procedure, which includes devices, and because offsets are intended to represent the cost of devices that are included in the cost of the procedure, we believe the same departmental-CCR method must be applied in calculating offsets.

TABLE 11.—OFFSETS TO BE APPLIED FOR EACH APC THAT CONTAINS DEVICE COSTS

APC	Description	APC percent attributed to devices	Device related costs to be subtracted from pass-through payment
0032	Insertion of Central Venous/Arterial Catheter	31.96	$191.22
0048	Arthroplasty with Prosthesis	29.92	633.96
0051	Level III Musculoskeletal Procedures Except Hand and Foot	1.31	22.48
0052	Level IV Musculoskeletal Procedures Except Hand and Foot	3.08	65.48
0080	Diagnostic Cardiac Catheterization	10.63	195.69
0081	Non-Coronary Angioplasty or Atherectomy	31.45	713.58
0082	Coronary Atherectomy	48.25	2,174.88
0083	Coronary Angioplasty and Percutaneous Valvuloplasty	29.59	802.06
0085	Level II Electrophysiologic Evaluation	37.00	805.10
0086	Ablate Heart Dysrhythm Focus	41.96	1,156.01
0087	Cardiac Electrophysiologic Recording/Mapping	51.40	1,056.10
0088	Thrombectomy	3.80	64.56
0089	Insertion/Replacement of Permanent Pacemaker and Electrodes	77.40	4,543.29
0655	Insertion/Replacement/Conversion of a permanent dual chamber pacemaker	77.14	4,942.78
0090	Insertion/Replacement of Pacemaker Pulse Generator	79.61	3,782.34
0654	Insertion/Replacement of a permanent dual chamber pacemaker	78.27	3,749.52

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TABLE 11.—OFFSETS TO BE APPLIED FOR EACH APC THAT CONTAINS DEVICE COSTS—Continued

APC	Description	APC percent attributed to devices	Device related costs to be subtracted from pass-through payment
0091	Level II Vascular Ligation	1.08	15.04
0653	Vascular Reconstruction/Fistula Repair with Device	10.83	169.60
0104	Transcatheter Placement of Intracoronary Stents	46.65	1,862.31
0105	Revision/Removal of Pacemakers, AICD, or Vascular	4.60	44.61
0106	Insertion/Replacement/Repair of Pacemaker and/or Electrodes	50.46	1,442.72
0107	Insertion of Cardioverter-Defibrillator	93.29	15,871.30
0108	Insertion/Replacement/Repair of Cardioverter-Defibrillator Leads	92.99	21,509.86
0109	Removal of Implanted Devices	1.61	6.27
0115	Cannula/Access Device Procedures	25.85	327.87
0119	Implantation of Devices	74.37	3,463.86
0122	Level II Tube Changes and Repositioning	40.26	225.62
0124	Revision of Implanted Infusion Pump	52.73	1,377.33
0151	Endoscopic Retrograde Cholangio-Pancreatography (ERCP)	2.87	26.21
0152	Percutaneous Abdominal and Biliary Procedures	31.57	165.11
0652	Insertion of Intraperitoneal Catheters	10.91	160.05
0154	Hernia/Hydrocele Procedures	2.73	36.63
0167	Level III Urethral Procedures	43.96	649.32
0168	Level II Urethral Procedures	1.15	14.67
0179	Urinary Incontinence Procedures	56.34	3,066.24
0182	Insertion of Penile Prosthesis	58.45	2,908.45
0202	Level VIII Female Reproductive Proc	38.35	911.22
0222	Implantation of Neurological Device	88.08	10,461.01
0223	Implantation of Pain Management Device	52.96	1,133.11
0225	Implantation of Neurostimulator Electrodes	81.03	5,888.13
0226	Implantation of Drug Infusion Reservoir	82.74	6,228.55
0227	Implantation of Drug Infusion Device	81.57	6,147.49
0229	Transcatheter Placement of Intravascular Shunts	63.65	1,907.33
0246	Cataract Procedures with IOL Insert	1.38	16.00
0259	Level VI ENT Procedures	84.07	16,118.86
0279	Level II Angiography and Venography except Extremity	2.18	9.83
0280	Level III Angiography and Venography except Extremity	4.89	38.80
0297	Level II Therapeutic Radiologic Procedures	1.35	5.41
0651	Complex Interstitial Radiation Source Application	85.13	2,429.25
0670	Intravenous and Intracardiac Ultrasound	53.75	847.71
0680	Insertion of Patient Activated Event Recorders	77.72	2,275.14
0681	Knee Arthroplasty	64.16	4,945.63
0686	Level III Skin Repair	37.79	280.72
0687	Revision/Removal of Neurostimulator Electrodes	35.06	472.51
0688	Revision/Removal of Neurostimulator Pulse Generator Receiver	69.42	2,699.74
0648	Breast Reconstruction with Prosthesis	31.69	740.32

2. Devices Paid With Multiple Procedures

As explained above, under section 1833(t)(6)(D)(ii) of the Act, the amount of additional payment for a device eligible for pass-through payment is the amount by which the hospital's cost exceeds the portion of the otherwise applicable APC payment amount that the Secretary determines is associated with the device. Thus, for devices eligible for pass-through payment, we reduce the pass-through payment amount by the cost attributable to the device that is already packaged into the APC payment for an associated procedure. For 2002, we developed offset amounts for 59 APCs (March 1, 2002 final rule, 67 FR 9556 through 9557, Table 1).

In our November 30, 2001 final rule (66 FR 59856), we articulated a policy regarding the calculation of the offsets for device costs already reflected in APCs in cases where the payment for the associated APC is reduced due to the multiple procedure discount. The policy was in response to several commenting parties that recommended that we apply the multiple procedure discount only to the non-device-related portion of the APC payment amount (66 FR 59906).

We agreed with the commenters that the full pass-through offset should not be applied when the APC payment is subject to the multiple procedure discount of 50 percent.

The purpose of the offset is to ensure that the OPPS is not making double payments for any portion of the cost associated with the use of the pass-through item. We stated in the November 30, 2001 rule that the offset should reflect that portion of the cost for the pass-through device actually reflected in the payment that is received for the associated APC. We consequently ruled that the most straightforward methodology for applying this principle is to reduce the amount of the offset amount by 50 percent whenever the multiple procedure discount applies to the associated APC. This discounting of the offset is applied in 2002 to bills subject to multiple procedure discounting that also include devices eligible for pass-through payment.

The significant number of device categories that are expiring in 2003 combined with our proposal to package 100 percent of device costs into their associated APCs has prompted us to revisit the current policy of reducing offsets for pass-through devices in instances when multiple procedure discounts are applied to procedures

associated with pass-through device categories. In order to determine the impact of multiple procedure discounting on APCs with full packaging of device costs, we reviewed the median costs of all APCs after incorporation of device costs and arrayed them in order of descending median cost. We also determined the contribution (in absolute dollars and as a percentage) of device costs to the median costs of each APC.

We then determined which APCs containing devices would be billed together. We next determined, based on median cost data, which device containing APCs would be subject to the 50 percent multiple procedure reduction. After identifying these APCs, we applied a 50 percent reduction to arrive at a discounted payment amount. We then reviewed the contribution of device costs to the discounted APC both as a percentage and in absolute dollars to determine if applying the 50 percent reduction would result in underpayment for the service. We determined that the reduced payment was adequate to pay both for the devices incorporated into the APC and for the procedure cost in the context of performing multiple procedures. We obtained the same results even when we overstated device costs in our model by 5 or 10 percent to offset concerns expressed by some manufacturers and physicians that hospital charges for transitional pass-through devices may be understated.

We noted that almost all APCs with high device costs (such as insertion of pacemakers, insertion of cardioverter-defibrillators, insertion of infusion pumps and neurostimulator electrodes) would never be subject to a multiple procedure discount. They have the highest relative weights in the OPPS, and we would not expect these procedures to be performed during the same operative session with a higher paying procedure with status indicator "T." Therefore, we proposed to continue our current policy of multiple procedure discounting. That is, when two or more APCS with status indicator "T" are billed together we proposed to pay 100 percent for the highest cost APC and 50 percent for all other APCs with status indicator "T." We proposed not to adjust these payments to account for device costs in the APCs.

We received a large number of comments on this proposal, which are summarized below:

Comment: Many commenters asked that the status indicator be changed from "T" to "S" for APCs for which a large amount of the cost of the APC is cost for a device that is packaged into the APC. They said that it is not appropriate to apply the multiple procedure discount that is applied to services with status indicator "T" to APCs for which the cost of a device is the majority of the cost of the APC because there is no efficiency in the provision of multiple devices. They said that the multiple procedure discount should only apply to the nondevice portion of the APC payment.

Response: We reviewed the data for combinations of APCs billed on the same claim and determined that it would not be typical for an APC, which is predominantly device cost, to be the second or subsequent APC on the same claim. Hence, it would not be typical that the predominantly device APC would be reduced (because a predominantly device APC would generally be the highest cost APC on the claim).

In the case of APC 225, however, we did change the status indicator to "S" because we were convinced that it must be performed when APC 222 also performed and that, therefore, a status indicator of "T" would not result in appropriate payment for 225.

Comment: A number of commenters took issue with our claim that almost all APCs with high device costs (such as insertion of pacemakers, insertion of cardioverter-defibrillators, insertion of infusion pumps, and neurostimulator electrodes) would never be subject to a multiple procedure discount. They asserted that some high cost APCs do incur multiple procedure discounting. The example most provided is the implantation of a neurostimulator (APC 0222) with neurostimulator electrodes or leads (APC 0225). They said that the multiple procedure discount along with proposed payment cuts to these APCs even more significantly impact the payment of these services and warrant extensive review, analysis, and consideration of outside data. They also recommended that we change the status indicators for these procedures to "S" (significant procedure), which are not reduced when performed as a multiple procedure in the same session. Other examples cited were: bilateral neurostimulator implants for patients with Parkinson's disease (APC 0222) and implantation of a spinal infusion pump, which involves implantation of a catheter (APC 0223) and infusion pump (APC 0227) and dual implantation of an artificial urinary sphincter and a penile prosthesis in prostate cancer survivors. One commenter recommended that all device-related APCs have a status indicator of "S" to reflect significant resources.

Response: We continue to believe that most procedures with significant device costs packaged in will, if provided on the same day and billed in conjunction with another procedure, be the most expensive procedure on the claim and thus not subject to discounting. We are concerned that, if we were to discontinue our policy of reducing payment for multiple procedures, we would overpay some lower valued procedures. We received many thoughtful comments on the multiple procedure discounting of certain APCs and we intend to take these comments under advisement and study this issue further.

Comment: One commenter objected to our proposal to stop applying the 50 percent discount to offsets to pass-through payments when there are multiple procedures involving a claim of a pass-through device also.

Response: As discussed above, the discount to offsets to pass-through payments will become a much less significant aspect beginning January 1, 2003, when we will retire 95 of 97 existing categories and add a limited number of new categories.

F. Outpatient Billing for Dialysis

Currently, Medicare does not pay for dialysis treatments furnished to End-Stage Renal Disease (ESRD) patients on an outpatient basis, unless the hospital also has a certified hospital-based ESRD facility. As a result of this policy, ESRD patients in need of emergency dialysis have been admitted to the hospital. These admissions have been found to be inappropriate by the Quality Improvement Organizations, and payment has been denied.

When ESRD patients come to the hospital for a medical emergency or for problems with their access sites, they typically miss their regularly scheduled dialysis appointments. If the ESRD patient's usual facility is unable to reschedule the dialysis treatment, the ESRD patient has to wait until the next scheduled dialysis appointment. We are concerned that by maintaining this policy, ESRD patients may be receiving interrupted care because there will be unnecessary lapses in treatment. The ESRD patient should not be prevented from receiving her or his normal dialysis because he or she experienced another unrelated medical situation. Therefore, we proposed to allow payment for dialysis treatments for ESRD patients in the outpatient department of a hospital in specific situations. Payment would be limited to unscheduled dialysis for ESRD patients in exceptional circumstances. Outpatient dialysis for acute patients

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would not be included in this payment mechanism.

In certain instances, it is appropriate to dialyze ESRD patients on an outpatient basis. We proposed to allow payment for these nonroutine dialysis treatments in medical situations in which the ESRD patient cannot obtain her or his regularly scheduled dialysis treatment at a certified ESRD facility. The circumstances in which we proposed to allow payment are limited to:

- Dialysis performed following or in connection with a vascular access procedure;
- Dialysis performed following treatment for an unrelated medical emergency; for example, if a patient goes to the emergency room for chest pains and misses a regularly scheduled dialysis treatment that cannot be rescheduled, we would allow the hospital to provide and bill Medicare for the dialysis treatment; and
- Emergency dialysis—Currently, the only mechanism available for payment in this situation is through an inpatient admission. We will maintain our policy that routine treatments in non-ESRD certified hospitals would not be payable under OPPS.

We believe it is important to make this change in the policy for two reasons:

- To ensure that hospital outpatient departments are paid for providing this much needed service; and
- To prevent dialysis patients from receiving interrupted care. Non-ESRD certified hospital outpatient facilities would bill Medicare using a new G code, G0GGG, "Unscheduled or emergency treatment for dialysis for ESRD patient in the outpatient department of a hospital that does not have a certified ESRD facility." We proposed that this new code will have status indicator "S" and be assigned to APC 0170. Payment would be roughly equivalent to the reimbursement rate for acute dialysis. We proposed to implement this change effective January 1, 2003. Effective January 1, 2003, this would be the only way for non-ESRD certified hospital outpatient facilities to bill Medicare and be paid for providing nonroutine outpatient dialysis to ESRD patients.

We will be monitoring the use of this new code to ensure the following:

- Certified dialysis facilities are not incorrectly using this code.
- The same dialysis patient is not repeatedly using this code, which would indicate routine dialysis treatment.

When ESRD patients receive outpatient dialysis in non-ESRD certified hospital outpatient facilities, the patient's home facility would be responsible for obtaining and reviewing the patient's medical records to ensure that appropriate care was provided in the hospital and that modifications are made, if necessary, to the patient's plan of care upon her or his return to the facility. This ensures continuity of care for the patient.

We received eight comments on our proposal to allow payment for dialysis treatments for ESRD patients in the outpatient department of a hospital. Although all of the comments support our proposed changes, some commenters asked for clarification on issues pertaining to this provision.

Comment: One commenter requested that we provide clarification on how the payment rate would be determined for this service.

Response: In the August 9, 2002 proposed rule, we provided the payment rate for providing dialysis treatments for ESRD patients in the outpatient department of a hospital. The proposed rule stated that this service would be assigned Ambulatory Payment Classification (APC) 0170, and Addendum A provides the payment rate for this APC. Effective January 1, 2003, the payment national unadjusted rate for this service will be $252.16.

Comment: One commenter wanted clarification on how services typically associated with outpatient dialysis such as covered pharmaceuticals and laboratory testing will be accounted for under the proposed policy.

Response: We would pay separately for laboratory tests based on the laboratory fee schedule. Drugs may or may not be paid separately from the payment for the dialysis treatment. The drugs that would be paid separately would have a separate APC. If there is not a separate APC, then the drugs would be packaged into the APC paid for the dialysis treatment.

Comment: One commenter expressed concern that the proposal to require the ESRD patient's home facility to obtain and review the patient's medical records from the hospital would create an additional information collection burden for dialysis facilities. The commenter requested that we include language in the final rule that specifically outlines the hospital's responsibilities in providing the patient's medical records to the home facility.

Response: There should be a regular exchange of information between a patient's home facility and any treating facilities to verify the care that has been provided and to ensure that patients are not receiving inappropriate or incorrect treatment. The dialysis facility is, however, ultimately responsible for effectively coordinating the care of its patients, including the inclusion of all information in the patient's medical record, and we believe obtaining and reviewing information from other treating facilities is part of this responsibility. The medical record indicates what care has actually been provided, and it also provides the data for evaluation and documentation of the quality and appropriateness of the care delivered. We believe subsequent dialysis treatment at the patient's home facility should not be provided without information from another treatment facility because the home facility may need to make adjustments to the plan of care when the patient returns to the facility, so the facility should obtain this information from the hospital to implement any new strategies, etc. Furthermore, since dialysis facilities should already be collecting medical records for home dialysis patients and for traveling patients, we do not view this as an additional information collection burden. We view this as a responsibility within the facilities scope of practice.

Comment: One commenter cautioned us about the potential for abuse with this proposal and recommended that we develop clear guidelines governing the use of this new code.

Response: We agree with the commenter, and we plan to issue instructions for the use of the code as well as develop code edits to monitor the use of this code to prevent potential fraud and abuse. The instructions will be issued at a later date.

Comment: Another commenter requested clarification of the word "routine," and what criteria that we will apply to establish whether a patient is receiving "routine" dialysis treatment. The commenter also requested documentation requirements (for example, diagnoses, other procedures, etc.) for meeting these "exceptional circumstances" defined in the August 9, 2002 proposed rule.

Response: We define "routine" dialysis as the three times per week maintenance treatment the same patient would normally receive at his or her home facility. We would consider a patient to be receiving routine dialysis if the claims received from the outpatient department indicated that the same patient received dialysis treatment more than once a week in this setting.

The August 9, 2002 proposed rule states that we would allow payment for this unscheduled dialysis under exceptional circumstances, and these circumstances would be (1) dialysis

performed following or in connection with a vascular access procedure; (2) dialysis performed following treatment for an unrelated medical emergency; and (3) emergency dialysis. These are the only situations in which payment would be made for dialysis provided in the outpatient department of a hospital without a certified dialysis facility. As stated above, we plan on issuing instructions governing the specific use of this code at a later date.

Comment: The commenter requested clarification as to whether an emergency department that is part of a larger hospital that contains a certified dialysis unit is already considered an ESRD certified location. Specifically, is this proposed payment change only for those providers that do not have a certified dialysis unit on their premises, making them a non-ESRD certified outpatient facility? If the answer is yes, then would the emergency department that is part of the hospital that has an ESRD-certified location bill the new dialysis G code if dialysis is given on an emergency basis while the ESRD certified location is closed?

Response: The proposed G code is specifically designated for an outpatient department of a hospital that does not have a certified ESRD facility. Therefore, a hospital's emergency department cannot use the code just because the certified dialysis facility is closed. The basis for this decision is to prevent potential fraud and abuse. We do not want dialysis facilities to use this as a means of circumventing the current requirements to receive a higher reimbursement rate for providing dialysis treatment. As stated above, we plan on issuing instructions governing the specific use of this code at a later date.

XI. Summary and Responses of Public Comments to CMS's Response to MedPAC Recommendations

In the August 9, 2002 proposed rule, we responded to the Medicare Payment Advisory Commission (MedPAC) March 2002 Report to the Congress: "Medicare Payment Policy," recommendations relating to the OPPS (67 FR 52141 through 52143). We received no comments on our responses to MedPAC's recommendations. Therefore, we will not discuss that response further here. We did receive comments from MedPAC on other issues in the proposed rule. For convenience we group those comments and our responses here:

Comment: MedPAC endorsed our proposal to create APCs for procedures involving drug-eluting stents and noted, "This step illustrates that CMS can respond rapidly to ensure adequate payment for technologies that are thought to be of a breakthrough nature." The Commission noted that our reliance on data from other countries to set the payment rate for this new technology appeared adequate in this instance. However, it expressed some reservation about the long-term issues that might attend more general use of such data. MedPAC has begun to consider these issues in more depth and urges us to do so as well.

Response: We appreciate the Commission's views. We have adopted our proposal for drug-eluting stents, including our method of setting the payment rate. We will give further consideration to the issues involved in use of foreign data.

Comment: MedPAC discussed the possibility that a pro rata reduction to payments for transitional pass-through drugs and devices would be needed this year, though we had not reached a conclusion on this question in the August 9, 2002 proposed rule. The Commission commented that even if a modest pro rata reduction is needed, it does not anticipate serious consequences for access to new technology services for several reasons. First, the methods for calculating transitional pass-through payments may overcompensate for these services. Second, hospitals are still likely to use these items to improve care and maintain reputations for excellence. Third, little evidence is available that indicates access problems resulting from the large pro rata reduction in 2002. Fourth, asking hospitals to share in the costs of new technologies gives them incentives to assess their value before adopting them.

Response: We have concluded that no pro rata reduction will be necessary for 2003. We appreciate and agree with the Commission's analysis of the possible effects of a pro rata reduction.

Comment: Regarding payment for medical devices no longer eligible for transitional pass-through payments, MedPAC urged us to work with stakeholders in instances where creditable evidence is available that coding issues may have led to inaccurate payment rates. The Commission does not believe that an extension of transitional pass-through eligibility is warranted or that data other than hospital cost data should be used where reliable hospital cost data are available. It also urged us to monitor beneficiary access to procedures that include such devices if payments are cut significantly.

Response: We agree that extension of transitional pass-through eligibility is not warranted, and we do not believe that the statute contemplates that it could be continued. We also agree that stakeholders may have valuable input, and as we describe elsewhere in this final rule, we have received a great deal of helpful information that has informed the policies adopted in this rule designed to moderate payment reductions that may be associated with use of devices (and of drugs) previously in transitional pass-through status. We also agree that monitoring access by beneficiaries to these procedures is important, and we expect to do so to the extent feasible.

Comment: MedPAC expressed concern that our proposal to pay separately for high-cost drugs but not for other drugs has the potential to distort the payment system. Where drugs may substitute for one another, hospitals may face incentives to use those paid separately. The Commission urged us to limit the amount of time this policy is followed and to work to move more drugs into the procedure APCs.

Response: We agree that this policy may have distorting effects on incentives, and we do not intend to use it longer than necessary. In future years, we hope to propose additional changes to this policy, and in particular to package drugs into procedure APCs where this approach appears reasonable. We hope further improvements in our data and further attention to the structure of APCs involving the use of drugs, such as those for infusion and injection, will provide the foundation for future policy development in this area.

Comment: MedPAC commented that hospital cost data are preferable to AWPs set by manufacturers. The Commission indicated the need to give careful consideration to stakeholder comments on payment for drugs and the importance of monitoring beneficiary access.

Response: We agree.

Comment: MedPAC commented that the reductions in payments for drugs that may no longer be eligible for transitional pass-through payments based on 95 percent of average wholesale price (AWP) will result in lower payments for these drugs than in other settings, such as physicians' offices. These differences may lead to shifts in the site of care based on financial considerations. MedPAC commented that this effect is not sufficient reason to change payments for these drugs in the hospital outpatient setting, but that it indicates the need for a new approach to paying for Part B drugs.

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Response: The possibility of inappropriate shifts in site of service is a source of concern. We note, however, that payment rates for these drugs only shifted to 95 percent of AWP at the inception of the OPPS; before that time, Medicare paid for drugs in outpatient departments at reasonable cost, subject to statutory reductions. Medicare payment for drugs in physicians' offices has been set at 95 percent of AWP throughout this period. It is not clear that the increase in drug payments in outpatient departments from August 2000 to the present has led to substantial shifts in site of service, and the response to the forthcoming reductions may be muted as well. Nonetheless, we believe that Medicare should attempt to align payments across settings to the greatest extent possible in order to avoid inappropriate incentives to shift the site of service. In particular, we agree that a new approach to paying for Part B drugs would be desirable.

Comment: MedPAC noted that we have the statutory authority to modify updates to correct for unnecessary increases in the volume of services or for "upcoding" by hospitals. The Commission urged us to carefully track the volume of services and increases in coding intensity.

Response: We have not proposed any adjustment to the update for either of these reasons, and we will not adopt any such adjustment for 2003. We continue to monitor the progress of the OPPS system to discern whether we should make any such adjustment in the future.

Comment: MedPAC noted that small rural hospitals will continue to be held harmless for losses under the OPPS in 2003. The Commission urged us to study the performance of small rural hospitals and evaluate the impact of the end of their hold-harmless status.

Response: We agree that small rural hospitals warrant special attention. We expect to study the effect of the transitional corridor provision, including the protection it affords these hospitals, in the period since the implementation of the OPPS so that we can help evaluate what provision would be appropriate for 2004 and beyond.

XII. Provisions of the Final Rule With Comment for 2003

A. OPPS

The provisions of this final rule with comment restate changes to the Medicare hospital OPPS and CY 2003 payment rates including changes used to determine these payment rates set forth in the August 9, 2002 proposed rule, except as noted elsewhere in the preamble. The following is a highlight of provisions implemented in this final rule, which are discussed in detail above.

1. Statutory and Discretionary Changes

- We revised the methodology for calculating relative weights to dampen the difference in the median costs for all APCs for which the median costs fell more than 15 percent from 2002 to 2003; used only claims on which devices were reported to set the median for APCs for which the device was either essential or frequently used in the procedures in the APC; split some APCs for which devices were an issue to achieve more accurate pricing; limited the reduction in median costs for blood and certain blood products to 11 percent, which limited the reduction in payment from 2002 to 2003 to about 15 percent; used acquisition costs from external sources as a factor together with claims data in setting adjusted medians for four APCs.
- We reviewed and revised the composition of APCs to comply with the limitation on variation in procedure medians and to achieve more accurate reflections of the costs.
- We removed from pass-through status those drugs and devices that will have been on pass-through status for at least 2 years on January 1, 2003. We packaged the costs of the expiring devices into the payments for the APCs with which the devices were billed. We packaged the costs of the expiring drugs into the APCs with which the drugs were billed if the per encounter drug cost was less than $150; we established APCs for those drugs for which the per encounter drug cost was more than $150 and for blood and certain blood products. We paid for influenza and pneumococcal pneumonia vaccines and orphan drugs on a reasonable cost basis.
- We estimated the amount of payment that would be made under the pass through provisions and compared it to 2.5 percent of the projected program expenditures; we determined that no pro rata reduction would be needed for 2003, and we adjusted the conversion factor accordingly.
- We established the percentages by which pass-through devices would be reduced to remove the part of the payment that is packaged into the APC when it is billed with the device.
- We finalized the regulations that describe the criteria that must be met for a device to get a pass-through code.
- We issued the 2003 wage index and conversion factor that would be applied to the relative weights to determine the amount of payment for a particular hospital.

2. Changes to the Regulations Text

- We amended § 419.21(d)(3) to delete influenza and pneumococcal pneumonia vaccines from the list of items that are paid to CORFs, HHAs, and hospices under OPPS.
- We amended § 419.66(c)(1) to specify that we must establish a new category for a medical device if it is not described by any category previously in effect as well as an existing category. We received no comments concerning this technical correction to our regulations text. We are making this proposal final in this final rule.

B. Payment Suspension for Unfiled Cost Reports

We are adopting the provisions set forth in the proposed rule without change.

C. Partial Hospitalization Services

In the August 9, 2002 proposed rule, we indicated we would be addressing comments received on our proposal to establish a new payment amount for partial hospitalization services and remove clinical social worker services from the partial hospitalization benefit. Upon further review we have determined that we will not include this issue in this final rule, but will address it in future rulemaking.

D. Pneumococcal and Influenza Vaccines

Section 419.21(d)(3) states that "Pneumococcal vaccine, influenza vaccine, and hepatitis B vaccine" are paid under the OPPS for comprehensive outpatient rehabilitation facilities, home health agencies, and hospices. There is no specific inclusion of hospitals, but we have paid hospitals for them under the OPPS since the OPPS began. We are removing the pneumococcal vaccine and influenza vaccine from this paragraph and want to pay for it under reasonable cost. We are requesting public comment on this change.

XIII. Response to Public Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, if we proceed with a subsequent document, we will respond to comments in the preamble to that document.

XIV. Collection of Information Requirements

This rule does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995.

XV. Regulatory Impact Analysis

The regulatory impact analysis for this final rule consists of an impact analysis for the OPPS provisions and a regulatory impact statement for the provision for payment suspension for unfiled cost reports.

A. OPPS

1. General

We have examined the impacts of this rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 16, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132.

Executive Order 12866 (as amended by Executive Order 13258, which merely reassigns responsibility of duties) directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year).

We estimate the effects of the provisions that will be implemented by this final rule will result in expenditures exceeding $100 million in any 1 year. We estimate the total increase (from changes in the final rule as well as enrollment, utilization, and case mix changes) in expenditures under the OPPS for CY 2003 compared to CY 2002 to be approximately $1.372 billion. Therefore, this final rule is an economically significant rule under Executive Order 12866, and a major rule under 5 U.S.C. 804(2).

The RFA requires agencies to determine whether a rule will have a significant economic impact on a substantial number of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $6 million to $29 million in any 1 year (see 65 FR 69432).

For purposes of the RFA, we have determined that approximately 37 percent of hospitals will be considered small entities according to the Small Business Administration (SBA) size standards. We do not have data available to calculate the percentages of entities in the pharmaceutical preparation manufacturing, biological products, or medical instrument industries that would be considered to be small entities according to the SBA size standards. For the pharmaceutical preparation manufacturing industry (NAICS 325412), the size standard is 750 or fewer employees and $67.6 billion in annual sales (1997 business census). For biological products (except diagnostic) (NAICS 325414), with $5.7 billion in annual sales, and medical instruments (NAICS 339112), with $18.5 billion in annual sales, the standard is 50 or fewer employees (see the standards Web site at *http://www.sba.gov/regulations/siccodes/*). Individuals and States are not included in the definition of a small entity.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. With the exception of hospitals located in certain New England counties, for purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area (MSA) and has fewer than 100 beds (or New England County Metropolitan Area (NECMA)). Section 601(g) of the Social Security Amendments of 1983 (Pub. L. 98–21) designated hospitals in certain New England counties as belonging to the adjacent NECMA. Thus, for purposes of the OPPS, we classify these hospitals as urban hospitals. We believe that the changes in this final rule will affect both a substantial number of rural hospitals as well as other classes of hospitals and that the effects on some may be significant. Therefore, we conclude that this final rule has a significant impact on a substantial number of small entities. However, the statute provides for small rural hospitals (of fewer than 100 beds) to be held harmless by the law and to continue to be paid at cost; therefore this final rule has no impact on them.

Unfunded Mandates

Section 202 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in an expenditure in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. This final rule will not mandate any requirements for State, local, or tribal governments. This final rule imposes no unfunded mandates on the private sector.

Federalism

Executive Order 13132 establishes certain requirements that an agency must meet when it publishes a proposed rule (and subsequent final rule) that imposes substantial direct costs on State and local governments, preempts State law, or otherwise has Federalism implications.

We have examined this final rule in accordance with Executive Order 13132, Federalism, and have determined that it will not have an impact on the rights, roles, and responsibilities of State, local or tribal governments. The impact analysis (see Table 10) shows that payments to governmental hospitals (including State, local, and tribal governmental hospitals) will increase by 5 percent under the final rule.

2. Changes in this Final Rule

We are making several changes to the OPPS that are required by the statute. We are required under section 1833(t)(3)(C)(ii) of the Act to update annually the conversion factor used to determine the APC payment rates. We are also required under section 1833(t)(9)(A) of the Act to revise, not less often than annually, the wage index and other adjustments. In addition, we must review the clinical integrity of payment groups and weights at least annually. Accordingly, in this final rule, we are updating the conversion factor and the wage index adjustment for hospital outpatient services furnished beginning January 1, 2003 as we discuss in sections VIII and VI, respectively, of this preamble. We are also revising the relative APC payment weights based on claims data from January 1, 2001 through December 31, 2001. Finally, we are removing 95 devices and more than 200 drugs and biologicals from pass-through payment status.

Under this final rule, the change to the conversion factor as provided by statute will increase total OPPS payments by 3.7 percent in 2003. The changes to the wage index and to the APC weights (which incorporate the cessation of pass-through payments for many drugs and devices) do not increase OPPS payments because the OPPS is budget neutral. However, the

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wage index and APC weight changes do change the distribution of payments within the budget neutral system as shown in Table 10 and described in more detail in this section.

Alternatives Considered

Alternatives to the changes we are making and the reasons that we are choosing not to make them are discussed throughout this final rule. Below we discuss options we considered when analyzing methodologies to appropriately recognize the costs of former pass-through items. For a more detailed discussion, see section IV.C regarding the expiration of pass-through payment for devices and section IV.D regarding the expiration of pass-through payment for drugs and biologicals.

Payment for Categories of Devices

We considered establishing separate APCs for categories of devices and paying for them separately. We are not choosing this option because we believe that to the extent possible, hospital payment for procedures and visits should include all of the costs required to provide the procedures and visits.

A second option we considered involved (1) packaging some categories of devices into the procedures with which they were billed in 2001 and (2) paying the rest through separate APCs (as discussed in section IV of this final rule.). We are not choosing this option because we believe that devices are routinely used in the services for which they are needed and therefore are consistently paid at the cost of providing the service. Furthermore, criteria that will provide a basis for some devices to be packaged and for others to be paid separately must be developed and approved, thereby further complicating an already complex payment system.

Payment for Drugs and Biologicals

We considered continuing to make separate payment for all drugs and biologicals through separate APCs. We are not choosing to pay separately for all drugs through separate APCs because we believe that, to the extent possible, hospital payment for services should include all of the costs of the services. We believe that drugs should be packaged with the services in which they are furnished except when we determine that there is a valid reason to do otherwise. However, we recognize that (unlike the stability that exists with device usage with the applicable procedures) the use of drugs may vary widely depending upon patient and disease characteristics. Therefore, packaging payment for all drugs may, in some cases, provide inadequate payment for the services furnished. Where a hospital has a disproportionate share of patients who need greater amounts of expensive drugs, underpayment for the drugs needed by these patients could result in cessation of needed services. For the first year that we are ceasing transitional pass-through payment for drugs, we decided to proceed cautiously by paying separately for drugs when the cost per encounter was more than $150 or when special characteristics existed (for example, orphan drugs, blood products).

We also considered packaging the costs of all drugs into the cost of the associated procedures with which they were billed in 2001. We did not package all payment for drugs into the payment for the procedures because, while this packaging is ultimately our goal, we believe, for the reasons indicated above, that we need to proceed cautiously to ensure that we do not inadvertently threaten access to needed care.

Conclusion

It is clear that the changes in this final rule will affect both a substantial number of rural hospitals as well as other classes of hospitals, and the effects on some may be significant. Therefore, the discussion below, in combination with the rest of this final rule, constitutes a regulatory impact analysis.

The OPPS rates for CY 2003 will have, overall, a positive effect for every category of hospital with the exception of children's hospitals, which are held harmless under the OPPS. These changes in the OPPS for 2003 will result in an overall 3.7 percent increase in Medicare payments to hospitals, exclusive of outlier and transitional pass-through payments and transitional corridor payments. As described in the preamble, budget neutrality adjustments are made to the conversion factor and the weights to ensure that the revisions in the wage index, APC groups, and relative weights do not affect aggregate payments. The impact of the wage and recalibration changes does vary somewhat by hospital group. Estimates of these impacts are displayed on Table 10.

The overall projected increase in payments for urban hospitals is slightly lower (3.1 percent) than the average increase for all hospitals (3.7 percent) while the increase for rural hospitals is significantly greater (6.2 percent) than the average increase. Rural hospitals gain 2.2 percent from the wage index change, and also gain 0.1 percent from APC changes. A discussion of the distribution of outlier payments that we project under this final rule can be found under section XV.A.4 below. Table 11 presents the outlier distribution that we expect to see under this final rule.

3. Limitations of Our Analysis

The distributional impacts represent the projected effects of the policy changes, as well as statutory changes effective for 2003, on various hospital groups. We estimate the effects of individual policy changes by estimating payments per service while holding all other payment policies constant. We use the best data available but do not attempt to predict behavioral responses to our policy changes. In addition, we do not make adjustments for future changes in variables such as service volume, service mix, or number of encounters.

4. Estimated Impacts of This Final Rule on Hospitals

The OPPS is a budget neutral payment system under which the increase to the total payments made under OPPS is limited by the increase to the conversion factor set under the methodology in the statute. The impact tables show the redistributive effects of the wage index and APC changes. In some cases, under this final rule, hospitals will receive more total payment than in 2002 while in other cases they will receive less total payment than they received in 2002. The impact of this final rule will depend on a number of factors, most significant of which are the mix of services furnished by a hospital (for example, how the APCs for the hospital's most frequently furnished services will change) and the impact of the wage index changes on the hospital.

Column 4 in Table 12 represents the full impact on each hospital group of all the changes for 2003. Columns 2 and 3 in the table reflect the independent effects of the change in the wage index and the APC reclassification and recalibration changes, respectively. We excluded critical access hospitals (CAHs) from the analysis of the impact of the 2003 OPPS rates that is summarized in Table 12. For that reason, the total number of hospitals included in Table 10 (4,551) is lower than in previous years. CAHs are excluded from the OPPS.

In general, the wage index changes favor rural hospitals, particularly the largest in bed size and volume. The only rural hospitals that will experience a negative impact due to wage index changes are those in Puerto Rico, a decrease of 3.2 percent. Conversely, the urban hospitals are generally negatively

affected by wage index changes, with the largest decreases occurring in those with 300 to 499 beds (−0.7 percent) and those in the Middle Atlantic (−1.0 percent), Pacific (−1.2 percent), and Puerto Rico Regions (−1.6 percent). However, this effect is somewhat lessened by the distribution of outlier payments as discussed in more detail below.

The APC reclassification and recalibration changes also favor rural hospitals and have a negative effect on urban hospitals in excess of 200 beds. Specifically, urban hospitals with 300 to 499 beds (−0.6 percent decrease) and urban hospitals in excess of 500 beds (a −0.8 percent decrease) all show a decrease attributed to APC recalibration. However, this decrease is much less than what would have occurred under the proposed rule.

In urban areas, hospitals that provide a lower volume of outpatient services are projected to receive a larger increase in payments than higher volume hospitals. In rural areas, hospitals with higher volumes are expected to receive higher increases in payments. In rural areas, hospitals with volumes greater than 42,999 services are projected to experience a significant increase in payments (7.7 percent). The less favorable impact for the high volume urban hospitals is attributable to both wage index and APC changes. For example, urban hospitals providing more than 42,999 services are projected to gain a combined 2.8 percent due to these changes.

Major teaching hospitals are projected to experience a smaller increase in payments (2.7 percent) than the aggregate for all hospitals (3.7 percent) due to negative impacts of the wage index (−0.3 percent) and recalibration (−0.8 percent). Hospitals with less intensive teaching programs are projected to experience an overall increase (3.2 percent) that is smaller than the average for all hospitals.

TABLE 12.—IMPACT OF CHANGES FOR CY 2003 HOSPITAL OUTPATIENT PROSPECTIVE PAYMENT SYSTEM

[Percent change in total payments to hospitals (program and beneficiary); does not include hold harmless, corridor, outlier or transitional pass-through payments]

	Number of Hospitals[1] (1)	New Wage Index[2] (2)	APC Changes[3] (3)	All CY 2003 Changes[4] (4)
ALL HOSPITALS	4,519	0	0	3.7
NON-TEFRA HOSPITALS	3,989	0	−0.1	3.6
URBAN HOSPS	2,420	−0.5	−0.1	3.1
LARGE URBAN (GT 1 MILL.)	1,397	−0.6	−0.1	3.1
OTHER URBAN (LE 1 MILL.)	1,023	−0.5	−0.1	3.1
RURAL HOSPS	1,569	2.2	0.1	6.2
BEDS (URBAN):				
0–99 BEDS	550	−0.4	0.7	4.0
100–199 BEDS	877	−0.6	0.6	3.7
200–299 BEDS	488	−0.6	0.1	3.3
300–499 BEDS	364	−0.7	−0.6	2.4
500+ BEDS	141	−0.1	−0.8	2.8
BEDS (RURAL):				
0–49 BEDS	752	0.2	0	4.0
50–99 BEDS	478	1.4	−0.3	4.9
100–149 BEDS	200	2.4	0.3	6.6
150–199 BEDS	73	5.4	−0.5	8.9
200+ BEDS	66	3.1	0.8	8.0
VOLUME (URBAN):				
LT 5,000	182	0.9	3.4	8.0
5,000–10,999	293	−0.8	2.2	5.2
11,000–20,999	476	−0.7	1.1	4.2
21,000–42,999	667	−0.7	0.2	3.2
GT 42,999	802	−0.5	−0.4	2.8
VOLUME (RURAL):				
LT 5,000	334	0	1.1	4.9
5,000–10,999	419	0.3	1.2	5.4
11,000–20,999	387	1.2	0	5.0
21,000–42,999	295	1.9	0	5.8
GT 42,999	134	4.1	−0.3	7.7
REGION (URBAN):				
NEW ENGLAND	127	−0.6	0.4	3.4
MIDDLE ATLANTIC	372	−1	0.1	2.7
SOUTH ATLANTIC	367	−0.3	0.5	3.9
EAST NORTH CENT.	411	−0.7	−0.9	2.1
EAST SOUTH CENT.	153	−0.8	−0.1	2.8
WEST NORTH CENT.	170	−0.6	−1.1	2.0
WEST SOUTH CENT.	292	1	0	4.8
MOUNTAIN	122	0.2	−0.8	3.0
PACIFIC	367	−1.2	0.8	3.3
PUERTO RICO	39	−1.6	2.1	4.1
REGION (RURAL):				
NEW ENGLAND	40	1.7	−0.2	5.3
MIDDLE ATLANTIC	63	1.9	−0.5	5.3
SOUTH ATLANTIC	224	2.4	0.9	7.2
EAST NORTH CENT.	212	1.1	−1.7	3.2
EAST SOUTH CENT.	232	2.2	1.2	7.3
WEST NORTH CENT.	271	1.8	−0.6	5.0

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TABLE 12.—IMPACT OF CHANGES FOR CY 2003 HOSPITAL OUTPATIENT PROSPECTIVE PAYMENT SYSTEM—Continued

[Percent change in total payments to hospitals (program and beneficiary); does not include hold harmless, corridor, outlier or transitional pass-through payments]

	Number of Hospitals[1] (1)	New Wage Index[2] (2)	APC Changes[3] (3)	All CY 2003 Changes[4] (4)
WEST SOUTH CENT.	278	1.9	1.4	7.2
MOUNTAIN	141	4.6	−0.6	7.9
PACIFIC	103	4.9	1	10.0
PUERTO RICO	5	−3.2	7.2	7.6
TEACHING STATUS:				
NON-TEACHING	2,922	0.3	0.3	4.4
MINOR	782	−0.3	−0.2	3.2
MAJOR	284	−0.3	−0.8	2.7
DSH PATIENT PERCENT:				
0	11	5.3	5.5	15.3
GT 0–0.10	975	−0.2	−0.6	2.9
0.10–0.16	872	0.6	−0.6	3.7
0.16–0.23	766	−0.6	0	3.1
0.23–0.35	755	−0.1	0.4	4.1
GE 0.35	610	0.1	1.6	5.5
URBAN IME/DSH:				
IME & DSH	982	−0.6	−0.4	2.7
IME/NO DSH	0	0	0	0.0
NO IME/DSH	1,432	−0.5	0.4	3.6
NO IME/NO DSH	6	6.1	5.1	15.7
RURAL HOSP. TYPES:				
NO SPECIAL STATUS	607	0.5	0.3	4.6
RRC	167	4.2	0.2	8.4
SCH/EACH	507	1.4	−0.1	5.1
MDH	199	0.5	−0.7	3.6
SCH AND RRC	75	3.8	0.1	7.9
TYPE OF OWNERSHIP:				
VOLUNTARY	2,434	−0.1	−0.2	3.5
PROPRIETARY	703	−0.5	0.5	3.7
GOVERNMENT	852	0.6	0	4.4
SPECIALTY HOSPITALS:				
EYE AND EAR	13	−1.3	9.1	11.7
TRAUMA	153	−0.3	−0.6	2.9
CANCER	10	1	−4.5	0.4
TEFRA HOSPITALS (NOT INCLUDED ON OTHER LINES):				
REHAB	163	10.1	0.8	14.7
PSYCH	191	0	7.4	11.4
LTC	135	4.3	15.1	23.0
CHILDREN	41	−1.4	−1	1.3

[1] Some data necessary to classify hospitals by category were missing; thus, the total number of hospitals in each category may not equal the national total.

[2] This column shows the impact of updating the wage index used to calculate payment by applying the FY 2003 hospital inpatient wage index after geographic reclassification by the Medicare Geographic Classification Review Board. The hospital inpatient final rule for FY 2003 was published in the **Federal Register** on May 9, 2002.

[3] This column shows the impact of changes resulting from the reclassification of HCPCS codes among APC groups and the recalibration of APC weights based on 2001 hospital claims data.

[4] This column shows changes in total payment from CY 2002 to CY 2003, excluding outlier and pass-through payments. It incorporates all of the changes reflected in columns 2 and 3. In addition, it shows the impact of the FY 2003 payment update. The sum of the columns may be different from the percentage changes shown here due to rounding.

Note: For CY 2003, under the OPPS transitional corridor policy, the following categories of hospitals are held harmless compared to their 1996 payment margin for these services: cancer and children's hospitals and rural hospitals with 100 or fewer beds.

As stated elsewhere in this preamble, we have allocated 2 percent of the estimated 2003 expenditures to outlier payments. In Table 13 below, we provide a distribution by percentage of the total projected outlier payments for the categories of hospitals that we show in the impact table (Table 10).

We project, based on the mix of services for the hospitals that will be paid under the OPPS in 2003, that most hospitals will receive outlier payments.

The anticipated outlier payments for urban hospitals can be expected to ameliorate the impact of the wage index and APC changes on payments to urban hospitals.

TABLE 13.—DISTRIBUTION OF OUTLIER PAYMENTS FOR CY 2003 HOSPITAL OUTPATIENT PROSPECTIVE PAYMENT SYSTEM

	Number of Hospitals	Percent of Total Hospitals	Number of Hospitals with Outliers	Percent of Total Outlier Payments
ALL HOSPITALS	4,519	100.00	4,298	100.00
NON-TEFRA HOSPITALS	3,989	88.20	3,977	99.40
URBAN HOSPS	2,420	53.60	2,413	83.20
LARGE URBAN (GT 1 MILL.)	1,397	31.00	1,394	56.00
OTHER URBAN (LE 1 MILL.)	1,023	22.60	1,019	27.20
RURAL HOSPS	1,569	34.80	1,564	16.20
BEDS (URBAN):				
0–99 BEDS	550	12.20	545	7.20
100–199 BEDS	877	19.40	875	18.20
200–299 BEDS	488	10.80	488	16.80
300–499 BEDS	364	8.00	364	21.00
500 + BEDS	141	3.20	141	19.80
BEDS (RURAL):				
0–49 BEDS	752	16.60	749	4.40
50–99 BEDS	478	10.60	477	5.00
100–149 BEDS	200	4.40	199	2.40
150–199 BEDS	73	1.60	73	2.00
200 + BEDS	66	1.40	66	2.20
VOLUME (URBAN):				
LT 5,000	182	4.00	176	1.00
5,000–10,999	293	6.40	292	2.80
11,000–20,999	476	10.60	476	6.80
21,000–42,999	667	14.80	667	17.60
GT 42,999	802	17.80	802	55.00
VOLUME (RURAL):				
LT 5,000	334	7.40	330	1.00
5,000–10,999	419	9.20	418	2.40
11,000–20,999	387	8.60	387	4.00
21,000–42,999	295	6.60	295	4.20
GT 42,999	134	3.00	134	4.40
REGION (URBAN):				
NEW ENGLAND	127	2.80	126	5.60
MIDDLE ATLANTIC	372	8.20	371	24.20
SOUTH ATLANTIC	367	8.20	366	11.40
EAST NORTH CENT	411	9.00	408	14.80
EAST SOUTH CENT	153	3.40	153	3.20
WEST NORTH CENT	170	3.80	170	4.20
WEST SOUTH CENT	292	6.40	292	8.00
MOUNTAIN	122	2.60	122	3.00
PACIFIC	367	8.20	366	8.80
PUERTO RICO	39	0.80	39	0.00
REGION (RURAL):				
NEW ENGLAND	40	0.80	40	1.00
MIDDLE ATLANTIC	63	1.40	63	1.00
SOUTH ATLANTIC	224	5.00	222	3.00
EAST NORTH CENT	212	4.60	211	3.00
EAST SOUTH CENT	232	5.20	232	1.60
WEST NORTH CENT	271	6.00	270	2.40
WEST SOUTH CENT	278	6.20	278	1.60
MOUNTAIN	141	3.20	141	1.40
PACIFIC	103	2.20	102	1.20
PUERTO RICO	5	0.20	5	0.00
TEACHING STATUS:				
NON-TEACHING	2,922	64.60	2,910	40.40
MINOR	782	17.40	782	27.00
MAJOR	284	6.20	284	31.80
DSH PATIENT PERCENT:				
0	11	0.20	11	0.00
GT 0–0.10	975	21.60	973	24.60
0.10–0.16	872	19.20	872	19.20
0.16–0.23	766	17.00	764	17.60
0.23–0.35	755	16.80	752	19.40
GE 0.35	610	13.40	605	18.40
URBAN IME/DSH:				
IME & DSH	982	21.80	982	56.60
IME/NO DSH	0	0.00	0	0.00
NO IME/DSH	1,432	31.60	1,425	26.40
NO IME/NO DSH	6	0.20	6	0.00
RURAL HOSP. TYPES:				
NO SPECIAL STATUS	607	13.40	605	5.00

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TABLE 13.—DISTRIBUTION OF OUTLIER PAYMENTS FOR CY 2003 HOSPITAL OUTPATIENT PROSPECTIVE PAYMENT SYSTEM—Continued

	Number of Hospitals	Percent of Total Hospitals	Number of Hospitals with Outliers	Percent of Total Outlier Payments
RRC	167	3.60	166	4.00
SCH/EACH	507	11.20	507	4.40
MDH	199	4.40	198	1.20
SCH AND RRC	75	1.60	75	1.60
TYPE OF OWNERSHIP:				
VOLUNTARY	2,434	53.80	2,431	73.60
PROPRIETARY	703	15.60	699	10.60
GOVERNMENT	852	18.80	847	15.20
SPECIALTY HOSPITALS:				
EYE AND EAR	13	0.20	13	0.20
TRAUMA	153	3.40	153	15.00
CANCER	10	0.20	10	3.60
TEFRA HOSPITALS (NOT INCLUDED ON OTHER LINES):				
REHAB	163	3.60	115	0.20
PSYCH	191	4.20	67	0.00
LTC	135	3.00	99	0.20
CHILDREN	41	1.00	40	0.20

5. Estimated Impacts of This Final Rule on Beneficiaries

For services for which the beneficiary pays a coinsurance of 20 percent of the payment rate, the beneficiary share of payment will increase for services for which OPPS payments will rise and will decrease for services for which OPPS payments will fall. For example for a mid level office visit (APC 0601), the minimum unadjusted copayment in 2002 was $9.67; under this final rule, the minimum unadjusted copayment for APC 601 is $10.11 because the OPPS payment for the service will increase under this final rule. For some services (those services for which a national unadjusted copayment amount is shown in Addendum B), however, the beneficiary copayment is frozen based on historic data and will not change, therefore not presenting any potential impact on beneficiaries.

However, in all cases, the statute limits beneficiary liability for copayment for a service to the inpatient hospital deductible for the applicable year. This amount was $812 for 2002, and is $840 for 2003. In general, the impact of this final rule on beneficiaries will vary based on the service the beneficiary receives and whether the copayment for the service is one that is frozen under the OPPS.

B. Payment Suspension for Unfiled Cost Reports

Overall Impact

We have examined the impacts of this final rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 16, 1980, Public Law 96-354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132. (A description of each of these requirements is stated above in section XV.A.1.)

• We have determined that the payment suspension provision does not have an economic impact on Medicare payments or other payments to providers. We are allowing the Secretary flexibility in payment suspensions, but we are not altering the final payment determination in any way. With the implementation of the various prospective payment systems, the majority of the payment to providers is based on the PPS methodology and not on the cost report. Suspending all payments because the cost report is not timely filed negatively affects providers. Providing the Secretary with flexibility in payment suspension can lessen the financial impact on providers. For these reasons, we are not preparing analyses for either the RFA or section 1102(b) of the Act because we have determined, and we certify, that this rule will not have a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals. Under the requirement for Unfunded Mandates, this final rule will not have an economic effect on State, local, or tribal governments, in the aggregate, or on the private sector.

Anticipated Effects

1. Effects on Providers That File Cost Reports

The majority of providers that file cost reports comply with the timeliness provisions and will be unaffected by this regulation. In FY 2000, collectively 16 percent of hospitals, skilled nursing facilities, and home health agencies filed late cost reports. Of this 16 percent, 65 percent of those were only 1 day late. Currently, when a provider fails to file an acceptable cost report, the provider is placed on a complete payment suspension. Under this provision, for those providers who do not file timely, an immediate payment suspension less than the total suspension currently required might be imposed if the Secretary deemed it appropriate, which will allow the provider to more easily continue operations while completing and submitting the acceptable cost report.

2. Effects on Other Providers

The payment suspension provision does not affect other providers.

3. Effects on the Medicare Program

The provision will allow the Secretary to more effectively manage the Medicare program by imposing other than complete payment suspension when it is appropriate to do so. The Medicare program benefits because immediate complete payment suspension can be disruptive to providers and may negatively affect the care of Medicare patients. There are no costs to the Medicare program to doing so, because when the cost report is submitted, the suspended payments are returned to the provider.

4. Effects on Beneficiaries

We have determined that this provision has a potentially positive impact on beneficiaries. Under this provision, the Secretary will have the discretion to impose less than 100 percent payment suspension when a provider fails to timely file an acceptable cost report. Doing so will lessen the financial burden on the provider and thereby allow it to provide adequate services to its patient population as it works to complete and file an acceptable cost report.

Alternatives Considered

We considered not revising existing § 405.371(c) to provide that payment suspension could be "in whole or in part." However, we did not choose this option because we believe the Secretary should have the discretion to impose partial payment suspensions when circumstances warrant in order to more effectively manage the Medicare program.

Conclusion

In conclusion, we have determined that the payment suspension provision does not have an economic impact on Medicare payments.

C. Federalism

Since this regulation does not impose any costs on State or local governments, it will not have an effect on State or local governments will have no roles or responsibilities associated with this provision.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects

42 CFR Part 405

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Medicare, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 419

Hospitals, Medicare, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services amends 42 CFR chapter IV as follows:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

Subpart C—Suspension of Payment, Recovery of Overpayments, and Repayment of Scholarships and Loans

1. The authority citation for subpart C of part 405 continues to read as follows:

Authority: Secs. 1102, 1815, 1833, 1842, 1866, 1870, 1871, 1879, and 1892 of the Social Security Act (42 U.S.C. 1302, 1395g, 1395l, 1395u, 1395cc, 1395gg, 1395hh, 1395pp, and 1395ccc) and 31 U.S.C. 3711.

2. Section 405.371(c) is revised to read as follows:

§ 405.371 Suspension, offset and recoupment of Medicare payments to providers and suppliers of services.

* * * * *

(c) Suspension of payment in the case of unfiled cost reports. If a provider has failed to timely file an acceptable cost report, payment to the provider is immediately suspended in whole or in part until a cost report is filed and determined by the intermediary to be acceptable. In the case of an unfiled cost report, the provisions of § 405.372 do not apply. (See § 405.372(a)(2) concerning failure to furnish other information.)

PART 419—PROSPECTIVE PAYMENT SYSTEM FOR HOSPITAL OUTPATIENT DEPARTMENT SERVICES

1. The authority citation for part 419 continues to read as follows:

Authority: Secs. 1102, 1833(t), and 1871 of the Social Security Act (42 U.S.C. 1302, 1395l(t), and 1395hh).

2. In § 419.21, paragraph (d)(3) is revised to read as follows:

§ 419.21 Hospital outpatient services subject to the outpatient prospective payment system.

* * * * *

(d) * * *

(3) Hepatitis B vaccine.

§ 419.66 [Amended]

3. In § 419.66, paragraph (c)(1) is amended by adding the phrase "or by any category previously in effect" after "categories" and before "and".

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary (Medical Insurance Program).

Dated: October 23, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare and Medicaid Services.

Approved: October 23, 2002.

Tommy G. Thompson,

Secretary.

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ADDENDUM A.—LIST OF AMBULATORY PAYMENT CLASSIFICATIONS (APCs) WITH STATUS INDICATORS, RELATIVE WEIGHTS, PAYMENT RATES, AND COPAYMENT AMOUNTS

[Calendar Year 2003]

APC	Group title	Status indicator	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
0001	Level I Photochemotherapy	S	0.3779	$19.71	$7.09	$3.94
0002	Fine needle Biopsy/Aspiration	T	0.5911	$30.83	.....	$6.17
0003	Bone Marrow Biopsy/Aspiration	T	1.2306	$64.18	.....	$12.84
0004	Level I Needle Biopsy/ Aspiration Except Bone Marrow	T	1.7441	$90.96	$23.47	$18.19
0005	Level II Needle Biopsy /Aspiration Except Bone Marrow	T	3.1201	$162.72	$71.59	$32.54
0006	Level I Incision & Drainage	T	1.7926	$93.49	$24.12	$18.70
0007	Level II Incision & Drainage	T	10.0191	$522.51	$108.89	$104.50
0008	Level III Incision and Drainage	T	16.1430	$841.87	.....	$168.37
0009	Nail Procedures	T	0.6298	$32.84	$8.34	$6.57
0010	Level I Destruction of Lesion	T	0.6589	$34.36	$10.08	$6.87
0011	Level II Destruction of Lesion	T	1.8507	$96.52	$27.88	$19.30
0012	Level I Debridement & Destruction	T	0.7849	$40.93	$11.18	$8.19
0013	Level II Debridement & Destruction	T	1.0756	$56.09	$14.20	$11.22
0015	Level III Debridement & Destruction	T	1.5407	$80.35	$20.35	$16.07
0016	Level IV Debridement & Destruction	T	2.6162	$136.44	$57.31	$27.29
0017	Level VI Debridement & Destruction	T	15.8233	$825.20	$227.84	$165.04
0018	Biopsy of Skin/Puncture of Lesion	T	0.9399	$49.02	$16.04	$9.80
0019	Level I Excision/ Biopsy	T	3.7693	$196.57	$71.87	$39.31
0020	Level II Excision/ Biopsy	T	7.1898	$374.96	$113.25	$74.99
0021	Level III Excision/ Biopsy	T	13.9338	$726.66	$219.48	$145.33
0022	Level IV Excision/ Biopsy	T	17.3930	$907.06	$354.45	$181.41
0023	Exploration Penetrating Wound	T	2.5193	$131.38	$40.37	$26.28
0024	Level I Skin Repair	T	1.8507	$96.52	$34.75	$19.30
0025	Level II Skin Repair	T	5.8623	$305.72	$115.49	$61.14
0027	Level IV Skin Repair	T	15.2225	$793.87	$329.72	$158.77
0028	Level I Breast Surgery	T	16.8698	$879.78	$303.74	$175.96
0029	Level II Breast Surgery	T	28.7881	$1,501.33	$632.64	$300.27
0030	Level III Breast Surgery	T	37.5185	$1,956.63	$763.55	$391.33
0032	Insertion of Central Venous/Arterial Catheter	T	11.4726	$598.31	.....	$119.66
0033	Partial Hospitalization	P	4.6026	$240.03	$48.17	$48.01
0035	Placement of Arterial or Central Venous Catheter	T	0.2229	$11.62	$3.51	$2.32
0041	Level I Arthroscopy	T	26.1234	$1,362.36	.....	$272.47
0042	Level II Arthroscopy	T	40.9680	$2,136.52	$804.74	$427.30
0043	Closed Treatment Fracture Finger/Toe/Trunk	T	2.4999	$130.37	.....	$26.07
0045	Bone/Joint Manipulation Under Anesthesia	T	12.9357	$674.61	$268.47	$134.92
0046	Open/Percutaneous Treatment Fracture or Dislocation	T	29.2920	$1,527.61	$535.76	$305.52
0047	Arthroplasty without Prosthesis	T	28.2842	$1,475.05	$537.03	$295.01
0048	Arthroplasty with Prosthesis	T	40.6289	$2,118.84	$695.60	$423.77
0049	Level I Musculoskeletal Procedures Except Hand and Foot	T	18.6042	$970.23	$197.14	$194.05
0050	Level II Musculoskeletal Procedures Except Hand and Foot	T	23.3037	$1,215.31	.....	$243.06
0051	Level III Musculoskeletal Procedures Except Hand and Foot	T	32.9062	$1,716.09	.....	$343.22
0052	Level IV Musculoskeletal Procedures Except Hand and Foot	T	40.7646	$2,125.91	.....	$425.18
0053	Level I Hand Musculoskeletal Procedures	T	14.1760	$739.29	$253.49	$147.86
0054	Level II Hand Musculoskeletal Procedures	T	22.7223	$1,184.99	.....	$237.00
0055	Level I Foot Musculoskeletal Procedures	T	17.6740	$921.72	$355.34	$184.34
0056	Level II Foot Musculoskeletal Procedures	T	22.1700	$1,156.19	$405.81	$231.24
0057	Bunion Procedures	T	22.9064	$1,194.59	$475.91	$238.92
0058	Level I Strapping and Cast Application	S	1.0368	$54.07	.....	$10.81
0060	Manipulation Therapy	S	0.3294	$17.18	.....	$3.44
0068	CPAP Initiation	S	2.0736	$108.14	$59.48	$21.63
0069	Thoracoscopy	T	27.5575	$1,437.15	$591.64	$287.43
0070	Thoracentesis/Lavage Procedures	T	3.3623	$175.35	.....	$35.07
0071	Level I Endoscopy Upper Airway	T	0.9205	$48.00	$12.89	$9.60
0072	Level II Endoscopy Upper Airway	T	1.1628	$60.64	$26.68	$12.13
0073	Level III Endoscopy Upper Airway	T	3.1976	$166.76	$73.38	$33.35
0074	Level IV Endoscopy Upper Airway	T	12.8582	$670.57	$295.70	$134.11
0075	Level V Endoscopy Upper Airway	T	19.6604	$1,025.31	$445.92	$205.06
0076	Endoscopy Lower Airway	T	8.9533	$466.92	$189.82	$93.38
0077	Level I Pulmonary Treatment	S	0.2907	$15.16	$8.34	$3.03
0078	Level II Pulmonary Treatment	S	0.6492	$33.86	$14.55	$6.77
0079	Ventilation Initiation and Management	S	1.6376	$85.40	.....	$17.08
0080	Diagnostic Cardiac Catheterization	T	35.2996	$1,840.91	$838.92	$368.18
0081	Non-Coronary Angioplasty or Atherectomy	T	43.5067	$2,268.92	.....	$453.78
0082	Coronary Atherectomy	T	86.4321	$4,507.52	$1,293.59	$901.50
0083	Coronary Angioplasty and Percutaneous Valvuloplasty	T	51.9755	$2,710.57	.....	$542.11
0084	Level I Electrophysiologic Evaluation	S	9.3312	$486.63	.....	$97.33
0085	Level II Electrophysiologic Evaluation	T	41.7238	$2,175.94	$480.03	$435.19
0086	Ablate Heart Dysrhythm Focus	T	52.8282	$2,755.04	$936.35	$551.01

ADDENDUM A.—LIST OF AMBULATORY PAYMENT CLASSIFICATIONS (APCs) WITH STATUS INDICATORS, RELATIVE WEIGHTS, PAYMENT RATES, AND COPAYMENT AMOUNTS—Continued

[Calendar Year 2003]

APC	Group title	Status indicator	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
0087	Cardiac Electrophysiologic Recording/Mapping	T	39.3983	$2,054.66	.....	$410.93
0088	Thrombectomy	T	32.5768	$1,698.91	$655.22	$339.78
0089	Insertion/Replacement of Permanent Pacemaker and Electrodes	T	112.5555	$5,869.88	$1,722.59	$1,173.98
0090	Insertion/Replacement of Pacemaker Pulse Generator	T	87.9631	$4,587.36	$1,651.45	$917.47
0091	Level II Vascular Ligation	T	26.7048	$1,392.68	$348.23	$278.54
0092	Level I Vascular Ligation	T	23.7882	$1,240.58	$505.37	$248.12
0093	Vascular Reconstruction/Fistula Repair without Device	T	20.6294	$1,075.84	$277.34	$215.17
0094	Level I Resuscitation and Cardioversion	S	3.8371	$200.11	$67.63	$40.02
0095	Cardiac Rehabilitation	S	0.6105	$31.84	$16.73	$6.37
0096	Non-Invasive Vascular Studies	S	1.7054	$88.94	$48.15	$17.79
0097	Cardiac and Ambulatory Blood Pressure Monitoring	X	1.0077	$52.55	$23.80	$10.51
0098	Injection of Sclerosing Solution	T	1.6666	$86.91	$20.88	$17.38
0099	Electrocardiograms	S	0.3682	$19.20	.....	$3.84
0100	Cardiac Stress Tests	X	1.6085	$83.88	$41.44	$16.78
0101	Tilt Table Evaluation	S	4.2247	$220.32	$105.27	$44.06
0103	Miscellaneous Vascular Procedures	T	11.8408	$617.51	$223.63	$123.50
0104	Transcatheter Placement of Intracoronary Stents	T	76.5486	$3,992.09	.....	$798.42
0105	Revision/Removal of Pacemakers, AICD, or Vascular	T	18.5945	$969.72	$370.40	$193.94
0106	Insertion/Replacement/Repair of Pacemaker and/or Electrodes	T	54.8243	$2,859.14	.....	$571.83
0107	Insertion of Cardioverter-Defibrillator	T	326.2231	$17,012.86	$3,699.14	$3,402.57
0108	Insertion/Replacement/Repair of Cardioverter-Defibrillator Leads	T	443.5460	$23,131.37	.....	$4,626.27
0109	Removal of Implanted Devices	T	7.4708	$389.61	$131.49	$77.92
0110	Transfusion	S	4.0309	$210.22	.....	$42.04
0111	Blood Product Exchange	S	14.9803	$781.24	$217.61	$156.25
0112	Apheresis, Photopheresis, and Plasmapheresis	S	36.4236	$1,899.53	$612.47	$379.91
0113	Excision Lymphatic System	T	18.7496	$977.81	.....	$195.56
0114	Thyroid/Lymphadenectomy Procedures	T	36.1135	$1,883.36	$485.91	$376.67
0115	Cannula/Access Device Procedures	T	24.3211	$1,268.37	$459.35	$253.67
0116	Chemotherapy Administration by Other Technique Except Infusion	S	0.7752	$40.43	.....	$8.09
0117	Chemotherapy Administration by Infusion Only	S	3.6046	$187.98	$48.28	$37.60
0118	Chemotherapy Administration by Both Infusion and Other Technique.	S	5.4844	$286.02	$72.03	$57.20
0119	Implantation of Devices	T	89.3100	$4,657.61	.....	$931.52
0120	Infusion Therapy Except Chemotherapy	T	2.1802	$113.70	$30.75	$22.74
0121	Level I Tube changes and Repositioning	T	2.0833	$108.65	$43.80	$21.73
0122	Level II Tube changes and Repositioning	T	10.7459	$560.41	$114.93	$112.08
0123	Bone Marrow Harvesting and Bone Marrow/Stem Cell Transplant	S	6.4049	$334.02	.....	$66.80
0124	Revision of Implanted Infusion Pump	T	50.0861	$2,612.04	.....	$522.41
0125	Refilling of Infusion Pump	T	2.0639	$107.63	.....	$21.53
0130	Level I Laparoscopy	T	30.4644	$1,588.75	$659.53	$317.75
0131	Level II Laparoscopy	T	40.2026	$2,096.61	$1,001.89	$419.32
0132	Level III Laparoscopy	T	56.9948	$2,972.34	$1,239.22	$594.47
0140	Esophageal Dilation without Endoscopy	T	6.0948	$317.85	$107.24	$63.57
0141	Upper GI Procedures	T	7.4126	$386.57	$143.38	$77.31
0142	Small Intestine Endoscopy	T	8.1393	$424.47	$152.78	$84.89
0143	Lower GI Endoscopy	T	7.9165	$412.85	$186.06	$82.57
0146	Level I Sigmoidoscopy	T	3.4302	$178.89	$64.40	$35.78
0147	Level II Sigmoidoscopy	T	7.0153	$365.85	$79.46	$73.17
0148	Level I Anal/Rectal Procedure	T	3.4205	$178.38	$63.38	$35.68
0149	Level III Anal/Rectal Procedure	T	16.3756	$854.00	$293.06	$170.80
0150	Level IV Anal/Rectal Procedure	T	21.2398	$1,107.68	$437.12	$221.54
0151	Endoscopic Retrograde Cholangio-Pancreatography (ERCP)	T	17.5093	$913.13	$245.46	$182.63
0152	Percutaneous Abdominal and Biliary Procedures	T	10.0288	$523.01	$131.28	$104.60
0153	Peritoneal and Abdominal Procedures	T	19.5441	$1,019.24	$410.87	$203.85
0154	Hernia/Hydrocele Procedures	T	25.7262	$1,341.65	$464.85	$268.33
0155	Level II Anal/Rectal Procedure	T	10.1936	$531.61	$188.89	$106.32
0156	Level II Urinary and Anal Procedures	T	2.9747	$155.13	$46.55	$31.03
0157	Colorectal Cancer Screening: Barium Enema	S	2.5387	$132.40	.....	$26.48
0158	Colorectal Cancer Screening: Colonoscopy	T	7.0638	$368.38	.....	$92.10
0159	Colorectal Cancer Screening: Flexible Sigmoidoscopy	S	2.3255	$121.28	.....	$30.32
0160	Level I Cystourethroscopy and other Genitourinary Procedures	T	6.3080	$328.97	$105.06	$65.79
0161	Level II Cystourethroscopy and other Genitourinary Procedures	T	15.7070	$819.14	$249.36	$163.83
0162	Level III Cystourethroscopy and other Genitourinary Procedures	T	20.5906	$1,073.82	.....	$214.76
0163	Level IV Cystourethroscopy and other Genitourinary Procedures	T	28.3714	$1,479.60	.....	$295.92
0164	Level I Urinary and Anal Procedures	T	1.1240	$58.62	$17.59	$11.72
0165	Level III Urinary and Anal Procedures	T	12.2672	$639.75	.....	$127.95
0166	Level I Urethral Procedures	T	15.4163	$803.98	$218.73	$160.80
0167	Level III Urethral Procedures	T	28.3230	$1,477.07	$555.84	$295.41

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APC	Group title	Status indicator	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
0168	Level II Urethral Procedures	T	24.4665	$1,275.95	$405.60	$255.19
0169	Lithotripsy	T	44.0978	$2,299.74	$1,115.69	$459.95
0170	Dialysis	S	4.8352	$252.16		$50.43
0179	Urinary Incontinence Procedures	T	104.3581	$5,442.38	$2,340.22	$1,088.48
0180	Circumcision	T	18.1004	$943.95	$304.87	$188.79
0181	Penile Procedures	T	29.2435	$1,525.08	$621.82	$305.02
0182	Insertion of Penile Prosthesis	T	95.4145	$4,975.96		$995.19
0183	Testes/Epididymis Procedures	T	21.2592	$1,108.69		$221.74
0184	Prostate Biopsy	T	3.6918	$192.53	$96.27	$38.51
0187	Miscellaneous Placement/Repositioning	X	3.9534	$206.17	$90.71	$41.23
0188	Level II Female Reproductive Proc	T	1.0465	$54.58	$11.95	$10.92
0189	Level III Female Reproductive Proc	T	1.5310	$79.84	$18.60	$15.97
0190	Surgical Hysteroscopy	T	19.0596	$993.98	$424.28	$198.80
0191	Level I Female Reproductive Proc	T	0.2035	$10.61	$3.08	$2.12
0192	Level IV Female Reproductive Proc	T	2.7228	$142.00	$39.11	$28.40
0193	Level V Female Reproductive Proc	T	14.4764	$754.96	$171.13	$150.99
0194	Level VI Female Reproductive Proc	T	18.0228	$939.91	$397.84	$187.98
0195	Level VII Female Reproductive Proc	T	23.7301	$1,237.55	$483.80	$247.51
0196	Dilation and Curettage	T	15.5035	$808.52	$338.23	$161.70
0197	Infertility Procedures	T	1.5697	$81.86	$33.06	$16.37
0198	Pregnancy and Neonatal Care Procedures	T	1.2597	$65.69	$32.19	$13.14
0199	Obstetrical Care Service	T	3.9146	$204.15	$57.16	$40.83
0200	Therapeutic Abortion	T	15.1838	$791.85	$307.83	$158.37
0201	Spontaneous Abortion	T	15.3097	$798.42	$329.65	$159.68
0202	Level VIII Female Reproductive Proc	T	45.5610	$2,376.05	$1,164.26	$475.21
0203	Level IV Nerve Injections	T	11.7924	$614.99	$276.76	$123.00
0204	Level I Nerve Injections	T	2.0251	$105.61	$40.13	$21.12
0206	Level II Nerve Injections	T	4.7867	$249.63	$75.55	$49.93
0207	Level III Nerve Injections	T	5.7654	$300.67	$123.69	$60.13
0208	Laminotomies and Laminectomies	T	38.4487	$2,005.14		$401.03
0209	Extended EEG Studies and Sleep Studies, Level II	S	11.3369	$591.23	$280.58	$118.25
0212	Nervous System Injections	T	3.3139	$172.82	$79.53	$34.56
0213	Extended EEG Studies and Sleep Studies, Level I	S	3.2557	$169.79	$70.41	$33.96
0214	Electroencephalogram	S	2.2286	$116.22	$58.12	$23.24
0215	Level I Nerve and Muscle Tests	S	0.5814	$30.32	$15.76	$6.06
0216	Level III Nerve and Muscle Tests	S	2.8972	$151.09	$67.98	$30.22
0218	Level II Nerve and Muscle Tests	S	1.0077	$52.55		$10.51
0220	Level I Nerve Procedures	T	15.8136	$824.70		$164.94
0221	Level II Nerve Procedures	T	21.5208	$1,122.33	$463.62	$224.47
0222	Implantation of Neurological Device	T	227.7370	$11,876.71		$2,375.34
0223	Implantation of Pain Management Device	T	41.0262	$2,139.56		$427.91
0224	Implantation of Reservoir/Pump/Shunt	T	34.0302	$1,774.71	$453.41	$354.94
0225	Implantation of Neurostimulator Electrodes	S	139.3379	$7,266.61		$1,453.32
0226	Implantation of Drug Infusion Reservoir	T	144.3474	$7,527.86		$1,505.57
0227	Implantation of Drug Infusion Device	T	144.5122	$7,536.46		$1,507.29
0228	Creation of Lumbar Subarachnoid Shunt	T	59.6207	$3,109.28	$696.46	$621.86
0229	Transcatherter Placement of Intravascular Shunts	T	57.4599	$2,996.59	$771.23	$599.32
0230	Level I Eye Tests & Treatments	S	0.7364	$38.40	$14.97	$7.68
0231	Level III Eye Tests & Treatments	S	2.1705	$113.19	$50.94	$22.64
0232	Level I Anterior Segment Eye Procedures	T	4.4960	$234.47	$103.17	$46.89
0233	Level II Anterior Segment Eye Procedures	T	13.4202	$699.88	$266.33	$139.98
0234	Level III Anterior Segment Eye Procedures	T	20.4259	$1,065.23	$511.31	$213.05
0235	Level I Posterior Segment Eye Procedures	T	5.0871	$265.30	$73.44	$53.06
0236	Level II Posterior Segment Eye Procedures	T	19.4278	$1,013.18		$202.64
0237	Level III Posterior Segment Eye Procedures	T	33.2647	$1,734.79	$818.54	$346.96
0238	Level I Repair and Plastic Eye Procedures	T	2.9747	$155.13	$58.96	$31.03
0239	Level II Repair and Plastic Eye Procedures	T	6.8119	$355.25	$115.94	$71.05
0240	Level III Repair and Plastic Eye Procedures	T	16.3078	$850.47	$315.31	$170.09
0241	Level IV Repair and Plastic Eye Procedures	T	20.6294	$1,075.84	$384.47	$215.17
0242	Level V Repair and Plastic Eye Procedures	T	28.0517	$1,462.92	$597.36	$292.58
0243	Strabismus/Muscle Procedures	T	19.9705	$1,041.48	$431.39	$208.30
0244	Corneal Transplant	T	35.6290	$1,858.09	$803.26	$371.62
0245	Level I Cataract Procedures without IOL Insert	T	14.5442	$758.49	$251.21	$151.70
0246	Cataract Procedures with IOL Insert	T	22.2379	$1,159.73	$495.96	$231.95
0247	Laser Eye Procedures Except Retinal	T	4.7092	$245.59	$104.31	$49.12
0248	Laser Retinal Procedures	T	4.2925	$223.86	$95.08	$44.77
0249	Level II Cataract Procedures without IOL Insert	T	26.7242	$1,393.69	$524.67	$278.74
0250	Nasal Cauterization/Packing	T	1.6376	$85.40	$29.89	$17.08

ADDENDUM A.—LIST OF AMBULATORY PAYMENT CLASSIFICATIONS (APCs) WITH STATUS INDICATORS, RELATIVE WEIGHTS, PAYMENT RATES, AND COPAYMENT AMOUNTS—Continued

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APC	Group title	Status indicator	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
0251	Level I ENT Procedures	T	1.9089	$99.55		$19.91
0252	Level II ENT Procedures	T	5.8041	$302.69	$113.41	$60.54
0253	Level III ENT Procedures	T	14.4473	$753.44	$282.29	$150.69
0254	Level IV ENT Procedures	T	20.1158	$1,049.06	$321.35	$209.81
0256	Level V ENT Procedures	T	34.0302	$1,774.71		$354.94
0258	Tonsil and Adenoid Procedures	T	19.8736	$1,036.43	$437.25	$207.29
0259	Level VI ENT Procedures	T	367.6466	$19,173.14	$9,394.83	$3,834.63
0260	Level I Plain Film Except Teeth	X	0.7655	$39.92	$21.95	$7.98
0261	Level II Plain Film Except Teeth Including Bone Density Measurement.	X	1.2887	$67.21		$13.44
0262	Plain Film of Teeth	X	0.5717	$29.81	$9.82	$5.96
0263	Level I Miscellaneous Radiology Procedures	X	1.8992	$99.05	$43.58	$19.81
0264	Level II Miscellaneous Radiology Procedures	X	2.8197	$147.05	$79.41	$29.41
0265	Level I Diagnostic Ultrasound Except Vascular	S	0.9787	$51.04	$28.07	$10.21
0266	Level II Diagnostic Ultrasound Except Vascular	S	1.5988	$83.38	$45.86	$16.68
0267	Level III Diagnostic Ultrasound Except Vascular	S	2.4418	$127.34	$65.52	$25.47
0268	Ultrasound Guidance Procedures	S	1.3856	$72.26		$14.45
0269	Level III Echocardiogram Except Transesophageal	S	3.2170	$167.77	$87.24	$33.55
0270	Transesophageal Echocardiogram	S	5.3003	$276.42	$146.79	$55.28
0271	Mammography	S	0.6492	$33.86	$16.80	$6.77
0272	Level I Fluoroscopy	X	1.3372	$69.74	$38.36	$13.95
0274	Myelography	S	3.8759	$202.13	$96.54	$40.43
0275	Arthrography	S	2.9747	$155.13	$69.09	$31.03
0276	Level I Digestive Radiology	S	1.5891	$82.87	$41.72	$16.57
0277	Level II Digestive Radiology	S	2.3546	$122.79	$60.47	$24.56
0278	Diagnostic Urography	S	2.5290	$131.89	$66.07	$26.38
0279	Level II Angiography and Venography except Extremity	S	8.6432	$450.75	$174.57	$90.15
0280	Level III Angiography and Venography except Extremity	S	15.2128	$793.36	$353.85	$158.67
0281	Venography of Extremity	S	5.2227	$272.37	$115.16	$54.47
0282	Miscellaneous Computerized Axial Tomography	S	1.6763	$87.42	$44.51	$17.48
0283	Computerized Axial Tomography with Contrast Material	S	4.5057	$234.98	$126.27	$47.00
0284	Magnetic Resonance Imaging and Magnetic Resonance Angiography with Contrast Material.	S	7.2382	$377.48	$201.02	$75.50
0285	Myocardial Positron Emission Tomography (PET)	S	18.1294	$945.47	$409.56	$189.09
0286	Myocardial Scans	S	6.5309	$340.59	$187.32	$68.12
0287	Complex Venography	S	6.9863	$364.34	$114.51	$72.87
0288	Bone Density:Axial Skeleton	S	1.2984	$67.71		$13.54
0289	Needle Localization for Breast Biopsy	X	1.8992	$99.05	$44.80	$19.81
0290	Level I Diagnostic Nuclear Medicine Excluding Myocardial Scans	S	2.0251	$105.61	$53.17	$21.12
0291	Level II Diagnostic Nuclear Medicine Excluding Myocardial Scans	S	3.9825	$207.69	$104.55	$41.54
0292	Level III Diagnostic Nuclear Medicine Excluding Myocardial Scans	S	4.2925	$223.86	$112.69	$44.77
0294	Level II Therapeutic Nuclear Medicine	S	4.0794	$212.74	$117.01	$42.55
0296	Level I Therapeutic Radiologic Procedures	S	2.4127	$125.82	$69.20	$25.16
0297	Level II Therapeutic Radiologic Procedures	S	7.6839	$400.72	$172.51	$80.14
0299	Miscellaneous Radiation Treatment	S	5.9785	$311.78		$62.36
0300	Level I Radiation Therapy	S	1.5794	$82.37		$16.47
0301	Level II Radiation Therapy	S	3.1588	$164.73		$32.95
0302	Level III Radiation Therapy	S	9.2343	$481.58	$182.43	$96.32
0303	Treatment Device Construction	X	2.8391	$148.06	$66.95	$29.61
0304	Level I Therapeutic Radiation Treatment Preparation	X	1.6182	$84.39	$41.52	$16.88
0305	Level II Therapeutic Radiation Treatment Preparation	X	3.6530	$190.51	$91.38	$38.10
0310	Level III Therapeutic Radiation Treatment Preparation	X	13.6625	$712.51	$325.27	$142.50
0312	Radioelement Applications	S	52.8864	$2,758.08		$551.62
0313	Brachytherapy	S	21.0363	$1,097.06		$219.41
0314	Hyperthermic Therapies	S	4.1763	$217.80	$101.77	$43.56
0320	Electroconvulsive Therapy	S	4.2635	$222.35	$80.06	$44.47
0321	Biofeedback and Other Training	S	1.2112	$63.17	$21.78	$12.63
0322	Brief Individual Psychotherapy	S	1.3275	$69.23	$12.40	$13.85
0323	Extended Individual Psychotherapy	S	1.8410	$96.01	$21.26	$19.20
0324	Family Psychotherapy	S	2.4612	$128.35		$25.67
0325	Group Psychotherapy	S	1.4244	$74.28	$18.27	$14.86
0330	Dental Procedures	S	4.7770	$249.13		$49.83
0332	Computerized Axial Tomography and Computerized Angiography without Contrast Material.	S	3.4398	$179.39	$91.27	$35.88
0333	Computerized Axial Tomography and Computerized Angio w/o Contrast Material followed by Contrast.	S	5.3681	$279.95	$146.98	$55.99
0335	Magnetic Resonance Imaging, Miscellaneous	S	6.2983	$328.46	$151.46	$65.69

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APC	Group title	Status indicator	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
0336	Magnetic Resonance Imaging and Magnetic Resonance Angiography without Contrast.	S	6.5987	$344.13	$176.94	$68.83
0337	MRI and Magnetic Resonance Angiography without Contrast Material followed by Contrast Material.	S	9.2440	$482.08	$240.77	$96.42
0339	Observation	S	7.2188	$376.47		$75.29
0340	Minor Ancillary Procedures	X	0.6492	$33.86		$6.77
0341	Skin Tests and Miscellaneous Red Blood Cell Tests	X	0.1453	$7.58	$3.08	$1.52
0342	Level I Pathology	X	0.2132	$11.12	$5.88	$2.22
0343	Level II Pathology	X	0.4457	$23.24	$12.55	$4.65
0344	Level III Pathology	X	0.6201	$32.34	$17.46	$6.47
0345	Level I Transfusion Laboratory Procedures	X	0.1938	$10.11	$3.10	$2.02
0346	Level II Transfusion Laboratory Procedures	X	0.5136	$26.78	$6.75	$5.36
0347	Level III Transfusion Laboratory Procedures	X	1.1240	$58.62	$14.76	$11.72
0348	Fertility Laboratory Procedures	X	0.5523	$28.80		$5.76
0352	Level I Injections	X	0.2229	$11.62		$2.32
0353	Level II Allergy Injections	X	0.3973	$20.72		$4.14
0355	Level III Immunizations	K	0.2132	$11.12		$2.22
0356	Level IV Immunizations	K	0.7655	$39.92		$7.98
0359	Level II Injections	X	1.1337	$59.12		$11.82
0360	Level I Alimentary Tests	X	1.6279	$84.90	$42.45	$16.98
0361	Level II Alimentary Tests	X	3.3914	$176.86	$83.23	$35.37
0362	Level III Otorhinolaryngologic Function Tests	X	2.8391	$148.06		$29.61
0363	Level I Otorhinolaryngologic Function Tests	X	1.0852	$56.59	$20.94	$11.32
0364	Level I Audiometry	X	0.4457	$23.24	$9.06	$4.65
0365	Level II Audiometry	X	1.2112	$63.17	$18.95	$12.63
0367	Level I Pulmonary Test	X	0.5814	$30.32	$15.16	$6.06
0368	Level II Pulmonary Tests	X	1.0562	$55.08	$27.55	$11.02
0369	Level III Pulmonary Tests	X	2.5871	$134.92	$44.18	$26.98
0370	Allergy Tests	X	0.7752	$40.43	$11.58	$8.09
0371	Level I Allergy Injections	X	0.5039	$26.28		$5.26
0372	Therapeutic Phlebotomy	X	0.5329	$27.79	$10.09	$5.56
0373	Neuropsychological Testing	X	2.2577	$117.74		$23.55
0374	Monitoring Psychiatric Drugs	X	1.1434	$59.63	$9.97	$11.93
0600	Low Level Clinic Visits	V	0.8430	$43.96		$8.79
0601	Mid Level Clinic Visits	V	0.9690	$50.53		$10.11
0602	High Level Clinic Visits	V	1.4631	$78.30		$15.26
0610	Low Level Emergency Visits	V	1.4147	$73.78	$19.57	$14.78
0611	Mid Level Emergency Visits	V	2.5290	$131.89	$36.47	$26.38
0612	High Level Emergency Visits	V	4.3410	$226.39	$54.14	$45.28
0620	Critical Care	S	9.9610	$519.48	$150.55	$103.90
0648	Breast Reconstruction with Prosthesis	T	44.7955	$2,336.13		$467.23
0649	Prostate Brachytherapy Palladium Seeds	T	115.0167	$5,998.24		$1,199.65
0650	Intermediate/Complex Proton Beam Radiation Therapy	S	12.0152	$626.60		$125.32
0651	Complex Interstitial Radiation Source Application	S	54.7177	$2,853.58		$570.72
0652	Insertion of Intraperitoneal Catheters	T	28.1292	$1,466.97		$293.39
0653	Vascular Reconstruction/Fistula Repair with Device	T	30.0284	$1,566.01		$313.20
0654	Insertion/Replacement of a permanent dual chamber pacemaker	T	91.8583	$4,790.50		$958.10
0655	Insertion/Replacement/Conversion of a permanent dual chamber pacemaker.	T	122.8654	$6,407.55		$1,281.51
0656	Transcatheter Placement of Intracoronary of Drug-Eluting Stents	T	96.7516	$5,045.69		$1,009.14
0657	Placement of Tissue Clips	S	1.4438	$75.30		$15.06
0658	Percutaneous Breast Biopsies	T	5.2712	$274.90		$54.98
0659	Hyperbaric Oxygen	S	3.2364	$168.78		$33.76
0660	Level II Otorhinolaryngologic Function Tests	X	1.5891	$82.87	$30.66	$16.57
0661	Level IV Pathology	X	3.5077	$182.93	$100.61	$36.59
0662	CT Angiography	S	5.4553	$284.50	$156.47	$56.90
0664	Proton Beam Radiation Therapy	S	10.0482	$524.02		$104.80
0665	Bone Density:AppendicularSkeleton	S	0.8236	$42.95		$8.59
0666	Myocardial Add-on Scans	S	2.9650	$154.63	$85.05	$30.93
0668	Level I Angiography and Venography except Extremity	S	10.3292	$538.68	$237.76	$107.74
0669	Digital Mammography	S	0.8915	$46.49		$9.30
0670	Intravenous and Intracardiac Ultrasound	S	30.2416	$1,577.13	$571.17	$315.43
0671	Level II Echocardiogram Except Transesophageal	S	2.3643	$123.30	$64.12	$24.66
0672	Level IV Posterior Segment Procedures	T	37.9061	$1,976.84	$988.43	$395.37
0673	Level IV Anterior Segment Eye Procedures	T	25.9490	$1,353.27	$649.56	$270.65
0674	Prostate Cryoablation	T	62.9152	$3,281.09		$656.22
0675	Prostatic Thermotherapy	T	48.5648	$2,532.70		$506.54
0676	Level II Transcatheter Thrombolysis	T	4.1278	$215.27	$58.21	$43.05

ADDENDUM A.—LIST OF AMBULATORY PAYMENT CLASSIFICATIONS (APCs) WITH STATUS INDICATORS, RELATIVE WEIGHTS, PAYMENT RATES, AND COPAYMENT AMOUNTS—Continued

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APC	Group title	Status indicator	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
0677	Level I Transcatheter Thrombolysis	T	2.6453	$137.96		$27.59
0678	External Counterpulsation	T	2.2189	$115.72		$23.14
0679	Level II Resuscitation and Cardioversion	S	5.4069	$281.98	$95.30	$56.40
0680	Insertion of Patient Activated Event Recorders	S	56.1324	$2,927.36		$585.47
0681	Knee Arthroplasty	T	147.8067	$7,708.27	$3,067.55	$1,541.65
0682	Level V Debridement & Destruction	T	7.2770	$379.50	$174.57	$75.90
0683	Level II Photochemotherapy	S	1.8992	$99.05	$35.65	$19.81
0684	Prostate Brachytherapy Iodine Seeds	T	98.8349	$5,154.34		$1,030.87
0685	Level III Needle Biopsy/Aspiration Except Bone Marrow	T	5.9882	$312.29	$137.40	$62.46
0686	Level III Skin Repair	T	14.2439	$742.83	$341.70	$148.57
0687	Revision/Removal of Neurostimulator Electrodes	T	25.8424	$1,347.71	$619.95	$269.54
0688	Revision/Removal of Neurostimulator Pulse Generator Receiver	T	74.5719	$3,889.00	$1,905.61	$777.80
0689	Electronic Analysis of Cardioverter-defibrillators	S	0.5814	$30.32		$6.06
0690	Electronic Analysis of Pacemakers and other Cardiac Devices	S	0.4263	$22.23	$10.63	$4.45
0691	Electronic Analysis of Programmable Shunts/Pumps	S	2.9166	$152.10	$83.65	$30.42
0692	Electronic Analysis of Neurostimulator Pulse Generators	S	6.2595	$326.44	$179.54	$65.29
0693	Level II Breast Reconstruction	T	37.5863	$1,960.16	$798.17	$392.03
0694	Mohs Surgery	T	3.4689	$180.91	$72.36	$36.18
0695	Level VII Debridement & Destruction	T	18.6817	$974.27	$266.59	$194.85
0697	Level I Echocardiogram Except Transesophageal	S	1.5697	$81.86	$42.57	$16.37
0698	Level II Eye Tests & Treatments	S	0.9205	$48.00	$18.72	$9.60
0699	Level IV Eye Tests & Treatments	T	3.7596	$196.07	$88.23	$39.21
0701	SR 89 chloride, per mCi	K	8.9920	$468.94		$93.79
0702	SM 153 lexidronam, 50 mCi	K	14.6218	$762.54		$152.51
0706	New Technology - Level I ($0 - $50)	S		$25.00		$5.00
0707	New Technology - Level II ($50 - $100)	S		$75.00		$15.00
0708	New Technology - Level III ($100 - $200)	S		$150.00		$30.00
0709	New Technology - Level IV ($200 - $300)	S		$250.00		$50.00
0710	New Technology - Level V ($300 - $500)	S		$400.00		$80.00
0711	New Technology - Level VI ($500 - $750)	S		$625.00		$125.00
0712	New Technology - Level VII ($750 - $1000)	S		$875.00		$175.00
0713	New Technology - Level VIII ($1000 - $1250)	S		$1,125.00		$225.00
0714	New Technology - Level IX ($1250 - $1500)	S		$1,375.00		$275.00
0715	New Technology - Level X ($1500 - $1750)	S		$1,625.00		$325.00
0716	New Technology - Level XI ($1750 - $2000)	S		$1,875.00		$375.00
0717	New Technology - Level XII ($2000 - $2500)	S		$2,250.00		$450.00
0718	New Technology - Level XIII ($2500 - $3000)	S		$2,750.00		$550.00
0719	New Technology-Level XIV ($3000 - $3500)	S		$3,250.00		$650.00
0720	New Technology - Level XV ($3500 - $5000)	S		$4,250.00		$850.00
0721	New Technology - Level XVI ($5000 - $6000)	S		$5,500.00		$1,100.00
0725	New Technology - Level XX ($19500 - $20500)	S		$20,000.00		$4,000.00
0726	Dexrazoxane hcl injection, 250 mg	K	2.2577	$117.74		$23.55
0728	Filgrastim 300 mcg injection	K	2.1027	$109.66		$21.93
0730	Pamidronate disodium , 30 mg	K	3.2654	$170.29		$34.06
0732	Mesna injection 200 mg	K	0.5039	$26.28		$5.26
0733	Non esrd epoetin alpha inj, 1000 u	K	0.1744	$9.10		$1.82
0734	Injection, darbepoetin alfa (for non-ESRD use), pre 1 mcg	K	0.0454	$2.37		$.47
0800	Leuprolide acetate, 3.75 mg	K	3.7984	$198.09		$39.62
0802	Etoposide oral 50 mg	K	0.5523	$28.80		$5.76
0807	Aldesleukin/single use vial	K	7.2867	$380.01		$76.00
0810	Goserelin acetate implant 3.6 mg	K	5.5619	$290.06		$58.01
0811	Carboplatin injection 50 mg	K	1.4922	$77.82		$15.56
0812	Carmustine, 100 mg	K	1.5310	$79.84		$15.97
0813	Cisplatin 10 mg injection	K	0.4263	$22.23		$4.45
0820	Daunorubicin 10 mg	K	1.9379	$101.06		$20.21
0821	Daunorubicin citrate liposom 10 mg	K	2.9069	$151.60		$30.32
0822	Diethylstilbestrol injection 250 mg	K	2.0251	$105.61		$21.12
0823	Docetaxel, 20 mg	K	3.8953	$203.14		$40.63
0827	Floxuridine injection 500 mg	K	2.2189	$115.72		$23.14
0828	Gemcitabine HCL 200 mg	K	1.2984	$67.71		$13.54
0830	Irinotecan injection 20 mg	K	1.7538	$91.46		$18.29
0831	Ifosfomide injection 1 gm	K	1.9186	$100.06		$20.01
0832	Idarubicin hcl injection 5 mg	K	4.8642	$253.67		$50.73
0838	Interferon gamma 1-b inj, 3 million u	K	3.0426	$158.67		$31.73
0840	Melphalan hydrochl 50 mg	K	4.5348	$236.49		$47.30
0842	Fludarabine phosphate inj 50 mg	K	3.2848	$171.31		$34.26
0843	Pegaspargase, singl dose vial	K	8.8079	$459.34		$91.87
0844	Pentostatin injection, 10 mg	K	19.8833	$1,036.93		$207.39

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ADDENDUM A.—LIST OF AMBULATORY PAYMENT CLASSIFICATIONS (APCs) WITH STATUS INDICATORS, RELATIVE WEIGHTS, PAYMENT RATES, AND COPAYMENT AMOUNTS—Continued

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APC	Group title	Status indicator	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
0849	Rituximab, 100 mg	K	5.4941	$286.52		$57.30
0852	Topotecan, 4 mg	K	7.7130	$402.24		$80.45
0855	Vinorelbine tartrate, 10 mg	K	1.0756	$56.09		$11.22
0856	Porfimer sodium, 75 mg	K	29.6117	$1,544.28		$308.86
0857	Bleomycin sulfate injection 15 u	K	3.1879	$166.25		$33.25
0858	Cladribine, 1mg	K	0.7946	$41.44		$8.29
0861	Leuprolide acetate injection 1 mg	K	0.7752	$40.43		$8.09
0862	Mitomycin 5 mg inj	K	1.1337	$59.12		$11.82
0863	Paclitaxel injection, 30 mg	K	2.3158	$120.77		$24.15
0864	Mitoxantrone hcl, 5 mg	K	2.9263	$152.61		$30.52
0888	Cyclosporine oral 100 mg	K	0.0484	$2.52		$.50
0890	Lymphocyte immune globulin 250 mg	K	3.3429	$174.34		$34.87
0891	Tacrolimus oral per 1 mg	K	0.0291	$1.52		$.30
0902	Botulinum toxin a, per unit	K	0.0484	$2.52		$.50
0903	Cytomegalovirus imm IV/vial	K	4.7383	$247.11		$49.42
0905	Immune globulin 500 mg	K	0.8333	$43.46		$8.69
0906	RSV-ivig, 50 mg	K	0.5911	$30.83		$6.17
0909	Interferon beta-1a, 33 mcg	K	2.7906	$145.53		$29.11
0910	Interferon beta-1b /0.25 mg	K	1.9864	$103.59		$20.72
0916	Injection imiglucerase /unit	K	0.0484	$2.52		$.50
0917	Inj, Adenosine, 90 mg	K	3.1986	$166.81		$33.36
0925	Factor viii per iu	K	0.0097	$.51		$.10
0926	Factor VIII (porcine) per iu	K	0.0291	$1.52		$.30
0927	Factor viii recombinant per iu	K	0.0194	$1.01		$.20
0928	Factor ix complex per iu	K	0.0097	$.51		$.10
0929	Anti-inhibitor per iu	K	0.0194	$1.01		$.20
0930	Antithrombin iii injection per iu	K	0.0194	$1.01		$.20
0931	Factor IX non-recombinant, per iu	K	0.0097	$.51		$.10
0932	Factor IX recombinant, per iu	K	0.0194	$1.01		$.20
0949	Plasma, Pooled Multiple Donor, Solvent/Detergent T	K	2.3837	$124.31		$24.86
0950	Blood (Whole) For Transfusion	K	1.6860	$87.93		$17.59
0952	Cryoprecipitate	K	0.5620	$29.31		$5.86
0954	RBC leukocytes reduced	K	2.2868	$119.26		$23.85
0955	Plasma, Fresh Frozen	K	1.8217	$95.00		$19.00
0956	Plasma Protein Fraction	K	1.7829	$92.98		$18.60
0957	Platelet Concentrate	K	0.7946	$41.44		$8.29
0958	Platelet Rich Plasma	K	1.0271	$53.56		$10.71
0959	Red Blood Cells	K	1.6569	$86.41		$17.28
0960	Washed Red Blood Cells	K	3.0813	$160.69		$32.14
0961	Infusion, Albumin (Human) 5%, 50 ml	K	0.9980	$52.05		$10.41
0963	Albumin (human), 5%, 250 ml	K	4.9708	$259.23		$51.85
0964	Albumin (human), 25%, 20 ml	K	1.0756	$56.09		$11.22
0965	Albumin (human), 25%, 50ml	K	2.6840	$139.97		$27.99
0966	Plasmaprotein fract,5%,250ml	K	8.9145	$464.90		$92.98
0970	New Technology - Level I ($0 - $50)	T		$25.00		$5.00
0971	New Technology - Level II ($50 - $100)	T		$75.00		$15.00
0972	New Technology - Level III ($100 - $200)	T		$150.00		$30.00
0973	New Technology - Level IV ($200 - $300)	T		$250.00		$50.00
0974	New Technology - Level V ($300 - $500)	T		$400.00		$80.00
0975	New Technology - Level VI ($500 - $750)	T		$625.00		$125.00
0976	New Technology - Level VII ($750 - $1000)	T		$875.00		$175.00
0977	New Technology - Level VIII ($1000 - $1250)	T		$1,125.00		$225.00
0978	New Technology - Level IX ($1250 - $1500)	T		$1,375.00		$275.00
0979	New Technology - Level X ($1500 - $1750)	T		$1,625.00		$325.00
0980	New Technology - Level XI ($1750 - $2000)	T		$1,875.00		$375.00
0981	New Technology - Level XII ($2000 - $2500)	T		$2,250.00		$450.00
0982	New Technology - Level XIII ($2500 - $3000)	T		$2,750.00		$550.00
0983	New Technology - Level XIV ($3000 - $3500)	T		$3,250.00		$650.00
0984	New Technology - Level XV ($3500 - $5000)	T		$4,250.00		$850.00
0985	New Technology - Level XVI ($5000 - $6000)	T		$5,500.00		$1,100.00
0989	New Technology - Level XX ($19500-$20500)	T		$20,000.00		$4,000.00
1009	Cryoprecip reduced plasma	K	0.7170	$37.39		$7.48
1010	Blood, L/R, CMV-neg	K	2.3352	$121.78		$24.36
1011	Platelets, HLA-m, L/R, unit	K	9.5831	$499.77		$99.95
1013	Platelet concentrate, L/R, unit	K	0.9496	$49.52		$9.90
1016	Blood, L/R, froz/deglycerol/washed	K	5.7848	$301.68		$60.34
1017	Platelets, aph/pher, L/R, CMV-neg, unit	K	7.5386	$393.15		$78.63
1018	Blood, L/R, irradiated	K	2.5387	$132.40		$26.48

ADDENDUM A.—LIST OF AMBULATORY PAYMENT CLASSIFICATIONS (APCs) WITH STATUS INDICATORS, RELATIVE WEIGHTS, PAYMENT RATES, AND COPAYMENT AMOUNTS—Continued

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APC	Group title	Status indicator	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
1019	Platelets, aph/pher, L/R, irradiated, unit	K	7.7905	$406.28		$81.26
1020	Pit, pher,L/R,CMV,irrad	K	9.4959	$495.22		$99.04
1021	RBC, frz/deg/wsh, L/R, irrad	K	6.4436	$336.04		$67.21
1022	RBC, L/R, CMV neg, irrad	K	3.8565	$201.12		$40.22
1045	Iobenguane sulfate I-31per 0.5 mCi	K	1.5697	$81.86		$16.37
1059	Cultured chondrocytes implnt	K	114.2706	$5,959.33		$1,191.87
1084	Denileukin diftitox, 300 MCG	K	12.1315	$632.67		$126.53
1086	Temozolomide,oral 5 mg	K	0.0581	$3.03		$.61
1091	IN 111 Oxyquinoline, per .5 mCi	K	4.7092	$245.59		$49.12
1092	IN 111 Pentetate, per 0.5 mCi	K	4.4379	$231.44		$46.29
1095	Technetium TC 99M Depreotide	K	5.6006	$292.08		$58.42
1096	TC 99M Exametazime, per dose	K	4.4379	$231.44		$46.29
1122	TC 99M arcitumomab, per vial	K	11.4726	$598.31		$119.66
1167	Epirubicin hcl, 2 mg	K	0.3294	$17.18		$3.44
1178	Busulfan IV, 6 mg	K	0.4845	$25.27		$5.05
1203	Verteporfin for injection	K	16.5209	$861.58		$172.32
1207	Octreotide acetate depot 1mg	K	1.4244	$74.28		$14.86
1305	Apligraf	K	13.0520	$680.67		$136.13
1348	I-131 sol, per 1-6 mCi	K	0.9399	$49.02		$9.80
1409	Factor viia recombinant, per 1.2 mg	K	20.7844	$1,083.93		$216.79
1604	IN 111 capromab pendetide, per dose	K	16.4434	$857.54		$171.51
1605	Abciximab injection, 10 mg	K	5.8526	$305.22		$61.04
1609	Rho(D) immune globulin h, sd, 100 iu	K	0.2229	$11.62		$2.32
1611	Hylan G-F 20 injection, 16 mg	K	2.3643	$123.30		$24.66
1612	Daclizumab, parenteral, 25 mg	K	4.3991	$229.42		$45.88
1613	Trastuzumab, 10 mg	K	0.6298	$32.84		$6.57
1614	Valrubicin, 200 mg	K	3.5658	$185.96		$37.19
1615	Basiliximab, 20 mg	K	13.3621	$696.85		$139.37
1618	Vonwillebrandfactrcmplx, per iu	K	0.0194	$1.01		$.20
1620	Technetium tc99m bicisate	K	3.8759	$202.13		$40.43
1625	Indium 111-in pentetreotide	K	8.2169	$428.52		$85.70
1628	Chromic phosphate p32	K	1.5891	$82.87		$16.57
1716	Brachytx seed, Gold 198	K	0.4360	$22.74		$4.55
1718	Brachytx seed, Iodine 125	K	0.6008	$31.33		$6.27
1719	Brachytxseed, Non-HDR Ir-192	K	0.5232	$27.29		$5.46
1720	Brachytx seed, Palladium 103	K	0.8430	$43.96		$8.79
1765	Adhesion barrier	H				
1775	FDG, per dose (4-40 mCi/ml)	K	7.5289	$392.64		$78.53
1783	Ocular implant, aqueous drain device	H				
1888	Endovascular non-cardiac ablation catheter	H				
1900	Lead coronary venous	H				
2614	Probe, percutaneous lumbar disc	H				
2616	Brachytx seed, Yttrium-90	K	8.8370	$460.86		$92.17
2618	Probe, cryoablation	H				
2632	Brachytx sol, I-125, per mCi	H				
7000	Amifostine, 500 mg	K	4.5057	$234.98		$47.00
7001	Amphotericin B lipid complex, 50 mg	K	2.3449	$122.29		$24.46
7011	Oprelvekin injection, 5 mg	K	2.7325	$142.50		$28.50
7024	Corticorelin ovine triflutat	K	2.2965	$119.76		$23.95
7025	Digoxin immune FAB (ovine)	K	4.9805	$259.74		$51.95
7030	Hemin, per 1 mg	K	0.0097	$.51		$.10
7031	Octreotide acetate injection	K	1.2694	$66.20		$13.24
7034	Somatropin injection	K	0.7170	$37.39		$7.48
7035	Teniposide, 50 mg	K	1.9573	$102.08		$20.42
7038	Muromonab-CD3, 5 mg	K	6.9572	$362.82		$72.56
7041	Tirofiban hydrochloride 12.5 mg	K	4.9417	$257.71		$51.54
7042	Capecitabine, oral, 150 mg	K	0.0291	$1.52		$.30
7043	Infliximab injection 10 mg	K	0.7364	$38.40		$7.68
7045	Trimetrexate glucoronate	K	1.3081	$68.22		$13.64
7046	Doxorubicin hcl liposome inj 10 mg	K	4.3894	$228.91		$45.78
7049	Filgrastim 480 mcg injection	K	3.2267	$168.28		$33.66
7051	Leuprolide acetate implant, 65 mg	G		$5,399.80		$807.13
9000	Na chromate Cr51, per 0.25mCi	K	1.8798	$98.03		$19.61
9002	Tenecteplase, 50mg/vial	K	27.5963	$1,439.17		$287.83
9003	Palivizumab, per 50mg	K	8.5657	$446.71		$89.34
9005	Reteplase injection	K	12.6547	$659.96		$131.99
9009	Baclofen refill kit - per 2000 mcg	K	0.7267	$37.90		$7.58
9010	Baclofen refill kit - per 4000 mcg	K	0.9205	$48.00		$9.60

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APC	Group title	Status indicator	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
9012	Arsenic Trioxide	G		$31.35		$4.69
9015	Mycophenolate mofetil oral 250 mg	K	0.0291	$1.52		$.30
9016	Echocardiography contrast	G		$118.75		$17.75
9018	Botulinum toxin B, per 100 u	G		$8.79		$1.31
9019	Caspofungin acetate, 5 mg	G		$34.20		$5.11
9020	Sirolimus tablet, 1 mg	K	0.0581	$3.03		$.61
9021	Immune globulin 10 mg	K	0.0097	$.51		$.10
9022	IM inj interferon beta 1-a	K	0.9302	$48.51		$9.70
9023	Rho d immune globulin 50 mcg	K	0.0484	$2.52		$.50
9024	Amphotericin b lipid complex	K	0.4167	$21.73		$4.35
9104	Anti-thymocyte globulin rabbit	K	2.6356	$137.45		$27.49
9105	Hep B imm glob, per 1 ml	K	1.5116	$78.83		$15.77
9108	Thyrotropin alfa, per 1.1 mg	K	7.5870	$395.67		$79.13
9109	Tirofiban hcl, per 6.25 mg	K	2.1996	$114.71		$22.94
9110	Alemtuzumab, per ml	G		$511.22		$76.41
9111	Inj, bivalirudin, per 250 mg vial	G		$397.81		$56.46
9112	Perflutren lipid micro, per 2ml	G		$4.94		$.74
9113	Inj, pantoprazole sodium, vial	G		$22.80		$3.41
9114	Nesiritide, per 1.5 mg vial	G		$433.20		$64.75
9115	Inj, zoledronic acid, per 2 mg	G		$406.78		$60.80
9116	Inj, Ertapenem sodium, per 1 gm vial	G		$45.31		$6.77
9119	Inj, Pegfilgrastim, per 6 mg single dose vial	G		$2,802.50		$418.90
9120	Inj, Fulvestrant, per 50 mg	G		$87.58		$13.09
9121	Inj, Argatroban, per 5 mg	G		$14.25		$2.13
9200	Orcel, per 36 cm2	G		$1,135.25		$169.69
9201	Dermagraft, per 37.5 sq cm	G		$577.60		$86.34
9217	Leuprolide acetate suspnsion, 7.5 mg	K	6.5696	$342.61		$68.52
9500	Platelets, irradiated	K	1.4341	$74.79		$14.96
9501	Platelets, pheresis	K	7.8390	$408.81		$81.76
9502	Platelet pheresis irradiated	K	8.5076	$443.68		$88.74
9503	Fresh frozen plasma, ea unit	K	1.3372	$69.74		$13.95
9504	RBC deglycerolized	K	3.5174	$183.44		$36.69
9505	RBC irradiated	K	2.0833	$108.65		$21.73
9506	Granulocytes, pheresis	K	23.9432	$1,248.66		$249.73

ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION

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CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
0001T	C		Endovas repr abdo ao aneurys					
0002T	C		Endovas repr abdo ao aneurys					
0003T	S		Cervicography	0706		$25.00		$5.00
0005T	C		Perc cath stent/brain cv art					
0006T	C		Perc cath stent/brain cv art					
0007T	C		Perc cath stent/brain cv art					
0008T	E		Upper gi endoscopy w/suture					
0009T	T		Endometrial cryoablation	0980		$1,875.00		$375.00
00100	N		Anesth, salivary gland					
00102	N		Anesth, repair of cleft lip					
00103	N		Anesth, blepharoplasty					
00104	N		Anesth, electroshock					
0010T	A		Tb test, gamma interferon					
00120	N		Anesth, ear surgery					
00124	N		Anesth, ear exam					
00126	N		Anesth, tympanotomy					
0012T	T		Osteochondral knee autograft	0041	26.1234	$1,362.36		$272.47
0013T	T		Osteochondral knee allograft	0041	26.1234	$1,362.36		$272.47
00140	N		Anesth, procedures on eye					
00142	N		Anesth, lens surgery					

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CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
00144	N		Anesth, corneal transplant					
00145	N		Anesth, vitreoretinal surg					
00147	N		Anesth, iridectomy					
00148	N		Anesth, eye exam					
0014T	T		Meniscal transplant, knee	0041	26.1234	$1,362.36		$272.47
00160	N		Anesth, nose/sinus surgery					
00162	N		Anesth, nose/sinus surgery					
00164	N		Anesth, biopsy of nose					
0016T	E		Thermotx choroid vasc lesion					
00170	N		Anesth, procedure on mouth					
00172	N		Anesth, cleft palate repair					
00174	C		Anesth, pharyngeal surgery					
00176	C		Anesth, pharyngeal surgery					
0017T	E		Photocoagulat macular drusen					
0018T	S		Transcranial magnetic stimul	0215	0.5814	$30.32	$15.76	$6.06
00190	N		Anesth, face/skull bone surg					
00192	C		Anesth, facial bone surgery					
0019T	A		Extracorp shock wave tx, ms					
0020T	A		Extracorp shock wave tx, ft					
00210	N		Anesth, open head surgery					
00212	N		Anesth, skull drainage					
00214	C		Anesth, skull drainage					
00215	C		Anesth, skull repair/fract					
00216	N		Anesth, head vessel surgery					
00218	N		Anesth, special head surgery					
0021T	C		Fetal oximetry, trnsvag/cerv					
00220	N		Anesth, intrcrn nerve					
00222	N		Anesth, head nerve surgery					
0023T	A		Phenotype drug test, hiv 1					
0024T	C		Transcath cardiac reduction					
0025T	S		Ultrasonic pachymetry	0230	0.7364	$38.40	$14.97	$7.68
0026T	A		Measure remnant lipoproteins					
0027T	T	NI	Endoscopic epidural lysis	0976		$875.00		$175.00
0028T	N	NI	Dexa body composition study					
0029T	N	NI	Magnetic tx for incontinence					
00300	N		Anesth, head/neck/ptrunk					
0030T	A	NI	Antiprothrombin antibody					
0031T	N	NI	Speculoscopy					
00320	N		Anesth, neck organ surgery					
00322	N		Anesth, biopsy of thyroid					
00326	N	NI	Anesth, larynx/trach, < 1 yr					
0032T	N	NI	Speculoscopy w/direct sample					
0033T	C	NI	Endovasc taa repr incl subcl					
0034T	C	NI	Endovasc taa repr w/o subcl					
00350	N		Anesth, neck vessel surgery					
00352	N		Anesth, neck vessel surgery					
0035T	C	NI	Insert endovasc prosth, taa					
0036T	C	NI	Endovasc prosth, taa, add-on					
0037T	C	NI	Artery transpose/endovas taa					
0038T	C	NI	Rad endovasc taa rpr w/cover					
0039T	C	NI	Rad s/i, endovasc taa repair					
00400	N		Anesth, skin, ext/per/atrunk					
00402	N		Anesth, surgery of breast					
00404	C		Anesth, surgery of breast					
00406	C		Anesth, surgery of breast					
0040T	C	NI	Rad s/i, endovasc taa prosth					
00410	N		Anesth, correct heart rhythm					
0041T	A	NI	Detect ur infect agnt w/cpas					
0042T	N	NI	Ct perfusion w/contrast, cbf					
0043T	A	NI	Co expired gas analysis					
0044T	N	NI	Whole body photography					
00450	N		Anesth, surgery of shoulder					
00452	C		Anesth, surgery of shoulder					
00454	N		Anesth, collar bone biopsy					
00470	N		Anesth, removal of rib					

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CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
00472	N		Anesth, chest wall repair					
00474	C		Anesth, surgery of rib(s)					
00500	N		Anesth, esophageal surgery					
00520	N		Anesth, chest procedure					
00522	N		Anesth, chest lining biopsy					
00524	C		Anesth, chest drainage					
00528	N		Anesth, chest partition view					
00530	N		Anesth, pacemaker insertion					
00532	N		Anesth, vascular access					
00534	N		Anesth, cardioverter/defib					
00537	N		Anesth, cardiac electrophys					
00539	N	NI	Anesth, trach-bronch reconst					
00540	C		Anesth, chest surgery					
00541	N	NI	Anesth, one lung ventilation					
00542	C		Anesth, release of lung					
00544	C		Anesth, chest lining removal					
00546	C		Anesth, lung,chest wall surg					
00548	N		Anesth, trachea,bronchi surg					
00550	N		Anesth, sternal debridement					
00560	C		Anesth, open heart surgery					
00562	C		Anesth, open heart surgery					
00563	N		Anesth, heart proc w/pump					
00566	N		Anesth, cabg w/o pump					
00580	C		Anesth, heart/lung transplnt					
00600	N		Anesth, spine, cord surgery					
00604	C		Anesth, sitting procedure					
00620	N		Anesth, spine, cord surgery					
00622	C		Anesth, removal of nerves					
00630	N		Anesth, spine, cord surgery					
00632	C		Anesth, removal of nerves					
00634	C		Anesth for chemonucleolysis					
00635	N		Anesth, lumbar puncture					
00640	N	NI	Anesth, spine manipulation					
00670	C		Anesth, spine, cord surgery					
00700	N		Anesth, abdominal wall surg					
00702	N		Anesth, for liver biopsy					
00730	N		Anesth, abdominal wall surg					
00740	N		Anesth, upper gi visualize					
00750	N		Anesth, repair of hernia					
00752	N		Anesth, repair of hernia					
00754	N		Anesth, repair of hernia					
00756	N		Anesth, repair of hernia					
00770	N		Anesth, blood vessel repair					
00790	N		Anesth, surg upper abdomen					
00792	C		Anesth, hemorr/excise liver					
00794	C		Anesth, pancreas removal					
00796	C		Anesth, for liver transplant					
00797	N		Anesth, surgery for obesity					
00800	N		Anesth, abdominal wall surg					
00802	C		Anesth, fat layer removal					
00810	N		Anesth, low intestine scope					
00820	N		Anesth, abdominal wall surg					
00830	N		Anesth, repair of hernia					
00832	N		Anesth, repair of hernia					
00834	N	NI	Anesth, hernia repair< 1 yr					
00836	N	NI	Anesth hernia repair preemie					
00840	N		Anesth, surg lower abdomen					
00842	N		Anesth, amniocentesis					
00844	C		Anesth, pelvis surgery					
00846	C		Anesth, hysterectomy					
00848	C		Anesth, pelvic organ surg					
00851	N		Anesth, tubal ligation					
00860	N		Anesth, surgery of abdomen					
00862	N		Anesth, kidney/ureter surg					
00864	C		Anesth, removal of bladder					

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CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
00865	C		Anesth, removal of prostate					
00866	C		Anesth, removal of adrenal					
00868	C		Anesth, kidney transplant					
00869	N	DG	Anesth, vasectomy					
00870	N		Anesth, bladder stone surg					
00872	N		Anesth kidney stone destruct					
00873	N		Anesth kidney stone destruct					
00880	N		Anesth, abdomen vessel surg					
00882	C		Anesth, major vein ligation					
00902	N		Anesth, anorectal surgery					
00904	C		Anesth, perineal surgery					
00906	N		Anesth, removal of vulva					
00908	C		Anesth, removal of prostate					
00910	N		Anesth, bladder surgery					
00912	N		Anesth, bladder tumor surg					
00914	N		Anesth, removal of prostate					
00916	N		Anesth, bleeding control					
00918	N		Anesth, stone removal					
00920	N		Anesth, genitalia surgery					
00921	N	NI	Anesth, vasectomy					
00922	N		Anesth, sperm duct surgery					
00924	N		Anesth, testis exploration					
00926	N		Anesth, removal of testis					
00928	C		Anesth, removal of testis					
00930	N		Anesth, testis suspension					
00932	C		Anesth, amputation of penis					
00934	C		Anesth, penis, nodes removal					
00936	C		Anesth, penis, nodes removal					
00938	N		Anesth, insert penis device					
00940	N		Anesth, vaginal procedures					
00942	N		Anesth, surg on vag/urethral					
00944	C		Anesth, vaginal hysterectomy					
00948	N		Anesth, repair of cervix					
00950	N		Anesth, vaginal endoscopy					
00952	N		Anesth, hysteroscope/graph					
01112	N		Anesth, bone aspirate/bx					
01120	N		Anesth, pelvis surgery					
01130	N		Anesth, body cast procedure					
01140	C		Anesth, amputation at pelvis					
01150	C		Anesth, pelvic tumor surgery					
01160	N		Anesth, pelvis procedure					
01170	N		Anesth, pelvis surgery					
01180	N		Anesth, pelvis nerve removal					
01190	C		Anesth, pelvis nerve removal					
01200	N		Anesth, hip joint procedure					
01202	N		Anesth, arthroscopy of hip					
01210	N		Anesth, hip joint surgery					
01212	C		Anesth, hip disarticulation					
01214	C		Anesth, hip arthroplasty					
01215	N		Anesth, revise hip repair					
01220	N		Anesth, procedure on femur					
01230	N		Anesth, surgery of femur					
01232	C		Anesth, amputation of femur					
01234	C		Anesth, radical femur surg					
01250	N		Anesth, upper leg surgery					
01260	N		Anesth, upper leg veins surg					
01270	N		Anesth, thigh arteries surg					
01272	C		Anesth, femoral artery surg					
01274	C		Anesth, femoral embolectomy					
01320	N		Anesth, knee area surgery					
01340	N		Anesth, knee area procedure					
01360	N		Anesth, knee area surgery					
01380	N		Anesth, knee joint procedure					
01382	N		Anesth, knee arthroscopy					
01390	N		Anesth, knee area procedure					

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CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
01392	N		Anesth, knee area surgery					
01400	N		Anesth, knee joint surgery					
01402	C		Anesth, knee arthroplasty					
01404	C		Anesth, amputation at knee					
01420	N		Anesth, knee joint casting					
01430	N		Anesth, knee veins surgery					
01432	N		Anesth, knee vessel surg					
01440	N		Anesth, knee arteries surg					
01442	C		Anesth, knee artery surg					
01444	C		Anesth, knee artery repair					
01462	N		Anesth, lower leg procedure					
01464	N		Anesth, ankle arthroscopy					
01470	N		Anesth, lower leg surgery					
01472	N		Anesth, achilles tendon surg					
01474	N		Anesth, lower leg surgery					
01480	N		Anesth, lower leg bone surg					
01482	N		Anesth, radical leg surgery					
01484	N		Anesth, lower leg revision					
01486	C		Anesth, ankle replacement					
01490	N		Anesth, lower leg casting					
01500	N		Anesth, leg arteries surg					
01502	C		Anesth, lwr leg embolectomy					
01520	N		Anesth, lower leg vein surg					
01522	N		Anesth, lower leg vein surg					
01610	N		Anesth, surgery of shoulder					
01620	N		Anesth, shoulder procedure					
01622	N		Anesth, shoulder arthroscopy					
01630	N		Anesth, surgery of shoulder					
01632	C		Anesth, surgery of shoulder					
01634	C		Anesth, shoulder joint amput					
01636	C		Anesth, forequarter amput					
01638	C		Anesth, shoulder replacement					
01650	N		Anesth, shoulder artery surg					
01652	C		Anesth, shoulder vessel surg					
01654	C		Anesth, shoulder vessel surg					
01656	C		Anesth, arm-leg vessel surg					
01670	N		Anesth, shoulder vein surg					
01680	N		Anesth, shoulder casting					
01682	N		Anesth, airplane cast					
01710	N		Anesth, elbow area surgery					
01712	N		Anesth, uppr arm tendon surg					
01714	N		Anesth, uppr arm tendon surg					
01716	N		Anesth, biceps tendon repair					
01730	N		Anesth, uppr arm procedure					
01732	N		Anesth, elbow arthroscopy					
01740	N		Anesth, upper arm surgery					
01742	N		Anesth, humerus surgery					
01744	N		Anesth, humerus repair					
01756	C		Anesth, radical humerus surg					
01758	N		Anesth, humeral lesion surg					
01760	N		Anesth, elbow replacement					
01770	N		Anesth, uppr arm artery surg					
01772	N		Anesth, uppr arm embolectomy					
01780	N		Anesth, upper arm vein surg					
01782	N		Anesth, uppr arm vein repair					
01810	N		Anesth, lower arm surgery					
01820	N		Anesth, lower arm procedure					
01829	N	NI	Anesth, dx wrist arthroscopy					
01830	N		Anesth, lower arm surgery					
01832	N		Anesth, wrist replacement					
01840	N		Anesth, lwr arm artery surg					
01842	N		Anesth, lwr arm embolectomy					
01844	N		Anesth, vascular shunt surg					
01850	N		Anesth, lower arm vein surg					
01852	N		Anesth, lwr arm vein repair					

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CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
01860	N		Anesth, lower arm casting					
01905	N		Anes, spine inject, x-ray/re					
01916	N		Anesth, dx arteriography					
01920	N		Anesth, catheterize heart					
01922	N		Anesth, cat or MRI scan					
01924	N		Anes, ther interven rad, art					
01925	N		Anes, ther interven rad, car					
01926	N		Anes, tx interv rad hrt/cran					
01930	N		Anes, ther interven rad, vei					
01931	N		Anes, ther interven rad, tip					
01932	N		Anes, tx interv rad, th vein					
01933	N		Anes, tx interv rad, cran v					
01951	N		Anesth, burn, less 4 percent					
01952	N		Anesth, burn, 4-9 percent					
01953	N		Anesth, burn, each 9 percent					
01960	N		Anesth, vaginal delivery					
01961	N		Anesth, cs delivery					
01962	N		Anesth, emer hysterectomy					
01963	N		Anesth, cs hysterectomy					
01964	N		Anesth, abortion procedures					
01967	N		Anesth/analg, vag delivery					
01968	N		Anes/analg cs deliver add-on					
01969	N		Anesth/analg cs hyst add-on					
01990	C		Support for organ donor					
01991	N	NI	Anesth, nerve block/inj					
01992	N	NI	Anesth, n block/inj, prone					
01995	N		Regional anesthesia limb					
01996	N		Manage daily drug therapy					
01999	N		Unlisted anesth procedure					
10021	T		Fna w/o image	0002	0.5911	$30.83		$6.17
10022	T		Fna w/image	0002	0.5911	$30.83		$6.17
10040	T		Acne surgery	0010	0.6589	$34.36	$10.08	$6.87
10060	T		Drainage of skin abscess	0006	1.7926	$93.49	$24.12	$18.70
10061	T		Drainage of skin abscess	0006	1.7926	$93.49	$24.12	$18.70
10080	T		Drainage of pilonidal cyst	0006	1.7926	$93.49	$24.12	$18.70
10081	T		Drainage of pilonidal cyst	0007	10.0191	$522.51	$108.89	$104.50
10120	T		Remove foreign body	0006	1.7926	$93.49	$24.12	$18.70
10121	T		Remove foreign body	0021	13.9338	$726.66	$219.48	$145.33
10140	T		Drainage of hematoma/fluid	0007	10.0191	$522.51	$108.89	$104.50
10160	T		Puncture drainage of lesion	0018	0.9399	$49.02	$16.04	$9.80
10180	T		Complex drainage, wound	0007	10.0191	$522.51	$108.89	$104.50
11000	T		Debride infected skin	0015	1.5407	$80.35	$20.35	$16.07
11001	T		Debride infected skin add-on	0013	1.0756	$56.09	$14.20	$11.22
11010	T		Debride skin, fx	0022	17.3930	$907.06	$354.45	$181.41
11011	T		Debride skin/muscle, fx	0022	17.3930	$907.06	$354.45	$181.41
11012	T		Debride skin/muscle/bone, fx	0022	17.3930	$907.06	$354.45	$181.41
11040	T		Debride skin, partial	0015	1.5407	$80.35	$20.35	$16.07
11041	T		Debride skin, full	0015	1.5407	$80.35	$20.35	$16.07
11042	T		Debride skin/tissue	0016	2.6162	$136.44	$57.31	$27.29
11043	T		Debride tissue/muscle	0016	2.6162	$136.44	$57.31	$27.29
11044	T		Debride tissue/muscle/bone	0682	7.2770	$379.50	$174.57	$75.90
11055	T		Trim skin lesion	0012	0.7849	$40.93	$11.18	$8.19
11056	T		Trim skin lesions, 2 to 4	0012	0.7849	$40.93	$11.18	$8.19
11057	T		Trim skin lesions, over 4	0012	0.7849	$40.93	$11.18	$8.19
11100	T		Biopsy of skin lesion	0018	0.9399	$49.02	$16.04	$9.80
11101	T		Biopsy, skin add-on	0018	0.9399	$49.02	$16.04	$9.80
11200	T		Removal of skin tags	0013	1.0756	$56.09	$14.20	$11.22
11201	T		Remove skin tags add-on	0015	1.5407	$80.35	$20.35	$16.07
11300	T		Shave skin lesion	0012	0.7849	$40.93	$11.18	$8.19
11301	T		Shave skin lesion	0012	0.7849	$40.93	$11.18	$8.19
11302	T		Shave skin lesion	0013	1.0756	$56.09	$14.20	$11.22
11303	T		Shave skin lesion	0015	1.5407	$80.35	$20.35	$16.07
11305	T		Shave skin lesion	0013	1.0756	$56.09	$14.20	$11.22
11306	T		Shave skin lesion	0013	1.0756	$56.09	$14.20	$11.22
11307	T		Shave skin lesion	0013	1.0756	$56.09	$14.20	$11.22

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued
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CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
11308	T		Shave skin lesion	0013	1.0756	$56.09	$14.20	$11.22
11310	T		Shave skin lesion	0013	1.0756	$56.09	$14.20	$11.22
11311	T		Shave skin lesion	0013	1.0756	$56.09	$14.20	$11.22
11312	T		Shave skin lesion	0013	1.0756	$56.09	$14.20	$11.22
11313	T		Shave skin lesion	0016	2.6162	$136.44	$57.31	$27.29
11400	T		Removal of skin lesion	0019	3.7693	$196.57	$71.87	$39.31
11401	T		Removal of skin lesion	0019	3.7693	$196.57	$71.87	$39.31
11402	T		Removal of skin lesion	0019	3.7693	$196.57	$71.87	$39.31
11403	T		Removal of skin lesion	0020	7.1898	$374.96	$113.25	$74.99
11404	T		Removal of skin lesion	0020	7.1898	$374.96	$113.25	$74.99
11406	T		Removal of skin lesion	0021	13.9338	$726.66	$219.48	$145.33
11420	T		Removal of skin lesion	0020	7.1898	$374.96	$113.25	$74.99
11421	T		Removal of skin lesion	0020	7.1898	$374.96	$113.25	$74.99
11422	T		Removal of skin lesion	0020	7.1898	$374.96	$113.25	$74.99
11423	T		Removal of skin lesion	0020	7.1898	$374.96	$113.25	$74.99
11424	T		Removal of skin lesion	0021	13.9338	$726.66	$219.48	$145.33
11426	T		Removal of skin lesion	0022	17.3930	$907.06	$354.45	$181.41
11440	T		Removal of skin lesion	0019	3.7693	$196.57	$71.87	$39.31
11441	T		Removal of skin lesion	0019	3.7693	$196.57	$71.87	$39.31
11442	T		Removal of skin lesion	0020	7.1898	$374.96	$113.25	$74.99
11443	T		Removal of skin lesion	0020	7.1898	$374.96	$113.25	$74.99
11444	T		Removal of skin lesion	0020	7.1898	$374.96	$113.25	$74.99
11446	T		Removal of skin lesion	0022	17.3930	$907.06	$354.45	$181.41
11450	T		Removal, sweat gland lesion	0022	17.3930	$907.06	$354.45	$181.41
11451	T		Removal, sweat gland lesion	0022	17.3930	$907.06	$354.45	$181.41
11462	T		Removal, sweat gland lesion	0022	17.3930	$907.06	$354.45	$181.41
11463	T		Removal, sweat gland lesion	0022	17.3930	$907.06	$354.45	$181.41
11470	T		Removal, sweat gland lesion	0022	17.3930	$907.06	$354.45	$181.41
11471	T		Removal, sweat gland lesion	0022	17.3930	$907.06	$354.45	$181.41
11600	T		Removal of skin lesion	0019	3.7693	$196.57	$71.87	$39.31
11601	T		Removal of skin lesion	0019	3.7693	$196.57	$71.87	$39.31
11602	T		Removal of skin lesion	0019	3.7693	$196.57	$71.87	$39.31
11603	T		Removal of skin lesion	0020	7.1898	$374.96	$113.25	$74.99
11604	T		Removal of skin lesion	0020	7.1898	$374.96	$113.25	$74.99
11606	T		Removal of skin lesion	0021	13.9338	$726.66	$219.48	$145.33
11620	T		Removal of skin lesion	0020	7.1898	$374.96	$113.25	$74.99
11621	T		Removal of skin lesion	0019	3.7693	$196.57	$71.87	$39.31
11622	T		Removal of skin lesion	0020	7.1898	$374.96	$113.25	$74.99
11623	T		Removal of skin lesion	0020	7.1898	$374.96	$113.25	$74.99
11624	T		Removal of skin lesion	0021	13.9338	$726.66	$219.48	$145.33
11626	T		Removal of skin lesion	0022	17.3930	$907.06	$354.45	$181.41
11640	T		Removal of skin lesion	0020	7.1898	$374.96	$113.25	$74.99
11641	T		Removal of skin lesion	0020	7.1898	$374.96	$113.25	$74.99
11642	T		Removal of skin lesion	0020	7.1898	$374.96	$113.25	$74.99
11643	T		Removal of skin lesion	0020	7.1898	$374.96	$113.25	$74.99
11644	T		Removal of skin lesion	0021	13.9338	$726.66	$219.48	$145.33
11646	T		Removal of skin lesion	0022	17.3930	$907.06	$354.45	$181.41
11719	T		Trim nail(s)	0009	0.6298	$32.84	$8.34	$6.57
11720	T		Debride nail, 1-5	0009	0.6298	$32.84	$8.34	$6.57
11721	T		Debride nail, 6 or more	0009	0.6298	$32.84	$8.34	$6.57
11730	T		Removal of nail plate	0013	1.0756	$56.09	$14.20	$11.22
11732	T		Remove nail plate, add-on	0012	0.7849	$40.93	$11.18	$8.19
11740	T		Drain blood from under nail	0009	0.6298	$32.84	$8.34	$6.57
11750	T		Removal of nail bed	0019	3.7693	$196.57	$71.87	$39.31
11752	T		Remove nail bed/finger tip	0022	17.3930	$907.06	$354.45	$181.41
11755	T		Biopsy, nail unit	0019	3.7693	$196.57	$71.87	$39.31
11760	T		Repair of nail bed	0024	1.8507	$96.52	$34.75	$19.30
11762	T		Reconstruction of nail bed	0024	1.8507	$96.52	$34.75	$19.30
11765	T		Excision of nail fold, toe	0015	1.5407	$80.35	$20.35	$16.07
11770	T		Removal of pilonidal lesion	0022	17.3930	$907.06	$354.45	$181.41
11771	T		Removal of pilonidal lesion	0022	17.3930	$907.06	$354.45	$181.41
11772	T		Removal of pilonidal lesion	0022	17.3930	$907.06	$354.45	$181.41
11900	T		Injection into skin lesions	0012	0.7849	$40.93	$11.18	$8.19
11901	T		Added skin lesions injection	0012	0.7849	$40.93	$11.18	$8.19
11920	T		Correct skin color defects	0024	1.8507	$96.52	$34.75	$19.30

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued
[Calendar Year 2003]

CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
11921	T		Correct skin color defects	0024	1.8507	$96.52	$34.75	$19.30
11922	T		Correct skin color defects	0024	1.8507	$96.52	$34.75	$19.30
11950	T		Therapy for contour defects	0024	1.8507	$96.52	$34.75	$19.30
11951	T		Therapy for contour defects	0024	1.8507	$96.52	$34.75	$19.30
11952	T		Therapy for contour defects	0024	1.8507	$96.52	$34.75	$19.30
11954	T		Therapy for contour defects	0024	1.8507	$96.52	$34.75	$19.30
11960	T		Insert tissue expander(s)	0027	15.2225	$793.87	$329.72	$158.77
11970	T		Replace tissue expander	0027	15.2225	$793.87	$329.72	$158.77
11971	T		Remove tissue expander(s)	0022	17.3930	$907.06	$354.45	$181.41
11975	E		Insert contraceptive cap					
11976	T		Removal of contraceptive cap	0019	3.7693	$196.57	$71.87	$39.31
11977	E		Removal/reinsert contra cap					
11980	X		Implant hormone pellet(s)	0340	0.6492	$33.86		$6.77
11981	X		Insert drug implant device	0340	0.6492	$33.86		$6.77
11982	X		Remove drug implant device	0340	0.6492	$33.86		$6.77
11983	X		Remove/insert drug implant	0340	0.6492	$33.86		$6.77
12001	T		Repair superficial wound(s)	0024	1.8507	$96.52	$34.75	$19.30
12002	T		Repair superficial wound(s)	0024	1.8507	$96.52	$34.75	$19.30
12004	T		Repair superficial wound(s)	0024	1.8507	$96.52	$34.75	$19.30
12005	T		Repair superficial wound(s)	0024	1.8507	$96.52	$34.75	$19.30
12006	T		Repair superficial wound(s)	0024	1.8507	$96.52	$34.75	$19.30
12007	T		Repair superficial wound(s)	0024	1.8507	$96.52	$34.75	$19.30
12011	T		Repair superficial wound(s)	0024	1.8507	$96.52	$34.75	$19.30
12013	T		Repair superficial wound(s)	0024	1.8507	$96.52	$34.75	$19.30
12014	T		Repair superficial wound(s)	0024	1.8507	$96.52	$34.75	$19.30
12015	T		Repair superficial wound(s)	0024	1.8507	$96.52	$34.75	$19.30
12016	T		Repair superficial wound(s)	0024	1.8507	$96.52	$34.75	$19.30
12017	T		Repair superficial wound(s)	0024	1.8507	$96.52	$34.75	$19.30
12018	T		Repair superficial wound(s)	0024	1.8507	$96.52	$34.75	$19.30
12020	T		Closure of split wound	0024	1.8507	$96.52	$34.75	$19.30
12021	T		Closure of split wound	0024	1.8507	$96.52	$34.75	$19.30
12031	T		Layer closure of wound(s)	0024	1.8507	$96.52	$34.75	$19.30
12032	T		Layer closure of wound(s)	0024	1.8507	$96.52	$34.75	$19.30
12034	T		Layer closure of wound(s)	0024	1.8507	$96.52	$34.75	$19.30
12035	T		Layer closure of wound(s)	0024	1.8507	$96.52	$34.75	$19.30
12036	T		Layer closure of wound(s)	0024	1.8507	$96.52	$34.75	$19.30
12037	T		Layer closure of wound(s)	0025	5.8623	$305.72	$115.49	$61.14
12041	T		Layer closure of wound(s)	0024	1.8507	$96.52	$34.75	$19.30
12042	T		Layer closure of wound(s)	0024	1.8507	$96.52	$34.75	$19.30
12044	T		Layer closure of wound(s)	0024	1.8507	$96.52	$34.75	$19.30
12045	T		Layer closure of wound(s)	0024	1.8507	$96.52	$34.75	$19.30
12046	T		Layer closure of wound(s)	0024	1.8507	$96.52	$34.75	$19.30
12047	T		Layer closure of wound(s)	0025	5.8623	$305.72	$115.49	$61.14
12051	T		Layer closure of wound(s)	0024	1.8507	$96.52	$34.75	$19.30
12052	T		Layer closure of wound(s)	0024	1.8507	$96.52	$34.75	$19.30
12053	T		Layer closure of wound(s)	0024	1.8507	$96.52	$34.75	$19.30
12054	T		Layer closure of wound(s)	0024	1.8507	$96.52	$34.75	$19.30
12055	T		Layer closure of wound(s)	0024	1.8507	$96.52	$34.75	$19.30
12056	T		Layer closure of wound(s)	0024	1.8507	$96.52	$34.75	$19.30
12057	T		Layer closure of wound(s)	0025	5.8623	$305.72	$115.49	$61.14
13100	T		Repair of wound or lesion	0025	5.8623	$305.72	$115.49	$61.14
13101	T		Repair of wound or lesion	0025	5.8623	$305.72	$115.49	$61.14
13102	T		Repair wound/lesion add-on	0024	1.8507	$96.52	$34.75	$19.30
13120	T		Repair of wound or lesion	0024	1.8507	$96.52	$34.75	$19.30
13121	T		Repair of wound or lesion	0024	1.8507	$96.52	$34.75	$19.30
13122	T		Repair wound/lesion add-on	0024	1.8507	$96.52	$34.75	$19.30
13131	T		Repair of wound or lesion	0024	1.8507	$96.52	$34.75	$19.30
13132	T		Repair of wound or lesion	0024	1.8507	$96.52	$34.75	$19.30
13133	T		Repair wound/lesion add-on	0024	1.8507	$96.52	$34.75	$19.30
13150	T		Repair of wound or lesion	0025	5.8623	$305.72	$115.49	$61.14
13151	T		Repair of wound or lesion	0024	1.8507	$96.52	$34.75	$19.30
13152	T		Repair of wound or lesion	0025	5.8623	$305.72	$115.49	$61.14
13153	T		Repair wound/lesion add-on	0024	1.8507	$96.52	$34.75	$19.30
13160	T		Late closure of wound	0027	15.2225	$793.87	$329.72	$158.77
14000	T		Skin tissue rearrangement	0027	15.2225	$793.87	$329.72	$158.77

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

[Calendar Year 2003]

CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
14001	T		Skin tissue rearrangement	0027	15.2225	$793.87	$329.72	$158.77
14020	T		Skin tissue rearrangement	0027	15.2225	$793.87	$329.72	$158.77
14021	T		Skin tissue rearrangement	0027	15.2225	$793.87	$329.72	$158.77
14040	T		Skin tissue rearrangement	0027	15.2225	$793.87	$329.72	$158.77
14041	T		Skin tissue rearrangement	0027	15.2225	$793.87	$329.72	$158.77
14060	T		Skin tissue rearrangement	0027	15.2225	$793.87	$329.72	$158.77
14061	T		Skin tissue rearrangement	0027	15.2225	$793.87	$329.72	$158.77
14300	T		Skin tissue rearrangement	0027	15.2225	$793.87	$329.72	$158.77
14350	T		Skin tissue rearrangement	0027	15.2225	$793.87	$329.72	$158.77
15000	T		Skin graft	0025	5.8623	$305.72	$115.49	$61.14
15001	T		Skin graft add-on	0025	5.8623	$305.72	$115.49	$61.14
15050	T		Skin pinch graft	0025	5.8623	$305.72	$115.49	$61.14
15100	T		Skin split graft	0027	15.2225	$793.87	$329.72	$158.77
15101	T		Skin split graft add-on	0027	15.2225	$793.87	$329.72	$158.77
15120	T		Skin split graft	0027	15.2225	$793.87	$329.72	$158.77
15121	T		Skin split graft add-on	0027	15.2225	$793.87	$329.72	$158.77
15200	T		Skin full graft	0027	15.2225	$793.87	$329.72	$158.77
15201	T		Skin full graft add-on	0025	5.8623	$305.72	$115.49	$61.14
15220	T		Skin full graft	0027	15.2225	$793.87	$329.72	$158.77
15221	T		Skin full graft add-on	0025	5.8623	$305.72	$115.49	$61.14
15240	T		Skin full graft	0027	15.2225	$793.87	$329.72	$158.77
15241	T		Skin full graft add-on	0025	5.8623	$305.72	$115.49	$61.14
15260	T		Skin full graft	0027	15.2225	$793.87	$329.72	$158.77
15261	T		Skin full graft add-on	0025	5.8623	$305.72	$115.49	$61.14
15342	T		Cultured skin graft, 25 cm	0025	5.8623	$305.72	$115.49	$61.14
15343	T		Culture skn graft addl 25 cm	0024	1.8507	$96.52	$34.75	$19.30
15350	T		Skin homograft	0686	14.2439	$742.83	$341.70	$148.57
15351	T		Skin homograft add-on	0027	15.2225	$793.87	$329.72	$158.77
15400	T		Skin heterograft	0025	5.8623	$305.72	$115.49	$61.14
15401	T		Skin heterograft add-on	0025	5.8623	$305.72	$115.49	$61.14
15570	T		Form skin pedicle flap	0027	15.2225	$793.87	$329.72	$158.77
15572	T		Form skin pedicle flap	0027	15.2225	$793.87	$329.72	$158.77
15574	T		Form skin pedicle flap	0027	15.2225	$793.87	$329.72	$158.77
15576	T		Form skin pedicle flap	0027	15.2225	$793.87	$329.72	$158.77
15600	T		Skin graft	0027	15.2225	$793.87	$329.72	$158.77
15610	T		Skin graft	0027	15.2225	$793.87	$329.72	$158.77
15620	T		Skin graft	0027	15.2225	$793.87	$329.72	$158.77
15630	T		Skin graft	0027	15.2225	$793.87	$329.72	$158.77
15650	T		Transfer skin pedicle flap	0027	15.2225	$793.87	$329.72	$158.77
15732	T		Muscle-skin graft, head/neck	0027	15.2225	$793.87	$329.72	$158.77
15734	T		Muscle-skin graft, trunk	0027	15.2225	$793.87	$329.72	$158.77
15736	T		Muscle-skin graft, arm	0027	15.2225	$793.87	$329.72	$158.77
15738	T		Muscle-skin graft, leg	0027	15.2225	$793.87	$329.72	$158.77
15740	T		Island pedicle flap graft	0027	15.2225	$793.87	$329.72	$158.77
15750	T		Neurovascular pedicle graft	0027	15.2225	$793.87	$329.72	$158.77
15756	C		Free muscle flap, microvasc					
15757	C		Free skin flap, microvasc					
15758	C		Free fascial flap, microvasc					
15760	T		Composite skin graft	0027	15.2225	$793.87	$329.72	$158.77
15770	T		Derma-fat-fascia graft	0027	15.2225	$793.87	$329.72	$158.77
15775	T		Hair transplant punch grafts	0025	5.8623	$305.72	$115.49	$61.14
15776	T		Hair transplant punch grafts	0025	5.8623	$305.72	$115.49	$61.14
15780	T		Abrasion treatment of skin	0022	17.3930	$907.06	$354.45	$181.41
15781	T		Abrasion treatment of skin	0022	17.3930	$907.06	$354.45	$181.41
15782	T		Abrasion treatment of skin	0022	17.3930	$907.06	$354.45	$181.41
15783	T		Abrasion treatment of skin	0016	2.6162	$136.44	$57.31	$27.29
15786	T		Abrasion, lesion, single	0013	1.0756	$56.09	$14.20	$11.22
15787	T		Abrasion, lesions, add-on	0013	1.0756	$56.09	$14.20	$11.22
15788	T		Chemical peel, face, epiderm	0012	0.7849	$40.93	$11.18	$8.19
15789	T		Chemical peel, face, dermal	0015	1.5407	$80.35	$20.35	$16.07
15792	T		Chemical peel, nonfacial	0012	0.7849	$40.93	$11.18	$8.19
15793	T		Chemical peel, nonfacial	0013	1.0756	$56.09	$14.20	$11.22
15810	T		Salabrasion	0016	2.6162	$136.44	$57.31	$27.29
15811	T		Salabrasion	0016	2.6162	$136.44	$57.31	$27.29
15819	T		Plastic surgery, neck	0025	5.8623	$305.72	$115.49	$61.14

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

[Calendar Year 2003]

CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
15820	T		Revision of lower eyelid	0027	15.2225	$793.87	$329.72	$158.77
15821	T		Revision of lower eyelid	0027	15.2225	$793.87	$329.72	$158.77
15822	T		Revision of upper eyelid	0027	15.2225	$793.87	$329.72	$158.77
15823	T		Revision of upper eyelid	0027	15.2225	$793.87	$329.72	$158.77
15824	T		Removal of forehead wrinkles	0027	15.2225	$793.87	$329.72	$158.77
15825	T		Removal of neck wrinkles	0027	15.2225	$793.87	$329.72	$158.77
15826	T		Removal of brow wrinkles	0027	15.2225	$793.87	$329.72	$158.77
15828	T		Removal of face wrinkles	0027	15.2225	$793.87	$329.72	$158.77
15829	T		Removal of skin wrinkles	0027	15.2225	$793.87	$329.72	$158.77
15831	T		Excise excessive skin tissue	0022	17.3930	$907.06	$354.45	$181.41
15832	T		Excise excessive skin tissue	0022	17.3930	$907.06	$354.45	$181.41
15833	T		Excise excessive skin tissue	0022	17.3930	$907.06	$354.45	$181.41
15834	T		Excise excessive skin tissue	0022	17.3930	$907.06	$354.45	$181.41
15835	T		Excise excessive skin tissue	0025	5.8623	$305.72	$115.49	$61.14
15836	T		Excise excessive skin tissue	0020	7.1898	$374.96	$113.25	$74.99
15837	T		Excise excessive skin tissue	0020	7.1898	$374.96	$113.25	$74.99
15838	T		Excise excessive skin tissue	0020	7.1898	$374.96	$113.25	$74.99
15839	T		Excise excessive skin tissue	0020	7.1898	$374.96	$113.25	$74.99
15840	T		Graft for face nerve palsy	0027	15.2225	$793.87	$329.72	$158.77
15841	T		Graft for face nerve palsy	0027	15.2225	$793.87	$329.72	$158.77
15842	T		Flap for face nerve palsy	0027	15.2225	$793.87	$329.72	$158.77
15845	T		Skin and muscle repair, face	0027	15.2225	$793.87	$329.72	$158.77
15850	T		Removal of sutures	0016	2.6162	$136.44	$57.31	$27.29
15851	T		Removal of sutures	0013	1.0756	$56.09	$14.20	$11.22
15852	X		Dressing change,not for burn	0340	0.6492	$33.86		$6.77
15860	S		Test for blood flow in graft	0706		$25.00		$5.00
15876	T		Suction assisted lipectomy	0027	15.2225	$793.87	$329.72	$158.77
15877	T		Suction assisted lipectomy	0027	15.2225	$793.87	$329.72	$158.77
15878	T		Suction assisted lipectomy	0027	15.2225	$793.87	$329.72	$158.77
15879	T		Suction assisted lipectomy	0027	15.2225	$793.87	$329.72	$158.77
15920	T		Removal of tail bone ulcer	0022	17.3930	$907.06	$354.45	$181.41
15922	T		Removal of tail bone ulcer	0027	15.2225	$793.87	$329.72	$158.77
15931	T		Remove sacrum pressure sore	0022	17.3930	$907.06	$354.45	$181.41
15933	T		Remove sacrum pressure sore	0022	17.3930	$907.06	$354.45	$181.41
15934	T		Remove sacrum pressure sore	0027	15.2225	$793.87	$329.72	$158.77
15935	T		Remove sacrum pressure sore	0027	15.2225	$793.87	$329.72	$158.77
15936	T		Remove sacrum pressure sore	0027	15.2225	$793.87	$329.72	$158.77
15937	T		Remove sacrum pressure sore	0027	15.2225	$793.87	$329.72	$158.77
15940	T		Remove hip pressure sore	0022	17.3930	$907.06	$354.45	$181.41
15941	T		Remove hip pressure sore	0022	17.3930	$907.06	$354.45	$181.41
15944	T		Remove hip pressure sore	0027	15.2225	$793.87	$329.72	$158.77
15945	T		Remove hip pressure sore	0027	15.2225	$793.87	$329.72	$158.77
15946	T		Remove hip pressure sore	0027	15.2225	$793.87	$329.72	$158.77
15950	T		Remove thigh pressure sore	0022	17.3930	$907.06	$354.45	$181.41
15951	T		Remove thigh pressure sore	0022	17.3930	$907.06	$354.45	$181.41
15952	T		Remove thigh pressure sore	0027	15.2225	$793.87	$329.72	$158.77
15953	T		Remove thigh pressure sore	0027	15.2225	$793.87	$329.72	$158.77
15956	T		Remove thigh pressure sore	0027	15.2225	$793.87	$329.72	$158.77
15958	T		Remove thigh pressure sore	0027	15.2225	$793.87	$329.72	$158.77
15999	T		Removal of pressure sore	0022	17.3930	$907.06	$354.45	$181.41
16000	T		Initial treatment of burn(s)	0013	1.0756	$56.09	$14.20	$11.22
16010	T		Treatment of burn(s)	0016	2.6162	$136.44	$57.31	$27.29
16015	T		Treatment of burn(s)	0017	15.8233	$825.20	$227.84	$165.04
16020	T		Treatment of burn(s)	0013	1.0756	$56.09	$14.20	$11.22
16025	T		Treatment of burn(s)	0013	1.0756	$56.09	$14.20	$11.22
16030	T		Treatment of burn(s)	0015	1.5407	$80.35	$20.35	$16.07
16035	C		Incision of burn scab, initi					
16036	C		Incise burn scab, addl incis					
17000	T		Destroy benign/premlg lesion	0010	0.6589	$34.36	$10.08	$6.87
17003	T		Destroy lesions, 2-14	0010	0.6589	$34.36	$10.08	$6.87
17004	T		Destroy lesions, 15 or more	0011	1.8507	$96.52	$27.88	$19.30
17106	T		Destruction of skin lesions	0011	1.8507	$96.52	$27.88	$19.30
17107	T		Destruction of skin lesions	0011	1.8507	$96.52	$27.88	$19.30
17108	T		Destruction of skin lesions	0011	1.8507	$96.52	$27.88	$19.30
17110	T		Destruct lesion, 1-14	0010	0.6589	$34.36	$10.08	$6.87

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

[Calendar Year 2003]

CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
17111	T		Destruct lesion, 15 or more	0011	1.8507	$96.52	$27.88	$19.30
17250	T		Chemical cautery, tissue	0013	1.0756	$56.09	$14.20	$11.22
17260	T		Destruction of skin lesions	0015	1.5407	$80.35	$20.35	$16.07
17261	T		Destruction of skin lesions	0015	1.5407	$80.35	$20.35	$16.07
17262	T		Destruction of skin lesions	0015	1.5407	$80.35	$20.35	$16.07
17263	T		Destruction of skin lesions	0015	1.5407	$80.35	$20.35	$16.07
17264	T		Destruction of skin lesions	0015	1.5407	$80.35	$20.35	$16.07
17266	T		Destruction of skin lesions	0016	2.6162	$136.44	$57.31	$27.29
17270	T		Destruction of skin lesions	0015	1.5407	$80.35	$20.35	$16.07
17271	T		Destruction of skin lesions	0013	1.0756	$56.09	$14.20	$11.22
17272	T		Destruction of skin lesions	0015	1.5407	$80.35	$20.35	$16.07
17273	T		Destruction of skin lesions	0015	1.5407	$80.35	$20.35	$16.07
17274	T		Destruction of skin lesions	0016	2.6162	$136.44	$57.31	$27.29
17276	T		Destruction of skin lesions	0016	2.6162	$136.44	$57.31	$27.29
17280	T		Destruction of skin lesions	0015	1.5407	$80.35	$20.35	$16.07
17281	T		Destruction of skin lesions	0015	1.5407	$80.35	$20.35	$16.07
17282	T		Destruction of skin lesions	0015	1.5407	$80.35	$20.35	$16.07
17283	T		Destruction of skin lesions	0015	1.5407	$80.35	$20.35	$16.07
17284	T		Destruction of skin lesions	0016	2.6162	$136.44	$57.31	$27.29
17286	T		Destruction of skin lesions	0015	1.5407	$80.35	$20.35	$16.07
17304	T		Chemosurgery of skin lesion	0694	3.4689	$180.91	$72.36	$36.18
17305	T		2 stage mohs, up to 5 spec	0694	3.4689	$180.91	$72.36	$36.18
17306	T		3 stage mohs, up to 5 spec	0694	3.4689	$180.91	$72.36	$36.18
17307	T		Mohs addl stage up to 5 spec	0694	3.4689	$180.91	$72.36	$36.18
17310	T		Extensive skin chemosurgery	0694	3.4689	$180.91	$72.36	$36.18
17340	T		Cryotherapy of skin	0012	0.7849	$40.93	$11.18	$8.19
17360	T		Skin peel therapy	0012	0.7849	$40.93	$11.18	$8.19
17380	T		Hair removal by electrolysis	0012	0.7849	$40.93	$11.18	$8.19
17999	T		Skin tissue procedure	0006	1.7926	$93.49	$24.12	$18.70
19000	T		Drainage of breast lesion	0004	1.7441	$90.96	$23.47	$18.19
19001	T		Drain breast lesion add-on	0004	1.7441	$90.96	$23.47	$18.19
19020	T		Incision of breast lesion	0008	16.1430	$841.87		$168.37
19030	N		Injection for breast x-ray					
19100	T		Bx breast percut w/o image	0005	3.1201	$162.72	$71.59	$32.54
19101	T		Biopsy of breast, open	0028	16.8698	$879.78	$303.74	$175.96
19102	T		Bx breast percut w/image	0005	3.1201	$162.72	$71.59	$32.54
19103	T		Bx breast percut w/device	0658	5.2712	$274.90		$54.98
19110	T		Nipple exploration	0028	16.8698	$879.78	$303.74	$175.96
19112	T		Excise breast duct fistula	0028	16.8698	$879.78	$303.74	$175.96
19120	T		Removal of breast lesion	0028	16.8698	$879.78	$303.74	$175.96
19125	T		Excision, breast lesion	0028	16.8698	$879.78	$303.74	$175.96
19126	T		Excision, addl breast lesion	0028	16.8698	$879.78	$303.74	$175.96
19140	T		Removal of breast tissue	0028	16.8698	$879.78	$303.74	$175.96
19160	T		Removal of breast tissue	0028	16.8698	$879.78	$303.74	$175.96
19162	T		Remove breast tissue, nodes	0693	37.5863	$1,960.16	$798.17	$392.03
19180	T		Removal of breast	0029	28.7881	$1,501.33	$632.64	$300.27
19182	T		Removal of breast	0029	28.7881	$1,501.33	$632.64	$300.27
19200	C		Removal of breast					
19220	C		Removal of breast					
19240	T		Removal of breast	0030	37.5185	$1,956.63	$763.55	$391.33
19260	T		Removal of chest wall lesion	0021	13.9338	$726.66	$219.48	$145.33
19271	C		Revision of chest wall					
19272	C		Extensive chest wall surgery					
19290	N		Place needle wire, breast					
19291	N		Place needle wire, breast					
19295	S		Place breast clip, percut	0657	1.4438	$75.30		$15.06
19316	T		Suspension of breast	0029	28.7881	$1,501.33	$632.64	$300.27
19318	T		Reduction of large breast	0693	37.5863	$1,960.16	$798.17	$392.03
19324	T		Enlarge breast	0693	37.5863	$1,960.16	$798.17	$392.03
19325	T		Enlarge breast with implant	0648	44.7955	$2,336.13		$467.23
19328	T		Removal of breast implant	0029	28.7881	$1,501.33	$632.64	$300.27
19330	T		Removal of implant material	0029	28.7881	$1,501.33	$632.64	$300.27
19340	T		Immediate breast prosthesis	0030	37.5185	$1,956.63	$763.55	$391.33
19342	T		Delayed breast prosthesis	0648	44.7955	$2,336.13		$467.23
19350	T		Breast reconstruction	0029	28.7881	$1,501.33	$632.64	$300.27

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

[Calendar Year 2003]

CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
19355	T		Correct inverted nipple(s)	0029	28.7881	$1,501.33	$632.64	$300.27
19357	T		Breast reconstruction	0648	44.7955	$2,336.13		$467.23
19361	C		Breast reconstruction					
19364	C		Breast reconstruction					
19366	T		Breast reconstruction	0029	28.7881	$1,501.33	$632.64	$300.27
19367	C		Breast reconstruction					
19368	C		Breast reconstruction					
19369	C		Breast reconstruction					
19370	T		Surgery of breast capsule	0029	28.7881	$1,501.33	$632.64	$300.27
19371	T		Removal of breast capsule	0029	28.7881	$1,501.33	$632.64	$300.27
19380	T		Revise breast reconstruction	0030	37.5185	$1,956.63	$763.55	$391.33
19396	T		Design custom breast implant	0029	28.7881	$1,501.33	$632.64	$300.27
19499	T		Breast surgery procedure	0028	16.8698	$879.78	$303.74	$175.96
20000	T		Incision of abscess	0006	1.7926	$93.49	$24.12	$18.70
20005	T		Incision of deep abscess	0049	18.6042	$970.23	$197.14	$194.05
20100	T		Explore wound, neck	0023	2.5193	$131.38	$40.37	$26.28
20101	T		Explore wound, chest	0027	15.2225	$793.87	$329.72	$158.77
20102	T		Explore wound, abdomen	0027	15.2225	$793.87	$329.72	$158.77
20103	T		Explore wound, extremity	0023	2.5193	$131.38	$40.37	$26.28
20150	T		Excise epiphyseal bar	0051	32.9062	$1,716.09		$343.22
20200	T		Muscle biopsy	0021	13.9338	$726.66	$219.48	$145.33
20205	T		Deep muscle biopsy	0021	13.9338	$726.66	$219.48	$145.33
20206	T		Needle biopsy, muscle	0005	3.1201	$162.72	$71.59	$32.54
20220	T		Bone biopsy, trocar/needle	0019	3.7693	$196.57	$71.87	$39.31
20225	T		Bone biopsy, trocar/needle	0019	3.7693	$196.57	$71.87	$39.31
20240	T		Bone biopsy, excisional	0022	17.3930	$907.06	$354.45	$181.41
20245	T		Bone biopsy, excisional	0022	17.3930	$907.06	$354.45	$181.41
20250	T		Open bone biopsy	0049	18.6042	$970.23	$197.14	$194.05
20251	T		Open bone biopsy	0049	18.6042	$970.23	$197.14	$194.05
20500	T		Injection of sinus tract	0251	1.9089	$99.55		$19.91
20501	N		Inject sinus tract for x-ray					
20520	T		Removal of foreign body	0019	3.7693	$196.57	$71.87	$39.31
20525	T		Removal of foreign body	0022	17.3930	$907.06	$354.45	$181.41
20526	T		Ther injection, carp tunnel	0204	2.0251	$105.61	$40.13	$21.12
20550	T		Inject tendon/ligament/cyst	0204	2.0251	$105.61	$40.13	$21.12
20551	T		Inject tendon origin/insert	0204	2.0251	$105.61	$40.13	$21.12
20552	T		Inject trigger point, 1 or 2	0204	2.0251	$105.61	$40.13	$21.12
20553	T		Inject trigger points, > 3	0204	2.0251	$105.61	$40.13	$21.12
20600	T		Drain/inject, joint/bursa	0204	2.0251	$105.61	$40.13	$21.12
20605	T		Drain/inject, joint/bursa	0204	2.0251	$105.61	$40.13	$21.12
20610	T		Drain/inject, joint/bursa	0204	2.0251	$105.61	$40.13	$21.12
20612	T	NI	Aspirate/inj ganglion cyst	0204	2.0251	$105.61	$40.13	$21.12
20615	T		Treatment of bone cyst	0004	1.7441	$90.96	$23.47	$18.19
20650	T		Insert and remove bone pin	0049	18.6042	$970.23	$197.14	$194.05
20660	C		Apply, rem fixation device					
20661	C		Application of head brace					
20662	C		Application of pelvis brace					
20663	C		Application of thigh brace					
20664	C		Halo brace application					
20665	X		Removal of fixation device	0340	0.6492	$33.86		$6.77
20670	T		Removal of support implant	0021	13.9338	$726.66	$219.48	$145.33
20680	T		Removal of support implant	0022	17.3930	$907.06	$354.45	$181.41
20690	T		Apply bone fixation device	0050	23.3037	$1,215.31		$243.06
20692	T		Apply bone fixation device	0050	23.3037	$1,215.31		$243.06
20693	T		Adjust bone fixation device	0049	18.6042	$970.23	$197.14	$194.05
20694	T		Remove bone fixation device	0049	18.6042	$970.23	$197.14	$194.05
20802	C		Replantation, arm, complete					
20805	C		Replant forearm, complete					
20808	C		Replantation hand, complete					
20816	C		Replantation digit, complete					
20822	C		Replantation digit, complete					
20824	C		Replantation thumb, complete					
20827	C		Replantation thumb, complete					
20838	C		Replantation foot, complete					
20900	T		Removal of bone for graft	0050	23.3037	$1,215.31		$243.06

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

[Calendar Year 2003]

CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
20902	T		Removal of bone for graft	0050	23.3037	$1,215.31		$243.06
20910	T		Remove cartilage for graft	0027	15.2225	$793.87	$329.72	$158.77
20912	T		Remove cartilage for graft	0027	15.2225	$793.87	$329.72	$158.77
20920	T		Removal of fascia for graft	0027	15.2225	$793.87	$329.72	$158.77
20922	T		Removal of fascia for graft	0027	15.2225	$793.87	$329.72	$158.77
20924	T		Removal of tendon for graft	0050	23.3037	$1,215.31		$243.06
20926	T		Removal of tissue for graft	0027	15.2225	$793.87	$329.72	$158.77
20930	C		Spinal bone allograft					
20931	C		Spinal bone allograft					
20936	C		Spinal bone autograft					
20937	C		Spinal bone autograft					
20938	C		Spinal bone autograft					
20950	T		Fluid pressure, muscle	0006	1.7926	$93.49	$24.12	$18.70
20955	C		Fibula bone graft, microvasc					
20956	C		Iliac bone graft, microvasc					
20957	C		Mt bone graft, microvasc					
20962	C		Other bone graft, microvasc					
20969	C		Bone/skin graft, microvasc					
20970	C		Bone/skin graft, iliac crest					
20972	C		Bone/skin graft, metatarsal					
20973	C		Bone/skin graft, great toe					
20974	A		Electrical bone stimulation					
20975	T		Electrical bone stimulation	0049	18.6042	$970.23	$197.14	$194.05
20979	A		Us bone stimulation					
20999	T		Musculoskeletal surgery	0049	18.6042	$970.23	$197.14	$194.05
21010	T		Incision of jaw joint	0254	20.1158	$1,049.06	$321.35	$209.81
21015	T		Resection of facial tumor	0253	14.4473	$753.44	$282.29	$150.69
21025	T		Excision of bone, lower jaw	0256	34.0302	$1,774.71		$354.94
21026	T		Excision of facial bone(s)	0256	34.0302	$1,774.71		$354.94
21029	T		Contour of face bone lesion	0256	34.0302	$1,774.71		$354.94
21030	T		Removal of face bone lesion	0254	20.1158	$1,049.06	$321.35	$209.81
21031	T		Remove exostosis, mandible	0254	20.1158	$1,049.06	$321.35	$209.81
21032	T		Remove exostosis, maxilla	0254	20.1158	$1,049.06	$321.35	$209.81
21034	T		Removal of face bone lesion	0256	34.0302	$1,774.71		$354.94
21040	T		Removal of jaw bone lesion	0254	20.1158	$1,049.06	$321.35	$209.81
21041	T	DG	Removal of jaw bone lesion	0256	34.0302	$1,774.71		$354.94
21044	T		Removal of jaw bone lesion	0256	34.0302	$1,774.71		$354.94
21045	C		Extensive jaw surgery					
21046	T	NI	Remove mandible cyst complex	0256	34.0302	$1,774.71		$354.94
21047	T	NI	Excise lwr jaw cyst w/repair	0256	34.0302	$1,774.71		$354.94
21048	T	NI	Remove maxilla cyst complex	0256	34.0302	$1,774.71		$354.94
21049	T	NI	Excis uppr jaw cyst w/repair	0256	34.0302	$1,774.71		$354.94
21050	T		Removal of jaw joint	0256	34.0302	$1,774.71		$354.94
21060	T		Remove jaw joint cartilage	0256	34.0302	$1,774.71		$354.94
21070	T		Remove coronoid process	0256	34.0302	$1,774.71		$354.94
21076	T		Prepare face/oral prosthesis	0254	20.1158	$1,049.06	$321.35	$209.81
21077	T		Prepare face/oral prosthesis	0256	34.0302	$1,774.71		$354.94
21079	T		Prepare face/oral prosthesis	0256	34.0302	$1,774.71		$354.94
21080	T		Prepare face/oral prosthesis	0256	34.0302	$1,774.71		$354.94
21081	T		Prepare face/oral prosthesis	0256	34.0302	$1,774.71		$354.94
21082	T		Prepare face/oral prosthesis	0256	34.0302	$1,774.71		$354.94
21083	T		Prepare face/oral prosthesis	0256	34.0302	$1,774.71		$354.94
21084	T		Prepare face/oral prosthesis	0256	34.0302	$1,774.71		$354.94
21085	T		Prepare face/oral prosthesis	0253	14.4473	$753.44	$282.29	$150.69
21086	T		Prepare face/oral prosthesis	0256	34.0302	$1,774.71		$354.94
21087	T		Prepare face/oral prosthesis	0256	34.0302	$1,774.71		$354.94
21088	T		Prepare face/oral prosthesis	0256	34.0302	$1,774.71		$354.94
21089	T		Prepare face/oral prosthesis	0253	14.4473	$753.44	$282.29	$150.69
21100	T		Maxillofacial fixation	0256	34.0302	$1,774.71		$354.94
21110	T		Interdental fixation	0252	5.8041	$302.69	$113.41	$60.54
21116	N		Injection, jaw joint x-ray					
21120	T		Reconstruction of chin	0254	20.1158	$1,049.06	$321.35	$209.81
21121	T		Reconstruction of chin	0254	20.1158	$1,049.06	$321.35	$209.81
21122	T		Reconstruction of chin	0254	20.1158	$1,049.06	$321.35	$209.81
21123	T		Reconstruction of chin	0254	20.1158	$1,049.06	$321.35	$209.81

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

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CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
21125	T		Augmentation, lower jaw bone	0254	20.1158	$1,049.06	$321.35	$209.81
21127	T		Augmentation, lower jaw bone	0256	34.0302	$1,774.71		$354.94
21137	T		Reduction of forehead	0254	20.1158	$1,049.06	$321.35	$209.81
21138	T		Reduction of forehead	0256	34.0302	$1,774.71		$354.94
21139	T		Reduction of forehead	0256	34.0302	$1,774.71		$354.94
21141	C		Reconstruct midface, lefort					
21142	C		Reconstruct midface, lefort					
21143	C		Reconstruct midface, lefort					
21145	C		Reconstruct midface, lefort					
21146	C		Reconstruct midface, lefort					
21147	C		Reconstruct midface, lefort					
21150	C		Reconstruct midface, lefort					
21151	C		Reconstruct midface, lefort					
21154	C		Reconstruct midface, lefort					
21155	C		Reconstruct midface, lefort					
21159	C		Reconstruct midface, lefort					
21160	C		Reconstruct midface, lefort					
21172	C		Reconstruct orbit/forehead					
21175	C		Reconstruct orbit/forehead					
21179	C		Reconstruct entire forehead					
21180	C		Reconstruct entire forehead					
21181	T		Contour cranial bone lesion	0254	20.1158	$1,049.06	$321.35	$209.81
21182	C		Reconstruct cranial bone					
21183	C		Reconstruct cranial bone					
21184	C		Reconstruct cranial bone					
21188	C		Reconstruction of midface					
21193	C		Reconst lwr jaw w/o graft					
21194	C		Reconst lwr jaw w/graft					
21195	C		Reconst lwr jaw w/o fixation					
21196	C		Reconst lwr jaw w/fixation					
21198	T		Reconstr lwr jaw segment	0256	34.0302	$1,774.71		$354.94
21199	T		Reconstr lwr jaw w/advance	0256	34.0302	$1,774.71		$354.94
21206	T		Reconstruct upper jaw bone	0256	34.0302	$1,774.71		$354.94
21208	T		Augmentation of facial bones	0256	34.0302	$1,774.71		$354.94
21209	T		Reduction of facial bones	0256	34.0302	$1,774.71		$354.94
21210	T		Face bone graft	0256	34.0302	$1,774.71		$354.94
21215	T		Lower jaw bone graft	0256	34.0302	$1,774.71		$354.94
21230	T		Rib cartilage graft	0256	34.0302	$1,774.71		$354.94
21235	T		Ear cartilage graft	0254	20.1158	$1,049.06	$321.35	$209.81
21240	T		Reconstruction of jaw joint	0256	34.0302	$1,774.71		$354.94
21242	T		Reconstruction of jaw joint	0256	34.0302	$1,774.71		$354.94
21243	T		Reconstruction of jaw joint	0256	34.0302	$1,774.71		$354.94
21244	T		Reconstruction of lower jaw	0256	34.0302	$1,774.71		$354.94
21245	T		Reconstruction of jaw	0256	34.0302	$1,774.71		$354.94
21246	T		Reconstruction of jaw	0256	34.0302	$1,774.71		$354.94
21247	C		Reconstruct lower jaw bone					
21248	T		Reconstruction of jaw	0256	34.0302	$1,774.71		$354.94
21249	T		Reconstruction of jaw	0256	34.0302	$1,774.71		$354.94
21255	C		Reconstruct lower jaw bone					
21256	C		Reconstruction of orbit					
21260	T		Revise eye sockets	0256	34.0302	$1,774.71		$354.94
21261	T		Revise eye sockets	0256	34.0302	$1,774.71		$354.94
21263	T		Revise eye sockets	0256	34.0302	$1,774.71		$354.94
21267	T		Revise eye sockets	0256	34.0302	$1,774.71		$354.94
21268	C		Revise eye sockets					
21270	T		Augmentation, cheek bone	0256	34.0302	$1,774.71		$354.94
21275	T		Revision, orbitofacial bones	0256	34.0302	$1,774.71		$354.94
21280	T		Revision of eyelid	0256	34.0302	$1,774.71		$354.94
21282	T		Revision of eyelid	0253	14.4473	$753.44	$282.29	$150.69
21295	T		Revision of jaw muscle/bone	0252	5.8041	$302.69	$113.41	$60.54
21296	T		Revision of jaw muscle/bone	0254	20.1158	$1,049.06	$321.35	$209.81
21299	T		Cranio/maxillofacial surgery	0253	14.4473	$753.44	$282.29	$150.69
21300	T		Treatment of skull fracture	0253	14.4473	$753.44	$282.29	$150.69
21310	X		Treatment of nose fracture	0340	0.6492	$33.86		$6.77
21315	X		Treatment of nose fracture	0340	0.6492	$33.86		$6.77

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued
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CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
21320	X		Treatment of nose fracture	0340	0.6492	$33.86		$6.77
21325	T		Treatment of nose fracture	0254	20.1158	$1,049.06	$321.35	$209.81
21330	T		Treatment of nose fracture	0254	20.1158	$1,049.06	$321.35	$209.81
21335	T		Treatment of nose fracture	0254	20.1158	$1,049.06	$321.35	$209.81
21336	T		Treat nasal septal fracture	0046	29.2920	$1,527.61	$535.76	$305.52
21337	T		Treat nasal septal fracture	0253	14.4473	$753.44	$282.29	$150.69
21338	T		Treat nasoethmoid fracture	0254	20.1158	$1,049.06	$321.35	$209.81
21339	T		Treat nasoethmoid fracture	0254	20.1158	$1,049.06	$321.35	$209.81
21340	T		Treatment of nose fracture	0256	34.0302	$1,774.71		$354.94
21343	C		Treatment of sinus fracture					
21344	C		Treatment of sinus fracture					
21345	T		Treat nose/jaw fracture	0254	20.1158	$1,049.06	$321.35	$209.81
21346	C		Treat nose/jaw fracture					
21347	C		Treat nose/jaw fracture					
21348	C		Treat nose/jaw fracture					
21355	T		Treat cheek bone fracture	0256	34.0302	$1,774.71		$354.94
21356	C		Treat cheek bone fracture					
21360	C		Treat cheek bone fracture					
21365	C		Treat cheek bone fracture					
21366	C		Treat cheek bone fracture					
21385	C		Treat eye socket fracture					
21386	C		Treat eye socket fracture					
21387	C		Treat eye socket fracture					
21390	T		Treat eye socket fracture	0256	34.0302	$1,774.71		$354.94
21395	C		Treat eye socket fracture					
21400	T		Treat eye socket fracture	0252	5.8041	$302.69	$113.41	$60.54
21401	T		Treat eye socket fracture	0253	14.4473	$753.44	$282.29	$150.69
21406	T		Treat eye socket fracture	0256	34.0302	$1,774.71		$354.94
21407	T		Treat eye socket fracture	0256	34.0302	$1,774.71		$354.94
21408	C		Treat eye socket fracture					
21421	T		Treat mouth roof fracture	0254	20.1158	$1,049.06	$321.35	$209.81
21422	C		Treat mouth roof fracture					
21423	C		Treat mouth roof fracture					
21431	C		Treat craniofacial fracture					
21432	C		Treat craniofacial fracture					
21433	C		Treat craniofacial fracture					
21435	C		Treat craniofacial fracture					
21436	C		Treat craniofacial fracture					
21440	T		Treat dental ridge fracture	0254	20.1158	$1,049.06	$321.35	$209.81
21445	T		Treat dental ridge fracture	0254	20.1158	$1,049.06	$321.35	$209.81
21450	T		Treat lower jaw fracture	0251	1.9089	$99.55		$19.91
21451	T		Treat lower jaw fracture	0252	5.8041	$302.69	$113.41	$60.54
21452	T		Treat lower jaw fracture	0253	14.4473	$753.44	$282.29	$150.69
21453	T		Treat lower jaw fracture	0256	34.0302	$1,774.71		$354.94
21454	T		Treat lower jaw fracture	0254	20.1158	$1,049.06	$321.35	$209.81
21461	T		Treat lower jaw fracture	0256	34.0302	$1,774.71		$354.94
21462	T		Treat lower jaw fracture	0256	34.0302	$1,774.71		$354.94
21465	T		Treat lower jaw fracture	0256	34.0302	$1,774.71		$354.94
21470	T		Treat lower jaw fracture	0256	34.0302	$1,774.71		$354.94
21480	T		Reset dislocated jaw	0251	1.9089	$99.55		$19.91
21485	T		Reset dislocated jaw	0253	14.4473	$753.44	$282.29	$150.69
21490	T		Repair dislocated jaw	0256	34.0302	$1,774.71		$354.94
21493	T		Treat hyoid bone fracture	0252	5.8041	$302.69	$113.41	$60.54
21494	T		Treat hyoid bone fracture	0252	5.8041	$302.69	$113.41	$60.54
21495	C		Treat hyoid bone fracture					
21497	T		Interdental wiring	0253	14.4473	$753.44	$282.29	$150.69
21499	T		Head surgery procedure	0253	14.4473	$753.44	$282.29	$150.69
21501	T		Drain neck/chest lesion	0008	16.1430	$841.87		$168.37
21502	T		Drain chest lesion	0049	18.6042	$970.23	$197.14	$194.05
21510	C		Drainage of bone lesion					
21550	T		Biopsy of neck/chest	0021	13.9338	$726.66	$219.48	$145.33
21555	T		Remove lesion, neck/chest	0022	17.3930	$907.06	$354.45	$181.41
21556	T		Remove lesion, neck/chest	0022	17.3930	$907.06	$354.45	$181.41
21557	C		Remove tumor, neck/chest					
21600	T		Partial removal of rib	0050	23.3037	$1,215.31		$243.06

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued
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CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
21610	T		Partial removal of rib	0050	23.3037	$1,215.31		$243.06
21615	C		Removal of rib					
21616	C		Removal of rib and nerves					
21620	C		Partial removal of sternum					
21627	C		Sternal debridement					
21630	C		Extensive sternum surgery					
21632	C		Extensive sternum surgery					
21700	T		Revision of neck muscle	0049	18.6042	$970.23	$197.14	$194.05
21705	C		Revision of neck muscle/rib					
21720	T		Revision of neck muscle	0049	18.6042	$970.23	$197.14	$194.05
21725	T		Revision of neck muscle	0006	1.7926	$93.49	$24.12	$18.70
21740	C		Reconstruction of sternum					
21742	T	NI	Repair stern/nuss w/o scope	0051	32.9062	$1,716.09		$343.22
21743	T	NI	Repair sternum/nuss w/scope	0051	32.9062	$1,716.09		$343.22
21750	C		Repair of sternum separation					
21800	T		Treatment of rib fracture	0043	2.4999	$130.37		$26.07
21805	T		Treatment of rib fracture	0046	29.2920	$1,527.61	$535.76	$305.52
21810	C		Treatment of rib fracture(s)					
21820	T		Treat sternum fracture	0043	2.4999	$130.37		$26.07
21825	C		Treat sternum fracture					
21899	T		Neck/chest surgery procedure	0252	5.8041	$302.69	$113.41	$60.54
21920	T		Biopsy soft tissue of back	0020	7.1898	$374.96	$113.25	$74.99
21925	T		Biopsy soft tissue of back	0022	17.3930	$907.06	$354.45	$181.41
21930	T		Remove lesion, back or flank	0022	17.3930	$907.06	$354.45	$181.41
21935	T		Remove tumor, back	0022	17.3930	$907.06	$354.45	$181.41
22100	T		Remove part of neck vertebra	0208	38.4487	$2,005.14		$401.03
22101	T		Remove part, thorax vertebra	0208	38.4487	$2,005.14		$401.03
22102	T		Remove part, lumbar vertebra	0208	38.4487	$2,005.14		$401.03
22103	T		Remove extra spine segment	0208	38.4487	$2,005.14		$401.03
22110	C		Remove part of neck vertebra					
22112	C		Remove part, thorax vertebra					
22114	C		Remove part, lumbar vertebra					
22116	C		Remove extra spine segment					
22210	C		Revision of neck spine					
22212	C		Revision of thorax spine					
22214	C		Revision of lumbar spine					
22216	C		Revise, extra spine segment					
22220	C		Revision of neck spine					
22222	C		Revision of thorax spine					
22224	C		Revision of lumbar spine					
22226	C		Revise, extra spine segment					
22305	T		Treat spine process fracture	0043	2.4999	$130.37		$26.07
22310	T		Treat spine fracture	0043	2.4999	$130.37		$26.07
22315	T		Treat spine fracture	0043	2.4999	$130.37		$26.07
22318	C		Treat odontoid fx w/o graft					
22319	C		Treat odontoid fx w/graft					
22325	C		Treat spine fracture					
22326	C		Treat neck spine fracture					
22327	C		Treat thorax spine fracture					
22328	C		Treat each add spine fx					
22505	T		Manipulation of spine	0045	12.9357	$674.61	$268.47	$134.92
22520	T		Percut vertebroplasty thor	0050	23.3037	$1,215.31		$243.06
22521	T		Percut vertebroplasty lumb	0050	23.3037	$1,215.31		$243.06
22522	T		Percut vertebroplasty addl	0050	23.3037	$1,215.31		$243.06
22548	C		Neck spine fusion					
22554	C		Neck spine fusion					
22556	C		Thorax spine fusion					
22558	C		Lumbar spine fusion					
22585	C		Additional spinal fusion					
22590	C		Spine & skull spinal fusion					
22595	C		Neck spinal fusion					
22600	C		Neck spine fusion					
22610	C		Thorax spine fusion					
22612	T		Lumbar spine fusion	0208	38.4487	$2,005.14		$401.03
22614	T		Spine fusion, extra segment	0208	38.4487	$2,005.14		$401.03

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

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CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
22630	C		Lumbar spine fusion					
22632	C		Spine fusion, extra segment					
22800	C		Fusion of spine					
22802	C		Fusion of spine					
22804	C		Fusion of spine					
22808	C		Fusion of spine					
22810	C		Fusion of spine					
22812	C		Fusion of spine					
22818	C		Kyphectomy, 1-2 segments					
22819	C		Kyphectomy, 3 or more					
22830	C		Exploration of spinal fusion					
22840	C		Insert spine fixation device					
22841	C		Insert spine fixation device					
22842	C		Insert spine fixation device					
22843	C		Insert spine fixation device					
22844	C		Insert spine fixation device					
22845	C		Insert spine fixation device					
22846	C		Insert spine fixation device					
22847	C		Insert spine fixation device					
22848	C		Insert pelv fixation device					
22849	C		Reinsert spinal fixation					
22850	C		Remove spine fixation device					
22851	C		Apply spine prosth device					
22852	C		Remove spine fixation device					
22855	C		Remove spine fixation device					
22899	T		Spine surgery procedure	0043	2.4999	$130.37		$26.07
22900	T		Remove abdominal wall lesion	0022	17.3930	$907.06	$354.45	$181.41
22999	T		Abdomen surgery procedure	0022	17.3930	$907.06	$354.45	$181.41
23000	T		Removal of calcium deposits	0021	13.9338	$726.66	$219.48	$145.33
23020	T		Release shoulder joint	0051	32.9062	$1,716.09		$343.22
23030	T		Drain shoulder lesion	0008	16.1430	$841.87		$168.37
23031	T		Drain shoulder bursa	0008	16.1430	$841.87		$168.37
23035	T		Drain shoulder bone lesion	0049	18.6042	$970.23	$197.14	$194.05
23040	T		Exploratory shoulder surgery	0050	23.3037	$1,215.31		$243.06
23044	T		Exploratory shoulder surgery	0050	23.3037	$1,215.31		$243.06
23065	T		Biopsy shoulder tissues	0021	13.9338	$726.66	$219.48	$145.33
23066	T		Biopsy shoulder tissues	0022	17.3930	$907.06	$354.45	$181.41
23075	T		Removal of shoulder lesion	0021	13.9338	$726.66	$219.48	$145.33
23076	T		Removal of shoulder lesion	0022	17.3930	$907.06	$354.45	$181.41
23077	T		Remove tumor of shoulder	0022	17.3930	$907.06	$354.45	$181.41
23100	T		Biopsy of shoulder joint	0049	18.6042	$970.23	$197.14	$194.05
23101	T		Shoulder joint surgery	0050	23.3037	$1,215.31		$243.06
23105	T		Remove shoulder joint lining	0050	23.3037	$1,215.31		$243.06
23106	T		Incision of collarbone joint	0050	23.3037	$1,215.31		$243.06
23107	T		Explore treat shoulder joint	0050	23.3037	$1,215.31		$243.06
23120	T		Partial removal, collar bone	0051	32.9062	$1,716.09		$343.22
23125	T		Removal of collar bone	0051	32.9062	$1,716.09		$343.22
23130	T		Remove shoulder bone, part	0051	32.9062	$1,716.09		$343.22
23140	T		Removal of bone lesion	0049	18.6042	$970.23	$197.14	$194.05
23145	T		Removal of bone lesion	0050	23.3037	$1,215.31		$243.06
23146	T		Removal of bone lesion	0050	23.3037	$1,215.31		$243.06
23150	T		Removal of humerus lesion	0050	23.3037	$1,215.31		$243.06
23155	T		Removal of humerus lesion	0050	23.3037	$1,215.31		$243.06
23156	T		Removal of humerus lesion	0050	23.3037	$1,215.31		$243.06
23170	T		Remove collar bone lesion	0050	23.3037	$1,215.31		$243.06
23172	T		Remove shoulder blade lesion	0050	23.3037	$1,215.31		$243.06
23174	T		Remove humerus lesion	0050	23.3037	$1,215.31		$243.06
23180	T		Remove collar bone lesion	0050	23.3037	$1,215.31		$243.06
23182	T		Remove shoulder blade lesion	0050	23.3037	$1,215.31		$243.06
23184	T		Remove humerus lesion	0050	23.3037	$1,215.31		$243.06
23190	T		Partial removal of scapula	0050	23.3037	$1,215.31		$243.06
23195	T		Removal of head of humerus	0050	23.3037	$1,215.31		$243.06
23200	C		Removal of collar bone					
23210	C		Removal of shoulder blade					
23220	C		Partial removal of humerus					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

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CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
23221	C		Partial removal of humerus					
23222	C		Partial removal of humerus					
23330	T		Remove shoulder foreign body	0020	7.1898	$374.96	$113.25	$74.99
23331	T		Remove shoulder foreign body	0022	17.3930	$907.06	$354.45	$181.41
23382	C		Remove shoulder foreign body					
23350	N		Injection for shoulder x-ray					
23395	T		Muscle transfer,shoulder/arm	0051	32.9062	$1,716.09		$343.22
23397	T		Muscle transfers	0052	40.7646	$2,125.91		$425.18
23400	T		Fixation of shoulder blade	0050	23.3037	$1,215.31		$243.06
23405	T		Incision of tendon & muscle	0050	23.3037	$1,215.31		$243.06
23406	T		Incise tendon(s) & muscle(s)	0050	23.3037	$1,215.31		$243.06
23410	T		Repair of tendon(s)	0052	40.7646	$2,125.91		$425.18
23412	T		Repair rotator cuff, chronic	0052	40.7646	$2,125.91		$425.18
23415	T		Release of shoulder ligament	0051	32.9062	$1,716.09		$343.22
23420	T		Repair of shoulder	0052	40.7646	$2,125.91		$425.18
23430	T		Repair biceps tendon	0052	40.7646	$2,125.91		$425.18
23440	T		Remove/transplant tendon	0052	40.7646	$2,125.91		$425.18
23450	T		Repair shoulder capsule	0052	40.7646	$2,125.91		$425.18
23455	T		Repair shoulder capsule	0052	40.7646	$2,125.91		$425.18
23460	T		Repair shoulder capsule	0052	40.7646	$2,125.91		$425.18
23462	T		Repair shoulder capsule	0052	40.7646	$2,125.91		$425.18
23465	T		Repair shoulder capsule	0052	40.7646	$2,125.91		$425.18
23466	T		Repair shoulder capsule	0052	40.7646	$2,125.91		$425.18
23470	T		Reconstruct shoulder joint	0048	40.6289	$2,118.84	$695.60	$423.77
23472	C		Reconstruct shoulder joint					
23480	T		Revision of collar bone	0051	32.9062	$1,716.09		$343.22
23485	T		Revision of collar bone	0051	32.9062	$1,716.09		$343.22
23490	T		Reinforce clavicle	0051	32.9062	$1,716.09		$343.22
23491	T		Reinforce shoulder bones	0051	32.9062	$1,716.09		$343.22
23500	T		Treat clavicle fracture	0043	2.4999	$130.37		$26.07
23505	T		Treat clavicle fracture	0043	2.4999	$130.37		$26.07
23515	T		Treat clavicle fracture	0046	29.2920	$1,527.61	$535.76	$305.52
23520	T		Treat clavicle dislocation	0043	2.4999	$130.37		$26.07
23525	T		Treat clavicle dislocation	0043	2.4999	$130.37		$26.07
23530	T		Treat clavicle dislocation	0046	29.2920	$1,527.61	$535.76	$305.52
23532	T		Treat clavicle dislocation	0046	29.2920	$1,527.61	$535.76	$305.52
23540	T		Treat clavicle dislocation	0043	2.4999	$130.37		$26.07
23545	T		Treat clavicle dislocation	0043	2.4999	$130.37		$26.07
23550	T		Treat clavicle dislocation	0046	29.2920	$1,527.61	$535.76	$305.52
23552	T		Treat clavicle dislocation	0046	29.2920	$1,527.61	$535.76	$305.52
23570	T		Treat shoulder blade fx	0043	2.4999	$130.37		$26.07
23575	T		Treat shoulder blade fx	0043	2.4999	$130.37		$26.07
23585	T		Treat scapula fracture	0046	29.2920	$1,527.61	$535.76	$305.52
23600	T		Treat humerus fracture	0043	2.4999	$130.37		$26.07
23605	T		Treat humerus fracture	0043	2.4999	$130.37		$26.07
23615	T		Treat humerus fracture	0046	29.2920	$1,527.61	$535.76	$305.52
23616	T		Treat humerus fracture	0046	29.2920	$1,527.61	$535.76	$305.52
23620	T		Treat humerus fracture	0043	2.4999	$130.37		$26.07
23625	T		Treat humerus fracture	0043	2.4999	$130.37		$26.07
23630	T		Treat humerus fracture	0046	29.2920	$1,527.61	$535.76	$305.52
23650	T		Treat shoulder dislocation	0043	2.4999	$130.37		$26.07
23655	T		Treat shoulder dislocation	0045	12.9357	$674.61	$268.47	$134.92
23660	T		Treat shoulder dislocation	0046	29.2920	$1,527.61	$535.76	$305.52
23665	T		Treat dislocation/fracture	0043	2.4999	$130.37		$26.07
23670	T		Treat dislocation/fracture	0046	29.2920	$1,527.61	$535.76	$305.52
23675	T		Treat dislocation/fracture	0043	2.4999	$130.37		$26.07
23680	T		Treat dislocation/fracture	0046	29.2920	$1,527.61	$535.76	$305.52
23700	T		Fixation of shoulder	0045	12.9357	$674.61	$268.47	$134.92
23800	T		Fusion of shoulder joint	0051	32.9062	$1,716.09		$343.22
23802	T		Fusion of shoulder joint	0051	32.9062	$1,716.09		$343.22
23900	C		Amputation of arm & girdle					
23920	C		Amputation at shoulder joint					
23921	T		Amputation follow-up surgery	0025	5.8623	$305.72	$115.49	$61.14
23929	T		Shoulder surgery procedure	0043	2.4999	$130.37		$26.07
23930	T		Drainage of arm lesion	0008	16.1430	$841.87		$168.37

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued
[Calendar Year 2003]

CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
23931	T		Drainage of arm bursa	0006	1.7926	$93.49	$24.12	$18.70
23935	T		Drain arm/elbow bone lesion	0049	18.6042	$970.23	$197.14	$194.05
24000	T		Exploratory elbow surgery	0050	23.3037	$1,215.31		$243.06
24006	T		Release elbow joint	0050	23.3037	$1,215.31		$243.06
24065	T		Biopsy arm/elbow soft tissue	0021	13.9338	$726.66	$219.48	$145.33
24066	T		Biopsy arm/elbow soft tissue	0021	13.9338	$726.66	$219.48	$145.33
24075	T		Remove arm/elbow lesion	0021	13.9338	$726.66	$219.48	$145.33
24076	T		Remove arm/elbow lesion	0022	17.3930	$907.06	$354.45	$181.41
24077	T		Remove tumor of arm/elbow	0022	17.3930	$907.06	$354.45	$181.41
24100	T		Biopsy elbow joint lining	0049	18.6042	$970.23	$197.14	$194.05
24101	T		Explore/treat elbow joint	0050	23.3037	$1,215.31		$243.06
24102	T		Remove elbow joint lining	0050	23.3037	$1,215.31		$243.06
24105	T		Removal of elbow bursa	0049	18.6042	$970.23	$197.14	$194.05
24110	T		Remove humerus lesion	0049	18.6042	$970.23	$197.14	$194.05
24115	T		Remove/graft bone lesion	0050	23.3037	$1,215.31		$243.06
24116	T		Remove/graft bone lesion	0050	23.3037	$1,215.31		$243.06
24120	T		Remove elbow lesion	0049	18.6042	$970.23	$197.14	$194.05
24125	T		Remove/graft bone lesion	0050	23.3037	$1,215.31		$243.06
24126	T		Remove/graft bone lesion	0050	23.3037	$1,215.31		$243.06
24130	T		Removal of head of radius	0050	23.3037	$1,215.31		$243.06
24134	T		Removal of arm bone lesion	0050	23.3037	$1,215.31		$243.06
24136	T		Remove radius bone lesion	0050	23.3037	$1,215.31		$243.06
24138	T		Remove elbow bone lesion	0050	23.3037	$1,215.31		$243.06
24140	T		Partial removal of arm bone	0050	23.3037	$1,215.31		$243.06
24145	T		Partial removal of radius	0050	23.3037	$1,215.31		$243.06
24147	T		Partial removal of elbow	0050	23.3037	$1,215.31		$243.06
24149	C		Radical resection of elbow					
24150	T		Extensive humerus surgery	0052	40.7646	$2,125.91		$425.18
24151	T		Extensive humerus surgery	0052	40.7646	$2,125.91		$425.18
24152	T		Extensive radius surgery	0052	40.7646	$2,125.91		$425.18
24153	T		Extensive radius surgery	0052	40.7646	$2,125.91		$425.18
24155	T		Removal of elbow joint	0051	32.9062	$1,716.09		$343.22
24160	T		Remove elbow joint implant	0050	23.3037	$1,215.31		$243.06
24164	T		Remove radius head implant	0050	23.3037	$1,215.31		$243.06
24200	T		Removal of arm foreign body	0019	3.7693	$196.57	$71.87	$39.31
24201	T		Removal of arm foreign body	0021	13.9338	$726.66	$219.48	$145.33
24220	N		Injection for elbow x-ray					
24300	T		Manipulate elbow w/anesth	0045	12.9357	$674.61	$268.47	$134.92
24301	T		Muscle/tendon transfer	0050	23.3037	$1,215.31		$243.06
24305	T		Arm tendon lengthening	0050	23.3037	$1,215.31		$243.06
24310	T		Revision of arm tendon	0049	18.6042	$970.23	$197.14	$194.05
24320	T		Repair of arm tendon	0051	32.9062	$1,716.09		$343.22
24330	T		Revision of arm muscles	0051	32.9062	$1,716.09		$343.22
24331	T		Revision of arm muscles	0051	32.9062	$1,716.09		$343.22
24332	T		Tenolysis, triceps	0049	18.6042	$970.23	$197.14	$194.05
24340	T		Repair of biceps tendon	0051	32.9062	$1,716.09		$343.22
24341	T		Repair arm tendon/muscle	0051	32.9062	$1,716.09		$343.22
24342	T		Repair of ruptured tendon	0051	32.9062	$1,716.09		$343.22
24343	T		Repr elbow lat ligmnt w/tiss	0050	23.3037	$1,215.31		$243.06
24344	T		Reconstruct elbow lat ligmnt	0051	32.9062	$1,716.09		$343.22
24345	T		Repr elbw med ligmnt w/tissu	0050	23.3037	$1,215.31		$243.06
24346	T		Reconstruct elbow med ligmnt	0051	32.9062	$1,716.09		$343.22
24350	T		Repair of tennis elbow	0050	23.3037	$1,215.31		$243.06
24351	T		Repair of tennis elbow	0050	23.3037	$1,215.31		$243.06
24352	T		Repair of tennis elbow	0050	23.3037	$1,215.31		$243.06
24354	T		Repair of tennis elbow	0050	23.3037	$1,215.31		$243.06
24356	T		Revision of tennis elbow	0050	23.3037	$1,215.31		$243.06
24360	T		Reconstruct elbow joint	0047	28.2842	$1,475.05	$537.03	$295.01
24361	T		Reconstruct elbow joint	0048	40.6289	$2,118.84	$695.60	$423.77
24362	T		Reconstruct elbow joint	0048	40.6289	$2,118.84	$695.60	$423.77
24363	T		Replace elbow joint	0048	40.6289	$2,118.84	$695.60	$423.77
24365	T		Reconstruct head of radius	0047	28.2842	$1,475.05	$537.03	$295.01
24366	T		Reconstruct head of radius	0048	40.6289	$2,118.84	$695.60	$423.77
24400	T		Revision of humerus	0050	23.3037	$1,215.31		$243.06
24410	T		Revision of humerus	0050	23.3037	$1,215.31		$243.06

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued
[Calendar Year 2003]

CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
24420	T		Revision of humerus	0051	32.9062	$1,716.09		$343.22
24430	T		Repair of humerus	0051	32.9062	$1,716.09		$343.22
24435	T		Repair humerus with graft	0051	32.9062	$1,716.09		$343.22
24470	T		Revision of elbow joint	0051	32.9062	$1,716.09		$343.22
24495	T		Decompression of forearm	0050	23.3037	$1,215.31		$243.06
24498	T		Reinforce humerus	0051	32.9062	$1,716.09		$343.22
24500	T		Treat humerus fracture	0043	2.4999	$130.37		$26.07
24505	T		Treat humerus fracture	0043	2.4999	$130.37		$26.07
24515	T		Treat humerus fracture	0046	29.2920	$1,527.61	$535.76	$305.52
24516	T		Treat humerus fracture	0046	29.2920	$1,527.61	$535.76	$305.52
24530	T		Treat humerus fracture	0043	2.4999	$130.37		$26.07
24535	T		Treat humerus fracture	0043	2.4999	$130.37		$26.07
24538	T		Treat humerus fracture	0046	29.2920	$1,527.61	$535.76	$305.52
24545	T		Treat humerus fracture	0046	29.2920	$1,527.61	$535.76	$305.52
24546	T		Treat humerus fracture	0046	29.2920	$1,527.61	$535.76	$305.52
24560	T		Treat humerus fracture	0043	2.4999	$130.37		$26.07
24565	T		Treat humerus fracture	0043	2.4999	$130.37		$26.07
24566	T		Treat humerus fracture	0046	29.2920	$1,527.61	$535.76	$305.52
24575	T		Treat humerus fracture	0046	29.2920	$1,527.61	$535.76	$305.52
24576	T		Treat humerus fracture	0043	2.4999	$130.37		$26.07
24577	T		Treat humerus fracture	0043	2.4999	$130.37		$26.07
24579	T		Treat humerus fracture	0046	29.2920	$1,527.61	$535.76	$305.52
24582	T		Treat humerus fracture	0046	29.2920	$1,527.61	$535.76	$305.52
24586	T		Treat elbow fracture	0046	29.2920	$1,527.61	$535.76	$305.52
24587	T		Treat elbow fracture	0046	29.2920	$1,527.61	$535.76	$305.52
24600	T		Treat elbow dislocation	0043	2.4999	$130.37		$26.07
24605	T		Treat elbow dislocation	0045	12.9357	$674.61	$268.47	$134.92
24615	T		Treat elbow dislocation	0046	29.2920	$1,527.61	$535.76	$305.52
24620	T		Treat elbow fracture	0043	2.4999	$130.37		$26.07
24635	T		Treat elbow fracture	0046	29.2920	$1,527.61	$535.76	$305.52
24640	T		Treat elbow dislocation	0043	2.4999	$130.37		$26.07
24650	T		Treat radius fracture	0043	2.4999	$130.37		$26.07
24655	T		Treat radius fracture	0043	2.4999	$130.37		$26.07
24665	T		Treat radius fracture	0046	29.2920	$1,527.61	$535.76	$305.52
24666	T		Treat radius fracture	0046	29.2920	$1,527.61	$535.76	$305.52
24670	T		Treat ulnar fracture	0043	2.4999	$130.37		$26.07
24675	T		Treat ulnar fracture	0043	2.4999	$130.37		$26.07
24685	T		Treat ulnar fracture	0046	29.2920	$1,527.61	$535.76	$305.52
24800	T		Fusion of elbow joint	0051	32.9062	$1,716.09		$343.22
24802	T		Fusion/graft of elbow joint	0051	32.9062	$1,716.09		$343.22
24900	C		Amputation of upper arm					
24920	C		Amputation of upper arm					
24925	T		Amputation follow-up surgery	0049	18.6042	$970.23	$197.14	$194.05
24930	C		Amputation follow-up surgery					
24931	C		Amputate upper arm & implant					
24935	T		Revision of amputation	0052	40.7646	$2,125.91		$425.18
24940	C		Revision of upper arm					
24999	T		Upper arm/elbow surgery	0043	2.4999	$130.37		$26.07
25000	T		Incision of tendon sheath	0049	18.6042	$970.23	$197.14	$194.05
25001	T		Incise flexor carpi radialis	0049	18.6042	$970.23	$197.14	$194.05
25020	T		Decompress forearm 1 space	0049	18.6042	$970.23	$197.14	$194.05
25023	T		Decompress forearm 1 space	0050	23.3037	$1,215.31		$243.06
25024	T		Decompress forearm 2 spaces	0050	23.3037	$1,215.31		$243.06
25025	T		Decompress forarm 2 spaces	0050	23.3037	$1,215.31		$243.06
25028	T		Drainage of forearm lesion	0049	18.6042	$970.23	$197.14	$194.05
25031	T		Drainage of forearm bursa	0049	18.6042	$970.23	$197.14	$194.05
25035	T		Treat forearm bone lesion	0049	18.6042	$970.23	$197.14	$194.05
25040	T		Explore/treat wrist joint	0050	23.3037	$1,215.31		$243.06
25065	T		Biopsy forearm soft tissues	0021	13.9338	$726.66	$219.48	$145.33
25066	T		Biopsy forearm soft tissues	0022	17.3930	$907.06	$354.45	$181.41
25075	T		Removel forearm lesion subcu	0021	13.9338	$726.66	$219.48	$145.33
25076	T		Removel forearm lesion deep	0022	17.3930	$907.06	$354.45	$181.41
25077	T		Remove tumor, forearm/wrist	0022	17.3930	$907.06	$354.45	$181.41
25085	T		Incision of wrist capsule	0049	18.6042	$970.23	$197.14	$194.05
25100	T		Biopsy of wrist joint	0049	18.6042	$970.23	$197.14	$194.05

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued
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CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
25101	T		Explore/treat wrist joint	0050	23.3037	$1,215.31		$243.06
25105	T		Remove wrist joint lining	0050	23.3037	$1,215.31		$243.06
25107	T		Remove wrist joint cartilage	0050	23.3037	$1,215.31		$243.06
25110	T		Remove wrist tendon lesion	0049	18.6042	$970.23	$197.14	$194.05
25111	T		Remove wrist tendon lesion	0053	14.1760	$739.29	$253.49	$147.86
25112	T		Reremove wrist tendon lesion	0053	14.1760	$739.29	$253.49	$147.86
25115	T		Remove wrist/forearm lesion	0049	18.6042	$970.23	$197.14	$194.05
25116	T		Remove wrist/forearm lesion	0049	18.6042	$970.23	$197.14	$194.05
25118	T		Excise wrist tendon sheath	0050	23.3037	$1,215.31		$243.06
25119	T		Partial removal of ulna	0050	23.3037	$1,215.31		$243.06
25120	T		Removal of forearm lesion	0050	23.3037	$1,215.31		$243.06
25125	T		Remove/graft forearm lesion	0050	23.3037	$1,215.31		$243.06
25126	T		Remove/graft forearm lesion	0050	23.3037	$1,215.31		$243.06
25130	T		Removal of wrist lesion	0050	23.3037	$1,215.31		$243.06
25135	T		Remove & graft wrist lesion	0050	23.3037	$1,215.31		$243.06
25136	T		Remove & graft wrist lesion	0050	23.3037	$1,215.31		$243.06
25145	T		Remove forearm bone lesion	0050	23.3037	$1,215.31		$243.06
25150	T		Partial removal of ulna	0050	23.3037	$1,215.31		$243.06
25151	T		Partial removal of radius	0050	23.3037	$1,215.31		$243.06
25170	T		Extensive forearm surgery	0052	40.7646	$2,125.91		$425.18
25210	T		Removal of wrist bone	0054	22.7223	$1,184.99		$237.00
25215	T		Removal of wrist bones	0054	22.7223	$1,184.99		$237.00
25230	T		Partial removal of radius	0050	23.3037	$1,215.31		$243.06
25240	T		Partial removal of ulna	0050	23.3037	$1,215.31		$243.06
25246	N		Injection for wrist x-ray					
25248	T		Remove forearm foreign body	0049	18.6042	$970.23	$197.14	$194.05
25250	T		Removal of wrist prosthesis	0050	23.3037	$1,215.31		$243.06
25251	T		Removal of wrist prosthesis	0050	23.3037	$1,215.31		$243.06
25259	T		Manipulate wrist w/anesthes	0043	2.4999	$130.37		$26.07
25260	T		Repair forearm tendon/muscle	0050	23.3037	$1,215.31		$243.06
25263	T		Repair forearm tendon/muscle	0050	23.3037	$1,215.31		$243.06
25265	T		Repair forearm tendon/muscle	0050	23.3037	$1,215.31		$243.06
25270	T		Repair forearm tendon/muscle	0050	23.3037	$1,215.31		$243.06
25272	T		Repair forearm tendon/muscle	0050	23.3037	$1,215.31		$243.06
25274	T		Repair forearm tendon/muscle	0050	23.3037	$1,215.31		$243.06
25275	T		Repair forearm tendon sheath	0050	23.3037	$1,215.31		$243.06
25280	T		Revise wrist/forearm tendon	0050	23.3037	$1,215.31		$243.06
25290	T		Incise wrist/forearm tendon	0050	23.3037	$1,215.31		$243.06
25295	T		Release wrist/forearm tendon	0049	18.6042	$970.23	$197.14	$194.05
25300	T		Fusion of tendons at wrist	0050	23.3037	$1,215.31		$243.06
25301	T		Fusion of tendons at wrist	0050	23.3037	$1,215.31		$243.06
25310	T		Transplant forearm tendon	0051	32.9062	$1,716.09		$343.22
25312	T		Transplant forearm tendon	0051	32.9062	$1,716.09		$343.22
25315	T		Revise palsy hand tendon(s)	0051	32.9062	$1,716.09		$343.22
25316	T		Revise palsy hand tendon(s)	0051	32.9062	$1,716.09		$343.22
25320	T		Repair/revise wrist joint	0051	32.9062	$1,716.09		$343.22
25332	T		Revise wrist joint	0047	28.2842	$1,475.05	$537.03	$295.01
25335	T		Realignment of hand	0051	32.9062	$1,716.09		$343.22
25337	T		Reconstruct ulna/radioulnar	0051	32.9062	$1,716.09		$343.22
25350	T		Revision of radius	0051	32.9062	$1,716.09		$343.22
25355	T		Revision of radius	0051	32.9062	$1,716.09		$343.22
25360	T		Revision of ulna	0050	23.3037	$1,215.31		$243.06
25365	T		Revise radius & ulna	0050	23.3037	$1,215.31		$243.06
25370	T		Revise radius or ulna	0051	32.9062	$1,716.09		$343.22
25375	T		Revise radius & ulna	0051	32.9062	$1,716.09		$343.22
25390	T		Shorten radius or ulna	0050	23.3037	$1,215.31		$243.06
25391	T		Lengthen radius or ulna	0051	32.9062	$1,716.09		$343.22
25392	T		Shorten radius & ulna	0050	23.3037	$1,215.31		$243.06
25393	T		Lengthen radius & ulna	0051	32.9062	$1,716.09		$343.22
25394	T		Repair carpal bone, shorten	0053	14.1760	$739.29	$253.49	$147.86
25400	T		Repair radius or ulna	0050	23.3037	$1,215.31		$243.06
25405	T		Repair/graft radius or ulna	0050	23.3037	$1,215.31		$243.06
25415	T		Repair radius & ulna	0050	23.3037	$1,215.31		$243.06
25420	T		Repair/graft radius & ulna	0051	32.9062	$1,716.09		$343.22
25425	T		Repair/graft radius or ulna	0051	32.9062	$1,716.09		$343.22

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued
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CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
25426	T		Repair/graft radius & ulna	0051	32.9062	$1,716.09		$343.22
25430	T		Vasc graft into carpal bone	0054	22.7223	$1,184.99		$237.00
25431	T		Repair nonunion carpal bone	0054	22.7223	$1,184.99		$237.00
25440	T		Repair/graft wrist bone	0051	32.9062	$1,716.09		$343.22
25441	T		Reconstruct wrist joint	0048	40.6289	$2,118.84	$695.60	$423.77
25442	T		Reconstruct wrist joint	0048	40.6289	$2,118.84	$695.60	$423.77
25443	T		Reconstruct wrist joint	0048	40.6289	$2,118.84	$695.60	$423.77
25444	T		Reconstruct wrist joint	0048	40.6289	$2,118.84	$695.60	$423.77
25445	T		Reconstruct wrist joint	0048	40.6289	$2,118.84	$695.60	$423.77
25446	T		Wrist replacement	0048	40.6289	$2,118.84	$695.60	$423.77
25447	T		Repair wrist joint(s)	0047	28.2842	$1,475.05	$537.03	$295.01
25449	T		Remove wrist joint implant	0047	28.2842	$1,475.05	$537.03	$295.01
25450	T		Revision of wrist joint	0051	32.9062	$1,716.09		$343.22
25455	T		Revision of wrist joint	0051	32.9062	$1,716.09		$343.22
25490	T		Reinforce radius	0051	32.9062	$1,716.09		$343.22
25491	T		Reinforce ulna	0051	32.9062	$1,716.09		$343.22
25492	T		Reinforce radius and ulna	0051	32.9062	$1,716.09		$343.22
25500	T		Treat fracture of radius	0043	2.4999	$130.37		$26.07
25505	T		Treat fracture of radius	0043	2.4999	$130.37		$26.07
25515	T		Treat fracture of radius	0046	29.2920	$1,527.61	$535.76	$305.52
25520	T		Treat fracture of radius	0043	2.4999	$130.37		$26.07
25525	T		Treat fracture of radius	0046	29.2920	$1,527.61	$535.76	$305.52
25526	T		Treat fracture of radius	0046	29.2920	$1,527.61	$535.76	$305.52
25530	T		Treat fracture of ulna	0043	2.4999	$130.37		$26.07
25535	T		Treat fracture of ulna	0043	2.4999	$130.37		$26.07
25545	T		Treat fracture of ulna	0046	29.2920	$1,527.61	$535.76	$305.52
25560	T		Treat fracture radius & ulna	0043	2.4999	$130.37		$26.07
25565	T		Treat fracture radius & ulna	0043	2.4999	$130.37		$26.07
25574	T		Treat fracture radius & ulna	0046	29.2920	$1,527.61	$535.76	$305.52
25575	T		Treat fracture radius/ulna	0046	29.2920	$1,527.61	$535.76	$305.52
25600	T		Treat fracture radius/ulna	0043	2.4999	$130.37		$26.07
25605	T		Treat fracture radius/ulna	0043	2.4999	$130.37		$26.07
25611	T		Treat fracture radius/ulna	0046	29.2920	$1,527.61	$535.76	$305.52
25620	T		Treat fracture radius/ulna	0046	29.2920	$1,527.61	$535.76	$305.52
25622	T		Treat wrist bone fracture	0043	2.4999	$130.37		$26.07
25624	T		Treat wrist bone fracture	0043	2.4999	$130.37		$26.07
25628	T		Treat wrist bone fracture	0046	29.2920	$1,527.61	$535.76	$305.52
25630	T		Treat wrist bone fracture	0043	2.4999	$130.37		$26.07
25635	T		Treat wrist bone fracture	0043	2.4999	$130.37		$26.07
25645	T		Treat wrist bone fracture	0046	29.2920	$1,527.61	$535.76	$305.52
25650	T		Treat wrist bone fracture	0043	2.4999	$130.37		$26.07
25651	T		Pin ulnar styloid fracture	0046	29.2920	$1,527.61	$535.76	$305.52
25652	T		Treat fracture ulnar styloid	0046	29.2920	$1,527.61	$535.76	$305.52
25660	T		Treat wrist dislocation	0043	2.4999	$130.37		$26.07
25670	T		Treat wrist dislocation	0046	29.2920	$1,527.61	$535.76	$305.52
25671	T		Pin radioulnar dislocation	0046	29.2920	$1,527.61	$535.76	$305.52
25675	T		Treat wrist dislocation	0043	2.4999	$130.37		$26.07
25676	T		Treat wrist dislocation	0046	29.2920	$1,527.61	$535.76	$305.52
25680	T		Treat wrist fracture	0043	2.4999	$130.37		$26.07
25685	T		Treat wrist fracture	0046	29.2920	$1,527.61	$535.76	$305.52
25690	T		Treat wrist dislocation	0043	2.4999	$130.37		$26.07
25695	T		Treat wrist dislocation	0046	29.2920	$1,527.61	$535.76	$305.52
25800	T		Fusion of wrist joint	0051	32.9062	$1,716.09		$343.22
25805	T		Fusion/graft of wrist joint	0051	32.9062	$1,716.09		$343.22
25810	T		Fusion/graft of wrist joint	0051	32.9062	$1,716.09		$343.22
25820	T		Fusion of hand bones	0053	14.1760	$739.29	$253.49	$147.86
25825	T		Fuse hand bones with graft	0054	22.7223	$1,184.99		$237.00
25830	T		Fusion, radioulnar jnt/ulna	0051	32.9062	$1,716.09		$343.22
25900	C		Amputation of forearm					
25905	C		Amputation of forearm					
25907	T		Amputation follow-up surgery	0049	18.6042	$970.23	$197.14	$194.05
25909	C		Amputation follow-up surgery					
25915	C		Amputation of forearm					
25920	C		Amputate hand at wrist					
25922	T		Amputate hand at wrist	0049	18.6042	$970.23	$197.14	$194.05

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

[Calendar Year 2003]

CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
25924	C		Amputation follow-up surgery					
25927	C		Amputation of hand					
25929	T		Amputation follow-up surgery	0027	15.2225	$793.87	$329.72	$158.77
25931	C		Amputation follow-up surgery					$26.07
25999	T		Forearm or wrist surgery	0043	2.4999	$130.37		$18.70
26010	T		Drainage of finger abscess	0006	1.7926	$93.49	$24.12	$104.50
26011	T		Drainage of finger abscess	0007	10.0191	$522.51	$108.89	$147.86
26020	T		Drain hand tendon sheath	0053	14.1760	$739.29	$253.49	$147.86
26025	T		Drainage of palm bursa	0053	14.1760	$739.29	$253.49	$147.86
26030	T		Drainage of palm bursa(s)	0053	14.1760	$739.29	$253.49	$147.86
26034	T		Treat hand bone lesion	0053	14.1760	$739.29	$253.49	$147.86
26035	T		Decompress fingers/hand	0053	14.1760	$739.29	$253.49	$147.86
26037	T		Decompress fingers/hand	0053	14.1760	$739.29	$253.49	$237.00
26040	T		Release palm contracture	0054	22.7223	$1,184.99		$237.00
26045	T		Release palm contracture	0054	22.7223	$1,184.99		$147.86
26055	T		Incise finger tendon sheath	0053	14.1760	$739.29	$253.49	$147.86
26060	T		Incision of finger tendon	0053	14.1760	$739.29	$253.49	$147.86
26070	T		Explore/treat hand joint	0053	14.1760	$739.29	$253.49	$147.86
26075	T		Explore/treat finger joint	0053	14.1760	$739.29	$253.49	$147.86
26080	T		Explore/treat finger joint	0053	14.1760	$739.29	$253.49	$147.86
26100	T		Biopsy hand joint lining	0053	14.1760	$739.29	$253.49	$147.86
26105	T		Biopsy finger joint lining	0053	14.1760	$739.29	$253.49	$147.86
26110	T		Biopsy finger joint lining	0022	17.3930	$907.06	$354.45	$181.41
26115	T		Removel hand lesion subcut	0022	17.3930	$907.06	$354.45	$181.41
26116	T		Removel hand lesion, deep	0022	17.3930	$907.06	$354.45	$181.41
26117	T		Remove tumor, hand/finger	0054	22.7223	$1,184.99		$237.00
26121	T		Release palm contracture	0054	22.7223	$1,184.99		$237.00
26123	T		Release palm contracture	0054	22.7223	$1,184.99		$237.00
26125	T		Release palm contracture	0053	14.1760	$739.29	$253.49	$147.86
26130	T		Remove wrist joint lining	0054	22.7223	$1,184.99		$237.00
26135	T		Revise finger joint, each	0053	14.1760	$739.29	$253.49	$147.86
26140	T		Revise finger joint, each	0053	14.1760	$739.29	$253.49	$147.86
26145	T		Tendon excision, palm/finger	0053	14.1760	$739.29	$253.49	$147.86
26160	T		Remove tendon sheath lesion	0053	14.1760	$739.29	$253.49	$147.86
26170	T		Removal of palm tendon, each	0053	14.1760	$739.29	$253.49	$147.86
26180	T		Removal of finger tendon	0053	14.1760	$739.29	$253.49	$147.86
26185	T		Remove finger bone	0053	14.1760	$739.29	$253.49	$147.86
26200	T		Remove hand bone lesion	0053	14.1760	$739.29	$253.49	$147.86
26205	T		Remove/graft bone lesion	0054	22.7223	$1,184.99		$237.00
26210	T		Removal of finger lesion	0053	14.1760	$739.29	$253.49	$147.86
26215	T		Remove/graft finger lesion	0053	14.1760	$739.29	$253.49	$147.86
26230	T		Partial removal of hand bone	0053	14.1760	$739.29	$253.49	$147.86
26235	T		Partial removal, finger bone	0053	14.1760	$739.29	$253.49	$147.86
26236	T		Partial removal, finger bone	0053	14.1760	$739.29	$253.49	$147.86
26250	T		Extensive hand surgery	0054	22.7223	$1,184.99		$237.00
26255	T		Extensive hand surgery	0053	14.1760	$739.29	$253.49	$147.86
26260	T		Extensive finger surgery	0053	14.1760	$739.29	$253.49	$147.86
26261	T		Extensive finger surgery	0053	14.1760	$739.29	$253.49	$147.86
26262	T		Partial removal of finger	0021	13.9338	$726.66	$219.48	$145.33
26320	T		Removal of implant from hand	0043	2.4999	$130.37		$26.07
26340	T		Manipulate finger w/anesth	0054	22.7223	$1,184.99		$237.00
26350	T		Repair finger/hand tendon	0054	22.7223	$1,184.99		$237.00
26352	T		Repair/graft hand tendon	0054	22.7223	$1,184.99		$237.00
26356	T		Repair finger/hand tendon	0054	22.7223	$1,184.99		$237.00
26357	T		Repair finger/hand tendon	0054	22.7223	$1,184.99		$237.00
26358	T		Repair/graft hand tendon	0054	22.7223	$1,184.99		$237.00
26370	T		Repair finger/hand tendon	0054	22.7223	$1,184.99		$237.00
26372	T		Repair/graft hand tendon	0054	22.7223	$1,184.99		$237.00
26373	T		Repair finger/hand tendon	0054	22.7223	$1,184.99		$237.00
26390	T		Revise hand/finger tendon	0054	22.7223	$1,184.99		$237.00
26392	T		Repair/graft hand tendon	0053	14.1760	$739.29	$253.49	$147.86
26410	T		Repair hand tendon	0054	22.7223	$1,184.99		$237.00
26412	T		Repair/graft hand tendon	0054	22.7223	$1,184.99		$237.00
26415	T		Excision, hand/finger tendon	0054	22.7223	$1,184.99		$237.00
26416	T		Graft hand or finger tendon	0054	22.7223	$1,184.99		$237.00

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

[Calendar Year 2003]

CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
26418	T		Repair finger tendon	0053	14.1760	$739.29	$253.49	$147.86
26420	T		Repair/graft finger tendon	0054	22.7223	$1,184.99		$237.00
26426	T		Repair finger/hand tendon	0054	22.7223	$1,184.99		$237.00
26428	T		Repair/graft finger tendon	0054	22.7223	$1,184.99		$237.00
26432	T		Repair finger tendon	0053	14.1760	$739.29	$253.49	$147.86
26433	T		Repair finger tendon	0053	14.1760	$739.29	$253.49	$147.86
26434	T		Repair/graft finger tendon	0054	22.7223	$1,184.99		$237.00
26437	T		Realignment of tendons	0053	14.1760	$739.29	$253.49	$147.86
26440	T		Release palm/finger tendon	0053	14.1760	$739.29	$253.49	$147.86
26442	T		Release palm & finger tendon	0054	22.7223	$1,184.99		$237.00
26445	T		Release hand/finger tendon	0053	14.1760	$739.29	$253.49	$147.86
26449	T		Release forearm/hand tendon	0054	22.7223	$1,184.99		$237.00
26450	T		Incision of palm tendon	0053	14.1760	$739.29	$253.49	$147.86
26455	T		Incision of finger tendon	0053	14.1760	$739.29	$253.49	$147.86
26460	T		Incise hand/finger tendon	0053	14.1760	$739.29	$253.49	$147.86
26471	T		Fusion of finger tendons	0053	14.1760	$739.29	$253.49	$147.86
26474	T		Fusion of finger tendons	0053	14.1760	$739.29	$253.49	$147.86
26476	T		Tendon lengthening	0053	14.1760	$739.29	$253.49	$147.86
26477	T		Tendon shortening	0053	14.1760	$739.29	$253.49	$147.86
26478	T		Lengthening of hand tendon	0053	14.1760	$739.29	$253.49	$147.86
26479	T		Shortening of hand tendon	0053	14.1760	$739.29	$253.49	$147.86
26480	T		Transplant hand tendon	0054	22.7223	$1,184.99		$237.00
26483	T		Transplant/graft hand tendon	0054	22.7223	$1,184.99		$237.00
26485	T		Transplant palm tendon	0054	22.7223	$1,184.99		$237.00
26489	T		Transplant/graft palm tendon	0054	22.7223	$1,184.99		$237.00
26490	T		Revise thumb tendon	0054	22.7223	$1,184.99		$237.00
26492	T		Tendon transfer with graft	0054	22.7223	$1,184.99		$237.00
26494	T		Hand tendon/muscle transfer	0054	22.7223	$1,184.99		$237.00
26496	T		Revise thumb tendon	0054	22.7223	$1,184.99		$237.00
26497	T		Finger tendon transfer	0054	22.7223	$1,184.99		$237.00
26498	T		Finger tendon transfer	0054	22.7223	$1,184.99		$237.00
26499	T		Revision of finger	0054	22.7223	$1,184.99		$237.00
26500	T		Hand tendon reconstruction	0053	14.1760	$739.29	$253.49	$147.86
26502	T		Hand tendon reconstruction	0054	22.7223	$1,184.99		$237.00
26504	T		Hand tendon reconstruction	0054	22.7223	$1,184.99		$237.00
26508	T		Release thumb contracture	0053	14.1760	$739.29	$253.49	$147.86
26510	T		Thumb tendon transfer	0054	22.7223	$1,184.99		$237.00
26516	T		Fusion of knuckle joint	0054	22.7223	$1,184.99		$237.00
26517	T		Fusion of knuckle joints	0054	22.7223	$1,184.99		$237.00
26518	T		Fusion of knuckle joints	0054	22.7223	$1,184.99		$237.00
26520	T		Release knuckle contracture	0053	14.1760	$739.29	$253.49	$147.86
26525	T		Release finger contracture	0053	14.1760	$739.29	$253.49	$147.86
26530	T		Revise knuckle joint	0047	28.2842	$1,475.05	$537.03	$295.01
26531	T		Revise knuckle with implant	0048	40.6289	$2,118.84	$695.60	$423.77
26535	T		Revise finger joint	0047	28.2842	$1,475.05	$537.03	$295.01
26536	T		Revise/implant finger joint	0048	40.6289	$2,118.84	$695.60	$423.77
26540	T		Repair hand joint	0053	14.1760	$739.29	$253.49	$147.86
26541	T		Repair hand joint with graft	0054	22.7223	$1,184.99		$237.00
26542	T		Repair hand joint with graft	0053	14.1760	$739.29	$253.49	$147.86
26545	T		Reconstruct finger joint	0054	22.7223	$1,184.99		$237.00
26546	T		Repair nonunion hand	0054	22.7223	$1,184.99		$237.00
26548	T		Reconstruct finger joint	0054	22.7223	$1,184.99		$237.00
26550	T		Construct thumb replacement	0054	22.7223	$1,184.99		$237.00
26551	C		Great toe-hand transfer					
26553	C		Single transfer, toe-hand					
26554	C		Double transfer, toe-hand					
26555	T		Positional change of finger	0054	22.7223	$1,184.99		$237.00
26556	C		Toe joint transfer					
26560	T		Repair of web finger	0053	14.1760	$739.29	$253.49	$147.86
26561	T		Repair of web finger	0054	22.7223	$1,184.99		$237.00
26562	T		Repair of web finger	0054	22.7223	$1,184.99		$237.00
26565	T		Correct metacarpal flaw	0054	22.7223	$1,184.99		$237.00
26567	T		Correct finger deformity	0054	22.7223	$1,184.99		$237.00
26568	T		Lengthen metacarpal/finger	0054	22.7223	$1,184.99		$237.00
26580	T		Repair hand deformity	0054	22.7223	$1,184.99		$237.00

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

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CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
26587	T		Reconstruct extra finger	0053	14.1760	$739.29	$253.49	$147.86
26590	T		Repair finger deformity	0054	22.7223	$1,184.99		$237.00
26591	T		Repair muscles of hand	0054	22.7223	$1,184.99		$237.00
26593	T		Release muscles of hand	0053	14.1760	$739.29	$253.49	$147.86
26596	T		Excision constricting tissue	0054	22.7223	$1,184.99		$237.00
26600	T		Treat metacarpal fracture	0043	2.4999	$130.37		$26.07
26605	T		Treat metacarpal fracture	0043	2.4999	$130.37		$26.07
26607	T		Treat metacarpal fracture	0043	2.4999	$130.37		$26.07
26608	T		Treat metacarpal fracture	0046	29.2920	$1,527.61	$535.76	$305.52
26615	T		Treat metacarpal fracture	0046	29.2920	$1,527.61	$535.76	$305.52
26641	T		Treat thumb dislocation	0043	2.4999	$130.37		$26.07
26645	T		Treat thumb fracture	0043	2.4999	$130.37		$26.07
26650	T		Treat thumb fracture	0046	29.2920	$1,527.61	$535.76	$305.52
26665	T		Treat thumb fracture	0046	29.2920	$1,527.61	$535.76	$305.52
26670	T		Treat hand dislocation	0043	2.4999	$130.37		$26.07
26675	T		Treat hand dislocation	0043	2.4999	$130.37		$26.07
26676	T		Pin hand dislocation	0046	29.2920	$1,527.61	$535.76	$305.52
26685	T		Treat hand dislocation	0046	29.2920	$1,527.61	$535.76	$305.52
26686	T		Treat hand dislocation	0046	29.2920	$1,527.61	$535.76	$305.52
26700	T		Treat knuckle dislocation	0043	2.4999	$130.37		$26.07
26705	T		Treat knuckle dislocation	0043	2.4999	$130.37		$26.07
26706	T		Pin knuckle dislocation	0043	2.4999	$130.37		$26.07
26715	T		Treat knuckle dislocation	0046	29.2920	$1,527.61	$535.76	$305.52
26720	T		Treat finger fracture, each	0043	2.4999	$130.37		$26.07
26725	T		Treat finger fracture, each	0043	2.4999	$130.37		$26.07
26727	T		Treat finger fracture, each	0046	29.2920	$1,527.61	$535.76	$305.52
26735	T		Treat finger fracture, each	0046	29.2920	$1,527.61	$535.76	$305.52
26740	T		Treat finger fracture, each	0043	2.4999	$130.37		$26.07
26742	T		Treat finger fracture, each	0043	2.4999	$130.37		$26.07
26746	T		Treat finger fracture, each	0046	29.2920	$1,527.61	$535.76	$305.52
26750	T		Treat finger fracture, each	0043	2.4999	$130.37		$26.07
26755	T		Treat finger fracture, each	0043	2.4999	$130.37		$26.07
26756	T		Pin finger fracture, each	0046	29.2920	$1,527.61	$535.76	$305.52
26765	T		Treat finger fracture, each	0046	29.2920	$1,527.61	$535.76	$305.52
26770	T		Treat finger dislocation	0043	2.4999	$130.37		$26.07
26775	T		Treat finger dislocation	0045	12.9357	$674.61	$268.47	$134.92
26776	T		Pin finger dislocation	0046	29.2920	$1,527.61	$535.76	$305.52
26785	T		Treat finger dislocation	0046	29.2920	$1,527.61	$535.76	$305.52
26820	T		Thumb fusion with graft	0054	22.7223	$1,184.99		$237.00
26841	T		Fusion of thumb	0054	22.7223	$1,184.99		$237.00
26842	T		Thumb fusion with graft	0054	22.7223	$1,184.99		$237.00
26843	T		Fusion of hand joint	0054	22.7223	$1,184.99		$237.00
26844	T		Fusion/graft of hand joint	0054	22.7223	$1,184.99		$237.00
26850	T		Fusion of knuckle	0054	22.7223	$1,184.99		$237.00
26852	T		Fusion of knuckle with graft	0054	22.7223	$1,184.99		$237.00
26860	T		Fusion of finger joint	0054	22.7223	$1,184.99		$237.00
26861	T		Fusion of finger jnt, add-on	0054	22.7223	$1,184.99		$237.00
26862	T		Fusion/graft of finger joint	0054	22.7223	$1,184.99		$237.00
26863	T		Fuse/graft added joint	0054	22.7223	$1,184.99		$237.00
26910	T		Amputate metacarpal bone	0053	14.1760	$739.29	$253.49	$147.86
26951	T		Amputation of finger/thumb	0053	14.1760	$739.29	$253.49	$147.86
26952	T		Amputation of finger/thumb	0043	2.4999	$130.37		$26.07
26989	T		Hand/finger surgery	0049	18.6042	$970.23	$197.14	$194.05
26990	T		Drainage of pelvis lesion	0049	18.6042	$970.23	$197.14	$194.05
26991	T		Drainage of pelvis bursa					
26992	C		Drainage of bone lesion	0049	18.6042	$970.23	$197.14	$194.05
27000	T		Incision of hip tendon	0050	23.3037	$1,215.31		$243.06
27001	T		Incision of hip tendon	0050	23.3037	$1,215.31		$243.06
27003	T		Incision of hip tendon					
27005	C		Incision of hip tendon					
27006	C		Incision of hip tendons					
27025	C		Incision of hip/thigh fascia					
27030	C		Drainage of hip joint	0051	32.9062	$1,716.09		$343.22
27033	T		Exploration of hip joint	0052	40.7646	$2,125.91		$425.18
27035	T		Denervation of hip joint					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

[Calendar Year 2003]

CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
27036	C		Excision of hip joint/muscle					
27040	T		Biopsy of soft tissues	0021	13.9338	$726.66	$219.48	$145.33
27041	T		Biopsy of soft tissues	0022	17.3930	$907.06	$354.45	$181.41
27047	T		Remove hip/pelvis lesion	0022	17.3930	$907.06	$354.45	$181.41
27048	T		Remove hip/pelvis lesion	0022	17.3930	$907.06	$354.45	$181.41
27049	T		Remove tumor, hip/pelvis	0022	17.3930	$907.06	$354.45	$181.41
27050	T		Biopsy of sacroiliac joint	0049	18.6042	$970.23	$197.14	$194.05
27052	T		Biopsy of hip joint	0049	18.6042	$970.23	$197.14	$194.05
27054	C		Removal of hip joint lining					
27060	T		Removal of ischial bursa	0049	18.6042	$970.23	$197.14	$194.05
27062	T		Remove femur lesion/bursa	0049	18.6042	$970.23	$197.14	$194.05
27065	T		Removal of hip bone lesion	0049	18.6042	$970.23	$197.14	$194.05
27066	T		Removal of hip bone lesion	0050	23.3037	$1,215.31		$243.06
27067	T		Remove/graft hip bone lesion	0050	23.3037	$1,215.31		$243.06
27070	C		Partial removal of hip bone					
27071	C		Partial removal of hip bone					
27075	C		Extensive hip surgery					
27076	C		Extensive hip surgery					
27077	C		Extensive hip surgery					
27078	C		Extensive hip surgery					
27079	C		Extensive hip surgery					
27080	T		Removal of tail bone	0050	23.3037	$1,215.31		$243.06
27086	T		Remove hip foreign body	0020	7.1898	$374.96	$113.25	$74.99
27087	T		Remove hip foreign body	0049	18.6042	$970.23	$197.14	$194.05
27090	C		Removal of hip prosthesis					
27091	C		Removal of hip prosthesis					
27093	N		Injection for hip x-ray					
27095	N		Injection for hip x-ray					
27096	N		Inject sacroiliac joint					
27097	T		Revision of hip tendon	0050	23.3037	$1,215.31		$243.06
27098	T		Transfer tendon to pelvis	0050	23.3037	$1,215.31		$243.06
27100	T		Transfer of abdominal muscle	0051	32.9062	$1,716.09		$343.22
27105	T		Transfer of spinal muscle	0051	32.9062	$1,716.09		$343.22
27110	T		Transfer of iliopsoas muscle	0051	32.9062	$1,716.09		$343.22
27111	T		Transfer of iliopsoas muscle	0051	32.9062	$1,716.09		$343.22
27120	C		Reconstruction of hip socket					
27122	C		Reconstruction of hip socket					
27125	C		Partial hip replacement					
27130	C		Total hip arthroplasty					
27132	C		Total hip arthroplasty					
27134	C		Revise hip joint replacement					
27137	C		Revise hip joint replacement					
27138	C		Revise hip joint replacement					
27140	C		Transplant femur ridge					
27146	C		Incision of hip bone					
27147	C		Revision of hip bone					
27151	C		Incision of hip bones					
27156	C		Revision of hip bones					
27158	C		Revision of pelvis					
27161	C		Incision of neck of femur					
27165	C		Incision/fixation of femur					
27170	C		Repair/graft femur head/neck					
27175	C		Treat slipped epiphysis					
27176	C		Treat slipped epiphysis					
27177	C		Treat slipped epiphysis					
27178	C		Treat slipped epiphysis					
27179	C		Revise head/neck of femur					
27181	C		Treat slipped epiphysis					
27185	C		Revision of femur epiphysis					
27187	C		Reinforce hip bones					
27193	T		Treat pelvic ring fracture	0043	2.4999	$130.37		$26.07
27194	T		Treat pelvic ring fracture	0045	12.9357	$674.61	$268.47	$134.92
27200	T		Treat tail bone fracture	0043	2.4999	$130.37		$26.07
27202	T		Treat tail bone fracture	0046	29.2920	$1,527.61	$535.76	$305.52
27215	C		Treat pelvic fracture(s)					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

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CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
27216	T		Treat pelvic ring fracture	0050	23.3037	$1,215.31		$243.06
27217	C		Treat pelvic ring fracture					
27218	C		Treat pelvic ring fracture					
27220	T		Treat hip socket fracture	0043	2.4999	$130.37		$26.07
27222	C		Treat hip socket fracture					
27226	C		Treat hip wall fracture					
27227	C		Treat hip fracture(s)					
27228	C		Treat hip fracture(s)					
27230	T		Treat thigh fracture	0043	2.4999	$130.37		$26.07
27232	C		Treat thigh fracture					
27235	T		Treat thigh fracture	0050	23.3037	$1,215.31		$243.06
27236	C		Treat thigh fracture					
27238	T		Treat thigh fracture	0043	2.4999	$130.37		$26.07
27240	C		Treat thigh fracture					
27244	C		Treat thigh fracture					
27245	C		Treat thigh fracture					
27246	T		Treat thigh fracture	0043	2.4999	$130.37		$26.07
27248	C		Treat thigh fracture					
27250	T		Treat hip dislocation	0043	2.4999	$130.37		$26.07
27252	T		Treat hip dislocation	0045	12.9357	$674.61	$268.47	$134.92
27253	C		Treat hip dislocation					
27254	C		Treat hip dislocation					
27256	T		Treat hip dislocation	0043	2.4999	$130.37		$26.07
27257	T		Treat hip dislocation	0045	12.9357	$674.61	$268.47	$134.92
27258	C		Treat hip dislocation					
27259	C		Treat hip dislocation					
27265	T		Treat hip dislocation	0043	2.4999	$130.37		$26.07
27266	T		Treat hip dislocation	0045	12.9357	$674.61	$268.47	$134.92
27275	T		Manipulation of hip joint	0045	12.9357	$674.61	$268.47	$134.92
27280	C		Fusion of sacroiliac joint					
27282	C		Fusion of pubic bones					
27284	C		Fusion of hip joint					
27286	C		Fusion of hip joint					
27290	C		Amputation of leg at hip					
27295	C		Amputation of leg at hip					
27299	T		Pelvis/hip joint surgery	0043	2.4999	$130.37		$26.07
27301	T		Drain thigh/knee lesion	0008	16.1430	$841.87		$168.37
27303	C		Drainage of bone lesion					
27305	T		Incise thigh tendon & fascia	0049	18.6042	$970.23	$197.14	$194.05
27306	T		Incision of thigh tendon	0049	18.6042	$970.23	$197.14	$194.05
27307	T		Incision of thigh tendons	0049	18.6042	$970.23	$197.14	$194.05
27310	T		Exploration of knee joint	0050	23.3037	$1,215.31		$243.06
27315	T		Partial removal, thigh nerve	0220	15.8136	$824.70		$164.94
27320	T		Partial removal, thigh nerve	0220	15.8136	$824.70		$164.94
27323	T		Biopsy, thigh soft tissues	0021	13.9338	$726.66	$219.48	$145.33
27324	T		Biopsy, thigh soft tissues	0022	17.3930	$907.06	$354.45	$181.41
27327	T		Removal of thigh lesion	0022	17.3930	$907.06	$354.45	$181.41
27328	T		Removal of thigh lesion	0022	17.3930	$907.06	$354.45	$181.41
27329	T		Remove tumor, thigh/knee	0022	17.3930	$907.06	$354.45	$181.41
27330	T		Biopsy, knee joint lining	0050	23.3037	$1,215.31		$243.06
27331	T		Explore/treat knee joint	0050	23.3037	$1,215.31		$243.06
27332	T		Removal of knee cartilage	0050	23.3037	$1,215.31		$243.06
27333	T		Removal of knee cartilage	0050	23.3037	$1,215.31		$243.06
27334	T		Remove knee joint lining	0050	23.3037	$1,215.31		$243.06
27335	T		Remove knee joint lining	0050	23.3037	$1,215.31		$243.06
27340	T		Removal of kneecap bursa	0049	18.6042	$970.23	$197.14	$194.05
27345	T		Removal of knee cyst	0049	18.6042	$970.23	$197.14	$194.05
27347	T		Remove knee cyst	0049	18.6042	$970.23	$197.14	$194.05
27350	T		Removal of kneecap	0050	23.3037	$1,215.31		$243.06
27355	T		Remove femur lesion	0050	23.3037	$1,215.31		$243.06
27356	T		Remove femur lesion/graft	0050	23.3037	$1,215.31		$243.06
27357	T		Remove femur lesion/graft	0050	23.3037	$1,215.31		$243.06
27358	T		Remove femur lesion/fixation	0050	23.3037	$1,215.31		$243.06
27360	T		Partial removal, leg bone(s)	0050	23.3037	$1,215.31		$243.06
27365	C		Extensive leg surgery					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

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CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
27370	N		Injection for knee x-ray					
27372	T		Removal of foreign body	0022	17.3930	$907.06	$354.45	$181.41
27380	T		Repair of kneecap tendon	0049	18.6042	$970.23	$197.14	$194.05
27381	T		Repair/graft kneecap tendon	0049	18.6042	$970.23	$197.14	$194.05
27385	T		Repair of thigh muscle	0049	18.6042	$970.23	$197.14	$194.05
27386	T		Repair/graft of thigh muscle	0049	18.6042	$970.23	$197.14	$194.05
27390	T		Incision of thigh tendon	0049	18.6042	$970.23	$197.14	$194.05
27391	T		Incision of thigh tendons	0049	18.6042	$970.23	$197.14	$194.05
27392	T		Incision of thigh tendons	0049	18.6042	$970.23	$197.14	$194.05
27393	T		Lengthening of thigh tendon	0050	23.3037	$1,215.31		$243.06
27394	T		Lengthening of thigh tendons	0050	23.3037	$1,215.31		$243.06
27395	T		Lengthening of thigh tendons	0051	32.9062	$1,716.09		$343.22
27396	T		Transplant of thigh tendon	0050	23.3037	$1,215.31		$243.06
27397	T		Transplants of thigh tendons	0051	32.9062	$1,716.09		$343.22
27400	T		Revise thigh muscles/tendons	0051	32.9062	$1,716.09		$343.22
27403	T		Repair of knee cartilage	0050	23.3037	$1,215.31		$243.06
27405	T		Repair of knee ligament	0051	32.9062	$1,716.09		$343.22
27407	T		Repair of knee ligament	0051	32.9062	$1,716.09		$343.22
27409	T		Repair of knee ligaments	0051	32.9062	$1,716.09		$343.22
27418	T		Repair degenerated kneecap	0051	32.9062	$1,716.09		$343.22
27420	T		Revision of unstable kneecap	0051	32.9062	$1,716.09		$343.22
27422	T		Revision of unstable kneecap	0051	32.9062	$1,716.09		$343.22
27424	T		Revision/removal of kneecap	0051	32.9062	$1,716.09		$343.22
27425	T		Lateral retinacular release	0050	23.3037	$1,215.31		$243.06
27427	T		Reconstruction, knee	0052	40.7646	$2,125.91		$425.18
27428	T		Reconstruction, knee	0052	40.7646	$2,125.91		$425.18
27429	T		Reconstruction, knee	0052	40.7646	$2,125.91		$425.18
27430	T		Revision of thigh muscles	0051	32.9062	$1,716.09		$343.22
27435	T		Incision of knee joint	0051	32.9062	$1,716.09		$343.22
27437	T		Revise kneecap	0047	28.2842	$1,475.05	$537.03	$295.01
27438	T		Revise kneecap with implant	0048	40.6289	$2,118.84	$695.60	$423.77
27440	T		Revision of knee joint	0047	28.2842	$1,475.05	$537.03	$295.01
27441	T		Revision of knee joint	0047	28.2842	$1,475.05	$537.03	$295.01
27442	T		Revision of knee joint	0047	28.2842	$1,475.05	$537.03	$295.01
27443	T		Revision of knee joint	0047	28.2842	$1,475.05	$537.03	$295.01
27445	C		Revision of knee joint					
27446	T		Revision of knee joint	0681	147.8067	$7,708.27	$3,067.55	$1,541.65
27447	C		Total knee arthroplasty					
27448	C		Incision of thigh					
27450	C		Incision of thigh					
27454	C		Realignment of thigh bone					
27455	C		Realignment of knee					
27457	C		Realignment of knee					
27465	C		Shortening of thigh bone					
27466	C		Lengthening of thigh bone					
27468	C		Shorten/lengthen thighs					
27470	C		Repair of thigh					
27472	C		Repair/graft of thigh					
27475	C		Surgery to stop leg growth					
27477	C		Surgery to stop leg growth					
27479	C		Surgery to stop leg growth					
27485	C		Surgery to stop leg growth					
27486	C		Revise/replace knee joint					
27487	C		Revise/replace knee joint					
27488	C		Removal of knee prosthesis					
27495	C		Reinforce thigh					
27496	T		Decompression of thigh/knee	0049	18.6042	$970.23	$197.14	$194.05
27497	T		Decompression of thigh/knee	0049	18.6042	$970.23	$197.14	$194.05
27498	T		Decompression of thigh/knee	0049	18.6042	$970.23	$197.14	$194.05
27499	T		Decompression of thigh/knee	0049	18.6042	$970.23	$197.14	$194.05
27500	T		Treatment of thigh fracture	0043	2.4999	$130.37		$26.07
27501	T		Treatment of thigh fracture	0043	2.4999	$130.37		$26.07
27502	T		Treatment of thigh fracture	0043	2.4999	$130.37		$26.07
27503	T		Treatment of thigh fracture	0043	2.4999	$130.37		$26.07
27506	C		Treatment of thigh fracture					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

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CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
27507	C		Treatment of thigh fracture					
27508	T		Treatment of thigh fracture	0043	2.4999	$130.37		$26.07
27509	T		Treatment of thigh fracture	0046	29.2920	$1,527.61	$535.76	$305.52
27510	T		Treatment of thigh fracture	0043	2.4999	$130.37		$26.07
27511	C		Treatment of thigh fracture					
27513	C		Treatment of thigh fracture					
27514	C		Treatment of thigh fracture					
27516	T		Treat thigh fx growth plate	0043	2.4999	$130.37		$26.07
27517	T		Treat thigh fx growth plate	0043	2.4999	$130.37		$26.07
27519	C		Treat thigh fx growth plate					
27520	T		Treat kneecap fracture	0043	2.4999	$130.37		$26.07
27524	T		Treat kneecap fracture	0046	29.2920	$1,527.61	$535.76	$305.52
27530	T		Treat knee fracture	0043	2.4999	$130.37		$26.07
27532	T		Treat knee fracture	0043	2.4999	$130.37		$26.07
27535	C		Treat knee fracture					
27536	C		Treat knee fracture					
27538	T		Treat knee fracture(s)	0043	2.4999	$130.37		$26.07
27540	C		Treat knee fracture					
27550	T		Treat knee dislocation	0043	2.4999	$130.37		$26.07
27552	T		Treat knee dislocation	0045	12.9357	$674.61	$268.47	$134.92
27556	C		Treat knee dislocation					
27557	C		Treat knee dislocation					
27558	C		Treat knee dislocation					
27560	T		Treat kneecap dislocation	0043	2.4999	$130.37		$26.07
27562	T		Treat kneecap dislocation	0045	12.9357	$674.61	$268.47	$134.92
27566	T		Treat kneecap dislocation	0046	29.2920	$1,527.61	$535.76	$305.52
27570	T		Fixation of knee joint	0045	12.9357	$674.61	$268.47	$134.92
27580	C		Fusion of knee					
27590	C		Amputate leg at thigh					
27591	C		Amputate leg at thigh					
27592	C		Amputate leg at thigh					
27594	T		Amputation follow-up surgery	0049	18.6042	$970.23	$197.14	$194.05
27596	C		Amputation follow-up surgery					
27598	C		Amputate lower leg at knee					
27599	T		Leg surgery procedure	0043	2.4999	$130.37		$26.07
27600	T		Decompression of lower leg	0049	18.6042	$970.23	$197.14	$194.05
27601	T		Decompression of lower leg	0049	18.6042	$970.23	$197.14	$194.05
27602	T		Decompression of lower leg	0049	18.6042	$970.23	$197.14	$194.05
27603	T		Drain lower leg lesion	0008	16.1430	$841.87		$168.37
27604	T		Drain lower leg bursa	0049	18.6042	$970.23	$197.14	$194.05
27605	T		Incision of achilles tendon	0055	17.6740	$921.72	$355.34	$184.34
27606	T		Incision of achilles tendon	0049	18.6042	$970.23	$197.14	$194.05
27607	T		Treat lower leg bone lesion	0049	18.6042	$970.23	$197.14	$194.05
27610	T		Explore/treat ankle joint	0050	23.3037	$1,215.31		$243.06
27612	T		Exploration of ankle joint	0050	23.3037	$1,215.31		$243.06
27613	T		Biopsy lower leg soft tissue	0020	7.1898	$374.96	$113.25	$74.99
27614	T		Biopsy lower leg soft tissue	0022	17.3930	$907.06	$354.45	$181.41
27615	T		Remove tumor, lower leg	0046	29.2920	$1,527.61	$535.76	$305.52
27618	T		Remove lower leg lesion	0021	13.9338	$726.66	$219.48	$145.33
27619	T		Remove lower leg lesion	0022	17.3930	$907.06	$354.45	$181.41
27620	T		Explore/treat ankle joint	0050	23.3037	$1,215.31		$243.06
27625	T		Remove ankle joint lining	0050	23.3037	$1,215.31		$243.06
27626	T		Remove ankle joint lining	0050	23.3037	$1,215.31		$243.06
27630	T		Removal of tendon lesion	0049	18.6042	$970.23	$197.14	$194.05
27635	T		Remove lower leg bone lesion	0050	23.3037	$1,215.31		$243.06
27637	T		Remove/graft leg bone lesion	0050	23.3037	$1,215.31		$243.06
27638	T		Remove/graft leg bone lesion	0050	23.3037	$1,215.31		$243.06
27640	T		Partial removal of tibia	0051	32.9062	$1,716.09		$343.22
27641	T		Partial removal of fibula	0050	23.3037	$1,215.31		$243.06
27645	C		Extensive lower leg surgery					
27646	C		Extensive lower leg surgery					
27647	T		Extensive ankle/heel surgery	0051	32.9062	$1,716.09		$343.22
27648	N		Injection for ankle x-ray					
27650	T		Repair achilles tendon	0051	32.9062	$1,716.09		$343.22
27652	T		Repair/graft achilles tendon	0051	32.9062	$1,716.09		$343.22

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

[Calendar Year 2003]

CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
27654	T		Repair of achilles tendon	0051	32.9062	$1,716.09		$343.22
27656	T		Repair leg fascia defect	0049	18.6042	$970.23	$197.14	$194.05
27658	T		Repair of leg tendon, each	0049	18.6042	$970.23	$197.14	$194.05
27659	T		Repair of leg tendon, each	0049	18.6042	$970.23	$197.14	$194.05
27664	T		Repair of leg tendon, each	0049	18.6042	$970.23	$197.14	$194.05
27665	T		Repair of leg tendon, each	0050	23.3037	$1,215.31		$243.06
27675	T		Repair lower leg tendons	0049	18.6042	$970.23	$197.14	$194.05
27676	T		Repair lower leg tendons	0050	23.3037	$1,215.31		$243.06
27680	T		Release of lower leg tendon	0050	23.3037	$1,215.31		$243.06
27681	T		Release of lower leg tendons	0050	23.3037	$1,215.31		$243.06
27685	T		Revision of lower leg tendon	0050	23.3037	$1,215.31		$243.06
27686	T		Revise lower leg tendons	0050	23.3037	$1,215.31		$243.06
27687	T		Revision of calf tendon	0050	23.3037	$1,215.31		$243.06
27690	T		Revise lower leg tendon	0051	32.9062	$1,716.09		$343.22
27691	T		Revise lower leg tendon	0051	32.9062	$1,716.09		$343.22
27692	T		Revise additional leg tendon	0051	32.9062	$1,716.09		$343.22
27695	T		Repair of ankle ligament	0050	23.3037	$1,215.31		$243.06
27696	T		Repair of ankle ligaments	0050	23.3037	$1,215.31		$243.06
27698	T		Repair of ankle ligament	0050	23.3037	$1,215.31		$243.06
27700	T		Revision of ankle joint	0047	28.2842	$1,475.05	$537.03	$295.01
27702	C		Reconstruct ankle joint					
27703	C		Reconstruction, ankle joint					
27704	T		Removal of ankle implant	0049	18.6042	$970.23	$197.14	$194.05
27705	T		Incision of tibia	0051	32.9062	$1,716.09		$343.22
27707	T		Incision of fibula	0049	18.6042	$970.23	$197.14	$194.05
27709	T		Incision of tibia & fibula	0050	23.3037	$1,215.31		$243.06
27712	C		Realignment of lower leg					
27715	C		Revision of lower leg					
27720	C		Repair of tibia					
27722	C		Repair/graft of tibia					
27724	C		Repair/graft of tibia					
27725	C		Repair of lower leg					
27727	C		Repair of lower leg					
27730	T		Repair of tibia epiphysis	0050	23.3037	$1,215.31		$243.06
27732	T		Repair of fibula epiphysis	0050	23.3037	$1,215.31		$243.06
27734	T		Repair lower leg epiphyses	0050	23.3037	$1,215.31		$243.06
27740	T		Repair of leg epiphyses	0050	23.3037	$1,215.31		$243.06
27742	T		Repair of leg epiphyses	0051	32.9062	$1,716.09		$343.22
27745	T		Reinforce tibia	0051	32.9062	$1,716.09		$343.22
27750	T		Treatment of tibia fracture	0043	2.4999	$130.37		$26.07
27752	T		Treatment of tibia fracture	0043	2.4999	$130.37		$26.07
27756	T		Treatment of tibia fracture	0046	29.2920	$1,527.61	$535.76	$305.52
27758	T		Treatment of tibia fracture	0046	29.2920	$1,527.61	$535.76	$305.52
27759	T		Treatment of tibia fracture	0046	29.2920	$1,527.61	$535.76	$305.52
27760	T		Treatment of ankle fracture	0043	2.4999	$130.37		$26.07
27762	T		Treatment of ankle fracture	0043	2.4999	$130.37		$26.07
27766	T		Treatment of ankle fracture	0046	29.2920	$1,527.61	$535.76	$305.52
27780	T		Treatment of fibula fracture	0043	2.4999	$130.37		$26.07
27781	T		Treatment of fibula fracture	0043	2.4999	$130.37		$26.07
27784	T		Treatment of fibula fracture	0046	29.2920	$1,527.61	$535.76	$305.52
27786	T		Treatment of ankle fracture	0043	2.4999	$130.37		$26.07
27788	T		Treatment of ankle fracture	0043	2.4999	$130.37		$26.07
27792	T		Treatment of ankle fracture	0046	29.2920	$1,527.61	$535.76	$305.52
27808	T		Treatment of ankle fracture	0043	2.4999	$130.37		$26.07
27810	T		Treatment of ankle fracture	0043	2.4999	$130.37		$26.07
27814	T		Treatment of ankle fracture	0046	29.2920	$1,527.61	$535.76	$305.52
27816	T		Treatment of ankle fracture	0043	2.4999	$130.37		$26.07
27818	T		Treatment of ankle fracture	0043	2.4999	$130.37		$26.07
27822	T		Treatment of ankle fracture	0046	29.2920	$1,527.61	$535.76	$305.52
27823	T		Treatment of ankle fracture	0046	29.2920	$1,527.61	$535.76	$305.52
27824	T		Treat lower leg fracture	0043	2.4999	$130.37		$26.07
27825	T		Treat lower leg fracture	0043	2.4999	$130.37		$26.07
27826	T		Treat lower leg fracture	0046	29.2920	$1,527.61	$535.76	$305.52
27827	T		Treat lower leg fracture	0046	29.2920	$1,527.61	$535.76	$305.52
27828	T		Treat lower leg fracture	0046	29.2920	$1,527.61	$535.76	$305.52

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

[Calendar Year 2003]

CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
27829	T		Treat lower leg joint	0046	29.2920	$1,527.61	$535.76	$305.52
27830	T		Treat lower leg dislocation	0043	2.4999	$130.37		$26.07
27831	T		Treat lower leg dislocation	0043	2.4999	$130.37		$26.07
27832	T		Treat lower leg dislocation	0046	29.2920	$1,527.61	$535.76	$305.52
27840	T		Treat ankle dislocation	0043	2.4999	$130.37		$26.07
27842	T		Treat ankle dislocation	0045	12.9357	$674.61	$268.47	$134.92
27846	T		Treat ankle dislocation	0046	29.2920	$1,527.61	$535.76	$305.52
27848	T		Treat ankle dislocation	0046	29.2920	$1,527.61	$535.76	$305.52
27860	T		Fixation of ankle joint	0045	12.9357	$674.61	$268.47	$134.92
27870	T		Fusion of ankle joint	0051	32.9062	$1,716.09		$343.22
27871	T		Fusion of tibiofibular joint	0051	32.9062	$1,716.09		$343.22
27880	C		Amputation of lower leg					
27881	C		Amputation of lower leg					
27882	C		Amputation of lower leg					
27884	T		Amputation follow-up surgery	0049	18.6042	$970.23	$197.14	$194.05
27886	C		Amputation follow-up surgery					
27888	C		Amputation of foot at ankle					
27889	T		Amputation of foot at ankle	0050	23.3037	$1,215.31		$243.06
27892	T		Decompression of leg	0049	18.6042	$970.23	$197.14	$194.05
27893	T		Decompression of leg	0049	18.6042	$970.23	$197.14	$194.05
27894	T		Decompression of leg	0049	18.6042	$970.23	$197.14	$194.05
27899	T		Leg/ankle surgery procedure	0043	2.4999	$130.37		$26.07
28001	T		Drainage of bursa of foot	0008	16.1430	$841.87		$168.37
28002	T		Treatment of foot infection	0049	18.6042	$970.23	$197.14	$194.05
28003	T		Treatment of foot infection	0049	18.6042	$970.23	$197.14	$194.05
28005	T		Treat foot bone lesion	0055	17.6740	$921.72	$355.34	$184.34
28008	T		Incision of foot fascia	0055	17.6740	$921.72	$355.34	$184.34
28010	T		Incision of toe tendon	0055	17.6740	$921.72	$355.34	$184.34
28011	T		Incision of toe tendons	0055	17.6740	$921.72	$355.34	$184.34
28020	T		Exploration of foot joint	0055	17.6740	$921.72	$355.34	$184.34
28022	T		Exploration of foot joint	0055	17.6740	$921.72	$355.34	$184.34
28024	T		Exploration of toe joint	0055	17.6740	$921.72	$355.34	$184.34
28030	T		Removal of foot nerve	0220	15.8136	$824.70		$164.94
28035	T		Decompression of tibia nerve	0220	15.8136	$824.70		$164.94
28043	T		Excision of foot lesion	0021	13.9338	$726.66	$219.48	$145.33
28045	T		Excision of foot lesion	0055	17.6740	$921.72	$355.34	$184.34
28046	T		Resection of tumor, foot	0055	17.6740	$921.72	$355.34	$184.34
28050	T		Biopsy of foot joint lining	0055	17.6740	$921.72	$355.34	$184.34
28052	T		Biopsy of foot joint lining	0055	17.6740	$921.72	$355.34	$184.34
28054	T		Biopsy of toe joint lining	0055	17.6740	$921.72	$355.34	$184.34
28060	T		Partial removal, foot fascia	0056	22.1700	$1,156.19	$405.81	$231.24
28062	T		Removal of foot fascia	0056	22.1700	$1,156.19	$405.81	$231.24
28070	T		Removal of foot joint lining	0056	22.1700	$1,156.19	$405.81	$231.24
28072	T		Removal of foot joint lining	0056	22.1700	$1,156.19	$405.81	$231.24
28080	T		Removal of foot lesion	0055	17.6740	$921.72	$355.34	$184.34
28086	T		Excise foot tendon sheath	0055	17.6740	$921.72	$355.34	$184.34
28088	T		Excise foot tendon sheath	0055	17.6740	$921.72	$355.34	$184.34
28090	T		Removal of foot lesion	0055	17.6740	$921.72	$355.34	$184.34
28092	T		Removal of toe lesions	0055	17.6740	$921.72	$355.34	$184.34
28100	T		Removal of ankle/heel lesion	0055	17.6740	$921.72	$355.34	$184.34
28102	T		Remove/graft foot lesion	0056	22.1700	$1,156.19	$405.81	$231.24
28103	T		Remove/graft foot lesion	0056	22.1700	$1,156.19	$405.81	$231.24
28104	T		Removal of foot lesion	0055	17.6740	$921.72	$355.34	$184.34
28106	T		Remove/graft foot lesion	0056	22.1700	$1,156.19	$405.81	$231.24
28107	T		Remove/graft foot lesion	0056	22.1700	$1,156.19	$405.81	$231.24
28108	T		Removal of toe lesions	0055	17.6740	$921.72	$355.34	$184.34
28110	T		Part removal of metatarsal	0056	22.1700	$1,156.19	$405.81	$231.24
28111	T		Part removal of metatarsal	0055	17.6740	$921.72	$355.34	$184.34
28112	T		Part removal of metatarsal	0055	17.6740	$921.72	$355.34	$184.34
28113	T		Part removal of metatarsal	0055	17.6740	$921.72	$355.34	$184.34
28114	T		Removal of metatarsal heads	0055	17.6740	$921.72	$355.34	$184.34
28116	T		Revision of foot	0055	17.6740	$921.72	$355.34	$184.34
28118	T		Removal of heel bone	0055	17.6740	$921.72	$355.34	$184.34
28119	T		Removal of heel spur	0055	17.6740	$921.72	$355.34	$184.34
28120	T		Part removal of ankle/heel	0055	17.6740	$921.72	$355.34	$184.34

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

[Calendar Year 2003]

CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
28122	T		Partial removal of foot bone	0055	17.6740	$921.72	$355.34	$184.34
28124	T		Partial removal of toe	0055	17.6740	$921.72	$355.34	$184.34
28126	T		Partial removal of toe	0055	17.6740	$921.72	$355.34	$184.34
28130	T		Removal of ankle bone	0055	17.6740	$921.72	$355.34	$184.34
28140	T		Removal of metatarsal	0055	17.6740	$921.72	$355.34	$184.34
28150	T		Removal of toe	0055	17.6740	$921.72	$355.34	$184.34
28153	T		Partial removal of toe	0055	17.6740	$921.72	$355.34	$184.34
28160	T		Partial removal of toe	0055	17.6740	$921.72	$355.34	$184.34
28171	T		Extensive foot surgery	0055	17.6740	$921.72	$355.34	$184.34
28173	T		Extensive foot surgery	0055	17.6740	$921.72	$355.34	$184.34
28175	T		Extensive foot surgery	0055	17.6740	$921.72	$355.34	$184.34
28190	T		Removal of foot foreign body	0019	3.7693	$196.57	$71.87	$39.31
28192	T		Removal of foot foreign body	0021	13.9338	$726.66	$219.48	$145.33
28193	T		Removal of foot foreign body	0021	13.9338	$726.66	$219.48	$145.33
28200	T		Repair of foot tendon	0055	17.6740	$921.72	$355.34	$184.34
28202	T		Repair/graft of foot tendon	0056	22.1700	$1,156.19	$405.81	$231.24
28208	T		Repair of foot tendon	0055	17.6740	$921.72	$355.34	$184.34
28210	T		Repair/graft of foot tendon	0055	17.6740	$921.72	$355.34	$184.34
28220	T		Release of foot tendon	0055	17.6740	$921.72	$355.34	$184.34
28222	T		Release of foot tendons	0055	17.6740	$921.72	$355.34	$184.34
28225	T		Release of foot tendon	0055	17.6740	$921.72	$355.34	$184.34
28226	T		Release of foot tendons	0055	17.6740	$921.72	$355.34	$184.34
28230	T		Incision of foot tendon(s)	0055	17.6740	$921.72	$355.34	$184.34
28232	T		Incision of toe tendon	0055	17.6740	$921.72	$355.34	$184.34
28234	T		Incision of foot tendon	0055	17.6740	$921.72	$355.34	$184.34
28238	T		Revision of foot tendon	0056	22.1700	$1,156.19	$405.81	$231.24
28240	T		Release of big toe	0055	17.6740	$921.72	$355.34	$184.34
28250	T		Revision of foot fascia	0056	22.1700	$1,156.19	$405.81	$231.24
28260	T		Release of midfoot joint	0056	22.1700	$1,156.19	$405.81	$231.24
28261	T		Revision of foot tendon	0056	22.1700	$1,156.19	$405.81	$231.24
28262	T		Revision of foot and ankle	0056	22.1700	$1,156.19	$405.81	$231.24
28264	T		Release of midfoot joint	0056	22.1700	$1,156.19	$405.81	$231.24
28270	T		Release of foot contracture	0055	17.6740	$921.72	$355.34	$184.34
28272	T		Release of toe joint, each	0055	17.6740	$921.72	$355.34	$184.34
28280	T		Fusion of toes	0055	17.6740	$921.72	$355.34	$184.34
28285	T		Repair of hammertoe	0055	17.6740	$921.72	$355.34	$184.34
28286	T		Repair of hammertoe	0055	17.6740	$921.72	$355.34	$184.34
28288	T		Partial removal of foot bone	0056	22.1700	$1,156.19	$405.81	$231.24
28289	T		Repair hallux rigidus	0056	22.1700	$1,156.19	$405.81	$231.24
28290	T		Correction of bunion	0056	22.1700	$1,156.19	$405.81	$231.24
28292	T		Correction of bunion	0057	22.9064	$1,194.59	$475.91	$238.92
28293	T		Correction of bunion	0057	22.9064	$1,194.59	$475.91	$238.92
28294	T		Correction of bunion	0056	22.1700	$1,156.19	$405.81	$231.24
28296	T		Correction of bunion	0056	22.1700	$1,156.19	$405.81	$231.24
28297	T		Correction of bunion	0057	22.9064	$1,194.59	$475.91	$238.92
28298	T		Correction of bunion	0056	22.1700	$1,156.19	$405.81	$231.24
28299	T		Correction of bunion	0057	22.9064	$1,194.59	$475.91	$238.92
28300	T		Incision of heel bone	0056	22.1700	$1,156.19	$405.81	$231.24
28302	T		Incision of ankle bone	0056	22.1700	$1,156.19	$405.81	$231.24
28304	T		Incision of midfoot bones	0056	22.1700	$1,156.19	$405.81	$231.24
28305	T		Incise/graft midfoot bones	0056	22.1700	$1,156.19	$405.81	$231.24
28306	T		Incision of metatarsal	0056	22.1700	$1,156.19	$405.81	$231.24
28307	T		Incision of metatarsal	0056	22.1700	$1,156.19	$405.81	$231.24
28308	T		Incision of metatarsal	0056	22.1700	$1,156.19	$405.81	$231.24
28309	T		Incision of metatarsals	0056	22.1700	$1,156.19	$405.81	$231.24
28310	T		Revision of big toe	0055	17.6740	$921.72	$355.34	$184.34
28312	T		Revision of toe	0055	17.6740	$921.72	$355.34	$184.34
28313	T		Repair deformity of toe	0055	17.6740	$921.72	$355.34	$184.34
28315	T		Removal of sesamoid bone	0055	17.6740	$921.72	$355.34	$184.34
28320	T		Repair of foot bones	0056	22.1700	$1,156.19	$405.81	$231.24
28322	T		Repair of metatarsals	0056	22.1700	$1,156.19	$405.81	$231.24
28340	T		Resect enlarged toe tissue	0055	17.6740	$921.72	$355.34	$184.34
28341	T		Resect enlarged toe	0055	17.6740	$921.72	$355.34	$184.34
28344	T		Repair extra toe(s)	0056	22.1700	$1,156.19	$405.81	$231.24
28345	T		Repair webbed toe(s)	0056	22.1700	$1,156.19	$405.81	$231.24

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

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CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
28360	T		Reconstruct cleft foot	0056	22.1700	$1,156.19	$405.81	$231.24
28400	T		Treatment of heel fracture	0043	2.4999	$130.37		$26.07
28405	T		Treatment of heel fracture	0043	2.4999	$130.37		$26.07
28406	T		Treatment of heel fracture	0046	29.2920	$1,527.61	$535.76	$305.52
28415	T		Treat heel fracture	0046	29.2920	$1,527.61	$535.76	$305.52
28420	T		Treat/graft heel fracture	0046	29.2920	$1,527.61	$535.76	$305.52
28430	T		Treatment of ankle fracture	0043	2.4999	$130.37		$26.07
28435	T		Treatment of ankle fracture	0043	2.4999	$130.37		$26.07
28436	T		Treatment of ankle fracture	0046	29.2920	$1,527.61	$535.76	$305.52
28445	T		Treat ankle fracture	0046	29.2920	$1,527.61	$535.76	$305.52
28450	T		Treat midfoot fracture, each	0043	2.4999	$130.37		$26.07
28455	T		Treat midfoot fracture, each	0043	2.4999	$130.37		$26.07
28456	T		Treat midfoot fracture	0046	29.2920	$1,527.61	$535.76	$305.52
28465	T		Treat midfoot fracture, each	0046	29.2920	$1,527.61	$535.76	$305.52
28470	T		Treat metatarsal fracture	0043	2.4999	$130.37		$26.07
28475	T		Treat metatarsal fracture	0043	2.4999	$130.37		$26.07
28476	T		Treat metatarsal fracture	0046	29.2920	$1,527.61	$535.76	$305.52
28485	T		Treat metatarsal fracture	0046	29.2920	$1,527.61	$535.76	$305.52
28490	T		Treat big toe fracture	0043	2.4999	$130.37		$26.07
28495	T		Treat big toe fracture	0043	2.4999	$130.37		$26.07
28496	T		Treat big toe fracture	0046	29.2920	$1,527.61	$535.76	$305.52
28505	T		Treat big toe fracture	0046	29.2920	$1,527.61	$535.76	$305.52
28510	T		Treatment of toe fracture	0043	2.4999	$130.37		$26.07
28515	T		Treatment of toe fracture	0043	2.4999	$130.37		$26.07
28525	T		Treat toe fracture	0046	29.2920	$1,527.61	$535.76	$305.52
28530	T		Treat sesamoid bone fracture	0043	2.4999	$130.37		$26.07
28531	T		Treat sesamoid bone fracture	0046	29.2920	$1,527.61	$535.76	$305.52
28540	T		Treat foot dislocation	0043	2.4999	$130.37		$26.07
28545	T		Treat foot dislocation	0045	12.9357	$674.61	$268.47	$134.92
28546	T		Treat foot dislocation	0046	29.2920	$1,527.61	$535.76	$305.52
28555	T		Repair foot dislocation	0046	29.2920	$1,527.61	$535.76	$305.52
28570	T		Treat foot dislocation	0043	2.4999	$130.37		$26.07
28575	T		Treat foot dislocation	0043	2.4999	$130.37		$26.07
28576	T		Treat foot dislocation	0046	29.2920	$1,527.61	$535.76	$305.52
28585	T		Repair foot dislocation	0046	29.2920	$1,527.61	$535.76	$305.52
28600	T		Treat foot dislocation	0043	2.4999	$130.37		$26.07
28605	T		Treat foot dislocation	0043	2.4999	$130.37		$26.07
28606	T		Treat foot dislocation	0046	29.2920	$1,527.61	$535.76	$305.52
28615	T		Repair foot dislocation	0046	29.2920	$1,527.61	$535.76	$305.52
28630	T		Treat toe dislocation	0043	2.4999	$130.37		$26.07
28635	T		Treat toe dislocation	0045	12.9357	$674.61	$268.47	$134.92
28636	T		Treat toe dislocation	0046	29.2920	$1,527.61	$535.76	$305.52
28645	T		Repair toe dislocation	0046	29.2920	$1,527.61	$535.76	$305.52
28660	T		Treat toe dislocation	0043	2.4999	$130.37		$26.07
28665	T		Treat toe dislocation	0045	12.9357	$674.61	$268.47	$134.92
28666	T		Treat toe dislocation	0046	29.2920	$1,527.61	$535.76	$305.52
28675	T		Repair of toe dislocation	0046	29.2920	$1,527.61	$535.76	$305.52
28705	T		Fusion of foot bones	0056	22.1700	$1,156.19	$405.81	$231.24
28715	T		Fusion of foot bones	0056	22.1700	$1,156.19	$405.81	$231.24
28725	T		Fusion of foot bones	0056	22.1700	$1,156.19	$405.81	$231.24
28730	T		Fusion of foot bones	0056	22.1700	$1,156.19	$405.81	$231.24
28735	T		Fusion of foot bones	0056	22.1700	$1,156.19	$405.81	$231.24
28737	T		Revision of foot bones	0055	17.6740	$921.72	$355.34	$184.34
28740	T		Fusion of foot bones	0056	22.1700	$1,156.19	$405.81	$231.24
28750	T		Fusion of big toe joint	0055	17.6740	$921.72	$355.34	$184.34
28755	T		Fusion of big toe joint	0055	17.6740	$921.72	$355.34	$184.34
28760	T		Fusion of big toe joint	0056	22.1700	$1,156.19	$405.81	$231.24
28800	C		Amputation of midfoot					
28805	C		Amputation thru metatarsal					
28810	T		Amputation toe & metatarsal	0055	17.6740	$921.72	$355.34	$184.34
28820	T		Amputation of toe	0055	17.6740	$921.72	$355.34	$184.34
28825	T		Partial amputation of toe	0055	17.6740	$921.72	$355.34	$184.34
28899	T		Foot/toes surgery procedure	0043	2.4999	$130.37		$26.07
29000	S		Application of body cast	0058	1.0368	$54.07		$10.81
29010	S		Application of body cast	0058	1.0368	$54.07		$10.81

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

[Calendar Year 2003]

CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
29015	S		Application of body cast	0058	1.0368	$54.07		$10.81
29020	S		Application of body cast	0058	1.0368	$54.07		$10.81
29025	S		Application of body cast	0058	1.0368	$54.07		$10.81
29035	S		Application of body cast	0058	1.0368	$54.07		$10.81
29040	S		Application of body cast	0058	1.0368	$54.07		$10.81
29044	S		Application of body cast	0058	1.0368	$54.07		$10.81
29046	S		Application of body cast	0058	1.0368	$54.07		$10.81
29049	S		Application of figure eight	0058	1.0368	$54.07		$10.81
29055	S		Application of shoulder cast	0058	1.0368	$54.07		$10.81
29058	S		Application of shoulder cast	0058	1.0368	$54.07		$10.81
29065	S		Application of long arm cast	0058	1.0368	$54.07		$10.81
29075	S		Application of forearm cast	0058	1.0368	$54.07		$10.81
29085	S		Apply hand/wrist cast	0058	1.0368	$54.07		$10.81
29086	S		Apply finger cast	0058	1.0368	$54.07		$10.81
29105	S		Apply long arm splint	0058	1.0368	$54.07		$10.81
29125	S		Apply forearm splint	0058	1.0368	$54.07		$10.81
29126	S		Apply forearm splint	0058	1.0368	$54.07		$10.81
29130	S		Application of finger splint	0058	1.0368	$54.07		$10.81
29131	S		Application of finger splint	0058	1.0368	$54.07		$10.81
29200	S		Strapping of chest	0058	1.0368	$54.07		$10.81
29220	S		Strapping of low back	0058	1.0368	$54.07		$10.81
29240	S		Strapping of shoulder	0058	1.0368	$54.07		$10.81
29260	S		Strapping of elbow or wrist	0058	1.0368	$54.07		$10.81
29280	S		Strapping of hand or finger	0058	1.0368	$54.07		$10.81
29305	S		Application of hip cast	0058	1.0368	$54.07		$10.81
29325	S		Application of hip casts	0058	1.0368	$54.07		$10.81
29345	S		Application of long leg cast	0058	1.0368	$54.07		$10.81
29355	S		Application of long leg cast	0058	1.0368	$54.07		$10.81
29358	S		Apply long leg cast brace	0058	1.0368	$54.07		$10.81
29365	S		Application of long leg cast	0058	1.0368	$54.07		$10.81
29405	S		Apply short leg cast	0058	1.0368	$54.07		$10.81
29425	S		Apply short leg cast	0058	1.0368	$54.07		$10.81
29435	S		Apply short leg cast	0058	1.0368	$54.07		$10.81
29440	S		Addition of walker to cast	0058	1.0368	$54.07		$10.81
29445	S		Apply rigid leg cast	0058	1.0368	$54.07		$10.81
29450	S		Application of leg cast	0058	1.0368	$54.07		$10.81
29505	S		Application, long leg splint	0058	1.0368	$54.07		$10.81
29515	S		Application lower leg splint	0058	1.0368	$54.07		$10.81
29520	S		Strapping of hip	0058	1.0368	$54.07		$10.81
29530	S		Strapping of knee	0058	1.0368	$54.07		$10.81
29540	S		Strapping of ankle	0058	1.0368	$54.07		$10.81
29550	S		Strapping of toes	0058	1.0368	$54.07		$10.81
29580	S		Application of paste boot	0058	1.0368	$54.07		$10.81
29590	S		Application of foot splint	0058	1.0368	$54.07		$10.81
29700	S		Removal/revision of cast	0058	1.0368	$54.07		$10.81
29705	S		Removal/revision of cast	0058	1.0368	$54.07		$10.81
29710	S		Removal/revision of cast	0058	1.0368	$54.07		$10.81
29715	S		Removal/revision of cast	0058	1.0368	$54.07		$10.81
29720	S		Repair of body cast	0058	1.0368	$54.07		$10.81
29730	S		Windowing of cast	0058	1.0368	$54.07		$10.81
29740	S		Wedging of cast	0058	1.0368	$54.07		$10.81
29750	S		Wedging of clubfoot cast	0058	1.0368	$54.07		$10.81
29799	S		Casting/strapping procedure	0058	1.0368	$54.07		$10.81
29800	T		Jaw arthroscopy/surgery	0041	26.1234	$1,362.36		$272.47
29804	T		Jaw arthroscopy/surgery	0041	26.1234	$1,362.36		$272.47
29805	T		Shoulder arthroscopy, dx	0041	26.1234	$1,362.36		$272.47
29806	T		Shoulder arthroscopy/surgery	0041	26.1234	$1,362.36		$272.47
29807	T		Shoulder arthroscopy/surgery	0041	26.1234	$1,362.36		$272.47
29819	T		Shoulder arthroscopy/surgery	0041	26.1234	$1,362.36		$272.47
29820	T		Shoulder arthroscopy/surgery	0041	26.1234	$1,362.36		$272.47
29821	T		Shoulder arthroscopy/surgery	0041	26.1234	$1,362.36		$272.47
29822	T		Shoulder arthroscopy/surgery	0041	26.1234	$1,362.36		$272.47
29823	T		Shoulder arthroscopy/surgery	0041	26.1234	$1,362.36		$272.47
29824	T		Shoulder arthroscopy/surgery	0041	26.1234	$1,362.36		$272.47
29825	T		Shoulder arthroscopy/surgery	0041	26.1234	$1,362.36		$272.47

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

[Calendar Year 2003]

CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
29826	T		Shoulder arthroscopy/surgery	0042	40.9680	$2,136.52	$804.74	$427.30
29827	T	NI	Arthroscop rotator cuff repr	0041	26.1234	$1,362.36		$272.47
29830	T		Elbow arthroscopy	0041	26.1234	$1,362.36		$272.47
29834	T		Elbow arthroscopy/surgery	0041	26.1234	$1,362.36		$272.47
29835	T		Elbow arthroscopy/surgery	0042	40.9680	$2,136.52	$804.74	$427.30
29836	T		Elbow arthroscopy/surgery	0042	40.9680	$2,136.52	$804.74	$427.30
29837	T		Elbow arthroscopy/surgery	0041	26.1234	$1,362.36		$272.47
29838	T		Elbow arthroscopy/surgery	0041	26.1234	$1,362.36		$272.47
29840	T		Wrist arthroscopy	0041	26.1234	$1,362.36		$272.47
29843	T		Wrist arthroscopy/surgery	0041	26.1234	$1,362.36		$272.47
29844	T		Wrist arthroscopy/surgery	0041	26.1234	$1,362.36		$272.47
29845	T		Wrist arthroscopy/surgery	0041	26.1234	$1,362.36		$272.47
29846	T		Wrist arthroscopy/surgery	0041	26.1234	$1,362.36		$272.47
29847	T		Wrist arthroscopy/surgery	0041	26.1234	$1,362.36		$272.47
29848	T		Wrist endoscopy/surgery	0041	26.1234	$1,362.36		$272.47
29850	T		Knee arthroscopy/surgery	0041	26.1234	$1,362.36		$272.47
29851	T		Knee arthroscopy/surgery	0041	26.1234	$1,362.36		$272.47
29855	T		Tibial arthroscopy/surgery	0042	40.9680	$2,136.52	$804.74	$427.30
29856	T		Tibial arthroscopy/surgery	0041	26.1234	$1,362.36		$272.47
29860	T		Hip arthroscopy, dx	0041	26.1234	$1,362.36		$272.47
29861	T		Hip arthroscopy/surgery	0041	26.1234	$1,362.36		$272.47
29862	T		Hip arthroscopy/surgery	0042	40.9680	$2,136.52	$804.74	$427.30
29863	T		Hip arthroscopy/surgery	0042	40.9680	$2,136.52	$804.74	$427.30
29870	T		Knee arthroscopy, dx	0041	26.1234	$1,362.36		$272.47
29871	T		Knee arthroscopy/drainage	0041	26.1234	$1,362.36		$272.47
29873	T	NI	Knee arthroscopy/surgery	0041	26.1234	$1,362.36		$272.47
29874	T		Knee arthroscopy/surgery	0041	26.1234	$1,362.36		$272.47
29875	T		Knee arthroscopy/surgery	0041	26.1234	$1,362.36		$272.47
29876	T		Knee arthroscopy/surgery	0041	26.1234	$1,362.36		$272.47
29877	T		Knee arthroscopy/surgery	0041	26.1234	$1,362.36		$272.47
29879	T		Knee arthroscopy/surgery	0041	26.1234	$1,362.36		$272.47
29880	T		Knee arthroscopy/surgery	0041	26.1234	$1,362.36		$272.47
29881	T		Knee arthroscopy/surgery	0041	26.1234	$1,362.36		$272.47
29882	T		Knee arthroscopy/surgery	0041	26.1234	$1,362.36		$272.47
29883	T		Knee arthroscopy/surgery	0041	26.1234	$1,362.36		$272.47
29884	T		Knee arthroscopy/surgery	0041	26.1234	$1,362.36		$272.47
29885	T		Knee arthroscopy/surgery	0041	26.1234	$1,362.36		$272.47
29886	T		Knee arthroscopy/surgery	0041	26.1234	$1,362.36		$272.47
29887	T		Knee arthroscopy/surgery	0041	26.1234	$1,362.36		$272.47
29888	T		Knee arthroscopy/surgery	0042	40.9680	$2,136.52	$804.74	$427.30
29889	T		Knee arthroscopy/surgery	0042	40.9680	$2,136.52	$804.74	$427.30
29891	T		Ankle arthroscopy/surgery	0041	26.1234	$1,362.36		$272.47
29892	T		Ankle arthroscopy/surgery	0041	26.1234	$1,362.36		$272.47
29893	T		Scope, plantar fasciotomy	0055	17.6740	$921.72	$355.34	$184.34
29894	T		Ankle arthroscopy/surgery	0041	26.1234	$1,362.36		$272.47
29895	T		Ankle arthroscopy/surgery	0041	26.1234	$1,362.36		$272.47
29897	T		Ankle arthroscopy/surgery	0041	26.1234	$1,362.36		$272.47
29898	T		Ankle arthroscopy/surgery	0041	26.1234	$1,362.36		$272.47
29899	T	NI	Ankle arthroscopy/surgery	0041	26.1234	$1,362.36		$272.47
29900	T		Mcp joint arthroscopy, dx	0053	14.1760	$739.29	$253.49	$147.86
29901	T		Mcp joint arthroscopy, surg	0053	14.1760	$739.29	$253.49	$147.86
29902	T		Mcp joint arthroscopy, surg	0053	14.1760	$739.29	$253.49	$147.86
29999	T		Arthroscopy of joint	0041	26.1234	$1,362.36		$272.47
30000	T		Drainage of nose lesion	0251	1.9089	$99.55		$19.91
30020	T		Drainage of nose lesion	0251	1.9089	$99.55		$19.91
30100	T		Intranasal biopsy	0252	5.8041	$302.69	$113.41	$60.54
30110	T		Removal of nose polyp(s)	0253	14.4473	$753.44	$282.29	$150.69
30115	T		Removal of nose polyp(s)	0253	14.4473	$753.44	$282.29	$150.69
30117	T		Removal of intranasal lesion	0253	14.4473	$753.44	$282.29	$150.69
30118	T		Removal of intranasal lesion	0254	20.1158	$1,049.06	$321.35	$209.81
30120	T		Revision of nose	0253	14.4473	$753.44	$282.29	$150.69
30124	T		Removal of nose lesion	0252	5.8041	$302.69	$113.41	$60.54
30125	T		Removal of nose lesion	0256	34.0302	$1,774.71		$354.94
30130	T		Removal of turbinate bones	0253	14.4473	$753.44	$282.29	$150.69
30140	T		Removal of turbinate bones	0254	20.1158	$1,049.06	$321.35	$209.81

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

[Calendar Year 2003]

CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
30150	T		Partial removal of nose	0256	34.0302	$1,774.71		$354.94
30160	T		Removal of nose	0256	34.0302	$1,774.71		$354.94
30200	T		Injection treatment of nose	0253	14.4473	$753.44	$282.29	$150.69
30210	T		Nasal sinus therapy	0252	5.8041	$302.69	$113.41	$60.54
30220	T		Insert nasal septal button	0252	5.8041	$302.69	$113.41	$60.54
30300	X		Remove nasal foreign body	0340	0.6492	$33.86		$6.77
30310	T		Remove nasal foreign body	0253	14.4473	$753.44	$282.29	$150.69
30320	T		Remove nasal foreign body	0253	14.4473	$753.44	$282.29	$150.69
30400	T		Reconstruction of nose	0256	34.0302	$1,774.71		$354.94
30410	T		Reconstruction of nose	0256	34.0302	$1,774.71		$354.94
30420	T		Reconstruction of nose	0256	34.0302	$1,774.71		$354.94
30430	T		Revision of nose	0254	20.1158	$1,049.06	$321.35	$209.81
30435	T		Revision of nose	0256	34.0302	$1,774.71		$354.94
30450	T		Revision of nose	0256	34.0302	$1,774.71		$354.94
30460	T		Revision of nose	0256	34.0302	$1,774.71		$354.94
30462	T		Revision of nose	0256	34.0302	$1,774.71		$354.94
30465	T		Repair nasal stenosis	0256	34.0302	$1,774.71		$354.94
30520	T		Repair of nasal septum	0254	20.1158	$1,049.06	$321.35	$209.81
30540	T		Repair nasal defect	0256	34.0302	$1,774.71		$354.94
30545	T		Repair nasal defect	0256	34.0302	$1,774.71		$354.94
30560	T		Release of nasal adhesions	0251	1.9089	$99.55		$19.91
30580	T		Repair upper jaw fistula	0256	34.0302	$1,774.71		$354.94
30600	T		Repair mouth/nose fistula	0256	34.0302	$1,774.71		$354.94
30620	T		Intranasal reconstruction	0256	34.0302	$1,774.71		$354.94
30630	T		Repair nasal septum defect	0254	20.1158	$1,049.06	$321.35	$209.81
30801	T		Cauterization, inner nose	0252	5.8041	$302.69	$113.41	$60.54
30802	T		Cauterization, inner nose	0253	14.4473	$753.44	$282.29	$150.69
30901	T		Control of nosebleed	0250	1.6376	$85.40	$29.89	$17.08
30903	T		Control of nosebleed	0250	1.6376	$85.40	$29.89	$17.08
30905	T		Control of nosebleed	0250	1.6376	$85.40	$29.89	$17.08
30906	T		Repeat control of nosebleed	0250	1.6376	$85.40	$29.89	$17.08
30915	T		Ligation, nasal sinus artery	0091	26.7048	$1,392.68	$348.23	$278.54
30920	T		Ligation, upper jaw artery	0092	23.7882	$1,240.58	$505.37	$248.12
30930	T		Therapy, fracture of nose	0253	14.4473	$753.44	$282.29	$150.69
30999	T		Nasal surgery procedure	0251	1.9089	$99.55		$19.91
31000	T		Irrigation, maxillary sinus	0251	1.9089	$99.55		$19.91
31002	T		Irrigation, sphenoid sinus	0252	5.8041	$302.69	$113.41	$60.54
31020	T		Exploration, maxillary sinus	0254	20.1158	$1,049.06	$321.35	$209.81
31030	T		Exploration, maxillary sinus	0256	34.0302	$1,774.71		$354.94
31032	T		Explore sinus, remove polyps	0256	34.0302	$1,774.71		$354.94
31040	T		Exploration behind upper jaw	0254	20.1158	$1,049.06	$321.35	$209.81
31050	T		Exploration, sphenoid sinus	0256	34.0302	$1,774.71		$354.94
31051	T		Sphenoid sinus surgery	0256	34.0302	$1,774.71		$354.94
31070	T		Exploration of frontal sinus	0254	20.1158	$1,049.06	$321.35	$209.81
31075	T		Exploration of frontal sinus	0256	34.0302	$1,774.71		$354.94
31080	T		Removal of frontal sinus	0256	34.0302	$1,774.71		$354.94
31081	T		Removal of frontal sinus	0256	34.0302	$1,774.71		$354.94
31084	T		Removal of frontal sinus	0256	34.0302	$1,774.71		$354.94
31085	T		Removal of frontal sinus	0256	34.0302	$1,774.71		$354.94
31086	T		Removal of frontal sinus	0256	34.0302	$1,774.71		$354.94
31087	T		Removal of frontal sinus	0256	34.0302	$1,774.71		$354.94
31090	T		Exploration of sinuses	0256	34.0302	$1,774.71		$354.94
31200	T		Removal of ethmoid sinus	0256	34.0302	$1,774.71		$354.94
31201	T		Removal of ethmoid sinus	0256	34.0302	$1,774.71		$354.94
31205	T		Removal of ethmoid sinus	0256	34.0302	$1,774.71		$354.94
31225	C		Removal of upper jaw					
31230	C		Removal of upper jaw					
31231	T		Nasal endoscopy, dx	0071	0.9205	$48.00	$12.89	$9.60
31233	T		Nasal/sinus endoscopy, dx	0073	3.1976	$166.76	$73.38	$33.35
31235	T		Nasal/sinus endoscopy, dx	0074	12.8582	$670.57	$295.70	$134.11
31237	T		Nasal/sinus endoscopy, surg	0075	19.6604	$1,025.31	$445.92	$205.06
31238	T		Nasal/sinus endoscopy, surg	0074	12.8582	$670.57	$295.70	$134.11
31239	T		Nasal/sinus endoscopy, surg	0075	19.6604	$1,025.31	$445.92	$205.06
31240	T		Nasal/sinus endoscopy, surg	0074	12.8582	$670.57	$295.70	$134.11
31254	T		Revision of ethmoid sinus	0075	19.6604	$1,025.31	$445.92	$205.06

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

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CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
31255	T		Removal of ethmoid sinus	0075	19.6604	$1,025.31	$445.92	$205.06
31256	T		Exploration maxillary sinus	0075	19.6604	$1,025.31	$445.92	$205.06
31267	T		Endoscopy, maxillary sinus	0075	19.6604	$1,025.31	$445.92	$205.06
31276	T		Sinus endoscopy, surgical	0075	19.6604	$1,025.31	$445.92	$205.06
31287	T		Nasal/sinus endoscopy, surg	0075	19.6604	$1,025.31	$445.92	$205.06
31288	T		Nasal/sinus endoscopy, surg	0075	19.6604	$1,025.31	$445.92	$205.06
31290	C		Nasal/sinus endoscopy, surg					
31291	C		Nasal/sinus endoscopy, surg					
31292	C		Nasal/sinus endoscopy, surg					
31293	C		Nasal/sinus endoscopy, surg					
31294	C		Nasal/sinus endoscopy, surg					
31299	T		Sinus surgery procedure	0252	5.8041	$302.69	$113.41	$60.54
31300	T		Removal of larynx lesion	0256	34.0302	$1,774.71		$354.94
31320	T		Diagnostic incision, larynx	0256	34.0302	$1,774.71		$354.94
31360	C		Removal of larynx					
31365	C		Removal of larynx					
31367	C		Partial removal of larynx					
31368	C		Partial removal of larynx					
31370	C		Partial removal of larynx					
31375	C		Partial removal of larynx					
31380	C		Partial removal of larynx					
31382	C		Partial removal of larynx					
31390	C		Removal of larynx & pharynx					
31395	C		Reconstruct larynx & pharynx					
31400	T		Revision of larynx	0256	34.0302	$1,774.71		$354.94
31420	T		Removal of epiglottis	0256	34.0302	$1,774.71		$354.94
31500	S		Insert emergency airway	0094	3.8371	$200.11	$67.63	$40.02
31502	T		Change of windpipe airway	0121	2.0833	$108.65	$43.80	$21.73
31505	T		Diagnostic laryngoscopy	0072	1.1628	$60.64	$26.68	$12.13
31510	T		Laryngoscopy with biopsy	0074	12.8582	$670.57	$295.70	$134.11
31511	T		Remove foreign body, larynx	0072	1.1628	$60.64	$26.68	$12.13
31512	T		Removal of larynx lesion	0074	12.8582	$670.57	$295.70	$134.11
31513	T		Injection into vocal cord	0072	1.1628	$60.64	$26.68	$12.13
31515	T		Laryngoscopy for aspiration	0074	12.8582	$670.57	$295.70	$134.11
31520	T		Diagnostic laryngoscopy	0072	1.1628	$60.64	$26.68	$12.13
31525	T		Diagnostic laryngoscopy	0074	12.8582	$670.57	$295.70	$134.11
31526	T		Diagnostic laryngoscopy	0075	19.6604	$1,025.31	$445.92	$205.06
31527	T		Laryngoscopy for treatment	0075	19.6604	$1,025.31	$445.92	$205.06
31528	T		Laryngoscopy and dilation	0074	12.8582	$670.57	$295.70	$134.11
31529	T		Laryngoscopy and dilation	0074	12.8582	$670.57	$295.70	$134.11
31530	T		Operative laryngoscopy	0075	19.6604	$1,025.31	$445.92	$205.06
31531	T		Operative laryngoscopy	0075	19.6604	$1,025.31	$445.92	$205.06
31535	T		Operative laryngoscopy	0075	19.6604	$1,025.31	$445.92	$205.06
31536	T		Operative laryngoscopy	0075	19.6604	$1,025.31	$445.92	$205.06
31540	T		Operative laryngoscopy	0075	19.6604	$1,025.31	$445.92	$205.06
31541	T		Operative laryngoscopy	0075	19.6604	$1,025.31	$445.92	$205.06
31560	T		Operative laryngoscopy	0075	19.6604	$1,025.31	$445.92	$205.06
31561	T		Operative laryngoscopy	0075	19.6604	$1,025.31	$445.92	$205.06
31570	T		Laryngoscopy with injection	0074	12.8582	$670.57	$295.70	$134.11
31571	T		Laryngoscopy with injection	0075	19.6604	$1,025.31	$445.92	$205.06
31575	T		Diagnostic laryngoscopy	0071	0.9205	$48.00	$12.89	$9.60
31576	T		Laryngoscopy with biopsy	0075	19.6604	$1,025.31	$445.92	$205.06
31577	T		Remove foreign body, larynx	0073	3.1976	$166.76	$73.38	$33.35
31578	T		Removal of larynx lesion	0075	19.6604	$1,025.31	$445.92	$205.06
31579	T		Diagnostic laryngoscopy	0073	3.1976	$166.76	$73.38	$33.35
31580	T		Revision of larynx	0256	34.0302	$1,774.71		$354.94
31582	T		Revision of larynx	0256	34.0302	$1,774.71		$354.94
31584	C		Treat larynx fracture					
31585	T		Treat larynx fracture	0253	14.4473	$753.44	$282.29	$150.69
31586	T		Treat larynx fracture	0256	34.0302	$1,774.71		$354.94
31587	C		Revision of larynx					
31588	T		Revision of larynx	0256	34.0302	$1,774.71		$354.94
31590	T		Reinnervate larynx	0256	34.0302	$1,774.71		$354.94
31595	T		Larynx nerve surgery	0256	34.0302	$1,774.71		$354.94
31599	T		Larynx surgery procedure	0254	20.1158	$1,049.06	$321.35	$209.81

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

[Calendar Year 2003]

CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
31600	T		Incision of windpipe	0254	20.1158	$1,049.06	$321.35	$209.81
31601	T		Incision of windpipe	0254	20.1158	$1,049.06	$321.35	$209.81
31603	T		Incision of windpipe	0252	5.8041	$302.69	$113.41	$60.54
31605	T		Incision of windpipe	0253	14.4473	$753.44	$282.29	$150.69
31610	T		Incision of windpipe	0254	20.1158	$1,049.06	$321.35	$209.81
31611	T		Surgery/speech prosthesis	0254	20.1158	$1,049.06	$321.35	$209.81
31612	T		Puncture/clear windpipe	0254	20.1158	$1,049.06	$321.35	$209.81
31613	T		Repair windpipe opening	0254	20.1158	$1,049.06	$321.35	$209.81
31614	T		Repair windpipe opening	0256	34.0302	$1,774.71		$354.94
31615	T		Visualization of windpipe	0076	8.9533	$466.92	$189.82	$93.38
31622	T		Dx bronchoscope/wash	0076	8.9533	$466.92	$189.82	$93.38
31623	T		Dx bronchoscope/brush	0076	8.9533	$466.92	$189.82	$93.38
31624	T		Dx bronchoscope/lavage	0076	8.9533	$466.92	$189.82	$93.38
31625	T		Bronchoscopy w/biopsy(s)	0076	8.9533	$466.92	$189.82	$93.38
31628	T		Bronchoscopy/lung bx, each	0076	8.9533	$466.92	$189.82	$93.38
31629	T		Bronchoscopy/needle bx, each	0076	8.9533	$466.92	$189.82	$93.38
31630	T		Bronchoscopy dilate/fx repr	0076	8.9533	$466.92	$189.82	$93.38
31631	T		Bronchoscopy, dilate w/stent	0076	8.9533	$466.92	$189.82	$93.38
31635	T		Bronchoscopy w/fb removal	0076	8.9533	$466.92	$189.82	$93.38
31640	T		Bronchoscopy w/tumor excise	0076	8.9533	$466.92	$189.82	$93.38
31641	T		Bronchoscopy, treat blockage	0076	8.9533	$466.92	$189.82	$93.38
31643	T		Diag bronchoscope/catheter	0076	8.9533	$466.92	$189.82	$93.38
31645	T		Bronchoscopy, clear airways	0076	8.9533	$466.92	$189.82	$93.38
31646	T		Bronchoscopy, reclear airway	0076	8.9533	$466.92	$189.82	$93.38
31656	T		Bronchoscopy, inj for x-ray	0076	8.9533	$466.92	$189.82	$93.38
31700	T		Insertion of airway catheter	0072	1.1628	$60.64	$26.68	$12.13
31708	N		Instill airway contrast dye					
31710	N		Insertion of airway catheter					
31715	N		Injection for bronchus x-ray					
31717	T		Bronchial brush biopsy	0073	3.1976	$166.76	$73.38	$33.35
31720	T		Clearance of airways	0072	1.1628	$60.64	$26.68	$12.13
31725	C		Clearance of airways					
31730	T		Intro, windpipe wire/tube	0073	3.1976	$166.76	$73.38	$33.35
31750	T		Repair of windpipe	0256	34.0302	$1,774.71		$354.94
31755	T		Repair of windpipe	0256	34.0302	$1,774.71		$354.94
31760	C		Repair of windpipe					
31766	C		Reconstruction of windpipe					
31770	C		Repair/graft of bronchus					
31775	C		Reconstruct bronchus					
31780	C		Reconstruct windpipe					
31781	C		Reconstruct windpipe					
31785	T		Remove windpipe lesion	0254	20.1158	$1,049.06	$321.35	$209.81
31786	C		Remove windpipe lesion					
31800	C		Repair of windpipe injury					
31805	C		Repair of windpipe injury					
31820	T		Closure of windpipe lesion	0253	14.4473	$753.44	$282.29	$150.69
31825	T		Repair of windpipe defect	0254	20.1158	$1,049.06	$321.35	$209.81
31830	T		Revise windpipe scar	0254	20.1158	$1,049.06	$321.35	$209.81
31899	T		Airways surgical procedure	0076	8.9533	$466.92	$189.82	$93.38
32000	T		Drainage of chest	0070	3.3623	$175.35		$35.07
32002	T		Treatment of collapsed lung	0070	3.3623	$175.35		$35.07
32005	T		Treat lung lining chemically	0070	3.3623	$175.35		$35.07
32020	T		Insertion of chest tube	0070	3.3623	$175.35		$35.07
32035	C		Exploration of chest					
32036	C		Exploration of chest					
32095	C		Biopsy through chest wall					
32100	C		Exploration/biopsy of chest					
32110	C		Explore/repair chest					
32120	C		Re-exploration of chest					
32124	C		Explore chest free adhesions					
32140	C		Removal of lung lesion(s)					
32141	C		Remove/treat lung lesions					
32150	C		Removal of lung lesion(s)					
32151	C		Remove lung foreign body					
32160	C		Open chest heart massage					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued
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CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
32200	C		Drain, open, lung lesion					
32201	T		Drain, percut, lung lesion	0070	3.3623	$175.35		$35.07
32215	C		Treat chest lining					
32220	C		Release of lung					
32225	C		Partial release of lung					
32310	C		Removal of chest lining					
32320	C		Free/remove chest lining					
32400	T		Needle biopsy chest lining	0005	3.1201	$162.72	$71.59	$32.54
32402	C		Open biopsy chest lining					
32405	T		Biopsy, lung or mediastinum	0685	5.9882	$312.29	$137.40	$62.46
32420	T		Puncture/clear lung	0070	3.3623	$175.35		$35.07
32440	C		Removal of lung					
32442	C		Sleeve pneumonectomy					
32445	C		Removal of lung					
32480	C		Partial removal of lung					
32482	C		Bilobectomy					
32484	C		Segmentectomy					
32486	C		Sleeve lobectomy					
32488	C		Completion pneumonectomy					
32491	C		Lung volume reduction					
32500	C		Partial removal of lung					
32501	C		Repair bronchus add-on					
32520	C		Remove lung & revise chest					
32522	C		Remove lung & revise chest					
32525	C		Remove lung & revise chest					
32540	C		Removal of lung lesion					
32601	T		Thoracoscopy, diagnostic	0069	27.5575	$1,437.15	$591.64	$287.43
32602	T		Thoracoscopy, diagnostic	0069	27.5575	$1,437.15	$591.64	$287.43
32603	T		Thoracoscopy, diagnostic	0069	27.5575	$1,437.15	$591.64	$287.43
32604	T		Thoracoscopy, diagnostic	0069	27.5575	$1,437.15	$591.64	$287.43
32605	T		Thoracoscopy, diagnostic	0069	27.5575	$1,437.15	$591.64	$287.43
32606	T		Thoracoscopy, diagnostic	0069	27.5575	$1,437.15	$591.64	$287.43
32650	C		Thoracoscopy, surgical					
32651	C		Thoracoscopy, surgical					
32652	C		Thoracoscopy, surgical					
32653	C		Thoracoscopy, surgical					
32654	C		Thoracoscopy, surgical					
32655	C		Thoracoscopy, surgical					
32656	C		Thoracoscopy, surgical					
32657	C		Thoracoscopy, surgical					
32658	C		Thoracoscopy, surgical					
32659	C		Thoracoscopy, surgical					
32660	C		Thoracoscopy, surgical					
32661	C		Thoracoscopy, surgical					
32662	C		Thoracoscopy, surgical					
32663	C		Thoracoscopy, surgical					
32664	C		Thoracoscopy, surgical					
32665	C		Thoracoscopy, surgical					
32800	C		Repair lung hernia					
32810	C		Close chest after drainage					
32815	C		Close bronchial fistula					
32820	C		Reconstruct injured chest					
32850	C		Donor pneumonectomy					
32851	C		Lung transplant, single					
32852	C		Lung transplant with bypass					
32853	C		Lung transplant, double					
32854	C		Lung transplant with bypass					
32900	C		Removal of rib(s)					
32905	C		Revise & repair chest wall					
32906	C		Revise & repair chest wall					
32940	C		Revision of lung					
32960	T		Therapeutic pneumothorax	0070	3.3623	$175.35		$35.07
32997	C		Total lung lavage					
32999	T		Chest surgery procedure	0070	3.3623	$175.35		$35.07
33010	T		Drainage of heart sac	0070	3.3623	$175.35		$35.07

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued
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CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
33011	T		Repeat drainage of heart sac	0070	3.3623	$175.35		$35.07
33015	C		Incision of heart sac					
33020	C		Incision of heart sac					
33025	C		Incision of heart sac					
33030	C		Partial removal of heart sac					
33031	C		Partial removal of heart sac					
33050	C		Removal of heart sac lesion					
33120	C		Removal of heart lesion					
33130	C		Removal of heart lesion					
33140	C		Heart revascularize (tmr)					
33141	C		Heart tmr w/other procedure					
33200	C		Insertion of heart pacemaker					
33201	C		Insertion of heart pacemaker					
33206	T		Insertion of heart pacemaker	0089	112.5555	$5,869.88	$1,722.59	$1,173.98
33207	T		Insertion of heart pacemaker	0089	112.5555	$5,869.88	$1,722.59	$1,173.98
33208	T		Insertion of heart pacemaker	0655	122.8654	$6,407.55		$1,281.51
33210	T		Insertion of heart electrode	0106	54.8243	$2,859.14		$571.83
33211	T		Insertion of heart electrode	0106	54.8243	$2,859.14		$571.83
33212	T		Insertion of pulse generator	0090	87.9631	$4,587.36	$1,651.45	$917.47
33213	T		Insertion of pulse generator	0654	91.8583	$4,790.50		$958.10
33214	T		Upgrade of pacemaker system	0655	122.8654	$6,407.55		$1,281.51
33215	T	NI	Reposition pacing-defib lead	0105	18.5945	$969.72	$370.40	$193.94
33216	T		Revise eltrd pacing-defib	0106	54.8243	$2,859.14		$571.83
33217	T		Insert lead pace-defib, dual	0106	54.8243	$2,859.14		$571.83
33218	T		Repair lead pace-defib, one	0106	54.8243	$2,859.14		$571.83
33220	T		Repair lead pace-defib, dual	0106	54.8243	$2,859.14		$571.83
33222	T		Revise pocket, pacemaker	0027	15.2225	$793.87	$329.72	$158.77
33223	T		Revise pocket, pacing-defib	0027	15.2225	$793.87	$329.72	$158.77
33224	T	NI	Insert pacing lead & connect	0976		$875.00		$175.00
33225	T	NI	L ventric pacing lead add-on	0977		$1,125.00		$225.00
33226	T	NI	Reposition l ventric lead	0105	18.5945	$969.72	$370.40	$193.94
33233	T		Removal of pacemaker system	0105	18.5945	$969.72	$370.40	$193.94
33234	T		Removal of pacemaker system	0105	18.5945	$969.72	$370.40	$193.94
33235	T		Removal pacemaker electrode	0105	18.5945	$969.72	$370.40	$193.94
33236	C		Remove electrode/thoracotomy					
33237	C		Remove electrode/thoracotomy					
33238	C		Remove electrode/thoracotomy					
33240	T		Insert pulse generator	0107	326.2231	$17,012.86	$3,699.14	$3,402.57
33241	T		Remove pulse generator	0105	18.5945	$969.72	$370.40	$193.94
33243	C		Remove eltrd/thoracotomy					
33244	T		Remove eltrd, transven	0105	18.5945	$969.72	$370.40	$193.94
33245	C		Insert epic eltrd pace-defib					
33246	C		Insert epic eltrd/generator					
33249	T		Eltrd/insert pace-defib	0108	443.5460	$23,131.37		$4,626.27
33250	C		Ablate heart dysrhythm focus					
33251	C		Ablate heart dysrhythm focus					
33253	C		Reconstruct atria					
33261	C		Ablate heart dysrhythm focus					
33282	S		Implant pat-active ht record	0680	56.1324	$2,927.36		$585.47
33284	T		Remove pat-active ht record	0109	7.4708	$389.61	$131.49	$77.92
33300	C		Repair of heart wound					
33305	C		Repair of heart wound					
33310	C		Exploratory heart surgery					
33315	C		Exploratory heart surgery					
33320	C		Repair major blood vessel(s)					
33321	C		Repair major vessel					
33322	C		Repair major blood vessel(s)					
33330	C		Insert major vessel graft					
33332	C		Insert major vessel graft					
33335	C		Insert major vessel graft					
33400	C		Repair of aortic valve					
33401	C		Valvuloplasty, open					
33403	C		Valvuloplasty, w/cp bypass					
33404	C		Prepare heart-aorta conduit					
33405	C		Replacement of aortic valve					

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CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
33406	C		Replacement of aortic valve					
33410	C		Replacement of aortic valve					
33411	C		Replacement of aortic valve					
33412	C		Replacement of aortic valve					
33413	C		Replacement of aortic valve					
33414	C		Repair of aortic valve					
33415	C		Revision, subvalvular tissue					
33416	C		Revise ventricle muscle					
33417	C		Repair of aortic valve					
33420	C		Revision of mitral valve					
33422	C		Revision of mitral valve					
33425	C		Repair of mitral valve					
33426	C		Repair of mitral valve					
33427	C		Repair of mitral valve					
33430	C		Replacement of mitral valve					
33460	C		Revision of tricuspid valve					
33463	C		Valvuloplasty, tricuspid					
33464	C		Valvuloplasty, tricuspid					
33465	C		Replace tricuspid valve					
33468	C		Revision of tricuspid valve					
33470	C		Revision of pulmonary valve					
33471	C		Valvotomy, pulmonary valve					
33472	C		Revision of pulmonary valve					
33474	C		Revision of pulmonary valve					
33475	C		Replacement, pulmonary valve					
33476	C		Revision of heart chamber					
33478	C		Revision of heart chamber					
33496	C		Repair, prosth valve clot					
33500	C		Repair heart vessel fistula					
33501	C		Repair heart vessel fistula					
33502	C		Coronary artery correction					
33503	C		Coronary artery graft					
33504	C		Coronary artery graft					
33505	C		Repair artery w/tunnel					
33506	C		Repair artery, translocation					
33508	N	NI	Endoscopic vein harvest					
33510	C		CABG, vein, single					
33511	C		CABG, vein, two					
33512	C		CABG, vein, three					
33513	C		CABG, vein, four					
33514	C		CABG, vein, five					
33516	C		Cabg, vein, six or more					
33517	C		CABG, artery-vein, single					
33518	C		CABG, artery-vein, two					
33519	C		CABG, artery-vein, three					
33521	C		CABG, artery-vein, four					
33522	C		CABG, artery-vein, five					
33523	C		Cabg, art-vein, six or more					
33530	C		Coronary artery, bypass/reop					
33533	C		CABG, arterial, single					
33534	C		CABG, arterial, two					
33535	C		CABG, arterial, three					
33536	C		Cabg, arterial, four or more					
33542	C		Removal of heart lesion					
33545	C		Repair of heart damage					
33572	C		Open coronary endarterectomy					
33600	C		Closure of valve					
33602	C		Closure of valve					
33606	C		Anastomosis/artery-aorta					
33608	C		Repair anomaly w/conduit					
33610	C		Repair by enlargement					
33611	C		Repair double ventricle					
33612	C		Repair double ventricle					
33615	C		Repair, modified fontan					
33617	C		Repair single ventricle					

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CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
33619	C		Repair single ventricle					
33641	C		Repair heart septum defect					
33645	C		Revision of heart veins					
33647	C		Repair heart septum defects					
33660	C		Repair of heart defects					
33665	C		Repair of heart defects					
33670	C		Repair of heart chambers					
33681	C		Repair heart septum defect					
33684	C		Repair heart septum defect					
33688	C		Repair heart septum defect					
33690	C		Reinforce pulmonary artery					
33692	C		Repair of heart defects					
33694	C		Repair of heart defects					
33697	C		Repair of heart defects					
33702	C		Repair of heart defects					
33710	C		Repair of heart defects					
33720	C		Repair of heart defect					
33722	C		Repair of heart defect					
33730	C		Repair heart-vein defect(s)					
33732	C		Repair heart-vein defect					
33735	C		Revision of heart chamber					
33736	C		Revision of heart chamber					
33737	C		Revision of heart chamber					
33750	C		Major vessel shunt					
33755	C		Major vessel shunt					
33762	C		Major vessel shunt					
33764	C		Major vessel shunt & graft					
33766	C		Major vessel shunt					
33767	C		Major vessel shunt					
33770	C		Repair great vessels defect					
33771	C		Repair great vessels defect					
33774	C		Repair great vessels defect					
33775	C		Repair great vessels defect					
33776	C		Repair great vessels defect					
33777	C		Repair great vessels defect					
33778	C		Repair great vessels defect					
33779	C		Repair great vessels defect					
33780	C		Repair great vessels defect					
33781	C		Repair great vessels defect					
33786	C		Repair arterial trunk					
33788	C		Revision of pulmonary artery					
33800	C		Aortic suspension					
33802	C		Repair vessel defect					
33803	C		Repair vessel defect					
33813	C		Repair septal defect					
33814	C		Repair septal defect					
33820	C		Revise major vessel					
33822	C		Revise major vessel					
33824	C		Revise major vessel					
33840	C		Remove aorta constriction					
33845	C		Remove aorta constriction					
33851	C		Remove aorta constriction					
33852	C		Repair septal defect					
33853	C		Repair septal defect					
33860	C		Ascending aortic graft					
33861	C		Ascending aortic graft					
33863	C		Ascending aortic graft					
33870	C		Transverse aortic arch graft					
33875	C		Thoracic aortic graft					
33877	C		Thoracoabdominal graft					
33910	C		Remove lung artery emboli					
33915	C		Remove lung artery emboli					
33916	C		Surgery of great vessel					
33917	C		Repair pulmonary artery					
33918	C		Repair pulmonary atresia					

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CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
33919	C		Repair pulmonary atresia					
33920	C		Repair pulmonary atresia					
33922	C		Transect pulmonary artery					
33924	C		Remove pulmonary shunt					
33930	C		Removal of donor heart/lung					
33935	C		Transplantation, heart/lung					
33940	C		Removal of donor heart					
33945	C		Transplantation of heart					
33960	C		External circulation assist					
33961	C		External circulation assist					
33967	C		Insert ia percut device					
33968	C		Remove aortic assist device					
33970	C		Aortic circulation assist					
33971	C		Aortic circulation assist					
33973	C		Insert balloon device					
33974	C		Remove intra-aortic balloon					
33975	C		Implant ventricular device					
33976	C		Implant ventricular device					
33977	C		Remove ventricular device					
33978	C		Remove ventricular device					
33979	C		Insert intracorporeal device					
33980	C		Remove intracorporeal device					
33999	T		Cardiac surgery procedure	0070	3.3623	$175.35		$35.07
34001	C		Removal of artery clot					
34051	C		Removal of artery clot					
34101	T		Removal of artery clot	0088	32.5768	$1,698.91	$655.22	$339.78
34111	T		Removal of arm artery clot	0088	32.5768	$1,698.91	$655.22	$339.78
34151	C		Removal of artery clot					
34201	T		Removal of artery clot	0088	32.5768	$1,698.91	$655.22	$339.78
34203	T		Removal of leg artery clot	0088	32.5768	$1,698.91	$655.22	$339.78
34401	C		Removal of vein clot					
34421	T		Removal of vein clot	0088	32.5768	$1,698.91	$655.22	$339.78
34451	C		Removal of vein clot					
34471	T		Removal of vein clot	0088	32.5768	$1,698.91	$655.22	$339.78
34490	T		Removal of vein clot	0088	32.5768	$1,698.91	$655.22	$339.78
34501	T		Repair valve, femoral vein	0088	32.5768	$1,698.91	$655.22	$339.78
34502	C		Reconstruct vena cava					
34510	T		Transposition of vein valve	0088	32.5768	$1,698.91	$655.22	$339.78
34520	T		Cross-over vein graft	0088	32.5768	$1,698.91	$655.22	$339.78
34530	T		Leg vein fusion	0088	32.5768	$1,698.91	$655.22	$339.78
34800	C		Endovasc abdo repair w/tube					
34802	C		Endovasc abdo repr w/device					
34804	C		Endovasc abdo repr w/device					
34808	C		Endovasc abdo occlud device					
34812	C		Xpose for endoprosth, aortic					
34813	C		Femoral endovas graft add-on					
34820	C		Xpose for endoprosth, iliac					
34825	C		Endovasc extend prosth, init					
34826	C		Endovasc exten prosth, addl					
34830	C		Open aortic tube prosth repr					
34831	C		Open aortoiliac prosth repr					
34832	C		Open aortofemor prosth repr					
34833	C	NI	Xpose for endoprosth, iliac					
34834	C	NI	Xpose, endoprosth, brachial					
34900	C	NI	Endovasc iliac repr w/graft					
35001	C		Repair defect of artery					
35002	C		Repair artery rupture, neck					
35005	C		Repair defect of artery					
35011	T		Repair defect of artery	0653	30.0284	$1,566.01		$313.20
35013	C		Repair artery rupture, arm					
35021	C		Repair defect of artery					
35022	C		Repair artery rupture, chest					
35045	C		Repair defect of arm artery					
35081	C		Repair defect of artery					
35082	C		Repair artery rupture, aorta					

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CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
35091	C		Repair defect of artery					
35092	C		Repair artery rupture, aorta					
35102	C		Repair defect of artery					
35103	C		Repair artery rupture, groin					
35111	C		Repair defect of artery					
35112	C		Repair artery rupture,spleen					
35121	C		Repair defect of artery					
35122	C		Repair artery rupture, belly					
35131	C		Repair defect of artery					
35132	C		Repair artery rupture, groin					
35141	C		Repair defect of artery					
35142	C		Repair artery rupture, thigh					
35151	C		Repair defect of artery					
35152	C		Repair artery rupture, knee					
35161	C		Repair defect of artery					
35162	C		Repair artery rupture					
35180	T		Repair blood vessel lesion	0093	20.6294	$1,075.84	$277.34	$215.17
35182	C		Repair blood vessel lesion					
35184	T		Repair blood vessel lesion	0093	20.6294	$1,075.84	$277.34	$215.17
35188	T		Repair blood vessel lesion	0088	32.5768	$1,698.91	$655.22	$339.78
35189	C		Repair blood vessel lesion					
35190	T		Repair blood vessel lesion	0093	20.6294	$1,075.84	$277.34	$215.17
35201	T		Repair blood vessel lesion	0093	20.6294	$1,075.84	$277.34	$215.17
35206	T		Repair blood vessel lesion	0093	20.6294	$1,075.84	$277.34	$215.17
35207	T		Repair blood vessel lesion	0088	32.5768	$1,698.91	$655.22	$339.78
35211	C		Repair blood vessel lesion					
35216	C		Repair blood vessel lesion					
35221	C		Repair blood vessel lesion					
35226	T		Repair blood vessel lesion	0093	20.6294	$1,075.84	$277.34	$215.17
35231	T		Repair blood vessel lesion	0093	20.6294	$1,075.84	$277.34	$215.17
35236	T		Repair blood vessel lesion	0093	20.6294	$1,075.84	$277.34	$215.17
35241	C		Repair blood vessel lesion					
35246	C		Repair blood vessel lesion					
35251	C		Repair blood vessel lesion					
35256	T		Repair blood vessel lesion	0093	20.6294	$1,075.84	$277.34	$215.17
35261	T		Repair blood vessel lesion	0653	30.0284	$1,566.01		$313.20
35266	T		Repair blood vessel lesion	0653	30.0284	$1,566.01		$313.20
35271	C		Repair blood vessel lesion					
35276	C		Repair blood vessel lesion					
35281	C		Repair blood vessel lesion					
35286	T		Repair blood vessel lesion	0653	30.0284	$1,566.01		$313.20
35301	C		Rechanneling of artery					
35311	C		Rechanneling of artery					
35321	T		Rechanneling of artery	0093	20.6294	$1,075.84	$277.34	$215.17
35331	C		Rechanneling of artery					
35341	C		Rechanneling of artery					
35351	C		Rechanneling of artery					
35355	C		Rechanneling of artery					
35361	C		Rechanneling of artery					
35363	C		Rechanneling of artery					
35371	C		Rechanneling of artery					
35372	C		Rechanneling of artery					
35381	C		Rechanneling of artery					
35390	C		Reoperation, carotid add-on					
35400	C		Angioscopy					
35450	C		Repair arterial blockage					
35452	C		Repair arterial blockage					
35454	C		Repair arterial blockage					
35456	C		Repair arterial blockage					
35458	T		Repair arterial blockage	0081	43.5067	$2,268.92		$453.78
35459	T		Repair arterial blockage	0081	43.5067	$2,268.92		$453.78
35460	T		Repair venous blockage	0081	43.5067	$2,268.92		$453.78
35470	T		Repair arterial blockage	0081	43.5067	$2,268.92		$453.78
35471	T		Repair arterial blockage	0081	43.5067	$2,268.92		$453.78
35472	T		Repair arterial blockage	0081	43.5067	$2,268.92		$453.78

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CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
35473	T		Repair arterial blockage	0081	43.5067	$2,268.92		$453.78
35474	T		Repair arterial blockage	0081	43.5067	$2,268.92		$453.78
35475	T		Repair arterial blockage	0081	43.5067	$2,268.92		$453.78
35476	T		Repair venous blockage	0081	43.5067	$2,268.92		$453.78
35480	C		Atherectomy, open					
35481	C		Atherectomy, open					
35482	C		Atherectomy, open					
35483	C		Atherectomy, open					
35484	T		Atherectomy, open	0081	43.5067	$2,268.92		$453.78
35485	T		Atherectomy, open	0081	43.5067	$2,268.92		$453.78
35490	T		Atherectomy, percutaneous	0081	43.5067	$2,268.92		$453.78
35491	T		Atherectomy, percutaneous	0081	43.5067	$2,268.92		$453.78
35492	T		Atherectomy, percutaneous	0081	43.5067	$2,268.92		$453.78
35493	T		Atherectomy, percutaneous	0081	43.5067	$2,268.92		$453.78
35494	T		Atherectomy, percutaneous	0081	43.5067	$2,268.92		$453.78
35495	T		Atherectomy, percutaneous	0081	43.5067	$2,268.92		$453.78
35500	T		Harvest vein for bypass	0081	43.5067	$2,268.92		$453.78
35501	C		Artery bypass graft					
35506	C		Artery bypass graft					
35507	C		Artery bypass graft					
35508	C		Artery bypass graft					
35509	C		Artery bypass graft					
35511	C		Artery bypass graft					
35515	C		Artery bypass graft					
35516	C		Artery bypass graft					
35518	C		Artery bypass graft					
35521	C		Artery bypass graft					
35526	C		Artery bypass graft					
35531	C		Artery bypass graft					
35533	C		Artery bypass graft					
35536	C		Artery bypass graft					
35541	C		Artery bypass graft					
35546	C		Artery bypass graft					
35548	C		Artery bypass graft					
35549	C		Artery bypass graft					
35551	C		Artery bypass graft					
35556	C		Artery bypass graft					
35558	C		Artery bypass graft					
35560	C		Artery bypass graft					
35563	C		Artery bypass graft					
35565	C		Artery bypass graft					
35566	C		Artery bypass graft					
35571	C		Artery bypass graft					
35572	N	NI	Harvest femoropopliteal vein					
35582	C		Vein bypass graft					
35583	C		Vein bypass graft					
35585	C		Vein bypass graft					
35587	C		Vein bypass graft					
35600	C		Harvest artery for cabg					
35601	C		Artery bypass graft					
35606	C		Artery bypass graft					
35612	C		Artery bypass graft					
35616	C		Artery bypass graft					
35621	C		Artery bypass graft					
35623	C		Bypass graft, not vein					
35626	C		Artery bypass graft					
35631	C		Artery bypass graft					
35636	C		Artery bypass graft					
35641	C		Artery bypass graft					
35642	C		Artery bypass graft					
35645	C		Artery bypass graft					
35646	C		Artery bypass graft					
35647	C		Artery bypass graft					
35650	C		Artery bypass graft					
35651	C		Artery bypass graft					

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CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
35654	C		Artery bypass graft					
35656	C		Artery bypass graft					
35661	C		Artery bypass graft					
35663	C		Artery bypass graft					
35665	C		Artery bypass graft					
35666	C		Artery bypass graft					
35671	C		Artery bypass graft					
35681	C		Composite bypass graft					
35682	C		Composite bypass graft					
35683	C		Composite bypass graft					
35685	T		Bypass graft patency/patch	0093	20.6294	$1,075.84	$277.34	$215.17
35686	T		Bypass graft/av fist patency	0093	20.6294	$1,075.84	$277.34	$215.17
35691	C		Arterial transposition					
35693	C		Arterial transposition					
35694	C		Arterial transposition					
35695	C		Arterial transposition					
35700	C		Reoperation, bypass graft					
35701	C		Exploration, carotid artery					
35721	C		Exploration, femoral artery					
35741	C		Exploration popliteal artery					
35761	T		Exploration of artery/vein	0115	24.3211	$1,268.37	$459.35	$253.67
35800	C		Explore neck vessels					
35820	C		Explore chest vessels					
35840	C		Explore abdominal vessels					
35860	T		Explore limb vessels	0093	20.6294	$1,075.84	$277.34	$215.17
35870	C		Repair vessel graft defect					
35875	T		Removal of clot in graft	0088	32.5768	$1,698.91	$655.22	$339.78
35876	T		Removal of clot in graft	0088	32.5768	$1,698.91	$655.22	$339.78
35879	T		Revise graft w/vein	0088	32.5768	$1,698.91	$655.22	$339.78
35881	T		Revise graft w/vein	0088	32.5768	$1,698.91	$655.22	$339.78
35901	C		Excision, graft, neck					
35903	T		Excision, graft, extremity	0115	24.3211	$1,268.37	$459.35	$253.67
35905	C		Excision, graft, thorax					
35907	C		Excision, graft, abdomen					
36000	N		Place needle in vein					
36002	S		Pseudoaneurysm injection trt	0267	2.4418	$127.34	$65.52	$25.47
36005	N		Injection ext venography					
36010	N		Place catheter in vein					
36011	N		Place catheter in vein					
36012	N		Place catheter in vein					
36013	N		Place catheter in artery					
36014	N		Place catheter in artery					
36015	N		Place catheter in artery					
36100	N		Establish access to artery					
36120	N		Establish access to artery					
36140	N		Establish access to artery					
36145	N		Artery to vein shunt					
36160*	N		Establish access to aorta					
36200	N		Place catheter in aorta					
36215	N		Place catheter in artery					
36216	N		Place catheter in artery					
36217	N		Place catheter in artery					
36218	N		Place catheter in artery					
36245	N		Place catheter in artery					
36246	N		Place catheter in artery					
36247	N		Place catheter in artery					
36248	N		Place catheter in artery					
36260	T		Insertion of infusion pump	0119	89.3100	$4,657.61		$931.52
36261	T		Revision of infusion pump	0124	50.0861	$2,612.04		$522.41
36262	T		Removal of infusion pump	0109	7.4708	$389.61	$131.49	$77.92
36299	N		Vessel injection procedure					
36400	N		Bl draw < 3 yrs fem/jugular					
36405	N		Bl draw < 3 yrs scalp vein					
36406	N		Bl draw < 3 yrs other vein					
36410	N		Non-routine bl draw > 3 yrs					

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CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
36415	E		Drawing blood					
36416	E	NI	Capillary blood draw					
36420	T		Vein access cutdown < 1 yr	0035	0.2229	$11.62	$3.51	$2.32
36425	T		Vein access cutdown > 1 yr	0035	0.2229	$11.62	$3.51	$2.32
36430	S		Blood transfusion service	0110	4.0309	$210.22		$42.04
36440	S		Bl push transfuse, 2 yr or <	0110	4.0309	$210.22		$42.04
36450	S		Bl exchange/transfuse, nb	0110	4.0309	$210.22		$42.04
36455	S		Bl exchange/transfuse non-nb	0110	4.0309	$210.22		$42.04
36460	S		Transfusion service, fetal	0110	4.0309	$210.22		$42.04
36468	T		Injection(s), spider veins	0098	1.6666	$86.91	$20.88	$17.38
36469	T		Injection(s), spider veins	0098	1.6666	$86.91	$20.88	$17.38
36470	T		Injection therapy of vein	0098	1.6666	$86.91	$20.88	$17.38
36471	T		Injection therapy of veins	0098	1.6666	$86.91	$20.88	$17.38
36481	N		Insertion of catheter, vein					
36488	T		Insertion of catheter, vein	0032	11.4726	$598.31		$119.66
36489	T		Insertion of catheter, vein	0032	11.4726	$598.31		$119.66
36490	T		Insertion of catheter, vein	0032	11.4726	$598.31		$119.66
36491	T		Insertion of catheter, vein	0032	11.4726	$598.31		$119.66
36493	X		Repositioning of cvc	0187	3.9534	$206.17	$90.71	$41.23
36500	N		Insertion of catheter, vein					
36510	C		Insertion of catheter, vein					
36511	S	NI	Apheresis wbc	0111	14.9803	$781.24	$217.61	$156.25
36512	S	NI	Apheresis rbc	0111	14.9803	$781.24	$217.61	$156.25
36513	S	NI	Apheresis platelets	0111	14.9803	$781.24	$217.61	$156.25
36514	S	NI	Apheresis plasma	0111	14.9803	$781.24	$217.61	$156.25
36515	S	NI	Apheresis, adsorp/reinfuse	0112	36.4236	$1,899.53	$612.47	$379.91
36516	S	NI	Apheresis, selective	0112	36.4236	$1,899.53	$612.47	$379.91
36520	S	DG	Plasma and/or cell exchange	0111	14.9803	$781.24	$217.61	$156.25
36521	S	DG	Apheresis w/ adsorp/reinfuse	0112	36.4236	$1,899.53	$612.47	$379.91
36522	S		Photopheresis	0112	36.4236	$1,899.53	$612.47	$379.91
36530	T		Insertion of infusion pump	0119	89.3100	$4,657.61		$931.52
36531	T		Revision of infusion pump	0124	50.0861	$2,612.04		$522.41
36532	T		Removal of infusion pump	0109	7.4708	$389.61	$131.49	$77.92
36533	T		Insertion of access device	0115	24.3211	$1,268.37	$459.35	$253.67
36534	T		Revision of access device	0109	7.4708	$389.61	$131.49	$77.92
36535	T		Removal of access device	0109	7.4708	$389.61	$131.49	$77.92
36536	T	NI	Remove cva device obstruct	0973		$250.00		$50.00
36537	T	NI	Remove cva lumen obstruct	0973		$250.00		$50.00
36540	N		Collect blood venous device					
36550	T		Declot vascular device	0677	2.6453	$137.96		$27.59
36600	N		Withdrawal of arterial blood					
36620	N		Insertion catheter, artery					
36625	N		Insertion catheter, artery					
36640	T		Insertion catheter, artery	0032	11.4726	$598.31		$119.66
36660	C		Insertion catheter, artery					
36680	T		Insert needle, bone cavity	0120	2.1802	$113.70	$30.75	$22.74
36800	T		Insertion of cannula	0115	24.3211	$1,268 37	$459.35	$253.67
36810	T		Insertion of cannula	0115	24.3211	$1,268.37	$459.35	$253.67
36815	T		Insertion of cannula	0115	24.3211	$1,268.37	$459.35	$253.67
36819	T		Av fusion/uppr arm vein	0088	32.5768	$1,698.91	$655.22	$339.78
36820	T		Av fusion/forearm vein	0088	32.5768	$1,698.91	$655.22	$339.78
36821	T		Av fusion direct any site	0088	32.5768	$1,698.91	$655.22	$339.78
36822	C		Insertion of cannula(s)					
36823	C		Insertion of cannula(s)					
36825	T		Artery-vein autograft	0088	32.5768	$1,698.91	$655.22	$339.78
36830	T		Artery-vein graft	0088	32.5768	$1,698.91	$655.22	$339.78
36831	T		Open thrombect av fistula	0088	32.5768	$1,698.91	$655.22	$339.78
36832	T		Av fistula revision, open	0088	32.5768	$1,698.91	$655.22	$339.78
36833	T		Av fistula revision	0088	32.5768	$1,698.91	$655.22	$339.78
36834	T		Repair A-V aneurysm	0088	32.5768	$1,698.91	$655.22	$339.78
36835	T		Artery to vein shunt	0115	24.3211	$1,268.37	$459.35	$253.67
36860	T		External cannula declotting	0103	11.8408	$617.51	$223.63	$123.50
36861	T		Cannula declotting	0115	24.3211	$1,268.37	$459.35	$253.67
36870	T		Percut thrombect av fistula	0653	30.0284	$1,566.01		$313.20
37140	C		Revision of circulation					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

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CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
37145	C		Revision of circulation					
37160	C		Revision of circulation					
37180	C		Revision of circulation					
37181	C		Splice spleen/kidney veins					
37182	C	NI	Insert hepatic shunt (tips)					
37183	C	NI	Remove hepatic shunt (tips)					
37195	C		Thrombolytic therapy, stroke					
37200	T		Transcatheter biopsy	0685	5.9882	$312.29	$137.40	$62.46
37201	T		Transcatheter therapy infuse	0676	4.1278	$215.27	$58.21	$43.05
37202	T		Transcatheter therapy infuse	0677	2.6453	$137.96		$27.59
37203	T		Transcatheter retrieval	0103	11.8408	$617.51	$223.63	$123.50
37204	T		Transcatheter occlusion	0115	24.3211	$1,268.37	$459.35	$253.67
37205	T		Transcatheter stent	0229	57.4599	$2,996.59	$771.23	$599.32
37206	T		Transcatheter stent add-on	0229	57.4599	$2,996.59	$771.23	$599.32
37207	T		Transcatheter stent	0229	57.4599	$2,996.59	$771.23	$599.32
37208	T		Transcatheter stent add-on	0229	57.4599	$2,996.59	$771.23	$599.32
37209	T		Exchange arterial catheter	0103	11.8408	$617.51	$223.63	$123.50
37250	S		Iv us first vessel add-on	0670	30.2416	$1,577.13	$571.17	$315.43
37251	S		Iv us each add vessel add-on	0670	30.2416	$1,577.13	$571.17	$315.43
37500	T	NI	Endoscopy ligate perf veins	0092	23.7882	$1,240.58	$505.37	$248.12
37501	T	NI	Vascular endoscopy procedure	0092	23.7882	$1,240.58	$505.37	$248.12
37565	T		Ligation of neck vein	0093	20.6294	$1,075.84	$277.34	$215.17
37600	T		Ligation of neck artery	0093	20.6294	$1,075.84	$277.34	$215.17
37605	T		Ligation of neck artery	0091	26.7048	$1,392.68	$348.23	$278.54
37606	T		Ligation of neck artery	0091	26.7048	$1,392.68	$348.23	$278.54
37607	T		Ligation of a-v fistula	0092	23.7882	$1,240.58	$505.37	$248.12
37609	T		Temporal artery procedure	0021	13.9338	$726.66	$219.48	$145.33
37615	T		Ligation of neck artery	0091	26.7048	$1,392.68	$348.23	$278.54
37616	C		Ligation of chest artery					
37617	C		Ligation of abdomen artery					
37618	C		Ligation of extremity artery					
37620	T		Revision of major vein	0091	26.7048	$1,392.68	$348.23	$278.54
37650	T		Revision of major vein	0091	26.7048	$1,392.68	$348.23	$278.54
37660	C		Revision of major vein					
37700	T		Revise leg vein	0091	26.7048	$1,392.68	$348.23	$278.54
37720	T		Removal of leg vein	0092	23.7882	$1,240.58	$505.37	$248.12
37730	T		Removal of leg veins	0092	23.7882	$1,240.58	$505.37	$248.12
37735	T		Removal of leg veins/lesion	0092	23.7882	$1,240.58	$505.37	$248.12
37760	T		Revision of leg veins	0091	26.7048	$1,392.68	$348.23	$278.54
37780	T		Revision of leg vein	0091	26.7048	$1,392.68	$348.23	$278.54
37785	T		Revise secondary varicosity	0091	26.7048	$1,392.68	$348.23	$278.54
37788	C		Revascularization, penis					
37790	T		Penile venous occlusion	0181	29.2435	$1,525.08	$621.82	$305.02
37799	T		Vascular surgery procedure	0035	0.2229	$11.62	$3.51	$2.32
38100	C		Removal of spleen, total					
38101	C		Removal of spleen, partial					
38102	C		Removal of spleen, total					
38115	C		Repair of ruptured spleen					
38120	T		Laparoscopy, splenectomy	0131	40.2026	$2,096.61	$1,001.89	$419.32
38129	T		Laparoscope proc, spleen	0130	30.4644	$1,588.75	$659.53	$317.75
38200	N		Injection for spleen x-ray					
38204	E	NI	Bl donor search management					
38205	S	NI	Harvest allogenic stem cells	0111	14.9803	$781.24	$217.61	$156.25
38206	S	NI	Harvest auto stem cells	0111	14.9803	$781.24	$217.61	$156.25
38207	E	NI	Cryopreserve stem cells					
38208	E	NI	Thaw preserved stem cells					
38209	E	NI	Wash harvest stem cells					
38210	E	NI	T-cell depletion of harvest					
38211	E	NI	Tumor cell deplete of harvst					
38212	E	NI	Rbc depletion of harvest					
38213	E	NI	Platelet deplete of harvest					
38214	E	NI	Volume deplete of harvest					
38215	E	NI	Harvest stem cell concentrte					
38220	T		Bone marrow aspiration	0003	1.2306	$64.18		$12.84
38221	T		Bone marrow biopsy	0003	1.2306	$64.18		$12.84

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

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CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
38230	S		Bone marrow collection	0123	6.4049	$334.02		$66.80
38231	S	DG	Stem cell collection	0111	14.9803	$781.24	$217.61	$156.25
38240	S		Bone marrow/stem transplant	0123	6.4049	$334.02		$66.80
38241	S		Bone marrow/stem transplant	0123	6.4049	$334.02		$66.80
38242	S	NI	Lymphocyte infuse transplant	0111	14.9803	$781.24	$217.61	$156.25
38300	T		Drainage, lymph node lesion	0008	16.1430	$841.87		$168.37
38305	T		Drainage, lymph node lesion	0008	16.1430	$841.87		$168.37
38308	T		Incision of lymph channels	0113	18.7496	$977.81		$195.56
38380	C		Thoracic duct procedure					
38381	C		Thoracic duct procedure					
38382	C		Thoracic duct procedure					
38500	T		Biopsy/removal, lymph nodes	0113	18.7496	$977.81		$195.56
38505	T		Needle biopsy, lymph nodes	0005	3.1201	$162.72	$71.59	$32.54
38510	T		Biopsy/removal, lymph nodes	0113	18.7496	$977.81		$195.56
38520	T		Biopsy/removal, lymph nodes	0113	18.7496	$977.81		$195.56
38525	T		Biopsy/removal, lymph nodes	0113	18.7496	$977.81		$195.56
38530	T		Biopsy/removal, lymph nodes	0113	18.7496	$977.81		$195.56
38542	T		Explore deep node(s), neck	0114	36.1135	$1,883.36	$485.91	$376.67
38550	T		Removal, neck/armpit lesion	0113	18.7496	$977.81		$195.56
38555	T		Removal, neck/armpit lesion	0113	18.7496	$977.81		$195.56
38562	C		Removal, pelvic lymph nodes					
38564	C		Removal, abdomen lymph nodes					
38570	T		Laparoscopy, lymph node biop	0131	40.2026	$2,096.61	$1,001.89	$419.32
38571	T		Laparoscopy, lymphadenectomy	0132	56.9948	$2,972.34	$1,239.22	$594.47
38572	T		Laparoscopy, lymphadenectomy	0131	40.2026	$2,096.61	$1,001.89	$419.32
38589	T		Laparoscope proc, lymphatic	0130	30.4644	$1,588.75	$659.53	$317.75
38700	T		Removal of lymph nodes, neck	0113	18.7496	$977.81		$195.56
38720	T		Removal of lymph nodes, neck	0113	18.7496	$977.81		$195.56
38724	C		Removal of lymph nodes, neck					
38740	T		Remove armpit lymph nodes	0114	36.1135	$1,883.36	$485.91	$376.67
38745	T		Remove armpit lymph nodes	0114	36.1135	$1,883.36	$485.91	$376.67
38746	C		Remove thoracic lymph nodes					
38747	C		Remove abdominal lymph nodes					
38760	T		Remove groin lymph nodes	0113	18.7496	$977.81		$195.56
38765	C		Remove groin lymph nodes					
38770	C		Remove pelvis lymph nodes					
38780	C		Remove abdomen lymph nodes					
38790	N		Inject for lymphatic x-ray					
38792	N		Identify sentinel node					
38794	N		Access thoracic lymph duct					
38999	S		Blood/lymph system procedure	0110	4.0309	$210.22		$42.04
39000	C		Exploration of chest					
39010	C		Exploration of chest					
39200	C		Removal chest lesion					
39220	C		Removal chest lesion					
39400	T		Visualization of chest	0069	27.5575	$1,437.15	$591.64	$287.43
39499	C		Chest procedure					
39501	C		Repair diaphragm laceration					
39502	C		Repair paraesophageal hernia					
39503	C		Repair of diaphragm hernia					
39520	C		Repair of diaphragm hernia					
39530	C		Repair of diaphragm hernia					
39531	C		Repair of diaphragm hernia					
39540	C		Repair of diaphragm hernia					
39541	C		Repair of diaphragm hernia					
39545	C		Revision of diaphragm					
39560	C		Resect diaphragm, simple					
39561	C		Resect diaphragm, complex					
39599	C		Diaphragm surgery procedure					
40490	T		Biopsy of lip	0251	1.9089	$99.55		$19.91
40500	T		Partial excision of lip	0253	14.4473	$753.44	$282.29	$150.69
40510	T		Partial excision of lip	0254	20.1158	$1,049.06	$321.35	$209.81
40520	T		Partial excision of lip	0253	14.4473	$753.44	$282.29	$150.69
40525	T		Reconstruct lip with flap	0254	20.1158	$1,049.06	$321.35	$209.81
40527	T		Reconstruct lip with flap	0254	20.1158	$1,049.06	$321.35	$209.81

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

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CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
40530	T		Partial removal of lip	0254	20.1158	$1,049.06	$321.35	$209.81
40650	T		Repair lip	0252	5.8041	$302.69	$113.41	$60.54
40652	T		Repair lip	0252	5.8041	$302.69	$113.41	$60.54
40654	T		Repair lip	0252	5.8041	$302.69	$113.41	$60.54
40700	T		Repair cleft lip/nasal	0256	34.0302	$1,774.71		$354.94
40701	T		Repair cleft lip/nasal	0256	34.0302	$1,774.71		$354.94
40702	T		Repair cleft lip/nasal	0256	34.0302	$1,774.71		$354.94
40720	T		Repair cleft lip/nasal	0256	34.0302	$1,774.71		$354.94
40761	T		Repair cleft lip/nasal	0256	34.0302	$1,774.71		$354.94
40799	T		Lip surgery procedure	0253	14.4473	$753.44	$282.29	$150.69
40800	T		Drainage of mouth lesion	0251	1.9089	$99.55		$19.91
40801	T		Drainage of mouth lesion	0252	5.8041	$302.69	$113.41	$60.54
40804	X		Removal, foreign body, mouth	0340	0.6492	$33.86		$6.77
40805	T		Removal, foreign body, mouth	0252	5.8041	$302.69	$113.41	$60.54
40806	T		Incision of lip fold	0251	1.9089	$99.55		$19.91
40808	T		Biopsy of mouth lesion	0251	1.9089	$99.55		$19.91
40810	T		Excision of mouth lesion	0253	14.4473	$753.44	$282.29	$150.69
40812	T		Excise/repair mouth lesion	0253	14.4473	$753.44	$282.29	$150.69
40814	T		Excise/repair mouth lesion	0253	14.4473	$753.44	$282.29	$150.69
40816	T		Excision of mouth lesion	0254	20.1158	$1,049.06	$321.35	$209.81
40818	T		Excise oral mucosa for graft	0251	1.9089	$99.55		$19.91
40819	T		Excise lip or cheek fold	0252	5.8041	$302.69	$113.41	$60.54
40820	T		Treatment of mouth lesion	0253	14.4473	$753.44	$282.29	$150.69
40830	T		Repair mouth laceration	0251	1.9089	$99.55		$19.91
40831	T		Repair mouth laceration	0252	5.8041	$302.69	$113.41	$60.54
40840	T		Reconstruction of mouth	0254	20.1158	$1,049.06	$321.35	$209.81
40842	T		Reconstruction of mouth	0254	20.1158	$1,049.06	$321.35	$209.81
40843	T		Reconstruction of mouth	0254	20.1158	$1,049.06	$321.35	$209.81
40844	T		Reconstruction of mouth	0256	34.0302	$1,774.71		$354.94
40845	T		Reconstruction of mouth	0256	34.0302	$1,774.71		$354.94
40899	T		Mouth surgery procedure	0252	5.8041	$302.69	$113.41	$60.54
41000	T		Drainage of mouth lesion	0253	14.4473	$753.44	$282.29	$150.69
41005	T		Drainage of mouth lesion	0251	1.9089	$99.55		$19.91
41006	T		Drainage of mouth lesion	0254	20.1158	$1,049.06	$321.35	$209.81
41007	T		Drainage of mouth lesion	0253	14.4473	$753.44	$282.29	$150.69
41008	T		Drainage of mouth lesion	0253	14.4473	$753.44	$282.29	$150.69
41009	T		Drainage of mouth lesion	0251	1.9089	$99.55		$19.91
41010	T		Incision of tongue fold	0253	14.4473	$753.44	$282.29	$150.69
41015	T		Drainage of mouth lesion	0251	1.9089	$99.55		$19.91
41016	T		Drainage of mouth lesion	0252	5.8041	$302.69	$113.41	$60.54
41017	T		Drainage of mouth lesion	0252	5.8041	$302.69	$113.41	$60.54
41018	T		Drainage of mouth lesion	0252	5.8041	$302.69	$113.41	$60.54
41100	T		Biopsy of tongue	0252	5.8041	$302.69	$113.41	$60.54
41105	T		Biopsy of tongue	0253	14.4473	$753.44	$282.29	$150.69
41108	T		Biopsy of floor of mouth	0252	5.8041	$302.69	$113.41	$60.54
41110	T		Excision of tongue lesion	0253	14.4473	$753.44	$282.29	$150.69
41112	T		Excision of tongue lesion	0253	14.4473	$753.44	$282.29	$150.69
41113	T		Excision of tongue lesion	0253	14.4473	$753.44	$282.29	$150.69
41114	T		Excision of tongue lesion	0254	20.1158	$1,049.06	$321.35	$209.81
41115	T		Excision of tongue fold	0252	5.8041	$302.69	$113.41	$60.54
41116	T		Excision of mouth lesion	0253	14.4473	$753.44	$282.29	$150.69
41120	T		Partial removal of tongue	0254	20.1158	$1,049.06	$321.35	$209.81
41130	C		Partial removal of tongue					
41135	C		Tongue and neck surgery					
41140	C		Removal of tongue					
41145	C		Tongue removal, neck surgery					
41150	C		Tongue, mouth, jaw surgery					
41153	C		Tongue, mouth, neck surgery					
41155	C		Tongue, jaw, & neck surgery					
41250	T		Repair tongue laceration	0251	1.9089	$99.55		$19.91
41251	T		Repair tongue laceration	0252	5.8041	$302.69	$113.41	$60.54
41252	T		Repair tongue laceration	0252	5.8041	$302.69	$113.41	$60.54
41500	T		Fixation of tongue	0254	20.1158	$1,049.06	$321.35	$209.81
41510	T		Tongue to lip surgery	0253	14.4473	$753.44	$282.29	$150.69
41520	T		Reconstruction, tongue fold	0252	5.8041	$302.69	$113.41	$60.54

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CPT/HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
41599	T		Tongue and mouth surgery	0251	1.9089	$99.55		$19.91
41800	T		Drainage of gum lesion	0251	1.9089	$99.55		$19.91
41805	T		Removal foreign body, gum	0254	20.1158	$1,049.06	$321.35	$209.81
41806	T		Removal foreign body,jawbone	0253	14.4473	$753.44	$282.29	$150.69
41820	T		Excision, gum, each quadrant	0252	5.8041	$302.69	$113.41	$60.54
41821	T		Excision of gum flap	0252	5.8041	$302.69	$113.41	$60.54
41822	T		Excision of gum lesion	0253	14.4473	$753.44	$282.29	$150.69
41823	T		Excision of gum lesion	0254	20.1158	$1,049.06	$321.35	$209.81
41825	T		Excision of gum lesion	0253	14.4473	$753.44	$282.29	$150.69
41826	T		Excision of gum lesion	0253	14.4473	$753.44	$282.29	$150.69
41827	T		Excision of gum lesion	0254	20.1158	$1,049.06	$321.35	$209.81
41828	T		Excision of gum lesion	0253	14.4473	$753.44	$282.29	$150.69
41830	T		Removal of gum tissue	0253	14.4473	$753.44	$282.29	$150.69
41850	T		Treatment of gum lesion	0253	14.4473	$753.44	$282.29	$150.69
41870	T		Gum graft	0254	20.1158	$1,049.06	$321.35	$209.81
41872	T		Repair gum	0253	14.4473	$753.44	$282.29	$150.69
41874	T		Repair tooth socket	0254	20.1158	$1,049.06	$321.35	$209.81
41899	T		Dental surgery procedure	0253	14.4473	$753.44	$282.29	$150.69
42000	T		Drainage mouth roof lesion	0251	1.9089	$99.55		$19.91
42100	T		Biopsy roof of mouth	0252	5.8041	$302.69	$113.41	$60.54
42104	T		Excision lesion, mouth roof	0253	14.4473	$753.44	$282.29	$150.69
42106	T		Excision lesion, mouth roof	0253	14.4473	$753.44	$282.29	$150.69
42107	T		Excision lesion, mouth roof	0254	20.1158	$1,049.06	$321.35	$209.81
42120	T		Remove palate/lesion	0256	34.0302	$1,774.71		$354.94
42140	T		Excision of uvula	0252	5.8041	$302.69	$113.41	$60.54
42145	T		Repair palate, pharynx/uvula	0254	20.1158	$1,049.06	$321.35	$209.81
42160	T		Treatment mouth roof lesion	0253	14.4473	$753.44	$282.29	$150.69
42180	T		Repair palate	0251	1.9089	$99.55		$19.91
42182	T		Repair palate	0256	34.0302	$1,774.71		$354.94
42200	T		Reconstruct cleft palate	0256	34.0302	$1,774.71		$354.94
42205	T		Reconstruct cleft palate	0256	34.0302	$1,774.71		$354.94
42210	T		Reconstruct cleft palate	0256	34.0302	$1,774.71		$354.94
42215	T		Reconstruct cleft palate	0256	34.0302	$1,774.71		$354.94
42220	T		Reconstruct cleft palate	0256	34.0302	$1,774.71		$354.94
42225	T		Reconstruct cleft palate	0256	34.0302	$1,774.71		$354.94
42226	T		Lengthening of palate	0256	34.0302	$1,774.71		$354.94
42227	T		Lengthening of palate	0256	34.0302	$1,774.71		$354.94
42235	T		Repair palate	0253	14.4473	$753.44	$282.29	$150.69
42260	T		Repair nose to lip fistula	0254	20.1158	$1,049.06	$321.35	$209.81
42280	T		Preparation, palate mold	0251	1.9089	$99.55		$19.91
42281	T		Insertion, palate prosthesis	0253	14.4473	$753.44	$282.29	$150.69
42299	T		Palate/uvula surgery	0251	1.9089	$99.55		$19.91
42300	T		Drainage of salivary gland	0253	14.4473	$753.44	$282.29	$150.69
42305	T		Drainage of salivary gland	0253	14.4473	$753.44	$282.29	$150.69
42310	T		Drainage of salivary gland	0251	1.9089	$99.55		$19.91
42320	T		Drainage of salivary gland	0251	1.9089	$99.55		$19.91
42325	T		Create salivary cyst drain	0251	1.9089	$99.55		$19.91
42326	T		Create salivary cyst drain	0252	5.8041	$302.69	$113.41	$60.54
42330	T		Removal of salivary stone	0253	14.4473	$753.44	$282.29	$150.69
42335	T		Removal of salivary stone	0253	14.4473	$753.44	$282.29	$150.69
42340	T		Removal of salivary stone	0253	14.4473	$753.44	$282.29	$150.69
42400	T		Biopsy of salivary gland	0005	3.1201	$162.72	$71.59	$32.54
42405	T		Biopsy of salivary gland	0253	14.4473	$753.44	$282.29	$150.69
42408	T		Excision of salivary cyst	0253	14.4473	$753.44	$282.29	$150.69
42409	T		Drainage of salivary cyst	0253	14.4473	$753.44	$282.29	$150.69
42410	T		Excise parotid gland/lesion	0256	34.0302	$1,774.71		$354.94
42415	T		Excise parotid gland/lesion	0256	34.0302	$1,774.71		$354.94
42420	T		Excise parotid gland/lesion	0256	34.0302	$1,774.71		$354.94
42425	T		Excise parotid gland/lesion	0256	34.0302	$1,774.71		$354.94
42426	C		Excise parotid gland/lesion					
42440	T		Excise submaxillary gland	0256	34.0302	$1,774.71		$354.94
42450	T		Excise sublingual gland	0254	20.1158	$1,049.06	$321.35	$209.81
42500	T		Repair salivary duct	0254	20.1158	$1,049.06	$321.35	$209.81
42505	T		Repair salivary duct	0256	34.0302	$1,774.71		$354.94
42507	T		Parotid duct diversion	0256	34.0302	$1,774.71		$354.94

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued
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CPT/HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
42508	T		Parotid duct diversion	0256	34.0302	$1,774.71		$354.94
42509	T		Parotid duct diversion	0256	34.0302	$1,774.71		$354.94
42510	T		Parotid duct diversion	0256	34.0302	$1,774.71		$354.94
42550	N		Injection for salivary x-ray					
42600	T		Closure of salivary fistula	0253	14.4473	$753.44	$282.29	$150.69
42650	T		Dilation of salivary duct	0252	5.8041	$302.69	$113.41	$60.54
42660	T		Dilation of salivary duct	0252	5.8041	$302.69	$113.41	$60.54
42665	T		Ligation of salivary duct	0254	20.1158	$1,049.06	$321.35	$209.81
42699	T		Salivary surgery procedure	0253	14.4473	$753.44	$282.29	$150.69
42700	T		Drainage of tonsil abscess	0251	1.9089	$99.55		$19.91
42720	T		Drainage of throat abscess	0253	14.4473	$753.44	$282.29	$150.69
42725	T		Drainage of throat abscess	0256	34.0302	$1,774.71		$354.94
42800	T		Biopsy of throat	0252	5.8041	$302.69	$113.41	$60.54
42802	T		Biopsy of throat	0253	14.4473	$753.44	$282.29	$150.69
42804	T		Biopsy of upper nose/throat	0253	14.4473	$753.44	$282.29	$150.69
42806	T		Biopsy of upper nose/throat	0254	20.1158	$1,049.06	$321.35	$209.81
42808	T		Excise pharynx lesion	0253	14.4473	$753.44	$282.29	$150.69
42809	X		Remove pharynx foreign body	0340	0.6492	$33.86		$6.77
42810	T		Excision of neck cyst	0254	20.1158	$1,049.06	$321.35	$209.81
42815	T		Excision of neck cyst	0256	34.0302	$1,774.71		$354.94
42820	T		Remove tonsils and adenoids	0258	19.8736	$1,036.43	$437.25	$207.29
42821	T		Remove tonsils and adenoids	0258	19.8736	$1,036.43	$437.25	$207.29
42825	T		Removal of tonsils	0258	19.8736	$1,036.43	$437.25	$207.29
42826	T		Removal of tonsils	0258	19.8736	$1,036.43	$437.25	$207.29
42830	T		Removal of adenoids	0258	19.8736	$1,036.43	$437.25	$207.29
42831	T		Removal of adenoids	0258	19.8736	$1,036.43	$437.25	$207.29
42835	T		Removal of adenoids	0258	19.8736	$1,036.43	$437.25	$207.29
42836	T		Removal of adenoids	0258	19.8736	$1,036.43	$437.25	$207.29
42842	T		Extensive surgery of throat	0254	20.1158	$1,049.06	$321.35	$209.81
42844	T		Extensive surgery of throat	0256	34.0302	$1,774.71		$354.94
42845	C		Extensive surgery of throat					
42860	T		Excision of tonsil tags	0258	19.8736	$1,036.43	$437.25	$207.29
42870	T		Excision of lingual tonsil	0258	19.8736	$1,036.43	$437.25	$207.29
42890	T		Partial removal of pharynx	0256	34.0302	$1,774.71		$354.94
42892	T		Revision of pharyngeal walls	0256	34.0302	$1,774.71		$354.94
42894	C		Revision of pharyngeal walls					
42900	T		Repair throat wound	0252	5.8041	$302.69	$113.41	$60.54
42950	T		Reconstruction of throat	0254	20.1158	$1,049.06	$321.35	$209.81
42953	C		Repair throat, esophagus					
42955	T		Surgical opening of throat	0254	20.1158	$1,049.06	$321.35	$209.81
42960	T		Control throat bleeding	0250	1.6376	$85.40	$29.89	$17.08
42961	C		Control throat bleeding					
42962	T		Control throat bleeding	0256	34.0302	$1,774.71		$354.94
42970	T		Control nose/throat bleeding	0250	1.6376	$85.40	$29.89	$17.08
42971	C		Control nose/throat bleeding					
42972	T		Control nose/throat bleeding	0253	14.4473	$753.44	$282.29	$150.69
42999	T		Throat surgery procedure	0252	5.8041	$302.69	$113.41	$60.54
43020	T		Incision of esophagus	0252	5.8041	$302.69	$113.41	$60.54
43030	T		Throat muscle surgery	0253	14.4473	$753.44	$282.29	$150.69
43045	C		Incision of esophagus					
43100	C		Excision of esophagus lesion					
43101	C		Excision of esophagus lesion					
43107	C		Removal of esophagus					
43108	C		Removal of esophagus					
43112	C		Removal of esophagus					
43113	C		Removal of esophagus					
43116	C		Partial removal of esophagus					
43117	C		Partial removal of esophagus					
43118	C		Partial removal of esophagus					
43121	C		Partial removal of esophagus					
43122	C		Partial removal of esophagus					
43123	C		Partial removal of esophagus					
43124	C		Removal of esophagus					
43130	T		Removal of esophagus pouch	0254	20.1158	$1,049.06	$321.35	$209.81
43135	C		Removal of esophagus pouch					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued
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CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
43200	T		Esophagus endoscopy	0141	7.4126	$386.57	$143.38	$77.31
43201	T	NI	Esoph scope w/submucous inj	0141	7.4126	$386.57	$143.38	$77.31
43202	T		Esophagus endoscopy, biopsy	0141	7.4126	$386.57	$143.38	$77.31
43204	T		Esoph scope w/sclerosis inj	0141	7.4126	$386.57	$143.38	$77.31
43205	T		Esophagus endoscopy/ligation	0141	7.4126	$386.57	$143.38	$77.31
43215	T		Esophagus endoscopy	0141	7.4126	$386.57	$143.38	$77.31
43216	T		Esophagus endoscopy/lesion	0141	7.4126	$386.57	$143.38	$77.31
43217	T		Esophagus endoscopy	0141	7.4126	$386.57	$143.38	$77.31
43219	T		Esophagus endoscopy	0141	7.4126	$386.57	$143.38	$77.31
43220	T		Esoph endoscopy, dilation	0141	7.4126	$386.57	$143.38	$77.31
43226	T		Esoph endoscopy, dilation	0141	7.4126	$386.57	$143.38	$77.31
43227	T		Esoph endoscopy, repair	0141	7.4126	$386.57	$143.38	$77.31
43228	T		Esoph endoscopy, ablation	0141	7.4126	$386.57	$143.38	$77.31
43231	T		Esoph endoscopy w/us exam	0141	7.4126	$386.57	$143.38	$77.31
43232	T		Esoph endoscopy w/us fn bx	0141	7.4126	$386.57	$143.38	$77.31
43234	T		Upper GI endoscopy, exam	0141	7.4126	$386.57	$143.38	$77.31
43235	T		Uppr gi endoscopy, diagnosis	0141	7.4126	$386.57	$143.38	$77.31
43236	T	NI	Uppr gi scope w/submuc inj	0141	7.4126	$386.57	$143.38	$77.31
43239	T		Upper GI endoscopy, biopsy	0141	7.4126	$386.57	$143.38	$77.31
43240	T		Esoph endoscope w/drain cyst	0141	7.4126	$386.57	$143.38	$77.31
43241	T		Upper GI endoscopy with tube	0141	7.4126	$386.57	$143.38	$77.31
43242	T		Uppr gi endoscopy w/us fn bx	0141	7.4126	$386.57	$143.38	$77.31
43243	T		Upper gi endoscopy & inject	0141	7.4126	$386.57	$143.38	$77.31
43244	T		Upper GI endoscopy/ligation	0141	7.4126	$386.57	$143.38	$77.31
43245	T		Uppr gi scope dilate strictr	0141	7.4126	$386.57	$143.38	$77.31
43246	T		Place gastrostomy tube	0141	7.4126	$386.57	$143.38	$77.31
43247	T		Operative upper GI endoscopy	0141	7.4126	$386.57	$143.38	$77.31
43248	T		Uppr gi endoscopy/guide wire	0141	7.4126	$386.57	$143.38	$77.31
43249	T		Esoph endoscopy, dilation	0141	7.4126	$386.57	$143.38	$77.31
43250	T		Upper GI endoscopy/tumor	0141	7.4126	$386.57	$143.38	$77.31
43251	T		Operative upper GI endoscopy	0141	7.4126	$386.57	$143.38	$77.31
43255	T		Operative upper GI endoscopy	0141	7.4126	$386.57	$143.38	$77.31
43256	T		Uppr gi endoscopy w stent	0141	7.4126	$386.57	$143.38	$77.31
43258	T		Operative upper GI endoscopy	0141	7.4126	$386.57	$143.38	$77.31
43259	T		Endoscopic ultrasound exam	0141	7.4126	$386.57	$143.38	$77.31
43260	T		Endo cholangiopancreatograph	0151	17.5093	$913.13	$245.46	$182.63
43261	T		Endo cholangiopancreatograph	0151	17.5093	$913.13	$245.46	$182.63
43262	T		Endo cholangiopancreatograph	0151	17.5093	$913.13	$245.46	$182.63
43263	T		Endo cholangiopancreatograph	0151	17.5093	$913.13	$245.46	$182.63
43264	T		Endo cholangiopancreatograph	0151	17.5093	$913.13	$245.46	$182.63
43265	T		Endo cholangiopancreatograph	0151	17.5093	$913.13	$245.46	$182.63
43267	T		Endo cholangiopancreatograph	0151	17.5093	$913.13	$245.46	$182.63
43268	T		Endo cholangiopancreatograph	0151	17.5093	$913.13	$245.46	$182.63
43269	T		Endo cholangiopancreatograph	0151	17.5093	$913.13	$245.46	$182.63
43271	T		Endo cholangiopancreatograph	0151	17.5093	$913.13	$245.46	$182.63
43272	T		Endo cholangiopancreatograph	0151	17.5093	$913.13	$245.46	$182.63
43280	T		Laparoscopy, fundoplasty	0132	56.9948	$2,972.34	$1,239.22	$594.47
43289	T		Laparoscope proc, esoph	0130	30.4644	$1,588.75	$659.53	$317.75
43300	C		Repair of esophagus					
43305	C		Repair esophagus and fistula					
43310	C		Repair of esophagus					
43312	C		Repair esophagus and fistula					
43313	C		Esophagoplasty congenital					
43314	C		Tracheo-esophagoplasty cong					
43320	C		Fuse esophagus & stomach					
43324	C		Revise esophagus & stomach					
43325	C		Revise esophagus & stomach					
43326	C		Revise esophagus & stomach					
43330	C		Repair of esophagus					
43331	C		Repair of esophagus					
43340	C		Fuse esophagus & intestine					
43341	C		Fuse esophagus & intestine					
43350	C		Surgical opening, esophagus					
43351	C		Surgical opening, esophagus					
43352	C		Surgical opening, esophagus					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued
[Calendar Year 2003]

CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
43360	C		Gastrointestinal repair					
43361	C		Gastrointestinal repair					
43400	C		Ligate esophagus veins					
43401	C		Esophagus surgery for veins					
43405	C		Ligate/staple esophagus					
43410	C		Repair esophagus wound					
43415	C		Repair esophagus wound					
43420	C		Repair esophagus opening					
43425	C		Repair esophagus opening					
43450	T		Dilate esophagus	0140	6.0948	$317.85	$107.24	$63.57
43453	T		Dilate esophagus	0140	6.0948	$317.85	$107.24	$63.57
43456	T		Dilate esophagus	0140	6.0948	$317.85	$107.24	$63.57
43458	T		Dilate esophagus	0140	6.0948	$317.85	$107.24	$63.57
43460	C		Pressure treatment esophagus					
43496	C		Free jejunum flap, microvasc					
43499	T		Esophagus surgery procedure	0141	7.4126	$386.57	$143.38	$77.31
43500	C		Surgical opening of stomach					
43501	C		Surgical repair of stomach					
43502	C		Surgical repair of stomach					
43510	C		Surgical opening of stomach					
43520	C		Incision of pyloric muscle					
43600	T		Biopsy of stomach	0141	7.4126	$386.57	$143.38	$77.31
43605	C		Biopsy of stomach					
43610	C		Excision of stomach lesion					
43611	C		Excision of stomach lesion					
43620	C		Removal of stomach					
43621	C		Removal of stomach					
43622	C		Removal of stomach					
43631	C		Removal of stomach, partial					
43632	C		Removal of stomach, partial					
43633	C		Removal of stomach, partial					
43634	C		Removal of stomach, partial					
43635	C		Removal of stomach, partial					
43638	C		Removal of stomach, partial					
43639	C		Removal of stomach, partial					
43640	C		Vagotomy & pylorus repair					
43641	C		Vagotomy & pylorus repair					
43651	T		Laparoscopy, vagus nerve	0132	56.9948	$2,972.34	$1,239.22	$594.47
43652	T		Laparoscopy, vagus nerve	0132	56.9948	$2,972.34	$1,239.22	$594.47
43653	T		Laparoscopy, gastrostomy	0131	40.2026	$2,096.61	$1,001.89	$419.32
43659	T		Laparoscope proc, stom	0130	30.4644	$1,588.75	$659.53	$317.75
43750	T		Place gastrostomy tube	0141	7.4126	$386.57	$143.38	$77.31
43752	E		Nasal/orogastric w/stent					
43760	T		Change gastrostomy tube	0121	2.0833	$108.65	$43.80	$21.73
43761	T		Reposition gastrostomy tube	0121	2.0833	$108.65	$43.80	$21.73
43800	C		Reconstruction of pylorus					
43810	C		Fusion of stomach and bowel					
43820	C		Fusion of stomach and bowel					
43825	C		Fusion of stomach and bowel					
43830	T		Place gastrostomy tube	0141	7.4126	$386.57	$143.38	$77.31
43831	T		Place gastrostomy tube	0141	7.4126	$386.57	$143.38	$77.31
43832	C		Place gastrostomy tube					
43840	C		Repair of stomach lesion					
43842	C		Gastroplasty for obesity					
43843	C		Gastroplasty for obesity					
43846	C		Gastric bypass for obesity					
43847	C		Gastric bypass for obesity					
43848	C		Revision gastroplasty					
43850	C		Revise stomach-bowel fusion					
43855	C		Revise stomach-bowel fusion					
43860	C		Revise stomach-bowel fusion					
43865	C		Revise stomach-bowel fusion					
43870	T		Repair stomach opening	0141	7.4126	$386.57	$143.38	$77.31
43880	C		Repair stomach-bowel fistula					
43999	T		Stomach surgery procedure	0141	7.4126	$386.57	$143.38	$77.31

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

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CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
44005	C		Freeing of bowel adhesion					
44010	C		Incision of small bowel					
44015	C		Insert needle cath bowel					
44020	C		Explore small intestine					
44021	C		Decompress small bowel					
44025	C		Incision of large bowel					
44050	C		Reduce bowel obstruction					
44055	C		Correct malrotation of bowel					
44100	T		Biopsy of bowel	0141	7.4126	$386.57	$143.38	$77.31
44110	C		Excise intestine lesion(s)					
44111	C		Excision of bowel lesion(s)					
44120	C		Removal of small intestine					
44121	C		Removal of small intestine					
44125	C		Removal of small intestine					
44126	C		Enterectomy w/o taper, cong					
44127	C		Enterectomy w/taper, cong					
44128	C		Enterectomy cong, add-on					
44130	C		Bowel to bowel fusion					
44132	C		Enterectomy, cadaver donor					
44133	C		Enterectomy, live donor					
44135	C		Intestine transpint, cadaver					
44136	C		Intestine transplant, live					
44139	C		Mobilization of colon					
44140	C		Partial removal of colon					
44141	C		Partial removal of colon					
44143	C		Partial removal of colon					
44144	C		Partial removal of colon					
44145	C		Partial removal of colon					
44146	C		Partial removal of colon					
44147	C		Partial removal of colon					
44150	C		Removal of colon					
44151	C		Removal of colon/ileostomy					
44152	C		Removal of colon/ileostomy					
44153	C		Removal of colon/ileostomy					
44155	C		Removal of colon/ileostomy					
44156	C		Removal of colon/ileostomy					
44160	C		Removal of colon					
44200	T		Laparoscopy, enterolysis	0131	40.2026	$2,096.61	$1,001.89	$419.32
44201	T		Laparoscopy, jejunostomy	0131	40.2026	$2,096.61	$1,001.89	$419.32
44202	C		Lap resect s/intestine singl					
44203	C		Lap resect s/intestine, addl					
44204	C		Laparo partial colectomy					
44205	C		Lap colectomy part w/ileum					
44206	T	NI	Lap part colectomy w/stoma	0132	56.9948	$2,972.34	$1,239.22	$594.47
44207	T	NI	L colectomy/coloproctostomy	0132	56.9948	$2,972.34	$1,239.22	$594.47
44208	T	NI	L colectomy/coloproctostomy	0132	56.9948	$2,972.34	$1,239.22	$594.47
44209	T	DG	Laparoscope proc, intestine	0130	30.4644	$1,588.75	$659.53	$317.75
44210	C	NI	Laparo total proctocolectomy					
44211	C	NI	Laparo total proctocolectomy					
44212	C	NI	Laparo total proctocolectomy					
44238	T	NI	Laparoscope proc, intestine	0130	30.4644	$1,588.75	$659.53	$317.75
44239	T	NI	Laparoscope proc, rectum	0130	30.4644	$1,588.75	$659.53	$317.75
44300	C		Open bowel to skin					
44310	C		Ileostomy/jejunostomy					
44312	T		Revision of ileostomy	0027	15.2225	$793.87	$329.72	$158.77
44314	C		Revision of ileostomy					
44316	C		Devise bowel pouch					
44320	C		Colostomy					
44322	C		Colostomy with biopsies					
44340	T		Revision of colostomy	0027	15.2225	$793.87	$329.72	$158.77
44345	C		Revision of colostomy					
44346	C		Revision of colostomy					
44360	T		Small bowel endoscopy	0142	8.1393	$424.47	$152.78	$84.89
44361	T		Small bowel endoscopy/biopsy	0142	8.1393	$424.47	$152.78	$84.89
44363	T		Small bowel endoscopy	0142	8.1393	$424.47	$152.78	$84.89

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

[Calendar Year 2003]

CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
44364	T		Small bowel endoscopy	0142	8.1393	$424.47	$152.78	$84.89
44365	T		Small bowel endoscopy	0142	8.1393	$424.47	$152.78	$84.89
44366	T		Small bowel endoscopy	0142	8.1393	$424.47	$152.78	$84.89
44369	T		Small bowel endoscopy	0142	8.1393	$424.47	$152.78	$84.89
44370	T		Small bowel endoscopy/stent	0142	8.1393	$424.47	$152.78	$84.89
44372	T		Small bowel endoscopy	0142	8.1393	$424.47	$152.78	$84.89
44373	T		Small bowel endoscopy	0142	8.1393	$424.47	$152.78	$84.89
44376	T		Small bowel endoscopy	0142	8.1393	$424.47	$152.78	$84.89
44377	T		Small bowel endoscopy/biopsy	0142	8.1393	$424.47	$152.78	$84.89
44378	T		Small bowel endoscopy	0142	8.1393	$424.47	$152.78	$84.89
44379	T		S bowel endoscope w/stent	0142	8.1393	$424.47	$152.78	$84.89
44380	T		Small bowel endoscopy	0142	8.1393	$424.47	$152.78	$84.89
44382	T		Small bowel endoscopy	0142	8.1393	$424.47	$152.78	$84.89
44383	T		Ileoscopy w/stent	0142	8.1393	$424.47	$152.78	$84.89
44385	T		Endoscopy of bowel pouch	0143	7.9165	$412.85	$186.06	$82.57
44386	T		Endoscopy, bowel pouch/biop	0143	7.9165	$412.85	$186.06	$82.57
44388	T		Colon endoscopy	0143	7.9165	$412.85	$186.06	$82.57
44389	T		Colonoscopy with biopsy	0143	7.9165	$412.85	$186.06	$82.57
44390	T		Colonoscopy for foreign body	0143	7.9165	$412.85	$186.06	$82.57
44391	T		Colonoscopy for bleeding	0143	7.9165	$412.85	$186.06	$82.57
44392	T		Colonoscopy & polypectomy	0143	7.9165	$412.85	$186.06	$82.57
44393	T		Colonoscopy, lesion removal	0143	7.9165	$412.85	$186.06	$82.57
44394	T		Colonoscopy w/snare	0143	7.9165	$412.85	$186.06	$82.57
44397	T		Colonoscopy w/stent	0143	7.9165	$412.85	$186.06	$82.57
44500	T		Intro, gastrointestinal tube	0121	2.0833	$108.65	$43.80	$21.73
44602	C		Suture, small intestine					
44603	C		Suture, small intestine					
44604	C		Suture, large intestine					
44605	C		Repair of bowel lesion					
44615	C		Intestinal stricturoplasty					
44620	C		Repair bowel opening					
44625	C		Repair bowel opening					
44626	C		Repair bowel opening					
44640	C		Repair bowel-skin fistula					
44650	C		Repair bowel fistula					
44660	C		Repair bowel-bladder fistula					
44661	C		Repair bowel-bladder fistula					
44680	C		Surgical revision, intestine					
44700	C		Suspend bowel w/prosthesis					
44701	N	NI	Intraop colon lavage add-on					
44799	T		Intestine surgery procedure	0142	8.1393	$424.47	$152.78	$84.89
44800	C		Excision of bowel pouch					
44820	C		Excision of mesentery lesion					
44850	C		Repair of mesentery					
44899	C		Bowel surgery procedure					
44900	C		Drain app abscess, open					
44901	C		Drain app abscess, percut					
44950	C		Appendectomy					
44955	C		Appendectomy add-on					
44960	C		Appendectomy					
44970	T		Laparoscopy, appendectomy	0130	30.4644	$1,588.75	$659.53	$317.75
44979	T		Laparoscope proc, app	0130	30.4644	$1,588.75	$659.53	$317.75
45000	T		Drainage of pelvic abscess	0149	16.3756	$854.00	$293.06	$170.80
45005	T		Drainage of rectal abscess	0148	3.4205	$178.38	$63.38	$35.68
45020	T		Drainage of rectal abscess	0149	16.3756	$854.00	$293.06	$170.80
45100	T		Biopsy of rectum	0149	16.3756	$854.00	$293.06	$170.80
45108	T		Removal of anorectal lesion	0150	21.2398	$1,107.68	$437.12	$221.54
45110	C		Removal of rectum					
45111	C		Partial removal of rectum					
45112	C		Removal of rectum					
45113	C		Partial proctectomy					
45114	C		Partial removal of rectum					
45116	C		Partial removal of rectum					
45119	C		Remove rectum w/reservoir					
45120	C		Removal of rectum					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

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CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
45121	C		Removal of rectum and colon					
45123	C		Partial proctectomy					
45126	C		Pelvic exenteration					
45130	C		Excision of rectal prolapse					
45135	C		Excision of rectal prolapse					
45136	C		Excise ileoanal reservior					
45150	T		Excision of rectal stricture	0150	21.2398	$1,107.68	$437.12	$221.54
45160	T		Excision of rectal lesion	0150	21.2398	$1,107.68	$437.12	$221.54
45170	T		Excision of rectal lesion	0150	21.2398	$1,107.68	$437.12	$221.54
45190	T		Destruction, rectal tumor	0150	21.2398	$1,107.68	$437.12	$221.54
45300	T		Proctosigmoidoscopy dx	0146	3.4302	$178.89	$64.40	$35.78
45303	T		Proctosigmoidoscopy dilate	0146	3.4302	$178.89	$64.40	$35.78
45305	T		Proctosigmoidoscopy w/bx	0146	3.4302	$178.89	$64.40	$35.78
45307	T		Proctosigmoidoscopy fb	0146	3.4302	$178.89	$64.40	$35.78
45308	T		Proctosigmoidoscopy removal	0147	7.0153	$365.85	$79.46	$73.17
45309	T		Proctosigmoidoscopy removal	0147	7.0153	$365.85	$79.46	$73.17
45315	T		Proctosigmoidoscopy removal	0147	7.0153	$365.85	$79.46	$73.17
45317	T		Proctosigmoidoscopy bleed	0146	3.4302	$178.89	$64.40	$35.78
45320	T		Proctosigmoidoscopy ablate	0147	7.0153	$365.85	$79.46	$73.17
45321	T		Proctosigmoidoscopy volvul	0147	7.0153	$365.85	$79.46	$73.17
45327	T		Proctosigmoidoscopy w/stent	0147	7.0153	$365.85	$79.46	$73.17
45330	T		Diagnostic sigmoidoscopy	0146	3.4302	$178.89	$64.40	$35.78
45331	T		Sigmoidoscopy and biopsy	0146	3.4302	$178.89	$64.40	$35.78
45332	T		Sigmoidoscopy w/fb removal	0146	3.4302	$178.89	$64.40	$35.78
45333	T		Sigmoidoscopy & polypectomy	0147	7.0153	$365.85	$79.46	$73.17
45334	T		Sigmoidoscopy for bleeding	0147	7.0153	$365.85	$79.46	$73.17
45335	T	NI	Sigmoidoscope w/submuc inj	0147	7.0153	$365.85	$79.46	$73.17
45337	T		Sigmoidoscopy & decompress	0147	7.0153	$365.85	$79.46	$73.17
45338	T		Sigmoidoscpy w/tumr remove	0147	7.0153	$365.85	$79.46	$73.17
45339	T		Sigmoidoscopy w/ablate tumr	0147	7.0153	$365.85	$79.46	$73.17
45340	T	NI	Sig w/balloon dilation	0147	7.0153	$365.85	$79.46	$73.17
45341	T		Sigmoidoscopy w/ultrasound	0147	7.0153	$365.85	$79.46	$73.17
45342	T		Sigmoidoscopy w/us guide bx	0147	7.0153	$365.85	$79.46	$73.17
45345	T		Sigmoidoscopy w/stent	0147	7.0153	$365.85	$79.46	$73.17
45355	T		Surgical colonoscopy	0143	7.9165	$412.85	$186.06	$82.57
45378	T		Diagnostic colonoscopy	0143	7.9165	$412.85	$186.06	$82.57
45379	T		Colonoscopy w/fb removal	0143	7.9165	$412.85	$186.06	$82.57
45380	T		Colonoscopy and biopsy	0143	7.9165	$412.85	$186.06	$82.57
45381	T	NI	Colonoscope, submucous inj	0143	7.9165	$412.85	$186.06	$82.57
45382	T		Colonoscopy/control bleeding	0143	7.9165	$412.85	$186.06	$82.57
45383	T		Lesion removal colonoscopy	0143	7.9165	$412.85	$186.06	$82.57
45384	T		Lesion remove colonoscopy	0143	7.9165	$412.85	$186.06	$82.57
45385	T		Lesion removal colonoscopy	0143	7.9165	$412.85	$186.06	$82.57
45386	T	NI	Colonoscope dilate stricture	0143	7.9165	$412.85	$186.06	$82.57
45387	T		Colonoscopy w/stent	0143	7.9165	$412.85	$186.06	$82.57
45500	T		Repair of rectum	0150	21.2398	$1,107.68	$437.12	$221.54
45505	T		Repair of rectum	0150	21.2398	$1,107.68	$437.12	$221.54
45520	T		Treatment of rectal prolapse	0098	1.6666	$86.91	$20.88	$17.38
45540	C		Correct rectal prolapse					
45541	C		Correct rectal prolapse					
45550	C		Repair rectum/remove sigmoid					
45560	T		Repair of rectocele	0150	21.2398	$1,107.68	$437.12	$221.54
45562	C		Exploration/repair of rectum					
45563	C		Exploration/repair of rectum					
45800	C		Repair rect/bladder fistula					
45805	C		Repair fistula w/colostomy					
45820	C		Repair rectourethral fistula					
45825	C		Repair fistula w/colostomy					
45900	T		Reduction of rectal prolapse	0148	3.4205	$178.38	$63.38	$35.68
45905	T		Dilation of anal sphincter	0149	16.3756	$854.00	$293.06	$170.80
45910	T		Dilation of rectal narrowing	0149	16.3756	$854.00	$293.06	$170.80
45915	T		Remove rectal obstruction	0148	3.4205	$178.38	$63.38	$35.68
45999	T		Rectum surgery procedure	0148	3.4205	$178.38	$63.38	$35.68
46020	T		Placement of seton	0148	3.4205	$178.38	$63.38	$35.68
46030	T		Removal of rectal marker	0148	3.4205	$178.38	$63.38	$35.68

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

[Calendar Year 2003]

CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
46040	T		Incision of rectal abscess	0155	10.1936	$531.61	$188.89	$106.32
46045	T		Incision of rectal abscess	0150	21.2398	$1,107.68	$437.12	$221.54
46050	T		Incision of anal abscess	0148	3.4205	$178.38	$63.38	$35.68
46060	T		Incision of rectal abscess	0150	21.2398	$1,107.68	$437.12	$221.54
46070	T		Incision of anal septum	0155	10.1936	$531.61	$188.89	$106.32
46080	T		Incision of anal sphincter	0149	16.3756	$854.00	$293.06	$170.80
46083	T		Incise external hemorrhoid	0148	3.4205	$178.38	$63.38	$35.68
46200	T		Removal of anal fissure	0150	21.2398	$1,107.68	$437.12	$221.54
46210	T		Removal of anal crypt	0149	16.3756	$854.00	$293.06	$170.80
46211	T		Removal of anal crypts	0150	21.2398	$1,107.68	$437.12	$221.54
46220	T		Removal of anal tag	0149	16.3756	$854.00	$293.06	$170.80
46221	T		Ligation of hemorrhoid(s)	0148	3.4205	$178.38	$63.38	$35.68
46230	T		Removal of anal tags	0149	16.3756	$854.00	$293.06	$170.80
46250	T		Hemorrhoidectomy	0150	21.2398	$1,107.68	$437.12	$221.54
46255	T		Hemorrhoidectomy	0150	21.2398	$1,107.68	$437.12	$221.54
46257	T		Remove hemorrhoids & fissure	0150	21.2398	$1,107.68	$437.12	$221.54
46258	T		Remove hemorrhoids & fistula	0150	21.2398	$1,107.68	$437.12	$221.54
46260	T		Hemorrhoidectomy	0150	21.2398	$1,107.68	$437.12	$221.54
46261	T		Remove hemorrhoids & fissure	0150	21.2398	$1,107.68	$437.12	$221.54
46262	T		Remove hemorrhoids & fistula	0150	21.2398	$1,107.68	$437.12	$221.54
46270	T		Removal of anal fistula	0150	21.2398	$1,107.68	$437.12	$221.54
46275	T		Removal of anal fistula	0150	21.2398	$1,107.68	$437.12	$221.54
46280	T		Removal of anal fistula	0150	21.2398	$1,107.68	$437.12	$221.54
46285	T		Removal of anal fistula	0150	21.2398	$1,107.68	$437.12	$221.54
46288	T		Repair anal fistula	0150	21.2398	$1,107.68	$437.12	$221.54
46320	T		Removal of hemorrhoid clot	0148	3.4205	$178.38	$63.38	$35.68
46500	T		Injection into hemorrhoid(s)	0155	10.1936	$531.61	$188.89	$106.32
46600	X		Diagnostic anoscopy	0340	0.6492	$33.86		$6.77
46604	T		Anoscopy and dilation	0147	7.0153	$365.85	$79.46	$73.17
46606	T		Anoscopy and biopsy	0147	7.0153	$365.85	$79.46	$73.17
46608	T		Anoscopy, remove for body	0147	7.0153	$365.85	$79.46	$73.17
46610	T		Anoscopy, remove lesion	0147	7.0153	$365.85	$79.46	$73.17
46611	T		Anoscopy	0147	7.0153	$365.85	$79.46	$73.17
46612	T		Anoscopy, remove lesions	0147	7.0153	$365.85	$79.46	$73.17
46614	T		Anoscopy, control bleeding	0147	7.0153	$365.85	$79.46	$73.17
46615	T		Anoscopy	0147	7.0153	$365.85	$79.46	$73.17
46700	T		Repair of anal stricture	0150	21.2398	$1,107.68	$437.12	$221.54
46705	C		Repair of anal stricture					
46706	T	NI	Repr of anal fistula w/glue	0148	3.4205	$178.38	$63.38	$35.68
46715	C		Repair of anovaginal fistula					
46716	C		Repair of anovaginal fistula					
46730	C		Construction of absent anus					
46735	C		Construction of absent anus					
46740	C		Construction of absent anus					
46742	C		Repair of imperforated anus					
46744	C		Repair of cloacal anomaly					
46746	C		Repair of cloacal anomaly					
46748	C		Repair of cloacal anomaly					
46750	T		Repair of anal sphincter	0150	21.2398	$1,107.68	$437.12	$221.54
46751	C		Repair of anal sphincter					
46753	T		Reconstruction of anus	0150	21.2398	$1,107.68	$437.12	$221.54
46754	T		Removal of suture from anus	0149	16.3756	$854.00	$293.06	$170.80
46760	T		Repair of anal sphincter	0150	21.2398	$1,107.68	$437.12	$221.54
46761	T		Repair of anal sphincter	0150	21.2398	$1,107.68	$437.12	$221.54
46762	T		Implant artificial sphincter	0150	21.2398	$1,107.68	$437.12	$221.54
46900	T		Destruction, anal lesion(s)	0016	2.6162	$136.44	$57.31	$27.29
46910	T		Destruction, anal lesion(s)	0017	15.8233	$825.20	$227.84	$165.04
46916	T		Cryosurgery, anal lesion(s)	0013	1.0756	$56.09	$14.20	$11.22
46917	T		Laser surgery, anal lesions	0695	18.6817	$974.27	$266.59	$194.85
46922	T		Excision of anal lesion(s)	0695	18.6817	$974.27	$266.59	$194.85
46924	T		Destruction, anal lesion(s)	0695	18.6817	$974.27	$266.59	$194.85
46934	T		Destruction of hemorrhoids	0155	10.1936	$531.61	$188.89	$106.32
46935	T		Destruction of hemorrhoids	0155	10.1936	$531.61	$188.89	$106.32
46936	T		Destruction of hemorrhoids	0149	16.3756	$854.00	$293.06	$170.80
46937	T		Cryotherapy of rectal lesion	0149	16.3756	$854.00	$293.06	$170.80

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued
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CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
46938	T		Cryotherapy of rectal lesion	0150	21.2398	$1,107.68	$437.12	$221.54
46940	T		Treatment of anal fissure	0149	16.3756	$854.00	$293.06	$170.80
46942	T		Treatment of anal fissure	0148	3.4205	$178.38	$63.38	$35.68
46945	T		Ligation of hemorrhoids	0155	10.1936	$531.61	$188.89	$106.32
46946	T		Ligation of hemorrhoids	0155	10.1936	$531.61	$188.89	$106.32
46999	T		Anus surgery procedure	0148	3.4205	$178.38	$63.38	$35.68
47000	T		Needle biopsy of liver	0685	5.9882	$312.29	$137.40	$62.46
47001	N		Needle biopsy, liver add-on					
47010	C		Open drainage, liver lesion					
47011	T		Percut drain, liver lesion	0005	3.1201	$162.72	$71.59	$32.54
47015	C		Inject/aspirate liver cyst					
47100	C		Wedge biopsy of liver					
47120	C		Partial removal of liver					
47122	C		Extensive removal of liver					
47125	C		Partial removal of liver					
47130	C		Partial removal of liver					
47133	C		Removal of donor liver					
47134	C		Partial removal, donor liver					
47135	C		Transplantation of liver					
47136	C		Transplantation of liver					
47300	C		Surgery for liver lesion					
47350	C		Repair liver wound					
47360	C		Repair liver wound					
47361	C		Repair liver wound					
47362	C		Repair liver wound					
47370	T		Laparo ablate liver tumor rf	0130	30.4644	$1,588.75	$659.53	$317.75
47371	T		Laparo ablate liver cryosurg	0130	30.4644	$1,588.75	$659.53	$317.75
47379	T		Laparoscope procedure, liver	0130	30.4644	$1,588.75	$659.53	$317.75
47380	C		Open ablate liver tumor rf					
47381	C		Open ablate liver tumor cryo					
47382	T		Percut ablate liver rf	0980		$1,875.00		$375.00
47399	T		Liver surgery procedure	0005	3.1201	$162.72	$71.59	$32.54
47400	C		Incision of liver duct					
47420	C		Incision of bile duct					
47425	C		Incision of bile duct					
47460	C		Incise bile duct sphincter					
47480	C		Incision of gallbladder					
47490	T		Incision of gallbladder	0152	10.0288	$523.01	$131.28	$104.60
47500	N		Injection for liver x-rays					
47505	N		Injection for liver x-rays					
47510	T		Insert catheter, bile duct	0152	10.0288	$523.01	$131.28	$104.60
47511	T		Insert bile duct drain	0152	10.0288	$523.01	$131.28	$104.60
47525	T		Change bile duct catheter	0122	10.7459	$560.41	$114.93	$112.08
47530	T		Revise/reinsert bile tube	0121	2.0833	$108.65	$43.80	$21.73
47550	C		Bile duct endoscopy add-on					
47552	T		Biliary endoscopy thru skin	0152	10.0288	$523.01	$131.28	$104.60
47553	T		Biliary endoscopy thru skin	0152	10.0288	$523.01	$131.28	$104.60
47554	T		Biliary endoscopy thru skin	0152	10.0288	$523.01	$131.28	$104.60
47555	T		Biliary endoscopy thru skin	0152	10.0288	$523.01	$131.28	$104.60
47556	T		Biliary endoscopy thru skin	0152	10.0288	$523.01	$131.28	$104.60
47560	T		Laparoscopy w/cholangio	0130	30.4644	$1,588.75	$659.53	$317.75
47561	T		Laparo w/cholangio/biopsy	0130	30.4644	$1,588.75	$659.53	$317.75
47562	T		Laparoscopic cholecystectomy	0131	40.2026	$2,096.61	$1,001.89	$419.32
47563	T		Laparo cholecystectomy/graph	0131	40.2026	$2,096.61	$1,001.89	$419.32
47564	T		Laparo cholecystectomy/explr	0131	40.2026	$2,096.61	$1,001.89	$419.32
47570	C		Laparo cholecystoenterostomy					
47579	T		Laparoscope proc, biliary	0130	30.4644	$1,588.75	$659.53	$317.75
47600	C		Removal of gallbladder					
47605	C		Removal of gallbladder					
47610	C		Removal of gallbladder					
47612	C		Removal of gallbladder					
47620	C		Removal of gallbladder					
47630	T		Remove bile duct stone	0152	10.0288	$523.01	$131.28	$104.60
47700	C		Exploration of bile ducts					
47701	C		Bile duct revision					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued
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CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
47711	C		Excision of bile duct tumor					
47712	C		Excision of bile duct tumor					
47715	C		Excision of bile duct cyst					
47716	C		Fusion of bile duct cyst					
47720	C		Fuse gallbladder & bowel					
47721	C		Fuse upper gi structures					
47740	C		Fuse gallbladder & bowel					
47741	C		Fuse gallbladder & bowel					
47760	C		Fuse bile ducts and bowel					
47765	C		Fuse liver ducts & bowel					
47780	C		Fuse bile ducts and bowel					
47785	C		Fuse bile ducts and bowel					
47800	C		Reconstruction of bile ducts					
47801	C		Placement, bile duct support					
47802	C		Fuse liver duct & intestine					
47900	C		Suture bile duct injury					
47999	T		Bile tract surgery procedure	0152	10.0288	$523.01	$131.28	$104.60
48000	C		Drainage of abdomen					
48001	C		Placement of drain, pancreas					
48005	C		Resect/debride pancreas					
48020	C		Removal of pancreatic stone					
48100	C		Biopsy of pancreas, open					
48102	T		Needle biopsy, pancreas	0685	5.9882	$312.29	$137.40	$62.46
48120	C		Removal of pancreas lesion					
48140	C		Partial removal of pancreas					
48145	C		Partial removal of pancreas					
48146	C		Pancreatectomy					
48148	C		Removal of pancreatic duct					
48150	C		Partial removal of pancreas					
48152	C		Pancreatectomy					
48153	C		Pancreatectomy					
48154	C		Pancreatectomy					
48155	C		Removal of pancreas					
48160	E		Pancreas removal/transplant					
48180	C		Fuse pancreas and bowel					
48400	C		Injection, intraop add-on					
48500	C		Surgery of pancreatic cyst					
48510	C		Drain pancreatic pseudocyst					
48511	T		Drain pancreatic pseudocyst	0005	3.1201	$162.72	$71.59	$32.54
48520	C		Fuse pancreas cyst and bowel					
48540	C		Fuse pancreas cyst and bowel					
48545	C		Pancreatorrhaphy					
48547	C		Duodenal exclusion					
48550	E		Donor pancreatectomy					
48554	E		Transpl allograft pancreas					
48556	C		Removal, allograft pancreas					
48999	T		Pancreas surgery procedure	0005	3.1201	$162.72	$71.59	$32.54
49000	C		Exploration of abdomen					
49002	C		Reopening of abdomen					
49010	C		Exploration behind abdomen					
49020	C		Drain abdominal abscess					
49021	C		Drain abdominal abscess					
49040	C		Drain, open, abdom abscess					
49041	C		Drain, percut, abdom abscess					
49060	C		Drain, open, retrop abscess					
49061	C		Drain, percut, retroper absc					
49062	C		Drain to peritoneal cavity					
49080	T		Puncture, peritoneal cavity	0070	3.3623	$175.35		$35.07
49081	T		Removal of abdominal fluid	0070	3.3623	$175.35		$35.07
49085	T		Remove abdomen foreign body	0153	19.5441	$1,019.24	$410.87	$203.85
49180	T		Biopsy, abdominal mass	0685	5.9882	$312.29	$137.40	$62.46
49200	T		Removal of abdominal lesion	0130	30.4644	$1,588.75	$659.53	$317.75
49201	C		Remove abdom lesion, complex					
49215	C		Excise sacral spine tumor					
49220	C		Multiple surgery, abdomen					

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CPT/HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
49250	T		Excision of umbilicus	0153	19.5441	$1,019.24	$410.87	$203.85
49255	C		Removal of omentum					
49320	T		Diag laparo separate proc	0130	30.4644	$1,588.75	$659.53	$317.75
49321	T		Laparoscopy, biopsy	0130	30.4644	$1,588.75	$659.53	$317.75
49322	T		Laparoscopy, aspiration	0130	30.4644	$1,588.75	$659.53	$317.75
49323	T		Laparo drain lymphocele	0130	30.4644	$1,588.75	$659.53	$317.75
49329	T		Laparo proc, abdm/per/oment	0130	30.4644	$1,588.75	$659.53	$317.75
49400	N		Air injection into abdomen					
49419	T	NI	Insrt abdom cath for chemotx	0119	89.3100	$4,657.61		$931.52
49420	T		Insert abdom drain, temp	0652	28.1292	$1,466.97		$293.39
49421	T		Insert abdom drain, perm	0652	28.1292	$1,466.97		$293.39
49422	T		Remove perm cannula/catheter	0105	18.5945	$969.72	$370.40	$193.94
49423	T		Exchange drainage catheter	0152	10.0288	$523.01	$131.28	$104.60
49424	N		Assess cyst, contrast inject					
49425	C		Insert abdomen-venous drain					
49426	T		Revise abdomen-venous shunt	0153	19.5441	$1,019.24	$410.87	$203.85
49427	N		Injection, abdominal shunt					
49428	C		Ligation of shunt					
49429	T		Removal of shunt	0105	18.5945	$969.72	$370.40	$193.94
49491	T		Rpr hern preemie reduc	0154	25.7262	$1,341.65	$464.85	$268.33
49492	T		Rpr ing hern premie, blocked	0154	25.7262	$1,341.65	$464.85	$268.33
49495	T		Rpr ing hernia baby, reduc	0154	25.7262	$1,341.65	$464.85	$268.33
49496	T		Rpr ing hernia baby, blocked	0154	25.7262	$1,341.65	$464.85	$268.33
49500	T		Rpr ing hernia, init, reduce	0154	25.7262	$1,341.65	$464.85	$268.33
49501	T		Rpr ing hernia, init blocked	0154	25.7262	$1,341.65	$464.85	$268.33
49505	T		Prp i/hern init reduc>5 yr	0154	25.7262	$1,341.65	$464.85	$268.33
49507	T		Prp i/hern init block>5 yr	0154	25.7262	$1,341.65	$464.85	$268.33
49520	T		Rerepair ing hernia, reduce	0154	25.7262	$1,341.65	$464.85	$268.33
49521	T		Rerepair ing hernia, blocked	0154	25.7262	$1,341.65	$464.85	$268.33
49525	T		Repair ing hernia, sliding	0154	25.7262	$1,341.65	$464.85	$268.33
49540	T		Repair lumbar hernia	0154	25.7262	$1,341.65	$464.85	$268.33
49550	T		Rpr rem hernia, init, reduce	0154	25.7262	$1,341.65	$464.85	$268.33
49553	T		Rpr fem hernia, init blocked	0154	25.7262	$1,341.65	$464.85	$268.33
49555	T		Rerepair fem hernia, reduce	0154	25.7262	$1,341.65	$464.85	$268.33
49557	T		Rerepair fem hernia, blocked	0154	25.7262	$1,341.65	$464.85	$268.33
49560	T		Rpr ventral hern init, reduc	0154	25.7262	$1,341.65	$464.85	$268.33
49561	T		Rpr ventral hern init, block	0154	25.7262	$1,341.65	$464.85	$268.33
49565	T		Rerepair ventrl hern, reduce	0154	25.7262	$1,341.65	$464.85	$268.33
49566	T		Rerepair ventrl hern, block	0154	25.7262	$1,341.65	$464.85	$268.33
49568	T		Hernia repair w/mesh	0154	25.7262	$1,341.65	$464.85	$268.33
49570	T		Rpr epigastric hern, reduce	0154	25.7262	$1,341.65	$464.85	$268.33
49572	T		Rpr epigastric hern, blocked	0154	25.7262	$1,341.65	$464.85	$268.33
49580	T		Rpr umbil hern, reduc < 5 yr	0154	25.7262	$1,341.65	$464.85	$268.33
49582	T		Rpr umbil hern, block < 5 yr	0154	25.7262	$1,341.65	$464.85	$268.33
49585	T		Rpr umbil hern, reduc > 5 yr	0154	25.7262	$1,341.65	$464.85	$268.33
49587	T		Rpr umbil hern, block > 5 yr	0154	25.7262	$1,341.65	$464.85	$268.33
49590	T		Repair spigilian hernia	0154	25.7262	$1,341.65	$464.85	$268.33
49600	T		Repair umbilical lesion	0154	25.7262	$1,341.65	$464.85	$268.33
49605	C		Repair umbilical lesion					
49606	C		Repair umbilical lesion					
49610	C		Repair umbilical lesion					
49611	C		Repair umbilical lesion					
49650	T		Laparo hernia repair initial	0131	40.2026	$2,096.61	$1,001.89	$419.32
49651	T		Laparo hernia repair recur	0131	40.2026	$2,096.61	$1,001.89	$419.32
49659	T		Laparo proc, hernia repair	0131	40.2026	$2,096.61	$1,001.89	$419.32
49900	C		Repair of abdominal wall					
49904	C	NI	Omental flap, extra-abdom					
49905	C		Omental flap					
49906	C		Free omental flap, microvasc					
49999	T		Abdomen surgery procedure	0153	19.5441	$1,019.24	$410.87	$203.85
50010	C		Exploration of kidney					
50020	C		Renal abscess, open drain					
50021	T		Renal abscess, percut drain	0005	3.1201	$162.72	$71.59	$32.54
50040	C		Drainage of kidney					
50045	C		Exploration of kidney					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued
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CPT/HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
50060	C		Removal of kidney stone					
50065	C		Incision of kidney					
50070	C		Incision of kidney					
50075	C		Removal of kidney stone					
50080	T		Removal of kidney stone	0163	28.3714	$1,479.60		$295.92
50081	T		Removal of kidney stone	0163	28.3714	$1,479.60		$295.92
50100	C		Revise kidney blood vessels					
50120	C		Exploration of kidney					
50125	C		Explore and drain kidney					
50130	C		Removal of kidney stone					
50135	C		Exploration of kidney					
50200	T		Biopsy of kidney	0685	5.9882	$312.29	$137.40	$62.46
50205	C		Biopsy of kidney					
50220	C		Remove kidney, open					
50225	C		Removal kidney open, complex					
50230	C		Removal kidney open, radical					
50234	C		Removal of kidney & ureter					
50236	C		Removal of kidney & ureter					
50240	C		Partial removal of kidney					
50280	C		Removal of kidney lesion					
50290	C		Removal of kidney lesion					
50300	C		Removal of donor kidney					
50320	C		Removal of donor kidney					
50340	C		Removal of kidney					
50360	C		Transplantation of kidney					
50365	C		Transplantation of kidney					
50370	C		Remove transplanted kidney					
50380	C		Reimplantation of kidney					
50390	T		Drainage of kidney lesion	0685	5.9882	$312.29	$137.40	$62.46
50392	T		Insert kidney drain	0161	15.7070	$819.14	$249.36	$163.83
50393	T		Insert ureteral tube	0161	15.7070	$819.14	$249.36	$163.83
50394	N		Injection for kidney x-ray					
50395	T		Create passage to kidney	0161	15.7070	$819.14	$249.36	$163.83
50396	T		Measure kidney pressure	0164	1.1240	$58.62	$17.59	$11.72
50398	T		Change kidney tube	0122	10.7459	$560.41	$114.93	$112.08
50400	C		Revision of kidney/ureter					
50405	C		Revision of kidney/ureter					
50500	C		Repair of kidney wound					
50520	C		Close kidney-skin fistula					
50525	C		Repair renal-abdomen fistula					
50526	C		Repair renal-abdomen fistula					
50540	C		Revision of horseshoe kidney					
50541	T		Laparo ablate renal cyst	0130	30.4644	$1,588.75	$659.53	$317.75
50542	T	NI	Laparo ablate renal mass	0131	40.2026	$2,096.61	$1,001.89	$419.32
50543	T	NI	Laparo partial nephrectomy	0131	40.2026	$2,096.61	$1,001.89	$419.32
50544	T		Laparoscopy, pyeloplasty	0130	30.4644	$1,588.75	$659.53	$317.75
50545	C		Laparo radical nephrectomy					
50546	C		Laparoscopic nephrectomy					
50547	C		Laparo removal donor kidney					
50548	C		Laparo remove k/ureter					
50549	T		Laparoscope proc, renal	0130	30.4644	$1,588.75	$659.53	$317.75
50551	T		Kidney endoscopy	0160	6.3080	$328.97	$105.06	$65.79
50553	T		Kidney endoscopy	0161	15.7070	$819.14	$249.36	$163.83
50555	T		Kidney endoscopy & biopsy	0160	6.3080	$328.97	$105.06	$65.79
50557	T		Kidney endoscopy & treatment	0162	20.5906	$1,073.82		$214.76
50559	T		Renal endoscopy/radiotracer	0160	6.3080	$328.97	$105.06	$65.79
50561	T		Kidney endoscopy & treatment	0161	15.7070	$819.14	$249.36	$163.83
50562	T	NI	Renal scope w/tumor resect	0160	6.3080	$328.97	$105.06	$65.79
50570	C		Kidney endoscopy					
50572	C		Kidney endoscopy					
50574	C		Kidney endoscopy & biopsy					
50575	C		Kidney endoscopy					
50576	C		Kidney endoscopy & treatment					
50578	C		Renal endoscopy/radiotracer					
50580	C		Kidney endoscopy & treatment					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

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CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
50590	T		Fragmenting of kidney stone	0169	44.0978	$2,299.74	$1,115.69	$459.95
50600	C		Exploration of ureter					
50605	C		Insert ureteral support					
50610	C		Removal of ureter stone					
50620	C		Removal of ureter stone					
50630	C		Removal of ureter stone					
50650	C		Removal of ureter					
50660	C		Removal of ureter					
50684	N		Injection for ureter x-ray					
50686	T		Measure ureter pressure	0164	1.1240	$58.62	$17.59	$11.72
50688	T		Change of ureter tube	0121	2.0833	$108.65	$43.80	$21.73
50690	N		Injection for ureter x-ray					
50700	C		Revision of ureter					
50715	C		Release of ureter					
50722	C		Release of ureter					
50725	C		Release/revise ureter					
50727	C		Revise ureter					
50728	C		Revise ureter					
50740	C		Fusion of ureter & kidney					
50750	C		Fusion of ureter & kidney					
50760	C		Fusion of ureters					
50770	C		Splicing of ureters					
50780	C		Reimplant ureter in bladder					
50782	C		Reimplant ureter in bladder					
50783	C		Reimplant ureter in bladder					
50785	C		Reimplant ureter in bladder					
50800	C		Implant ureter in bowel					
50810	C		Fusion of ureter & bowel					
50815	C		Urine shunt to intestine					
50820	C		Construct bowel bladder					
50825	C		Construct bowel bladder					
50830	C		Revise urine flow					
50840	C		Replace ureter by bowel					
50845	C		Appendico-vesicostomy					
50860	C		Transplant ureter to skin					
50900	C		Repair of ureter					
50920	C		Closure ureter/skin fistula					
50930	C		Closure ureter/bowel fistula					
50940	C		Release of ureter					
50945	T		Laparoscopy ureterolithotomy	0131	40.2026	$2,096.61	$1,001.89	$419.32
50947	T		Laparo new ureter/bladder	0131	40.2026	$2,096.61	$1,001.89	$419.32
50948	T		Laparo new ureter/bladder	0131	40.2026	$2,096.61	$1,001.89	$419.32
50949	T		Laparoscope proc, ureter	0130	30.4644	$1,588.75	$659.53	$317.75
50951	T		Endoscopy of ureter	0160	6.3080	$328.97	$105.06	$65.79
50953	T		Endoscopy of ureter	0160	6.3080	$328.97	$105.06	$65.79
50955	T		Ureter endoscopy & biopsy	0161	15.7070	$819.14	$249.36	$163.83
50957	T		Ureter endoscopy & treatment	0161	15.7070	$819.14	$249.36	$163.83
50959	T		Ureter endoscopy & tracer	0161	15.7070	$819.14	$249.36	$163.83
50961	T		Ureter endoscopy & treatment	0161	15.7070	$819.14	$249.36	$163.83
50970	T		Ureter endoscopy	0160	6.3080	$328.97	$105.06	$65.79
50972	T		Ureter endoscopy & catheter	0160	6.3080	$328.97	$105.06	$65.79
50974	T		Ureter endoscopy & biopsy	0161	15.7070	$819.14	$249.36	$163.83
50976	T		Ureter endoscopy & treatment	0161	15.7070	$819.14	$249.36	$163.83
50978	T		Ureter endoscopy & tracer	0161	15.7070	$819.14	$249.36	$163.83
50980	T		Ureter endoscopy & treatment	0161	15.7070	$819.14	$249.36	$163.83
51000	T		Drainage of bladder	0165	12.2672	$639.75		$127.95
51005	T		Drainage of bladder	0164	1.1240	$58.62	$17.59	$11.72
51010	T		Drainage of bladder	0165	12.2672	$639.75		$127.95
51020	T		Incise & treat bladder	0162	20.5906	$1,073.82		$214.76
51030	T		Incise & treat bladder	0162	20.5906	$1,073.82		$214.76
51040	T		Incise & drain bladder	0162	20.5906	$1,073.82		$214.76
51045	T		Incise bladder/drain ureter	0160	6.3080	$328.97	$105.06	$65.79
51050	T		Removal of bladder stone	0162	20.5906	$1,073.82		$214.76
51060	C		Removal of ureter stone					
51065	T		Remove ureter calculus	0162	20.5906	$1,073.82		$214.76

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CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
51080	T		Drainage of bladder abscess	0007	10.0191	$522.51	$108.89	$104.50
51500	T		Removal of bladder cyst	0154	25.7262	$1,341.65	$464.85	$268.33
51520	T		Removal of bladder lesion	0162	20.5906	$1,073.82		$214.76
51525	C		Removal of bladder lesion					
51530	C		Removal of bladder lesion					
51535	C		Repair of ureter lesion					
51550	C		Partial removal of bladder					
51555	C		Partial removal of bladder					
51565	C		Revise bladder & ureter(s)					
51570	C		Removal of bladder					
51575	C		Removal of bladder & nodes					
51580	C		Remove bladder/revise tract					
51585	C		Removal of bladder & nodes					
51590	C		Remove bladder/revise tract					
51595	C		Remove bladder/revise tract					
51596	C		Remove bladder/create pouch					
51597	C		Removal of pelvic structures					
51600	N		Injection for bladder x-ray					
51605	N		Preparation for bladder xray					
51610	N		Injection for bladder x-ray					
51700	T		Irrigation of bladder	0164	1.1240	$58.62	$17.59	$11.72
51701	N	NI	Insert bladder catheter					
51702	N	NI	Insert temp bladder cath					
51703	N	NI	Insert bladder cath, complex					
51705	T		Change of bladder tube	0121	2.0833	$108.65	$43.80	$21.73
51710	T		Change of bladder tube	0121	2.0833	$108.65	$43.80	$21.73
51715	T		Endoscopic injection/implant	0167	28.3230	$1,477.07	$555.84	$295.41
51720	T		Treatment of bladder lesion	0156	2.9747	$155.13	$46.55	$31.03
51725	T		Simple cystometrogram	0156	2.9747	$155.13	$46.55	$31.03
51726	T		Complex cystometrogram	0156	2.9747	$155.13	$46.55	$31.03
51736	T		Urine flow measurement	0164	1.1240	$58.62	$17.59	$11.72
51741	T		Electro-uroflowmetry, first	0164	1.1240	$58.62	$17.59	$11.72
51772	T		Urethra pressure profile	0164	1.1240	$58.62	$17.59	$11.72
51784	T		Anal/urinary muscle study	0164	1.1240	$58.62	$17.59	$11.72
51785	T		Anal/urinary muscle study	0164	1.1240	$58.62	$17.59	$11.72
51792	T		Urinary reflex study	0164	1.1240	$58.62	$17.59	$11.72
51795	T		Urine voiding pressure study	0164	1.1240	$58.62	$17.59	$11.72
51797	T		Intraabdominal pressure test	0164	1.1240	$58.62	$17.59	$11.72
51798	X	NI	Us urine capacity measure	0340	0.6492	$33.86		$6.77
51800	C		Revision of bladder/urethra					
51820	C		Revision of urinary tract					
51840	C		Attach bladder/urethra					
51841	C		Attach bladder/urethra					
51845	C		Repair bladder neck					
51860	C		Repair of bladder wound					
51865	C		Repair of bladder wound					
51880	T		Repair of bladder opening	0162	20.5906	$1,073.82		$214.76
51900	C		Repair bladder/vagina lesion					
51920	C		Close bladder-uterus fistula					
51925	C		Hysterectomy/bladder repair					
51940	C		Correction of bladder defect					
51960	C		Revision of bladder & bowel					
51980	C		Construct bladder opening					
51990	T		Laparo urethral suspension	0131	40.2026	$2,096.61	$1,001.89	$419.32
51992	T		Laparo sling operation	0132	56.9948	$2,972.34	$1,239.22	$594.47
52000	T		Cystoscopy	0160	6.3080	$328.97	$105.06	$65.79
52001	T		Cystoscopy, removal of clots	0160	6.3080	$328.97	$105.06	$65.79
52005	T		Cystoscopy & ureter catheter	0161	15.7070	$819.14	$249.36	$163.83
52007	T		Cystoscopy and biopsy	0161	15.7070	$819.14	$249.36	$163.83
52010	T		Cystoscopy & duct catheter	0160	6.3080	$328.97	$105.06	$65.79
52204	T		Cystoscopy	0161	15.7070	$819.14	$249.36	$163.83
52214	T		Cystoscopy and treatment	0162	20.5906	$1,073.82		$214.76
52224	T		Cystoscopy and treatment	0162	20.5906	$1,073.82		$214.76
52234	T		Cystoscopy and treatment	0162	20.5906	$1,073.82		$214.76
52235	T		Cystoscopy and treatment	0162	20.5906	$1,073.82		$214.76

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued
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CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
52240	T		Cystoscopy and treatment	0162	20.5906	$1,073.82		$214.76
52250	T		Cystoscopy and radiotracer	0162	20.5906	$1,073.82		$214.76
52260	T		Cystoscopy and treatment	0161	15.7070	$819.14	$249.36	$163.83
52265	T		Cystoscopy and treatment	0160	6.3080	$328.97	$105.06	$65.79
52270	T		Cystoscopy & revise urethra	0161	15.7070	$819.14	$249.36	$163.83
52275	T		Cystoscopy & revise urethra	0161	15.7070	$819.14	$249.36	$163.83
52276	T		Cystoscopy and treatment	0161	15.7070	$819.14	$249.36	$163.83
52277	T		Cystoscopy and treatment	0162	20.5906	$1,073.82		$214.76
52281	T		Cystoscopy and treatment	0161	15.7070	$819.14	$249.36	$163.83
52282	T		Cystoscopy, implant stent	0163	28.3714	$1,479.60		$295.92
52283	T		Cystoscopy and treatment	0161	15.7070	$819.14	$249.36	$163.83
52285	T		Cystoscopy and treatment	0161	15.7070	$819.14	$249.36	$163.83
52290	T		Cystoscopy and treatment	0161	15.7070	$819.14	$249.36	$163.83
52300	T		Cystoscopy and treatment	0161	15.7070	$819.14	$249.36	$163.83
52301	T		Cystoscopy and treatment	0161	15.7070	$819.14	$249.36	$163.83
52305	T		Cystoscopy and treatment	0161	15.7070	$819.14	$249.36	$163.83
52310	T		Cystoscopy and treatment	0160	6.3080	$328.97	$105.06	$65.79
52315	T		Cystoscopy and treatment	0161	15.7070	$819.14	$249.36	$163.83
52317	T		Remove bladder stone	0162	20.5906	$1,073.82		$214.76
52318	T		Remove bladder stone	0162	20.5906	$1,073.82		$214.76
52320	T		Cystoscopy and treatment	0162	20.5906	$1,073.82		$214.76
52325	T		Cystoscopy, stone removal	0162	20.5906	$1,073.82		$214.76
52327	T		Cystoscopy, inject material	0162	20.5906	$1,073.82		$214.76
52330	T		Cystoscopy and treatment	0162	20.5906	$1,073.82		$214.76
52332	T		Cystoscopy and treatment	0162	20.5906	$1,073.82		$214.76
52334	T		Create passage to kidney	0162	20.5906	$1,073.82		$214.76
52341	T		Cysto w/ureter stricture tx	0162	20.5906	$1,073.82		$214.76
52342	T		Cysto w/up stricture tx	0162	20.5906	$1,073.82		$214.76
52343	T		Cysto w/renal stricture tx	0162	20.5906	$1,073.82		$214.76
52344	T		Cysto/uretero, stone remove	0162	20.5906	$1,073.82		$214.76
52345	T		Cysto/uretero w/up stricture	0162	20.5906	$1,073.82		$214.76
52346	T		Cystouretero w/renal strict	0162	20.5906	$1,073.82		$214.76
52347	T		Cystoscopy, resect ducts	0160	6.3080	$328.97	$105.06	$65.79
52351	T		Cystouretero & or pyeloscope	0160	6.3080	$328.97	$105.06	$65.79
52352	T		Cystouretero w/stone remove	0162	20.5906	$1,073.82		$214.76
52353	T		Cystouretero w/lithotripsy	0163	28.3714	$1,479.60		$295.92
52354	T		Cystouretero w/biopsy	0162	20.5906	$1,073.82		$214.76
52355	T		Cystouretero w/excise tumor	0162	20.5906	$1,073.82		$214.76
52400	T		Cystouretero w/congen repr	0162	20.5906	$1,073.82		$214.76
52450	T		Incision of prostate	0162	20.5906	$1,073.82		$214.76
52500	T		Revision of bladder neck	0162	20.5906	$1,073.82		$214.76
52510	T		Dilation prostatic urethra	0161	15.7070	$819.14	$249.36	$163.83
52601	T		Prostatectomy (TURP)	0163	28.3714	$1,479.60		$295.92
52606	T		Control postop bleeding	0162	20.5906	$1,073.82		$214.76
52612	T		Prostatectomy, first stage	0163	28.3714	$1,479.60		$295.92
52614	T		Prostatectomy, second stage	0163	28.3714	$1,479.60		$295.92
52620	T		Remove residual prostate	0163	28.3714	$1,479.60		$295.92
52630	T		Remove prostate regrowth	0163	28.3714	$1,479.60		$295.92
52640	T		Relieve bladder contracture	0162	20.5906	$1,073.82		$214.76
52647	T		Laser surgery of prostate	0163	28.3714	$1,479.60		$295.92
52648	T		Laser surgery of prostate	0163	28.3714	$1,479.60		$295.92
52700	T		Drainage of prostate abscess	0162	20.5906	$1,073.82		$214.76
53000	T		Incision of urethra	0166	15.4163	$803.98	$218.73	$160.80
53010	T		Incision of urethra	0166	15.4163	$803.98	$218.73	$160.80
53020	T		Incision of urethra	0166	15.4163	$803.98	$218.73	$160.80
53025	T		Incision of urethra	0166	15.4163	$803.98	$218.73	$160.80
53040	T		Drainage of urethra abscess	0166	15.4163	$803.98	$218.73	$160.80
53060	T		Drainage of urethra abscess	0166	15.4163	$803.98	$218.73	$160.80
53080	T		Drainage of urinary leakage	0166	15.4163	$803.98	$218.73	$160.80
53085	C		Drainage of urinary leakage					
53200	T		Biopsy of urethra	0166	15.4163	$803.98	$218.73	$160.80
53210	T		Removal of urethra	0168	24.4665	$1,275.95	$405.60	$255.19
53215	T		Removal of urethra	0168	24.4665	$1,275.95	$405.60	$255.19
53220	T		Treatment of urethra lesion	0168	24.4665	$1,275.95	$405.60	$255.19
53230	T		Removal of urethra lesion	0168	24.4665	$1,275.95	$405.60	$255.19

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued
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CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
53235	T		Removal of urethra lesion	0168	24.4665	$1,275.95	$405.60	$255.19
53240	T		Surgery for urethra pouch	0168	24.4665	$1,275.95	$405.60	$255.19
53250	T		Removal of urethra gland	0166	15.4163	$803.98	$218.73	$160.80
53260	T		Treatment of urethra lesion	0166	15.4163	$803.98	$218.73	$160.80
53265	T		Treatment of urethra lesion	0166	15.4163	$803.98	$218.73	$160.80
53270	T		Removal of urethra gland	0167	28.3230	$1,477.07	$555.84	$295.41
53275	T		Repair of urethra defect	0166	15.4163	$803.98	$218.73	$160.80
53400	T		Revise urethra, stage 1	0168	24.4665	$1,275.95	$405.60	$255.19
53405	T		Revise urethra, stage 2	0168	24.4665	$1,275.95	$405.60	$255.19
53410	T		Reconstruction of urethra	0168	24.4665	$1,275.95	$405.60	$255.19
53415	C		Reconstruction of urethra					
53420	T		Reconstruct urethra, stage 1	0168	24.4665	$1,275.95	$405.60	$255.19
53425	T		Reconstruct urethra, stage 2	0168	24.4665	$1,275.95	$405.60	$255.19
53430	T		Reconstruction of urethra	0168	24.4665	$1,275.95	$405.60	$255.19
53431	T		Reconstruct urethra/bladder	0168	24.4665	$1,275.95	$405.60	$255.19
53440	T		Correct bladder function	0179	104.3581	$5,442.38	$2,340.22	$1,088.48
53442	T		Remove perineal prosthesis	0166	15.4163	$803.98	$218.73	$160.80
53444	T		Insert tandem cuff	0179	104.3581	$5,442.38	$2,340.22	$1,088.48
53445	T		Insert uro/ves nck sphincter	0179	104.3581	$5,442.38	$2,340.22	$1,088.48
53446	T		Remove uro sphincter	0168	24.4665	$1,275.95	$405.60	$255.19
53447	T		Remove/replace ur sphincter	0179	104.3581	$5,442.38	$2,340.22	$1,088.48
53448	C		Remov/replc ur sphinctr comp					
53449	T		Repair uro sphincter	0168	24.4665	$1,275.95	$405.60	$255.19
53450	T		Revision of urethra	0168	24.4665	$1,275.95	$405.60	$255.19
53460	T		Revision of urethra	0168	24.4665	$1,275.95	$405.60	$255.19
53502	T		Repair of urethra injury	0166	15.4163	$803.98	$218.73	$160.80
53505	T		Repair of urethra injury	0167	28.3230	$1,477.07	$555.84	$295.41
53510	T		Repair of urethra injury	0166	15.4163	$803.98	$218.73	$160.80
53515	T		Repair of urethra injury	0168	24.4665	$1,275.95	$405.60	$255.19
53520	T		Repair of urethra defect	0168	24.4665	$1,275.95	$405.60	$255.19
53600	T		Dilate urethra stricture	0156	2.9747	$155.13	$46.55	$31.03
53601	T		Dilate urethra stricture	0164	1.1240	$58.62	$17.59	$11.72
53605	T		Dilate urethra stricture	0161	15.7070	$819.14	$249.36	$163.83
53620	T		Dilate urethra stricture	0165	12.2672	$639.75		$127.95
53621	T		Dilate urethra stricture	0164	1.1240	$58.62	$17.59	$11.72
53660	T		Dilation of urethra	0164	1.1240	$58.62	$17.59	$11.72
53661	T		Dilation of urethra	0164	1.1240	$58.62	$17.59	$11.72
53665	T		Dilation of urethra	0166	15.4163	$803.98	$218 73	$160.80
53670	N	DG	Insert urinary catheter					
53675	T	DG	Insert urinary catheter	0164	1.1240	$58.62	$17.59	$11.72
53850	T		Prostatic microwave thermotx	0675	48.5648	$2,532.70		$506.54
53852	T		Prostatic rf thermotx	0675	48.5648	$2,532.70		$506.54
53853	T		Prostatic water thermother	0977		$1,125.00		$225.00
53899	T		Urology surgery procedure	0164	1.1240	$58.62	$17.59	$11.72
54000	T		Slitting of prepuce	0166	15.4163	$803.98	$218.73	$160.80
54001	T		Slitting of prepuce	0166	15.4163	$803.98	$218.73	$160.80
54015	T		Drain penis lesion	0007	10.0191	$522.51	$108.89	$104.50
54050	T		Destruction, penis lesion(s)	0013	1.0756	$56.09	$14.20	$11.22
54055	T		Destruction, penis lesion(s)	0017	15.8233	$825.20	$227.84	$165.04
54056	T		Cryosurgery, penis lesion(s)	0012	0.7849	$40.93	$11.18	$8.19
54057	T		Laser surg, penis lesion(s)	0017	15.8233	$825.20	$227.84	$165.04
54060	T		Excision of penis lesion(s)	0017	15.8233	$825.20	$227.84	$165.04
54065	T		Destruction, penis lesion(s)	0695	18.6817	$974.27	$266.59	$194.85
54100	T		Biopsy of penis	0021	13.9338	$726.66	$219.48	$145.33
54105	T		Biopsy of penis	0022	17.3930	$907.06	$354.45	$181.41
54110	T		Treatment of penis lesion	0181	29.2435	$1,525.08	$621.82	$305.02
54111	T		Treat penis lesion, graft	0181	29.2435	$1,525.08	$621.82	$305.02
54112	T		Treat penis lesion, graft	0181	29.2435	$1,525.08	$621.82	$305.02
54115	T		Treatment of penis lesion	0008	16.1430	$841.87		$168.37
54120	T		Partial removal of penis	0181	29.2435	$1,525.08	$621.82	$305.02
54125	C		Removal of penis					
54130	C		Remove penis & nodes					
54135	C		Remove penis & nodes					
54150	T		Circumcision	0180	18.1004	$943.95	$304.87	$188.79
54152	T		Circumcision	0180	18.1004	$943.95	$304.87	$188.79

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

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CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
54160	T		Circumcision	0180	18.1004	$943.95	$304.87	$188.79
54161	T		Circumcision	0180	18.1004	$943.95	$304.87	$188.79
54162	T		Lysis penil circumic lesion	0180	18.1004	$943.95	$304.87	$188.79
54163	T		Repair of circumcision	0180	18.1004	$943.95	$304.87	$188.79
54164	T		Frenulotomy of penis	0180	18.1004	$943.95	$304.87	$188.79
54200	T		Treatment of penis lesion	0156	2.9747	$155.13	$46.55	$31.03
54205	T		Treatment of penis lesion	0181	29.2435	$1,525.08	$621.82	$305.02
54220	T		Treatment of penis lesion	0156	2.9747	$155.13	$46.55	$31.03
54230	N		Prepare penis study					
54231	T		Dynamic cavernosometry	0165	12.2672	$639.75		$127.95
54235	T		Penile injection	0164	1.1240	$58.62	$17.59	$11.72
54240	T		Penis study	0164	1.1240	$58.62	$17.59	$11.72
54250	T		Penis study	0165	12.2672	$639.75		$127.95
54300	T		Revision of penis	0181	29.2435	$1,525.08	$621.82	$305.02
54304	T		Revision of penis	0181	29.2435	$1,525.08	$621.82	$305.02
54308	T		Reconstruction of urethra	0181	29.2435	$1,525.08	$621.82	$305.02
54312	T		Reconstruction of urethra	0181	29.2435	$1,525.08	$621.82	$305.02
54316	T		Reconstruction of urethra	0181	29.2435	$1,525.08	$621.82	$305.02
54318	T		Reconstruction of urethra	0181	29.2435	$1,525.08	$621.82	$305.02
54322	T		Reconstruction of urethra	0181	29.2435	$1,525.08	$621.82	$305.02
54324	T		Reconstruction of urethra	0181	29.2435	$1,525.08	$621.82	$305.02
54326	T		Reconstruction of urethra	0181	29.2435	$1,525.08	$621.82	$305.02
54328	T		Revise penis/urethra	0181	29.2435	$1,525.08	$621.82	$305.02
54332	C		Revise penis/urethra					
54336	C		Revise penis/urethra					
54340	T		Secondary urethral surgery	0181	29.2435	$1,525.08	$621.82	$305.02
54344	T		Secondary urethral surgery	0181	29.2435	$1,525.08	$621.82	$305.02
54348	T		Secondary urethral surgery	0181	29.2435	$1,525.08	$621.82	$305.02
54352	T		Reconstruct urethra/penis	0181	29.2435	$1,525.08	$621.82	$305.02
54360	T		Penis plastic surgery	0181	29.2435	$1,525.08	$621.82	$305.02
54380	T		Repair penis	0181	29.2435	$1,525.08	$621.82	$305.02
54385	T		Repair penis	0181	29.2435	$1,525.08	$621.82	$305.02
54390	C		Repair penis and bladder					
54400	T		Insert semi-rigid prosthesis	0182	95.4145	$4,975.96		$995.19
54401	T		Insert self-contd prosthesis	0182	95.4145	$4,975.96		$995.19
54405	T		Insert multi-comp penis pros	0182	95.4145	$4,975.96		$995.19
54406	T		Remove muti-comp penis pros	0181	29.2435	$1,525.08	$621.82	$305.02
54408	T		Repair multi-comp penis pros	0181	29.2435	$1,525.08	$621.82	$305.02
54410	T		Remove/replace penis prosth	0182	95.4145	$4,975.96		$995.19
54411	C		Remov/replc penis pros, comp					
54415	T		Remove self-contd penis pros	0181	29.2435	$1,525.08	$621.82	$305.02
54416	T		Remv/repl penis contain pros	0182	95.4145	$4,975.96		$995.19
54417	C		Remv/replc penis pros, compl					
54420	T		Revision of penis	0181	29.2435	$1,525.08	$621.82	$305.02
54430	C		Revision of penis					
54435	T		Revision of penis	0181	29.2435	$1,525.08	$621.82	$305.02
54440	T		Repair of penis	0181	29.2435	$1,525.08	$621.82	$305.02
54450	T		Preputial stretching	0156	2.9747	$155.13	$46.55	$31.03
54500	T		Biopsy of testis	0005	3.1201	$162.72	$71.59	$32.54
54505	T		Biopsy of testis	0183	21.2592	$1,108.69		$221.74
54512	T		Excise lesion testis	0183	21.2592	$1,108.69		$221.74
54520	T		Removal of testis	0183	21.2592	$1,108.69		$221.74
54522	T		Orchiectomy, partial	0183	21.2592	$1,108.69		$221.74
54530	T		Removal of testis	0154	25.7262	$1,341.65	$464.85	$268.33
54535	C		Extensive testis surgery					
54550	T		Exploration for testis	0154	25.7262	$1,341.65	$464.85	$268.33
54560	C		Exploration for testis					
54600	T		Reduce testis torsion	0183	21.2592	$1,108.69		$221.74
54620	T		Suspension of testis	0183	21.2592	$1,108.69		$221.74
54640	T		Suspension of testis	0154	25.7262	$1,341.65	$464.85	$268.33
54650	C		Orchiopexy (Fowler-Stephens)					
54660	T		Revision of testis	0183	21.2592	$1,108.69		$221.74
54670	T		Repair testis injury	0183	21.2592	$1,108.69		$221.74
54680	T		Relocation of testis(es)	0183	21.2592	$1,108.69		$221.74
54690	T		Laparoscopy, orchiectomy	0131	40.2026	$2,096.61	$1,001.89	$419.32

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

[Calendar Year 2003]

CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
54692	T		Laparoscopy, orchiopexy	0132	56.9948	$2,972.34	$1,239.22	$594.47
54699	T		Laparoscope proc, testis	0130	30.4644	$1,588.75	$659.53	$317.75
54700	T		Drainage of scrotum	0183	21.2592	$1,108.69		$221.74
54800	T		Biopsy of epididymis	0004	1.7441	$90.96	$23.47	$18.19
54820	T		Exploration of epididymis	0183	21.2592	$1,108.69		$221.74
54830	T		Remove epididymis lesion	0183	21.2592	$1,108.69		$221.74
54840	T		Remove epididymis lesion	0183	21.2592	$1,108.69		$221.74
54860	T		Removal of epididymis	0183	21.2592	$1,108.69		$221.74
54861	T		Removal of epididymis	0183	21.2592	$1,108.69		$221.74
54900	T		Fusion of spermatic ducts	0183	21.2592	$1,108.69		$221.74
54901	T		Fusion of spermatic ducts	0183	21.2592	$1,108.69		$221.74
55000	T		Drainage of hydrocele	0004	1.7441	$90.96	$23.47	$18.19
55040	T		Removal of hydrocele	0154	25.7262	$1,341.65	$464.85	$268.33
55041	T		Removal of hydroceles	0154	25.7262	$1,341.65	$464.85	$268.33
55060	T		Repair of hydrocele	0183	21.2592	$1,108.69		$221.74
55100	T		Drainage of scrotum abscess	0007	10.0191	$522.51	$108.89	$104.50
55110	T		Explore scrotum	0183	21.2592	$1,108.69		$221.74
55120	T		Removal of scrotum lesion	0183	21.2592	$1,108.69		$221.74
55150	T		Removal of scrotum	0183	21.2592	$1,108.69		$221.74
55175	T		Revision of scrotum	0183	21.2592	$1,108.69		$221.74
55180	T		Revision of scrotum	0183	21.2592	$1,108.69		$221.74
55200	T		Incision of sperm duct	0183	21.2592	$1,108.69		$221.74
55250	T		Removal of sperm duct(s)	0183	21.2592	$1,108.69		$221.74
55300	N		Prepare, sperm duct x-ray					
55400	T		Repair of sperm duct	0183	21.2592	$1,108.69		$221.74
55450	T		Ligation of sperm duct	0183	21.2592	$1,108.69		$221.74
55500	T		Removal of hydrocele	0183	21.2592	$1,108.69		$221.74
55520	T		Removal of sperm cord lesion	0183	21.2592	$1,108.69		$221.74
55530	T		Revise spermatic cord veins	0183	21.2592	$1,108.69		$221.74
55535	T		Revise spermatic cord veins	0154	25.7262	$1,341.65	$464.85	$268.33
55540	T		Revise hernia & sperm veins	0154	25.7262	$1,341.65	$464.85	$268.33
55550	T		Laparo ligate spermatic vein	0131	40.2026	$2,096.61	$1,001.89	$419.32
55559	T		Laparo proc, spermatic cord	0130	30.4644	$1,588.75	$659.53	$317.75
55600	C		Incise sperm duct pouch					
55605	C		Incise sperm duct pouch					
55650	C		Remove sperm duct pouch					
55680	T		Remove sperm pouch lesion	0183	21.2592	$1,108.69		$221.74
55700	T		Biopsy of prostate	0184	3.6918	$192.53	$96.27	$38.51
55705	T		Biopsy of prostate	0184	3.6918	$192.53	$96.27	$38.51
55720	T		Drainage of prostate abscess	0162	20.5906	$1,073.82		$214.76
55725	T		Drainage of prostate abscess	0162	20.5906	$1,073.82		$214.76
55801	C		Removal of prostate					
55810	C		Extensive prostate surgery					
55812	C		Extensive prostate surgery					
55815	C		Extensive prostate surgery					
55821	C		Removal of prostate					
55831	C		Removal of prostate					
55840	C		Extensive prostate surgery					
55842	C		Extensive prostate surgery					
55845	C		Extensive prostate surgery					
55859	T		Percut/needle insert, pros	0163	28.3714	$1,479.60		$295.92
55860	T		Surgical exposure, prostate	0165	12.2672	$639.75		$127.95
55862	C		Extensive prostate surgery					
55865	C		Extensive prostate surgery					
55866	C	NI	Laparo radical prostatectomy					
55870	T		Vag hyst w/enterocele repair	0197	1.5697	$81.86	$33.06	$16.37
55873	T		Cryoablate prostate	0674	62.9152	$3,281.09		$656.22
55899	T		Genital surgery procedure	0164	1.1240	$58.62	$17.59	$11.72
55970	E		Sex transformation, M to F					
55980	E		Sex transformation, F to M					
56405	T		I & D of vulva/perineum	0192	2.7228	$142.00	$39.11	$28.40
56420	T		Drainage of gland abscess	0192	2.7228	$142.00	$39.11	$28.40
56440	T		Surgery for vulva lesion	0194	18.0228	$939.91	$397.84	$187.98
56441	T		Lysis of labial lesion(s)	0193	14.4764	$754.96	$171.13	$150.99
56501	T		Destroy, vulva lesions, sim	0017	15.8233	$825.20	$227.84	$165.04

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

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CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
56515	T		Destroy vulva lesion/s compl	0695	18.6817	$974.27	$266.59	$194.85
56605	T		Biopsy of vulva/perineum	0019	3.7693	$196.57	$71.87	$39.31
56606	T		Biopsy of vulva/perineum	0019	3.7693	$196.57	$71.87	$39.31
56620	T		Partial removal of vulva	0195	23.7301	$1,237.55	$483.80	$247.51
56625	T		Complete removal of vulva	0195	23.7301	$1,237.55	$483.80	$247.51
56630	C		Extensive vulva surgery					
56631	C		Extensive vulva surgery					
56632	C		Extensive vulva surgery					
56633	C		Extensive vulva surgery					
56634	C		Extensive vulva surgery					
56637	C		Extensive vulva surgery					
56640	C		Extensive vulva surgery					
56700	T		Partial removal of hymen	0194	18.0228	$939.91	$397.84	$187.98
56720	T		Incision of hymen	0193	14.4764	$754.96	$171.13	$150.99
56740	T		Remove vagina gland lesion	0194	18.0228	$939.91	$397.84	$187.98
56800	T		Repair of vagina	0194	18.0228	$939.91	$397.84	$187.98
56805	T		Repair clitoris	0194	18.0228	$939.91	$397.84	$187.98
56810	T		Repair of perineum	0194	18.0228	$939.91	$397.84	$187.98
56820	T	NI	Exam of vulva w/scope	0188	1.0465	$54.58	$11.95	$10.92
56821	T	NI	Exam/biopsy of vulva w/scope	0189	1.5310	$79.84	$18.60	$15.97
57000	T		Exploration of vagina	0194	18.0228	$939.91	$397.84	$187.98
57010	T		Drainage of pelvic abscess	0194	18.0228	$939.91	$397.84	$187.98
57020	T		Drainage of pelvic fluid	0192	2.7228	$142.00	$39.11	$28.40
57022	T		I & d vaginal hematoma, pp	0007	10.0191	$522.51	$108.89	$104.50
57023	T		I & d vag hematoma, non-ob	0007	10.0191	$522.51	$108.89	$104.50
57061	T		Destroy vag lesions, simple	0194	18.0228	$939.91	$397.84	$187.98
57065	T		Destroy vag lesions, complex	0194	18.0228	$939.91	$397.84	$187.98
57100	T		Biopsy of vagina	0192	2.7228	$142.00	$39.11	$28.40
57105	T		Biopsy of vagina	0194	18.0228	$939.91	$397.84	$187.98
57106	T		Remove vagina wall, partial	0194	18.0228	$939.91	$397.84	$187.98
57107	T		Remove vagina tissue, part	0195	23.7301	$1,237.55	$483.80	$247.51
57109	T		Vaginectomy partial w/nodes	0202	45.5610	$2,376.05	$1,164.26	$475.21
57110	C		Remove vagina wall, complete					
57111	C		Remove vagina tissue, compl					
57112	C		Vaginectomy w/nodes, compl					
57120	T		Closure of vagina	0194	18.0228	$939.91	$397.84	$187.98
57130	T		Remove vagina lesion	0194	18.0228	$939.91	$397.84	$187.98
57135	T		Remove vagina lesion	0194	18.0228	$939.91	$397.84	$187.98
57150	T		Treat vagina infection	0191	0.2035	$10.61	$3.08	$2.12
57155	T		Insert uteri tandems/ovoids	0192	2.7228	$142.00	$39.11	$28.40
57160	T		Insert pessary/other device	0188	1.0465	$54.58	$11.95	$10.92
57170	T		Fitting of diaphragm/cap	0191	0.2035	$10.61	$3.08	$2.12
57180	T		Treat vaginal bleeding	0192	2.7228	$142.00	$39.11	$28.40
57200	T		Repair of vagina	0194	18.0228	$939.91	$397.84	$187.98
57210	T		Repair vagina/perineum	0194	18.0228	$939.91	$397.84	$187.98
57220	T		Revision of urethra	0195	23.7301	$1,237.55	$483.80	$247.51
57230	T		Repair of urethral lesion	0194	18.0228	$939.91	$397.84	$187.98
57240	T		Repair bladder & vagina	0195	23.7301	$1,237.55	$483.80	$247.51
57250	T		Repair rectum & vagina	0195	23.7301	$1,237.55	$483.80	$247.51
57260	T		Repair of vagina	0195	23.7301	$1,237.55	$483.80	$247.51
57265	T		Extensive repair of vagina	0195	23.7301	$1,237.55	$483.80	$247.51
57268	T		Repair of bowel bulge	0195	23.7301	$1,237.55	$483.80	$247.51
57270	C		Repair of bowel pouch					
57280	C		Suspension of vagina					
57282	C		Repair of vaginal prolapse					
57284	T		Repair paravaginal defect	0195	23.7301	$1,237.55	$483.80	$247.51
57287	T		Revise/remove sling repair	0202	45.5610	$2,376.05	$1,164.26	$475.21
57288	T		Repair bladder defect	0202	45.5610	$2,376.05	$1,164.26	$475.21
57289	T		Repair bladder & vagina	0195	23.7301	$1,237.55	$483.80	$247.51
57291	T		Construction of vagina	0195	23.7301	$1,237.55	$483.80	$247.51
57292	C		Construct vagina with graft					
57300	T		Repair rectum-vagina fistula	0195	23.7301	$1,237.55	$483.80	$247.51
57305	C		Repair rectum-vagina fistula					
57307	C		Fistula repair & colostomy					
57308	C		Fistula repair, transperine					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

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CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
57310	T		Repair urethrovaginal lesion	0195	23.7301	$1,237.55	$483.80	$247.51
57311	C		Repair urethrovaginal lesion					
57320	T		Repair bladder-vagina lesion	0195	23.7301	$1,237.55	$483.80	$247.51
57330	T		Repair bladder-vagina lesion	0195	23.7301	$1,237.55	$483.80	$247.51
57335	C		Repair vagina					
57400	T		Dilation of vagina	0194	18.0228	$939.91	$397.84	$187.98
57410	T		Pelvic examination	0194	18.0228	$939.91	$397.84	$187.98
57415	T		Remove vaginal foreign body	0194	18.0228	$939.91	$397.84	$187.98
57420	T	NI	Exam of vagina w/scope	0192	2.7228	$142.00	$39.11	$28.40
57421	T	NI	Exam/biopsy of vag w/scope	0192	2.7228	$142.00	$39.11	$28.40
57452	T		Examination of vagina	0189	1.5310	$79.84	$18.60	$15.97
57454	T		Vagina examination & biopsy	0192	2.7228	$142.00	$39.11	$28.40
57455	T	NI	Biopsy of cervix w/scope	0192	2.7228	$142.00	$39.11	$28.40
57456	T	NI	Endocerv curettage w/scope	0192	2.7228	$142.00	$39.11	$28.40
57460	T		Cervix excision	0193	14.4764	$754.96	$171.13	$150.99
57461	T	NI	Conz of cervix w/scope, leep	0194	18.0228	$939.91	$397.84	$187.98
57500	T		Biopsy of cervix	0192	2.7228	$142.00	$39.11	$28.40
57505	T		Endocervical curettage	0192	2.7228	$142.00	$39.11	$28.40
57510	T		Cauterization of cervix	0193	14.4764	$754.96	$171.13	$150.99
57511	T		Cryocautery of cervix	0189	1.5310	$79.84	$18.60	$15.97
57513	T		Laser surgery of cervix	0193	14.4764	$754.96	$171.13	$150.99
57520	T		Conization of cervix	0194	18.0228	$939.91	$397.84	$187.98
57522	T		Conization of cervix	0195	23.7301	$1,237.55	$483.80	$247.51
57530	T		Removal of cervix	0195	23.7301	$1,237.55	$483.80	$247.51
57531	C		Removal of cervix, radical					
57540	C		Removal of residual cervix					
57545	C		Remove cervix/repair pelvis					
57550	T		Removal of residual cervix	0195	23.7301	$1,237.55	$483.80	$247.51
57555	T		Remove cervix/repair vagina	0195	23.7301	$1,237.55	$483.80	$247.51
57556	T		Remove cervix, repair bowel	0195	23.7301	$1,237.55	$483.80	$247.51
57700	T		Revision of cervix	0194	18.0228	$939.91	$397.84	$187.98
57720	T		Revision of cervix	0194	18.0228	$939.91	$397.84	$187.98
57800	T		Dilation of cervical canal	0193	14.4764	$754.96	$171.13	$150.99
57820	T		D & c of residual cervix	0196	15.5035	$808.52	$338.23	$161.70
58100	T		Biopsy of uterus lining	0188	1.0465	$54.58	$11.95	$10.92
58120	T		Dilation and curettage	0196	15.5035	$808.52	$338.23	$161.70
58140	C		Removal of uterus lesion					
58145	T		Myomectomy vag method	0195	23.7301	$1,237.55	$483.80	$247.51
58146	C	NI	Myomectomy abdom complex					
58150	C		Total hysterectomy					
58152	C		Total hysterectomy					
58180	C		Partial hysterectomy					
58200	C		Extensive hysterectomy					
58210	C		Extensive hysterectomy					
58240	C		Removal of pelvis contents					
58260	C		Vaginal hysterectomy					
58262	C		Vag hyst including t/o					
58263	C		Vag hyst w/t/o & vag repair					
58267	C		Vag hyst w/urinary repair					
58270	C		Vag hyst w/enterocele repair					
58275	C		Hysterectomy/revise vagina					
58280	C		Hysterectomy/revise vagina					
58285	C		Extensive hysterectomy					
58290	C	NI	Vag hyst complex					
58291	C	NI	Vag hyst incl t/o, complex					
58292	C	NI	Vag hyst t/o & repair, compl					
58293	C	NI	Vag hyst w/uro repair, compl					
58294	C	NI	Vag hyst w/enterocele, compl					
58300	E		Insert intrauterine device					
58301	T		Remove intrauterine device	0189	1.5310	$79.84	$18.60	$15.97
58321	T		Artificial insemination	0197	1.5697	$81.86	$33.06	$16.37
58322	T		Artificial insemination	0197	1.5697	$81.86	$33.06	$16.37
58323	T		Sperm washing	0197	1.5697	$81.86	$33.06	$16.37
58340	N		Catheter for hysterography					
58345	T		Reopen fallopian tube	0194	18.0228	$939.91	$397.84	$187.98

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CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
58346	T		Insert heyman uteri capsule	0192	2.7228	$142.00	$39.11	$28.40
58350	T		Reopen fallopian tube	0194	18.0228	$939.91	$397.84	$187.98
58353	T		Endometr ablate, thermal	0193	14.4764	$754.96	$171.13	$150.99
58400	C		Suspension of uterus					
58410	C		Suspension of uterus					
58520	C		Repair of ruptured uterus					
58540	C		Revision of uterus					
58545	T	NI	Laparoscopic myomectomy	0130	30.4644	$1,588.75	$659.53	$317.75
58546	T	NI	Laparo-myomectomy, complex	0131	40.2026	$2,096.61	$1,001.89	$419.32
58550	T		Laparo-asst vag hysterectomy	0132	56.9948	$2,972.34	$1,239.22	$594.47
58551	T	DG	Laparoscopy, remove myoma	0131	40.2026	$2,096.61	$1,001.89	$419.32
58552	T	NI	Laparo-vag hyst incl t/o	0131	40.2026	$2,096.61	$1,001.89	$419.32
58553	T	NI	Laparo-vag hyst, complex	0131	40.2026	$2,096.61	$1,001.89	$419.32
58554	T	NI	Laparo-vag hyst w/t/o, compl	0131	40.2026	$2,096.61	$1,001.89	$419.32
58555	T		Hysteroscopy, dx, sep proc	0194	18.0228	$939.91	$397.84	$187.98
58558	T		Hysteroscopy, biopsy	0190	19.0596	$993.98	$424.28	$198.80
58559	T		Hysteroscopy, lysis	0190	19.0596	$993.98	$424.28	$198.80
58560	T		Hysteroscopy, resect septum	0190	19.0596	$993.98	$424.28	$198.80
58561	T		Hysteroscopy, remove myoma	0190	19.0596	$993.98	$424.28	$198.80
58562	T		Hysteroscopy, remove fb	0190	19.0596	$993.98	$424.28	$198.80
58563	T		Hysteroscopy, ablation	0190	19.0596	$993.98	$424.28	$198.80
58578	T		Laparo proc, uterus	0190	19.0596	$993.98	$424.28	$198.80
58579	T		Hysteroscope procedure	0190	19.0596	$993.98	$424.28	$198.80
58600	T		Division of fallopian tube	0194	18.0228	$939.91	$397.84	$187.98
58605	C		Division of fallopian tube					
58611	C		Ligate oviduct(s) add-on					
58615	T		Occlude fallopian tube(s)	0194	18.0228	$939.91	$397.84	$187.98
58660	T		Laparoscopy, lysis	0131	40.2026	$2,096.61	$1,001.89	$419.32
58661	T		Laparoscopy, remove adnexa	0131	40.2026	$2,096.61	$1,001.89	$419.32
58662	T		Laparoscopy, excise lesions	0131	40.2026	$2,096.61	$1,001.89	$419.32
58670	T		Laparoscopy, tubal cautery	0131	40.2026	$2,096.61	$1,001.89	$419.32
58671	T		Laparoscopy, tubal block	0131	40.2026	$2,096.61	$1,001.89	$419.32
58672	T		Laparoscopy, fimbrioplasty	0131	40.2026	$2,096.61	$1,001.89	$419.32
58673	T		Laparoscopy, salpingostomy	0131	40.2026	$2,096.61	$1,001.89	$419.32
58679	T		Laparo proc, oviduct-ovary	0130	30.4644	$1,588.75	$659.53	$317.75
58700	C		Removal of fallopian tube					
58720	C		Removal of ovary/tube(s)					
58740	C		Revise fallopian tube(s)					
58750	C		Repair oviduct					
58752	C		Revise ovarian tube(s)					
58760	C		Remove tubal obstruction					
58770	C		Create new tubal opening					
58800	T		Drainage of ovarian cyst(s)	0195	23.7301	$1,237.55	$483.80	$247.51
58805	C		Drainage of ovarian cyst(s)					
58820	T		Drain ovary abscess, open	0195	23.7301	$1,237.55	$483.80	$247.51
58822	C		Drain ovary abscess, percut					
58823	T		Drain pelvic abscess, percut	0193	14.4764	$754.96	$171.13	$150.99
58825	C		Transposition, ovary(s)					
58900	T		Biopsy of ovary(s)	0195	23.7301	$1,237.55	$483.80	$247.51
58920	T		Partial removal of ovary(s)	0202	45.5610	$2,376.05	$1,164.26	$475.21
58925	T		Removal of ovarian cyst(s)	0202	45.5610	$2,376.05	$1,164.26	$475.21
58940	C		Removal of ovary(s)					
58943	C		Removal of ovary(s)					
58950	C		Resect ovarian malignancy					
58951	C		Resect ovarian malignancy					
58952	C		Resect ovarian malignancy					
58953	C		Tah, rad dissect for debulk					
58954	C		Tah rad debulk/lymph remove					
58960	C		Exploration of abdomen					
58970	T		Retrieval of oocyte	0194	18.0228	$939.91	$397.84	$187.98
58974	T		Transfer of embryo	0197	1.5697	$81.86	$33.06	$16.37
58976	T		Transfer of embryo	0197	1.5697	$81.86	$33.06	$16.37
58999	T		Genital surgery procedure	0191	0.2035	$10.61	$3.08	$2.12
59000	T		Amniocentesis, diagnostic	0198	1.2597	$65.69	$32.19	$13.14
59001	T		Amniocentesis, therapeutic	0198	1.2597	$65.69	$32.19	$13.14

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

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CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
59012	T		Fetal cord puncture,prenatal	0198	1.2597	$65.69	$32.19	$13.14
59015	T		Chorion biopsy	0198	1.2597	$65.69	$32.19	$13.14
59020	T		Fetal contract stress test	0198	1.2597	$65.69	$32.19	$13.14
59025	T		Fetal non-stress test	0198	1.2597	$65.69	$32.19	$13.14
59030	T		Fetal scalp blood sample	0198	1.2597	$65.69	$32.19	$13.14
59050	E		Fetal monitor w/report					
59051	E		Fetal monitor/interpret only					
59100	C		Remove uterus lesion					
59120	C		Treat ectopic pregnancy					
59121	C		Treat ectopic pregnancy					
59130	C		Treat ectopic pregnancy					
59135	C		Treat ectopic pregnancy					
59136	C		Treat ectopic pregnancy					
59140	C		Treat ectopic pregnancy					
59150	T		Treat ectopic pregnancy	0131	40.2026	$2,096.61	$1,001.89	$419.32
59151	T		Treat ectopic pregnancy	0131	40.2026	$2,096.61	$1,001.89	$419.32
59160	T		D & c after delivery	0196	15.5035	$808.52	$338.23	$161.70
59200	T		Insert cervical dilator	0189	1.5310	$79.84	$18.60	$15.97
59300	T		Episiotomy or vaginal repair	0193	14.4764	$754.96	$171.13	$150.99
59320	T		Revision of cervix	0194	18.0228	$939.91	$397.84	$187.98
59325	C		Revision of cervix					
59350	C		Repair of uterus					
59400	E		Obstetrical care					
59409	T		Obstetrical care	0199	3.9146	$204.15	$57.16	$40.83
59410	E		Obstetrical care					
59412	T		Antepartum manipulation	0199	3.9146	$204.15	$57.16	$40.83
59414	T		Deliver placenta	0199	3.9146	$204.15	$57.16	$40.83
59425	E		Antepartum care only					
59426	E		Antepartum care only					
59430	E		Care after delivery					
59510	E		Cesarean delivery					
59514	C		Cesarean delivery only					
59515	E		Cesarean delivery					
59525	C		Remove uterus after cesarean					
59610	E		Vbac delivery					
59612	T		Vbac delivery only	0199	3.9146	$204.15	$57.16	$40.83
59614	E		Vbac care after delivery					
59618	E		Attempted vbac delivery					
59620	C		Attempted vbac delivery only					
59622	E		Attempted vbac after care					
59812	T		Treatment of miscarriage	0201	15.3097	$798.42	$329.65	$159.68
59820	T		Care of miscarriage	0201	15.3097	$798.42	$329.65	$159.68
59821	T		Treatment of miscarriage	0201	15.3097	$798.42	$329.65	$159.68
59830	C		Treat uterus infection					
59840	T		Abortion	0200	15.1838	$791.85	$307.83	$158.37
59841	T		Abortion	0200	15.1838	$791.85	$307.83	$158.37
59850	C		Abortion					
59851	C		Abortion					
59852	C		Abortion					
59855	C		Abortion					
59856	C		Abortion					
59857	C		Abortion					
59866	T		Abortion (mpr)	0198	1.2597	$65.69	$32.19	$13.14
59870	T		Evacuate mole of uterus	0201	15.3097	$798.42	$329.65	$159.68
59871	T		Remove cerclage suture	0194	18.0228	$939.91	$397.84	$187.98
59898	T		Laparo proc, ob care/deliver	0130	30.4644	$1,588.75	$659.53	$317.75
59899	T		Maternity care procedure	0198	1.2597	$65.69	$32.19	$13.14
60000	T		Drain thyroid/tongue cyst	0252	5.8041	$302.69	$113.41	$60.54
60001	T		Aspirate/inject thyriod cyst	0004	1.7441	$90.96	$23.47	$18.19
60100	T		Biopsy of thyroid	0004	1.7441	$90.96	$23.47	$18.19
60200	T		Remove thyroid lesion	0114	36.1135	$1,883.36	$485.91	$376.67
60210	T		Partial thyroid excision	0114	36.1135	$1,883.36	$485.91	$376.67
60212	T		Partial thyroid excision	0114	36.1135	$1,883.36	$485.91	$376.67
60220	T		Partial removal of thyroid	0114	36.1135	$1,883.36	$485.91	$376.67
60225	T		Partial removal of thyroid	0114	36.1135	$1,883.36	$485.91	$376.67

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued
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CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
60240	T		Removal of thyroid	0114	36.1135	$1,883.36	$485.91	$376.67
60252	T		Removal of thyroid	0256	34.0302	$1,774.71		$354.94
60254	C		Extensive thyroid surgery					
60260	T		Repeat thyroid surgery	0256	34.0302	$1,774.71		$354.94
60270	C		Removal of thyroid					
60271	C		Removal of thyroid					
60280	T		Remove thyroid duct lesion	0114	36.1135	$1,883.36	$485.91	$376.67
60281	T		Remove thyroid duct lesion	0114	36.1135	$1,883.36	$485.91	$376.67
60500	T		Explore parathyroid glands	0256	34.0302	$1,774.71		$354.94
60502	C		Re-explore parathyroids					
60505	C		Explore parathyroid glands					
60512	T		Autotransplant parathyroid	0022	17.3930	$907.06	$354.45	$181.41
60520	C		Removal of thymus gland					
60521	C		Removal of thymus gland					
60522	C		Removal of thymus gland					
60540	C		Explore adrenal gland					
60545	C		Explore adrenal gland					
60600	C		Remove carotid body lesion					
60605	C		Remove carotid body lesion					
60650	C		Laparoscopy adrenalectomy					
60659	T		Laparo proc, endocrine	0130	30.4644	$1,588.75	$659.53	$317.75
60699	T		Endocrine surgery procedure	0114	36.1135	$1,883.36	$485.91	$376.67
61000	T		Remove cranial cavity fluid	0212	3.3139	$172.82	$79.53	$34.56
61001	T		Remove cranial cavity fluid	0212	3.3139	$172.82	$79.53	$34.56
61020	T		Remove brain cavity fluid	0212	3.3139	$172.82	$79.53	$34.56
61026	T		Injection into brain canal	0212	3.3139	$172.82	$79.53	$34.56
61050	T		Remove brain canal fluid	0212	3.3139	$172.82	$79.53	$34.56
61055	T		Injection into brain canal	0212	3.3139	$172.82	$79.53	$34.56
61070	T		Brain canal shunt procedure	0212	3.3139	$172.82	$79.53	$34.56
61105	C		Twist drill hole					
61107	C		Drill skull for implantation					
61108	C		Drill skull for drainage					
61120	C		Burr hole for puncture					
61140	C		Pierce skull for biopsy					
61150	C		Pierce skull for drainage					
61151	C		Pierce skull for drainage					
61154	C		Pierce skull & remove clot					
61156	C		Pierce skull for drainage					
61210	C		Pierce skull, implant device					
61215	T		Insert brain-fluid device	0224	34.0302	$1,774.71	$453.41	$354.94
61250	C		Pierce skull & explore					
61253	C		Pierce skull & explore					
61304	C		Open skull for exploration					
61305	C		Open skull for exploration					
61312	C		Open skull for drainage					
61313	C		Open skull for drainage					
61314	C		Open skull for drainage					
61315	C		Open skull for drainage					
61316	N	NI	Implt cran bone flap to abdo					
61320	C		Open skull for drainage					
61321	C		Open skull for drainage					
61322	C	NI	Decompressive craniotomy					
61323	C	NI	Decompressive lobectomy					
61330	T		Decompress eye socket	0256	34.0302	$1,774.71		$354.94
61332	C		Explore/biopsy eye socket					
61333	C		Explore orbit/remove lesion					
61334	C		Explore orbit/remove object					
61340	C		Relieve cranial pressure					
61343	C		Incise skull (press relief)					
61345	C		Relieve cranial pressure					
61440	C		Incise skull for surgery					
61450	C		Incise skull for surgery					
61458	C		Incise skull for brain wound					
61460	C		Incise skull for surgery					
61470	C		Incise skull for surgery					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued
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CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
61480	C		Incise skull for surgery					
61490	C		Incise skull for surgery					
61500	C		Removal of skull lesion					
61501	C		Remove infected skull bone					
61510	C		Removal of brain lesion					
61512	C		Remove brain lining lesion					
61514	C		Removal of brain abscess					
61516	C		Removal of brain lesion					
61517	N	NI	Implt brain chemotx add-on					
61518	C		Removal of brain lesion					
61519	C		Remove brain lining lesion					
61520	C		Removal of brain lesion					
61521	C		Removal of brain lesion					
61522	C		Removal of brain abscess					
61524	C		Removal of brain lesion					
61526	C		Removal of brain lesion					
61530	C		Removal of brain lesion					
61531	C		Implant brain electrodes					
61533	C		Implant brain electrodes					
61534	C		Removal of brain lesion					
61535	C		Remove brain electrodes					
61536	C		Removal of brain lesion					
61538	C		Removal of brain tissue					
61539	C		Removal of brain tissue					
61541	C		Incision of brain tissue					
61542	C		Removal of brain tissue					
61543	C		Removal of brain tissue					
61544	C		Remove & treat brain lesion					
61545	C		Excision of brain tumor					
61546	C		Removal of pituitary gland					
61548	C		Removal of pituitary gland					
61550	C		Release of skull seams					
61552	C		Release of skull seams					
61556	C		Incise skull/sutures					
61557	C		Incise skull/sutures					
61558	C		Excision of skull/sutures					
61559	C		Excision of skull/sutures					
61563	C		Excision of skull tumor					
61564	C		Excision of skull tumor					
61570	C		Remove foreign body, brain					
61571	C		Incise skull for brain wound					
61575	C		Skull base/brainstem surgery					
61576	C		Skull base/brainstem surgery					
61580	C		Craniofacial approach, skull					
61581	C		Craniofacial approach, skull					
61582	C		Craniofacial approach, skull					
61583	C		Craniofacial approach, skull					
61584	C		Orbitocranial approach/skull					
61585	C		Orbitocranial approach/skull					
61586	C		Resect nasopharynx, skull					
61590	C		Infratemporal approach/skull					
61591	C		Infratemporal approach/skull					
61592	C		Orbitocranial approach/skull					
61595	C		Transtemporal approach/skull					
61596	C		Transcochlear approach/skull					
61597	C		Transcondylar approach/skull					
61598	C		Transpetrosal approach/skull					
61600	C		Resect/excise cranial lesion					
61601	C		Resect/excise cranial lesion					
61605	C		Resect/excise cranial lesion					
61606	C		Resect/excise cranial lesion					
61607	C		Resect/excise cranial lesion					
61608	C		Resect/excise cranial lesion					
61609	C		Transect artery, sinus					
61610	C		Transect artery, sinus					

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CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
61611	C		Transect artery, sinus					
61612	C		Transect artery, sinus					
61613	C		Remove aneurysm, sinus					
61615	C		Resect/excise lesion, skull					
61616	C		Resect/excise lesion, skull					
61618	C		Repair dura					
61619	C		Repair dura					
61623	T	NI	Endovasc tempory vessel occl	0979		$1,625.00		$325.00
61624	C		Occlusion/embolization cath					
61626	T		Transcath occlusion, non-cns	0081	43.5067	$2,268.92		$453.78
61680	C		Intracranial vessel surgery					
61682	C		Intracranial vessel surgery					
61684	C		Intracranial vessel surgery					
61686	C		Intracranial vessel surgery					
61690	C		Intracranial vessel surgery					
61692	C		Intracranial vessel surgery					
61697	C		Brain aneurysm repr, complx					
61698	C		Brain aneurysm repr, complx					
61700	C		Brain aneurysm repr, simple					
61702	C		Inner skull vessel surgery					
61703	C		Clamp neck artery					
61705	C		Revise circulation to head					
61708	C		Revise circulation to head					
61710	C		Revise circulation to head					
61711	C		Fusion of skull arteries					
61720	C		Incise skull/brain surgery					
61735	C		Incise skull/brain surgery					
61750	C		Incise skull/brain biopsy					
61751	C		Brain biopsy w/ ct/mr guide					
61760	C		Implant brain electrodes					
61770	C		Incise skull for treatment					
61790	T		Treat trigeminal nerve	0220	15.8136	$824.70		$164.94
61791	T		Treat trigeminal tract	0204	2.0251	$105.61	$40.13	$21.12
61793	E		Focus radiation beam					
61795	S		Brain surgery using computer	0302	9.2343	$481.58	$182.43	$96.32
61850	C		Implant neuroelectrodes					
61860	C		Implant neuroelectrodes					
61862	C		Implant neurostimul, subcort					
61870	C		Implant neuroelectrodes					
61875	C		Implant neuroelectrodes					
61880	T		Revise/remove neuroelectrode	0687	25.8424	$1,347.71	$619.95	$269.54
61885	T		Implant neurostim one array	0222	227.7370	$11,876.71		$2,375.34
61886	T		Implant neurostim arrays	0222	227.7370	$11,876.71		$2,375.34
61888	T		Revise/remove neuroreceiver	0688	74.5719	$3,889.00	$1,905.61	$777.80
62000	C		Treat skull fracture					
62005	C		Treat skull fracture					
62010	C		Treatment of head injury					
62100	C		Repair brain fluid leakage					
62115	C		Reduction of skull defect					
62116	C		Reduction of skull defect					
62117	C		Reduction of skull defect					
62120	C		Repair skull cavity lesion					
62121	C		Incise skull repair					
62140	C		Repair of skull defect					
62141	C		Repair of skull defect					
62142	C		Remove skull plate/flap					
62143	C		Replace skull plate/flap					
62145	C		Repair of skull & brain					
62146	C		Repair of skull with graft					
62147	C		Repair of skull with graft					
62148	N	NI	Retr bone flap to fix skull					
62160	N	NI	Neuroendoscopy add-on					
62161	C	NI	Dissect brain w/scope					
62162	C	NI	Remove colloid cyst w/scope					
62163	C	NI	Neuroendoscopy w/fb removal					

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CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
62164	C	NI	Remove brain tumor w/scope					
62165	C	NI	Remove pituit tumor w/scope					
62180	C		Establish brain cavity shunt					
62190	C		Establish brain cavity shunt					
62192	C		Establish brain cavity shunt					
62194	T		Replace/irrigate catheter	0121	2.0833	$108.65	$43.80	$21.73
62200	C		Establish brain cavity shunt					
62201	C		Establish brain cavity shunt					
62220	C		Establish brain cavity shunt					
62223	C		Establish brain cavity shunt					
62225	T		Replace/irrigate catheter	0121	2.0833	$108.65	$43.80	$21.73
62230	T		Replace/revise brain shunt	0224	34.0302	$1,774.71	$453.41	$354.94
62252	S		Csf shunt reprogram	0691	2.9166	$152.10	$83.65	$30.42
62256	C		Remove brain cavity shunt					
62258	C		Replace brain cavity shunt					
62263	T		Lysis epidural adhesions	0203	11.7924	$614.99	$276.76	$123.00
62264	T	NI	Epidural lysis on single day	0203	11.7924	$614.99	$276.76	$123.00
62268	T		Drain spinal cord cyst	0212	3.3139	$172.82	$79.53	$34.56
62269	T		Needle biopsy, spinal cord	0005	3.1201	$162.72	$71.59	$32.54
62270	T		Spinal fluid tap, diagnostic	0206	4.7867	$249.63	$75.55	$49.93
62272	T		Drain cerebro spinal fluid	0206	4.7867	$249.63	$75.55	$49.93
62273	T		Treat epidural spine lesion	0206	4.7867	$249.63	$75.55	$49.93
62280	T		Treat spinal cord lesion	0207	5.7654	$300.67	$123.69	$60.13
62281	T		Treat spinal cord lesion	0207	5.7654	$300.67	$123.69	$60.13
62282	T		Treat spinal canal lesion	0207	5.7654	$300.67	$123.69	$60.13
62284	N		Injection for myelogram					
62287	T		Percutaneous diskectomy	0220	15.8136	$824.70		$164.94
62290	N		Inject for spine disk x-ray					
62291	N		Inject for spine disk x-ray					
62292	T		Injection into disk lesion	0212	3.3139	$172.82	$79.53	$34.56
62294	T		Injection into spinal artery	0212	3.3139	$172.82	$79.53	$34.56
62310	T		Inject spine c/t	0206	4.7867	$249.63	$75.55	$49.93
62311	T		Inject spine l/s (cd)	0206	4.7867	$249.63	$75.55	$49.93
62318	T		Inject spine w/cath, c/t	0206	4.7867	$249.63	$75.55	$49.93
62319	T		Inject spine w/cath l/s (cd)	0206	4.7867	$249.63	$75.55	$49.93
62350	T		Implant spinal canal cath	0223	41.0262	$2,139.56		$427.91
62351	T		Implant spinal canal cath	0208	38.4487	$2,005.14		$401.03
62355	T		Remove spinal canal catheter	0203	11.7924	$614.99	$276.76	$123.00
62360	T		Insert spine infusion device	0226	144.3474	$7,527.86		$1,505.57
62361	T		Implant spine infusion pump	0227	144.5122	$7,536.46		$1,507.29
62362	T		Implant spine infusion pump	0227	144.5122	$7,536.46		$1,507.29
62365	T		Remove spine infusion device	0203	11.7924	$614.99	$276.76	$123.00
62367	S		Analyze spine infusion pump	0691	2.9166	$152.10	$83.65	$30.42
62368	S		Analyze spine infusion pump	0691	2.9166	$152.10	$83.65	$30.42
63001	T		Removal of spinal lamina	0208	38.4487	$2,005.14		$401.03
63003	T		Removal of spinal lamina	0208	38.4487	$2,005.14		$401.03
63005	T		Removal of spinal lamina	0208	38.4487	$2,005.14		$401.03
63011	T		Removal of spinal lamina	0208	38.4487	$2,005.14		$401.03
63012	T		Removal of spinal lamina	0208	38.4487	$2,005.14		$401.03
63015	T		Removal of spinal lamina	0208	38.4487	$2,005.14		$401.03
63016	T		Removal of spinal lamina	0208	38.4487	$2,005.14		$401.03
63017	T		Removal of spinal lamina	0208	38.4487	$2,005.14		$401.03
63020	T		Neck spine disk surgery	0208	38.4487	$2,005.14		$401.03
63030	T		Low back disk surgery	0208	38.4487	$2,005.14		$401.03
63035	T		Spinal disk surgery add-on	0208	38.4487	$2,005.14		$401.03
63040	T		Laminotomy, single cervical	0208	38.4487	$2,005.14		$401.03
63042	T		Laminotomy, single lumbar	0208	38.4487	$2,005.14		$401.03
63043	C		Laminotomy, addl cervical					
63044	C		Laminotomy, addl lumbar					
63045	T		Removal of spinal lamina	0208	38.4487	$2,005.14		$401.03
63046	T		Removal of spinal lamina	0208	38.4487	$2,005.14		$401.03
63047	T		Removal of spinal lamina	0208	38.4487	$2,005.14		$401.03
63048	T		Remove spinal lamina add-on	0208	38.4487	$2,005.14		$401.03
63055	T		Decompress spinal cord	0208	38.4487	$2,005.14		$401.03
63056	T		Decompress spinal cord	0208	38.4487	$2,005.14		$401.03

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

[Calendar Year 2003]

CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
63057	T		Decompress spine cord add-on	0208	38.4487	$2,005.14		$401.03
63064	T		Decompress spinal cord	0208	38.4487	$2,005.14		$401.03
63066	T		Decompress spine cord add-on	0208	38.4487	$2,005.14		$401.03
63075	C		Neck spine disk surgery					
63076	C		Neck spine disk surgery					
63077	C		Spine disk surgery, thorax					
63078	C		Spine disk surgery, thorax					
63081	C		Removal of vertebral body					
63082	C		Remove vertebral body add-on					
63085	C		Removal of vertebral body					
63086	C		Remove vertebral body add-on					
63087	C		Removal of vertebral body					
63088	C		Remove vertebral body add-on					
63090	C		Removal of vertebral body					
63091	C		Remove vertebral body add-on					
63170	C		Incise spinal cord tract(s)					
63172	C		Drainage of spinal cyst					
63173	C		Drainage of spinal cyst					
63180	C		Revise spinal cord ligaments					
63182	C		Revise spinal cord ligaments					
63185	C		Incise spinal column/nerves					
63190	C		Incise spinal column/nerves					
63191	C		Incise spinal column/nerves					
63194	C		Incise spinal column & cord					
63195	C		Incise spinal column & cord					
63196	C		Incise spinal column & cord					
63197	C		Incise spinal column & cord					
63198	C		Incise spinal column & cord					
63199	C		Incise spinal column & cord					
63200	C		Release of spinal cord					
63250	C		Revise spinal cord vessels					
63251	C		Revise spinal cord vessels					
63252	C		Revise spinal cord vessels					
63265	C		Excise intraspinal lesion					
63266	C		Excise intraspinal lesion					
63267	C		Excise intraspinal lesion					
63268	C		Excise intraspinal lesion					
63270	C		Excise intraspinal lesion					
63271	C		Excise intraspinal lesion					
63272	C		Excise intraspinal lesion					
63273	C		Excise intraspinal lesion					
63275	C		Biopsy/excise spinal tumor					
63276	C		Biopsy/excise spinal tumor					
63277	C		Biopsy/excise spinal tumor					
63278	C		Biopsy/excise spinal tumor					
63280	C		Biopsy/excise spinal tumor					
63281	C		Biopsy/excise spinal tumor					
63282	C		Biopsy/excise spinal tumor					
63283	C		Biopsy/excise spinal tumor					
63285	C		Biopsy/excise spinal tumor					
63286	C		Biopsy/excise spinal tumor					
63287	C		Biopsy/excise spinal tumor					
63290	C		Biopsy/excise spinal tumor					
63300	C		Removal of vertebral body					
63301	C		Removal of vertebral body					
63302	C		Removal of vertebral body					
63303	C		Removal of vertebral body					
63304	C		Removal of vertebral body					
63305	C		Removal of vertebral body					
63306	C		Removal of vertebral body					
63307	C		Removal of vertebral body					
63308	C		Remove vertebral body add-on					
63600	T		Remove spinal cord lesion	0220	15.8136	$824.70		$164.94
63610	T		Stimulation of spinal cord	0220	15.8136	$824.70		$164.94
63615	T		Remove lesion of spinal cord	0220	15.8136	$824.70		$164.94

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

[Calendar Year 2003].

CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
63650	S		Implant neuroelectrodes	0225	139.3379	$7,266.61		$1,453.32
63655	S		Implant neuroelectrodes	0225	139.3379	$7,266.61		$1,453.32
63660	T		Revise/remove neuroelectrode	0687	25.8424	$1,347.71	$619.95	$269.54
63685	T		Implant neuroreceiver	0222	227.7370	$11,876.71		$2,375.34
63688	T		Revise/remove neuroreceiver	0688	74.5719	$3,889.00	$1,905.61	$777.80
63700	C		Repair of spinal herniation					
63702	C		Repair of spinal herniation					
63704	C		Repair of spinal herniation					
63706	C		Repair of spinal herniation					
63707	C		Repair spinal fluid leakage					
63709	C		Repair spinal fluid leakage					
63710	C		Graft repair of spine defect					
63740	C		Install spinal shunt					
63741	T		Install spinal shunt	0228	59.6207	$3,109.28	$696.46	$621.86
63744	T		Revision of spinal shunt	0228	59.6207	$3,109.28	$696.46	$621.86
63746	T		Removal of spinal shunt	0109	7.4708	$389.61	$131.49	$77.92
64400	T		N block inj, trigeminal	0204	2.0251	$105.61	$40.13	$21.12
64402	T		N block inj, facial	0204	2.0251	$105.61	$40.13	$21.12
64405	T		N block inj, occipital	0204	2.0251	$105.61	$40.13	$21.12
64408	T		N block inj, vagus	0204	2.0251	$105.61	$40.13	$21.12
64410	T		N block inj, phrenic	0204	2.0251	$105.61	$40.13	$21.12
64412	T		N block inj, spinal accessor	0204	2.0251	$105.61	$40.13	$21.12
64413	T		N block inj, cervical plexus	0204	2.0251	$105.61	$40.13	$21.12
64415	T		Injection for nerve block	0204	2.0251	$105.61	$40.13	$21.12
64416	T	NI	N block cont infuse, b plex	0204	2.0251	$105.61	$40.13	$21.12
64417	T		N block inj, axillary	0204	2.0251	$105.61	$40.13	$21.12
64418	T		N block inj, suprascapular	0204	2.0251	$105.61	$40.13	$21.12
64420	T		N block inj, intercost, sng	0207	5.7654	$300.67	$123.69	$60.13
64421	T		N block inj, intercost, mlt	0207	5.7654	$300.67	$123.69	$60.13
64425	T		N block inj ilio-ing/hypogi	0204	2.0251	$105.61	$40.13	$21.12
64430	T		N block inj, pudendal	0204	2.0251	$105.61	$40.13	$21.12
64435	T		N block inj, paracervical	0204	2.0251	$105.61	$40.13	$21.12
64445	T		Injection for nerve block	0204	2.0251	$105.61	$40.13	$21.12
64446	T	NI	N blk inj, sciatic, cont inf	0204	2.0251	$105.61	$40.13	$21.12
64447	T	NI	N block inj fem, single	0204	2.0251	$105.61	$40.13	$21.12
64448	T	NI	N block inj fem, cont inf	0204	2.0251	$105.61	$40.13	$21.12
64450	T		N block, other peripheral	0204	2.0251	$105.61	$40.13	$21.12
64470	T		Inj paravertebral c/t	0207	5.7654	$300.67	$123.69	$60.13
64472	T		Inj paravertebral c/t add-on	0207	5.7654	$300.67	$123.69	$60.13
64475	T		Inj paravertebral l/s	0207	5.7654	$300.67	$123.69	$60.13
64476	T		Inj paravertebral l/s add-on	0207	5.7654	$300.67	$123.69	$60.13
64479	T		Inj foramen epidural c/t	0207	5.7654	$300.67	$123.69	$60.13
64480	T		Inj foramen epidural add-on	0207	5.7654	$300.67	$123.69	$60.13
64483	T		Inj foramen epidural l/s	0207	5.7654	$300.67	$123.69	$60.13
64484	T		Inj foramen epidural add-on	0207	5.7654	$300.67	$123.69	$60.13
64505	T		N block, spenopalatine gangl	0204	2.0251	$105.61	$40.13	$21.12
64508	T		N block, carotid sinus s/p	0204	2.0251	$105.61	$40.13	$21.12
64510	T		N block, stellate ganglion	0207	5.7654	$300.67	$123.69	$60.13
64520	T		N block, lumbar/thoracic	0207	5.7654	$300.67	$123.69	$60.13
64530	T		N block inj, celiac pelus	0207	5.7654	$300.67	$123.69	$60.13
64550	A		Apply neurostimulator					
64553	S		Implant neuroelectrodes	0225	139.3379	$7,266.61		$1,453.32
64555	S		Implant neuroelectrodes	0225	139.3379	$7,266.61		$1,453.32
64560	S		Implant neuroelectrodes	0225	139.3379	$7,266.61		$1,453.32
64561	S		Implant neuroelectrodes	0225	139.3379	$7,266.61		$1,453.32
64565	S		Implant neuroelectrodes	0225	139.3379	$7,266.61		$1,453.32
64573	S		Implant neuroelectrodes	0225	139.3379	$7,266.61		$1,453.32
64575	S		Implant neuroelectrodes	0225	139.3379	$7,266.61		$1,453.32
64577	S		Implant neuroelectrodes	0225	139.3379	$7,266.61		$1,453.32
64580	S		Implant neuroelectrodes	0225	139.3379	$7,266.61		$1,453.32
64581	S		Implant neuroelectrodes	0225	139.3379	$7,266.61		$1,453.32
64585	T		Revise/remove neuroelectrode	0687	25.8424	$1,347.71	$619.95	$269.54
64590	T		Implant neuroreceiver	0222	227.7370	$11,876.71		$2,375.34
64595	T		Revise/remove neuroreceiver	0688	74.5719	$3,889.00	$1,905.61	$777.80
64600	T		Injection treatment of nerve	0203	11.7924	$614.99	$276.76	$123.00

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

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CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
64605	T		Injection treatment of nerve	0203	11.7924	$614.99	$276.76	$123.00
64610	T		Injection treatment of nerve	0203	11.7924	$614.99	$276.76	$123.00
64612	T		Destroy nerve, face muscle	0204	2.0251	$105.61	$40.13	$21.12
64613	T		Destroy nerve, spine muscle	0204	2.0251	$105.61	$40.13	$21.12
64614	T		Destroy nerve, extrem musc	0204	2.0251	$105.61	$40.13	$21.12
64620*	T		Injection treatment of nerve	0203	11.7924	$614.99	$276.76	$123.00
64622	T		Destr paravertebrl nerve l/s	0203	11.7924	$614.99	$276.76	$123.00
64623	T		Destr paravertebral n add-on	0203	11.7924	$614.99	$276.76	$123.00
64626	T		Destr paravertebrl nerve c/t	0203	11.7924	$614.99	$276.76	$123.00
64627	T		Destr paravertebral n add-on	0203	11.7924	$614.99	$276.76	$123.00
64630	T		Injection treatment of nerve	0207	5.7654	$300.67	$123.69	$60.13
64640	T		Injection treatment of nerve	0207	5.7654	$300.67	$123.69	$60.13
64680	T		Injection treatment of nerve	0203	11.7924	$614.99	$276.76	$123.00
64702	T		Revise finger/toe nerve	0220	15.8136	$824.70		$164.94
64704	T		Revise hand/foot nerve	0220	15.8136	$824.70		$164.94
64708	T		Revise arm/leg nerve	0220	15.8136	$824.70		$164.94
64712	T		Revision of sciatic nerve	0220	15.8136	$824.70		$164.94
64713	T		Revision of arm nerve(s)	0220	15.8136	$824.70		$164.94
64714	T		Revise low back nerve(s)	0220	15.8136	$824.70		$164.94
64716	T		Revision of cranial nerve	0220	15.8136	$824.70		$164.94
64718	T		Revise ulnar nerve at elbow	0220	15.8136	$824.70		$164.94
64719	T		Revise ulnar nerve at wrist	0220	15.8136	$824.70		$164.94
64721	T		Carpal tunnel surgery	0220	15.8136	$824.70		$164.94
64722	T		Relieve pressure on nerve(s)	0220	15.8136	$824.70		$164.94
64726	T		Release foot/toe nerve	0220	15.8136	$824.70		$164.94
64727	T		Internal nerve revision	0220	15.8136	$824.70		$164.94
64732	T		Incision of brow nerve	0220	15.8136	$824.70		$164.94
64734	T		Incision of cheek nerve	0220	15.8136	$824.70		$164.94
64736	T		Incision of chin nerve	0220	15.8136	$824.70		$164.94
64738	T		Incision of jaw nerve	0220	15.8136	$824.70		$164.94
64740	T		Incision of tongue nerve	0220	15.8136	$824.70		$164.94
64742	T		Incision of facial nerve	0220	15.8136	$824.70		$164.94
64744	T		Incise nerve, back of head	0220	15.8136	$824.70		$164.94
64746	T		Incise diaphragm nerve	0220	15.8136	$824.70		$164.94
64752	C		Incision of vagus nerve					
64755	C		Incision of stomach nerves					
64760	C		Incision of vagus nerve					
64761	T		Incision of pelvis nerve	0220	15.8136	$824.70		$164.94
64763	C		Incise hip/thigh nerve					
64766	C		Incise hip/thigh nerve					
64771	T		Sever cranial nerve	0220	15.8136	$824.70		$164.94
64772	T		Incision of spinal nerve	0220	15.8136	$824.70		$164.94
64774	T		Remove skin nerve lesion	0220	15.8136	$824.70		$164.94
64776	T		Remove digit nerve lesion	0220	15.8136	$824.70		$164.94
64778	T		Digit nerve surgery add-on	0220	15.8136	$824.70		$164.94
64782	T		Remove limb nerve lesion	0220	15.8136	$824.70		$164.94
64783	T		Limb nerve surgery add-on	0220	15.8136	$824.70		$164.94
64784	T		Remove nerve lesion	0220	15.8136	$824.70		$164.94
64786	T		Remove sciatic nerve lesion	0221	21.5208	$1,122.33	$463.62	$224.47
64787	T		Implant nerve end	0220	15.8136	$824.70		$164.94
64788	T		Remove skin nerve lesion	0220	15.8136	$824.70		$164.94
64790	T		Removal of nerve lesion	0220	15.8136	$824.70		$164.94
64792	T		Removal of nerve lesion	0221	21.5208	$1,122.33	$463.62	$224.47
64795	T		Biopsy of nerve	0220	15.8136	$824.70		$164.94
64802	T		Remove sympathetic nerves	0220	15.8136	$824.70		$164.94
64804	C		Remove sympathetic nerves					
64809	C		Remove sympathetic nerves					
64818	C		Remove sympathetic nerves					
64820	T		Remove sympathetic nerves	0220	15.8136	$824.70		$164.94
64821	T		Remove sympathestic nerves	0054	22.7223	$1,184.99		$237.00
64822	T		Remove sympathetic nerves	0054	22.7223	$1,184.99		$237.00
64823	T		Remove sympathetic nerves	0054	22.7223	$1,184.99		$237.00
64831	T		Repair of digit nerve	0221	21.5208	$1,122.33	$463.62	$224.47
64832	T		Repair nerve add-on	0221	21.5208	$4,122.33	$463.62	$224.47
64834	T		Repair of hand or foot nerve	0221	21.5208	$1,122.33	$463.62	$224.47

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

[Calendar Year 2003]

CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
64835	T		Repair of hand or foot nerve	0221	21.5208	$1,122.33	$463.62	$224.47
64836	T		Repair of hand or foot nerve	0221	21.5208	$1,122.33	$463.62	$224.47
64837	T		Repair nerve add-on	0221	21.5208	$1,122.33	$463.62	$224.47
64840	T		Repair of leg nerve	0221	21.5208	$1,122.33	$463.62	$224.47
64856	T		Repair/transpose nerve	0221	21.5208	$1,122.33	$463.62	$224.47
64857	T		Repair arm/leg nerve	0221	21.5208	$1,122.33	$463.62	$224.47
64858	T		Repair sciatic nerve	0221	21.5208	$1,122.33	$463.62	$224.47
64859	T		Nerve surgery	0221	21.5208	$1,122.33	$463.62	$224.47
64861	T		Repair of arm nerves	0221	21.5208	$1,122.33	$463.62	$224.47
64862	T		Repair of low back nerves	0221	21.5208	$1,122.33	$463.62	$224.47
64864	T		Repair of facial nerve	0221	21.5208	$1,122.33	$463.62	$224.47
64865	T		Repair of facial nerve	0221	21.5208	$1,122.33	$463.62	$224.47
64866	C		Fusion of facial/other nerve					
64868	C		Fusion of facial/other nerve					
64870	T		Fusion of facial/other nerve	0221	21.5208	$1,122.33	$463.62	$224.47
64872	T		Subsequent repair of nerve	0221	21.5208	$1,122.33	$463.62	$224.47
64874	T		Repair & revise nerve add-on	0221	21.5208	$1,122.33	$463.62	$224.47
64876	T		Repair nerve/shorten bone	0221	21.5208	$1,122.33	$463.62	$224.47
64885	T		Nerve graft, head or neck	0221	21.5208	$1,122.33	$463.62	$224.47
64886	T		Nerve graft, head or neck	0221	21.5208	$1,122.33	$463.62	$224.47
64890	T		Nerve graft, hand or foot	0221	21.5208	$1,122.33	$463.62	$224.47
64891	T		Nerve graft, hand or foot	0221	21.5208	$1,122.33	$463.62	$224.47
64892	T		Nerve graft, arm or leg	0221	21.5208	$1,122.33	$463.62	$224.47
64893	T		Nerve graft, arm or leg	0221	21.5208	$1,122.33	$463.62	$224.47
64895	T		Nerve graft, hand or foot	0221	21.5208	$1,122.33	$463.62	$224.47
64896	T		Nerve graft, hand or foot	0221	21.5208	$1,122.33	$463.62	$224.47
64897	T		Nerve graft, arm or leg	0221	21.5208	$1,122.33	$463.62	$224.47
64898	T		Nerve graft, arm or leg	0221	21.5208	$1,122.33	$463.62	$224.47
64901	T		Nerve graft add-on	0221	21.5208	$1,122.33	$463.62	$224.47
64902	T		Nerve graft add-on	0221	21.5208	$1,122.33	$463.62	$224.47
64905	T		Nerve pedicle transfer	0221	21.5208	$1,122.33	$463.62	$224.47
64907	T		Nerve pedicle transfer	0221	21.5208	$1,122.33	$463.62	$224.47
64999	T		Nervous system surgery	0204	2.0251	$105.61	$40.13	$21.12
65091	T		Revise eye	0242	28.0517	$1,462.92	$597.36	$292.58
65093	T		Revise eye with implant	0241	20.6294	$1,075.84	$384.47	$215.17
65101	T		Removal of eye	0242	28.0517	$1,462.92	$597.36	$292.58
65103	T		Remove eye/insert implant	0242	28.0517	$1,462.92	$597.36	$292.58
65105	T		Remove eye/attach implant	0242	28.0517	$1,462.92	$597.36	$292.58
65110	T		Removal of eye	0242	28.0517	$1,462.92	$597.36	$292.58
65112	T		Remove eye/revise socket	0242	28.0517	$1,462.92	$597.36	$292.58
65114	T		Remove eye/revise socket	0242	28.0517	$1,462.92	$597.36	$292.58
65125	T		Revise ocular implant	0240	16.3078	$850.47	$315.31	$170.09
65130	T		Insert ocular implant	0241	20.6294	$1,075.84	$384.47	$215.17
65135	T		Insert ocular implant	0241	20.6294	$1,075.84	$384.47	$215.17
65140	T		Attach ocular implant	0242	28.0517	$1,462.92	$597.36	$292.58
65150	T		Revise ocular implant	0241	20.6294	$1,075.84	$384.47	$215.17
65155	T		Reinsert ocular implant	0242	28.0517	$1,462.92	$597.36	$292.58
65175	T		Removal of ocular implant	0240	16.3078	$850.47	$315.31	$170.09
65205	S		Remove foreign body from eye	0698	0.9205	$48.00	$18.72	$9.60
65210	S		Remove foreign body from eye	0231	2.1705	$113.19	$50.94	$22.64
65220	S		Remove foreign body from eye	0231	2.1705	$113.19	$50.94	$22.64
65222	S		Remove foreign body from eye	0231	2.1705	$113.19	$50.94	$22.64
65235	T		Remove foreign body from eye	0233	13.4202	$699.88	$266.33	$139.98
65260	T		Remove foreign body from eye	0236	19.4278	$1,013.18		$202.64
65265	T		Remove foreign body from eye	0236	19.4278	$1,013.18		$202.64
65270	T		Repair of eye wound	0240	16.3078	$850.47	$315.31	$170.09
65272	T		Repair of eye wound	0233	13.4202	$699.88	$266.33	$139.98
65273	C		Repair of eye wound					
65275	T		Repair of eye wound	0233	13.4202	$699.88	$266.33	$139.98
65280	T		Repair of eye wound	0234	20.4259	$1,065.23	$511.31	$213.05
65285	T		Repair of eye wound	0234	20.4259	$1,065.23	$511.31	$213.05
65286	T		Repair of eye wound	0233	13.4202	$699.88	$266.33	$139.98
65290	T		Repair of eye socket wound	0243	19.9705	$1,041.48	$431.39	$208.30
65400	T		Removal of eye lesion	0233	13.4202	$699.88	$266.33	$139.98
65410	T		Biopsy of cornea	0233	13.4202	$699.88	$266.33	$139.98

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

[Calendar Year 2003]

CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
65420	T		Removal of eye lesion	0233	13.4202	$699.88	$266.33	$139.98
65426	T		Removal of eye lesion	0234	20.4259	$1,065.23	$511.31	$213.05
65430	S		Corneal smear	0230	0.7364	$38.40	$14.97	$7.68
65435	T		Curette/treat cornea	0239	6.8119	$355.25	$115.94	$71.05
65436	T		Curette/treat cornea	0233	13.4202	$699.88	$266.33	$139.98
65450	S		Treatment of corneal lesion	0231	2.1705	$113.19	$50.94	$22.64
65600	T		Revision of cornea	0240	16.3078	$850.47	$315.31	$170.09
65710	T		Corneal transplant	0244	35.6290	$1,858.09	$803.26	$371.62
65730	T		Corneal transplant	0244	35.6290	$1,858.09	$803.26	$371.62
65750	T		Corneal transplant	0244	35.6290	$1,858.09	$803.26	$371.62
65755	T		Corneal transplant	0244	35.6290	$1,858.09	$803.26	$371.62
65760	E		Revision of cornea					
65765	E		Revision of cornea					
65767	E		Corneal tissue transplant					
65770	T		Revise cornea with implant	0244	35.6290	$1,858.09	$803.26	$371.62
65771	E		Radial keratotomy					
65772	T		Correction of astigmatism	0233	13.4202	$699.88	$266.33	$139.98
65775	T		Correction of astigmatism	0233	13.4202	$699.88	$266.33	$139.98
65800	T		Drainage of eye	0233	13.4202	$699.88	$266.33	$139.98
65805	T		Drainage of eye	0233	13.4202	$699.88	$266.33	$139.98
65810	T		Drainage of eye	0234	20.4259	$1,065.23	$511.31	$213.05
65815	T		Drainage of eye	0234	20.4259	$1,065.23	$511.31	$213.05
65820	T		Relieve inner eye pressure	0232	4.4960	$234.47	$103.17	$46.89
65850	T		Incision of eye	0234	20.4259	$1,065.23	$511.31	$213.05
65855	T		Laser surgery of eye	0247	4.7092	$245.59	$104.31	$49.12
65860	T		Incise inner eye adhesions	0247	4.7092	$245.59	$104.31	$49.12
65865	T		Incise inner eye adhesions	0233	13.4202	$699.88	$266.33	$139.98
65870	T		Incise inner eye adhesions	0234	20.4259	$1,065.23	$511.31	$213.05
65875	T		Incise inner eye adhesions	0234	20.4259	$1,065.23	$511.31	$213.05
65880	T		Incise inner eye adhesions	0233	13.4202	$699.88	$266.33	$139.98
65900	T		Remove eye lesion	0233	13.4202	$699.88	$266.33	$139.98
65920	T		Remove implant of eye	0233	13.4202	$699.88	$266.33	$139.98
65930	T		Remove blood clot from eye	0234	20.4259	$1,065.23	$511.31	$213.05
66020	T		Injection treatment of eye	0233	13.4202	$699.88	$266.33	$139.98
66030	T		Injection treatment of eye	0233	13.4202	$699.88	$266.33	$139.98
66130	T		Remove eye lesion	0234	20.4259	$1,065.23	$511.31	$213.05
66150	T		Glaucoma surgery	0233	13.4202	$699.88	$266.33	$139.98
66155	T		Glaucoma surgery	0234	20.4259	$1,065.23	$511.31	$213.05
66160	T		Glaucoma surgery	0234	20.4259	$1,065.23	$511.31	$213.05
66165	T		Glaucoma surgery	0234	20.4259	$1,065.23	$511.31	$213.05
66170	T		Glaucoma surgery	0234	20.4259	$1,065.23	$511.31	$213.05
66172	T		Incision of eye	0673	25.9490	$1,353.27	$649.56	$270.65
66180	T		Implant eye shunt	0673	25.9490	$1,353.27	$649.56	$270.65
66185	T		Revise eye shunt	0673	25.9490	$1,353.27	$649.56	$270.65
66220	T		Repair eye lesion	0236	19.4278	$1,013.18		$202.64
66225	T		Repair/graft eye lesion	0673	25.9490	$1,353.27	$649.56	$270.65
66250	T		Follow-up surgery of eye	0233	13.4202	$699.88	$266.33	$139.98
66500	T		Incision of iris	0232	4.4960	$234.47	$103.17	$46.89
66505	T		Incision of iris	0232	4.4960	$234.47	$103.17	$46.89
66600	T		Remove iris and lesion	0233	13.4202	$699.88	$266.33	$139.98
66605	T		Removal of iris	0234	20.4259	$1,065.23	$511.31	$213.05
66625	T		Removal of iris	0233	13.4202	$699.88	$266.33	$139.98
66630	T		Removal of iris	0233	13.4202	$699.88	$266.33	$139.98
66635	T		Removal of iris	0234	20.4259	$1,065.23	$511.31	$213.05
66680	T		Repair iris & ciliary body	0234	20.4259	$1,065.23	$511.31	$213.05
66682	T		Repair iris & ciliary body	0234	20.4259	$1,065.23	$511.31	$213.05
66700	T		Destruction, ciliary body	0233	13.4202	$699.88	$266.33	$139.98
66710	T		Destruction, ciliary body	0233	13.4202	$699.88	$266.33	$139.98
66720	T		Destruction, ciliary body	0233	13.4202	$699.88	$266.33	$139.98
66740	T		Destruction, ciliary body	0233	13.4202	$699.88	$266.33	$139.98
66761	T		Revision of iris	0247	4.7092	$245.59	$104.31	$49.12
66762	T		Revision of iris	0247	4.7092	$245.59	$104.31	$49.12
66770	T		Removal of inner eye lesion	0247	4.7092	$245.59	$104.31	$49.12
66820	T		Incision, secondary cataract	0232	4.4960	$234.47	$103.17	$46.89
66821	T		After cataract laser surgery	0247	4.7092	$245.59	$104.31	$49.12

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

[Calendar Year 2003]

CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
66825	T		Reposition intraocular lens	0234	20.4259	$1,065.23	$511.31	$213.05
66830	T		Removal of lens lesion	0232	4.4960	$234.47	$103.17	$46.89
66840	T		Removal of lens material	0245	14.5442	$758.49	$251.21	$151.70
66850	T		Removal of lens material	0249	26.7242	$1,393.69	$524.67	$278.74
66852	T		Removal of lens material	0249	26.7242	$1,393.69	$524.67	$278.74
66920	T		Extraction of lens	0249	26.7242	$1,393.69	$524.67	$278.74
66930	T		Extraction of lens	0249	26.7242	$1,393.69	$524.67	$278.74
66940	T		Extraction of lens	0245	14.5442	$758.49	$251.21	$151.70
66982	T		Cataract surgery, complex	0246	22.2379	$1,159.73	$495.96	$231.95
66983	T		Cataract surg w/iol, 1 stage	0246	22.2379	$1,159.73	$495.96	$231.95
66984	T		Cataract surg w/iol, 1 stage	0246	22.2379	$1,159.73	$495.96	$231.95
66985	T		Insert lens prosthesis	0246	22.2379	$1,159.73	$495.96	$231.95
66986	T		Exchange lens prosthesis	0246	22.2379	$1,159.73	$495.96	$231.95
66990	N	NI	Ophthalmic endoscope add-on					
66999	T		Eye surgery procedure	0232	4.4960	$234.47	$103.17	$46.89
67005	T		Partial removal of eye fluid	0237	33.2647	$1,734.79	$818.54	$346.96
67010	T		Partial removal of eye fluid	0237	33.2647	$1,734.79	$818.54	$346.96
67015	T		Release of eye fluid	0237	33.2647	$1,734.79	$818.54	$346.96
67025	T		Replace eye fluid	0236	19.4278	$1,013.18		$202.64
67027	T		Implant eye drug system	0237	33.2647	$1,734.79	$818.54	$346.96
67028	T		Injection eye drug	0235	5.0871	$265.30	$73.44	$53.06
67030	T		Incise inner eye strands	0236	19.4278	$1,013.18		$202.64
67031	T		Laser surgery, eye strands	0247	4.7092	$245.59	$104.31	$49.12
67036	T		Removal of inner eye fluid	0237	33.2647	$1,734.79	$818.54	$346.96
67038	T		Strip retinal membrane	0237	33.2647	$1,734.79	$818.54	$346.96
67039	T		Laser treatment of retina	0237	33.2647	$1,734.79	$818.54	$346.96
67040	T		Laser treatment of retina	0672	37.9061	$1,976.84	$988.43	$395.37
67101	T		Repair detached retina	0235	5.0871	$265.30	$73.44	$53.06
67105	T		Repair detached retina	0248	4.2925	$223.86	$95.08	$44.77
67107	T		Repair detached retina	0672	37.9061	$1,976.84	$988.43	$395.37
67108	T		Repair detached retina	0672	37.9061	$1,976.84	$988.43	$395.37
67110	T		Repair detached retina	0235	5.0871	$265.30	$73.44	$53.06
67112	T		Rerepair detached retina	0672	37.9061	$1,976.84	$988.43	$395.37
67115	T		Release encircling material	0236	19.4278	$1,013.18		$202.64
67120	T		Remove eye implant material	0236	19.4278	$1,013.18		$202.64
67121	T		Remove eye implant material	0237	33.2647	$1,734.79	$818.54	$346.96
67141	T		Treatment of retina	0235	5.0871	$265.30	$73.44	$53.06
67145	T		Treatment of retina	0248	4.2925	$223.86	$95.08	$44.77
67208	T		Treatment of retinal lesion	0235	5.0871	$265.30	$73.44	$53.06
67210	T		Treatment of retinal lesion	0248	4.2925	$223.86	$95.08	$44.77
67218	T		Treatment of retinal lesion	0236	19.4278	$1,013.18		$202.64
67220	T		Treatment of choroid lesion	0235	5.0871	$265.30	$73.44	$53.06
67221	T		Ocular photodynamic ther	0235	5.0871	$265.30	$73.44	$53.06
67225	T		Eye photodynamic ther add-on	0235	5.0871	$265.30	$73.44	$53.06
67227	T		Treatment of retinal lesion	0235	5.0871	$265.30	$73.44	$53.06
67228	T		Treatment of retinal lesion	0248	4.2925	$223.86	$95.08	$44.77
67250	T		Reinforce eye wall	0240	16.3078	$850.47	$315.31	$170.09
67255	T		Reinforce/graft eye wall	0237	33.2647	$1,734.79	$818.54	$346.96
67299	T		Eye surgery procedure	0235	5.0871	$265.30	$73.44	$53.06
67311	T		Revise eye muscle	0243	19.9705	$1,041.48	$431.39	$208.30
67312	T		Revise two eye muscles	0243	19.9705	$1,041.48	$431.39	$208.30
67314	T		Revise eye muscle	0243	19.9705	$1,041.48	$431.39	$208.30
67316	T		Revise two eye muscles	0243	19.9705	$1,041.48	$431.39	$208.30
67318	T		Revise eye muscle(s)	0243	19.9705	$1,041.48	$431.39	$208.30
67320	T		Revise eye muscle(s) add-on	0243	19.9705	$1,041.48	$431.39	$208.30
67331	T		Eye surgery follow-up add-on	0243	19.9705	$1,041.48	$431.39	$208.30
67332	T		Rerevise eye muscles add-on	0243	19.9705	$1,041.48	$431.39	$208.30
67334	T		Revise eye muscle w/suture	0243	19.9705	$1,041.48	$431.39	$208.30
67335	T		Eye suture during surgery	0243	19.9705	$1,041.48	$431.39	$208.30
67340	T		Revise eye muscle add-on	0243	19.9705	$1,041.48	$431.39	$208.30
67343	T		Release eye tissue	0243	19.9705	$1,041.48	$431.39	$208.30
67345	T		Destroy nerve of eye muscle	0238	2.9747	$155.13	$58.96	$31.03
67350	T		Biopsy eye muscle	0699	3.7596	$196.07	$88.23	$39.21
67399	T		Eye muscle surgery procedure	0243	19.9705	$1,041.48	$431.39	$208.30
67400	T		Explore/biopsy eye socket	0241	20.6294	$1,075.84	$384.47	$215.17

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued
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CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
67405	T		Explore/drain eye socket	0241	20.6294	$1,075.84	$384.47	$215.17
67412	T		Explore/treat eye socket	0241	20.6294	$1,075.84	$384.47	$215.17
67413	T		Explore/treat eye socket	0241	20.6294	$1,075.84	$384.47	$215.17
67414	T		Explr/decompress eye socket	0242	28.0517	$1,462.92	$597.36	$292.58
67415	T		Aspiration, orbital contents	0239	6.8119	$355.25	$115.94	$71.05
67420	T		Explore/treat eye socket	0242	28.0517	$1,462.92	$597.36	$292.58
67430	T		Explore/treat eye socket	0242	28.0517	$1,462.92	$597.36	$292.58
67440	T		Explore/drain eye socket	0242	28.0517	$1,462.92	$597.36	$292.58
67445	T		Explr/decompress eye socket	0242	28.0517	$1,462.92	$597.36	$292.58
67450	T		Explore/biopsy eye socket	0242	28.0517	$1,462.92	$597.36	$292.58
67500	S		Inject/treat eye socket	0231	2.1705	$113.19	$50.94	$22.64
67505	T		Inject/treat eye socket	0238	2.9747	$155.13	$58.96	$31.03
67515	T		Inject/treat eye socket	0239	6.8119	$355.25	$115.94	$71.05
67550	T		Insert eye socket implant	0242	28.0517	$1,462.92	$597.36	$292.58
67560	T		Revise eye socket implant	0241	20.6294	$1,075.84	$384.47	$215.17
67570	T		Decompress optic nerve	0242	28.0517	$1,462.92	$597.36	$292.58
67599	T		Orbit surgery procedure	0239	6.8119	$355.25	$115.94	$71.05
67700	T		Drainage of eyelid abscess	0238	2.9747	$155.13	$58.96	$31.03
67710	T		Incision of eyelid	0239	6.8119	$355.25	$115.94	$71.05
67715	T		Incision of eyelid fold	0240	16.3078	$850.47	$315.31	$170.09
67800	T		Remove eyelid lesion	0238	2.9747	$155.13	$58.96	$31.03
67801	T		Remove eyelid lesions	0239	6.8119	$355.25	$115.94	$71.05
67805	T		Remove eyelid lesions	0238	2.9747	$155.13	$58.96	$31.03
67808	T		Remove eyelid lesion(s)	0240	16.3078	$850.47	$315.31	$170.09
67810	T		Biopsy of eyelid	0238	2.9747	$155.13	$58.96	$31.03
67820	S		Revise eyelashes	0230	0.7364	$38.40	$14.97	$7.68
67825	T		Revise eyelashes	0238	2.9747	$155.13	$58.96	$31.03
67830	T		Revise eyelashes	0239	6.8119	$355.25	$115.94	$71.05
67835	T		Revise eyelashes	0240	16.3078	$850.47	$315.31	$170.09
67840	T		Remove eyelid lesion	0239	6.8119	$355.25	$115.94	$71.05
67850	T		Treat eyelid lesion	0239	6.8119	$355.25	$115.94	$71.05
67875	T		Closure of eyelid by suture	0239	6.8119	$355.25	$115.94	$71.05
67880	T		Revision of eyelid	0233	13.4202	$699.88	$266.33	$139.98
67882	T		Revision of eyelid	0240	16.3078	$850.47	$315.31	$170.09
67900	T		Repair brow defect	0240	16.3078	$850.47	$315.31	$170.09
67901	T		Repair eyelid defect	0240	16.3078	$850.47	$315.31	$170.09
67902	T		Repair eyelid defect	0240	16.3078	$850.47	$315.31	$170.09
67903	T		Repair eyelid defect	0240	16.3078	$850.47	$315.31	$170.09
67904	T		Repair eyelid defect	0240	16.3078	$850.47	$315.31	$170.09
67906	T		Repair eyelid defect	0240	16.3078	$850.47	$315.31	$170.09
67908	T		Repair eyelid defect	0240	16.3078	$850.47	$315.31	$170.09
67909	T		Revise eyelid defect	0240	16.3078	$850.47	$315.31	$170.09
67911	T		Revise eyelid defect	0240	16.3078	$850.47	$315.31	$170.09
67914	T		Repair eyelid defect	0239	6.8119	$355.25	$115.94	$71.05
67915	T		Repair eyelid defect	0240	16.3078	$850.47	$315.31	$170.09
67916	T		Repair eyelid defect	0240	16.3078	$850.47	$315.31	$170.09
67917	T		Repair eyelid defect	0240	16.3078	$850.47	$315.31	$170.09
67921	T		Repair eyelid defect	0239	6.8119	$355.25	$115.94	$71.05
67922	T		Repair eyelid defect	0240	16.3078	$850.47	$315.31	$170.09
67923	T		Repair eyelid defect	0240	16.3078	$850.47	$315.31	$170.09
67924	T		Repair eyelid defect	0240	16.3078	$850.47	$315.31	$170.09
67930	T		Repair eyelid wound	0240	16.3078	$850.47	$315.31	$170.09
67935	T		Repair eyelid wound	0698	0.9205	$48.00	$18.72	$9.60
67938	S		Remove eyelid foreign body	0240	16.3078	$850.47	$315.31	$170.09
67950	T		Revision of eyelid	0240	16.3078	$850.47	$315.31	$170.09
67961	T		Revision of eyelid	0240	16.3078	$850.47	$315.31	$170.09
67966	T		Revision of eyelid	0241	20.6294	$1,075.84	$384.47	$215.17
67971	T		Reconstruction of eyelid	0241	20.6294	$1,075.84	$384.47	$215.17
67973	T		Reconstruction of eyelid	0241	20.6294	$1,075.84	$384.47	$215.17
67974	T		Reconstruction of eyelid	0240	16.3078	$850.47	$315.31	$170.09
67975	T		Reconstruction of eyelid	0240	16.3078	$850.47	$315.31	$170.09
67999	T		Revision of eyelid	0240	16.3078	$850.47	$315.31	$170.09
68020	T		Incise/drain eyelid lining	0698	0.9205	$48.00	$18.72	$9.60
68040	S		Treatment of eyelid lesions	0232	4.4960	$234.47	$103.17	$46.89
68100	T		Biopsy of eyelid lining					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued
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CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
68110	T		Remove eyelid lining lesion	0699	3.7596	$196.07	$88.23	$39.21
68115	T		Remove eyelid lining lesion	0239	6.8119	$355.25	$115.94	$71.05
68130	T		Remove eyelid lining lesion	0233	13.4202	$699.88	$266.33	$139.98
68135	T		Remove eyelid lining lesion	0239	6.8119	$355.25	$115.94	$71.05
68200	S		Treat eyelid by injection	0698	0.9205	$48.00	$18.72	$9.60
68320	T		Revise/graft eyelid lining	0240	16.3078	$850.47	$315.31	$170.09
68325	T		Revise/graft eyelid lining	0242	28.0517	$1,462.92	$597.36	$292.58
68326	T		Revise/graft eyelid lining	0241	20.6294	$1,075.84	$384.47	$215.17
68328	T		Revise/graft eyelid lining	0241	20.6294	$1,075.84	$384.47	$215.17
68330	T		Revise eyelid lining	0233	13.4202	$699.88	$266.33	$139.98
68335	T		Revise/graft eyelid lining	0241	20.6294	$1,075.84	$384.47	$215.17
68340	T		Separate eyelid adhesions	0240	16.3078	$850.47	$315.31	$170.09
68360	T		Revise eyelid lining	0234	20.4259	$1,065.23	$511.31	$213.05
68362	T		Revise eyelid lining	0234	20.4259	$1,065.23	$511.31	$213.05
68399	T		Eyelid lining surgery	0239	6.8119	$355.25	$115.94	$71.05
68400	T		Incise/drain tear gland	0238	2.9747	$155.13	$58.96	$31.03
68420	T		Incise/drain tear sac	0240	16.3078	$850.47	$315.31	$170.09
68440	T		Incise tear duct opening	0238	2.9747	$155.13	$58.96	$31.03
68500	T		Removal of tear gland	0241	20.6294	$1,075.84	$384.47	$215.17
68505	T		Partial removal, tear gland	0241	20.6294	$1,075.84	$384.47	$215.17
68510	T		Biopsy of tear gland	0240	16.3078	$850.47	$315.31	$170.09
68520	T		Removal of tear sac	0241	20.6294	$1,075.84	$384.47	$215.17
68525	T		Biopsy of tear sac	0240	16.3078	$850.47	$315.31	$170.09
68530	T		Clearance of tear duct	0240	16.3078	$850.47	$315.31	$170.09
68540	T		Remove tear gland lesion	0241	20.6294	$1,075.84	$384.47	$215.17
68550	T		Remove tear gland lesion	0242	28.0517	$1,462.92	$597.36	$292.58
68700	T		Repair tear ducts	0241	20.6294	$1,075.84	$384.47	$215.17
68705	T		Revise tear duct opening	0238	2.9747	$155.13	$58.96	$31.03
68720	T		Create tear sac drain	0242	28.0517	$1,462.92	$597.36	$292.58
68745	T		Create tear duct drain	0241	20.6294	$1,075.84	$384.47	$215.17
68750	T		Create tear duct drain	0242	28.0517	$1,462.92	$597.36	$292.58
68760	S		Close tear duct opening	0698	0.9205	$48.00	$18.72	$9.60
68761	S		Close tear duct opening	0231	2.1705	$113.19	$50.94	$22.64
68770	T		Close tear system fistula	0240	16.3078	$850.47	$315.31	$170.09
68801	S		Dilate tear duct opening	0231	2.1705	$113.19	$50.94	$22.64
68810	T		Probe nasolacrimal duct	0699	3.7596	$196.07	$88.23	$39.21
68811	T		Probe nasolacrimal duct	0240	16.3078	$850.47	$315.31	$170.09
68815	T		Probe nasolacrimal duct	0240	16.3078	$850.47	$315.31	$170.09
68840	T		Explore/irrigate tear ducts	0699	3.7596	$196.07	$88.23	$39.21
68850	N		Injection for tear sac x-ray					
68899	T		Tear duct system surgery	0699	3.7596	$196.07	$88.23	$39.21
69000	T		Drain external ear lesion	0006	1.7926	$93.49	$24.12	$18.70
69005	T		Drain external ear lesion	0007	10.0191	$522.51	$108.89	$104.50
69020	T		Drain outer ear canal lesion	0006	1.7926	$93.49	$24.12	$18.70
69090	E		Pierce earlobes					
69100	T		Biopsy of external ear	0019	3.7693	$196.57	$71.87	$39.31
69105	T		Biopsy of external ear canal	0253	14.4473	$753.44	$282.29	$150.69
69110	T		Remove external ear, partial	0021	13.9338	$726.66	$219.48	$145.33
69120	T		Removal of external ear	0254	20.1158	$1,049.06	$321.35	$209.81
69140	T		Remove ear canal lesion(s)	0254	20.1158	$1,049.06	$321.35	$209.81
69145	T		Remove ear canal lesion(s)	0021	13.9338	$726.66	$219.48	$145.33
69150	T		Extensive ear canal surgery	0252	5.8041	$302.69	$113.41	$60.54
69155	C		Extensive ear/neck surgery					
69200	X		Clear outer ear canal	0340	0.6492	$33.86		$6.77
69205	T		Clear outer ear canal	0022	17.3930	$907.06	$354.45	$181.41
69210	X		Remove impacted ear wax	0340	0.6492	$33.86		$6.77
69220	T		Clean out mastoid cavity	0012	0.7849	$40.93	$11.18	$8.19
69222	T		Clean out mastoid cavity	0253	14.4473	$753.44	$282.29	$150.69
69300	T		Revise external ear	0254	20.1158	$1,049.06	$321.35	$209.81
69310	T		Rebuild outer ear canal	0256	34.0302	$1,774.71		$354.94
69320	T		Rebuild outer ear canal	0256	34.0302	$1,774.71		$354.94
69399	T		Outer ear surgery procedure	0251	1.9089	$99.55		$19.91
69400	T		Inflate middle ear canal	0251	1.9089	$99.55		$19.91
69401	T		Inflate middle ear canal	0251	1.9089	$99.55		$19.91
69405	T		Catheterize middle ear canal	0252	5.8041	$302.69	$113.41	$60.54

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

[Calendar Year 2003]

CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
69410	T		Inset middle ear (baffle)	0252	5.8041	$302.69	$113.41	$60.54
69420	T		Incision of eardrum	0251	1.9089	$99.55		$19.91
69421	T		Incision of eardrum	0253	14.4473	$753.44	$282.29	$150.69
69424	T		Remove ventilating tube	0252	5.8041	$302.69	$113.41	$60.54
69433	T		Create eardrum opening	0252	5.8041	$302.69	$113.41	$60.54
69436	T		Create eardrum opening	0253	14.4473	$753.44	$282.29	$150.69
69440	T		Exploration of middle ear	0254	20.1158	$1,049.06	$321.35	$209.81
69450	T		Eardrum revision	0256	34.0302	$1,774.71		$354.94
69501	T		Mastoidectomy	0256	34.0302	$1,774.71		$354.94
69502	T		Mastoidectomy	0254	20.1158	$1,049.06	$321.35	$209.81
69505	T		Remove mastoid structures	0256	34.0302	$1,774.71		$354.94
69511	T		Extensive mastoid surgery	0256	34.0302	$1,774.71		$354.94
69530	T		Extensive mastoid surgery	0256	34.0302	$1,774.71		$354.94
69535	C		Remove part of temporal bone					
69540	T		Remove ear lesion	0253	14.4473	$753.44	$282.29	$150.69
69550	T		Remove ear lesion	0256	34.0302	$1,774.71		$354.94
69552	T		Remove ear lesion	0256	34.0302	$1,774.71		$354.94
69554	C		Remove ear lesion					
69601	T		Mastoid surgery revision	0256	34.0302	$1,774.71		$354.94
69602	T		Mastoid surgery revision	0256	34.0302	$1,774.71		$354.94
69603	T		Mastoid surgery revision	0256	34.0302	$1,774.71		$354.94
69604	T		Mastoid surgery revision	0256	34.0302	$1,774.71		$354.94
69605	T		Mastoid surgery revision	0256	34.0302	$1,774.71		$354.94
69610	T		Repair of eardrum	0254	20.1158	$1,049.06	$321.35	$209.81
69620	T		Repair of eardrum	0254	20.1158	$1,049.06	$321.35	$209.81
69631	T		Repair eardrum structures	0256	34.0302	$1,774.71		$354.94
69632	T		Rebuild eardrum structures	0256	34.0302	$1,774.71		$354.94
69633	T		Rebuild eardrum structures	0256	34.0302	$1,774.71		$354.94
69635	T		Repair eardrum structures	0256	34.0302	$1,774.71		$354.94
69636	T		Rebuild eardrum structures	0256	34.0302	$1,774.71		$354.94
69637	T		Rebuild eardrum structures	0256	34.0302	$1,774.71		$354.94
69641	T		Revise middle ear & mastoid	0256	34.0302	$1,774.71		$354.94
69642	T		Revise middle ear & mastoid	0256	34 0302	$1,774.71		$354.94
69643	T		Revise middle ear & mastoid	0256	34.0302	$1,774.71		$354.94
69644	T		Revise middle ear & mastoid	0256	34.0302	$1,774.71		$354.94
69645	T		Revise middle ear & mastoid	0256	34.0302	$1,774.71		$354.94
69646	T		Revise middle ear & mastoid	0256	34.0302	$1,774.71		$354.94
69650	T		Release middle ear bone	0254	20.1158	$1,049.06	$321.35	$209.81
69660	T		Revise middle ear bone	0256	34.0302	$1,774.71		$354.94
69661	T		Revise middle ear bone	0256	34.0302	$1,774.71		$354.94
69662	T		Revise middle ear bone	0256	34.0302	$1,774.71		$354.94
69666	T		Repair middle ear structures	0256	34.0302	$1,774.71		$354.94
69667	T		Repair middle ear structures	0256	34.0302	$1,774.71		$354.94
69670	T		Remove mastoid air cells	0256	34.0302	$1,774.71		$354.94
69676	T		Remove middle ear nerve	0256	34.0302	$1,774.71		$354.94
69700	T		Close mastoid fistula	0256	34.0302	$1,774.71		$354.94
69710	E		Implant/replace hearing aid					
69711	T		Remove/repair hearing aid	0256	34.0302	$1,774.71		$354.94
69714	T		Implant temple bone w/stimul	0256	34.0302	$1,774.71		$354.94
69715	T		Temple bne implnt w/stimulat	0256	34.0302	$1,774.71		$354.94
69717	T		Temple bone implant revision	0256	34.0302	$1,774.71		$354.94
69718	T		Revise temple bone implant	0256	34.0302	$1,774.71		$354.94
69720	T		Release facial nerve	0256	34.0302	$1,774.71		$354.94
69725	T		Release facial nerve	0256	34.0302	$1,774.71		$354.94
69740	T		Repair facial nerve	0256	34.0302	$1,774.71		$354.94
69745	T		Repair facial nerve	0256	34.0302	$1,774.71		$354.94
69799	T		Middle ear surgery procedure	0253	14.4473	$753.44	$282.29	$150.69
69801	T		Incise inner ear	0256	34.0302	$1,774.71		$354.94
69802	T		Incise inner ear	0256	34.0302	$1,774.71		$354.94
69805	T		Explore inner ear	0256	34.0302	$1,774.71		$354.94
69806	T		Explore inner ear	0256	34.0302	$1,774.71		$354.94
69820	T		Establish inner ear window	0256	34.0302	$1,774.71		$354.94
69840	T		Revise inner ear window	0256	34.0302	$1,774.71		$354.94
69905	T		Remove inner ear	0256	34.0302	$1,774.71		$354.94
69910	T		Remove inner ear & mastoid	0256	34.0302	$1,774.71		$354.94

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

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CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
69915	T		Incise inner ear nerve	0256	34.0302	$1,774.71		$354.94
69930	T		Implant cochlear device	0259	367.6466	$19,173.14	$9,394.83	$3,834.63
69949	T		Inner ear surgery procedure	0253	14.4473	$753.44	$282.29	$150.69
69950	C		Incise inner ear nerve					
69955	T		Release facial nerve	0256	34.0302	$1,774.71		$354.94
69960	T		Release inner ear canal	0256	34.0302	$1,774.71		$354.94
69970	C		Remove inner ear lesion					
69979	T		Temporal bone surgery	0251	1.9089	$99.55		$19.91
69990	N		Microsurgery add-on					
70010	S		Contrast x-ray of brain	0274	3.8759	$202.13	$96.54	$40.43
70015	S		Contrast x-ray of brain	0274	3.8759	$202.13	$96.54	$40.43
70030	X		X-ray eye for foreign body	0260	0.7655	$39.92	$21.95	$7.98
70100	X		X-ray exam of jaw	0260	0.7655	$39.92	$21.95	$7.98
70110	X		X-ray exam of jaw	0260	0.7655	$39.92	$21.95	$7.98
70120	X		X-ray exam of mastoids	0260	0.7655	$39.92	$21.95	$7.98
70130	X		X-ray exam of mastoids	0260	0.7655	$39.92	$21.95	$7.98
70134	X		X-ray exam of middle ear	0261	1.2887	$67.21		$13.44
70140	X		X-ray exam of facial bones	0260	0.7655	$39.92	$21.95	$7.98
70150	X		X-ray exam of facial bones	0260	0.7655	$39.92	$21.95	$7.98
70160	X		X-ray exam of nasal bones	0260	0.7655	$39.92	$21.95	$7.98
70170	X		X-ray exam of tear duct	0263	1.8992	$99.05	$43.58	$19.81
70190	X		X-ray exam of eye sockets	0260	0.7655	$39.92	$21.95	$7.98
70200	X		X-ray exam of eye sockets	0260	0.7655	$39.92	$21.95	$7.98
70210	X		X-ray exam of sinuses	0260	0.7655	$39.92	$21.95	$7.98
70220	X		X-ray exam of sinuses	0260	0.7655	$39.92	$21.95	$7.98
70240	X		X-ray exam, pituitary saddle	0260	0.7655	$39.92	$21.95	$7.98
70250	X		X-ray exam of skull	0260	0.7655	$39.92	$21.95	$7.98
70260	X		X-ray exam of skull	0261	1.2887	$67.21		$13.44
70300	X		X-ray exam of teeth	0262	0.5717	$29.81	$9.82	$5.96
70310	X		X-ray exam of teeth	0262	0.5717	$29.81	$9.82	$5.96
70320	X		Full mouth x-ray of teeth	0262	0.5717	$29.81	$9.82	$5.96
70328	X		X-ray exam of jaw joint	0260	0.7655	$39.92	$21.95	$7.98
70330	X		X-ray exam of jaw joints	0260	0.7655	$39.92	$21.95	$7.98
70332	S		X-ray exam of jaw joint	0275	2.9747	$155.13	$69.09	$31.03
70336	S		Magnetic image, jaw joint	0335	6.2983	$328.46	$151.46	$65.69
70350	X		X-ray head for orthodontia	0260	0.7655	$39.92	$21.95	$7.98
70355	X		Panoramic x-ray of jaws	0260	0.7655	$39.92	$21.95	$7.98
70360	X		X-ray exam of neck	0260	0.7655	$39.92	$21.95	$7.98
70370	X		Throat x-ray & fluoroscopy	0272	1.3372	$69.74	$38.36	$13.95
70371	X		Speech evaluation, complex	0272	1.3372	$69.74	$38.36	$13.95
70373	X		Contrast x-ray of larynx	0263	1.8992	$99.05	$43.58	$19.81
70380	X		X-ray exam of salivary gland	0260	0.7655	$39.92	$21.95	$7.98
70390	X		X-ray exam of salivary duct	0264	2.8197	$147.05	$79.41	$29.41
70450	S		Ct head/brain w/o dye	0332	3.4398	$179.39	$91.27	$35.88
70460	S		Ct head/brain w/dye	0283	4.5057	$234.98	$126.27	$47.00
70470	S		Ct head/brain w/o&w dye	0333	5.3681	$279.95	$146.98	$55.99
70480	S		Ct orbit/ear/fossa w/o dye	0332	3.4398	$179.39	$91.27	$35.88
70481	S		Ct orbit/ear/fossa w/dye	0283	4.5057	$234.98	$126.27	$47.00
70482	S		Ct orbit/ear/fossa w/o&w dye	0333	5.3681	$279.95	$146.98	$55.99
70486	S		Ct maxillofacial w/o dye	0332	3.4398	$179.39	$91.27	$35.88
70487	S		Ct maxillofacial w/dye	0283	4.5057	$234.98	$126.27	$47.00
70488	S		Ct maxillofacial w/o&w dye	0333	5.3681	$279.95	$146.98	$55.99
70490	S		Ct soft tissue neck w/o dye	0332	3.4398	$179.39	$91.27	$35.88
70491	S		Ct soft tissue neck w/dye	0283	4.5057	$234.98	$126.27	$47.00
70492	S		Ct sft tsue nck w/o & w/dye	0333	5.3681	$279.95	$146.98	$55.99
70496	S		Ct angiography, head	0662	5.4553	$284.50	$156.47	$56.90
70498	S		Ct angiography, neck	0662	5.4553	$284.50	$156.47	$56.90
70540	S		Mri orbit/face/neck w/o dye	0336	6.5987	$344.13	$176.94	$68.83
70542	S		Mri orbit/face/neck w/dye	0284	7.2382	$377.48	$201.02	$75.50
70543	S		Mri orbt/fac/nck w/o&w dye	0337	9.2440	$482.08	$240.77	$96.42
70544	S		Mr angiography head w/o dye	0336	6.5987	$344.13	$176.94	$68.83
70545	S		Mr angiography head w/dye	0284	7.2382	$377.48	$201.02	$75.50
70546	S		Mr angiograph head w/o&w dye	0337	9.2440	$482.08	$240.77	$96.42
70547	S		Mr angiography neck w/o dye	0336	6.5987	$344.13	$176.94	$68.83
70548	S		Mr angiography neck w/dye	0284	7.2382	$377.48	$201.02	$75.50

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued
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CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
70549	S		Mr angiograph neck w/o&w dye	0337	9.2440	$482.08	$240.77	$96.42
70551	S		Mri brain w/o dye	0336	6.5987	$344.13	$176.94	$68.83
70552	S		Mri brain w/dye	0284	7.2382	$377.48	$201.02	$75.50
70553	S		Mri brain w/o&w dye	0337	9.2440	$482.08	$240.77	$96.42
71010	X		Chest x-ray	0260	0.7655	$39.92	$21.95	$7.98
71015	X		Chest x-ray	0260	0.7655	$39.92	$21.95	$7.98
71020	X		Chest x-ray	0260	0.7655	$39.92	$21.95	$7.98
71021	X		Chest x-ray	0260	0.7655	$39.92	$21.95	$7.98
71022	X		Chest x-ray	0260	0.7655	$39.92	$21.95	$7.98
71023	X		Chest x-ray and fluoroscopy	0272	1.3372	$69.74	$38.36	$13.95
71030	X		Chest x-ray	0260	0.7655	$39.92	$21.95	$7.98
71034	X		Chest x-ray and fluoroscopy	0272	1.3372	$69.74	$38.36	$13.95
71035	X		Chest x-ray	0260	0.7655	$39.92	$21.95	$7.98
71040	X		Contrast x-ray of bronchi	0263	1.8992	$99.05	$43.58	$19.81
71060	X		Contrast x-ray of bronchi	0264	2.8197	$147.05	$79.41	$29.41
71090	X		X-ray & pacemaker insertion	0272	1.3372	$69.74	$38.36	$13.95
71100	X		X-ray exam of ribs	0260	0.7655	$39.92	$21.95	$7.98
71101	X		X-ray exam of ribs/chest	0260	0.7655	$39.92	$21.95	$7.98
71110	X		X-ray exam of ribs	0260	0.7655	$39.92	$21.95	$7.98
71111	X		X-ray exam of ribs/ chest	0261	1.2887	$67.21		$13.44
71120	X		X-ray exam of breastbone	0260	0.7655	$39.92	$21.95	$7.98
71130	X		X-ray exam of breastbone	0260	0.7655	$39.92	$21.95	$7.98
71250	S		Ct thorax w/o dye	0332	3.4398	$179.39	$91.27	$35.88
71260	S		Ct thorax w/dye	0283	4.5057	$234.98	$126.27	$47.00
71270	S		Ct thorax w/o&w dye	0333	5.3681	$279.95	$146.98	$55.99
71275	S		Ct angiography, chest	0662	5.4553	$284.50	$156.47	$56.90
71550	S		Mri chest w/o dye	0336	6.5987	$344.13	$176.94	$68.83
71551	S		Mri chest w/dye	0284	7.2382	$377.48	$201.02	$75.50
71552	S		Mri chest w/o&w/dye	0337	9.2440	$482.08	$240.77	$96.42
71555	E		Mri angio chest w or w/o dye					
72010	X		X-ray exam of spine	0261	1.2887	$67.21		$13.44
72020	X		X-ray exam of spine	0260	0.7655	$39.92	$21.95	$7.98
72040	X		X-ray exam of neck spine	0260	0.7655	$39.92	$21.95	$7.98
72050	X		X-ray exam of neck spine	0261	1.2887	$67.21		$13.44
72052	X		X-ray exam of neck spine	0261	1.2887	$67.21		$13.44
72069	X		X-ray exam of trunk spine	0260	0.7655	$39.92	$21.95	$7.98
72070	X		X-ray exam of thoracic spine	0260	0.7655	$39.92	$21.95	$7.98
72072	X		X-ray exam of thoracic spine	0260	0.7655	$39.92	$21.95	$7.98
72074	X		X-ray exam of thoracic spine	0260	0.7655	$39.92	$21.95	$7.98
72080	X		X-ray exam of trunk spine	0260	0.7655	$39.92	$21.95	$7.98
72090	X		X-ray exam of trunk spine	0261	1.2887	$67.21		$13.44
72100	X		X-ray exam of lower spine	0260	0.7655	$39.92	$21.95	$7.98
72110	X		X-ray exam of lower spine	0261	1.2887	$67.21		$13.44
72114	X		X-ray exam of lower spine	0261	1.2887	$67.21		$13.44
72120	X		X-ray exam of lower spine	0260	0.7655	$39.92	$21.95	$7.98
72125	S		Ct neck spine w/o dye	0332	3.4398	$179.39	$91.27	$35.88
72126	S		Ct neck spine w/dye	0283	4.5057	$234.98	$126.27	$47.00
72127	S		Ct neck spine w/o&w/dye	0333	5.3681	$279.95	$146.98	$55.99
72128	S		Ct chest spine w/o dye	0332	3.4398	$179.39	$91.27	$35.88
72129	S		Ct chest spine w/dye	0283	4.5057	$234.98	$126.27	$47.00
72130	S		Ct chest spine w/o&w/dye	0333	5.3681	$279.95	$146.98	$55.99
72131	S		Ct lumbar spine w/o dye	0332	3.4398	$179.39	$91.27	$35.88
72132	S		Ct lumbar spine w/dye	0283	4.5057	$234.98	$126.27	$47.00
72133	S		Ct lumbar spine w/o&w/dye	0333	5.3681	$279.95	$146.98	$55.99
72141	S		Mri neck spine w/o dye	0336	6.5987	$344.13	$176.94	$68.83
72142	S		Mri neck spine w/dye	0284	7.2382	$377.48	$201.02	$75.50
72146	S		Mri chest spine w/o dye	0336	6.5987	$344.13	$176.94	$68.83
72147	S		Mri chest spine w/dye	0284	7.2382	$377.48	$201.02	$75.50
72148	S		Mri lumbar spine w/o dye	0336	6.5987	$344.13	$176.94	$68.83
72149	S		Mri lumbar spine w/dye	0284	7.2382	$377.48	$201.02	$75.50
72156	S		Mri neck spine w/o&w/dye	0337	9.2440	$482.08	$240.77	$96.42
72157	S		Mri chest spine w/o&w/dye	0337	9.2440	$482.08	$240.77	$96.42
72158	S		Mri lumbar spine w/o&w/dye	0337	9.2440	$482.08	$240.77	$96.42
72159	E		Mr angio spine w/o&w/dye					
72170	X		X-ray exam of pelvis	0260	0.7655	$39.92	$21.95	$7.98

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued
[Calendar Year 2003]

CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
72190	X		X-ray exam of pelvis	0260	0.7655	$39.92	$21.95	$7.98
72191	S		Ct angiograph pelv w/o&w/dye	0662	5.4553	$284.50	$156.47	$56.90
72192	S		Ct pelvis w/o dye	0332	3.4398	$179.39	$91.27	$35.88
72193	S		Ct pelvis w/dye	0283	4.5057	$234.98	$126.27	$47.00
72194	S		Ct pelvis w/o&w/dye	0333	5.3681	$279.95	$146.98	$55.99
72195	S		Mri pelvis w/o dye	0336	6.5987	$344.13	$176.94	$68.83
72196	S		Mri pelvis w/dye	0284	7.2382	$377.48	$201.02	$75.50
72197	S		Mri pelvis w/o & w/dye	0337	9.2440	$482.08	$240.77	$96.42
72198	E		Mr angio pelvis w/o&w/dye					
72200	X		X-ray exam sacroiliac joints	0260	0.7655	$39.92	$21.95	$7.98
72202	X		X-ray exam sacroiliac joints	0260	0.7655	$39.92	$21.95	$7.98
72220	X		X-ray exam of tailbone	0260	0.7655	$39.92	$21.95	$7.98
72240	S		Contrast x-ray of neck spine	0274	3.8759	$202.13	$96.54	$40.43
72255	S		Contrast x-ray, thorax spine	0274	3.8759	$202.13	$96.54	$40.43
72265	S		Contrast x-ray, lower spine	0274	3.8759	$202.13	$96.54	$40.43
72270	S		Contrast x-ray of spine	0274	3.8759	$202.13	$96.54	$40.43
72275	S		Epidurography	0274	3.8759	$202.13	$96.54	$40.43
72285	S		X-ray c/t spine disk	0274	3.8759	$202.13	$96.54	$40.43
72295	S		X-ray of lower spine disk	0274	3.8759	$202.13	$96.54	$40.43
73000	X		X-ray exam of collar bone	0260	0.7655	$39.92	$21.95	$7.98
73010	X		X-ray exam of shoulder blade	0260	0.7655	$39.92	$21.95	$7.98
73020	X		X-ray exam of shoulder	0260	0.7655	$39.92	$21.95	$7.98
73030	X		X-ray exam of shoulder	0260	0.7655	$39.92	$21.95	$7.98
73040	S		Contrast x-ray of shoulder	0275	2.9747	$155.13	$69.09	$31.03
73050	X		X-ray exam of shoulders	0260	0.7655	$39.92	$21.95	$7.98
73060	X		X-ray exam of humerus	0260	0.7655	$39.92	$21.95	$7.98
73070	X		X-ray exam of elbow	0260	0.7655	$39.92	$21.95	$7.98
73080	X		X-ray exam of elbow	0260	0.7655	$39.92	$21.95	$7.98
73085	S		Contrast x-ray of elbow	0275	2.9747	$155.13	$69.09	$31.03
73090	X		X-ray exam of forearm	0260	0.7655	$39.92	$21.95	$7.98
73092	X		X-ray exam of arm, infant	0260	0.7655	$39.92	$21.95	$7.98
73100	X		X-ray exam of wrist	0260	0.7655	$39.92	$21.95	$7.98
73110	X		X-ray exam of wrist	0260	0.7655	$39.92	$21.95	$7.98
73115	S		Contrast x-ray of wrist	0275	2.9747	$155.13	$69.09	$31.03
73120	X		X-ray exam of hand	0260	0.7655	$39.92	$21.95	$7.98
73130	X		X-ray exam of hand	0260	0.7655	$39.92	$21.95	$7.98
73140	X		X-ray exam of finger(s)	0260	0.7655	$39.92	$21.95	$7.98
73200	S		Ct upper extremity w/o dye	0332	3.4398	$179.39	$91.27	$35.88
73201	S		Ct upper extremity w/dye	0283	4.5057	$234.98	$126.27	$47.00
73202	S		Ct uppr extremity w/o&w/dye	0333	5.3681	$279.95	$146.98	$55.99
73206	S		Ct angio upr extrm w/o&w/dye	0662	5.4553	$284.50	$156.47	$56.90
73218	S		Mri upper extremity w/o dye	0336	6.5987	$344.13	$176.94	$68.83
73219	S		Mri upper extremity w/dye	0284	7.2382	$377.48	$201.02	$75.50
73220	S		Mri uppr extremity w/o&w/dye	0337	9.2440	$482.08	$240.77	$96.42
73221	S		Mri joint upr extrem w/o dye	0336	6.5987	$344.13	$176.94	$68.83
73222	S		Mri joint upr extrem w/dye	0284	7.2382	$377.48	$201.02	$75.50
73223	S		Mri joint upr extr w/o&w/dye	0337	9.2440	$482.08	$240.77	$96.42
73225	E		Mr angio upr extr w/o&w/dye					
73500	X		X-ray exam of hip	0260	0.7655	$39.92	$21.95	$7.98
73510	X		X-ray exam of hip	0260	0.7655	$39.92	$21.95	$7.98
73520	X		X-ray exam of hips	0260	0.7655	$39.92	$21.95	$7.98
73525	S		Contrast x-ray of hip	0275	2.9747	$155.13	$69.09	$31.03
73530	X		X-ray exam of hip	0261	1.2887	$67.21		$13.44
73540	X		X-ray exam of pelvis & hips	0260	0.7655	$39.92	$21.95	$7.98
73542	S		X-ray exam, sacroiliac joint	0275	2.9747	$155.13	$69.09	$31.03
73550	X		X-ray exam of thigh	0260	0.7655	$39.92	$21.95	$7.98
73560	X		X-ray exam of knee, 1 or 2	0260	0.7655	$39.92	$21.95	$7.98
73562	X		X-ray exam of knee, 3	0260	0.7655	$39.92	$21.95	$7.98
73564	X		X-ray exam, knee, 4 or more	0260	0.7655	$39.92	$21.95	$7.98
73565	X		X-ray exam of knees	0260	0.7655	$39.92	$21.95	$7.98
73580	S		Contrast x-ray of knee joint	0275	2.9747	$155.13	$69.09	$31.03
73590	X		X-ray exam of lower leg	0260	0.7655	$39.92	$21.95	$7.98
73592	X		X-ray exam of leg, infant	0260	0.7655	$39.92	$21.95	$7.98
73600	X		X-ray exam of ankle	0260	0.7655	$39.92	$21.95	$7.98
73610	X		X-ray exam of ankle	0260	0.7655	$39.92	$21.95	$7.98

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

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CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
73615	S		Contrast x-ray of ankle	0275	2.9747	$155.13	$69.09	$31.03
73620	X		X-ray exam of foot	0260	0.7655	$39.92	$21.95	$7.98
73630	X		X-ray exam of foot	0260	0.7655	$39.92	$21.95	$7.98
73650	X		X-ray exam of heel	0260	0.7655	$39.92	$21.95	$7.98
73660	X		X-ray exam of toe(s)	0260	0.7655	$39.92	$21.95	$7.98
73700	S		Ct lower extremity w/o dye	0332	3.4398	$179.39	$91.27	$35.88
73701	S		Ct lower extremity w/dye	0283	4.5057	$234.98	$126.27	$47.00
73702	S		Ct lwr extremity w/o&w/dye	0333	5.3681	$279.95	$146.98	$55.99
73706	S		Ct angio lwr extr w/o&w/dye	0662	5.4553	$284.50	$156.47	$56.90
73718	S		Mri lower extremity w/o dye	0336	6.5987	$344.13	$176.94	$68.83
73719	S		Mri lower extremity w/dye	0284	7.2382	$377.48	$201.02	$75.50
73720	S		Mri lwr extremity w/o&w/dye	0337	9.2440	$482.08	$240.77	$96.42
73721	S		Mri jnt of lwr extre w/o dye	0336	6.5987	$344.13	$176.94	$68.83
73722	S		Mri joint of lwr extr w/dye	0284	7.2382	$377.48	$201.02	$75.50
73723	S		Mri joint lwr extr w/o&w/dye	0337	9.2440	$482.08	$240.77	$96.42
73725	E		Mr ang lwr ext w or w/o dye					
74000	X		X-ray exam of abdomen	0260	0.7655	$39.92	$21.95	$7.98
74010	X		X-ray exam of abdomen	0260	0.7655	$39.92	$21.95	$7.98
74020	X		X-ray exam of abdomen	0260	0.7655	$39.92	$21.95	$7.98
74022	X		X-ray exam series, abdomen	0261	1.2887	$67.21		$13.44
74150	S		Ct abdomen w/o dye	0332	3.4398	$179.39	$91.27	$35.88
74160	S		Ct abdomen w/dye	0283	4.5057	$234.98	$126.27	$47.00
74170	S		Ct abdomen w/o&w/dye	0333	5.3681	$279.95	$146.98	$55.99
74175	S		Ct angio abdom w/o&w/dye	0662	5.4553	$284.50	$156.47	$56.90
74181	S		Mri abdomen w/o dye	0336	6.5987	$344.13	$176.94	$68.83
74182	S		Mri abdomen w/dye	0284	7.2382	$377.48	$201.02	$75.50
74183	S		Mri abdomen w/o&w/dye	0337	9.2440	$482.08	$240.77	$96.42
74185	E		Mri angio, abdom w or w/o dy					
74190	X		X-ray exam of peritoneum	0263	1.8992	$99.05	$43.58	$19.81
74210	S		Contrst x-ray exam of throat	0276	1.5891	$82.87	$41.72	$16.57
74220	S		Contrast x-ray, esophagus	0276	1.5891	$82.87	$41.72	$16.57
74230	S		Cine/vid x-ray, throat/esoph	0276	1.5891	$82.87	$41.72	$16.57
74235	S		Remove esophagus obstruction	0296	2.4127	$125.82	$69.20	$25.16
74240	S		X-ray exam, upper gi tract	0276	1.5891	$82.87	$41.72	$16.57
74241	S		X-ray exam, upper gi tract	0276	1.5891	$82.87	$41.72	$16.57
74245	S		X-ray exam, upper gi tract	0277	2.3546	$122.79	$60.47	$24.56
74246	S		Contrst x-ray uppr gi tract	0276	1.5891	$82.87	$41.72	$16.57
74247	S		Contrst x-ray uppr gi tract	0276	1.5891	$82.87	$41.72	$16.57
74249	S		Contrst x-ray uppr gi tract	0277	2.3546	$122.79	$60.47	$24.56
74250	S		X-ray exam of small bowel	0276	1.5891	$82.87	$41.72	$16.57
74251	S		X-ray exam of small bowel	0277	2.3546	$122.79	$60.47	$24.56
74260	S		X-ray exam of small bowel	0277	2.3546	$122.79	$60.47	$24.56
74270	S		Contrast x-ray exam of colon	0276	1.5891	$82.87	$41.72	$16.57
74280	S		Contrast x-ray exam of colon	0277	2.3546	$122.79	$60.47	$24.56
74283	S		Contrast x-ray exam of colon	0276	1.5891	$82.87	$41.72	$16.57
74290	S		Contrast x-ray, gallbladder	0276	1.5891	$82.87	$41.72	$16.57
74291	S		Contrast x-rays, gallbladder	0276	1.5891	$82.87	$41.72	$16.57
74300	X		X-ray bile ducts/pancreas	0263	1.8992	$99.05	$43.58	$19.81
74301	X		X-rays at surgery add-on	0263	1.8992	$99.05	$43.58	$19.81
74305	X		X-ray bile ducts/pancreas	0263	1.8992	$99.05	$43.58	$19.81
74320	X		Contrast x-ray of bile ducts	0264	2.8197	$147.05	$79.41	$29.41
74327	S		X-ray bile stone removal	0296	2.4127	$125.82	$69.20	$25.16
74328	N		X-ray bile duct endoscopy					
74329	N		X-ray for pancreas endoscopy					
74330	N		X-ray bile/panc endoscopy					
74340	X		X-ray guide for GI tube	0272	1.3372	$69.74	$38.36	$13.95
74350	X		X-ray guide, stomach tube	0263	1.8992	$99.05	$43.58	$19.81
74355	X		X-ray guide, intestinal tube	0263	1.8992	$99.05	$43.58	$19.81
74360	S		X-ray guide, GI dilation	0296	2.4127	$125.82	$69.20	$25.16
74363	S		X-ray, bile duct dilation	0297	7.6839	$400.72	$172.51	$80.14
74400	S		Contrst x-ray, urinary tract	0278	2.5290	$131.89	$66.07	$26.38
74410	S		Contrst x-ray, urinary tract	0278	2.5290	$131.89	$66.07	$26.38
74415	S		Contrst x-ray, urinary tract	0278	2.5290	$131.89	$66.07	$26.38
74420	S		Contrst x-ray, urinary tract	0278	2.5290	$131.89	$66.07	$26.38
74425	S		Contrst x-ray, urinary tract	0278	2.5290	$131.89	$66.07	$26.38

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

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CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
74430	S		Contrast x-ray, bladder	0278	2.5290	$131.89	$66.07	$26.38
74440	S		X-ray, male genital tract	0278	2.5290	$131.89	$66.07	$26.38
74445	S		X-ray exam of penis	0278	2.5290	$131.89	$66.07	$26.38
74450	S		X-ray, urethra/bladder	0278	2.5290	$131.89	$66.07	$26.38
74455	S		X-ray, urethra/bladder	0278	2.5290	$131.89	$66.07	$26.38
74470	X		X-ray exam of kidney lesion	0264	2.8197	$147.05	$79.41	$29.41
74475	S		X-ray control, cath insert	0297	7.6839	$400.72	$172.51	$80.14
74480	S		X-ray control, cath insert	0296	2.4127	$125.82	$69.20	$25.16
74485	S		X-ray guide, GU dilation	0296	2.4127	$125.82	$69.20	$25.16
74710	X		X-ray measurement of pelvis	0260	0.7655	$39.92	$21.95	$7.98
74740	X		X-ray, female genital tract	0264	2.8197	$147.05	$79.41	$29.41
74742	X		X-ray, fallopian tube	0263	1.8992	$99.05	$43.58	$19.81
74775	S		X-ray exam of perineum	0278	2.5290	$131.89	$66.07	$26.38
75552	S		Heart mri for morph w/o dye	0336	6.5987	$344.13	$176.94	$68.83
75553	S		Heart mri for morph w/dye	0284	7.2382	$377.48	$201.02	$75.50
75554	S		Cardiac MRI/function	0335	6.2983	$328.46	$151.46	$65.69
75555	S		Cardiac MRI/limited study	0335	6.2983	$328.46	$151.46	$65.69
75556	E		Cardiac MRI/flow mapping					
75600	S		Contrast x-ray exam of aorta	0280	15.2128	$793.36	$353.85	$158.67
75605	S		Contrast x-ray exam of aorta	0280	15.2128	$793.36	$353.85	$158.67
75625	S		Contrast x-ray exam of aorta	0280	15.2128	$793.36	$353.85	$158.67
75630	S		X-ray aorta, leg arteries	0280	15.2128	$793.36	$353.85	$158.67
75635	S		Ct angio abdominal arteries	0662	5.4553	$284.50	$156.47	$56.90
75650	S		Artery x-rays, head & neck	0280	15.2128	$793.36	$353.85	$158.67
75658	S		Artery x-rays, arm	0280	15.2128	$793.36	$353.85	$158.67
75660	S		Artery x-rays, head & neck	0279	8.6432	$450.75	$174.57	$90.15
75662	S		Artery x-rays, head & neck	0279	8.6432	$450.75	$174.57	$90.15
75665	S		Artery x-rays, head & neck	0280	15.2128	$793.36	$353.85	$158.67
75671	S		Artery x-rays, head & neck	0280	15.2128	$793.36	$353.85	$158.67
75676	S		Artery x-rays, neck	0280	15.2128	$793.36	$353.85	$158.67
75680	S		Artery x-rays, neck	0280	15.2128	$793.36	$353.85	$158.67
75685	S		Artery x-rays, spine	0279	8.6432	$450.75	$174.57	$90.15
75705	S		Artery x-rays, spine	0279	8.6432	$450.75	$174.57	$90.15
75710	S		Artery x-rays, arm/leg	0280	15.2128	$793.36	$353.85	$158.67
75716	S		Artery x-rays, arms/legs	0280	15.2128	$793.36	$353.85	$158.67
75722	S		Artery x-rays, kidney	0280	15.2128	$793.36	$353.85	$158.67
75724	S		Artery x-rays, kidneys	0280	15.2128	$793.36	$353.85	$158.67
75726	S		Artery x-rays, abdomen	0280	15.2128	$793.36	$353.85	$158.67
75731	S		Artery x-rays, adrenal gland	0280	15.2128	$793.36	$353.85	$158.67
75733	S		Artery x-rays, adrenals	0280	15.2128	$793.36	$353.85	$158.67
75736	S		Artery x-rays, pelvis	0280	15.2128	$793.36	$353.85	$158.67
75741	S		Artery x-rays, lung	0279	8.6432	$450.75	$174.57	$90.15
75743	S		Artery x-rays, lungs	0280	15.2128	$793.36	$353.85	$158.67
75746	S		Artery x-rays, lung	0279	8.6432	$450.75	$174.57	$90.15
75756	S		Artery x-rays, chest	0279	8.6432	$450.75	$174.57	$90.15
75774	S		Artery x-ray, each vessel	0668	10.3292	$538.68	$237.76	$107.74
75790	S		Visualize A-V shunt	0281	5.2227	$272.37	$115.16	$54.47
75801	X		Lymph vessel x-ray, arm/leg	0264	2.8197	$147.05	$79.41	$29.41
75803	X		Lymph vessel x-ray,arms/legs	0264	2.8197	$147.05	$79.41	$29.41
75805	X		Lymph vessel x-ray, trunk	0264	2.8197	$147.05	$79.41	$29.41
75807	X		Lymph vessel x-ray, trunk	0264	2.8197	$147.05	$79.41	$29.41
75809	X		Nonvascular shunt, x-ray	0263	1.8992	$99.05	$43.58	$19.81
75810	S		Vein x-ray, spleen/liver	0279	8.6432	$450.75	$174.57	$90.15
75820	S		Vein x-ray, arm/leg	0281	5.2227	$272.37	$115.16	$54.47
75822	S		Vein x-ray, arms/legs	0281	5.2227	$272.37	$115.16	$54.47
75825	S		Vein x-ray, trunk	0279	8.6432	$450.75	$174.57	$90.15
75827	S		Vein x-ray, chest	0279	8.6432	$450.75	$174.57	$90.15
75831	S		Vein x-ray, kidney	0287	6.9863	$364.34	$114.51	$72.87
75833	S		Vein x-ray, kidneys	0279	8.6432	$450.75	$174.57	$90.15
75840	S		Vein x-ray, adrenal gland	0287	6.9863	$364.34	$114.51	$72.87
75842	S		Vein x-ray, adrenal glands	0287	6.9863	$364.34	$114.51	$72.87
75860	S		Vein x-ray, neck	0287	6.9863	$364.34	$114.51	$72.87
75870	S		Vein x-ray, skull	0287	6.9863	$364.34	$114.51	$72.87
75872	S		Vein x-ray, skull	0287	6.9863	$364.34	$114.51	$72.87
75880	S		Vein x-ray, eye socket	0287	6.9863	$364.34	$114.51	$72.87

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

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CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
75885	S		Vein x-ray, liver	0279	8.6432	$450.75	$174.57	$90.15
75887	S		Vein x-ray, liver	0280	15.2128	$793.36	$353.85	$158.67
75889	S		Vein x-ray, liver	0279	8.6432	$450.75	$174.57	$90.15
75891	S		Vein x-ray, liver	0279	8.6432	$450.75	$174.57	$90.15
75893	N		Venous sampling by catheter					
75894	S		X-rays, transcath therapy	0297	7.6839	$400.72	$172.51	$80.14
75896	S		X-rays, transcath therapy	0297	7.6839	$400.72	$172.51	$80.14
75898	X		Follow-up angiography	0264	2.8197	$147.05	$79.41	$29.41
75900	C		Arterial catheter exchange					
75901	X	NI	Remove cva device obstruct	0264	2.8197	$147.05	$79.41	$29.41
75902	X	NI	Remove cva lumen obstruct	0263	1.8992	$99.05	$43.58	$19.81
75940	X		X-ray placement, vein filter	0187	3.9534	$206.17	$90.71	$41.23
75945	S		Intravascular us	0267	2.4418	$127.34	$65.52	$25.47
75946	S		Intravascular us add-on	0267	2.4418	$127.34	$65.52	$25.47
75952	C		Endovasc repair abdom aorta					
75953	C		Abdom aneurysm endovas rpr					
75954	C	NI	Iliac aneurysm endovas rpr					
75960	S		Transcatheter intro, stent	0280	15.2128	$793.36	$353.85	$158.67
75961	S		Retrieval, broken catheter	0280	15.2128	$793.36	$353.85	$158.67
75962	S		Repair arterial blockage	0280	15.2128	$793.36	$353.85	$158.67
75964	S		Repair artery blockage, each	0280	15.2128	$793.36	$353.85	$158.67
75966	S		Repair arterial blockage	0280	15.2128	$793.36	$353.85	$158.67
75968	S		Repair artery blockage, each	0280	15.2128	$793.36	$353.85	$158.67
75970	S		Vascular biopsy	0280	15.2128	$793.36	$353.85	$158.67
75978	S		Repair venous blockage	0668	10.3292	$538.68	$237.76	$107.74
75980	S		Contrast xray exam bile duct	0296	2.4127	$125.82	$69.20	$25.16
75982	S		Contrast xray exam bile duct	0297	7.6839	$400.72	$172.51	$80.14
75984	X		Xray control catheter change	0264	2.8197	$147.05	$79.41	$29.41
75989	N		Abscess drainage under x-ray					
75992	S		Atherectomy, x-ray exam	0280	15.2128	$793.36	$353.85	$158.67
75993	S		Atherectomy, x-ray exam	0280	15.2128	$793.36	$353.85	$158.67
75994	S		Atherectomy, x-ray exam	0280	15.2128	$793.36	$353.85	$158.67
75995	S		Atherectomy, x-ray exam	0280	15.2128	$793.36	$353.85	$158.67
75996	S		Atherectomy, x-ray exam	0280	15.2128	$793.36	$353.85	$158.67
76000	X		Fluoroscope examination	0272	1.3372	$69.74	$38.36	$13.95
76001	N		Fluoroscope exam, extensive					
76003	N		Needle localization by x-ray					
76005	N		Fluoroguide for spine inject					
76006	X		X-ray stress view	0260	0.7655	$39.92	$21.95	$7.98
76010	X		X-ray, nose to rectum	0260	0.7655	$39.92	$21.95	$7.98
76012	S		Percut vertebroplasty fluor	0274	3.8759	$202.13	$96.54	$40.43
76013	S		Percut vertebroplasty, ct	0274	3.8759	$202.13	$96.54	$40.43
76020	X		X-rays for bone age	0260	0.7655	$39.92	$21.95	$7.98
76040	X		X-rays, bone evaluation	0260	0.7655	$39.92	$21.95	$7.98
76061	X		X-rays, bone survey	0261	1.2887	$67.21		$13.44
76062	X		X-rays, bone survey	0261	1.2887	$67.21		$13.44
76065	X		X-rays, bone evaluation	0261	1.2887	$67.21		$13.44
76066	X		Joint survey, single view	0260	0.7655	$39.92	$21.95	$7.98
76070	E		CT scan, bone density study					
76071	S	NI	Ct bone density, peripheral	0282	1.6763	$87.42	$44.51	$17.48
76075	S		Dexa, axial skeleton study	0288	1.2984	$67.71		$13.54
76076	S		Dexa, peripheral study	0665	0.8236	$42.95		$8.59
76078	X		Radiographic absorptiometry	0261	1.2887	$67.21		$13.44
76080	X		X-ray exam of fistula	0263	1.8992	$99.05	$43.58	$19.81
76085	A		Computer mammogram add-on					
76086	X		X-ray of mammary duct	0263	1.8992	$99.05	$43.58	$19.81
76088	X		X-ray of mammary ducts	0263	1.8992	$99.05	$43.58	$19.81
76090	S		Mammogram, one breast	0271	0.6492	$33.86	$16.80	$6.77
76091	S		Mammogram, both breasts	0271	0.6492	$33.86	$16.80	$6.77
76092	A		Mammogram, screening					
76093	E		Magnetic image, breast					
76094	E		Magnetic image, both breasts					
76095	X		Stereotactic breast biopsy	0187	3.9534	$206.17	$90.71	$41.23
76096	X		X-ray of needle wire, breast	0289	1.8992	$99.05	$44.80	$19.81
76098	X		X-ray exam, breast specimen	0260	0.7655	$39.92	$21.95	$7.98

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

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CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
76100	X		X-ray exam of body section	0261	1.2887	$67.21		$13.44
76101	X		Complex body section x-ray	0264	2.8197	$147.05	$79.41	$29.41
76102	X		Complex body section x-rays	0264	2.8197	$147.05	$79.41	$29.41
76120	X		Cine/video x-rays	0260	0.7655	$39.92	$21.95	$7.98
76125	X		Cine/video x-rays add-on	0260	0.7655	$39.92	$21.95	$7.98
76140	E		X-ray consultation					
76150	X		X-ray exam, dry process	0260	0.7655	$39.92	$21.95	$7.98
76350	N		Special x-ray contrast study					
76355	S		CAT scan for localization	0283	4.5057	$234.98	$126.27	$47.00
76360	S		CAT scan for needle biopsy	0283	4.5057	$234.98	$126.27	$47.00
76362	N		Cat scan for tissue ablation					
76370	S		CAT scan for therapy guide	0282	1.6763	$87.42	$44.51	$17.48
76375	S		3d/holograph reconstr add-on	0282	1.6763	$87.42	$44.51	$17.48
76380	S		CAT scan follow-up study	0282	1.6763	$87.42	$44.51	$17.48
76390	E		Mr spectroscopy					
76393	N		Mr guidance for needle place					
76394	N		Mri for tissue ablation					
76400	S		Magnetic Image, bone marrow	0335	6.2983	$328.46	$151.46	$65.69
76490	N		Us for tissue ablation					
76496	X	NI	Fluoroscopic procedure	0272	1.3372	$69.74	$38.36	$13.95
76497	S	NI	Ct procedure	0282	1.6763	$87.42	$44.51	$17.48
76498	S	NI	Mri procedure	0335	6.2983	$328.46	$151.46	$65.69
76499	X		Radiographic procedure	0260	0.7655	$39.92	$21.95	$7.98
76506	S		Echo exam of head	0266	1.5988	$83.38	$45.86	$16.68
76511	S		Echo exam of eye	0266	1.5988	$83.38	$45.86	$16.68
76512	S		Echo exam of eye	0266	1.5988	$83.38	$45.86	$16.68
76513	S		Echo exam of eye, water bath	0265	0.9787	$51.04	$28.07	$10.21
76516	S		Echo exam of eye	0266	1.5988	$83.38	$45.86	$16.68
76519	S		Echo exam of eye	0266	1.5988	$83.38	$45.86	$16.68
76529	S		Echo exam of eye	0265	0.9787	$51.04	$28.07	$10.21
76536	S		Us exam of head and neck	0266	1.5988	$83.38	$45.86	$16.68
76604	S		Us exam, chest, b-scan	0266	1.5988	$83.38	$45.86	$16.68
76645	S		Us exam, breast(s)	0265	0.9787	$51.04	$28.07	$10.21
76700	S		Us exam, abdom, complete	0266	1.5988	$83.38	$45.86	$16.68
76705	S		Echo exam of abdomen	0266	1.5988	$83.38	$45.86	$16.68
76770	S		Us exam abdo back wall, comp	0266	1.5988	$83.38	$45.86	$16.68
76775	S		Us eam abdo back wall, lim	0266	1.5988	$83.38	$45.86	$16.68
76778	S		Us exam kidney transplant	0266	1.5988	$83.38	$45.86	$16.68
76800	S		Us exam, spinal canal	0266	1.5988	$83.38	$45.86	$16.68
76801	S	NI	Ob us < 14 wks, single fetus	0265	0.9787	$51.04	$28.07	$10.21
76802	S	NI	Ob us < 14 wks, addl fetus	0265	0.9787	$51.04	$28.07	$10.21
76805	S		Us exam, pg uterus, compl	0266	1.5988	$83.38	$45.86	$16.68
76810	S		Us exam, pg uterus, mult	0265	0.9787	$51.04	$28.07	$10.21
76811	S	NI	Ob us, detailed, sngl fetus	0267	2.4418	$127.34	$65.52	$25.47
76812	S	NI	Ob us, detailed, addl fetus	0266	1.5988	$83.38	$45.86	$16.68
76815	S		Us exam, pg uterus limit	0265	0.9787	$51.04	$28.07	$10.21
76816	S		Us exam pg uterus repeat	0265	0.9787	$51.04	$28.07	$10.21
76817	S	NI	Transvaginal us, obstetric	0265	0.9787	$51.04	$28.07	$10.21
76818	S		Fetal biophys profile w/nst	0266	1.5988	$83.38	$45.86	$16.68
76819	S		Fetal biophys profil w/o nst	0266	1.5988	$83.38	$45.86	$16.68
76825	S		Echo exam of fetal heart	0671	2.3643	$123.30	$64.12	$24.66
76826	S		Echo exam of fetal heart	0697	1.5697	$81.86	$42.57	$16.37
76827	S		Echo exam of fetal heart	0671	2.3643	$123.30	$64.12	$24.66
76828	S		Echo exam of fetal heart	0697	1.5697	$81.86	$42.57	$16.37
76830	S		Transvaginal us, non-ob	0266	1.5988	$83.38	$45.86	$16.68
76831	S		Echo exam, uterus	0266	1.5988	$83.38	$45.86	$16.68
76856	S		Us exam, pelvic, complete	0266	1.5988	$83.38	$45.86	$16.68
76857	S		Us exam, pelvic, limited	0265	0.9787	$51.04	$28.07	$10.21
76870	S		Us exam, scrotum	0266	1.5988	$83.38	$45.86	$16.68
76872	S		Echo exam, transrectal	0266	1.5988	$83.38	$45.86	$16.68
76873	S		Echograp trans r, pros study	0266	1.5988	$83.38	$45.86	$16.68
76880	S		Us exam, extremity	0266	1.5988	$83.38	$45.86	$16.68
76885	S		Us exam infant hips, dynamic	0266	1.5988	$83.38	$45.86	$16.68
76886	S		Us exam infant hips, static	0266	1.5988	$83.38	$45.86	$16.68
76930	S		Echo guide, cardiocentesis	0268	1.3856	$72.26		$14.45

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

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CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
76932	S		Echo guide for heart biopsy	0268	1.3856	$72.26		$14.45
76936	S		Echo guide for artery repair	0268	1.3856	$72.26		$14.45
76941	S		Echo guide for transfusion	0268	1.3856	$72.26		$14.45
76942	S		Echo guide for biopsy	0268	1.3856	$72.26		$14.45
76945	S		Echo guide, villus sampling	0268	1.3856	$72.26		$14.45
76946	S		Echo guide for amniocentesis	0268	1.3856	$72.26		$14.45
76948	S		Echo guide, ova aspiration	0268	1.3856	$72.26		$14.45
76950	S		Echo guidance radiotherapy	0268	1.3856	$72.26		$14.45
76965	S		Echo guidance radiotherapy	0268	1.3856	$72.26		$14.45
76970	S		Ultrasound exam follow-up	0265	0.9787	$51.04	$28.07	$10.21
76975	S		GI endoscopic ultrasound	0266	1.5988	$83.38	$45.86	$16.68
76977	S		Us bone density measure	0265	0.9787	$51.04	$28.07	$10.21
76986	S		Ultrasound guide intraoper	0266	1.5988	$83.38	$45.86	$16.68
76999	S		Echo examination procedure	0265	0.9787	$51.04	$28.07	$10.21
77261	E		Radiation therapy planning					
77262	E		Radiation therapy planning					
77263	E		Radiation therapy planning					
77280	X		Set radiation therapy field	0304	1.6182	$84.39	$41.52	$16.88
77285	X		Set radiation therapy field	0305	3.6530	$190.51	$91.38	$38.10
77290	X		Set radiation therapy field	0305	3.6530	$190.51	$91.38	$38.10
77295	X		Set radiation therapy field	0310	13.6625	$712.51	$325.27	$142.50
77299	E		Radiation therapy planning					
77300	X		Radiation therapy dose plan	0304	1.6182	$84.39	$41.52	$16.88
77301	S		Radiotherapy dose plan, imrt	0712		$875.00		$175.00
77305	X		Teletx isodose plan simple	0304	1.6182	$84.39	$41.52	$16.88
77310	X		Teletx isodose plan intermed	0304	1.6182	$84.39	$41.52	$16.88
77315	X		Teletx isodose plan complex	0305	3.6530	$190.51	$91.38	$38.10
77321	X		Special teletx port plan	0305	3.6530	$190.51	$91.38	$38.10
77326	X		Radiation therapy dose plan	0305	3.6530	$190.51	$91.38	$38.10
77327	X		Brachytx isodose calc interm	0305	3.6530	$190.51	$91.38	$38.10
77328	X		Brachytx isodose plan compl	0305	3.6530	$190.51	$91.38	$38.10
77331	X		Special radiation dosimetry	0304	1.6182	$84.39	$41.52	$16.88
77332	X		Radiation treatment aid(s)	0303	2.8391	$148.06	$66.95	$29.61
77333	X		Radiation treatment aid(s)	0303	2.8391	$148.06	$66.95	$29.61
77334	X		Radiation treatment aid(s)	0303	2.8391	$148.06	$66.95	$29.61
77336	X		Radiation physics consult	0304	1.6182	$84.39	$41.52	$16.88
77370	X		Radiation physics consult	0305	3.6530	$190.51	$91.38	$38.10
77399	X		External radiation dosimetry	0304	1.6182	$84.39	$41.52	$16.88
77401	S		Radiation treatment delivery	0300	1.5794	$82.37		$16.47
77402	S		Radiation treatment delivery	0300	1.5794	$82.37		$16.47
77403	S		Radiation treatment delivery	0300	1.5794	$82.37		$16.47
77404	S		Radiation treatment delivery	0300	1.5794	$82.37		$16.47
77406	S		Radiation treatment delivery	0300	1.5794	$82.37		$16.47
77407	S		Radiation treatment delivery	0300	1.5794	$82.37		$16.47
77408	S		Radiation treatment delivery	0300	1.5794	$82.37		$16.47
77409	S		Radiation treatment delivery	0300	1.5794	$82.37		$16.47
77411	S		Radiation treatment delivery	0300	1.5794	$82.37		$16.47
77412	S		Radiation treatment delivery	0301	3.1588	$164.73		$32.95
77413	S		Radiation treatment delivery	0301	3.1588	$164.73		$32.95
77414	S		Radiation treatment delivery	0301	3.1588	$164.73		$32.95
77416	S		Radiation treatment delivery	0301	3.1588	$164.73		$32.95
77417	X		Radiology port film(s)	0260	0.7655	$39.92	$21.95	$7.98
77418	S		Radiation tx delivery, imrt	0710		$400.00		$80.00
77427	E		Radiation tx management, x5					
77431	E		Radiation therapy management					
77432	E		Stereotactic radiation trmt					
77470	S		Special radiation treatment	0299	5.9785	$311.78		$62.36
77499	E		Radiation therapy management					
77520	S		Proton trmt, simple w/o comp	0664	10.0482	$524.02		$104.80
77522	S		Proton trmt, simple w/comp	0664	10.0482	$524.02		$104.80
77523	S		Proton trmt, intermediate	0650	12.0152	$626.60		$125.32
77525	S		Proton treatment, complex	0650	12.0152	$626.60		$125.32
77600	S		Hyperthermia treatment	0314	4.1763	$217.80	$101.77	$43.56
77605	S		Hyperthermia treatment	0314	4.1763	$217.80	$101.77	$43.56
77610	S		Hyperthermia treatment	0314	4.1763	$217.80	$101.77	$43.56

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

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CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
77615	S		Hyperthermia treatment	0314	4.1763	$217.80	$101.77	$43.56
77620	S		Hyperthermia treatment	0314	4.1763	$217.80	$101.77	$43.56
77750	S		Infuse radioactive materials	0300	1.5794	$82.37		$16.47
77761	S		Apply intrcav radiat simple	0312	52.8864	$2,758.08		$551.62
77762	S		Apply intrcav radiat interm	0312	52.8864	$2,758.08		$551.62
77763	S		Apply intrcav radiat compl	0312	52.8864	$2,758.08		$551.62
77776	S		Apply interstit radiat simpl	0312	52.8864	$2,758.08		$551.62
77777	S		Apply interstit radiat inter	0312	52.8864	$2,758.08		$551.62
77778	S		Apply interstit radiat compl	0651	54.7177	$2,853.58		$570.72
77781	S		High intensity brachytherapy	0313	21.0363	$1,097.06		$219.41
77782	S		High intensity brachytherapy	0313	21.0363	$1,097.06		$219.41
77783	S		High intensity brachytherapy	0313	21.0363	$1,097.06		$219.41
77784	S		High intensity brachytherapy	0313	21.0363	$1,097.06		$219.41
77789	S		Apply surface radiation	0300	1.5794	$82.37		$16.47
77790	N		Radiation handling					
77799	S		Radium/radioisotope therapy	0313	21.0363	$1,097.06		$219.41
78000	S		Thyroid, single uptake	0290	2.0251	$105.61	$53.17	$21.12
78001	S		Thyroid, multiple uptakes	0290	2.0251	$105.61	$53.17	$21.12
78003	S		Thyroid suppress/stimul	0290	2.0251	$105.61	$53.17	$21.12
78006	S		Thyroid imaging with uptake	0291	3.9825	$207.69	$104.55	$41.54
78007	S		Thyroid image, mult uptakes	0292	4.2925	$223.86	$112.69	$44.77
78010	S		Thyroid imaging	0291	3.9825	$207.69	$104.55	$41.54
78011	S		Thyroid imaging with flow	0292	4.2925	$223.86	$112.69	$44.77
78015	S		Thyroid met imaging	0291	3.9825	$207.69	$104.55	$41.54
78016	S		Thyroid met imaging/studies	0292	4.2925	$223.86	$112.69	$44.77
78018	S		Thyroid met imaging, body	0292	4.2925	$223.86	$112.69	$44.77
78020	S		Thyroid met uptake	0666	2.9650	$154.63	$85.05	$30.93
78070	S		Parathyroid nuclear imaging	0292	4.2925	$223.86	$112.69	$44.77
78075	S		Adrenal nuclear imaging	0292	4.2925	$223.86	$112.69	$44.77
78099	S		Endocrine nuclear procedure	0291	3.9825	$207.69	$104.55	$41.54
78102	S		Bone marrow imaging, ltd	0291	3.9825	$207.69	$104.55	$41.54
78103	S		Bone marrow imaging, mult	0291	3.9825	$207.69	$104.55	$41.54
78104	S		Bone marrow imaging, body	0291	3.9825	$207.69	$104.55	$41.54
78110	S		Plasma volume, single	0290	2.0251	$105.61	$53.17	$21.12
78111	S		Plasma volume, multiple	0290	2.0251	$105.61	$53.17	$21.12
78120	S		Red cell mass, single	0290	2.0251	$105.61	$53.17	$21.12
78121	S		Red cell mass, multiple	0290	2.0251	$105.61	$53.17	$21.12
78122	S		Blood volume	0290	2.0251	$105.61	$53.17	$21.12
78130	S		Red cell survival study	0290	2.0251	$105.61	$53.17	$21.12
78135	S		Red cell survival kinetics	0290	2.0251	$105.61	$53.17	$21.12
78140	S		Red cell sequestration	0290	2.0251	$105.61	$53.17	$21.12
78160	S		Plasma iron turnover	0290	2.0251	$105.61	$53.17	$21.12
78162	S		Radioiron absorption exam	0290	2.0251	$105.61	$53.17	$21.12
78170	S		Red cell iron utilization	0290	2.0251	$105.61	$53.17	$21.12
78172	S		Total body iron estimation	0290	2.0251	$105.61	$53.17	$21.12
78185	S		Spleen imaging	0291	3.9825	$207.69	$104.55	$41.54
78190	S		Platelet survival, kinetics	0290	2.0251	$105.61	$53.17	$21.12
78191	S		Platelet survival	0292	4.2925	$223.86	$112.69	$44.77
78195	S		Lymph system imaging	0292	4.2925	$223.86	$112.69	$44.77
78199	S		Blood/lymph nuclear exam	0291	3.9825	$207.69	$104.55	$41.54
78201	S		Liver imaging	0291	3.9825	$207.69	$104.55	$41.54
78202	S		Liver imaging with flow	0291	3.9825	$207.69	$104.55	$41.54
78205	S		Liver imaging (3D)	0291	3.9825	$207.69	$104.55	$41.54
78206	S		Liver image (3d) with flow	0292	4.2925	$223.86	$112.69	$44.77
78215	S		Liver and spleen imaging	0291	3.9825	$207.69	$104.55	$41.54
78216	S		Liver & spleen image/flow	0291	3.9825	$207.69	$104.55	$41.54
78220	S		Liver function study	0291	3.9825	$207.69	$104.55	$41.54
78223	S		Hepatobiliary imaging	0292	4.2925	$223.86	$112.69	$44.77
78230	S		Salivary gland imaging	0292	4.2925	$223.86	$112.69	$44.77
78231	S		Serial salivary imaging	0292	4.2925	$223.86	$112.69	$44.77
78232	S		Salivary gland function exam	0292	4.2925	$223.86	$112.69	$44.77
78258	S		Esophageal motility study	0291	3.9825	$207.69	$104.55	$41.54
78261	S		Gastric mucosa imaging	0291	3.9825	$207.69	$104.55	$41.54
78262	S		Gastroesophageal reflux exam	0292	4.2925	$223.86	$112.69	$44.77
78264	S		Gastric emptying study	0292	4.2925	$223.86	$112.69	$44.77

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

[Calendar Year 2003]

CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
78267	A		Breath tst attain/anal c-14					
78268	A		Breath test analysis, c-14					
78270	S		Vit B-12 absorption exam	0290	2.0251	$105.61	$53.17	$21.12
78271	S		Vit b-12 absrp exam, int fac	0290	2.0251	$105.61	$53.17	$21.12
78272	S		Vit B-12 absorp, combined	0290	2.0251	$105.61	$53.17	$21.12
78278	S		Acute GI blood loss imaging	0292	4.2925	$223.86	$112.69	$44.77
78282	S		GI protein loss exam	0290	2.0251	$105.61	$53.17	$21.12
78290	S		Meckel's divert exam	0292	4.2925	$223.86	$112.69	$44.77
78291	S		Leveen/shunt patency exam	0292	4.2925	$223.86	$112.69	$44.77
78299	S		GI nuclear procedure	0291	3.9825	$207.69	$104.55	$41.54
78300	S		Bone imaging, limited area	0291	3.9825	$207.69	$104.55	$41.54
78305	S		Bone imaging, multiple areas	0291	3.9825	$207.69	$104.55	$41.54
78306	S		Bone imaging, whole body	0291	3.9825	$207.69	$104.55	$41.54
78315	S		Bone imaging, 3 phase	0292	4.2925	$223.86	$112.69	$44.77
78320	S		Bone imaging (3D)	0291	3.9825	$207.69	$104.55	$41.54
78350	X		Bone mineral, single photon	0261	1.2887	$67.21		$13.44
78351	E		Bone mineral, dual photon					
78399	S		Musculoskeletal nuclear exam	0291	3.9825	$207.69	$104.55	$41.54
78414	S		Non-imaging heart function	0290	2.0251	$105.61	$53.17	$21.12
78428	S		Cardiac shunt imaging	0291	3.9825	$207.69	$104.55	$41.54
78445	S		Vascular flow imaging	0291	3.9825	$207.69	$104.55	$41.54
78455	S		Venous thrombosis study	0290	2.0251	$105.61	$53.17	$21.12
78456	S		Acute venous thrombus image	0292	4.2925	$223.86	$112.69	$44.77
78457	S		Venous thrombosis imaging	0291	3.9825	$207.69	$104.55	$41.54
78458	S		Ven thrombosis images, bilat	0292	4.2925	$223.86	$112.69	$44.77
78459	E		Heart muscle imaging (PET)					
78460	S		Heart muscle blood, single	0286	6.5309	$340.59	$187.32	$68.12
78461	S		Heart muscle blood, multiple	0286	6.5309	$340.59	$187.32	$68.12
78464	S		Heart image (3d), single	0286	6.5309	$340.59	$187.32	$68.12
78465	S		Heart image (3d), multiple	0286	6.5309	$340.59	$187.32	$68.12
78466	S		Heart infarct image	0291	3.9825	$207.69	$104.55	$41.54
78468	S		Heart infarct image (ef)	0291	3.9825	$207.69	$104.55	$41.54
78469	S		Heart infarct image (3D)	0291	3.9825	$207.69	$104.55	$41.54
78472	S		Gated heart, planar, single	0286	6.5309	$340.59	$187.32	$68.12
78473	S		Gated heart, multiple	0286	6.5309	$340.59	$187.32	$68.12
78478	S		Heart wall motion add-on	0666	2.9650	$154.63	$85.05	$30.93
78480	S		Heart function add-on	0666	2.9650	$154.63	$85.05	$30.93
78481	S		Heart first pass, single	0286	6.5309	$340.59	$187.32	$68.12
78483	S		Heart first pass, multiple	0286	6.5309	$340.59	$187.32	$68.12
78491	E		Heart image (pet), single					
78492	E		Heart image (pet), multiple					
78494	S		Heart image, spect	0286	6.5309	$340.59	$187.32	$68.12
78496	S		Heart first pass add-on	0666	2.9650	$154.63	$85.05	$30.93
78499	S		Cardiovascular nuclear exam	0291	3.9825	$207.69	$104.55	$41.54
78580	S		Lung perfusion imaging	0291	3.9825	$207.69	$104.55	$41.54
78584	S		Lung V/Q image single breath	0292	4.2925	$223.86	$112.69	$44.77
78585	S		Lung V/Q imaging	0292	4.2925	$223.86	$112.69	$44.77
78586	S		Aerosol lung image, single	0291	3.9825	$207.69	$104.55	$41.54
78587	S		Aerosol lung image, multiple	0291	3.9825	$207.69	$104.55	$41.54
78588	S		Perfusion lung image	0292	4.2925	$223.86	$112.69	$44.77
78591	S		Vent image, 1 breath, 1 proj	0291	3.9825	$207.69	$104.55	$41.54
78593	S		Vent image, 1 proj, gas	0291	3.9825	$207.69	$104.55	$41.54
78594	S		Vent image, mult proj, gas	0291	3.9825	$207.69	$104.55	$41.54
78596	S		Lung differential function	0292	4.2925	$223.86	$112.69	$44.77
78599	S		Respiratory nuclear exam	0291	3.9825	$207.69	$104.55	$41.54
78600	S		Brain imaging, ltd static	0291	3.9825	$207.69	$104.55	$41.54
78601	S		Brain imaging, ltd w/ flow	0291	3.9825	$207.69	$104.55	$41.54
78605	S		Brain imaging, complete	0291	3.9825	$207.69	$104.55	$41.54
78606	S		Brain imaging, compl w/flow	0291	3.9825	$207.69	$104.55	$41.54
78607	S		Brain imaging (3D)	0291	3.9825	$207.69	$104.55	$41.54
78608	E		Brain imaging (PET)					
78609	E		Brain imaging (PET)					
78610	S		Brain flow imaging only	0291	3.9825	$207.69	$104.55	$41.54
78615	S		Cerebral vascular flow image	0291	3.9825	$207.69	$104.55	$41.54
78630	S		Cerebrospinal fluid scan	0292	4.2925	$223.86	$112.69	$44.77

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

[Calendar Year 2003]

CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
78635	S		CSF ventriculography	0292	4.2925	$223.86	$112.69	$44.77
78645	S		CSF shunt evaluation	0292	4.2925	$223.86	$112.69	$44.77
78647	S		Cerebrospinal fluid scan	0292	4.2925	$223.86	$112.69	$44.77
78650	S		CSF leakage imaging	0292	4.2925	$223.86	$112.69	$44.77
78660	S		Nuclear exam of tear flow	0291	3.9825	$207.69	$104.55	$41.54
78699	S		Nervous system nuclear exam	0291	3.9825	$207.69	$104.55	$41.54
78700	S		Kidney imaging, static	0291	3.9825	$207.69	$104.55	$41.54
78701	S		Kidney imaging with flow	0291	3.9825	$207.69	$104.55	$41.54
78704	S		Imaging renogram	0291	3.9825	$207.69	$104.55	$41.54
78707	S		Kidney flow/function image	0291	3.9825	$207.69	$104.55	$41.54
78708	S		Kidney flow/function image	0292	4.2925	$223.86	$112.69	$44.77
78709	S		Kidney flow/function image	0292	4.2925	$223.86	$112.69	$44.77
78710	S		Kidney imaging (3D)	0291	3.9825	$207.69	$104.55	$41.54
78715	S		Renal vascular flow exam	0291	3.9825	$207.69	$104.55	$41.54
78725	S		Kidney function study	0290	2.0251	$105.61	$53.17	$21.12
78730	S		Urinary bladder retention	0291	3.9825	$207.69	$104.55	$41.54
78740	S		Ureteral reflux study	0292	4.2925	$223.86	$112.69	$44.77
78760	S		Testicular imaging	0291	3.9825	$207.69	$104.55	$41.54
78761	S		Testicular imaging/flow	0291	3.9825	$207.69	$104.55	$41.54
78799	S		Genitourinary nuclear exam	0291	3.9825	$207.69	$104.55	$41.54
78800	S		Tumor imaging, limited area	0292	4.2925	$223.86	$112.69	$44.77
78801	S		Tumor imaging, mult areas	0292	4.2925	$223.86	$112.69	$44.77
78802	S		Tumor imaging, whole body	0292	4.2925	$223.86	$112.69	$44.77
78803	S		Tumor imaging (3D)	0292	4.2925	$223.86	$112.69	$44.77
78805	S		Abscess imaging, ltd area	0292	4.2925	$223.86	$112.69	$44.77
78806	S		Abscess imaging, whole body	0292	4.2925	$223.86	$112.69	$44.77
78807	S		Nuclear localization/abscess	0292	4.2925	$223.86	$112.69	$44.77
78810	E		Tumor imaging (PET)					
78890	N		Nuclear medicine data proc					
78891	N		Nuclear med data proc					
78990	N		Provide diag radionuclide(s)					
78999	S		Nuclear diagnostic exam	0291	3.9825	$207.69	$104.55	$41.54
79000	S		Init hyperthyroid therapy	0294	4.0794	$212.74	$117.01	$42.55
79001	S		Repeat hyperthyroid therapy	0294	4.0794	$212.74	$117.01	$42.55
79020	S		Thyroid ablation	0294	4.0794	$212.74	$117.01	$42.55
79030	S		Thyroid ablation, carcinoma	0294	4.0794	$212.74	$117.01	$42.55
79035	S		Thyroid metastatic therapy	0294	4.0794	$212.74	$117.01	$42.55
79100	S		Hematopoetic nuclear therapy	0294	4.0794	$212.74	$117.01	$42.55
79200	S		Intracavitary nuclear trmt	0294	4.0794	$212.74	$117.01	$42.55
79300	S		Interstitial nuclear therapy	0294	4.0794	$212.74	$117.01	$42.55
79400	S		Nonhemato nuclear therapy	0294	4.0794	$212.74	$117.01	$42.55
79420	S		Intravascular nuclear ther	0294	4.0794	$212.74	$117.01	$42.55
79440	S		Nuclear joint therapy	0294	4.0794	$212.74	$117.01	$42.55
79900	N		Provide ther radiopharm(s)					
79999	S		Nuclear medicine therapy	0294	4.0794	$212.74	$117.01	$42.55
80048	A		Basic metabolic panel					
80050	A		General health panel					
80051	A		Electrolyte panel					
80053	A		Comprehen metabolic panel					
80055	A		Obstetric panel					
80061	A		Lipid panel					
80069	A		Renal function panel					
80074	A		Acute hepatitis panel					
80076	A		Hepatic function panel					
80090	A	DG	Torch antibody panel					
80100	A		Drug screen, qualitate/multi					
80101	A		Drug screen, single					
80102	A		Drug confirmation					
80103	N		Drug analysis, tissue prep					
80150	A		Assay of amikacin					
80152	A		Assay of amitriptyline					
80154	A		Assay of benzodiazepines					
80156	A		Assay, carbamazepine, total					
80157	A		Assay, carbamazepine, free					
80158	A		Assay of cyclosporine					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

[Calendar Year 2003]

CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
80160	A		Assay of desipramine					
80162	A		Assay of digoxin					
80164	A		Assay, dipropylacetic acid					
80166	A		Assay of doxepin					
80168	A		Assay of ethosuximide					
80170	A		Assay of gentamicin					
80172	A		Assay of gold					
80173	A		Assay of haloperidol					
80174	A		Assay of imipramine					
80176	A		Assay of lidocaine					
80178	A		Assay of lithium					
80182	A		Assay of nortriptyline					
80184	A		Assay of phenobarbital					
80185	A		Assay of phenytoin, total					
80186	A		Assay of phenytoin, free					
80188	A		Assay of primidone					
80190	A		Assay of procainamide					
80192	A		Assay of procainamide					
80194	A		Assay of quinidine					
80196	A		Assay of salicylate					
80197	A		Assay of tacrolimus					
80198	A		Assay of theophylline					
80200	A		Assay of tobramycin					
80201	A		Assay of topiramate					
80202	A		Assay of vancomycin					
80299	A		Quantitative assay, drug					
80400	A		Acth stimulation panel					
80402	A		Acth stimulation panel					
80406	A		Acth stimulation panel					
80408	A		Aldosterone suppression eval					
80410	A		Calcitonin stimul panel					
80412	A		CRH stimulation panel					
80414	A		Testosterone response					
80415	A		Estradiol response panel					
80416	A		Renin stimulation panel					
80417	A		Renin stimulation panel					
80418	A		Pituitary evaluation panel					
80420	A		Dexamethasone panel					
80422	A		Glucagon tolerance panel					
80424	A		Glucagon tolerance panel					
80426	A		Gonadotropin hormone panel					
80428	A		Growth hormone panel					
80430	A		Growth hormone panel					
80432	A		Insulin suppression panel					
80434	A		Insulin tolerance panel					
80435	A		Insulin tolerance panel					
80436	A		Metyrapone panel					
80438	A		TRH stimulation panel					
80439	A		TRH stimulation panel					
80440	A		TRH stimulation panel					
80500	X		Lab pathology consultation	0343	0.4457	$23.24	$12.55	$4.65
80502	X		Lab pathology consultation	0342	0.2132	$11.12	$5.88	$2.22
81000	A		Urinalysis, nonauto w/scope					
81001	A		Urinalysis, auto w/scope					
81002	A		Urinalysis nonauto w/o scope					
81003	A		Urinalysis, auto, w/o scope					
81005	A		Urinalysis					
81007	A		Urine screen for bacteria					
81015	A		Microscopic exam of urine					
81020	A		Urinalysis, glass test					
81025	A		Urine pregnancy test					
81050	A		Urinalysis, volume measure					
81099	A		Urinalysis test procedure					
82000	A		Assay of blood acetaldehyde					
82003	A		Assay of acetaminophen					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

[Calendar Year 2003]

CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
82009	A		Test for acetone/ketones					
82010	A		Acetone assay					
82013	A		Acetylcholinesterase assay					
82016	A		Acylcamitines, qual					
82017	A		Acylcamitines, quant					
82024	A		Assay of acth					
82030	A		Assay of adp & amp					
82040	A		Assay of serum albumin					
82042	A		Assay of urine albumin					
82043	A		Microalbumin, quantitative					
82044	A		Microalbumin, semiquant					
82055	A		Assay of ethanol					
82075	A		Assay of breath ethanol					
82085	A		Assay of aldolase					
82088	A		Assay of aldosterone					
82101	A		Assay of urine alkaloids					
82103	A		Alpha-1-antitrypsin, total					
82104	A		Alpha-1-antitrypsin, pheno					
82105	A		Alpha-fetoprotein, serum					
82106	A		Alpha-fetoprotein, amniotic					
82108	A		Assay of aluminum					
82120	A		Amines, vaginal fluid qual					
82127	A		Amino acid, single qual					
82128	A		Amino acids, mult qual					
82131	A		Amino acids, single quant					
82135	A		Assay, aminolevulinic acid					
82136	A		Amino acids, quant, 2-5					
82139	A		Amino acids, quan, 6 or more					
82140	A		Assay of ammonia					
82143	A		Amniotic fluid scan					
82145	A		Assay of amphetamines					
82150	A		Assay of amylase					
82154	A		Androstanediol glucuronide					
82157	A		Assay of androstenedione					
82160	A		Assay of androsterone					
82163	A		Assay of angiotensin II					
82164	A		Angiotensin I enzyme test					
82172	A		Assay of apolipoprotein					
82175	A		Assay of arsenic					
82180	A		Assay of ascorbic acid					
82190	A		Atomic absorption					
82205	A		Assay of barbiturates					
82232	A		Assay of beta-2 protein					
82239	A		Bile acids, total					
82240	A		Bile acids, cholylglycine					
82247	A		Bilirubin, total					
82248	A		Bilirubin, direct					
82252	A		Fecal bilirubin test					
82261	A		Assay of biotinidase					
82270	A		Test for blood, feces					
82273	A		Test for blood, other source					
82274	A		Assay test for blood, fecal					
82286	A		Assay of bradykinin					
82300	A		Assay of cadmium					
82306	A		Assay of vitamin D					
82307	A		Assay of vitamin D					
82308	A		Assay of calcitonin					
82310	A		Assay of calcium					
82330	A		Assay of calcium					
82331	A		Calcium infusion test					
82340	A		Assay of calcium in urine					
82355	A		Calculus analysis, qual					
82360	A		Calculus assay, quant					
82365	A		Calculus spectroscopy					
82370	A		X-ray assay, calculus					

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CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
82373	A		Assay, c-d transfer measure					
82374	A		Assay, blood carbon dioxide					
82375	A		Assay, blood carbon monoxide					
82376	A		Test for carbon monoxide					
82378	A		Carcinoembryonic antigen					
82379	A		Assay of carnitine					
82380	A		Assay of carotene					
82382	A		Assay, urine catecholamines					
82383	A		Assay, blood catecholamines					
82384	A		Assay, three catecholamines					
82387	A		Assay of cathepsin-d					
82390	A		Assay of ceruloplasmin					
82397	A		Chemiluminescent assay					
82415	A		Assay of chloramphenicol					
82435	A		Assay of blood chloride					
82436	A		Assay of urine chloride					
82438	A		Assay, other fluid chlorides					
82441	A		Test for chlorohydrocarbons					
82465	A		Assay, bld/serum cholesterol					
82480	A		Assay, serum cholinesterase					
82482	A		Assay, rbc cholinesterase					
82485	A		Assay, chondroitin sulfate					
82486	A		Gas/liquid chromatography					
82487	A		Paper chromatography					
82488	A		Paper chromatography					
82489	A		Thin layer chromatography					
82491	A		Chromotography, quant, sing					
82492	A		Chromotography, quant, mult					
82495	A		Assay of chromium					
82507	A		Assay of citrate					
82520	A		Assay of cocaine					
82523	A		Collagen crosslinks					
82525	A		Assay of copper					
82528	A		Assay of corticosterone					
82530	A		Cortisol, free					
82533	A		Total cortisol					
82540	A		Assay of creatine					
82541	A		Column chromotography, qual					
82542	A		Column chromotography, quant					
82543	A		Column chromotograph/isotope					
82544	A		Column chromotograph/isotope					
82550	A		Assay of ck (cpk)					
82552	A		Assay of cpk in blood					
82553	A		Creatine, MB fraction					
82554	A		Creatine, isoforms					
82565	A		Assay of creatinine					
82570	A		Assay of urine creatinine					
82575	A		Creatinine clearance test					
82585	A		Assay of cryofibrinogen					
82595	A		Assay of cryoglobulin					
82600	A		Assay of cyanide					
82607	A		Vitamin B-12					
82608	A		B-12 binding capacity					
82615	A		Test for urine cystines					
82626	A		Dehydroepiandrosterone					
82627	A		Dehydroepiandrosterone					
82633	A		Desoxycorticosterone					
82634	A		Deoxycortisol					
82638	A		Assay of dibucaine number					
82646	A		Assay of dihydrocodeinone					
82649	A		Assay of dihydromorphinone					
82651	A		Assay of dihydrotestosterone					
82652	A		Assay of dihydroxyvitamin d					
82654	A		Assay of dimethadione					
82657	A		Enzyme cell activity					

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CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
82658	A		Enzyme cell activity, ra					
82664	A		Electrophoretic test					
82666	A		Assay of epiandrosterone					
82668	A		Assay of erythropoietin					
82670	A		Assay of estradiol					
82671	A		Assay of estrogens					
82672	A		Assay of estrogen					
82677	A		Assay of estriol					
82679	A		Assay of estrone					
82690	A		Assay of ethchlorvynol					
82693	A		Assay of ethylene glycol					
82696	A		Assay of etiocholanolone					
82705	A		Fats/lipids, feces, qual					
82710	A		Fats/lipids, feces, quant					
82715	A		Assay of fecal fat					
82725	A		Assay of blood fatty acids					
82726	A		Long chain fatty acids					
82728	A		Assay of ferritin					
82731	A		Assay of fetal fibronectin					
82735	A		Assay of fluoride					
82742	A		Assay of flurazepam					
82746	A		Blood folic acid serum					
82747	A		Assay of folic acid, rbc					
82757	A		Assay of semen fructose					
82759	A		Assay of rbc galactokinase					
82760	A		Assay of galactose					
82775	A		Assay galactose transferase					
82776	A		Galactose transferase test					
82784	A		Assay of gammaglobulin igm					
82785	A		Assay of gammaglobulin ige					
82787	A		Igg 1, 2, 3 or 4, each					
82800	A		Blood pH					
82803	A		Blood gases: pH, pO2 & pCO2					
82805	A		Blood gases W/02 saturation					
82810	A		Blood gases, O2 sat only					
82820	A		Hemoglobin-oxygen affinity					
82926	A		Assay of gastric acid					
82928	A		Assay of gastric acid					
82938	A		Gastrin test					
82941	A		Assay of gastrin					
82943	A		Assay of glucagon					
82945	A		Glucose other fluid					
82946	A		Glucagon tolerance test					
82947	A		Assay, glucose, blood quant					
82948	A		Reagent strip/blood glucose					
82950	A		Glucose test					
82951	A		Glucose tolerance test (GTT)					
82952	A		GTT-added samples					
82953	A		Glucose-tolbutamide test					
82955	A		Assay of g6pd enzyme					
82960	A		Test for G6PD enzyme					
82962	A		Glucose blood test					
82963	A		Assay of glucosidase					
82965	A		Assay of gdh enzyme					
82975	A		Assay of glutamine					
82977	A		Assay of GGT					
82978	A		Assay of glutathione					
82979	A		Assay, rbc glutathione					
82980	A		Assay of glutethimide					
82985	A		Glycated protein					
83001	A		Gonadotropin (FSH)					
83002	A		Gonadotropin (LH)					
83003	A		Assay, growth hormone (hgh)					
83008	A		Assay of guanosine					
83010	A		Assay of haptoglobin, quant					

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CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
83012	A		Assay of haptoglobins					
83013	A		H pylori analysis					
83014	A		H pylori drug admin/collect					
83015	A		Heavy metal screen					
83018	A		Quantitative screen, metals					
83020	A		Hemoglobin electrophoresis					
83021	A		Hemoglobin chromotography					
83026	A		Hemoglobin, copper sulfate					
83030	A		Fetal hemoglobin, chemical					
83033	A		Fetal hemoglobin assay, qual					
83036	A		Glycated hemoglobin test					
83045	A		Blood methemoglobin test					
83050	A		Blood methemoglobin assay					
83051	A		Assay of plasma hemoglobin					
83055	A		Blood sulfhemoglobin test					
83060	A		Blood sulfhemoglobin assay					
83065	A		Assay of hemoglobin heat					
83068	A		Hemoglobin stability screen					
83069	A		Assay of urine hemoglobin					
83070	A		Assay of hemosiderin, qual					
83071	A		Assay of hemosiderin, quant					
83080	A		Assay of b hexosaminidase					
83088	A		Assay of histamine					
83090	A		Assay of homocystine					
83150	A		Assay of for hva					
83491	A		Assay of corticosteroids					
83497	A		Assay of 5-hiaa					
83498	A		Assay of progesterone					
83499	A		Assay of progesterone					
83500	A		Assay, free hydroxyproline					
83505	A		Assay, total hydroxyproline					
83516	A		Immunoassay, nonantibody					
83518	A		Immunoassay, dipstick					
83519	A		Immunoassay, nonantibody					
83520	A		Immunoassay, RIA					
83525	A		Assay of insulin					
83527	A		Assay of insulin					
83528	A		Assay of intrinsic factor					
83540	A		Assay of iron					
83550	A		Iron binding test					
83570	A		Assay of idh enzyme					
83582	A		Assay of ketogenic steroids					
83586	A		Assay 17- ketosteroids					
83593	A		Fractionation, ketosteroids					
83605	A		Assay of lactic acid					
83615	A		Lactate (LD) (LDH) enzyme					
83625	A		Assay of ldh enzymes					
83632	A		Placental lactogen					
83633	A		Test urine for lactose					
83634	A		Assay of urine for lactose					
83655	A		Assay of lead					
83661	A		L/s ratio, fetal lung					
83662	A		Foam stability, fetal lung					
83663	A		Fluoro polarize, fetal lung					
83664	A		Lamellar bdy, fetal lung					
83670	A		Assay of lap enzyme					
83690	A		Assay of lipase					
83715	A		Assay of blood lipoproteins					
83716	A		Assay of blood lipoproteins					
83718	A		Assay of lipoprotein					
83719	A		Assay of blood lipoprotein					
83721	A		Assay of blood lipoprotein					
83727	A		Assay of lrh hormone					
83735	A		Assay of magnesium					
83775	A		Assay of md enzyme					

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CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
83785	A		Assay of manganese					
83788	A		Mass spectrometry qual					
83789	A		Mass spectrometry quant					
83805	A		Assay of meprobamate					
83825	A		Assay of mercury					
83835	A		Assay of metanephrines					
83840	A		Assay of methadone					
83857	A		Assay of methemalbumin					
83858	A		Assay of methsuximide					
83864	A		Mucopolysaccharides					
83866	A		Mucopolysaccharides screen					
83872	A		Assay synovial fluid mucin					
83873	A		Assay of csf protein					
83874	A		Assay of myoglobin					
83880	A	NI	Natriuretic peptide					
83883	A		Assay, nephelometry not spec					
83885	A		Assay of nickel					
83887	A		Assay of nicotine					
83890	A		Molecule isolate					
83891	A		Molecule isolate nucleic					
83892	A		Molecular diagnostics					
83893	A		Molecule dot/slot/blot					
83894	A		Molecule gel electrophor					
83896	A		Molecular diagnostics					
83897	A		Molecule nucleic transfer					
83898	A		Molecule nucleic ampli					
83901	A		Molecule nucleic ampli					
83902	A		Molecular diagnostics					
83903	A		Molecule mutation scan					
83904	A		Molecule mutation identify					
83905	A		Molecule mutation identify					
83906	A		Molecule mutation identify					
83912	A		Genetic examination					
83915	A		Assay of nucleotidase					
83916	A		Oligoclonal bands					
83918	A		Organic acids, total, quant					
83919	A		Organic acids, qual, each					
83921	A		Organic acid, single, quant					
83925	A		Assay of opiates					
83930	A		Assay of blood osmolality					
83935	A		Assay of urine osmolality					
83937	A		Assay of osteocalcin					
83945	A		Assay of oxalate					
83950	A		Oncoprotein, her-2/neu					
83970	A		Assay of parathormone					
83986	A		Assay of body fluid acidity					
83992	A		Assay for phencyclidine					
84022	A		Assay of phenothiazine					
84030	A		Assay of blood pku					
84035	A		Assay of phenylketones					
84060	A		Assay acid phosphatase					
84061	A		Phosphatase, forensic exam					
84066	A		Assay prostate phosphatase					
84075	A		Assay alkaline phosphatase					
84078	A		Assay alkaline phosphatase					
84080	A		Assay alkaline phosphatases					
84081	A		Amniotic fluid enzyme test					
84085	A		Assay of rbc pg6d enzyme					
84087	A		Assay phosphohexose enzymes					
84100	A		Assay of phosphorus					
84105	A		Assay of urine phosphorus					
84106	A		Test for porphobilinogen					
84110	A		Assay of porphobilinogen					
84119	A		Test urine for porphynns					
84120	A		Assay of urine porphyrins					

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CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
84126	A		Assay of feces porphyrins					
84127	A		Assay of feces porphyrins					
84132	A		Assay of serum potassium					
84133	A		Assay of urine potassium					
84134	A		Assay of prealbumin					
84135	A		Assay of pregnanediol					
84138	A		Assay of pregnanetriol					
84140	A		Assay of pregnenolone					
84143	A		Assay of 17-hydroxypregneno					
84144	A		Assay of progesterone					
84146	A		Assay of prolactin					
84150	A		Assay of prostaglandin					
84152	A		Assay of psa, complexed					
84153	A		Assay of psa, total					
84154	A		Assay of psa, free					
84155	A		Assay of protein					
84160	A		Assay of serum protein					
84165	A		Assay of serum proteins					
84181	A		Western blot test					
84182	A		Protein, western blot test					
84202	A		Assay RBC protoporphyrin					
84203	A		Test RBC protoporphyrin					
84206	A		Assay of proinsulin					
84207	A		Assay of vitamin b-6					
84210	A		Assay of pyruvate					
84220	A		Assay of pyruvate kinase					
84228	A		Assay of quinine					
84233	A		Assay of estrogen					
84234	A		Assay of progesterone					
84235	A		Assay of endocrine hormone					
84238	A		Assay, nonendocrine receptor					
84244	A		Assay of renin					
84252	A		Assay of vitamin b-2					
84255	A		Assay of selenium					
84260	A		Assay of serotonin					
84270	A		Assay of sex hormone globul					
84275	A		Assay of sialic acid					
84285	A		Assay of silica					
84295	A		Assay of serum sodium					
84300	A		Assay of urine sodium					
84302	A	NI	Assay of sweat sodium					
84305	A		Assay of somatomedin					
84307	A		Assay of somatostatin					
84311	A		Spectrophotometry					
84315	A		Body fluid specific gravity					
84375	A		Chromatogram assay, sugars					
84376	A		Sugars, single, qual					
84377	A		Sugars, multiple, qual					
84378	A		Sugars single quant					
84379	A		Sugars multiple quant					
84392	A		Assay of urine sulfate					
84402	A		Assay of testosterone					
84403	A		Assay of total testosterone					
84425	A		Assay of vitamin b-1					
84430	A		Assay of thiocyanate					
84432	A		Assay of thyroglobulin					
84436	A		Assay of total thyroxine					
84437	A		Assay of neonatal thyroxine					
84439	A		Assay of free thyroxine					
84442	A		Assay of thyroid activity					
84443	A		Assay thyroid stim hormone					
84445	A		Assay of tsi					
84446	A		Assay of vitamin e					
84449	A		Assay of transcortin					
84450	A		Transferase (AST) (SGOT)					

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CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
84460	A		Alanine amino (ALT) (SGPT)					
84466	A		Assay of transferrin					
84478	A		Assay of triglycerides					
84479	A		Assay of thyroid (t3 or t4)					
84480	A		Assay, triiodothyronine (t3)					
84481	A		Free assay (FT-3)					
84482	A		T3 reverse					
84484	A		Assay of troponin, quant					
84485	A		Assay duodenal fluid trypsin					
84488	A		Test feces for trypsin					
84490	A		Assay of feces for trypsin					
84510	A		Assay of tyrosine					
84512	A		Assay of troponin, qual					
84520	A		Assay of urea nitrogen					
84525	A		Urea nitrogen semi-quant					
84540	A		Assay of urine/urea-n					
84545	A		Urea-N clearance test					
84550	A		Assay of blood/uric acid					
84560	A		Assay of urine/uric acid					
84577	A		Assay of feces/urobilinogen					
84578	A		Test urine urobilinogen					
84580	A		Assay of urine urobilinogen					
84583	A		Assay of urine urobilinogen					
84585	A		Assay of urine vma					
84586	A		Assay of vip					
84588	A		Assay of vasopressin					
84590	A		Assay of vitamin a					
84591	A		Assay of nos vitamin					
84597	A		Assay of vitamin k					
84600	A		Assay of volatiles					
84620	A		Xylose tolerance test					
84630	A		Assay of zinc					
84681	A		Assay of c-peptide					
84702	A		Chorionic gonadotropin test					
84703	A		Chorionic gonadotropin assay					
84830	A		Ovulation tests					
84999	A		Clinical chemistry test					
85002	A		Bleeding time test					
85004	A	NI	Automated diff wbc count					
85007	A		Differential WBC count					
85008	A		Nondifferential WBC count					
85009	A		Differential WBC count					
85013	A		Spun microhematocrit					
85014	A		Hematocrit					
85018	A		Hemoglobin					
85021	A	DG	Automated hemogram					
85022	A	DG	Automated hemogram					
85023	A	DG	Automated hemogram					
85024	A	DG	Automated hemogram					
85025	A		Automated hemogram					
85027	A		Automated hemogram					
85031	A	DG	Manual hemogram, cbc					
85032	A	NI	Manual cell count, each					
85041	A		Red blood cell (RBC) count					
85044	A		Reticulocyte count					
85045	A		Reticulocyte count					
85046	A		Reticyte/hgb concentrate					
85048	A		White blood cell (WBC) count					
85049	A	NI	Automated platelet count					
85060	X		Blood smear interpretation	0342	0.2132	$11.12	$5.88	$2.22
85097	X		Bone marrow interpretation	0343	0.4457	$23.24	$12.55	$4.65
85130	A		Chromogenic substrate assay					
85170	A		Blood clot retraction					
85175	A		Blood clot lysis time					
85210	A		Blood clot factor II test					

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CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
85220	A		Blood clot factor V test					
85230	A		Blood clot factor VII test					
85240	A		Blood clot factor VIII test					
85244	A		Blood clot factor VIII test					
85245	A		Blood clot factor VIII test					
85246	A		Blood clot factor VIII test					
85247	A		Blood clot factor VIII test					
85250	A		Blood clot factor IX test					
85260	A		Blood clot factor X test					
85270	A		Blood clot factor XI test					
85280	A		Blood clot factor XII test					
85290	A		Blood clot factor XIII test					
85291	A		Blood clot factor XIII test					
85292	A		Blood clot factor assay					
85293	A		Blood clot factor assay					
85300	A		Antithrombin III test					
85301	A		Antithrombin III test					
85302	A		Blood clot inhibitor antigen					
85303	A		Blood clot inhibitor test					
85305	A		Blood clot inhibitor assay					
85306	A		Blood clot inhibitor test					
85307	A		Assay activated protein c					
85335	A		Factor inhibitor test					
85337	A		Thrombomodulin					
85345	A		Coagulation time					
85347	A		Coagulation time					
85348	A		Coagulation time					
85360	A		Euglobulin lysis					
85362	A		Fibrin degradation products					
85366	A		Fibrinogen test					
85370	A		Fibrinogen test					
85378	A		Fibrin degradation					
85379	A		Fibrin degradation, quant					
85380	A	NI	Fibrin degradation, vte					
85384	A		Fibrinogen					
85385	A		Fibrinogen					
85390	A		Fibrinolysins screen					
85400	A		Fibrinolytic plasmin					
85410	A		Fibrinolytic antiplasmin					
85415	A		Fibrinolytic plasminogen					
85420	A		Fibrinolytic plasminogen					
85421	A		Fibrinolytic plasminogen					
85441	A		Heinz bodies, direct					
85445	A		Heinz bodies, induced					
85460	A		Hemoglobin, fetal					
85461	A		Hemoglobin, fetal					
85475	A		Hemolysin					
85520	A		Heparin assay					
85525	A		Heparin neutralization					
85530	A		Heparin-protamine tolerance					
85536	A		Iron stain peripheral blood					
85540	A		Wbc alkaline phosphatase					
85547	A		RBC mechanical fragility					
85549	A		Muramidase					
85555	A		RBC osmotic fragility					
85557	A		RBC osmotic fragility					
85576	A		Blood platelet aggregation					
85585	A	DG	Blood platelet estimation					
85590	A	DG	Platelet count, manual					
85595	A	DG	Platelet count, automated					
85597	A		Platelet neutralization					
85610	A		Prothrombin time					
85611	A		Prothrombin test					
85612	A		Viper venom prothrombin time					
85613	A		Russell viper venom, diluted					

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CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
85635	A		Reptilase test					
85651	A		Rbc sed rate, nonautomated					
85652	A		Rbc sed rate, automated					
85660	A		RBC sickle cell test					
85670	A		Thrombin time, plasma					
85675	A		Thrombin time, titer					
85705	A		Thromboplastin inhibition					
85730	A		Thromboplastin time, partial					
85732	A		Thromboplastin time, partial					
85810	A		Blood viscosity examination					
85999	A		Hematology procedure					
86000	A		Agglutinins, febrile					
86001	A		Allergen specific igg					
86003	A		Allergen specific IgE					
86005	A		Allergen specific IgE					
86021	A		WBC antibody identification					
86022	A		Platelet antibodies					
86023	A		Immunoglobulin assay					
86038	A		Antinuclear antibodies					
86039	A		Antinuclear antibodies (ANA)					
86060	A		Antistreptolysin o, titer					
86063	A		Antistreptolysin o, screen					
86077	X		Physician blood bank service	0343	0.4457	$23.24	$12.55	$4.65
86078	X		Physician blood bank service	0344	0.6201	$32.34	$17.46	$6.47
86079	X		Physician blood bank service	0344	0.6201	$32.34	$17.46	$6.47
86140	A		C-reactive protein					
86141	A		C-reactive protein, hs					
86146	A		Glycoprotein antibody					
86147	A		Cardiolipin antibody					
86148	A		Phospholipid antibody					
86155	A		Chemotaxis assay					
86156	A		Cold agglutinin, screen					
86157	A		Cold agglutinin, titer					
86160	A		Complement, antigen					
86161	A		Complement/function activity					
86162	A		Complement, total (CH50)					
86171	A		Complement fixation, each					
86185	A		Counterimmunoelectrophoresis					
86215	A		Deoxyribonuclease, antibody					
86225	A		DNA antibody					
86226	A		DNA antibody, single strand					
86235	A		Nuclear antigen antibody					
86243	A		Fc receptor					
86255	A		Fluorescent antibody, screen					
86256	A		Fluorescent antibody, titer					
86277	A		Growth hormone antibody					
86280	A		Hemagglutination inhibition					
86294	A		Immunoassay, tumor qual					
86300	A		Immunoassay, tumor ca 15-3					
86301	A		Immunoassay, tumor ca 19-9					
86304	A		Immunoassay, tumor, ca 125					
86308	A		Heterophile antibodies					
86309	A		Heterophile antibodies					
86310	A		Heterophile antibodies					
86316	A		Immunoassay, tumor other					
86317	A		Immunoassay,infectious agent					
86318	A		Immunoassay,infectious agent					
86320	A		Serum immunoelectrophoresis					
86325	A		Other immunoelectrophoresis					
86327	A		Immunoelectrophoresis assay					
86329	A		Immunodiffusion					
86331	A		Immunodiffusion ouchterlony					
86332	A		Immune complex assay					
86334	A		Immunofixation procedure					
86336	A		Inhibin A					

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CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
86337	A		Insulin antibodies					
86340	A		Intrinsic factor antibody					
86341	A		Islet cell antibody					
86343	A		Leukocyte histamine release					
86344	A		Leukocyte phagocytosis					
86353	A		Lymphocyte transformation					
86359	A		T cells, total count					
86360	A		T cell, absolute count/ratio					
86361	A		T cell, absolute count					
86376	A		Microsomal antibody					
86378	A		Migration inhibitory factor					
86382	A		Neutralization test, viral					
86384	A		Nitroblue tetrazolium dye					
86403	A		Particle agglutination test					
86406	A		Particle agglutination test					
86430	A		Rheumatoid factor test					
86431	A		Rheumatoid factor, quant					
86485	X		Skin test, candida	0341	0.1453	$7.58	$3.08	$1.52
86490	X		Coccidioidomycosis skin test	0341	0.1453	$7.58	$3.08	$1.52
86510	X		Histoplasmosis skin test	0341	0.1453	$7.58	$3.08	$1.52
86580	X		TB intradermal test	0341	0.1453	$7.58	$3.08	$1.52
86585	X		TB tine test	0341	0.1453	$7.58	$3.08	$1.52
86586	X		Skin test, unlisted	0341	0.1453	$7.58	$3.08	$1.52
86590	A		Streptokinase, antibody					
86592	A		Blood serology, qualitative					
86593	A		Blood serology, quantitative					
86602	A		Antinomyces antibody					
86603	A		Adenovirus antibody					
86606	A		Aspergillus antibody					
86609	A		Bacterium antibody					
86611	A		Bartonella antibody					
86612	A		Blastomyces antibody					
86615	A		Bordetella antibody					
86617	A		Lyme disease antibody					
86618	A		Lyme disease antibody					
86619	A		Borrelia antibody					
86622	A		Brucella antibody					
86625	A		Campylobacter antibody					
86628	A		Candida antibody					
86631	A		Chlamydia antibody					
86632	A		Chlamydia igm antibody					
86635	A		Coccidioides antibody					
86638	A		Q fever antibody					
86641	A		Cryptococcus antibody					
86644	A		CMV antibody					
86645	A		CMV antibody, IgM					
86648	A		Diphtheria antibody					
86651	A		Encephalitis antibody					
86652	A		Encephalitis antibody					
86653	A		Encephalitis antibody					
86654	A		Encephalitis antibody					
86658	A		Enterovirus antibody					
86663	A		Epstein-barr antibody					
86664	A		Epstein-barr antibody					
86665	A		Epstein-barr antibody					
86666	A		Ehrlichia antibody					
86668	A		Francisella tularensis					
86671	A		Fungus antibody					
86674	A		Giardia lamblia antibody					
86677	A		Helicobacter pylori					
86682	A		Helminth antibody					
86684	A		Hemophilus influenza					
86687	A		Htlv-i antibody					
86688	A		Htlv-ii antibody					
86689	A		HTLV/HIV confirmatory test					

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CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
86692	A		Hepatitis, delta agent					
86694	A		Herpes simplex test					
86695	A		Herpes simplex test					
86696	A		Herpes simplex type 2					
86698	A		Histoplasma					
86701	A		HIV-1					
86702	A		HIV-2					
86703	A		HIV-1/HIV-2, single assay					
86704	A		Hep b core antibody, total					
86705	A		Hep b core antibody, igm					
86706	A		Hep b surface antibody					
86707	A		Hep be antibody					
86708	A		Hep a antibody, total					
86709	A		Hep a antibody, igm					
86710	A		Influenza virus antibody					
86713	A		Legionella antibody					
86717	A		Leishmania antibody					
86720	A		Leptospira antibody					
86723	A		Listeria monocytogenes ab					
86727	A		Lymph choriomeningitis ab					
86729	A		Lympho venereum antibody					
86732	A		Mucormycosis antibody					
86735	A		Mumps antibody					
86738	A		Mycoplasma antibody					
86741	A		Neisseria meningitidis					
86744	A		Nocardia antibody					
86747	A		Parvovirus antibody					
86750	A		Malaria antibody					
86753	A		Protozoa antibody nos					
86756	A		Respiratory virus antibody					
86757	A		Rickettsia antibody					
86759	A		Rotavirus antibody					
86762	A		Rubella antibody					
86765	A		Rubeola antibody					
86768	A		Salmonella antibody					
86771	A		Shigella antibody					
86774	A		Tetanus antibody					
86777	A		Toxoplasma antibody					
86778	A		Toxoplasma antibody, igm					
86781	A		Treponema pallidum, confirm					
86784	A		Trichinella antibody					
86787	A		Varicella-zoster antibody					
86790	A		Virus antibody nos					
86793	A		Yersinia antibody					
86800	A		Thyroglobulin antibody					
86803	A		Hepatitis c ab test					
86804	A		Hep c ab test, confirm					
86805	A		Lymphocytotoxicity assay					
86806	A		Lymphocytotoxicity assay					
86807	A		Cytotoxic antibody screening					
86808	A		Cytotoxic antibody screening					
86812	A		HLA typing, A, B, or C					
86813	A		HLA typing, A, B, or C					
86816	A		HLA typing, DR/DQ					
86817	A		HLA typing, DR/DQ					
86821	A		Lymphocyte culture, mixed					
86822	A		Lymphocyte culture, primed					
86849	A		Immunology procedure					
86850	X		RBC antibody screen	0345	0.1938	$10.11	$3.10	$2.02
86860	X		RBC antibody elution	0346	0.5136	$26.78	$6.75	$5.36
86870	X		RBC antibody identification	0346	0.5136	$26.78	$6.75	$5.36
86880	X		Coombs test, direct	0341	0.1453	$7.58	$3.08	$1.52
86885	X		Coombs test, indirect, qual	0341	0.1453	$7.58	$3.08	$1.52
86886	X		Coombs test, indirect, titer	0341	0.1453	$7.58	$3.08	$1.52
86890	X		Autologous blood process	0347	1.1240	$58.62	$14.76	$11.72

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CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
86891	X		Autologous blood, op salvage	0345	0.1938	$10.11	$3.10	$2.02
86900	X		Blood typing, ABO	0341	0.1453	$7.58	$3.08	$1.52
86901	X		Blood typing, Rh (D)	0345	0.1938	$10.11	$3.10	$2.02
86903	X		Blood typing, antigen screen	0345	0.1938	$10.11	$3.10	$2.02
86904	X		Blood typing, patient serum	0345	0.1938	$10.11	$3.10	$2.02
86905	X		Blood typing, RBC antigens	0345	0.1938	$10.11	$3.10	$2.02
86906	X		Blood typing, Rh phenotype	0345	0.1938	$10.11	$3.10	$2.02
86910	E		Blood typing, paternity test					
86911	E		Blood typing, antigen system					
86915	S	DG	Bone marrow/stem cell prep	0110	4.0309	$210.22		$42.04
86920	X		Compatibility test	0346	0.5136	$26.78	$6.75	$5.36
86921	X		Compatibility test	0345	0.1938	$10.11	$3.10	$2.02
86922	X		Compatibility test	0346	0.5136	$26.78	$6.75	$5.36
86927	X		Plasma, fresh frozen	0346	0.5136	$26.78	$6.75	$5.36
86930	X		Frozen blood prep	0347	1.1240	$58.62	$14.76	$11.72
86931	X		Frozen blood thaw	0347	1.1240	$58.62	$14.76	$11.72
86932	X		Frozen blood freeze/thaw	0347	1.1240	$58.62	$14.76	$11.72
86940	A		Hemolysins/agglutinins, auto					
86941	A		Hemolysins/agglutinins					
86945	X		Blood product/irradiation	0346	0.5136	$26.78	$6.75	$5.36
86950	X		Leukacyte transfusion	0347	1.1240	$58.62	$14.76	$11.72
86965	X		Pooling blood platelets	0346	0.5136	$26.78	$6.75	$5.36
86970	X		RBC pretreatment	0345	0.1938	$10.11	$3.10	$2.02
86971	X		RBC pretreatment	0345	0.1938	$10.11	$3.10	$2.02
86972	X		RBC pretreatment	0345	0.1938	$10.11	$3.10	$2.02
86975	X		RBC pretreatment, serum	0345	0.1938	$10.11	$3.10	$2.02
86976	X		RBC pretreatment, serum	0345	0.1938	$10.11	$3.10	$2.02
86977	X		RBC pretreatment, serum	0345	0.1938	$10.11	$3.10	$2.02
86978	X		RBC pretreatment, serum	0345	0.1938	$10.11	$3.10	$2.02
86985	X		Split blood or products	0347	1.1240	$58.62	$14.76	$11.72
86999	X		Transfusion procedure	0345	0.1938	$10.11	$3.10	$2.02
87001	A		Small animal inoculation					
87003	A		Small animal inoculation					
87015	A		Specimen concentration					
87040	A		Blood culture for bacteria					
87045	A		Feces culture, bacteria					
87046	A		Stool cultr, bacteria, each					
87070	A		Culture, bacteria, other					
87071	A		Culture bacteri aerobic othr					
87073	A		Culture bacteria anaerobic					
87075	A		Culture bacteria anaerobic					
87076	A		Culture anaerobe ident, each					
87077	A		Culture aerobic identify					
87081	A		Culture screen only					
87084	A		Culture of specimen by kit					
87086	A		Urine culture/colony count					
87088	A		Urine bacteria culture					
87101	A		Skin fungi culture					
87102	A		Fungus isolation culture					
87103	A		Blood fungus culture					
87106	A		Fungi identification, yeast					
87107	A		Fungi identification, mold					
87109	A		Mycoplasma					
87110	A		Chlamydia culture					
87116	A		Mycobacteria culture					
87118	A		Mycobacteric identification					
87140	A		Culture type immunofluoresc					
87143	A		Culture typing, glc/hplc					
87147	A		Culture type, immunologic					
87149	A		Culture type, nucleic acid					
87152	A		Culture type pulse field gel					
87158	A		Culture typing, added method					
87164	A		Dark field examination					
87166	A		Dark field examination					
87168	A		Macroscopic exam arthropod					

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CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
87169	A		Macroscopic exam parasite					
87172	A		Pinworm exam					
87176	A		Tissue homogenization, cultr					
87177	A		Ova and parasites smears					
87181	A		Microbe susceptible, diffuse					
87184	A		Microbe susceptible, disk					
87185	A		Microbe susceptible, enzyme					
87186	A		Microbe susceptible, mic					
87187	A		Microbe susceptible, mlc					
87188	A		Microbe suscept, macrobroth					
87190	A		Microbe suscept, mycobacteri					
87197	A		Bactericidal level, serum					
87198	A	DG	Cytomegalovirus antibody dfa					
87199	A	DG	Enterovirus antibody, dfa					
87205	A		Smear, gram stain					
87206	A		Smear, fluorescent/acid stai					
87207	A		Smear, special stain					
87210	A		Smear, wet mount, saline/ink					
87220	A		Tissue exam for fungi					
87230	A		Assay, toxin or antitoxin					
87250	A		Virus inoculate, eggs/animal					
87252	A		Virus inoculation, tissue					
87253	A		Virus inoculate tissue, addl					
87254	A		Virus inoculation, shell via					
87255	A	NI	Genet virus isolate, hsv					
87260	A		Adenovirus ag, if					
87265	A		Pertussis ag, if					
87267	A	NI	Enterovirus antibody, dfa					
87270	A		Chlamydia trachomatis ag, if					
87271	A	NI	Cryptosporidum/gardia ag, if					
87272	A		Cryptosporidum/gardia ag, if					
87273	A		Herpes simplex 2, ag, if					
87274	A		Herpes simplex 1, ag, if					
87275	A		Influenza b, ag, if					
87276	A		Influenza a, ag, if					
87277	A		Legionella micdadei, ag, if					
87278	A		Legion pneumophilia ag, if					
87279	A		Parainfluenza, ag, if					
87280	A		Respiratory syncytial ag, if					
87281	A		Pneumocystis carinii, ag, if					
87283	A		Rubeola, ag, if					
87285	A		Treponema pallidum, ag, if					
87290	A		Varicella zoster, ag, if					
87299	A		Antibody detection, nos, if					
87300	A		Ag detection, polyval, if					
87301	A		Adenovirus ag, eia					
87320	A		Chylmd trach ag, eia					
87324	A		Clostridium ag, eia					
87327	A		Cryptococcus neoform ag, eia					
87328	A		Cryptospor ag, eia					
87332	A		Cytomegalovirus ag, eia					
87335	A		E coli 0157 ag, eia					
87336	A		Entamoeb hist dispr, ag, eia					
87337	A		Entamoeb hist group, ag, eia					
87338	A		Hpylori, stool, eia					
87339	A		H pylori ag, eia					
87340	A		Hepatitis b surface ag, eia					
87341	A		Hepatitis b surface, ag, eia					
87350	A		Hepatitis be ag, eia					
87380	A		Hepatitis delta ag, eia					
87385	A		Histoplasma capsul ag, eia					
87390	A		Hiv-1 ag, eia					
87391	A		Hiv-2 ag, eia					
87400	A		Influenza a/b, ag, eia					
87420	A		Resp syncytial ag, eia					

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CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
87425	A		Rotavirus ag, eia					
87427	A		Shiga-like toxin ag, eia					
87430	A		Strep a ag, eia					
87449	A		Ag detect nos, eia, mult					
87450	A		Ag detect nos, eia, single					
87451	A		Ag detect polyval, eia, mult					
87470	A		Bartonella, dna, dir probe					
87471	A		Bartonella, dna, amp probe					
87472	A		Bartonella, dna, quant					
87475	A		Lyme dis, dna, dir probe					
87476	A		Lyme dis, dna, amp probe					
87477	A		Lyme dis, dna, quant					
87480	A		Candida, dna, dir probe					
87481	A		Candida, dna, amp probe					
87482	A		Candida, dna, quant					
87485	A		Chylmd pneum, dna, dir probe					
87486	A		Chylmd pneum, dna, amp probe					
87487	A		Chylmd pneum, dna, quant					
87490	A		Chylmd trach, dna, dir probe					
87491	A		Chylmd trach, dna, amp probe					
87492	A		Chylmd trach, dna, quant					
87495	A		Cytomeg, dna, dir probe					
87496	A		Cytomeg, dna, amp probe					
87497	A		Cytomeg, dna, quant					
87510	A		Gardner vag, dna, dir probe					
87511	A		Gardner vag, dna, amp probe					
87512	A		Gardner vag, dna, quant					
87515	A		Hepatitis b, dna, dir probe					
87516	A		Hepatitis b, dna, amp probe					
87517	A		Hepatitis b, dna, quant					
87520	A		Hepatitis c, ma, dir probe					
87521	A		Hepatitis c, rna, amp probe					
87522	A		Hepatitis c, rna, quant					
87525	A		Hepatitis g, dna, dir probe					
87526	A		Hepatitis g, dna, amp probe					
87527	A		Hepatitis g, dna, quant					
87528	A		Hsv, dna, dir probe					
87529	A		Hsv, dna, amp probe					
87530	A		Hsv, dna, quant					
87531	A		Hhv-6, dna, dir probe					
87532	A		Hhv-6, dna, amp probe					
87533	A		Hhv-6, dna, quant					
87534	A		Hiv-1, dna, dir probe					
87535	A		Hiv-1, dna, amp probe					
87536	A		Hiv-1, dna, quant					
87537	A		Hiv-2, dna, dir probe					
87538	A		Hiv-2, dna, amp probe					
87539	A		Hiv-2, dna, quant					
87540	A		Legion pneumo, dna, dir prob					
87541	A		Legion pneumo, dna, amp prob					
87542	A		Legion pneumo, dna, quant					
87550	A		Mycobacteria, dna, dir probe					
87551	A		Mycobacteria, dna, amp probe					
87552	A		Mycobacteria, dna, quant					
87555	A		M.tuberculo, dna, dir probe					
87556	A		M.tuberculo, dna, amp probe					
87557	A		M.tuberculo, dna, quant					
87560	A		M.avium-intra, dna, dir prob					
87561	A		M.avium-intra, dna, amp prob					
87562	A		M.avium-intra, dna, quant					
87580	A		M.pneumon, dna, dir probe					
87581	A		M.pneumon, dna, amp probe					
87582	A		M.pneumon, dna, quant					
87590	A		N.gonorrhoeae, dna, dir prob					
87591	A		N.gonorrhoeae, dna, amp prob					

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CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
87592	A		N.gonorrhoeae, dna, quant					
87620	A		Hpv, dna, dir probe					
87621	A		Hpv, dna, amp probe					
87622	A		Hpv, dna, quant					
87650	A		Strep a, dna, dir probe					
87651	A		Strep a, dna, amp probe					
87652	A		Strep a, dna, quant					
87797	A		Detect agent nos, dna, dir					
87798	A		Detect agent nos, dna, amp					
87799	A		Detect agent nos, dna, quant					
87800	A		Detect agnt mult, dna, direc					
87801	A		Detect agnt mult, dna, ampli					
87802	A		Strep b assay w/optic					
87803	A		Clostridium toxin a w/optic					
87804	A		Influenza assay w/optic					
87810	A		Chylmd trach assay w/optic					
87850	A		N. gonorrhoeae assay w/optic					
87880	A		Strep a assay w/optic					
87899	A		Agent nos assay w/optic					
87901	A		Genotype, dna, hiv reverse t					
87902	A		Genotype, dna, hepatitis C					
87903	A		Phenotype, dna hiv w/culture					
87904	A		Phenotype, dna hiv w/clt add					
87999	A		Microbiology procedure					
88000	E		Autopsy (necropsy), gross					
88005	E		Autopsy (necropsy), gross					
88007	E		Autopsy (necropsy), gross					
88012	E		Autopsy (necropsy), gross					
88014	E		Autopsy (necropsy), gross					
88016	E		Autopsy (necropsy), gross					
88020	E		Autopsy (necropsy), complete					
88025	E		Autopsy (necropsy), complete					
88027	E		Autopsy (necropsy), complete					
88028	E		Autopsy (necropsy), complete					
88029	E		Autopsy (necropsy), complete					
88036	E		Limited autopsy					
88037	E		Limited autopsy					
88040	E		Forensic autopsy (necropsy)					
88045	E		Coroner's autopsy (necropsy)					
88099	E		Necropsy (autopsy) procedure					
88104	X		Cytopathology, fluids	0343	0.4457	$23.24	$12.55	$4.65
88106	X		Cytopathology, fluids	0343	0.4457	$23.24	$12.55	$4.65
88107	X		Cytopathology, fluids	0343	0.4457	$23.24	$12.55	$4.65
88108	X		Cytopath, concentrate tech	0343	0.4457	$23.24	$12.55	$4.65
88125	X		Forensic cytopathology	0342	0.2132	$11.12	$5.88	$2.22
88130	A		Sex chromatin identification					
88140	A		Sex chromatin identification					
88141	N		Cytopath, c/v, interpret					
88142	A		Cytopath, c/v, thin layer					
88143	A		Cytopath c/v thin layer redo					
88144	A	DG	Cytopath, c/v, thin lyr redo					
88145	A	DG	Cytopath, c/v, thin lyr sel					
88147	A		Cytopath, c/v, automated					
88148	A		Cytopath, c/v, auto rescreen					
88150	A		Cytopath, c/v, manual					
88152	A		Cytopath, c/v, auto redo					
88153	A		Cytopath, c/v, redo					
88154	A		Cytopath, c/v, select					
88155	A		Cytopath, c/v, index add-on					
88160	X		Cytopath smear, other source	0342	0.2132	$11.12	$5.88	$2.22
88161	X		Cytopath smear, other source	0343	0.4457	$23.24	$12.55	$4.65
88162	X		Cytopath smear, other source	0343	0.4457	$23.24	$12.55	$4.65
88164	A		Cytopath tbs, c/v, manual					
88165	A		Cytopath tbs, c/v, redo					
88166	A		Cytopath tbs, c/v, auto redo					

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CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
88167	A		Cytopath tbs, c/v, select					
88172	X		Cytopathology eval of fna	0343	0.4457	$23.24	$12.55	$4.65
88173	X		Cytopath eval, fna, report	0343	0.4457	$23.24	$12.55	$4.65
88174	A	NI	Cytopath, c/v auto, in fluid					
88175	A	NI	Cytopath c/v auto fluid redo					
88180	X		Cell marker study	0343	0.4457	$23.24	$12.55	$4.65
88182	X		Cell marker study	0344	0.6201	$32.34	$17.46	$6.47
88199	A		Cytopathology procedure					
88230	A		Tissue culture, lymphocyte					
88233	A		Tissue culture, skin/biopsy					
88235	A		Tissue culture, placenta					
88237	A		Tissue culture, bone marrow					
88239	A		Tissue culture, tumor					
88240	A		Cell cryopreserve/storage					
88241	A		Frozen cell preparation					
88245	A		Chromosome analysis, 20-25					
88248	A		Chromosome analysis, 50-100					
88249	A		Chromosome analysis, 100					
88261	A		Chromosome analysis, 5					
88262	A		Chromosome analysis, 15-20					
88263	A		Chromosome analysis, 45					
88264	A		Chromosome analysis, 20-25					
88267	A		Chromosome analys, placenta					
88269	A		Chromosome analys, amniotic					
88271	A		Cytogenetics, dna probe					
88272	A		Cytogenetics, 3-5					
88273	A		Cytogenetics, 10-30					
88274	A		Cytogenetics, 25-99					
88275	A		Cytogenetics, 100-300					
88280	A		Chromosome karyotype study					
88283	A		Chromosome banding study					
88285	A		Chromosome count, additional					
88289	A		Chromosome study, additional					
88291	A		Cyto/molecular report					
88299	X		Cytogenetic study	0342	0.2132	$11.12	$5.88	$2.22
88300	X		Surgical path, gross	0342	0.2132	$11.12	$5.88	$2.22
88302	X		Tissue exam by pathologist	0342	0.2132	$11.12	$5.88	$2.22
88304	X		Tissue exam by pathologist	0343	0.4457	$23.24	$12.55	$4.65
88305	X		Tissue exam by pathologist	0343	0.4457	$23.24	$12.55	$4.65
88307	X		Tissue exam by pathologist	0344	0.6201	$32.34	$17.46	$6.47
88309	X		Tissue exam by pathologist	0344	0.6201	$32.34	$17.46	$6.47
88311	X		Decalcify tissue	0342	0.2132	$11.12	$5.88	$2.22
88312	X		Special stains	0342	0.2132	$11.12	$5.88	$2.22
88313	X		Special stains	0342	0.2132	$11.12	$5.88	$2.22
88314	X		Histochemical stain	0342	0.2132	$11.12	$5.88	$2.22
88318	X		Chemical histochemistry	0342	0.2132	$11.12	$5.88	$2.22
88319	X		Enzyme histochemistry	0342	0.2132	$11.12	$5.88	$2.22
88321	X		Microslide consultation	0342	0.2132	$11.12	$5.88	$2.22
88323	X		Microslide consultation	0343	0.4457	$23.24	$12.55	$4.65
88325	X		Comprehensive review of data	0344	0.6201	$32.34	$17.46	$6.47
88329	X		Path consult introp	0342	0.2132	$11.12	$5.88	$2.22
88331	X		Path consult intraop, 1 bloc	0343	0.4457	$23.24	$12.55	$4.65
88332	X		Path consult intraop, addl	0342	0.2132	$11.12	$5.88	$2.22
88342	X		Immunocytochemistry	0344	0.6201	$32.34	$17.46	$6.47
88346	X		Immunofluorescent study	0343	0.4457	$23.24	$12.55	$4.65
88347	X		Immunofluorescent study	0344	0.6201	$32.34	$17.46	$6.47
88348	X		Electron microscopy	0661	3.5077	$182.93	$100.61	$36.59
88349	X		Scanning electron microscopy	0661	3.5077	$182.93	$100.61	$36.59
88355	X		Analysis, skeletal muscle	0344	0.6201	$32.34	$17.46	$6.47
88356	X		Analysis, nerve	0344	0.6201	$32.34	$17.46	$6.47
88358	X		Analysis, tumor	0344	0.6201	$32.34	$17.46	$6.47
88362	X		Nerve teasing preparations	0343	0.4457	$23.24	$12.55	$4.65
88365	X		Tissue hybridization	0344	0.6201	$32.34	$17.46	$6.47
88371	A		Protein, western blot tissue					
88372	A		Protein analysis w/probe					

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88380	A		Microdissection					
88399	A		Surgical pathology procedure					
88400	A		Bilirubin total transcut					
89050	A		Body fluid cell count					
89051	A		Body fluid cell count					
89055	A	NI	Leukocyte count, fecal					
89060	A		Exam,synovial fluid crystals					
89100	X		Sample intestinal contents	0360	1.6279	$84.90	$42.45	$16.98
89105	X		Sample intestinal contents	0360	1.6279	$84.90	$42.45	$16.98
89125	A		Specimen fat stain					
89130	X		Sample stomach contents	0360	1.6279	$84.90	$42.45	$16.98
89132	X		Sample stomach contents	0360	1.6279	$84.90	$42.45	$16.98
89135	X		Sample stomach contents	0360	1.6279	$84.90	$42.45	$16.98
89136	X		Sample stomach contents	0360	1.6279	$84.90	$42.45	$16.98
89140	X		Sample stomach contents	0360	1.6279	$84.90	$42.45	$16.98
89141	X		Sample stomach contents	0360	1.6279	$84.90	$42.45	$16.98
89160	A		Exam feces for meat fibers					
89190	A		Nasal smear for eosinophils					
89250	X		Fertilization of oocyte	0348	0.5523	$28.80		$5.76
89251	X		Culture oocyte w/embryos	0348	0.5523	$28.80		$5.76
89252	X		Assist oocyte fertilization	0348	0.5523	$28.80		$5.76
89253	X		Embryo hatching	0348	0.5523	$28.80		$5.76
89254	X		Oocyte identification	0348	0.5523	$28.80		$5.76
89255	X		Prepare embryo for transfer	0348	0.5523	$28.80		$5.76
89256	X		Prepare cryopreserved embryo	0348	0.5523	$28.80		$5.76
89257	X		Sperm identification	0348	0.5523	$28.80		$5.76
89258	X		Cryopreservation, embryo	0348	0.5523	$28.80		$5.76
89259	X		Cryopreservation, sperm	0348	0.5523	$28.80		$5.76
89260	X		Sperm isolation, simple	0348	0.5523	$28.80		$5.76
89261	X		Sperm isolation, complex	0348	0.5523	$28.80		$5.76
89264	X		Identify sperm tissue	0348	0.5523	$28.80		$5.76
89300	A		Semen analysis w/huhner					
89310	A		Semen analysis					
89320	A		Semen analysis, complete					
89321	A		Semen analysis & motility					
89325	A		Sperm antibody test					
89329	A		Sperm evaluation test					
89330	A		Evaluation, cervical mucus					
89350	X		Sputum specimen collection	0344	0.6201	$32.34	$17.46	$6.47
89355	A		Exam feces for starch					
89360	X		Collect sweat for test	0344	0.6201	$32.34	$17.46	$6.47
89365	A		Water load test					
89399	A		Pathology lab procedure					
90281	E		Human ig, im					
90283	E		Human ig, iv					
90287	E		Botulinum antitoxin					
90288	E		Botulism ig, iv					
90291	E		Cmv ig, iv					
90296	K		Diphtheria antitoxin	0356	0.7655	$39.92		$7.98
90371	E		Hep b ig, im					
90375	K		Rabies ig, im/sc	0356	0.7655	$39.92		$7.98
90376	K		Rabies ig, heat treated	0356	0.7655	$39.92		$7.98
90378	E		Rsv ig, im, 50mg					
90379	K		Rsv ig, iv	0356	0.7655	$39.92		$7.98
90384	E		Rh ig, full-dose, im					
90385	N		Rh ig, minidose, im					
90386	E		Rh ig, iv					
90389	N		Tetanus ig, im					
90393	N		Vaccina ig, im					
90396	N		Varicella-zoster ig, im					
90399	E		Immune globulin					
90471	N		Immunization admin					
90472	N		Immunization admin, each add					
90473	E		Immune admin oral/nasal					
90474	E		Immune admin oral/nasal addl					

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90476	N		Adenovirus vaccine, type 4					
90477	N		Adenovirus vaccine, type 7					
90581	K		Anthrax vaccine, sc	0356	0.7655	$39.92		$7.98
90585	N		Bcg vaccine, percut					
90586	N		Bcg vaccine, intravesical					
90632	N		Hep a vaccine, adult im					
90633	N		Hep a vacc, ped/adol, 2 dose					
90634	N		Hep a vacc, ped/adol, 3 dose					
90636	K		Hep a/hep b vacc, adult im	0355	0.2132	$11.12		$2.22
90645	N		Hib vaccine, hboc, im					
90646	N		Hib vaccine, prp-d, im					
90647	N		Hib vaccine, prp-omp, im					
90648	N		Hib vaccine, prp-t, im					
90657	L		Flu vaccine, 6-35 mo, im					
90658	L		Flu vaccine, 3 yrs, im					
90659	L		Flu vaccine, whole, im					
90660	E		Flu vaccine, nasal					
90665	N		Lyme disease vaccine, im					
90669	E		Pneumococcal vacc, ped <5					
90675	N		Rabies vaccine, im					
90676	N		Rabies vaccine, id					
90680	N		Rotovirus vaccine, oral					
90690	N		Typhoid vaccine, oral					
90691	N		Typhoid vaccine, im					
90692	N		Typhoid vaccine, h-p, sc/id					
90693	K		Typhoid vaccine, akd, sc	0356	0.7655	$39.92		$7.98
90700	N		Dtap vaccine, im					
90701	N		Dtp vaccine, im					
90702	N		Dt vaccine < 7, im					
90703	N		Tetanus vaccine, im					
90704	N		Mumps vaccine, sc					
90705	N		Measles vaccine, sc					
90706	N		Rubella vaccine, sc					
90707	N		Mmr vaccine, sc					
90708	N		Measles-rubella vaccine, sc					
90709	K	DG	Rubella & mumps vaccine, sc	0356	0.7655	$39.92		$7.98
90710	N		Mmrv vaccine, sc					
90712	N		Oral poliovirus vaccine					
90713	N		Poliovirus, ipv, sc					
90716	N		Chicken pox vaccine, sc					
90717	N		Yellow fever vaccine, sc					
90718	N		Td vaccine > 7, im					
90719	N		Diphtheria vaccine, im					
90720	N		Dtp/hib vaccine, im					
90721	N		Dtap/hib vaccine, im					
90723	K		Dtap-hep b-ipv vaccine, im	0356	0.7655	$39.92		$7.98
90725	N		Cholera vaccine, injectable					
90727	N		Plague vaccine, im					
90732	L		Pneumococcal vaccine					
90733	N		Meningococcal vaccine, sc					
90735	N		Encephalitis vaccine, sc					
90740	E		Hepb vacc, ill pat 3 dose im					
90743	E		Hep b vacc, adol, 2 dose, im					
90744	E		Hepb vacc ped/adol 3 dose im					
90746	E		Hep b vaccine, adult, im					
90747	E		Hepb vacc, ill pat 4 dose im					
90748	E		Hep b/hib vaccine, im					
90749	N		Vaccine toxoid					
90780	E		IV infusion therapy, 1 hour					
90781	E		IV infusion, additional hour					
90782	X		Injection, sc/im	0353	0.3973	$20.72		$4.14
90783	X		Injection, ia	0359	1.1337	$59.12		$11.82
90784	X		Injection, iv	0359	1.1337	$59.12		$11.82
90788	X		Injection of antibiotic	0359	1.1337	$59.12		$11.82
90799	X		Ther/prophylactic/dx inject	0352	0.2229	$11.62		$2.32

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CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
90801	S		Psy dx interview	0323	1.8410	$96.01	$21.26	$19.20
90802	S		Intac psy dx interview	0323	1.8410	$96.01	$21.26	$19.20
90804	S		Psytx, office, 20-30 min	0322	1.3275	$69.23	$12.40	$13.85
90805	S		Psytx, off, 20-30 min w/e&m	0322	1.3275	$69.23	$12.40	$13.85
90806	S		Psytx, off, 45-50 min	0323	1.8410	$96.01	$21.26	$19.20
90807	S		Psytx, off, 45-50 min w/e&m	0323	1.8410	$96.01	$21.26	$19.20
90808	S		Psytx, office, 75-80 min	0323	1.8410	$96.01	$21.26	$19.20
90809	S		Psytx, off, 75-80, w/e&m	0323	1.8410	$96.01	$21.26	$19.20
90810	S		Intac psytx, off, 20-30 min	0322	1.3275	$69.23	$12.40	$13.85
90811	S		Intac psytx, 20-30, w/e&m	0322	1.3275	$69.23	$12.40	$13.85
90812	S		Intac psytx, off, 45-50 min	0323	1.8410	$96.01	$21.26	$19.20
90813	S		Intac psytx, 45-50 min w/e&m	0323	1.8410	$96.01	$21.26	$19.20
90814	S		Intac psytx, off, 75-80 min	0323	1.8410	$96.01	$21.26	$19.20
90815	S		Intac psytx, 75-80 w/e&m	0323	1.8410	$96.01	$21.26	$19.20
90816	S		Psytx, hosp, 20-30 min	0322	1.3275	$69.23	$12.40	$13.85
90817	S		Psytx, hosp, 20-30 min w/e&m	0322	1.3275	$69.23	$12.40	$13.85
90818	S		Psytx, hosp, 45-50 min	0323	1.8410	$96.01	$21.26	$19.20
90819	S		Psytx, hosp, 45-50 min w/e&m	0323	1.8410	$96.01	$21.26	$19.20
90821	S		Psytx, hosp, 75-80 min	0323	1.8410	$96.01	$21.26	$19.20
90822	S		Psytx, hosp, 75-80 min w/e&m	0323	1.8410	$96.01	$21.26	$19.20
90823	S		Intac psytx, hosp, 20-30 min	0322	1.3275	$69.23	$12.40	$13.85
90824	S		Intac psytx, hsp 20-30 w/e&m	0322	1.3275	$69.23	$12.40	$13.85
90826	S		Intac psytx, hosp, 45-50 min	0323	1.8410	$96.01	$21.26	$19.20
90827	S		Intac psytx, hsp 45-50 w/e&m	0323	1.8410	$96.01	$21.26	$19.20
90828	S		Intac psytx, hosp, 75-80 min	0323	1.8410	$96.01	$21.26	$19.20
90829	S		Intac psytx, hsp 75-80 w/e&m	0323	1.8410	$96.01	$21.26	$19.20
90845	S		Psychoanalysis	0323	1.8410	$96.01	$21.26	$19.20
90846	S		Family psytx w/o patient	0324	2.4612	$128.35		$25.67
90847	S		Family psytx w/patient	0324	2.4612	$128.35		$25.67
90849	S		Multiple family group psytx	0325	1.4244	$74.28	$18.27	$14.86
90853	S		Group psychotherapy	0325	1.4244	$74.28	$18.27	$14.86
90857	S		Intac group psytx	0325	1.4244	$74.28	$18.27	$14.86
90862	X		Medication management	0374	1.1434	$59.63	$9.97	$11.93
90865	S		Narcosynthesis	0323	1.8410	$96.01	$21.26	$19.20
90870	S		Electroconvulsive therapy	0320	4.2635	$222.35	$80.06	$44.47
90871	S		Electroconvulsive therapy	0320	4.2635	$222.35	$80.06	$44.47
90875	E		Psychophysiological therapy					
90876	E		Psychophysiological therapy					
90880	S		Hypnotherapy	0323	1.8410	$96.01	$21.26	$19.20
90882	E		Environmental manipulation					
90885	N		Psy evaluation of records					
90887	N		Consultation with family					
90889	N		Preparation of report					
90899	S		Psychiatric service/therapy	0322	1.3275	$69.23	$12.40	$13.85
90901	S		Biofeedback train, any meth	0321	1.2112	$63.17	$21.78	$12.63
90911	S		Biofeedback peri/uro/rectal	0321	1.2112	$63.17	$21.78	$12.63
90918	A		ESRD related services, month					
90919	A		ESRD related services, month					
90920	A		ESRD related services, month					
90921	A		ESRD related services, month					
90922	A		ESRD related services, day					
90923	A		Esrd related services, day					
90924	A		Esrd related services, day					
90925	A		Esrd related services, day					
90935	S		Hemodialysis, one evaluation	0170	4.8352	$252.16		$50.43
90937	E		Hemodialysis, repeated eval					
90939	N		Hemodialysis study, transcut					
90940	N		Hemodialysis access study					
90945	S		Dialysis, one evaluation	0170	4.8352	$252.16		$50.43
90947	E		Dialysis, repeated eval					
90989	E		Dialysis training, complete					
90993	E		Dialysis training, incompl					
90997	E		Hemoperfusion					
90999	E		Dialysis procedure					
91000	X		Esophageal intubation	0361	3.3914	$176.86	$83.23	$35.37

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CPT/HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
91010	X		Esophagus motility study	0361	3.3914	$176.86	$83.23	$35.37
91011	X		Esophagus motility study	0361	3.3914	$176.86	$83.23	$35.37
91012	X		Esophagus motility study	0361	3.3914	$176.86	$83.23	$35.37
91020	X		Gastric motility	0361	3.3914	$176.86	$83.23	$35.37
91030	X		Acid perfusion of esophagus	0361	3.3914	$176.86	$83.23	$35.37
91032	X		Esophagus, acid reflux test	0361	3.3914	$176.86	$83.23	$35.37
91033	X		Prolonged acid reflux test	0361	3.3914	$176.86	$83.23	$35.37
91052	X		Gastric analysis test	0361	3.3914	$176.86	$83.23	$35.37
91055	X		Gastric intubation for smear	0360	1.6279	$84.90	$42.45	$16.98
91060	X		Gastric saline load test	0360	1.6279	$84.90	$42.45	$16.98
91065	X		Breath hydrogen test	0360	1.6279	$84.90	$42.45	$16.98
91100	X		Pass intestine bleeding tube	0360	1.6279	$84.90	$42.45	$16.98
91105	X		Gastric intubation treatment	0360	1.6279	$84.90	$42.45	$16.98
91122	T		Anal pressure record	0156	2.9747	$155.13	$46.55	$31.03
91123	N		Irrigate fecal impaction					
91132	X		Electrogastrography	0360	1.6279	$84.90	$42.45	$16.98
91133	X		Electrogastrography w/test	0360	1.6279	$84.90	$42.45	$16.98
91299	X		Gastroenterology procedure	0360	1.6279	$84.90	$42.45	$16.98
92002	V		Eye exam, new patient	0601	0.9690	$50.53		$10.11
92004	V		Eye exam, new patient	0602	1.4631	$76.30		$15.26
92012	V		Eye exam established pat	0600	0.8430	$43.96		$8.79
92014	V		Eye exam & treatment	0602	1.4631	$76.30		$15.26
92015	E		Refraction					
92018	T		New eye exam & treatment	0699	3.7596	$196.07	$88.23	$39.21
92019	S		Eye exam & treatment	0698	0.9205	$48.00	$18.72	$9.60
92020	S		Special eye evaluation	0230	0.7364	$38.40	$14.97	$7.68
92060	S		Special eye evaluation	0230	0.7364	$38.40	$14.97	$7.68
92065	S		Orthoptic/pleoptic training	0230	0.7364	$38.40	$14.97	$7.68
92070	N		Fitting of contact lens					
92081	S		Visual field examination(s)	0230	0.7364	$38.40	$14.97	$7.68
92082	S		Visual field examination(s)	0698	0.9205	$48.00	$18.72	$9.60
92083	S		Visual field examination(s)	0698	0.9205	$48.00	$18.72	$9.60
92100	N		Serial tonometry exam(s)					
92120	S		Tonography & eye evaluation	0230	0.7364	$38.40	$14.97	$7.68
92130	S		Water provocation tonography	0698	0.9205	$48.00	$18.72	$9.60
92135	S		Opthalmic dx imaging	0230	0.7364	$38.40	$14.97	$7.68
92136	S		Ophthalmic biometry	0230	0.7364	$38.40	$14.97	$7.68
92140	S		Glaucoma provocative tests	0698	0.9205	$48.00	$18.72	$9.60
92225	S		Special eye exam, initial	0698	0.9205	$48.00	$18.72	$9.60
92226	S		Special eye exam, subsequent	0698	0.9205	$48.00	$18.72	$9.60
92230	T		Eye exam with photos	0699	3.7596	$196.07	$88.23	$39.21
92235	T		Eye exam with photos	0699	3.7596	$196.07	$88.23	$39.21
92240	S		Icg angiography	0231	2.1705	$113.19	$50.94	$22.64
92250	S		Eye exam with photos	0230	0.7364	$38.40	$14.97	$7.68
92260	S		Ophthalmoscopy/dynamometry	0230	0.7364	$38.40	$14.97	$7.68
92265	S		Eye muscle evaluation	0231	2.1705	$113.19	$50.94	$22.64
92270	S		Electro-oculography	0698	0.9205	$48.00	$18.72	$9.60
92275	S		Electroretinography	0231	2.1705	$113.19	$50.94	$22.64
92283	S		Color vision examination	0230	0.7364	$38.40	$14.97	$7.68
92284	S		Dark adaptation eye exam	0698	0.9205	$48.00	$18.72	$9.60
92285	S		Eye photography	0230	0.7364	$38.40	$14.97	$7.68
92286	S		Internal eye photography	0698	0.9205	$48.00	$18.72	$9.60
92287	S		Internal eye photography	0231	2.1705	$113.19	$50.94	$22.64
92310	E		Contact lens fitting					
92311	X		Contact lens fitting	0362	2.8391	$148.06		$29.61
92312	X		Contact lens fitting	0362	2.8391	$148.06		$29.61
92313	X		Contact lens fitting	0362	2.8391	$148.06		$29.61
92314	E		Prescription of contact lens					
92315	X		Prescription of contact lens	0362	2.8391	$148.06		$29.61
92316	X		Prescription of contact lens	0362	2.8391	$148.06		$29.61
92317	X		Prescription of contact lens	0362	2.8391	$148.06		$29.61
92325	X		Modification of contact lens	0362	2.8391	$148.06		$29.61
92326	X		Replacement of contact lens	0362	2.8391	$148.06		$29.61
92330	S		Fitting of artificial eye	0230	0.7364	$38.40	$14.97	$7.68
92335	N		Fitting of artificial eye					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

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CPT/HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
92340	E		Fitting of spectacles					
92341	E		Fitting of spectacles					
92342	E		Fitting of spectacles					
92352	X		Special spectacles fitting	0362	2.8391	$148.06		$29.61
92353	X		Special spectacles fitting	0362	2.8391	$148.06		$29.61
92354	X		Special spectacles fitting	0362	2.8391	$148.06		$29.61
92355	X		Special spectacles fitting	0362	2.8391	$148.06		$29.61
92358	X		Eye prosthesis service	0362	2.8391	$148.06		$29.61
92370	E		Repair & adjust spectacles					
92371	X		Repair & adjust spectacles	0362	2.8391	$148.06		$29.61
92390	E		Supply of spectacles					
92391	E		Supply of contact lenses					
92392	E		Supply of low vision aids					
92393	E		Supply of artificial eye					
92395	E		Supply of spectacles					
92396	E		Supply of contact lenses					
92499	S		Eye service or procedure	0230	0.7364	$38.40	$14.97	$7.68
92502	T		Ear and throat examination	0251	1.9089	$99.55		$19.91
92504	N		Ear microscopy examination					
92506	A		Speech/hearing evaluation					
92507	A		Speech/hearing therapy					
92508	A		Speech/hearing therapy					
92510	A		Rehab for ear implant					
92511	T		Nasopharyngoscopy	0071	0.9205	$48.00	$12.89	$9.60
92512	X		Nasal function studies	0363	1.0852	$56.59	$20.94	$11.32
92516	X		Facial nerve function test	0660	1.5891	$82.87	$30.66	$16.57
92520	X		Laryngeal function studies	0660	1.5891	$82.87	$30.66	$16.57
92525	A	DG	Oral function evaluation					
92526	A		Oral function therapy					
92531	N		Spontaneous nystagmus study					
92532	N		Positional nystagmus test					
92533	N		Caloric vestibular test					
92534	N		Optokinetic nystagmus test					
92541	X		Spontaneous nystagmus test	0363	1.0852	$56.59	$20.94	$11.32
92542	X		Positional nystagmus test	0363	1.0852	$56.59	$20.94	$11.32
92543	X		Caloric vestibular test	0660	1.5891	$82.87	$30.66	$16.57
92544	X		Optokinetic nystagmus test	0363	1.0852	$56.59	$20.94	$11.32
92545	X		Oscillating tracking test	0363	1.0852	$56.59	$20.94	$11.32
92546	X		Sinusoidal rotational test	0660	1.5891	$82.87	$30.66	$16.57
92547	X		Supplemental electrical test	0363	1.0852	$56.59	$20.94	$11.32
92548	X		Posturography	0660	1.5891	$82.87	$30.66	$16.57
92551	E		Pure tone hearing test, air					
92552	X		Pure tone audiometry, air	0364	0.4457	$23.24	$9.06	$4.65
92553	X		Audiometry, air & bone	0365	1.2112	$63.17	$18.95	$12.63
92555	X		Speech threshold audiometry	0364	0.4457	$23.24	$9.06	$4.65
92556	X		Speech audiometry, complete	0364	0.4457	$23.24	$9.06	$4.65
92557	X		Comprehensive hearing test	0365	1.2112	$63.17	$18.95	$12.63
92559	E		Group audiometric testing					
92560	E		Bekesy audiometry, screen					
92561	X		Bekesy audiometry, diagnosis	0365	1.2112	$63.17	$18.95	$12.63
92562	X		Loudness balance test	0364	0.4457	$23.24	$9.06	$4.65
92563	X		Tone decay hearing test	0364	0.4457	$23.24	$9.06	$4.65
92564	X		Sisi hearing test	0364	0.4457	$23.24	$9.06	$4.65
92565	X		Stenger test, pure tone	0364	0.4457	$23.24	$9.06	$4.65
92567	X		Tympanometry	0364	0.4457	$23.24	$9.06	$4.65
92568	X		Acoustic reflex testing	0364	0.4457	$23.24	$9.06	$4.65
92569	X		Acoustic reflex decay test	0364	0.4457	$23.24	$9.06	$4.65
92571	X		Filtered speech hearing test	0364	0.4457	$23.24	$9.06	$4.65
92572	X		Staggered spondaic word test	0364	0.4457	$23.24	$9.06	$4.65
92573	X		Lombard test	0364	0.4457	$23.24	$9.06	$4.65
92575	X		Sensorineural acuity test	0365	1.2112	$63.17	$18.95	$12.63
92576	X		Synthetic sentence test	0364	0.4457	$23.24	$9.06	$4.65
92577	X		Stenger test, speech	0365	1.2112	$63.17	$18.95	$12.63
92579	X		Visual audiometry (vra)	0365	1.2112	$63.17	$18.95	$12.63
92582	X		Conditioning play audiometry	0365	1.2112	$63.17	$18.95	$12.63

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued
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CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
92583	X		Select picture audiometry	0364	0.4457	$23.24	$9.06	$4.65
92584	X		Electrocochleography	0660	1.5891	$82.87	$30.66	$16.57
92585	S		Auditor evoke potent, compre	0216	2.8972	$151.09	$67.98	$30.22
92586	S		Auditor evoke potent, limit	0218	1.0077	$52.55		$10.51
92587	X		Evoked auditory test	0363	1.0852	$56.59	$20.94	$11.32
92588	X		Evoked auditory test	0660	1.5891	$82.87	$30.66	$16.57
92589	X		Auditory function test(s)	0364	0.4457	$23.24	$9.06	$4.65
92590	E		Hearing aid exam, one ear					
92591	E		Hearing aid exam, both ears					
92592	E		Hearing aid check, one ear					
92593	E		Hearing aid check, both ears					
92594	E		Electro hearng aid test, one					
92595	E		Electro hearng aid tst, both					
92596	X		Ear protector evaluation	0365	1.2112	$63.17	$18.95	$12.63
92597	E		Voice Prosthetic Evaluation					
92598	E	DG	Voice Prosthetic Modification					
92599	X	DG	ENT procedure/service	0364	0.4457	$23.24	$9.06	$4.65
92601	A	NI	Cochlear implt f/up exam < 7					
92602	A	NI	Reprogram cochlear implt < 7					
92603	A	NI	Cochlear implt f/up exam 7 >					
92604	A	NI	Reprogram cochlear implt 7 >					
92605	A	NI	Eval for nonspeech device rx					
92606	A	NI	Non-speech device service					
92607	A	NI	Ex for speech device rx, 1hr					
92608	A	NI	Ex for speech device rx addl					
92609	A	NI	Use of speech device service					
92610	A	NI	Evaluate swallowing function					
92611	A	NI	Motion fluoroscopy/swallow					
92612	A	NI	Endoscopy swallow tst (fees)					
92613	E	NI	Endoscopy swallow tst (fees)					
92614	A	NI	Laryngoscopic sensory test					
92615	E	NI	Eval laryngoscopy sense tst					
92616	A	NI	Fees w/laryngeal sense test					
92617	E	NI	Interprt fees/laryngeal test					
92700	X	NI	Ent procedure/service	0364	0.4457	$23.24	$9.06	$4.65
92950	S		Heart/lung resuscitation cpr	0094	3.8371	$200.11	$67.63	$40.02
92953	S		Temporary external pacing	0094	3.8371	$200.11	$67.63	$40.02
92960	S		Cardioversion electric, ext	0679	5.4069	$281.98	$95.30	$56.40
92961	S		Cardioversion, electric, int	0679	5.4069	$281.98	$95.30	$56.40
92970	C		Cardioassist, internal					
92971	C		Cardioassist, external					
92973	T		Percut coronary thrombectomy	0973		$250.00		$50.00
92974	T		Cath place, cardio brachytx	0981		$2,250.00		$450.00
92975	C		Dissolve clot, heart vessel					
92977	T		Dissolve clot, heart vessel	0676	4.1278	$215.27	$58.21	$43.05
92978	S		Intravasc us, heart add-on	0670	30.2416	$1,577.13	$571.17	$315.43
92979	S		Intravasc us, heart add-on	0670	30.2416	$1,577.13	$571.17	$315.43
92980	T		Insert intracoronary stent	0104	76.5486	$3,992.09		$798.42
92981	T		Insert intracoronary stent	0104	76.5486	$3,992.09		$798.42
92982	T		Coronary artery dilation	0083	51.9755	$2,710.57		$542.11
92984	T		Coronary artery dilation	0083	51.9755	$2,710.57		$542.11
92986	T		Revision of aortic valve	0083	51.9755	$2,710.57		$542.11
92987	T		Revision of mitral valve	0083	51.9755	$2,710.57		$542.11
92990	T		Revision of pulmonary valve	0083	51.9755	$2,710.57		$542.11
92992	C		Revision of heart chamber					
92993	C		Revision of heart chamber					
92995	T		Coronary atherectomy	0082	86.4321	$4,507.52	$1,293.59	$901.50
92996	T		Coronary atherectomy add-on	0082	86.4321	$4,507.52	$1,293.59	$901.50
92997	T		Pul art balloon repr, percut	0081	43.5067	$2,268.92		$453.78
92998	T		Pul art balloon repr, percut	0081	43.5067	$2,268.92		$453.78
93000	E		Electrocardiogram, complete					
93005	S		Electrocardiogram, tracing	0099	0.3682	$19.20		$3.84
93010	A		Electrocardiogram report					
93012	N		Transmission of ecg					
93014	E		Report on transmitted ecg					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued
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CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
93015	E		Cardiovascular stress test					
93016	E		Cardiovascular stress test					
93017	X		Cardiovascular stress test	0100	1.6085	$83.88	$41.44	$16.78
93018	E		Cardiovascular stress test					
93024	X		Cardiac drug stress test	0100	1.6085	$83.88	$41.44	$16.78
93025	X		Microvolt t-wave assess	0100	1.6085	$83.88	$41.44	$16.78
93040	E		Rhythm ECG with report					
93041	S		Rhythm ECG, tracing	0099	0.3682	$19.20		$3.84
93042	E		Rhythm ECG, report					
93224	E		ECG monitor/report, 24 hrs					
93225	X		ECG monitor/record, 24 hrs	0097	1.0077	$52.55	$23.80	$10.51
93226	X		ECG monitor/report, 24 hrs	0097	1.0077	$52.55	$23.80	$10.51
93227	E		ECG monitor/review, 24 hrs					
93230	E		ECG monitor/report, 24 hrs					
93231	X		Ecg monitor/record, 24 hrs	0097	1.0077	$52.55	$23.80	$10.51
93232	X		ECG monitor/report, 24 hrs	0097	1.0077	$52.55	$23.80	$10.51
93233	E		ECG monitor/review, 24 hrs					
93235	E		ECG monitor/report, 24 hrs					
93236	X		ECG monitor/report, 24 hrs	0097	1.0077	$52.55	$23.80	$10.51
93237	E		ECG monitor/review, 24 hrs					
93268	E		ECG record/review					
93270	X		ECG recording	0097	1.0077	$52.55	$23.80	$10.51
93271	X		Ecg/monitoring and analysis	0097	1.0077	$52.55	$23.80	$10.51
93272	E		Ecg/review, interpret only					
93278	S		ECG/signal-averaged	0099	0.3682	$19.20		$3.84
93303	S		Echo transthoracic	0269	3.2170	$167.77	$87.24	$33.55
93304	S		Echo transthoracic	0697	1.5697	$81.86	$42.57	$16.37
93307	S		Echo exam of heart	0269	3.2170	$167.77	$87.24	$33.55
93308	S		Echo exam of heart	0697	1.5697	$81.86	$42.57	$16.37
93312	S		Echo transesophageal	0270	5.3003	$276.42	$146.79	$55.28
93313	S		Echo transesophageal	0270	5.3003	$276.42	$146.79	$55.28
93314	N		Echo transesophageal					
93315	S		Echo transesophageal	0270	5.3003	$276.42	$146.79	$55.28
93316	S		Echo transesophageal	0270	5.3003	$276.42	$146.79	$55.28
93317	N		Echo transesophageal					
93318	S		Echo transesophageal intraop	0270	5.3003	$276.42	$146.79	$55.28
93320	S		Doppler echo exam, heart	0671	2.3643	$123.30	$64.12	$24.66
93321	S		Doppler echo exam, heart	0697	1.5697	$81.86	$42.57	$16.37
93325	S		Doppler color flow add-on	0697	1.5697	$81.86	$42.57	$16.37
93350	S		Echo transthoracic	0269	3.2170	$167.77	$87.24	$33.55
93501	T		Right heart catheterization	0080	35.2996	$1,840.91	$838.92	$368.18
93503	T		Insert/place heart catheter	0103	11.8408	$617.51	$223.63	$123.50
93505	T		Biopsy of heart lining	0103	11.8408	$617.51	$223.63	$123.50
93508	T		Cath placement, angiography	0080	35.2996	$1,840.91	$838.92	$368.18
93510	T		Left heart catheterization	0080	35.2996	$1,840.91	$838.92	$368.18
93511	T		Left heart catheterization	0080	35.2996	$1,840.91	$838.92	$368.18
93514	T		Left heart catheterization	0080	35.2996	$1,840.91	$838.92	$368.18
93524	T		Left heart catheterization	0080	35.2996	$1,840.91	$838.92	$368.18
93526	T		Rt & Lt heart catheters	0080	35.2996	$1,840.91	$838.92	$368.18
93527	T		Rt & Lt heart catheters	0080	35.2996	$1,840.91	$838.92	$368.18
93528	T		Rt & Lt heart catheters	0080	35.2996	$1,840.91	$838.92	$368.18
93529	T		Rt, lt heart catheterization	0080	35.2996	$1,840.91	$838.92	$368.18
93530	T		Rt heart cath, congenital	0080	35.2996	$1,840.91	$838.92	$368.18
93531	T		R & l heart cath, congenital	0080	35.2996	$1,840.91	$838.92	$368.18
93532	T		R & l heart cath, congenital	0080	35.2996	$1,840.91	$838.92	$368.18
93533	T		R & l heart cath, congenital	0080	35.2996	$1,840.91	$838.92	$368.18
93539	N		Injection, cardiac cath					
93540	N		Injection, cardiac cath					
93541	N		Injection for lung angiogram					
93542	N		Injection for heart x-rays					
93543	N		Injection for heart x-rays					
93544	N		Injection for aortography					
93545	N		Inject for coronary x-rays					
93555	N		Imaging, cardiac cath					
93556	N		Imaging, cardiac cath					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

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CPT/HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
93561	N		Cardiac output measurement					
93562	N		Cardiac output measurement					
93571	N		Heart flow reserve measure					
93572	N		Heart flow reserve measure					
93580	T	NI	Transcath closure of asd	0981		$2,250.00		$450.00
93581	T	NI	Transcath closure of vsd	0981		$2,250.00		$450.00
93600	T		Bundle of His recording	0087	39.3983	$2,054.66		$410.93
93602	T		Intra-atrial recording	0087	39.3983	$2,054.66		$410.93
93603	T		Right ventricular recording	0087	39.3983	$2,054.66		$410.93
93609	T		Map tachycardia, add-on	0087	39.3983	$2,054.66		$410.93
93610	T		Intra-atrial pacing	0087	39.3983	$2,054.66		$410.93
93612	T		Intraventricular pacing	0087	39.3983	$2,054.66		$410.93
93613	T		Electrophys map 3d, add-on	0087	39.3983	$2,054.66		$410.93
93615	T		Esophageal recording	0087	39.3983	$2,054.66		$410.93
93616	T		Esophageal recording	0087	39.3983	$2,054.66		$410.93
93618	T		Heart rhythm pacing	0087	39.3983	$2,054.66		$410.93
93619	T		Electrophysiology evaluation	0085	41.7238	$2,175.94	$480.03	$435.19
93620	T		Electrophysiology evaluation	0085	41.7238	$2,175.94	$480.03	$435.19
93621	T		Electrophysiology evaluation	0085	41.7238	$2,175.94	$480.03	$435.19
93622	T		Electrophysiology evaluation	0085	41.7238	$2,175.94	$480.03	$435.19
93623	T		Stimulation, pacing heart	0087	39.3983	$2,054.66		$410.93
93624	S		Electrophysiologic study	0084	9.3312	$486.63		$97.33
93631	T		Heart pacing, mapping	0087	39.3983	$2,054.66		$410.93
93640	S		Evaluation heart device	0084	9.3312	$486.63		$97.33
93641	S		Electrophysiology evaluation	0084	9.3312	$486.63		$97.33
93642	S		Electrophysiology evaluation	0084	9.3312	$486.63		$97.33
93650	T		Ablate heart dysrhythm focus	0086	52.8282	$2,755.04	$936.35	$551.01
93651	T		Ablate heart dysrhythm focus	0086	52.8282	$2,755.04	$936.35	$551.01
93652	T		Ablate heart dysrhythm focus	0086	52.8282	$2,755.04	$936.35	$551.01
93660	S		Tilt table evaluation	0101	4.2247	$220.32	$105.27	$44.06
93662	S		Intracardiac ecg (ice)	0670	30.2416	$1,577.13	$571.17	$315.43
93668	E		Peripheral vascular rehab					
93701	S		Bioimpedance, thoracic	0099	0.3682	$19.20		$3.84
93720	E		Total body plethysmography					
93721	X		Plethysmography tracing	0368	1.0562	$55.08	$27.55	$11.02
93722	E		Plethysmography report					
93724	S		Analyze pacemaker system	0690	0.4263	$22.23	$10.63	$4.45
93727	S		Analyze ilr system	0690	0.4263	$22.23	$10.63	$4.45
93731	S		Analyze pacemaker system	0690	0.4263	$22.23	$10.63	$4.45
93732	S		Analyze pacemaker system	0690	0.4263	$22.23	$10.63	$4.45
93733	S		Telephone analy, pacemaker	0690	0.4263	$22.23	$10.63	$4.45
93734	S		Analyze pacemaker system	0690	0.4263	$22.23	$10.63	$4.45
93735	S		Analyze pacemaker system	0690	0.4263	$22.23	$10.63	$4.45
93736	S		Telephone analy, pacemaker	0690	0.4263	$22.23	$10.63	$4.45
93740	X		Temperature gradient studies	0367	0.5814	$30.32	$15.16	$6.06
93741	S		Analyze ht pace device sngl	0689	0.5814	$30.32		$6.06
93742	S		Analyze ht pace device sngl	0689	0.5814	$30.32		$6.06
93743	S		Analyze ht pace device dual	0689	0.5814	$30.32		$6.06
93744	S		Analyze ht pace device dual	0689	0.5814	$30.32		$6.06
93760	E		Cephalic thermogram					
93762	E		Peripheral thermogram					
93770	N		Measure venous pressure					
93784	E		Ambulatory BP monitoring					
93786	X		Ambulatory BP recording	0097	1.0077	$52.55	$23.80	$10.51
93788	E		Ambulatory BP analysis					
93790	E		Review/report BP recording					
93797	S		Cardiac rehab	0095	0.6105	$31.84	$16.73	$6.37
93798	S		Cardiac rehab/monitor	0095	0.6105	$31.84	$16.73	$6.37
93799	S		Cardiovascular procedure	0096	1.7054	$88.94	$48.15	$17.79
93875	S		Extracranial study	0096	1.7054	$88.94	$48.15	$17.79
93880	S		Extracranial study	0267	2.4418	$127.34	$65.52	$25.47
93882	S		Extracranial study	0267	2.4418	$127.34	$65.52	$25.47
93886	S		Intracranial study	0267	2.4418	$127.34	$65.52	$25.47
93888	S		Intracranial study	0266	1.5988	$83.38	$45.86	$16.68
93922	S		Extremity study	0096	1.7054	$88.94	$48.15	$17.79

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

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CPT/HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
93923	S		Extremity study	0096	1.7054	$88.94	$48.15	$17.79
93924	S		Extremity study	0096	1.7054	$88.94	$48.15	$17.79
93925	S		Lower extremity study	0267	2.4418	$127.34	$65.52	$25.47
93926	S		Lower extremity study	0267	2.4418	$127.34	$65.52	$25.47
93930	S		Upper extremity study	0267	2.4418	$127.34	$65.52	$25.47
93931	S		Upper extremity study	0266	1.5988	$83.38	$45.86	$16.68
93965	S		Extremity study	0096	1.7054	$88.94	$48.15	$17.79
93970	S		Extremity study	0267	2.4418	$127.34	$65.52	$25.47
93971	S		Extremity study	0267	2.4418	$127.34	$65.52	$25.47
93975	S		Vascular study	0267	2.4418	$127.34	$65.52	$25.47
93976	S		Vascular study	0267	2.4418	$127.34	$65.52	$25.47
93978	S		Vascular study	0267	2.4418	$127.34	$65.52	$25.47
93979	S		Vascular study	0267	2.4418	$127.34	$65.52	$25.47
93980	S		Penile vascular study	0267	2.4418	$127.34	$65.52	$25.47
93981	S		Penile vascular study	0267	2.4418	$127.34	$65.52	$25.47
93990	S		Doppler flow testing	0267	2.4418	$127.34	$65.52	$25.47
94010	X		Breathing capacity test	0368	1.0562	$55.08	$27.55	$11.02
94014	X		Patient recorded spirometry	0367	0.5814	$30.32	$15.16	$6.06
94015	X		Patient recorded spirometry	0367	0.5814	$30.32	$15.16	$6.06
94016	A		Review patient spirometry					
94060	X		Evaluation of wheezing	0368	1.0562	$55.08	$27.55	$11.02
94070	X		Evaluation of wheezing	0369	2.5871	$134.92	$44.18	$26.98
94150	X		Vital capacity test	0367	0.5814	$30.32	$15.16	$6.06
94200	X		Lung function test (MBC/MVV)	0367	0.5814	$30.32	$15.16	$6.06
94240	X		Residual lung capacity	0368	1.0562	$55.08	$27.55	$11.02
94250	X		Expired gas collection	0367	0.5814	$30.32	$15.16	$6.06
94260	X		Thoracic gas volume	0368	1.0562	$55.08	$27.55	$11.02
94350	X		Lung nitrogen washout curve	0368	1.0562	$55.08	$27.55	$11.02
94360	X		Measure airflow resistance	0367	0.5814	$30.32	$15.16	$6.06
94370	X		Breath airway closing volume	0367	0.5814	$30.32	$15.16	$6.06
94375	X		Respiratory flow volume loop	0367	0.5814	$30.32	$15.16	$6.06
94400	X		CO2 breathing response curve	0367	0.5814	$30.32	$15.16	$6.06
94450	X		Hypoxia response curve	0367	0.5814	$30.32	$15.16	$6.06
94620	X		Pulmonary stress test/simple	0368	1.0562	$55.08	$27.55	$11.02
94621	X		Pulm stress test/complex	0369	2.5871	$134.92	$44.18	$26.98
94640	S		Airway inhalation treatment	0077	0.2907	$15.16	$8.34	$3.03
94642	S		Aerosol inhalation treatment	0078	0.6492	$33.86	$14.55	$6.77
94650	S	DG	Pressure breathing (IPPB)	0077	0.2907	$15.16	$8.34	$3.03
94651	S	DG	Pressure breathing (IPPB)	0077	0.2907	$15.16	$8.34	$3.03
94652	C	DG	Pressure breathing (IPPB)					
94656	S		Initial ventilator mgmt	0079	1.6376	$85.40		$17.08
94657	S		Continued ventilator mgmt	0079	1.6376	$85.40		$17.08
94660	S		Pos airway pressure, CPAP	0068	2.0736	$108.14	$59.48	$21.63
94662	S		Neg press ventilation, cnp	0079	1.6376	$85.40		$17.08
94664	S		Aerosol or vapor inhalations	0077	0.2907	$15.16	$8.34	$3.03
94665	S	DG	Aerosol or vapor inhalations	0077	0.2907	$15.16	$8.34	$3.03
94667	S		Chest wall manipulation	0077	0.2907	$15.16	$8.34	$3.03
94668	S		Chest wall manipulation	0077	0.2907	$15.16	$8.34	$3.03
94680	X		Exhaled air analysis, o2	0367	0.5814	$30.32	$15.16	$6.06
94681	X		Exhaled air analysis, o2/co2	0368	1.0562	$55.08	$27.55	$11.02
94690	X		Exhaled air analysis	0367	0.5814	$30.32	$15.16	$6.06
94720	X		Monoxide diffusing capacity	0368	1.0562	$55.08	$27.55	$11.02
94725	X		Membrane diffusion capacity	0368	1.0562	$55.08	$27.55	$11.02
94750	X		Pulmonary compliance study	0367	0.5814	$30.32	$15.16	$6.06
94760	N		Measure blood oxygen level					
94761	N		Measure blood oxygen level					
94762	N		Measure blood oxygen level					
94770	X		Exhaled carbon dioxide test	0367	0.5814	$30.32	$15.16	$6.06
94772	X		Breath recording, infant	0369	2.5871	$134.92	$44.18	$26.98
94799	X		Pulmonary service/procedure	0367	0.5814	$30.32	$15.16	$6.06
95004	X		Percut allergy skin tests	0370	0.7752	$40.43	$11.58	$8.09
95010	X		Percut allergy titrate test	0370	0.7752	$40.43	$11.58	$8.09
95015	X		Id allergy titrate-drug/bug	0370	0.7752	$40.43	$11.58	$8.09
95024	X		Id allergy test, drug/bug	0370	0.7752	$40.43	$11.58	$8.09
95027	X		Skin end point titration	0370	0.7752	$40.43	$11.58	$8.09

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued
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CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
95028	X		Id allergy test-delayed type	0370	0.7752	$40.43	$11.58	$8.09
95044	X		Allergy patch tests	0370	0.7752	$40.43	$11.58	$8.09
95052	X		Photo patch test	0370	0.7752	$40.43	$11.58	$8.09
95056	X		Photosensitivity tests	0370	0.7752	$40.43	$11.58	$8.09
95060	X		Eye allergy tests	0370	0.7752	$40.43	$11.58	$8.09
95065	X		Nose allergy test	0370	0.7752	$40.43	$11.58	$8.09
95070	X		Bronchial allergy tests	0369	2.5871	$134.92	$44.18	$26.98
95071	X		Bronchial allergy tests	0369	2.5871	$134.92	$44.18	$26.98
95075	X		Ingestion challenge test	0361	3.3914	$176.86	$83.23	$35.37
95078	X		Provocative testing	0370	0.7752	$40.43	$11.58	$8.09
95115	X		Immunotherapy, one injection	0352	0.2229	$11.62		$2.32
95117	X		Immunotherapy injections	0353	0.3973	$20.72		$4.14
95120	E		Immunotherapy, one injection					
95125	E		Immunotherapy, many antigens					
95130	E		Immunotherapy, insect venom					
95131	E		Immunotherapy, insect venoms					
95132	E		Immunotherapy, insect venoms					
95133	E		Immunotherapy, insect venoms					
95134	E		Immunotherapy, insect venoms					
95144	X		Antigen therapy services	0371	0.5039	$26.28		$5.26
95145	X		Antigen therapy services	0371	0.5039	$26.28		$5.26
95146	X		Antigen therapy services	0371	0.5039	$26.28		$5.26
95147	X		Antigen therapy services	0371	0.5039	$26.28		$5.26
95148	X		Antigen therapy services	0371	0.5039	$26.28		$5.26
95149	X		Antigen therapy services	0371	0.5039	$26.28		$5.26
95165	X		Antigen therapy services	0371	0.5039	$26.28		$5.26
95170	X		Antigen therapy services	0371	0.5039	$26.28		$5.26
95180	X		Rapid desensitization	0370	0.7752	$40.43	$11.58	$8.09
95199	X		Allergy immunology services	0370	0.7752	$40.43	$11.58	$8.09
95250	T		Glucose monitoring, cont	0972		$150.00		$30.00
95805	S		Multiple sleep latency test	0209	11.3369	$591.23	$280.58	$118.25
95806	S		Sleep study, unattended	0213	3.2557	$169.79	$70.41	$33.96
95807	S		Sleep study, attended	0209	11.3369	$591.23	$280.58	$118.25
95808	S		Polysomnography, 1-3	0209	11.3369	$591.23	$280.58	$118.25
95810	S		Polysomnography, 4 or more	0209	11.3369	$591.23	$280.58	$118.25
95811	S		Polysomnography w/cpap	0209	11.3369	$591.23	$280.58	$118.25
95812	S		Electroencephalogram (EEG)	0213	3.2557	$169.79	$70.41	$33.96
95813	S		Eeg, over 1 hour	0213	3.2557	$169.79	$70.41	$33.96
95816	S		Electroencephalogram (EEG)	0214	2.2286	$116.22	$58.12	$23.24
95819	S		Electroencephalogram (EEG)	0214	2.2286	$116.22	$58.12	$23.24
95822	S		Sleep electroencephalogram	0214	2.2286	$116.22	$58.12	$23.24
95824	S		Eeg, cerebral death only	0214	2.2286	$116.22	$58.12	$23.24
95827	S		Night electroencephalogram	0209	11.3369	$591.23	$280.58	$118.25
95829	S		Surgery electrocorticogram	0214	2.2286	$116.22	$58.12	$23.24
95830	E		Insert electrodes for EEG					
95831	N		Limb muscle testing, manual					
95832	N		Hand muscle testing, manual					
95833	N		Body muscle testing, manual					
95834	N		Body muscle testing, manual					
95851	N		Range of motion measurements					
95852	N		Range of motion measurements					
95857	S		Tensilon test	0218	1.0077	$52.55		$10.51
95858	S		Tensilon test & myogram	0218	1.0077	$52.55		$10.51
95860	S		Muscle test, one limb	0218	1.0077	$52.55		$10.51
95861	S		Muscle test, 2 limbs	0218	1.0077	$52.55		$10.51
95863	S		Muscle test, 3 limbs	0218	1.0077	$52.55		$10.51
95864	S		Muscle test, 4 limbs	0218	1.0077	$52.55		$10.51
95867	S		Muscle test, head or neck	0218	1.0077	$52.55		$10.51
95868	S		Muscle test cran nerve bilat	0218	1.0077	$52.55		$10.51
95869	S		Muscle test, thor paraspinal	0215	0.5814	$30.32	$15.76	$6.06
95870	S		Muscle test, nonparaspinal	0218	1.0077	$52.55		$10.51
95872	S		Muscle test, one fiber	0218	1.0077	$52.55		$10.51
95875	S		Limb exercise test	0215	0.5814	$30.32	$15.76	$6.06
95900	S		Motor nerve conduction test	0218	1.0077	$52.55		$10.51
95903	S		Motor nerve conduction test	0218	1.0077	$52.55		$10.51

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued
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CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
95904	S		Sense nerve conduction test	0215	0.5814	$30.32	$15.76	$6.06
95920	S		Intraop nerve test add-on	0216	2.8972	$151.09	$67.98	$30.22
95921	S		Autonomic nerv function test	0218	1.0077	$52.55		$10.51
95922	S		Autonomic nerv function test	0218	1.0077	$52.55		$10.51
95923	S		Autonomic nerv function test	0215	0.5814	$30.32	$15.76	$6.06
95925	S		Somatosensory testing	0216	2.8972	$151.09	$67.98	$30.22
95926	S		Somatosensory testing	0216	2.8972	$151.09	$67.98	$30.22
95927	S		Somatosensory testing	0216	2.8972	$151.09	$67.98	$30.22
95930	S		Visual evoked potential test	0218	1.0077	$52.55		$10.51
95933	S		Blink reflex test	0215	0.5814	$30.32	$15.76	$6.06
95934	S		H-reflex test	0215	0.5814	$30.32	$15.76	$6.06
95936	S		H-reflex test	0215	0.5814	$30.32	$15.76	$6.06
95937	S		Neuromuscular junction test	0218	1.0077	$52.55		$10.51
95950	S		Ambulatory eeg monitoring	0213	3.2557	$169.79	$70.41	$33.96
95951	S		EEG monitoring/videorecord	0209	11.3369	$591.23	$280.58	$118.25
95953	S		EEG monitoring/computer	0209	11.3369	$591.23	$280.58	$118.25
95954	S		EEG monitoring/giving drugs	0214	2.2286	$116.22	$58.12	$23.24
95955	S		EEG during surgery	0214	2.2286	$116.22	$58.12	$23.24
95956	S		Eeg monitoring, cable/radio	0214	2.2286	$116.22	$58.12	$23.24
95957	S		EEG digital analysis	0214	2.2286	$116.22	$58.12	$23.24
95958	S		EEG monitoring/function test	0213	3.2557	$169.79	$70.41	$33.96
95961	S		Electrode stimulation, brain	0216	2.8972	$151.09	$67.98	$30.22
95962	S		Electrode stim, brain add-on	0216	2.8972	$151.09	$67.98	$30.22
95965	S		Meg, spontaneous	0717		$2,250.00		$450.00
95966	S		Meg, evoked, single	0714		$1,375.00		$275.00
95967	S		Meg, evoked, each addl	0712		$875.00		$175.00
95970	S		Analyze neurostim, no prog	0692	6.2595	$326.44	$179.54	$65.29
95971	S		Analyze neurostim, simple	0692	6.2595	$326.44	$179.54	$65.29
95972	S		Analyze neurostim, complex	0692	6.2595	$326.44	$179.54	$65.29
95973	S		Analyze neurostim, complex	0692	6.2595	$326.44	$179.54	$65.29
95974	S		Cranial neurostim, complex	0692	6.2595	$326.44	$179.54	$65.29
95975	S		Cranial neurostim, complex	0692	6.2595	$326.44	$179.54	$65.29
95990	T	NI	Spin/brain pump refil & main	0125	2.0639	$107.63		$21.53
95999	S		Neurological procedure	0215	0.5814	$30.32	$15.76	$6.06
96000	S		Motion analysis, video/3d	0708		$150.00		$30.00
96001	S		Motion test w/ft press meas	0708		$150.00		$30.00
96002	S		Dynamic surface emg	0708		$150.00		$30.00
96003	S		Dynamic fine wire emg	0708		$150.00		$30.00
96004	E		Phys review of motion tests					
96100	X		Psychological testing	0373	2.2577	$117.74		$23.55
96105	X		Assessment of aphasia	0373	2.2577	$117.74		$23.55
96110	X		Developmental test, lim	0373	2.2577	$117.74		$23.55
96111	X		Developmental test, extend	0373	2.2577	$117.74		$23.55
96115	X		Neurobehavior status exam	0373	2.2577	$117.74		$23.55
96117	X		Neuropsych test battery	0373	2.2577	$117.74		$23.55
96150	S		Assess lth/behave, init	0322	1.3275	$69.23	$12.40	$13.85
96151	S		Assess hlth/behave, subseq	0322	1.3275	$69.23	$12.40	$13.85
96152	S		Intervene hlth/behave, indiv	0322	1.3275	$69.23	$12.40	$13.85
96153	S		Intervene hlth/behave, group	0322	1.3275	$69.23	$12.40	$13.85
96154	S		Interv hlth/behav, fam w/pt	0322	1.3275	$69.23	$12.40	$13.85
96155	S		Interv hlth/behav fam no pt	0322	1.3275	$69.23	$12.40	$13.85
96400	E		Chemotherapy, sc/im					
96405	E		Intralesional chemo admin					
96406	E		Intralesional chemo admin					
96408	E		Chemotherapy, push technique					
96410	E		Chemotherapy,infusion method					
96412	E		Chemo, infuse method add-on					
96414	E		Chemo, infuse method add-on					
96420	E		Chemotherapy, push technique					
96422	E		Chemotherapy,infusion method					
96423	E		Chemo, infuse method add-on					
96425	E		Chemotherapy,infusion method					
96440	E		Chemotherapy, intracavitary					
96445	E		Chemotherapy, intracavitary					
96450	E		Chemotherapy, into CNS					

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CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
96520	T		Port pump refill & main	0125	2.0639	$107.63		$21.53
96530	T		Pump refilling, maintenance	0125	2.0639	$107.63		$21.53
96542	E		Chemotherapy injection					
96545	E		Provide chemotherapy agent					
96549	E		Chemotherapy, unspecified					
96567	T		Photodynamic tx, skin	0972		$150.00		$30.00
96570	T		Photodynamic tx, 30 min	0973		$250.00		$50.00
96571	T		Photodynamic tx, addl 15 min	0973		$250.00		$50.00
96900	S		Ultraviolet light therapy	0001	0.3779	$19.71	$7.09	$3.94
96902	N		Trichogram					
96910	S		Photochemotherapy with UV-B	0001	0.3779	$19.71	$7.09	$3.94
96912	S		Photochemotherapy with UV-A	0001	0.3779	$19.71	$7.09	$3.94
96913	S		Photochemotherapy, UV-A or B	0683	1.8992	$99.05	$35.65	$19.81
96920	T	NI	Laser tx, skin < 250 sq cm	0012	0.7849	$40.93	$11.18	$8.19
96921	T	NI	Laser tx, skin 250-500 sq cm	0012	0.7849	$40.93	$11.18	$8.19
96922	T	NI	Laser tx, skin > 500 sq cm	0013	1.0756	$56.09	$14.20	$11.22
96999	T		Dermatological procedure	0010	0.6589	$34.36	$10.08	$6.87
97001	A		Pt evaluation					
97002	A		Pt re-evaluation					
97003	A		Ot evaluation					
97004	A		Ot re-evaluation					
97005	E		Athletic train eval					
97006	E		Athletic train reeval					
97010	A		Hot or cold packs therapy					
97012	A		Mechanical traction therapy					
97014	A		Electric stimulation therapy					
97016	A		Vasopneumatic device therapy					
97018	A		Paraffin bath therapy					
97020	A		Microwave therapy					
97022	A		Whirlpool therapy					
97024	A		Diathermy treatment					
97026	A		Infrared therapy					
97028	A		Ultraviolet therapy					
97032	A		Electrical stimulation					
97033	A		Electric current therapy					
97034	A		Contrast bath therapy					
97035	A		Ultrasound therapy					
97036	A		Hydrotherapy					
97039	A		Physical therapy treatment					
97110	A		Therapeutic exercises					
97112	A		Neuromuscular reeducation					
97113	A		Aquatic therapy/exercises					
97116	A		Gait training therapy					
97124	A		Massage therapy					
97139	A		Physical medicine procedure					
97140	A		Manual therapy					
97150	A		Group therapeutic procedures					
97504	A		Orthotic training					
97520	A		Prosthetic training					
97530	A		Therapeutic activities					
97532	A		Cognitive skills development					
97533	A		Sensory integration					
97535	A		Self care mngment training					
97537	A		Community/work reintegration					
97542	A		Wheelchair mngment training					
97545	A		Work hardening					
97546	A		Work hardening add-on					
97601	A		Wound(s) care, selective					
97602	N		Wound(s) care non-selective					
97703	A		Prosthetic checkout					
97750	A		Physical performance test					
97780	E		Acupuncture w/o stimul					
97781	E		Acupuncture w/stimul					
97799	A		Physical medicine procedure					
97802	A		Medical nutrition, indiv, in					

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97803	A		Med nutrition, indiv, subseq					
97804	A		Medical nutrition, group					
98925	S		Osteopathic manipulation	0060	0.3294	$17.18		$3.44
98926	S		Osteopathic manipulation	0060	0.3294	$17.18		$3.44
98927	S		Osteopathic manipulation	0060	0.3294	$17.18		$3.44
98928	S		Osteopathic manipulation	0060	0.3294	$17.18		$3.44
98929	S		Osteopathic manipulation	0060	0.3294	$17.18		$3.44
98940	S		Chiropractic manipulation	0060	0.3294	$17.18		$3.44
98941	S		Chiropractic manipulation	0060	0.3294	$17.18		$3.44
98942	S		Chiropractic manipulation	0060	0.3294	$17.18		$3.44
98943	E		Chiropractic manipulation					
99000	E		Specimen handling					
99001	E		Specimen handling					
99002	E		Device handling					
99024	E		Postop follow-up visit					
99025	E		Initial surgical evaluation					
99026	E	NI	In-hospital on call service					
99027	E	NI	Out-of-hosp on call service					
99050	E		Medical services after hrs					
99052	E		Medical services at night					
99054	E		Medical servcs, unusual hrs					
99056	E		Non-office medical services					
99058	E		Office emergency care					
99070	E		Special supplies					
99071	E		Patient education materials					
99075	E		Medical testimony					
99078	N		Group health education					
99080	E		Special reports or forms					
99082	E		Unusual physician travel					
99090	E		Computer data analysis					
99091	E		Collect/review data from pt					
99100	E		Special anesthesia service					
99116	E		Anesthesia with hypothermia					
99135	E		Special anesthesia procedure					
99140	E		Emergency anesthesia					
99141	N		Sedation, iv/im or inhalant					
99142	N		Sedation, oral/rectal/nasal					
99170	T		Anogenital exam, child	0191	0.2035	$10.61	$3.08	$2.12
99172	E		Ocular function screen					
99173	E		Visual acuity screen					
99175	N		Induction of vomiting					
99183	E		Hyperbaric oxygen therapy					
99185	N		Regional hypothermia					
99186	N		Total body hypothermia					
99190	C		Special pump services					
99191	C		Special pump services					
99192	C		Special pump services					
99195	X		Phlebotomy	0372	0.5329	$27.79	$10.09	$5.56
99199	E		Special service/proc/report					
99201	V		Office/outpatient visit, new	0600	0.8430	$43.96		$8.79
99202	V		Office/outpatient visit, new	0600	0.8430	$43.96		$8.79
99203	V		Office/outpatient visit, new	0601	0.9690	$50.53		$10.11
99204	V		Office/outpatient visit, new	0602	1.4631	$76.30		$15.26
99205	V		Office/outpatient visit, new	0602	1.4631	$76.30		$15.26
99211	V		Office/outpatient visit, est	0600	0.8430	$43.96		$8.79
99212	V		Office/outpatient visit, est	0600	0.8430	$43.96		$8.79
99213	V		Office/outpatient visit, est	0601	0.9690	$50.53		$10.11
99214	V		Office/outpatient visit, est	0602	1.4631	$76.30		$15.26
99215	V		Office/outpatient visit, est	0602	1.4631	$76.30		$15.26
99217	N		Observation care discharge					
99218	N		Observation care					
99219	N		Observation care					
99220	N		Observation care					
99221	E		Initial hospital care					
99222	E		Initial hospital care					

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99223	E		Initial hospital care					
99231	E		Subsequent hospital care					
99232	E		Subsequent hospital care					
99233	E		Subsequent hospital care					
99234	N		Observ/hosp same date					
99235	N		Observ/hosp same date					
99236	N		Observ/hosp same date					
99238	E		Hospital discharge day					
99239	E		Hospital discharge day					
99241	V		Office consultation	0600	0.8430	$43.96		$8.79
99242	V		Office consultation	0600	0.8430	$43.96		$8.79
99243	V		Office consultation	0601	0.9690	$50.53		$10.11
99244	V		Office consultation	0602	1.4631	$76.30		$15.26
99245	V		Office consultation	0602	1.4631	$76.30		$15.26
99251	C		Initial inpatient consult					
99252	C		Initial inpatient consult					
99253	C		Initial inpatient consult					
99254	C		Initial inpatient consult					
99255	C		Initial inpatient consult					
99261	C		Follow-up inpatient consult					
99262	C		Follow-up inpatient consult					
99263	C		Follow-up inpatient consult					
99271	V		Confirmatory consultation	0600	0.8430	$43.96		$8.79
99272	V		Confirmatory consultation	0600	0.8430	$43.96		$8.79
99273	V		Confirmatory consultation	0601	0.9690	$50.53		$10.11
99274	V		Confirmatory consultation	0602	1.4631	$76.30		$15.26
99275	V		Confirmatory consultation	0602	1.4631	$76.30		$15.26
99281	V		Emergency dept visit	0610	1.4147	$73.78	$19.57	$14.76
99282	V		Emergency dept visit	0610	1.4147	$73.78	$19.57	$14.76
99283	V		Emergency dept visit	0611	2.5290	$131.89	$36.47	$26.38
99284	V		Emergency dept visit	0612	4.3410	$226.39	$54.14	$45.28
99285	V		Emergency dept visit	0612	4.3410	$226.39	$54.14	$45.28
99288	E		Direct advanced life support					
99289	N		Pt transport, 30-74 min					
99290	N		Pt transport, addl 30 min					
99291	S		Critical care, first hour	0620	9.9610	$519.48	$150.55	$103.90
99292	N		Critical care, addl 30 min					
99293	C	NI	Ped critical care, initial					
99294	C	NI	Ped critical care, subseq					
99295	C		Neonatal critical care					
99296	C		Neonatal critical care					
99297	C	DG	Neonatal critical care					
99298	C		Neonatal critical care					
99299	C	NI	Ic, lbw infant 1500-2500 gm					
99301	E		Nursing facility care					
99302	E		Nursing facility care					
99303	E		Nursing facility care					
99311	E		Nursing fac care, subseq					
99312	E		Nursing fac care, subseq					
99313	E		Nursing fac care, subseq					
99315	E		Nursing fac discharge day					
99316	E		Nursing fac discharge day					
99321	E		Rest home visit, new patient					
99322	E		Rest home visit, new patient					
99323	E		Rest home visit, new patient					
99331	E		Rest home visit, est pat					
99332	E		Rest home visit, est pat					
99333	E		Rest home visit, est pat					
99341	E		Home visit, new patient					
99342	E		Home visit, new patient					
99343	E		Home visit, new patient					
99344	E		Home visit, new patient					
99345	E		Home visit, new patient					
99347	E		Home visit, est patient					
99348	E		Home visit, est patient					

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99349	E		Home visit, est patient					
99350	E		Home visit, est patient					
99354	N		Prolonged service, office					
99355	N		Prolonged service, office					
99356	C		Prolonged service, inpatient					
99357	C		Prolonged service, inpatient					
99358	N		Prolonged serv, w/o contact					
99359	N		Prolonged serv, w/o contact					
99360	E		Physician standby services					
99361	E		Physician/team conference					
99362	E		Physician/team conference					
99371	E		Physician phone consultation					
99372	E		Physician phone consultation					
99373	E		Physician phone consultation					
99374	E		Home health care supervision					
99377	E		Hospice care supervision					
99379	E		Nursing fac care supervision					
99380	E		Nursing fac care supervision					
99381	E		Prev visit, new, infant					
99382	E		Prev visit, new, age 1-4					
99383	E		Prev visit, new, age 5-11					
99384	E		Prev visit, new, age 12-17					
99385	E		Prev visit, new, age 18-39					
99386	E		Prev visit, new, age 40-64					
99387	E		Prev visit, new, 65 & over					
99391	E		Prev visit, est, infant					
99392	E		Prev visit, est, age 1-4					
99393	E		Prev visit, est, age 5-11					
99394	E		Prev visit, est, age 12-17					
99395	E		Prev visit, est, age 18-39					
99396	E		Prev visit, est, age 40-64					
99397	E		Prev visit, est, 65 & over					
99401	E		Preventive counseling, indiv					
99402	E		Preventive counseling, indiv					
99403	E		Preventive counseling, indiv					
99404	E		Preventive counseling, indiv					
99411	E		Preventive counseling, group					
99412	E		Preventive counseling, group					
99420	E		Health risk assessment test					
99429	E		Unlisted preventive service					
99431	V		Initial care, normal newborn	0600	0.8430	$43.96		$8.79
99432	N		Newborn care, not in hosp					
99433	C		Normal newborn care/hospital					
99435	E		Newborn discharge day hosp					
99436	N		Attendance, birth					
99440	S		Newborn resuscitation	0094	3.8371	$200.11	$67.63	$40.02
99450	E		Life/disability evaluation					
99455	E		Disability examination					
99456	E		Disability examination					
99499	E		Unlisted e&m service					
99500	E		Home visit, prenatal					
99501	E		Home visit, postnatal					
99502	E		Home visit, nb care					
99503	E		Home visit, resp therapy					
99504	E		Home visit mech ventilator					
99505	E		Home visit, stoma care					
99506	E		Home visit, im injection					
99507	E		Home visit, cath maintain					
99508	E	DG	Home visit, sleep studies					
99509	E		Home visit day life activity					
99510	E		Home visit, sing/m/fam couns					
99511	E		Home visit, fecal/enema mgmt					
99512	E		Home visit, hemodialysis					
99539	E	DG	Home visit, nos					
99551	E		Home infus, pain mgmt, iv/sc					

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99552	E		Hm infus pain mgmt, epid/ith					
99553	E		Home infuse, tocolytic tx					
99554	E		Home infus, hormone/platelet					
99555	E		Home infuse, chemotheraphy					
99556	E		Home infus, antibio/fung/vir					
99557	E		Home infuse, anticoagulant					
99558	E		Home infuse, immunotherapy					
99559	E		Home infus, periton dialysis					
99560	E		Home infus, entero nutrition					
99561	E		Home infuse, hydration tx					
99562	E		Home infus, parent nutrition					
99563	E		Home admin, pentamidine					
99564	E		Hme infus, antihemophil agnt					
99565	E		Home infus, proteinase inhib					
99566	E		Home infuse, iv therapy					
99567	E		Home infuse, sympath agent					
99568	E		Home infus, misc drug, daily					
99569	E		Home infuse, each addl tx					
99600	E	NI	Home visit nos					
A0021	E		Outside state ambulance serv					
A0080	E		Noninterest escort in non er					
A0090	E		Interest escort in non er					
A0100	E		Nonemergency transport taxi					
A0110	E		Nonemergency transport bus					
A0120	E		Noner transport mini-bus					
A0130	E		Noner transport wheelch van					
A0140	E		Nonemergency transport air					
A0160	E		Noner transport case worker					
A0170	E		Noner transport parking fees					
A0180	E		Noner transport lodgng recip					
A0190	E		Noner transport meals recip					
A0200	E		Noner transport lodgng escrt					
A0210	E		Noner transport meals escort					
A0225	A		Neonatal emergency transport					
A0380	A		Basic life support mileage					
A0382	A		Basic support routine suppls					
A0384	A		Bls defibrillation supplies					
A0390	A		Advanced life support mileag					
A0392	A		Als defibrillation supplies					
A0394	A		Als IV drug therapy supplies					
A0396	A		Als esophageal intub suppls					
A0398	A		Als routine disposble suppls					
A0420	A		Ambulance waiting 1/2 hr					
A0422	A		Ambulance 02 life sustaining					
A0424	A		Extra ambulance attendant					
A0425	A		Ground mileage					
A0426	A		Als 1					
A0427	A		ALS1-emergency					
A0428	A		bls					
A0429	A		BLS-emergency					
A0430	A		Fixed wing air transport					
A0431	A		Rotary wing air transport					
A0432	A		PI volunteer ambulance co					
A0433	A		als 2					
A0434	A		Specialty care transport					
A0435	A		Fixed wing air mileage					
A0436	A		Rotary wing air mileage					
A0888	E		Noncovered ambulance mileage					
A0999	A		Unlisted ambulance service					
A4206	A		1 CC sterile syringe&needle					
A4207	A		2 CC sterile syringe&needle					
A4208	A		3 CC sterile syringe&needle					
A4209	E		5+ CC sterile syringe&needle					
A4210	E		Nonneedle injection device					
A4211	E		Supp for self-adm injections					

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CPT/HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
A4212	E		Non coring needle or stylet					
A4213	E		20+ CC syringe only					
A4214	A		30 CC sterile water/saline					
A4215	E		Sterile needle					
A4220	A		Infusion pump refill kit					
A4221	A		Maint drug infus cath per wk					
A4222	A		Drug infusion pump supplies					
A4230	A		Infus insulin pump non needl					
A4231	A		Infusion insulin pump needle					
A4232	A		Syringe w/needle insulin 3cc					
A4244	E		Alcohol or peroxide per pint					
A4245	E		Alcohol wipes per box					
A4246	E		Betadine/phisohex solution					
A4247	E		Betadine/iodine swabs/wipes					
A4250	E		Urine reagent strips/tablets					
A4253	A		Blood glucose/reagent strips					
A4254	A		Battery for glucose monitor					
A4255	A		Glucose monitor platforms					
A4256	A		Calibrator solution/chips					
A4257	A		Replace Lensshield Cartridge					
A4258	A		Lancet device each					
A4259	A		Lancets per box					
A4260	E		Levonorgestrel implant					
A4261	E		Cervical cap contraceptive					
A4262	N		Temporary tear duct plug					
A4263	N		Permanent tear duct plug					
A4265	A		Paraffin					
A4266	E	NI	Diaphragm					
A4267	E	NI	Male condom					
A4268	E	NI	Female condom					
A4269	E	NI	Spermicide					
A4270	A		Disposable endoscope sheath					
A4280	A		Brst prsths adhsv attchmnt					
A4281	E	NI	Replacement breastpump tube					
A4282	E	NI	Replacement breastpump adpt					
A4283	E	NI	Replacement breastpump cap					
A4284	E	NI	Replcmnt breast pump shield					
A4285	E	NI	Replcmnt breast pump bottle					
A4286	E	NI	Replcmnt breastpump lok ring					
A4290	E		Sacral nerve stim test lead					
A4300	N		Cath impl vasc access portal					
A4301	N		Implantable access syst perc					
A4305	A		Drug delivery system >=50 ML					
A4306	A		Drug delivery system <=5 ML					
A4310	A		Insert tray w/o bag/cath					
A4311	A		Catheter w/o bag 2-way latex					
A4312	A		Cath w/o bag 2-way silicone					
A4313	A		Catheter w/bag 3-way					
A4314	A		Cath w/drainage 2-way latex					
A4315	A		Cath w/drainage 2-way silcne					
A4316	A		Cath w/drainage 3-way					
A4319	A		Sterile H2O irrigation solut					
A4320	A		Irrigation tray					
A4321	A		Cath therapeutic irrig agent					
A4322	A		Irrigation syringe					
A4323	A		Saline irrigation solution					
A4324	A		Male ext cath w/adh coating					
A4325	A		Male ext cath w/adh strip					
A4326	A		Male external catheter					
A4327	A		Fem urinary collect dev cup					
A4328	A		Fem urinary collect pouch					
A4330	A		Stool collection pouch					
A4331	A		Extension drainage tubing					
A4332	A		Lubricant for cath insertion					
A4333	A		Urinary cath anchor device					

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CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
A4334	A		Urinary cath leg strap					
A4335	A		Incontinence supply					
A4338	A		Indwelling catheter latex					
A4340	A		Indwelling catheter special					
A4344	A		Cath indw foley 2 way silicn					
A4346	A		Cath indw foley 3 way					
A4347	A		Male external catheter					
A4348	A		Male ext cath extended wear					
A4351	A		Straight tip urine catheter					
A4352	A		Coude tip urinary catheter					
A4353	A		Intermittent urinary cath					
A4354	A		Cath insertion tray w/bag					
A4355	A		Bladder irrigation tubing					
A4356	A		Ext ureth clmp or compr dvc					
A4357	A		Bedside drainage bag					
A4358	A		Urinary leg or abdomen bag					
A4359	A		Urinary suspensory w/o leg b					
A4360	A	DG	Adult incontinence garment					
A4361	A		Ostomy face plate					
A4362	A		Solid skin barrier					
A4364	A		Adhesive, liquid or equal					
A4365	A		Adhesive remover wipes					
A4367	A		Ostomy belt					
A4368	A		Ostomy filter					
A4369	A		Skin barrier liquid per oz					
A4370	A	DG	Skin barrier paste per oz					
A4371	A		Skin barrier powder per oz					
A4372	A		Skin barrier solid 4x4 equiv					
A4373	A		Skin barrier with flange					
A4374	A	DG	Skin barrier extended wear					
A4375	A		Drainable plastic pch w fcpl					
A4376	A		Drainable rubber pch w fcplt					
A4377	A		Drainable plstic pch w/o fp					
A4378	A		Drainable rubber pch w/o fp					
A4379	A		Urinary plastic pouch w fcpl					
A4380	A		Urinary rubber pouch w fcplt					
A4381	A		Urinary plastic pouch w/o fp					
A4382	A		Urinary hvy plstc pch w/o fp					
A4383	A		Urinary rubber pouch w/o fp					
A4384	A		Ostomy faceplt/silicone ring					
A4385	A		Ost skn barrier sld ext wear					
A4386	A	DG	Ost skn barrier w flng ex wr					
A4387	A		Ost clsd pouch w att st barr					
A4388	A		Drainable pch w ex wear barr					
A4389	A		Drainable pch w st wear barr					
A4390	A		Drainable pch ex wear convex					
A4391	A		Urinary pouch w ex wear barr					
A4392	A		Urinary pouch w st wear barr					
A4393	A		Urine pch w ex wear bar conv					
A4394	A		Ostomy pouch liq deodorant					
A4395	A		Ostomy pouch solid deodorant					
A4396	A		Peristomal hernia supprt blt					
A4397	A		Irrigation supply sleeve					
A4398	A		Ostomy irrigation bag					
A4399	A		Ostomy irrig cone/cath w brs					
A4400	A		Ostomy irrigation set					
A4402	A		Lubricant per ounce					
A4404	A		Ostomy ring each					
A4405	A	NI	Nonpectin based ostomy paste					
A4406	A	NI	Pectin based ostomy paste					
A4407	A	NI	Ext wear ost skn barr <=4sq≧					
A4408	A	NI	Ext wear ost skn barr >4sq≧					
A4409	A	NI	Ost skn barr w flng <=4 sq≧					
A4410	A	NI	Ost skn barr w flng >4sq≧					
A4413	A	NI	2 pc drainable ost pouch					

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CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
A4414	A	NI	Ostomy sknbarr w flng <=4sq≧					
A4415	A	NI	Ostomy skn barr w flng >4sq≧					
A4421	A		Ostomy supply misc					
A4422	A	NI	Ost pouch absorbent material					
A4450	A	NI	Non-waterproof tape					
A4452	A	NI	Waterproof tape					
A4454	A	DG	Tape all types all sizes					
A4455	A		Adhesive remover per ounce					
A4458	E	NI	Reusable enema bag					
A4460	A	DG	Elastic compression bandage					
A4462	A		Abdmnl drssng holder/binder					
A4464	A	DG	Joint support device/garment					
A4465	A		Non-elastic extremity binder					
A4470	A		Gravlee jet washer					
A4480	A		Vabra aspirator					
A4481	A		Tracheostoma filter					
A4483	A		Moisture exchanger					
A4490	E		Above knee surgical stocking					
A4495	E		Thigh length surg stocking					
A4500	E		Below knee surgical stocking					
A4510	E		Full length surg stocking					
A4521	E	NI	Adult size diaper sm each					
A4522	E	NI	Adult size diaper med each					
A4523	E	NI	Adult size diaper lg each					
A4524	E	NI	Adult size diaper xl each					
A4525	E	NI	Adult size brief sm each					
A4526	E	NI	Adult size brief med each					
A4527	E	NI	Adult size brief lg each					
A4528	E	NI	Adult size brief xl each					
A4529	E	NI	Child size diaper sm/med ea					
A4530	E	NI	Child size diaper lg each					
A4531	E	NI	Child size brief sm/med each					
A4532	E	NI	Child size brief lg each					
A4533	E	NI	Youth size diaper each					
A4534	E	NI	Youth size brief each					
A4535	E	NI	Disp incont liner/shield ea					
A4536	E	NI	Prot underwr wshbl any sz ea					
A4537	E	NI	Under pad reusable any sz ea					
A4538	E	NI	Diaper sv ea reusable diaper					
A4550	E		Surgical trays					
A4554	E		Disposable underpads					
A4556	A		Electrodes, pair					
A4557	A		Lead wires, pair					
A4558	A		Conductive paste or gel					
A4561	N		Pessary rubber, any type					
A4562	N		Pessary, non rubber,any type					
A4565	A		Slings					
A4570	N		Splint					
A4572	A	DG	Rib belt					
A4575	E		Hyperbaric o2 chamber disps					
A4580	N		Cast supplies (plaster)					
A4590	N		Special casting material					
A4595	A		TENS suppl 2 lead per month					
A4606	A	NI	Oxygen probe used w oximeter					
A4608	A		Transtracheal oxygen cath					
A4609	A	NI	Trach suction cath clsed sys					
A4610	A	NI	Trach sctn cath 72h clsedsys					
A4611	A		Heavy duty battery					
A4612	A		Battery cables					
A4613	A		Battery charger					
A4614	A		Hand-held PEFR meter					
A4615	A		Cannula nasal					
A4616	A		Tubing (oxygen) per foot					
A4617	A		Mouth piece					
A4618	A		Breathing circuits					

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A4619	A		Face tent					
A4620	A		Variable concentration mask					
A4621	A		Tracheotomy mask or collar					
A4622	A		Tracheostomy or larngectomy					
A4623	A		Tracheostomy inner cannula					
A4624	A		Tracheal suction tube					
A4625	A		Trach care kit for new trach					
A4626	A		Tracheostomy cleaning brush					
A4627	E		Spacer bag/reservoir					
A4628	A		Oropharyngeal suction cath					
A4629	A		Tracheostomy care kit					
A4630	A		Repl bat t.e.n.s. own by pt					
A4631	A		Wheelchair battery					
A4632	A	NI	Infus pump rplcemnt battery					
A4633	A	NI	Uvl replacement bulb					
A4634	A	NI	Replacement bulb th lightbox					
A4635	A		Underarm crutch pad					
A4636	A		Handgrip for cane etc					
A4637	A		Repl tip cane/crutch/walker					
A4639	A	NI	Infrared ht sys replcmnt pad					
A4640	A		Alternating pressure pad					
A4641	N		Diagnostic imaging agent					
A4642	N		Satumomab pendetide per dose					
A4643	N		High dose contrast MRI					
A4644	N		Contrast 100-199 MGs iodine					
A4645	N		Contrast 200-299 MGs iodine					
A4646	N		Contrast 300-399 MGs iodine					
A4647	N		Supp- paramagnetic contr mat					
A4649	A		Surgical supplies					
A4651	A		Calibrated microcap tube					
A4652	A		Microcapillary tube sealant					
A4653	A	NI	PD catheter anchor belt					
A4656	A		Dialysis needle					
A4657	A		Dialysis syringe w/wo needle					
A4660	A		Sphyg/bp app w cuff and stet					
A4663	A		Dialysis blood pressure cuff					
A4670	E		Automatic bp monitor, dial					
A4680	A		Activated carbon filter, ea					
A4690	A		Dialyzer, each					
A4706	A		Bicarbonate conc sol per gal					
A4707	A		Bicarbonate conc pow per pac					
A4708	A		Acetate conc sol per gallon					
A4709	A		Acid conc sol per gallon					
A4712	A		Sterile water inj per 10 ml					
A4714	A		Treated water per gallon					
A4719	A		≧Y set≧ tubing					
A4720	A		Dialysat sol fld vol > 249cc					
A4721	A		Dialysat sol fld vol > 999cc					
A4722	A		Dialys sol fld vol > 1999cc					
A4723	A		Dialys sol fld vol > 2999cc					
A4724	A		Dialys sol fld vol > 3999cc					
A4725	A		Dialys sol fld vol > 4999cc					
A4726	A		Dialys sol fld vol > 5999cc					
A4730	A		Fistula cannulation set, ea					
A4736	A		Topical anesthetic, per gram					
A4737	A		Inj anesthetic per 10 ml					
A4740	A		Shunt accessory					
A4750	A		Art or venous blood tubing					
A4755	A		Comb art/venous blood tubing					
A4760	A		Dialysate sol test kit, each					
A4765	A		Dialysate conc pow per pack					
A4766	A		Dialysate conc sol add 10 ml					
A4770	A		Blood collection tube/vacuum					
A4771	A		Serum clotting time tube					
A4772	A		Blood glucose test strips					

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A4773	A		Occult blood test strips					
A4774	A		Ammonia test strips					
A4801	A	DG	Heparin per 1000 units					
A4802	A		Protamine sulfate per 50 mg					
A4860	A		Disposable catheter tips					
A4870	A		Plumb/elec wk hm hemo equip					
A4890	A		Repair/maint cont hemo equip					
A4911	A		Drain bag/bottle					
A4913	A		Misc dialysis supplies noc					
A4918	A		Venous pressure clamp					
A4927	A		Non-sterile gloves					
A4928	A		Surgical mask					
A4929	A		Tourniquet for dialysis, ea					
A4930	A	NI	Sterile, gloves per pair					
A4931	A	NI	Reusable oral thermometer					
A4932	E	NI	Reusable rectal thermometer					
A5051	A		Pouch clsd w barr attached					
A5052	A		Clsd ostomy pouch w/o barr					
A5053	A		Clsd ostomy pouch faceplate					
A5054	A		Clsd ostomy pouch w/flange					
A5055	A		Stoma cap					
A5061	A		Pouch drainable w barrier at					
A5062	A		Drnble ostomy pouch w/o barr					
A5063	A		Drain ostomy pouch w/flange					
A5071	A		Urinary pouch w/barrier					
A5072	A		Urinary pouch w/o barrier					
A5073	A		Urinary pouch on barr w/fing					
A5081	A		Continent stoma plug					
A5082	A		Continent stoma catheter					
A5093	A		Ostomy accessory convex inse					
A5102	A		Bedside drain btl w/wo tube					
A5105	A		Urinary suspensory					
A5112	A		Urinary leg bag					
A5113	A		Latex leg strap					
A5114	A		Foam/fabric leg strap					
A5119	A		Skin barrier wipes box pr 50					
A5121	A		Solid skin barrier 6x6					
A5122	A		Solid skin barrier 8x8					
A5123	A	DG	Skin barrier with flange					
A5126	A		Disk/foam pad +or- adhesive					
A5131	A		Appliance cleaner					
A5200	A		Percutaneous catheter anchor					
A5500	A		Diab shoe for defsity insert					
A5501	A		Diabetic custom molded shoe					
A5503	A		Diabetic shoe w/roller/rockr					
A5504	A		Diabetic shoe with wedge					
A5505	A		Diab shoe w/metatarsal bar					
A5506	A		Diabetic shoe w/off set heel					
A5507	A		Modification diabetic shoe					
A5508	A		Diabetic deluxe shoe					
A5509	A		Direct heat form shoe insert					
A5510	A		Compression form shoe insert					
A5511	A		Custom fab molded shoe inser					
A6000	E		Wound warming wound cover					
A6010	A		Collagen based wound filler					
A6011	A	NI	Collagen gel/paste wound fil					
A6021	A		Collagen dressing <=16 sq in					
A6022	A		Collagen drsg>6<=48 sq in					
A6023	A		Collagen dressing >48 sq in					
A6024	A		Collagen dsg wound filler					
A6025	E		Silicone gel sheet, each					
A6154	A		Wound pouch each					
A6196	A		Alginate dressing <=16 sq in					
A6197	A		Alginate drsg >16 <=48 sq in					
A6198	A		alginate dressing > 48 sq in					

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A6199	A		Alginate drsg wound filler					
A6200	A		Compos drsg <=16 no border					
A6201	A		Compos drsg >16<=48 no bdr					
A6202	A		Compos drsg >48 no border					
A6203	A		Composite drsg <= 16 sq in					
A6204	A		Composite drsg >16<=48 sq in					
A6205	A		Composite drsg > 48 sq in					
A6206	A		Contact layer <= 16 sq in					
A6207	A		Contact layer >16<= 48 sq in					
A6208	A		Contact layer > 48 sq in					
A6209	A		Foam drsg <=16 sq in w/o bdr					
A6210	A		Foam drg >16<=48 sq in w/o b					
A6211	A		Foam drg > 48 sq in w/o brdr					
A6212	A		Foam drg <=16 sq in w/border					
A6213	A		Foam drg >16<=48 sq in w/bdr					
A6214	A		Foam drg > 48 sq in w/border					
A6215	A		Foam dressing wound filler					
A6216	A		Non-sterile gauze<=16 sq in					
A6217	A		Non-sterile gauze>16<=48 sq					
A6218	A		Non-sterile gauze > 48 sq in					
A6219	A		Gauze <= 16 sq in w/border					
A6220	A		Gauze >16 <=48 sq in w/bordr					
A6221	A		Gauze > 48 sq in w/border					
A6222	A		Gauze <=16 in no w/sal w/o b					
A6223	A		Gauze >16<=48 no w/sal w/o b					
A6224	A		Gauze > 48 in no w/sal w/o b					
A6228	A		Gauze <= 16 sq in water/sal					
A6229	A		Gauze >16<=48 sq in watr/sal					
A6230	A		Gauze > 48 sq in water/salne					
A6231	A		Hydrogel dsg<=16 sq in					
A6232	A		Hydrogel dsg>16<=48 sq in					
A6233	A		Hydrogel dressing >48 sq in					
A6234	A		Hydrocolld drg <=16 w/o bdr					
A6235	A		Hydrocolld drg >16<=48 w/o b					
A6236	A		Hydrocolld drg > 48 in w/o b					
A6237	A		Hydrocolld drg <=16 in w/bdr					
A6238	A		Hydrocolld drg >16<=48 w/bdr					
A6239	A		Hydrocolld drg > 48 in w/bdr					
A6240	A		Hydrocolld drg filler paste					
A6241	A		Hydrocolloid drg filler dry					
A6242	A		Hydrogel drg <=16 in w/o bdr					
A6243	A		Hydrogel drg >16<=48 w/o bdr					
A6244	A		Hydrogel drg >48 in w/o bdr					
A6245	A		Hydrogel drg <= 16 in w/bdr					
A6246	A		Hydrogel drg >16<=48 in w/b					
A6247	A		Hydrogel drg > 48 sq in w/b					
A6248	A		Hydrogel drsg gel filler					
A6250	A		Skin seal protect moisturizr					
A6251	A		Absorpt drg <=16 sq in w/o b					
A6252	A		Absorpt drg >16 <=48 w/o bdr					
A6253	A		Absorpt drg > 48 sq in w/o b					
A6254	A		Absorpt drg <=16 sq in w/bdr					
A6255	A		Absorpt drg >16<=48 in w/bdr					
A6256	A		Absorpt drg > 48 sq in w/bdr					
A6257	A		Transparent film <= 16 sq in					
A6258	A		Transparent film >16<=48 in					
A6259	A		Transparent film > 48 sq in					
A6260	A		Wound cleanser any type/size					
A6261	A		Wound filler gel/paste /oz					
A6262	A		Wound filler dry form / gram					
A6263	A	DG	Non-sterile elastic gauze/yd					
A6264	A	DG	Non-sterile no elastic gauze					
A6265	A	DG	Tape per 18 sq inches					
A6266	A		Impreg gauze no h20/sal/yard					
A6402	A		Sterile gauze <= 16 sq in					

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A6403	A		Sterile gauze>16 <= 48 sq in					
A6404	A		Sterile gauze > 48 sq in					
A6405	A	DG	Sterile elastic gauze /yd					
A6406	A	DG	Sterile non-elastic gauze/yd					
A6410	A	NI	Sterile eye pad					
A6411	A	NI	Non-sterile eye pad					
A6412	E	NI	Occlusive eye patch					
A6421	A	NI	Pad bandage >=3 <5in w /roll					
A6422	A	NI	Conf bandage ns >=3<5≥w/roll					
A6424	A	NI	Conf bandage ns >=5≥w /roll					
A6426	A	NI	Conf bandage s >=3<5≥ w/roll					
A6428	A	NI	Conf bandage s >=5≥ w /roll					
A6430	A	NI	Lt compres bdg >=3<5≥w /roll					
A6432	A	NI	Lt compres bdg >=5≥w /roll					
A6434	A	NI	Mo compres bdg >=3<5≥w /roll					
A6436	A	NI	Hi compres bdg >=3<5≥w /roll					
A6438	A	NI	Self-adher bdg >=3<5≥w /roll					
A6440	A	NI	Zinc paste bdg >=3<5≥w /roll					
A6501	A	NI	Compres burngarment bodysuit					
A6502	A	NI	Compres burngarment chinstrp					
A6503	A	NI	Compres burngarment facehood					
A6504	A	NI	Cmprsburngarment glove-wrist					
A6505	A	NI	Cmprsburngarment glove-elbow					
A6506	A	NI	Cmprsburngrmnt glove-axilla					
A6507	A	NI	Cmprs burngarment foot-knee					
A6508	A	NI	Cmprs burngarment foot-thigh					
A6509	A	NI	Compres burn garment jacket					
A6510	A	NI	Compres burn garment leotard					
A6511	A	NI	Compres burn garment panty					
A6512	A	NI	Compres burn garment, noc					
A7000	A		Disposable canister for pump					
A7001	A		Nondisposable pump canister					
A7002	A		Tubing used w suction pump					
A7003	A		Nebulizer administration set					
A7004	A		Disposable nebulizer sml vol					
A7005	A		Nondisposable nebulizer set					
A7006	A		Filtered nebulizer admin set					
A7007	A		Lg vol nebulizer disposable					
A7008	A		Disposable nebulizer prefill					
A7009	A		Nebulizer reservoir bottle					
A7010	A		Disposable corrugated tubing					
A7011	A		Nondispos corrugated tubing					
A7012	A		Nebulizer water collec devic					
A7013	A		Disposable compressor filter					
A7014	A		Compressor nondispos filter					
A7015	A		Aerosol mask used w nebulize					
A7016	A		Nebulizer dome & mouthpiece					
A7017	A		Nebulizer not used w oxygen					
A7018	A		Water distilled w/nebulizer					
A7019	A		Saline solution dispenser					
A7020	A		Sterile H2O or NSS w lgv neb					
A7025	A	NI	Replace chest compress vest					
A7026	A	NI	Replace chst cmprss sys hose					
A7030	A	NI	CPAP full face mask					
A7031	A	NI	Replacement facemask interfa					
A7032	A	NI	Replacement nasal cushion					
A7033	A	NI	Replacement nasal pillows					
A7034	A	NI	Nasal application device					
A7035	A	NI	Pos airway press headgear					
A7036	A	NI	Pos airway press chinstrap					
A7037	A	NI	Pos airway pressure tubing					
A7038	A	NI	Pos airway pressure filter					
A7039	A	NI	Filter, non disposable w pap					
A7042	A	NI	Implanted pleural catheter					
A7043	A	NI	Vacuum drainagebottle/tubing					

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A7044	A	NI	PAP oral interface					
A7501	A		Tracheostoma valve w diaphra					
A7502	A		Replacement diaphragm/fplate					
A7503	A		HMES filter holder or cap					
A7504	A		Tracheostoma HMES filter					
A7505	A		HMES or trach valve housing					
A7506	A		HMES/trachvalve adhesivedisk					
A7507	A		Integrated filter & holder					
A7508	A		Housing & Integrated Adhesiv					
A7509	A		Heat & moisture exchange sys					
A9150	E		Misc/exper non-prescript dru					
A9270	E		Non-covered item or service					
A9300	E		Exercise equipment					
A9500	N		Technetium TC 99m sestamibi					
A9502	N		Technetium TC99M tetrofosmin					
A9503	N		Technetium TC 99m medronate					
A9504	N		Technetium tc 99m apcitide					
A9505	N		Thallous chloride TL 201/mci					
A9507	K		Indium/111 capromab pendetid	1604	16.4434	$857.54		$171.51
A9508	K		Iobenguane sulfate I-131	1045	1.5697	$81.86		$16.37
A9510	N		Technetium TC99m Disofenin					
A9511	K		Technetium TC 99m depreotide	1095	5.6006	$292.08		$58.42
A9512	N	NI	Technetium tc99m pertechnetate					
A9513	N	NI	Technetium tc-99m mebrofenin					
A9514	N	NI	Technetium tc99m pyrophosphate					
A9515	N	NI	Technetium tc-99m pentetate					
A9516	N	NI	I-123 sodium iodide capsule					
A9517	N	NI	I-131 sodium iodide capsule					
A9518	K	NI	I-131 sodium iodide solution	1348	0.9399	$49.02		$9.80
A9519	N	NI	Technetium tc-99m macroag albu					
A9520	N	NI	Technetium tc-99m sulfur clld					
A9521	K	NI	Technetium tc-99m exametazine	1096	4.4379	$231.44		$46.29
A9522	E	NI	Indium111ibritumomabtiuxetan					
A9523	E	NI	Yttrium90ibritumomabtiuxetan					
A9524	N	NI	Iodinated I-131 serumalbumin					
A9600	K		Strontium-89 chloride	0701	8.9920	$468.94		$93.79
A9603	N	NI	I-131sodiumiodidecap per mci					
A9605	K		Samarium sm153 lexidronamm	0702	14.6218	$762.54		$152.51
A9699	N	NI	Noc therapeutic radiopharm					
A9700	G		Echocardiography Contrast	9016		$118.75		$17.75
A9900	A		Supply/accessory/service					
A9901	A		Delivery/set up/dispensing					
B4034	A		Enter feed supkit syr by day					
B4035	A		Enteral feed supp pump per d					
B4036	A		Enteral feed sup kit grav by					
B4081	A		Enteral ng tubing w/ stylet					
B4082	A		Enteral ng tubing w/o stylet					
B4083	A		Enteral stomach tube levine					
B4086	A		Gastrostomy/jejunostomy tube					
B4100	E	NI	Food thickener oral					
B4150	A		Enteral formulae category i					
B4151	A		Enteral formulae cat1natural					
B4152	A		Enteral formulae category ii					
B4153	A		Enteral formulae categoryIII					
B4154	A		Enteral formulae category IV					
B4155	A		Enteral formulae category v					
B4156	A		Enteral formulae category vi					
B4164	A		Parenteral 50% dextrose solu					
B4168	A		Parenteral sol amino acid 3.					
B4172	A		Parenteral sol amino acid 5.					
B4176	A		Parenteral sol amino acid 7-					
B4178	A		Parenteral sol amino acid >					
B4180	A		Parenteral sol carb > 50%					
B4184	A		Parenteral sol lipids 10%					
B4186	A		Parenteral sol lipids 20%					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued
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CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
B4189	A		Parenteral sol amino acid &					
B4193	A		Parenteral sol 52-73 gm prot					
B4197	A		Parenteral sol 74-100 gm pro					
B4199	A		Parenteral sol > 100gm prote					
B4216	A		Parenteral nutrition additiv					
B4220	A		Parenteral supply kit premix					
B4222	A		Parenteral supply kit homemi					
B4224	A		Parenteral administration ki					
B5000	A		Parenteral sol renal-amirosy					
B5100	A		Parenteral sol hepatic-fream					
B5200	A		Parenteral sol stres-bmch c					
B9000	A		Enter infusion pump w/o alrm					
B9002	A		Enteral infusion pump w/ ala					
B9004	A		Parenteral infus pump portab					
B9006	A		Parenteral infus pump statio					
B9998	A		Enteral supp not otherwise c					
B9999	A		Parenteral supp not othrws c					
C1010	K		Blood, L/R, CMV-NEG	1010	2.3352	$121.78		$24.36
C1011	K		Platelets, HLA-m, L/R, unit	1011	9.5831	$499.77		$99.95
C1012	K	DG	PLATELET CONC, L/R, Irrad	0954	2.2868	$119.26		$23.85
C1013	K	DG	PLATELET CONC, L/R, Unit	1013	0.9496	$49.52		$9.90
C1014	K	DG	Platelet,Aph/Pher, L/R, unit	9501	7.8390	$408.81		$81.76
C1015	K	NI	Plt, pher,L/R,CMV, irrad	1020	9.4959	$495.22		$99.04
C1016	K		BLOOD,L/R,FROZ/DEGLY/Washed	1016	5.7848	$301.68		$60.34
C1017	K		Plt, APH/PHER,L/R,CMV-NEG	1017	7.5386	$393.15		$78.63
C1018	K		Blood, L/R, IRRADIATED	1018	2.5387	$132.40		$26.48
C1020	K	NI	RBC, frz/deg/wsh, L/R, irrad	1021	6.4436	$336.04		$67.21
C1021	K	NI	RBC, L/R, CMV neg, irrad	1022	3.8565	$201.12		$40.22
C1022	K	NI	Plasma, frz within 24 hour	0955	1.8217	$95.00		$19.00
C1058	N	DG	TC 99M oxidronate, per vial					
C1064	N	DG	I-131 cap, each add mCi					
C1065	N	DG	I-131 sol, each add mCi					
C1066	N	DG	IN 111 satumomab pendetide					
C1079	N		CO 57/58 per 0.5 uCi					
C1087	N	DG	I-123 per 100 uCi					
C1088	T		LASER OPTIC TR Sys	0980		$1,875.00		$375.00
C1091	K		IN111 oxyquinoline,per0.5mCi	1091	4.7092	$245.59		$49.12
C1092	K		IN 111 pentetate per 0.5 mCi	1092	4.4379	$231.44		$46.29
C1094	N	DG	TC99Malbumin aggr,per 1.0mCi					
C1096	K	DG	TC 99M EXAMETAZIME, PER Dose	1096	4.4379	$231.44		$46.29
C1097	N	DG	TC 99M MEBROFENIN, PER Vial					
C1098	N	DG	TC 99M PENTETATE, PER Vial					
C1099	N	DG	TC 99M PYROPHOSPHATE,PER Via.					
C1122	K		Tc 99M ARCITUMOMAB PER VIAL	1122	11.4726	$598.31		$119.66
C1166	N		CYTARABINE LIPOSOMAL, 10 mg					
C1167	K		EPIRUBICIN HCL, 2 mg	1167	0.3294	$17.18		$3.44
C1178	K		BUSULFAN IV, 6 Mg	1178	0.4845	$25.27		$5.05
C1188	N	DG	I-131 cap, per 1-5 mCi					
C1200	N		TC 99M Sodium Glucoheptonat					
C1201	N		TC 99M SUCCIMER, PER Vial					
C1202	N	DG	TC 99M SULFUR COLLOID, Vial					
C1207	K	DG	OCTREOTIDE ACETATE DEPOT 1mg.	1207	1.4244	$74.28		$14.86
C1300	S		HYPERBARIC Oxygen	0659	3.2364	$168.78		$33.76
C1305	K		Apligraf	1305	13.0520	$680.67		$136.13
C1348	K	DG	I-131 sol, per 1-6 mCi	1348	0.9399	$49.02		$9.80
C1713	D	DNG	Anchor/screw bn/bn,tis/bn					
C1714	D	DNG	Cath, trans atherectomy, dir					
C1715	D	DNG	Brachytherapy needle					
C1716	K		Brachytx seed, Gold 198	1716	0.4360	$22.74		$4.55
C1717	D	DNG	Brachytx seed, HDR Ir-192					
C1718	K		Brachytx seed, Iodine 125	1718	0.6008	$31.33		$6.27
C1719	K		Brachytx seed,Non-HDR Ir-192	1719	0.5232	$27.29		$5.46
C1720	K		Brachytx seed, Palladium 103	1720	0.8430	$43.96		$8.79

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued
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CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
C1721	D	DNG	AICD, dual chamber					
C1722	D	DNG	AICD, single chamber					
C1724	D	DNG	Cath, trans atherec,rotation					
C1725	D	DNG	Cath, translumin non-laser					
C1726	D	DNG	Cath, bal dil, non-vascular					
C1727	D	DNG	Cath, bal tis dis, non-vas					
C1728	D	DNG	Cath, brachytx seed adm					
C1729	D	DNG	Cath, drainage					
C1730	D	DNG	Cath, EP, 19 or few elect					
C1731	D	DNG	Cath, EP, 20 or more elec					
C1732	D	DNG	Cath, EP, diag/abl, 3D/vect					
C1733	D	DNG	Cath, EP, othr than cool-tip					
C1750	D	DNG	Cath, hemodialysis,long-term					
C1751	D	DNG	Cath, int, per/cent/midline					
C1752	D	DNG	Cath,hemodialysis,short-term					
C1753	D	DNG	Cath, intravas ultrasound					
C1754	D	DNG	Catheter, intradiscal					
C1755	D	DNG	Catheter, intraspinal					
C1756	D	DNG	Cath, pacing, transesoph					
C1757	D	DNG	Cath, thrombectomy/embolect					
C1758	D	DNG	Catheter, ureteral					
C1759	D	DNG	Cath, intra echocardiography					
C1760	D	DNG	Closure dev, vasc					
C1762	D	DNG	Conn tiss, human(inc fascia)					
C1763	D	DNG	Conn tiss, non-human					
C1764	D	DNG	Event recorder, cardiac					
C1765	H		Adhesion barrier	1765				
C1766	D	DNG	Intro/sheath,strble,non-peel					
C1767	D	DNG	Generator, neurostim, imp					
C1768	D	DNG	Graft, vascular					
C1769	D	DNG	Guide wire					
C1770	D	DNG	Imaging coil, MR, insertable					
C1771	D	DNG	Rep dev, urinary, w/sling					
C1772	D	DNG	Infusion pump, programmable					
C1773	D	DNG	Ret dev, insertable					
C1774	K		Darbepoetin alfa, 1 mcg	0734	0.0454	$2.37		$.47
C1775	K		FDG, per dose (4-40 mCi/ml)	1775	7.5289	$392.64		$78.53
C1776	D	DNG	Joint device (implantable)					
C1777	D	DNG	Lead, AICD, endo single coil					
C1778	D	DNG	Lead, neurostimulator					
C1779	D	DNG	Lead, pmkr, transvenous VDD					
C1780	D	DNG	Lens, intraocular (new tech)					
C1781	D	DNG	Mesh (implantable)					
C1782	D	DNG	Morcellator					
C1783	H		Ocular imp, aqueous drain dev	1783				
C1784	D	DNG	Ocular dev, intraop, det ret					
C1785	D	DNG	Pmkr, dual, rate-resp					
C1786	D	DNG	Pmkr, single, rate-resp					
C1787	D	DNG	Patient progr, neurostim					
C1788	D	DNG	Port, indwelling, imp					
C1789	D	DNG	Prosthesis, breast, imp					
C1813	D	DNG	Prosthesis, penile, inflatab					
C1815	D	DNG	Pros, urinary sph, imp					
C1816	D	DNG	Receiver/transmitter, neuro					
C1817	D	DNG	Septal defect imp sys					
C1874	D	DNG	Stent, coated/cov w/del sys					
C1875	D	DNG	Stent, coated/cov w/o del sy					
C1876	D	DNG	Stent, non-coa/non-cov w/del					
C1877	D	DNG	Stent, non-coat/cov w/o del					
C1878	D	DNG	Matrl for vocal cord					
C1879	D	DNG	Tissue marker, implantable					
C1880	D	DNG	Vena cava filter					
C1881	D	DNG	Dialysis access system					
C1882	D	DNG	AICD, other than sing/dual					
C1883	D	DNG	Adapt/ext, pacing/neuro lead					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued
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CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
C1885	D	DNG	Cath, translumin angio laser					
C1887	D	DNG	Catheter, guiding					
C1888	H		Endovas non-cardiac abl cath	1888				
C1891	D	DNG	Infusion pump,non-prog, perm					
C1892	D	DNG	Intro/sheath,fixed,peel-away					
C1893	D	DNG	Intro/sheath, fixed,non-peel					
C1894	D	DNG	Intro/sheath, non-laser					
C1895	D	DNG	Lead, AICD, endo dual coil					
C1896	D	DNG	Lead, AICD, non sing/dual					
C1897	D	DNG	Lead, neurostim test kit					
C1898	D	DNG	Lead, pmkr, other than trans					
C1899	D	DNG	Lead, pmkr/AICD combination					
C1900	H		Lead coronary venous	1900				
C2614	H	NI	Probe, perc lumb disc	2614				
C2615	D	DNG	Sealant, pulmonary, liquid					
C2616	K		Brachytx seed, Yttrium-90	2616	8.8370	$460.86		$92.17
C2617	D	DNG	Stent, non-cor, tem w/o del					
C2618	H		Probe, cryoablation	2618				
C2619	D	DNG	Pmkr, dual, non rate-resp					
C2620	D	DNG	Pmkr, single, non rate-resp					
C2621	D	DNG	Pmkr, other than sing/dual					
C2622	D	DNG	Prosthesis, penile, non-inf					
C2625	D	DNG	Stent, non-cor, tem w/del sy					
C2626	D	DNG	Infusion pump, non-prog,temp					
C2627	D	DNG	Cath, suprapubic/cystoscopic					
C2628	D	DNG	Catheter, occlusion					
C2629	D	DNG	Intro/sheath, laser					
C2630	D	DNG	Cath, EP, cool-tip					
C2631	D	DNG	Rep dev, urinary, w/o sling					
C2632	H	NI	Brachytx sol, I-125, per mCi	2632				
C8900	S		MRA w/cont, abd	0284	7.2382	$377.48	$201.02	$75.50
C8901	S		MRA w/o cont, abd	0336	6.5987	$344.13	$176.94	$68.83
C8902	S		MRA w/o fol w/cont, abd	0337	9.2440	$482.08	$240.77	$96.42
C8903	S		MRI w/cont, breast, uni	0284	7.2382	$377.48	$201.02	$75.50
C8904	S		MRI w/o cont, breast, uni	0336	6.5987	$344.13	$176.94	$68.83
C8905	S		MRI w/o fol w/cont, brst, un	0337	9.2440	$482.08	$240.77	$96.42
C8906	S		MRI w/cont, breast, bi	0284	7.2382	$377.48	$201.02	$75.50
C8907	S		MRI w/o cont, breast, bi	0336	6.5987	$344.13	$176.94	$68.83
C8908	S		MRI w/o fol w/cont, breast,	0337	9.2440	$482.08	$240.77	$96.42
C8909	S		MRA w/cont, chest	0284	7.2382	$377.48	$201.02	$75.50
C8910	S		MRA w/o cont, chest	0336	6.5987	$344.13	$176.94	$68.83
C8911	S		MRA w/o fol w/cont, chest	0337	9.2440	$482.08	$240.77	$96.42
C8912	S		MRA w/cont, lwr ext	0284	7.2382	$377.48	$201.02	$75.50
C8913	S		MRA w/o cont, lwr ext	0336	6.5987	$344.13	$176.94	$68.83
C8914	S		MRA w/o fol w/cont, lwr ext	0337	9.2440	$482.08	$240.77	$96.42
C9000	K		Na chromateCr51, per 0.25mCi	9000	1.8798	$98.03		$19.61
C9003	K		Palivizumab, per 50 mg	9003	8.5657	$446.71		$89.34
C9007	N		Baclofen Intrathecal kit-1am					
C9008	N		Baclofen Refill Kit-500mcg					
C9009	K		Baclofen Refill Kit-2000mcg	9009	0.7267	$37.90		$7.58
C9010	K		Baclofen Refill Kit--4000mcg	9010	0.9205	$48.00		$9.60
C9013	N		Co 57 cobaltous chloride					
C9019	G	DG	Caspofungin acetate, 5 mg	9019		$34.20		$5.11
C9020	K	DG	Sirolimussolution, 1 mg	9020	0.0581	$3.03		$.61
C9100	N	DG	Iodinated I-131 Albumin					
C9102	N		51 Na Chromate, 50mCi					
C9103	N		Na Iothalamate I-125, 10 uCi					
C9105	K		Hep B imm glob, per 1 ml	9105	1.5116	$78.83		$15.77
C9108	K	DG	Thyrotropin alfa, 1.1 mg	9108	7.5870	$395.67		$79.13
C9109	K		Tirofiban hcl, 6.25 mg	9109	2.1996	$114.71		$22.94
C9110	G	DG	Alemtuzumab, per 10mg/ml	9110		$511.22		$76.41
C9111	G		Inj, bivalirudin, 250mg vial	9111		$397.81		$56.46
C9112	G		Perflutren lipid micro, 2ml	9112		$4.94		$.74
C9113	G		Inj pantoprazole sodium, via	9113		$22.80		$3.41
C9114	G	DG	Nesiritide, per 1.5 mg vial	9114		$433.20		$64.75

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

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CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
C9115	G	DG	Inj, zoledronic acid, 2 mg	9115		$406.78		$60.80
C9116	G	NI	Ertapenem sodium, per 1 gm	9116		$45.31		$6.77
C9117	E	DG	Y-90 ibritumomab tiuxetan					
C9118	E	DG	IN-111 ibritumomab tiuxetan					
C9119	G	NI	Injection, pegfilgrastim	9119		$2,802.50		$418.90
C9120	G	NI	Injection, fulvestrant	9120		$87.58		$13.09
C9121	G	NI	Injection, argatroban	9121		$14.25		$2.13
C9200	G		Orcel, per 36 cm2	9200		$1,135.25		$169.69
C9201	G		Dermagraft, per 37.5 sq cm	9201		$577.60		$86.34
C9503	K		Fresh frozen plasma, ea unit	9503	1.3372	$69.74		$13.95
C9701	T		Stretta System	0980		$1,875.00		$375.00
C9703	T		Bard Endoscopic Suturing Sys	0979		$1,625.00		$325.00
C9708	T	DG	Preview Tx Planning Software	0975		$625.00		$125.00
C9711	T		H.E.L.P. Apheresis System	0978		$1,375.00		$275.00
D0120	E		Periodic oral evaluation					
D0140	E		Limit oral eval problm focus					
D0150	S		Comprehensve oral evaluation	0330	4.7770	$249.13		$49.83
D0160	E		Extensv oral eval prob focus					
D0170	E		Re-eval,est pt,problem focus					
D0180	E	NI	Comp periodontal evaluation					
D0210	E		Intraor complete film series					
D0220	E		Intraoral periapical first f					
D0230	E		Intraoral periapical ea add					
D0240	S		Intraoral occlusal film	0330	4.7770	$249.13		$49.83
D0250	S		Extraoral first film	0330	4.7770	$249.13		$49.83
D0260	S		Extraoral ea additional film	0330	4.7770	$249.13		$49.83
D0270	S		Dental bitewing single film	0330	4.7770	$249.13		$49.83
D0272	S		Dental bitewings two films	0330	4.7770	$249.13		$49.83
D0274	S		Dental bitewings four films	0330	4.7770	$249.13		$49.83
D0277	S		Vert bitewings-sev to eight	0330	4.7770	$249.13		$49.83
D0290	E		Dental film skull/facial bon					
D0310	E		Dental saliography					
D0320	E		Dental tmj arthrogram incl i					
D0321	E		Dental other tmj films					
D0322	E		Dental tomographic survey					
D0330	E		Dental panoramic film					
D0340	E		Dental cephalometric film					
D0350	E		Oral/facial images					
D0415	E		Bacteriologic study					
D0425	E		Caries susceptibility test					
D0460	S		Pulp vitality test	0330	4.7770	$249.13		$49.83
D0470	E		Diagnostic casts					
D0472	S		Gross exam, prep & report	0330	4.7770	$249.13		$49.83
D0473	S		Micro exam, prep & report	0330	4.7770	$249.13		$49.83
D0474	S		Micro w exam of surg margins	0330	4.7770	$249.13		$49.83
D0480	S		Cytopath smear prep & report	0330	4.7770	$249.13		$49.83
D0501	S	DG	Histopathologic examinations	0330	4.7770	$249.13		$49.83
D0502	S		Other oral pathology procedu	0330	4.7770	$249.13		$49.83
D0999	S		Unspecified diagnostic proce	0330	4.7770	$249.13		$49.83
D1110	E		Dental prophylaxis adult					
D1120	E		Dental prophylaxis child					
D1201	E		Topical fluor w prophy child					
D1203	E		Topical fluor w/o prophy chi					
D1204	E		Topical fluor w/o prophy adu					
D1205	E		Topical fluoride w/ prophy a					
D1310	E		Nutri counsel-control caries					
D1320	E		Tobacco counseling					
D1330	E		Oral hygiene instruction					
D1351	E		Dental sealant per tooth					
D1510	S		Space maintainer fxd unilat	0330	4.7770	$249.13		$49.83
D1515	S		Fixed bilat space maintainer	0330	4.7770	$249.13		$49.83
D1520	S		Remove unilat space maintain	0330	4.7770	$249.13		$49.83
D1525	S		Remove bilat space maintain	0330	4.7770	$249.13		$49.83
D1550	S		Recement space maintainer	0330	4.7770	$249.13		$49.83
D2110	E	DG	Amalgam one surface primary					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

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CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
D2120	E	DG	Amalgam two surfaces primary					
D2130	E	DG	Amalgam three surfaces prima					
D2131	E	DG	Amalgam four/more surf prima					
D2140	E		Amalgam one surface permanen					
D2150	E		Amalgam two surfaces permane					
D2160	E		Amalgam three surfaces perma					
D2161	E		Amalgam 4 or > surfaces perm					
D2330	E		Resin one surface-anterior					
D2331	E		Resin two surfaces-anterior					
D2332	E		Resin three surfaces-anterio					
D2335	E		Resin 4/> surf or w incis an					
D2336	E	DG	Composite resin crown					
D2337	E	DG	Compo resin crown ant-perm					
D2380	E	DG	Resin one surf poster primar					
D2381	E	DG	Resin two surf poster primar					
D2382	E	DG	Resin three/more surf post p					
D2385	E	DG	Resin one surf poster perman					
D2386	E	DG	Resin two surf poster perman					
D2387	E	DG	Resin three/more surf post p					
D2388	E	DG	Resin four/more, post perm					
D2390	E	NI	Ant resin-based cmpst crown					
D2391	E	NI	Post 1 srfc resinbased cmpst					
D2392	E	NI	Post 2 srfc resinbased cmpst					
D2393	E	NI	Post 3 srfc resinbased cmpst					
D2394	E	NI	Post >=4srfc resinbase cmpst					
D2410	E		Dental gold foil one surface					
D2420	E		Dental gold foil two surface					
D2430	E		Dental gold foil three surfa					
D2510	E		Dental inlay metalic 1 surf					
D2520	E		Dental inlay metallic 2 surf					
D2530	E		Dental inlay metl 3/more sur					
D2542	E		Dental onlay metallic 2 surf					
D2543	E		Dental onlay metallic 3 surf					
D2544	E		Dental onlay metl 4/more sur					
D2610	E		Inlay porcelain/ceramic 1 su					
D2620	E		Inlay porcelain/ceramic 2 su					
D2630	E		Dental onlay porc 3/more sur					
D2642	E		Dental onlay porcelin 2 surf					
D2643	E		Dental onlay porcelin 3 surf					
D2644	E		Dental onlay porc 4/more sur					
D2650	E		Inlay composite/resin one su					
D2651	E		Inlay composite/resin two su					
D2652	E		Dental inlay resin 3/mre sur					
D2662	E		Dental onlay resin 2 surface					
D2663	E		Dental onlay resin 3 surface					
D2664	E		Dental onlay resin 4/mre sur					
D2710	E		Crown resin laboratory					
D2720	E		Crown resin w/ high noble me					
D2721	E		Crown resin w/ base metal					
D2722	E		Crown resin w/ noble metal					
D2740	E		Crown porcelain/ceramic subs					
D2750	E		Crown porcelain w/ h noble m					
D2751	E		Crown porcelain fused base m					
D2752	E		Crown porcelain w/ noble met					
D2780	E		Crown 3/4 cast hi noble met					
D2781	E		Crown 3/4 cast base metal					
D2782	E		Crown 3/4 cast noble metal					
D2783	E		Crown 3/4 porcelain/ceramic					
D2790	E		Crown full cast high noble m					
D2791	E		Crown full cast base metal					
D2792	E		Crown full cast noble metal					
D2799	E		Provisional crown					
D2910	E		Dental recement inlay					
D2920	E		Dental recement crown					
D2930	E		Prefab stnlss steel crwn pri					

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CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
D2931	E		Prefab stnlss steel crown pe					
D2932	E		Prefabricated resin crown					
D2933	E		Prefab stainless steel crown					
D2940	E		Dental sedative filling					
D2950	E		Core build-up incl any pins					
D2951	E		Tooth pin retention					
D2952	E		Post and core cast + crown					
D2953	E		Each addtnl cast post					
D2954	E		Prefab post/core + crown					
D2955	E		Post removal					
D2957	E		Each addtnl prefab post					
D2960	E		Laminate labial veneer					
D2961	E		Lab labial veneer resin					
D2962	E		Lab labial veneer porcelain					
D2970	S		Temporary- fractured tooth	0330	4.7770	$249.13		$49.83
D2980	E		Crown repair					
D2999	S		Dental unspec restorative pr	0330	4.7770	$249.13		$49.83
D3110	E		Pulp cap direct					
D3120	E		Pulp cap indirect					
D3220	E		Therapeutic pulpotomy					
D3221	E		Gross pulpal debridement					
D3230	E		Pulpal therapy anterior prim					
D3240	E		Pulpal therapy posterior pri					
D3310	E		Anterior					
D3320	E		Root canal therapy 2 canals					
D3330	E		Root canal therapy 3 canals					
D3331	E		Non-surg tx root canal obs					
D3332	E		Incomplete endodontic tx					
D3333	E		Internal root repair					
D3346	E		Retreat root canal anterior					
D3347	E		Retreat root canal bicuspid					
D3348	E		Retreat root canal molar					
D3351	E		Apexification/recalc initial					
D3352	E		Apexification/recalc interim					
D3353	E		Apexification/recalc final					
D3410	E		Apicoect/perirad surg anter					
D3421	E		Root surgery bicuspid					
D3425	E		Root surgery molar					
D3426	E		Root surgery ea add root					
D3430	E		Retrograde filling					
D3450	E		Root amputation					
D3460	S		Endodontic endosseous implan	0330	4.7770	$249.13		$49.83
D3470	E		Intentional replantation					
D3910	E		Isolation- tooth w rubb dam					
D3920	E		Tooth splitting					
D3950	E		Canal prep/fitting of dowel					
D3999	S		Endodontic procedure	0330	4.7770	$249.13		$49.83
D4210	E		Gingivectomy/plasty per quad					
D4211	E		Gingivectomy/plasty per toot					
D4220	E	DG	Gingival curettage per quadr					
D4240	E		Gingival flap proc w/ planin					
D4241	E	NI	Gngvl flap w rootplan 1-3 th					
D4245	E		Apically positioned flap					
D4249	E		Crown lengthen hard tissue					
D4260	S		Osseous surgery per quadrant	0330	4.7770	$249.13		$49.83
D4261	E	NI	Osseous surgl-3teethperquad					
D4263	S		Bone replce graft first site	0330	4.7770	$249.13		$49.83
D4264	S		Bone replce graft each add	0330	4.7770	$249.13		$49.83
D4265	E	NI	Bio mtrls to aid soft/os reg					
D4266	E		Guided tiss regen resorble					
D4267	E		Guided tiss regen nonresorb					
D4268	S		Surgical revision procedure	0330	4.7770	$249.13		$49.83
D4270	S		Pedicle soft tissue graft pr	0330	4.7770	$249.13		$49.83
D4271	S		Free soft tissue graft proc	0330	4.7770	$249.13		$49.83
D4273	S		Subepithelial tissue graft	0330	4.7770	$249.13		$49.83

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D4274	E		Distal/proximal wedge proc					
D4275	E	NI	Soft tissue allograft					
D4276	E	NI	Con tissue w dble ped graft					
D4320	E		Provision splnt intracoronal					
D4321	E		Provisional splint extracoro					
D4341	E		Periodontal scaling & root					
D4342	E	NI	Periodontal scaling 1-3teeth					
D4355	S		Full mouth debridement	0330	4.7770	$249.13		$49.83
D4381	S		Localized chemo delivery	0330	4.7770	$249.13		$49.83
D4910	E		Periodontal maint procedures					
D4920	E		Unscheduled dressing change					
D4999	E		Unspecified periodontal proc					
D5110	E		Dentures complete maxillary					
D5120	E		Dentures complete mandible					
D5130	E		Dentures immediat maxillary					
D5140	E		Dentures immediat mandible					
D5211	E		Dentures maxill part resin					
D5212	E		Dentures mand part resin					
D5213	E		Dentures maxill part metal					
D5214	E		Dentures mandibl part metal					
D5281	E		Removable partial denture					
D5410	E		Dentures adjust cmplt maxil					
D5411	E		Dentures adjust cmplt mand					
D5421	E		Dentures adjust part maxill					
D5422	E		Dentures adjust part mandbl					
D5510	E		Dentur repr broken compl bas					
D5520	E		Replace denture teeth complt					
D5610	E		Dentures repair resin base					
D5620	E		Rep part denture cast frame					
D5630	E		Rep partial denture clasp					
D5640	E		Replace part denture teeth					
D5650	E		Add tooth to partial denture					
D5660	E		Add clasp to partial denture					
D5670	E	NI	Replc tth&acrlc on mtl frmwk					
D5671	E	NI	Replc tth&acrlc mandibular					
D5710	E		Dentures rebase cmplt maxil					
D5711	E		Dentures rebase cmplt mand					
D5720	E		Dentures rebase part maxill					
D5721	E		Dentures rebase part mandbl					
D5730	E		Denture rein cmplt maxil ch					
D5731	E		Denture rein cmplt mand chr					
D5740	E		Denture rein part maxil chr					
D5741	E		Denture rein part mand chr					
D5750	E		Denture rein cmplt max lab					
D5751	E		Denture rein cmplt mand lab					
D5760	E		Denture rein part maxil lab					
D5761	E		Denture rein part mand lab					
D5810	E		Denture interm cmplt maxill					
D5811	E		Denture interm cmplt mandbl					
D5820	E		Denture interm part maxill					
D5821	E		Denture interm part mandbl					
D5850	E		Denture tiss conditn maxill					
D5851	E		Denture tiss conditn mandbl					
D5860	E		Overdenture complete					
D5861	E		Overdenture partial					
D5862	E		Precision attachment					
D5867	E		Replacement of precision att					
D5875	E		Prosthesis modification					
D5899	E		Removable prosthodontic proc					
D5911	S		Facial moulage sectional	0330	4.7770	$249.13		$49.83
D5912	S		Facial moulage complete	0330	4.7770	$249.13		$49.83
D5913	E		Nasal prosthesis					
D5914	E		Auricular prosthesis					
D5915	E		Orbital prosthesis					
D5916	E		Ocular prosthesis					

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D5919	E		Facial prosthesis					
D5922	E		Nasal septal prosthesis					
D5923	E		Ocular prosthesis interim					
D5924	E		Cranial prosthesis					
D5925	E		Facial augmentation implant					
D5926	E		Replacement nasal prosthesis					
D5927	E		Auricular replacement					
D5928	E		Orbital replacement					
D5929	E		Facial replacement					
D5931	E		Surgical obturator					
D5932	E		Postsurgical obturator					
D5933	E		Refitting of obturator					
D5934	E		Mandibular flange prosthesis					
D5935	E		Mandibular denture prosth					
D5936	E		Temp obturator prosthesis					
D5937	E		Trismus appliance					
D5951	E		Feeding aid					
D5952	E		Pediatric speech aid					
D5953	E		Adult speech aid					
D5954	E		Superimposed prosthesis					
D5955	E		Palatal lift prosthesis					
D5958	E		Intraoral con def inter plt					
D5959	E		Intraoral con def mod palat					
D5960	E		Modify speech aid prosthesis					
D5982	E		Surgical stent					
D5983	S		Radiation applicator	0330	4.7770	$249.13		$49.83
D5984	S		Radiation shield	0330	4.7770	$249.13		$49.83
D5985	S		Radiation cone locator	0330	4.7770	$249.13		$49.83
D5986	E		Fluoride applicator					
D5987	S		Commissure splint	0330	4.7770	$249.13		$49.83
D5988	E		Surgical splint					
D5999	E		Maxillofacial prosthesis					
D6010	E		Odontics endosteal implant					
D6020	E		Odontics abutment placement					
D6040	E		Odontics eposteal implant					
D6050	E		Odontics transosteal implnt					
D6053	E	NI	Implnt/abtmnt spprt remv dnt					
D6054	E	NI	Implnt/abtmnt spprt remvprtl					
D6055	E		Implant connecting bar					
D6056	E		Prefabricated abutment					
D6057	E		Custom abutment					
D6058	E		Abutment supported crown					
D6059	E		Abutment supported mtl crown					
D6060	E		Abutment supported mtl crown					
D6061	E		Abutment supported mtl crown					
D6062	E		Abutment supported mtl crown					
D6063	E		Abutment supported mtl crown					
D6064	E		Abutment supported mtl crown					
D6065	E		Implant supported crown					
D6066	E		Implant supported mtl crown					
D6067	E		Implant supported mtl crown					
D6068	E		Abutment supported retainer					
D6069	E		Abutment supported retainer					
D6070	E		Abutment supported retainer					
D6071	E		Abutment supported retainer					
D6072	E		Abutment supported retainer					
D6073	E		Abutment supported retainer					
D6074	E		Abutment supported retainer					
D6075	E		Implant supported retainer					
D6076	E		Implant supported retainer					
D6077	E		Implant supported retainer					
D6078	E		Implnt/abut suprtd fixd dent					
D6079	E		Implnt/abut suprtd fixd dent					
D6080	E		Implant maintenance					
D6090	E		Repair implant					

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CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
D6095	E		Odontics repr abutment					
D6100	E		Removal of implant					
D6199	E		Implant procedure					
D6210	E		Prosthodont high noble metal					
D6211	E		Bridge base metal cast					
D6212	E		Bridge noble metal cast					
D6240	E		Bridge porcelain high noble					
D6241	E		Bridge porcelain base metal					
D6242	E		Bridge porcelain nobel metal					
D6245	E		Bridge porcelain/ceramic					
D6250	E		Bridge resin w/high noble					
D6251	E		Bridge resin base metal					
D6252	E		Bridge resin w/noble metal					
D6253	E	NI	Provisional pontic					
D6519	E	DG	Inlay/onlay porce/ceramic					
D6520	E	DG	Dental retainer two surfaces					
D6530	E	DG	Retainer metallic 3+ surface					
D6543	E	DG	Dental retainr onlay 3 surf					
D6544	E	DG	Dental retainr onlay 4/more					
D6545	E		Dental retainr cast metl					
D6548	E		Porcelain/ceramic retainer					
D6600	E	NI	Porcelain/ceramic inlay 2srf					
D6601	E	NI	Porc/ceram inlay >= 3 surfac					
D6602	E	NI	Cst hgh nble mtl inlay 2 srf					
D6603	E	NI	Cst hgh nble mtl inlay >=3sr					
D6604	E	NI	Cst bse mtl inlay 2 surfaces					
D6605	E	NI	Cst bse mtl inlay >= 3 surfa					
D6606	E	NI	Cast noble metal inlay 2 sur					
D6607	E	NI	Cst noble mtl inlay >=3 surf					
D6608	E	NI	Onlay porc/crmc 2 surfaces					
D6609	E	NI	Onlay porc/crmc >=3 surfaces					
D6610	E	NI	Onlay cst hgh nbl mtl 2 srfc					
D6611	E	NI	Onlay cst hgh nbl mtl >=3srf					
D6612	E	NI	Onlay cst base mtl 2 surface					
D6613	E	NI	Onlay cst base mtl >=3 surfa					
D6614	E	NI	Onlay cst nbl mtl 2 surfaces					
D6615	E	NI	Onlay cst nbl mtl >=3 surfac					
D6720	E		Retain crown resin w hi nble					
D6721	E		Crown resin w/base metal					
D6722	E		Crown resin w/noble metal					
D6740	E		Crown porcelain/ceramic					
D6750	E		Crown porcelain high noble					
D6751	E		Crown porcelain base metal					
D6752	E		Crown porcelain noble metal					
D6780	E		Crown 3/4 high noble metal					
D6781	E		Crown 3/4 cast based metal					
D6782	E		Crown 3/4 cast noble metal					
D6783	E		Crown 3/4 porcelain/ceramic					
D6790	E		Crown full high noble metal					
D6791	E		Crown full base metal cast					
D6792	E		Crown full noble metal cast					
D6793	E	NI	Provisional retainer crown					
D6920	S		Dental connector bar	0330	4.7770	$249.13		$49.83
D6930	E		Dental recement bridge					
D6940	E		Stress breaker					
D6950	E		Precision attachment					
D6970	E		Post & core plus retainer					
D6971	E		Cast post bridge retainer					
D6972	E		Prefab post & core plus reta					
D6973	E		Core build up for retainer					
D6975	E		Coping metal					
D6976	E		Each addtnl cast post					
D6977	E		Each addtl prefab post					
D6980	E		Bridge repair					
D6985	E	NI	Pediatric partial denture fx					

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CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
D6999	E		Fixed prosthodontic proc					
D7110	S	DG	Oral surgery single tooth	0330	4.7770	$249.13		$49.83
D7111	S	NI	Coronal remnants deciduous t	0330	4.7770	$249.13		$49.83
D7120	S	DG	Each add tooth extraction	0330	4.7770	$249.13		$49.83
D7130	S	DG	Tooth root removal	0330	4.7770	$249.13		$49.83
D7140	S	NI	Extraction erupted tooth/exr	0330	4.7770	$249.13		$49.83
D7210	S		Rem imp tooth w mucoper flp	0330	4.7770	$249.13		$49.83
D7220	S		Impact tooth remov soft tiss	0330	4.7770	$249.13		$49.83
D7230	S		Impact tooth remov part bony	0330	4.7770	$249.13		$49.83
D7240	S		Impact tooth remov comp bony	0330	4.7770	$249.13		$49.83
D7241	S		Impact tooth rem bony w/comp	0330	4.7770	$249.13		$49.83
D7250	S		Tooth root removal	0330	4.7770	$249.13		$49.83
D7260	S		Oral antral fistula closure	0330	4.7770	$249.13		$49.83
D7261	S	NI	Primary closure sinus perf	0330	4.7770	$249.13		$49.83
D7270	E		Tooth reimplantation					
D7272	E		Tooth transplantation					
D7280	E		Exposure impact tooth orthod					
D7281	E		Exposure tooth aid eruption					
D7282	E	NI	Mobilize erupted/malpos toot					
D7285	E		Biopsy of oral tissue hard					
D7286	E		Biopsy of oral tissue soft					
D7287	E	NI	Cytology sample collection					
D7290	E		Repositioning of teeth					
D7291	S		Transseptal fiberotomy	0330	4.7770	$249.13		$49.83
D7310	E		Alveoplasty w/ extraction					
D7320	E		Alveoplasty w/o extraction					
D7340	E		Vestibuloplasty ridge extens					
D7350	E		Vestibuloplasty exten graft					
D7410	E		Rad exc lesion up to 1.25 cm					
D7411	E	NI	Excision benign lesion>1.25c					
D7412	E	NI	Excision benign lesion compl					
D7413	E	NI	Excision malig lesion<=1.25c					
D7414	E	NI	Excision malig lesion>1.25cm					
D7415	E	NI	Excision malig les complicat					
D7420	E	DG	Lesion > 1.25 cm					
D7430	E	DG	Exc benign tumor to 1.25 cm					
D7431	E	DG	Benign tumor exc > 1.25 cm					
D7440	E		Malig tumor exc to 1.25 cm					
D7441	E		Malig tumor > 1.25 cm					
D7450	E		Rem odontogen cyst to 1.25cm					
D7451	E		Rem odontogen cyst > 1.25 cm					
D7460	E		Rem nonodonto cyst to 1.25cm					
D7461	E		Rem nonodonto cyst > 1.25 cm					
D7465	E		Lesion destruction					
D7471	E		Rem exostosis any site					
D7472	E	NI	Removal of torus palatinus					
D7473	E	NI	Remove torus mandibularis					
D7480	E	DG	Partial ostectomy					
D7485	E	NI	Surg reduct osseoustuberosit					
D7490	E		Mandible resection					
D7510	E		I&d absc intraoral soft tiss					
D7520	E		I&d abscess extraoral					
D7530	E		Removal fb skin/areolar tiss					
D7540	E		Removal of fb reaction					
D7550	E		Removal of sloughed off bone					
D7560	E		Maxillary sinusotomy					
D7610	E		Maxilla open reduct simple					
D7620	E		Clsd reduct simpl maxilla fx					
D7630	E		Open red simpl mandible fx					
D7640	E		Clsd red simpl mandible fx					
D7650	E		Open red simp malar/zygom fx					
D7660	E		Clsd red simp malar/zygom fx					
D7670	E		Closd rductn splint alveolus					
D7671	E	NI	Alveolus open reduction					
D7680	E		Reduct simple facial bone fx					

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D7710	E		Maxilla open reduct compound					
D7720	E		Clsd reduct compd maxilla fx					
D7730	E		Open reduct compd mandble fx					
D7740	E		Clsd reduct compd mandble fx					
D7750	E		Open red comp malar/zygma fx					
D7760	E		Clsd red comp malar/zygma fx					
D7770	E		Open reduc compd alveolus fx					
D7771	E	NI	Alveolus clsd reduc stblz te					
D7780	E		Reduct compnd facial bone fx					
D7810	E		Tmj open reduct-dislocation					
D7820	E		Closed tmp manipulation					
D7830	E		Tmj manipulation under anest					
D7840	E		Removal of tmj condyle					
D7850	E		Tmj meniscectomy					
D7852	E		Tmj repair of joint disc					
D7854	E		Tmj excisn of joint membrane					
D7856	E		Tmj cutting of a muscle					
D7858	E		Tmj reconstruction					
D7860	E		Tmj cutting into joint					
D7865	E		Tmj reshaping components					
D7870	E		Tmj aspiration joint fluid					
D7871	E		Lysis + lavage w catheters					
D7872	E		Tmj diagnostic arthroscopy					
D7873	E		Tmj arthroscopy lysis adhesn					
D7874	E		Tmj arthroscopy disc reposit					
D7875	E		Tmj arthroscopy synovectomy					
D7876	E		Tmj arthroscopy discectomy					
D7877	E		Tmj arthroscopy debridement					
D7880	E		Occlusal orthotic appliance					
D7899	E		Tmj unspecified therapy					
D7910	E		Dent sutur recent wnd to 5cm					
D7911	E		Dental suture wound to 5 cm					
D7912	E		Suture complicate wnd > 5 cm					
D7920	E		Dental skin graft					
D7940	S		Reshaping bone orthognathic	0330	4.7770	$249.13		$49.83
D7941	E		Bone cutting ramus closed					
D7943	E		Cutting ramus open w/graft					
D7944	E		Bone cutting segmented					
D7945	E		Bone cutting body mandible					
D7946	E		Reconstruction maxilla total					
D7947	E		Reconstruct maxilla segment					
D7948	E		Reconstruct midface no graft					
D7949	E		Reconstruct midface w/graft					
D7950	E		Mandible graft					
D7955	E		Repair maxillofacial defects					
D7960	E		Frenulectomy/frenulotomy					
D7970	E		Excision hyperplastic tissue					
D7971	E		Excision pericoronal gingiva					
D7972	E	NI	Surg redct fibrous tuberosit					
D7980	E		Sialolithotomy					
D7981	E		Excision of salivary gland					
D7982	E		Sialodochoplasty					
D7983	E		Closure of salivary fistula					
D7990	E		Emergency tracheotomy					
D7991	E		Dental coronoidectomy					
D7995	E		Synthetic graft facial bones					
D7996	E		Implant mandible for augment					
D7997	E		Appliance removal					
D7999	E		Oral surgery procedure					
D8010	E		Limited dental tx primary					
D8020	E		Limited dental tx transition					
D8030	E		Limited dental tx adolescent					
D8040	E		Limited dental tx adult					
D8050	E		Intercep dental tx primary					
D8060	E		Intercep dental tx transitn					

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CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
D8070	E		Compre dental tx transition					
D8080	E		Compre dental tx adolescent					
D8090	E		Compre dental tx adult					
D8210	E		Orthodontic rem appliance tx					
D8220	E		Fixed appliance therapy habt					
D8660	E		Preorthodontic tx visit					
D8670	E		Periodic orthodontc tx visit					
D8680	E		Orthodontic retention					
D8690	E		Orthodontic treatment					
D8691	E		Repair ortho appliance					
D8692	E		Replacement retainer					
D8999	E		Orthodontic procedure					
D9110	N		Tx dental pain minor proc					
D9210	E		Dent anesthesia w/o surgery					
D9211	E		Regional block anesthesia					
D9212	E		Trigeminal block anesthesia					
D9215	E		Local anesthesia					
D9220	E		General anesthesia					
D9221	E		General anesthesia ea ad 15m					
D9230	N		Analgesia					
D9241	E		Intravenous sedation					
D9242	E		IV sedation ea ad 30 m					
D9248	N		Sedation (non-iv)					
D9310	E		Dental consultation					
D9410	E		Dental house call					
D9420	E		Hospital call					
D9430	E		Office visit during hours					
D9440	E		Office visit after hours					
D9450	E	NI	Case presentation tx plan					
D9610	E		Dent therapeutic drug inject					
D9630	S		Other drugs/medicaments	0330	4.7770	$249.13		$49.83
D9910	E		Dent appl desensitizing med					
D9911	E		Appl desensitizing resin					
D9920	E		Behavior management					
D9930	S		Treatment of complications	0330	4.7770	$249.13		$49.83
D9940	S		Dental occlusal guard	0330	4.7770	$249.13		$49.83
D9941	E		Fabrication athletic guard					
D9950	S		Occlusion analysis	0330	4.7770	$249.13		$49.83
D9951	S		Limited occlusal adjustment	0330	4.7770	$249.13		$49.83
D9952	S		Complete occlusal adjustment	0330	4.7770	$249.13		$49.83
D9970	E		Enamel microabrasion					
D9971	E		Odontoplasty 1-2 teeth					
D9972	E		Extrnl bleaching per arch					
D9973	E		Extrnl bleaching per tooth					
D9974	E		Intrnl bleaching per tooth					
D9999	E		Adjunctive procedure					
E0100	A		Cane adjust/fixed with tip					
E0105	A		Cane adjust/fixed quad/3 pro					
E0110	A		Crutch forearm pair					
E0111	A		Crutch forearm each					
E0112	A		Crutch underarm pair wood					
E0113	A		Crutch underarm each wood					
E0114	A		Crutch underarm pair no wood					
E0116	A		Crutch underarm each no wood					
E0117	A	NI	Underarm springassist crutch					
E0130	A		Walker rigid adjust/fixed ht					
E0135	A		Walker folding adjust/fixed					
E0141	A		Rigid walker wheeled wo seat					
E0142	A		Walker rigid wheeled with se					
E0143	A		Walker folding wheeled w/o s					
E0144	A		Enclosed walker w rear seat					
E0145	A		Walker whled seat/crutch att					
E0146	A		Folding walker wheels w seat					
E0147	A		Walker variable wheel resist					
E0148	A		Heavyduty walker no wheels					

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CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
E0149	A		Heavy duty wheeled walker					
E0153	A		Forearm crutch platform atta					
E0154	A		Walker platform attachment					
E0155	A		Walker wheel attachment,pair					
E0156	A		Walker seat attachment					
E0157	A		Walker crutch attachment					
E0158	A		Walker leg extenders set of4					
E0159	A		Brake for wheeled walker					
E0160	A		Sitz type bath or equipment					
E0161	A		Sitz bath/equipment w/faucet					
E0162	A		Sitz bath chair					
E0163	A		Commode chair stationry fxd					
E0164	A		Commode chair mobile fixed a					
E0165	A		Commode chair stationry det					
E0166	A		Commode chair mobile detach					
E0167	A		Commode chair pail or pan					
E0168	A		Heavyduty/wide commode chair					
E0169	A		Seatlift incorp commodechair					
E0175	A		Commode chair foot rest					
E0176	A		Air pressre pad/cushion nonp					
E0177	A		Water press pad/cushion nonp					
E0178	A		Gel pressre pad/cushion nonp					
E0179	A		Dry pressre pad/cushion nonp					
E0180	A		Press pad alternating w pump					
E0181	A		Press pad alternating w/ pum					
E0182	A		Pressure pad alternating pum					
E0184	A		Dry pressure mattress					
E0185	A		Gel pressure mattress pad					
E0186	A		Air pressure mattress					
E0187	A		Water pressure mattress					
E0188	E		Synthetic sheepskin pad					
E0189	E		Lambswool sheepskin pad					
E0191	A		Protector heel or elbow					
E0192	A		Pad wheelchr low press/posit					
E0193	A		Powered air flotation bed					
E0194	A		Air fluidized bed					
E0196	A		Gel pressure mattress					
E0197	A		Air pressure pad for mattres					
E0198	A		Water pressure pad for mattr					
E0199	A		Dry pressure pad for mattres					
E0200	A		Heat lamp without stand					
E0202	A		Phototherapy light w/ photom					
E0203	A	NI	Therapeutic lightbox tabletp					
E0205	A		Heat lamp with stand					
E0210	A		Electric heat pad standard					
E0215	A		Electric heat pad moist					
E0217	A		Water circ heat pad w pump					
E0218	E		Water circ cold pad w pump					
E0220	A		Hot water bottle					
E0221	A		Infrared heating pad system					
E0225	A		Hydrocollator unit					
E0230	A		Ice cap or collar					
E0231	E		Wound warming device					
E0232	E		Warming card for NWT					
E0235	A		Paraffin bath unit portable					
E0236	A		Pump for water circulating p					
E0238	A		Heat pad non-electric moist					
E0239	A		Hydrocollator unit portable					
E0241	E		Bath tub wall rail					
E0242	E		Bath tub rail floor					
E0243	E		Toilet rail					
E0244	E		Toilet seat raised					
E0245	E		Tub stool or bench					
E0246	E		Transfer tub rail attachment					
E0249	A		Pad water circulating heat u					

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CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
E0250	A		Hosp bed fixed ht w/ mattres					
E0251	A		Hosp bed fixd ht w/o mattres					
E0255	A		Hospital bed var ht w/ mattr					
E0256	A		Hospital bed var ht w/o matt					
E0260	A		Hosp bed semi-electr w/ matt					
E0261	A		Hosp bed semi-electr w/o mat					
E0265	A		Hosp bed total electr w/ mat					
E0266	A		Hosp bed total elec w/o matt					
E0270	E		Hospital bed institutional t					
E0271	A		Mattress innerspring					
E0272	A		Mattress foam rubber					
E0273	E		Bed board					
E0274	E		Over-bed table					
E0275	A		Bed pan standard					
E0276	A		Bed pan fracture					
E0277	A		Powered pres-redu air mattrs					
E0280	A		Bed cradle					
E0290	A		Hosp bed fx ht w/o rails w/m					
E0291	A		Hosp bed fx ht w/o rail w/o					
E0292	A		Hosp bed var ht w/o rail w/o					
E0293	A		Hosp bed var ht w/o rail w/					
E0294	A		Hosp bed semi-elect w/ mattr					
E0295	A		Hosp bed semi-elect w/o matt					
E0296	A		Hosp bed total elect w/ matt					
E0297	A		Hosp bed total elect w/o mat					
E0305	A		Rails bed side half length					
E0310	A		Rails bed side full length					
E0315	E		Bed accessory brd/tbl/supprt					
E0316	A		Bed safety enclosure					
E0325	A		Urinal male jug-type					
E0326	A		Urinal female jug-type					
E0350	E		Control unit bowel system					
E0352	E		Disposable pack w/bowel syst					
E0370	E		Air elevator for heel					
E0371	A		Nonpower mattress overlay					
E0372	A		Powered air mattress overlay					
E0373	A		Nonpowered pressure mattress					
E0424	A		Stationary compressed gas 02					
E0425	E		Gas system stationary compre					
E0430	E		Oxygen system gas portable					
E0431	A		Portable gaseous 02					
E0434	A		Portable liquid 02					
E0435	E		Oxygen system liquid portabl					
E0439	A		Stationary liquid 02					
E0440	E		Oxygen system liquid station					
E0441	A		Oxygen contents, gaseous					
E0442	A		Oxygen contents, liquid					
E0443	A		Portable 02 contents, gas					
E0444	A		Portable 02 contents, liquid					
E0445	A	NI	Oximeter non-invasive					
E0450	A		Volume vent stationary/porta					
E0454	A	NI	Pressure ventilator					
E0455	A		Oxygen tent excl croup/ped t					
E0457	A		Chest shell					
E0459	A		Chest wrap					
E0460	A		Neg press vent portabl/statn					
E0461	A	NI	Vol vent noninvasive interfa					
E0462	A		Rocking bed w/ or w/o side r					
E0480	A		Percussor elect/pneum home m					
E0481	A		Intrpulmnry percuss vent sys					
E0482	A		Cough stimulating device					
E0483	A	NI	Chest compression gen system					
E0484	A	NI	Non-elec oscillatory pep dvc					
E0500	A		Ippb all types					
E0550	A		Humidif extens supple w ippb					

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CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
E0555	A		Humidifier for use w/ regula					
E0560	A		Humidifier supplemental w/ i					
E0565	A		Compressor air power source					
E0570	A		Nebulizer with compression					
E0571	A		Aerosol compressor for svneb					
E0572	A		Aerosol compressor adjust pr					
E0574	A		Ultrasonic generator w svneb					
E0575	A		Nebulizer ultrasonic					
E0580	A		Nebulizer for use w/ regulat					
E0585	A		Nebulizer w/ compressor & he					
E0590	A		Dispensing fee dme neb drug					
E0600	A		Suction pump portab hom modl					
E0601	A		Cont airway pressure device					
E0602	E		Manual breast pump					
E0603	A		Electric breast pump					
E0604	A		Hosp grade elec breast pump					
E0605	A		Vaporizer room type					
E0606	A		Drainage board postural					
E0607	A		Blood glucose monitor home					
E0608	A	DG	Apnea monitor					
E0610	A		Pacemaker monitr audible/vis					
E0615	A		Pacemaker monitr digital/vis					
E0616	N		Cardiac event recorder					
E0617	A		Automatic ext defibrillator					
E0618	A	NI	Apnea monitor					
E0619	A	NI	Apnea monitor w recorder					
E0620	A		Cap bld skin piercing laser					
E0621	A		Patient lift sling or seat					
E0625	E		Patient lift bathroom or toi					
E0627	A		Seat lift incorp lift-chair					
E0628	A		Seat lift for pt furn-electr					
E0629	A		Seat lift for pt furn-non-el					
E0630	A		Patient lift hydraulic					
E0635	A		Patient lift electric					
E0636	A	NI	PT support & positioning sys					
E0650	A		Pneuma compresor non-segment					
E0651	A		Pneum compressor segmental					
E0652	A		Pneum compres w/cal pressure					
E0655	A		Pneumatic appliance half arm					
E0660	A		Pneumatic appliance full leg					
E0665	A		Pneumatic appliance full arm					
E0666	A		Pneumatic appliance half leg					
E0667	A		Seg pneumatic appl full leg					
E0668	A		Seg pneumatic appl full arm					
E0669	A		Seg pneumatic appli half leg					
E0671	A		Pressure pneum appl full leg					
E0672	A		Pressure pneum appl full arm					
E0673	A		Pressure pneum appl half leg					
E0690	A	DG	Ultraviolet cabinet					
E0691	A	NI	Uvl pnl 2 sq ft or less					
E0692	A	NI	Uvl sys panel 4 ft					
E0693	A	NI	Uvl sys panel 6 ft					
E0694	A	NI	Uvl md cabinet sys 6 ft					
E0700	E		Safety equipment					
E0701	A	NI	Helmet w face guard prefab					
E0710	E		Restraints any type					
E0720	A		Tens two lead					
E0730	A		Tens four lead					
E0731	A		Conductive garment for tens/					
E0740	E		Incontinence treatment systm					
E0744	A		Neuromuscular stim for scoli					
E0745	A		Neuromuscular stim for shock					
E0746	E		Electromyograph biofeedback					
E0747	A		Elec osteogen stim not spine					
E0748	A		Elec osteogen stim spinal					

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CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
E0749	N		Elec osteogen stim implanted					
E0752	E		Neurostimulator electrode					
E0754	A		Pulsegenerator pt programmer					
E0755	E		Electronic salivary reflex s					
E0756	E		Implantable pulse generator					
E0757	E		Implantable RF receiver					
E0758	A		External RF transmitter					
E0759	A		Replace rdfrquncy transmittr					
E0760	E		Osteogen ultrasound stimltor					
E0761	E	NI	Nontherm electromgntc device					
E0765	E		Nerve stimulator for tx n&v					
E0776	A		Iv pole					
E0779	A		Amb infusion pump mechanical					
E0780	A		Mech amb infusion pump <8hrs					
E0781	A		External ambulatory infus pu					
E0782	E		Non-programble infusion pump					
E0783	E		Programmable infusion pump					
E0784	A		Ext amb infusn pump insulin					
E0785	E		Replacement impl pump cathet					
E0786	E		Implantable pump replacement					
E0791	A		Parenteral infusion pump sta					
E0830	N		Ambulatory traction device					
E0840	A		Tract frame attach headboard					
E0850	A		Traction stand free standing					
E0855	A		Cervical traction equipment					
E0860	A		Tract equip cervical tract					
E0870	A		Tract frame attach footboard					
E0880	A		Trac stand free stand extrem					
E0890	A		Traction frame attach pelvic					
E0900	A		Trac stand free stand pelvic					
E0910	A		Trapeze bar attached to bed					
E0920	A		Fracture frame attached to b					
E0930	A		Fracture frame free standing					
E0935	A		Exercise device passive moti					
E0940	A		Trapeze bar free standing					
E0941	A		Gravity assisted traction de					
E0942	A		Cervical head harness/halter					
E0943	A		Cervical pillow					
E0944	A		Pelvic belt/harness/boot					
E0945	A		Belt/harness extremity					
E0946	A		Fracture frame dual w cross					
E0947	A		Fracture frame attachmnts pe					
E0948	A		Fracture frame attachmnts ce					
E0950	E		Tray					
E0951	E		Loop heel					
E0952	E		Loop tie					
E0953	E		Pneumatic tire					
E0954	E		Wheelchair semi-pneumatic ca					
E0958	A		Whlchr att- conv 1 arm drive					
E0959	E		Amputee adapter					
E0961	E		Wheelchair brake extension					
E0962	A		Wheelchair 1 inch cushion					
E0963	A		Wheelchair 2 inch cushion					
E0964	A		Wheelchair 3 inch cushion					
E0965	A		Wheelchair 4 inch cushion*					
E0966	E		Wheelchair head rest extensi					
E0967	E		Wheelchair hand rims					
E0968	A		Wheelchair commode seat					
E0969	E		Wheelchair narrowing device					
E0970	E		Wheelchair no. 2 footplates					
E0971	E		Wheelchair anti-tipping devi					
E0972	A		Transfer board or device					
E0973	E		Wheelchair adjustabl height					
E0974	E		Wheelchair grade-aid					
E0975	E		Wheelchair reinforced seat u					

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CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
E0976	E		Wheelchair reinforced back u					
E0977	E		Wheelchair wedge cushion					
E0978	E		Wheelchair belt w/airplane b					
E0979	E		Wheelchair belt with velcro					
E0980	E		Wheelchair safety vest					
E0990	E		Whellchair elevating leg res					
E0991	E		Wheelchair upholstry seat					
E0992	E		Wheelchair solid seat insert					
E0993	E		Wheelchair back upholstery					
E0994	E		Wheelchair arm rest					
E0995	E		Wheelchair calf rest					
E0996	E		Wheelchair tire solid					
E0997	E		Wheelchair caster w/ a fork					
E0998	E		Wheelchair caster w/o a fork					
E0999	E		Wheelchr pneumatic tire w/wh					
E1000	E		Wheelchair tire pneumatic ca					
E1001	E		Wheelchair wheel					
E1011	A	NI	Ped wc modify width adjustm					
E1012	A	NI	Int seat sys planar ped w/c					
E1013	A	NI	Int seat sys contour ped w/c					
E1014	A	NI	Reclining back add ped w/c					
E1015	A	NI	Shock absorber for man w/c					
E1016	A	NI	Shock absorber for power w/c					
E1017	A	NI	HD shck absrbr for hd man wc					
E1018	A	NI	HD shck absrber for hd powwc					
E1020	A	NI	Residual limb support system					
E1025	A	NI	Pedwc lat/thor sup nocontour					
E1026	A	NI	Pedwc contoured lat/thor sup					
E1027	A	NI	Ped wc lat/ant support					
E1031	A		Rollabout chair with casters					
E1035	E		Patient transfer system					
E1037	A	NI	Transport chair, ped size					
E1038	A	NI	Transport chair, adult size					
E1050	A		Whelchr fxd full length arms					
E1060	A		Wheelchair detachable arms					
E1065	E		Wheelchair power attachment					
E1066	E		Wheelchair battery charger					
E1069	E		Wheelchair deep cycle batter					
E1070	A		Wheelchair detachable foot r					
E1083	A		Hemi-wheelchair fixed arms					
E1084	A		Hemi-wheelchair detachable a					
E1085	A		Hemi-wheelchair fixed arms					
E1086	A		Hemi-wheelchair detachable a					
E1087	A		Wheelchair lightwt fixed arm					
E1088	A		Wheelchair lightweight det a					
E1089	A		Wheelchair lightwt fixed arm					
E1090	A		Wheelchair lightweight det a					
E1091	A		Wheelchair youth					
E1092	A		Wheelchair wide w/ leg rests					
E1093	A		Wheelchair wide w/ foot rest					
E1100	A		Whchr s-recl fxd arm leg res					
E1110	A		Wheelchair semi-recl detach					
E1130	A		Whlchr stand fxd arm ft rest					
E1140	A		Wheelchair standard detach a					
E1150	A		Wheelchair standard w/ leg r					
E1160	A		Wheelchair fixed arms					
E1161	A	NI	Manual adult wc w tiltinspac					
E1170	A		Whlchr ampu fxd arm leg rest					
E1171	A		Wheelchair amputee w/o leg r					
E1172	A		Wheelchair amputee detach ar					
E1180	A		Wheelchair amputee w/ foot r					
E1190	A		Wheelchair amputee w/ leg re					
E1195	A		Wheelchair amputee heavy dut					
E1200	A		Wheelchair amputee fixed arm					
E1210	A		Whlchr moto ful-arm leg rest					

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CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
E1211	A		Wheelchair motorized w/ det					
E1212	A		Wheelchair motorized w full					
E1213	A		Wheelchair motorized w/ det					
E1220	A		Whlchr special size/constrc					
E1221	A		Wheelchair spec size w foot					
E1222	A		Wheelchair spec size w/ leg					
E1223	A		Wheelchair spec size w foot					
E1224	A		Wheelchair spec size w/ leg					
E1225	A		Wheelchair spec sz semi-recl					
E1226	E		Wheelchair spec sz full-recl					
E1227	E		Wheelchair spec sz spec ht a					
E1228	A		Wheelchair spec sz spec ht b					
E1230	A		Power operated vehicle					
E1231	A	NI	Rigid ped w/c tilt-in-space					
E1232	A	NI	Folding ped wc tilt-in-space					
E1233	A	NI	Rig ped wc tltnspc w/o seat					
E1234	A	NI	Fld ped wc tltnspc w/o seat					
E1235	A	NI	Rigid ped wc adjustable					
E1236	A	NI	Folding ped wc adjustable					
E1237	A	NI	Rgd ped wc adjstabl w/o seat					
E1238	A	NI	Fld ped wc adjstabl w/o seat					
E1240	A		Whchr litwt det arm leg rest					
E1250	A		Wheelchair lightwt fixed arm					
E1260	A		Wheelchair lightwt foot rest					
E1270	A		Wheelchair lightweight leg r					
E1280	A		Whchr h-duty det arm leg res					
E1285	A		Wheelchair heavy duty fixed					
E1290	A		Wheelchair hvy duty detach a					
E1295	A		Wheelchair heavy duty fixed					
E1296	A		Wheelchair special seat heig					
E1297	A		Wheelchair special seat dept					
E1298	A		Wheelchair spec seat depth/w					
E1300	E		Whirlpool portable					
E1310	A		Whirlpool non-portable					
E1340	A		Repair for DME, per 15 min					
E1353	A		Oxygen supplies regulator					
E1355	A		Oxygen supplies stand/rack					
E1372	A		Oxy suppl heater for nebuliz					
E1390	A		Oxygen concentrator					
E1399	A		Durable medical equipment mi					
E1405	A		O2/water vapor enrich w/heat					
E1406	A		O2/water vapor enrich w/o he					
E1500	A		Centrifuge					
E1510	A		Kidney dialysate delivry sys					
E1520	A		Heparin infusion pump					
E1530	A		Replacement air bubble detec					
E1540	A		Replacement pressure alarm					
E1550	A		Bath conductivity meter					
E1560	A		Replace blood leak detector					
E1570	A		Adjustable chair for esrd pt					
E1575	A		Transducer protect/fld bar					
E1580	A		Unipuncture control system					
E1590	A		Hemodialysis machine					
E1592	A		Auto interm peritoneal dialy					
E1594	A		Cycler dialysis machine					
E1600	A		Deli/install chrg hemo equip					
E1610	A		Reverse osmosis h2o puri sys					
E1615	A		Deionizer H2O puri system					
E1620	A		Replacement blood pump					
E1625	A		Water softening system					
E1630	A		Reciprocating peritoneal dia					
E1632	A		Wearable artificial kidney					
E1635	A		Compact travel hemodialyzer					
E1636	A		Sorbent cartridges per 10					
E1637	A		Hemostats for dialysis, each					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

[Calendar Year 2003]

CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
E1638	A	DG	Peri dialysis heating pad					
E1639	A		Dialysis scale					
E1699	A		Dialysis equipment noc					
E1700	A		Jaw motion rehab system					
E1701	A		Repl cushions for jaw motion					
E1702	A		Repl measr scales jaw motion					
E1800	A		Adjust elbow ext/flex device					
E1801	A		SPS elbow device					
E1802	A	NI	Adjst forearm pro/sup device					
E1805	A		Adjust wrist ext/flex device					
E1806	A		SPS wrist device					
E1810	A		Adjust knee ext/flex device					
E1811	A		SPS knee device					
E1815	A		Adjust ankle ext/flex device					
E1816	A		SPS ankle device					
E1818	A		SPS forearm device					
E1820	A		Soft interface material					
E1821	A		Replacement interface SPSD					
E1825	A		Adjust finger ext/flex devc					
E1830	A		Adjust toe ext/flex device					
E1840	A		Adj shoulder ext/flex device					
E1902	A		AAC non-electronic board					
E2000	A		Gastric suction pump hme mdl					
E2100	A		Bld glucose monitor w voice					
E2101	A		Bld glucose monitor w lance					
G0001	A		Drawing blood for specimen					
G0002	X	DG	Temporary urinary catheter	0340	0.6492	$33.86		$6.77
G0004	E	DG	ECG transm phys review & int					
G0005	X	DG	ECG 24 hour recording	0097	1.0077	$52.55	$23.80	$10.51
G0006	X	DG	ECG transmission & analysis	0097	1.0077	$52.55	$23.80	$10.51
G0007	N	DG	ECG phy review & interpret					
G0008	L		Admin influenza virus vac					
G0009	L		Admin pneumococcal vaccine					
G0010	K		Admin hepatitis b vaccine	0355	0.2132	$11.12		$2.22
G0015	X	DG	Post symptom ECG tracing	0097	1.0077	$52.55	$23.80	$10.51
G0025	N		Collagen skin test kit					
G0026	A	DG	Fecal leukocyte examination					
G0027	A	DG	Semen analysis					
G0030	S		PET imaging prev PET single	0285	18.1294	$945.47	$409.56	$189.09
G0031	S		PET imaging prev PET multple	0285	18.1294	$945.47	$409.56	$189.09
G0032	S		PET follow SPECT 78464 singl	0285	18.1294	$945.47	$409.56	$189.09
G0033	S		PET follow SPECT 78464 mult	0285	18.1294	$945.47	$409.56	$189.09
G0034	S		PET follow SPECT 76865 singl	0285	18.1294	$945.47	$409.56	$189.09
G0035	S		PET follow SPECT 78465 mult	0285	18.1294	$945.47	$409.56	$189.09
G0036	S		PET follow comry angio sing	0285	18.1294	$945.47	$409.56	$189.09
G0037	S		PET follow comry angio mult	0285	18.1294	$945.47	$409.56	$189.09
G0038	S		PET follow myocard perf sing	0285	18.1294	$945.47	$409.56	$189.09
G0039	S		PET follow myocard perf mult	0285	18.1294	$945.47	$409.56	$189.09
G0040	S		PET follow stress echo singl	0285	18.1294	$945.47	$409.56	$189.09
G0041	S		PET follow stress echo mult	0285	18.1294	$945.47	$409.56	$189.09
G0042	S		PET follow ventriculogm sing	0285	18.1294	$945.47	$409.56	$189.09
G0043	S		PET follow ventriculogm mult	0285	18.1294	$945.47	$409.56	$189.09
G0044	S		PET following rest ECG singl	0285	18.1294	$945.47	$409.56	$189.09
G0045	S		PET following rest ECG mult	0285	18.1294	$945.47	$409.56	$189.09
G0046	S		PET follow stress ECG singl	0285	18.1294	$945.47	$409.56	$189.09
G0047	S		PET follow stress ECG mult	0285	18.1294	$945.47	$409.56	$189.09
G0050	S	DG	Residual urine by ultrasound	0265	0.9787	$51.04	$28.07	$10.21
G0101	V		CA screen;pelvic/breast exam	0600	0.8430	$43.96		$8.79
G0102	N		Prostate ca screening; dre					
G0103	A		Psa, total screening					
G0104	S		CA screen;flexi sigmoidscope	0159	2.3255	$121.28		$30.32
G0105	T		Colorectal scrn; hi risk ind	0158	7.0638	$368.38		$92.10
G0106	S		Colon CA screen;barium enema	0157	2.5387	$132.40		$26.48
G0107	A		CA screen; fecal blood test					
G0108	A		Diab manage trn per indiv					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

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CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
G0109	A		Diab manage trn ind/group					
G0110	A		Nett pulm-rehab educ; ind					
G0111	A		Nett pulm-rehab educ; group					
G0112	A		Nett;nutrition guid, initial					
G0113	A		Nett;nutrition guid,subseqnt					
G0114	A		Nett; psychosocial consult					
G0115	A		Nett; psychological testing					
G0116	A		Nett; psychosocial counsel					
G0117	S		Glaucoma scrn hgh risk direc	0230	0.7364	$38.40	$14.97	$7.68
G0118	S		Glaucoma scrn hgh risk direc	0230	0.7364	$38.40	$14.97	$7.68
G0120	S		Colon ca scrn; barium enema	0157	2.5387	$132.40		$26.48
G0121	T		Colon ca scrn not hi rsk ind	0158	7.0638	$368.38		$92.10
G0122	E		Colon ca scrn; barium enema					
G0123	A		Screen cerv/vag thin layer					
G0124	A		Screen c/v thin layer by MD					
G0125	S		PET img WhBD sgl pulm ring	0714		$1,375.00		$275.00
G0127	T		Trim nail(s)	0009	0.6298	$32.84	$8.34	$6.57
G0128	E		CORF skilled nursing service					
G0129	P		Partial hosp prog service	0033	4.6026	$240.03	$48.17	$48.01
G0130	X		Single energy x-ray study	0260	0.7655	$39.92	$21.95	$7.98
G0131	S	DG	CT scan, bone density study	0288	1.2984	$67.71		$13.54
G0132	S	DG	CT scan, bone density study	0665	0.8236	$42.95		$8.59
G0141	E		Scr c/v cyto,autosys and md					
G0143	A		Scr c/v cyto,thinlayer,rescr					
G0144	A		Scr c/v cyto,thinlayer,rescr					
G0145	A		Scr c/v cyto,thinlayer,rescr					
G0147	A		Scr c/v cyto, automated sys					
G0148	A		Scr c/v cyto, autosys, rescr					
G0151	E		HHCP-serv of pt,ea 15 min					
G0152	E		HHCP-serv of ot,ea 15 min					
G0153	E		HHCP-svs of s/l path,ea 15mn					
G0154	E		HHCP-svs of pt,ea 15 min					
G0155	E		HHCP-svs of csw,ea 15 min					
G0156	E		HHCP-svs of aide,ea 15 min					
G0166	T		Extrnl counterpulse, per tx	0678	2.2189	$115.72		$23.14
G0167	E		Hyperbaric oz tx;no md reqrd					
G0168	X		Wound closure by adhesive	0340	0.6492	$33.86		$6.77
G0173	S		Stereo radoisurgery,complete	0721		$5,500.00		$1,100.00
G0175	V		OPPS Service,sched team conf	0602	1.4631	$76.30		$15.26
G0176	P		OPPS/PHP;activity therapy	0033	4.6026	$240.03	$48.17	$48.01
G0177	P		OPPS/PHP; train & educ serv	0033	4.6026	$240.03	$48.17	$48.01
G0179	E		MD recertification HHA PT					
G0180	E		MD certification HHA patient					
G0181	E		Home health care supervision					
G0182	E		Hospice care supervision					
G0185	T	DG	Transpuppillary thermotx	0235	5.0871	$265.30	$73.44	$53.06
G0186	T		Dstry eye lesn,fdr vssl tech	0235	5.0871	$265.30	$73.44	$53.06
G0187	T	DG	Dstry mclr drusen,photocoag	0235	5.0871	$265.30	$73.44	$53.06
G0192	N	DG	Immunization oral/intranasal					
G0193	A	DG	Endoscopicstudyswallowfunctn					
G0194	A	DG	Sensorytestingendoscopicstud					
G0195	A	DG	Clinicalevalswallowingfunct					
G0196	A	DG	Evalofswallowingwithradioopa					
G0197	A	DG	Evalofptforprescipspeechdevi					
G0198	A	DG	Patientadapation&trainforspe					
G0199	A	DG	Reevaluationofpatientusespec					
G0200	A	DG	Evalofpatientprescipofvoicep					
G0201	A	DG	Modifortraininginusevoicepro					
G0202	A		Screeningmammographydigital					
G0204	S		Diagnosticmammographydigital	0669	0.8915	$46.49		$9.30
G0206	S		Diagnosticmammographydigital	0669	0.8915	$46.49		$9.30
G0210	S		PET img whbd ring dxlung ca	0714		$1,375.00		$275.00
G0211	S		PET img whbd ring init lung	0714		$1,375.00		$275.00
G0212	S		PET img whbd ring restag lun	0714		$1,375.00		$275.00
G0213	S		PET img whbd ring dx colorec	0714		$1,375.00		$275.00

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

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CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
G0214	S		PET img whbd ring init colre	0714		$1,375.00		$275.00
G0215	S		PET img whbd restag col	0714		$1,375.00		$275.00
G0216	S		PET img whbd ring dx melanom	0714		$1,375.00		$275.00
G0217	S		PET img whbd ring init melan	0714		$1,375.00		$275.00
G0218	S		PET img whbd ring restag mel	0714		$1,375.00		$275.00
G0219	E		PET img whbd ring noncov ind					
G0220	S		PET img whbd ring dx lymphom	0714		$1,375.00		$275.00
G0221	S		PET img whbd ring init lymph	0714		$1,375.00		$275.00
G0222	S		PET img whbd ring resta lymp	0714		$1,375.00		$275.00
G0223	S		PET img whbd reg ring dx hea	0714		$1,375.00		$275.00
G0224	S		PETimg whbd reg ring ini hea	0714		$1,375.00		$275.00
G0225	S		PET img whbd ring restag hea	0714		$1,375.00		$275.00
G0226	S		PET img whbd dx esophag	0714		$1,375.00		$275.00
G0227	S		PET img whbd ring ini esopha	0714		$1,375.00		$275.00
G0228	S		PET img whbd ring restg esop	0714		$1,375.00		$275.00
G0229	S		PET img metabolic brain ring	0714		$1,375.00		$275.00
G0230	S		PET myocard viability ring	0714		$1,375.00		$275.00
G0231	S		PET WhBD colorec; gamma cam	0714		$1,375.00		$275.00
G0232	S		PET whbd lymphoma; gamma cam	0714		$1,375.00		$275.00
G0233	S		PET whbd melanoma; gamma cam	0714		$1,375.00		$275.00
G0234	S		PET WhBD pulm nod; gamma cam	0714		$1,375.00		$275.00
G0236	S		Digital film convert diag ma	0706		$25.00		$5.00
G0237	T		Therapeutic procd strg endur	0970		$25.00		$5.00
G0238	T		Oth resp proc, indiv	0970		$25.00		$5.00
G0239	T		Oth resp proc, group	0970		$25.00		$5.00
G0240	A	DG	Critic care by MD transport					
G0241	A	DG	Each additional 30 minutes					
G0242	S		Multisource photon ster plan	0714		$1,375.00		$275.00
G0243	S		Multisour photon stero treat	0721		$5,500.00		$1,100.00
G0244	S		Observ care by facility topt	0339	7.2188	$376.47		$75.29
G0245	V		Initial Foot Exam PTLOPS	0600	0.8430	$43.96		$8.79
G0246	V		Follow-up Eval of Foot PTLOPS	0600	0.8430	$43.96		$8.79
G0247	T		Routine footcare w LOPS	0009	0.6298	$32.84	$8.34	$6.57
G0248	S		Demonstrate use home INR mon	0708		$150.00		$30.00
G0249	S		Provide test material,equipm	0708		$150.00		$30.00
G0250	E		MD review interpret of test					
G0251	S	NI	Linear acc based stero radio	0713		$1,125.00		$225.00
G0252	S	NI	PET imaging initial dx	0714		$1,375.00		$275.00
G0253	S	NI	PET image brst dection recur	0714		$1,375.00		$275.00
G0254	S	NI	PET image brst eval to tx	0714		$1,375.00		$275.00
G0255	E	NI	Current percep threshold tst					
G0256	T	NF	Prostate brachy w palladium	0649	115.0167	$5,998.24		$1,199.65
G0257	S	NF	Unsched dialysis ESRD pt hos	0170	4.8352	$252.16		$50.43
G0258	X	DG	IV infusion during obs stay	0340	0.6492	$33.86		$6.77
G0259	N	NF	Inject for sacroiliac joint					
G0260	T	NF	Inj for sacroiliac jt anesth	0204	2.0251	$105.61	$40.13	$21.12
G0261	T	NF	Prostate brachy w iodine see	0684	98.8349	$5,154.34		$1,030.87
G0262	S	NI	Sm intestinal image capsule	0711		$625.00		$125.00
G0263	N	NF	Adm with CHF, CP, asthma					
G0264	V	NF	Assmt otr CHF, CP, asthma	0600	0.8430	$43.96		$8.79
G0265	A	NI	Cryopresevation Freeze+stora					
G0266	A	NI	Thawing + expansion froz cel					
G0267	A	NI	Bone marrow or psc harvest					
G0268	X	NI	Removal of impacted wax md	0340	0.6492	$33.86		$6.77
G0269	N	NI	Occlusive device in vein art					
G0270	A	NI	MNT subs tx for change dx					
G0271	A	NI	Group MNT 2 or more 30 mins					
G0272	X	NI	Naso/oro gastric tube pl MD	0272	1.3372	$69.74	$38.36	$13.95
G0273	S	NI	Pretx planning, non-Hodgkins	0718		$2,750.00		$550.00
G0274	S	NI	Radiopharm tx, non-Hodgkins	0725		$20,000.00		$4,000.00
G0275	N	NI	Renal angio, cardiac cath					
G0278	N	NI	Iliac art angio,cardiac cath					
G0279	A	NI	Excorp shock tx, elbow epi					
G0280	A	NI	Excorp shock tx other than					
G0281	A	NI	Elec stim unattend for press					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

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CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
G0282	A	NI	Elect stim wound care not pd					
G0283	A	NI	Elec stim other than wound					
G0288	T	NI	Recon, CTA for surg plan	0975		$625.00		$125.00
G0289	N	NI	Arthro, loose body + chondro					
G0290	E	NF	Drug-eluting stents, single					
G0291	E	NF	Drug-eluting stents,each add					
G0292	S	NI	Adm exp drugs,clinical trial	0708		$150.00		$30.00
G0293	S	NI	Non-cov surg proc,clin trial	0710		$400.00		$80.00
G0294	S	NI	Non-cov proc, clinical trial	0707		$75.00		$15.00
G0295	E	NI	Electromagnetic therapy onc					
G9001	E		MCCD, initial rate					
G9002	E		MCCD,maintenance rate					
G9003	E		MCCD, risk adj hi, initial					
G9004	E		MCCD, risk adj lo, initial					
G9005	E		MCCD, risk adj, maintenance					
G9006	E		MCCD, Home monitoring					
G9007	E		MCCD, sch team conf					
G9008	E		Mccd,phys coor-care ovrsght					
G9009	E		MCCD, risk adj, level 3					
G9010	E		MCCD, risk adj, level 4					
G9011	E		MCCD, risk adj, level 5					
G9012	E		Other Specified Case Mgmt					
G9016	A		Demo-smoking cessation coun					
H0001	E		Alcohol and/or drug assess					
H0002	E		Alcohol and/or drug screenin					
H0003	E		Alcohol and/or drug screenin					
H0004	E		Alcohol and/or drug services					
H0005	E		Alcohol and/or drug services					
H0006	E		Alcohol and/or drug services					
H0007	E		Alcohol and/or drug services					
H0008	E		Alcohol and/or drug services					
H0009	E		Alcohol and/or drug services					
H0010	E		Alcohol and/or drug services					
H0011	E		Alcohol and/or drug services					
H0012	E		Alcohol and/or drug services					
H0013	E		Alcohol and/or drug services					
H0014	E		Alcohol and/or drug services					
H0015	E		Alcohol and/or drug services					
H0016	E		Alcohol and/or drug services					
H0017	E		Alcohol and/or drug services					
H0018	E		Alcohol and/or drug services					
H0019	E		Alcohol and/or drug services					
H0020	E		Alcohol and/or drug services					
H0021	E		Alcohol and/or drug training					
H0022	E		Alcohol and/or drug interven					
H0023	E		Alcohol and/or drug outreach					
H0024	E		Alcohol and/or drug preventi					
H0025	E		Alcohol and/or drug preventi					
H0026	E		Alcohol and/or drug preventi					
H0027	E		Alcohol and/or drug preventi					
H0028	E		Alcohol and/or drug preventi					
H0029	E		Alcohol and/or drug preventi					
H0030	E		Alcohol and/or drug hotline					
H0031	E	NI	MH health assess by non-md					
H0032	E	NI	MH svc plan dev by non-md					
H0033	E	NI	Oral med adm direct observe					
H0034	E	NI	Med trng & support per 15min					
H0035	E	NI	MH partial hosp tx under 24h					
H0036	E	NI	Comm psy face-face per 15min					
H0037	E	NI	Comm psy sup tx pgm per diem					
H0038	E	NI	Self-help/peer svc per 15min					
H0039	E	NI	Asser com tx face-face/15min					
H0040	E	NI	Assert comm tx pgm per diem					
H0041	E	NI	Fos c chld non-ther per diem					
H0042	E	NI	Fos c chld non-ther per mon					

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CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
H0043	E	NI	Supported housing, per diem					
H0044	E	NI	Supported housing, per month					
H0045	E	NI	Respite not-in-home per diem					
H0046	E	NI	Mental health service, nos					
H0047	E	NI	Alcohol/drug abuse svc nos					
H0048	E	NI	Spec coll non-blood:a/d test					
H1000	A		Prenatal care atrisk assessm					
H1001	A		Antepartum management					
H1002	A		Carecoordination prenatal					
H1003	A		Prenatal at risk education					
H1004	A		Follow up home visit/prental					
H1005	A		Prenatalcare enhanced srv pk					
H1010	E	NI	Nonmed family planning ed					
H1011	E	NI	Family assessment					
H2000	E	NI	Comp multidisipln evaluation*					
H2001	E	NI	Rehabilitation program 1/2 d					
J0120	N		Tetracyclin injection					
J0130	K		Abciximab injection	1605	5.8526	$305.22		$61.04
J0150	N		Injection adenosine 6 MG					
J0151	K		Adenosine injection	0917	3.1986	$166.81		$33.36
J0170	N		Adrenalin epinephrin inject					
J0190	N		Inj biperiden lactate/5 mg					
J0200	N		Alatrofloxacin mesylate					
J0205	F		Alglucerase injection					
J0207	K		Amifostine	7000	4.5057	$234.98		$47.00
J0210	N		Methyldopate hcl injection					
J0256	F		Alpha 1 proteinase inhibitor					
J0270	E		Alprostadil for injection					
J0275	E		Alprostadil urethral suppos					
J0280	N		Aminophyllin 250 MG inj					
J0282	N		Amiodarone HCl					
J0285	N		Amphotericin B					
J0286	K	DG	Amphotericin B lipid complex	7001	2.3449	$122.29		$24.46
J0287	K	NI	Amphotericin b lipid complex	9024	0.4167	$21.73		$4.35
J0288	N	NI	Ampho b cholesteryl sulfate					
J0289	N	NI	Amphotericin b liposome inj					
J0290	N		Ampicillin 500 MG inj					
J0295	N		Ampicillin sodium per 1.5 gm					
J0300	N		Amobarbital 125 MG inj					
J0330	N		Succinycholine chloride inj					
J0350	N		Injection anistreplase 30 u					
J0360	N		Hydralazine hcl injection					
J0380	N		Inj metaraminol bitartrate					
J0390	N		Chloroquine injection					
J0395	N		Arbutamine HCl injection					
J0456	N		Azithromycin					
J0460	N		Atropine sulfate injection					
J0470	N		Dimecaprol injection					
J0475	N		Baclofen 10 MG injection					
J0476	E		Baclofen intrathecal trial					
J0500	N		Dicyclomine injection					
J0515	N		Inj benztropine mesylate					
J0520	N		Bethanechol chloride inject					
J0530	N		Penicillin g benzathine inj					
J0540	N		Penicillin g benzathine inj					
J0550	N		Penicillin g benzathine inj					
J0560	N		Penicillin g benzathine inj					
J0570	N		Penicillin g benzathine inj					
J0580	N		Penicillin g benzathine inj					
J0585	K		Botulinum toxin a per unit	0902	0.0484	$2.52		$.50
J0587	G		Botulinum toxin type B	9018		$8.79		$1.31
J0592	N	NI	Buprenorphine hydrochloride					
J0600	N		Edetate calcium disodium inj					
J0610	N		Calcium gluconate injection					
J0620	N		Calcium glycer & lact/10 ML					

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CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
J0630	N		Calcitonin salmon injection					
J0635	N	DG	Calcitriol injection					
J0636	N	NI	Inj calcitriol per 0.1 mcg					
J0637	G	NI	Caspofungin acetate	9019		$34.20		$5.11
J0640	N		Leucovorin calcium injection					
J0670	N		Inj mepivacaine HCL/10 ml					
J0690	N		Cefazolin sodium injection					
J0692	N		Cefepime HCl for injection					
J0694	N		Cefoxitin sodium injection					
J0696	N		Ceftriaxone sodium injection					
J0697	N		Sterile cefuroxime injection					
J0698	N		Cefotaxime sodium injection					
J0702	N		Betamethasone acet&sod phosp					
J0704	N		Betamethasone sod phosp/4 MG					
J0706	N		Caffeine citrate injection					
J0710	N		Cephapirin sodium injection					
J0713	N		Inj ceftazidime per 500 mg					
J0715	N		Ceftizoxime sodium / 500 MG					
J0720	N		Chloramphenicol sodium injec					
J0725	N		Chorionic gonadotropin/1000u					
J0735	N		Clonidine hydrochloride					
J0740	N		Cidofovir injection					
J0743	N		Cilastatin sodium injection					
J0744	N		Ciprofloxacin iv					
J0745	N		Inj codeine phosphate /30 MG					
J0760	N		Colchicine injection					
J0770	N		Colistimethate sodium inj					
J0780	N		Prochlorperazine injection					
J0800	N		Corticotropin injection					
J0835	N		Inj cosyntropin per 0.25 MG					
J0850	K		Cytomegalovirus imm IV /vial	0903	4.7383	$247.11		$49.42
J0880	E	NI	Darbepoetin alfa injection					
J0895	N		Deferoxamine mesylate inj					
J0900	N		Testosterone enanthate inj					
J0945	N		Brompheniramine maleate inj					
J0970	N		Estradiol valerate injection					
J1000	N		Depo-estradiol cypionate inj					
J1020	N		Methylprednisolone 20 MG inj					
J1030	N		Methylprednisolone 40 MG inj					
J1040	N		Methylprednisolone 80 MG inj					
J1050	N	DG	Medroxyprogesterone inj					
J1051	N	NI	Medroxyprogesterone inj					
J1055	E		Medrxyprogester acetate inj					
J1056	E		MA/EC contraceptiveinjection					
J1060	N		Testosterone cypionate 1 ML					
J1070	N		Testosterone cypionat 100 MG					
J1080	N		Testosterone cypionat 200 MG					
J1094	N	NI	Inj dexamethasone acetate					
J1095	N	DG	Inj dexamethasone acetate					
J1100	N		Dexamethasone sodium phos					
J1110	N		Inj dihydroergotamine mesylt					
J1120	N		Acetazolamid sodium injectio					
J1160	N		Digoxin injection					
J1165	N		Phenytoin sodium injection					
J1170	N		Hydromorphone injection					
J1180	N		Dyphylline injection					
J1190	K		Dexrazoxane HCl injection	0726	2.2577	$117.74		$23.55
J1200	N		Diphenhydramine hcl injectio					
J1205	N		Chlorothiazide sodium inj					
J1212	N		Dimethyl sulfoxide 50% 50 ML					
J1230	N		Methadone injection					
J1240	N		Dimenhydrinate injection					
J1245	N		Dipyridamole injection					
J1250	N		Inj dobutamine HCL/250 mg					
J1260	N		Dolasetron mesylate					

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CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
J1270	N		Injection, doxercalciferol					
J1320	N		Amitriptyline injection					
J1325	N		Epoprostenol injection					
J1327	N		Eptifibatide injection					
J1330	N		Ergonovine maleate injection					
J1364	N		Erythro lactobionate /500 MG					
J1380	N		Estradiol valerate 10 MG inj					
J1390	N		Estradiol valerate 20 MG inj					
J1410	N		Inj estrogen conjugate 25 MG					
J1435	N		Injection estrone per 1 MG					
J1436	N		Etidronate disodium inj					
J1438	N		Etanercept injection					
J1440	K		Filgrastim 300 mcg injection	0728	2.1027	$109.66		$21.93
J1441	K		Filgrastim 480 mcg injection	7049	3.2267	$168.28		$33.66
J1450	N		Fluconazole					
J1452	N		Intraocular Fomivirsen na					
J1455	N		Foscarnet sodium injection					
J1460	N		Gamma globulin 1 CC inj					
J1470	E		Gamma globulin 2 CC inj					
J1480	E		Gamma globulin 3 CC inj					
J1490	E		Gamma globulin 4 CC inj					
J1500	E		Gamma globulin 5 CC inj					
J1510	E		Gamma globulin 6 CC inj					
J1520	E		Gamma globulin 7 CC inj					
J1530	E		Gamma globulin 8 CC inj					
J1540	E		Gamma globulin 9 CC inj					
J1550	E		Gamma globulin 10 CC inj					
J1560	E		Gamma globulin > 10 CC inj					
J1561	K	DG	Immune globulin 500 mg	0905	0.8333	$43.46		$8.69
J1563	E		IV immune globulin					
J1564	K	NI	Immune globulin 10 mg	9021	0.0097	$.51		$.10
J1565	K		RSV-ivig	0906	0.5911	$30.83		$6.17
J1570	N		Ganciclovir sodium injection					
J1580	N		Garamycin gentamicin inj					
J1590	N		Gatifloxacin injection					
J1600	N		Gold sodium thiomaleate inj					
J1610	N		Glucagon hydrochloride/1 MG					
J1620	N		Gonadorelin hydroch/ 100 mcg					
J1626	N		Granisetron HCl injection					
J1630	N		Haloperidol injection					
J1631	N		Haloperidol decanoate inj					
J1642	N		Inj heparin sodium per 10 u					
J1644	N		Inj heparin sodium per 1000u					
J1645	N		Dalteparin sodium					
J1650	N		Inj enoxaparin sodium					
J1652	N	NI	Fondaparinux sodium					
J1655	N		Tinzaparin sodium injection					
J1670	N		Tetanus immune globulin inj					
J1700	N		Hydrocortisone acetate inj					
J1710	N		Hydrocortisone sodium ph inj					
J1720	N		Hydrocortisone sodium succ i					
J1730	N		Diazoxide injection					
J1742	N		Ibutilide fumarate injection					
J1745	K		Infliximab injection	7043	0.7364	$38.40		$7.68
J1750	N		Iron dextran					
J1755	N	DG	Iron sucrose injection					
J1756	N	NI	Iron sucrose injection					
J1785	K		Injection imiglucerase /unit	0916	0.0484	$2.52		$.50
J1790	N		Droperidol injection					
J1800	N		Propranolol injection					
J1810	E		Droperidol/fentanyl inj					
J1815	N	NI	Insulin injection					
J1817	N	NI	Insulin for insulin pump use					
J1820	N	DG	Insulin injection					
J1825	K		Interferon beta-1a	0909	2.7906	$145.53		$29.11

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J1830	K		Interferon beta-1b / .25 MG	0910	1.9864	$103.59		$20.72
J1835	N		Itraconazole injection					
J1840	N		Kanamycin sulfate 500 MG inj					
J1850	N		Kanamycin sulfate 75 MG inj					
J1885	N		Ketorolac tromethamine inj					
J1890	N		Cephalothin sodium injection					
J1910	N		Kutapressin injection					
J1940	N		Furosemide injection					
J1950	K		Leuprolide acetate /3.75 MG	0800	3.7984	$198.09		$39.62
J1955	E		Inj levocarnitine per 1 gm					
J1956	N		Levofloxacin injection					
J1960	N		Levorphanol tartrate inj					
J1980	N		Hyoscyamine sulfate inj					
J1990	N		Chlordiazepoxide injection					
J2000	N		Lidocaine injection					
J2010	N		Lincomycin injection					
J2020	N		Linezolid injection					
J2060	N		Lorazepam injection					
J2150	N		Mannitol injection					
J2175	N		Meperidine hydrochl /100 MG					
J2180	N		Meperidine/promethazine inj					
J2210	N		Methylergonovin maleate inj					
J2250	N		Inj midazolam hydrochloride					
J2260	N		Inj milrinone lactate / 5 ML					
J2270	N		Morphine sulfate injection					
J2271	N		Morphine so4 injection 100mg					
J2275	N		Morphine sulfate injection					
J2300	N		Inj nalbuphine hydrochloride					
J2310	N		Inj naloxone hydrochloride					
J2320	N		Nandrolone decanoate 50 MG					
J2321	N		Nandrolone decanoate 100 MG					
J2322	N		Nandrolone decanoate 200 MG					
J2324	G	NI	Nesiritide	9114		$433.20		$64.75
J2352	K		Octreotide acetate injection	7031	1.2694	$66.20		$13.24
J2355	K		Oprelvekin injection	7011	2.7325	$142.50		$28.50
J2360	N		Orphenadrine injection					
J2370	N		Phenylephrine hcl injection					
J2400	N		Chloroprocaine hcl injection					
J2405	N		Ondansetron hcl injection					
J2410	N		Oxymorphone hcl injection					
J2430	K		Pamidronate disodium /30 MG	0730	3.2654	$170.29		$34.06
J2440	N		Papaverin hcl injection					
J2460	N		Oxytetracycline injection					
J2500	N	DG	Paricalcitol					
J2501	N	NI	Paricalcitol					
J2510	N		Penicillin g procaine inj					
J2515	N		Pentobarbital sodium inj					
J2540	N		Penicillin g potassium inj					
J2543	N		Piperacillin/tazobactam					
J2545	A		Pentamidine isethionte/300mg					
J2550	N		Promethazine hcl injection					
J2560	N		Phenobarbital sodium inj					
J2590	N		Oxytocin injection					
J2597	N		Inj desmopressin acetate					
J2650	N		Prednisolone acetate inj					
J2670	N		Totazoline hcl injection					
J2675	N		Inj progesterone per 50 MG					
J2680	N		Fluphenazine decanoate 25 MG					
J2690	N		Procainamide hcl injection					
J2700	N		Oxacillin sodium injeciton					
J2710	N		Neostigmine methylslfte inj					
J2720	N		Inj protamine sulfate/10 MG					
J2725	N		Inj protirelin per 250 mcg					
J2730	N		Pralidoxime chloride inj					
J2760	N		Phentolaine mesylate inj					

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CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
J2765	N		Metoclopramide hcl injection					
J2770	N		Quinupristin/dalfopristin					
J2780	N		Ranitidine hydrochloride inj					
J2788	K	NI	Rho d immune globulin 50 mcg	9023	0.0484	$2.52		$.50
J2790	N		Rho d immune globulin inj					
J2792	K		Rho(D) immune globulin h, sd	1609	0.2229	$11.62		$2.32
J2795	N		Ropivacaine HCl injection					
J2800	N		Methocarbamol injection					
J2810	N		Inj theophylline per 40 MG					
J2820	N		Sargramostim injection					
J2910	N		Aurothioglucose injeciton					
J2912	N		Sodium chloride injection					
J2915	N	DG	NA Ferric Gluconate Complex					
J2916	N	NI	Na ferric gluconate complex					
J2920	N		Methylprednisolone injection					
J2930	N		Methylprednisolone injection					
J2940	N		Somatrem injection					
J2941	K		Somatropin injection	7034	0.7170	$37.39		$7.48
J2950	N		Promazine hcl injection					
J2993	K		Reteplase injection	9005	12.6547	$659.96		$131.99
J2995	N		Inj streptokinase /250000 IU					
J2997	N		Alteplase recombinant					
J3000	N		Streptomycin injection					
J3010	N		Fentanyl citrate injeciton					
J3030	N		Sumatriptan succinate / 6 MG					
J3070	N		Pentazocine hcl injection					
J3100	K		Tenecteplase injection	9002	27.5963	$1,439.17		$287.83
J3105	N		Terbutaline sulfate inj					
J3120	N		Testosterone enanthate inj					
J3130	N		Testosterone enanthate inj					
J3140	N		Testosterone suspension inj					
J3150	N		Testosteron propionate inj					
J3230	N		Chlorpromazine hcl injection					
J3240	K		Thyrotropin injection	9108	7.5870	$395.67		$79.13
J3245	K		Tirofiban hydrochloride	7041	4.9417	$257.71		$51.54
J3250	N		Trimethobenzamide hcl inj					
J3260	N		Tobramycin sulfate injection					
J3265	N		Injection torsemide 10 mg/ml					
J3280	N		Thiethylperazine maleate inj					
J3301	N		Triamcinolone acetonide inj					
J3302	N		Triamcinolone diacetate inj					
J3303	N		Triamcinolone hexacetonl inj					
J3305	K		Inj trimetrexate glucoronate	7045	1.3081	$68.22		$13.64
J3310	N		Perphenazine injeciton					
J3315	E	NI	Triptorelin pamoate					
J3320	N		Spectinomycn di-hcl inj					
J3350	N		Urea injection					
J3360	N		Diazepam injection					
J3364	N		Urokinase 5000 IU injection					
J3365	N		Urokinase 250,000 IU inj					
J3370	N		Vancomycin hcl injection					
J3395	K		Verteporfin injection	1203	16.5209	$861.58		$172.32
J3400	N		Triflupromazine hcl inj					
J3410	N		Hydroxyzine hcl injection					
J3420	N		Vitamin b12 injection					
J3430	N		Vitamin k phytonadione inj					
J3470	N		Hyaluronidase injection					
J3475	N		Inj magnesium sulfate					
J3480	N		Inj potassium chloride					
J3485	N		Zidovudine					
J3487	G	NI	Zoledronic acid	9115		$406.78		$60.80
J3490	N		Drugs unclassified injection					
J3520			Edetate disodium per 150 mg					
J3530	N		Nasal vaccine inhalation					
J3535	E		Metered dose inhaler drug					

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J3570	E		Laetrile amygdalin vit B17					
J3590	N	NI	Unclassified biologics					
J7030	N		Normal saline solution infus					
J7040	N		Normal saline solution infus					
J7042	N		5% dextrose/normal saline					
J7050	N		Normal saline solution infus					
J7051	N		Sterile saline/water					
J7060	N		5% dextrose/water					
J7070	N		D5w infusion					
J7100	N		Dextran 40 infusion					
J7110	N		Dextran 75 infusion					
J7120	N		Ringers lactate infusion					
J7130	N		Hypertonic saline solution					
J7190	K		Factor viii	0925	0.0097	$.51		$.10
J7191	K		Factor VIII (porcine)	0926	0.0291	$1.52		$.30
J7192	K		Factor viii recombinant	0927	0.0194	$1.01		$.20
J7193	K		Factor IX non-recombinant	0931	0.0097	$.51		$.10
J7194	K		Factor ix complex	0928	0.0097	$.51		$.10
J7195	K		Factor IX recombinant	0932	0.0194	$1.01		$.20
J7197	K		Antithrombin iii injection	0930	0.0194	$1.01		$.20
J7198	K		Anti-inhibitor	0929	0.0194	$1.01		$.20
J7199	E		Hemophilia clot factor noc					
J7300	E		Intraut copper contraceptive					
J7302	E		Levonorgestrel iu contracept					
J7308	N		Aminolevulinic acid hcl top					
J7310	N		Ganciclovir long act implant					
J7318	N	DG	Sodium hyaluronate injection					
J7317	N	NI	Sodium hyaluronate injection					
J7320	K		Hylan G-F 20 injection	1611	2.3643	$123.30		$24.66
J7330	K		Cultured chondrocytes implnt	1059	114.2706	$5,959.33		$1,191.87
J7340	E		Metabolic active D/E tissue					
J7342	N	NI	Metabolically active tissue					
J7350	N	NI	Injectable human tissue					
J7500	N		Azathioprine oral 50mg					
J7501	N		Azathioprine parenteral					
J7502	K		Cyclosporine oral 100 mg	0888	0.0484	$2.52		$.50
J7504	K		Lymphocyte immune globulin	0890	3.3429	$174.34		$34.87
J7505	K		Monoclonal antibodies	7038	6.9572	$362.82		$72.56
J7506	N		Prednisone oral					
J7507	K		Tacrolimus oral per 1 MG	0891	0.0291	$1.52		$.30
J7508	E		Tacrolimus oral per 5 MG					
J7509	N		Methylprednisolone oral					
J7510	N		Prednisolone oral per 5 mg					
J7511	K		Antithymocyte globuln rabbit	9104	2.6356	$137.45		$27.49
J7513	K		Daclizumab, parenteral	1612	4.3991	$229.42		$45.88
J7515	N		Cyclosporine oral 25 mg					
J7516	N		Cyclosporin parenteral 250mg					
J7517	K		Mycophenolate mofetil oral	9015	0.0291	$1.52		$.30
J7520	K		Sirolimus, oral	9020	0.0581	$3.03		$.61
J7525	N		Tacrolimus injection					
J7599	E		Immunosuppressive drug noc					
J7608	A		Acetylcysteine inh sol u d					
J7618	A		Albuterol inh sol con					
J7619	A		Albuterol inh sol u d					
J7622	A		Beclomethasone inhalatn sol					
J7624	A		Betamethasone inhalation sol					
J7626	A		Budesonide inhalation sol					
J7628	A		Bitolterol mes inhal sol con					
J7629	A		Bitolterol mes inh sol u d					
J7631	A		Cromolyn sodium inh sol u d					
J7633	N	NI	Budesonide concentrated sol					
J7635	A		Atropine inhal sol con					
J7636	A		Atropine inhal sol unit dose					
J7637	A		Dexamethasone inhal sol con					
J7638	A		Dexamethasone inhal sol u d					

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CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
J7639	A		Dornase alpha inhal sol u d					
J7641	A		Flunisolide, inhalation sol					
J7642	A		Glycopyrrolate inhal sol con					
J7643	A		Glycopyrrolate inhal sol u d					
J7644	A		Ipratropium brom inh sol u d					
J7648	A		Isoetharine hcl inh sol con					
J7649	A		Isoetharine hcl inh sol u d					
J7658	A		Isoproterenolhcl inh sol con					
J7659	A		Isoproterenol hcl inh sol ud					
J7668	A		Metaproterenol inh sol con					
J7669	A		Metaproterenol inh sol u d					
J7680	A		Terbutaline so4 inh sol con					
J7681	A		Terbutaline so4 inh sol u d					
J7682	A		Tobramycin inhalation sol					
J7683	A		Triamcinolone inh sol con					
J7684	A		Triamcinolone inh sol u d					
J7699	A		Inhalation solution for DME					
J7799	A		Non-inhalation drug for DME					
J8499	E		Oral prescrip drug non chemo					
J8510	N		Oral busulfan					
J8520	K		Capecitabine, oral, 150 mg	7042	0.0291	$1.52		$.30
J8521	E		Capecitabine, oral, 500 mg					
J8530	N		Cyclophosphamide oral 25 MG					
J8560	K		Etoposide oral 50 MG	0802	0.5523	$28.80		$5.76
J8600	N		Melphalan oral 2 MG					
J8610	N		Methotrexate oral 2.5 MG					
J8700	K		Temozolmide	1086	0.0581	$3.03		$.61
J8999	E		Oral prescription drug chemo					
J9000	N		Doxorubic hcl 10 MG vl chemo					
J9001	K		Doxorubicin hcl liposome inj	7046	4.3894	$228.91		$45.78
J9010	G	NI	Alemtuzumab injection	9110		$511.22		$76.41
J9015	K		Aldesleukin/single use vial	0807	7.2867	$380.01		$76.00
J9017	G		Arsenic trioxide	9012		$31.35		$4.69
J9020	N		Asparaginase injection					
J9031	N		Bcg live intravesical vac					
J9040	K		Bleomycin sulfate injection	0857	3.1879	$166.25		$33.25
J9045	K		Carboplatin injection	0811	1.4922	$77.82		$15.56
J9050	K		Carmus bischl nitro inj	0812	1.5310	$79.84		$15.97
J9060	K		Cisplatin 10 MG injection	0813	0.4263	$22.23		$4.45
J9062	E		Cisplatin 50 MG injection					
J9065	K		Inj cladribine per 1 MG	0858	0.7946	$41.44		$8.29
J9070	N		Cyclophosphamide 100 MG inj					
J9080	E		Cyclophosphamide 200 MG inj					
J9090	E		Cyclophosphamide 500 MG inj					
J9091	E		Cyclophosphamide 1.0 grm inj					
J9092	E		Cyclophosphamide 2.0 grm inj					
J9093	N		Cyclophosphamide lyophilized					
J9094	E		Cyclophosphamide lyophilized					
J9095	E		Cyclophosphamide lyophilized					
J9096	E		Cyclophosphamide lyophilized					
J9097	E		Cyclophosphamide lyophilized					
J9100	N		Cytarabine hcl 100 MG inj					
J9110	E		Cytarabine hcl 500 MG inj					
J9120	N		Dactinomycin actinomycin d					
J9130	N		Dacarbazine 10 MG inj					
J9140	E		Dacarbazine 200 MG inj					
J9150	K		Daunorubicin	0820	1.9379	$101.06		$20.21
J9151	K		Daunorubicin citrate liposom	0821	2.9069	$151.60		$30.32
J9160	K		Denileukin diftitox, 300 mcg	1084	12.1315	$632.67		$126.53
J9165	K		Diethylstilbestrol injection	0822	2.0251	$105.61		$21.12
J9170	K		Docetaxel	0823	3.8953	$203.14		$40.63
J9180	E		Epirubicin HCl injection					
J9181	N		Etoposide 10 MG inj					
J9182	E		Etoposide 100 MG inj					
J9185	K		Fludarabine phosphate inj	0842	3.2848	$171.31		$34.26

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J9190	N		Fluorouracil injection					
J9200	K		Floxuridine injection	0827	2.2189	$115.72		$23.14
J9201	K		Gemcitabine HCl	0828	1.2984	$67.71		$13.54
J9202	K		Goserelin acetate implant	0810	5.5619	$290.06		$58.01
J9206	K		Irinotecan injection	0830	1.7538	$91.46		$18.29
J9208	K		Ifosfomide injection	0831	1.9186	$100.06		$20.01
J9209	K		Mesna injection	0732	0.5039	$26.28		$5.26
J9211	K		Idarubicin hcl injection	0832	4.8642	$253.67		$50.73
J9212	N		Interferon alfacon-1					
J9213	N		Interferon alfa-2a inj					
J9214	N		Interferon alfa-2b inj					
J9215	N		Interferon alfa-n3 inj					
J9216	K		Interferon gamma 1-b inj	0838	3.0426	$158.67		$31.73
J9217	K		Leuprolide acetate suspnsion	9217	6.5696	$342.61		$68.52
J9218	K		Leuprolide acetate injeciton	0861	0.7752	$40.43		$8.09
J9219	G		Leuprolide acetate implant	7051		$5,399.80		$807.13
J9230	N		Mechlorethamine hcl inj					
J9245	K		Inj melphalan hydrochl 50 MG	0840	4.5348	$236.49		$47.30
J9250	N		Methotrexate sodium inj					
J9260	E		Methotrexate sodium inj					
J9265	K		Paclitaxel injection	0863	2.3158	$120.77		$24.15
J9266	K		Pegaspargase/singl dose vial	0843	8.8079	$459.34		$91.87
J9268	K		Pentostatin injection	0844	19.8833	$1,036.93		$207.39
J9270	N		Plicamycin (mithramycin) inj					
J9280	K		Mitomycin 5 MG inj	0862	1.1337	$59.12		$11.82
J9290	E		Mitomycin 20 MG inj					
J9291	E		Mitomycin 40 MG inj					
J9293	K		Mitoxantrone hydrochl / 5 MG	0864	2.9263	$152.61		$30.52
J9300	F		Gemtuzumab ozogamicin					
J9310*	K		Rituximab cancer treatment	0849	5.4941	$286.52		$57.30
J9320	N		Streptozocin injection					
J9340	N		Thiotepa injection					
J9350	K		Topotecan	0852	7.7130	$402.24		$80.45
J9355	K		Trastuzumab	1613	0.6298	$32.84		$6.57
J9357	K		Valrubicin, 200 mg	1614	3.5658	$185.96		$37.19
J9360	N		Vinblastine sulfate inj					
J9370	N		Vincristine sulfate 1 MG inj					
J9375	E		Vincristine sulfate 2 MG inj					
J9380	E		Vincristine sulfate 5 MG inj					
J9390	K		Vinorelbine tartrate/10 mg	0855	1.0756	$56.09		$11.22
J9600	K		Porfimer sodium	0856	29.6117	$1,544.28		$308.86
J9999	E		Chemotherapy drug					
K0001	A		Standard wheelchair					
K0002	A		Stnd hemi (low seat) whlchr					
K0003	A		Lightweight wheelchair					
K0004	A		High strength ltwt whlchr					
K0005	A		Ultralightweight wheelchair					
K0006	A		Heavy duty wheelchair					
K0007	A		Extra heavy duty wheelchair					
K0009	A		Other manual wheelchair/base					
K0010	A		Stnd wt frame power whlchr					
K0011	A		Stnd wt pwr whlchr w control					
K0012	A		Ltwt portbl power whlchr					
K0014	A		Other power whlchr base					
K0015	A		Detach non-adjus hght armrst					
K0016	A		Detach adjust armrst cmplete					
K0017	A		Detach adjust armrest base					
K0018	A		Detach adjust armrst upper					
K0019	A		Arm pad each					
K0020	A		Fixed adjust armrest pair					
K0021	A	DG	Anti-tipping device each					
K0022	A		Reinforced back upholstery					
K0023	A		Planr back insrt foam w/strp					
K0024	A		Plnr back insrt foam w/hrdwr					
K0025	A		Hook-on headrest extension					

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K0026	A		Back upholst lgtwt whlchr					
K0027	A		Back upholst other whlchr					
K0028	A		Manual fully reclining back					
K0029	A		Reinforced seat upholstery					
K0030	A		Solid plnr seat sngl dnsfoam					
K0031	A		Safety belt/pelvic strap					
K0032	A		Seat uphols lgtwt whlchr					
K0033	A		Seat upholstery other whlchr					
K0034	A	DG	Heel loop each					
K0035	A		Heel loop with ankle strap					
K0036	A		Toe loop each					
K0037	A		High mount flip-up footrest					
K0038	A		Leg strap each					
K0039	A		Leg strap h style each					
K0040	A		Adjustable angle footplate					
K0041	A		Large size footplate each					
K0042	A		Standard size footplate each					
K0043	A		Ftrst lower extension tube					
K0044	A		Ftrst upper hanger bracket					
K0045	A		Footrest complete assembly					
K0046	A		Elevat legrst low extension					
K0047	A		Elevat legrst up hangr brack					
K0048	A		Elevate legrest complete					
K0049	A		Calf pad each					
K0050	A		Ratchet assembly					
K0051	A		Cam relese assem ftrst/lgrst					
K0052	A		Swingaway detach footrest					
K0053	A		Elevate footrest articulate					
K0054	A		Seat wdth 10-12/15/17/20 wc					
K0055	A		Seat dpth 15/17/18 ltwt wc					
K0056	A		Seat ht <17 or >=21 ltwt wc					
K0057	A		Seat wdth 19/20 hvy dty wc					
K0058	A		Seat dpth 17/18 power wc					
K0059	A		Plastic coated handrim each					
K0060	A		Steel handrim each					
K0061	A		Aluminum handrim each					
K0062	A		Handrim 8-10 vert/obliq proj					
K0063	A		Hndrm 12-16 vert/obliq proj					
K0064	A		Zero pressure tube flat free					
K0065	A		Spoke protectors					
K0066	A		Solid tire any size each					
K0067	A		Pneumatic tire any size each					
K0068	A		Pneumatic tire tube each					
K0069	A		Rear whl complete solid tire					
K0070	A		Rear whl compl pneum tire					
K0071	A		Front castr compl pneum tire					
K0072	A		Frnt cstr cmpl sem-pneum tir					
K0073	A		Caster pin lock each					
K0074	A		Pneumatic caster tire each					
K0075	A		Semi-pneumatic caster tire					
K0076	A		Solid caster tire each					
K0077	A		Front caster assem complete					
K0078	A		Pneumatic caster tire tube					
K0079	A		Wheel lock extension pair					
K0080	A		Anti-rollback device pair					
K0081	A		Wheel lock assembly complete					
K0082	A		22 nf deep cycl acid battery					
K0083	A		22 nf gel cell battery each					
K0084	A		Grp 24 deep cycl acid battry					
K0085	A		Group 24 gel cell battery					
K0086	A		U-1 lead acid battery each					
K0087	A		U-1 gel cell battery each					
K0088	A		Battry chrgr acid/gel cell					
K0089	A		Battery charger dual mode					
K0090	A		Rear tire power wheelchair					

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K0091	A		Rear tire tube power whlchr					
K0092	A		Rear assem cmplt powr whlchr					
K0093	A		Rear zero pressure tire tube					
K0094	A		Wheel tire for power base					
K0095	A		Wheel tire tube each base					
K0096	A		Wheel assem powr base complt					
K0097	A		Wheel zero presure tire tube					
K0098	A		Drive belt power wheelchair					
K0099	A		Pwr wheelchair front caster					
K0100	A		Amputee adapter pair					
K0101	A	DG	One-arm drive attachment					
K0102	A		Crutch and cane holder					
K0103	A		Transfer board < 25≧					
K0104	A		Cylinder tank carrier					
K0105	A		Iv hanger					
K0106	A		Arm trough each					
K0107	A		Wheelchair tray					
K0108	A		W/c component-accessory NOS					
K0112	A		Trunk vest supprt innr frame					
K0113	A		Trunk vest suprt w/o inr frm					
K0114	A		Whlchr back suprt inr frame					
K0115	A		Back module orthotic system					
K0116	A		Back & seat modul orthot sys					
K0183	A	DG	Nasal application device					
K0184	A	DG	Nasal pillow or face seal					
K0185	A	DG	Pos airway pressure headgear					
K0186	A	DG	Pos airway prssure chinstrap					
K0187	A	DG	Pos airway pressure tubing					
K0188	A	DG	Pos airway pressure filter					
K0189	A	DG	Filter nondisposable w PAP					
K0195	A		Elevating whlchair leg rests					
K0268	A		Humidifier nonheated w PAP					
K0415	E		RX antiemetic drg, oral NOS					
K0416	E		Rx antiemetic drg,rectal NOS					
K0452	A		Wheelchair bearings					
K0455	A		Pump uninterrupted infusion					
K0460*	A		WC power add-on joystick					
K0461	A		WC power add-on tiller cntrl					
K0462	A		Temporary replacement eqpmnt					
K0531	A		Heated humidifier used w pap					
K0532	A		Noninvasive assist wo backup					
K0533	A		Noninvasive assist w backup					
K0534	A		Invasive assist w backup					
K0538	A		Neg pressure wnd thrpy pump					
K0539	A		Neg pres wnd thrpy dsg set					
K0540	A		Neg pres wnd thrp canister					
K0541	A		SGD prerecorded msg <= 8 min					
K0542	A		SGD prerecorded msg > 8 min					
K0543	A		SGD msg formed by spelling					
K0544	A		SGD w multi methods msg/accs					
K0545	A		SGD sftwre prgrm for PC/PDA					
K0546	A		SGD accessory,mounting systm					
K0547	A		SGD accessory NOC					
K0548	A		Insulin lispro					
K0549	A		Hosp bed hvy dty xtra wide					
K0550	A		Hosp bed xtra hvy dty x wide					
K0551	A	DG	Residual limb support system					
K0556	A	NI	Socket insert w lock mech					
K0557	A	NI	Socket insert w/o lock mech					
K0558	A	NI	Intl custm cong/atyp insert					
K0559	A	NI	Initial custom socket insert					
K0581	A	NI	Ost pch clsd w barrier/filtr					
K0582	A	NI	Ost pch w bar/bltinconv/fltr					
K0583	A	NI	Ost pch clsd w/o bar w filtr					
K0584	A	NI	Ost pch for bar w flange/filt					

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K0585	A	NI	Ost pch clsd for bar w lk fl					
K0586	A	NI	Ost pch for bar w lk fl/fltr					
K0587	A	NI	Ost pch drain w bar & filter					
K0588	A	NI	Ost pch drain for barrier fl					
K0589	A	NI	Ost pch drain 2 piece system					
K0590	A	NI	Ost pch drain/barr lk fing/f					
K0591	A	NI	Urine ost pouch w faucet/tap					
K0592	A	NI	Urine ost pouch w bltinconv					
K0593	A	NI	Ost urine pch w b/bltin conv					
K0594	A	NI	Ost pch urine w barrier/tapv					
K0595	A	NI	Os pch urine w bar/fange/tap					
K0596	A	NI	Urine ost pch bar w lock fln					
K0597	A	NI	Ost pch urine w lock fing/ft					
L0100	A		Cranial orthosis/helmet mold					
L0110	A		Cranial orthosis/helmet nonm					
L0120	A		Cerv flexible non-adjustable					
L0130	A		Flex thermoplastic collar mo					
L0140	A		Cervical semi-rigid adjustab					
L0150	A		Cerv semi-rig adj molded chn					
L0160	A		Cerv semi-rig wire occ/mand					
L0170	A		Cervical collar molded to pt					
L0172	A		Cerv col thermplas foam 2 pi					
L0174	A		Cerv col foam 2 piece w thor					
L0180	A		Cer post col occ/man sup adj					
L0190	A		Cerv collar supp adj cerv ba					
L0200	A		Cerv col supp adj bar & thor					
L0210	A		Thoracic rib belt					
L0220	A		Thor rib belt custom fabrica					
L0300	A	DG	TLSO flex surgical support					
L0310	A	DG	Tlso flexible custom fabrica					
L0315	A	DG	Tlso flex elas rigid post pa					
L0317	A	DG	Tlso flex hypext elas post p					
L0320	A	DG	Tlso a-p contrl w apron frnt					
L0321	A	DG	Tlso anti-post-cntrl prefab					
L0330	A	DG	Tlso ant-pos-lateral control					
L0331	A	DG	Tlso ant-post-lat cntrl prfb					
L0340	A	DG	Tlso a-p-l-rotary with apron					
L0350	A	DG	Tlso flex compress jacket cu					
L0360	A	DG	Tlso flex compress jacket mo					
L0370	A	DG	Tlso a-p-l-rotary hyperexten					
L0380	A	DG	Tlso a-p-l-rot w/ pos extens					
L0390	A	DG	Tlso a-p-l control molded					
L0391	A	DG	Tlso ant-post-lat-rot cntrl					
L0400	A	DG	Tlso a-p-l w interface mater					
L0410	A	DG	Tlso a-p-l two piece constr					
L0420	A	DG	Tlso a-p-l 2 piece w interfa					
L0430	A	DG	Tlso a-p-l w interface custm					
L0440	A	DG	Tlso a-p-l overlap frnt cust					
L0450	A	NI	TLSO flex prefab thoracic					
L0452	A	NI	tlso flex custom fab thoraci					
L0454	A	NI	TLSO flex prefab sacrococ-T9					
L0456	A	NI	TLSO flex prefab					
L0458	A	NI	TLSO 2Mod symphis-xipho pre					
L0460	A	NI	TLSO2Mod symphysis-stern pre					
L0462	A	NI	TLSO 3Mod sacro-scap pre					
L0464	A	NI	TLSO 4Mod sacro-scap pre					
L0466	A	NI	TLSO rigid frame pre soft ap					
L0468	A	NI	TLSO rigid frame prefab pelv					
L0470	A	NI	TLSO rigid frame pre subclav					
L0472	A	NI	TLSO rigid frame hyperex pre					
L0474	A	NI	TLSO rigid frame pre pelvic					
L0476	A	NI	TLSO flexion compres jac pre					
L0478	A	NI	TLSO flexion compres jac cus					
L0480	A	NI	TLSO rigid plastic custom fa					
L0482	A	NI	TLSO rigid lined custom fab					

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L0484	A	NI	TLSO rigid plastic cust fab					
L0486	A	NI	TLSO rigidlined cust fab two					
L0488	A	NI	TLSO rigid lined pre one pie					
L0490	A	NI	TLSO rigid plastic pre one					
L0500	A		Lso flex surgical support					
L0510	A		Lso flexible custom fabricat					
L0515	A		Lso flex elas w/ rig post pa					
L0520	A		Lso a-p-l control with apron					
L0530	A		Lso ant-pos control w apron					
L0540	A		Lso lumbar flexion a-p-l					
L0550	A		Lso a-p-l control molded					
L0560	A		Lso a-p-l w interface					
L0561	A		Prefab lso					
L0565	A		Lso a-p-l control custom					
L0600	A		Sacroiliac flex surg support					
L0610	A		Sacroiliac flexible custm fa					
L0620	A		Sacroiliac semi-rig w apron					
L0700	A		Ctlso a-p-l control molded					
L0710	A		Ctlso a-p-l control w/ inter					
L0810	A		Halo cervical into jckt vest					
L0820	A		Halo cervical into body jack					
L0830	A		Halo cerv into milwaukee typ					
L0860	A		Magnetic resonanc image comp					
L0900	A	DG	Torso/ptosis support					
L0910	A	DG	Torso & ptosis supp custm fa					
L0920	A	DG	Torso/pendulous abd support					
L0930	A	DG	Pendulous abdomen supp custm					
L0940	A	DG	Torso/postsurgical support					
L0950	A	DG	Post surg support custom fab					
L0960	A		Post surgical support pads					
L0970	A		Tlso corset front					
L0972	A		Lso corset front					
L0974	A		Tlso full corset					
L0976	A		Lso full corset					
L0978	A		Axillary crutch extension					
L0980	A		Peroneal straps pair					
L0982	A		Stocking supp grips set of f					
L0984	A		Protective body sock each					
L0986	A	DG	Spinal orth abdm pnl prefab					
L0999	A		Add to spinal orthosis NOS					
L1000	A		Ctlso milwauke initial model					
L1005	A		Tension based scoliosis orth					
L1010	A		Ctlso axilla sling					
L1020	A		Kyphosis pad					
L1025	A		Kyphosis pad floating					
L1030	A		Lumbar bolster pad					
L1040	A		Lumbar or lumbar rib pad					
L1050	A		Sternal pad					
L1060	A		Thoracic pad					
L1070	A		Trapezius sling					
L1080	A		Outrigger					
L1085	A		Outrigger bil w/ vert extens					
L1090	A		Lumbar sling					
L1100	A		Ring flange plastic/leather					
L1110	A		Ring flange plas/leather mol					
L1120	A		Covers for upright each					
L1200	A		Furnsh initial orthosis only					
L1210	A		Lateral thoracic extension					
L1220	A		Anterior thoracic extension					
L1230	A		Milwaukee type superstructur					
L1240	A		Lumbar derotation pad					
L1250	A		Anterior asis pad					
L1260	A		Anterior thoracic derotation					
L1270	A		Abdominal pad					
L1280	A		Rib gusset (elastic) each					

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[Calendar Year 2003]

CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
L1290	A		Lateral trochanteric pad					
L1300	A		Body jacket mold to patient					
L1310	A		Post-operative body jacket					
L1499	A		Spinal orthosis NOS					
L1500	A		Thkao mobility frame					
L1510	A		Thkao standing frame					
L1520	A		Thkao swivel walker					
L1600	A		Abduct hip flex frejka w cvr					
L1610	A		Abduct hip flex frejka covr					
L1620	A		Abduct hip flex pavlik harne					
L1630	A		Abduct control hip semi-flex					
L1640	A		Pelv band/spread bar thigh c					
L1650	A		HO abduction hip adjustable					
L1652	A	NI	HO bi thighcuffs w sprdr bar					
L1660	A		HO abduction static plastic					
L1680	A		Pelvic & hip control thigh c					
L1685	A		Post-op hip abduct custom fa					
L1686	A		HO post-op hip abduction					
L1690	A		Combination bilateral HO					
L1700	A		Leg perthes orth toronto typ					
L1710	A		Legg perthes orth newington					
L1720	A		Legg perthes orthosis trilat					
L1730	A		Legg perthes orth scottish r					
L1750	A		Legg perthes sling					
L1755	A		Legg perthes patten bottom t					
L1800	A		Knee orthoses elas w stays					
L1810	A		Ko elastic with joints					
L1815	A		Elastic with condylar pads					
L1820	A		Ko elas w/ condyle pads & jo					
L1825	A		Ko elastic knee cap					
L1830	A		Ko immobilizer canvas longit					
L1832	A		KO adj jnt pos rigid support					
L1834	A		Ko w/0 joint rigid molded to					
L1836	A	NI	Rigid KO wo joints					
L1840	A		Ko derot ant cruciate custom					
L1843	A		KO single upright custom fit					
L1844	A		Ko w/adj jt rot cntrl molded					
L1845	A		Ko w/ adj flex/ext rotat cus					
L1846	A		Ko w adj flex/ext rotat mold					
L1847	A		KO adjustable w air chambers					
L1850	A		Ko swedish type					
L1855	A		Ko plas doub upright jnt mol					
L1858	A		Ko polycentric pneumatic pad					
L1860	A		Ko supracondylar socket mold					
L1870	A		Ko doub upright lacers molde					
L1880	A		Ko doub upright cuffs/lacers					
L1885	A		Knee upright w/resistance					
L1900	A		Afo sprng wir drsflx calf bd					
L1901	A	NI	Prefab ankle orthosis					
L1902	A		Afo ankle gauntlet					
L1904	A		Afo molded ankle gauntlet					
L1906	A		Afo multiligamentus ankle su					
L1910	A		Afo sing bar clasp attach sh					
L1920	A		Afo sing upright w/ adjust s					
L1930	A		Afo plastic					
L1940	A		Afo molded to patient plasti					
L1945	A		Afo molded plas rig ant tib					
L1950	A		Afo spiral molded to pt plas					
L1960	A		Afo pos solid ank plastic mo					
L1970	A		Afo plastic molded w/ankle j					
L1980	A		Afo sing solid stirrup calf					
L1990	A		Afo doub solid stirrup calf					
L2000	A		Kafo sing fre stirr thi/calf					
L2010	A		Kafo sng solid stirrup w/o j					
L2020	A		Kafo dbl solid stirrup band/					

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CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
L2030	A		Kafo dbl solid stirrup w/o j					
L2035	A		KAFO plastic pediatric size					
L2036	A		Kafo plas doub free knee mol					
L2037	A		Kafo plas sing free knee mol					
L2038	A		Kafo w/o joint multi-axis an					
L2039	A		KAFO,plstic,medlat rotat con					
L2040	A		Hkafo torsion bil rot straps					
L2050	A		Hkafo torsion cable hip pelv					
L2060	A		Hkafo torsion ball bearing j					
L2070	A		Hkafo torsion unilat rot str					
L2080	A		Hkafo unilat torsion cable					
L2090	A		Hkafo unilat torsion ball br					
L2102	E		Afo tibial fx cast plstr mol					
L2104	E		Afo tib fx cast synthetic mo					
L2106	A		Afo tib fx cast plaster mold					
L2108	A		Afo tib fx cast molded to pt					
L2112	A		Afo tibial fracture soft					
L2114	A		Afo tib fx semi-rigid					
L2116	A		Afo tibial fracture rigid					
L2122	E		Kafo fem fx cast plaster mol					
L2124	E		Kafo fem fx cast synthet mol					
L2126	A		Kafo fem fx cast thermoplas					
L2128	A		Kafo fem fx cast molded to p					
L2132	A		Kafo femoral fx cast soft					
L2134	A		Kafo fem fx cast semi-rigid					
L2136	A		Kafo femoral fx cast rigid					
L2180	A		Plas shoe insert w ank joint					
L2182	A		Drop lock knee					
L2184	A		Limited motion knee joint					
L2186	A		Adj motion knee jnt lerman t					
L2188	A		Quadrilateral brim					
L2190	A		Waist belt					
L2192	A		Pelvic band & belt thigh fla					
L2200	A		Limited ankle motion ea jnt					
L2210	A		Dorsiflexion assist each joi					
L2220	A		Dorsi & plantar flex ass/res					
L2230	A		Split flat caliper stirr & p					
L2240	A		Round caliper and plate atta					
L2250	A		Foot plate molded stirrup at					
L2260	A		Reinforced solid stirrup					
L2265	A		Long tongue stirrup					
L2270	A		Varus/valgus strap padded/li					
L2275	A		Plastic mod low ext pad/line					
L2280	A		Molded inner boot					
L2300	A		Abduction bar jointed adjust					
L2310	A		Abduction bar-straight					
L2320	A		Non-molded lacer					
L2330	A		Lacer molded to patient mode					
L2335	A		Anterior swing band					
L2340	A		Pre-tibial shell molded to p					
L2350	A		Prosthetic type socket molde					
L2360	A		Extended steel shank					
L2370	A		Patten bottom					
L2375	A		Torsion ank & half solid sti					
L2380	A		Torsion straight knee joint					
L2385	A		Straight knee joint heavy du					
L2390	A		Offset knee joint each					
L2395	A		Offset knee joint heavy duty					
L2397	A		Suspension sleeve lower ext					
L2405	A		Knee joint drop lock ea jnt					
L2415	A		Knee joint cam lock each joi					
L2425	A		Knee disc/dial lock/adj flex					
L2430	A		Knee jnt ratchet lock ea jnt					
L2435	A		Knee joint polycentric joint					
L2492	A		Knee lift loop drop lock rin					

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CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
L2500	A		Thi/glut/ischia wgt bearing					
L2510	A		Th/wght bear quad-lat brim m					
L2520	A		Th/wght bear quad-lat brim c					
L2525	A		Th/wght bear nar m-l brim mo					
L2526	A		Th/wght bear nar m-l brim cu					
L2530	A		Thigh/wght bear lacer non-mo					
L2540	A		Thigh/wght bear lacer molded					
L2550	A		Thigh/wght bear high roll cu					
L2570	A		Hip clevis type 2 posit jnt					
L2580	A		Pelvic control pelvic sling					
L2600	A		Hip clevis/thrust bearing fr					
L2610	A		Hip clevis/thrust bearing lo					
L2620	A		Pelvic control hip heavy dut					
L2622	A		Hip joint adjustable flexion					
L2624	A		Hip adj flex ext abduct cont					
L2627	A		Plastic mold recipro hip & c					
L2628	A		Metal frame recipro hip & ca					
L2630	A		Pelvic control band & belt u					
L2640	A		Pelvic control band & belt b					
L2650	A		Pelv & thor control gluteal					
L2660	A		Thoracic control thoracic ba					
L2670	A		Thorac cont paraspinal uprig					
L2680	A		Thorac cont lat support upri					
L2750	A		Plating chrome/nickel pr bar					
L2755	A		Carbon graphite lamination					
L2760	A		Extension per extension per					
L2768	A		Ortho sidebar disconnect					
L2770	A		Low ext orthosis per bar/jnt					
L2780	A		Non-corrosive finish					
L2785	A		Drop lock retainer each					
L2795	A		Knee control full kneecap					
L2800	A		Knee cap medial or lateral p					
L2810	A		Knee control condylar pad					
L2820	A		Soft interface below knee se					
L2830	A		Soft interface above knee se					
L2840	A		Tibial length sock fx or equ					
L2850	A		Femoral lgth sock fx or equa					
L2860	A		Torsion mechanism knee/ankle					
L2999	A		Lower extremity orthosis NOS					
L3000	E		Ft insert ucb berkeley shell					
L3001	E		Foot insert remov molded spe					
L3002	E		Foot insert plastazote or eq					
L3003	E		Foot insert silicone gel eac					
L3010	E		Foot longitudinal arch suppo					
L3020	E		Foot longitud/metatarsal sup					
L3030	E		Foot arch support remov prem					
L3040	E		Ft arch suprt premold longit					
L3050	E		Foot arch supp premold metat					
L3060	E		Foot arch supp longitud/meta					
L3070	E		Arch suprt att to sho longit					
L3080	E		Arch supp att to shoe metata					
L3090	E		Arch supp att to shoe long/m					
L3100	E		Hallus-valgus nght dynamic s					
L3140	E		Abduction rotation bar shoe					
L3150	E		Abduct rotation bar w/o shoe					
L3160	E		Shoe styled positioning dev					
L3170	E		Foot plastic heel stabilizer					
L3201	E		Oxford w supinat/pronat inf					
L3202	E		Oxford w/ supinat/pronator c					
L3203	E		Oxford w/ supinator/pronator					
L3204	E		Hightop w/ supp/pronator inf					
L3206	E		Hightop w/ supp/pronator chi					
L3207	E		Hightop w/ supp/pronator jun					
L3208	E		Surgical boot each infant					
L3209	E		Surgical boot each child					

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CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
L3211	E		Surgical boot each junior					
L3212	E		Benesch boot pair infant					
L3213	E		Benesch boot pair child					
L3214	E		Benesch boot pair junior					
L3215	E		Orthopedic ftwear ladies oxf					
L3216	E		Orthoped ladies shoes dpth i					
L3217	E		Ladies shoes hightop depth i					
L3218	E	DG	Ladies surgical boot each					
L3219	E		Orthopedic mens shoes oxford					
L3221	E		Orthopedic mens shoes dpth i					
L3222	E		Mens shoes hightop depth inl					
L3223	E	DG	Mens surgical boot each					
L3224	A		Woman's shoe oxford brace					
L3225	A		Man's shoe oxford brace					
L3230			Custom shoes depth inlay					
L3250	E		Custom mold shoe remov prost					
L3251	E		Shoe molded to pt silicone s					
L3252	E		Shoe molded plastazote cust					
L3253	E		Shoe molded plastazote cust					
L3254	E		Orth foot non-stndard size/w					
L3255	E		Orth foot non-standard size/					
L3257	E		Orth foot add charge split s					
L3260	E		Ambulatory surgical boot eac					
L3265	E		Plastazote sandal each					
L3300	E		Sho lift taper to metatarsal					
L3310	E		Shoe lift elev heel/sole neo					
L3320	E		Shoe lift elev heel/sole cor					
L3330	E		Lifts elevation metal extens					
L3332	E		Shoe lifts tapered to one-ha					
L3334	E		Shoe lifts elevation heel /i					
L3340	E		Shoe wedge sach					
L3350	E		Shoe heel wedge					
L3360	E		Shoe sole wedge outside sole					
L3370	E		Shoe sole wedge between sole					
L3380	E		Shoe clubfoot wedge					
L3390	E		Shoe outflare wedge					
L3400	E		Shoe metatarsal bar wedge ro					
L3410	E		Shoe metatarsal bar between					
L3420	E		Full sole/heel wedge btween					
L3430	E		Sho heel count plast reinfor					
L3440	E		Heel leather reinforced					
L3450	E		Shoe heel sach cushion type					
L3455	E		Shoe heel new leather standa					
L3460	E		Shoe heel new rubber standar					
L3465	E		Shoe heel thomas with wedge					
L3470	E		Shoe heel thomas extend to b					
L3480	E		Shoe heel pad & depress for					
L3485	E		Shoe heel pad removable for					
L3500	E		Ortho shoe add leather insol					
L3510	E		Orthopedic shoe add rub insl					
L3520	E		O shoe add felt w leath insl					
L3530	E		Ortho shoe add half sole					
L3540	E		Ortho shoe add full sole					
L3550	E		O shoe add standard toe tap					
L3560	E		O shoe add horseshoe toe tap					
L3570	E		O shoe add instep extension					
L3580	E		O shoe add instep velcro clo					
L3590	E		O shoe convert to sof counte					
L3595	E		Ortho shoe add march bar					
L3600	E		Trans shoe calip plate exist					
L3610	E		Trans shoe caliper plate new					
L3620	E		Trans shoe solid stirrup exi					
L3630	E		Trans shoe solid stirrup new					
L3640	E		Shoe dennis browne splint bo					
L3649	E		Orthopedic shoe modifica NOS					

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CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
L3650	A		Shlder fig 8 abduct restrain					
L3651	A	NI	Prefab shoulder orthosis					
L3652	A	NI	Prefab dbl shoulder orthosis					
L3660	A		Abduct restrainer canvas&web					
L3670	A		Acromio/clavicular canvas&we					
L3675	A		Canvas vest SO					
L3677	A		SO hard plastic stabilizer					
L3700	A		Elbow orthoses elas w stays					
L3701	A	NI	Prefab elbow orthosis					
L3710	A		Elbow elastic with metal joi					
L3720	A		Forearm/arm cuffs free motio					
L3730	A		Forearm/arm cuffs ext/flex a					
L3740	A		Cuffs adj lock w/ active con					
L3760	A		EO withjoint, Prefabricated					
L3762	A	NI	Rigid EO wo joints					
L3800	A		Whfo short opponen no attach					
L3805	A		Whfo long opponens no attach					
L3807	A		WHFO,no joint, prefabricated					
L3810	A		Whfo thumb abduction bar					
L3815	A		Whfo second m.p. abduction a					
L3820	A		Whfo ip ext asst w/ mp ext s					
L3825	A		Whfo m.p. extension stop					
L3830	A		Whfo m.p. extension assist					
L3835	A		Whfo m.p. spring extension a					
L3840	A		Whfo spring swivel thumb					
L3845	A		Whfo thumb ip ext ass w/ mp					
L3850	A		Action wrist w/ dorsiflex as					
L3855	A		Whfo adj m.p. flexion contro					
L3860	A		Whfo adj m.p. flex ctrl & i.					
L3890	E		Torsion mechanism wrist/elbo					
L3900	A		Hinge extension/flex wrist/f					
L3901	A		Hinge ext/flex wrist finger					
L3902	A		Whfo ext power compress gas					
L3904	A		Whfo electric custom fitted					
L3906	A		Wrist gauntlet molded to pt					
L3907	A		Whfo wrst gauntlt thmb spica					
L3908	A		Wrist cock-up non-molded					
L3909	A	NI	Prefab wrist orthosis					
L3910	A		Whfo swanson design					
L3911	A	NI	Prefab hand finger orthosis					
L3912	A		Flex glove w/elastic finger					
L3914	A		WHO wrist extension cock-up					
L3916	A		Whfo wrist extens w/ outrigg					
L3918	A		HFO knuckle bender					
L3920	A		Knuckle bender with outrigge					
L3922	A		Knuckle bend 2 seg to flex j					
L3923	A		HFO, no joint, prefabricated					
L3924	A		Oppenheimer					
L3926	A		Thomas suspension					
L3928	A		Finger extension w/ clock sp					
L3930	A		Finger extension with wrist					
L3932	A		Safety pin spring wire					
L3934	A		Safety pin modified					
L3936	A		Palmer					
L3938	A		Dorsal wrist					
L3940	A		Dorsal wrist w/ outrigger at					
L3942	A		Reverse knuckle bender					
L3944	A		Reverse knuckle bend w/ outr					
L3946	A		HFO composite elastic					
L3948	A		Finger knuckle bender					
L3950	A		Oppenheimer w/ knuckle bend					
L3952	A		Oppenheimer w/ rev knuckle 2					
L3954	A		Spreading hand					
L3956	A		Add joint upper ext orthosis					
L3960	A		Sewho airplan desig abdu pos					

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CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
L3962	A		Sewho erbs palsey design abd					
L3963	A		Molded w/ articulating elbow					
L3964	A		Seo mobile arm sup att to wc					
L3965	A		Arm supp att to wc rancho ty					
L3966	A		Mobile arm supports reclinin					
L3968	A		Friction dampening arm supp					
L3969	A		Monosuspension arm/hand supp					
L3970	A		Elevat proximal arm support					
L3972	A		Offset/lat rocker arm w/ ela					
L3974	A		Mobile arm support supinator					
L3980	A		Upp ext fx orthosis humeral					
L3982	A		Upper ext fx orthosis rad/ul					
L3984	A		Upper ext fx orthosis wrist					
L3985	A		Forearm hand fx orth w/ wr h					
L3986	A		Humeral rad/ulna wrist fx or					
L3995	A		Sock fracture or equal each					
L3999	A		Upper limb orthosis NOS					
L4000	A		Repl girdle milwaukee orth					
L4010	A		Replace trilateral socket br					
L4020	A		Replace quadlat socket brim					
L4030	A		Replace socket brim cust fit					
L4040	A		Replace molded thigh lacer					
L4045	A		Replace non-molded thigh lac					
L4050	A		Replace molded calf lacer					
L4055	A		Replace non-molded calf lace					
L4060	A		Replace high roll cuff					
L4070	A		Replace prox & dist upright					
L4080	A		Repl met band kafo-afo prox					
L4090	A		Repl met band kafo-afo calf/					
L4100	A		Repl leath cuff kafo prox th					
L4110	A		Repl leath cuff kafo-afo cal					
L4130	A		Replace pretibial shell					
L4205	A		Ortho dvc repair per 15 min					
L4210	A		Orth dev repair/repl minor p					
L4350	A		Pneumatic ankle cntrl splint					
L4360	A		Pneumatic walking splint					
L4370	A		Pneumatic full leg splint					
L4380	A		Pneumatic knee splint					
L4386	A	NI	Non-pneumatic walking splint					
L4392	A		Replace AFO soft interface					
L4394	A		Replace foot drop spint					
L4396	A		Static AFO					
L4398	A		Foot drop splint recumbent					
L5000	A		Sho insert w arch toe filler					
L5010	A		Mold socket ank hgt w/ toe f					
L5020	A		Tibial tubercle hgt w/ toe f					
L5050	A		Ank symes mold sckt sach ft					
L5060	A		Symes met fr leath socket ar					
L5100	A		Molded socket shin sach foot					
L5105	A		Plast socket jts/thgh lacer					
L5150	A		Mold sckt ext knee shin sach					
L5160	A		Mold socket bent knee shin s					
L5200	A		Kne sing axis fric shin sach					
L5210	A		No knee/ankle joints w/ ft b					
L5220	A		No knee joint with artic ali					
L5230	A		Fem.focal defic constant fri					
L5250	A		Hip canad sing axi cons fric					
L5270	A		Tilt table locking hip sing					
L5280	A		Hemipelvect canad sing axis					
L5301	A		BK mold socket SACH ft endo					
L5311	A		Knee disart, SACH ft, endo					
L5321	A		AK open end SACH					
L5331	A		Hip disart canadian SACH ft					
L5341	A		Hemipelvectomy canadian SACH					
L5400	A		Postop dress & 1 cast chg bk					

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CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
L5410	A		Postop dsg bk ea add cast ch					
L5420	A		Postop dsg & 1 cast chg ak/d					
L5430	A		Postop dsg ak ea add cast ch					
L5450	A		Postop app non-wgt bear dsg					
L5460	A		Postop app non-wgt bear dsg					
L5500	A		Init bk ptb plaster direct					
L5505	A		Init ak ischal plstr direct					
L5510	A		Prep BK ptb plaster molded					
L5520	A		Perp BK ptb thermopls direct					
L5530	A		Prep BK ptb thermopls molded					
L5535	A		Prep BK ptb open end socket					
L5540	A		Prep BK ptb laminated socket					
L5560	A		Prep AK ischial plast molded					
L5570	A		Prep AK ischial direct form					
L5580	A		Prep AK ischial thermo mold					
L5585	A		Prep AK ischial open end					
L5590	A		Prep AK ischial laminated					
L5595	A		Hip disartic sach thermopls					
L5600	A		Hip disart sach laminat mold					
L5610	A		Above knee hydracadence					
L5611	A		Ak 4 bar link w/fric swing					
L5613	A		Ak 4 bar ling w/hydraul swig					
L5614	A		4-bar link above knee w/swng					
L5616	A		Ak univ multiplex sys frict					
L5617	A		AK/BK self-aligning unit ea					
L5618	A		Test socket symes					
L5620	A		Test socket below knee					
L5622	A		Test socket knee disarticula					
L5624	A		Test socket above knee					
L5626	A		Test socket hip disarticulat					
L5628	A		Test socket hemipelvectomy					
L5629	A		Below knee acrylic socket					
L5630	A		Syme typ expandabl wall sckt					
L5631	A		Ak/knee disartic acrylic soc					
L5632	A		Symes type ptb brim design s					
L5634	A		Symes type poster opening so					
L5636	A		Symes type medial opening so					
L5637	A		Below knee total contact					
L5638	A		Below knee leather socket					
L5639	A		Below knee wood socket					
L5640	A		Knee disarticulat leather so					
L5642	A		Above knee leather socket					
L5643	A		Hip flex inner socket ext fr					
L5644	A		Above knee wood socket					
L5645	A		Bk flex inner socket ext fra					
L5646	A		Below knee air cushion socke					
L5647	A		Below knee suction socket					
L5648	A		Above knee air cushion socke					
L5649	A		Isch containmt/narrow m-l so					
L5650	A		Tot contact ak/knee disart s					
L5651	A		Ak flex inner socket ext fra					
L5652	A		Suction susp ak/knee disart					
L5653	A		Knee disart expand wall sock					
L5654	A		Socket insert symes					
L5655	A		Socket insert below knee					
L5656	A		Socket insert knee articulat					
L5658	A		Socket insert above knee					
L5660	A	DG	Sock insrt syme silicone gel					
L5661	A		Multi-durometer symes					
L5662	A	DG	Socket insert bk silicone ge					
L5663	A	DG	Sock knee disartic silicone					
L5664	A	DG	Socket insert ak silicone ge					
L5665	A		Multi-durometer below knee					
L5666	A		Below knee cuff suspension					
L5668	A		Socket insert w/o lock lower					

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CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
L5670	A		Bk molded supracondylar susp					
L5671	A		BK/AK locking mechanism					
L5672	A		Bk removable medial brim sus					
L5674	A		Bk suspension sleeve					
L5675	A		Bk heavy duty susp sleeve					
L5676	A		Bk knee joints single axis p					
L5677	A		Bk knee joints polycentric p					
L5678	A		Bk joint covers pair					
L5680	A		Bk thigh lacer non-molded					
L5682	A		Bk thigh lacer glut/ischia m					
L5684	A		Bk fork strap					
L5686	A		Bk back check					
L5688	A		Bk waist belt webbing					
L5690	A		Bk waist belt padded and lin					
L5692	A		Ak pelvic control belt light					
L5694	A		Ak pelvic control belt pad/l					
L5695	A		Ak sleeve susp neoprene/equa					
L5696	A		Ak/knee disartic pelvic join					
L5697	A		Ak/knee disartic pelvic band					
L5698	A		Ak/knee disartic silesian ba					
L5699	A		Shoulder harness					
L5700	A		Replace socket below knee					
L5701	A		Replace socket above knee					
L5702	A		Replace socket hip					
L5704	A		Custom shape cover BK					
L5705	A		Custom shape cover AK					
L5706	A		Custom shape cvr knee disart					
L5707	A		Custom shape cvr hip disart					
L5710	A		Kne-shin exo sng axi mnl loc					
L5711	A		Knee-shin exo mnl lock ultra					
L5712	A		Knee-shin exo frict swg & st					
L5714	A		Knee-shin exo variable frict					
L5716	A		Knee-shin exo mech stance ph					
L5718	A		Knee-shin exo frct swg & sta					
L5722	A		Knee-shin pneum swg frct exo					
L5724	A		Knee-shin exo fluid swing ph					
L5726	A		Knee-shin ext jnts fld swg e					
L5728	A		Knee-shin fluid swg & stance					
L5780	A		Knee-shin pneum/hydra pneum					
L5781	A	NI	Lower limb pros vacuum pump					
L5782	A	NI	HD low limb pros vacuum pump					
L5785	A		Exoskeletal bk ultralt mater					
L5790	A		Exoskeletal ak ultra-light m					
L5795	A		Exoskel hip ultra-light mate					
L5810	A		Endoskel knee-shin mnl lock					
L5811	A		Endo knee-shin mnl lck ultra					
L5812	A		Endo knee-shin frct swg & st					
L5814	A		Endo knee-shin hydral swg ph					
L5816	A		Endo knee-shin polyc mch sta					
L5818	A		Endo knee-shin frct swg & st					
L5822	A		Endo knee-shin pneum swg frc					
L5824	A		Endo knee-shin fluid swing p					
L5826	A		Miniature knee joint					
L5828	A		Endo knee-shin fluid swg/sta					
L5830	A		Endo knee-shin pneum/swg pha					
L5840	A		Multi-axial knee/shin system					
L5845	A		Knee-shin sys stance flexion					
L5846	A		Knee-shin sys microprocessor					
L5847	A		Microprocessor cntrl feature					
L5848	A	NI	Knee-shin sys hydraul stance					
L5850	A		Endo ak/hip knee extens assi					
L5855	A		Mech hip extension assist					
L5910	A		Endo below knee alignable sy					
L5920	A		Endo ak/hip alignable system					
L5925	A		Above knee manual lock					

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CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
L5930	A		High activity knee frame					
L5940	A		Endo bk ultra-light material					
L5950	A		Endo ak ultra-light material					
L5960	A		Endo hip ultra-light materia					
L5962	A		Below knee flex cover system					
L5964	A		Above knee flex cover system					
L5966	A		Hip flexible cover system					
L5968	A		Multiaxial ankle w dorsiflex					
L5970	A		Foot external keel sach foot					
L5972	A		Flexible keel foot					
L5974	A		Foot single axis ankle/foot					
L5975	A		Combo ankle/foot prosthesis					
L5976	A		Energy storing foot					
L5978	A		Ft prosth multiaxial anki/ft					
L5979	A		Multi-axial ankle/ft prosth					
L5980	A		Flex foot system					
L5981	A		Flex-walk sys low ext prosth					
L5982	A		Exoskeletal axial rotation u					
L5984	A		Endoskeletal axial rotation					
L5985	A		Lwr ext dynamic prosth pylon					
L5986	A		Multi-axial rotation unit					
L5987	A		Shank ft w vert load pylon					
L5988	A		Vertical shock reducing pylo					
L5989	A		Pylon w elctmc force sensor					
L5990	A		User adjustable heel height					
L5995	A	NI	Lower ext pros heavyduty fea					
L5999	A		Lowr extremity prosthes NOS					
L6000	A		Par hand robin-aids thum rem					
L6010	A		Hand robin-aids little/ring					
L6020	A		Part hand robin-aids no fing					
L6025	A	NI	Part hand disart myoelectric					
L6050	A		Wrst MLd sck flx hng tri pad					
L6055	A		Wrst mold sock w/exp interfa					
L6100	A		Elb mold sock flex hinge pad					
L6110	A		Elbow mold sock suspension t					
L6120	A		Elbow mold doub split soc ste					
L6130	A		Elbow stump activated lock h					
L6200	A		Elbow mold outsid lock hinge					
L6205	A		Elbow molded w/ expand inter					
L6250	A		Elbow inter loc elbow forarm					
L6300	A		Shlder disart int lock elbow					
L6310	A		Shoulder passive restor comp					
L6320	A		Shoulder passive restor cap					
L6350	A		Thoracic intern lock elbow					
L6360	A		Thoracic passive restor comp					
L6370	A		Thoracic passive restor cap					
L6380	A		Postop dsg cast chg wrst/elb					
L6382	A		Postop dsg cast chg elb dis/					
L6384	A		Postop dsg cast chg shlder/t					
L6386	A		Postop ea cast chg & realign					
L6388	A		Postop applicat rigid dsg on					
L6400	A		Below elbow prosth tiss shap					
L6450	A		Elb disart prosth tiss shap					
L6500	A		Above elbow prosth tiss shap					
L6550	A		Shldr disar prosth tiss shap					
L6570	A		Scap thorac prosth tiss shap					
L6580	A		Wrist/elbow bowden cable mol					
L6582	A		Wrist/elbow bowden cbl dir f					
L6584	A		Elbow fair lead cable molded					
L6586	A		Elbow fair lead cable dir fo					
L6588	A		Shdr fair lead cable molded					
L6590	A		Shdr fair lead cable direct					
L6600	A		Polycentric hinge pair					
L6605	A		Single pivot hinge pair					
L6610	A		Flexible metal hinge pair					

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CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
L6615	A		Disconnect locking wrist uni					
L6616	A		Disconnect insert locking wr					
L6620	A		Flexion-friction wrist unit					
L6623	A		Spring-ass rot wrst w/ latch					
L6625	A		Rotation wrst w/ cable lock					
L6628	A		Quick disconn hook adapter o					
L6629	A		Lamination collar w/ couplin					
L6630	A		Stainless steel any wrist					
L6632	A		Latex suspension sleeve each					
L6635	A		Lift assist for elbow					
L6637	A		Nudge control elbow lock					
L6638	A	NI	Elec lock on manual pw elbow					
L6640	A		Shoulder abduction joint pai					
L6641	A		Excursion amplifier pulley t					
L6642	A		Excursion amplifier lever ty					
L6645	A		Shoulder flexion-abduction j					
L6646	A	NI	Multipo locking shoulder jnt					
L6647	A	NI	Shoulder lock actuator					
L6648	A	NI	Ext pwrd shlder lock/unlock					
L6650	A		Shoulder universal joint					
L6655	A		Standard control cable extra					
L6660	A		Heavy duty control cable					
L6665	A		Teflon or equal cable lining					
L6670	A		Hook to hand cable adapter					
L6672	A		Harness chest/shlder saddle					
L6675	A		Harness figure of 8 sing con					
L6676	A		Harness figure of 8 dual con					
L6680	A		Test sock wrist disart/bel e					
L6682	A		Test sock elbw disart/above					
L6684	A		Test socket shldr disart/tho					
L6686	A		Suction socket					
L6687	A		Frame typ socket bel elbow/w					
L6688	A		Frame typ sock above elb/dis					
L6689	A		Frame typ socket shoulder di					
L6690	A		Frame typ sock interscap-tho					
L6691	A		Removable insert each					
L6692	A		Silicone gel insert or equal					
L6693	A		Lockingelbow forearm cntrbal					
L6700	A		Terminal device model #3					
L6705	A		Terminal device model #5					
L6710	A		Terminal device model #5x					
L6715	A		Terminal device model #5xa					
L6720	A		Terminal device model #6					
L6725	A		Terminal device model #7					
L6730	A		Terminal device model #7lo					
L6735	A		Terminal device model #8					
L6740	A		Terminal device model #8x					
L6745	A		Terminal device model #88x					
L6750	A		Terminal device model #10p					
L6755	A		Terminal device model #10x					
L6765	A		Terminal device model #12p					
L6770	A		Terminal device model #99x					
L6775	A		Terminal device model#555					
L6780	A		Terminal device model #ss555					
L6790	A		Hooks-accu hook or equal					
L6795	A		Hooks-2 load or equal					
L6800	A		Hooks-aprl vc or equal					
L6805	A		Modifier wrist flexion unit					
L6806	A		Trs grip vc or equal					
L6807	A		Term device grip1/2 or equal					
L6808	A		Term device infant or child					
L6809	A		Trs super sport passive					
L6810	A		Pincher tool otto bock or eq					
L6825	A		Hands dorrance vo					
L6830	A		Hand aprl vc					

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CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
L6835	A		Hand sierra vo					
L6840	A		Hand becker imperial					
L6845	A		Hand becker lock grip					
L6850	A		Term dvc-hand becker plylite					
L6855	A		Hand robin-aids vo					
L6860	A		Hand robin-aids vo soft					
L6865	A		Hand passive hand					
L6867	A		Hand detroit infant hand					
L6868	A		Passive inf hand steeper/hos					
L6870	A		Hand child mitt					
L6872	A		Hand nyu child hand					
L6873	A		Hand mech inf steeper or equ					
L6875	A		Hand bock vc					
L6880	A		Hand bock vo					
L6881	A		Autograsp feature ul term dv					
L6882	A		Microprocessor control uplmb					
L6890	A		Production glove					
L6895	A		Custom glove					
L6900	A		Hand restorat thumb/1 finger					
L6905	A		Hand restoration multiple fi					
L6910	A		Hand restoration no fingers					
L6915	A		Hand restoration replacmnt g					
L6920	A		Wrist disarticul switch ctrl					
L6925	A		Wrist disart myoelectronic c					
L6930	A		Below elbow switch control					
L6935	A		Below elbow myoelectronic ct					
L6940	A		Elbow disarticulation switch					
L6945	A		Elbow disart myoelectronic c					
L6950	A		Above elbow switch control					
L6955	A		Above elbow myoelectronic ct					
L6960	A		Shldr disartic switch contro					
L6965	A		Shldr disartic myoelectronic					
L6970	A		Interscapular-thor switch ct					
L6975	A		Interscap-thor myoelectronic					
L7010	A		Hand otto back steeper/eq sw					
L7015	A		Hand sys teknik village swit					
L7020	A		Electronic greifer switch ct					
L7025	A		Electron hand myoelectronic					
L7030	A		Hand sys teknik vill myoelec					
L7035	A		Electron greifer myoelectro					
L7040	A		Prehensile actuator hosmer s					
L7045	A		Electron hook child michigan					
L7170	A		Electronic elbow hosmer swit					
L7180	A		Electronic elbow utah myoele					
L7185	A		Electron elbow adolescent sw					
L7186	A		Electron elbow child switch					
L7190	A		Elbow adolescent myoelectron					
L7191	A		Elbow child myoelectronic ct					
L7260	A		Electron wrist rotator otto					
L7261	A		Electron wrist rotator utah					
L7266	A		Servo control steeper or equ					
L7272	A		Analogue control unb or equa					
L7274	A		Proportional ctl 12 volt uta					
L7360	A		Six volt bat otto bock/eq ea					
L7362	A		Battery chrgr six volt otto					
L7364	A		Twelve volt battery utah/equ					
L7366	A		Battery chrgr 12 volt utah/e					
L7367	A	NI	Replacemnt lithium ionbatter					
L7368	A	NI	Lithium ion battery charger					
L7499	A		Upper extremity prosthes NOS					
L7500	A		Prosthetic dvc repair hourly					
L7510	A		Prosthetic device repair rep					
L7520	A		Repair prosthesis per 15 min					
L7900	A		Vacuum erection system					
L8000	A		Mastectomy bra					

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CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
L8001	A		Breast prosthesis bra & form					
L8002	A		Brst prsth bra & bilat form					
L8010	A		Mastectomy sleeve					
L8015	A		Ext breastprosthesis garment					
L8020	A		Mastectomy form					
L8030	A		Breast prosthesis silicone/e					
L8035	A		Custom breast prosthesis					
L8039	A		Breast prosthesis NOS					
L8040	A		Nasal prosthesis					
L8041	A		Midfacial prosthesis					
L8042	A		Orbital prosthesis					
L8043	A		Upper facial prosthesis					
L8044	A		Hemi-facial prosthesis					
L8045	A		Auricular prosthesis					
L8046	A		Partial facial prosthesis					
L8047	A		Nasal septal prosthesis					
L8048	A		Unspec maxillofacial prosth					
L8049	A		Repair maxillofacial prosth					
L8100	E		Compression stocking BK18-30					
L8110	E		Compression stocking BK30-40					
L8120	E		Compression stocking BK40-50					
L8130	E		Gc stocking thighlngth 18-30					
L8140	E		Gc stocking thighlngth 30-40					
L8150	E		Gc stocking thighlngth 40-50					
L8160	E		Gc stocking full lngth 18-30					
L8170	E		Gc stocking full lngth 30-40					
L8180	E		Gc stocking full lngth 40-50					
L8190	E		Gc stocking waistlngth 18-30					
L8195	E		Gc stocking waistlngth 30-40					
L8200	E		Gc stocking waistlngth 40-50					
L8210	E		Gc stocking custom made					
L8220	E		Gc stocking lymphedema					
L8230	E		Gc stocking garter belt					
L8239	E		G compression stocking NOS					
L8300	A		Truss single w/ standard pad					
L8310	A		Truss double w/ standard pad					
L8320	A		Truss addition to std pad wa					
L8330	A		Truss add to std pad scrotal					
L8400	A		Sheath below knee					
L8410	A		Sheath above knee					
L8415	A		Sheath upper limb					
L8417	A		Pros sheath/sock w gel cushn					
L8420	A		Prosthetic sock multi ply BK					
L8430	A		Prosthetic sock multi ply AK					
L8435	A		Pros sock multi ply upper lm					
L8440	A		Shrinker below knee					
L8460	A		Shrinker above knee					
L8465	A		Shrinker upper limb					
L8470	A		Pros sock single ply BK					
L8480	A		Pros sock single ply AK					
L8485	A		Pros sock single ply upper l					
L8490	A		Air seal suction reten systm					
L8499	A		Unlisted misc prosthetic ser					
L8500	A		Artificial larynx					
L8501	A		Tracheostomy speaking valve					
L8505	A		Artificial larynx, accessory					
L8507	A		Trach-esoph voice pros pt in					
L8509	A		Trach-esoph voice pros md in					
L8510	A		Voice amplifier					
L8600	N		Implant breast silicone/eq					
L8603	N		Collagen imp urinary 2.5 ml					
L8606	A		Synthetic implnt urinary 1ml					
L8610	N		Ocular implant					
L8612	N		Aqueous shunt prosthesis					
L8613	N		Ossicular implant					

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CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
L8614	E		Cochlear device/system					
L8619	A		Replace cochlear processor					
L8630	N		Metacarpophalangeal implant					
L8641	N		Metatarsal joint implant					
L8642	N		Hallux implant					
L8658	N		Interphalangeal joint implnt					
L8670	N		Vascular graft, synthetic					
L8699	N		Prosthetic implant NOS					
L9900	A		O&P supply/accessory/service					
M0064	X		Visit for drug monitoring	0374	1.1434	$59.63	$9.97	$11.93
M0075	E		Cellular therapy					
M0076	E		Prolotherapy					
M0100	E		Intragastric hypothermia					
M0300	E		IV chelationtherapy					
M0301	E		Fabric wrapping of aneurysm					
P2028	A		Cephalin floculation test					
P2029	A		Congo red blood test					
P2031	E		Hair analysis					
P2033	A		Blood thymol turbidity					
P2038	A		Blood mucoprotein					
P3000	A		Screen pap by tech w md supv					
P3001	E		Screening pap smear by phys					
P7001	E		Culture bacterial urine					
P9010	K		Whole blood for transfusion	0950	1.6860	$87.93		$17.59
P9011	E		Blood split unit					
P9012	K		Cryoprecipitate each unit	0952	0.5620	$29.31		$5.86
P9016	K		RBC leukocytes reduced	0954	2.2868	$119.26		$23.85
P9017	K		One donor fresh frozn plasma	0955	1.8217	$95.00		$19.00
P9019	K		Platelets, each unit	0957	0.7946	$41.44		$8.29
P9020	K		Plaelet rich plasma unit	0958	1.0271	$53.56		$10.71
P9021	K		Red blood cells unit	0959	1.6569	$86.41		$17.28
P9022	K		Washed red blood cells unit	0960	3.0813	$160.69		$32.14
P9023	K		Frozen plasma, pooled, sd	0949	2.3837	$124.31		$24.86
P9031	K		Platelets leukocytes reduced	1013	0.9496	$49.52		$9.90
P9032	K		Platelets, irradiated	9500	1.4341	$74.79		$14.96
P9033	K		Platelets leukoreduced irrad	0954	2.2868	$119.26		$23.85
P9034	K		Platelets, pheresis	9501	7.8390	$408.81		$81.76
P9035	K		Platelet pheres leukoreduced	9501	7.8390	$408.81		$81.76
P9036	K		Platelet pheresis irradiated	9502	8.5076	$443.68		$88.74
P9037	K		Plate pheres leukoredu irrad	1019	7.7905	$406.28		$81.26
P9038	K		RBC irradiated	9505	2.0833	$108.65		$21.73
P9039	K		RBC deglycerolized	9504	3.5174	$183.44		$36.69
P9040	K		RBC leukoreduced irradiated	9504	3.5174	$183.44		$36.69
P9041	K		Albumin (human),5%, 50ml	0961	0.9980	$52.05		$10.41
P9043	K		Plasma protein fract,5%,50ml	0956	1.7829	$92.98		$18.60
P9044	K		Cryoprecipitatereducedplasma	1009	0.7170	$37.39		$7.48
P9045	K		Albumin (human), 5%, 250 ml	0963	4.9708	$259.23		$51.85
P9046	K		Albumin (human), 25%, 20 ml	0964	1.0756	$56.09		$11.22
P9047	K		Albumin (human), 25%, 50ml	0965	2.6840	$139.97		$27.99
P9048	K		Plasmaprotein fract,5%,250ml	0966	8.9145	$464.90		$92.98
P9050	K		Granulocytes, pheresis unit	9506	23.9432	$1,248.66		$249.73
P9603	A		One-way allow prorated miles					
P9604	A		One-way allow prorated trip					
P9612	N		Catheterize for urine spec					
P9615	N		Urine specimen collect mult					
Q0035	X		Cardiokymography	0100	1.6085	$83.88	$41.44	$16.78
Q0081	T		Infusion ther other than che	0120	2.1802	$113.70	$30.75	$22.74
Q0083	S		Chemo by other than infusion	0116	0.7752	$40.43		$8.09
Q0084	S		Chemotherapy by infusion	0117	3.6046	$187.98	$48.28	$37.60
Q0085	S		Chemo by both infusion and o	0118	5.4844	$286.02	$72.03	$57.20
Q0086	A		Physical therapy evaluation/					
Q0091	T		Obtaining screen pap smear	0191	0.2035	$10.61	$3.08	$2.12
Q0092	N		Set up port xray equipment					
Q0111	A		Wet mounts/ w preparations					
Q0112	A		Potassium hydroxide preps					

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ADDENDUM B.—PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued
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CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
Q0113	A		Pinworm examinations					
Q0114	A		Fern test					
Q0115	A		Post-coital mucous exam					
Q0136	K		Non esrd epoetin alpha inj	0733	0.1744	$9.10		$1.82
Q0144	E		Azithromycin dihydrate, oral					
Q0163	N		Diphenhydramine HCl 50mg					
Q0164	N		Prochlorperazine maleate 5mg					
Q0165	E		Prochlorperazine maleate10mg					
Q0166	N		Granisetron HCl 1 mg oral					
Q0167	N		Dronabinol 2.5mg oral					
Q0168	E		Dronabinol 5mg oral					
Q0169	N		Promethazine HCl 12.5mg oral					
Q0170	E		Promethazine HCl 25 mg oral					
Q0171	N		Chlorpromazine HCl 10mg oral					
Q0172	E		Chlorpromazine HCl 25mg oral					
Q0173	N		Trimethobenzamide HCl 250mg					
Q0174	N		Thiethylperazine maleate10mg					
Q0175	N		Perphenazine 4mg oral					
Q0176	E		Perphenazine 8mg oral					
Q0177	N		Hydroxyzine pamoate 25mg					
Q0178	E		Hydroxyzine pamoate 50mg					
Q0179	N		Ondansetron HCl 8mg oral					
Q0180	N		Dolasetron mesylate oral					
Q0181	E		Unspecified oral anti-emetic					
Q0183	N		Nonmetabolic active tissue					
Q0184	N		Metabolically active tissue					
Q0187	K		Factor viia recombinant	1409	20.7844	$1,083.93		$216.79
Q1001	E		Ntiol category 1					
Q1002	E		Ntiol category 2					
Q1003	E		Ntiol category 3					
Q1004	E		Ntiol category 4					
Q1005	E		Ntiol category 5					
Q2001	N		Oral cabergoline 0.5 mg					
Q2002	N		Elliotts b solution per ml					
Q2003	N		Aprotinin, 10,000 kiu					
Q2004	N		Bladder calculi irrig sol					
Q2005	K		Corticorelin ovine triflutat	7024	2.2965	$119.76		$23.95
Q2006	K		Digoxin immune fab (ovine)	7025	4.9805	$259.74		$51.95
Q2007	N		Ethanolamine oleate 100 mg					
Q2008	N		Fomepizole, 15 mg					
Q2009	N		Fosphenytoin, 50 mg					
Q2010	N		Glatiramer acetate, per dose					
Q2011	K		Hemin, per 1 mg	7030	0.0097	$.51		$.10
Q2012	N		Pegademase bovine, 25 iu					
Q2013	N		Pentastarch 10% solution					
Q2014	N		Sermorelin acetate, 0.5 mg					
Q2017	K		Teniposide, 50 mg	7035	1.9573	$102.08		$20.42
Q2018	N		Urofollitropin, 75 iu					
Q2019	K		Basiliximab	1615	13.3621	$696.85		$139.37
Q2020	E		Histrelin acetate					
Q2021	N		Lepirudin					
Q2022	K		VonWillebrandFactrCmplxpertIU	1618	0.0194	$1.01		$.20
Q3001	N		Brachytherapy Radioelements					
Q3002	N		Gallium ga 67					
Q3003	K		Technetium tc99m bicisate	1620	3.8759	$202.13		$40.43
Q3004	N		Xenon xe 133					
Q3005	N		Technetium tc99m mertiatide					
Q3006	N		Technetium tc99m glucepatate					
Q3007	N		Sodium phosphate p32					
Q3008	K		Indium 111-in pentetreotide	1625	8.2169	$428.52		$85.70
Q3009	N		Technetium tc99m oxidronate					
Q3010	N		Technetium tc99mlabeledrbcs					
Q3011	K		Chromic phosphate p32	1628	1.5891	$82.87		$16.57
Q3012	N		Cyanocobalamin cobalt co57					
Q3014	A		Telehealth facility fee					

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CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
Q3017	E	DG	ALS assessment					
Q3019	A		ALS emer trans no ALS serv					
Q3020	A		ALS nonemer trans no ALS se					
Q3021	K	NI	Ped hepatitis b vaccine inj	0355	0.2132	$11.12		$2.22
Q3022	K	NI	Hepatitis b vaccine adult ds	0356	0.7655	$39.92		$7.98
Q3023	K	NI	Injection hepatitis Bvaccine	0356	0.7655	$39.92		$7.98
Q3025	K	NI	IM inj interferon beta 1-a	9022	0.9302	$48.51		$9.70
Q3026	N	NI	Subc inj interferon beta-1a					
Q4001	A		Cast sup body cast plaster					
Q4002	A		Cast sup body cast fiberglas					
Q4003	A		Cast sup shoulder cast plstr					
Q4004	A		Cast sup shoulder cast fbrgl					
Q4005	A		Cast sup long arm adult plst					
Q4006	A		Cast sup long arm adult fbrg					
Q4007	A		Cast sup long arm ped plster					
Q4008	A		Cast sup long arm ped fbrgls					
Q4009	A		Cast sup sht arm adult plstr					
Q4010	A		Cast sup sht arm adult fbrgl					
Q4011	A		Cast sup sht arm ped plaster					
Q4012	A		Cast sup sht arm ped fbrglas					
Q4013	A		Cast sup gauntlet plaster					
Q4014	A		Cast sup gauntlet fiberglass					
Q4015	A		Cast sup gauntlet ped plster					
Q4016	A		Cast sup gauntlet ped fbrgls					
Q4017	A		Cast sup lng arm splint plst					
Q4018	A		Cast sup lng arm splint fbrg					
Q4019	A		Cast sup lng arm splnt ped p					
Q4020	A		Cast sup lng arm splnt ped f					
Q4021	A		Cast sup sht arm splint plst					
Q4022	A		Cast sup sht arm splint fbrg					
Q4023	A		Cast sup sht arm splnt ped p					
Q4024	A		Cast sup sht arm splnt ped f					
Q4025	A		Cast sup hip spica plaster					
Q4026	A		Cast sup hip spica fiberglas					
Q4027	A		Cast sup hip spica ped plstr					
Q4028	A		Cast sup hip spica ped fbrgl					
Q4029	A		Cast sup long leg plaster					
Q4030	A		Cast sup long leg fiberglass					
Q4031	A		Cast sup lng leg ped plaster					
Q4032	A		Cast sup lng leg ped fbrgls					
Q4033	A		Cast sup lng leg cylinder pl					
Q4034	A		Cast sup lng leg cylinder fb					
Q4035	A		Cast sup lngleg cylndr ped p					
Q4036	A		Cast sup lngleg cylndr ped f					
Q4037	A		Cast sup shrt leg plaster					
Q4038	A		Cast sup shrt leg fiberglass					
Q4039	A		Cast sup shrt leg ped plster					
Q4040	A		Cast sup shrt leg ped fbrgls					
Q4041	A		Cast sup lng leg splint plstr					
Q4042	A		Cast sup lng leg splint fbrgl					
Q4043	A		Cast sup lng leg splint ped p					
Q4044	A		Cast sup lng leg splint ped f					
Q4045	A		Cast sup sht leg splint plstr					
Q4046	A		Cast sup sht leg splint fbrgl					
Q4047	A		Cast sup sht leg splint ped p					
Q4048	A		Cast sup sht leg splint ped f					
Q4049	A		Finger splint, static					
Q4050	A		Cast supplies unlisted					
Q4051	A		Splint supplies misc					
Q9920	A		Epoetin with hct <= 20					
Q9921	A		Epoetin with hct = 21					
Q9922	A		Epoetin with hct = 22					
Q9923	A		Epoetin with hct = 23					
Q9924	A		Epoetin with hct = 24					
Q9925	A		Epoetin with hct = 25					

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CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
Q9926	A		Epoetin with hct = 26					
Q9927	A		Epoetin with hct = 27					
Q9928	A		Epoetin with hct = 28					
Q9929	A		Epoetin with hct = 29					
Q9930	A		Epoetin with hct = 30					
Q9931	A		Epoetin with hct = 31					
Q9932	A		Epoetin with hct = 32					
Q9933	A		Epoetin with hct = 33					
Q9934	A		Epoetin with hct = 34					
Q9935	A		Epoetin with hct = 35					
Q9936	A		Epoetin with hct = 36					
Q9937	A		Epoetin with hct = 37					
Q9938	A		Epoetin with hct = 38					
Q9939	A		Epoetin with hct = 39					
Q9940	A		Epoetin with hct >= 40					
R0070	N		Transport portable x-ray					
R0075	N		Transport port x-ray multipl					
R0076	N		Transport portable EKG					
T1015	E		Clinic service					
T1016	E	NI	Case management					
T1017	E	NI	Targeted case management					
T1018	E	NI	School-based IEP ser bundled					
T1019	E	NI	Personal care ser per 15 min					
T1020	E	NI	Personal care ser per diem					
T1021	E	NI	HH Aide or cn aide per visit					
T1022	E	NI	Contracted services per day					
T1023	E	NI	Program intake assessment					
T1024	E	NI	Team evaluation & management					
T1025	E	NI	Ped compr care pkg, per diem					
T1026	E	NI	Ped compr care pkg, per hour					
T1027	E	NI	Family training & counseling					
T1028	E	NI	Home environment assessment					
T1029	E	NI	Dwelling lead investigation					
T1030	E	NI	RN home care per diem					
T1031	E	NI	LPN home care per diem					
T1500	E	NI	Reusable diaper/pant					
T1502	E	NI	Medication admin visit					
T1999	E	NI	NOC retail items andsupplies					
T2001	E	NI	N-et; patient attend/escort					
T2002	E	NI	N-et; per diem					
T2003	E	NI	N-et; encounter/trip					
T2004	E	NI	N-et; commerc carrier pass					
T2005	E	NI	N-et; stretcher van					
T2006	E	NI	Amb response & trt, no trans					
T2007	E	NI	Non-emer transport wait time					
V2020	A		Vision svcs frames purchases					
V2025	E		Eyeglasses delux frames					
V2100	A		Lens spher single plano 4.00					
V2101	A		Single visn sphere 4.12-7.00					
V2102	A		Singl visn sphere 7.12-20.00					
V2103	A		Spherocylindr 4.00d/12-2.00d					
V2104	A		Spherocylindr 4.00d/2.12-4d					
V2105	A		Spherocylinder 4.00d/4.25-6d					
V2106	A		Spherocylinder 4.00d/>6.00d					
V2107	A		Spherocylinder 4.25d/12-2d					
V2108	A		Spherocylinder 4.25d/2.12-4d					
V2109	A		Spherocylinder 4.25d/4.25-6d					
V2110	A		Spherocylinder 4.25d/over 6d					
V2111	A		Spherocylindr 7.25d/.25-2.25					
V2112	A		Spherocylindr 7.25d/2.25-4d					
V2113	A		Spherocylindr 7.25d/4.25-6d					
V2114	A		Spherocylinder over 12.00d					
V2115	A		Lens lenticular bifocal					
V2116	A		Nonaspheric lens bifocal					
V2117	A		Aspheric lens bifocal					

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CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
V2118	A		Lens aniseikonic single					
V2199	A		Lens single vision not oth c					
V2200	A		Lens spher bifoc plano 4.00d					
V2201	A		Lens sphere bifocal 4.12-7.0					
V2202	A		Lens sphere bifocal 7.12-20.					
V2203	A		Lens sphcyl bifocal 4.00d/.1					
V2204	A		Lens sphcy bifocal 4.00d/2.1					
V2205	A		Lens sphcy bifocal 4.00d/4.2					
V2206	A		Lens sphcy bifocal 4.00d/ove					
V2207	A		Lens sphcy bifocal 4.25-7d/.					
V2208	A		Lens sphcy bifocal 4.25-7/2.					
V2209	A		Lens sphcy bifocal 4.25-7/4.					
V2210	A		Lens sphcy bifocal 4.25-7/ov					
V2211	A		Lens sphcy bifo 7.25-12/.25-					
V2212	A		Lens sphcyl bifo 7.25-12/2.2					
V2213	A		Lens sphcyl bifo 7.25-12/4.2					
V2214	A		Lens sphcyl bifocal over 12.					
V2215	A		Lens lenticular bifocal					
V2216	A		Lens lenticular nonaspheric					
V2217	A		Lens lenticular aspheric bif					
V2218	A		Lens aniseikonic bifocal					
V2219	A		Lens bifocal seg width over					
V2220	A		Lens bifocal add over 3.25d					
V2299	A		Lens bifocal speciality					
V2300	A		Lens sphere trifocal 4.00d					
V2301	A		Lens sphere trifocal 4.12-7.					
V2302	A		Lens sphere trifocal 7.12-20					
V2303	A		Lens sphcy trifocal 4.0/.12-					
V2304	A		Lens sphcy trifocal 4.0/2.25					
V2305	A		Lens sphcy trifocal 4.0/4.25					
V2306	A		Lens sphcyl trifocal 4.00/>6					
V2307	A		Lens sphcy trifocal 4.25-7/.					
V2308	A		Lens sphc trifocal 4.25-7/2.					
V2309	A		Lens sphc trifocal 4.25-7/4.					
V2310	A		Lens sphc trifocal 4.25-7/>6					
V2311	A		Lens sphc trifo 7.25-12/.25-					
V2312	A		Lens sphc trifo 7.25-12/2.25					
V2313	A		Lens sphc trifo 7.25-12/4.25					
V2314	A		Lens sphcyl trifocal over 12					
V2315	A		Lens lenticular trifocal					
V2316	A		Lens lenticular nonaspheric					
V2317	A		Lens lenticular aspheric tri					
V2318	A		Lens aniseikonic trifocal					
V2319	A		Lens trifocal seg width > 28					
V2320	A		Lens trifocal add over 3.25d					
V2399	A		Lens trifocal speciality					
V2410	A		Lens variab asphericity sing					
V2430	A		Lens variable asphericity bi					
V2499	A		Variable asphericity lens					
V2500	A		Contact lens pmma spherical					
V2501	A		Cntct lens pmma-toric/prism					
V2502	A		Contact lens pmma bifocal					
V2503	A		Cntct lens pmma color vision					
V2510	A		Cntct gas permeable sphericl					
V2511	A		Cntct toric prism ballast					
V2512	A		Cntct lens gas permbl bifocl					
V2513	A		Contact lens extended wear					
V2520	A		Contact lens hydrophilic					
V2521	A		Cntct lens hydrophilic toric					
V2522	A		Cntct lens hydrophil bifocl					
V2523	A		Cntct lens hydrophil extend					
V2530	A		Contact lens gas impermeable					
V2531	A		Contact lens gas permeable					
V2599	A		Contact lens/es other type					
V2600	A		Hand held low vision aids					

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V2610	A		Single lens spectacle mount					
V2615	A		Telescop/othr compound lens					
V2623	A		Plastic eye prosth custom					
V2624	A		Polishing artifical eye					
V2625	A		Enlargemnt of eye prosthesis					
V2626	A		Reduction of eye prosthesis					
V2627	A		Scleral cover shell					
V2628	A		Fabrication & fitting					
V2629	A		Prosthetic eye other type					
V2630	N		Anter chamber intraocul lens					
V2631	N		Iris support intraoclr lens					
V2632	N		Post chmbr intraocular lens					
V2700	A		Balance lens					
V2710	A		Glass/plastic slab off prism					
V2715	A		Prism lens/es					
V2718	A		Fresnell prism press-on lens					
V2730	A		Special base curve					
V2740	A		Rose tint plastic					
V2741	A		Non-rose tint plastic					
V2742	A		Rose tint glass					
V2743	A		Non-rose tint glass					
V2744	A		Tint photochromatic lens/es					
V2750	A		Anti-reflective coating					
V2755	A		UV lens/es					
V2760	A		Scratch resistant coating					
V2770	A		Occluder lens/es					
V2780	A		Oversize lens/es					
V2781	E		Progressive lens per lens					
V2785	F		Corneal tissue processing					
V2790	N		Amniotic membrane					
V2799	A		Miscellaneous vision service					
V5008	E		Hearing screening					
V5010	E		Assessment for hearing aid					
V5011	E		Hearing aid fitting/checking					
V5014	E		Hearing aid repair/modifying					
V5020	E		Conformity evaluation					
V5030	E		Body-worn hearing aid air					
V5040	E		Body-worn hearing aid bone					
V5050	E		Hearing aid monaural in ear					
V5060	E		Behind ear hearing aid					
V5070	E		Glasses air conduction					
V5080	E		Glasses bone conduction					
V5090	E		Hearing aid dispensing fee					
V5095	E	NI	Implant mid ear hearing pros					
V5100	E		Body-worn bilat hearing aid					
V5110	E		Hearing aid dispensing fee					
V5120	E		Body-worn binaur hearing aid					
V5130	E		In ear binaural hearing aid					
V5140	E		Behind ear binaur hearing ai					
V5150	E		Glasses binaural hearing aid					
V5160	E		Dispensing fee binaural					
V5170	E		Within ear cros hearing aid					
V5180	E		Behind ear cros hearing aid					
V5190	E		Glasses cros hearing aid					
V5200	E		Cros hearing aid dispens fee					
V5210	E		In ear bicros hearing aid					
V5220	E		Behind ear bicros hearing ai					
V5230	E		Glasses bicros hearing aid					
V5240	E		Dispensing fee bicros					
V5241	E		Dispensing fee, monaural					
V5242	E		Hearing aid, monaural, cic					
V5243	E		Hearing aid, monaural, itc					
V5244	E		Hearing aid, prog, mon, cic					
V5245	E		Hearing aid, prog, mon, itc					
V5246	E		Hearing aid, prog, mon, ite					

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CPT/ HCPCS	Status indicator	Condition	Description	APC	Relative weight	Payment rate	National unadjusted copayment	Minimum unadjusted copayment
V5247	E		Hearing aid, prog, mon, bte					
V5248	E		Hearing aid, binaural, cic					
V5249	E		Hearing aid, binaural, itc					
V5250	E		Hearing aid, prog, bin, cic					
V5251	E		Hearing aid, prog, bin, itc					
V5252	E		Hearing aid, prog, bin, ite					
V5253	E		Hearing aid, prog, bin, bte					
V5254	E		Hearing id, digit, mon, cic					
V5255	E		Hearing aid, digit, mon, itc					
V5256	E		Hearing aid, digit, mon, ite					
V5257	E		Hearing aid, digit, mon, bte					
V5258	E		Hearing aid, digit, bin, cic					
V5259	E		Hearing aid, digit, bin, itc					
V5260	E		Hearing aid, digit, bin, ite					
V5261	E		Hearing aid, digit, bin, bte					
V5262	E		Hearing aid, disp, monaural					
V5263	E		Hearing aid, disp, binaural					
V5264	E		Ear mold/insert					
V5265	E		Ear mold/insert, disp					
V5266	E		Battery for hearing device					
V5267	E		Hearing aid supply/accessory					
V5268	E		ALD Telephone Amplifier					
V5269	E		Alerting device, any type					
V5270	E		ALD, TV amplifier, any type					
V5271	E		ALD, TV caption decoder					
V5272	E		Tdd					
V5273	E		ALD for cochlear implant					
V5274	E		ALD unspecified					
V5275	E		Ear impression					
V5298	E	NI	Hearing aid noc					
V5299	E		Hearing service					
V5336	E		Repair communication device					
V5362	A		Speech screening					
V5363	A		Language screening					
V5364	A		Dysphagia screening					

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ADDENDUM D.—PAYMENT STATUS INDICATORS FOR THE HOSPITAL OUTPATIENT PROSPECTIVE PAYMENT SYSTEM

Indicator	Service	Status
A	Ambulance	Ambulance Fee Schedule.
A	Clinical Diagnostic Laboratory Services	Laboratory Fee Schedule.
A	Durable Medical Equipment, Prosthetics and Orthotics (excluding implanted DME and prosthetics).	DMEPOS Fee Schedule.
A	EPO for ESRD Patients	National Rate.
A	Physical, Occupational and Speech Therapy	Physician Fee Schedule.
A	Physician Services for ESRD Patients	Physician Fee Schedule.
A	Screening Mammography	Physician Fee Schedule.
C	Inpatient Procedures	Not Payable under OPPS; Admit Patient; Bill as Inpatient.
D	Deleted Code	Deleted Effective Beginning of Calendar Year.
E	Non-Covered Items and Services, Codes not Reportable in Hospital Outpatient Settings.	Not Paid Under Medicare or When Performed in a Hospital Outpatient Setting.
F	Corneal tissue acquisition; orphan drugs	Paid at Reasonable Cost.
G	Drug/Biological Pass-Through	Paid Under OPPS; Separate APC Payment Includes Pass Through Amount.
H	Device Category Pass-Through	Paid Under OPPS; Separate Cost Based Pass Through Payment.
K	Non Pass-Through Drug/Biological, Radiopharmaceutical Agents, Certain Brachytherapy seeds.	Paid Under OPPS; Separate APC.
L	Influenza Vaccine; Pneumococcal Pneumonia Vaccine	Paid reasonable cost; not subject to deductible or coinsurance.
N	Items and Services Packaged into APC Rate	Paid under OPPS; Payment Is Packaged Into Payment for Other Services.

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ADDENDUM D.—PAYMENT STATUS INDICATORS FOR THE HOSPITAL OUTPATIENT PROSPECTIVE PAYMENT SYSTEM—Continued

Indicator	Service	Status
P	Partial Hospitalization	Paid under OPPS; Per Diem APC.
S	Significant Procedure, Not Discounted When Multiple	Paid Under OPPS; Separate APC.
T	Significant Procedure, Multiple Procedure Reduction Applies	Paid Under OPPS; Separate APC.
V	Visit to Clinic or Emergency Department	Paid Under OPPS; Separate APC.
X	Ancillary Service	Paid Under OPPS; Separate APC.

ADDENDUM D1.—CODE CONDITIONS

Code condition	Descriptor
DG	Deleted code with a grace period; payment will be made under the deleted code in accord with the status indicator during the standard grace period.
DNG	Deleted code with no grace period; payment will not be made under the deleted code after January 1, 2003.
NF	New code final APC assignment; comments were accepted on a proposed APC assignment in the NPRM; APC assignment is no longer open to comment.
NI	New code interim APC assignment; comments will be accepted on the interim APC assignment for the new code.

ADDENDUM E.—CPT CODES WHICH WOULD BE PAID ONLY AS INPATIENT PROCEDURES

[Calendar Year 2003]

CPT/HCPCS	Status indicator	Description
00846	C	Anesth, hysterectomy
00848	C	Anesth, pelvic organ surg
00864	C	Anesth, removal of bladder
00865	C	Anesth, removal of prostate
00866	C	Anesth, removal of adrenal
00868	C	Anesth, kidney transplant
00882	C	Anesth, major vein ligation
00904	C	Anesth, perineal surgery
00908	C	Anesth, removal of prostate
00928	C	Anesth, removal of testis
00932	C	Anesth, amputation of penis
00934	C	Anesth, penis, nodes removal
00936	C	Anesth, penis, nodes removal
00944	C	Anesth, vaginal hysterectomy
01140	C	Anesth, amputation at pelvis
01150	C	Anesth, pelvic tumor surgery
01190	C	Anesth, pelvis nerve removal
01212	C	Anesth, hip disarticulation
01214	C	Anesth, hip arthroplasty
01232	C	Anesth, amputation of femur
01234	C	Anesth, radical femur surg
01272	C	Anesth, femoral artery surg
01274	C	Anesth, femoral embolectomy
01402	C	Anesth, knee arthroplasty
01404	C	Anesth, amputation at knee
01442	C	Anesth, knee artery surg
01444	C	Anesth, knee artery repair
01486	C	Anesth, ankle replacement
01502	C	Anesth, lwr leg embolectomy
01632	C	Anesth, surgery of shoulder
01634	C	Anesth, shoulder joint amput
01636	C	Anesth, forequarter amput
01638	C	Anesth, shoulder replacement
01652	C	Anesth, shoulder vessel surg
01654	C	Anesth, shoulder vessel surg
01656	C	Anesth, arm-leg vessel surg
01756	C	Anesth, radical humerus surg
01990	C	Support for organ donor
15756	C	Free muscle flap, microvasc

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ADDENDUM E.—CPT CODES WHICH WOULD BE PAID ONLY AS INPATIENT PROCEDURES—Continued

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CPT/HCPCS	Status indicator	Description
15757	C	Free skin flap, microvasc
15758	C	Free fascial flap, microvasc
16035	C	Incision of burn scab, initi
16036	C	Incise burn scab, addl incis
19200	C	Removal of breast
19220	C	Removal of breast
19271	C	Revision of chest wall
19272	C	Extensive chest wall surgery
19361	C	Breast reconstruction
19364	C	Breast reconstruction
19367	C	Breast reconstruction
19368	C	Breast reconstruction
19369	C	Breast reconstruction
20660	C	Apply,remove fixation device
20661	C	Application of head brace
20662	C	Application of pelvis brace
20663	C	Application of thigh brace
20664	C	Halo brace application
20802	C	Replantation, arm, complete
20805	C	Replant, forearm, complete
20808	C	Replantation hand, complete
20816	C	Replantation digit, complete
20822	C	Replantation digit, complete
20824	C	Replantation thumb, complete
20827	C	Replantation thumb, complete
20838	C	Replantation foot, complete
20930	C	Spinal bone allograft
20931	C	Spinal bone allograft
20936	C	Spinal bone autograft
20937	C	Spinal bone autograft
20938	C	Spinal bone autograft
20955	C	Fibula bone graft, microvasc
20956	C	Iliac bone graft, microvasc
20957	C	Mt bone graft, microvasc
20962	C	Other bone graft, microvasc
20969	C	Bone/skin graft, microvasc
20970	C	Bone/skin graft, iliac crest
20972	C	Bone/skin graft, metatarsal
20973	C	Bone/skin graft, great toe
21045	C	Extensive jaw surgery
21141	C	Reconstruct midface, lefort
21142	C	Reconstruct midface, lefort
21143	C	Reconstruct midface, lefort
21145	C	Reconstruct midface, lefort
21146	C	Reconstruct midface, lefort
21147	C	Reconstruct midface, lefort
21150	C	Reconstruct midface, lefort
21151	C	Reconstruct midface, lefort
21154	C	Reconstruct midface, lefort
21155	C	Reconstruct midface, lefort
21159	C	Reconstruct midface, lefort
21160	C	Reconstruct midface, lefort
21172	C	Reconstruct orbit/forehead
21175	C	Reconstruct orbit/forehead
21179	C	Reconstruct entire forehead
21180	C	Reconstruct entire forehead
21182	C	Reconstruct cranial bone
21183	C	Reconstruct cranial bone
21184	C	Reconstruct cranial bone
21188	C	Reconstruction of midface
21193	C	Reconst lwr jaw w/o graft
21194	C	Reconst lwr jaw w/graft
21195	C	Reconst lwr jaw w/o fixation
21196	C	Reconst lwr jaw w/fixation
21247	C	Reconstruct lower jaw bone

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ADDENDUM E.—CPT CODES WHICH WOULD BE PAID ONLY AS INPATIENT PROCEDURES—Continued
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CPT/HCPCS	Status indicator	Description
21255	C	Reconstruct lower jaw bone
21256	C	Reconstruction of orbit
21268	C	Revise eye sockets
21343	C	Treatment of sinus fracture
21344	C	Treatment of sinus fracture
21346	C	Treat nose/jaw fracture
21347	C	Treat nose/jaw fracture
21348	C	Treat nose/jaw fracture
21356	C	Treat cheek bone fracture
21360	C	Treat cheek bone fracture
21365	C	Treat cheek bone fracture
21366	C	Treat cheek bone fracture
21385	C	Treat eye socket fracture
21386	C	Treat eye socket fracture
21387	C	Treat eye socket fracture
21395	C	Treat eye socket fracture
21408	C	Treat eye socket fracture
21422	C	Treat mouth roof fracture
21423	C	Treat mouth roof fracture
21431	C	Treat craniofacial fracture
21432	C	Treat craniofacial fracture
21433	C	Treat craniofacial fracture
21435	C	Treat craniofacial fracture
21436	C	Treat craniofacial fracture
21495	C	Treat hyoid bone fracture
21510	C	Drainage of bone lesion
21557	C	Remove tumor, neck/chest
21615	C	Removal of rib
21616	C	Removal of rib and nerves
21620	C	Partial removal of sternum
21627	C	Sternal debridement
21630	C	Extensive sternum surgery
21632	C	Extensive sternum surgery
21705	C	Revision of neck muscle/rib
21740	C	Reconstruction of sternum
21750	C	Repair of sternum separation
21810	C	Treatment of rib fracture(s)
21825	C	Treat sternum fracture
22110	C	Remove part of neck vertebra
22112	C	Remove part, thorax vertebra
22114	C	Remove part, lumbar vertebra
22116	C	Remove extra spine segment
22210	C	Revision of neck spine
22212	C	Revision of thorax spine
22214	C	Revision of lumbar spine
22216	C	Revise, extra spine segment
22220	C	Revision of neck spine
22222	C	Revision of thorax spine
22224	C	Revision of lumbar spine
22226	C	Revise, extra spine segment
22318	C	Treat odontoid fx w/o graft
22319	C	Treat odontoid fx w/graft
22325	C	Treat spine fracture
22326	C	Treat neck spine fracture
22327	C	Treat thorax spine fracture
22328	C	Treat each add spine fx
22548	C	Neck spine fusion
22554	C	Neck spine fusion
22556	C	Thorax spine fusion
22558	C	Lumbar spine fusion
22585	C	Additional spinal fusion
22590	C	Spine & skull spinal fusion
22595	C	Neck spinal fusion
22600	C	Neck spine fusion
22610	C	Thorax spine fusion

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ADDENDUM E.—CPT CODES WHICH WOULD BE PAID ONLY AS INPATIENT PROCEDURES—Continued
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CPT/HCPCS	Status indicator	Description
22630	C	Lumbar spine fusion
22632	C	Spine fusion, extra segment
22800	C	Fusion of spine
22802	C	Fusion of spine
22804	C	Fusion of spine
22808	C	Fusion of spine
22810	C	Fusion of spine
22812	C	Fusion of spine
22818	C	Kyphectomy, 1-2 segments
22819	C	Kyphectomy, 3 or more
22830	C	Exploration of spinal fusion
22840	C	Insert spine fixation device
22841	C	Insert spine fixation device
22842	C	Insert spine fixation device
22843	C	Insert spine fixation device
22844	C	Insert spine fixation device
22845	C	Insert spine fixation device
22846	C	Insert spine fixation device
22847	C	Insert spine fixation device
22848	C	Insert pelv fixation device
22849	C	Reinsert spinal fixation
22850	C	Remove spine fixation device
22851	C	Apply spine prosth device
22852	C	Remove spine fixation device
22855	C	Remove spine fixation device
23200	C	Removal of collar bone
23210	C	Removal of shoulder blade
23220	C	Partial removal of humerus
23221	C	Partial removal of humerus
23222	C	Partial removal of humerus
23332	C	Remove shoulder foreign body
23472	C	Reconstruct shoulder joint
23900	C	Amputation of arm & girdle
23920	C	Amputation at shoulder joint
24149	C	Radical resection of elbow
24900	C	Amputation of upper arm
24920	C	Amputation of upper arm
24930	C	Amputation follow-up surgery
24931	C	Amputate upper arm & implant
24940	C	Revision of upper arm
25900	C	Amputation of forearm
25905	C	Amputation of forearm
25909	C	Amputation follow-up surgery
25915	C	Amputation of forearm
25920	C	Amputate hand at wrist
25924	C	Amputation follow-up surgery
25927	C	Amputation of hand
25931	C	Amputation follow-up surgery
26551	C	Great toe-hand transfer
26553	C	Single transfer, toe-hand
26554	C	Double transfer, toe-hand
26556	C	Toe joint transfer
26992	C	Drainage of bone lesion
27005	C	Incision of hip tendon
27006	C	Incision of hip tendons
27025	C	Incision of hip/thigh fascia
27030	C	Drainage of hip joint
27036	C	Excision of hip joint/muscle
27054	C	Removal of hip joint lining
27070	C	Partial removal of hip bone
27071	C	Partial removal of hip bone
27075	C	Extensive hip surgery
27076	C	Extensive hip surgery
27077	C	Extensive hip surgery
27078	C	Extensive hip surgery

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CPT/HCPCS	Status indicator	Description
27079	C	Extensive hip surgery
27090	C	Removal of hip prosthesis
27091	C	Removal of hip prosthesis
27120	C	Reconstruction of hip socket
27122	C	Reconstruction of hip socket
27125	C	Partial hip replacement
27130	C	Total hip arthroplasty
27132	C	Total hip arthroplasty
27134	C	Revise hip joint replacement
27137	C	Revise hip joint replacement
27138	C	Revise hip joint replacement
27140	C	Transplant femur ridge
27146	C	Incision of hip bone
27147	C	Revision of hip bone
27151	C	Incision of hip bones
27156	C	Revision of hip bones
27158	C	Revision of pelvis
27161	C	Incision of neck of femur
27165	C	Incision/fixation of femur
27170	C	Repair/graft femur head/neck
27175	C	Treat slipped epiphysis
27176	C	Treat slipped epiphysis
27177	C	Treat slipped epiphysis
27178	C	Treat slipped epiphysis
27179	C	Revise head/neck of femur
27181	C	Treat slipped epiphysis
27185	C	Revision of femur epiphysis
27187	C	Reinforce hip bones
27215	C	Treat pelvic fracture(s)
27217	C	Treat pelvic ring fracture
27218	C	Treat pelvic ring fracture
27222	C	Treat hip socket fracture
27226	C	Treat hip wall fracture
27227	C	Treat hip fracture(s)
27228	C	Treat hip fracture(s)
27232	C	Treat thigh fracture
27236	C	Treat thigh fracture
27240	C	Treat thigh fracture
27244	C	Treat thigh fracture
27245	C	Treat thigh fracture
27248	C	Treat thigh fracture
27253	C	Treat hip dislocation
27254	C	Treat hip dislocation
27258	C	Treat hip dislocation
27259	C	Treat hip dislocation
27280	C	Fusion of sacroiliac joint
27282	C	Fusion of pubic bones
27284	C	Fusion of hip joint
27286	C	Fusion of hip joint
27290	C	Amputation of leg at hip
27295	C	Amputation of leg at hip
27303	C	Drainage of bone lesion
27365	C	Extensive leg surgery
27445	C	Revision of knee joint
27447	C	Total knee arthroplasty
27448	C	Incision of thigh
27450	C	Incision of thigh
27454	C	Realignment of thigh bone
27455	C	Realignment of knee
27457	C	Realignment of knee
27465	C	Shortening of thigh bone
27466	C	Lengthening of thigh bone
27468	C	Shorten/lengthen thighs
27470	C	Repair of thigh
27472	C	Repair/graft of thigh

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ADDENDUM E.—CPT CODES WHICH WOULD BE PAID ONLY AS INPATIENT PROCEDURES—Continued
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CPT/HCPCS	Status indicator	Description
27475	C	Surgery to stop leg growth
27477	C	Surgery to stop leg growth
27479	C	Surgery to stop leg growth
27485	C	Surgery to stop leg growth
27486	C	Revise/replace knee joint
27487	C	Revise/replace knee joint
27488	C	Removal of knee prosthesis
27495	C	Reinforce thigh
27506	C	Treatment of thigh fracture
27507	C	Treatment of thigh fracture
27511	C	Treatment of thigh fracture
27513	C	Treatment of thigh fracture
27514	C	Treatment of thigh fracture
27519	C	Treat thigh fx growth plate
27535	C	Treat knee fracture
27536	C	Treat knee fracture
27540	C	Treat knee fracture
27556	C	Treat knee dislocation
27557	C	Treat knee dislocation
27558	C	Treat knee dislocation
27580	C	Fusion of knee
27590	C	Amputate leg at thigh
27591	C	Amputate leg at thigh
27592	C	Amputate leg at thigh
27596	C	Amputation follow-up surgery
27598	C	Amputate lower leg at knee
27645	C	Extensive lower leg surgery
27646	C	Extensive lower leg surgery
27702	C	Reconstruct ankle joint
27703	C	Reconstruction, ankle joint
27712	C	Realignment of lower leg
27715	C	Revision of lower leg
27720	C	Repair of tibia
27722	C	Repair/graft of tibia
27724	C	Repair/graft of tibia
27725	C	Repair of lower leg
27727	C	Repair of lower leg
27880	C	Amputation of lower leg
27881	C	Amputation of lower leg
27882	C	Amputation of lower leg
27886	C	Amputation follow-up surgery
27888	C	Amputation of foot at ankle
28800	C	Amputation of midfoot
28805	C	Amputation thru metatarsal
31225	C	Removal of upper jaw
31230	C	Removal of upper jaw
31290	C	Nasal/sinus endoscopy, surg
31291	C	Nasal/sinus endoscopy, surg
31292	C	Nasal/sinus endoscopy, surg
31293	C	Nasal/sinus endoscopy, surg
31294	C	Nasal/sinus endoscopy, surg
31360	C	Removal of larynx
31365	C	Removal of larynx
31367	C	Partial removal of larynx
31368	C	Partial removal of larynx
31370	C	Partial removal of larynx
31375	C	Partial removal of larynx
31380	C	Partial removal of larynx
31382	C	Partial removal of larynx
31390	C	Removal of larynx & pharynx
31395	C	Reconstruct larynx & pharynx
31584	C	Treat larynx fracture
31587	C	Revision of larynx
31725	C	Clearance of airways
31760	C	Repair of windpipe

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ADDENDUM E.—CPT CODES WHICH WOULD BE PAID ONLY AS INPATIENT PROCEDURES—Continued

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CPT/HCPCS	Status indicator	Description
31766	C	Reconstruction of windpipe
31770	C	Repair/graft of bronchus
31775	C	Reconstruct bronchus
31780	C	Reconstruct windpipe
31781	C	Reconstruct windpipe
31786	C	Remove windpipe lesion
31800	C	Repair of windpipe injury
31805	C	Repair of windpipe injury
32035	C	Exploration of chest
32036	C	Exploration of chest
32095	C	Biopsy through chest wall
32100	C	Exploration/biopsy of chest
32110	C	Explore/repair chest
32120	C	Re-exploration of chest
32124	C	Explore chest free adhesions
32140	C	Removal of lung lesion(s)
32141	C	Remove/treat lung lesions
32150	C	Removal of lung lesion(s)
32151	C	Remove lung foreign body
32160	C	Open chest heart massage
32200	C	Drain, open, lung lesion
32215	C	Treat chest lining
32220	C	Release of lung
32225	C	Partial release of lung
32310	C	Removal of chest lining
32320	C	Free/remove chest lining
32402	C	Open biopsy chest lining
32440	C	Removal of lung
32442	C	Sleeve pneumonectomy
32445	C	Removal of lung
32480	C	Partial removal of lung
32482	C	Bilobectomy
32484	C	Segmentectomy
32486	C	Sleeve lobectomy
32488	C	Completion pneumonectomy
32491	C	Lung volume reduction
32500	C	Partial removal of lung
32501	C	Repair bronchus add-on
32520	C	Remove lung & revise chest
32522	C	Remove lung & revise chest
32525	C	Remove lung & revise chest
32540	C	Removal of lung lesion
32650	C	Thoracoscopy, surgical
32651	C	Thoracoscopy, surgical
32652	C	Thoracoscopy, surgical
32653	C	Thoracoscopy, surgical
32654	C	Thoracoscopy, surgical
32655	C	Thoracoscopy, surgical
32656	C	Thoracoscopy, surgical
32657	C	Thoracoscopy, surgical
32658	C	Thoracoscopy, surgical
32659	C	Thoracoscopy, surgical
32660	C	Thoracoscopy, surgical
32661	C	Thoracoscopy, surgical
32662	C	Thoracoscopy, surgical
32663	C	Thoracoscopy, surgical
32664	C	Thoracoscopy, surgical
32665	C	Thoracoscopy, surgical
32800	C	Repair lung hernia
32810	C	Close chest after drainage
32815	C	Close bronchial fistula
32820	C	Reconstruct injured chest
32850	C	Donor pneumonectomy
32851	C	Lung transplant, single
32852	C	Lung transplant with bypass

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ADDENDUM E.—CPT CODES WHICH WOULD BE PAID ONLY AS INPATIENT PROCEDURES—Continued

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CPT/HCPCS	Status indicator	Description
32853	C	Lung transplant, double
32854	C	Lung transplant with bypass
32900	C	Removal of rib(s)
32905	C	Revise & repair chest wall
32906	C	Revise & repair chest wall
32940	C	Revision of lung
32997	C	Total lung lavage
33015	C	Incision of heart sac
33020	C	Incision of heart sac
33025	C	Incision of heart sac
33030	C	Partial removal of heart sac
33031	C	Partial removal of heart sac
33050	C	Removal of heart sac lesion
33120	C	Removal of heart lesion
33130	C	Removal of heart lesion
33140	C	Heart revascularize (tmr)
33141	C	Heart tmr w/other procedure
33200	C	Insertion of heart pacemaker
33201	C	Insertion of heart pacemaker
33236	C	Remove electrode/thoracotomy
33237	C	Remove electrode/thoracotomy
33238	C	Remove electrode/thoracotomy
33243	C	Remove eltrd/thoracotomy
33245	C	Insert epic eltrd pace-defib
33246	C	Insert epic eltrd/generator
33250	C	Ablate heart dysrhythm focus
33251	C	Ablate heart dysrhythm focus
33253	C	Reconstruct atria
33261	C	Ablate heart dysrhythm focus
33300	C	Repair of heart wound
33305	C	Repair of heart wound
33310	C	Exploratory heart surgery
33315	C	Exploratory heart surgery
33320	C	Repair major blood vessel(s)
33321	C	Repair major vessel
33322	C	Repair major blood vessel(s)
33330	C	Insert major vessel graft
33332	C	Insert major vessel graft
33335	C	Insert major vessel graft
33400	C	Repair of aortic valve
33401	C	Valvuloplasty, open
33403	C	Valvuloplasty, w/cp bypass
33404	C	Prepare heart-aorta conduit
33405	C	Replacement of aortic valve
33406	C	Replacement of aortic valve
33410	C	Replacement of aortic valve
33411	C	Replacement of aortic valve
33412	C	Replacement of aortic valve
33413	C	Replacement of aortic valve
33414	C	Repair of aortic valve
33415	C	Revision, subvalvular tissue
33416	C	Revise ventricle muscle
33417	C	Repair of aortic valve
33420	C	Revision of mitral valve
33422	C	Revision of mitral valve
33425	C	Repair of mitral valve
33426	C	Repair of mitral valve
33427	C	Repair of mitral valve
33430	C	Replacement of mitral valve
33460	C	Revision of tricuspid valve
33463	C	Valvuloplasty, tricuspid
33464	C	Valvuloplasty, tricuspid
33465	C	Replace tricuspid valve
33468	C	Revision of tricuspid valve
33470	C	Revision of pulmonary valve

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CPT/HCPCS	Status indicator	Description
33471	C	Valvotomy, pulmonary valve
33472	C	Revision of pulmonary valve
33474	C	Revision of pulmonary valve
33475	C	Replacement, pulmonary valve
33476	C	Revision of heart chamber
33478	C	Revision of heart chamber
33496	C	Repair, prosth valve clot
33500	C	Repair heart vessel fistula
33501	C	Repair heart vessel fistula
33502	C	Coronary artery correction
33503	C	Coronary artery graft
33504	C	Coronary artery graft
33505	C	Repair artery w/tunnel
33506	C	Repair artery, translocation
33510	C	CABG, vein, single
33511	C	CABG, vein, two
33512	C	CABG, vein, three
33513	C	CABG, vein, four
33514	C	CABG, vein, five
33516	C	Cabg, vein, six or more
33517	C	CABG, artery-vein, single
33518	C	CABG, artery-vein, two
33519	C	CABG, artery-vein, three
33521	C	CABG, artery-vein, four
33522	C	CABG, artery-vein, five
33523	C	Cabg, art-vein, six or more
33530	C	Coronary artery, bypass/reop
33533	C	CABG, arterial, single
33534	C	CABG, arterial, two
33535	C	CABG, arterial, three
33536	C	Cabg, arterial, four or more
33542	C	Removal of heart lesion
33545	C	Repair of heart damage
33572	C	Open coronary endarterectomy
33600	C	Closure of valve
33602	C	Closure of valve
33606	C	Anastomosis/artery-aorta
33608	C	Repair anomaly w/conduit
33610	C	Repair by enlargement
33611	C	Repair double ventricle
33612	C	Repair double ventricle
33615	C	Repair, modified fontan
33617	C	Repair single ventricle
33619	C	Repair single ventricle
33641	C	Repair heart septum defect
33645	C	Revision of heart veins
33647	C	Repair heart septum defects
33660	C	Repair of heart defects
33665	C	Repair of heart defects
33670	C	Repair of heart chambers
33681	C	Repair heart septum defect
33684	C	Repair heart septum defect
33688	C	Repair heart septum defect
33690	C	Reinforce pulmonary artery
33692	C	Repair of heart defects
33694	C	Repair of heart defects
33697	C	Repair of heart defects
33702	C	Repair of heart defects
33710	C	Repair of heart defects
33720	C	Repair of heart defect
33722	C	Repair of heart defect
33730	C	Repair heart-vein defect(s)
33732	C	Repair heart-vein defect
33735	C	Revision of heart chamber
33736	C	Revision of heart chamber

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CPT/HCPCS	Status indicator	Description
33737	C	Revision of heart chamber
33750	C	Major vessel shunt
33755	C	Major vessel shunt
33762	C	Major vessel shunt
33764	C	Major vessel shunt & graft
33766	C	Major vessel shunt
33767	C	Major vessel shunt
33770	C	Repair great vessels defect
33771	C	Repair great vessels defect
33774	C	Repair great vessels defect
33775	C	Repair great vessels defect
33776	C	Repair great vessels defect
33777	C	Repair great vessels defect
33778	C	Repair great vessels defect
33779	C	Repair great vessels defect
33780	C	Repair great vessels defect
33781	C	Repair great vessels defect
33786	C	Repair arterial trunk
33788	C	Revision of pulmonary artery
33800	C	Aortic suspension
33802	C	Repair vessel defect
33803	C	Repair vessel defect
33813	C	Repair septal defect
33814	C	Repair septal defect
33820	C	Revise major vessel
33822	C	Revise major vessel
33824	C	Revise major vessel
33840	C	Remove aorta constriction
33845	C	Remove aorta constriction
33851	C	Remove aorta constriction
33852	C	Repair septal defect
33853	C	Repair septal defect
33860	C	Ascending aortic graft
33861	C	Ascending aortic graft
33863	C	Ascending aortic graft
33870	C	Transverse aortic arch graft
33875	C	Thoracic aortic graft
33877	C	Thoracoabdominal graft
33910	C	Remove lung artery emboli
33915	C	Remove lung artery emboli
33916	C	Surgery of great vessel
33917	C	Repair pulmonary artery
33918	C	Repair pulmonary atresia
33919	C	Repair pulmonary atresia
33920	C	Repair pulmonary atresia
33922	C	Transect pulmonary artery
33924	C	Remove pulmonary shunt
33930	C	Removal of donor heart/lung
33935	C	Transplantation, heart/lung
33940	C	Removal of donor heart
33945	C	Transplantation of heart
33960	C	External circulation assist
33961	C	External circulation assist
33967	C	Insert ia percut device
33968	C	Remove aortic assist device
33970	C	Aortic circulation assist
33971	C	Aortic circulation assist
33973	C	Insert balloon device
33974	C	Remove intra-aortic balloon
33975	C	Implant ventricular device
33976	C	Implant ventricular device
33977	C	Remove ventricular device
33978	C	Remove ventricular device
33979	C	Insert intracorporeal device
33980	C	Remove intracorporeal device

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CPT/HCPCS	Status indicator	Description
34001	C	Removal of artery clot
34051	C	Removal of artery clot
34151	C	Removal of artery clot
34401	C	Removal of vein clot
34451	C	Removal of vein clot
34502	C	Reconstruct vena cava
34800	C	Endovasc abdo repair w/tube
34802	C	Endovasc abdo repr w/device
34804	C	Endovasc abdo repr w/device
34808	C	Endovasc abdo occlud device
34812	C	Xpose for endoprosth, aortic
34813	C	Xpose for endoprosth, femorl
34820	C	Xpose for endoprosth, iliac
34825	C	Endovasc extend prosth, init
34826	C	Endovasc exten prosth, addl
34830	C	Open aortic tube prosth repr
34831	C	Open aortoiliac prosth repr
34832	C	Open aortofemor prosth repr
34833	C	Xpose for endoprosth, iliac
34834	C	Xpose, endoprosth, brachial
34900	C	Endovasc iliac repr w/graft
35001	C	Repair defect of artery
35002	C	Repair artery rupture, neck
35005	C	Repair defect of artery
35013	C	Repair artery rupture, arm
35021	C	Repair defect of artery
35022	C	Repair artery rupture, chest
35045	C	Repair defect of arm artery
35081	C	Repair defect of artery
35082	C	Repair artery rupture, aorta
35091	C	Repair defect of artery
35092	C	Repair artery rupture, aorta
35102	C	Repair defect of artery
35103	C	Repair artery rupture, groin
35111	C	Repair defect of artery
35112	C	Repair artery rupture,spleen
35121	C	Repair defect of artery
35122	C	Repair artery rupture, belly
35131	C	Repair defect of artery
35132	C	Repair artery rupture, groin
35141	C	Repair defect of artery
35142	C	Repair artery rupture, thigh
35151	C	Repair defect of artery
35152	C	Repair artery rupture, knee
35161	C	Repair defect of artery
35162	C	Repair artery rupture
35182	C	Repair blood vessel lesion
35189	C	Repair blood vessel lesion
35211	C	Repair blood vessel lesion
35216	C	Repair blood vessel lesion
35221	C	Repair blood vessel lesion
35241	C	Repair blood vessel lesion
35246	C	Repair blood vessel lesion
35251	C	Repair blood vessel lesion
35271	C	Repair blood vessel lesion
35276	C	Repair blood vessel lesion
35281	C	Repair blood vessel lesion
35301	C	Rechanneling of artery
35311	C	Rechanneling of artery
35331	C	Rechanneling of artery
35341	C	Rechanneling of artery
35351	C	Rechanneling of artery
35355	C	Rechanneling of artery
35361	C	Rechanneling of artery
35363	C	Rechanneling of artery

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CPT/HCPCS	Status indicator	Description
35371	C	Rechanneling of artery
35372	C	Rechanneling of artery
35381	C	Rechanneling of artery
35390	C	Reoperation, carotid add-on
35400	C	Angioscopy
35450	C	Repair arterial blockage
35452	C	Repair arterial blockage
35454	C	Repair arterial blockage
35456	C	Repair arterial blockage
35480	C	Atherectomy, open
35481	C	Atherectomy, open
35482	C	Atherectomy, open
35483	C	Atherectomy, open
35501	C	Artery bypass graft
35506	C	Artery bypass graft
35507	C	Artery bypass graft
35508	C	Artery bypass graft
35509	C	Artery bypass graft
35511	C	Artery bypass graft
35515	C	Artery bypass graft
35516	C	Artery bypass graft
35518	C	Artery bypass graft
35521	C	Artery bypass graft
35526	C	Artery bypass graft
35531	C	Artery bypass graft
35533	C	Artery bypass graft
35536	C	Artery bypass graft
35541	C	Artery bypass graft
35546	C	Artery bypass graft
35548	C	Artery bypass graft
35549	C	Artery bypass graft
35551	C	Artery bypass graft
35556	C	Artery bypass graft
35558	C	Artery bypass graft
35560	C	Artery bypass graft
35563	C	Artery bypass graft
35565	C	Artery bypass graft
35566	C	Artery bypass graft
35571	C	Artery bypass graft
35582	C	Vein bypass graft
35583	C	Vein bypass graft
35585	C	Vein bypass graft
35587	C	Vein bypass graft
35600	C	Harvest artery for cabg
35601	C	Artery bypass graft
35606	C	Artery bypass graft
35612	C	Artery bypass graft
35616	C	Artery bypass graft
35621	C	Artery bypass graft
35623	C	Bypass graft, not vein
35626	C	Artery bypass graft
35631	C	Artery bypass graft
35636	C	Artery bypass graft
35641	C	Artery bypass graft
35642	C	Artery bypass graft
35645	C	Artery bypass graft
35646	C	Artery bypass graft
35647	C	Artery bypass graft
35650	C	Artery bypass graft
35651	C	Artery bypass graft
35654	C	Artery bypass graft
35656	C	Artery bypass graft
35661	C	Artery bypass graft
35663	C	Artery bypass graft
35665	C	Artery bypass graft

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CPT/HCPCS	Status indicator	Description
35666	C	Artery bypass graft
35671	C	Artery bypass graft
35681	C	Composite bypass graft
35682	C	Composite bypass graft
35683	C	Composite bypass graft
35691	C	Arterial transposition
35693	C	Arterial transposition
35694	C	Arterial transposition
35695	C	Arterial transposition
35700	C	Reoperation, bypass graft
35701	C	Exploration, carotid artery
35721	C	Exploration, femoral artery
35741	C	Exploration popliteal artery
35800	C	Explore neck vessels
35820	C	Explore chest vessels
35840	C	Explore abdominal vessels
35870	C	Repair vessel graft defect
35901	C	Excision, graft, neck
35905	C	Excision, graft, thorax
35907	C	Excision, graft, abdomen
36510	C	Insertion of catheter, vein
36660	C	Insertion catheter, artery
36822	C	Insertion of cannula(s)
36823	C	Insertion of cannula(s)
37140	C	Revision of circulation
37145	C	Revision of circulation
37160	C	Revision of circulation
37180	C	Revision of circulation
37181	C	Splice spleen/kidney veins
37182	C	Insert hepatic shunt (tips)
37183	C	Remove hepatic shunt (tips)
37195	C	Thrombolytic therapy, stroke
37616	C	Ligation of chest artery
37617	C	Ligation of abdomen artery
37618	C	Ligation of extremity artery
37660	C	Revision of major vein
37788	C	Revascularization, penis
38100	C	Removal of spleen, total
38101	C	Removal of spleen, partial
38102	C	Removal of spleen, total
38115	C	Repair of ruptured spleen
38380	C	Thoracic duct procedure
38381	C	Thoracic duct procedure
38382	C	Thoracic duct procedure
38562	C	Removal, pelvic lymph nodes
38564	C	Removal, abdomen lymph nodes
38724	C	Removal of lymph nodes, neck
38746	C	Remove thoracic lymph nodes
38747	C	Remove abdominal lymph nodes
38765	C	Remove groin lymph nodes
38770	C	Remove pelvis lymph nodes
38780	C	Remove abdomen lymph nodes
39000	C	Exploration of chest
39010	C	Exploration of chest
39200	C	Removal chest lesion
39220	C	Removal chest lesion
39499	C	Chest procedure
39501	C	Repair diaphragm laceration
39502	C	Repair paraesophageal hernia
39503	C	Repair of diaphragm hernia
39520	C	Repair of diaphragm hernia
39530	C	Repair of diaphragm hernia
39531	C	Repair of diaphragm hernia
39540	C	Repair of diaphragm hernia
39541	C	Repair of diaphragm hernia

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CPT/HCPCS	Status indicator	Description
39545	C	Revision of diaphragm
39560	C	Resect diaphragm, simple
39561	C	Resect diaphragm, complex
39599	C	Diaphragm surgery procedure
41130	C	Partial removal of tongue
41135	C	Tongue and neck surgery
41140	C	Removal of tongue
41145	C	Tongue removal, neck surgery
41150	C	Tongue, mouth, jaw surgery
41153	C	Tongue, mouth, neck surgery
41155	C	Tongue, jaw, & neck surgery
42426	C	Excise parotid gland/lesion
42845	C	Extensive surgery of throat
42894	C	Revision of pharyngeal walls
42953	C	Repair throat, esophagus
42961	C	Control throat bleeding
42971	C	Control nose/throat bleeding
43045	C	Incision of esophagus
43100	C	Excision of esophagus lesion
43101	C	Excision of esophagus lesion
43107	C	Removal of esophagus
43108	C	Removal of esophagus
43112	C	Removal of esophagus
43113	C	Removal of esophagus
43116	C	Partial removal of esophagus
43117	C	Partial removal of esophagus
43118	C	Partial removal of esophagus
43121	C	Partial removal of esophagus
43122	C	Partial removal of esophagus
43123	C	Partial removal of esophagus
43124	C	Removal of esophagus
43135	C	Removal of esophagus pouch
43300	C	Repair of esophagus
43305	C	Repair esophagus and fistula
43310	C	Repair of esophagus
43312	C	Repair esophagus and fistula
43313	C	Esophagoplasty congential
43314	C	Tracheo-esophagoplasty cong
43320	C	Fuse esophagus & stomach
43324	C	Revise esophagus & stomach
43325	C	Revise esophagus & stomach
43326	C	Revise esophagus & stomach
43330	C	Repair of esophagus
43331	C	Repair of esophagus
43340	C	Fuse esophagus & intestine
43341	C	Fuse esophagus & intestine
43350	C	Surgical opening, esophagus
43351	C	Surgical opening, esophagus
43352	C	Surgical opening, esophagus
43360	C	Gastrointestinal repair
43361	C	Gastrointestinal repair
43400	C	Ligate esophagus veins
43401	C	Esophagus surgery for veins
43405	C	Ligate/staple esophagus
43410	C	Repair esophagus wound
43415	C	Repair esophagus wound
43420	C	Repair esophagus opening
43425	C	Repair esophagus opening
43460	C	Pressure treatment esophagus
43496	C	Free jejunum flap, microvasc
43500	C	Surgical opening of stomach
43501	C	Surgical repair of stomach
43502	C	Surgical repair of stomach
43510	C	Surgical opening of stomach
43520	C	Incision of pyloric muscle

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CPT/HCPCS	Status indicator	Description
43605	C	Biopsy of stomach
43610	C	Excision of stomach lesion
43611	C	Excision of stomach lesion
43620	C	Removal of stomach
43621	C	Removal of stomach
43622	C	Removal of stomach
43631	C	Removal of stomach, partial
43632	C	Removal of stomach, partial
43633	C	Removal of stomach, partial
43634	C	Removal of stomach, partial
43635	C	Removal of stomach, partial
43638	C	Removal of stomach, partial
43639	C	Removal of stomach, partial
43640	C	Vagotomy & pylorus repair
43641	C	Vagotomy & pylorus repair
43800	C	Reconstruction of pylorus
43810	C	Fusion of stomach and bowel
43820	C	Fusion of stomach and bowel
43825	C	Fusion of stomach and bowel
43832	C	Place gastrostomy tube
43840	C	Repair of stomach lesion
43842	C	Gastroplasty for obesity
43843	C	Gastroplasty for obesity
43846	C	Gastric bypass for obesity
43847	C	Gastric bypass for obesity
43848	C	Revision gastroplasty
43850	C	Revise stomach-bowel fusion
43855	C	Revise stomach-bowel fusion
43860	C	Revise stomach-bowel fusion
43865	C	Revise stomach-bowel fusion
43880	C	Repair stomach-bowel fistula
44005	C	Freeing of bowel adhesion
44010	C	Incision of small bowel
44015	C	Insert needle cath bowel
44020	C	Explore small intestine
44021	C	Decompress small bowel
44025	C	Incision of large bowel
44050	C	Reduce bowel obstruction
44055	C	Correct malrotation of bowel
44110	C	Excise intestine lesion(s)
44111	C	Excision of bowel lesion(s)
44120	C	Removal of small intestine
44121	C	Removal of small intestine
44125	C	Removal of small intestine
44126	C	Enterectomy w/taper, cong
44127	C	Enterectomy w/o taper, cong
44128	C	Enterectomy cong, add-on
44130	C	Bowel to bowel fusion
44132	C	Enterectomy, cadaver donor
44133	C	Enterectomy, live donor
44135	C	Intestine transplnt, cadaver
44136	C	Intestine transplant, live
44139	C	Mobilization of colon
44140	C	Partial removal of colon
44141	C	Partial removal of colon
44143	C	Partial removal of colon
44144	C	Partial removal of colon
44145	C	Partial removal of colon
44146	C	Partial removal of colon
44147	C	Partial removal of colon
44150	C	Removal of colon
44151	C	Removal of colon/ileostomy
44152	C	Removal of colon/ileostomy
44153	C	Removal of colon/ileostomy
44155	C	Removal of colon/ileostomy

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CPT/HCPCS	Status indicator	Description
44156	C	Removal of colon/ileostomy
44160	C	Removal of colon
44202	C	Lap resect s/intestine singl
44203	C	Lap resect s/intestine, addl
44204	C	Laparo partial colectomy
44205	C	Lap colectomy part w/ileum
44210	C	Laparo total proctocolectomy
44211	C	Laparo total proctocolectomy
44212	C	Laparo total proctocolectomy
44300	C	Open bowel to skin
44310	C	Ileostomy/jejunostomy
44314	C	Revision of ileostomy
44316	C	Devise bowel pouch
44320	C	Colostomy
44322	C	Colostomy with biopsies
44345	C	Revision of colostomy
44346	C	Revision of colostomy
44602	C	Suture, small intestine
44603	C	Suture, small intestine
44604	C	Suture, large intestine
44605	C	Repair of bowel lesion
44615	C	Intestinal stricturoplasty
44620	C	Repair bowel opening
44625	C	Repair bowel opening
44626	C	Repair bowel opening
44640	C	Repair bowel-skin fistula
44650	C	Repair bowel fistula
44660	C	Repair bowel-bladder fistula
44661	C	Repair bowel-bladder fistula
44680	C	Surgical revision, intestine
44700	C	Suspend bowel w/prosthesis
44800	C	Excision of bowel pouch
44820	C	Excision of mesentery lesion
44850	C	Repair of mesentery
44899	C	Bowel surgery procedure
44900	C	Drain app abscess, open
44901	C	Drain app abscess, percut
44950	C	Appendectomy
44955	C	Appendectomy add-on
44960	C	Appendectomy
45110	C	Removal of rectum
45111	C	Partial removal of rectum
45112	C	Removal of rectum
45113	C	Partial proctectomy
45114	C	Partial removal of rectum
45116	C	Partial removal of rectum
45119	C	Remove rectum w/reservoir
45120	C	Removal of rectum
45121	C	Removal of rectum and colon
45123	C	Partial proctectomy
45126	C	Pelvic exenteration
45130	C	Excision of rectal prolapse
45135	C	Excision of rectal prolapse
45136	C	Excise ileoanal reservoir
45540	C	Correct rectal prolapse
45541	C	Correct rectal prolapse
45550	C	Repair rectum/remove sigmoid
45562	C	Exploration/repair of rectum
45563	C	Exploration/repair of rectum
45800	C	Repair rect/bladder fistula
45805	C	Repair fistula w/colostomy
45820	C	Repair rectourethral fistula
45825	C	Repair fistula w/colostomy
46705	C	Repair of anal stricture
46715	C	Repair of anovaginal fistula

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CPT/HCPCS	Status indicator	Description
46716	C	Repair of anovaginal fistula
46730	C	Construction of absent anus
46735	C	Construction of absent anus
46740	C	Construction of absent anus
46742	C	Repair of imperforated anus
46744	C	Repair of cloacal anomaly
46746	C	Repair of cloacal anomaly
46748	C	Repair of cloacal anomaly
46751	C	Repair of anal sphincter
47010	C	Open drainage, liver lesion
47015	C	Inject/aspirate liver cyst
47100	C	Wedge biopsy of liver
47120	C	Partial removal of liver
47122	C	Extensive removal of liver
47125	C	Partial removal of liver
47130	C	Partial removal of liver
47133	C	Removal of donor liver
47134	C	Partial removal, donor liver
47135	C	Transplantation of liver
47136	C	Transplantation of liver
47300	C	Surgery for liver lesion
47350	C	Repair liver wound
47360	C	Repair liver wound
47361	C	Repair liver wound
47362	C	Repair liver wound
47380	C	Open ablate liver tumor rf
47381	C	Open ablate liver tumor cryo
47400	C	Incision of liver duct
47420	C	Incision of bile duct
47425	C	Incision of bile duct
47460	C	Incise bile duct sphincter
47480	C	Incision of gallbladder
47550	C	Bile duct endoscopy add-on
47570	C	Laparo cholecystoenterostomy
47600	C	Removal of gallbladder
47605	C	Removal of gallbladder
47610	C	Removal of gallbladder
47612	C	Removal of gallbladder
47620	C	Removal of gallbladder
47700	C	Exploration of bile ducts
47701	C	Bile duct revision
47711	C	Excision of bile duct tumor
47712	C	Excision of bile duct tumor
47715	C	Excision of bile duct cyst
47716	C	Fusion of bile duct cyst
47720	C	Fuse gallbladder & bowel
47721	C	Fuse upper gi structures
47740	C	Fuse gallbladder & bowel
47741	C	Fuse gallbladder & bowel
47760	C	Fuse bile ducts and bowel
47765	C	Fuse liver ducts & bowel
47780	C	Fuse bile ducts and bowel
47785	C	Fuse bile ducts and bowel
47800	C	Reconstruction of bile ducts
47801	C	Placement, bile duct support
47802	C	Fuse liver duct & intestine
47900	C	Suture bile duct injury
48000	C	Drainage of abdomen
48001	C	Placement of drain, pancreas
48005	C	Resect/debride pancreas
48020	C	Removal of pancreatic stone
48100	C	Biopsy of pancreas, open
48120	C	Removal of pancreas lesion
48140	C	Partial removal of pancreas
48145	C	Partial removal of pancreas

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CPT/HCPCS	Status indicator	Description
48146	C	Pancreatectomy
48148	C	Removal of pancreatic duct
48150	C	Partial removal of pancreas
48152	C	Pancreatectomy
48153	C	Pancreatectomy
48154	C	Pancreatectomy
48155	C	Removal of pancreas
48180	C	Fuse pancreas and bowel
48400	C	Injection, intraop add-on
48500	C	Surgery of pancreatic cyst
48510	C	Drain pancreatic pseudocyst
48520	C	Fuse pancreas cyst and bowel
48540	C	Fuse pancreas cyst and bowel
48545	C	Pancreatorrhaphy
48547	C	Duodenal exclusion
48556	C	Removal, allograft pancreas
49000	C	Exploration of abdomen
49002	C	Reopening of abdomen
49010	C	Exploration behind abdomen
49020	C	Drain abdominal abscess
49021	C	Drain abdominal abscess
49040	C	Drain, open, abdom abscess
49041	C	Drain, percut, abdom abscess
49060	C	Drain, open, retrop abscess
49061	C	Drain, percut, retroper absc
49062	C	Drain to peritoneal cavity
49201	C	Removal of abdominal lesion
49215	C	Excise sacral spine tumor
49220	C	Multiple surgery, abdomen
49255	C	Removal of omentum
49425	C	Insert abdomen-venous drain
49428	C	Ligation of shunt
49605	C	Repair umbilical lesion
49606	C	Repair umbilical lesion
49610	C	Repair umbilical lesion
49611	C	Repair umbilical lesion
49900	C	Repair of abdominal wall
49904	C	Omental flap, extra-abdom
49905	C	Omental flap
49906	C	Free omental flap, microvasc
50010	C	Exploration of kidney
50020	C	Renal abscess, open drain
50040	C	Drainage of kidney
50045	C	Exploration of kidney
50060	C	Removal of kidney stone
50065	C	Incision of kidney
50070	C	Incision of kidney
50075	C	Removal of kidney stone
50100	C	Revise kidney blood vessels
50120	C	Exploration of kidney
50125	C	Explore and drain kidney
50130	C	Removal of kidney stone
50135	C	Exploration of kidney
50205	C	Biopsy of kidney
50220	C	Remove kidney, open
50225	C	Removal kidney open, complex
50230	C	Removal kidney open, radical
50234	C	Removal of kidney & ureter
50236	C	Removal of kidney & ureter
50240	C	Partial removal of kidney
50280	C	Removal of kidney lesion
50290	C	Removal of kidney lesion
50300	C	Removal of donor kidney
50320	C	Removal of donor kidney
50340	C	Removal of kidney

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CPT/HCPCS	Status indicator	Description
50360	C	Transplantation of kidney
50365	C	Transplantation of kidney
50370	C	Remove transplanted kidney
50380	C	Reimplantation of kidney
50400	C	Revision of kidney/ureter
50405	C	Revision of kidney/ureter
50500	C	Repair of kidney wound
50520	C	Close kidney-skin fistula
50525	C	Repair renal-abdomen fistula
50526	C	Repair renal-abdomen fistula
50540	C	Revision of horseshoe kidney
50545	C	Laparo radical nephrectomy
50546	C	Laparoscopic nephrectomy
50547	C	Laparo removal donor kidney
50548	C	Laparo remove k/ureter
50570	C	Kidney endoscopy
50572	C	Kidney endoscopy
50574	C	Kidney endoscopy & biopsy
50575	C	Kidney endoscopy
50576	C	Kidney endoscopy & treatment
50578	C	Renal endoscopy/radiotracer
50580	C	Kidney endoscopy & treatment
50600	C	Exploration of ureter
50605	C	Insert ureteral support
50610	C	Removal of ureter stone
50620	C	Removal of ureter stone
50630	C	Removal of ureter stone
50650	C	Removal of ureter
50660	C	Removal of ureter
50700	C	Revision of ureter
50715	C	Release of ureter
50722	C	Release of ureter
50725	C	Release/revise ureter
50727	C	Revise ureter
50728	C	Revise ureter
50740	C	Fusion of ureter & kidney
50750	C	Fusion of ureter & kidney
50760	C	Fusion of ureters
50770	C	Splicing of ureters
50780	C	Reimplant ureter in bladder
50782	C	Reimplant ureter in bladder
50783	C	Reimplant ureter in bladder
50785	C	Reimplant ureter in bladder
50800	C	Implant ureter in bowel
50810	C	Fusion of ureter & bowel
50815	C	Urine shunt to intestine
50820	C	Construct bowel bladder
50825	C	Construct bowel bladder
50830	C	Revise urine flow
50840	C	Replace ureter by bowel
50845	C	Appendico-vesicostomy
50860	C	Transplant ureter to skin
50900	C	Repair of ureter
50920	C	Closure ureter/skin fistula
50930	C	Closure ureter/bowel fistula
50940	C	Release of ureter
51060	C	Removal of ureter stone
51525	C	Removal of bladder lesion
51530	C	Removal of bladder lesion
51535	C	Repair of ureter lesion
51550	C	Partial removal of bladder
51555	C	Partial removal of bladder
51565	C	Revise bladder & ureter(s)
51570	C	Removal of bladder
51575	C	Removal of bladder & nodes

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ADDENDUM E.—CPT CODES WHICH WOULD BE PAID ONLY AS INPATIENT PROCEDURES—Continued
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CPT/HCPCS	Status indicator	Description
51580	C	Remove bladder/revise tract
51585	C	Removal of bladder & nodes
51590	C	Remove bladder/revise tract
51595	C	Remove bladder/revise tract
51596	C	Remove bladder/create pouch
51597	C	Removal of pelvic structures
51800	C	Revision of bladder/urethra
51820	C	Revision of urinary tract
51840	C	Attach bladder/urethra
51841	C	Attach bladder/urethra
51845	C	Repair bladder neck
51860	C	Repair of bladder wound
51865	C	Repair of bladder wound
51900	C	Repair bladder/vagina lesion
51920	C	Close bladder-uterus fistula
51925	C	Hysterectomy/bladder repair
51940	C	Correction of bladder defect
51960	C	Revision of bladder & bowel
51980	C	Construct bladder opening
53085	C	Drainage of urinary leakage
53415	C	Reconstruction of urethra
53448	C	Remov/replc ur sphinctr comp
54125	C	Removal of penis
54130	C	Remove penis & nodes
54135	C	Remove penis & nodes
54332	C	Revise penis/urethra
54336	C	Revise penis/urethra
54390	C	Repair penis and bladder
54411	C	Remv/replc penis pros, comp
54417	C	Remv/replc penis pros, compl
54430	C	Revision of penis
54535	C	Extensive testis surgery
54560	C	Exploration for testis
54650	C	Orchiopexy (Fowler-Stephens)
55600	C	Incise sperm duct pouch
55605	C	Incise sperm duct pouch
55650	C	Remove sperm duct pouch
55801	C	Removal of prostate
55810	C	Extensive prostate surgery
55812	C	Extensive prostate surgery
55815	C	Extensive prostate surgery
55821	C	Removal of prostate
55831	C	Removal of prostate
55840	C	Extensive prostate surgery
55842	C	Extensive prostate surgery
55845	C	Extensive prostate surgery
55862	C	Extensive prostate surgery
55865	C	Extensive prostate surgery
55866	C	Laparo radical prostatectomy
56630	C	Extensive vulva surgery
56631	C	Extensive vulva surgery
56632	C	Extensive vulva surgery
56633	C	Extensive vulva surgery
56634	C	Extensive vulva surgery
56637	C	Extensive vulva surgery
56640	C	Extensive vulva surgery
57110	C	Remove vagina wall, complete
57111	C	Remove vagina tissue, compl
57112	C	Vaginectomy w/nodes, compl
57270	C	Repair of bowel pouch
57280	C	Suspension of vagina
57282	C	Repair of vaginal prolapse
57292	C	Construct vagina with graft
57305	C	Repair rectum-vagina fistula
57307	C	Fistula repair & colostomy

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CPT/HCPCS	Status indicator	Description
57308	C	Fistula repair, transperine
57311	C	Repair urethrovaginal lesion
57335	C	Repair vagina
57531	C	Removal of cervix, radical
57540	C	Removal of residual cervix
57545	C	Remove cervix/repair pelvis
58140	C	Removal of uterus lesion
58146	C	Myomectomy abdom complex
58150	C	Total hysterectomy
58152	C	Total hysterectomy
58180	C	Partial hysterectomy
58200	C	Extensive hysterectomy
58210	C	Extensive hysterectomy
58240	C	Removal of pelvis contents
58260	C	Vaginal hysterectomy
58262	C	Vaginal hysterectomy
58263	C	Vaginal hysterectomy
58267	C	Hysterectomy & vagina repair
58270	C	Hysterectomy & vagina repair
58275	C	Hysterectomy/revise vagina
58280	C	Hysterectomy/revise vagina
58285	C	Extensive hysterectomy
58290	C	Vag hyst complex
58291	C	Vag hyst incl t/o, complex
58292	C	Vag hyst t/o & repair, compl
58293	C	Vag hyst w/uro repair, compl
58294	C	Vag hyst w/enterocele, compl
58400	C	Suspension of uterus
58410	C	Suspension of uterus
58520	C	Repair of ruptured uterus
58540	C	Revision of uterus
58605	C	Division of fallopian tube
58611	C	Ligate oviduct(s) add-on
58700	C	Removal of fallopian tube
58720	C	Removal of ovary/tube(s)
58740	C	Revise fallopian tube(s)
58750	C	Repair oviduct
58752	C	Revise ovarian tube(s)
58760	C	Remove tubal obstruction
58770	C	Create new tubal opening
58805	C	Drainage of ovarian cyst(s)
58822	C	Drain ovary abscess, percut
58825	C	Transposition, ovary(s)
58940	C	Removal of ovary(s)
58943	C	Removal of ovary(s)
58950	C	Resect ovarian malignancy
58951	C	Resect ovarian malignancy
58952	C	Resect ovarian malignancy
58953	C	Tah, rad dissect for debulk
58954	C	Tah rad debulk/lymph remove
58960	C	Exploration of abdomen
59100	C	Remove uterus lesion
59120	C	Treat ectopic pregnancy
59121	C	Treat ectopic pregnancy
59130	C	Treat ectopic pregnancy
59135	C	Treat ectopic pregnancy
59136	C	Treat ectopic pregnancy
59140	C	Treat ectopic pregnancy
59325	C	Revision of cervix
59350	C	Repair of uterus
59514	C	Cesarean delivery only
59525	C	Remove uterus after cesarean
59620	C	Attempted vbac delivery only
59830	C	Treat uterus infection
59850	C	Abortion

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CPT/HCPCS	Status indicator	Description
59851	C	Abortion
59852	C	Abortion
59855	C	Abortion
59856	C	Abortion
59857	C	Abortion
60254	C	Extensive thyroid surgery
60270	C	Removal of thyroid
60271	C	Removal of thyroid
60502	C	Re-explore parathyroids
60505	C	Explore parathyroid glands
60520	C	Removal of thymus gland
60521	C	Removal of thymus gland
60522	C	Removal of thymus gland
60540	C	Explore adrenal gland
60545	C	Explore adrenal gland
60600	C	Remove carotid body lesion
60605	C	Remove carotid body lesion
60650	C	Laparoscopy adrenalectomy
61105	C	Twist drill hole
61107	C	Drill skull for implantation
61108	C	Drill skull for drainage
61120	C	Burr hole for puncture
61140	C	Pierce skull for biopsy
61150	C	Pierce skull for drainage
61151	C	Pierce skull for drainage
61154	C	Pierce skull & remove clot
61156	C	Pierce skull for drainage
61210	C	Pierce skull, implant device
61250	C	Pierce skull & explore
61253	C	Pierce skull & explore
61304	C	Open skull for exploration
61305	C	Open skull for exploration
61312	C	Open skull for drainage
61313	C	Open skull for drainage
61314	C	Open skull for drainage
61315	C	Open skull for drainage
61320	C	Open skull for drainage
61321	C	Open skull for drainage
61322	C	Decompressive craniotomy
61323	C	Decompressive lobectomy
61332	C	Explore/biopsy eye socket
61333	C	Explore orbit/remove lesion
61334	C	Explore orbit/remove object
61340	C	Relieve cranial pressure
61343	C	Incise skull (press relief)
61345	C	Relieve cranial pressure
61440	C	Incise skull for surgery
61450	C	Incise skull for surgery
61458	C	Incise skull for brain wound
61460	C	Incise skull for surgery
61470	C	Incise skull for surgery
61480	C	Incise skull for surgery
61490	C	Incise skull for surgery
61500	C	Removal of skull lesion
61501	C	Remove infected skull bone
61510	C	Removal of brain lesion
61512	C	Remove brain lining lesion
61514	C	Removal of brain abscess
61516	C	Removal of brain lesion
61518	C	Removal of brain lesion
61519	C	Remove brain lining lesion
61520	C	Removal of brain lesion
61521	C	Removal of brain lesion
61522	C	Removal of brain abscess
61524	C	Removal of brain lesion

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CPT/HCPCS	Status indicator	Description
61526	C	Removal of brain lesion
61530	C	Removal of brain lesion
61531	C	Implant brain electrodes
61533	C	Implant brain electrodes
61534	C	Removal of brain lesion
61535	C	Remove brain electrodes
61536	C	Removal of brain lesion
61538	C	Removal of brain tissue
61539	C	Removal of brain tissue
61541	C	Incision of brain tissue
61542	C	Removal of brain tissue
61543	C	Removal of brain tissue
61544	C	Remove & treat brain lesion
61545	C	Excision of brain tumor
61546	C	Removal of pituitary gland
61548	C	Removal of pituitary gland
61550	C	Release of skull seams
61552	C	Release of skull seams
61556	C	Incise skull/sutures
61557	C	Incise skull/sutures
61558	C	Excision of skull/sutures
61559	C	Excision of skull/sutures
61563	C	Excision of skull tumor
61564	C	Excision of skull tumor
61570	C	Remove foreign body, brain
61571	C	Incise skull for brain wound
61575	C	Skull base/brainstem surgery
61576	C	Skull base/brainstem surgery
61580	C	Craniofacial approach, skull
61581	C	Craniofacial approach, skull
61582	C	Craniofacial approach, skull
61583	C	Craniofacial approach, skull
61584	C	Orbitocranial approach/skull
61585	C	Orbitocranial approach/skull
61586	C	Resect nasopharynx, skull
61590	C	Infratemporal approach/skull
61591	C	Infratemporal approach/skull
61592	C	Orbitocranial approach/skull
61595	C	Transtemporal approach/skull
61596	C	Transcochlear approach/skull
61597	C	Transcondylar approach/skull
61598	C	Transpetrosal approach/skull
61600	C	Resect/excise cranial lesion
61601	C	Resect/excise cranial lesion
61605	C	Resect/excise cranial lesion
61606	C	Resect/excise cranial lesion
61607	C	Resect/excise cranial lesion
61608	C	Resect/excise cranial lesion
61609	C	Transect artery, sinus
61610	C	Transect artery, sinus
61611	C	Transect artery, sinus
61612	C	Transect artery, sinus
61613	C	Remove aneurysm, sinus
61615	C	Resect/excise lesion, skull
61616	C	Resect/excise lesion, skull
61618	C	Repair dura
61619	C	Repair dura
61624	C	Occlusion/embolization cath
61680	C	Intracranial vessel surgery
61682	C	Intracranial vessel surgery
61684	C	Intracranial vessel surgery
61686	C	Intracranial vessel surgery
61690	C	Intracranial vessel surgery
61692	C	Intracranial vessel surgery
61697	C	Brain aneurysm repr, complx

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CPT/HCPCS	Status indicator	Description
61698	C	Brain aneurysm repr, complx
61700	C	Brain aneurysm repr , simple
61702	C	Inner skull vessel surgery
61703	C	Clamp neck artery
61705	C	Revise circulation to head
61708	C	Revise circulation to head
61710	C	Revise circulation to head
61711	C	Fusion of skull arteries
61720	C	Incise skull/brain surgery
61735	C	Incise skull/brain surgery
61750	C	Incise skull/brain biopsy
61751	C	Brain biopsy w/ ct/mr guide
61760	C	Implant brain electrodes
61770	C	Incise skull for treatment
61850	C	Implant neuroelectrodes
61860	C	Implant neuroelectrodes
61862	C	Implant neurostimul, subcort
61870	C	Implant neuroelectrodes
61875	C	Implant neuroelectrodes
62000	C	Treat skull fracture
62005	C	Treat skull fracture
62010	C	Treatment of head injury
62100	C	Repair brain fluid leakage
62115	C	Reduction of skull defect
62116	C	Reduction of skull defect
62117	C	Reduction of skull defect
62120	C	Repair skull cavity lesion
62121	C	Incise skull repair
62140	C	Repair of skull defect
62141	C	Repair of skull defect
62142	C	Remove skull plate/flap
62143	C	Replace skull plate/flap
62145	C	Repair of skull & brain
62146	C	Repair of skull with graft
62147	C	Repair of skull with graft
62161	C	Dissect brain w/scope
62162	C	Remove colloid cyst w/scope
62163	C	Neuroendoscopy w/fb removal
62164	C	Remove brain tumor w/scope
62165	C	Remove pituit tumor w/scope
62180	C	Establish brain cavity shunt
62190	C	Establish brain cavity shunt
62192	C	Establish brain cavity shunt
62200	C	Establish brain cavity shunt
62201	C	Establish brain cavity shunt
62220	C	Establish brain cavity shunt
62223	C	Establish brain cavity shunt
62256	C	Remove brain cavity shunt
62258	C	Replace brain cavity shunt
63043	C	Laminotomy, addl cervical
63044	C	Laminotomy, addl lumbar
63075	C	Neck spine disk surgery
63076	C	Neck spine disk surgery
63077	C	Spine disk surgery, thorax
63078	C	Spine disk surgery, thorax
63081	C	Removal of vertebral body
63082	C	Remove vertebral body add-on
63085	C	Removal of vertebral body
63086	C	Remove vertebral body add-on
63087	C	Removal of vertebral body
63088	C	Remove vertebral body add-on
63090	C	Removal of vertebral body
63091	C	Remove vertebral body add-on
63170	C	Incise spinal cord tract(s)
63172	C	Drainage of spinal cyst

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CPT/HCPCS	Status indicator	Description
63173	C	Drainage of spinal cyst
63180	C	Revise spinal cord ligaments
63182	C	Revise spinal cord ligaments
63185	C	Incise spinal column/nerves
63190	C	Incise spinal column/nerves
63191	C	Incise spinal column/nerves
63194	C	Incise spinal column & cord
63195	C	Incise spinal column & cord
63196	C	Incise spinal column & cord
63197	C	Incise spinal column & cord
63198	C	Incise spinal column & cord
63199	C	Incise spinal column & cord
63200	C	Release of spinal cord
63250	C	Revise spinal cord vessels
63251	C	Revise spinal cord vessels
63252	C	Revise spinal cord vessels
63265	C	Excise intraspinal lesion
63266	C	Excise intraspinal lesion
63267	C	Excise intraspinal lesion
63268	C	Excise intraspinal lesion
63270	C	Excise intraspinal lesion
63271	C	Excise intraspinal lesion
63272	C	Excise intraspinal lesion
63273	C	Excise intraspinal lesion
63275	C	Biopsy/excise spinal tumor
63276	C	Biopsy/excise spinal tumor
63277	C	Biopsy/excise spinal tumor
63278	C	Biopsy/excise spinal tumor
63280	C	Biopsy/excise spinal tumor
63281	C	Biopsy/excise spinal tumor
63282	C	Biopsy/excise spinal tumor
63283	C	Biopsy/excise spinal tumor
63285	C	Biopsy/excise spinal tumor
63286	C	Biopsy/excise spinal tumor
63287	C	Biopsy/excise spinal tumor
63290	C	Biopsy/excise spinal tumor
63300	C	Removal of vertebral body
63301	C	Removal of vertebral body
63302	C	Removal of vertebral body
63303	C	Removal of vertebral body
63304	C	Removal of vertebral body
63305	C	Removal of vertebral body
63306	C	Removal of vertebral body
63307	C	Removal of vertebral body
63308	C	Remove vertebral body add-on
63700	C	Repair of spinal hemiation
63702	C	Repair of spinal hemiation
63704	C	Repair of spinal hemiation
63706	C	Repair of spinal hemiation
63707	C	Repair spinal fluid leakage
63709	C	Repair spinal fluid leakage
63710	C	Graft repair of spine defect
63740	C	Install spinal shunt
64752	C	Incision of vagus nerve
64755	C	Incision of stomach nerves
64760	C	Incision of vagus nerve
64763	C	Incise hip/thigh nerve
64766	C	Incise hip/thigh nerve
64804	C	Remove sympathetic nerves
64809	C	Remove sympathetic nerves
64818	C	Remove sympathetic nerves
64866	C	Fusion of facial/other nerve
64868	C	Fusion of facial/other nerve
65273	C	Repair of eye wound
69155	C	Extensive ear/neck surgery

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CPT/HCPCS	Status indicator	Description
69535	C	Remove part of temporal bone
69554	C	Remove ear lesion
69950	C	Incise inner ear nerve
69970	C	Remove inner ear lesion
75900	C	Arterial catheter exchange
75952	C	Endovasc repair abdom aorta
75953	C	Abdom aneurysm endovas rpr
75954	C	Iliac aneurysm endovas rpr
92970	C	Cardioassist, internal
92971	C	Cardioassist, external
92975	C	Dissolve clot, heart vessel
92992	C	Revision of heart chamber
92993	C	Revision of heart chamber
94652	C	Pressure breathing (IPPB)
99190	C	Special pump services
99191	C	Special pump services
99192	C	Special pump services
99251	C	Initial inpatient consult
99252	C	Initial inpatient consult
99253	C	Initial inpatient consult
99254	C	Initial inpatient consult
99255	C	Initial inpatient consult
99261	C	Follow-up inpatient consult
99262	C	Follow-up inpatient consult
99263	C	Follow-up inpatient consult
99293	C	Ped critical care, initial
99294	C	Ped critical care, subseq
99295	C	Neonatal critical care
99296	C	Neonatal critical care
99297	C	Neonatal critical care
99298	C	Neonatal critical care
99299	C	Ic, lbw infant 1500-2500 gm
99356	C	Prolonged service, inpatient
99357	C	Prolonged service, inpatient
99433	C	Normal newborn care/hospital
0001T	C	Endovas repr abdo ao aneurys
0002T	C	Endovas repr abdo ao aneurys
0005T	C	Perc cath stent/brain cv art
0006T	C	Perc cath stent/brain cv art
0007T	C	Perc cath stent/brain cv art
00174	C	Anesth, pharyngeal surgery
00176	C	Anesth, pharyngeal surgery
00192	C	Anesth, facial bone surgery
00214	C	Anesth, skull drainage
00215	C	Anesth, skull repair/fract
0021T	C	Fetal oximetry, trnsvag/cerv
0024T	C	Transcath cardiac reduction
0033T	C	Endovasc taa repr incl subcl
0034T	C	Endovasc taa repr w/o subcl
0035T	C	Insert endovasc prosth, taa
0036T	C	Endovasc prosth, taa, add-on
0037T	C	Artery transpose/endovas taa
0038T	C	Rad endovasc taa rpr w/cover
0039T	C	Rad s/i, endovasc taa repair
00404	C	Anesth, surgery of breast
00406	C	Anesth, surgery of breast
0040T	C	Rad s/i, endovasc taa prosth
00452	C	Anesth, surgery of shoulder
00474	C	Anesth, surgery of rib(s)
00524	C	Anesth, chest drainage
00540	C	Anesth, chest surgery
00542	C	Anesth, release of lung
00544	C	Anesth, chest lining removal
00546	C	Anesth, lung,chest wall surg
00560	C	Anesth, open heart surgery

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CPT/HCPCS	Status indicator	Description
00562	C	Anesth, open heart surgery
00580	C	Anesth heart/lung transplant
00604	C	Anesth, sitting procedure
00622	C	Anesth, removal of nerves
00632	C	Anesth, removal of nerves
00634	C	Anesth for chemonucleolysis
00670	C	Anesth, spine, cord surgery
00792	C	Anesth, hemorr/excise liver
00794	C	Anesth, pancreas removal
00796	C	Anesth, for liver transplant
00802	C	Anesth, fat layer removal
00844	C	Anesth, pelvis surgery

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ADDENDUM H.—WAGE INDEX FOR URBAN AREAS

Urban area (constituent counties)	Wage index
0040 Abilene, TX[2]	0.7827
Taylor, TX	
0060 Aguadilla, PR	0.4587
Aguada, PR	
Aguadilla, PR	
Moca, PR	
0080 Akron, OH	0.9600
Portage, OH	
Summit, OH	
0120 Albany, GA	1.0594
Dougherty, GA	
Lee, GA	
0160 Albany-Schenectady-Troy, NY[2]	0.8542
Albany, NY	
Montgomery, NY	
Rensselaer, NY	
Saratoga, NY	
Schenectady, NY	
Schoharie, NY	
0200 Albuquerque, NM	0.9390
Bernalillo, NM	
Sandoval, NM	
Valencia, NM	
0220 Alexandria, LA	0.7883
Rapides, LA	
0240 Allentown-Bethlehem-Easton, PA	0.9735
Carbon, PA	
Lehigh, PA	
Northampton, PA	
0280 Altoona, PA	0.9225
Blair, PA	
0320 Amarillo, TX	0.9034
Potter, TX	
Randall, TX	
0380 Anchorage, AK	1.2490
Anchorage, AK	
0440 Ann Arbor, MI	1.1103
Lenawee, MI	
Livingston, MI	
Washtenaw, MI	
0450 Anniston, AL	0.8044
Calhoun, AL	
0460 Appleton-Oshkosh-Neenah, WI[2]	0.9162
Calumet, WI	
Outagamie, WI	
Winnebago, WI	
0470 Arecibo, PR[2]	0.4356
Arecibo, PR	
Camuy, PR	
Hatillo, PR	
0480 Asheville, NC	0.9876
Buncombe, NC	
Madison, NC	
0500 Athens, GA	1.0211
Clarke, GA	
Madison, GA	
Oconee, GA	
0520 Atlanta, GA[1]	0.9991
Barrow, GA	
Bartow, GA	
Carroll, GA	
Cherokee, GA	
Clayton, GA	
Cobb, GA	
Coweta, GA	
DeKalb, GA	
Douglas, GA	
Fayette, GA	
Forsyth, GA	
Fulton, GA	
Gwinnett, GA	
Henry, GA	
Newton, GA	
Paulding, GA	
Pickens, GA	
Rockdale, GA	
Spalding, GA	
Walton, GA	
0560 Atlantic-Cape May, NJ	1.1017
Atlantic, NJ	
Cape May, NJ	
0580 Auburn-Opelika, AL	0.8325
Lee, AL	
0600 Augusta-Aiken, GA-SC	1.0264
Columbia, GA	
McDuffie, GA	
Richmond, GA	
Aiken, SC	
Edgefield, SC	
0640 Austin-San Marcos, TX[1]	0.9637
Bastrop, TX	
Caldwell, TX	
Hays, TX	
Travis, TX	
Williamson, TX	
0680 Bakersfield, CA	0.9899
Kern, CA	
0720 Baltimore, MD[1]	0.9929
Anne Arundel, MD	
Baltimore, MD	
Baltimore City, MD	
Carroll, MD	
Harford, MD	
Howard, MD	
Queen Anne's, MD	
0733 Bangor, ME	0.9664
Penobscot, ME	
0743 Barnstable-Yarmouth, MA	1.3202
Barnstable, MA	
0760 Baton Rouge, LA	0.8294
Ascension, LA	
East Baton Rouge, LA	
Livingston, LA	
West Baton Rouge, LA	
0840 Beaumont-Port Arthur, TX	0.8324
Hardin, TX	
Jefferson, TX	
Orange, TX	
0860 Bellingham, WA	1.2282
Whatcom, WA	
0870 Benton Harbor, MI	0.9106
Berrien, MI	
0875 Bergen-Passaic, NJ[1]	1.2207
Bergen, NJ	
Passaic, NJ	
0880 Billings, MT	0.9022
Yellowstone, MT	
0920 Biloxi-Gulfport-Pascagoula, MS	0.8757
Hancock, MS	
Harrison, MS	
Jackson, MS	
0960 Binghamton, NY[2]	0.8542
Broome, NY	
Tioga, NY	
1000 Birmingham, AL	0.9222
Blount, AL	
Jefferson, AL	
St. Clair, AL	

ADDENDUM H.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties)	Wage index
Shelby, AL	
1010 Bismarck, ND	0.7972
Burleigh, ND	
Morton, ND	
1020 Bloomington, IN	0.8907
Monroe, IN	
1040 Bloomington-Normal, IL	0.9109
McLean, IL	
1080 Boise City, ID	0.9310
Ada, ID	
Canyon, ID	
1123 Boston-Worcester-Lawrence-Lowell-Brockton, MA-NH (MA Hospitals)[1 2]	1.1288
Bristol, MA	
Essex, MA	
Middlesex, MA	
Norfolk, MA	
Plymouth, MA	
Suffolk, MA	
Worcester, MA	
Hillsborough, NH	
Merrimack, NH	
Rockingham, NH	
Strafford, NH	
1123 Boston-Worcester-Lawrence-Lowell-Brockton, MA-NH (NH Hospitals)[1]	1.1235
Bristol, MA	
Essex, MA	
Middlesex, MA	
Norfolk, MA	
Plymouth, MA	
Suffolk, MA	
Worcester, MA	
Hillsborough, NH	
Merrimack, NH	
Rockingham, NH	
Strafford, NH	
1125 Boulder-Longmont, CO	0.9689
Boulder, CO	
1145 Brazoria, TX	0.8535
Brazoria, TX	
1150 Bremerton, WA	1.0944
Kitsap, WA	
1240 Brownsville-Harlingen-San Benito, TX	0.8880
Cameron, TX	
1260 Bryan-College Station, TX	0.8821
Brazos, TX	
1280 Buffalo-Niagara Falls, NY[1]	0.9365
Erie, NY	
Niagara, NY	
1303 Burlington, VT	1.0052
Chittenden, VT	
Franklin, VT	
Grand Isle, VT	
1310 Caguas, PR	0.4408
Caguas, PR	
Cayey, PR	
Cidra, PR	
Gurabo, PR	
San Lorenzo, PR	
1320 Canton-Massillon, OH	0.8932
Carroll, OH	
Stark, OH	
1350 Casper, WY	0.9690
Natrona, WY	
1360 Cedar Rapids, IA	0.9056
Linn, IA	
1400 Champaign-Urbana, IL	1.0635
Champaign, IL	
1440 Charleston-North Charleston, SC	0.9235
Berkeley, SC	
Charleston, SC	
Dorchester, SC	
1480 Charleston, WV	0.8898
Kanawha, WV	
Putnam, WV	
1520 Charlotte-Gastonia-Rock Hill, NC-SC[1]	0.9850
Cabarrus, NC	
Gaston, NC	
Lincoln, NC	
Mecklenburg, NC	
Rowan, NC	
Stanly, NC	
Union, NC	
York, SC	
1540 Charlottesville, VA	1.0438
Albemarle, VA	
Charlottesville City, VA	
Fluvanna, VA	
Greene, VA	
1560 Chattanooga, TN-GA	0.8976
Catoosa, GA	
Dade, GA	
Walker, GA	
Hamilton, TN	
Marion, TN	
1580 Cheyenne, WY[2]	0.9007
Laramie, WY	
1600 Chicago, IL[1]	1.1044
Cook, IL	
DeKalb, IL	
DuPage, IL	
Grundy, IL	
Kane, IL	
Kendall, IL	
Lake, IL	
McHenry, IL	
Will, IL	
1620 Chico-Paradise, CA[2]	0.9840
Butte, CA	
1640 Cincinnati, OH-KY-IN[1]	0.9389
Dearborn, IN	
Ohio, IN	
Boone, KY	
Campbell, KY	
Gallatin, KY	
Grant, KY	
Kenton, KY	
Pendleton, KY	
Brown, OH	
Clermont, OH	
Hamilton, OH	
Warren, OH	
1660 Clarksville-Hopkinsville, TN-KY	0.8419
Christian, KY	
Montgomery, TN	
1680 Cleveland-Lorain-Elyria, OH[1]	0.9670
Ashtabula, OH	
Cuyahoga, OH	
Geauga, OH	
Lake, OH	
Lorain, OH	
Medina, OH	
1720 Colorado Springs, CO	0.9916
El Paso, CO	
1740 Columbia, MO	0.8515
Boone, MO	
1760 Columbia, SC	0.9307
Lexington, SC	
Richland, SC	
1800 Columbus, GA-AL	0.8374
Russell, AL	
Chattahoochee, GA	
Harris, GA	
Muscogee, GA	
1840 Columbus, OH[1]	0.9751
Delaware, OH	
Fairfield, OH	
Franklin, OH	
Licking, OH	
Madison, OH	
Pickaway, OH	
1880 Corpus Christi, TX	0.8729
Nueces, TX	
San Patricio, TX	
1890 Corvallis, OR	1.1453
Benton, OR	
1900 Cumberland, MD-WV (MD Hospitals)[2]	0.8946
Allegany, MD	
Mineral, WV	
1900 Cumberland, MD-WV (WV Hospitals)[2]	0.7975
Allegany, MD	
Mineral, WV	
1920 Dallas, TX[1]	0.9998
Collin, TX	
Dallas, TX	
Denton, TX	
Ellis, TX	
Henderson, TX	
Hunt, TX	
Kaufman, TX	
Rockwall, TX	
1950 Danville, VA	0.8859
Danville City, VA	
Pittsylvania, VA	
1960 Davenport-Moline-Rock Island, IA-IL	0.8835
Scott, IA	
Henry, IL	
Rock Island, IL	
2000 Dayton-Springfield, OH	0.9282
Clark, OH	
Greene, OH	
Miami, OH	
Montgomery, OH	
2020 Daytona Beach, FL	0.9062
Flagler, FL	
Volusia, FL	
2030 Decatur, AL	0.8973
Lawrence, AL	
Morgan, AL	
2040 Decatur, IL[2]	0.8204
Macon, IL	
2080 Denver, CO[1]	1.0601
Adams, CO	
Arapahoe, CO	
Broomfield, CO	
Denver, CO	
Douglas, CO	
Jefferson, CO	
2120 Des Moines, IA	0.8827

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ADDENDUM H.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties)	Wage index
Dallas, IA	
Polk, IA	
Warren, IA	
2160 Detroit, MI [1]	1.0448
Lapeer, MI	
Macomb, MI	
Monroe, MI	
Oakland, MI	
St. Clair, MI	
Wayne, MI	
2180 Dothan, AL	0.8158
Dale, AL	
Houston, AL	
2190 Dover, DE	0.9356
Kent, DE	
2200 Dubuque, IA	0.8795
Dubuque, IA	
2240 Duluth-Superior, MN-WI	1.0368
St. Louis, MN	
Douglas, WI	
2281 Dutchess County, NY	1.0684
Dutchess, NY	
2290 Eau Claire, WI [2]	0.9162
Chippewa, WI	
Eau Claire, WI	
2320 El Paso, TX	0.9265
El Paso, TX	
2330 Elkhart-Goshen, IN	0.9722
Elkhart, IN	
2335 Elmira, NY [2]	0.8542
Chemung, NY	
2340 Enid, OK	0.8376
Garfield, OK	
2360 Erie, PA	0.8925
Erie, PA	
2400 Eugene-Springfield, OR	1.0944
Lane, OR	
2440 Evansville-Henderson, IN-KY (IN Hospitals) [2]	0.8755
Posey, IN	
Vanderburgh, IN	
Warrick, IN	
Henderson, KY	
2440 Evansville-Henderson, IN-KY (KY Hospitals)	0.8177
Posey, IN	
Vanderburgh, IN	
Warrick, IN	
Henderson, KY	
2520 Fargo-Moorhead, ND-MN	0.9684
Clay, MN	
Cass, ND	
2560 Fayetteville, NC	0.8992
Cumberland, NC	
2580 Fayetteville-Springdale-Rogers, AR	0.8100
Benton, AR	
Washington, AR	
2620 Flagstaff, AZ-UT	1.0682
Coconino, AZ	
Kane, UT	
2640 Flint, MI	1.1135
Genesee, MI	
2650 Florence, AL	0.7819
Colbert, AL	
Lauderdale, AL	
2655 Florence, SC	0.8780
Florence, SC	
2670 Fort Collins-Loveland, CO	1.0066
Larimer, CO	
2680 Ft. Lauderdale, FL [1]	1.0704
Broward, FL	
2700 Fort Myers-Cape Coral, FL	0.9680
Lee, FL	
2710 Fort Pierce-Port St. Lucie, FL	0.9931
Martin, FL	
St. Lucie, FL	
2720 Fort Smith, AR-OK	0.7895
Crawford, AR	
Sebastian, AR	
Sequoyah, OK	
2750 Fort Walton Beach, FL	0.9693
Okaloosa, FL	
2760 Fort Wayne, IN	0.9457
Adams, IN	
Allen, IN	
De Kalb, IN	
Huntington, IN	
Wells, IN	
Whitley, IN	
2800 Forth Worth-Arlington, TX [1]	0.9446
Hood, TX	
Johnson, TX	
Parker, TX	
Tarrant, TX	
2840 Fresno, CA	1.0216
Fresno, CA	
Madera, CA	
2880 Gadsden, AL	0.8599
Etowah, AL	
2900 Gainesville, FL	0.9871
Alachua, FL	
2920 Galveston-Texas City, TX	0.9465
Galveston, TX	
2960 Gary, IN	0.9584
Lake, IN	
Porter, IN	
2975 Glens Falls, NY [2]	0.8542
Warren, NY	
Washington, NY	
2980 Goldsboro, NC Wayne, NC	0.8892
2985 Grand Forks, ND-MN	0.9243
Polk, MN	
Grand Forks, ND	
2995 Grand Junction, CO	0.9679
Mesa, CO	
3000 Grand Rapids-Muskegon-Holland, MI [1]	0.9548
Allegan, MI	
Kent, MI	
Muskegon, MI	
Ottawa, MI	
3040 Great Falls, MT	0.8966
Cascade, MT	
3060 Greeley, CO	0.9336
Weld, CO	
3080 Green Bay, WI	0.9668
Brown, WI	
3120 Greensboro-Winston-Salem-High Point, NC [1]	0.9282
Alamance, NC	
Davidson, NC	
Davie, NC	
Forsyth, NC	
Guilford, NC	
Randolph, NC	
Stokes, NC	
Yadkin, NC	
3150 Greenville, NC	0.9174
Pitt, NC	
3160 Greenville-Spartanburg-Anderson, SC	0.9122
Anderson, SC	
Cherokee, SC	
Greenville, SC	
Pickens, SC	
Spartanburg, SC	
3180 Hagerstown, MD	0.9268
Washington, MD	
3200 Hamilton-Middletown, OH	0.9418
Butler, OH	
3240 Harrisburg-Lebanon-Carlisle, PA	0.9223
Cumberland, PA	
Dauphin, PA	
Lebanon, PA	
Perry, PA	
3283 Hartford, CT [1 2]	1.2394
Hartford, CT	
Litchfield, CT	
Middlesex, CT	
Tolland, CT	
3285 Hattiesburg, MS [2]	0.7680
Forrest, MS	
Lamar, MS	
3290 Hickory-Morganton-Lenoir, NC	0.9028
Alexander, NC	
Burke, NC	
Caldwell, NC	
Catawba, NC	
3320 Honolulu, HI	1.1457
Honolulu, HI	
3350 Houma, LA	0.8385
Lafourche, LA	
Terrebonne, LA	
3360 Houston, TX [1]	0.9892
Chambers, TX	
Fort Bend, TX	
Harris, TX	
Liberty, TX	
Montgomery, TX	
Waller, TX	
3400 Huntington-Ashland, WV-KY-OH	0.9636
Boyd, KY	
Carter, KY	
Greenup, KY	
Lawrence, OH	
Cabell, WV	
Wayne, WV	
3440 Huntsville, AL	0.8903
Limestone, AL	
Madison, AL	
3480 Indianapolis, IN [1]	0.9717
Boone, IN	
Hamilton, IN	
Hancock, IN	
Hendricks, IN	
Johnson, IN	
Madison, IN	
Marion, IN	
Morgan, IN	
Shelby, IN	
3500 Iowa City, IA	0.9587
Johnson, IA	
3520 Jackson, MI	0.9532
Jackson, MI	
3560 Jackson, MS	0.8607
Hinds, MS	
Madison, MS	
Rankin, MS	
3580 Jackson, TN	0.9275
Madison, TN	
Chester, TN	
3600 Jacksonville, FL [1]	0.9381
Clay, FL	
Duval, FL	
Nassau, FL	
St. Johns, FL	
3605 Jacksonville, NC [2]	0.8666
Onslow, NC	
3610 Jamestown, NY [2]	0.8542
Chautauqua, NY	
3620 Janesville-Beloit, WI	0.9849
Rock, WI	
3640 Jersey City, NJ	1.1190
Hudson, NJ	
3660 Johnson City-Kingsport-Bristol, TN-VA (TN Hospitals)	0.8337
Carter, TN	
Hawkins, TN	
Sullivan, TN	
Unicoi, TN	
Washington, TN	
Bristol City, VA	
Scott, VA	
Washington, VA	
3660 Johnson City-Kingsport-Bristol, TN-VA (VA Hospitals) [2]	0.8504
Carter, TN	
Hawkins, TN	
Sullivan, TN	
Unicoi, TN	
Washington, TN	
Bristol City, VA	
Scott, VA	
Washington, VA	
3680 Johnstown, PA [2]	0.8462
Cambria, PA	
Somerset, PA	
3700 Jonesboro, AR	0.7843
Craighead, AR	
3710 Joplin, MO	0.8613
Jasper, MO	
Newton, MO	
3720 Kalamazoo-Battlecreek, MI	1.0595
Calhoun, MI	
Kalamazoo, MI	
Van Buren, MI	
3740 Kankakee, IL [2]	0.8204
Kankakee, IL	
3760 Kansas City, KS-MO [1]	0.9736
Johnson, KS	
Leavenworth, KS	
Miami, KS	
Wyandotte, KS	
Cass, MO	
Clay, MO	
Clinton, MO	
Jackson, MO	
Lafayette, MO	
Platte, MO	
Ray, MO	
3800 Kenosha, WI	0.9686
Kenosha, WI	
3810 Killeen-Temple, TX	0.9570
Bell, TX	
Coryell, TX	
3840 Knoxville, TN	0.8970
Anderson, TN	
Blount, TN	
Knox, TN	
Loudon, TN	
Sevier, TN	
Union, TN	
3850 Kokomo, IN	0.9038
Howard, IN	
Tipton, IN	
3870 La Crosse, WI-MN	0.9400
Houston, MN	
La Crosse, WI	
3880 Lafayette, LA	0.8475
Acadia, LA	
Lafayette, LA	
St. Landry, LA	
St. Martin, LA	
3920 Lafayette, IN	0.9278
Clinton, IN	
Tippecanoe, IN	
3960 Lake Charles, LA	0.7965
Calcasieu, LA	
3980 Lakeland-Winter Haven, FL	0.9357
Polk, FL	
4000 Lancaster, PA	0.9078
Lancaster, PA	
4040 Lansing-East Lansing, MI	0.9726
Clinton, MI	
Eaton, MI	
Ingham, MI	
4080 Laredo, TX	0.8472
Webb, TX	
4100 Las Cruces, NM [2]	0.8872
Dona Ana, NM	
4120 Las Vegas, NV-AZ [1]	1.1521
Mohave, AZ	
Clark, NV	
Nye, NV	
4150 Lawrence, KS	0.7923
Douglas, KS	
4200 Lawton, OK	0.8315
Comanche, OK	
4243 Lewiston-Auburn, ME	0.9179
Androscoggin, ME	
4280 Lexington, KY	0.8581
Bourbon, KY	
Clark, KY	
Fayette, KY	
Jessamine, KY	
Madison, KY	
Scott, KY	
Woodford, KY	
4320 Lima, OH	0.9483
Allen, OH	
Auglaize, OH	
4360 Lincoln, NE	0.9892
Lancaster, NE	
4400 Little Rock-North Little Rock, AR	0.9097
Faulkner, AR	
Lonoke, AR	
Pulaski, AR	
Saline, AR	
4420 Longview-Marshall, TX	0.8629
Gregg, TX	
Harrison, TX	
Upshur, TX	
4480 Los Angeles-Long Beach, CA [1]	1.2011
Los Angeles, CA	
4520 Louisville, KY-IN [1]	0.9276
Clark, IN	
Floyd, IN	
Harrison, IN	
Scott, IN	
Bullitt, KY	
Jefferson, KY	
Oldham, KY	
4600 Lubbock, TX	0.9646
Lubbock, TX	
4640 Lynchburg, VA	0.9219
Amherst, VA	
Bedford, VA	
Bedford City, VA	
Campbell, VA	
Lynchburg City, VA	
4680 Macon, GA	0.9250
Bibb, GA	
Houston, GA	
Jones, GA	
Peach, GA	
Twiggs, GA	
4720 Madison, WI	1.0467
Dane, WI	
4800 Mansfield, OH	0.8900
Crawford, OH	
Richland, OH	
4840 Mayaguez, PR	0.4914
Anasco, PR	
Cabo Rojo, PR	
Hormigueros, PR	
Mayaguez, PR	
Sabana Grande, PR	
San German, PR	
4880 McAllen-Edinburg-Mission, TX	0.8428
Hidalgo, TX	
4890 Medford-Ashland, OR	1.0498
Jackson, OR	
4900 Melbourne-Titusville-Palm Bay, FL	1.0253
Brevard, FI	
4920 Memphis, TN-AR-MS [1]	0.8920
Crittenden, AR	
DeSoto, MS	
Fayette, TN	
Shelby, TN	
Tipton, TN	
4940 Merced, CA [2]	0.9840
Merced, CA	
5000 Miami, FL [1]	0.9815
Dade, FL	
5015 Middlesex-Somerset-Hunterdon, NJ [1]	1.1213
Hunterdon, NJ	
Middlesex, NJ	
Somerset, NJ	
5080 Milwaukee-Waukesha, WI [1]	0.9893
Milwaukee, WI	
Ozaukee, WI	
Washington, WI	
Waukesha, WI	
5120 Minneapolis-St. Paul, MN-WI [1]	1.0903
Anoka, MN	
Carver, MN	
Chisago, MN	
Dakota, MN	
Hennepin, MN	

ADDENDUM H.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties)	Wage index
Hinds, MS	
Madison, MS	
Rankin, MS	
3580 Jackson, TN	0.9275
Madison, TN	
Chester, TN	
3600 Jacksonville, FL [1]	0.9381
Clay, FL	
Duval, FL	
Nassau, FL	
St. Johns, FL	
3605 Jacksonville, NC [2]	0.8666
Onslow, NC	
3610 Jamestown, NY [2]	0.8542
Chautauqua, NY	
3620 Janesville-Beloit, WI	0.9849
Rock, WI	
3640 Jersey City, NJ	1.1190
Hudson, NJ	
3660 Johnson City-Kingsport-Bristol, TN-VA (TN Hospitals)	0.8337
Carter, TN	
Hawkins, TN	
Sullivan, TN	
Unicoi, TN	
Washington, TN	
Bristol City, VA	
Scott, VA	
Washington, VA	
3660 Johnson City-Kingsport-Bristol, TN-VA (VA Hospitals) [2]	0.8504
Carter, TN	
Hawkins, TN	
Sullivan, TN	
Unicoi, TN	
Washington, TN	
Bristol City, VA	
Scott, VA	
Washington, VA	
3680 Johnstown, PA [2]	0.8462
Cambria, PA	
Somerset, PA	
3700 Jonesboro, AR	0.7843
Craighead, AR	
3710 Joplin, MO	0.8613
Jasper, MO	
Newton, MO	
3720 Kalamazoo-Battlecreek, MI	1.0595
Calhoun, MI	
Kalamazoo, MI	
Van Buren, MI	
3740 Kankakee, IL [2]	0.8204
Kankakee, IL	
3760 Kansas City, KS-MO [1]	0.9736
Johnson, KS	
Leavenworth, KS	
Miami, KS	
Wyandotte, KS	
Cass, MO	
Clay, MO	
Clinton, MO	
Jackson, MO	
Lafayette, MO	
Platte, MO	
Ray, MO	
3800 Kenosha, WI	0.9686
Kenosha, WI	
3810 Killeen-Temple, TX	0.9570
Bell, TX	
Coryell, TX	

ADDENDUM H.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties)	Wage index
3840 Knoxville, TN	0.8970
Anderson, TN	
Blount, TN	
Knox, TN	
Loudon, TN	
Sevier, TN	
Union, TN	
3850 Kokomo, IN	0.9038
Howard, IN	
Tipton, IN	
3870 La Crosse, WI-MN	0.9400
Houston, MN	
La Crosse, WI	
3880 Lafayette, LA	0.8475
Acadia, LA	
Lafayette, LA	
St. Landry, LA	
St. Martin, LA	
3920 Lafayette, IN	0.9278
Clinton, IN	
Tippecanoe, IN	
3960 Lake Charles, LA	0.7965
Calcasieu, LA	
3980 Lakeland-Winter Haven, FL	0.9357
Polk, FL	
4000 Lancaster, PA	0.9078
Lancaster, PA	
4040 Lansing-East Lansing, MI	0.9726
Clinton, MI	
Eaton, MI	
Ingham, MI	
4080 Laredo, TX	0.8472
Webb, TX	
4100 Las Cruces, NM [2]	0.8872
Dona Ana, NM	
4120 Las Vegas, NV-AZ [1]	1.1521
Mohave, AZ	
Clark, NV	
Nye, NV	
4150 Lawrence, KS	0.7923
Douglas, KS	
4200 Lawton, OK	0.8315
Comanche, OK	
4243 Lewiston-Auburn, ME	0.9179
Androscoggin, ME	
4280 Lexington, KY	0.8581
Bourbon, KY	
Clark, KY	
Fayette, KY	
Jessamine, KY	
Madison, KY	
Scott, KY	
Woodford, KY	
4320 Lima, OH	0.9483
Allen, OH	
Auglaize, OH	
4360 Lincoln, NE	0.9892
Lancaster, NE	
4400 Little Rock-North Little Rock, AR	0.9097
Faulkner, AR	
Lonoke, AR	
Pulaski, AR	
Saline, AR	
4420 Longview-Marshall, TX	0.8629
Gregg, TX	
Harrison, TX	
Upshur, TX	
4480 Los Angeles-Long Beach, CA [1]	1.2011
Los Angeles, CA	
4520 Louisville, KY-IN [1]	0.9276
Clark, IN	
Floyd, IN	
Harrison, IN	
Scott, IN	
Bullitt, KY	
Jefferson, KY	
Oldham, KY	
4600 Lubbock, TX	0.9646
Lubbock, TX	
4640 Lynchburg, VA	0.9219
Amherst, VA	
Bedford, VA	
Bedford City, VA	
Campbell, VA	
Lynchburg City, VA	
4680 Macon, GA	0.9250
Bibb, GA	
Houston, GA	
Jones, GA	
Peach, GA	
Twiggs, GA	
4720 Madison, WI	1.0467
Dane, WI	
4800 Mansfield, OH	0.8900
Crawford, OH	
Richland, OH	
4840 Mayaguez, PR	0.4914
Anasco, PR	
Cabo Rojo, PR	
Hormigueros, PR	
Mayaguez, PR	
Sabana Grande, PR	
San German, PR	
4880 McAllen-Edinburg-Mission, TX	0.8428
Hidalgo, TX	
4890 Medford-Ashland, OR	1.0498
Jackson, OR	
4900 Melbourne-Titusville-Palm Bay, FL	1.0253
Brevard, FI	
4920 Memphis, TN-AR-MS [1]	0.8920
Crittenden, AR	
DeSoto, MS	
Fayette, TN	
Shelby, TN	
Tipton, TN	
4940 Merced, CA [2]	0.9840
Merced, CA	
5000 Miami, FL [1]	0.9815
Dade, FL	
5015 Middlesex-Somerset-Hunterdon, NJ [1]	1.1213
Hunterdon, NJ	
Middlesex, NJ	
Somerset, NJ	
5080 Milwaukee-Waukesha, WI [1]	0.9893
Milwaukee, WI	
Ozaukee, WI	
Washington, WI	
Waukesha, WI	
5120 Minneapolis-St. Paul, MN-WI [1]	1.0903
Anoka, MN	
Carver, MN	
Chisago, MN	
Dakota, MN	
Hennepin, MN	

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ADDENDUM H.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties)	Wage index
Isanti, MN	
Ramsey, MN	
Scott, MN	
Sherburne, MN	
Washington, MN	
Wright, MN	
Pierce, WI	
St. Croix, WI	
5140 Missoula, MT	0.9157
Missoula, MT	
5160 Mobile, AL	0.8110
Baldwin, AL	
Mobile, AL	
5170 Modesto, CA	1.0498
Stanislaus, CA	
5190 Monmouth-Ocean, NJ[1]	1.0814
Monmouth, NJ	
Ocean, NJ	
5200 Monroe, LA	0.8137
Ouachita, LA	
5240 Montgomery, AL	0.7734
Autauga, AL	
Elmore, AL	
Montgomery, AL	
5280 Muncie, IN	0.9284
Delaware, IN	
5330 Myrtle Beach, SC	0.8976
Horry, SC	
5345 Naples, FL	0.9754
Collier, FL	
5360 Nashville, TN[1]	0.9578
Cheatham, TN	
Davidson, TN	
Dickson, TN	
Robertson, TN	
Rutherford TN	
Sumner, TN	
Williamson, TN	
Wilson, TN	
5380 Nassau-Suffolk, NY[1]	1.3357
Nassau, NY	
Suffolk, NY	
5483 New Haven-Bridgeport-Stamford-Waterbury- Danbury, CT[1]	1.2459
Fairfield, CT	
New Haven, CT	
5523 New London-Norwich, CT[2]	1.2394
New London, CT	
5560 New Orleans, LA[1]	0.9046
Jefferson, LA	
Orleans, LA	
Plaquemines, LA	
St. Bernard, LA	
St. Charles, LA	
St. James, LA	
St. John The Baptist, LA	
St. Tammany, LA	
5600 New York, NY[1]	1.4414
Bronx, NY	
Kings, NY	
New York, NY	
Putnam, NY	
Queens, NY	
Richmond, NY	
Rockland, NY	
Westchester, NY	
5640 Newark, NJ[1]	1.1406
Essex, NJ	
Morris, NJ	
Sussex, NJ	
Union, NJ	
Warren, NJ	
5660 Newburgh, NY-PA	1.1387
Orange, NY	
Pike, PA	
5720 Norfolk-Virginia Beach-Newport News, VA-NC[1]	0.8574
Currituck, NC	
Chesapeake City, VA	
Gloucester, VA	
Hampton City, VA	
Isle of Wight, VA	
James City, VA	
Mathews, VA	
Newport News City, VA	
Norfolk City, VA	
Poquoson City, VA	
Portsmouth City, VA	
Suffolk City, VA	
Virginia Beach City VA	
Williamsburg City, VA	
York, VA	
5775 Oakland, CA[1]	1.5185
Alameda, CA	
Contra Costa, CA	
5790 Ocala, FL	0.9402
Marion, FL	
5800 Odessa-Midland, TX	0.9397
Ector, TX	
Midland, TX	
5880 Oklahoma City, OK[1]	0.8900
Canadian, OK	
Cleveland, OK	
Logan, OK	
McClain, OK	
Oklahoma, OK	
Pottawatomie, OK	
5910 Olympia, WA	1.0960
Thurston, WA	
5920 Omaha, NE-IA	0.9978
Pottawattamie, IA	
Cass, NE	
Douglas, NE	
Sarpy, NE	
Washington, NE	
5945 Orange County, CA[1]	1.1594
Orange, CA	
5960 Orlando, FL[1]	0.9640
Lake, FL	
Orange, FL	
Osceola, FL	
Seminole, FL	
5990 Owensboro, KY	0.8344
Daviess, KY	
6015 Panama City, FL	0.8865
Bay, FL	
6020 Parkersburg-Marietta, WV-OH (WV Hospitals)	0.8127
Washington, OH	
Wood, WV	
6020 Parkersburg-Marietta, WV-OH (OH Hospitals)[2]	0.8613
Washington, OH	
Wood, WV	
6080 Pensacola, FL[2]	0.8814
Escambia, FL	
Santa Rosa, FL	
6120 Peoria-Pekin, IL	0.8739
Peoria, IL	
Tazewell, IL	
Woodford, IL	
6160 Philadelphia, PA-NJ[1]	1.0713
Burlington, NJ	
Camden, NJ	
Gloucester, NJ	
Salem, NJ	
Bucks, PA	
Chester, PA	
Delaware, PA	
Montgomery, PA	
Philadelphia, PA	
6200 Phoenix-Mesa, AZ[1]	0.9820
Maricopa, AZ	
Pinal, AZ	
6240 Pine Bluff, AR	0.7962
Jefferson, AR	
6280 Pittsburgh, PA[1]	0.9365
Allegheny, PA	
Beaver, PA	
Butler, PA	
Fayette, PA	
Washington, PA	
Westmoreland, PA	
6323 Pittsfield, MA[2]	1.1288
Berkshire, MA	
6340 Pocatello, ID	0.9674
Bannock, ID	
6360 Ponce, PR	0.5169
Guayanilla, PR	
Juana Diaz, PR	
Penuelas, PR	
Ponce, PR	
Villalba, PR	
Yauco, PR	
6403 Portland, ME	0.9794
Cumberland, ME	
Sagadahoc, ME	
York, ME	
6440 Portland-Vancouver, OR-WA[1]	1.0684
Clackamas, OR	
Columbia, OR	
Multnomah, OR	
Washington, OR	
Yamhill, OR	
Clark, WA	
6483 Providence-Warwick-Pawtucket, RI[1]	1.0854
Bristol, RI	
Kent, RI	
Newport, RI	
Providence, RI	
Washington, RI	
6520 Provo-Orem, UT	0.9984
Utah, UT	
6560 Pueblo, CO[2]	0.9015
Pueblo, CO	
6580 Punta Gorda, FL	0.9218
Charlotte, FL	
6600 Racine, WI	0.9334
Racine, WI	
6640 Raleigh-Durham-Chapel Hill, NC[1]	0.9990
Chatham, NC	
Durham, NC	
Franklin, NC	
Johnston, NC	
Orange, NC	
Wake, NC	

ADDENDUM H.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties)	Wage index
6660 Rapid City, SD	0.8846
Pennington, SD	
6680 Reading, PA	0.9295
Berks, PA	
6690 Redding, CA	1.1135
Shasta, CA	
6720 Reno, NV	1.0648
Washoe, NV	
6740 Richland-Kennewick-Pasco, WA	1.1491
Benton, WA	
Franklin, WA	
6760 Richmond-Petersburg, VA	0.9477
Charles City County, VA	
Chesterfield, VA	
Colonial Heights City, VA	
Dinwiddie, VA	
Goochland, VA	
Hanover, VA	
Henrico, VA	
Hopewell City, VA	
New Kent, VA	
Petersburg City, VA	
Powhatan, VA	
Prince George, VA	
Richmond City, VA	
6780 Riverside-San Bernardino, CA[1]	1.1365
Riverside, CA	
San Bernardino, CA	
6800 Roanoke, VA	0.8614
Botetourt, VA	
Roanoke, VA	
Roanoke City, VA	
Salem City, VA	
6820 Rochester, MN	1.2139
Olmsted, MN	
6840 Rochester, NY[1]	0.9194
Genesee, NY	
Livingston, NY	
Monroe, NY	
Ontario, NY	
Orleans, NY	
Wayne, NY	
6880 Rockford, IL	0.9625
Boone, IL	
Ogle, IL	
Winnebago, IL	
6895 Rocky Mount, NC	0.9228
Edgecombe, NC	
Nash, NC	
6920 Sacramento, CA[1]	1.1513
El Dorado, CA	
Placer, CA	
Sacramento, CA	
6960 Saginaw-Bay City-Midland, MI	0.9650
Bay, MI	
Midland, MI	
Saginaw, MI	
6980 St. Cloud, MN	0.9785
Benton, MN	
Stearns, MN	
7000 St. Joseph, MO[2]	0.8026
Andrew, MO	
Buchanan, MO	
7040 St. Louis, MO-IL[1]	0.8855
Clinton, IL	
Jersey, IL	
Madison, IL	
Monroe, IL	
St. Clair, IL	
Franklin, MO	
Jefferson, MO	
Lincoln, MO	
St. Charles, MO	
St. Louis, MO	
St. Louis City, MO	
Warren, MO	
7080 Salem, OR	1.0367
Marion, OR	
Polk, OR	
7120 Salinas, CA	1.4623
Monterey, CA	
7160 Salt Lake City-Ogden, UT[1]	0.9945
Davis, UT	
Salt Lake, UT	
Weber, UT	
7200 San Angelo, TX	0.8374
Tom Green, TX	
7240 San Antonio, TX[1]	0.8753
Bexar, TX	
Comal, TX	
Guadalupe, TX	
Wilson, TX	
7320 San Diego, CA[1]	1.1135
San Diego, CA	
7360 San Francisco, CA[1]	1.4142
Marin, CA	
San Francisco, CA	
San Mateo, CA	
7400 San Jose, CA[1]	1.4145
Santa Clara, CA	
7440 San Juan-Bayamon, PR[1]	0.4741
Aguas Buenas, PR	
Barceloneta, PR	
Bayamon, PR	
Canovanas, PR	
Carolina, PR	
Catano, PR	
Ceiba, PR	
Comerio, PR	
Corozal, PR	
Dorado, PR	
Fajardo, PR	
Florida, PR	
Guaynabo, PR	
Humacao, PR	
Juncos, PR	
Los Piedras, PR	
Loiza, PR	
Luguillo, PR	
Manati, PR	
Morovis, PR	
Naguabo, PR	
Naranjito, PR	
Rio Grande, PR	
San Juan, PR	
Toa Alta, PR	
Toa Baja, PR	
Trujillo Alto, PR	
Vega Alta, PR	
Vega Baja, PR	
Yabucoa, PR	
7460 San Luis Obispo-Atascadero-Paso Robles, CA	1.1271
San Luis Obispo, CA	
7480 Santa Barbara-Santa Maria-Lompoc, CA	1.0481
Santa Barbara, CA	
7485 Santa Cruz-Watsonville, CA	1.3646
Santa Cruz, CA	
7490 Santa Fe, NM	1.0712
Los Alamos, NM	
Santa Fe, NM	
7500 Santa Rosa, CA	1.3046
Sonoma, CA	
7510 Sarasota-Bradenton, FL	0.9449
Manatee, FL	
Sarasota, FL	
7520 Savannah, GA	0.9376
Bryan, GA	
Chatham, GA	
Effingham, GA	
7560 Scranton--Wilkes-Barre--Hazleton, PA	0.8599
Columbia, PA	
Lackawanna, PA	
Luzerne, PA	
Wyoming, PA	
7600 Seattle-Bellevue-Everett, WA[1]	1.1474
Island, WA	
King, WA	
Snohomish, WA	
7610 Sharon, PA[2]	0.8462
Mercer, PA	
7620 Sheboygan, WI[2]	0.9162
Sheboygan, WI	
7640 Sherman-Denison, TX	0.9255
Grayson, TX	
7680 Shreveport-Bossier City, LA	0.8987
Bossier, LA	
Caddo, LA	
Webster, LA	
7720 Sioux City, IA-NE	0.9046
Woodbury, IA	
Dakota, NE	
7760 Sioux Falls, SD	0.9257
Lincoln, SD	
Minnehaha, SD	
7800 South Bend, IN	0.9802
St. Joseph, IN	
7840 Spokane, WA	1.0852
Spokane, WA	
7880 Springfield, IL	0.8659
Menard, IL	
Sangamon, IL	
7920 Springfield, MO	0.8424
Christian, MO	
Greene, MO	
Webster, MO	
8003 Springfield, MA[2]	1.1288
Hampden, MA	
Hampshire, MA	
8050 State College, PA	0.8941
Centre, PA	
8080 Steubenville-Weirton, OH-WV	0.8804
Jefferson, OH	
Brooke, WV	
Hancock, WV	
8120 Stockton-Lodi, CA	1.0650
San Joaquin, CA	
8140 Sumter, SC[2]	0.8607
Sumter, SC	
8160 Syracuse, NY	0.9714
Cayuga, NY	
Madison, NY	
Onondaga, NY	

[2]Hospitals geographically located in the

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ADDENDUM H.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties)	Wage index
Oswego, NY	
8200 Tacoma, WA	1.0940
Pierce, WA	
8240 Tallahassee, FL[2]	0.8814
Gadsden, FL	
Leon, FL	
8280 Tampa-St. Petersburg-Clearwater, FL[1]	0.9171
Hernando, FL	
Hillsborough, FL	
Pasco, FL	
Pinellas, FL	
8320 Terre Haute, IN[2]	0.8755
Clay, IN	
Vermillion, IN	
Vigo, IN	
8360 Texarkana,AR-Texarkana, TX	0.8126
Miller, AR	
Bowie, TX	
8400 Toledo, OH	0.9810
Fulton, OH	
Lucas, OH	
Wood, OH	
8440 Topeka, KS	0.9199
Shawnee, KS	
8480 Trenton, NJ	1.0432
Mercer, NJ	
8520 Tucson, AZ	0.8911
Pima, AZ	
8560 Tulsa, OK	0.8332
Creek, OK	
Osage, OK	
Rogers, OK	
Tulsa, OK	
Wagoner, OK	
8600 Tuscaloosa, AL	0.8203
Tuscaloosa, AL	
8640 Tyler, TX	0.9521
Smith, TX	
8680 Utica-Rome, NY[2]	0.8542
Herkimer, NY	
Oneida, NY	
8720 Vallejo-Fairfield-Napa, CA	1.3421
Napa, CA	
Solano, CA	
8735 Ventura, CA	1.1096
Ventura, CA	
8750 Victoria, TX	0.8756
Victoria, TX	
8760 Vineland-Millville-Bridgeton, NJ	1.0031
Cumberland, NJ	
8780 Visalia-Tulare-Porterville, CA[2]	0.9840
Tulare, CA	
8800 Waco, TX	0.8088
McLennan, TX	
8840 Washington, DC-MD-VA-WV[1]	1.0851
District of Columbia, DC	
Calvert, MD	
Charles, MD	
Frederick, MD	
Montgomery, MD	
Prince Georges, MD	
Alexandria City, VA	
Arlington, VA	
Clarke, VA	
Culpeper, VA	
Fairfax, VA	
Fairfax City, VA	
Falls Church City, VA	
Fauquier, VA	
Fredericksburg City, VA	
King George, VA	
Loudoun, VA	
Manassas City, VA	
Manassas Park City, VA	
Prince William, VA	
Spotsylvania, VA	
Stafford, VA	
Warren, VA	
Berkeley, WV	
Jefferson, WV	
8920 Waterloo-Cedar Falls, IA	0.8902
Black Hawk, IA	
8940 Wausau, WI	0.9782
Marathon, WI	
8960 West Palm Beach-Boca Raton, FL[1]	0.9939
Palm Beach, FL	
9000 Wheeling, WV-OH (WV Hospitals)[2]	0.7975
Belmont, OH	
Marshall, WV	
Ohio, WV	
9000 Wheeling, WV-OH (OH Hospitals)[2]	0.8613
Belmont, OH	
Marshall, WV	
Ohio, WV	
9040 Wichita, KS	0.9520
Butler, KS	
Harvey, KS	
Sedgwick, KS	
9080 Wichita Falls, TX	0.8498
Archer, TX	
Wichita, TX	
9140 Williamsport, PA	0.8544
Lycoming, PA	
9160 Wilmington-Newark, DE-MD	1.1173
New Castle, DE	
Cecil, MD	
9200 Wilmington, NC	0.9640
New Hanover, NC	
Brunswick, NC	
9260 Yakima, WA	1.0569
Yakima, WA	
9270 Yolo, CA[2]	0.9840
Yolo, CA	
9280 York, PA	0.9026
York, PA	
9320 Youngstown-Warren, OH	0.9358
Columbiana, OH	
Mahoning, OH	
Trumbull, OH	
9340 Yuba City, CA	1.0276
Sutter, CA	
Yuba, CA	
9360 Yuma, AZ	0.8589
Yuma, AZ	

[1]Large Urban Area.

[2]Hospitals geographically located in the area are assigned the statewide rural wage index for FY 2003.

ADDENDUM I.—WAGE INDEX FOR RURAL AREAS

Nonurban area	Wage index
Alabama	0.7727
Alaska	1.2293
Arizona	0.8493
Arkansas	0.7666
California	0.9840
Colorado	0.9015
Connecticut	1.2394
Delaware	0.9128
Florida	0.8814
Georgia	0.8230
Hawaii	1.0255
Idaho	0.8747
Illinois	0.8204
Indiana	0.8755
Iowa	0.8315
Kansas	0.7923
Kentucky	0.8079
Louisiana	0.7647
Maine	0.8874
Maryland	0.8946
Massachusetts	1.1288
Michigan	0.9013
Minnesota	0.9151
Mississippi	0.7680
Missouri	0.8026
Montana	0.8481
Nebraska	0.8204
Nevada	0.9577
New Hampshire	0.9796
New Jersey[1]	
New Mexico	0.8872
New York	0.8542
North Carolina	0.8666
North Dakota	0.7788
Ohio	0.8613
Oklahoma	0.7590
Oregon	1.0303
Pennsylvania	0.8462
Puerto Rico	0.4356
Rhode Island[1]	
South Carolina	0.8607
South Dakota	0.7815
Tennessee	0.7877
Texas	0.7827
Utah	0.9312
Vermont	0.9345
Virginia	0.8504
Washington	1.0179
West Virginia	0.7975
Wisconsin	0.9162
Wyoming	0.9007

[1]All counties within the State are classified as urban.

ADDENDUM J.—WAGE INDEX FOR HOSPITALS THAT ARE RECLASSIFIED

Area	Wage index
Abilene, TX	0.7827
Akron, OH	0.9600
Albany, GA	1.0427
Albuquerque, NM	0.9390
Alexandria, LA	0.7883
Allentown-Bethlehem-Easton, PA	0.9735
Altoona, PA	0.9225
Amarillo, TX	0.8884
Anchorage, AK	1.2490
Ann Arbor, MI	1.1103
Anniston, AL	0.7910
Asheville, NC	0.9575
Athens, GA	1.0066
Atlanta, GA	0.9889
Augusta-Aiken, GA-SC	0.9887
Austin-San Marcos, TX	0.9637
Barnstable-Yarmouth, MA	1.2943
Baton Rouge, LA	0.8190
Bellingham, WA	1.1642
Benton Harbor, MI	0.9106
Bergen-Passaic, NJ	1.2207
Billings, MT	0.9022
Biloxi-Gulfport-Pascagoula, MS	0.8368
Binghamton, NY	0.8462
Birmingham, AL	0.9222
Bismarck, ND	0.7972
Boston-Worcester-Lawrence-Lowell-Brockton, MA-NH	1.1235
Burlington, VT	0.9572
Caguas, PR	0.4408
Casper, WY	0.9586
Champaign-Urbana, IL	0.9772
Charleston-North Charleston, SC	0.9235
Charleston, WV	0.8649
Charlotte-Gastonia-Rock Hill, NC-SC	0.9743
Charlottesville, VA	1.0120
Chattanooga, TN-GA	0.8843
Chicago, IL	1.0905
Cincinnati, OH-KY-IN	0.9389
Clarksville-Hopkinsville, TN-KY	0.8419
Cleveland-Lorain-Elyria, OH	0.9670
Columbia, MO	0.8515
Columbia, SC	0.9194
Columbus, GA-AL (GA Hospitals)	0.8230
Columbus, GA-AL (AL Hospitals)	0.7985
Columbus, OH	0.9549
Corpus Christi, TX	0.8729
Dallas, TX	0.9998
Davenport-Moline-Rock Island, IA-IL	0.8835
Dayton-Springfield, OH	0.9282
Denver, CO	1.0484
Des Moines, IA	0.8827
Detroit, MI	1.0448
Dothan, AL	0.8158
Dover, DE	0.9254
Duluth-Superior, MN-WI	1.0368
Eau Claire, WI	0.9162
Elkhart-Goshen, IN	0.9516
Erie, PA	0.8761
Eugene-Springfield, OR	1.0944
Fargo-Moorhead, ND-MN	0.9468
Fayetteville, NC	0.8992
Flagstaff, AZ-UT	1.0131
Flint, MI	1.0963
Florence, AL	0.7819
Florence, SC	0.8780
Fort Collins-Loveland, CO	1.0066
Ft. Lauderdale, FL	1.0704
Fort Pierce-Port St. Lucie, FL	0.9931
Fort Smith, AR-OK	0.7738
Fort Walton Beach, FL	0.9430
Forth Worth-Arlington, TX	0.9446
Gadsden, AL	0.8599
Gainesville, FL	0.9871
Grand Forks, ND-MN	0.9243
Grand Junction, CO	0.9679
Grand Rapids-Muskegon-Holland, MI	0.9548
Great Falls, MT	0.8966
Greeley, CO	0.9336
Green Bay, WI	0.9668
Greensboro-Winston-Salem-High Point, NC	0.9129
Greenville, NC	0.9174
Harrisburg-Lebanon-Carlisle, PA	0.9223
Hartford, CT	1.1549
Hattiesburg, MS	0.7680
Hickory-Morganton-Lenoir, NC	0.8926
Houston, TX	0.9792
Huntington-Ashland, WV-KY-OH	0.9167
Huntsville, AL	0.8771
Indianapolis, IN	0.9717
Iowa City, IA	0.9442
Jackson, MS	0.8607
Jackson, TN	0.9002
Jacksonville, FL	0.9237
Johnson City-Kingsport-Bristol, TN-VA (VA Hospitals)	0.8504
Johnson City-Kingsport-Bristol, TN-VA (KY Hospitals)	0.8337
Jonesboro, AR (AR Hospitals)	0.7843
Jonesboro, AR (MO Hospitals)	0.8026
Joplin, MO	0.8613
Kalamazoo-Battlecreek, MI	1.0400
Kansas City, KS-MO	0.9736
Knoxville, TN	0.8970
Kokomo, IN	0.9038
Lafayette, LA	0.8316
Lakeland-Winter Haven, FL	0.9357
Las Vegas, NV-AZ	1.1521
Lawton, OK	0.8077
Lexington, KY	0.8581
Lima, OH	0.9483
Lincoln, NE	0.9711
Little Rock-North Little Rock, AR	0.8951
Longview-Marshall, TX	0.8629
Los Angeles-Long Beach, CA	1.2011
Louisville, KY-IN	0.9163
Lubbock, TX	0.9646
Lynchburg, VA	0.8909
Macon, GA	0.9250
Madison, WI	1.0467
Medford-Ashland, OR	1.0303
Memphis, TN-AR-MS	0.8712
Miami, FL	0.9815
Milwaukee-Waukesha, WI	0.9893
Minneapolis-St. Paul, MN-WI	1.0903
Missoula, MT	0.9047
Mobile, AL	0.8110
Modesto, CA	1.0498
Monmouth-Ocean, NJ	1.0814
Monroe, LA	0.8137
Montgomery, AL	0.7734
Nashville, TN	0.9375
New Haven-Bridgeport-Stamford-Waterbury-Danbury, CT	1.2459
New London-Norwich, CT	1.1626
New Orleans, LA	0.9046
New York, NY	1.4220
Newark, NJ	1.1406
Newburgh, NY-PA	1.0747
Norfolk-Virginia Beach-Newport News, VA-NC	0.8666
Oakland, CA	1.5185
Odessa-Midland, TX	0.9180
Oklahoma City, OK	0.8900
Omaha, NE-IA	0.9978
Orange County, CA	1.1594
Orlando, FL	0.9640
Peoria-Pekin, IL	0.8739
Philadelphia, PA-NJ	1.0713
Phoenix-Mesa, AZ	0.9820
Pine Bluff, AR	0.7798
Pittsburgh, PA	0.9224
Pittsfield, MA	0.9863
Pocatello, ID	0.9674
Portland, ME	0.9620
Portland-Vancouver, OR-WA	1.0684
Provo-Orem, UT	0.9984
Raleigh-Durham-Chapel Hill, NC	0.9990
Rapid City, SD	0.8846
Reading, PA	0.9108
Redding, CA	1.1135
Reno, NV	1.0466
Richland-Kennewick-Pasco, WA	1.0800
Richmond-Petersburg, VA	0.9477
Roanoke, VA	0.8614
Rochester, MN	1.2139
Rockford, IL	0.9399
Sacramento, CA	1.1513
Saginaw-Bay City-Midland, MI	0.9543
St. Cloud, MN	0.9785
St. Joseph, MO	0.8240
St. Louis, MO-IL	0.8855
Salinas, CA	1.4623
Salt Lake City-Ogden, UT	0.9945
San Antonio, TX	0.8753
San Diego, CA	1.1135
Santa Fe, NM	0.9891
Santa Rosa, CA	1.2761
Sarasota-Bradenton, FL	0.9449
Savannah, GA	0.9376
Seattle-Bellevue-Everett, WA	1.1474
Sherman-Denison, TX	0.9008
Shreveport-Bossier City, LA	0.8987
Sioux City, IA-NE	0.8647
Sioux Falls, SD	0.9059
South Bend, IN	0.9802
Spokane, WA	1.0663
Springfield, IL	0.8659
Springfield, MO	0.8153
Stockton-Lodi, CA	1.0650
Syracuse, NY	0.9612
Tampa-St. Petersburg-Clearwater, FL	0.9171
Texarkana,AR-Texarkana, TX	0.8126
Toledo, OH	0.9810
Topeka, KS	0.9031
Tucson, AZ	0.8911
Tulsa, OK	0.8332
Tuscaloosa, AL	0.8203
Tyler, TX	0.9195
Vallejo-Fairfield-Napa, CA	1.3421
Victoria, TX	0.8756
Waco, TX	0.8088
Washington, DC-MD-VA-WV	1.0851

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ADDENDUM J.—WAGE INDEX FOR HOSPITALS THAT ARE RECLASSIFIED—Continued

Area	Wage index
Waterloo-Cedar Falls, IA	0.8902
Wausau, WI	0.9782
West Palm Beach-Boca Raton, FL	0.9939
Wichita, KS	0.9179
Wichita Falls, TX	0.8498
Wilmington-Newark, DE-MD	1.0862
Wilmington, NC	0.9425
York, PA	0.9026
Youngstown-Warren, OH	0.9358

ADDENDUM J.—WAGE INDEX FOR HOSPITALS THAT ARE RECLASSIFIED—Continued

Area	Wage index
Rural Alabama	0.7727
Rural Florida	0.8814
Rural Illinois (IA Hospitals)	0.8315
Rural Illinois (MO Hospitals)	0.8204
Rural Kentucky	0.8079
Rural Louisiana	0.7647
Rural Michigan	0.9013
Rural Minnesota	0.9151
Rural Missouri	0.8026

ADDENDUM J.—WAGE INDEX FOR HOSPITALS THAT ARE RECLASSIFIED—Continued

Area	Wage index
Rural Montana	0.8481
Rural Nebraska	0.8204
Rural Nevada	0.9117
Rural Texas	0.7827
Rural Washington	1.0179
Rural Wyoming	0.9007

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Federal Register

Friday,
November 1, 2002

Part III

Department of Education

34 CFR Parts 600, 668, et al.
Federal Student Aid Programs; Final Rule

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DEPARTMENT OF EDUCATION

34 CFR Parts 600, 668, 673, 674, 675, 682, 685, 690, and 694

RIN 1845–AA23

Federal Student Aid Programs

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the Institutional Eligibility Under the Higher Education Act of 1965, as Amended; Student Assistance General Provisions; General Provisions for the Federal Perkins Loan Program, Federal Work-Study Program, and Federal Supplemental Educational Opportunity Grant Program; Federal Perkins Loan (Perkins Loan) Program; Federal Work-Study (FWS) Programs; Federal Family Education Loan (FFEL) Program; William D. Ford Federal Direct Loan (Direct Loan) Program; Federal Pell Grant Program; and Gaining Early Awareness and Readiness for Undergraduate Programs (GEAR UP) regulations. The Secretary is amending these regulations to reduce administrative burden for program participants, and to provide them with greater flexibility to serve students and borrowers.

DATES: *Effective Date:* Except for the amendment to section 694.10, these regulations are effective July 1, 2003. The amendment to section 694.10 becomes effective December 2, 2002.

Implementation Date: The Secretary has determined, in accordance with section 482(c)(2)(A) of the Higher Education Act of 1965, as amended (HEA) (20 U.S.C. 1089(c)(2)(A)), that institutions, lenders, guaranty agencies, and state grant agencies that administer Title IV, HEA programs may, at their discretion, choose to implement all of the provisions of these final rules on or after November 1, 2002. For further information, see "Implementation Date of These Regulations" under the **SUPPLEMENTARY INFORMATION** section of this preamble.

FOR FURTHER INFORMATION CONTACT: For provisions related to the Title IV loan programs (Perkins Loan Program, FFEL Program, and Direct Loan Program): Ms. Gail McLarnon, U.S. Department of Education, 1990 K Street, NW, (8th Floor) Washington, DC 20006, Telephone: (202) 219–7048 or via the Internet: *Gail.McLarnon@ed.gov.*

For other provisions: Ms. Wendy Macias, U.S. Department of Education, 1990 K Street, NW, (8th Floor), Washington, DC, 20006, Telephone: (202) 502–7526 or via the Internet: *Wendy.Macias@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION: On August 6, 2002, and August 8, 2002, the Secretary published in the **Federal Register** two separate notices of proposed rulemaking (NPRMs) (67 FR 51036 and 67 FR 51718, respectively) for the Federal student assistance programs authorized by Title IV of the HEA. This document contains the final regulations for the rules that were proposed in both of these NPRMs.

The August 6, 2002 NPRM included proposed rules for the Student Assistance General Provisions, Perkins Loan Program, FFEL Program, and Direct Loan Program regulations.

In the preamble to the August 6, 2002 NPRM, the Secretary discussed on pages 51037 through 51046 the major changes proposed to improve the Federal student assistance programs. These included the following:

- Amending § 668.35 to state the conditions under which a borrower who is subject to a judgment obtained on a Title IV loan may regain eligibility for additional Title IV student financial assistance. [page 51037]
- Amending §§ 674.39, 682.405, and 685.211 to exclude from rehabilitation defaulted Perkins Loan, FFEL, and Direct Loan program loans on which a judgment has been obtained. [page 51037]
- Amending §§ 674.19, 682.402, and 682.414 to clarify the record retention requirements for promissory notes under the Perkins Loan and FFEL programs. [page 51038]
- Amending §§ 674.34, 682.210, and, by reference, 685.204, to modify the way loan holders in the Perkins Loan, FFEL, and Direct Loan programs calculate Federal postsecondary educational loan debt for purposes of determining a borrower's eligibility for an economic hardship deferment. [page 51039]
- Amending §§ 674.42, 682.604, and 685.304 to clarify that entities other than the institution may provide initial and exit loan counseling on the institution's behalf and to provide consistency in the information that must be disclosed to borrowers. [page 51039]
- Amending §§ 682.204 and 685.203 to clarify loan limits for separate stand-alone programs in the FFEL and Direct Loan programs. [page 51039]
- Amending § 682.210 and, by reference, § 685.204 to make it easier for borrowers in the FFEL and Direct Loan programs to certify eligibility for an unemployment deferment. [page 51040]
- Amending §§ 682.402, 685.212, and 685.220 to expand the instances where FFEL and Direct Loan program borrowers can have a portion of a consolidation loan discharged. [page 51040]
- Amending §§ 674.2 and 674.16 to provide for the use of a Master Promissory Note (MPN) in the Perkins Loan Program. [page 51041]
- Amending §§ 674.9 and 674.47 to modify the low-balance write-off options for institutions that participate in the Perkins Loan Program. [page 51042]
- Amending § 674.17 to clarify that when an institution participating in the Perkins Loan Program closes, or otherwise leaves the program, that institution must assign its outstanding loans to the Secretary and liquidate its Perkins Loan fund according to the Secretary's instructions. [page 51042]
- Amending §§ 674.33 and 674.42 to clarify the conditions under which an institution must coordinate minimum repayment options when a Perkins Loan borrower has received loans from more than one institution. [page 51042]
- Amending § 674.42 to provide flexibility to institutions that participate in the Perkins Loan Program in providing copies of promissory notes to borrowers. [page 51042]
- Amending § 674.43 to provide institutions increased flexibility in assessing late fees in the Perkins Loan Program. [page 51043]
- Amending § 674.45 to clarify when an institution that participates in the Perkins Loan Program must report a defaulted account to a national credit bureau. [page 51043]
- Amending § 674.46 to simplify the requirements for an institution that participates in the Perkins Loan Program to determine if it should initiate litigation against a defaulted borrower. [page 51043]
- Amending § 674.50 to provide consistency within the regulations for the assignment to the Secretary of Perkins loans. [page 51043]
- Amending § 682.200 to revise the definition of lender to clarify the treatment of loans held by trustee lenders. [page 51044]
- Amending § 682.209 to allow an FFEL lender to establish a borrower's first payment due date up to 60 days after the borrower enters repayment, to provide increased flexibility to FFEL lenders when they receive updates to a borrower's enrollment status from an institution, and to provide a simplified method for a borrower in the FFEL Program to ask a lender to increase the length of the repayment period. [page 51044]
- Amending § 682.211 to simplify the process by which a lender and a borrower in the FFEL Program may agree to a discretionary forbearance. [page 51044]
- Amending § 682.402 to clarify that a State guaranty agency is not required to file a proof of claim in a bankruptcy filing and may instruct lenders not to file a proof of claim if filing a proof of claim would waive the State's sovereign immunity. [page 51045]
- Amending § 682.402 to provide that a guaranty agency may take up to 90 days to review a total and permanent disability discharge claim under the FFEL Program. [page 51045]
- Amending §§ 668.183 and 668.193 to revise, for purposes of calculating an institution's cohort default rate, the definition of a defaulted loan. [page 51045]
- Amending § 685.102 to modify the provisions governing the expiration of a Master Promissory Note in the Direct Loan Program. [page 51046]

The August 8, 2002 NPRM included proposed rules for the Institutional Eligibility Under the Higher Education Act of 1965, as Amended; Student Assistance General Provisions; General Provisions for the Federal Perkins Loan Program, Federal Work-Study Program, and Federal Supplemental Educational Opportunity Grant Program; FWS Programs; FFEL Program; Direct Loan Program; Federal Pell Grant Program; and GEAR UP regulations.

In the preamble to the August 8, 2002 NPRM, the Secretary discussed on pages 51720 through 51733 the major changes proposed to improve the Federal student assistance programs. These included the following:

- Amending § 600.8 to reflect that the statutory provision that a branch campus must be in existence for two years before seeking to be designated as a main campus applies only to proprietary institutions of higher education and postsecondary vocational institutions. [page 51720]
- Amending §§ 600.21, 600.31, and 668.174 to provide clarification and additional flexibility to the change of ownership provisions by expanding the definition of family members and broadening the transactions that are not considered to be a change of ownership. [page 51720]
- Amending §§ 668.2, 668.3, and 668.8 to remove the so-called "12-hour" rule that defined a week of instructional time for credit hour nonterm and nonstandard term educational programs. [page 51720]
- Amending §§ 668.4, 682.603, 685.301, and 690.75 to revise the definition of payment period for credit hour nonterm educational programs and to clarify the definition of a payment period when a student withdraws and then returns to school. [page 51721]
- Amending § 668.14 to clarify the statutory program participation agreement provision concerning incentive payment restrictions. [page 51722]
- Amending § 668.22 to clarify when an institution is considered to be one that is required to take attendance for purposes of determining a student's last date of attendance. [page 51725]
- Amending § 668.22 to simplify the definition of a leave of absence and to allow for multiple leaves of absence not to exceed 180 days in any 12-month period. [page 51726]
- Amending §§ 668.35, 673.5, and 690.79 to provide consistent requirements for handling Title IV overpayments, including a provision under which, in most cases, a student who owes an overpayment of a Title IV grant or loan of less than $25 does not lose eligibility for additional Title IV aid. [page 51726]
- Amending §§ 668.32 and 668.151 to eliminate the provision that limits the duration of a passing score on an approved ability-to-benefit (ATB) test to 12 months before a student initially receives Title IV aid. [page 51728]
- Amending § 668.164 to clarify when an institution is required to make a late disbursement and to provide increased flexibility for an institution to make a late disbursement to a student. [page 51728]
- Amending § 668.165 to eliminate the requirement that an institution must confirm the receipt of a notice sent electronically to a student or parent. [page 51730]
- Amending §§ 668.171 and 668.173 to establish clear requirements for returning unearned Title IV program funds and the conditions under which an institution must submit a letter of credit if it does not return those funds in a timely manner. [page 51730]
- Amending §§ 675.2 and 675.21 to provide greater flexibility for the employment of FWS students by proprietary institutions. [page 51731]
- Amending § 694.10 to remove language in the GEAR UP regulations related to the packaging of GEAR UP scholarships by institutions. [page 51732]

We strongly encourage the reader to refer to the preambles of both the August 6, 2002, and August 8, 2002, NPRMs for a full discussion of the topics proposed in those NPRMs and finalized in this document.

These final regulations contain a few changes from the NPRMs. We fully explain these changes in the *Analysis of Comments and Changes* elsewhere in this preamble.

Implementation Date of These Regulations

Section 482(c) of the HEA requires that regulations affecting programs under Title IV of the HEA be published in final form by November 1 prior to the start of the award year (July 1) to which they apply. However, that section also permits the Secretary to designate any regulation as one that an entity subject to the regulation may choose to implement earlier and the conditions under which the entity may implement the provisions early.

Note: Section 482 does not apply to the GEAR UP program (34 CFR part 694).

In response to our request in the NPRMs for suggestions on which provisions the Secretary should designate for early implementation, most of the commenters supported making all of the provisions available for early implementation at the discretion of the regulated entity. Therefore, consistent with the intent of this regulatory effort to reduce burden and to provide greater flexibility, the Secretary is using the authority granted him under section 482(c) to designate all of the regulations subject to that section included in this document for early implementation at the discretion of each institution, lender, guaranty agency, or state agency, as appropriate.

In accordance with the authority provided by section 482(c) of the HEA, the Secretary has determined that for some provisions, there are conditions that must be met in order for an institution, lender, guaranty agency, or state agency, as appropriate, to implement those provisions early. The conditions are—

Provision: Sections 674.34 and 682.210 that modify the formula used by Title IV loan holders when calculating a borrower's eligibility for an economic hardship deferment.

Condition: Until the Secretary has announced the approval of revised deferment forms, loan holders must provide alternative methods by which borrowers provide them with the loan detail information needed to perform the calculation using the modified formula.

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Provision: Section 682.210 that modifies the information that a borrower must provide to a loan holder when requesting an unemployment deferment.

Condition: Until the Secretary has announced the approval of a revised deferment form, loan holders must provide alternative methods by which borrowers certify their eligibility for an unemployment deferment under the revised rules.

Provision: Sections 674.2 and 674.16 that provide for a Master Promissory Note (MPN) in the Federal Perkins Loan Program.

Condition: Implementation cannot occur until the Secretary has announced the approval of the Perkins MPN.

Provision: Section 668.22 that clarifies when an institution is considered to be one that is required to take attendance.

Condition: An institution must apply these provisions to all students who withdraw on or after the institution's implementation of these regulations.

Provision: Section 668.22 that provides increased flexibility in the granting of leaves of absence under the Return of Title IV Funds regulations.

Condition: An institution must apply these provisions to all students who are granted a leave of absence on or after the institution's implementation of these regulations.

Analysis of Comments and Changes

The regulations in this document were developed through the use of negotiated rulemaking. Section 492 of the HEA requires that, before publishing any proposed regulations to implement programs under Title IV of the HEA, the Secretary obtain public involvement in the development of the proposed regulations. After obtaining advice and recommendations, the Secretary must conduct a negotiated rulemaking process to develop the proposed regulations. All proposed regulations must conform to agreements resulting from the negotiated rulemaking process unless the Secretary reopens that process or explains any departure from the agreements to the negotiated rulemaking participants.

These regulations were published in proposed form on August 6, 2002, and on August 8, 2002, following the completion of the negotiated rulemaking process. The Secretary invited comments on the proposed regulations by October 7 for both NPRMs. We received 32 comments on the August 6, 2002 NPRM and 55 comments on the August 8, 2002 NPRM. In addition to their general support of our efforts to simplify the regulations and to reduce regulatory burden on students, borrowers, institutions, lenders, and guaranty agencies, the overwhelming majority of the commenters on both NPRMs also expressed support for the individual proposals included in the NPRMs.

We also received several comments on changes in the negotiated rulemaking process. Most of the commenters expressed appreciation to the Department of Education (Department) for the new scope and structure of the negotiated rulemaking process. Some commenters, however, felt that the Department should have included representatives of certain other organizations in the negotiations, but did not question the constituencies identified. Other commenters expressed the view that the Department should have excluded—and should exclude from future negotiations—individuals or groups that failed to negotiate in good faith and blocked consensus. We note that all organizations had an opportunity to submit institutional nominees and to form coalitions within the constituency groups identified and all nominations were carefully considered to achieve a balanced product. In creating the negotiating committees, the Department encouraged nominations of individuals from coalitions of individuals and organizations representing the constituencies. Moreover, the Department encouraged nominations of individuals who are actively involved in administering the Federal student financial assistance programs or whose interests are significantly affected by the regulations. We, and most of the commenters, believe that the Department was successful in assuring that individuals directly involved in administering the Federal student financial assistance programs appropriately represented the constituencies. In structuring future negotiations, however, the Department will take the comments received into consideration.

An analysis of the comments and of the changes in the regulations since publication of the NPRMs follows. We group major issues according to subject, with appropriate sections of the regulations referenced in parentheses. Generally, we do not address technical and other minor changes—and suggested changes the law does not authorize the Secretary to make.

Change of Ownership (Sections 600.21, 600.31, and 668.174)

Comments: One commenter requested that the preamble discussion clarify that a transfer by an owner to a family member does not require the family member acquiring the institution to have previously worked there.

Discussion: The commenter is correct that the exception does not require a family member of the owner to have worked at the institution.

Changes: None.

Definition of Academic Year—"12-Hour Rule" (Sections 668.2, 668.3, and 668.8)

Comments: Most of the comments we received supported the proposed change that would eliminate the so-called "12-hour" rule for determining a week of instructional time for credit hour nonterm and nonstandard term educational programs. Most commenters were very supportive of the proposal to use a single standard for all educational programs by extending the current "one-day" rule used for term-based and clock hour programs to credit hour nonterm and nonstandard term programs. One commenter specifically noted that the 12-hour rule acted as an impediment to increasing access to higher education. Others noted that the 12-hour rule was at odds with the educational advantages that flexible program calendars and formats, including web-based programs, provide to working adults. Two commenters noted that the Web-based Education Commission, chartered by the Higher Education Amendments of 1998, called for the elimination of the 12-hour rule. Another commenter noted that the House of Representatives' Committee on Education and the Workforce called the 12-hour rule "outdated and obsolete." Finally, a commenter, in support of the proposed change, agreed that the 12-hour rule sometimes results in disparities in the amount of Title IV, HEA program funding that students receive for the same amount of academic credit.

Discussion: We appreciate the commenters' support.

Changes: None.

Comments: A number of commenters expressed concern with the proposal or requested that we not proceed with this change to the regulations. None of these commenters suggested alternatives or modifications to the proposal that was included in the NPRM.

Several commenters suggested that the issue should await the reauthorization of the HEA, so that Congress could consider it in conjunction with other issues related to distance and other nontraditional modes of instruction. One commenter noted that an independent study of the use of the credit hour in postsecondary education was being undertaken and that the results of that study could help inform Congress on this and related issues. One commenter specifically

stated that Congress should address issues of cost of attendance and disbursement schedules for students enrolled in nontraditional programs.

Discussion: We created the one-day rule and the 12-hour rule to implement the statutory condition that an academic year consist of at least 30 weeks of instructional time. We believe that the 12-hour rule had many unintended consequences and believe that one single standard is preferable for the reasons we stated in the preamble to the August 8, 2002 NPRM. Since the original establishment of the rule was a regulatory action, we believe that it does not require any legislative action. Therefore, we see no need to wait for Congress to deal with this issue in the next reauthorization of the HEA. This change will allow Title IV, HEA program eligibility to be determined on the same basis regardless of how a student's academic program is structured. Thus it provides for consistent and equitable treatment for individuals seeking a postsecondary education. We note that nothing prevents Congress from taking further action on this or any other issue. Finally, we do not see the change to the one-day rule from the 12-hour rule as having any effect on how Congress should address issues of cost of attendance and disbursements in nontraditional programs.

Changes: None.

Comments: One commenter suggested that changing from the 12-hour rule to the one-day rule would add a new category of eligible programs, and therefore a new group of eligible students who would compete with students in more traditional programs for scarce Title IV grant funding.

Discussion: We disagree with the commenter. Programs that previously were covered by the 12-hour rule were eligible to participate in the Title IV, HEA programs. Therefore, we do not believe that this change will result in an increased number of students receiving Title IV assistance. Under the one-day rule, students enrolled in those programs would be able to receive the same amount of assistance that students in term-based programs currently do.

Changes: None.

Comments: A few commenters disagreed with the proposal to eliminate the 12-hour rule, based upon their view that, while not perfect, the requirement that a nonterm or nonstandard term academic program include at least 12 hours of instruction per week provides some assurance that the program provides sufficient educational content to make the student's and taxpayer's investment worthwhile. One commenter questioned whether educational quality can be measured by time, particularly given new technological delivery systems. However, the commenter felt that it would be inappropriate to eliminate the 12-hour rule at this time because matters of educational quantity/quality need further study. One commenter, representing several consumer law advocacy organizations, opposed the elimination of the 12-hour rule, suggesting that it currently provides a quantitative method to measure the quality of an academic program. The commenter also stated that the proposed change would encourage some institutions to reduce program content without a commensurate reduction in tuition and other charges.

Discussion: We disagree with the commenter that the 12-hour rule provided any assurance that institutions would provide a minimum quantity of education to warrant support under the Title IV, HEA programs. Hours of regularly scheduled instruction are not the exclusive measure of the quantity of education provided in a postsecondary educational program. For example, in certain educational programs, research papers and projects may make up a considerable portion of that program, and the work associated with carrying out those papers and projects would not be considered as instructional hours under the 12-hour rule or the one-day rule. We believe that the one-day rule is adequate for programs offered in traditional terms and have no evidence to suggest that it is inadequate for programs offered in nonstandard terms and nonterms.

The 12-hour rule was established to measure educational quantity, not educational quality. It was established to implement the statutory requirement that an academic year for Title IV, HEA program purposes had to contain at least 30 weeks of instructional time, which in turn was enacted for the purpose of determining how much Title IV, HEA program funds a student could receive. As we noted in the preamble to the August 8, 2002 NPRM, we believe that there are adequate safeguards in place to ensure program integrity, such as the changes to the definition of a payment period made by this final rule, the clock-hour/credit-hour conversion regulations, and program monitoring by accrediting agencies. Finally, we are aware of no evidence that the proposed change would encourage some institutions to reduce program content.

Changes: None.

Comments: One commenter suggested that our statement in the preamble to the August 8, 2002 NPRM that the clock-hour/credit-hour conversion regulations provide adequate safeguards is questionable since those requirements do not apply to programs that are two years or longer in length and lead to a degree. The commenter stated the belief that the existence of what was perceived to be "low-content degree programs" offered by for-profit institutions demonstrates that the clock-hour/credit-hour conversion is not as valuable as we had stated.

Discussion: We disagree with the commenter because, based upon our experience with the clock/credit hour conversion controversy, the problems that needed to be addressed were found in short-term vocational programs, not in associate and higher degree programs. Moreover, we have no evidence that any institutions have reduced educational content in educational programs that lead to associate and higher degrees.

Changes: None.

Comments: A commenter representing accrediting agencies asked for clarification as to whether the change from the 12-hour rule to the one-day rule will impose any additional responsibilities on those agencies or on the process by which the Secretary recognizes accrediting agencies.

Discussion: No additional regulatory requirements are being placed on accrediting agencies as a result of this change.

Changes: None.

Comments: Two commenters requested specific clarification as to what exactly constituted a day of instruction. One of those commenters asked how much time during each day must actually be spent on instruction. The other commenter asked specifically how one day would be counted for a program offered on-line. That same commenter suggested that we make it clear that the one-day rule did not have to be met on a week-by-week basis, but could be met on average. That is, the requisite number of days must be met over the course of the program.

Discussion: We do not believe it is appropriate for the Department to limit institutional flexibility by establishing a rigid definition of how many hours of instructional time must be included in order for a day to be considered a day of instruction. We agree with the commenter who suggested that the measure should be whether the institution can demonstrate that the activities that make up a day of instruction are reasonable in both content and time. We also will rely upon the determination of the relevant accrediting agency in this regard.

We disagree with the commenter who suggested that the one-day rule did not

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require one day each week but could be met by the program having an average of one day per week over the course of the program. The basis for the one-day rule is the requirement contained in section 481 of the HEA that states that an academic year must contain at least 30 weeks of instructional time. The one-day rule simply defines a week of instructional time as one that includes at least one day of instruction or examinations. The regulations make it clear that a week is a consecutive seven-day period. Therefore, a week in which there is not at least one day of instruction or examination cannot be counted as one of the 30 weeks of instructional time required by the statute. In order for a program to meet the 30 weeks of instructional time requirement, it must include at least 30 separate weeks in which at least one day of instruction or examination occurs.

Changes: None.

Payment Periods (Sections 668.4, 682.603, 685.301, and 690.75)

Comments: One commenter was uncertain whether the proposal to require a payment period to be made up of both the requisite number (usually half) of credit hours in an academic year or program, and the requisite number (usually half) of weeks in the academic year or program was to be applied to both credit-hour programs with terms and credit-hour programs without terms.

Discussion: The proposal applies only to credit-hour programs without terms.

Changes: None.

Comments: A number of commenters supported the Department's proposal that students who withdraw from an institution during a payment period and then return within 180 days to the same program remain in the same payment period. But one commenter wondered what would happen when the student returns, and thus the resumption of the payment period, was in a different award year. The commenter suggested that, if some of the funds for the payment period were to be paid from a different (new) award year, they should be a percentage of the aid that would have been scheduled for that payment period in the new award year, equal to the percentage of the original payment period amount that was not disbursed or returned from the initial period of attendance.

Discussion: A student who was originally enrolled in a payment period that began, and was scheduled to end, in one award year could return after the end of that award year (June 30). However, the intent of these regulations is that such a student is considered, upon his or her return, to be in the same payment period. Therefore, any Title IV program funds that will be disbursed to the student should be paid from the original award year regardless of whether the resumption of the payment period is in a new award year. Generally, the original payment for the payment period would have come from the earlier award year and any new disbursements would be from that same year. Of course, if the original payment period had been a crossover payment period (one that was originally scheduled to begin in one award year and end in the following award year) and the institution had paid (or planned to pay) the student from the second award year, then the resumption of the payment period and any required disbursements would remain in the second award year.

Finally, even if the student's absence and subsequent return causes more than six months of the recalculated payment period to fall into the second award year, we will still consider that the institution's original decision to place the payment period in the first award year remains valid based on the fact that, at the time of that original choice, less than six months of the payment period was scheduled to fall into the second award year.

Changes: None.

Comments: With regard to the student's withdrawal and subsequent return (within 180 days) to the same program, one commenter asked whether, if aid had not been disbursed during the original enrollment, credits earned for the entire payment period, both those enrolled in before the withdrawal and those enrolled in after the return, could be included in determining payment eligibility.

Discussion: The regulation addressing the situation in which a student withdraws from a program and then returns to that program within 180 days applies only to clock-hour programs and credit-hour programs without terms. For those programs, the regulations define a payment period in a way that generally requires the clock-hours or credit-hours in one payment period to be completed before the next payment period begins. Further, students in those payment periods are generally paid for one-half of the program or academic year, as appropriate, at a time. Thus, regardless of whether the student had already been paid for a certain number of clock- or credit-hours before the student's withdrawal, upon the student's subsequent return to the same program within 180 days, the institution would not be adding hours to the payment period, but would simply be keeping the student in the same payment period (consisting of the same number of clock- or credit-hours) he or she was in before withdrawing. Then, upon completion of the hours (and weeks for a credit-hour without terms program) in that payment period, the student would advance to the next payment period.

Changes: None.

Comments: A number of commenters asked how a Return of Title IV Funds calculation would be performed if a student withdrew from a program during a payment period and returned to that program within 180 days, and then withdrew a second time during that same payment period.

Discussion: When a student withdraws (the first time) without completing the payment period, a Return of Title IV Funds calculation is performed. If the student returns to the program within 180 days of his or her initial withdrawal, the student is put back into the same payment period he or she withdrew from, and any Title IV funds that the student or institution returned to the Title IV programs or to a lender for that payment period as a result of the earlier withdrawal are restored to the student. If the student then withdraws from the institution again during that same payment period, a new Return of Title IV Funds calculation, based on the second withdrawal date, would be performed using the full payment period and the full amount of Title IV aid for the payment period.

Changes: None.

Comments: One commenter raised general questions about the way payment periods are determined for programs that measure progress in credit hours but do not use terms. The commenter suggested that there should not be any rigid rules for such programs, but that the institution should have flexibility in determining the length and timing of a student's payment period based upon the program length and a student's enrollment pattern.

Discussion: The changes proposed in the August 8, 2002 NPRM and finalized in this document do not address the entire concept of payment periods, but instead only relate to two issues: (1) For nonterm credit hour programs, requiring a payment period to include, in addition to half the number of credits in the academic year, program, or remainder of the program, also half the number of weeks in that period, and (2) guidance on the treatment for a student who withdraws from a clock-hour or credit-hour nonterm program, and then returns to school.

Therefore, since a more comprehensive review of payment

periods was not included in either the negotiated rulemaking process that led to the August 8, 2002 NPRM or in the proposal presented in the NPRM, we do not believe that it would be appropriate to make additional changes to the payment period regulations at this time.

Changes: None.

Comments: One commenter asked whether an institution should remove costs for the period that the student was out of school in those cases where the student withdrew from an institution and returned within 180 days, and was worried that if that were done the student might not qualify for the original loan amount once he returned to the institution.

Discussion: The cost of attendance would be the costs associated with the original period before the student withdrew. Once the student has withdrawn and then returned to the same program within a 180-day period, the regulation states that the student remains in the same payment period. The cost of attendance for such a student returning to the same program within 180 days must reflect the original educational costs associated with the payment period from which the student withdrew.

Changes: None.

Comments: One commenter suggested that if a student withdraws but returns to the institution during the period in which the institution is required to return funds under the Return of Title IV Funds calculation, the institution would not have to return any funds or notify the lender of the enrollment change. In essence, the student would be retroactively granted a leave of absence.

Discussion: If a student returns to the institution before the Title IV funds are returned, the institution is not required to return the funds. However, § 668.22(j) requires an institution to return unearned funds for which it is responsible as soon as possible, but no later than 30 days after the date of the institution's determination that the student withdrew. Therefore, an institution is expected to begin the Return of Title IV Funds process immediately upon its determination that a student has withdrawn.

Changes: None.

Comments: One commenter stated that it was his understanding that students who withdraw and return after 180 days, or transfer to new programs within any timeframe, have their payment periods restarted, and that this meant that these students would not have to complete the credits that they were already paid for before they could receive additional student aid payments.

Discussion: The regulation addresses the determination of payment periods for students who have withdrawn and either returned to the same program after 180 days, or returned to another program within any timeframe. The regulation specifies that students who have withdrawn and either returned to the same program after 180 days, or returned to another program within any timeframe start a new payment period. However, a student's eligibility for additional Title IV funds may be subject to a variety of limitations associated with the aid the student received during the most recent period of attendance. For example, in the Federal Pell Grant Program, a student may never receive more than the student's scheduled annual award. In the FFEL Program, there are limitations imposed by annual loan limits, the existence of crossover loan periods, and overlapping award years.

Changes: None.

Comments: A couple of commenters asked for further clarification of the payment period provisions as they relate to the Return of Title IV Funds provisions and various Title IV program provisions.

Discussion: We will provide additional clarification on the applicability of these changes through appropriate Department publications after publication of these final regulations.

Changes: None.

Program Participation Agreement (Section 668.14)

Comments: The vast majority of commenters supported the proposal that came out of the negotiated rulemaking sessions to establish safe harbors that institutions could use to avoid the statutory prohibition against making incentive payments to recruiters and other covered personnel.

Discussion: None.

Changes: None.

Comments: Some commenters opposed any change to the current regulations dealing with incentive compensation. They believed that the proposed regulations were not authorized under section 487(a)(20) of the HEA, were ambiguous, and were burdensome to institutions.

Discussion: We disagree with the commenters. With regard to the first point, we believe that the regulations lawfully implement section 487(a)(20) of the HEA. As indicated in the preamble to the proposed regulations, the Congress recognized that if given a strictly literal interpretation, section 487(a)(20) of the HEA could be interpreted to cover almost every compensation arrangement involving a student's ultimate admission to a postsecondary institution. As a result, when enacting section 487(a)(20) of the HEA in 1992, the conference report resolving the different House and Senate versions of the Higher Education Amendments of 1992 indicated that the statutory words "directly" and "indirectly" in section 487(a)(20) of the HEA did not imply that institutions could not base salaries or salary increases on merit. Thus, Congress recognized that the scope of section 487(a)(20) of the HEA had limits, even though that section precluded incentive payments based directly or indirectly on success in securing enrollments.

Consistent with this clarification of legislative intent, we based the proposed safe harbors on a "purposive reading" of section 487(a)(20) of the HEA. This purposive reading is based upon our view that Congress enacted this provision with the purpose of preventing an institution from providing incentives to its staff to enroll unqualified students.

In viewing the scope of section 487(a)(20) of the HEA through this purposive reading, we determined that various payment arrangements constituted legitimate business practices that did not support the enrollment of unqualified students and therefore did not fall within the scope of section 487(a)(20) of the HEA. Making these determinations is within the scope of the Secretary's authority of interpreting the statutory provisions he is charged with administering.

With regard to the commenters' other two points, we agree with the vast majority of commenters that, rather than being ambiguous, the safe harbors clarify the current law for most institutions by setting forth specific payment arrangements that an institution may carry out that have been determined not to violate the incentive compensation prohibition in section 487(a)(20) of the HEA. Moreover, no burden is placed upon an institution that uses a payment arrangement set forth in one of the safe harbors.

Changes: None.

Comments: The commenters who felt that the regulations were not authorized under section 487(a)(20) of the HEA also felt that any change to the current regulations would allow unscrupulous institutions to engage in the kinds of improper recruiting activities that gave rise to section 487(a)(20) of the HEA. They also felt that there was no demonstrated need for any change to the current regulations covering the

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incentive compensation prohibition, and that any change should be made through legislation during the next HEA reauthorization.

Discussion: We believe that the primary purpose of the regulatory safe harbors is to provide guidance to institutions so they may adopt compensation arrangements that do not run afoul of the incentive compensation prohibition contained in section 487(a)(20) of the HEA. The safe harbors are based on comments we received from institutions during the FED UP initiative that requested that we provide clearer and more detailed guidance regarding this topic, suggestions by negotiators, and numerous questions we have received from institutions during the last eight years. We believe that institutions need this guidance now, and therefore it is neither necessary nor desirable to wait to make changes legislatively during the next HEA reauthorization.

Finally, we do not agree with the commenters that the safe harbors will allow unscrupulous institutions to engage in the kinds of improper recruiting activities that took place during the 1980s and early 1990s. As the commenters noted, during that period, institutions would recruit ability-to-benefit students who were not qualified to enroll in their institutions and keep the Title IV, HEA program funds those students received. That result is no longer possible today.

The incentive compensation prohibition is only one of the remedies that Congress has enacted to preclude such results. First, most of those unscrupulous institutions were terminated from participating in the Title IV, HEA programs because of their high cohort default rates. Second, there is a strengthened ability-to-benefit process that walls off institutions from the process and has higher standards of judging a student's ability-to-benefit. Third, if an institution enrolls unqualified students who then drop out, the institution may only keep Title IV, HEA program funds that the student has earned and must return unearned funds under the Return of Title IV Funds rules set forth in § 668.22. Fourth, under the default rate termination provisions, the institution would put its continuing eligibility to participate in the Title IV loan programs in jeopardy if their unqualified students fail to repay their loans. Finally, an institution could have its eligibility terminated if it misrepresents its programs to students.

Changes: None.

Comments: A commenter asked about the interrelationship between the various safe harbors.

Discussion: The 12 safe harbors are divided into two categories. The first category relates to whether a particular compensation payment is an incentive payment. The first safe harbor addresses this category by describing the conditions under which an institution may pay compensation without that compensation being considered an incentive payment.

The second category relates to the conditions under which an institution may make an incentive payment to an individual or entity that could be construed as based upon securing enrollments. The remaining 11 safe harbors address this category by describing the conditions under which such a payment may be made. These 11 safe harbors reflect our view that the individuals and activities described in a safe harbor are not covered by the statutory prohibition.

With regard to the latter 11 safe harbors, if an incentive payment arrangement falls within any one safe harbor, that payment arrangement is not covered by the statutory prohibition.

Changes: None.

Comments: Several commenters suggested that the Secretary include additional safe harbors in the final regulations and provided examples of safe harbors that they would like to see added.

Discussion: We proposed 12 safe harbors based upon the suggestions of the negotiators and questions we received regarding the incentive compensation prohibition. We intended that these safe harbors be clear and uncomplicated. As a result, we believe that institutions can use these safe harbors as a workable framework to determine if their payment arrangements violate the incentive compensation prohibition.

Changes: None.

Comments: A commenter suggested that we discuss the penalties that apply if an institution violates the incentive compensation prohibition.

Discussion: We believe that a discussion of the penalties for violating the incentive compensation prohibition are outside the scope of this exercise in developing final regulations for the provision.

Changes: None.

Comments: A commenter indicated that the safe harbors should specifically indicate that an institution could pay an incentive payment to a person or entity that was in the safe harbor.

Discussion: The last 11 safe harbors describe situations under which an institution can make an incentive payment to an individual or entity based upon success in securing enrollments. Therefore, it is not necessary to include that statement in each safe harbor. For this very reason, as noted below, we will eliminate the restriction in the last sentence in the "clerical pre-enrollment" safe harbor, § 668.14(b)(22)(ii)(F).

Changes: See discussion under Pre-Enrollment Activities.

Adjustments to Employee Compensation (Section 668.14(b)(22)(ii)(A))

Comments: Many commenters approved of our determination set forth in the first safe harbor that fixed compensation could include up to two adjustments in a twelve-month period as long as no adjustment is based solely on success in securing enrollments. Some commenters believed that two adjustments were too many; that two adjustments during a 12-month period was a loophole that institutions could use to bundle their bonuses and pay them as a salary adjustment.

Discussion: We believe that defining fixed compensation to include up to two pay adjustments during a 12-month period is not inconsistent with standard business practice, particularly as this safe harbor includes pay adjustments to an individual for any reason, including promotions.

Changes: None.

Comments: Almost all commenters approved our determination that one cost of living increase that is paid to all or substantially all employees would not count as one of the two allowable adjustments. One commenter asked the effect of an employer policy that withheld cost-of-living increases to poorly performing employees. Another pointed out that employers treat full-time employees differently from part-time employees, and suggested that cost of living increases that are paid to all or substantially all full-time employees not count as an adjustment in the safe harbor.

Discussion: We believe that if an employer has a written policy that indicates that cost of living increases are denied to poorly performing employees, that policy would not disqualify cost of living increases from being treated in the manner described in this safe harbor unless such a written policy has the effect of no longer applying the cost of living increase to "all or substantially all" employees, and other relevant factors reveal the increase to be tied to student recruitment and not within any of the prescribed safe harbors.

We agree with the commenters that employers often treat full-time employees differently from part-time employees, and therefore agree with the

commenters' suggestion that cost-of-living increases that are given to all or substantially all of an institution's full-time employees would not be considered a compensation adjustment.

Changes: Section 668.14(b)(22)(ii)(A) is changed to reflect that cost of living increases that are given to all or substantially all of an institution's full-time employees will not be considered a compensation adjustment.

Comments: Many commenters noted that salary adjustments could not be based solely on the number of students recruited, admitted, enrolled, or awarded financial aid, and asked whether the term "solely" was being used in its dictionary definition. If it was not, the commenters suggested a definition.

Discussion: In this safe harbor, the word "solely" is being used in its dictionary definition.

Changes: None.

Comments: Commenters raised a series of questions concerning various aspects of fixed compensation, including how overtime should be treated, how employee benefits should be treated, and the effect under this safe harbor if some of an institution's employees are unionized and others are not.

Discussion: With regard to overtime and benefits, if the basic compensation of an employee would not be an incentive payment, neither would overtime pay required under the Federal Labor Standards Act. Generally, the fact that some of an institution's employees are unionized and others are not should have no bearing on this safe harbor.

Changes: None.

Comments: One commenter asked about activities that recruiters could perform that would not be considered recruitment.

Discussion: There are a myriad of non-recruitment activities that a recruiter may engage in on a day-to-day basis, but we do not believe that it is practical nor necessary to provide an exhaustive list for purposes of this discussion.

Changes: None.

Enrollment in Programs That Are Not Eligible for Title IV, HEA Assistance (Section 668.14(b)(22)(ii)(B))

Comments: Some commenters objected to this safe harbor, because they believed that the Secretary had no authority to establish it because section 487(a)(20) of the HEA does not cover incentive payments to enroll students in educational programs that are not eligible programs under the Title IV, HEA programs. Another commenter objected to the safe harbor because it would encourage institutions to promote private loans.

Discussion: We disagree with the commenters. The safe harbor is authorized, as well as appropriate, because it informs institutions of the scope of the coverage of the incentive compensation prohibition of section 487(a)(20) of the HEA. Moreover, we believe that this safe harbor will have no bearing on whether institutions promote private loan programs to students attending ineligible programs.

Changes: None.

Contracts With Employers (Section 668.14(b)(22)(ii)(C))

Comments: Most commenters supported this safe harbor. The commenters recognized that the underlying rationale for the safe harbor was that an employer should have a significant stake in the education being offered its employees under a contract with an institution that uses a recruiter who receives an incentive payment. However, several commenters objected to the conditions that employers under this safe harbor had to satisfy. In particular, they objected to the conditions that an employer had to pay at least 50 percent of the tuition and fees charged its employees, and that recruiters have no contact with the employees. Some commenters recommended that these conditions be eliminated; that the employer/employee relationship itself provided a sufficient stake in the education being offered. Some commenters indicated that the percentage of tuition and fees that an employer had to pay should be a smaller percentage, while others indicated that the employer's stake in the education being offered could be demonstrated by other criteria. One commenter noted that literally no one could satisfy this safe harbor because a recruiter had to contact an employee in order to negotiate the contract. Another commenter recommended that Title IV, HEA program funds could not be used to pay the portion of the tuition and fees not paid by the employer.

Discussion: This safe harbor represents that, in general, business-to-business marketing of employer-provided education is not covered by the incentive compensation prohibition. However, not all business-to-business transactions are paid in the same manner, such as the straightforward payment by a company to an institution to educate its employees. This safe harbor deals with an iteration of that scheme; the payment of employees' tuition and fee charges by the employer under a contract arranged by an institution's recruiter who is paid an incentive.

In this safe harbor, the Secretary believes that the 50 percent requirement is a simple, straightforward standard to assure that an employer has a significant financial stake in the outcome of the education provided to its employees. This standard was supported by a majority of the negotiators. Therefore, we disagree with the commenters who suggested that this safe harbor be changed to allow an employer to pay less than 50 percent of its employees' tuition and fee charges.

With regard to the alternatives suggested by commenters, we believe that they are too complicated for a safe harbor. With regard to recruiter contact with employees, the contact that is prohibited does not include the contact necessary to obtain the contract.

Changes: None.

Profit-Sharing or Bonus Payments (Section 668.14(b)(22)(ii)(D))

Comments: Most commenters supported this safe harbor. However, one commenter objected to it because the commenter considered that the safe harbor could be manipulated. Several commenters pointed out that the safe harbor allowed a profit sharing plan to be limited to employees in an "organizational level" at an institution rather than the institution as a whole, and asked whether an organizational level in a multi-school institution could be one of the institutions. Other commenters suggested that the definition of "profit" be defined as "total profit resulting when total costs are subtracted from total revenue at the institution." One commenter noted that while the regulatory safe harbor required that profit sharing or bonus payments be provided to all or substantially all of an institution's full-time employees, the preamble indicated that such payments had to be substantially the same amount, or based upon the same percentage of salary. The commenter recommended that the preamble requirement be eliminated as unnecessary. Moreover, if this condition is to be retained, the commenter proposed that percentage increases, like dollar increases, should also be substantially the same to all covered employees.

Discussion: We do not agree with the commenter who indicated that this safe harbor could be manipulated to provide incentive payments to recruiters under the guise of profit sharing because the payments must be made to all or substantially all of the full-time employees at one or more organizational level at the institution. In response to

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comments relating to organizational level, we believe an "organizational level" at a multi-school institution would be one of the institutions.

We do not believe that it is necessary to define the term "profit" in this safe harbor as it is a commonly used business term that needs no explanation.

With regard to the last comment, we agree that a safe harbor should be in the regulation itself rather than in the preamble. Contrary to the commenter's suggestion, we believe that the safe harbor for bonuses and profit sharing should require that the payments to employees be substantially the same amount or the same percentage of salary. We do not, however, see the need to allow percentage increases to be substantially the same. We believe that this safe harbor already provides significant flexibility particularly since institutions can provide different percentages of compensation based on employees' organizational levels.

Changes: Section 668.14(b)(22)(ii)(D) is changed to reflect that the safe harbor only applies if the profit sharing or bonus payment is substantially the same amount or the same percentage of salary or wages.

Compensation Based Upon Completion of Program (Section 668.14(b)(22)(ii)(E))

Comments: Most commenters supported this safe harbor. However, several objected to it on the grounds that completion of an educational program is not a valid measure when the quality of an institution's programs is poor. One commenter, quoting from our preamble statement of April 24, 1994, when the current regulation was published, objected to the use of retention as a safe harbor, and also objected to the one-year retention period as too short.

Discussion: As previously indicated, we believe that the purpose of the incentive compensation prohibition is to prevent institutions from enrolling unqualified students. We note that other legislative and regulatory requirements are designed to weed out institutions with poor quality programs. We agree with most of the commenters that a student who successfully completes an educational program in which he or she was enrolled means, for this purpose, that the student was qualified to attend the institution.

With regard to retention, we believe that the successful completion of 24 semester or trimester credit hours, 36 quarter credit hours, or 900 clock hours of instruction also means that the student was qualified to enroll at the institution. Moreover, as a general matter, retention and completion of programs by students is a positive result that should be encouraged.

Changes: None.

Comments: Several commenters requested that the measure of whether a student completes one year of a program should be time rather than credits earned. One commenter asked whether all the required credits or hours had to be earned at the institution, or could they include transfer credits, life experience credit, or credits earned through tests. Another commenter asked whether the student had to earn one academic year of credit within the institution's satisfactory progress standard, and another asked whether the 30 weeks of instructional time element of the definition of an "academic year" was included in this safe harbor. A commenter indicated that the safe harbor should indicate that retention for one year is a minimum requirement and institutions are free to establish longer periods. Finally, one commenter asked whether a recruiter could get paid a bonus for each year the student successfully completes, so that the recruiter can theoretically receive four years of bonuses for a student enrolled in a four-year program.

Discussion: We believe that the appropriate method of measuring whether a student completes one academic year is by determining that the student has earned one academic year of credit rather than by not dropping out during a 12-month period. Therefore, we do not agree with the commenters' suggestions to substitute time for credits earned. To answer the questions raised by the other commenters: All the credits have to be earned at the institution as a result of taking courses at that institution; we have not applied the 30 weeks of instructional time element of the definition of an "academic year" to this safe harbor. Thus, this safe harbor applies when a student earns, for example, 24 semester credits no matter how short or long a time that takes.

We agree with the commenter that the one-year retention condition requirement is a minimum. Finally, if an institution so chooses, it may pay a recruiter a bonus for each academic year a student completes and not be in violation.

Changes: Section 668.14(b)(22)(ii)(E) is changed to reflect that the one academic year's worth of credit or hours must be earned at the institution.

Pre-Enrollment Activities (Section 668.14(b)(22)(ii)(F))

Comments: Most commenters supported this safe harbor. Some commenters objected to the requirement that the pre-enrollment activity had to be clerical in nature, with some noting that the clerical requirement was not in the proposed safe harbor itself, but was in the preamble discussion of the safe harbor. Some commenters concluded that the safe harbor described an individual rather than an activity, and based upon that interpretation, the commenters were concerned that recruiters could not be paid a bonus based upon their performance of pre-enrollment activities.

Some commenters requested that the list of pre-enrollment activities be expanded, and other commenters objected to the characterization that soliciting students for interviews is a recruitment activity rather than a pre-enrollment activity. Other commenters asked whether institutions could purchase leads to potential students for a flat fee from a third party under this safe harbor.

Discussion: We believe that one of the most important criterion for inclusion in this safe harbor is the clerical nature of the pre-enrollment activities that are being performed. Limiting pre-enrollment activities to rote clerical activities helps to draw the line between recruiting and pre-enrollment activity. Therefore, we will incorporate this requirement into the regulations.

We disagree with the characterization that this safe harbor describes an individual rather than an activity. However, by the very job description, a recruiter's job is to recruit. Therefore, as a practical matter, it would be very difficult for an institution to document that it was paying a bonus based upon enrollments to a recruiter solely for clerical pre-enrollment activities.

We are not going to expand the list of acceptable clerical pre-enrollment activities because no list will be all-inclusive, and we believe that institutions can determine whether activities qualify as clerical pre-enrollment activities based upon the current examples. Contrary to the commenter's conclusion, we believe that soliciting students for interviews is a core recruiting activity. Finally, although we believe that buying leads from third parties for a flat fee is not a clerical pre-enrollment activity under this safe harbor, we believe that the activity is not covered under the incentive compensation prohibition. Buying leads from third parties for a flat fee is not providing a commission, bonus, or other incentive payment based directly or indirectly on success in securing enrollments.

Changes: Section 668.14(b)(22)(ii)(F) is changed to add the requirement that pre-enrollment activities must be clerical in nature, and, for the reasons

stated earlier in connection with the general comments, we are deleting the requirement that compensation is not based upon the number of people actually enrolled.

Managerial and Supervisory Employees (Section 668.14(b)(22)(ii)(G))

Comments: One commenter objected to this safe harbor because the commenter believed that managers of recruiters and other covered persons should not be covered by the incentive compensation prohibition, and therefore should be included in this safe harbor. Other commenters objected to the preamble discussion of this safe harbor, where we indicated that an individual's occasional direct contact with students in the recruiting process would not turn that individual into a recruiter, because it would not necessarily be easy to determine whether an individual's involvement was occasional.

Discussion: As indicated in the preamble to the proposed regulations, we believe that direct supervisors of recruiters and other covered persons should be excluded from this safe harbor because their actions have a direct and immediate effect on the recruiters and other covered persons.

Changes: None.

Token Gifts (Section 668.14(b)(22)(ii)(H))

Comments: One commenter appreciated the increase in the cost of token gifts allowed under this safe harbor, indicating that it would eliminate concerns at many institutions.

Discussion: None.

Changes: None.

Profit Distributions (Section 668.14(b)(22)(ii)(I))

Comments: One commenter objected to this safe harbor because some institutions could treat revenue as profits.

Discussion: We disagree with the commenter because institutions participating in the Title IV, HEA programs must submit compliance audits and financial statement audits, and such audits would uncover this practice.

Changes: None.

Internet-Based Activities (Section 668.14(b)(22)(ii)(J))

Comments: Almost all commenters supported this safe harbor. One commenter agreed that the Internet is a communications medium much like the U.S. mail and direct mail solicitations. The commenter noted, however, that compensation arrangements between institutions and direct mail servicers are typically not based upon enrollments, and therefore suggested that the Internet safe harbor exclude compensation arrangements that are based upon enrollments.

Discussion: We disagree with the commenter. We believe that the use of the Internet is outside the scope of the incentive compensation prohibition, and, as indicated earlier, the point of the last 11 safe harbors is that they describe situations that would not violate the incentive compensation prohibition to make incentive payments to recruiters and other covered individuals based on enrollments. However, to highlight that the Internet is frequently used to refer prospective students to institutions, we are including that activity in the safe harbor.

Changes: Section 668.14(b)(22)(ii)(J) is changed to add referring prospective students to the institution as a described safe harbor.

Payments to Third Parties for Non-Recruitment Activities (Section 668.14(b)(22)(ii)(K))

Comments: One commenter requested that we clarify that recruiting activities do not include advertising or marketing.

Discussion: We agree with the commenter that if an institution pays a third party for marketing and advertising, those contracted services are not considered recruiting.

Changes: None.

Payments to Third Parties for Recruitment Activities (Section 668.14(b)(22)(ii)(L))

Comments: Several commenters specifically indicated their support for this safe harbor. Several others objected to it because they believed that it violated the spirit of the incentive compensation prohibition as well as the literal language of that provision.

Discussion: With regard to the reasons given by the commenters who objected to the safe harbor, as we stated in the preamble to the August 8, 2002 NPRM, we believe that Congress did not intend to limit an institution's ability to contract with outside entities for recruitment, admissions, enrollment, or financial aid services if the outside entity adheres to the same limitations that apply to institutions. Payments made by an institution to a third party would not violate the incentive payment restrictions as long as the individuals performing any activities related to recruitment, admissions, enrollment, or financial aid were compensated in a way that would otherwise be permissible under the standards in this section for covered employees of the institution.

Changes: None.

Institutions Required To Take Attendance (Section 668.22)

Comments: One commenter did not believe that an institution that is required to take attendance by an outside entity for a limited time for census purposes should automatically qualify as an institution that is required to take attendance for purposes of the Return of Title IV Funds calculation. The commenter indicated that census records may not be appropriate for determining a student's withdrawal date. As such, the commenter suggested that the length of a limited period of census taking does not matter. Rather, if the institution's policy does not result in a student being withdrawn as a result of the census data, the institution should not be considered one that is required to take attendance for the census period.

The commenter asked for clarification regarding the procedures that must be followed after the end of the period of required attendance taking.

Discussion: Census taking was merely an example of a reason why an institution might be required to take attendance by an outside entity for a limited period of time. As stated in the preamble to the August 8, 2002 NPRM, if the outside entity determines that the institution is required to take attendance for any period, for any purpose, including census purposes, then the institution is considered to be one that is required to take attendance for that period of time. We would like to emphasize that the change to the regulations related to determining whether an institution is one that is required to take attendance, specifically revises § 668.22(b)(3)(i) to state that it is such an institution only if the outside entity has determined that the institution is required to take attendance. Thus, if an outside entity that imposes census taking requirements does not consider its requirements to require an institution to take attendance continuously for the limited period of time, the institution would be considered an institution that is not required to take attendance for that period for Title IV purposes. The exception that the preamble addressed was that even if the outside entity considers a one-day census activity to be required attendance taking, we would not consider the institution to be one that is required to take attendance.

Unless an institution demonstrates that a withdrawn student who is not in attendance at the end of a limited period of required attendance taking attended after the limited period, the student's

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withdrawal date would be determined according to the requirements for an institution that is required to take attendance. That is, the student's withdrawal date would be the last date of academic attendance as determined by the institution from its attendance records. If the institution demonstrates that the student attended past the end of the limited period, the student's withdrawal date is determined in accordance with the requirements for an institution that is not required to take attendance. So, for a student who has attended past the limited period and unofficially withdrew, the student's withdrawal date is the midpoint of the payment period or period of enrollment. Consistent with the policy for documenting a student's last date of attendance at an academically-related activity, an institution is not required to take attendance to demonstrate a student's attendance past the end of the limited period of attendance taking.

Changes: None.

Leaves of Absence (Section 668.22)

Comments: One commenter requested that we repeat the discussion in the August 8, 2002 NPRM on allowing multiple leaves of absence as long as the sum of the leaves does not exceed 180 days within any 12-month period and the requirement that an institution must require the student to submit a written reason for his or her request for an approved leave of absence.

Discussion: The commenter is correct that the proposed change does mean that an institution can approve more than one leave of absence for a student as long as the total of all leaves for that student does not exceed 180 days in a 12-month period. The commenter is also correct that the new regulations require the student to submit a written reason for the request for the leave of absence. We refer the reader to the more extensive discussion on these matters that was included in the August 8, 2002 NPRM beginning on page 51726.

Changes: None.

Comments: One commenter agreed with our position that a student should be able to return to an institution from an approved leave of absence and repeat coursework as long as there are no additional institutional charges.

Discussion: We clarified in the NPRM that a student may resume his or her academic program at a point earlier than the point where the academic program was suspended temporarily through an approved leave of absence. Under this guidance, both the student and the institution enjoy greater flexibility to deal with student academic needs. However, since the regulations provide that an institution may not impose additional charges when the approved leave of absence ends and the student resumes his or her program of study, a student who returns for the purpose of repeating prior coursework may not be assessed additional charges by the institution.

Changes: None.

Comments: One commenter noted that, especially for nonterm programs, there are a variety of reasons (most frequently scheduling problems) that prevent students from simply restarting their coursework at the same place they stopped. Particularly if the nonterm program offers its course in a series of modules, a returning student might choose to re-enter into a different course in a different module within the same program. The commenter suggested that students in nonterm programs be exempt from the requirement that, after returning from an approved leave of absence, they must return to the same point in the coursework that they were at the time the leave of absence began.

Discussion: Currently, § 668.22(d)(1)(viii) requires that when a student returns from a leave of absence, the student must be permitted to complete the coursework he or she began prior to the leave of absence. This is because the concept of an approved leave of absence is that the payment period in which the student was originally enrolled in has been temporarily suspended due to the leave of absence. Upon the student's return, the student simply resumes or continues the same payment period and coursework and is not eligible for additional Title IV program assistance until the payment period has been completed.

For term-based programs, where the payment period is the term, a student returning from a leave of absence must complete the term in order to complete the payment period and be eligible to receive a second or subsequent disbursement. In addition, as noted earlier, upon return from a leave of absence the student cannot be assessed any additional charges. Therefore, we think it very unlikely that a student enrolled in a term-based program could ever participate in the leave of absence process included as part of the Return of Title IV Funds requirements.

However, for nonterm-based programs, the regulations in § 668.4, as finalized by this document, provide that the payment period is the period of time it takes a student to complete both half the number of credits and half the number of weeks of the academic year, program or remainder of the program, as appropriate. For clock-hour programs, the payment period is the period of time it takes a student to complete half the number of clock hours in the program. Therefore, whether the student returns to the point in the same course as when the leave of absence began, or the student starts in a new course within the program (without additional institutional charges), once half the required credits are earned and half the number of weeks are completed or, for a clock-hour program, half the number of clock hours are completed, the student has completed the payment period for which the student was previously paid Title IV funds. If otherwise eligible, the student may receive a second or subsequent disbursement of Title IV program funds. Thus, we agree with the commenter that flexibility in this area could be provided to students and institutions when the program is offered on a nonterm basis.

Changes: Section 668.22(d)(1)(vii) is revised to provide that for a clock-hour program or a nonterm credit-hour program, the student need not complete the exact same coursework he or she began prior to the leave.

Comments: One commenter suggested that we modify the proposed rule to allow an institution to offer the student a full tuition credit towards the course the student chooses to re-enter as a mechanism to comply with the requirement that the institution not assess the student any additional charges upon return from an approved leave of absence.

Discussion: As we understand the commenter's suggestion, we do not see a need to modify the regulations. We believe that the commenter's proposal would meet the requirement that a student returning from an approved leave of absence not be assessed any additional institutional charges for completing the payment period.

Changes: None.

Expiration of Ability To Benefit Tests (Sections 668.32 and 668.151)

Comments: While there was general support for the removal of the 12-month limitation on the acceptability of an ability to benefit (ATB) passing score, one commenter expressed concern about the exception that "home-schooled" students are not required to have passed the GED or an ATB test before becoming eligible for Title IV, HEA program assistance.

Discussion: We appreciate the support for the elimination of the 12-month limitation of ATB passing scores. Section 484(d)(3) of the HEA provides that, as an alternative to a high school diploma, a student who has completed a secondary school education in a home

school setting that is treated as a home school or private school under State law meets the applicable standard to be eligible for Title IV, HEA program assistance without the need for such a student to have passed the GED or an ATB test.

Changes: None.

Overpayments (Sections 668.35, 673.5, and 690.79)

Comments: One commenter indicated that the *de minimis* standard of less than $25 for student original overpayment amounts is too low and should be increased to at least $100. Further, the commenter stated that excluding from the application of the *de minimis* standard situations in which the amount owed by the student was the result of an original overpayment amount that was paid down to less than $25, or was the result of the application of the $300 campus-based overaward threshold, makes the regulation too complicated for efficient program administration.

Discussion: The less than $25 *de minimis* standard used in the regulations is based upon an amount that is cost effective for the Department to collect. We are able to successfully pursue collections of $25 or higher with Internal Revenue Service (IRS) offsets, as well as with other methods. As to the second comment, the regulations exclude two instances in which the *de minimis* amount provisions do not apply. In the case where the original overpayment amount was $25 or more, but has been reduced to less than $25, the student is still responsible for fully paying that remaining balance. Without this exclusion, students would be encouraged not to pay the last $24.99 of their overpayment. In the other case, a student is responsible for paying the balance of the overpayment, even if it is less than $25, when the overpayment is a result of applying the $300 campus-based overaward threshold to an FSEOG or Federal Perkins Loan overaward. Without this second exclusion, we would be creating a new campus-based overaward threshold of $324.99. There is no basis in the statute for changing the campus-based overaward threshold beyond $300.

Changes: None.

Comments: One commenter recommended that, in addition to applying the less than $25 *de minimis* amount to original overpayments owed by a student, the regulations provide the same treatment to an institution when it is liable for an overpayment. That is, the commenter suggested that an institution not be required to return an original overpayment that is less than $25. The commenter believed that the requirement for an institution to return small amounts is administratively burdensome to the institution and is not cost effective.

Discussion: The purpose of having the less than $25 *de minimis* amount for student original overpayments is to allow needy students to continue to be eligible for Title IV aid when their overpayment obligation is a small amount. The overpayment amounts that an institution owes do not impact a student's eligibility. However, the regulatory change that we are making for student original overpayment amounts that are less than $25 provides for a consistent application across the Title IV programs, reduces the burden on needy students, and reduces the burden for institutions in the recording and collection of a small student debt.

Changes: None.

Comments: One commenter suggested that the language in the regulations requiring the institution to provide written notice of an FSEOG or Federal Pell Grant overpayment to the student be clarified. The commenter suggested that the regulations state that an institution is not required to send the written notice if the institution pays the overpayment on the student's behalf from its own funds, because there is no reason for the student to register a formal objection to an overpayment determination with the institution.

Discussion: The written notice requirement for overpayments does not apply unless the student owes an overpayment that is outstanding. If the institution already paid the overpayment on the student's behalf from its own funds, the institution would not have to send the written notice to the student because there is no overpayment to collect.

Changes: None.

Rehabilitation of Defaulted Loans (Sections 668.35, 674.39, 682.405, and 685.211)

Comments: One commenter objected to the addition of language in § 668.35(b) that allows a Perkins Loan borrower against whom a judgment has been obtained to regain eligibility for further Title IV student aid by making satisfactory repayment arrangements. The commenter noted that seeking a judgment against a defaulted Perkins Loan borrower is a last resort that involves considerable time and money and that a judgment is pursued only after a Perkins institution has exhausted all other means of collecting the defaulted loan. The commenter stated that extending further Title IV student financial assistance to such a borrower is against the taxpayers' best interests and that the only option that should be offered to a defaulted borrower against whom a judgment has been obtained is to pay the judgment amount in full.

Discussion: The proposal to allow a borrower who is subject to a judgment to regain eligibility for Title IV program assistance reflects the concerns expressed by the negotiators that, under the original proposal presented to the negotiators, borrowers subject to a judgment would not only be excluded from the benefits of rehabilitation, but would also be unable to regain eligibility for Title IV aid. The negotiators felt that denying access to additional student financial assistance to a borrower who makes an agreement with the loan holder to repay the loan was excessively harsh and had the potential to effectively prohibit the borrower from furthering his or her education, securing employment, and being better able to repay student loan obligations.

The new regulations in § 668.35(b) provide institutions and guarantors with significant flexibility to recover judgment debts by allowing the loan holder to determine the conditions that the judgment debtor must satisfy to regain eligibility for additional Title IV aid. For example, if, in a particular case, payment in full is the only repayment arrangement that is satisfactory to the holder, then a borrower who is subject to a judgment must pay the loan in full. Alternatively, should the holder agree to repayment arrangements with the judgment debtor, the holder is free to determine the number and amount of payments necessary to restore eligibility for further Title IV aid, as long as those arrangements include the borrower making at least six consecutive monthly payments.

Changes: None.

Comments: Some commenters noted that proposed language in § 682.405(b)(1), which defines "voluntary" payments for the purpose of loan rehabilitation, excluded payments made "after a judgment has been entered on a loan." (The commenters incorrectly believed that this proposed change was the basis for excluding judgment borrowers from rehabilitation.) The commenters further noted that the proposed regulations in § 668.35(b) provided that a borrower who is subject to a judgment may reestablish Title IV eligibility if the borrower pays the debt in full or makes at least six payments under arrangements satisfactory to the judgment holder, but that the proposed regulation did not require that such payments be "voluntary." Lastly, the

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commenters noted that the FFEL Program definition of "satisfactory repayment arrangements" in § 682.200(b) defines the term "voluntary payments" differently than it is defined in § 682.405(b)(1) of the FFEL Program regulations. While the commenters supported the proposed language in § 668.35(b) to provide a mechanism for judgment borrowers to regain Title IV eligibility, the commenters believed the interplay between this provision and the provisions within the FFEL Program regulations requiring differing "voluntary" payments is confusing and that clarification was needed.

Several commenters representing institutions that participate in the Perkins Loan Program also noted that proposed § 668.35(b) is inconsistent with § 674.9(j) of the Perkins Loan Program regulations, in that the Perkins regulations require a defaulted Perkins Loan borrower subject to a judgment to make "voluntary" payments to reestablish eligibility for a Federal Perkins Loan. (Sections 674.9(j)(1) and (2) define "voluntary" payments as "payments made directly by the borrower, including payments made over and above payments made pursuant to a judgment * * * and do not include payments obtained pursuant to a judgment.") In contrast, the commenters noted that proposed § 668.35(b) did not require that payments to reestablish Title IV eligibility be voluntary.

The commenters suggested that we revise the FFEL regulations defining "satisfactory repayment arrangement" to clarify that a borrower against whom a judgment has been obtained can reestablish Title IV eligibility under § 668.35(b). With regard to the Perkins Loan program, the commenters suggested that we either revise proposed § 668.35(b) to reference the Perkins Loan program definition of "satisfactory repayment arrangement" or remove the reference to "voluntary" payments in § 674.9 for the purpose of regaining eligibility for a Perkins Loan.

Discussion: We disagree with the commenters' assumption that the basis for excluding borrowers subject to a judgment from loan rehabilitation is that payments on a judgment are not considered "voluntary." The preamble of the August 6, 2002 NPRM, beginning at 67 FR 51036, has a full discussion of the reasons we proposed to exclude borrowers subject to a judgment from the opportunity for loan rehabilitation. We agree with the commenters, however, that the interplay of provisions defining "voluntary" in the Perkins Loan and the FFEL program regulations and their relationship with proposed § 668.35(b) is confusing.

We believe that the best resolution is to modify proposed § 668.35(b) to add the word "voluntary," with a definition, to the description of the monthly payments that a borrower who is subject to a judgment must make before regaining eligibility for additional Title IV aid. We believe that the definition of "voluntary payments," in the definition of "satisfactory repayment arrangement" in § 682.200(b) of the FFEL Program regulations is the most appropriate definition to use. Accordingly, we will define "voluntary" in § 668.35(b) as "payments made directly by the borrower, not including payments obtained by Federal offset, garnishment, or income or asset execution." We would emphasize that a payment on a judgment is considered a "voluntary" payment under this definition if the borrower who is subject to the judgment makes a payment directly to the judgment holder and that there is no requirement that the payment be over and above the payment required on the judgment.

We also believe that the definition of "voluntary" in § 674.9(j)(1) and (2) and in the Direct Loan Program definition of "satisfactory repayment arrangement" in § 685.102(b) should be changed to reflect the definition of "voluntary" in § 682.200(b).

Changes: We have added the requirement that payments made pursuant to § 668.35(b) must be voluntary payments, along with a definition of "voluntary." We have also amended the definition of "voluntary" in §§ 674.9(j) and 685.102(b) to reflect the definition of "voluntary" in current § 682.200(b).

Comments: Several commenters requested that we revise the rules governing a guaranty agency's basic program agreement with the Secretary in § 682.401(b)(4), as they relate to reinstatement of borrower eligibility, to add a reference to proposed language in § 668.35(b) that allows a borrower who is subject to a judgment to reestablish eligibility for Title IV, HEA program assistance. The commenters believed that since loan rehabilitation would no longer be an option for a borrower with a loan on which a judgment has been obtained, a clarifying change was needed to exempt these borrowers from the FFEL Program rules governing reinstatement of borrower eligibility.

Discussion: We agree that the addition of a reference in § 682.401(b)(4), stating that reinstatement of Title IV eligibility for a borrower with a defaulted loan on which a judgment has been obtained is governed by § 668.35(b), would add clarity.

Changes: We have made the suggested change to § 682.401(b)(4).

Comments: Several commenters supported the proposed regulations that excluded from rehabilitation defaulted Title IV loans on which a judgment has been obtained.

Discussion: None.

Changes: None.

Comments: One commenter stated that rehabilitation of loans subject to a judgment has served as a beneficial and successful tool to encourage borrowers to repay their loans and objected to the proposed changes that excluded from rehabilitation defaulted loans on which a judgment has been obtained. The commenter stated that many borrowers default at an early age without realizing the serious and long-lasting consequences of their failure to repay their loan and that eliminating the option of rehabilitation denies borrowers subject to a judgment the ability to improve their credit history.

Discussion: The negotiators reached consensus that the effort and expense associated with rehabilitating loans subject to a judgment outweighed the value of rehabilitation of judgment debts as a collection tool. However, as we pointed out in the August 6, 2002, NPRM, while the new regulations exclude a loan on which a judgment has been obtained from rehabilitation, a loan holder may, at its option, enter into an agreement with such a borrower to offer some of the benefits of rehabilitation while maximizing recovery of the debt. Moreover, we also proposed new language in § 668.35(b) to ensure that a borrower subject to a judgment may reestablish eligibility for further Title IV, HEA program assistance.

Changes: None.

Comments: Several commenters requested that we revise § 682.405(b)(1) to specify that the definition of the term voluntary in that section applies only to loan rehabilitation. The commenters felt that we introduced ambiguity with regard to the meaning of voluntary payments by placing language in the August 6, 2002 NPRM preamble describing proposed changes to § 682.405(b)(1) in the same paragraph as language describing reinstatement of Title IV eligibility. The commenters also suggested revising this paragraph to exclude payments obtained by state offset from the definition of voluntary payments for the purpose of loan rehabilitation.

Discussion: Although we regret any confusion that resulted from the placement of preamble language

describing proposed changes to § 682.405(b)(1) in the same paragraph as language describing reinstatement of Title IV eligibility, we do not see the need for a clarification that the term voluntary, as defined in § 682.405(b)(1), applies only to that section. The proposed language, by its placement within § 682.405, makes it clear that the definition of voluntary applies only to that section. We also disagree with the suggestion to revise this paragraph to add that payments made by state offset are excluded from the definition of voluntary payments for the purposes of loan rehabilitation because making such a change is more than a technical change to the regulations and was not subject to negotiated rulemaking.

Changes: None.

Comments: One commenter felt strongly that the regulations should specifically state that judgment holders may enter into an agreement with the judgment debtor that would allow the holder to provide many of the same benefits offered under loan rehabilitation programs. The commenter asked if the proposed addition of language in § 668.35(b), which allows a judgment borrower the opportunity to reestablish Title IV eligibility by making repayment arrangements that are satisfactory to the holder of the debt, gives the holder of a judgment the authority to enter into agreements with judgment borrowers that would provide borrowers with some of the benefits of rehabilitation.

Discussion: In many cases, the terms of a court judgment make the entire obligation due and payable in full immediately, and any payment arrangements that arise between the parties to satisfy the judgment is solely by agreement between the debtor and the judgment holder. We do not see the need to specify in regulation the authority already held by a judgment holder to enter into such agreements with a judgment debtor.

The new regulations in § 668.35(b) simply extend to a borrower who is subject to a judgment the opportunity to reestablish eligibility for Title IV student financial assistance. As stated earlier, the negotiators were concerned that borrowers who were subject to a judgment would no longer be entitled to rehabilitate their loans and would be left without any recourse if the borrower wished to return to school and needed additional financial aid. We note that a borrower who is subject to a judgment will reestablish Title IV eligibility as part of an agreement between the debtor and judgment holder, if the holder chooses to enter into such an agreement. However, the authority to enter into such an agreement stems from the nature of the judgment debt, not from this regulatory provision.

Changes: None.

Comments: Several commenters asked us to clarify what types of benefits a holder can provide to a borrower with a Title IV loan that is subject to a judgment pursuant to an agreement outside of the holder's loan rehabilitation program. The commenters were concerned that loan holders would not have the authority to offer removal of the borrower's negative credit history under such an agreement under the Fair Credit Reporting Act and loan program credit bureau reporting regulations. Several commenters wanted us to address the status of a loan on which a judgment has been obtained, both from the standpoint of the borrower and the judgment holder, once the borrower has reached an agreement with the judgment holder. One commenter asked us to clarify how long a borrower has to repay the loan and what interest rate would apply in cases when the borrower signs a new note under an arrangement between the borrower and the judgment holder.

Discussion: The holder of a Title IV loan that is subject to a judgment has the option, but is not required, to enter into an agreement with the borrower in which the holder agrees to offer some benefits. We expect any agreement between a borrower subject to a judgment and the judgment holder to require the debtor to make at least six consecutive, voluntary monthly payments, the minimum standard contained in § 668.35(b) for a judgment borrower to reestablish Title IV eligibility. A judgment holder is also free to require other, more stringent repayment arrangements it considers appropriate. The benefits the judgment holder may offer the borrower as part of an agreement to resolve a judgment include the return of Title IV eligibility and removal of a borrower's negative credit history. Alternatively, the holder may offer to vacate the judgment and allow the borrower to sign a new promissory note after the borrower complies with the conditions of the agreement. However, it is up to the holder of the judgment to consider any legal and practical restrictions on its ability to offer the borrower certain benefits, such as credit report changes.

In accordance with general legal principles and our longstanding policy, a judgment debt on a Title IV loan is considered a Title IV loan obligation. An agreement between a loan holder and a borrower to resolve a judgment does not change the character of the debt. Accordingly, if the holder vacates the judgment as part of such an agreement, the borrower's rights and responsibilities would be those of a defaulted Title IV borrower and would include the opportunity to enter into a formal regulatory rehabilitation agreement with the loan holder. The holder would be subject to the requirements and benefits associated with holding a defaulted Title IV loan. The interest rate and repayment options would be those available under the original promissory note.

Changes: None.

Comments: One commenter stated that the regulations addressing rehabilitation of loans, although now revised to exclude loans reduced to judgment, still may imply that the Secretary considers defaulted borrowers to be able to seek rehabilitation even after the Secretary has referred a loan to the Department of Justice for collection litigation. The commenter considered this implication unfounded as a matter of law, contrary to the interests of the loan programs and the Federal government, and urged the Secretary to clarify the proposed regulations to specify that neither the statute nor the regulations allow borrowers to rehabilitate loans that have been referred to the Department of Justice for litigation.

Discussion: We believe that the HEA and the Federal Claims Collection Standards adequately address this concern and that a regulatory change is unnecessary. A rehabilitation agreement is a form of repayment arrangement; after a Federal agency has referred a debt owed the agency to the Department of Justice for litigation, the Federal Claims Collection Standards provide that the Department of Justice has "exclusive jurisdiction" over the debt, and the agency is no longer authorized to determine repayment terms for that debt (31 CFR 904.1(b)). Moreover, sections 432(a)(2) and 468(3) of the HEA state explicitly that the Secretary's broad power to enforce Title IV HEA loans remains subject to the full authority of the Attorney General to conduct litigation to collect those loans. The HEA both directs the institution, the guarantor, or the Secretary to offer the borrower in default an opportunity for rehabilitation of the loan, and directs that the Secretary's authority to arrange repayment terms ends where responsibility for enforcement of the debt passes to the Department of Justice. The Secretary therefore interprets the HEA itself to limit the defaulted borrower's ability to seek rehabilitation of a Title IV loan only to the period during which the loan is held by the Secretary. The option to rehabilitate a

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defaulted loan therefore lapses once the debt is referred to the Department of Justice.

Changes: None.

Comments: Two commenters recommended that borrowers subject to a judgment, who have begun the rehabilitation process but not completed the payment stream before final regulations are effective, be permitted to complete the rehabilitation process.

Discussion: If a holder has agreed to allow a judgment borrower to attempt rehabilitation of his or her loan prior to the effective date of these final regulations, we expect the loan holder to honor such an agreement. However, if the judgment borrower misses any of the required payments, the holder is not required to allow the borrower another attempt at rehabilitation.

Changes: None.

Comments: One commenter asked if the holder of an institutional loan subject to a judgment has the option to enter into an agreement with the borrower and offer to remove the borrower's negative credit history under the proposed regulations.

Discussion: The terms and conditions of non-Federal loans are not subject to the regulations that apply to the Title IV loan programs.

Changes: None.

Late Disbursements (Section 668.164)

Comments: Several commenters objected to the proposal that an institution would be required to obtain the Secretary's approval in order to make late disbursements more than 120 days after the student was no longer eligible. Most of these commenters believed that we should continue the current practice of allowing guaranty agencies to approve late disbursements of FFEL Program funds. Two commenters stated that deciding to make a late disbursement was similar to professional judgment and argued that institutions should be permitted to make these disbursements without obtaining our approval.

Discussion: While we appreciate the willingness of guaranty agencies to approve requests for late disbursements that are not made within the 120-day timeframe, we continue to believe that we should review and approve such disbursement requests. These rules (and previous late disbursement rules) provide an exception to the general rule that a student must be enrolled and eligible to receive Title IV student aid. If a disbursement is not made while a student is enrolled and eligible, an institution now has, regardless of the reason and without any approval, 120 days to make that disbursement. Beyond that, from both a policy and operations perspective, we need to be aware of the frequency and circumstances under which this exception is used. In addition, we believe it is more efficient, and more equitable to students and institutions, to direct all late disbursement requests requiring approval (those after the 120-day timeframe) to one party for review, particularly for requests that deal with funds from more than one Title IV program. To facilitate the process, before the effective date for these regulations, the Department plans to establish a process by which institutions will submit their request. In its request, an institution will provide the name of the student (or parent in the case of a PLUS loan), the type and amount of Title IV aid to be disbursed, and a description of the circumstances that resulted in the disbursement not being made, including why the disbursement was not made and was not the faulf of the student or parent. After we review the request, we will promptly inform the institution of our decision or if necessary, request additional information. If the request is approved, the institution can, consistent with the requirements of the funding source (*i.e.*, FFEL lender or guaranty agency) make the late disbursement. We expect the institution to maintain documentation of its request and the Department's response to that request.

Changes: None.

Comments: One commenter did not agree with the proposal that an institution would be required to offer a late disbursement to a student who had completed a payment period or period of enrollment. The commenter contended that in many such cases the student would not owe the institution any money or would not be likely to have other remaining costs, thereby eliminating the need for the late disbursement. For this reason, the commenter was concerned that requiring an institution to make a late disbursement of a loan would needlessly increase a student's debt. Instead, the commenter suggested that an institution should have sole discretion in determining whether a late disbursement was necessary.

Discussion: As we explained in the August 8, 2002 NPRM, because the student earned the funds for the period completed, it is up to the student, not the institution, to decide whether he or she needs the funds. Consequently, an institution must offer the late disbursement to the student and must make that disbursement if the student accepts the offer. If an institution believes a late disbursement is not needed or is concerned that a late disbursement of a loan may increase the risk of default, we encourage the institution to advise the student about how the disbursement may affect his or her eligibility for additional Title IV aid and caution the student about loan debt. An institution may do this in the offer it makes to the student.

Changes: None.

Comments: Many commenters supported the proposal eliminating the requirement that, for a student to qualify for late disbursement, an institution must have a valid SAR/ISIR for that student on or before the date the student became ineligible.

Discussion: We appreciate the support for a proposal that makes it easier for a student to qualify for a late disbursement and easier for an institution to document that the student qualified. However, as we noted in the NPRM, an institution must still have a valid SAR/ISIR to make a late disbursement of a Federal Pell Grant. In this regard, two changes are necessary.

Changes: Two conforming changes are necessary. First, we have made a conforming change to 668.22(a)(4)(ii)(B) to increase from 90 to 120 days the amount of time within which an institution must disburse a post-withdrawal disbursement. Second, we have made a conforming change to § 690.61(b) to exempt a student, who now otherwise qualifies for a late disbursement, from the requirement that the student submit a valid SAR/ISIR to the institution while the student is enrolled (the student now qualifies, in part, when the Department processes a SAR/ISIR with a valid EFC). As a result of this conforming change, the deadline date for receiving a valid SAR/ISIR in § 690.61(b)(2) no longer applies to a late disbursement of a Federal Pell Grant. Rather, the deadline date provisions for receiving a valid SAR/ISIR for the purpose of making a late disbursement of a Federal Pell Grant are now included as part of § 668.164(g)(4).

Notices and Authorizations (Section 668.165)

Comments: Many commenters supported the proposed change that would eliminate the requirement that an institution confirm receipt by a student of a notice sent electronically that Title IV loan funds were credited to a student's account.

Discussion: We are appreciative of the commenters' support.

Changes: None.

Timely Return of Funds (Sections 668.171 and 668.173)

Comments: Two commenters opposed the proposal under which an institution would have to return unearned Title IV program funds no later than 30 days after the institution determines that a student withdrew. The commenters stated that the process of determining which students unofficially withdrew, and the subsequent calculation of the amount of unearned funds, often takes longer than the 30-day period allowed for returning the funds.

Discussion: We did not propose any changes to the 30-day timeframe for returning unearned Title IV program funds, as currently provided in § 668.22. The proposed changes focused solely on establishing clear requirements for returning unearned Title IV funds within the existing 30-day timeframe and the consequences if that timeframe is not met. Consequently, we decline to accept the commenters' proposal.

Changes: None.

Comments: A few commenters objected to the 45-day proposal for returning unearned funds by check, arguing it would be unreasonable to hold an institution responsible for the time it takes the Secretary or an FFEL Program lender to cash a check. One of these commenters believed that we should not impose any requirements along these lines, unless there is a deliberate pattern of delaying the return of unearned funds.

Discussion: The Department or an FFEL lender (or its agent) will usually receive a check mailed by an institution within three to five days. Within the next day or two, that check is endorsed by the bank used by the Department or lender, resulting in a typical timeframe of four to seven days. Even if this process takes twice as long, an institution would still satisfy the requirements that unearned funds were returned in a timely manner (an institution must issue the check no later than 30 days after it determines the student withdrew, and the check must have been endorsed by the bank used by the Department or lender no later than 45 days after that date). Moreover, the regulations provide that if an institution can show that something unusual happened that delayed the delivery or receipt of a particular check, we will not hold the institution responsible.

Changes: None.

Comments: One commenter stated that the date on the back of the check is not necessarily the date it was received by an FFEL lender. To clarify the rule, the commenter suggested that we define the clearance date as the date the check clears the lender's or Department's bank account.

Discussion: In proposing this provision, we intended to describe the first date that appears on a cancelled check. In this regard, the Federal Reserve banking regulations under 12 CFR part 229, appendix D, require a depository bank (in this case, the bank used by the Department or FFEL lender) to evidence that it received a check by endorsing that check. Under those regulations, the bank's endorsement must include the routing number, the name of the bank, and the endorsement date. We agree to revise the regulations to clarify that the endorsement date is the date used to determine whether an institution returned unearned funds by check in a timely manner.

Changes: Section 668.173(b)(4)(ii) is revised to provide that if a check is used to return unearned funds, it must be endorsed by the bank used by the Department or FFEL Program lender no later than 45 days after the institution's determination that a student withdrew.

Comments: One commenter suggested another method of returning unearned funds. In cases where an institution needs Title IV program funds to make disbursements to additional eligible students, the institution should be permitted to use unearned funds of withdrawn students to make those disbursements instead of depositing or transferring those funds into the institution's Federal account.

Discussion: An institution that maintains a separate Federal bank account must deposit to that account, or transfer from its operating account to its Federal account, the amount of unearned program funds, as determined under § 668.22. The date the institution makes that deposit or transfer is the date used to determine whether the institution returned the funds within the 30-day timeframe permitted in the regulations. After that, the institution can use the unearned funds to make disbursements to other eligible students, provided those funds were originally received from the Department or from an FFEL lender under a process that allows the institution to use the unearned funds for this purpose.

However, unless the Department requires an institution to use a separate account, the institution may use its operating account for Title IV purposes. In this case, the institution must designate that account as its Federal bank account, as required under § 668.163(a), and have an auditable system of records showing that the funds have been allocated properly and returned in a timely manner. Absent a clear audit trail, the Department can require the institution to begin maintaining Title IV funds in a separate bank account.

Moreover, the institution has a fiduciary responsibility to segregate Federal funds from all other funds and to ensure that Federal funds are used only for the benefit of eligible students. Absent a separate Federal bank account, the institution must ensure that its accounting records clearly reflect that it segregates Federal funds. Under no circumstances may the institution use Federal funds for any other purpose, such as paying operating expenses, collateralizing or otherwise securing a loan, or earning interest or generating revenue in a manner that risks the loss of Federal funds or subjects Federal funds to liens or other attachments (such as would be the case with certain overnight investment arrangements or sweeps). Clearly, carrying out these fiduciary duties limits the ways the institution can otherwise manage cash in its operating account, simply because that account contains Federal funds.

In any event, we consider an institution that maintains (co-mingles) Federal Title IV, HEA program funds and general operating funds in the same bank account to satisfy the requirement under § 668.173(b)(1) that it return unearned funds on a timely basis if (1) the institution maintains subsidiary ledgers of each type of funds co-mingled in that account that clearly show how and when those funds were used and reconciled to its general ledger, (2) the subsidiary ledgers for each Federal program provide a detailed audit trail on a student-by-student basis that reconciles to the amount of Federal Title IV, HEA program funds received and disbursed by the institution, and (3) the institution updates the relevant subsidiary ledger accounts in its general ledger no later than 30 days after it determines that the student withdrew. More specifically, the return of an unearned funds transaction should be recorded as a debit to the Federal program fund subsidiary ledger account and credit to the institution's operating fund subsidiary ledger account. The date of the return is the date this transaction is posted to the institution's general ledger.

Changes: None.

Comments: One commenter felt that the letter of credit trigger should be changed from a finding that an institution has not returned unearned funds for "10 percent or more" of the sampled students, to a finding that an institution has not returned unearned funds for "more than 10 percent" of the sampled students. The commenter noted that a "more than 10 percent"

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trigger would be consistent with the Department's Program Review Guide and the Department's School Site Review Guide for Guaranty Agencies, which use a trigger of "greater than 10 percent" as an indication of a possible significant problem.

Discussion: We agree that the triggers should be consistent.

Changes: Section 668.173(d)(3)(iv) has been changed to require a letter of credit upon a finding that an institution has not returned unearned funds for more than 10 percent of the sampled students.

Federal Perkins Loan—Master Promissory Note (Sections 674.2 and 674.16)

Comments: Many commenters supported the proposal to adopt a Master Promissory Note (MPN) in the Federal Perkins Loan Program. These commenters believe that the MPN will simplify the loan process by eliminating the need for institutions to prepare, and students to sign, a promissory note each award year. They also stated that uniformity across the Title IV loan program regulations, where possible, is beneficial for institutions and borrowers.

One commenter representing several institutions participating in the Perkins Loan Program expressed concern about setting conditions under which an MPN would automatically expire. The commenter stated that there is no apparent reason for establishing arbitrary timeframes by which an MPN will automatically expire since participating institutions do not need to coordinate with a third party. The commenter believed that these timeframes would diminish the streamlining benefits of the MPN in the Perkins Loan Program and create additional burden on institutions because they would be required to ensure that funds are not advanced against an expired MPN.

Discussion: We appreciate the overwhelming support for an MPN in the Perkins Loan Program and agree with those commenters that consistency across the Title IV loan programs is beneficial to both institutions and borrowers. We disagree with the commenter who objected to the time limits on the use of an MPN. Because a Perkins Loan borrower will be signing the MPN only once, we believe it is necessary to have time limits on the use of the MPN to achieve an appropriate balance between consumer protection and simplification of the loan process. Further, we are not aware of any public or private loan program that has open-ended promissory notes. In addition, the expiration date provisions are consistent with the expiration date provisions for FFEL and Direct Loan MPNs, and ensure that borrowers across all three Title IV loan programs are treated consistently. We do not believe that these time limits diminish the benefit of an MPN or cause any additional workload for institutions.

Changes: None.

Federal Perkins Loan—Write-Offs (Sections 674.9 and 674.47)

Comments: Several commenters supported the proposed regulations in § 674.47(g) and (h) to allow institutions to write off accounts of less than $25, or less than $50, if the borrower has been billed for at least two years. These commenters also supported the provisions that would make it clear that a borrower whose balance has been written off is relieved of all repayment obligations. One commenter representing several Perkins Loan institutions recommended modifying the proposed language under § 674.47(h)(1)(ii) that would permit institutions to write off an account with a balance of less than $50 if the borrower has been billed for this balance for at least two years. The commenter recommended that the language be modified so that institutions would not be required, given the minimal amount owed, to keep accounts with balances of less than $50 open for two years before being able to write off these accounts. The commenter pointed out that institutions that outsource the servicing of their loans could pay nearly 50 percent of the value of the loan in servicing costs alone over that two-year period.

Discussion: We appreciate the commenters' support for the increased write-off authority. However, we disagree with the commenter who recommended modifying the proposed language in § 674.47(h) so that institutions would not be required to bill the borrower for two years before writing off accounts with balances of less than $50. We believe that the proposed language ensures program integrity and financing. The proposed language balances the need to maintain program integrity by attempting to make the institution's Perkins revolving fund whole with the need to provide institutions greater flexibility in servicing their Perkins loan portfolio. The failure to collect on these funds could affect the future level of the Perkins Loan Fund and the availability of loans for future borrowers. Institutions that outsource the servicing of their loans could possibly reduce servicing costs associated with these loans by recalling these accounts and performing the required collection action on their own. As stated in the preamble to the August 6, 2002 NPRM, we also believe that the changes approved by the negotiating committee will reduce costs and administrative burden on Perkins Loan institutions.

Changes: None.

Retention of Promissory Notes (Sections 674.19, 682.402, and 682.414)

Comments: Some commenters indicated that it would be simpler to state in § 682.414(a)(5)(ii) that an electronically signed promissory note must be stored "electronically and it must be retrievable in a coherent format" rather than using a cross-reference to 34 CFR 668.24(d)(3)(i) through (iv).

Discussion: We agree that it would be simpler if FFEL Program requirements were stated directly in the FFEL regulations to the extent practicable. Additionally, after reviewing the provisions in § 668.24(d)(3)(i)–(iv), we do not believe that they clearly address the maintenance of electronically signed documents.

Changes: We have revised § 682.414(a)(5)(ii) to replace the cross-reference with the language recommended by the commenters. For consistency, a comparable change also has been made in the Federal Perkins Loan regulations at 34 CFR 674.19(e)(4)(ii).

Initial and Exit Counseling (Sections 674.42, 682.604, and 685.304)

Comments: One commenter representing several institutions participating in the Perkins Loan Program noted that the proposed regulations in § 674.42(b) did not use the term "institution" consistently throughout the section. Instead, both the terms "institution" and "school" were used in the section.

Discussion: We appreciate the commenter pointing out that the term "institution" was not used consistently in § 674.42(b) and agree that the section should be revised accordingly.

Changes: We have revised § 674.42(b) by changing references to "school" to "institution" or "the institution" as appropriate.

Comments: One commenter representing financial aid administrators noted that the proposed language in §§ 682.605(f)(2)(v) and 685.304(a)(3)(iv) did not offer the option of basing the sample monthly repayment amounts that must be provided to FFEL and Direct Loan borrowers as part of initial counseling on the average indebtedness of borrowers with FFEL or Direct Loan

program loans for attendance in the borrower's program of study at the institution. The commenter believed that since this option is available under the corresponding exit counseling provisions it should also be available under the initial counseling provisions. The commenter noted that some institutions that have graduate programs or short-term programs may want to exercise the option of providing sample monthly repayment amounts based on a borrower's program of study and that adding the option would not impose an additional regulatory requirement on institutions because it would not be mandatory.

Discussion: We agree with the commenter that it is important to offer in initial counseling the option of basing sample monthly repayment amounts on the average indebtedness of borrowers with FFEL or Direct Loan program loans for attendance in the borrower's program of study at the institution. The final regulations reflect that this option is available to institutions and to parties that provide initial counseling for institutions.

In reviewing the preamble to the August 6, 2002 NPRM and the proposed regulations, we discovered that our preamble discussion of the new requirement that sample monthly repayment amounts be provided to borrowers as part of initial counseling was inaccurate. Specifically, the preamble to the August 6, 2002 NPRM stated that this was a new exit counseling requirement under the FFEL Program. However, the proposed regulations reflected a new initial counseling requirement under the FFEL Program. We would like to take this opportunity to accurately explain the change.

The proposed regulations did not include any changes to the current exit counseling provisions in the Perkins, FFEL, and Direct Loan programs that require borrowers to be informed of average anticipated monthly repayment amounts. As part of exit counseling, Perkins, FFEL, and Direct Loan borrowers must be informed of the average anticipated monthly repayment amount based either on the borrower's indebtedness or on the average indebtedness of other borrowers who have obtained Perkins, FFEL, or Direct Loan program loans for attendance at the borrower's institution or in the borrower's program of study at the institution.

The proposed regulations did add to the FFEL Program's initial counseling regulations a provision requiring that sample monthly repayment amounts be provided to borrowers. The proposed regulations also modified an already existing repayment-related provision in the Direct Loan Program initial counseling regulations to mirror the new FFEL Program provision. As a result, the new initial counseling regulations require that FFEL and Direct Loan borrowers be informed of sample monthly repayment amounts. In both programs, the sample monthly repayment amounts may be based either on a range of student levels of indebtedness or on the average indebtedness of other borrowers.

Changes: We have changed §§ 682.604(f)(2)(v) and 685.304(a)(3)(iv) to reflect that sample monthly repayment amounts may be based on the average indebtedness of borrowers with FFEL or Direct Loan program loans for attendance in the borrower's program of study at the institution.

Comments: One commenter representing an institution expressed opposition to the provision in the proposed FFEL and Direct Loan program exit counseling regulations that requires a borrower to provide, as part of exit counseling updated personal information, as well as information about the borrower's expected permanent address, the address of the borrower's next of kin, and the name and address of the borrower's expected employer. The commenter stated that the regulations should not place on an institution (or a party that provides exit counseling for an institution) the burden of requiring a borrower to provide this information. Specifically, the commenter noted that some of the information may not be known to a borrower at the time exit counseling occurs and would make it difficult for an institution to enforce this requirement. The commenter requested that we revise the proposed regulations to state that exit counseling must "request" rather than "require" that a borrower provide the specified information.

Discussion: The exit counseling provision to which the commenter referred has been longstanding in the Perkins, FFEL, and Direct Loan programs and is based on section 485(b)(2) of the HEA. We are not aware of any problems in this area and decline to accept the commenter's suggested change to the regulatory language. However, we would like to assure the commenter that neither the statute nor the regulations requires a borrower to provide information that is not known to the borrower at the time exit counseling occurs.

Changes: None.

Comments: None.

Discussion: In reviewing the new requirement that exit counseling provide Perkins, FFEL, and Direct Loan borrowers with information about the availability of the Department's National Student Loan Data System (NSLDS), we realized that there may be questions about the information that is expected to be provided to borrowers. As agreed during negotiated rulemaking, it is important for borrowers to be informed that they may access NSLDS to review information about all of their Title IV loans. To achieve this goal, borrowers must be informed of the existence of NSLDS and of the fact that information about their Title IV loans is stored in NSLDS. We do not want to be prescriptive in this area. However, we believe it would be helpful to provide borrowers with the address for the NSLDS Web site and the toll-free phone number that borrowers may call if they do not have Internet access. The address for the NSLDS Web site is *http://www.nslds.ed.gov/*. The toll-free phone number that borrowers may call is 1–800–4–FED–AID.

Changes: None.

Perkins Loan—Credit Bureau Reporting (Section 674.45)

Comments: One commenter representing several Perkins Loan institutions agreed with the goal of clarifying when a borrower's default status is to be reported to a national credit bureau, but believed that the proposed change does not achieve that result. The commenter recommended modifying the proposed language in § 674.45(a)(1) to clarify that an institution must report the account as in default, "if the institution has not already done so" since such reporting typically occurs in advance of the collection procedures being initiated. The commenter further recommended removing the words "before beginning collection procedures" from § 674.43(f) to provide additional clarification.

Discussion: We do not agree with the commenter's suggested changes to the proposed language because we believe that such a change would give the false impression that reporting default status information to a national credit bureau for the first time is appropriate when done before beginning collection procedures. Institutions are required by the HEA to report to credit bureaus beginning when the loan is disbursed and to report information concerning the repayment and collection of any loan as soon as that loan is more than 30 days past due.

Changes: None.

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Perkins Loan—Litigation (Section 674.46)

Comments: Several commenters supported the proposal to increase from $200 to $500 the amount that the Perkins Loan institution must use to determine if it must litigate. However, a few commenters pointed out that it was not cost effective to litigate accounts of $500 or less and recommended that the minimum dollar amount be increased to $1000. One commenter urged the Secretary to remove the two-year timeframe for reviewing accounts for litigation and eliminate the minimum dollar threshold because the institution is in the best position to make the assessment as to whether it is cost effective to litigate. This commenter pointed out that due to the institutional investment in the Perkins Loan Program and the inherent interest in recovering these funds, the Secretary should take every opportunity to eliminate unnecessary regulations that result in greater expense but do not yield greater debt recovery. The commenter felt that the proposed regulations requiring a two-year review and increasing the minimum threshold amount to $500 was a step in the right direction, but was not enough.

Discussion: We appreciate the support from most of the commenters. However, we do not accept the recommendations for changes made by some of the commenters. The preamble language contained in the NPRM accurately describes the basis on which a consensus was reached on this issue by the negotiators. As indicated in the preamble language, the decision to increase the litigation threshold amount from $200 to $500 was based upon average Perkins loan balance data and our view that the majority of these accounts should remain subject to litigation. In addition, we continue to believe that requiring a review once every two years ensures that these overdue accounts will remain subject to litigation. Failure to litigate on these overdue accounts in a relatively timely manner could result in the reduction of an institution's revolving fund, thereby decreasing the number of loans awarded to needy students.

Changes: None.

Federal Work-Study at For-Profit Institutions (Sections 675.2 and 675.21)

Comments: One commenter requested clarification on one of the revisions made to the definition of "student services." One of the examples added to the definition of student services was assisting instructors in curriculum-related activities. The commenter recommended that the language in the regulation or the preamble clarify that this means that a student may be employed under the FWS Program as a teaching assistant.

Discussion: The amended definition of "student services" added more examples of acceptable jobs in which a proprietary institution may employ students on campus to work for the institution itself. The example of assisting instructors in curriculum-related activities was added to highlight that an FWS student is considered to be providing a student service when he or she is assisting an instructor in the lab or in other work that is related to the instructor's official academic duties at the proprietary institution. This change does allow a student to serve as a teaching assistant. However, an FWS student may not be hired to be an instructor at a proprietary institution, while remaining a FWS student.

Changes: None.

Comments: One commenter requested clarification on whether services provided to the institution's former students meets the definition of student services. The commenter stated that FWS students should be able to be employed in areas such as job placement and default management services in which the services are available to former students as well as to current students.

Discussion: Student services are those services that provide a benefit, either directly or indirectly, to students. Students are persons enrolled or accepted for enrollment at the institution. An FWS student whose job is to provide services only to the institution's former students would not be considered to be providing a student service because the service is not for currently enrolled students. However, if a student's FWS job involved providing services to both current students and to former students, the job would be considered one that provides student services. As an example, an FWS student is employed in the job placement office providing assistance in finding potential employers and helping prepare resumes for current students as well as for alumni of the institution. Because the FWS student is providing these services to current students, the fact that he or she is also helping alumni does not mean that the FWS student is not providing a student service. On the other hand, if an institution has a default management counselor job in which the employee assists only former students of the institution, the requirement that the job be one that provides student services would not be met because the service is not being provided to currently enrolled students.

Changes: None.

FFEL and Direct Loan—Loan Limits (Sections 682.204 and 685.203)

Comments: One commenter stated that he did not understand what types of abuses the new loan limit regulations are intended to address. However, the commenter felt strongly that if a program requires a student to complete two years of prerequisite coursework in order to be admitted, then the student should be considered a third-year student upon admission to that program.

Discussion: As we explained in the preamble to the proposed regulations, the new regulations clarify that an institution may not link separate, stand-alone programs to allow students to qualify for higher annual loan limits than they would otherwise be eligible to receive based on the length of the program. As an example, we noted that an institution may not allow students in one-year program "B" to borrow at the second-year loan level based on the fact that they were required to have previously completed one-year program "A" as a prerequisite for admission to program "B". Since program "B" is only one academic year in length, students enrolled in that program are restricted to first-year annual loan limits.

We remind the commenter that the new regulations do not affect the existing provisions in §§ 682.204 and 685.203, which allow undergraduate borrowers who enroll in programs that require prior completion of an associate or baccalaureate degree to borrow at the higher annual loan limits for third-year undergraduates. In addition, as we noted in the preamble to the proposed regulations, the new regulations do not restrict an institution from determining a student's grade level based on the number of hours earned at another institution that are applicable to the student's program at the new institution.

Changes: None.

Comments: One commenter requested that the loan limit regulations be revised to clearly state that second-year annual loan limits apply when prorating a loan for a student who is enrolled in the final period of study of a program that is more than one academic year in length, but less than two academic years in length. The commenter further recommended that the final regulations clarify the role of the Secretary's "Eligibility and Certification Approval Report" (ECAR) in determining whether a program is longer than one academic year in length for annual loan limit purposes. The commenter noted that there has been some confusion as to whether first- or second-year annual loan limits apply for the final portion of programs that are longer than one academic year, but shorter than two academic years, because the section of the ECAR that identifies the highest educational program offered by an institution categorizes these programs as "one year" programs. The commenter believed that second-year annual loan limits should apply after a student has completed the first academic year of such a program, regardless of how the program is classified on the ECAR.

Discussion: The commenter is correct in understanding that a student who has completed the first academic year of a program that is more than one academic year in length, but less than two academic years in length, may receive a prorated loan at the second-year level for the final portion of the program. As noted below, the current regulations clearly support the understanding of the commenter. The proposed changes do not affect these provisions.

The current annual loan limit regulations in the FFEL and Direct Loan programs provide for second-year annual loan limits in the situation described by the commenter. Sections 682.204(a)(2)(ii), 682.204(d)(2)(ii), 685.203(a)(2)(ii), and 685.203(c)(2)(ii)(B) specify a prorated annual loan limit at the second-year undergraduate level for students who have completed the first year of study of a program and are in a remaining portion of the program that is less than one academic year in length. While the ECAR contains the information that forms the basis of an institution's approval to participate in the Title IV, HEA programs, including the highest level of program offered, annual loan limits are not strictly determined by the ECAR, but rather on the actual length of the academic program.

Changes: None.

FFEL—Unemployment Deferment (Sections 682.210 and by reference 685.204)

Comments: Some commenters recommended that the unemployment deferment regulations be revised in § 682.210(h)(3)(iv) to state that a borrower is not required to "certify" his or her search for full-time employment. The commenters noted that § 682.210(h)(2) uses the term "certify" rather than "describe" and believed these two regulatory provisions should use the same terminology.

Discussion: We agree that a borrower requesting a period of initial deferment is not required to describe his or her search for full-time employment at the time the deferment is granted. After examining the regulations, however, we have determined that the effect of recent regulatory changes and the proposed changes to this section of the regulations has caused the entire first sentence of § 682.210(h)(3)(iv), in which the commenter requested the change, to be duplicative and unnecessary.

Changes: We have deleted the first sentence of proposed § 682.210(h)(3)(iv) from these final regulations.

Comments: One commenter believed that it is no longer appropriate to require a "written certification" in § 682.210(h)(4) because § 682.210(h)(2) permits an alternative equivalent as approved by the Secretary. The commenter recommended that the word "written" be deleted from § 682.210(h)(4).

Discussion: The commenter's rationale for the deletion appears to be based on the presumption that the alternative equivalent form of borrower certification approved by the Secretary would not be in writing, therefore the requirement for a written certification in § 682.210(h)(4) should be modified accordingly. However, the regulatory provision permits both requirements to exist simultaneously independent of each other; a written certification and another that applies to an equivalent form of borrower certification approved by the Secretary. Even if the Secretary were to approve an equivalent that would not need to be in writing, that does not mean that the other requirement for a written certification needs to be undone. We believe it is clearer to amend § 682.210(h)(4) to reflect an alternate approved form of certification.

Changes: We have amended § 682.210(h)(4) to include reference to an approved equivalent.

FFEL and Direct Loan—Consolidation Loan Benefits (Sections 682.402, 685.212, and 685.220)

Comments: One commenter representing a guaranty agency recommended that the new provisions in §§ 682.402, 685.212, and 685.220 related to discharges of consolidation loans apply only to consolidation loans made on or after July 1, 2003. The commenter believed that they should not apply to consolidation loans made before July 1, 2003, since it would be very difficult for program participants to identify previous underlying loans that might qualify for discharge under the new regulations.

The commenter also asked how a lender would file a claim when only one of the borrowers of a joint consolidation loan qualifies for a loan discharge under the new provisions. The commenter suggested that such claims should be handled in a manner similar to the procedures for unpaid refund discharge claims.

Finally, the commenter asked how a guaranty agency would assign a portion of a joint consolidation loan to the Secretary—and who would hold the promissory note—when a preliminary determination has been made that one of the borrowers is totally and permanently disabled. The commenter recommended that the entire joint consolidation loan be assigned to the Secretary, instead of "splitting" the loan and assigning only the potentially dischargeable portion.

Discussion: As we explained in the preamble to the August 6, 2002 NPRM, we suggested the changes related to consolidation loan discharges because we believed that borrowers should be permitted to receive discharges that they would have qualified for if they had not consolidated their loans. We did not intend to provide the new benefits only to borrowers who receive consolidation loans in the future. Moreover, there was never any suggestion made during the negotiated rulemaking that discharge eligibility should be limited based on the date the consolidation loan was made, or the date the discharge condition was met. Accordingly, a consolidation loan borrower may qualify for a discharge under the new provisions regardless of when the consolidation loan was made or when the discharge condition was met, provided that the borrower still has an outstanding balance on the consolidation loan at the time of the borrower's discharge request. However, a borrower who would have qualified for a discharge of a consolidation loan under the new regulations may not apply for a discharge of a loan that has already been paid in full.

We would also like to note that we do not plan to attempt, nor do we expect guaranty agencies to attempt, to identify borrowers who were not eligible to receive loan discharges in the past, but who might qualify under the new regulations. However, we will work with interested parties to determine how to make information about the new consolidation loan benefits available to the public.

With regard to filing claims when only one of the borrowers of a joint consolidation loan qualifies for loan discharge under the new provisions, the procedures would be the same as the procedures for filing claims when a joint consolidation loan is partially discharged under current regulations

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due to school closure, false certification, or unpaid refund.

The assignment of joint consolidation loans to the Secretary when one of the borrowers may qualify for a total and permanent disability discharge involves operational issues that are not regulated. We will work with lenders, servicers and guaranty agencies to address the issues raised by the commenter.

Changes: None.

Comments: None.

Discussion: We have determined that the language in the proposed regulations on loan discharge for consolidation loans did not clearly reflect our intentions. In the case of a discharge of a consolidation loan based on the death of the student for whom the parent had obtained a PLUS loan that was included in the consolidation loan, or the death or total and permanent disability of one of the borrowers of a joint consolidation loan, the borrower or the borrower's estate should receive the same discharge benefit that they would have received if the loan(s) had not been consolidated. Current loan discharge regulations in both the FFEL and Direct Loan programs provide that any payments received after the date of a borrower's (or dependent student's) death or after the date that a borrower became totally and permanently disabled are returned to the borrower or the borrower's estate. In the case of a consolidation loan, loan holders should return payments to the borrower or the borrower's estate only if there is no remaining balance on the consolidation loan after the discharge. Otherwise, payments received after the date the discharge condition was met should be reapplied to reduce the remaining outstanding balance of the consolidation loan. Payments received after the date the discharge condition was met should be reflected in the discharge amount, regardless of how that amount is determined. However, the proposed regulatory language might have suggested that the amount discharged is limited to the applicable portion of the current outstanding balance of the loan, and does not include a refund or reapplication of payments received after the date that the borrower met the eligibility requirements for the discharge.

Changes: We have revised §§ 682.402(a)(2), 685.212(a)(3), 685.220(l)(3)(i), and 685.220(l)(3)(ii) to reflect that the amount discharged is an amount equal to the applicable portion of the outstanding balance of the consolidation loan as of the date that the borrower met the eligibility requirements for the discharge.

Comments: Several commenters recommended that we add language to § 682.402(a)(2) clarifying that in the case of a joint consolidation loan that is partially discharged due to the death or total and permanent disability of one of the borrowers, neither that borrower nor that borrower's estate is any longer jointly and severally liable for repayment of the remaining portion of the consolidation loan. One commenter proposed the addition of similar language, but also recommended that the information in § 682.402(a)(2) related to the discharge amount be removed from that paragraph and placed in § 682.402(h), which covers the payment of discharge claims by a guaranty agency. That commenter recommended that § 682.402(a)(2) be revised to include only general discharge information.

Discussion: In the case of discharges involving the death of one of the borrowers of a joint consolidation loan, the suggested additional language is unnecessary. A borrower's joint and several liability for repayment of the balance of the joint consolidation loan ends upon the borrower's death, and an existing provision in § 682.402(b)(4) prohibits lenders from attempting to collect on a loan from the borrower's estate or from any endorser after making a determination that the borrower has died. The same policy applies in the Direct Loan Program.

The commenters are not correct in assuming that a total and permanent disability discharge of a portion of a joint consolidation loan eliminates joint and several liability for the remaining balance of the loan for either of the borrowers. In the case of a partial discharge of a joint consolidation loan for a reason other than the death of one of the borrowers, both borrowers remain jointly and severally liable for the remaining balance of the loan. For example, under current regulations, a joint consolidation loan may be partially discharged if one of the borrowers meets the eligibility requirements for discharge based on school closure, false certification, or an unpaid refund. However, both borrowers on the joint consolidation loan are still jointly and severally liable for the amount of the loan that remains after the discharge has been granted. Under the new regulations, this will also be true if a joint consolidation loan is partially discharged based on the total and permanent disability of one of the borrowers. That is, each borrower will remain jointly and severally liable for repayment of the remaining portion of the consolidation loan.

With regard to the suggestion that information on the discharge amount be moved from § 682.402(a)(2) to § 682.402(h), we understand the rationale for the commenter's recommendation. However, we believe that this information is presented more clearly and concisely in § 682.402(a)(2).

Changes: None.

Comments: Several commenters suggested that we restore language that was deleted from redesignated § 682.402(a)(3) in the proposed regulations. Specifically, they proposed that the words "or a Consolidation loan was obtained by a married couple," be restored after the word "co-makers". The commenters believed that the deleted language ensures that when only one of the borrowers of a co-made PLUS loan or joint consolidation loan meets the requirements for loan discharge based on death, total and permanent disability, or bankruptcy, the other borrower remains obligated to repay the portion of the loan that is not discharged.

One commenter made a similar recommendation for revising redesignated § 682.402(a)(3) to specifically state that if one of the borrowers of a co-made PLUS loan or one of the borrowers of a joint consolidation loan dies or becomes totally and permanently disabled, the other borrower remains obligated to repay the remaining balance of the loan. The commenter further noted that the proposed regulations did not address bankruptcy situations, and recommended additional language for redesignated § 682.402(a)(3) specifying that if the loan obligation of one of the borrowers of a co-made PLUS loan or joint consolidation loan is stayed by a bankruptcy filing or discharged in bankruptcy, but the other borrower's obligation is not stayed or discharged, the other borrower remains obligated to repay the remaining balance of the loan.

Discussion: The commenters suggest that the new loan discharge provisions apply to both joint consolidation loans and PLUS loans obtained jointly by two parents as co-makers. That is incorrect. The proposed regulations that resulted from the negotiated rulemaking sessions apply only to joint consolidation loans, not to co-made PLUS loans.

Restoring the language that was deleted from redesignated § 682.402(a)(3) would not have the effect of ensuring that the other borrower is responsible for repaying the remaining portion of a partially discharged joint consolidation loan, as suggested by the commenters. In the current regulations, § 682.402(a)(2) (redesignated § 682.402(a)(3)) prohibits partial discharges of both joint consolidation loans and PLUS loans obtained by two parents as co-makers if one of the two

borrowers dies or becomes totally and permanently disabled, has collection of his or her loan obligation stayed by a bankruptcy filing, or has that obligation discharged in bankruptcy, but the other borrower does not qualify for any type of discharge. In such cases, current regulations provide that the other borrower is responsible for repaying the entire loan. The new regulations provide for the partial discharge of a joint consolidation loan—but not a PLUS loan obtained by two parents as co-makers—if one of the borrowers dies or becomes totally and permanently disabled. To allow for this new provision, it was necessary to remove the reference to joint consolidation loans from redesignated § 682.402(a)(3). If the language of the current regulations were restored, there would be a conflict with the new provisions related to discharges of joint consolidation loans.

We do not believe that it is necessary to explicitly state in the regulations that when a joint consolidation loan is partially discharged as a result of the death of one of the borrowers, the other borrower remains responsible for repaying the outstanding balance of the loan. We also do not believe that it is necessary to state in the regulations that, as explained elsewhere in this preamble, each borrower of a joint consolidation loan remains jointly and severally liable for repayment of the remaining balance of the loan if the loan is partially discharged based on the total and permanent disability of one of the borrowers.

The new provisions related to the discharge of joint consolidation loans do not specifically address the discharge of joint consolidation loans due to bankruptcy, since our regulations do not determine whether one or both of the borrowers of a joint consolidation loan is relieved of any repayment obligation as the result of a bankruptcy filing. Such determinations are made by a bankruptcy court in accordance with the Bankruptcy Code.

Changes: None.

Comments: Several commenters recommended that, based on the new regulations which allow partial discharges of joint consolidation loans based on the death or total and permanent disability of one of the borrowers, we make a conforming change to § 682.402(k)(2)(iii) by eliminating language that provides, in the case of claims for reimbursement on joint consolidation loans, for the Secretary to reimburse a guaranty agency only if each of the co-makers of the loan has died or become totally and permanently disabled. Some commenters also suggested additional technical changes to this paragraph to reflect the fact that under the current total and permanent disability discharge regulations, a guaranty agency does not make the determination that a borrower is totally and permanently disabled.

Discussion: We agree that most of the changes suggested by the commenters are appropriate. However, the commenters' proposed conforming change to § 682.402(k)(2)(iii) would retain current language specifying that in the case of a bankruptcy claim, both co-makers of a joint consolidation loan must file a petition for relief in bankruptcy in order for a guaranty agency to be reimbursed. As explained elsewhere in this preamble, the new provisions for the discharge of joint consolidation loan do not address bankruptcy, since our regulations do not determine whether a borrower who has filed for bankruptcy is relieved of the obligation to repay a loan. For the same reason, we do not believe that it is appropriate for § 682.402(k)(2)(iii) to specify that both co-makers of a joint consolidation loan must file for bankruptcy.

Changes: We have revised § 682.402(k)(2)(iii) by removing language that provides for reimbursement by the Secretary only if each of the co-makers of a joint consolidation loan has died or become totally and permanently disabled. We have also removed the reference to determination of a borrower's total and permanent disability by the guaranty agency.

Comments: One commenter objected to the proposed changes related to consolidation loan discharges in §§ 685.212(a)(3) and 685.220(l)(3) on the basis that comparable provisions were not proposed for the FFEL Program. The commenter believed that the proposed changes would give an unfair advantage to Direct Loan borrowers, and felt that the new consolidation loan discharge benefits should be made available to FFEL Program borrowers as well.

Discussion: We disagree with the commenter. The August 6, 2002 NPRM included proposed changes in §§ 682.402(a)(2) and 682.402(b)(6) of the FFEL Program regulations that provide the same benefits as the proposed changes in § 685.212(a)(3) and 685.220(l)(3) of the Direct Loan Program regulations.

Changes: None.

Direct Loans—Expiration of Master Promissory Note (Section 685.102)

Comments: None.

Discussion: In reviewing the proposed regulations, we realized that the Direct Loan MPN expiration date provision based on a borrower providing written notice that no further loans may be made under an MPN was not stated correctly. Instead of referring to a written notice that no further loans may be "made," the proposed regulations referred to a written notice that no further loans may be "disbursed." To be technically correct, the regulations need to refer to a written notice that no further loans may be made.

Changes: We have revised § 685.102(b)(3)(i) in the definition of Master Promissory Note (MPN) to refer to a written notice that no further loans may be made.

GEAR UP Program (Section 694.10)

Comments: One commenter requested clarification on whether GEAR UP funds may be used to replace a student's expected family contribution (EFC).

Discussion: Section 404E(c) of the HEA provides that a GEAR UP scholarship "* * * shall not be considered for purpose of awarding Federal grant assistance under this title, except that in no case shall the total amount of student financial assistance awarded to a student under this title exceed such student's total cost of attendance." Thus, a GEAR UP scholarship can be awarded without considering the student's EFC as long as the total Title IV aid, including the GEAR UP scholarship, does not exceed the student's cost of attendance. Also, when awarding other Title IV grants, a GEAR UP scholarship is not to be considered. The combination of these two provisions means, in effect, that a GEAR UP scholarship may be used to replace EFC for Title IV grants, including FSEOG. However, when awarding FWS, Federal Perkins Loans, and subsidized FFEL or Direct Loans to a student who is receiving a GEAR UP scholarship, GEAR UP funds may not be used to replace the EFC.

Changes: None.

Executive Order 12866

We have reviewed these final regulations in accordance with Executive Order 12866. Under the terms of the order we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the final regulations are those resulting from statutory requirements and those we have determined to be necessary for administering these programs effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of these final regulations, we have determined that the benefits of the regulations justify the costs.

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We have also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

Summary of Potential Costs and Benefits

We summarized the potential costs and benefits of these final regulations in the preamble to the August 6, 2002, NPRM (67 FR 51046) and in the preamble to the August 8, 2002, NPRM (67 FR 51733).

Paperwork Reduction Act of 1995

We received no comments on the Paperwork Reduction Act portion of the rule. The Paperwork Reduction Act of 1995 does not require you to respond to a collection of information unless it displays a valid OMB control number. OMB has approved the information collection request and assigned the following numbers to the collections of information in these final regulations:

Section 600.21	1845–0012
Section 600.31	1845–0012
Section 668.22	1845–0022
Section 668.165	1845–0038
Section 668.173	1845–0022
Section 668.183	1845–0022
Section 668.193	1845–0022
Section 673.5	1845–0019
Section 674.16	1845–0019
Section 674.19	1845–0019
Section 674.33	1845–0019
Section 674.34	1845–0019
Section 674.39	1845–0023
Section 674.42	1845–0023
Section 674.43	1845–0023
Section 674.45	1845–0023
Section 674.47	1845–0023
Section 674.50	1845–0019
Section 682.200	1845–0020
Section 682.209	1845–0020
Section 682.210	1845–0020
Section 682.211	1845–0020
Section 682.402	1845–0020
Section 682.405	1845–0020
Section 682.414	1845–0020
Section 682.604	1845–0020
Section 685.212	1845–0021
Section 685.220	1845–0021
Section 685.304	1845–0021

Assessment of Educational Impact

In the NPRM we requested comments on whether the proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Based on the response to the NPRM and on our review, we have determined that these final regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

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(Catalog of Federal Domestic Assistance Numbers: 84.007 Federal Supplemental Educational Opportunity Grant Program; 84.032 Federal Family Education Loan Program; 84.033 Federal Work-Study Program; 84.038 Federal Perkins Loan Program; 84.063 Federal Pell Grant Program; and 84.268 William D. Ford Federal Direct Loan Program)

List of Subjects

34 CFR Parts 600 and 668

Administrative practice and procedure, Colleges and universities, Consumer protection, Education, Grant programs-education, Loan programs—education, Reporting and recordkeeping requirements, Student aid, Vocational education.

34 CFR Parts 673 and 675

Administrative practice and procedure, Colleges and universities, Consumer protection, Education, Employment, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Student aid, Vocational education.

34 CFR Parts 674, 682, and 685

Administrative Practice and Procedure, Colleges and universities, Education, Loans program—education, Reporting and recordkeeping requirements, Student aid, Vocational education.

34 CFR Part 690

Grant programs—education, Reporting and recordkeeping requirements, Student aid.

34 CFR Part 694

Colleges and universities, Elementary and secondary education, Grant programs—education, Reporting and recordkeeping requirements, Student aid.

Dated: October 23, 2002.

Rod Paige,

Secretary of Education.

For the reasons discussed in the preamble, the Secretary amends parts 600, 668, 673, 674, 675, 682, 685, 690, and 694 of title 34 of the Code of Federal Regulations as follows:

PART 600—INSTITUTIONAL ELIGIBILITY UNDER THE HIGHER EDUCATION ACT OF 1965, AS AMENDED

1. The authority citation for part 600 is revised to read as follows:

Authority: 20 U.S.C. 1001, 1002, 1003, 1088, 1091, 1094, 1099b, and 1099c, unless otherwise noted.

§ 600.8 [Amended]

2. Section 600.8 is amended by adding "proprietary institution of higher education or a postsecondary vocational" after "eligible".

3. Section 600.21 is amended:

A. By revising paragraph (f);

B. By revising the Office of Management and Budget control number.

The revisions read as follows:

§ 600.21 Updating application information.

* * * * *

(f) *Definition.* A family member includes a person's—

(1) Parent or stepparent, sibling or step-sibling, spouse, child or stepchild, or grandchild or step-grandchild;

(2) Spouse's parent or stepparent, sibling or step-sibling, child or stepchild, or grandchild or step-grandchild;

(3) Child's spouse; and

(4) Sibling's spouse.

(Approved by the Office of Management and Budget under control number 1845–0012)

4. Section 600.31 is amended:

A. By revising paragraph (e);

B. By revising the Office of Management and Budget control number.

The revisions read as follows:

§ 600.31 Change in ownership resulting in a change in control for private nonprofit, private for-profit and public institutions.

* * * * *

(e) *Excluded transactions.* A change in ownership and control reported under § 600.21 and otherwise subject to this section does not include a transfer of ownership and control of all or part of an owner's equity or partnership interest in an institution, the institution's parent corporation, or other legal entity that has signed the institution's Program Participation Agreement—

(1) From an owner to a "family member" of that owner as defined in § 600.21(f); or

(2) Upon the retirement or death of the owner, to a person with an ownership interest in the institution who has been involved in management of the institution for at least two years preceding the transfer and who has established and retained the ownership interest for at least two years prior to the transfer.

(Approved by the Office of Management and Budget under control number 1845–0012)

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

5. The authority citation for part 668 continues to read as follows:

Authority: 20 U.S.C. 1001, 1002, 1003, 1085, 1091, 1091b, 1092, 1094, 1099c, and 1099c–1, unless otherwise noted.

§ 668.2 [Amended]

6. Section 668.2(b) is amended by removing the definition of "Academic year".

7. Section 668.3 is revised to read as follows:

§ 668.3 Academic year.

(a) *General.* Except as provided in paragraph (c) of this section, an academic year is a period that begins on the first day of classes and ends on the last day of classes or examinations during which—

(1) An institution provides a minimum of 30 weeks of instructional time; and

(2) For an undergraduate educational program, a full-time student is expected to complete at least—

(i) Twenty-four semester or trimester credit hours or 36 quarter credit hours for a program measured in credit hours; or

(ii) 900 clock hours for a program measured in clock hours.

(b) *Definitions.* For purposes of paragraph (a) of this section—

(1) A week is a consecutive seven-day period;

(2) A week of instructional time is any week in which at least one day of regularly scheduled instruction or examinations occurs or, after the last scheduled day of classes for a term or payment period, at least one day of study for final examinations occurs; and

(3) Instructional time does not include any vacation periods, homework, or periods of orientation or counseling.

(c) *Reduction in the length of an academic year.*

(1) Upon the written request of an institution, the Secretary may approve, for good cause, an academic year of 26 through 29 weeks of instructional time for educational programs offered by the institution if the institution offers a two-year program leading to an associate degree or a four-year program leading to a baccalaureate degree.

(2) An institution's written request must—

(i) Identify each educational program for which the institution requests a reduction, and the requested number of weeks of instructional time for that program;

(ii) Demonstrate good cause for the requested reductions; and

(iii) Include any other information that the Secretary may require to determine whether to grant the request.

(3)(i) The Secretary approves the request of an eligible institution for a reduction in the length of its academic year if the institution has demonstrated good cause for granting the request and the institution's accrediting agency and State licensing agency have approved the request.

(ii) If the Secretary approves the request, the approval terminates when the institution's program participation agreement expires. The institution may request an extension of that approval as part of the recertification process.

(Approved by the Office of Management and Budget under control number 1845–0022)

(Authority: 20 U.S.C. 1088)

8. Section 668.4 is revised to read as follows:

§ 668.4 Payment period.

(a) *Payment periods for an eligible program that measures progress in credit hours and has academic terms.* For a student enrolled in an eligible program that measures progress in credit hours and has academic terms, the payment period is the academic term.

(b) *Payment periods for an eligible program that measures progress in credit hours and does not have academic terms.* (1) For a student enrolled in an eligible program that is one academic year or less in length—

(i) The first payment period is the period of time in which the student completes half the number of credit hours in the program and half the number of weeks in the program; and

(ii) The second payment period is the period of time in which the student completes the program.

(2) For a student enrolled in an eligible program that is more than one academic year in length—

(i) For the first academic year and any subsequent full academic year—

(A) The first payment period is the period of time in which the student completes half the number of credit hours in the academic year and half the number of weeks in the academic year; and

(B) The second payment period is the period of time in which the student completes the academic year.

(ii) For any remaining portion of an eligible program that is more than one-half an academic year but less than a full academic year in length—

(A) The first payment period is the period of time in which the student completes half the number of credit hours in the remaining portion of the program and half the number of weeks remaining in the program; and

(B) The second payment period is the period of time in which the student completes the remainder of the program.

(iii) For any remaining portion of an eligible program that is not more than half an academic year, the payment period is the remainder of the program.

(3) For purposes of paragraphs (b)(1) and (b)(2) of this section, if an institution is unable to determine when a student has completed half of the credit hours in a program, academic year, or remainder of a program; the student is considered to begin the second payment period of the program, academic year, or remainder of a program at the later of—

(i) The date, as determined by the institution, on which the student has completed half of the academic coursework in the program, academic year, or remainder of the program; or

(ii) The calendar midpoint between the first and last scheduled days of class of the program, academic year, or remainder of the program.

(c) *Payment periods for an eligible program that measures progress in clock hours.* (1) For a student enrolled in an eligible program that is one academic year or less in length—

(i) The first payment period is the period of time in which the student completes half the number of clock hours in the program; and

(ii) The second payment period is the period of time in which the student completes the program.

(2) For a student enrolled in an eligible program that is more than one academic year in length—

(i) For the first academic year and any subsequent full academic year—

(A) The first payment period is the period of time in which the student completes half the number of clock hours in the academic year; and

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(B) The second payment period is the period of time in which the student completes the academic year.

(ii) For any remaining portion of an eligible program that is more than one-half an academic year but less than a full academic year in length—

(A) The first payment period is the period of time in which the student completes half the number of clock hours in the remaining portion of the program; and

(B) The second payment period is the period of time in which the student completes the remainder of the program.

(iii) For any remaining portion of an eligible program that is not more than one half of an academic year, the payment period is the remainder of the program.

(d) *Number of payment periods.* Notwithstanding paragraphs (b) and (c) of this section, an institution may choose to have more than two payment periods. If an institution so chooses, the regulations in paragraphs (b) and (c) of this section are modified to reflect the increased number of payment periods. For example, if an institution chooses to have three payment periods in an academic year in a program that measures progress in credit hours but does not have academic terms, each payment period must correspond to one-third of the academic year measured in both credit hours and weeks of instruction.

(e) *Re-entry within 180 days.* If a student withdraws from a program described in paragraph (b) or (c) of this section during a payment period and then reenters the same program within 180 days, the student remains in that same payment period when he or she returns and, subject to conditions established by the Secretary or by the FFEL lender or guaranty agency, is eligible to receive any title IV, HEA program funds for which he or she was eligible prior to withdrawal, including funds that were returned by the institution or student under the provisions of § 668.22.

(f) *Re-entry after 180 days or transfer.* (1) Subject to the conditions of paragraph (f)(2) of this section, an institution calculates new payment periods for the remainder of a student's program based on paragraphs (b) through (d) of this section, for a student who withdraws from a program described in paragraph (b) or (c) of this section, and—

(i) Reenters that program after 180 days,

(ii) Transfers into another program at the same institution within any time period, or

(iii) Transfers into a program at another institution within any time period.

(2) For a student described in paragraph (f)(1) of this section—

(i) For the purpose of calculating payment periods only, the length of the program is the number of credit hours and the number of weeks, or the number of clock hours, that the student has remaining in the program he or she enters or reenters; and

(ii) If the remaining hours, and weeks if applicable, constitute one-half of an academic year or less, the remaining hours constitute one payment period.

(Authority: 20 U.S.C. 1070 *et seq.*)

9. Section 668.8 is amended by:

A. Revising paragraph (b)(3).

B. Removing paragraph (b)(4).

The revision reads as follows:

§ 668.8 Eligible program.

* * * * *

(b) * * *

(3)(i) The Secretary considers that an institution provides one week of instructional time in an academic program during any week the institution provides at least one day of regularly scheduled instruction or examinations, or, after the last scheduled day of classes for a term or a payment period, at least one day of study for final examinations.

(ii) Instructional time does not include any vacation periods, homework, or periods of orientation or counseling.

* * * * *

10. Section 668.14(b)(22) is revised to read as follows:

§ 668.14 Program participation agreement.

* * * * *

(b) * * *

(22)(i) It will not provide any commission, bonus, or other incentive payment based directly or indirectly upon success in securing enrollments or financial aid to any person or entity engaged in any student recruiting or admission activities or in making decisions regarding the awarding of title IV, HEA program funds, except that this limitation does not apply to the recruitment of foreign students residing in foreign countries who are not eligible to receive title IV, HEA program funds.

(ii) Activities and arrangements that an institution may carry out without violating the provisions of paragraph (b)(22)(i) of this section include, but are not limited to:

(A) The payment of fixed compensation, such as a fixed annual salary or a fixed hourly wage, as long as that compensation is not adjusted up or down more than twice during any twelve month period, and any adjustment is not based solely on the number of students recruited, admitted, enrolled, or awarded financial aid. For this purpose, an increase in fixed compensation resulting from a cost of living increase that is paid to all or substantially all full-time employees is not considered an adjustment.

(B) Compensation to recruiters based upon their recruitment of students who enroll only in programs that are not eligible for title IV, HEA program funds.

(C) Compensation to recruiters who arrange contracts between the institution and an employer under which the employer's employees enroll in the institution, and the employer pays, directly or by reimbursement, 50 percent or more of the tuition and fees charged to its employees; provided that the compensation is not based upon the number of employees who enroll in the institution, or the revenue they generate, and the recruiters have no contact with the employees.

(D) Compensation paid as part of a profit-sharing or bonus plan, as long as those payments are substantially the same amount or the same percentage of salary or wages, and made to all or substantially all of the institution's full-time professional and administrative staff. Such payments can be limited to all, or substantially all of the full-time employees at one or more organizational level at the institution, except that an organizational level may not consist predominantly of recruiters, admissions staff, or financial aid staff.

(E) Compensation that is based upon students successfully completing their educational programs, or one academic year of their educational programs, whichever is shorter. For this purpose, successful completion of an academic year means that the student has earned at least 24 semester or trimester credit hours or 36 quarter credit hours, or has successfully completed at least 900 clock hours of instruction at the institution.

(F) Compensation paid to employees who perform clerical "pre-enrollment" activities, such as answering telephone calls, referring inquiries, or distributing institutional materials.

(G) Compensation to managerial or supervisory employees who do not directly manage or supervise employees who are directly involved in recruiting or admissions activities, or the awarding of title IV, HEA program funds.

(H) The awarding of token gifts to the institution's students or alumni, provided that the gifts are not in the form of money, no more than one gift is provided annually to an individual, and the cost of the gift is not more than $100.

(I) Profit distributions proportionately based upon an individual's ownership interest in the institution.

(J) Compensation paid for Internet-based recruitment and admission activities that provide information about the institution to prospective students, refer prospective students to the institution, or permit prospective students to apply for admission on-line.

(K) Payments to third parties, including tuition sharing arrangements, that deliver various services to the institution, provided that none of the services involve recruiting or admission activities, or the awarding of title IV, HEA program funds.

(L) Payments to third parties, including tuition sharing arrangements, that deliver various services to the institution, even if one of the services involves recruiting or admission activities or the awarding of title IV, HEA program funds, provided that the individuals performing the recruitment or admission activities, or the awarding of title IV, HEA program funds, are not compensated in a manner that would be impermissible under paragraph (b)(22) of this section.

* * * * *

11. Section 668.22 is amended by:

A. In paragraph (a)(3), removing "§ 668.164(g)(2)" and adding, in its place, "§ 668.164(g)".

B. In paragraph (a)(4)(ii)(B), removing "90" and adding, in its place, "120".

C. Revising paragraph (b)(3)(i).

D. Revising paragraph (d)(1)(vi).

E. Removing paragraph (d)(1)(vii).

F. Redesignating paragraphs (d)(1)(viii) and (d)(1)(ix) as paragraphs (d)(1)(vii) and (d)(1)(viii), respectively, and revising the newly designated paragraph (d)(1)(vii).

G. Removing paragraph (d)(2).

H. Redesignating paragraphs (d)(3) and (d)(4) as paragraphs (d)(2) and (d)(3), respectively.

I. Removing "on" and adding, in its place, "at" in newly redesignated paragraph (d)(2).

J. Removing "are" and adding, in its place, "is" in newly redesignated paragraph (d)(3)(i).

K. Adding ", that includes the reason for the request," after "request" in the first sentence in newly redesignated paragraph (d)(3)(iii)(B).

L. Adding "The timeframe for returning funds is further described in § 668.173(b)." at the end of paragraph (j)(1).

The revisions and additions read as follows:

§ 668.22 Treatment of title IV funds when a student withdraws.

* * * * *

(b) * * *

(3)(i) An institution is required to take attendance if an outside entity (such as the institution's accrediting agency or a State agency) has a requirement, as determined by the entity, that the institution take attendance.

* * * * *

(d) * * *

(1) * * *

(vi) The number of days in the approved leave of absence, when added to the number of days in all other approved leaves of absence, does not exceed 180 days in any 12-month period;

(vii) Except for a clock hour or nonterm credit hour program, upon the student's return from the leave of absence, the student is permitted to complete the coursework he or she began prior to the leave of absence; and

* * * * *

§ 668.32 [Amended]

12. Section 668.32(e)(2) is amended by removing "within 12 months before the date the student initially receives title IV, HEA program assistance,".

13. Section 668.35 is amended:

A. In paragraph (a)(2), by adding new introductory text.

B. By redesignating paragraphs (b), (c), (d), (e), and (f) as paragraphs (d), (e), (f), (g), and (h) respectively.

C. By adding new paragraphs (b) and (c).

D. By revising newly redesignated paragraph (e).

The revision and additions read as follows:

§ 668.35 Student debts under the HEA and to the U.S.

(a) * * *

(2) Except as limited by paragraph (c) of this section—

* * * * *

(b) A student who is subject to a judgment for failure to repay a loan made under a title IV, HEA loan program may nevertheless be eligible to receive title IV, HEA program assistance if the student—

(1) Repays the debt in full; or

(2) Except as limited by paragraph (c) of this section—

(i) Makes repayment arrangements that are satisfactory to the holder of the debt; and

(ii) Makes at least six consecutive, voluntary monthly payments under those arrangements. Voluntary payments are those payments made directly by the borrower, and do not include payments obtained by Federal offset, garnishment, or income or asset execution.

(c) A student who reestablishes eligibility under either paragraph (a)(2) of this section or paragraph (b)(2) of this section may not reestablish eligibility again under either of those paragraphs.

* * * * *

(e) A student who receives an overpayment under the Federal Perkins Loan Program, or under a title IV, HEA grant program may nevertheless be eligible to receive title IV, HEA program assistance if—

(1) The student pays the overpayment in full;

(2) The student makes arrangements satisfactory to the holder of the overpayment debt to pay the overpayment; or

(3) The overpayment amount is less than $25 and is neither a remaining balance nor a result of the application of the overaward threshold in 34 CFR 673.5(d).

* * * * *

§ 668.151 [Amended]

14. Section 668.151(a)(2) is amended by adding the words "it received from an approved test publisher or assessment center" after "an approved test".

15. Section 668.164(g) is revised to read as follows:

§ 668.164 Disbursing funds.

* * * * *

(g) *Late disbursements.* (1) *Ineligible student.* For purposes of this paragraph, an otherwise eligible student becomes ineligible to receive title IV, HEA program funds on the date that—

(i) For a loan under the FFEL and Direct Loan programs, the student is no longer enrolled at the institution as at least a half-time student for the period of enrollment for which the loan was intended; or

(ii) For an award under the Federal Pell Grant, FSEOG, and Federal Perkins Loan programs, the student is no longer enrolled at the institution for the award year.

(2) *Conditions for a late disbursement.* Except as limited under paragraph (g)(4) of this section, a student who becomes ineligible (or the student's parent in the case of a PLUS loan) qualifies for a late disbursement if, before the date the student became ineligible—

(i) Except in the case of a PLUS loan, the Secretary processed a SAR or ISIR with an official expected family contribution; and

(ii) (A) For a loan under the FFEL or Direct Loan programs, the institution certified or originated the loan; or

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(B) For an award under the Federal Perkins Loan or FSEOG programs, the institution made that award to the student.

(3) *Making a late disbursement.* Provided that the conditions described in paragraph (g)(2) of this section are satisfied—

(i) If the student withdrew from the institution during a payment period or period of enrollment, the institution must make any post-withdrawal disbursement required under § 668.22(a)(3) in accordance with the provisions of § 668.22(a)(4);

(ii) If the student successfully completed the payment period or period of enrollment, the institution must provide the student (or parent) the opportunity to receive the amount of title IV, HEA program funds that the student (or parent) was eligible to receive while the student was enrolled at the institution. For a late disbursement in this circumstance, the institution may credit the student's account to pay for current and allowable charges as described in paragraph (d) of this section, but must pay or offer any remaining amount to the student or parent; or

(iii) If the student did not withdraw but ceased to be enrolled as at least a half-time student, the institution may make the late disbursement of a loan under the FFEL or Direct Loan programs to pay for educational costs that the institution determines the student incurred for the period in which the student was eligible.

(4) *Limitations.* (i) Generally, an institution may not make a late disbursement later than 120 days after the date of the institution's determination that the student withdrew, as provided under § 668.22, or, for a student who did not withdraw, 120 days after the date the student otherwise became ineligible. On an exception basis, and with the approval of the Secretary, an institution may make a late disbursement after the applicable 120-day period, if the reason the late disbursement was not made within the 120-day period was not the fault of the student.

(ii) An institution may not make a second or subsequent late disbursement of a loan under the FFEL or Direct Loan programs unless the student successfully completed the period of enrollment for which the loan was intended.

(iii) An institution may not make a late disbursement of a loan under the FFEL or Direct Loan programs if the student was a first-year, first-time borrower unless the student completed the first 30 days of his or her program of study. This limitation does not apply if the institution is exempt from the 30-day delayed disbursement requirements under § 682.604(c)(5)(i), (ii), or (iii) or § 685.303(b)(4)(i)(A), (B), or (C) of this chapter.

(iv) An institution may not make a late disbursement of a Federal Pell Grant unless it received a valid SAR or a valid ISIR for the student by the deadline date established by the Secretary in a notice published in the **Federal Register**.

16. Section 668.165 is amended:

A. By revising paragraph (a)(3);

B. By revising the Office of Management and Budget control number.

The revisions read as follows:

§ 668.165 Notices and authorizations.

(a) * * *

(3) The institution must send the notice described in paragraph (a)(2) of this section in writing no earlier than 30 days before, and no later than 30 days after, crediting the student's account at the institution.

* * * * *

(Approved by the Office of Management and Budget under control number 1845–0038)

§ 668.171 [Amended]

17. Section 668.171(b) is amended by:

A. Removing "refunds" and adding, in its place, "returns of unearned title IV HEA program funds" in paragraph (b)(2).

B. Removing "and the payment of post-withdrawal disbursements under § 668.22" in paragraph (b)(4)(i).

18. Section 668.173 is amended by:

A. Revising paragraphs (a) through (c).

B. Redesignating paragraph (d) as paragraph (f).

C. Adding new paragraphs (d) and (e).

D. Adding an Office of Management and Budget control number.

The revisions and additions read as follows:

§ 668.173 Refund reserve standards.

(a) *General.* The Secretary considers that an institution has sufficient cash reserves, as required under § 668.171(b)(2), if the institution—

(1) Satisfies the requirements for a public institution under § 668.171(c)(1);

(2) Is located in a State that has a tuition recovery fund approved by the Secretary and the institution contributes to that fund; or

(3) Returns, in a timely manner as described in paragraph (b) of this section, unearned title IV, HEA program funds that it is responsible for returning under the provisions of § 668.22 for a student that withdrew from the institution.

(b) *Timely return of title IV, HEA program funds.* In accordance with procedures established by the Secretary or FFEL Program lender, an institution returns unearned title IV, HEA funds timely if—

(1) The institution deposits or transfers the funds into the bank account it maintains under § 668.163 no later than 30 days after the date it determines that the student withdrew;

(2) The institution initiates an electronic funds transfer (EFT) no later than 30 days after the date it determines that the student withdrew;

(3) The institution initiates an electronic transaction, no later than 30 days after the date it determines that the student withdrew, that informs an FFEL lender to adjust the borrower's loan account for the amount returned; or

(4) The institution issues a check no later than 30 days after the date it determines that the student withdrew. However, the Secretary considers that the institution did not satisfy this requirement if—

(i) The institution's records show that the check was issued more than 30 days after the date the institution determined that the student withdrew; or

(ii) The date on the cancelled check shows that the bank used by the Secretary or FFEL Program lender endorsed that check more than 45 days after the date the institution determined that the student withdrew.

(c) *Compliance thresholds.* (1) An institution does not comply with the reserve standard under § 668.173(a)(3) if, in a compliance audit conducted under § 668.23, an audit conducted by the Office of the Inspector General, or a program review conducted by the Department or guaranty agency, the auditor or reviewer finds—

(i) In the sample of student records audited or reviewed that the institution did not return unearned title IV, HEA program funds within the timeframes described in paragraph (b) of this section for 5% or more of the students in the sample. (For purposes of determining this percentage, the sample includes only students for whom the institution was required to return unearned funds during its most recently completed fiscal year.); or

(ii) A material weakness or reportable condition in the institution's report on internal controls relating to the return of unearned title IV, HEA program funds.

(2) The Secretary does not consider an institution to be out of compliance with the reserve standard under § 668.173(a)(3) if the institution is cited in any audit or review report because it did not return unearned funds in a timely manner for one or two students, or for less than 5% of the students in the sample referred to in paragraph (c)(1)(i) of this section.

(d) *Letter of credit.* (1) Except as provided under paragraph (e)(1) of this section, an institution that can satisfy the reserve standard only under paragraph (a)(3) of this section, must submit an irrevocable letter of credit acceptable and payable to the Secretary if a finding in an audit or review shows that the institution exceeded the compliance thresholds in paragraph (c) of this section for either of its two most recently completed fiscal years.

(2) The amount of the letter of credit required under paragraph (d)(1) of this section is 25 percent of the total amount of unearned title IV, HEA program funds that the institution was required to return under § 668.22 during the institution's most recently completed fiscal year.

(3) An institution that is subject to paragraph (d)(1) of this section must submit to the Secretary a letter of credit no later than 30 days after the earlier of the date that—

(i) The institution is required to submit its compliance audit;

(ii) The Office of the Inspector General issues a final audit report;

(iii) The designated department official issues a final program review determination;

(iv) The Department issues a preliminary program review report or draft audit report, or a guaranty agency issues a preliminary report showing that the institution did not return unearned funds for more than 10% of the sampled students; or

(v) The Secretary sends a written notice to the institution requesting the letter of credit that explains why the institution has failed to return unearned funds in a timely manner.

(e) *Exceptions.* With regard to the letter of credit described in paragraph (d) of this section—

(1) An institution does not have to submit the letter of credit if the amount calculated under paragraph (d)(2) of this section is less than $5,000 and the institution can demonstrate that it has cash reserves of at least $5,000 available at all times.

(2) An institution may delay submitting the letter of credit and request the Secretary to reconsider a finding made in its most recent audit or review report that it failed to return unearned title IV, HEA program funds in a timely manner if—

(i)(A) The institution submits documents showing that the unearned title IV, HEA program funds were not returned in a timely manner solely because of exceptional circumstances beyond the institution's control and that the institution would not have exceeded the compliance thresholds under paragraph (c)(1) of this section had it not been for these exceptional circumstances; or

(B) The institution submits documents showing that it did not fail to make timely refunds as provided under paragraphs (b) and (c) of this section; and

(ii) The institution's request, along with the documents described in paragraph (e)(2)(i) of this section, is submitted to the Secretary no later than the date it would otherwise be required to submit a letter of credit under paragraph (d)(3).

(3) If the Secretary denies the institution's request under paragraph (e)(2) of this section, the Secretary notifies the institution of the date it must submit the letter of credit.

* * * * *

(Approved by the Office of Management and Budget under control number 1845–0022)

19. Section 668.174(c)(4) is revised to read as follows:

§ 668.174 Past performance.

* * * * *

(c) * * *

(4) "Family member" is defined in § 600.21(f) of this chapter.

§ 668.183 [Amended]

20. Section 668.183(c)(1) is amended as follows:

A. In paragraph (c)(1)(ii), by adding "or" after the semi-colon.

B. By removing paragraph (c)(1)(iii).

C. By redesignating paragraph (c)(1)(iv) as paragraph (c)(1)(iii).

§ 668.193 [Amended]

21. Section 668.193 is amended:

A. In paragraph (d)(1), by removing the last sentence.

B. By removing paragraph (f)(3).

PART 673—GENERAL PROVISIONS FOR THE FEDERAL PERKINS LOAN PROGRAM, FEDERAL WORK-STUDY PROGRAM, AND FEDERAL SUPPLEMENTAL EDUCATIONAL OPPORTUNITY GRANT PROGRAM

22. The authority citation for part 673 continues to read as follows:

Authority: 20 U.S.C. 421–429, 1070b–1070b–3, and 1087aa–1087ii; 42 U.S.C. 2751–2756b, unless otherwise noted.

23. Section 673.5(f) is revised to read as follows:

§ 673.5 Overaward.

* * * * *

(f) *Liability for and recovery of Federal Perkins loans and FSEOG overpayments.* (1) Except as provided in paragraphs (f)(2) and (f)(3) of this section, a student is liable for any Federal Perkins loan or FSEOG overpayment made to him or her. An FSEOG overpayment for purposes of this paragraph does not include the non-Federal share of an FSEOG award if an institution meets its FSEOG matching share by the individual recipient method or the aggregate method.

(2) The institution is liable for a Federal Perkins loan or FSEOG overpayment if the overpayment occurred because the institution failed to follow the procedures in this part or 34 CFR parts 668, 674, or 676. The institution shall restore an amount equal to the overpayment and any administrative cost allowance claimed on that amount to its loan fund for a Federal Perkins loan overpayment or to its FSEOG account for an FSEOG overpayment.

(3) A student is not liable for, and the institution is not required to attempt recovery of, a Federal Perkins loan or FSEOG overpayment, nor is the institution required to refer an FSEOG overpayment to the Secretary, if the overpayment—

(i) Is less than $25; and

(ii) Is neither a remaining balance nor a result of the application of the overaward threshold in paragraph (d) of this section.

(4)(i) Except as provided in paragraph (f)(3) of this section, if an institution makes a Federal Perkins loan or FSEOG overpayment for which it is not liable, it shall promptly send a written notice to the student requesting repayment of the overpayment amount. The notice must state that failure to make that repayment, or to make arrangements satisfactory to the holder of the overpayment debt to pay the overpayment, makes the student ineligible for further title IV, HEA program funds until final resolution of the overpayment.

(ii) If a student objects to the institution's Federal Perkins loan or FSEOG overpayment determination on the grounds that it is erroneous, the institution shall consider any information provided by the student and determine whether the objection is warranted.

(5) Except as provided in paragraph (f)(3) of this section, if a student fails to repay an FSEOG overpayment or make arrangements satisfactory to the holder of the overpayment debt to repay the FSEOG overpayment after the institution has taken the action required by paragraph (f)(4) of this section, the institution must refer the FSEOG overpayment to the Secretary for

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collection purposes in accordance with procedures required by the Secretary. After referring the FSEOG overpayment to the Secretary under this section, the institution need make no further effort to recover the overpayment.

PART 674—FEDERAL PERKINS LOAN PROGRAM

24. The authority citation for part 674 continues to read as follows:

Authority: 20 U.S.C. 1087aa–1087hh and 20 U.S.C. 421–429, unless otherwise noted.

25. Section 674.2(b) is amended:

A. By revising the definition of "Making of a loan".

B. By adding, in alphabetical order, a new definition of "Master Promissory Note (MPN)".

The revision and addition read as follows:

§ 674.2 Definitions.

* * * * *

(b) * * *

Making of a loan: When the institution makes the first disbursement of a loan to a student for an award year.

Master Promissory Note (MPN): A promissory note under which the borrower may receive loans for a single award year or multiple award years.

* * * * *

26. Section 674.9 is amended:

A. By removing paragraph (g).

B. By redesignating paragraphs (h), (i), (j), (k) and (l) as paragraphs (g), (h), (i), (j) and (k), respectively.

C. In newly redesignated paragraph (g)(3), by removing "(h)(1) and (h)(2)" and adding, in its place, "(g)(1) and (g)(2)"; and by removing the period at the end of the last sentence and adding, in its place, a "; and".

D. By revising newly redesignated paragraph (j).

The revision reads as follows:

§ 674.9 Student eligibility.

* * * * *

(j) In the case of a borrower who is in default on a Federal Perkins Loan, NDSL or Defense loan, satisfies one of the conditions contained in § 674.5(c)(3)(i) or (ii) except that—

(1) For purposes of this section, voluntary payments made by the borrower under paragraph (i) of this section are those payments made directly by the borrower; and

(2) Voluntary payments do not include payments obtained by Federal offset, garnishment, or income or asset execution.

* * * * *

27. Section 674.16 is amended:

A. By revising paragraph (d)(2).

B. By adding a new paragraph (d)(3).

The revision and addition read as follows:

§ 674.16 Making and disbursing loans.

* * * * *

(d) * * *

(2) The institution shall ensure that each loan is supported by a legally enforceable promissory note as proof of the borrower's indebtedness.

(3) If the institution uses a Master Promissory Note (MPN), the institution's ability to make additional loans based on that MPN will automatically expire upon the earliest of—

(i) The date the institution receives written notification from the borrower requesting that the MPN no longer be used as the basis for additional loans;

(ii) Twelve months after the date the borrower signed the MPN if no disbursements are made by the institution under that MPN; or

(iii) Ten years from the date the borrower signed the MPN or the date the institution receives the MPN, except that a remaining portion of a loan may be disbursed after this date.

* * * * *

§ 674.17 [Amended]

28. Section 674.17 is amended:

A. In paragraph (a), by removing in the introductory text "one or more of".

B. By removing paragraph (a)(2).

C. By redesignating paragraph (a)(3) as paragraph (a)(2).

D. In newly redesignated paragraph (a)(2), by removing "transfer" and adding, in its place, "assignment"; and by removing "Department of Education" and adding, in its place, "United States".

E. In paragraph (b), by removing "transfers" and adding, in its place, "assigns".

F. By removing paragraphs (c), (d), and (e).

29. Section 674.19(e)(4) is revised to read as follows:

§ 674.19 Fiscal procedures and records.

* * * * *

(e) * * *

(4) *Manner of retention of promissory notes and repayment schedules.* An institution shall keep the original promissory notes and repayment schedules until the loans are satisfied. If required to release original documents in order to enforce the loan, the institution must retain certified true copies of those documents.

(i) An institution shall keep the original paper promissory note or original paper Master Promissory Note (MPN) and repayment schedules in a locked, fireproof container.

(ii) If a promissory note was signed electronically, the institution must store it electronically and the promissory note must be retrievable in a coherent format.

(iii) After the loan obligation is satisfied, the institution shall return the original or a true and exact copy of the note marked "paid in full" to the borrower, or otherwise notify the borrower in writing that the loan is paid in full, and retain a copy for the prescribed period.

(iv) An institution shall maintain separately its records pertaining to cancellations of Defense, NDSL, and Federal Perkins Loans.

(v) Only authorized personnel may have access to the loan documents.

30. Section 674.33(b) is amended:

A. By revising the introductory text following the heading in paragraph (b)(2).

B. By revising the text following the heading of paragraph (b)(3).

The revisions read as follows:

§ 674.33 Repayment.

* * * * *

(b) * * *

(2) * * * If a borrower has received loans from more than one institution and has notified the institution that he or she wants the minimum monthly payment determination to be based on payments due to other institutions, the following rules apply:

* * * * *

(3) * * * If the borrower has notified the institution that he or she wants the minimum monthly payment determination to be based on payments due to other institutions, and if the total monthly repayment is less than $30 and the monthly repayment on a Defense loan is less than $15 a month, the amount attributed to the Defense loan may not exceed $15 a month.

* * * * *

31. Section 674.34 is amended:

A. In paragraph (e)(4), by removing "(e)(9)" and adding, in its place, "(e)(10)".

B. In paragraph (e)(5), by adding "as determined under paragraph (e)(10) of this section" after the first occurrence of "burden".

C. By revising paragraph (e)(10).

The revision reads as follows:

§ 674.34 Deferment of repayment—Federal Perkins loans, NDSLs and Defense loans.

* * * * *

(e) * * *

(10) In determining a borrower's Federal education debt burden under paragraphs (e)(4) and (e)(5) of this section, the institution shall—

(i) If the Federal postsecondary education loan is scheduled to be repaid in 10 years or less, use the actual monthly payment amount (or a proportional share if the payments are due less frequently than monthly); or

(ii) If the Federal postsecondary education loan is scheduled to be repaid in more than 10 years, use a monthly payment amount (or a proportional share if the payments are due less frequently than monthly) that would have been due on the loan if the loan had been scheduled to be repaid in 10 years.

* * * * *

§ 674.39 [Amended]

32. Section 674.39(a) is amended:

A. In the first sentence of the introductory text in paragraph (a), by adding ", except for loans for which a judgment has been secured" after "part".

B. In paragraph (a)(2), by removing "; and" and adding, in its place, a period.

C. By removing paragraph (a)(3).

33. Section 674.42 is amended:

A. By revising paragraph (a)(10).

B. By adding a new paragraph (a)(11).

C. By revising paragraph (b)(1) and the introductory text in paragraph (b)(2).

D. In paragraph (b)(2)(i), by removing "that school" and adding, in its place, "the institution".

E. By revising paragraph (b)(2)(iii).

F. In paragraph (b)(2)(v), by removing "in forceful terms".

G. In paragraph (b)(2)(vi), by removing "school" and adding, in its place, "institution".

H. In paragraph (b)(2)(vii), by removing "with" and adding, in its place, "for".

I. In paragraph (b)(2)(viii), by removing "corrections to the institution's records" and adding, in its place, "current information"; and by removing "and" following the semicolon.

J. In paragraph (b)(2)(ix), by removing "with" and adding, in its place, "for"; and by removing the period and adding, in its place, "; and".

K. By adding a new paragraph (b)(2)(x).

L. By removing paragraph (b)(3).

M. By redesignating paragraphs (b)(4) and (b)(5) as paragraphs (b)(3) and (b)(4), respectively.

N. By revising newly redesignated paragraph (b)(3).

O. In newly redesignated paragraph (b)(4), by removing "school's" and adding, in its place, "institution's".

The revisions and additions read as follows:

§ 674.42 Contact with the borrower.

(a) * * *

(10) The contact information of a party who, upon request of the borrower, will provide the borrower with a copy of his or her signed promissory note.

(11) An explanation that if a borrower is required to make minimum monthly repayments, and the borrower has received loans from more than one institution, the borrower must notify the institution if he or she wants the minimum monthly payment determination to be based on payments due to other institutions.

(b) * * * (1) An institution must ensure that exit counseling is conducted with each borrower either in person, by audiovisual presentation, or by interactive electronic means. The institution must ensure that exit counseling is conducted shortly before the borrower ceases at least half-time study at the institution. As an alternative, in the case of a student enrolled in a correspondence program or a study-abroad program that the institution approves for credit, the borrower may be provided with written counseling material by mail within 30 days after the borrower completes the program. If a borrower withdraws from the institution without the institution's prior knowledge or fails to complete an exit counseling session as required, the institution must ensure that exit counseling is provided through either interactive electronic means or by mailing counseling materials to the borrower at the borrower's last known address within 30 days after learning that the borrower has withdrawn from the institution or failed to complete exit counseling as required.

(2) The exit counseling must—

* * * * *

(iii) Suggest to the borrower debt-management strategies that would facilitate repayment;

* * * * *

(x) Inform the borrower of the availability of title IV loan information in the National Student Loan Data System (NSLDS).

(3) If exit counseling is conducted through interactive electronic means, the institution must take reasonable steps to ensure that each student borrower receives the counseling materials, and participates in and completes the exit counseling.

* * * * *

§ 674.43 [Amended]

34. Section 674.43(b)(2) is amended in the introductory text by removing "shall" and adding, in its place, "may".

§ 674.45 [Amended]

35. Section 674.45(a)(1) is amended by removing "defaulted account" and adding, in its place, "account as being in default".

§ 674.46 [Amended]

36. Section 674.46(a) is amended as follows:

A. In the introductory text of paragraph (a)(1), by removing "annually" and adding, in its place, "once every two years".

B. In paragraph (a)(1)(i), by removing "$200" and adding, in its place, "$500".

37. Section 674.47 is amended:

A. By removing paragraph (g)(1).

B. By redesignating paragraphs (g)(2), (g)(2)(i), and (g)(2)(ii) as paragraph (g) introductory text, paragraph (g)(1), and paragraph (g)(2) respectively.

C. In newly redesignated paragraph (g)(1), by removing the last "the" and adding, in its place, "this".

D. In the paragraph (h) heading, by removing "of less than $5".

E. By revising paragraph (h)(1).

F. By adding a new paragraph (h)(3).

The revision and addition read as follows:

§ 674.47 Costs chargeable to the Fund.

* * * * *

(h) * * *

(1) Notwithstanding any other provision of this subpart, an institution may write off an account, including outstanding principal, accrued interest, collection costs, and late charges, with a balance of—

(i) Less than $25; or

(ii) Less than $50 if, for a period of at least 2 years, the borrower has been billed for this balance in accordance with § 674.43(a).

* * * * *

(3) When the institution writes off an account, the borrower is relieved of all repayment obligations.

§ 674.50 [Amended]

38. Section 674.50 is amended:

A. In paragraph (e)(2)(ii), by adding "or" after the semicolon.

B. In paragraph (e)(3), by deleting "; or" at the end of the paragraph and adding, in its place, a period.

C. By removing paragraph (e)(4).

D. In paragraph (g)(2), by adding "Secretary may require the" after "The"; and by removing "shall" and adding, in its place, "to".

PART 675—FEDERAL WORK-STUDY PROGRAMS

39. The authority citation for part 675 continues to read as follows:

Authority: 42 U.S.C. 2751–2756b, unless otherwise noted.

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40. Section 675.2(b) is amended by revising the definition of "Student services" to read as follows:

§ 675.2 Definitions.

* * * * *

(b) * * *

Student services: Services that are offered to students that may include, but are not limited to, financial aid, library, peer guidance counseling, job placement, assisting an instructor with curriculum-related activities, security, and social, health, and tutorial services. Student services do not have to be direct or involve personal interaction with students. For purposes of this definition, facility maintenance, cleaning, purchasing, and public relations are never considered student services.

* * * * *

41. Section 675.21(b)(2)(i) is revised to read as follows:

§ 675.21 Institutional employment.

* * * * *

(b) * * *

(2) * * *

(i) Involve the provision of student services as defined in § 675.2(b) that are directly related to the work-study student's training or education;

* * * * *

PART 682—FEDERAL FAMILY EDUCATION LOAN (FFEL) PROGRAM

42. The authority citation for part 682 continues to read as follows:

Authority: 20 U.S.C. 1071 to 1087–2, unless otherwise noted.

43. Section 682.200(b) is amended:

A. By adding a sentence at the end of paragraph (2)(ii) of the definition of "Lender" to read as follows: "For purposes of this paragraph, loans held in trust by a trustee lender are not considered part of the trustee lender's consumer credit function."

B. In the definition of "Master promissory note (MPN)", by changing "Master promissory note (MPN)" to "Master Promissory Note (MPN)".

44. Section 682.204 is amended:

A. By adding new paragraphs (a)(8), (a)(9), (d)(7), and (d)(8).

B. In paragraph (l) by removing "34 CFR 668.2" and adding, in its place, "34 CFR 668.3".

The additions read as follows:

§ 682.204 Maximum loan amounts.

(a) * * *

(8) Except as provided in paragraph (a)(4) of this section, an undergraduate student who is enrolled in a program that is one academic year or less in length may not borrow an amount for any academic year of study that exceeds the amounts in paragraph (a)(1) of this section.

(9) Except as provided in paragraph (a)(4) of this section—

(i) An undergraduate student who is enrolled in a program that is more than one academic year in length and who has not successfully completed the first year of that program may not borrow an amount for any academic year of study that exceeds the amounts in paragraph (a)(1) of this section.

(ii) An undergraduate student who is enrolled in a program that is more than one academic year in length and who has successfully completed the first year of that program, but has not successfully completed the second year of the program, may not borrow an amount for any academic year of study that exceeds the amounts in paragraph (a)(2) of this section.

* * * * *

(d) * * *

(7) Except as provided in paragraph (d)(4) of this section, an undergraduate student who is enrolled in a program that is one academic year or less in length may not borrow an amount for any academic year of study that exceeds the amounts in paragraph (d)(1) of this section.

(8) Except as provided in paragraph (d)(4) of this section—

(i) An undergraduate student who is enrolled in a program that is more than one academic year in length and who has not successfully completed the first year of that program may not borrow an amount for any academic year of study that exceeds the amounts in paragraph (d)(1) of this section.

(ii) An undergraduate student who is enrolled in a program that is more than one academic year in length and who has successfully completed the first year of that program, but has not successfully completed the second year of the program, may not borrow an amount for any academic year of study that exceeds the amounts in paragraph (d)(2) of this section.

* * * * *

45. Section 682.209(a) is amended by:

A. Removing the number "45" each time it appears in paragraphs (a)(3)(ii)(A), (a)(3)(ii)(B), and (a)(3)(ii)(C) and adding, in its place, the number "60".

B. Adding a new paragraph (a)(3)(iii).

C. Revising the last sentence in paragraph (a)(8)(iv).

The revisions and addition read as follows:

§ 682.209 Repayment of a loan.

(a) * * *

(3) * * *

(iii) When determining the date that the student was no longer enrolled on at least a half-time basis, the lender must use a new date it receives from a school, unless the lender has already disclosed repayment terms to the borrower and the new date is within the same month and year as the most recent date reported to the lender.

* * * * *

(8) * * *

(iv) * * * Subject to paragraph (a)(8)(iii) of this section, a borrower who makes such a request may notify the lender at any time to extend the repayment period to a minimum of 5 years.

* * * * *

46. Section 682.210 is amended by revising paragraphs (h)(2), (h)(3)(iv), (h)(4), (s)(6)(vii), and (s)(6)(ix) to read as follows:

§ 682.210 Deferment.

* * * * *

(h) * * *

(2) A borrower also qualifies for an unemployment deferment by providing to the lender a written certification, or an equivalent as approved by the Secretary, that—

(i) The borrower has registered with a public or private employment agency, if one is available to the borrower within a 50-mile radius of the borrower's current address; and

(ii) For all requests beyond the initial request, the borrower has made at least six diligent attempts during the preceding 6-month period to secure full-time employment.

(3) * * *

(iv) The initial period of unemployment deferment may be granted for a period of unemployment beginning up to 6 months before the date the lender receives the borrower's request, and may be granted for up to 6 months after that date.

(4) A lender may not grant an unemployment deferment beyond the date that is 6 months after the date the borrower provides evidence of the borrower's eligibility for unemployment insurance benefits under paragraph (h)(1) of this section or the date the borrower provides the written certification, or an approved equivalent, under paragraph (h)(2) of this section.

* * * * *

(s) * * *

(6) * * *

(vii) In determining a borrower's Federal education debt burden for purposes of an economic hardship deferment under paragraphs (s)(6)(iv) and (v) of this section, the lender shall—

(A) If the Federal postsecondary education loan is scheduled to be repaid in 10 years or less, use the actual monthly payment amount (or a proportional share if the payments are due less frequently than monthly);

(B) If the Federal postsecondary education loan is scheduled to be repaid in more than 10 years, use a monthly payment amount (or a proportional share if the payments are due less frequently than monthly) that would have been due on the loan if the loan had been scheduled to be repaid in 10 years; and

(C) Require the borrower to provide evidence that would enable the lender to determine the amount of the monthly payments that would have been owed by the borrower during the deferment period.

* * * * *

(ix) To qualify for a subsequent period of deferment that begins less than one year after the end of a period of deferment under paragraphs (s)(6)(iii) through (v) of this section, the lender must require the borrower to submit evidence showing the amount of the borrower's monthly income or a copy of the borrower's most recently filed Federal income tax return.

* * * * *

47. Section 682.211 is amended by:

A. Revising paragraphs (b), (c), and (e).

B. Amending the introductory text of paragraph (f) by adding the words "or would be due" after the word "overdue".

C. Amending paragraph (f)(2) by removing the reference to paragraph "(f)(10)" and adding, in its place, "(f)(11)".

D. Revising paragraph (f)(11).

E. Redesignating paragraph (h)(3) as paragraph (h)(4).

F. Adding a new paragraph (h)(3).

The revisions and addition read as follows:

§ 682.211 Forbearance.

* * * * *

(b) A lender may grant forbearance if—

(1) The lender and the borrower or endorser agree to the terms of the forbearance and, unless the agreement was in writing, the lender sends, within 30 days, a notice to the borrower or endorser confirming the terms of the forbearance; or

(2) In the case of forbearance of interest during a period of deferment, if the lender informs the borrower at the time the deferment is granted that interest payments are to be forborne.

(c) A lender may grant forbearance for a period of up to one year at a time if both the borrower or endorser and an authorized official of the lender agree to the terms of the forbearance. If the lender and the borrower or endorser agree to the terms orally, the lender must notify the borrower or endorser of the terms within 30 days of that agreement.

* * * * *

(e) Except in the case of forbearance of interest payments during a deferment period, if a forbearance involves the postponement of all payments, the lender must contact the borrower or endorser at least once every six months during the period of forbearance to inform the borrower or endorser of—

(1) The outstanding obligation to repay;

(2) The amount of the unpaid principal balance and any unpaid interest that has accrued on the loan;

(3) The fact that interest will accrue on the loan for the full term of the forbearance; and

(4) The borrower's or endorser's option to discontinue the forbearance at any time.

(f) * * *

(11) For a period not to exceed 3 months when the lender determines that a borrower's ability to make payments has been adversely affected by a natural disaster, a local or national emergency as declared by the appropriate government agency, or a military mobilization.

* * * * *

(h) * * *

(3) *Written agreement.* The terms of the forbearance must be agreed to in writing—

(i) By the lender and the borrower for a forbearance under paragraphs (h)(1) or (h)(2)(ii)(A) of this section; or

(ii) By the lender and the borrower or endorser for a forbearance under paragraph (h)(2)(i) of this section.

* * * * *

§ 682.401 [Amended]

48. Section 682.401 is amended by adding a sentence after the heading of paragraph (b)(4) to read as follows: "Except as provided in § 668.35(b) for a borrower with a defaulted loan on which a judgment has been obtained, reinstatement of Title IV eligibility for a borrower with a defaulted loan must be in accordance with this paragraph (b)(4)."

49. Section 682.402 is amended by:

A. Redesignating paragraphs (a)(2) through (a)(4) as paragraphs (a)(3) through (a)(5), respectively.

B. Adding a new paragraph (a)(2).

C. Amending newly redesignated paragraph (a)(3) by removing the words "or a Consolidation loan was obtained by a married couple,".

D. Amending newly redesignated paragraph (a)(5)(iii) by removing the reference to paragraph "(a)(4)(i) or (ii)" and adding, in its place, "(a)(5)(i) or (ii)".

E. Adding a new paragraph (b)(6).

F. Revising paragraph (f)(4).

G. Revising paragraph (g)(1)(i).

H. Revising paragraph (h)(1)(i).

I. Revising paragraph (h)(3)(iii).

J. Revising paragraph (k)(2)(iii).

The revisions and additions read as follows:

§ 682.402 Death, disability, closed school, false certification, unpaid refunds, and bankruptcy payments.

(a) * * *

(2) If a Consolidation loan was obtained jointly by a married couple, the amount of the Consolidation loan that is discharged if one of the borrowers dies or becomes totally and permanently disabled is equal to the portion of the outstanding balance of the Consolidation loan, as of the date the borrower died or became totally and permanently disabled, attributable to any of that borrower's loans that would have been eligible for discharge.

* * * * *

(b) * * *

(6) In the case of a Federal Consolidation Loan that includes a Federal PLUS or Direct PLUS loan borrowed for a dependent who has died, the obligation of the borrower or any endorser to make any further payments on the portion of the outstanding balance of the Consolidation Loan attributable to the Federal PLUS or Direct PLUS loan is discharged as of the date of the dependent's death.

* * * * *

(f) * * *

(4) *Proof of claim.* (i) Except as provided in paragraph (f)(4)(ii) of this section, the holder of the loan shall file a proof of claim with the bankruptcy court within—

(A) 30 days after the holder receives a notice of first meeting of creditors unless, in the case of a proceeding under chapter 7, the notice states that the borrower has no assets; or

(B) 30 days after the holder receives a notice from the court stating that a chapter 7 no-asset case has been converted to an asset case.

(ii) A guaranty agency that is a state guaranty agency, and on that basis may assert immunity from suit in bankruptcy court, and that does not assign any loans affected by a bankruptcy filing to another guaranty agency—

(A) Is not required to file a proof of claim on a loan already held by the guaranty agency; and

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(B) May direct lenders not to file proofs of claim on loans guaranteed by that agency.

* * * * *

(g) * * *

(1) * * *

(i) The original or a true and exact copy of the promissory note.

* * * * *

(h) * * *

(1) * * *

(i) The guaranty agency shall review a death, disability, bankruptcy, closed school, or false certification claim promptly and shall pay the lender on an approved claim the amount of loss in accordance with paragraphs (h)(2) and (h)(3) of this section—

(A) Not later than 45 days after the claim was filed by the lender for death and bankruptcy claims; and

(B) Not later than 90 days after the claim was filed by the lender for disability, closed school, or false certification claims.

* * * * *

(3) * * *

(iii) During the period required by the guaranty agency to approve the claim and to authorize payment or to return the claim to the lender for additional documentation not to exceed—

(A) 45 days for death or bankruptcy claims; or

(B) 90 days for disability, closed school, or false certification claims.

* * * * *

(k) * * *

(2) * * *

(iii) In the case of a Consolidation loan, the borrower (or one of the co-makers) has died, is determined to be totally and permanently disabled under § 682.402(c), or has filed the petition for relief in bankruptcy within the maximum repayment period described in § 682.209(h)(2), exclusive of periods of deferment or periods of forbearance granted by the lender that extended the maximum repayment period;

* * * * *

50. Section 682.405 is amended by:

A. Adding the words ", except for loans for which a judgment has been obtained," after "defaulted loans" in paragraph (a)(1).

B. Removing paragraph (a)(4).

C. Revising the fifth sentence in paragraph (b)(1).

The revision reads as follows:

§ 682.405 Loan rehabilitation agreement.

* * * * *

(b) * * *

(1) * * * Voluntary payments are those made directly by the borrower, and do not include payments obtained by Federal offset, garnishment, income or asset execution, or after a judgment has been entered on a loan. * * *

* * * * *

51. Section 682.414 is amended by revising paragraph (a)(5)(ii) to read as follows:

§ 682.414 Records, reports, and inspection requirements for guaranty agency programs.

(a) * * *

(5) * * *

(ii) If a promissory note was signed electronically, the guaranty agency or lender must store it electronically and it must be retrievable in a coherent format.

* * * * *

§ 682.603 [Amended]

52. Sections 682.603(f)(1)(ii)(B) and (f)(2)(i) are amended by removing "34 CFR 668.2" and adding, in its place, "34 CFR 668.3".

53. Section 682.604 is amended by:

A. Revising paragraph (f)(1).

B. Revising the introductory text of paragraph (f)(2).

C. Revising paragraph (f)(2)(iii).

D. In paragraph (f)(2)(iv), removing the period and adding, in its place, "; and".

E. Adding a new paragraph (f)(2)(v).

F. Revising paragraph (f)(3).

G. Revising paragraph (g)(1).

H. Revising paragraph (g)(2).

I. Revising paragraph (g)(3).

The revisions and addition read as follows:

§ 682.604 Processing the borrower's loan proceeds and counseling borrowers.

* * * * *

(f) * * *

(1) A school must ensure that initial counseling is conducted with each Stafford loan borrower either in person, by audiovisual presentation, or by interactive electronic means prior to its release of the first disbursement, unless the student borrower has received a prior Federal Stafford, Federal SLS, or Direct subsidized or unsubsidized loan. A school must ensure that an individual with expertise in the title IV programs is reasonably available shortly after the counseling to answer the student borrower's questions regarding those programs. As an alternative, in the case of a student borrower enrolled in a correspondence program or a student borrower enrolled in a study-abroad program that the home institution approves for credit, the counseling may be provided through written materials, prior to releasing those loan proceeds.

(2) The initial counseling must—

* * * * *

(iii) Describe the likely consequences of default, including adverse credit reports, Federal offset, and litigation;

* * * * *

(v) Inform the student borrower of sample monthly repayment amounts based on a range of student levels of indebtedness or on the average indebtedness of Stafford loan borrowers at the same school or in the same program of study at the same school.

(3) If initial counseling is conducted through interactive electronic means, the school must take reasonable steps to ensure that each student borrower receives the counseling materials, and participates in and completes the initial counseling.

* * * * *

(g) * * *

(1) A school must ensure that exit counseling is conducted with each Stafford loan borrower either in person, by audiovisual presentation, or by interactive electronic means. In each case, the school must ensure that this counseling is conducted shortly before the student borrower ceases at least half-time study at the school, and that an individual with expertise in the title IV programs is reasonably available shortly after the counseling to answer the student borrower's questions. As an alternative, in the case of a student borrower enrolled in a correspondence program or a study-abroad program that the home institution approves for credit, written counseling materials may be provided by mail within 30 days after the student borrower completes the program. If a student borrower withdraws from school without the school's prior knowledge or fails to complete an exit counseling session as required, the school must ensure that exit counseling is provided through either interactive electronic means or by mailing written counseling materials to the student borrower at the student borrower's last known address within 30 days after learning that the student borrower has withdrawn from school or failed to complete the exit counseling as required.

(2) The exit counseling must—

(i) Inform the student borrower of the average anticipated monthly repayment amount based on the student borrower's indebtedness or on the average indebtedness of student borrowers who have obtained Stafford or SLS loans for attendance at the same school or in the same program of study at the same school;

(ii) Review for the student borrower available repayment options, including standard, graduated, extended, and

income-sensitive repayment plans and loan consolidation;

(iii) Suggest to the student borrower debt-management strategies that would facilitate repayment;

(iv) Include the matters described in paragraph (f)(2) of this section;

(v) Review for the student borrower the conditions under which the student borrower may defer or forbear repayment or obtain a full or partial discharge of a loan;

(vi) Require the student borrower to provide current information concerning name, address, social security number, references, and driver's license number and State of issuance, as well as the student borrower's expected permanent address, the address of the student borrower's next of kin, and the name and address of the student borrower's expected employer (if known). The school must ensure that this information is provided to the guaranty agency or agencies listed in the student borrower's records within 60 days after the student borrower provides the information;

(vii) Review for the student borrower information on the availability of the Student Loan Ombudsman's office; and

(viii) Inform the student borrower of the availability of title IV loan information in the National Student Loan Data System (NSLDS).

(3) If exit counseling is conducted by electronic interactive means, the school must take reasonable steps to ensure that each student borrower receives the counseling materials, and participates in and completes the counseling.

* * * * *

PART 685—WILLIAM D. FORD FEDERAL DIRECT LOAN PROGRAM

54. The authority citation for part 685 continues to read as follows:

Authority: 20 U.S.C. 1087a *et seq.*, unless otherwise noted.

55. Section 685.102(b) is amended:

A. By revising the definition of "Master promissory note (MPN)".

B. In the second sentence of paragraph (3) in the definition of "Satisfactory repayment arrangement", by removing ", regardless of whether there is a judgment against the borrower,"; and by removing "income tax" and adding, in its place, "Federal".

The revision reads as follows:

§ 685.102 Definitions.

* * * * *

(b) * * *

Master Promissory Note (MPN): (1) A promissory note under which the borrower may receive loans for a single academic year or multiple academic years.

(2) For MPNs processed by the Secretary before July 1, 2003, loans may no longer be made under an MPN after the earliest of—

(i) The date the Secretary or the school receives the borrower's written notice that no further loans may be disbursed;

(ii) One year after the date of the borrower's first anticipated disbursement if no disbursement is made during that twelve-month period; or

(iii) Ten years after the date of the first anticipated disbursement, except that a remaining portion of a loan may be disbursed after this date.

(3) For MPNs processed by the Secretary on or after July 1, 2003, loans may no longer be made under an MPN after the earliest of—

(i) The date the Secretary or the school receives the borrower's written notice that no further loans may be made;

(ii) One year after the date the borrower signed the MPN or the date the Secretary receives the MPN, if no disbursements are made under that MPN; or

(iii) Ten years after the date the borrower signed the MPN or the date the Secretary receives the MPN, except that a remaining portion of a loan may be disbursed after this date.

* * * * *

56. Section 685.203 is amended:

A. By adding new paragraphs (a)(8) and (a)(9).

B. By adding new paragraphs (c)(2)(viii) and (c)(2)(ix).

C. By adding in paragraph (b) ", as defined in 34 CFR 668.3" after "year".

The additions read as follows:

§ 685.203 Loan limits.

(a) * * *

(8) Except as provided in paragraph (a)(4) of this section, an undergraduate student who is enrolled in a program that is one academic year or less in length may not borrow an amount for any academic year of study that exceeds the amounts in paragraph (a)(1) of this section.

(9) Except as provided in paragraph (a)(4) of this section—

(i) An undergraduate student who is enrolled in a program that is more than one academic year in length and who has not successfully completed the first year of that program may not borrow an amount for any academic year of study that exceeds the amounts in paragraph (a)(1) of this section.

(ii) An undergraduate student who is enrolled in a program that is more than one academic year in length and who has successfully completed the first year of that program, but has not successfully completed the second year of the program, may not borrow an amount for any academic year of study that exceeds the amounts in paragraph (a)(2) of this section.

* * * * *

(c) * * *

(2) * * *

(viii) Except as provided in paragraph (c)(2)(iv) of this section, an undergraduate student who is enrolled in a program that is one academic year or less in length may not borrow an amount for any academic year of study that exceeds the amounts in paragraph (c)(2)(i) of this section.

(ix) Except as provided in paragraph (c)(2)(iv) of this section—

(A) An undergraduate student who is enrolled in a program that is more than one academic year in length and who has not successfully completed the first year of that program may not borrow an amount for any academic year of study that exceeds the amounts in paragraph (c)(2)(i) of this section.

(B) An undergraduate student who is enrolled in a program that is more than one academic year in length and who has successfully completed the first year of that program, but has not successfully completed the second year of the program, may not borrow an amount for any academic year of study that exceeds the amounts in paragraph (c)(2)(ii) of this section.

* * * * *

57. Section 685.211(f) is revised to read as follows:

§ 685.211 Miscellaneous repayment provisions.

* * * * *

(f) *Rehabilitation of defaulted loans.* (1) A defaulted Direct Loan, except for a loan on which a judgment has been obtained, is rehabilitated if the borrower makes 12 consecutive, on-time, reasonable, and affordable monthly payments. The amount of such a payment is determined on the basis of the borrower's total financial circumstances. If a defaulted loan is rehabilitated, the Secretary instructs any credit bureau to which the default was reported to remove the default from the borrower's credit history.

(2) A defaulted Direct Loan on which a judgment has been obtained may not be rehabilitated.

58. Section 685.212 is amended by adding a new paragraph (a)(3) to read as follows:

§ 685.212 Discharge of a loan obligation.

(a) * * *

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(3) In the case of a Direct PLUS Consolidation Loan that repaid a Direct PLUS Loan or a Federal PLUS Loan obtained on behalf of a student who dies, the Secretary discharges an amount equal to the portion of the outstanding balance of the consolidation loan, as of the date of the student's death, attributable to that Direct PLUS Loan or Federal PLUS Loan.

* * * * *

59. Section 685.220(l)(3) is revised to read as follows:

§ 685.220 Consolidation.

* * * * *

(l) * * *

(3) *Discharge.* (i) If a borrower dies and the Secretary receives the documentation described in § 685.212(a), the Secretary discharges an amount equal to the portion of the outstanding balance of the consolidation loan, as of the date of the borrower's death, attributable to any of that borrower's loans that were repaid by the consolidation loan.

(ii) If a borrower meets the requirements for total and permanent disability discharge under § 685.212(b), the Secretary discharges an amount equal to the portion of the outstanding balance of the consolidation loan, as of the date the borrower became totally and permanently disabled, attributable to any of that borrower's loans that were repaid by the consolidation loan.

(iii) If a borrower meets the requirements for discharge under § 685.212(d), (e), or (f) on a loan that was consolidated into a joint Direct Consolidation Loan, the Secretary discharges the portion of the consolidation loan equal to the amount of the loan that would be eligible for discharge under the provisions of § 685.212(d), (e), or (f) as applicable, and that was repaid by the consolidation loan.

(iv) If a borrower meets the requirements for loan forgiveness under § 685.212(h) on a loan that was consolidated into a joint Direct Consolidation Loan, the Secretary repays the portion of the outstanding balance of the consolidation loan attributable to the loan that would be eligible for forgiveness under the provisions of § 685.212(h), and that was repaid by the consolidation loan.

§ 685.301 [Amended]

60. Sections 685.301(a)(9)(i)(B)(*2*) and (a)(9)(ii)(A) are amended by removing "34 CFR 668.2" and adding, in its place, "34 CFR 668.3".

61. Section 685.304 is amended:

A. By revising paragraphs (a)(1), (a)(2), (a)(3), and (a)(5).

B. In paragraph (b)(1), by removing "conduct" and adding, in its place, "ensure that"; by adding "is conducted" after "counseling"; and by adding "Loan" after "Subsidized".

C. In paragraph (b)(2), by adding, in the first sentence, "exit" after "The"; by removing, in the second sentence, "knowledge of" and adding, in its place, "expertise in"; by removing, in the last sentence, "the school may provide"; and by adding, in the last sentence, "may be provided" after the second occurrence of "borrower".

D. In paragraph (b)(3), by removing "school must provide"; and by adding "must be provided" after the second occurrence of "counseling".

E. By revising paragraph (b)(4).

F. By revising paragraph (b)(5).

G. By redesignating paragraph (b)(6) as paragraph (b)(7).

H. By adding a new paragraph (b)(6).

The revisions and addition read as follows:

§ 685.304 Counseling borrowers.

(a) * * * (1) Except as provided in paragraph (a)(4) of this section, a school must ensure that initial counseling is conducted with each Direct Subsidized Loan or Direct Unsubsidized Loan student borrower prior to making the first disbursement of the proceeds of a loan to a student borrower unless the student borrower has received a prior Direct Subsidized, Direct Unsubsidized, Federal Stafford, or Federal SLS Loan.

(2) The initial counseling must be in person, by audiovisual presentation, or by interactive electronic means. In each case, the school must ensure that an individual with expertise in the title IV programs is reasonably available shortly after the counseling to answer the student borrower's questions. As an alternative, in the case of a student borrower enrolled in a correspondence program or a study-abroad program approved for credit at the home institution, the student borrower may be provided with written counseling materials before the loan proceeds are disbursed.

(3) The initial counseling must—

(i) Explain the use of a Master Promissory Note (MPN);

(ii) Emphasize to the borrower the seriousness and importance of the repayment obligation the student borrower is assuming;

(iii) Describe the likely consequences of default, including adverse credit reports, garnishment of wages, Federal offset, and litigation;

(iv) Inform the student borrower of sample monthly repayment amounts based on a range of student levels of indebtedness or on the average indebtedness of Direct Subsidized Loan and Direct Unsubsidized Loan borrowers at the same school or in the same program of study at the same school; and

(v) Emphasize that the student borrower is obligated to repay the full amount of the loan even if the student borrower does not complete the program, is unable to obtain employment upon completion, or is otherwise dissatisfied with or does not receive the educational or other services that the student borrower purchased from the school.

* * * * *

(5) If initial counseling is conducted through interactive electronic means, a school must take reasonable steps to ensure that each student borrower receives the counseling materials, and participates in and completes the initial counseling.

* * * * *

(b) * * *

(4) The exit counseling must—

(i) Inform the student borrower of the average anticipated monthly repayment amount based on the student borrower's indebtedness or on the average indebtedness of Direct Subsidized Loan and Direct Unsubsidized Loan borrowers at the same school or in the same program of study at the same school;

(ii) Review for the student borrower available repayment options including the standard repayment, extended repayment, graduated repayment, and income contingent repayment plans, and loan consolidation;

(iii) Suggest to the student borrower debt-management strategies that would facilitate repayment;

(iv) Explain to the student borrower how to contact the party servicing the student borrower's Direct Loans;

(v) Meet the requirements described in paragraphs (a)(3)(i), (ii), (iii), and (v) of this section;

(vi) Review for the student borrower the conditions under which the student borrower may defer or forbear repayment or obtain a full or partial discharge of a loan;

(vii) Review for the student borrower information on the availability of the Department's Student Loan Ombudsman's office;

(viii) Inform the student borrower of the availability of title IV loan information in the National Student Loan Data System (NSLDS); and

(ix) Require the student borrower to provide current information concerning name, address, social security number, references, and driver's license number and State of issuance, as well as the student borrower's expected permanent address, the address of the student borrower's next of kin, and the name and address of the student borrower's expected employer (if known).

(5) The school must ensure that the information required in paragraph (b)(4)(ix) of this section is provided to the Secretary within 60 days after the student borrower provides the information.

(6) If exit counseling is conducted through interactive electronic means, a school must take reasonable steps to ensure that each student borrower receives the counseling materials, and participates in and completes the exit counseling.

* * * * *

PART 690—FEDERAL PELL GRANT PROGRAM

62. The authority citation for part 690 continues to read as follows:

Authority: 20 U.S.C. 1070a, unless otherwise noted.

§ 690.61 [Amended]

63. In paragraph (b) by removing "34 CFR 668.60," and adding, in its place, "the verification provisions of § 668.60 and the late disbursement provisions of § 668.164(g) of this chapter,".

64. Section 690.75(a) is revised to read as follows:

§ 690.75 Determination of eligibility for payment.

(a) For each payment period, an institution may pay a Federal Pell Grant to an eligible student only after it determines that the student—

(1) Qualifies as an eligible student under 34 CFR Part 668, Subpart C;

(2) Is enrolled in an eligible program as an undergraduate student; and

(3) If enrolled in a credit hour program without terms or a clock hour program, has completed the payment period as defined in § 668.4 for which he or she has been paid a Federal Pell Grant.

* * * * *

65. Section 690.79 is revised to read as follows:

§ 690.79 Liability for and recovery of Federal Pell Grant overpayments.

(a)(1) Except as provided in paragraphs (a)(2) and (a)(3) of this section, a student is liable for any Federal Pell Grant overpayment made to him or her.

(2) The institution is liable for a Federal Pell Grant overpayment if the overpayment occurred because the institution failed to follow the procedures set forth in this part or 34 CFR Part 668. The institution must restore an amount equal to the overpayment to its Federal Pell Grant account.

(3) A student is not liable for, and the institution is not required to attempt recovery of or refer to the Secretary, a Federal Pell Grant overpayment if the amount of the overpayment is less than $25 and is not a remaining balance.

(b)(1) Except as provided in paragraph (a)(3) of this section, if an institution makes a Federal Pell Grant overpayment for which it is not liable, it must promptly send a written notice to the student requesting repayment of the overpayment amount. The notice must state that failure to make that repayment, or to make arrangements satisfactory to the holder of the overpayment debt to repay the overpayment, makes the student ineligible for further title IV, HEA program funds until final resolution of the Federal Pell Grant overpayment.

(2) If a student objects to the institution's Federal Pell Grant overpayment determination on the grounds that it is erroneous, the institution must consider any information provided by the student and determine whether the objection is warranted.

(c) Except as provided in paragraph (a)(3) of this section, if the student fails to repay a Federal Pell Grant overpayment or make arrangements satisfactory to the holder of the overpayment debt to repay the Federal Pell Grant overpayment, after the institution has taken the action required by paragraph (b) of this section, the institution must refer the overpayment to the Secretary for collection purposes in accordance with procedures required by the Secretary. After referring the Federal Pell Grant overpayment to the Secretary under this section, the institution need make no further efforts to recover the overpayment.

(Authority: 20 U.S.C. 1070a)

PART 694—GAINING EARLY AWARENESS AND READINESS FOR UNDERGRADUATE PROGRAMS (GEAR UP)

66. The authority citation for part 694 continues to read as follows:

Authority: 20 U.S.C. 1070a–21 to 1070a–28.

67. Section 694.10(e) is revised to read as follows:

§ 694.10 What are the requirements for awards under the program's scholarship component under section 404E of the HEA?

* * * * *

(e) *Other grant assistance.* A GEAR UP scholarship may not be considered in the determination of a student's eligibility for other grant assistance provided under title IV of the HEA.

[FR Doc. 02–27627 Filed 10–31–02; 8:45 am]

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Part IV

The President

Proclamation 7615—National Family Caregivers Month, 2002

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Presidential Documents

Title 3—

The President

Proclamation 7615 of October 29, 2002

National Family Caregivers Month, 2002

By the President of the United States of America

A Proclamation

One of our most important responsibilities as citizens is to give back to our communities. Individuals who care for loved ones in their homes demonstrate the compassionate spirit of America. During National Family Caregivers Month, we honor these individuals who bring hope and comfort to their fellow citizens in need.

America's family caregivers are vital to the strength of our communities. Through specialized care for family members with disabilities or those who are aging or chronically ill, millions of caregivers help their loved ones live in a comforting environment. As the size of our elderly population continues to grow, home care increasingly represents an important, dignified, and compassionate alternative for countless individuals.

To support and train families at all stages of caregiving, the Administration on Aging provides community-based assistance through the "National Family Caregiver Support Program." This network of community service providers, faith-based organizations, tribal organizations, State and local agencies on aging, and hundreds of thousands of volunteers informs caregivers that they are not alone, and that help is always available through counseling, support groups, training, respite care, and supplemental services.

As we work to build a culture of service, responsibility, and compassion, caregivers continue to bring our families and communities together. Through their efforts to assist loved ones in need, family caregivers demonstrate the true spirit of our Nation.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim November 2002 as National Family Caregivers Month. I encourage all Americans to pause to honor the family members, friends, and neighbors who shoulder caregiving responsibilities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-ninth day of October, in the year of our Lord two thousand two, and of the

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Independence of the United States of America the two hundred and twenty-seventh.

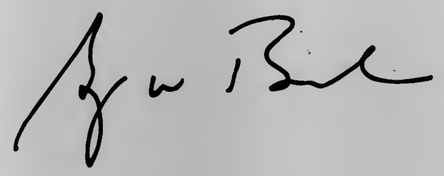

[FR Doc. 02–28058
Filed 10–31–02; 10:34 am]
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H.R. 5647/P.L. 107–254
To authorize the duration of the base contract of the Navy-Marine Corps Intranet contract to be more than five years but not more than seven years. (Oct. 29, 2002; 116 Stat. 1733; 1 page)

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Recognizing the contributions of Patsy Takemoto Mink. (Oct. 29, 2002; 116 Stat. 1734; 1 page)

S. 1227/P.L. 107–256
Niagara Falls National Heritage Area Study Act (Oct. 29, 2002; 116 Stat. 1735; 2 pages)

S. 1270/P.L. 107–257
To designate the United States courthouse to be constructed at 8th Avenue and Mill Street in Eugene, Oregon, as the "Wayne Lyman Morse United States Courthouse". (Oct. 29, 2002; 116 Stat. 1737; 1 page)

S. 1339/P.L. 107–258
Persian Gulf War POW/MIA Accountability Act of 2002 (Oct. 29, 2002; 116 Stat. 1738; 3 pages)

S. 1646/P.L. 107–259
To identify certain routes in the States of Texas, Oklahoma, Colorado, and New Mexico as part of the Ports-to-Plains Corridor, a high priority corridor on the National Highway System. (Oct. 29, 2002; 116 Stat. 1741; 2 pages)

S. 2558/P.L. 107–260
Benign Brain Tumor Cancer Registries Amendment Act (Oct. 29, 2002; 116 Stat. 1743; 2 pages)

H.R. 669/P.L. 107–261
To designate the facility of the United States Postal Service located at 127 Social Street in Woonsocket, Rhode Island, as the "Alphonse F. Auclair Post Office Building". (Oct. 30, 2002; 116 Stat. 1745; 1 page)

H.R. 670/P.L. 107–262
To designate the facility of the United States Postal Service located at 7 Commercial Street in Newport, Rhode Island, as the "Bruce F. Cotta Post Office Building". (Oct. 30, 2002; 116 Stat. 1746; 1 page)

H.R. 3034/P.L. 107–263
To redesignate the facility of the United States Postal Service located at 89 River Street in Hoboken, New Jersey, as the "Frank Sinatra Post Office Building". (Oct. 30, 2002; 116 Stat. 1747; 1 page)

H.R. 3738/P.L. 107–2
4 To designate the facility of the United States Postal Service located at 1299 North 7th Street in Philadelphia, Pennsylvania, as the "Herbert Arlene Post Office Building". (Oct. 30, 2002; 116 Stat. 1748; 1 page)

H.R. 3739/P.L. 107–265
To designate the facility of the United States Postal Service located at 6150 North Broad Street in Philadelphia, Pennsylvania, as the "Rev. Leon Sullivan Post Office Building". (Oct. 30, 2002; 116 Stat. 1749; 1 page)

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To designate the facility of the United States Postal Service located at 204 South Broad Street in Lancaster, Ohio, as the "Clarence Miller Post Office Building". (Oct. 30, 2002; 116 Stat. 1753; 1 page)

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To designate the facility of the United States Postal Service located at 1895 Avenida Del Oro in Oceanside, California, as the "Ronald C. Packard Post Office Building". (Oct. 30, 2002; 116 Stat. 1754; 1 page)

H.R. 4797/P.L. 107–271
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H.R. 4851/P.L. 107–272
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107th Congress

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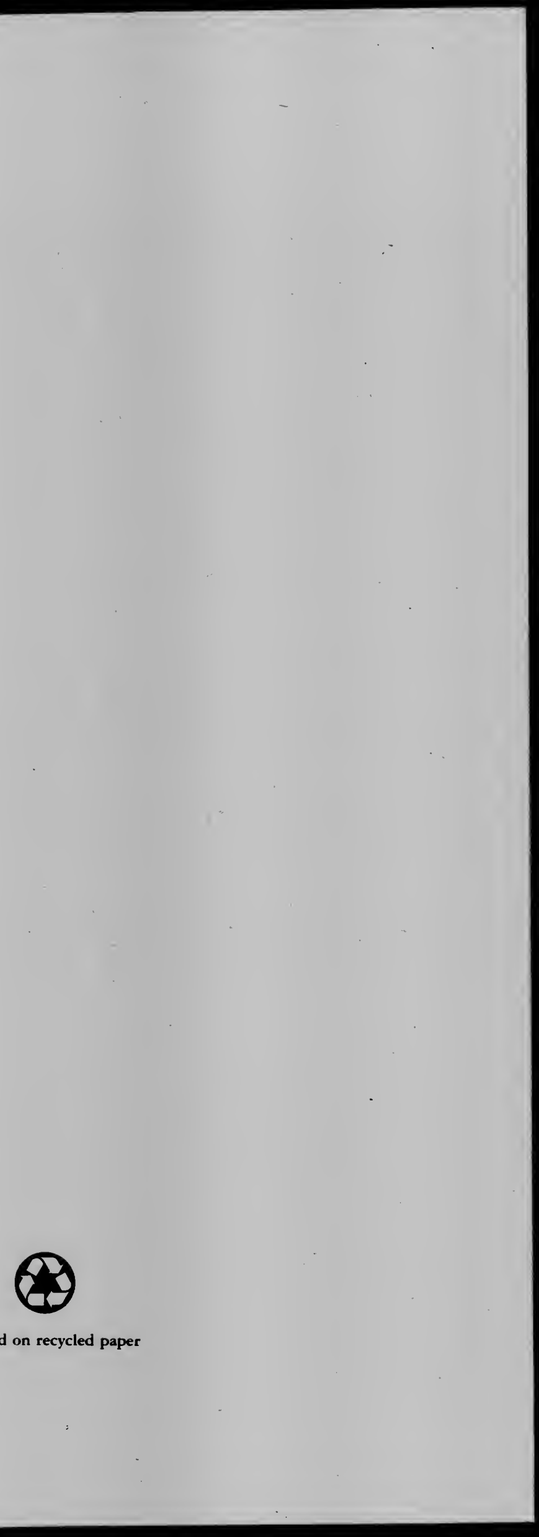

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

5 CFR Part 8301

RIN 3209–AA15

Supplemental Standards of Ethical Conduct for Employees of the Department of Agriculture; Correction

AGENCY: Department of Agriculture (USDA).

ACTION: Final rule; correction.

SUMMARY: In this document, the Department of Agriculture, with the concurrence of the Office of Government Ethics (OGE), is correcting a typographical error in one of the amendatory instructions of the final rule amendments to the supplemental standards of ethical conduct for USDA employees, which was published by the USDA in the **Federal Register** on Monday, September 16, 2002 (67 FR 58319).

EFFECTIVE DATE: September 16, 2002.

FOR FURTHER INFORMATION CONTACT: Raymond J. Sheehan, Director, Office of Ethics, U.S. Department of Agriculture, Room 348–W–Stop 0122, 1400 Independence Avenue, SW., Washington, DC 20250–0122, telephone: (202) 720–2251.

SUPPLEMENTARY INFORMATION: In the above-noted final rule amendments document published by the USDA, with OGE concurrence, the beginning of amendatory instruction 2.e. inadvertently omitted the words "Removing the" before the paragraph reference identified therein which was being replaced by a redesignated paragraph reference. This document corrects the error in amendatory instruction 2.e.

Dated: October 15, 2002.

John S. Surina,

Designated Agency Ethics Official, U.S. Department of Agriculture.

Approved: October 28, 2002.

Stuart D. Rick,

Deputy General Counsel, Office of Government Ethics.

For the reasons set forth in the preamble, the Department of Agriculture, with the concurrence of the Office of Government Ethics, is correcting the September 16, 2002, publication of the final rule amendments on Supplemental Standards of Ethical Conduct for Employees of the Department of Agriculture, which was the subject of FR Doc. 02–23489, as follows:

PART 8301—[CORRECTED]

§ 8301.103 [Corrected]

On page 58319, in the third column, the beginning of the first line of amendatory instruction 2.e., is corrected by removing the word "Paragraph" and adding in this place the words "Removing the paragraph".

[FR Doc. 02–27989 Filed 11–1–02; 8:45 am]
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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 53

[Docket No. 02–048–1]

RIN 0579–AB46

Low Pathogenic Avian Influenza; Payment of Indemnity

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending our general indemnity regulations to allow the Department to pay indemnity to contract growers and owners for poultry destroyed because of low pathogenic avian influenza associated with a disease situation in Virginia. Subject to available funding, the Department may pay all eligible losses of contract growers and up to 50 percent of eligible losses of owners, minus any amount paid to the contract grower of a flock. However, total payments may not exceed 50 percent of all eligible costs. Additionally, we are providing that the value of poultry destroyed due to the disease may be determined after destruction and disposal of the poultry, and, except in limited situations, are requiring a waiting period of 7 days following cleaning and disinfection before premises that contained poultry affected by the disease may be restocked. These actions are necessary to help control this disease in the United States.

DATES: This interim rule is effective December 9, 2002. We will consider all comments that we receive by December 4, 2002.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 02–048–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 02–048–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 02–048–1" on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: Dr. Cheryl Hall, Staff Veterinarian, Planning, Certification, and Monitoring Staff, VS, APHIS, 4700 River Road Unit 46, Riverdale, MD 20737–1231; (301) 734–4924.

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SUPPLEMENTARY INFORMATION:

Background

The Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture (the Department) administers regulations at 9 CFR part 53 (referred to below as the regulations) that provide for the payment of indemnity to owners of animals that are required to be destroyed because of foot-and-mouth disease, pleuropneumonia, rinderpest, exotic Newcastle disease, highly pathogenic avian influenza, infectious salmon anemia, or any other communicable disease of livestock or poultry that, in the opinion of the Secretary of Agriculture, constitutes an emergency and threatens the U.S. livestock or poultry population. Payment for animals destroyed is to be based on the fair market value of the animals.

Payment of Indemnity

Section 53.2 of the regulations authorizes the APHIS Administrator to cooperate with a State in the control and eradication of disease. Paragraph (b) of this section allows for the payment of indemnity to cover the costs for purchase, destruction, and disposition of animals and materials required to be destroyed because of being contaminated by or exposed to such disease. In the case of low pathogenic avian influenza (LPAI), the Administrator may pay up to 50 percent of the costs.

Low Pathogenic Avian Influenza

Avian influenza (AI) viruses are classified into 15 subtypes based on their surface hemagglutinin (H) proteins. LPAI viruses constitute the vast majority of AI viruses and cause few clinical signs in infected birds. However, LPAI H5 and H7 viruses can mutate into highly pathogenic forms under field conditions.

Highly pathogenic AI (HPAI) is not known to exist in the United States. It is an extremely infectious and deadly form of the disease and can cause sudden death in poultry without any warning signs of infection. Recently, a subtype of the H7 virus, the H7N2 strain, was determined to be present in commercial poultry flocks in the State of Virginia. (To date, no poultry infected with the H5 virus have been found in Virginia.) Because of the possibility that LPAI H5 and H7 viruses could mutate into HPAI, we have determined that it is necessary to eliminate these specific viruses if they occur in poultry in relation to the disease situation occurring in Virginia.

Agricultural authorities in Virginia have taken action to control the disease through diagnostic activities, quarantines, surveillance, depopulation and disposal of infected and exposed poultry, and cleaning and disinfection or disposal of contaminated materials. To protect the poultry industry in the United States, APHIS is cooperating with Virginia in its control measures. Integral to these efforts is the destruction of all poultry known to be infected with or exposed to the disease.

Payment for Losses

In reviewing the regulations in § 53.2 regarding authorization of payments by the Department for losses growing out of the destruction of animals affected with the disease, we found the wording too narrow to cover costs borne by contract growers of poultry, who do not own the birds, but who nonetheless would suffer losses associated with their destruction. Therefore, we are adding a new § 53.11(a) to the regulations, in which we provide that, subject to available funding, in the case of the current disease situation in Virginia associated with the H5 or H7 virus, the Administrator may pay claims of up to 100 percent of eligible losses incurred by each contract grower resulting from the destruction of poultry affected with the disease, up to the amount that the owner of the poultry is eligible to receive before grower compensation is deducted, as discussed below.

We are also adding a new § 53.11(b) to provide that, in the case of the current LPAI situation in Virginia, the Administrator may pay up to 50 percent of all eligible losses incurred by each owner resulting from the destruction of poultry affected with the disease, minus any amount APHIS pays to the contract grower of the poultry under § 53.11(a). A copy of the LPAI compensation plan is available for review at the location listed in the **ADDRESSES** section at the beginning of this document and at *http://www.aphis.usda.gov/ppd/rad/avianecon.pdf*. Compensation will be made only for poultry destroyed and the costs of destruction and disposal, and not for materials.

Method of Calculating Compensation

Under the LPAI compensation plan, the total per bird compensation value is determined first. Compensation for growers is determined next, with the amount per bird based on the payments that growers have earned in previous production cycles. Once the amount to be paid to growers is arrived at, that amount is subtracted from the total compensation value to determine what owners will receive. (Compensation will not be paid for meat birds sent to slaughter. For breeder or table egg layer birds, the amount of compensation paid will be reduced by any salvage value of the birds.)

In general, the compensation plan will be applied according to the following formulas:

1. Compensation to Contract Growers

Per bird payment based on the average per bird company grower payment received during the previous year's production
× the number of birds depopulated (based on company and grower records)
= estimated grower payment if the disease situation hadn't occurred
− any company grower payment already received
= grower compensation

The compensation plan for growers allows for Federal payment of 100 percent of eligible losses suffered by a grower, up to the amount that the owner of the poultry is eligible to receive before grower compensation is deducted. In all cases, 100 percent of eligible grower losses will be less than 50 percent of the value of the birds.

By targeting growers for indemnities, the Federal Government enhances the probability of rapid reporting by growers who are in a position to quickly report a disease situation. This enhances the likelihood of prompt eradication. In addition, such payments will benefit poultry growers who could otherwise suffer uncompensated economic losses from participating in an eradication program. If growers are not compensated, any sunk mortgage, electricity, or labor costs a grower has invested in a flock are lost when the flock is depopulated. Some of these costs, such as mortgage costs, continue even if there are no poultry on the grower's premises.

2. Compensation to Owners

Compensation value per bird (based on tables included in the compensation plan)
× the number of birds depopulated
= the total bird value loss
+ cost to owners of destruction and disposal of birds
× 50 percent
= total compensation for birds, destruction, and disposal
− grower compensation
= net owner compensation from the Department

Depopulation Agreement

We are providing in new § 53.11(c) that payments are conditioned on each claimant's complying with all applicable requirements of part 53 and, additionally, adhering to and complying with the specific conditions set forth in the "Avian Influenza Depopulation Agreement" regarding cleaning and disinfection, restocking, surveillance, and other disease prevention measures.

We will consider affected poultry to be related to the current disease situation in Virginia if they are located in Virginia or if they are poultry in another State that are determined to be affected with LPAI because of being epidemiologically linked to the disease situation in Virginia.

Owners who collect salvage value for poultry destroyed because of LPAI will have that value subtracted from the amount of indemnity they are eligible to receive.

Determining the Value of Poultry Destroyed

Prior to this interim rule, § 53.4 provided, among other things, that poultry affected by disease must be killed promptly after appraisal. However, in the case of a disease such as LPAI that can spread rapidly among poultry in close proximity, it may be necessary in controlling the disease to destroy poultry before determining its value. Therefore, we are providing in a new § 53.4(b) that, in the case of the current disease situation in Virginia, the value of poultry may be calculated following destruction and disposal of the poultry, based on the number, type, and age of the poultry destroyed.

We are providing in § 53.8 that any claims for payment for poultry destroyed in relation to the current disease situation in Virginia must be submitted to APHIS within 90 days after the effective date of this rule or the destruction of the poultry, whichever is later. Additionally, we are revising § 53.8 to provide that claims for payment must simply be made on a form approved by the Administrator, and remove the requirement that a separate voucher be used for each type of commodity for which a claim is made. In the case of the disease situation in Virginia, compensation will be made for the poultry and for the costs of destruction and disposal of the poultry. In all other cases, the claim form approved by the Administrator can be used for claims for other eligible losses.

The Administration is examining how the costs of program activities, including the payment of claims, are shared among the Federal government and cooperators such as State and local governments, industry, and producers. Hence, in the future, the payment rate provided under this rule may change.

Restocking of Premises

We are providing in § 53.7 that, in the case of LPAI related to the current disease situation in Virginia, premises that have contained poultry for which indemnity is paid under the provisions of this interim rule may not be restocked with poultry until at least 7 days following cleaning and disinfection of the premises, unless the Administrator determines that a shorter or longer period of time is adequate or necessary to protect new poultry against infection. Generally, we consider 7 days following cleaning and disinfection (which usually follows approximately 14 days after the removal of the poultry) to be a sufficient period of time for the elimination of any LPAI virus that might remain on the premises. However, in some cases it is possible it might not be entirely safe to restock a premises until more than 7 days following cleaning and disinfection, such as when poultry have not yet been removed from a premises contiguous to the premises that has been cleaned and disinfected, or when poultry litter is left in a barn that has been otherwise cleaned and disinfected. In such cases, an APHIS official will recommend to the Administrator that more than 7 days be required before restocking may occur. If on the other hand, owners or growers can demonstrate to the Administrator that less than a 7-day waiting period following cleaning and disinfection is sufficient to ensure that the virus has been eliminated, this interim rule allows the Administrator to approve such a shorter period.

Immediate Action

The Administrator has determined that there is good cause for publishing this interim rule without prior opportunity for public comment. This rulemaking is necessary to allow contract growers, as well as owners, of poultry destroyed because of LPAI associated with a disease situation in Virginia to be compensated. The rulemaking is also necessary to allow the value of the poultry to be determined after destruction, and to specify how soon a premises that contained affected poultry may be restocked. These provisions are necessary to help control the disease in the United States.

We will consider comments we receive during the comment period for this interim rule (see **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

Below is a summary of the economic analysis for the changes in indemnity with regard to low pathogenic avian influenza in Virginia contained in this document. The economic analysis provides a cost-benefit analysis as required by Executive Order 12866 and an analysis of the potential economic effects on small entities as required by the Regulatory Flexibility Act. A copy of the full economic analysis is available for review at the location listed in the **ADDRESSES** section at the beginning of this document and at *http://www.aphis.usda.gov/ppd/rad/avianecon.pdf*.

We do not have enough data for a comprehensive analysis of the economic effects of this interim rule on small entities. Therefore, in accordance with 5 U.S.C. 603, we have performed an initial regulatory flexibility analysis for this rule. We are inviting comments about this rule as it relates to small entities. In particular, we are interested in determining the number and kinds of small entities who may incur benefits or costs from implementation of this interim rule and the economic effect of those benefits or costs.

Authorization for Payment of Indemnity

The Secretary of Agriculture is authorized to carry out operations and measures to detect, control, or eradicate any diseases affecting livestock (7 U.S.C. 8308). These measures include the payment of claims growing out of the destruction of animals, articles, and means of conveyance (7 U.S.C. 8308).

Subject to available funding, this rule will permit compensation of up to 50 percent of the value of poultry destroyed because of LPAI associated with a disease situation in Virginia, plus 50 percent of the costs of the destruction and disposal of the poultry. It will allow both contract growers and owners to be compensated for losses, and for each contract grower to be compensated for 100 percent of his or her losses, up to the amount that the owner is eligible to receive before grower compensation is deducted. Language requiring appraisal before depopulation is amended to allow birds to be valued after

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depopulation based on the age and type of birds. Finally, except in limited situations, the rule requires a 7-day waiting period following cleaning and disinfection before poultry houses may be restocked. A key issue in terms of benefits and distributional issues is compensation to growers.

We consider it important to formalize provisions to share indemnity payments among poultry owners and poultry growers, both of whose productive assets are imbedded in the value of the birds. For example, an owner may own large numbers of birds located on several different farms where they are cared for by contract growers who provide the housing, equipment, labor, and other inputs. There is at present no formal requirement or procedure for assuring that the indemnity is properly shared with the contract grower, depending on the terms of the contractual arrangement. But if the owner does not pass on the proper amount to the grower, the grower loses costs committed to production when flocks under his or her care are depopulated.

Comparison of Baseline With This Rule

The existing regulations provide that APHIS and the States will cooperate in controlling and eradicating disease. For most diseases, including LPAI, the regulations prior to this interim rule provided that APHIS may pay 50 percent of the costs of indemnity.

In assessing the need for this interim rule, we identified the baseline and an alternative:

1. The baseline option is to maintain the status quo, where State and industry efforts to control LPAI are supported by Federal technical assistance and by Federal compensation of up to 50 percent of the costs.

2. The alternative provides for up to 50 percent Federal compensation and allows for both growers and owners to be compensated for economic losses arising from depopulation. It also allows growers to be fully compensated for their losses, provided that the amount for each grower does not exceed the amount that the owner of the poultry is eligible to receive before grower compensation is deducted. In addition, appraisal and restocking provisions are added.

The baseline and the alternative differ with respect to three broad issues: (1) Distribution of compensation between owners and growers; (2) appraisal; and (3) restocking. The baseline and the alternative are alike in every respect except for the distribution of compensation paid by the Federal Government. In the baseline, the Federal Government pays all compensation to the owner and, in the alternative, the Federal Government pays compensation to the owner and the grower.

Alternative: 50 Percent Federal Compensation and Payment to Growers

In this alternative, the key issue for comparison in terms of benefits and distributional issues is compensation of growers. APHIS is amending the regulations so that contract growers, as well as poultry owners, can be compensated for economic losses arising from depopulation.

For contract growers, this is a significant change from the baseline and a benefit. Prior to this interim rule, the regulations have been interpreted to mean that the owner of the bird should receive the compensation. Owners own the bird and provide most of the physical inputs, such as feed, into production. The farmer—or contract grower who raises the bird—provides inputs such as labor, electricity, and housing. Embedded in the value of a bird at any point in time is the value of the physical inputs as well as the value of the farmer's labor and inputs. In the past, only one payment check was issued. It went to the owner who, depending on the terms of the contractual relationship, could compensate the grower or not.

By targeting growers for indemnities, the Federal Government enhances the probability of rapid reporting by growers' agents who are in a position to quickly report a disease situation and thus enhances the likelihood of prompt eradication of the disease. In addition, this alternative will benefit poultry growers who could otherwise suffer uncompensated economic losses from participating in an eradication program. If growers are not compensated, any sunk mortgage, electricity, or labor costs a grower has invested in a flock are lost when the flock is depopulated. Some of these costs, such as mortgage costs, continue even if there are no poultry on the grower's premises.

Language relating to appraisal is also being changed in this interim rule. This change is more of a clarification than a substantive change with pronounced economic effects. Language in the regulations prior to this interim rule required that poultry be appraised before being depopulated. However, appraisal *per se* is often an impracticable approach for valuing commercial poultry flocks that can number hundreds of thousands of birds in size. Using a standard value per bird calculated by age (or weight) and type of bird (meat turkey, meat broiler, or breeder turkey, for example) is often more reasonable and effective than appraisal. Further, it could be difficult or unproductive to hold infected birds pending appraisal, or impossible to appraise birds that have already been incinerated, buried, or otherwise disposed of.

Finally, except in limited situations, the alternative requires a 7-day waiting period after cleaning and disinfection before poultry houses may be restocked. The baseline regulation is silent on the issue of restocking. This is a new requirement that will impose costs on industry, primarily on the growers whose houses will remain idle during cleaning and disinfection and the waiting period after, but that will confer benefits on industry as a whole in terms of reduced likelihood of reinfection.

Chronology of the 2002 LPAI Situation in the Shenandoah Valley

On April 1, 2002, the Virginia Department of Agriculture and Consumer Services (VDACS) confirmed that 20 flocks of birds in 4 Shenandoah Valley, VA, counties were infected with LPAI. As of June 18, 2002, 11 weeks later, 165 farms had been quarantined and roughly 4.7 million birds had been depopulated. Turkey farms, raising both meat birds (126 farms) and breeder birds (26 farms), had been hardest hit, accounting for 152 of the affected premises. Six Virginia counties were affected, with the bulk of cases (142) reported in Rockingham County.

State Response

To control spread of disease, VDACS has set up quarantines around farms, implemented mandatory pre-slaughter testing on all breeder birds, commercial turkeys and broilers, as well as mandatory testing of any flocks with respiratory symptoms. If a flock tests positive, officials quarantine the farm immediately and order the destruction of the flock within 24 hours if logistically possible. State and industry have collaborated on surveillance, depopulation, disposal and diagnostics.

Coordinated State and Federal Response

Beginning April 15, 2002, a significant Federal component joined the State of Virginia in an effort to contain the spread of the disease. The joint Federal/State task force has collaborated on diagnosis and inspection, disposal, cleaning and disinfection, vector control, and disease surveillance.

The U.S. Poultry Industry

The United States is the world's largest producer and exporter of poultry meat. In 1999, the most recent year for which Economic Research Service (ERS) reports summarized data, U.S. poultry meat production totaled 35.3 billion pounds, of which 83 percent was broiler meat, 15 percent was turkey meat, and 2 percent was other chicken meat. The total farm value of U.S. poultry production in 1999 was $22.4 billion. Broiler production accounts for the majority of the value at $15.1 billion, followed by eggs at $4.3 billion, turkey at $2.8 billion, and other chicken at $68 million.

Broiler production is concentrated in a group of States stretching from Delaware, south along the Atlantic Coast to Georgia, then westward through Alabama, Mississippi, and Arkansas. In 1999, these States accounted for over 70 percent of broilers produced in the United States. The top broiler-producing States were: Georgia (1.24 billion head); Arkansas (1.2 billion head); Alabama (0.971 billion head); Mississippi (0.735 billion head); and North Carolina (0.674 billion head).

U.S. turkey production in 1999 totaled 273 million birds with a combined live weight of 6.9 billion pounds. Production of turkey is somewhat more scattered geographically than broiler production. The top five turkey-producing States are North Carolina, Minnesota, Arkansas, Virginia, and California.

The United States is the world's largest exporter of broilers. In 1999, broiler exports totaled 4.920 billion pounds (17 percent of total production), valued at $1.4 billion. Demand for U.S. broiler products has fluctuated over the last several years due to changing economic conditions and currency exchange rates in the major exporting countries. In 1999, the largest importers of U.S. broiler products were Russia (including the Baltic countries) and China (including Hong Kong), which together accounted for 62 percent of total shipments of U.S. broiler products, on a quantity basis.

The United States is also the world's largest exporter of turkey products. In 1999, U.S. turkey exports were 378 million pounds and were valued at $198 million. Only 11 percent of turkey exports were as whole birds, with the majority of shipments being lower-valued turkey parts or ground or mechanically deboned meat (MDM). Many importing countries mix ground or MDM turkey meat with other meats in sausage production.

Virginia Poultry Industry

In 2000, Virginia was the fourth ranking turkey-producing State and the eighth ranking broiler-producing State. Virginia produced 25.5 million turkeys (almost 10 percent of the U.S. total) valued at $238 million, and 265 million commercial broilers valued at $441 million. Gross income from Virginia broilers, turkeys, and all other poultry totaled over $700 million in 2000. Virginia's poultry industry is concentrated in the Shenandoah Valley. A recent industry survey determined that of the 1,285 poultry farms in Virginia, 1,100 were located in the Shenandoah Valley, and all were contract growers.

Structure of the U.S. Poultry Industry

Contract production dominates the Virginia and the U.S. chicken, turkey, and egg industry. Owners place poultry on farms, and the farmer (or contract grower) cares for the birds until they reach processing size (usually 6.5 weeks for broilers, and 17–24 weeks for turkeys). Typically the owner provides chicks, feed, veterinary supplies and services, management services, field personnel, and transportation for the birds to and from the farm. The grower provides labor, land and housing facilities, utilities, and other operating expenses, such as repairs and maintenance.

Specific contract terms vary greatly from situation to situation. Farmers are compensated by owners at the end of the grow-out period. The compensation typically consists of three components: (1) A base payment (per-bird payment or a per-pound fee); (2) an incentive or performance payment to reward efficient producers; and (3) a disaster clause that may compensate the grower for losses resulting from natural disasters, such as flood, excessive heat, fire, or for damage or loss of potential production. Some contracts have provisions under which owners can compensate growers for losses arising from depopulation and others do not.

Compensation to Owners and Growers

This interim rule will allow both owners and growers to be compensated for their losses arising from depopulation of birds affected with LPAI. When a bird is depopulated and an indemnity is paid solely to an owner who does not pass on a portion to the grower, the grower suffers uncompensated economic losses. The process of compensating growers and owners will have three separate steps: (1) Calculation of per bird payments by age and type of bird; (2) determination of how much of this payment should go to growers and how much to owners; and (3) development of procedures for paying growers and owners.

In conjunction with industry, production experts, and poultry price specialists, the Department has developed reference tables that specify per bird indemnity payments based on the age and type of bird. Fair market values have been developed for breeder birds (breeder broilers, breeder turkey hens, and breeder turkey toms), for meat birds (broilers, hens, and toms), and for table egg layers (two table egg layer flocks have been depopulated) using appropriate methodologies. These tables are available in the full economic analysis for this rule, which is available for review at the location listed in the **ADDRESSES** section at the beginning of this document and at *http://www.aphis.usda.gov/ppd/rad/avianecon.pdf*.

Because there is limited price information (the U.S. poultry industry is a vertically integrated industry with no markets for poultry at intermediate stages of development), it has been necessary to develop "fair market values" for meat birds depopulated prior to "grow-out" and for breeder birds, which are not typically sold at intermediate stages of development. In brief, the approach that has been taken is to start with published wholesale prices for meat birds (broilers and turkeys) and work backwards. Transportation and processing costs are subtracted out to arrive at broiler and turkey values. Then production costs are subtracted to arrive at the value of the chick. Then hatchery costs are subtracted to determine the value of a fertile egg. The value of a fertile egg times the number of fertile eggs laid equals the gross value of a breeding bird. Gross value less egg production cost equals the net value of a breeding bird. The value of birds at less than slaughter weight is calculated by adjusting for the cost of feed not fed. For breeders in production, adjustment is made for fertile eggs already produced and, for breeders being raised, adjustment is made for feed not fed.

Compensation of Growers and Owners

The Department has determined that, subject to available funding, growers may recoup 100 percent of their eligible costs regardless of the age at which the birds are depopulated, up to 50 percent of all eligible losses incurred by each owner (as determined before grower compensation is deducted) resulting from the destruction of poultry affected with the disease. Grower payments will be based on historical contract settlement sheets or historical amounts paid per bird by companies in the past. Subject to available funding, payments to owners will equal 50 percent of the

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estimated value of the birds and the cost of destroying and disposing of the birds, minus grower compensation.

Cost-Benefit Analysis

The final cost of this rule will depend on a number of factors, including the number, type, and age of birds depopulated; actual indemnity paid per bird; and other program costs. Given the provisions of this rule (a 50 percent compensation cap on total compensation to owners and growers, with growers being compensated up to 100 percent of their losses) and the depopulation numbers as of October 2, 2002, of 4.74 million birds, the total compensation bill is estimated at $51 million, with growers being compensated $13.9 million and owners being compensated $37.1 million.

The groups that primarily benefit because of a disease eradication campaign include consumers and those owners and growers whose flocks have remained healthy. The groups that bear the primary burden of the eradication effort are the owners and growers whose flocks are depopulated. In addition to the value of lost production, the owners and growers of affected birds may also bear costs of cleanup, disinfection, transportation, foregone income, and other financial hardships.

The benefits of this rule are not quantified, but are expected to significantly exceed the costs. They stem from the enhanced probability of rapid detection and prompt eradication of a disease situation. Benefits include: (1) Avoided owner and grower losses from disease morbidity and mortality; (2) avoided consumer price increases resulting from decreased supplies; and (3) avoided trade bans (State, regional, or national) that result when trading partners close markets because of disease. In addition by eradication of a disease situation of LPAI, we reduce the probability of the disease mutating into HPAI and spreading to densely populated poultry production areas on the eastern seaboard, which would have severe industry costs.

Although a quantified cost-benefit analysis was not conducted for this disease situation, the full economic analysis for this rule does summarize an economic analysis by ERS of a 1983–1984 outbreak of HPAI that affected parts of Pennsylvania, New Jersey, Maryland, and Virginia. That analysis found that the program and indemnity costs were small compared to losses avoided (consumer losses from increased prices). That analysis found that program and indemnity costs were $55 million ($98 million in 2002 dollars). If the outbreak had spread to the Delmarva Peninsula in Delaware, Maryland, and Virginia, consumer losses due to increased prices would have approached $492 million ($882.2 million in 2002 dollars). If the outbreak had spread to the entire eastern seaboard, consumer losses due to increased prices would have approached $5.6 billion ($10.04 billion in 2002 dollars) in increased consumer prices for eggs, fowl, broilers, turkeys, pork, and beef. Although market conditions have changed from the time that analysis was conducted, and although the current disease situation differs from the 1983–1984 outbreak, we believe that the conclusion holds that benefits of this action will significantly outweigh costs. Please also note that the ERS estimates do not include any potential effects on trade. We believe that the avoidance of potential reductions in trade increases the benefits of this interim rule substantially.

Potential Effects on Small Entities

To the extent that the interim rule contributes to the elimination of AI in Virginia, all affected entities should benefit over the long term. In the short term, however, the economic effects will vary.

As of June 18, 2002, 163 Shenandoah Valley poultry farms in a six-county area of Virginia were quarantined because of LPAI. Assuming the LPAI event remains localized in this area, 5 or 6 poultry companies/integrators who own the affected poultry, and a minimum of 104 to a maximum of 1,100 contract growers could be affected by this rule. A minimum of 7 and maximum of 15 poultry processors could be affected by this rule. In addition, other entities not yet identified may be directly or indirectly affected by the disease situation and/or the interim rule.

The poultry companies/integrators who own the birds are all large, vertically integrated concerns that do not meet the Small Business Administration (SBA) small-entity criteria. There are 1,100 contract poultry growers in the Shenandoah Valley. It is unclear at this time how many contract growers will be affected by this rule, or how many of them will qualify for consideration as small entities. The SBA defines small poultry operations as those earning gross per-farm receipts of no more than $750,000 annually.

There were 15 poultry processing plants in the State of Virginia in 1997. Seven of the processing plants were located in Rockingham and Shenandoah Counties. The SBA defines small poultry processing plants as those earning receipts of no more than $500,000 annually. It is unclear at this time how poultry processing plants will be affected by this rule. Census data for 1997 suggests that most of the processing plants would not qualify as small businesses because their average revenues exceed $100 million annually.

Reporting and Recordkeeping

The reporting and recordkeeping requirements in this rule are discussed below under the heading "Paperwork Reduction Act."

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507(j) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection and recordkeeping requirements included in this interim rule have been submitted for emergency approval to the Office of Management and Budget (OMB). OMB has assigned control number 0579–0208 to the information collection and recordkeeping requirements.

We plan to request continuation of that approval for 3 years. Please send written comments on the 3-year approval request to the following addresses: (1) Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503; and (2) Docket No. 02–048–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 02–048–1 and send your comments within 60 days of publication of this rule.

This interim rule amends the regulations in a way that will allow the Department to pay indemnity to contract growers and owners relating to poultry destroyed because of low pathogenic avian influenza associated with a disease situation in Virginia. The Department may pay all eligible losses of a contract grower, up to the amount that the owner is eligible to receive before grower compensation is deducted, and up to 50 percent of eligible losses of owners, minus any amount paid to the contract grower of a flock. Implementing this program will require affected entities to complete an appraisal and indemnity claim form, its accompanying worksheet, and depopulation agreements. We are soliciting comments from the public (as well as affected agencies) concerning our information collection and recordkeeping requirements.

These comments will help us:

(1) Evaluate whether the information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses).

Estimate of burden: Public reporting burden for this collection of information is estimated to average 1 hour per response.

Respondents: Participating poultry owners and growers, APHIS accredited veterinarians, State animal health officials, and State personnel who perform appraisal work.

Estimated annual number of respondents: 800.

Estimated annual number of responses per respondent: 2.

Estimated annual number of responses: 1,600.

Estimated total annual burden on respondents: 1,600 hours.

Copies of this information collection can be obtained from Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

List of Subjects in 9 CFR Part 53

Animal diseases, Indemnity payments, Livestock, Poultry and poultry products.

Accordingly, we are amending 9 CFR part 53 as follows:

PART 53—FOOT-AND-MOUTH DISEASE, PLEUROPNEUMONIA, RINDERPEST, AND CERTAIN OTHER COMMUNICABLE DISEASES OF LIVESTOCK OR POULTRY

1. The authority citation for part 53 is revised to read as follows:

Authority: 7 U.S.C. 8303–8306, 8308, 8310, 8315; 7 CFR 2.22, 2.80, and 371.4.

§ 53.2 [Amended]

2. In § 53.2, paragraph (b) is amended by adding, immediately after the phrase "control and eradication of the disease, and" the words ", except as provided in § 53.11,".

3. In § 53.4, paragraph (a) is revised, paragraph (b) is redesignated as paragraph (c), and a new paragraph (b) is added to read as follows:

§ 53.4 Destruction of animals.

(a) Except as provided in paragraph (b) of this section, animals infected with or exposed to disease shall be killed promptly after appraisal and disposed of by burial or burning, unless otherwise specifically provided by the Administrator, at his or her discretion. In the case of animals depopulated due to infectious salmon anemia, salvageable fish may be sold for rendering, processing, or any other purpose approved by the Administrator. In the case of poultry depopulated because of low pathogenic avian influenza related to the 2002 disease situation in Virginia associated with the H5 or H7 virus, poultry may be slaughtered and sold. The proceeds gained from the sale of the fish or poultry will be subtracted from any payment from APHIS for which the producer or owner is eligible under § 53.2(b) or § 53.11.

(b) In the case of low pathogenic avian influenza related to a 2002 disease situation in Virginia associated with the H5 or H7 virus, the value of poultry depopulated because of the disease may be calculated following destruction and disposal of the poultry, based on the number, type, and age of the animals destroyed.

* * * * *

§ 53.7 [Amended]

4. Section 53.7 is amended by adding, immediately after the second sentence, the following sentence: "In the case of low pathogenic avian influenza related to the 2002 disease situation in Virginia associated with the H5 or H7 virus, premises may not be restocked with poultry until at least 7 days following such cleaning and disinfection, unless the Administrator determines that a shorter or longer period of time is adequate or necessary to protect new poultry against infection."

5. Section 53.8 is revised to read as follows:

§ 53.8 Presentation of claims.

(a) Except for claims made under § 53.11, claims for the following must be presented to APHIS, through the inspector in charge, on a form approved by the Administrator:

(1) Compensation for the value of animals;

(2) The cost of burial, burning, or other disposition of animals;

(3) The value of material destroyed; and

(4) The expenses of destruction.

(b) In the case of claims made under § 53.11, claims for compensation for losses from poultry destroyed or to be destroyed must be presented to APHIS, through the inspector in charge, on a form approved by the Administrator, and the claim must specify the number, type, and age of the poultry.

(c) To be considered by the Department, claims made under § 53.11 must be submitted to APHIS within 90 days after December 9, 2002 or the destruction of the poultry, whichever is later.

(Approved by the Office of Management and Budget under control number 0579–0208)

6. A new § 53.11 is added to read as follows:

§ 53.11 Payments arising from low pathogenic avian influenza; conditions for payment.

In the case of low pathogenic avian influenza related to a 2002 disease situation in Virginia associated with the H5 or H7 virus, the Administrator may pay claims, subject to available funding, as follows:

(a) *For contract growers.* The Administrator may pay a contract grower up to 100 percent of the losses identified in accordance with the LPAI compensation plan, up to the amount that the owner is eligible to receive before grower compensation is deducted.

(b) *For owners.* The Administrator, in accordance with § 53.4, may pay an owner up to 50 percent of the value of the poultry destroyed plus 50 percent of the costs of destruction and disposal of the poultry, in accordance with the LPAI compensation plan, minus the amount paid in accordance with paragraph (a) of this section to the contract grower of that poultry.

(c) *Conditions.* Payments to be made in accordance with paragraph (a) or (b) of this section are conditioned on each claimant's complying with all

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applicable requirements of this part and, additionally, agreeing to and complying with the specific conditions set forth in the "Avian Influenza Depopulation Agreement" regarding cleaning and disinfection, restocking, surveillance, and other disease prevention measures.

(Approved by the Office of Management and Budget under control number 0579–0208)

Done in Washington, DC, this 30th day of October 2002.

Bill Hawks,

Under Secretary for Marketing and Regulatory Programs.

[FR Doc. 02–27988 Filed 10–30–02; 1:21 pm]

BILLING CODE 3410–34–P

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 1, 2, 7, 9, 19, 20, 26, 30, 31, 33, 39, 50, 51, 52, 54, 55, 71, 75, 100 and 110

RIN 3150–AH01

NRC Public Document Room Address Change and Corrections to Information Collection Provisions

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to reflect the new address for the Public Document Room (PDR) and to correct information collection sections in the Code of Federal Regulations. These amendments are necessary to inform the public of these administrative changes to the NRC regulations.

EFFECTIVE DATE: November 4, 2002.

FOR FURTHER INFORMATION CONTACT: Alzonia W. Shepard, Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6864, *e-mail:aws@nrc.gov*.

SUPPLEMENTARY INFORMATION: The NRC has relocated its Public Document Room (PDR) to the NRC's headquarters building, One White Flint North, located at 11555 Rockville Pike (first floor), Rockville, Maryland. The NRC is amending portions of its regulations to reflect the relocation of the PDR. This final rule also corrects the paragraphs listing approved information collection requirements in the information collection sections of several 10 CFR parts. These corrections are necessary to reflect information collections that were added or removed by specific rulemaking actions for which conforming changes were not made.

Because these amendments deal solely with agency practice and procedures, the notice and comment provisions of the Administrative Procedure Act do not apply under 5 U.S.C. 553(b)(A). These amendments are effective upon publication in the **Federal Register**. Good cause exists to dispense with the usual 30-day delay in the effective date, because these amendments are of a minor and administrative nature, dealing with the relocation of the agency PDR and correction of information collection sections.

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22 (c)(2). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This rule does not contain new or amended information collection requirements subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget, approval numbers 3150–0043, –0044, –0014, –0146, –0017, –0016, –0015, –0130, –0011, –0021, –0151, –0155, –0018, –0008, –0132,—0002, –0055, –0093, and –0036.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

Regulatory Analysis

A regulatory analysis has not been prepared for this final rule because this rule is administrative in that it amends the regulations to reflect the current address for the Public Document Room and corrects information collection sections in the Code of Federal Regulations. These are considered minor non-substantive amendments and will not have a significant impact on NRC licensees or the public.

Backfit Analysis

The NRC has determined that the backfit rule does not apply to this final rule because this rule does not involve any provisions that would impose a backfit as defined in 10 CFR Chapter I. Therefore a backfit analysis is not required for this rule.

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and verified this determination with the Office of Information and Regulatory Affairs of OMB.

List of Subjects

10 CFR Part 1

Organization and functions (Government Agencies).

10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalties, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

10 CFR Part 7

Advisory committees, Sunshine Act.

10 CFR Part 9

Criminal penalties, Freedom of information, Privacy, Reporting and recordkeeping requirements, Sunshine Act.

10 CFR Part 19

Criminal penalties, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Occupational safety and health, Radiation protection, Reporting and recordkeeping requirements, Sex discrimination.

10 CFR Part 20

Byproduct material, Criminal penalties, Licensed material, Nuclear materials, Nuclear power plants and reactors, Occupational safety and health, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Source material, Special nuclear material, Waste treatment and disposal.

10 CFR Part 26

Alcohol abuse, Alcohol testing, Appeals, Chemical testing, Drug abuse, Drug testing, Employee assistance programs, Fitness for duty, Management actions, Nuclear power reactors, Protection of information, Reporting and recordkeeping requirements.

10 CFR Part 30

Byproduct material, Criminal penalties, Government contracts,

Intergovernmental relations, Isotopes, Nuclear materials, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 31

Byproduct material, Criminal penalties, Labeling, Nuclear materials, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment.

10 CFR Part 33

Byproduct material, Criminal penalties, Nuclear materials, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 39

Byproduct material, Criminal penalties, Nuclear material, Oil and gas exploration—well logging, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Source material, Special nuclear material.

10 CFR Part 50

Antitrust, Classified information, Criminal penalties, Fire protection, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

10 CFR Part 51

Administrative practice and procedure, Environmental impact statement, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements.

10 CFR Part 52

Administrative practice and procedure, Antitrust, Backfitting, Combined license, Early site permit, Emergency planning, Fees, Inspection, Limited work authorization, Nuclear power plants and reactors, Probabilistic risk assessment, Prototype, Reactor siting criteria, Redress of site, Reporting and recordkeeping requirements, Standard design, Standard design certification.

10 CFR Part 54

Administrative practice and procedure, Age-related degradation, Backfitting, Classified information, Criminal penalties, Environmental protection, Nuclear power plants and reactors, Reporting and recordkeeping requirements

10 CFR Part 55

Criminal penalties, Manpower training programs, Nuclear power plants and reactors, Reporting and recordkeeping requirements.

10 CFR Part 71

Criminal penalties, Hazardous materials transportation, Nuclear materials, Packaging and containers, Reporting and recordkeeping requirements.

10 CFR Part 75

Criminal penalties, Intergovernmental relations, Nuclear materials, Nuclear power plants and reactors; Reporting and recordkeeping requirements, Security measures.

10 CFR Part 100

Nuclear power plants and reactors, Reactor siting criteria.

10 CFR Part 110

Administrative practice and procedure, Classified information, Criminal penalties, Export, Import, Intergovernmental relations, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Scientific equipment.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR Parts 1, 2, 7, 9, 19, 20, 26, 30, 31, 33, 39, 50, 51, 52, 54, 55, 71, 75,100 and 110.

PART 1—STATEMENT OF ORGANIZATION AND GENERAL INFORMATION

1. The authority citation for part 1 continues to read as follows:

Authority: Secs. 23, 161, 68 Stat. 925, 948, as amended (42 U.S.C. 2033, 2201); sec. 29, Pub. L. 85–256, 71 Stat. 579, Pub. L. 95–209, 91 Stat. 1483 (42 U.S.C. 2039); sec. 191, Pub. L. 87–615, 76 Stat. 409 (42 U.S.C. 2241); secs. 201, 203, 204, 205, 209, 88 Stat. 1242, 1244, 1245, 1246, 1248, as amended (42 U.S.C. 5841, 5843, 5844, 5845, 5849); 5 U.S.C. 552, 553; Reorganization Plan No. 1 of 1980, 45 FR 40561, June 16, 1980.

§ 1.3 [Amended]

2. In § 1.3, paragraph (a), in the third sentence, remove the words "2120 L Street, NW., Washington, DC," and add in their place the words "One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852–2738."

3. Section 1.5 is revised to read as follows:

§ 1.5 Location of principal offices and Regional Offices.

(a) The principal NRC offices are located in the Washington, DC, area. Facilities for the service of process and papers are maintained in the State of Maryland at 11555 Rockville Pike, Rockville, Maryland 20852–2738. The agency's official mailing address is U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. The locations of NRC offices in the Washington, DC, area are as follows:

(1) One White Flint North Building, 11555 Rockville Pike, Rockville, Maryland 20852–2738.

(2) Two White Flint North Building, 11545 Rockville Pike, Rockville, Maryland 20852–2738.

(b) The addresses of the NRC Regional Offices are as follows:

(1) Region 1, USNRC, 475 Allendale Road, King of Prussia, PA 19406–1415.

(2) Region II, USNRC, Atlanta Federal Center, 61 Forsyth Street, SW., Suite 23T85, Atlanta, GA 30303–3415.

(3) Region III, USNRC, 801 Warrenville Road, Lisle, Il. 60532–4351.

(4) Region IV, USNRC, 611 Ryan Plaza Drive, Suite 400, Arlington, TX 76011–8064.

4. In Subpart B, the undesignated center heading immediately preceding § 1.30 reading "Chief Information Officer" is removed.

§ 1.30 [Redesignated as § 1.35]

5. Section 1.30 is redesignated as § 1.35.

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS

6. The authority citation for part 2 continues to read as follows:

Authority: Secs.161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87–615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 88 Stat.1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552.

Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 105, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 114(f), Pub. L. 97–425, 96 Stat. 2213, as amended (42 U.S.C. 10134(f)); sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871). Sections 2.102, 2.103, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 183i; 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Section 2.105 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Sections 2.200–2.206 also issued under secs. 161 b, i, o, 182, 186, 234, 68 Stat. 948–951, 955, 83 Stat. 444, as amended (42 U.S.C. 2201 (b), (i), (o), 2236, 2282); sec. 206, 88 Stat 1246 (42 U.S.C. 5846). Section 2.205(j) also issued under Pub. L. 101–410, 104 Stat. 90, as amended by section 3100(s), Pub. L. 104–134, 110 Stat. 1321–373 (28 U.S.C. 2461 note). Sections 2.600–2.606 also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332). Sections 2.700a, 2.719 also issued under 5 U.S.C. 554. Sections 2.754, 2.760, 2.770, 2.780 also issued under 5 U.S.C. 557. Section

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2.764 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133), and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553, and sec. 29, Pub. L. 85–256, 71 Stat. 579, as amended (42 U.S.C. 2039). Subpart K also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Subpart L also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Subpart M also issued under sec. 184 (42 U.S.C. 2234) and sec. 189, 68 stat. 955 (42 U.S.C. 2239). Appendix A also issued under sec. 6, Pub. L. 91–560, 84 Stat. 1473 (42 U.S.C. 2135).

7. In § 2.4, the definitions for *NRC Public Document Room* and *Public Document Room* are revised to read as follows:

§ 2.4 Definitions.

* * * * *

NRC Public Document Room means the facility at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, where certain public records of the NRC that were made available for public inspection in paper or microfiche prior to the implementation of the NRC Agencywide Documents Access and Management System, commonly referred to as ADAMS, will remain available for public inspection. It is also the place where NRC makes computer terminals available to access the Publicly Available Records System (PARS) component of ADAMS on the NRC Web site, *http://www.nrc.gov*, and where copies of publicly available documents can be viewed or ordered for a fee as set forth in § 9.35 of this chapter. The facility is staffed with reference librarians to assist the public in identifying and locating documents and in using the NRC Web site and ADAMS. The NRC Public Document Room is open from 7:45 am to 4:15 pm, Monday through Friday, except on Federal holidays. Reference service and access to documents may also be requested by telephone (301–415–4737 or 800–397–4209) between 8:30 am and 4:15 pm, or by e-mail (*PDR@nrc.gov*), facsimile (301–415–3548), or letter (NRC Public Document Room, One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852–2738).

* * * * *

Public Document Room means the place at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852–2738, at which public records of the Commission will ordinarily be made available for inspection.

* * * * *

§ 2.101 [Amended]

8. In § 2.101, the introductory text of paragraph (g)(1), remove the words "2120 L Street NW., Washington, D.C." and add in their place the words "One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852–2738."

§ 2.701 [Amended]

9. In § 2.701, paragraph (a)(1), remove the words "2120 L Street, NW., Washington, D.C.," and add in their place the words "One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852–2738."

PART 7—ADVISORY COMMITTEES

10. The authority citation for part 7 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat.1242, as amended (42 U.S.C. 5841); Pub. L. 92–463, 86 Stat. 770 (5 U.S.C. App.).

11. In § 7.2, the paragraph designations are removed and the definition for *NRC Public Document Room* is revised to read as follows:

§ 7.2 Definitions.

* * * * *

NRC Public Document Room means the Public Document Room maintained by the NRC at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852–2738.

* * * * *

PART 9—PUBLIC RECORDS

12. The authority citation for part 9 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

Subpart A also issued 5 U.S.C. 552 and 31 U.S.C. 9701; Pub. L. 99–570. Subpart B is also issued under 5 U S.C. 552a. Subpart C is also issued under 5 U.S.C. 552b.

13. In § 9.21, paragraph (b) is revised to read as follows:

§ 9.21 Publicly available records.

* * * * *

(b) For the convenience of persons who may wish to inspect without charge, or purchase copies of a record or a limited category of records for a fee, publicly available records of the NRC's activities described in paragraph (c) of this section are also made available at the NRC Web site, *http://www.nrc.gov*, and/or at the Public Document Room located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852–2738, between 7:45 am and 4:15 pm on Monday through Friday except Federal holidays.

* * * * *

14. In § 9.23, the introductory text of paragraph (a)(1) is revised to read as follows:

§ 9.23 Requests for records.

(a)(1) A person may request access to records routinely made available by the NRC under § 9.21 in person, by telephone, by e-mail, facsimile, or U.S. mail from the NRC Public Document Room, One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852–2738.

* * * * *

15. In § 9.35 the introductory text of paragraph (b) is revised to read as follows:

§ 9.35 Duplicate fees.

* * * * *

(b) The NRC will assess the following charges for copies of records to be duplicated by the NRC at locations other than the NRC Public Document Room located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland.

* * * * *

PART 19—NOTICES, INSTRUCTIONS, AND REPORTS TO WORKERS: INSPECTIONS AND INVESTIGATIONS

16. The authority citation for part 19 continues to read as follows:

Authority: Secs. 53, 63, 81, 103, 104, 161, 186, 68 Stat. 930, 933, 935, 936, 937, 948, 955, as amended, sec. 234, 83 Stat. 444, as amended, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 2073, 2093, 2111, 2133, 2134, 2201, 2236, 2282, 2297f); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851).

17. Section 19.5 is revised to read as follows:

§ 19.5 Communications.

Except where otherwise specified in this part, all communications and reports concerning the regulations in this part should be addressed to the Regional Administrator of the appropriate U.S. Nuclear Regulatory Commission Regional Office listed in Appendix D of part 20 of this chapter. Communications, reports, and applications may be delivered in person at the Commission's offices at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland.

PART 20—STANDARDS FOR PROTECTION AGAINST RADIATION

18. The authority citation for part 20 continues to read as follows:

Authority: Secs. 53, 63, 65, 81, 103, 104, 161, 182, 186, 68 Stat. 930, 933, 935, 936, 937, 948, 953, 955, as amended, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 2073, 2093, 2095, 2111, 2133, 2134, 2201, 2232, 2236, 2297f), secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

19. In § 20.1009, paragraph (b) is revised to read as follows:

§ 20.1009 Information collection requirements: OMB approval.

* * * * *

(b) The approved information collection requirements contained in this part appear in §§ 20.1003, 20.1101, 20.1202, 20.1203, 20.1204, 20.1206, 20.1208, 20.1301, 20.1302, 20.1403, 20.1404, 20.1406, 20.1501, 20.1601, 20.1703, 20.1901, 20.1904, 20.1905, 20.1906, 20.2002, 20.2004, 20.2005, 20.2006, 20.2102, 20.2103, 20.2104, 20.2105, 20.2106, 20.2107, 20.2108, 20.2110, 20.2201, 20.2202, 20.2203, 20.2204, 20.2205, 20.2206, 20.2301, and appendix G to this part.

* * * * *

Appendix D—[Amended]

20. In Appendix D to part 20, the address for the Region IV field office is removed.

PART 26—FITNESS-FOR-DUTY PROGRAM

21. The authority citation for part 26 is revised to read as follows:

Authority: Secs. 53, 81, 103, 104, 107, 161, 68 Stat. 930, 935, 936, 937, 948, as amended, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 2073, 2111, 2112, 2133, 2134, 2137, 2201, 2297f); secs. 201, 202, 206, 88 S at. 1242, 1244, 1246, as amended (42 U.S.C. 5841, 5842, 5846).

22. In § 26.8, paragraph (b) is revised to read as follows:

§ 26.8 Information collection requirements: OMB approval.

* * * * *

(b) The approved information collection requirements contained in this part appear in §§ 26.6, 26.20, 26.21, 26.22, 26.23, 26.24, 26.25, 26.27, 26.28, 26.29, 26.70, 26.71, 26.73, 26.80, and appendix A to this part.

PART 30—RULES OF GENERAL APPLICABILITY TO DOMESTIC LICENSING OF BYPRODUCT MATERIAL

23. The authority citation for part 30 continues to read as follows:

Authority: Secs. 81, 82, 161, 182, 183, 186, 68 Stat. 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2111, 2112, 2201, 2232, 2233, 2236, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 30.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 2902, 106 Stat. 3123 (42 U.S.C. 5851). Section 30.34(b) also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 30.61 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

24. In § 30.8, paragraph (b) is revised to read as follows:

§ 30.8 Information collection requirements: OMB approval.

* * * * *

(b) The approved information collection requirements contained in this part appear in §§ 30.9, 30.11, 30.15, 30.19, 30.20, 30.32, 30.34, 30.35, 30.36, 30.37, 30.38, 30.41, 30.50, 30.51, 30.55, and appendices A, C, D, and E to this part.

* * * * *

PART 31—GENERAL DOMESTIC LICENSES FOR BYPRODUCT MATERIAL

25. The authority citation for part 31 continues to read as follows:

Authority: Secs. 81, 161, 183, 68 Stat. 935, 948, 954, as amended (42 U.S.C. 2111, 2201, 2233); secs. 201, as amended, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842).

Section 31.6 also issued under sec. 274, 73 Stat. 688 (42 U.S.C. 2021).

26. In § 31.4, paragraph (b) is revised to read as follows:

§ 31.4 Information collection requirements: OMB approval.

* * * * *

(b) The approved information collection requirements contained in this part appear in §§ 31.5, 31.8, and 31.11.

* * * * *

PART 33—SPECIFIC DOMESTIC LICENSES OF BROAD SCOPE FOR BYPRODUCT MATERIAL

27. The authority citation for part 33 continues to read as follows:

Authority: Secs. 81, 161, 182, 183, 68 Stat. 935, 948, 953, 954, as amended (42 U.S.C. 2111, 2201, 2232, 2233); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

§ 33.8 [Amended]

28. In § 33.8, paragraphs (c)(3) and (c)(4) are removed, and paragraph (c)(2) is removed and reserved.

PART 39—LICENSES AND RADIATION SAFETY REQUIREMENTS FOR WELL LOGGING

29. The authority citation for part 39 continues to read as follows:

Authority: Secs. 53, 57, 62, 63, 65, 69, 81, 82, 161, 182, 183, 186, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2112, 2201, 2232, 2233, 2236, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244,1246 (42 U.S.C. 5841, 5842, 5846).

30. In § 39.8, paragraph (b) is revised to read as follows:

§ 39.8 Information collection requirements: OMB approval.

* * * * *

(b) The approved information collection requirements contained in this part appear in §§ 39.11, 39.13, 39.15, 39.17, 39.31, 39.33, 39.35, 39.37, 39.39, 39.43, 39.51, 39.61, 39.63, 39.65, 39.67, 39.73, 39.75, 39.77, and 39.91.

* * * * *

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

31. The authority citation for part 50 is revised to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5841). Section 50.10 also issued under secs. 101, 185, 68 Stat. 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54(dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80—50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

32. In § 50.8, paragraph (b) is revised to read as follows:

§ 50.8 Information collection requirements: OMB approval.

* * * * *

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(b) The approved information collection requirements contained in this part appear in §§ 50.30, 50.33, 50.33a, 50.34, 50.34a, 50.35, 50.36, 50.36a, 50.36b, 50.44, 50.46, 50.47, 50.48, 50.49, 50.54, 50.55, 50.55a, 50.59, 50.60, 50.61, 50.62, 50.63, 50.64, 50.65, 50.66, 50.68, 50.71, 50.72, 50.74, 50.75, 50.80, 50.82, 50.90, 50.91, 50.120, and appendices A, B, E, G, H, I, J, K, M, N, O, Q, R, and S to this part.

* * * * *

PART 51—ENVIRONMENTAL PROTECTION REGULATIONS FOR DOMESTIC LICENSING AND RELATED REGULATORY FUNCTIONS

33. The authority citation for part 51 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended, sec. 1701, 106 Stat. 2951, 2952, 2953, (42 U.S.C. 2201, 2297f); secs. 201, as amended, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842). Subpart A also issued under National Environmental Policy Act of 1969, secs. 102, 104, 105, 83 Stat. 853–854, as amended (42 U.S.C. 4332, 4334, 4335); and Pub. L. 95–604, Title II, 92 Stat. 3033–3041; and sec. 193, Pub. L. 101–575, 104 Stat. 2835 (42 U.S.C. 2243). Sections 51.20, 51.30, 51.60, 51.80. and 51.97 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241, and sec. 148, Pub. L. 100–203, 101 Stat. 1330–223 (42 U.S.C. 10155, 10161, 10168). Section 51.22 also issued under sec. 274, 73 Stat. 688, as amended by 92 Stat. 3036–3038 (42 U.S.C. 2021) and under Nuclear Waste Policy Act of 1982, sec. 121, 96 Stat. 2228 (42 U.S.C. 10141). Sections 51.43, 51.67, and 51.109 also under Nuclear Waste Policy Act of 1982, sec. 114(f), 96 Stat. 2216, as amended (42 U.S.C. 10134(f)).

34. In § 51.17, paragraph (b) is revised to read as follows:

§ 51.17 Information collection requirements: OMB approval.

* * * * *

(b) The approved information collection requirements in this part appear in §§ 51.6, 51.16, 51.41, 51.45, 51.50, 51.51, 51.52, 51.53, 51.54, 51.55, 51.60, 51.61, 51.62, 51.66, 51.68, and 51.69.

PART 52—EARLY SITE PERMITS; STANDARD DESIGN CERTIFICATIONS; AND COMBINED LICENSES FOR NUCLEAR POWER PLANTS

35. The authority citation for part 52 continues to read as follows:

Authority: Secs. 103, 104, 161, 182, 183, 186, 189, 68 Stat. 936, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2133, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, 202, 206, 88 Stat. 1242, 1244, 1246, as amended (42 U.S.C. 5841, 5842, 5846).

36. In § 52.8, paragraph (b) is revised to read as follows:

§ 52.8 Information collection requirements: OMB approval.

* * * * *

(b) The approved information collection requirements contained in this part appear in §§ 52.15, 52.17, 52.29, 52.35, 52.45, 52.47, 52.57, 52.63, 52.75, 52.77, 52.78, 52.79, 52.91, 52.99, and appendices A, B. and C to this part.

PART 54—REQUIREMENTS FOR RENEWAL OF OPERATING LICENSES FOR NUCLEAR POWER PLANTS

37. The authority citation for part 54 continues to read as follows:

Authority: Secs. 102, 103, 104, 161, 181, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs 201, 202, 206, 88 Stat. 1242, 1244, as amended (42 U.S.C. 5841, 5842).

Section 54.17 also issued under E.O. 12829, 3 CFR, 1993 Comp., p.570; E.O. 12958, as amended, 3 CFR, 1995 Comp., p. 333; E.O. 12968, 3 CFR, 1995 Comp., p.391.

38. In § 54.9, paragraph (b) is revised to read as follows:

§ 54.9 Information collection requirements: OMB approval.

* * * * *

(b) The approved information requirements contained in this part appear in §§ 54.13, 54.15, 54.17, 54.19, 54.21, 54.22, 54.23, 54.33, and 54.37.

PART 55—OPERATORS' LICENSES

39. The authority citation for part 55 continues to read as follows:

Authority: Secs. 107, 161, 182, 68 Stat. 939, 948, 953 , as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2137, 2201, 2232, 2282); secs. 201, as amended, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842).

Sections 55.41, 55.43, 55.45, and 55.59 also issued under sec. 306, Pub. L. 97–425, 96 Stat. 2262 (42 U.S.C. 10226). Section 55.61 also issued under secs. 186, 187, 68 Stat. 955 (42 U.S.C. 2236, 2237).

40. In § 55.8, paragraph (b) is revised to read as follows:

§ 55.8 Information collection requirements: OMB approval.

* * * * *

(b) The approved information collection requirements contained in this part appear in §§ 55.11, 55.25, 55.27, 55.31, 55.35, 55.40, 55.41, 55.43, 55.45, 55.47, 55.53, 55.57, and 55.59.

* * * * *

PART 71—PACKAGING AND TRANSPORTATION OF RADIOACTIVE MATERIAL

41. The authority citation for part 71 continues to read as follows:

Authority: Secs. 53, 57, 62, 63, 81, 161, 182, 183, 68 Stat. 930, 932, 933, 935, 948, 953, 954, as amended, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 2073, 2077, 2092, 2093, 2111, 2201, 2232, 2233, 2297f); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 71.97 also issued under sec. 301, Pub. L. 96–295, 94 Stat. 789–790.

42. In § 71.6, paragraph (b) is revised to read as follows:

§ 71.6 Information collection requirements: OMB approval.

* * * * *

(b) The approved information collection requirements contained in this part appear in §§ 71.5, 71.7, 71.8, 71.12, 71.13, 71.31, 71.33, 71.35, 71.37, 71.38, 71.39, 71.47, 71.85, 71.87, 71.89, 71.91, 71.93, 71.95, 71.97, 71.101, 71.103, 71.105, 71.107, 71.109, 71.111, 71.113, 71.115, 71.117, 71.119, 71.121, 71.123, 71.125, 71.127, 71.129, 71.131, 71.133, 71.135, and 71.137.

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL, HIGH-LEVEL RADIOACTIVE WASTE, AND REACTOR-RELATED GREATER THAN CLASS C WASTE

43. The authority citation for part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 7902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c), (d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2224 (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

44. In § 72.9 paragraph (b) is revised to read as follows:

§ 72.9 Information collection requirements: OMB approval.

* * * * *

(b) The approved information collection requirements contained in this part appear in §§ 72.7, 72.11, 72.16, 72.22 through 72.34, 72.42, 72.44, 72.48 through 72.56, 72.62, 72.70 through 72.82, 72.90, 72.92, 72.94, 72.98, 72.100, 72.102, 72.104, 72.108, 72.120, 72.126, 72.140 through 72.176, 72.180 through 72.186, 72.192, 72.206, 72.212, 72.216, 72.218, 72.230, 72.232, 72.234, 72.236, 72.240, 72.242, 72.244, and 72.248.

PART 73—PHYSICAL PROTECTION OF PLANTS AND MATERIALS

45. The authority citation for part 73 continues to read as follows:

Authority: Secs. 53, 161, 68 Stat. 930, 948, as amended, sec. 147, 94 Stat. 780 (42 U.S.C. 2073, 2167, 2201); sec. 201, as amended, 204, 88 Stat. 1242, as amended, 1245, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 5841, 5844, 2297f). Section 73.1 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 73.37(f) also issued under sec. 301, Pub. L. 96–295, 94 Stat. 789 (42 U.S.C. 5841 note). Section 73.57 is issued under sec. 606, Pub. L. 99–399, 100 Stat. 876 (42 U.S.C. 2169).

46. In § 73.8, paragraph (b) is revised to read as follows:

§ 73.8 Information collection requirements: OMB approval.

* * * * *

(b) The approved information collection requirements contained in this part appear in §§ 73.5, 73.20, 73.21, 73.24, 73.25, 73.26, 73.27, 73.37, 73.40, 73.45, 73.46, 73.50, 73.55, 73.56, 73.57, 73.60, 73.67, 73.70, 73.71, 73.72, 73.73, 73.74, and appendices B, C, and G to this part.

PART 75—SAFEGUARDS ON NUCLEAR MATERIAL—IMPLEMENTATION OF US/IAEA AGREEMENT

47. The authority citation for part 75 continues to read as follows:

Authority: Secs. 53, 63, 103, 104, 122, 161, 68 Stat. 930, 932, 936, 937, 939, 948, as amended (42 U.S.C. 2073, 2093, 2133, 2134, 2152, 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

Section 75.4 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161).

48. In § 75.9, paragraph (c)(4) is revised to read as follows:

§ 75.9 Information collection requirements: OMB approval.

* * * * *

(c) * * *

(4) In §§ 75.34 and 75.35, DOE/NRC Form 740M is approved under OMB control number 3150–0057.

* * * * *

PART 100—REACTOR SITE CRITERIA

49. The authority citation for part 100 continues to read as follows:

Authority: Secs. 103, 104, 161, 182, 68 Stat. 936, 937, 948, 953, as amended (42 U.S.C. 2133, 2134, 2201, 2232); secs. 201, as amended, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842).

50. In § 100.8, paragraph (b) is revised to read as follows:

§ 100.8 Information collection requirements: OMB approval.

* * * * *

(b) The approved information collection requirements contained in this part appear in §§ 100.21, 100.23 and appendix A to this part.

§ 100.11 [Amended]

51. In § 100.11, paragraph (c) is removed.

PART 110—EXPORT AND IMPORT OF NUCLEAR EQUIPMENT AND MATERIAL

52. The authority citation for 10 CFR part 110 continues to read as follows:

Authority: Secs. 51, 53, 54, 57, 63, 64, 65, 81, 82, 103, 104, 109, 111, 126, 127, 128, 129, 161, 181, 182, 183, 187, 189, 68 Stat. 929, 930, 931, 932, 933, 936, 937, 948, 953, 954, 955, 956, as amended (42 U.S.C. 2071, 2073, 2074, 2077, 2092–2095, 2111, 2112, 2133, 2134, 2139, 2139a, 2141, 2154–2158, 2201, 2231–2233, 2237, 2239); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841; sec 5, Pub. L. 101–575, 104 Stat 2835 (42 U.S.C. 2243).

Sections 110.1(b)(2) and 110.1(b)(3) also issued under Pub. L. 96–92, 93 Stat. 710 (22 U.S.C. 2403). Section 110.11 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152) and secs. 54c and 57d., 88 Stat. 473, 475 (42 U.S.C. 2074). Section 110.27 also issued under sec. 309(a), Pub. L. 99–440. Section 110.50(b)(3) also issued under sec. 123, 92 Stat. 142 (42 U.S.C. 2153). Section 110.51 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 110.52 also issued under sec. 186, 68 Stat. 955 (42 U.S.C. 2236). Sections 110.80–110.113 also issued under 5 U.S.C. 552, 554. Sections 110.130–110.135 also issued under 5 U.S.C. 553. Sections 110.2 and 110.42 (a)(9) also issued under sec. 903, Pub. L. 102–496 (42 U.S.C. 2151 *et seq.*).

53. In § 110.2, the definition for *NRC Public Document Room* is revised to read as follows:

§ 110.2 Definitions.

* * * * *

NRC Public Document Room means the facility at One White Flint North, 11555 Rockville Pike (first floor), Rockville Maryland, where certain public records of the NRC that were made available for public inspection in paper or microfiche prior to the implementation of the NRC Agencywide Documents Access and Management System, commonly referred to as ADAMS, will remain available for public inspection. It is also the place where NRC makes computer terminals available to access the Publicly Available Records System (PARS) component of ADAMS on the NRC Web site, *http://www.nrc.gov*, and where copies can be viewed or ordered for a fee as set forth in § 9.35 of this chapter. The facility is staffed with reference librarians to assist the public in identifying and locating documents and in using the NRC Web site and ADAMS. The NRC Public Document Room is open from 7:45 am to 4:15 pm, Monday through Friday, except on Federal holidays. Reference service and access to documents may also be requested by telephone (301–315–4737 or 800–397–4209) between 8:30 am and 4:15 pm, or by e-mail (*PDR@nrc.gov*), facsimile (301–415–3548), or letter (NRC Public Document Room, One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852–2738).

* * * * *

54. In § 110.7, paragraph (c) is revised to read as follows:

§ 110.7 Information collection requirements: OMB approval.

* * * * *

(c) This part contains information collection requirements in addition to those approved under the control number specified in paragraph (a) of this section. These information collection requirements and the control numbers under which they are approved are as follows:

(1) In §§ 110.19, 110.20, 110.21, 110.22, 110.23, 110.31, and 110.32, NRC Form 7 is approved under control number 3150–0027.

(2) [Reserved]

Dated at Rockville, Maryland, this 21st day of October 2002.

For the Nuclear Regulatory Commission.

William D. Travers,

Executive Director for Operations.

[FR Doc. 02–27865 Filed 11–1–02; 8:45 am]

BILLING CODE 7590–01–P

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NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 722

Federal Credit Unions; Miscellaneous Technical Amendment

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: The National Credit Union Administration (NCUA) is amending its appraisal regulation regarding the transaction value for nonresidential loans that require an appraisal from a state-certified appraiser. This amendment is technical rather than substantive.

DATES: This rule is effective November 4, 2002.

FOR FURTHER INFORMATION CONTACT: Chrisanthy J. Loizos, Staff Attorney, Division of Operations, Office of General Counsel, (703) 518–6540, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428.

SUPPLEMENTARY INFORMATION: When adopting the Regulatory Flexibility Program in 2001, NCUA amended its appraisal rule to raise the threshold for requiring an appraisal for real estate-related financial transactions from those over $100,000 to those over $250,000. 66 FR 58656, 58662, Nov. 23, 2001. NCUA also removed the provision creating a different threshold for appraisals related to member business loans. *Id.* The amendment, therefore, raised the appraisal threshold for all real estate-related financial transactions, including member business loans, to $250,000. The NCUA Board found that the raised appraisal threshold for a member business loan was consistent with the regulatory provisions adopted by the Federal banking agencies.

In the 2001 rulemaking, NCUA amended the transaction value threshold in paragraph (a)(1), the paragraph that requires certain types of transactions to have appraisals. 12 CFR 722.3(a). NCUA did not adjust the corresponding amount in paragraph (b)(2), the paragraph that determines the type of appraiser for certain nonresidential transactions, namely, member business loans. 12 CFR 722.3(b)(2). This has caused some confusion. Under paragraph (b)(2), only nonresidential transactions with a transaction value over $250,000 require an appraisal by a state-certified appraiser. 12 CFR 722.2(e), 722.3(a)(1), 722.3(b)(2). Some credit unions, however, have read the requirement in paragraph (b)(2) as requiring an appraisal for transactions with a value over $50,000.

This amendment conforms the transaction value that triggers the requirement for a state-certified appraiser's appraisal in paragraph (b)(2) to the transaction value threshold in paragraph (a)(1), which initially determines if the rule requires any appraisal. The amendment clarifies that a federally insured credit union must have an appraisal prepared by a state-certified appraiser for a nonresidential transaction if the value of the transaction exceeds $250,000.

Regulatory Procedures

Final Rule Under the Administrative Procedure Act

The amendment to the final rule is technical rather than substantive. NCUA finds good cause that notice and public comment are unnecessary under sec. 553(b)(B) of the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(B).

Effective Date

NCUA also finds good cause to dispense with the 30-day delayed effective date requirement under sec. 553(d)(3) of the APA. The rule is technical rather than substantive. The rule will, therefore, be effective immediately upon publication of this notice.

Regulatory Flexibility Act

An initial regulatory flexibility analysis under the Regulatory Flexibility Act is required only when an agency is required to publish a general notice of proposed rulemaking for any proposed rule. 5 U.S.C. 603. As noted previously, NCUA has determined that it is unnecessary to publish a notice of proposed rulemaking for this rule. Accordingly, an initial regulatory analysis is not required. Moreover, since this final rule imposes no new requirements and makes only a technical amendment, NCUA has determined and certifies that this rule will not have any significant economic impact on a substantial number of small credit unions (primarily those under $1 million in assets).

Small Business Regulatory Enforcement Fairness Act

Title II of the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 (Pub. L. 104–121) provides, generally, for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by Section 551 of the Administrative Procedures Act. 5 U.S.C. 551. The Office of Management and Budget has reviewed this rule and has determined that for purposes of the Small Business Regulatory Enforcement Fairness Act of 1996 it is not a major rule.

Paperwork Reduction Act

NCUA has determined that the final rule does not increase paperwork requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and regulations of the Office of Management and Budget.

Executive Order 13132 Statement

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their regulatory actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. NCUA has determined that this final rule does not constitute a policy that has federalism implications for purposes of the executive order.

List of Subjects in 12 CFR Part 722

Credit unions, Mortgages, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on October 15, 2002.

Becky Baker,

Secretary of the Board.

For the reasons stated in the preamble, NCUA amends 12 CFR chapter VII as set forth below:

PART 722—APPRAISALS

1. The authority citation for part 722 continues to read as follows:

Authority: 12 U.S.C. 1766, 1789, 3339.

§ 722.3 [Amended]

2. Section 722.3(b)(2) is amended by revising the number "50,000" to read "250,000."

[FR Doc. 02–28044 Filed 11–1–02; 8:45 am]

BILLING CODE 7535–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

RIN 3245–AF00

Small Business Size Standards; Adoption of Size Standards by 2002 North American Industry Classification System for Size Standards

AGENCY: Small Business Administration (SBA).

ACTION: Direct final rule; correction.

SUMMARY: The Small Business Administration (SBA) is correcting the correction notice it published in the **Federal Register** on September 6, 2002. This notice inserts the heading "Subsector 454—Nonstore Retailers" into the table and corrects the misalignment of footnote 9 and footnote 10. The September 6, 2002, notice corrected the direct final rule that SBA published in the **Federal Register** on August 13, 2002, amending Small Business Size Regulations by incorporating the Office of Management and Budget's (OMB) 2002 modifications of the North American Industry Classification System (NAICS) into its table of small business size standards.

DATES: This correction is effective on October 1, 2002.

FOR FURTHER INFORMATION CONTACT: Carl Jordan, Program Analyst, Office of Size Standards, at (202) 205–6618 or *sizestandards@sba.gov.*

SUPPLEMENTARY INFORMATION: SBA published a direct final rule in the **Federal Register** on August 13, 2002, (67 FR 52597) amending its Small Business Size Regulations by incorporating the Office of Management and Budget's (OMB) 2002 modifications of the North American Industry Classification System (NAICS) into its table of small business size standards. The August 13, 2002, **Federal Register** publication omitted dollar signs for many of the monetary-based size standards. Therefore, SBA published the September 6, 2002 (67 FR 56905) correction. It included the entire table of size standards, with monetary-based and employee-based size standards in different columns for ease of use.

The table omitted the heading "Subsector 454—Nonstore Retailers" in the table, and SBA is therefore adding it with this correction. It does not affect any NAICS code or size standard.

Also, SBA inadvertently appended footnote 9 and footnote 10 to the industry descriptions of NAICS codes 531210 and 531311. However, footnote 9 correctly applies to the description of the "Exception" in NAICS 531190, and footnote 10 correctly applies to the industry description of NAICS 531210. There is no footnote to NAICS 531311. The "Footnotes" section at the end of the table correctly matches footnote 9 to the description of the exception to NAICS 531190 and footnote 10 to the industry description of NAICS 531210.

In FR Doc. 02–22200 published on September 6, 2002 (67 FR 56905) make the following two corrections:

§ 121.201 [Corrected]

1. On page 56919, in § 121.201, in the table, in Sectors 44–45, Retail Trade, add the heading *Subsector 454—Nonstore Retailers* immediately below NAICS code 453998 and immediately above NAICS 454111, as set forth below:

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
	Sectors 44–45—Retail Trade		
. . . . .			
	Subsector 453—Miscellaneous Store Retailers		
. . . . .			
453998	All Other Miscellaneous Store Retailers (except Tobacco Stores)	$6.0	
	Subsector 454—Nonstore Retailers		
454111	Electronic Shopping	21.0	
. . . . .			

2. On page 56922, in § 121.201, in the table, in *Subsector 531—Real Estate,* the entries for NAICS 531190, NAICS 531210 and NAICS 531311 are corrected as set forth below:

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
	Sector 53—Real Estate and Rental and Leasing		
	Subsector 531—Real Estate		
. . . . .			
531190	Lessors of Other Real Estate Property	$6.0	
Except,	Leasing of Building Space to Federal Government by Owners [9]	[9] 17.5	
531210	Offices of Real Estate Agents and Brokers [10]	[10] 1.5	

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SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
531311	Residential Property Managers	1.5	

Dated: October 24, 2002.
Gary M. Jackson,
Assistant Administrator.
[FR Doc. 02–27503 Filed 11–1–02; 8:45 am]
BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NE–43–AD; Amendment 39–12933; AD 2002–22–08]

RIN 2120–AA64

Airworthiness Directives; Hartzell Propeller Inc., Model HD–E6C–3( ) Propellers

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Hartzell Propeller Inc. model HD–E6C–3( ) propellers. This action requires replacement of the current design propeller blade thrust bearing with a new design propeller blade thrust bearing and visual and eddy current inspection (ECI) of propeller hubs for cracks. This amendment is prompted by reports of fractured thrust bearings observed during disassembly, one or more blades becoming jammed in position during operation, pitch change fork fractures causing loss of blade pitch control, and excessive vibration. The actions specified in this AD are intended to prevent loss of aircraft control due to loss of blade pitch control, inability to fully feather the propeller, hub fracture, and blade release.

DATES: Effective November 19, 2002. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of November 19, 2002.

Comments for inclusion in the Rules Docket must be received on or before January 3, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2001–NE–43–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location, by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Comments may also be sent via the Internet using the following address: *9-ane-adcomment@faa.gov*. Comments sent via the Internet must contain the docket number in the subject line. The service information referenced in this AD may be obtained from Hartzell Propeller Inc., Technical Publications Department, One Propeller Place, Piqua, OH 45356; telephone (937) 778–4200; fax (937) 778–4365. This information may be examined, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tomaso DiPaolo, Aerospace Engineer, Chicago Aircraft Certification Office, FAA, Small Airplane Directorate, 2300 East Devon Avenue, Des Plaines, IL 60018; telephone (847) 294–7031; fax (847) 294–7834.

SUPPLEMENTARY INFORMATION: The FAA and Hartzell Propeller Inc. have been reviewing and investigating reports of current design propeller blade thrust bearings, P/N's C–2882–1, C–2882–2, and C–7075, found fractured during disassembly, one or more blades becoming jammed in position during operation, pitch change fork fractures causing loss of blade pitch control, and excessive vibration. The current design thrust bearings have demonstrated a tendency to have brittle fracture and reduced strength characteristics, for which the cause has yet to be determined. This action requires replacement of the current design propeller blade thrust bearings, P/N's C–2882–1, C–2882–2, and C–7075, with a new design propeller blade thrust bearing, P/N C–7438, and a 10X magnification-assisted visual inspection and ECI of propeller hubs for cracks. This amendment is prompted by reports of fractured thrust bearings observed during disassembly, one or more blades becoming jammed in position during operation, pitch change fork fractures causing loss of blade pitch control, and excessive vibration. This condition, if not corrected, could result in loss of aircraft control due to loss of blade pitch control, inability to fully feather the propeller, hub fracture, and blade release.

Manufacturer's Service Information

The FAA has reviewed and approved the technical contents of the following Hartzell Propeller Inc. Alert Service Bulletins (ASB's):

- ASB HD–ASB–61–026, dated August 6, 2001, that describes the schedule and procedures for replacing P/N's C–2882–1, C–2882–2, and C–7075 propeller thrust bearings with blade thrust bearing P/N C–7438.
- ASB HD–ASB–61–023, Revision 1, dated May 23, 2001, that describes procedures for 10X magnification-assisted visual inspections of the O-ring groove and hub-half and parting surface areas and ECI inspections of propeller hubs, P/N D–5108–( ), for cracks in the bearing retention radius.

FAA's Determination of an Unsafe Condition and Required Actions

Since an unsafe condition has been identified that is likely to exist or develop on other Hartzell Propeller Inc. model HD–E6C–3( ) propellers of the same type design, this AD is being issued to prevent loss of aircraft control due to loss of blade pitch control, inability to fully feather the propeller, hub fracture, and blade release. This AD requires within 50 hours time-in-service (TIS) after the effective date of this AD, or nine months after the effective date of this AD, or when the propeller is next disassembled after the effective date of this AD, whichever occurs earliest:

- Replacement of the current design propeller blade thrust bearings P/N's C–2882–1, C–2882–2, and C–7075 with a new design propeller blade thrust bearing P/N C–7438.
- 10X Magnification-assisted visual inspections and ECI of propeller hubs for cracks.

The actions must be done in accordance with the service bulletins described previously.

Immediate Adoption of This AD

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001–NE–43–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Analysis

This final rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this final rule.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2002–22–08 Hartzell Propeller Inc.: Amendment 39–12933. Docket No. 2001–NE–43–AD.

Applicability: This airworthiness directive (AD) is applicable to Hartzell Propeller Inc. model HD–E6C–3( ) propellers. These propellers are installed on, but not limited to Fairchild Dornier GmbH 328–100 series airplanes.

Note 1: The parentheses indicate the presence or absence of an additional letter(s) which vary the basic propeller blade model designation. This AD still applies regardless of whether these letters are present or absent on the propeller blade model designation.

Note 2: This AD applies to each propeller identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For propellers that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Compliance with this AD is required as indicated, unless already done.

To prevent loss of aircraft control due to loss of blade pitch control, inability to fully feather the propeller, hub fracture, and blade release, do the following:

Replacement of Propeller Blade Thrust Bearings

(a) Within 50 hours time-in-service (TIS) after the effective date of this AD, or nine months after the effective date of this AD, or when the propeller is next disassembled after the effective date of this AD, whichever occurs earliest, do the following:

(1) Replace all propeller blade thrust bearings, part numbers (P/N's) C–2882–1, C–2882–2, and C–7075, with thrust bearings P/N C–7438, in accordance with paragraph 3 of the Accomplishment Instructions of Hartzell Alert Service Bulletin (ASB) HD–SB–61–026, dated August 6, 2001.

(2) Perform a visual inspection of the propeller hub for cracks, in accordance with paragraph 3 of the Accomplishment Instructions of Hartzell Alert Service Bulletin (ASB) HD–ASB–61–023, Revision 1, dated May 23, 2001. Before further flight, remove from service cracked propeller hubs and replace with a serviceable hub.

(3) Perform an eddy current inspection (ECI) of the propeller hub for cracks, in accordance with paragraph 3 of the Accomplishment Instructions of Hartzell ASB HD–ASB–61–023, Revision 1, dated May 23, 2001. Before further flight, remove from service cracked propeller hubs and replace with a serviceable hub.

(b) Propellers that have had blade thrust bearings replaced using Hartzell ASB HD–ASB–61–026, dated August 6, 2001, or Hartzell Service Letter HD–SL–61–034, dated May 7, 2001, are considered to be in compliance with paragraph (a)(1) of this AD.

(c) After the effective date of this AD, do not install propeller blade thrust bearings P/N's C–2882–1, C–2882–2, or C–7075 into any HD–E6C–3( ) Hartzell propeller models.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Chicago Aircraft Certification Office (ACO). Operators must submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Chicago ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Chicago ACO.

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Special Flight Permits

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be done.

Documents That Have Been Incorporated by Reference

(f) The replacement and inspections must be done in accordance with the following Hartzell service bulletin and alert service bulletins:

Document No.	Pages	Revision	Date
ASB HD–ASB–61–023 Total pages: 11	All	1	May 23, 2001.
ASB HD–ASB–61–026 Total pages: 8	All	Original	Aug. 6, 2001.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Hartzell Propeller Inc., Technical Publications Department, One Propeller Place, Piqua, OH 45356; telephone: (937) 778–4200; fax: (937) 778–4365. Copies may be inspected, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

Effective Date

(g) This amendment becomes effective on November 19, 2002.

Issued in Burlington, Massachusetts, on October 25, 2002.

Francis A. Favara,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 02–27739 Filed 11–1–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30338; Amdt. No. 3030]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective November 4, 2002. The compliance date for each SIAP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of November 4, 2002.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which affected airport is located; or
3. The Flight Inspection Area Office which originated the SIAP.
4. The Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125), telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation's Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAMs for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been canceled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, and Navigation (air)

Issued in Washington, DC on October 25, 2002.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

. . . Effective Upon Publication

FDC date	State	City	Airport	FDC No.	Subject
08/29/02	IN	Frankfort	Frankfort Muni	2/8986	NDB Rwy 9, Amdt 2.
08/29/02	IN	Frankfort	Frankfort Muni	2/8987	GPS Rwy 9, Orig.
08/29/02	IN	Frankfort	Frankfort Muni	2/8988	GPS Rwy 27, Amdt 1.
09/T1/02	NJ	Teterboro	Teterboro	2/9639	VOR/DME RNAV Rwy 24, Orig-B. This NOTAM published in Docket No 30333, Amdt 3026, Vol 67, No 195, page 62641, dated 10/8/02 is hereby rescinded.
10/09/02	WA	Seattle	Seattle-Tacoma Intl	2/0732	ILS Rwy 34R, Orig-A.
10/09/02	WA	Everett	Snohomish County (Paine Field)	2/0735	ILS Rwy 16R, Amdt 19.
10/09/02	WA	Everett	Snohomish County (Paine Field)	2/0737	VOR or GPS–B, Orig-B.
10/09/02	WA	Everett	Snohomish County (Paine Field)	2/0738	NDB Rwy 16R, Amdt 12B.
10/09/02	WA	Everett	Snohomish County (Paine Field)	2/0740	GPS Rwy 16R, Orig-A.
10/10/02	WA	Portland	Portland-Troutdale	2/0786	NDB or GPS–A, Amdt 8.
10/10/02	OR	Newport	Newport Muni	2/0800	ILS Rwy 16, Amdt 1.
10/10/02	MD	Leonardtown	Capt Walter Francis Duke Regional at St. Mary's.	2/0801	GPS Rwy 11, Amdt 1.
10/11/02	OR	Eugene	Mahlon Sweet Field	2/0809	GPS Rwy 16, Orig-A.
0/11/02	WA	Everett	Snohomish County (Paine Field)	2/0820	GPS Rwy 34L, Orig.
10/15/02	MN	Minneapolis	Flying Cloud	2/0908	ILS Rwy 9R, Amdt 2.
10/15/02	MN	Minneapolis	Flying Cloud	2/0909	Copter ILS Rwy 9R, Orig-A.
10/15/02	MN	Minneapolis	Flying Cloud	2/0914	VOR Rwy 9R, Amdt 8.
10/23/02	MA	Vineyard Haven	Martha's Vineyard	2/1157	VOR or GPS Rwy 6, Orig-C.

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[FR Doc. 02–27843 Filed 11–1–02; 8:45 am]
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DEPARTMENT OF STATE

22 CFR Part 41

[Public Notice 4183]

RIN: 1400–AA91

Documentation of Nonimmigrants Under the Immigration and Nationality Act, as Amended

AGENCY: Bureau of Consular Affairs, Department of State.

ACTION: Final rule.

SUMMARY: This rule adopts as final the Department's interim rule creating the nonimmigrant visa classification, "S", for certain alien informants and witnesses.

EFFECTIVE DATE: November 4, 2002.

FOR FURTHER INFORMATION CONTACT: Pam Chavez, Legislation and Regulations Division, Visa Services, Department of State, Washington, DC 20522–0106, 202–663–1206.

SUPPLEMENTARY INFORMATION:

What Is the Authority for Issuing Nonimmigrant "S" Visas?

On January 24, 1996, the Department added a new section 41.83 at 22 CFR (*see* 61 FR 1837) to implement section 130003 of the Violent Crime Control and Law Enforcement Act of 1994 (Public Law 103–322). This Act amended section 101(a)(15) of the Immigration and Nationality Act by adding a new category of nonimmigrants for aliens determined by the Attorney General to have critical and reliable information concerning a criminal organization or enterprise. The program, as originally enacted, was to terminate on September 12, 1999. The program was extended for an additional two years by Public Law 106–104 on November 13, 1999 and was made permanent by Public Law 107–45 on October 1, 2001.

Were Comments Solicited in the Department's Interim Rule?

The Department's interim rule (61 FR 1837) solicited comments from the public to be received by March 25, 1996. No comments were received.

Final Rule

Since no change is made to the interim regulation, the Department does not believe it necessary to reprint the regulations in this final rule.

PART 41—[AMENDED]

1. The authority citation for part 41 continues to read as follows:

Authority: 8 U.S.C. 1104; Pub. L. 105–277, 112 Stat. 2681–795 through 2681–801.

2. Accordingly, the Department adopts as final the interim rule at 61 FR 1837, as published in the **Federal Register** on January 24, 1996.

Dated: October 21, 2002.

George C. Lannon,

Acting Assistant Secretary for Consular Affairs, Department of State.

[FR Doc. 02–27887 Filed 11–1–02; 8:45 am]
BILLING CODE 4710–06–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD08–02–024]

RIN 2115–AE47

Drawbridge Operation Regulation; Illinois Waterway, Joliet, IL

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Commander, Eighth Coast Guard District is temporarily changing the regulation governing the McDonough Street Bridge, mile 287.3; Jefferson Street Bridge, mile 287.9; Cass Street Bridge, mile 288.1; Jackson Street Bridge, mile 288.4 and the Ruby Street Bridge, mile 288.7, Illinois Waterway at Joliet, Illinois. The drawbridges, with the exception of the Ruby Street Bridge, will be allowed to remain closed to navigation from 7:30 a.m. to 9 a.m. and 4 p.m. to 5:30 p.m., Monday through Saturday. The Ruby Street Bridge will remain in the open to navigation position while structural steel repairs are made. This temporary rule is issued to facilitate vehicle traffic management and structural steel repairs to the Ruby Street Bridge.

DATES: This temporary rule is effective from 7:30 a.m., October 28, 2002, until 7:30 a.m. on December 16, 2002.

ADDRESSES: Documents referred to in this rule are available for inspection or copying at room 2.107f in the Robert A. Young Federal Building at Eighth Coast Guard District, Bridge Branch, 1222 Spruce Street, St. Louis, MO 63103–2832, between 8 a.m. and 4 p.m. Monday through Friday, except Federal holidays. The telephone number is (314) 539–3900, extension 2378. Commander (obr) maintains the public docket for this rulemaking.

FOR FURTHER INFORMATION CONTACT: Mr. Roger K. Wiebusch, Bridge Administrator, (314) 539–3900, extension 2378.

SUPPLEMENTARY INFORMATION:

Good Cause for Not Publishing an NPRM

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. This rule is being promulgated without an NPRM due to the short time frame allowed between the submission of the request by the Illinois Department of Transportation to temporarily change the regulations governing the drawbridges on the Illinois Waterway at Joliet, Illinois and the start date of repairs to the Ruby Street Bridge. Structural repairs to the Ruby Street Bridge are scheduled to begin immediately. Thus, following normal rulemaking procedures would be impractical. Delaying implementation of the regulation will result in unnecessarily prolonged traffic management problems within the City of Joliet, Illinois because vehicle traffic will be unable to cross the Ruby Street Bridge while structural repairs are made.

Good Cause for Making Rule Effective in Less Than 30 Days

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. This rule should be made effective in less than 30 days due to the short time frame allowed between the submission of the request by the Illinois Department of Transportation to temporarily change the regulations governing the drawbridges on the Illinois Waterway at Joliet, Illinois and the start date of repairs to the Ruby Street Bridge. Structural repairs to the Ruby Street Bridge are scheduled to begin immediately. Thus, following normal rulemaking procedures would be impractical. Delaying implementation of the regulation will result in unnecessarily prolonged traffic management problems within the City of Joliet, Illinois because vehicle traffic will be unable to cross the Ruby Street Bridge while structural repairs are made.

Background and Purpose

Due to routine maintenance to the Ruby Street Bridge, mile 288.7, Illinois Waterway, the bridge must remain in the open to navigation (closed to motor vehicle traffic) position at all times. As a result, the Illinois Department of Transportation requested a temporary change to the current regulations for the remaining four bascule leaf drawbridges within the City of Joliet that carry vehicular traffic across the Illinois Waterway. Increasing the hours that the four remaining bridges are closed to navigation and available for vehicle use only during peak traffic periods will reduce traffic jams in the City of Joliet while having minimal impact on vessel traffic on the Illinois Waterway. Repairs to the Ruby Street Bridge are expected to be complete by December 16, 2002.

The current regulations permit the bridges to remain closed to navigation during commuter hours of 7:30 a.m. to 8:30 a.m. and 4:15 p.m. to 5:15 p.m., Monday through Saturday. By increasing the time the remaining bridges may remain closed to navigation by thirty minutes in the morning and afternoon, traffic buildup in the city will be greatly alleviated. This regulation will result in these bridges, with exception of the Ruby Street Bridge, being closed to navigation from 7:30 a.m. to 9 a.m. and from 4 p.m. to 5:30 p.m., Monday through Saturday. The Ruby Street Bridge will be in the open to navigation position for structural steel repairs. Navigation on the waterway consists primarily of commercial tows and recreational watercraft. This temporary drawbridge operation regulation has been coordinated with commercial waterway operators. No objections to the proposed temporary rule were raised.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

The Coast Guard expects the economic impact of the temporary rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The temporary rule will have a negligible impact on vessel traffic. The primary users of the Illinois Waterway in Joliet are commercial towboat operators. On average, eight vessels per day transit the affected bridges. Of these, one or two may have to adjust their speed and schedules to arrive at the affected bridges prior to, or after, the times the bridges are closed to navigation.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. Any individual that qualifies or, believes he or she qualifies as a small entity and requires assistance with the provisions of this rule, may contact Mr. Roger K. Wiebusch, Bridge Administrator, Eighth Coast Guard District, Bridge Branch, at (314) 539–3900, extension 2378.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule contains no new collection-of-information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it

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does not require a Statement of Energy Effects under Executive Order 13211.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (32)(e), of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. Promulgation of changes to drawbridge regulations has been found not to have significant effect on the human environment. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons set out in the preamble, the Coast Guard is amending part 117 of Title 33, Code of Federal Regulations, as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Public Law 102–587, 106 Stat. 5039.

2. Effective 7:30 a.m. on October 28, 2002, through 7:30 a.m. on December 16, 2002, paragraph (c) of § 117.393 is suspended and a new paragraph (e) is added to read as follows:

§ 117.393 Illinois Waterway.

* * * * *

(e) The draws of the McDonough Street Bridge, mile 287.3; Jefferson Street Bridge, mile 287.9; Cass Street Bridge, mile 288.1; Jackson Street Bridge, mile 288; all of Joliet, shall open on signal, except that they need not open from 7:30 a.m. to 9 a.m. and from 4 p.m. to 5:30 p.m. Monday through Saturday. The Ruby Street Bridge shall remain in the open to navigation position from October 28, 2002, to December 16, 2002.

Dated: October 28, 2002.

J. R. Whitehead,

Captain, U.S. Coast Guard, Commander, 8th Coast Guard Dist., Acting.

[FR Doc. 02–27994 Filed 11–1–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP San Diego 02–023]

RIN 2115–AA97

Safety Zone; Lake Moovalya, Colorado River, Parker, AZ

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone within the Lake Moovalya Region on the navigable waters of the Colorado River for the Bluewater Casino and Resort Thanksgiving Regatta. This temporary safety zone is necessary to provide for the safety of the participants, crew, spectators, sponsor vessels of the race, and to protect participating vessels. This temporary safety zone is also necessary to protect other vessels and users of the waterway. Persons and vessels are prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port, or his designated representative.

DATES: This rule is effective from 6 a.m. (PST) on November 29, 2002, to 6 p.m. (PST) on December 1, 2002.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket (COTP San Diego 02–023) and are available for inspection or copying at Marine Safety Office San Diego, 2716 N. Harbor Drive, San Diego, CA 92101–1064 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Petty Officer Austin Murai, USCG, c/o U.S. Coast Guard Captain of the Port, at (619) 683–6495.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a NPRM. Final approval and permitting of this event were not issued in time to engage in full notice and comment rulemaking. Publishing a NPRM and delaying the effective date would be contrary to the public interest since the event would occur before the rulemaking process was complete.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. In addition to the reasons stated above, it would be contrary to the public interest not to publish this rule because the event has been permitted and participants and the public require protection.

Background and Purpose

The Southern California Speedboat Club is sponsoring the Bluewater Resort and Casino Thanksgiving Regatta, which is held on the Lake Moovalya region of Parker, AZ. This temporary safety zone is necessary to provide for the safety of the participants, crew, spectators, sponsor vessels, and to protect participating vessels of the Bluewater Casino and Resort Thanksgiving Regatta. This temporary safety zone is also necessary to protect other vessels and users of the waterway.

Discussion of Rule

The following area is a temporary safety zone: the portion of the Colorado River from Headgate Dam to 0.5 nautical miles north of Bluewater Marina, Parker, Arizona.

The Coast Guard proposes to establish one safety zone that will be enforced everyday from 6 a.m. (PST) to 6 p.m. (PST) from November 29, 2002, to December 1, 2002. This safety zone is necessary to provide for the safety of the crews, spectators, and participants of the Bluewater Resort and Casino Thanksgiving Regatta and to protect other vessels and users of the waterway. Persons and vessels will be prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port, or his designated representative.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT)(44 FR 11040, February 26, 1979). We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary because of its limited duration of 12 hours per day for a period of three days and the limited geographic scope of the safety zone.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities because this safety zone is limited in scope and duration (in effect for only 12 hours per day for a period of three days, from November 29, 2002, to December 1, 2002). In addition the Coast Guard will publish local notice to mariners (LNM) before the safety zone is enforced.

Assistance for Small Entities

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that Order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (34)(g) of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation because we are proposing to establish a safety zone. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. Add new § 165.T11–035 to read as follows:

§ 165.T11–035 Safety Zone; Lake Moovalya, Colorado River, Parker, AZ.

(a) *Location.* The following area is a temporary safety zone: the portion of the Colorado River from Headgate Dam to 0.5 nautical miles north of Bluewater Marina, Parker, Arizona.

(b) *Effective dates.* This safety zone will be in effect from 6 a.m. (PST) on November 29, 2002, to 6 p.m. (PST) on December 1, 2002. If the need for the safety zone ends before the scheduled termination time, the Captain of the Port will cease enforcement of this safety zone.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into, transit through, or anchoring within this zone by all vessels is prohibited, unless authorized by the Captain of the Port, or his designated representative. Mariners requesting permission to transit through the safety zone may request authorization to do so from the Patrol Commander (PATCOM). The Patrol Commander may be contacted via VHF–FM channel 16.

Dated: October 21, 2002.

S.P. Metruck,

Commander, U.S. Coast Guard, Captain of the Port, San Diego.

[FR Doc. 02–27993 Filed 11–1–02; 8:45 am]

BILLING CODE 4910–15–P

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DEPARTMENT OF TRANSPORTATION

Saint Lawrence Seaway Development Corporation

33 CFR PART 401

RIN–2135–AA16

Seaway Regulations and Rules: Inflation Adjustment of Civil Monetary Penalty

AGENCY: Saint Lawrence Seaway Development Corporation, DOT.

ACTION: Final rule.

SUMMARY: This final rule implements the Federal Civil Penalties Inflation Adjustment Act of 1990 as amended by the Debt Collection Improvement Act of 1996. The rule adjusts the amount of the statutory civil penalty for violation of the Seaway Regulations and Rules under the authority of the Ports and Waterways Safety Act of 1972, as amended (PWSA).

EFFECTIVE DATE: This rule is effective on November 4, 2002.

FOR FURTHER INFORMATION CONTACT: Marc C. Owen, Chief Counsel, Saint Lawrence Seaway Development Corporation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–6823.

SUPPLEMENTARY INFORMATION: The Federal Civil Penalties Inflation Adjustment Act of 1990 (1990 Act), Public Law 101–410, 104 Stat. 890, 28 U.S.C. 2461 NOTE, as amended by the Debt Collection Improvement Act of 1996 (Act), Public Law 104–134, April 26, 1996, requires the inflation adjustment of civil monetary penalties (CMP) to ensure that they continue to maintain their deterrent value. The Act requires that not later than 180 days after its enactment, October 23, 1996, and at least once every four years thereafter, the head of each agency shall, by regulation published in the **Federal Register**, adjust each CMP within its jurisdiction by the inflation adjustment described in the 1990 Act. The cost-of-living adjustment is the percentage (if any) for each CMP by which the Consumer Price Index for all urban consumers (CPI), published annually by the Department of Labor, for the month of June of the calendar year preceding the adjustment, exceeds the CPI for the month of June of the calendar year in which the amount of the CMP was last set or adjusted pursuant to law. Nevertheless, the first adjustment to a CMP may not exceed 10 percent of that penalty amount. Any increased penalties shall apply only to violations that occur after the date on which the increase takes effect. 33 U.S.C. 1232(a) imposes a maximum $25,000 civil penalty for a violation of a regulation issued under the authority of the PWSA, which includes the Seaway Regulations and Rules in 33 CFR part 401. The penalty was set in 1978. Under the Act, the penalty amount was adjusted in 1996 to $27,500. The CPI for June 1996, was 156.6. The CPI for June 2002, is 179.2. The inflation factor, therefore, is 179.2/156.6 or 1.15. The maximum penalty amount after the increase and statutory rounding would be $31,625 (1.15 X 27,500). Accordingly, paragraph (a) of section 401.102 is being amended to change the amount of the penalty from $ 27,500 to $31,625.

Regulatory Evaluation

This final rule is exempt from Office of Management and Budget review under Executive Order 12866 because it is limited to the adoption of statutory language, without interpretation. As stated above, the provisions contained in this final rulemaking set forth the inflation adjustments in compliance with the Act for a specific, applicable CMP under the authority of the Corporation. The great majority of individuals, organizations, and entities addressed through the Seaway Regulations and Rules do not commit violations and, as a result, we believe any aggregate economic impact of this revision will be minimal, affecting only those who violate the regulations. As such, the final rule and its inflation adjustment should have no effect on Federal and State expenditures. This final rule has also been evaluated under the Department of Transportation's Regulatory Policies and Procedures and the proposed regulation is not considered significant under those procedures and its economic impact is expected to be so minimal that a full economic evaluation is not warranted.

Regulatory Flexibility Act Determination

The Saint Lawrence Seaway Development Corporation certifies that this final rule will not have a significant economic impact on a substantial number of small entities. The St. Lawrence Seaway Regulations and Rules primarily relate to the activities of commercial users of the Seaway, the vast majority of whom are foreign vessel operators. Therefore, any resulting costs will be borne mostly by foreign vessels.

Environmental Impact

This final rule does not require an environmental impact statement under the National Environmental Policy Act (49 U.S.C. 4321,*et seq.*) because it is not a major federal action significantly affecting the quality of human environment.

Federalism

The Corporation has analyzed this final rule under the principles and criteria in Executive Order 12612 and has determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Unfunded Mandates

The Corporation has analyzed this proposed rule under title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 109 Stat. 48) and determined that it does not impose unfunded mandates on State, local, and tribal governments and the private sector requiring a written statement of economic and regulatory alternatives.

Paperwork Reduction Act

This proposed regulation has been analyzed under the Paperwork Reduction Act of 1995 and does not contain new or modified information collection requirements subject to the Office of Management and Budget review.

Notice and Public Comment

Notice and an opportunity for public comment under the Administrative Procedure Act (APA) (5 U.S.C. 553) are waived. The APA provides an exception to the notice and comment procedures when an agency finds there is good cause for dispensing with those procedures because they are impracticable, unnecessary, or contrary to the public interest. The Corporation has determined under 5 U.S.C. 553(b)(3) that good cause exists for dispensing with the notice of proposed rulemaking and public comment procedures for this rule. Specifically, this rulemaking comports with the statutory authority in the Act with no issues of policy discretion. Accordingly, the Corporation finds that the opportunity for prior comment is unnecessary and contrary to the public interest and is issuing this revised regulation as a final rule that will apply to all future cases under this authority.

List of Subjects in 33 CFR Part 401

Hazardous materials transportation, Navigation (water), Penalties, Radio, Reporting and recordkeeping requirements, Vessels, Waterways.

Accordingly, the Saint Lawrence Seaway Development Corporation proposes to amend 33 CFR chapter IV as follows:

PART 401—SEAWAY REGULATIONS AND RULES

Subpart B—[Amended]

1. The authority citation for part 401 would continue to read as follows:

Authority: 33 U.S.C. 983(a) and 984(a)(4), as amended; 49 CFR 1.52, unless otherwise noted.

2. Paragraph (a) of § 401.102 is amended by removing the number "$27,500" and adding, in its place, the number "$31,625".

Issued in Washington, DC on October 28, 2002.

Saint Lawrence Seaway Development Corporation.

Albert S. Jacquez,

Administrator.

[FR Doc. 02–28021 Filed 11–1–02; 8:45 am]

BILLING CODE 4910–61–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AL—200302; FRL–7403–5]

Determination of Attainment of 1-hour Ozone Standard as of November 15, 1993, for the Birmingham, AL, Marginal Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing the determination that the Birmingham, Alabama, marginal ozone nonattainment area attained the 1-hour ozone National Ambient Air Quality Standard by November 15, 1993, the date required by the Clean Air Act to be used for making this determination.

DATES: This final rule is effective on December 4, 2002.

ADDRESSES: Copies of documents relative to this action are available at the following address for inspection during normal business hours: Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The interested persons wanting to examine these documents should make an appointment at least 24 hours before the visiting day.

FOR FURTHER INFORMATION CONTACT: Sean Lakeman, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9043. Mr. Lakeman can also be reached via electronic mail at *lakeman.sean@epa.gov.*

SUPPLEMENTARY INFORMATION:

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I. Today's Action

In this final rulemaking, Environmental Protection Agency (EPA) is responding to comments made on EPA's proposed rulemaking published August 21, 2002 (67 FR 54159). In the August 21, 2002, **Federal Register** notice, EPA proposed to determine that the Birmingham marginal ozone nonattainment area (hereinafter referred to as the Birmingham area) attained the 1-hour ozone National Ambient Air Quality Standard (NAAQS) by November 15, 1993, the date required by the Clean Air Act (CAA) to be used for making this determination since it is Birmingham's attainment date.

II. Background

On August 21, 2002, EPA published a proposed rule to determine that the Birmingham marginal ozone nonattainment area (hereinafter referred to as the Birmingham area) attained the 1-hour ozone National Ambient Air Quality Standard (NAAQS) by November 15, 1993, the date required by the Clean Air Act (CAA). The Birmingham area is comprised of Jefferson and Shelby Counties. On July, 10, 2002, the United States District Court for the District of Columbia concluded that EPA failed to exercise its non-discretionary duty to make a final attainment determination for the Birmingham area by May 15, 1994. The Court required that EPA make a formal attainment determination within 120 days from date of opinion. *Sierra Club* v. *Whitman*, No. 00–2206 (D.D.C. July 10, 2002). Therefore, in response to the Court's order, EPA is publishing this rule.

III. Response to Comments

What Comments Did We (EPA) Receive and What Are Our Responses?

EPA received adverse comments from one commenter regarding the proposed determination that Birmingham attained the 1-hour ozone standard as of November 15, 1993. The commenter, Earthjustice, submitted the comments on behalf of the Sierra Club Alabama Chapter, the Sierra Club Cahaba Group, the Alabama Environmental Council, and Alabama Physicians for Social Responsibility. They raised a number of policy and legal issues that EPA has considered and is responding to below.

Comment 1: According to the commenter, "EPA's proposal flies in the face of the Clean Air Act's mandate to protect * * * people from the health threats posed by smog."

Response: EPA is not failing to protect the people of Birmingham from the health threats posed by ozone. As described below in response to Comment 5, EPA has already taken steps to require the State of Alabama to deal with Birmingham's ozone problems and the State has taken the necessary steps and adopted additional significant control measures that will be implemented no later than the spring of next year. Furthermore, the State has demonstrated that those additional measures will lead to attainment of the 1-hour ozone standard in Birmingham by November of next year, which is the date for attainment that EPA determined was as expeditiously as practicable. That EPA disagrees with the commenter about the precise statutory mechanism to utilize in achieving attainment of the 1-hour ozone standard in Birmingham does not mean that EPA is not acting to fulfill the objective of the Clean Air Act of achieving attainment of the ozone standard as expeditiously as practicable. To the contrary, EPA has already acted to fulfill that objective and is protecting the people of Birmingham from ozone pollution.

Comment 2: The commenter asserts that EPA proposed to find that the Birmingham area "has attained" the 1-hour ozone standard "solely on the basis of air quality data in the 1991–93 period," even though Birmingham has violated the standard since then and continues to do so. The commenter concludes that Birmingham has not attained the ozone NAAQS and that for "EPA to assert otherwise, based on air quality conditions ten years or more ago, defies reality."

Response: The pertinent statutory provision of the Clean Air Act clearly and explicitly establishes the criteria to be applied in determining whether a 1-hour ozone nonattainment area classified under subpart 2 of part D of Title I of the Clean Air Act has failed to attain the 1-hour standard and must be reclassified by operation of law. Section 181(b)(2)(A) provides that: "Within 6 months following the applicable attainment date (including any extension thereof) for an ozone nonattainment area, *the Administrator shall determine, based on the area's design value (as of the attainment date), whether the area attained the standard by that date.* * * * [A]ny area that the

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Administrator finds has not attained the standard by that date shall be reclassified by operation of law * * *" (Emphasis added.) Thus, section 181(b)(2) clearly directs EPA to determine whether an area attained the ozone standard by its attainment date based on the area's design value as of that date. The only areas subject to mandatory reclassification under section 181(b)(2) are those that the Administrator finds have "not attained the standard by that date." Whether or not Birmingham is attaining the ozone standard today or, for that matter, any date after its November 15, 1993 attainment date, is simply irrelevant to the determination of whether Birmingham had attained as of November 15, 1993. EPA is not purporting to determine that the Birmingham area "has attained" the standard in the sense that the area came into attainment and continues to be in attainment today; EPA is simply following the words of the statute to determine whether the Birmingham area attained the standard as of its November 15, 1993 attainment date. The fact that Birmingham violated the standard after November 15, 1993, does not, and cannot, detract from the conclusion that Birmingham "attained the standard by" its attainment date. Contrary to the suggestion of the commenter, the Act simply does not call for EPA, when acting pursuant to section 181(b)(2)(A), to determine whether an area is still attaining the standard after its attainment date. In contrast, in determining which classification an area being reclassified should receive, section 181(b)(2)(A)(ii) clearly and explicitly requires EPA to determine the design value of an area as of the time of the **Federal Register** notice identifying an area as having failed to attain by its attainment date. Clearly, Congress knew how to distinguish between directing EPA to make one determination as of the area's attainment date and a second determination as of the date of the **Federal Register** notice announcing the first determination. The commenter, however, advances an interpretation of the Act that it asserts EPA is compelled to follow that conflates one provision of a statute setting forth one criterion with another provision setting forth a different criterion. The validity and reasonableness of EPA's interpretation is supported by the 1998 decision of the U.S. District Court for the Northern District of Alabama in *Vahle* v. *Browner* (Memorandum Opinion, dated Sept. 4, 1998) concerning the reclassification of Birmingham. In that case, the plaintiff, just like the commenter, argued that section 181(b)(2) "should be interpreted so as to require the EPA to reclassify an area that "backslides" into nonattainment after its attainment date." The court ruled, however, that "the clear wording of the statute prevents such interpretation. The statute provides that the determination shall be 'whether the area attained the standard *by that date.*' 42 U.S.C. 7511(b)(2)(A) (emphasis added). There can be no question that the date referred to is the attainment date established in 42 U.S.C. 7511(a)(1), November 15, 1993, in the case of the Jefferson/Shelby area. Therefore, the statute is not remotely subject to the interpretation suggested by the plaintiff." (Memorandum Opinion at 5–6.) EPA's interpretation is clearly a reasonable one.

Comment 3: The commenter claims that EPA's proposed action is based on a "crabbed reading" of the Clean Air Act. The commenter asserts that EPA's reading of the language of section 181(b)(2)(A) of the Act to limit the pertinent data to that for the 1991–93 period "improperly ignores subsequent language in the same subsection requiring reclassification of any area that 'the Administrator finds has not attained the standard by that date.' Thus, the issue is whether the Administrator can currently 'find' that the area 'has attained' the standard—not whether the area 'was' meeting the standard at some time in the past. Here, EPA cannot possibly find that the Birmingham area 'has attained' the standard by the attainment date, because that area continues to violate the standard." The commenter further asserts that, in the context of redesignations to attainment, EPA stated that the statutory phrase "has attained" means that an area must be attaining the standard at the time of redesignation to attainment. According to the commenter, the "very same analysis applies here. EPA must reclassify any area that the Administrator finds 'has not' (in the present tense) attained the standard."

Response: As explained more fully in response to Comment 2, EPA's reading of the Act is fully consistent with its language and with the opinion in the Vahle case, which rejected the view espoused by the commenter as an interpretation to which the Act is "not remotely subject." As for the commenter's reference to redesignations to attainment, the statutory language that is pertinent to that issue differs from the language of section 181(b)(2)(A) regarding reclassifications. Section 107(d)(3)(e) prohibits EPA from redesignating an area from nonattainment to attainment unless it determines that the area "has attained" the standard. In contrast to the reclassification provision, which specifies the attainment date as the point of reference for making the attainment determination, section 107(d)(3)(E) sets no date to use for making that determination. Furthermore, in light of the fact that an attainment area is defined in section 107(d)(1) as an area that "meets" the standard it is clear that for EPA to take an action affirmatively designating an area as attainment it must be meeting the standard at the time of the decision to designate it as attainment. Section 181(b)(2)(A), however, expressly directs EPA to determine whether an area attained as of a specified date in the past, its attainment date.

Comment 4: The commenter asserts that language in section 181(b)(2)(A) expressly stating that EPA's determination of attainment is to be based on the area's design value as of the attainment date, "[b]y its terms * * * only applies to attainment determinations made within 6 months of the attainment date." The commenter states that "nowhere did Congress suggest that EPA could ignore post-attainment date violations if the agency delayed its attainment determination substantially beyond the 6-month window." The commenter also argues that even if EPA's reading of the first sentence of section 181(b)(2)(A) were correct "the second sentence of that subsection plainly requires reclassification to take place where the Administrator finds that the area "has not attained" by that date. Thus, even if EPA finds that the area was meeting the standard on November 15, 1993, the second sentence of section 181(b)(2)(A) still requires reclassification because, as EPA itself has found (and as the data unequivocally shows), the area "has not attained.'"

Response: EPA does not believe that Congress intended for the language regarding determining attainment as of the attainment date not to apply when an attainment determination occurs more than six months after the attainment date. There is no statutory language supporting the commenter's reading that eliminates this language from the Act when EPA takes action more than six months after an area's design value. Furthermore, contrary to the commenter's assertion, the second sentence of section 181(b)(2)(A) does not somehow override the language of the first sentence and require reclassification if an area slips back into nonattainment after its attainment date. Rather, the second sentence reinforces the validity of EPA's view of the

straightforward language of the first sentence by stating that "[e]xcept for any Severe or Extreme area, any area that the Administrator *finds has not attained the standard by that date* shall be reclassified by operation of law * * *" (Emphasis added.) EPA is finding that Birmingham attained by "that date," its November 15, 1993 attainment date, and, consequently, no reclassification occurs regardless of whether the area slipped back into nonattainment after that date. *See* also Responses to Comments 2 and 3.

Comment 5: According to the commenter, EPA's approach is "wholly inconsistent with the Act's structure and purpose. To accept EPA's reading, one must conclude that Congress did not care about unhealthful air after 1993, and meant to forever exempt such areas from reclassification even if their air pollution problems had not actually been cured." The commenter further contends that there is no "plausible basis for denying to Birmingham residents the same level of air quality protection mandated for" other cities.

Response: EPA's approach is not only consistent with the express language of section 181(b)(2), it is consistent with the Clean Air Act's structure and purpose. Moreover, accepting EPA's reading of this provision does not mean that either Congress or EPA does not care about unhealthful air in Birmingham after 1993 and does not deny to the residents of Birmingham the same level of air quality protection that is afforded to the other residents of the United States. This comment would be accurate only if Congress precluded EPA from dealing with air quality problems in areas such as Birmingham. Congress has not done so, however, and EPA has exercised its authority available under other provisions of the Clean Air Act to require that steps be taken to improve air quality in Birmingham. In fact, EPA undertook a rulemaking action to require the State of Alabama to submit a SIP revision to provide for attainment of the 1-hour ozone standard in Birmingham. EPA took final action on this rulemaking on October 19, 2000. 65 FR 64352 (Oct. 27, 2000). The State of Alabama submitted a SIP revision to provide for attainment based on photochemical grid modeling (which is only required by the Clean Air Act for ozone nonattainment areas classified as serious or higher) on November 1, 2000. The attainment demonstration relied upon additional fuel controls and controls on emission controls on two major power plants and demonstrated that attainment would occur by November 15, 2003, on the basis of these additional control measures, which are to be implemented by May 2003. EPA approved that SIP submission on October 24, 2001. 66 FR 56223 (Nov. 7, 2001). Consequently, even though EPA is not reclassifying Birmingham as the commenter desires, EPA and the State of Alabama have taken steps to rectify the problems with Birmingham's SIP and to achieve attainment of the 1-hour ozone standard as expeditiously as practicable, thereby affording Birmingham's citizens the health protections of that air quality standard.

Comment 6: The commenter claims that in *Whitman* v. *American Trucking Ass'ns*, "the Supreme Court soundly rejected the very sort of evasion of the Act's reclassification provisions that EPA is proposing here." According to the commenter, that decision held "that EPA could not construe the Act in a way that renders Subpart 2 "abruptly obsolete" * * * Yet that is precisely what the Agency proposes here." In the view of the commenter, EPA's reliance on other provisions of the Act, such as section 110, is an approach that "effectively nullifies the Subpart 2 reclassification provisions as to the affected area" and claims that such an approach "was squarely rejected by the Supreme Court in Whitman."

Response: The Supreme Court's decision in *Whitman* v. *American Trucking Ass'ns*, 431 U.S. 537, 121 S.Ct. 903 (2001), did not grapple with the issue presented in this rulemaking. At issue in Whitman was the implementation regime for the revised ozone standard, the 8-hour ozone standard promulgated by EPA in 1997. There, the Court dealt with the issue of "whether Subpart 1[of Part D] alone (as the agency determined), or rather Subpart 2 or some combination of Subparts 1 and 2, controls the implementation of the revised ozone NAAQS in nonattainment areas." The Court ruled that EPA could not establish an implementation program for a new ozone NAAQS that eliminated subpart 2 but left it to the Agency to resolve ambiguities in the Clean Air Act concerning how subparts 1 and 2 interact with respect to the implementation of revised ozone standards. The Court did not deal with an issue of how a particular provision of subpart 2 should be interpreted and implemented, which is the issue in this rulemaking. In this rulemaking EPA is not seeking to supplant the provisions of subpart 2, it is merely applying those provisions in a way consistent with their language and a prior court decision interpreting the provisions at issue. The fact that EPA disagrees with the commenter's suggested interpretation of section 181(b)(2)(A) does not mean that EPA is effectively nullifying that provision, which, in EPA's review, provides for the reclassification of areas that fail to attain as of their attainment date.

Comment 7: The commenter also claims that EPA's reading of the Clean Air Act leads to absurd results because an area that was violating the standard on November 15, 1993, would be subject to more stringent requirements than Birmingham even if its air were cleaner than Birmingham's after 1993. Another absurd result that EPA's approach leads to in the eyes of the commenter is the possibility that Birmingham would remain classified as marginal, while other areas with better air quality could be reclassifed up to severe status "solely because they happened to be in violation on November 15, 1993."

Response: EPA's approach does not lead to absurd results. EPA's approach merely follows the language of the statute and gives full force and effect to the clearly expressed intent of Congress. If EPA's approach meant that nothing could be done to address air quality problems in Birmingham because the area was not reclassified, then there might be legitimate questions that could be raised about the validity of such an approach, which would mean that the fundamental objective of attainment of the ozone standard could not be achieved. That is not the case, however. As described above in response to Comment 5, EPA exercised its statutory authority to issue a SIP call to the State of Alabama requiring an attainment demonstration for Birmingham. The State then submitted that SIP, which was based on photochemical modeling and which contained significant additional control measures. EPA approved that SIP and the SIP for Birmingham now provides for attainment of the 1-hour ozone standard next year. Also, the Clean Air Act clearly contemplates that areas that once achieved attainment of the ozone standard may be categorized differently than areas that have not achieved attainment even if an area that was once clean violates the standard again. Section 175A(d), which applies to areas that were once designated nonattainment but are seeking redesignation to attainment after attaining a standard, requires that such areas submit SIP revisions containing contingency provisions "to assure that the State will promptly correct any violation of the standard which occurs after the redesignation of the area as an attainment area." Neither section 175A nor any other provision of the Act establishes a mandatory duty for EPA to

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redesignate an attainment area back to nonattainment status after a violation, although such action by EPA is authorized by section 107(d)(3)(A). This is the case even though such an area could have air quality worse at some point than another area that had remained designated nonattainment and may have even been classified at a higher level than the area that had been redesignated to attainment. Clearly, Congress expected that there would be areas that had been redesignated to attainment that were in fact violating a standard but did not require that such areas be redesignated to nonattainment. Instead of compelling EPA to change their designation status, Congress required such areas to have provisions in their SIPs to address the air quality problems (the contingency measures). Thus, Congress clearly expected that two areas could be in different categories (one attainment and one nonattainment) even though the area designated attainment might have worse air quality than the area designated nonattainment. Congress also expected that the area designated attainment would have SIP provisions designed to address the air quality problems. EPA is treating Birmingham in an analogous fashion. EPA does not view Birmingham, having attained the standard by its attainment date, as being subject to the mandatory reclassification provisions of section 181(b)(2); EPA, however, did require the State of Alabama to revise the Birmingham SIP to address the air quality problems Birmingham was experiencing and it has done so.

Comment 8: The commenter asserts that EPA has relied on post-attainment date conditions in making attainment and reclassification determinations under the Act and that it is arbitrary, capricious, and contrary to law for the Agency to find areas in attainment and waive reclassification, but refuse to consider post-attainment date conditions to find areas in nonattainment. The commenter offers two examples of this. One is where EPA decided not to reclassify Kent & Queen Anne's County in Maryland from marginal to moderate when it had come into attainment of the 1-hour ozone standard a year after its attainment date, and the second was EPA's decision not to reclassify the Liberty Borough, Pennsylvania PM–10 area from moderate to serious when it had attained by the time of EPA's decision.

Response: The fact that EPA did not reclassify certain other areas that were in violation as of their attainment dates but attained shortly thereafter does not compel the result that EPA reclassify areas that did attain by their attainment date on the basis of post-attainment date information. In the first situation, where an area attains after its attainment date, the purpose of the reclassification has been fulfilled because the area achieved attainment of the standard (albeit somewhat late). In the second situation, for the reasons explained in response to other comments, the language of the Act requires that only areas that failed to attain as of their attainment date be reclassified. That EPA may not have acted to reclassify all such areas does not lead to the conclusion that EPA must now consider post-attainment date information in every case and make reclassification decisions on the basis of such data.

Comment 9: The commenter asserts that since EPA has elsewhere recognized that a nonattainment area with clean air can fall back into nonattainment and must be subject to the enforcement of the Act's nonattainment area requirements. Citing EPA's "clean data" policy, the commenter argues that the post-attainment deadline violations in Birmingham "compel an EPA finding of nonattainment and reclassification."

Response: As explained elsewhere in the responses to comments, the post-attainment deadline violations in Birmingham do not compel a finding of nonattainment and reclassification. In addition, the "clean data policy" to which the commenter refers is not relevant to the reclassification provisions of the Act and does not compel such a finding or action. The "clean data" policy concerns other provisions of the Act, such as the attainment demonstration and reasonable further progress requirements, and sets forth EPA's view that the SIP submission requirements contained in those provisions may be suspended for so long as the purpose of those provisions is being achieved, *i.e.*, for so long as the area is attaining the standard. Under that policy, if an area violates the standard during the period in which the requirements are suspended, the requirements are to be reimposed. This simply does not involve the reclassification provisions and their attendant requirements to impose additional requirements on areas that fail to attain by their attainment dates.

Comment 10: Even if the attainment status of Birmingham as of November 15, 1993, were the only relevant issue, the commenter asserts that the "post-1993 data strongly suggests that the area was not in fact in attainment on that date." The commenter claims that the only monitor in Shelby County recorded 2 exceedances in 1993 and two other monitored readings of .124 ppm—"barely within the NAAQS, and within only because of EPA's 'rounding' convention." The commenter asks EPA to determine whether the actual values were .1245 or higher, which the commenter states would mean they should have been reported as .125, indicating a violation. The commenter asserts that, based on the post-1993 monitored violations and the "limited size" of the Birmingham monitoring network, "it is highly unlikely that the area was in fact 'in attainment' as of November 15, 1993." Citing a statement made by EPA in 1997 that Birmingham is subject to ozone exceedances "whenever meteorological conditions are conducive to ozone formation," the commenter claims that EPA "cannot rationally find that the Birmingham area was in fact 'in attainment' as of November 15, 1993."

Response: EPA does not believe that the post-1993 data suggests that the Birmingham area was not attaining as of November 15, 1993. First, that data was affected by emissions levels in those years and meteorological conditions that occurred in the post-1993 period, which may or may not have been present in the 1991–93 period when the area attained. Thus, the fact that exceedances occurred in 1995 or 1996 does not suggest that unmonitored exceedances were occurring in the 1991–93 period. Second, the Birmingham monitoring network is not insufficient. The area's monitoring network met or exceeded the requirements of EPA's regulatory requirements for National Air Monitoring Stations (NAMS) and for State and Local Air Monitoring Stations (SLAMS) (contained in 40 CFR part 58 Appendix D). Third, as EPA has explained elsewhere, the "rounding convention" referred to by the commenter was established by EPA in guidance issued in 1977 and 1979, guidance that was carried forward by Congress in 1990 when it enacted section 193 of the Clean Air Act. Moreover, the rounding convention is perfectly consistent with the standard as defined in 40 CFR 50.9, which defines the 1-hour ozone standard as 0.12 parts per million (ppm), not .120 ppm or 120 parts per billion. Since the one-hour ozone standard is specified as two significant digits, the appropriate data handling convention is to round to two decimal places. *See* 67 FR 5152, 5160 (Feb. 4, 2002). Finally, EPA did examine the 1993 data as requested by the commenter and determined that 1-hour ozone data is stored to three decimal places in AIRS–AQS.

Comment 11: The commenter contends that not only must EPA reclassify Birmingham as a moderate area, it must reclassify the area as severe since the moderate and serious area attainment dates have passed and the area is still not attaining the standard.

Response: For the reasons given in response to the previous comments, EPA does not believe that it must reclassify Birmingham as a moderate area. Even if it were required to reclassify Birmingham as a moderate area at this time, whether it would have to reclassify the Birmingham area immediately as severe is open to question. In another case where EPA acted to reclassify a moderate ozone area as serious after the serious area attainment deadline of 1999 had passed, EPA determined that it would be appropriate to reclassify the area as serious and establish an attainment date satisfying the principle that the attainment date be as expeditiously as practicable even though that date post-dated the 1999 attainment date for serious areas. 66 FR 15578, 15584–85, 15587 (Mar. 19, 2001). In any event, as EPA is not reclassifying Birmingham, EPA is not taking any final action with respect to what a new classification for Birmingham should be and is not resolving that issue on a hypothetical basis.

IV. Final Action

Pursuant to Section 181(b)(2)(A) of the CAA, EPA is finalizing the determination that the Birmingham area has attained the 1-hour NAAQS for ozone by November 15, 1993, the date required by section 181(a)(1) of the CAA. This determination is based upon three years of complete, quality-assured, ambient air monitoring data for the years 1991–1993 which indicate that Birmingham area attained the 1-hour ozone NAAQS.

V. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply to this action since it is simply a determination that Birmingham was in attainment of the 1-hour ozone NAAQS as of November 15, 1993. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. section 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 3, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: October 24, 2002.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 02–27828 Filed 11–1–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA–7795]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

EFFECTIVE DATES: The effective date of each community's suspension is the

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third date ("Susp.") listed in the third column of the following tables.

ADDRESSES: If you wish to determine whether a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

FOR FURTHER INFORMATION CONTACT: Edward Pasterick, Division Director, Risk Communication Division, Federal Insurance and Mitigation Administration, 500 C Street, SW.; Room 411, Washington, DC 20472, (202) 646–2807.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the National Flood Insurance Program, 42 U.S.C. 4001 *et seq.*; unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59 *et seq.* Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications have been made, this final rule may take effect within less than 30 days.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless they take remedial action.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Paperwork Reduction Act. This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp.; p. 252.

Executive Order 12778, Civil Justice Reform. This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp.; p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp.; p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp.; p. 376.

§ 64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance community	Current effective map date	Date certain federal assistance no longer available in special flood hazard areas
Region III				
West Virginia:				
Capon Bridge, Town of, Hampshire County.	540046	May 13, 1975, Emerg.; April 1, 1988, Reg.; November 7, 2002.	Nov. 7, 2002	11/7/02
Hampshire County, Unincorporated Areas.	540226	January 19, 1976, Emerg.; August 1, 1987, Reg.; November 7, 2002.	.....do	Do.
Romney, Town of, Hampshire County ..	540276	April 25, 1975, Emerg.; June 15, 1988, Reg.; November 7, 2002.	.....do.	

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance community	Current effective map date	Date certain federal assistance no longer available in special flood hazard areas
Region IV				
Tennessee:				
Chattanooga, City of, Hamilton County	470072	March 3, 1972, Emerg.; September 3, 1980, Reg.; November 7, 2002.	.....do	Do.
Hamilton County, Unincorporated Areas	470071	March 3, 1972, Emerg.; August 1, 1979, Reg.; November 7, 2002.	.....do	Do.
Signal Mountain, Town of, Hamilton County.	470078	September 23, 1977, Emerg.; June 28, 1979, Reg.; November 7, 2002.	.....do	Do.
Region V				
Minnesota:				
Vadnais Heights, City of, Ramsey County.	270385	July 3, 1974, Emerg.; June 30, 1976, Reg.; November 7, 2002.	.....do	Do.
Region IV				
Alabama:				
Cowarts, Town of, Houston County	010103	October 29, 1998, Emerg.; November 21, 2002, Reg.; November 21, 2002.	Nov. 7, 2002	11/21/02
Madrid, Town of, Houston County	010107	November 6, 1975, Emerg.; July 18, 1985, Reg.; November 21, 2002.	.....do	Do.
Webb, Town of, Houston County	010109	August 26, 1975, Emerg.; May 15, 1985, Reg.; November 21, 2002.	.....do	Do.
Tennessee:				
Portland, City of, Sumner County	470187	February 14, 1975, Emerg.; August 4, 1987, Reg.; November 21, 2002.	.....do	Do.
Region V				
Ohio:				
Niles, City of, Trumbull County	390540	March 5, 1974, Emerg.; June 1, 1978, Reg.; November 21, 2002.	.....do	Do.
Wisconsin:				
Sheboygan County, Unincorporated Areas.	550424	April 4, 1973, Emerg.; July 17, 1978, Reg.; November 21, 2002.	.....do	Do.
Sheboygan, City of, Sheboygan County	550430	April 23, 1971, Emerg.; March 15, 1977, Reg.; November 21, 2002.	.....do	Do.

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Dated: October 25, 2002.

Anthony S. Lowe,

Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 02–27959 Filed 11–1–02; 8:45 am]

BILLING CODE 6718–05–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA–D–7531]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the base (1% annual chance) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base flood elevations for new buildings and their contents.

DATES: These modified base flood elevations are currently in effect on the dates listed in the table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Administrator reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (email) *matt.miller@fema.gov.*

SUPPLEMENTARY INFORMATION: The modified base flood elevations are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection is provided.

Any request for reconsideration must be based upon knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to Section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR Part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the

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community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Administrator, Federal Insurance and Mitigation Administration, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

Regulatory Classification. This interim rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Alabama: Jefferson	City of Hoover	October 8, 2002, October 15, 2002, *The Birmingham News.*	The Honorable Barbara McCollum, Mayor of the City of Hoover, 100 Municipal Drive, Hoover, Alabama 32516.	Oct. 1, 2002	010123 B
Connecticut: Middlesex	City of Middletown	September 10, 2002, September 17, 2002, *The Middletown Press.*	The Honorable Domenique S. Thornton, Mayor of the City of Middletown, 245 deKoven Drive, P.O. Box 1300, Middletown, Connecticut 06457.	Dec. 17, 2002	090068 C
New Haven	City of Milford	October 9, 2002, October 16, 2002, *New Haven Register.*	The Honorable James L. Richetelli, Mayor of the City of Milford, City Hall, 110 River Street, Milford, Connecticut 06460.	Jan. 15, 2003	090082 F
Florida: Charlotte	Unincorporated Areas	September 19, 2002, September 26, 2002, *Herald Tribune (Charlotte County Edition)* and *Sun Herald.*	Ms. Pamela Brangaccio, Charlotte County Interim Administrator, 18500 Murdock Circle, Port Charlotte, Florida 33948.	Sept. 12, 2002	120061 D
Dade	Unincorporated Areas	September 13, 2002, September 20, 2002, *The Miami Herald.*	Mr. Steve Shriver, Dade County Manager, 111 N.W. First Street, Suite 910, Miami, Florida 33128.	Sept. 6, 2002	120635 J

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Polk	City of Lakeland	October 1, 2002, October 8, 2002, *The Ledger.*	Mr. Roger D. Haar, City Manager for the City of Lakeland, Lakeland City Hall, 228 South Massachusetts Avenue, Lakeland, Florida 33801–5086.	Sept. 24, 2002	120267 F
Dade	City of Miami	September 10, 2002, September 17, 2002, *The Miami Herald.*	The Honorable Manuel A. Diaz, Mayor of the City of Miami, 3500 Pan American Drive, Miami, Florida 33133.	Sept. 3, 2002	120650 J
Orange	City of Ocoee	September 25, 2002, October 2, 2002, *The Orlando Sentinel.*	The Honorable S. Scott Vandergift, Mayor of the City of Ocoee, City Hall, 150 North Lakeshore Drive, Ocoee, Florida 34761.	Sept. 18, 2002	120185 E
Orange	Unincorporated Areas	September 25, 2002, October 2, 2002, *The Orlando Sentinel.*	M. Krishnamurthy, P.E., Ph.D., Orange County Stormwater, Management Manager, 4200 South John Young Parkway, Orlando, Florida 32839.	Sept. 18, 2002	120179 E
Orange	Unincorporated Areas	September 27, 2002, October 4, 2002, *The Orlando Sentinel.*	M. Krishnamurthy, P.E., Ph.D., Orange County Stormwater, Management Manager, 4200 South John Young Parkway, Orlando, Florida 32839.	Sept. 20, 2002	120179 E
Georgia: Richmond	City of Augusta	September 5, 2002, September 12, 2002, *The Augusta Chronicle.*	The Honorable Bob Young, Mayor of the City of Augusta, City-County Municipal Building, 530 Greene Street, Augusta, Georgia 30911.	Dec. 12, 2002	130158 E
Catoosa	City of Fort Oglethorpe	September 4, 2002, September 11, 2002, *Chattanooga Free Press.*	The Honorable Judson L. Burkhart, Mayor of the City of Fort Oglethorpe, P.O. Box 5509, 500 City Hall Drive, Fort Oglethorpe, Georgia 30742.	Dec. 11, 2002	130248 B
New York: Schenectady County	Town of Rotterdam	September 27, 2002, October 4, 2002, *The Daily Gazette.*	Mr. John Paolino, Supervisor of the Town of Rotterdam, 1100 Sunrise Boulevard, Rotterdam, New York 12306.	Mar. 17, 2003	360740 B
North Carolina: Buncombe	City of Ashville	October 9, 2002, October 16, 2002, *The Asheville Citizen-Times.*	The Honorable Charlie Worley, Mayor of the City of Asheville, P.O. Box 7148, Asheville, North Carolina 28802.	Jan. 15, 2003	370032 C
Pennsylvania:					

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State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Cambria	City of Johnstown	September 30, 2002, October 7, 2002, *Johnstown Tribune.*	Mr. Silka, City of Johnstown Manager, 401 Main Street, Johnstown, Pennsylvania 15901.	Sept. 16, 2002	420231 C
Allegheny	Township of Moon	October 9, 2002, October 16, 2002, *Moon Record Star.*	Mr. Gregory S. Smith, Manager of Moon Township, 1000 Beaver Grade Road, Moon, Pennsylvania 15108.	Jan. 14, 2003	421082 E
Allegheny	Township of North Fayette	October 9, 2002, October 16, 2002, *Moon Record Star.*	Mr. Robert T. Grimm, Manager of the Township of North Fayette, 400 North Branch Road, Oakdale, Pennsylvania 15071.	Jan. 14, 2003	421085 E
Allegheny	Township of Robinson	October 9, 2002, October 16, 2002, *Suburban Gazette.*	Mr. William L. Blumling, Chairman of the Board of Commissioners, Township of Robinson, 1000 Church Hill Road, Pittsburgh, Pennsylvania 15205.	Jan. 14, 2003	421097 E
Tennessee:					
Shelby	City of Memphis	October 15, 2002, October 22, 2002, *The Commercial Appeal.*	The Honorable Willie W. Herenton, PhD, Mayor of the City of Memphis, City Hall, 125 North Main Street, Suite 700, Memphis, Tennessee 38103.	Jan. 22, 2003	470177 E
Williamson	Unincorporated Areas	October 7, 2002, October 14, 2002, *The Review Appeal.*	Mr. Rogers Anderson, Williamson County Executive, 1320 West Main Street, Suite 100, Franklin, Tennessee 37064.	Oct. 1, 2002	470204 C
Virginia:					
Independent City	City of Harrisonburg	October 11, 2002, October 18, 2002, *Daily News-Record.*	The Honorable Joseph G. Fitzgerald, Mayor of the City of Harrisonburg, City Manager's, Office 345 South Main Street, Harrisonburg, Virginia 22801.	Oct. 4, 2002	510076 B
Independent City	City of Roanoke	September 20, 2002, September 27, 2002, *Roanoke Times.*	The Honorable Ralph K. Smith, Mayor of the City of Roanoke, 215 Church Avenue, S.W., Room 452, Roanoke, Virginia 24011.	Sept. 12, 2002	510130 D
Independent City	City of Winchester	September 23, 2002, September 30, 2002, *Winchester Star.*	Mr. Edwin C. Daley, City of Winchester Manager, Rouss City Hall, 15 North Cameron Street, Winchester, Virginia 22601.	Dec. 30, 2002	510173 B

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
West Virginia: Berkeley	Unincorporated Areas	September 20, 2002, September 27, 2002, *Martinsburg Journal.*	Mr. Howard Strauss, President of Berkeley County, Board of Commissioners, 126 West King Street, Martinsburg, West Virginia 25401.	Sept. 4, 2002	540282 B

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: October 30, 2002.

Anthony S. Lowe,

Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 02–27962 Filed 11–1–02; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: Modified base (1% annual chance) flood elevations are finalized for the communities listed below. These modified elevations will be used to calculate flood insurance premium rates for new buildings and their contents.

EFFECTIVE DATES: The effective dates for these modified base flood elevations are indicated on the following table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect for each listed community prior to this date.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (email) *matt.miller@fema.gov*.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes the final determinations listed below of modified base flood elevations for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Administrator has resolved any appeals resulting from this notification.

The modified base flood elevations are not listed for each community in this notice. However, this rule includes the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection.

The modifications are made pursuant to Section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities.

These modified elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Administrator, Federal Insurance and Mitigation Administration, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, floodplains, reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

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State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arizona: Maricopa (FEMA Docket No. D–7525).	City of Tempe	May 1, 2002, May 8, 2002, *Arizona Republic.*	The Honorable Neil G. Giuliano, Mayor of the City of Tempe, P.O. Box 5002, Tempe, Arizona 85280.	Aug. 6, 2002	040054 G&F
Connecticut:					
Hartford (FEMA Docket No. D–7525).	Town of Berlin	April 26, 2002, May 3, 2002, *The Herald.*	Ms. Bonnie Therrien, Manager of the Town of Berlin, Town Hall, 240 Kensington Road, Berlin, Connecticut 06037.	Apr. 15, 2002	090022 D
Fairfield (FEMA Docket No. D–7525).	City of Stamford	May 10, 2002, May 17, 2002, *The Stamford Advocate.*	The Honorable Dannel P. Malloy, Mayor of the City of Stamford, 888 Washington Boulevard, 10th Floor Government Center, Stamford, Connecticut 06904.	Apr. 23, 2002	090015 C&D
Indiana: Hamilton (FEMA Docket No. D–7525).	Town of Westfield	April 12, 2002, April 19, 2002, *The Daily Ledger.*	Mr. Michael McDonald, Town of Westfield Council President, 130 Penn Street, Westfield, Indiana 46074.	July 19, 2002	180083 C
North Carolina:					
Wake (FEMA Docket No. D–7525).	Town of Cary	Apr. 23, 2002, April 30, 2002, *The News and Observer.*	The Honorable Glenn Lang, Mayor of the Town of Cary, P.O. Box 8005, Cary, North Carolina 27512.	July 30, 2002	370238 F&E
Lee (FEMA Docket No. D–7525).	City of Sanford	Apr. 18, 2002, April 25, 2002, *Sanford Herald.*	The Honorable Winston C. Hestor, Mayor of the City of Sanford, P.O. Box 3729, Sanford, North Carolina 27331–3729.	July 25, 2002	370143 B
Pennsylvania: Chester (FEMA Docket No. D–7523).	Township of Willistown	April 17, 2002, April 24, 2002, *Daily Local News.*	Mr. Robert T. Lang, Chairman of the Township of Willistown Board of Supervisors, 688 Sugartown Road, Malvern, Pennsylvania 19335.	Apr. 1, 2002	422282 D
South Carolina: Lexington (FEMA Docket No. D–7525).	Unincorporated Areas	April 19, 2002, April 26, 2002, *The State.*	Mr. Bill Banning, Council Chairman, 212 South Lake Drive, Lexington, South Carolina 29072.	July 26, 2002	450129 G
Virginia:					

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Loudoun (FEMA Docket No. D–7525).	Town of Leesburg	May 15, 2002, May 22, 2002, *Loudoun Times Mirror.*	The Honorable B. J. Webb, Mayor of the Town of Leesburg, 25 West Market Street, P.O. Box 88, Leesburg, Virginia 20178.	Aug. 21, 2002	510091 D
Loudoun (FEMA Docket No. D–7525).	Unincorporated Areas	May 22, 2002, May 29, 2002, *Loudoun Times Mirror.*	Mr. Kirby Bowers, Loudoun County Administrator, 1 Harrison Street, S.E., 5th Floor, P.O. Box 7000, Leesburg, Virginia 20177–7000.	May 6, 2002	510090 D
Prince William (FEMA Docket No. D–7523).	Unincorporated Areas	April 19, 2002, April 26, 2002, *Potomac News.*	Mr. Craig Gerhart, Prince William County Executive, 1 County Complex Court, Prince William, Virginia 22192.	Apr. 3, 2002	510119 D

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: October 30, 2002.

Anthony S. Lowe,

Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 02–27963 Filed 11–1–02; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Base (1% annual chance) flood elevations and modified base flood elevations are made final for the communities listed below. The base flood elevations and modified base flood elevations are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base flood elevations and modified base flood elevations for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

ADDRESSES: The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (e-mail) *matt.miller@fema.gov.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) makes final determinations listed below of base flood elevations and modified base flood elevations for each community listed. The proposed base flood elevations and proposed modified base flood elevations were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of 90 days. The proposed base flood elevations and proposed modified base flood elevations were also published in the **Federal Register**.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67.

The Agency has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and Flood Insurance Rate Map available at the address cited below for each community.

The base flood elevations and modified base flood elevations are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Administrator, Federal Insurance and Mitigation Administration, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive

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Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

2. The tables published under the authority of § 67.11 are amended as follows:

Source of Flooding and Location	#Depth in feet above ground. *Elevation in feet (NGVD) •Elevation in feet (NAVD)
FLORIDA	
Jupiter Island (Town), Martin County (FEMA Docket No. D–7514)	
Atlantic Ocean:	
Approximately 0.94 mile east of intersection of Suddard Drive and Williams Drive	*13
Approximately 1.32 miles north-northwest of intersection of Beach Road and Harmony Avenue	*6
Maps available for inspection at the Jupiter Town Hall, Building Department, 103 Bunker Hill Road, Hobe Sound, Florida.	
KENTUCKY	
Harlan (City), Harlan County (FEMA Docket No. D–7538)	
Clover Fork:	
Approximately 260 feet downstream of the confluence of Martins Fork	*1,180
Approximately 375 feet upstream of Main Street/State Route 72	*1,181
Martins Fork:	
At the confluence with Clover Fork	*1,180
Approximately 1,200 feet upstream of State Route 72	*1,186
Interior Drainage Area No. 1:	
At the intersection of Walnut Street and Cumberland Avenue	*1,176
Interior Drainage Area No. 2:	
Approximately 150 feet southeast of the intersection of Clover and Walnut Streets along Walnut Street	*1,174
Maps available for inspection at the Harlan City Hall, 218 South Main Street, Harlan, Kentucky.	
MAINE	
Allagash (Town), Aroostook County (FEMA Docket No. D–7528)	
St. John River:	
Approximately 3.68 miles downstream of State Route 161	*603
Approximately 550 feet upstream of confluence of Little Black River	*627
Little Black River:	
At the confluence with St. John River	*626
Approximately 125 feet upstream of Route 161	*626
Maps available for inspection at the Allagash Town Office, Route 161, Allagash, Maine.	

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: October 30, 2002.

Anthony S. Lowe,

Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 02–27964 Filed 11–1–02; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Base (1% annual chance) flood elevations and modified base flood elevations are made final for the communities listed below. The base flood elevations and modified base flood elevations are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base flood elevations and modified base flood elevations for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

ADDRESSES: The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (e-mail) *matt.miller@fema.gov.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) makes final determinations listed below of base flood elevations and modified base flood elevations for each community listed. The proposed base flood elevations and proposed modified base flood elevations were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed base flood elevations and proposed modified base flood elevations were also published in the **Federal Register**.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR Part 67.

The Agency has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and Flood Insurance Rate Map available at the address cited below for each community.

The base flood elevations and modified base flood elevations are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Administrator, Federal Insurance and Mitigation Administration, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, flood insurance, reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

2. The tables published under the authority of § 67.11 are amended as follows:

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD) •Elevation in feet (NAVD)
ILLINOIS	
Monroe County (Unincorporated Areas), City of Columbia (FEMA Docket No. D–7520)	
Carr Creek:	
Approximately 250 feet upstream of Bluff Road	*421
Approximately 700 feet upstream of Gail Road	*448
Monroe County (Unincorporated Areas), City of Columbia	
Carr Creek Tributary:	
At the confluence with Carr Creek	*444
Approximately 1,620 feet upstream of confluence with Carr Creek	*447
Palmer Creek:	
Approximately 0.57 mile downstream of Ramsey Road	*402
At upstream side of Rueck Road	*456
Palmer Creek Tributary:	
At the confluence with Palmer Creek	*432
Approximately 760 feet upstream of Quarry Road	*473
Rueck Creek:	
At the confluence with Palmer Creek	*432
Approximately 0.83 mile upstream of confluence with Palmer Creek	*452
City of Columbia	
Wilson Creek:	
At the confluence with Carr Creek	*427
Approximately 550 feet upstream of South Main Street	*482
Monroe County (Unincorporated Areas)	
Maps available for inspection at the Monroe County Zoning Office, Monroe County Courthouse, 100 South Main Street, Waterloo, Illinois.	
City of Columbia	
Maps available for inspection at the Columbia City Hall, 208 South Rapp Avenue, Columbia, Illinois.	
KENTUCKY	
City of Williamsburg, Whitley County (Unincorporated Areas) (FEMA Docket No. D–7540)	
Cumberland River:	
Approximately 2.1 miles upstream of State Route 25 West	*934
Approximately 7.7 miles upstream of State Route 25 West	*943
City of Williamsburg	
Maps available for inspection at the City of Williamsburg Mayor's Office, 116 North Second Street, Williamsburg, Kentucky.	
Whitley County (Unincorporated Areas)	
Maps available for inspection at the Whitley County Courthouse, 310 Main Street, Williamsburg, Kentucky.	
TENNESSEE	
Carter County (Unincorporated Areas) (FEMA Docket No. D–7540)	
Doe River:	
Approximately 1,150 feet downstream of U.S. Highway 19E	*2,496
Approximately 1.3 miles upstream of Julian Road	*2,663
Carter County (Unincorporated Areas)	
Doe River Overland Flow:	
Approximately 175 feet upstream of the confluence with Doe River	*2,568
At divergence with Doe River	*2,585
Buck Creek:	
At confluence with Shell Creek	*2,642
Approximately 1,775 feet upstream of Buck Creek Road	*2,692
Hampton Creek:	
At confluence with Doe River	*2,597
Approximately 2 miles upstream of confluence with Doe River	*2,825
Shell Creek:	
At confluence with Doe River	*2,576
Approximately 140 feet upstream of Ellis Hollow Road	*2,780
Carter County (Unincorporated Areas)	
Maps available for inspection at the Carter County Courthouse, 801 East Elk Avenue, Elizabethton, Tennessee.	
WISCONSIN	
Winnebago County (Unincorporated Areas) (FEMA Docket No. D-7530), City of Oshkosh (FEMA Docket No. D–7530)	
Arrowhead River:	
Approximately 300 feet upstream of County Highway M	*751
Approximately 7,650 feet upstream of Woodland Road	*757
Winnebago County (Unincorporated Areas)	
Wolf River:	
Approximately 1.7 miles upstream of mouth at Lake Poygan	*751
At County boundary	*753
Mud Creek:	
Approximately 250 feet downstream of county boundary	*744
At County boundary	*744
Eight Mile Creek:	
At the confluence with Rush Creek	*817
Approximately 2,000 feet upstream of Knott Road	*844
Rush Creek:	

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Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD) •Elevation in feet (NAVD)
At upstream side of State Highway 116	*780
At the confluence of Eight Mile Creek	*817
Sawyer Creek:	
Downstream side of North Westfield Street	*753
Approximately 1.2 miles upstream of Clairville Road	*811
Winnebago County (Unincorporated Areas), City of Oshkosh	
Rush Lake:	
Entire shoreline within community	*823
Winnebago County (Unincorporated Areas)	
Waukau Creek:	
At the confluence of Eight Mile Creek	*817
Approximately 1.8 miles upstream of confluence of Eight Mile Creek	*818
Maps available for inspection at the Winnebago County Zoning Office, 448 Algoma Boulevard, Oshkosh, Wisconsin.	
City of Oshkosh	
Maps available for inspection at the Oshkosh City Hall, 215 Church Avenue, Oshkosh, Wisconsin.	

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: October 30, 2002.

Anthony S. Lowe,

Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 02–27965 Filed 11–1–02; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Base (1% annual chance) Flood Elevations (BFEs) and modified BFEs are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the FIRM is available for inspection as indicated in the table below.

ADDRESSES: The final BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (e-mail) *matt.miller@fema.gov.*

SUPPLEMENTARY INFORMATION: FEMA makes the final determinations listed below of BFEs and modified BFEs for each community listed. The proposed BFEs and proposed modified BFEs were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of 90 days. The proposed BFEs and proposed modified BFEs were also published in the **Federal Register**.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67.

FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Administrator, Federal Insurance and Mitigation Administration certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified BFEs are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This proposed rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is amended to read as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

2. The tables published under the authority of § 67.11 are amended as follows:

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD).
NEW MEXICO	
Chaves County (Unincorporated Areas), (FEMA Docket No. B–7421)	
Rio Hondo River:	
At confluence with South Berrendo Creek	*3,507
Approximately 9,500 feet upstream of Roswell Relief Route	*3,704
Maps are available for inspection at the Chaves County Courthouse, Planning Department, 401 North Main Street, Roswell, New Mexico.	
Roswell (City), Chaves County, (FEMA Docket No. B–7421)	
Rio Hondo River:	
Approximately 1,550 feet downstream from Atkinson Avenue	*3,544
Approximately 3,000 feet upstream of Sunset Avenue	*3,620
Maps are available for inspection at City Hall, Engineering Department, 401 North Main Street, Roswell, New Mexico.	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD).	Communities Affected[1]
OKLAHOMA		
Oklahoma County and Incorporated Areas, (FEMA Docket No. #B–7404)		
Biddy Creek:		
Approximately 3,200 feet upstream of confluence with Deer Creek	*1,054	
At Oklahoma-Canadian County Boundary	*1,103	
Bloody Rush Creek:		
Just upstream of Portland Avenue	*1,014	
Just upstream of Rockwell Avenue	*1,096	
Chisholm Creek:		
At Oklahoma-Logan County Boundary	*1,016	
At West Coffee Creek Road	*1,035	
Approximately 150 feet upstream of West Coffee Creek Road	*1,037	
At Hefner Road	*1,167	
At Northwest Britton Road	*1,192	
Coon Creek:		
Approximately 50 feet upstream of Northeast 192nd Street	*919	
Approximately 1,500 feet upstream of Triple XXX Road	*922	
Just downstream of Northeast 206th Street	*929	
Just upstream of Northeast 206th Street	*932	
At confluence with Coon Creek	*965	
Just downstream of Waterloo Road	*970	
Coon Creek Tributary:		
Approximately 70 feet upstream of Choctaw Road	*1,007	
Crutcho Creek:		
Approximately 2,000 feet upstream of North Midwest Boulevard	*1,149	
Approximately 700 feet downstream of Northeast 36th Street	*1,158	
Crutch Creek Tributary C:		
Just downstream of Sooner Road	*1,217	
Approximately 450 feet upstream of Epperly Drive	*1,246	
Crutch Creek Tributary C–1:		
Approximately 400 feet upstream of confluence with Crutcho Creek C	*1,226	
Just downstream of Southeast 59th Street	*1,233	
Deep Fork:		
Just upstream of Northeast 192nd Street	*902	
Approximately 1,800 feet upstream of Northwest 192 Street	*903	
Deep Fork Tributary 11:		
Approximately 1,300 feet downstream of Northeast 50th Street	*1,089	
Just upstream of Northeast 50th Street	*1,104	
Deer Creek:		
At Waterloo Road	*1,009	
Approximately 600 feet downstream of Northwest 164th Street	*1,072	
	*1,040	
Dorf Creek:		
Approximately 4,900 feet upstream of Meridian Avenue	*1,095	
Approximately 1,000 feet upstream of Coffee Creek Road	1,157	
North Canadian River:		
At intersection of North Sooner Road and Northeast 10th Street	*1,090	
North Canadian Tributary 1:		
Approximately 1,750 feet downstream of Northeast 10th Street	*1,110	
Just downstream of Reno Avenue	*1,114	
Approximately 150 feet upstream of Reno Avenue	*1,167	
Approximately 200 feet downstream of Triple XXX Road	*1,104	
North Canadian Tributary 2 of Tributary 1:		
Approximately 1,050 feet downstream of Reno Avenue	*1,110	
Just upstream of Reno Road	*1,132	
North Canadian Tributary 2 of Tributary 2:		
Approximately 250 feet downstream of Southeast 15th Street	*1,118	
North Canadian Tributary 3 of Tributary 1:		
At confluence with North Canadian Tributary 1	*1,141	
Approximately 3,700 feet upstream of Peebley Road	None	
Pond Creek (previously known as Chrisholm Creek Tributary 3):		
Approximately 4,000 feet downstream of Danforth Avenue	None	
Just downstream of Danforth Avenue	*1,056	
Soldier Creek Tributary to Deer Creek:		
At confluence with Deer Creek	*1,074	
At County Line Road	*1,042	
Walnut Creek:		
At confluence with Deer Creek	*1,068	
Approximately 150 feet downstream of Northwest 164th Street	*1,072	
Just upstream of Northwest 164th Street	*1,049	

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Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD).	Communities Affected[1]
Walnut Creek Tributary:		
Approximately 3,400 feet upstream of confluence with Walnut Creek	*1,086	
At Northwest 164th Street	*1,092	
Just upstream of Northwest 164th Street	*950	
West Captain Creek Tributary:		
At Oklahoma-Lincoln County Boundary	*1,051	
Approximately 2,500 feet upstream of Northeast 93rd Street	*956	
	*1,010	
West Captain Creek Tributary 2:		
At confluence with West Captain Creek Tributary	*989	
Approximately 3,000 feet upstream of Northeast 93rd Street	*1,021	
West Captain Creek Tributary 3:		
At confluence with West Captain Creek Tributary	*1,029	
Approximately 2,000 feet upstream of Northeast 93rd Street	*1,069	
Whistler Creek:		
Approximately 2,900 feet upstream of confluence with Deer Creek	.....	
Approximately 2,800 feet downstream of MacArthur Boulevard	.....	

ADDRESSES

Oklahoma County (Unincorporated Areas)

Maps are available for inspection at the Oklahoma County Engineer Office, 320 Robert A. Kerr Avenue, Suite 101, Oklahoma City, Oklahoma.

City of Edmond

Maps are available for inspection at 100 East First Street, Edmond, Oklahoma.

City of Harrah

Maps are available for inspection at 1900 Church Avenue, Harrah, Oklahoma.

Town of Lake Aluma

Maps are available for inspection at 100 East First Street, Edmond, Oklahoma.

Town of Luther

Maps are available for inspection at 119 South Main Street, Luther, Oklahoma.

City of Midwest City

Maps are available for inspection at 100 North Midwest Boulevard, Midwest City, Oklahoma.

Oklahoma City

Maps are available for inspection at 420 West Main Street, Oklahoma City, Oklahoma.

City of Spencer

Maps are available for inspection at 8200 Northeast 36th Street, Spencer, Oklahoma.

City of the Village

Maps are available for inspection at 2304 Manchester Drive, The Village, Oklahoma.

[1] Oklahoma County (Uninc. Areas), City of Edmond, City of Harrah, Town of Lake Alma, Town of Luther, City of Midwest City, City of Oklahoma City, City of Spencer, City of The Village.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: October 30, 2002.

Anthony S. Lowe,

Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 02–27966 Filed 11–1–02; 8:45 am]

BILLING CODE 6718–04–P

Proposed Rules

Federal Register
Vol. 67, No. 213
Monday, November 4, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–SW–37–AD]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model AS350B, B1, B2, BA, and D Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) for specified Eurocopter France (Eurocopter) model helicopters. This proposal would require fireproofing the engine oil tank breather pipe (breather pipe) where it passes through the firewall from the engine compartment to the main gearbox compartment. This proposal is prompted by the discovery of a design deficiency that permitted the installation of a non-fireproof breather pipe. The actions specified by the proposed AD are intended to prevent the spread of fire between two designated fire zones of the helicopter, additional structural damage, and a decrease in the time available to execute an emergency landing.

DATES: Comments must be received on or before January 3, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2002–SW–37–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: *9-asw-adcomments@faa.gov*. Comments may be inspected at the Office of the Regional Counsel between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ed Cuevas, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations Group, Fort Worth, Texas 76193–0111, telephone (817) 222–5355, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this document may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this document must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 2002–SW–37–AD." The postcard will be date stamped and returned to the commenter.

Discussion

The Direction Generale De L'Aviation Civile (DGAC), the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on specified Eurocopter model helicopters. The DGAC advises that the breather pipe should be made fireproof by fitting it with a heat-resistant silicone sheath.

Eurocopter has issued AS 350 Service Bulletin No. 79.00.11, Revision No. 1, dated May 5, 2000, which specifies modifying the engine oil tank breather pipe with a high-temperature silicone glass sheath, then inspecting for oil leaks. The service bulletin states that it relates to MOD 072793. It further states that the high-temperature silicone glass sheath, part number (P/N) ASNAO 199–024, is included in modificatrion kit 350A0727930071. The DGAC classified this service bulletin as mandatory and issued AD No. 2000–268–078(A), dated June 28, 2000, to ensure the continued airworthiness of these helicopters in France.

These helicopter models are manufactured in France and are type certificated for operation in the United States under the provisions of 14 CFR 21.29 and the applicable bilateral agreement. Pursuant to this bilateral agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other specified Eurocopter model helicopters of these same type designs registered in the United States, the proposed AD would require modifying the breather pipe by installing a protection sheath on the segment of the engine oil tank breather pipe between the engine and the main gearbox compartments. The action would be required to be accomplished in accordance with the service bulletin described previously.

The FAA estimates that 470 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per helicopter to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $25 per helicopter. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $39,950.

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1)

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is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

Eurocopter France: Docket No. 2002–SW–37–AD.

Applicability: Eurocopter France Model AS350B, B1, B2, BA, and D helicopters, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required before flight, unless accomplished previously.

To prevent a fire from spreading from the engine compartment through the firewall to the main gearbox due to a non-fireproof engine oil tank breather pipe (breather pipe), additional structural damage, and a decrease in the time available to execute an emergency landing, accomplish the following:

(a) Modify the engine oil tank breather pipe to make it fireproof by installing a high-terperature silicone glass protective sheath, part number ASNO199–024, in accordance with the Accomplishment Instructions, paragraph 2.A., in Eurocopter AS 350 Service Bulletin No. 79.00.11, Revision No. 1, dated May 5, 2000.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

(c) Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the helicopter to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD 2000–268–078(A), dated June 28, 2000.

Issued in Fort Worth, Texas, on October 24, 2002.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 02–27789 Filed 11–1–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 301

[REG–106876–00]

RIN 1545–AY24

Revision of Income Tax Regulations under Sections 897, 1445, and 6109 to Require Use of Taxpayer Identifying Numbers on Submissions Under the Sections 897 and 1445 Regulations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cancellation of notice of public hearing on proposed rulemaking.

SUMMARY: This document provides notice of cancellation of a public hearing on proposed regulations that require the use of taxpayer identifying numbers on submissions under sections 897 and 1445 of the Internal Revenue Code.

DATES: The public hearing originally scheduled for November 13, 2002, at 10 a.m., is cancelled.

FOR FURTHER INFORMATION CONTACT: Treena Garrett of the Regulations Unit, Associate Chief Counsel (Income Tax and Accounting), (202) 622–7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking and notice of public hearing that appeared in the **Federal Register** on July 26, 2002, (67 FR 48823), announced that a public hearing was scheduled for November 13, 2002, at 10 a.m. in Room 6718, Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC. The subject of the public hearing is proposed regulations under sections 897, 1445 and 6109 of the Internal Revenue Code. The public comment period for these proposed regulations expired on October 23, 2002.

The notice of proposed rulemaking and notice of public hearing, instructed those interested in testifying at the public hearing to submit a request to speak and an outline of the topics to be addressed. As of October 30, 2002, no one has requested to speak. Therefore, the public hearing scheduled for November 13, 2002, is cancelled.

Cynthia E. Grigsby,

Chief, Regulations Unit, Associate Chief Counsel (Income Tax and Accounting).

[FR Doc. 02–28017 Filed 11–1–02; 8:45 am]

BILLING CODE 4830–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–D–7546]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (1% annual chance) flood elevations and proposed base flood elevation modifications for the communities listed below. The base flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed base flood elevations for each community are

available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (e-mail) *mott.miller@fema.gov.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) proposes to make determinations of base flood elevations and modified base flood elevations for each community listed below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act. This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Administrator, Federal Insurance and Mitigation Administration, certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. As a result, a regulatory flexibility analysis has not been prepared.

Regulatory Classification. This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) • Elevation in feet (NAVD)	
				Existing	Modified
Illinois	Monroe County (Unincorporated areas).	Shallow flooding area	Approximately 500 feet west of the intersection of West Industrial Drive and Westwood Court.	None	*408
Maps available for inspection at the Monroe County Zoning Office, Monroe County Courthouse, 100 South Main Street, Waterloo, Illinois.					
Maine	Turner (Town), Androscoggin County.	Nezinscot River	At confluence with Androscoggin River	None	*274
			At upstream corporate limits	None	*315
		Androscoggin River	At downstream corporate limits	None	*264
			At upstream corporate limits	None	*281
Maps available for inspection at the Turner Town Office, 11 Turner Center Road, Turner, Maine. Send comments to Mr. James Caitlin, Turner Town Manager, Town Office, P.O. Box 157, Turner, Maine 04282–0157.					

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: October 30, 2002.

Anthony S. Lowe,

Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 02–27967 Filed 11–1–02; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–B–7432]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed Base (1% annual chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the

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National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (e-mail) *matt.miller@fema.gov.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act. This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Administrator, Federal Insurance and Mitigation Administration certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified BFEs are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification. This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376, *§ 67.4*

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
California	Madera County	San Joaquin River	At State Highway 145 Just upstream of State Highway 99.	None	*225
				*245	*244
			Approximately 5,000 feet upstream of Atchison, Topeka and Santa Fe Railroad.	*252	*251

Maps are available for inspection at the Madera County Planning Department, 135 West Yosemite Avenue, Madera, California 93637.

Send comments to The Honorable Frank Bigelow, Chairman, Madera County Board of Supervisors, Madera County Government Center, 209 West Yosemite Avenue, Madera, California 93637.

Flooding source(s)	Location of referenced elevation	Elevation in feet *(NGVD) Elevation in feet +(NAVD)		Communities affected
		Effective	Modified	
Fresno County, and Incorporated Areas				
San Joaquin River	At State Highway 145	None	*225	City of Fresno and Unincorporated Areas Fresno County.
	Just upstream of State Highway 99	*245	*244	
	Approximately 5,000 feet upstream of Atchison, Topeka and Santa Fe Railroad.	*252	*251	

Flooding source(s)	Location of referenced elevation	Elevation in feet *(NGVD) Elevation in feet +(NAVD)		Communities affected
		Effective	Modified	

Addresses:
Depth in feet above ground.
Fresno County (Unincorporated. Areas):

Maps are available for inspection at the Fresno County Department of Public Works and Planning, 2220 Tulare Street, Fresno, California 93721.

Send comments to The Honorable Bart Bohn, Fresno County Administrative Officer, County Hall of Records, Room 304, 2281 Tulare Street, Fresno, California 93721.

City of Fresno:

Maps are available for inspection at City Hall, 2600 Fresno Street, Room 3043, Fresno, California 93721.

Send comments to The Honorable Alan Autry, Mayor, City of Fresno, City Hall, 2600 Fresno Street, Fresno, California 93721–3600.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: October 30, 2002.

Anthony S. Lowe,

Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 02–27968 Filed 11–1–02; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–D–7544]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (1% annual chance) flood elevations and proposed base flood elevation modifications for the communities listed below. The base flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (e-mail) *matt.miller@fema.gov.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) proposes to make determinations of base flood elevations and modified base flood elevations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act. This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Administrator, Federal Insurance and Mitigation Administration, certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. As a result, a regulatory flexibility analysis has not been prepared.

Regulatory Classification. This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, flood insurance, reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

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Source of flooding	Location	# Depth in feet above ground. *Elevation in feet (NGVD) • Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
Alabama				
Montgomery County (Unincorporated Areas) and City of Montgomery				
Baldwin Slough	At the confluence with Catoma Creek	*182	*181	City of Montgomery.
	Approximately 600 feet upstream of Vaughn Road	None	*235	
Catoma Creek	Just upstream of Trotman Road	*214	*216	Montgomery County (Unincorporated Areas).
	Approximately 12.5 miles upstream of Trotman Road	None	*247	
Catoma Creek Tributary 1	Approximately 550 feet downstream of the most downstream crossing of Troy Highway.	*203	*204	City of Montgomery, Montogomery County (Unincorporated Areas).
	Approximately 2.9 miles upstream of the most upstream crossing of Troy Highway.	None	*233	
Catoma Creek Tributary 1 Branch 1.	At the confluence with Catoma Creek Tributary 1	None	*206	City of Montgomery.
	Approximately 1.5 miles upstream of the confluence with Catoma Creek Tributary 1.	None	*223	
Catoma Creek Tributary 1 Branch 2.	At confluence with Catoma Creek Tributary 1	None	*208	City of Montgomery.
	Approximately 1.7 miles upstream of confluence with Catoma Creek Tributary 1.	None	*234	
Catoma Creek Tributary 1 and Branch 3.	At confluence with Catoma Creek Tributary 1	None	*212	City of Montgomery.
	Approximately 1.4 miles upstream of the confluence with Catoma Creek Tributary 1.	None	*235	
Dry Creek	Approximately 200 feet downstream of Troy Highway	None	*247	Montgomery County (Unincorporated Areas).
	Approximately 0.9 mile upstream of Canty Road	None	*271	
Jenkins Creek	Just upstream of CSX Transportation	None	*208	City of Montgomery, Montgomery County (Unincorporated Areas).
	Approximately 100 feet upstream of Vaughn Road	None	*222	
Little Catoma Creek	Approximately 1.25 miles upstream of Troy Highway	None	*220	Montgomery County (Unincorporated Areas).
	Just upstream of Old Hayneville Road	None	*268	
Little Catoma Creek Tributary 1.	Approximately 300 feet upstream from the confluence with Little Catoma Creek.	None	*220	Montgomery County (Unincorporated Areas).
	Approximately 50 feet upstream of Old Pike Road	None	*259	
Millies Creek	Just upstream of CSX Transportation	None	*215	Montgomery County (Unincorporated Areas), City of Montgomery.
	Approximately 50 feet upstream of Wallahatchie Road	None	*238	
Oliver Creek	Approximately 0.8 mile downstream of CSX Transportation.	*174	*173	City of Montgomery.
	Approximately 100 feet upstream of Interstate Route 85.	None	*237	

Montgomery County (Unincorporated Areas)

Maps available for inspection at the Montgomery County Engineering Department, 3152 Rolling Road Circle, Montgomery, Alabama.
Send comments to Mr. Bill Joseph, Chairman of the Montgomery County Commission, P.O. Box 1667, Montgomery, Alabama 36102.

City of Montgomery

Maps available for inspection at the Montgomery City Hall, 103 North Perry, Montgomery, Alabama.
Send comments to The Honorable Bobby Bright, Mayor of the City of Montgomery, City Hall, P.O. Box 1111, Montgomery, Alabama 36101.

Beaufort County, North Carolina (Unincorporated Areas)

Acre Swamp	At the confluence with Pungo Swamp	None	•20	Beaufort County (Unincorporated Areas)
	Approximately 0.6 mile upstream of confluence with Fork Swamp.	None	•28	
Back Creek	Approximately 1.9 miles upstream of State Route 92	None	•9	Beaufort County (Unincorporated Areas).
	Approximately 3.0 miles upstream of State Route 92	None	•10	
Bailey Creek	Approximately 1.1 mile upstream of State Route 306	None	•9	Beaufort County (Unincorporated Areas).
	Approximately 150 feet upstream of railroad	None	•12	

Source of flooding	Location	# Depth in feet above ground. *Elevation in feet (NGVD) • Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
Blounts Creek	At the upstream side of the railroad	•16	•15	Beaufort County (Unincorporated Areas).
	Approximately 1.7 miles upstream of the railroad	None	•23	
Broomfield Swamp Creek	Approximately 200 feet downstream of Broome Road	None	•7	Beaufort County (Unincorporated Areas), Town of Aurora.
	Approximately 0.4 mile upstream of Broome Road	None	•11	
Cypress Run	At the upstream side of Idalia Road	None	•10	Beaufort County (Unincorporated Areas).
	Approximately 0.8 mile upstream of Idalia Road	None	•14	
Duck Creek	Approximately 0.4 mile upstream of Hawkins Beach Road.	None	•9	Beaufort County (Unincorporated Areas).
	Approximately 200 feet upstream of Camp Leach Road	None	•9	
Durham Creek	Approximately 1.2 miles downstream of Durham Creek Road.	None	•8	Beaufort County (Unincorporated Areas).
	Approximately 0.8 mile upstream of Walker Road	None	•37	
Durham Creek Tributary	At the confluence with Durham Creek	None	•12	Beaufort County (Unincorporated Areas).
	Approximately 50 feet downstream of Durham Creek Road.	•16	•15	
Durham Creek Tributary 2	At the confluence with Durham Creek	None	•21	Beaufort County (Unincorporated Areas).
	Approximately 1,875 feet upstream of Fork Road	None	•27	
Fork Swamp	At the confluence with Acre Swamp	None	•28	Beaufort County (Unincorporated Areas).
	Approximately 0.5 mile upstream of the railroad	None	•35	
Gum Swamp Run East	Approximately 0.4 mile upstream of confluence with South Creek.	None	•7	Beaufort County (Unincorporated Areas).
	Approximately 100 feet downstream of Bay City Road	None	•9	
Harvey Creek	At the upstream side of Interstate Route 264	None	•19	Beaufort County (Unincorporated Areas).
	Approximately 1.0 mile upstream of Interstate Route 264.	None	•25	
Herring Run	Approximately 100 feet downstream of Herring Run Road.	None	•10	Beaufort County (Unincorporated Areas).
	Approximately 1.0 mile upstream of Gore Point Road	None	•17	
Porter Creek	Approximately 0.9 mile downstream of Louden Road	None	•8	Beaufort County (Unincorporated Areas).
	Approximately 100 feet downstream of Gray Road	None	•16	
Poundpole Swamp Branch	At the confluence with Blounts Creek	None	•15	Beaufort County (Unincorporated Areas).
	Approximately 0.6 mile upstream of Little Egypt Road	None	•33	
Pungo Swamp	Approximately 0.5 mile upstream of Jones Bridge Road.	None	•12	Beaufort County (Unincorporated Areas).
	Approximately 100 feet upstream of State Route 32	None	•25	
Rowland Creek	Approximately 100 feet upstream of Post Road	None	•9	Beaufort County (Unincorporated Areas).
	Approximately 2,000 feet upstream of Jackson Swamp Road.	None	•11	
South Creek	Approximately 1,800 feet upstream of the confluence with Cypress Run.	None	•7	Beaufort County (Unincorporated Areas).
	Approximately 2.7 miles upstream of the confluence with Cypress Run.	None	•15	
Tankard Creek	Approximately 100 feet upstream of Boyd Loop Road	None	•13	Beaufort County (Unincorporated Areas).
	Approximately 1.2 miles upstream of Boyd Loop Road	None	•18	
Upper Broad Creek	At the confluence with Durham Creek	•27	•26	Beaufort County (Unincorporated Areas).
	At the County boundary	None	•31	
Whitehurst Creek	Approximately 0.9 mile upstream of State Route 306	None	•7	Beaufort County (Unincorporated Areas).
	Approximately 0.5 mile upstream of Brantley Swamp Road.	None	•11	
Pamlico River/Pamlico Sound/Atlantic Ocean.	In the vicinity of the intersection of Austin Road and Cypress Swamp Road.	None	•7	Beaufort County (Unincorporated Areas).
Atlantic Ocean/Pamlico Sound.	At the intersection of 9th Street and Boston Avenue	•9	•10	City of Washington.
Bear Creek	At the upstream side of State Route 33	None	•27	Beaufort County (Unincorporated Areas).

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Source of flooding	Location	# Depth in feet above ground. *Elevation in feet (NGVD) • Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
Bear Grass Swamp	Approximately 650 feet downstream of Hodges Road	None	•35	Beaufort County (Unincorporated Areas).
	At the confluence with Tranters Creek	None	•31	
	Approximately 1,000 feet upstream of the confluence with Turkey Swamp.	None	•31	
Beaverdam Swamp	Approximately 50 feet upstream of Slatestone Road	None	•37	Beaufort County (Unincorporated Areas).
	Approximately 1.0 mile upstream of Slatestone Road	None	•46	
Big Swamp	Approximately 50 feet upstream of Market Street Ext.	None	•31	Beaufort County (Unincorporated Areas).
	Approximately 1,000 feet upstream of J and W Tram Road.	None	•44	
Broad Creek	At Broad Creek Road	•9	•10	Beaufort County (Unincorporated Areas).
	Approximately 1.3 miles upstream of Broad Creek Road.	•9	•10	
Broad Creek Tributary	At the upstream side of Lizard Slip Road	•14	•15	Beaufort County (Unincorporated Areas).
	Approximately 1.4 miles upstream of Old Bath Highway.	•28	•31	
Chicod Creek	Approximately 0.9 mile downstream of Dixon Road	None	•31	Beaufort County (Unincorporated Areas).
	At the confluence of Juniper Swamp	None	•43	
Chocowinity Creek	Approximately 450 feet downstream of the confluence of Morris Run.	None	•22	Beaufort County (Unincorporated Areas).
	Approximately 3.7 miles upstream of the confluence of Morris Run.	None	•40	
Cindy Edwards Branch	At the upstream side of State Route 33	None	•17	Beaufort County (Unincorporated Areas).
	Approximately 1.0 mile upstream of State Route 33	None	•24	
Creeping Swamp	Approximately 0.7 mile downstream of State Route 102.	None	•34	Beaufort County (Unincorporated Areas).
	At the County boundary	None	•48	
Gum Swamp	At the upstream side of U.S. Interstate 17	None	•38	Beaufort County (Unincorporated Areas).
	Approximately 650 feet downstream of County boundary.	None	•42	
Gum Swamp Run West	Approximately 300 feet upstream of the confluence with Morris Run.	None	•26	Beaufort County (Unincorporated Areas).
	Approximately 1.5 miles upstream of the confluence with Morris Run.	None	•32	
Hall Swamp	Approximately 50 feet upstream of Slatestone Road	None	•37	Beaufort County (Unincorporated Areas).
	Approximately 150 feet downstream of Bluebird Lane	None	•39	
Harding Swamp	At the confluence with Juniper Swamp	None	•43	Beaufort County (Unincorporated Areas).
	Approximately 0.7 mile upstream of the confluence of Juniper Swamp.	None	•47	
Hills Creek	At the downstream side of Gilead Shores Road	None	•10	Beaufort County (Unincorporated Areas).
	Approximately 0.8 mile upstream of Gilead Shores Road.	None	•13	
Horse Branch	At the confluence with White Branch	None	•14	Beaufort County (Unincorporated Areas).
	At Gray Road	None	•18	
Horsepen Swamp	At the confluence with Tranters Creek	None	•16	Beaufort County (Unincorporated Areas).
	Approximately 1.4 miles upstream of Wards Bridge Road.	None	•40	
Joe Branch	At the upstream side of Possum Track Road	None	•43	Beaufort County (Unincorporated Areas).
	Approximately 1,500 fee upstream of Possum Track Road.	None	•45	
Maple Branch	At the upstream side of U.S. Highway 264	•14	•11	Beaufort County (Unincorporated Areas), City of Washington.
	Approximately 0.6 mile upstream of Farm Path	None	•21	

Source of flooding	Location	# Depth in feet above ground. *Elevation in feet (NGVD) • Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
Mitchell Branch	At U.S. Highway 264	•12	•14	Beaufort County (Unincorporated Areas), City of Washington.
	Approximately 160 feet upstream of Cherry Run Road	None	•21	
Morris Run	At the confluence with Chocowinity Creek	None	•22	Beaufort County (Unincorporated Areas).
	Approximately 1.8 miles upstream of State Route 33	None	•32	
Old Ford Swamp	Approximately 1,250 feet downstream of Calf Branch Road.	•25	•26	Beaufort County (Unincorporated Areas).
	Approximately 0.7 mile upstream of Calf Branch Road	None	•36	
Pinelog Branch	At the confluence with Tranters Creek	None	•29	Beaufort County (Unincorporated Areas).
	Approximately 0.8 mile upstream of Cherry Run Road	None	•30	
Pineygrove Branch	Approximately 100 feet upstream of Corsica Road	None	•27	Beaufort County (Unincorporated Areas), City of Washington.
	Approximately 2,000 feet upstream of Singleton Road	None	•33	
Snoad Branch	Approximately 600 feet downstream of Voa Road	•18	•19	Beaufort County (Unincorporated Areas).
	Approximately 1.4 miles upstream of Voa Road	None	•33	
Tranters Creek	Approximately 1,600 feet upstream of the confluence with Maple Branch.	None	•11	Beaufort County (Unincorporated Areas).
	At the confluence of Bear Grass Swamp	None	•31	
White Branch	At the confluence with Chocowinity Creek	•11	•12	Beaufort County (Unincorporated Areas).
	At the downstream side of Gray Road	None	•16	

•North American Vertical Datum.

Town of Aurora

Maps available for inspection at the Aurora Town Hall, 295 Main Street, Aurora, North Carolina.
Send comments to The Honorable Joe Hooker, Mayor of the Town of Aurora, P.O. Box 86, Aurora, North Carolina 27806.

Beaufort County (Unincorporated Areas)

Maps available for inspection at the Beaufort County Building Inspection, 220 North Market Street, Washington, North Carolina.
Send comments to Mr. Donald Davenport, Beaufort County Manager, P.O. Box 1027, Washington, North Carolina 27889.

City of Washington

Maps available for inspection at the City of Washington Building Inspection Department, 102 East Second Street, North Carolina.
Send comments to Mr. R.L. Willoughby, Washington City Manager, P.O. Box 1988, Washington, North Carolina 27889.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: October 30, 2002.

Anthony S. Lowe,

Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 02–27969 Filed 11–01–02; 8:45 am]

BILLING CODE 6718–04–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. I.D. 083002E]

RIN 0648–AP86

International Fisheries; Pacific Tuna Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; 2002 management measures for yellowfin and juvenile bigeye tuna; request for comments.

SUMMARY: NMFS proposes this rule to implement the 2002 management measures to prevent overfishing of eastern tropical Pacific ocean (ETP) tuna stocks, pursuant to recommendations by the Inter-American Tropical Tuna Commission (IATTC) that have been approved by the Department of State (DOS) under the terms of the Tuna Conventions Act. The purse seine fishery for tuna in the Convention Area would be closed for the month of December, 2002. This action is taken to limit total fishing mortality caused by purse seine fishing in the Convention Area and thus prevent overfishing and maintain the tuna stocks at levels that support healthy fisheries. In addition, the current bycatch reduction pilot program scheduled to run through 2002 would be extended through 2004.

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DATES: Comments must be submitted in writing by November 19, 2002.

FOR FURTHER INFORMATION CONTACT: Svein Fougner, Sustainable Fisheries Division, Southwest Region, NMFS, 562–980–4040.

SUPPLEMENTARY INFORMATION: The United States is a member of the IATTC, which was established under the Convention for the Establishment of an IATTC signed in 1949. The IATTC was established to provide an international arrangement to ensure the effective international conservation and management of highly migratory species of fish in the Convention Area. The IATTC has maintained a scientific research and fishery monitoring program for many years and annually assesses the status of stocks of tuna and the fisheries to determine appropriate harvest limits or other measures to prevent overexploitation of the stocks and promote viable fisheries. The Convention Area is defined to include waters of the eastern Pacific ocean (EPO) bounded by the coast of the Americas, the 40° N. and 40° S. parallels, and the 150° W. meridian.

At its annual meeting June 26–28, 2002, the IATTC adopted a resolution dealing with conservation of ETP tuna stocks. The IATTC considered the use of quotas and partial fishery closures as in 1999, 2000, and 2001 but, after reviewing the history of administration of these quotas and partial closures and the occasions of non-compliance, the IATTC recommended that the Convention Area be closed to all purse seine fishing for the month of December 2002. This approach will provide substantial protection against overfishing in a manner that is fair and equitable manner and is readily enforceable. There will be no need to investigate catch records to determine if incidental catch limits have been exceeded or to distinguish between activities inside and outside the IATTC's Commission Yellowfin Regulatory Area. The DOS has approved this recommendation.

The closure is based on 2002 assessments of the condition of the tuna stocks in the ETP and the administrative records relating to implementation of quotas in prior years. The assessments indicate that the stocks are healthy, though there is substantial uncertainty with respect to the bigeye assessment. The closure is believed to be sufficient to prevent overfishing of any tuna stock.

Classification

This action is authorized by the Tuna Conventions Act, 16 U.S.C. 951–961 and 971 *et seq.*

NMFS prepared a biological opinion (BO) assessing the impacts of the fisheries as they would operate under the regulations (65 FR 47, January 3, 2000) implementing the International Dolphin Conservation Program. NMFS concluded that the fishing activities conducted under those regulations are not likely to jeopardize the continued existence of any endangered or threatened species under the jurisdiction of NMFS or result in the destruction or adverse modification of critical habitat. This rule will not result in any changes in the fisheries such that there would be impacts beyond those considered in that BO and further consultation is not necessary.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities as follows:

The U.S. tuna purse seine fleet in the ETP consists of 10–20 small vessels and 4–6 large vessels. The large vessels generally fish outside U.S. waters and deliver their catch to foreign ports or transship to processors outside the mainland United States. The small vessels fish most of the year for small pelagic fish (sardine, mackerel) but harvest tuna in the U.S. exclusive economic zone seasonally when they are available. The large vessels are categorized as large business entities. They have been actively regulated for many years and have complied with IATTC recommendations without difficulty. The closure may have less adverse impact than alternative conservation measures (e.g., a yellowfin quota) could have had because it will be uniformly applied to all purse seine fleets in all areas rather than being more selectively applied. There should be no substantial increase in costs due to the bycatch reduction program extension. The small fleet should not be affected at all by the closure. Tuna would only very rarely be available to these smaller vessels in December, and in December many if not most of the fleet will be targeting market squid. The bycatch reduction program also should not pose significant difficulties for this fleet, which uses smaller nets and generally harvests fairly discrete schools of bluefin tuna which would be expected to have relatively little bycatch. In the rest of the Convention Area however, fishing has often been heavy during the month of December. Therefore, the closure in the purse seine fishery will limit fishing mortality.

As a result, an Initial Regulatory Flexibility Analysis was not prepared.

This proposed rule has been determined to be not significant for the purposes of Executive Order 12866.

Authority: 16 U.S.C. 951–961 and 971 *et seq.*

Dated: October 30, 2002.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 02–28007 Filed 11–1–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[I.D. 102802B]

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits (EFPs)

AGENCY: Department of Commerce, National Oceanic and Atmospheric Administration (NOAA), National Marine Fisheries Service (NMFS).

ACTION: Notification of a proposal for EFPs to conduct experimental fishing; request for comments.

SUMMARY: The Administrator, Northeast Region, NMFS (Regional Administrator) has made a preliminary determination that the subject exempted fishing permit (EFP) application contains all the required information and warrants further consideration. The Regional Administrator has also made a preliminary determination that the activities authorized under the EFP would be consistent with the goals and objectives of the Northeast (NE) Multispecies Fishery Management Plan (FMP). However, further review and consultation may be necessary before a final determination is made to issue the EFP. Therefore, NMFS announces that the Regional Administrator proposes to issue an EFP that would allow two vessels to conduct fishing operations that are otherwise restricted by the regulations governing the fisheries of the Northeastern United States. The EFP would exempt two vessels from the days-at-sea (DAS) requirements, and the Gulf of Maine (GOM) Rolling Closure Area IV restrictions. The experiment proposes to conduct a study to target flatfish using a large mesh trawl net (8–inch (20.32–cm) mesh throughout the net) in order to develop otter trawl gear for the NE multispecies fishery that would result in reduced catch of Atlantic cod. The EFP would allow these exemptions for two commercial vessels, for not more than 8 days of sea trials per vessel. All experimental work would be monitored by a project coordinator for the Northeast Consortium-funded project.

Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs.

DATES: Comments on this document must be received on or before November 19, 2002.

ADDRESSES: Written comments should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope "Comments on Northeast Consortium-funded EFP Proposal for 8" Square Mesh Bottom Trawl." Comments may also be sent via facsimile (fax) to (978) 281–9135.

FOR FURTHER INFORMATION CONTACT: Douglas W. Christel, Fisheries Management Specialist, 978–281–9141.

SUPPLEMENTARY INFORMATION: An application for an EFP was submitted by Phil Averill as part of a Northeast Consortium-funded project on September 23, 2002. The EFP would exempt two federally permitted commercial fishing vessels from the following NE multispecies provisions: The Rolling Closure Area IV restriction; and the NE multispecies DAS restrictions.

The goal of this study is to assess the applicability of using 8–inch (20.32–cm) square mesh throughout the entire trawl net in the inshore GOM groundfish fishery. The vessels would be primarily targeting grey sole and American plaice. The incidental catch is expected to be primarily Atlantic cod.

The applicant has proposed that the research be conducted within the GOM in the area defined as follows: Between 43o00' and 44o00' N. lat. and between 69o00' and 70o00' W. long. Each vessel, one fishing with the experimental 8–inch (20.32–cm) square mesh net and one fishing with a conventional 6,5–inch (16.51–cm) diamond mesh cod-end trawl net, would conduct a total of 24 side-by-side tows of between 1 and 2 hours duration over a period of 8 sea days (3 tows per day). The tows would take place between November 1 and December 31, 2002, and between May 15 and July 15, 2003. These areas, during these specific times, have been selected because it is expected that there will be significant concentrations of both flat and round fish available. Fish retained by the experimental net and the control net would be enumerated, weighed and measured, and returned to the sea as quickly as possible. Length frequencies of the fish retained and an estimate of escapement would be recorded for each tow. Each vessel would be exempted from 8 NE multispecies DAS in order to compensate for a portion of the cost of the research.

Based on the results of the EFPs, this action may lead to future rulemaking.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 29, 2002.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–28008 Filed 11–1–02; 8:45 am]

BILLING CODE 3510–22–S

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Notices

Federal Register
Vol. 67, No. 213
Monday, November 4, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Notice of Meeting

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that the Advisory Council on Historic Preservation (ACHP) will meet on Friday, November 15, 2002. The meeting will be held in the Rachel Carson Great Hall, Third Floor, at the Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC, beginning at 8:30 a.m.

The ACHP was established by the National Historic Preservation Act of 1996 (16 U.S.C. Section 470) to advise the President and the Congress on historic preservation issues and to comment upon Federal, federally assisted, and federally licensed undertakings having an effect upon properties listed in or eligible for inclusion in the National Register of Historic Places. The ACHP's members are the Architect of the Capitol; the Secretaries of the Interior, Agriculture, Defense, and Transportation; the Administrators of the Environmental Protection Agency and General Services Administration; the Chairman of the National Trust for Historic Preservation; the President of the National Conference of State Historic Preservation Officers; a Governor; a Mayor; a Native Hawaiian; and eight non-Federal members appointed by the President.

The agenda for the meting includes the following:

I. Chairman's Welcome
II. Presentation of Chairman's Awards for Federal Achievement in Historic Preservation
III. Report of the Executive Committee
  A. FY 2004 Budget Request
  B. ACHP Appropriations Authorization
  C. ACHP Congressional Relations Strategy
IV. Report of the Preservation Initiatives Committee
  A. Federal Heritage Tourism Summit
  B. Followup from Espanola, NM, Heritage Tourism Session
  C. Legislation related to Heritage Tourism
V. Report of the Federal Agency Programs Committee
  A. White House Transportation Infrastructure Streamlining Task Force
  B. Coordination between Section 4(f) of the Department of Transportation Act and Section 106
  C. Telecommunications Working Group
  D. Section 106 Cases
VI. Report of the Communications, Education, and Outreach Committee
  A. Historic Preservation Awards Program
  B. Council Publications Program
  C. ACHP Communications Plan
VII. Chairman's Report
  A. Cooperative Agreement with the Department of Agriculture
  B. Historic Preservation Executive Order
  C. Preserve America Initiative
  D. White House Transportation Infrastructure Streamlining Task Force
VIII. Executive Director's Report
  A. Technical Amendments to Section 106 Regulations
  B. FY 2003 Appropriations Process
IX. New Business
X. Adjourn

Note: The meetings of the ACHP are open to the public. If you need special accommodations due to a disability, please contact the Advisory Council on Historic Preservation, 1100 Pennsylvania Ave., NW., Room 809, Washington, DC, 202–606–8503, at least seven (7) days prior to the meeting.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the meeting is available from the Executive Director, Advisory Council on Historic Preservation, 1100 Pennsylvania Ave., NW., #809, Washington, DC 20004.

Dated: October 29, 2002.

John M. Fowler,

Executive Director.

[FR Doc. 02–27972 Filed 11–1–02; 8:45 am]

BILLING CODE 4310–10–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc. No. CN–03–001]

Cotton Research and Promotion Program: Determination of Whether To Conduct a Referendum Regarding 1990 Amendments to the Cotton Research and Promotion Act

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces the U.S. Department of Agriculture's (USDA) determination not to conduct a continuance referendum regarding the 1991 amendments to the Cotton Research and Promotion Order (Order) provided for in the Cotton Research and Promotion Act (Act) amendments of 1990. This determination is based on the results of a sign-up period conducted June 3 through August 30, 2002, during which eligible cotton producers and importers were provided an opportunity to request a continuance referendum.

FOR FURTHER INFORMATION CONTACT: Whitney Rick, Chief, Research and Promotion Staff, Cotton Program, AMS, USDA, Stop 0224, 1400 Independence Ave., SW., Washington, DC 20250–0224, telephone (202) 720–2259, facsimile (202) 690–1718, or email at *whitney.rick@usda.gov.*

SUPPLEMENTARY INFORMATION: During the period of June 3 through August 30, 2002, pursuant to section 8(c)(1) of the Act, USDA provided an opportunity for eligible cotton producers and importers to request a continuance referendum regarding the 1991 amendments to the Order provided for in the Act. Sign-up period results showed that a total of 1,550 valid requests were received by USDA from eligible producers in 16 states and from importers. The following table depicts the number of requests for a continuance referendum.

FSA State Office	Sign-up request
Alabama	19
Arizona	37
Arkansas	93
California	2
Florida	4
Georgia	19
Illinois	0
Kansas	0
Kentucky	0
Louisiana	31
Maryland	0
Mississippi	57
Missouri	186
Nevada	0
New Mexico	13
North Carolina	23
Oklahoma	6
South Carolina	2
Tennessee	58
Texas	611
Virginia	10
Importers	379

FSA State Office	Sign-up request
Total	1,550

Section 8(c)(2) of the Act, provides that following a sign-up period, USDA shall conduct a referendum upon the request of 10 percent or more of the number of cotton producers and importers voting in the most recent referendum (1991). This would require 10 percent or 4,622 (46,220×.10=4,622) of the 46,220 valid ballots cast by cotton producers and importers in the July 1991 referendum. It is further provided that, in counting such request not more than 20 percent or 924 may be from producers from any one state or importers of cotton.

USDA finds that the results of the sign-up period did not meet the criteria requiring a continuance referendum by the Act. USDA bases this determination on the fact that the 1,550 requests received during the sign-up period is less than the 4,622 required.

Background

The 1991 amendments to the Order (7 CFR 1205 *et seq.*) were implemented following the July 1991 referendum. The 1990 amendments were provided for in the Act (7 U.S.C. 2101–2118). These amendments provided for: (1) Importer representation on the Cotton Board by an appropriate number of persons, to be determined by USDA, who import cotton or cotton products into the U.S. and whom USDA selects from nominations submitted by importer organization certified by USDA; (2) assessments levied on imported cotton and cotton products at a rate determined in the same manner as for U.S. cotton; (3) increasing the amount USDA can be reimbursed for the conduct of a referendum from $200,000 to $300,000; (4) reimbursing government agencies that assist in administering the collection of assessments on imported cotton and cotton products; and (5) terminating the right of producers to demand a refund of assessments.

On July 9, 1991, (56 FR 31289) AMS issued a proposal to amend the Order to determine if a majority, 50 percent or more, of producers and importers favored implementation of the proposed amendments to the Order. USDA conducted a referendum (July 1991) among persons who had been cotton producers or cotton importers during a representative period.

Results of the July 1991 referendum showed that of the 46,220 valid ballots received; 27,879 or 60 percent of the persons voting favored the amendments to the Order and 18,341 or 40 percent opposed the amendments.

Following the July 1991 referendum, AMS implemented the amendments. In addition to the previously discussed amendments to the Act and Order, USDA is required by section 8(c)(1) to: (1) Conduct a review once every five years after the anniversary date of the referendum implementing the 1990 Act amendments to determine whether a referendum is necessary and (2) make public the results of such a review within 60 days after each fifth anniversary date of the 1991 implementing referendum. Should the review indicate that a referendum is needed USDA is directed to conduct the referendum within 12 months after a public announcement of review results.

Should the review indicate that a referendum is not warranted, section 8(c)(2) includes provisions for producers and importers to request a continuance referendum through a sign-up period.

Pursuant to the Act, on October 8, 1996, USDA issued the results of the first five-year review of the Cotton Research and Promotion Program. USDA announced its view not to conduct a referendum regarding the 1991 amendments to the Order (61 FR 52772). From January 15 though April 14, 1997, USDA conducted a sign-up period for all eligible persons to request a continuance referendum on the 1990 Act amendments. The results of the sign-up period did not meet the criteria as established by the Act for a continuance referendum and, therefore, a referendum was not conducted.

On January 14, 2002, USDA issued the results of the second five-year review on the Cotton Research and Promotion Program (67 FR 1714). The report describes the impact of the Cotton Research and Promotion Program on the cotton industry and the views of those receiving its benefits. The review report cited that the 1990 amendments to the Act were successfully implemented and are operating as intended. The report also noted that there is a general consensus within the cotton industry that the Cotton Research and Promotion Program and the 1990 amendments to the Act are operating as intended. Written comments, economic data, and results from two independent evaluations supported this conclusion. Industry comments cited examples how the additional funding has yielded benefits by increasing the demand and consumption for cotton. Based on the findings of the report, USDA found no compelling reason to conduct a referendum regarding the 1990 Act amendments to the Order although some program participants supported a referendum.

If USDA does not provide for such a referendum on its own initiative, the Act provides that USDA shall conduct such a referendum upon the request of 10 percent or more of the number of cotton producers and importers voting in the most recent referendum. This would be accomplished through a sign-up period conducted by USDA. Determination of the procedures for the conduct of the sign-up period was announced prior to the start of the sign-up period in the **Federal Register** (67 FR 21167).

With this announcement of the results of the sign-up period, USDA has completed all requirements set forth in section 8(c) (1) and (2) of the Act regarding the review of the Cotton Research and Promotion Program to determine if a continuance referendum is warranted. A referendum will not be conducted, and no further actions are planned in connection with this review.

Authority: 7 U.S.C. 2101–2118.

Dated: October 29, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–27990 Filed 11–1–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 02–035C]

Codex Alimentarius: Meeting of the Codex Committee on Food Import and Export Inspection and Certification Systems

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice; correction.

SUMMARY: The Food Safety and Inspection Service published a document in the **Federal Register** on October 2, 2002, in FR Doc. Number 02–24978 on page 61847, concerning announcement of public meetings. The document contained an incorrect date.

The date for the second public meeting was incorrect. The **DATES** caption should be corrected to read:

"**DATES:** The public meetings are scheduled for Tuesday, October 22, 2002 from 1 p.m. to 4 p.m. and Tuesday, November 19, 2002 from 1 p.m. to 3 p.m."

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Done at Washington, DC on October 29, 2002.

F. Edward Scarbrough,

U.S. Manager for Codex Alimentarius.

[FR Doc. 02–27848 Filed 11–1–02; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

Modoc National Forest; California; Modoc National Forest Noxious Weed Strategy Implementation Project

AGENCY: Forest Service, USDA.

ACTION: Revision of notice of intent to prepare an environmental impact statement published at 63 FR 20375, April 24, 1998.

SUMMARY: This environmental analysis focuses on the planning and control element of the Modoc National Forest Noxious Weed Strategy. Physical treatment and herbicide application will be analyzed, other elements identified in the strategy are very important aspects of the Forest weed program, but environmental analysis and documentation are not required to implement those activities. An Integrated Weed Management (IWM) approach was used to determine treatment methods for all known noxious weed occurrences. Treatment will occur to noxious weeds spread geographically over <1% of the Forest, at known infestation sites, by a variety of treatment methods. Sites planned for treatment range in size from single plants to infestations covering up to 1,500 acres. Actual treatment would not exceed 1,500 acres per year.

Physical treatment includes hand pulling, digging, and grubbing. These treatments will be applied within 10 feet of streams and other water features or to small, isolated populations of 100 plants or less where mechanical treatments can be effective.

Herbicide application will occur directly to weed leaves and stems. Two types of foliar applications will be used: *Spot applicators*—herbicide is sprayed directly onto target plants only; other desirable plants are avoided. These applicators include motorized rigs with spray hoses, backpack sprayers, and hand-pumped spray or spray bottles that can target very small plants or parts of plants, and *Wick (wipe-on) applicators*—A sponge or wick on a handle wipes herbicide onto weed foliage and stems. The wick generally prevents drift or droplets from falling onto non-target plants and soil.

All herbicides proposed for use are registered in the U.S. and California and have a label certifying that the Federal Environmental Protection Agency (EPA) and the California Department of Pesticide Regulation (DPR) have approved the chemical for use. No biological control or aerial spraying of herbicides is planned in the proposed action. Implementation would begin in the spring and summer following the decision and extend for a period of at least 5 years.

DATES: The draft environmental impact statement is expected November 29, 2002, and the final environmental impact statement is expected January 31, 2003.

ADDRESSES: Send written comments to Kathleen Jordan, Acting Forest Supervisor, Modoc National Forest, Supervisor's Office 800 W. 12th, Alturas, CA 96101 (*kjordan@fs.fed.us*).

For further information, mail correspondence to Irene Davidson, Project Team Leader, Modoc National Forest, Supervisor's Office 800 W. 12th, Alturas, CA 96101 (*idavidson@fs.fed.us*).

FOR FURTHER INFORMATION CONTACT: Irene Davidson, Project Team Leader, Modoc National Forest, Supervisor's Office 800 W. 12th, Alturas, CA 96101 (*idavidson@fs.fed.us*).

SUPPLEMENTARY INFORMATION: The electronic copy of the draft environmental impact statement can be viewed at the Modoc National Forest Planning page: *http://www.r5.fs.fed.us/modoc/management/nepa/nepa.html.*

Purpose and Need for Action

This environmental impact statement (EIS) is the site-specific decision level for implementing treatment activities identified in the Modoc National Forest Noxious Weed Strategy. This strategy was prepared to tier to the Forest Service National and Regional strategies that are currently in place to address key elements of a comprehensive weed program. The Forest completed a Noxious and Invasive Plant Strategy in 2002. The Forest is directed to develop and implement weed programs and work cooperatively with other Federal, State, and local agencies and groups in the Federal Noxious Weed Act of 1974, as amended (7 U.S.C. 2801, *et seq.*), FSM Direction (FSM 2080), the Modoc Land and Resource Management Plan (MLRMP), and Presidential Executive Order #13112. Forest Service regulation at 36 Code of Federal Regulations (CFR) 222.8 acknowledges the Agency's obligation to work cooperatively in identifying noxious weed problems and developing control programs in areas where NFS lands are located.

The objectives of implementing the proposed treatment activities through the Modoc National Forest Noxious Weed Strategy Implementation Project are to:

- Protect the ecosystem function and biodiversity of the Modoc by preventing the continued spread of non-native noxious and invasive plant species.
- Prevent the spread of established non-native noxious and invasive plants into areas containing little or no infestation.
- Eradicate new invaders (non-native noxious and invasive plant species not previously reported in the area) before they become established.
- Eradicate or control known non-native noxious and invasive plant infestations in areas that are considered infestation pathways for the establishment and movement of these plants on the Modoc (roads, trails, streams, intensely burned areas).

On the Forest, the numbers of exotic invasive plant species and areas infested are relatively small compared to other parts of the west. There are still opportunities to prevent extensive weed infestation and spread if aggressive, consistent treatment is employed. The species of highest priority for treatment (*e.g.* the knapweeds, yellow starthistle, Dalmatian toadflax) are in relatively small, scattered populations on the scale of hundreds of gross acres.

Prevention is recognized as the best, most cost-effective strategy, but once infestation has occurred, actions must be taken to prevent further establishment and spread of the alien species. As discussed below, treatments are a part of a larger overall strategy. Noxious weeds and invasive exotic plants are an increasing threat to the function, composition, and structure of native ecosystems.

All ecosystems (rangelands, forests, grasslands, riparian areas, wetlands, lakes, and streams) are vulnerable to invasion by non-native weed species. Noxious weeds and invasive exotic plants are a serious biodiversity issue of great significance to human and natural resource conditions on the Modoc National Forest (Forest). Noxious weeds have traditionally been considered primarily rangeland and agricultural problems in the western United States.

Aggressive noxious weed species often out-compete native plants for water, nutrients, sunlight, and space. Many species contain chemical compounds that prevent other plant seeds from germinating (allelopathic) at the same site. When noxious weeds dominate sites, the composition, structure, and function of the entire ecological community is altered. Weed infestations affect wildlife by reducing important food plants and modifying habitat characteristics such as cover and movement corridors.

Noxious weed altering of habitat and competition for resources adversely affects more than 50% of all threatened and endangered species in the United States.

Because of the root structure and growth characteristics of some noxious weeds, soil erosion will increase, affecting water quality and aquatic habitat. Some exotic weeds, such as cheat grass, create unnatural fuel conditions and alter the natural fire regime.

Exotic weeds decrease the quantity and quality of desired forage species and rangeland production. Many weed species contain compounds that are toxic to livestock when eaten in abundance. Noxious weeds negatively affect many recreational experiences, hamper vegetation restoration efforts, interfere with the maintenance and function of aquatic and riparian habitats, and potentially displace plant communities with important cultural values.

Conservation organizations now recognize invasive weed species as a threat to wildland biodiversity and ecosystem integrity, which is second only to habitat loss. Invasive alien species can cause significant irreversible environmental and socio-economic impact at the genetic, species, and ecosystem levels.

On this Forest, the major habitat and source of dispersal for weeds is roads. The constantly disturbed cut and fill slopes of a road prism and associated high traffic create ideal conditions for many weed species. Forested habitats are not immune from weed invasion. Intact forest ecosystems are less vulnerable to invasion, but both natural and human-related disturbances such as fire, floods, mineral extraction, grazing, and timber harvest can create opportunities for weeds to become established and spread. Many weed species are located and spread along stream courses and river corridors. These areas are particularly vulnerable to weed infestation due to frequent flooding events and associated water use and recreation. High water can move weed seeds and root material long distances downstream where they establish new plant populations.

Proposed Action

This environmental analysis focuses on the planning and control element of the Modoc National Forest Noxious Weed Strategy. Other elements identified in the strategy are very important aspects of the Forest weed program, but environmental analysis and documentation are not required to implement those activities.

Sites planned for treatment range in size from single plants to infestations covering up to 1,500 acres. Actual treatment would not exceed 1,500 acres per year. The word "control" refers to eradication (elimination) or reduction for some weed populations, and slowing the rate of spread for others.

There are currently nine A-rated weed species known to occur on the Forest: Common crupina, dalmatian toadflax, diffuse knapweed, musk thistle, plumeless thistle, Scotch thistle, spotted knapweed, squarrose knapweed, and wavyleaf thistle. The goal for A-rated weed species (using the State of California Noxious Weed list and County ratings) is eradication.

Based on current inventories, known sites of A-rated weeds currently occupy a gross area of approximately 27,000 acres on the Modoc. These acres are calculated as gross acres and reflect the entire perimeters of areas in which those weed species occur. Forest-wide data indicate that these species occur in scattered, dispersed patches and generally occupy less than 10 percent of the gross acreage.

Six species of B- and C-rated weed pests in areas of local concern will be treated: Canada thistle, dyers woad, Klamath weed, Mediterranean sage, perennial pepperweed and yellow starthistle. Small infestations will be eradicated. Larger infestations will be controlled. These species occur in roughly the same numbers as the A-rated species and their density and frequency varies according to individual site locations. These species are generally widespread in the State of California and in Modoc, Lassen and Siskiyou Counties, and eradication is not an achievable goal on a broad scale. Treatment of these species will receive a different priority. The strategy will be to control the more extensive infestations by keeping them within currently identified boundaries and treating new invasions into previously uninfested areas.

Treatment

An Integrated Weed Management (IWM) approach has been used to determine treatment methods for all known noxious weed occurrences. IWM is the subset of Integrated Pest Management specific to weed control.

Methods

Physical Treatment

This method includes hand pulling, digging, and grubbing. These treatments will be applied within 10 feet of streams and other water features described below or to small, isolated populations of 100 plants or less where mechanical treatments can be effective.

Release of Biological Control Agents

No Biological control is planned in the proposed action.

Herbicide Application

No aerial spraying of herbicides is planned in the proposed action.

All herbicides registered for use in the U.S. and California must have a label certifying that the Federal Environmental Protection Agency (EPA) and the California Department of Pesticide Regulation (DPR) have approved the chemical for use. The label contains information about the product, including its relative toxicity, potential hazard to humans and the environment, directions for use, storage and disposal, and first aid treatment in case of exposure. Product labels are legal documents whose language is determined and approved by the EPA during the pesticide registration process. Chemical herbicide treatment will include the use of the following herbicides: 2,4–D, clopyralid, dicamba, glyphosate, hexazinone, and triclopyr, applied at appropriate rates according to label directions, and EPA and DPR requirements. These label directions provide for public and worker safety by requiring posting of treated areas, pre-designation of mixing, storage and filling sites, and transportation and handling practices in accordance with toxicity of each formulation.

Weed treatment areas will be evaluated for presence of culturally significant plants through consultation with a designated tribal representative. Consultation may alter treatment methods, timing or allow for controlled harvest before treatments. Areas treated with herbicides will be posted on the ground and written notification sent to tribal officials and basket weavers.

High treatment priority will be placed on known sites and pathways of spread from those sites. Areas adjacent to stream courses and road and trail systems have moderate incidences of weed infestations and great potential for spread. Administrative sites (campgrounds, parking lots, trail heads, river accesses) are at risk of infestation and will be included in the treatment analysis.

Herbicide will be applied directly to weed leaves and stems. A surfactant may be used to enable herbicide penetration of the plant cuticle (a thick, waxy layer present on leaves and stems

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of most plants). The following types of foliar applicators will be used:

a. *Spot applicators*—Herbicide is sprayed directly onto target plants only; other desirable plants are avoided. These applicators include motorized rigs with spray hoses, backpack sprayers, and hand-pumped spray or spray bottles that can target very small plants or parts of plants. Crook-necked spray bottles and similar equipment may be used to carry herbicide over distances and through dense vegetation for safety reasons.

b. *Wick (wipe-on) applicators*—A sponge or wick on a handle wipes herbicide onto weed foliage and stems. The wick generally prevents drift or droplets from falling onto non-target plants and soil. Wick applicators will be used in riparian and streamside areas.

Implementation would begin in the spring and summer following the decision and extend for a period of at least 5 years.

Possible Alternatives

Control With Aerial Spraying

This alternative would utilize aerial spraying as a viable option. Aerial spraying was proposed for the 160-acre infestation of common Crupina. The alternative was dropped from consideration because it did not provide any distinct environmental advantages over the proposed action. Common Crupina populations are such at this time that applications would need to be continued over a long period of time and the eradication program would be cost prohibitive. It was determined that an Environmental Impact Statement needs to be completed for this occurrence as well as large populations of Scotch thistle.

Control Using Prescribed Fire

This alternative would utilize prescribed burning as a tool in the eradication and control of noxious weeds on the Forest. Prescribed fire will not be considered in detail because in the past, fire has proven to be a large contributor to the increase of noxious weeds on the Forest. For many weeds, there is little or no information on how each species will respond to a controlled fire. In fact, several studies have concluded that most fires actually increase the density of spotted knapweed, even when followed-up with herbicides. What little information is found indicates that fire has either no effect or aids in the establishment of many noxious weeds. Weeds in general inhabit disturbed sites, so in many cases fire will increase potential for many opportunistic species to take over an area. Other factors such as high costs, and labor-intensive implementation led to this method being dropped from consideration.

Responsible Official

Kathleen Jordan, Acting Forest Supervisor, Modoc National Forest, Supervisor's Office, 800 W. 12th, Alturas, CA 96101 (*kjordan@fs.fed.us*).

Nature of Decision To Be Made

The decision to be made is what actions from the Modoc National Forest Noxious Weed Strategy, if any, should be taken to control weeds on the Modoc National Forest, where treatment should be applied, what type of treatment(s) should be used and what additional mitigating measures and operating procedures not currently contained in the Proposed Action, will be applied, if any.

Scoping Process

Scoping began with the publication of the notice of intent in the **Federal Register** on April 24, 1998. On April 20, 1998, a scoping letter was mailed to 504 individuals, organizations, and agencies inviting their participation in the planning process. The mailing list for the scoping document was developed using lists of people who had contacted the Forest in the past and people who specifically might be interested in the management and control of noxious weeds on Modoc National Forest lands. News releases were sent to two local newspapers. Scoping was re-initiated in 2001. A news release was sent to the local newspaper and postcards were sent to those individuals that had responded to the initial scoping.

Tribal consultation with federally recognized tribes began in March 1998 with preliminary telephone calls to individual tribes. Later formal letters were sent to each tribe and face-to-face consultation meetings were held between line officers and tribal officials. Line officers traveled to each tribe's preferred meeting location.

Also in March 1998, contact was made with the California Indian Basketweavers Association (CIBA) and the California Department of Pesticide Regulation to obtain lists of individuals who were weavers that those organizations maintain. A public meeting was planned to solicit input from weavers. Letters and follow up phone calls to individual weavers were sent for the public meeting to be held in June 1998. A form was developed for individual weavers to return indicating their interest in participation of the public meeting. The form was mailed to 36 individual weavers with a preaddressed envelope enclosed. One form was returned by a person that was unable to attend the meeting and wanted to continue to receive information about the development of the Environmental Assessment. The public meeting was held just in case some individuals still wanted to attend. The result was that there was no participation.

In January 2001, tribal consultation with federally recognized tribes began again with telephone calls, formal letters and face-to-face meetings between line officers and tribal officials. Line officers met with tribal officials at the tribal offices of each respective tribe.

Telephone calls and letters were sent to unrecognized tribes whose relationship with the Forest had begun to develop. In February 2001, the Forest Botanist and the Forest Tribal Relations Program Manager traveled to Yreka, California to solicit input from one of the tribes.

Scoping meetings with weavers were held in Alturas, Susanville and Redding, California and Klamath Falls, Oregon. New mailing lists for individual weavers were requested from CIBA. The weavers on the CIBA mailing list told the Forest of additional weavers that weren't members of CIBA and might be interested. Scoping letters were sent to the new contacts and the Forest gave invitations to the meetings. Nineteen telephone calls were made to coordinate the meetings. Six home visits were made to determine interest.

Because many of the weavers of the Klamath Tribes do not belong to the CIBA, the Culture and Heritage Department of the Klamath Tribes suggested an article be placed in the tribal newsletter to invite weavers to the meeting in Oregon. A news article was developed to invite weavers to the public meetings. The Forest Botanist and the Forest Tribal Relations Program Manager meet with weavers in Chiloquin and Klamath Falls, Oregon.

One weaver known to live in Alturas was contacted at their home and a meeting was held in the Alturas Supervisor's Office to identify scoping issues from a weaver's perspective. No additional scoping is planned at this time as the comments and recommendations made during previous scoping and tribal consultation were used to revise the 1998 notice of intent.

Preliminary Issues

Following are the four issues that were identified during previous scoping for this project.

The effects on human health from the application of herbicides; this includes the quantities of herbicides, the proposed methods of herbicide application, and the potential effects on project workers, nearby residents and visitors to the project area.

The effects to water quality from the application of herbicides; this includes the effects on riparian vegetation, concentrations of pesticides found in surface waters, potential bioaccumulation of pesticides in aquatic life and the effects of treatments on the potential increase of sediment transport and delivery in streams.

The effects to vegetated communities, including sensitive plants, from the application of herbicides; this includes effects on plants of importance to local tribes and the potential impacts of treatment methods on desired plants species.

The effects on wildlife and fish, as represented by Threatened, Endangered, Sensitive (TES) and other Management Indicator Species (MIS), from the application of herbicides.

Early Notice of Importance of Public Participation in Subsequent Environmental Review: A draft environmental impact statement will be prepared for comment. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

(**Authority:** 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21)

Dated: October 25, 2002.

Kathleen A. Jordan,

Acting Forest Supervisor.

[FR Doc. 02–27787 Filed 11–1–02; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Forest Service

Wasatch Powderbird Guides Outfitter and Guide Special Use Permit, Wasatch-Cache National Forest, Salt Lake Ranger District, Salt Lake County, UT and Uinta National Forest, Pleasant Grove and Spanish Fork Ranger Districts, Utah County, UT

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement (EIS).

SUMMARY: The Salt Lake Ranger District, of the Wasatch-Cache National Forest, will prepare an EIS on Wasatch Powderbird Guides request for a 5-year outfitter and guide special use permit for guided helicopter skiing on National Forest System lands.

DATES: Comments concerning the scope of the analysis should be received in writing by December 13, 2002.

ADDRESSES: Send written comments to Loren Kroenke, District Ranger, 6944 South 3000 East, Salt Lake City, Utah 84121.

FOR FURTHER INFORMATION CONTACT: Steve Scheid, District Environmental Coordinator, (801) 733–2689 or at *sscheid@fs.fed.us*.

SUPPLEMENTARY INFORMATION: Wasatch Powderbird Guides, a current Special Use Permit permittee, is proposing to operate a heli-skiing operation for another five years along the Wasatch Front of the Wasatch-Cache and Uinta National Forests. This proposal includes elements on both private and public lands. Elements include the landing of helicopters to drop off and pick up heli-skiers that are skiing across both private and public lands. A complete description is available from the Salt Lake Ranger District.

Preliminary issues were identified from the 1999 permit renewal EIS and include potential effects on public safety, effects on designated Wilderness areas, effects on wildlife, including golden eagles and threatened, endangered and forest sensitive species, economic effects of Wasatch Powderbird Guides and the local economy, and effects on other winter recreationalists, including noise and competition for untracked powder skiing.

Two preliminary alternatives have been identified. The proposed action alternative is Wasatch Powderbird Guides proposal and includes replacing the existing Sunday/Monday Tri-Canyon closure with 15-day annual average cap in the area and other minor modifications designed to increase operational flexibility and minimize user conflicts. The No Action Alternative would allow continued use as authorized under the 1999 Record of Decision. Other potential alternatives will address issues raised during the public scoping process. Detailed descriptions of the Proposed and No Action Alternatives are available on the Wasatch-Cache National Forest Web site at *www.fs.fed.us/wcnf*.

The public is invited to submit comments or suggestions to the address above. The responsible officials are Tom Tidwell and Pete Karp, Forest Supervisors of the Wasatch-Cache and Uinta National Forests, respectively. A Draft EIS is expected to be filed in May of 2003 and the Final EIS filed in September of 2003.

The comment period on the draft EIS will be 45 days from the date the Environmental Protection Agency's notice of availability appears in the **Federal Register**. It is very important that those interested in this proposed action participate during that time. To be most helpful, comments on the draft EIS should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (*see* The Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3).

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In addition, Federal court decisions have established that the reviewers of the draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp* v. *NRDC*, 435 U.S. 519, 553 (1978). Environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final EIS. *City of Angoon* v. *Hodel*, (9th Circuit, 1986), and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

Dated: October 29, 2002.

Carol Majeske, for Loren M. Kroenke,

Salt Lake District Ranger.

[FR Doc. 02–27981 Filed 11–1–02; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Resource Advisory Committee Meeting

AGENCY: Southwest Idaho Resource Advisory Committee, Boise, ID, USDA, Forest Service.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393), the Boise and Payette National Forests' Southwest Idaho Resource Advisory Committee will meet Wednesday, November 20, 2002 in Boise, Idaho for a business meeting. The meeting is open to the public.

SUPPLEMENTARY INFORMATION: The business meeting on November 20, begins at 10:30 a.m., at the Idaho Counties Risk Management Program Building, 3100 Vista Avenue, Boise, Idaho. Agenda topics will include review and approval of project proposals, and an open public forum.

FOR FURTHER INFORMATION CONTACT: Randy Swick, Designated Federal Officer, at (208) 634–2290.

Dated: October 29, 2002.

Mark J. Madrid,

Forest Supervisor, Payette National Forest.

[FR Doc. 02–27970 Filed 11–01–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Southwest Washington Provincial Advisory Committee Meeting Notice

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Southwest Washington Provincial Advisory Committee will meet on Wednesday, November 13, 2002 in the Washington State Department of Transportation conference room #302, located adjacent to the Gifford Pinchot National Forest Headquarters, at 11018 NE. 51st Circle, Vancouver, Washington. The meeting will begin at 9:30 a.m. and continue until 4 p.m. The purpose of the meeting is to learn about the results of the: (1) Roads analysis, (2) forest plan monitoring, and (3) recreation use survey; (4) provide preliminary input to the Northwest Forest Plan social and economic monitoring; and (5) provide for a Public Open Forum. All Southwest Washington Provincial Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend. The "open forum" provides opportunity for the public to bring issues, concerns, and discussion topics to the Advisory Committee. The "open forum" is scheduled to occur at 1 p.m. Interested speakers will need to register prior to the open forum period. The committee welcomes the public's written comments on committee business at any time.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Linda Turner, Public Affairs Specialist, at (360) 891–5008, or write Forest Headquarters Office, Gifford Pinchot National Forest, 10600 NE. 51st Circle, Vancouver, WA 98682.

Dated: October 28, 2002.

Claire Lavendel,

Forest Supervisor.

[FR Doc. 02–27954 Filed 11–1–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Producing Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration (EDA).

ACTION: Notice.

Petitions have been accepted for filing on the dates indicated from the firms listed below.

LIST OF PETITION ACTION BY TRADE ADJUSTMENT ASSISTANCE FOR PERIOD SEPTEMBER 25, 2002–OCTOBER 18, 2002

Firm name	Address	Date petition accepted	Product
Slocum Adhesives Corporation	2500 Carroll Avenue, Lynchburg, VA 24501.	10/01/02	Adhesive use in the footwear and furniture industry.
Gilchrist Metal Faricating Co., Inc.	18 Park Avenue, Hudson, NH 03051.	10/01/02	Frames for electronic photo typesetting machines.
R.P. Adams Company, Inc	P.O. Box 963, Buffalo, NY 14240.	10/02/02	Filtration and heat exchange machinery.
Dynomach Inc	1146 Commercial Dr., Port Allen, LA 70767.	10/04/02	Oil and gas machine parts.
Xenetech Global, Inc	12139 Airline Hwy., Baton Rouge, LA 70817.	10/15/02	Engraving machines.
Willacy Co-Op	P.O. Box 795, Raymondville, TX 76577.	10/16/02	Cotton fibers.
New Hampshire Stamping Co., Inc.	9 Lance Lane, Goffstown, NH 03051.	10/18/02	Stamped metal bird feeder parts, protective eyewear, appliance parts and heat sinks.
East Coast Machining, Inc	150 Airport Drive, Westminster, MD 21157.	10/18/02	Precision parts for filtration housings for the telecommunications industry.

LIST OF PETITION ACTION BY TRADE ADJUSTMENT ASSISTANCE FOR PERIOD SEPTEMBER 25, 2002–OCTOBER 18, 2002—Continued

Firm name	Address	Date petition accepted	Product
Elk Metals, Inc	201 Stackpole Street, St. Mary's, PA 15857.	10/18/02	Powdered metal parts for the automotive industry.
Councill Craftsmen, Inc	1156 N. Main Street, Denton, NC 27239.	10/18/02	Upholstered household wooden furniture.
L & D Industries, Inc	740 Grit Road, Hurt, VA 24563	10/18/02	Screws from bar stock for commercial and industrial use.
All Precision Manufacturing, Inc	153 N. 5th Street, Nokomis, IL 62075.	10/18/02	Machined metal components for pressure relief valves.

The petitions were submitted pursuant to section 251 of the Trade Act of 1974 (19 U.S.C. 2341). Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by Trade Adjustment Assistance, Room 7315, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.

Dated: October 25, 2002.

Anthony J. Meyer,

Coordinator, Trade Adjustment and Technical Assistance.

[FR Doc. 02–27957 Filed 11–1–02; 8:45 am]

BILLING CODE 3510–24–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

[Docket No. 021001228–2244–02]

National Defense Stockpile Market Impact Committee Request for Public Comments on the Potential Market Impact of Proposed Stockpile Disposals in FY 2003 and FY 2004

AGENCY: U.S. Department of Commerce.

ACTION: Correction to notice of inquiry.

SUMMARY: On October 15, 2002, the Bureau of Industry and Security published a Notice to advise the public that the National Defense Stockpile Market Impact Committee is seeking public comments on the potential market impact of proposed increases in the disposal levels of excess materials from the National Defense Stockpile under the Fiscal Year 2003 Annual Materials Plan and proposed commodity disposal levels under the Fiscal Year 2004 Annual Materials Plan. This Action corrects an error in the Supplementary Information section to indicate that the National Defense Stockpile Administrator is proposing revision of the previously approved Fiscal Year 2003 Annual Materials Plan quantities for five materials instead of three, as set forth in Attachment 1 to the Notice.

DATES: This action is effective November 4, 2002.

FOR FURTHER INFORMATION CONTACT: The co-chairs of the National Defense Stockpile Market Impact Committee. Contact either Richard V. Meyers, Office of Strategic Industries and Economic Security, Bureau of Industry and Security, U.S. Department of Commerce, (202) 482–3634 or Terri L. Robl, Office of International Energy and Commodity Policy, U.S. Department of State, (202) 647–3423.

SUPPLEMENTARY INFORMATION: In the Notice published on October 15, 2002 (67 FR 63606), the Bureau of Industry and Security ("BIS") makes the following correction: On page 63607, in the second column, second line, under Supplementary Information, revise the phrase "quantities for three materials" to read "quantities for five materials."

Dated: October 30, 2002.

James J. Jochum,

Assistant Secretary for Export Administration, Bureau of Industry and Security, U.S. Department of Commerce.

[FR Doc. 02–27911 Filed 11–1–02; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–815]

Sulfanilic Acid From the People's Republic of China: Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

SUMMARY: In accordance with 19 CFR 351.213(b)(1), the Department received a timely request from petitioner Nation Ford Chemical Company (NFC), to conduct an administrative review of the sales of Zhenxing Chemical Industry Company (also known as Baoding Mancheng Zhenxing Chemical Plant) and Xinyu Chemical Plant (formerly known as Yude Chemical Industry Company). On September 25, 2002, the Department initiated an administrative review of the antidumping duty order on sulfanilic acid from the People's Republic of China (PRC) for the period of review (POR) of August 1, 2001, to July 31, 2002. Because the interested party has withdrawn its request for review within 90 days of the notice of initiation's publication date, the Department is rescinding this review in accordance with 19 CFR 351.213(d)(1).

EFFECTIVE DATE: November 4, 2002.

FOR FURTHER INFORMATION CONTACT: Sean Carey or Holly Hawkins at Enforcement Group III, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3964 or (202) 482–0414, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

All citations are to the provisions of the Tariff Act of 1930, as amended ("the Act"). In addition, unless otherwise indicated, all citations to the Department's regulations are to the

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regulations codified at 19 CFR part 351 (2002).

Background

On August 29, 2002, the Department received a timely request from petitioner NFC that we conduct an administrative review of the sales of Zhenxing Chemical Industry Company and Xinyu Chemical Plant. On September 25, 2002, the Department published a notice of initiation of the administrative review of the antidumping duty order on sulfanilic acid from the PRC for the period of review (POR) August 1, 2001, to July 31, 2002, in accordance with 19 CFR 351.221(c)(1)(i). *See* "Initiation of Antidumping and Countervailing Duty Administrative Reviews," 67 FR 60210 (September 25, 2002). On October 11, 2002, NFC, the only party requesting this administrative review, withdrew its request for review.

Rescission of Review

Pursuant to our regulations, the Department will rescind an administrative review, "if a party that requested the review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review." *See* 19 CFR 351.213(d)(1). Accordingly, we are rescinding this administrative review for the period August 1, 2001, through July 31, 2002. The Department will issue appropriate assessment instructions to the U.S. Customs Service. This notice is published in accordance with sections 751(a)(2)(B) and 777(i) of the Act.

Dated: October 25, 2002.

Richard O. Weible,

Acting Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 02–28010 Filed 11–1–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 072202A]

Receipt of an Application for an Incidental Take Permit (1398)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration, Commerce

ACTION: Issuance of Permit 1398.

SUMMARY: Notice is hereby given of that NMFS issued on August 30, 2002, an incidental take permit (Permit 1398) to the North Carolina Division of Marine Fisheries (NCDMF) pursuant to the Endangered Species Act of 1973 (ESA), as amended. As required by the ESA, NCDMF's Permit 1398 includes a conservation plan designed to minimize and mitigate any such take of endangered or threatened species. Permit 1398 is for the incidental take of ESA-listed adult and juvenile sea turtles associated with otherwise lawful commercial fall gill net fisheries for flounder operating in Pamlico Sound, NC. The duration of Permit 1398 is for 3 years.

ADDRESSES: The application and related documents are available for review in the following office by appointment:

Endangered Species Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910 or Protected Resources Division, S/SER, 9721 Executive Center Dr. N., St. Petersburg, FL 33702 (ph: 727–570–5312, fax: 727–570–5517).

FOR FURTHER INFORMATION CONTACT: Dennis Klemm (ph. 727–570–5312, fax 727–570–5517, e-mail *Dennis.Klemm@noaa.gov*) or Therese Conant (ph. 301–713–1401, fax 301–713–0376, e-mail *Therese.Conant@noaa.gov*). Comments received will also be available for public inspection, by appointment, during normal business hours by calling 301–713–1401.

SUPPLEMENTARY INFORMATION: Issuance of permits and permit modifications, as required by the ESA (16 U.S.C. 1531–1543), is based on a finding that such permits/modifications: (1) are applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. Incidental take permits are issued under Section 10(a)(1)(B) of the ESA. Authority to take listed species is subject to conditions set forth in the permits. NMFS regulations governing permits for threatened and endangered species are promulgated at 50 CFR 222.307.

Permit 1398

The following species are included in Permit 1398 conservation plan: Loggerhead (*Caretta caretta*), green (*Chelonia mydas*), leatherback (*Dermochelys coriacea*), hawksbill (*Eretmochelys imbricata*), and Kemp's ridley (*Lepidochelys kempii*) sea turtles. The conservation plan includes managing the shallow water large and small mesh gill net fishery operating from September through mid-December in areas adjacent to the Outer Banks and mainland in Pamlico Sound. Permit 1398 includes measures to limit the commercial fall gill net fishery for flounder such that the incidental impacts on ESA-listed sea turtles will be minimized. NCDMF would use a variety of adaptive fishery management measures and restrictions through their state proclamation authority to reduce sea turtle mortality. Specific measures to be implemented each year include: (1) require tending for gillnets less than 5-inch (12.7-cm) stretched mesh from September 1 through October 31; (2) prohibit gillnets ≤ 5-inch (≤ 12.7-cm) stretched mesh in areas adjacent to Ocracoke, Hatteras, and Oregon Inlets from September 1 through December 15: (3) restrict the maximum net per fishing operation to 2,000 yards (1,828 m); (4) require NCDMF-issued permits for individual fishing operations employing large mesh gillnets in restricted areas between September 1 and December 15; (5) monitor gear interactions through a mandatory observer program for large and small mesh gillnets as well as through reports from fishermen and NCDMF Marine Patrol.

Comments

NMFS published a notice of availability on July 29, 2002 (67 FR 49009), and requested comments on the NCDMF. Two comment letters were submitted with the following comments.

Comment 1: The 3-year duration for the permit may not allow for adjustments to management measures such as adding the small mesh fishery under the permit in subsequent years. In addition, the annual evaluation of the permit may not be as rigorous given the permit is already in hand.

Response. Annual renewal of this permit is not automatic. Yearly evaluation of this permit by NMFS will include re-analyses of all data and a re-assessment of the take levels prior to 2nd and 3rd year re-authorization. The permit requires weekly, monthly, and yearly reporting. This requirement is unchanged from the previous 1–year permits issued to NCDMF. NCDMF has agreed to modify the conservation plan to cover the small mesh fishery and to achieve 10 percent observer coverage for this component of the shallow water fishery.

Comment 2: Given a 12.5 percent mortality rate, the estimated lethal take should be 61 not 71 as identified in the application. The take levels should also be reviewed on a yearly basis with the goal to reduce both actual and authorized take.

Response. NMFS felt that the take levels authorized in the 2001 permit should not be used in Permit 1398 for 2002–2004. The spatial and temporal scope of the management program was sufficiently different from the 2001 permit. Although NCDMF applied for a September 1 begin date and a December 1 end date for the management measures, they agreed to adjust the end date to December 15 to be consistent with NMFS regulations which close Pamlico Sound to large mesh fishing from September 1 through December 15. The management area also was expanded to include the shallow water areas of Hyde and Pamlico Counties along the mainland. Thus, the take levels were revised based on the observer data collected for the shallow water fishery in 2000 and 2001 and expanded to account for the additional 2–week period in September and the increase in fishing effort from the mainland area. Green turtles are the only species documented in the shallow water fishery. The upper limit of the live and lethal take was estimated to be 160 and 50 respectively. Although Kemp's ridleys and loggerheads have not been documented in the shallow water fishery, interactions are likely. Thus, NMFS determined that the live and lethal take for the Kemp's ridley and loggerhead would be 80 and 25 for each species. NMFS and NCDMF will review these take estimates on an annual basis and modify them as necessary.

Comment 3: The North Carolina Trip Ticket program does not subdivide Pamlico Sound geographically. In order to constructively apply the information collected through the observer program, a simple latitude and longitude subdivision of Pamlico Sound should be considered.

Response. The North Carolina Trip Ticket Program data are used to validate the effort data obtained through the mandatory fishermen reports. These reports require fishermen to identify the restricted area fished. There are 8 restricted areas consisting of only shallow waters adjacent to the Outer Banks and mainland. The majority of the Pamlico Sound waters are closed to fishing with large mesh gillnets and small mesh gillnets appear to not interact with sea turtles. Thus, NMFS and NCDMF believe that the identification of 8 separate restricted areas within an overall limited geographic area is sufficient to determine fishing effort distribution to apply towards the estimates of sea turtle interactions collected through the observer program.

Comment 4: The applicant considered, but rejected, to not apply for a permit and to close the area to gillnet fisheries. Georgia and Florida have banned gill nets in their state waters and this should be considered the preferred alternative for gill nets in Pamlico Sound, NC.

Response. The closure of the deep water large mesh fishery concurrent with the management of the shallow water fishery in 2001 resulted in a 67–percent reduction in strandings and an 88- percent reduction in the estimated take level when compared to 2000. The reduction in sea turtle interactions in the gillnet fishery clearly demonstrates the effectiveness of the management measures. NMFS does not believe that the prohibition of all gill nets is necessary at this time.

Upon a review of the application, relevant documents, public comments, and further discussions with NCDMF, NMFS found that the application met the criteria for issuance of 50 CFR 222.307(c). Permit 1398 was issued on August 30, 2002, and expires on December 15, 2004.

Dated: October 29, 2002.

Phil Williams,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–28009 Filed 11–01–02; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in the People's Republic of China

October 29, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: November 4, 2002.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita:doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being increased for carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 66 FR 65178, published on December 18, 2001). Also see 66 FR 67229, published on December 28, 2001.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 29, 2002.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 20, 2001, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in China and exported during the twelve-month period which began on January 1, 2002 and extends through December 31, 2002.

Effective on November 4, 2002, you are directed to increase the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Twelve-month limit [1]
Sublevels in Group I	
313	48,314,384 square meters.
315	144,709,863 square meters.
317/326	25,685,147 square meters of which not more than 4,914,073 square meters shall be in Category 326.
334	369,582 dozen.
336	201,943 dozen.
340	863,004 dozen of which not more than 439,094 dozen shall be in Category 340–Z [2].
351	663,481 dozen.
359–C [3]	728,105 kilograms.
360	9,335,937 numbers of which not more than 6,318,105 numbers shall be in Category 360–P [4].
434	14,639 dozen.
438	28,985 dozen.
443	141,613 numbers.

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Category	Twelve-month limit [1]
445/446	312,118 dozen.
447	77,532 dozen.
448	24,458 dozen.
615	29,424,147 square meters.
617	20,558,354 square meters.
634	719,118 dozen.
635	751,388 dozen.
636	616,642 dozen.
640	1,489,424 dozen.
641	1,402,816 dozen.
645/646	885,297 dozen.
651	893,144 dozen of which not more than 154,221 dozen shall be in Category 651–B [5].
652	3,295,329 dozen.
659–H	3,334,122 kilograms.
666pt.	449,014 kilograms.
845	2,514,179 dozen.
846	199,894 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2001.

[2] Category 340–Z: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2050 and 6205.20.2060.

[3] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010.

[4] Category 360–P: only HTS numbers 6302.21.3010, 6302.21.5010, 6302.21.7010, 6302.21.9010, 6302.31.3010, 6302.31.5010, 6302.31.7010 and 6302.31.9010.

[5] Category 651–B: only HTS numbers 6107.22.0015 and 6108.32.0015.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.02–27979 Filed 11–01–02; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Hong Kong

October 29, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: November 4, 2002.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being reduced for carryforward used.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 66 FR 65178, published on December 18, 2001). Also see 66 FR 63219, published on December 5, 2001.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 29, 2002.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 29, 2001, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Hong Kong and exported during the twelve-month period which began on January 1, 2002 and extends through December 31, 2002.

Effective on November 4, 2002, you are directed to reduce the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Sublevels in Group II	
345	507,428 dozen.
638/639	5,061,712 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2001.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.02–27978 Filed 11–01–02; 8:45 am]

BILLING CODE 3510–DR–S

DEPARTMENT OF EDUCATION

[CFDA Nos.: 84.133G and 84.133P]

Office of Special Education and Rehabilitative Services, National Institute on Disability and Rehabilitation Research; Notice Inviting Applications for New Awards for Fiscal Years (FY) 2003; Correction

ACTION: Notice inviting applications for new awards for fiscal years (FY) 2003; correction.

On September 13, a notice inviting applications for new awards under the Field-Initiated Projects-Research (84.133G–1); Field-Initiated Projects-Development (84.133G–2); and Advanced Rehabilitation Research Training Projects (84.133P–1) was published in the **Federal Register** (67 FR 58025). On page 58026, in the table, the column *Deadline for transmittal of applications* states that the deadline for transmittal of applications for these awards is "November 12, 2002." The *Deadline for transmittal of applications* is corrected to read "November 13, 2002." On page 58027, the contact person is changed to Mary Darnell.

FOR FURTHER INFORMATION CONTACT: For further information on this notice contact Mary Darnell, U.S. Department of Education, 400 Maryland Avenue, SW., room 3040, Switzer Building, Washington, DC 20202–2645. Telephone: (202) 401–6176. Or via the Internet: *Mary.Darnell@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact persons listed under **FOR FURTHER INFORMATION CONTACT.**

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Program Authority: 29 U.S.C. 764.

Dated: October 30, 2002.

Loretta Petty Chittum,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 02–28016 Filed 11–1–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Science Financial Assistance Program Notice 03–08: Advanced Detector Research Program

AGENCY: U.S. Department of Energy (DOE).

ACTION: Notice inviting grant applications.

SUMMARY: The Division of High Energy Physics of the Office of Science (SC), U.S. Department of Energy, hereby announces its interest in receiving grant applications for support under its Advanced Detector Research Program. Applications should be from investigators who are currently involved in experimental high energy physics, and should be submitted through a U.S. academic institution. The purpose of this program is to support the development of the new detector technologies needed to perform future high energy physics experiments.

DATES: To permit timely consideration for award in Fiscal Year 2003, formal applications submitted in response to this notice should be received before February 5, 2003.

Applicants are requested to submit a letter of intent by January 10, 2003, which includes the title of the proposal, the name of the principal investigator(s), the requested funding, and a one-page abstract. Failure to submit a letter of intent will not negatively prejudice a responsive formal application submitted in a timely manner.

ADDRESSES: Formal applications in response to this solicitation are to be electronically submitted by an authorized institutional business official through DOE's Industry Interactive Procurement System (IIPS) at: *http://e-center.doe.gov/.* IIPS provides for the posting of solicitations and receipt of applications in a paperless environment via the Internet. In order to submit applications through IIPS your business official will need to register at the IIPS Web site. The Office of Science will include attachments as part of this notice that provide the appropriate forms in PDF fillable format that are to be submitted through IIPS. Color images should be submitted in IIPS as a separate file in PDF format and identified as such. These images should be kept to a minimum due to the limitations of reproducing them. They should be numbered and referred to in the body of the technical scientific proposal as Color image 1, Color image 2, etc. Questions regarding the operation of IIPS may be e-mailed to the IIPS Help Desk at: *HelpDesk@e-center.doe.gov* or you may call the help desk at: (800) 683–0751. Further information on the use of IIPS by the Office of Science is available at: *http://www.sc.doe.gov/production/grants/grants.html.*

If you are unable to submit an application through IIPS please contact the Office of the Director, Grants and Contracts Division, Office of Science, DOE at: (301) 903–5212 in order to gain assistance for submission through IIPS or to receive special approval and instructions on how to submit printed applications.

Letters of intent referencing Program Notice 03–08 should be submitted via e-mail at the following e-mail address: *Michael.Procario@science.doe.gov.* Please include the phrase "ADR letter of intent" in the subject line.

FOR FURTHER INFORMATION CONTACT: Dr. Michael Procario, SC–221/Germantown Building, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585–1290. Telephone: (301) 903–2890. e-mail: *Michael.Procario@science.doe.gov.*

SUPPLEMENTARY INFORMATION: Future high energy physics experiments will require higher performance detectors to exploit the higher beam energies and intensities of new or upgraded accelerators. Higher performance detectors are also needed to probe for new physical processes in both accelerator-based and non-accelerator-based experiments. Proposed detector research should be driven by the anticipated needs of experiments to be built within the foreseeable future. Generic detector research that could be applied to upgrades that have not yet been approved would also be appropriate. It is expected that the final engineering or fabrication of detectors for specific experiments will not be funded by this program. Interesting technologies would include but not be limited to charged particle track detectors, calorimeters or particle identification detectors that are less sensitive to radiation, have higher resolution, are lower in cost, or can be read out faster than currently available detectors. Proposals to develop detector technology that is targeted at experiments for an energy frontier e^+e^- linear collider should not be submitted under this notice unless additional credible uses for the technology are described. Alternative funding is potentially available for that purpose.

It is anticipated that in Fiscal Year 2003 approximately $500,000 will be available for new awards. The number of awards will be determined by the number of excellent applications and the total funds available for this program. Multiple year grants should be requested if the project cannot be completed in one year. A maximum of three years will be considered. Out-year funding will be provided on an annual basis subject to availability of funds. Cost sharing is encouraged but not required.

Applicants are welcome to collaborate with researchers in other institutions, such as universities, industry, non-profit organizations, federal laboratories and Federally Funded Research and Development Centers (FFRDCs), which include the DOE National Laboratories. In the case of collaborative applications submitted from different institutions that are directed at a single research activity, each application must have a different scope of work and a qualified principal investigator who is responsible for the research effort being performed at his or her institution. There must be a single technical description of the proposed work, and separate face pages and budget pages for each institution. The scope of work at each institution must be clearly specified. While collaboration with researchers at FFRDCs (Fermi National Accelerator Lab and other DOE national labs are examples of FFRDCs), is encouraged, no funds will be provided to those organizations under this notice. The procedure for submitting a collaborative application can be accessed via the web at: *http://www.sc.doe.gov/production/grants/Colab.html.* This section provides specific details regarding collaborating institutions and states, "The lead organization must submit their own grant application plus the other collaborator's applications to DOE in one package with a cover letter which

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describes the role to be played by each organization, the managerial arrangements, and the advantages of the multi-organizational effort."

Applications will be subjected to scientific merit review (peer review) and will be evaluated against the following criteria, which are listed in descending order of importance as set forth in 10 CFR part 605.10 (d):

1. Scientific and/or technical merit of the project;

2. Appropriateness of the proposed method or approach;

3. Competency of applicant's personnel and adequacy of proposed resources; and

4. Reasonableness and appropriateness of the proposed budget.

In considering item 1 particular attention will be paid to:

- the importance of the physics that motivates developing the proposed detector,
- whether the proposed research is generic detector research that will benefit more than one experiment,
- the magnitude of the potential impact versus the risk of failure.

General information about development and submission of applications, eligibility, limitations, evaluations and selection processes, and other policies and procedures are contained in the Application Guide for the Office of Science Financial Assistance Program and 10 CFR part 605. Electronic access to the application guide and required forms is available on the World Wide Web at: *http://www.sc.doe.gov/production/grants/grants.html*.

In addition, for this notice, project descriptions must be 25 pages or less, including tables and figures, but excluding forms and certifications. The application must also contain an abstract or project summary, letters of intent from all non-funded collaborators, and short curriculum vitae of all senior personnel.

The Catalog of Federal Domestic Assistance Number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR part 605.

Issued in Washington, DC, on October 28, 2002.

John Rodney Clark,

Associate Director of Science for Resource Management.

[FR Doc. 02–27987 Filed 11–1–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[Certification Notice—209]

Office of Fossil Energy; Notice of Filings of Coal Capability Powerplant and Industrial Fuel Use Act

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of filings.

SUMMARY: The owners/operators of 10 baseload electric powerplants have submitted coal capability self-certifications pursuant to section 201(d) of the Powerplant and Industrial Fuel Use Act of 1978, as amended, in accordance with 10 CFR 501.60, 61.

ADDRESSES: Copies of self-certification filings are available for public inspection, upon request, in the Office of Coal & Power Import/Export, Fossil Energy, Room 4G–039, FE–27, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Ellen Russell at (202) 586–9624.

SUPPLEMENTARY INFORMATION: Title II of the Powerplant and Industrial Fuel Use Act of 1978 (FUA), as amended (42 U.S.C. 8301 et seq.), provides that no new baseload electric powerplant may be constructed or operated without the capability to use coal or another alternate fuel as a primary energy source. In order to meet the requirement of coal capability, the owner or operator of such facilities proposing to use natural gas or petroleum as its primary energy source shall certify, pursuant to FUA section 201(d), to the Secretary of Energy prior to construction, or prior to operation as a base load electric powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) as of the date filed with the Department of Energy (DOE). The Secretary is required to publish a notice in the **Federal Register** that a certification has been filed. The following owners/operators of proposed new baseload electric powerplants have filed self-certifications pursuant to section 201(d) and in accordance with DOE regulations in 10 CFR 501.60, 61.

Owner/operator	Capacity	Plant location	In-service date
Los Esteros Critical Energy Facility	180 MW	Santa Clara Cnty, CA	4th Qrt. 2002
Ocean Peaking Power	500 MW	Lakewood, NJ	January 2003
Reliant Energy Choctaw Cnty Facility	804 MW	Choctaw County, MS	June 1, 2003
Genova Arkansas I	550 MW	Tontitown, AR	January 2005
Genova Oklahoma I	550 MW	Chickasha, OK	January 2005
Beatrice Power Station	250 MW	Gage County, NE	March 2005
Black Rock Facility	62 MW	Buffalo, NY	2nd Qtr. 2003
Blythe Energy Project	520 MW	Blythe, CA	December 2002
Acadia Power Project	1,200 MW	Acadia Parish, LA	May 2002
Wolfskill Energy Center	45 MW	Solano Cnty, CA	1st Qtr. 2003

Issued in Washington, DC, on October 28, 2002.

Anthony J. Como,

Deputy Director, Electric Power Regulation, Office of Coal & Power Import/Export, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 02–27986 Filed 11–1–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC02–717–001, FERC–717]

Commission Information Collection Activities, Proposed Collection; Comment Request; Submitted for OMB Review

October 25, 2002.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice.

SUMMARY: In compliance with the requirements of section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507, the Federal Energy Regulatory Commission (Commission) has submitted the information collection described below to the Office of Management and Budget (OMB) for review and extension of the current expiration date. Any interested person may file comments directly with OMB and should address a copy of those

comments to the Commission as explained below. The Commission received comments from one entity in response to an earlier **Federal Register** notice of June 21, 2002 (67 FR 42243–42244), and has responded to these comments in its submission to OMB.

DATES: Comments on the collection of information are due by November 29, 2002.

ADDRESSES: Address comments on the collection of information to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Federal Energy Regulatory Commission Desk Officer, 725 17th Street, NW., Washington, DC 20503. The Desk Officer may be reached by telephone at 202–395–7856. A copy of the comments should also be sent to the Federal Energy Regulatory Commission, Office of the Chief Information Officer, CI–1, Attention: Michael Miller, 888 First Street NE., Washington, DC 20426. Comments may be filed either in paper format or electronically. Those persons filing electronically do not need to make a paper filing. For paper filings, such comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 and refer to Docket No. IC02–717–001.

Documents filed electronically via the Internet must be prepared in WordPerfect, MS Word, Portable Document Format, or ASCII format. To file the document, access the Commission's website at *www.ferc.gov* and click on "Make an E-filing," and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgment to the sender's E-mail address upon receipt of comments. User assistance for electronic filings is available at 202–208–0258 or by e-mail to *efiling@ferc.fed.us*. Comments should not be submitted to the e-mail address.

All comments may be viewed, printed or downloaded remotely via the Internet through FERC's homepage using the FERRIS link. User assistance for FERRIS is available at 202–502–8222, or by e-mail to *contentmaster@ferc.fed.us*.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202)502–8415, by fax at (202)208–2425, and by e-mail at *michael.miller@ferc.gov*.

SUPPLEMENTARY INFORMATION:

Description

The information collected and submitted for OMB review contains:

1. *Collection of Information*: FERC–717 "Open Access Same Time Information Systems".

2. *Sponsor*: Federal Energy Regulatory Commission.

3. *Control No.* 1902–0173.

The Commission is now requesting that OMB approve a three-year extension of the current expiration date, with no changes to the existing collection. This is a mandatory information collection requirement and the Commission does not consider the information to be confidential.

4. *Necessity of the Collection of Information*: Submission of the information is necessary to enable the Commission to carry out its responsibilities in implementing the statutory provisions of part I of the Federal Power Act (FPA.), sections 309 and 311, 16 U.S.C. 825(h), and 825(j). Section 309 gives the Commission the authority to prescribe, issue, make and amend orders, rules and regulations to implement the provisions of the Federal Power Act. Section 311 gives the Commission authority to secure information necessary or appropriate for recommending legislation or to conduct investigations concerning generation, transmission, distribution and sale of electric energy regardless of whether they are jurisdictional or nonjurisdictional entities within the United States and its possessions. The Commission is also authorized to keep current information on the ownership, operation, management and control of all facilities for generation, transmission, distribution, sale, the capacity and output of these facilities and the relationship between the two. The information is also used for determining the cost(s) for generation, distribution, rates, charges, and contracts with respect to the sale of electric energy and the service to residential, rural, commercial and industrial consumers and other purchasers by private and public agencies.

The information collected under FERC–717 is specifically used to monitor the networks to ensure that potential purchasers of transmission services obtain the services on a non-discriminatory basis. Failure to issue these requirements would mean the Commission is not meeting its statutory obligations and permitting discrimination in interstate transmission services provided by public utilities.

The Commission is obligated by statute to regulate key economic aspects of the energy industry. The law requires the Commission's economic regulatory activity because the transmission and generation of electricity have been and continue to be a natural monopoly. The challenge facing the Commission is to develop a regulatory approach that promotes competitive markets while protecting customers and serving and safeguarding the public. To safeguard workable competition in wholesale power markets, the Commission must ensure open, nondiscriminatory access to transmission facilities and must monitor the market to detect instances of market abuse or failure.

The Commission implements these requirements in the Code of Federal Regulations (CFR) under 18 CFR part 37.

5. *Respondent Description*: The respondent universe currently comprises (on average) 140 entities subject to the Commission's jurisdiction.

6. *Estimated Burden*: 198,520 total hours, 140 respondents(average), 1 response per respondent annually, 1,418 hours per response (average).

7. *Estimated Cost Burden to respondents*: $22,283,975 (140 respondents × $159,171(cost per respondent)).

Statutory Authority: Sections 309 and 311 of the Federal Power Act, 16 U.S.C. 825(h), 825(j).

Magalie R. Salas,

Secretary.

[FR Doc. 02–27935 Filed 11–1–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP02–90–001 and CP02–93–001]

AES Ocean Express LLC; Notice of Amendments to Applications for a Certificates of Public Convenience and Neccessity, and for Section 3 Authorization and a Presidential Permit

October 24, 2002.

Take notice that on October 18, 2002, AES Ocean Express LLC (Ocean Express), Two Alhambra Plaza, Suite 1104, Coral Gables, Florida, 33134, filed in Docket No. CP02–90–001 an amendment to its pending application for a certificate of public convenience and necessity filed pursuant to Section 7(c) of the Natural Gas Act (NGA) in Docket No. CP02–90–000, and in Docket No. CP02–93–001, it filed an amendment to its pending application for a Presidential Permit and Section 3 authorization, filed pursuant to Section 3 of the NGA and Executive Order No. 10485 in Docket No. CP02–93–000. The

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application amendments reflect a proposed new route variation and certain revised pipeline materials and design in the vicinity of the 12-square mile Navy Restricted Area located offshore from Broward County, Florida, as well as a change in the ownership structure of Ocean Express.

The application amendments are on file with the Commission and open to public inspection. The filings may be viewed on the web at http://www.ferc.gov using the "FERRIS" link, selecting "Docket #" and following the instructions (please call (202) 208–2222 for assistance). Any questions regarding the applications or these amendments may be directed to Julie Romaniw, AES Ocean Express LLC, Two Alhambra Plaza, Suite 1104, Coral Gables, FL 33134; Phone No. (305) 444–4002.

Ocean Express explains that its proposed route variation reflects the measures contemplated by the "agreement in principle" reached between Ocean Express and the Naval Surface Warfare Center, Carderock Division (Naval Group) to resolve the Naval Group's technical and operational concerns regarding construction, operation and maintenance of the proposed Ocean Express Pipeline offshore of Broward County, Florida. Specifically, Ocean Express states that its amendment involves a 7.5-mile offshore route variation, as well as the use of special stainless steel, 40-foot and 500-foot anode spacings, three-layer polypropylene coating and other design features for specific portions of the offshore pipeline. Ocean Express explains that in developing the 7.5-mile offshore route variation, it gave extensive consideration to the avoidance or minimization of potential impacts to sensitive marine resources, such as the three nearshore reef systems, the technical feasibility of constructing the offshore route variation, and other related factors.

The proposed route variation increases the estimated cost of the project to from $ 93.1 million to $ 111.6 million and increases the Monthly Reservation Rate from $ 1.3859 per Dth to $ 1.6085 per Dth. The design capacity of the project is unchanged and is 842,000 Dth per day. The total length of the United States part of the pipeline project is increased from 52.4 miles to 54.3 miles; the onshore route and 6.3 mile length remains unchanged, but the offshore length in increased from 46.1 miles to 48.0 miles.

Separately, Ocean Express explains that since the time it filed its original applications in these proceedings on February 21, 2002, VAC Ocean Cay LLC (VAC) has acquired a 25% interest in Ocean Express. Ocean Express states that it has included the information and documentation required by the Commission's regulations regarding the new ownership structure.

Ocean Express requests that the Commission issue a preliminary determination on non-environmental issues by February 1, 2003, and final certificate authorization by early in the third quarter of 2003.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before November 14, 2002, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party currently in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

Motions to intervene, comments and protests may be filed electronically via the internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the Commission's website at *http://www.ferc.gov.* . The Commission strongly encourages prospective intervenors, commenters or protesters to file electronically.

Parties who filed motions to intervene in the underlying pending applications in Docket Nos. CP02–90, *et al.* do not need to move to intervene again in response to this notice, but may file a supplement to their previous filing(s) if they have any comments or protests with regard to the changes in the project proposed by these amendments.

Persons who wish to comment only on the environmental review of this project, as amended, should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents, and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, Commenters will not receive copies of all documents filed by other parties or issued by the Commission, and will not have the right to seek rehearing or appeal the Commission's final order to a Federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and ion landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important to file comments or to intervene as early in the process as possible.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–27924 Filed 11–1–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EC03–5–000 and ER03–65–000]

Allegheny Energy Supply Company, LLC; Allegheny Trading Finance Company; Notice of Filing

October 24, 2002.

Take notice that, in Docket No. EC03–5–000, on October 21, 2002, Allegheny Energy Supply Company, LLC ("AE Supply"), and Allegheny Trading Finance Company ("ATF") filed with the Federal Energy Regulatory Commission an application pursuant to Section 203 of the Federal Power Act for authorization to assign two contracts between AE Supply and the California Department of Water Resources from AE Supply to ATF. The Applicants have requested Commission action on an expedited basis.

Also take notice that, in Docket No. ER03–65–000, on October 21, 2002, ATF filed proposed Market Rate Tariff, and a request for such waivers and blanket authorizations as have been granted in previous orders. ATF requests an effective date of October 22, 2002.

Any person desiring to intervene or to protest these filings should file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding.

Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502–8222 or TTY, (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: November 4, 2002.

Issued October 24, 2002.

By direction of the Commission. Commissioner Massey dissenting with a separate statement attached.

Magalie R. Salas,

Secretary.

MASSEY, Commissioner, dissenting:

I am concerned that a substantial shortening of our normal 21-day intervention period for this type of filing may not allow potential intervenors sufficient time to review the application and to comment appropriately. Therefore, I dissent.

William L. Massey,

Commissioner.

[FR Doc. 02–27927 Filed 11–1–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM01–12–000 et al.]

Remedying Undue Discrimination Through Open Access Transmission Service and Standard Electricity Market Design; Notice Announcing Process for Western Interconnection Market Design and Postponing Technical Conference

October 25, 2002.

Avista Corporation, Bonneville Power Administration, Idaho Power Company, Montana Power Company, Nevada Power Company, PacifiCorp, Portland General Electric Company, Puget Sound Energy, Inc., Sierra Pacific Power Company, British Columbia Hydro and Power Authority, Arizona Public Service Company, El Paso Electric Company, Public Service Company of New Mexico, Tucson Electric Power Company , WestConnect RTO, LLC [Docket No. EL02–9–000], California Independent System Operator Corporation, California Independent System Operator Corporation. [Docket No. RM01–12–000], [Docket No. RT01–35–000], [Docket No. RT02–1–000], [Docket No. ER02–1656–000], [Docket No. ER02–2576–000]

The Commission is announcing a process to develop compatible market designs in the Western Interconnect. The Commission wishes to build upon constructive ideas that emerged in technical meetings in Denver this week, comments from western commissioners at CREPC on October 1, and other outreach meetings around the West. In these meetings, participants learned about positive developments in RTO West, WestConnect, and the California ISO and flagged certain market design elements that may not be sufficiently compatible across the region. We note that the Seams Steering Group of the Western Interconnect (SSG-WI) and other regional organizations have been working to identify such elements in order to develop and support an evolving seamless western wholesale energy market that minimizes trade barriers and promotes common business practices for inter-RTO transmission services. We learned that SSG-WI is pursuing plans to formalize its role and to re-structure in a way that allows for open participation, and that there has been further clarification of the roles of SSG-WI, the WECC, and CREPC. Participants in these meetings asked FERC staff for an opportunity to resolve "seams" issues through these regional processes.

We are encouraged by these developments and offer FERC staff resources to support this effort. We believe that the seams resolution and market development process will be most successful if all market participants and representatives of public power and states fully participate, and if the process is driven by the market participants within the context of FERC's efforts. State participation is essential to this process, and states are encouraged to give their policy guidance through the appropriate regional organization. We request that SSG-WI develop a list of recommended market design elements appropriate for the western interconnect (*i.e.*, balancing market, transmission rights, planning process, etc.), which elements must be designed compatibly to avoid seams, and a plan and timeline for resolution of these issues that is coordinated with RTO development efforts. This plan would include specific tasks for each of the current SSG-WI working groups and any other working groups that may be necessary. We request that SSG-WI present that plan by mid-January, consistent with previously set SSG-WI deadlines.

To accommodate this process, we recognize that some flexibility in RTO timelines may be required. We envision a parallel track between this process and RTO development processes so that both can continue to move forward. We expect the SSG–WI process to clarify which remaining issues can be resolved in RTO proceedings and which should be coordinated through this collaborative process for the Western Interconnect.

We will defer the November 4, 2002, policy meeting scheduled in Portland, Oregon, to allow this alternative process a chance to succeed. We will schedule a public meeting, which Commissioners plan to attend, after a consensus plan has been presented. We expect further technical meetings between the parties during November and December to advance this process; our staff will participate.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–27944 Filed 11–1–02; 8:45 am]

BILLING CODE 6717–01–P

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ES03–6–000]

Baltimore Gas and Electric Company; Notice of Application

October 24, 2002.

Take notice that on October 16, 2002, Baltimore Gas and Electric Company submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to issue no more than $700 million of short term unsecured promissory notes, commercial paper notes, medium term notes, and guarantees of assumptions of liabilities or obligations with a final maturity date no later than December 31, 2005.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502–8222 or TTY, (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: November 14, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–27933 Filed 11–1–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC03–4–000]

Calpine Energy Services, L.P., Riverside Energy Center, LLC; Notice of Filing

October 24, 2002.

Take notice that on October 21, 2002, Calpine Energy Services, L.P. (CES) and Riverside Energy Center, LLC (Riverside) tendered for filing an application with the Federal Energy Regulatory Commission (Commission) under section 203 of the Federal Power Act for approval of the assignment by CES to Riverside of a power purchase agreement between CES and Madison Gas and Electric Company.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502–8222 or TTY, (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: November 12, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–27926 Filed 11–1–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–2064–003]

Choctaw Generation, LP; Notice of Filing

October 24, 2002.

Take notice that on October 8, 2002, Choctaw Generation LP, hereby advised the Federal Energy Regulatory Commission that on September 6, 2002, Choctaw transferred, under protest, and with a full reservation of rights, consistent with the Request for Rehearing filed by Choctaw in the above referenced docket on September 6, 2002, to the Tennessee Valley Authority, the amount to $153,604.37.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502–8222 or TTY, (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: November 4, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–27931 Filed 11–1–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP95–408–047]

Columbia Gas Transmission Corporation; Notice of Refund Report

October 25, 2002.

Take notice that on October 21, 2002, Columbia Gas Transmission Corporation (Columbia Gas) tendered for filing its report on the flow-back to customers of funds received from insurance carriers for environmental costs attributable to Columbia Gas' Docket No. RP95–408 settlement period.

Columbia Gas states that it allocated such recoveries among customers based on terms of the Docket No. RP95–408 Phase II Settlement which states that customer allocations shall be based on customers' actual contributions to Remediation Program collections for the most recent February 1–January 31 period.

Columbia Gas states further that it provided a copy of the report to all customers who received a share of the environmental insurance recoveries and all state commissions whose jurisdiction includes the location of any such recipient.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed on or before November 1, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202) 502–8222 or for TTY, (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–27952 Filed 11–1–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP91–160–028]

Columbia Gulf Transmission Company; Notice of Refund Report

October 25, 2002.

Take notice that on October 21, 2002, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing its report on the flow-back to customers of funds received from insurance carriers for environmental costs pursuant to Article I(A)(2)(d) of its Docket No. RP91–160 settlement.

Columbia Gulf states that it allocated such recoveries among customers based on their fixed cost responsibility for services rendered on the Columbia Gulf system during the period December 1, 1991 through October 31, 1994, the period of the Docket No. RP91–160 settlement.

Columbia Gulf states further that it provided a copy of the report to all customers who received a share of the environmental insurance recoveries and all state commissions whose jurisdiction includes the location of any such recipient.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before November 1, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202) 502–8222 or for TTY, (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–27951 Filed 11–1–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–389–069]

Columbia Gulf Transmission Company; Notice of Compliance Filing

October 25, 2002.

Take notice that on October 21, 2002, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Sixth Revised Sheet No. 316 to become effective October 10, 2002.

Columbia Gulf states that on August 30, 2002, it made a filing with the Commission seeking approval of a Rate Schedule FTS–1 negotiated rate agreement FPL Energy Power Marketing Inc. (FPL) in Docket No. RP96–389–067. On October 10, 2002, the Commission issued an order approving the service agreement effective November 1, 2002. The order directed Columbia Gulf to file a tariff sheet identifying the agreement as a non-conforming agreement in compliance with Section 154.112(b) of the Commission's regulations. The instant filing is being made to comply with Section 154.112(b) and reference the non-conforming service agreement in its Volume No. 1 tariff.

Columbia Gulf states that copies of its filing have been served to each of the parties listed on the service list.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202) 502–8222 or for TTY, (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See, 18

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CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Magalie R. Salas,
Secretary.
[FR Doc. 02–27953 Filed 11–1–02; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 184–065]

El Dorado Irrigation District, Ca; Notice of Public Meetings

October 24, 2002.

The Federal Energy Regulatory Commission (Commission) is reviewing the application for a new license for the El Dorado Project (FERC No. 184), filed on February 22, 2000. The El Dorado Project, licensed to the El Dorado Irrigation District (EID), is located on the South Fork American River, in El Dorado, Alpine, and Amador Counties, California. The project occupies lands of the El Dorado National Forest.

The EID, several state and federal agencies, and several non-governmental agencies are working collaboratively with a facilitator to resolve certain issues relevant to this proceeding. These meetings are a part of that collaborative process. Meetings will be held as follows:

Date	Group-Time
November 12	Aquatics/Hydrology Workgroup, 9 am–4 pm
November 13	Recreation Workgroup, 9 am–12 pm
November 13	Terrestrial Workgroup, 1 pm–2 pm
November 13	Project Economics Workgroup, 2:15 pm–4 pm

We invite the participation of all interested governmental agencies, non-governmental organizations, and the general public in these meetings.

All meetings will be held in the Rancho Cordova Holiday Inn, located at 11131 Folsom Blvd, Rancho Cordova, California.

For further information, please contact Elizabeth Molloy at (202) 502–8771 or John Mudre at (202) 502–8902.

Linwood A. Watson, Jr.,
Deputy Secretary.
[FR Doc. 02–27940 Filed 11–1–02; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–39–000]

Enbridge Pipelines (Midla) L.L.C. Formerly Enbridge Pipelines (Midla) Inc.; Notice of Proposed Changes in FERC Gas Tariff

October 25, 2002.

Take notice that on October 23, 2002, Enbridge Pipelines (Midla) L.L.C. (Midla L.L.C.), formerly Enbridge Pipelines (Midla) Inc., tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1 and Third Revised Volume No. 2 to reflect a name change to become effective on October 11, 2002. A complete listing of the tariff sheets filed are shown on Appendix A to the filing.

Midla L.L.C. states that copies of its transmittal letter and appendices have been mailed to all parties on the Commission's Official Service list, all of its jurisdictional customers, and applicable State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202)502–8222 or for TTY, (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Magalie R. Salas,
Secretary.
[FR Doc. 02–27949 Filed 11–1–02; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–40–000]

Enbridge Pipelines (AlaTenn) L.L.C. formerly Enbridge Pipelines (AlaTenn) Inc.; Notice of Proposed Changes in FERC Gas Tariff

October 25, 2002.

Take notice that on October 23, 2002, Enbridge Pipelines (AlaTenn) L.L.C. (AlaTenn L.L.C.), formerly Enbridge Pipelines (AlaTenn) Inc. tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, to reflect a name change to become effective on October 11, 2002. A complete listing of the tariff sheets filed is shown on Appendix A to the filing.

AlaTenn L.L.C. states that copies of its transmittal letter and appendices have been mailed to all parties on the Commission's Official Service list, all of its jurisdictional customers, and applicable State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202) 502–8222 or for TTY, (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Magalie R. Salas,
Secretary.
[FR Doc. 02–27950 Filed 11–1–02; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–38–000]

North Baja Pipeline, LLC; Notice of Tariff Filing

October 25, 2002.

Take notice that on October 21, 2002, North Baja Pipeline, LLC (NBP) tendered for filing to be part of its FERC Gas Tariff, Original Volume No. 1, First Revised Sheet No. 164, First Revised Sheet No. 171, Second Revised Sheet No. 173 and First Revised Sheet No. 174, with an effective date of October 1, 2002.

NBP states that these tariff sheets reflect modifications necessary to reinstate the rate ceiling for short-term capacity release transactions following the conclusion of FERC's two-year waiver period as provided for in Order No. 637.

NBP further states that a copy of this filing has been served on NBP's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202)502–8222 or for TTY, (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Magalie R. Salas,
Secretary.
[FR Doc. 02–27948 Filed 11–1–02; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–41–000]

e prime, Inc., Complainant, v. PG&E Gas Transmission, Northwest Corp., Respondent; Notice of Complaint and Request for Fast Track Processing

October 29, 2002.

Take notice that on October 25, 2002, e prime inc. (e prime) filed a Complaint and Request for Fast Track Processing against PG&E Gas Transmission, Northwest Corporation (GTN) requesting that the Federal Energy Regulatory Commission (Commission) find that GTN's demand for collateral support in an amount equal to one year of reservation charges as a precondition to continuing to provide service to e prime is in violation of GTN's tariff, and order GTN immediately to return the collateral cash deposits demanded from e prime, with interest, and to continue providing service to e prime under the Service Agreement.

Any person desiring to be heard or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. The answer to the complaint and all comments, interventions or protests must be filed on or before November 8, 2002. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866)208–3676, or for TTY, contact (202)502–8659. The answer to the complaint, comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,
Secretary.
[FR Doc. 02–28104 Filed 11–1–02; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT02–37–001]

PG&E Gas Transmission Northwest Corporation; Notice of Compliance Filing

October 25, 2002.

Take notice that on October 21, 2002, PG&E Gas Transmission, Northwest Corporation (GTN) tendered for filing to be part of its FERC Gas Tariff, Second Revised Volume No. 1-A, the tariff sheets included in Appendix A to the filing, to be effective October 1, 2002.

GTN states that the filing is being filed to comply with the requirements of the Commission's September 30, 2002 Order in this proceeding. The Commission's September 30th Order required minor modifications to GTN tariff language that provides for the termination of shipper contracts for non-payment and the treatment of replacement shippers when a releasing shipper's contract is terminated.

GTN further states that a copy of this filing has been served on GTN's jurisdictional customers and interested state regulatory agencies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202)502–8222 or for TTY, (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions

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on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–27934 Filed 11–1–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–37–000]

Southern LNG Inc.; Notice of Proposed Changes to FERC Gas Tariff

October 25, 2002

Take notice that on October 21, 2002, Southern LNG Inc. (SLNG) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following revised sheets, with an effective date of October 1, 2002:

Fourth Revised Sheet No. 5
Fourth Revised Sheet No. 6

SLNG states that the purpose of this filing is to add the Commission-approved ACA surcharge to the settlement rates accepted by the Commission's order issued on October 10, 2002 (October 10 Order) in SLNG's Docket No. RP02–129 *et al.* SLNG has requested that these sheets be made effective as of October 1, 2002, the date the ACA surcharge became effective pursuant to the September 30, 2002 order in Docket No. RP02–523.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202)502–8222 or for TTY, (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–27947 Filed 11–1–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–205–003]

Southern Natural Gas Company; Notice of Negotiated Rate Filing

October 25, 2002.

Take notice that on October 21, 2002, Southern Natural Gas Company (Southern) tendered for filing its Negotiated Rate Tariff Filing.

Southern's filing requests that the Commission approve a negotiated rate arrangement between Southern and SCANA Resources, Inc. (SCANA). On September 20, 2002, in Docket Nos. CP02–1–000 and CP02–1–001, the Commission approved, subject to conditions, Southern's South System II Expansion Project (South System II Order). In the South System II Order, the Commission stated, "although SCANA will initially pay Southern's maximum tariff rate, other aspects of SCANA's rate are negotiated to amounts other than those provided in the tariff. Accordingly, we find it appropriate for Southern to file the SCANA contract as a negotiated rate agreement, putting forward all the particulars of the rate so that customers who believe they are similarly situated may seek a similar rate with Southern."

In accordance with the South System II Order, Southern files herewith the SCANA FT Agreement. Southern requests that the Commission grant such approval effective the date facilities are completed and placed in service.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202)502–8222 or for TTY, (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–27946 Filed 11–1–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP02–90–000 et al., CP01–36–000, CP01–382–000, CP01–52–000 and CP01–383–000]

Zia Natural Gas Company, an Operating Division of Natural Gas Processing Company v. Raton Gas Transmission Company [Not Consolidated]; Notice of Technical Conference

October 24, 2002.

Take notice that a technical conference to discuss a proposed settlement of issues raised by the complaints and certificate filings in these proceedings will be held on Thursday, November 14, 2002, at 10 a.m., in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC, 20426.

All interested parties and staff are permitted to attend. For further information contact Cecilia Desmond at (202) 502–8695.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–27921 Filed 11–1–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL03–7–000, et al.]

Cities of Anaheim, et al.; Electric Rate and Corporate Regulation Filings

October 10, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Cities of Anaheim, Azusa, Banning, and Riverside, California

[Docket No. EL03–7–000]

Take notice that on October 4, 2002, the Cities of Anaheim, Azusa, Banning, and Riverside, California (Southern Cities) filed a Petition for Declaratory Order, Request for Expedited Procedures, and Request for Waiver of Filing Fee. Southern Cities seek a determination of the propriety of a withdrawal provision in the Transmission Control Agreement that will enable them to participate in the California ISO as Participating Transmission Owners.

Comment Date: October 31, 2002.

2. LMB Funding, Limited Partnership

[Docket No. EL03–8–000]

Take notice that on October 4, 2002, LMB Funding, Limited Partnership (Petitioner) filed a Petition for Declaratory Order Disclaiming Jurisdiction and Request for Expedited Consideration. Petitioner is seeking a disclaimer of jurisdiction in connection with a lease financing involving a generating plant of approximately 600 MW to be located in Lower Mount Bethel Township, Northampton County, Pennsylvania.

Comment Date: November 4, 2002.

3. Westar Generating, Inc.

[Docket Nos. ER01–1305–004]

Take notice that on October 7, 2002, in compliance with the Commission's September 5, 2002. Order Conditionally Approving Uncontested Settlement, 100 FERC 61,255 (2002), in the above-referenced dockets, Westar Generating, Inc. (Westar) submitted a new Order 614 designation for the Purchase Power Agreement between Westar and Western Resources, Inc. (Western), and changes to Section 3.2 of Article III of the Settlement Agreement as required by the Order in the above-referenced proceedings.

A copy of this filing was served on every participant to the proceedings.

Comment Date: October 28, 2002.

4. Southwest Power Pool, Inc.

[Docket Nos. ER02–1705–003]

Take notice that on October 7, 2002, Southwest Power Pool, Inc. (SPP) submitted for filing the compliance filing required by the Federal Energy Regulatory Commission's September 5, 2002 issued in the proceeding listed above. Southwest Power Pool, Inc., 100 FERC 61,248.

Comment Date: October 28, 2002.

5. Duke Energy Corporations

[Docket No. ER02–2008–002]

Take notice that on October 7, 2002, in compliance with the Commission's order in Docket Nos. ER02–2008–000 and ER02–2008–001 issued September 5, 2002, Duke Energy Corp., 100 FERC 61,251, Duke Energy Corporation, on behalf of Duke Electric Transmission, filed a revised Interconnection and Operating Agreement by and between Duke Electric Transmission and GenPower Anderson, LLC. The Interconnection and Operating Agreement was made effective as of September 9, 2002 by the Commission.

Comment Date: October 28, 2002.

6. New England Power Pool and ISO New England Inc.

[Docket Nos. ER02–2330–001 and EL00–62–052]

Take notice that on October 7, 2002, New England Power Pool and ISO New England Inc. tendered for filing with the Federal Energy Regulatory Commission (Commission) a Compliance Filing in response to the Commission's September 20, 2002 Order issued in the above proceedings. Copies of these materials were sent to the NEPOOL Participants, Non-Participant Transmission Customers and the New England state governors and regulatory commission.

Comment Date: October 28, 2002.

7. Pinnacle West Capital Corporation

[Docket No. ER02–2385–001]

Take notice that on October 8, 2002, Pinnacle West Capital Corporation (PWCC) tendered for filing a refund report for the time value of revenues received from Phelps Dodge Energy Services (PDES).

A copy of this filing has been served on PDES.

Comment Date: October 29, 2002.

8. Westar Energy, Inc.

[Docket No. ER03–9–001]

Take notice that on October 8, 2002, Westar Energy, Inc. (Westar Energy) filed an errata to its Notification of Change in Status and Petition for Acceptance of Revised Market Rate Schedules. The errata corrects the proposed tariff sheets to comply with Order No. 614.

Comment Date: October 29, 2002.

9. El Paso Electric Company

[Docket No.ER03–23–000]

Take notice that on October 8, 2002, El Paso Electric Company (EPE) tendered for filing eight umbrella service agreements for firm transmission service, two umbrella service agreements for non-firm transmission service, and seven service agreements and accompanying specification sheets for firm transmission service transactions of exactly one year (collectively, TSAs) between EPE and nine of its customers. The rates, terms, and conditions of the TSAs are those of EPE's Open Access Transmission Tariff (OATT). EPE seeks effective dates for the TSAs in accordance with their service commencement dates.

Comment Date: October 29, 2002.

10. Los Esteros Critical Energy Facility, LLC

[Docket No. ER03–24–000]

Take notice that on October 8, 2002, Los Esteros Critical Energy Facility, LLC (Los Esteros) tendered for filing, under section'205 of the Federal Power Act, a request for authorization to make wholesale sales of electric energy, capacity and ancillary services at market-based rates, to reassign transmission capacity, and to resell firm transmission rights. Los Esteros proposes to own and operate an approximately 180 megawatt simple cycle natural gas-fired generation facility located in Santa Clara County, California.

Comment Date: October 29, 2002.

11. Blue Spruce Energy Center, LLC

[Docket No. ER03–25–000]

Take notice that on October 8, 2002, Blue Spruce Energy Center, LLC (the Applicant) tendered for filing, under section 205 of the Federal Power Act (FPA), a request for authorization to make wholesale sales of electric energy, capacity, replacement reserves, and ancillary services at market-based rates, to reassign transmission capacity, and to resell firm transmission rights. Applicant proposes to own and operate a 300 MW gas fired, simple cycle electric generating facility in Aurora, Colorado.

Comment Date: October 29, 2002.

12. Wisconsin Electric Power Company

[Docket No. ER03–26–000]

Take notice that on October 8, 2002, Wisconsin Electric Power Company

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(Wisconsin Electric) tendered for filing revisions to the Wisconsin Corporation Operating Companies (WEC Operating Companies) Joint Ancillary Services Tariff. (WEC Operating Companies FERC Electric Tariff, Original Volume No. 2)

Wisconsin Electric respectfully requests an effective date October 15, 2002.

Comment Date: October 29, 2002.

13. Edison Sault Electric Company

[Docket No. ES03–3–000]

Take notice that on October 2, 2002, Edison Sault Electric Company (Edison Sault) filed an application pursuant to section 204 of the Federal Power Act seeking authorization to issue, over a two-year period, long-term and short-term debt to its parent company, Wisconsin Energy Corporation, and/or short term debt to other third-party lenders, with no more than $50 million outstanding at any one time.

Edison Sault also requests a waiver of the Commission's competitive bidding and negotiated placement requirements at 18 CFR 34.2.

Comment Date: October 23, 2002.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with rules 211 and 214 of the commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–27928 Filed 11–1–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–2227–001, et al.]

Creed Energy Center, LLC, et al.; Electric Rate and Corporate Regulation Filings

October 15, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1 Creed Energy Center, LLC

[Docket No. ER02–2227–001]

Take notice that on October 10, 2002, Creed Energy Center, LLC tendered for filing a revised rate schedule to correct an error in the name of the company.

Comment Date: October 31, 2002.

2. RockGen Energy LLC

[Docket No. ER02–2314–001]

Take notice that on October 10, 2002, RockGen Energy LLC (the Applicant) tendered for filing with the Federal Energy Regulatory Commission (Commission), under section'205 of the Federal Power Act, a compliance filing pursuant to the Commission's September 10, 2002 Order in the above-captioned proceeding.

Comment Date: October 31, 2002.

3. Allegheny Energy Service Corporation, on behalf of Monongahela Power Company, The Potomac Edison Company, and West Penn Power Company (Allegheny Power)

[Docket No. ER02–2561–001

Take notice that on October 10, 2002, Allegheny Energy Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company, and West Penn Power Company (Allegheny Power), filed an amendment to its Interconnection Agreement (Agreement) with Mill Run Windpower LLC as First Revised Sheet No. 12 to First Revised Service Agreement No. 345 under Allegheny Power's Open Access Transmission Tariff. The proposed effective date for First Revised Sheet No.12 to First Revised Service Agreement No. 345 is September 20, 2002.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, and the West Virginia Public Service Commission.

Comment Date: October 31, 2002.

4. NorthWestern Energy, L.L.C.

[Docket No. ER02–2569–000]

Take notice that on October 4, 2002 NorthWestern Energy, L.L.C. (NWE) filed with the Federal Energy Regulatory Commission (Commission) pages of Exhibit No. NWE–3 that were inadvertently omitted from NWE's September 20, 2002 filing with the Commission. On October 7, 2002, NWE filed a few more pages to Exhibit No. NWE–3 that were inadvertently omitted from the October 4, 2002 filing.

Comment Date: October 28, 2002.

5. CP Power Sales Eighteen, L.L.C.

[Docket No. ER03–30–000]

Take notice that on October 10, 2002, CP Power Sales Eighteen, L.L.C. tendered for filing a Notice of Succession. Effective September 10, 2002, CP Power Sales Eighteen, L.L.C. changed its name to Midwest Generation Energy Services, LLC.

Comment Date: October 31, 2002.

6. The United Illuminating Company

[Docket No. ER03–31–000]

Take notice that on October 10, 2002, The United Illuminating Company (The United Illuminating Company) tendered for filing with the Federal Energy Regulatory Commission (Commission) an Interconnection Agreement between UI and Cross-Sound Cable Company, LLC , executed pursuant to UI's Open Access Transmission Tariff, FERC Electric Tariff, Original Volume No. 4, as amended.

Comment Date: October 31, 2002.

7. Virginia Electric and Power Company

[Docket Nos. ER03–32–000]

Take notice that on October 10, 2002 Virginia Electric and Power Company (Dominion Virginia Power), tendered for filing revisions to its Amended and Restated Interconnection and Operating Agreement (I&O Agreement), First Revised Rate Schedule FERC No. 126, between Dominion Virginia Power and Old Dominion Electric Cooperative (Old Dominion). The revisions address generation reserves in Section 8.05(a), operating costs in Section 11.01, reserve capacity charges in Appendix I and the appropriate billing format in Appendix L.

Dominion Virginia Power respectfully requests that the Commission allow the revised I&O Agreement to become effective on January 1, 2001 and allow the revisions in Section 8.05(a) and Appendix I to become effective as of January 1, 2002.

Copies of the filing were served upon Old Dominion, the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment Date: October 31, 2002.

8. Duquesne Light Company

[Docket No. ER03–33–000]

Take notice that on October 11, 2002, Duquesne Light Company (DLC) filed a Service Agreement for Retail Network Integration Transmission Service and a Network Operating Agreement for Retail Network Integration Transmission Service dated October 11, 2002 with Constellation NewEnergy, Inc. under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement and Network Operating Agreement adds Constellation NewEnergy, Inc. as a customer under the Tariff. DLC requests an effective date of October 11, 2002 for the Service Agreement.

Comment Date: November 1, 2002.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–27932 Filed 11–1–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–10–003, et al.]

Duke Energy Oakland, LLC, et al.; Electric Rate and Corporate Filings

October 25, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Duke Energy Oakland, LLC

[Docket Nos. ER02–10–003, ER02–240–003, and ER02–1478–002]

Take notice that on October 22, 2002, Duke Energy Oakland, LLC (DEO) tendered for filing certain revisions to Schedules A and B of its RMR Agreement (RMR Agreement) with the California Independent System Operator (CAISO). The revisions are proposed in light of an Offer of Settlement submitted in the above-referenced dockets. DEO states that the revised tariff sheets resolve all outstanding issues related to DEO's 2002 Annual Fixed Revenue Requirement in the above referenced dockets.

DEO requests an effective date of January 1, 2002 for these revisions. Copies of the filing have been served upon each person designated on the official service list compiled by the Secretary in these proceedings.

Comment Date: November 12, 2002.

2. California Independent System Operator Corporation

[Docket No. ER02–1656–007]

Investigation of Wholesale Rates of Public Utility Sellers of Energy and Ancillary Services in the Western Systems Coordinating Council

[Docket No. EL01–68–023]

Take notice that on October 21, 2002, the California Independent System Operator Corporation (ISO) tendered for filing with the Federal Energy Regulatory Commission (Commission) a Report on Demand Response, in compliance with the Commission's July 17, 2002 Order issued in the above-referenced dockets.

Comment Date: November 12, 2002.

3. Aquila, Inc.

[Docket No. ER02–2170–001]

Take notice that on October 22, 2002, Aquila, Inc. d/b/a Aquila Networks-MPS (Aquila), filed with the Commission, pursuant to Section 205 of the Federal Power Act, 16 U.S.C. 824d, and Part 35 of the Commission regulations, Rate Schedule FERC No. 120, an amended Master Power Purchase and Sale Agreement Confirmation between Aquila and its affiliate Aquila Merchant Services, Inc.

Comment Date: November 12, 2002.

4. ISO New England Inc.

[Docket No. ER02–2463–001]

Take notice on October 23, 2002, pursuant to Section 205 of the Federal Power Act and in compliance with the Commission's order dated October 9, 2002, 101 FERC ¶ 61,003 (2002), ISO New England Inc. filed with the Federal Energy Regulatory Commission an unredacted Reliability Agreement dated August 1, 2002 between ISO–NE and Devon Power LLC.

Copies of said filing have been served upon all parties to this proceeding, and upon NEPOOL Participants, and upon all non-Participant entities that are customers under the NEPOOL Open Access Transmission Tariff, as well as upon the utility regulatory agencies of the six New England States.

Comment Date: November 13, 2002.

5. Duke Energy Corporation

[Docket No. ER02–2553–001]

Take notice that on October 23, 2002, Duke Energy Corporation, on behalf of Duke Electric Transmission, (collectively, Duke) tendered for filing an amended Notice of Cancellation of the Service Agreement for Network Integration Transmission Service between Duke and Cincinnati Gas and Electric Company, PSI Energy, Inc., and Cinergy Services, Inc., as agent for and on behalf of Cincinnati Gas and Electric Company, PSI Energy, Inc., and the Commissioners of Public Works of the City of Greenwood, South Carolina.

Duke requests an effective date for the Notice of Cancellation of October 24, 2002.

Comment Date: November 13, 2002.

6. Kentucky Utilities Company

[Docket No. ER02–2608–001]

Take notice that on October 22, 2002, Kentucky Utilities Company (KU) tendered for filing an Amendment to Interchange Agreement between the City of Paris, Kentucky (City) and Kentucky Utilities Company, dated June 25, 2002 (Amendment). The Amendment, along with the Interchange Agreement was appended to such filing as Exhibit 1 and 2, respectively.

Comment Date: November 12, 2002.

7. Calpine Northbrook Energy Marketing, LLC

[Docket No. ER03–36–001]

Take notice that on October 23, 2002, Calpine Northbrook Energy Marketing,

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LLC submitted for filing its triennial market power analysis in compliance with the Commission Order issued in this docket on March 4, 1999.

Comment Date: November 13, 2002.

8. Montana-Dakota Utilities Co., A Division of MDU Resources Group, Inc.

[Docket No. ER03–68–000]

Take notice that on October 21, 2002, Montana-Dakota Utilities Co. (Montana-Dakota), a Division of MDU Resources Group, Inc., tendered for filing the restated "Agreement Covering Operation and Maintenance of Upper Missouri G & T Electric Cooperative's Electric Facilities" dated February 3, 1999 and "Amendment No. 1 to Agreement Covering Operation and Maintenance of Upper Missouri G & T Electric Cooperative's Electric Facilities' dated July 23, 2002. The Agreement is being filed to implement Amendment No. 1 to the Agreement and to comply with Commission Order No. 614. Order No. 614 requires that as changes are made to a portion of a tariff or rate schedule, the Commission will require that the entire rate schedule be re-filed in a format consistent with the requirements of Order No. 614. Montana-Dakota designates the Agreement and Amendment, together, as Revised Rate Schedule FERC No. 35.

Montana-Dakota requests an effective date of July 23, 2002 for the Amendment, and requests whatever waivers may be necessary for that effective date or as otherwise necessary for the Commission's acceptance of the Revised Rate Schedule No. 35. Montana-Dakota states that service of its filing has been made upon Upper Missouri G & T Electric Cooperative and upon applicable state utility commissions as set out in the filing.

Comment Date: November 12, 2002.

9. Midwest Generation, LLC

[Docket No. ER03–69–000]

Take notice that on October 22, 2002, Midwest Generation, LLC (Midwest) tendered for filing a Fourth Revised Service Agreement No. 1 (the Collins Generating Station Power Purchase Agreement between Commonwealth Edison Company and Midwest).

Comment Date: November 12, 2002.

10. Tucson Electric Power Company

[Docket No. ER03–70–000]

Take notice that on October 22, 2002, Tucson Electric Power Company (Tucson Electric) tendered for filing a Notice of Cancellation of the Power Sales Agreement by and between Tucson Electric and Navopache Electric Cooperative, Inc., designated as Service Agreement No. 10 under Tucson Electric's Market-Based Power Sales Tariff, FERC Electric Tariff Original Volume No. 3.

Comment Date: November 12, 2002.

11. Deseret Generation & Transmission Co-operative, Inc.

[Docket No. ER03–71–000]

Take notice that on October 22, 2002, Deseret Generation & Transmission Co-operative, Inc. (Deseret) tendered for filing Amendments to First Revised Service Agreement Nos. 1 though 6 to its FERC Electric Tariff, Volume No. 1. The amendment provides for a rate rebate for the calendar year 2002 to each of Deseret's six Member Cooperatives. Deseret requests an effective date of December 9, 2002.

Copies of this filing were served upon Deseret's six Member Cooperatives.

Comment Date: November 12, 2002.

12. Westar Energy, Inc.

[Docket No. ER03–72–000]

Take notice that on October 23, 2002, Westar Energy, Inc. (Westar Energy) submitted for filing a Notice of Cancellation for Rate Schedule FERC No. 208, Contract between Westar Energy and the City of Seneca, Kansas, effective October 31, 2002.

Copies of this filing were served on the City of Seneca, Kansas and the Kansas Corporation Commission.

Comment Date: November 13, 2002.

13. PPL Electric Utilities Corporation

[Docket No. ER03–73–000]

Take notice that on October 23, 2002, PPL Electric Utilities Corporation (PPL Electric Utilities) filed a notice of termination of Rate Schedule FERC No. 95. PPL Electric Utilities requests that the termination be effective on December 22, 2002.

Notice of the termination has been served on Public Service Electric and Gas Company.

Comment Date: November 13, 2002.

14. PPL Electric Utilities Corporation

[Docket No. ER03–74–000]

Take notice that on October 23, 2002, PPL Electric Utilities Corporation (PPL Electric Utilities) filed a notice of termination of Rate Schedule FERC No. 96. PPL Electric Utilities requests that the termination be effective on December 22, 2002.

Notice of the termination has been served on Delmarva Power & Light Company.

Comment Date: November 13, 2002.

15. PPL Electric Utilities Corporation

[Docket No. ER03–75–000]

Take notice that on October 23, 2002, PPL Electric Utilities Corporation (PPL Electric Utilities) filed a notice of termination of Rate Schedule FERC No. 97. PPL Electric Utilities requests that the termination be effective on December 22, 2002.

Notice of the termination has been served on Atlantic City Electric Company.

Comment Date: November 13, 2002.

16. PPL Electric Utilities Corporation

[Docket No. ER03–76–000]

Take notice that on October 23, 2002, PPL Electric Utilities Corporation (PPL Electric Utilities) filed a notice of termination of Rate Schedule FERC No. 107. PPL Electric Utilities requests that the termination be effective on December 22, 2002.

Notice of the termination has been served on Philadelphia Electric Company.

Comment Date: November 13, 2002.

17. PPL Electric Utilities Corporation

[Docket No. ER03–77–000]

Take notice that on October 23, 2002, PPL Electric Utilities Corporation (PPL Electric Utilities) filed a notice of termination of PPL Electric Utilities' Rate Schedule FERC No. 109. PPL Electric Utilities requests that the termination be effective on December 22, 2002.

Notice of the termination has been served on Long Island Lighting Company.

Comment Date: November 13, 2002.

18. PPL Electric Utilities Corporation

[Docket No. ER03–78–000]

Take notice that on October 23, 2002, PPL Electric Utilities Corporation (PPL Electric Utilities) filed a notice of termination of Rate Schedule FERC No. 110. PPL Electric Utilities requests that the termination be effective on December 22, 2002.

Notice of the termination has been served on Public Service Electric and Gas Company.

Comment Date: November 13, 2002.

19. PPL Electric Utilities Corporation

[Docket No. ER03–79–000]

Take notice that on October 23, 2002, PPL Electric Utilities Corporation (PPL Electric Utilities) filed a notice of termination of Rate Schedule FERC No. 142. PPL Electric Utilities requests that the termination be effective on December 22, 2002.

Notice of the termination has been served on Consolidated Edison Company of New York, Inc.

Comment Date: November 13, 2002.

20. PPL Electric Utilities Corporation

[Docket No. ER03–80–000]

Take notice that on October 23, 2002, PPL Electric Utilities Corporation (PPL Electric Utilities) filed a notice of termination of Rate Schedule FERC No. 143. PPL Electric Utilities requests that the termination be effective on December 22, 2002.

Notice of the termination has been served on Electric Clearinghouse, Inc.

Comment Date: November 13, 2002.

21. Reliant Energy Solutions West, LLC

[Docket No. ER03–81–000]

Take notice that on October 23, 2002, Reliant Energy Solutions West, LLC (RESW) petitioned the Federal Energy Regulatory Commission to grant certain blanket authorizations, to waive certain of the Commission's Regulations and to issue an order accepting RESW's FERC Electric Rate Schedule No. 1.

Comment Date: November 13, 2002.

22. Mountainview Power Company

[Docket No. ER98–4301–002]

Take notice that on October 22, 2002, pursuant to the Federal Energy Regulatory Commission's Order in this docket, Mountainview Power Company (Mountainview) submitted its triennial market power update. In addition, pursuant to Section 205 of the Federal Power Act, Mountainview submitted its second revision to FERC Electric Rate Schedule, Original Volume No. 1, and a supplemental code of conduct reflecting new corporate affiliations.

Comment Date: November 12, 2002.

23. Public Service Company of New Mexico

[Docket No. OA03–1–000]

Take notice that on October 16, 2002, Public Service Company of New Mexico (PNM) submitted for filing an updated version of its written procedures for implementing Standards of Conduct. PNM is replacing the predecessor version of Standards of Conduct on file with the Commission with this updated version, and has posted the update on PNM's Open Access Same-Time Information System (OASIS). PNM's filing is available for public inspection at its offices in Albuquerque, New Mexico.

Informational copies of this filing have been sent to the New Mexico Public Regulation Commission and to the New Mexico Attorney General.

Comment Date: November 6, 2002.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502–8222 or TTY, (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 02–27929 Filed 11–1–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–2414–001, et al.]

Florida Power & Light Company, et al.; Electric Rate and Corporate Filings

October 28, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Florida Power & Light Company

[Docket No. ER02–2414–001]

Take notice that on October 25, 2002, Florida Power & Light Company (FPL) filed, pursuant to the Commission's Order issued on September 25, 2002 in Docket No. ER02–2414–000, a compliance filing making the required changes to the Interconnection & Operation Agreement between FPL and Duke Energy Fort Pierce, LLC.

Comment Date: November 15, 2002.

2. Southern California Edison Company

[Docket No. ER03–82–000]

Take notice that on October 24, 2002, Southern California Edison Company (SCE) tendered for filing a Reliability Management System Agreement (RMS Agreement) between SCE and High Desert Power Trust (HDPT). SCE respectfully requests the RMS Agreement to become effective on December 24, 2002.

The RMS Agreement sets forth terms and conditions intended to maintain the reliable operation of the Western Interconnection through the generator's commitment to comply with certain reliability standards.

Copies of this filing were served upon the Public Utilities Commission of the State of California and HDPT.

Comment Date: November 14, 2002.

3. TRANSLink Development Company, LLC

[Docket No. ER03–83–000]

Take notice that on October 24, 2002, TRANSLink Development Company, LLC (TRANSLink) filed with the Commission rate schedules and attachments for service on the TRANSLink transmission system within the Midwest ISO region consistent with the guidance provided by the Commission's April 25, 2002 Order Authorizing Disposition of Jurisdictional Facilities and Participation in the Midwest ISO Regional Transmission Organization, 99 FERC ¶ 61,106.

TRANSLink filed at the Commission schedules for rates for Firm Point-To-Point Transmission Service, Non-Firm Point-To-Point Transmission Service and Network Integration Transmission Service on the TRANSLink network; and a schedule explaining the calculation and application of TRANSLink's Administrative Fee. TRANSLink also filed tariff attachments outlining TRANSLink's Emergency Redispatch Service and TRANSLink's Rate Calculation Process for Network Integration and Point-to-Point Transmission Service; setting forth retail access terms; containing definitions and general provisions that are specific to TRANSLink transactions pursuant to TRANSLink rate schedules to the MISO Tariff. TRANSLink requested that the rate schedules and attachments be accepted by the Commission with an effective date of December 23, 2002, and an operational date when TRANSLink commences commercial operations and begins providing transmission services, targeted for the third quarter of 2003.

Comment date: November 14, 2002.

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4. Southwest Power Pool, Inc.

[Docket No. ER03–84–000]

Take notice that on October 24, 2002, Southwest Power Pool, Inc. (SPP) submitted for filing executed service agreements for Firm Point-to-Point Transmission Service, Non-Firm Point-to-Point Transmission Service, and Loss Compensation Service with RWE Trading Americas, Inc. (Transmission Customer).

SPP seeks an effective date of September 26, 2002 for these service agreements.

The Transmission Customer was served with a copy of this filing.

Comment Date: November 14, 2002.

5. PJM Interconnection, L.L.C.

[Docket Nos. ER03–85–000]

Take notice that on October 24, 2002 PJM Interconnection, L.L.C. (PJM), submitted for filing revised pages to PJM's Open Access Transmission Tariff (PJM Tariff). PJM states that these revised tariff sheets contain the same (with certain minor exceptions, as explained in the filing) provisions regarding terms and conditions for interconnection of generation facilities as those that PJM filed in Docket No. ER02–1333–000 on March 18, 2002. The Commission accepted and suspended those tariff sheets by its order dated May 17, 2002, 99 FERC ¶ 61,189 (2002), to become effective, subject to refund and subject to its final rule in Docket No. RM02–1–000, on November 1, 2002. It is necessary to re-file these tariff sheets, PJM states, to re-designate them in conformance with PJM's current effective Fifth Revised Volume No. 1 tariff, which has superceded the Fourth Revised Volume No. 1 that was in effect at the time of its March 18, 2002, filing. PJM proposes to make the enclosed tariff sheets effective on November 1, 2002, the end of the suspension period under the Commission's cited order of May 17, 2002, subject to the same conditions prescribed by that order.

Copies of this filing were served upon the official service list for Docket No. ER02–1333–000, all members of PJM, and the state electric utility regulatory commissions within the PJM region.

Comment Date: November 14, 2002.

6. GWF Energy LLC

[Docket No. EC03–6–000]

Take notice that on October 24, 2002, GWF Energy LLC tendered for filing an application under Section 203 of the Federal Power Act for approval of an intra-corporate reorganization.

Comment Date: November 14, 2002.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502–8222 or TTY, (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 02–28101 Filed 11–1–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–763–003, et al.]

Indigo Generation LLC, et al.; Electric Rate and Corporate Filings

October 23, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Indigo Generation LLC, Larkspur Energy LLC and Wildflower Energy LP (collectively the Wildflower Entities)

[Docket No. ER02–763–003]

Take notice that on October 21, 2002, Indigo Generation LLC, Larkspur Energy LLC and Wildflower Energy LP (collectively the Wildflower Entities) supplemented their June 26, 2002 filing in compliance with the directives of the Commission in a letter order dated June 11, 2002 in the above-captioned dockets.

Comment Date: November 12, 2002.

2. PECO Energy Company

[Docket No. ER02–1779–001]

Take notice that on October 21, 2002, PECO Energy Company (PECO) submitted for filing First Revised Page 32 to the Interconnection Agreement between PECO, and Rock Springs Generation LLC and CED Rock Springs, Inc. (Rock Springs/CED), and requests an effective date of October 21, 2002. The Interconnection Agreement had originally been filed by PECO Energy unexecuted. The unexecuted Interconnection Agreement was designated as Service Agreement No. 669 under PJM Interconnection L.L.C.'s (PJM) FERC Electric Tariff Fourth Revised Volume No. 1, and accepted by the Commission for filing with an effective date of May 10, 2002, subject to PECO Energy making this compliance filing. Original Page 32 has been revised to reflect the electronic signatures of the parties to the Interconnection Agreement.

Other than the addition of the parties' signatures, the Interconnection Agreement remains unchanged. Copies of this filing were served on Rock Springs/CED and PJM.

Comment Date: November 12, 2002.

3. New England Power Pool and ISO New England Inc.

[Docket No. ER02–2330–003]

Take notice that on October 21, 2002, the New England Power Pool (NEPOOL) Participants Committee and ISO New England Inc. submitted revisions to Market Rule 1 in response to requirements of the Commission's September 20, 2002 order in New England Power Pool *et al.*, 100 FERC ¶ 61,287 (2002).

The NEPOOL Participants Committee states that copies of these materials were sent to all persons identified on the service lists in the captioned proceedings, the NEPOOL Participants and the six New England state governors and regulatory commissions.

Comment Date: November 12, 2002.

4. PPL Electric Utilities Corporation

[Docket No. ER03–3–001]

Take notice that on October 21, 2002, PPL Electric Utilities Corporation (PPL Electric) filed an executed Interconnection Agreement between PPL Electric and Allegheny Electric Cooperative, Inc. for interconnection at the Renovo/Chapman delivery point. The executed Interconnection Agreement replaces the unexecuted

version that was filed in this docket on October 1, 2002.

Comment Date: November 12, 2002.

5. PPL Electric Utilities Corporation

[Docket No. ER03–4–001]

Take notice that on October 21, 2002, PPL Electric Utilities Corporation (PPL Electric) filed an executed Interconnection Agreement between PPL Electric and Allegheny Electric Cooperative, Inc. for interconnection at the Fairfield delivery point. The executed Interconnection Agreement replaces the unexecuted version that was filed in this docket on October 1, 2002.

Comment Date: November 12, 2002.

6. PECO Energy Company

[Docket No. ER03–63–000]

Take notice that on October 21, 2002 PECO Energy Company (PECO) submitted for filing an Interconnection Agreement by and between PECO and FPL Energy Marcus Hook, L.P. (FPL) for Generation Interconnection and Parallel Operation, designated as Service Agreement No. 791 under PJM Interconnection, L.L.C.'s FERC Electric Tariff, Fourth Revised Volume No. 1, to be effective on October 21, 2002. Copies of this filing were served on Visteon and PJM.

Comment Date: November 12, 2002.

7. PECO Energy Company

[Docket No. ER03–64–000]

Take notice that on October 21, 2002, PECO Energy Company (PECO) submitted for filing a Construction Agreement between PECO and Fairless Energy, LLC (Fairless Energy) related to the Fairless Energy Station, to be located in Fairless Hills, Pennsylvania. The Construction Agreement was designated as Service Agreement 792 under PJM Interconnection L.L.C.'s (PJM) FERC Electric Tariff Fourth Revised Volume No. 1. The proposed effective date for the Construction Agreement is October 21, 2002. Copies of this filing were served on Fairless Energy and PJM.

Comment Date: November 12, 2002.

8. Allegheny Trading Finance Company

[Docket No. ER03–65–000]

Take notice that on October 21, 2002, Allegheny Trading Finance Company (ATF) filed a market rate tariff of general applicability under which it proposes to sell capacity and energy to affiliates and non-affiliates at market-based rates, and to make such sales to franchised public utility affiliates at rates capped by a publicly available regional index price. ATF requests an effective date of October 22, 2002.

Comment Date: November 12, 2002.

9. Idaho Power Company

[Docket No. ER03–66–000]

Take notice that on October 21, 2002, Idaho Power Company filed the Goshen Series Capacitor Replacement Agreement between Idaho Power Company and PacifiCorp.

Comment Date: November 12, 2002.

10. PJM Interconnection, L.L.C.

[Docket No. ER03–67–000]

Take notice that on October 21, 2002 PJM Interconnection, L.L.C. (PJM), submitted for filing thirty-three executed interconnection service agreements and interim interconnection service agreements between PJM and Conectiv Bethlehem, Inc., Industrial Power Generating Corp., PPL Martins Creek, L.L.C., PSEG Nuclear LLC, MM Hackensack Energy L.L.C., Delaware Municipal Electric Corporation, Conectiv Delmarva Generation, Inc., Constellation Power Source Generation, Inc., PPL Holtwood, L.L.C., Energy Systems North East, L.L.C., Conectiv Mid-Merit Inc., Lebanon Methane Recovery, Inc., Williams Generation Company—Hazleton, Somerset Windpower, L.L.C., AES Red Oak, L.L.C., Susquehanna Electric Company, LMB Funding, Limited Partnership, PPL Susquehanna, LLC, AES Ironwood L.L.C., Sight and Sound Ministries, Inc., Motiva Enterprises, L.L.C., Public Service Electric and Gas Company, PSEG Power, L.L.C., PPL Montour, LLC, Mantua Creek Generating Company, LP, and Liberty Electric Power, LLC, and three notices of cancellation of certain ISAs and Interim ISAs that have been superceded.

PJM requests a waiver of the Commission's 60-day notice requirement to permit the effective dates agreed to by the parties. Copies of this filing were served upon each of the parties to the agreements and the state regulatory commissions within the PJM region.

Comment Date: November 12, 2002.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502–8222 or TTY, (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–27930 Filed 11–1–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC03–2–000, et al.]

WPS Empire State, Inc., et al.; Electric Rate and Corporate Regulation Filings

October 22, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. WPS Empire State, Inc

[Docket No. EC03–2–000]

Take notice that on October 17, 2002, WPS Empire State, Inc. (Empire) tendered for filing with the Federal Energy Regulatory Commission (Commission) pursuant to Section 203 of the Federal Power Act and Part 33 of the Commission's regulations, a request for authorization to engage in an internal restructuring whereby Empire transfers its ownership interest in three generating and associated facilities to three limited liability companies that will be wholly-owned by Empire

Copies of the filing were served on the New York Public Service Commission.

Comment Date: November 7, 2002.

2. New England Power Company and Central Vermont Public Service Corporation

[Docket No. EC03–3–000]

Take notice that on October 18, 2002, New England Power Company (NEP) and Central Vermont Public Service

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Corporation (CVPS) filed with the Federal Energy Regulatory Commission (Commission) an application pursuant to Section 203 of the Federal Power Act for authorization to transfer from NEP to CVPS the ownership of a section of a 0.8 mile long 34.5 kV transmission line associated with electric service provided to American Paper Mills of Vermont, Inc. located in Gilman, Vermont.

Comment Date: November 8, 2002.

3. WPS Beaver Falls Generation, LLC, WPS Niagara Generation, LLC, WPS Syracuse Generation, LLC

[Docket Nos. EG03–5–000, EG03–6–000, and EG03–7–000]

Take notice that on October 17, 2002, WPS Beaver Falls Generation, LLC (WPS Beaver Falls) WPS Niagara Generation, LLC (WPS Niagara) and WPS Syracuse Generation, LLC (WPS Syracuse) each having a business address of 1088 Springhurst Toad, Green Bay, Wisconsin, 54304, tendered for filing with the Federal Energy Regulatory Commission (Commission), an Application for Determination of Exempt Wholesale Generator Status pursuant to Part 365 of the Commission's Regulations (18 CFR part 365).

Applicants are each wholly-owned subsidiaries of WPS Empire State, Inc. (WPS Empire), a New York corporation and exempt wholesale generator which owns three generating facilities located in upstate New York: (1) the approximately 95 MW Beaver Falls Generating Facility located in Crogham (Beaver Falls Facility); (2) the approximately 53 MW Niagara Falls Generating Facility located in Niagara Falls (Niagara Facility); (3) and the approximately 108 MW Syracuse Generating Facility located in Solvay (Syracuse Facility). As part of an internal corporate reorganization, WPS Empire will transfer the Beaver Falls Facility to Applicant WPS Beaver Falls Generation, LLC, the Niagara Facility to WPS Niagara Generation, LLC, and the Syracuse Facility to WPS Syracuse Generation, LLC. No operational changes are anticipated as a result of these transactions.

Comment Date: November 12, 2002.

4. FPL Energy Hancock County Wind, LLC

[Docket No. EG03–8–000]

Take notice that on October 18, 2002, FPL Energy Hancock County Wind, LLC (the Applicant), with its principal office at 700 Universe Blvd., Juno Beach, Florida 33408, filed with the Federal Energy Regulatory Commission (the Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Applicant states that it is a Delaware limited liability company engaged directly and exclusively in the business of owning and operating an approximately 98 MW wind-powered generation facility located in Hancock County, Iowa. Electric energy produced by the facility will be sold at wholesale.

Comment Date: November 12, 2002.

5. Arizona Public Service Company v. Idaho Power Company

[Docket No. EL99–44–007]

Take notice that on October 10, 2002, Idaho Power Company tendered for filing with the Federal Energy Regulatory Commission (Commission) compliance filing pursuant to the Commission's September 5, 2002 Order, Opinion No. 460, 100 FERC ¶ 61,253 (2002).

Comment Date: November 12, 2002.

6. City of Azusa, California

[Docket No. EL03–14–000]

Take notice that on October 18, 2002, the City of Azusa, California (Azusa) submitted a Petition for a Declaratory Order (1) determining that Azusa's proffered Transmission Revenue Requirement (TRR) is appropriate under the California Independent System Operator Corporation's Tariff on file at the Commission for purposes of Azusa's becoming a Participating Transmission Owner; (2) approving Azusa's Transmission Owner (TO) Tariff; (3) waiving the filing fee otherwise applicable to a petition for declaratory order; and (4) granting any other relief or waivers necessary or appropriate for approval or implementation of Azusa's TRR and TO Tariff effective as of the later of January 1, 2003 or the effective date of a Transmission Control Agreement acceptable to Azusa.

Comment Date: November 18, 2002.

7. City of Anaheim, California

[Docket No. EL03–15–000]

Take notice that on October 18, 2002, the City of Anaheim, California (Anaheim) tendered for filing with the Federal Energy Regulatory Commission (Commission) a Petition for a Declaratory Order (1) determining that Anaheim's proffered Transmission Revenue Requirement (TRR) is appropriate under the California Independent System Operator Corporation's Tariff on file at the Commission for purposes of Anaheim's becoming a Participating Transmission Owner; (2) approving Anaheim's Transmission Owner (TO) Tariff; (3) waiving the filing fee otherwise applicable to a petition for declaratory order; and (4) granting any other relief or waivers necessary or appropriate for approval or implementation of Anaheim's TRR and TO Tariff effective as of the later of January 1, 2003 or the effective date of a Transmission Control Agreement acceptable to Anaheim.

Comment Date: November 18, 2002.

8. PPL Electric Utilities Corporation

[Docket No. EL03–16–000]

Take notice that on October 18, 2002, PPL Electric Utilities Corporation filed with the Federal Energy Regulatory Commission (Commission) a petition requesting that the Commission issue a declaratory order stating that, in the event that the Borough of Olyphant, Pennsylvania, takes over service to certain PPL's existing retail customers, neither the Settlement Agreement approved in Boroughs of Lansdale, *et al.*, Docket No. SC97–1–000, nor the Commission order approving that Agreement, would affect the existing retail stranded cost charges that such customers would be required to continue paying pursuant to orders of the Pennsylvania Public Utility Commission.

Comment Date: November 18, 2002.

9. Choctaw Generation Limited Partnership

[Docket No. ER98–3774–001]

Take notice that on October 17, 2002, Choctaw Generation Limited Partnership tendered for filing its Triennial Market Power Update.

Comment Date: November 7, 2002.

10. Dighton Power Associates, L.P.

[Docket No. ER99–616–001]

Take notice that on October 18, 2002, Dighton Power Associates, L.P. submitted for filing its triennial market analysis update in compliance with the Commission order issued in this docket on January 7, 1999.

Comment Date: November 8, 2002.

11. WPS Westwood Generation, LLC

[Docket No. ER02–2361–001]

Take notice that on October 17, 2002, WPS Westwood Generation, LLC (Westwood) filed supplementary cost support to its July 24, 2002 filing for recovery of the costs for Reactive Supply and Voltage Control from Generation Sources Service (Reactive Power Service) in response to the Commission's September 20, 2002 deficiency letter in this proceeding.

Comment Date: November 7, 2002.

12. Virginia Electric and Power Company Docket No. ER02–2485–001

[Docket No. ER02–2485–001]

Take notice that on October 17, 2002, Virginia Electric and Power Company, doing business as Dominion Virginia Power, tendered for filing a revised first page of its August 21, 2002 transmittal letter filed in these proceedings (Revised First Page) and a revised cover sheet (Revised Cover Sheet) to the Generator Interconnection and Operating Agreement (Interconnection Agreement) between Dominion Virginia Power and CPV Cunningham Creek LLC filed in these proceedings. The Revised First Page and Revised Cover Sheet have been modified to reflect a new proposed effective date in compliance with an informal Commission Staff request.

Dominion Virginia Power respectfully requests that the Commission accept the Revised First Page and the Revised Cover Sheet to the Interconnection Agreement to allow them to become effective on August 20, 2002.

Copies of the filing were served upon parties on the Commission's official service list and the Virginia State Corporation Commission.

Comment Date: November 7, 2002.

13. American Electric Power

[Docket No. ER02–2507–001]

Take notice that on October 17, 2002, American Electric Power Service Corporation (AEPSC) tendered for filing with the Commission a Compliance Filing in the above referenced Docket. On August 28, 2002 AEPSC had filed a Facilities, Operation and Maintenance Agreement (Facility Agreement) dated August 1, 2002, between Columbus Southern Power Company (d/b/a AEP), Consolidated Electric Cooperative, Inc. (hereinafter called CEC) and Buckeye Power, Inc. (hereinafter called Buckeye).

The Facility Agreement provides for the establishment of a new delivery point, pursuant to the provisions of the Power Delivery Agreement between Columbus Southern Power, Buckeye, The Cincinnati Gas & Electric Company, The Dayton Power and Light Company, Monongahela Power Company, Ohio Power Company and Toledo Edison Company, dated January 1, 1968. AEP requested an effective date of October 1, 2002 for the Facility Agreement.

On October 2, 2002 the Commission issued an Order directing AEPSC to correct certain deficiencies in the August 28, 2002 submission. This subsequent filing complies with the Commission's Order of October 2, 2002.

AEPSC states that copies of its Compliance Filing were served upon CEC, Buckeye and the Public Utilities Commission of Ohio.

Comment Date: November 8, 2002.

14. CED ROCK SPRINGS, INC.

[Docket No. ER02–2546–001]

Take notice that on October 18, 2002, CED Rock Springs, Inc. (CEDRS) tendered for filing an Amendment to its Application dated September 6, 2002, which sought an Order accepting CEDRS's FERC Electric Rate Schedule No. 1, granting certain blanket approvals, including the authority to sell electricity at market-base rates, and waiving certain regulations of the Commission. CEDRS also filed its FERC Electric Rate Schedule No. 1, seeking an effective date of October 10, 2002.

Comment Date: November 8, 2002.

15. AES NewEnergy, Inc.,

[Docket No. ER02–2567–001]

Take notice on October 18, 2002, Constellation NewEnergy, Inc. (NewEnergy) submitted for filing a revised market-based tariff (Tariff) reflecting its name change from AES NewEnergy, Inc. to Constellation NewEnergy, Inc., and the elimination of its Code of Conduct with Central Illinois Light Co. and Indianapolis Power & Light Company, which is no longer applicable. NewEnergy requests waiver of the 60-day prior notice requirement to allow its revised Tariff to become effective as of September 9, 2002.

Comment Date: November 8, 2002.

16. MidAmerican Energy Company

[Docket No. ER02–2603–001]

Take notice that on October 18, 2002, MidAmerican Energy Company (MidAmerican), filed with the Federal Energy Regulatory Commission (Commission) a supplement to its September 26, 2002, filing in this docket, consisting of a red-lined version of the Generation Interconnection Contract (Contract), entered into by MidAmerican, as transmission and distribution delivery services provider (Delivery), and MidAmerican, as wholesale merchant (Merchant). The supplement consists of a red-lined version of the Contract, showing revisions to Exhibits A and B, and the addition of Exhibit F.

MidAmerican requests an effective date of May 1, 2002, for the Revised Contract and seeks a waiver of the Commission's notice requirement. MidAmerican has served a copy of the filing on the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment Date: November 8, 2002.

17. Wisconsin Public Service Corporation

Docket No. ER03–29–000]

Take notice that on October 10, 2002, Wisconsin Public Service Corporation (WPSC) tendered for filing a revised partial requirements service agreement with Washington Island (WIEC). Fourth Revised Service Agreement No. 9 provides WIEC's contract demand nominations for January 2003—December 2007, under WPSC's W–2A partial requirements tariff.

The company states that copies of this filing have been served upon WIEC and to the State Commissions where WPSC serves at retail.

Comment Date: November 4, 2002.

18. Westar Energy, Inc.

[Docket No. ER03–50–000]

Take notice that on October 17, 2002, pursuant to Rule 204 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.204, Westar Energy, Inc. (Westar Energy), tendered for filing an Application for Waiver of the Commission's FAC regulations, 18 CFR 35.14(a)(6). Westar Energy states that the waiver is necessary to enable it to recover its costs related to coal contract buy-down and buy-out payments through its wholesale fuel adjustment clause (FAC).

Comment Date: November 7, 2002.

19. Southern California Edison Company

[Docket No. ER03–52–000]

Take notice that on October 17, 2002, Southern California Edison Company (SCE) tendered for filing a Service Agreement for Wholesale Distribution Service under SCE's Wholesale Distribution Access Tariff and an Interconnection Facilities Agreement (Agreements) between SCE and NM Milliken Genco LLC (NM Milliken Genco). SCE respectfully requests the Agreements become effective on October 18, 2002.

NM Milliken Genco intends to install, own and operate four 1,440 kW reciprocating engines operating on landfill gas (Milliken Landfill Project) at the Milliken Landfill located in Ontario, California. These Agreements specify the terms and conditions under which SCE will interconnect NM Milliken Genco's Milliken Landfill Project to its electrical system and provide Distribution Service for up to 5.44 MW of power produced Milliken Landfill Project.

Copies of this filing were served upon the Public Utilities Commission of the

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State of California and NM Milliken Genco.

Comment Date: November 7, 2002.

20. Southern California Edison Company

[Docket No. ER03–53–000]

Take notice that on October 17, 2002, Southern California Edison Company (SCE) tendered for filing a Service Agreement for Wholesale Distribution Service under SCE's Wholesale Distribution Access Tariff and an Interconnection Facilities Agreement (Agreements) between SCE and NM Mid Valley Genco LLC (NM Mid Valley Genco). SCE respectfully requests the Agreements become effective on October 18, 2002.

NM Mid Valley Genco intends to install, own and operate three 1,440 kW reciprocating engines operating on landfill gas (Mid Valley Landfill Project) at the Mid Valley Landfill located in Rialto, California. These Agreements specify the terms and conditions under which SCE will interconnect NM Mid Valley Genco's Mid Valley Landfill Project to its electrical system and provide Distribution Service for up to 4.08 MW of power produced Mid Valley Landfill Project.

Copies of this filing were served upon the Public Utilities Commission of the State of California and NM Mid Valley Genco.

Comment Date: November 7, 2002.

21. WPS Beaver Falls Generation, LLC, WPS Niagara Generation, LLC, and WPS Syracuse Generation, LLC

[Docket Nos. ER03–54–000, ER03–55–000, and ER03–56–000]

Take notice that on October 17, 2002, WPS Empire State, Inc. (Empire) and its proposed subsidiaries, including WPS Beaver Falls Generation, LLC (WPS Beaver Falls), WPS Niagara Generation, LLC (WPS Niagara) and WPS Syracuse Generation, LLC (WPS Syracuse) (collectively, the Companies), hereby tendered for filing requests for market-based rate authority for each of the Companies. Applicants request that the Commission make the market-based rate tariffs filed for the Companies effective on December 17, 2002, sixty days after the date of this filing.

Comment Date: November 7, 2002.

22. Southern Company Services, Inc.

[Docket No. ER03–57–000]

Take notice that on October 17, 2002, Southern Company Services, Inc. (SCS), acting on behalf of Alabama Power Company (APC), filed an amendment (the Amendment) to the Interconnection Agreement Between mobile Energy Services Company, L.L.C. and APC (the Agreement) (Service Agreement No. 416 under Southern Operating Companies' FERC Electric Tariff, Fourth Revised Volume No. 5). Pursuant to the Amendment, the term of the Agreement will be extended until November 18, 2002.

Comment Date: November 7, 2002.

23. Cinergy Services, Inc.

[Docket No. ER03–58–000]

Take notice that on October 18, 2002. Cinergy Services, Inc. (Cinergy), tendered for filing a form of service agreement for ancillary services to be incorporated into the Cinergy Open Access Transmission Tariff (OATT), Second Revised, Volume No. 5, and contemporaneously submitted for filing an executed electric service agreement for ancillary services, designated as Service Agreement No. 344 under the Cinergy OATT between Cinergy and Midwest Independent System Operator (MISO). Cinergy respectfully requests an effective date November 1, 2002.

Copies of the filing have been served on MISO, the Public Utility Commission of Ohio, the Indiana Utility Regulatory Commission and ancillary service customers under the Cinergy OATT.

Comment Date: November 8, 2002.

24. Entergy Services, Inc.

[Docket No. ER03–59–000]

Take notice that on October 17, 2002, Entergy Services, Inc., on behalf of Entergy New Orleans, Inc., tendered for filing an unexecuted Interconnection and Operating Agreement with Duke Energy Orleans, LLC (Duke Orleans), and a Generator Imbalance Agreement with Duke Orleans.

Comment Date: November 7, 2002.

25. Deseret Generation & Transmission Co-operative, Inc.

[Docket No. ER03–60–000]

Take notice that on October 15, 2002, Desert Generation & Transmission Co-operative, Inc. Submitted an informational filing, providing the exact amount paid as a 2001 Rate Rebate to each of its six member cooperatives under Service Agreement Nos. 1 through 6 of FERC Electric Tariff, Original Volume No. 1.

Comment Date: November 5, 2002.

26. Ameren Services Company

[Docket No.ER03–61–000]

Take notice that on October 18, 2002, Ameren Services Company (ASC) tendered for filing Service Agreements for Firm Point-to-Point Transmission Service and Non-Firm Point-to-Point Transmission Service between ASC and Dominion Energy Marketing, Inc., PLL EnergyPlus, LLC, RWE Trading Americas Inc. and Select Energy, Inc. (the parties). ASC asserts that the purpose of the Agreements is to permit ASC to provide transmission service to the parties pursuant to Ameren's Open Access Transmission Tariff.

Comment Date: November 8, 2002.

27. The New Power Company

[Docket No. ER03–62–000]

Take notice that on October 18, 2002, The New Power Company (NewPower) tendered for filing a Notice of Cancellation of its Rate Schedule, Designated as Rate Schedule FERC No. 1. New Power requests cancellation effective January 31, 2003, which is more than sixty (60) days and less than 120 days after the date of this filing.

Comment Date: November 8, 2002.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–27925 Filed 11–1–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No.11797–000]

Grande Pointe Power Corporation; Notice of Availability of Environmental Assessment

October 24, 2002.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission (Commission or FERC) regulations contained in the Code of Federal Regulations (CFR) (18 CFR part 380 (FERC Order No. 486, 52 FR 47897)), the Office of Energy Projects staff (staff) reviewed the application for an original minor license for the Three Rivers Project, located on the St. Joseph River in the city of Three Rivers, St. Joseph County, Michigan, and has prepared an environmental assessment (EA) for the project. In this EA, the staff has analyzed the potential environmental effects of the existing project and concluded that licensing the project, with staff's recommended measures, would not constitute a major federal action significantly affecting the quality of the human environment.

A copy of the EA is available for review at the Commission in the Public Reference Room, or it may be viewed on the Commission's website at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number, excluding the last three digits in the docket number field, to access the document. For assistance, call (202) 502–8222 or (202) 502–8659 (for TTY).

Any comments should be filed within 45 days from the date of this notice and should be addressed to Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please affix "Three Rivers Project No. 11797–000," to all comments. For further information, please contact Sean Murphy at (202) 502–6145 or at *sean.murphy@ferc.gov*.

Comments may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's website at *http://www.ferc.gov* under the "e-Filing" link. The Commission strongly encourages electronic filings.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–27936 Filed 11–1–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP02–396–000 and PF01–1–000]

Greenbrier Pipeline Company, LLC; Notice of Availability of the Draft Environmental Impact Statement for the Proposed Greenbrier Pipeline Project

October 24, 2002.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared this draft environmental impact statement (DEIS) on the natural gas pipeline facilities (the Greenbrier Pipeline Project) proposed by Greenbrier Pipeline Company, LLC (GPC) in the above-referenced dockets. The application and other supplemental filings in these dockets are available for viewing on the FERC Internet Web site *(www.ferc.gov)*. Click on the "FERRIS" link, select "General Search," then "Docket #" on the menu, and follow the instructions.

The DEIS was prepared to satisfy the requirements of the National Environmental Policy Act (NEPA). The staff concludes that approval of the proposed project with appropriate mitigating measures, as recommended, would result in some adverse environmental impacts. The DEIS evaluates alternatives to the proposal, including system alternatives, route alternatives, and route variations, and requests comments on them.

The purpose of the project is to create gas supply diversity and to meet a portion of the growing energy market in the South Atlantic region. The project would be designed to meet a variety of anticipated loads, including the growth of two local distribution companies, four natural gas-fired electric generation plants and a natural gas marketer. The project is fully subscribed and would transport up to 600,000 decatherms per day of natural gas.

The proposed pipeline would extend from east of Clendenin, Kanawha County, West Virginia through West Virginia, southwestern Virginia, and North Carolina to its terminus near Stem, in Granville County, North Carolina. It would consist of 275.6 miles of mainline and three laterals totaling 3.8 miles. GPC would also construct 2 compressor stations, 3 meter stations, 20 block valves, and appurtenant facilities, and use up to 212 access roads. Mainline DG–1 would extend from the proposed Elk River Compressor Station adjacent to Dominion Transmission, Inc."s existing Cornwell Compressor Station to the proposed Public Service Company of North Carolina, a South Carolina Corporation's compressor station near Stem, North Carolina. DG–1 would include 20-, 24-, and 30-inch-diameter pipeline. Lateral DG–2 would consist of 1.0 mile of 12-inch-diameter pipeline that extends from DG–1 to the proposed Somerset Meter Station near Roxboro, North Carolina. Lateral DG–3 would consist of 2.1 miles of 10-inch-diameter pipeline that extends from the end of DG–1 to the proposed Mountain Creek Meter Station near Butner, North Carolina. Lateral DG–4 would consist of 0.7 mile of 30-inch-diameter pipeline that would interconnect the proposed Transco Meter Station and the proposed Eden Compressor Station in Rockingham County, North Carolina.

Comment Procedures and Public Meetings

Any person wishing to comment on the DEIS may do so. To ensure consideration prior to a Commission decision on the proposal, it is important that we receive your comments before the date specified below. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send one original and two copies of your comments to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE, Room 1A, Washington, DC 20426.
- Label one copy of the comments for the attention of the Gas 2, PJ–11.2;
- Reference Docket No. CP02–396–000; and
- Mail your comments so that they will be received in Washington, DC on or before December 16, 2002.

Please note that we are continuing to experience delays in mail deliveries from the U.S. Postal Service. As a result, we will include all comments that we receive within a reasonable time frame in our environmental analysis of the project. Comments may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Internet Web site *(http://www.ferc.gov)* under the "e-Filing" link and the links to the User's Guide. Before you can file comments, you will need to create an account, which can be created by clicking on "Login to File," "New Account," and then following the instructions. For help in "e-Filing" call (202) 502–8258.

We will announce in a future notice, the location and time of the local public meetings to receive comments on the DEIS.

After comments have been reviewed, any significant new issues will be

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investigated. When the DEIS has been modified as appropriate, the staff will publish and distribute a final environmental impact statement (FEIS). The FEIS will contain the staff's responses to timely comments filed on the DEIS.

Comments will be considered by the Commission but will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a Motion to Intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (*see* 18 CFR 385.214). Anyone may intervene in this proceeding based on this DEIS. You must file your request to intervene as specified above.[1] You do not need intervenor status to have your comments considered.

All intervenors, agencies, elected officials, local governments, Indian tribes, local libraries, media, and anyone providing written comments on the DEIS will receive a copy of the FEIS. If you do not wish to comment on the DEIS but wish to receive a copy of the FEIS, you must write to the Secretary of the Commission, indicating this request.

The DEIS has been placed in the public files of the FERC and is available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 888 First Street, NE, Room 2A, Washington, DC 20426, (202) 502–8371.

A limited number of copies are available from the Public Reference and Files Maintenance Branch identified above. In addition, copies of the DEIS have been mailed to Federal, state, and local government agencies; elected officials, environmental and public interest groups; affected landowners who requested a copy of the DEIS; Native American tribes that might attach religious and cultural significance to historic properties in the area of potential effect; local libraries and newspapers; and the Commission's list of parties to this proceeding. Additional information about the proposed project is available from the Commission's Office of External Affairs, at 1–866–208–FERC (3372) or on the FERC Internet Web site *(www.ferc.gov)*, using the "FERRIS" link to information in this docket number. Click on the "FERRIS" link, select "General Search" from the menu, and follow the instructions. For assistance with access to FERRIS, the FERRIS help line can be reached at 1–866–208–3676, TTY (202) 502–8659.

[1] Interventions also may be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

The FERRIS link on the FERC Internet Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–27923 Filed 11–1–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 6418–007]

Judith A. Burford Hydroelectric Project, CO; Notice of Availability of Final Environmental Assessment

October 25, 2002.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the application for an original license for the Judith A. Burford Hydroelectric Project, and has prepared an Environmental Assessment (EA). The operating project is located on East Brush Creek, a tributary to the Eagle River, in Eagle County, Colorado. The project occupies about 1.008 acres of land within the White River National Forest, administered by the FS.

The EA contains the staff's analysis of the potential environmental impacts of the project and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the EA is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call (202)502–8222 or for TTY, (202) 502–8659.

For further information, contact Gaylord Hoisington at (202) 502–6032.

Magalie R. Salas,

Secretary.

[FR Doc. 02–27943 Filed 11–1–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Northern California Power Agency Utica Power Authority; Notice of Availability of Final Environmental Assessment

October 25, 2002.

[Project Nos. 2699–001, 2019–017, & 11563–002-California]

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) Regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the applications for licenses for the Angels Hydroelectric Project, Utica Hydroelectric Project, and the Upper Utica Project. Commission staff, with the U.S. Forest Service as a cooperating agency, has prepared a Final Environmental Assessment (FEA) for the project. These projects are located on the North Fork Stanislaus River, Silver Creek, Mill Creek, and Angels Creek in Alpine, Calaveras, and Tuolumne Counties, California, partially within the Stanislaus National Forest.

The FEA contains the analysis of the potential environmental impact of the projects and concludes that licensing the projects, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the FEA is on file with the Commission and is available for public inspection. The FEA may also be viewed on the web at *http://www.ferc.gov* using the "FERRIS" link. For assistance with FERRIS, the FERRIS help line can be reached at (202) 502–8222, TTY (202) 208–1659.

For further information, contact Timothy Welch at (202) 502–8760.

Magalie R. Salas,

Secretary.

[FR Doc. 02–27941 Filed 11–1–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–204–000]

Transcontinental Gas Pipe Line Corporation; Notice of Availability of the Environmental Assessment for the Proposed Trenton Woodbury Expansion Project

October 24, 2002.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared this Environmental Assessment (EA) on the natural gas pipeline facilities proposed by Transcontinental Gas Pipe Line Corporation (Transco) in the above-referenced docket.

The EA was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

The EA assesses the potential environmental effects of the construction and operation of the proposed natural gas pipeline facilities, including:

- Trenton Woodbury Expansion Loop—about 7.17 miles of new 36-inch-diameter loop and associated tap valve and pig launcher/receiver facilities adjacent to Transco's existing 16-inch-diameter Trenton Woodbury Line "A" between milepost (MP) 8.23 and MP 15.40 in Mercer and Burlington Counties, New Jersey; and
- Fairless Delivery Lateral—about 2.48 miles of new 24-inch-diameter pipeline lateral in Burlington County, New Jersey, and Bucks County, Pennsylvania, including a meter station in Bucks County, Pennsylvania, and associated tap valve and pig launcher/receiver facilities at the beginning and end points of the lateral. The lateral would commence from approximate MP 17.74 on Transco's existing Trenton Woodbury Line "A" in Bordentown, New Jersey.

Transco states that the project facilities would create incremental primary firm capacity and provide additional delivery flexibility to its subscribers, PECO Energy Company (PECO) and Virginia Power Energy Marketing (VAPEM), on Transco's existing Trenton Woodbury Line in Mercer and Burlington Counties, New Jersey. The project would also provide natural gas to a new power generation plant in Bucks County, Pennsylvania.

The EA has been placed in the public files of the FERC. A limited number of copies of the EA are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 888 First Street, NE, Room 2A, Washington, DC 20426, (202) 502–8371.

Copies of the EA have been mailed to Federal, state and local agencies, public interest groups, interested individuals, newspapers, and parties to this proceeding.

Any person wishing to comment on the EA may do so. To ensure consideration prior to a Commission decision on the proposal, it is important that we receive your comments before the date specified below. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your comments to: Secretary, Federal Energy Regulatory Commission, 888 First St., NE, Room 1A, Washington, DC 20426;
- Label one copy of the comments for the attention of the Gas Branch 1, PJ11.1.
- Reference Docket No. CP02–204–000; and
- Mail your comments so that they will be received in Washington, DC on or before November 25, 2002.

Please note that we are continuing to experience delays in mail deliveries from the U.S. Postal Service. As a result, we will include all comments that we receive within a reasonable time frame in our environmental analysis of this project. However, the Commission strongly encourages electronic filing of any comments or interventions or protests to this proceeding. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the "e-Filing" link and the link to the User's Guide. Before you can file comments you will need to create a free account which can be created by clicking on "Login to File" and then "New User Account."

Comments will be considered by the Commission but will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214).[1] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your comments considered.

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208-FERC or on the FERC Internet Web site *(www.ferc.gov)* using the FERRIS link. Click on the FERRIS link, enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance with FERRIS, the FERRIS helpline can be reached at 1–866–208–3676, TTY (202) 502–8659 or at *FERCONLINESUPPORT@FERC.GOV*. The FERRIS link on the FERC Internet Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

[1] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–27922 Filed 11–1–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions to Intervene, and Protests

October 24, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application*: Preliminary Permit.

b. *Project No*: 12369–000.

c. *Date Filed*: September 17, 2002.

d. *Applicant*: MSR 5 Hydro, LLC.

e. *Name of Project*: Mississippi L & D # 5 Hydroelectric Project.

f. *Location*: The proposed project would be located on an existing dam owned by the U.S. Army Corps of Engineers, on the Mississippi River in Buffalo County, Wisconsin. Part of the project would be on lands administered by the U.S. Army Corps of Engineers.

g. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. § § 791(a)-825(r).

h. *Applicant Contact*: Mr. Brent L. Smith, Northwest Power Services, Inc., PO Box 535, Rigby, ID 83442, (208) 745–0834.

i. FERC Contact: Any questions on this notice should be addressed to Mr. Lynn R. Miles, Sr. at (202) 502–8763.

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j. *Deadline for filing comments, protests, and motions to intervene*: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings. Please include the project number (P–12369–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. Description of Project: The proposed run-of-river project using the existing Corps of Engineers' Mississippi Lock & Dam No. 5 would consist of: (1) Four 168-inch-diameter 50-foot-long concrete penstocks, (2) a proposed powerhouse containing four generating units with an installed capacity of 40 MW, (3) a 49 kv transmission line approximately 1 mile long, and (4) appurtenant facilities. The project would have an annual generation of 300 GWh.

l. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCONLINESUPPORT@FERC.GOV*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h. above.

m. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. Competing Development Application—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–27938 Filed 11–1–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11887–000]

Notice of Application Accepted for Filing and Soliciting Comments, Motions to Intervene, and Protests

October 24, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application*: Preliminary Permit.

b. *Project No*: 12399–000.

c. *Date Filed*: October 9, 2002.

d. *Applicant*: San Jacinto River Authority.

e. *Name and Location of Project*: The Conroe Dam Hydroelectric Project would be located at an existing dam owned by the Applicant on the West Fork San Jacinto River in Montgomery County, Texas.

f. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. 791(a)-825(r).

g. Applicant Contact: Mr. James R. Adams, General Manager, San Jacinto River Authority, 1577 Damsite Road, Conroe, TX 77304, (936) 588–1111.

h. *FERC Contact*: James Hunter, (202) 502–6086.

i. *Deadline for filing motions to intervene, protests and comments*: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings. Please include the project number (P–12399–000) on any comments or motions filed.

The Commission's rules of practice and procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Competing Application*: Project No. 12247–000, Date Filed: June 18, 2002, *Due Date*: September 9, 2002

k. *Description of Project*: The proposed project would consist of: (1) The existing 80-foot-high, 11,300-foot-long concrete dam impounding Lake Conroe, which has a 21,000-acre surface area at normal maximum water surface elevation 201 feet, (2) a proposed 500-foot-long, 66-inch-diameter steel penstock, (3) a proposed powerhouse containing one generating unit with an installed capacity of one megawatt, (4) a proposed one-mile-long, 15-kilovolt transmission line, and (5) appurtenant facilities. The project would have an average annual generation of 3.2 gigawatthours.

l. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCONLINESUPPORT@FERC.GOV*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item g. above.

m. Competing Applications—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit applications or notices of intent. Any competing preliminary permit or development application or notice of intent to file a competing preliminary permit or development application must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intent to file competing applications may be filed in response to this notice. A competing license application must conform with 18 CFR 4.30 (b) and 4.36.

n. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

o. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

p. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Compliance and Administration, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

q. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–27939 Filed 11–1–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Settlement Agreement and Soliciting Comments

October 24, 2002.

Take notice that the following settlement agreement has been filed with the Commission and is available for public inspection.

a. *Type of Application*: Settlement Agreement.

b. *Projects*: Oneida Project No. 472–017, Soda Project No. 20–019 and Grace-Cove Project No. 2401–007.

c. *Date filed*: September 26, 2002.

d. *Applicant*: PacifiCorp.

e. *Location*: On the Bear River in Caribou and Franklin Counties, Idaho. The projects are partially located on United States lands administered by the Bureau of Land Management.

f. *Filed Pursuant to*: Rule 602 of the Commission's Rules of Practice and Procedure, 18 CFR 385.602.

g. *Applicant Contact*: Randy Landolt, Managing Director, Hydro Resources, PacifiCorp, 825 NE. Multnomah Street, Suite 1500, Portland, OR 97232, (503) 813–6650, or Thomas H. Nelson, 825 Multnomah Street, Suite 925, Portland, OR 97232, (503) 813–5890.

h. *FERC Contact*: Susan O'Brien, (202) 502–8449; *susan.obrien@ferc.gov*.

i. *Deadline for filing comments*: December 2, 2002. Reply comments due December 17, 2002.

All documents (original and eight copies) should be filed with: Magalie R.

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Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Comments may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site (*http://www.ferc.gov*) under the "e-Filing" link.

j. PacifiCorp filed a comprehensive settlement agreement, signed by 14 other stakeholders, with the stated objective ". . . to resolve all issues regarding relicensing of the Bear River Projects, for the purpose of obtaining a FERC order issuing to PacifiCorp the New Licenses for the Projects . . ." (section 1.1 of the agreement). Thus, the settlement agreement supercedes the original license application filings of September 1999, and the settlement constitutes PacifiCorp's proposed action. Issues resolved through the settlement include project operations, delivery of irrigation water, flood control, recreational opportunities, water quality, and enhancement and restoration of natural resources. k. A copy of the settlement agreement is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call 1–866–208–3676 or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item g. above.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–27942 Filed 11–1–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Tendered for Filing With the Commission, Soliciting Additional Study Requests, and Establishing Procedural Schedule for Relicensing and a Deadline for Submission of Final Amendments

October 29, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. Type of Application: New Major License.

b. Project No.: 2105–089.

c. Date Filed: October 23, 2002.

d. Applicant: Pacific Gas and Electric Company.

e. Name of Project: Upper North Fork Feather River Project

f. Location: On the North Fork Feather River, in the vicinity of the community of Chester, Plumas County, California, T28N, R7E. The project occupies 1,500 acres of land administered by the Forest Supervisors of the Lassen and Plumas National Forests.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)-825(r)

h. Applicant Contacts: Mr. Randal Livingston, Lead Director, Hydro Generation Department, Pacific Gas and Electric Company, PO Box 770000 (N11C), San Francisco, CA, 94177, (415) 973–6950, and Ms. Janet Loduca, Attorney, Pacific Gas and Electric Company, PO Box 7442, San Francisco, CA, 94120–7442, (415) 973–0174.

i. FERC Contact: John Mudre, (202) 502–8902 or john.mudre@ferc.gov.

j. Cooperating agencies: We are asking Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing comments described in item k below.

k. Pursuant to section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

1. Deadline for filing additional study requests and requests for cooperating agency status: December 23, 2002.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC, 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Additional study requests and requests for cooperating agency status may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *(http://www.ferc.gov)* under the "e-Filing" link.

m. This application is not ready for environmental analysis at this time.

n. The existing Upper North Fork Feather River Project consists of three dams and reservoirs, five powerhouses, tunnels and penstocks connecting the rewservoirs to the powerhouses, 230kV and 115kV transmission facilities, and various roads, recreation facilities, and administrative facilities. Project reservoirs include Lake Almanor (1,142,251 acre-feet), Butt Valley Reservoir (49,891 acre-feet), and Belden Forebay (2,477 acre-feet). Powerhouses include Butt Valley Powerhouse (41 MW), Caribou No. 1 Powerhouse (75 MW), Caribou No. 2 Powerhouse (120 MW), Oak Flat Powerhouse (1.3 MW), and Belden Powerhouse (125 MW). The Applicant proposes no new facilities, but proposes to add 33.73 acres of lands of the Plumas National Forest to the project because of historical and future project use of these lands.

o. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Website at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call 1–866–208–3676 or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

p. With this notice, we are initiating consultation with the CALIFORNIA STATE HISTORIC PRESERVATION OFFICER (SHPO), as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36, CFR, at § 800.4.

q. Procedural schedule and final amendments: The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate.

Issue Acceptance or Deficiency Letter: December 2002
Request Additional Information (if needed): December 2002
Issue Acceptance Letter: March 2003
Issue Scoping Document 1 for comments: April 2003
Hold Scoping Meetings: May 2003
Request Additional Information (if needed): July 2003
Issue Scoping Document 2: July 2003
Notice of Application is Ready for Environmental Analysis: July 2003
Notice of the availability of the draft EA: January 2004
Initiate 10(j) process: March 2004
Notice of the availability of the final EA: July 2004
Ready for Commission's decision on the application: October 2004

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–28102 Filed 11–1–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Woods Lake Hydro Company, CO, Project No. 3410–009; Notice of Availability of Environmental Assessment

October 29, 2002.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the application for a new license for the Woods Lake Hydro Company Hydroelectric Project, and has prepared an Environmental Assessment (EA). The operating project is located on Lime Creek, a tributary to the Frying Pan River, in Eagle County, Colorado. The project occupies about 2.73 acres of land within the White River National Forest, administered by the Forest Service.

The EA contains the staff's analysis of the potential environmental impacts of the project and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the EA is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call 1–866–208–3676 or for TTY, (202) 502–8659.

For further information, contact Gaylord Hoisington at (202) 502–6032.

Magalie R. Salas,

Secretary.

[FR Doc. 02–28103 Filed 11–1–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Third Workshop, Better Stakeholder Involvement: How To Make it Work

October 29, 2002.

The Office of Energy Projects will host the third workshop in its second phase of its "Better Stakeholder Involvement—How to Make it Work" series in Lowell, Massachusetts, Thursday, November 21, 2002. We are inviting interstate natural gas companies; Federal, state and local agencies; landowners and other non-governmental organizations interested in developing strategies for involving people in the pre-filing planning process for natural gas pipelines.

We will continue to base our discussions on the ideas outlined in staff's December 2001 report, "Ideas for Better Stakeholder Involvement In The Interstate Natural Gas Pipeline Planning Pre-Filing Process."[1]

In the Lowell meeting, among other things, we will focus on interagency communications and agreements, alternative dispute resolution, and benefits and opportunities for local stakeholders in the pre-filing arena.

The workshop will be held at the Doubletree Riverfront Hotel, 50 Warren Street, Lowell, Massachusetts 01852, from 9 a.m. to 4:30 p.m. The phone number at the hotel is 978–452–1200. A preliminary agenda and directions to the hotel are enclosed. You may also go to the hotel's website for more detailed directions at *www.doubletree.com.*

If you plan to attend or have suggestions for the agenda, please respond by Monday, November 18, 2002 via facsimile to Roberta Coulter at 202/208–0353, or you may email our team at: *gasoutreach@ferc.gov.* Please include in the response the names, addresses, and telephone numbers of all attendees from your organization.

To help us enhance our panel discussions, please consider, and forward to us, issues and/or questions you would like to have addressed at the meetings. If you have any questions, you may contact any of the staff listed below: Richard Hoffmann 202/502–8066, Lauren O'Donnell 202/502–8325, Jeff Shenot 202/502–8329, Howard Wheeler 202/502–8688.

J. Mark Robinson,

Director, Office of Energy Projects.

Agenda

Federal Energy Regulatory Commission

Better Stakeholder Involvement: How To Make It Work

Lowell Workshop, November 21, 2002

9 a.m. Welcome, Introduction and Objectives
9:15 a.m. FERC NEPA Pre-filing Process Presentation/Discussion
10:15 a.m. Elements of a Public Participation Plan
11 a.m. Break
11:15 a.m. Benefits and Opportunities for Local Stakeholders
12:15 p.m. Lunch (on your own)
1:30 p.m. FERC's Alternative Dispute Resolution Process and the Millennium Settlement—Lessons Learned
3 p.m. Break
3:15 p.m. A Tale of Two Companies: A Citizen Perspective
4 p.m. Summary Discussion, Overall Comments, Next Steps
4:30 p.m. Adjourn

BILLING CODE 6717–01–P

[1] The staff report can be downloaded from the FERC web-site at www.ferc.gov or requested by e-mail at: *gasoutreach@ferc.gov.*

Doubletree Riverfront Hotel

50 Warren Street, Lowell, MA 01852
Tel: 1-978-452-1200 Fax: 1-978-453-4674

www.doubletree.com

Directions from Boston Logan International Airport
Distance from hotel: 20 mi.
Directions: from the airport exit, take route 93 north to exit 44B (495 South). Follow 495 South to Exit 35 C/Lowell Connector.

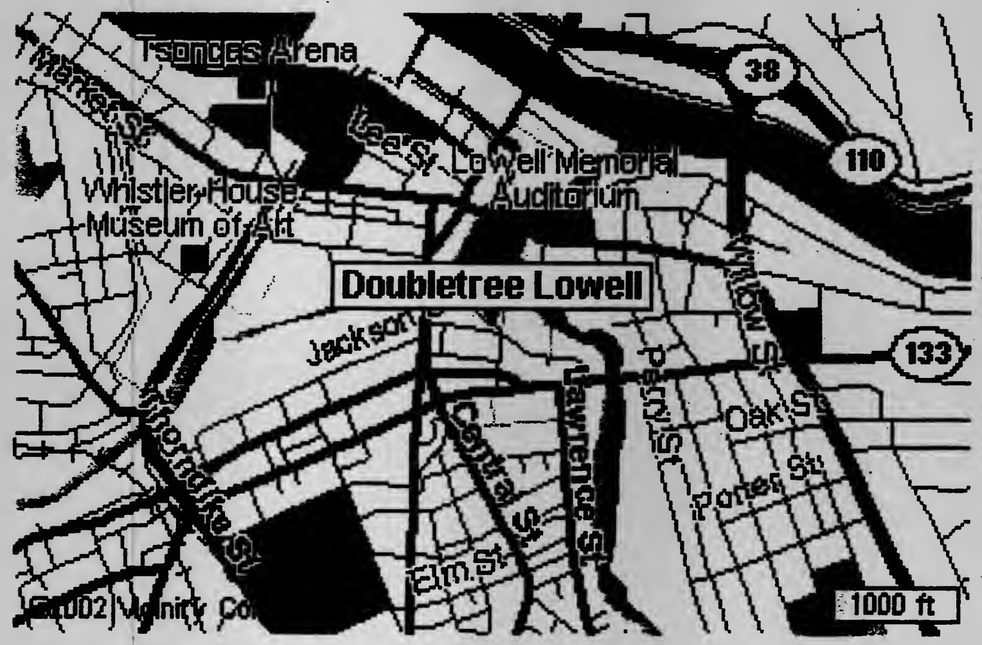

[FR Doc. 02–27983 Filed 11–1–02; 8:45 am]
BILLING CODE 6717–01–C

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Regulations Governing Off-the-Record Communications; Public Notice

October 25, 2002.

This constitutes notice, in accordance with 18 CFR 385.2201(h), of the receipt of exempt and prohibited off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive an exempt or a prohibited off-the-record communication relevant to the merits of a contested on-the-record proceeding, to deliver a copy of the communication, if written, or a summary of the substance of any oral communication, to the Secretary.

Prohibited communications will be included in a public, non-decisional file associated with, but not part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such requests only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication should serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications will be included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of exempt and prohibited off-the-record communications recently received in the Office of the Secretary. These filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202)502–8222 or for TTY, (202) 502–8659.

EXEMPT

	Date filed	Presenter or requester
1. Project No. 184–065	10–21–02	Susan O'Brien.
2. Project No. 184–000	10–21–02	Scott E. Shewbridge.
3. Project Nos 20, 2401 and 472	10–21–02	Monte Garrett
4. Project Nos. 20, 2401 and 472	10–21–02	Monte Garrett.

Magalie R. Salas,
Secretary.
[FR Doc. 02–27945 Filed 11–1–02; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12068–001]

CPS Products, Incorporated; Notice of Surrender of Preliminary Permit

October 24, 2002.

Take notice that CPS Products, Incorporated, permittee for the proposed Upper Bear Creek Project, has requested that its preliminary permit be terminated. The permit was issued on December 13, 2001, and would have expired on November 30, 2004. The project would have been located on North Fork Bear Creek in Skagit County, Washington.

The permittee filed the request on September 17, 2002, and the preliminary permit for Project No. 12068 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday, or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR part 4, may be filed on the next business day.

Linwood A. Watson, Jr.,
Deputy Secretary.
[FR Doc. 02–27937 Filed 11–1–02; 8:45 am]
BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7403–9]

Update to EPA Policy on Certain Grants to Intertribal Consortia

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is providing public notice that it is updating its policy allowing for the award of grants to intertribal consortia to include two new grant programs that were authorized by the recently enacted Small Business Liability Relief and Brownfields Revitalization Act (SBLRBRA). The effect of this policy change is that EPA interprets its authority to award, to Federally recognized Indian tribes, Brownfields Revitalization Grants and State and Tribal grants for the establishment and enhancement of state and tribal response programs to include awarding such grants to intertribal consortia, as the term is defined in this document. This document does not affect the eligibility status of intertribal consortia in their capacity to apply for other types of grants authorized under SBLRBRA.

DATES: The policy update summarized in this document is effective immediately.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA/CERCLA Call Center at 800–424–9346 or TDD 800–553–7672 (hearing impaired). In the Washington, DC metropolitan area, call 703–412–9810 or TDD 703–412–3323.

For more detailed information on specific aspects of this rule, contact Felicia Wright, Office of Solid Waste and Emergency Response, (Mail Code

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5105T), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0002, 202–566–1786. *Wright.Felicia@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On September 29, 1999, EPA published a document advising the public of its policy to interpret statutes authorizing EPA to make grants to Indian tribes for specified EPA grant programs to Indian tribes. This policy will allow EPA to award grants to intertribal consortia to the extent that such an interpretation would be consistent with Congressional intent (64 FR 52504, September 29, 1999). Subsequently, the Agency promulgated regulations at 40 CFR part 35, subpart B which reflect that policy with some modifications, for all but two grant programs. The two programs covered under the September 1991 document, but not affected by the regulations include grants authorized by section 104(d) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and grants for the Leaking Underground Storage Tank program authorized under Subtitle I of RCRA. Today EPA is providing public notice that it is updating its September 1999 policy to include two new grant programs that were authorized by the recently enacted Small Business Liability Relief and Brownfields Revitalization Act (SBLRBRA, Pub. L. 107–118). The policy also is being updated to modify the requirements for intertribal consortia to receive grants under the grant programs covered by the September 1999 document, but not covered by regulations at 40 CFR part 35, subpart B.

SBLRBRA amended the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) to authorize funding for Brownfields revitalization grants (*e.g.*, site assessment, cleanup, and revolving loan fund grants) and for establishing or enhancing State and tribal response programs. EPA is notifying the public today that it interprets its new authorities under section 104(k) of CERCLA to award Brownfields revitalization grants to Federally recognized Indian tribes to include awarding these grants to intertribal consortia, as that term is defined in this document. The Agency notes, however, that section 104(k)(1)(G) of CERCLA excludes Indian tribes in Alaska from the definition of entities eligible for Brownfields revitalization funding. The Agency also interprets its new authorities under section 128(a) of CERCLA to award grants to establish and enhance tribal response programs to include awarding these grants to intertribal consortia. Intertribal consortia comprised of Alaskan Indian tribes are eligible for funding under section 128(a) of CERCLA.

On September 29, 1999, EPA announced its policy regarding the award of financial assistance to intertribal consortia under the following EPA grant programs for Indian tribes: Pesticides Program Implementation (section 23(a)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act); Pesticides Enforcement (section 23(a)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act); Superfund Cooperative Agreements (section 104(d) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)); Leaking Underground Storage Tanks (Department of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1999, Pub. L. 105–276, 112 Stat. 2461, 2497–98(1998)); Underground Storage Tank Programs (Department of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1999, Pub. L. 105–276, 112 Stat. 2461, 2499(1998)); and Hazardous Waste Management Programs (Department of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1999, Pub. L. 105–276, 112 Stat. 2461, 2499(1998)). The September 1999 tribal consortia funding policy states:

> In the absence of clear Congressional intent to the contrary and in accordance with the definition and requirements set forth [in the September 29, 1999 **Federal Register** notice], EPA interprets its statutory authorities to award grants to Indian tribes to include the authority to award grants to intertribal consortia. If Indian tribes are eligible for a particular grant, EPA will also treat a group of individually eligible tribes (an intertribal consortium) as eligible for the grant. EPA believes this approach is a practical, reasonable and prudent way to help interested tribes strengthen environmental protection when limited funding is available to support tribal environmental program. Tribes that form an intertribal consortium may be able to use their limited resources more efficiently and address environmental issues more effectively than they could if each tribe developed and maintained separate environmental programs. Moreover, EPA believes that making grants for tribes available to intertribal consortia is consistent with President Clinton's Executive Order 13084, which encourages agencies to adopt "flexible policy approaches" and to respect the principle of Indian self-government and sovereignty.

Executive Order 13084 was revoked by Executive Order 13175 dated November 6, 2000, which also encourages agencies to adopt flexible policy approaches and to recognize tribal self government and sovereignty. At the time the September 1999 document was published, EPA had also announced the same policy and rationale in a proposed rulemaking governing the award of environmental program grants to Indian tribes, which has since been promulgated as a final rule and is codified at 40 CFR part 35, subpart B (66 FR 3782, January 16, 2001). In the September 1999 document, EPA explained that it may change this policy as a result of comments received in response to the proposed rule governing grants to intertribal consortia at 40 CFR part 35, subpart B (*i.e.*, grants under the Pesticides Program Implementation; Pesticides Enforcement; Underground Storage Tank Programs; and Hazardous Waste Management Programs). EPA further explained in September 1999 that if EPA changed the treatment of consortia in grant programs covered by 40 CFR part 35, subpart B, then EPA would likely issue a subsequent **Federal Register** notice so as to treat grants to intertribal consortia consistently in all programs covered by the September 1999 **Federal Register** document. Because EPA made some changes to the eligibility requirements for intertribal consortia in the final rulemaking, this document makes the same changes for grants to intertribal consortia under the following two EPA grant programs for Indian tribes: Superfund Cooperative Agreements (section 104(d) of the CERCLA); Leaking Underground Storage Tanks (Department of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1999, Pub. L.w 105–276, 112 Stat. 2461, 2497–98(1998)). In addition, with this document, EPA announces that it will apply the policy to grants for Brownfields revitalization awarded under section 104(k) of CERCLA and to grants for establishing or enhancing tribal response programs awarded under section 128(a) of CERCLA.

Federally recognized Indian tribes, other than excluded Indian tribes in Alaska, are eligible for Brownfields revitalization grants awarded under section 104(k) of CERCLA in accordance with the definition of "eligible entity" set forth at section 104(k)(1)(G) of CERCLA. Alaska Native Regional Corporations and Alaska Native Village Corporations, as those terms are defined in the Alaska Native Claims Settlement Act, 43 U.S.C. 1601 *et. seq.*, and the Metlakata Indian community are included within the definition of entities eligible for Brownfields funding under CERCLA 104(k)(1)(H). Although Alaska Native Village Corporations and Alaska Native Regional Corporations as those terms are defined in the Alaska Native Claims Settlement Act (43 U.S.C. 1601 and following) are eligible for Brownfields revitalization grants awarded under section 104(k) of CERCLA, EPA will not consider an intertribal consortium that includes one or more such Alaska Native corporations to be eligible for 104(k) grants as an intertribal consortium under this document. Those Alaska Native corporations are not federally recognized Indian tribes. Groups of Alaska Native Village Corporations and Alaska Native Regional Corporations may, however, apply for funding in combined applications as "coalitions" (*i.e.*, one eligible entity that will be accountable for grant funds applies on behalf of itself and one or more other eligible entities) under EPA's guidelines for applying for SBLRBRA grants.

EPA has determined that it would be inconsistent with EPA's policy and Congressional intent to allow intertribal consortia comprised of excluded Indian tribes in Alaska to be eligible for Brownfields revitalization grants awarded under section 104(k) of CERCLA. However, neither the eligibility provisions of section 128(a)(1)(A) of CERCLA nor the legislative history of section 128, indicate that Congress intended for Indian tribes in Alaska to be ineligible for grants to establish or enhance tribal response programs. EPA will, therefore, consider intertribal consortia comprised of Indian tribes in Alaska to be eligible for funding under section 128(a) of CERCLA. The rationale stated in the September 29, 1999 document for EPA's decision to allow intertribal consortia to be eligible for funding also applies to funding under section 104(k) and section 128(a) of CERCLA, to the extent consistent with Congressional intent: "EPA believes this approach is a practical, reasonable and prudent way to help interested Indian tribes strengthen environmental protection when limited funding is available to support tribal environmental programs. Indian tribes that form an intertribal consortium may be able to use their limited resources more efficiently and address environmental issues more effectively than they could if each tribe developed and maintained separate environmental programs." Making grants for Indian tribes available to intertribal consortia is consistent with Executive Order 3175, which encourages agencies to adopt "flexible policy approaches" and to respect the principle of Indian self-government and sovereignty.

An organization that characterizes itself as an intertribal consortium that does not meet the definition of intertribal consortium or the eligibility requirements in this document may be eligible for funding under section 104(k) of CERCLA or other EPA grant programs, but not as an intertribal consortium under this document. This is because some of EPA's grant programs are available to a broad range of recipients, such as public or nonprofit private agencies, institutions, organizations, and individuals. Thus, an intertribal organization that does not meet the definition of an intertribal consortium or the requirements of this document nonetheless may be eligible for a grant as another type of organization, such as a nonprofit agency. This document is not intended to affect the eligibility status of intertribal consortia for grants in their capacity as other types of eligible organizations. If the organization meets the definition of a non profit organization provided in section 4(6) of the Federal Financial Management Assistance Act of 1999, Pub. L. 106–107, it will be eligible for funding as a non profit organization under section 104(k)(3) of CERCLA for Brownfields site remediation grants and under section 104(k)(6) Brownfields research, training, and technical assistance grants. Non profit organizations are not eligible for grants to establish or enhance State and tribal response programs under section 128(a) of CERCLA.

II. EPA Policy

The following definition and statement of eligibility requirements for awarding grants to intertribal consortia apply to the following grant programs: Superfund Cooperative Agreements (section 104(d) of the CERCLA); Leaking Underground Storage Tanks (Department of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1999, Pub. L. 105–276, 112 Stat. 2461, 2497–98(1998)); Brownfields Revitalization (section 104(k) of CERCLA); and Tribal Response Programs (section 128(a) of CERCLA).

Definition: The term intertribal consortium means a partnership between two or more federally recognized Indian tribes that is authorized by the governing bodies of those Indian tribes to apply for and receive assistance under one of the EPA grant programs covered by this document.

Eligibility Requirements for an Intertribal Consortium: (a) An intertribal consortium is eligible to receive a grant from EPA under the statutes authorizing grants to federally recognized Indian tribes listed in this document only if the intertribal consortium demonstrates that all members of the consortium (1) meet the eligibility requirements for the grant and (2) authorize the consortium to apply for and receive assistance in accordance with paragraph (b).

(b) An intertribal consortium must submit to EPA adequate documentation of: (1) The existence of the partnership between federally recognized Indian Tribal governments, and (2) Authorization of the consortium by all its members to apply for and receive the grant(s) for which the consortium has applied.

Dated: October 29, 2002.

Marianne Lamont Horinko,

Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 02–28005 Filed 11–1–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7403–8]

Preliminary Administrative Determination Document on the Question of Whether Ferric Ferrocyanide Is One of the "Cyanides" Within the Meaning of the List of Toxic Pollutants Under the Clean Water Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of new information and reopening of comment period.

SUMMARY: On January 25, 2001, EPA published a notice announcing a preliminary administrative determination document on whether Ferric Ferrocyanide is one of the "cyanides" within the meaning of the list of toxic pollutants under the Clean Water Act. The comment period ended on July 10, 2001. Today's action reopens the comment period for an additional 60 days for a limited purpose.

DATES: Comments will be accepted through December 4, 2002.

ADDRESSES: Send your comments by mail to "Ferric Ferrocyanide; Preliminary Administrative Determination" Comment Clerk (W–00–24), Water Docket (4101T), U. S.

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Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC, 20460. You may also submit comments electronically or through hand delivery or courier. Follow the detailed instruction in I. B.

FOR FURTHER INFORMATION CONTACT: For further information and to request a copy of the administrative determination, contact Marion Kelly, USEPA, Engineering and Analysis Division (4303T), Office of Science and Technology, 1200 Pennsylvania Avenue, NW, Washington, DC, 20460; or call (202) 566–1045; or fax (202) 566–1053; or e-mail *kelly.marion@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. How Can I Get Copies of This Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under Docket ID No. W–00–24. The official public docket is the collection of materials that is available for public viewing at the Water Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW, Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in I.A.1.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

B. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. However, late comments may be considered if time permits.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket,* and follow the online instructions for submitting comments. Once in the system, select "search," and then key in Docket ID No. OW–2002–0036. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by electronic mail (e-mail) to *OW-Docket@epa.gov* Attention Docket ID No. OW–2002–0036. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in I.B.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send an original and three of copies of your comments to: Water Docket , Environmental Protection Agency, Mailcode: 4101T, 1200 Pennsylvania Ave., NW, Washington, DC, 20460, Attention Docket ID No. W–00–24 (Electronic Docket No. OW–2002–0036).

3. *By Hand Delivery or Courier.* Deliver your comments to: Water Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Avenue, NW, Washington, DC., Attention Docket ID No. W–00–24 (Electronic Docket No. OW–2002–0036). Such deliveries are only accepted during the Docket's normal hours of operation as identified in I.A.1.

C. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

II. Subject of Notice

On January 25, 2001, EPA published a notice announcing availability of the preliminary administrative determination document (66 FR 7759). While EPA initially scheduled a 60 day comment period (to end March 12, 2001), EPA received requests for additional time to provide comments. EPA reopened the comment period for an additional 90 days (66 FR 14581, March 13, 2001) and then extended the comment period until July 10, 2001 (66 FR 29800, June 1, 2001).

On March 1, 2001, Narragansett Electric Company ("Narragansett") submitted a request for Agency records under the Freedom of Information Act (FOIA) relating to the preliminary administrative determination and records concerning the interpretation of the term "cyanides." EPA released some documents and withheld others pursuant to discretionary exclusions under the FOIA. Narragansett appealed the withholding of documents. EPA and Narragansett agreed to a settlement of the appeal based on EPA's release of 29 of the withheld documents and access to other historical documentation. These records include scientific articles, reports, legal briefs and memoranda pertaining to the development of the Toxic Pollutant List and effluent guidelines. Recently, Narragansett requested that EPA reopen the comment period on the preliminary administrative determination in order to allow for comment on these recently released records.

In response to this request, EPA has placed these documents in the docket and is reopening the comment period to allow public comment on the records released pursuant to the FOIA as they relate to the determination of whether ferric ferrocyanide (FFC) is one of the "cyanides" within the meaning of EPA regulations promulgated pursuant to section 307(a) of the Clean Water Act. These documents are designated in the index to Docket W–00–24, section F, numbers 1–199 and in the index to the electronic docket (OW–2002–0036) as numbers 1–199. In addition, on October 3, 2002, EPA officials met with representatives of Narragansett where Narragansett presented a document concerning some of the recently released records. This document has also been placed in the docket and is designated as number 207 in the index to the Docket W–00–24, section F and in the index to the electronic docket (OW–2002–0036) as number 207. By placing these documents in the docket and reopening the comment period with respect to these documents, EPA is not conceding that any of the documents are necessarily relevant to the final administrative determination nor are they necessarily a part of the administrative record.

In addition, EPA has gathered additional documents that may affect the final determination, independent of the FOIA request, and has placed these in the docket for public review and comment. These documents are recently-published scientific articles, and appear in the Docket W–00–24, section F as numbers 200–206 and in the index to the electronic docket (OW–2002–0036) as numbers 200–206. Today's action makes these records available for public comment.

EPA is hereby requesting comment on whether any of these newly-released records or other documents provide additional information that is relevant to the final determination on whether FFC is one of the "cyanides" within the list of toxic pollutants promulgated under section 307(a) of the Clean Water Act, and, if so, whether and how such document or documents should affect EPA's final administrative determination regarding FFC.

Dated: October 29, 2002.

G. Tracy Mehan, III,

Assistant Administrator for Water.

[FR Doc. 02–28006 Filed 11–1–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2002–0068; FRL–7279–8]

Certain New Chemicals; Receipt and Status Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from October 1, 2002 to October 18, 2002, consists of the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

DATES: Comments identified by the docket ID number OPPT–2002–0068 and the specific PMN number or TME number, must be received on or before December 4, 2002.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Barbara Cunningham, Acting Director, Environmental Assistance Division, Office of Pollution Prevention and Toxics (7408M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov.*

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SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the premanufacture notices addressed in the action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of This Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPPT–2002–0068. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number and specific PMN number or TME number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket*, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number— OPPT–2002–0068. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to oppt.ncic@epa.gov, Attention: Docket ID Number OPPT–2002–0068 and PMN Number or TME Number. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *By hand delivery or courier.* Deliver your comments to: OPPT Document Control Office (DCO) in EPA East Building Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number OPPT–2002–0068 and PMN Number or TME Number. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the notice or collection activity.

7. Make sure to submit your comments by the deadline in this document.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action and the specific PMN number you are commenting on in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Why Is EPA Taking This Action?

Section 5 of TSCA requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a PMN or an application for a TME and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from October 1, 2002 to October 18, 2002, consists of the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

III. Receipt and Status Report for PMNs

This status report identifies the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. If you are interested in information that is not included in the following tables, you may contact EPA as described in Unit II. to access additional non-CBI information that may be available.

In Table I of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: the EPA case number assigned to the PMN; the date the PMN was received by EPA; the projected end date for EPA's review of the PMN; the submitting manufacturer; the potential uses identified by the manufacturer in the PMN; and the chemical identity.

I. 43 PREMANUFACTURE NOTICES RECEIVED FROM: 10/01/02 TO 10/18/02

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–03–0001	10/01/02	12/30/02	CIBA Specialty Chemicals Corporation	(S) Light stabilizer for coatings	(G) Substituted triazine derivatives
P–03–0002	10/01/02	12/30/02	The Dow Chemical Company	(S) Polymer used in foams and adhesives manufacture	(G) Blocked, isocyanate terminated urethane prepolymer
P–03–0003	10/01/02	12/30/02	Burlington Chemical Company, Inc.	(G) Fabric conditioning agent	(S) Soybean oil, reaction products with hydrogenated soybean oil and triethanolamine, di-et sulfate-quaternized
P–03–0004	10/02/02	12/31/02	E.I. Dupont De Nemours and Co.	(G) Coating stabilizer for non-dispersive use; catalyst used in closed process	(S) Titanium, acetylacetone et alc. iso-pr alc. complexes

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I. 43 PREMANUFACTURE NOTICES RECEIVED FROM: 10/01/02 TO 10/18/02—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–03–0005	10/02/02	12/31/02	Cook Composites and Polymers Co.	(S) Industrial/maintenance coatings resin	(G) 2-propenoic acid, 2-methyl-,alkyl ester, telomer with butyl 2-propenoate, 2-(dimethylamino)ethyl-2-methyl-2-propenoate,1-dodecanethiol, ethenylbenzene,2-hydroxyethyl-2-methyl-2-propenoate and methyl 2-methyl-2-propenoate, 1,1-dimethylpropyl-2-ethylhexaneperoxoate-initiated
P–03–0006	10/03/02	01/01/03	Degussa Corporation	(S) Monomer in the production of a polymer	(G) Alkylamino functional silane
P–03–0007	10/03/02	01/01/03	CBI	(S) Ingredient for use in fragrances for soaps, detergents, cleaners and other household products	(G) Alkyl cinnamic aldehyde
P–03–0008	10/07/02	01/05/03	Reichhold, Inc.	(G) Industrial coatings	(G) Hydroxyester acrylate, polymer with alkanediol polymer and isocyanate.
P–03–0009	10/07/02	01/05/03	CBI	(G) Pressure sensitive adhesive	(G) Acrylic polymer
P–03–0010	10/07/02	01/05/03	Reichhold, Inc.	(G) Industrial coating	(G) Hydroxyester acrylate, polymer with isocyanate and alkanediol
P–03–0011	10/08/02	01/06/03	CBI	(G) Petroleum additive	(G) Organometallic sulfide complex
P–03–0012	10/08/02	01/06/03	CBI	(G) Surfactant	(G) Alkylamides, ethoxylated
P–03–0013	10/08/02	01/06/03	CBI	(G) Surfactant	(G) Alkylamides, ethoxylated
P–03–0014	10/08/02	01/06/03	CBI	(G) Open, non dispersive (coating applications)	(G) Crosslinking stoving urethane resin
P–03–0015	10/08/02	01/06/03	CBI	(G) Surfactant	(G) Alkyl ether sulfuric acid, amine salt
P–03–0016	10/09/02	01/07/03	CBI	(G) Resin coating	(G) Polyurethane
P–03–0017	10/09/02	01/07/03	CBI	(G) Lubricant additive.	(G) Fatty acid amide
P–03–0018	10/11/02	01/09/03	CBI	(G) Raw material for manufacturing of photosensitive material	(G) Polysubstituted imidazole
P–03–0019	10/15/02	01/13/03	CBI	(G) Open, non-dispersive (resin)	(G) Aliphatic, hydroxyl-bearing polyester polyurethane resin
P–03–0020	10/15/02	01/13/03	CBI	(G) Open, non-dispersive (resin)	(G) Aliphatic hydroxyfunctional polyester polyurethane resin
P–03–0021	10/15/02	01/13/03	The Purolite Company	(S) An ion exhange resin for demineralization of water or process fluids	(S) 2-propenenitrile, polymer with diethenylbenzene, hydrolyzed, reaction products with diethylenetriamine
P–03–0022	10/15/02	01/13/03	CBI	(S) Resin for printing ink	(G) Modified hydrocarbon resin
P–03–0023	10/15/02	01/13/03	CBI	(S) Resin for printing ink	(G) Modified hydrocarbon resin
P–03–0024	10/15/02	01/13/03	CBI	(S) Resin for printing ink	(G) Modified hydrocarbon resin
P–03–0025	10/15/02	01/13/03	CBI	(S) Resin for printing ink	(G) Modified hydrocarbon resin
P–03–0026	10/15/02	01/13/03	CBI	(S) Resin for printing ink	(G) Modified hydrocarbon resin
P–03–0027	10/15/02	01/13/03	CBI	(S) Resin for printing ink	(G) Modified hydrocarbon resin
P–03–0028	10/16/02	01/14/03	CBI	(G) Friction reducing polymer for use in engineering plastics (open/non-dispersive use)	(G) Alkene acrylate copolymer
P–03–0029	10/15/02	01/13/03	CBI	(S) A colorant for plastics	(G) Disazo yellow pigment
P–03–0030	10/17/02	01/15/03	Cytec Engineered Materials Inc. (CEM)	(G) Resin for non-dispersive use.	(G) Epoxy-amine adduct
P–03–0031	10/17/02	01/15/03	CBI	(G) Resin coating	(G) Urethane acrylate
P–03–0032	10/17/02	01/15/03	3M Company	(G) Protective treatment	(G) Blocked fluoroChemical urethane
P–03–0033	10/17/02	01/15/03	3M Company	(G) Chemical intermediate	(G) FluoroChemical alcohol
P–03–0034	10/18/02	01/16/03	EPM Services, Inc.	(S) Pulper conditioner for treatment of the pulper water system on ships	(S) Formic acid, potassium salt (1:2)
P–03–0035	10/17/02	01/15/03	CBI	(G) Polymer used to improve scratch resistance of thermoplastics (open/non-dispersive use)	(G) Alkene acyylate copolymer
P–03–0036	10/17/02	01/15/03	CBI	(G) Polishing compound	(G) Acrylic acid co-polymer
P–03–0037	10/18/02	01/16/03	CBI	(G) Colourant	(G) Copper(11) complex of sulfonated azo dye intermediate
P–03–0038	10/18/02	01/16/03	CBI	(G) Colourant	(G) Copper(11) complex of sulfonated azo dye
P–03–0039	10/18/02	01/16/03	CIBA Specialty Chemicals Corporation	(S) Antioxidant for elastomers	(G) Amine stabilizer

I. 43 PREMANUFACTURE NOTICES RECEIVED FROM: 10/01/02 TO 10/18/02—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–03–0040	10/18/02	01/16/03	CBI	(S) Retention agent in paper making process prior to sheet formation	(G) Polyamidoamine resin grafted with aziridine.
P–03–0041	10/18/02	01/16/03	CBI	(G) Chemical intermediate - destructive use	(G) Alkyl silane methacrylate
P–03–0042	10/18/02	01/16/03	CBI	(G) Surfactant	(G) Alkylamides, ethoxylated
P–03–0043	10/18/02	01/16/03	CBI	(G) Resin component - destructive use	(G) Substituted phenolic polymer

In Table II of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the Notices of Commencement to manufacture received:

II. 29 NOTICES OF COMMENCEMENT FROM: 10/01/02 TO 10/18/02

Case No.	Received Date	Commencement/ Import Date	Chemical
P–01–0111	10/03/02	09/25/02	(G) Benzothiazine
P–01–0213	10/18/02	10/06/02	(G) Hydrocarbon resin
P–01–0442	10/16/02	09/29/02	(S) Xonotlite
P–02–0025	10/01/02	07/25/02	(S) Aluminum cesium fluoride
P–02–0058	10/18/02	09/18/02	(G) *N*-substituted-2-methyl-2-propenamide
P–02–0389	10/01/02	08/27/02	(G) Alkyd resin
P–02–0396	10/18/02	09/17/02	(G) Aliphatic substituted amide
P–02–0416	10/01/02	08/27/02	(G) Alkyd resin
P–02–0434	10/08/02	09/23/02	(G) Polyester resin
P–02–0532	10/02/02	09/13/02	(G) Acrylic solution polymer
P–02–0579	10/01/02	09/12/02	(G) Polyester isocyanate
P–02–0631	10/18/02	10/02/02	(G) Substituted naphthalene sulfonic acid, alkali salt
P–02–0632	10/09/02	09/10/02	(G) Acrylic polymer
P–02–0650	10/04/02	09/04/02	(G) Aromatic polyester polyol
P–02–0662	10/18/02	10/02/02	(G) Substituted naphthalene sulfonic acid, alkali salt
P–02–0696	10/16/02	10/04/02	(G) Styrene-methacrylate copolymer
P–02–0697	10/17/02	09/26/02	(G) Dineopentyl-4-substituted phthalate
P–02–0730	10/07/02	09/06/02	(G) Polytertiaryamine glycol
P–02–0731	10/15/02	09/30/02	(S) Fatty acids, C_{16-18} and C_{18}-unsaturated, branched and linear, reaction products with polyethylenepolyamines
P–02–0742	10/04/02	09/18/02	(G) Polyurethane
P–02–0754	10/08/02	09/27/02	(G) Amine modified epoxy resin
P–02–0756	10/08/02	09/27/02	(G) Amine modified epoxy resin
P–02–0819	10/08/02	10/02/02	(G) Polymer of alkylene polyester and methylenebis [isocyanatobenzene]
P–96–0281	10/16/02	07/22/02	(S) Fatty acids, C_{18}-unsaturated, dimers, hydrogenated, diisooctadecyl esters
P–99–0039	10/16/02	09/26/02	(G) Aliphatic urethane acrylate
P–99–0103	10/16/02	09/26/02	(G) Acrylated oligoamine
P–99–0207	10/02/02	08/12/02	(S) *L*-glutamic acid, n-(1-oxododecyl)-, disodium salt
P–99–0208	10/02/02	09/11/02	(S) *L*-glutamic acid, n-(1-oxododecyl)-
P–99–0805	10/01/02	09/20/02	(G) Modified polyester isocyanate prepolymer

List of Subjects

Environmental protection, Chemicals, Premanufacturer notices.

Dated: October 24, 2002.

Sandra R. Wilkins,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 02–28003 Filed 11–1–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2002–0065; FRL–7278–8]

Certain New Chemicals; Receipt and Status Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from September 12, 2002 to September 30, 2002, consists of the PMNs pending or expired, and the notices of commencement to

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manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

DATES: Comments identified by the docket ID number OPPT–2002–0065 and the specific PMN number or TME number, must be received on or before December 4, 2002.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Barbara Cunningham, Acting Director, Environmental Assistance Division, Office of Pollution Prevention and Toxics (7408M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the premanufacture notices addressed in the action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of This Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPPT–2002–0065. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at http://www.epa.gov/fedrgstr/.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

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For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number and specific PMN number or TME number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e- mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at http://www.epa.gov/edocket, and follow the online instructions for submitting comments. Once in the system, select" search," and then key in docket ID number— OPPT–2002–0065. The system is an" anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to oppt.ncic@epa.gov, Attention: Docket ID Number OPPT–2002–0065 and PMN Number or TME Number. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *By hand delivery or courier.* Deliver your comments to: OPPT Document Control Office (DCO) in EPA East Building Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number OPPT–2002–0065 and PMN Number or TME Number. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930.

D. How Should I Submit CBI To the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the notice or collection activity.

7. Make sure to submit your comments by the deadline in this document.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action and the specific PMN number you are commenting on in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Why Is EPA Taking This Action?

Section 5 of TSCA requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a PMN or an application for a TME and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from September 12, 2002 to September 30, 2002, consists of the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

III. Receipt and Status Report for PMNs

This status report identifies the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. If you are interested in information that is not included in the following tables, you may contact EPA as described in Unit II. to access additional non-CBI information that may be available.

In Table I of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: the EPA case number assigned to the PMN; the date the PMN was received by EPA; the projected end date for EPA's review of the PMN; the submitting manufacturer; the potential uses identified by the manufacturer in the PMN; and the chemical identity.

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I. 90 Premanufacture Notices Received From: 09/12/02 to 09/30/02

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–02–0994	09/12/02	12/11/02	CBI	(S) Ink jet dye for inks	(G) Cuprat-e,[[[[[[(sulfonaphthalenyl)]azo]-(substitutedphenyl)]azo]-(substitutedsulfonaphthalenyl)]azo]-substitutedphenyl-substituted heteromonocycle], sodium salts
P–02–0995	09/12/02	12/11/02	E.I. Dupont De Nemours and Company	(S) Chemical intermediate	(G) Aminonitrile
P–02–0996	09/12/02	12/11/02	E.I. Dupont De Nemours and Company	(S) Monomer for polymers with amide or imide links; crosslinker for epoxy type coatings, adhesives, sealents; crosslinker for epoxy type composites; monomer for urea and urethane urea polymers used in coatings; chemical intermediate for functional chemicals: amides, imides; chemical intermediate for functional chemicals: isocyanates, salts; chemical intermediate for functional chemicals: cyclic amines. etc.	(G) Aliphatic triamine
P–02–0997	09/13/02	12/12/02	Solutia Inc.	(S) Cross linker for waterborne primers	(G) Alkaline epoxide amine adduct
P–02–0998	09/13/02	12/12/02	CBI	(G) Component of polymer batteries	(G) Alkyleneoxide derivatives
P–02–0999	09/13/02	12/12/02	J.M. Huber corporation	(S) Industrial coating	(G) Silane coated barium sulfate
P–02–1000	09/13/02	12/12/02	J.M. Huber corporation	(S) Industrial coating	(G) Silane coated barium sulfate
P–02–1001	09/13/02	12/12/02	J.M. Huber corporation	(S) Industrial coating	(G) Silane coated barium sulfate
P–02–1002	09/16/02	12/15/02	Eichrom Technologies, Inc.	(S) Removal of polyvalent metal cations from aqueous media	(S) Benzene, diethenyl-, polymer with ethenylbenzene and ethenylethylbenzene, phosphonomethylated sulfonated
P–02–1005	09/16/02	12/15/02	CBI	(G) Surfactant	(G) Mixed phosphate esters
P–02–1006	09/17/02	12/16/02	CBI	(G) Component of coating with open use	(G) Polyurethane crosslinker
P–02–1007	09/17/02	12/16/02	CBI	(G) Component of coating with open use	(G) Polyurethane crosslinker
P–02–1008	09/17/02	12/16/02	CBI	(G) Surfactant performance additive	(S) 1-propanaminium, .nu.,.nu.,.nu.-trimethyl-3-[(2-methyl-1-oxo-2-propenyl)amino]-, chloride, polymer with ethyl 2-propenoate and sodium 2-propenoate
P–02–1009	09/17/02	12/16/02	CBI	(G) Component of coating with open use	(G) Polyurethane crosslinker
P–02–1010	09/17/02	12/16/02	CBI	(G) Component of coating with open use	(G) Polyurethane crosslinker
P–02–1011	09/17/02	12/16/02	CBI	(G) Component of coating with open use	(G) Polyurethane crosslinker
P–02–1012	09/17/02	12/16/02	CBI	(G) Component of coating with open use	(G) Polyurethane crosslinker
P–02–1013	09/18/02	12/17/02	CBI	(G) Resin for coating plates	(G) Modified polyvinyl butyral
P–02–1014	09/17/02	12/16/02	CBI	(G) Component of coating with open use	(G) Cationic polyether
P–02–1015	09/17/02	12/16/02	CBI	(G) Component of coating with open use	(G) Cationic polyether
P–02–1016	09/17/02	12/16/02	CBI	(G) Component of coating with open use	(G) Cationic polyether
P–02–1017	09/17/02	12/16/02	CBI	(G) Component of coating with open use	(G) Cationic polyether
P–02–1018	09/17/02	12/16/02	CBI	(G) Component of coating with open use	(G) Cationic polyether
P–02–1019	09/17/02	12/16/02	CBI	(G) Component of coating with open use	(G) Acrylic resin
P–02–1020	09/17/02	12/16/02	CBI	(G) Component of coating with open use	(G) Acrylic resin
P–02–1021	09/17/02	12/16/02	CBI	(G) Component of coating with open use	(G) Acrylic resin
P–02–1022	09/17/02	12/16/02	CBI	(G) Component of coating with open use	(G) Acrylic resin

I. 90 Premanufacture Notices Received From: 09/12/02 to 09/30/02—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–02–1023	09/17/02	12/16/02	CBI	(G) Component of coating with open use	(G) Acrylic resin
P–02–1024	09/17/02	12/16/02	CBI	(G) Component of coating with open use	(G) Acrylic resin
P–02–1025	09/18/02	12/17/02	CBI	(G) Lubricant additive	(S) Octadecanoic acid, 12-hydroxy-, homopolymer, reaction products with .nu.,.nu.-dimethyl-1,3-propanediamine, compounds with polyethylene glycol dihydrogen phosphate bu ether
P–02–1026	09/18/02	12/17/02	Solutia Inc.	(S) Binder for industrial coatings	(G) Modified alkyd resin
P–02–1027	09/18/02	12/17/02	CBI	(S) Structural sealant for window manufacture	(G) Silylated polyester
P–02–1028	09/18/02	12/17/02	3M Company	(S) Adhesive component	(S) Oxirane, methyl-, polymer with oxirane, ether with 1,2,3-propanetriol (3:1), polymer with 1,1′-methylenebis[4-isocyanatocyclohexane]
P–02–1029	09/18/02	12/17/02	3M Company	(S) Adhesive component	(S) Oxirane, methyl-, polymer with oxirane, ether with 1,2,3-propanetriol (3:1), polymer with alpha-hydro-.omega.-hydroxypoly[oxy(methyl-1,2-ethanediyl)] and 1,1′-methylenebis[4-isocyanatocyclohexane]
P–02–1030	09/18/02	12/17/02	CBI	(S) Anionic electrocoat	(G) Hydroxy functional acrylic resin salted with an organic amine
P–02–1031	09/18/02	12/17/02	CBI	(S) Anionic electrocoat	(G) Hydroxy functional acrylic resin salted with an organic amine
P–02–1032	09/18/02	12/17/02	CBI	(S) Anionic electrocoat	(G) Hydroxy functional acrylic resin salted with an organic amine
P–02–1033	09/18/02	12/17/02	CBI	(S) Anionic electrocoat	(G) Hydroxy functional acrylic resin salted with an organic amine
P–02–1034	09/18/02	12/17/02	CBI	(S) Anionic electrocoat	(G) Hydroxy functional acrylic resin salted with an organic amine
P–02–1035	09/18/02	12/17/02	CBI	(S) Anionic electrocoat	(G) Hydroxy functional acrylic resin salted with an organic amine
P–02–1036	09/19/02	12/18/02	The Dow Chemical Company	(G) Isocyanate prepolymer for polyurethan products	(G) Polyurethane prepolymer
P–02–1037	09/19/02	12/18/02	CBI	(G) Lawn and garden bag coatings	(G) Polyamine acrylate
P–02–1038	09/19/02	12/18/02	CBI	(G) Surfactant	(G) Alkylamides, ethoxylated
P–02–1039	09/19/02	12/18/02	The Dow Chemical Company	(G) Polymer for bonding textiles and/or fibers	(G) Water dispersable polyurethane polymer
P–02–1040	09/19/02	12/18/02	CBI	(G) Processing aid	(G) Alkyl phosphate derivative
P–02–1041	09/19/02	12/18/02	Forbo Adhesives, LLC	(G) Hot melt polyurethane adhesive	(G) Isocyanate functional polyester polyether urethane polymer
P–02–1042	09/20/02	12/19/02	CBI	(G) Energy curable compounds	(G) Polyester acrylate oligomer
P–02–1043	09/20/02	12/19/02	CBI	(G) Energy curable compounds	(G) Polyester acrylate oligomer
P–02–1044	09/20/02	12/19/02	CBI	(G) Energy curable compounds	(G) Polyester acrylate oligomer
P–02–1045	09/20/02	12/19/02	CBI	(G) Energy curable compounds	(G) Polyester acrylate oligomer
P–02–1046	09/20/02	12/19/02	CBI	(G) Energy curable compounds	(G) Polyester acrylate oligomer
P–02–1047	09/20/02	12/19/02	CBI	(G) Energy curable compounds	(G) Polyester acrylate oligomer
P–02–1048	09/20/02	12/19/02	CBI	(G) Water-borne coating	(G) Water-borne urethane polymer
P–02–1049	09/20/02	12/19/02	CBI	(S) Friction modifier and lubricity additive in industrial and automotive lubricants	(G) Saturated and unsaturated fatty acids, esters with a polyalcohol.
P–02–1050	09/19/02	12/18/02	International Specialty Products	(S) Component of coatings for digital printing paper	(S) 2-propenoic acid, 2-methyl-, 2-hydroxyethyl ester, polymer with n-[3-(dimethylamino)propyl]-2-methyl-2-propenamide
P–02–1051	09/20/02	12/19/02	CBI	(G) Ingredient for concrete admixtures	(G) Distiller's solubles
P–02–1054	09/23/02	12/22/02	CBI	(G) Thermoset polymer component, open nondispersive use	(G) Acrylonitrile, butadiene rubber-extended epoxy resin polymer
P–02–1055	09/23/02	12/22/02	CBI	(G) Thermoset polymer component, open nondispersive use	(G) Acrylonitrile, butadiene rubber-extended epoxy resin polymer
P–02–1056	09/23/02	12/22/02	CBI	(G) Thermoset polymer component, open nondispersive use	(G) Acrylonitrile, butadiene rubber-extended epoxy resin polymer

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I. 90 PREMANUFACTURE NOTICES RECEIVED FROM: 09/12/02 TO 09/30/02—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–02–1057	09/23/02	12/22/02	CBI	(G) Thermoset polymer component, open nondispersive use	(G) Acrylate, acrylonitrile, butadiene rubber-extended epoxy resin
P–02–1058	09/23/02	12/22/02	CBI	(G) Thermoset polymer component, open nondispersive use	(G) Acrylate, acrylonitrile, butadiene rubber-extended epoxy resin
P–02–1059	09/23/02	12/22/02	CBI	(G) Thermoset polymer component, open nondispersive use	(G) Acrylate, acrylonitrile, butadiene rubber-extended epoxy resin
P–02–1060	09/23/02	12/22/02	CBI	(G) Thermoset polymer component, open nondispersive use	(G) Acrylate, acrylonitrile, butadiene rubber-extended epoxy resin
P–02–1061	09/23/02	12/22/02	CBI	(G) Thermoset polymer component, open nondispersive use	(G) Acrylate, acrylonitrile, butadiene rubber-extended epoxy resin
P–02–1062	09/23/02	12/22/02	CBI	(G) Thermoset polymer component, open nondispersive use	(G) Acrylate, acrylonitrile, butadiene rubber-extended epoxy resin
P–02–1063	09/23/02	12/22/02	CBI	(G) Thermoset polymer component, open nondispersive use	(G) Acrylonitrile, butadiene rubber-extended epoxy resin
P–02–1064	09/23/02	12/22/02	CBI	(G) Thermoset polymer component, open nondispersive use	(G) Acrylonitrile, butadiene rubber-extended epoxy resin
P–02–1065	09/23/02	12/22/02	CBI	(G) Thermoset polymer component, open nondispersive use	(G) Acrylonitrile, butadiene rubber-extended epoxy resin
P–02–1066	09/23/02	12/22/02	CBI	(G) Thermoset polymer component, open nondispersive use	(G) Acrylonitrile, butadiene rubber-extended epoxy resin
P–02–1067	09/23/02	12/22/02	CBI	(G) Thermoset polymer component, open nondispersive use	(G) Acrylonitrile, butadiene rubber-extended epoxy resin
P–02–1068	09/23/02	12/22/02	CBI	(G) Thermoset polymer component, open nondispersive use	(G) Acrylonitrile, butadiene rubber-extended epoxy resin
P–02–1069	09/24/02	12/23/02	CBI	(S) Intermediate chemical for synthesizing alkylphosphine	(G) Alkylhalophosphine
P–02–1070	09/24/02	12/23/02	CBI	(S) Intermediate chemical for synthesizing alkylarsine	(G) Alkylhaloarsine
P–02–1071	09/24/02	12/23/02	CBI	(S) Phosphorus source in semiconductor manufacture by metalorganic chemical vapor deposition (mocvd)	(G) Alkylphosphine
P–02–1072	09/25/02	12/24/02	Essential Industries	(S) Acrylic floor finish	(S) 2-propenoic acid, 2-methyl-, polymer with ethenylbenzene, 2-ethyhexyl 2-propenoate, 1,6-hexanediyl di-2-propenoate and methyl 2-methyl-2-propenoate
P–02–1073	09/25/02	12/24/02	Essential Industries	(S) Acrylic floor finish	(S) 2-propenoic acid, 2-methyl-, polymer with ethenylbenzene, 2-ethyhexyl 2-propenoate, 1,6-hexanediyl di-2-propenoate and methyl 2-methyl-2-propenoate, ammonium salt
P–02–1074	09/25/02	12/24/02	Degussa Corporation	(G)Surface Treatment/Modification	(G) Fluorosilane mixture
P–02–1075	09/24/02	12/23/02	CBI	(S) Arsenic source in semiconductor manufacture by metalorganic chemical vapor deposition (mocvd)	(G) Alkylarsine
P–02–1076	09/25/02	12/24/02	Grain Processing Corporation	(G) Inert carrier	(G) Corn by product
P–02–1077	09/25/02	12/24/02	Grain Processing Corporation	(G) Inert carrier/absorbent	(G) Corn by product
P–02–1078	09/26/02	12/25/02	CBI	(S) Curative for epoxy resin (to improve chemcal resistance)	(G) Mannich base
P–02–1079	09/26/02	12/25/02	CBI	(S) Epoxy curing agent for green concrete	(G) Modified mannich base polyamine
P–02–1080	09/26/02	12/25/02	CBI	(S) Curative for eposxy resin (to improve chemical resistance)	(G) Mannich base
P–02–1081	09/26/02	12/25/02	CBI	(G) Open, non dispersive (active in batteries)	(G) Lithium nickel cobalt oxide
P–02–1086	09/26/02	12/25/02	CBI	(G) Sealant component	(G) Polymer of a carbomonocyclic diisocyanante, a modified polyalkene, hydroxyalkane and a substituted alkoxysilane
P–02–1087	09/27/02	12/26/02	Eastman Chemical Company	(S) Chemical intermediate	(S) Ethanol, 2,2′-[sulfonylbis(4,1-phenyleneoxy)]bis-
P–02–1088	09/27/02	12/26/02	CBI	(G) Destructive	(G) Alkylphenol mannich
P–02–1089	09/27/02	12/26/02	Degussa Corporation	(S) Weatherproofing formulation; mineral filler treatment	(G) Polysiloxane, containing propyl and ethoxy groups
P–02–1090	09/30/02	12/29/02	CBI	(G) Surfactant	(G) Glycol ether sulfuric acid ester, ammonium salt

I. 90 PREMANUFACTURE NOTICES RECEIVED FROM: 09/12/02 TO 09/30/02—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–02–1091	09/26/02	12/25/02	CBI	(G) Coating component	(G) Polymer of methacrylate and acrylate esters, peroxide-initiated

In Table II of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the Notices of Commencement to manufacture received:

II. 41 NOTICES OF COMMENCEMENT FROM: 09/12/02 TO 09/30/02

Case No.	Received Date	Commencement/ Import Date	Chemical
P–00–0936	09/24/02	08/23/02	(G) Phenolic modified polymer or resin
P–00–0961	09/26/02	09/05/02	(G) Aliphatic polyisocyanate
P–01–0009	09/12/02	08/12/02	(G) Halogenated arylsilane
P–01–0047	09/17/02	08/06/02	(G) Modified alkyl ester
P–01–0596	09/18/02	09/04/02	(G) Polymer of a polyether polyol, isophorone diisocyanate and hydroxyethyl methacrylate
P–02–0100	09/25/02	09/16/02	(G) Substituted o-cresol
P–02–0123	09/16/02	08/19/02	(G) Anthracenesulfonic acid, amino[[[[[[(alkenylsulfonyl)alkyl]substituted phenyl]amino]-substituted 1,3,5-triazin]amino]-alkyl-substituted phenyl]amino]-9,10-dihydro-9,10-dioxo-, disodium salt
P–02–0139	09/12/02	09/07/02	(G) Polymer of substituted propenoic acid, propenamide and propenoic esters
P–02–0177	09/16/02	08/19/02	(G) Naphthalene disulfonicacid,azo substituted phenyl disodium salt, reaction products with halo triazin amino substituted phenyl sulfonyl compound
P–02–0184	09/23/02	09/02/02	(S) 1,4-benzenedicarboxylic acid, polymer with 1,3-diisocyanatomethylbenzene, 1,2-ethanediol, 2,2′-[1,2-ethanediylbis (oxy)] bis [ethanol], 2-ethyl-2-(hydroxymethyl)-1,3-propanediol and alpha,alpha′-[(1-methylethylidene)di-4,1-phenylene] bis (omega-hydroxypoly [oxy(methyl-1,2-ethanediyl)]], benzoate (ester)
P–02–0286	09/13/02	08/06/02	(G) Naphthalenedisulfonic acid, amino halo alkyl sulfonyl alkyl amino-1,3,5-triazin sulfophenyl azo hydroxy substituted phenyl azo sodium salt
P–02–0428	09/17/02	08/15/02	(G) Alkoxysilane terminated polyether polymer
P–02–0456	09/16/02	08/19/02	(G) Naphthalenesulfonic acid amino halo substituted triazin azo substituted phenyl sodium salt
P–02–0484	09/18/02	08/28/02	(G) Substituted naphthalenedisulfonic acid amino substituted triazine reaction products with substituted alkyl amino benzenesulfonic acid
P–02–0506	09/16/02	08/31/02	(G) Aromatic pyromellitic tetrapolyimide
P–02–0516	09/13/02	09/03/02	(G) Alkyl methacrylate copolymer
P–02–0519	09/12/02	09/07/02	(G) (substituted)dicarboxylic acid, polymer with dioic acid, (substituted)diol, hydrazine, (substituted)propanoic acid and (substituted)cylcohexane, compound with (substituted)amine
P–02–0533	09/24/02	09/16/02	(G) Sulfophenyl substituted alkyl acid, sodium salt
P–02–0566	09/17/02	09/12/02	(G) Polymer ester of mono and dibasic acids
P–02–0577	09/26/02	08/09/02	(G) Amine acrylate ester
P–02–0589	09/25/02	09/17/02	(G) Polyester isocyanate
P–02–0595	09/13/02	09/05/02	(G) Epoxy-amine adduct salt
P–02–0611	09/17/02	07/26/02	(G) Polyisocyanate polyaddition product
P–02–0614	09/13/02	09/04/02	(G) Acrylic copolymer
P–02–0616	09/17/02	08/22/02	(G) Halogenated heterocyclic carboxylic acid derivative
P–02–0617	09/13/02	09/04/02	(G) Acrylic copolymer
P–02–0634	09/17/02	08/08/02	(G) Methoxymethylbenzenes methylanisoles
P–02–0635	09/17/02	08/08/02	(G) Methoxymethylbenzenes methylanisoles
P–02–0636	09/17/02	08/08/02	(G) Methoxymethylbenzenes methylanisoles
P–02–0637	09/17/02	08/08/02	(G) Methoxymethylbenzenes methylanisoles
P–02–0658	09/17/02	08/26/02	(G) Ethylene copolymer
P–02–0660	09/18/02	08/24/02	(G) Chlorooxazole
P–02–0679	09/17/02	08/27/02	(G) Polyester polyurethane polymer
P–02–0685	09/23/02	09/17/02	(G) Butyl acrylate, polymer with styrene and methylamino chloride compounds
P–02–0699	09/30/02	09/04/02	(G) Substituted aminophenyl substituted heteropolycycle, salt
P–02–0729	09/13/02	09/04/02	(G) Acrylic copolymer
P–02–0737	09/18/02	09/10/02	(G) Naphthalenesulfonic acid derivative
P–98–1081	09/23/02	09/10/02	(G) Urethane acrylate
P–99–0101	09/24/02	09/10/02	(G) Aliphatic urethane acrylate
P–99–0647	09/24/02	09/10/02	(G) Polyester acrylate
P–99–0831	09/27/02	09/18/02	(G) Metal salt of a phosphorus compound

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List of Subjects

Environmental protection, Chemicals, Premanufacturer notices.

Dated: October 15, 2002.

Sandra R. Wilkins,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 02–28004 Filed 11–1–02; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

[DA 02–2813]

Public Safety National Coordination Committee

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document advises interested persons of a meeting of the Public Safety National Coordination Committee ("NCC"), which will be held in Brooklyn, New York. The Federal Advisory Committee Act, Public Law 92–463, as amended, requires public notice of all meetings of the NCC. This notice advises interested persons of the eighteenth meeting of the Public Safety National Coordination Committee.

DATES: November 22, 2002 at 9:30 a.m.–12:30 p.m.

ADDRESSES: Fire Department of New York—Headquarters, 9 MetroTech Center, Brooklyn, New York 11201.

FOR FURTHER INFORMATION CONTACT: Designated Federal Officer, Michael J. Wilhelm, (202) 418–0680, e-mail *mwilhelm@fcc.gov*. Press Contact, Meribeth McCarrick, Wireless Telecommunications Bureau, 202–418–0600, or e-mail *mmccarri@fcc.gov*.

SUPPLEMENTARY INFORMATION: Following is the complete text of the Public Notice: This Public Notice advises interested persons of the eighteenth meeting of the Public Safety National Coordination Committee ("NCC"), which will be held in Brooklyn, New York. The Federal Advisory Committee Act, Public Law 92–463, as amended, requires public notice of all meetings of the NCC.

Date: November 22, 2002.

Meeting Time: General Membership Meeting—9:30 a.m.–12:30 p.m.

Address: Fire Department of New York—Headquarters, 9 MetroTech Center, Brooklyn, New York.

The NCC Subcommittees will meet from 9 a.m. to 5:30 p.m. the previous day. The NCC General Membership Meeting will commence at 9:30 a.m. and continue until 12:30 p.m. The agenda for the NCC General Membership meeting is as follows:

1. Introduction and Welcoming Remarks
2. Administrative Matters
3. Report from the Interoperability Subcommittee
4. Report from the Technology Subcommittee
5. Report from the Implementation Subcommittee
6. Public Discussion
7. Action on Subcommittee Recommendations
8. Other Business
9. Upcoming Meeting Dates and Locations
10. Closing Remarks

The FCC has established the Public Safety National Coordination Committee, pursuant to the provisions of the Federal Advisory Committee Act, to advise the Commission on a variety of issues relating to the use of the 24 MHz of spectrum in the 764–776/794–806 MHz frequency bands (collectively, the 700 MHz band) that has been allocated to public safety services. See The Development of Operational, Technical and Spectrum Requirements For Meeting Federal, State and Local Public Safety Agency Communications Requirements Through the Year 2010 and Establishment of Rules and Requirements For Priority Access Service, WT Docket No. 96–86, First Report and Order and Third Notice of Proposed Rulemaking, FCC 98–191, 14 FCC Rcd 152 (1998), 63 FR 58645 (11–2–98).

The NCC has an open membership. Previous expressions of interest in membership have been received in response to several Public Notices inviting interested persons to become members and to participate in the NCC's processes. All persons who have previously identified themselves or have been designated as a representative of an organization are deemed members and are invited to attend. All other interested parties are hereby invited to attend and to participate in the NCC processes and its meetings and to become members of the Committee. This policy will ensure balanced participation. Members of the general public may attend the meeting. To attend the eighteenth meeting of the Public Safety National Coordination Committee, please RSVP to Joy Alford of the Policy and Rules Branch of the Public Safety and Private Wireless Division, Wireless Telecommunications Bureau of the FCC by calling (202) 418–0680, by faxing (202) 418–2643, or by e-mailing at *jalford@fcc.gov*. Please provide your name, the organization you represent, your phone number, fax number and e-mail address. This RSVP is for the purpose of determining the number of people who will attend this eighteenth meeting. The FCC will attempt to accommodate as many people as possible. However, admittance will be limited to the seating available. Persons requesting accommodations for hearing disabilities should contact Joy Alford immediately at (202) 418–7233 (TTY). Persons requesting accommodations for other physical disabilities should contact Joy Alford immediately at (202) 418–0694 or via e-mail at *jalford@fcc.gov*. The public may submit written comments to the NCC's Designated Federal Officer before the meeting.

Additional information about the NCC and NCC-related matters can be found on the NCC Web site located at: *http://wireless.fcc.gov/publicsafety/ncc*.

Federal Communications Commission.

Jeanne Kowalski,

Deputy Division Chief for Public Safety, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau.

[FR Doc. 02–27975 Filed 11–1–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1422–DR]

Arizona; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Arizona, (FEMA–1422-DR), dated June 25, 2002, and related determinations.

EFFECTIVE DATE: October 23, 2002.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Magda.Ruiz@fema.gov*.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Arizona is hereby amended to include assistance under the Public Assistance program limited to Category F for repair of public utilities in the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 25, 2002:

Apache and Navajo Counties for Category F, Utilities. (Already designated for Public Assistance Categories A, Debris Removal; C, Roads and Bridges; E, Buildings and Equipment; and Individual Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program)

Joe M. Allbaugh,

Director.

[FR Doc. 02–27960 Filed 11–1–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1437–DR]

Louisiana; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Louisiana, (FEMA–1437–DR), dated October 3, 2002, and related determinations.

EFFECTIVE DATE: October 17, 2002.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Magda.Ruiz@fema.gov*.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Louisiana is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of October 3, 2002:

Acadia, Assumption, Avoyelles, Beauregard, Calcasieu, Cameron, Evangeline, Iberia, Iberville, Jefferson Davis, Jefferson, Lafayette, Lafourche, Livingston, Orleans, Plaquemines, St. Bernard, St. Charles, St. James, St. John the Baptist, St. Landry, St. Martin, St. Mary, St. Tammany, Tangipahoa, Terrebonne, and Vermillion Parishes for Categories C through G under the Public Assistance program (already designated for Categories A and B, including direct Federal assistance and Individual Assistance).

East Baton Rouge, Pointe Coupee, Rapides, and West Baton Rouge Parishes for Categories C through G under the Public Assistance program (already designated for Categories A and B).

Allen, Caldwell, Catahoula, East Feliciana, LaSalle, Ouachita, St. Helena, Vernon, Washington, and West Feliciana Parishes for Public Assistance.

Allen, East Baton Rouge, East Feliciana, St. Helena, Pointe Coupee, Rapides, Washington, and West Baton Rouge Parishes for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program)

Joe M. Allbaugh,

Director.

[FR Doc. 02–27961 Filed 11–1–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL MARITIME COMMISSION

Advisory to Ocean Common Carriers, Conferences and Discussion Agreements of Such Carriers, Shippers, Shippers' Associations, Ocean Transportation Intermediaries and Tariff Publishers in the Foreign Commerce of the United States Regarding Actions in Response to Congestion at Ports on the West Coast of the United States

October 29, 2002.

The Federal Maritime Commission ("Commission") has been monitoring ongoing developments relating to the congestion and delays that recently have occurred, and may continue for some time, at U.S. West Coast ports. We also have received several inquiries from interested parties as to the legality of certain carrier actions being taken or proposed. Accordingly, the Commission wishes to remind the regulated industry and the shipping public of the general requirements of the Shipping Act of 1984, 46 U.S.C. app. § 1701 *et seq.* ("1984 Act") and of the Commission's rules that govern rate changes that result in an increased cost to the shipper. These provisions should provide guidance to shippers and carriers in this situation.

Section 8(d) of the 1984 Act, and the Commission's rules on tariffs at 46 CFR 520.8, generally prohibit any "change in an existing rate that results in an increased cost to the shipper from becoming effective earlier than 30 calendar days after publication." The Commission's rules on tariffs state that the "rates, charges, and rules applicable to any given shipment shall be those in effect on the date the cargo is received by the common carrier or its agent including originating carriers in the case of rates for through transportation." 46 CFR 520.7(c).

With respect to service contracts, the public is reminded that the specific terms of individual service contracts generally govern the rates and service obligations of the parties. Any variance from specific terms must be authorized otherwise, either by the terms of the contract itself or by reference therein to other applicable authority, such as carrier rules tariffs which would normally be subject to the 30-day notice requirement. Of course, service contract terms always may be varied by mutual agreement of the parties reflected in an amendment duly filed with the Commission and otherwise consistent with applicable regulations and statutes.

The Commission wishes to caution the industry and the shipping public that these general rules remain in effect and that any actions inconsistent with these rules would be permissible only if they are authorized by other lawful provisions. Specifically, any surcharges published in tariffs that are designed to address the consequences of continuing congestion at U.S. West Coast ports generally should not be instituted without the required 30-day notice, and may be applied only in conformance with the applicable "effective date" rule, cited above. Again, parties to service contracts lawfully may negotiate alternative means of addressing the costs associated with this congestion through amendment of their service contacts.

The Commission recognizes that a host of differing circumstances and questions will arise as the West Coast dock situation continues to unfold. The foregoing does not attempt to address all such matters—it is intended to serve as general guidance. Involved parties who have any uncertainty as to the legality of the actions they are encountering or proposing may wish to obtain legal counsel. The Commission will continue to monitor this situation and is available to answer general questions on applicable legal requirements. Any questions relating to this Advisory or other aspects of common carriers' service in the present situation may be directed to Vern W. Hill, Director, Bureau of Enforcement, at (202) 523–5783 or by electronic mail at *vernh@fmc.gov*.

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This Advisory will be posted on the Commission's website at *http://www.fmc.gov*, posted in the Office of the Secretary, 800 N. Capitol Street, NW., Room 1046, Washington, DC 20573, and published in the **Federal Register**.

By the Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 02–27919 Filed 11–1–02; 8:45 am]

BILLING CODE 6730–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

NCHS, Data Policy and Standards Staff: Meeting

National Center for Health Statistics (NCHS), Data Policy and Standards Staff, announces the following meeting.

Name: ICD–9–CM Coordination and Maintenance Committee meeting.

Times and Dates: 9 a.m.–4 p.m., December 5–6, 2002.

Place: Centers for Medicare and Medicaid Services (CMS) Auditorium, 7500 Security Boulevard, Baltimore, Maryland.

Status: Open to the public, but limited by the space available. Because of fire code requirements, should the number of attendants meet the capacity of the room, the meeting room will be closed.

Purpose: The ICD–9–CM Coordination and Maintenance (C&M) Committee will hold its final meeting of the 2002 calendar year cycle on Thursday and Friday, December 5–6, 2002. The C&M meeting is a public forum for the presentation of proposed modifications to the International Classification of Diseases, Ninth-Revision, Clinical Modification.

Matters to Be Discussed: Agenda items include:

Subgaleal hemorrhage
Septic shock
Cerebral infarction of unknown vessel
Early satiety
Impaired fasting glucose
Carnithine deficiency
Late newborn
Hyperaldosteronism
Scrotal transposition
Peyronie's disease
Rhabdomyolysis
Hypercoagulable states
Postpartum cardiomyopathy
ICD–10 Procedure Classification System (PCS)—Update
Multi-level spinal fusion
Artificial heart
Interleukin 2 (IL–2)
Laparoscopic/Thorascopic approaches
Radioactive Isotope therapy
Addenda

Contact Person for Additional Information: Amy Blum, Medical Classification Specialist, Data Policy and Standards Staff, NCHS, 6526 Belcrest Road, Room 1100, Hyattsville, Maryland 20782, telephone 301/458–4106 (diagnosis), Amy Gruber, Health Insurance Specialist, Division of Acute Care, CMS, 7500 Security Blvd., Room C4–07–07, Baltimore, Maryland, 21244 telephone 410–786–1542 (procedures).

Notice: In the interest of security, [CMS] has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: October 25, 2002.

John Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 02–27956 Filed 11–1–02; 8:45 am]

BILLING CODE 4160–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Statement of Organization, Functions, and Delegations of Authority

This notice amends Part K of the Statement of Organization, Functions, and Delegations for Authority of the Department of Health and Human Services (DHHS), Administration of Children and Families (ACF) as follows: Chapter KG, The Office of Community Services (OCS) [62 FR 8743–44], as last amended February 26, 1997; Chapter KH, The Office of Family Assistance (OFA) [61 FR 35770], as last amended, February 23, 2000; and Chapter KM, The Office of Planning, Research and Evaluation (OPRE) [67 FR 4453–54], as last amended, January 30, 2002. This notice reflects the realignment of the Tribal Services and the Data Collection and Analysis functions within ACF.

These Chapters are amended as follows:

I. Chapter KG, The Office of Community Services

A. *Delete KG.00 Mission in its entirety, and replace it with the following:*

KG.00 Mission. The Office of Community Services (OCS) advises the Secretary, through the Assistant Secretary for Children and Families, on matters relating to community programs to promote economic self-sufficiency. The Office is responsible for administering programs that serve low-income and needy individuals and address the overall goal of personal responsibility and achieving and maintaining self-sufficiency. The Office administers the Community Services Block Grant, Social Services Block Grant, and the Low Income Home Energy Assistance Block Grant programs. The Office also administers the Family Violence Program. It administers a variety of discretionary grant programs that foster family stability, economic security, responsibility and self-support, promote and provide services to homeless and low-income individuals, and develop new and innovative approaches to reduce welfare dependency.

B. *Delete KG.10 Organization in its entirety and replace with the following:*

KG.10 Organization. The Office of Community Services is headed by a Director who reports directly to the Assistant Secretary for Children and Families and consists of:

Office of the Director (KGA)
Division of State Assistance (KGB)
Division of Community Discretionary Programs (KGC)
Division of Community Demonstration Programs (KGD)
Division of Energy Assistance (KGE)

C. *Delete KG.20 Functions, Paragraph F, The Division of Tribal Services in its entirety.*

II. Chapter KH, The Office of Family Assistance

A. *Delete Chapter KH.00 Mission in its entirety, and replace with the following:*

KH.00 Mission. The Office of Family Assistance (OFA) advises the Secretary, through the Assistant Secretary for Children and Families, on matters relating to the Temporary Assistance for Needy Families (TANF) program, title IV–A of the Social Security Act. This program promotes temporary assistance and economic self-sufficiency for children and families. The Office provides leadership, direction and technical guidance, with ACF Regional Offices, to the States, Tribes, and Territories on the TANF program, the Native Employment Works program, and the Aid to the Aged, Blind and Disabled program in Guam, Puerto Rico and the Virgin Islands. The Office refocuses efforts to increase economic independence and productivity for families. It provides direction and guidance in the collection and dissemination of performance and other valuable data for these programs. The Office provides technical assistance to States, Territories, Indian Tribes, Native American organizations, localities and

community groups, and assesses State, Territorial, and Tribal performance in administering these programs; reviews State and Tribal planning for administrative and operational improvements; and recommends actions to improve effectiveness.

B. *Delete KH.10 Organization in its entirety and replace with the following:*

KH.10 Organization. The Office of Family Assistance is headed by a Director, who reports to the Assistant Secretary for Children and Families. The office is organized as follows:

Office of the Director (KHA)
Division of State TANF Policy (KHB)
Division of State and Territory TANF Management (KHC)
Division of Data Collection and Analysis (KHG)
Division of Tribal TANF Management (KHH)

C. *Delete KH.20 Functions, Paragraph A. in its entirety and replace with the following:*

KH.20 Functions. A. The Office of the Director is directly responsible to the Assistant Secretary for Children and Families for carrying out OFA's mission and providing direction, leadership, guidance and general supervision to the principal components of OFA. The Deputy Director assists the Director in carrying out the responsibilities of the office. The Chief Program Officer assists the Director, and OFA Divisions in program planning, coordination, and evaluation efforts, and providing leadership and direction in the planning and execution of initiatives designed to improve program and organizational performance. The Office provides public information services by responding to welfare reform inquiries from the public and private sectors from both domestic and international entities via written and electronic communication and monitors completion of correspondence assigned to OFA. This office also coordinates and organizes the printing and distribution of policy and guidance documents and responds to Freedom of Information Act (FOIA) requests.

D. *Delete KH.20 Functions, Paragraph B. in its entirety and replace with the following:*

B. The Division of State TANF Policy provides direction and guidance in the nationwide administration of the Temporary Assistance for Needy Families programs, under title IV–A of the Social Security Act and the Aid to the Aged, Blind, and Disabled program in Guam, Puerto Rico and the Virgin Islands.

The Division ensures compliance with Federal laws and regulations. The Division proposes and reviews legislation and implements national policy, develops regulations to implement new laws and prepares policy interpretations. The Division provides guidance and direction, analyzes, tracks and disseminates information on State progress in achieving work participation goals. The Division shapes and facilitates communication between Federal, State and local entities to coordinate cross-cutting welfare to work related policies. The Division collaborates with ACF and HHS components on related programs such as: Head Start, child care programs and programs related to child welfare. The Division develops State plan procedures and evaluates State TANF plans with internal and external collaboration to identify critical issues contained in the plans and amendments. It also prepares congressional materials, testimonies and speeches. The Division collaborates with and provides program guidance to the Office of the General Counsel (OGC) on litigation.

E. *Delete KH.20 Functions, Paragraph C. in its entirety and replace with the following:*

C. The Division of State and Territory TANF Management provides technical assistance to States, Territories, localities and community groups; assists in the assessment of State and Territorial performance in administering the TANF program and the Aid to the Aged, Blind and Disabled program in Guam, Puerto Rico and the Virgin Islands; and recommends and promotes improvements in outcomes for clients. The Division develops and implements strategies to assist grantees in implementing and designing programs to meet TANF purposes. The Division develops and delivers technical assistance, focusing on innovative policy and program design approaches, to improve the well-being of children. The Division facilitates closer working relationships with State programs and program officials to help States improve their TANF programs. The Division promotes cross-program policy initiatives to self-sufficiency and family focused services. The Division collaborates with ACF and HHS components and other Federal agencies to deliver family-focused services. It promotes job development through agreements with other Federal agencies and corporations. The Division identifies best practices and shares information through conferences, publications and other means. The Division establishes strong working partnerships with States, Tribes and Territories to help them build management capacity and skills to improve the performance of the TANF programs. The Division compiles, analyzes, evaluates, and disseminates information on implementation and strategies in the TANF program and other related welfare programs in the United States, including information on pertinent statutes, regulations, program instructions and guidance. The Division serves as a catalyst to connect other relevant national, Federal, State and local organizations to operate more effectively, and to share resources and information relative to increasing the economic self-sufficiency of low-income families. The Division has responsibility for updating contracted Web sites to provide easy access; targeted and focused useful information; customer-friendly organization and search capabilities.

F. *Delete KH.20 Functions, Paragraph D. in its entirety and replace with the following:*

D. The Division of Data Collection and Analysis is responsible for all aspects of the collection, compilation, analysis, and dissemination of statistical and financial data on the TANF program and the Aid to the Aged, Blind and Disabled programs in Guam, Puerto Rico, and the Virgin Islands. The Division develops regulations to implement data collection requirements; designs, develops, implements, and maintains systems for the collection and analysis of data including: participation rate information, recipient characteristics, financial and administrative data, State expenditures on families, work activities of non-custodial parents, transitional services, and data used in the assessment of State performance. The Division provides leadership and coordinates with other ACF and HHS offices and external organizations in the use of these data for policy and research purposes. The Division also develops and maintains statistical protocols and manuals for data collection purposes and provides technical assistance in the use of these materials.

G. *Amend KH.20 Functions, to add the following new paragraph:*

E. The Division of Tribal TANF Management is responsible for assisting in implementation and coordination of ongoing consultation with tribal governments and, where appropriate, State and Federal agencies regarding issues relating to the TANF and the Native Employment Works program and related legislation. It is also responsible for development of regulations and guidelines for Tribal employment programs and for providing leadership, policy direction, technical assistance and coordination of Tribal services

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programs. The Division performs inter- and intra-agency liaison functions to promote family stability, economic security, responsibility and self-support for Native Americans. It is responsible for conducting program reviews to ensure compliance with the Act, regulations and policy directives. It is responsible for activities related to tribal data collection reporting requirements relating to the programs.

III. Chapter KM, The Office of Planning, Research and Evaluation

A. *Delete KM.00 Mission in its entirety and replace with the following:*

KM.00 Mission. The Office of Planning, Research and Evaluation (OPRE) is the principal advisor to the Assistant Secretary for Children and Families on improving the effectiveness and efficiency of programs designed to make measurable improvements in the economic and social well-being of children and families.

The Office provides guidance, analysis, technical assistance, and oversight to ACF programs and across programs in the agency on: Strategic planning aimed at measurable results; performance measurement; research and evaluation methodologies; demonstration testing and model development; statistical, policy and program analysis; synthesis and dissemination of research and demonstration findings; and application of emerging technologies to improve the effectiveness of programs and service delivery.

The Office, through the Division of Economic Independence and the Division of Child and Family Development, oversees and manages the research programs under sections 413 and 1110 of the Social Security Act, including: Priority setting and analysis; managing and coordinating major cross-cutting, leading-edge studies and special initiatives; and collaborating with states, communities, foundations, professional organizations and others to promote the development of children, family focused services, parental responsibility, employment, and economic independence. Through the Division of Child and Family Development, the Office also oversees and manages the research, demonstration, and evaluation activities under Section 649 of the Head Start Act. In addition, the Office also provides coordination and leadership in implementing the Government Performance and Results Act (GPRA).

B. *Delete KM.10 Organization in its entirety and replace with the following:*

KM.10 Organization. The Office of Planing, Research and Evaluation (OPRE) is headed by a Director, who reports to the Assistant Secretary for Children and Families. *The Office is organized as follows:*

Office of the Director (KMA)
Division of Economic Independence (KMB)
Division of Child and Family Development (KMC)

C. *Delete KM.20 Functions, Paragraph A. in its entirety and replace with the following:*

KM.20 Functions. A. The Office of the Director provides direction and executive leadership to OPRE in administering its responsibilities. It serves as principal advisor to the Assistant Secretary for Children and Families on all matters pertaining to: improving the effectiveness and efficiency of ACF programs; strategic planning; performance measurement; program and policy evaluation; research and demonstrations; state and local innovations and progress; and public/private partnership initiatives of concern to the Assistant Secretary for Children and Families. It represents the Assistant Secretary for Children and Families at various planning, research, and evaluation forums and carries out special Departmental and Administration initiatives.

D. *Delete KM.20 Functions, Paragraph B in its entirety and replace with the following:*

B. The Division of Economic Independence, in cooperation with ACF income support programs and others, works with Federal counterparts, States, community agencies, and the private sector to understand and overcome barriers to economic independence; promote parental responsibility; and assist in improving the effectiveness of programs that further economic independence.

The Division provides guidance, analysis, technical assistance and oversight in ACF on: Strategic planning and performance measurement for economic independence; statistical, policy, and program analysis; surveys, research, and evaluation methodologies; demonstration testing and model development; synthesis and dissemination of research and demonstration findings; and application of emerging technologies to programs which promote employment, parental responsibility, and economic independence.

The Division develops policy-relevant research priorities; conducts, manages, and coordinates major cross-program, leading-edge research, demonstrations, and evaluation studies, manages and conducts statistical, policy, and program analyses on trends in employment, child support payments, and other income supports; and works in partnership with States, communities, and the private sector to promote employment, parental responsibility, and family economic independence.

E. *Delete KM.20 Functions, Paragraph C. in its entirety and replace with the following:*

C. The Division of Child and Family Development, in cooperation with ACF programs and others, works with Federal counterparts, States, community agencies, and the private sector to: Improve the effectiveness and efficiency of programs; assure the protection of children and other vulnerable populations; strengthen and promote family stability; and foster sound growth and development of children and their families.

The Division provides guidance, analysis, technical assistance, and oversight in ACF on: Strategic planning and performance measurement for all ACF programs, including child and family development; statistical, policy, and program analysis; surveys, research and evaluation methodologies; demonstration testing and model development; synthesis and dissemination of research and demonstration findings; and application of emerging technologies to improve the effectiveness of programs and service delivery.

The Division conducts, manages, and coordinates major cross-program, leading edge research, demonstration, and evaluation studies; develops policy-relevant research priorities; and manages and conducts statistical, policy, and program analyses related to children and families. Division staff also provides consultation, coordination, direction, and support for research activities related to children and families across ACF programs.

In partnership with the Head Start Bureau and the Commissioner, Administration on Children, Youth and Families, the Division oversees and manages the research, demonstration, and evaluation activities under section 649 of the Head Start Act and manages the Head Start research budget. The Division also manages the Social Services research and demonstration budget under section 1110 of the Social Security Act.

F. *Delete KM.20 Functions, Paragraph D. in its entirety.*

Dated: October 28, 2002.

Wade F. Horn,

Assistant Secretary for Children and Families.

[FR Doc. 02–27971 Filed 11–1–02; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Novel Molecular Conjugates for Signal Amplification

Subhash Dhawan (CBER/FDA), DHHS Reference No. E–136–02/0 filed 10 Jun 2002, Licensing Contact: Susan Ano; 301/435–5515; *anos@od.nih.gov.*

This invention relates to novel molecular conjugates that are applicable to the field of immunoassays and, in general, any probe assay requiring detection of an analyte. These molecular constructs are capable of enhancing test sensitivity and shortening assay time through the use of analyte-specific binding reagents associated with a multiple label scaffold. The invention can utilize a diversity of analyte-binding molecules, providing adjustable selectivity for a range of analytes. Conversely, combination of labels with different chemical properties with a single binding partner facilitates a multiplex approach to analyte detection on a large scale. The invention includes kits and methods for production and use of the molecular conjugates.

Methods of Inducing Deacetylase Inhibitors To Promote Cell Differentiation and Regeneration

Vittorrio Sartorelli (NIAMS) and Pier L. Puri, DHHS Reference No. E–353–01/0 filed 18 Oct 2001, Licensing Contact: Fatima Sayyid; 301/435–4521; *sayyidf@od.nih.gov.*

The present invention discloses a method of enhancing progenitor cell differentiation, including enhancing myogenesis, neurogenesis and hematopoiesis, by contacting a progenitor cell with an effective amount of a deacetylase inhibitor (DI). The progenitor cell can be part of cell culture, such as a cell culture used for in vitro or in vivo analysis of progenitor cell differentiation, or can be part of an organism, such as a human or other mammal. Contacting the progenitor cell with a DI can lead to enhancement of expression of terminal cell-type specific genes in the progenitor cell, such as enhancing expression of muscle-specific genes in myoblasts, and can lead to skeletal muscle hypertrophy. Administering a DI to a subject also can provide some prophylactic or therapeutic effect for inhibiting, preventing, or treating associated with a degeneration or loss of tissue. The DI can be administered to a subject as part of a pharmaceutical composition.

FcεRI-Bearing Human Mast Cell Lines

Arnold Kirshenbaum, Cem Akin, Dean D. Metcalfe (NIAID), DHHS Reference No. E–279–01/0 filed 04 Feb 2002, Licensing Contact: Marlene Shinn; 301/435–4426; *shinnm@od.nih.gov.*

Allergic diseases, which include asthma, are a significant health problem in the United States, with 15–25% of the population displaying some form of allergies. The mast cell is the major effector cell of allergic inflammation and has also been shown to be involved in delayed hypersensitivity reactions, fibrosis, autoimmune disorders, neoplasia, and immunity against parasitic infections. Most mast cell studies are currently performed using mast cells derived from cultured CD34+ progenitor cells, which is time consuming, costly, and produces a poor yield of cells.

The NIH announces a number of newly derived mast cell lines that more closely resemble normal in vivo and in vitro human mast cells, which express functional FcεRI receptors and respond to Stem Cell Factor (SCF) with proliferation. It is well known that the most important means by which mast cells induce inflammation is by mediator release via FcεRI receptor cross-linking. These cell lines also release mediators by cross-linking of FcγRI (CD64) receptors, and have been shown to express FcγRII (CD32). It is anticipated that these cell lines will be useful in a variety of research projects including the development of drugs that block the release of potent mediators that cause allergic inflammation and the development of drugs to inhibit mast cell hyperplasia and dysmyelopoiesis in mastocytosis.

Thermolabile Hydroxyl Protecting Groups and Methods of Use

Serge L. Beaucage et al. (FDA), DHHS Reference No. E–242–00/0 filed 03 Dec 2001, Licensing Contact: Marlene Shinn; 301/435–4426; *shinnm@od.nih.gov.*

Synthetic oligonucleotides can be used in a wide variety of settings, which aside from basic research tools include gene therapy applications, antisense and immunostimulatory therapeutic indications, and the rapidly evolving diagnostic and DNA sequencing microarray technology. The NIH announces a new technology aimed at improving oligonucleotide synthesis on glass microarrays. The technology is based on the use of thermolabile groups for 5′-/3′-hydroxyl protection of oligonucleotides and departs from the current methods employed in the preparation of oligonucleotide microarrays in that it does not utilize photochemical irradiation or abrasive chemicals for the removal of such protecting groups. Instead, thermal cleavage of 5′-/3′-hydroxyl protecting groups is effected at temperatures near 90°C under mild neutral conditions to prevent glass surfaces from being harmed by harsh chemical reagents. In addition, thermolabile protecting groups could be useful in manufacturing synthetic oligonucleotides on solid supports or in solution. Thermolabile protecting groups may also be used to protect/deprotect drug functional groups under conditions that will not affect other functional entity(ies) on the molecule.

Dated: October 24, 2002.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 02–27900 Filed 11–1–02; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

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SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Identification of a Novel BHD Gene

Laura S. Schmidt (NCI), DHHS Reference Nos. E–190–02/0 filed 31 May 2002 and E–190–02/1 filed 20 Jun 2002, Licensing Contact: George Pipia; 301/435–5560; *pipiag@od.nih.gov*.

Birt-Hogg-Dube (BHD) syndrome is an inherited autosomal dominant neoplasia syndrome characterized by benign hair follicle tumors and is associated with a higher risk for developing renal cancer, spontaneous pneumothorax and /or lung cysts.

The present invention describes identification of the BHD syndrome associated germline mutations in a novel human gene, herein called BHD gene. This gene encodes for the protein, folliculin, functions of which remain currently unknown.

This discovery makes possible the development of a diagnostic method for BHD syndrome using a simple blood test. The test is particularly useful in detecting BHD mutations in asymptomatic carriers within BHD families.

Patients with kidney tumors can be evaluated for BHD gene mutations using a similar genetic diagnostic test, which will allow for a more accurate diagnosis of a kidney cancer and improved patient prognosis. The BHD encoding sequence is the third gene found to be responsible for inherited kidney cancer, and mutation testing allows for a correct diagnosis and initiation of the proper treatment, which is different for each of the types of kidney cancer caused by the three genes.

Methods of using BHD encoding sequence also allows for a differential genetic diagnosis of spontaneous pneumothorax, or collapsed lung. Since collapsed lung can be caused by several factors, a BHD diagnostic test allows a physician to determine predisposition and recurrence of additional spontaneous pneumothoraces due to mutation(s) in the BHD gene.

The discovery should also lead to the development of novel pharmaceutical products and methods for treating BHD skin lesions using creams containing the BHD gene product, folliculin. Such products and methods of treatment are expected to reduce the size and appearance of the benign hair follicle tumors.

The disclosed technology will provide new and exciting methodologies to correctly diagnose BHD syndrome and should lead to the development of novel pharmaceutical reagents for treatment of BHD skin lesions as well as other skin diseases.

Novel Anti-CD30 Antibodies and Recombinant Immunotoxins Containing Disulfide-Stabilized Fv Fragments

Ira H. Pastan et al. (NCI), DHHS Reference No. E–135–02/0 filed 07 Jun 2002, Licensing Contact: Jonathan Dixon; 301/435–5559; *dixonj@od.nih.gov*.

The present invention discloses the creation of new anti-CD30 stalk antibodies and anti-CD30 dsFv-immunotoxins, which have shown good cytotoxic activity.

CD30 is a member of the tumor necrosis factor receptor super family. It is an excellent target due to its high expression in malignant Reed Sternberg cells of Hodgkin's Lymphoma (HL) and in anaplastic large cell lymphomas (ALCL), and due to its expression in only a small subset of normal lymphocytes. Previous attempts to target CD30 include the scFv immunotoxin Ki-4 that has shown specific binding to CD30-positive lymphoma cell lines and killed target cells.

The immunotoxins of the present invention are more stable and have higher affinity for CD30 then their predecessors. Research thus far has shown that the dsFv-immunotoxins are able to kill a variety of CD30-positive lymphoma cell lines in vitro as well as CD30-transfected A431 cells via specific binding to CD30.

As claimed in this patent application, the antibodies are able to bind to the stalk or to a cleavage site that is destroyed when sCD30 is cleaved away. This enhancement further increases the ability of immunotoxins to target and treat lymphomas expressing CD30.

The researchers are also interested in seeking a partner(s) under a Cooperative Research and Development Agreement (CRADA). For information on this CRADA opportunity, please contact Dr. Patrick Twomey of the NCI Technology Transfer Branch at twomeyp@mail.nih.gov.

Cytotoxic Agents Delivered Into Tumor Cells Through Specific Cell Surface Receptors and Conjugates of Ligand, Linker and Cytotoxic Agent and Related Compositions and Methods of Use

DHHS Reference No. E–057–02/0 filed 27 Feb 2002 and DHHS Reference No. E–057–02/1 filed 05 Apr 2002, Nadya Tarasova, Christophe A. Michejda, Marcin Dyba, Carolyn Cohran (NCI), Licensing Contact: George Pipia; 301/435–5560; *pipiag@od.nih.gov*.

Systemic toxicity of drugs is one of the most serious problems in cancer chemotherapy and frequently is dose limiting. Specific delivery of cytotoxic drugs to cancer cells remains among the most intractable problems of cancer therapy. Targeted delivery of anti-proliferation drugs through the cell surface receptors that are over expressed on cancer cells can reduce systemic toxicity and increase effectiveness of a treatment.

The present invention describes cytotoxic compounds with an intracellular target that can selectively enter tumor cells through specific receptors on the cell surface. The invention also describes a conjugate comprising a cytotoxic agent, a linker arm and a ligand capable of delivering a cytotoxic agent in a cell specific manner. Such conjugates of a cytotoxic agent and a ligand (delivery moiety) have increased selectivity for tumor cells. The toxic moiety and the ligand are joined by a linker arm that is stable in circulation, but is easily cleaved in lysosomes upon internalization of the conjugate. A panel of compounds comprised of a variety of cytotoxic warheads, against various intracellular targets linked to an assortment of ligands, has been developed and tested in a model system. Ligand moieties of these conjugates are capable of specific delivery of cytotoxic agents to receptors that are frequently over expressed in gastric, colon, lung, breast, ovarian and pancreatic tumors. These compounds have the potential to be highly effective anti-tumor agents with considerably little negative effect. This disclosed technology could provide new and exciting methodologies to treat cancer.

Novel Form of MRP9 in Breast Cancer

I. Pastan, T. Bera, and B. Lee (NCI), U.S. Provisional Patent Application 60/350,053 filed 17 Jan 2002, Licensing Contact: Brenda Hefti; 301/435–4632; *heftib@od.nih.gov*.

MRP9 is a member of the ATP binding cassette (ABC) transporter super family. This gene has at least two splice variants, one of which is membrane-associated and expressed in normal breast, breast cancer and testis, and the other of which is expressed in several other tissues. Anti-peptide antibodies designed to react with the amino terminus of the protein detect only the variant found in breast and testis. This protein should be a useful target for immunotherapy in breast cancer.

The patent application has claims directed towards use of MRP9 in detecting various cancers, including breast, testicular and pancreatic cancers. The application also contains claims directed toward immunotherapeutic agents, which could be useful to treat said cancers.

Use of a Histone Deacetylase Inhibitor To Increase the Entry of an Adenoviral Agent into a Cell

Tito A. Fojo *et al.* (NCI), DHHS Reference No. E–198–01/0 filed 24 Aug 2001, Licensing Contact: Matthew Kiser; 301/435–5236; *kiserm@od.nih.gov*.

This technology is directed to the use of any histone deacetylase inhibitor, including but not limited to FR901228 (depsipeptide, FK228), to increase the expression of Coxsackie-Adenovirus Receptor (CAR) and/or "-" integrins on the surface of a cell, such as a normal or cancerous cell, so as to increase the entry into the cell of a subsequently administered adenovirus-based therapeutic agent.

This disclosed method comprises exposing a cell to a histone deacetylase inhibitor in an amount sufficient to increase the expression of CAR and/or "-" integrin on the surface of the cell and, simultaneously with or subsequently to, exposing the cell to an adenoviral agent, whereupon the uptake of the adenoviral agent by the cell is increased relative to an otherwise identical cell that has not been exposed to a histone deacetylase inhibitor.

PEGylation of Linkers Improves Antitumor Activity and Reduces Toxicity of Immunoconjugates

I. Pastan, Y. Tsutsumi, M. Onda, S. Nagata and B. Lee (NCI), DHHS Reference No. E–216–00/2 filed 08 Jun 2001 (PCT Application PCT/US01/18503), Licensing Contact: Jonathan Dixon; 301/435–5559; *dixonj@od.nih.gov*.

The present invention relates to site-directed PEGylation of immunoconjugates. In particular, it provides a new approach for modifying with polyethylene glycol (PEG) a connector molecule that attaches the toxin moiety to the targeting moiety of an immunotoxin. The PEGylated immunotoxin has comparable *in vitro* specific toxicity against tumor cells, but other properties including stability, plasma half-life, antitumor activity, immunogenicity and non-specific toxicity are greatly improved.

The application contains composition of matter claims towards PEGylated connector molecules and method claims for using said PEGylated connector molecules.

Inhibitor of DNA Methylation

Victor E. Marquez (NCI), Erik Selker, Cindy Matson, Sheldon Greer, Peter Jones, PCT filing claiming priority to 60/309,242 filed on July 31, 2001, Licensing Contact: Brenda Hefti; 301/435–4632; *heftib@od.nih.gov*.

DNA methyltransferases (also referred to as DNA methylases) transfer methyl groups from the universal methyl donor S-adenosyl methionine to specific sites on a DNA molecule. When gene sequences contain many methylated cytosines, they are less likely to be expressed. Several such 'silenced' genes are now known to be an important contributing factor in many cancers where expression of tumor suppressor genes has been suppressed. Preventing DNA methyltransferase production, or inhibiting the enzyme, may allow tumor suppressor genes that have been silenced by hypermethylation to be re-activated. Re-activation of tumor suppressor genes is intended to stop or slow tumor growth by restoring growth control mechanisms. Thus, there exists a need for an effective, stable, and low-toxicity inhibitor of DNA methylation.

The inventors have discovered a potent inhibitor of DNA methylation that can specifically reactivate silenced tumor suppressor genes. This agent can be used to inhibit methylation and thereby combat certain cancers that have been linked to hypermethylation. This agent has also been shown in initial animal testing to be active orally and is more stable than some other agents in this same area of therapy and is a suitable candidate for further pre-clinical and clinical development as an anti-cancer agent to be used as monotherapy and/or as an adjunct to existing anti-cancer therapeutics.

Dated: October 24, 2002.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 02–27901 Filed 11–1–02; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Public Health Service and National Institute of Environmental Health Sciences; Notice of a Meeting of the Scientific Advisory Committee on Alternative Toxicological Methods

December 5, 2002.

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of a meeting of the Scientific Advisory Committee on Alternative Toxicological Methods (SACATM) beginning at 9 AM on December 5, 2002, in Salon C at the Crystal Gateway Marriott, 1700 Jefferson Davis Highway, Arlington, Virginia.

Background

The SACATM was chartered January 9, 2002, to fulfill section 3(d) of Public Law 106–545, the ICCVAM Authorization Act of 2000 [42 U.S.C. 285*l*–3(d)] and is composed of scientists from the public and private sectors (**Federal Register:** March 13, 2002: Vol. 67, No. 49, page 11358). The SACATM provides advice to the Director of the National Institute of Environmental Health Sciences (NIEHS), the Interagency Coordinating Committee on the Validation of Alternative Toxicological Methods (ICCVAM), and the National Toxicology Program (NTP) Interagency Center for the Evaluation of Alternative Toxicological Methods (NICEATM) regarding statutorily mandated duties of the ICCVAM and activities of the NICEATM. The committee's charter is posted on the Web at *http://iccvam.niehs.nih.gov* and is available in hard copy upon request from the NTP Executive Secretary (NTP Liaison and Scientific Review Office, NIEHS, PO Box 12233, Research Triangle Park, NC 27709; telephone: 919–541–0530; facsimile: 919–541–0295 or *wolfe.niehs.nih.gov*).

Agenda

The meeting is being held on December 5, 2002, from 9 AM until adjournment and is open to the public with attendance limited only by the space available. Although not required, pre-registration is preferred to assist in planning for adequate space. To pre-register for this meeting, please contact the NTP Executive Secretary (contact information above). Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable

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accommodations, are asked to notify the executive secretary.

A preliminary agenda is provided below. Relevant documents and publications about the test methods and the validation and acceptance criteria being discussed are available on the NICEATM/ICCVAM Web site at: *http://iccvam.niehs.nih.gov* (select Documents and Publications).

Preliminary Agenda

Scientific Advisory Committee on Alternative Toxicological Methods

December 5, 2002.

Salon C, Crystal Gateway Marriott (703–920–3230), 1700 Jefferson Davis Highway, Arlington, Virginia, Crystal City Metro Stop.

9:00 a.m.

Welcome and Introductions
Informational Overviews of NIEHS, NTP, NICEATM, and ICCVAM
ICCVAM Validation and Acceptance Criteria
Current Scientific Directions of the European Centre for Validation of Alternative Methods (ECVAM)
Linkage of Scientific Directions between ECVAM and ICCVAM
- Public comment

12:15 p.m.

Lunch break

1:15 p.m.

Test Method Submissions and Proposed Nomination and Prioritization Process
- Public comment

In-Vitro Acute Toxicity Testing Methods
- Public comment

In-Vitro Estrogen/Androgen Receptor Binding and Transcriptional Activation Assays
- Public comment

Other Business

5:00 p.m.

Adjourn

A copy of the agenda, committee roster, and any additional information, when available, will be posted on the NTP Web site (*http://ntp-server.niehs.nih.gov*) or available upon request to the NTP Executive Secretary (contact information provided above). Following the meeting, summary minutes will be prepared and available through the NICEATM/ICCVAM Web site (*http://iccvam.niehs.nih.gov*) and upon request to the NTP Liaison and Scientific Review Office (contact information above).

Public Comment Welcome

Public input at this meeting is invited and time is set aside for the presentation of public comments on any agenda topic. Each organization is allowed one time slot per agenda topic. At least 7 minutes will be allotted to each speaker, and if time permits, may be extended to 10 minutes. In order to facilitate planning for this meeting, persons wishing to make an oral presentation are asked to notify the NTP Executive Secretary (contact information above) by November 28, 2002, and to provide their name, affiliation, mailing address, phone, fax, e-mail, and sponsoring organization (if any). Registration for oral comments will also be available on-site, although time allowed for presentation by on-site registrants may be less then that for pre-registered speakers and will be determined by the number of persons who register at the meeting.

Persons registering to make oral comments are asked, if possible, to provide a copy of their statement to the NTP Executive Secretary (contact information above) by November 28, to enable review by the SACATM and NIEHS/NTP staff prior to the meeting. Written statements can supplement and may expand the oral presentation. If registering on-site and reading from written text, please bring 50 copies of the statement for distribution to the SACATM and NIEHS/NTP staff and to supplement the record.

Persons may also submit written comments in lieu of making oral comments. Written comments should be sent to the NTP Executive Secretary and should be received by November 28 to enable review by the SACATM and NIEHS/NIH prior to the meeting. Persons submitting written comments should include their name, affiliation, mailing address, phone, fax, e-mail, and sponsoring organization (if any) with the document.

Dated: October 24, 2002.

Samuel Wilson,

Deputy Director, National Institute of Environmental Health Sciences.

[FR Doc. 02–27902 Filed 11–1–02; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Small Grants Program for Cancer Epidemiology (PAR–01–021) and Cancer Prevention Research (PAR–00–025).

Date: December 3–4, 2002.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: C. Michael Kerwin, Ph.D., MpH, Scientific Review Administrator, Special Review & Logistics Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8057, MSC 8329, Bethesda, MD 20892–8329. (301) 496–7421. *kerwinm@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: October 28, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–27895 Filed 11–01–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, NHLBI.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Heart, Lung, and Blood Institute, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NHLBI.

Date: December 12–13, 2002.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Building 10, Room 7S235, 10 Center Drive, Bethesda, MD 20892.

Contact Person: Elizabeth G. Nabel, MD, Scientific Director for Clinical Research, National Heart, Lung, and Blood Institute, Division of Intramural Research, Building 10, Room 8C103, MSC 1754, Bethesda, MD 20892, 301/496–1518.

Information is also available on the Institute's/Center's Home Page: www.nhlbi.nih.gov/meetings/index.htm, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: October 25, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–27890 Filed 11–1–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Heart, Lung, and Blood Program Project Review Committee.

Date: December 5, 2002.

Time: 8 a.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Jeffrey H. Hurst, Ph.D., Scientific Review Administrator, Review Branch, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, Bethesda, MD 20892, (301) 435–0303.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: October 25, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–27891 Filed 11–1–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Meeting

Pursuant to section 109(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, National Human Genome Research Institute.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting. The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual grant applications and/or contract proposals conducted by the National Human Genome Research Institute, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Human Genome Research Institute.

Date: November 3–5, 2002.

Open: November 3, 2002, 8 p.m. to 10 p.m.

Agenda: To discuss matters of program relevance.

Place: Eisenhower Inn and Conference Center, Gettysburg, PA.

Closed: November 4, 2002, 8:30 a.m. to adjournment on November 5, 2002.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Eisenhower Inn and Conference Center, Gettysburg, PA.

Contact Person: Claire Rodgaard, Assistant to the Scientific Director, Division of Intramural Research, Office of the Director, National Human Genome Research Institute, 45 Convent Drive, Building 49, Room 4A06, Bethesda, MD 20892, 301–435–5802.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the intramural research review cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: October 28, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–27898 Filed 11–01–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Nutrients Uptake and Intestinal Immunity, Part 1.

Date: December 2, 2002.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Crystal City Courtyard by Marriott, 2899 Jefferson Davis Highway, Arlington, VA 22202.

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Contact Person: Michael W. Edwards, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 751, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892, (301) 594–8886.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Nutrients Uptake and Intestinal Immunity, Part 2.

Date: December 5, 2002.

Time: 8 a.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Crystal City Courtyard by Marriott, 2899 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: Michael W. Edwards, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 751, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892, (301) 594–8886.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: October 28, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–27892 Filed 11–1–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Adult Stem Cells for Program Project.

Date: November 21, 2002.

Time: 9 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Mariott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: John Connaughton, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 757, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892, (301) 594–7797, *connaughtonj@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Career Enhancement Award for Stem Cells Research.

Date: November 21, 2002.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Mariott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: John Connaughton, Ph.D., Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 757, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892, (301) 594–7797, *connaughtonj@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Small Clinical Research Grants in Digestive Diseases and Nutrition.

Date: December 2, 2002.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Crystal Gateway Marriott, 1700 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: Carolyn Miles, Ph.D., Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 755, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892, (301) 594–7791.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: October 28, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–27893 Filed 11–1–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Digestive Diseases Research Development Centers.

Date: December 4–5, 2002.

Time: 6:30 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Dan E. Matsumoto, Ph.D., Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 749, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–8894.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; BioSample and Genetics Repositories.

Date: December 9, 2002.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: Courtyard by Marriott, 2899 Jefferson Davis Highway, Arlington, VA 22203.

Contact Person: Maxine Lesniak, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 756, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–7792, *lesniakm@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: October 28, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–27894 Filed 11–1–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Deafness and Other Communications Disorders Special Emphasis Panel, NIDCD Exploratory/Developmental Research-Voice, Speech, and Language.

Date: December 10, 2002.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: 6120 Executive Blvd., Suite 400C, Rockville, MD 20852.

Contact Person: Stanley C. Oaks, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, Executive Plaza South, Room 400C, 6120 Executive Blvd., Bethesda, MD 20892–7180. 301–496–8683.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: October 28, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–27897 Filed 11–01–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Fetal Basis of Adult Disease.

Date: November 14–15, 2002.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Bethesda, Versailles Room 4, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Dennis Leszczynski, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6170, MSC 7892, Bethesda, MD 20892. (301) 435–1044.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1: SSS–7 (10): Small Business Applications on Imaging Technologies B.

Date: November 19, 2002.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Chevy Chase, Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Tracy E. Orr, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Dr., Room 5112, Bethesda, MD 20892. (301) 435–1259. *orrt@csr.nih.gov,*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1: SSS–M (15) Nephrology/Urology SBIR.

Date: November 19, 2002.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Jean D. Sipe, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Rm. 4106, MSC 7814, Bethesda, MD 20892–7814. 301/435–1743. *sipej@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Oral, Craniofacial and Dental Sciences SBIR/STTR Panel.

Date: November 19, 2002.

Time: 10 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: The River Inn, 924 Twenty-Fifth Street, NW., Washington, DC 20037.

Contact Person: J. Terrell Hoffeld, DDS, Ph.D., Dental Officer, USPHS, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4116, MSC 7816, Bethesda, MD 20892, 301/435–1781. *th88q@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Developmental Disabilities.

Date: November 19, 2002.

Time: 11:30 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Cheri Wiggs, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3180, MSC 7848, Bethesda, MD 20892. (301) 435–1261.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Special Topics: Tumor Hypoxia and Apoptosis.

Date: November 19, 2002.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Shen K. Yang, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4138, MSC 7804, Bethesda, MD 20892. (301) 435–1213. *yangsh@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 IFCN (3) Neurobiology of Alcohol and Stress.

Date: November 19, 2002.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Gamil C. Debbas, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5170, MSC 7844, Bethesda, MD 20892. (301) 435–1247. *eskayr@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 CDF–5 01M: Member Conflict: Dab2 Adaptor Proteins.

Date: November 19, 2002.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Sherry L. Dupere, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5136, MSC 7840, Bethesda, MD 20892. (301) 435–1021. *duperes@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 MEP01M: HSP and cancer.

Date: November 19, 2002.

Time: 4 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Angela Y. Ng, Ph.D., MBA, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4142, MSC 7804, (For courier delivery, use MD 20817), Bethesda, MD 20892. 301–434–1715, *nga@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Brain Disorders and Clinical Neuroscience/ZRG1 BDCN–5 (10) SBIR.

Date: November 20–21, 2002.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036–3305.

Contact Person: Sherry L. Stuesse, Ph.D., Scientific Review Administrator, Division of Clinical and Population-Based Studies,

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Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5188, MSC 7846, Bethesda, MD 20892. 301–435–1785. *stuesses@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 PTHB 04M: Member Conflict: Carcinogenesis: DNA Damage.

Date: November 20, 2002.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Martin L. Padarathsingh, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4146, MSC 7804, Bethesda, MD 20892. 301–435–1717.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Metastasis and Invasion.

Date: November 20, 2002.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Victor A. Fung, Ph.D., Scientific Review Administrator, Oncological Sciences Initial Review Group, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6178, MSC 7804, Bethesda, MD 20814–9692. 301–435–3504 *vf6n@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 BBCB 03: PA–01–049; Single Molecule Studies of Membranes.

Date: November 20, 2002.

Time: 1:30 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Arnold Revzin, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4184, MSC 7824, Bethesda, MD 20892. (301) 435–1153.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SSS–C (04) BBBP–1 Member Reviews in the Neurobiology of Addiction.

Date: November 20, 2002.

Time: 2 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Mary Sue Krause, MED, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3182, MSC 7848, Bethesda, MD 20892. 301–435–0902. *krausem@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 F02A (20) Fellowships: integrative, Functional & Cognitive Neurosciences.

Date: November 21, 2002.

Time: 8 a.m. to 4 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Gamil C. Debbas, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5170, MSC 7844, Bethesda, MD 20892. (301 435–1018. *debbasg@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 F04 20L: Chemistry/Biophysics Fellowships Panel.

Date: November 21–22, 2002.

Time: 8 a.m. to 6 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 8120 Wisconsin Avenue, Chevy Chase, MD 20814.

Contact Person: David R. Jollie, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4156, MSC 7806, Bethesda, MD 20892. (301) 435–1722. *joieda@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Ethical, Legal and Social Implications of Genetics.

Date: November 21–22, 2002.

Time: 8:30 a.m. to 3 pm.

Agenda: To review and evaluate grant applications.

Place: The Hyatt Regency Hotel, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Cheryl M. Corsaro Ph.D., Genetic Sciences IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2204, MSC 7890, Bethesda, MD 20892. (30) 435–1045. *corarоc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Nero SBIR.

Date: November 21, 2002.

Time: 8:30 a.m. to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Jurys Washington Hotel, 1500 New Hampshire Avenue, NW., Washington, DC 20036.

Contact Person: Michael A. Lang, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5210, MSC 7850, Bethesda, MD 20892. (301) 435–1265.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 EDC–2A 10B: Small Business: Social Sciences, Nursing, Epidemiology & Methods.

Date: November 21–22, 2002.

Time: 8 a.m. to 4 pm.

Agenda: To review and evaluate grant applications.

Place: The Madison Hotel, 15th and M Streets, NW., Washington, DC 20005.

Contact Person: Denise Wiesch, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3150, MSC 7770, Bethesda, MD 20892. (301) 435–0684.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Brain Disorders and Clinical Neuroscience/ZRG1 BDCN–2 (10).

Date: November 21, 2002.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: William C. Benzing, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5190, MSC 7846, Bethesda, MD 20892. (301) 435–1254. *benzingw@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Molecular Genetics.

Date: November 21, 2002.

Time: 10 a.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Sharon K. Gubanich, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4140, MSC 7804, Bethesda, MD 20892. (301) 435–1767.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 GRM (03) Musculoskeletal & Dental Sciences.

Date: November 21, 2002.

Time: 11 a.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Jo Pelham, BA, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4102, MSC 7814, Bethesda, MD 20892. (301) 435–1786.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Oncogene Amplification.

Date: November 21, 2002.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Shen K. Yang, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4138, MSC 7804, Bethesda, MD 20892. (301) 435–1213. *yangsh@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Demography of Long Term Care.

Date: November 21, 2002.

Time: 1:30 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Robert Weller, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3160, MSC 7770, Bethesda, MD 20892. (301) 435–0694.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Brain Disorders and Clinical Neuroscience/ZRG1 BDCN–2(11).

Date: November 22, 2002.

Time: 8:30 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: William C. Benzing, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5190, MSC 7846, Bethesda, MD 20892. (301) 435–1254. *benzingw@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Adolescent Substance Use Prevention & Smoking Cessation.

Date: November 22, 2002.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Ave., NW., Washington, DC 20037.

Contact Person: Karen Sirocco, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3184, MSC 7848, Bethesda, MD 20892. (301) 435–0676. *siroccok@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Computational Neuroscience.

Date: November 22, 2002.

Time: 10:30 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: John Bishop, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5180, MSC 7844, Bethesda, MD 20892. (301) 435–1250.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 PC (02): DNA Metabolism.

Date: November 22, 2002.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Richard Panniers, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5148, 7842, Bethesda, MD 20892. (301) 435–1741.

Name of Committee: Center for Scientific Review Special Emphasis Panel, SNEM 5—Member Applications.

Date: November 22, 2002.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Yvette M. Davis, VMD, MpH, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3152, MSC 7770, Bethesda, MD 20892. 301–435–0906.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 BBBP–6 (03) Member Conflict Review on Perception, Cognition and Emotion.

Date: November 22, 2002.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Anita Miller Sostek, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3176, MSC 7848, Bethesda, MD 20892. (301) 435–1260.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SSS–B (02) M: Member Conflict in Biophysical Chemistry.

Date: November 22, 2002.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Donald Schneider, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4172, MSC 7806, Bethesda, MD 20892. (301) 435–1727.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SSS–7 (40) Research Resources: Nuclear Magnetic Resonance.

Date: November 24–26, 2002.

Time: 7 p.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select, Pittsburgh University Center, 100 Lytton Avenue, Pittsburgh, PA 15213.

Contact Person: Tracy E. Orr, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Dr., Room 5112, Bethesda, MD 20892. (301) 435–1259. *orrt@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SSS–5 (15) Small Business Orthopedic Medicine.

Date: November 25–26, 2002.

Time: 10 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington Embassy Row, 2015 Massachusetts Avenue NW., Washington, DC 20036.

Contact Person: Nancy Shinowara, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4208, MSC 7814, Bethesda, MD 20892–7814. (301) 435–1173. *shinowan@drg.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 PTHB 03M: Member Conflict: Carcinogenesis: Vascular Injury.

Date: November 25, 2002.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Martin L. Padarathsingh, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4146, MSC 7804, Bethesda, MD 20892. (301) 435–1717.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 28, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–27899 Filed 11–01–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Draft Environmental Impact Report/ Environmental Impact Statement and Habitat Conservation Plan for the Natomas Basin, Sacramento County, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Extension of comment period and notice of availability.

SUMMARY: On August 26, 2002, the Fish and Wildlife Service (Service) issued a Notice of Availability (NOA) for the draft Environmental Impact Statement/ Environmental Impact Report (EIS/EIR) and draft Habitat Conservation Plan (HCP) for the Natomas Basin, Sacramento County, California (67 FR 54819). We are extending the comment period, which was originally scheduled to close on October 22, 2002, to December 2, 2002. Comments already submitted on the draft EIS/EIR and draft HCP need not be resubmitted as they will be fully considered in the final documents. This notice is provided pursuant to section 10(a) of the Endangered Species Act and Service regulations for implementing the National Environmental Policy Act of 1969 (40 CFR 1506.6). In addition, the draft HCP included as an appendix a Natomas Basin HCP Fee Update, prepared by Economic Planning Systems (EPS), to estimate the amount of the mitigation fee under the HCP. The Service also announces the availability of a revised Fee Study Update that EPS has prepared and invites public comment during the extended public comment period.

DATES: The comment period now closes on December 5, 2002. Any comments received by the closing date will be considered in the final documents.

ADDRESSES: Comments should be addressed to the Field Supervisor, Fish and Wildlife Service, Sacramento Fish

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and Wildlife Office, 2800 Cottage Way, W–2605, Sacramento, California 95825. Written comments may be sent by facsimile to (916) 414–6711.

FOR FURTHER INFORMATION CONTACT: Ms. Vicki Campbell, Chief, Conservation Planning Division, at the Sacramento Fish and Wildlife Office (*see* **ADDRESSES**); telephone: (916) 414–6600.

SUPPLEMENTARY INFORMATION:

Document Availability

Individuals wishing copies of the fee study should immediately contact the Service by telephone at (916) 414–6600 or by letter to the Sacramento Fish and Wildlife Office [*see* **ADDRESSES**]. Copies of the updated fee study Update also are available for public inspection, during regular business hours, at the Sacramento Fish and Wildlife Office; and the City of Sacramento Planning and Building Department, 1231 I Street, Room 300, Sacramento, California; State Library, 914 Capitol Mall, Sacramento, California; Central Library, 828 I Street, Sacramento, California; South Natomas Library, 2901 Truxel Road, Sacramento, California; and Sutter County Library, 750 Forbes Avenue, Yuba City, California.

Dated: October 28, 2002.

Daniel S. Walsworth,

Acting Deputy Manager, California/Nevada Operations Office, Sacramento, California.

[FR Doc. 02–27955 Filed 11–1–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-day notice of information collection under review: New collection; survey of practitioners to assess the impact of transnational crime.

The Department of Justice, Office of Justice Programs, National Institute of Justice has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with emergency review procedures of the Paperwork Reduction Act of 1995. OMB approval has been requested by November 13, 2002. The proposed information collection is published to obtain comments from the public and affected agencies. If granted, the emergency approval is only valid for 180 days. Comments should be directed to OMB, Office of Information and Regulation Affairs, Attention: Department of Justice Desk Officer, (202) 395–6466, Washington, DC 20503.

During the first 60 days of this same review period, a regular review of this information collection is also being undertaken. All comments and suggestions, or questions regarding additional information, to include obtaining a copy of the proposed information collection instrument with instructions, should be directed to Jay Albanese, Director, National Institute of Justice International Center, 810 7th Street, NW., Washington, DC 20531 or call (202) 616–1960.

Written comments and suggestion from the public and affected agencies concerning proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* New Collection.

(2) *Title of the Form/Collection:* Survey of Practitioners to Assess the Impact of Transnational Crime.

(3) *Agency form number, if any, and the applicable component of the department sponsoring the collection:* OJP Form Number, none. National Institute of Justice, Office of Justice Programs, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Affected public includes law enforcement administrators or other persons responsible for investigatory operations within sampled jurisdictions. The survey will gather information about the impact of terrorism and other transnational crimes on local jurisdictions across the country, including resource allocation, collaboration with other agencies, extent of activity, and awareness of activity. The data will be used to advise the National Institute of Justice, Federal law enforcement agencies, and state and local law enforcement agencies on how state and local jurisdictions are impacted by terrorism and transnational crime.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 250 respondents will complete the survey which will take 30 minutes to complete.

An estimate of the total public burden (in hours) associated with this collection: An estimated 125 hours of public burden is associated with this collection.

If additional information is required, contact: Brenda E. Dyer, Department Deputy Clearance Officer, Information Management and Security Staff, Justice Management Division, United States Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: October 30, 2002.

Brenda Dyer,

Department Deputy Clearance Officer, U.S. Department of Justice.

[FR Doc. 02–27920 Filed 11–1–02; 8:45 am]

BILLING CODE 4410–18–M

NATIONAL COUNCIL ON DISABILITY

Sunshine Act Meetings

TIMES AND DATES: 2 p.m. to 5 p.m., December 4, 2002; 8:30 a.m. to 1:00 p.m., December 5, 2002.

PLACE: Renaissance Washington, DC Hotel, 999 9th Street, NW., Washington, DC.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Reports from the Chairperson and the Executive Director, Committee Meetings and Committee Reports, Executive Session, Unfinished Business, New Business, Announcements, Adjournment.

PORTIONS OPEN TO THE PUBLIC: Reports from the Chairperson and the Executive Director, committee meetings and committee reports, unfinished business, new business, announcements, adjournment.

PORTIONS CLOSED TO THE PUBLIC: Executive Session.

CONTACT PERSON FOR MORE INFORMATION: Mark S. Quigley, Director of Communications, National Council on Disability, 1331 F Street, NW., Suite 850, Washington, DC 20004; 202–272–2004 (Voice), 202–272–2074 (TTY), 202–272–2022 (Fax), *mquigley@ncd.gov* (E-mail).

AGENCY MISSION: The National Council on Disability (NCD) is an independent federal agency composed of 15 members appointed by the President and confirmed by the U.S. Senate. Its overall purpose is to promote policies, programs, practices, and procedures that guarantee equal opportunity for all people with disabilities, including people from culturally diverse backgrounds, regardless of the nature or significance of the disability; and to empower people with disabilities to achieve economic self-sufficiency, independent living, and inclusion and integration into all aspects of society.

ACCOMMODATIONS: Those needing sign language interpreters or other disability accommodations should notify NCD at least one week prior to this meeting.

LANGUAGE TRANSLATION: In accordance with E.O. 13166, Improving Access to Services for Persons with Limited English Proficiency, those people with disabilities who are limited English proficient and seek translation services for this meeting should notify NCD at least one week prior to this meeting.

MULTIPLE CHEMICAL SENSITIVITY/ ENVIRONMENTAL ILLNESS: People with multiple chemical sensitivity/ environmental illness must reduce their exposure to volatile chemical substances to attend this meeting. To reduce such exposure, NCD requests that attendees not wear perfumes or scented products at this meeting. Smoking is prohibited in meeting rooms and surrounding areas.

Dated: October 31, 2002.

Ethel D. Briggs,

Executive Director.

[FR Doc. 02–28109 Filed 10–31–02; 3:19 pm]

BILLING CODE 6820–MA–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Federal Council on the Arts and the Humanities; Arts and Artifacts Indemnity Panel; Advisory Committee; Notice of Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463 as amended) notice is hereby given that a meeting of the Arts and Artifacts Indemnity Panel of the Federal Council on the Arts and the Humanities will be held at 1100 Pennsylvania Avenue, NW., Washington, DC 20506, in Room 708, from 9 a.m. to 5:30 p.m., on Monday, November 18, 2002.

The purpose of the meeting is to review applications for Certificates of Indemnity submitted to the Federal Council on the Arts and the Humanities for exhibitions beginning after January 1, 2003.

Because the proposed meeting will consider financial and commercial data and because it is important to keep values of objects, methods of transportation and security measures confidential, pursuant to the authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated July 19, 1993, I have determined that the meeting would fall within exemption (4) of 5 U.S.C. 552(b) and that it is essential to close the meeting to protect the free exchange of views and to avoid interference with the operations of the Committee.

It is suggested that those desiring more specific information contact the Advisory Committee Management Officer, Daniel Schneider, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, or call 202/606–8322.

Daniel Schneider,

Advisory Committee Management Officer.

[FR Doc. 02–27912 Filed 11–01–02; 8:45 am]

BILLING CODE 7536–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Council on the Humanities; Meeting

October 28, 2002.

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended) notice is hereby given the National Council on the Humanities will meet in Washington, DC on November 14–15, 2002.

The purpose of the meeting is to advise the Chairman of the National Endowment for the Humanities with respect to policies, programs, and procedures for carrying out his functions, and to review applications for financial support from and gifts offered to the Endowment and to make recommendations thereon to the Chairman.

The meeting will be held in the Old Post Office Building, 1100 Pennsylvania Avenue, NW., Washington, DC. A portion of the morning and afternoon sessions on November 14–15, 2002, will not be open to the public pursuant to subsections (c)(4), (c)(6) and (c)(9)(B) of section 552b of Title 5, United States Code because the Council will consider information that may disclose: trade secrets and commercial or financial information obtained from a person and privileged or confidential; information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; and information the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency action. I have made this determination under the authority granted me by the Chairman's Delegation of Authority dated July 19, 1993.

The agenda for the session on November 14, 2002 will be as follows:

Committee Meetings

(Open to the Public)

Policy Discussion

9–10:30 a.m.
- Education Programs—Room M–07.
- Federal/State Partnership—Room 507.
- Preservation and Access/Challenge Grants—Room 415.
- Public Programs—Room 420.
- Research Programs—Room 315.

(Closed to the Public)

Discussion of Specific Grant Applications and Programs Before the Council

10:30 a.m. until adjourned
- Education Programs—Room M–07.
- Federal/State Partnership—Room 507.
- Preservation and Access/Challenge Grants—Room 415.
- Public Programs—Room 420.
- Research Programs—Room 315.

The morning session on November 15, 2002 will convene at 9 a.m., in the 1st Floor Council Room M–09, and will be open to the public, as set out below. The agenda for the morning session will be as follows:

Minutes of the Previous Meeting

Reports
- A. Introductory Remarks.
- B. Staff Report.
- C. Congressional Report.
- D. Budget Report.
- E. Reports on Policy and General Matters.
- 1. Overview.
- 2. Research Programs.
- 3. Education Programs.
- 4. Preservation and Access/Challenge Grants.
- 5. Public Programs.
- 6. Federal/State Partnership.

The remainder of the proposed meeting will be given to the consideration of specific applications and closed to the public for the reasons stated above.

Further information about this meeting can be obtained from Mr.

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Daniel C. Schneider, Advisory Committee Management Officer, National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, or by calling (202) 606–8322, TDD (202) 606–8282. Advance notice of any special needs or accommodations is appreciated.

Daniel C. Schnieder,

Advisory Committee Management Officer.

[FR Doc. 02–27913 Filed 11–01–02; 8:45 am]

BILLING CODE 7536–01–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Biological Sciences (BIO); Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Biological Sciences (BIO) (1110).

Date and Time: November 7, 2002, 8:30 am.–5 p.m., November 8, 2002, 8:30 a.m.–3 p.m.

Place: National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230, Stafford II, Room 595.

Type of Meeting: Open.

Contact Person: Dr. Mary E. Clutter, Assistant Director, Biological Sciences, Room 605, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Tel No.: (703) 292–8400.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: The Advisory Committee for BIO provides advice, recommendations, and oversight concerning major program emphases, directions, and goals for the research-related activities of the divisions that make up BIO.

Agenda: Planning and issues discussion.

Dated: October 29, 2002.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 02–27908 Filed 11–01–02; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Proposal Review Panel for Physics; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Proposal Review Panel for Physics (#1208).

Date and Time: November 12–13, 2002, 8 a.m. to 6 p.m.

Place: University of Illinois.

Type of Meeting: Part-open.

Contact Person: Dr. Richard Boyd, Program Director for Nuclear Physics, Room 1015N, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 292–7381.

Purpose of Meeting: Site Visit in conjunction with review for a five-year grant.

Agenda: Closed: Nov. 12, from 8:30–9 a.m., noon–1 p.m., 3:30–3:50 p.m., and 5:30–6 p.m.; and Nov. 13 from 8:30–9 a.m. to noon, 1–3:30 p.m. During these times the merits of the research presented in the open sessions will be discussed and evaluated.

Open: Nov. 12, from 9 a.m. to noon, 1–3:30 p.m., and 3:50–5:30 p.m.; and Nov. 13 aspects of the program will be presented. In an evening session on Nov. 12, from 8–9:30, graduate students will present their work in a poster session.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; information on personnel and proprietary data for present and future subcontracts. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: October 29, 2002.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 02–27907 Filed 11–01–02; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Social, Behavioral and Economic Sciences; Notice of Meeting

In accordacne with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Advisory Committee for Social, Behavioral, and Economic Sciences, (ACSBE) (#1171).

Date & Time: December 12, 2002 8:30 a.m.—5 p.m., December 13, 2002 8:30 a.m.—12:30 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Open.

Contact Person: Dr. Sally Kane, Senior Advisor, ACSBE, Directorate for Social, Behavioral, and Economic Sciences, National Science Foundation, 4201 Wilson Boulevard, Room 905, Arlington, VA 22230, 703–292–8741.

Summary Minutes: May be obtained from contact person listed above.

Purpose of Meeting: To provide advice and recommendations to the National Science Foundation on major goals and policies pertaining to Social, Behavioral and Economic Sciences Directorate programs and activities.

Agenda: Discussion on issues, role and future direction of the Directorate for Social, Behavioral, and Economic Sciences.

Note: Visitors from outside of NSF should call (703)292–8741 to arrange for a vistitor's badge in order to facilitate getting into the building.

Dated: October 29, 2002.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 02–27906 Filed 11–1–02; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–213]

Connecticut Yankee Atomic Power Company; Haddam Neck Plant; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an amendment to Facility Operating License No. DPR–61 issued to Connecticut Yankee Atomic Power Company (the licensee) for the Haddam Neck Plant, a permanently shutdown nuclear reactor facility located in Middlesex County, Connecticut. The new license condition is related to the licensee's proposed License Termination Plan (LTP) for the plant. Therefore, pursuant to Section 51.21 of Title 10 of the Code of Federal Regulations (10 CFR), the NRC is issuing this environmental assessment and finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action would amend Facility Operating License No. DPR–61 to approve the LTP for the plant and add a new License Condition C.7 to the LTP for the plant. The proposed condition will require the licensee to implement and maintain in effect all provisions of the LTP that are approved by the NRC as part of the amendment. The proposed condition would also (1) provide criteria for the licensee to make changes to the LTP with prior NRC review and approval and (2) require the licensee to perform a capture zone analysis and to have assured that the groundwater contribution is included for all applicable survey areas. In accordance with the regulations, the licensee has, and will continue to have, the authority to remediate the site without an approved LTP, which is performed under the provisions of 10 CFR 50.82(a)(6) and 50.59. The proposed license amendment does not authorize additional plant activities beyond those that are already authorized and, therefore, is administrative.

The proposed action is in accordance with the licensee's application dated July 7, 2000, as supplemented by letters dated June 14, July 31, August 15, August 22, September 6, September 7, 2001, and August 20 and October 10, 2002. Calculations to support the LTP were also provided by the licensee in the letters dated January 11, 2001, and May 9, June 26, and August 15, 2002.

Consistent with the decommissioning rule that appeared in the **Federal Register** notice dated July 29, 1996 (Vol. 61, No. 146, pp. 39283–39284), the NRC has also prepared this environmental assessment (EA) to determine the adequacy of the radiation release criteria and the adequacy of the final status survey presented in the LTP.

The Need for the Proposed Action

The proposed action would allow the licensee to meet the requirements of 10 CFR 50.82(a)(9), by which a licensee is required to submit an LTP to the NRC for approval. Further, in accordance with the requirements of 10 CFR 50.82(a)(10) and (11), the staff will: (1) Approve an LTP by license amendment if the remaining decommissioning activities will be performed in accordance with the regulations, will not be inimical to the common defense and security or the health and safety of the public, and will not have a significant effect on the quality of the environment; and (2) terminate the license if the remaining dismantlement has been performed in accordance with the approved LTP and if the final radiation survey and associated documents demonstrate the facility and site are suitable for release.

Environmental Impacts of the Proposed Action

Background

The nuclear steam supply for the HNP is a four-loop pressurized-water reactor (PWR) with a thermal power design limit of 1,825 MWt. The turbine generator was rated to produce 619 MWe. The HNP began commercial operation in January 1968 and was permanently shut down on December 4, 1996, after 28 years of operation. After the cessation of operations, the licensee began to decommission the HNP. The Post Shutdown Decommissioning Activities Report (PSDAR) was submitted to NRC in 1997. The licensee transmitted an Updated Final Safety Analysis Report (UFSAR) to NRC in 1998. The UFSAR reflects the HNP's permanent shutdown status. Later in 1998, NRC amended the HNP Facility Operating License to reflect the plant's shutdown condition. In 1999, the operating license was amended to reflect the decommissioning status of the plant and long-term storage of the spent fuel.

The LTP was submitted to NRC on July 7, 2000. The LTP was subsequently revised in response to NRC comments and resubmitted on August 20 and October 10, 2002. NRC regulations in 10 CFR 50.82 require that an LTP contain plans for site characterization, identification of remaining dismantlement activities, plans for site remediation, the licensee's plan for the final radiation survey, information on whether the site is being released for restricted or unrestricted use, an assurance that the licensee has adequate funds to complete decommissioning, and a supplement to the environmental report that describes any new information or significant environmental change associated with what the licensee provided in its PSDAR.

The licensee is proposing to decontaminate the site to meet the unrestricted release criteria (25 mrem/year and residual radioactivity as low as reasonably achievable) as found in 10 CFR 20.1402. The licensee plans to complete decommissioning activities by 2004. At the time of license termination, several buildings may remain on site. Debris from buildings that were demolished during decommissioning will have been sent to an appropriate offsite disposal facility. The spent fuel will eventually be removed from the spent fuel pool and placed in an Independent Spent Fuel Storage Installation (ISFSI).

Scope

NRC rule changes in 1996 (61 FR 39278) allow the licensee to perform major decommissioning activities after submittal of a PSDAR. The 1996 rule prohibits decommissioning activities that could result in significant environmental impacts that have not been previously analyzed. The impacts of decommissioning activities for nuclear power reactors have been assessed previously by NRC in the Generic Environmental Impact Statement (GEIS) for Decommissioning (Reference NRC, 1988, 2001) and are not reevaluated in the EA. The PSDAR is required to include a discussion of the reasons for concluding that the planned decommissioning activities are bounded by the GEIS and previous site-specific analyses.

At this time, the NRC is considering only approval of the licensee's LTP, not termination of the license. Approval of the LTP, as discussed in the Statements of Consideration that accompanied the Final Rule on Decommissioning Nuclear Power Reactors (61 FR 39284, July 29, 1996), requires the NRC to consider: (1) The licensee's plan for assuring sufficient funds will be available for final site release; (2) radiation release criteria for license termination; and (3) the adequacy of the final survey required to verify that these release criteria have been met. NRC has reviewed the decommissioning costs to ensure that adequate funds will be available for site decommissioning, and this review is documented in the safety evaluation report for the LTP amendment. Financial assurance is not analyzed in this EA since financial assurance methods would not result in any environmental impacts. The radiation release criteria and adequacy of the final status survey are addressed in this EA.

Additionally, the Commission has made a generic determination (10 CFR 51.23) that spent fuel generated in any reactor can be stored safely and without significant environmental impacts for at least 30 years beyond the licensed life for operation of the plant and that there is reasonable assurance that at least one mined geologic repository will be available within 30 years beyond the licensed life of operation to dispose of high level waste. Accordingly, no discussion of environmental impacts of spent fuel storage in HNP's storage pool or its projected ISFSI is provided in this EA.

Site Description and Current Site Environmental Conditions

The HNP is located on a site of about 2,124,608 square meters (525 acres) in the town of Haddam on the eastern bank of the Connecticut River in an area known as Haddam Neck. Haddam Neck is bounded by the Connecticut River and the Salmon River, which enters the Connecticut River just south of the plant site. The town of Haddam is in Middlesex County, Connecticut. The HNP is about 35.4 kilometers (22 miles) south-southeast of Hartford and 40.2 kilometers (25 miles) northeast of New Haven.

Land Use

About 80 percent of the area surrounding the site within a 8-kilometer (5-mile) radius is rural and wooded, with much of it occupied by State parks and forests. The remaining area is used for general farming and for small industrial-production facilities. The largest industrial complex in the vicinity, which employs about 3,000 workers, is located in Middletown, which is about 8.9 kilometers (5.5 miles) northwest of the site. Several other

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small industrial facilities are located within a 10-mile radius. The nearest agricultural farm is about 17 kilometers (10 miles) from the site. Two schools are located within 8 kilometers (5 miles), with a combined enrollment of about 600 students in 1995 (Reference CYAPCO, 1997).

Geology and Soil

As discussed in the Decommissioning Environmental Review dated August 1997 (Reference CYAPCO, 1997), the surficial deposits at the site are dominated by relatively thin and often discontinuous layers of glacial till overlying bedrock. This till is a poorly sorted mixture of clay, silt, sand, gravel, cobbles, and boulders. Sediments underlying the floodplain portion of the site vary from 3 to 30.5 meters (10 to 100 feet) thick. The uppermost portion of these sediments consists of thin [less than 6.1 meters (20 feet deep)] alluvial silts and sands deposited by the Connecticut River.

Before the plant was constructed, much of the overburden sediments were excavated to competent, unweathered bedrock. The area was filled and graded from an initial elevation of about 3.7 meters (12 feet) to an elevation of 6.4 meters (21 feet) above mean sea level (MSL). Site elevations range from about 3 to 6.1 meters (10 to 20 feet) MSL on the developed floodplain, and to approximately 91.4 meters (300 feet) MSL in undeveloped upland portions of the site.

Radiologically contaminated site soil is generally confined to surface soil, although survey results have indicated localized areas with deeper contamination. In the LTP, 20 radionuclides have been identified in site soil on the basis of survey data collected from 15 sample locations. These radionuclides include cesium, plutonium, americium, and cobalt.

Surface Water

All stream flow past the site is derived wholly from within the Connecticut River basin. Although tidal influence in the Connecticut River extends upstream to approximately Hartford, saline water extends only as far north as East Haddam, about 3.2 kilometers (2 miles) south of the plant. No drinking water intakes exist on the Connecticut River in the vicinity of the site; local water supply needs are provided by wells or tributary stream reservoirs.

Stream flow at the site is a combination of upstream basin discharge and tidal interchange. The average annual daily flow at Haddam Neck is approximately 481 cubic meters per second (cms) [17,000 cubic feet per second (cfs)]. Tidal flow at the site averages about 425 cms (15,000 cfs), but it may be as great as 623 cms (22,000 cfs). During periods of low river flow, tidal flows can be significant (Reference CYAPCO, 1997).

The HNP drew once-through cooling water from the Connecticut River through an intake structure at the edge of the river. The cooling water effluent was discharged into a canal that flows parallel to the river, with its outflow located approximately 1676 meters (5,500 feet) downstream of the intake. The plant's National Pollutant Discharge Elimination System permit will be in effect until the end of decommissioning. The permit imposes the limits for flow, temperature, and effluent chemistry. To date, no surface-water contamination attributable to the site has been observed.

Groundwater

At the site, groundwater is present in both unconsolidated sediments and in underlying fractured bedrock. In the LTP, the shallow groundwater is described as flowing toward the Connecticut River. Near the uplands, the generalized flow direction of groundwater is downward and toward the river; near the river, the generalized flow direction of the groundwater is upward toward the river. Groundwater flow in the bedrock is assumed to occur in the fractures. The direction of this flow can be complex because of the variability of the depth, orientation, and interconnectiveness of fractures; however, net flow in the bedrock is expected to be toward the river.

Groundwater beneath the HNP has been affected by boron, tritium, and strontium-90 releases. The boron and tritium contamination is attributed, in part, to leakage from the refueling water-storage tank (RWST). A contaminated groundwater plume extends from the RWST south to wells adjacent to the Connecticut River. The locations of the core and bottom of the boron/tritium plume are not known. Groundwater concentrations of tritium as high as 5,137 Becquerels per liter (Bq/L) [138,700 picocuries per liter (pCi/L)] were reported from sampling events performed in 1999 (Reference Malcolm Pirnie, 1999). Since then, there has been a trend of decreasing tritium concentrations. The highest concentration reported from sampling conducted in June 2001 was 774 Bq/L (20,900 pCi/L) (Reference CYAPCO, 2001a). Groundwater in the deep water-bearing bedrock units is also monitored (Reference CYAPCO, 2002b). Tritium concentrations as high as 1,225 Bq/L (33,070 pCi/L) were reported for deeper segments of the fractured bedrock (Reference CYAPCO, 2001b). No plant-generated contamination has been found in any of the area drinking-water wells. However, strontium-90 has been found at a concentration of about 0.4 Bq/L (1 pCi/L) in water from the water-supply well on the peninsula adjacent to the discharge canal. Cesium-137 (76 pCi/L in 1999) and technetium-99 (3.9 pCi/L in 2001) have each been found in one monitoring well, both near the containment building.

Many private water-supply wells occur in the vicinity of the site (Reference CYAPCO, 1997). These wells, which pump water from deep water-bearing units in the bedrock, are located outside and upgradient of the facility. The nearest residential well is approximately 0.8 kilometer (0.5 mile) northwest, in the opposite direction of the groundwater plume traveling southwest of the RWST, of the HNP stack. The nearest community water supply well is approximately 4.8 kilometers (3 miles) from the site.

Additional groundwater characterization is being performed by the licensee to determine the nature and extent of potential groundwater contamination. This investigation is described in the plan titled "Phase 2 Hydrogeologic Investigation Work Plan," which was approved by the State of Connecticut's Department of Environmental Protection on May 10, 2002 (Reference CYAPCO, 2002a). The plan's objectives are to study the distribution and migration of radionuclides within the plant industrial area, and to show whether any radiological substances of concern exist at the landfill, other property areas, or across the Connecticut River.

Groundwater samples from the landfill area wells were also analyzed for chemical parameters, consistent with State requirements for solid waste disposal areas. The samples were analyzed for various metals and for volatile organic compounds. No volatile organic compounds were found, and metals were either below detection limits or were detected at very low concentrations (Reference Malcolm Pirnie, 1999). The licensee will be conducting a site-wide characterization of hazardous constituents under the Federal Resource Conservation and Recovery Act Corrective Action program, and this environmental investigation will provide additional information regarding chemical parameters (Reference Rosenstein, 2002).

Ecological Resources

About 70 percent of the plant site's 2,124,604 square meters (525 acres) are forested. Dominant tree species include eastern hemlock, black oak, shagbark hickory, and sweet (black) birch (Reference CYAPCO, 1997). The remainder of the site contains wetlands and open areas. Wetlands include forested swamps, beaver ponds, and floodplain (riparian) areas. Open lands are mostly manmade, occurring within the transmission line rights-of-way and along roadways. These areas consist primarily of short, transitional vegetation. Only 28,328 square meters (7 acres) of the site were developed and occupied by buildings and associated parking lots. Approximately 36,422 square meters (9 acres) were modified to create the discharge canal. Transmission line rights-of-way associated with the HNP occupy about 3,986,170 square meters (985 acres) (Reference USAEC, 1973). Important habitats located within the plant site boundary include a freshwater tidal marsh and a bald eagle winter-roosting site (Reference McKay, 1997).

Common mammal species occurring at the site include white-tailed deer, woodchucks, eastern cottontails, red and gray squirrels, eastern chipmunks, raccoons, and Virginia opossums. Regularly encountered bird species include mourning doves, red-eyed vireos, red-winged blackbirds, black-capped chickadees, American robins, wood thrushes, common grackles, song sparrows, American goldfinches, and several species of warblers. Herring gulls, mallards, and great blue herons are common species within riparian areas. Salmon River Cove, which abuts the site, is a wintering area for waterfowl such as mallards, black ducks, and Canada geese. Common reptile and amphibian species include northern spring peepers, bullfrogs, red-spotted newts, eastern box turtles, eastern hognose snakes, and northern black racers (Reference CYAPCO, 1997).

The HNP is located at the estuary portion of the Connecticut River about 25.8 kilometers (16 miles) from the mouth of the river. Thus, freshwater, estuarine, and anadromous fish species occur in the plant area. Common fish species include channel catfish, striped bass, large-mouth bass, white catfish, white perch, yellow perch, spottail shiners, white suckers, American eels, carp, American shad, and several species of sunfish. The American shad is the most important commercial species in the area. Plant operations had no apparent effect on the shad population (Reference CYAPCO, 1997). Because of silt deposition in the plant area, the macroinvertebrate community is dominated by aquatic worms and chironomid (midge) larvae. Several expansive beds of submerged aquatic vegetation occur in the plant vicinity. A large bed occurs near Haddam Island State Park and Haddam Meadows State Park upstream of the plant, and several smaller beds occur just downstream of the plant in the vicinity of the discharge canal (Reference CYAPCO, 1997).

No Federally listed or proposed threatened or endangered species are known to occur in the area that will be affected by site activities (Reference Amaral, 2001). However, the endangered shortnose sturgeon makes seasonal movements through the Connecticut River estuary and thus passes by the site. The shortnose sturgeon is also State-listed as endangered. Three other State-listed species occur in the site area: Atlantic sturgeon (threatened); tidewater mucket (endangered); and swamp cottonwood (endangered). Six other species listed as of special concern in Connecticut occur in the site area: eastern box turtle; eastern pondmussel; golden club; woodland pondsnail; and two arrowleaf species (Reference McKay, 1997).

Historical and Cultural Resources

Known archaeological and historical resources within the HNP lands include the plant itself, archaeological sites containing Native American ceramics, and the Venture Smith site. The HNP is historically significant as one of four early demonstration reactors that used the PWR design. It was one of the earliest nuclear power plants constructed in the Northeast and was the world's leading reactor in nuclear power generation from 1980 to 1984. The HNP has been determined eligible for listing on the National Register of Historic Places (Reference Maddox, 1998). The Venture Smith site is an 18th century homestead of African American archaeological significance and has been identified as potentially eligible for listing on the National Register of Historic Places (Reference Maddox, 2001).

Visual and Scenic Resources

The HNP is adjacent to the Cove Meadow State Park, located on an undeveloped riverfront area at the confluence of the Salmon and Connecticut Rivers. Haddam Meadows State Park is located directly across from the HNP on the western bank of the Connecticut River. The plant can be viewed from the parking and boat-launching facilities at this park. Hurd State Park, Haddam Island State Park, and Cockaponset State Park are all within 4.8 kilometers (3 miles) of the HNP (Reference CYAPCO, 1997). The nearest Historic Landmark is the Goodspeed Opera House, which is located 4.8 kilometers (3 miles) downstream of the plant. The plant is not visible from this landmark because of a bend in the Connecticut River near the Salmon River confluence (Reference CYAPCO, 1997).

Radiological Impacts

After approval of the LTP and release of the site for unrestricted use, the only source of exposure to members of the public would be any residual radionuclide concentrations on the building surfaces, in the soil, and in the groundwater. Derived concentration guideline levels (DCGLs) were derived to ensure that exposure of the average member of the critical group to residual radioactivity within the various media will not exceed the dose limit of 0.25 Sieverts per year (Sv/yr) [25 millirоentgen-equivalent-man per year (mrem/yr)] as specified in 10 CFR Part 20, Subpart E. The impacts of radiological release criteria were analyzed in NRC's 1997 Generic Environmental Impact Statement (GEIS) in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Nuclear Facilities (NUREG–1496). Because the residual radionuclides that are expected to remain on the building surfaces, in soil, and in groundwater will be less than the DCGLs, any doses incurred by a potential receptor will be less than the 0.25 Sv/yr (25 mrem/yr) dose limit.

The manner in which the DCGLs are derived for the HNP is documented in the LTP. NRC evaluated the adequacy of the DCGLs in providing protection for members of the public as the site is released for unrestricted use, as documented in the safety evaluation for the amendment that approves the LTP (Reference NRC, 2002).

In deriving the soil DCGLs, a resident-farmer was considered to represent the average member of the critical population group. The hypothetical resident farmer is assumed to build a house, draw water from a well, grow plant food and fodder, raise livestock, and catch fish for consumption from a pond within areas of the site with residual radioactivity in the soil and groundwater. The resident farmer scenario embodies the greatest number of exposure pathways and represents the longest exposure durations of any other scenario envisioned.

The DCGLs for buildings are obtained by selecting the more restrictive DCGLs (*i.e.*, the lowest radionuclide

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concentrations) between two potential exposure scenarios. The first scenario is a building occupancy scenario that considers a light industrial worker working in a contaminated building. The second scenario considers a resident farmer who builds a house on the concrete debris generated from the demolition of the contaminated buildings. The light industrial worker is assumed to be the average member of the critical group for exposure to residual radioactivity remaining on the walls of standing structures at the site. The worker is assumed to spend time in the structure performing light industrial activities. Because exposure for the light industrial worker scenario does not consider exposure from any residual radioactivity that may be located below the wall surface (*e.g.*, from activation within the containment building), a second scenario involving a resident farmer performing limited activities in the area of concrete debris was considered.

The DCGLs for the groundwater pathway are determined by assuming a well is pumping water that contains residual radioactivity and the water is used for drinking, crop irrigation, and livestock watering.

NRC evaluated the appropriateness of the exposure scenarios postulated and the methodology used for deriving the DCGLs. It has concluded that the potential radiation exposures caused by residual radionuclide concentrations have not been underestimated by the licensee and will not exceed the dose limit in 10 CFR Part 20, subpart E, for the general public. Additional details of the NRC's analysis of the DCGLs are available in the safety evaluation for the amendment which approves the LTP (Reference NRC, 2002).

The licensee will use a series of surveys and a final status survey to demonstrate compliance with Part 20, Subpart E, consistent with the Radiation Survey and Site Investigation process and the data quality objectives (DQO) process. Planning for the final status survey involves an iterative process that requires appropriate site classification (on the basis of the potential residual radionuclide concentration levels relative to the DCGLs) and formal planning using the DQO process. The licensee has committed to an integrated design process that will address the selection of appropriate survey and laboratory instrumentation and procedures, and that includes a statistically based measurement and sampling plan for collecting and evaluating the data needed for the final status survey. The NRC staff has determined that the integrated design process, sampling strategy, and survey data evaluation methodology presented in the LTP are adequate. Additional details of the NRC's analysis of the survey plan are available in the safety evaluation for the amendment which approves the LTP (Reference NRC, 2002).

If the licensee requests license termination in the future, it will submit a final status survey report, which will describe the residual contamination remaining on site. NRC would conduct a confirmatory study to determine whether the site meets the criteria for unrestricted release, and would also confirm that decommissioning activities were done in accordance with the LTP, prior to terminating the license.

As for groundwater, emptying the RWST has eliminated a major source of tritium contamination in the shallow groundwater system. With time, contaminant concentrations will decrease because of source removal and dilution and discharge to the Connecticut River. Groundwater levels at this site are complex and the effect of discontinuing groundwater pumping is not well understood. Tidal conditions in the Connecticut River probably affect water levels. The water levels and groundwater flow directions between the unconsolidated and fractured bedrock units are variable. The complexity of the stratigraphic units in this area also affects both the water levels and groundwater flow (Reference CYAPCO, 2002a).

Nonradiological Impacts

The scope of this EA is limited to adequacy of the DCGLs and adequacy of the final status survey described in the LTP. Therefore, there are not expected to be any adverse nonradiological impacts on the environmental resources described in Section 3.0.

NRC notes that the HNP has been determined eligible for the National Register of Historic Places, and decommissioning and dismantling of the plant are considered adverse effects on Connecticut's cultural heritage (Reference Maddox, 2001). Additionally, HNP lands have a high potential for containing significant prehistoric and historic archaeological resources. Archaeological resources that have been determined potentially eligible include the Venture Smith homestead and areas near the canal that have been found to contain Native American ceramics (Reference Maddox, 2001). The following summarizes the mitigation measures that the Connecticut Historical Commission (Reference Maddox, 2001) has recommended, in response to NRC's request for a consultation:

a. Documentation of the HNP to the professional standards of the National Park Service's Historic American Engineering Record;

b. Completion of a reconnaissance-level archaeological survey of all lands associated with the HNP; and

c. Consultation with the Thomas J. Dodd Research Center, at the University of Connecticut, concerning the archiving of pertinent documents, plans, and photographs of the HNP.

All three of these recommendations are being carried out by the licensee.

Cumulative Impacts

The NRC has evaluated whether cumulative environmental impacts could result from an incremental impact of the proposed action when added to other past, present, or reasonably foreseeable future actions in the area. The proposed NRC approval of the LTP, when combined with known effects on resource areas at the site, are not anticipated to result in any cumulative impacts at the site.

Mitigation Measures

As a result of NRC's review of the LTP, the NRC has added license conditions to the licensee's Part 50 license. The license conditions concern: (1) The procedure for any changes to the LTP after approval by the NRC; and (2) the analysis of groundwater prior to release of any survey areas. These license conditions will ensure that there are no significant adverse effects on the adequacy of the DCGLs or the final status survey after approval of the LTP. The license conditions are described further in the NRC's safety evaluation for the amendment that approves the LTP (Reference NRC, 2002).

The licensee is taking mitigative measures to minimize adverse effects on the potential historic and cultural resources present at the site. These mitigative measures are described in the above section on nonradiological impacts.

Conclusions

NRC believes that the approval of the LTP will not cause any significant impacts on the human environment and is protective of human health. Adverse effects were identified for historical and cultural resources, but these impacts will be mitigated by the licensee, as described in the above section on nonradiological impacts. Environmental impacts caused by site activity after NRC has terminated the HNP license would be evaluated, if necessary, by either the State of Connecticut or other agencies responsible for overseeing or regulating the specific future activity.

Agencies and Persons Consulted

The NRC staff has prepared this EA with input from the State of Connecticut's Historic Preservation Officer, by letter dated January 8, 2001, and the U.S. Fish and Wildlife Service, by letter dated January 25, 2001.

In its letter, the State of Connecticut's Historic Preservation Office noted that the HNP possesses historic and technological significance and is eligible for the National Register of Historic places. It further notes that the lands associated with the HNP possess high sensitivity for prehistoric and historic archaeological resources, and these resources harbor a strong potential for being eligible for the National Register. The State Historic Preservation Office believes that decommissioning and dismantling of the HNP represent adverse effects upon Connecticut's cultural heritage and has recommended three mitigative measures, which are described in the above section on nonradiological impacts.

The U.S. Fish and Wildlife Service indicated, in its letter, that on the basis of current information, no Federally or proposed threatened or endangered species under U.S. Fish and Wildlife Service jurisdiction are known to occur in the site project area.

The NRC staff provided a draft of this EA to the State of Connecticut for review. In response, the Connecticut Department of Environmental Protection provided input related to ecological resources, surface water, and groundwater (Reference Wilds, 2002). The EA was revised to reflect the State's input where appropriate.

The U.S. Environmental Protection Agency provided comments on the draft EA to the NRC staff (Reference Rosenstein, 2002). The comments were related to a range of topics, including site characterization and decommissioning impacts. The EA was revised to reflect the EPA's comments where appropriate.

The licensee submitted comments related to clarification of the water resources and historical resources sections (Reference Fetherston, 2002). The EA was revised to reflect the licensee's comments where appropriate.

In accordance with its stated policy, on January 3, 2001, the NRC staff consulted by e-mail with the Connecticut State Official, Dr. Michael Firsick, of the Connecticut Department of Environmental Protection, regarding the environmental impact of the proposed action. In the e-mail response dated October 4, 2002, the State official had no further comments (ADAMS Accession No. ML022840536).

Alternatives, Including the Proposed Action

Proposed Action

The proposed action is NRC approval of the HNP's LTP, which contains the radiation release criteria (*i.e.*, the DCGLs), and the description of the final status survey plan required by NRC. NRC review and approval of the LTP will verify that the remainder of the decommissioning activities will be performed in accordance with NRC regulations.

No Action

NRC considered the no-action alternative relative to the licensee's request for approval of the LTP. Under the no-action alternative, NRC would not approve the LTP and therefore would not be able to terminate the license. This alternative is in conflict with NRC's regulations in 10 CFR 50.82, which states that an LTP will be approved if it has been determined that the remainder of the decommissioning activities will be performed in accordance with NRC regulations, are not detrimental to the health and safety of the public, and do not have a significant effect on the quality of the environment. Therefore, the no-action alternative is not considered to be reasonable and is not analyzed further in this EA. Also, the no-action alternative would result in no change in current environmental impacts.

Therefore, the environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Haddam Neck Plant or the Generic Environmental Impact Statement on Decommissioning of Nuclear Facilities.

Finding of No Significant Impact

NRC has prepared an EA related to the issuance of a license amendment to Facility Operating License No. DPR–61, approving the LTP. On the basis of this EA and the mitigative measures described above, NRC has concluded that there are no significant environmental impacts and the license amendment does not warrant the preparation of an Environmental Impact Statement. Accordingly, it has been determined that a Finding of No Significant Impact is appropriate.

For further details with respect to the proposed action, see the licensee's letters dated July 7, 2000, January 11, June 14, July 31, August 15, August 22, September 6, September 7, 2001, and May 9, June 26, and August 15 and 20 and October 10, 2002. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff at 1–800–397–4209, or 301–415–4737, or by e-mail at *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 28th day of October 2002.

For the Nuclear Regulatory Commission.

Stephen Dembek,

Chief, Section 2, Project Directorate IV, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

Attachment to "Connecticut Yankee Atomic Power Company Environmental Assessment and Finding of No Significant Impact"

References for the Environment Assessment and Finding of No Significant Impact

Amaral, M., 2001, letter from Amaral (U.S. Department of the Interior, Fish and Wildlife Service, New England Field Office, Concord, N.H.) to C.E. Abrams (U.S. Nuclear Regulatory Commission, Washington, D.C.), January 2001. (Amaral, 2001)

Connecticut Yankee Atomic Power Company. 1997. Decommissioning Environmental Review, Haddam Neck Plant, East Hampton, Conn., August 1997. (CYAPCO, 1997)

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Connecticut Yankee Atomic Power Company, 2001a, June 2001 Quarterly Groundwater Monitoring Report, Haddam Neck Plant, Haddam, Conn., November 2001 (CYAPCO 2001a)

Connecticut Yankee Atomic Power Company, 2001b, Response to the Request for Additional Information (RAI) Regarding the Haddam Neck Plant License Termination Plant (TAC NO. MA9791). CY–01–084, Haddam Neck Plant, Conn., submitted to U.S. Nuclear Regulatory Commission, Document Control Desk, Washington, D.C., August 22, 2001. (CYAPCO, 2001b)

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Connecticut Yankee Atomic Power Company 2002b, Haddam Neck License Termination Plan, Revision 1, Haddam Neck Plant, East Hampton, Conn., August 20, 2002. (CYAPCO, 2002b)
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Fetherston, N.W., 2002, letter from Fetherston (Site Manager, CYAPCO, East Hampton, Conn.) to U.S. Nuclear Regulatory Commission, Washington, D.C., June 19, 2002. (Fetherston, 2002)
Maddox, D., 1998, letter from Maddox (Deputy State Historic Preservation Officer, Connecticut Historical Commission, Hartford, Conn.) to J. Borne (Northeast Utilities Service Company, Hartford, Conn.), June 1, 1998. (Maddox, 1998)
Maddox, D., 2001, letter from Maddox (Deputy State Historic Preservation Officer, Connecticut Historical Commission, Hartford, Conn.) C.E. Abrams (Office of Nuclear Material Safety and Safeguards, Nuclear Regulatory Commission, Washington, D.C.), January 8, 2001. (Maddox, 2001)
Malcolm Pirnie, Inc., 1999, Groundwater Monitoring Report, Connecticut Yankee Atomic Power Station, Haddam Neck, Connecticut, Final Report, Malcolm Pirnie, Inc., Middletown, Conn., September 1999. (Malcolm Pirnie, 1999)
McKay, D.M., 1997, letter from McKay (Department of Environmental Protection, Natural Resources Center, Hartford, Conn.) to P. Jacobson (Northeast Utilities Service Company, Hartford, Conn.) January 6, 1997. (McKay, 1997)
Rosenstein, M., 2002, letter from Rosenstein (U.S. Environmental Protection Agency, Region 1, Boston, MA) to J. Donoghue (Office of Nuclear Reactor Regulation, Nuclear Regulatory Commission, Washington, D.C.), June 24, 2002. (Rosenstein, 2002)
U.S. Atomic Energy Commission, 1973, Final Environmental Statement, Haddam Neck (Connecticut Yankee) Nuclear Power Plant, Connecticut Yankee Atomic Power Company, Docket No. 50–2123, Directorate of Licensing, Washington, D.C., October 1973. (USAEC, 1973)
U.S. Nuclear Regulatory Commission, 1988, Final Generic Environmental Impact Statement on the Decommissioning of Nuclear Facilities, NUREG–0586, Office of Nuclear Regulatory Research, Washington D.C. (NRC, 1988)
U.S. Nuclear Regulatory Commission, 1997, Final Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Nuclear Facilities, NUREG–1496; Office of Nuclear Regulatory Research, Washington, D.C. (GEIS, 1997)
U.S. Nuclear Regulatory Commission, 2001, Generic Environmental Impact Statement on the Decommissioning of Nuclear Facilities; Draft Supplement Dealing with Decommissioning of Nuclear Power Reactors, NUREG–0586 Supplement 1, Office of Nuclear Reactor Regulation, Washington, D.C. (NRC, 20901)
U.S. Nuclear Regulatory Commission, 2002, Safety Evaluation Related to Amendment to Facility Operating License No. DPR–61, Connecticut Yankee Atomic Power Company, Haddam Neck Plant, Docket No. 50–213, Office of Nuclear Material Safety and Safeguards, Washington, D.C., to be issued in November 2002. (NRC, 2002)
Wilds, E., 2002, letter from Wilds (Department of Environmental Protection, Hartford, Conn.) to J.E. Donoghue (U.S. Nuclear Regulatory Commission, Washington, D.C.), June 3, 2002. (Wilds, 2002)

[FR Doc. 02–28014 Filed 11–1–02; 8:45 am]
BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste

Meeting on Planning and Procedures; Notice of Meeting

The ACNW will hold a Planning and Procedures meeting on November 20, 2002, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c) (2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACNW, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Wednesday, November 20, 2002—8:30 a.m.–10:00 a.m.

The Committee will discuss proposed ACNW activities and related matters. The purpose of this meeting is to gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Chairman; written statements will be accepted and made available to the Committee. Persons desiring to make oral statements should notify the Designated Federal Official named below five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted only during those portions of the meeting that are open to the public

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements, and the time allotted therefor can be obtained by contacting the Designated Federal Official, Howard J. Larson (telephone: 301/415–6805) between 7:30 a.m. and 4:15 p.m. (ET). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes in the proposed agenda.

Dated: October 29, 2002.

Sher Bahadur,

Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 02–28012 Filed 11–1–02; 8:45 am]
BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards

Subcommittee Meeting on Future Plant Designs; Notice of Meeting

The ACRS Subcommittee on Future Plant Designs will hold a meeting on November 21, 2002, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Thursday, November 21, 2002—8:30 a.m. Until the Conclusion of Business

The Subcommittee will review the draft commission paper being prepared by the Office of Nuclear Regulatory Research regarding the options on policy issues for advanced reactor designs. The purpose of this meeting is to gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman. Written statements will be accepted and made available to the Committee. Persons desiring to make oral statements should notify the Designated Federal Official named below five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted only during those portions of the meeting that are open to the public.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, and the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the Designated Federal Official, Dr. Medhat M. El-Zeftawy (telephone 301–415–6889) between 7:30 a.m. and 5 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes to the agenda.

Dated: October 29, 2002.

Sher Bahadur,

Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 02–28011 Filed 11–1–02; 8:45 am]
BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 72–12 and 50–333; License No. DPR–59]

Entergy Nuclear Operations, Inc.; James A. Fitzpatrick Nuclear Power Plant; Notice of Issuance of Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission (NRC), has issued a Director's Decision with regard to a Petition dated February 21, 2002, filed by Mr. Timothy Judson of the Citizens Awareness Network, *et al.*, hereinafter referred to as the "Petitioner." The Petition concerns the operation of Entergy's James A. FitzPatrick Interim Spent Fuel Storage Installation (ISFSI). The Petitioner requested the following:

1. That the NRC order Entergy to suspend the dry cask storage program at the FitzPatrick reactor.

2. That the NRC require Entergy to:

• Demonstrate that the proposed fuel storage program presents no increased risks to the national security or worker or public health and safety beyond what is contemplated in the Certificate of Compliance and General License, pursuant to § 72.212(4)–(5);

• Submit its proposed design changes for technical review in the form of a license amendment application and seek regulatory approval for them pursuant to § 72.244;

• Evaluate its use of the HI-TRAC 100 transfer cask for ALARA standards, per § 50, Appendix I;

• Provide more substantial physical and structural protection of the irradiated fuel and ISFSI to satisfy the requirements of §§ 73.51, 73.55; and

• Demonstrate the use of the HI-STORM 100 can satisfy these requirements at FitzPatrick, or demonstrate countervailing and compelling reasons to utilize the HI-STORM 100 at FitzPatrick, as opposed to any other casks certified by NRC.

3. That all documents and information filed in relation to the selection of storage casks and the implementation of dry storage at FitzPatrick be put on the docket for public inspection.

4. That the Petition Review Board (PRB) submit this Petition to the NRC's Office of the Inspector General (OIG) for review of the Spent Fuel Project Office's compliance with regard to NRC regulations in terms of design changes, licensing, amendments, exemptions and ALARA in its permitting process relating to the use of dry cask storage at FitzPatrick. Additionally, that a review be conducted to determine whether NRC staff in the Spent Fuel Project Office are complicit or misguided in permitting design changes to these casks without submission of a license amendment.

5. That the NRC conduct an investigation to determine whether Entergy has deliberately circumvented the appropriate technical and regulatory review required to protect worker and public health and safety and the environment.

As the basis for the February 21, 2002, request, the Petitioner states several safety concerns related to the design changes associated with the HI-STORM 100 cask design, as well as safety concerns related to national security.

The Petitioner addressed the PRB on March 29, 2002, in a telephone conference call to clarify the bases for the Petition. The meeting gave the Petitioner and the licensee an opportunity to provide additional information and to clarify issues raised in the Petition.

The NRC sent a copy of the proposed Director's Decision to the Petitioner and to the licensee for comment on August 13, 2002. The Petitioner responded with comments on August 27, 2002, and the licensee responded on August 28, 2002. The comments and the NRC staff's response to them are Enclosures to the Director's Decision.

The Director of the Office of Nuclear Material Safety and Safeguards has determined that the safety concerns the Petitioner raised related to the modified HI-STORM 100 cask design at FitzPatrick were reviewed, and determined not to pose an immediate safety issue. Therefore, the request to require that an order be issued to Entergy to suspend the dry cask storage program at FitzPatrick was denied. In response to the Petitioner's request that Entergy submit an additional safety demonstration of the FitzPatrick storage facility, it was determined, through the NRC inspection program, that Entergy has demonstrated that the proposed fuel storage program presents no increased risks to the national security or worker or public health and safety beyond what is contemplated in the Certificate of Compliance and General License, pursuant to § 72.212(4)–(5). The NRC denied the Petitioner's request that Entergy submit a license amendment, ALARA review, and various other safety evaluations and justifications to the NRC for review for the reasons noted in the detailed discussion in the Director's Decision. The Petitioner's request to require Entergy to provide more substantial physical and structural protection of the irradiated fuel and ISFSI was also denied, as existing security measures, including issuance of an NRC Order to Entergy on October, 16, 2002, have been determined to be adequate. The Petitioner requested that all documents and information filed in relation to the selection of storage casks and the implementation of dry storage at FitzPatrick be put on the docket for public inspection. Documents and information filed in relation to the selection of storage casks and the implementation of dry storage at FitzPatrick were put on the docket for public inspection by letter dated May 10, 2002, and the additional information was released to the public at that time. The Petitioner's request that the PRB submit this Petition to the OIG for review of the SFPO was granted, as noted in the letter dated April 12, 2002. In response to the Petitioner's request to investigate whether Entergy deliberately circumvented the regulatory process, the NRC staff review of Entergy's 10 CFR 72.48 evaluation concluded that the proper regulatory process was followed by Entergy, and no further investigation was warranted. The reasons for these decisions are explained in the Director's Decision pursuant to 10 CFR 2.206 (DD–02–02), the complete text of which is available for inspection at the Commission's Public Document Room, located at One

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White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. The text is also accessible through the ADAMS Public Library on the NRC's Web site, *http://www.nrc.gov* (Public Electronic Reading Room).

A copy of the Director's Decision will be filed with the Secretary of the Commission for the Commission's review in accordance with 10 CFR 2.206 of the Commission's regulations. As provided for by this regulation, the Director's Decision will constitute the final action of the Commission 25 days after the date of the decision, unless the Commission, on its own motion, institutes a review of the Director's Decision in that time.

Dated at Rockville, Maryland, this 28th day of October 2002.

For the Nuclear Regulatory Commission.

Martin J. Virgilio,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 02–28013 Filed 11–1–02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration on the American Stock Exchange LLC (Citizens, Inc., Class A Common Stock, no par value) File No. 1–16509

October 30, 2002.

Citizens, Inc., a Colorado corporation ("Issuer"), has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its Class A Common Stock, no par value ("Security"), from listing and registration on the American Stock Exchange LLC ("Amex" or "Exchange").

The Issuer stated in its application that it has met the requirements of Amex Rule 18 by complying with all applicable laws in the State of Colorado, in which it is incorporated, and with the Amex's rules governing an issuer's voluntary withdrawal of a security from listing and registration.

The Board of Directors ("Board") of the Issuer unanimously approved a resolution on June 4, 2002, to withdraw the Issuer's Security from listing on the Amex. The Issuer states that the Security has traded on the New York Stock Exchange, Inc. ("NYSE") since August 2002. The Issuer stated that the Board took such action in order to avoid the direct and indirect costs and the division of the market resulting from dual listing on the Amex and NYSE.

The Issuer's application relates solely to the withdrawal of the Security from listing on the Amex and shall not affect its listing on the NYSE or its obligation to be registered under section 12(b) of the Act.[3]

Any interested person may, on or before November 19, 2002, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority. [4]

Jonathan G. Katz,

Secretary.

[FR Doc. 02–27999 Filed 11–1–02; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 781(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 781(b).

[4] 17 CFR 200.30–3(a)(1).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25789; 812–12224]

Credit Suisse Asset Management, LLC, et al.; Notice of Application

October 29, 2002.

AGENCY: Securities and Exchange Commission ("Commission")

ACTION: Notice of application under section 12(d)(1)(J) of the Investment Company Act of 1940 ("Act") for an exemption from section 12(d)(1) of the Act, under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act, under section 6(c) of the Act for an exemption from section 17(e) of the Act, and under section 17(d) of the Act and rule 17d–1 under the Act to permit certain joint transactions.

SUMMARY OF APPLICATION: Applicants request an order to permit (a) Certain investment companies and other institutional investors to use cash collateral from securities lending transactions ("Cash Collateral") and uninvested cash ("Uninvested Cash," and together with the Cash Collateral, the "Cash Balances") to purchase shares of certain registered open-end management investment companies ("Registered Investment Funds") and unregistered investment companies ("Unregistered Investment Funds," and together with the Registered Investment Funds, the "Investment Funds"); (b) Credit Suisse First Boston (New York Branch) ("CSFB") to accept fees from certain registered investment companies for acting as securities lending agent; (c) CSFB, Credit Suisse First Boston Corporation ("CSFB Corp."), Credit Suisse Asset Management Securities, Inc. ("CSAMSI") and any broker-dealer that may be controlling, controlled by or under common control with CSFB, CSFB Corp. or CSAMSI (each, an "Affiliated Broker-Dealer") to borrow portfolio securities from certain registered investment companies and to receive brokerage commissions from, and to engage in principal securities transactions with, registered investment companies that are affiliated persons solely because they hold 5% or more of the outstanding voting securities of an Investment Fund; and (d) certain investment companies, other institutional investors and the Investment Funds to engage in certain purchase and sale transactions with each other.

APPLICANTS: Credit Suisse European Equity Fund, Inc., Credit Suisse Select Equity Fund, Inc., Credit Suisse Global Technology Fund, Inc., Credit Suisse Municipal Bond Fund, Inc., Credit Suisse Institutional U.S. Core Equity Fund, Inc., Credit Suisse Institutional Fixed Income Fund, Inc., Credit Suisse Institutional High Yield Fund, Inc., Credit Suisse Capital Appreciation Fund, Credit Suisse Capital Funds, Credit Suisse Emerging Growth Fund, Inc., Credit Suisse Emerging Markets Fund, Inc., Credit Suisse Fixed Income Fund, Credit Suisse Global Fixed Income Fund, Inc., Credit Suisse Global Health Sciences Fund, Inc., Credit Suisse Global Post-Venture Capital Fund, Inc., Credit Suisse Global Financial Services Fund, Inc., Credit Suisse Institutional Fund, Inc., Credit Suisse Investment Grade Bond Fund, Inc., Credit Suisse Institutional International Fund, Inc, Credit Suisse Japan Growth Fund, Inc., Credit Suisse International Focus Fund, Inc., Credit Suisse New York Municipal Fund, Credit Suisse Opportunity Funds, Credit Suisse Short Duration Bond Fund, Credit Suisse Small Cap Growth Fund, Inc., Credit Suisse Strategic Small Cap Fund, Inc., Credit Suisse Strategic Value Fund, Inc., Credit Suisse Cash Reserve Fund, Inc., Credit Suisse Institutional Money Market Fund, Inc., Credit Suisse New York Tax Exempt Fund, Inc., Credit Suisse Trust and Credit Suisse Global New Technologies Fund, Inc. (each, a "Registered Affiliated Fund"), Credit Suisse Asset Management, LLC ("CSAM"), CSFB, CSFB Corp. and CSAMSI ("Applicants").

FILING DATES: The application was filed on August 16, 2000 and amended on January 7, 2002, May 22, 2002 and August 21, 2002. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on November 21, 2002, and should be accompanied by proof or service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, c/o Credit Suisse Asset Management, LLC, 466 Lexington Avenue, New York, New York, 10017, Attn: Hal Liebes.

FOR FORTHER INFORMATION CONTACT: John L. Sullivan, Senior Counsel, at (202) 942–0681, or Nadya B. Roytblat, Assistant Director, at (202) 942–0578 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (tel. 202–942–8090).

Applicants' Representations

1. Each of the Registered Affiliated Funds is either an open-end or closed-end management investment company registered under the Act and advised or subadvised by CSAM or an entity controlling, controlled by or under common control with CSAM (each, including CSAM, a "CS Entity"). Each such CS Entity is or will be registered as an investment adviser under the Investment Advisers Act of 1940 or exempt from such registration. Applicants requests that the order also apply to any other existing or subsequently created registered open- and closed-end management investment companies (and each series thereof) that are advised or subadvised by a CS Entity (included in the term "Registered Affiliated Funds").[1]

2. CSFB is a Zurich-based bank. CSFB's New York branch will serve as the lending agent in a securities lending program ("Program") for the Registered Affiliated Funds and certain other registered management investment companies (and series thereof) of which CSFB is not an affiliated person, as defined in section 2(a)(3) of the Act, or an affiliated person of an affiliated person ("Second-Tier Affiliate") (each, an "Other Fund," and together with the Registered Affiliated Funds, the "Funds"). Other participants in the Program include certain investment companies exempt from registration under sections 3(c)(1) and 3(c)(7) of the Act ("Unregistered Funds"), including those advised by a CS Entity ("Unregistered Affiliated Funds"); certain managed accounts advised or sub-advised by a CS Entity ("Managed Accounts"); and certain corporations, partnerships or other entities (i) in which a Registered Affiliated Fund or an Unregistered Affiliated Fund directly or indirectly owns, controls or holds with power to vote 5% or more of the outstanding voting securities or (ii) which may be deemed to be controlled by or under common control with a Registered Affiliated Fund or Unregistered Affiliated Fund ("Portfolio Companies," and together with the Managed Accounts, the "Other Institutional Investors," and together with the Funds and Unregistered Funds, the "Participants").[2] The Other Institutional Investors also include other corporations, partnerships and other entities that are not owned or controlled by a CS Entity. The Managed Accounts are not pooled investment vehicles, and the Other Institutional Investors are not investment companies as defined in the Act.

3. Each of the Investment Funds is or will be advised by a CS Entity. The Registered Investment Funds are or will be open-end management investment companies registered under the Act. Certain of the Registered Investment Funds are or will be taxable or tax-exempt money market funds operating pursuant to rule 2a–7 under the Act or short-term bond funds that seek current income consistent with the preservation of capital by investing in fixed-income securities and maintaining a dollar-weighted average maturity of three years or less. The Registered Investment Funds are, or will be, designed specifically for use in connection with the investment of Cash Balances. The Unregistered Funds will be investment companies exempt from registration under sections 3(c)(1) or 3(c)(7) of the Act. Each Unregistered Investment Fund will comply with rule 2a–7 under the Act.

4. CSFB Corp. and CSAMSI are broker-dealers registered under the Securities Exchange Act of 1934 and are (together with CSAM) indirect wholly owned subsidiaries of the Credit Suisse Group, an international financial services firm.

5. Under the Program, CSFB and each Fund will enter into a securities lending agreement ("Securities Lending Agreement") that authorizes CSFB to enter into a borrowing agreement ("Borrow Agreement") with certain entities ("Borrowers") approved by a Fund from a list of Borrowers maintained by CSFB. The Securities Lending Agreement authorizes CSFB to lend portfolio securities of the Fund to Borrowers in exchange for Cash Collateral or other types of collateral, as indicated in the Securities Lending Agreement and Borrowing Agreement. CSFB invests any Cash Collateral on behalf of the Fund in accordance with specific guidelines provided by the Fund. These guidelines identify the particular Investment Funds and other investments, if any, in which Cash Collateral may be invested, as well as the amounts that may be invested.

6. When a securities loan is collateralized with Cash Collateral, CSFB will receive a portion of the return earned on the investment of the Cash Collateral. Depending on the arrangement negotiated with the Borrower by CSFB, the Fund may pay the Borrower a rate of interest for use of the Cash Collateral. When the collateral is not Cash Collateral, CSFB will negotiate a lending fee to be paid by the Borrower to the Fund. For its services to the Funds, if the requested order is granted, CSFB will receive fees based on a share of the revenue generated from the securities lending transactions.

7. The personnel who will provide day-to-day lending agency services to

[1] All existing Registered Affiliated Funds that currently intend to rely on the relief requested in the application have been named as Applicants. Any existing and future entity may rely on the requested order only in accordance with the terms and conditions in the application.

[2] If a Portfolio Company is relying on section 3(c)(1) or 3(c)(7) of the Act, it will be treated as an Unregistered Fund for purposes of the requested relief.

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the Funds do not provide investment advisory services to the Funds or participate in any way in the selection of portfolio securities or other aspects of the management of the Funds.

8. The Registered Affiliated Funds and the Unregistered Affiliated Funds may have Uninvested Cash that comes from a variety of sources, including dividend or interest payments, unsettled securities transactions, reserves held for investment strategy purposes, scheduled maturity of investments, liquidation of portfolio securities to meet anticipated redemption and dividend payments, as well as monies received from investors. Other Institutional Investors, including the Managed Accounts and the Portfolio Companies, also may have Uninvested Cash.

9. Applicants request an order to permit (a) the Participants to use Cash Balances to purchase shares of the Investment Funds; (b) (CSFB to accept fees from the Funds for acting as securities lending agent; (c) the Affiliated Broker-Dealers to borrow portfolio securities from the Registered Affiliated Funds and to receive brokerage commissions from, and to engage in principal securities transactions with, the Other Funds that are affiliated persons solely because they hold 5% or more of the outstanding voting securities of an Investment Fund; and (d) the Participants and the Investment Funds to engage in certain purchase and sale transactions with each other.[3]

Applicants' Legal Analysis

A. Investment of Cash Balances by the Participants in the Investment Funds

1. Section 12(d)(1)(A) of the Act prohibits an investment company or any company controlled by the investment company from acquiring shares of a registered investment company if the securities represent more than 3% of the total outstanding voting stock of the acquired company, more than 5% of the total assets of the acquiring company, or, together with the securities of any other investment companies, more than 10% of the total assets of the acquiring company. Section 12(d)(1)(B) of the Act prohibits a registered open-end investment company from selling its shares to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies generally. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security or transaction, or any class or classes of persons, securities or transactions, from any provision of section 12(d)(1) if such exemption is consist with the public interest and the protection of investors.

2. Applicants seek an order under section 12(d)(1)(J) of the Act exempting them from the provisions of section 12(d)(1) of the Act to permit the Funds, Unregistered Funds and Portfolio Companies to purchase, and the Registered Investment Funds to sell, securities in excess of the limits of sections 12(d)(1)(A) and 12(d)(1)(B) in connection with the investment of Cash Balances in a Registered Investment Funds.

3. Applicants state that the proposed arrangement will not give rise to the policy concerns underlying sections 12(d)(1)(A) and (B). Applicants note that shares of the Investment Funds will be sold without a sales load, redemption fee, asset-based distribution fee or service fee (as defined in rule 2830(b)(9) of the Conduct Rules of the National Association of Securities Dealers, Inc.). In addition, before approving any advisory contract, the board of directors ("Board") of a Registered Affiliated Fund; including a majority of the directors/trustees who are not interested persons within the meaning of section 2(a)(19) of the Act ("Independent Directors/Trustees"), will consider the extent to which the advisory fees charged to a Registered Affiliated Fund by a CS Entity should be reduced to account for reduced services provided to the Registered Affiliated Fund by such CS Entity as a result of Uninvested Cash being invested in the Investment Funds. Applicants also note that an Investment Fund will not acquire securities of any investment company in excess of the limits contained in section 12(d)(1)(A) of the Act.

4. Sections 17(a)(1) and (2) of the Act make it unlawful for any affiliated person of a registered investment company, or any Second-tier Affiliate, acting as principal, to sell any security to, or purchase any security from, the registered investment company. Section 2(a)(3) of the Act defines an "affiliated person" of another person to include, among others, any person directly or indirectly owning, controlling or holding with power to vote 5% or more of the outstanding voting securities of such other person; Any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote by the other person: Any person directly or indirectly controlling, controlled by, or under common control with, the other person; and, in the case of an investment company, its investment adviser.

5. As investment adviser to each of the Registered Affiliated Funds and the Investment Funds, CSAM could be deemed to control both the Registered Affiliated Funds and the Investment Funds. Accordingly, the Registered Affiliated Funds and the Investment Funds could be deemed to be under common control and affiliated persons of each other. In addition, if an Other Fund acquires 5% or more of the outstanding voting securities of an Investment Fund, the Investment Fund could be deemed an affiliated person of the Other Fund. As a result, section 17(a) would prohibit an Investment Fund from selling its shares to, and redeeming its shares from, certain Funds.

6. Section 17(b) of the Act authorizes the Commission to exempt a transaction from section 17(a) if the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and if the proposed transaction is consistent with the policy of each registered investment company concerned and with the general purposes of the Act. Section 6(c) of the Act provides that the Commission may exempt any person or transaction from any provision of the Act if the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

7. Applicants request an order under sections 6(c) and 17(B) of the Act to permit the funds to purchase shares of the Investment Funds and the Investment Funds to redeem their shares from the Funds. Applicants submit that the terms of the proposed transactions, including the consideration to be paid or received, are reasonable and fair and consistent with the general purposes of the Act, as well as with the policies of the respective Funds. Applicants state that the Funds will be treated like any other shareholders in an Investment Fund, and the Funds will purchase and redeem shares of an Investment Fund on the same terms and basis as such shares are purchased and redeemed by all other shareholders of an Investment Fund. Applicants state that a Fund will only be permitted to invest Cash Balances in an Investment Fund if that Investment Fund has been approved for investment by the Fund and if the Investment Fund invests in instruments that the Fund has previously determined are an acceptable medium for the investment of Cash Balances. A Fund that complies with rule 2a–7 under the Act will not invest its Cash Balances in an Investment Fund that does not comply with rule 2a–7. For these reasons, Applicants believe that their requested relief meets the standards of sections 6(c) and 17(b) of the Act.

8. Section 17(d) of the Act and rule 17d–1 under the Act prohibit any affiliated person of a registered investment company or any Second-tier Affiliate, acting as principal, from effecting any transaction in connection with any joint enterprise or joint arrangement in which the investment company participates, unless an application regarding the joint arrangement has been filed with the Commission and granted by order. Under rule 17d–1, in passing on applications for orders under section 17(d), the Commission considers whether the participation of the registered investment company is consistent with the provisions, policies, and purposes of the Act and the extent to which the participation is on a basis different from or less advantageous than that of other participants.

9. Applicants state that the Participants (by purchasing and redeeming shares of an Investment Fund), the Investment Funds (by selling shares of an Investment Fund to and redeeming them for the Participants), a CS Entity (by managing the portfolio securities of the Registered Affiliated Funds, the Unregistered Affiliated Funds, the Managed Accounts and the Investment Funds at the same time that the Registered Affiliated Funds, Unregistered Affiliated Funds and Managed Accounts' Cash Balances are invested in shares of an Investment Fund) and CSFB (by acting as lending agent, investing Cash Collateral in shares of an Investment Fund and receiving a portion of the revenue generated by securities lending transactions) could be considered participants in a joint enterprise or arrangement. Applicants request an order in accordance with section 17(d) and rule 17d–1 to permit certain transactions incident to investment of Cash Balances in the Investment Funds.

10. Applicants state that the Registered Affiliated Funds and the other Participants will invest in the Investment Funds on the same basis as any other shareholder in the Investment Funds. Accordingly, Applicants believe that the proposed investment in Investment Funds meets the standards of section 17(d) and rule 17d–1.

B. Interfund Transactions

1. Applicants state that certain Participants and certain Investment Funds currently rely on rule 17a–7 to engage in purchase and sale transactions in securities ("Interfund Transactions"). Rule 17a–7 excepts from the prohibitions of section 17(a) the purchase or sale of certain securities between registered investment companies that are affiliated persons or Second-tier Affiliates of each other or between a registered investment company and a person that is an affiliated person or Second-tier Affiliate of such company solely by reason of having a common investment adviser or affiliated investment advisers, common officers, and/or common directors. If at any time a Participant were to own 5% or more of the voting securities of an Investment Fund, then such Participant would be an affiliated person of such Investment Fund, and such Investment Fund would be an affiliated person of such Participant, by reason of such ownership of voting securities, and not solely by reason of such Participant and such Investment Fund having a common investment adviser, common officers and/or common directors.

2. Applicants request an order under sections 6(c) and 17(b) to permit the Interfund Transactions. Applicants state that the Participants and the Investment Funds will comply with rule 17a–7 under the Act, other than the requirement that the participants be affiliated solely by reason of having a common investment adviser or affiliated investment advisers, common officers, and/or common directors. Applicants state that the affiliation created by the proposed transaction does not affect the other protections provided by rule 17a–7 or the policies underlying the rule.

C. Payment of Fees by the Funds to CSFB

1. Applicants state that the lending agent arrangement between each Fund and CSFB, under which CSFB is to receive compensation based on a share of the revenue generated from the securities lending transactions, may be deemed a joint enterprise or other joint arrangement requiring an order under section 17(d) of the Act and rule 17d–1 under the Act. Consequently, Applicants request an order in accordance with section 17(d) and rule 17d–1 to the extent necessary to permit each Fund to pay, and CSFB to accept, fees in connection with CSFB's acting as lending agent in the manner and subject to the conditions and procedures described in the application.

2. Applicants submit that to safeguard each Registered Affiliated Fund's shareholders, Applicants will adopt the following procedures to ensure that the proposed fee arrangement and other terms governing the relationship with CSFB, as lending agent, will meet the standards of rule 17d–1:

(a) In connection with the approval of CSFB as lending agent for a Registered Affiliated Fund and implementation of the proposed fee arrangement, a majority of the Board (including a majority of the Independent Directors/Trustees) will determine that (i) the contract with CSFB is in the best interests of the Registered Affiliated Fund and its shareholders, (ii) the services to be performed by CSFB are appropriate for the Registered Affiliated Fund, (iii) the nature and quality of the services provided by CSFB are at least equal to those offered and provided by others, and (iv) the fees for CSFB's services are fair and reasonable in light of the usual and customary charges imposed by other lending agents for services of the same nature and quality.

(b) Each Registered Affiliated Fund's contract with CSFB for lending agent services will be reviewed annually and will be approved for continuation only if a majority of the Board (including a majority of the Independent Directors/Trustees) makes the findings referred to in paragraph (a) above.

(c) In connection with the initial implementation of an arrangement whereby CSFB will be compensated as lending agent based on a percentage of the revenue generated by a Registered Affiliated Fund's participation in the Program, the Board shall obtain competing quotes with respect to lending agent fees from at least three independent lending agents to assist the Board in making the findings referred to in paragraph (a) above.

(d) The Board of the Registered Affiliated Fund, including a majority of the Independent Directors/Trustees, will (i) determine at each regular quarterly meeting that the loan transactions during the prior quarter were conducted in compliance with the conditions and procedures set forth in the application and (ii) review no less frequently than annually the conditions and procedures set forth in the application for continuing appropriateness.

(e) Each Registered Affiliated Fund will (i) maintain and preserve permanently in an easily accessible place a written copy of the procedures and conditions (and modifications thereto) described in the application and (ii) maintain and preserve for a

[3] No relief is requested from the provisions of section 12(d)(1)(A) and (B) with respect to any investment of Uninvested Cash in a Registered Investment Fund by any Unregistered Fund that is not an Unregistered Affiliated Fund or by any Other Fund.

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period not less than six years from the end of the fiscal year in which any loan transaction pursuant to the Program occurred, the first two years in an easily accessible place, a written record of each loan transaction setting forth a description of the security loaned, the identity of the person on the other side of the loan transaction, the terms of the loan transaction, and the information or materials upon which the determination was made that each loan was made in accordance with the procedures set forth above and the conditions to the application.

3. With respect to the Other Funds, Applicants state that the nature of the affiliation between the Other Funds and CSFB is only technical. Applicants state that CSFB would not have any influence over the decisions made by any Other Fund and that any fee arrangements between the Other Funds and CSFB will be the product of arms-length bargaining.

D. Loans by Registered Affiliated Funds to Affiliated Broker-Dealers

1. Section 17(a)(3) of the Act makes it unlawful for any affiliated person of a registered investment company, or any Second-tier Affiliate, acting as principal, to borrow money or other property from a registered investment company. Under section 2(a)(3)(E) of the Act, CSFB Corp. is an affiliated person of those Registered Affiliated Funds for which it acts as investment adviser and, under section 2(a)(3)(C), a Second-tier Affiliate of those Registered Affiliated Funds for which CSAM acts as an investment adviser, since CSFB Corp. and CSAM may be deemed to be under common control. Further, the other Affiliated Broker-Dealers may be deemed to be under common control with CSAM and Second-tier Affiliates of the Registered Affiliated Funds. Accordingly, under section 17(a)(3) of the Act, CSFB Corp. and the other Affiliated Broker-Dealers would be prohibited from borrowing securities from the Registered Affiliated Funds.

2. The Applicants request relief under sections 6(c) and 17(b) of the Act exempting them from Section 17(a)(3) of the Act, and under section 17(d) of the Act and rule 17d–1 under the Act to permit the Registered Affiliated Funds to lend portfolio securities to the Affiliated Broker-Dealers.

3. Applicants state that each loan to an Affiliated Broker-Dealer by a Registered Affiliated Fund will be made with a spread that is no lower than that applied to comparable loans to unaffiliated Borrowers.[4] In this regard, Applicants state that at least 50% of the loans made by the Registered Affiliated Funds, on an aggregate basis, will be made to unaffiliated Borrowers. Moreover, all loans will be made with spreads that are no lower than those set forth in a schedule of spreads ("Schedule of Spreads") established by the Board of each Registered Affiliated Fund, including a majority of the Independent Directors/Trustees.

E. Transactions by the Other Funds With the Affiliated Broker-Dealers

1. As noted above, sections 17(a)(1), (2) and (3) of the Act prohibit certain principal transactions between a registered investment company and its affiliates. The Affiliated Broker-Dealers and the Investment Funds could be deemed to be under common control and thus affiliated persons of one another. Therefore, an Affiliated Broker-Dealer could be deemed a Second-tier Affiliate of an Other Fund that purchases 5% or more of the outstanding voting securities of an Investment Fund. Applicants request relief under sections 6(c) and 17(b) from section 17(a) to permit principal transactions between the Other Funds and the Affiliated Broker-Dealer where the affiliation between the parties arises solely as a result of an investment by an Other Fund of Cash Balances in an Investment Fund.

2. Applicants state that there will be no element of self-dealing because the Affiliated Broker-Dealers have no influence over the decisions made by any Other Fund. Applicants state that each transaction between an Affiliated Broker-Dealer and an Other Fund would be the product of arms-length bargaining.

3. Section 17(e)(2) of the Act makes it unlawful for any affiliated person of a registered investment company, or any Second-tier Affiliate, acting as broker in connection with the sale of securities to or by that registered investment company, to receive from any source a commission for effecting the transaction that exceeds (a) the usual and customary broker's commission if the sale is effect on a securities exchange, (b) 2 percent of the sales price if the sale is effected in connection with a secondary distribution of the securities, or (c) 1 percent of the purchase or sale price of such securities if the sale is otherwise effected.

4. Applicants request relief under section 6(c) from section 17(e)(2) as it may apply to transactions by Other Funds that are brokered by an Affiliated Broker-Dealer. Applicants believe that each transaction between an Other Fund and an Affiliated Broker-Dealer would be the product of arms-length bargaining.

Applicant's Conditions

Applicants agree that any order of the Commission granting the requested relief will be subject to the following conditions:

A. General

1. The Securities Lending Program of each Fund will comply with all present and future applicable Commission and staff positions regarding securities lending arrangements.

2. The approval of the Registered Affiliated Fund's Board, including a majority of the Independent Directors/Trustees, shall be required for the initial and subsequent approvals of CSFB's service as lending agent for the Registered Affiliated Fund pursuant to the Securities Lending Program, for the institution of all procedures relating to the Securities Lending Program as it relates to the Registered Affiliated Fund, and for any periodic review of loan transactions for which CSFB acted as lending agent pursuant to the Securities Lending Program.

3. No Fund will purchase shares of any Investment Fund unless participation in the Securities Lending Program has been approved by a majority of the Independent Directors/Trustees of the Fund. The Independent Directors/Trustees also will evaluate the Securities Lending Program no less frequently than annually and determine that investing Cash Collateral in the Investment Funds is in the best interests of the shareholders of the Fund. Further, the Independent Directors/Trustees of the Registered Affiliated Funds will initially and at least annually thereafter determine that investing Uninvested Cash in the Investment Funds is in the best interests of the shareholders of the Registered Affiliated Funds.

4. Each of the Registered Affiliated Funds will invest Uninvested Cash in, and hold shares of, the Investment Funds only to the extent that the Registered Affiliated Fund's aggregate investment of Uninvested Cash in the Investment Funds does not exceed 25% of the Registered Affiliated Fund's total assets. For purposes of this limitation, each Registered Affiliated Fund or series thereof will be treated as a separate investment company.

5. The Registered Affiliated Funds, Unregistered Affiliated Funds, and any Investment Fund will be advised by a CS Entity or will have a CS Entity as its general partner or managing member. A Registered Affiliated Fund that is subadvised, but not advised, by a CS Entity may rely on the order provided that the CS Entity manages the Cash Balances and that any relief granted from the provision of section 12(d)(1)(A) and (B) of the Act shall be available only if the Registered Affiliated Fund is in the same group of investment companies (as defined in Section 12(d)(1)(G) of the Act) as the Registered Investment Fund in which the Registered Affiliated Fund invests Cash Balances.

B. Loans to Affiliated Broker-Dealers

1. The Registered Affiliated Funds, on an aggregate basis, will make at least 50% of their portfolio securities loans to unaffiliated Borrowers.

2. The total value of securities loaned to any one broker-dealer on the approved list will be in accordance with a schedule by the Registered Affiliated Fund's Board, but in no event will the total value of securities lent to any one Affiliated Broker-Dealer exceed 10% of the net assets of the Registered Affiliated Fund, computed at market.

3. A Registered Affiliated Fund will not make any loan to an Affiliated Broker-Dealer unless the income attributable to such loan fully covers the transaction cost incurred in making such loan.

4. (a) All loans will be made with spreads no lower than those set forth in a Schedule of Spreads which will be established and may be modified from time to time by each Registered Affiliated Fund's Board and by a majority of the Independent Directors/Trustees.

(b) The Schedule of Spreads will set forth rates of compensation to each Registered Affiliated Fund that are reasonable and fair and that are determined in light of those considerations set forth in the application.

(c) The Schedule of Spreads will be uniformly applied to all Borrowers of the Registered Affiliated Funds' portfolio securities , and will specify the lowest allowable spread with respect to a loan of securities to any Borrower.

(d) If a security is loaned to an unaffiliated Borrower with a spread higher than the minimum set forth in the Schedule of Spreads, all comparable loans to an Affiliated Broker-Dealer will be made at no less than the higher spread.

(e) The Registered Affiliated Funds' portfolio securities lending program will be monitored on a daily basis by an officer of each Registered Affiliated Fund who is subject to section 36(a) of the Act. This officer will review the terms of each loan to an Affiliated Broker-Dealer for comparability with loans to unaffiliated Borrowers and conformity with the Schedule of Spreads, and will periodically, and at least quarterly, report his or her findings to each Registered Affiliated Fund's Board, including a majority of the Interested Directors/Trustees.

5. Each Registered Affiliated Fund's Board, including a majority of the Independent Directors/Trustees: (a) will determine no less frequently than quarterly that all transactions with Affiliated Broker-Dealers effected during the preceding quarter were effected in compliance with the requirements of the procedures adopted by the Board and the conditions of this order if granted and that such transactions were conducted on terms which were reasonable and fair; and (b) will review no less frequently than annually such requirements and conditions for their continuing appropriateness.

6. Each Registered Affiliated Fund's Board, including a majority of the Independent Directors/Trustees: (a) will determine no less frequently than quarterly that all transactions with Affiliated Broker-Dealers effected during the preceding quarter were effected in compliance with the requirements of the procedures adopted by the Board and the conditions of this order if granted and that such transactions were conducted on terms which were reasonable and fair; and (b) will review no less frequently than annually such requirements and conditions for their continuing appropriateness.

C. Investment of Cash Balances in an Investment Fund

1. Investment in shares of an Investment Fund by a particular Fund will be in accordance with the guidelines regarding the investment of securities lending Cash Collateral specified by the Fund in the Securities Lending Agreement. A Fund's Cash Balances will be invested in a particular Investment Fund only if that Investment Fund has been approved for investment by the Fund and if that Investment Fund invests solely in the types of instruments that the Fund has authorized for the investment of its Cash Balances.

2. An Investment Fund will not acquire securities of any investment company in excess of the limits contained section 12(d)(1)(A) of the Act.

3. Each Fund will purchase and redeem shares of any Unregistered Investment Fund on the same basis as of the same time and at the same price, and will receive dividends and bear its proportionate share of expenses on the same basis, as other shareholders investing in the same series of the Unregistered Investment Fund. A separate account will be established in the shareholder records of the Unregistered Investment Fund for the account of each Fund for the account of each Fund that invests in such Unregistered Investment Fund.

4. Each Unregistered Investment Fund will comply with rule 2a–7 under the Act. A CS Entity as the investment adviser to such Unregistered Investment Fund will adopt and monitor the procedures described in rule 2a–7(c)(7) under the Act and will take such other actions as are required to be taken pursuant to such procedures. A Fund may only purchase shares of such Unregistered Investment Fund if the relevant CS Entity determines on an ongoing basis that the Unregistered Investment Fund is in compliance with rule 2a–7. Such CS Entity will preserve for a period not less than six years from the date of determination, the first two years in an easily accessible place, a record of such determination and the basis upon which such determination was made. The record will be subject to examination by the Commission and the staff.

5. Each Unregistered Investment Fund will comply with the requirements of sections 17(a), (d) and (e) and 18 of the Act as if it were a registered open-end investment company. With respect to all redemption requests made by a Fund, each Unregistered Investment Fund will comply with section 22(e) of the Act. Any CS Entity that serves as investment adviser to an Unregistered Investment Fund will adopt procedures designed to ensure that the Unregistered Investment Fund complies with section 17(a), (d) and (e), 18 and 22(e) of the Act. Any such CS Entity will also periodically review and update as appropriate such procedures and will maintain books and records describing such procedures, and maintain the records required by rules 31(a)–1(b)(1), 31a–1(b)(2)(ii) and 31a–1(b)(9) under the Act. All books and records required to be made pursuant to this condition will be maintained and preserved for a period of not less than six years from the end of the fiscal year in which any transaction occurred, the first two years in an easily accessible place, and will be subject to

[4] A "spread" is the compensation earned by a Registered Affiliated Fund, as lender, from a securities loan, which compensation is in the form either of a lending fee payable by the Borrower to the Registered Affiliated Fund (where non-Cash Collateral is posted) or of the excess, retained by the Registered Affiliated Fund, over a rebate rate payable by the Registered Affiliated Fund to the Borrower (where Cash Collateral is posted and then invested by the Registered Affiliated Fund).

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examination by the Commission and the staff.

6. The net asset value per share with respect to shares of an Unregistered Investment Fund will be determined separately for each Unregistered Investment Fund by dividing the value of the assets belonging to that Unregistered Investment Fund, less the liabilities of that Unregistered Investment Fund, by the number of shares outstanding with respect to that Unregistered Investment Fund.

7. If a CS Entity collects a fee from an Investment Fund for acting as its investment adviser with respect to Uninvested Cash invested by a Registered Affiliated Fund, before the next meeting of the Board of a Registered Affiliated Fund that invests in the Investment Funds is held for the purpose of voting on an advisory contract pursuant to section 15 of the Act, that CS Entity will provide the Board with specific information regarding the approximate cost to the CS Entity for, or portion of the advisory fee under the existing advisory fee attributable to, managing the Uninvested Cash of the Registered Affiliated Fund that can be expected to be invested in the Investment Funds. Before approving any advisory contract pursuant to Section 15 of the Act, the Board of the Registered Affiliated Fund, including a majority of the Independent Directors/Trustees, shall consider to what extent, if any, the advisory fees charged to the Registered Affiliated Fund by a CS Entity should be reduced to account for the reduced services provided to the Registered Affiliated Fund by such CS Entity as a result of Uninvested Cash being invested in the Investment Funds. The minute books of the Registered Affiliated Fund will record fully the Board's consideration in approving the advisory contract, including the considerations relating to fees referred to above.

8. Investment in shares of an Investment Fund by a particular Fund will be consistent with such Fund's investment objectives and policies. A Fund that complies with rule 2a–7 under the Act will not invest its Cash Balances in an Investment Fund that does not comply with rule 2a–7.

9. The shares of an Investment Fund will not be subject to a sales load, redemption fee, any asset-based distribution fee or service fee (as defined in rule 2830(b)(9) of the Conduct rules of the NASD).

D. Interfund Transactions

1. To engage in Interfund Transactions, the Participants and the Investment Funds will comply with rule 17a–7 under the Act in all respects other than the requirement that the parties to the transaction be affiliated persons (or Second-tier Affiliates) of each other solely by reason of having a common investment adviser or investments advisers which are affiliated persons of each other, common officers, and/or common directors, solely because a Participant and an Investment Fund might become affiliated persons within the meaning of Section 2(a)(3)(A) and (B) of the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–27915 Filed 11–01–02; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46731; File No. SR–Amex–2002–78]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC Relating to a Temporary Waiver of Associate Member Fees for Persons Trading Nasdaq Securities Admitted to Unlisted Trading Privileges Through the Exchange's Electronic Order Routing Systems

October 28, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on September 26, 2002, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to waive through December 31, 2002: (1) the membership dues, initiation fee, application processing fee, initial registration fee and the electronic access fee for new Associate Members that trade only Nasdaq stocks through the Exchange's electronic order routing systems during the period of the waiver, and (2) the electronic access fee for existing Associate Members that currently do not have electronic access privileges and that trade only Nasdaq stocks through the Exchange's electronic order routing systems during the period of the waiver.

The proposed fee schedule is available at the Amex and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to temporarily waive Associate Member and electronic access fees for broker/dealer firms that currently do not have electronic access to the Amex Order File ("AOF"). The waiver would last through December 31, 2002, and would apply to firms that trade only Nasdaq stocks through the Exchange's electronic order routing systems during the period of the waiver. Broker-dealers that become Associate Members during the waiver period would not have to pay: (1) 2002 dues applicable to Associate Members, (2) Associate Member initiation fee, (3) application processing fee, (4) initial registration fee, and (5) the electronic access fee. Existing Associate Members that currently do not have electronic access to the AOF also could upgrade to electronic access privileges without paying the customary electronic access fee provided they trade only Nasdaq stocks through the Exchange's electronic order routing systems during the period of the fee waiver.

At the end of the waiver period, firms that became Associate Members during the waiver and traded only Nasdaq stocks through the AOF would have to: (1) Acquire a regular membership and pay the fees and dues associated with becoming a regular member, or (2) pay the 2003 dues, the Associate Member initiation fee, the application processing fee, the renewal registration fee and the electronic access fee for 2003 applicable to Associate Members, or (3) terminate their Associate Membership. New Associate Members that terminate their Associate Membership on or prior to December 31, 2002, will not have to pay 2002 dues, the Associate Member initiation fee, the application processing fee, the initial registration fee and the electronic access fee for 2002.

At the end of the waiver period, firms that already were Associate Members prior to the waiver and upgraded to electronic access privileges during the waiver and traded only Nasdaq stocks through the AOF would have to: (1) Acquire a regular membership and pay the fees and dues associated with becoming a regular member, or (2) pay the 2003 dues and electronic access fee for 2003 applicable to Associate Members.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[3] in general and furthers the objectives of section 6(b)(4)[4] of the Act in particular in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among the Exchange's members, issuers and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, and therefore, has become effective pursuant to section 19(b)(3)(A)(ii) of the Act[5] and subparagraph (f)(2) of Rule 19b-4 thereunder.[6]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Amex–2002–78 and should be submitted by November 25, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–28001 Filed 11–1–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46737; File No. SR–NYSE–2002–29]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the New York Stock Exchange, Inc. Proposing to Increase the Maintenance Charge for Cellular Phones Used on the Floor of the Exchange

October 29, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 16, 2002, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed Amendment No. 1 to the proposed rule change with the Commission on October 28, 2002.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.[4]

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to increase the maintenance charge for cellular phones used on the floor of the Exchange.

The text of the proposed rule change appears below. New text is in italics. Deleted text is in brackets.

* * * * *

NYSE 2002 Price List

* * * * *

Facility and Equipment Fees

* * * * *

Schedule of Annual Charges, unless otherwise noted

* * * * *

Cellular Phones	
Phone and Headset	No Charge.
Ongoing Maintenance—per phone.	$[2,100.00] 2,400.00(3).

Notes:

(1) ITPN "User" is a member or person associated with a member, who has been entitled to receive one or more third party market data vendor service offerings via the Exchange's Integrated Technology Program Network.

(2) Plus appropriate sales tax where applicable.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Sapna Patel, Attorney, Division of Market Regulation, Commission, dated October 21, 2002 ("Amendment No. 1"). In Amendment No. 1, the Exchange clarified that the proposed rule change has become effective upon filing pursuant to section 19(b)(3)(A)(ii) of the Act and Rule 19b–4(f)(2) thereunder. In its filing, the NYSE had incorrectly referred to Rule 19b–4(e)(2) under the Act.

[4] For purposes of determining the effective date and calculating the 60-day abrogation date, the Commission considers October 28, 2002, the date NYSE filed Amendment No. 1, to be the effective date of the proposed rule change.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78f(b)

[4] 15 U.S.C. 78f(b)(4).

[5] 15 U.S.C. 78s(b)(3)(A)(ii).

[6] 17 CFR 240.19b–4(f)(2).

[7] 17 CFR 200.30–3(a)(12).

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(3) Plus sales tax.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange has a charge for cellular phones as part of its facilities and equipment fees.[5] The charge has been the same since 1994. The Exchange proposes to increase the charge from $2,100.00 to $2,400.00 per year to help cover the costs of the recent upgrade to industry standards by Verizon Wireless to the NYSE Broker Mobile Phone System. The Exchange represents that this upgrade provides improved voice quality, longer battery life, smaller and lighter handsets, and improves technical support, which will in turn improve the Exchange's service level. The charge by its nature will continue to apply only to membership organizations that operate on the floor of the Exchange and utilize the NYSE Broker Mobile Phone System.

2. Statutory Basis

The NYSE believes that the proposed rule change, as amended, is consistent with section 6(b) of the Act,[8] in general, and furthers the objectives of section 6(b)(4) of the Act,[7] in particular, which requires that an exchange have rules that provide for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

[5] *See* Securities Exchange Act Release No. 34395 (July 18, 1994) 59 FR 38007 (July 26, 1994).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee, or charge imposed by the Exchange and, therefore, has become effective upon filing pursuant to section 19(b)(3)(A)(ii) of the Act[8] and Rule 19b–4(f)(2) thereunder.[9] At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purpose of the Act.[10]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–NYSE–2002–29 and should be submitted by November 25, 2002.

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

[9] 17 CFR 240.19b–4(f)(2).

[10] For purposes of determining the effective date and calculating the 60-day abrogation date, the Commission considers October 28, 2002, the date NYSE filed Amendment No. 1, to be the effective date of the proposed rule change.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–28002 Filed 11–1–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46733; File No. SR–OCC–2002–15]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Granting Approval of a Proposed Rule Change Relating to Dating Assignments

October 28, 2002.

I. Introduction

On July 3, 2002, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") proposed rule change File No. SR–OCC–2002–15 pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1]. Notice of the proposal was published in the **Federal Register** on August 23, 2002.[2] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description

This rule change modifies OCC Rule 803 to provide that assignments will be dated and effective on the same date that the related exercise notice is accepted by OCC. Rule 803(b) currently provides that assignments are dated and effective as of the business day following the exercise date. This reflects the mechanics of OCC's processing. OCC assigns exercises on an overnight basis, but assigned clearing members do not receive notice of assignment until the morning of the day after exercise. OCC's practice has been to date assignments as of the day the assigned clearing members receive the notice of assignment. However, the "trade" resulting from the exercise is treated as having occurred on the exercise date not the assignment date. Thus, settlement takes place on the third business day following the exercise date.[3]

This has the potential to cause confusion for call writers. OCC has learned that some, if not all, clearing

[11] 17 CFR 200.30–3(e)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 46377 (August 19, 2002), 67 FR 54689.

[3] OCC Rule 902.

members use the same assignment date as OCC. As a result, when a holder exercises a call on the day before an ex-dividend date in order to capture the dividend, the writer who is assigned the exercise may see an assignment date the same as the ex-dividend date. The writer's broker may then have to explain that the writer is required to give up the dividend to the exercising holder because the exercise occurred before the ex-dividend date even though the assignment did not. While the language of this filing reflects OCC's current business of clearing and settling exchange traded options, the filing and the change to OCC's by-laws and rules extend to assignments from national securities exchanges, national securities associations, futures merchants, security futures markets, and international markets for which OCC clears and settles transactions.[4] Dating assignments on the same date as the related exercise will lessen the potential for this kind of confusion.

Other nonsubstantive changes are made to Rule 803 for the purposes of updating obsolete language. In addition, a conforming change is made to Rule 402, which pertains to supplemental reports of matched trades.

OCC believes that the proposed rule change is consistent with Section 17A of the Act because it eliminates a potential source for investor confusion.

III. Discussion

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions.[5] OCC's current procedure for dating assignments is a potential source of confusion. By changing OCC's assignment dating procedure to provide that assignments will be dated and effective on the same date that the related exercise notice is accepted by OCC, the proposed rule change should eliminate the potential for confusion and therefore is consistent with OCC's section 17A obligation to promote the prompt and accurate clearance and settlement of securities transactions.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular with the requirements of section 17A(b)(3)(F) of the Act and the rules and regulations thereunder applicable.

[4] OCC Rules 912 and 913(e).

[5] 15 U.S.C. 78q–1(b)(3)(F).

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR–OCC–2002–15) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–27916 Filed 11–1–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46734; File No. SR–OCC–2002–18]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Granting Approval of a Proposed Rule Change Relating to Matched Trade Reporting

October 28, 2002.

I. Introduction

On July 30, 2002, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") proposed rule change File No. SR–OCC–2002–18 pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1]. Notice of the proposal was published in the **Federal Register** on August 23, 2002.[2] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description

The rule change modifies OCC's by-laws and rules to accommodate the transition to near real-time reporting of matched trade information by the options exchanges.[3] In addition, OCC's rules are modified to reflect that OCC may make available to clearing members updated position and exercise information; however, such information is provisional until final processing.

Each option exchange currently compares the trade information submitted by purchasing and selling members with respect to each transaction effected on that exchange. A compared transaction reflects that the parties to the trade have agreed on the terms of the trade. After the completion of its comparison processing, an exchange transmits to OCC a cumulative report of all matched trades effected or reconciled on that exchange on that particular trading day.[4] A compared or "matched" trade reported to OCC also contains information required by OCC, including, for example, the identity of the purchasing and selling clearing members, the accounts in which each side of the transaction was effected, the exercise prices, the expiration date, and the number of options contracts.[5] Each night, OCC processes the cumulative report of matched trades submitted by each option exchange, as well as exercise notices submitted by clearing members and accepted by OCC, and updates the clearing members' positions for the next trading day.

In connection with systems modification, OCC is amending its by-laws and rules so that it will accept and process matched trades reported by the exchanges on a near real-time basis. After receipt of a matched trade, OCC will process the matched trade information and make available updated position information for clearing member review throughout the trading day. However, a matched trade reported by a particular exchange might not always be complete or accurate for a variety of reasons. A clearing member may need to modify or append additional information after the matched trade has been sent to OCC. For example, a clearing member may need to reflect that a transaction was either to open or close a position. In such cases, the reporting exchange will instruct OCC to disregard a previously reported matched trade and will report new matched trade information to replace the original transaction. No replacement matched trade information will be reported by an exchange if the previously reported matched trade was to be disregarded altogether. Because an exchange may instruct OCC to disregard a previously submitted matched trade,

[6] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 46378 (August 19, 2002), 67 FR 54688.

[3] While the language of this filing reflects OCC's current business of clearing and settling exchange traded options, the filing and the change to OCC's by-laws and rules extend to matching trade information from national securities exchanges, national securities associations, futures merchants, security futures markets, and international markets for which OCC clears and settles transactions.

[4] While OCC receives periodic matched trade transmissions for each option exchange during a business day, it currently uses the cumulative matched trade transmission made by each exchange for position processing and does not use intraday transmissions for position processing. OCC anticipates that the option exchanges will gradually transition to reporting of matched trades on a near real-time basis. Until all exchanges have transitioned to near real-time matched trade reporting during the business day, OCC's systems will accept and process cumulative batch transmissions, intermittent batch transmissions, and near real-time matched trade reporting.

[5] See Article VI, Section 7 of OCC's By-Laws and OCC Rule 401 for a description of the information required by OCC.

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OCC is amending Article VI, section 7 of its By-Laws to reflect that, in accordance with such an instruction, the previously reported matched trade will be deemed null and void and will be given no effect under OCC's by-laws and rules. In addition, section 7 is amended to reflect that OCC will not be liable to any writer, holder, buyer, or seller in acting on an exchange's instruction to disregard a previously submitted trade. Article VII, section 7 of the By Laws and Rules 401 and 402 also are amended to eliminate references to the receipt of a report of matched trades. Instead, these provisions will reference the reporting of matching trade information by an exchange. Other by-law and rule provisions that describe the receipt of a report of matched trades are similarly revised.[6]

Rule 501, which governs position reporting by OCC to its clearing members, is amended to reflect that position information updated during a business day is provisional and informational in nature and that only clearing members' daily position reports can be relied upon as definitely reflecting their final positions. Daily position reports are made available to clearing members each morning and reflect matched trades reported the previous business day.

Rule 801, which relates to exercises of options, also is amended to reflect that exercise information provided throughout a business day is provisional and informational only. Exercises accepted by OCC will be definitely reflected in delivery advices and exercise and assignment reports. Such advices or reports are also made available each morning and reflect exercises from the previous business day.

III. Discussion

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions.[7] By moving towards accepting and processing matched trades and exercises on a near real-time basis, OCC will be able to make available to its clearing members information on their positions, exercises, and assignments in a more timely manner. As a result, OCC will be fulfilling its section 17A obligation to promote the prompt and accurate clearance and settlement of securities transactions and thereby meets the requirements of section 17A(b)(3)(F).

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular with the requirements of section 17A of the Act and the rules and regulations thereunder applicable.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR–OCC–2002–18) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–27917 Filed 11–1–02; 8:45 am]

BILLING CODE 8010–01–P

[6] In addition, the term settlement time, as defined in Section 1.S. of Articles XV, XX, and XXIII is being modified to reflect OCC's receipt of matching trade information as opposed to a matched trade report.

[7] 15 U.S.C. 78q-1(b)(3)(F).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46722; File No. SR–OCC–2002–13]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Clearing Agreement

October 25, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on June 24, 2002, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of the "Amended and Restated Agreement for Clearing and Settling Security Futures and Futures and Futures Options on Broad-Based Indexes' between OCC and Nasdaq Liffe Markets, LLC ("NqLX").

[1] 15 U.S.C. 78s(b)(1).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

OCC is preparing to clear security futures for a number of markets. One such market is NqLX. Amendment No. 2 to SR–OCC–2001–07 included the "Agreement for Clearing and Settlement Services" dated August 29, 2001, ("Original Agreement") between OCC and NqLX (under its former name, Nasdaq LIFFE, LLC). The Commission approved that rule filing, as amended, on August 20, 2001.[3]

As generally noted in Amendment No. 2 to SR–OCC–2001–07, OCC anticipated that it would file with the Commission the agreements it enters into with markets for the clearance of security futures when negotiated. OCC has recently executed an amendment and restatement of the Original Agreement with NqLX, which is the subject of this filing. The primary motivation for amending and restating the Original Agreement was to expand the range of contracts to be cleared and settled by OCC under that agreement to include futures on broad-based stock indexes and options on such futures.[4] Thus, the parties have added sections on the selection of underlying interests for broad-based stock index futures and options on such futures and have changed numerous occurrences of "security futures" to "Cleared Contracts," a term that encompasses security futures and also futures on broad-based stock indexes and options on such futures. Certain minor adjustments in other terms have been made to bring the agreement into line with clearing and settlement agreements that OCC has entered into with other exchanges after it entered into the Original Agreement.

OCC believes that the proposed rule change is consistent with the purposes and requirements of section 17A of the Securities Exchange Act of 1934, as amended, because it will foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions and remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(iii) of the Act[5] and Rule 19b-4(f)(4)[6] thereunder because it effects a change in an existing service of OCC that (i) does not adversely affect the safeguarding of securities or funds in the custody or control of OCC or for which it is responsible and (ii) does not significantly affect the respective rights or obligations of OCC or persons using the service. At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW, Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of OCC. All submissions should refer to the File No. SR–OCC–2002–13 and should be submitted by November 25, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–27918 Filed 11–1–02; 8:45 am]

BILLING CODE 8010–01–P

[2] The Commission has modified parts of these statements.

[3] Securities Exchange Act Release No. 44727 (August 20, 2001), 66 FR 45351.

[4] OCC was registered as a "derivatives clearing organization" under the Commodity Exchange Act by order of the Commodity Futures Trading Commission (December 10, 2001). The Commission previously approved OCC's rule filing to clear futures and futures options on broad-based stock indexes. Securities Exchange Act Release No. 45946 (May 16, 2002), 67 FR 36056 (SR–OCC–2001–16).

[5] 15 U.S.C. 78s(b)(3)(A)(iii).

[6] 17 CFR 240.19b-4(f)(4).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46728; File No. SR–PCX–2002–65]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Exchange Fees and Charges

October 25, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 27, 2002, the Pacific Exchange, Inc. ("PCX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which the PCX has prepared. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX is proposing to amend its Schedule of Fees and Charges with respect to the following fees for options: broker-dealer and market maker transaction charges, the continued listings fee, and the shortfall fee. The text of the proposed rule change is below. New text is italicized; deleted text is in brackets.

SCHEDULE OF FEES AND CHARGES FOR EXCHANGE SERVICES

[PCX Options: Trade-Related Charges]

Transactions:	
Customer	$0.00 per contract side.
PCX Market Maker	$0.21 per contract side.
Non-PCX Option Market Makers.	*$0.26 per contract side.*
Firm	$0.10 per contract side for customer facilitation.
Broker/Dealer	[$0.19] *$0.21* per contract side.
PCX Options: Floor and Market Maker Fees:	
Continued Listings Fee.	Difference between $500 and average monthly revenue for issues with less than $500 in volume based charges (average monthly revenue based on trailing 3 months). *The fee will be capped at $15,000 per month per LLM firm.*
Shortfall Fee	$.35 per contract on shortfall volume*

*Only applies to the top 120 options. Shortfall volume is the difference between 12% of the total national market share in an option issue for one month and the percentage executed by the LMM. *For the purpose of this calculation, the national market share of any equity option industry volume will be capped at 2.9 million contracts per day.*

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it had received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The PCX has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of those statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The PCX is proposing to change its broker-dealer transaction charge, market maker transaction charges, continued listings fee, and shortfall fee effective with the October 2002 trading month. Other than the fees listed herein, the PCX does not seek to make any other changes to its fee schedule.

1. Broker-Dealer Transaction Charge

The PCX currently imposes a fee of $0.19 per contract side on all transactions of broker-dealers. The PCX proposes to increase this fee to $0.21 per contract side, which would bring the transaction fee to the same level as the PCX Market Maker transaction charge.

2. Transaction Fees Originating From Non-PCX Options Market Makers

Currently, the PCX charges all market makers a fee of $0.21 for every contract that they execute. The PCX proposes to increase, to $0.26 per contract, the transaction fee for market maker transactions that originate from non-PCX options market makers. The fee would be imposed only on member firms that clear trades for away market makers. The PCX proposes this increase in order to recoup its administrative and regulatory costs related to non-PCX market maker transactions.

3. Continued Listing Fee

The PCX currently imposes upon LMMs a continued listing fee for issues that have not generated at least $500 in monthly revenues to the PCX on a trailing three-month average basis.[3] The continued listing fee is calculated as the incremental difference between the $500 threshold and the amount of revenue that the issue generates. The PCX proposes to cap the amount of the continued listings fee that can be charged to an LMM firm at $15,000 per month per LMM firm.

The PCX also proposes to modify the continued listing fee in order to adjust the method of calculating the average monthly volume-based charges for recently transferred issues. Currently, LMM firms that are transferred issues from another LMM assume the continued listings fee from the transferring firm. To help foster demand for issues during a period of continuing consolidation among trading firms, the PCX proposes to modify the way the continued listings fee is applied to transferred issues. Under the PCX's proposal, an LMM would not be subject to the continued listings fee for an issue that it acquired by transfer for any portion of the month that it acquired the issue, assuming a mid-month transfer. The LLM firm would be subject to a fee based upon the activity of the first full month that it trades an issue. After the second full month of trading the issue, the transferee LMM would be subject to a continued listings fee based upon the trailing two-month activity level. In future months, the transferee LMM would be subject to the fee based on a three-month rolling average.

4. Shortfall Fee

In June 2002, the PCX increased the LMM shortfall fee from 10% to 12% for the top 120 equity options traded nationally. Due to periodic spikes in national industry volume, the PCX proposes to cap the shortfall fee when equity industry volume reaches 2.9 million contracts per day or higher. As proposed, LMM firms would not be charged a shortfall fee on contracts in a top 120 issue that exceeds the calculated volume cap amount.

The PCX believe that the proposal is consistent with Section 6(b)(4) of the Act[4] in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PCX does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The PCX neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act[5] and Rule 19b–4(f)[6] because it changes the PCX fee schedule. At any time within 60 days after the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–2002–65 and should be submitted by November 25, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–28000 Filed 11–1–02; 8:45 am]

BILLING CODE 8010–01–P

[3] *See* Securities Exchange Act Release No. 42050 (October 21, 1999), 64 FR 58117 (October 28, 1999) (SR–PCX–99–32).

[4] 15 U.S.C. 78f(b)(4).

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 240.19b–4(f).

[7] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages that will require clearance by the Office of Management and Budget (OMB) in compliance with P.L. 104–13 effective October 1, 1995, The Paperwork Reduction Act of 1995. The information collection packages that may be included in this notice are for new information collections, revisions to OMB-approved information collections and extensions (no change) of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Written comments and recommendations regarding the information collection(s) should be submitted to the OMB Desk Officer and the SSA Reports Clearance Officer. The information can be mailed and/or faxed to the individuals at the addresses and fax numbers listed below:

(OMB) Office of Management and Budget, Attn: Desk Officer for SSA, New Executive Office Building, Room 10235, 725 17th St., NW., Washington, DC 20503, Fax: 202–395–6974;

(SSA) Social Security Administration, DCFAM, Attn: Reports Clearance Officer, 1–A–21 Operations Bldg., 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–965–6400.

I. The information collections listed below are pending at SSA and will be submitted to OMB within 60 days from the date of this notice. Therefore, your comments should be submitted to SSA within 60 days from the date of this publication. You can obtain copies of the collection instruments by calling the SSA Reports Clearance Officer at 410–965–0454, or by writing to the address listed above.

1. *Statement of Funds You Provided to Another, Statement of Funds You Received—20 CFR 416.1103(f)—0960–0481.* Supplemental Security Income (SSI) entitlement, and the amount of the SSI payment, is affected by any other income the applicant has. Forms SSA–2854 and SSA–2855 are used by SSA to collect information in situations where the SSI applicant alleges that money was borrowed on an informal basis from a noncommercial lender, *e.g.*, a relative or friend, etc. These statements are completed by the borrower/claimant and by the lender and are required to determine whether the proceeds from the transaction are/are not income to the borrower/claimant. If the transaction constitutes a bona fide loan, the proceeds are not income to the SSI borrower/claimant. The respondents are applicants for SSI payments who borrow money on an informal (noncommercial) basis and by individuals who lend money informally to SSI applicants.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 40,000.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Annual Burden: 6,667 hours.

II. The information collection listed below has been submitted to OMB for clearance. Your comments on the information collections would be most useful if received by OMB and SSA within 30 days from the date of this publication. You can obtain a copy of the OMB clearance package by calling the SSA Reports Clearance Officer at 410–965–0454, or by writing to the address listed above.

1. *The Internet Social Security Benefits Application (ISBA)—20 CFR Subpart D, 404.310–404.311 and 20 CFR Subpart F, 404.601–404.603—0960–0618.* One of the requirements for obtaining Social Security benefits is the filing of an application so that a determination may be made on the applicant's eligibility for monthly benefits. ISBA, which is available at SSA's Internet site, is one method that an individual can choose to file an application for benefits. Individuals can use ISBA to apply for retirement insurance benefits (RIB), disability insurance benefits (DIB) and spouse's insurance benefits based on age. SSA gathers only information relevant to the individual applicant's circumstances and will use the information collected by ISBA to entitle individuals to RIB, DIB and/or spouses benefits. The respondents are applicants for RIB, DIB and/or spouses benefits. Below is an estimate of the public reporting burden:

Type of Request: Revision of an OMB-approved information collection.

Number of Respondents: 169,000.

Frequency of Response: 1.

Average Burden Per Response: 21.4 minutes.

Estimated Annual Burden: 60,277 hours.

2. *Application for Disability Insurance Benefits—20 CFR Subpart P—404.1501–1512 and Subpart D—404.315–404.322—0960–0060.* Section 223 of the Social Security Act allows payment of disability insurance benefits to any individual who is insured for disability benefits by virtue of covered employment under Social Security; has not attained full retirement age; has filed an application for disability insurance benefits; and is under a disability as defined by the Act. Form SSA–16–F6 obtains the information necessary to determine whether the provisions of the Act have been satisfied with respect to an applicant for disability benefits and detects whether the applicant has dependents who would qualify for benefits on his or her earnings record. The information collected on form SSA–16 helps to determine eligibility for social security disability benefits. The respondents are applicants for Social Security disability benefits.

Type of Request: Revision of an OMB-Approved Information Collection.

Number of Respondents: 1,513,677.

Frequency of Response: 1.

Average Burden Per Response: 20 minutes.

Estimated Annual Burden: 504,559 hours.

3. *Worker's Compensation/Public Disability Benefit Questionnaire—20 CFR Subpart E, 404.408—0960–0247.* Section 224 of the Social Security Act provides for the reduction of disability insurance benefits (DIB) when the combination of DIB benefits and any worker's compensation (WC) and/or certain Federal, State or Local public disability benefits (PDB) exceeds 80% of the worker's predisability earnings. SSA–546 collects the information to determine whether or not the worker's receipt of WC/PDB payments will cause a reduction of DIB. The respondents are applicants for title II DIB.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 100,000.

Frequency of Response: 1.

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 25,000 hours.

4. *Medical Report on Adult with Allegation of Human Immune Deficiency Virus Infection and Medical Report on Child with Allegation of Human Immune Deficiency Virus Infection—20 CFR Subpart I, 416.933—0960–0500.* The information collected on forms SSA–4814–F5 and SSA–4815–F6 assist the field offices/disability determination services to make findings of presumptive disability that confirms the claimants' disease manifestations meet the severity of listing-level criteria for Human Immunodeficency Virus (HIV) infection. The respondents are medical sources of claimants for title XVI disability payments based on HIV infection.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 59,100.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Annual Burden: 9,850 hours.

Dated: October 29, 2002.

Elizabeth A. Davidson,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 02–27974 Filed 11–1–02; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–2000–8079]

Setting the Environmental Agenda of the Coast Guard for Oil Pollution—Prevention, Preparedness, and Response—In the 21st Century

AGENCY: Coast Guard, DOT.

ACTION: Notice of availability and request for public comments.

SUMMARY: The Coast Guard announces the availability of the Risk Assessment it conducted to help set its environmental agenda for oil spill prevention, preparedness and response in the 21st century. We request your comments on the Assessment.

DATES: Comments and related material must reach the Docket Management Facility on or before February 3, 2003.

ADDRESSES: To make sure that your comments and related material are not entered more than once in the docket, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility, (USCG–2000–8079), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web site for the Docket Management System at *http://dms.dot.gov.*

The Docket Management Facility maintains the public docket for this notice. Comments and material received from the public, as well as the draft Programmatic Environmental Assessment (PEA), will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket, including the PEA, on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, or the associated risk assessment, call Commander David Lersch, U.S. Coast Guard, telephone (202) 267–0421. If you have questions on viewing or submitting material to the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202–366–5149.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to submit comments and related material on the Risk Assessment. If you do so, please include your name and address, identify the docket number for this notice (USCG–2000–8079) and give the reasons for each comment. You may submit your comments and material by mail, hand delivery, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period.

Proposed Action

The Coast Guard has completed the first phase of the risk assessment it initiated during the fall of 2000 to help set its environmental agenda for oil pollution prevention, preparedness and response in the 21st century. One element of this study was the results of the Public Meeting held at Coast Guard Headquarters on December 12, 2000. We published a notice of this meeting and request for comments in the **Federal Register** on October 18, 2000 (65 FR 62408).

This project contains several elements addressing concept development, risk characterization and issue identification. The first portion identifies the nature and frequency of spills from key sources and determines how the sources and causes may vary in the next decade. The second portion analyzes the impacts associated with each source category. Together these two portions produce a risk characterization by source category. The last section provides an assessment of the overall effectiveness of various prevention, preparedness and response measures in mitigating the threat posed by the various source categories.

The Coast Guard is seeking public comment on the results of this study to help guide its planning for follow-on management analysis.

The assessment is located online at *http://www.uscg.mil/hq/g-m/mor/morgmor1new.htm.*

Dated: September 12, 2002.

Jeffrey P. High,

Acting Assistant Commandant for Marine Safety, Security, and Environmental Protection.

[FR Doc. 02–27489 Filed 11–1–02; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket Nos. FMCSA–99–5578, FMCSA–99–6156, FMCSA–99–6480, FMCSA–2000–7006, FMCSA–2000–7165, and FMCSA–2000–8203]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemption; request for comments.

SUMMARY: This notice publishes the FMCSA's decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 16 individuals.

DATES: This decision is effective November 9, 2002. Comments from interested persons should be submitted by December 4, 2002.

ADDRESSES: You can mail or deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. You can also submit comments at *http://dms.dot.gov.* Please include the docket numbers that appear in the heading of this document in your submission. You can examine and copy this document and all comments received at the same Internet address or at the Dockets Management Facility from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Ms. Sandra Zywokarte, Office of Bus and Truck Standards and Operations, (202) 366–2987, FMCSA, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Exemption Decision

Under 49 U.S.C. 31315 and 31136(e), the FMCSA may renew an exemption from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of commercial motor vehicles in interstate commerce, for a 2-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than the level that would be achieved absent such exemption." The procedures for receiving an exemption (including renewals) are set out in 49 CFR part 381. This notice addresses 16 individuals who have requested renewal of their exemptions in a timely manner. They are: Ronald W. Coe, Sr., James A. Creed, Earl D. Edland, Lloyd E. Hall, Steven H. Heidorn, Dale H. Hellmann, Danny E. Hillier, Gary L. Killian, James A. Kneece, Ronald L. Martsching, Garry R. Setters, Jimmy E. Settle, Jesse M. Sikes, Harold A. Sleesman, Buford C. Varnadore, and Hubert Whittenburg. The FMCSA has evaluated these 16 petitions for renewal on their merits and decided to extend each exemption for a renewable 2-year period.

These exemptions are extended subject to the following conditions: (1) That each individual have a physical exam every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retain a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for 2 years unless rescinded earlier by the FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31315 and 31136(e).

Background

On September 23, 1999, the agency published a notice of final disposition announcing its decision to exempt 32 individuals, including 1 of these applicants for renewal, from the vision requirement in 49 CFR 391.41(b)(10)(64 FR 51568). The qualifications, experience, and medical condition of the applicant were stated and discussed in detail at 64 FR 27027 (May 18, 1999). Two comments were received, and their contents were carefully considered by the agency in reaching its final decision to grant the exemption (64 FR 51568).

On January 3, 2000, the agency published a notice of final disposition announcing its decision to exempt 40 individuals, including 1 of these applicants for renewal, from the vision requirement in 49 CFR 391.41(b)(10)(65 FR 159). The qualifications, experience, and medical condition of the applicant were stated and discussed in detail at 64 FR 54948 (October 8, 1999). Two comments were received, and their contents were carefully considered by the agency in reaching its final decision to grant the exemption (65 FR 159).

On April 14, 2000, the agency published a notice of final disposition announcing its decision to exempt 34 individuals, including 1 of these applicants for renewal, from the vision requirement in 49 CFR 391.41(b)(10)(65 FR 20251). The qualifications, experience, and medical condition of the applicant were stated and discussed in detail at 64 FR 68195 (December 6, 1999). Two comments were received, and their contents were carefully considered by the agency in reaching its final decision to grant the exemption (65 FR 20251).

On September 21, 2000, the agency published a notice of final disposition announcing its decision to exempt 56 individuals, including 4 of these applicants for renewal, from the vision requirement in 49 CFR 391.41(b)(10)(65 FR 57230). The qualifications, experience, and medical condition of each applicant were stated and discussed in detail at 65 FR 20245 (April 14, 2000). Three comments were received, and their contents were carefully considered by the agency in reaching its final decision to grant the exemptions (65 FR 57230).

Also on September 21, 2000, the agency published a second notice of final disposition announcing its decision to exempt 60 individuals, including 4 of these applicants for renewal, from the vision requirement in 49 CFR 391.41(b)(10) (65 FR 57234). The qualifications, experience, and medical condition of each applicant were stated and discussed in detail at 65 FR 33406 (May 23, 2000). One comment was received, and its contents were carefully considered by the agency in reaching its final decision to grant the exemptions (65 FR 57234).

On October 9, 1998, the agency published a notice of final disposition announcing its decision to exempt 12 individuals from the vision requirement in 49 CFR 391.41(b)(10) (63 FR 54519). The qualifications, experience, and medical condition of each applicant were stated and discussed in detail at 63 FR 20385 (June 3, 1998). Three comments were received, and their contents were carefully considered by the agency in reaching its final decision to grant the exemptions (63 FR 54519). On November 3, 2000, the agency published a notice of renewal of exemption for 9 of the 12 individuals, including 5 of these applicants for renewal, from the vision requirement in 49 CFR 391.41(b)(10) (65 FR 66293). At the time of renewal, each applicant submitted evidence showing that the vision in the better eye continued to meet the standard specified at 49 CFR 291.41(b)(10) and that the vision impairment was stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the 2-year exemption period indicated each applicant continued to meet the vision exemption standards.

Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than 2 years from its approval date and may be renewed upon application for additional 2-year periods. In accordance with 49 U.S.C. 31315 and 31136(e), each of the 16 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (63 FR 30285, 63 FR 54519, 64 FR 27027, 64 FR 51568, 64 FR 54948, 64 FR 68195, 65 FR 159, 65 FR 20245, 65 FR 20251, 65 FR 33406, 65 FR 57230, and 65 FR 57234), and 5 of the applicants have also satisfied the conditions for renewing an exemption (65 FR 66293). Each of these 16 applicants has requested timely renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the standard specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safely while driving with the respective vision deficiencies over the past 2 years indicates each applicant continues to meet the vision exemption standards. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, the FMCSA concludes that extending the exemption for a period of 2 years is likely to achieve a level of safety equal to that existing without the exemption for each renewal applicant.

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Comments

The FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31315 and 31136(e). However, the FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by December 4, 2002.

In the past FMCSA has received comments from Advocates for Highway and Auto Safety (Advocates) expressing continued opposition to the FMCSA's procedures for renewing exemptions from the vision requirement in 49 CFR 391.41(b)(10). Specifically, Advocates objects to the agency's extension of the exemptions without any opportunity for public comment prior to the decision to renew and reliance on a summary statement of evidence to make its decision to extend the exemption of each driver.

The issues raised by Advocates were addressed at length in 66 FR 17994 (April 4, 2001). The FMCSA continues to find its exemption process appropriate to the statutory and regulatory requirements.

Issued on October 29, 2002.

Brian M. McLaughlin,

Associate Administrator, Policy and Program Development.

[FR Doc. 02–27992 Filed 11–1–02; 8:45 am]

BILLING CODE 4910–EX–M

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Job Access and Reverse Commute Program Announcement of Project Selection

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice.

SUMMARY: The U.S. Department of Transportation (DOT) Federal Transit Administration (FTA) announces the selection of projects to be funded under Fiscal Year 2002 appropriations for the Job Access and Reverse Commute (JARC) Program, authorized by Section 3037 of the Transportation Equity Act for the 21st Century (TEA–21). A total of $125 million was available for the JARC Program in FY 2002, the guaranteed funding level under TEA–21. In the Congressional conference committee report language accompanying the appropriations bill, $109.3 million was designated for projects in specific areas. However, the General Accounting Office, in a December 2001 report to Congress, concluded that FTA could only select and fund projects through a national competition as specified in the JARC legislation. Accordingly, FTA required all applicants for FY 2002 JARC funding, including those designated in Congressional report language, to submit a project proposal application to be evaluated, scored, and ranked against all others. Subsequently, however, in the FY 2003 Supplemental Appropriations Act (H.R. 4775), signed into law on August 2, 2002, Congress authorized and instructed FTA to fund all projects designated in the report language upon receipt of an application. A number of applications for projects in congressionally-designated areas were submitted in FY 2002 and FTA has obligated $13 million for those projects. The list of congressionally-designated areas was included in FTA's 2002 Annual Apportionment Notice, published in the **Federal Register** on January 2, 2002. That notice can be found at: *http://www.fta.dot.gov/library/legal/federalregister/2002/fr1202a.pdf.*

Because FTA solicited applications for both 2002 and 2003 funding, we will be prepared to announce projects selected for FY 2003 funds as soon as these funds become available.

Local agencies and authorities and private non-profit organizations are eligible to apply for JARC Program funds. Local agencies and authorities include states, local governments, metropolitan planning organizations, public transit agencies and tribal organizations. A Job Access project is one that provides new or expanded transportation service designed to fill gaps that exist for welfare recipients and other low-income individuals to and from jobs and other employment-related services. A Reverse Commute project facilitates the provision of new or expanded public mass transportation services for the general public from urban, suburban, and rural areas to suburban work sites. Capital and operating costs for such projects are eligible.

FOR FURTHER INFORMATION CONTACT: The appropriate FTA Regional Administrator for grant-specific issues; or Sue Masselink, Office of Program Management, 202–366–2053 for general information about the JARC Program.

SUPPLEMENTARY INFORMATION: After setting aside the $109.3 million for Congressional earmarks, a total of $15.7 million was available for allocation by FTA. In FY 2002, the total amount requested from applicants other than those with Congressional earmarks was $43 million. Among these applicants, 49 requested $23 million for 108 continuation projects and 39 requested $20 million for 77 new projects. In order to encourage the creation of partnerships at the local level and afford a reasonable period in which to establish and sustain service, FTA announced in the solicitation notice that it would give funding priority to continuation projects. Because of the limited funding available for competitive allocation by FTA, only 76 of the 108 proposed continuation projects were selected for funding, and none of the 77 proposed new projects were funded. The 76 projects selected were submitted by 39 applicants, and are being funded at a total of $16,765,367. The $15.7 million in available FY 2002 funds, together with a small balance of unobligated and uncommitted funds from prior years, will be used to fund the selected projects. The following continuation projects rated most meritorious in the evaluation process have been selected for funding:

Region	State	Agency	Amount
I	MA	Massachusetts Office of Transportation and Construction	$1,064,223
	MA	Massachusetts Bay Transportation Authority	803,810
	MA	Pioneer Valley Transportation Authority	300,000
	NH	City of Nashua	149,302
II	NY	New York Metropolitan Transportation Council	396,941
	NY	Central NY Regional Transportation Authority	104,167
	NY	Capital District Transportation Authority	232,250
III	PA	Southeastern PA Transit Authority (SEPTA)	116,300
IV	FL	Jacksonville Transportation Authority	1,569,750
	GA	Georgia Department of Transportation	200,000
	NC	North Carolina Department of Transportation	122,000

Region	State	Agency	Amount
V	IL	Chicago Transit Authority	1,128,000
	IL	Metra Commuter Rail Board	75,000
	IL	Regional Transportation Authority	100,000
	IL	Sparta-Monroe Randolph Co. Transit Consortium	113,000
	IN	Muncie Public Transit Corporation	106,722
	MI	City of Detroit Employment and Training Dept.	1,436,482
	MI	Michigan Department of Transportation	814,408
	OH	Lorain County Transit	114,475
	OH	Western Reserve Transit Authority	750,000
VI	LA	Louisiana Dept. of Transportation & Development	1,234,492
	TX	City of Abilene—CityLink	100,000
	TX	City of El Paso Mass Transit Dept. (Sun Metro)	250,000
	TX	City of Lubbock/Citibus	460,000
	TX	Fort Worth Transportation Authority	200,000
VII	IL	Rock Island County Metropolitan Transit District	184,625
	MO	City Utilities of Springfield (CUS)	643,000
	MO	East-West Gateway Coordinating Council	305,197
	MO	Missouri Department of Transportation	750,000
VIII	CO	City of Loveland	97,355
	CO	City of Ft. Collins	130,981
	CO	Mesa County	200,000
	CO	Archuleta County Department of Social Services	85,887
	ND	Standing Rock Public Transportation	63,500
IX	AZ	Maricopa Association of Governments (MAG)	1,500,000
	CA	Mendocino Transit Authority	80,000
	CA	Metropolitan Transit Development Board	388,500
	CA	Napa County TPA	20,000
	CA	San Luis Obispo Council of Governments	25,000
X	OR	Central Oregon Commuter Network	350,000

Pre-Award Authority

JARC costs may be incurred for eligible projects before grants are made without prejudice to possible Federal participation in the cost of the project(s). However, in exercising pre-award authority, applicants must comply with all Federal requirements. Failure to do so will render a project ineligible for FTA financial assistance. Applicants must consult the appropriate FTA regional office regarding the eligibility of the project for future FTA funds or the applicability of the conditions and Federal requirements. Pre-award spending authority is provided effective December 18, 2001, the date on which the Department of Transportation (DOT) and Related Agencies Appropriations Act for Fiscal Year 2002 was signed into law by President Bush.

Certifications and Assurances

In accordance with 49 U.S.C. 5323(n), certifications and assurances have been compiled for the various FTA programs. Before FTA may award a Federal grant, each successful applicant must provide to FTA all certifications and assurances required by Federal laws and regulations applicable to itself and its project. A state providing certifications and assurances on behalf of its prospective subrecipients should obtain sufficient documentation from those subrecipients needed to provide informed certifications and assurances.

The signature page accompanying the Certifications and Assurances contains the current fiscal year's certifications assurances and, when properly attested to and submitted to FTA, assures FTA that the applicant intends to comply with the requirements for the specific program involved. FTA will not award any federal assistance until the successful applicant provides assurance of compliance by selecting Category I on the signature page and all other categories applicable to itself and its project.

FTA's (FY) 2003 Certifications and Assurances Notice is expected to be published in the **Federal Register** soon. The document is already available on the opening page of the TEAM Website. Copies may also be obtained from FTA regional offices. Applicants that need further assistance should contact the appropriate FTA regional office (see Appendix A) for further information.

U.S. Department of Labor Certification

As a condition of release of Federal funds for this program, Federal Transit law requires that applicants must comply with 49 U.S.C. 5333(b), administered under the Department of Labor's (DOL) Mass Transit Employee Protection Program. These employee protections include the preservation of rights, privileges, and benefits under existing collective bargaining agreements, the continuation of collective bargaining rights, the protection of individual employees against a worsening of their positions related to employment, assurances of employment to employees of acquired mass transportation systems, priority of reemployment, and paid training or retraining. Generally, DOL processes the employee protection certification required under Section 5333(b) in accordance with the procedural guidelines published at 29 CFR 215.3. However, for the Job Access and Reverse Commute Grants program, DOL has proposed to apply appropriate protections without referral for Job Access and Reverse Commute Grant applications serving populations under 200,000 and to utilize the guidelines for Job Access and Reverse Commute Grant applications serving populations of 200,000 or more. FTA will submit the grant application to DOL for certification. Grant funds will NOT be released without DOL certification. Where there are questions regarding the DOL certification process and/or information needed by DOL to obtain a labor certification, successful applicants must contact the appropriate FTA regional office (*See* Appendix A). Additional guidance is provided on the World Wide Web at *http://www.fta.dot.gov/wtw/labor.htm.*

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Completed Applications

All successful applicants must now proceed to complete their grant application by fully documenting all the Job Access and Reverse Commute Grant program requirements that were not fully documented when the original grant proposal was submitted. In a few cases, not all projects in the applicant's proposal were selected. FTA regional offices will advise applicants by letter of any conditions relative to the selection or remaining outstanding items, as well as stipulations specific to the Job Access and Reverse Commute Grant projects that need to be addressed and/or fully documented prior to grant approval. Successful applicants will be notified in writing by the FTA regional offices with further guidance.

Issued on October 23, 2002.

Jennifer L. Dorn,

Administrator.

Appendix A—FTA Regional Offices

Region I

Maine, New Hampshire, Vermont, Connecticut, Rhode Island, and Massachusetts. Richard Doyle, FTA Regional Administrator, Volpe National Transportation Systems Center, Kendall Square, 55 Broadway, Suite 920, Cambridge, MA 02142–1093, (617) 494–2055.

Region II

New York, New Jersey, and Virgin Islands. Letitia Thompson, FTA Regional Administrator, One Bowling Green, Room 429, New York, NY 10004–1415, (212) 668–2170.

Region III

Pennsylvania, Delaware, Maryland, Virginia, West Virginia, and District of Columbia. Susan Schruth, FTA Regional Administrator, 1760 Market Street, Suite 500, Philadelphia, PA 19103–4124, (215) 656–7100.

Region IV

Kentucky, North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Tennessee, and Puerto Rico. Jerry Franklin, FTA Regional Administrator, 61 Forsyth Street, SW., Suite 17T50, Atlanta, GA 30303, (404) 562–3500.

Region V

Minnesota, Wisconsin, Michigan, Illinois, Indiana, and Ohio. Joel Ettinger, FTA Regional Administrator, 200 West Adams Street, Suite 2410, Chicago, IL 60606–5232, (312) 353–2789.

Region VI

Arkansas, Louisiana, Oklahoma, Texas, and New Mexico. Robert Patrick, FTA Regional Administrator, 819 Taylor Street, Room 8A36, Ft. Worth, TX 76102, (817) 978–0550.

Region VII

Missouri, Iowa, Kansas, and Nebraska. Mokhtee Ahmad, FTA Regional Administrator, 901 Locust Street, Suite 404, Kansas City, MO 64106, (816) 329–3920.

Region VIII

Colorado, Utah, Wyoming, Montana, North Dakota, South Dakota. Lee Waddleton, FTA Regional Administrator, Columbine Place, 216 16th Street, Suite 650, Denver, CO 80202–5120, (303) 844–3242.

Region IX

California, Hawaii, Guam, Arizona, Nevada, American Samoa, and the Northern Mariana Islands. Leslie Rogers, FTA Regional Administrator, 201 Mission Street, Suite 2210, San Francisco, CA 94105–1839, (415) 744–3133.

Region X

Idaho, Oregon, Washington, and Alaska. Richard F. Krochalis, FTA Regional Administrator, Jackson Federal Building, 915 Second Avenue, Suite 3142, Seattle, WA 98174–1002, (206) 220–7954.

[FR Doc. 02–27995 Filed 11–1–02; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34265]

Blackwell & Northern Railway Company, Inc.—Operation Exemption—Oklahoma Department of Transportation and Blackwell Industrial Authority

Blackwell & Northern Railway Company, Inc. (BNRC), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to operate 35.26 miles of rail line owned by the State of Oklahoma by and through the Oklahoma Department of Transportation and Blackwell Industries Authority. The rail line extends: (1) Between milepost 34.3 at Blackwell, OK, and milepost 18+1712.9 feet at the Oklahoma/Kansas State line near Hun Newell, KS; (2) between milepost 35+1848 feet, west of Blackwell and milepost 34.3 at Blackwell; and (3) between milepost 18+1712.9 feet at the Oklahoma/Kansas State line near Hun Newell and milepost 0+466.3 feet, at Wellington, KS. BNRC will replace South Kansas and Oklahoma Railroad, Inc., which has been operating over the line, and will become a Class III rail carrier.[1] BNRC certifies that its projected revenues as a result of this transaction will not exceed those that would qualify it as a Class III carrier and that such revenues would not exceed $5 million.

The transaction was scheduled to be consummated no earlier than October 17, 2002, the effective date of the exemption (7 days after the exemption was filed).

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34265, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Thomas F. McFarland, Thomas F. McFarland, P.C., 208 South LaSalle Street, Suite 1890, Chicago, IL 60604–1194.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: October 28, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–27881 Filed 11–4–02; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–565 (Sub–No. 11X, AB–55 (Sub–No. 617X)]

New York Central Lines, LLC—Abandonment Exemption—in Lake County, OH; CSX Transportation, Inc.—Discontinuance of Service Exemption—in Lake County, OH

On October 15, 2002, New York Central Lines, LLC (NYC) and CSX Transportation, Inc. (CSXT), jointly filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903. NYC seeks to abandon and CSXT seeks to discontinue service over a line of railroad in the Western Region, Great Lakes Division, Chicago Line Subdivision, extending from the former B&O Valuation Station 2535+40 to the end of the track at former Conrail Valuation Station 45+01, between Painesville and Grand River, a distance of 2.56 miles in Lake County, OH. The line traverses United States Postal Service Zip Codes 44077 and 44045, and includes no stations.

The line does not contain federally granted rights-of-way. Any documentation in NYC's or CSXT's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by January 31, 2003.

Any offer of financial assistance under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each offer must be accompanied by a $1,100 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than November 25, 2002. Each trail use request must be accompanied by a $150 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–565 (Sub-No. 11X) and AB–55 (Sub-No. 617X) and must be sent to: (1) Surface Transportation Board, 1925 K Street NW, Washington, DC 20423–0001; and (2) Natalie S. Rosenberg, 500 Water Street—J150, Jacksonville, FL 32202. Replies to the petition are due on or before November 25, 2002.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1552. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339].

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary), prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our Web site at "*WWW.STB.DOT.GOV.*"

Decided: October 29, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–28069 Filed 11–1–02; 8:45 am]

BILLING CODE 4915–00–P

[1] *See South Kansas and Oklahoma Railroad, Inc.-Operation Exemption-Oklahoma Department of Transportation and Blackwell Industrial Authority*, STB Docket No. 33494 (STB served Oct. 31, 1997).

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

Office of the Comptroller of the Currency

Office of Thrift Supervision

FEDERAL RESERVE SYSTEM

FEDERAL DEPOSIT INSURANCE CORPORATION

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities; Proposed Collection; Comment Request; Suspicious Activity Report by Financial Institutions

AGENCY: Financial Crimes Enforcement Network (FinCEN), Office of the Comptroller of the Currency (OCC), Office of Thrift Supervision (OTS), Board of Governors of the Federal Reserve System (Board), Federal Deposit Insurance Corporation (FDIC), National Credit Union Administration (NCUA).

ACTION: Notice and request for comments.

SUMMARY: FinCEN and the Supervisory Agencies (OCC, OTS, Board, FDIC, and NCUA), as part of their continuing effort to reduce paperwork and respondent burden, invite the general public and other Federal agencies to take this opportunity to comment on information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). FinCEN, OCC, OTS, Board, FDIC, and NCUA are soliciting comments concerning the Suspicious Activity Report, which is being revised to include two new check boxes in Part III, box 35, suspicious activities, for terrorist financing and identify theft and to update the language in the Safe Harbor provision to that contained in the PATRIOT Act. The OCC is also soliciting comments on all information collections contained in 12 CFR part 21. No new reporting requirements are being added.

DATES: Written comments should be received on or before January 3, 2003.

ADDRESSES: Interested parties are invited to submit written comments to any or all of the agencies. All comments, which should refer to the OMB control number(s), will be shared among the agencies. Direct all written comments as follows:

FinCEN: Financial Crimes Enforcement Network, Department of the Treasury, PO Box 39, Vienna, VA 22183, Attention: 1506–0001, Revised SAR, Financial Institutions. Comments also may be submitted by electronic mail to the following Internet address: *regcomments@fincen.treas.gov* with the caption in the body of the text, "Attention: 1506–0001, Revised SAR, Financial Institutions".

OCC: Public Information Room, Office of the Comptroller of the Currency, 250 E Street, SW., Mail stop 1–5, Attention: 1557–0180, Washington, DC 20219. In addition, comments may be sent by facsimile transmission to (202) 874–4448, or by electronic mail to *regs.comments@occ.treas.gov*. Due to disruptions in OCC's mail service since September 11, commenters are encouraged to submit comments by fax or e-mail. You can make an appointment to inspect comments by calling (202) 874–5043.

OTS: Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552; send a facsimile transmission to (202) 906–6518; or send an e-mail to *infocollection.comments@ots.treas.gov*. OTS will post comments and the related index on the OTS Internet site at *www.ots.treas.gov*. In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *publicinfo@ots.treas.gov*, or send a facsimile transmission to (202) 906–7755.

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Board: Comments may be mailed to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. However, because paper mail in the Washington area and at the Board of Governors is subject to delay, please consider submitting your comments by e-mail to *regs.comments@federalreserve.gov*, or faxing them to the office of the Secretary at 202–452–3819 or 202–452–3102. Comments addresses to Ms. Johnson may also be delivered to the Board's mail facility in the West Courtyard between 8:45 a.m. and 5:15 p.m., located on 21st Street between Constitution Avenue and C Street, NW. Members of the public may inspect comments in Room MP–500 between 9 a.m. and 5 p.m. on weekdays pursuant to 261.12, except as provided in 261.14, of the Board's Rules Regarding Availability of Information, 12 CFR 261.12 and 261.14.

FDIC: Written comments should be addressed to Robert E. Feldman, Executive Secretary, Attention: Comments/OES, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. Comments may be hand-delivered to the guard station at the rear of the 550 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m. (FAX number (202) 898–3838: Internet address: *comments@fdic.gov*). Comments may be inspected and photocopied in the FDIC Public Information Center, Room 100, 801 17th Street, NW., Washington, DC, between 9 a.m. and 4:30 p.m., on business days.

NCUA: Clearance Officer: Mr. Neil M. McNamara, (703) 518–6447, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428, Fax No. 703–518–6489, E-mail: *mcnamara@ncua.gov*.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or a copy of the collection may be obtained by contacting:

FinCEN: Russell Stephenson, 202–354–6400 (ORP);

OCC: Jessie Dunaway, OCC Clearance Officer, or Camille Dixon, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219, (202) 874–5090.

OTS: Richard Stearns, Enforcement Deputy Counsel, Office of Enforcement, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, (202) 906–7966.

Board: Herbert A. Biern, Senior Associate Director, Division of Banking Supervision and Regulation, (202) 452–2620. For users of Telecommunications Devices for the Deaf (TDD) only, contact 202–263–4869, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

FDIC: Tamara R. Manly, Office of the Executive Secretary, FDIC, 550 17th Street, NW., Washington, DC 20429, (202) 898–7453.

NCUA: NCUA Clearance Officer, Mr. Neil M. McNamara, (703) 518–6447, or John K. Ianno, Office of General Counsel, (703) 518–6540.

SUPPLEMENTARY INFORMATION:

Title: Suspicious Activity Report. The OCC is renewing all information collections covered under information collection titled: "(MA)—Minimum Security Devices and Procedures, Reports of Suspicious Activities, and Bank Secrecy Act Compliance—12 CFR 21." FinCEN is renewing 31 CFR 103.18.

OMB Numbers:

FinCEN: 1506–0001
OCC: 1557–0180
OTS: 1550–0003
Board: 7100–0212
FDIC: 3064–0077
NCUA: 3133–0094

Form Numbers:

FinCEN: TD F 90–22.47
OCC: None
OTS: 1601
Board: FR 2230
FDIC: 6710/06
NCUA: 2362

Abstract: In 1985, the Supervisory Agencies issued procedures to be used by banks and certain other financial institutions operating in the United States to report known or suspected criminal activities to the appropriate law enforcement and Supervisory Agencies. Beginning in 1994, the Supervisory Agencies and FinCEN completely redesigned the reporting process resulting in a Suspicious Activity Report, which became effective in April 1996.[1]

Current Action: This Notice proposes three minor revisions to the form. In Part III Suspicious Activity Information, block 35 Summary characterization of suspicious activity, two new boxes would be added. A box to indicate "Terrorist Financing" and a box to indicate "Identity Theft." The third is an update to the "Safe Harbor" wording to reflect changes by the Patriot Act. These additions will improve the form's usefulness to law enforcement and the Supervisory Agencies.

Type of Review: Revision of a currently approved collection.

Affected Public: Business, for-profit institutions, and non-profit institutions.

Estimated Number of Respondents:

FinCEN: 22,600[2]
OCC: 2252
OTS: 990
Board: 10,000
FDIC: 8000
NCUA: 9300

Estimated Total Annual Responses:

FinCEN: 63,750
OCC: 54,172
OTS: 20,804
Board: 11,162
FDIC: 16,018
NCUA: 2,961

Estimated Total Annual Burden:

Estimated 30 minutes per form.
FinCEN: 31,750 hours[3]
OCC: 32,906 hours
OTS: 10,402 hours
Board: 5,581 hours
FDIC: 8,009 hours
NCUA: 1,480 hours

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Records required to be retained under the Bank Secrecy Act and these regulations issued by the Supervisory Agencies must be retained for five years. Generally, information collected pursuant to the Bank Secrecy Act is confidential, but may be shared as provided by law with regulatory and law enforcement authorities.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology, and (e) estimates of capital or start-up costs and costs of operation, maintenance and purchase of services to provide information.

[1] The report is authorized by the following rules: 31 CFR 103.18 (FinCEN); 12 CFR 21.11 (OCC); 12 CFR 563.180 (OTS); 12 CFR 208.20 (Board); 12 CFR 353.3 (FDIC); 12 CFR 748.1 (NCUA). The rules were issued under the authority of 31 U.S.C. 5318(g) (FinCEN); 12 U.S.C. 93a, 1818, 1881–84, 3401–22, 31 U.S.C. 5318 (OCC); 12 U.S.C. 1463 and 1464 (OTS); 12 U.S.C. 324, 334, 611a, 1844(b) and (c), 3015(c)(2) and 3106(a) (Board); 12 U.S.C. 93a, 1818, 1881–84, 3401–22 (FDIC); 12 U.S.C. 1766(a), 1789(a) (NCUA).

[2] Respondents represent many of the same institutions responding to the Supervisory Agencies.

[3] Only one form is filed in satisfaction of the rules of both FinCEN and the Supervisory Agencies. The estimated burden per form is 30 minutes; the hourly burden does not attempt to allocate that time between agencies when the form is filed in satisfaction of the rules of more than one agency.

Dated: October 28, 2002.

James F. Sloan,

Director, Financial Crimes Enforcement Network.

Dated: September 20, 2002.

Mark J. Tenhundfeld,

Assistant Director, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency.

Dated: September 24, 2002.

Deborah Dakin,

Deputy Chief Counsel, Regulations and Legislation Division, Office of Thrift Supervision.

By the Board of Governors of the Federal Reserve System on October 3, 2002.

Jennifer J. Johnson,

Secretary of the Board.

By Order of the Board of Directors.

Dated in Washington, DC, this 30th day of September, 2002.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

By the National Credit Union Administration Board on September 24, 2002.

Becky Baker.

Secretary of the Board.

BILLING CODE 4810–02–P

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Suspicious Activity Report

ALWAYS COMPLETE ENTIRE REPORT (see instructions)

FRB:	FR 2230	OMB No. 7100-0212
FDIC:	6710/06	OMB No. 3064-0077
OCC:	8010-9,8010-1	OMB No. 1557-0180
OTS:	1601	OMB No. 1550-0003
NCUA:	2362	OMB No. 3133-0094
TREASURY:	TD F 90-22.47	OMB No. 1506-0001

Revised January 2003 (This revision supersedes all others)

1 Check box below only if correcting a prior report.
☐ Corrects Prior Report (see instruction #3 under "How to Make a Report")

Part I Reporting Financial Institution Information

2 Name of Financial Institution | 3 EIN

4 Address of Financial Institution | 5 Primary Federal Regulator: a ☐ Federal Reserve b ☐ FDIC c ☐ NCUA d ☐ OCC e ☐ OTS

6 City | 7 State | 8 Zip Code

9 Address of Branch Office(s) where activity occurred ☐ Multiple Branches (include information in narrative, Part V)

10 City | 11 State | 12 Zip Code | 13 If institution closed, date closed (MM/DD/YYYY)

14 Account number(s) affected, if any — a ____ Closed? ☐ Yes ☐ No; b ____ Closed? ☐ Yes ☐ No; c ____ Closed? ☐ Yes ☐ No; d ____ Closed? ☐ Yes ☐ No

Part II Suspect Information ☐ Suspect Information Unavailable

15 Last Name or Name of Entity | 16 First Name | 17 Middle

18 Address | 19 SSN, EIN or TIN

20 City | 21 State | 22 Zip Code | 23 Country

24 Phone Number - Residence (include area code) ( ) | 25 Phone Number - Work (include area code) ( )

26 Occupation/Type of Business | 27 Date of Birth (MM/DD/YYYY) | 28 Admission/Confession? a ☐ Yes b ☐ No

29 Forms of Identification for Suspect:
a ☐ Driver's License/State ID b ☐ Passport c ☐ Alien Registration d ☐ Other ____
Number ____ Issuing Authority ____

30 Relationship to Financial Institution:
a ☐ Accountant b ☐ Agent c ☐ Appraiser d ☐ Attorney e ☐ Borrower f ☐ Broker g ☐ Customer h ☐ Director i ☐ Employee j ☐ Officer k ☐ Shareholder l ☐ Other ____

31 Is the relationship an insider relationship? a ☐ Yes b ☐ No
If Yes specify: c ☐ Still employed at financial institution d ☐ Suspended e ☐ Terminated f ☐ Resigned

32 Date of Suspension, Termination, Resignation (MM/DD/YYYY)

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Part III Suspicious Activity Information

33 Date or date range of suspicious activity
From ____/____/____ (MM/DD/YYYY) To ____/____/____ (MM/DD/YYYY)

34 Total dollar amount involved in known or suspicious activity
$ .00

35 Summary characterization of suspicious activity:
a ☐ Bank Secrecy Act/Structuring/Money Laundering
b ☐ Bribery/Gratuity
c ☐ Check Fraud
d ☐ Check Kiting
e ☐ Commercial Loan Fraud
f ☐ Computer Intrusion
g ☐ Consumer Loan Fraud
h ☐ Counterfeit Check
i ☐ Counterfeit Credit/Debit Card
j ☐ Counterfeit Instrument (other)
k ☐ Credit Card Fraud
l ☐ Debit Card Fraud
m ☐ Defalcation/Embezzlement
n ☐ False Statement
o ☐ Misuse of Position or Self Dealing
p ☐ Mortgage Loan Fraud
q ☐ Mysterious Disappearance
r ☐ Wire Transfer Fraud
s ☐ Terrorist Financing
t ☐ Identity Theft
u ☐ Other ____ (type of activity)

36 Amount of loss prior to recovery (if applicable)
$ .00

37 Dollar amount of recovery (if applicable)
$ .00

38 Has the suspicious activity had a material impact on, or otherwise affected, the financial soundness of the institution?
a ☐ Yes b ☐ No

39 Has the institution's bonding company been notified?
a ☐ Yes b ☐ No

40 Has any law enforcement agency already been advised by telephone, written communication, or otherwise?
a ☐ DEA b ☐ FBI c ☐ IRS d ☐ Postal Inspection e ☐ Secret Service f ☐ U.S. Customs g ☐ Other Federal h ☐ State i ☐ Local
j ☐ Agency Name (for g, h or i) ____

41 Name of person(s) contacted at Law Enforcement Agency | 42 Phone Number (include area code) ( )

43 Name of person(s) contacted at Law Enforcement Agency | 44 Phone Number (include area code) ( )

Part IV Contact for Assistance

45 Last Name | 46 First Name | 47 Middle

48 Title/Occupation | 49 Phone Number (include area code) ( ) | 50 Date Prepared (MM/DD/YYYY)

51 Agency (if not filed by financial institution)

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Part V Suspicious Activity Information Explanation/Description

Explanation/description of known or suspected violation of law or suspicious activity.

This section of the report is **critical**. The care with which it is written may make the difference in whether or not the described conduct and its possible criminal nature are clearly understood. Provide below a chronological and **complete** account of the possible violation of law, including what is unusual, irregular or suspicious about the transaction, using the following checklist as you prepare your account. **If necessary, continue the narrative on a duplicate of this page.**

a **Describe** supporting documentation and retain for 5 years.
b **Explain** who benefited, financially or otherwise, from the transaction, how much, and how.
c **Retain** any confession, admission, or explanation of the transaction provided by the suspect and indicate to whom and when it was given.
d **Retain** any confession, admission, or explanation of the transaction provided by any other person and indicate to whom and when it was given.
e **Retain** any evidence of cover-up or evidence of an attempt to deceive federal or state examiners or others.
f **Indicate** where the possible violation took place (e.g., main office, branch, other).
g **Indicate** whether the possible violation is an isolated incident or relates to other transactions.
h **Indicate** whether there is any related litigation; if so, specify.
i **Recommend** any further investigation that might assist law enforcement authorities.
j **Indicate** whether any information has been excluded from this report; if so, why?
k If you are correcting a previously filed report, describe the changes that are being made.

For Bank Secrecy Act/Structuring/Money Laundering reports, include the following additional information:
l **Indicate** whether currency and/or monetary instruments were involved. If so, provide the amount and/or description of the instrument (for example, bank draft, letter of credit, domestic or international money order, stocks, bonds, traveler's checks, wire transfers sent or received, cash, etc.).
m **Indicate** any account number that may be involved or affected.

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Paperwork Reduction Act Notice: The purpose of this form is to provide an effective and consistent means for financial institutions to notify appropriate law enforcement agencies of known or suspected criminal conduct or suspicious activities that take place at or were perpetrated against financial institutions. This report is required by law, pursuant to authority contained in the following statutes. Board of Governors of the Federal Reserve System: 12 U.S.C. 324, 334, 611a, 1844(b) and (c), 3105(c) (2) and 3106(a). Federal Deposit Insurance Corporation: 12 U.S.C. 93a, 1818, 1881-84, 3401-22. Office of the Comptroller of the Currency: 12 U.S.C. 93a, 1818, 1881-84, 3401-22. Office of Thrift Supervision: 12 U.S.C. 1463 and 1464. National Credit Union Administration: 12 U.S.C. 1786(a), 1786(q). Financial Crimes Enforcement Network: 31 U.S.C. 5318(g). Information collected on this report is confidential (5 U.S.C. 552(b)(7) and 552a(k)(2), and 31 U.S.C. 5318(g)). The Federal financial institutions' regulatory agencies and the U.S. Departments of Justice and Treasury may use and share the information. Public reporting and recordkeeping burden for this information collection is estimated to average 30 minutes per response, and includes time to gather and maintain data in the required report, review the instructions, and complete the information collection. Send comments regarding this burden estimate, including suggestions for reducing the burden, to the Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503 and, depending on your primary Federal regulatory agency, to Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551; or Assistant Executive Secretary, Federal Deposit Insurance Corporation, Washington, DC 20429; or Legislative and Regulatory Analysis Division, Office of the Comptroller of the Currency, Washington, DC 20219; or Office of Thrift Supervision, Enforcement Office, Washington, DC 20552; or National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314; or Office of the Director, Financial Crimes Enforcement Network, Department of the Treasury, P.O. Box 39, Vienna, VA 22183-0039. The agencies may not conduct or sponsor, and an organization (or a person) is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Suspicious Activity Report Instructions

Safe Harbor Federal law (31 U.S.C. 5318(g)(3)) provides complete protection from civil liability for all reports of suspicious transactions made to appropriate authorities, including supporting documentation, regardless of whether such reports are filed pursuant to this report's instructions or are filed on a voluntary basis. Specifically, the law provides that a financial institution, and its directors, officers, employees and agents, that make a disclosure of any possible violation of law or regulation, including in connection with the preparation of suspicious activity reports, "shall not be liable to any person under any law or regulation of the United States, any constitution, law, or regulation of any State or political subdivision of any State, or under any contract or other legally enforceable agreement (including any arbitration agreement), for such disclosure or for any failure to provide notice of such disclosure to the person who is the subject of such disclosure or any other person identified in the disclosure".
Notification Prohibited Federal law (31 U.S.C. 5318(g)(2)) requires that a financial institution, and its directors, officers, employees and agents who, voluntarily or by means of a suspicious activity report, report suspected or known criminal violations or suspicious activities may not notify any person involved in the transaction that the transaction has been reported.

In situations involving violations requiring immediate attention, such as when a reportable violation is ongoing, the financial institution shall immediately notify, by telephone, appropriate law enforcement and financial institution supervisory authorities in addition to filing a timely suspicious activity report.

WHEN TO MAKE A REPORT:

1. All financial institutions operating in the United States, including insured banks, savings associations, savings association service corporations, credit unions, bank holding companies, nonbank subsidiaries of bank holding companies, Edge and Agreement corporations, and U.S. branches and agencies of foreign banks, are required to make this report following the discovery of:

   a. **Insider abuse involving any amount.** Whenever the financial institution detects any known or suspected Federal criminal violation, or pattern of criminal violations, committed or attempted against the financial institution or involving a transaction or transactions conducted through the financial institution, where the financial institution believes that it was either an actual or potential victim of a criminal violation, or series of criminal violations, or that the financial institution was used to facilitate a criminal transaction, and the financial institution has a substantial basis for identifying one of its directors, officers, employees, agents or other institution-affiliated parties as having committed or aided in the commission of a criminal act regardless of the amount involved in the violation.

   b. **Violations aggregating $5,000 or more where a suspect can be identified.** Whenever the financial institution detects any known or suspected Federal criminal violation, or pattern of criminal violations, committed or attempted against the financial institution or involving a transaction or transactions conducted through the financial institution and involving or aggregating $5,000 or more in funds or other assets, where the financial institution believes that it was either an actual or potential victim of a criminal violation, or series of criminal violations, or that the financial institution was used to facilitate a criminal transaction, and the financial institution has a substantial basis for identifying a possible suspect or group of suspects. If it is determined prior to filing this report that the identified suspect or group of suspects has used an "alias," then information regarding the true identity of the suspect or group of suspects, as well as alias identifiers, such as drivers' licenses or social security numbers, addresses and telephone numbers, must be reported.

   c. **Violations aggregating $25,000 or more regardless of a potential suspect.** Whenever the financial institution detects any known or suspected Federal criminal violation, or pattern of criminal violations, committed or attempted against the financial institution or involving a transaction or transactions conducted through the financial institution and involving or aggregating $25,000 or more in funds or other assets, where the financial institution believes that it was either an actual or potential victim of a criminal violation, or series of criminal violations, or that the financial institution was used to facilitate a criminal transaction, even though there is no substantial basis for identifying a possible suspect or group of suspects.

   d. **Transactions aggregating $5,000 or more that involve potential money laundering or violations of the Bank Secrecy Act.** Any transaction (which for purposes of this subsection means a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, certificate of deposit, or other monetary instrument or investment security, or any other payment, transfer, or delivery by, through, or to a financial institution, by whatever means effected) conducted or attempted by, at

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or through the financial institution and involving or aggregating $5,000 or more in funds or other assets, if the financial institution knows, suspects, or has reason to suspect that:

i. The transaction involves funds derived from illegal activities or is intended or conducted in order to hide or disguise funds or assets derived from illegal activities (including, without limitation, the ownership, nature, source, location, or control of such funds or assets) as part of a plan to violate or evade any law or regulation or to avoid any transaction reporting requirement under Federal law;

ii. The transaction is designed to evade any regulations promulgated under the Bank Secrecy Act; or

iii. The transaction has no business or apparent lawful purpose or is not the sort in which the particular customer would normally be expected to engage, and the financial institution knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction.

The Bank Secrecy Act requires all financial institutions to file currency transaction reports (CTRs) in accordance with the Department of the Treasury's implementing regulations (31 CFR Part 103). These regulations require a financial institution to file a CTR whenever a currency transaction exceeds $10,000. If a currency transaction exceeds $10,000 and is suspicious, the institution must file both a CTR (reporting the currency transaction) and a suspicious activity report (reporting the suspicious or criminal aspects of the transaction). If a currency transaction equals or is below $10,000 and is suspicious, the institution should only file a suspicious activity report.

2. **Computer Intrusion.** For purposes of this report, "computer intrusion" is defined as gaining access to a computer system of a financial institution to:

a. Remove, steal, procure or otherwise affect funds of the institution or the institution's customers;
b. Remove, steal, procure or otherwise affect critical information of the institution including customer account information; or
c. Damage, disable or otherwise affect critical systems of the institution.

For purposes of this reporting requirement, computer intrusion does not mean attempted intrusions of websites or other non-critical information systems of the institution that provide no access to institution or customer financial or other critical information.

3. A financial institution is required to file a suspicious activity report no later than 30 calendar days after the date of initial detection of facts that may constitute a basis for filing a suspicious activity report. If no suspect was identified on the date of detection of the incident requiring the filing, a financial institution may delay filing a suspicious activity report for an additional 30 calendar days to identify a suspect. In no case shall reporting be delayed more than 60 calendar days after the date of initial detection of a reportable transaction.

4. This suspicious activity report does not need to be filed for those robberies and burglaries that are reported to local authorities, or (except for savings associations and service corporations) for lost, missing, counterfeit or stolen securities that are reported pursuant to the requirements of 17 CFR 240.17f-1.

HOW TO MAKE A REPORT:

1. Send each completed suspicious activity report to:

Detroit Computing Center, P.O. Box 33980, Detroit, MI 48232-0980

2. For items that do not apply or for which information is not available, leave blank.
3. If you are correcting a previously filed report, check the box at the top of the report (line 1). Complete the report in its entirety and include the corrected information in the applicable boxes. Then describe the changes that are being made in Part V (Description of Suspicious Activity), line k.
4. **Do not include any supporting documentation with the suspicious activity report.** Identify and retain a copy of the suspicious activity report and all original supporting documentation or business record equivalent for five (5) years from the date of the suspicious activity report. All supporting documentation must be made available to appropriate authorities upon request.
5. If more space is needed to report additional suspects, attach copies of page 1 to provide the additional information. If more space is needed to report additional branch addresses, include this information in the narrative, Part V.
6. Financial institutions are encouraged to provide copies of suspicious activity reports to state and local authorities, where appropriate.

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[FR Doc. 02–27771 Filed 11–4–02; 8:45 am]
BILLING CODE 4810–02–C

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8802

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8802, Application for United States Residency Certification.

DATES: Written comments should be received on or before January 3, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage, (202) 622–3945, or through the Internet (*CAROL.A.SAVAGE@irs.gov.*), Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Application for United States Residency Certification.

OMB Number: To be assigned later.

Form Number: 8802.

Abstract: An entity must use Form 8802 to apply for United States Residency Certification. All requests for U.S. residency certification must be received on Form 8802, Application for United States Residency Certification. This application must be sent to the Philadelphia Service Center. As proof of residency in the United States and of entitlement to the benefits of a tax treaty, U.S. treaty partner countries require a U.S. Government certification that you are a U.S. citizen, U.S. corporation, U.S. partnership, or resident of the United States for purposes of taxation.

Current Actions: This is a new collection of information.

Type of Review: New OMB approval.

Affected Public: Individuals or households, business or other for-profit organization, and not-for-profit institution.

Estimated Number of Respondents: 100,000.

Estimated Time Per Respondent: 2 hours, 34 minutes.

Estimated Total Annual Burden Hours: 256,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 25, 2002.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 02–27910 Filed 11–1–02; 8:45 am]
BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

IRS' Intent To Enter Into an Agreement With Free File Alliance, LLC (i.e., Free File Alliance)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: This document contains the final agreement that has been agreed to by IRS and Free File Alliance (formerly referred to as the Consortium in the previous **Federal Register** Notice published on August 8, 2002 (67 FR 51621), a non-profit corporation (under the provisions of 26 U.S.C. 501(c)(3)). This agreement will require companies of Free File Alliance to offer free on-line tax preparation and filing services to at least 60% of taxpayers. This document also responds to written comments and concerns that were submitted in response to the announcement of the draft agreement published as a **Federal Register** Notice, dated August 8, 2002 (67 FR 51621).

DATES: These free on-line tax preparation and filing services will be available for use by eligible taxpayers no later than December 31, 2002, and will be located at *http://www.irs.gov* with a link from *http://www.firstgov.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Department of the Treasury and IRS announced, on August 8, 2002, through a **Federal Register** Notice (67 FR 51621), a proposed agreement (the Agreement) with a consortium of companies (Free File Alliance) that will offer free on-line tax return preparation and filing services (Free Services) to at least 60% of taxpayers. IRS will provide eligible taxpayers with links to the Free Services offered by Free File Alliance members via a homepage managed and hosted through irs.gov and accessible through firstgov.gov. The Agreement and during its term, the IRS will not compete with the private sector by providing free on-line tax preparation and filing services to taxpayers.

The IRS plans to enter into the Agreement with Free File Alliance to accomplish the following five objectives:

1. Assuring access to a free and secure electronic preparation and filing option for additional taxpayers, building upon free electronic tax preparation and filing provided in the commercial market today;

2. Making tax return preparation and filing easier and reducing the burden on individual taxpayers;

3. Supporting the IRS's statutory goals of increased e-filing, pursuant to the IRS Restructuring and Reform Act of 1998, which encouraged the IRS to set a goal of having 80% of Federal tax and information returns filed electronically by the year 2007;

4. Providing greater service and access to taxpayers; and

5. Implementing one of the proposals in the President's FY'03 budget,

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specifically to encourage further growth in electronic filing by providing taxpayers the option to file their tax return on-line without charge using cooperation with, and encouraging competition within, the private sector to increase e-filing.

IRS Response to Comments and Concerns

In the **Federal Register** Notice, the IRS requested comments and/or suggestions with respect to the draft Agreement. In response, the IRS received over seven hundred comments from various individuals and organizations. The vast majority of the feedback received supported the Agreement and its benefits to taxpayers. Most of the positive feedback received was from taxpayers; however supporting comments were also received from members of Congress, consumer groups, tax software companies, and technology associations. Themes running throughout this feedback were the advantages of public/private sector cooperation rather than direct government competition with the private sector, the economic value of the Agreement and Free Services to both the government and taxpayers, as well as other benefits of the Agreement to many taxpayers who have not previously taken advantage of electronic tax return filing. Taxpayers who e-file get their refunds twice as fast, experience fewer mistakes and errors, and consistently prefer e-filing as measured by customer surveys. The draft Agreement will extend these taxpayer benefits by making Free Services available to approximately 78 million taxpayers.

The most common concern voiced was that these Free Services would adversely impact accounting and legal tax professionals by attracting their clients to Free File Alliance products. However, IRS historical data shows that the migration of taxpayers from the services of accounting and legal tax professionals to low cost Internet filing options has been minimal. This is also not supported by the experience by comparable foreign governments. In Australia, for example, where the national government itself has offered free Internet filing for a number of years, over 70% of all taxpayers still use a tax professional. Free File Alliance products, and the marketing thereof, are expected to focus on taxpayers who currently self-prepare a paper return and mail it to the IRS. In support of its continuing partnership with the tax professionals, the IRS will continue to assist taxpayers desiring to e-file through a tax professional by providing, through its web site (irs.gov), a mechanism (zip code locator) to assist them in finding an e-file tax return preparer in their area.

The next most common concern expressed was that on-line tax software products do not provide the same level of quality and service of a tax return preparer, thus possibly resulting in a greater tax obligation or more errors. It is important to note that the free offerings are not comparable to the services provided by an accounting or legal tax professional, because they service two distinct groups of taxpayers. The free offerings are expected to be of primary interest to those taxpayers who manually prepare their own tax return. Taxpayers who want more comprehensive services are expected to continue to seek the services of accounting or legal tax professionals. Regardless of the vehicle used to prepare and e-file a return, e-filed returns have a lower error rate than paper returns. It is also expected that Free File Alliance products will be equivalent to those offered for sale on the commercial market and thus are expected to have all of the features and operability of those commercial products.

Other respondents, including some consumer groups, expressed concern that the Agreement does not sufficiently protect the interest of taxpayers, specifically low-income taxpayers, because it may expose them to the risk of receiving unsolicited products or services (*e.g.*, Refund Anticipation Loans (RALs)). The Agreement clearly states the use of any Free Service cannot be contingent on the sale of any other product or service. It also provides that taxpayers will not have to go through additional steps or barriers to access the Free Service, beyond those steps required or imposed to access the comparable paid service. In addition, federal tax laws already strictly prohibit unauthorized marketing to taxpayers using a commercial tax preparation service. Accordingly, information entered to complete a tax return under this program will continue to be protected by Internal Revenue Code Section 7216 (26 CFR 301.7216). This provision of law requires explicit taxpayer consent for tax return information to be used for any reason other than the preparation of the tax return, including for marketing purposes. IRS Publication 1345, Handbook for e-file Providers, also governs marketing and business practices for Electronic Return Orginators. In addition to the protections afforded by law, taxpayer privacy and security protections for consumers will be increased in that the Agreement requires that Free File Alliance products receive third party privacy and security certifications, and these additional requirements and certifications will be prominently displayed on the IRS web site.

With respect to RALs, because taxpayers who e-file get their refunds twice as fast, the demand for costly tax refund loans should be reduced as a result of the Agreement. Also, the demand will be reduced significantly further as refund cycle times are shortened under IRS' Business Systems Modernization Plans. It should be noted that RALs are generally governed by state, not federal law. Even if Free File Alliance members had no financial products such as RALs offered within their products, taxpayers wanting a tax refund secured bank loan would still have them available through thousands of tax return preparers. However, to ensure that taxpayer and consumer interests are fully accounted for, the IRS is asking the statutory National Taxpayer Advocate, and the Taxpayer Advocacy Panel (a federal advisory committee comprised of over 100 taxpayers representing the 50 states) to advise the IRS regarding Free File Alliance activities. There was a range of comments (three or fewer), most of which reflected a general misunderstanding of the Agreement. Three respondents stated the IRS should not compete with the commercial marketplace by providing its own government application. As stated earlier, private industry with proven tax experience and expertise will be providing these Free Services, not the IRS.

Three other respondents believed that the Free Services would not help taxpayers overcome the complexity of the tax law. It is important to point out that these complexities are inherent in the underlying tax laws themselves. The Free Services will nonetheless reduce taxpayer burden by making the tax return preparation, filing and payment process simpler and easier. In typical tax software applications the taxpayer need only input relevant tax information through a standard "interview" format. Applications then interpret most complications of the tax process for the taxpayer, producing a final result suitable for filing with the IRS at no cost to the taxpayer. Two respondents believed that Free File Alliance members would be given an unfair advantage over non-Free File Alliance members. Membership in Free File Alliance is open to all companies that can satisfy the basic eligibility requirements. Interested companies should visit *www.cerca.org* for more information. In addition, the IRS will also continue to list non-participating software providers on the IRS web site.

One respondent questioned whether the Agreement was consistent with antitrust laws. With respect to these concerns, on October 7, 2002, the Free File Alliance received a business review letter from the Antitrust Division of the United States Department of Justice (DOJ). The letter concluded that the Free File Alliance, as proposed, should pose no threat to competition in the market for providing tax services to individuals.

Final Analysis

The overwhelming majority of the respondents supported the draft Agreement as an effective way to expand the availability of the benefits of e-filing through a public/private partnership. In evaluating all the comments and concerns received, the IRS has determined that the Agreement does not omit any necessary requirements; therefore, it is the IRS' intention to enter into this Agreement with the Free File Alliance, LLC. The final version of the Agreement is attached.

Drafting Information

The principal author of these comments is Paul J. Mamo, IRS Electronic Tax Administration; however, other personnel from the Department of the Treasury and IRS participated in the development of this document.

Dated: October 29, 2002.

Terence H. Lutes,

Director, Electronic Tax Administration, Internal Revenue Service.

Final Agreement

Free On-Line Electronic Tax Filing Agreement

This Agreement is entered into, as of October 30, 2002, between the Internal Revenue Service (the "IRS") and the Free File Alliance, LLC a consortium of companies in the electronic tax preparation and filing industry (the "Consortium"), a non-profit corporation (under the provisions of 26 U.S.C. § 501(c)(3)) formed under the auspices of, and affiliated with, the Council for Electronic Revenue Communication Advancement. The Consortium has been formed to facilitate participation in this Agreement by commercial entities, which are members of the Consortium engaged in the business of electronic tax preparation and filing ("Consortium Participants").

I. Purpose

This Agreement provides for free on-line tax return preparation and filing to individual taxpayers, thereby meeting the following five objectives:

1. Assuring access to a free and secure electronic preparation and filing option for additional taxpayers, building upon free electronic tax preparation and filing provided in the commercial market today;

2. Making tax return preparation and filing easier and reducing the burden on individual taxpayers;

3. Supporting the IRS's statutory goals of increased e-filing, pursuant to the IRS Restructuring and Reform Act of 1998, which encouraged the IRS to set a goal of having 80% of Federal tax and information returns filed electronically by the year 2007;

4. Providing greater service and access to taxpayers; and

5. Implementing one of the proposals in the President's FY'03 budget, specifically to encourage further growth in electronic filing by providing taxpayers the option to file their tax return on-line without charge, using cooperation with, and encouraging competition within, the private sector to increase e-filing.

II. Summary

To accomplish the above objectives, the IRS and the Consortium (together, "the Parties") will work together to offer free, on-line tax return preparation and filing services to taxpayers ("Free Services"). The Consortium will offer Free Services to taxpayers. The IRS will provide taxpayers with links to the Free Services offered by the Consortium Participants through a web page (described more fully in V. below; hereafter, the "Web Page"), which will be hosted at irs.gov accessible through firstgov.gov. During the term of this Agreement, the IRS will not compete with the Consortium in providing free, on-line tax return preparation and filing services to taxpayers.

This Agreement is the best method for meeting the above stated objectives because it will promote higher quality Free Services by utilizing the existing expertise of the private sector, maximize consumer choice, promote competition for such Free Services, and thereby meet the objectives in the least costly manner.

III. Scope of Offerings

A. The Consortium will offer Free Services for eligible taxpayers (taxpayers meeting the qualifications for free offerings) from individual commercial sites. Such offerings, when taken in the aggregate, are intended to provide for Free Services to be available to 60% or more of taxpayers. If at any point the Consortium's aggregate offerings of Free Services are available to fewer than 60% of taxpayers, the IRS may notify the Consortium of that fact. After receipt of such notice, the Consortium will have six months within which to raise the availability of such offerings to at least 60% of taxpayers. If the Consortium fails to achieve 60% within such six-month period, the IRS may terminate this Agreement. In making this decision, the IRS agrees to take into account the extent to which actual usage of Free Services has increased. Consortium offerings, taken together, will provide eligible taxpayers with a reasonable assurance that: (1) Free Services will be available on demand, and (2) these services will provide the ability to file the same federal tax forms which are fileable and available in the comparable paid on-line services offered by a selected Consortium Participant.

B. The Consortium shall accept offerings only from entities that:

1. Provide electronic, on-line tax preparation and filing of individual income tax returns:

2. Will offer and can provide Free Services to a number of individual taxpayers, which equals or exceeds 10 percent (10%) of the number of individual income tax returns filed in the base year (CY 2001).

3. Offer on-line software approved by the IRS that generates returns that can be sent to the IRS via an IRS-approved channel.

4. Are Authorized IRS E-File Providers in accord with IRS Rev. Proc. 2000–31.

5. Are in compliance with applicable law, including but not limited to, Department of Treasury/IRS rules, including but not limited to 31 C.F.R. Part 10, IRS Rev. Proc. 2000–31, current versions of IRS Publications 1345 and 1345–A, and 26 U.S.C. § 7216.

6. Demonstrate the competence and capability to deliver their free offerings. This competence and capability may be demonstrated either by providing evidence of prior experience in providing on-line or electronic filing services or by self-certification. Such self-certification shall be reasonably and objectively determined by the Consortium, taking into account the above referenced need for competence and capability and the intent of the Agreement to avoid unnecessary barriers to entry. Consortium Participants must have adequate capacity to meet the expected demand for their Free Services. In addition to initial Participants, the Consortium will

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accept later qualified applicants as Consortium Participants.

7. Have a security seal certification program, from a third party agreed to by the Consortium and IRS. Certification will be based upon an assessment of the system's ability to protect taxpayer data.

8. Comply with the privacy provisions of 26 U.S.C. § 7216. Have a privacy seal certification program from a third party agreed to by the Consortium and IRS. Consortium participants are encouraged to use software that will enable their websites to state their privacy practices in a standard machine-readable format that can be retrieved automatically and interpreted easily by users. Consortium Participants shall also agree that provisions of Free Services shall not be conditioned on obtaining an eligible taxpayer's consent to solicitations of additional business.

9. Will not contain or provide links to inappropriate content.

10. Clearly disclose to users their customer service support options and privacy policy.

11. Agree to have at least one link to the IRS web site (irs.gov).

C. The Consortium will take reasonable steps to publicize the criteria for Consortium participation. The Consortium will provide to the IRS, on request, the names of unsuccessful applicants for Consortium participation and the reason for their rejection.

IV. Performance Standards

A. The IRS will have the Consortium web page ready by December 31, 2002. Consortium participants will have submitted their test returns produced by their software to the IRS sufficiently in advance of that date for testing. The IRS will not list on the Consortium web page a Consortium participant whose test returns have not been certified prior to the beginning of the filing season until that participant's test returns have been tested and certified.

B. The Consortium will use its best efforts to assure that Free Services by individual Consortium Participants are performed in accordance with the terms of the Agreement and in accordance with the offer made by the Consortium Participant. If the IRS determines a particular offering of Free Services is deficient or that Free Services are not being properly performed, it will notify the Consortium in writing of that fact, and provide information regarding corrective actions it believes are needed.

C. The undertaking by the Consortium under IV. A to offer Free Services at or above the 60% level shall apply only to January through April of each year (the primary tax filing season). Outside of the primary tax filing season, the Consortium shall encourage Consortium members to offer Free Services to the same extent that such services are offered by Consortium members for compensation.

D. The Consortium will be responsible for establishing its governance standards. These standards shall be in accord with applicable law and regulations. The standards shall be consistent with the Consortium performing its obligations under this Agreement and be designed to maximize participation of industry members while meeting the requirements of the Agreement.

E. IRS, in consultation with the Consortium, will develop an assessment process including usability performance measures to measure the extent to which the Agreement is accomplishing the objectives described in I., above. They will include at least:

1. Uptime and reliability through the tax season.

2. Delivery of the taxpayer to the Free Services in the minimum number of clicks consistent with usability design principles and the need to fully inform taxpayers about the free online services. . From the site the taxpayer arrives at by clicking on the Consortium page's link to the Consortium Participant, until the taxpayer arrives at the Free Services, there will be no more clicks than required of such Consortium Participant's paying customers, if applicable, consistent with usability design principles

V. Consortium Web Page Operation

A. The IRS will host and maintain the Web Page. The Consortium will submit to the IRS proposed content for the Web Page, and the IRS shall determine the final content to appear on the Web Page. The IRS will ensure that there are links from appropriate Government sites to the Web Page.

B. The design of the Web Page will conform to the following guidelines:

1. The Consortium will determine rank order placement of links to individual offerings in accordance with reasonable, objective criteria. Each listing of an offering will provide a description of the scope of, and eligibility for, Free Services it offers.

2. The Web Page will provide a link to each Consortium Participant's Free Services entry using a minimum number of clicks.

3. No advertising will appear on the Web Page.

4. The Consortium will create and supply to IRS proposed content for the Web Page using existing IRS content management procedures.

5. The Web Page will be developed using usability design principles and will be updated based upon usability testing and other user feedback.

C. Taxpayers will be able to use Consortium Participants' software to prepare and electronically file their own personal income tax returns using proprietary processes and systems which such Participants host and maintain.

D. The Consortium will promptly notify the IRS of any planned or unplanned unavailability (*i.e.*, downtime) of an offering that is anticipated to exceed five hours in duration. The IRS will annotate that offering's listing on the Web Page with a notice advising the public of the unavailability. The IRS may delist an offeror if its service remains unavailable for more than 24 hours, but shall re-list after restoration of availability; provided, however, if a Consortium Participant repeatedly has periods of such unavailability, the IRS shall be entitled to delist that Consortium Participant.

VI. Marketing

A. The Parties will coordinate with each other their respective marketing of these Free Services to provide uniformity and maximize public awareness. Final decisions on the marketing campaign will remain with the IRS for IRS marketing expenditures and with the Consortium and the Consortium Participants for their marketing expenditures.

B. The IRS will not endorse specific offerings or products, but will promote the availability of the Consortium's Free Services.

C. The Parties will work with the States to explore how this Agreement can support the states. On-line tax preparation and e-filing of both federal and state returns can maximize benefits of this Agreement to taxpayers.

D. The Consortium understands that the IRS may continue to provide Consortium Participants or non-Participants Partners links from Government sites to electronic preparers and filers.

VII. Term of Agreement; Termination

A. This Agreement has an initial term of three years from its effective date with automatic options to renew for successive two-year periods. Representatives from the Parties will meet semiannually to review operation of this Agreement. The Parties will review the terms of this Agreement on an annual basis, and, upon mutual consent, can agree in writing to modify any provision of this Agreement.

B. Either Party may terminate this Agreement for cause if the other Party fails to comply with this Agreement, and such failure is not cured within thirty days of written notice of such failure from the other Party.

C. The IRS may terminate this Agreement without cause, such termination to be effective 12 months after the date of notice of such termination.

D. Should the IRS decide to offer Free Services to taxpayers the IRS shall notify the Consortium immediately. If the IRS gives such notice during the tax season (between January 1st and April 15th, or the last day of the filing deadline if that date is changed from April 15) of any year, the Consortium may, by written notice to the IRS, terminate this Agreement, effective on April 16th (or, if the filing deadline is changed from April 15, on the day following such new deadline) of that year. If the IRS gives such notice between April 16th (or, if the filing deadline is changed from April 15, on the day following such new deadline) and October 15th of any year, then the Consortium may, by written notice to the IRS other than during a tax season, terminate this Agreement, such termination to be effective no fewer than 30 days after the date of the Consortium's notice of such termination. If the IRS gives such notice between October 15 and December 31, the Consortium may by written notice immediately terminate this Agreement at any time on or before December 31.

VIII. Miscellaneous

This Agreement represents the entire agreement between the Parties. This Agreement is governed by Federal law.

Internal Revenue Service

By: _____
Title: _____

Free File Alliance

By: _____
Title: _____

[FR Doc. 02–27909 Filed 10–30–02; 10:08 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 5 Taxpayer Advocacy Panel (Including the States of Texas, Oklahoma, Kansas, Missouri, Nebraska, Iowa, South Dakota, North Dakota, and Minnesota)

ACTION: Notice.

SUMMARY: An open meeting of the Area 5 Taxpayer Advocacy Panel will be conducted (Via teleconference).

DATES: The meeting will be held Monday, November 18, 2002.

FOR FURTHER INFORMATION CONTACT: James McGurn at 1–888–912–1227, or 718–488–3553.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 5 Taxpayer Advocacy Panel will be held Monday, November 18, 2002 from 2:30 p.m. Central Time to 4:30 p.m. Central Time via a telephone conference call. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 718–488–3553, or write to James McGurn, TAP Office, 625 Fulton Street—6th Floor, Brooklyn, NY 11201. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with James McGurn. Mr. McGurn can be reached at 1–888–912–1227 or 718–488–3553.

The agenda will include the following: various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: October 25, 2002.

Cathy VanHorn,

Director, Communication and Liaison.

[FR Doc. 02–28018 Filed 11–1–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Small Business/ Self Employed Ensuring Fair Compliance (Schedule C Non-Filers) Committee of the Taxpayer Advocacy Panel

ACTION: Notice.

SUMMARY: An open meeting of the Small Business/ Self Employed Ensuring Fair Compliance (Schedule C Non-Filers) Committee of the Taxpayer Advocacy Panel will be conducted (via teleconference).

DATES: The meeting will be held Tuesday, November 12, 2002.

FOR FURTHER INFORMATION CONTACT: James McGurn at 1–888–912–1227, or 718–488–3553.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Small Business/Self Employed Ensuring Fair Compliance (Schedule C Non-Filers) Committee of the Taxpayer Advocacy Panel will be held Tuesday, November 12, 2002 from 2 p.m. EST to 4 p.m. EST via a telephone conference call. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 718–488–3553, or write to James McGurn, TAP Office, 625 Fulton Street, 6th Floor, Brooklyn, NY 11201. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with James McGurn. Mr. McGurn can be reached at 1–888–912–1227 or 718–488–3553.

The agenda will include the following: various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: October 25, 2002.

Cathy VanHorn,

Director, Communication and Liaison.

[FR Doc. 02–28019 Filed 11–1–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

President's Task Force To Improve Health Care Delivery for Our Nation's Veterans; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 that a meeting of the President's Task Force to Improve Health Care Delivery for Our Nation's Veterans is scheduled for Wednesday, November 13, 2002, beginning at 9 a.m. and adjourning at 5 p.m. The meeting will be held in the Horizon Ballroom of the Ronald Reagan Building International Trade Center, 1300 Pennsylvania Avenue, NW., Washington, DC and is open to the general public.

The purpose of the President's Task Force to Improve Health Care Delivery for Our Nation's Veterans is to:

(a) Identify ways to improve benefits and services for Department of Veterans Affairs (VA) beneficiaries and Department of Defense (DOD) military retirees who are also eligible for benefits from VA, through better coordination of the activities of the two departments;

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(b) Identify opportunities to remove barriers that impede VA and DOD coordination, including budgeting processes, timely billing, cost accounting, information technology, and reimbursement; and

(c) Identify opportunities through partnership between VA and DOD, to maximize the use of resources and infrastructure, including buildings, information technology and data sharing systems, procurement of supplies, equipment, and services.

The morning and afternoon sessions will be a discussion of format and issues for the Final Report to the President.

Interested parties can provide written comments to Mr. Dan Amon, Communications Director, President's Task Force to Improve Health Care Delivery for Our Nation's Veterans, 1401 Wilson Boulevard, 4th Floor, Arlington, Virginia 22209.

Dated: October 29, 2002.
By direction of the Secretary.

Nora E. Egan,

Committee Management Officer.

[FR Doc. 02–28015 Filed 11–1–02; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register
Vol. 67, No. 213
Monday, November 4, 2002

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF ENERGY

Energy Information Administration

Policy Statement; Solicitation Of Comments On The Proposed Policy For Information In Statistical Tables Based On Confidential Historical Electric Power Survey Data

Correction

In notice document 02–27123 beginning on page 65345 in the issue of Thursday, October 24, 2002, make the following correction:

On page 65345, in the first column, under the **DATES** heading, in the second line, "December 23, 2002." should read " November 25, 2002".

[FR Doc. C2–27123 Filed 11–1–02; 8:45 am]

BILLING CODE 1505–01–D

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

RIN 3245–AF00

Small Business Size Standards; Adoption of Size Standards by 2002 North American Industry Classification System for Size Standards

Correction

In rule document 02–22200 beginning on page 56905 in the issue of Friday, September 6, 2002, make the following correction:

§121.201 [Corrected]

On page 56908, in §121.201, in the table, in **Subsector 237–Heavy and Civil Engineering Construction**, the entry for *EXCEPT,* is corrected as set forth below:

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY–CONTINUED

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
	Sector 23—Construction		
	Subsector 237—Heavy and Civil Engineering Construction		
EXCEPT, ...	Dredging and Surface Cleanup Activities [2]	[2] 17.0	.....

[FR Doc. C2–22200 Filed 11–1;–02; 8:45 am]

BILLING CODE 1505–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 02–ASO–10]

Establishment of Class E5 Airspace; Franklin, NC

Correction

In rule document 02–26284 appearing on page 63828 in the issue of Wednesday, October 16, 2002, make the following correction:

On page 63828, in the first column, under the heading **EFFECTIVE DATE**, in the first line, "January 23, 2002" should read " January 23, 2003".

[FR Doc. C2–26284 Filed 11–1–02; 8:45 am]

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Federal Register

Monday,
November 4, 2002

Part II

Department of the Interior

Fish and Wildlife Service
50 CFR Part 20
Migratory Bird Hunting; Late Seasons and Bag and Possession Limits for Certain Migratory Game Birds; Final Rule Correction

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018–AI30

Migratory Bird Hunting; Late Seasons and Bag and Possession Limits for Certain Migratory Game Birds

Correction

In rule document 02–23804 beginning on page 59358 in the issue of Friday, September 20, 2002 make the following correction:

Starting on page 59361 and concluding on page 59384 the text should read as follows:

	Sora & Virginia Rails	Clapper & King Rails	Woodcock	Common Snipe
Tennessee				
Reelfoot Zone	Nov. 9-Nov. 10 & Nov. 30-Jan. 20	Closed	Oct. 26-Dec. 9	Nov. 14-Feb. 28
State Zone	Nov. 23-Nov. 24 & Nov. 30-Jan. 20	Closed	Oct. 26-Dec. 9	Nov. 14-Feb. 28
Wisconsin				
North Zone	Sept. 28-Nov. 28	Closed	Sept. 21-Nov. 4	Sept. 28-Nov. 28
South Zone	Oct. 5-Oct. 13 & Oct. 19-Dec. 8	Closed	Sept. 21-Nov. 4	Oct. 5-Oct. 13 & Oct. 19-Dec. 8
CENTRAL FLYWAY				
New Mexico (10) (1)	Oct. 5-Dec. 13	Closed	Closed	Oct. 5-Jan. 19
PACIFIC FLYWAY				
Arizona (17)				
North Zone	Closed	Closed	Closed	Oct. 19-Jan. 26
South Zone	Closed	Closed	Closed	Oct. 19-Jan. 26
California	Closed	Closed	Closed	Oct. 19-Feb. 2
Idaho				
Zone 1	Closed	Closed	Closed	Oct. 5-Jan. 17
Zones 2 & 3	Closed	Closed	Closed	Oct. 12-Jan. 24
Nevada				
Clark County	Closed	Closed	Closed	Oct. 12-Jan. 24
Rest of State	Closed	Closed	Closed	Oct. 12-Jan. 24
New Mexico (10) (1)	Oct. 5-Dec. 13	Closed	Closed	Oct. 5-Jan. 19

Note – The following annual regulations provided for by §§20.104, 20.105, 20.106, 20.107, and 20.109 of 50 CFR part 20 will not appear in the Code of Federal Regulations because of their seasonal nature.

CHECK STATE REGULATIONS FOR ADDITIONAL RESTRICTIONS AND DELINEATIONS OF GEOGRAPHICAL AREAS. SPECIAL RESTRICTIONS MAY APPLY ON FEDERAL AND STATE PUBLIC HUNTING AREAS AND FEDERAL INDIAN RESERVATIONS.

2. Section 20.104 is amended by adding the entries for the following States in alphabetical order to read as follows:

§20.104 Seasons, limits, and shooting hours for rails, woodcock, and common snipe.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits for the species designated in this section are prescribed as follows:

Shooting and hawking hours are one-half hour before sunrise until sunset, except as otherwise restricted by State regulations. Area descriptions were published in the August 23 and September 19 Federal Register.

NOTE: The following seasons are in addition to the seasons published previously in the August 29, 2002, Federal Register (67 FR 55624).

	Sora & Virginia Rails	Clapper & King Rails	Woodcock	Common Snipe
Daily bag limit	25 (1)	15 (2)	3	8
Possession limit	25 (1)	30 (2)	6	16
ATLANTIC FLYWAY				
Maine	Sept. 2-Nov. 9	Closed	Oct. 1-Oct. 30	Sept. 2-Dec. 14
Massachusetts (4)	Sept. 2-Nov. 9	Closed	Oct. 17-Oct. 26 & Oct. 28-Nov. 16	Sept. 2-Dec. 14
Vermont	Closed	Closed	Oct. 5-Nov. 3	Oct. 9-Dec. 15
MISSISSIPPI FLYWAY				
Louisiana	Sept. 21-Sept. 29 & Nov. 9-Jan. 9	Sept. 21-Sept. 29 & Nov. 9-Jan. 9	Dec. 16-Jan. 31	Nov. 2-Dec. 8 & Dec. 14-Feb. 21

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	Sora & Virginia Rails	Clapper & King Rails	Woodcock	Common Snipe
Oregon				
Zone 1	Closed	Closed	Closed	Oct. 5-Nov. 22 & Dec. 28-Feb. 23
Zone 2	Closed	Closed	Closed	Oct. 5-Nov. 22 & Dec. 28-Feb. 23
Utah	Closed	Closed	Closed	Oct. 5-Jan. 18
Washington				
East Zone	Closed	Closed	Closed	Oct. 5-Oct. 16 & Oct. 26-Jan. 26
West Zone	Closed	Closed	Closed	Oct. 5-Oct. 16 & Oct. 26-Jan. 26

• • • • • •

(1) The bag and possession limits for sora and Virginia rails apply singly or in the aggregate of these species.

(2) All bag and possession limits for clapper and king rails apply singly or in the aggregate of the two species and, unless otherwise specified, the limits are in addition to the limits on sora and Virginia rails in all States. In Connecticut, Delaware, Maryland, and New Jersey, the limits for clapper and king rails are 10 daily and 20 in possession.

• • • • • •

(4) In Massachusetts, the sora daily limits are 5 daily and 5 in possession; the Virginia rail limits are 10 daily and 10 in possession.

• • • • • •

(16) In New Mexico, the rail daily bag and possession limits are 10 and 20, respectively.
(17) In Arizona, Ashurst Lake in Unit 5B is closed to common snipe hunting.

3. In Section 20.105, paragraphs (a), (b), and (f) are amended by adding the entries for the following States in alphabetical order and paragraph (e) is revised to read as follows:

§20.105 Seasons, limits, and shooting hours for waterfowl, coots, and gallinules.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits for the species designated in this section are prescribed as follows:

Shooting and hawking hours are one-half hour before sunrise until sunset, except as otherwise restricted by State regulations. Area descriptions were published in the August 23 and September 19 Federal Registers.

(a) Common Moorhens and Purple Gallinules
(Atlantic, Mississippi, and Central Flyways).

NOTE: The following seasons are in addition to the seasons published previously in the August 29, 2002, Federal Register (67 FR 45730). The zones named in this paragraph are the same as those used for setting duck seasons.

	Season Dates	Limits Bag	Limits Possession
ATLANTIC FLYWAY			
• • • • • •			
Georgia	Nov. 23-Dec. 1 & Dec. 7-Jan. 20	15	30
• • • • • •			
Virginia	Oct. 8-Oct. 12 &	15	30
	Nov. 16-Dec. 7 &	15	30
	Dec. 14-Jan. 26	15	30
West Virginia			
Zone 1	Oct. 1-Oct. 12 &	15	30
	Dec. 2-Jan. 18	15	30
Zone 2	Oct. 1-Oct. 12 &	15	30
	Nov. 25-Jan. 11	15	30
• • • • • •			
MISSISSIPPI FLYWAY			
• • • • • •			
Louisiana	Sept. 21-Sept. 29 &	15	30
	Nov. 9-Jan. 8	15	30
Michigan			
North Zone	Sept. 28-Nov. 24 &	15	30
	Nov. 30-Dec. 1	15	30
Middle Zone	Oct. 12-Dec. 8 &	15	30
	Jan. 4-Jan. 5	15	30
South Zone	Oct. 12-Dec. 8 &	15	30
	Jan. 4-Jan. 5	15	30
Minnesota (2)	Sept. 28-Nov. 26	15	30
• • • • • •			
Tennessee			
Reelfoot Zone	Nov. 9-Nov. 10 &	15	30
	Nov. 30-Jan. 19	15	30
State Zone	Nov. 23-Nov. 24 &	15	30
	Nov. 30-Jan. 19	15	30

	Season Dates	Limits Bag	Limits Possession
Wisconsin			
North Zone	Sept. 28-Nov. 26	10	20
South Zone	Oct. 5-Oct. 13 & Oct. 19-Dec. 8	10	20
• • • • • •			
PACIFIC FLYWAY			
All States	Seasons are in aggregate with coots and listed in paragraph (e).		

• • • • • •

(2) In Minnesota, the daily bag limit is 15 and the possession limit is 30 coots and moorhens in the aggregate.

(b) Sea Ducks (scoter, eider, and oldsquaw ducks in Atlantic Flyway)

NOTE: The following seasons are in addition to the seasons published previously in the August 29, 2002, Federal Register (67 FR 45730).

Within the special sea duck areas, the daily bag limit is 7 sea ducks of which no more than 4 may be scoters. Possession limits are twice the daily bag limit. These limits may be in addition to regular duck bag limits only during the regular duck season in the special sea duck hunting areas.

	Season Dates	Limits Bag	Limits Possession
Georgia	Nov. 23-Dec. 1 &	15	30
	Dec. 12-Jan. 20	15	30
• • • • • •			
Maine (1)	Oct. 1-Jan. 15	7	14
Maryland	Oct. 5-Jan. 20	5	10
Massachusetts (2)	Oct. 5-Jan. 20	7	14
• • • • • •			
North Carolina	Oct. 1-Jan. 20	7	14
• • • • • •			
South Carolina	Oct. 5-Jan. 20	7	14
Virginia	Oct. 9-Jan. 20	7	14

Note: Notwithstanding the provisions of this part 20, the shooting of crippled waterfowl from a motorboat under power will be permitted in Maine, Massachusetts, New Hampshire, Rhode Island, Connecticut, New York, Delaware, Virginia, and Maryland in those areas described, delineated, and designated in their respective hunting regulations as special sea duck hunting areas.

(1) In Maine, the daily bag limit for elders is 5, possession 10.
(2) In Massachusetts, the daily bag limit may include no more than 4 elders (only 1 of which may be a hen) and 4 long-tailed ducks.

(e) Waterfowl, Coots, and Pacific Flyway Seasons for Common Moorhens and Purple Gallinules

Definitions

The Atlantic Flyway: Includes Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and West Virginia.

The Mississippi Flyway: Includes Alabama, Arkansas, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Ohio, Tennessee, and Wisconsin.

The Central Flyway: Includes Colorado (east of the Continental Divide), Kansas, Montana (Blaine, Carbon, Fergus, Judith Basin, Stillwater, Sweetgrass, Wheatland, and all counties east thereof), Nebraska, New Mexico (east of the Continental Divide except that the Jicarilla Apache Indian Reservation is in the Pacific Flyway), North Dakota, Oklahoma, South Dakota, Texas, and Wyoming (east of the Continental Divide).

The Pacific Flyway: Includes the States of Arizona, California, Colorado (west of the Continental Divide), Idaho, Montana (including and to the west of Hill, Chouteau, Cascade, Meagher, and Park Counties), Nevada, New Mexico (the Jicarilla Apache Indian Reservation and west of the Continental Divide), Oregon, Utah, Washington, and Wyoming (west of the Continental Divide including the Great Divide Basin).

Light Geese: Includes lesser snow (including blue) geese, greater snow geese, and Ross' geese.

Dark Geese: Includes Canada geese, white-fronted geese, emperor geese, brant (except in California, Oregon, Washington, and the entire Atlantic Flyway) and all other geese except light geese.

ATLANTIC FLYWAY

Flyway-wide Regulations

Duck Limits: The daily bag limit of 6 ducks may include no more than 4 mallards (2 hen mallards), 3 scaup, 1 black duck, 1 pintail, 1 mottled duck, 2 wood ducks, 2 redheads, and 1 fulvous tree duck. The possession limit is twice the daily bag limit.

Harlequin Ducks: All areas of the Flyway are closed to harlequin duck hunting.

Canvasbacks: All areas of the Flyway are closed to canvasback hunting.

Merganser Limits: The merganser limits include no more than 1 hooded merganser daily and 2 in possession.

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	Season Dates	Limits: Bag	Limits: Possession
Delaware (cont.):			
Rest of State (3)	Oct. 2-Nov. 13 &	15	–
	Nov. 28-Jan. 17 &	15	–
	Jan. 31-Mar. 10	15	–
Brant	Nov. 23-Jan. 31	3	6
Florida			
Ducks:			
Pintails	Nov. 23-Dec. 1 &	6	12
	Dec. 7-Dec. 27		
Other ducks	Nov. 23-Dec. 1 &		
	Dec. 7-Jan. 26		
Mergansers	Same as for Other ducks	5	10
Coots	Same as for Other ducks	15	30
Canada Geese (4)	Nov. 23-Jan. 30	5	10
Light Geese (5)	Nov. 23-Dec. 1 &	15	–
	Dec. 7-Jan. 26	15	–
Georgia			
Ducks:			
Pintails	Dec. 28-Jan. 26	6	12
Other ducks	Nov. 23-Dec. 1 &		
	Dec. 7-Jan. 26		
Mergansers	Nov. 23-Dec. 1 &	5	10
Coots	Nov. 23-Dec. 1 &	15	30
	Dec. 7-Jan. 20		
Canada Geese (special season)	Nov. 23-Dec. 1 &	15	30
	Dec. 7-Jan. 20		
Light Geese	Nov. 23-Dec. 1 &	3	6
	Dec. 7-Jan. 21	3	6
Brant	Same as for Canada geese	2	4
	Closed	–	–
Maine			
Ducks (6):			
North Zone:		4	8
Pintails	Oct. 1-Nov. 4		
Other ducks	Oct. 1-Dec. 6		
South Zone:			
Pintails	Oct. 1-Oct. 19 &		
	Nov. 4-Nov. 19		
Other ducks	Oct. 1-Oct. 19 &		
	Nov. 4-Dec. 23		
Mergansers	Same as for Other ducks	5	10
Coots	Same as for Other ducks	5	10
Canada Geese:			
North Zone	Oct. 1-Dec. 9	2	4
South Zone	Oct. 1-Nov. 2 &	2	4
	Nov. 18-Dec. 23	2	4
Light Geese	Oct. 1-Jan. 31	15	–
Brant	Oct. 1-Nov. 27	2	4

	Season Dates	Limits: Bag	Limits: Possession
Massachusetts (cont.)			
Coastal Zone	Same as for ducks &	15	30
	Jan. 20-Feb. 15	15	30
Brant:			
Western & Central Zone	Closed	–	–
Coastal Zone	Nov. 11-Jan. 18	2	4
New Hampshire			
Ducks :		6	12
Inland Zone:			
Pintails	Oct. 2-Oct. 31		
Other ducks	Oct. 2-Nov. 5 &		
	Nov. 27-Dec. 21		
Coastal Zone:			
Pintails	Oct. 3-Oct. 20 &		
	Nov. 27-Dec. 8 &		
Other ducks	Oct. 3-Oct. 20 &		
	Nov. 27-Jan. 7		
Mergansers	Same as ducks	5	10
Coots	Same as ducks	15	30
Canada Geese:			
Inland Zone	Oct. 2-Nov. 5 &	2	4
	Nov. 27-Dec. 21	2	4
Coastal Zone	Oct. 3-Oct. 20 &	2	4
	Nov. 27-Jan. 7	2	4
Light Geese:			
Inland Zone	Oct. 2-Dec. 21	15	–
Coastal Zone	Oct. 3-Jan. 7	15	–
Brant:			
Inland Zone	Oct. 2-Nov. 5 &	3	6
	Nov. 27-Dec. 21	3	6
Coastal Zone	Oct. 3-Oct. 20 &	3	6
	Nov. 27-Jan. 7	3	6
New Jersey			
Ducks (10):		6	12
North Zone:			
Pintails	Nov. 18-Nov. 30 &		
	Dec. 14-Jan. 2		
Other ducks	Oct. 12-Nov. 2 &		
	Nov. 18-Jan. 2		
South Zone:			
Pintails	Oct. 19-Oct. 26 &		
	Nov. 8-Nov. 30		
Other ducks	Oct. 19-Nov. 30 &		
	Dec. 13-Jan. 8		
Coastal Zone:			
Pintails	Nov. 2-Nov. 12 &		
	Dec. 7-Dec. 31		
Other ducks	Nov. 2-Nov. 12 &		
	Nov. 28-Jan. 25		
Mergansers	Same as ducks	5	10

	Season Dates	Limits: Bag	Limits: Possession
Connecticut			
Ducks (1):		6	12
North Zone:			
Pintails	Oct. 9-Oct. 19 &		
	Nov. 15-Dec. 7		
Other ducks	Oct. 9-Oct. 19 &		
	Nov. 15-Jan. 11		
South Zone:			
Pintails	Oct. 9-Oct. 15 &		
	Nov. 26-Dec. 21		
Other ducks	Oct. 9-Oct. 15 &		
	Nov. 26-Jan. 25		
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Canada Geese:			
NAP Zone:			
L-Unit	Oct. 1-Oct. 31 &	3	6
	Nov. 26-Jan. 14	3	6
H-Unit			
North Zone	Oct. 1-Oct. 19 &	2	4
	Nov. 26-Jan. 14	2	4
South Zone	Oct. 1-Oct. 19 &	2	4
	Nov. 26-Jan. 14	2	4
(special season)	Jan. 15-Feb. 15	5	10
AP Unit	Nov. 1-Nov. 9 &	2	4
	Nov. 23-Jan. 4	2	4
Light Geese:			
North Zone	Oct. 10-Feb. 8	15	–
South Zone	Oct. 10-Feb. 8	15	–
Brant:			
North Zone	Nov. 4-Jan. 11	3	6
South Zone	Nov. 18-Jan. 26	3	6
Delaware			
Ducks :		6	12
Pintails	Oct. 2-Oct. 6 &		
	Nov. 1-Nov. 11 &		
	Nov. 28-Dec. 13		
Other ducks (2)	Oct. 2-Oct. 6 &		
	Nov. 1-Nov. 11 &		
	Nov. 28-Jan. 17		
Mergansers	Same as for Other ducks	5	10
Coots	Same as for Other ducks	15	30
Canada Geese	Nov. 26-Dec. 7 &	1	2
	Dec. 11-Jan. 17	1	2
Light Geese:			
Bombay Hook NWR Zone (2)	Oct. 14-Jan. 17 &	15	–
	Feb. 3-Mar. 7	15	–

	Season Dates	Limits: Bag	Limits: Possession
Maryland			
Ducks (7):		5	10
Pintails	Oct. 5-Oct. 12 &		
	Dec. 31-Jan. 25		
Other ducks	Oct. 5-Oct. 12 &		
	Nov. 9-Nov. 29 &		
	Dec. 17-Jan. 25		
Mergansers	Same as for Other ducks	5	10
Coots	Same as for Other ducks	15	30
Canada Geese:			
RP Zone	Nov. 18-Nov. 29 &	5	10
	Dec. 12-Jan. 14	5	10
AP Zone	Nov. 19-Nov. 29 &	1	2
	Dec. 17-Jan. 25	1	2
Light Geese (8)	Oct. 17-Nov. 29 &	15	–
	Dec. 9-Jan. 31 &	15	–
	Feb. 1-Mar. 10	15	–
Brant	Nov. 9-Nov. 29 &	3	6
	Dec. 3-Jan. 20	3	6
Massachusetts			
Ducks (9):		6	12
Western Zone:			
Pintails	Oct. 18-Nov. 18		
Other ducks	Oct. 18-Dec. 23		
Central Zone:			
Pintails	Oct. 18-Nov. 18		
Other ducks	Oct. 18-Nov. 30 &		
	Dec. 21-Jan. 11		
Coastal Zone:			
Pintails	Oct. 18-Oct. 28 &		
	Nov. 23-Dec. 14		
Other ducks	Oct. 18-Oct. 28 &		
	Nov. 23-Jan. 18		
Mergansers	Same as for Other ducks	5	10
Coots	Same as for Other ducks	15	30
Canada Geese:			
NAP Zone			
Central Zone:	Oct. 15-Nov. 30 &	2	4
	Dec. 21-Jan. 11	2	4
(special season)	Jan. 18-Feb. 15	2	4
Coastal Zone:	Oct. 15-Oct. 28 &	2	4
	Nov. 23-Jan. 18	2	4
(special season)	Jan. 28-Feb. 15	5	10
AP Zone	Oct. 25-Nov. 30 &	1	2
	Dec. 16-Dec. 31	1	2
Light Geese:			
Western Zone	Same as for ducks	15	30
Central Zone	Same as for ducks &	15	30
	Jan. 18-Feb. 18	15	30

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	Season Dates	Limits Bag	Possession
New Jersey (cont.)			
Coots	Same as for Other ducks	15	30
Canada Geese:			
North Zone	Nov. 16-Nov. 30 &	2	4
	Dec. 13-Jan. 18	2	4
South Zone	Nov. 16-Nov. 30 &	2	4
	Dec. 13-Jan. 18	2	4
Coastal Zone	Nov. 28-Jan. 18	2	4
(special season)	Jan. 20-Feb. 15	5	10
Light Geese:			
North Zone	Oct. 12-Feb. 13	15	–
South Zone	Oct. 18-Oct. 28 &	15	–
	Nov. 14-Mar. 10	15	–
Coastal Zone	Oct. 2-Feb. 3	15	–
Brant:			
North Zone	Same as for Other ducks	3	6
South Zone	Same as for Other ducks	3	6
Coastal Zone	Same as for Other ducks	3	6
New York			
Ducks (11):		6	12
Long Island Zone:			
Pintails	Nov. 22-Dec. 1 &		
	Dec. 8-Dec. 27		
Other ducks	Nov. 22-Dec. 1 &		
	Dec. 8-Jan. 26		
Lake Champlain Zone:			
Pintails	Oct. 8-Oct. 13 &		
	Oct. 22-Nov. 15		
Other ducks	Oct. 8-Oct. 13 &		
	Oct. 22-Dec. 15		
Northeastern Zone:			
Pintails	Oct. 5-Nov. 3		
Other ducks	Oct. 5-Nov. 17 &		
	Nov. 23-Dec. 8		
Southeastern Zone:			
Pintails	Oct. 12-Oct. 20 &		
	Nov. 9-Nov. 29		
Other ducks	Oct. 12-Oct. 20 &		
	Nov. 9-Dec. 28		
Western Zone:			
Pintails	Oct. 18-Nov. 17		
Other ducks	Oct. 19-Dec. 5 &		
	Dec. 27-Jan. 7		
Mergansers	Same as for Other ducks	5	10
Coots	Same as for Other ducks	15	30
Canada Geese:			
Western Long Island (NAP)	Nov. 22-Jan. 30	3	6
Eastern Long Island (NAP)	Nov. 22-Dec. 1 &	2	4
	Dec. 8-Jan. 26	2	4
Lake Champlain (AP) Zone	Oct. 26-Dec. 8	2	4

	Season Dates	Limits Bag	Possession
New York (cont.)			
Saint Lawrence (RP) Zone	Oct. 26-Jan. 3	5	10
Northeast (AP) Zone	Oct. 26-Dec. 8	2	4
East Central (AP) Zone	Oct. 26-Nov. 16 &	2	4
	Dec. 7-Dec. 29	2	4
West Central (AP) Zone	Oct. 26-Nov. 16 &	2	4
	Dec. 27-Jan. 18	2	4
Southwest (SJBP) Zone	Oct. 26-Jan. 3	2	4
South Central (RP)	Oct. 26-Jan. 3	5	10
(special season)	Feb. 8-Feb. 14	5	10
Light Geese:			
Long Island Zone	Oct. 5-Oct. 23 &	15	– – – – –
	Nov. 22-Dec. 1 &	15	– – – – –
	Dec. 23-Mar. 10	15	– – – – –
Lake Champlain Zone	Oct. 8-Dec. 27 &	15	– – – – –
	Feb.24-Mar. 10	15	– – – – –
Northeastern Zone	Oct. 5-Jan. 4 &	15	– – – – –
	Feb. 24-Mar. 10	15	– – – – –
Southeastern Zone	Oct. 12-Jan. 11 &	15	– – – – –
	Feb. 24-Mar. 10	15	– – – – –
Western Zone	Oct. 18-Jan. 18 &	15	– – – – –
	Feb. 24-Mar. 10	15	– – – – –
Brant:			
Long Island Zone	Nov. 22-Dec. 1 &	3	6
	Dec. 8-Jan. 26	3	6
Lake Champlain Zone	Oct. 26-Dec. 9	3	6
Northeastern Zone	Oct. 5-Dec. 3	3	6
Southeastern Zone	Oct. 12-Dec. 10	3	6
Western Zone	Oct. 12-Dec. 10	3	6
North Carolina			
Ducks (12):		6	12
Pintails	Dec. 23-Jan. 25		
Other ducks	Oct. 2-Oct. 5 &		
	Nov. 9-Nov. 30 &		
	Dec. 14-Jan. 25		
Mergansers	Same as for Other ducks	5	10
Coots	Same as for Other ducks	15	30
Canada Geese:			
Resident Population Hunt Zone	Nov. 9-Nov. 30 &	5	10
	Dec. 14-Jan. 25	5	10
Southern James Bay Hunt Zone	Oct. 12-Oct. 26 &	2	4
Northeast Hunt Zone	Closed		
Light Geese	Oct. 21-Oct. 31 &	15	–
	Nov. 18-Mar. 10	15	–
Brant	Nov. 23-Jan. 31	3	6
Pennsylvania			
Ducks:		6	12
North Zone:			
Pintails	Oct. 5-Oct. 19 &		
	Nov. 12-Nov. 30		

	Season Dates	Limits Bag	Possession
Pennsylvania (cont.)			
Other ducks	Oct. 5-Oct. 19 &		
	Nov. 12-Jan. 4		
South Zone:			
Pintails	Oct. 5-Oct. 12 &		
	Nov. 15-Dec. 11		
Other ducks	Oct. 5-Oct. 12 &		
	Nov. 15-Jan. 15		
Northwest Zone:			
Pintails	Oct. 5-Oct. 19 &		
	Nov. 9-Nov. 28		
Other ducks	Oct. 5-Oct. 19 &		
	Nov. 9-Jan. 2		
Lake Erie Zone:			
Pintails	Oct. 28-Nov. 16 &		
	Nov. 25-Dec. 7		
Other ducks	Oct. 28-Nov. 16 &		
	Nov. 25-Jan. 11		
Mergansers	Same as for Other ducks	5	10
Coots	Same as for Other ducks	15	30
Canada Geese:			
Eastern (AP) Zone	Nov. 15-Nov. 30 &	2	4
	Dec. 16-Jan. 20	2	4
(late season area)	Nov. 15-Nov. 30 &	5	10
	Dec. 10-Jan. 14	5	10
SJBP Zone	Nov. 15-Dec. 31	2	4
(special season)	Jan. 15-Feb. 15	5	10
Pymatuning Zone	Nov. 15-Dec. 25	1	2
Resident (RP) Zone	Nov. 15-Nov. 30 &	5	10
	Dec. 13-Feb. 15	5	10
Special Late Season (portion of AP Zone)	Jan. 15-Feb. 15	5	10
Light Geese	Nov. 7-Mar. 10	15	–
Brant	Oct. 5-Dec. 13	3	6
Rhode Island			
Ducks:		6	12
Pintails	Dec. 28-Jan. 26		
Other ducks	Oct. 11-Oct. 14 &		
	Nov. 20-Nov. 24 &		
	Dec. 7-Jan. 26		
Mergansers	Same as for Other ducks	5	10
Coots	Same as for Other ducks	15	30
Canada Geese	Nov. 16-Nov. 24 &	2	4
	Dec. 7-Jan. 26	2	4
(special season)	Jan. 30-Feb. 15	5	10
Light Geese	Oct. 12-Jan. 26	15	–
Brant	Nov. 20-Nov. 24 &	2	4
	Dec. 7-Jan. 26	2	4
South Carolina			
Ducks (13):		6	12
Pintails	Dec. 28-Jan. 26		

	Season Dates	Limits Bag	Possession
South Carolina (cont.)			
Other ducks	Nov. 27-Nov. 30 &		
	Dec. 12-Jan. 26		
Mergansers	Same as for Other ducks	5	10
Coots	Same as for Other ducks	15	30
Canada Geese (special season)	Nov. 27-Nov. 30 &	5	10
	Dec. 12-Feb. 15	5	10
Light Geese	Same as for ducks	5	10
Brant	Dec. 12-Jan. 26	3	6
Vermont			
Ducks:		6	12
Lake Champlain Zone:			
Pintails	Oct. 8-Oct. 13 &		
	Oct. 22-Nov. 15		
Other ducks	Oct. 8-Oct 13 &		
	Oct. 22-Dec. 15		
Interior Zone:			
Pintails	Oct. 8-Nov. 7		
Other ducks	Oct. 8-Nov. 14 &		
	Nov. 23-Dec. 15		
Connecticut River Zone:			
Pintails	Oct. 2-Oct. 31		
Other ducks	Oct. 2-Nov. 5 &		
	Nov. 27-Dec. 21		
Mergansers	Same as for Other ducks	5	10
Coots	Same as for Other ducks	15	30
Canada Geese			
Lake Champlain Zone:	Oct. 26-Dec. 8	2	4
Interior Zone:	Oct. 26-Dec. 8	2	4
Connecticut River Zone:	Oct. 2-Nov. 5 &	2	4
	Nov. 27-Dec. 21	2	4
Light Geese			
Lake Champlain Zone:	Oct. 8-Dec. 27 &	15	– – – – –
	Feb. 24-Mar. 10	15	– – – – –
Interior Zone:	Oct. 8-Dec. 27 &	15	– – – – –
	Feb. 24-Mar. 10	15	– – – – –
Connecticut River Zone:	Oct. 2-Dec. 21	15	– – – – –
Brant			
Lake Champlain Zone:	Oct. 8-Dec. 7	2	4
Interior Zone:	Oct. 8-Dec. 7	2	4
Connecticut River Zone:	Oct. 2-Nov. 5 &	2	4
	Nov. 27-Dec. 21	2	4
Virginia			
Ducks (14):		5	10
Pintails	Dec. 23-Jan. 26		

	Season Dates	Limits Bag	Limits Possession
Virginia (cont.)			
Other ducks	Oct. 9-Oct. 12 & Nov. 16-Jan. 7 & Dec. 14-Jan. 25		
Mergansers	Same as for Other ducks	5	10
Coots	Same as for Other ducks	15	30
Canada Geese:			
Back Bay Area	Closed	--	--
Eastern (AP) Zone	Nov. 22-Nov. 30 & Dec. 14-Jan. 25	1	2
Western (SJBP) Zone	Nov. 16-Nov. 30 & Dec. 14-Jan. 14	2	4
Western (RP) Zone	Nov. 16-Nov. 30 & Dec. 14-Jan. 14	2	4
(special season)	Jan. 15-Feb. 15	4	8
Light Geese	Nov. 6-Mar. 10	15	--
Brant	Nov. 16-Dec. 7 & Dec. 10-Jan. 25	3	6
West Virginia			
Ducks (15):		6	12
Zone 1:			
Pintails	Dec. 20-Jan. 18		
Other ducks	Oct. 1-Oct. 12 & Dec. 2-Jan. 18		
Zone 2:			
Pintails	Dec. 13-Jan. 11		
Other ducks	Oct. 1-Oct. 12 & Nov. 28-Jan. 11		
Mergansers	Same as for Other ducks	5	10
Coots	Same as for Other ducks	15	30
Canada Geese:			
Zone 1	Oct. 1-Oct. 12 &	3	6
	Dec. 5-Jan. 31	3	6
Zone 2	Oct. 1-Oct. 26 &	3	6
	Dec. 19Jan. 31	3	6
Light Geese:			
Zone 1	Same as for Canada geese	5	10
Zone 2	Same as for Canada geese	5	10
Brant	Same as for Other ducks	3	6

(1) In Connecticut, the season is closed for black ducks prior to November 16 in the North Zone and prior to November 20 in the South Zone.
(2) In Delaware, the January 31 to March 10 Rest of State snow goose season is open Mondays, Wednesdays, Fridays, and Saturdays only.
(3) In Delaware, the February 3 to March 7 Bombay Hook NWR snow goose season is open Mondays, Wednesdays, and Fridays only.
(4) In Florida, the Canada goose season is only open in the Florida waters of Lake Seminole in Jackson County that are south of SR2, north of the Jim Woodruff Dam, and east of SR271.
(5) In Florida, the light goose season is only open north and west of the Suwannee River.
(6) In Maine, the season is closed for black ducks October 1 through October 4; in addition to the daily bag limit, 2 additional teal may be taken. A possession limit of 12 ducks is permitted provided it includes 4 or more teal.
(7) In Maryland, the black duck season is closed October 5 through October 12. In addition to the daily bag limit, 1 additional teal may be taken.
(8) In Maryland, the February 1 to March 10 snow goose season is open Mondays, Wednesdays, Fridays, and Saturdays only.
(9) In Massachusetts, the daily bag limit may include no more than 4 of any single species in addition to the flyway-wide bag restrictions.
(10) In New Jersey, the daily bag limit for bufflehead is 6.
(11) In New York, in the Lake Champlain Zone, the daily bag limit may include no more than 4 goldeneyes.
(12) In North Carolina, the season is closed for black ducks October 2 through October 6 and November 9 through November 30. The daily bag limit for Black and Mottled ducks are combined with no more than 1 of either sex allowed in the bag.
(13) In South Carolina, the daily bag limit of 6 may not exceed 1 female mallard and 1 black duck or 1 mottled duck in the aggregate.
(14) In Virginia, the season is closed for black ducks October 9 through October 12.
(15) In West Virginia, the daily bag limit may include no more than 4 long-tailed ducks and the season is closed for scoters, eiders, whistling ducks, and mottled ducks.

MISSISSIPPI FLYWAY

Flyway-wide Restrictions

Duck Limits: The daily bag limit of 6 ducks may include no more than 4 mallards (no more than 2 of which may be females), 1 black duck, 1 pintail, 2 redheads, 3 scaup, and 2 wood ducks. The season on canvasbacks is closed. The possession limit is twice the daily bag limit.

Merganser Limits: The merganser limits include no more than 1 hooded merganser daily and 2 in possession. In states that include mergansers in the duck bag limit, the daily limit is the same as the duck bag limit, of which only 1 daily and 2 in possession may be hooded mergansers.

	Season Dates	Limits Bag	Limits Possession
Alabama			
Ducks:		6	12
North Zone:			
Pintails	Dec. 28-Jan. 26		
Other ducks	Nov. 28-Jan. 26		
South Zone:			
Pintails	Dec. 28-Jan. 26		
Other ducks	Nov. 28-Jan. 26		
Mergansers	Same as for Other ducks	5	10
Coots	Same as for Other ducks	15	30
Geese:			
Dark Geese:			
North Zone:			
SJBP Zone	Dec. 14-Jan. 30	2	4
Rest of North Zone	Sept. 28-Oct. 19 & Dec. 14-Jan. 30	2	4
South Zone	Sept. 28-Oct. 19 & Dec. 14-Jan. 30	2	4
Light Geese	Sept. 28-Oct. 19 & Dec. 14-Jan. 30	5	5
Arkansas			
Ducks (1):		5	10
Pintails	Nov. 23-Nov. 29 & Jan. 4-Jan. 26		

	Season Dates	Limits Bag	Limits Possession
Arkansas (cont.)			
Other ducks	Nov. 23-Dec. 8 & Dec. 14-Jan. 26		
Mergansers	Same as for Other ducks	5	10
Coots	Same as for Other ducks	15	30
Geese:			
Canada:			
Northwest Zone	Oct. 5-Oct. 14 & Jan. 6-Jan. 31	2	4
Remainder of State	Jan. 9-Jan. 31	2	4
White-fronted	Nov. 7-Jan. 31	2	4
Brant	Closed	--	--
Light Geese	Nov. 7-Jan. 31	20	--
Illinois			
Ducks (2):		6	12
North Zone:			
Pintails	Closed		
Other ducks	Oct. 17-Dec. 15		
Central Zone:			
Pintails	Closed		
Other ducks	Oct. 24-Dec. 22		
South Zone:			
Pintails	Closed		
Other ducks	Nov. 7-Jan. 5		
Mergansers	Same as for Other ducks	5	10
Coots	Same as for Other ducks	15	30
Geese:			
Canada (3):			
North Zone:			
Northern Illinois Quota Zone (3)	Oct. 17-Jan. 4	2	10
Rest of North Zone	Oct. 17-Jan. 4	2	10
Central Zone:			
Central Illinois Quota Zone (3)	Oct. 24-Oct. 27 & Nov. 17-Jan. 31	2	10
Rest of Central Zone	Oct. 24-Oct. 27 & Nov. 17-Jan. 31	2	10
South Zone:			
Southern Illinois Quota Zone (3)(4)	Nov. 7-Nov. 10 & Dec. 7-Jan. 31	2	10
Rest of South Zone	Nov. 7-Nov. 10 & Dec. 7-Jan. 31	2	10
White-fronted (5):			
North Zone	Oct. 17-Jan. 4	2	4
Central Zone	Oct. 24-Oct. 27 & Nov. 17-Jan. 31	2	4
South Zone	Nov. 7-Nov. 10 & Dec. 7-Jan. 31	2	4
Brant (5)	Same as for Light Geese	1	2

	Season Dates	Limits Bag	Limits Possession
Illinois (cont.)			
Light Geese (5):			
North Zone	Oct. 17-Jan. 4	20	--
Central Zone	Oct. 24-Jan. 31	20	--
South Zone	Nov. 7-Jan. 31	20	--
Indiana			
Ducks:		6	12
North Zone:			
Pintails	Oct. 12-Oct. 14 & Oct. 26-Nov. 21		
Other ducks	Oct. 12-Oct. 14 & Oct. 26-Dec. 21		
South Zone:			
Pintails	Oct. 26-Nov. 1 & Nov. 23-Dec. 15		
Other ducks	Oct. 26-Nov. 1 & Nov. 23-Jan. 14		
Ohio River Zone:			
Pintails	Oct. 26-Oct. 27 & Nov. 23-Dec. 20		
Other ducks	Oct. 26-Oct. 27 & Nov. 23-Jan. 18		
Mergansers	Same as for Other ducks	5	10
Coots	Same as for Other ducks	15	30
Geese:			
Canada:			
North Zone:			
SJBP Area	Oct. 12-Oct. 14 & Oct. 26-Dec. 11	2	4
Rest of North Zone	Oct. 12-Oct. 14 & Oct. 26-Dec. 21	2	4
South Zone:	Nov. 23-Nov. 26 & Dec. 7-Jan. 31	2	4
Ohio River Zone:	Dec. 3-Jan. 31	2	4
White-fronted and Brant	Oct. 12-Oct. 14 & Oct. 20-Jan. 31	1	2
Light Geese	Oct. 12-Oct. 14 & Oct. 20-Jan. 31	20	--
Iowa			
Ducks:		6	12
North Zone:			
Pintails	Sept. 21-Sept. 25 & Oct. 12-Nov. 5		
Other ducks	Sept. 21-Sept. 25 & Oct. 12-Dec. 5		
South Zone:			
Pintails	Sept. 21-Sept. 23 & Oct. 19-Nov. 14		
Other ducks	Sept. 21-Sept. 23 & Oct. 19-Dec. 14		
Mergansers	Same as for Other ducks	5	10
Coots	Same as for Other ducks	15	30

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	Season Dates	Limits Bag	Limits Possession
Iowa (cont.)			
Geese:			
Canada:			
North Zone	Same as for Other ducks	5	10
South Zone	Same as for Other ducks	15	30
White-fronted:			
North Zone	Same as for Canada geese	2	4
South Zone	Same as for Canada geese	2	4
Brant:			
North Zone	Same as for Canada geese	2	4
South Zone	Same as for Canada geese	2	4
Light Geese	Sept. 28-Jan. 12	20	40
Kentucky			
Ducks:		6	12
West Zone:			
Pintails	Dec. 28-Jan. 26		2
Other ducks	Nov. 28-Jan. 26		4
East Zone:			
Pintails	Dec. 28-Jan. 26		2
Other ducks	Nov. 28-Jan. 26		4
Mergansers	Same as for Other Ducks	5	10
Coots	Same as for Other Ducks	15	30
Geese:			
Canada (3):			
MVP Zone:			
Muskegon Wastewater Goose Management Unit (GMU) (3)	Nov. 2-Nov. 14 & Dec. 1-Dec. 12	2	4
Allegan County GMU (3)	Nov. 2-Nov. 10 & Jan. 4-Jan. 19	1	2
Rest of MVP Zone	Sept. 15-Oct. 6	2	4
SJBP Zone:			
Saginaw County GMU (3)	Oct. 12-Nov. 30	1	2
Tuscola/Huron GMU (3)	Oct. 12-Nov. 30	1	2
Rest of SJBP Zone	Sept. 15-Oct. 6 & Dec. 14-Dec. 22	2	4
Special Season:			
Southern Michigan GMU	Jan. 4-Feb. 2	5	10
Central Michigan GMU	Jan. 4-Feb. 2	5	10
White-fronted and Brant	Sept. 15-Dec. 6	1	2
Light Geese	Sept. 15-Dec. 6	10	30
Minnesota			
Ducks:		6	12
Pintails	Sept. 28-Oct. 27		
Other ducks	Sept. 28-Nov. 26		
Mergansers	Same as for Other ducks	5	10
Coots (9)	Same as for Other ducks	15	30

	Season Dates	Limits Bag	Limits Possession
Missouri (cont.)			
Southeast Zone	Sept. 28-Oct. 6 & Nov. 23-Jan. 26	2	4
Rest of Middle Zone	Sept. 21-Oct. 6 & Nov. 2-Dec. 1 & Dec. 21-Jan. 18	3	6
South Zone	Sept. 28-Oct. 6 & Nov. 23-Jan. 26	2	4
White-fronted:			
North Zone:			
Swan Lake Zone	Oct. 26-Jan. 18	2	4
Rest of North Zone	Oct. 26-Jan. 18	2	4
Middle Zone:			
Southeast Zone	Nov. 2-Jan. 26	2	4
Rest of Middle Zone	Nov. 2-Jan. 26	2	4
South Zone	Same as for Canada geese	2	4
Brant			
Light Geese:			
North Zone:			
Swan Lake Zone	Oct. 26-Jan. 18	20	—
Rest of North Zone	Oct. 26-Jan. 18	20	—
Middle Zone:			
Southeast Zone	Nov. 2-Jan. 26	20	—
Rest of Middle Zone	Nov. 2-Jan. 26	20	—
South Zone	Nov. 2-Jan. 26	20	—
Ohio			
Ducks:		6	12
North Zone:			
Pintails	Oct. 19-Nov. 17		
Other ducks	Oct. 19-Nov. 30 & Dec. 7-Dec. 23		
South Zone:			
Pintails	Oct. 26-Nov. 2 & Dec. 14-Jan. 4		
Other ducks	Oct. 26-Nov. 17 & Dec. 14-Jan. 19		
Mergansers	Same as for Other ducks	5	10
Coots	Same as for Other ducks	15	30
Geese:			
Canada:			
North Zone:			
Lake Erie SJBP Zone	Oct. 19-Oct. 27 & Dec. 7-Jan. 1	1	2
Rest of North Zone	Oct. 19-Nov. 30 & Dec. 7-Jan. 2	2	4
(special season)	Jan. 11-Jan. 29	2	4
South Zone	Oct. 26-Nov. 17 & Dec. 14-Jan. 25	2	4
White-fronted and Brant	Same as for Canada geese	2	4
Light Geese	Same as for Canada geese	10	30

	Season Dates	Limits Bag	Limits Possession
Minnesota (cont.)			
Geese:			
Canada (3):			
West Zone:			
West Central Zone:			
Lac qui Parle Zone (3)	Oct. 5-Nov. 13	1	2
Rest of West Central Zone	Oct. 5-Nov. 13	1	2
Rest of West Zone	Sept. 28-Nov. 6	1	2
(Special season)	Dec. 7- Dec. 16	5	10
Northwest Zone	Sept. 28-Nov. 6	1	2
(Special season)	Dec. 7-Dec. 16	5	10
Southeast Zone	Sept. 28-Dec. 6	2	4
(special season)	Dec. 13-Dec. 22	2	4
Rest of State	Sept. 28-Dec. 6	2	4
(special season)	Dec. 7-Dec. 16	5	10
White-fronted	Sept. 28-Dec. 22	2	4
Brant	Sept. 28-Dec. 22	1	2
Light Geese	Sept. 28-Dec. 22	20	40
Mississippi		6	12
Ducks:			
Pintails	Dec. 28-Jan. 26		2
Other ducks	Nov. 23-Nov. 24 & Nov. 28-Dec. 24 & Dec. 28-Jan. 26		4
Mergansers	Same as for Other ducks	5	10
Coots	Same as for Other ducks	15	30
Geese:			
Canada	Nov. 23-Jan. 26	3	6
White-fronted	Nov. 23-Jan. 26	2	4
Brant	Nov. 23-Jan. 26	2	4
Light Geese	Nov. 23-Jan. 26	20	40
Missouri		6	12
Ducks and Mergansers:			
North Zone:			
Pintails	Oct. 26-Nov. 24		
Other ducks/mergansers	Oct. 26-Dec. 24		
Middle Zone:			
Pintails	Nov. 2-Dec. 1		
Other ducks/mergansers	Nov. 2-Dec. 31		
South Zone:			
Pintails	Nov. 23-Dec. 22		
Other ducks/mergansers	Nov. 23-Jan. 21		
Coots	Same as for Other ducks	15	30
Geese:			
Canada:			
North Zone:			
Swan Lake Zone	Oct. 26-Dec. 18	2	4
	Dec. 21-Jan. 18	2	4
Rest of North Zone	Sept. 21-Oct. 6 & Oct. 26-Nov. 24 & Dec. 21-Jan. 18	3	6
Middle Zone:		2	4

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	Season Dates	Limits: Bag	Limits: Possession
Tennessee			
Ducks:		6	12
Reelfoot Zone:			
Pintails	Dec. 28-Jan. 26		
Other ducks	Nov. 9-Nov. 10 & Nov. 30-Jan. 26		
State Zone:			
Pintails	Dec. 28-Jan. 26		
Other ducks	Nov. 23-Nov. 24 & Nov. 30-Jan. 26		
Mergansers	Same as for Other ducks	5	10
Coots	Same as for Other ducks	15	30
Geese:			
Canada (10):			
Northwest Zone	Dec. 7-Feb. 15	2	4
Southwest Zone	Dec. 13-Jan. 31	2	4
Kentucky/Barkley Lakes Zone	Dec. 13-Jan. 31	2	4
Rest of State (10)	Oct. 5-Oct. 16 & Nov. 30-Jan. 26	2	4
White-fronted	Nov. 22-Feb. 15	2	4
Brant	Dec. 2-Jan. 31	2	4
Light Geese	Nov. 16-Mar. 2	20	–
Wisconsin			
Ducks:		6	12
North Zone:			
Pintails	Sept. 28-Oct. 27		
Other ducks	Sept. 28-Nov. 26		
South Zone:			
Pintails	Oct. 5-Oct. 13 & Oct. 19-Nov. 6		
Other ducks	Oct. 5-Oct. 13 & Oct. 19-Dec. 6		
Mergansers	Same as for Other ducks	5	10
Coots	Same as for Other ducks	10	20
Geese:			
Canada (3):			
Horicon Zone	Sept. 16-Dec. 16	Tag System–See State Regulations	
Collins Zone	Sept. 16-Nov. 22	Tag System–See State Regulations	
Exterior Zone:			
Rock Prairie Subzone	Sept. 28-Oct. 13 & Oct. 19-Jan. 2	1	2
Mississippi River Subzone	Sept. 28-Oct. 13 & Oct. 19-Dec. 11	1	2
Brown County Subzone	Sept. 21-Dec. 23	1	2
Rest of Exterior Zone:			
North Duck Zone	Sept. 21-Dec. 23	1	2
South Duck Zone	Sept. 28-Oct. 13 & Oct. 19-Jan. 2	1	2
White-fronted and Brant	Same as for Canada geese	1	2
Light Geese	Same as for Canada geese	10	30

(1) In Arkansas, the daily bag limit may include no more than three mallards, only one of which may be a hen.
(2) In Illinois, the daily bag limit cannot include more than one hen mallard. The season on Pintails is closed.
(3) Harvests of Canada geese will be limited by quotas established in the September 18, 2002, Federal Register. When it has been determined that the quota of Canada geese allotted to the Northern Illinois, Central Illinois, and Southern Illinois Quota Zones in Illinois, the Ballard and Henderson-Union Subzones in Kentucky, the Allegan County, Muskegon Wastewater, Saginaw County, and Tuscola/Huron Goose Management Units in Michigan, the Lac Qui Parle Zone in Minnesota, and the Exterior Zone in Wisconsin will have been filled, the season for taking Canada geese in the respective Zone (and associated area, if applicable) will be closed by either the Director upon giving public notice through local information media at least 48 hours in advance of the time and date of closing, or by the State through State regulations with such notice and time (not less than 48 hours) as they deem necessary.
(4) In Illinois, shooting hours for geese in the Southern Illinois quota Zone through January 26 shall close at 3 p.m.
(5) In Illinois, white-fronted goose, light goose, and brant seasons will close with Canada goose seasons if the season closes early due the quota being reached.
(6) In Kentucky, in Fulton County, if the Canada goose season closes after January 31 and before February 15, the season for light geese will close with the Canada goose season.
(7) In Louisiana, during the Canada goose season, a special permit is required by the State.
(8) In Michigan, the daily bag limit includes no more than 1 hen mallard.
(9) In Minnesota, the daily bag limit is 15 and the possession limit is 30 coots and moorhens in the aggregate.
(10) In Tennessee, see State regulations for permit requirements and additional restrictions.

CENTRAL FLYWAY

Flyway-wide Restrictions

Duck Limits: The daily bag limit of 6 ducks may include no more than 5 mallards (2 female mallards), 1 mottled duck, 1 pintail, 2 redheads, 3 scaup, and 2 wood ducks. The season on canvasbacks is closed. The possession limit is twice the daily bag limit.
Merganser Limits: The daily bag limit is 5 mergansers with 10 in possession and may include no more than 1 hooded merganser daily and 2 in possession. In states that include mergansers in the duck bag limit, the daily limit is the same as the duck bag limit, of which only 1 daily and 2 in possession may be hooded mergansers.

	Season Dates	Limits: Bag	Limits: Possession
Colorado			
Ducks:		6	12
Pintails	Sept. 28-Oct. 20 & Nov. 2-Nov. 17		
Other ducks	Sept. 28-Oct. 20 & Nov. 2-Nov. 29 & Dec. 13-Jan. 26		
Coots	Same as for Other ducks	15	30
Mergansers	Same as for Other ducks	6	10
Dark Geese:			
Northern Front Range Unit	Sept. 28-Oct. 9 & Nov. 16-Feb. 16	5	10
South Park/San Luis Valley Unit (1)	Sept. 28-Oct. 9 & Nov. 16-Feb. 16	3	6
North Park Unit (1)	Sept. 28-Oct. 9 & Nov. 16-Feb. 16	3	6
Arkansas Valley Unit (2)	Nov. 16-Feb. 16	5	10
Pueblo County	Dec. 7-Feb. 16	2	4
Rest of State in Central Flyway	Nov. 16-Feb. 16	5	10

	Season Dates	Limits: Bag	Limits: Possession
Colorado (cont.)			
Light Geese:			
Northern Front Range Unit	Nov. 16-Feb. 16	20	–
South Park/San Luis Valley Unit (1)	Nov. 16-Feb. 16	3	6
North Park Unit (1)	Nov. 16-Feb. 16	3	6
Arkansas Valley Unit (2)	Nov. 16-Feb. 16	20	–
Pueblo County	Nov. 16-Feb. 16	20	–
Rest of State in Central Flyway	Nov. 2-Feb. 16	20	–
Kansas			
Ducks (3):		6	12
High Plains:			
Pintails	Oct. 12-Nov. 19		
Other ducks	Oct. 12-Jan 7 & Jan. 18-Jan. 26		
Low Plains:			
Early Zone:			
Pintails	Oct. 12-Nov. 19		
Other ducks	Oct. 12-Dec. 15 & Dec. 24-Jan. 1		
Late Zone:			
Pintails	Oct. 26-Nov. 3 & Nov. 9-Dec. 8		
Other ducks	Oct. 26-Nov. 3 & Nov. 9-Jan. 12		
Mergansers	Same as for Other ducks	5	10
Coots	Same as for Other ducks	15	30
Dark Geese (4):			
Canada	Oct. 19-Oct. 20 & Nov. 2-Feb. 2	3	6
White-fronted	Oct. 19-Oct. 20 & Nov. 2-Jan. 24	2	4
Light Geese	Oct. 19-Feb. 2	20	–
Montana			
Ducks:		6	12
Zone 1:			
Pintails	Sept. 28-Nov. 5		
Other ducks	Sept. 28-Jan. 2		
Zone 2:			
Pintails	Sept. 28-Nov. 5		
Other ducks	Sept. 28-Jan. 2		
Mergansers	Sept. 28-Jan. 2	5	10
Coots	Sept. 28-Jan. 2	15	30
Dark Geese	Sept. 28-Jan. 10	4	8
Light Geese	Sept. 28-Jan. 10	5	10
Nebraska			
Ducks:		6	12
High Plains:			
Pintails	Sept. 28-Nov. 5		
Other ducks	Sept. 28-Dec. 8 & Dec. 13-Jan. 5		

	Season Dates	Limits: Bag	Limits: Possession
Nebraska (cont.)			
Low Plains:			
Zones 1 and 2:			
Pintails	Oct. 12-Oct. 13 & Oct. 19-Nov. 24		
Other ducks	Oct. 12-Oct. 13 & Oct. 19-Dec. 29		
Zones 3 and 4:			
Pintails	Sept. 28-Oct. 6 & Oct. 12-Nov. 10		
Other ducks	Sept. 28-Oct. 6 & Oct. 12-Dec. 15		
Mergansers	Same as for Other ducks	5	10
Coots	Same as for Other ducks	15	30
Geese:			
Canada:			
Niobrara Unit	Oct. 29-Jan. 31	3	6
East Unit	Sept. 28-Oct. 13 & Nov. 2-Jan. 19	3	6
North Central Unit	Sept. 28-Dec. 31	3	6
Platte River Unit	Oct. 29-Jan. 31	3	6
White-fronted	Sept. 28-Dec. 22	2	4
Light Geese:			
Rainwater Basin Area - East	Sept. 28-Jan. 10	20	–
Rainwater Basin Area - West	Sept. 28-Jan. 10	20	–
Rest of State	Sept. 28-Jan. 10	20	–
New Mexico			
Ducks and Mergansers (5):		6	12
North Zone:			
Pintails	Oct. 5-Oct. 27 & Nov. 8-Nov. 23		
Other ducks/merg.	Oct. 5-Oct. 27 & Nov. 8-Jan. 19		
South Zone:			
Pintails	Dec. 12-Jan. 19		
Other ducks/merg.	Oct. 16-Jan. 19		
Coots	Same as for Other ducks	15	30
Dark Geese (6):			
Middle Rio Grande Valley Unit (6)	Dec. 28-Jan. 19	1 per season	
Rest of State	Oct. 17-Jan. 31	4	8
Light Geese	Oct. 17-Jan. 31	20	60
North Dakota			
Ducks:		6	12
High Plains:			
Pintails	Sept. 21-Oct. 29		
Other ducks	Sept. 21-Dec. 1 & Dec. 7-Dec. 29		
Remainder of State:			
Pintails	Sept. 21-Oct. 29		
Other ducks	Sept. 21-Dec. 1		
Mergansers	Same as for Other ducks	5	10
Coots	Same as for Other ducks	15	30
Geese:			
Canada Geese (7):			

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	Season Dates	Limits Bag	Limits Possession
South Dakota (cont.)			
Power Plant Area	Sept. 28-Nov. 30 &	3	6
	Dec. 1-Dec. 15	2	4
Rest of Unit	Sept. 28-Dec. 15	3	6
Unit 4	Oct. 26-Dec. 22 &	3	6
	Jan. 11-Jan. 19	3	6
Light Geese	Sept. 28-Dec. 22	20	--
Texas			
Ducks:		8	12
High Plains:			
Pintails	Dec. 12-Jan. 19		
Other ducks	Sept. 23-Sept. 29 & Oct. 26-Jan. 22		
Low Plains:			
North Zone:			
Pintails	Dec. 19-Jan. 26		
Other ducks	Nov. 9-Nov. 10 & Nov. 16-Jan. 26		
South Zone:			
Pintails	Dec. 12-Jan. 19		
Other ducks	Nov. 2-Dec. 1 & Dec. 7-Jan. 19		
Mergansers	Same as for Other ducks	5	10
Coots	Same as for Other ducks	15	30
Geese:			
East Tier:			
Canada and brant	Oct. 26-Jan. 19	2	4
White-fronted	Oct. 26-Jan. 19	2	4
Light Geese			
North Zone	Oct. 26-Jan. 26	20	--
South Zone	Oct. 26-Jan. 19	20	--
West Tier:			
Dark Geese:		5	10
Canada geese and Brant	Oct. 26-Feb. 9	5	10
White-fronted	Oct. 26-Feb. 9	1	2
Light Geese	Oct. 26-Feb. 9	20	--
Wyoming			
Ducks:		6	12
Zone 1:			
Pintails	Oct. 5-Oct. 20 & Oct. 26-Nov. 17		
Other ducks	Oct. 5-Oct. 20 & Oct. 26-Jan. 14		
Zone 2:			
Pintails	Sept. 21-Oct. 20 & Oct. 26-Nov. 3		
Other ducks	Sept. 21-Oct. 20 & Oct. 26-Dec. 6 Dec. 14-Jan. 5		
Mergansers	Same as for Other ducks	5	10
Coots	Same as for Other ducks	15	30
Dark Geese:			
Area 1	Oct. 6-Jan. 16	5	10

	Season Dates	Limits Bag	Limits Possession
Arizona (cont.)			
Geese:			
Dark (2):			
GMU 22 & 23	Nov. 15-Jan. 26	3	3
GMU 1 & 27	Dec. 1-Jan. 26	3	3
Balance of State	Oct. 19-Jan. 26	3	3
Light (2):			
GMU 22 & 23	Nov. 15-Jan. 26	3	3
Rest of State	Oct. 19-Jan. 26	3	3
California			
Ducks:		7	14
Northeastern Zone:			
Pintails	Oct. 12-Dec. 10		
Other ducks	Oct. 12-Jan. 5		
Colorado River Zone:			
Pintails	Nov. 28-Jan. 26		
Other ducks	Oct. 19-Jan. 26		
Southern Zone:			
Pintails	Nov. 28-Jan. 26		
Other ducks	Nov. 2-Jan. 26		
Southern San Joaquin Valley Zone:			
Pintails	Oct. 19-Oct. 25 & Dec. 5-Jan. 26		
Other ducks	Oct. 19-Nov. 10 & Nov. 23-Jan. 26		
Balance-of-State Zone:			
Pintails	Oct. 26-Nov. 10 & Dec. 14-Jan. 26		
Other ducks	Oct. 26-Nov. 17 & Nov. 30-Jan. 26		
Coots and moorhens:			
Northeastern Zone	Same as for Other ducks	25	25
Colorado River Zone	Same as for Other ducks	25	25
Southern Zone	Same as for Other ducks	25	25
Southern San Joaquin Valley Zone	Oct. 19-Jan 26	25	25
Balance-of-State Zone	Oct. 26-Jan. 26	25	25
Geese:			
Northeastern Zone:		3	6
Canada Geese	Oct. 12-Jan. 19	2	4
Small Canada Geese (3)	Oct. 12-Jan. 19	1	2
White-fronted Geese	Oct. 12-Jan. 19	2	4
Light Geese	Oct. 12-Jan. 19	3	6
Colorado River Zone:		5	10
Canada Geese	Oct. 19-Jan. 26	3	6
White-fronted Geese	Oct. 19-Jan. 26	3	6
Light Geese	Oct. 19-Jan. 26	3	6
Southern Zone:		5	10
Dark Geese:		3	6
Canada geese	Oct. 19-Jan. 26	3	6
Small Canada Geese (3)	Oct. 19-Jan. 26	1	2
White-fronted Geese	Oct. 19-Jan. 26	3	6
Light Geese	Oct. 19-Jan. 26	3	6
Balance-of-State Zone:		3	6

	Season Dates	Limits Bag	Limits Possession
North Dakota (cont.)			
High Plains Unit	Sept. 21-Dec. 1 & Dec. 7-Dec. 21	3	6
Rest of State	Sept. 21-Dec. 15	3	6
White-fronted (7)	Sept. 21-Dec. 15	2	4
Light Geese (7)	Sept. 21-Dec. 15	20	--
Oklahoma			
Ducks:		6	12
High Plains:			
Pintails	Dec. 8-Jan. 15		
Other ducks	Oct. 12-Jan. 15		
Low Plains:			
Zone 1:			
Pintails	Nov. 30-Dec. 8 & Dec. 14-Jan. 12		
Other ducks	Oct. 26-Dec. 8 & Dec. 14-Jan. 12		
Zone 2:			
Pintails	Dec. 19-Jan. 26		
Other ducks	Nov. 9-Dec. 8 & Dec. 14-Jan. 26		
Mergansers	Same as for Other ducks	5	10
Coots	Same as for Other ducks	15	30
Geese:			
Canada	Nov. 9-Dec. 8 & Dec. 14-Feb. 16	3	6
White-fronted	Nov. 9-Dec. 8 & Dec. 14-Feb. 7	2	4
Light Geese	Nov. 9-Dec. 8 & Dec. 14-Feb. 16	20	--
South Dakota			
Ducks:		6	12
High Plains:			
Pintails	Sept. 28-Nov. 6		
Other ducks	Sept. 28-Jan. 2		
Low Plains:			
North Zone:			
Pintails	Sept. 21-Oct. 29		
Other ducks	Sept. 21-Dec. 3		
Middle Zone:			
Pintails	Sept. 28-Nov. 5		
Other ducks	Sept. 28-Dec. 10		
South Zone:			
Pintails	Oct. 12-Nov. 19		
Other ducks	Oct. 12-Dec. 24		
Mergansers	Same as for Other ducks	5	10
Coots	Same as for Other ducks	15	30
Geese:			
White-fronted	Sept. 28-Dec. 22	2	4
Canada:			
Unit 1	Sept. 28-Dec. 27	3	8
Unit 2	Oct. 26-Jan. 26	3	6
Unit 3:			

	Season Dates	Limits Bag	Limits Possession
Wyoming (cont.)			
Area 2	Oct. 16-Jan. 31	5	10
Area 3	Sept. 28-Oct. 20 & Oct. 26-Jan. 16	5	10
Area 4(6):	Oct. 5-Oct. 20 & Nov. 16-Feb. 13	1	2
		5	10
Light Geese	Oct. 5-Dec. 31 & Jan. 27-Feb. 13	10	40
		10	40

(1) In Colorado, in the North Park and South Park/San Luis Valley Units, the bag limit for the November 16 through February 16 period is 3 geese. The possession limit is twice the daily bag limit.
(2) In Colorado, in the Arkansas Valley Unit, shooting hours are one-half hour before sunrise to noon November 16 through November 24.
(3) In Kansas, the daily bag limit may include no more than 2 scaup and 1 hen mallard.
(4) See State regulations for additional restrictions.
(5) In New Mexico, the daily bag limit consists of no more than 5 mallards (of which only 2 may be female mallards), 2 redheads, 2 scaup, 2 wood ducks, 1 hooded merganser, and 1 northern pintail (see dates by zone).
(6) In New Mexico, the season for dark geese is closed in Bernalillo and Sandoval Counties. In the Middle Rio Grande Valley Unit, a state permit is required.
(7) In North Dakota, the shooting hours for geese are one-half hour before sunrise to 1 p.m. through October 26 and until 2 p.m. the remainder of the season, except that during October 2 through December 21, shooting hours are one-half hour before sunrise to sunset on Saturdays and Wednesdays.
(8) In Wyoming, the shooting hours for dark geese in Goshen County are one-half hour before sunrise to 1 p.m., except during the period October 5 through October 20 and on all Saturdays and Wednesdays after December 16 until the close of the dark goose season, when shooting hours are until sunset. In Platte County, shooting hours for dark geese in the area east of Interstate Highway 25 and north of Wyoming Highway 160 are 1/2 hour before sunrise to sunset. In the remainder of Platte County, shooting hours for dark geese are 1/2 hour before sunrise to 1 p.m. except during the period October 5 through October 20 and on all Saturdays and Wednesdays after December 16 until the close of the dark goose season, when shooting hours are until sunset.

PACIFIC FLYWAY

Flyway-wide Restrictions

Duck and Merganser Limits: The daily bag limit of 7 ducks (including mergansers) may include no more than 2 female mallards, 1 pintail, 2 redheads, and 4 scaup. The season on canvasbacks is closed. The possession limit is twice the daily bag limit.

Coot and Common Moorhen Limits: Daily bag and possession limits are in the aggregate for the two species.

Goose Limits: Daily bag limits for geese may not exceed 2 white-fronted geese and 3 light geese. The possession limit is twice the daily bag limit.

	Season Dates	Limits Bag	Limits Possession
Arizona			
Ducks (1):		7	14
North Zone			
Pintails	Nov. 28-Jan. 26		
Other ducks	Oct. 18-Jan. 26		
South Zone:			
Pintails	Nov. 28-Jan. 26		
Other ducks	Oct. 18-Jan. 26		
Coots and moorhens	Oct. 18-Jan. 26	25	25

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	Season Dates	Limits	
		Bag	Possession
Montana			
Ducks:		7	14
Pintails	Sept. 28-Nov. 28		
Other ducks	Sept. 28-Jan. 10		
Coots	Sept. 28-Jan. 10	25	25
Geese (6):			
Dark	Sept. 28-Jan. 10	4	8
Light	Sept. 28-Jan. 10	3	6
Nevada			
Ducks:		7	14
Lincoln & Clark Counties:			
Pintails	Oct. 12-Oct. 13 & Nov. 28-Jan. 24		
Other ducks	Oct. 12-Jan. 24		
Rest of State:			
Pintails	Oct. 12-Oct. 13 & Nov. 30-Jan. 26		
Other ducks	Oct. 12-Jan. 26		
Coots and moorhens	Same as for Other ducks	25	25
Dark Geese:			
Lincoln & Clark Counties	Nov. 2-Jan. 24	2	4
Scripps/Washoe Lake Zone	Oct. 12-Jan. 26	3	6
Rest of State	Oct. 12-Jan. 26	3	6
Light Geese:			
Lincoln & Clark Counties	Nov. 2-Jan. 24	3	6
Scripps/Washoe Lake Zone	Oct. 12-Jan. 26	3	6
Rest of State (6)	Oct. 12-Jan. 26	3	6
New Mexico			
Ducks (7):		7	14
Pintails	Oct. 7-Dec. 8		
Other ducks	Oct. 7-Jan. 19		
Coots and Moorhens	Same as for Other ducks	12	24
Dark Geese (8):			
North Zone	Sept. 28-Oct. 27& Nov. 11-Jan. 19	3	6
South Zone	Oct. 12-Jan. 19	3	6
Light Geese:			
North Zone	Sept. 28-Oct. 27 & Nov. 11-Jan. 19	1	2
South Zone	Oct. 12-Jan. 19	1	2

	Season Dates	Limits	
		Bag	Possession
Utah (11)			
Ducks:		7	14
Zone 1:			
Pintails	Oct. 5-Nov. 7		
	Dec. 28-Jan. 19		
Other ducks	Oct. 5-Jan. 19		
Zone 2:			
Pintails	Oct. 5-Nov. 7		
	Dec. 28-Jan. 19		
Other ducks	Oct. 5-Jan. 19		
Coots	Same as for Other ducks	25	25
Geese:			
Light	Oct. 5-Jan. 19	3	6
Dark:			
Washington County (12)	Oct. 12-Jan. 26	3	6
Rest of State	Oct. 5-Jan. 19	3	6
Washington			
Ducks:		7	14
East Zone:			
Pintails	Oct. 5-Oct. 11 & Oct. 26-Dec. 17		
Other ducks	Oct. 5-Oct 19 & Oct. 26-Jan. 26		
West Zone (13):			
Pintails	Oct. 5-Oct. 11 & Oct. 26-Dec. 17		
Other ducks	Oct. 5-Oct 19 & Oct. 26-Jan. 26		
Coots	Same as for Other ducks	25	25
Geese (14):		4	8
Management Area 1:			
Light Geese	Oct 5-Jan. 5		
Dark Geese	Oct 5-Oct. 24 & Nov. 28-Jan. 26		
Management Area 2A (15)	Nov. 5-Jan. 26		1 per season
Dusky Canada geese	Nov. 5-Jan. 26	4	8
Lake Terrell Canada geese	Feb. 1-Mar. 8		1 per season
Dusky Canada geese	Feb. 1-Mar. 8	1	
Management Area 2B (16)	Nov. 5-Dec. 29		1 per season
Dusky Canada geese	Nov. 5-Dec. 29	1	
Management Areas 3, 4, & 5 (16)	Oct. 5-Oct. 24 & Nov. 5-Jan. 26	4	8
Brant (17)	Nov. 23-Nov. 29 & Jan. 19-Jan. 29	2	4
Wyoming			
Ducks:		7	14
Pintails	Sept. 21-Nov. 10		
Other ducks	Sept. 21-Jan. 4		
Coots	Same as for Other ducks	25	25
Dark Geese	Sept. 28-Jan. 4	4	8

	Season Dates	Limits	
		Bag	Possession
California (cont.)			
Dark Geese :		2	4
Canada:			
Del Norte & Humboldt	Nov. 23-Nov. 27	–	–
Sacramento Valley Area	Closed	–	–
San Joaquin Valley Area	Closed	–	–
Rest of Zone:			
Canada geese	Nov. 2-Jan. 26	2	4
White-fronted:			
Sacramento Valley Closure	Nov. 2-Dec. 14	2	4
Rest of Zone	Nov. 2-Jan. 26	2	4
Light Geese	Nov. 2-Jan. 26	3	6
Brant	Nov. 10-Dec. 8	2	4
Colorado			
Ducks:		7	14
Pintails	Sept. 28-Oct. 13 & Oct. 30-Dec. 12		
Other ducks	Sept. 28-Oct. 13 & Oct. 30-Jan. 26		
Coots	Same as for Other ducks	25	25
Geese:	Sept. 28-Oct. 9 &	3	6
	Oct. 30-Jan. 26	3	6
Idaho			
Ducks:		7	14
Zone 1:			
Pintails	Oct. 5-Dec. 3		
Other ducks	Oct. 5-Jan. 10		
Zone 2:			
Pintails	Oct. 12-Dec. 10		
Other ducks	Oct. 12-Jan. 24		
Zone 3:			
Pintails	Oct. 12-Dec. 10		
Other ducks	Oct. 12-Jan. 24		
Coots	Same as for Other ducks	25	25
Geese:			
Zone 1 (4):		4	8
Dark	Oct. 19-Jan. 24	4	8
Light	Oct. 6-Oct. 17 & Oct. 27-Jan. 20	3	6
Zone 2:		3	6
Dark	Oct. 19-Jan. 24	4	8
Light	Oct. 19-Jan. 24	3	6
Zone 3:		3	6
Dark	Oct. 19-Jan. 24	3	6
Light	Oct. 19-Jan. 24	3	6
Zone 4:		4	8
Dark	Oct. 6-Oct. 17 & Oct. 27-Jan. 20	4	8
Light	Oct. 6-Oct. 17 & Oct. 27-Jan. 2	3	6
Zone 6:		4	8
Dark	Oct. 5-Jan. 10	3	6
Light	Oct. 5-Jan. 10		
Oregon			
Ducks:		7	14
Zone 1:			
Columbia Basin Unit:			
Pintails	Oct. 12-Oct. 20 & Oct. 23-Dec. 12		
Other ducks	Oct. 12-Oct. 20 & Oct. 23- Jan. 26		
Rest of Zone 1:			
Pintails	Oct. 12-Oct. 20 & Oct. 23-Dec. 12		
Other ducks	Oct. 12-Oct. 20 & Oct. 23- Jan. 26		
Zone 2:			
Pintails	Oct. 5-Dec. 3		
Other ducks	Oct. 5-Dec. 3 & Dec. 13- Jan. 26		
Coots	Same as for Other ducks	25	25
Geese:			
Northwest General Goose Zone:			
Dark Geese	Oct. 12-Jan. 12	4	8
Light Geese	Oct. 12-Jan. 12	3	6
Northwest Special Permit Zone (9):			
Dark Geese	Oct. 27-Nov. 7 & Nov. 23-Jan. 19 & Feb. 8-Mar. 2	4	8
		4	8
Dusky Canada geese			1 per season
Light Geese	Oct. 27-Nov. 7 & Nov. 23-Jan. 19	3	6
Southwest General Zone (8):			
Dark Geese	Oct. 12-Dec. 10 & Dec. 20-Jan. 26	4	8
	Oct. 12-Dec. 10 & Dec. 20-Jan. 26	4	8
Light Geese		6	6
		3	6
Eastern Zone:			
Klamath, Harney, Lake, and Malheur Counties:			
Dark Geese	Oct. 5-Dec. 3 & Dec. 20-Jan. 26	4	8
		4	8
Cackling Canada geese		1	2
Light Geese	Oct. 5-Dec. 3 & Dec. 20-Jan. 26	3	6
		3	6
Remainder of Eastern Zone:			
Dark Geese	Oct. 12-Dec. 10 & Dec. 20-Jan. 26	4	8
		4	8
Cackling Canada geese		1	2
White-fronted geese		4	8
Light Geese	Oct. 12-Dec. 10 & Dec. 20-Jan. 26	3	6
		2	4
Brant	Nov. 2-Nov. 15		

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(1) In Arizona, the daily limit may include no more than either 2 female mallards or 2 Mexican-like ducks, or 1 of each; and not more than 4 female mallards and Mexican-like ducks, in the aggregate, may be in possession.
(2) In Arizona, in Yuma County, La Paz County, Game Management Units 13B, 16, and that portion of Unit 16 lying within Mohave County, the bag and possession limits are 3 and 6 for Canada geese and 3 and 6 for light geese, respectively.
(3) In California, small Canada geese are cackling and Aleutian Canada geese.
(4) In Idaho, the season on light geese is closed in Fremont and Teton Counties.
(5) In Montana, check State regulations for special seasons/exceptions in Freezeout Lake WMA; Canyon Ferry; Flathead; Deer Lodge County; and Missoula County.
(6) In Nevada, there is no open season on light geese in Ruby Valley within Elko and White Pine Counties, White River Valley of Nye County, and Pahranagat Valley of Lincoln County.
(7) In New Mexico, the daily bag limit for ducks and mergansers may include no more than 5 mergansers (only 1 of which may be a hooded merganser).
(8) In New Mexico, the season for dark geese is closed in Bernalillo and Sandoval Counties. In the Middle Rio Grande Valley Unit, a state permit is required.
(9) In Oregon, the Northwest Special Permit Zone is closed to all goose hunting, except for designated areas. See State regulations for specific boundary descriptions, times, days, and other conditions of the special permit season.
(10) In Oregon, those portions of Coos and Curry Counties south of Bandon and west of US 101 are closed to all Canada goose hunting.
(11) In Utah, the shooting hours are 8:00 a.m. to sunset on October 6 in Cache, Salt Lake, Davis, Weber, and Box Elder Counties, and November 3 statewide.
(12) In Utah, the season in Washington County is for Canada geese only.
(13) In Washington, the daily bag limit in the West Zone may include no more than 4 scoters and 4 oldsquaws, with the possession limit twice the daily bag limit. The daily bag and possession limit for harlequins is 1.
(14) In Washington, daily bag and possession limits may include no more than 3 and 6 light geese, respectively.
(15) In Washington, see State regulations for specific dates and conditions of permit hunts and closures for Canada geese.
(16) In Washington, in State Goose Area 4, hunting is only on Saturdays, Sundays, Wednesdays, and certain holidays. In State Goose Areas 3 and 5, hunting is everyday. See State regulations for details, including shooting hours.
(17) In Washington, brant may be hunted in Skagit and Pacific Counties only; see State regulations for specific dates.

(f) Youth Waterfowl Hunting Day

The following seasons are open only to youth hunters. Youth Hunters must be accompanied into the field by an adult at least 18 years of age. This adult can not duck hunt but may participate in other open seasons.

Definition

Youth Hunters: Includes youths 15 years of age or younger.

NOTE: The following seasons are in addition to the seasons published previously in the August 29, 2002, Federal Register (67 FR 45730). Bag and possession limits will conform to those set for the regular season.

	Season Dates
ATLANTIC FLYWAY	
Connecticut	
Ducks (except Pintails), mergansers, coots, and geese	Nov. 9 & 11
. . . . .	
Florida	
Ducks, mergansers, coots, moorhens, and geese (9)	Feb. 1 & 2
. . . . .	
Louisiana	
Ducks, mergansers, coots, moorhens, gallinules, and geese:	
West Zone	Nov. 2 & 3
East Zone	Nov. 9 & 10
. . . . .	
Mississippi	
Ducks, mergansers, coots, moorhens, gallinules, and geese	Feb. 1 & 2
Missouri	
Ducks, coots, and geese:	
North Zone	Oct. 19 & 20
Middle Zone	Oct. 26 & 27
South Zone	Nov. 16 & 17
Ohio	
Ducks, mergansers, coots, moorhens, gallinules, and geese	Oct. 12 & 13
Tennessee	
Ducks, mergansers, coots, moorhens, gallinules, and geese	Feb. 1 & 2
. . . . .	
CENTRAL FLYWAY	
. . . . .	
Kansas (5)	
Ducks, dark geese, mergansers and coots:	
High Plains	Oct. 5 & 6
Low Plains	
Early Zone	Oct. 5 & 6
Late Zone	Oct. 12 & 13
. . . . .	
Oklahoma	
Ducks, mergansers, coots, and geese:	
High Plains	Oct. 5 & 6
Low Plains:	
Zone 1	Oct. 16 & 20
Zone 2	Nov. 2 & 3
. . . . .	

	Season Dates
. . . . .	
Massachusetts	
Ducks, mergansers, coots, and geese	Oct. 12 & 14
. . . . .	
New York	
Ducks, coots, mergansers, and Canada geese:	
Long Island Zone	Nov. 9 & 10
Lake Champlain Zone	Sept. 28 & 29
Northeastern Zone	Sept. 28 & 29
Southeastern Zone	Sept. 28 & 29
Western Zone	Oct. 5 & 6
. . . . .	
North Carolina	
Ducks, mergansers, and coots	Feb. 1
. . . . .	
South Carolina	
Ducks and geese	Feb. 1 & 2
. . . . .	
Virginia	
Ducks, mergansers, coots, moorhens, gallinules, and Canada geese (10)	Oct. 19
. . . . .	
MISSISSIPPI FLYWAY	
. . . . .	
Arkansas	
Ducks, geese, mergansers, coots, moorhens, and gallinules	Feb. 1 & 2
Illinois	
Ducks, mergansers, coots, and geese (10):	
North Zone	Oct. 12 & 13
Central Zone	Oct. 19 &20
South Zone	Oct. 26 & 27
Indiana	
Ducks, mergansers, coots, moorhens, gallinules, and geese:	
North Zone	Oct. 5 & 6
South Zone	Nov. 9 & 10
Ohio River Zone	Nov. 9 & 10

	Season Dates
Texas	
Ducks, mergansers, and coots:	
High Plains	Oct. 19 & 20
Low Plains:	
North	Oct. 26 & 27
South	Oct. 26 & 27f
. . . . .	
PACIFIC FLYWAY	
California	
Ducks, geese, mergansers, coots, moorhens, and gallinules	
Northeastern Zone	Sept. 28 &29
Colorado River Zone	Feb. 1
Southern Zone	Feb. 1 & 2
Southern San Joaquin Valley	Feb. 1 & 2
Balance-of-State Zone	Feb. 1 & 2
Colorado	
Ducks, dark and light geese, mergansers, and coots	Oct. 26 & 27
. . . . .	
Nevada	
Lincoln and Clark Counties	Jan. 25 & 26
Rest of State	Sept. 28

. . . . . .

(5) In Kansas, the adult accompanying the youth and nonresident youth, must be licensed and possess state and federal duck stamps as required by state or federal regulation to hunt waterfowl.

. . . . . .

(9) In Florida, the Canada goose season is only open in the Florida waters of Lake Seminole in Jackson County that are south of SR 2, north of Jim Woodruff Dam, and east of SR271. The light goose season is only open north and west of the Suwannee River.
(10) In Illinois and Virginia, the daily bag limit for Canada geese is 1.

4. Section 20.108 is amended by adding the entries for the following States in alphabetical order to read as follows:

§20.108 Seasons, limits, and shooting hours for sandhill cranes.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits on the species designated in this section are as follows:

Shooting and Hawking hours are one-half hour before sunrise until sunset, except as otherwise restricted by State regulations. Area descriptions were published in the August 23, 2002, Federal Register (67 FR 54702).

Note: The following seasons are in addition to the seasons published previously in the August 29, 2002, Federal Register (67 FR 45730).

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	Season Dates	Limits: Bag	Limits: Possession
CENTRAL FLYWAY			
* * * * *			
Oklahoma (1)	Nov. 9-Feb. 9	3	6
* * * * *			
Texas (1):			
Zone A	Nov. 9-Feb. 9	3	6
Zone B	Nov. 30-Feb. 9	3	6
Zone C	Dec. 21-Jan. 19	2	4

(1) Each hunter participating in a regular sandhill crane hunting season must obtain and carry in his possession while hunting sandhill cranes a valid Federal sandhill crane hunting permit available without cost from conservation agencies in the States where crane hunting seasons are allowed. The permit must be displayed to any authorized law enforcement official upon request.

* * * * *

5. Section 20.107 is revised to read as follows:

§20.107 Seasons, limits, and shooting hours for swans.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits on the species designated in this section are as follows:

Shooting hours are one-half hour before sunrise until sunset, except as otherwise restricted by State regulations. Hunting is by State permit only.

NOTE: Successful permittees must immediately validate their harvest by that method required in State regulations.

	Season Dates	Limits: Bag	Limits: Possession
ATLANTIC FLYWAY			
North Carolina	Oct. 21-Jan. 31	1 tundra swan per season	
Virginia	Dec. 2-Jan 31	1 tundra swan per season	
CENTRAL FLYWAY (1)			
Montana	Sept. 28-Jan. 2	1 tundra swan per season	
North Dakota	Sept. 28-Dec. 1	1 tundra swan per season	
South Dakota	Sept. 28-Dec. 22	1 tundra swan per permit	
PACIFIC FLYWAY (1)(2)			
Montana (3)	Oct. 12-Dec. 1	1 swan per season	
Nevada (4)(5)	Oct. 19-Jan. 5	1 swan per season	
Utah (3)(5)	Oct. 5-Dec. 6	1 swan per season	

(1) See State regulations for description of area open to swan hunting.
(2) Any species of swan may be taken.
(3) All harvested swans and tags must be checked or registered within 3 days of harvest.
(4) All harvested swans and tags must be checked or registered within 5 days of harvest.
(5) Harvests of trumpeter swans are limited to 5 in Nevada and 10 in Utah. When it has been determined that the quota of trumpeter swans allotted to Nevada and Utah will have been filled, the season for taking of any swan species in the respective State will be closed by either the Director upon giving public notice through local information media at least 48 hours in advance of the time and date of closing, or by the State through State regulations with such notice and time (not less than 48 hours) as they deem necessary.

6. Section 20.109 is amended by adding the entries for the following States in alphabetical order to read as follows:

§20.109 Extended seasons, limits, and hours for taking migratory game birds by falconry.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), hawking hours, and daily bag and possession limits for the species designated in this section are prescribed as follows:

Hawking hours are one-half hour before sunrise until sunset except as otherwise restricted by State regulations. Area descriptions were published in the August 23 and September 19 Federal Registers.

Limits: The daily bag limit may include no more than 3 migratory game birds, singly or in the aggregate. The possession limit is twice the daily bag limit.

These limits apply to falconry during both regular hunting seasons and extended falconry seasons -- unless further restricted by State regulations. The falconry bag and possession limits are not in addition to regular season limits.

Unless otherwise specified, extended falconry for ducks does not include sea ducks within the special sea duck areas.

Although many States permit falconry during the gun seasons, only extended falconry seasons are shown below. Please consult State regulations for details.

NOTE: The following seasons are in addition to the seasons published previously in the August 29, 2002, Federal Register (67 FR 45730).

	Extended Falconry Dates
ATLANTIC FLYWAY	
Delaware	
* * * * *	
Ducks, mergansers, and coots	Jan. 21-Mar. 10
Brant	Jan. 21-Mar. 10
Florida	
* * * * *	

	Extended Falconry Dates
Florida (cont.)	
Ducks, light geese and coots (6)	Oct. 30-Nov. 12 & Feb. 3-Feb. 28
Georgia	
Sea Ducks	Nov. 16-Nov. 22 & Dec. 2-Dec. 6 & Jan. 27-Feb. 15
Ducks, mergansers, gallinules, and coots	Nov. 16-Nov. 22 & Dec. 2-Dec. 6 & Jan. 27-Feb. 15
Maine	
Ducks, mergansers, and coots (4):	
North Zone	Dec. 10-Jan. 31
South Zone	Jan. 7-Feb. 28
Maryland	
* * * * *	
Ducks	Oct. 1-Oct. 4 & Jan. 26-Mar. 8
Brant	Jan. 26-Mar. 9
Massachusetts	
Ducks, mergansers, and coots:	
Western Zone	Oct. 5-Oct. 14 & Dec. 11-Jan. 20
Central Zone	Oct. 5-Oct. 14 & Dec. 2-Dec. 20 & Jan. 13-Jan. 20
Coastal Zone	Oct. 5-Oct. 14 & Oct. 28-Nov. 22 & Jan. 20
New Hampshire	
Ducks, mergansers, and coots:	
Inland Zone	Nov. 6-Nov. 26 & Dec. 22-Jan. 14
Coastal Zone	Jan. 26-Mar. 10
New Jersey	
Woodcock:	
North Zone	Oct. 1-Oct. 16 & Nov. 11-Jan. 15
South Zone	Oct. 1-Nov. 15 & Dec. 1-Dec. 22 & Jan. 1-Jan. 15
Ducks:	
North Zone	Oct. 1-Oct. 11 & Nov. 4-Nov. 15 & Jan. 3-Jan. 31
South Zone	Oct. 1-Oct. 18 & Dec. 2-Dec. 12 & Jan. 9-Jan. 31
Coastal Zone	Oct. 1-Nov. 1 & Nov. 13-Nov. 27 & Jan. 27-Jan. 31
New York	
Ducks, mergansers and coots:	
Long Island Zone	Nov. 1-Nov. 21 & Dec. 2-Dec. 7 & Jan. 27-Jan. 31
Northeastern Zone	Oct. 1-Oct. 4 & Nov. 18-Nov. 22 & Dec. 9-Dec. 31
Southeastern Zone	Oct. 1-Oct. 11 & Oct. 21-Nov. 9 & Dec. 30-Dec. 31
Western Zone	Oct. 1-Oct. 16 & Dec. 6-Dec. 26
Pennsylvania	
Mourning doves	Oct. 7-Nov. 1 & Dec. 2-Dec.17
Ducks:	
North Zone	Oct. 21-Nov. 9 & Jan. 6-Jan. 16 & Feb. 17-Mar. 10
South Zone	Oct. 14-Nov. 13 & Feb. 17-Mar. 10
Northwest Zone	Oct. 21-Nov. 9 & Jan. 3-Jan. 14 & Feb. 17-Mar. 10
Lake Erie Zone	Nov. 18-Nov. 23 & Jan. 13-Jan. 14 & Jan. 26-Mar. 10
Canada Geese:	
SJBP Zone	Mar. 3-Mar. 10
Pymatuning Zone	Jan. 15-Mar. 10
AP Zone	Mar. 3-Mar. 10
RP Zone	Feb. 26-Mar. 10

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	Extended Falconry Dates
South Carolina	
Ducks, mergansers, and coots	Oct. 21-Nov. 26 & Dec. 1-Dec. 11
Virginia	
. . . . .	
Ducks, mergansers, coots, moorhens, and gallinules	Dec. 8-Dec. 13& Jan. 26-Feb. 28
Canada Geese	Dec. 1-Dec. 13 & Feb. 16-Feb. 22
Brant	Nov. 6-Nov. 15 & Dec. 9 only & Jan. 27-Mar. 10
MISSISSIPPI FLYWAY	
Arkansas	
Ducks, mergansers, and coots	Dec. 6-Dec. 13 & Jan. 27-Feb. 28
Illinois	
. . . . .	
Ducks, mergansers, and coots	Feb. 3-Mar. 10
Indiana	
. . . . .	
Ducks, mergansers, and coots:	
North Zone	Sept. 28-Oct. 5 & Feb. 11-Mar. 10
South Zone	Oct. 6-Oct. 13 & Feb. 11-Mar. 10
Ohio River Zone	Oct. 6-Oct. 13 & Feb. 11-Mar. 10
Iowa	
Ducks, mergansers, and coots	Dec. 15-Jan. 28
Dark Geese:	
North Zone	Dec. 7-Jan. 12
South Zone	Oct. 21-Nov. 8 & Dec. 26-Jan. 12

	Extended Falconry Dates
Kentucky	
Ducks, mergansers, and coots	Nov. 5-Nov. 27 & Jan. 27-Feb. 2
Canada Geese:	
Western Goose Zone	
Fulton County	Nov. 6-Dec. 6
Rest of Zone	Nov. 6-Dec. 6
Pennyroyal/Coalfield Zone	Nov. 5-Dec. 12
Rest of State	Nov. 5-Dec. 12
White-fronted geese and brant	Nov. 5-Nov. 27
Light geese	Nov. 5-Nov. 27
Michigan	
. . . . .	
Ducks, mergansers, coots, and moorhens:	
North Zone	Sept. 7-Sept. 27 & Nov. 25-Nov. 28 & Mar. 1-Mar. 10
Middle Zone	Sept. 7-Oct. 11 & Dec. 9-Dec. 10 & Mar. 1-Mar. 10
South Zone	Sept. 7-Oct. 11 & Dec. 9-Dec. 10 & Mar. 1-Mar. 10
Minnesota	
. . . . .	
Ducks, mergansers, coots, moorhens, and gallinules	Nov. 27-Jan. 11
Mississippi	
Mourning Doves	Nov. 30-Dec. 22 & Jan. 12-Feb. 4
Ducks, mergansers and coots	Feb. 3-Mar. 10
Missouri	
. . . . .	
Ducks, mergansers, and coots:	
North Zone	Sept. 14-Oct. 26 & Dec. 25-Dec. 29
Middle Zone	Sept. 14-Sept. 22 & Sept. 28-Nov. 1
South Zone	Sept. 14-Sept. 22 & Oct. 16-Nov. 1

	Extended Falconry Dates
Ohio	
Ducks, mergansers, and coots	Sept. 7-Sept. 15 & Oct. 12-Oct. 13 & Jan. 20-Feb. 24
Tennessee	
. . . . .	
Ducks, mergansers, and coots	Sept. 19-Oct. 28
Wisconsin	
Rails, snipe, moorhens, and gallinules	
North Duck Zone	Sept. 1-Sept. 27 & Nov. 27-Dec. 16
South Duck Zone	Sept. 1-Oct. 4 & Oct. 14-Oct. 18 & Dec. 9-Dec. 16
Woodcock	Sept. 1-Sept. 20 & Nov. 5-Dec. 16
Ducks, mergansers, and coots	Sept. 21-Sept. 22 & Jan. 26-Mar. 10
CENTRAL FLYWAY	
Kansas	
Ducks, mergansers, and coots:	
Low Plains:	
Early Zone	Feb. 16-Mar. 9
Late Zone	Feb. 16-Mar. 9
Montana (2)	
Ducks, mergansers, and coots:	
Zone 1	Sept. 18-Sept. 27
Zone 2	Sept. 18-Sept. 27
. . . . .	
Oklahoma	
Ducks, mergansers, and coots:	
Low Plains:	
Zone 1	Dec. 9-Dec. 13 & Jan. 13-Jan. 26
Zone 2	Dec. 9-Dec. 13 & Jan. 27-Feb. 12

	Extended Falconry Dates
South Dakota	
Ducks, mergansers, and coots:	
Low Plains:	
North Zone	Sept. 4-Sept. 13 & Sept. 16-Sept.20 & Dec. 4-Dec. 19
Middle Zone	Sept. 4-Sept. 13 & Sept. 16-Sept. 27 & Dec. 11-Dec. 19
South Zone	Sept. 4-Sept. 13 & Sept. 16-Oct. 6 &
High Plains	Sept. 4-Sept. 11
Texas	
. . . . .	
Ducks, mergansers, and coots:	
Low Plains North Zone	Jan. 27-Feb. 17
Low Plains South Zone	Jan. 20-Feb. 10
. . . . .	
PACIFIC FLYWAY	
Arizona	
. . . . .	
Ducks and mergansers:	
North Zone	Oct. 13-Oct. 17
South Zone	Jan. 27-Jan. 31
California	
Ducks, mergansers, and coots:	
Northeastern Zone	Jan. 6-Jan. 24
Colorado River Zone	Jan. 27-Jan. 31
Southern Zone	Oct. 19-Nov. 1 & Jan. 27-Jan. 3
Balance-of-State Zone	Nov. 18-Nov. 29 & Jan. 27-Feb. 9
Southern San Joaquin Zone	Nov. 11-Nov. 22 & Jan. 27-Jan. 31
Canada Geese:	
Northeastern Zone	Jan. 20-Jan. 24
Southern Zone	Jan. 27-Jan. 31
Balance-of-State Zone (5)	Oct. 26-Nov. 1 & Jan 27-Feb. 9
Southern San Joaquin Zone	Oct. 19-Nov. 1 & Jan. 27-Jan. 31

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Extended Falconry Dates
California (cont.)
White-fronted Geese:
Northeastern Zone — Jan. 20–Jan. 24
Southern Zone — Jan. 27–Jan. 31
Balance-of-State Zone — Oct. 26–Nov. 1 & Jan. 27–Feb. 9
Southern San Joaquin Zone — Oct. 19–Nov. 1 & Jan. 27–Jan. 31
Brant
Northeastern Zone — Oct. 12–Nov. 9 & Dec. 10–Jan 24
Southern Zone — Nov. 2–Nov. 9 & Dec. 10–Jan. 31
Balance-of-State Zone — Oct. 26–Nov. 9 & Dec. 10–Feb. 9
Southern San Joaquin Zone — Oct. 19–Nov. 9 & Dec. 10–Jan. 31
. . . . .
New Mexico
. . . . .
Rails
Dark Geese:
North Zone — Dec. 14–Jan. 19
South Zone — Nov. 4–Nov. 10 / Oct. 5–Oct. 11
Light Geese:
North Zone — Nov. 4–Nov. 10
South Zone — Oct. 5–Oct. 11
. . . . .

(2) In Montana, the bag limit is 2 and the possession limit is 6.

. . . . . .

(4) In Maine, the daily bag and possession limits for black ducks are 1 and 2, respectively.
(5) In California, the falconry season for Canada geese is closed in the Del Norte and Humboldt Area, the Sacramento Valley Area, and in the San Joaquin Valley Area.
(6) In Florida, light geese may only be taken north and west of the Suwannee River.

[FR Doc. C2–23804 Filed 11–1–02; 8:45 am]
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Federal Register

Monday,
November 4, 2002

Part III

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Part 9
Federal Acquisition Regulation; Debarment and Suspension–Order Placement and Option Exercise; Proposed Rule

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 9

[FAR Case 2002–010]

RIN: 9000–AJ48

Federal Acquisition Regulation; Debarment and Suspension—Order Placement and Option Exercise

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to address the placement of orders against existing contracts with contractors that have been debarred, suspended, or proposed for debarment.

DATES: Interested parties should submit comments in writing on or before January 3, 2003, to be considered in the formulation of a final rule.

ADDRESSES: Submit written comments to—General Services Administration, FAR Secretariat (MVA), 1800 F Street, NW, Room 4035, ATTN: Laurie Duarte, Washington, DC 20405.

Submit electronic comments via the Internet to—*farcase.2002–010@gsa.gov*.

Please submit comments only and cite FAR case 2002–010 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Ralph De Stefano, Procurement Analyst, at (202) 501–1758. Please cite FAR case 2002–010.

SUPPLEMENTARY INFORMATION:

A. Background

This proposed rule revises FAR 9.405–1(b) to require that discretionary actions on the part of the agency meet the same standards as agencies would have to meet in awarding new contracts. Therefore, for contractors debarred, suspended, or proposed for debarment, unless the agency head makes a written determination of the compelling reasons for doing so, ordering activities shall not place orders exceeding the guaranteed minimum under indefinite-quantity contracts; place orders against optional use Federal Supply Schedule contracts; or add new work, exercise options, or otherwise extend the duration of current contracts or orders.

In addition, minor editorial corrections are made in sections 9.405, 9.405–1, and 9.405–2. The various deletions of "or a designee" from the phrase "agency head or designee" does not signify a change in policy, but implements the FAR convention at FAR 1.108(b) that each authority is delegable unless specifically stated otherwise.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Councils do not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because it only affects orders placed by civilian agencies against existing indefinite quantity contracts with contractors debarred, suspended, or proposed for debarment. The Defense FAR Supplement already prohibits the placement of such orders. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. We invite comments from small businesses and other interested parties. The Councils will consider comments from small entities concerning the affected FAR Part in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 2002–010), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 9

Government procurement.

Dated: October 18, 2002.

Al Matera,

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA propose amending 48 CFR part 9 as set forth below:

PART 9—CONTRACTOR QUALIFICATIONS

1. The authority citation for 48 CFR part 9 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Amend section 9.405 by revising paragraph (a); and removing from paragraphs (d)(2) and (d)(3) the words "or a designee". The revised text reads as follows:

9.405 Effect of listing.

(a) Contractors debarred, suspended, or proposed for debarment are excluded from receiving contracts, and agencies shall not solicit offers from, award contracts to, or consent to subcontracts with these contractors, unless the agency head determines that there is a compelling reason for such action (see 9.405–1(b), 9.405–2, 9.406–1(c), 9.407–1(d), and 23.506(e)). Contractors debarred, suspended, or proposed for debarment are also excluded from conducting business with the Government as agents or representatives of other contractors.

* * * * *

3. Amend section 9.405–1 by removing from the first sentence of paragraph (a) the words "or a designee"; revising paragraph (b); and removing paragraph (c). The revised text reads as follows:

9.405–1 Continuation of current contracts.

* * * * *

(b) For contractors debarred, suspended, or proposed for debarment, unless the agency head makes a written determination of the compelling reasons for doing so, ordering activities shall not—

(1) Place orders exceeding the guaranteed minimum under indefinite-quantity contracts;

(2) Place orders against optional use Federal Supply Schedule contracts; or

(3) Add new work, exercise options, or otherwise extend the duration of current contracts or orders.

9.405–2 [Amended]

4. Amend section 9.405–2 by removing from the first sentence of paragraph (a) the words "or a designee".

[FR Doc. 02–27268 Filed 11–1–02; 8:45 am]

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Niagara Falls National Heritage Area Study Act (Oct. 29, 2002; 116 Stat. 1735; 2 pages)

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To designate the United States courthouse to be constructed at 8th Avenue and Mill Street in Eugene, Oregon, as the "Wayne Lyman Morse United States Courthouse". (Oct. 29, 2002; 116 Stat. 1737; 1 page)

S. 1339/P.L. 107–258
Persian Gulf War POW/MIA Accountability Act of 2002 (Oct. 29, 2002; 116 Stat. 1738; 3 pages)

S. 1646/P.L. 107–259
To identify certain routes in the States of Texas, Oklahoma, Colorado, and New Mexico as part of the Ports-to-Plains Corridor, a high priority corridor on the National Highway System. (Oct. 29, 2002; 116 Stat. 1741; 2 pages)

S. 2558/P.L. 107–260
Benign Brain Tumor Cancer Registries Amendment Act (Oct. 29, 2002; 116 Stat. 1743; 2 pages)

H.R. 669/P.L. 107–261
To designate the facility of the United States Postal Service located at 127 Social Street in Woonsocket, Rhode Island, as the "Alphonse F. Auclair Post Office Building". (Oct. 30, 2002; 116 Stat. 1745; 1 page)

H.R. 670/P.L. 107–262
To designate the facility of the United States Postal Service located at 7 Commercial Street in Newport, Rhode Island, as the "Bruce F. Cotta Post Office Building". (Oct. 30, 2002; 116 Stat. 1746; 1 page)

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4 To designate the facility of the United States Postal Service located at 1299 North 7th Street in Philadelphia, Pennsylvania, as the "Herbert Arlene Post Office Building". (Oct. 30, 2002; 116 Stat. 1748; 1 page)

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To designate the facility of the United States Postal Service located at 1199 Pasadena Boulevard in Pasadena, Texas, as the "Jim Fonteno Post Office Building". (Oct. 30, 2002; 116 Stat. 1752; 1 page)

H.R. 4755/P.L. 107–269
To designate the facility of the United States Postal Service located at 204 South Broad Street in Lancaster, Ohio, as the "Clarence Miller Post Office Building". (Oct. 30, 2002; 116 Stat. 1753; 1 page)

H.R. 4794/P.L. 107–270
To designate the facility of the United States Postal Service located at 1895 Avenida Del Oro in Oceanside, California, as the "Ronald C. Packard Post Office Building". (Oct. 30, 2002; 116 Stat. 1754; 1 page)

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An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1-189 contains a note only for Parts 1-39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1-39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1-100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2001, through January 1, 2002. The CFR volume issued as of January 1, 2001 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2001. The CFR volume issued as of April 1, 2000 should be retained.

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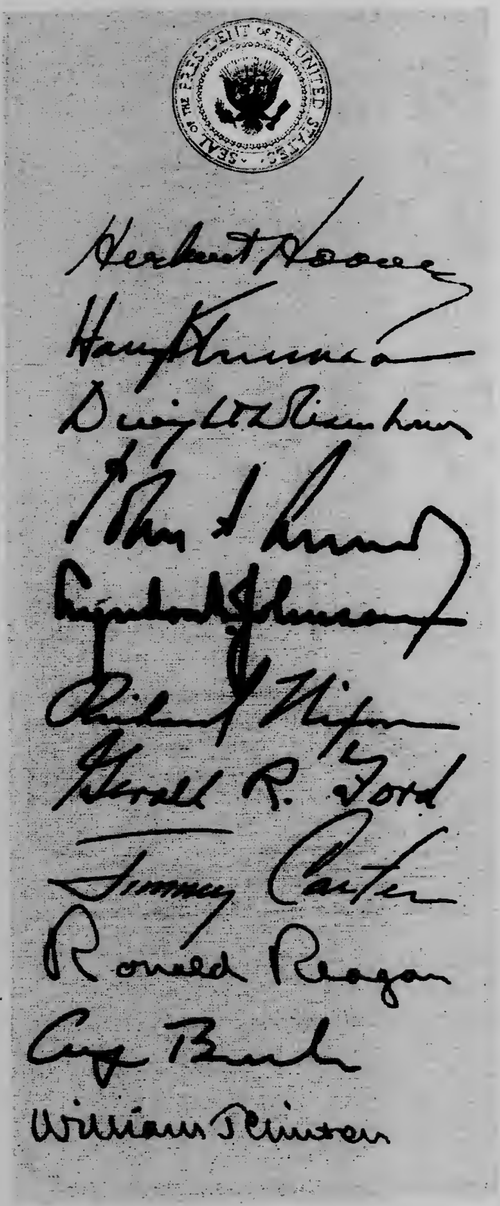

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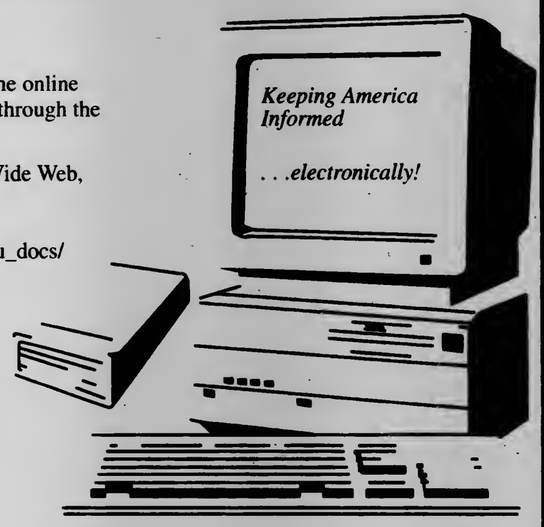

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Title 3—

The President

Proclamation 7616 of October 31, 2002

To Implement the Andean Trade Promotion and Drug Eradication Act

By the President of the United States of America

A Proclamation

1. Section 3103 of the Andean Trade Promotion and Drug Eradication Act (title XXXI of the Trade Act of 2002, Public Law 107–210) (ATPDEA) amended section 204(b) of the Andean Trade Preference Act (19 U.S.C. 3203(b)) (ATPA) to provide that certain preferential tariff treatment may be provided to eligible articles that are the product of any country that the President designates as an "ATPDEA beneficiary country" pursuant to section 204(b)(6)(B) of the ATPA, as amended, provided that the President determines that the country has satisfied the requirements of section 204(b)(5)(A)(ii)(I) of the ATPA, as amended, relating to the implementation of procedures and requirements similar to those in chapter 5 of the North American Free Trade Agreement (NAFTA).

2. Section 3103(a)(2) of the ATPDEA amended section 204(b) of the ATPA to authorize the President to proclaim duty-free treatment for any article described in section 204(b)(1)(A) through (D) of the ATPA, as amended, that is the growth, product, or manufacture of an ATPDEA beneficiary country, that is imported directly into the customs territory of the United States from an ATPDEA beneficiary country, and that meets the requirements of section 204 of the ATPA, as amended, if the President determines that such article is not import-sensitive in the context of imports from ATPDEA beneficiary countries, provided that the President determines that the country has satisfied the requirements of section 204(b)(5)(A)(ii)(I) of the ATPA, as amended, relating to the implementation of procedures and requirements similar to those in chapter 5 of the NAFTA.

3. Section 3103(a)(2) of the ATPDEA amended section 204(b) of the ATPA to provide that eligible textile and apparel articles of a designated ATPDEA beneficiary country shall enter the United States free of duty and free of quantitative limitations, provided that the President determines that the country has satisfied the requirements of section 204(b)(5)(A)(ii)(I) of the ATPA, as amended, relating to the implementation of procedures and requirements similar to those in chapter 5 of the NAFTA.

4. Section 3103(a)(2) of the ATPDEA amended section 204(b) of the ATPA to provide that eligible tuna products of a designated ATPDEA beneficiary country shall enter the United States free of duty and free of quantitative limitations, provided that the President determines that the country has satisfied the requirements of section 204(b)(5)(A)(ii)(I) of the ATPA, as amended, relating to the implementation of procedures and requirements similar to those in chapter 5 of the NAFTA.

5. Section 203(e)(2)(A) of the ATPA (19 U.S.C. 3202(e)(2)(A)) requires the President to publish in the **Federal Register** notice of proposed action under section 203(e)(1) of the ATPA (19 U.S.C. 3202(e)(1)) at least 30 days prior to taking such action. Section 212(e)(2)(A) of the Caribbean Basin Economic Recovery Act (CBERA) (19 U.S.C. 2702(e)(2)(A)) requires the President to publish in the **Federal Register** notice of proposed action under section 212(e)(1) of the CBERA (19 U.S.C. 2702(e)(1)) at least 30 days prior to taking such action.

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6. In order to implement the tariff treatment provided under the ATPDEA, it is necessary to modify the Harmonized Tariff Schedule of the United States (HTS).

7. Section 604 of the Trade Act of 1974 (19 U.S.C. 2483) (1974 Trade Act) authorizes the President to embody in the HTS the substance of the relevant provisions of that Act, and of other acts affecting import treatment, and actions thereunder, including the removal, modification, continuance, or imposition of any rate of duty or other import restriction.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States of America, including section 604 of the 1974 Trade Act, do proclaim as follows:

(1) I have designated the following countries as ATPDEA beneficiary countries pursuant to section 204(b)(6)(B) of the ATPA, as amended, and have determined that these countries have satisfied the requirements of section 204(b)(5)(A)(ii)(I) of the ATPA, as amended, relating to the implementation of procedures and requirements similar to those in chapter 5 of the NAFTA:

Bolivia

Colombia

Ecuador

Peru.

(2) In order to provide for the preferential treatment provided for in section 204(b) of the ATPA, as amended, the HTS is modified as provided in the annex to this proclamation.

(3) The functions of the President under section 203(e)(2)(A) of the ATPA and section 212(e)(2)(A) of the CBERA with respect to publishing notice of this proclamation are delegated to the United States Trade Representative.

(4) Any provisions of previous proclamations and Executive Orders that are inconsistent with this proclamation are superseded to the extent of such inconsistency.

(5) This proclamation is effective on the date of signature.

IN WITNESS WHEREOF, I have hereunto set my hand this thirty-first day of October, in the year of our Lord two thousand two, and of the Independence of the United States of America the two hundred and twenty-seventh.

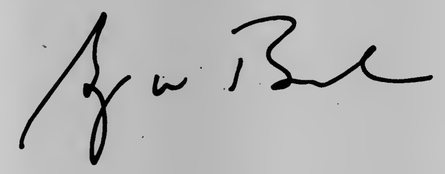

Billing code 3195–01–P

ANNEX

Effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after the date of signature, the Harmonized Tariff Schedule of the United States (HTS) is modified as follows:

A. General note 3(c)(i) is modified by deleting "Andean Trade Preference Act.....J or J*" and by inserting in lieu thereof "Andean Trade Preference Act or Andean Trade Promotion and Drug Eradication Act.....J, J* or J+".

B. General note 11(d) is modified by–

(i) deleting from subdivision (i) of such note the phrase "which are subject to textile agreements" and by inserting in lieu thereof "which were not eligible articles for purposes of this note on January 1, 1994";

(ii) deleting from subdivision (ii) of such note the phrase ", except goods of subheadings 6402.20.00 and 6405.90.20 of the HTS" and by inserting in lieu thereof "not designated as of August 6, 2002, as eligible for purposes of the U.S. Generalized System of Preferences under title V of the Trade Act of 1974";

(iii) deleting from subdivision (iii) of such note the semicolon after the word "containers" and by inserting in lieu thereof the phrase ", other than tuna in foil or other flexible airtight containers weighing with their contents not more than 6.8 kg each";

(iv) deleting the text of subdivision (vi) of such note and by inserting in lieu thereof the following:

> "handbags, luggage, flat goods, work gloves and leather wearing apparel that were not designated on August 5, 1983, as eligible articles for purposes of the U.S. Generalized System of Preferences under title V of the Trade Act of 1974;"

(v) deleting the period at the end of subdivision (ix) of such note and by inserting a semicolon in lieu thereof, and by inserting the following new clause immediately below such subdivision:

> "provided that, in the case of goods described in subdivisions (ii), (iv), (v) and (vi), the President may proclaim duty-free treatment for any article that is the growth, product or manufacture of a country both listed in subdivision (a) of this note and enumerated below, where such article is imported directly into the customs territory of the United States from a designated Andean Trade Promotion and Drug Eradication Act (ATPDEA) beneficiary country that satisfies the customs requirements of the ATPDEA and is enumerated below, if the President determines that such article is not import-sensitive in the context of imports from a country or countries enumerated below:
>
> Bolivia
> Colombia
> Ecuador
> Peru
>
> Such goods shall be designated in the "Special" subcolumn following the rate of duty of "Free" by the symbol "J+" in parentheses. Goods described in subdivisions (i), (iii), (vii), (viii) and (ix) of this note and the product of a country enumerated herein shall not be eligible for such duty-free treatment under the terms of this note." and

(vi) deleting subdivision (e) of such note.

C. The following provisions of the HTS are each modified by inserting, in the "Special" subcolumn after the duty rate of "free", in alphabetical sequence in the parenthetical expression the symbol "J+":

2709.00.10	2710.11.15	2710.11.25	2710.19.05	2710.19.15
2709.00.20	2710.11.18	2710.11.45	2710.19.10	2710.19.21

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2710.19.22	6116.10.44	6403.91.90	9101.29.70	9108.90.50
2710.19.23	6116.10.48	6403.99.20	9101.29.80	9108.90.60
2710.19.30	6116.10.55	6403.99.40	9101.99.40	9108.90.70
2710.19.35	6116.10.65	6403.99.60	9102.11.10	9108.90.80
2710.19.40	6116.92.64	6403.99.75	9102.11.25	9108.90.90
2710.19.45	6116.92.88	6403.99.90	9102.11.30	9108.90.95
2710.91.00	6116.93.64	6404.11.20	9102.11.45	9110.11.00
2710.99.05	6116.93.88	6404.11.40	9102.11.50	9110.12.00
2710.99.10	6116.99.48	6404.11.50	9102.11.65	9110.19.00
2710.99.16	6216.00.17	6404.11.60	9102.11.70	9111.10.00
2710.99.21	6216.00.19	6404.11.70	9102.11.95	9111.20.20
2710.99.31	6216.00.21	6404.11.80	9102.19.20	9111.20.40
2710.99.32	6216.00.24	6404.19.15	9102.19.40	9111.80.00
2710.99.39	6216.00.26	6404.19.25	9102.19.60	9111.90.40
2710.99.45	6216.00.38	6404.19.30	9102.19.80	9111.90.50
4202.11.00	6216.00.54	6404.19.35	9102.21.10	9111.90.70
4202.12.20	6401.92.60	6404.19.40	9102.21.25	9113.10.00
4202.12.40	6402.19.05	6404.19.50	9102.21.30	9113.20.20
4202.12.60	6402.19.15	6404.19.60	9102.21.50	9113.20.40
4202.12.80	6402.19.50	6404.19.70	9102.21.70	9113.20.60
4202.19.00	6402.19.70	6404.19.80	9102.21.90	9113.20.90
4202.21.30	6402.19.90	6404.19.90	9102.29.02	9113.90.40
4202.21.60	6402.30.30	6404.20.20	9102.29.04	9113.90.80
4202.21.90	6402.30.60	6404.20.40	9102.29.10	9114.10.40
4202.22.15	6402.30.90	6404.20.60	9102.29.15	9114.30.40
4202.22.40	6402.91.40	6405.10.00	9102.29.20	9114.30.80
4202.22.45	6402.91.60	6405.20.30	9102.29.25	9114.40.20
4202.22.60	6402.91.70	6405.20.90	9102.29.30	9114.40.60
4202.22.80	6402.99.05	6405.90.90	9102.29.35	9114.90.15
4202.29.90	6402.99.10	6406.10.05	9102.29.40	9114.90.40
4202.31.60	6402.99.14	6406.10.10	9102.29.45	
4202.32.40	6402.99.18	6406.10.20	9102.29.50	
4202.32.80	6402.99.30	6406.10.25	9102.29.55	
4202.32.95	6402.99.60	6406.10.30	9102.29.60	
4202.91.00	6402.99.70	6406.10.35	9102.91.20	
4202.92.15	6403.19.10	6406.10.40	9102.91.40	
4202.92.20	6403.19.30	6406.10.45	9102.91.80	
4202.92.30	6403.19.40	6406.10.50	9102.99.20	
4202.92.45	6403.19.50	9101.11.40	9102.99.40	
4202.92.60	6403.40.30	9101.11.80	9102.99.60	
4202.92.90	6403.40.60	9101.19.40	9102.99.80	
4202.99.90	6403.51.30	9101.19.80	9108.11.40	
4203.10.40	6403.51.60	9101.21.10	9108.11.80	
4203.29.08	6403.51.90	9101.21.30	9108.12.00	
4203.29.18	6403.59.15	9101.21.80	9108.19.40	
4602.10.21	6403.59.30	9101.29.10	9108.19.80	
4602.10.22	6403.59.60	9101.29.20	9108.90.10	
4602.10.25	6403.59.90	9101.29.30	9108.90.20	
4602.10.29	6403.91.30	9101.29.40	9108.90.30	
6116.10.17	6403.91.60	9101.29.50	9108.90.40	

D. U.S. note 7 to subchapter II of chapter 98 is modified by inserting the following new subdivision in sequence:

"(c) For purposes of heading 9802.00.80, duty-free treatment shall be accorded only to textile luggage assembled in a designated Andean Trade Promotion and Drug Eradication Act beneficiary country enumerated in U.S. note 1 to subchapter XXI of this chapter from fabric wholly formed and cut in the United States, from yarns wholly formed in the United States."

E. Chapter 98 of the HTS is further modified by adding at the end thereof the following new subchapter XXI, as set forth below:

"SUBCHAPTER XXI

GOODS ELIGIBLE FOR SPECIAL TARIFF BENEFITS UNDER THE ANDEAN TRADE PROMOTION AND DRUG ERADICATION ACT

U.S. Notes

1. The tariff treatment provided in this subchapter shall be accorded only to goods that are described in the subheadings of this subchapter and imported directly into the customs territory of the United States from a designated Andean Trade Promotion and Drug Eradication Act (ATPDEA) beneficiary country that satisfies the customs requirements of the ATPDEA and is enumerated below. The following countries have been designated by the President as ATPDEA beneficiary countries that satisfy the customs requirements of the ATPDEA and, therefore, are to be afforded the tariff treatment provided for in this subchapter:

Bolivia
Colombia
Ecuador
Peru

2. (a) For purposes of eligibility for duty-free treatment under subheading 9821.01.01, such tuna--

(i) must be harvested by United States vessels or by ATPDEA beneficiary country vessels, and

(ii) must have been prepared or preserved in any manner in an ATPDEA beneficiary country enumerated in note 1 to this subchapter.

Such tuna shall enter the United States free of any quantitative restrictions.

(b) The term "United States vessels" includes any vessel having a certificate of documentation with a fishery endorsement under chapter 121 of title 46, United States Code; and the term "ATPDEA beneficiary country vessels" includes any vessel–

(i) which is registered or recorded in an ATPDEA beneficiary country enumerated in note 1 to this subchapter,

(ii) which sails under the flag of such an ATPDEA beneficiary country,

(iii) which is at least 75 percent owned by nationals of such an ATPDEA beneficiary country or by a company having its principal place of business in such an ATPDEA beneficiary country, of which the manager or managers, chairman of the board of directors or of the supervisory board and the majority of the members of such boards are nationals of such an ATPDEA beneficiary country and of which, in the case of a company, at least 50 percent of the capital is owned by such an ATPDEA beneficiary country or by public bodies or nationals of an ATPDEA beneficiary country;

(iv) of which the master and officers are nationals of such an ATPDEA beneficiary country; and

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(v) of which at least 75 percent of the crew are nationals of such an ATPDEA beneficiary country.

3. (a) Except as provided in this note, textile and apparel articles described in subheadings 9821.11.01 through 9821.11.25, inclusive, of this subchapter that are imported directly into the customs territory of the United States from a designated ATPDEA beneficiary country enumerated in U.S. note 1 to this subchapter shall be eligible to enter free of duty and free of any quantitative limitations, restrictions or consultation levels except as provided in this subchapter, under the terms of the provisions set forth in such subheadings and applicable legal notes, as indicated by the rate of duty of "Free" in the "Special" subcolumn for such provisions.

(b) For purposes of subheading 9821.11.16, goods entered under this provision must be certified, by a competent authority of a designated ATPDEA beneficiary country enumerated in U.S. note 1 to this subchapter, as eligible products of such country, in accordance with requirements established by the appropriate U.S. government authority.

(c) For purposes of subheading 9821.11.19, imports of brassieres of a producer or an entity controlling production, during the 12-month period beginning on October 1, 2003, and during each of the two succeeding 12-month periods and the time period beginning October 1, 2006 and ending December 31, 2006, shall be eligible for preferential treatment under this subheading only if the aggregate cost of fabrics (exclusive of all findings and trimmings) formed in the United States that are used in the production of all such articles of that producer or entity that are entered and eligible during the preceding 12-month period is at least 75 percent of the aggregate declared customs value of the fabric (exclusive of all findings and trimmings) contained in all such articles of that producer or entity that are entered and eligible under this subheading during the preceding 12-month period. If the Customs Service finds that a producer or an entity controlling production has not satisfied such requirement in a 12-month period, then all such apparel articles of that producer or entity shall be ineligible for preferential treatment under this subheading during any succeeding 12-month period until the aggregate cost of fabrics (exclusive of all findings and trimmings) formed in the United States that are used in the production of such articles of that producer or entity entered during the preceding 12-month period is at least 85 percent of the aggregate declared customs value of the fabric (exclusive of all findings and trimmings) contained all such articles of that producer or entity that are entered and eligible under this clause during the preceding 12-month period.

(d) For purposes of subheading 9821.11.25, the duty-free treatment afforded to goods imported under such subheading shall be limited, in each of the time periods set forth herein, to an aggregate quantity not to exceed the applicable percentage set forth herein in aggregate square meter equivalents of all apparel articles imported into the United States in the preceding one-year period for which data are available:

Time Period	Applicable Percentage
October 1, 2002 through September 30, 2003	2%
October 1, 2003 through September 30, 2004	2.75%
October 1, 2004 through September 30, 2005	3.5%
October 1, 2005 through September 30, 2006	4.25%
October 1, 2006 through December 31, 2006	5%

The aggregate quantity of imports allowed during each enumerated time period shall be published in the Federal Register by the Committee for the Implementation of Textile Agreements.

(e) For purposes of subheading 9821.11.25, duty-free treatment shall be afforded to goods imported under such subheading whether or not the apparel articles are also made from any of the fabrics, fabric components formed or components knit-to-shape described in subheadings 9821.11.01 through 9821.11.10, inclusive, unless such articles are made exclusively from any of the fabrics, fabric components formed or components knit-to-shape described in such subheadings.

4. (a) A textile or apparel article otherwise eligible for preferential treatment under the provisions of this subchapter shall not be ineligible for such treatment because the article contains–

(i) findings or trimmings of foreign origin, if the value of such findings and trimmings does not exceed 25 percent of the cost of the components of the assembled article;

(ii) certain interlinings of foreign origin, if the value of such interlinings (and any findings and trimmings of foreign origin) does not exceed 25 percent of the cost of the components of the assembled article, unless

the appropriate U.S. government authority terminates such treatment in a determination published in the Federal Register; or

(iii) yarns not wholly formed in the United States or in one or more designated ATPDEA beneficiary countries enumerated in U.S. note 1 to this subchapter, provided that the total weight of all such yarns is not more than 7 percent of the total weight of the good.

(b) For purposes of subdivision (a)(i) above, findings or trimmings eligible under such subdivision include sewing thread, hooks and eyes, snaps, buttons, "bow buds", decorative lace trim, elastic strips, zippers (including zipper tapes), labels, and other similar products.

(c) For purposes of subdivision (a)(ii) above, the interlinings eligible under such subdivision include only a chest type plate, "hymo" piece or "sleeve header", of woven or weft-inserted warp knit construction and of coarse animal hair or man-made filaments.

(d) For purposes of subheadings 9821.11.01 through 9821.11.13, inclusive, and subheading 9821.11.25, an article otherwise eligible for preferential treatment under such subheadings shall not be ineligible because the article contains nylon filament yarn (other than elastomeric yarn) that is classifiable in subheading 5402.10.30, 5402.10.60, 5402.31.30, 5402.31.60, 5402.32.30, 5402.32.60, 5402.41.10, 5402.41.90, 5402.51.00 or 5402.61.00 of the tariff schedule that is entered free of duty as a product of Israel under the terms of general note 8 to the tariff schedule or as a good of Canada or a good of Mexico under the terms of general note 12 to the tariff schedule.

	Articles imported from a designated ATPDEA beneficiary country enumerated in U.S. note 1(a) to this subchapter:		
9821.01.01	Tuna in foil or in flexible airtight containers, the foregoing weighing with their contents not more than 6.8 kg each, under the terms of U.S. note 2 to this subchapter...		Free
	Apparel articles sewn or otherwise assembled in one or more such countries, or the United States, or both, exclusively from any of the following:		
9821.11.01	Fabrics or fabric components wholly formed, or components knit-to-shape, in the United States, from yarns wholly formed in the United States or in one or more such countries (including fabrics not formed from yarns, if such fabrics are classifiable in heading 5602 or 5603 of the tariff schedule and are formed in the United States), provided that, if such apparel articles are assembled from knitted or crocheted fabrics or from woven fabrics, all dyeing, printing and finishing of the fabrics is carried out in the United States.....		Free
9821.11.04	Fabrics or fabric components formed or components knit-to-shape in one or more such countries, from yarns wholly formed in one or more such countries, if such fabrics (including fabrics not formed from yarns, if such fabrics are classifiable in heading 5602 or 5603 of the tariff schedule and are formed in one or more such countries) or components are in chief value of llama, alpaca or vicuña.....		Free

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	[Articles...:]	
	[Apparel...:]	
9821.11.07	Fabrics or yarns, provided that such apparel articles of such fabrics or yarns would be considered an originating good under the terms of general note 12(t) to the tariff schedule without regard to the source of the fabric or yarn if such apparel article had been imported from the territory of Canada or the territory of Mexico directly into the customs territory of the United States	Free
9821.11.10	Fabrics or yarns designated by the appropriate U.S. government authority in the Federal Register as fabrics or yarns that cannot be supplied by the domestic industry in commercial quantities in a timely manner, under any terms as such authority may provide	Free
9821.11.13	Combinations of fabrics, fabric components, knit-to-shape components or yarns described in two or more subheadings from 9821.11.01 through 9821.11.10, inclusive	Free
9821.11.16	Handloomed, handmade or folklore textile and apparel goods, under the terms of U.S. note 3(b) to this subchapter	Free
9821.11.19	Brassieres classifiable in subheading 6212.10 of the tariff schedule, both cut and sewn or otherwise assembled in the United States, or one or more such countries, or both, subject to the provisions of U.S. note 3(c) to this subchapter	Free
9821.11.22	Textile luggage assembled in one or more such countries from fabric cut in one or more such countries from fabric wholly formed in the United States from yarns wholly formed in the United States	Free
9821.11.25	Apparel articles sewn or otherwise assembled in one or more such countries from fabrics or from fabric components formed or from components knit-to-shape in one or more such countries, from yarns wholly formed in the United States or in one or more such countries (including fabrics not formed from yarns, if such fabrics are classifiable in heading 5602 or 5603 of the tariff schedule and are formed in one or more such countries); the foregoing apparel articles imported under the terms of U.S. note 3(d) and U.S. note 3(e) to this subchapter	Free"

F. Chapter 16 of the HTS is modified by:

(i) deleting from additional U.S. note 3 to such chapter "1604.14.20" and inserting in lieu thereof "1604.14.22".

(ii) for the Rates of Duty 1-Special subcolumn in HTS subheading 1604.14.22, on January 1 for each of the years listed below, deleting the rate of duty followed by the symbol "MX,R" in parentheses and inserting in lieu thereof the rate of duty specified:

2003	2004	2005	2006	2007	2008
2%	1.6%	1.2%	0.8%	0.4%	Free

(iii) for the Rates of Duty 1-Special subcolumn in HTS subheading 1604.14.22, on January 1 for each of the years listed below, deleting the rate of duty followed by the symbol "JO" in parentheses and inserting in lieu thereof the rate of duty specified:

2003	2004
1.5%	Free

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Presidential Documents

Proclamation 7617 of October 31, 2002

National Alzheimer's Disease Awareness Month, 2002

By the President of the United States of America

A Proclamation

Alzheimer's Disease robs its victims of their independence and identity and greatly affects the lives of their loved ones. This disease and other forms of dementia afflict approximately 50 percent of Americans age 85 and older. Due to the rapid growth of our elderly population, experts expect that the number of individuals who will develop this debilitating illness will dramatically increase. As we observe National Alzheimer's Disease Awareness Month, we rededicate ourselves to fighting this devastating affliction and to supporting Alzheimer's patients, their families, and their caregivers.

Alzheimer's Disease harms its victims by altering the brain's chemistry and disrupting signals to the brain by attacking cells, nerves, and transmitters. Those who develop Alzheimer's Disease may experience memory lapses, confusion, or mood swings. They can also become withdrawn and depressed due to lost confidence, and they have significant problems communicating. These symptoms usually worsen over time and, in most cases, patients eventually need help with all of their daily activities.

Researchers at the National Institutes of Health (NIH) and in the private sector are working to understand how Alzheimer's develops. We hope that their advances will lead to new methods for early diagnosis, new medications that will aid Alzheimer's patients in all stages of the disease, and ultimately a cure for this debilitating illness. Recent studies suggest that commonly used substances, including certain vitamins and anti-inflammatory drugs, may help prevent Alzheimer's Disease. In addition, we are working to increase understanding of the genetic and nongenetic risk factors that may influence the development of this disease.

As we continue to pursue better prevention and treatment regimes, we remain committed to caring for those now afflicted with Alzheimer's disease. Alzheimer's patients generally live for an average of 8 to 10 years after they are diagnosed. As the disease progresses, patients require increased support from families and caregivers.

Scientists at the NIH and the Department of Veterans Affairs are continuing their research to help improve patient care and ease the burdens of caregivers at home and in nursing facilities. The Administration on Aging is working to develop best practices for serving persons with Alzheimer's disease and assisting States as they attempt to improve their responsiveness and the accessibility of home and community-based long-term care services and other support resources. My Administration is increasing access to available information, education, and referrals about diagnostic and treatment services for those afflicted with Alzheimer's Disease.

During National Alzheimer's Disease Awareness Month, I commend the members of our research community for their commitment to improving diagnosis and treatment for Alzheimer's Disease; and I encourage those suffering from or at risk for Alzheimer's to participate in clinical treatment studies and therapy trials. These studies and trials have been and continue to be an important part of our progress against this disease. I also commend

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the families and caregivers of individuals suffering from Alzheimer's disease who provide the care and support to their loved ones and carry the daily burden of this tragic disease.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim November 2002 as National Alzheimer's Disease Awareness Month. I call upon the people of the United States to observe this month with appropriate programs and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this thirty-first day of October, in the year of our Lord two thousand two, and of the Independence of the United States of America the two hundred and twenty-seventh.

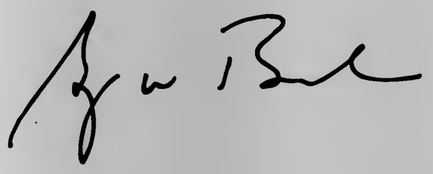

[FR Doc. 02–28259
Filed 11–4–02; 8:45 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 7618 of October 31, 2002

National Diabetes Month, 2002

By the President of the United States of America

A Proclamation

Diabetes is a chronic disease that affects approximately 17 million Americans. During National Diabetes Month, we renew our commitment to preventing and eradicating this illness.

Diabetes interferes with the body's ability to process sugars normally and can lead to adverse complications of the eyes, heart, kidneys, or nerves. There are two major types of diabetes, and both have debilitating effects on organ systems. Type 1 diabetes, also known as juvenile diabetes, is an autoimmune disorder that destroys insulin-producing cells in the pancreas. The young people who are affected by this disease must maintain their health by taking insulin and carefully regulating their diets. Type 2 diabetes, which is also known as "adult onset diabetes," is a metabolic disorder that is linked to a combination of genetics, excess weight, and lack of exercise. The most common form of diabetes is type 2, which comprises 95 percent of the diabetes cases in our Nation. It usually occurs in adults but now also affects a growing number of children who do not get enough exercise. At least 16 million Americans are currently at high risk of developing type 2 diabetes.

To ensure the future health of our Nation, Americans must safeguard our children and our families from diabetes by encouraging good health and regular exercise. Following the guidelines for good nutrition, getting enough physical exercise, and maintaining proper weight can help prevent diabetes and aid those suffering from it to reduce the chance of severe complications associated with the disease. Doctors have found that even minor weight loss in patients with type 2 diabetes can improve glucose control, decrease dependence on medications, and enhance quality of life.

My Administration is committed to fighting diabetes and its complications through advanced research funded by the National Institutes of Health (NIH), improved medical treatments, and education. In fiscal year 2002, the NIH dedicated approximately $781 million to diabetes research. My Administration will continue to support NIH's important efforts in this area as well as other scientists and researchers who are working to prevent, manage, and cure this disease. Through the National Diabetes Education Program, a joint effort of the NIH and the Centers for Disease Control and Prevention, we are educating Americans about the diabetes risk factors and encouraging them to make simple changes in their life that will help them stay healthy and prevent this serious disease. We are also working with volunteers from the American Diabetes Association, Juvenile Diabetes Research Foundation, and other organizations to raise awareness of diabetes in our communities and to provide assistance for families who have loved ones with diabetes.

As we observe National Diabetes Awareness Month, I encourage all Americans to help fight this disease by making healthy lifestyle choices and by providing support to those suffering from diabetes. We can help overcome diabetes and give hope and comfort to countless individuals in the United States and around the world.

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NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim November 2002 as National Diabetes Month. I call on all Americans to increase their awareness of the risk factors and symptoms related to diabetes and to observe this month with appropriate programs and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this thirty-first day of October, in the year of our Lord two thousand two, and of the Independence of the United States of America the two hundred and twenty-seventh.

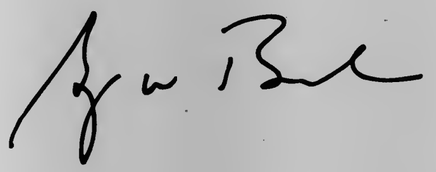

[FR Doc. 02–28260
Filed 11–4–02; 8:45 am]
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Rules and Regulations

Federal Register
Vol. 67, No. 214
Tuesday, November 5, 2002

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–CE–13–AD; Amendment 39–12939; AD 2002–22–13]

RIN 2120–AA64

Airworthiness Directives; Rockwell Collins, Inc. FMC–4200, FMC–5000, and FMC–6000 Flight Management Computers

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Rockwell Collins, Inc. (Rockwell Collins) FMC–4200, FMC–5000, and FMC–6000 flight management computers (FMC) that are installed on airplanes. This AD requires you to remove the affected FMC unit and replace it with a new FMC unit or an FMC unit that has been modified to correct a problem with the flight management system (FMS) accepting new information when an existing procedure or flight plan is changed. This AD is the result of a report that an aircraft proceeded beyond the published altitude constraint on an arrival procedure. The actions specified by this AD are intended to prevent the FMC from retaining and displaying original altitude constraints when an edit or a replacement is made to a procedure or flight plan that shares a waypoint with another procedure or an airway, and there is an altitude constraint on the shared waypoint. Such a condition could cause the pilot to fly the airplane out of the range of the correct altitude constraint. This condition could result in air traffic control or the pilot making flight decisions that put the airplane in unsafe flight conditions.

DATES: This AD becomes effective on December 20, 2002.

ADDRESSES: You may get the service information referenced in this AD from Rockwell Collins, Business and Regional Systems, 400 Collins Road Northeast, Cedar Rapids, Iowa 52498; telephone: (319) 295–2512; facsimile: (319) 295–5064. You may view this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–CE–13–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Roger A. Souter, FAA, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Rm 100, Wichita, Kansas 67209; telephone: (316) 946–4134; facsimile: (316) 946–4407. E-mail address: *Roger.Souter@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

What events have caused this AD? The FAA received a report of an incident that occurred during a flight arriving in Toronto, Ontario. A change in the flight management computer (FMC) had been made to the original flight plan changing the altitude constraint to 8,000 feet–11,000 feet. However, the flight management system (FMS) retained the altitude constraint of the original flight plan of 10,000 feet–14,000 feet. The pilot was unaware of this situation occurring, which resulted in the descent of the airplane beyond the published altitude constraint on the arrival procedure.

When the FMC is operating correctly and a change is made, the FMS allows the pilot to delete information associated with a procedure or flight plan by deleting the procedure or by replacing the procedure.

Rockwell Collins FMC–4200, FMC–5000, and FMC–6000 flight management computers could be installed on, but not limited to, the following aircraft:

- Raytheon Model Beechjet 400A and Model 400T (T–1A) airplanes;
- Bombardier Model CL–600–2B19 Regional Jet Series 100 airplanes; and
- Bombardier Model CL–600–2B16 (variant CL–604) airplanes.

What is the potential impact if FAA took no action? As described above, such erroneous altitude constraints retained by the FMS could cause the pilot to fly the airplane out of the range of the correct altitude constraint. This condition could result in air traffic control or the pilot making flight decisions that put the airplane in unsafe flight conditions.

Has FAA taken any action to this point? We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to Rockwell Collins FMC–4200, FMC–5000, and FMC–6000 flight management computers (FMC) that are installed on airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on July 10, 2002 (67 FR 45678). The NPRM proposed to require you to remove the affected FMC unit and replace it with a new FMC unit or an FMC unit that has been modified to correct a problem with the flight management system (FMS) accepting new information when an existing procedure or flight plan is changed.

Was the public invited to comment? The FAA encouraged interested persons to participate in the making of this amendment. The following presents the comments received on the proposal and FAA's response to each comment:

Comment Issue No. 1: List Affected FMC Units by Part Numbers in Addition to Model Number

What is the commenter's concern? Two commenters state that there are numerous part numbers associated with each FMC model number that are not affected by the proposed AD. The commenters state that only seven part numbers are actually affected by the proposed AD as specified in Rockwell Collins Operator Bulletin 99–11, dated September 1999. The way the proposed AD is currently written, an owner/operator of an aircraft with any of the specified model FMCs installed would be subject to the proposed AD. Therefore, adding specific affected part numbers in the AD will significantly reduce the burden on owners/operators of aircraft equipped with the specified FMC model.

What is FAA's response to the concern? We concur with the commenters and will clearly identify the seven affected FMC part numbers in the AD.

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Comment Issue No. 2: Remove the Manufacturer's Service Bulletins From the Procedures Requirements of the Proposed AD and List Acceptable Replacement FMC Part Numbers

What is the commenter's concern? The corrective action required is to modify the affected FMC unit. Only a Rockwell Collins Service Center is authorized to modify (rework) the affected FMC units. The modification includes changing the FMC part number when the unit is reworked. Therefore, it is irrelevant whether an owner/operator has a reworked unit or a newly manufactured unit installed provided the part number is correct.

What is FAA's response to the concern? We concur with the commenters and will include a list of acceptable replacement part numbers in the proposed AD. We will not reference the individual service bulletins in the AD.

Comment Issue No. 3: Add a Note in the AD Alerting Owners/Operators That Certain FMC Part Numbers Affect Other Installed Avionics Units

What is the commenter's concern? The commenter states that all of the FMC corrective actions involve a change in the FMC part number. Before a part number has been certified for installation on the particular aircraft, through either the Type Certification or Supplemental Type Certification process, you should also determine whether additional avionics units need to be upgraded at the same time to be compatible with the selected FMC part number. The commenter suggests that a note to this effect be included in the AD.

What is FAA's response to the concern? We concur with the commenter and will include a note in the AD to address this concern.

FAA's Determination

What is FAA's final determination on this issue? After careful review of all available information related to the subject presented above, we have determined that air safety and the public interest require the adoption of the rule as proposed except for the additions discussed previously and minor editorial corrections. We have determined that these additions and minor corrections:

- Provide the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

Cost Impact

How many airplanes does this AD impact? We estimate that 700 affected Rockwell Collins FMC–4200, FMC–5000, and FMC–6000 flight management computers could be installed on airplanes in the U.S. registry. Some airplanes have more than one unit installed.

What is the cost impact of this AD on owners/operators of the affected airplanes? We estimate the following costs to accomplish the modification:

Labor cost	Parts cost	Total cost per FMC unit
4 workhours per FMC unit X $60 per hour = $240.	$500 per FMC unit	$740

Compliance Time of This AD

What would be the compliance time of this AD? The compliance time of this AD is "within the next 24 calendar months after the effective date of this AD, unless already accomplished."

Why is the compliance time presented in calendar time instead of hours time-in-service (TIS)? The compliance of this AD is presented in calendar time instead of hours TIS because the condition exists regardless of airplane operation. The FMS retention of invalid altitude constraint information could occur regardless of the number of times and hours the airplane was operated. For these reasons, FAA has determined that a compliance based on calendar time should be utilized in this AD in order to ensure that the unsafe condition is addressed in a reasonable time period on all airplanes that have an affected Rockwell FMC–4200, FMC–5000, or FMC–6000 flight management computer installed.

Regulatory Impact

Does this AD impact various entities? The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

Does this AD involve a significant rule or regulatory action? For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new AD to read as follows:

2002–22–13 Rockwell Collins, Inc.: Amendment 39–12939; Docket No. 2000–CE–13–AD.

(a) *What airplanes are affected by this AD?* This AD affects Rockwell Collins flight management computers (FMC) specified in paragraph (a)(1) that are installed on, but not limited to, the aircraft specified in paragraph (a)(2).

(1) *Rockwell Collins flight management computers:* The following presents the affected FMC models and part numbers:

Affected FMC model No.	Affected FMC Collins part No.
FMC–4200	822–0783–002
FMC–4200	822–0783–006
FMC–4200	822–0783–010
FMC–5000	822–0891–001
FMC–6000	822–0868–004
FMC–6000	822–0868–010
FMC–6000	822–0868–021

(2) *Affected airplanes:* The following presents a list of aircraft (certificated in any category) that the affected Rockwell Collins FMC units are installed on (other airplanes could have the installation):

Type certificate holder	Affected airplanes
Raytheon	Model Beechjet 400A and Model 400T (T–1A).
Bombardier	Model CL–600–2B19 Regional Jet Series 100 and Model CL–600–2B16 (variant CL–604).

(b) *Who must comply with this AD?* Anyone who wishes to operate an aircraft equipped with one of the affected FMCs must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to prevent the FMC from retaining original information when an edit is made to a procedure or flight plan. Such a condition could cause the pilot to fly the airplane out of the range of the correct altitude constraint. This condition could result in air traffic control or the pilot making flight decisions that put the airplane in unsafe flight conditions.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance
(1) Remove the affected FMC unit specified in paragraph (a)(1) of this AD and install a modified or new FMC unit (as specified in paragraph (e) of this AD) in accordance with the applicable maintenance manual.	Within the next 24 calendar months after December 20, 2002 (the effective date of this AD), unless already accomplished.
(2) Do not install, on any aircraft, an affected FMC unit specified in paragraph (a)(1) of this AD that has not been modified to the replacement part number specified in paragraph (e) of this AD.	As of December 20, 2002 (the effective date of this AD).

Note 1: When selecting a replacement FMC part number, determine if the part number has been certified for installation on the particular aircraft through either the Type Certification or Supplemental Type Certification process. Also, determine whether additional avionics units must be upgraded at the same time to be compatible with the selected replacement FMC part number.

(e) *What are the acceptable replacement FMC part numbers?*

FMC affected part No.	Acceptable replacement FMC part No.
822–0783–002	822–0783–011 or 822–0783–013
822–0783–006	822–0783–011 or 822–0783–013
822–0783–010	822–0783–011 or 822–0783–013
822–0891–001	822–0891–005 or 822–0891–008
822–0868–004	822–0868–029, 822–0868–030, 822–0868–031, or 822–0868–032
822–0868–010	822–0868–029, 822–0868–030, 822–0868–031, or 822–0868–032
822–0868–021	822–0868–029, 822–0868–030, 822–0868–031, or 822–0868–032

(f) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Wichita Aircraft Certification Office (ACO), approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note 2: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(g) *Where can I get information about any already-approved alternative methods of compliance?* Contact Roger A. Souter, FAA, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Rm 100, Wichita, Kansas 67209; telephone: (316) 946–4134; facsimile: (316) 946–4407. E-mail address: *Roger.Souter@faa.gov.*

(h) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(i) *When does this amendment become effective?* This amendment becomes effective on December 20, 2002.

Issued in Kansas City, Missouri, on October 28, 2002.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–28052 Filed 11–4–02; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30337; Amdt. No. 3029]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations and

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instrument flight rules at the affected airports.

DATES: This rule is effective November 5, 2002. The compliance date for each SIAP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 5, 2002.

ADDRESSES: Availability of matters incorporated by reference by the amendment is as follows:

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located.
3. The Flight Inspection Area Office which originated the SIAP; or,
4. The Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by Superintendence of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK. 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 976.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expansive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers or aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment states the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (NFDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective data at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). IN developing these SIAPs, the TERPs criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC on October 25, 2002.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

** * * Effective November 28, 2002*

Camden, AR, Harrell Field, VOR/DME RWY 36, Amdt 9
Camden, AR, Harrell Field, NDB RWY 18, Amdt 11
Camden, AR, Harrell Field, RNAV (GPS) RWY 18, Orig
Camden, AR, Harrell Field, RNAV (GPS) RWY 36, Orig
Seymour, IN, Freeman Muni, RNAV (GPS) RWY 23, Orig
Portland, ME, Portland Intl Jetport, RADAR–1, Orig
Portland, ME, Portland Intl Jetport, RNAV (GPS) RWY 18, Orig
Portland, ME, Portland Intl Jetport, RNAV (GPS) RWY 36, Orig
Portland, ME, Portland Intl Jetport, GPS RWY 18, Orig, CANCELLED
Portland, ME, Portland Intl Jetport, GPS RWY 36, Orig, CANCELLED
Akron, OH, Akron-Canton Regional, RNAV (GPS) RWY 14, Orig
Akron, OH, Akron-Canton Regional, RNAV (GPS) RWY 32, Orig

** * * Effective January 23, 2003*

Dumas, AR, Billy Free Municipal, NDB RWY 36, Orig-A, CANCELLED
Mountain View, AR, Mountain View Wilcox Memorial Field, NDB–A, Amdt 2
St. Petersburg-Clearwater, FL, St. Petersburg-Clearwater Intl, VOR/DME RWY 17L, Orig
St. Petersburg-Clearwater, FL, St. Petersburg-Clearwater Intl, VOR RWY 17L, Amdt 11B, CANCELLED
Dallas-Fort Worth, TX, Dallas-Fort Worth Intl, CONVERGING ILS RWY 18L, Amdt 3D, CANCELLED
Dallas-Fort Worth, TX, Dallas-Forth Worth Intl, ILS RWY 18L, Amdt 17C, CANCELLED
Dallas-Fort Worth, TX, Dallas-Fort Worth Intl, VOR/DME RNAV RWY 31, Orig-A, CANCELLED
Edna, TX, Jackson County, NDB or GPS–A, Amdt 1, CANCELLED

The FAA published the following procedure in Docket No. 30323; Amdt. No. 3023 to Part 97 of the Federal Aviation Regulations (Vol. 67, FR No. 183, page 59159; dated Friday, September 20, 2002) under section 97.29 effective October 31, 2002 which is hereby rescinded:

Camden, AR, Harrell Field, VOR/DME RWY 36 Amdt 9
Camden, AR, Harrell Field, NDB RWY 18, Amdt 11
Camden, AR, Harrell Field, RNAV (GPS) RWY 18, Orig
Camden, AR, Harrell Field, RNAV (GPS) RWY 36, Orig

[FR Doc. 02–27847 Filed 11–4–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Houston-Galveston-02–018]

RIN 2115–AA97

Security Zones; Captain of the Port Houston-Galveston Zone

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing security zones within the ports of Houston, Morgan's Point, Bayport, Texas City, and Freeport, Texas. These zones are being established to protect waterfront facilities, persons, and vessels from subversive or terrorist acts. Entry of persons and vessels into these zones is prohibited except as authorized by this rule or by the Captain of the Port Houston-Galveston.

DATES: This section is effective from 8 a.m. on October 15, 2002 through 8 a.m. on April 15, 2003.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket [COTP Houston-Galveston-02–018] and are available for inspection or copying at U.S. Coast Guard Marine Safety Office Houston-Galveston, 9640 Clinton Dr, Galena Park, TX 77547 between 8 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade (LTJG) George Tobey, Port Waterways Management, Marine Safety Office Houston-Galveston, TX at (713) 671–5100.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this rule. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM and, under 5 U.S.C. 553 (d)(3), good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

On June 11, 2002 the Coast Guard published a temporary final rule entitled "Security Zones; Captain of the Port Houston-Galveston Zone" [COTP Houston-Galveston-02–011] (67 FR 39851). This rule was required to respond to security concerns within the Captain of the Port Houston-Galveston zone following the September 11, 2001 attacks on the World Trade Center towers in New York City and the Pentagon in Washington DC. October 15, 2002 is the expiration date of that rule.

National security and intelligence officials continue to warn that future terrorist attacks against United States interests are likely. The Captain of the Port Houston-Galveston is establishing a new temporary final rule that encompasses many of the same areas covered in the expiring rule. Any delay in making this new rule effective would be contrary to the public interest because immediate action is necessary to protect against the possible loss of life, injury, or damage to property.

On June 11, 2002, we published an NPRM entitled "Security Zones; Captain of the Port Houston-Galveston Zone" [COTP Houston-Galveston-02–009] (67 FR 39919). The NPRM proposed to replace the existing temporary security zones with permanent zones. The comment period for the NPRM expired on August 12, 2002. We received only two comments on this rule and both of these comments asked for information on how to comment on the proposed rule. As a result of these comments and to reflect changes in the size of the security zones in this rule the Coast Guard intends to issue a supplemental notice of proposed rule making and reopen the comment period.

Background and Purpose

On September 11, 2001, both towers of the World Trade Center and the Pentagon were attacked by terrorists. The President has continued the national emergencies he declared following those attacks (67 FR 58317 (Sep. 13, 2002) (continuing the emergency declared with respect to terrorist attacks); 67 FR 59447 (Sep. 20, 2002) (continuing emergency with respect to persons who commit, threaten to commit or support terrorism)). The President also has found pursuant to law, including the Magnuson Act (50 U.S.C. 191 *et seq.*), that the security of the United States is and continues to be endangered following the terrorist attacks (E.O. 13,273, 67 FR 56215 (Sep. 3, 2002) (security of U.S. endangered by disturbances in international relations of U.S. and such disturbances continue to endanger such relations). In response to these terrorist acts, heightened awareness and security of our ports and harbors became necessary. To enhance security the Captain of the Port Houston-Galveston established temporary security zones published in the **Federal Register** on June 11, 2002 (67 FR 39851). The original rule established security zones within the ports of Houston, Bayport, Texas City and Freeport, TX.

In order to provide continuous protection while permanent zones are being promulgated through notice and comment rule making the Coast Guard is establishing a new temporary final rule for the ports of Houston, Morgan's Point, Bayport, Texas City and Freeport, TX. This rule establishes distinct security zones in these areas with slight modifications from the previous rule and includes the addition of a new zone for Morgan's Point, TX. The Morgan's Point security zone was originally proposed in the NPRM published on June 11, 2002 (67 FR 39919). We received no comments or objections regarding the security zone for Morgan's Point.

These zones are being established to protect waterfront facilities, persons, and vessels from subversive or terrorist acts. They are being established around areas concentrated with commercial facilities considered critical to national security. This rule is designed to restrict access to vessels engaged, or assisting in commerce with waterfront facilities

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within the security zones, vessels operated by port authorities, vessels operated by waterfront facilities within the security zones, and vessels operated by federal, state, county or municipal agencies. By limiting access to these areas the Coast Guard is increasing the opportunity for detection and reducing potential methods of attack on vessels, waterfront facilities within the security zones, and adjacent population centers located near the zones.

The size of the Houston security zone remains unchanged from the original rule and NPRM. It includes the Houston Ship Channel and all associated turning basins, bounded by a line drawn between Houston Ship Channel Light 132 and Houston Ship Channel Light 133 west to the T & N Rail Road Swing Bridge at the entrance to Buffalo Bayou, including all waters adjacent to the ship channel from shoreline to shoreline and the first 200 yards of connecting waterways.

The Morgan's Point security zone includes the waters of Barbours Cut Ship Channel and Turning Basin west of a line drawn between Junction Light "Barbours Cut" and Houston Ship Channel Light 91.

The security zone for Bayport is being increased to create a zone slightly larger than that published in the original rule and NPRM. This will have a minimal impact on vessel traffic because the northern portion of the ship channel remains open. The Bayport security zone includes all waters of the Port of Bayport, Bayport Ship Channel and Bayport Turning Basin south of latitude 29°36′45″ N and west of the Bayport Ship Channel Light 9.

The security zone for Texas City increases the size of the zone to provide protection for facilities which were previously just outside of the zone. The Texas City security zone includes all waters of the Port of Texas City Channel, Turning Basin and Industrial Canal containing South and West of a line drawn from Texas City Channel Light 19 through Cut B Inner Range Front Light and terminating on land in position 29°23′16″ N, 94°53′15″ W.

The security zones for Freeport have been modified to reflect the zones as they are described in the NPRM. These zones are slightly smaller than those in the original rule and are now drawn along more natural boundaries. The Dow Barge Canal security zone contains all waters bounded by its junction with the Intracoastal Waterway from a line drawn between an eastern point at 28°56′48″ N, 95°18′20″ W and a western point at 28°56′40″ N, 95°18′33″ W. The Brazos Harbor security zone contains all waters west of a line drawn between the northern point at 28°56′27″ N, 95°20′00″ W, and the southern point 28°56′09″ N, 95°20′00″ W.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. The impacts on routine navigation are expected to be minimal. Vessels engaged or assisting, in commerce with facilities located within the zones or having the express permission of the Captain of the Port Houston-Galveston, are authorized entry under this rule.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This security zone will not have an impact on a substantial number of small entities because this rule will not obstruct the regular flow of commercial vessel traffic conducting business within the zones. Other vessels may seek permission for entry into the zone from the Captain of the Port Houston-Galveston.

If you are a small business entity and are significantly affected by the regulation please contact LTJG George Tobey at U.S. Coast Guard Marine Safety Office Houston-Galveston, TX at (713) 671–5100.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such expenditure, we so discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that Order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation because this rule is not expected to result in any significant environmental impact as described in the National Environmental Policy Act of 1969 (NEPA). A "Categorical Exclusion Determination" is available for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. A new temporary § 165.T08–108 is added to read as follows:

§ 165.T08–108 Security Zones; Captain of the Port Houston-Galveston Zone.

(a) *Location.* The following areas are designated as security zones:

(1) Houston, TX. The Houston Ship Channel and all associated turning basins, bounded by a line drawn between Houston Ship Channel Light 132 (LLNR–24445) and Houston Ship Channel Light 133 (LLNR–24450) west to the T & N Rail Road Swing Bridge at the entrance to Buffalo Bayou, including all waters adjacent to the ship channel from shoreline to shoreline and the first 200 yards of connecting waterways.

(2) Morgan's Point, TX. The Barbours Cut Ship Channel and Turning Basin containing all waters west of a line drawn between Junction Light "Barbours Cut" 29°41′12″ N, 94°59′12″ W (LLNR–23525), and Houston Ship Channel Light 91, 29°41′00″ N, 94°59′00″ W (LLNR–23375) (NAD 1983).

(3) Bayport, TX. The Port of Bayport, Bayport Ship Channel and Bayport Turning Basin containing all waters south of latitude 29°36′45″ N and west of the Bayport Ship Channel Light 9 (LLNR–23295) (NAD 1983).

(4) Texas City, TX. The Port of Texas City Channel, Turning Basin and Industrial Canal containing all waters bounded by the area South and West of a line drawn from Texas City Channel Light 19 (LLNR 24810) through Cut B Inner Range Front Light (LLNR 24765) and terminating on land in position 29°23′16″ N, 94°53′15″ W (NAD 1983).

(5) Freeport, TX. (i) The Dow Barge Canal containing all waters bounded by its junction with the Intracoastal Waterway, by a line drawn between the eastern point at 28°56′48″ N, 95°18′20″ W, and the western point at 28°56′40″ N, 95°18′33″ W (NAD 1983).

(ii) The Brazos Harbor containing all waters west of a line drawn between the northern point at 28°56′27″ N, 95°20′00″ W, and the southern point 28°56′09″ N, 95°20′00″ W (NAD 1983) at its junction with the Old Brazos River Cut.

(b) *Effective dates.* This section is effective from 8 a.m. on October 15, 2002 through 8 a.m. on April 15, 2003.

(c) *Regulations.* (1) Entry into these zones is prohibited except for the following:

(i) Commercial vessels operating at waterfront facilities within these zones;

(ii) Commercial vessels transiting directly to or from waterfront facilities within these zones;

(iii) Vessels providing direct operational/logistic support to commercial vessels within these zones;

(iv) Vessels operated by the appropriate port authority or by facilities located within these zones; and

(v) Vessels operated by Federal, State, county, or municipal agencies.

(2) Other persons or vessels requiring entry into a zone described in this section must request express permission to enter from the Captain of the Port Houston-Galveston, or his designated representative.

(3) To request permission as required by these regulations contact "Houston Traffic" via VHF Channels 11/12 or via phone at (713) 671–5103.

(4) All persons and vessels shall comply with the instructions of the Captain of the Port Houston-Galveston and designated on-scene U.S. Coast Guard patrol personnel. On-scene U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard.

Dated: October, 11 2002.

Kevin S. Cook,

Captain, U.S. Coast Guard, Captain of the Port Houston-Galveston.

[FR Doc. 02–28090 Filed 11–4–02; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 2

[OEI–2002–0005; FRL–7404–4]

RIN 2025–AA04

Revised Freedom of Information Act Regulations

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This document revises subpart A of the Environmental Protection Agency (EPA or Agency) regulations implementing the Freedom of Information Act (FOIA). EPA is streamlining and condensing its regulations, in accordance with the principles of the National Performance Review, and is using simpler language whenever possible. In addition, the regulations contain new provisions implementing the Electronic Freedom of Information Act Amendments of 1996 (E-FOIA) and update cost figures for calculating and charging fees.

EFFECTIVE DATE: November 5, 2002.

FOR FURTHER INFORMATION CONTACT: Betty A. Lopez, Records, Privacy and

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FOIA Branch, Collection Strategies Division, Office of Information Collection, Office of Environmental Information (OEI), EPA, 1200 Pennsylvania Ave, NW. (2822T), Washington, DC 20460. Phone, (202) 566–1667; Fax, (202) 566–2147. e-mail, *hq.foia@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. How Can I Get Copies Of This Document and Other Related Information ?

1. *Docket.* EPA has established an official public docket for this action under Docket ID No.OEI–2002–0005. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Public Reading Room, Room B102, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The Public Reading Room telephone number is (202) 566–1744.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.A 1. Once in the system, select "search," then key in the appropriate docket identification number.

II. Background Information

On April 12, 2000, the EPA published a proposed rule to revise 40 CFR part 2, subpart A, and add new provisions implementing the Electronic Freedom of Information Act Amendments of 1996, Public Law 104–231. *See* 65 FR 19703, April 12, 2000. Interested persons were afforded an opportunity to participate in the rulemaking through submission of written comments on the proposed rule. The Agency received eight comments on its proposed rule. The Agency has adopted several of the suggested changes made by the commenters and has also made other revisions to its proposed rule for clarity.

New provisions implementing the suggested changes made by the commenters are found at § 2.100(a), § 2.101(a), § 2.101(c) (electronic availability of records), § 2.102(a)—§ 2.102(d) (process for requesting records), § 2.103 (responsibility for responding for requests), § 2.104(a) (deadline for response), § 2.104(b) (timing of responses, acknowledgment), § 2.104(c) (multitrack processing), § 2.104(d) (unusual circumstances), § 2.104(e) (expedited processing), § 2.104(f) (annotation of applicable exemption), § 2.104(h) (denial of records), § 2.104 (i) (denial of fee waivers), § 2.104(j)(2) (appeal of Inspector General determinations), § 2.104(j)(4) (closing of appeal if litigation initiated), § 2.104(k) (exhaustion of administrative appeal rights), § 2.105 (exemption categories), § 2.107(b)(3) (format of disclosure), and § 2.107(b)(8) (searches for electronic records). Revisions to the Agency's fee schedule are found at §§ 2.107(c) and (d).

Comments

The Agency received a total of eight comments from the following: a nonprofit group that regularly uses the FOIA; an association that represents electric utilities, international affiliates, and industry associates; a manufacturing and services company; a law firm on behalf of a manufacturing company; a law firm on behalf of an ad hoc group of electric utilities and trade associations; a citizen; an association that represents cattle feeders and family ranchers; and the EPA Office of Inspector General.

In some instances, commenters suggested particular changes to the proposed rule. Several of the suggested changes have been accepted and incorporated into the Agency's final rule. For example, several commenters suggested the rule should list the FOIA statutory exemptions and refer to subpart B of these regulations to further address the handling of confidential business information. The Agency agrees and has modified § 2.100(a) to include a reference to subpart B of these regulations and has listed the statutory exemptions at § 2.105.

The Agency also agrees with one commenter's suggestion to include the e-mail addresses of the Agency's Freedom of Information (FOI) Offices, a reference to the Agency's online forms for filing FOIA requests, and clarification that a FOIA request must be in writing and may be submitted by mail, facsimile (fax), or electronically. Accordingly, the Agency has revised § 2.101(a) to include the e-mail addresses and the last sentence of § 2.102(a) recommending that envelopes, fax cover sheets, or e-mail subject lines be marked, "Freedom of Information Act Request." Since telephone and fax numbers are subject to change, the Agency has not included the numbers in the final rule. Current telephone and fax numbers may be obtained from the Agency's web site.

One commenter suggested the deletion of the phrase "created by EPA" in § 2.101(c) and rescission of an allegedly erroneous interpretation of the statutory phrase "created on or after November 1, 1996." The Agency disagrees with the commenter and believes that these phrases are in accordance with the plain language of the statute.

The Agency agrees with one commenter's suggestion to revise § 2.102(c) to match the language of FOIA at 5 U.S.C. 552(a)(3)(A) on what constitutes a reasonable request. Accordingly, the Agency has modified § 2.102(c) concerning the description of records sought.

One commenter suggested the Agency amend § 2.103(a) to provide that EPA will review all responsive records "in its possession as of the date the FOI Office begins processing the request." The Agency disagrees with the suggestion but has modified § 2.103(a) to clarify that only those records in EPA's possession as of the date the FOIA request was received in the appropriate FOI Office will be considered within the scope of the request.

Further, the Agency agrees with the suggestion of two commenters that § 2.103(c) be revised to set forth the standard EPA will use to decide whether to refer a request to another Federal agency. Accordingly, § 2.103(c) has been revised to state that where records responsive to the request originated with another Federal agency, EPA will either refer the request to the other agency or, after consultation, respond to the request itself. In addition, whenever all or any part of a request has been transferred to another agency for response, EPA will notify the requestor.

Three commenters suggested that the language in §§ 2.104(b) and (k) regarding proposed time limits does not comply with the time limits prescribed by FOIA at 5 U.S.C. 552(a)(6)(A)(i) and (ii), which provide that an agency must always respond to an initial FOIA request within 20 working days and to an appeal within 20 working days. The commenters recommended that § 2.104(b) be rewritten to delete the language "[c]omponents *ordinarily* will respond to requests no later than twenty (20) working days from the date the request is received." Similarly, the commenters recommended that § 2.104(k) be rewritten to delete the language "[t]he decision on an appeal will be made normally in writing, within 20 working days of its receipt." The Agency has modified § 2.104(b) to clarify that unusual circumstances may provide for a response outside the 20 working day statutory time limit. Also, § 2.104(k) has been modified by removing any reference to time limits. Moreover, § 2.104(l) has been modified to clarify that judicial action may be taken should EPA not respond to an appeal within the statutory 20 working day time limit.

The Agency agrees with the suggestion of two commenters to change § 2.104(c) to comport with the requirements of FOIA at 5 U.S.C. 552(a)(6)(C)(i) concerning when requesters may be deemed to have exhausted their administrative remedies. Accordingly, the Agency has modified § 2.104(b) to provide notice that requesters have a right to seek immediate judicial review when the Agency fails to respond to a request within the statutory 20 working day period or any authorized extension of time.

Three commenters suggested that proposed § 2.104(d) provides no standards to guide the Agency when distinguishing between simple and complex requests based on the amount of work or time (or both) expended for processing a request. The Agency believes that the current language, stating that the amount of work or time (or both) to process a request, as well as informing requesters that they have the opportunity to limit the scope of their requests in order to qualify for faster processing, directly comports with the statutory language and therefore it declines to revise § 2.104(d).

One commenter suggests that the "as soon as practicable" language in proposed § 2.104(e) should be changed to provide that the Agency shall notify a requester in writing, "within 20 days of the date the request is received" of the unusual circumstances that warrant delay and of the extended date for response. The commenter also suggests that the Agency should incorporate the statutory definition of "unusual circumstances" to avoid any confusion. In response to the commenter's suggestions, the Agency has inserted the phrase "as defined in the FOIA" into this provision to alert requesters to the statutory basis of the definition of the term "unusual circumstances," although we have retained the proposed language in § 2.104(e) regarding notification.

Two commenters suggested changes to § 2.104(f) concerning expedited processing. Specifically, one commenter recommended that the Agency use the multitrack authority to expedite requests that are likely to be the subject of multiple requests. Another commenter suggested that the expedited processing provision is too narrow and should be rewritten so that it guarantees expedited processing to any requester who "demonstrates a compelling need" for the requested records. The Agency declines to adopt the first comment because it believes that it is implicit in the current language of § 2.104(f) that those requests being given expedited processing will receive immediate priority. Moreover, the current language of § 2.104(l) clearly states that when a requester meets the criteria set out in the regulation for establishing a compelling need, expedited processing will be granted. Accordingly, a "guarantee of expedited processing" is unnecessary and the Agency declines to adopt the second comment.

Three commenters suggested that the proposal retain the language for listing withheld records as it appears in existing 40 CFR 2.113. The Agency agrees and has revised § 2.104(i)(2) to include the language for identifying records being withheld.

The EPA Office of Inspector General requested that the rule be revised to delegate authority to the Counsel to the Inspector General to respond to appeals of denials of requests for Office of Inspector General records. The Office of Inspector General commented that appeals of denials of access to Office of Inspector General records are currently handled by EPA's General Counsel and, in its view, Inspector General independence requires that the Office of Inspector General maintain full responsibility for, and custody and control over, all Office of Inspector General records. The Agency agrees and has added § 2.104(j)(2) to authorize the Counsel to the Inspector General to act on appeals of denials of requests for Office of Inspector General records, unless the Counsel to the Inspector General has signed the adverse initial determination, in which case the General Counsel, or their designee, would respond to the appeal.

One commenter suggested that the Agency should eliminate proposed § 2.104(j)(3), which stated that the Agency would take no further action on an appeal if the request becomes a matter of FOIA litigation, because it penalizes requesters who exercise their statutory right to sue the Agency if the Agency fails to respond to the requester's appeal within 20 working days, as provided by § 2.104(j)(4). This language is not intended to penalize requesters or to suggest that EPA will take no further action on the matter but to indicate that once a lawsuit has been filed, any further actions on behalf of the Agency will be taken in the context of the litigation and not the administrative appeal process. Therefore, EPA has added language in § 2.104(j)(4) to reflect that once an appellant has initiated litigation because the Agency has not resolved an appeal in a timely manner, any further action on the records in dispute will take place through the lawsuit.

The Agency agrees with one commenter's suggestion to revise § 2.104(l) because an administrative appeal is not necessary when the Agency has not made a timely initial determination. Accordingly, the Agency has inserted language in §§ 2.104(b) and (l) stating that if EPA fails to respond to a request within the statutory 20 working day period or any authorized extension of time, the requester may seek judicial review to obtain the records without first making an administrative appeal.

The Agency has removed the word "component" from the proposed regulations, and replaced it with "Agency" or "office" as appropriate to reflect more accurately the Agency's organizational structure.

III. Statutory Authority

EPA is issuing this rule under the authority of 5 U.S.C. 301, 552 (as amended), and 553.

IV. Administrative Requirements

A. Regulatory Flexibility Act, as amended

The Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 601 *et seq.*, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute, unless the agency certifies

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that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as that term is defined in the Small Business Administration's regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

EPA has determined that this final rule will have only a small economic impact on the small entities that submit FOI requests to EPA for records. Under the FOIA, agencies may recover only the direct costs of processing FOI requests. EPA's proposed fees are nominal and have been calculated to recover only the direct costs of processing a FOI request. The revision to the fee schedule is minimal and reflects a more specific breakdown of direct costs by the kind of EPA employee involved in processing a FOI request. Therefore, under 5 U.S.C. 605(b), I certify that this final rule will not have a significant economic impact on a substantial number of small entities.

B. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective November 5, 2002.

C. Paperwork Reduction Act

This final rule does not impose any reporting or recordkeeping requirements under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* It pertains solely to the dissemination of information under the FOIA.

D. Environmental Impact

This final rule is expected to have no environmental impact. It pertains solely to the dissemination of information under the FOIA.

E. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must determine whether this final rule is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

EPA has determined that this final rule is not a "significant regulatory action" under the terms of Executive Order 12866 and therefore is not subject to OMB review.

F. Executive Order 13132 on Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This final rule simply revises EPA's regulations implementing the FOIA. Thus, the requirements of section 6 of the Executive Order do not apply to this final rule.

G. Executive Order 13175 on Consultation with Indian Tribal Governments

Executive Order 13175, entitled, "A Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure " meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

This final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175.

H. Unfunded Mandates Reform Act of 1995

Under section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, EPA must prepare a budgetary impact statement to accompany any general notice of proposed rulemaking or final rule that includes a federal mandate which may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more. Under section 205, for any rule subject to section 202, EPA generally must select the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Under section 203, before establishing any regulatory requirements that may significantly or uniquely affect small governments, EPA must take steps to inform and advise small governments of the requirements and enable them to provide input.

EPA has determined that this final rule does not include a federal mandate as defined in UMRA. This final rule does not include a federal mandate that may result in estimated annual costs to State, local or tribal governments in the aggregate, or to the private sector, of $100 million or more, and does not establish regulatory requirements that may significantly or uniquely affect small governments.

I. Executive Order 13045

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it is not an economically significant regulatory action as defined under Executive Order 12866.

J. National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when EPA decides not to use available and applicable voluntary consensus standards.

This final rule does not involve any technical standards, and EPA is not considering the use of any voluntary consensus standards. Accordingly, this final rule is not subject to the requirements of the NTTAA.

K. Executive Order 13211 (Energy Effects)

This rule is not a "significant energy action" as defined in Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. EPA has concluded that this rule is not likely to have any adverse energy effects.

List of Subjects in 40 CFR Part 2

Environmental protection, Administrative practice and procedure, Confidential business information, Freedom of information, Government employees.

Dated: October 30, 2002.

Christie Whitman,

Administrator, Environmental Protection Agency.

For the reasons set out in the preamble, 40 CFR part 2 is amended as follows:

PART 2—PUBLIC INFORMATION

1. The authority citation for part 2 continues to read as follows:

Authority: 5 U.S.C. 301, 552 (as amended) and 553; secs. 114, 205, 208, 301, and 307, Clean Air Act, as amended (42 U.S.C. 7414, 7525, 7542, 7601, 7607); secs. 308, 501 and 509(a), Clean Water Act, as amended (33 U.S.C. 1318, 1361, 1369(a)); sec. 13, Noise Control Act of 1972 (42 U.S.C. 4912); secs. 1445 and 1450, Safe Drinking Water Act (42 U.S.C. 300j–4, 300j–9); secs. 2002, 3007, and 9005, Solid Waste Disposal Act, as amended (42 U.S.C. 6912, 6927, 6995); secs. 8(c), 11, and 14, Toxic Substances Control Act (15 U.S.C. 2607(c), 2610, 2613); secs. 10, 12, and 25, Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136h, 136j, 136w); sec. 408(f), Federal Food, Drug and Cosmetic Act, as amended (21 U.S.C. 346(f)); secs. 104(f) and 108, Marine Protection Research and Sanctuaries Act of 1972 (33 U.S.C. 1414(f), 1418); secs. 104 and 115, Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. 9604 and 9615); sec. 505, Motor Vehicle Information and Cost Savings Act, as amended (15 U.S.C. 2005).

2. Part 2, subpart A, is revised to read as follows:

PART 2—PUBLIC INFORMATION

Subpart A—Procedures for Disclosure of Records Under the Freedom of Information Act

Sec.
2.100 General provisions.
2.101 Where requests for records are to be filed.
2.102 Procedures for making requests.
2.103 Responsibility for responding to requests.
2.104 Responses to requests and appeals.
2.105 Exemption categories.
2.106 Preservation of records.
2.107 Fees.
2.108 Other rights and services.

Subpart A—Procedures for Disclosure of Records Under the Freedom of Information Act

§ 2.100 General provisions.

(a) This subpart contains the rules that the Environmental Protection Agency (EPA or Agency) follows in processing requests for records under the Freedom of Information Act (FOIA), 5 U.S.C. 552. The Agency also has rules that it follows in processing Freedom of Information (FOI) requests for records submitted to it as Confidential Business Information (CBI). Such records are covered in subpart B of this part. Requests made by individuals for records about themselves under the Privacy Act of 1974 which are processed under 40 CFR part 16, will also be treated as FOIA requests under this subpart. This ensures that the requestor has access to all responsive records. Information routinely provided to the public as part of a regular EPA activity may be provided to the public without following this subpart.

(b) When documents responsive to a request are maintained for distribution by agencies operating statutory-based fee schedule programs, such as, but not limited to, the Government Printing Office or the National Technical Information Service, EPA will inform the requester of the steps necessary to obtain records from these sources.

§ 2.101 Where requests for records are to be filed.

(a) You may request records by writing to the Records, FOIA, and Privacy Branch, Office of Environmental Information, Environmental Protection Agency, 1200 Pennsylvania Avenue (2822T), NW, Washington, DC 20460; e-mail: *hq.foia@epa.gov*. You may also access EPA Headquarters and Regional Freedom of Information Offices' Web sites at *http://www.epa.gov/foia* and submit a request via an online form. If you believe the records sought may be located in an EPA regional office, you should send your request to the appropriate regional FOI Officer as indicated in the following list:

(1) Region I (CT, ME, MA, NH, RI, VT): EPA, FOI Officer, One Congress Street, Suite 1100, Boston, MA 02114–2023; e-mail: *r1foia@epa.gov*.

(2) Region II (NJ, NY, PR, VI): EPA, FOI Officer, 290 Broadway, 26th Floor, New York, NY 10007–1866; e-mail: *r2foia@epa.gov*.

(3) Region III (DE, DC, MD, PA, VA, WV): EPA, FOI Officer, 1650 Arch Street, Philadelphia, PA 19103–2029; e-mail: *r3foia@epa.gov*.

(4) Region IV (AL, FL, GA, KY, MS, NC, SC, TN): EPA, Freedom of

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Information Officer, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, GA 30303–8960; e-mail: *r4foia@epa.gov*.

(5) Region V (IL, IN, MI, MN, OH, WI): EPA. Freedom of Information Officer, 77 West Jackson Boulevard, Chicago, IL 60604–3507; e-mail: *r5foia@epa.gov*.

(6) Region VI (AR, LA, NM, OK, TX): EPA, Freedom of Information Officer, 1445 Ross Avenue, Dallas, TX 75202–2733; e-mail: *r6foia@epa.gov*.

(7) Region VII (IA, KS, MO, NE): EPA, Freedom of Information Officer, 901 North Fifth Street, Kansas City, KS 66101; e-mail: *r7foia@epa.gov*.

(8) Region VIII (CO, MT, ND, SD, UT, WY): EPA, Freedom of Information Officer, 999 18th Street, Suite 500, Denver, CO 80202–2466, e-mail: *r8foia@epa.gov*.

(9) Region IX (AZ, CA, HI, NV, AS, GU): EPA, Freedom of Information Officer, 75 Hawthorne Street, San Francisco, CA 94105; e-mail: *r9foia@epa.gov*.

(10) Region X (AK, ID, OR, WA): EPA, Freedom of Information Officer, 1200 Sixth Avenue, Seattle, WA 98101; e-mail: *r10foia@epa.gov*.

(b) EPA provides access to all records that the FOIA requires an agency to make regularly available for public inspection and copying. Each office is responsible for determining which of the records it generates are required to be made publicly available and for providing access by the public to them. The Agency will also maintain and make available for public inspection and copying a current subject-matter index of such records and provide a copy or a link to the respective Web site for Headquarters or the Regions. Each index will be updated regularly, at least quarterly, with respect to newly-included records.

(c) All records created by EPA on or after November 1, 1996, which the FOIA requires an agency to make regularly available for public inspection and copying, will be made available electronically through EPA's worldwide Web site, located at *http://www.epa.gov*, or, upon request, through other electronic means. EPA will also include on its worldwide Web site the current subject-matter index of all such records.

§ 2.102 Procedures for making requests.

(a) *How made and addressed.* You may make a request for EPA records that are not publicly available under § 2.201(a)–(b) by writing directly to the appropriate FOI Officer, as listed in § 2.101(a). Only written requests for records will be accepted for processing under this subpart. For records located at EPA Headquarters, or in those instances when you cannot determine where to send your request, you may send it to the Records, FOIA, and Privacy Branch, Office of Environmental Information, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; e-mail: *hq.foia@epa.gov*. That office will forward your request to the regional FOI Office it believes most likely to have the records that you want. Your request will be considered received as of the date it is received by the correct FOI Office. Misdirected requests will not be considered received by EPA until the appropriate FOI Office receives the request. For proper handling, you should mark both your request letter and its envelope or e-mail subject line "Freedom of Information Act Request." You should also include your name, mailing address, and daytime telephone number in the event we need to contact you.

(b) EPA employees may attempt in good faith to comply with oral requests for inspection or disclosure of EPA records publicly available under § 2.201(a)–(b), but such requests are not subject to the FOIA or the regulations in this part.

(c) *Description of records sought.* Your request should reasonably describe the records you are seeking in a way that will permit EPA employees to identify and locate them. Whenever possible, your request should include specific information about each record sought, such as the date, title or name, author, recipient, and subject matter. If known, you should include any file designations or descriptions for the records that you want. The more specific you are about the records or type of records that you want, the more likely EPA will be able to identify and locate records responsive to your request. If EPA determines that your request does not reasonably describe the records, it will tell you either what additional information you need to provide or why your request is otherwise insufficient. EPA will also give you an opportunity to discuss and modify your request to meet the requirements of this section. Should it be necessary for you to provide a revised description of the records you are seeking, the time necessary to do so will be excluded from the statutory 20 working day period (or any authorized extension of time) that EPA has to respond to your request as discussed in § 2.104.

(d) *Agreement to pay fees.* If you make a FOIA request, EPA will consider your request to be an agreement that you will pay all applicable fees charged under § 2.107, up to $25.00, unless you seek a waiver of fees. The EPA office responsible for responding to your request ordinarily will confirm this agreement in writing. When making a request, you may specify a willingness to pay a greater or lesser amount. Should it be necessary for you to provide a written agreement to pay additional fees, the time necessary to do so will be excluded from the statutory 20 working day period (or any authorized extension of time).

§ 2.103 Responsibility for responding to requests.

(a) *In general.* Except as stated in paragraphs (c), (d), (e), and (f) of this section, the EPA office that has possession of that record is the office responsible for responding to you. In determining which records are within the scope of a request, an office will ordinarily include only those records in its possession as of the date the request was received in the Headquarters or Regional FOI Office. If any other date is used, the office will inform you of that date.

(b) *Authority to grant or deny requests.* The head of an office, or that individual's designee, is authorized to grant or deny any request for a record of that office or other Agency records when appropriate.

(c) *Authority to grant or deny fee waivers or requests for expedited treatment.* The head of the Headquarters FOIA Office and Regional FOI Officers, or their designees, are authorized to grant or deny fee waivers or requests for expedited treatment.

(d) *Consultations and referrals.* When a request to EPA seeks records in its possession that originated with another Federal agency, the EPA office receiving the request shall either:

(1) Consult with the Federal agency where the record or portion thereof originated and then respond to your request, or

(2) Direct the FOI Office to refer your request to the Federal agency where the record or portion thereof originated. Whenever all or any part of the responsibility for responding to a request has been referred to another agency, the FOI Office will notify you accordingly.

(e) *Law enforcement information.* Whenever a request is made for a record containing information that relates to an investigation of a possible violation of law and was originated by another agency, the receiving office will either direct the FOI Office to refer the request to that other agency or consult with that other agency prior to making any release determination.

§ 2.104 Responses to requests and appeals.

(a) Unless the Agency and the requester have agreed otherwise, or when unusual circumstances exist as provided in paragraph (e) of this section, EPA offices will respond to requests no later than 20 working days from the date the request is received and logged in by the appropriate FOI Office. EPA will ordinarily respond to requests in the order in which they were received. If EPA fails to respond to your request within the 20 working day period, or any authorized extension of time, you may seek judicial review to obtain the records without first making an administrative appeal.

(b) On receipt of a request, the FOI Office ordinarily will send a written acknowledgment advising you of the date it was received and of the processing number assigned to the request for future reference.

(c) *Multitrack processing.* The Agency uses three or more processing tracks by distinguishing between simple and complex requests based on the amount of work and/or time needed to process the request, including limits based on the number of pages involved. The Agency will advise you of the processing track in which your request has been placed and of the limits of the different processing tracks. The Agency may place your request in its slower track(s) while providing you the opportunity to limit the scope of your request in order to qualify for faster processing within the specified limits of the faster track(s). If your request is placed in a slower track, the Agency will contact you either by telephone or by letter, whichever is most efficient in each case.

(d) *Unusual circumstances.* When the statutory time limits for processing a request cannot be met because of "unusual circumstances," as defined in the FOIA, and the time limits are extended on that basis, you will be notified in writing, as soon as practicable, of the unusual circumstances and of the date by which processing of the request should be completed. When the extension is for more than 10 working days, the Agency will provide you with an opportunity either to modify the request so that it may be processed within the 10 working day time limit extension or to arrange an alternative time period for processing the original or modified request.

(e) *Expedited processing.* (1) Requests or appeals will be taken out of order and given expedited treatment whenever EPA determines that such requests or appeals involve a compelling need, as follows:

(i) Circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(ii) An urgency to inform the public about an actual or alleged Federal government activity, if the information is requested by a person primarily engaged in disseminating information to the public.

(2) A request for expedited processing must be made at the time of the initial request for records or at the time of appeal.

(3) If you are seeking expedited processing, you must submit a statement, certified to be true and correct to the best of your knowledge and belief, explaining in detail the basis for the request. For example, if you fit within the category described in paragraph (e)(1)(ii) of this section and are not a full-time member of the news media, you must establish that you are a person whose primary professional activity or occupation is information dissemination, although it need not be your sole occupation. If you fit within the category described in paragraph (e)(1)(ii) of this section, you must also establish a particular urgency to inform the public about the government activity involved in the request, beyond the public's right to know about government activity generally.

(4) Within 10 calendar days from the date of your request for expedited processing, the head of the Headquarters FOI Staff or Regional FOI Officer will decide whether to grant your request and will notify you of the decision. If your request for expedited treatment is granted, the request will be given priority and will be processed as soon as practicable. If your request for expedited processing is denied, any appeal of that decision will be acted on expeditiously.

(f) *Grants of requests.* Once an office makes a determination to grant a request in whole or in part, it will release the records or parts of records to you and notify you of any applicable fee charged under § 2.107. Records released in part will be annotated, whenever technically feasible, with the applicable FOIA exemption(s) at that part of the record from which the exempt information was deleted.

(g) *Adverse determinations of requests.* Once the Agency makes an adverse determination of a request, the requestor will be notified of that determination in writing. An adverse determination consists of a determination to withhold any requested record in whole or in part; a determination that a requested record does not exist or cannot be located; a determination that what has been requested is not a record subject to the FOIA; a determination on any disputed fee matter, including a denial of a request for a fee waiver; or a denial of a request for expedited treatment.

(h) *Initial denials of requests.* The Deputy Administrator, Assistant Administrators, Regional Administrators, the General Counsel, the Inspector General, Associate Administrators, and heads of headquarters staff offices are delegated the authority to issue initial determinations. However, the authority to issue initial denials of requests for existing, located records (other than initial denials based solely on § 2.204(d)(1)) may be redelegated only to persons occupying positions not lower than division director or equivalent. Each letter will include:

(1) The name and title or position of the person responsible for the denial;

(2) A brief statement of the reason(s) for the denial, including an identification of records being withheld (individual, or if a large number of similar records are being denied, by described category), and any FOIA exemption applied by the office in denying the request;

(3) An estimate of the volume of records or information withheld, in number of pages or in some other reasonable form of estimation. This estimate does not need to be provided if the volume is otherwise indicated through annotated deletions on records disclosed in part, or if providing an estimate would harm an interest protected by an applicable exemption; and

(4) A statement that the denial may be appealed under, and a description of the requirements of, paragraph (j) of this section.

(i) Denial of fee waiver. The letter denying a request for a fee waiver or expedited treatment will be signed by the head of the Headquarters FOI Staff or Regional FOI Officers.

(j) Appeals of adverse determinations. If you are dissatisfied with any adverse determination of your request by an office, you may appeal that determination to the Headquarters Freedom of Information Staff, Records, Privacy and FOIA Branch, Office of Information Collection, Office of Environmental Information, Environmental Protection Agency, 1200 Pennsylvania Avenue (2822T), NW., Washington, DC 20460; e-mail: *hq.foia@epa.gov*. The appeal must be made in writing, and it must be submitted to the Headquarters FOI Staff no later than 30 calendar days from the

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date of the letter denying the request. The Agency will not consider appeals received after the 30-day limit. The appeal letter may include as much or as little related information as you wish, as long as it clearly identifies the determination being appealed (including the assigned FOIA request number, if known). For quickest possible handling, the appeal letter and its envelope should be marked "Freedom of Information Act Appeal." Unless the Administrator directs otherwise, the General Counsel or his/her designee will act on behalf of the Administrator on all appeals under this section, except that:

(1) In the case of an adverse initial determination by the General Counsel or his/her designee, the Administrator or his/her designee will act on the appeal;

(2) The Counsel to the Inspector General will act on any appeal where the Inspector General or his/her designee has made the initial adverse determination; however, if the Counsel to the Inspector General has signed the initial adverse determination, the General Counsel or his/her designee will act on the appeal;

(3) An adverse determination by the Administrator on an initial request will serve as the final action of the Agency; and

(4) If a requester seeks judicial review because the Agency has not responded in a timely manner, any further action on an appeal will take place through the lawsuit.

(k) The decision on your appeal will be made in writing, normally within 20 working days of its receipt by the Headquarters Freedom of Information Staff. A decision affirming an adverse determination in whole or in part will contain a statement of the reason(s) for the decision, including any FOIA exemption(s) applied, and inform you of the FOIA provisions for judicial review of the decision. If the adverse determination is reversed or modified on appeal, you will be notified in a written decision. This written decision will either have the requested information that has been determined on appeal to be releasable attached to it, or your request will be returned to the appropriate office so that it may be reprocessed in accordance with the appeal decision.

(l) If you wish to seek judicial review of any adverse determination, you must first appeal that adverse determination under this section, except when EPA has not responded to your request within the statutory 20 working day time limit. In such cases, you may seek judicial review without making an administrative appeal.

§ 2.105 Exemption categories.

(a) The FOIA, 5 U.S.C. 552(b), establishes the following nine categories of information which are exempt from the mandatory disclosure requirements of 5 U.S.C. 552(a):

(1)(i) Specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy; and

(ii) Are in fact properly classified pursuant to such Executive order;

(2) Related solely to the internal personnel rules and practices of an agency;

(3) Specifically exempted from disclosure by statute (other than 5 U.S.C. 552(b)), provided that such statute:

(i) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or

(ii) Establishes particular criteria for withholding information or refers to particular types of information to be withheld;

(4) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Inter-agency or intra-agency memoranda or letters which would not be available by law to a party other than an agency in litigation with the affected agency;

(6) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:

(i) Could reasonably be expected to interfere with enforcement proceedings;

(ii) Would deprive a person of a right to a fair trial or an impartial adjudication;

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source;

(v) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(vi) Could reasonably be expected to endanger the life or physical safety of any individual;

(8) Contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

(9) Geological and geophysical information and data, including maps, concerning wells.

§ 2.106 Preservation of records.

Each FOI Officer shall preserve all correspondence pertaining to the FOIA requests that it receives until disposition or destruction is authorized by title 44 of the United States Code or the National Archives and Records Administration's General Records Schedule 14. Copies of all responsive records should be maintained by the appropriate program office. Records shall not be disposed of while they are the subject of a pending request, appeal, or lawsuit under the FOIA.

§ 2.107 Fees.

(a) *In general.* The Agency will charge for processing requests under the FOIA in accordance with paragraph (c) of this section, except where fees are limited under paragraph (d) of this section or where a waiver or reduction of fees is granted under paragraph (l) of this section. Requesters will pay fees by check or money order made payable to the U.S. Environmental Protection Agency.

(b) *Definitions.* For purposes of this section:

(1) *Commercial use request* means a request from or on behalf of a person who seeks information for a use or purpose that furthers his/her commercial, trade, or profit interests, which can include furthering those interests through litigation. FOI Officers will determine, whenever reasonably possible, the use to which a requester will put the requested records. When it appears that the requester will put the records to a commercial use, either because of the nature of the request itself or because an office has reasonable cause to doubt a requester's stated use, the FOI Officer will provide the requester a reasonable opportunity to submit further clarification.

(2) *Direct costs* means those expenses that the Agency actually incurs in searching for and duplicating (and, in the case of commercial use requests, reviewing) records to respond to a FOIA request. Direct costs include, for example, the salary of the employee performing the work and the cost of operating duplication equipment. Not included in direct costs are overhead expenses such as the costs of space and heating or lighting of the facility in which the records are kept.

(3) *Duplication* means the making of a copy of a record, or of the information contained in it, necessary to respond to a FOIA request. Copies can take the form of paper, microform, audiovisual materials, or electronic records (for example, magnetic tape, disk, or compact disk), among others. The Agency will honor a requester's specified preference of form or format of disclosure if the record is readily reproducible with reasonable efforts in the requested form or format.

(4) *Educational institution* means a preschool, a public or private elementary or secondary school, an institution of undergraduate higher education, an institution of graduate higher education, an institution of professional education, or an institution of vocational education, that operates a program of scholarly research. To be in this category, a requester must show that the request is authorized by, and is made under the auspices of, a qualifying institution and that the records are not sought for a commercial use but are sought to further scholarly research.

(5) *Noncommercial scientific institution* means an institution that is not operated on a "commercial" basis, as that term is defined in paragraph (b)(1) of this section, and that is operated solely for the purpose of conducting scientific research which is not intended to promote any particular product or industry. To be in this category, a requester must show that the request is authorized by, and is made under the auspices of, a qualifying institution and that the records are not sought for a commercial use but are sought to further scientific research.

(6) *Representative of the news media* or *news media requester* means any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media include television or radio stations broadcasting to the public at large and publishers of periodicals (but only in those instances where they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. For "freelance" journalists to be regarded as working for a news organization, they must demonstrate a solid basis for expecting publication through that organization. A publication contract would be the clearest proof, but FOI Officers will also look to the past publication record of a requester in making this determination. To be in this category, a requester must not be seeking the requested records for a commercial use. A request for records supporting the news-dissemination function of the requester will not be considered to be for a commercial use.

(7) *Review* means the examination of a record located in response to a request in order to determine whether any portion of it is exempt from disclosure. It also includes processing any record for disclosure (for example, doing all that is necessary to redact it and prepare it for disclosure). Review costs are recoverable even if a record ultimately is not disclosed. Review time includes time spent considering any formal objection to disclosure made by a business submitter requesting confidential treatment, but does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(8) *Search* means the process of looking for and retrieving records or information responsive to a request. It includes page-by-page or line-by-line identification of information within records and also includes reasonable efforts to locate and retrieve information from records maintained in electronic form or format. Offices will ensure that searches are done in the most efficient and least expensive manner reasonably possible. For example, offices will not search line-by-line where duplicating an entire document would be quicker and less expensive.

(c) *Fees to be charged.* (1) There are four categories of requests. Fees for each of these categories will be charged as follows:

(i) *Commercial use requests.* A requester seeking access to records for a commercial use will be charged for the time spent searching for the records, reviewing the records for possible disclosure, and for the cost of each page of duplication. The charges for searching for and/or reviewing the records may be charged even if no responsive records are found or if the records are located but are determined to be exempt from disclosure.

(ii) *Educational or non-commercial scientific requests.* Requesters from educational or scientific institutions, whose purpose is scholarly, noncommercial research, will be charged only for the cost of record duplication, except that the first 100 pages of duplication will be furnished at no charge.

(iii) *News media requests.* Requesters who are representatives of the news media, and whose purpose in seeking records is noncommercial, will be charged only for the cost of duplication, except that the first 100 pages of duplication will be furnished at no charge.

(iv) *All other requests.* Requesters not covered by one of the three categories above will be charged for the full cost of search and duplication, except that the first two hours of search time and the first 100 pages of duplication will be furnished without charge. The charges for searching for the records will be assessed even if no responsive records are found or if the records are located but are determined to be exempt from disclosure.

(2) In responding to FOIA requests, the Agency will charge the following fees unless a waiver or reduction of fees has been granted under paragraph (l) of this section:

(i) *Search.* (A) Search fees will be charged for all requests except for those made by educational institutions, noncommercial scientific institutions, or representatives of the news media subject to the limitations of paragraph (d) of this section. Offices will charge for time spent searching even if no responsive records are found or if the records are located but are determined to be exempt from disclosure.

(B) For searches and retrievals of requested records, either manually or electronically, conducted by clerical personnel, the fee will be $4.00 for each quarter hour of time. For searches and retrievals of requested records, either manually or electronically, requiring the use of professional personnel, the fee will be $7.00 for each quarter hour of time. For searches and retrievals of requested records, either manually or electronically, requiring the use of managerial personnel, the fee will be $10.25 for each quarter hour of time.

(C) When searches and retrievals are conducted by contractors, requesters will be charged for the actual charges up to but not exceeding the rate which would have been charged had EPA employees conducted the search. The costs of actual computer resource usage in connection with such searches will also be charged, to the extent they can be determined.

(ii) *Duplication.* Duplication fees will be charged to all requesters, subject to the limitations of paragraph (d) of this section. For either a photocopy or a computer-generated printout of a record (no more than one copy of which need be supplied), the fee will be fifteen (15) cents per page. For electronic forms of duplication, other than a computer-generated printout, offices will charge the direct costs of that duplication. Such

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direct costs will include the costs of the requested electronic medium on which the copy is to be made and the actual operator time and computer resource usage required to produce the copy, to the extent they can be determined.

(iii) *Review.* Review fees will be charged only to requesters who make a commercial use request. Review fees will be charged only for the initial record review (that is, the review done when an office is deciding whether an exemption applies to a particular record or portion of a record at the initial request level). No charge will be made for review at the administrative appeal level for an exemption already applied. However, records or portions of records withheld under an exemption that is subsequently determined not to apply may be reviewed again to determine whether any other exemption not previously considered applies; the costs of that review will be charged when it is made necessary by a change of circumstances. Review fees will be charged at the same rates as those charged for a search under paragraph (c)(1)(i) of this section.

(d) *Limitations on charging fees.* (1) No search or review fees will be charged for requests by educational institutions, noncommercial scientific institutions, or representatives of the news media.

(2) No search fee or review fee will be charged for a quarter-hour period unless more than half of that period is required for search or review.

(3) Except for requesters seeking records for a commercial use, offices will provide without charge:

(i) The first 100 pages of duplication, and

(ii) The first two hours of search.

(4) Whenever a total fee calculated under paragraph (c) of this section is $14.00 or less for any request, no fee will be charged.

(5) The provisions of paragraphs (d)(3) and (4) of this section work together. This means that for requesters other than those seeking records for a commercial use, no fee will be charged unless the cost of search in excess of two hours plus the cost of duplication in excess of 100 pages totals more than $14.00.

(e) *Notice of anticipated fees in excess of $25.00.* When the Agency determines or estimates that the fees to be charged under this section will amount to more than $25.00, the Agency will notify the requester of the actual or estimated amount of the fees, unless the requester has indicated a willingness to pay fees as high as those anticipated. The amount of $25.00 is cumulative for multi-office requests. If only a portion of the fee can be estimated readily, the Agency will advise the requester that the estimated fee may be only a portion of the total fee. When a requester has been notified that actual or estimated fees will amount to more than $25.00, EPA will do no further work on the request until the requester agrees to pay the anticipated total fee. This time will be excluded from the twenty (20) working day time limit. EPA will memorialize any such agreement in writing. A notice under this paragraph will offer the requester an opportunity to discuss the matter with Agency personnel in order to reformulate the request to meet the requester's needs at a lower cost.

(f) *Charges for other services.* Apart from the other provisions of this section, when an office chooses as a matter of administrative discretion to provide a special service-such as certifying that records are true copies or sending records by other than ordinary mail-the direct costs of providing the service ordinarily will be charged.

(g) *Charging interest.* EPA may charge interest on any unpaid bill starting on the 31st day following the date of billing the requester. Interest charges will be assessed at the rate provided in 31 U.S.C. 3717 and will accrue from the date of the billing until payment is received by the Agency. EPA will follow the provisions of the Debt Collection Act of 1982 (Pub. L. 97–365), as amended, and its administrative procedures, including the use of consumer reporting agencies, collection agencies, and offset. No penalty will be assessed against FOIA requesters for exercising their statutory right to ask that a fee be waived or reduced or to dispute a billing. If a fee is in dispute, penalties will be suspended upon notification.

(h) *Delinquent requesters.* If requesters fail to pay all fees within 60 calendar days of the fees assessment, they will be placed on a delinquency list. Subsequent FOIA requests will not be processed until payment of the overdue fees has first been made.

(i) *Aggregating requests.* When the Agency reasonably believes that a requester or a group of requesters acting together is attempting to divide a request into a series of requests for the purpose of avoiding fees, the Agency may aggregate those requests and charge accordingly. The Agency may presume that multiple requests of this type made within a 30-day period have been made in order to avoid fees. When requests are separated by a longer period, the Agency will aggregate them only if there exists a solid basis for determining that aggregation is warranted under all the circumstances involved. Multiple requests involving unrelated matters will not be aggregated.

(j) *Advance payments.* (1) For requests other than those described in paragraphs (j)(2) and (3) of this section, an office will not require the requester to make an advance payment (that is, a payment made before EPA begins or continues work on a request). Payment owed for work already completed (that is, a prepayment before copies are sent to a requester) is not an advance payment.

(2) When the Agency determines or estimates that a total fee to be charged under this section will be more than $250.00, it may require the requester to make an advance payment of an amount up to the amount of the entire anticipated fee before beginning to process the request, except when it receives a satisfactory assurance of full payment from a requester that has a history of prompt payment.

(3) When a requester has previously failed to pay a properly charged FOIA fee to the Agency within 30 calendar days of the date of billing, the Agency may require the requester to pay the full amount due, plus any applicable interest, and to make an advance payment of the full amount of any anticipated fee, before the Agency begins to process a new request or continues to process a pending request from that requester.

(4) When the Agency requires advance payment or payment due under paragraph (j)(3) of this section, the request will not be considered, and EPA will do no further work on the request until the required payment is made.

(k) *Other statutes specifically providing for fees.* The fee schedule of this section does not apply to fees charged under any other statute that specifically requires an agency to set and collect fees for particular types of records. When records responsive to requests are maintained for distribution by agencies operating such statutorily based fee schedule programs, EPA will inform requesters of the steps for obtaining records from those sources so that they may do so most economically.

(l) *Waiver or reduction of fees.* (1) Records responsive to a request will be furnished without charge or at a charge reduced below that established under paragraph (c) of this section when a FOI Office determines, based on all available information, that disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

(2) To determine whether the first fee waiver requirement is met, FOI Offices will consider the following factors:

(i) The subject of the request: Whether the subject of the requested records concerns "the operations or activities of the government." The subject of the requested records must concern identifiable operations or activities of the Federal government, with a connection that is direct and clear, not remote.

(ii) The informative value of the information to be disclosed: Whether the disclosure is "likely to contribute" to an understanding of government operations or activities. The disclosable portions of the requested records must be meaningfully informative about government operations or activities in order to be "likely to contribute" to an increased public understanding of those operations or activities. The disclosure of information that already is in the public domain, in either a duplicative or a substantially identical form, would not be as likely to contribute to such understanding when nothing new would be added to the public's understanding.

(iii) The contribution to an understanding of the subject by the public is likely to result from disclosure: Whether disclosure of the requested information will contribute to "public understanding." The disclosure must contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester. A requester's expertise in the subject area and ability and intention to effectively convey information to the public will be considered. It will be presumed that a representative of the news media will satisfy this consideration.

(iv) The significance of the contribution to public understanding: Whether the disclosure is likely to contribute "significantly" to public understanding of government operations or activities. The public's understanding of the subject in question, as compared to the level of public understanding existing prior to the disclosure, must be enhanced by the disclosure to a significant extent. FOI Offices will not make value judgments about whether information that would contribute significantly to public understanding of the operations or activities of the government is "important" enough to be made public.

(3) To determine whether the second fee waiver requirement is met, FOI Offices will consider the following factors:

(i) The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure. FOI Offices will consider any commercial interest of the requester (with reference to the definition of "commercial use request" in paragraph (b)(1) of this section), or of any person on whose behalf the requester may be acting, that would be furthered by the requested disclosure. Requesters will be given an opportunity in the administrative process to provide explanatory information regarding this consideration.

(ii) The primary interest in disclosure: Whether any identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is "primarily in the commercial interest of the requester." A fee waiver or reduction is justified where the public interest standard is satisfied and that public interest is greater in magnitude than that of any identified commercial interest in disclosure. FOI Offices ordinarily will presume that when a news media requester has satisfied the public interest standard, the public interest will be the interest primarily served by disclosure to that requester. Disclosure to data brokers or others who merely compile and market government information for direct economic return will not be presumed to primarily serve the public interest.

(4) When only some of the requested records satisfy the requirements for a waiver of fees, a waiver will be granted for only those records.

(5) Requests for the waiver or reduction of fees must address the factors listed in paragraphs (k) (l)–(3) of this section, insofar as they apply to each request. FOI Offices will exercise their discretion to consider the cost-effectiveness of their investment of administrative resources in deciding whether to grant waivers or reductions of fees and will consult the appropriate EPA offices as needed. Requests for the waiver or reduction of fees must be submitted along with the request.

(6) When a fee waiver request is denied, EPA will do no further work on the request until it receives an assurance of payment or an appeal of the fee waiver adverse determination is made and a final appeal determination is made pursuant to § 2.104(j).

§ 2.108 Other rights and services.

Nothing in this subpart shall be construed to entitle any person, as a right, to any service or to the disclosure of any record to which such person is not entitled under the FOIA.

[FR Doc. 02–28081 Filed 11–4–02; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA242–0373a; FRL–7395–8]

Revisions to the California State Implementation Plan, Imperial County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Imperial County Air Pollution Control District's (ICAPCD) portion of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from Soil Decontamination Operations, Organic Solvent Degreasing Operations, and Organic Solvents. We are approving local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: This rule is effective on January 6, 2003 without further notice, unless EPA receives adverse comments by December 5, 2002. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** to notify the public that this rule will not take effect.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

You can inspect copies of the submitted SIP revisions and EPA's technical support documents (TSDs) at our Region IX office during normal business hours. You may also see copies of the submitted SIP revisions at the following locations:

Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Room B–102, 1301 Constitution Avenue, NW., (Mail Code 6102T), Washington, DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814.

Imperial County Air Pollution Control District, 150 South 9th Street, El Centro, California 92243–2850

A copy of the rules may also be available via the Internet at *http://*

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www.arb.ca.gov/drdb/drdbltxt.htm. Please be advised that this is not an EPA website and may not contain the same version of the rule that was submitted to EPA.

FOR FURTHER INFORMATION CONTACT: Terry McCall, EPA Region IX, (415) 947–3976.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

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I. The State's Submittal

A. What Rules Did the State Submit?

Table 1 lists the rules we are approving with the dates that they were adopted by the local air agencies and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULES

Local agency	Rule No.	Rule title	Adopted	Submitted
ICAPCD	412	Soil Decontamination Operations	01/16/01	10/30/01
ICAPCD	413	Organic Solvent Cleaning	01/16/01	10/30/01
ICAPCD	417	Organic Solvents	9/14/99	05/26/00

On January 18, 2002, for Rules 412 and 413, and on October 6, 2000 for Rule 417, these rule submittals were found to meet the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review.

B. Are There Other Versions of These Rules?

There are no previous versions of Rules 412 and 413 SIP. The ICAPCD adopted earlier versions of Rule 417 and CARB submitted them to us on November 4, 1977 and October 15, 1979. We approved these versions of Rule 417 into the SIP on August 8, 1978 and January 1, 1981. The ICAPCD adopted revisions to the 1981 SIP-approved version of Rule 417 on September 14, 1999 and CARB submitted them to us on May 26, 2000. While we can act on only the most recently submitted version, we have reviewed materials provided with previous submittals.

C. What Is the Purpose of the Submitted Rules and Rule Revisions?

Rule 412—Soil Decontamination Operations, establishes standards to reduce the emissions of VOC from soil that has been contaminated with organic materials, typically gasoline, jet fuel, or diesel fuel. The rule requires VOC emissions from contaminated soil (greater than 50 ppm VOC) to be controlled when the soil is being excavated.

Rule 413—Organic Solvent Degreasing Operations, applies to the operation of equipment using organic solvent in degreasing operations. The rule reduces emissions of reactive organic compounds (ROC) by establishing equipment standards and work practice procedures for cold cleaners and open top and conveyorized vapor degreasers.

Rule 417—Organic Solvents, applies to emissions or organic material from heated and unheated operations. Rule 417 reduces emissions of ozone precursor compounds from operations that are not currently regulated by other District rules. The TSDs have more information about Rules 412, 413 and 417.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating the Rules?

Generally, SIP rules must be enforceable (see section 110(a) of the Act), must require Reasonably Available Control Technology (RACT) for major sources in nonattainment areas (see section 182(a)(2)(A)), and must not relax existing requirements (see sections 110(l) and 193). EPA has classified Imperial County a "transitional area" for attainment of the NAAQS for ozone (CAA section 185). Transitional areas are exempt from additional nonattainment requirements in CAA part D, subpart 2. The exemption will continue until EPA redesignates Imperial County as either attainment or nonattainment under CAA section 107(d)(4) (see 57 FR 113498, 13523–13527). The District is not exempt from the general nonattainment requirements in CAA part D, subpart 1.

Guidance and policy documents that we used to help evaluate specific enforceability and RACT requirements consistently include the following:

1. Portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044, November 24, 1987.
2. "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations," EPA, May 25, 1988 (the Bluebook).
3. "Guidance Document for Correcting Common VOC & Other Rule Deficiencies," EPA Region 9, August 21, 2001 (the Little Bluebook).
4. Control of Volatile Organic Emissions from Solvent Metal Cleaning. EPA–450/2–77–022, November 1977.
5. Determination of Reasonably Available Control Technology and Best Available Retrofit Control Technology for Organic Solvent Cleaning and Degreasing Operations. California Air Resources Board Guidance Document. July 18, 1991,

B. Do the Rules Meet the Evaluation Criteria?

We believe these rules are consistent with the relevant policy and guidance regarding enforceability, RACT, and SIP relaxations. The TSD has more information on our evaluation.

C. EPA Recommendations To Further Improve the Rules

The TSD describes additional rule revisions that do not affect EPA's current action but are recommended for the next time the local agency modifies the rules.

D. Public Comment and Final Action

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted rules because we believe they fulfill all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rules. If we receive adverse comments by December 5, 2002, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on January 6, 2003. This will incorporate these rules into the federally enforceable SIP.

Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

III. Background Information

Why Were These Rules Submitted?

VOCs help produce ground-level ozone and smog, which harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control VOC emissions. Table 2 lists some of the national milestones leading to the submittal of these local agency VOC rules.

TABLE 2.—OZONE NONATTAINMENT MILESTONES

Date	Event
March 3, 1978	EPA promulgated a list of ozone nonattainment areas under the Clean Air Act as amended in 1977. 43 FR 8964; 40 CFR 81.305.
May 26, 1988	EPA notified Governors that parts of their SIPs were inadequate to attain and maintain the ozone standard and requested that they correct the deficiencies (EPA's SIP–Call). See section 110(a)(2)(H) of the pre-amended Act.
November 15, 1990	Clean Air Act Amendments of 1990 were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q.
May 15, 1991	Section 182(a)(2)(A) requires that ozone nonattainment areas correct deficient RACT rules by this date.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 6, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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Dated: September 30, 2002.

Keith Takata,

Acting Regional Administrator, Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(279)(i)(A)(*8*) and (288)(i)(D) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(279) * * *

(i) * * *

(A) * * *

(*8*) Rule 417 adopted on September 14, 1999.

* * * * *

(288) * * *

(i) * * *

(D) Imperial County Air Pollution Control District.

(*1*) Rules 412 and 413 adopted on January 16, 2001.

* * * * *

[FR Doc. 02–28077 Filed 11–4–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[MS–200301(a); FRL–7404–2]

Approval and Promulgation of State Plan for Designated Facilities and Pollutants; State of Mississippi

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving the small Municipal Waste Combustion (MWC) units section 111(d) negative declaration submitted by the State of Mississippi. This negative declaration certifies that small MWC units subject to the requirements of section 111(d) and 129 of the Clean Air Act (CAA) do not exist in Mississippi.

DATE: This direct final rule will be effective January 6, 2003 unless EPA receives adverse comments by December 5, 2002. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Comments may be mailed to Joydeb Majumder, EPA Region 4, Air Toxics and Monitoring Branch, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.

Copies of documents relative to this action are available for public inspectioin during normal business hours at the above-listed Region 4 location. The interested person wanting to examine this document should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Joydeb Majumder at (404) 562–9121 or Michele Notarianni at (404) 562–9031.

SUPPLEMENTARY INFORMATION: Section 111(d) of the CAA requires states to submit plans to control certain pollutants (designated pollutants) at existing facilities (designated facilities) whenever standards of performance have been established under section 111(d) for new sources of the same type, and EPA has established emissions guidelines for such existing sources. A designated pollutant is any pollutant for which no air quality criteria have been issued, and which is not included on a list published under section 108(a) or section 112(b)(1)(A) of the CAA, but emissions of which are subject to a standard of performance for new stationary sources.

The emissions guidelines for small MWC units were originally promulgated in December 1995 but were vacated by the U.S. Court of Appeals for the District of Columbia Circuit in March 1997. In response to the 1997 vacature, on August 30, 1999, EPA proposed to reestablish emission guidelines for small MWC units. On December 6, 2000 (65 FR 76378), EPA finalized the section 111(d) emission guidelines for existing small MWC units. The emission guidelines contained in this final rule are equivalent to the 1995 emission guidelines for small MWC units. The emission guidelines are codified at 40 CFR part 60, subpart BBBB.

Subpart B of 40 CFR part 60 establishes procedures to be followed and requirements to be met in the development and submission of state plans for controlling designated pollutants. Part 62 of the CFR provides the procedural framework for the submission of these plans. When designated facilities are located in a state, a state must develop and submit a plan for the control of designated pollutant. However, 40 CFR 62.06 provides that if there are no existing sources of the designated pollutants in the state, the state may submit a letter of certification to that effect, or negative declaration, in lieu of a plan. The negative declaration exempts the state from the requirements of subpart B for that designated pollutant. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

Final Action

The State of Mississippi has determined there is no existing source in the state of Mississippi subject to the small MWC units emission guidelines. Consequently, the state of Mississippi has submitted a letter of negative declaration certifying this fact. We are taking final action to approve this negative declaration.

The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective January 6, 2003 without further notice unless the Agency receives adverse comments by December 5, 2002.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on January 6, 2003 and no further action will be taken on the proposed rule.

Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. section 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 6, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects 40 CFR Part 62

Environmental protection, Air pollution control, Municipal waste combustion units, Nitrogen dioxide, Particulate matter, Sulfur oxides.

Dated: October 24, 2002.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 62—[AMENDED]

1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart Z—Mississippi

2. Subpart Z is amended by adding an undesignated center heading and § 62.6126 to read as follows:

AIR EMISSIONS FROM SMALL EXISTING MUNICIPAL WASTE COMBUSTION UNITS

§ 62.6126 Identification of plan—negative declaration.

Letter from the Mississippi Department of Environmental Quality submitted March 27, 2002, certifying that there are no small municipal waste combustion units subject to 40 CFR part 60, subpart BBBB.

[FR Doc. 02–28079 Filed 11–4–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[AMS–FRL–7404–5]

Clean Diesel Fuel Implementation Workshop

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: The Environmental Protection Agency will be holding a Clean Diesel Fuel Implementation Workshop November 20 and 21 in Houston, Texas. The clean diesel fuel program (66 FR 5002, January 18, 2001) establishes a maximum sulfur content of 15 ppm for highway diesel fuel beginning in June 2006 to enable the advanced emission control devices that will be used on 2007 and later model year heavy-duty diesel vehicles. The purpose of this workshop is to assist regulated entities, including refiners, fuel distributors, and fuel marketers, with program implementation and compliance. The workshop is being sponsored by the National Petrochemical and Refiners Association (NPRA) in conjunction with the Society of Independent Gasoline Marketers of America (SIGMA), the Association of Oil Pipelines (AOPL), the National Association of Convenience Stores (NACS), the Independent Fuel Terminal Operators Association (IFTOA), and the Petroleum Marketers Association of America (PMAA). EPA will present a summary of the clean diesel program, including recordkeeping and reporting requirements, and enforcement provisions. The workshop will also include a series of industry panel sessions on developing solutions to program implementation challenges. An agenda for the workshop will be available in early November on the clean diesel Web Page: *http://www.epa.gov/otaq/diesel.htm.* If you plan to attend the workshop, please register at *https://www.b-there.com/breg/diw02/index.cfm?x=1.*

DATES: Wednesday, November 20, 2002, from 10 a.m. to 6 p.m., Thursday, November 21, 2002, from 8 a.m. to 12:30 p.m.

ADDRESSES: The Westin Galleria Hotel, 5060 W. Alabama Street, Houston, Texas 77056, (713) 960–8100, (713)

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960–6553 (fax), *http://www.starwood.com/westin/index.html.*

FOR FURTHER INFORMATION CONTACT: Ms. Mary Manners, Chemical Engineer, U.S. EPA, National Vehicle and Fuels Emission Laboratory, Assessment and Standards Division, 2000 Traverwood, Ann Arbor, MI 48105; telephone: (734) 214–4873, fax: (734) 214–4051, e-mail: *manners.mary@epa.gov.*

Dated: October 30, 2002.

Donald E. Zinger,

Acting Director, Office of Transportation and Air Quality.

[FR Doc. 02–28083 Filed 11–4–02; 8:45 am]

BILLING CODE 6561–7–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 410 and 414

[CMS–1204–N]

RIN 0938–AL21

Medicare Program; Revisions to Payment Policies Under the Physician Fee Schedule for Calendar Year 2003, Notice of Delay of Final Rule

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice of delay of final rule.

SUMMARY: This document gives notice of a delay in publication of the physician fee schedule for calendar year 2003 due to concerns about data used to establish the physician fees and the need to further assess the accuracy of the data.

FOR FURTHER INFORMATION CONTACT: Terry Kay (410) 786–4497.

SUPPLEMENTARY INFORMATION: The Medicare physician fee schedule specifies payments to physicians for more than 7,000 health care services and procedures ranging from routine office visits to complex surgical procedures. In calendar year (CY) 2003, Medicare is expected to pay approximately $44.7 billion to over 750,000 physicians and other practitioners for services paid under the physician fee schedule.

On June 28, 2002, we published a proposed rule to refine the resource-based ST practice expense relative value units (RVUs) and make other changes to Medicare Part B payment policy, which affect the Medicare physician fee schedule for CY 2003. The policy changes proposed concerned: the Medicare Economic Index, pricing of the technical component for positron emission tomography (PET) scans, Medicare qualifications for clinical nurse specialists, a process to add or delete services to the definition of telehealth, definition for ZZZ global periods, global period for surface radiation, and an endoscopic base for urology codes. We also discuss the refinement of anesthesia work values, clinical social worker services, and how drugs are accounted for in the sustainable growth rate.

Under the formula set for in section 1848(b)(1) of the Social Security Act, the payment amount for each service paid under the physician fee schedule is the product of three factors: (1) A nationally uniform RVU for the service; (2) a geographic adjustment factor for each physician; and (3) a nationally uniform conversion factor (CF) for the service. The CF converts the RVUs into payment amounts. For each physician fee schedule service there are three RVUs: (1) An RVU for physician work; (2) an RVU for practice expense; and (3) an RVU for malpractice expense.

We are concerned about information and data used in establishing RVUs for certain physicians' services that would apply under the Medicare physician fee schedule for CY 2003. In reviewing the information and data used to establish RVUs (including data and information obtained from outside sources) we discovered that the data and information were incomplete, and we could not, therefore, make an accurate evaluation and establishment of RVUs, which form in part the basis of payment under the physician fee schedule. The effects of the incomplete data and information that we have identified are of such a magnitude to affect significantly the rates paid under the physician fee schedule for all physicians, non-physician practitioners, suppliers and providers paid physician fee schedule rates. Because changes in RVUs are done in a budget-neutral manner, RVU changes have redistributive implications for all physicians, non-physician practitioners, suppliers, and providers paid physician fee schedule rates. Using the data and information as currently constituted without refinement would result in inappropriate and uneven payments to physicians, non-physician practitioners, suppliers, and providers. Because it would be impossible to avoid such uneven payments at this point based on the current state of information, it would be inappropriate to proceed to publication of a final rule with a physician fee schedule for CY 2003 until the subject data and information can be re-evaluated and then utilized to assign the proper number of units under our relative value system.

In order to thoroughly assess the accuracy of the data and information and to assure that they do not contain further inaccuracies that might also have significant implications, an intensive review of the data and information will be necessary. Because of the time needed for this review, we cannot complete this review and recalculate the physician fee schedule rates for CY 2003 before November 1, 2002. Once our review has been completed and data and information assessed and rates revised, we will publish a final rule. We will announce the effective date of the physician fee schedule for CY 2003 in that rule.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: October 31, 2002.

Thomas A. Scully,

Administrator, , Centers for Medicare & Medicaid Services.

Approved: October 31, 2002.

Tommy G. Thompson,

Secretary.

[FR Doc. 02–28147 Filed 11–1–02; 11:57 am]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[Gen Docket No. 86–285; FCC 02–202]

Schedule of Application Fees

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document the Commission has amended its Schedule of Application Fees to adjust the fees for processing applications and other filings. Section 8(b) of the Communications Act requires the Commission to adjust its application fees every two years after October 1, 1991 to reflect the net change in the Consumer Price Index for all Urban Consumers (CPI-U). The increased fees reflect the net change in the CPI-U of 40 percent, calculated from December 1989 to October 2001.

DATES: Effective December 5, 2002.

FOR FURTHER INFORMATION CONTACT: Claudette Pride, Office of the Managing Director at (202) 418–1995.

SUPPLEMENTARY INFORMATION: In the Matter of the Schedule of Application Fees Set Forth in §§ 1.1102 through 1.1107 of the Commission's rules.

Adopted: July 1, 2002;

Released: July 12, 2002.

By this action, the Commission amends its Schedule of Application Fees, 47 CFR 1.1102 *et seq.*, to adjust the fees for processing applications and other filings. Section 8(b) of the Communications Act, as amended, requires that the Commission review and adjust its application fees every two years after October 1, 1999. 47 U.S.C. 158(b). The adjusted or increased fees reflect the net change in the Consumer Price Index for all Urban Consumers (CPI-U) of 40 percent, calculated from December 1989 to October 2001. The adjustments made to the fee schedule comport with the statutory formula set forth in section 8(b).

List of Subjects in 47 CFR Part 1

Administrative practice and procedures.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR Part 1 as follows:

PART 1—PRACTICE AND PROCEDURE

1. The authority citation for Part 1 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 503(b)(5); 5 U.S.C. 552 and 21 U.S.C. 853a, unless otherwise noted.

2. Section 1.1102 is revised to read as follows:

§ 1.1102 Schedule of charges for applications and other filings in the wireless telecommunications services.

Those services designated with an asterisk in the payment type code column have associated regulatory fees that must be paid at the same time the application fee is paid. Please refer to § 1.1152 for the appropriate regulatory fee that must be paid for this service.

Action	FCC Form No.	Fee amount	Payment type code	Address
1. Marine Coast				
a. New; Renewal/Modification	601 & 159	$100.00	PBMR*	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
b. Modification, Public Coast CMRS; Non-Profit.	601 & 159	100.00	PBMM	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
c. Assignment of Authorization	601 & 159	100.00	PBMM	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
d. Transfer of Control	601 & 159	50.00	PATM	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
e. Duplicate License	601 & 159	50.00	PADM	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
f. Special Temporary Authority	601 & 159	145.00	PCMM	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
g. Renewal Only	601 & 159	100.00	PBMR*	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358245, Pittsburgh, PA 15251–5245.
h. Renewal (Electronic Filing)	601 & 159	100.00	PBMR*	Federal Communications Commission, Wireless Bureau Applications (ELT), P.O. Box 358994, Pittsburgh, PA 15251–5994.
i. Renewal Only (Non-Profit; CMRS)	601 & 159	100.00	PBMM	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358245, Pittsburgh, PA 15251–5245.
j. Renewal (Electronic Filing) Non-profit, CMRS.	601 & 159	100.00	PBMM	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358994, Pittsburgh, PA 15251–5994.
k. Rule Waiver	601 & 159	150.00	PDWM	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
2. Aviation Ground				
a. New; Renewal/Modification	601 & 159	100.00	PBVR*	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
b. Modification; Non-Profit	601 & 159	100.00	PBVM	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
c. Assignment of Authorization	601 & 159	100.00	PBVM	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
d. Transfer of Control	603 & 159	50.00	PATM	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.

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Action	FCC Form No.	Fee amount	Payment type code	Address
e. Duplicate License	601 & 159	50.00	PADM	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
f. Special Temporary Authority	601 & 159	145.00	PCVM	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
g. Renewal Only	601 & 159	100.00	PBVR*	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358245, Pittsburgh, PA 15251–5245.
h. Renewal (Electronic Filing)	601 & 159	100.00	PBVR*	Federal Communications Commission, Wireless Bureau Applications (ELT), P.O. Box 358994, Pittsburgh, PA 15251–5994.
i. Renewal Only (Non-Profit)	601 & 159	100.00	PBVM	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358245, Pittsburgh, PA 15251–5245.
j. Renewal (Electronic Filing) (Non-Profit).	601 & 159	100.00	PBVM	Federal Communications Commission, Wireless Bureau Applications (ELT), P.O. Box 358994, Pittsburgh, PA 15251–5994.
k. Rule Waiver	601 & 159	150.00	PDWM	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
3. Ship				
a. New, Renewal/Modification	605 & 159	50.00	PASR*	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
b. Modification; Non-profit	605 & 159	50.00	PASM	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
c. Duplicate License	605 & 159	50.00	PADM	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
d. Exemption from Ship Station Requirements.	820 & 159	150.00	PDWM	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
e. Rule Waiver	605 & 159	150.00	PDWM	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
4. Aircraft				
New; Renewal/Modification	605 & 159	50.00	PAAR*	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
b. New; Renewal; Modification (Electronic Filing).	605 & 159	50.00	PAAR*	Federal Communications Commission, Wireless Bureau Applications (ELT), P.O. Box 358994, Pittsburgh, PA 15251–5994.
c. Modification Non-Profit	605 & 159	50.00	PAAM	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
d. Modification; Non-Profit (Electronic Filing).	605 & 159	50.00	PAAM	Federal Communications Commission, Wireless Bureau Applications (ELT), P.O. Box 358994, Pittsburgh, PA 15251–5994.
e. Renewal Only	605 & 159	50.00	PAAR*	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358245, Pittsburgh, PA 15251–5245.
f. Renewal (Electronic Filing)	605 & 159	50.00	PAAR*	Federal Communications Commission, Wireless Bureau Applications (ELT), P.O. Box 358994, Pittsburgh, PA 15251–5994.
g. Renewal Only (Non-Profit)	605 & 159	50.00	PAAM	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358245, Pittsburgh, PA 15251–5245.
h. Renewal (Non-Profit) (Electronic Filing).	605 & 159	50.00	PAAM	Federal Communications Commission, Wireless Bureau Applications (ELT), P.O. Box 358994, Pittsburgh, PA 15251–5994.
i. Duplicate License	605 & 159	50.00	PADM	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
j. Duplicate License (Electronic Filing)	605 & 159	50.00	PADM	Federal Communications Commission, Wireless Bureau Applications (ELT), P.O. Box 358994, Pittsburgh, PA 15251–5994.
k. Rule Waiver	605 & 159	150.00	PDWM	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.

Action	FCC Form No.	Fee amount	Payment type code	Address
l. Rule Waiver (Electronic Filing)	605 & 159	150.00	PDWM	Federal Communications Commission, Wireless Bureau Applications (ELT), P.O. Box 358994, Pittsburgh, PA 15251–5994.
5. Private Operational Fixed Microwave				
a. New; Renewal/Modification	601 & 159	220.00	PEOR*	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
b. New; Renewal/Modification (Electronic Filing).	601 & 159	220.00	PEOR*	Federal Communications Commission, Wireless Bureau Applications (ELT), P.O. Box 358994, Pittsburgh, PA 15251–5994.
c. Modification; Consolidate Call Signs; Non-Profit.	601 & 159	220.00	PEOM	Federal Communications Commission, Wireless Bureau Applications P.O. Box 358130, Pittsburgh, PA 15251–5130.
d. Modification; Consolidate Call Signs; Non-Profit (Electronic Filing).	601 & 159	220.00	PEOM	Federal Communications Commission, Wireless Bureau Applications (ELT), P.O. Box 358994, Pittsburgh, PA 15251–5994.
e. Renewal Only	601 & 159	220.00	PEOR*	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358245, Pittsburgh, PA 15251–5245.
f. Renewal (Electronic Filing)	601 & 159	220.00	PEOR*	Federal Communications Commission, Wireless Bureau Applications (ELT), P.O. Box 358994, Pittsburgh, PA 15251–5994.
g. Renewal Only (Non-Profit)	601 & 159	220.00	PEOM	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358245, Pittsburgh, PA 15251–5245.
h. Renewal (Non-Profit) (Electronic Filing).	601 & 159	220.00	PEOM	Federal Communications Commission, Wireless Bureau Applications (ELT), P.O. Box 358994, Pittsburgh, PA 15251–5994.
i. Assignment	603 & 159	220.00	PEOM	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
j. Assignment (Electronic Filing)	603 & 159	220.00	PEOM	Federal Communications Commission, Wireless Bureau Applications, (ELT), P.O. Box 358994, Pittsburgh, PA 15251–5994.
k. Transfer of Control	603 & 159	50.00	PATM	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
l. Transfer of Control (Electronic Filing)	603 & 159	50.00	PATM	Federal Communications Commission, Wireless Bureau Applications (ELT), P.O. Box 358994, Pittsburgh, PA 15251–5994.
m. Duplicate License	601 & 159	50.00	PADM	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
n. Duplicate License (Electronic Filing)	601 & 159	50.00	PADM	Federal Communications Commission, Wireless Bureau Applications (ELT), P.O. Box 358994, Pittsburgh, PA 15251–5994.
o. Special Temporary Authority	601 & 159	50.00	PAOM	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
p. Special Temporary Authority (Electronic Filing).	601 & 159	50.00	PAOM	Federal Communications Commission, Wireless Bureau Applications (ELT), P.O. Box 358994, Pittsburgh, PA 15251–5994.
q. Rule Waiver	601 & 159	150.00	PDWM	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
r. Rule Waiver (Electronic Filing)	601 & 159	150.00	PDWM	Federal Communications Commission, Wireless Bureau Applications (ELT), P.O. Box 358994, Pittsburgh, PA 15251–5994.
6. Land Mobile PMRS				
a. New or Renewal/Modification (Frequencies below 470 MHz (except 220 MHz).	601 & 159	50.00	PALR*	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
b. New or Renewal/Modification (Frequencies below 470 MHz) (except 220 MHz) (Electronic Filing).	601 & 159	50.00	PALR*	Federal Communications Commission, Wireless Bureau Applications (ELT), P.O. Box 358994, Pittsburgh, PA 15251–5994.
c. New or Renewal/Modification (Frequencies 470 MHz) and above and 220 MHz Local).	601 & 159	50.00	PALS*	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.

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Action	FCC Form No.	Fee amount	Payment type code	Address
d. New or Renewal/Modification (Frequencies 470 MHz) and above and 220 MHz Local) (Electronic Filing).	601 & 159	50.00	PALS*	Federal Communications Commission, Wireless Bureau Applications (ELT), P.O. Box 358994, Pittsburgh, PA 15251–5994.
e. New or Renewal/Modification (220 MHz Nationwide).	601 & 159	50.00	PALT*	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
f. New or Renewal/Modification (220 MHz Nationwide) (Electronic Filing).	601 & 159	50.00	PALT*	Federal Communications Commission, Wireless Bureau Applications (ELT), P.O. Box 358994, Pittsburgh, PA 15251–5994.
g. Modification; Non-Profit; For Profit Special Emergency and Public Safety; and CMRS.	601 & 159	50.00	PALM	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
h. Modification; Non-Profit; For Profit Special Emergency and Public Safety; and CMRS (Electronic Filing).	601 & 159	50.00	PALM	Federal Communications Commission, Wireless Bureau Applications (ELT), P.O. Box 358994, Pittsburgh, PA 15251–5994.
i. Renewal Only	601 & 159	50.00 50.00 50.00	PALR* PALS* PALT*	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358245, Pittsburgh, PA 15251–5245.
j. Renewal (Electronic Filing)	601 & 159	50.00 50.00 50.00	PALR* PALS* PALT*	Federal Communications Commission, Wireless Bureau Applications (ELT), P.O. Box 358994, Pittsburgh, PA 15251–5994.
k. Renewal Only (Non-Profit; CMRS; For-Profit Special Emergency and Public Safety).	601 & 159	50.00	PALM	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358245, Pittsburg, PA 15251–5245.
l. Renewal (Non-Profit; CMRS; For-Profit Special Emergency and Public Safety) (Electronic Filing).	601 & 159	50.00	PALM	Federal Communications Commission, Wireless Bureau Applications (ELT), P.O. Box 358994, Pittsburgh, PA 15251–5994.
m. Assignment of Authorization (PMRS & CMRS).	603 & 159	50.00	PALM	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburg, PA 15251–5130.
n. Assignment of Authorization (PMRS & CMRS) (Electronic Filing).	603 & 159	50.00	PALM	Federal Communications Commission, Wireless Bureau Applications (ELT), P.O. Box 358994, Pittsburgh, PA 15251–5994.
o. Transfer of Control (PMRS & CMRS)	603 & 159	50.00	PATM	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
p. Transfer of Control (PMRS & CMRS) (Electronic Filing).	603 & 159	50.00	PATM	Federal Communications Commission, Wireless Bureau Applications (ELT), P.O. Box 358994, Pittsburgh, PA 15251–5994.
q. Duplicate License	601 & 159	50.00	PADM	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
r. Duplicate License (Electronic Filing)	601 & 159	50.00	PADM	Federal Communications Commission, Wireless Bureau Applications (ELT), P.O. Box 358994, Pittsburgh, PA 15251–5994.
s. Special Temporary Authority	601 & 159	50.00	PALM	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
t. Special Temporary Authority (Electronic Filing).	601 & 159	50.00	PALM	Federal Communications Commission, Wireless Bureau Applications (ELT), P.O. Box 358994, Pittsburgh, PA 15251–5994.
u. Rule Waiver	601 & 159	150.00	PDWM	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
v. Rule Waiver (Electronic Filing)	601 & 159	150.00	PDWM	Federal Communications Commission, Wireless Bureau Applications (ELT), P.O. Box 358994, Pittsburgh, PA 15251–5994.
w. Consolidate Call Signs	601 & 159	50.00	PALM	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
x. Consolidate Call Signs (Electronic Filing).	601 & 159	50.00	PALM	Federal Communications Commission, Wireless Bureau Applications (ELT), P.O. Box 358994, Pittsburgh, PA 15251–5994.
7. 218–219 MHz (previously IVDS)				
a. New; Renewal/Modification	601 & 159	50.00	PAIR*	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
b. New; Renewal/Modification (Electronic Filing).	601 & 159	50.00	PAIR*	Federal Communications Commission, Wireless Bureau Applications (ELT), P.O. Box 358994, Pittsburgh, PA 15251–5994.

Action	FCC Form No.	Fee amount	Payment type code	Address
c. Modification	601 & 159	50.00	PAIM	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130 Pittsburgh, PA 15251–5130.
d. Modification (Electronic Filing)	601 & 159	50.00	PAIM	Federal Communications Commission, Wireless Bureau Applications (ELT), P.O. Box 358994, Pittsburgh, PA 15251–5994.
e. Renewal Only	601 & 159	50.00	PAIR*	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358245, Pittsburg, PA 15251–5245.
f. Renewal (Electronic Filing)	601 & 159	50.00	PAIR*	Federal Communications Commission, Wireless Bureau Applications (ELT), P.O. Box 358994, Pittsburgh, PA 15251–5994.
g. Assignment of Authorization	603 & 159	50.00	PAIM	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
h. Assignment of Authorization (Electronic Filing).	603 & 159	50.00	PAIM	Federal Communications Commission, Wireless Bureau Applications (ELT), P.O. Box 358994, Pittsburgh, PA 15251–5994.
i. Transfer of Control	603 & 159	50.00	PATM	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
j. Transfer of Control (Electronic Filing)	603 & 159	50.00	PATM	Federal Communication Commission, Wireless Bureau Applications (ELT), P.O. Box 358994, Pittsburgh, PA 15251–5994.
k. Duplicate License	601 & 159	50.00	PADM	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
l. Duplicate License (Electronic Filing)	601 & 159	50.00	PADM	Federal Communications Commission, Wireless Bureau Applications (ELT), P.O. Box 358994, Pittsburgh, PA 15251–5994.
m. Special Temporary Authority	601 & 159	50.00	PAIM	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
n. Special Temporary Authority (Electronic Filing).	601 & 159	50.00	PAIM	Federal Communications Commission, Wireless Bureau Applications (ELT), P.O. Box 358994, Pittsburgh, PA 15251–5994.
8. General Mobile Radio (GMRS)				
a. New; Renewal/Modification	605 & 159	50.00	PAZR*	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
b. New; Renewal/Modification (Electronic Filing).	605 & 159	50.00	PAZR*	Federal Communications Commission, Wireless Bureau Applications (ELT), P.O. Box 358994, Pittsburgh, PA 15251–5994.
c. Modification	605.& 159	50.00	PAZM	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
d. Modification (Electronic Filing)	605 & 159	50.00	PAZM	Federal Communications Commission, Wireless Bureau Applications (ELT), P.O. Box 358994, Pittsburgh, PA 15251–5994.
e. Renewal Only	605 & 159	50.00	PAZR*	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358245, Pittsburgh, PA 15251–5245.
f. Renewal (Electronic Filing)	605 & 159	$50.00	PAZR*	Federal Communications Commission, Wireless Bureau Applications (ELT), P.O. Box 358994, Pittsburgh, PA 15251–5994.
g. Duplicate License	605 & 159	50.00	PADM	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130 , Pittsburgh, PA 15251–5130.
h. Duplicate License (Electronic Filing)	605 & 159	50.00	PADM	Federal Communications Commission, Wireless Bureau Applications (ELT), P.O. Box 358994, Pittsburgh, PA 15251–5994.
i. Special Temporary Authority	605 & 159	50.00	PAZM	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
j. Special Temporary Authority (Electronic Filing).	605 & 159	50.00	PAZM	Federal Communications Commission, Wireless Bureau Applications (ELT), P.O. Box 358994, Pittsburgh, PA 15251–5994.
k. Rule Waiver	605 & 159	150.00	PDWM	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.

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Action	FCC Form No.	Fee amount	Payment type code	Address
l. Rule Waiver (Electronic Filing)	605 & 159	150.00	PDWM	Federal Communications Commission, Wireless Bureau Applications (ELT), P.O. Box 358994, Pittsburgh, PA 15251–5994.
9. Restricted Radiotelephone				
a. New (Lifetime Permit)	605 & 159	50.00	PARR	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358245, Pittsburgh, PA 15251–5245.
New (Limited Use)	605 & 159			
b. Duplicate/Replacement Permit	605 & 159	50.00	PADM	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
Duplicate/Replacement Permit (Limited Use).	605 & 159			
10. Commercial Radio Operator				
a. Renewal Only	605 & 159	50.00	PACS	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358245, Pittsburgh, PA 15251–5245.
b. Duplicate	605 & 159	50.00	PADM	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
11. Hearing	Corres & 159	9,530.00	PFHM	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
12. Common Carrier Microwave (Pt. To Pt. & Local TV Trans)				
a. New; Renewal/Modification (Electronic Filing Required).	601 & 159	220.00	CJPR*	Federal Communications Commission, Wireless Bureau Applications (ELT), P.O. Box 358994, Pittsburgh, PA 15251–5994.
b. Modification; Consolidate Call Signs (Electronic Filing Required).	601 & 159	220.00	CJPM	Federal Communications Commission, Wireless Bureau Applications (ELT), P.O. Box 358994, Pittsburgh, PA 15251–5994.
c. Renewal (Electronic Filing Required)	601 & 159	220.00	CJPR*	Federal Communications Commission, Wireless Bureau Applications (ELT), P.O. Box 358994, Pittsburgh, PA 15251–5994.
d. Assignment of Authorization; Transfer of Control Additional Stations (Electronic Filing Required).	603 & 159	80.00 50.00	CCPM CAPM	Federal Communications Commission Wireless Bureau Applications (ELT), P.O. Box 358994, Pittsburgh, PA 15251–5994.
e. Duplicate License (Electronic Filing Required).	601 & 159	50.00	PADM	Federal Communications Commission, Wireless Bureau Applications (ELT), P.O. Box 358994, Pittsburgh, PA 15251–5994.
f. Extension of Construction Authority (Electronic Filing Required).	601 & 159	80.00	CCPM	Federal Construction Communications Commission, Wireless Bureau Applications (ELT), P.O. Box 358994, Pittsburgh, PA 15251–5994.
g. Special Temporary Authority	601 & 159	100.00	CEPM	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
h. Special Temporary Authority (Electronic Filing.	601 & 159	100.00	CEPM	Federal Communications Commission, Wireless Bureau Applications (ELT), P.O. Box 358994, Pittsburgh, PA 15251–5994.
13. Common Carrier Microwave (DEMS)				
a. New; Renewal/Modification (Electronic Filing Required).	601 & 159	220.00	CJLR*	Federal Communications Commission, Wireless Bureau Applications (ELT), P.O. Box 358994, Pittsburgh, PA 15251–5994.
b. Modification; Consolidate Call Signs (Electronic Filing Required).	601 & 159	220.00	CJLM	Federal Communications Commission, Wireless Bureau Applications (ELT), P.O. Box 358994, Pittsburgh, PA 15251–5994.
c. Renewal (Electronic Filing Required)	601 & 159	220.00	CJLR*	Federal Communications Commission, Wireless Bureau Applications (ELT), P.O. Box 358994, Pittsburgh, PA 15251–5994.
d. Assignment of Authorization; Transfer of Control.	603 & 159	80.00	CCLM	Federal Communications Commission, Wireless Bureau Applications (ELT), P.O. Box 358994, Pittsburgh, PA 15251–5994.
Additional Stations (Electronic Filing Required).	603 & 159	50.00	CALM	
e. Duplicate License (Electronic Filing Required).	601 & 159	50.00	PADM	Federal Communications Commission, Wireless Bureau Applications (ELT), P.O. Box 358994, Pittsburgh, PA 15251–5994.
f. Extension of Construction Authority (Electronic Filing Required).	601 & 159	80.00	CCLM	Federal Communications Commission, Wireless Bureau Applications (ELT), P.O. Box 358994, Pittsburgh, PA 15251–5994.
g. Special Temporary Authority	601 & 159	100.00	CELM	Federal Communications Commission, Wireless Bureau Applications (ELT), P.O. Box 358130, Pittsburgh, PA 15251–5130.

Action	FCC Form No.	Fee amount	Payment type code	Address
h. Special Temporary Authority (Electronic Filing).	601 & 159	100.00	CELM	Federal Communications Commission, Wireless Bureau Applications (ELT), P.O. Box 358994, Pittsburgh, PA 15251–5994.
14. Broadcast Auxiliary (Aural and TV Microwave)				
a. New; Modification; Renewal/Modification.	601 & 159	120.00	MEA	Federal Communications Commission, Wireless Bureau Applications (ELT), P.O. Box 358130, Pittsburgh, PA 15251–5130.
b. New; Modification; Renewal/Modification (Electronic Filing).	601 & 159	120.00	MEA	Federal Communications Commission, Wireless Bureau Applications (ELT), P.O. Box 358994, Pittsburgh, PA 15251–5994.
c. Special Temporary Authority	601 & 159	145.00	MGA	Federal Communications Commission, Wireless Bureau Applications ELT, P.O. Box 358130, Pittsburgh, PA 15251–5130.
d. Special Temporary Authority (Electronic Filing).	601 & 159	145.00	MGA	Federal Communications Commission, Wireless Bureau Applications (ELT), P.O. Box 358994, Pittsburgh, PA 15251–5994.
e. Renewal Only	601 & 159	50.00	MAA	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358245, Pittsburgh, PA 15251–5245.
f. Renewal (Electronic Filing)	601 & 159	50.00	MAA	Federal Communications Commission, Wireless Bureau Applications (ELT), P.O. Box 358994, Pittsburgh, PA 15251–5994.
15. Broadcast Auxiliary (Remote and Low Power)				
a. New; Modification Renewal/Modification.	601 & 159	120.00	MEA	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
b. New; Modification Renewal/Modification (Electronic Filing).	601 & 159	120.00	MEA	Federal Communications Commission, Wireless Bureau Applications (ELT), P.O. Box 358994, Pittsburgh, PA 15251–5994.
c. Renewal Only	601 & 159	50.00	MAA	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358245, Pittsburgh, PA 15251–5245.
d. Renewal (Electronic Filing)	601 & 159	50.00	MAA	Federal Communications Commission, Wireless Bureau Applications (ELT), P.O. Box 358994, Pittsburgh, PA 15251–5994.
e. Special Temporary Authority	601 & 159	145.00	MGA	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
f. Special Temporary Authority (Electronic Filing).	601 & 159	145.00	MGA	Federal Communications Commission, Wireless Bureau Applications (ELT), P.O. Box 358994, Pittsburgh, PA 15251–5994.
16. Pt 22 Paging & Radiotelephone				
a. New; Major Mod; Additional Facility; Major Amendment; Major Renewal/Mod; Fill in Transmitter (Per Transmitter) (Electronic Filing Required).	601 & 159	325.00	CMD	Federal Communications Commission, Wireless Bureau Applications (ELT), P.O. Box 358994, Pittsburgh, PA 15251–5994.
b. Minor Mod; Renewal; Minor Renewal/Mod; (Per Call Sign) 900 MHz Nationwide Renewal Net Organ; New Operator (Per Operator/Per City) Notice of Completion of Construction or Extension of Time to Construct (Per Application) (Electronic Filing Required).	601 & 159	50.00	CAD	Federal Communications Commission, Wireless Bureau Applications (ELT), P.O. Box 358994, Pittsburgh, PA 15251–5994.
c. Auxiliary Test (Per Transmitter); Consolidate Call Signs (Per Call Sign) (Electronic Filing Required).	601 & 159	285.00	CLD	Federal Communications Commission, Wireless Bureau Applications (ELT), P.O. Box 358994, Pittsburgh, PA 15251–5994.
d. Special Temporary Authority (Per Location/Per Frequency).	601 & 159	285.00	CLD	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
e. Special Temporary Authority (Per Location/Per Frequency) (Electronic Filing).	601 & 159	285.00	CLD	Federal Communications Commission, Wireless Bureau Applications (ELT), P.O. Box 358994, Pittsburgh, PA 15251–5994.
f. Assignment of License or Transfer of Control (Full or Partial) (Per Call Sign).	603 & 159	325.00	CMD	Federal Communications Commission, Wireless Bureau Applications (ELT), P.O. Box 358994, Pittsburgh, PA 15251–5994.
Additional Call Signs (Per Call Signs) (Electronic Filing Required).	603 & 159	50.00	CAD	

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Action	FCC Form No.	Fee amount	Payment type code	Address
g. Subsidiary Comm Service (Per Request) (Electronic Filing Required).	601 & 159	145.00	CFD	Federal Communications Commission, Wireless Bureau Applications (ELT), P.O. Box 358994, Pittsburgh, PA 15251–5994.
h. Air Ground Individual (Initial License; Mod; Renewal (Per Station).	409 & 159	50.00	CAD	Federal Communications Commission, Wireless Bureau Applications (ELT), P.O. Box 358994, Pittsburgh, PA 15251–5994.
17. Cellular				
a. New; Major Mod; Additional Facility; Major Renewal/Mod (Electronic Filing Required).	601 & 159	325.00	CMC	Federal Communications Commission, Wireless Bureau Applications (ELT), P.O. Box 358994, Pittsburgh, PA 15251–5994.
b. Minor Modification; Minor Renewal/Mod (Electronic Filing Required).	601 & 159	85.00	CDC	Federal Communications Commission, Wireless Bureau Applications (ELT), P.O. Box 358994, Pittsburgh, PA 15251–5994.
c. Assignment of License or Transfer of Control (Full or Partial) (Electronic Filing Required).	603 & 159	325.00	CMC	Federal Communications Commission, Wireless Bureau Applications (ELT), P.O. Box 358994, Pittsburgh, PA 15251–5994.
d. Notice of Extension of Time to Complete Construction; Renewal (Electronic Filing Required).	601 & 159	50.00	CAC	Federal Communications Commission, Wireless Bureau Applications (ELT), P.O. Box 358994, Pittsburgh, PA 15251–5994
e. Special Temporary Authority	601 & 159	285.00	CLC	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130
f. Special Temporary Authority (Electronic Filing).	601 & 159	285.00	CLC	Federal Communications Commission, Wireless Bureau Applications (ELT), P.O. Box 358994, Pittsburgh, PA 15251–5994
g. Combining Cellular Geographic Areas (Electronic Filing Required).	601 & 159	75.00	CBC	Federal Communications Commission, Wireless Bureau Applications (ELT), P.O. Box 358994, Pittsburgh, PA 15251–5994
18. Rural Radio				
a. New; Major Renew/Mod; Additional Facility (Per Transmitter) (Electronic Filing Required).	601 & 159	150.00	CGRR*	Federal Communications Commission, Wireless Bureau Applications (ELT), P.O. Box 358994, Pittsburgh, PA 15251–5994
b. Major Mod; Major Amendment (Per Transmitter) (Electronic Filing Required).	601 & 159	150.00	CGRM	Federal Communications Commission, Wireless Bureau Applications (ELT), P.O. Box 358994, Pittsburgh, PA 15251–5994
c. Minor Modification; (Per Transmitter) (Electronic Filing Required).	601 & 159	50.00	CARM	Federal Communications Commission, Wireless Bureau Applications (ELT), P.O. Box 358994, Pittsburgh, PA 15251–5994
d. Assignment of License or Transfer of Control (Full or Partial) (Per Call Sign); Additional Calls (Per Call Sign) (Electronic Filing Required).	603 & 159 603 & 159	150.00 50.00	CGRM CARM	Federal Communications Commission, Wireless Bureau Applications (ELT), P.O. Box 358994, Pittsburgh, PA 15251–5994
e. Renewal (Per Call Sign); Minor Renewal/Mod (Per Transmitter) (Electronic Filing Required).	601 & 159	50.00	CARR*	Federal Communications Commission, Wireless Bureau Applications (ELT), P.O. Box 358994, Pittsburgh, PA 15251–5994
f. Notice of Completion of Construction or Extension of Time to Construct (Per Application) (Electronic Filing Required).	601 & 159	50.00	CARM	Federal Communications Commission, Wireless Bureau Applications (ELT), P.O. Box 358994, Pittsburgh, PA 15251–5994
g. Special Temporary Authority (Per Transmitter).	601 & 159	285.00	CLRM	Federal Communications Commission, Wireless Bureau Applications (ELT), P.O. Box 358994, Pittsburgh, PA 15251–5994
h. Special Temporary Authority (Per Transmitter) (Electronic Filing Required).	601 & 159	285.00	CLRM	Federal Communications Commission, Wireless Bureau Applications (ELT), P.O. Box 358994, Pittsburgh, PA 15251–5994
i. Combining Call Signs (Per Call Sign) (Electronic Filing Required).	601 & 159	285.00	CLRM	Federal Communications Commission, Wireless Bureau Applications (ELT), P.O. Box 358994, Pittsburgh, PA 15251–5994
j. Auxiliary Test Station (Per Transmitter) (Electronic Filing Required).	601 & 159	285.00	CLRM	Federal Communications Commission, Wireless Bureau Applications (ELT), P.O. Box 358994, Pittsburgh, PA 15251–5994
19. Offshore Radio				
a. New; Major Mod; Additional Facility; Major Amendment; Major Renew/Mod; Fill in Transmitters (Per Transmitter) (Electronic Filing Required).	601 & 159	150.00	GGF	Federal Communications Commission, Wireless Bureau Applications (ELT), P.O. Box 358994, Pittsburgh, PA 15251–5994.
b. Consolidate Call Signs (Per Call Sign); Auxiliary Test (Per Transmitter) (Electronic Filing Required).	601 & 159	285.00	CLF	Federal Communications Commission, Wireless Bureau Applications (ELT), P.O. Box 358994, Pittsburgh, PA 15251–5994.

Action	FCC Form No.	Fee amount	Payment type code	Address
c. Minor Modification; (Per Transmitter); Notice of Completion of Construction or Extension of Time to Construct (Per Application); Renewal (Per Call Sign) (Electronic Filing Required).	601 & 159	50.00	CAF	Federal Communications Commission, Wireless Bureau Applications (ELT), P.O. Box 358994, Pittsburgh, PA 15251–5994.
d. Assignment of License or Transfer of Control (Full or Partial) Additional Calls (Electronic Filing Required).	603 & 159	150.00	CGF	Federal Communications Commission, Wireless Bureau Applications (ELT), P.O. Box 358994, Pittsburgh, PA 15251–5994.
e. Special Temporary Authority (Per Transmitter).	601 & 159	285.00	CLF	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358130, Pittsburgh, PA 15251–5130.
f. Special Temporary Authority (Per Transmitter) (Electronic Filing Required).	601 & 159	285.00	CLF	Federal Communications Commission, Wireless Bureau Applications (ELT), P.O. Box 358994, Pittsburgh, PA 15251–5994.
20. Multipoint Distribution Service (including Multi-channel MDS)				
a. Conditional License	304 & 159 or 331 & 159.	220.00	CJM	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358155, Pittsburgh, PA 15251–5155.
b. Major Modification of Conditional Licenses or License Authorization.	304 & 159 or 331 &159.	220.00	CJM	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358994, Pittsburgh, PA 15251–5155.
c. Certification of Completion of Construction.	304–A & 159	645.00	CPM*	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358155, Pittsburgh, PA 15251–5155.
d. License Renewal	405 & 159	220.00	CJM	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358155, Pittsburgh, PA 15251–5155.
e. Assignment or Transfer:				
(i) First Station on Application	702 & 159 or 704 & 159.	80.00	CCM	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358155, Pittsburgh, PA 15251–5155.
(ii) Each Additional Station	702 & 159 or 704 & 159.	50.00	CAM	
f. Extension of Construction Authorization.	701 & 159	185.00	CHM	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358155, Pittsburgh, PA 15251–5155.
g. Special Temporary Authority or Request for Waiver of Prior Construction Authorization.	Corres & 159	100.00	CEM	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358155, Pittsburgh, PA 15251–5155.
h. Signal Booster				
(i) Application	304 & 159, 331 & 159.	75.00	CSB	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358155, Pittsburgh, PA 15251–5155.
(ii) Certification of Completion of Construction (Electronic Filing Only).	304A & 159	80.00	CCB	Federal Communications Commission, Wireless Bureau Applications, P.O. Box 358155, Pittsburgh, PA 15251–5155.

3. Section 1.1103 is revised to read as follows:

§ 1.1103 Schedule of charges for equipment approval, experimental radio services, and international telecommunications settlement services.

Action	FCC Form No.	Fee amount	Payment type code	Address
1. Certification				
a. Receivers (except TV and FM) (Electronic Filing Only).	731 & 159	405.00	EEC	Federal Communications Commission, Equipment Approval Services, P.O. Box 358315, Pittsburgh, PA 15251–5315.
b. Devices Under Parts 11, 15 & 18 (except receivers) (Electronic Filing Only).	731 & 159	525.00	EFT	Federal Communications Commission, Equipment Approval Services, P.O. Box 358315, Pittsburgh, PA 15251–5315.
c. All Other Devices (Electronic Filing Only)	731 & 159	525.00	EFT	Federal Communications Commission, Equipment Approval Services, P.O. Box 358315, Pittsburgh, PA 15251–5315.
d. Modifications and Class II Permissive Changes (Electronic Filing Only).	731 & 159	50.00	EAC	Federal Communications Commission, Equipment Approval Services, P.O. Box 358315, Pittsburgh, PA 15251–5315.

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Action	FCC Form No.	Fee amount	Payment type code	Address
e. Modification and Class III Permissive Change (Electronic Filing Only).	731 & 159	495.00	ECC	Federal Communications Commission, Equipment Approval Services, P.O. Box 358315, Pittsburgh, PA 15251–5315.
f. Request for Confidentiality (Electronic Filing Only).	731 & 159	150.00	EBC	Federal Communications Commission, Equipment Approval Services, P.O. Box 358315, Pittsburgh, PA 15251–5315.
2. Advance approval of Subscription TV Systems.	Corres & 159	3,180.00	EIS	Federal Communications Commission, Equipment Approval Services, P.O. Box 358315, Pittsburgh, PA 15251–5315.
a. Request for Confidentiality (Electronic Filing Only).	Corres & 159	150.00	EBS	Federal Communications Commission, Equipment Approval Services, P.O. Box 358315, Pittsburgh, PA 15251–5315.
3. Assignment of Grantee Code				
a. New Applicants for all Application Types, except Subscription TV (Electronic Filing Only Optional).	Corres & 159	50.00	EAG	Federal Communications Commission, Equipment Approval Services, P.O. Box 358315, Pittsburgh, PA 15251–5315.
4. Experimental Radio Service				
a. New Station Authorization	442 & 159	50.00	EAE	Federal Communications Commission, Equipment Radio Services, P.O. Box 358320, Pittsburg, PA 15251–5320.
b. Modification of Authorization	442 & 159	50.00	EAE	Federal Communications Commission, Equipment Radio Services, P.O. Box 358320, Pittsburg, PA 15251–5320.
c. Renewal of Station Authorization	442 & 159	50.00	EAE	Federal Communications Commission, Equipment Radio Services, P.O. Box 358320, Pittsburg, PA 15251–5320.
d. Assignment of Transfer of Control	702 & 159 or 703 & 159.	50.00	EAE	Federal Communications Commission, Equipment Radio Services, P.O. Box 358320, Pittsburg, PA 15251–5320.
e. Special Temporary Authority	Corres & 159	50.00	EAE	Federal Communications Commission, Equipment Radio Services, P.O. Box 358320, Pittsburg, PA 15251–5320.
f. Additional fee required for any of the above applications that request withholding from public inspection.	Corres & 159	50.00	EAE	Federal Communications Commission, Equipment Radio Services, P.O. Box 358320, Pittsburg, PA 15251–5320.
5. International Telecommunications	99 & 159	2.00	IAT	Federal Communications Commission, International Telecommunications Settlements, P.O. Box 358001, Pittsburg, PA 15251–5001.

4. Section 1.1104 is revised to read as follows:

§ 1.1104 Schedule of charges for applications and other filings for media services.

Those services designated with an asterisk in the Payment Type Code column accept multiples if filing in the same post office box.

Action	FCC Form No.	Fee Amount	Payment type code	Address
1. Commercial TV Services				
a. New and Major Change Construction Permits (per application) (Electronic Filing).	301 & 159; 301–CA & 159.	$3,575.00	MVT	Federal Communications Commission, Media Services, P.O. Box 358165, Pittsburgh, PA 15251–5165.
b. Minor Change (per application) (Electronic Filing).	301 & 159; 301–CA & 159.	800.00	MPT	Federal Communications Commission, Media Services, P.O. Box 358165, Pittsburgh, PA 15251–5165.
c. Main Studio Request	Corres & 159	800.00	MPT	Federal Communications Commission, Media Services, P.O. Box 358165, Pittsburgh, PA 15251–5165.
d. New License (per application)	302–TV & 159; 301–CA & 159; 302–DTV & 159.	240.00	MJT	Federal Communications Commission, Media Services, P.O. Box 358165, Pittsburgh, PA 15251–5165.
e. License Renewal (per application)	303–S & 159	145.00	MGT	Federal Communications Commission, Media Services, P.O. Box 358165, Pittsburgh, PA 15251–5165.
f. License Assignment: (i) Long Form (Electronic Filing)	314 & 159	800.00	MPT*	Federal Communications Commission, Media Services, P.O. Box 358350, Pittsburgh, PA 15251–5350.

Action	FCC Form No.	Fee Amount	Payment type code	Address
(ii) Short Form (Electronic Filing)	316 & 159	115.00	MDT*	Federal Communications Commission, Media Services, P.O. Box 358350, Pittsburgh, PA 15251–5350.
g. Transfer of Control: (i) Long Form (Electronic Filing)	315 & 159	800.00	MPT*	Federal Communications Commission, Media Services, P.O. Box 358350, Pittsburgh, PA 15251–5350.
(ii) Short Form (Electronic Filing)	316 & 159	115.00	MDT*	Federal Communications Commission, Media Services, P.O. Box 358350, Pittsburgh, PA 15251–5350.
h. Hearing (New and Major/Minor Change, Comparative Construction Permit).	Corres & 159	9,530.00	MWT	Federal Communications Commission, Media Services, P.O. Box 358170, Pittsburgh, PA 15251–5370.
i. Call Sign (Electronic Filing)	380 & 159	80.00	MBT	Federal Communications Commission, Media Services, P.O. Box 358165, Pittsburgh, PA 15251–5165.
j. Special Temporary Authority	Corres & 159	145.00	MGT	Federal Communications Commission, Media Services, P.O. Box 358165, Pittsburgh, PA 15251–5165.
k. Petition for Rulemaking for New Community of License.	301 & 159; 302–TV & 159.	2,210.00	MRT	Federal Communications Commission, Media Services, P.O. Box 358165, Pittsburgh, PA 15251–5165.
l. Ownership Report	323 & 159 Corres & 159.	50.00	MAT	Federal Communications Commission, Media Services, P.O. Box 358180, Pittsburgh, PA 15251–5180.
2. Commercial AM Radio Stations				
a. New or Major Change Construction Permit (Electronic Filing).	301 & 159	3,180.00	MUR	Federal Communications Commission, Media Services, P.O. Box 358190, Pittsburgh, PA 15251–5190.
b. Minor Change (per application) (Electronic Filing).	301 & 159	800.00	MPR	Federal Communications Commission, Media Services, P.O. Box 358190, Pittsburgh, PA 15251–5190.
c. Main Studio Request (per request)	Corres & 159	800.00	MPR	Federal Communications Commission, Media Services, P.O. Box 358190, Pittsburgh, PA 15251–5190.
d. New License (per application)	302–AM & 159	525.00	MMR	Federal Communications Commission, Media Services, P.O. Box 358190, Pittsburgh, PA 15251–5190.
e. AM Directional Antenna (per application)	302–AM & 159	600	MOR	Federal Communications Commission, Media Services, P.O. Box 358190, Pittsburgh, PA 15251–5190.
f. AM Remote Control (per applicaiton) (Electronic filing).	301 & 159	50.00	MAR	Federal Communications Commission, Media Services, P.O. Box 358190, Pittsburgh, PA 15251–5190.
g. License Renewal (per application)	303–S & 159	145.00	MGR	Federal Communications Commission, Media Services, P.O. Box 358190, Pittsburgh, PA 15251–5190.
h. License Assignment: (i) Long Form (Electronic Filing)	314 & 159	800.00	MPR*	Federal Communications Commission, Media Services, P.O. Box 358350, Pittsburgh, PA 15251–5350.
(ii) Short Form (Electronic Filing)	316 & 159	115.00	MDR*	Federal Communications Commission, Media Services, P.O. Box 358350, Pittsburgh, PA 15251–5350.
i. Transfer of Control: (i) Long Form (Electronic Filing)	315 & 159	800.00	MPR*	Federal Communications Commission, Media Services, P.O. Box 358350, Pittsburgh, PA 15251–5350.
(ii) Short Form (Electronic Filing)	316 & 159	$115.00	MDR*	Federal Communications Commission, Media Services, P.O. Box *358350, Pittsburgh, PA 15251–5350.
j. Hearing (New or Major/Minor Change, Comparative Construction Permit Hearings).	Corres & 159	9,530.00	MWR	Federal Communciations Commission, Media Services, P.O. Box 358170, Pittsburgh, PA 15251–5170.
k. Call Sign (Electronic Filing)	380 & 159	80.00	MBR	Federal Communications Commission, Media Services, P.O. Box 358165, Pittsburgh, PA 15251–5165.
l. Special Temporary Authority	Corres & 159	145.00	MGR	Federal Communications Commission, Media Services, P.O. Box 358190, Pittsburgh, PA 15251–5190.

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Action	FCC Form No.	Fee Amount	Payment type code	Address
m. Ownership Report	323 & 159 or Corres & 159.	50.00	MAR	Federal Communications Commission, Media Services, P.O. Box 358180, Pittsburgh, PA 15251–5180.
3. Commercial FM Radio Station				
a. New or Major Change Construction Permit (Electronic Filing).	301 & 159	2,865.00	MTR	Federal Communications Commission, Media Services, P.O. Box 358195, Pittsburgh, PA 15251–5195.
b. Minor Change (Electronic Filing)	301 & 159	800.00	MPR	Federal Communications Commission, Mass Media Services, P.O. Box 358195, Pittsburgh, PA 15251–5195.
c. Main Studio Request (per request)	Corres & 159	800.00	MPR	Federal Communications Commission, Media Services, P.O. Box 358195, Pittsburgh, PA 15251–5195.
d. New License (Electronic Filing)	302-FM & 159	165.00	MHR	Federal Communications Commission, Media Services, P.O. Box 358195, Pittsburgh, PA 15251–5195.
e. FM Directional Antenna (Electronic Filing)	302-FM & 159	505.00	MLR	Federal Communications Commission, Media Services, P.O. Box 358195, Pittsburgh, PA 15251–5195.
f. License Renewal	303-S & 159	145.00	MGR	Federal Communications Commission, Media Services, P.O. Box 358190, Pittsburgh, PA 15251–5190.
g. License Assignment:				
Long Form (Electronic Filing)	314 & 159	800.00	MPR*	Federal Communications Commission, Media Services, P.O. Box 358350, Filing) Pittsburgh, PA 15251–5350.
(i) Short Form (Electronic Filing)	316 & 159	115.00	MDR*	Federal Communications Commission, Media Sservices, P.O. Box 358350, Pittsburgh, PA 15251–5350.
h. Transfer of Control:				
(i) Long Form (Electronic Filing)	315 & 159	800.00	MPR*	Federal Communications Commission, Media Services, P.O. Box 358350, Filing) Pittsburgh, PA 15251–5350.
(ii) Short Form (Electronic Filing)	316 & 159	115.00	MDR*	Federal Communications Commission, Media Services, P.O. Box 358350, Pittsburgh, PA 15251–5350.
i. Hearing (New or Major/Minor Change, Comparative Construction Permit Heraings) (per application).	Corres & 159	9,530.00	MWR	Federal Communications Commission, Medida Service, P.O. Box 358170, Pittsburgh, PA 15251–5170.
j. Call Sign (Electronic Filing)	380 & 159	80.00	MBR	Federal Communications Commission, Media Services, P.O. Box 358165, Pittsburgh, PA 15251–5165.
k. Special Temporary Authority	Corres & 159	145.00	MGR	Federal Communications Commission, Media Services, P.O. Box 358195, Pittsburgh, PA 15251–5195.
l. Petition for New Community of LIcense or Higher Class Channel.	301 & 159 or 302–FM & 159.	2,210.00	MRR	Federal Communications Commission, Media Services, P.O. Box 358195, Pittsburgh, PA 15251–5195.
m. Ownership Report	323 & 159 or Corres & 159.	50.00	MAR	Federal Communications Commission, Media Services, P.O. Box 358180, Pittsburgh, PA 15251–5180.
4. FM Translators				
a. New or Major Change Construction Permit (Electronic Filing).	349 & 159	600.00	MOF	Federal Communications Commission, Media Services, P.O. Box 358190, Pittsburgh, PA 15251–5200.
b. New License (Electronic Filing)	350 & 159	120.00	MEF	Federal Communications Commission, Media Services, P.O. Box 358200, Pittsburgh, PA 15251–5200.
c. License Renewal	303–S & 159	50.00	MAF	Federal Communications Commission, Media Services, P.O. Box 358190, Pittsburgh, PA 15251–5190.
d. Spectal Temporary Authority	Corres & 159	145.00	MGF	Federal Communications Commission, Media Services, P.O. Box 358200, Pittsburgh, PA 15251–5190.
e. License Assignment	345 & 159; 314 & 159; 316 & 159.	115.00	MDF*	Federal Communications Commission, Media Services, P.O. Box 358350, Pittsburgh, PA 15251–5350.
f. Transfer of Control	345 & 159; 314 & 159; 316 & 159.	115.00	MDF*	Federal Communications Commission, Media Services, P.O. Box 358350, Pittsburgh, PA 15251–5350.

Action	FCC Form No.	Fee Amount	Payment type code	Address
5. TV Translators and LPTV Stations				
a. New or Major Change Construction Permit (per application) (Electronic Filing).	346 & 159	600.00	MOL	Federal Communications Commission, Media Services, P.O. Box 358185, Pittsburgh, PA 15251–5185.
b. New License (per application)	347 & 159	120.00	MEL	Federal Communications Commission, Media Services, P.O. Box 358185, Pittsburgh, PA 15251–5185.
c. License Renewal	303–S & 159	50.00	MAL*	Federal Communications Commission, Media Services, P.O. Box 358165, Pittsburgh, PA 15251–5165.
d. Special Temporary Authority	Corres & 159	145.00	MGL	Federal Communications Commission, Media Services, P.O. Box 358185, Pittsburgh, PA 15251–5185.
e. License Assignment	345 & 159; 314 & 159; 316 & 159;.	115.00	MDL*	Federal Communications Commission, Media Services, P.O. Box 358350, Pittsburgh, PA 15251–5350.
f. Transfer of Control	345 & 159; 314 & 159; 316 & 159;.	115.00	MDL*	Federal Communications Commission, Media Services, P.O. Box 358350, Pittsburgh, PA 15251–5350.
6. FM Booster Stations				
a. New or Major Change Construction Permit (Electronic Filing).	349 &159	600.00	MOF	Federal Communications Commission, Media Services, P.O. Box 358200, Pittsburgh, PA 15251–5200.
b. New License (Electronic Filing)	350 & 159	120.00	MEF	Federal Communications Commission, Media Services, P.O. Box 358200, Pittsburgh, PA 15251–5200.
c. Special Temporary Authority	Corres & 159	145.00	MGF	Federal Communications Commission, Media Services, P.O. Box 358200, Pittsburgh, PA 15251–5200.
7. TV Booster Stations				
a. New or Major Change (Electronic Filing)	346 & 159	600.00	MOF	Federal Communications Commission, Media Services, P.O. Box 358185, Pittsburgh, PA 15251–5185.
b. New License (Electronic Filing)	347 & 159	120.00	MEF	Federal Communications Commission, Media Services, P.O. Box 358185, Pittsburgh, PA 15251–5185.
c. Special Temporary Authority	Corres & 159	145.00	MGF	Federal Communications Commission, Media Services, P.O. Box 358185, Pittsburgh, PA 15251–5185.
8. Cable Television Services				
a. CARS License	327 & 159	220.00	TIC	Federal Communications Commission, Media Services, P.O. Box 358205, Pittsburgh, PA 15215–5205.
b. CARS Modifications	327 & 159	220.00	TIC	Federal Communications Commission, Media Services, P.O. Box 358205, Pittsburgh, PA 15215–5205.
c. CARS License Renewal	327 & 159	220.00	TIC	Federal Communications Commission, Media Services, P.O. Box 358205, Pittsburgh, PA 15215–5205.
d. CARS License Assignment	327 & 159	220.00	TIC	Federal Communications Commission, Media Services, P.O. Box 358205, Pittsburgh, PA 15215–5205.
e. CARS Transfer of Control	327 & 159	220.00	TIC	Federal Communications Commission, Media Services, P.O. Box 358205, Pittsburgh, PA 15215–5205.
f. Special Temporary Authorization	Corres & 159	145.00	TGC	Federal Communications Commission, Media Services, P.O. Box 358205, Pittsburgh, PA 15215–5205.
g. Cable Special Relief Petition	Corres & 159	1,115.00	TQC	Federal Communications Commission, Media Services, P.O. Box 358205, Pittsburgh, PA 15215–5205.
h. 76.1801 Registration Statement	Corres & 159	50.00	TAC	Federal Communications Commission, Media Services, P.O. Box 358205, Pittsburgh, PA 15215–5205.
i. Aeronautical Frequency Usage Notification Sec. 76.1804.	Corres & 159	50.00	TAC	Federal Communications Commission, Media Services, P.O. Box 358205, Pittsburgh, PA 15215–5205.

5. Section 1.1105 is revised to read as follows:

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§ 1.1105 Schedule of charges for applications and other filings for the wireline competition service.

Action	FCC Form No.	Fee amount	Payment type code	Address
1. **Communication Assistance for Law Enforcement (CALEA) Petitions.**	Corres & 159	$5,000.00	CLEA	Federal Communications Commission, Wireline Competition Services—IA&TD CALEA, P.O. Box 358140, Pittsburgh, PA 15251–5140.
2. Domestic 214 Applicataions				
a. Domestic Cable Construction	Corres & 159	860.00	CUT	Federal Communications Commission Wireline Competition Services—CPD214 Appls., P.O. Box 358145, Pittsburgh, PA 15251–5145.
b. Other	Corres & 159	860.00	CUT	Federal Communications Commission, Wireline Competition Services CPD214—Appls., P.O. Box 358145, Pittsburgh, PA 15251–5145.
3. Tariff Filings				
a. Filing Fees (per transmittal or cover letter).	Corres & 159	695.00	CQK	Federal Communications Commission, Wireline Competition Services—PPD Tariffs, P.O. Box 358150, Pittsburgh, PA 15251–5150.
b. Special Permission Filing (request for waiver of any rule in Part 61 of the Commission's Rules (per request)).	Corres &159	695.00	CQK	Federal Communications Commission, Wireline Competition Services—PPD Tariffs, P.O. Box 358150, Pittsburgh, PA 15251–5150.
c. Waiver of Part 69 Tariff Rules (per request).	Corres & 159	695.00	CQK	Federal Communications Commission, Wireline Competition Services—PPD Tariffs, P.O. Box 358150, Pittsburgh, PA 15251–5150.
4. Accounting				
a. Review of Depreciation Update Study:				
(i) Single state	Corres & 159	29,150.00	BKA	Federal Communications Commission, Wireline Competition Services—PPD—Accounting Rule, P.O. Box 358140, Pittsburgh, PA 15251–5140.
(ii) Each Additional State	Corres & 159	960.00	CVA	Federal Communications Commission, Wireline Competition Services—PPD—Accounting Rule, P.O. Box 358125, Pittsburgh, PA 15251–5125.
b. Petition for Waiver (per petition) ..... Waiver of Part 69 Accounting Rules & Part 32 Accounting Rules. Part 36 Separation Rules, Part 43 Reporting Requirements. Part 64 Allocation of Costs Rules ..... Part 65 Rate of Return & Rate Base Rules.	Corres & 159	6,570.00	BEA	Federal Communications Commission, Wireline Competition Services—PPD Tariffs, P.O. Box 358140, Pittsburgh, PA 15251–5140.

6. Section 1.1106 is revised to read as follows:

§ 1.1106 Schedule of charges for applications and other filings for the enforcement services.

Action	FCC Form No.	Fee amount	Payment type code	Address
1. **Formal Complaints**	Corres & 159	$170.00	CIZ	Federal Communications Commission, Enforcement, P.O. Box 358120, Pittsburgh, PA 15251–5120.
2. Accounting and Audits				
a. Field Audit	Corres & 159	87,780.00	BMA	Carriers will be billed.
b. Review of Arrest Audit	Corres & 159	47,915.00	BLA	Carriers will be billed.
3. Development and Review of Agreed upon —Procedures Engagement.	Corres & 159	47,915.00	BLA	Federal Communications Commission, Enforcement, P.O. Box 358125, Pittsburgh, PA 15251–5140.
4. Pole Attachment Complaint	Corres & 159	215.00	TPC	Federal Communications Commission, Enforcement, P.O. Box 358110, Pittsburgh, PA 15215–5110.

7. Section 1.1107 is revised to read as follows:

§ 1.1107 Schedule of charges for applications and other filings for the international service.

Action	FCC Form No.	Fee amount	Payment type code	Address
1. **International Fixed Public Radio** (Public & Control Stations)				
a. Initial Construction Permit (per station)	407 & 159	$685.00	CSN	Federal Communications Commission, International Bureau—Fixed Public Radio, P.O. Box 358160, Pittsburgh, PA 15251–5160.
b. Assignment or Transfer (per Application)	702 & 159 or 704 & 159.	720.00	CSN	Federal Communications Commission, International Bureau—Fixed Public Radio, P.O. Box 358160 Pittsburgh, PA 15251–5160.
c. Renewal (per license)	405 & 159	525.00	CON	Federal Communications Commission, International Bureau—Fixed Public Radio, P.O. Box 358160, Pittsburgh, PA 15251–5160.
d. Modification (per station)	403 & 159	525.00	CON	Federal Communications Commission, International Bureau—Fixed Public Radio, P.O. Box 358160, Pittsburgh, PA 15251–5160.
e. Extension of Construction Authorization (per station).	701 & 159	265.00	CKN	Federal Communications Commission, International Bureau—Fixed Public Radio, P.O. Box 358160, Pittsburgh, PA 15251–5160.
f. Special Temporary Authority or request for Waiver (per request).	Corres & 159	265.00	CKN	Federal Communications Commission, International Bureau—Fixed Public Radio, P.O. Box 358160, Pittsburgh, PA 15251–5160.
2. Section 214 Applications				
a. Overseas Cable Construction	Corres & 159	12,860.00	BIT	Federal Communications Commission, International Bureau—Telecommunications, P.O. Box 358115, Pittsburgh, PA 15251–5115.
b. Cable Landing License:				
(i) Common Carrier	Corres & 159	1,445.00	CXT	Federal Communications Commission, International Bureau—Telecommunications, P.O. Box 358115, Pittsburgh, PA 15251–5115.
(ii) Non—Common Carrier	Corres & 159	14,305.00	BJT	Federal Communications Commission, International Bureau—Telecommunications, P.O. Box 358115, Pittsburgh, PA 15251–5115.
c. All other International 214 Applications	Corres & 159	860.00	CUT	Federal Communications Commission, International Bureau—Telecommunications, P.O. Box 358115, Pittsburgh, PA 15251–5115.
d. Special Temporary Authority (all services)	Corres & 159	860.00	CUT	Federal Communications Commission, International Bureau—Telecommunications, P.O. Box 358115, Pittsburgh, PA 15251–5115.
e. Assignments or transfers (all services)	Corres & 159	860.00	CUT	Federal Communications Commission, International Bureau—Telecommunications, P.O. Box 358115, Pittsburgh, PA 15251–5115.
3. Fixed Satellite Transmit/Receive Earth Stations				
a. Initial Application (per station)	312 & Schedule B & 159.	2,150.00	BAX	Federal Communications Commission, International Bureau—Earth Stations P.O. Box 358160, Pittsburgh, PA 15251–5160.
b. Modification of License (per station)	312 & Schedule B & 159.	150.00	CGX	Federal Communications Commission, International Bureau—Earth Stations P.O. Box 358160, Pittsburgh, PA 15251–5160.
c. Assignment or Transfer:				
(i) First station	312 & Schedule A & 159.	425.00	CNX	Federal Communications Commission, International Bureau—Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
(ii) Each Additional Station	Schedule A & 159	145.00	CFX	Federal Communications Commission, International Bureau—Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
d. Renewal of License (per station)	405 & 159	150.00	CGX	Federal Communications Commission, International Bureau—Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
e. Special Temporary Authority or Waiver of Prior Construction Authorization (per request).	Corres & 159	150.00	CGX	Federal Communications Commission, International Bureau—Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.

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Action	FCC Form No.	Fee amount	Payment type code	Address
f. Amendment of Pending Application (per station).	312 & Schedule B & 159.	150.00	CGX	Federal Communications Commission, Application International Bureau— Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
g. Extension of Construction Permit (per station).	701 & 159	150.00	CGX	Federal Communications Commission, International Bureau—Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
4. Fixed Satellite transmit/receive Earth Stations (2 meters or less operating in the 4/6GHz frequency band)				
a. Lead Application	312 & Schedule B & 159.	4,765.00	BDS	Federal Communications Commission, International Bureau—Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
b. Routine Application (per station)	312 & Schedule B & 159.	50.00	CAS	Federal Communications Commission, International Bureau—Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
c. Modification of License (per station)	312 & 159	150.00	CGS	Federal Communications Commission, International Bureau—Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
d. Assignment or Transfer:				
(i) First Station	312 & Schedule A & 159.	425.00	CNS	Federal Communications Commission, International Bureau—Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
(ii) Each Additional Station	Attachment To 312 & Schedule A.	50.00	CAS	Federal Communications Commission, International Bureau—Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
e. Renewal of License (per station)	405 & 159	150.00	CGS	Federal Communications Commission, International Bureau—Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
f. Special Temporary Authority or Waiver of Prior Construction Authorization (per request).	Corres & 159	150.00	CGS	Federal Communications Commission, International Bureau—Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
g. Amendment of Pending Application (per station).	312 & Schedule B & 159.	150.00	CGS	Federal Communications Commission, International Bureau—Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
h. Extension of Construction Permit (per station).	701 & 159	150.00	CGS	Federal Communications Commission, International Bureau—Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
5. Receive Only Earth Stations				
a. Initial Applications for Registration or License.	312 & Schedule B & 159.	325.00	CMO	Federal Communications Commission, International Bureau—Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
b. Modification of License or Registration (per station).	312 & Schedule B & 159.	150.00	CGO	Federal Communications Commission, International Bureau—Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
c. Assignment or Transfer:				
(i) First Station	312 & Schedule A & 159.	425.00	CNO	Federal Communications Commission, International Bureau—Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
(ii) Each Additional Station	312 & Schedule A & 159.	145.00	CFO	Federal Communications Commission, International Bureau—Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
d. Renewal of License (per station)	405 & 159	150.00	CGO	Federal Communications Commission, International Bureau—Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
e. Amendment of Pending Application (per station).	312 & Schedule B & 159.	150.00	CGO	Federal Communications Commission, International Bureau—Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
f. Extension of Construction Permit (per station).	701 & 159	150.00	CGO	Federal Communications Commission, International Bureau—Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
g. Waivers (per request)	Corres & 159	150.00	CGO	Federal Communications Commission, International Bureau—Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
6. Fixed Satellite Very Small Aperture Terminal (VSAT) Systems				
a. Initial Application (per station)	312 & Schedule B & 159.	7,935.00	BGV	Federal Communications Commission, International Bureau—Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
b. Modification of License (per system)	312 & 159	150.00	CGV	Federal Communications Commission, International Bureau—Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.

Action	FCC Form No.	Fee amount	Payment type code	Address
c. Assignment or Transfer of System	312 & Schedule A & 159.	2,125.00	CZV	Federal Communications Commission, International Bureau—Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
d. Renewal of License (per system)	405 & 159	150.00	CGV	Federal Communications Commission, International Bureau—Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
e. Special Temporary Authority or Waiver of Prior Construction Authorization (per request).	Corres & 159	150.00	CGV	Federal Communications Commission, International Bureau—Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
f. Amendment of Pending Application (Per system).	312 & Schedule B & 159.	150.00	CGV	Federal Communications Commission, International Bureau—Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
g. Extension of Construction Permit (per system).	701 & 159	150.00	CGV	Federal Communications Commission, International Bureau—Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
7. Mobile Satellite Earth Stations				
a. Initial Applications of Blanket Authorization	312 & Schedule B & 159.	7,935.00	BGB	Federal Communications Commission, International Bureau—Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
b. Initial Application for Individual Earth Station	312 & Schedule B & 159.	1,905.00	CYB	Federal Communications Commission, International Bureau—Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
c. Modification of License (per system)	312 & Schedule B & 159.	150.00	CGB	Federal Communications Commission, International Bureau—Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
d. Assignment or Transfer (per system)	312 & Schedule A & 159.	2,125.00	CZB	Federal Communications Commission, International Bureau—Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
e. Renewal of License (per system)	405 & 159	150.00	CGB	Federal Communications Commission, International Bureau—Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
f. Special Temporary Authority of Waiver of Prior Construction Authorization (per request).	Corres & 159	150.00	CGB	Federal Communications Commission, International Bureau—Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
g. Amendment of Pending Application (per system).	312 & Schedule B & 159.	150.00	CGB	Federal Communications Commission, International Bureau—Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
h. Extension of Construction Permit (per system).	701 & 159	150.00	CGB	Federal Communications Commission, International Bureau—Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
8. Radio Determination Satellite Earth Station				
a. Initial Application of Blanket Authorization	312 & Schedule B & 159.	7,935.00	BGH	Federal Communications Commission, International Bureau—Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
b. Initial Application for Individual Earth Station	312 & Schedule B & 159.	1,905.00	CYH	Federal Communications Commission, International Bureau—Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
c. Modification of License (per system)	312 & Schedule B & 159.	150.00	CGH	Federal Communications Commission, International Bureau—Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
d. Assignments or Transfer (per system)	312 & Schedule B & 159.	2,010.00	CHZ	Federal Communications Commission, International Bureau—Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
e. Renewal of License (per system)	405 & 159	150.00	CGH	Federal Communications Commission, International Bureau—Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
f. Special Temporary Authority or Waiver of Prior Construction Authorization (per request).	Corres & 159	150.00	CGH	Federal Communications Commission, International Bureau—Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
g. Amendment of Pending Application (per system).	312 & Schedule B & 159.	150.00	CGH	Federal Communications Commission, International Bureau—Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
h. Extension of Construction Permit (per system).	701 & 159	150.00	CGH	Federal Communications Commission, International Bureau—Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
9. Space Stations (Geostationary)				
a. Application for Authority to Launch & Operate:				
(i) Initial Application	312 & 159	98,645.00	BNY	Federal Communications Commission, International Bureau—Satellites, P.O. Box 358210, Pittsburgh, PA 15251–5210.

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Action	FCC Form No.	Fee amount	Payment type code	Address
(ii) Replacement Satellite		98,645.00	BNY	
b. Assignment or Transfer (per satellite)	312 & Schedule A & 159.	7,050.00	BFY	Federal Communications Commission, International Bureau—Satellites, P.O. Box 358210, Pittsburgh, PA 15251–5210.
c. Modification	312 & 159	7,050.00	BFY	Federal Communications Commission, International Bureau—Satellites, P.O. Box 358210, Pittsburgh, PA 15251–5210.
d. Special Temporary Authority (per request)	Corres & 159	705.00	CRY	Federal Communications Commission, International Bureau—Satellites, P.O. Box 358210, Pittsburgh, PA 15251–5210.
e. Amendment of Pending Application (per request).	312 & Schedule B & 159.	1,410.00	CWY	Federal Communications Commission, International Bureau—Satellites, P.O. Box 358210, Pittsburgh, PA 15251–5210.
10. Space Stations (Low-earth Orbit Satellite Systems)				
a. Application for Authority to Launch and Operate (per system of technically identical satellites).	312 & 159	339,730.00	CLW	Federal Communications Commission, International Bureau—Satellites, P.O. Box 358210, Pittsburgh, PA 15251–5210.
b. Assignment or Transfer (per request)	312 & 159	9,710.00	CZW	Federal Communications Commission, International Bureau—Satellites, P.O. Box 358210, Pittsburgh, PA 15251–5210.
c. Modification (per request)	312 & 159	24,270.00	CGW	Federal Communications Commission, International Bureau—Satellites, P.O. Box 358210, Pittsburgh, PA 15251–5210.
d. Special Temporary Authority (per request)	Corres & 159	2,435.00	CXW	Federal Communications Commission, International Bureau—Satellites, P.O. Box 358210, Pittsburgh, PA 15251–5210.
e. Amendment of Pending Application (per request).	312 & 159	4,855.00	CAW	Federal Communications Commission, International Bureau—Satellites, P.O. Box 358210, Pittsburgh, PA 15251–5210.
11. Direct Broadcast Satellites				
a. Authorization to Construct or Major Modification (per request).	Corres & 159	2,865.00	MTD	Federal Communications Commission, International Bureau—Satellites, P.O. Box 358210, Pittsburgh, PA 15251–5210.
b. Construction Permit and Launch Authority (per request).	Corres & 159	27,780.00	MXD	Federal Communications Commission, International Bureau—Satellites, P.O. Box 358210, Pittsburgh, PA 15251–5210.
c. License to Operate (per request)	Corres & 159	27,780.00	MXD	Federal Communications Commission, International Bureau—Satellites, P.O. Box 358210, Pittsburgh, PA 15251–5210.
d. Special Temporary Authority (per request)	Corres & 159	9,530.00	MWD	Federal Communications Commission, International Bureau—Satellites, P.O. Box 358210, Pittsburgh, PA 15251–5210.
e. Hearing New and Major/Minor change, comparative Construction permit hearings; comparative license renewal.	Corres & 159	9,530.00	MWD	Federal Communications Commission, International Bureau, P.O. Box 358270, Pittsburgh, PA 15251–5170.
12. International Broadcast Stations				
a. New Station & Facility Change Construction Permit (per applications).	309 & 159	2,405.00	MSN	Federal Communications Commission, International Bureau, P.O. Box 358175, Pittsburgh, PA 15251–5175.
b. New License (per application)	310 & 159	545.00	MNN	Federal Communications Commission, International Bureau, P.O. Box 358175 Pittsburgh, PA 15251—5175
c. License Renewal (per application)	311 & 159	135.00	MFN	Federal Communications Commission, International Bureau, P.O. Box 358175, Pittsburgh, PA 15251—5175
d. License Assignment or Transfer Control (per Station license).	314 & 159 or 315 & 159, or 316 & 159.	85.00	MCN	Federal Communications Commission, International Bureau, P.O. Box 358175, Pittsburgh, PA 15251—5175
e. Frequency Assignment & Coordination (per frequency hour).	Corres & 159	50.00	MAN	Federal Communications Commission, International Bureau, P.O. Box 358175, Pittsburgh, PA 15251—5175
f. Special Temporary Authorization (per application).	Corres & 159	145.00	MGN	Federal Communications Commission, International Bureau, P.O. Box 358175, Pittsburgh, PA 15251—5175
13. Permit to Deliver Programs to Foreign Broadcast Stations (per application)				
a. Commercial Television Stations	308 & 159	80.00	MBT	Federal Communications Commission, International Bureau, P.O. Box 358175, Pittsburgh, PA 15251–5175

Action	FCC Form No.	Fee amount	Payment type code	Address
b. Commercial AM or FM Radio Stations	308 & 159	80.00	MBR	Federal Communications Commission, International Bureau, P.O. Box 358175, Pittsburgh, PA 15251—5175
14. Recognized Private Operating Status (per application)	Corres & 159	860.00	CUG	Federal Communications Commission, International Bureau, P.O. Box 358115, Pittsburgh, PA 15251—5115

8. Section 1.1109 is amended by revising the note immediately following paragraph (c) revising paragraph (d) introductory text and paragraph (e) and note to read as follows:

§ 1.1109 Payment of charges.

* * * * *

(c) * * *

Note: This requirement for the simultaneous submission of fees forms with applications or other filings does not apply to the payment of fees for which the Commission has established a billing process. *See* § 1.1119 of this subpart.

(d) Applications returned to applicants for additional information or corrections will not require an additional fee when resubmitted, unless the additional information results in an increase of the original fee amount. Those applications not requiring an additional fee should be resubmitted directly to the Bureau/Office requesting the additional information. The original fee will be forfeited if the additional information or corrections are not resubmitted to the appropriate Bureau/Office by the prescribed deadline. A forfeited application fee will not be refunded. If an additional fee is required, the original fee will be returned and the application must be resubmitted with a new remittance in the amount of the required fee to the Commission's lockbox bank. Applicants should attach a copy of the Commission's request for additional or corrected information to their resubmission.

* * * * *

(e) Should the staff change the status of an application, resulting in an increase in the fee due, the applicant will be billed for the remainder under the conditions established by § 1.1116(b) of the rules.

Note: Due to the statutory requirements applicable to tariff filings, the procedures for handling tariff filings may vary from the procedures set out in the rules.

9. Section 1.1110 is amended by revising paragraphs (a)(1), (a)(2) and (a)(3) to read as follows:

§ 1.1110 Form of payment.

(a) * * *

(1) Specific procedures for electronic payments are announced in Bureau/Office fee filing guides.

(2) It is the responsibility of the payer to insure that any electronic payment is made in the manner required by the Commission. Failure to comply with the Commission's procedures will result in the return of the application or other filing and the fee payment.

(3) Payments by wire transfer will be accepted; however, to insure proper credit, applicants must follow the instructions set out in the appropriate Bureau/Office fee filing guide.

* * * * *

10. Section 1.1111 is amended by revising paragraph (c) to read as follows:

§ 1.1111 Filing locations.

* * * * *

(c) Fees for applications and other filings pertaining to the Wireless Radio Services that are submitted electronically via ULS may be paid electronically or sent to the Commission's lock box bank manually. When paying manually, applicants must include the application file number (assigned by the ULS electronic filing system on FCC Form 159) and submit such number with the payment in order for the Commission to verify that the payment was made. Manual payments must be received no later than ten (10) days after receipt of the application on ULS or the application will be dismissed. Payment received more than ten (10) days after electronic filing of an application on a Bureau/Office electronic filing system (*e.g.*, ULS) will be forfeited (*see* §§ 1.034 and 1.1109.)

11. Section 1.1113 is amended by revising paragraph (a)(1) to read as follows:

§ 1.1113 Return or refund of charges.

(a) * * *

(1) When no fee is required for the application or other filing. (*see* § 1.1109).

* * * * *

12. Section 1.1114 is amended by revising the introductory text to read as follows:

§ 1.1114 General exemptions to charges.

No fee established in §§ 1.1102 through 1.1107 of this subpart, unless otherwise qualified herein, shall be required for:

* * * * *

13. Section 1.1116 is amended by revising paragraph (a) introductory text to read as follows:

§ 1.1116 Penalty for late or insufficient payments.

(a) Filings subject to fees and accompanied by defective fee submissions will be dismissed under § 1.1109(b) of this subpart where the defect is discovered by the Commission's staff within 30 calendar days from the receipt of the application or filing by the Commission.

* * * * *

14. Section 1.1117 is amended by revising paragraphs (c)(1) and (e) to read as follows:

§ 1.1117 Petitions and applications for review.

* * * * *

(c) * * *

(1) Petitions and applications for review submitted with a fee must be submitted to the Commission's lock box bank at the address for the appropriate service set forth in §§ 1.1102 through 1.1107.

* * * * *

(e) Applicants seeking waivers must submit the request for waiver with the application or filing, required fee and FCC Form 159, or a request for deferral. A petition for waiver and/or deferral of payment must be submitted to the Office of the Managing Director as specified in paragraph (c) of this section. Waiver requests that do not include these materials will be dismissed in accordance with § 1.1109 of this subpart. Submitted fees will be returned if a waiver is granted. The Commission will not be responsible for delays in acting upon these requests.

15. Section 1.1119 is amended by revising paragraph (a) to read as follows:

§ 1.1119 Billing procedures.

(a) The fees required for the International Telecommunications

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Settlements (§ 1.1103 of this subpart) and Common Carrier Field Audits (§ 1.1105 of this subpart) should not be paid with the filing or submission of the request. The fees required for requests for Special Temporary Authority (see generally §§ 1.1102, 1.1104, 1.1106, & 1.1107 of this subpart).

* * * * *

[FR Doc. 02–27696 Filed 11–4–02; 8:45 am]
BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 67, No. 214
Tuesday, November 5, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket No. RM01–12–000]

Remedying Undue Discrimination Through Open Access Transmission Service and Standard Electricity Market Design; Notice of Technical Conference

October 28, 2002.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of technical conference.

SUMMARY: On July 31, 2002, the Commission issued a Notice of Proposed Rulemaking (NPRM) in the above-captioned docket, proposing to amend its regulations to remedy undue discrimination through open access transmission service and standard electricity market design. *See* 67 FR 55452 (Aug. 29, 2002). The Commission has scheduled a public conference to address specific issues related to the inclusion of liability provisions in the Commission's Standard Market Design Tariff, as discussed in the NPRM.

DATES: *The conference will be held on:* December 11, 2002. *Requests to speak are due:* November 8, 2002.

ADDRESSES: *Send requests to speak to:* Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Jignasa Gadani, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. (202) 502–8608.

SUPPLEMENTARY INFORMATION:

1. Take notice that a technical conference will be held on December 11, 2002, beginning at 9:30 a.m., in the Commission Meeting Room on the second floor of the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC. All interested persons may attend, and registration is not required.

2. The conference will address specific issues related to liability provisions in the Commission's proposed Standard Market Design Tariff, as described in the Notice of Proposed Rulemaking (NOPR) issued in this docket on July 31, 2002:

a. Is there a need to include liability provisions in the Commission's *pro forma* Standard Market Design tariff?

b. Under what circumstances should liability protection be provided in a Commission open access transmission tariff? For example, should the Commission provide such protection only when it is not available through state tariffs, or should such protection be included for all transmission uses?

c. If the Commission adopts liability provisions, should they be generic or do they need to be adopted on a regional basis?

d. Should the standards adopted in a Commission *pro forma* tariff reflect what was previously provided under state law? If so, how should this issue be resolved in the multistate context of an Independent System Operator or Regional Transmission Operator?

3. The Commission asks interested speakers to include in their requests to speak specific proposed tariff language for the liability provisions the speaker supports (if any) and a summary of the basis for those provisions. Draft liability provisions may address other liability-related issues beyond those enumerated above, and other liability-related issues may be addressed at the conference as necessary. Those interested in submitting comments regarding liability issues should be aware that the due date for such comments remains November 15, 2002. However, if participants wish to submit additional written comments regarding liability issues after the technical conference, they may do so on or before January 10, 2003.

4. Persons interested in speaking should file a request to speak on or before November 8, 2002, in Docket No. RM01–12–000. The request should clearly specify the name of the speaker; his or her title; the person or entity the speaker represents; and the speaker's mailing address, telephone number, facsimile number and e-mail address. As the number of potential speakers may exceed the time allotted for the conference, interested speakers are encouraged to coordinate their efforts with others who may have similar interests. Based on the requests to participate, panels of speakers will be specified in a subsequent notice.

5. Transcripts of the conference will be immediately available from Ace Reporting Company (202–347–3700 or 1–800–336–6646), for a fee. They will be available for the public on the Commission's FERRIS system two weeks after the conference. Additionally, Capitol Connection offers the opportunity for remote listening and viewing of the conference. It is available for a fee, live over the Internet, via C-Band Satellite. Persons interested in receiving the broadcast, or who need information on making arrangements should contact David Reininger or Julia Morelli at the Capitol Connection (703–993–3100) as soon as possible or visit the Capitol Connection Web site at *http://www.capitolconnection.gmu.edu* and click on "FERC."

6. For more information about the conference, please contact Jignasa Gadani at (202) 502–8608 or *jignasa.gadani@ferc.gov*.

Magalie R. Salas,
Secretary.

[FR Doc. 02–28047 Filed 11–4–02; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket No. RM01–12–000]

Remedying Undue Discrimination Through Open Access Transmission Service and Standard Electricity Market Design; Notice of Extension of Time To File Requests To Speak at Technical Conferences

October 24, 2002.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of extension of time.

SUMMARY: On October 22, 2002, the Commission issued a Notice of Technical Conferences in this docket. *See* 67 FR 65913 (Oct. 29, 2002). The Commission's notice scheduled a series of technical conferences for November 6, 2002, November 19, 2002 and

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December 3, 2002. The dates for filing requests to participate in the conferences are being extended at the request of various entities.

DATES: The dates for filing requests to speak are as follows:

November 6th conference: October 29, 2002.

November 19th conference: November 7, 2002.

December 3rd conference: November 7, 2002.

ADDRESSES: *Send requests to speak to:* Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Sarah McKinley, Office of External Affairs, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8004.

SUPPLEMENTARY INFORMATION:

1. The Commission issued a Notice of Technical Conferences in this docket on October 22, 2002, announcing further details of conferences that will be held on November 6, 2002, November 19, 2002, and December 3, 2002. The notice requested all parties interested in speaking at the conferences to file a request to speak with the Commission no later than October 25, 2002.

2. Various entities have asserted that three days is not sufficient time to consider the Notice of Technical Conference, coordinate a response, and identify potential speakers. The Commission will grant an extension of time to permit interested parties to file requests to speak at the November 6, 2002 conference no later than Tuesday, October 29, 2002. Parties interested in speaking at the November 19, 2002 conference or the December 3, 2002 conference should file their requests to speak no later than November 7, 2002. If possible, interested speakers should also send a copy of their requests to speak by e-mail to *customer@ferc.gov*; however, this procedure cannot be used in lieu of filing a request to speak as described below.

3. Requests to speak may be filed in paper format or electronically. Those making paper filings should submit the original and 14 copies of their request to speak to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. Requests to speak may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. Assistance for electronic filing is available at (866) 208–3676, or by e-mail to *ferconlinesupport@ferc.gov*. Do not submit requests to speak to *ferconlinesupport@ferc.gov*.

Magalie R. Salas,

Secretary.

[FR Doc. 02–28149 Filed 11–4–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 40 and 275

[Notice No. 962]

RIN 1512–AC33

Elimination of Statistical Classes for Large Cigars (2000R–410P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule removes the eight statistical classes for large cigars prescribed in ATF regulations. Since tobacco manufacturers and importers no longer use these statistical classes to report removals of large cigars subject to tax, this proposed rule eliminates obsolete regulations.

DATES: Written comments must be received on or before December 5, 2002.

ADDRESSES: Send written comments to: Chief, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW., Room 5000, Washington, DC 20226; (Attention Notice No. 962). *See* the "Public Participation" section of this notice for alternative means of commenting.

FOR FURTHER INFORMATION CONTACT: Robert Ruhf, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW., Washington, DC 20226 (telephone 202–927–8210 or e-mail to *alctob@atfhq.atf.treas.gov*).

SUPPLEMENTARY INFORMATION:

Background

For the reasons discussed below, we are proposing to eliminate the ATF regulations in 27 CFR parts 40 and 275 that prescribe eight ATF statistical classes for large cigars subject to tax. The first seven classes (Classes A through G) cover large cigars selling for $235.294 or less per thousand, while the eighth class (Class H) covers those selling for more than $235.294 per thousand.

Manufacturers in the United States

Manufacturers of tobacco products no longer use the eight ATF statistical classes to report removals of large cigars subject to tax. For periods prior to January 1, 2001, manufacturers used the eight statistical classes to report large cigar removals subject to tax. For periods beginning on or after January 1, 2001, manufacturers report such removals of large cigars in two classes. The two current ATF classes for large cigars are those with a sale price of (1) $235.294 or less per thousand, or (2) more than $235.294 per thousand. The sale price of more than $235.294 per thousand is based on the maximum sale price for calculating the excise tax on large cigars prescribed by 26 U.S.C. 5701(a)(2).

Manufacturers of tobacco products report information about large cigars on ATF Form 5210.5, Monthly Report—Manufacturer of Tobacco Products. We have revised ATF Form 5210.5 to reflect the reduction in the number of classes for large cigars removed subject to tax. This reduction benefits manufacturers of tobacco products by reducing their reporting burden. Also, it does not jeopardize ATF's ability to protect the revenue.

When manufacturers submit ATF Forms 5210.5, ATF compiles their reports to prepare tobacco statistics for government and public use. The elimination of statistical classes will not adversely affect the governments or the general public that use the ATF tobacco statistics.

Importers

Prior to the year 2002, sections 2402.10.30.60 and 2402.10.30.90 of the Harmonized Tariff Schedule of the United States (HTSUS) referred to the eight ATF statistical classes for large cigars. These sections required persons who used the HTSUS to classify cigars, cheroots, and cigarillos, containing tobacco, according to their value. If such products had a value of less than 15 cents per item and weighed more than 1.36 kg per thousand, the products were classified according to the eight ATF statistical classes. Persons classified these products by ATF statistical classes A through G, or by ATF statistical class H.

Beginning January 1, 2002, sections 2402.10.30.60 and 2402.10.30.90 of the HTSUS no longer refer to the ATF statistical classes for such products. As stated in the record of change for the 14th edition of HTSUS (2002), this change reflects the modifications made to the HTSUS made by Presidential

Proclamation 7515 of December 18, 2001 (66 FR 66549).

Public Participation

Who May Comment on This Notice?

We request comments on the proposed regulations from all interested persons. Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practicable to do so. However, assurance of consideration can only be given to comments received on or before the closing date.

Will ATF Keep My Comments Confidential?

ATF cannot recognize any material in comments as confidential. Comments may be disclosed to the public. If you consider your material to be confidential or inappropriate for disclosure to the public, you should not include it in the comment. We may also disclose the name of any person who submits a comment.

May I Review the Comments?

You may view and copy written comments on this proposed rule during normal business hours in the ATF Public Reading Room, Room 6480, 650 Massachusetts Avenue, NW., Washington, DC 20226, telephone (202) 927–8480.

For the convenience of the public, ATF will post comments received in response to this notice on the ATF web site. All comments posted on our web site will show the name of the commenter, but will have street addresses, telephone numbers and e-mail addresses removed. We may also omit voluminous attachments or material that we do not consider suitable for posting. In all cases, the full comment will be available in the library or through FOIA requests, as noted above. To access online copies of the comments on this rulemaking, visit *http://www.atf.treas.gov/*, and select "Regulations," then "Proposed regulations (tobacco)," then click on this notice, and then on the "view comments" link.

Where Do I Send Written Comments?

You may submit written comments to ATF at the address listed in the **ADDRESSES** section.

How Do I Send Facsimile Comments?

You may submit comments by facsimile transmission to (202) 927–8525. Facsimile comments must:

- Be legible;
- Be 8½" × 11" in size;
- Have a written signature;
- Have a legible name of the individual making the comment; and
- Be five pages or less in length.

We will not acknowledge receipt of facsimile transmissions. We treat facsimile transmissions as originals.

How Do I Send Comments by E-mail?

You may submit e-mail comments by following these instructions. E-mailed comments must:

- Contain your name, mailing address, and e-mail address;
- Contain the word "notice" and the notice number in the subject or reference line of the e-mail;
- Contain your company or association affiliation, if pertinent to your comment, and your reason for commenting (manufacturer, importer, consumer, etc.);
- Be legible when printed on 8½" x 11" paper (no special characters or symbols); and
- Be addressed to the following address: *nprm@atfhq.atf.treas.gov*.

We will not acknowledge receipt of comments submitted by e-mail. We treat e-mailed comments as originals.

May I Request a Public Hearing?

If you wish the opportunity to comment orally at a public hearing on this proposed regulation, you must submit a request in writing to the Director within the 30-day comment period. The Director reserves the right, in light of all circumstances, to determine if a public hearing is necessary.

Regulatory Analyses and Notices

Does This Proposed Rule Comply with the Administrative Procedure Act?

This proposed rule complies with the Administrative Procedure Act by publishing this notice in the **Federal Register** and giving at least a 30-day period for comment on the proposed rules.

How Does the Regulatory Flexibility Act Apply to This Proposed Rule?

We certify that this proposed rule will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. The proposed rule does not impose any additional requirements on any small businesses. We have sent a copy of this notice to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business pursuant to section 7805(f).

Is This a Significant Regulatory Action as Defined by Executive Order 12866?

This proposed rule does not fit any of the criteria for significant regulatory actions as defined by Executive Order 12866. Consequently, a regulatory assessment is not required.

Does the Paperwork Reduction Act Apply to This Proposed Rule?

The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this notice of proposed rulemaking because it does not require a collection of information.

Drafting Information

The principal author of this document is Robert Ruhf, Regulations Division, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects

27 CFR Part 40

Administrative practice and procedure, Authority delegations, Cigars and cigarettes, Claims, Electronic fund transfers, Excise taxes, Imports, Labeling, Packaging and containers, Penalties, Reporting and recordkeeping requirements, Seizures and forfeitures, Surety bonds, Tobacco.

27 CFR Part 275

Administrative practice and procedure, Authority delegations, Cigarette papers and tubes, Claims, Electronic fund transfer, Customs duties and inspection, Excise taxes, Imports, Labeling, Packaging and containers, Penalties, Reporting requirements, Seizures and forfeitures, Surety bonds, Tobacco products, U.S. possessions, Warehouses.

Authority and Issuance

Title 27, Code of Federal Regulations is proposed to be amended as follows:

PART 40—MANUFACTURE OF TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES

Paragraph 1. The authority citation for part 40 continues to read as follows:

Authority: 26 U.S.C. 5142, 5143, 5146, 5701, 5703–5705, 5711–5713, 5721–5723, 5731, 5741, 5751, 5753, 5761–5763, 6061, 6065, 6109, 6151, 6301, 6302, 6311, 6313, 6402, 6404, 6423, 6676, 6806, 7011, 7212, 7325, 7342, 7502, 7503, 7606, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

§ 40.203 [Removed and reserved]

Par. 2. Section 40.203 is removed and Reserved.

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PART 275—IMPORTATION OF TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES

Par 3. The authority citation for part 275 continues to read as follows:

Authority: 18 U.S.C. 2342; 26 U.S.C. 5701, 5703, 5704, 5705, 5708, 5712, 5713, 5721, 5722, 5723, 5741, 5754, 5761, 5762, 5763, 6301, 6302, 6313, 6404, 7101, 7212, 7342, 7606, 7652, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

§ 275.37 [Removed and reserved]

Par. 4. Section 275.37 is removed and reserved.

Dated: September 16, 2002.

Bradley A. Buckles,

Director.

Approved: October 25, 2002.

Timothy E. Skud,

Deputy Assistant Secretary (Regulatory, Tariff, and Trade Enforcement).

[FR Doc. 02–27973 Filed 11–4–02; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Miami–02–115]

RIN 2115–AA97

Security Zones; Port of Palm Beach, Palm Beach, FL; Port Everglades, Fort Lauderdale, FL; Port of Miami, Miami, FL; and Port of Key West, Key West, FL

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rule making.

SUMMARY: The Coast Guard is proposing to establish permanent security zones throughout the Captain of the Port of Miami's area of responsibility. The security zones are needed for national security reasons to protect the public and ports from potential subversive acts. Entry into these zones would be prohibited, unless specifically authorized by the Captain of the Port, Miami, Florida, or his designated representative.

DATES: Comments and related material must reach the Coast Guard on or before December 5, 2002.

ADDRESSES: You may mail comments and related material to Commanding Officer, U.S. Coast Guard, Marine Safety Office, 100 MacArthur Causeway, Miami Beach, FL 33139–6940. Captain of the Port (Miami) maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Marine Safety Office Miami, 100 MacArthur Causeway, Miami Beach, FL 33139 between 7:30 a.m. and 3 p.m. Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LTJG Jennifer Sadowski, Waterways Management Division Officer, Coast Guard Marine Safety Office Miami, at (305) 535–8750.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking [COTP Miami-02–115], indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ × 11 inches, suitable for copying. If you would like to know they reached us, please enclose a self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Commanding Officer, Marine Safety Office Miami at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The terrorist attacks of September 2001 killed thousands of people and heightened the need for development of various security measures throughout the seaports of the United States, particularly around those vessels and facilities which are frequented by foreign nationals and maintain an interest to national security. The President has continued the national emergencies he declared following the September 11, 2001 terrorist attacks (67 FR 58317 (Sep. 13, 2002) (continuing national emergency with respect to terrorist attacks), 67 FR 59447 (Sep. 20, 2002) (continuing national emergency with respect to persons who commit, threaten to commit or support terrorism)). The President also has found pursuant to law, including the Magnuson Act (50 U.S.C. 191 *et seq.*), that the security of the United States is and continues to be endangered following the attacks (E.O. 13,273, 67 FR 56215 (Sep. 3, 2002) (security endangered by disturbances in international relations of U.S and such disturbances continue to endanger such relations)). Following these attacks by well-trained and clandestine terrorists, national security and intelligence officials have warned that future terrorist attacks are likely. The Captain of the Port (COTP) of Miami has determined that there is an increased risk that subversive activity could be launched by vessels or persons in close proximity to the Ports of Palm Beach, Miami, Port Everglades, and Key West, Florida. These security zones are necessary to protect the public, ports, and waterways of the United States from potential subversive acts.

The Coast Guard Captain of the Port of Miami established temporary security zones in these areas following the September 11, 2001 attacks. Those temporary rules are as follows:

On September 11, 2001, the COTP issued a temporary final rule (TFR) (67 FR 9194, 9195, February 28, 2002, Docket # COTP Miami 01–093) establishing 100-yard security zones around certain vessels in the Port of Palm Beach, Miami, Port Everglades, and Key West, FL, that expired September 25, 2001. On September 25, 2001, the COTP issued another TFR (67 FR 1101, January 9, 2002, COTP Miami 01–115) that maintained these 100-yard security zones around certain vessels in the Ports of Palm Beach, Miami, Port Everglades, and Key West, FL, and added a reference to specific points (buoys) where moving zones were activated and deactivated. This second TFR expired on June 15, 2002.

On October 7, 2001, the COTP issued a TFR (67 FR 6652, February 13, 2002, COTP Miami 01–116) establishing fixed-security zones in Port Everglades and Miami, FL, that expired June 15, 2002.

On October 11, 2001, the COTP issued a TFR (67 FR 4177, January 29, 2002, COTP Miami 01–122) establishing a fixed-security zone for Port Everglades, FL, that expired June 15, 2002.

All of the above security zones were extended by a TFR issued on June 13, 2002 (67 FR 46389, COTP Miami-02–054) until December 15, 2002. That temporary final rule requested comments. As of June 26, 2002, the Coast Guard has not received any comments on that TFR.

Discussion of Proposed Rule

The COTP Miami proposes to combine the security zones discussed above into a permanent rule. These zones are described below in the same order as they would appear in the proposed regulation, 33 CFR 165.761.

Fixed and Moving Security Zones Around Vessels in the Ports of Palm Beach, Port Everglades, Miami, and Key West—Paragraph (a)(1) of this proposed rule would create 100-yard fixed and moving security zones in the Port of Palm Beach, Palm Beach, FL; Port Everglades, Fort Lauderdale, FL; Port of Miami, Miami, FL; and Port of Key West, Key West, FL. These security zones would be activated when a passenger vessel, a vessel carrying cargoes of particular hazard or when a liquefied hazardous gas (LHG) vessel as defined in 33 CFR parts 120, 126 and 127 respectively, enter or moor within one of these Ports. The security zones would be activated when a subject vessel passes the sea buoy for inbound transits, and is deactivated when the vessel departs the port and passes the sea buoy.

Fixed Security Zone in the Port of Miami—Paragraph (a)(2) of this proposed rule would create a fixed security zone encompassing all waters between the Port of Miami and MacArthur Causeway. The fixed security zone would be activated when two or more passenger vessels, vessels carrying cargoes of particular hazard, or vessels carrying liquefied hazardous gas (LHG) as defined in 33 CFR parts 120, 126, and 127 respectively, enter or moor within this zone.

Fixed Security Zones in Port Everglades—Paragraph (a)(3) of this proposed rule would create a fixed security zone encompassing the waters of the Intracoastal Waterway between the northern tip of Port Everglades berth 22 and a point directly east across the Intracoastal Waterway; and a line drawn from the corner of Port Everglades berth 29 at point easterly across the Intracoastal Waterway to John U. Lloyd Beach, State Recreational Area. The fixed security zone would be activated when a passenger vessel, a vessel carrying cargoes of particular hazard or a liquefied hazardous gas (LHG) vessel as defined in 33 CFR parts 120, 126 and 127 respectively, enter or moor within this zone.

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary because we anticipate these security zones may only impact vessel traffic for short periods of times. Alternate vessel traffic routes have also been accounted for to assist in minimizing delays. Also, the Captain of the Port of Miami may allow persons or vessels to enter a security zone on a case-by-case basis.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this proposed rule would have a significant economic effect upon a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities because we anticipate these security zones may only impact vessel traffic for short periods of times. Alternate vessel traffic routes have also been identified to assist in minimizing delays. Also, the Captain of the Port of Miami may allow persons or vessels to enter a security zone on a case-by-case basis. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (*see* **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact LTJG Jennifer Sadowski at (305) 535–8750.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implication for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Although this proposed rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

We have considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph (34)(g), of Commandant

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Instruction M16475.1D, this rule is categorically excluded from further environmental documentation because no environmental changes will be affected with the security zone implementation. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES.**

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. We invite your comments on how this rule might impact tribal governments, even if that impact may not constitute a "tribal implication" under the Order.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reports and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. Add new § 165.761 to read as follows:

§ 165.761 Security Zones; Port of Palm Beach, Port Everglades, Port of Miami, and Port of Key West, Florida.

(a) *Location.* The following areas are security zones:

(1) *Fixed and moving security zones around vessels in the Ports of Palm Beach, Port Everglades, Miami, and Key West*—Moving security zones are established 100 yards around all passenger vessels, vessels carrying cargoes of particular hazard, or vessels carrying liquefied hazardous gas (LHG) as defined in 33 CFR parts 120, 126 and 127 respectively, during transits entering or departing the Ports of Palm Beach, Port Everglades, Miami or Key West, Florida. These moving security zones are activated when the subject vessel passes: "LW" buoy, at approximate position 26°46.3′ N, 080°00.6′ W, when entering the Port of Palm Beach, passes "PE" buoy, at approximate position 26°05.5′ N, 080°04.8′ W, when entering Port Everglades; the "M" buoy, at approximate position 25°46.1′ N, 080°05.0′ W, when entering the Port of Miami; and "KW" buoy, at approximate position 24°27.7′ N, 081°48.1′ W, when entering the Port of Key West. Fixed security zones are established 100 yards around all passenger vessels, vessels carrying cargoes of particular hazard or liquefied hazardous gas (LHG) as defined in 33 CFR parts 120, 126 and 127 respectively, while they are docked in the Ports of Palm Beach, Port Everglades, Miami or Key West, Florida.

(2) *Fixed security zone in the Port of Miami*—A fixed security zone encompasses all waters between Watson Park and Star Island on the MacArthur Causeway south to the Port of Miami. The western boundary is formed by an imaginary line from points 25°46.79′ N, 080°10.90′ W, to 25°46.77′ N, 080°10.92′ W to 25°46.88′ N, 080°10.84′ W, and ending on Watson Park at 25°47.00′ N, 080°10.67′ W. The eastern boundary is formed by an imaginary line from the traffic light located at Bridge road, in approximate position 25°46.33′ N, 080°09.12′ W, which leads to Star Island, and MacArthur Causeway directly extending across the Main Channel to the Port of Miami, at 25°46.26′ N, 080°09.18′ W. The fixed security zone is activated when two or more passenger vessels, vessels carrying cargoes of particular hazard, or vessels carrying liquefied hazardous gas (LHG) as defined in 33 CFR parts 120, 126 and 127 respectively, enter or moor within this zone.

(i) Vessels may be allowed to transit the Main Channel when only one passenger vessel or vessel carrying cargoes of particular hazard are berthed, by staying on the north side of the law enforcement boats and cruise ship tenders which will mark a transit lane in channel.

(ii) When passenger vessels are not berthed on the Main Channel, navigation will be unrestricted. Law enforcement vessels can be contacted on VHF Marine Band Radio, Channel 16 (156.8 MHz).

(3) *Fixed security zones in the Port Everglades*—A fixed security zone encompasses all waters west of an imaginary line starting at the northern most point 26°05.98′ N, 080°07.15′ W, near the west side of the 17th Street Causeway Bridge, to the southern most point 26°05.41′ N, 080°06.96′ W, on the northern tip of pier 22. An additional fixed security zone encompasses the Intracoastal Waterway between a line connecting point 26°05.41′ N, 080°06.97′ W, on the northern tip of berth 22 and a point directly east across the Intracoastal Waterway to 26°05.41′ N, 080°06.74′ W; and a line drawn from the corner of Port Everglades berth 29 at point 26°04.72′ N, 080°06.92′ W, easterly across the Intracoastal Waterway to John U. Lloyd Beach, State Recreational Area at point 26°04.72′ N, 080°06.81′ W.

(i) Vessels may be allowed to transit the Intracoastal Waterway when passenger vessels or vessels carrying cargoes of particular hazard are berthed, by staying east of the law enforcement boats and cruise ship tenders, which will mark a transit lane in the Intracoastal Waterway.

(ii) Periodically, vessels may be required to temporarily hold their positions while large commercial traffic operates in this area. Vessels in this security zone must follow the orders of the COTP or his designated representative, who may be embarked in law enforcement or other vessels on scene. When passenger vessels are not berthed on the Intracoastal Waterway, navigation will be unrestricted. Law enforcement vessels can be contacted on VHF Marine Band Radio, Channel 16 (156.8 MHz).

(b) *Regulations.* (1) Prior to commencing the movement, the person directing the movement of a passenger vessel, a vessel carrying cargoes of particular hazard or when a vessel carrying liquefied hazardous gas (LHG) as defined in Title 33, Code of Federal Regulations parts 120, 126 and 127 respectively, are encouraged to make a security broadcast on VHF Marine Band Radio, Channel 13 (156.65 MHz) to advise mariners of the moving security zone activation and intended transit.

(2) In accordance with the general regulations § 165.33 of this part, entry into these zones is prohibited except as authorized by the Captain of the Port Miami or his designated representative. Other vessels such as pilot boats, cruise ship tenders, tug boats and contracted security vessels may assist the Coast Guard Captain of the Port under the direction of his designated representative by monitoring these zones strictly to advise mariners of the restrictions. The Captain of the Port will notify the public via Marine Safety Radio Broadcast on VHF Marine Band Radio, Channel 13 (156.65 MHz) when the security zones are being enforced.

(3) Persons desiring to enter or transit the area of the security zone may contact the Captain of the Port on VHF Marine Band Radio, Channel 16 (156.8 MHz) to seek permission to transit the area. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or his or her designated representative.

(4) The Captain of the Port Miami may waive any of the requirements of this subpart for any vessel upon finding that the vessel or class of vessel, operational conditions, or other circumstances are such that application of this subpart is unnecessary or impractical for the purpose of port security, safety or environmental safety.

(c) *Definition.* As used in this section, *cruise ship* means a passenger vessel greater than 100 feet in length and over 100 gross tons that is authorized to carry more than 12 passengers for hire making voyages lasting more than 24 hours, except for a ferry.

(d) *Authority.* In addition to 33 U.S.C. 1231 and 50 U.S.C. 191, the authority for this section includes 33 U.S.C. 1226.

Dated: October 16, 2002.

J.A. Watson, IV,

Captain, U.S. Coast Guard, Captain of the Port Miami.

[FR Doc. 02–28089 Filed 11–4–02; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA242–0373b; FRL–7395–9]

Revisions to the California State Implementation Plan, Imperial County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Imperial County Air Pollution Control District's (ICAPCD) portion of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from Soil Decontamination Operations, Organic Solvent Degreasing Operations and Organic Solvents. We are proposing to approve local rules to regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: Any comments on this proposal must arrive by December 5, 2002.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

You can inspect copies of the submitted SIP revisions and EPA's technical support documents (TSDs) at our Region IX office during normal business hours. You may also see copies of the submitted SIP revisions at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814.

Imperial County APCD, 150 South 9th Street, El Centro, CA 92243–2850

A copy of the rule may also be available via the Internet at *http://www.arb.ca.gov/drdb/drdbltxt.htm.* Please be advised that this is not an EPA website and may not contain the same version of the rule that was submitted to EPA.

FOR FURTHER INFORMATION CONTACT: Terry McCall, EPA Region IX, (415) 972–3976.

SUPPLEMENTARY INFORMATION: This proposal addresses the following local rules: ICAPCD Rules 412, 413 and 417. In the Rules and Regulations section of this **Federal Register**, we are approving these local rules in a direct final action without prior proposal because we believe these SIP revisions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: September 30, 2002.

Keith Takata,

Acting Regional Administrator, Region IX.

[FR Doc. 02–28078 Filed 11–4–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region II Docket No. NJ54–246, FRL–7404–1]

Approval and Promulgation of Implementation Plans; New Jersey; Motor Vehicle Enhanced Inspection and Maintenance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by New Jersey, including revisions to the State's enhanced motor vehicle inspection and maintenance (I/M) program. This revision updates New Jersey's enhanced I/M performance standard modeling to reflect the State's plan to extend the current new vehicle inspection exemption from one inspection cycle (2 years) to two inspection cycles (4 years). This evaluation is necessary for New Jersey to demonstrate that the proposed changes to the enhanced I/M program will not impact the State's ability to continue to meet its enhanced I/M emission reduction goals for current and future years. EPA is proposing approval of New Jersey's plan to extend the new car emission inspection exemption, and the State's supporting revised performance standard modeling, which demonstrates that the enhanced I/M program continues to meet EPA's low enhanced performance standard.

DATES: Comments must be received on or before December 5, 2002. Public comments on this action are requested and will be considered before taking final action.

ADDRESSES: All comments should be addressed to Raymond Werner, Branch Chief, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007–1866.

Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations: Environmental Protection Agency,

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Region 2 Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866, and New Jersey Department of Environmental Protection, Bureau of Air Quality Planning, 401 East State Street, CN027, Trenton, New Jersey 08625.

FOR FURTHER INFORMATION CONTACT: Kenneth M. Champagne, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–4249.

SUPPLEMENTARY INFORMATION:

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1. Background

The Clean Air Act Amendments of 1990 (the Clean Air Act) require certain states to implement an enhanced I/M program to detect gasoline-fueled motor vehicles which exhibit excessive emissions of certain air pollutants. The enhanced I/M program is intended to help states meet federal health-based national ambient air quality standards (NAAQS) for ozone and carbon monoxide by requiring vehicles with excess emissions to have their emissions control systems repaired. New Jersey is required to have an enhanced I/M program pursuant to the Clean Air Act, and consequently has adopted, and is implementing an enhanced I/M program state-wide as of December 13, 1999. On January 22, 2002, EPA fully approved New Jersey's enhanced I/M program, including the State's performance standard modeling, as meeting the applicable requirements of the Clean Air Act. Additional information on EPA's final approval of New Jersey's enhanced I/M program can be found in the January 22, 2002 **Federal Register** (67 FR 2811).

2. What Is the Purpose and Content of New Jersey's Submittal?

New Jersey's August 20, 2002 proposed SIP revision submittal (hereinafter referred to as the August 20, 2002 submittal) modifies the State's enhanced I/M program to extend the current new vehicle emission inspection exemption from one inspection cycle (2 years) to two inspection cycles (4 years). This new vehicle emission inspection exemption was enacted by New Jersey on July 1, 2002 as Pub. L. 2002, Chapter 34, and supercedes the current emission inspection test frequency set forth in New Jersey's I/M rules. The new legislation requires any new vehicle of model year 2000 and newer to be exempt from the emission inspection for 4 years, and thereafter inspected every 2 years, however implementation of this new legislation is contingent upon approval by EPA. New Jersey's goal is to begin implementation of the new vehicle emission inspection exemption on January 1, 2003.

Also included as a part of the August 20, 2002 submittal, New Jersey revised its performance standard modeling to demonstrate that the new vehicle emission inspection exemption would not impact the State's ability to continue to meet its enhanced I/M emission reduction goals. To ensure that the performance standard modeling reflects the latest design assumptions for the State's I/M program, this revised performance standard modeling also includes major proposed program changes contained in New Jersey's April 24, 2002 proposed SIP revision (hereinafter referred to as the April 24, 2002 submittal). The major changes included are: (1) Removal of the requirements for implementation of the evaporative pressure and purge tests, (2) removal of the requirements for implementation of the existing final standards for the ASM5015 exhaust test to allow for continued use of the initial standards, (3) implementation of an OBD testing component for 1996 and newer vehicles, and (4) an exemption of gasoline-fueled vehicles registered as school buses from the enhanced I/M program (however, these vehicles will be inspected by the State's school bus inspection unit biannually using a 2500 RPM test). The State appropriately included the proposed I/M program design changes from the April 24, 2002 submittal in the revised modeling since they will, if adopted, impact the overall emission reduction potential of the I/M program. However, EPA is not taking action on the proposed changes included in the April 24, 2002 submittal in this proposed rulemaking. EPA will take formal rulemaking action on the April 24, 2002 submittal in a separate action at a later date.

New Jersey's revised performance standard modeling demonstrates that the State's enhanced I/M program, including the proposed program changes, successfully meets and exceeds EPA's low enhanced I/M program performance standard developed for all three criteria pollutants: (volatile organic compounds (VOC) and oxides of nitrogen (NO_X) as modeled for years 2002, 2005, and 2007, and carbon monoxide (CO) as modeled for the year 2002.

3. Can EPA Approve Exemptions for New Vehicles?

The Clean Air Act outlines the minimum elements required in the design of I/M programs, however model year coverage is not defined. EPA fulfilled its statutory requirement in this regard by designing performance standards that addressed these minimum elements. If a state designs a program which gets the same or better emission reductions as the performance standard it is considered to have met the I/M requirements in the Clean Air Act. EPA's I/M regulations at 40 CFR 51.356(a)(5) state that "special exemption may be permitted for certain subject vehicles provided a demonstration is made that the performance standard will be met." Accordingly, exemption of model years from emission testing is permissible as long as the state can demonstrate that the program meets the performance standard for I/M programs as contained in 40 CFR 51.351 and 51.352. Generally, the exemption of newer model year vehicles from emission testing results in a relatively small loss in emission benefit since newer vehicles are less likely to have excess emissions due to malfunctions which would be discoverable through an I/M program.

4. What Is Performance Standard Modeling?

EPA included provisions for a model program, known as the performance standard, in the requirements established for enhanced I/M programs. The features of the enhanced I/M performance standard model program are used to generate the minimum performance target that a state must meet. When programmed into EPA's mobile source emission factor model (the MOBILE model), these features produce target emission factors, in grams per mile of vehicle travel, which a state's enhanced I/M program must not exceed to be deemed minimally acceptable for purposes of SIP approval. The performance standard provides a gauge by which EPA can evaluate the adequacy and effectiveness of each state's enhanced I/M program. As such, states are required to demonstrate that their enhanced I/M programs achieve applicable area-wide emission levels for the pollutants of interest that are equal to, or lower than, those which would be realized by the implementation of the performance standard model program. However, the combination of program features which make up the performance standard does not necessarily constitute a recommended program design. The use of the performance standard approach allows EPA to develop a performance standard based on certain statutory features and that also provides states with maximum flexibility to design I/M programs to meet local needs.

5. How Has New Jersey Modeled and Met the Performance Standard?

To comply with the requirements of the Clean Air Act, New Jersey submitted modeling to EPA on August 20, 2001 which demonstrated that the State's enhanced I/M program met EPA's low enhanced performance standard. On January 22, 2002, EPA fully approved New Jersey's enhanced I/M program, including the State's performance standard modeling, as meeting the applicable requirements of the Clean Air Act. Additional information on EPA's final approval of New Jersey's performance standard modeling can be found in the January 22, 2002 **Federal Register** (67 FR 2811).

Although New Jersey recently submitted performance standard modeling for its enhanced I/M program, and EPA subsequently approved it, the State is required to revise its performance standard modeling to demonstrate that the proposed changes to the approved program, such as the new vehicle emission inspection exemption, will not impact the effectiveness of the overall program. As previously stated, New Jersey also included in the modeling the proposed changes in the April 24, 2002 submittal to ensure that the modeling reflects the latest design assumptions for the State's I/M program. In the August 20, 2002 submittal, New Jersey's intent was to show through modeling that its enhanced I/M program, including the latest design changes, meets or exceeds the low enhanced performance standard, expressed as emission levels in program area-wide average grams per vehicle mile (gpm). New Jersey is required to demonstrate that its enhanced I/M program is able to maintain the same or better level of emission reductions as EPA's low enhanced performance standard through its attainment deadlines for the applicable NAAQS standards. For the ozone precursors, VOC and NO_X, the State needs to meet the performance standard through its attainment deadlines of 2005 and 2007. Although New Jersey is in attainment for all of its previously designated CO nonattainment areas (60 FR 62741 and 67 FR 54574), the State is still required to include CO in its performance standard modeling because the maintenance plan for the Northeastern New Jersey CO nonattainment area relies upon the benefits from the enhanced I/M program. Thus, the State needs to meet the performance standard for CO in its 2002 attainment year.

EPA's enhanced I/M final rule requires that equivalency to the performance standard be demonstrated using the most current version of EPA's mobile source emission model. New Jersey has completed its performance standard modeling using the most current model MOBILE6, which was released on January 29, 2002 (67 FR 4254). During technical review of the August 20, 2002 submittal, EPA identified several minor issues with the State's modeling. EPA worked closely with New Jersey on these issues, and concluded that the minor changes to the modeling will not negatively impact the State's modeling demonstration. New Jersey subsequently sent a letter to EPA September 20, 2002 addressing the issues in question. However, EPA identified an additional issue with the modeling after this letter had been sent. EPA re-ran the State's modeling with the modified MOBILE6 data inputs, and the results show that this minor change will not affect New Jersey's performance modeling demonstration. While these changes will not impact the outcome of the modeling exercise, that is the State still passes the performance standard test, EPA has requested that all minor issues be addressed in the State's final SIP revision submittal.

The following table shows the results of New Jersey's revised performance standard modeling, including the re-modeled results contained in New Jersey's September 20, 2002 letter and EPA's re-run of the State's modeling with the modified MOBILE6 data inputs. Further details on New Jersey's revised performance standard modeling can be found in the Technical Support Document prepared for this rulemaking action.

TABLE 1.—MODELING RESULTS

Program type	VOC (gpm)	NO_X (gpm)	CO (gpm)
EPA Low Enhanced Performance Standard 2002 Evaluation Year	1.178	1.810	22.572
New Jersey Program 2002 Evaluation Year	1.152	1.745	22.398
New Jersey Program 2005 Evaluation Year	0.964	1.416	N/A*
New Jersey Program 2007 Evaluation Year	0.817	1.114	N/A*

The 2005 and 2007 modeling runs were not required to include CO since the attainment date (2002) has passed.

Based on New Jersey's modeling analysis, EPA agrees that the State's enhanced I/M program, including the proposed program changes, successfully meets and exceeds EPA's low enhanced I/M program performance standard for all three criteria pollutants, VOC and NO_X as modeled for years 2002, 2005, and 2007, and CO as modeled for the year 2002.

6. Summary of Conclusions and Proposed Action

This revision is being proposed under a procedure called parallel processing, whereby EPA proposes rulemaking action concurrently with the state's procedures for amending its regulations. If the proposed revision is substantially changed in areas other than those identified in this document, EPA will evaluate those changes and may publish another notice of proposed rulemaking. If no substantial changes are made other than those areas cited in this document, EPA will publish a final rulemaking on the revisions. The final rulemaking action by EPA will occur only after the SIP revision has been adopted by New Jersey and submitted formally to EPA for incorporation into the SIP.

EPA is proposing to approve New Jersey's I/M SIP revision submitted on August 20, 2002. This revision updates New Jersey's enhanced I/M performance standard modeling to reflect the State's plan to extend the current new vehicle inspection exemption from one inspection cycle (2 years) to two inspection cycles (4 years). New Jersey has demonstrated that its enhanced I/M program with the new vehicle emission inspection exemption, including other proposed program design changes, continues to meet EPA's low enhanced performance standard.

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7. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This proposed action merely proposes to approve state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This proposed rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely proposes to approve a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: October 28, 2002.

William J. Muszynski,

Deputy Regional Administrator, Region 2.

[FR Doc. 02–28076 Filed 11–4–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[MS–200301(b); FRL–7404–3]

Approval and Promulgation of State Plan for Designated Facilities and Pollutants; State of Mississippi

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve the small Municipal Waste Combustion (MWC) units section 111(d) negative declaration submitted by the State of Mississippi. This negative declaration certifies that small MWC units subject to the requirements of section 111(d) and 129 of the Clean Air Act (CAA) do not exist in Mississippi.

In the Final Rules Section of this **Federal Register**, the EPA is approving the State's submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Written comments must be received on or before December 5, 2002.

ADDRESSES: Written comments should be addressed to Joydeb Majumder, at the EPA Regional Office listed below. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day. Copies of the documents relative to this action are available for public inspection during normal business hours at the following locations: EPA Region 4, Air Toxics and Monitoring Branch, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.

FOR FURTHER INFORMATION CONTACT: Joydeb Majumder at (404) 562–9121 or Michele Notarianni at (404) 562–9031.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the Final Rules Section of this **Federal Register**.

Dated: October 24, 2002.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 02–28080 Filed 11–4–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[WT Docket No. 02–285; FCC 02–255; RM–10077]

Frequency Coordination of Public Safety Frequencies in the Private Land Mobile Radio Below 470 MHz Band

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document the Federal Communications Commission (Commission) seeks comment on whether to modify the frequency coordination procedures for Public Safety Pool frequencies in the Private Land Mobile Radio (PLMR) Services below 470 MHz by expanding competitive coordination. The Commissions also solicits comments on potential rule changes, whether modification of the existing frequency coordination process is warranted to ensure the quality of recommendations, minimize unwarranted application processing costs and delays, and encourage sharing and new technologies where appropriate while preserving the integrity of public safety communications systems in the Public Safety Pool below 470 MHz. Also, the Commission grants a Petition for Rulemaking (Petition) filed by the Association of Public-Safety Communications Officials-International, Inc. (APCO). The Petition requests the commencement of a proceeding to amend Commission's Rules for expansion of competitive frequency coordination for Public Safety Pool frequencies in the PLMR Services frequencies below 470 MHz. Finally, the Commission also seeks comment on retaining the existing frequency coordination rules and policies and alternatives to competitive frequency coordination.

DATES: Comments are due on or before December 5, 2002 and reply comments are due on or before December 20, 2002.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., TW–A325, Washington, DC 20554. *See* Supplementary Information for filing instructions.

FOR FURTHER INFORMATION CONTACT: John Evanoff, Esquire, at (202) 418–0848, *jevanoff@fcc.gov*, Policy and Rules Branch, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rulemaking (NPRM)*, FCC 02–255, adopted on September 16, 2002, and released on September 19, 2002. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the Commission's copy contractor, Qualex International, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The full text may also be downloaded at: *http://www.fcc.gov*. Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365 or at *bmillin@fcc.gov*.

1. In this NPRM, we solicit comment on whether to modify the existing frequency coordination procedures for the Public Safety Pool below 470 MHz by expanding competitive frequency coordination. We also grant the February 21, 2001 Petition for Rulemaking (Petition) filed by the Association of Public-Safety Communications Officials-International, Inc. (APCO) requesting the commencement of a proceeding to amend § 90.20(c) of the Commission's Rules.

I. Procedural Matters

A. Ex Parte Rules—Permit-But-Disclose Proceeding

2. This is a permit-but-disclose notice and comment rulemaking proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, if they are disclosed as provided in the Commission's Rules. See generally 47 CFR 1.1200(a), 1.1203, and 1.1206.

B. Initial Regulatory Flexibility Analysis

3. As required by section 603 of the regulatory Flexibility Act, 5 U.S.C. 603, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the proposals suggested in this document. The IRFA is set forth in Appendix A of the NPRM. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments filed in this NPRM, but they must have a separate and distinct heading designating them as responses to the IRFA. The Commission's Consumer Information Bureau, Reference Information Center, SHALL SEND a copy of this NPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA) in accordance with Section 603(a) of the Regulatory Flexibility Act, 5 U.S.C. 603(a).

C. Initial Paperwork Reduction Analysis

4. This NPRM contains a proposed information collection. As part of its continuing effort to reduce paperwork burdens, we invite the general public and the Office of Management and Budget (OMB) to take this opportunity to comment on the information collections contained in this NPRM, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due at the same time as other comments on this NPRM; OMB comments are due on or before January 6, 2003. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

D. Alternative Formats

5. Alternative formats (computer diskette, large print, audio cassette and Braille) are available from Brian Millin at (202) 418–7426, TTY (202) 418–7365, or at *bmillin@fcc.gov*. This NPRM can also be downloaded at *http://www.fcc.gov*.

E. Pleading Dates

6. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before December 5, 2002, and reply comments on or before December 20, 2002. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

7. Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.htm*. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience

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delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

8. Written comments by the public on the proposed information collections are due on or before December 5, 2002. Written comments must be submitted by the OMB on the proposed information collections on or before January 6, 2003. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *jboley@fcc.gov* and to Kim Johnson, OMB Desk Officer, 10236 NEOP, 725 17th Street, NW., Washington, DC 20503, or via the Internet *Kim_A._Johnson@omb.eop.gov.*

II. Initial Regulatory Flexibility Analysis

9. As required by the Regulatory Flexibility Act (RFA), the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this NPRM. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on this NPRM provided above in paragraph 6, supra. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. In addition, the NPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.

A. Need for, and Objectives of, the Proposed Rules

10. The Commission has stated that it would revisit competitive coordination in the PLMR public safety frequencies below 470 MHz. On February 21, 2001, the Association of Public Safety Communications Officials, International, Inc. (APCO) filed a petition for rulemaking recommending that the Commission introduce competitive coordination. Because the APCO Petition required changes to the Commission's Rules, APCO asked the Commission to adopt these rule changes. Presently, certain below 470 MHz frequencies are coordinated by designated frequency coordinators. APCO believes these proposed rule changes are needed in order to reduce cost and delays in processing applications for public safety frequencies below 470 MHz. Because of the continuing need for public safety spectrum, APCO believes that implementation of the rule changes proposed in its Petition is in the public interest. Therefore, the Commission seeks comment on whether to amend part 90 of its rules in order to effectuate the changes suggested in the Petition.

11. Commenters disagree with the Petition and urge the Commission to maintain the current coordination processes, or consider alternatives to the existing coordination processes. Commenters contend that the APCO proposal would undermine public safety communications if implemented. Because of the need to improve efficiency in the licensing of public safety spectrum and the need to protect public safety communications, commenters suggest that the Commission should seek comment on maintaining the existing system or examine alternatives to the rule changes proposed in the Petition. With regard to alternatives, commenters suggest the Commission consider whether a contour overlap analysis would be appropriate in the Public Safety Pool below 470 MHz. Therefore, the Commission seeks comment on whether to maintain or amend Part 90 of its rules in order to retain the current processes as suggested in the comments or effectuate the changes suggested in the comments.

B. Legal Basis

12. Authority for the proposed rules included in this issuance of this NPRM is contained in sections 1, 4(i), 302, 303(f), and (r), and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 1, 154(i), 302, 303(f) and (r), and 332.

C. Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply

13. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small business concern" under section 3 of the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. Nationwide, as of 1992, there were approximately 275,801 small organizations. "Small governmental jurisdiction" generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000." As of 1992, there were approximately 85,006 such jurisdictions in the United States. This number includes 38,978 counties, cities, and towns; of these, 37,566, or ninety-six percent, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (ninety-one percent) are small entities. Below, we further describe and estimate the number of small entity licensees and regulatees that may be affected by the proposed rules, if adopted.

14. Public Safety Pool and Governmental entities. As a general matter, Public Safety Radio Pool licensees include police, fire, local government, forestry conservation, highway maintenance, and emergency medical services. The SBA rules contain a definition for small radiotelephone (wireless) companies, which encompasses business entities engaged in radiotelephone communications employing no more that 1,500 persons. There are a total of approximately 127,540 licensees within these services. Governmental entities as well as private businesses comprise the licensees for these services. The RFA also includes small governmental entities as a part of the regulatory flexibility analysis. "Small governmental jurisdiction" generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000." As of 1992, there were approximately 85,006 such jurisdictions in the United States. This number includes 38,978 counties, cities and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, the Commission estimates that 81,600 (91 percent) are small entities.

15. Estimates for PLMR Licensees. Private land mobile radio systems serve an essential role in a vast range of industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories. Because of the vast array of PLMR users, the Commission has not developed a definition of small entities specifically applicable to PLMR users, nor has the SBA developed any such definition. The SBA rules do, however, contain a definition for small radiotelephone (wireless) companies. Included in this definition are business entities engaged in radiotelephone communications employing no more that 1,500 persons. According to the Bureau of the Census, only twelve radiotelephone firms, out of a total of 1,178 such firms that operated during 1992, had 1,000 or more employees. For the purpose of determining whether a licensee is a small business as defined by the SBA, each licensee would need to be evaluated within its own business area. The Commission's fiscal year 1994 annual report indicates that, at the end of fiscal year 1994, there were 1,101,711 licensees operating 12,882,623 transmitters in the PLMR bands below 512 MHz.

16. Estimates for Frequency Coordinators. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to spectrum frequency coordinators. Therefore the Commission concluded that the closest applicable definition under SBA rules is Business Associations (SIC 8611). The SBA defines a small business association as an entity with $5 million or less in annual receipts. There are 18 entities certified to perform frequency coordination functions under Part 90 of our Rules. However, the Commission is unable to ascertain how many of these frequency coordinators are classified as small entities under the SBA definition. The Census Bureau indicates that 97% of business associations have annual receipts of $4.999 million or less and would be classified as small entities. The Census Bureau category is very broad and does not include specific figures for firms that are engaged in frequency coordination. Therefore, for the purposes of this IRFA, the Commission estimates that almost all of the 18 spectrum frequency coordinators are small as defined by the SBA.

D. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

17. As part of our consideration of whether to introduce competitive coordination in the below-470 MHz public safety band, thereby reducing application processing costs and delays, we continue to believe that each public safety frequency coordinator that chooses to recommend below-470 MHz Public Safety frequencies must be knowledgeable about public safety plans. In this connection, we seek comment on whether to require certified public safety coordinators to adopt a system for information exchange to ensure that applications, once submitted, are not in conflict with relevant public safety plans or other applications being submitted simultaneously or concurrently. In this connection, we will leave the issue of whether to use a real-time common database to the coordinators' discretion.

18. We seek comment on whether to require that coordinators provide notification of all frequency recommendations for Public Safety below-470 MHz frequencies to every certified in-pool coordinator that is also certified to coordinate that frequency within one business day of making such recommendations. This notification requirement, we believe, could improve the speed and quality of recommendations. In the interests of efficiency and fairness, notification must be made to all in-pool coordinators at approximately the same time. To encourage and facilitate the cooperation between in-pool coordinators, we propose to require that each coordinator communicate at least once each business day with each other in-pool coordinator. Even on days when there are no coordinations, communication between coordinators would be required.

19. We seek comment on whether to maintain the existing concurrence mechanism for frequency recommendations for Public Safety below-470 MHz frequencies. Presently, coordinators are required to obtain the concurrence of certain coordinators when coordinating certain below-470 MHz public safety frequencies. This requirement, we believe, could continue to ensure that frequency coordination recommendations are consistent with existing public safety plans.

20. We seek comment on whether to amend the existing concurrence procedure by requiring coordinators to conduct a contour overlap analysis. Presently, coordinators in the Industrial/Business Pool are required to determine whether concurrence from a designated frequency coordinator or an affected licensee is required before coordinating certain frequencies. This requirement could continue to ensure that frequency coordination recommendations are consistent with existing public safety plans while improving efficiency in the licensing of public safety spectrum below-470 MHz.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

21. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule or any part thereof for small entities.

22. Presently, the majority of below-470 MHz frequencies are coordinated by designated frequency coordinators. Any of the four certified public safety coordinators, however, may coordinate frequencies designated for frequency coordination by a specific frequency coordinator. Under such circumstances, a frequency coordinator must obtain the consent of the designated frequency coordinator prior to coordinating an application. While this consent requirement may delay application processing and increase application costs it may also ensure that frequency recommendation are consistent with relevant public safety plans. We seek comment on whether maintaining the existing concurrence requirement would affect small entities.

23. As part of our consideration of whether to introduce competitive coordination in the below-470 MHz public safety band, each public safety frequency coordinator that chooses to recommend below-470 MHz Public Safety frequencies may be required to provide notification of all frequency recommendations for Public Safety below-470 MHz frequencies. We believe that the proposed notification system could minimize the economic impact on small entities by reducing application processing delays and costs, however, commenters believe that the notification system could impair public safety systems. We also believe that the suggested contour overlap analysis

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could reduce application processing costs and delays while ensuring applications are filed consistent with relevant public safety plans. We seek comment on how the changes proposed and alternatives suggested in the NPRM would affect small entities.

24. The proposal contained herein has been analyzed with respect to the Paper Reduction Act of 1980 and found to contain a proposed information collection that will not increase or decrease burden hours imposed on the public. We seek comment on how the proposed information collection contained herein will affect the public.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

25. None.

III. Ordering Clauses

26. Pursuant to sections 1, 4(j), 302, 303(f) and (r), and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 1, 154(j), 302, 303(f) and (r), 332, the Petition for Rulemaking filed by the Association of Public Safety Communications Officials, International, Inc., on February 21, 2001, *is granted* to the extent indicated herein.

27. Pursuant to Sections 1, 4(j), 302, 303(f) and (r), and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 1, 154(j), 302, 303(f) and(r), 332, Notice *is hereby given* of the proposed regulatory changes described in this Notice of Proposed Rulemaking, and that *comment is sought* on these proposals.

28. The Commission's Consumer Information Bureau, Reference Information Center, SHALL SEND a copy of this Notice of Proposed Rulemaking, RM–10077, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of the Regulatory Flexibility Act.

List of Subjects in 47 CFR Part 90

Communications equipment, Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Potential Rule Changes

Part 90 of Chapter 1 of Title 47 of the Code of Federal Regulations is proposed to be amended as follows:

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

1. The authority citation for part 90 continues to read as follows.

Authority: Sections 4(i), 11, 303(g), 303(r), and 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7).

2. Section 90.20 would be amended by adding paragraph (c)(2)(iii)and by revising paragraph (c)(3) to read as follows:

§ 90.20 Public Safety Pool.

* * * * *

(c) * * *

(2) * * *

(iii) Applications for new or modified facilities on frequencies allocated prior to radio service consolidation in the former Emergency Medical Radio Service, the Fire Radio Service, the Forestry Conservation Radio Service, the Highway Maintenance Radio Service, and the Police Radio Service, may be coordinated by any certified Public Safety coordinator. However, in the event that the interference contour of a proposed station would overlap the service contour of an existing station licensed on one of these previously shared frequencies, the written concurrence of the coordinator associated with the public safety radio service for which the existing station license was issued, or the written concurrence of the licensee of the existing station, shall be obtained. For the purposes of this § 90.20, the service contour for UHF stations is the 39 dBu contour; and the interference contour for UHF stations is the 21 dBu contour; the service contour for VHF stations is the 37 dBu contour; and the interference contour for VHF stations is the 19 dBu contour.

(3) *Frequencies.*

PUBLIC SAFETY POOL FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations	Coordinator
Kilohertz			
530		1	PX
1610	Base (T.I.S.)	1	PX
1630	Base or mobile		PF
1722	do	2, 3	PP
1730	do	2, 3	PP
2212	do	4	PO
2226	do	4	PO
2236	do	4	PO
2244	do	4	PO
2366	do	2, 4	PP
2382	do	2	PP
2390	do	2, 4	PP
2406	do	2	PP
2430	do	2	PP
2442	do	2	PP
2450	do	2	PP
2458	do	2	PP
2482	do	2	PP
2490	do	2, 3	PP
2726	do	5	PX, PS
3201	do		PS
2000 to 3000	Fixed	75	PS
2000 to 10,000	Fixed, base, or mobile	6	PX
Megahertz			
30.86	Base or mobile	7	PX

PUBLIC SAFETY POOL FREQUENCY TABLE—Continued

Frequency or band	Class of station(s)	Limitations	Coordinator
30.90	do	7	PX
30.94	do	7	PX
30.98	do	7	PX
31.02	do	7	PX
31.06	do	7, 8, 9	PX
31.10	do	7, 8, 9	PX
31.14	do	7, 8, 9	PX
31.18	do	8, 9	PX
31.22	do	8, 9	PX
31.26	do	8, 9	PX
31.30	do	8, 9	PX
31.34	do	8, 9	PX
31.38	do	8, 9	PX
31.42	do	8, 9	PX
31.46	do	8, 9	PX
31.50	do	8, 9	PX
31.54	do	8, 9	PX
31.58	do	8, 9	PX
31.62	do	8, 9	PX
31.66	do	8, 9	PX
31.70	do	8, 9	PX
31.74	do	8, 9	PX
31.78	do	8, 9	PX
31.82	do	8, 9	PX
31.86	do	8, 9	PX
31.90	do	8, 9	PX
31.94	do	8, 9	PX
31.98	do	8, 9	PX
33.02	do	10	PX, PS
33.04	do		PS
33.06	do	10	PX, PS
33.08	do		PS
33.10	do	10	PX, PS
33.42	Mobile or fixed	11	PX
33.44	Base or mobile		PX
33.46	Mobile		PX
33.48	Base or mobile		PX
33.50	Mobile		PX
33.52	Base or mobile		PX
33.54	Mobile		PX
33.56	Base or mobile		PX
33.58	Mobile		PX
33.60	Base or mobile		PX
33.62	Mobile		PX
33.64	Base or mobile		PX
33.66	Mobile		PX
33.68	Base or mobile		PX
33.70	do		PX
33.72	do		PX
33.74	do		PX
33.76	do		PX
33.78	do		PX
33.80	do		PX
33.82	do		PX
33.84	do		PX
33.86	do		PX
33.88	do		PX
33.90	do		PX
33.92	do		PX
33.94	do		PX
33.96	do		PX
33.98	do		PX
35.02	Mobile	12, 77	PS
35.64	Base	13	PS
35.68	do	13	PS
37.02	Mobile		PX
37.04	Base or mobile		PX
37.06	do		PX
37.08	do		PX
37.10	do		PX
37.12	do		PX
37.14	do		PX

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PUBLIC SAFETY POOL FREQUENCY TABLE—Continued

Frequency or band	Class of station(s)	Limitations	Coordinator
37.16	.....do		PX
37.18	.....do		PX
37.20	.....do		PX
37.22	.....do		PX
37.24	.....do		PX
37.26	.....do		PX
37.28	.....do		PX
37.30	.....do		PX
37.32	.....do		PX
37.34	Mobile		PX
37.36	Base or mobile		PX
37.38	Mobile		PX
37.40	Base or mobile		PX
37.42	Mobile		PX
37.90	Base or mobile	10	PX, PS
37.92	.....do		PX
37.94	.....do	10	PX, PS
37.96	.....do		PX
37.98	.....do	10	PX, PS
39.02	.....do		PX
39.04	.....do		PX
39.06	.....do	14	PX
39.08	.....do		PX
39.10	.....do		PX
39.12	.....do		PX
39.14	.....do		PX
39.16	.....do		PX
39.18	.....do		PX
39.20	.....do		PX
39.22	.....do		PX
39.24	.....do		PX
39.26	Mobile		PX
39.28	Base or mobile		PX
39.30	Mobile		PX
39.32	Base or mobile		PX
39.34	Mobile		PX
39.36	Base or mobile		PX
39.38	Mobile		PX
39.40	Base or mobile		PX
39.42	.....do		PX
39.44	.....do		PX
39.46	.....do	15	PX
39.48	.....do		PX
39.50	.....do		PX
39.52	.....do		PX
39.54	.....do		PX
39.56	.....do		PX
39.58	.....do		PX
39.60	.....do		PX
39.62	.....do		PX
39.64	.....do		PX
39.66	Mobile		PX
39.68	Base or mobile		PX
39.70	Mobile		PX
39.72	Base or mobile		PX
39.74	Mobile		PX
39.76	Base or mobile		PX
39.78	Mobile		PX
39.80	Base or mobile		PX
39.82	.....do		PX
39.84	.....do		PX
39.86	.....do		PX
39.88	.....do		PX
39.90	.....do		PX
39.92	.....do		PX
39.94	.....do		PX
39.96	.....do		PX
39.98	.....do		PX
42.02	.....do	2, 3, 16	PX
42.04	.....do	2, 3, 16	PX
42.06	.....do	2, 3, 16	PX
42.08	.....do	2, 3, 16	PX

PUBLIC SAFETY POOL FREQUENCY TABLE—Continued

Frequency or band	Class of station(s)	Limitations	Coordinator
42.10	.....do	2, 3, 16	PX
42.12	.....do	2, 3, 16	PX
42.14	.....do	2, 3, 16	PX
42.16	.....do	2, 3, 16	PX
42.18	Mobile	2, 16	PX
42.20	.....do	2, 16	PX
42.22	.....do	2, 16	PX
42.24	.....do	2, 16	PX
42.26	.....do	2, 16	PX
42.28	.....do	2, 16	PX
42.30	.....do	2, 16	PX
42.32	Base or mobile	2, 3, 16	PX
42.34	.....do	2, 3, 16	PX
42.36	.....do	2, 3, 16	PX
42.38	.....do	2, 3, 16	PX
42.40	.....do	2, 3, 16, 27	PX
42.42	.....do	2, 3, 16	PX
42.44	.....do	2, 3, 16	PX
42.46	.....do	2, 3, 16	PX
42.48	.....do	2, 3, 16	PX
42.50	.....do	2, 3, 16	PX
42.52	.....do	2, 3, 16	PX
42.54	.....do	2, 3, 16	PX
42.56	.....do	2, 3, 16	PX
42.58	.....do	2, 3, 16	PX
42.60	.....do	2, 3, 16	PX
42.62	.....do	2, 3, 16	PX
42.64	.....do	2, 3, 16	PX
42.66	Mobile	2, 16	PX
42.68	.....do	2, 16	PX
42.70	.....do	2, 16	PX
42.72	.....do	2, 16	PX
42.74	.....do	2, 16	PX
42.76	.....do	2, 16	PX
42.78	.....do	2, 16	PX
42.80	Base or mobile	13	PX
42.82	.....do	2, 3, 16	PX
42.84	.....do	2, 3, 16	PX
42.86	.....do	2, 3, 16	PX
42.88	.....do	2, 3, 16	PX
42.90	.....do	2, 3, 16	PX
42.92	.....do	2, 3, 16	PX
42.94	.....do	2, 3, 16	PX
43.64	Base	13, 18	PS
43.68	.....do	13	PS
44.62	Base or mobile	2, 3, 16	PX
44.64	.....do		PX
44.66	.....do	2, 3, 16	PX
44.68	.....do		PX
44.70	.....do	2, 3, 16	PX
44.72	.....do		PX
44.74	.....do	2, 3, 16	PX
44.76	.....do		PX
44.78	Mobile	2, 16	PX
44.80	Base or mobile		PX
44.82	Mobile	2, 16	PX
44.84	Base or mobile		PX
44.86	Mobile	2, 16	PX
44.88	Base or mobile		PX
44.90	Mobile	2, 16	PX
44.92	Base or mobile		PX
44.94	.....do	2, 3, 16	PX
44.96	.....do		PX
44.98	.....do	2, 3, 16	PX
45.00	.....do		PX
45.02	.....do	2, 3, 16	PX
45.04	.....do		PX
45.06	.....do	2, 3, 16	PX
45.08	.....do		PX
45.10	.....do		PX
45.12	.....do		PX
45.14	.....do		PX

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PUBLIC SAFETY POOL FREQUENCY TABLE—Continued

Frequency or band	Class of station(s)	Limitations	Coordinator
45.16	do		PX
45.18	do		PX
45.20	do		PX
45.22	do		PX
45.24	do		PX
45.26	Mobile		PX
45.28	Base or mobile		PX
45.30	Mobile		PX
45.32	Base or mobile		PX
45.34	Mobile		PX
45.36	Base or mobile		PX
45.38	Mobile		PX
45.40	Base or mobile		PX
45.42	do		PX
45.44	do		PX
45.46	do		PX
45.48	do		PX
45.50	do		PX
45.52	do		PX
45.54	do		PX
45.56	do		PX
45.58	do		PX
45.60	do		PX
45.62	do		PX
45.64	do		PX
45.66	do		PX
45.68	do		PX
45.70	do		PX
45.72	do		PX
45.74	Mobile		PX
45.76	Base or mobile		PX
45.78	Mobile		PX
45.80	Base or mobile		PX
45.82	Mobile		PX
45.84	Base or mobile		PX
45.86	do	15	PX
45.88	do	19	PX
45.90	do	20	PX
45.92	do	10	PS
45.94	do		PX
45.96	do	10	PS
45.98	do		PX
46.00	do	10	PS
46.02	do		PX
46.04	do	10	PS
46.06	do		PX
46.08	do		PX
46.10	do		PX
46.12	do		PX
46.14	do		PX
46.16	do		PX
46.18	do		PX
46.20	do		PX
46.22	Mobile		PX
46.24	do		PX
46.26	do		PX
46.28	do		PX
46.30	Mobile or fixed	11	PX
46.32	Mobile		PX
46.34	do		PX
46.36	Base or mobile		PX
46.38	do		PX
46.40	do		PX
46.42	do		PX
46.44	do		PX
46.46	do		PX
46.48	do		PX
46.50	do		PX
46.52	do		PX
46.54	do		PX
46.56	do		PX
46.58	do		PX

PUBLIC SAFETY POOL FREQUENCY TABLE—Continued

Frequency or band	Class of station(s)	Limitations	Coordinator
47.02	do	21, 22	PX
47.04	do	21, 22	PX
47.06	do	21, 22	PX
47.08	do	21, 22	PX
47.10	do	21, 22	PX
47.12	do	21, 22	PX
47.14	do	21, 22	PX
47.16	do	21, 22	PX
47.18	do	21, 22	PX
47.20	do	21, 22	PX
47.22	do	21, 22	PX
47.24	do	21, 22	PX
47.26	do	21, 22	PX
47.28	do	21, 22	PX
47.30	do	21, 22	PX
47.32	do	21, 22	PX
47.34	do	21, 22	PX
47.36	do	21, 22	PX
47.38	do	21, 22	PX
47.40	do	21, 22	PX
47.42	do	10, 23	PS
47.46	do	10	PS
47.50	do	10	PS
47.54	do	10	PS
47.58	do	10	PS
47.62	do	10	PS
47.66	do	10	PS
72.00 to 76.00	Operational fixed	24.	
72.44	Mobile	25	PX
72.48	do	25	PX
72.52	do	25	PX
72.56	do	25	PX
72.6	do	25	PX
75.44	do	25	PX
75.48	do	25	PX
75.52	do	25	PX
75.56	do	25	PX
75.6	do	25	PX
150 to 170	Base or mobile	26.	
150.775	Mobile		PX
150.7825	do	27	PX
150.790	do		PX
150.7975	do		PX
150.805	do		PX
150.995	Base or mobile	28	PX
151.0025	do	27, 28	PX
151.010	do	28	PX
151.0175	do	27, 28	PX
151.025	do	28	PX
151.0325	do	27, 28	PX
151.040	do	28	PX
151.0475	do	27, 28	PX
151.055	do	28	PX
151.0625	do	27, 28	PX
151.070	do	28	PX
151.0775	do	27, 28	PX
151.085	do	28	PX
151.0925	do	27, 28	PX
151.100	do	28	PX
151.1075	do	27, 28	PX
151.115	do	28	PX
151.1225	do	27, 28	PX
151.130	do	28, 81	PX
151.1375	do	27, 28, 80	PX
151.145	do	28, 81	PX
151.1525	do	27, 28	PX
151.160	do	28	PX
151.1675	do	27, 28	PX
151.175	do	28	PX
151.1825	do	27, 28	PX
151.190	do	28	PX
151.1975	do	27, 28	PX

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PUBLIC SAFETY POOL FREQUENCY TABLE—Continued

Frequency or band	Class of station(s)	Limitations	Coordinator
151.205	do	28	PX
151.2125	do	27, 28	PX
151.220	do	28	PX
151.2275	do	27, 28	PX
151.235	do	28	PX
151.2425	do	27, 28	PX
151.250	do	28	PX
151.2575	do	27, 28	PX
151.265	do	28	PX
151.2725	do	27, 28	PX
151.280	do	28	PX
151.2875	do	27, 28	PX
151.295	do	28	PX
151.3025	do	27, 28	PX
151.310	do	28	PX
151.3175	do	27, 28	PX
151.325	do	28	PX
151.3325	do	27, 28	PX
151.340	do	28	PX
151.3475	do	27, 28	PX
151.355	do	28	PX
151.3625	do	27, 28	PX
151.370	do	28	PX
151.3775	do	27, 28	PX
151.385	do	28	PX
151.3925	do	27, 28	PX
151.400	do	28	PX
151.4075	do	27, 28	PX
151.415	do	28	PX
151.4225	do	27, 28	PX
151.430	do	28	PX
151.4375	do	27, 28	PX
151.445	do	28	PX
151.4525	do	27, 28	PX
151.460	do	28	PX
151.4675	do	27, 28	PX
151.475	do	28	PX
151.4825	do	27, 28	PX
151.490	do	7, 28	PX
151.4975	do	7, 27, 28	PX
152.0075	Base	13, 19, 30	PS
153.740	Mobile		PX
153.7475	do	27	PX
153.755	do		PX
153.7625	do	27	PX
153.770	do		PX
153.7775	do	27	PX
153.785	do		PX
153.7925	do	27	PX
153.800	do		PX
153.8075	do	27	PX
153.815	do		PX
153.8225	do	27	PX
153.830	do	31	PX
153.8375	do	27, 31	PX
153.845	do		PX
153.8525	do	27	PX
153.860	do		PX
153.8675	do	27	PX
153.875	do		PX
153.8825	do	27	PX
153.890	do		PX
153.8975	do	27	PX
153.905	do		PX
153.9125	do	27	PX
153.920	do		PX
153.9275	do	27	PX
153.935	do		PX
153.9425	do	27	PX
153.950	do		PX
153.9575	do	27	PX
153.965	do		PX

PUBLIC SAFETY POOL FREQUENCY TABLE—Continued

Frequency or band	Class of station(s)	Limitations	Coordinator
153.9725	do	27	PX
153.980	do		PX
153.9875	do	27	PX
153.995	do		PX
154.0025	do	27	PX
154.010	do		PX
154.0175	do	27	PX
154.025	Base or mobile		PX
154.0325	do	27	PX
154.040	do	28	PX
154.0475	do	27, 28	PX
154.055	do	28	PX
154.0625	do	27, 28	PX
154.070	Mobile	28	PX
154.0775	do	27, 28	PX
154.085	Base or mobile	28	PX
154.0925	do	27, 28	PX
154.100	do	28	PX
154.1075	do	27, 28	PX
154.115	do	28	PX
154.1225	do	27, 28	PX
154.130	do	28	PX
154.1375	do	27, 28	PX
154.145	do	28	PX
154.1525	do	27, 28	PX
154.160	do	28	PX
154.1675	do	27, 28	PX
154.175	do	28	PX
154.1825	do	27, 28	PX
154.190	do	28	PX
154.1975	do	27, 28	PX
154.205	do	28	PX
154.2125	do	27, 28	PX
154.220	do	28	PX
154.2275	do	27, 28	PX
154.235	do	28	PX
154.2425	do	27, 28	PX
154.250	do	28	PX
154.2575	do	27, 28	PX
154.265	do	19, 28	PX
154.2725	do	19, 27, 28	PX
154.280	do	19, 28	PX
154.2875	do	19, 27, 28	PX
154.295	do	19, 28	PX
154.3025	do	19, 27, 28	PX
154.310	do	28	PX
154.3175	do	27, 28	PX
154.325	do	28	PX
154.3325	do	27, 28	PX
154.340	do	28	PX
154.3475	do	27, 28	PX
154.355	do	28	PX
154.3625	do	27, 28	PX
154.370	do	28	PX
154.3775	do	27, 28	PX
154.385	do	28	PX
154.3925	do	27, 28	PX
154.400	do	28	PX
154.4075	do	27, 28	PX
154.415	do	28	PX
154.4225	do	27, 28	PX
154.430	do	28	PX
154.4375	do	27, 28	PX
154.445	do	28, 81	PX
154.4525	do	27, 28, 80	PX
154.45625	Fixed or mobile	32, 33, 34, 35	PX
154.46375	do	33, 34, 35, 36, 37	PX
154.47125	do	33, 34, 35, 36	PX
154.47875	do	33, 34, 35, 37	PX
154.650	Mobile		PX
154.6575	do	27	PX
154.665	Base or mobile	16	PX

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PUBLIC SAFETY POOL FREQUENCY TABLE—Continued

Frequency or band	Class of station(s)	Limitations	Coordinator
154.6725	do	16, 27	PX
154.680	do	16	PX
154.6875	do	16, 27	PX
154.695	do	16	PX
154.7025	do	16, 27	PX
154.710	Mobile		PX
154.7175	do	27	PX
154.725	Base or mobile		PX
154.7325	do	27	PX
154.740	do		PX
154.7475	do	27	PX
154.755	do		PX
154.7625	do	27	PX
154.770	Mobile		PX
154.7775	do	27	PX
154.785	Base or mobile		PX
154.7925	do	27	PX
154.800	do		PX
154.8075	do	27	PX
154.815	do		PX
154.8225	do	27	PX
154.830	Mobile		PX
154.8375	do	27	PX
154.845	Base or mobile		PX
154.8525	do	27	PX
154.860	do		PX
154.8675	do	27	PX
154.875	do		PX
154.8825	do	27	PX
154.890	Mobile		PX
154.8975	do	27	PX
154.905	Base or mobile	16	PX
154.9125	do	16, 27	PX
154.920	do	16	PX
154.9275	do	16, 27	PX
154.935	do	16	PX
154.9425	do	16, 27	PX
154.950	Mobile		PX
154.9575	do	27	PX
154.965	Base or mobile		PX
154.9725	do	27	PX
154.980	do		PX
154.9875	do	27	PX
154.995	do		PX
155.0025	do	27	PX
155.010	do		PX
155.0175	do	27	PX
155.025	do		PX
155.0325	do	27	PX
155.040	do		PX
155.0475	do	27	PX
155.055	do		PX
155.0625	do	27	PX
155.070	do		PX
155.0775	do	27	PX
155.085	do		PX
155.0925	do	27	PX
155.100	do		PX
155.1075	do	27	PX
155.115	do		PX
155.1225	do	27	PX
155.130	do		PX
155.1375	do	27	PX
155.145	do		PX
155.1525	do	27	PX
155.160	do	10	PS
155.1675	do	10, 27	PS
155.175	do	10	PS
155.1825	do	10, 27	PS
155.190	do		PX
155.1975	do	27	PX
155.205	do	10	PS

PUBLIC SAFETY POOL FREQUENCY TABLE—Continued

Frequency or band	Class of station(s)	Limitations	Coordinator
155.2125	do	10, 27	PS
155.220	do	10	PS
155.2275	do	10, 27	PS
155.235	do	10	PS
155.2425	do	10, 27	PS
155.250	do		PX
155.2575	do	27	PX
155.265	do	10	PS
155.2725	do	10, 27	PS
155.280	do	10	PS
155.2875	do	10, 27	PS
155.295	do	10	PS
155.3025	do	10, 27	PS
155.310	do		PX
155.3175	do	27	PX
155.325	do	38, 39	PX
155.3325	do	27, 38, 39	PX
155.340	do	39, 40	PX
155.3475	do	27, 39, 40	PX
155.355	do	38, 39	PX
155.3625	do	27, 38, 39	PX
155.370	do		PX
155.3775	do	27	PX
155.385	do	38, 39	PX
155.3925	do	27, 38, 39	PX
155.400	do	38, 39	PX
155.4075	do	27, 38, 39	PX
155.415	do		PX
155.4225	do	27	PX
155.430	do		PX
155.4375	do	27	PX
155.445	do	16	PX
155.4525	do	16, 27	PX
155.460	do	16	PX
155.4675	do	16, 27	PX
155.475	do	41	PX
155.4825	do	27, 41	PX
155.490	do		PX
155.4975	do	27	PX
155.505	do	16	PX
155.5125	do	16, 27	PX
155.520	do		PX
155.5275	do	27	PX
155.535	do		PX
155.5425	do	27	PX
155.550	do		PX
155.5575	do	27	PX
155.565	do		PX
155.5725	do	27	PX
155.580	do		PX
155.5875	do	27	PX
155.595	do		PX
155.6025	do	27	PX
155.610	do		PX
155.6175	do	27	PX
155.625	do		PX
155.6325	do	27	PX
155.640	do		PX
155.6475	do	27	PX
155.655	do		PX
155.6625	do	27	PX
155.670	do		PX
155.6775	do	27	PX
155.685	do		PX
155.6925	do	27	PX
155.700	do		PX
155.7075	do	27	PX
155.715	do		PX
155.7225	do	27	PX
155.730	do		PX
155.7375	do	27	PX
155.745	do	81	PX

PUBLIC SAFETY POOL FREQUENCY TABLE—Continued

Frequency or band	Class of station(s)	Limitations	Coordinator
155.7525	do	27	PX
155.760	do		PX
155.7675	do	27	PX
155.775	do		PX
155.7825	do	27	PX
155.790	do		PX
155.7975	do	27	PX
155.805	do		PX
155.8125	do	27	PX
155.820	do		PX
155.8275	do	27	PX
155.835	do		PX
155.8425	do	27	PX
155.850	do		PX
155.8575	do	27	PX
155.865	do		PX
155.8725	do	27	PX
155.880	do		PX
155.8875	do	27	PX
155.895	do		PX
155.9025	do	27	PX
155.910	do		PX
155.9175	do	27	PX
155.925	do		PX
155.9325	do	27	PX
155.940	do		PX
155.9475	do	27	PX
155.955	do		PX
155.9625	do	27	PX
155.970	do		PX
155.9775	do	27	PX
155.985	do		PX
155.9925	do	27	PX
156.000	do		PX
156.0075	do	27	PX
156.015	do		PX
156.0225	do	27	PX
156.030	do		PX
156.0375	do	27	PX
156.045	do		PX
156.0525	do	27	PX
156.060	do		PX
156.0675	do	27	PX
156.075	do		PX
156.0825	do	27	PX
156.090	do		PX
156.0975	do	27	PX
156.105	do		PX
156.1125	do	27	PX
156.120	do		PX
156.1275	do	27	PX
156.135	do		PX
156.1425	do	27	PX
156.150	do		PX
156.1575	do	27	PX
156.165	do		PX
156.1725	do	27	PX
156.180	do		PX
156.1875	do	27	PX
156.195	do		PX
156.2025	do	27	PX
156.210	do		PX
156.2175	do	27	PX
156.225	do		PX
156.2325	do	27	PX
156.240	do		PX
156.2475	do	27	PX
156.255	do		PX
156.2625	do	27	PX
156.270	do		PX
156.2775	do	27	PX
156.285	do		PX
156.2925	do	27	PX
156.300	do		PX
156.3075	do	27	PX
156.315	do		PX
156.3225	do	27	PX
156.330	do		PX
156.3375	do	27	PX
156.345	do		PX
156.3525	do	27	PX
156.360	do		PX
156.3675	do	27	PX
156.375	do		PX
156.3825	do	27	PX
156.390	do		PX
156.3975	do	27	PX
156.405	do		PX
156.4125	do	27	PX
156.420	do		PX
156.4275	do	27	PX
156.435	do		PX
156.4425	do	27	PX
156.450	do		PX
156.4575	do	27	PX
156.465	do		PX
156.4725	do	27	PX
156.480	do		PX
156.4875	do	27	PX
156.495	do		PX
156.4925	do	27	PX
156.500	do		PX
156.5075	do	27	PX
156.515	do		PX
156.5225	do	27	PX
156.530	do		PX
156.5375	do	27	PX
156.545	do		PX
156.5525	do	27	PX
156.560	do		PX
156.5675	do	27	PX
156.575	do		PX
156.5825	do	27	PX
156.590	do		PX
156.5975	do	27	PX
156.605	do		PX
156.6125	do	27	PX
156.620	do		PX
156.6275	do	27	PX
156.635	do		PX
156.6425	do	27	PX
156.650	do		PX
156.6575	do	27	PX
156.665	do		PX
156.6725	do	27	PX
156.680	do		PX
156.6875	do	27	PX
156.695	do		PX
156.7025	do	27	PX
156.710	do		PX
156.7175	do	27	PX
156.725	do		PX
156.7325	do	27	PX
156.740	do		PX
156.7475	do	27	PX
156.755	do		PX
156.7625	do	27	PX
156.770	do		PX
156.7775	do	27	PX
156.785	do		PX
156.7925	do	27	PX
156.800	do		PX
156.8075	do	27	PX
156.815	do		PX
156.8225	do	27	PX
156.830	do		PX
156.8375	do	27	PX
156.845	do		PX
156.8525	do	27	PX
156.860	do		PX
156.8675	do	27	PX
156.875	do		PX
156.8825	do	27	PX
156.890	do		PX
156.8975	do	27	PX
156.905	do		PX
156.9125	do	27	PX
156.920	do		PX
156.9275	do	27	PX
156.935	do		PX
156.9425	do	27	PX
156.950	do		PX
156.9575	do	27	PX
156.965	do		PX
156.9725	do	27	PX
156.980	do		PX
156.9875	do	27	PX
156.995	do		PX
157.0025	do	27	PX
157.010	do		PX
157.0175	do	27	PX
157.025	do		PX
157.0325	do	27	PX
157.040	do		PX
157.0475	do	27	PX
157.055	do		PX
157.0625	do	27	PX
157.070	do		PX
157.0775	do	27	PX
157.085	do		PX
157.0925	do	27	PX
157.100	do		PX
157.1075	do	27	PX
157.115	do		PX
157.1225	do	27	PX
157.130	do		PX
157.1375	do	27	PX
157.145	do		PX
157.1525	do	27	PX
157.160	do	10	PS
157.1675	do	10, 27	PS
157.175	do	10	PS
157.1825	do	10, 27	PS
157.190	do		PX
157.1975	do	27	PX
157.205	do	10	PS

PUBLIC SAFETY POOL FREQUENCY TABLE—Continued

Frequency or band	Class of station(s)	Limitations	Coordinator
157.2125	do	10, 27	PS
157.220	do	10	PS
157.2275	do	10, 27	PS
157.235	do	10	PS
157.2425	do	10, 27	PS
157.250	do		PX
157.2575	do	27	PX
157.265	do	10	PS
157.2725	do	10, 27	PS
157.280	do	10	PS
157.2875	do	10, 27	PS
157.295	do	10	PS
157.3025	do	10, 27	PS
157.310	do		PX
157.3175	do	27	PX
157.325	do	38, 39	PX
157.3325	do	27, 38, 39	PX
157.340	do	39, 40	PX
157.3475	do	27, 39, 40	PX
157.355	do	38, 39	PX
157.3625	do	27, 38, 39	PX
157.370	do		PX
157.3775	do	27	PX
157.385	do	38, 39	PX
157.3925	do	27, 38, 39	PX
157.400	do	38, 39	PX
157.4075	do	27, 38, 39	PX
157.415	do		PX
157.4225	do	27	PX
157.430	do		PX
157.4375	do	27	PX
157.445	do	16	PX
157.4525	do	16, 27	PX
157.460	do	16	PX
157.4675	do	16, 27	PX
157.475	do	41	PX
157.4825	do	27, 41	PX
157.490	do		PX
157.4975	do	27	PX
157.505	do	16	PX
157.5125	do	16, 27	PX
157.520	do		PX
157.5275	do	27	PX
157.535	do		PX
157.5425	do	27	PX
157.550	do		PX
157.5575	do	27	PX
157.565	do		PX
157.5725	do	27	PX
157.580	do		PX
157.5875	do	27	PX
157.595	do		PX
157.6025	do	27	PX
157.610	do		PX
157.6175	do	27	PX
157.625	do		PX
157.6325	do	27	PX
157.640	do		PX
157.6475	do	27	PX
157.655	do		PX
157.6625	do	27	PX
157.670	do		PX
157.6775	do	27	PX
157.685	do		PX
157.6925	do	27	PX
157.700	do		PX
157.7075	do	27	PX
157.715	do		PX
157.7225	do	27	PX
157.730	do		PX
157.7375	do	27	PX
157.745	do	81	PX

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PUBLIC SAFETY POOL FREQUENCY TABLE—Continued

Frequency or band	Class of station(s)	Limitations	Coordinator
155.7525	do	27, 80, 83	PX
155.760	do	81	PX
155.7675	do	27	PX
155.775	do		PX
155.7825	do	27	PX
155.790	do		PX
155.7975	do	27	PX
155.805	do		PX
155.8125	do	27	PX
155.820	do		PX
155.8275	do	27	PX
155.835	do		PX
155.8425	do	27	PX
155.850	Mobile		PX
155.8575	do	27	PX
155.865	Base or mobile		PX
155.8725	do	27	PX
155.880	do		PX
155.8875	do	27	PX
155.895	do		PX
155.9025	do	27	PX
155.910	Mobile		PX
155.9175	do	27	PX
155.925	Base or mobile		PX
155.9325	do	27	PX
155.940	do		PX
155.9475	do	27	PX
155.955	do		PX
155.9625	do	27	PX
155.970	Mobile		PX
155.9775	do	27	PX
155.985	do		PX
155.9925	do	27	PX
156.000	do		PX
156.0075	do	27	PX
156.015	do		PX
156.0225	do	27	PX
156.030	do		PX
156.0375	do	27	PX
156.045	do	42	PX
156.0525	do	27, 42	PX
156.060	do	42	PX
156.0675	do	27, 42	PX
156.075	do		PX
156.0825	do	27	PX
156.090	do		PX
156.0975	do	27	PX
156.105	Base or mobile		PX
156.1125	do	27	PX
156.120	do		PX
156.1275	do	27	PX
156.135	do		PX
156.1425	do	27	PX
156.150	Mobile		PX
156.1575	do	27	PX
156.165	Base or mobile	42, 43	PX
156.1725	do	27, 42, 43	PX
156.180	do	42, 43	PX
156.1875	do	27, 42, 43	PX
156.195	do	43	PX
156.2025	do	27, 43	PX
156.210	do		PX
156.2175	do	27	PX
156.225	do	43	PX
156.2325	do	27, 43	PX
156.240	do	43, 79	PX
157.450	do	13, 45, 30	PS
158.7225	do	44	PX
158.730	do	81	PX
158.7375	do	27, 80	PX
158.745	Base or mobile	81	PX
158.7525	do	27	PX

PUBLIC SAFETY POOL FREQUENCY TABLE—Continued

Frequency or band	Class of station(s)	Limitations	Coordinator
158.760	do		PX
158.7675	do	27	PX
158 775	do		PX
158.7825	do	27	PX
158.790	Base or mobile		PX
158.7975	do	27	PX
158.805	Base and mobile		PX
158.8125	do	27	PX
158.820	do		PX
158.8275	do	27	PX
158.835	do		PX
158.8425	do	27	PX
158.850	Base or mobile		PX
158.8575	do	27	PX
158.865	Mobile		PX
158.8725	do	27	PX
158.880	do		PX
158.8875	do	27	PX
158.895	do		PX
158.9025	do	27	PX
158.910	do		PX
158.9175	do	27	PX
158.925	do		PX
158.9325	do	27	PX
158.940	do		PX
158.9475	do	27	PX
158.955	do		PX
158.9625	do	27	PX
158.970	do		PX
158.9775	do	27	PX
158.985	do	43	PX
158.9925	do	27, 43	PX
159.000	do	43	PX
159.0075	do	27, 43	PX
159.015	do	43	PX
159.0225	do	27, 43	PX
159.030	do		PX
159.0375	do	27	PX
159.045	do	43	PX
159.0525	do	27, 43	PX
159.060	do	43	PX
159.0675	do	27, 43	PX
159.075	do	43	PX
159.0825	do	27, 43	PX
159.090	Base or mobile		PX
159.0975	do	27	PX
159.105	do	43	PX
159.1125	do	27, 43	PX
159.120	do	43	PX
159.1275	do	27, 43	PX
159.135	do	43	PX
159.1425	do	27, 43	PX
159.150	do		PX
159.1575	do	27	PX
159.165	do	43	PX
159.1725	do	27, 43	PX
159.180	do		PX
159.1875	do	27	PX
159.195	do		PX
159.2025	do	27	PX
159.210	do		PX
159.2175	do	27	PX
159.225	do		PX
159.2325	do	27	PX
159.240	do	46	PX
159.2475	do	27, 46	PX
159.255	do	46	PX
159.2625	do	27, 46	PX
159.270	do	46	PX
159.2775	do	27, 46	PX
159.285	do	46	PX
159.2925	do	27, 46	PX

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PUBLIC SAFETY POOL FREQUENCY TABLE—Continued

Frequency or band	Class of station(s)	Limitations	Coordinator
159.300	do	46	PX
159.3075	do	27, 46	PX
159.315	do	46	PX
159.3225	do	27, 46	PX
159.330	do	46	PX
159.3375	do	27, 46	PX
159.345	do	46	PX
159.3525	do	27, 46	PX
159.360	do	46	PX
159.3675	do	27, 46	PX
159.375	do	46	PX
159.3825	do	27, 46	PX
159.390	do	46	PX
159.3975	do	27, 46	PX
159.405	do	46	PX
159.4125	do	27, 46	PX
159.420	do	46	PX
159.4275	do	27, 46	PX
159.435	do	46	PX
159.4425	do	27, 46	PX
159.450	do		PX
159.4575	do	27	PX
159.465	do	81	PX
159.4725	do	27, 80	PX
163.250	do	13, 30	PS
166.250	do	47	PX
169 to 172	Mobile	48.	
170.150	Base or mobile	47	PX
170.425	do	9, 49, 50	PX
170.475	do	9, 49, 51	PX
170.575	do	9, 49, 50	PX
171.425	do	9, 49, 51	PX
171.475	do	9, 50, 52	PX
171.575	do	9, 49, 51	PX
172.225	do	9, 49, 50	PX
172.275	do	9, 51, 52	PX
172.375	do	9, 49, 50	PX
173.075	do	53	PX
173.20375	Fixed or mobile	33, 34, 35, 36	PX
173.210	do	33, 34, 35, 36	PX
173.2375	do	32, 33, 34, 35	PX
173.2625	do	32, 33, 34, 35	PX
173.2875	do	32, 33, 34, 35	PX
173.3125	do	32, 33, 34, 35	PX
173.3375	do	32, 33, 34, 35	PX
173.3625	do	32, 33, 34, 35	PX
173.390	do	32, 33, 34, 35	PX
173.39625	do	33, 34, 35, 36	PX
220 to 222	Base and mobile	55.	
220.8025	Base	55	PX, PS
220.8075	do	55	PX, PS
220.8125	do	55	PX, PS
220.8175	do	55	PX, PS
220.8225	do	55	PX, PS
220.8275	do	55	PX, PS
220.8325	do	55	PX, PS
220.8375	do	55	PX, PS
220.8425	do	55	PX, PS
220.8475	do	55	PX, PS
220.9025	do	55	PX
220.9075	do	55	PX
220.9125	do	55	PX
220.9175	do	55	PX
220.9225	do	55	PX
221.8025	Mobile	55	PX, PS
221.8075	do	55	PX, PS
221.8125	do	55	PX, PS
221.8175	do	55	PX, PS
221.8225	do	55	PX, PS
221.8275	do	55	PX, PS
221.8325	do	55	PX, PS
221.8375	do	55	PX, PS

PUBLIC SAFETY POOL FREQUENCY TABLE—Continued

Frequency or band	Class of station(s)	Limitations	Coordinator
221.8425	do	55	PX, PS
221.8475	do	55	PX, PS
221.9025	do	55	PX
221.9075	do	55	PX
221.9125	do	55	PX
221.9175	do	55	PX
221.9225	do	55	PX
450 to 470	Fixed, base, or mobile	26, 56.	
453.0125	Mobile	57, 78	PX
453.03125	Base or mobile	44, 59, 60, 61, 62	PX
453.0375	do	27, 59, 60, 61, 62	PX
453.04375	do	44, 59, 60, 61, 62	PX
453.050	do		PX
453.05625	do	44	PX
453.0625	do	27	PX
453.06875	do	44	PX
453.075	Central control, fixed base, or mobile	58, 59, 60, 61, 62	PX
453.08125	Base or mobile	44, 59, 60, 61, 62	PX
453.0875	do	27, 59, 60, 61, 62	PX
453.09375	do	44, 59, 60, 61, 62	PX
453.100	do		PX
453.10625	do	44	PX
453.1125	do	27	PX
453.11875	do	44	PX
453.125	Central control, fixed base, or mobile	58, 59, 60, 61, 62	PX
453.13125	Base or mobile	44, 59, 60, 61, 62	PX
453.1375	do	27, 59, 60, 61, 62	PX
453.14375	do	44, 59, 60, 61, 62	PX
453.150	do		PX
453.15625	do	44	PX
453.1625	do	27	PX
453.16875	do	44	PX
453.175	Central control, fixed base, or mobile	58, 59, 60, 61, 62	PX
453.18125	Base or mobile	44, 59, 60, 61, 62	PX
453.1875	do	27, 59, 60, 61, 62	PX
453.19375	do	44, 59, 60, 61, 62	PX
453.200	do	81	PX
453.20625	do	44, 82	PX
453.2125	do	27, 80, 83	PX
453.21875	do	44, 82	PX
453.225	do	81	PX
453.23125	do	44	PX
453.2375	do	27	PX
453.24375	do	44	PX
453.250	do		PX
453.25625	do	44	PX
453.2625	do	27	PX
453.26875	do	44	PX
453.275	do		PX
453.28125	do	44	PX
453.2875	do	27	PX
453.29375	do	44	PX
453.300	do		PX
453.30625	do	44	PX
453.3125	do	27	PX
453.31875	do	44	PX
453.325	do		PX
453.33125	do	44	PX
453.3375	do	27	PX
453.34375	do	44	PX
453.350	do		PX
453.35625	do	44	PX
453.3625	do	27	PX
453.36875	do	44	PX
453.375	do		PX
453.38125	do	44	PX
453.3875	do	27	PX
453.39375	do	44	PX
453.400	do		PX
453.40625	do	44	PX
453.4125	do	27	PX
453.41875	do	44	PX

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PUBLIC SAFETY POOL FREQUENCY TABLE—Continued

Frequency or band	Class of station(s)	Limitations	Coordinator
453.425	do		PX
453.43125	do	44	PX
453.4375	do	27	PX
453.44375	do	44	PX
453.450	do	81	PX
453.45625	do	44, 82	PX
453.4625	do	27, 80	PX
453.46875	do	44, 82	PX
453.475	do	81	PX
453.48125	do	44	PX
453.4875	do	27	PX
453.49375	do	44	PX
453.500	do		PX
453.50625	do	44	PX
453.5125	do	27	PX
453.51875	do	44	PX
453.525	do		PX
453.53125	do	44	PX
453.5375	do	27	PX
453.54375	do	44	PX
453.550	do		PX
453.55625	do	44	PX
453.5625	do	27	PX
453.56875	do	44	PX
453.575	do		PX
453.58125	do	44	PX
453.5875	do	27	PX
453.59375	do	44	PX
453.600	do		PX
453.60625	do	44	PX
453.6125	do	27	PX
453.61875	do	44	PX
453.625	do		PX
453.63125	do	44	PX
453.6375	do	27	PX
453.64375	do	44	PX
453.650	do		PX
453.65625	do	44	PX
453.6625	do	27	PX
453.66875	do	44	PX
453.675	do		PX
453.68125	do	44	PX
453.6875	do	27	PX
453.69375	do	44	PX
453.700	do	81	PX
453.70625	do	44, 82	PX
453.7125	do	27, 80	PX
453.71875	do	44, 82	PX
453.725	do	81	PX
453.73125	do	44	PX
453.7375	do	27	PX
453.74375	do	44	PX
453.750	do		PX
453.75625	do	44	PX
453.7625	do	27	PX
453.76875	do	44	PX
453.775	do		PX
453.78125	do	44	PX
453.7875	do	27	PX
453.79375	do	44	PX
453.800	do		PX
453.80625	do	44	PX
453.8125	do	27	PX
453.81875	do	44	PX
453.825	do		PX
453.83125	do	44	PX
453.8375	do	27	PX
453.84375	do	44	PX
453.850	do	81	PX
453.85625	do	44, 82	PX
453.8625	do	27, 80	PX
453.86875	do	44, 82	PX

PUBLIC SAFETY POOL FREQUENCY TABLE—Continued

Frequency or band	Class of station(s)	Limitations	Coordinator
453.875	do	81	PX
453.88125	do	44	PX
453.8875	do	27	PX
453.89375	do	44	PX
453.900	do		PX
453.90625	do	44	PX
453.9125	do	27	PX
453.91875	do	44	PX
453.925	do		PX
453.93125	do	44	PX
453.9375	do	27	PX
453.94375	do	44	PX
453.950	do		PX
453.95625	do	44	PX
453.9625	do	27	PX
453.96875	do	44	PX
453.975	do		PX
453.98125	do	44	PX
453.9875	do	27	PX
453.99375	do	44	PX
458.0125	Mobile	57	PS
458.025	Central control, fixed base, or mobile	58, 59, 61, 62, 63	PX
458.03125	Mobile	44, 59, 61, 62	PX
458.0375	do	27, 59, 61, 62	PX
458.04375	do	44, 59, 61, 62	PX
458.050	do		PX
458.05625	do	44	PX
458.0625	do	27	PX
458.06875	do	44	PX
458.075	Central control, fixed base, or mobile	58, 59, 61, 62, 63	PX
458.08125	Mobile	44, 59, 61, 62	PX
458.0875	do	27, 59, 61, 62	PX
458.09375	do	44, 59, 61, 62	PX
458.100	do		PX
458.10625	do	44	PX
458.1125	do	27	PX
458.11875	do	44	PX
458.125	Central control, fixed base, or mobile	58, 59, 61, 62, 63	PX
458.13125	Mobile	44, 59, 61, 62	PX
458.1375	do	27, 59, 61, 62	PX
458.14375	do	44, 59, 61, 62	PX
458.150	do		PX
458.15625	do	44	PX
458.1625	do	27	PX
458.16875	do	44	PX
458.175	Central control, fixed base, or mobile	58, 59, 61, 62, 63	PX
458.18125	Mobile	44, 59, 61, 62	PX
458.1875	do	27, 59, 61, 62	PX
458.19375	do	44, 59, 61, 62	PX
458.200	do	81	PX
458.20625	do	44, 82	PX
458.2125	do	27, 80, 83	PX
458.21875	do	44, 82	PX
458.225	do	81	PX
458.23125	do	44	PX
458.2375	do	27	PX
458.24375	do	44	PX
458.250	do		PX
458.25625	do	44	PX
458.2625	do	27	PX
458.26875	do	44	PX
458.275	do		PX
458.28125	do	44	PX
458.2875	do	27	PX
458.29375	do	44	PX
458.300	do		PX
458.30625	do	44	PX
458.3125	do	27	PX
458.31875	do	44	PX
458.325	do		PX
458.33125	do	44	PX
458.3375	do	27	PX

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PUBLIC SAFETY POOL FREQUENCY TABLE—Continued

Frequency or band	Class of station(s)	Limitations	Coordinator
458.34375	....do	44	PX
458.350	....do		PX
458.35625	....do	44	PX
458.3625	....do	27	PX
458.36875	....do	44	PX
458.375	....do		PX
458.38125	....do	44	PX
458.3875	....do	27	PX
458.39375	....do	44	PX
458.400	....do		PX
458.40625	....do	44	PX
458.4125	....do	27	PX
458.41875	....do	44	PX
458.425	....do		PX
458.43125	....do	44	PX
458.4375	....do	27	PX
458.44375	....do	44	PX
458.450	....do	81	PX
458.45625	....do	44, 82	PX
458.4625	....do	27, 80	PX
458.46875	....do	44, 82	PX
458.475	....do	81	PX
458.48125	....do	44	PX
458.4875	....do	27	PX
458.49375	....do	44	PX
458.500	....do		PX
458.50625	....do	44	PX
458.5125	....do	27	PX
458.51875	....do	44	PX
458.525	....do		PX
458.53125	....do	44	PX
458.5375	....do	27	PX
458.54375	....do	44	PX
458.550	....do		PX
458.55625	....do	44	PX
458.5625	....do	27	PX
458.56875	....do	44	PX
458.575	....do		PX
458.58125	....do	44	PX
458.5875	....do	27	PX
458.59375	....do	44	PX
458.600	....do		PX
458.60625	....do	44	PX
458.6125	....do	27	PX
458.61875	....do	44	PX
458.625	....do		PX
458.63125	....do	44	PX
458.6375	....do	27	PX
458.64375	....do	44	PX
458.650	....do		PX
458.65625	....do	44	PX
458.6625	....do	27	PX
458.66875	....do	44	PX
458.675	....do		PX
458.68125	....do	44	PX
458.6875	....do	27	PX
458.69375	....do	44	PX
458.700	....do	81	PX
458.70625	....do	44, 82	PX
458.7125	....do	27, 80	PX
458.71875	....do	44, 82	PX
458.725	....do	81	PX
458.73125	....do	44	PX
458.7375	....do	27	PX
458.74375	....do	44	PX
458.750	....do		PX
458.75625	....do	44	PX
458.7625	....do	27	PX
458.76875	....do	44	PX
458.775	....do		PX
458.78125	....do	44	PX
458.7875	....do	27	PX

PUBLIC SAFETY POOL FREQUENCY TABLE—Continued

Frequency or band	Class of station(s)	Limitations	Coordinator
458.79375	....do	44	PX
458.800	....do		PX
458.80625	....do	44	PX
458.8125	....do	27	PX
458.81875	....do	44	PX
458.825	....do		PX
458.83125	....do	44	PX
458.8375	....do	27	PX
458.84375	....do	44	PX
458.850	....do	81	PX
458.85625	....do	44, 82	PX
458.8625	....do	27, 80	PX
458.86875	....do	44, 82	PX
458.875	....do	81	PX
458.88125	....do	44	PX
458.8875	....do	27	PX
458.89375	....do	44	PX
458.900	....do		PX
458.90625	....do	44	PX
458.9125	....do	27	PX
458.91875	....do	44	PX
458.925	....do		PX
458.93125	....do	44	PX
458.9375	....do	27	PX
458.94375	....do	44	PX
458.950	....do		PX
458.95625	....do	44	PX
458.9625	....do	27	PX
458.96875	....do	44	PX
458.975	....do		PX
458.98125	....do	44	PX
458.9875	....do	27	PX
458.99375	....do	44	PX
460.0125	....do	27, 64	PX
460.01875	Base or mobile	44	PX
460.025	....do		PX
460.03125	....do	44	PX
460.0375	....do	27	PX
460.04375	....do	44	PX
460.050	....do		PX
460.05626	....do	44	PX
460.0625	....do	27	PX
460.06875	....do	44	PX
460.075	....do		PX
460.08125	....do	44	PX
460.0875	....do	27	PX
460.09375	....do	44	PX
460.100	....do		PX
460.10625	....do	44	PX
460.1125	....do	27	PX
460.11875	....do	44	PX
460.125	....do		PX
460.13125	....do	44	PX
460.1375	....do	27	PX
460.14375	....do	44	PX
460.150	....do		PX
460.15625	....do	44	PX
460.1625	....do	27	PX
460.16875	....do	44	PX
460.175	....do		PX
460.18125	....do	44	PX
460.1875	....do	27	PX
460.19375	....do	44	PX
460.200	....do		PX
460.20625	....do	44	PX
460.2125	....do	27	PX
460.21875	....do	44	PX
460.225	....do		PX
460.23125	....do	44	PX
460.2375	....do	27	PX
460.24375	....do	44	PX
460.250	....do		PX

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PUBLIC SAFETY POOL FREQUENCY TABLE—Continued

Frequency or band	Class of station(s)	Limitations	Coordinator
460.25625	do	44	PX
460.2625	do	27	PX
460.26875	do	44	PX
460.275	do		PX
460.28125	do	44	PX
460.2875	do	27	PX
460.29375	do	44	PX
460.300	do		PX
460.30625	do	44	PX
460.3125	do	27	PX
460.31875	do	44	PX
460.325	do		PX
460.33125	do	44	PX
460.3375	do	27	PX
460.34375	do	44	PX
460.350	do		PX
460.35625	do	44	PX
460.3625	do	27	PX
460.36875	do	44	PX
460.375	do		PX
460.38125	do	44	PX
460.3875	do	27	PX
460.39375	do	44	PX
460.400	do		PX
460.40625	do	44	PX
460.4125	do	27	PX
460.41875	do	44	PX
460.425	do		PX
460.43125	do	44	PX
460.4375	do	27	PX
460.44375	do	44	PX
460.450	do		PX
460.45625	do	44	PX
460.4625	do	27	PX
460.46875	do	44	PX
460.475	do		PX
460.48125	do	44	PX
460.4875	do	27	PX
460.49375	do	44	PX
460.500	do		PX
460.50625	do	44	PX
460.5125	do	27	PX
460.51875	do	44	PX
460.525	do		PX
460.53125	do	44	PX
460.5375	do	27	PX
460.54375	do	44	PX
460.550	do		PX
460.55625	do	44	PX
460.5625	do	27	PX
460.56875	do	44	PX
460.575	do		PX
460.58125	do	44	PX
460.5875	do	27	PX
460.59375	do	44	PX
460.600	do		PX
460.60625	do	44	PX
460.6125	do	27	PX
460.61875	do	44	PX
460.625	do		PX
460.63125	do	44	PX
460.6375	do	27	PX
460.64375	do	44	PX
462.9375	Mobile	57	PS
462.950	Base or mobile	38, 65	PX
462.95625	do	38, 44, 65	PX
462.9625	do	27, 38, 65	PX
462.96875	do	38, 44, 65	PX
462.975	do	38, 65	PX
462.98125	do	38, 44, 65	PX
462.9875	do	27, 38, 65	PX
462.99375	do	38, 44, 65	PX

PUBLIC SAFETY POOL FREQUENCY TABLE—Continued

Frequency or band	Class of station(s)	Limitations	Coordinator
463.000	do	59, 66, 76	PX
463.00625	do	44, 59, 66, 76	PX
463.0125	do	27, 59, 66, 67	PX
463.01875	do	44, 59, 66, 76	PX
463.025	do	59, 66, 76	PX
463.03125	do	44, 59, 66, 76	PX
463.0375	do	27, 59, 66, 67	PX
463.04375	do	44, 59, 66, 76	PX
463.050	do	59, 66, 76	PX
463.05625	do	44, 59, 66, 76	PX
463.0625	do	27, 59, 66, 67	PX
463.06875	do	44, 59, 66, 76	PX
463.075	do	59, 66, 76	PX
463.08125	do	44, 59, 66, 76	PX
463.0875	do	27, 59, 66, 67	PX
463.09375	do	44, 59, 66, 76	PX
463.100	do	59, 66, 76	PX
463.10625	do	44, 59, 66, 76	PX
463.1125	do	27, 59, 66, 67	PX
463.11875	do	44, 59, 66, 76	PX
463.125	do	59, 66, 76	PX
463.13125	do	44, 59, 66, 76	PX
463.1375	do	27, 59, 66, 67	PX
463.14375	do	44, 59, 66, 76	PX
463.150	do	59, 66, 76	PX
463.15625	do	44, 59, 66, 76	PX
463.1625	do	27, 59, 66, 67	PX
463.16875	do	44, 59, 66, 76	PX
463.175	do	59, 66, 76	PX
463.18125	do	44, 59, 66, 76	PX
463.1875	do	27, 59, 66, 67	PX
463.19375	do	44, 59, 66, 76	PX
465.0125	Mobile	57	PX
465.025	do		PX
465.03125	do	44	PX
465.0375	do	27	PX
465.04375	do	44	PX
465.050	do		PX
465.05625	do	44	PX
465.0625	do	27	PX
465.06875	do	44	PX
465.075	do		PX
465.08125	do	44	PX
465.0875	do	27	PX
465.09375	do	44	PX
465.100	do		PX
465.10625	do	44	PX
465.1125	do	27	PX
465.11875	do	44	PX
465.125	do		PX
465.13125	do	44	PX
465.1375	do	27	PX
465.14375	do	44	PX
465.150	do		PX
465.15625	do	44	PX
465.1625	do	27	PX
465.16875	do	44	PX
465.175	do		PX
465.18125	do	44	PX
465.1875	do	27	PX
465.19375	do	44	PX
465.200	do		PX
465.20625	do	44	PX
465.2125	do	27	PX
465.21875	do	44	PX
465.225	do		PX
465.23125	do	44	PX
465.2375	do	27	PX
465.24375	do	44	PX
465.250	do		PX
465.25625	do	44	PX
465.2625	do	27	PX

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Frequency or band	Class of station(s)	Limitations	Coordinator
465.26875	....do	44	PX
465.275	....do		PX
465.28125	....do	44	PX
465.2875	....do	27	PX
465.29375	....do	44	PX
465.300	....do		PX
465.30625	....do	44	PX
465.3125	....do	27	PX
465.31875	....do	44	PX
465.325	....do		PX
465.33125	....do	44	PX
465.3375	....do	27	PX
465.34375	....do	44	PX
465.350	....do		PX
465.35625	....do	44	PX
465.3625	....do	27	PX
465.36875	....do	44	PX
465.375	....do		PX
465.38125	....do	44	PX
465.3875	....do	27	PX
465.39375	....do	44	PX
465.400	....do		PX
465.40625	....do	44	PX
465.4125	....do	27	PX
465.41875	....do	44	PX
465.425	....do		PX
465.43125	....do	44	PX
465.4375	....do	27	PX
465.44375	....do	44	PX
465.450	....do		PX
465.45625	....do	44	PX
465.4625	....do	27	PX
465.46875	....do	44	PX
465.475	....do		PX
465.48125	....do	44	PX
465.4875	....do	27	PX
465.49375	....do	44	PX
465.500	....do		PX
465.50625	....do	44	PX
465.5125	....do	27	PX
465.51875	....do	44	PX
465.525	....do		PX
465.53125	....do	44	PX
465.5375	....do	27	PX
465.54375	....do	44	PX
465.550	Base or mobile		PX
465.55625	....do	44	PX
465.5625	....do	27	PX
465.56875	....do	44	PX
465.575	Mobile		PX
465.58125	....do	44	PX
465.5875	....do	27	PX
465.59375	....do	44	PX
465.600	....do		PX
465.60625	....do	44	PX
465.6125	....do	27	PX
465.61875	....do	44	PX
465.625	....do		PX
465.63125	....do	44	PX
465.6375	....do	27	PX
465.64375	....do	44	PX
467.9375	....do	57	PX
467.950	....do	38, 65	PX
467.95625	....do	38, 44, 65	PX
467.9625	....do	27, 38, 65	PX
467.96875	....do	38, 44, 65	PX
467.975	....do	38, 65	PX
467.98125	....do	38, 44, 65	PX
467.9875	....do	27, 38, 65	PX
467.99375	....do	38, 44, 65	PX
468.000	....do	59, 66, 76	PX
468.00625	....do	44, 59, 66, 76	PX

PUBLIC SAFETY POOL FREQUENCY TABLE—Continued

Frequency or band	Class of station(s)	Limitations	Coordinator
468.0125	....do	27, 59, 66, 76	PX
468.01875	....do	44, 59, 66, 76	PX
468.025	....do	59, 66, 76	PX
468.03125	....do	44, 59, 66, 76	PX
468.0375	....do	27, 59, 66, 76	PX
468.04375	....do	44, 59, 66, 76	PX
468.050	....do	59, 66, 76	PX
468.05625	....do	44, 59, 66, 76	PX
468.0625	....do	27, 59, 66, 76	PX
468.06875	....do	44, 59, 66, 76	PX
468.075	....do	59, 66, 76	PX
468.08125	....do	44, 59, 66, 76	PX
468.0875	....do	27, 59, 66, 76	PX
468.09375	....do	44, 59, 66, 76	PX
468.100	....do	59, 66, 76	PX
468.10625	....do	44, 59, 66, 76	PX
468.1125	....do	27, 59, 66, 76	PX
468.11875	....do	44, 59, 66, 76	PX
468.125	....do	59, 66, 76	PX
468.13125	....do	44, 59, 66, 76	PX
468.1375	....do	27, 59, 66, 76	PX
468.14375	....do	44, 59, 66, 76	PX
468.150	....do	59, 66, 76	PX
468.15625	....do	44, 59, 66, 76	PX
468.1625	....do	27, 59, 66, 76	PX
468.16875	....do	44, 59, 66, 76	PX
468.175	....do	59, 66, 76	PX
468.18125	....do	44, 59, 66, 76	PX
468.1875	....do	27, 59, 66, 76	PX
468.19375	....do	44, 59, 66, 76	PX
470 to 512	Base or mobile	68	
764 to 776	Base, mobile	77	PX
794 to 806	Mobile	77	PX
806 to 824	Mobile	69	
851 to 859	Base or mobile	69	
928 and above	Operational fixed	70	
929 to 930	Base only	71	
1,427 to 1,435	Operational fixed, base, or mobile	72	
2,450 to 2,500	Base or mobile	73	
10,550 to 10,680	....do	74	

* * * * *

3. Section 90.175 is amended by revising paragraph (b)(1) to read as follows:

§ 90.175 Frequency coordinator requirements.

* * * * *

(b) * * *

(1) A statement is required from the applicable frequency coordinator as specified in §§ 90.20(c)(2) and 90.35(b) recommending the most appropriate frequency. In addition, if the interference contour of a proposed station would overlap the service contour of a station on a frequency formerly allocated to the former Emergency Medical Radio Service, Fire Radio Service, Forestry Conservation Radio Service, Highway Maintenance Radio Service, and Police Radio Service, or shared prior to radio service consolidation by licensees in the Manufacturers Radio Service, the Forest Products Radio Service, the Power Radio Service, the Petroleum Radio Service, the Motor Carrier Radio Service, the Railroad Radio Service, the Telephone Maintenance Radio Service, or the Automobile Emergency Radio Service, the written concurrence of the coordinator for the public safety or industry-specific service, or the written concurrence of the licensee itself, must be obtained. Requests for concurrence must be responded to within 20 days of receipt of the request. The written request for concurrence shall advise the receiving party of the maximum 20 day response period. The coordinator's recommendation may include comments on technical factors such as power, antenna height and gain, terrain and other factors which may serve to minimize potential interference. In addition:

* * * * *

[FR Doc. 02–27976 Filed 11–4–02; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[DOT Docket No. NHTSA–2002–13704]

RIN 2127–AH23

Federal Motor Vehicle Safety Standards; Definition of Multifunction School Activity Bus

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: Under existing Federal requirements, all school buses must be equipped with crash avoidance devices designed to control traffic (*i.e.*, flashing lights and stop arms) because the use of most school buses includes stopping in the roadway to pick children up from and drop them off at home. There is a

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need in those circumstances to stop nearby traffic during the loading and unloading of children.

This notice proposes to establish a subcategory of relatively small school buses that would not be used to pick school children up from or drop them off at home. These school buses would, accordingly, not be required to have traffic control features. They would, however, be required to meet all other school bus crash avoidance requirements and all crashworthiness and post-crash requirements. These buses would be known as "multifunction school activity buses."

It is anticipated that these buses would be used by child care facilities to drop children off at school at the beginning of the school day or pick them up from school at the end of the school day, by schools to transport children from school to extracurricular activities and back, and by "coordinated transportation" systems to provide a wide range of transportation services that can include transporting children to or from Head Start Programs and transporting senior citizens to social service facilities. These buses could be used for the Head Start Program transportation because they would qualify as "allowable alternate vehicles" under the regulations for that program.

DATES: You should submit your comments early enough to ensure that Docket Management receives them not later than January 6, 2003.

ADDRESSES: You may submit your comments in writing to: Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC, 20590. Alternatively, you may submit your comments electronically by logging onto the Docket Management System Web site at *http://dms.dot.gov.* Click on "Help & Information" or "Help/Info" to view instructions for filing your comments electronically. Regardless of how you submit your comments, you should mention the docket number of this document.

You may call the Docket at 202–366–9324. You may visit the Docket from 10 a.m. to 5 p.m., Monday through Friday, except for Federal holidays.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, you may call Mr. Charles Hott, Office of Crashworthiness Standards at (202) 366–0247. His FAX number is (202) 493–2739.

For legal issues, you may call Ms. Dorothy Nakama, Office of the Chief Counsel at (202) 366–2992. Her FAX number is (202) 366–3820.

You may send mail to both of these officials at National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC, 20590.

SUPPLEMENTARY INFORMATION:

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I. Executive Summary

When selling a new bus that is likely to be used significantly to transport preprimary, primary, secondary students to or from school or related events, a motor vehicle dealer is required by Federal law to sell a bus that meets the Federal motor vehicle safety standards for school buses. In this document, we (NHTSA) propose to create a subcategory of school buses, the "multifunction school activity bus" (MFSAB). The MFSAB would be defined as a school bus with a gross vehicle weight rating (GVWR) of 6,804 kg (15,000 pounds) or less sold for purposes that do not include transportation between home and school for students from kindergarten through Grade 12. Since the MFSAB would not be used by schools for picking up children from, or dropping them off at, home, they would not make stops under circumstances in which there is a need to control traffic.

As a consequence of their more limited usage compared to other school buses, the MFSAB would not be required to be equipped with traffic control features, *i.e.*, the 4-way/8-way alternating flashing lights and stop arms. They would, however, be required to meet all requirements in the school bus crashworthiness, all other requirements in the crash avoidance safety standards, and all post crash standards.

II. What Is the Purpose of This Rulemaking?

This notice proposes to create a subcategory of school buses consisting of school buses with a gross vehicle weight rating of 6804 kg (15,000 pounds) and under that meet all Federal Motor Vehicle Safety Standards (FMVSSs) applicable to school buses, except for S5.1.4 of Standard No. 108, *Lamps, Reflective Devices, and Associated Equipment*, and Standard No. 131, *School Bus Pedestrian Safety Devices*. This rulemaking seeks to resolve the conflict between current NHTSA requirements that all new school buses be equipped with those devices, regardless of whether a particular school bus will ever be used in circumstances for which those devices are intended, and State laws that do not permit the use of those devices on trips that do not involve transporting children between home and school. MFSABs within the new subcategory of school buses would not be required to be equipped with flashing lights and stop arms. They would be intended to be used to transport children to places other than between home and school, and would afford children the crashworthiness protection of other school buses.

As will be explained in more detail, creating the MFSAB school bus classification without the Standards Nos. 108 and 131 traffic control devices will facilitate Head Start programs' purchases of school buses (which will be the "allowable alternate vehicles" defined in Head Start regulations). It is anticipated that this new school bus classification will also be used for coordinated transportation purposes by State and local social services agencies, that may, for example, use the school buses to transport Head Start participants in the morning, and to transport senior citizens later in the day. At present, there are Federal restrictions on financial assistance to purchase school buses that exclusively transport students and school personnel in competition with a private school bus operator. If made final, we anticipate that this rulemaking will facilitate funding from the U.S. Federal Transit Administration to Head Start programs and coordinated transportation providers to purchase the school buses.

III. Relevant Laws and Policies of Affected Federal Agencies

A. National Highway Traffic Safety Administration

NHTSA's statute requires any person selling or leasing a new vehicle to sell or lease a vehicle that meets all applicable standards issued by the agency. Under our regulations, a "bus" is any vehicle (including a van) that has a seating capacity of 11 persons or more. Our statute defines a "school bus" as any vehicle that is designed for carrying 11 or more persons and that is likely to be "used significantly" to transport "preprimary, primary, secondary" students *to or from school* or related events. (Emphasis added.) 49 U.S.C. section 30125. For example, many before and after school child care facilities use 15-passenger vans to transport children between school and the care facility several times a week. A 15-passenger van that will be used in that way is regarded as likely to be "used significantly" to transport students and is, therefore, a "school bus" and must meet the school bus safety standards.

More broadly, we deem a bus likely to be used significantly to transport preprimary, primary, or secondary students to or from school or school-related events if, for example, it will be used for any of the following purposes on a regular basis: Pick those students up from home to take them to school; pick them up from a place other than home (*e.g.*, a before-school care facility) and drop them off at school; or pick them up from school and drop them off at home or a place other than home (*e.g.*, an after-school care facility). Under current NHTSA interpretations, the term "preprimary, primary, and secondary school" includes kindergarten, elementary school, middle or junior high school, and senior high school. However, the term "school" does not include pre-school (nursery) centers, day care centers or Head Start programs.

Thus, for example, in answering questions about the sale or leasing of a new bus in situations involving transportation of children to or from multiple institutions, one of which was a school, we have informed motor vehicle dealers that new buses sold to day-care providers and other entities that routinely drop students off at school or pick them up from school are required to be buses that meet the school bus safety standards. (*See, e.g.*, July 23, 1998 letter to Mr. Don Cote, Northside Ford, explaining that when the dealership sells or leases new buses to a child care facility to drop-off students at school and pick them up from school on "regular school days," the dealership must sell or lease only buses that meet Federal motor vehicle safety standards (FMVSSs) for school buses. A copy of this letter has been placed in the docket for this rulemaking.)

In our interpretations of section 30125, we have stated that in order to be sold as a school bus, a vehicle must meet all applicable school bus FMVSSs and requirements, including the 4-way/8-way alternating flashing lights required by Standard No. 108 and the stop-arm required by Standard No. 131. Thus, dealers cannot sell school buses that will be used only to transport children on trips that do not include "regular route" school transportation (*i.e.*, normal to and from school transportation involving multiple stops for the purposes of pick-up from home and/or drop-off at home) unless those buses are equipped with flashing lights and stop arms. This is true even if these devices are not likely to be used, or State law does not allow them to be used, on such trips.

After selling or leasing school buses, dealers cannot remove the flashing lights and stop-arms from them. Under 49 U.S.C. section 30122, "Making safety devices and elements inoperative," manufacturers, distributors, dealers, or motor vehicle repair businesses may not "knowingly make inoperative" any part of a device or element of design installed on or in a motor vehicle or motor vehicle equipment in compliance with an applicable motor vehicle safety standard.

B. U.S. Department of Health and Human Services—Head Start Bureau

The U.S. Department of Health and Human Services" (DHHS) Head Start Bureau administers the Head Start Program. There is no statutory requirement for the Head Start Program to provide transportation for children participating in the Program. However, if a Head Start agency provides transportation, it must follow the regulations established in 45 CFR part 1310 *Head Start Transportation.* Beginning on January 18, 2006, if it provides transportation for the children, a Head Start agency must comply with the following provision in 45 CFR section 1310.12 "Required use of School Buses or Allowable Alternate Vehicles:"

(a) Effective January 18, 2006, each agency providing transportation services must ensure that children enrolled in its program are transported in school buses or allowable alternate vehicles that are equipped for use of height- and weight-appropriate child restraint systems, and have reverse beepers.

"Allowable alternate vehicle" is defined at 45 CFR section 1310.3 as: "a vehicle designed for carrying eleven or more people, including the driver, that meets all the Federal Motor Vehicle Safety Standards applicable to school buses, except 49 CFR 571•108 and 571.131."

C. Federal Transit Administration

Under the Federal Transit Administration's (FTA) statutory authority at 49 U.S.C. section 5323(f) "School Transportation," the FTA may provide financial assistance "for a capital project, or to operate mass transportation equipment or a mass transportation facility, only if the applicant agrees not to provide schoolbus transportation that exclusively transports students and school personnel in competition with a private schoolbus operator." Thus, FTA funds may not be used to purchase schoolbuses that will be used exclusively to transport students and school personnel. In order to make FTA funds available to Head Start agencies to purchase buses to transport Head Start children, on June 24, 1994, the FTA issued an interpretation that Head Start is a broad-based social services program rather than an educational program.

The FTA provides funding to Regional Transit Authorities, which provide transportation services to different population groups, *e.g.*, children, persons with disabilities, senior citizens, and others in need of public transportation services. Many of these authorities also have contracts with Head Start to transport its participants to and from Head Start programs. Thus, these authorities need buses that can serve multiple needs.

D. National Transportation Safety Board

In a report dated June 8, 1999, the National Transportation Safety Board (NTSB) recommended that the 50 States and the District of Columbia:

Require that all vehicles carrying more than 10 passengers (buses) and transporting children to and from school and school related activities, including, but not limited to, Head Start programs and day care centers, meet the school bus structural standards or the equivalent set forth in *49 Code of Federal Regulations Part 571*. Enact regulatory measures to enforce compliance with the revised statutes.

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The NTSB also recommended that child transportation providers: "Inform your members about the circumstances of the accidents discussed in this special investigation report and urge that they use buses built to Federal school bus structural standards or the equivalent to transport children. (H–99–25)" The NTSB made these recommendations after investigating four crashes involving buses that did not meet NHTSA's school bus standards that resulted in the deaths of eight children, one adult, and injuries to 36 people.

IV. How Did This Rulemaking Begin?—Rabun-Gap Nacoochee School Petition

Rabun-Gap Nacoochee School of Rabun-Gap, Georgia (Rabun) petitioned us to create a new motor vehicle type classification known as the "school activity bus." Rabun is a private school that offers education from Grades 6 through 12.

Specifically, Rabun petitioned us for the following:

- Create an official "category" of school buses to be called "school activity buses" that consists of buses that are used for transporting school children to or from school-related activities, but are not used to transport children between home and school. Require that the classification "school activity bus" be displayed on the vehicle certification label. (49 CFR 576.4(g)(7) and 49 CFR 568.4(a)(6).)
- Exclude school buses that meet the criteria for this new category from the requirement for School Bus Warning Lights at 49 CFR part 571.108, S5.1.4. (Federal Motor Vehicle Safety Standard No. 108, *Lamps, reflective devices, and associated equipment.*)
- Exclude school buses that meet the criteria for this new category from the requirement for Stop Signal Arms at 49 CFR part 571.131 (Federal Motor Vehicle Safety Standard No. 131, *School Bus Pedestrian Safety Devices.*)
- Provide an alternative to passenger seating and crash protection so that buses meeting the criteria for this new category may either meet the compartmentalization requirements of 49 CFR 571.222, *School Bus Passenger Seating and Crash Protection* (Standard No. 222), or be equipped with either an "acceptable" passive restraint system (other than compartmentalization) or seat belts for each designated seating position.
- Require buses meeting the criteria for this new category to provide approximately 18 inches of seat [seating] width for each designated seating position. In a letter dated March 26, 2001, NHTSA granted Rabun's petition for rulemaking.

V. Notice of Proposed Rulemaking—What Is the Multifunction School Activity Bus?

The following describes the proposed FMVSS features of a "multifunction school activity bus" that would distinguish it from other school buses and a "bus" such as a 15-passenger van. We also discuss the extent to which we propose to adopt requests in Rabun's petition for rulemaking. For those requests that we are not proposing to adopt, we explain why we are not doing so.

A. Vehicle Classification

Petitioner Rabun asked that the proposed new vehicle be called a "school activity bus." We believe that a more generic name is needed because we believe that the proposed type of school bus would be used for more than school activity trips. As earlier discussed, we are proposing the new vehicle classification with the expectation that this new school bus type would be used by coordinated transportation systems and other types of transportation service, such as Head Start and day care. "Coordinated transportation" is a term used by the transit community to signify that the transportation is coordinated among all user transportation organizations. These services usually involve social services transportation including senior citizens and/or Head Start. We propose to call the new vehicle a "multifunction school activity bus" (MFSAB), a term that does not necessarily imply a use limited to school activity trips.

Petitioner Rabun asked that the classification "school activity bus" be required to be displayed on the vehicle certification label so that its intended use is clearly stated. Rabun recommended that 49 CFR 567.4(g)(7) be amended to require this vehicle type to be listed on the certification label. Rabun also recommended that the incomplete vehicle document required by section 568.4(a)(6) be amended to require the vehicle classification. The agency notes that a vehicle's classification, as determined in accordance with the definitions in 49 CFR part 571.3 *Definitions*, is already required to be on the vehicle's certification label and on any incomplete vehicle document. Although Rabun asked us to do so, the agency believes that it is not necessary to propose to amend parts 567 and 568 to provide another example of a type classification.

B. Must Meet Most School Bus Standards

As a type of bus, the proposed "multifunction school activity bus" would be required to meet all the FMVSSs applicable to a "bus." As a type of school bus, it would also have to meet provisions in the following FMVSSs applicable to school buses:

Standard No. 105, *Hydraulic and electric brake system*, requires school buses with hydraulic brakes to stop in shorter distances than other vehicle types;

Standard No. 111, *Rearview mirrors*, requires the school bus driver to be able to see, either directly or through a system of mirrors, certain areas in front of and along both sides of the school bus;

Standard No. 217, *Bus emergency exits and window retention and release*, specifies means of readily accessible emergency egress, makes the emergency exits easier for children to use and requires increased outside conspicuity, to aid in nighttime evacuation;

Standard No. 220, *School bus rollover protection*, specifies minimum strength requirements for school bus roofs, to reduce the likelihood of roof collapse in the event of a rollover, and requires that emergency exits (except roof exits) be operable after the roof is subjected to forces that can be encountered in rollovers;

Standard No. 221, *School bus body joint strength*, specifies minimum strength requirements for body panel joints, to improve the structural integrity of the passenger compartment, and to reduce the likelihood of lacerative injuries to occupants caused by the sharp edges of body panels that tear loose in crashes;

Standard No. 222, *School bus passenger seating and crash protection*, specifies seating restraining barrier and impact zone requirements for school buses, relying on compartmentalization between well-padded and well-constructed energy-absorbing seats to provide occupant protection, and specifies requirements for wheelchair restraint systems;

Standard No. 225, *Child restraint anchorage systems*, establishes requirements for child restraint anchorage systems (except school buses do not have to meet the requirement for vehicles to be equipped with tether anchorages);

Standard No. 301, *Fuel system integrity*, specifies requirements for the integrity and security of the entire fuel system, including the fuel tanks, fuel pump, fuel delivery system, emission controls, lines, and connections in severe barrier impact crash tests; and

Standard No. 303, *Fuel system integrity of compressed natural gas vehicles*, specifies, for school buses using compressed natural gas, requirements for the integrity and security of the entire fuel system and connections in severe barrier impact crash tests.

In Section D., below, we explain why, despite Petitioner Rabun's request, we have decided not to propose to exclude the "multifunction school activity bus" from Standard No. 222, *School bus passenger seating and crash protection.*

C. Would Not Be Required To Meet S5.1.4 of Standard No. 108 and Standard No. 131

Petitioner Rabun seeks relief from the traffic control devices that the FMVSSs specify for school buses. These traffic control devices are the 4-way/8-way alternating flashing warning lamps specified in Standard No. 108 and the stop arm specified in Standard No. 131.

Petitioner Rabun said that regular route school buses that are used for transportation between home and school are required by State regulations to utilize the warning lights and stop arms when stopping on a highway to receive and discharge student passengers along the route. The agency notes that in every State, motorists are required to stop and refrain from passing a school bus while those traffic control warning devices are activated. A survey conducted by the National Association of State Directors of Pupil Transportation Services indicated that most States require the use of these devices when a bus is receiving or discharging student passengers along a street or highway.

Petitioner Rabun said that when school buses are engaged in activity trips, student passengers are typically transported from the school to the activity site and returned to the school. Rabun said that it would be very unusual for the bus to stop along a highway to receive or discharge passengers during one of these trips. Rabun stated that when a school bus is engaged in an activity trip, it would normally be prohibited by State law from using the school bus warning lights and stop signal arm, which are unique to school buses.

The agency notes that in many cases, the same is true for Head Start buses and day-care buses that provide to and from school transportation as well as buses used by coordinated transportation systems for to and from school and Head Start transportation. Child day-care buses normally would load students at their facility and drop them off at the school, with no stops along the way to drop off or pick up passengers.

DHHS's regulation, *Head Start Transportation* (at 45 CFR part 1310) generally requires that "each agency providing transportation services must ensure that in planning fixed routes the safety of the children being transported is the primary consideration." (45 CFR section 1310.20(a)). Among its specific requirements are: "When possible, stops must be located to eliminate the need for children to cross the street or highway to board or leave the vehicle" (45 CFR section 1310.20(b)(5)) and "If children must cross the street before boarding or after leaving the vehicle because curbside drop off or pick up is impossible, they must be escorted across the street by the bus monitor or another adult." (45 CFR section 1310.20(b)(6)).

The agency agrees with Rabun that the alternating flashing warning lights and stop-arm are traffic control devices and that their use on a bus is generally prohibited by State law except when the bus is receiving or discharging student passengers along a roadway. The agency is not aware of any State that permits using these school bus traffic control devices on trips other than ones between school and home.[1]

The agency tentatively concludes that 4-way/8-way alternating flashing lights and stop-arms are not needed if a school bus is not going to be used to transport students between home and school. The agency does not believe that there are any safety benefits from requiring stop-arms and alternating flashing lights on school buses that are solely used for trips during which State law prohibits their use.

Some States do not allow any vehicle other than a school bus that is painted yellow to have 4-way/8-way alternating flashing lights and stop arms. Other States, for example, Georgia, Maryland, and Indiana, require that the alternating flashing lights and stop-arms be completely removed from the buses if they are used for purposes other than transporting school children to and from home.

D. Would Be Required To Meet School Bus Seating Requirements

Petitioner Rabun argued that the agency should provide an alternative to school bus passenger seating and crash protection so that school buses certified as MFSABs may meet either Standard No. 222, *School bus passenger seating and crash protection* or be excluded from compartmentalization requirements, provided that they are equipped with an "acceptable" passive restraint system, or that they are equipped with occupant seat belt restraints for each designated seating position. Rabun further argued that the new school bus type should provide approximately 18 inches of seat width (seating room) for each designated seating position. Rabun's rationale was that most new vehicles have the option of providing either a passive occupant protection system or an active occupant protection system. Only a school bus, however, must meet the passive occupant restraint system specified in Standard No. 222.

Rabun stated that the logic behind requiring passive systems on school bus routes is not difficult to understand. However, the petitioner believes that the wisdom of this logic is coming under increasing scrutiny. Rabun stated that, in their search for an activity bus, school officials seek a crash protection alternative to compartmentalization, the construction techniques that give the school bus its passive occupant restraint capability. Rabun stated that purchasers of this new bus type would be looking for a passenger seating system that would provide comfort for trips of several hours' duration and would be comfortable for tall and/or large passengers who have difficulty fitting into the typical school bus seat bench and the narrow space provided for knees.

The agency does not agree with Rabun's reasons for not requiring the MFSAB to meet Standard No. 222. Rabun's belief that manufacturers of most new vehicles have the option of providing either a passive occupant protection system or an active occupant protection system is incorrect. Except for motorcycles, all motor vehicles with a gross vehicle weight rating (GVWR) of 4,536 kg (10,000 pounds) or less are required to have a type I (lap belt) or a type II (lap and shoulder belt) at each designated seating position (active system). In addition to the seat belt requirement, passenger cars, trucks, and multipurpose passenger vehicles with a GVWR of 3,863 kg (8,500 pounds) or less and an unloaded vehicle weight of less than 2,500 kg (5,500 pounds) are required to have airbags (passive system) at the front outboard seating positions. Multipurpose passenger vehicles with a GVWR greater than 4,536 kg (10,000 pounds) are required to have seat belts at all seating positions. Only buses and school buses with a

[1] It is the agency's understanding that some States may prohibit school buses from deploying their stop arms and 4-way/8-way alternating flashing lights when stopped at railroad crossings. Later in this notice, the agency asks whether any State allows or requires use of these traffic control devices when the school bus is stopped at a railroad crossing.

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GVWR over 4,536 kg are not required to have seat belts for all seating positions.

For the following reasons, we also do not agree with Rabun's argument that the seating requirements specified in Standard No. 222 do not allow for comfort. Nothing in Standard No. 222 prohibits school bus seats from reclining. Standard No. 222's test procedure at S6.4 states: "*Seat back position.* If adjustable, a seat back is adjusted to its most upright position." Standard No. 222 is a performance standard, not a design standard. Therefore, as long as the MFSAB manufacturer certifies (and ensures) that its MFSAB will meet Standard No. 222 when NHTSA tests the MFSAB, nothing in Standard No. 222 would have the effect of prohibiting extra padding or leather on school bus seats.

Rabun is apparently under the impression that the Standard No. 222 specifies that school bus seats be close together, which is not the case. At present, nothing prohibits school buses from being ordered with maximum seat spacing that provides for more leg room. The seat spacing requirements for school buses over 4,536 kg (10,000 pounds) gross vehicle weight rating (GVWR) allows for comfortable seating. Standard No. 222 at S5.2 specifies that the seats be spaced no further than 610 mm (24 inches) from the seating reference point to the seat back or restraining barrier in front of it. In practice, however, in order to maximize seating capacity in the school bus, schools and school districts order most school buses used on regular routes with seat spacing of approximately 482.6 to 508 mm (19 to 20 inches) from the seating reference point.

S5.2 in effect allows for approximately 711.2 to 787.4 mm (28 to 31 inches) for seat spacing pitch distance (the distance between the backs of two school bus seats, where one seat is placed directly in front of the other seat). The 787.4 mm (31 inches) seat spacing is similar to that found on coach-type intercity buses. School bus manufacturers Thomas Built Buses, and Blue Bird Body Company both offer activity seats in school buses that are comfortable on long trips. In addition to the school bus manufacturers, Freedman Seating Company, a seat manufacturer, also offers activity-seating systems that are designed for comfort. The Freeman activity seating systems have seat pitch spacing of approximately 787.4 mm (31 inches), which should provide adequate knee room.

We note that there are no parallel spacing requirements between rows (to provide knee room) for school buses with a GVWR of 4,536 kg (10,000 pounds) or under.

Rabun argued that S4.1 of Standard No. 222 should be modified so that seating positions on buses are wider. Rabun suggested that the number of seating positions in a bench seat should be calculated by dividing the bench seat width by 457.2 mm (18 inches) (for each seating position). Rabun believes that its recommended change would also eliminate the situation of having a bench seat on a school activity bus equipped with three sets of seat belts when only two typical teenage passengers will fit on the seat.

The agency notes that Rabun's argument for considering the minimum seat width of each designated seating position to be 457.2 mm (18 inches) appears to be based on the misconception that the number of seating positions is an exact figure that must be the same as the number of seats derived from the formula NHTSA uses to determine loading forces when testing school bus seats. Rabun also appears to believe that school bus users are bound by the number of seating positions determined under Standard No. 222, and that that Standard unduly restricts the amount of seat width allowed for persons sitting in the school bus seat. As explained below, we do not agree with Rabun's understanding of minimum seat width requirements.

Standard No. 222 requires that seats in school buses be able to withstand specified minimum/maximum forces, which are intended to ensure that the seats (and restraining barriers) are capable of providing acceptable levels of crash protection to seated occupants who may impact structures within the bus during a crash or sudden driving maneuver. In order to determine the amount of force to apply to a seat during testing, Standard No. 222 (at S4.1) specifies that the width of the seat is divided by 381 and rounded to the nearest whole number. That divisor is used because 381 mm (15 inches) is the seat width that is necessary to accommodate children and younger teenagers. For example, a 990.6 mm (39 inches) wide seat (the most popular width for school bus seats) divided by 381 equals 2.6, which is rounded up to 3. The loading to which the seat is subjected for the performance tests is the specified loading multiplied by 3.

The logic behind this procedure is to subject school bus seats to force levels sufficiently high enough to ensure that the seat is unlikely to fail as a result of a severe crash. The force derived in the above example by rounding 2.6 up to 3 for a 990.6 mm (39 inches) seat is necessarily a greater force than would be exerted if only two occupants were in the seat. Subjecting seats to this increased loading provides an increased margin of safety for school bus seats.

The agency has addressed the seating width issue in the past. In an October 9, 1990 **Federal Register** document (55 FR 41117)(No DOT Docket No.), we denied a petition for rulemaking asking that Standard No. 222 be amended by specifying the seating capacity of school bus seats. The petitioner sought to have the agency revise the formula discussed above by providing for dividing the seating width by 15 (seat width in inches) and ignoring the remainder. Thus, a 39-inch wide seat would be considered as having two seating positions. The petitioner asserted that the change was needed to avoid overcrowding on school buses.

In denying the petition, we explained that the passenger capacity for school buses is not based on the formula in Standard No. 222 for determining the test loading for seats. The formula in Standard No. 222 is not to be used to infer the number of seating positions on a school bus seat bench. It is not clear, given the wide range of ages and sizes of students carried on school buses (from pre-primary through high school football teams), how one could specify a meaningful requirement for passenger seating capacity that would be appropriate for all sizes of students. For example, a school bus seat that would easily accommodate three small children may only be able to accommodate two high school seniors.

We emphasize that Standard No. 222 is not intended to require or suggest that a school bus seat bench be occupied by the maximum number of persons determined under S4.1 for the purposes of calculating test forces. Instead, by imposing loads during testing that are representative of severe crash conditions, the Standard is intended to ensure that school bus seats and restraining barriers will perform safely and effectively. This is the safety margin discussed above. Standard No. 222 addresses the issue of potential overcrowding by including this safety margin.

The agency recognizes some state laws require that children participating in Head Start Programs must, because of their age, size or weight, use child restraint systems while being transported. The agency strongly recommends that Head Start Programs utilize MFSABs equipped either with seat belt systems or with lower anchors and tether for children (LATCH) systems to attach the children restraint systems used to transport these children. We are currently reviewing

research test results to develop a proposal regarding the installation of seat belt systems and/or LATCH systems in school buses.

E. Relationship of This Rulemaking to Laws and Policies of Other Federal Agencies

1. U.S. Department of Health and Human Services—Head Start Bureau

If this proposal were made final, it would create a subcategory of school buses that would qualify as "allowable alternate vehicles" under DHHS" Head Start regulations, 45 CFR 1310.12, and thus could be used to transport Head Start Program participants.

2. Federal Transit Administration

If made final, this proposal would specify a vehicle type, the MFSAB, that would aid the efforts of Regional Transit Authorities (which must serve the general public) and Head Start both to meet State law and to satisfy the limitations on the availability of funding from the FTA. Since the MFSABs would not have the school bus flashing lights and stop arms, it is NHTSA's hope that transit authorities and other transportation providers could readily obtain FTA funding to buy MFSABs, provided that such vehicles are not used as school buses to provide home-to-school service. Further, as noted above, in many States, the flashing lights and stop arms are permitted only on "school buses" (as defined by State law).

3. National Transportation Safety Board

By making available a category of school bus that is potentially slightly cheaper than the conventional school bus, NHTSA believes that the final adoption of this proposal would aid child transportation providers in implementing the NTSB's recommendation that children be transported in buses that "meet the school bus structural standards or the equivalent set forth in *49 Code of Federal Regulations Part 571.*"

F. Additional Issues

We also seek responses to the following questions.

1. In order to get a better estimate about the number of vehicles that would be affected by this rulemaking, NHTSA seeks the following information. What is the total number of MFSABs that would be sold each year if this proposed rule were made final? Would the adoption of this proposal lead to any change in the total sales of the existing smaller (6,804 kg (15,000 pound) and under) van-based school bus (with the flashing lights and stop arm)?

2. The agency proposes to limit this new subcategory of school bus to the smaller school buses that are generally used by day-care, Head Start and schools (private and public) for activity trips. NHTSA proposes the size limitation on the new school bus subcategory to reduce the possibility of misuse, *i.e.*, the possibility that schools would purchase school buses without traffic control devices as a means of saving money on buses used to pick children up from and drop them off at home. Current van-based school buses have a gross vehicle weight rating (GVWR) between less than 4536 kg (10,000 pounds) to 6804 kg (15,000 pounds). Alternatively, the agency seeks comment on whether the proposed GVWR restriction should be adjusted to include larger school buses.

3. Should MFSAB manufacturers be required to place a prominent warning label near the front of the occupant compartment of their vehicles to warn the driver and passengers that the bus is not intended to be used to pick children up from and drop them off at places such as home and bus stops? If you believe a label should be used, what standardized wording should be specified to provide that warning? Should any size or other appearance requirements be specified? For example, should such a label be required to have the appearance of the air bag warning labels required by FMVSS 208, Occupant Crash Protection, 49 CFR 571.208?[2] Where should the label be placed so that it is visible to both drivers and passengers?

4. It is the agency's belief that most States prohibit school buses from deploying their stop arms and operating their 4-way/8-way alternating flashing lights when stopped at railroad crossings. NHTSA seeks information on whether any States allow or require the use of the 4-way/8-way alternating flashing lights on school buses stopped at railroad grade crossings.

VI. Leadtime

We propose that, if made final, the rule take effect thirty days from the date the final rule appears in the **Federal Register**. Since the fact that Rabun has petitioned us for rulemaking has become publicly known, school bus manufacturers and their customers, child transportation providers, are anticipating this rulemaking. To meet the expected demand for multifunction school activity buses, we believe manufacturers should be permitted to manufacture, and certify them as soon as possible. Nothing in this proposed rule would require any motor vehicle manufacturer to manufacture the new subcategory of school buses proposed in this NPRM. We do not believe that manufacturing multifunction school activity buses would involve any new technology, or performance specifications that manufacturers cannot meet with existing design, tooling, or manufacturing capabilities. We believe that in order to manufacture a multifunction school activity bus, manufacturers need do nothing more to existing school buses than to simply not install the signal arms and 4-way/8-way alternating flashing lights. If enough interest from manufacturers is expressed, we may provide for optional early compliance with the final rule.

VII. Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), provides for making determinations whether a regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and to the requirements of the Executive Order. The Order defines a "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

We have considered the impact of this rulemaking action under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed by the Office of Management and Budget under E.O. 12866, "Regulatory Planning and Review." The rulemaking action is also not considered to be significant under the Department's Regulatory Policies

[2] These labels have a heading area and a message area. The heading area is yellow with the word "warning" and the alert symbol (consisting of an exclamation mark inside a triangle) in black. The message area is white with black text.

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and Procedures (44 FR 11034; February 26, 1979).

For the following reasons, we believe that this proposal, if made final, would not increase vehicle manufacturers' costs to provide school buses for uses other than transportation of students between home and school. In order to manufacture a "multifunction school activity bus," vehicle manufacturers need only manufacture a school bus and omit including the 4-way/8-way alternating flashing lights and stop arm.

For the following reasons, depending on how the new "multifunction school activity bus" is priced, NHTSA believes that organizations that at present purchase school buses for transportation purposes other than to and from home to school might realize a cost benefit as a result of this rulemaking.

As earlier discussed, this notice proposes a subcategory of school buses that would not be subject to the requirements for flashing 4–way/8–way alternating flashing lights or a stop arm. Estimates supplied by Blue Bird Body Company (a school bus manufacturer) indicate that the average cost of the 4-way/8-way alternating flashing lights is approximately $417 per school bus and the average cost of the stop-arm is approximately $580. Estimates supplied by Thomas Built Buses (another school bus manufacturer) indicate that the cost for the 4-way/8-way alternating flashing lights ranges from $175 for the least expensive 4-way system to $2,300 for the most expensive 8-way system and the cost for stop-arms ranges from $250 to $720. Based on those figures, the cost of adding stop-arms and alternating flashing lights ranges from $425 to $3020 per school bus.

The Annual Fact Book published by *School Transportation News* reports a strong increase in sales of "Type A" school buses (approximately 4,536 kg (10,000 pounds) GVWR); increasing from 6,389 in the 1995–1996 school year to 10,475 in the 1998–1999 school year. The agency notes that from 1990 through 1997, approximately 6,000 "Type A" school buses were sold each year. The agency believes that the increase in the sales of small school buses for years following 1997 is mostly due to purchases by organizations such as day care centers and Head Start, which provide child transportation. The agency does not have any data to indicate what percentages of the "Type A" school buses are sold to organizations that provide transportation other than between home and school. We note that since approximately 6,000 small "Type A" school buses were sold per year prior to 1997, a reasonable assumption would be that about 4,000 of these buses are sold to day care centers and others for transportation purposes other than to and from home to school.

Based on the cost figures discussed above and the conservative estimate of 4,000 Type A school buses sold each year, we estimate that the adoption of this proposal would save child transportation providers approximately $2.6 million dollars per year in the small "Type A" school bus market. However, this estimate is based on the assumption that school bus manufacturers would reduce the prices of the "multifunction school activity bus" by the amount of money saved as a result of not having to install 4-way/8-way alternating flashing lights or stop arms on those vehicles.

Because the economic impacts of this proposal are so minimal (*i.e.*, the annual effect on the economy is less than $100 million), no further regulatory evaluation is necessary.

B. Executive Order 13132 (Federalism)

Executive Order 13132 requires us to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, we may not issue a regulation with Federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or unless we consult with State and local governments, or unless we consult with State and local officials early in the process of developing the proposed regulation. We also may not issue a regulation with Federalism implications and that preempts State law unless we consult with State and local officials early in the process of developing the proposed regulation.

This proposed rule would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The reason is that this proposed rule, if made final, would apply to motor vehicle manufacturers, not to the States or local governments. This proposed rule, if made final, would assist child transportation providers by making available a school bus that would meet the traffic control laws of States and local governments. Thus, the requirements of Section 6 of the Executive Order do not apply to this proposed rule.

C. Executive Order 13045 (Economically Significant Rules Disproportionately Affecting Children)

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental, health or safety risk that NHTSA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by us.

This proposed rule is not subject to the Executive Order because it is not economically significant as defined in E.O. 12866 and does not involve decisions based on environmental, health or safety risks that disproportionately affect children. However, this proposed rule, if made final, would make a school bus vehicle type available for transportation purposes other than to and from home to school. Although we do not have any estimates of the extent or nature of the practice throughout the country, the agency is informed by the National Child Care Association that at present, in many cases, children provided transportation to and from child care facilities are transported in 15-passenger vans or other buses that do not meet the special requirements for school buses. If this proposed rule were made final, the chances that children would be transported in MFSABs, rather than in buses that are not school buses, would increase and the children's safety would thereby be enhanced.

D. Executive Order 12778 (Civil Justice Reform)

Pursuant to Executive Order 12778, "Civil Justice Reform," we have considered whether this proposed rule would have any retroactive effect. We conclude that it would not have such an effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to

the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use.

49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

E. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule would not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule would not have a significant economic impact on a substantial number of small entities.

The agency Administrator has considered the effects of this rulemaking action under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) and certifies that this proposal would not have a significant economic impact on a substantial number of small entities. We believe that if this proposed rule were made final, small businesses, small nonprofits and small local governments might benefit slightly because they would be able to purchase a school bus without traffic control devices on them, potentially saving $977 per school bus (using figures provided by Blue Bird Body Company), and saving small entity providers of transportation other than to and from home to school transportation approximately $3.9 million dollars per year. This cost savings assumes that school bus manufacturers (some of which are small businesses) would pass on to customers the cost savings resulting from not installing the traffic control devices on the school buses.

Accordingly, the agency believes that this proposal would, if made final, have a small beneficial cost effect on small motor vehicle manufacturers considered to be small business entities, on small businesses (that presently transport children in school buses with the 4-way/8-way alternating flashing lights and stop arms) providing transportation other than to and from home to school, or child care, small nonprofits, and small local governmental entities.

F. National Environmental Policy Act

We have analyzed this proposal for the purposes of the National Environmental Policy Act and determined that it would not have any significant impact on the quality of the human environment.

G. Paperwork Reduction Act

NHTSA has determined that, if made final, this proposed rule would not impose any "collection of information" burdens on the public, within the meaning of the Paperwork Reduction Act of 1995 (PRA). This rulemaking action would not impose any filing or recordkeeping requirements on any manufacturer or any other party.

H. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272) directs us to use voluntary consensus standards in our regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies, such as the Society of Automotive Engineers (SAE). The NTTAA directs us to provide Congress, through OMB, explanations when we decide not to use available and applicable voluntary consensus standards.

After conducting a search of available sources, we have determined that there are not any applicable voluntary consensus standards.

I. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires Federal agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million in any one year (adjusted for inflation with base year of 1995). Before promulgating a NHTSA rule for which a written statement is needed, section 205 of the UMRA generally requires us to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows us to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if we publish with the final rule an explanation why that alternative was not adopted.

This proposal would not result in costs of $100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector. Thus, this proposal is not subject to the requirements of sections 202 and 205 of the UMRA.

J. Plain Language

Executive Order 12866 requires each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

- Have we organized the material to suit the public's needs?
- Are the requirements in the rule clearly stated?
- Does the rule contain technical language or jargon that is not clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make this rulemaking easier to understand?

If you have any responses to these questions, please include them in your comments on this NPRM.

K. Regulotion Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

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Comments

How Do I Prepare and Submit Comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long. (49 CFR 553.21). We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES.**

You may also submit your comments to the docket electronically by logging onto the Dockets Management System website at *http://dms.dot.gov.* Click on "Help & Information" or "Help/Info" to obtain instructions for filing the document electronically.

How Can I Be Sure That my Comments Were Received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How Do I Submit Confidential Business Information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT.** In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES.** When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation. (49 CFR part 512.)

Will the Agency Consider Late Comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES.** To the extent possible, we will also consider comments that Docket Management receives after that date. If Docket Management receives a comment too late for us to consider it in developing a final rule (assuming that one is issued), we will consider that comment as an informal suggestion for future rulemaking action.

How Can I Read the Comments Submitted by Other People?

You may read the comments received by Docket Management at the address given above under **ADDRESSES.** The hours of the Docket are indicated above in the same location.

You may also see the comments on the Internet. To read the comments on the Internet, take the following steps:

1. Go to the Docket Management System (DMS) Web page of the Department of Transportation (*http://dms.dot.gov/).*
2. On that page, click on "search."
3. On the next page (*http://dms.dot.gov/search/*), type in the four-digit docket number shown at the beginning of this document. Example: If the docket number were "NHTSA–1998–1234," you would type "1234." After typing the docket number, click on "search."
4. On the next page, which contains docket summary information for the docket you selected, click on the desired comments. You may download the comments. Although the comments are imaged documents, instead of word processing documents, the "pdf" versions of the documents are word searchable.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, it is proposed that the Federal Motor Vehicle Safety Standards (49 CFR part 571), be amended as set forth below.

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

2. Section 571.3 is amended by adding a definition of "Multifunction school activity bus" to paragraph (b), in the appropriate alphabetical order, to read as follows:

§ 571.3 Definitions.

* * * * *

(b) * * *

Multifunction school activity bus (MFSAB) means a school bus with a gross vehicle weight rating of 6,804 kilograms (15,000 pounds) or less whose purposes do not include transporting students to and from home.

* * * * *

3. Section 571.108 is amended by revising the introductory sentence in S5.1.4 to read as follows:

§ 571.108 Standard No. 108, Lamps, reflective devices, and associated equipment.

* * * * *

5.1.4 Except for multifunction school activity buses, each school bus shall be equipped with a system of either:

* * * * *

4. Section 571.131 is amended by revising S3 to read as follows:

§ 571.131 Standard No. 131, School bus pedestrian safety devices.

* * * * *

S3. *Application.* This standard applies to school buses other than multifunction school activity buses.

* * * * *

Issued on: October 29, 2002.

Noble N. Bowie,

Acting Associate Administrator for Rulemaking.

[FR Doc. 02–27996 Filed 11–4–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Transportation Security Administration

49 CFR 1520, 1540, 1542, 1544, 1546, and 1548

RIN 2110–AA15 and 2110–AA16

Security of Checked Baggage on Flights Within the United States; Certification of Screening Companies; Notice of Rulemaking Status

AGENCY: Transportation Security Administration (TSA), DOT.

ACTION: Notice of rulemaking status.

SUMMARY: This notice provides information on the status of two notices of proposed rulemaking (NPRMs), entitled "Security of Checked Baggage on Flights Within the United States" and "Certification of Screening Companies," which were published by the Federal Aviation Administration (FAA) but now are within TSA's authority as a result of the passage of the Aviation and Transportation Security Act. On February 22, 2002, TSA published a final rule transferring FAA's rules governing civil aviation security to TSA. The purpose of this document is to inform the public that TSA will take no further action on these two NPRMs issued by FAA.

FOR FURTHER INFORMATION CONTACT: Angela Anderson, TSA–2 Chief Counsel, Transportation Security Administration, 400 Seventh Street, SW., Washington, DC 20590; telephone (202) 385–1641.

SUPPLEMENTARY INFORMATION.

Background

On November 19, 2001, Congress enacted Public Law 107–71, 115 Stat. 597, the Aviation and Transportation Security Act (ATSA), which transferred authority over civil aviation security from FAA to TSA. In section 101(f), ATSA transferred FAA's authority in Chapter 449, Title 49 United States Code (U.S.C.), to issue aviation security regulations to TSA. On February 22, 2002, the TSA and FAA published a final rule titled "Civil Aviation Security Rules" (67 FR 8340), transferring the regulations at 14 CFR parts 107, 108, 109 and 191 to 49 CFR parts 1540, 1542, 1544, 1548 and 1520 and §§ 129.25 and 129.26 to part 1546.

The purpose of this notice is to inform the public that TSA will take no further action on the two outstanding FAA NPRMs described below.

Security of Checked Baggage on Flights Within the United States

On April 19, 1999, the FAA published an NPRM titled, "Security of Checked Baggage on Flights Within the United States" (64 FR 19220). The proposed rule would have required each aircraft operator with an FAA-approved security program to use the Computer-Assisted Passenger Screening (CAPS) [1] system to select passengers (selectees) whose checked baggage would be subjected to additional security measures. The proposed rule also would have required aircraft operators to use FAA-certified explosives detection system (EDS) equipment, where available, to screen selectee baggage, or conduct 100 percent passenger-to-baggage matching (PBM). The proposed rule would have applied to each scheduled flight segment within the United States when using aircraft having a seating configuration of 61 or more passenger seats.

The FAA received 605 comments on the NPRM. These comments can be viewed by going to the search function of the Department of Transportation's electronic Docket Management System (DMS) Web page (*http://dms.dot.gov/search*) and typing in the last four digits of the docket number: FAA–1999–5536.

Certification of Screening Companies

On January 5, 2000, the FAA published an NPRM titled, "Certification of Screening Companies" (65 FR 560). The proposed rule would have required companies that perform aviation security screening for air carriers to be certificated by the FAA and meet enhanced requirements. It would have increased qualifications for managers, instructors, and screeners, and would have required the use of threat image projection (TIP) for all X-ray and EDS equipment. The proposed rule also would have made screening companies directly accountable to the FAA, with air carriers continuing to oversee the operations of their screening companies.

The FAA received 31 comments on the NPRM. These comments can be viewed by going to the search function of the Department of Transportation's electronic Docket Management System (DMS) Web page (*http://dms.dot.gov/search*) and typing in the last four digits of the docket number: FAA–1999–6673.

TSA Determination To Take No Further Action

The ATSA mandated sweeping changes to security requirements for the civil aviation system, including the transfer of responsibility for passenger and baggage screening from the private sector to the federal government. *See* 49 U.S.C. 114. As a result of this change, the two NPRMs discussed above have become obsolete.

Because the two FAA NPRMs addressed civil aviation security under parts 108, and 129, responsibility for those proposed changes also transferred to TSA. The Screening Company NPRM also proposed to add a new part 111 that would have implemented requirements for screening company security. ATSA changed the screening requirements in section 110(b), codified at 49 U.S.C. 44901(a), which now require Federal employees to carry out the screening; and in section 108 which requires establishment of a pilot program for some screening to be done by private companies under contract to TSA. With all of these changes being made TSA has no need to regulate screening companies using the proposed rule. For TSA employees who screen, TSA will use internal policies for screening. We will use contract provisions to govern the screening conducted by contractors under the pilot program.

The ATSA also requires that all checked baggage, not just baggage checked by CAPPS selectees, be inspected using explosive detection systems. *See* 49 U.S.C. 44901(d), as amended by ATSA section 110(b). Further, Federal employees must do the inspection. TSA is working to install equipment and to hire the screeners to meet these requirements. In addition, TSA must use CAPPS to evaluate all passengers before boarding, not only those who are checking bags. *See* 49 U.S.C. 44903(i)(2). This requirement is now being met. Accordingly, the proposals in the NPRM are obsolete, and the rule is not needed for TSA to use CAPPS fully and effectively.

For these reasons, TSA will take no further actions on these two NPRMs.

Issued in Washington, DC, on October 23, 2002.

Francine J. Kerner,

Chief Counsel.

[FR Doc. 02–27842 Filed 11–4–02; 8:45 am]

BILLING CODE 4110–62–P

[1] The NPRM used the term "Computer-Assisted Passenger Screening" system but the term used to describe this system has since been changed to Computer-Assisted Passenger Prescreening System (CAPPS).

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Notices

Federal Register
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Tuesday, November 5, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 00–090–1]

Availability of Pest Risk Assessment for the Importation of Unshu Oranges From the Republic of Korea into Citrus Producing States of the Continental United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of availability and request for comments.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has prepared a pest risk assessment relative to a proposed rule currently under consideration that would allow the importation of Unshu oranges from the Republic of Korea into citrus producing States of the continental United States. We are making the pest risk assessment available to the public for review and comment.

DATES: We will consider all comments that we receive on or before January 6, 2003.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 00–090–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 00–090–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 00–090–1" on the subject line.

You may read any comments that we receive on the pest risk assessment in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: Dr. Gary Cave, Center for Plant Health Science and Technology, PPQ, APHIS, 1017 Main Campus Drive, Suite 2500, Raleigh, NC 27606–5202; (919) 513–2127.

SUPPLEMENTARY INFORMATION:

Background

Under the regulations in "Subpart—Citrus Fruit" (7 CFR 319.28, referred to below as the regulations), Unshu oranges from the Republic of Korea may be imported, under certain conditions, into any area in the United States except American Samoa, Arizona, California, Florida, Louisiana, the Northern Mariana Islands, Puerto Rico, Texas, and the U.S. Virgin Islands, which are citrus-producing States.

At the request of the Government of the Republic of Korea, the Animal and Plant Health Inspection Service (APHIS) is considering amending the regulations to allow the importation of Unshu oranges from the Republic of Korea into citrus-producing States in the continental United States. To evaluate the risks associated with the importation of Unshu oranges from the Republic of Korea as specified in the Korean Government's request, APHIS has drafted a pest risk assessment entitled "Expansion of the Importation of Fresh Unshu Orange Fruit (*Citrus reticulata* Blanco var. *unshu* Swingle) from the Republic of Korea into Citrus Producing States of the Continental United States' (October 4, 2002). This notice solicits public comments on the pest risk assessment.

You may view the pest risk assessment on the Internet at *http://www.aphis.usda.gov/ppq/pra/*, or in our reading room (information on the location and hours of the reading room is provided under the heading **ADDRESSES** at the beginning of this notice). You may also request a copy from the person listed under **FOR FURTHER INFORMATION CONTACT.**

Authority: 7 U.S.C. 450, 7711–7714, 7718, 7731, 7732, and 7751–7754; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 30th day of October 2002.

Bobby R. Acord,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–28074 Filed 11–4–02; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Tahoe National Forest; Sierra County, CA; Cottonwood Fire Vegetation Management Project

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an Environmental Impact Statement.

SUMMARY: The USDA Forest Service, Tahoe National Forest, gives notice of the Agency's intent to prepare an Environmental Impact Statement (EIS) to disclose the environmental effects of applying registered herbicides to approximately 13,500 acres of National Forest System land. The application will reduce competition from overgrown vegetation that is adversely affecting the survival and growth of conifer seedlings on the Sierraville Ranger District. The project proposes to apply glyhosate (trade name Accord or equivalent) and triclopyr (trade name Garlon 4 or equivalent), using backpack sprayers, in the spring and summer months when herbicide treatments are most effective. The acres identified for application would be treated over a five- to seven-year time period.

The purpose of the project is to help ensure survival, and stimulate vigor and growth of sufficient numbers of conifer seedlings in order to accelerate the development of a biologically and structurally diverse forest. Following a wildfire in 1994 that destroyed much of the forest stand structure, shrub and grass have re-occupied the area, competing with conifer seedlings for limited resources. This competition is prolonging the time it will take for the native conifer forest to re-establish. Restoring the area to a conifer forest sooner will develop a more fire resistant and healthy forest in less time. Alternative, non-herbicide methods to control competing vegetation have been attempted over the past eight years, but success has been limited due to cost and inability to treat enough area. Because of this, the Forest Service believes the least impacting and most cost effective method to reduce competing vegetation is through prudent and careful application of registered herbicides.

DATES: Comments concerning the proposed action should be received by November 19, 2002. The Draft Environmental Impact Statement (DEIS) is expected to be completed in January 2003, and the Final Environmental Impact Statement (FEIS) is expected to be completed in April 2003.

ADDRESSES: Send written comments to Deborah Walker, Sierraville Ranger District, PO Box 95, Sierraville, CA 96126, or by sending electronic mail (e-mail) to *deborahwalker@fs.fed.us*. For further information, mail correspondence to Jeff Leach, NEPA Coordinator, Sierraville Ranger District, PO Box 95, Sierraville, CA 96126.

FOR FURTHER INFORMATION CONTACT: Questions and comments about the proposed action should be directed to Deborah Walker or Jeff Leach at the above address, or by phone at 530–994–3401.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

In 1994, the Cottonwood Fire burned more than 46,000 acres of forest land on the Tahoe and Humboldt-Toiyabe National Forests. In 1995, the Tahoe National Forest prepared an environmental document authorizing the use of manual and mechanical release methods to accelerate conifer growth and development by controlling shrubs, grasses, and forbs. Since that time conifer seedlings have either been planted or naturally regenerated in the area. Even though this area historically supported large conifer trees, the site is now predominately occupied by shrubs, such as snowbrush and manzanita. The project area is considered a Sierra Nevada east-side pine type, where moisture is the most limiting factor in determining plant survival. Shrubs and trees currently occupy the same depth of rooting zone in the soil profile. These particular shrub species have the ability to extract soil moisture more effectively than do the trees, especially under dry conditions. This ability to extract soil water under extremely dry conditions gives shrubs a competitive advantage over young seedlings, so there is a need to control shrubs before tree mortality becomes too severe.

Proposed Action

The proposed action is to:

1. Apply the herbicides glyphosate and triclopyr to selected units in the Cottonwood burn area on a total of 13,500 acres. Treated areas would encompass less than 30% of the total burn area.

2. Include a surfactant to improve the herbicide effectiveness and a colorant to aid in identifying treated areas.

3. Use backpack sprayers to apply the registered herbicides during the spring and summer months.

4. Treat between 1,500 acres and 3,600 acres a year over a five- to seven-year period. Re-treatment may be necessary on up to one-third of the project area, depending on herbicide effectiveness.

5. Treat individual target plants uniformly over the entire area, except near stream channels, where a spot application would be used.

6. Establish a no-treatment zone along all stream channels of 25 feet on either side and around wet areas (seeps, springs, and fens) of 50 feet.

7. Avoid treating areas not productive for growing trees, areas that were unburned or lightly burned, sites that have a predominance of cheatgrass, known sensitive plant occurrences, or areas that have been selected as cover habitat for wildlife species.

Possible Alternatives

Alternatives being considered at this time include: (1) Proposed action; (2) no action alternative that would not implement the proposed action or allow for manual and mechanical release; and (3) continue with manual and mechanical release treatments exclusively. Additional alternatives to this proposal would be based on significant issues identified during the scoping process.

Responsible Official

The District Ranger, Sierraville Ranger District, Tahoe National Forest, is the responsible official making the decision and can be reached at PO Box 95, Sierraville CA 96126. As the responsible official, the District Ranger will document the decision and reasons for the decision in the Record of Decision, which will be published along with the final EIS. That decision will be subject to Forest Service appeal regulations (36 CFR part 215).

Nature of Decision To Be Made

The decision to be made is whether to implement the Cottonwood Fire Vegetation Management Project as described above, modify the proposal in response to an unresolved issue based on comments received during public scoping, or not take any action at this time.

Scoping Process

Public participation is viewed as an integral part of the environmental analysis. The Forest Service will be seeking points of dispute, debate, or disagreement from Federal, State, and local governmental agencies as well as from individuals or organizations that may be potentially interested or affected by the proposed action. A scoping letter will be mailed to persons who have expressed interest in the proposed action based on notification in the Tahoe National Forest Quarterly Schedule of Proposed Actions and by notification through a published legal notice in the *Mountain Messenger*, Downieville, California, and the *Sierra Booster*, Loyalton, California. In addition, persons who provided comment on the Cottonwood Fire Vegetation Management Environmental Assessment (2000) will be mailed a scoping letter.

Comment Requested

This notice of intent initiates the scoping process, which guides the development of the EIS. Comments submitted during the scoping process should be in writing or email, and should be specific to the proposed action. The comments should describe as clearly and completely as possible any points of dispute, debate, or disagreement the commenter has with the proposal. Once scoping letters are received, the District shall identify all potential issues, eliminate non-significant issues or those covered by another environmental analysis, identify issues to analyze in depth, develop additional alternatives to address those significant issues, and identify potential environmental effects of the proposed action as well as fully analyzed alternatives.

Early Notice of Importance of Public Participation in Subsequent Environmental Review

The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and available for public review in January 2003. EPA will publish a notice of availability of the

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draft EIS in the **Federal Register** at that time. The comment period on the draft EIS will extend for 45 days from the date the EPA notice appears in the **Federal Register**. At that time, copies of the draft EIS will be mailed to potentially interested and affected agencies, organizations, and individuals for their review and comment and to those who provided comment during the scoping period. It is very important that those interested in the Cottonwood Fire Vegetation Management Project participate by providing comment at that tie.

The final EIS would be completed in April 2003. In the final EIS, the Forest Service is required to respond to substantive comments received during the comment period that pertain to the environmental consequences discussed in the draft EIS, as well as applicable laws, regulations, and policies considered in making the decision regarding this proposal.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court ruling related to public participation in the environmental review process. First, reviewers of Draft Environmental Impact Statement must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978).* Also, environmental objections that could be raised at the Draft Environmental Impact Statement stage, but that are not raised until after completion of the FEIS, may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980).* Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the two-week comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the FEIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the DEIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the DEIS or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act of 40 CFR 1503.3 in addressing these points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

Dated: October 30, 2002.

Steven T. Eubanks,

Forest Supervisor, Tahoe National Forest.

[FR Doc. 02–28051 Filed 11–4–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Madera County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of Resource Advisory Committee meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act of 1972 (Public law 92–463) and under the secure Rural Schools and Community Self-Determination Act of 2000 (Public Law 106–393) the Sierra National Forest's Resource Advisor Committee for Madera County will meet on Monday, November 18, 2002. The Madera Resource Advisory Committee will meet at the Yosemite Sierra Visitor Bureau, 40637 Highway 41, Oakhurst, CA. The purpose of the meeting is an update about the RAC presentation at the Madera County Board of Supervisor's meeting September 17, 2002, update RAC committee outreach, discuss a subject for a news article and develop a planning schedule for projects and project reviews.

DATES: The Madera Resource Advisory Committee meeting will be held Monday, November 18, 2002. The meeting will be held from 7 p.m. to 9 p.m.

ADDRESSES: The Madera County RAC meeting will be held at the Yosemite Sierra Visitor Bureau, 40637 Highway 41, Oakhurst, CA.

FOR FURTHER INFORMATION CONTACT: Dave Martin, U.S.D.A., Sierra National Forest, 57003 Road 225, North Fork, CA, 93643 (559) 877–2217 ext. 3100; e-mail: *dmartin05@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Agenda items to be covered include: (1) Review Clover Meadow road project, (2) update on RAC committee outreach, and, (3) follow up on newspaper article, (4) have evaluation of past projects. The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: October 31, 2002.

David W. Martin,

District Ranger.

[FR Doc. 02–28053 Filed 11–4–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Resource Advisory Committee Meeting

AGENCY: Crook County Resource Advisory Committee, Sundance, Wyoming, USDA, Forest Service

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) the Black Hills National Forests' Crook County Resource Advisory Committee will meet Monday, November 18, 2002 in Sundance, Wyoming for a business meeting. The meeting is open to the public.

SUPPLEMENTARY INFORMATION: The business meeting on November 18, begins at 6:30 PM, at U.S. Forest Service, Bearlodge Ranger District office, 121 South 21st Street, Sundance, Wyoming. Agenda topics will include reviewing the response of the community to a call for project proposals, discussion of selection criteria and procedures and scheduling future meetings. A public forum will begin at 8:30 p.m. (MT).

FOR FURTHER INFORMATION CONTACT: Steve Kozel, Bearlodge District Ranger and Designated Federal Officer, at (307) 283–1361.

Dated: October 29, 2002.

Steve Kozel,

Bearlodge District Ranger.

[FR Doc. 02–28136 Filed 11–4–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

East Prong Little Pigeon River Watershed, Sevier County, TN

AGENCY: Natural Resources Conservation Service.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Regulations (40 CFR part 1500); and the Natural Resources Conservation Service Guidelines (7 CFR part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the East Prong Little Pigeon River watershed, Sevier County, Tennessee.

FOR FURTHER INFORMATION CONTACT: James W. Ford, State Conservationist, Natural Resources Conservation Service, 675 U.S. Courthouse, 801 Broadway, Nashville, Tennessee 37203, telephone (615) 277–2531.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, James W. Ford, State Conservationist, has determined that the preparation and review of an environmental impact statement is not needed for this project.

East Prong Little Pigeon River Watershed, Sevier County, TN; Notice of a Finding of No Significant Impact

The project purpose is watershed protection. The planned works of improvement include best management practices to reduce streambank erosion and nutrient loading from livestock access to streams, and measures to reduce erosion and sedimentation from eroding pastureland. Federal financial assistance will be provided to accelerate financial and technical assistance for land treatment.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting James W. Ford.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904, Watershed Protection and Flood Prevention, and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials.)

Dated: October 21, 2002.

James W. Ford,

State Conservationist.

[FR Doc. 02–28067 Filed 11–4–02; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Intent To Prepare an Environmental Impact Statement

AGENCY: Natural Resources Conservation Service.

ACTION: Notice of intent to prepare an Environmental Impact Statement for the Cane Creek Remedial Plan, Lauderdale County, Tennessee.

SUMMARY: Notice is hereby given that in accordance with the National Environmental Policy Act of 1969, the U.S. Department of Agriculture—Natural Resources Conservation Service will prepare an Environmental Impact Statement to assess potential environmental impacts associated with proposed structural measures to control the widening and degradation of the channel of Cane Creek. The project sponsor is the Cane Creek Watershed District. The actions proposed in the Cane Creek Remedial Plan address the continuing degradation and widening of the channel of Cane Creek and its tributaries resulting from modification of the main channel in 1970. The sponsor's objective is to stabilize the main channel bottom and limit head-cutting of two major tributaries. Six alternatives to address the concerns were addressed in the Plan. The sponsor's preferred alternative includes installation of five low head riprap chutes in the main channel and one structure each in two large tributaries to Cane Creek. Benefits of the sponsor's preferred plan are the protection of five main channel bridges and two county bridges; four previously installed repair structures will also be protected. Approximately 84,000 cubic yards of sediment will be prevented from annually entering the Hatchie River. Ten acres of riparian forest and 9.2 acres of recreational fishing area will be created. No federally listed threatened or endangered species are known from the watershed.

FOR FURTHER INFORMATION CONTACT: James W. Ford, State Conservationist, Natural Resources Conservation Service, 675 U.S. Courthouse, 801 Broadway, Nashville, Tennessee 37203, telephone (615) 277–2531.

(This activity is listed in the Catalog of Federal Domestic Assistance under NO. 10.904, Watershed Protection and Flood Prevention, and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials.)

Dated: October 21, 2002.

James W. Ford,

State Conservationist.

[FR Doc. 02–28068 Filed 11–4–02; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Owen Electric Cooperative; Notice of Finding of No Significant Impact

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of finding of no significant impact.

SUMMARY: Notice is hereby given that the Rural Utilities Service (RUS) has made a finding of no significant impact with respect to a request from Owen Electric Cooperative for financing assistance from RUS to finance the construction of a new headquarters facility in Owen County, Kentucky.

FOR FURTHER INFORMATION CONTACT: Bob Quigel, Environmental Protection Specialist, Engineering and Environmental Staff, RUS, Stop 1571, 1400 Independence Avenue, SW, Washington, DC 20250–1571, telephone (202) 720–0468, e-mail at *bquigel@rus.usda.gov.*

SUPPLEMENTARY INFORMATION: Owen Electric Cooperative proposes to construct a new headquarters facility in Owen County, Kentucky. The site of the new facility is located south of the unincorporated community of Bromley less than ½ mile south intersection of U.S. Highway 127 and State Route 35 on the western side to U.S. Highway 127. The new headquarters facility will be located on a 46-acre parcel of property. Approximately 13 acres of the property will be used for the facility. The facility will consist of a 31,900 square-foot, one story office building, a 27, 900 square-foot service building, 95 employee and 35 visitor parking spaces, a pole storage yard, a metal utility building, a lattice radio tower, and a 175-kilowatt standby electric generator with a 500-gallon diesel fuel storage tank. Access to the facility will be via a paved driveway from U.S. Highway 127.

Copies of the Finding of No Significant Impact are available from RUS at the address provided herein or from Mr. William T. Prather of Owen Electric Cooperative, PO Box 400,

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Owenton, Kentucky 40359, telephone (502) 484–3471.

Dated: October 29, 2002.

Blaine D. Stockton,

Assistant Administrator, Electric Program, Rural Utilities Service.

[FR Doc. 02–28048 Filed 11–4–02; 8:45 am]

BILLING CODE 3410–15–P

CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

Sunshine Act Meeting

In connection with its investigation into the cause of the hydrogen sulfide gas leak at the Georgia-Pacific Naheola Mill in Pennington, Alabama on January 16, 2002, the United States Chemical Safety and Hazard Investigation Board announces that it will convene a Public Meeting beginning at 10:00 a.m. local time on November 20, 2002, at 2175 K Street, NW, Suite 400 Conference Room.

At the meeting CSB staff will present to the Board the results of their investigation into this incident, including an analysis of the incident together with a discussion of the key findings, root and contributing causes and draft recommendations. In addition, the Chair will present a preliminary outlook for FY 2003.

Recommendations are issued by a vote of the Board and address an identified safety deficiency uncovered during the investigation, and specify how to correct the situation. Safety recommendations are the primary tool used by the Board to motivate implementation of safety improvements and prevent future incidents. The CSB uses its unique independent accident investigation perspective to identify trends or issues that might otherwise be overlooked. CSB recommendations may be directed to corporations, trade associations, government entities, safety organizations, labor unions and others.

At the conclusion of the staff presentation the Board will consider whether to vote to approve the final report and recommendations. When a report and its recommendations are approved, this will begin CSB's process for disseminating the findings and recommendations of the report not only to the recipients of recommendations but also to other public and industry sectors. The CSB believes that this process will ultimately lead to the adoption of recommendations and the growing body of safety knowledge in the industry, which, in turn, should save future lives and property.

All staff presentations are preliminary and are intended solely to allow the Board to consider in a public forum the issues and factors involved in this case. No factual analyses, conclusions or findings should be considered final. Only after the Board has considered the staff presentation and approved the staff report will there be an approved final record of this incident.

The Georgia-Pacific incident left two persons dead and injured eight. In addition, Choctaw County paramedics who transported the victims to the hospitals reported symptoms of hydrogen sulfide exposure.

The meeting will be open to the public. Please notify CSB if a translator or interpreter is needed, at least 5 business days prior to the public meeting. For more information, please contact the Chemical Safety and Hazard Investigation Board at (202)–261–7600, or visit our Web site at: *http://www.csb.gov.*

Christopher W. Warner,

General Counsel.

[FR Doc. 02–28193 Filed 11–1–02; 11:52 am]

BILLING CODE 6350–01–P

DEPARTMENT OF COMMERCE

Office of the Secretary

[Docket No.: 021025254–2254–01]

Privacy Act of 1974; System of Records

AGENCY: Office of Administration, Office of the Secretary, Department of Commerce.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Privacy Act (5 U.S.C. 552a(e)(4) and (11), the Department of Commerce is issuing notice of our intent to delete the system of records entitled COMMERCE/ITA–5, "National Defense Executive Reserve Personnel Folders." This system of records is no longer collected or maintained by the Bureau of Industry and Security, formerly the Bureau of Export Administration. The Bureau of Export Administration separated from ITA in 1987 and maintained this system of records. On May 15, 1997, the National Defense Executive Reserve (NDER) program was dissolved by then Under Secretary William Reinsch in a letter sent to 313 NDER members. As a result, there was no longer a need to maintain NDER personnel files, and they were all disposed.

DATES: *Effective Date*: The deletion will become effective as proposed without further notice on December 5, 2002. *Comment Date:* To be considered, written comments must be submitted on or before December 5, 2002.

ADDRESSES: Comments may be mailed to Dawnielle Battle, FOIA Officer, U.S. Department of Commerce, Bureau of Industry and Security, HCHB 6883, Washington, DC 20230.

SUPPLEMENTARY INFORMATION: This Privacy Act System of Records is being deleted because the records are no longer collected or maintained by the Bureau of Industry and Security.

Dated: October 31, 2002.

Brenda Dolan,

Department of Commerce, Freedom of Information/Privacy Act Officer.

[FR Doc. 02–28075 Filed 11–4–02; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–122–839]

Final Results and Partial Recission of Countervailing Duty Expedited Reviews: Certain Softwood Lumber Products From Canada

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of countervailing duty expedited reviews.

SUMMARY: On August 14, 2002, the Department of Commerce (the Department) published in the **Federal Register** its preliminary results of 18 expedited reviews of the countervailing duty order on certain softwood lumber products from Canada for the period April 1, 2000 through March 31, 2001. *See Preliminary Results of Countervailing Duty Expedited Reviews: Certain Softwood Lumber Products from Canada*, 67 FR 52945 (August 14, 2002) (*Preliminary Results*). Based on our analysis of additional information, we have made changes to the estimated net subsidy rates. Therefore, these final results differ from the preliminary results. For information on estimated net subsidies, please see the "Final Results of Reviews" section of this notice. In accordance with these final results of reviews, we will instruct the U.S. Customs Service (Customs) to amend the cash deposit for each reviewed company as detailed in the "Final Results of Reviews" section of this notice. In addition, the Department has rescinded expedited reviews with regard to Western Commercial Millwork Inc.

EFFECTIVE DATE: November 5, 2002.

FOR FURTHER INFORMATION CONTACT: Maria MacKay or Gayle Longest, Office of AD/CVD Enforcement VI, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1775 or (202) 482–3338.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930, (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 C.F.R. Part 351 (2002).

Background

On May 22, 2002, the Department published in the **Federal Register** its amended final affirmative countervailing duty determination and countervailing duty order on certain softwood lumber products (subject merchandise) from Canada (67 FR 36068), as corrected (67 FR 37775, May 30, 2002). On July 17, 2002, the Department published a Notice of Initiation of Expedited Reviews which covered 73 companies that filed complete and timely applications. (*See Notice of Initiation of Expedited Reviews of the Countervailing duty Order: Certain Softwood Lumber Products from Canada*, (67 FR 46955) (July 17, 2002) (*Notice of Initiation*).)

As explained in the Notice of Initiation, we segregated the 73 applicants into two groups. Group 1 consists of 45 companies that obtain the majority of their wood (over 50 percent of their inputs) from the United States, the Maritime Provinces, Canadian private lands, and Canadian companies excluded from the order, as well as companies that source less than a majority of their wood from these sources and do not have tenure. Group 2 includes 28 companies that source less than a majority of their wood from these sources and have acquired Crown timber through their own tenure contracts.

In our review of the applications in Group 1, we noted that, in order to conduct our analysis, we required only minimal supplemental data for 24 of the 45 companies. The other Group 1 companies required additional information and more extensive analysis. Rather than delaying the process to provide all Group 1 companies the opportunity to submit the necessary information, we issued a short questionnaire to the 24 companies requiring only minimal information and set a short deadline for the response. Of the 24 companies, 18 were able to supply the information by the deadline. We completed our preliminary analysis of those 18 companies, using the Group 1 methodology (see "Methodology" section below). *See Preliminary Results*. Two of these companies subsequently requested a pass-through analysis: Les Bois d'Oeuvre Beaudoin & Gauthier Inc. and Meunier Lumber Company Ltd. Three other companies were verified subsequent to the preliminary results of expedited reviews: Interbois Inc., Les Moulures Jacomau 2000, Inc., and Richard Lutes Cedar, Inc. We are providing those three companies and petitioners with an opportunity to comment on the verification reports, as explained in the "Verification" section of this notice. Therefore, this notice includes the final results for 13 of the 18 companies that were included in the *Preliminary Results*. We are continuing to process the other applications in Groups 1 and 2, and will be issuing additional questionnaires shortly. We received comments and rebuttal comments on the *Preliminary Results*, on September 6, 2002 and September 18, 2002, respectively, from petitioners and several respondents.

Partial Recission

On July 25, 2002, Olav Haavaldsrud Timber Company Limited (Olav Haavaldsrud) and Western Commercial Millwork withdrew their requests for review. On August 26, 2002, Olav Haavaldsrud requested that the Department reinstate its June 21, 2002, request for expedited review. On August 28, 2002, petitioners filed comments objecting to the reinstatement. The Department considered the arguments presented by Olav Haavaldsrud and petitioners, and decided that reinstatement of Olav Haavaldsrud in this expedited review proceeding is inappropriate. *See Letter to Elliot J. Feldman from Melissa G. Skinner, Director, Office of CVD/AD Enforcement VI, Re: Expedited Review of Countervailing Duty Order on Certain Softwood Lumber Products from Canada—Olav Haavaldsrud Timber Company* dated September 18, 2002.

On October 11, 2002, the GOC filed a submission urging the Department to reconsider the request for reinstatement filed by Olav Haavaldsrud. In the GOC's view, acceptance of Olav Haavaldsrud's request is required as a matter of procedural fairness. The GOC states that, as Olav Haavaldsrud detrimentally relied on the Department's statements, the Department should apply equitable tolling principles and accept Olav Haavaldsrud's request for reinstatement.

In response to the GOC, we note that the Department never, at any point in the expedited reviews, foreclosed consideration of arm's length issues, including in the cover letter to the questionnaire dated July 22, 2002 (cited by the GOC). Nevertheless, we understand that Olav Haavaldsrud may have misinterpreted that cover letter. Consequently, we are granting this company's request for reinstatement. However, we are granting the recission request of Western Commercial Millwork.

This notice includes the final results of review for the following 13 companies:

Bois Daaquam Inc.
Bois Omega Ltée
City Lumber Sales & Services Limited
Herridge Sawmills Ltd.
J. A. Fontaine et fils Inc.
Jointfor (3207021 Canada Inc.)
Les Produits Forestiers Dube Inc
Lonestar Lumber Inc.
Maibec Industries, Inc.
Materiaux Blanchet Inc.
MF Bernard Inc.
Scierie Nord-Sud Inc.
Scierie West-Brome Inc.

Scope of the Reviews

The products covered by this order are softwood lumber, flooring and siding (softwood lumber products). Softwood lumber products include all products classified under headings 4407.1000, 4409.1010, 4409.1090, and 4409.1020, respectively, of the Harmonized Tariff Schedule of the United States (HTSUS), and any softwood lumber, flooring and siding described below. These softwood lumber products include:

(1) Coniferous wood, sawn or chipped lengthwise, sliced or peeled, whether or not planed, sanded or finger-jointed, of a thickness exceeding six millimeters;

(2) Coniferous wood siding (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, v-jointed, beaded, molded, rounded or the like) along any of its edges or faces, whether or not planed, sanded or finger-jointed;

(3) Other coniferous wood (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, v-jointed, beaded, molded, rounded or the like) along any of its edges or faces (other than wood moldings and wood dowel rods) whether or not planed, sanded or finger-jointed; and

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(4) Coniferous wood flooring (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, v-jointed, beaded, molded, rounded or the like) along any of its edges or faces; whether or not planed, sanded or finger-jointed.

Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise subject to this order is dispositive.

As specifically stated in the Issues and Decision Memorandum accompanying the *Notice of Final Determination of Sales at Less Than Fair Value: Certain Softwood Lumber Products from Canada*, 67 FR 15539 (April 2, 2002) (*see* comment 53, item D, page 116, and comment 57, item B–7, page 126), available at *http://www.ia.ita.doc.gov*, drilled and notched lumber and angle cut lumber are covered by the scope of this order.

The following softwood lumber products are excluded from the scope of this order provided they meet the specified requirements detailed below:

(1) *Stringers* (pallet components used for runners): if they have at least two notches on the side, positioned at equal distance from the center, to properly accommodate forklift blades, properly classified under HTSUS 4421.90.98.40.

(2) *Box-spring frame kits:* if they contain the following wooden pieces—two side rails, two end (or top) rails and varying numbers of slats. The side rails and the end rails should be radius-cut at both ends. The kits should be individually packaged, they should contain the exact number of wooden components needed to make a particular box spring frame, with no further processing required. None of the components exceeds 1″ in actual thickness or 83″ in length.

(3) *Radius-cut box-spring-frame components*, not exceeding 1″ in actual thickness or 83″ in length, ready for assembly without further processing. The radius cuts must be present on both ends of the boards and must be substantial cuts so as to completely round one corner.

(4) *Fence pickets* requiring no further processing and properly classified under HTSUS heading 4421.90.70, 1″ or less in actual thickness, up to 8″ wide, 6′ or less in length, and have finials or decorative cuttings that clearly identify them as fence pickets. In the case of dog-eared fence pickets, the corners of the boards should be cut off so as to remove pieces of wood in the shape of isosceles right angle triangles with sides measuring ¾ inch or more.

(5) *U.S. origin lumber* shipped to Canada for minor processing and imported into the United States, is excluded from the scope of this order if the following conditions are met: (1) The processing occurring in Canada is limited to kiln-drying, planing to create smooth-to-size board, and sanding, and (2) if the importer establishes to Customs' satisfaction that the lumber is of U.S. origin.

(6) *Softwood lumber products contained in single family home packages or kits*,[1] regardless of tariff classification, are excluded from the scope of this order if the importer certifies to items 6 A, B, C, D, and requirement 6 E is met:

A. The imported home package or kit constitutes a full package of the number of wooden pieces specified in the plan, design or blueprint necessary to produce a home of at least 700 square feet produced to a specified plan, design or blueprint.

B. The package or kit must contain all necessary internal and external doors and windows, nails, screws, glue, sub floor, sheathing, beams, posts, connectors, and if included in the purchase contract, decking, trim, drywall and roof shingles specified in the plan, design or blueprint.

C. Prior to importation, the package or kit must be sold to a retailer of complete home packages or kits pursuant to a valid purchase contract referencing the particular home design plan or blueprint, and signed by a customer not affiliated with the importer.

D. Softwood lumber products entered as part of a single family home package or kit, whether in a single entry or multiple entries on multiple days, will be used solely for the construction of the single family home specified by the home design matching the entry.

E. For each entry, the following documentation must be retained by the importer and made available to the U.S. Customs Service upon request:

i. A copy of the appropriate home design, plan, or blueprint matching the entry;

ii. A purchase contract from a retailer of home kits or packages signed by a customer not affiliated with the importer;

iii. A listing of inventory of all parts of the package or kit being entered that conforms to the home design package being entered;

iv. In the case of multiple shipments on the same contract, all items listed in E(iii) which are included in the present shipment shall be identified as well.

Lumber products that the Customs Service may classify as stringers, radius cut box-spring-frame components, and fence pickets, not conforming to the above requirements, as well as truss components, pallet components, and door and window frame parts, are covered under the scope of this order and may be classified under HTSUS subheadings 4418.90.45.90 , 4421.90.70.40, and 4421.90.97.40.

Finally, as clarified throughout the course of the investigation, the following products, previously identified as Group A, remain outside the scope of this order. They are:

1. Trusses and truss kits, properly classified under HTSUS 4418.90;
2. I-joist beams;
3. Assembled box spring frames;
4. Pallets and pallet kits, properly classified under HTSUS 4415.20;
5. Garage doors;
6. Edge-glued wood, properly classified under HTSUS item 4421.90.98.40;
7. Properly classified complete door frames;
8. Properly classified complete window frames;
9. Properly classified furniture.

Verification

The Department verified three companies from September 30, 2002, through October 3, 2002. The companies verified during this time period were Interbois, Inc., Les Moulures Jacomau 2000, Inc., and Richard Lutes Cedar. Because we want to provide those companies and petitioners with an opportunity to comment on the verification reports, and we want to maintain the schedule for conducting these expedited review proceedings, we are not at this time issuing the final results for these three companies. Instead, their final results will be included in the next notice of final results of expedited reviews. In addition, we note that, in the underlying investigation, the Department verified Bois Daaquam Inc., Bois Omega Ltée, J. A. Fontaine et fils Inc., Les Produits Forestiers Dube Inc., Maibec Industries, Inc., Materiaux Blanchet Inc., Scierie Nord-Sud Inc., and Scierie West-Brome Inc.

Methodology

These final results include: (a) Companies that obtain the majority of their wood (over 50 percent of their inputs) from the United States, the Maritime Provinces, Canadian private lands, and/or Canadian companies excluded from the order, and (b) companies that source less than a majority of their wood from these sources and do not have tenure. We calculated company-specific rates based on the methodology described in the notice of preliminary results. To obtain the company-specific stumpage benefit, we multiplied the quantity of Crown logs and the quantity of lumber inputs (except for those specified below) by the province-specific stumpage benefit calculated in the underlying investigation, *i.e.*, the average per-unit differential between the calculated adjusted stumpage fee for the relevant province and the appropriate benchmark for that province. For those provinces, such as British Columbia and Ontario, for which we calculated more than one per-unit benefit in the investigation, we calculated one province-wide per-unit benefit by weight-averaging the previously calculated values by the corresponding volumes of harvested softwood. As indicated in the Notice of Initiation, we have not attributed a benefit to (1) logs or lumber acquired from the Maritime Provinces, if accompanied by the appropriate certification, (2) logs or lumber of U.S. origin, (3) lumber produced by mills excluded in the investigation, or (4) logs from Canadian private land. We divided the stumpage benefit by the appropriate value of the company's sales to determine the company's estimated subsidy rate from stumpage and then added any benefit from other programs to obtain the cash deposit rate for the company.

[1] To ensure administrability, we clarified the language of exclusion number 6 to require an importer certification and to permit single or multiple entries on multiple days as well as instructing importers to retain and make available for inspection specific documentation in support of each entry.

Analysis of Comments Received

The issues raised in the case briefs by parties to these expedited reviews are addressed in the "Issues and Decision Memorandum" (Decision Memorandum), dated concurrently with this notice, which is hereby adopted by this notice. As noted in the Decision Memorandum, we are addressing in these final results those issues that are of a general nature or that specifically affect these 13 reviews. Other issues, related for instance to pass-through analysis or Group 2 methodology, will be addressed in the context of subsequent reviews. A list of the issues which parties have raised, and to which we have responded, all of which are in the Decision Memorandum, is attached to this notice as Appendix I. The Decision Memorandum is on file in the Central Records Unit in room B–099 of the Main Commerce Building. In addition, a complete version of the Decision Memorandum can be accessed directly on the World Wide Web at *http://ia.ita.doc.gov*, under the heading "**Federal Register** Notices." The paper copy and electronic version of the Decision Memorandum are identical in content.

Changes Since the Preliminary Results

We amended data for MF Bernard based on submissions of factual information dated September 3, 2002.

Final Results of Review

We have calculated an individual subsidy rate for each producer/exporter subject to these expedited reviews. For the period April 1, 2000 to March 31, 2001, we determine the net subsidy to be as follows:

Net subsidies—producer/exporter	Net subsidy rate (in percent)
Bois Daaquam Inc	2.99
Bois Omega Ltée	3.10
City Lumber Sales & Services Limited	6.60
Herridge Sawmills Ltd	4.91
J. A. Fontaine et fils Inc	3.28
Jointfor (3207021 Canada Inc	1.96
Les Produits Forestiers Dube Inc	1.39
Lonestar Lumber Inc	13.42
Maibec Industries, Inc	1.98
Materiaux Blanchet Inc	10.32
MF Bernard Inc	3.69
Scierie Nord-Sud Inc	2.22
Scierie West-Brome Inc	1.16

We will instruct Customs to collect cash deposits of estimated countervailing duties in the amounts indicated above of the f.o.b. invoice price on all shipments of the subject merchandise produced by the reviewed companies, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of these reviews.

This notice covers only those 13 companies that we have specifically identified herein. We will instruct Customs to continue collecting cash deposits for all non-reviewed companies at the cash deposit rates established in the amended final determination on softwood lumber from Canada, 67 FR 36070 (May 22, 2002).

These expedited reviews and notice are issued and published in accordance with section 751(a)(1) and 777(I)(1) of the Act (19 U.S.C. 1675(a)(1) and 19 U.S.C. 1677(f)(I)).

Dated: October 31, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

Appendix 1

General Issues

Comment 1 Whether the Department should exclude companies from the CVD order as a result of expedited reviews

Comment 2 Whether the Department should verify all companies subject to expedited reviews

Comment 3 Whether the Department should allow companies purchasing inputs in arm's length transactions to request expedited reviews

Comment 4 Whether companies should be afforded the opportunity to self select the methodology to apply in the expedited review

Procedural Issues

Comment 1 Whether the timeline adopted by the Department for requesting rescission of an expedited review is in accordance with law

Comment 2 Whether the final results of expedited reviews should be issued sequentially or concurrently for all companies in Round 1

Comment 3 Whether non-compliant submissions should be removed from the record and companies that did not supply all documentation requested by the Department should be ejected from the process

Methodological Issues

Comment 1 Expedited reviews may result in a diminishment of subsidy offset notwithstanding the intent of the Department to adjust the country-wide rate

Comment 2 Whether the Department should collect full information on cross-owned and affiliated entities

Comment 3 Whether non-subject softwood lumber products should be included in the company-specific subsidy calculations

Comment 4 Whether the same stumpage benefit should apply to logs and lumber

Comment 5 Whether the Department may lawfully recalculate the country-wide cash deposit rate by deducting the alleged benefit to and sales by the companies receiving individual rates from the country-wide calculation

Comment 6 Whether logs purchased from excluded companies and lumber produced from private forest timber should be excluded from the volume of subsidized inputs

Comment 7 Whether the Department should adopt a standardized conversion factor to convert board feet into cubic meters for lumber input

Comment 8 Whether the Department should calculate mill-specific rates

Company Specific Issues

Comment 1 Bois Dequaam Inc.

Comment 2 City Lumber Sales and Services Limited

Comment 3 Herridge Sawmills Ltd.

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Comment 4 Jointfor
Comment 5 Lonestar Lumber
Comment 6 Maibec Industries Inc.
[FR Doc. 02–28217 Filed 11–4–02; 8:45 am]
BILLING CODE 3510–DS–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Terminate Nonexclusive Patent License; Micro Photonix Integration Corporation

AGENCY: Department of the Navy, DOD.
ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of it's intent to terminate the nonexclusive license granted to Micro Photonix Integration Corporation on June 6, 2000, to practice the Government-owned inventions described in U.S. Patent numbers 4,763,272; 5,121,453, and 5,652,819. The Licensee is in default of the license agreement.

DATE: Anyone wishing to object to the termination of this license has thirty (30) days from the date of this notice to file written objections along with supporting evidence, if any.

ADDRESS: Written objections are to be filed with the Office of Patent Counsel, Space and Naval Warfare Systems Center, Code 20012, 53510 Silvergate Ave., Room 103, San Diego, CA 92152–5765.

FOR FURTHER INFORMATION CONTACT: Mr. James A. Ward, Space and Naval Warfare Systems Center, Code 20012, 53510 Silvergate Ave., Room 103, San Diego, CA 92152–5765, telephone (619) 553–3823.

(Authority: 35 U.S.C. 207, 37 CFR Part 404.10)

Dated: October 23, 2002.

R.E. Vincent II,

Lieutenant Commander, Judge Advocate General's Corps, , U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 02–28045 Filed 11–4–02; 8:45 am]
BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Brown v. Board of Education 50th Anniversary Commission; Meeting

AGENCY: Brown v. Board of Education 50th Anniversary Commission, U.S. Department of Education (ED).
ACTION: Notice of meeting.

SUMMARY: This notice provides the schedule of a forthcoming meeting of the Brown v. Board of Education 50th Anniversary Commission. This notice also describes the functions of the commission. This document is intended to notify the general public of their opportunity to attend.

Date and Time: November 13, 2002 at 8:45 a.m.

ADDRESSES: Howard University School of Law, Allen Mercer Daniel Law Library, 2900 Van Ness Street, NW., Washington, DC 20008.

FOR FURTHER INFORMATION CONTACT: Daniel W. Sutherland, Chief of Staff, Office for Civil Rights, U.S. Department of Education, 330 C Street, SW., Washington, DC 20202, (202) 205–5526.

SUPPLEMENTARY INFORMATION: Brown v. Board of Education 50th Anniversary Commission is established under Public Law 107–41 to commemorate the 50th anniversary of the Brown decision. The Commission, in conjunction with the U.S. Department of Education, is responsible for planning and coordinating public education activities and initiatives. Also, the Commission, in cooperation with the Brown Foundation for Educational Equity, Excellence, and Research in Topeka, Kansas, and such other public or private entities as the Commission deems appropriate, is responsible for encouraging, planning, developing, and coordinating observances of the anniversary of the Brown decision. The meeting of the Commission is open to the public. Individuals who will need accommodations for a disability in order to attend the meeting (i.e. interpreting services, assistive listening devices, materials in alternative format) should notify Mary McPhail at (202) 205–9529 by no later than November 6, 2002. We will attempt to meet requests after that date, but cannot guarantee availability.

Dated: October 30, 2002.

Gerald A. Reynolds,

Assistant Secretary for Civil Rights.

[FR Doc. 02–28049 Filed 11–4–02; 8:45 am]
BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Office of Science; Fusion Energy Sciences Advisory Committee

AGENCY: Department of Energy.
ACTION: Notice of open meeting

SUMMARY: This notice announces a meeting of the Fusion Energy Sciences Advisory Committee. The Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Monday, November 25, 2002, 9 a.m. to 6 p.m.; Tuesday, November 26, 2002, 9 a.m. to 12 noon.

ADDRESSES: The Marriott Gaithersburg Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, Maryland 20878, USA.

FOR FURTHER INFORMATION CONTACT: Albert L. Opdenaker, Office of Fusion Energy Sciences; U.S. Department of Energy;1000 Independence Avenue, SW.; Washington, DC 20585–1290; Telephone: 301–903–4927.

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting: The major purpose of this meeting is to finalize the Fusion Energy Sciences Advisory Committee recommendations on a plan for putting fusion-generated electricity on the commercial utility grid in 35 years.

Tentative Agenda

Monday, November 25, 2002

- Office of Science Perspective
- Office of Fusion Energy Sciences Perspective
- Report from the 35-year Development Plan Panel
- Public Comments

Tuesday, November 26, 2002

- Report from the Simulation/Integrated Modeling Panel
- Report from the Non-electric Application Panel

Public Participation: The meeting is open to the public. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact Albert L. Opdenaker at 301–903–8584 (fax) or *albert.opdenaker@science.doe.gov* (e-mail). You must make your request for an oral statement at least 5 business days before the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

Minutes: We will make the minutes of this meeting available for public review and copying within 30 days at the Freedom of Information Public Reading Room; IE–190; Forrestal Building; 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on October 31, 2002.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 02–28064 Filed 11–4–02; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

International Energy Agency Meeting

AGENCY: Department of Energy.
ACTION: Notice of meeting.

SUMMARY: The Industry Advisory Board (IAB) to the International Energy Agency (IEA) will meet on November 12, 2002, at the headquarters of the IEA in Paris, France, and on November 12–13, 2002, in connection with a meeting of the IEA's Standing Group on Emergency Questions (SEQ).

FOR FURTHER INFORMATION CONTACT: Samuel M. Bradley, Assistant General Counsel for International and National Security Programs, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, 202–586–6738.

SUPPLEMENTARY INFORMATION: In accordance with section 252(c)(1)(A)(i) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(i)) (EPCA), the following notice of meeting is provided:

A meeting of the Industry Advisory Board (IAB) to the International Energy Agency (IEA) will be held at the headquarters of the IEA, 9, rue de la Fédération, Paris, France, on November 12, 2002, from 9:30 a.m. to noon. The Agenda for the IAB meeting is as follows:

1. Welcome and Review of Agenda
2. Introduction of Attendees
3. IEA Priorities and Challenges
   —Questions and Answers
4. Legal Ground Rules for IAB
   —Questions and Answers
5. IEA Overview and Introduction to the Office of Oil Markets and Emergency Preparedness
6. Joint Oil Data Exercise
   —History and Status
   —Role for Companies
   —Questions and Answers
7. IEA Emergency Response Capability
   —IEA's Role in Oil Crises
   —Role of IAB and Industry Supply Advisory Group in an Oil Crisis
   —Questions and Answers
8. SEQ Program of Work Overview
   —Overview of SEQ Work Plan for 2003/2004
   —Role for IAB in Supporting SEQ Work Plan
9. General Discussion
   —How Can the IAB Better Assist the IEA with Oil Issues?
10. IAB Future Issues

A meeting of the IAB will be held on November 12 and 13, 2002, at the headquarters of the IEA, commencing at 2:30 p.m. on November 12. The purpose of this notice is to permit attendance by representatives of U.S. company members of the IAB at a meeting of the IEA's SEQ, which is scheduled to be held at the same time and location.

The Agenda for the SEQ meeting is under the control of the SEQ. It is expected that the SEQ will adopt the following Agenda:

Tuesday, November 12, 2002, 2:30 p.m.

1 Adoption of the Agenda
2. Approval of the Summary Record of the 105th Meeting
3. The SEQ Program of Work for 2003–2004
4. Update on Compliance with International Energy Program (IEP) Stockholding Commitments
   —Report by Non-Complying Member Countries (Austria, Italy, Luxembourg, Portugal)
   —Information on French Stockholding Regulations
   —Report on Monthly Oil Statistics
5. Presentation and Informal Discussion on the Impacts of Supply Disruptions in the Middle East

Wednesday, November 13, 2002, 9:30 a.m.

6. Information about the Outcome of Governing Board Discussion on Initial Contingency Response Plan
7. Policy and Legislative Developments in Member Countries
   —Korea
   —United States
   —European Union
   —Others
8. The Current Oil Market Situation
9. Report on Developments in Non-Member Countries and International Organizations
   —Report on Oil Stockholding Seminar in Southeastern Europe
   —IEA/ASEAN Oil Security Workshop
   —Preparation for a Joint IEA/China Seminar on Oil Stocks and Emergency Response
   —Report on International Energy Forum, Osaka
   —Report on Joint Oil Data Exercise
10. Report on Annual Meeting of IAB and Current Activities of IAB
11. Other Emergency Response Activities
   —Transport Demand Restraint Study: Result of Survey and Next Steps
   —Revised Questionnaire on Minimum Operating Requirements
12. Emergency Response Reviews of IEA and Candidate Countries
   —Belgium
   —Luxembourg
   —Poland
   —Revised Schedule of Emergency Response Reviews for 2003–2004
13. Other Documents for Information
   —Emergency Reserve Situation of IEA Member Countries on July 1, 2002
   —Emergency Reserve Situation of IEA Candidate Countries on July 1, 2002
   —Monthly Oil Statistics: July 2002
   —Base Period Final Consumption: 3Q2001—2Q2002
   —Quarterly Oil Forecast: Fourth Quarter 2002
   —Update of Emergency Contacts List
14. Other Business
   —Information on Ministerial Meeting, 2003
   —Information on Workshop on Stockholding, 2003
   —Dates of Next Meetings:
   March 18–20, 2003
   June 17–18, 2003
   November 18–20, 2003

As provided in section 252(c)(1)(A)(ii) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(ii)), this meeting is open only to representatives of members of the IAB and their counsel; representatives of members of the SEQ; representatives of the Departments of Energy, Justice, and State, the Federal Trade Commission, the General Accounting Office, Committees of Congress, the IEA, and the European Commission; and invitees of the IAB, the SEQ, or the IEA.

Issued in Washington, DC, October 31, 2002.

Eric J. Fygi,

Deputy General Counsel.

[FR Doc. 02–28167 Filed 11–1–02; 11:25 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Energy Information Administration (EIA), Department of Energy (DOE).
ACTION: Agency information collection activities: proposed collection; comment request.

SUMMARY: The EIA is soliciting comments on the proposed reinstatement of the Form EIA–871A/I, and the proposed new EIA–871J, "2003 Commercial Buildings Energy Consumption Survey."

DATES: Comments must be filed by January 6, 2003. If you anticipate

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difficulty in submitting comments within that period, contact the person listed below as soon as possible.

ADDRESSES: Send comments to Martha Johnson. To ensure receipt of the comments by the due date, submission by FAX ((202) 586–0018) or e-mail (*martha.johnson@eia.doe.gov*) is recommended. The mailing address is Martha Johnson, Survey Manager, EI–63/Forrestal Building, U.S. Department of Energy, Washington, DC 20585–0660. Alternatively, Ms. Johnson may be contacted by telephone at (202) 586–1135.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of any forms and instructions should be directed to Martha Johnson at the address listed above.

SUPPLEMENTARY INFORMATION

I. Background
II. Current Actions
III. Request for Comments

I. Background

The Federal Energy Administration Act of 1974 (Pub. L. 93–275, 15 U.S.C. 761 *et seq.*) and the DOE Organization Act (Pub. L. 95–91, 42 U.S.C. 7101 *et seq.*) require the EIA to carry out a centralized, comprehensive, and unified energy information program. This program collects, evaluates, assembles, analyzes, and disseminates information on energy resource reserves, production, demand, technology, and related economic and statistical information. This information is used to assess the adequacy of energy resources to meet near and longer-term domestic demands.

The EIA, as part of its effort to comply with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35), provides the general public and other Federal agencies with opportunities to comment on collections of energy information conducted by or in conjunction with the EIA. Any comments received help the EIA to prepare data requests that maximize the utility of the information collected, and to assess the impact of collection requirements on the public. Also, the EIA will later seek approval by the Office of Management and Budget (OMB) under section 3507(a) of the Paperwork Reduction Act of 1995.

The Commercial Buildings Energy Consumption Survey (CBECS) has been conducted seven times covering the years 1979, 1983 and 1986 under the name of the "Nonresidential Buildings Energy Consumption Survey", and years 1989, 1992, 1995 and 1999 under the current name, "Commercial Buildings Energy Consumption Survey". CBECS collects baseline data on energy consumption and expenditures in commercial buildings, and on the energy-related characteristics of those buildings. To obtain this information, interviews are conducted for a sample of commercial buildings in the 50 States and the District of Columbia. For buildings in the survey, data are collected on the types, amount and cost of energy consumed in the building, how the energy is used, structural characteristics of the buildings, activities conducted inside the buildings that relate to energy use, building ownership and occupancy, energy conservation measures, and energy-using equipment. The information will be collected using Computer Assisted Personal Interviewing (CAPI) for the 2003 CBECS. For those buildings that cannot provide energy consumption data for the building, the data will be obtained in a mail survey from the suppliers of electricity, natural gas, fuel oil and district heat to the building, after receiving permission from the building owner, manager or tenant. This mail survey to the energy suppliers is mandatory. The data obtained from this survey are available to the public in a variety of EIA electronic tables and reports at *http://www.eia.doe.gov/emeu/cbecs*. Public use files that have been screened to protect the identity of the individual respondents are also available electronically at the above web address. Selected data from the surveys are also published in the Monthly Energy Review and the Annual Energy Review.

II. Current Actions

This will be a proposed reinstatement of a previously approved collection and three-year clearance request to OMB. The request in the expiration data will extend the EIA–871A/J to November 30, 2005.

Anticipated changes for the 2003 CBECS include:

- A complete redesign of the sample, to include new Primary Sampling Units (PSU), Secondary Sampling Units (SSU) and segments.
- Collecting the data in a personal interview (rather than by telephone) using CAPI.
- Collecting energy data from a subsample of establishments within enclosed shopping malls and strip shopping centers.
- Collecting limited energy data from university facilities and hospital complexes as a whole on Form EIA–871J.
- Reinstating select energy-related building characteristics questions (Form EIA–871A) that are of a high priority to CBECS data users. These building characteristics include building footprint and equipment renovation questions.
- Expanding some energy-related building characteristics questions to assist in the analysis of the CBECS data. These questions focus on new energy technology and include expanded office equipment questions, specifically related to digital technology, and expanded heating and cooling equipment questions.
- Reformatting the Building Characteristics Questionnaire (Form EIA–871A) so that fewer respondents are asked all questions.

III. Request for Comments

Prospective respondents and other interested parties should comment on the actions discussed in item II. The following guidelines are provided to assist in the preparation of comments. "Please indicate to which form(s) your comments apply."

General Issues

A. Is the proposed collection of information necessary for the proper performance of the functions of the agency and does the information have practical utility? Practical utility is defined as the actual usefulness of information to or for an agency, taking into account its accuracy, adequacy, reliability, timeliness, and the agency's ability to process the information it collects.

B. What enhancements can be made to the quality, utility, and clarity of the information to be collected?

As a Potential Respondent to the Request for Information

A. What actions could be taken to help ensure and maximize the quality, objectivity, utility, and integrity of the information to be collected?

B. Are the instructions and definitions clear and sufficient? If not, which instructions need clarification?

C. Can the information be submitted by the due date?

D. Public reporting burden for this collection is estimated to average approximately 45 minutes per interview for the building respondent and approximately 30 minutes per energy supplier response in those cases where the data must be collected from the energy suppliers (Forms EIA–871C–F). The estimated burden includes the total time necessary to provide the requested information. In your opinion, how accurate is this estimate?

E. The agency estimates that the only cost to a respondent is for the time it will take to complete the collection. Will a respondent incur any start-up costs for reporting, or any recurring annual costs for operation, maintenance, and purchase of services associated with the information collection?

F. What additional actions could be taken to minimize the burden of this collection of information? Such actions may involve the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

G. Does any other Federal, State, or local agency collect similar information? If so, specify the agency, the data element(s), and the methods of collection.

As a Potential User of the Information To Be Collected

A. What actions could be taken to help ensure and maximize the quality, objectivity, utility, and integrity of the information disseminated?

B. Is the information useful at the levels of detail to be collected?

C. For what purpose(s) would the information be used? Be specific.

D. Are there alternate sources for the information and are they useful? If so, what are their weaknesses and/or strengths?

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the form. They also will become a matter of public record.

Statutory Authority: Section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35).

Issued in Washington, DC, October 30, 2002.

Jay H. Casselberry,

Agency Clearance Officer, Statistics and Methods Group, Energy Information Administration.

[FR Doc. 02–28065 Filed 11–4–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–42–000]

Distrigas of Massachusetts LLC; Notice of Tariff Filing

October 30, 2002.

Take notice that on October 24, 2002, Distrigas of Massachusetts LLC (DOMAC), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, with an effective date of November 1, 2002:

Third Revised Sheet No. 85 Third Revised Sheet No. 86
Third Revised Sheet No. 87 Third Revised Sheet No. 88
Third Revised Sheet No. 89 Third Revised Sheet No. 90
Third Revised Sheet No. 91 Fourth Revised Sheet No. 92
Third Revised Sheet No. 93

DOMAC states that the tariff sheets modify and extend DOMAC's SS–1 Storage Service Agreement with Boston Gas. The replacement agreement will be effective on November 1, 2002 and extend for a term of two years.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at FERCOnlineSupport *@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–28179 Filed 11–4–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–383–044]

Dominion Transmission, Inc.; Notice of Negotiated Rate

October 30, 2002.

Take notice that on October 25, 2002, Dominion Transmission, Inc. (DTI) filed with the Commission the following tariff sheets for disclosure of a recently negotiated rate transaction:

Second Revised Sheet No. 1406

DTI also reserves for future use the following tariff sheets:

Sheet No. 1401
Sheet No. 1402
Sheet No. 1403
Sheet No. 1405

DTI states that copies of its letter of transmittal and enclosures have been served upon DTI's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport @ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–28183 Filed 11–4–02; 8:45 am]

BILLING CODE 6717–01–P

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP00–393–002 and RP01–43–003]

Eastern Shore Natural Gas Company; Notice of Compliance Filing

October 30, 2002.

Take notice that on October 28, 2002 Eastern Shore Natural Gas Company (Eastern Shore) submitted its Order No. 637 Compliance Filing as directed by the Commission in compliance with the Commission's letter order issued on October 11, 2002 in the above-referenced dockets.

Eastern Shore states such order directed it to file actual tariff sheets to replace the Pro Forma tariff sheets originally filed by Eastern Shore on August 19, 2002. The Commission also directed Eastern Shore to make such tariff sheets effective on November 1, 2002.

Eastern Shore states that copies of its filing has been mailed to its customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–28173 Filed 11–4–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–43–000]

Enbridge Pipelines (KPC); Notice of Proposed Changes in FERC Gas Tariff

October 30, 2002.

Take notice that on October 25, 2002, Enbridge Pipelines (KPC) (KPC) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, to be made effective December 1, 2002:

Third Revised Sheet No. 15
Third Revised Sheet No. 26
Third Revised Sheet No. 30
Second Revised Sheet No. 31C
Third Revised Sheet No. 21
Third Revised Sheet No. 28
Second Revised Sheet No. 31A

KPC states that the purpose of the filing is to reflect an increase in its Fuel Reimbursement Percentages pursuant to Section 23 of the General Terms and Conditions of its FERC Gas Tariff.

KPC further states that because of the extraordinary work load on KPC's limited staff caused by the Commission's Order in FERC Docket No. RP99–485, KPC did not file to change its Fuel Reimbursement Surcharge by September 30, 2002.

KPC states that copies of its transmittal letter and appendices have been mailed to all affected customers and interested state commissions

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–28180 Filed 11–4–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–220–012]

Great Lakes Gas Transmission Limited Partnership; Notice of Negotiated Rate Agreement

October 30, 2002.

Take notice that on October 28, 2002, Great Lakes Gas Transmission Limited Partnership (Great Lakes) filed for disclosure, a transportation service agreement pursuant to Great Lakes' Rate Schedule FT entered into by Great Lakes and ANR Pipeline Company (ANR) (FT Service Agreement). The FT Service Agreement being filed reflects a negotiated rate arrangement between Great Lakes and ANR commencing April 1, 2003.

Great Lakes states that the FT Service Agreement is being filed to implement a negotiated rate contract as required by both Great Lakes' negotiated rate tariff provisions and the Commission's Statement of Policy on Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines and Regulation of Negotiated Transportation Services of Natural Gas Pipelines, issued January 31, 1996, at Docket Nos. RM95–6–000 and RM96–7–000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the

Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–28185 Filed 11–4–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–151–005]

Gulf South Pipeline Company, LP; Notice of Compliance Filing October 30, 2002.

Take notice that on October 25, 2002, Gulf South Pipeline Company, LP (Gulf South) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following tariff sheet, to become effective November 1, 2002. Second Substitute Original Sheet No. 307

Gulf South states that the above tariff sheet has been filed to comply with the Order issued October 10, 2002, 101 FERC ¶ 61,019. The Commission directed Gulf South to permit an NNS customer subject to retail unbundling/open access to be entitled to give notice as of the date of the final order in such proceeding. The compliance filing incorporates this change.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–28176 Filed 11–4–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–476–002]

Iroquois Gas Transmission System, L.P.; Notice of Compliance Filing

October 30, 2002.

Take notice that on October 23, 2002, Iroquois Gas Transmission System, L.P. (Iroquois) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheet proposed, to become effective November 1, 2002:

2nd Substitute Third Revised Sheet No. 123

It has come to Iroquois attention that there was a typographical error within Substitute Third Revised Sheet No. 123, which was originally filed on October 15, 2002 in the above captioned proceeding. Therefore, Iroquois is resubmitting Second Substitute Third Revised Sheet No. 123.

Iroquois states that copies of its filing were served on all jurisdictional customers and interested state regulatory agencies and all parties to the proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–28178 Filed 11–4–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–1264–003]

Mirant Neenah, LLC; Notice of Filing

October 30, 2002.

Take notice that on August 20, 2002, Mirant Neenah, LLC (Mirant Neenah), tendered for filing a notification of change in status with respect to its authority to engage in wholesale sales of capacity, energy, and ancillary services at market-based rates.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at http://www.ferc.gov, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, please contact *FERC Online Support at ferconlinesupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii)

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and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: November 12, 2002.

Magalie R. Salas,

Secretary.

[FR Doc. 02–28169 Filed 11–4–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–176–070]

Natural Gas Pipeline Company of America; Notice of Negotiated Rate

October 30, 2002.

Take notice that on October 25, 2002, Natural Gas Pipeline Company of America (Natural) tendered for filing with the Commission to become part of its FERC Gas Tariff, Sixth Revised Volume No. 1, Second Revised Sheet No. 26C to be effective October 25, 2002.

Natural states that the purpose of this filing is to implement an amendment to an existing negotiated rate transaction entered into by Natural and The Peoples Gas Light and Coke Company under Natural's Rate Schedule FTS pursuant to Section 49 of the General Terms and Conditions of Natural's Tariff. Natural states that the amended negotiated rate agreement does not deviate in any material respect from the applicable form of service agreement in Natural's Tariff.

Natural states that copies of the filing are being mailed to all parties set out on the Commission's official service list in Docket No. RP99–176.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact *FERCOnline* Support at *FERCOnlineSupport @ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. Comments, protests and interventions may be filed ele ctronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–28184 Filed 11–4–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–412–001]

Northwest Pipeline Corporation; Notice of compliance Filing

October 30, 2002.

Take notice that on October 25, 2002, Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the tariff sheets listed in the filing, to be effective upon further order of the Commission.

Northwest states that the purpose of this filing is to comply with the Commission's Order No. 637 compliance order by filing actual tariff sheets pertaining to segmentation, operational flow orders, discounting, penalties, imbalance services and netting and trading.

Northwest states that a copy of this filing has been served upon each person designated on the official service list compiled by the Secretary in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–28174 Filed 11–4–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–129–004]

Southern LNG Inc.; Notice of Compliance Filing

October 30, 2002.

Take notice that on October 24, 2002, Southern LNG Inc. (SLNG) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the electronic version of the following revised sheets, with an effective date of March 1, 2002:

Second Revised Sheet No. 5
Original Sheet No. 105A
Second Revised Sheet No. 107
Second Revised Sheet No. 6
Original Sheet No. 105B

SLNG states that the purpose of this filing is to provide an electronic version of the above-referenced tariff sheets in compliance with the Commission's order issued on October 10, 2002 (October 10 Order), in the captioned proceeding. In the October 10 Order, the Commission accepted these tariff sheets with an effective date of March 1, 2002, to settle the rate proceeding in these dockets.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport @ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–28175 Filed 11–4–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–447–001]

Southwest Gas Storage Company; Notice of Compliance filing

October 30, 2002.

Take notice that on October 28, 2002, Southwest Gas Storage Company (Southwest) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheet to become effective October 1, 2002:

Sub 2nd Rev Second Revised Sheet No. 147

Southwest states that this filing is being made to comply with the Commission's Letter Order dated September 26, 2002 in Docket No. RP02–447–000 which requires Southwest to remove Standard 2.3.30 from Section 17.5 of the General Terms and Conditions of its tariff.

Southwest states that copies of this filing are being served on all jurisdictional customers, interested state regulatory agencies and parties to this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport @ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–28177 Filed 11–4–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–260–002]

Texas Gas Transmission Corporation; Notice of Compliance Filing

October 30, 2002.

Take notice that on October 25, 2002, Texas Gas Transmission Corporation (Texas Gas) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed on Appendix B to the filing, to become effective on August 1, 2002.

Texas Gas states that this filing is being submitted in compliance with paragraph 10 of the Commission Letter Order dated October 10, 2002 in Docket Nos. RP00–260–000 and RP00–260–010 (101 FERC ¶ 61,031). The Letter Order accepted an uncontested Settlement. By this filing, Texas Gas implements the provisions of the approved Settlement according to its terms.

Texas Gas states that copies of the revised tariff sheets are being mailed to all parties on the official service list, to Texas Gas's jurisdictional customers and to interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *ferconlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–28172 Filed 11–4–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP95–197–047 and RP97–71–039]

Transcontinental Gas Pipe Line Corporation; Notice of Compliance Filing

October 30, 2002.

Take notice that on October 15, 2002 Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, certain revised tariff sheets listed on Appendix A attached to the filing, to be effective December 1, 2002.

Transco states that the purpose of the filing is to comply with the Commission's Order issued September 30, 2002 which directed Transco to file a separate Section 5 compliance filing to unbundle the costs associated with its Emergency Eminence Storage Withdrawal Service.

Transco states that copies of the filing are being mailed to all parties in Docket Nos. RP95–197, RP97–71 and RP01–245 and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before November 8, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at

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http://www.ferc.gov using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202) 502–8222 or for TTY, (202) 502–8659. The Commission strongly encourages electronic filings. *See,* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–28181 Filed 11–4–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–359–011]

Transcontinental Gas Pipe Line Corporation; Notice of Negotiated Rate

October 30, 2002.

Take notice that on October 24, 2002, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing with the Commission a copy of an amendment to an executed service agreement between Transco and Williams Energy Marketing & Trading Company that contains a negotiated rate under Rate Schedule FT applicable to the Leidy East Expansion Project. Transco states that the purpose of the instant filing is to comply with requirements specified in the Commission's October 25, 2001, "Order Issuing Certificate," in Docket No. CP01–389 which required Transco, among other things, to file, not less than 30 days prior to the commencement of service of the Leidy East Expansion Project, the negotiated rate agreements or tariff sheets reflecting the essential elements of its negotiated rate agreements. The proposed effective date of the amendment submitted herein is November 1, 2002, the anticipated in-service date of the Leidy East project.

Transco states that copies of the filing are being mailed to its affected customers and interested State Commissions. Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–28182 Filed 11–4–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–436–000]

Northern Natural Gas Company; Notice of Intent To Prepare an Environmental Assessment for the Proposed Project Max and Request for Comments on Environmental Issues

October 30, 2002.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of Project MAX involving construction and operation of facilities by Northern Natural Gas Company (Northern) in several counties of Minnesota.[1] These facilities would consist of about 4.6 miles of 8-inch-diameter pipeline, a new compressor station, and modifications to 10 different town border stations. This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled "An Interstate Natural Gas Facility On My Land? What Do I Need To Know?" was attached to the project notice Northern provided to landowners. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet Web site (*www.ferc.gov*).

Summary of the Proposed Project

The incremental capacity attained by the proposed facilities (summarized below) would be utilized to serve high priority residential, commercial, and industrial customer market growth in Northern's Market Area. The construction of the proposed facilities would increase the peak day capacity on Northern's Market Area mainline by approximately 16,200 million cubic feet per day. These facilities are required to meet shipper requests for firm capacity that Northern received during its open season. Northern's proposed facilities are as follows:

(1) Construct 4.6 miles of 8-inch-diameter loop on its Alexandria Branchline in Morrison County, Minnesota;

(2) Relocate existing tie-over and blowdown valves from the end of the existing Alexandria Branchline Loop to the end of the proposed branchline loop in Morrison County Minnesota;

(3) Construct a new electric compressor station on its Minnesota Interconnecting Line MNB 77501 near Popple Creek, in Benton County, Minnesota;

(4) Install a new regulator and valve at its Farmington Compressor Station in Dakota County, Minnesota;

(5) Upgrade 10 existing town border stations (TBS) in Douglas, Wright, Stearns, Dakota, Sherburne and Pope counties of Minnesota; and

(6) Install a valve operator on the existing C to B tie-over valve located at the St. Paul TBS #1T in Washington County, Minnesota.

[1] Northern's application was filed with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

The general location of the project facilities is shown in appendix 1.[2] If you are interested in obtaining detailed maps of a specific portion of the project, send your request to Micheal T. Loeffler, Director, Certificates and Community Relations, Northern Natural Gas Company, 111 South 103rd Street, Omaha, Nebraska 68124–1000.

Land Requirements for Construction

Construction of the proposed facilities would require about 59.7 acres of land. Following construction, about 15.9 acres would be maintained as new operational right-of-way and aboveground facility sites. The remaining 43.8 acres of land would be restored and allowed to revert to its former use.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us[3] to discover and address concerns the public may have about proposals. This process is referred to as "scoping". The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

—Geology and soils
—Land use
—Water resources, fisheries, and wetlands
—Cultural resources
—Vegetation and wildlife
—Air quality and noise
—Endangered and threatened species
—Hazardous waste
—Public safety

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the public participation section below.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative locations/routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

—Send an original and two copies of your letter to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.
—Label one copy of the comments for the attention of Gas 2 Branch.
—Reference Docket No. CP02–436–000.
—Mail your comments so that they will be received in Washington, DC on or before November 29, 2002.

Please note that we are continuing to experience delays in mail deliveries from the U.S. Postal Service. As a result, we will include all comments that we receive within a reasonable time frame in our environmental analysis of this project. However, the Commission strongly encourages electronic filing of any comments or interventions or protests to this proceeding. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the "e-Filing" link and the link to the User's Guide. Before you can file comments you will need to create a free account which can be created by clicking on "Login to File" and then "New User Account."

We may mail the EA for comment. If you are interested in receiving it, please return the Information Request (appendix 4). If you do not return the Information Request, you will be taken off the mailing list.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an "intervenor". Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (*see* appendix 2).[4] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Environmental Mailing List

This notice is being sent to individuals, organizations, and government entities interested in and/or potentially affected by the proposed project. It is also being sent to all identified potential right-of-way grantors. By this notice we are also asking governmental agencies, especially those in appendix 3, to express their interest in becoming cooperating agencies for the preparation of the EA.

Additional Information

Additional information about the project is available from the

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available on the Commission's Web site at the "FERRIS" link or from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, NE, Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to FERRIS refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

[3] "We", "us", and "our" refer to the environmental staff of the Office of Energy Projects (OEP).

[4] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

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Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*www.ferc.gov*) using the FERRIS link. Click on the FERRIS link, enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance with FERRIS, the FERRIS helpline can be reached at 1–866–208–3676, TTY (202) 502–8659, or at *ferconlinesupport@ferc.gov*. The FERRIS link on the FERC Internet Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–28168 Filed 11–4–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Intent To File Application for a New License

October 30, 2002.

Take notice that the following notice of intent has been filed with the Commission and is available for public inspection:

a. *Type of filing:* Notice of Intent To File an Application for New License.

b. *Project No:* 2085.

c. *Date filed:* October 9, 2002.

d. *Submitted By:* Southern California Edison Company.

e. *Name of Project:* Mammoth Pool Project.

f. *Location:* Mammoth Pool is located on the main sterm of the Upper San Joaquin River, bordering Madera and Fresno Counties, California.

g. *Filed Pursuant to:* Section 15 of the Federal Power Act, 18 CFR 16.6.

h. Pursuant to Section 16.19 of the Commission's regulations, the licensee is required to make available the information described in Section 16.7 of the regulations. Such information is available from the licensee at the Northern Hydro Regional Office, 54205 Mountain Poplar Road, Big Creek, California 93605.

i. *FERC Contact:* James Fargo, 202–502–6095, *james.fargo@ferc.gov*.

j. *Expiration Date of Current License:* November 30, 2007.

k. *Project Description:* A storage dam, reservoir, dam outlet works including a 938 kilowatts(kw) fishwater generator, tunnel and penstock, and a powerhouse containing two turbines with two 95,000kw generators.

l. The licensee states its unequivocal intent to submit an application for a new license for Project No. 2085 Pursuant to 18 CFR 16.9(b)(1), each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by November 30, 2005.

A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *fercolinesuport@ferc.gov*. or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–28170 Filed 11–4–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Joint Application To Amend License and Soliciting Comments, Motions To Intervene, and Protests

October 30, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Joint Application to Amend License.

b. *Project No.:* 5–072.

c. *Date Filed:* October 15, 2002.

d. *Applicant:* PPL Montana, LLC (PPLM) and the Confederated Salish and Kootenai Tribes of the Flathead Nation (Tribes).

e. *Name of Project:* Kerr Hydroelectric Project.

f. *Location:* On the Flathead River in Lake and Flathead Counties, Montana.

g. *Filed Pursuant to:* 16 U.S.C. 799.

h. *Applicant Contacts:* David R. Poe, LeBoeuf, Lamb, Greene & MacRae, L.L.P., 1875 Connecticut Avenue, NW., Washington, DC 20009, (202) 986–8039 and Joe Hovenkotter, Tribal Legal Department, Flathead Reservation, 51383 Highway 93 North, Pablo, Montana 59855, (406) 675–2700, ext. 1169.

i. *FERC Contact:* Any questions on this notice should be addressed to Robert H. Grieve, *Robert.Grieve@ferc.gov*, (202) 502–8752.

j. *Deadline for filing comments, motions to intervene and protests:* November 29, 2002.

All documents (original and seven copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper, *see* 18 CFR 385.2002(a)(1)(iii) and instructions on the Commission's web site under the "e-filing" link. The Commission strongly encourages electronic filings. Please include the project number (P–5–072) on any comments or motions filed.

The Commission's rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Application:* Applicants request to amend the Kerr Project license in order to resolve the respective obligations of PPLM and the Tribes for performance of certain fish and wildlife mitigation measures that currently appear in several numbered articles in the project license. The articles at issue were originally submitted by the Department of the Interior pursuant to its authority under Section 4(e) of the Federal Power Act, 16 U.S.C. 797(e), and thereafter adopted by the Commission in its orders of June 25, 1997, October 30, 1998, and December 14, 2000. Applicants seek a similar resolution of obligations under a license article that was included in the project license in the December 14, 2000 order in response to a biological opinion prepared by the U.S. Fish and Wildlife Service pursuant to the Endangered Species Act.

l. *Locations of the Application:* Copies of this filing are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's web site at http:www.ferc.gov using the "FERRIS" link. Enter the docket number, excluding the last three digits in the docket number field, to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCONLINESUPPORT@FERC.GOV*. For TTY, call (202) 502–8659. Copies

are also available for inspection and reproduction at the addresses in item h. above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Protests or Motions to Intervene-Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210. 385.211, and 385.2114. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATION FOR TERMS AND CONDITIONS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–28171 Filed 11–4–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7404–6]

Clean Air Scientific Advisory Committee, National Ambient Air Monitoring Strategy (NAAMS) Subcommittee; Request for Nominations

ACTION: Notice; request for nominations to the National Ambient Air Monitoring Strategy Subcommittee of the Clean Air Scientific Advisory Committee of the U.S. Environmental Protection Agency.

SUMMARY: The Clean Air Scientific Advisory Committee (CASAC) of the U.S. Environmental Protection Agency (EPA or Agency) is announcing the formation of the National Ambient Air Monitoring Strategy (NAAMS or Strategy) Subcommittee (hereinafter, the "Subcommittee") and is hereby soliciting nominations for this Subcommittee. The CASAC is administratively located under the EPA Science Advisory Board (SAB). The SAB was established to provide independent scientific and technical advice, consultation, and recommendations to the EPA Administrator on the technical basis for Agency positions and regulations. The NAAMS Subcommittee will report to the Administrator of EPA through the Clean Air Scientific Advisory Committee, a Federal advisory committee chartered under the Federal Advisory Committee Act (FACA), as amended (5 U.S.C. App.). The Subcommittee will comply with the provisions of FACA and all appropriate SAB procedural policies, including the SAB process for panel formation described in the *Overview of the Panel Formation Process at the Environmental Protection Agency Science Advisory Board*, which can found on the SAB's Web site at: *http://www.epa.gov/sab/pdf/ec02010.pdf*. Those selected to serve on the NAAMS Subcommittee will review the draft materials identified in this notice and respond to the charge questions provided below.

Background

States, local agencies and Tribes establish and operate the Nation's regulatory-based ambient air monitoring networks. These networks are funded in part with Federal grants and are managed nationally by the EPA. The network data are used to support:

(a) Designation of attainment and non-attainment areas with respect to the National Ambient Air Quality Standards (NAAQS);

(b) Dissemination of air quality information to the public;

(c) Development (and tracking progress of) emission reduction strategies;

(d) Characterization of long-term air quality trends; and

(e) Studies in health and atmospheric science disciplines.

The associated monitoring network, instrumentation and quality assurance requirements are included in 40 CFR parts 50, 53 and 58.

EPA has recently completed development of the final draft of the National Ambient Air Monitoring Strategy document under the direction of the National Monitoring Strategy Committee (NMSC), an intergovernmental partnership comprising representatives from EPA (*i.e.*, the Office of Air Quality Planning and Standards (OAQPS), the Office of Research and Development (ORD) and Regional Offices), and State and local agencies and Tribes, *i.e.*, the principal Federal grantee organizations that operate the majority of the monitoring networks. The NAAMS document contains technical information underlying planned revisions of the National Ambient Air Monitoring program. The Strategy proposes a restructuring of the national regulatory-based air monitoring networks—commonly referred to as National Air Monitoring Stations (NAMS), State or Local Air Monitoring Stations (SLAMS), and Photochemical Assessment Monitoring Stations (PAMS)—to accommodate emerging priorities of air programs, the public and the scientific community. Specifically, the NAAMS provides a series of proposed changes for network design and improvements, assessments of existing networks, incorporation of new measurement and information transfer technologies, and revisions both to the current quality assurance program and the monitoring regulations. The principal proposed changes include:

(a) A shift toward collocated multiple pollutant monitoring stations under a new national monitoring network design referred to as "NCore."

(b) Incorporation of new continuous particle monitoring instruments, additional air toxics measurements and information transfer technologies to enhance the scope of near-real-time data delivered to the public.

(c) Adoption of new network design recommendations and the introduction of advanced monitoring technologies through performance-based standards.

(d) Reductions in existing monitoring stations that provide limited value for public protection or air quality planning

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needs, with attendant resource savings redirected to meeting new measurement needs.

EPA intends to propose revisions to the monitoring regulations that have emerged from this strategy during 2003. A public comment period on the proposed regulations will be announced at a later date by EPA's Office of Air and Radiation. The NAAMS document is available through EPA's Ambient Monitoring Technology Information Center (AMTIC) Web site at the following URL address: *http://www.epa.gov/ttn/amtic/stratmem.html.*

Request for and Proposed Charge to the NAAMS Subcommittee

EPA's Office of Air and Radiation (OAR) has requested that the CASAC form a subcommittee to review the NAAMS document. This new CASAC subcommittee will be charged with providing consultation to EPA on the technical bases and design aspects of the National Ambient Air Monitoring Strategy. In particular, the Subcommittee will be asked to provide a formal consultation on the following elements of the strategy:

(a) The NCore proposal, including conceptual approach to tiered monitoring levels, recommended measurements and numbers and locations of Level 2 sites. Consideration to phasing of measurements included in Level 2 sites should be addressed based on currently available and expected emerging monitoring technologies. The Subcommittee is also requested to advise on the scope and breadth of research-grade Level 1 sites.

(b) The use of spatial analysis approaches for network design and other air program planning needs. The monitoring strategy has utilized various spatial design approaches on National and Regional scales to identify areas of redundant monitoring as well as gaps requiring additional monitoring.

(c) The use of performance-based approaches for standardizing monitoring method requirements for particulate matter measurements. Performance-based approaches rely on applying data quality objectives to determine the allowable statistical uncertainties for instrument performance. This third subject area has evolved from discussions with the existing CASAC Subcommittee on Particulate Monitoring, and plays an important role in facilitating accommodation of new technologies into air monitoring networks.

Nominator's Assessment of Expertise

For all nominations submitted to the EPA SAB, please indicate the specific areas of expertise the candidate could contribute in this upcoming review topic. The nominee should be a recognized, national-level expert in one or more of the following disciplines.

(a) *Atmospheric sciences and air quality simulation modeling.* Areas of expertise include the development and application of regional and larger-scale air quality dispersion models to predict atmospheric concentrations of ozone, particulate matter and other pollutants, with emphasis placed on the application of such systems to developing emission control strategies in support of national-level programs or State Implementation Plans (SIPs). Related areas of expertise include individuals with expertise in chemical mechanism development, deterministic source-receptor modeling, observational-based models and related data analysis expertise and conceptual model development.

(b) *Health effects and exposure.* Areas of expertise include epidemiology, exposure assessment, risk assessment, and similar disciplines that relate adverse health impacts and ambient air pollution parameters to develop causative relationships, particularly with an emphasis on long-term time-series studies covering a range of population types and locations. This includes expertise in air pollution exposure studies that consider the relationship of ambient air to direct exposures through a range of environments (both outdoor and indoor).

(c) *Air quality measurement science.* Areas of expertise include particulate matter and gaseous species measurements, with an understanding of routine applications conducted by most State and local agencies, and both an interest in and an understanding of integrating advanced methodology in routine networks and transferring new technological advances to application level efforts in government agencies.

(d) *State or local agency experience.* Areas of expertise include experience working in a State or local agency organization familiar with the practical logistics of conducting air monitoring operations.

Process and Deadline for Submitting Nominations

Any interested person or organization may nominate qualified individuals for membership on the NAAMS Subcommittee. Nominations should be submitted in electronic format and must include the information listed below. To be considered, all nominations must include: (a) A current biography, *curriculum vitae* (C.V.) or resume, which provides the nominee's background, experience and qualifications for this subcommittee; and (b) a brief biographical sketch ("biosketch"). The biosketch should be no longer than one page and contain the following information for the nominee: current professional affiliations and positions held; research interests; leadership positions in national associations or professional publications or other significant distinctions; advanced degrees, including when and from which institutions these were granted; and sources of recent grant and/or other contract support.

Please provide nominations in the following manner:

(a) Send the nomination by email to: *butterfield.fred@epa.gov.*

(b) Use one email per person being nominated.

(c) Please use "NAAMS" in the subject field, followed by the last name of the candidate you are nominating. (For example, NAAMS: Smith).

(d) Attach supporting information (*i.e.*, resume, biosketch, *etc.*) in either MS Word or WordPerfect files formats ending in ".doc" or ".wpd," respectively.

(e) In a separate file, please provide the following information in the order shown:

For the Person Making the Nomination

First Name:
Last Name:
Person Title (*e.g.*, Dr., Mr., Ms., *etc.*)
Organization Title:
E-mail Address:
Mailing Address:
Work Phone:
Work Fax:

Name of Nominee (if Nomination Is Not a Self-Nomination)

First Name:
Last Name:
Person Title (*e.g.*, Dr., Mr., Ms., *etc.*)
Professional Title:
Department:
School or Unit:
University or Organization:
Mailing Address:
Work Phone:
Fax Work Phone:
E-mail Address:
Web site for C.V. (if one exists):
Expertise (Using the specific expertise categories in section 5 of this **Federal Register** notice, identify the Nominee's specific qualifying expertise):

Nominations should be submitted in electronic format to Mr. Fred Butterfield, Designated Federal Officer, Clean Air Scientific Advisory Committee, EPA SAB, at the following e-mail address: *butterfield.fred@epa.gov.* Anyone who is unable to submit nominations in electronic format may send hard copies of the nomination paperwork to Mr. Butterfield at the following mailing address: EPA Science Advisory Board, U.S. Environmental Protection Agency (1400A), 1200 Pennsylvania Avenue, NW., Washington, DC 20460; or via fax at: (202) 501–0582. Nominations should be submitted in time to arrive no later than November 26, 2002. Any questions concerning either this process or any other aspects notice should be directed to Mr. Butterfield either at the above e-mail address or via telephone at: (202) 564–4561.

The EPA Science Advisory Board will generally not formally acknowledge or respond to Subcommittee nominations. From the nominees identified by respondents to this **Federal Register** notice (termed the "Widecast"), SAB Staff will develop a smaller subset (known as the "Short List") for more detailed consideration. Criteria used by the SAB Staff in developing this Short List are given at the end of the following paragraph. The Short List will be posted on the SAB Web site at: *http://www.epa.gov/sab,* and will include, for each candidate, the nominee's name and their biosketch. Public comments will be accepted for 21 calendar days on the Short List. During this comment period, the public will be requested to provide information, analysis or other documentation on nominees that the SAB Staff should consider in evaluating candidates for the NAAMS Subcommittee.

For the EPA SAB, a balanced review panel (*i.e.*, committee or subcommittee) is characterized by inclusion of candidates who possess the necessary domains of knowledge, the relevant scientific perspectives (which, among other factors, can be influenced by work history and affiliation), and the collective breadth of experience to adequately address the charge. Public responses to the Short List candidates will be considered in the selection of the Subcommittee, along with information provided by candidates and information gathered by EPA SAB Staff independently on the background of each candidate (*e.g.*, financial disclosure information and computer searches to evaluate a nominee's prior involvement with the topic under review). Specific criteria to be used in evaluating an individual subcommittee member include: (a) Scientific and/or technical expertise, knowledge, and experience (primary factors); (b) availability and willingness to serve; (c) absence of financial conflicts of interest; (d) scientific credibility and impartiality; and (e) skills working in committees, subcommittees and advisory panels.

Short List candidates will also be required to fill-out the "Confidential Financial Disclosure Form for Special Government Employees Serving on Federal Advisory Committees at the U.S. Environmental Protection Agency" (EPA Form 3110–48). This confidential form, which is used by EPA SAB Members and Consultants, allows Government officials to determine whether there is a statutory conflict between that person's public responsibilities (which includes membership on an EPA Federal advisory committee) and private interests and activities, or the appearance of a lack of impartiality, as defined by Federal regulation. The form may be viewed and downloaded from the following URL address: *http://www.epa.gov/sab/pdf/epaform3110-48.pdf.* Subcommittee members will likely be asked to attend at least one public face-to-face meeting and several public conference call meetings over the anticipated three-month course of the Subcommittee's activity. Once the NAAMS Subcommittee completes its deliberations, its report will be forwarded to the CASAC, which will review the Subcommittee's report in a public teleconference meeting and reach a judgment concerning its transmittal to the Administrator.

General Information

Any persons having general review comments on the National Ambient Air Monitoring Strategy document should submit them no later than December 1, 2002, to Dr. Brenda Millar, Monitoring and Quality Assurance Group, at mailing address: U.S. EPA (C339–02), 4930 Old Page Road, Research Triangle Park, NC 27711; or e-mail: *bmillar@epa.gov.* Additionally, any questions concerning the NAAMS should be directed to Dr. Richard Scheffe, U.S. EPA OAQPS Monitoring and Quality Assurance Group Leader, at phone: (919) 541–4650; or e-mail: *Scheffe.Rich@epamail.epa.gov.*

The approved policy under which the EPA SAB selects review panels is described in a recent SAB document, *EPA Science Advisory Board (SAB) Panel Formation Process: Immediate Steps to Improve Policies and Procedures—An SAB Commentary* (EPA–SAB–EC–COM–002–003), which can be found on the SAB's Web site at: *http://www.epa.gov/sab/pdf/ecm02003.pdf.*

Additional information concerning the EPA Science Advisory Board, including its structure, function, and composition, may be found on the EPA SAB Web site at: *http://www.epa.gov/sab;* and in *The EPA Science Advisory Board FY2001 Annual Staff Report,* which is available from the EPA SAB Publications Staff at phone: (202) 564–4533; via fax at: (202) 501–0256; or on the SAB Web site at: *http://www.epa.gov/sab/annreport01.pdf.*

Dated: October 30, 2002.

Vanessa T. Vu,

Director, EPA Science Advisory Board Staff Office.

[FR Doc. 02–28082 Filed 11–4–02; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK OF THE UNITED STATES

[Public Notice 54]

Availability of Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the Export-Import Bank of the United States

AGENCY: Export-Import Bank of the United States.

ACTION: Notice of availability of guidelines.

SUMMARY: The Export-Import Bank's (Ex-Im Bank) Information Quality Guidelines will be available for public access on Ex-Im Bank's web site *http://www/exim.gov/omb/dataquality.doc,* on October 1, 2002. The Information Quality Guidelines describe Ex-Im Bank's procedures for reviewing and substantiating the quality of information before it is disseminated to the public, and the procedures by which an affected person may request correction of information disseminated by Ex-Im Bank that does not comply with the information quality guidelines.

EFFECTIVE DATE: October 1, 2002.

FOR FURTHER INFORMATION CONTACT: Kalesha Malloy, Office of the Chief Information Officer, Information Management & Technology Group, 811 Vermont Ave, NW., Room 763, Washington, DC 20571; phone (202) 565–3857, email to *kalesha.malloy@exim.gov;* fax (202) 565–3424.

SUPPLEMENTARY INFORMATION: Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554) directs OMB to issue government-wide guidelines that provide policy and procedural guidance to Federal agencies for ensuring and maximizing the quality, objectivity, utility, and integrity

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of information disseminated by Federal agencies. The OMB guidelines require each agency to prepare a final report providing the agency's information quality guidelines. Each agency is further required to publish a notice of availability of this final report in the **Federal Register** and to post this report on its web site. As required by OMB's guidelines, Ex-Im Bank is publishing in the **Federal Register** a notice of availability of the guidelines on its Web site *http://www.exim.gov/omg/dataquality.doc.*

Dated: September 27, 2002.

Patrick O'Hare,

Chief Information Officer, Information Management & Technology Group, Export-Import Bank of the United States.

[FR Doc. 02–28038 Filed 11–4–02; 8:45 am]

BILLING CODE 6690–01–M

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Special Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming special meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The special meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on November 7, 2002, from 9 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Jeanette C. Brinkley, Acting Secretary to the Farm Credit Administration Board, (703) 883–4024, TTY (703) 883–4056.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts of this meeting will be closed. In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance.

The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

- October 10, 2002 (Open and Closed)

B. Reports

- Regulation Development Program Survey
- National Credit Union Administration Field Structure

Closed*

A. Reports

- OSMO Report
- Capital Issues
- Securities Issues

B. Unfinished Business and General Orders

- Enforcement Issues

* Session Closed-Exempt pursuant to 5 U.S.C. 552b(c)(8), (9) and (10).

Dated: November 1, 2002.

Jeanette C. Brinkley,

Acting Secretary, Farm Credit Administration Board.

[FR Doc. 02–28277 Filed 11–1–02; 3:24 pm]

BILLING CODE 6705–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

October 30, 2002.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before January 6, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judith Boley Herman, Federal Communications Commission, Room 1-C804 or Room 1-A804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *jboley@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith Boley Herman at 202–418–0214 or via the Internet at *jboley@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0798.

Title: FCC Application for Wireless Telecommunications Bureau Radio Service Authorization.

Form No.: FCC Form 601

Type of Review: Revision of a currently approved collection.

Respondents: Individuals or households, business or other for-profit, not-for-profit institutions, and state, local and tribal government.

Number of Respondents: 242,555.

Estimated Time Per Response: 1.25 hours.

Frequency of Response: On occasion reporting requirement, third party disclosure requirement.

Total Annual Burden: 212,235 hours.

Total Annual Cost: $48,510,850.

Needs and Uses: FCC Form 601 is a consolidated, multi-part application or "long form" for market-based licensing and site-by-site licensing in the Wireless Telecommunications Bureau's (WTB's) Radio Services' Universal Licensing System (ULS).

A *Report and Order* for Auction of Multichannel Video Distribution and Data Services Licenses will begin February 12, 2003, and changes will occur to accommodate that auction. This auction will include 354 Component Economic Area licenses.

On May 16, 2002, the FCC adopted a *Report and Order,* WT Docket No. 02–8, Amendments to Parts 1, 2, 27 and 90 of the Commission's Rules to License Services in the 216–220 MHz, 1390–1395 MHz, 1427–1429 MHz, 1429–1432 MHz, 1432–1435 MHz, 1670–1675 MHz, and 2385–2390 MHz Government Transfer Bands. Pursuant to adoption of the Report and Order, the FCC is revising the FCC 601, which will be used to determine the basic eligibility and qualifications of auction winners to become licensees through Auction #46 scheduled to commence on April 30, 2003. This auction will include 66 licenses.

Also, in addition to the changes concerning the aforementioned auctions, the Commission is requesting approval of any future auction changes

in advance and increasing the number of respondents by 800 for potential winners to file, thus removing the need for repetitive emergency clearances submitted to OMB due to auction related changes (additional radio services necessary for future auctions).

The information is used by the Commission to determine whether the applicant is legally, technically and financially qualified to be licensed.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–28061 Filed 11–4–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

October 28, 2002.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before December 5, 2002. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judith Boley Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., DC 20554 or via the Internet to *jboley@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith Boley Herman at 202–418–0214 or via the Internet at *jboley@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0704.

Title: Policy and Rules Concerning the Interstate, Interexchange Marketplace; Implementation of section 254(g) of the Communications Act of 1934, as amended, CC Docket No. 96–6.

Form Nos.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 519.

Estimated Time Per Response: .50—120 hours.

Frequency of Response: Annual and on occasion reporting requirement, recordkeeping requirement, and third party disclosure requirement.

Total Annual Burden: 158,971 hours.

Total Annual Cost: $435,000.

Needs and Uses: These collections of information are necessary to provide consumers ready access to information concerning the rates, terms, and conditions governing the provision of interstate, domestic, interexchange services offered by nondominant IXC's in a detariffed and increasingly competitive environment. These collections of information are consistent with OMB's "strong recommendation" earlier in this proceeding that the Commission consider mechanisms to make pricing information available to consumers, state regulators, and other interested parties.

OMB Control No.: 3060–0770.

Title: Price Cap Performance Review for Local Exchange Carriers, CC Docket No. 94–1 (New Services).

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 13 respondents; 26 responses.

Estimated Time Per Response: 10 hours.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 130 hours.

Total Annual Cost: N/A.

Needs and Uses: The Commission permits price cap LECs to introduce new services on a streamlined basis, without prior approval. The Commission modified the rules to eliminate the public interest showing required by section 69.4(g) and to eliminate the new services test (except in the case of loop-based new services) required under sections 69.4(f) and (g). The information is needed by the Commission to carry out its mandate. The Commission is submitting this information collection to OMB with no change and to extend the approval for three years.

OMB Control No.: 3060–0760.

Title: Access Charge Reform, CC Docket No. 96–262 (First Report and Order); Second Order on Reconsideration and Memorandum Opinion and Order, and Fifth Report and Order.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 14.

Estimated Time Per Response: 3–2,060 hours.

Frequency of Response: On occasion and specific dates reporting requirement, third party disclosure requirement.

Total Annual Burden: 57,127 hours.

Total Annual Cost: $8,000.

Needs and Uses: The Commission provides detailed rules for implementing the market-based approach, pursuant to which price cap LECs would receive pricing flexibility in the provision of interstate access services as competition for those services develops. Commission rules grants immediate pricing flexibility to price cap LECs in the form of streamlined introduction of new services, geographic deaveraging of rates for services in the trunking basket, and removal of certain interstate interexchange services from price cap regulation, while providing for additional pricing flexibility upon certain showings. The information to be collected would be submitted to the Commission by incumbent LECs for use in determining whether the incumbent LECs should receive the regulatory relief proposed in the above reference rulemakings. The information collected under the Second Order on Reconsideration and Memorandum Opinion and Order would be submitted by the LECs to the interexchange carriers (IXCs) for use in developing the most cost-efficient rates and rate structures.

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Federal Communications Commission.
Marlene H. Dortch,
Secretary.
[FR Doc. 02–28062 Filed 11–4–02; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 92–237; DA 02–2933]

Next Meeting of the North American Numbering Council

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: On October 31, 2002, the Commission released a public notice announcing the November 19–20, 2002 meeting and agenda of the North American Numbering Council (NANC). The intended effect of this action is to make the public aware of the NANC's next meeting and its agenda.

FOR FURTHER INFORMATION CONTACT: Deborah Blue, Special Assistant to the Designated Federal Officer (DFO) at (202) 418–1466 or *dblue@fcc.gov*. The address is: Telecommunications Access Policy Division, Wireline Competition Bureau, Federal Communications Commission, The Portals II, 445 12th Street, SW., Suite 5–A420, Washington, DC 20554. The fax number is: (202) 418–2345. The TTY number is: (202) 418–0484.

SUPPLEMENTARY INFORMATION: Released: October 31, 2002.

The North American Numbering Council (NANC) has scheduled a meeting to be held Tuesday, November 19, 2002, from 9 a.m. until 5 p.m., and on Wednesday, November 20, 2002, from 8:30 a.m., until 12 noon (if required). The meeting will be held at the Federal Communications Commission, Portals II, 445 12th Street, SW., Room TW–C305, Washington, DC.

This meeting is open to members of the general public. The FCC will attempt to accommodate as many participants as possible. The public may submit written statements to the NANC, which must be received two business days before the meeting. In addition, oral statements at the meeting by parties or entities not represented on the NANC will be permitted to the extent time permits. Such statements will be limited to five minutes in length by any one party or entity, and requests to make an oral statement must be received two business days before the meeting. Requests to make an oral statement or provide written comments to the NANC should be sent to Deborah Blue at the address under **FOR FURTHER INFORMATION CONTACT,** stated above.

Proposed Agenda—Tuesday, November 19, 2002, 9 a.m.

1. Announcements and Recent News
2. Approval of Minutes
   —Meeting of September 24–25, 2002
3. Report of the North American Numbering Plan Administrator (NANPA)
4. Report of Oversight Working Group
   —Review of Change Orders
   —Comparison of PAS vs. specification
   —2002 Performance Survey
   —Performance Improvement Plan
5. NANC October 23, 2002 letter to FCC re: Waiver of Pooling Grandfathered Codes Outside NPA
6. Report of National Thousands Block Pooling Administrator
   —Response to OWG review of PAS vs. specification
7. Report of Contamination Threshold IMG
   —Draft of recommendation due to FCC by December 13, 2002
8. Status of Industry Numbering Committee activities
9. Report of NANP Expansion/ Optimization IMG
10. Report of Intermediate Numbering/ Soft Dial Tone IMG
11. Report of the Local Number Portability Administration (LNPA) Working Group
    —Wireless Number Portability Operations (WNPO) Subcommittee
12. Report of NAPM LLC
13. Report from NBANC
14. Report of Cost Recovery Working Group
15. Report of E-Conferencing Working Group
16. Steering Committee
    —Table of NANC Projects
17. Report of Steering Committee
18. Summary of Action Items
19. Public Comments and Participation (5 minutes per speaker)
20. Other Business

Adjourn no later than 5 p.m.

Wednesday, November 20, 2002—8:30 a.m., If Required

21. Complete any unfinished agenda items.
22. Other Business

Adjourn no later than 12 Noon.

Next Meeting: Wednesday, January 22, 2003.

Federal Communications Commission.
Cheryl L. Callahan,
Assistant Chief, Telecommunications Access Policy Division, Wireline Competition Bureau.
[FR Doc. 02–28060 Filed 11–4–02; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 18, 2002.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. Terry E. Forcht, Marion C. Forcht, Corbin, Kentucky; Theodore B. Forcht, Williamsburg, Kentucky; Rodney S. Shockley, and Laurie S. Shockley, Marietta, Kentucky; acting in concert to retain control of the voting shares of PRP Bancorp, Inc., Corbin, Kentucky, and thereby indirectly retain voting shares of PRP National Bank, Pleasure Ridge Park, Kentucky.

*2. Terry E. Forcht, Marion C. Forcht,*Corbin, Kentucky; Theodore B. Forcht, Williamsburg, Kentucky; Rodney S. Shockley, and Laurie S. Shockley, Marietta, Kentucky; acting in concert to retain control of Green County Bancshares, Inc., Corbin, Kentucky, and thereby indirectly retain voting shares of Greensburg Deposit Bank & Trust Company, Greensburg, Kentucky.

3. Terry E. Forcht, Marion C. Forcht, Corbin, Kentucky; Theodore B. Forcht, Williamsburg, Kentucky; Rodney S. Shockley, and Laurie S. Shockley, Marietta, Kentucky; acting in concert to retain control of Campbellsville Bancorp, Inc., Corbin, Kentucky, and thereby indirectly retain voting shares of Campbellsville National Bank, Campbellsville, Kentucky.

B. Federal Reserve Bank of Minneapolis (Julie Stackhouse, Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1. David Cyril Arnold, North Mankato, Minnesota; to acquire voting shares of Voyager Financial Services Corporation, Edina, Minnesota, and thereby indirectly acquire voting shares of Voyager Bank, Eden Prairie, Minnesota.

Board of Governors of the Federal Reserve System, October 29, 2002.
Robert deV. Frierson,
Deputy Secretary of the Board.
[FR Doc. 02–28024 Filed 11–4–02; 8:45 am]
BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 19, 2002.

A. Federal Reserve Bank of Minneapolis (Julie Stackhouse, Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1. Todd Haugan, Long Lake, Minnesota; Tom P. Kell, Duluth, Minnesota; and Richard Lefcowitz, Minong, Wisconsin; to acquire voting shares of Superior Financial Holding, Inc., Two Harbors, Minnesota, and thereby indirectly acquire voting shares of The Lake Bank, National Association, Two Harbors, Minnesota.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Harvey E. Zinn, Sugar Land, Texas; to acquire voting shares of SNB Bancshares, Inc., Sugar Land, Texas, and thereby indirectly acquire voting shares of Southern National Bank of Texas, Sugar Land, Texas.

Board of Governors of the Federal Reserve System, October 30, 2002.
Robert deV. Frierson,
Deputy Secretary of the Board.
[FR Doc. 02–28055 Filed 11–4–02; 8:45 am]
BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 29, 2002.

A. Federal Reserve Bank of Kansas City (Susan Zubradt, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Heritage Bancshares, Inc., Topeka, Kansas; to become a bank holding company by acquiring 100 percent of the voting shares of Heritage Bank, Topeka, Kansas.

Board of Governors of the Federal Reserve System, October 29, 2002.
Robert deV. Frierson,
Deputy Secretary of the Board.
[FR Doc. 02–28025 Filed 11–4–02; 8:45 am]
BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 29, 2002.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 3030-B4470:

1. Commerce National Bankshares of Florida, Inc., Winter Park, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of Commerce National Bank of Florida, Winter Park, Florida (in organization).

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Reynolds, Teague, Thurman Financial Corp., Moody, Texas, and RTT Delaware Holdings, Inc., Wilmington, Delaware; to become bank holding companies by acquiring 100 percent of the voting shares of The First National Bank of Moody, Moody, Texas.

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Board of Governors of the Federal Reserve System, October 30, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–28054 Filed 11–4–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 18, 2002.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106-2204:

1. Boston Private Financial Holdings, Inc., Boston, Massachusetts; to acquire up to 33 percent of the voting shares of Coldstream Holdings, Inc., and indirectly acquire Coldstream Capital Management, Inc., and Coldstream Securities, Inc., all of Bellevue, Washington, and thereby engage in investment advisory services, pursuant to § 225.28(b)(6) of Regulation Y; commodity pool operator activities; See *Dresdner Bank AG, 84 Fed. Res. Bull, 361 (May 1998)*; and in securities brokerage activities in an agency capacity, pursuant to § 225.28(b)(7) of Regulation Y.

Board of Governors of the Federal Reserve System, October 29, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc.02–28023 Filed 11–4–02; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the Secretary's Advisory Committee on Regulatory Reform

AGENCY: Office of the Assistant Secretary for Planning and Evaluation, HHS.

ACTION: Notice of meeting.

SUMMARY: This notice announces a public meeting of the Department of Health and Human Services (HHS) Secretary's Advisory Committee on Regulatory Reform. As governed by the Federal Advisory Committee Act in accordance with Section 10(a)(2), the Secretary's Advisory Committee on Regulatory Reform is seeking guidance for the Department's efforts to streamline regulatory requirements. The Advisory Committee will advise and make recommendations for changes that would be beneficial in four broad areas: health care delivery, health systems operations, biomedical and health research, and the development of pharmaceuticals and other products. The Committee will review changes identified through regional public hearings, written comments from the public, and consultation with HHS staff.

All meetings and hearings of the Committee are open to the general public. The meeting agenda will allow some time for public comment. Additional information on the meeting agenda will be posted on the Committee's Web site prior to the meeting (*http://www.regreform.hhs.gov*).

DATES: The final full meeting of the Secretary's Advisory Committee on Regulatory Reform will be held on Thursday, November 21, 2002, from 8 am to 6 pm.

ADDRESSES: The hearing will be held in Room 800, Hubert H. Humphrey Building, 200 Independence Ave, SW., Washington, DC. To comply with security requirements, individuals who do not possess a valid Federal identification must present a picture identification, e.g., driver's license or passport upon entry to the Humphrey Building.

FOR FURTHER INFORMATION CONTACT: Margaret P. Sparr, Executive Coordinator, Secretary's Advisory Committee on Regulatory Reform, Office of the Assistant Secretary for Planning and Evaluation, 200 Independence Avenue, SW., Room 344G, Washington, DC 20201, (202) 401–5182.

SUPPLEMENTARY INFORMATION: The Hubert H. Humphrey Building is in compliance with the Americans with Disabilities Act. Sign-language interpretation will be provided for the duration of the meeting. If any individual with a disability needs other reasonable accommodation to participate in the meeting, please contact Dianne Norcutt at Social and Scientific Systems—phone: 301–628–3146; fax: 301–628–3101; e-mail: *dnorcutt@s-3.com*,; TTY: 800–735–2258.

On June 8, 2001, HHS Secretary Thompson announced a Department-wide initiative to reduce regulatory burdens in health care, to improve patient care, and to respond to the concerns of health care providers and industry, State and local Governments, and individual Americans who are affected by HHS rules. Common sense approaches and careful balancing of needs can help improve patient care. As part of this initiative, the Department established the Secretary's Advisory Committee on Regulatory Reform to provide findings and recommendations regarding potential regulatory changes. These changes would enable HHS programs to reduce burdens and costs associated with departmental regulations and paperwork, while at the same time maintaining or enhancing the effectiveness, efficiency, impact, and access of HHS programs.

Dated: October 30, 2002.

Dr. William Raub,

Deputy Assistant Secretary for Planning and Evaluation.

[FR Doc. 02–28050 Filed 11–4–02; 8:45 am]

BILLING CODE 4151–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02D–0137]

Regulatory Procedures Manual; Chapter 9, Imports, Subchapter: Guidance Concerning Recommending Customs' Seizure and Destruction of Imported Human and Animal Food That Has Not Been Reconditioned; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft procedural guidance entitled "Guidance Concerning Recommending Customs' Seizure and Destruction of Imported Human and Animal Food That Has Not Been Reconditioned." This draft guidance will provide FDA field offices with procedures for recommending seizure and destruction of foods that pose a significant risk to public health.

DATES: Submit written or electronic comments on the draft guidance by January 6, 2003, to ensure adequate consideration of the comments in the preparation of the final guidance. However, you may submit written or electronic comments at any time.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Import Operations and Policy (HFC–170), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your request. Submit written comments on the draft guidance to Dockets Management Branch (HFA–305), 5630 Fishers Lane, rm. 1061, Rockville, MD, 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments. See* the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Joseph McCallion, Division of Import Operations and Policy (HFC–170), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–6553, FAX 301–594–3787, email: jmccalli@ora.fda.gov.

SUPPLEMENTARY INFORMATION:

I. Background

In July 1999, the Secretaries of Health and Human Services and Treasury began development of new operational procedures to protect consumers from unsafe imported food. A plan, announced in December 1999, was developed by FDA and the U.S. Customs Service (Customs) to prevent distribution of unsafe imported food by destroying food products that pose a significant risk to public health. This initiative optimizes the statutory authorities and resources available to FDA and Customs.

Food products refused entry into the United States may be offered subsequently for re-importation by importers who choose to circumvent the import regulatory system or by importers who are unaware of the previous refusal. FDA and Customs have worked together on numerous cases to seize and destroy unsafe imported products regulated by FDA. This draft guidance serves to delineate FDA's responsibilities for collecting information, analyzing public health risk, recommending seizure, and coordinating destruction of the violative imported food by Customs. The purpose of this guidance is to ensure that imported food that poses a significant risk to public health is not distributed or exported and subsequently re-entered into U.S. commerce.

The draft guidance entitled "Guidance Concerning Recommending Customs' Seizure and Destruction of Imported Human and Animal Food That Has Not Been Reconditioned" is level 1 guidance that is being distributed for comment in accordance with FDA's regulation on good guidance practices (21 CFR 10.115) relating to the development, issuance, and use of guidance documents. The draft guidance represents the agency's current thinking on this topic. It does not create or confer any rights for, or on, any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments on the draft guidance by January 6, 2003. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. A copy of the draft guidance and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at *http://www.cfsan.fda.gov/~dms/guidance.html.*

Dated: April 5, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–27575 Filed 11–4–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Request for public comment: 60-day proposed information collection.

AGENCY: Indian Health Service.

ACTION: Request for public comment: 60-day proposed information collection.

SUMMARY: The Indian Health Service (IHS), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the IHS is providing a 60-day advance opportunity for public comment on a proposed new collection of information to be submitted to the Office of Management and Budget for review.

Proposed Collection: Title: 0917–NEW, "IHS Forms to implement the Privacy Rule (45 CFR parts 160 and 164)". *Type of Information Collection Request:* New collection. *Form Number(s):* IHS–810, IHS–911, IHS–912–1, IHS 912–2, and IHS 913. *Need and Use of Information Collection:* This collection of information is made necessary by the Department of Health and Human Services Rule entitled "Standards for Privacy of Individually Identifiable Health Information" ("Privacy Rule") (45 CFR Parts 160 and 164). The Privacy Rule implements the privacy requirements of the Administrative Simplification subtitle of the Health Information Portability and Accountability Act of 1996 and creates national standards to protect individual's personal health information and gives patients increased access to their medical records. Sections, 45 CFR 164.508, 522, 526 and 528 of the Rule require the collection of information to implement these protection standards and access requirements. The IHS will use the following data collection instruments to implement the information collection requirements contained in the Rule.

45 CFR 164.508: This provision requires covered entities to obtain or

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receive a valid authorization for its use or disclosure of protected health information for other than treatment, payment and healthcare operations. Under the provision individuals may initiate a written authorization permitting covered entities to release their protected health information to entities of their choosing. The IHS–810 will be used to document an individual's authorization to use or disclose their protected health information.

45 CFR 164.522: Section 164.522(a)(1) requires a covered entity to permit individuals to request that the covered entity restrict the use and disclosure of their protected health information. The covered entity may or may not agree to the restriction. The form "IHS–912–1 Request for Restriction(s)" will be used to document an individual's request for restriction of their protected health information and whether IHS agreed or disagreed with the restriction. Section 164.522(a)(2)(1) permits a covered entity to terminate its agreement to a restriction if the individual agrees to or requests the termination in writing. The form "IHS–912–2 Request for Revocation of Restriction(s)" will be used to document the agency or individual request to terminate a formerly agreed to restriction regarding the use and disclosure of protected health information.

45 CFR 164.526: This provision requires covered entities to permit an individual to request that the covered entity amend protected health information. If the covered entity accepts the requested amendment, in whole or in part, the covered entity must inform the individual that the amendment is accepted and obtain the individual's identification of and agreement to have the covered entity notify the relevant persons with which the amendment needs to be shared. If the covered entity denies the requested amendment, in whole or in part, the covered entity must provide the individual with a written denial. The form "IHS–911 Request for Correction/Amendment of Protected Health Information" will be used to document an individual's request to amend their protected health information and the agency's decision to accept or deny the request.

45 CFR 164.528: This provision requires covered entities to permit an individual to request that the covered entity provide an accounting of disclosures of protected health information made by the covered entity. The form "IHS 913 Request for an Accounting of Disclosures" will be used to document an individual's request for an accounting of disclosures of their protected health information and the agency's handling of the request.

Completed forms used in this collection of information are filed in the medical record. *Affected Public:* Individuals and households. *Type of Respondents:* Individuals. *Burden Hours:* The table below provides the estimated burden hours for this information collection:

ESTIMATED ANNUAL BURDEN HOURS

45 CFR Section/IHS Form	No. of respondents	Responses per respondent	Burden per response* (minutes)	Total annual burden
164.508 IHS–810	500,000	1	20	166,667
164.522(a)(1) IHS–912–1	15000	1	10	2,500
164.522(a)(2) IHS–912–2	5000	1	10	833
164.526 IHS–911	7500	1	15	1,875
164.528 IHS–913	15000	1	10	2,500
Total Annual Burden		5		174,375

*For ease of understanding, burden hours are provided in actual minutes.

The total estimated burden for this collection of information is 174,375 hours.

There are no capital costs, operating costs and/or maintenance costs to respondents.

Request for Comments: Your written comments and/or suggestions are invited on one or more of the following points: (a) Whether the information collection activity is necessary to carry out an agency function; (b) whether the agency processes the information collected in a useful and timely fashion; (c) the accuracy of public burden estimate (the estimated amount of time needed for individual respondents to provide the requested information); (d) whether the methodology and assumptions used to determine the estimate are logical; (e) ways to enhance the quality, utility, and clarity of the information being collected; and (f) ways to minimize the public burden through the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Send Comments and Requests for Further Information: Send your written comments and requests for more information on the proposed collection or requests to obtain a copy of the data collection instrument(s) and instructions to: Mr. Lance Hodahkwen, Sr., M.P.H., IHS Reports Clearance Officer, 12300 Twinbrook Parkway, Suite 450, Rockville, MD 20852.1601, call non-toll free (301) 443–5938, send via facsimile to (301) 443-2316, or send your E-mail requests, comments, and return address to: *ihodahkw@hqe.ihs.gov.*

Comment Due Date: Your comments regarding this information collection are best assured of having their full effect if received within 60-days of the date of this publication.

Dated: October 28, 2002.

Charles W. Grim,

Assistant Surgeon General, Interim Director.

[FR Doc. 02–28056 Filed 11–4–02; 8:45 am]

BILLING CODE 4160–16–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–310–1310–PB–24–1A]

OMB Approval Number 1004–0–162; Information Collection Submitted to the Office of Management and Budget Under the Paperwork Reduction Act

The Bureau of Land Management (BLM) has submitted a request to the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) to extend a currently approved collection of information listed below. On May 14, 2002, the BLM published a notice in the **Federal Register** (67 FR 34467) requesting comments. The comment period ended July 15, 2002. BLM received no comments. You may obtain copies of the collection of information and related forms and explanatory material by contacting the BLM Information Collection Clearance Office at the telephone number listed below.

The OMB must respond to this request within 60 days but may respond after 30 days. For maximum consideration, your comments and suggestions on the requirement should be made within 30 days directly to the Office of Management and Budget, Interior Department Desk Officer (1004–0162), Office of Information and Regulatory Affairs, Washington, DC 20503. Please provide a copy of your comments to the Bureau Information Collection Clearance Officer (WO–630), Bureau of Land Management, Eastern States Office, 7450 Boston Blvd, Springfield, Virginia 22153.

Nature of Comments: We specifically request your comments on the following:

1. Whether the collection of information is necessary for the proper functioning of the BLM, including whether the information will have practically utility;

2. The accuracy of BLM's estimate of the burden of collecting the information, including the validity of the methodology and assumptions we use;

3. Ways to enhance the quality, utility, and clarity of the information collected; and

4. Ways to minimize the information collection burden on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology.

Title: Oil and Gas Geophysical Exploration Operations (43 CFR 3150).

OMB Approval Number: 1004–0162.

Abstract: Respondents supply information that we use to determine procedures for conducting oil and gas geophysical exploration operations on public lands. The information supplied allow the Bureau of Land Management and the Forest Service to determine that geophysical exploration operation activities are conducted in a manner consistent with the regulations, local use plans, and environmental assessments in compliance with the provisions of the National Environmental Policy Act of 1969, as amended.

Form Numbers: BLM 3150–4/FS 2800–16; BLM 3150–5/FS 2800–16a; certain nonform information (Alaska only).

Frequency: On occasion.

Description of Respondents: Oil and gas exploration and drilling companies.

Estimated Completion Time: BLM 3150–4/FS 2800–16, 1 hour; BLM 3150–5/FS 2800–16a, 20 minutes; and certain nonform information (Alaska only), 1 hour.

Annual Repsonses: 1,253.

Application Fee Per Response; $25 filing/renewal fee (only if off lease in Alaska).

Annual Burden Hours: 836.

Bureau Clearance Officer: Michael H. Schwartz (202) 452–5033.

Dated: October 30, 2002.

Michael H. Schwartz,

Bureau of Land Management, Information Collection Clearance Officer.

[FR Doc. 02–28046 Filed 11–4–02; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–027–1610–PG; G–03–0017]

Notice of Public Meetings, Steens Mountain Advisory Council

AGENCY: Department of the Interior, Bureau of Land Management, Burns District Office.

ACTION: Notice of Public Meetings for the Steens Mountain Advisory Council.

SUMMARY: In accordance with the Steens Mountain Cooperative Management and Protection Act (Steens Act) of 2000, the Federal Land Policy and Management Act, and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management (BLM), Steens Mountain Advisory Council (SMAC) will meet as indicated below:

DATES: The SMAC will meet at the BLM, Burns District Office 28910 Hwy 20 West, Hines, Oregon 97738, on January 23 and 24, 2003; March 3 and 4, 2003; April 9, 10, and 11, 2003; May 8, and 9, 2003; June 5 and 6, 2003; August 11 and 12, 2003; and November 17 and 18, 2003. A meeting in Bend, Oregon, will be held on September 15 and 16, 2003. All meeting sessions will begin the first day at 8:00 a.m., local time,and will end at approximately 4:30 p.m., local time. The second day of each session will begin at 8:00 a.m., local time, and will end at approximately 4:00 p.m., local time.

SUPPLEMENTARY INFORMATION: The SMAC was appointed by the Secretary of the Interior on August 14, 2001, pursuant to the Steens Act. The SMAC's purpose is to provide representative counsel and advice to the BLM regarding (1) new and unique approaches to management of the land within the bounds of the Steens Mountain Cooperative Management and Protection Area (CMPA), (2) cooperative programs and incentives for landscape management that meet human needs, maintain and improve the ecological and economic integrity of the area, and (3) preparation and implementation of a management plan for the CMPA.

Topics to be discussed by the SMAC at these meetings include categories such as transportation; recreation/public use; wildlife, special designated areas; partnerships/programs; cultural resources; watersheds; projects; education; volunteer-based information; adaptive management; planning process (Andrews Management Unit/Steens Mountain Cooperative Management and Protection Area Resource Management Plan and Environmental Impact Statement); science committee/consultants; socioeconomics; and other matters that may reasonably come before the SMAC.

All meetings are open to the public in their entirety. Information to be distributed to the SMAC is requested at least 10 days prior to the start of each SMAC meeting. Public comment is scheduled for 11 a.m. to 11:30 a.m., local time, both days of each meeting session. The amount of time scheduled for public presentations and meeting times may be extended when the authorized representative considers it necessary to accommodate all who seek to be heard regarding matters on the agenda.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the SMAC may be obtained from Rhonda Karges, Management Support Specialist, Burns District Office, 28910 Hwy 20 West, Hines, Oregon 97738, (541) 573–4400 or *Rhonda_Karges@or.blm.gov* or from the following Web site: *http://www.or.blm.gov/Steens.*

Dated: October 29, 2002.

Sandra C. Berain,

Associate District Manager.

[FR Doc. 02–28026 Filed 11–4–02; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Order Rescinding Final Order Denying Application for Registration Submitted by Steven J. Watterson

On May 21, 2001, an Order to Show Cause was issued to Steven J. Watterson proposing to deny his application for

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registration as researcher in controlled substances. Subsequently on May 17, 2002, a final order was published in the **Federal Register** at 67 FR 35,136, indicating that Mr. Watterson had not responded to the Order to Show Cause and had therefore waived his opportunity for a hearing. Noting that the applicant had waived his right to a hearing, the Deputy Administrator found that Mr. Watterson's application should be denied.

Subsequent to the final order being published in this matter, it was brought to the Deputy Administrator's attention that Mr. Watterson had been in contact with an official at DEA headquarters and had not requested a hearing because Mr. Watterson was under a misapprehension, caused in part by conflicting guidance being given to Mr. Watterson by the DEA official concerning how and when the matter would be resolved.

Inasmuch as it appears that Mr. Watterson had contacted DEA in this matter and received contradictory direction, a default judgment was not appropriate and the final order should not have been issued. The Deputy Administrator of the Drug Enforcement Administration therefore orders that the final order published May 17, 2002, at 67 FR 35,136 be, and it hereby is, rescinded, and this matter is hereby remanded to the Office of Diversion Control, Drug Enforcement Administration, for further appropriate proceedings. This order is effective upon publication.

Dated: October 15, 2002.

John B. Brown, III,

Deputy Administrator.

[FR Doc. 02–28066 Filed 11–4–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: *30-day notice of information collection under review:* Certificate of Satisfactory Pursuit; Form I–699.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on August 28, 2002 at 67 FR 55276, allowing for a 60-day public comment period. No public comment was received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until December 5, 2002. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, 725 17th Street, NW., Room 10235, Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Certificate of Satisfactory Pursuit.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–699. Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. The Service will use this form to verify that a certified course provider has supplied the required instructions to temporary resident aliens, in compliance with Pub. L. 99–603 and Pub. L. 100–204, section 902.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 100,000 responses at 10 minutes (0.166 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 16,600 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan (202) 514–3291, Director, Regulations and Forms Services Division, Immigration and Naturalization Service, U.S. Department of Justice, Room 4304, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Patrick Henry Building, 601 D Street, NW., Suite 1600, Washington, DC 20530.

Dated: October 30, 2002.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 02–28040 Filed 11–4–02; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: *30-day notice of information collection under review:* HRIFA Supplement to Form I–485 Instructions; Form I–485C.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on August 28, 2002 at 67 FR 55275, allowing for a 60-day public review and comment period. The INS received no public comments regarding this information collection. The INS is now requesting a 3-year extension on the currently approved information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until December 5, 2002. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, 725 17th Street, NW., Room 10235, Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection: Extension of currently approved collection.*

(2) *Title of Form/Collection:* HRIFA Supplement to Form I–485 Instructions.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–485 Supplement C. Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. This application is used to determine whether an alien applying for adjustment of status under the provisions of section 902 of Division A, Title IX of Public Law 105–277 is eligible to become a permanent resident of the United States.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 50,000 responses at approximately 30 minutes per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 25,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan (202) 514–3291, Director, Regulations and Forms Services Division, Immigration and Naturalization Service, U.S. Department of Justice, Room 4034, 425 I Street, NW., Washington, DC 20536.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, 601 D Street, NW., Patrick Henry Building, Suite 1600, Washington, DC 20004.

Dated: October 30, 2002.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 02–28041 Filed 11–4–02; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Extension of Existing Collection; Comment Request

ACTION: 30-day notice of information collection under review; affidavit of financial support and intent to Petition for Legal Custody for Pub. L. 97–359 Amerasian; Form I–361.

The Office of Management and Budget (OMB) approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** on August 16, 2002 at 67 FR 53621, allowing a 60-day public comment period. No comments were received.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until December 5, 2002. This process is conducted in accordance with 5 CFR part 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, 725–17th Street, NW., Suite 10102, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–6974. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, *Attention:* Department Clearance Officer, Patrick Henry Buildilng, 601 D Street, NW., Suite 1600, Washington, DC 20530. Comments may also be submitted to DOJ via facsimile to (202) 514–1534.

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on whose who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Affidavit of Financial Support and Intent to Petitiion for Legal Custody for Public Law 97–359 Amerasian.

(3) *Agency form number, if any, and the applciable component of the Department of Justice sponsoring the collection:* Form I–361. Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or Households.The form is used in support

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of Form I–360 to assure financial support for Pub. L. 97–359 Amerasian. The affadivit is used only to sponsor individuals eligible for immigration under Pub. L. 97–359.

(5) *An estimate of the total number respondents and the amount of time estimated for an average respondent to respond:* 50 responses at 30 minutes (.50) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 25 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Mr. Richard A. Sloan, (202) 514–3291, Director, Regulations and Forms Services Division, Immigration and Naturalization Service, U.S. Department of Justice, Room 4034, 425 I Street, NW., Washington, DC 20536.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Patrick Henry Building, 601 D Street, NW., Suite 1600, Washington, DC 20530.

Dated: October 30, 2002.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 02–28042 Filed 11–4–02; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: 30-Day Notice of Information Collection under Review: Petition for Approval of School for Attendance by Nonimmigrant; Form I–17.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on August 8, 2002 at 67 FR 53622, allowing for a 60-day public comment period. No comments were received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until December 5, 2002. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Room 10235, Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Petition for Approval of School for Attendance by Nonimmigrant.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–17. Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. The information is used by learning institutions to determine acceptance of nonimmigrant students, as well as INS to establish a list of names and locations of schools or campuses within school systems or districts with multiple locations, which schools are bona fide institutions of learning.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 322 responses at 1 hour per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 322 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instruments, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Regulation and Forms Services Division, Immigration and Naturalization Service, U.S. Department of Justice, Room 4304, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, 601 D Street, NW., Patrick Henry Building, Washington, DC 20530.

Dated: October 30, 2002.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 02–28043 Filed 11–4–02; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Comment Request

ACTION: 30-day notice of information collection under review; request for verification of naturalization; form N–25.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on August 16, 2002, at 67 FR 56323, allowing for a 60-day public comment period. No comments were received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until December 5, 2002. This process is conducted in accordance with 5 CFR 1320.10. Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, 725–17th Street, NW., Room 10235, Washington, DC 20530. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Request for Verification of Naturalization.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Forms N–25. Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or Households. This form is used to obtain information from the records of a clerk of court which may be needed by a person applying for benefits under various provisions of the Immigration and Nationality Act.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 1,000 responses at 15 minutes (.25) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 250 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan, 202–514–3291, Director, Regulations and Forms Services Division, Immigration and Naturalization Service, U.S. Department of Justice, Room 4034, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Patrick Henry Building, 601 D Street, NW., Suite 1600, Washington, DC 20530.

Dated: October 31, 2002.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 02–28059 Filed 11–4–02; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of October, 2002.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) that sales or production, or both, of the firm or sub-division have decreased absolutely, and

(3) that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–38,641; Applied Molded Products Corp., Watertown, WI
TA–W–41,490; Dispatch Printing, Inc., Erie, PA
TA–W–41,858; G and G Sewing Machine Co., Inc., Dunmore, PA
TA–W–41,971; Maryland Mold, Inc., Pittsfield, MA
TA–W–42,020; Maurer Enterprises, Inc., Grants Pass, OR
TA–W–42,052; Forem USA, a Div. Of Allen Telecom, Inc., Sparks, NV
TA–W–42,066; Leatherworks, LLC, Detroit, MI
TA–W–42,145; Acme Electronic, LLC, Cuba, NY
TA–W–41,966; Crane Resistoflex, Bay City, MI
TA–W–41,924; McDonald Woodworks, Inc., Philadelphia, MS
TA–W–41,325; Normark Corp., d/b/a Blue Fox Tackle, Cambridge, MN

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–42,157; A.O. Smith, Electrical Products Co., Upper Sandusky, OH
TA–W–42,127; Sun Apparel of Texas, Inc., Product Development Div., El Paso, TX
TA–W–42,105; Hershey Foods Corp., Pennsburg, PA
TA–W–42,093; Ames True Temper, Kane, PA
TA–W–41,329; TLD Lantis Corp., A Subsidiary of Teleflex Lionel-DuPont (TLD), Salinas, CA

The workers firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–42,131; Surgical Corp of America, Irvington, NY

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TA–W–41,794; Sunbeam Products, Product Design Group, Hattiesburg, MS
TA–W–42,195; EDUSA Corp., A Subsidiary of 3M, El Paso, TX Including Temporary Workers of the Following Firms: Manpower, Inc., El Paso, TX, Randstadt, El Paso, TX and Southwest Staffing, El Paso, TX
TA–W–42,067; Huntsman Polymers Corp., Utilities Div., Odessa, TX
TA–W–41,254; Cooper Lighting, a Div. Of Cooper Industries, Elk Grove Village, IL

The investigation revealed that criteria (1) has not been met. A significant number or proportion of the workers did not become totally or partially separated from employment as required for certification.

TA–W–42,095; K.T. Mold and Manufacturing, Inc., Woodstock, IL

The investigation revealed that criteria (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA–W–42,059; Isaac Hazan and Co, The Hazan Group, Secaucus, NJ

Affirmative Determinations for Worker Adjustment Asssistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

TA–W–41,886; The Kelly Springfield Tire Co., Fayetteville, NC: June 20, 2001.
TA–W–42,029; Wyman Gordon Forgings, LP., Precision Castparts Corp., Houston, TX: August 14, 2001.
TA–W–41,998; Clore Automotive, LLC, Bloomington, MN: August 5, 2001.
TA–W–42,047 & A; Holloway Sportswear, Inc., Many, LA and Olla, LA: August 15, 2001.
TA–W–42,038; Corning, Inc., Telecommunications Segment, Optical Fiber Div., Concord Plant, Concord, NC: August 12, 2001.
TA–W–42,071; Marconi, Outside Plant and Power Products Div., Toccoa, GA: August 15, 2001.
TA–W–42,069; Aerus, LLC, Formerly Electrolux, LLC, Piney Flats, TN: September 3, 2001.
TA–W–41,556; Fedders Appliances, Effingham, IL: January 8, 2002.
TA–W–42,083; Bauch and Lomb, Contact Lens Div., Rochester, NY: October 24, 2002.
TA–W–42,107; Bath Unlimited, Inc., a Div. Of Masco Corp., Passaic, NJ: August 28, 2001.
TA–W–42,094; Spectrum Control, Inc., Power Technologies Group, Erie, PA: August 15, 2001.
TA–W–42,129; TJ Edwards Co., Auburn, ME: August 29, 2001.
TA–W–42,169; Alcoa, Inc., Badin Works, Badin, NC: September 6, 2001.
TA–W–42,182; American Tramways, Inc., a Div. of Doppelmayr CTEC, Inc., Watertown, NY: September 10, 2001.
TA–W–42,133; Angelica Image Apparel Div., Savannah, TN: August 26, 2001.
TA–W–41,740; Sulzer Pumps (US), Inc., Portland, OR: June 10, 2001.
TA–W–41,739; Wemco Precision Tool, Inc., Meadville, PA: June 14, 2001.
TA–W–41,598; Sonoco Products Co., Santa Maria Plant, Santa Maria, CA: May 15, 2001.
TA–W–41,502; Northrop Grumman Corp., Winchester Electronics Div., Sacramento, CA: April 23, 2001.
TA–W–41,382; Pendleton Woolen Mills, Inc., Corporate Headquarters, Portland, OR, A; Columbia Wool Scouring, Portland, OR, B; Dorr Woolen Co., Guild, NH, C; Washougal Mill, Washougal, WA, D; Pendleton Mill, Pendleton, OR, E; Bellevue Plant, Bellevue, NE, F; Nebraska City Plant, G; Menswear Distribution Center, Milwaukie, OR: April 9, 2001.
TA–W–41,189; Hitachi Electronic Devices USA, Inc., Greenville, SC: February 13, 2001.
TA–W–42,163; VF Imagewear (West), Inc., Sparta, TN: September 4, 2001.
TA–W–42,132; Fashion Star, Inc., Carrollton, GA: August 24, 2001.
TA–W–42,128; Kellwood Intimate Apparel, Crowntuft Div., Heflin, AL: August 27, 2001.
TA–W–42,126; Northern Cap Manufacturing, Minneapolis, MN: August 23, 2001.
TA–W–42,090; Ames True Temper, Plant #1, Parkersburg, WV: August 26, 2001.
TA–W–42,076; Weyerhaeuser Co., Wimer Logging Co., Albany, OR: August 27, 2001.
TA–W–42,074; Gerson and Gerson, Inc., Middlesex, NC: August 22, 2001.
TA–W–42,065; Cray, Inc., Chippewa Falls, WI: August 6, 2001.
TA–W–42,062; Sam Fashion, Inc., North Bergen, NJ: August 15, 2001.
TA–W–41,977; Helsapenn Co., Philadelphia, PA: July 26, 2001.
TA–W–41,941; Samuel-Whittar, Inc., Detroit, MI: August 12, 2001.
TA–W–41,935; Flextronics Enclosure Systems, Including Contract Workers of Accurate Personnel, Elk Grove Village, IL: July 22, 2001.
TA–W–41,767; Intermix Distributors, Inc. (d/b/a Intermix Foods), El Paso, TX: June 10, 2001.
TA–W–41,622; Permagraphics, Inc., Eugene, OR: May 28, 2001.
TA–W–41,531; Barth and Dreyfuss of California, Burbank, CA: April 19, 2001.
TA–W–41,491; Warner Manufacturing, Inc., Sacred Heart, MN: October 26, 2000.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (Public Law 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with section 250(a), Subchaper D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA-TAA issued during the months of October, 2002.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA–TAA–06492; Maurer Enterprises, Inc., Grants Pass, OR

NAFTA–TAA–06498; Leatherworks, LLC, Detroit, MI
NAFTA–TAA–06277; St. Vincent de Paul Enterprises, Contract Manufacturing Div., Portland, OR
NAFTA–TAA–06413; The Kelly Springfield Tire Co., Fayetteville, NC
NAFTA–TAA–06433; G and G Sewing Machine Co., Inc., Dunmore, PA
NAFTA–TAA–04480; Applied Molded Products Corp., Watertown, WI
NAFTA–TAA–06119; American Fast Print, Spartanburg, SC
NAFTA–TAA–06139; Dispatch Printing, Inc., Erie, PA
NAFTA–TAA–06457; Clore Automotive, LLC, Bloomington, MN
NAFTA–TAA–06526; Acme Electronics, LLC, Cuba, NY
NAFTA–TAA–06530; Sun Apparel of Texas, Inc., Product Development Div., El Paso, TX

The investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The investigation revealed that workers of the subject firm did not produce an article within the meaning of Section 250(a) of the Trade Act, as amended.

NAFTA–TAA–06501; Spectralink Corp., Return Material Authorization (RMA), Boulder, CO
NAFTA–TAA–06373; Oxford Automotive, Argos, IN
NAFTA–TAA–06519; Surgical Corporation of America, Irvington, NY

Affirmativae Determinations NAFTA–TAA

NAFTA–TAA–06521; Alcoa, Inc., Badin Works, Badin, NC: August 29, 2001.
NAFTA–TAA–06513; Spectrum Control, Inc., Power Technologies Group Erie, PA: August 15, 2001.
NAFTA–TAA–06504; Owens Brigam Medical, Also Known as Westmed, Inc., Injection Mold Div., Corona, CA: July 18, 2001.
NAFTA–TAA–06465; Corning, Inc., Telecommunications Segment, Optical Fiber Div., Concord Plant, Concord, NC: August 9, 2001.
NAFTA–TAA–06441; Helsapenn Co., Philadelphia, PA: July 23, 2001.
NAFTA–TAA–06304; Ericson, Inc., Base Station and Systems Development, Durham, NC: June 11, 2001.
NAFTA–TAA–06171; Northrop Grumman Corp., Winchester Electronics Div., Sacramento, CA: April 6, 2001.
NAFTA–TAA–07567 & A; Holloway Sportswear, Inc., Many, LA and Olla, LA: September 5, 2001.
NAFTA–TAA–06427; Samuel-Whittar, Inc., Detroit, MI: July 25, 2001.
NAFTA–TAA–06448; Crown Cork and Seal Co., Inc., Portland, OR: August 1, 2001.
NAFTA–TAA–06503; Fashion Star, Inc., Carrollton, GA: August 24, 2001.
NAFTA–TAA–6516; Hershey Foods Corporation, Pennsburg, PA: August 21, 2001.
NAFTA–TAA–06522; Weyerhaeuser Co., Wimer Logging Co., Albany, OR: August 27, 2001.
NAFTA–TAA–07554; VF Imagewear (West), Inc., Sparta, TN: September 4, 2001.

I hereby certify that the aforementioned determinations were issued during the months of October, 2002. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: October 15, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–28028 Filed 11–4–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of October, 2002.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–42,135; GB Machining, San Jose, CA
TA–W–42,164; Exide Technologies, GNB Industrial Power, Columbus, GA
TA–W–42,161; Loris Industries, LLC, Loris, SC
TA–W–41,986; Stan's Wood Products, Inc., Redmond, OR
TA–W–42,042; Plastic Products Co., Inc., Moline, IL
TA–W–42,085; Sterling Dula Architectural Products, Erie, PA
TA–W–42,086; Potlatch Corp., Bradley Hardwood Unit, Warren, AR
TA–W–40,108; American and Efird, Mt. Holly, NC, A; American Plant, Mt. Holly, NC B; Adrian Madora Plant, Mt. Holly, NC, C; Brentwood Depot, Brentwood, MO, D; Filament Plant, Mt. Holly, NC, E; Miami Depot, Miami, FL, F; Mt. Holly 15 Dyeing and Finishing Plant, Mt. Holly, NC, G; Rush Plant, Mt. Holly, NC, H; Gastonia Plant 1, Gastonia, NC, I; Gastonia Plant 20, Gastonia, NC, J; Gastonia Plant 56, Gastonia, NC, K; Gastonia 51 Dyeing and Finishing Plant, Gastonia, NC, L; Los Angeles Depot, Commerce, CA, M; Maiden Plant 11, Maiden, NC, N; Nashville Depot, Nashville TN, O; Nelson Plant 2, Lenoir, NC, P; Nelson Plant 12, Lenoir, NC, Q; New York Depot, Long Island, NY, R; Tupelo Depot, Tupelo, MS, S; Winder Depot, Winder, GA

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–42,239; Aerovox, Inc., Huntsville Foil Div., Huntsville, AL
TA–W–40,003; HPM Corp., HPM Remanufacturing, Mount Gilead, OH
TA–W–41,735; MSC Pinole Point Steel, Inc., MSC Pre Finish Metals, Inc., Richmond, CA
TA–W–42,136; The Goodyear Tire and Rubber Co., Stow Mold Facility, Akron/Stow Complex, Akron, OH
TA–W–42,103; Kodak Polychrome Graphics LLC, Holyoke, MA

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The workers firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–42,080; Johnstown Knitting Mill, Inc., Johnstown, NY
TA–W–40,975; Converter Concepts, Inc., Pardeeville, WI
TA–W–42,243; Consolidated Freight Ways, Conway Transport, El Paso, TX
TA–W–41,732; APL Logistics, Thomson Consumer Electronics, Socorro, TX
TA–W–42,124; Norfolk Southern Railway Co., Hollidaysburg Car Shop, Hollidaysburg, PA

The investigation revealed that criteria (1) has not been met. A significant number or proportion of the workers did not become totally or partially separated from employment as required for certification.

TA–W–41,263A; CII/Tyco Electronics, Guttenberg, IA

The investigation revealed that criteria (1) and (3) have not been met. A significant number or proportion of the workers did not become totally or partially separated from employment as required for certification. Increased imports did not contribute importantly to worker separations at the firm.

TA–W–41,900; Tecumseh Products Co., Grafton Operations, Grafton, WI

The investigation revealed that criteria (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA–W–42,057; N and E Refractories, Inc. d/b/a International Ceramic Welding, Demotte, IN
TA–W–41,996; Eagle Bridge Machine and Tool, Eagle Bridge, NY

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

TA–W–41,817; Arrow/SI, Inc., Asheboro, NC: July 2, 2001
TA–W–41,678; Merrimac Paper Co., Pepperell Paper Co., Pepperell, MA: May 28, 2001
TA–W–41,263; CII/Tyco Electronics, Sabula, IA: March 7, 2001
TA–W–38,935; Naturipe Berry Growers, Inc., Watsonville, CA: March 14, 2000
TA–W–41,991; Donna Karan Co., New York, NY: August 13, 2001
TA–W–41,989; Pinnacle Arts and Frames, Piggott, AR: July 31, 2001
TA–W–41,921; Packard Electric Systems, Div. of Delphi Automotive Systems, Gadsden, AL: July 24, 2001
TA–W–42,144; Toyo Tanso PA Graphite, Inc., Brookville, PA: August 28, 2001
TA–W–42,111; G–III Leather Fashions, New York, NY: August 30, 2001
TA–W–42,099; Agilent Technologies, Inc., Lake Stevens Site, Order Fulfillment Operation, Everett, WA: August 19, 2001
TA–W–42,015; Rhodia North America, Analgesics Plant, St. Louis, MO: August 19, 2001
TA–W–41,995; Reliant Manufacturing, Inc., Chesterfield, MI: August 12, 2001
TA–W–40,728; Milkan Group, Inc., New York, NY: December 5, 2000
TA–W–41,128; Illinois Tool Works, Jemco Engineering Div., Minooka, IL: February 1, 2001
TA–W–41,433; Intercraft Burnes, Statesville, NC: April 4, 2001
TA–W–41,712; Denim Processing, Inc., Oneida, TN: May 31, 2001
TA–W–41,816; Wisconsin Color Press, Milwaukee, WI: June 20, 2001
TA–W–41,820; General Cable Corp., Outside Voice and Data Telecommunications Div., Bonham, TX: June 24, 2001
TA–W–41,907; Klaussner Furniture Industries, Inc., Plant 1, Asheboro, NC, A; Plant 3, Asheboro, NC, B; Plant 5, Asheboro, NC, C; Plant 7, Asheboro, NC, D; Plant 8, Asheboro, NC, E; Plants 9 and 98, Asheboro, NC, F; Plant 15, Asheboro, NC, G; Plant 20, Asheboro, NC, H; Plant 75, Asheboro, NC, I; Plants 91 and 95, Asheboro, NC, J; Plant 99, Asheboro, NC, K; Plant 27, Star, NC, L; Plants 88 and 89, Candor, NC, M; Plants 83 and 17, Robbins, NC: July 12, 2001
TA–W–41,954; Leather Center, Carrollton, TX: July 29, 2001
TA–W–42,005 &A; Sanmina-SCI Corp., Derry, NH and Hudson, NH: August 7, 2001
TA–W–42,063; Acco Chain and Lifting Products, a Div. of FKI Industries, Inc., Owned by FKI PLC, York, PA: August 15, 2001
TA–W–42,117; Superior Essex, Communications Group, Tarboro, NC: August 28, 2001
TA–W–42,147; Universal Manufacturing, Zelienople, PA: August 29, 2001
TA–W–42,246; Radiall/Larsen Antenna Technologies, a Wholly Owned Subsidiary of Radiall, Inc., a Wholly Owned Subsidiary of Radiall, S.A., Vancouver, WA: September 23, 2001

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the months of October, 2002.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA–TAA–05325; HPM Corp., HPM Remanufacturing, Mount Gilead, OH
NAFTA–TAA–05947; Limited Edition Shirt Co., Inc., Ranshaw, PA
NAFTA–TAA–06261; Merricac Paper Co., Pepperell Paper Co., Pepperell, MA
NAFTA–TAA–06523; Northern Engraving Corp., Holmen Div., Holmen, WI
NAFTA–TAA–07560; Toyo Tanso PA Graphite, Inc., Brookville, PA
NAFTA–TAA–06477; Stan's Wood Products, Inc., Redmond, OR

NAFTA–TAA–06230; Premier Machining Industries, LLC, Concord, NC
NAFTA–TAA–06320; MSC Pinole Point Steel, Inc., MSC Pre Finish Metals, Inc., Richmond, CA
NAFTA–TAA–06357; Tecumseh Products Co., Grafton Operations, Grafton, WI
NAFTA–TAA–05897; Illinois Tool Works, Jemco Engineering Div., Minooka, IL "All workers engaged in employment related to the production of lamps are denied eligibility to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974."
NAFTA–TAA–06424; Potlatch Corp., Bradley Hardwood Unit, Warren, AR
NAFTA–TAA–06532; Sappi Cloquet, LLC, Formerly Potlatch Corp., Cloquet, MN
NAFTA–TAA–07549; Exide Technologies, GNB Industrial Power, Columbus, GA

The investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The investigation revealed that workers of the subject firm did not produce an article within the meaning of section 250(a) of the Trade Act, as amended.

NAFTA–TAA–07605; Consolidated Freight Ways, Conway Transport, El Paso, TX
NAFTA–TAA–06518; Johnstown Knitting Mill, Inc., Johnstown, NY

The investigation revealed that criterion (1) has not been met. A significant number or proportion of the workers in such workers' firm or an appropriate subdivision (including workers in any agricultural firm or appropriate subdivision thereof) did not become totally or partially separated from employment as required for certification.

NAFTA–TAA–06612; Permit # 56865U, Dillingham, AK
NAFTA–TAA–06609; Permit # 56780U, Dillingham, AK

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

NAFTA–TAA–06497; N and E Refractories, Inc., d/b/a International Ceramic Welding, Demotte, IN

AFFIRMATIVE DETERMINATIONS NAFTA–TAA

NAFTA–TAA–05897; Illinois Tool Works, Jemco Engineering Div., Minooka, IL "All workers engaged in employment related to the assembly of indicator lights and switches who became totally or partially separated from employment on or after February 4, 2001"
NAFTA–TAA–04720; Naturipe Berry Growers, Inc., Watsonville, CA: March 22, 2000
NAFTA–TAA–06143; 3M Center, Coated Abrasives and Industrial Tape Div., St. Paul, MN: April 22, 2001
NAFTA–TAA–06467; Reliant Manufacturing, Inc., Chesterfield, MI: August 12, 2001
NAFTA–TAA–07550; Volex, Inc., Power Cord Div., Clinton, AR: September 6, 2001
NAFTA–TAA–06716; Permit # 57746H, Dillingham, AK: September 3, 2001
NAFTA–TAA–06317; General Cable Corp., Outside Voice and Date Telecommunications Div., Bonham, TX: June 24, 2001
NAFTA–TAA–06344; Wisconsin Color Press, Milwaukee, WI: July 2, 2001
NAFTA–TAA–06254; Denim Processing, Inc., Oneida, TN: May 31, 2001
NAFTA–TAA–06380; Klaussner Furniture Industries, Inc., Plant 1, Asheboro, NC, A; Plant 3, Asheboro, NC, B; Plant 5, Asheboro, NC, C; Plant 7, Asheboro, NC, D; Plant 8, Asheboro, NC, E; Plants 9 and 98, Asheboro, NC, F; Plant 15, Asheboro, NC, G; Plant 20, Asheboro, NC, H; Plant 75, Asheboro, NC, I; Plants 91 and 95, Asheboro, NC, J; Plant 99, Asheboro, NC, K; Plant 27, Star, NC, L; Plants 88, 89, Candor, NC, M; Plants 83 and 17, Robbins, NC: July 12, 2001

I hereby certify that the aforementioned determinations were issued during the months of October, 2002. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: October 25, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–28034 Filed 11–4–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of October, 2002.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or sub-division have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–41,585; Kennametal, Inc., Greenfield Tap Plant, Greenfield, MA
TA–W–41,667; Mechanical Products Co., LLC, Aerospace Div., Jackson, MI
TA–W–42,032; Millennium Plastics Technologies, LLC, El Paso, TX
TA–W–41,946; Tyco Electronics, Fiber Optic Business Unit, Middletown, PA
TA–W–41,967; Trego Industries, Inc., Red Oak, TX
TA–W–42,101; Carmet Co., PCC Structurals, Inc., Duncan, SC

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

Increased imports did not contribute importantly to worker separations at the firm.

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TA–W–41,842; Bee Paper Co., Wayne, NJ
TA–W–41,657; Chevron Philips Chemical, Orange, TX
TA–W–41,955; Bayer Pharmaceuticals, a Div. of Bayer Healthcare AG, West Haven, CT
TA–W–41,972; American Greetings Corp., Corbin, KY
TA–W–42,089; U.S. Manufacturing Corp., Steering Gear Div., Bad Axe, MI

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–42,202; Empire Blue Cross Blue Shield, Syracuse, NY
TA–W–42,116; XESystems, Inc., a/k/a Xerox Engineering Systems, Stamford, CT
TA–W–41,962; Competitive Engineering, Inc., Tucson, AZ
TA–W–42,148; Supervalu, Belle Vernon, PA
TA–W–42,113; The Wackenhut Corp., San Manuel, AZ

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

TA–W–40,940; Trinity Industries, Trinity Railcar Group, Clinton, IL: January 31, 2001.
TA–W–41,658; TNS Mills, Inc., Gaffney Weaving Div., Gaffney, SC: May 10, 2001.
TA–W–41,846; Northwest Swiss-Matic, Inc., Minneapolis, MN: June 30, 2001.
TA–W–41,873; The Boeing Co., Melbourne, AR: March 23, 2002.
TA–W–41,939; LaCrosse Rainfair Safety Products, Racine, WI: July 26, 2001.
TA–W–42,075; LaCrosse Footwear, Hillsboro Div., Hillsboro, WI: August 6, 2001.
TA–W–42,118; Lenox China, Oxford, NC: September 4, 2001.
TA–W–42,138; Classic Clay Concepts, Lake Oswego, OR: August 20, 2001.
TA–W–42,151; Electric Stems, Inc., Elysburg, PA: September 10, 2001.
TA–W–42,156; Wisconsin Automated Machinery Corp., Oshkosh, WI: September 5, 2001.
TA–W–41,976; Black and Decker, North American Power Tools, Easton, MD: August 1, 2001.
TA–W–42,186; AMF Reece, Mechanicsville, VA: September 10, 2001.
TA–W–42,137; General Binding Corp. (GBC), Buffalo Grove, IL: August 26, 2001.
TA–W–41,934; Mallinckrodt Respiratory Div. of Tyco Healthcare, Nellcor Puritan Bennett Subdivision, Carlsbad, CA: October 6, 2002.
TA–W–41,884; Dura Automotive Systems, Inc., Body and Glass Group, Pikeville, TN: July 8, 2001.
TA–W–41,829; Aurafin LLC, Providence Milling and Manufacturing, (Formerly Known as Little and Company, Inc.), Providence, RI: June 26, 2001.
TA–W–41,680; The Good Year Tire and Rubber Co., Engineered Products, Air Springs Plant, Green, OH: August 4, 2002.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with Section 250(a), Subchaper D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the months of October, 2002.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA–TAA–06255; Chevron Phillips Chemical, Orange, TX
NAFTA–TAA–06283; Alfa Laval (Tri-Clover), Kenosha, WI
NAFTA–TAA–06379; American Technical Ceramics Corp., Jacksonville, FL
NAFTA–TAA–06285; Northwest Swiss-Matic, Inc., Minneapolis, MN
NAFTA–TAA–06370; Bee Paper Co., Wayne, NJ
NAFTA–TAA–06453; U.S. Manufacturing Corp., Steering Gear Div., Bad Axe, MI
NAFTA–TAA–07584; Classic Clay Concepts, Lake Oswego, OR

The investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The investigation revealed that workers of the subject firm did not produce an article within the meaning of Section 250(a) of the Trade Act, as amended.

NAFTA–TAA–07604; Nortel Networks, Department 2446, Remote Validation Center (RVC), Research Triangle Park, NC
NAFTA–TAA–06459; Competitive Engineering, Inc., Tucson, AZ

Affirmative Determinations NAFTA–TAA

NAFTA–TAA–05872; Trinity Industries, Trinity Railcar Group, Clinton, IL: February 22, 2001.
NAFTA–TAA–06265; Ark-Les Corp., Raleigh, NC: June 12, 2001.
NAFTA–TAA–06478; Black and Decker, North American Power Tools, Easton, MD: August 9, 2001.
NAFTA–TAA–07557; MEI, a Div. of Mars, Inc., West Chester, PA: August 26, 2001.
NAFTA–TAA–06371; Dura Automotive Systems, Inc., Glass and Body Group, Pikeville, TN: July 8, 2001.
NAFTA–TAA–06410; The Good Year Tire and Rubber Co., Engineered Products, Air Springs Plant, Green, OH: August 4, 2002.
NAFTA–TAA–06445; Creo Americas, Inc., a Subsidiary of Creo, Inc., Bedford, MA: August 2, 2001.
NAFTA–TAA–07586; Hershey Chocolate and Confectionery Corp., Jolly Rancher Div., Wheatridge, CO: September 18, 2001.

I hereby certify that the aforementioned determinations were issued during the months of October, 2002. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: October 21, 2002,

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance

[FR Doc. 02–28031 Filed 11–4–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,175]

A. Brod, Inc., Long Island City, NY; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on March 25, 2002 in response to petition filed by the company on behalf of workers at A. Brod, Inc., Long Island City, New York.

The Department of Labor was unable to locate the petitioner or any other official of the company to obtain the information necessary to render a decision. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 18th day of October, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–28029 Filed 11–4–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,987]

Alcoa Wenatchee Works, a Division of Alcoa, Inc., Malaga, WA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on August 19, 2002, on behalf of workers at Alcoa Wenatchee Works, A Division of Alcoa, Inc., Malaga, Washington, producing primary aluminum.

The subject plant ceased the production of aluminum in July 2001, more than one year prior to the August 1, 2002, date of the petition. Section 223(b)(1) of the Trade Act of 1974 provides that a TAA certification may not apply to a worker whose separation from employment occurred more than one year prior to the date the petition was filed on behalf of affected workers. The Trade Act does not give the Secretary authority to waive this statutory limitation. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 18th day of October, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–28032 Filed 11–4–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–42,043]

The Eureka Company, El Paso, TX; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on September 3, 2002 in response to a worker petition signed on August 2, 2002 on behalf of workers at The Eureka Company, El Paso, Texas.

An active certification covering the petitioning group of workers remains in effect (TA–W–39,101) through May 8, 2002. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 23rd day of October, 2002.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–28033 Filed 11–4–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–42,230]

Flowserve US, Inc., Williamsport, PA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on October 15, 2002, in response to a petition filed jointly by the International Union of Engineers, Local 628, and the company on behalf of workers at Flowserve US, Inc., Williamsport, Pennsylvania.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 16th day of October, 2002.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–28037 Filed 11–4–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–42,197]

Georgia-Pacific Corporation Building Product Division Oriented Strand Board Mill Baileyville, Maine; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on September 30, 2002, in response to a petition filed by the Paper, Allied-Industrial, Chemical, and Energy Workers Union, Local 1–1367, on behalf of workers at Georgia-Pacific Corporation, Building Product Division, Oriented Strand Board Mill, Baileyville, Maine.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 15th day of October, 2002.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–28035 Filed 11–4–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–42,218]

Kent, Inc., Fort Kent, ME; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on October 7, 2002 in response to a worker petition which was filed by a company official on behalf of workers at Kent, Inc., Fort Kent, Maine.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

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Signed in Washington, DC this 16th day of October, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–28036 Filed 11–4–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,385]

Peck Manufacturing Company of North Carolina, Inc., Warrenton, Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on April 22, 2002 in response to petition filed by the company on behalf of workers at Peck Manufacturing Company of North Carolina, Inc., Warrenton, North Carolina.

The Department of Labor was unable to locate an official of the company to obtain the information necessary to render a decision. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 18th day of October, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–28030 Filed 11–4–02; 8:45 am]

BILLING CODE 4510–30–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

Date: Weeks of November 4, 11, 18, 25, December 2, 9, 2002.

Place: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

Status: Public and closed.

Matters To Be Considered:

Week of November 4, 2002

There are no meetings scheduled for the Week of November 4, 2002.

Week of November 11, 2002—Tentative

Thursday, November 14, 2002

2 p.m.

Discussion of Management Issues (Closed—Ex.2)

Week of November 18, 2002—Tentative

Thursday, November 21, 2002

10 a.m.

Briefing on Proposed Rulemaking to Add New Section 10 CFR 50.69, "Risk-Informed Categorization and Treatment of Structures, Systems, and Components for Nuclear Power Reactors" (Public Meeting) (Contact: Eileen McKenna, 301–415–2189, or Timothy Reed, 301–415–1462)

This meeting will be webcast live at the Web address—*www.nrc.gov.*

2 p.m.

Discussion of Security Issues (Closed—Ex. 1)

Week of November 25, 2002—Tentative

There are no meetings scheduled for the Week of November 25, 2002.

Week of December 2, 2002—Tentative

Wednesday, December 4, 2002

10 a.m.

Briefing on Decommissioning Bankruptcy Issues (Closed—Ex. 4 &9)

Week of December 9, 2002—Tentative

There are no meetings scheduled for the Week of December 9, 2002.

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: R. Michelle Schroll (301) 415–1662.

Additional Information: By a vote of 5–0 on October 29, the Commission determined pursuant to u.S.C. 552b(e) and § 9.107(a) of the Commission's rules that "Discussion of Intergovernmental Issues (Closed—Ex. 9)," be held on October 31, 2002, and on less than one week's notice to the public.

The NRC Commission Meeting Schedule can be found on the Internet at: *www.nrc.gov/what-we-do/policy-making/schedule.html.*

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov.*

Dated: October 31, 2002.

R. Michelle Schroll,

Acting Technical Coordinator; Office of the Secretary.

[FR Doc. 02–28158 Filed 11–1–02; 10:35 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Privacy Act of 1974: Computer Matching Programs—OPM/Social Security Administration

AGENCY: Office of Personnel Management.

ACTION: Publication of notice of computer matching to comply with Public Law 100–503, the Computer Matching and Privacy Protection Act of 1988.

SUMMARY: OPM is publishing notice of its computer matching program with the Social Security Administration (SSA) to meet the reporting requirements of Pub. L. 100–503. The purpose of this match is for SSA to disclose benefit information to OPM to offset specific benefits.

DATES: The matching program will begin in December 2002, or 40 days after agreements by the parties participating in the match have been submitted to Congress and the Office of Management and Budget, whichever is later. Any public comment on this matching program must be submitted within the 30 day public notice period, which begins on the publication date of this notice. The matching program will continue for 18 months from the beginning date and may be extended an additional 12 months thereafter. The data exchange will begin at a date mutually agreeable between OPM and SSA on or after December 1, 2002, unless comments are received which will result in a contrary determination. Subsequent matches will take place on a recurring basis until one of the parties advises the other, in writing, of its intention to reevaluate, modify and/or terminate the agreement.

ADDRESSES: Send comments to William J. Washington, Assistant Director for Systems, Finance and Administration, 1900 E. Street NW., Room 4312, Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Marc Flaster, (202) 606–2115.

SUPPLEMENTARY INFORMATION: OPM and SSA intend to conduct a computer matching program. The purpose of this agreement is to establish the conditions under which SSA agrees to the disclosure of benefit information to OPM. The SSA records will be used in a matching program with OPM's records on surviving spouses who may be eligible to receive a Supplementary Annuity, disability retirees, and child survivor annuitants, under the Federal Employees' Retirement System (FERS). The benefits payable to these recipients are offset if paid while also in receipt of SSA benefits.

Office of Personnel Management.

Kay Coles James,

Director.

Report of Computer Matching Program Between the Office of Personnel Management and Social Security Administration

A. Participating Agencies

OPM and SSA.

B. Purpose of the Matching Program

Chapter 84 of title 5, United States Code (U.S.C.), requires OPM to offset specific benefits by a percentage of benefits payable under Title II of the Social Security Act. The matching will enable OPM to compute benefits at the correct rate and determine eligibility for benefits.

C. Authority for Conducting the Matching Program

Chapter 84, title 5, United States Code.

D. Categories of Records and Individuals Covered by the Match

The two SSA records systems involved in the match are (1) Master Files of Social Security Number (SSN) Holders and SSN Applications, 60–0058 (SSA/OSR) last published on March 24, 1998 at 63 FR14165 and (2) the Master Beneficiary Record, 60–0090 (SSA/OSR) last published February 21, 2001 at 66 FR 11079. The OPM records consist of annuity data from its system of records entitled OPM/Central 1-Civil Service Retirement and Insurance Records, last published on October 8, 1999 at 64 FR 54930, and as amended at 65 FR 25775, May 3, 2000.

E. Description of Matching Program

As frequently as daily, OPM will provide SSA with an extract from the annuity master file and from pending claims snapshot records via the File Transfer Management System (FTMS). The extracted file will contain identifying information concerning the disability annuitant, child survivor, or surviving spouse who may be eligible for an annuity under FERS. Each record will be matched to SSA's records and requested information transmitted back to OPM.

F. Privacy Safeguards and Security

The personal privacy of the individuals whose names are included in the files transmitted are protected by strict adherence to the provisions of the Privacy Act of 1974 and OMB's "Guidance Interpreting the Provisions of Public Law 100–503, the Computer Matching and Privacy Protection Act of 1988". Access to the records used in the data exchange is restricted to only those authorized employees and officials who need it to perform their official duties. Records matched or created will be stored in an area that is physically safe. Records used during this exchange and any records created by this exchange will be processed under the immediate supervision and control of authorized personnel in a manner which will protect the confidentiality of the records. The records matched and records created by the match will be transported under appropriate safeguards. Both SSA and OPM have the right to make onsite inspection or make other provisions to ensure that adequate safeguards are being maintained by the other agency.

G. Inclusive Dates of the Matching Program

This computer matching program is subject to review by the Office of Management and Budget and the Congress. OPM's report to these parties must be received at least 40 days prior to the initiation of any matching activity. If no objections are raised by either, and the mandatory 30-day public notice period for comments has expired for this Federal Register notice with no significant adverse public comments in receipt resulting in a contrary determination, then this computer matching program becomes effective on the date specified above. By agreement between OPM and SSA, the matching program will be in effect and continue for 18 months with an option to renew for 12 additional months under the terms set forth in 5 U.S.C. 552a(o)(2)(D).

[FR Doc. 02–28105 Filed 10–31–02; 4:35 pm]

BILLING CODE 6325–50–P

POSTAL SERVICE

Postage Evidencing Product Submission Procedures

AGENCY: Postal Service.

ACTION: Final notice of procedures.

SUMMARY: The Postal Service is implementing product submission procedures for postage meters and other postage evidencing systems.

DATES: The procedures are effective November 5, 2002.

FOR FURTHER INFORMATION CONTACT: Wayne Wilkerson, manager, Postage Technology Management, by fax at 703–292–4050.

SUPPLEMENTARY INFORMATION: With the expansion of postage application methods and technologies, it is essential that the product submission procedures for all postage evidencing products be clearly stated and defined while remaining flexible enough to accommodate evolving technologies. The Postal Service evaluation process can be effective and efficient if all suppliers follow these procedures. In this way, secure and convenient technology will be made available to the mailing public with minimal delay and with the complete assurance that all Postal Service technical, quality, and security requirements are met. These procedures apply to all proposed postage evidencing products and systems, whether the provider is new or is currently authorized by the Postal Service.

Title 39, Code of Federal Regulations (CFR) section 501.9, Security Testing, states: "The Postal Service reserves the right to require or conduct additional examination and testing at any time, without cause, of any meter submitted to the Postal Service for approval or approved by the Postal Service for manufacture and distribution." For products meeting the performance criteria for postage evidencing systems that generate an information-based indicia (IBI), including PC Postage® products, the equivalent section is 39 CFR section 502.10, Security Testing, published as a proposed rule in the **Federal Register** on October 2, 2000. When the Postal Service elects to retest a previously approved product, the provider will be required to resubmit the product for evaluation according to part or all of the proposed procedures. The Postal Service will determine full or partial compliance with the procedures prior to resubmission by the provider.

The procedures were published as proposed procedures in the **Federal Register** on May 1, 2002 [Vol. 67, No. 84, pages 21780–21785] with a request for submission of comments by May 31, 2002. We received three submissions in response to the solicitation of public comments. These comments were carefully considered, as explained in the discussion of comments. No changes were made to the procedures as a result of these comments. However, a few changes were made to clarify the meaning of the procedures, as explained following the discussion of comments. The procedures, as revised, follow these explanations.

Discussion of Comments

1. One commenter asked the Postal Service to add maximum time frames for responding to product submissions

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to ensure the Postal Service and the independent test laboratory complete their reviews in a timely manner.

The Postal Service understands the commenter's concern and does in fact strive to complete each stage of the product review, test, and evaluation process in a timely manner. However, it is difficult if not impossible for the Postal Service to commit to a set timetable for response, given resource constraints, the unpredictability of product submissions, and the dependence on outside agents. The product providers can help the Postal Service to respond in a timely manner by ensuring that product submissions are complete and meet all requirements specified in the product submission procedures. No revision of the procedures is made in response to this comment.

2. One commenter assumed that the Postal Service will pay for costs associated with "resources under direct contract to the Postal Service" referenced in section 1.3, Additional Security Testing.

At the current time, the Postal Service does assume all costs associated with resources under direct contract to the Postal Service. However, there is no guarantee that the Postal Service will be able to assume all such costs for the future. In particular, the Postal Service might ask for cost recovery from a provider when the provider's submittal is inadequate or incomplete and the direct contract resource must perform additional or repeated reviews. No revision of the procedures is made in response to this comment.

3. One commenter noted that the revised policy on intellectual property is an improvement over prior policy because it removes the Postal Service from involvement in patent disputes among other parties, and places responsibility on the provider for determining and meeting intellectual property requirements for the provider's system. However, the commenter suggested that we delete the requirement for providers "to acquire intellectual property licenses that may be required . . . to allow the Postal Service to process mail bearing the indicia produced by the product." The commenter noted that the providers do not control how the Postal Service elects to process mail. The commenter stated that just as it is the responsibility of providers to determine what intellectual property licenses they may need, it is the responsibility of the Postal Service to determine what intellectual property licenses it needs for its processes.

The provider must demonstrate that the system submitted satisfies all applicable postal processing and interface requirements in a real-world environment, in accordance with procedures in section 7, Limited-Distribution Field Test. If the ability to satisfy all applicable current Postal Service processing and interface requirements requires property licenses to allow the Postal Service to process mail bearing the indicia produced by the product, it is the provider's responsibility to acquire these licenses. No revision of the procedures is made in response to this comment.

Discussion of Clarifications and Changes

1. In 1.1, we clarified the requirements for selection of the independent test laboratory. The provider must select an independent testing laboratory accredited by the National Institutes of Standards and Technology (NIST) under the National Voluntary Laboratory Accreditation Program (NVLAP).

2. In 4.1, we clarified the meaning of the Postal Service response to provider submissions of documentation during the product submission process. When the manager, Postage Technology Management (PTM), acknowledges receipt of the concept of operations or other documentation, the acknowledgement does not imply acceptance or approval of the concept of operation, of the documentation itself, or of the product. Approval of the product is granted only after the product prototype has been developed and testing has been successfully completed in accordance with all requirements of these procedures.

3. In describing the letter of intent (2.0), we clarified the requirements for identifying those involved in the product development and production. We also added a requirement for providers to submit an updated list with the concept of operations documentation (4.2). The list must be resubmitted to ensure that the Postal Service has current information about all entities involved in product development and production.

4. In the table of Required Documentation, we added a requirement for providers to submit the "Indicium Specification for Human Readable Data" directly to the Postal Service. We also indicated that the Postal Service may require submission of additional documentation, if deemed necessary for any product approval.

The submission procedures will be referenced in 39 CFR part 501 and will be published as a separate document titled "Postage Technology Management, Postage Evidencing Product Submission Procedures."

Product Submission Procedures for Postage Meters (Postage Evidencing Systems)

1. General Information

1.1 Independent Testing Laboratory

To receive authorization from the Postal Service to manufacture, produce, or distribute a postage meter (postage evidencing system) under 39 CFR part 501, Authorization to Manufacture and Distribute Postage Meters, the provider must obtain approval under these product submission procedures. These procedures also apply to providers requesting approval to manufacture, produce, or distribute a product under proposed 39 CFR part 502, Authority to Produce and Distribute Postage-Evidencing Systems that Generate Information-Based Indicia (IBI) (65 FR 58689).

The provider must select an independent testing laboratory accredited by the National Institutes of Standards and Technology (NIST) under the National Voluntary Laboratory Accreditation Program (NVLAP) to conduct the detailed product review and testing required by these procedures. When the product contains a postal security device (PSD) or cryptographic module, the laboratory must be an NVLAP-accredited cryptographic module testing laboratory.

Technical documentation (section 4) and production systems (section 5) must be provided to the selected test laboratory in sufficient detail to support testing. The testing laboratory will submit an executive summary containing the information referenced in the Required Documentation table set forth in paragraph 4.2 and the results of the product evaluation directly to the Postal Service. All supporting documentation, products, PSDs and cryptographic modules, and other materials used or generated during testing will be maintained by the testing laboratory for the life of the test. At the time of product approval, the manager, Postage Technology Management (PTM), will determine the ongoing disposition of all supporting documentation, products, PSDs and cryptographic modules, and other materials used or generated during testing.

During the product's life cycle, the provider may choose to use a different laboratory. In that event, all materials used or generated during testing and product evaluation must be transferred to the new laboratory.

Upon completion of the testing, the Postal Service may require that any or all of the following categories of information be forwarded directly from the accredited laboratory to the manager, PTM:

(a) A copy of all information that the provider gives to the laboratory, including a summary of all information transmitted orally.

(b) A copy of all instructions from the provider to the testing laboratory with respect to what is and what is not to be tested.

(c) Copies of all proprietary and nonproprietary reports and recommendations generated during the test process.

(d) Written full disclosure identifying any contribution by the test laboratory to the design, development, or ongoing maintenance of the system.

1.2 Product Submission Procedures

To submit a postage meter (postage evidencing system) for Postal Service approval, the provider will complete the following steps:

(a) Submit a letter of intent (section 2).

(b) Complete and sign the nondisclosure agreements (section 3).

(c) Submit the required documentation (section 4).

(d) Submit the postage evidencing system for evaluation (section 5).

(e) Enable the Postal Service to review the provider's system infrastructure (section 6).

(f) Place the product into limited distribution for field testing (section 7), after completing any additional security testing that the Postal Service requires.

1.3 Additional Security Testing

The Postal Service may choose to use resources under direct contract to the Postal Service to support the product review for additional security testing. The activities of these resources are independent of the testing laboratory selected by the provider and must be covered by nondisclosure agreements (section 3).

1.4 Product Approval Process

When the field testing (section 7) is completed successfully, the Postal Service performs an administrative review of the test and evaluation results and, when appropriate, grants authorization to distribute the product, as described in section 8.

At each stage of the product submission process, the manager, PTM, reserves the right to terminate testing if a review shows that the system as proposed will adversely impact Postal Service processes. The provider may resubmit the product after the problems have been resolved.

The provider can avoid unnecessary delays in the review and evaluation process by testing the product thoroughly prior to submitting it to the independent testing laboratory and to the Postal Service. If the Postal Service determines that there are significant deficiencies in the product or in the required supporting materials, then the Postal Service will return the submission to the provider without reviewing it further.

2. Letter of Intent

The provider must submit a letter of intent to Manager, Postage Technology Management (PTM), United States Postal Service, 1735 N. Lynn Street, Room 5011, Arlington, VA 22209–6050. The manager, PTM, will assign a point of contact to coordinate the submission and review process. The letter of intent must be dated and must include the following:

(a) Identification (name, mailing address, e-mail address, and telephone number) of all parties involved in the proposed product, including the provider, those responsible for the product's assembly, product management, hardware/firmware/software development and testing, and any other party involved (or expected to be involved) with the design or construction of the product, including all suppliers of product components which could affect the security of Postal Service revenues.

(b) Provider's business qualifications, including proof of financial viability and proof of the provider's ability to be responsive and responsible.

(c) System concept narrative, including the provider's infrastructure that will support the product.

(d) Target Postal Service market segment the proposed system is envisioned to serve.

When there is a significant change to any aspect of the product described in the letter of intent, or of the parties involved in developing or producing the product, prior to submission of the concept of operations (section 4), the provider must revise the letter of intent and resubmit it.

3. Nondisclosure Agreements

When the Postal Service uses resources under direct contract to the Postal Service to support the product review, the provider must establish a nondisclosure agreement with these resources. These nondisclosure agreements may require extension to third-party suppliers or others identified in the letter of intent (section 2).

Providers are encouraged to share copies of nondisclosure agreements provided by the Postal Service with all parties identified in the letter of intent, to ensure that these parties will execute the agreement if needed to support Postal Service review of the product. Failure to sign nondisclosure agreements, provided by the Postal Service to support review activities, might adversely affect a product submission. Questions regarding this process should be directed to the manager, PTM.

4. Technical Documentation

4.1 Introduction

The provider must submit the materials listed in the Required Documentation table. If the provider considers that a given requirement is not applicable to the product, the provider should note this in the document submission. The table is not meant to be an exhaustive list of all possible areas that need to be documented to support the evaluation of a postage meter (postage evidencing system). Ongoing advances and changes in technology and new approaches to providing postage evidencing can add other components that must be considered. The provider should submit any additional information that it considers necessary or desirable to describe the product fully. The independent testing laboratory may determine the level of detail that must be submitted to meet its test and evaluation requirements. The laboratory or the Postal Service may request additional information if needed for a complete evaluation.

Documentation must be submitted to the independent laboratory and the Postal Service as indicated in the Required Documentation table. The laboratory will prepare an executive summary and submit it to the Postal Service when required. Documentation must be in English and must be formatted for standard letter size (8.5" x 11") paper, except for engineering drawings, which must be folded to letter size. Where appropriate, documentation must be marked as "Confidential." The document recipient will determine the number of paper copies and the format of electronic copies of each document at the time of submission based on current technology and review requirements.

The provider should schedule a meeting with PTM staff shortly after or simultaneously with the submission of technical data and the concept of operations to permit full discussion and understanding of the technical concepts being presented for evaluation. The

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manager, PTM, will indicate Postal Service agreement or concerns relevant to the concept, as appropriate. However, no Postal Service communication or acknowledgement of receipt of documentation or other submission is meant to imply acceptance or approval of the concept of operation, of any documentation, or of the product.

Approval of the product is granted only after the product prototype has been developed and testing has been successfully completed in accordance with all requirements of these procedures.

4.2 Required Documentation

The following table details the documents that the provider must prepare. Providers are responsible for submitting any additional documentation the Postal Service may require during the product submission process. The table shows which documents must be submitted directly to the Postal Service and which must be submitted to the independent testing laboratory.

REQUIRED DOCUMENTATION

Document/section	Submit to test laboratory?	Postal Service requirement
Concept of Operations (CONOPS)		
System overview, including: • Concept overview and business model • Postal security device (PSD) implementation, features, and components, including the digital signature algorithm • System life cycle overview • Adherence to industry standards, such as FIPS PUB 140–1 or 140–2 (after May 25, 2002), as required by Postal Service	Yes	Provider submits in full. Executive summary prepared by laboratory.
System design details, including: • PSD features and functions • All aspects of key management • Client (host) system features and functions • Other components required for system use including, but not limited to, the proposed indicia design and label stock	Yes	Executive summary prepared by laboratory. Laboratory report on indicium compliance with Postal Service requirements as given in the performance criteria.
Indicium Specification for Human Readable Data	No	Provider submits in full.
System life cycle, including: • Manufacturing • Postal Service certification of the system • Production • Distribution • Meter licensing • Initialization • System authorization and installation • Postage value download or resetting process • System and support system audits • Inspections • Procedures for system withdrawal and replacement, including procedures for system malfunctions • Procedures to destroy scrapped systems	Yes	Provider submits in full. Executive summary prepared by laboratory.
Finance overview, including: • Customer account management (payment methods, statements, and refunds) • Individual product finance account management (resetting or postage value download, refunds) • Daily account reconciliation (provider reconciliation, Postal Service detailed transaction reporting) • Periodic summaries (monthly reconciliation, other reporting as required by the Postal Service)	Yes	Provider submits in full. Executive summary prepared by laboratory.
Interfaces, including: • Communications and message interfaces with the Postal Service infrastructure for resetting or postage value downloads, refunds, inspections, product audits, and lost or stolen product procedures • Communications and message interfaces with Postal Service financial functions for resetting or postage value downloads, daily account reconciliation, and refunds • Communications and message interfaces with customer infrastructure for cryptographic key management, product audits, and inspections • Message error detection and handling	Yes	Provider submits in full. Executive summary prepared by laboratory.
Configuration management and detailed change control procedures for all components, including, but not limited to: • Software • Hardware and firmware • Indicia • Provider infrastructure • Postal rate change procedures • Interfaces	Yes	Executive summary prepared by laboratory.
Physical security	Yes	Executive summary prepared by laboratory.

REQUIRED DOCUMENTATION—Continued

Document/section	Submit to test laboratory?	Postal Service requirement
Personnel/site security	Yes	Executive summary prepared by laboratory.
Executable code	Yes	On request.
Source code.	Yes	On request.
Operations manuals	Yes	Executive summary prepared by laboratory.
Communications interfaces	Yes	Executive summary prepared by laboratory.
Maintenance manuals	Yes	Executive summary prepared by laboratory.
Schematics	Yes	Executive summary prepared by laboratory.
Product initialization procedures	Yes	Executive summary prepared by laboratory.
Finite state machine models/diagrams	Yes	Executive summary prepared by laboratory.
Block diagrams	Yes	Executive summary prepared by laboratory.
Details of security features	Yes	Executive summary prepared by laboratory.
Description of cryptographic operations, as required by FIPS PUB 140–1 or 140–2 (after May 25, 2002), Appendix A	Yes	Executive summary prepared by laboratory.
Test Plan		
Postal Service requirements	Yes	Executive summary prepared by laboratory.
FIPS PUB 140–1 or 140–2 (after May 25, 2002) requirements	Yes	Executive summary prepared by laboratory.
Physical security of provider's Internet server, administrative site, and firewall	Yes	Executive summary prepared by laboratory.
Security for remote administrative access and configuration control	Yes	Executive summary prepared by laboratory.
Secure distribution or transmission of software and cryptographic keys	Yes	Executive summary prepared by laboratory.
Test plan for system infrastructure: • Test parameters • Infrastructure systems • Interfaces • Reporting requirements	Yes	Executive summary prepared by laboratory.
Test plan for limited-distribution field tests: • Test parameters • System quantities • Geographic location • Test participants • Test duration • Test milestones • System recall plan	Yes	Executive summary prepared by laboratory.
Provider Infrastructure Plan		
Public key infrastructure	Yes	Executive summary prepared by laboratory.
Procedures for enforcement of all provider-related, customer-related, and Postal Service-related processes, procedures, and interfaces discussed in CONOPS or required by Postal Service regulations	Yes	Executive summary prepared by laboratory.

5. Product Submission and Testing

5.1 General Submission Requirements

The provider must submit complete production systems to the independent testing laboratory for evaluation. The laboratory will determine how many systems are needed for a complete evaluation. The provider must also provide any equipment and consumables required to use the submitted systems in the manner described in the CONOPS. The provider must also submit complete production systems, supporting equipment, and consumables directly to the Postal Service, if requested. The Postal Service may test these for compliance with Postal Service regulations and processes under section 6, System Infrastructure Testing.

5.2 Submission Requirements for Products Containing a Postal Security Device or Cryptographic Module

The NVLAP-accredited cryptographic modules testing (CMT) laboratory must evaluate all PSDs and cryptographic modules for FIPS PUB 140–1 or 140–2 certification, or equivalent, as authorized by the Postal Service. After May 25, 2002, FIPS PUB 140–2

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certification will be required. The Postal Service requires that the PSD or cryptographic module receive FIPS PUB 140–1 or 140–2 certification as it is implemented. That is, the PSD or cryptographic module and the installed application must be considered as a whole in determining whether or not it receives FIPS certification. The FIPS certification of the PSD or cryptographic module is dependent on the application. Since any certification could be in question once any noncertified or untested software is installed, the PSD or cryptographic module must be certified as it will be implemented, and the accredited CMT lab must reevaluate any changes that would risk the certification.

Upon completing FIPS PUB 140–1 or 140–2 certification, or equivalent, the CMT laboratory must forward the following documentation directly to the manager, PTM:

(a) A copy of the letter of recommendation for certification of the PSD or cryptographic module that the laboratory submitted to NIST.

(b) A copy of the certificate, if any, issued by NIST for the PSD or cryptographic module.

6. System Infrastructure Testing and Provider System Security Testing

To achieve Postal Service approval of a postage evidencing system, the provider must demonstrate that the system satisfies all applicable Postal Service regulations and reporting requirements and that it is compatible with Postal Service mail processing functions and all other functions with which the product or its users interface. The tests must involve all entities in the proposed architecture, including the postage evidencing system, the provider infrastructure, the financial institution, and Postal Service infrastructure systems and interfaces. The tests may be conducted in a laboratory environment in accordance with the test plan for system infrastructure testing. Test and approval of system infrastructure functions must be completed before the postage evidencing system can be field tested under section 7. The functions to be tested include, but are not limited to, the following:

(a) Meter licensing, including license application, license update, and license revocation.

(b) System status activity reporting.

(c) System distribution and initialization, including system authorization, system initialization, customer authorization, and system maintenance.

(d) Total system population inventory, including leased and unleased systems; new system stock; and system installation, withdrawal, and replacement.

(e) Irregularity reporting.

(f) Lost and stolen reporting.

(g) Financial transactions, including cash management, individual system financial accounting, account reconciliation, and refund management.

(h) Financial transaction reporting, including daily summary reports, daily transaction reporting, and monthly summary reports.

(i) System initialization.

(j) Cryptographic key changes and public key management.

(k) Postal rate table changes.

(l) Print quality assurance.

(m) Device authorization.

(n) Postage evidencing system examination and inspection, including physical and remote inspections.

In addition to testing the system infrastructure, the Postal Service must be assured that the provider's support systems and infrastructure are secure and not vulnerable to security breaches. This will require site reviews of provider manufacturing, distribution, and other support facilities, and reviews of network security and system access controls.

7. Limited-Distribution Field Test

To achieve Postal Service approval of a postage evidencing system, the provider must demonstrate that the system satisfies all applicable Postal Service processing and interface requirements in a real-world environment. This is achieved by placing a limited number of systems in distribution for field testing. The Postal Service will determine the number of systems to be tested. The test will be conducted in accordance with the Postal Service-approved test plan for limited-distribution field testing. The purpose of the limited-distribution field test is to demonstrate the product's utility, security, audit and control, functionality, and compatibility with other systems, including mail entry, acceptance, and processing when in use. The field test will employ available communications and will interface with current operational systems to exercise all system functions.

The manager, PTM, will review the executive summary of the provider-proposed test plan for limited-distribution field testing. The review will be based on, but not limited to, the assessed revenue risk of the system, system impact on Postal Service operations, and requirements for Postal Service resources. Approval may be based in whole or in part on the anticipated mail volume, mail characteristics, and mail origination and destination patterns of the proposed system. For systems designed for use by an individual meter user, product users engaged in field testing must be approved by the Postal Service before they are allowed to participate in the test. These participants must sign a nondisclosure/confidentiality agreement when reporting system security, audit and control issues, deficiencies, or failures to the provider and the Postal Service. This requirement does not apply to users of systems designed for public use.

8. Postage Evidencing System Approval

Postal Service approval of the postage meter (postage evidencing system) is based on the results of an administrative review of the materials and test results generated during the product submission and approval process. In preparation for the administrative review, the provider must update all documentation submitted in compliance with these procedures to ensure accuracy. When approval is granted, the Postal Service will prepare a product approval letter detailing the conditions under which the specific product may be manufactured, distributed, and used. The provider must submit the following materials for the Postal Service administrative review:

(a) Materials prepared for the Postal Service by the independent testing laboratory.

(b) The final certificate of evaluation from the NVLAP laboratory, where required.

(c) The results of system infrastructure testing.

(d) The results of field testing of a limited number of systems.

(e) The results of any other Postal Service testing of the system.

(f) The results of provider site security reviews.

9. Intellectual Property

Providers submitting postage evidencing systems to the Postal Service for approval are responsible for obtaining all intellectual property licenses that may be required to distribute their product in commerce and to allow the Postal Service to process mail bearing the indicia produced by the product.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 02–28039 Filed 11–4–02; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

[Extension: Rule 31a–2, SEC File No. 270–174, OMB Control No. 3235–0179; Rule 32a–4, SEC File No. 270–473, OMB Control No. 3235–0530]

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549–0004.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget ("OMB") a request for extension of the previously approved collections of information discussed below.

Section 31(a)(1) of the Investment Company Act of 1940 (the "Act") requires registered investment companies ("funds") and certain principal underwriters, broker-dealers, investment advisers and depositors of funds to maintain and preserve records as prescribed by Commission rules.[1] Rule 31a–1 specifies the books and records each of these entities must maintain.[2] Rule 31a–2, which was adopted on April 17, 1944, specifies the time periods that entities must retain books and records required to be maintained under rule 31a–1.[3]

Rule 31a–2 requires the following:

1. Every fund must preserve permanently, and in an easily accessible place for the first two years, all books and records required under rule 31a–1(b)(1)–(4).[4]

2. Every fund must preserve for at least six years, and in an easily accessible place for the first two years: (a) all books and records required under rule 31a–1(b)(5)–(12);[5] (b) all vouchers, memoranda, correspondence, checkbooks, bank statements, canceled checks, cash reconciliations, canceled stock certificates and all schedules that support each computation of net asset value of fund shares; and (c) any advertisement, pamphlet, circular, form letter or other sales literature addressed or intended for distribution to prospective investors.

3. Every underwriter, broker or dealer that is a majority-owned subsidiary of a fund must preserve records required to be preserved by brokers and dealers under rules adopted under section 17 of the Securities Exchange Act ("section 17") for the periods established in those rules.

4. Every depositor of any fund, and every principal underwriter of any fund other than a closed-end fund, must preserve for at least six years records required to be preserved by brokers and dealers under rules adopted under section 17 to the extent the records are necessary or appropriate to record the entity's transactions with the fund.

5. Every investment adviser that is a majority-owned subsidiary of a fund must preserve the records required to be maintained by investment advisers under rules adopted under section 204 of the Investment Advisers Act of 1940 ("section 204") for the periods specified in those rules.

6. Every investment adviser that is not a majority-owned subsidiary of a fund must preserve for at least six years records required to be maintained by registered investment advisers under rules adopted under section 204 to the extent the records are necessary or appropriate to reflect the adviser's transactions with the fund.

The records required to be maintained and preserved under this part may be maintained and preserved for the required time by, or on behalf of, an investment company on (i) micrographic media, including microfilm, microfiche, or any similar medium, or (ii) electronic storage media, including any digital storage medium or system that meets the terms of this section. The investment company, or person that maintains and preserves records on its behalf, must arrange and index the records in a way that permits easy location, access, and retrieval of any particular record.[6]

The Commission periodically inspects the operations of all funds to ensure their compliance with the provisions of the Act and the rules under the Act. The Commission staff spends a significant portion of their time in these inspections reviewing the information contained in the books and records required to be kept by rule 31a–1 and to be preserved by rule 31a-2.

There are approximately 4,500 active investment companies registered with the Commission as of April 30, 2002, all of which are required to comply with rule 31a–2. Based on conversations with representatives of the fund industry, the Commission staff estimates that each fund spends about 210 hours per year complying with rule 31a–2, for a total annual burden for the fund industry of approximately 945,000 hours.[7]

The Commission staff estimates the average cost of preserving books and records required by rule 31a–2, to be approximately $.000035 per $1.00 of net assets per year.[8] With the total net assets of all funds at about $7 trillion,[9] the staff estimates that compliance with rule 31a–2 costs the fund industry approximately $245 million per year.[10]

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[1] 15 U.S.C. 80a–30(a)(1).

[2] 17 CFR 270.31a–1.

[3] 17 CFR 270.31a–2.

[4] 17 CFR 270.31a–1(b)(1)–(4). These include, among other records, journals detailing daily purchases and sales of securities or contracts to purchase and sell securities, general and auxiliary ledgers reflecting all asset, liability, reserve, capital, income and expense accounts, separate ledgers reflecting, separately for each portfolio security as of the trade date all "long" and "short" positions carried by the fund for its own account, and corporate charters, certificates of incorporation and by-laws.

[5] 17 CFR 270.31a–1(b)(5)–(12). These include, among other records, records of each brokerage order given in connection with purchases and sales of securities by the fund, all other portfolio purchases, records of all puts, calls, spreads, straddles or other options in which the fund has an interest, has granted, or has guaranteed, records of proof of money balances in all ledger accounts, files of all advisory material received from the investment adviser, and memoranda identifying persons, committees or groups authorizing the purchase or sale of securities for the fund.

[6] In addition, the fund, or whoever maintains the documents for the fund must provide promptly any of the following that the Commission (by its examiners or other representatives) or the directors of the company may request: (A) a legible, true, and complete copy of the record in the medium and format in which it is stored; (B) a legible, true, and complete printout of the record; and (C) means to access, view, and print the records; and separately store, for the time required for preservation of the original record, a duplicate copy of the record on any medium allowed by this section. In the case of records retained on electronic storage media, the investment company, or person that maintains and preserves records on its behalf, must establish and maintain procedures: (i) To maintain and preserve the records, so as to reasonably safeguard them from loss, alteration, or destruction; (ii) to limit access to the records to properly authorized personnel, the directors of the investment company, and the Commission (including its examiners and other representatives); and (iii) to reasonably ensure that any reproduction of a non-electronic original record on electronic storage media is complete, true, and legible when retrieved.

[7] Commission staff surveyed several fund representatives to determine the current burden hour estimate. The staff found that an average fund spends approximately 210 hours per annum complying with rule 31a–2 (210 hours × 4,500 registered investment companies = 945,000). Although the Commission did not change its collection of information requirements in rule 31a–2, the fund representatives' estimates reflect an annual increase of 182 hours per fund over the burden of 27.6 hours estimated in the 1998 PRA submission. The change in annual hours is based upon an increase in the estimated time each fund spends complying with the rule.

[8] The staff estimated the annual cost of preserving the required books and records by identifying the annual costs for several funds and then relating this total cost to the average net assets of these funds during the year. The staff estimates that the annual cost of preserving records is $70,000 per fund: the funds queried in support of this analysis had an average asset base of approximately $2 billion (70,000/2 billion=.000035).

[9] See Investment Company Institute, 2002 Mutual Fund Fact Book, at 61.

[10] This estimate is based on the annual cost per dollar of net assets of the average fund as applied

Continued

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The Commission staff estimates, however, based on past conversations with representatives of the fund industry, that funds could spend as much as half of this amount ($122.4 million) to preserve the books and records that are necessary to prepare financial statements, meet various state reporting requirements, and prepare their annual federal and state income tax returns.

Rule 32a–4 [17 CFR 270.32a–4] is entitled "Independent Audit Committees." The rule exempts a fund from the requirements of section 32(a)(2) of the Investment Company Act that shareholders ratify or reject the selection of the independent public accountant of a registered management company or registered face-amount certificate company if the fund has an audit committee composed wholly of independent directors.

Instead of relying on rule 32a–4, a fund could seek ratification or rejection by shareholders of the selection of its independent public accountant at each annual meeting. Under the rule, a fund is exempt from having to seek shareholder approval of its independent public accountant, if (i) the fund's board of directors establishes an audit committee composed solely of independent directors with responsibility for overseeing the fund's accounting and auditing processes,[11] (ii) the fund's board of directors adopts an audit committee charter setting forth the committee's structure, duties, powers and methods of operation, or sets out similar provisions in the fund's charter or bylaws,[12] and (iii) the fund maintains a copy of such an audit committee charter permanently in an easily accessible place.[13]

As conditions of relying on rule 32a–4, a fund's board of directors must adopt an audit committee charter and must preserve that charter, and any modifications to the charter, permanently in an easily accessible place. The information collection requirement in rule 32a–4 enables the Commission to monitor the duties and responsibilities of an independent audit committee formed by a fund relying on the rule. Commission staff estimates that there are approximately 3,700 management investment companies and face-amount certificate companies that could rely on the rule. We believe that approximately 9.7 percent (360) of those funds have taken advantage of the exemption since adoption of the rule, and approximately 2.7 % (100) of the funds that have not already done so choose to rely on the rule each year. For each of those funds choosing for the first time to rely on the rule, we estimate that the adoption of the audit committee charter requires, on average, 1 hour of directors' time, 2.5 hours of professional time and 1 hour of support staff time, for a total one-time burden of 4.5 hours, and an estimated total one-time cost of $555.40, resulting in an annual aggregate time burden of 450 hours and an annual aggregate cost of $55,540.[14]

In addition to the hour burden described above, rule 32a-4 imposes certain costs on those funds that choose to rely on the exemption. These costs are minimal and are justified by the relief provided by the exemption. We estimate that each of the approximately 360 funds currently relying on the rule is required to spend approximately .5 hours annually to comply with the requirement that it preserve permanently its audit committee charters, for an additional annual hour burden of 180 hours, and an additional annual cost for all funds of $12,439.20.[15]

These estimates of average costs are made solely for the purposes of the Paperwork Reduction Act. The estimate is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

General comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; and (ii) Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: October 29, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–28098 Filed 11–4–02; 8:45 am]

BILLING CODE 8010–01–P

to the net assets of all funds ($7 trillion x .000035 = $244.7 million).

[11] Rule 32a–4(a).

[12] Rule 32a–4(b).

[13] Rule 32a–4(c).

[14] To calculate this cost, the Commission staff used an average hourly wage rate of $300 per hour for directors, an average hourly wage rate of $96.16 per hour for professionals, and an average hourly wage rate of $15 per hour for support staff ((100 x 1 x $300/hour) + (100 x 2.5 x $96.16/hour) + (100 x 1 x $15/hour) = $55,540). See Securities Industry Association, Report on Management & Professional Earnings in the Securities Industry 2001 (Oct. 2001).

[15] In calculating this annual cost, the Commission staff estimated that one-third of the annual hour burden (60 hours) would be incurred by support staff with an average hourly wage rate of $15 per hour, and two-thirds of the annual burden (120 hours) would be incurred by professionals with an average hourly wage rate of $96.16 per hour ((60 x $15/hour) + (120 x $96.16/hour) = $12,439.20).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46739; File No. SR–NASD–2002–146]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Amending NASD Rule 3011 To Require Members To Identify and Provide Contact Information for Their Anti-Money Laundering Compliance Persons

October 29, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and rule 19b–4[2] thereunder, notice is hereby given that on October 22, 2002, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), submitted to the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I, II, and III below, which items have been prepared by the NASD. NASD filed the proposal pursuant to section 19(b)(3)(A) of the Act,[3] and rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD proposes to amend NASD rule 3011 to require each member to provide to NASD contact information for the individual or individuals responsible for implementing and monitoring the day-to-day operations and internal controls of the member's anti-money laundering ("AML") compliance program ("AML Program"). Below is the text of the proposed rule change. New text is in italics.

* * * * *

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

3011. Anti-Money Laundering Compliance Program

On or before April 24, 2002, each member shall develop and implement a written anti-money laundering program reasonably designed to achieve and monitor the member's compliance with the requirements of the Bank Secrecy Act (31 U.S.C. 5311, *et seq.*), and the implementing regulations promulgated thereunder by the Department of the Treasury. Each member organization's anti-money laundering program must be approved, in writing, by a member of senior management. The anti-money laundering programs required by this rule shall, at a minimum;

(a) Establish and implement policies and procedures that can be reasonably expected to detect and cause the reporting of transactions required under 31 U.S.C. 5318(g) and the implementing regulations thereunder;

(b) Establish and implement policies, procedures, and internal controls reasonably designed to achieve compliance with the Bank Secrecy Act and the implementing regulations thereunder;

(c) Provide for independent testing for compliance to be conducted by member personnel or by a qualified outside party;

(d) Designate, *and identify to NASD (by name, title, mailing address, e-mail address, telephone number, and facsimile number)* an individual or individuals responsible for implementing and monitoring the day-to-day operations and internal controls of the program *and provide prompt notification to NASD regarding any change in such designation(s)*; and

(e) Provide ongoing training for appropriate personnel.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The USA PATRIOT Act of 2001 ("PATRIOT Act"),[5] which was signed into law on October 26, 2001, recognizes that effective identification of money laundering and terrorist activities requires the expedited sharing and reporting of information among governmental and law enforcement authorities and financial institutions. In furtherance of this goal, section 314(a) of the PATRIOT Act requires the United States Department of the Treasury ("Treasury") to adopt regulations to encourage cooperation and information sharing among financial institutions, their regulatory authorities, and law enforcement authorities. In particular, the regulations should be designed to facilitate law enforcement authorities' ability to share information with financial institutions and to request information from financial institutions about persons suspected of engaging in money laundering or terrorist activities. Section 314(a) of the PATRIOT Act further provides that the regulations adopted by Treasury may require that each financial institution designate one or more contact persons to receive information concerning, and to monitor accounts of, identified individuals or entities.

On September 18, 2002, Treasury issued a final rule implementing section 314 of the PATRIOT Act. Consistent with section 314(a) of the PATRIOT Act, the rule creates a system for the efficient communication of potential money laundering and terrorist information. Upon receiving a request for information by the Financial Crimes Enforcement Network ("FinCEN"), a bureau of Treasury, the rule requires financial institutions to identify a contact person to handle the request and to receive future information requests. When requested by FinCEN, the financial institution is required to provide the name, title, mailing address, e-mail address, telephone number, and facsimile number of the designated contact person. The financial institution must also promptly notify FinCEN of any changes to the contact information.

NASD rule 3011, NASD's AML Compliance Program Rule, requires each member to designate an individual or individuals responsible for implementing and monitoring the daily operations of the firm's AML Program. To facilitate Treasury's efforts in collecting the AML contact information set forth in Treasury's final rule, NASD proposes to amend NASD rule 3011 to require that members provide to NASD contact information concerning the members' designated AML compliance person(s). The information would be used by Treasury in connection with its regulatory obligations set forth in section 314(a) of the PATRIOT Act and the implementing regulations promulgated thereunder. Consistent with Treasury's final rule, members would be required to provide to NASD the name, title, mailing address, e-mail address, telephone number, and facsimile number of the contact person. Members would also be required to promptly notify NASD of any changes to the information.[6]

NASD intends to initially collect the contact information through the Member Firm Contact Questionnaire on the NASD Website. NASD anticipates that form and system changes necessary to collect the contact information will be completed by November 15, 2002. Members will have until December 31, 2002, to provide NASD with the necessary contact information.[7]

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[8] which requires, among other things, that NASD's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes that the proposed rule change is designed to accomplish these ends by expediting the information sharing process necessary to help combat money laundering and terrorism.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

[5] Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub. L. No. 107–56, 115 Stat. 272 (2001).

[6] NASD believes that its proposed amendments to NASD rule 3011 are consistent with New York Stock Exchange, Inc. ("NYSE") rule 445 (AML Compliance Program), which requires that NYSE member organizations provide to the NYSE contact information identifying the member organization's designated AML compliance person and promptly notify the NYSE of any changes to the information.

[7] New member applicants will be required to provide the contact information during the application process.

[8] 15 U.S.C. 78o–3(b)(6).

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C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act [9] and subparagraph (f)(6) of rule 19b–4 [10] thereunder because it does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate and NASD has given the Commission written notice of its intention to file the proposed rule change at least five business days prior to filing. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the Association. All submissions should refer to File No. SR–NASD–2002–146 and should be submitted by November 26, 2002.

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–28100 Filed 11–4–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46735; File No. SR–OCC–2002–19]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Relating to Random Assignment Processing

October 28, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on August 15, 2002, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, and II below, which items have been prepared primarily by OCC. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change alters OCC's procedures for random assignment processing.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A)Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

OCC proposes to refine its random assignment procedures for processing exercise notices. These procedures are not described in OCC's rules but are treated as a stated policy, practice, or interpretation with respect to Rule 803, which addresses assignments to clearing members.

Current Method

Under OCC's current random assignment process, an assignment "wheel" is created for each option series for which there is an exercise and all short positions of that series are placed on the wheel, starting with positions in the customers' account of the clearing member with the lowest identification number, followed by positions in other accounts of that clearing member, then by positions in the customers' account of the clearing member with the next lowest identification number, and so forth. The number of contracts exercised for that series is totaled. If the number of exercised contracts is less than the number of contracts held in open short positions, exercises are assigned in standard assignment increments of 25 contracts.[3] The system calculates a random starting point on the wheel for the first assignment increment. The first 25 contracts are assigned starting at the first position randomly chosen. Based on the number of contracts in the open interest for the series and the number of exercise increments to be assigned, a uniform skip interval is calculated as follows:

S = the total number of contracts being exercised for a particular series
T = the total number of contracts on the wheel
I = the assignment increment
1. T1 = S + I − 1;
2. T2 = T1/I, where T2 is an integer;
3. T3 = T/T2, where T3 is an integer;
4. Skip Interval = T3 " 1, if I > than T3, skip interval = 0.

After the first assignment, the system skips the calculated skip interval, assigns the next 25 contracts, and skips again to the next assignment increment until all exercises are assigned.

Proposed Change

OCC is proposing minor modifications to its random assignment process. First, positions will be placed on the wheel in sequential order based on a unique data base identification code given to a position account (*i.e.*, an account or subaccount [4] that can hold positions). Thus, a position account of a clearing member that had been added after the initial allocation of data base identification codes will not be clustered on the wheel adjacent to the other position accounts of that clearing member as is the case today.

Second, the skip interval calculation described above is slightly modified as follows:

S = the total number of contracts being exercised for a particular series
T = the total number of contracts on the wheel
I = the assignment increment
1. T1 = S/I (with decimals carried to six places; T1 is rounded up so that it is an integer)
2. Initial Skip Interval = (T/T1) − I (with decimals carried to six places and reserved for further use; decimals are truncated so that the initial skip interval is an integer)
3. If the initial skip interval is < 0, then the initial skip increment is = 0.

Assignments will be processed using the revised skip interval calculation. After the random starting point has been determined and the first 25 contracts have been assigned, the initial skip interval will be calculated. The decimals from the resulting total will be truncated to determine the first skip interval and will be stored to calculate the second skip interval. After first skip interval, the next 25 contracts will be assigned and the second skip interval will be calculated by adding the initial skip interval (including decimals) to the remaining decimal number from the truncated first skip interval. The decimals from the resulting total will be truncated and stored to calculate the third skip interval. This process will continue until all exercises have been assigned.

The proposed change in method by which positions are placed on an assignment wheel will substantially reduce the system processing time needed to create the assignment wheel, and would thereby improve overall system efficiency. The proposed change to the skip interval formula will further refine the calculation. Truncating the calculated skip interval to produce a uniform skip interval that is less than the calculated interval may cause a slightly smaller number of exercises to be assigned to positions at the end of the wheel (*i.e.*, just before the random starting point).[5] The proposed modification to the skip interval formula will lessen the effect of truncating the calculated skip interval and will thereby smooth the distribution of assignments.

OCC believes that the proposed rule change is consistent with Section 17A of the Act because it enhances OCC's procedures for random assignment processing and therefore, helps to perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder and particularly with the requirements of Section 17A(b)(3)(F).[6] Section 17A(b)(3)(F) requires that the rules of a clearing agency be designed to remove impediments to and perfect the mechanism for a national system for the prompt and accurate clearance and settlement of securities transactions. The Commission believes that the proposed rule change is consistent with this requirement because the changes to the skip interval calculation will improve the efficiency of OCC's assignment process and will result in a more uniform distribution of assignments among OCC's clearing members with short positions.

OCC has requested that the Commission approve this rule change prior to the thirtieth day after the date of publication of notice of the filing. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after publication of notice because by so approving OCC will be able to implement the necessary system changes in connection with other system changes which are scheduled for implementation in early November 2002.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW, Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of OCC. All submissions should refer to the File No. SR-OCC–2002–19 and should be submitted by November 26, 2002.

V. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act and the rules and regulations thereunder applicable.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–OCC–2002–19) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–28099 Filed 11–4–02; 8:45 am]

BILLING CODE 8010–01–P

SOCIAL SECURITY ADMINISTRATION

Agreement on Social Security between the United States and Australia; Entry into Force

AGENCY: Social Security Administration (SSA).

ACTION: Notice.

SUMMARY: The Commissioner of Social Security gives notice that an agreement

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified parts of these statements.

[3] If the number of contracts being exercised is equal to the number of open short positions, the entire open interest for that series will be assigned automatically.

[4] In a combined market-makers' account, positions of individual market-makers are assigned unique acronyms and are not netted against each other for reporting purposes. Each market-maker acronym is treated as a separate "position account."

[5] Truncating is necessary because fractional contracts cannot be assigned.

[6] 15 U.S.C. 78q-1(b)(3)(I).

[7] 17 CFR 200.30–3(a)(12).

[11] 17 CFR 200.30–3(a)(12).

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coordinating the United States (U.S.) and Australian social security programs entered into force on October 1, 2002. The agreement with Australia, which was signed on September 27, 2001, is similar to U.S. social security agreements already in force with 19 other countries—Austria, Belgium, Canada, Chile, Finland, France, Germany, Greece, Ireland, Italy, Korea (South), Luxembourg, the Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, and the United Kingdom. Agreements of this type are authorized by section 233 of the Social Security Act.

The U.S.-Australian agreement eliminates dual coverage and contributions under the U.S. Social Security program and the Australian program of mandatory employer retirement contributions known as "Superannuation Guarantee." U.S. companies that employ U.S. citizens or residents in Australia have frequently been required to pay contributions with respect to the employees' wages under both the U.S. Social Security program and Australia's Superannuation Guarantee program. Australian companies with Australian employees working in the United States have frequently faced the same dual contribution obligation. Under the U.S.-Australian agreement, workers are covered under one program or the other, but not both, and contributions are only due under that one program. A worker who is sent by an employer in one country to work in the other country for 5 years or less remains covered only by the program of the sending country. The agreement includes additional rules that eliminate dual U.S. and Australian coverage in other work situations.

The agreement also helps eliminate situations where workers suffer a loss of benefit rights under the social security system of one or both countries because they have divided their careers between the two countries. Under the agreement, workers may qualify for partial social security benefits from each country based on combined credits from both countries.

Individuals who wish to obtain copies of the agreement or want more information about its provisions may write to the Social Security Administration, Office of International Programs, Post Office Box 17741, Baltimore, MD 21235–7741 or visit the Social Security Web site at *www.ssa.gov/international.*

Dated: October 28, 2002.

Jo Anne B. Barnhart,

Commissioner of Social Security.

[FR Doc. 02–28027 Filed 11–4–02; 8:45 am]

BILLING CODE 4191–02–P

SOCIAL SECURITY ADMINISTRATION

Social Security Ruling, SSR 02–2p; Titles II and XVI: Evaluation of Interstitial Cystitis

AGENCY: Social Security Administration.

ACTION: Notice of Social Security Ruling.

SUMMARY: In accordance with 20 CFR 402.35(b)(1), the Commissioner of Social Security gives notice of Social Security Ruling, SSR 02–2p. This Ruling clarifies the policies of the Social Security Administration for developing and evaluating title II and title XVI claims for disability on the basis of Interstitial Cystitis (IC). IC is a complex, chronic bladder disorder characterized by urinary frequency, urinary urgency, and pelvic pain.

EFFECTIVE DATE: November 5, 2002.

FOR FURTHER INFORMATION CONTACT: Carolyn Kiefer, Office of Disability, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–9104. For information on eligibility or filing for benefits, call our national toll-free number 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet web site, Social Security Online, at *http://www.ssa.gov.*

SUPPLEMENTARY INFORMATION: Although we are not required to do so pursuant to 5 U.S.C. 552(a)(1) and (a)(2), we are publishing this Social Security Ruling in accordance with 20 CFR 402.35(b)(1).

Social Security Rulings make available to the public precedential decisions relating to the Federal old-age, survivors, disability, supplemental security income, and black lung benefits programs. Social Security Rulings may be based on case decisions made at all administrative levels of adjudication, Federal court decisions, Commissioner's decisions, opinions of the Office of General Counsel, and policy interpretations of the law and regulations.

Although Social Security Rulings do not have the same force and effect as the statute or regulations, they are binding on all components of the Social Security Administration, in accordance with 20 CFR 402.35(b)(1), and are relied upon as precedents in adjudicating cases.

If this Social Security Ruling is later superseded, modified, or rescinded, we will publish a notice in the **Federal Register** to that effect.

(Catalog of Federal Domestic Assistance, Programs 96.001 Social Security—Disability Insurance; 96.006 Supplemental Security Income.)

Dated: October 25, 2002.

Jo Anne B. Barnhart,

Commissioner of Social Security.

Policy Interpretation Ruling

Titles II and XVI: Evaluation of Interstitial Cystitis

Purpose: To provide guidance on SSA policy concerning the development and evaluation of interstitial cystitis (IC) in disability claims filed under titles II and XVI of the Social Security Act (the Act).

Citations: Sections 216(i), 223(d), 223(f), 1614(a), and 1614(c) of the Act, as amended; Regulations No. 4, subpart P, sections 404.1502, 404.1505, 404.1508, 404.1509, 404.1511, 404.1512, 404.1513, 404.1520, 404.1520a, 404.1521, 404.1523, 404.1525, 404.1526, 404.1528, 404.1529, 404.1530, 404.1545, 404.1546, 404.1561, 404.1594, and appendix 1; and Regulations No. 16, subpart I, sections 416.902, 416.905, 416.906, 416.908, 416.909, 416.911, 416.912, 416.913, 416.920, 416.920a, 416.921, 416.923, 416.924, 416.925, 416.926, 416.926a, 416.928, 416.929, 416.930, 416.945, 416.946, 416.961, 416.994, and 416.994a.

Introduction: The Act and our implementing regulations require that an individual establish disability based on the existence of a medically determinable impairment; that is, one that can be shown by medical evidence, consisting of symptoms, signs, and laboratory findings. Disability may not be established on the basis of an individual's statement of symptoms alone.

This Ruling explains that IC (a complex, chronic bladder disorder), when accompanied by appropriate symptoms, signs, and laboratory findings, is a medically determinable impairment that can be the basis for a finding of "disability." It also provides guidance for the evaluation of claims involving IC.

Policy Interpretation

General

1. What Is IC?

IC is a complex, chronic bladder disorder characterized by urinary frequency, urinary urgency, and pelvic pain. IC occurs most frequently in women (about 10 times more often than in men), and sometimes prior to age 18. IC may be associated with other disorders, such as fibromyalgia, chronic fatigue syndrome, allergies, irritable bowel syndrome, inflammatory bowel disease, endometriosis, and vulvodynia (vulvar/vaginal pain). IC also may be associated with systemic lupus erythematosus.

The symptoms of IC may vary in incidence, duration, and severity. The causes of IC are currently unknown, and treatments are directed towards relief of symptoms. While no treatment is uniformly effective for everyone, there are many treatments available, and individuals may obtain some measure of relief. However, response to treatment is variable, and some individuals may have symptoms that are intractable to the current treatments available. Treatment may include bladder distention; bladder instillation; oral drugs, such as the prescription drug Elmiron, antidepressants, antihistamines, and narcotic analgesics; and the use of transcutaneous electrical nerve stimulation.

2. How Is IC Diagnosed?

The diagnosis is one of exclusion. A physician must rule out other conditions before making a diagnosis of IC because there is currently no definitive test to identify IC. The symptoms of IC are similar to those of other disorders, such as acute urinary tract or vaginal infections, post-radiation bladder inflammation or infection, bladder cancer, kidney stones, endometriosis, neurological disorders, sexually transmitted diseases, and, in men, chronic bacterial and nonbacterial prostatitis.

Symptoms of IC vary both in kind and in intensity from individual to individual, and even in the same individual. The three most common symptoms are an urgent need to urinate (urgency), a frequent need to urinate (frequency), and pain in the bladder and surrounding pelvic region. These symptoms may occur either singly or in combination. The pain may range from mild discomfort to extreme distress. The intensity of the pain may increase as the bladder fills, and decrease as it empties. In addition, many patients experience vaginal, testicular or penile pain, or low back and thigh pain. A woman's symptoms may worsen around the time of menstruation.

A diagnosis of IC is based on the presence of some or all of the following:

- Presence of urinary urgency or frequency (day and/or night), either singly or in combination;
- Pain in the bladder and surrounding pelvic region;
- Suprapubic tenderness on physical examination;
- Glomerulations (pinpoint bleeding caused by recurrent irritation) on the bladder wall after hydrodistention on cystoscopy;
- Hunner's ulcers on the bladder wall after hydrodistention on cystoscopy; and,
- Absence of other disorders that could cause the symptoms.

Diagnostic tests used to identify or exclude other disorders include urinalysis, urine culture, urine cytology, cystoscopy, biopsy of the bladder wall, and, in men, culture of prostate secretions.

The standard test currently used to aid in the diagnosis of IC is a cystoscopy with hydrodistention of the bladder (performed under anesthesia). It can be used to reveal glomerulations or Hunner's ulcers. A biopsy of the bladder wall can be taken to rule out diseases such as bladder cancer. Cystoscopy with hydrodistention also makes it possible to estimate bladder capacity, which is an important guide to treatment. The hydrodistention of the bladder itself also sometimes provides a therapeutic benefit, with a reduction in pain and urinary frequency for a limited time period. A report on the results of a cystoscopy, if done, should be part of the medical record. An absence of glomerulations or Hunner's ulcers on cystoscopy does not exclude a diagnosis of IC; a minority of individuals with IC (10%) will not have either of these medical signs. Cystoscopy should not be purchased to establish a diagnosis of IC because it is an invasive procedure.

While the medical findings discussed above are the principal symptoms, signs, and laboratory findings currently used to establish a diagnosis of IC, and, consequently, the existence of a medically determinable impairment, they are not all-inclusive. As progress is made in medical research into IC, additional signs and laboratory findings may be identified and new diagnostic techniques may be developed that also would establish a diagnosis of IC. The existence of IC may be documented with medical signs or laboratory findings other than those listed above, provided that such documentation is consistent with medically accepted clinical practice and is consistent with the other evidence in the case record.

3. What Is a Medically Determinable Impairment?

Sections 216(i) and 1614(a)(3) of the Act define "disability" [1] as the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment (or combination of impairments) which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.[2]

Sections 223(d)(3) and 1614(a)(3)(D) of the Act and 20 CFR 404.1508 and 416.908 require that an impairment result from anatomical, physiological, or psychological abnormalities that can be shown by medically acceptable clinical and laboratory diagnostic techniques. The Act and regulations further require that an impairment be established by medical evidence that consists of symptoms, signs, and laboratory findings, and not only by an individual's statement of symptoms.

4. How Is IC Identified as a Medically Determinable Impairment?

We [3] generally will rely on the judgment of a physician who has made the diagnosis after a review of the claimant's medical history, a physical examination of the claimant, and any pertinent testing to establish the existence of IC. In the absence of evidence to the contrary in the case record, we will find a medically determinable impairment is established if the evidence contains the appropriate symptoms, signs, and laboratory findings, as discussed under question 2 above. However, if there is evidence that indicates that the diagnosis is questionable, and the evidence is inadequate to determine whether or not the individual is disabled, we will contact the treating source for clarification, using the guidelines in 20 CFR 404.1512(e) and 416.912(e).

5. How Do We Consider IC in the Sequential Evaluation Process? [4]

Once we determine that the individual has the medically

[1] Except for statutory blindness.

[2] For a child under age 18 claiming benefits under title XVI, disability will be established if the child is suffering from a medically determinable physical or mental impairment (or combination of impairments) that results in "marked and severe functional limitations." *See* section 1614(a)(3)(C) of the Act and 20 CFR 416.906. However, for clarity, the following discussions refer only to claims of individuals claiming disability benefits under title II and individuals age 18 or older claiming disability benefits under title XVI. The concepts in this ruling, however, are also intended to apply in determining disability based on IC for individuals under age 18 under title XVI.

[3] The terms *we* and *us* in this Social Security Ruling have the same meaning as in 20 CFR 404.1502 and 416.902. *We* or *us* refers to either the Social Security Administration or the State agency making the disability or blindness determination; *i.e.*, our adjudicators at all levels of the administrative review process and our quality reviewers.

[4] For ease of reading, we refer in this Ruling only to the steps of the sequential evaluation processes for initial adult claims, 20 CFR 404.1520 and 416.920. We use separate sequential evaluation processes when we do continuing disability

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determinable impairment IC, we will consider it in determining whether:

- The individual's impairment(s) is severe.
- The individual's impairment(s) meets or equals the requirements of a listed impairment in the listings.
- The individual's impairment(s) prevents him or her from doing past relevant work and other work that exists in significant numbers in the national economy.

6. Can We Find an Individual Disabled Based on IC Alone?

If an individual has the medically determinable impairment IC that is "severe" as described in question 7 below, we may find that the IC medically equals a listing, if appropriate. (*See* 20 CFR 404.1525 and 416.925.) (In the case of a child seeking benefits under title XVI, we also may find that it functionally equals the listings (20 CFR 416.926a).) We also may find in a title II claim, or an adult claim under title XVI, that the IC results in a finding that the individual is disabled based on his or her residual functional capacity (RFC), age, education, and past work experience.

An individual with IC also may report symptoms suggestive of a mental impairment (for example, the individual may say that he or she is anxious or depressed, having difficulties with memory and concentration, *etc.*). If the evidence supports a possible discrete mental impairment or symptoms such as anxiety or depression resulting from the individual's IC or the side effects of medication, we will develop the possible mental impairment. If the evidence does not establish a medically determinable mental impairment, but does establish the presence of symptoms such as anxiety or depression resulting from the individual's IC or side effects of medication, we will determine whether there are any work-related functional limitations resulting from the symptoms. We will address any work-related functional limitations at steps 4 and 5 of the sequential evaluation process.

Sequential Evaluation: Step 2, Severe Impairment

7. When Is IC a "Severe" Impairment?

As with any other medical condition, we will find that IC is a "severe" impairment when, alone or in combination with another medically determinable physical or mental impairment(s), it significantly limits an individual's physical or mental ability to do basic work activities. (For children applying for disability under title XVI, we will find that IC is a "severe" impairment when it causes more than minimal functional limitations.) We also will consider the effects of any symptoms (such as pain or fatigue) that could limit functioning. (*See* SSR 85–28, "Titles II and XVI: Medical Impairments That Are Not Severe" and SSR 96–3p, "Titles II and XVI: Considering Allegations of Pain and Other Symptoms In Determining Whether a Medically Determinable Impairment Is Severe.") Therefore, we will find that an impairment(s) is "not severe" only if it is a slight abnormality (or a combination of slight abnormalities) that has no more than a minimal effect on the individual's ability to do basic work activities (or, for a child applying under title XVI, if it causes no more than minimal functional limitations).

Sequential Evaluation: Step 3, the Listings

8. How Do We Evaluate IC at Step 3 of Sequential Evaluation, the Listings?

IC may be a factor in both "meets" and "equals" determinations.

Because there is no listing for IC, we will find that an individual with IC "meets" the requirements of a listing if he or she has another impairment that, by itself, meets the requirements of a listing. We also will find that a listing is met if there is an impairment that, in combination with IC, meets the requirements of a listing. For example, IC may increase the severity of coexisting or related impairments, including mental disorders, to the extent that the combination of impairments meets the requirements of a listing. This also may be true in the reverse; coexisting or related impairments may increase the severity of IC.

We also may find that IC, by itself, is medically equivalent to a listed impairment (or, in the case of a child applying under title XVI, also functionally equivalent to the listings).

We also will find equivalence if an individual has multiple impairments, including IC, no one of which meets or equals the requirements of a listing, but the combination of impairments is equivalent in severity to a listed impairment.

However, we will not make assumptions about the severity or functional effects of IC combined with other impairments. IC in combination with another impairment may or may not increase the severity or functional limitations of the other impairment. We will evaluate each case based on the information in the case record.

Further, we will never deny an individual's claim because the individual's IC does not meet or medically equal a listing. If an individual with IC has a severe impairment that does not meet or medically equal a listing, we may still find the individual disabled based on other rules in the "sequential evaluation process" that we use to evaluate all disability claims.

Sequential Evaluation: Steps 4 and 5, Assessing Functioning in Adults; Step 3, Assessing Functional Equivalence in Children

9. How Do We Evaluate IC in Assessing Residual Functional Capacity (RFC) in Adults and Functional Equivalence in Children?

IC can cause limitation of function. The functions likely to be limited depend on many factors, including urinary frequency and pain. An individual may have limitations in any of the exertional functions such as sitting, standing, walking, lifting, carrying, pushing, and pulling. It also may affect ability to do postural functions, such as climbing, balancing, stooping, and crouching. The ability to tolerate extreme heat, humidity, or hazards also may be affected.

The effects of IC may not be obvious. For example, many people with IC have chronic pelvic pain, which can affect the ability to focus and sustain attention on the task at hand. Nocturia (nighttime urinary frequency) may disrupt sleeping patterns. This can lead to drowsiness and lack of mental clarity during the day. IC also may affect an individual's social functioning. The presence of urinary frequency alone can necessitate trips to the bathroom as often as every 10 to 15 minutes, day and night. Consequently, some individuals with IC essentially may confine themselves to their homes. In assessing RFC, we must consider all of the individual's symptoms in deciding how such symptoms may affect functional capacities.

An assessment also should be made of the effect IC has upon the individual's ability to perform routine movement and necessary physical activity within the work environment. Individuals with IC may have problems with the ability to sustain a function over time.

As explained in SSR 96–8p ("Titles II and XVI: Assessing Residual Functional Capacity in Initial Claims"), our RFC assessments must consider an individual's *maximum* remaining ability to do sustained work activities in an ordinary work setting on a regular and continuing basis. A "regular and continuing basis" means 8 hours a day, for 5 days a week, or an equivalent work schedule.[5] In cases involving IC, fatigue may affect the individual's physical and mental ability to sustain work activity. This may be particularly true in cases involving urinary frequency.

For a child applying for benefits under title XVI, we will evaluate the functional consequences of IC (either alone or in combination with other impairments) to decide if the child's impairment(s) functionally equals the listings. For example, the functional limitations imposed by IC, by itself or in combination with another impairment(s), may establish an extreme limitation in one broad area of functioning (*e.g.*, attending and completing tasks) or marked limitations in two broad areas of functioning (*e.g.*, attending and completing tasks, and interacting and relating with others).

As with any other impairment, we will explain how we reached our conclusions on whether IC caused any physical or mental limitations.

EFFECTIVE DATE: This Ruling is effective November 5, 2002.

Cross-References: SSR 85–28, "Titles II and XVI: Medical Impairments That Are Not Severe"; SSR 96–2p, "Titles II and XVI: Giving Controlling Weight to Treating Source Medical Opinions"; SSR 96–3p, "Titles II and XVI: Considering Allegations of Pain and Other Symptoms in Determining Whether a Medically Determinable Impairment is Severe"; SSR 96–4p, "Titles II and XVI: Symptoms, Medically Determinable Physical and Mental Impairments, and Exertional and Nonexertional Limitations"; SSR 96–5p, "Titles II and XVI: Medical Source Opinions on Issues Reserved to the Commissioner"; SSR 96–6p, "Titles II and XVI: Consideration of Administrative Findings of Fact by State Agency Medical and Psychological Consultants and Other Program Physicians and Psychologists at the Administrative Law Judge and Appeals Council Levels of Administrative Review; Medical Equivalence"; SSR 96–7p, "Titles II and XVI: Evaluation of Symptoms in Disability Claims: Assessing the Credibility of an Individual's Statements"; SSR 96–8p, "Titles II and XVI: Assessing Residual Functional Capacity in Initial Claims"; and SSR 96–9p, "Titles II and XVI: Determining Capability to Do Other Work—Implications of a Residual Functional Capacity for Less Than a Full Range of Sedentary Work."

[FR Doc. 02–28057 Filed 11–4–02; 8:45 am]

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reviews; *i.e.*, reviews to determine whether individuals who are receiving disability benefits are still disabled, or when we determine whether an individual has a "closed period of disability." These rules are set out in 20 CFR 404.1594 and 416.994, and the guidance in this Ruling applies to all of the appropriate steps in those regulations as well.

[5] However, *see* footnote 2 of SSR 96–8p. That footnote explains that the ability to work 8 hours a day for 5 days a week is not always required for a finding at step 4 of the sequential evaluation process for adults when an individual can do past relevant work that was part-time work, if that work was substantial gainful activity, performed within the applicable period, and lasted long enough for the person to learn to do it.

DEPARTMENT OF STATE

[Public Notice 4159]

Renewal of the Overseas Schools Advisory Council

The Department of State is renewing the Overseas Schools Advisory Council to provide a formal channel for regular consultation and advice from U.S. corporations and foundations regarding American-sponsored overseas schools. The Under Secretary for Management has determined that the committee is necessary and in the public interest.

Members of the committee will be appointed by the Assistant Secretary for Administration. The committee will follow the procedures prescribed by the Federal Advisory Committee Act (FACA). Meetings will be open to the public unless a determination is made in accordance with the FACA section 10(d) and 5 U.S.C. 552b(c) (1) and (4) that a meeting or a portion of the meeting should be closed to the public. Notice of each meeting will be provided in the **Federal Register** at least 15 days prior to the meeting date.

For further information, contact Dr. Keith D. Miller, Executive Secretary of the committee at 202–261–8200.

Dated: October 30, 2002.

Keith D. Miller,

Executive Secretary, Overseas Schools Advisory Council, Department of State.

[FR Doc. 02–28088 Filed 11–4–02; 8:45 am]

BILLING CODE 4710–24–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Determinations Under the African Growth and Opportunity Act: Correction

AGENCY: Office of the United States Trade Representative.

ACTION: Correction.

Correction to Previous Notice

In the **Federal Register** of October 23, 2002, Volume 67, Page 65169, the Office of the United States Trade Representative published a notice entitled "Determinations Under the African Growth and Opportunity Act." A correction is being made to the information that appeared under **SUPPLEMENTARY INFORMATION**. The reference to Presidential Proclamation 7360 of October 2, 2000 was incorrect. The correct citation is Presidential Proclamation 7350 of October 2, 2000.

Rosa M. Whitaker,

Assistant United States Trade Representative for Africa, Office of the United States Trade Representative.

[FR Doc. 02–28063 Filed 11–4–02; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed During the Week Ending October 25, 2002

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. Sections 412 and 414. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2002–13631.
Date Filed: October 22, 2002.
Parties: Members of the International Air Transport Association.
Subject:
PTC23 AFR–TC3 0184 dated 22 October 2002.
Mail Vote 247—TC23/TC123 Africa-South East Asia.
Special Passenger Amending Resolution 010e r1–r2.
PTC23 AFR–TC3 0185 dated 22 October 2002.
Mail Vote 248—TC23/TC123 Africa-Japan/Korea.
Special Passenger Amending Resolution 010f r3–r13.
Intended effective date: 15 November 2002.

Docket Number: OST–2002–13681.
Date Filed: October 23, 2002.
Parties: Members of the International Air Transport Association.
Subject:
Mail Vote 239.
PTC123 0201 dated 16 September 2002 r1–r18.
PTC123 0210 dated 11 October 2002 (Affirmative).
Minutes—PTC123 0217 dated 22 October 2002.
Tables—PTC123 Fares 0072 dated 11

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October 2002.
PTC123 Fares 0076 (Technical Correction).
Intended effective date: 1 March 2003.
Docket Number: OST 2002–13684.
Date Filed: October 24, 2002.
Parties: Members of the International Air Transport Association.
Subject:
Mail Vote 242
PTC123 dated 16 September 2002 r1–r9
TC123 North Atlantic-USA-Korea (Rep. of), Malaysia
Resolutions
PTC123 0213 dated 11 October 2002 (Affirmative)
Minutes—PTC123 0217 dated 22 October 2002
Tables—PTC123 Fares 0075 dated 11 October 2002
Intended effective date: 1 March 2003.

Dorothy Y. Beard,
Federal Register Liaison.
[FR Doc. 02–28091 Filed 11–4–02; 8:45 am]
BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Lake Superior Railroad Museum

[Docket Number FRA–2002–13490]

The Lake Superior Railroad Museum (LSRM) of Duluth, Minnesota has petitioned for a permanent waiver of compliance for one 1956 built General Motors Locomotive numbered 4211 from the requirements of the Railroad Safety Glazing Standards, 49 CFR part 223, which requires certified glazing in all windows and a minimum of four emergency windows. The railroad indicates that it operates on 26 miles of track on the North Shore Scenic Railroad between Duluth and Two Harbors, Minnesota.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number FRA–2002–13490) and must be submitted to the Docket Clerk, DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.—5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's web site at *http://dms.dot.gov.*

Issued in Washington, DC on October 29, 2002.

Grady C. Cothen, Jr.,
Deputy Associate Administrator for Safety Standards and Program Development.
[FR Doc. 02–28094 Filed 11–4–02; 8:45 am]
BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

The Livonia, Avon & Lakeville Railroad Corporation

[Docket Number FRA–2002–13250]

The Livonia, Avon & Lakeville Railroad Corporation (LAL) has petitioned the Federal Railroad Administration (FRA) for a waiver of compliance for one business car numbered 100 from the requirements of the Railroad Safety Glazing Standards, 49 CFR part 223, which requires certified glazing in all windows and a minimum of four emergency windows. The railroad indicates that the car is not air conditioned and is used only four times a year. This car has 25 windows that open a maximum of eight (8) inches.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number 2002–13250) and must be submitted to the Docket Clerk, DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.—5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

Issued in Washington, DC, on October 29, 2002.

Grady C. Cothen, Jr.,
Deputy Associate Administrator for Safety Standards and Program Development.
[FR Doc. 02–28093 Filed 11–4–02; 8:45 am]
BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Virginia & Truckee Railroad

[Docket Number FRA–2002–13310]

The Virginia & Truckee Railroad (VTRR) has petitioned the Federal Railroad Administration (FRA) for a permanent waiver of compliance from one 1953 General Electric 80-ton locomotive from the requirements of the Railroad Safety Glazing Standards, 49 CFR Part 223, which requires certified glazing in all windows and a minimum of four emergency windows. The railroad indicates that the locomotive operates as a tourist railroad with three miles of track in Virginia City, Nevada, approximately six months per year. It crosses one fully protected rail highway crossing. The locomotive is currently equipped with safety glazing.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.*, Waiver Petition Docket Number FRA–2002–13310) and must be submitted to the Docket Clerk, DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.—5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's web site at *http://dms.dot.gov.*

Issued in Washington, DC on October 29, 2002.

Grady C. Cothen, Jr.
Deputy Associate Administrator for Safety Standards and Program Development.
[FR Doc. 02–28095 Filed 11–4–02; 8:45 am]
BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2002–13703]

Information Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Maritime Administration's (MARAD's) intentions to request extension of approval for three years of a currently approved information collection.

DATES: Comments should be submitted on or before January 6, 2003.

FOR FURTHER INFORMATION CONTACT: Rodney McFadden, Maritime Administration, 400 Seventh St., SW., Washington, DC 20590. Telephone: 202–366–2647; FAX 202–493–2180, or E-MAIL: *rodney.mcfadden@marad.dot.gov.* Copies of this collection can also be obtained from that office.

SUPPLEMENTARY INFORMATION:

Title of Collection: Information to Determine Seamen's Reemployment Rights—National Emergency.

Type of Request: Extension of currently approved information collection.

OMB Control Number: 2133–0526.

Form Numbers: None.

Expiration Date of Approval: Three years from the date of approval.

Summary of Collection of Information: MARAD is requesting approval of this collection in an effort to implement provisions of the Maritime Security Act of 1996. These provisions grant reemployment rights and other benefits to certain merchant seamen serving aboard vessels used by the United States during times of national emergencies. The Maritime Security Act of 1996 establishes the procedures for obtaining the necessary MARAD certification for reemployment rights and other benefits.

Need and Use of the Information: MARAD will use the information to determine if U.S. civilian mariners are eligible for reemployment rights under the Maritime Security Act of 1996.

Description of Respondents: U.S. merchant seamen who have completed designated national service during a time of maritime mobilization need and are seeking reemployment with a prior employer.

Annual Responses: 50.

Annual Burden: 50 hours.

Comments: Comments should refer to the docket number that appears at the top of this document. Written comments may be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. Comments may also be submitted by electronic means via the Internet at *http://dmses.dot.gov/submit.* Specifically address whether this information collection is necessary for proper performance of the functions of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance the quality, utility, and clarity of the information to be collected. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m. EDT (or EST), Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web at *http://dms.dot.gov.*

By Order of the Maritime Administrator.
Dated: October 29, 2002.

Joel C. Richard,
Secretary, Maritime Administration.
[FR Doc. 02–28085 Filed 11–4–02; 8:45 am]
BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2002–13702]

Information Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Maritime Administration's (MARAD's) intentions to request extension of approval for three years of a currently approved information collection.

DATES: Comments should be submitted on or before January 6, 2003.

FOR FURTHER INFORMATION CONTACT: Thomas Olsen, Maritime Administration, 400 Seventh Street, SW., Washington, DC. Telephone: 202–366–2313; FAX: 202–366–9580, or E-Mail: *thomas.olsen@marad.dot.gov.* Copies of this collection can also be obtained from that office.

SUPPLEMENTARY INFORMATION:

Title of Collection: Determination of Fair and Reasonable Rates for Carriage of Agricultural Cargoes on U.S. Commercial Vessels.

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Type of Request: Extension of currently approved information collection.

OMB Control Number: 2133–0514.

Form Numbers: None.

Expiration Date of Approval: Three years from date of OMB approval.

Summary of Collection of Information: This collection of information requires U.S.-flag operators to submit vessel operating costs and capital costs data to MARAD officials on an annual basis.

Need and Use of the Information: This information is needed by MARAD to establish fair and reasonable guideline rates for carriage of specific cargoes on U.S. vessels.

Description of Respondents: U.S. citizens who own and operate U.S.-flag vessels.

Annual Responses: 175.

Annual Burden: 700 hours.

Comments: Comments should refer to the docket number that appears at the top of this document. Written comments may be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. Comments may also be submitted by electronic means via the Internet at *http://dmses.dot.gov/submit.* Specifically address whether this information collection is necessary for proper performance of the functions of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance the quality, utility, and clarity of the information to be collected. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m. EDT (or EST), Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web at *http://dms.dot.gov.*

By Order of the Maritime Administrator.

Dated: October 29, 2002.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–28086 Filed 11–4–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2002–13701]

Information Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Maritime Administration's (MARAD's) intentions to request extension of approval for three years of a currently approved information collection.

DATES: Comments should be submitted on or before January 6, 2003.

FOR FURTHER INFORMATION CONTACT: Richard Walker, Maritime Administration, MAR–810, 400 7th Street, SW., Washington, DC 20590. Telephone: 202–366–5076, FAX: 202–366–6988 or E-MAIL: *richard.walker@marad.dot.gov.* Copies of this collection can also be obtained from that office.

SUPPLEMENTARY INFORMATION:

Title of Collection: Inventory of American Intermodal Equipment.

Type of Request: Extension of currently approved information collection.

OMB Control Number: 2133–0503.

Form Numbers: None.

Expiration Date of Approval: Three years from date of approval by Office of Management and Budget.

Summary of Collection of Information: This collection consists of an intermodal equipment inventory that provides data essential to both the government and the transportation industry in planning for the most efficient use of intermodal equipment. Further, this collection is intended to assure that containers and related intermodal equipment are obtainable in the event of a national emergency.

Need and Use of the Information: The information contained in the inventory provides data about U.S.-based companies that own or lease intermodal equipment and is essential to both government and industry in planning for contingency operations.

Description of Respondents: Owners of U.S. steamship and intermodal equipment leasing companies.

Annual Responses: 22.

Annual Burden: 66 hours.

Comments: Comments should refer to the docket number that appears at the top of this document. Written comments may be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. Comments may also be submitted by electronic means via the Internet at *http://dmses.dot.gov/submit.* Specifically address whether this information collection is necessary for proper performance of the functions of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance the quality, utility, and clarity of the information to be collected. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m. EDT (or EST), Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web at *http://dms.dot.gov.*

By Order of the Maritime Administrator.

Dated: October 29, 2002.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–28087 Filed 11–4–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Bureau of Transportation Statistics

Grant Program for Research and Development in the Field of Transportation Statistics

AGENCY: Bureau of Transportation Statistics, DOT.

ACTION: Announcement of grant program.

SUMMARY: The Bureau of Transportation Statistics (BTS) supports its goal of advancing the field of transportation statistics through the Transportation Statistics Research Grants program. This notice solicits applications for projects that (1) support the development of the field of transportation statistics; and/or (2) involve research or development in transportation statistics. It outlines the purpose, goals, and general procedures for application and award. For this cycle, BTS will make available up to approximately $500,000 in grant funds to eligible organizations.

DATES: For BTS to consider your application, we must receive it by January 31, 2003, at 5:00 P.M. Eastern Standard Time. Applications received after January 31, 2003, will be held for the next cycle, which is anticipated to be every six to twelve months, unless you request in writing that your application be returned.

ADDRESSES: You must send six copies of the application package to the BTS Grants Program, Room 3117, Bureau of Transportation Statistics, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Promod Chandhok, Office of Statistical Programs, Bureau of Transportation Statistics, Room 3117, 400 Seventh Street, SW., Washington, DC 20590; phone (202) 366–2158; fax: (202) 493–0568; e-mail: *promod.chandhok@bts.gov.*

SUPPLEMENTARY INFORMATION:

I. Background—Advancing the Discipline of Transportation Statistics

The purpose of this grant program is to provide financial assistance to eligible organizations to help advance the discipline of transportation statistics. These grants are authorized by section 5109 of the Transportation Equity Act for the 21st Century (TEA–21) (Public Law 105–178 (1998), codified at 49 U.S.C. 111(g)). BTS anticipates awarding up to $500,000 per year in grants for projects that (1) support development of the field of transportation statistics; and/or (2) advance research or development in transportation statistics.

BTS is a separate operating administration within the U.S. Department of Transportation (DOT). Its mission is to lead in developing transportation data and information of high quality, and to advance their effective use in public and private transportation decision-making. In accomplishing this mission, BTS works to improve six key attributes of transportation data and analysis—quality, comparability, completeness, timeliness, relevance, and utility.

Our ultimate goal is to make transportation better—to enhance safety, mobility, economic growth, the human and natural environment, and national security (the five strategic goals of the Department of Transportation). BTS's role in this goal is to put together data and information that others need to make decisions concerning transportation. We collect data and compile, analyze, and publish statistics. Many others, both within and outside DOT, are involved in building this knowledge base and BTS could not do it alone.

While there are many excellent transportation data programs and many excellent statistics programs, few are devoted to the intersection of these two disciplines. Bringing a better understanding of statistics to transportation data will improve data quality, increase utility (*e.g.*, by improving measures of travel), and reduce costs (*e.g.*, by using techniques to make data collection, analysis, and dissemination more efficient). BTS wants to foster the transportation statistics discipline and increase its quality and usefulness to the transportation community. This grants program is one way BTS is working toward this goal.

II. Eligibility Requirements

What Organizations May Apply?

BTS invites applications from public and private non-profit entities. We strongly encourage organizations serving minorities, who have been traditionally under-represented in transportation statistics, to submit applications. If organizations partner on a project, the participants should submit a single application. You may submit more than one application as long as the applications are for separate and distinct projects.

What Projects Are Eligible for Funding?

Proposals should serve the broad transportation interests of the country, and we are particularly interested in high-quality proposals that treat one or more of the following areas:

(1) Quantifying the "safety culture" of transportation companies; assessing the predictive power of "safety culture" in predicting accident risk; identifying minimum data required in quantifying the "safety culture" of a transportation company; and suggesting specific measures or attributes of a company that are strong predictors of accident risk.

(2) Researching the utility of narrative text in accident and near-miss reports in identifying precursors to an accident; evaluating text mining techniques; and developing text mining tools specific for extracting information from Police Accident Reports.

(3) Measuring the vulnerability of the transportation system and its users to crime and terrorism.

This list is not exhaustive, and we are eager to consider any innovative proposal that supports the development of the field of transportation statistics or involves research and development in transportation statistics.

What Are the Cost Sharing Requirements?

For awards of $100,000 or more, the recipient shall fund at least 50 percent of the project's costs. The nonfederal match must come from sources other than the project sponsor, and must be cash contributions rather than in-kind contributions. In reviewing all applications, even those requesting less than $100,000, the degree of cost-sharing will be considered, with more weight given to cash contributions than in-kind services.

III. Application Contents

For more information about submitting an application, please refer to the **ADDRESSES** and **DATES** sections listed above. In order to be considered for funding under this program, your application package must include the following:

(1) *A Project Narrative.* This must not exceed 12 letter-size pages, single-sided and double-spaced. Use at least 12-point type and one inch margins. In general, the information you provide should be in sufficient detail so BTS understands the proposed work and its anticipated benefits. It should also demonstrate that you have the necessary experience and resources to accomplish it. The narrative must identify the organization; how it meets the eligibility criteria; its experience and accomplishments in collecting, analyzing, and/or disseminating transportation data; and the qualifications of the principals proposed to conduct the activities. The narrative must also describe the proposed activity, including how you would accomplish it, a timeline listing major milestones associated with the project, and a list of specific products and/or services with the dates they will be delivered.

(2) *An Application for Federal Assistance.* Submit OMB SF–424 (Application for Federal Assistance), which is the official form required for all Federal grants. It requests basic information about the grantee and the proposed project. Under Part 10 of this form, use 20.920 and Transportation Statistics Research Grants for the Catalog of Federal Domestic Assistance Number and Title. Also submit OMB SF–424A (Budget Information—Nonconstruction Programs). You can download these forms from the OMB Internet site at *http://www.whitehouse.gov/omb/grants.*

(3) *An Evaluation Plan.* Include a brief description of how you will evaluate and measure the success of the project, including the anticipated benefits and challenges in completing it. This can be part of the Project Narrative.

(4) *Resumes.* Include resumes from up to three key personnel who would be significantly involved in the project.

(5) *Letters of Commitment.* If your proposal includes the significant involvement of other eligible organizations, your application must include letters of commitment from them.

IV. Application Review Process and Selection Criteria

The Transportation Statistics Research Grants program uses a competitive process and applications will be evaluated based on the merit and relevance of the proposed project in relation to the other applications received. BTS anticipates making multiple awards based on this solicitation. While BTS will select the

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most meritorious proposals, we may choose to not award all available funds.

Upon receiving an application, BTS will conduct an initial review to determine if it meets the eligibility criteria and contains all of the items specified under the Application Contents section of this announcement. A BTS evaluation committee will then review each complete application from an eligible recipient using the evaluation criteria listed below (the order of criteria does not designate priority) and the BTS Director will select the final grants. The evaluation criteria are:

(1) How well does the proposal support BTS's strategic goals of improving the quality, comparability, completeness, timeliness, relevance, and utility of transportation data? How well does the proposal serve the broad transportation interests of the United States?

(2) How innovative is the proposed activity? To what extent is the work being accomplished elsewhere?

(3) How much experience has the applicant demonstrated in one or more of the following areas—collecting, analyzing, storing, or disseminating transportation data, particularly data collected or disseminated by BTS, and working with theoretical statistical issues concerning transportation data?

(4) Does the applicant have the professional qualifications and team members necessary for satisfactory performance of the proposed activity?

(5) How well does the technical approach and proposed costs reflect an understanding of the procedures necessary to complete the required tasks?

(6) To what degree does the proposal include cost-sharing? More weight will be given to proposals with cash contributions than in-kind services. For awards of $100,000 or more, BTS requires cash contributions of 50 percent toward the total project's cost.

V. Amount of Funds Available and Period of Support

We anticipate that approximately $500,000 per year will be designated to support grants over the next five years, subject to the availability of appropriated funds. This estimate does not bind BTS to a specific number of offers or awards, nor to a specific amount of funding support for particular awards or awards in aggregate. It is anticipated that individual award amounts, based upon demonstrated needs, will likely range from $50,000 to $200,000, though BTS has not established minimum or maximum funding levels.

Given the amount of funds available, applicants are strongly encouraged to seek other funding opportunities to supplement the federal funds. Preference will be given to applicants with cost sharing proposals from within or outside their organizations.

The period of time of awards will vary with the complexity of the project and it is possible that grants will be awarded for periods greater than one year.

VI. BTS Involvement

BTS involvement, if any, will vary by award. If you anticipate BTS involvement, you must note this in your project narrative and any support BTS provides will be specified in the award agreement. BTS will assign a liaison to serve as the primary contact regarding the grant.

VII. Terms and Conditions of Award

(1) Prior to award, each grantee will be required to complete additional government application forms, such as OMB SF–424B (Assurances—Nonconstruction Programs) and with the certification requirements of 49 CFR Part 20, Department of Transportation New Restrictions on Lobbying, and 49 CFR Part 29, Department of Transportation Government-Wide Debarment and Suspension (Non-Procurement) and Government-Wide Requirements for Drug Free Workplace (Grants).

(2) Each grantee shall submit a program implementation plan no more than one month after award. The BTS liaison will review and comment, if necessary.

(3) Each grantee shall submit quarterly progress reports, a draft final report, and a final report that reflects the BTS liaison's comments.

Thank you for your interest in our Transportation Statistics Research Grants program.

Ashish Sen,

Director.

[FR Doc. 02–28092 Filed 11–4–02; 8:45 am]

BILLING CODE 4910–HY–P

Corrections

Federal Register

Vol. 67, No. 214

Tuesday, November 5, 2002

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1, 41, and 190

RIN 3038–AB76

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–46473; File No. S7–17–01]

RIN 3235–AI32

Applicability of CFTC and SEC Customer Protection, Recordkeeping, Reporting, and Bankruptcy Rules and the Securities Investor Protection Act of 1970 to Accounts Holding Security Futures Products

Correction

In rule document 02–23274 beginning on page 58284 in the issue of Friday, September 13, 2002, make the following corrections:

1. On page 58287, in the first column, in footnote 30, in the third line, " "FCM" that is fully registered" should read, " "FCM" pertains to an FCM that is fully registered".

2. On page 58288, in the first column, in footnote 35, "notes through" should read, "notes 15 through 18".

3. On the same page, in the second column, in footnote 39, in the seventh line, after "note", add "44".

4. On the same page, in the third column, in footnote 41, "notes and" should read, "notes 42 and 43.".

5. On page 58291, in the second column, in footnote 69, after "note", add "8".

6. On page 58292, in the third column, in footnote 79, in the fifth line, after "note", add "74".

7. On page 58295, in the first column, in footnote 88, "NSD" should read, "NASD".

[FR Doc. C2–23274 Filed 11–4–02; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent to Prpare a Draft Supplemental Environmental Impact Statement for the Design Modifications and Recreational Enhancements to the Wyoming Valley Levee Raising Project at the Wilkes-Barre, PA Historic River Commons

Correction

In notice document 02–27156 beginning on page 65343 in the issue of Thursday, October 24, 2002, make the following correction:

On page 65343, in the third column, under the heading **3. Purpose and Need**, in the second line, "will project" should read " will provide".

[FR Doc. C2–27156 Filed 11–4–02; 8:45 am]

BILLING CODE 1505–01–D

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Federal Register

Tuesday,
November 5, 2002

Part II

Department of Transportation

National Highway Traffic Safety Administration

Consumer Information Regulations; Federal Motor Vehicle Safety Standards; Safety Rating Program for Child Restraint Systems; Notice and Final Rule

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2001-10053]

Consumer Information Regulations; Federal Motor Vehicle Safety Standards; Safety Rating Program for Child Restraint Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Response to Comments, Notice of Final Decision.

SUMMARY: The Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act requires that, by November 2002, a safety rating for child restraints be established to create a consumer information program to provide practicable, readily understandable, and timely information to consumers. Consumers could use the information to make informed decisions on the purchase of child restraint systems (CRS). In addition, TREAD directed the Secretary of Transportation to take into consideration, "whether to include a child restraint in each vehicle crash-tested under the New Car Assessment Program." In response to this mandate, the agency has decided to establish a consumer information program for add on child restraints based on ease of use. We believe that this consumer information program will encourage child restraint manufacturers to produce child restraints with features that make it easier for consumers to use and install, thereby, leading to increased correct use of child restraints and increased safety for child passengers. In addition, we have decided to perform two pilot programs to gather additional information about two other aspects of child passenger safety. One pilot program will subject child restraints to a 48 kmph (30 mph) sled test under the same test conditions as a proposed upgrade to FMVSS No. 213. The second pilot program will continue to include child restraints in the frontal crashes of our New Car Assessment Program. In 2003 and 2004, the agency will collect results from the vehicle tests and from the child restraint 30 mph (48 kmph) dynamic sled tests, as a pilot program, and not publish the results as consumer information. At the conclusion of the pilot program, and if analyses of the pilot program show this would be meaningful consumer information, the agency will seek public comments on a proposal for full implementation of the rating of vehicles for child protection and the dynamic child restraint test to commence in Model Year 2005. (By Model Year 2005, we mean October 2004 to coincide with the commencement of the fiscal year 2005 New Car Assessment Program.) We believe this consumer information will enable prospective purchasers to make better, informed choices about new child restraints and passenger vehicles.

FOR FURTHER INFORMATION CONTACT: Concerning issues related to the dynamic performance pilot program of the CRS, call Nathaniel Beuse of the New Car Assessment Program. For issues concerning the passenger vehicles pilot program, call Brian Park of the New Car Assessment Program. Both of these individuals can be reached at (202)-366-1740. For issues related to the ease of use rating, you may call Lori Miller of the Office of Planning and Consumer Standards at (202)-366-2191. You may send mail to these officials at: National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

I. Introduction
II. Discussion of General Issues Raised by Commenters
A. Major Safety Problem is the Unrestrained Child
B. The Belief that Retailers Might Eliminate Lower-Priced Child Restraints
III. CRS Ease of Use Rating Program
A. Summary of Proposal
B. Summary of Comments
1. Inclusion of LATCH
2. Forms for Each Type of Restraint
3. Features and Feature Criteria Evaluation
4. Weighting the Features
5. Low Cost Seats
6. Subjectivity of Ease of Use Rating
7. Other Comments
C. Focus Group Testing on Proposed Child Restraint Rating Program
D. Responses to Comments and Final Ease of Use Rating Program
1. LATCH
2. Forms for Each Type of Restraint
3. Features and Feature Criteria Evaluation
4. Weighting the Features
5. Low Cost Seats and Repeatability/Subjectivity
6. Other Comments
7. Summary of Final Ease of Use Protocol
IV. CRS Dynamic Performance Rating Program
A. Summary of Proposal
B. Summary of Comments
1. 48 kmph (30 mph) Sled Test
2. 56 kmph (35 mph) Sled Test
3. Test Dummies and Injury Assessment Reference Values
4. Testing Procedure
5. Rating System
C. Analysis of Comments
1. 48 kmph (30 mph) Sled Test
2. 56 kmph (35 mph) Sled Test
3. Test Dummies and Injury Assessment Reference Values
4. Testing Procedure
5. Rating System
D. NHTSA's Decision On A CRS Dynamic Rating Program
V. Vehicle Rating System for Child Protection
A. Summary of Proposal
B. Summary of Comments
C. Analysis of Comments
D. NHTSA's Decision On A Vehicle Rating System for Child Protection
VI. Combined Child Restraint Rating
A. Summary of Proposal
B. Summary of Comments
C. NHTSA Will Not Combine Ratings
VII. Distribution & Schedule
A. Summary of Proposal
B. Summary of Comments
C. Rating and Distribution Plan
VIII. Conclusion
Appendices
A. Proposed Ease of Use Rating Forms
B. Proposed Ease of Use Rating Sample
C. Final Ease of Use Rating and Scoring Forms
D. Final Ease of Use Rating Sample

I. Introduction

Congress has directed the National Highway Traffic Safety Administration (NHTSA) to develop a child restraint safety rating system that is practicable and understandable (Section 14(g) of the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act, November 1, 2000, Pub. L. 106–414, 114 Stat. 1800) and that will help consumers to make informed decisions when purchasing child restraints. Section 14(g) reads as follows:

(g) Child restraint safety rating program. No later than 12 months after the date of the enactment of this Act, the Secretary of Transportation shall issue a notice of proposed rulemaking to establish a child restraint safety rating consumer information program to provide practicable, readily understandable, and timely information to consumers for use in making informed decisions in the purchase of child restraints. No later than 24 months after the date of the enactment of this Act the Secretary shall issue a final rule establishing a child restraint safety rating program and providing other consumer information, which the Secretary determines, would be useful to consumers who purchase child restraint systems.

This notice outlines the program that NHTSA will use to incorporate a new safety rating for child restraint systems. The agency will rate child restraints in 2003 for ease of use. In addition, we have decided to conduct two pilot programs to gather additional information on the possibility of rating child restraints for dynamic performance, and, by installing such restraints in vehicles tested in our existing frontal New Car Assessment Program (NCAP), the possibility of rating these vehicles on their ability to protect children. NCAP currently gives consumers a crashworthiness rating for new vehicles in frontal and side impact crashes, and a crash avoidance rating in rollover. For Model Year (MY) 2003 and 2004 vehicles, we will conduct a pilot program and collect results for the vehicles subjected to NCAP frontal crashes with child restraints installed in the back seat. We will also conduct a second pilot program with child restraints subjected to a sled test. We plan to evaluate those results, but not publish them as part of NCAP during 2003 and 2004. If analyses of the pilot programs show either or both of these would be meaningful consumer information, we anticipate adding performance ratings for either or both in MY 2005 (By Model Year 2005, we mean October 2004 to coincide with the commencement of the Fiscal Year 2005 New Car Assessment Program.)

II. Discussion of General Issues Raised by Commenters

A notice was published November 6, 2001 (66 FR 56146), with the comment period closing January 7, 2002. Nineteen commenters replied. These responders were child restraint manufacturers, vehicle manufacturers, a testing laboratory, independent researchers, an insurance association, and consumer safety groups. Comments were provided regarding the agency's proposed rating system, and also cautioning that the agency should be alert to other issues. The other issues fell into two categories: (1) The most serious child safety problem comes from unrestrained children, and (2) retailers would only carry top-rated child seats, that would be the most expensive seats.

A. Major Safety Problem Is the Unrestrained Child

The Insurance Institute for Highway Safety (IIHS) argued, "by far the biggest problem contributing to child injury and death in motor vehicle crashes is nonuse of restraints." IIHS cautioned that rating a child restraint might do nothing to get more children into a restraint. Evenflo, National Automotive Dealers Association (NADA), General Motors (GM), Children's Hospital of Philadelphia (CHOP), and Britax stated reservations similar to IIHS's.

The agency agrees that even the best child seat does little good if not used. The agency, manufacturers, local governments, and consumer groups have given a consistent message to the public to put children in age-appropriate restraints in the back seat of automobiles. This educational effort is bearing fruit: over the past decade the percentage of unrestrained child fatalities has decreased significantly.[1] Recent analysis found that, "among children 0 to 3 years old, the percentage of fatalities where the child was unrestrained dropped from 58 percent in 1991 to 34 percent in 2000, mainly due to the increased usage of child restraint seats. This percentage dropped from 64 percent to 48 percent for the 4 to 8 year old age group, as lap and/or shoulder belt usage increased." Usage rates for child seats have also increased; in particular, during a rush hour survey, the under 5-age group had a child seat usage rate of 95% in 2000.[2] The agency and all safety groups must continue their efforts to get more children in age-appropriate restraint systems and to educate the public about the systems' proper use and installation.

Our belief is that an ease of use rating will help provide much needed guidance to consumers about certain child restraint features. We believe this guidance may help them choose the appropriate restraint for their child and vehicle. The goal is that an easy-to-use and an easy-to-adjust child seat will result in more children being properly restrained in the child seat. This increased correct use will increase the safety of child passengers. Our efforts to increase correct use of child restraints are not a substitute for our efforts to get all children in age-appropriate restraint systems. NHTSA and others will continue those efforts. This new child seat ratings program will add another element to our comprehensive program to increase restraint use among children and decrease child fatalities and injuries.

B. The Belief That Retailers Might Eliminate Lower-Priced Child Restraints

The Juvenile Products Manufacturers Association (JPMA) contended, "* * * mass market retailers are free to pick and choose among the product models offered * * * Any of these retailers * * * could easily insist that it will handle only 'double five-star' child restraint models * * * Such a result would also likely lead to the elimination of lower-priced child restraints that have dynamic performance equal to or better than higher priced child restraints * * *." JPMA, GM, and the National Safe Kids Campaign voiced the same cautionary message, indicating that while the lower-priced CRS does an excellent job of protecting children, a safety rating system may have the unintended consequence of leaving some less-affluent families without a restraint. The groups giving child seats to lower-income families, "* * * rely on those low-cost seats to distribute through their grass roots programs in order to reach families most in need."

We do not believe that lower priced child restraints will be eliminated from the market. The agency purchased twenty child seats ranging in price from $23 to $250. Without divulging the cost of the child seats to the evaluators, we applied the ease of use protocol to rate the twenty CRS in a pilot study. In this limited investigation, our analysis showed no correlation between higher priced seats and higher rated seats. We also present information in the notice showing that low priced CRS could provide highly rated dynamic performance.

III. CRS Ease of Use Rating Program

A. Summary of Proposal

NHTSA modeled its proposed ease of use rating program on that used by the Insurance Corporation of British Columbia (ICBC) because ICBC developed reasonably objective criteria for what is "good," "acceptable," and "poor," and NHTSA found ICBC's program to be repeatable. NHTSA proposed to rate ease of use features in four categories as A, B, or C, with A being the highest rating and C the lowest. NHTSA also proposed to take the ICBC rating one step further by combining the four category ratings into an overall ease of use rating. NHTSA proposed to rate each child restraint under the following four ease of use categories: Assembly, Evaluation of Labels/Instructions, Securing the Child, and Installation in Vehicle.

B. Summary of Comments

In general, the individual child restraint manufacturer's comments were similar to the Juvenile Products Manufacturers Association (JPMA). The child restraint manufacturers (Evenflo, Dorel Juvenile Group) commented that the proposed ease of use program was too subjective and they stated that they support a program that is based on objective criteria. In that respect, the

[1] Fatalities and Injuries to 0–8 Year Old Passenger Vehicle Occupants based on Impact Attributes, Technical Report DOT HS 809 410, National Center for Statistics and Analysis, 400 Seventh Street, SW., Washington, DC 20590, March 2002.

[2] *National Occupant Protection Use Survey—2000 Controlled Intersection Study*, Research Note DOT HS 809 318, National Center for Statistics and Analysis, 400 Seventh Street, SW., Washington, DC 20590.

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child restraint manufacturers and JPMA provided recommendations to several areas of the proposal.

In general, the individual vehicle manufacturers comments were similar to the Alliance of Automobile Manufacturers (Alliance). The automobile manufacturers (General Motors, Toyota, Honda) and National Automobile Dealers Association supported an ease of use rating program. Ford did not state whether they supported the proposed program or not. Ford and the Alliance did state that they were unclear how the proposed program would apply to vehicle add-on and built in booster seats.

Advocates for Highway and Auto Safety, Safe Ride News, Child Passenger Protection Technical Consulting, Children's Hospital of Philadelphia (CHOP), Consumers Union, the Insurance Institute for Highway Safety (IIHS), and the ICBC generally supported the ease of use rating program. The Florida Child Passenger Safety and Resource Center suggested an alternative program; the National SAFE KIDS Campaign does not support an ease of use rating system, however, they do believe that communicating ease of use characteristics is important. Several commenters expressed their opinion that the ease of use ratings system should be presented in such a way as to not mislead consumers that it is a safety performance indicator.

The major issues discussed by the commenters are summarized below.

1. Inclusion of LATCH

NHTSA's proposal did not include ease of use evaluation criteria specific to Lower Anchors and Tethers for Children (LATCH).[3] Several commenters (General Motors, Advocates, CHOP, and the Alliance) recommended LATCH be included.

2. Forms for Each Type of Restraint

NHTSA's **Federal Register** Notice of November 6, 2001 included, as Appendix B, the proposed Ease of Use Rating Form. The first sheet of the form included a cover sheet to gather general information about the restraint; the type of restraint, make and model number, measurements, and size range for the restraint. The remaining sheets included the four proposed ease of use categories, the features under each category and the evaluation criteria for each feature. One of the choices for several of the feature criteria was non-applicable (n/a), intended to be the choice selected if that feature was not applicable to the restraint being evaluated. Also included in the notice was an Appendix C, which included an ease of use rating sample. This included a list of categories, the features under each category and sample scoring and rating for each. JPMA recommended NHTSA provide different criteria for the different types of restraints. They suggested that some child restraints would receive lower ratings because they may not have or need some features. Dorel concurred with JPMA, stating that they believe different types of child restraints will require separate, detailed criteria for each factor. Dorel stated, "each type of child restraint has to have separate and distinct set of factors from which a rating will be assessed, otherwise certain types of child restraints will be unfairly rated." Evenflo recommended that NHTSA provide separate rear—and forward—facing ratings. Consumers Union "urges inclusion of evaluation of ease of use of a convertible used rear-facing and forward-facing." Advocates also recommended that child restraints be rated in all positions recommended by the manufacturer.

3. Features and Feature Evaluation Criteria

NHTSA proposed to rate each child restraint in the same manner as ICBC, rating each child restraint based on two elements per feature, a fixed weighting factor for each feature and an ease of use rating for each feature that can change depending on the child restraint being rated. NHTSA proposed to rate child restraints under the following four ease of use categories: Assembly, Evaluation of Labels/Instructions, Securing the Child, and Installation in Vehicle. Each feature was given a fixed weighting factor as determined by the child restraint usability task force of ISO/TC22/SC12/WG1 (child restraints).[4] It is based on each ease of use feature being given an A, B, or C according to risk of injury and severity of misuse. [Component features that minimize misuse that would pose a high risk of injury if misused are given a fixed weighting factor of "A."] Each factor is assigned a numerical value, where A = 3 points, B = 2 points, and C = 1 point. In addition, NHTSA proposed to rate each feature in the four categories as A, B, or C, with A (3 points) being the highest rating and C (1 point) the lowest, using the same numerical values as used by ICBC. The form containing NHTSA's proposed rating system criteria can be found in Appendix A. Below is a summary of comments by category.

a. Assembly

ICBC recommended clarifying "all functional parts * * * ready to use" to confirm that a convertible child restraint, whether threaded for rear facing infant restraint use or forward facing restraint use is "ready to use." ICBC also suggested rating the restraint based on the harness straps being set for the lowest rate range. JPMA requested a list of the components that will be evaluated under this feature. The proposed evaluation criterion for the "ready to use" feature states that a "yes" is an A and "no" is a C. Consumers Union recommended modifying the evaluation criteria to include a "no tools required" option.

JPMA recommended changing the evaluation criteria under "owner's manual easy to find" and ICBC recommended clarifying "clearly visible location." JPMA also stated that "obvious storage pocket for the manual" should not be rated. Under the feature, "obvious storage pocket for manual" JPMA and Evenflo disagreed with downgrading the rating for child restraints using plastic clips to store instructions. Evenflo supports a rating based on accessibility of instructions when the child restraint is installed, but stated they were concerned about visibility of instructions and them being accessible to children. Evenflo suggested rating accessibility and visibility of the instructions at time of purchase under "owner's manual easy to find."

b. Evaluation of Labels/Instructions

Both ICBC and Evenflo recommended clarifying which features applied to labels and which applied to instructions. JPMA believes that NHTSA should prescribe exactly what it wants to see on labels and labels should not be part of a ratings program. Evenflo stated that they support a proposal to objectively evaluate consistency of information on labels. ICBC recommended under "air bag warning in written instructions," that it not apply to booster seats. They also suggested adding a minimum size to the illustration. ICBC also recommended that "information in written instructions and on labels match," be clarified to refer to size specifications only. Both JPMA and Evenflo expressed concerns about the "durability of labels" feature. NHTSA proposed that a restraint would receive an A rating if the child restraint labels were molded or embossed or a C rating if the labels were sticky or one or more are already peeling when the restraint is removed from the box. JPMA stated that a highest rating for molded or heat embossed would be very costly for child restraint manufacturers. Evenflo also stated that this feature should be addressed in rulemaking and not through an ease of use rating system. ICBC did not agree that molded or embossed labels were better than sticky labels stating that embossed labeling which is the same color as plastic of child restraint can be difficult to read. They suggested that durability of labels be handled by performance tests. Consumers Union recommended adding the following features to this category, "Shows clear use of lower anchor system," and "shows clearly when chest-clip has to be used."

c: Securing the Child

JPMA stated, "unless features under 'securing the child' can be converted to objective criteria they should not be included in the ratings program." They did agree with lowering the rating if the buckle can be secured in reverse. ICBC suggested that if the number of harness slots in the cover is not the same as the number of harness slots in the shell then the child restraint should automatically receive a C rating. Evenflo expressed concern that rating the number of harness slots would lead to consumer confusion. They also recommended investigating limitations imposed by patents for devices that reposition or adjust the harness. JPMA opposed a rating based on the number of harness slots. In addition to the proposed criteria rating "harness adjustment easy to tighten and loosen when child restraint is installed," SAFE KIDS recommended a feature be included that rates "easy access to shoulder harness height adjusters and harness tensioning devices." CHOP recommended NHTSA evaluate ease of use in regard to harness tightness. Consumers Union recommended moving "ease of attaching/removing base" from Securing the Child category to the Installation in Vehicle category. IIHS commented that these categories along with "Installing in Vehicle" are the most important categories.

d. Installing in Vehicle

NHTSA specifically asked for views and comment on the consideration of adding a feature "Ease of tightening belt around child restraint." Advocates responded to this request by stating they support adding such a feature but did not provide any recommendations for objective criteria by which to evaluate this feature. Both JPMA and Evenflo stated that they disagree with the category because it lacks specific criteria. They suggested rating the following features: size of belt path, whether any belt positioning device allows seat belt slack, presence of feedback to identify proper seat back angle (rear facing only), presence or means to adjust back angle, and accessibility of tether adjustment when child restraint is installed in the vehicle. ICBC recommended, under "ease of vehicle belt routing (hand clearance)" that the male hand be better defined. CHOP recommended NHTSA evaluate ease of use in regard to child restraint tightness in the vehicle. Consumers Union recommended adding a new feature, "fit to the vehicle."

4. Weighting the Features

NHTSA proposed a weighting of the ease of use features similar to ICBC, where each child restraint is rated based on two elements per feature. Each feature is given a fixed weighting factor that remains the same for all child restraints. It is based on each ease of use feature being given an A, B, or C according to risk of injury and severity of misuse. [Component features that minimize misuse that would pose a high risk of injury if misused are given a fixed weighting factor of "A."] Each factor is assigned a numerical value, where A = 3 points, B = 2 points, and C = 1 point. The second element, which is based on rating the features of each child restraint, are similarly assigned a numerical value where an A rating = 3 points, a B rating = 2 points, and a C rating = 1 point. NHTSA proposed rating the category by taking the numerical value of the fixed weighting factor for each feature and multiplying it by the numerical value of that features rating. Point ranges for A, B, and C were determined through a 3-part split of the range of possible points for that factor, from the minimum (if all scores were coded "C") to the maximum (if all scores were coded "A") number of points. Appendix B of this final notice contains the "NHTSA Ease of Use Rating Sample" which was included in the proposed Notice. NHTSA also proposed using a "limiting factor" approach so that an overall rating could not be an A if more than one of the four categories was rated less than an A. Similarly, an overall rating could not be a B if more than one of the four categories was rated a C. There was only one comment addressing the weighting of the features. Consumers Union agreed that a seat should not receive an A rating if more than one out of the four categories is rated below an A or B and, they agreed with the determining factor for a B rating as well. They recommended this limiting factor approach be applied to the individual ease of use categories as well.

5. Low Cost Seats

General Motors responded to the agency's proposed ease of use rating system by stating, "higher priced seats tend to have more non-safety related features that could affect ease of use rating." The National SAFE KIDS Campaign believes that with the rating system there will be a perceived correlation between higher rated seats and higher costs for child restraints. With this perception, they believe that low cost seats will less likely be produced. JPMA also expressed concern that lower cost seats would be forced from the market.

6. Subjectivity of Ease of Use Rating

JPMA, Evenflo, and Dorel Juvenile Group commented that the proposed ease of use program was too subjective and they stated that they support a program that is based on objective criteria.

7. Other Comments

Advocates recommended that along with the rating system NHTSA include recall information as a separately listed item that is rated. They suggested including recall information with each category. They also suggested that a product with no recalls would get high marks and a product with one or more recalls no points.

C. Focus Group Testing on Proposed Child Restraint Rating Program

Following the publication of the proposed rating program on November 6, NHTSA conducted research aimed at exploring the perceptions, opinions, beliefs, and attitudes of parents and caregivers regarding NHTSA's Proposed Ease of Use and Performance Ratings for child safety seats. This research was conducted in two phases. The first phase consisted of 21 in-depth, one-on-one interviews with caregivers who regularly transported children. These interviews took place in Baltimore, MD and explored how participants would interpret and use ratings. During the

[3] "LATCH" is a term used by industry and retail groups referring to the child restraint anchorage system required by Federal Motor Vehicle Safety Standard No. 225. LATCH stands for "Lower Anchorages and Tethers for Children." The term is used to refer to vehicles equipped with the anchorage system (e.g., "LATCH vehicles") and to child restraints equipped with attachments that connect to the anchorage system (e.g., "restrained with LATCH," or "LATCH child restraints"). For convenience, we will use the term in this notice.

[4] Working group TC22/SC12/WGI, "Child Restraint Systems," to the International Organization for Standardization (ISO), a worldwide voluntary federation of ISO member bodies, is considering developing an ease of use usability rating system for child restraint systems. The group has based its preliminary work on the rating system of ICBC, which is similar to NHTSA's work.

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interviews, draft versions of charts that provide the ease of use and performance ratings were tested. Using the findings of the in-depth interviews, minor changes were made to the chart displaying the ratings to make them easier to read. The findings of this research were used for phase two of this research and will be used to determine the direction of presenting consumer information concerning child safety seats.

The second phase involved conducting 12 focus groups to test ways to present ratings to consumers. Twelve focus groups were conducted, four in Minneapolis, MN, four in Phoenix, AZ, and four in Richmond, VA. Participants were recruited by a professional recruiting agency. Screening criteria used in selecting participants included: were a parent or caregiver of a child up to six years of age or expecting a child within the next three months; purchased or planned to purchase a child safety seat themselves or were as likely as the other parent or caregiver to purchase a child safety seat; regularly transported a child in an automobile (or planned to do so); did not work or volunteer for any organization involved in the regulation, advocacy, or policy setting for motor vehicles; did not work or volunteer for any organization involved in the regulation, advocacy, or policy setting for children's products; and were between 20 and 55 years of age. Key outcomes from these focus groups:

Choosing a Child Safety Seat

- For most participants, safety ranked among the top two or three considerations in purchasing a child safety seat, along with price and appearance.
- Most respondents did not believe that, in general, the more a seat costs the safer it is. They stated that additional costs for a child seat were mainly due to extra features such as cup holders or the make/brand of the seat. Many, however, believed that people other than themselves held the belief that the safety of the seat is correlated with its cost.
- Most participants said that ratings influence their decision-making process when making a purchase.
- Respondents overwhelmingly preferred the use of stars to rate the seats.
- Most participants believed safety ratings are assigned based on absolute criteria, *i.e.*, the product must meet certain specified requirements to get a given rating.

Ease of Use Rating

- Most participants reacted positively to the information tables they saw and said the Ease of Use Rating would help them when deciding on a child safety seat.
- Most participants preferred the chart that included the Ease of Use Criteria. They explained that they liked having as much information as possible, and because they valued some criteria over others, seeing all the individual ratings was more helpful.
- Most respondents said they understood that the Total Ease of Use Rating was derived from combining the ratings on each Ease of Use Criterion.
- Most reacted positively to the use of a letter grade scale for the Ease of Use Rating because it differentiated the Ease of Use Rating from the Performance Rating that would be assigned based on the child seats performance in dynamic tests.

Performance Rating of Child Restraints in Dynamic Testing

- The Performance Rating was well received by participants, with many saying that it was more important than the Ease of Use Rating. However, many said that they wanted more information on how the ratings are derived and what constitutes "serious injury."

Combining Ratings

- Most participants said they would not want a rating that combined performance and ease of use. They mentioned that they usually like more information to be available and that a combined rating might be misleading.

Brochure

- Participants stated that a brochure including one of the charts they viewed should also include information on different harness types, price ranges of individual seats, explanations of the tests that are done when a seat is rated, and explanations of the column headings on the chart. Respondents said that the brochure should use color and graphics and text should be in a bullet-point format.

D. Response to Comments and Final Ease of Use Rating Program

The agency reviewed and considered all the comments. NHTSA's responses to the comments are below. Along with the responses to the comments, the final ease of use rating program is also presented. The final Ease of Use rating and scoring forms used for child restraints can be found in Appendix C of this notice. This ease of use rating program will apply to add on child restraints only. In developing an ease of use ratings program, NHTSA did not consider built-in child restraints, thus the features and rating criteria are designed to evaluate only add on child restraints. In order for NHTSA to evaluate built-in child restraints, a modified set of criteria would need to be developed. Based on the time frame for implementing the child restraint ratings program, developing and testing criteria to rate built-in child restraints is not possible. However, rating built-in child restraints may be explored by the agency in the future.

1. LATCH

The agency concurs with the commenters' belief that the ease of use rating program should include an assessment of a child restraint's incorporation of LATCH. LATCH will be the standardized means of attaching child restraints to vehicle seats in the future, so it is reasonable to include LATCH in the rating program. To address LATCH, we expanded some features within the "Evaluation of Labels," "Evaluation of Instructions," and "Installing in Vehicle"categories. Certain features in these categories were identified as being appropriate for addressing LATCH, in addition to assessing attachment of the child restraint by way of the belt system. These are discussed below. NHTSA is also considering incorporating other LATCH features into the ease of use program, such as ease of attaching LATCH attachments to the vehicle anchors. The agency will be considering the work of the ISO/WGI Usability Task Force in developing other ways of assessing LATCH in the agency's ease of use program. The agency will request comments on how other aspects of LATCH should be addressed in the future.

Two LATCH features have been added to the "Evaluation of Labels" category. The first is "Shows how to prepare lower LATCH attachments for use." An A rating is "visually obvious and able to use with illustration only, no need to read text, or no illustration required," a B rating is "Illustrations plus written instructions provided, need to read text," and a C rating is "Written instruction only provided or nothing." This feature's fixed weighting factor is A. The second added feature is "Shows how to use lower LATCH attachments." An A rating is "visually obvious and able to use with illustration only, no need to read text. This feature has the same B, and C rating criteria and fixed weighting factor as the first feature. To get an A rating under the feature "shows how to use lower LATCH attachments," NHTSA believes that having an illustration on the label showing the attachments connecting to the vehicle anchors will provide consumers with clear information about how this new technology is to be used. NHTSA believes that providing consumers with visual obvious and instruction on preparing and using this new technology is important for not only ease of use, but for correct use, which in turn results in increased safety for child occupants.

Three LATCH features have been added to the "Evaluation of Instructions" category. The first is, "Instructions describe how to prepare lower LATCH attachments for use." An A rating is "Visually obvious and able to use with illustration only, no need to read text, a B rating is "Illustrations plus written instructions provided, need to read text," and a C rating is "Written instruction only provided or nothing." The fixed weighting factor for this feature is a B.

The second is, "Instructions show how to use lower LATCH attachments." The A, B, and C ratings are the same as the first as well as the fixed weighting factor. The fixed weighting factors are lower for these features (weighting factor is B) under the "Evaluation of Instructions" category than under the "Evaluation of Labels" category (weighting factor is A) because NHTSA is aware that many consumers look only at the labels for instruction and not the instruction manual.

The third is, "Orientation for LATCH tether and lower attachments." An A rating is "Correct orientation of LATCH tether and lower attachments clearly illustrated or text clearly states that it can be used in any orientation," a B rating is "Correct orientation of LATCH tether and lower attachments explained only in text," and a C rating is "No information regarding orientation of LATCH tether and lower attachments." This feature is not applicable if orientation cannot be changed. The fixed weighting factor for this feature is a B. This feature is similar to "Buckle can be secured in reverse" feature under "Securing the Child." NHTSA included this feature because of experiencing some LATCH hardware which when reversed was difficult to un-attach. Orientation for LATCH tether is not applicable to rear facing restraints or booster seats.

Two LATCH features were also added to the "Installing in Vehicle" category: The first is, "Can LATCH attachments interfere with harness." An A rating is "No" and a C rating is "Yes." The fixed weighting factor for this feature is an A. This was included to coincide with the "Separation of vehicle belt path from harness" criteria for seat belts out of concern that if there is interference of the LATCH attachment (or seat belt) with the harness, it could prevent the harness from being properly adjusted on the child. The second is "LATCH tether and lower attachments can be installed in reverse." An A rating is "no, or yes but works in usual way," a B rating is "yes, but usual release requires more effort," and a C rating is "yes, and can't release." The fixed weighting factor for this feature is a A. This feature is similar to "Buckle can be secured in reverse" feature under "Securing the Child." NHTSA has seen some LATCH hardware, which can be reversed and is difficult to un-attach if this is done. The tether features being rated do not apply to rear facing restraints. Also, if a child restraint does not have LATCH (*e.g.*, booster seats) then these features will not be rated.

2. Forms for Each Type of Restraint

While the agency published one set of forms encompassing all rating criteria, NHTSA was aware that not all features would apply to all restraints and thus had not intended to rate all child restraints with all criteria. NHTSA recognized that this caused confusion among commenters and agrees that separate forms should be used for the different types of restraints. NHTSA has revised its forms and the final ease of use rating program has three sets of forms, which can be found in Appendix C. One set will be used to rate infant or convertible restraints used rear facing. Another set will be used to rate convertible restraints forward facing, forward facing only, and transitional forward facing/booster with the harness. The third set will be used to rate booster seats and transitional forward facing/booster as a booster.

NHTSA also agrees with comments recommending rating dual or multiple purpose seats each way. Therefore, a convertible restraint will be rated both rear facing and forward facing. A combination forward facing/booster will be evaluated as a forward facing restraint and as a booster seat. NHTSA is also aware that some of the features apply to some child restraints but do not apply to others, for example, under "Evaluation of Labels" and "Evaluation of Instructions," one of the features is "shows which harness slots OK to use." When evaluating a convertible seat, there are harness slots in this type of seat that can only be used forward facing while the others are used for rear facing, therefore this feature applies and thus would be rated. When evaluating a forward facing only or transitional forward facing/booster with the harness it would be "n/a" because all the slots can be used in the forward facing position. This is taken into consideration when scoring. This issue is discussed later in the notice under the section titled "Weighting the Features."

3. Features and Feature Evaluation Criteria

Below, comments on the final features and feature evaluation criteria are addressed by category. This section also lists the final features within each category. Each of the forms, located in Appendix C has the categories, the features and the feature evaluation criteria listed.

a. Assembly

NHTSA concurs with ICBC that we should clarify the language under "all functioning parts * * * ready to use." NHTSA also agrees that adding "harness straps set for lowest rate range" to this feature was a good idea. NHTSA believes that this is a sufficiently clear criterion to describe whether a restraint, when taken out of the box, is ready for a consumer to use. The proposed evaluation criterion for this feature was: an A was "yes," and a C was "No." There was no B rating. NHTSA has adopted Consumers Union's recommendation to add a "no tools required" criteria and has modified the evaluation criteria to reflect this. Under this feature, an A is "yes," and B is "No, tools not required," and C is "No, tools required." For a convertible seat used rear facing this feature will be rated. Then, when evaluated as forward facing, this feature will not be rated. The same applies for a transitional forward facing/booster seat with harness. When this restraint is being rated as a forward facing restraint this feature will be rated. Then, when it is rated as a booster seat this feature will not be rated.

NHTSA has clarified the feature "Owner's manual easy to find" and the evaluation needed to get an A rating for that feature. The feature now states "Owner's manual easy to find when taken out of box" and "A" was clarified to say, "Attached to child restraint in a clearly visible location." The evaluation criteria for B and C remain the same. "Attached to child restraint in a clearly visible location" does not mean the manual has to be in the storage compartment. In many cases NHTSA found manuals clearly visible in plastic bags attached to the child restraint harness when the restraint was taken out of the box. NHTSA would give these seats an A rating for this feature.

NHTSA believes that the feature "storage pocket for the manual" is an important feature to rate for ease of use

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because if consumers can access and store the manual easily, they will be more likely to keep it with the restraint and refer to it if need be. NHTSA found that the term "pocket" was misleading in that we were referring to an actual storage system, not just a pocket. Therefore, NHTSA has replaced the word "pocket" with "system." NHTSA reviewed JPMA and Evenflo's comments to provide a lower score to a child restraint that uses plastic clips as the tool for storing instruction manuals. After testing the ease of use in relation to plastic clips, NHTSA has modified its evaluation criteria. NHTSA found that in many cases it was easy to remove and replace the manuals on child restraints that used plastic clips for storage. Therefore, under "Storage system for manual," the revised evaluation criteria are as follows: an A rating is "manual removed and replaced easily," and a C rating is "manual cannot be removed and replaced easily." There is no B rating. This revised evaluation criteria also addresses the concerns Evenflo had about accessibility and visibility of the instructions when the restraint is installed.

The rating forms, located in Appendix C include the categories, the features and the feature evaluation criteria. Listed below are the features under the Assembly category that will be in NHTSA's final rating program:

(1) All functioning parts including seat pad or cover attached and ready to use; harness in lowest usable slots; includes tether attached (tether attached applies to forward facing only restraints and transitional forward facing/booster seats used with the harness);

(2) Tether attached to child restraint (this applies to convertible seats used forward facing);

(3) Owner's manual easy to find when child restraint removed from box; and

(4) Storage system for manual.

b. Evaluation of Labels

Even though NHTSA requires certain information to be on child restraint labels and in the instructions (such as model number, date of manufacture, statement concerning manufacturer's recommendations for maximum mass and height of children who can use the restraint, etc.), we do not think it is possible to specify the exact content of labels. There are so many different designs of child restraints, each with unique features that must be used differently to get optimal protection for the child occupant. However, we believe that clear, concise, and consistent information with illustrations of children in child restraints can be very effective in aiding consumers to properly use and install a child restraint. Therefore, NHTSA will include evaluation of labels and instructions in its ease of use rating program.

The agency agrees with the comments about the need to clarify which features applied to labels and which applied to instructions. NHTSA has responded to this comment by making separate categories for each. NHTSA also found a need to have separate categories because we found that as we rated several child restraints in our pilot study of the rating system, which is discussed in detail further in the notice under the section titled "Low Cost Seats and Repeatability," the child restraints received different ratings for the same feature. For example, for the feature "Clear indication of child's size range" we found that the same restraint may receive an "A" rating on its label and a "C" rating in the instructions.

NHTSA also agreed with comments related to our proposed durability rating. Therefore, we have modified the evaluation criteria. Under "durability of labels," in this notice, an A rating is now "sticky label not peeling or other method of technology label not peeling," and a C rating remains the same "sticky label if one or more are already peeling when restraint is removed from box." There is no B rating.

NHTSA chose not to adopt Consumers Union's recommendation to add the following as a separate feature "shows clearly when chest clip has to be used." However, we included this element as part of the feature "Clear indication of child's size range," under both the categories "Evaluation of Labels" and "Evaluation of Instructions." This feature is the only one where we rate an illustration of a child in the restraint. Under this feature we are looking for a picture of a child in the restraint (with use of harness clip) along with size measurements (e.g., height and weight) for use. Listed below are the features under the Evaluation of Labels category in NHTSA's final rating program:

(1) Clear indication of child's size range;

(2) All modes of use clearly indicated (e.g., rear-facing only, or RF vs. FF; FF + tether (vs. RF); FF + tether (v. booster); LATCH);

(3) Shows which harness slots OK to use (on forward facing form only);

(4) Instructions for routing both lap belt and lap/shoulder belt (tether use for FF);

(5) Shows how to prepare lower LATCH attachments for use (not on booster seat form);

(6) Shows how to use lower LATCH attachments (not on booster seat form);

(7) Visibility of seat belt routing for lap belt, lap/shoulder belt, and LATCH when child restraint is in position in vehicle (LATCH not on the booster form); and

(8) Durability of labels.

c. Evaluation of Instructions

NHTSA has chosen to apply the feature "air bag warning in written instructions" to forward facing/convertible child restraints used forward facing and to booster seats as well as rear facing restraints. While NHTSA requires an air bag warning only for seats that can be used rear facing, NHTSA recommends children ages 12 and under ride in the back seat, because an air bag can seriously injure or kill a child. Therefore, NHTSA believes it is important to rate this feature for all types of child restraints. Although NHTSA is going to rate "air bag warning in written instructions," the agency is not going to add a size minimum to the rating criteria because we believe that the evaluation criteria under A, "Separate, highlighted, and illustrated," are sufficient for rating this feature.

NHTSA agrees with ICBC 's recommendation to clarify that the feature "information in written instructions and on labels match" referred to size measurements, and NHTSA has added that on the form.

The rating forms, located in Appendix C include the categories, the features and the feature evaluation criteria. Listed below are the features under the Evaluation of Instructions category in NHTSA's final rating program:

(1) Clear indication of child's size range;

(2) All modes of use clearly indicated (e.g., rear-facing only, or RF vs. FF; FF + tether (vs. RF); FF + tether (v. booster) and LATCH);

(3) Air bag warning in written instructions;

(4) Shows which harness slots OK to use (on forward facing form only);

(5) Instructions for routing both lap belt and lap/shoulder belt;

(6) Instructions describe how to prepare lower LATCH attachments for use (not on booster seat form);

(7) Instructions show how to use lower LATCH attachments (not on booster seat form);

(8) Orientation of LATCH tether and lower attachments (tether not on rear facing restraint form and LATCH not on booster seat form); and

(9) Information in written instructions and on labels match (size measurements)

d. Securing the Child

NHTSA concurs with ICBC's recommendation that if the number of harness slots in the cover do not match the number of harness slots in the shell, then the child restraint should automatically receive a C rating. NHTSA wants to ensure that consumers will not be confused and potentially misuse a seat because there are differences in the number of slots in the pad vs. the shell. NHTSA is also aware that fit is an important aspect to proper use and by having more variation in harness slot number this allows more choices for fit as a child grows. Therefore, the proposed feature has been modified to two features: "Number of harness slots match (pad and shell)" and "Number of harness slots in shell." Under rating "Number of harness slots match (pad and shell)" an A is "yes" and a C is "no." Under rating "Number of harness slots in shell" an A is "at least 3 or 1 adjustable," a B is "2" and a C is "1."

NHTSA has examined the issue raised by commenters about patents for devices that reposition or adjust the harness. We do not believe our ratings raise a patent issue. The agency is not making reference to a specific product or device, only to a feature that would allow the harness straps to be adjusted without rethreading the straps.

NHTSA agrees with SAFE KIDS' comment recommending a feature be added that rates accessibility to the harness adjustment. NHTSA has added the following feature, "When installed, easy access to harness adjustment for tightening and loosening," and A rating is "yes" and a C rating is "no." There is no B rating.

NHTSA does not believe that it is possible to rate ease of use in regard to harness tightness. CHOP did not provide any objective rating evaluation criteria in support of its recommendation. Therefore NHTSA will not be adopting this recommendation.

NHTSA agrees with Consumers Unions' recommendation to move "Ease of attaching removing base" to the "Installing in Vehicle" category. NHTSA has moved this feature to the form applicable to rear facing child restraints. NHTSA appreciates IIHS' comment regarding the importance of this category and the "Installing in vehicle" category. However, NHTSA doesn't want to decide that certain categories are the "most important." NHTSA believes that all the categories are important to proper use and installation of a child restraint.

Under NHTSA's final rating program the booster seat form only has one feature under this category: (1) Ease of conversion forward facing to booster or highback to backless.

The rating forms, located in Appendix C include the categories, the features and the feature evaluation criteria. Listed below are the features under the Securing the Child category in NHTSA's final rating program:

(1) Buckle can be secured in reverse;

(2) When installed, easy access to harness adjustment for tightening and loosening;

(3) Harness adjustment easy to tighten and loosen when child restraint is installed;

(4) Number of harness slots match (pad and shell);

(5) Number of harness slots in shell;

(6) Visibility of harness slots;

(7) Ease of conversion forward facing to rear facing (rear facing form)

—Ease of conversion from rear facing to forward facing (forward facing form);

—Ease of conversion from booster to forward facing (forward facing form);

(8) Ease of changing harness slot position;

(9) Ease of reassembly if pad/cover is removed for cleaning or rethreading of harness; and

(10) Ease of adjusting/removing shield.

e. Installing in Vehicle

NHTSA will not be including the proposed feature "Ease of tightening belt around child restraint," because we could not come up with objective rating criteria and did not receive any recommendations from commenters. JPMA and Evenflo suggested features to rate under this category, the first being the size of the belt path. NHTSA will not be rating specific size of the belt path because we believe that belt path size is not the only factor involved in belt routing. We believe that child seat design is also a factor. A child seat could have a large enough belt path, but the design of the restraint may make it difficult to route the vehicle belt through. However, also under this feature, ICBC had recommended the "male hand" be better defined. We agree that the male hand could be better defined. Therefore, NHTSA will be using a human hand that represents the 95th percentile male dimensions as defined in Human Factors Design Handbook Wesley E. Woodson, Man Factors, Inc. McGraw Hill, 1981 to determine the rating for this feature.

NHTSA will retain the proposed feature "does belt positioning device allow slack to occur?" This is an evaluation criterion only for booster seats. NHTSA has also adopted the recommendation to add "presence of feedback to identify proper seat back angle" for rear-facing restraints. NHTSA has not adopted the recommendation to rate "accessibility of tether adjustment when child restraint is installed in the vehicle" because NHTSA believes that this may vary depending on the tether anchor location in the vehicle and therefore it would be very challenging to objectively rate this feature.

NHTSA chose not to include any feature related to tightness in vehicle and fit to vehicle because the geometry of vehicle seats varies so much from vehicle to vehicle. Under NHTSA's final rating program, the booster seat form only has two features under this category and both could be non-applicable depending on the seat being rated: (1) Ease of use of any belt positioning hardware on the child restraint, and (2) Does belt positioning device allow slack to occur?

The rating forms, located in Appendix C include the categories, the features and the feature evaluation criteria. Listed below are the features under the Installing in Vehicle category in NHTSA's final rating program. The features related to LATCH do not apply to booster seats:

(1) Separation of belt path from harness (on rear facing form applies to base also if applicable);

(2) Can lower LATCH attachments interfere with harness;

(3) Ease of vehicle belt routing (hand clearance) (on rear facing form applies to base also if applicable);

(4) Ease of attaching and removing from child seat from base (on rear facing form applies to base if applicable);

(5) Ease of use of any belt positioning feature including lock off;

(6) Tether easy to tighten and release (on forward facing form only);

(7) Presence of feedback for seat back angle (on rear facing form only); and

(8) LATCH tether and lower attachments can be installed in reverse.

4. Weighting the Features

NHTSA will adopt the procedure for weighting the features as proposed, with slight modifications to determining the point ranges for scoring as well as changes to the limiting factor approach for obtaining an overall ease of use score. The limiting factor approach could not be applied in the final notice because the final rating program has five ease of use categories instead of four as originally proposed.

Child restraints are rated for ease of use based on five categories: (1) Assembly, (2) Evaluation of Labels, (3) Evaluation of Instructions, (4) Securing the Child, and (5) Installing in the

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Vehicle. Each category has several ease of use features that child restraints are evaluated on. As in the proposal, a score for each feature is based on two elements. The first element is a fixed weighting factor and is based on each ease of use feature being given an A, B, or C according to risk of injury and severity of misuse. Component features that could be associated with a high risk of injury if misused are given a fixed weighting factor of "A." Each factor is assigned a numerical value, where A = 3 points, B = 2 points, and C = 1 point. The scoring forms to be used to rate child restraints are located in Appendix C along with the rating forms. Each features' fixed weighting factor can be found on the scoring forms. The second element, which is based on rating the features of each child restraint, are similarly assigned a numerical value where an A rating = 3 points, a B rating = 2 points, and a C rating = 1 point. As explained above, some features may include only two of these three ratings (A or C). Also, if a feature is not applicable, the points for that feature and the weighted factor are both treated as zero. NHTSA proposed a feature score by multiplying the numerical values of the feature rating by the fixed weighting factor. The weighted average for the category is calculated by taking the sum of the feature scores divided by the sum of the applicable fixed weighting factors. The weighted average will be between 1.00 and 3.00. Each category rating can then be given a rating of A, B, or C based on the weighted average.

A: Weighted Average from 2.40 to 3.00

B: Weighted Average from 1.70 to less than 2.40

C: Weighted Average less than 1.70

This differs from the proposal where point ranges for category rating A, B, or C were determined by a 3-part split of the range of possible points for that category.

The overall rating is calculated in a similar manner. The overall weighted average is equal to the sum of the feature scores for all features divided by the sum of the weighted factors for all applicable features. This will still be between 1.00 and 3.00. The overall rating uses the same ranges as the category ratings listed above. A sample of the revised ease of use scoring can be found in Appendix D.

Weight, W
Score, S
Weighted Score, $Ws = W \times S$

$$\text{Weighted Average, } A = \frac{\sum Ws}{\sum W}$$

5. Low Cost Seats and Repeatability/Subjectivity

To address commenters' concerns about the rating system producing a correlation between higher rated seats and the higher priced child restraints, the agency conducted a pilot study using the revised ease of use rating program to examine this issue. During this pilot study the agency also examined the repeatability/subjectivity of the ease of use rating program.

NHTSA purchased a total of 20 child restraints of varying price ranges from four different retail stores. The agency rated four infant only restraints ranging in price from $34.99 to $119.95; five convertible restraints ranging in price from $49.99 to $249.95; two forward facing only restraints ranging in price from $59.99 to $179.95; five transitional forward facing/booster seats ranging in price from $54.99 to $89.99; and four booster seats ranging in price from $22.99 to $124.95. NHTSA followed the proposed protocol for rating the child restraints in the pilot study, using draft-revised forms based on comments received from the notice. Following a one-day training to review the forms, each of the features and their evaluation criteria, two 2-person teams evaluated each child restraint. To determine the installation ratings, we used a representative seating device, as opposed to the current FMVSS No. 213 bench, since a FMVSS No. 213 bench seat was not available within the time constraints for this pilot study. The results of the pilot study did not show a correlation between higher priced seats and higher rated seats. Of the 20 seats rated in the pilot study, there were a range of A and B scores across the price ranges. Only one of the 20 restraints rated received an overall score of C, and it was a mid-priced convertible restraint. While the most expensive seat purchased did receive an overall A rating, there were A rated seats among the lower priced seats. Based on this, we do not believe that the concerns with lower priced child restraints being eliminated from the market are warranted.

Following the pilot study, the agency also concluded that an ease of use rating program would be repeatable. During the pilot study, to the extent that the teams ended up with a different rating (we did find minor differences within ratings of features within each category), the two teams jointly reexamined the child restraint before a rating was determined. The variations between the teams did not affect the overall rating. The findings in the pilot study were consistent with the findings when NHTSA conducted a hands-on evaluation of ICBC ratings program. We believe that the process of having two, or more, 2-person teams evaluating each child restraint is important to ensure repeatability and objectivity. Two teams of two will be used to rate the child restraints and if there are instances of non-concurrence, a third team of two will rate the restraint.

6. Other Comments

NHTSA agrees that informing the public about recalls of child restraints is important. However, NHTSA does not know how recalls could be incorporated into a ratings program. Recalls do not occur until after a child restraint is on the market. NHTSA plans to rate child restraints prior to or shortly after they are available on the retail market. In an effort to publish ratings information and make it available to the public in a timely fashion and following the same procedure as the compliance child seat testing, NHTSA will be ordering child restraints from the manufacturers before they are shipped to retailers. NHTSA plans to coordinate rating the child restraints and releasing the information with their availability to consumers at retailers.

NHTSA plans to continue improving our methods of informing the public about recalls. NHTSA currently has a list of child restraints that are available to consumers. As part of that list, if a seat on the market has been recalled, it is highlighted on the Web site. NHTSA plans to post the child restraint ratings on the Web site, and if a child restraint is recalled, the agency will highlight the rated child restraint on the Web site to alert consumers that a particular seat has been recalled.

7. Summary of Final Ease of Use Protocol

The final ease of use rating program consists of the following elements:

- Three sets of forms will be used to evaluate add-on child restraints. Combination child restraints will be rated in each mode of use. One set of forms will be used to rate rear-facing only and convertible child restraints in the rear-facing mode. Another set of forms will be used to rate convertible seats in the forward facing mode, forward facing only restraints, and combination forward facing/booster seats in the forward facing mode. The third set of forms will be used to rate booster seats and combination forward facing/booster seats in the booster seat mode.
- Five ease of use categories will be rated: (1) Assembly, (2) Evaluation of Labels, (3) Evaluation of Instructions, (4) Securing the Child, and (5) Installing in Vehicle. Features related to ease of use within each category, including LATCH, will be rated.
- Two, or more, 2-person teams will be used to rate each child restraint. Prior to rating, the teams will have a day of training to review and examine the forms, review each of the features and their evaluation criteria, conduct practice ratings and answer questions. To determine ease of use installation ratings, NHTSA will install the restraint using the current FMVSS No. 213 bench. If and when the FMVSS No. 213 bench is updated, the team will use the updated test bench. No dummy will be used during this process.
- Each child restraint will receive a rating for each of the five ease of use categories as well as an overall ease of use rating. The weighted average for the category is calculated by taking the feature score divided by the sum of applicable fixed weighting factors. The weighted average will be between 1.00 and 3.00. Each category rating can then be given a rating of A, B, or C based on the weighted average.

A: Weighted Average from 2.40 to 3.00

B: Weighted Average from 1.70 to less than 2.40

C: Weighted Average less than 1.70

- The overall rating is calculated in a similar manner. The overall weighted average is equal to the sum of all feature scores divided by the sum of all fixed weighting factors. This will still be between 1.00 and 3.00. The overall rating uses the same ranges as the category ratings.
- NHTSA plans to begin implementing the ease of use rating program following the publication of this Notice. NHTSA plans to obtain child restraints from the manufacturers and begin rating them shortly before they are available to the public. NHTSA's plans for distribution of rating results can be found in section VII of this notice.

IV. CRS Dynamic Performance Rating Program

A. Summary of Proposal

In the notice document dated November 6, 2001, NHTSA proposed to rate the dynamic performance of child restraints using the same approach as NCAP crashworthiness. With this approach, child restraints would undergo an identical test procedure to that used in FMVSS No. 213, the compliance tests of child restraints, except for test speed. In FMVSS No. 213, child restraints are subjected to a specific pulse that has a change in velocity of 48 kmph (30 mph). In the agency proposal, child restraints would be rated using the FMVSS No. 213 test conditions however, the speed would be 8 kmph (5 mph) faster. NHTSA also sought comments on using the 48 kmph (30 mph) compliance test as a basis for a rating program.

The proposal was for a 56 kmph (35 mph) sled test using forward-facing child restraints. The CRS would be installed following the FMVSS No. 213 compliance test procedures and would be secured to the FMVSS No. 213 bench seat using the lower anchorages and a top tether (LATCH). NHTSA proposed that the Hybrid III three-year-old and the 12-month-old CRABI dummies be used in this sled-testing program to rate the CRS performance. A rating system would be based on two injury criteria: Head Injury Criterion (HIC) and chest acceleration. For each child dummy tested in a child restraint, the agency would find the combined probability of a head and chest injury and provide a star rating for that child restraint.

Child restraints would also be subjected to a physical examination after the higher-speed sled test. This examination, as outlined in the FMVSS No. 213 testing procedure, would evaluate the structural integrity of the child restraint. The agency would make the child restraint's star rating available to the public in a manner similar to the NCAP vehicle results. Any safety concerns observed during the structural integrity evaluation would be noted, but would not affect the star rating.

B. Summary of Comments

This section will summarize the comments received relative to rating child restraints based on dynamic sled performance.

1. 48 kmph (30 mph) Sled Test

Evenflo, Ford, GM, Honda, Alliance of Automobile Manufacturers (Alliance), Consumers Union (CU), Child Passenger Protection Technical Consulting (CPPTC), Dorel Juvenile Group (DJG), the National Automobile Dealers Association (NADA), and National Safe Kids Campaign favored rating child restraints based on a 30 mph dynamic sled test as required in FMVSS No. 213. All felt that the current FMVSS No. 213 is a severe test, and has done a good job in protecting children. DJG and GM further stated that an initial rating of CRS performance based upon the current frontal impact requirements of FMVSS No. 213 could give consumers some useful information and does have merit. The Advocates for Highway and Auto Safety and CHOP, however, commented that FMVSS No. 213 is outdated and not representative of real world crashes. The Advocates for Highway and Auto Safety also commented that there would only be marginal difference in performance across a wide variety of CRS models if FMVSS No. 213 were used as a basis for a rating. Nevertheless, all commenters felt that a rating system based on 48 kmph (30 mph) sled test should be deferred until FMVSS No. 213 is upgraded as required by TREAD.

2. 56 kmph (35 mph) Sled Test

Some respondents to the notice, including Evenflo, the Alliance, JPMA, and CHOP, stated that the FMVSS No. 213 pulse is a very severe pulse. They maintained that increasing the speed to 56 kmph (35 mph) would not be a helpful indicator of expected performance in most real world crashes. They also stated that the majority of real world crashes involving children occur at speeds far lower than 56 kmph (35 mph).

Britax stated that the increased stiffness added to the restraint—required by the higher crash speeds—would lead to less inherent energy absorption by the restraint at lower speeds. Consequently, Britax believes that such an approach would pass more harmful energy to the children, resulting in more injuries to children in restraints due to the greater frequency of crashes at lower speeds.

The Advocates for Highway and Auto Safety, JPMA, Honda, and IIHS noted that NHTSA's own study found little discernable difference between the child restraint models tested at the higher-speed.

JPMA, DJG, Child Passenger Protection Technical Consulting, Royal Automobile Club of Spain, Honda, and CU supported the agency proposal to rate CRS via a 56 kmph (35 mph) sled test. JPMA believed that due to the Congressional mandate, a 56 kmph (35 mph) sled test rating had some merit due to its objectivity. Honda and DJG supported the higher speed sled test, because the agency's early data showed all seats would receive "5 stars." DJG later stated that CRS manufacturers could focus on the ease of use rating.

3. Test Dummies and Injury Assessment Reference Values

Several commenters advocated the use of the Hybrid III family of dummies and their associated injury criteria. The Advocates for Highway and Auto Safety, GM, Toyota, the Alliance, and CU, all noted that the current FMVSS No. 213 still uses the Hybrid II family of dummies and not the more up-to-date Hybrid III dummies. GM noted that the

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safety community had developed these dummies to meet the biomechanical impact response corridors that were scaled from the mid-size adult male to various sizes of child dummies, and that, the dummies' responses to forehead impact, neck flexion and extension, and blunt chest impact represent the responses of children of similar ages.

CU, the Alliance, and the Advocates for Highway and Auto Safety all suggested that the Injury Assessment Reference Values (IARV's) used for the rating program, should be the same as those outlined in the recent FMVSS No. 208 rulemaking, published May 12, 2000. These IARV's are different than the IARV's currently used in FMVSS No. 213.

Consumers Union (CU) suggested that child restraints should be tested with dummies that weigh the maximum weight specified for the restraint. CU said, "there needs to be some objective, dependable assurance that child restraints will provide adequate safety when occupied by a child at the weight listed by the manufacturer as the maximum safe occupant weight. Two additional pounds can significantly increase the kinetic energy of the child in a crash, and as [CU's] 1995 testing demonstrated, can mean the difference between adequate protection and certain danger to that child." Ford noted that many convertible child restraints are recommended for use in the rear-facing direction for children up to 30 and 35 pounds.

4. Testing Procedure

In the agency's proposed rating, child restraints in the forward-facing LATCH (including top tether) mode only would be rated. Some commenters suggested that child restraints should be rated in more than one configuration. Commenters discussed each of these configurations and why child restraints should or should not be rated in such configurations.

Safe Ride News suggested that NHTSA rate child restraints both with and without top tethers. They stated that both tethered and non-tethered performance is important. Safe Ride News speculated that seeing the difference between tethered and non-tethered performance might inspire some consumers to install top tether anchors in their older vehicle. Child Passenger Protection Technical Consulting (CPPTC) also stated that showing the consumer the effect of a top tether is important.

Several responses favored rating child restraints tested using the lap belt instead of lower anchors. Evenflo stated that testing with LATCH presupposes that the bulk of the buying public has a new vehicle that can fully take advantage of LATCH. The National Safe Kids Campaign and the JPMA stated that parents would be securing their child restraints with the vehicle seat belts for many years. Toyota and CU suggested that NHTSA phase in the use of LATCH for a safety rating. They recommended that for the first several years of testing, child restraints be rated both by the results of testing with LATCH and by the result of testing with the lap belt. This dual testing should continue until the majority of cars on the road have LATCH available.

GM noted that a rating based on child restraints installed with LATCH would be of greater value to consumers, as an increasing percentage of vehicles become LATCH equipped. GM also said "testing child restraints installed using only LATCH provisions would also reduce installation variability that could compromise performance assessment results."

Honda and Toyota suggested that NHTSA rate rear-facing child restraints and the rear-facing mode of convertible seats. Honda provided real-world data that suggested fatalities to children in a rear-facing seat are as frequent as those in a forward-facing seat. Toyota mentioned that new parents might be most likely to seek out safety information on a child restraint, and that the agency should provide information that would be applicable to their situation. Honda speculated that new parents might misinterpret the lack of ratings for rear-facing seats to mean that there is no safe rear-facing restraint. "Including rear-facing seats would build a rapport with new parents who would be more likely to return for information when they are searching for a forward-facing seat."

The Alliance, the Advocates for Highway and Auto Safety, Evenflo, GM, the Royal Automobile Club of Spain (RACE), and Toyota suggested that NHTSA consider other crash modes for its rating of child restraints. These commenters advocated the development of a side impact CRS rating program. Evenflo suggested that NHTSA do an investigative study of real-world side crashes to learn if child seats protect children seated on the struck side of the vehicle. Toyota and GM recommended that the agency first adopt a side impact sled test for FMVSS No. 213 followed by a CRS rating program for side impacts.

5. Rating System

Comments were received regarding what injury measures should be used for the CRS rating program and whether or not the agency should use compliance margin to rate child restraints. Compliance margin is defined as the amount by which products go above and beyond the requirement of the standard in a compliance test. Four commenters specifically addressed compliance margin, and they did not support a child restraint rating system based on a compliance margin. The IIHS and Dorel Juvenile Group (DJG) argued that no one has proven that an increase in compliance margin translates to better overall performance in the real world. JPMA also stated that a rating that rewards based on the amount of the compliance margin might encourage designs that are not optimized for safe performance in the real world. In addition, JPMA also stated that a rating system based on compliance margin might not provide useful information to consumers because "it may not distinguish among child restraints in a meaningful way." Britax commented that a compliance margin would not provide meaningful information, would not improve safety for children, and would not address the real-world vehicle population.

Comments were also received regarding what injury measures should be used for the CRS rating program. HIC and Chest G are currently used in the compliance tests and in the frontal NCAP vehicle tests. Toyota and the Alliance agreed with NHTSA that HIC and chest acceleration were a good basis for computing a child restraint rating. Honda, Safe Ride News, CPPTC, and CU suggested that head or knee excursion be added to the rating scheme. Compliance tests currently use both head and knee excursion to determine if a child restraint passes or fails. Toyota recommended that the agency conduct a real-world crash data analysis to determine if head contact with the vehicle interior due to head excursion is a significant contributor to child injuries. If the analysis showed that head excursion is a significant contributor, then head excursion should be used as a criterion to rate child restraints for dynamic performance.

Other commenters raised the possibility of including neck injury readings to rate child restraints. GM, Toyota, and the Alliance advocated the use of some sort of neck injury criteria in the rating and not just head and chest injury measures. GM also proposed that NHTSA initiate a study of motor vehicle field crash data better to quantify the extent of neck trauma in restrained children. Such a study "should determine the crash severity level(s) at which neck injury begins to occur."

JPMA submitted comments opposing the use of head excursion for rating a child restraint's dynamic performance. They stated, though no specific examples were given that, "other performance attributes measured in FMVSS No. 213 tests, such as head excursion, should not be included [in the rating system] because doing so could lead to unintended adverse consequences."

C. Analysis of Comments

1. 48 kmph (30 mph) Sled Test

Evenflo, Ford, GM, Honda, the Alliance, CU, CPPTC, JPMA, DJG, NADA, and National Safe Kids Campaign stated that if a rating system must be developed, a rating system based on an a 48 kmph (30 mph) FMVSS No. 213 sled test would be beneficial and prudent. All felt that the FMVSS No. 213 is a severe test and has done a good job protecting children. However, all commenters felt that the agency should delay the implementation of the rating until the proposed bench and pulse upgrades for FMVSS No. 213 are implemented. The agency agrees with the commenters that FMVSS No. 213 has ensured good safety protection for children. In addition, we acknowledge the commenters concerns that concurrent with the CRS rating, TREAD also mandates an upgrade to FMVSS No. 213. The upgrade to FMVSS No. 213 is a separate rulemaking effort that is mandated to be completed by November 1, 2002. The fundamental issue raised by the commenters is that since requirements and lead-time schedules for the FMVSS No. 213 upgrade will not be finalized prior to implementation of the CRS rating system, child seats would be evaluated according to their performance under the new requirements before those new requirements were final and had been explained in a notice. We agree that a CRS rating system based upon an upgraded FMVSS No. 213 should not occur until after any such changes to the standard have become effective. For this reason, we will perform a pilot program to evaluate the dynamic performance of child restraints. This pilot program will gather data in 2003 and 2004 and be based on the changes proposed in the FMVSS No. 213 rulemaking. In 2005, assuming the pilot program shows that the results could be used as useful consumer information, we expect full implementation of a rating program with a test procedure based on the finalized FMVSS No. 213.

2. 56 kmph (35 mph) Sled Test

Evenflo, the Alliance, CHOP and JPMA stated that increasing the test speed of FMVSS No. 213 an additional 8 kmph (5 mph) would not provide any additional information. We disagree with the commenters on this issue. Prior to issuing the notice on November 6, 2001, the agency conducted sled tests at both 48 kmph (30 mph) and 56 kmph (35 mph). These sled tests were based on the FMVSS No. 213 pulse. In those tests, we found that CRS dummy measurement responses had a greater dispersion when tested at the higher speed.

In addition, the commenters further stated that most real world crashes involving children occur at speeds less than 56 kmph (35 mph). The agency also analyzed 1988–2000 National Automotive Sampling System (NASS) Crashworthiness Data System. We looked at non-rollover, frontal crashes involving light vehicles where a child restraint was involved. The data was not further defined by age. The NASS data showed that 97% of the crashes involving a child restraint occurred at speeds less than 56 kmph (35 mph) compared to 94% at speed less than 48 kmph (30 mph). The agency recognizes the fact that most crashes occur at speeds less than 56 kmph (35 mph) and speeds less than 48 kmph (30 mph). This is also true for the adult population. However, the majority of adult fatal crashes occur at speeds of 48 kmph (30 mph) and greater. Unfortunately, we have insufficient data to know the velocity distribution of fatal CRS crashes.

DJG commented that a higher speed sled test would cause manufacturers to stiffen up the CRS to avoid structural failure of the CRS in the sled tests. The commenter hypothesized that a stiffer seat could have a negative influence on children in crashes at lower speeds. The agency is not aware of any data that would support the DJG assertion that stiffer child seats would have a negative influence on restrained children in lower crash velocities. In higher speed sled testing, the agency has observed some structural failures. Thus, we agree that CRS manufacturers would have to provide structural modifications to the seat. However, we do not have any quantification of the relative influence of the shell versus webbing stiffness, and believe that the structural stiffness of the seat shell would have considerably less influence on the overall occupant response measurements than the webbing material.

3. Test Dummies and Injury Assessment Reference Values

The Advocates for Highway and Auto Safety, GM, Toyota, the Alliance, and Consumer's Union advocated the use of the more biofidelic Hybrid III family of dummies, the CRABI dummy, and their associated injury criteria. FMVSS No. 213 currently uses the Hybrid II three-year-old child dummy, Hybrid II six-year-old child dummy, and the TNO non-instrumented, nine-month-old child dummy. The agency recognizes that the Hybrid III and CRABI child dummies are more biofidelic and have greater instrumentation capabilities than the Hybrid II dummy family. This was one of the primary reasons the agency proposed the CRABI and the Hybrid III dummy family, as an upgrade to FMVSS No. 213 and for the CRS dynamic rating.

However, the agency is also aware that only Hybrid II dummies have been used to date in NHTSA compliance tests for FMVSS No. 213. In addition, CRS manufacturers do not have any substantial experience testing child seats with Hybrid III dummies. NHTSA believes it is appropriate to take the time to run tests with the Hybrid III dummies, and make regulatory decisions about when to mandate use of the newer dummies as opposed to using the new dummies in a CRS rating program tests. Hence, NHTSA intends to conduct a pilot program in 2003 and 2004 using the test dummies proposed in the FMVSS No. 213 upgrade.

4. Testing Procedure

In the notice published November 6, 2001, the agency proposed to rate CRS in LATCH mode only. Safe Ride News, National Safe Kids Campaign, JPMA, Toyota and CU suggested that NHTSA use additional configurations in addition to LATCH to rate child restraints. NHTSA acknowledges that there are many vehicles being used today that do not have a top tether anchor and LATCH attachment for a child seat. However, beginning September 1, 2002, all child restraints and all vehicles manufactured will be required to have LATCH. Vehicles manufactured after September 1, 2000 are all required to have a top tether. The agency has performed several tests comparing tether and no-tether seats. These test results have shown that a tether decreases head excursion in addition to lowering HIC values. NHTSA tests have also shown that HIC and chest acceleration readings from child restraints tested with LATCH are similar to those tested with the lap belt and tether. The agency, however, must also consider the vehicle fleet. It will

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take some time before the entire vehicle fleet will be equipped with lower anchorages and top tether, and we feel that consumers should have information on both LATCH and non-LATCH configurations. Therefore, the pilot program will examine and evaluate the LATCH and lap belt/tether configuration performance.

The Alliance, the Advocates for Highway and Auto Safety, Evenflo, GM, the Royal Automobile Club of Spain (RACE), and Toyota suggested that NHTSA include a side impact program to rate CRS. NHTSA agrees that the available data indicates that side impact represents a substantial portion of the total harm to children in crashes. Because of this, we are currently researching the dynamic performance of child restraints in crash modes other than a frontal crash. In response to the TREAD Act, NHTSA issued an ANPRM for side impact. Depending on the results of that research, we will consider whether we should rate CRS performance in a side impact configuration after this research is completed.

5. Rating System

Four commenters specifically addressed the use of compliance margin to rate child restraints. Because it would be easy to implement, the cost would be minimal, and it could provide meaningful information, the agency proposal listed compliance margin as an option for rating child restraints. A compliance margin rating would rate child restraints based on how much better they performed than required by the standard. In the notice, the agency showed that many seats passed by a large margin. This was true for both HIC and Chest G. Contrary to HIC and Chest G, the agency found head and knee excursion close to their respective limits set forth in the standard. However, the agency does not have a probability of injury risk curve for head or knee excursion. Of those commenters that specifically addressed compliance margin, none agreed with the premise of using it as the basis for a rating program. IIHS argued that there was no correlation between the margins of compliance a particular CRS seat had and its performance in the real world. We disagree with the commenter. The risk of injury is derived from human tolerance data. Just as injury numbers above the minimum standard correlate to an increased risk of injury, injury measures below the minimum level correlate to a lower risk of injury. IIHS further commented that it would be difficult for the agency to determine if a seat that passes the HIC requirement by 60% is safer than one that passes by 50%. As noted above, a seat that passes by a 60% compliance margin is safer than one with a 50% margin. However, we agree with IIHS that the magnitude of this difference would be small and it would be difficult to quantify precisely.

JPMA argued that a child restraint is a system, and that focusing on one or two parameters could adversely affect others. JPMA stated that manufacturers, for example, could get a wide compliance margin on head excursion, but that would increase the accelerations experienced by the head (HIC). We understand that system modifications to reduce one parameter could adversely affect other parameters with safety trade-offs. However, manufacturers would still have to meet the head excursion requirement for FMVSS No. 213. We feel that the head excursion limit in FMVSS No. 213 would prevent the manufacturers from taking such an approach.

JPMA also argued that if the agency used compliance margin to rate a CRS the agency would have to choose and rate the "more important" performance requirements of FMVSS No. 213. That is, is knee excursion more important than chest G? On this point, the agency also agrees with the commenter and also stated this fact in the notice. We agree that it would be difficult to choose what factor(s) among the many are most important and convey the information to the public.

For these reasons and as indicated in the notice, the agency believes that the use of compliance margin (*i.e.* rating seats on how close or far from the compliance limit the injury measures are) does not appear to be the most meaningful way to rate child safety seats. We will consider this further during our pilot program.

Comments were also received regarding what metrics should be used in the rating system. Toyota and the Alliance agreed with the agency that HIC and chest acceleration were a good basis for computing a child restraint rating. However, Honda, Toyota, Safe Ride News, JPMA, and Child Passenger Protection Technical Consulting suggested that head and/or knee excursion should be added to the rating scheme. The agency agrees that head and knee excursion limits in FMVSS No. 213 protect children from striking the vehicle's interior. However, HIC and chest acceleration can more easily be correlated to probability of injury than head and knee excursion. None of the commenters provided specific suggestions on how to incorporate head and knee excursions into a rating system. In addition, by developing the rating system based on HIC and chest acceleration, the agency can follow the same approach that is used for the adult dummies in the frontal NCAP. Therefore, NHTSA will not incorporate head and knee excursions into a safety rating for child restraints, but plans to use HIC and chest acceleration.

GM, Toyota, and the Alliance advocated the use of some sort of neck injury criteria in the rating and not just head and chest injury measures. GM also proposed that NHTSA initiate a study of motor vehicle field crash data better to quantify the extent of neck trauma in restrained children. Such a study "should determine the crash severity level(s) at which neck injury begins to occur." The agency agrees that neck injuries for children in the field need to be examined and will therefore utilize several sources both inside and outside the agency like NHTSA's Special Crash Investigations and the Children's Hospital of Pennsylvania to assess neck injuries in children. The agency is also assessing the need to include neck injury criteria in frontal NCAP star ratings.

D. NHTSA's Decision on a CRS Dynamic Rating Program

In the notice published November 6, 2001, the agency suggested a 56 kmph (35 mph) sled test to rate child restraints. The 56 kmph (35 mph) option specified that the agency would rate child restraints based on sled tests performed in accordance with the FMVSS No. 213 standard, but at a speed 8 kmph (5 mph) faster than the standard specifies. It was proposed that these 56 kmph (35 mph) sled tests would be conducted using the three-year-old Hybrid III dummy and the 12-month-old CRABI dummy to assess CRS performance as it relates to head injury and chest acceleration. However, many respondents voiced concerns of using a 56 kmph (35 mph) FMVSS No. 213 crash pulse to rate child restraints, and most suggested a rating program be deferred until FMVSS No. 213 is upgraded as required by TREAD.

NHTSA shares the concerns raised by commenters, and agrees that a dynamic CRS rating should be deferred until incorporation of the FMVSS No. 213 upgrades required by TREAD. Another option that we seriously considered was to develop a dynamic CRS rating using the current FMVSS No. 213 with the Hybrid II dummies. However, the current standard does not have an instrumented dummy for rear facing infant seats, meaning that a dynamic rating would be limited to only forward facing CRS for 3-year-old and 6-year-old children. We believe that consumers would have an equally high, if not higher, interest in obtaining dynamic rating information for rear facing infant seats, and that an inability to provide ratings for this segment of CRSs would cause a great deal of confusion for consumers.

Furthermore, NHTSA has other concerns with providing a dynamic CRS rating at this time. In considering development of a dynamic rating using the current standard, we found that all child restraints would have received either a four or five star rating. This is consistent with the finding from field studies showing that CRSs, when used and used properly, are very effective in providing protection to children. Given that all CRS would receive either a four or five star rating, we have concerns that such a dynamic rating would not be meaningful to consumers.

Another concern is that in addition to facing potential upgrades to FMVSS No. 213 as required by TREAD, CRS manufacturers have also been recently required to incorporate LATCH into all CRS. Further burdening these manufacturers with a dynamic rating using the older Hybrid II dummies while the manufacturers are modifying their designs to account for the possible use of newer dummies would be a diversion with no apparent safety benefit.

In consideration of the above, NHTSA has decided not to implement a dynamic component to the CRS rating at this time, but rather to rely upon the Ease of Use rating to satisfy the TREAD mandate. As noted previously, the agency has published an NPRM to upgrade FMVSS No. 213. The agency plans to conduct a pilot dynamic test program in 2003 and 2004 using the test seat assembly, test dummies and IARV's as proposed in the upgraded FMVSS No. 213 and adopted by the agency in its final rule pertaining to that rulemaking.

We believe the performance of the CRS in a dynamic test is an important and meaningful part of an overall rating of child safety. If our pilot program goes as anticipated, we will go forward in 2005 with a consumer information program for the dynamic rating of child restraint systems. We will re-notice this program to define the test procedures, test dummies, configurations and IARV's for that consumer information program.

The dynamic pilot test program for CRS will be conducted at the 48 kmph (30 mph) test speed and in accordance with the upgraded FMVSS No. 213 test procedures adopted by the agency. The pilot program will use the 12-month-old CRABI, the Hybrid III three-year-old, and the Hybrid III six-year-old child dummies. Lower anchorages and top tethers (if provided) will be used to restrain all child seats. In addition, we will also use a lap belt only configuration (no tether) [or (with tether)] for all these seats. The results of this pilot program will be made available only as research, and no ratings will be assigned to any of the tested CRS.

V. Vehicle Rating System for Child Protection

A. Summary of Proposal

The TREAD Act specified that the agency consider "whether to include child restraints in each vehicle crash tested under the New Car Assessment Program" [14(b)(9)], and to "issue a final rule establishing a child restraint safety rating program and providing other consumer information which the Secretary determines would be useful [to] consumers who purchase child restraint systems." Therefore, in addition to the child restraint rating system, the agency proposed a program that would rate new vehicles based on their protection of child passengers when restrained in a CRS in the rear seat when in a frontal crash.

Under this proposed vehicle rating system, the agency would ask vehicle manufacturers for a recommendation of at least three forward-facing child restraints. We would require that (1) at least one of the recommended child restraints have a retail price of less than $60 and (2) a different CRS manufacturer make each of the three restraints. The agency would choose one of these three CRS to use in the NCAP frontal crash for child protection.

We proposed to place the forward-facing child restraint on the vehicle seat directly behind the right front passenger. A 3-year-old Hybrid III dummy would be placed in the child restraint system. After the vehicle crash, a five star rating would be applied to the vehicle based on HIC and chest G values measured by the child dummy. Risk curves would be developed based on the injury assessment reference values developed for child dummies in FMVSS No. 208. Under this proposed rating system, in addition to the two ratings now provided based upon the performance of the driver and the right front passenger, the subject vehicle would receive one additional rating for the child dummy in the rear occupant seat.

Finally, after each vehicle crash test, we proposed to examine the child restraint for structural integrity. We would conduct the physical evaluation for structural integrity specified in the test procedure of FMVSS No. 213.

B. Summary of Comments

This section summarizes the comments that addressed the rating of vehicles based on child restraint performance. Of the nineteen commenters to the notice, sixteen specifically addressed the proposed vehicle rating system.

Britax, Juvenile Products Manufacturers Association (JPMA), SAFEKIDS, and Evenflo suggested that CRS performance depends on vehicle performance. They agreed that NHTSA's research showed that CRS performance varies significantly with vehicle crashworthiness design, including such factors as vehicle stiffness, rear seat detail, and belt configuration. GM and National Automobile Dealers Association (NADA) also suggested that vehicle weight influences CRS performance. Child Passenger Protection Technical Consulting (CPPTC) also voiced a concern that rating a child restraint based on how well it performs in a vehicle is not a feasible method, due to the significant influence of vehicle performance as shown in Euro NCAP.

JPMA explained that child seat companies are typically small-scale companies compared to the vehicle manufacturers. Most child seat companies do not have the resources to do expensive vehicle testing to design better child seats. They said, "* * * child restraint manufacturers can't reasonably conduct tests that would predict NHTSA's ratings under an NCAP-based system, because NHTSA (or the vehicle manufacturer) could choose to place any child restraint in any motor vehicle, and child restraint manufacturers could not reasonably or feasibly conduct crash tests. * * *"

NADA said that not all child restraints would be tested if NHTSA were to evaluate child restraints in vehicle testing. They further explained that this condition would be an unfair and incomplete test because not all child restraints would be subjected to the same conditions. Testing every child restraint in every vehicle would result in a great many tests. NADA also expressed concern that testing child restraints in NCAP vehicles would ignore the fact that most child seats are bought for use in used vehicles. Dorel, CU, Alliance, GM, JPMA, and Advocates also supported this view. Honda said that under the proposed rating system; child restraints with poor performance would never be tested in vehicle testing because vehicle manufacturers would never select those CRSs.

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IIHS said rating child restraints in vehicle testing would not advance world harmonization. IIHS advised that, based on Australian NCAP and Euro NCAP rating programs, rating child seats in vehicles had many disadvantages. They said, "* * *One is that, because so few vehicles are tested and only one or two restraints can be installed for each test, the tests can provide useful information for only a small number of vehicle/child restraint combinations. * * *"

The Children's Hospital of Philadelphia (CHOP) and Child Passenger Protection Technical Consulting (CPPTC) suggested that the agency examine head and knee excursion in vehicle testing due to variability in vehicle interior design. CPPTC said, "Head excursion is the most important criterion for forward-facing child restraints, as it indicates overall structural integrity and how well the restraint is likely to keep the child's head out of harm's way." They suggested that evaluating head excursion is more important than evaluating chest acceleration. CPPTC said field data confirm that contact head injury is the most common type of serious injury among restrained children.

Honda, Toyota, and Advocates said rear-facing mode child restraints and booster seats should also be rated. Advocates interpreted that TREAD mandates NHTSA to rate all CRS types, not just forward-facing restraints. Honda declared that, since NHTSA understands that many fatalities are occurring to restrained children less than three years of age, the agency also has to evaluate rear-facing child restraints. Toyota said most new parents are likely to look for information on rear-facing seats. Such information should be made available. If NHTSA were to provide this information, Toyota explains that those parents would be more educated about child safety seats and would eventually seek more information on the safety of child seats.

Several CRS manufacturers and consumer advocates suggested that testing child restraints in vehicles would be beneficial. Evenflo and ARCCA, Inc. said that adding CRS to vehicle testing would be beneficial in understanding how child restraints are influenced by vehicle crashworthiness. In addition, ARCCA, Inc. favors the incorporation of child restraints into NCAP tests. ARCCA stated that NCAP tests more closely replicate real world conditions than the FMVSS No. 213 compliance tests.

CHOP, CU, and Advocates said that performing CRS in-vehicle testing is good for future research on improving child occupant safety. CHOP commented that, "* * * including child restraints in NCAP tests is important to build a fund of knowledge. This will lead to a better understanding of the interaction of various child restraints with the various types of vehicles, their space, and seat stiffness." Advocates added that conducting vehicle testing with child seats would provide important information such as CRS and vehicle seat interaction and assessment of head and knee excursion in vehicle crashes. They suggested that such information would be extremely valuable for prospective car buyers, especially for parents who transport their young children.

C. Analysis of Comments

Most of the commenters generally disagreed with rating child restraints in vehicle testing. We agree with these comments that vehicle tests would not be an appropriate means of rating CRS performance. The notice indicated that the agency felt "the most effective consumer information system is one that gives the consumer a combination of information about child restraints' ease of use and dynamic performance, with the dynamic performance obtained through higher speed sled testing and/or in-vehicle NCAP testing." In describing the proposal for CRS performance in NCAP frontal vehicle testing, the notice said that "unlike the rating systems proposed for the sled tests * * *, this option would rate the vehicle equipped with a CRS as a system in protecting the child."

CHOP and CPPTC comments suggested that head and knee excursion are important parameters to monitor due to variability in vehicle interior designs. While we agree that this is true, we do not believe that these parameters are the most critical measurements to be made. Excursion of the child within the vehicle compartment, along with the available interior space, will determine whether the child strikes an interior component of the vehicle compartment. Indeed, to maximize child protection and reduce the average head acceleration, the optimal design is a system that maximizes head excursion without permitting a head strike on an interior component. However, the space within the compartment is limited. The HIC measurement would show whether the dummy's head struck an interior component. Thus, for built-in seats, head excursion is not measured in FMVSS No. 213, since HIC reflects head contact events. For built-in seats, HIC by itself provides a measure of both excursion and available compartment space.

The agency does not fully agree with the IIHS comments about in-vehicle testing not being suited for world harmonization. As indicated above, the agency does not believe that in-vehicle testing is an appropriate test for rating the CRS alone. To the extent that the IIHS comments were meant to reflect that point, we agree. However, both the Euro NCAP and Australian NCAP program vehicle ratings incorporate the vehicle's ability to protect CRS restrained children. Since the proposed in-vehicle rating would also provide such an indication, we believe that, in this respect, the proposed vehicle rating for child protection in frontal testing would be similar to the Euro NCAP and Australian NCAP ratings.

Finally, Honda, Toyota, and Advocates suggested that rear-facing CRS and booster seats should also be rated. As indicated above, we do not believe that in-vehicle testing is appropriate for rating the CRS. Rather, the in-vehicle test rates the vehicle's contribution to protecting the restrained child in a crash. We concur with the commenters desire to have the vehicle rating reflect the protection afforded to children restrained in child restraints in addition to forward facing child seats. We will examine the feasibility of this in the pilot program described below.

D. NHTSA's Decision on a Vehicle Rating System for Child Protection

As indicated in the November 6, 2001, notice, optimal child protection requires that the child be properly placed in an appropriate restraint, that the CRS perform well, and that the vehicle work in concert with the CRS to protect the restrained child. In the notice, the agency presented an analysis of results of both dynamic sled and in-vehicle CRS testing. The dynamic sled testing showed tighter clustering of the CRS responses than observed in the vehicle tests. We inferred that the greater range of HIC response in the vehicle tests was not due to the child restraint, but was due to vehicle crash characteristics, such as crash pulse, belt geometry (important for child restraints that use a lap/shoulder belt), seat contour, and seat cushion stiffness. A vehicle with good crashworthiness characteristics appeared to provide better child occupant protection independent of the CRS.

Occupant protection fundamentals require that the vehicle restraints and dynamic crash characteristics operate as a system to provide energy management for optimal protection of the occupant. For children, the CRS and vehicle must work together as a complete system to protect the child. To accomplish this, CRS and vehicle manufacturers must work together to ensure that an optimal design of the CRS/vehicle system is developed for maximum child protection. Consumers wishing to select the best protection systems available for their children need to have not only a rating of the CRS, but also a rating of the CRS/vehicle system. We believe this was the intent of the TREAD mandate that the agency consider "whether to include child restraints in each vehicle crash tested under the New Car Assessment Program," and to "provide other consumer information which the Secretary determines would be useful [to] consumers who purchase child restraint systems."

Given this, NHTSA anticipates that, in addition to providing a rating of child restraint systems, we will try to rate vehicles on their ability to protect child occupants in a frontal crash. We proposed an approach for rating vehicles for crash protection for children in the notice, with an additional star rating to be added to the vehicle's NCAP score. The additional star rating would be based upon the likelihood that a CRS restrained child occupant would receive severe (AIS ≥4) injuries in a frontal crash.

Notwithstanding this belief, however, NHTSA is concerned that it is premature to begin assigning NCAP ratings to vehicles at this time. We are aware of little testing in the public domain to assess the vehicles' role in protecting child occupants in the rear seats. Further, we have not finished our analysis of the results of our testing to date, which showed that some vehicles that provide good front seat occupant protection provide relatively poor rear seat occupant protection. We would prefer to gather more information on vehicles with child seats in the rear, do a thorough analysis of the results, and publish our conclusions to allow a public review before we implement a ratings program in this area.

To gather additional information and a better understanding of what vehicle attributes contribute to good rear seat occupant protection, NHTSA will collect data during the 2003 and 2004 model year NCAP frontal crash tests on child protection in the rear seat, but will not publish any child protection vehicle ratings based on that testing. During the 2003 and 2004 model years, the agency will select a range of seats to be used and final selection will be based on a set of objective criteria yet to be developed.

Using a single forward-facing seat also leads us to plan to use a single test dummy (the Hybrid III three-year-old) to allow comparisons among the vehicles, and to make those comparisons reflect the difference in vehicle performance. NHTSA believes that vehicle performance with the three-year old in a forward-facing seat will be representative of the vehicles' ability to provide child occupant protection for other sizes and ages of children in other CRS, including rear-facing and booster seats. However, we will gather data to verify or disprove this belief during the pilot program. Specifically, we will continue to use the additional rear seating positions to collect data for research purposes on the performance of various size dummies in rear-facing, booster, and built-in CRS. Should we proceed as we currently expect, we will add the element of rear seat child protection to frontal NCAP beginning in the 2005 model year. We will publish a notice to get public comments on the test procedures and rating criteria, including what size or sizes of child dummies should be used for the rating.

VI. Combined Child Restraint Rating

A. Summary of Proposal

In the proposal, NHTSA stated that we were not currently planning to do an overall summary rating combining ease of use and dynamic performance. The agency had not been able to develop an acceptable methodology for a summary rating. We requested comments and suggestions on this issue.

B. Summary of Comments

General Motors and JPMA commented that they did not support a combined rating system. Toyota proposed a combined rating concept that included injury criteria, head excursion and ease of correct use. Toyota believes that a combined rating could help parents select safer child restraints. Consumers Union supports a combined ease of use and dynamic testing rating system and also proposed one. They included recommendations for arriving at a single summary rating. They also recommended a numerical procedure to convert individual ratings to a continuous scale that was then converted to an overall star rating.

C. NHTSA Will Not Combine Rating

NHTSA reviewed the comments received. While the agency believes a combined rating may have merit, we believe that further evaluation into the methodology would be needed. In addition, subsequent to the proposed Notice, NHTSA conducted focus groups and found that most participants did not want a rating that combined performance and ease of use. They mentioned that they usually like more information to be available and that a combined rating might be misleading. Also, given the factors described in Section IV.D, we have decided to continue dynamic testing of CRS on a pilot basis rather than providing dynamic ratings at this time. Based on these factors NHTSA will not have a combined rating.

VII. Distribution and Schedule

A. Summary of Proposal

In the Notice published on November 6, 2001, NHTSA discussed the two publications that are produced related to safety ratings for vehicles and vehicle safety features specific to children. One publication is a print brochure titled Buying a Safer Car that provides NCAP ratings and safety feature information for new vehicles. The other is a brochure titled *Buying a Safer Car for Child Passengers* that provides new vehicle safety features and other information relevant to children.

The agency also stated that we believe new printed information about child restraint ratings would be needed. Unlike vehicles, child restraint models do not tend to change on an annual cycle, therefore, NHTSA would have to pick a date and only include in a print brochure child restraints that are available in the marketplace at that time. The Notice also indicated that in Canada the largest concentration of child restraints were introduced in the months of May and June. We requested comments on whether this timing was also accurate for the United States.

Lastly, in the Notice, NHTSA noted that a print brochure could be used in addition to our Web site. The Web site can be updated on a continuous basis. Therefore, we could test child restraints as they become available and add new models to the Web site when testing is complete.

B. Summary of Comments

NHTSA did not receive any comments on whether the timing, May and June, for the introduction of a large concentration of child restraints on the market was accurate. The National SAFE KIDS Campaign did voice their concern about releasing timely information to consumers. They suggested that to do this, child restraints would need to be rated prior to being placed on retail shelves.

In addition to seeking comments on the accuracy of when child restraints are introduced into the marketplace, NHTSA conducted research aimed at exploring the perceptions, opinions, beliefs, and attitudes of parents and

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caregivers regarding our Proposed Ease of Use Rating and the Performance Rating for child safety seats (see Section III C for full summary of focus group findings). Relative to how this ratings program is presented to and would be received and used by consumers, we found that overall most participants said that ratings influence their decision-making process when making a purchase. Also, respondents overwhelmingly preferred the use of stars to rate the seats. Specific to ease of use ratings, most participants preferred the chart that included the ease of use criteria. They explained that they liked having as much information as possible, and because they valued some criteria over others, seeing all the individual ratings was more helpful. Also, most reacted positively to the use of a letter grade scale for the Ease of Use Rating because it differentiated the Ease of Use Rating from the Performance Rating. Specific to the performance rating, many believed that it was more important than the Ease of Use Rating. However, many said that they wanted more information on how the ratings are derived. Participants stated that a brochure should include information on different harness types, price ranges of individual seats, and explanations of the tests that are done when a seat is rated. Respondents also said that the brochure should use color and graphics and text should be in a bullet-point format.

C. Rating and Distribution Plan

NHTSA agrees with the National SAFE KIDS Campaign in that timing of information is an important element of the ratings program. Also of importance is how this information is presented to the consumer. After considering the comment received and the focus group findings, NHTSA's rating and distribution plan is as follows:

- NHTSA plans to obtain child restraints from the manufacturer and begin rating them before they are available to the public. The process for doing this will be similar to how NHTSA receives child restraints from the manufacturers for compliance testing. A letter will be sent to the manufacturers requesting a list of new child restraints that will be introduced into the marketplace. NHTSA will also request these seats be shipped to a designated testing location. NHTSA plans to conduct testing and evaluations beginning this fall and publish a print brochure in the spring of 2003. From discussions with manufacturers and retailers, early spring is a transition time for stocking retail shelves with new child restraints.
- The brochure will provide explanatory information to consumers as well as have charts listing the ratings of child safety seats. The brochure will list child seats by type: (1) Infant only, (2) convertible, (3) forward facing only, (4) combination forward facing booster, and (5) booster, followed by their ratings. NHTSA may include additional information about the child restraint such as harness type, weight ranges for the restraint, etc. NHTSA already has on its Web site, a listing of child restraints with features and will be considering combining this information with the ratings in print and on the Web site.
- There will be several ratings listed for each child restraint. Each ease of use category (there are 5) as well as an overall ease of use score will be listed. Also in 2005, we anticipate that each restraint will also have star ratings from the dynamic tests. Because multimode child restraints will be rated in each mode it is recommended for use, one seat may have 16 total ratings. For example, a convertible child restraint will have six ease of use ratings (5 categories and 1 overall) for rear-facing and the same amount for forward-facing, for a total of 12. The convertible seat will also have two dynamic tests for each mode for a total of four. Refer to Table 1 in the November 6, 2001, Notice to see the testing protocol for each type of restraint.
- The brochure, which will be updated on annual basis, will be posted on the NHTSA Web site as well as distributed through our outreach mechanisms (*e.g.*, Regional offices, State Highway Safety Offices, National Organizations, etc.).
- Following initial publication of the print brochure, throughout the remainder of the year (until October), NHTSA will continue to rate any new child restraints that will be introduced into the market. Following our rating, the results will be posted on the Web site as well as announced through a press release.

VIII. Conclusion

In response to the TREAD Act, NHTSA has decided to establish a consumer information program for add on child restraints based on their ease of use. We believe that this consumer information program will encourage child restraint manufacturers to produce child restraints with features that make it easier for consumers to use and install, thereby, leading to increased correct use of child restraints and increased safety for child passengers. Secondly, we believe that child protection is a systems approach. It involves both the child restraint manufacturer and the vehicle manufacturer. We feel that consumers would value information from both of these entities. Therefore, we have decided to perform two pilot programs to gather additional information about these two aspects of child passenger safety. One pilot program will subject child restraints to a 48 kmph (30 mph) sled test under the same test conditions as a proposed upgrade to FMVSS No. 213. The second pilot program will continue to include child restraints in the frontal crashes of our New Car Assessment Program. We will collect information from these two pilot programs in 2003 and 2004 and not publish the results as consumer information. At the conclusion of the pilot programs, and if analyses of the pilot program show this would be meaningful consumer information, the agency will seek public comments on a proposal for full implementation of the rating of vehicles for child protection and the dynamic child restraint test to commence in Model Year 2005. (By Model Year 2005, we mean October 2004 to coincide with the commencement of the Fiscal Year 2005 New Car Assessment Program). We believe this consumer information will enable prospective purchasers to make better, informed choices about new child restraints and passenger vehicles.

Authority: 49 U.S.C. §§ 32302, 30111, 30115, 30117, 30166, and 30168, and Pub. L. 106–414, 114 Stat. 1800; delegation of authority at 49 CFR 1.50.

Issued on: October 29, 2002.

Noble N. Bowie,

Acting Associate Administrator for Rulemaking.

BILLING CODE 4910–59–P

Appendix A

Proposed Ease of Use Rating Form

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NHTSA Child Restraint Usability Rating Form – 2001

Date _____ Evaluated by _____ Seat # (on tag) _____

Manufacturer _____ DOM _____

Make & Model _____ Model # (on CRS) _____

If optional base, model # on base _____ DOM on base _____

Style: ❑ Infant (RF) ❑ Convertible (RF/FF) ❑ Combination (FF harness/booster) ❑ Booster ❑ Other

Harness: ❑ 5-point ❑ "V" or 3-point ❑ T-shield ❑ OH shield ❑ Shield booster ❑ No shield booster

Measurements (imperial units for North American consumer guide) – *take out slack in seat cover*

Total number of crotch strap positions ❑ 1 ❑ 2 ❑ n/a (booster only)

Distance crotch strap opening on base to seat bight Position 1 _____ Position 2 _____ ❑ na

Lower harness slot height (bottom center slot to seat bight) _____ Upper harness slot height _____ ❑ n/a

Seat height (from seat bight) _____ ❑ n/a (no back-booster)

Size range given in owner' manual: _____ **Date on manual:** _____

	WEIGHT (kg and lb)		HEIGHT (cm and inches)	
	Minimum	**Maximum**	**Minimum**	**Maximum**
RF				
FF				
Booster				

❑ Yes ❑ No, note any differences _____

Infant restraint has optional base ❑ Yes ❑ No ❑ n/a (eg convertible)

Type: ❑ Booster Only ❑ Combination (harness/booster)

Style: ❑ No-back with non-removable shield ❑ No-back with removable shield ❑ No-back NO shield ❑ High back with soft back ❑ High back with hard back

Booster recommened for use with: Lap/torso ❑ Yes ❑ No ❑ not shown on seat

Lap belt ❑ Yes ❑ No ❑ not shown on seat

If shield booster, recommended t/belt position: ❑ front of child ❑ behind child ❑ not shown on seat ❑ n/a

NHTSA CHILD RESTRAINT USABILITY RATING FORM – 2001

Assemly *(When first out of box)*

	A	B	C	Notes
All functional parts including seat pad or cover attached and ready to use	Yes*		No	*parent may still need to adjust system to fit child
Tether attached to child restraint	Yes		No	n/a
Owner's manual easy to find	Attached to child restraint in a clearly visible location	Attached to child restraint but not clearly visible	In box, not attached	
Obvious storage (pocket) for manual	Easily accessible when installed in all modes and manual can be removed and replaced easily	Easily accessible when installed in all modes but manual cannot be removed and replaced easily (any use of plastic clips as the sole means of storing the instructions will not be higher than "acceptable")	Not accessible when installed in all modes	

Evaluation of Labels/Instructions

	A	B	C	Notes
Clear indication of child's size range	Separate clear text with illustrations of child in upper range	Separate clear text Independent paragraph	Size range buried in other text	
All mode/s of use clearly indicated e.g., rear-facing only or forward- and rear-facing if convertible	CRS illustration in complete vehicle seat (not FSP) Mode/s clear, no need to read text	CRS illustration in outline vehicle seat (could be front seat) Need to read text	No illustration, text only May be illustrated, but not all modes shown	*Infant restraint = RF* *Convertible = RH and FF (+tether could be separate illustration)* *Combination = FF (+harness/tether and booster)*
Air bag warning in written instructions	Separate, highlighted & illustrated	Separate & highlighted	Buried in other text or no warning	
Show harness slots okay to use for occupant size	Clear illustration or markings – no need to read text	Markings of top slot – need to read text	Other, includes text only or in manual only	n/a, all harness slots can be used
Instructions for routing for both lap belt and lap/shoulder belt in all modes	All modes illustrated clearly with CR in seat S/belt (tether) in illustration with s/b ***No need to read***	All modes illustrated with CR in seat (tether may have own illustration of s/belted CRS in seat) ***Need*** to read text	Not all illustrated (e.g. tether not shown)	*All modes = RF/FF & lap; lap/torso and for **Infant restraint** if torso belt shown behind CRS, alternative if torso belt not long enough* *and for **FF harness systems** + tether* *and for **booster** – whether or not okay for both lap and lap/torso seat belt*

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NHTSA CHILD RESTRAINT USABILITY RATING FORM – 2001

Evaluation of Labels/Instructions *(Continued)*

		A	B	C	Notes
Visability of seat belt routing (for lap belt and lap/torso) when CRS in position in vehicle i.e. is seat belt routing obvious	Without base	Clear routing illustration or clear contrast belt path marking ***both*** sides No need to read text	Markings or some form of routing illustration ***both*** sides Need to read text	Other incl illustration only ***one*** side or illustrations do not match CRS or belt direction or hidden by seat cover	
	Installing add-on base (alone) or n/a	Clear routing illustration or clear contrast belt path marking ***both*** sides No need to read text	Markings or some form of routing illustration ***both*** sides Need to read text	Other incl illustration only ***one*** side or illustrations do not match CRS or belt direction or hidden by seat cover	
Visibility of tether use		Yes		No	
Information in written instructions and on labels match		Yes		No	
Durability of labels		All labels molded or embossed	Sticky label	Sticky label if one or more are already peeling when restraint removed from box	

Securing the Child

	A	B	C	Notes
Buckle can be secured in reverse	No, or yes but usual release works with same degree of effort	Yes, but usual release requires more effort	Yes, but can't use release mechanism	
Harness adjustment easy to tighten or loosen when child restraint installed	One had to tighten Max 2 to loosen	Two hands to tighten, but easy No re-threading	Other	*Do not count one hand to support CRS*
Number of harness slots/ usable slots	3	2*	Top only	*2nd slot okay to 30 lb then top only
Ease of attaching/removing base (infant restraint systems only)	One had to attach Max two to release – handle easy to access	One hand to attach Max two to release – handle not easy access	Other includes need to tilt or tip to release	n/a, not an infant restraint n/a, no base offered with this infant restraint
Ease of conversion rear-facing to forward-facing or forward-facing to booster and back again	One had to change Easy to access	1-2 hands to change – not easy access or binds	Other	n/a, single mode
Visibility of harness slots	Clear view of both slots (slots aligned)	Clear view cloth slots, not aligned with plastic slots	Something in way when sold, e.g. pad, head hugger	n/a, no harness slots (booster only)

NHTSA CHILD RESTRAINT USABILITY RATING FORM – 2001

Securing the Child *(Continued)*

	A	B	C	Notes
Ease of changing harness slot position	No need to rethread Possible for one person to do	Possible for one person to do, easy to attach/remove Large slots easy to thread	Other, slot size too small for easy threading Loose mandatory pieces Could misroute through buckle	
Ease of reassembly if pad/cover removed for cleaning	No loose parts Easy to attach/ remove – clear slots No realignment necessary	No loose parts Slots may be misaligned	Loose parts, need hand tool Slot size too small for easy threading Could misroute through buckle	
Ease of adjusting/removing shield	Clear illustration simple action shield marked	Need to read text, simple action, shield not marked	Other tool/s required	n/a, no shield n/a, shield not adjustable

Installing in Vehicle

		A	B	C	Notes
Separation of vehicle belt path	***Without base***	No contact possible	Cover to avoid contact	Possible contact including crotch strap	
	Installing add-on base (alone) or n/a	No contact possible	Cover	Possible contact	
Ease of vehicle belt routing (hand clearance)	***Without base***	Male hand can route s/b through including flap in seat, nothing in way	Male hand fit but need to move CRS (no x-tilt), or move padding	Hand does not fit	
	Installing add-on base (alone) or n/a	Male hand can route s/b through including flap in seat	Male hand fit but need to move CRS (no x-tilt)	Hand does not fit	
Ease of seat belt routing (boosters)		Single action (could be done by child in seat)	Includes 2 hands to operate belt positioning hardware	Detachable or multiple steps	
Ease of use of any belt-positioning hardware on CRS including lock-off		One hand to use	Two hands to use	Detachable or multiple steps	n/a, no belt positioning hardware
Tether easy to tighten (& release)		One hand to tighten	Two hands but easy	Other	
Does belt-positioning device allow excessive slack to occur including lock off		Guides only		Slack could be introduced	n/a, no belt positioning hardware
Ease of tightening belt around CRS		???	????	???	

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Appendix B

Proposed Ease of Use Rating Sample

NHTSA Ease of Use Rating Sample

Evaluation Category	Feature	Possible Points for Feature	Example Rating	Example Rating: Points for Each Feature	Feature Weight	Example Rating: Weighted Points for Each Feature	Category Point Range for C Rating	Category Point Range for B Rating	Category Point Range for A Rating	Example Rating: Result for this Category
Assembly										
	All functional parts including seat pad or cover attached and ready to use	1, 3	C	1	2	2				
	Tether attached to child restraint	1, 3	C	1	2	2				
	Owner's manual easy to find	1, 2, 3	A	3	1	3				
	Obvious storage (pocket) for manual	1, 2, 3	C	1	2	2				
	Total					9	7 to 11	12 to 16	17 to 21	C
Labels/ Instructions										
	Clear indication of child's size range	1, 2, 3	A	3	2	6				
	All models of use clearly indicated e.g., rear-facing only or forward- and rear-facing if convertible	1, 2, 3	A	3	2	6				
	Air bag warning in written instructions	1, 2, 3	A	3	2	6				
	Show harness slots okay to use for occupant size	1, 2, 3	C	1	3	3				
	Instructions for routing for both lap belt and lap/shoulder belt in all modes	1, 2, 3	A	3	2	6				
	Visibility of seat belt routing (for lap belt and lap/torso) when CRS in position in vehicle i.e., is seat belt routing obvious	1, 2, 3	C	1	3	3				
	Visibility of tether use	1, 3	A	3	2	6				
	Information in written instructions and on labels match	1, 3	A	3	2	6				
	Durability of labels	1, 2, 3	B	2	2	4				
	Total					46	20 to 33	34 to 47	48 to 60	B
Securing the Child										
	Buckle can be secured in reverse	1, 2, 3	C	1	3	3				
	Harness adjustment easy to tighten or loosen when child restraint installed	1, 2, 3	B	2	3	6				
	Number of harness slots/usable slots	1, 2, 3	B	2	1	2				
	Ease of attaching/removing base (infant restraint systems only)	1, 2, 3	C	1	3	3				
	Ease of converson rear-facing to forward-facing or forward-facing to booster and back again	1, 2, 3	A	3	3	9				
	Visibility of harness slots	1, 2, 3	A	3	2	6				
	Ease of changing harness slot positions	1, 2, 3	A	3	2	6				
	Ease of reassembly if pad/cover removed for cleaning	1, 2, 3	C	1	3	3				
	Ease of adjusting/removing shield	1, 2, 3	A	3	1	3				
	Total					41	21 to 35	36 to 49	50 to 63	B
Installing in Vehicle										
	Separation of vehicle belt path	1, 2, 3	B	2	3	6				
	Ease of vehicle belt routing (hand clearance)	1, 2, 3	B	2	2	4				
	Ease of seat belt routing (boosters)	1, 2, 3	B	2	2	4				
	Ease of use of any belt-positioning hardware on CRS, including lock-off	1, 2, 3	A	3	1	3				
	Tether easy to tighten (& release)	1, 2, 3	C	1	3	3				
	Does belt-positioning device allow slack to occur	1, 3	C	1	3	3				
	Ease of tightening belt around CRS	1, 2, 3	A	3	2	6				
	Total					29	16 to 26	27 to 37	38 to 48	B
Overall Rating										B
Qualifiers:										
To be rated B, no more than one out of four categories can be rated C										
To be rated A, no more than one out of four categories can be rated less than A										

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Appendix C

Final Ease of Use Rating and Scoring Forms

NHTSA Ease of Use Rating Form – 2002

Complete if Infant Restraint or Convertible RF Mode

Date _____ Evaluated by _____ Seat # (on tag) _____

Manufacturer _____ DOM _____

Make & Model _____ Model # (on CRS) _____

If optional base, model # on base _____ DOM on base _____

Style: ❑ Infant (RF) ❑ Convertible (RF/FF) ❑ Car Bed

Infant restraint has optional base ❑ Yes ❑ No

Harness: ❑ 5-point ❑ "V" or 3-point ❑ T-shield ❑ OH shield

Measurements

Total number of crotch strap positions ❑ 1 ❑ 2

Distance crotch strap opening on base to seat bight Position 1 _____ Position 2 _____

Lower harness slot height (bottom center slot to seat bight) _____ Upper harness slot height _____ ❑ n/a

Seat height (from seat bight) _____ ❑ n/a (no back-booster)

Size range given in owner's manual: **Date on manual:** _____

	WEIGHT (kg and lb)		HEIGHT (cm and inches)	
	Minimum	Maximum	Minimum	Maximum
RF				

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NHTSA Ease of Use Rating Form – 2002

Complete if Infant Restraint or Convertible RF Mode

Make & Model _____ Seat # (on tag) _____

Assembly *(When first out of box)*

	A	B	C	Notes
All functional parts including seat pad or cover attached and ready to use; rear facing slots for lowest weight range	Yes*	No, tools not required	No, tools required	*parent may still need to adjust system to fit child
Owner's manual easy to find when taken out of box	Attached to child restraint in a clearly visible location	Attached to child restraint but not clearly visible	In box, not attached	
Storage system for manual	Manual removed and replaced easily		Manual cannot be removed and replaced easily	

Evaluation of Labels

	A	B	C	Notes
Clear indication of child's size range e.g., picture of child in seat use of harness clip weight range	Separate clear text with illustrations of child in upper range		Separate clear text Independent paragraph	
All mode/s of use clearly indicated e.g., rear-facing only or rear-facing vs. forward-facing, LATCH	CRS illustration in complete vehicle seat (not FSP) Mode/s clear, ***No need*** to read text	CRS illustration in outline vehicle seat (could be front seat) ***Need*** to read text	No illustration, text only May be illustrated, but not all modes shown	
Instructions for routing for both lap belt and lap/shoulder belt	Illustrated clearly with CR in vehicle seat Lap, lap/shoulder belts ***No need*** to read text	Illustrated, outlined or no vehicle seat ***Need*** to read text	Not all modes illustrated Unclear or incorrect instructions	
Shows how to prepare lower attachments for use	Visually obvious and able to use with illustration only, no need to read text OR No illustration required	Illustration plus written instructions provided, need to read text	Written instructions only provided or nothing	In "A" category one or two words OK for extra clarification
Shows how to use lower attachments	Visually obvious and able to use with illustration only, no need to read text	Illustration plus written instructions provided, need to read text	Written instructions only provided or nothing	In "A" category one or two words OK for extra clarification

NHTSA Ease of Use Rating Form – 2002

Complete if Infant Restraint or Convertible RF Mode

Evaluation of Labels *(Continued)*

		A	B	C	Notes
Visability of seat belt routing (for lap and lap/shoulder belts), and lower LATCH attachments, when CRS in position in vehicle i.e. Is seat belt routing, LATCH attachments obvious?	***Without base***	Clear routing illustration or clear contrast belt path marking ***No need*** to read text	Markings or some form of routing illustration ***Need*** to read text	Illustrations do not match CRS or belt direction or are hidden by seat cover	LATCH n/a
	Installing add-on base (alone)	Clear routing/ LATCH attachment illustration or clear contrast belt path marking ***No need*** to read text	Markings or some form of routing illustration ***Need*** to read text	Illustrations do not match CRS or belt direction or are hidden by seat cover	n/a
Durability of labels		Sticky label not peeling or other method of technology label not peeling		Sticky label if one or more are already peeling when restraint removed from box	

Evaluation of Instructions

	A	B	C	Notes
Clear indication of child's size range e.g., picture of child in seat use of harness clip weight range	Separate clear text with illustrations of child in upper range		Separate clear text Independent paragraph	
All mode/s of use clearly indicated e.g., rear-facing only or rear-facing vs. forward-facing, LATCH	CRS illustration in complete vehicle seat (not FSP) Mode/s clear, ***No need*** to read text	CRS illustration in outline vehicle seat (could be front seat) ***Need*** to read text	No illustration, text only May be illustrated, but not all modes shown	
Air bag warning in written instructions	Separate, highlighted & illustrated	Separate & highlighted	Buried in other text or no warning	
Instructions for routing for both lap belt and lap/shoulder belt	Illustrated clearly with CR in vehicle seat Lap, lap/shoulder belt ***No need*** to read text	Illustrated, outlined or no vehicle seat ***Need*** to read text	Not all illustrated Unclear or incorrect instructions	
Instructions describe how to prepare lower LATCH attachments for use	Visually obvious, able to use with illustration only	Illustration plus written instructions provided	Written instructions only provided or nothing	In "A" caterogy one or two words OK for extra clarification
Instructions show how to use lower LATCH attachments	Visually obvious, able to use with illustration only	Illustration plus written instructions provided	Written instructions only provided or nothing	In "A" caterogy one or two words OK for extra clarification

NHTSA Ease of Use Rating Form – 2002

Complete if Infant Restraint or Convertible RF Mode

Evaluation of Labels *(Continued)*

		A	B	C	Notes
Visability of seat belt routing (for lap and lap/shoulder belts), and lower LATCH attachments, when CRS in position in vehicle i.e. Is seat belt routing, LATCH attachments obvious?	***Without base***	Clear routing illustration or clear contrast belt path marking ***No need*** to read text	Markings or some form of routing illustration ***Need*** to read text	Illustrations do not match CRS or belt direction or are hidden by seat cover	LATCH n/a
	Installing add-on base (alone)	Clear routing/ LATCH attachment illustration or clear contrast belt path marking ***No need*** to read text	Markings or some form of routing illustration ***Need*** to read text	Illustrations do not match CRS or belt direction or are hidden by seat cover	n/a
Durability of labels		Sticky label not peeling or other method of technology label not peeling		Sticky label if one or more are already peeling when restraint removed from box	

Evaluation of Instructions

	A	B	C	Notes
Clear indication of child's size range e.g., picture of child in seat use of harness clip weight range	Separate clear text with illustrations of child in upper range		Separate clear text Independent paragraph	
All mode/s of use clearly indicated e.g., rear-facing only or rear-facing vs. forward-facing, LATCH	CRS illustration in complete vehicle seat (not FSP) Mode/s clear, ***No need*** to read text	CRS illustration in outline vehicle seat (could be front seat) ***Need*** to read text	No illustration, text only May be illustrated, but not all modes shown	
Air bag warning in written instructions	Separate, highlighted & illustrated	Separate & highlighted	Buried in other text or no warning	
Instructions for routing for both lap belt and lap/shoulder belt	Illustrated clearly with CR in vehicle seat Lap, lap/shoulder belt ***No need*** to read text	Illustrated, outlined or no vehicle seat ***Need*** to read text	Not all illustrated Unclear or incorrect instructions	
Instructions describe how to prepare lower LATCH attachments for use	Visually obvious, able to use with illustration only	Illustration plus written instructions provided	Written instructions only provided or nothing	In "A" caterogy one or two words OK for extra clarification
Instructions show how to use lower LATCH attachments	Visually obvious, able to use with illustration only	Illustration plus written instructions provided	Written instructions only provided or nothing	In "A" caterogy one or two words OK for extra clarification

NHTSA Ease of Use Rating Form – 2002

Complete if Infant Restraint or Convertible RF Mode

Evaluation of Labels *(Continued)*

		A	B	C	Notes
Visability of seat belt routing (for lap and lap/shoulder belts), and lower LATCH attachments, when CRS in position in vehicle i.e. Is seat belt routing, LATCH attachments obvious?	***Without base***	Clear routing illustration or clear contrast belt path marking ***No need*** to read text	Markings or some form of routing illustration ***Need*** to read text	Illustrations do not match CRS or belt direction or are hidden by seat cover	LATCH n/a
	Installing add-on base (alone)	Clear routing/ LATCH attachment illustration or clear contrast belt path marking ***No need*** to read text	Markings or some form of routing illustration ***Need*** to read text	Illustrations do not match CRS or belt direction or are hidden by seat cover	n/a
Durability of labels		Sticky label not peeling or other method of technology label not peeling		Sticky label if one or more are already peeling when restraint removed from box	

Evaluation of Instructions

	A	B	C	Notes
Clear indication of child's size range e.g., picture of child in seat use of harness clip weight range	Separate clear text with illustrations of child in upper range		Separate clear text Independent paragraph	
All mode/s of use clearly indicated e.g., rear-facing only or rear-facing vs. forward-facing, LATCH	CRS illustration in complete vehicle seat (not FSP) Mode/s clear, ***No need*** to read text	CRS illustration in outline vehicle seat (could be front seat) ***Need*** to read text	No illustration, text only May be illustrated, but not all modes shown	
Air bag warning in written instructions	Separate, highlighted & illustrated	Separate & highlighted	Buried in other text or no warning	
Instructions for routing for both lap belt and lap/shoulder belt	Illustrated clearly with CR in vehicle seat Lap, lap/shoulder belt ***No need*** to read text	Illustrated, outlined or no vehicle seat ***Need*** to read text	Not all illustrated Unclear or incorrect instructions	
Instructions describe how to prepare lower LATCH attachments for use	Visually obvious, able to use with illustration only	Illustration plus written instructions provided	Written instructions only provided or nothing	In "A" caterogy one or two words OK for extra clarification
Instructions show how to use lower LATCH attachments	Visually obvious, able to use with illustration only	Illustration plus written instructions provided	Written instructions only provided or nothing	In "A" caterogy one or two words OK for extra clarification

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NHTSA Ease of Use Rating Form – 2002

Complete if Infant Restraint or Convertible RF Mode

Evaluation of Instructions *(Continued)*

	A	B	C	Notes
Orientation for LATCH lower attachments	Correct orientation of LATCH lower attachments clearly illustrated or text clearly states that it can be used in any orientation	Correct orientation of LATCH lower attachments explained only in text	No information regarding orientation of LATCH lower attachments	n/a if orientation cannot be changed
Information in written instructions and on labels match (size measurements)	Yes		No	

Securing the Child

	A	B	C	Notes
Buckle can be secured in reverse	No, or yes but usual release works with same degree of effort	Yes, but usual release requires more effort	Yes, but can't use release mechanism	
When installed, easy access to harness adjustment for tightening and loosening	Yes		No	
Harness adjustment easy to tighten or loosen when child restraint is installed	One hand to tighten/loosen, or automatically adjusts Max 2 to loosen	Two hands to tighten/loosen, but easy No re-threading	Other	*Do not count one hand to support CRS*
Number of harness slots match (plastic and pad)	Yes		No	
Number of harness slots in shell	At least 3 or 1 adjustable	2	1	
Visibility of harness slots	Clear view of all slots (slots aligned)	Clear view cloth slots, not aligned with plastic slots	Something in way when sold, e.g. pad, head hugger	
Ease of conversion forward-facing to rear-facing	One hand to change Easy to access	1-2 hands to change – not easily accessible or binds	Other	n/a, single mode
Ease of changing harness slot position	No need to re-thread Possible for one person to do	Possible for one person to do, easy to attach/remove Large slots easy to thread	Other, slot size too small for easy threading Loose mandatory pieces Could misroute through buckle or could incorrectly resecure, requires multiple threading of harness	

NHTSA Ease of Use Rating Form – 2002

Complete if Infant Restraint or Convertible RF Mode

Securing the Child *(Continued)*

	A	B	C	Notes
Ease of re-assembly if pad/cover removed for cleaning or rethreading of harness	No loose parts Easy to attach/remove – clear slots No realignment necessary	No loose parts Slots may be misaligned	Loose parts, need hand tool Slot size too small for easy threading Could misroute through buckle	
Ease of adjusting/removing shield	Clear illustration, simple action, shield marked	Need to read text, simple action, shield not marked	Other tool/s required	n/a, no shield n/a, shield not adjustable

Installing in Vehicle

		A	B	C	Notes
Separation of vehicle belt path from harness	***Without base***	No contact possible		Possible contact including crotch strap	
	Installing add-on base (alone)	No contact possible	Cover	Possible contact	n/a
Can lower LATCH attachments interfere with harness	***Without base***	No		Yes	n/a
	Installing add-on base (alone)	No		Yes	n/a
Ease of vehicle belt routing (hand clearance)	***Without base***	Male hand can route s/b through including flap in seat, nothing in way	Male hand fit but need to move CRS (no x-tilt), or move padding	Hand does not fit	
	Installing add-on base (alone)	Male hand can route s/b through including flap in seat	Male hand fit but need to move CRS (no x-tilt)	Hand does not fit	n/a
Ease of attaching/removing infant seat from base		One hand to attach Max two to release – handle easy to access	One hand to attach Max two to release – handle not easily accessible	Other includes need to tilt or tip to release	n/a, no base offered with this infant restraint
Ease of use of any belt positioning feature on CRS including lock-off		One hand to use	Two hands to use	Detachable or multiple steps	n/a, no belt positioning hardware
Presence of feedback for seat back angle	***Seat***	Yes		No	
	Base	Yes		No	n/a
LATCH lower attachment can be installed in reverse		No, or yes but works in usual way	Yes, but usual release requires more effort	Yes, and can't release	

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NHTSA Ease of Use Rating Form – 2002

Complete if Convertible FF Mode . Forward Facing Only or Transitional with Harness

Date _____ Evaluated by _____ Seat # (on tag) _____

Manufacturer _____ DOM _____

Make & Model _____ Model # (on CRS) _____

Style: ❑ Convertible (RF/FF) ❑ FF only ❑ Combination (FF harness/booster)

Harness: ❑ 5-point ❑ "V" or 3-point ❑ T-shield ❑ OH shield ❑ Shield booster

Measurements

Total number of crotch strap positions ❑ 1 ❑ 2

Distance crotch strap opening on base to seat bight Position 1_____ Position 2_____ ❑ n/a

Lower harness slot height (bottom center slot to seat bight)_____ Upper harness slot height _____ ❑ n/a

Seat height (from seat bight) _____

Size range given in owner's manual: **Date on manual:** _____

	WEIGHT (kg and lb)		HEIGHT (cm and inches)	
	Minimum	Maximum	Minimum	Maximum
FF				

NHTSA Ease of Use Rating Form – 2002

Complete if Convertible FF Mode . Forward Facing Only or Transitional with Harness

Make & Model _____ Seat # (on tag) _____

Assembly *(When first out of box)*

	A	B	C	Notes
All functional parts including seat pad or cover attached and ready to use; harness in lowest usable slots; includes tether attached (FF only)	Yes*	No, tools not required	No, tools required	*parent may still need to adjust system to fit child n/a if convertible
Tether attached to restraint	Yes		No	n/a if single mode
Owner's manual easy to find when taken out of box	Attached to child restraint in a clearly visible location	Attached to child restraint but not clearly visible	In box, but not attached	
Storage system for manual	Manual removed and replaced easily		Manual cannot be removed and replaced easily	

Evaluation of Labels

	A	B	C	Notes
Clear indication of child's size range e.g., picture of child in seat use of harness clip weight range	Separate clear text with illustrations of child in upper range		Separate clear text Independent of illustration or no illustration	
All mode/s of use clearly indicated e.g., FF + tether (v. RF) FF + tether (v. booster) LATCH	CRS illustration in vehicle seat (not FSP) Mode/s clear, no need to read text	CRS illustration in outline vehicle seat (could be front seat) Need to read text	No illustration, text only May be illustrated, but not all modes shown (e.g. tether not shown)	
Shows which harness slots OK to use	Clear illustrations or markings ***No need*** to read text	Markings of top slot ***Need*** to read text	Text only or missing	n/a, all can be used
Instructions for routing both lap belt and lap/shoulder belt	Illustrated clearly with CR in vehicle seat and tether in illustration ***No need*** to read text	Illustrated, outlined or no vehicle seat Tether may have own illustration ***Need*** to read text	Not all modes illustrated (e.g. tether not shown) or unclear instructions	
Shows how to prepare lower attachments for use	Visually obvious and able to use with illustration only, no need to read text OR No illustration required	Illustrations plus written instructions provided, need to read text	Written instructions only provided or nothing	In "A" category one or two words OK for extra clanfication

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NHTSA Ease of Use Rating Form – 2002

Complete if Convertible FF Mode . Forward Facing Only or Transitional with Harness

Evaluation of Labels *(Continued)*

	A	B	C	Notes
Shows how to use lower attachments	Visually obvious and able to use with illustration only, no need to read text	Illustrations plus written instructions provided, need to read text	Written instructions only provided or nothing	In "A" category one or two words OK for extra clarification
Visability of seat belt routing (for lap and lap/shoulder belts), and LATCH attachments, when CRS in vehicle position i.e. Is seat belt routing, LATCH attachments obvious?	Clear routing illustration or clear contrast belt path, LATCH marking ***No need*** to read text	Markings or some form of routing illustration ***Need*** to read text	Illustrations do not match CRS or belt direction or are hidden by seat cover	
Durability of labels	Sticky label not peeling or other method of technology label not peeling		Sticky label if one or more are already peeling when restraint removed from box	

Evaluation of Instructions

	A	B	C	Notes
Clear indication of child's size range e.g., picture of child in seat use of harness clip weight range	Separate clear text with illustrations of child in upper range		Separate clear text Independent paragraph	Must have illustration with at least weight
All mode/s of use clearly indicated e.g., FF + tether (v. RF) FF + tether (v. booster) lower LATCH	CRS illustration in vehicle seat (not FSP) Mode/s clear, no need to read text	CRS illustration in outline vehicle seat (could be front seat) Need to read text	No illustration, text only May be illustrated, but not all modes shown (e.g. tether not shown)	
Shows which harness slots OK to use	Clear illustrations or markings ***No need*** to read text	Markings of top slot ***Need*** to read text	Text only or missing	n/a, all can be used
Air bag warning in written instructions	Separate, highlighted & illustrated	Separate & highlighted	Buried in other text or no warning	
Instructions for routing both lap belt and lap/shoulder belt	Illustrated clearly with CR in vehicle seat and tether in illustration ***No need*** to read text	Illustrated, outlined or no vehicle seat Tether may have own illustration ***Need*** to read text	Not all modes illustrated (e.g. tether not shown) or unclear instructions	
Instructions describe how to prepare lower attachments for use	Visually obvious, able to use with illustrations only	Illustrations plus written instructions provided	Written instructions only provided or nothing	In "A" caterogy one or two words OK for extra clarification

NHTSA Ease of Use Rating Form – 2002

Complete if Convertible FF Mode . Forward Facing Only or Transitional with Harness

Evaluation of Instructions *(Continued)*

	A	B	C	Notes
Instructions show how to use lower attachments	Visually obvious, able to use with illustrations only	Illustrations plus written instructions provided	Written instructions only provided or nothing	In "A" caterogy one or two words OK for extra clarification
Orientation for LATCH tether and lower attachments	Correct orientation of LATCH tether and lower attachments clearly illustrated or text clearly states that it can be used in any orientation	Correct orientation of LATCH tether and lower attachments explained only in text	No information regarding orientation of LATCH tether and lower attachments	n/a if orientation cannot be changed
Information in written instructions and on labels match (size measurements)	Yes		No	

Securing the Child

	A	B	C	Notes
Buckle can be secured in reverse	No, or yes but usual release works with same degree of effort	Yes, but usual release requires more effort	Yes, but can't use release mechanism	
When installed, easy access to harness adjustment for tightening and loosening	Yes		No	
Harness adjustment easy to tighten or loosen when child restraint is installed	One hand to tighten/loosen, or automatically adjusts Max 2 to loosen	Two hands to tighten/loosen, but easy No re-threading	Other	*Do not count one hand to support CRS*
Number of harness slots match (plastic and pad)	Yes		No	
Number of harness slots in shell	At least 3 or 1 adjustable	2	1	
Visibility of harness slots	Clear view of all slots (slots aligned)	Clear view of cloth slots, not aligned with plastic slots	Something in way when sold, e.g. pad, head hugger	
Ease of conversion from rear-facing to forward-facing	One hand to change Easy to access	1-2 hands to change – not easily accessible or binds	Other	n/a, single mode
Ease of conversion from booster to forward-facing	Easy to access Illustrations provided on seat showing change made	Easy to access No illustration provided on seat	Access difficult or need instructions	n/a

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Complete if Convertible FF Mode . Forward Facing Only or Transitional with Harness

Securing the Child *(Continued)*

	A	B	C	Notes
Ease of changing harness slot position	No need to re-thread Possible for one person to do	Possible for one person to do, easy to attach/remove Large slots easy to thread	Other, slot size too small for easy threading Loose mandatory pieces Could misroute, requires multiple threading of harness or could incorrectly resecure	
Ease of re-assembly if pad/cover removed for cleaning or rethreading of harness	No loose parts Easy to attach/remove – clear slots No realignment necessary	No loose parts Slots may be misaligned	Loose parts, need hand tool Slot size too small for easy threading Could misroute through buckle	
Ease of adjusting/removing shield	Clear illustration, simple action, shield marked	Need to read text, simple action, shield not marked	Other tool/s required	n/a, no shield n/a, shield not adjustable

Installing in Vehicle

	A	B	C	Notes
Separation of vehicle belt path from harness	No contact possible		Possible contact including crotch strap	
Can lower LATCH attachments interfere with harness	No		Yes	
Ease of vehicle belt routing (hand clearance)	Male hand can route s/b through including flap in seat, nothing in way	Male hand fit but need to move CRS (no x-tilt), or move padding	Hand does not fit	
Ease of use of any belt positioning feature on CRS including lock-off	One hand to use	Two hands to use	Detachable or multiple steps	n/a, no belt lock feature
Tether easy to tighten (& release)	One hand to tighten/loosen	Two hands but easy	Other	
LATCH tether and lower attachments can be installed in reverse	No, or yes but works in usual way	Yes, but usual release requires more effort	Yes, and can't release	

NHTSA Ease of Use Rating Form – 2002

Complete if Booster or Transitional Mode

Date _____ Evaluated by _____ Seat # (on tag) _____

Manufacturer _____ DOM _____

Make & Model _____ Model # (on CRS) _____

Type: ❑ Booster Only
❑ Combination (harness/booster)
❑ Other, energy absorbing restraint

Style: ❑ No-back with non-removable shield
❑ No-back with removable shield
❑ No-back NO shield
❑ High back with soft back
❑ High back with hard back
❑ No base

Booster recommended for use with: Lap/shoulder ❑ Yes ❑ No ❑ not shown on seat
Lap belt ❑ Yes ❑ No ❑ not shown on seat

If shield booster, recommended shoulder belt position: ❑ front of child ❑ behind child ❑ not shown on seat ❑ n/a

Measurements

Seat height (from seat bight) ❑ n/a (no back-booster)

Size range given in owner's manual: **Date on manual:** _____

	WEIGHT (kg and lb) (Optional for belt-positioning seats)		HEIGHT (cm and inches)	
	Minimum	Maximum	Minimum	Maximum
Booster				

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NHTSA Ease of Use Rating Form – 2002

Complete if Booster or Transitional Mode

Make & Model _____ Seat # (on tag) _____

Assembly *(When first out of box)*

	A	B	C	Notes
All functional parts including seat pad or cover attached and ready to use	Yes*	No, tools not required	No, tools required	*parent may still need to adjust system to fit child n/a if combination seat
Owner's manual easy to find when taken out of box	Attached to child restraint in a clearly visible location	Attached to child restraint but not clearly visible	In box, but not attached	
Storage system for manual	Manual removed and replaced easily		Manual cannot be removed and replaced easily	

Evaluation of Labels

	A	B	C	Notes
Clear indication of child's size range e.g., picture of child in seat weight and height range	Separate clear text with illustrations of child in upper range		Separate clear text Independent paragraph	Belt positioning seat may show height only
Mode of use clearly indicated (i.e. with lap belt or lap/shoulder belt, and if transitional seat, booster v. FF with harness)	CRS illustration in complete vehicle seat (not FSP) Mode/s clear, ***No need*** to read text	CRS illustration in outline vehicle seat (could be front seat) ***Need*** to read text	No illustration, text only May be illustrated, but not all modes shown	
Instructions for routing lap/shoulder belt and lap if applicable	Illustrated clearly with CR in vehicle seat Lap/shoulder belt in illustration ***No need*** to read text	Illustrated, outlined or no vehicle seat ***Need*** to read text	Not all modes illustrated, unclear or incorrect instructions	Whether or not OK for both lap and lap/shoulder seat belt
Visability of seat belt routing (for lap and lap/shoulder belts) when CRS in position in vehicle i.e: Is seat belt routing obvious?	Clear routing illustration or clear contrast belt path marking ***No need*** to read text	Markings or some form of routing illustration ***Need*** to read text	Illustrations do not match CRS or belt direction or hidden by seat cover	
Durability of labels	Sticky label not peeling or other method of technology label not peeling		Sticky label if one or more are already peeling when restraint removed from box	

NHTSA Ease of Use Rating Form – 2002

Complete if Booster or Transitional Mode

Evaluation of Instructions

	A	B	C	Notes
Clear indication of child's size range	Separate clear text with illustrations of child in upper range		Separate clear text Independent paragraph	
Mode of use clearly indicated (i.e. with lap belt or lap/shoulder belt, and if transitional seat, booster v. FF with harness)	CRS illustration in complete vehicle seat (not FSP) Mode/s clear, ***No need*** to read text	CRS illustration in outline vehicle seat (could be front seat) ***Need*** to read text	No illustration, text only May be illustrated, but not all modes shown	
Air bag warning in written instructions	Separate, highlighted & illustrated	Separate & highlighted	Buried in other text or no warning	
Instructions for routing both lap belt and lap/shoulder belt	Illustrated clearly with CR in vehicle seat Lap, lap/shoulder belt in illustration ***No need*** to read text	Illustrated, outlined or no vehicle seat ***Need*** to read text	Not all modes illustrated, unclear or incorrect instructions	Whether or not OK for both lap and lap/shoulder seat belt
Information in written instructions and on labels match (size measurements)	Yes		No	

Securing the Child

	A	B	C	Notes
Ease of conversion forward facing to booster or highback to backless	Easy to access illustrations provided on seat showing mode change	Easy access no illustrations provided on seat	Access difficult or need instructions	n/a

Installing in Vehicle

	A	B	C	Notes
Ease of use of any belt-positioning hardware on CRS	One hand to use	Two hands to use	Detachable or multiple steps	n/a, no belt positioning hardware
Does belt-positioning device allow slack to occur	No		Yes	n/a, no belt positioning hardware

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Booster Seat Scoring Form

CRS #		BOOSTER or TRANSITIONAL MODE		
A=3,B=2,C=1		A = 3, B = 2, C = 1		
Weighting Factor		Feature	0-N/A A (3) B (2) C (1)	
		Assembly	**Score**	**Weighted Score**
A	3	Is seat assembled ready to use		0
B	2	Owner's manual easy to find		0
B	2	Storage system for manual		0
			Total	0
			Weighted Ave	0.00
			Score	C
		Evaluation of Labels		
A	3	Clear indication of child's size range		0
A	3	mode/s of use clearly indicated		0
A	3	Instructions for routing s/b		0
A	3	Visibility of seat belt routing		0
B	2	Durability of labels		0
			Total	0
			Weighted Ave	0.00
			Score	C
		Evaluation of Instructions (manual)		
B	2	Clear indication of child's size range		0
B	2	mode of use clearly indicated		0
B	2	Air bag warning in written instructions		0
B	2	Instructions for routing of s/b		0
B	2	Information in written instructions and labels match		0
			Total	0
			Weighted Ave	0.00
			Score	C
		Securing the Child		
B	2	Ease of conversion from high back to backless		0
		(could be n/a)	Score	C
		Installation in vehicle		
B	2	Ease of use of belt positioning device		0
A	3	Does belt positioning device allow slack		0
		(note could be n/a for both)	Total	0
			Weighted Ave	0.00
			Score	C
			TOTAL	0
			Weighted Ave	0.00
			Overall Score	C

Rear Facing Scoring Form

CRS #		INFANT REAR FACING or CONVERTIBLE RF		
A=3,B=2,C=1		Ratings A = 3, B = 2, C = 1		
Weighted Factor		Feature	0-N/A A (3) B (2) C (1)	
		Ready to use	**Score**	**Weighted Score**
A	3	Assembled ready to use		0
B	2	Owner's manual easy to find		0
B	2	Storage system for manual		0
			Total	0
			Weighted Ave	0.00
			Score	**C**
		Evaluation of Labels		
A	3	Clear indication of child's size		0
A	3	All modes clearly indicated		0
A	3	Instructions for routing s/b		0
A	3	Shows how to prepare attachments		0
A	3	Shows how to use attachments		0
		Visibility of seat belt routing/LATCH		
A	3	without base (latch n/a)		0
A	3	base alone *(infant seat w/base would have 2 scores)*		0
B	2	Durability of labels		0
			Total	0
			Weighted Ave	0.00
			Score	**C**
		Evaluation of Instructions (manual)		
B	2	Clear indication of child's size		0
B	2	Mode/s of use clearly indicated		0
B	2	Air bag warning in written instructions		0
B	2	Instructions for routing belts		0
B	2	Instructions describe how to use attachments		0
B	2	Instructions show how to use attachments		0
B	2	Orientation for LATCH		0
B	2	Information in written instructions and labels match		0
			Total	0
			Weighted Ave	0.00
			Score	**C**
		Securing the child		
A	3	Buckle can be secured in reverse		0
A	3	When installed, easy access to harness adjustment		0
A	3	Harness adjustment easy to tighten and loosen		0
B	2	No. of harness match (pad and shell)		0
A	3	No. harness slots in shell		0
B	2	Visibility of harness slots		0
A	3	Ease of conversion forward-facing to rear-facing		0
B	2	Ease of changing harness slot position		0
A	3	Ease of reassembly		0
B	2	Ease of adjusting/removing shield		0
			Total	0
			Weighted Ave	0.00
			Score	**C**
		Installation in vehicle		
		Separation of vehicle belt path from harness:		
A	3	without base		0
A	3	base alone *(infant seat w/ base would have 2 scores)*		0
		Can lower LATCH attachments interfere with harness		
A	3	seat		0
A	3	base		0
		Ease of vehicle belt routing:		
B	2	without base		0
B	2	base alone *(infant seat w/ base would have 2 scores)*		0
A	3	Ease of attaching/removing from base		0
B	2	Ease of use of any belt positioning feature		0
		Presence of seat back angle:		
A	3	seat		0
A	3	base		0
A	3	Can lower LATCH attachments be installed in reverse		0
			Total	0
			Weighted Ave	0.00
			Score	**C**
			TOTAL	0
			Weighted Ave	0.00
			Overall Score	**C**

Forward Facing Scoring Form

CRS #		CONVERTIBLE FF, FF ONLY or TRANSL w/HARNESS		
ALL CRS				
A=3,B=2,C=1		Ratings A = 3, B = 2, C = 1		
Weighting Factor		Feature	0-N/A A (3) B (2) C (1)	
		Ready to use	**Score**	**Weighted Score**
A	3	Assembled ready to use (n/a if convertible)		0
A	3	Tether attached and ready to use (n/a if single mode)		0
B	2	Owner's manual easy to find		0
B	2	Storage system for manual		0
			Total	0
			Weighted Ave	0.00
			Score	C
		Evaluation of Labels		
A	3	Clear indication of child's size		0
A	3	All modes clearly indicated		0
A	3	Shows harness slots OK to use		0
A	3	Instructions for routing s/b		0
A	3	Shows how to prepare attachments		0
A	3	Shows how to use attachments		0
A	3	Visibility of seat belt routing/LATCH		0
B	2	Durability of labels		0
			Total	0
			Weighted Ave	0.00
			Score	C
		Evaluation of instructions (manual)		
B	2	Clear indication of child's size		0
B	2	Mode/s of use clearly indicated		0
B	2	Shows which harness slots OK to use		0
B	2	Air bag warning in written instructions		0
B	2	Instructions for routing belts		0
B	2	Instructions describe how to prepare attachments		0
B	2	Instructions show how to use attachments		0
B	2	Orientation for LATCH		0
B	2	Information in written instructions and labels match		0
			Total	0
			Weighted Ave	0.00
			Score	C
		Securing the child		
A	3	Buckle can be secured in reverse		0
A	3	When installed, easy access to harness adjustment		0
A	3	Harness adjustment easy to tighten and loosen		0
B	2	No. of harness slots match (shell and pad)		0
A	3	No. of harness slots in shell (max.)		0
B	2	Visibility of harness slots		0
A	3	Ease of conversion rear-facing to forward-facing		0
A	3	Ease of conversion from booster to forward-facing		0
		If single mode no ease of conversion score:		
B	2	Ease of changing harness slot position		0
A	3	Ease of reassembly		0
B	2	Ease of adjusting/removing shield		0
			Total	0
			Weighted Ave	0.00
			Score	C
		Installation in vehicle		
A	3	Separation of vehicle belt path from harness		0
A	3	Can lower LATCH attachments interfere with harness		0
B	2	Ease of vehicle belt routing		0
B	2	Ease of use of any belt positioning feature		0
A	3	Tether easy to tighten and loosen		0
A	3	Can lower LATCH attachments be installed in reverse		0
			Total	0
			Weighted Ave	0.00
			Score	C
			TOTAL	0
			Weighted Ave	0.00
			Overall Score	C

Appendix D

Final Ease of Use Rating Sample

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Final Ease of Use Rating Sample

Evaluation Category Assembly	Feature	Possible Points for Feature	Example Feature Rating	Example Rating: Points for Each Feature	Fixed Weighting Factor	Example Feature Score= Feature Rating x Fixed Weighting Factor	Weighted Avg. = Feature Score/ Sum of (appl.) fixed Weighting Factors	Category Score	Overall Weighted Avg. = Sum of all Feature Scores /Sum of all Fixed Weighting Factors	Overall Rating
	All functional parts including seat pad or cover attached and ready to use; harness in lowest slots, includes tether attached	1, 2, 3/ n/a	B	2	3	6				
	Tether attached and ready to use	1,3 n/a	n/a		3	n/a				
	Owner's manual easy to find when taken out of box	1, 2, 3	A	3	2	6				
	Storage system for manual	1, 3	G	1	2	2				
	Total					14	14/7 = 2.00	B		
Labels										
	Clear indication of child's size range	1, 3	A	3	3	9				
	All modes of use clearly indicated e g , FF = tether (vs. RF) FF = tether (vs. booster); LATCH	1, 2, 3	B	2	3	6				
	Show which harness slots OK to use	1, 2 3 n/a	n/a	n/a	3	n/a				
	Instructions for routing both lap and lap/shoulder belt	1, 2, 3	C	1	3	3				
	Shows how to prepare lower attachments for use	1, 2, 3	B	2	3	6				
	Shows how to use lower attachments	1, 2, 3	B	2	3	6				
	Show which harness slots OK to use									
	Visibility of seat belt routing for lap belt and lap/shoulder, LATCH when crs in vehicle position	1, 2, 3	C	1	3	3				
	Durability of labels	1, 3	A	3	2	6				
	Total					39	39/20 = 1.95	B		
Instructions										
	Clear indication of child's size range	1, 3	A	3	2	6				
	All modes of use clearly indicated e g , FF = tether (vs. RF) FF = tether (vs. booster); LATCH	1, 2, 3	A	3	2	6				
	Show which harness slots OK to use	1, 2 3, n/a	n/a	n/a	2	n/a				
	Air bag warning in written instructions	1, 2, 3	C	1	2	2				
	Instructions for routing both lap and lap/shoulder belt	1, 2 3	B	2	2	4				
	Instructions describe how to prepare lower attachments for use	1, 2, 3	B	2	2	4				
	Instructions show how to use lower attachments	1, 2, 3	B	2	2	4				
	Orientation for LATCH tether and lower attachments	1, 2, 3	B	2	2	4				
	Information in written instructions and on labels match	1, 3	A	3	2	6				
	Total					36	36/16 = 2.25	B		
Securing the Child										
	Buckle can't be secured in reverse	1, 2, 3	A	3	3	9				
	When installed, easy access to harness adjustment for tightening and loosening	1,3	A	3	3	9				
	Harness adjustment easy to tighten or loosen when child restraint installed	1, 2, 3	B	2	3	6				
	Number of harness slots match	1, 3	A	3	2	6				
	Number of harness slots in shell	1 2 3	B	2	3	6				
	Visibility of harness slots	1 2 3	B	2	2	4				
	Ease of conversion rear-facing to forward-facing	1, 2, 3, n/a	n/a	n/a	3	n/a				
	Ease of conversion from booster to forward-facing	1, 2, 3 n/a	A	3	3	9				
	Ease of changing harness slot position	1 2, 3	B	2	2	4				
	Ease of reassembly if pad/cover removed for cleaning or rethreading	1, 2, 3	C	1	3	3				
	Total					56	56/24 = 2.33	B		
Installing in Vehicle										
	Separation of vehicle belt path from harness	1, 3	A		3	9				
	Can lower LATCH attachments interfere with harness	1, 3	A		3					
	Ease of vehicle belt routing	1, 2, 3	A		3	6				
	Ease of use of any belt-positioning hardware on CRS, including lock-off	1, 2, 3,n/a	n/a	n/a	2	n/a				
	Tether easy to tighten (& release)	1, 2, 3	A		3	9				
	LATCH tether and lower attachments can be installed in reverse	1, 2, 3	A		2	6				
	Total					36	36/10 = 3.6	A		
	Overall Rating								175/77= 2.27	B
	Weighted Averages: A = from 2.40 to 3.00 B = from 1.70 to less then 2.40 C = less then 1.70									

[FR Doc. 02–27997 Filed 10–31–02; 2:00 pm]

BILLING CODE 4910–59–C

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 575

[Docket No. NHTSA–02–10053]

RIN 2127–AI65

Consumer Information; Safety Rating Program for Child Restraint Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: Section 14(g) of the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act requires that, by November 1, 2002, a final rule be issued to establish a child restraint safety rating consumer information program to provide practicable, readily understandable, and timely information to consumers for use in making informed decisions in the purchase of child restraint systems (CRS). In response to this mandate, NHTSA is establishing such a program. The program will not impose any binding legal obligations on any child restraint manufacturer regarding the generation or distribution of information.

The details of the new program are set forth in a companion document being published today in the **Federal Register**. The agency is establishing an ease of use rating program at this time. This rating program will enhance the safety of children by informing consumers about the features of child restraints that make child restraints easier to use, and evaluating each child restraint on those features. The agency anticipates that the program will result in more child restraints being used correctly. NHTSA is also evaluating whether to establish two complementary consumer information programs. The first would be based on child restraint dynamic performance. The second would involve expanding the agency's New Car Assessment Program to include consumer information on how vehicles do in protecting child occupants. The agency will be conducting two pilot programs in these areas to assess how to proceed in these programs.

DATES: The amendments made in this rule are effective January 6, 2003. If you wish to petition for reconsideration of this rule, your petition must be received by December 20, 2002.

ADDRESSES: If you wish to petition for reconsideration of this rule, you should refer in your petition to the docket number of this document and submit your petition to: Administrator, Room 5220, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC, 20590.

FOR FURTHER INFORMATION CONTACT: For issues related to the ease of use rating program, you may call Lori Miller of the Office of Planning and Consumer Standards, at (202) 366–2191. For issues related to the pilot programs for the dynamic performance of child restraints or for the New Car Assessment Program, call Nathaniel Beuse or Brian Park, respectively, of the Office of Crashworthiness Standards, at (202) 366–1740. For legal issues, call Deirdre Fujita of the Office of Chief Counsel, at (202) 366–2992. You may send mail to these officials at the National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: Congress has directed the National Highway Traffic Safety Administration (NHTSA) to establish a child restraint safety rating system that is practicable and understandable (Section 14 (g) of the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act, November 1, 2000, Pub. L. 106–414, 114 Stat. 1800) and that will help consumers to make informed decisions when purchasing child restraints. Section 14(g) reads as follows:

> (g) Child restraint safety rating program. No later than 12 months after the date of the enactment of this Act, the Secretary of Transportation shall issue a notice of proposed rulemaking to establish a child restraint safety rating consumer information program to provide practicable, readily understandable, and timely information to consumers for use in making informed decisions in the purchase of child restraints. No later than 24 months after the date of the enactment of this Act the Secretary shall issue a final rule establishing a child restraint safety rating program and providing other consumer information which the Secretary determines would be useful [to] consumers who purchase child restraint systems.

NHTSA issued an NPRM (66 FR 56048; November 6, 2001) and a companion request for comments on the details of the new program (66 FR 56146; November 6, 2001). Nineteen comments were submitted in response.

Pursuant to the TREAD Act, the agency is issuing this final rule. In this final rule, the agency establishes a program for rating the ease-of-use of child restraints. This final rule accompanies the agency's Response to Comments, Notice of Final Decision published elsewhere in today's **Federal Register**. That document addresses the comments we received on the ratings program, and sets forth the complete details of the program established today.

The program furthers the agency's efforts to harmonize its regulations internationally where possible. The program is modeled after the Insurance Corporation of British Columbia's (ICBC's) ease of use program, which evaluates all child restraints sold in Canada. NHTSA's program uses similar ratings categories as those of the ICBC, and the features that are rated and the criteria for rating the restraints are based on ICBC's features and criteria.

The ratings program established today is just a first step towards providing consumers more information about child occupant protection for use in making informed purchasing decisions. NHTSA believes that the most effective consumer information system would be one that gives the consumer a combination of information about child restraints' ease of use and dynamic performance, and vehicle performance in crash tests. The ease of use program is sufficiently developed at this time to proceed, whereas programs evaluating the dynamic performance of child restraints and vehicles are not ready for implementation at this time.

The Notice of Final Decision explains that NHTSA will conduct a pilot test program of child restraints using new test devices and procedures incorporated into the Federal motor vehicle safety standard for child restraint systems. We will also conduct a pilot test program involving the placement of child restraints in vehicles tested in the agency's New Car Assessment Program in MY 2003 and 2004. The pilot programs will evaluate the performance of child restraints and the ability of vehicles to provide child occupant protection. The agency will evaluate the results of the two pilot programs to decide how the ratings programs on the dynamic performance of child restraints and vehicles should proceed.

In comments to the Request for Comments, the Juvenile Products Manufacturers Association (JPMA) suggested that Congress wanted NHTSA to establish the ratings program "by rulemaking in order to ensure that public notice and an opportunity to comment would be provided not only for the initial establishment of the program, but also when subsequent changes to the program are contemplated." JPMA also stated that, to fulfill the mandate of section 14(g) of the TREAD Act, NHTSA must assure the public that it will not make changes to the ratings program without providing the public an opportunity to comment

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and providing the industry time to change their products.

It is our current policy, and one generally followed in the past, to seek public input when establishing new consumer information ratings programs. Public comment on the performance criteria and test protocols to be used in the programs assists the agency in developing consumer information programs that are readily understandable to consumers and helpful to their purchasing decisions. Generally, the agency has sought comment through issuing a Request for Comments or by holding public meetings on possible consumer information programs under consideration, rather than issuing a Notice of Proposed Rulemaking (NPRM). The agency has not deemed it necessary formally to propose particular performance criteria and procedures through an NPRM because the purpose of the consumer information programs is to rate products. There is no minimum level of performance specified as in the FMVSS, and the performance criteria and test protocols impose no legally binding obligations on manufacturers and are not published in the Code of Federal Regulations. However, the Request for Comments we have issued and the meetings we have held have included descriptions of the performance criteria and test protocols under consideration. In our view, there is no substantive difference between providing for that notice and comment through these procedures or through a Notice of Proposed Rulemaking.

The TREAD Act requires that we initially establish this consumer information program through a Notice of Proposed Rulemaking and a Final Rule. It is silent as to the process contemplated for any substantive changes to the program in the future. Although the agency often seeks public comment on significant substantive changes in consumer information programs, the agency does not believe a formal process is required. The agency may determine, based on experience or testing, that changes in the program are necessary to provide more descriptive or more accurate information to the public. The agency is concerned that a prolonged comment period during the course of a program could unduly delay the public's access to the best information available with which to make purchase decisions. While Congress acted to ensure that this consumer information program was developed with public comment, we do not believe that Congress intended for there to be delays in providing "timely information" by requiring a full rulemaking process when experience has shown that the quality of the information available could be markedly enhanced.

Nor do we agree that the TREAD Act provision mandates that we provide leadtime for the industry to change their products in order to enhance performance in our consumer information program. Unlike the issuance or amending of a Federal motor vehicle safety standard, our consumer information programs impose no binding legal obligations on child restraint or vehicle manufacturers, and are therefore not constrained by the practicability concerns addressed through the statutory mandates applicable to the FMVSSs. Manufacturers may sell motor vehicles or motor vehicle equipment regardless of how well or poorly the product performs in our consumer information program, as long as it meets the requirements of any applicable FMVSS.

This issue illustrates the difference between making changes to our consumer information programs and making changes to the Federal motor vehicle safety standards. The consumer information programs are intended to identify distinctions between products and provide the public with useful and timely information about products currently available to them to assist their purchase decisions. The programs don't require product manufacturers to make any changes to their products. If the manufacturers decide nevertheless to make changes, they can make their own decisions about the timing, nature and extent of any changes. Delaying the implementation of new procedures and the dissemination of timely and useful information about currently available products would undermine, rather than further, the intent of the consumer information programs. The FMVSSs, on the other hand, are intended to ensure that all products subject to them meet minimum performance criteria in accordance with a uniform schedule set by the agency. Accordingly, sufficient leadtime is necessary to allow manufacturers to change their products in response to the new FMVSS requirements.

Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), provides for making determinations whether a regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and to the requirements of the Executive Order. The Order defines a "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $ 100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal Governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

This document was not reviewed under Executive Order 12866. Since this final rule will not establish a rule imposing binding legal obligations on any party, it does not involve a significant rule within the meaning of that Executive Order or the Department of Transportation's Regulatory Policies and Procedures. Further, preparation of a full regulatory evaluation is not required under these circumstances. NHTSA is issuing this final rule and a companion response to comments, instead of a response to comments alone, because section 14(g) of the TREAD Act expressly requires the issuance of a final rule.

B. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). The Small Business Administration's regulations at 13 CFR part 121 define a small business, in part, as a business entity "which operates primarily within the United States." (13 CFR 121.105(a)). No regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

NHTSA has considered the effects of this final rule under the Regulatory Flexibility Act. For the reasons noted above in the section on Executive Order 12866 and DOT Regulatory Policies and Procedures, I certify that this final rule will not have a significant economic impact on a substantial number of small entities.

C. National Environmental Policy Act

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this final rule does not involve a rule that will have any significant impact on the quality of the human environment.

D. Executive Order 13132 (Federalism)

Executive Order 13132 requires NHTSA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, the agency may not issue a regulation with federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, the agency consults with State and local governments, or the agency consults with State and local officials early in the process of developing the regulation. NHTSA also may not issue a regulation with federalism implications and that preempts State law unless the agency consults with State and local officials early in the process of developing the regulation.

The agency has analyzed this final rule in accordance with the principles and criteria set forth in Executive Order 13132 and has determined that it does not involve a rule that would have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. The final rule will not have any substantial effects on the States, or on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various local officials.

E. Civil Justice Reform

This final rule does not involve a rule that would have any retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending, or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

F. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA), a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. This final rule does not require any collection of information.

G. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272), directs NHTSA to use voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies, such as the International Organization for Standardization (ISO), a worldwide voluntary federation of ISO member bodies. The NTTAA directs NHTSA to provide Congress, through OMB, explanations when the agency decides not to use available and applicable voluntary consensus standards.

The NTTAA does not apply to this final rule since it does not involve regulatory activities. The final rule will not impose binding legal obligations on any party. Nonetheless, NHTSA looked for but did not find voluntary consensus standards for an ease of use ratings program developed or adopted by voluntary consensus standards bodies. We did find and consider work being done by the ISO Usability Task Force on the ease of use of child restraints using ISOFIX systems. (ISOFIX refers to a child restraint anchorage system consisting of two lower anchor bars at the intersection of a vehicle seat cushion and vehicle seat back. A related anchorage system is what is commonly referred to as the LATCH system in the U.S.[1]) The ISO task force is in the early stages of exploring a possible ISOFIX ease of use ratings program.

H. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires Federal agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than $ 100 million in any one year (adjusted for inflation with base year of 1995). Before promulgating a rule for which a written statement is needed, section 205 of the UMRA generally requires NHTSA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows NHTSA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the agency publishes with the final rule an explanation why that alternative was not adopted.

This final rule will not require any expenditures by State, local, or tribal governments, or by private parties.

List of Subjects in 49 CFR Part 575

Consumer information, Labeling, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, 49 CFR part 575 is amended as follows:

[1] "LATCH" stands for "Lower Anchors and Tethers for Children," a term that was developed by child restraint manufacturers and retailers to refer to the standardized child restraint anchorage system required by Federal Motor Vehicle Safety Standard No. 225, *Child Restraint Anchorage Systems* (49 CFR § 571.225). This system has two lower anchorages and one tether anchorage. Each lower anchorage includes a rigid round rod or bar onto which the connector of a child restraint system can be snapped. The bars will be located at the intersection of the vehicle seat cushion and seat back. The upper anchorage is a fixture to which the tether of a child restraint system can be hooked. The draft ISOFIX system would not include the upper tether anchorage.

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PART 575—CONSUMER INFORMATION

1. The heading for part 575 is revised to read as set forth above.

2. The authority citation for part 575 is revised to read as follows:

Authority: 49 U.S.C. 32302, 30111, 30115, 30117, 30166, and 30168, and Pub.L. 106–414, 114 Stat. 1800; delegation of authority at 49 CFR 1.50.

3. The heading for subpart A is revised to read as follows:

Subpart A—Regulations; General

4. The heading for subpart B is revised to read as follows:

Subpart B—Regulations; Consumer Information Items

5. Subpart C is added to read as follows:

Subpart C—Transportation Recall Enhancement, Accountability, and Documentation Act; Consumer Information

§ 575.201 Child restraint performance.

The National Highway Traffic Safety Administration has established a program for rating the performance of child restraints. The agency makes the information developed under this rating program available through a variety of means, including postings on its Web site, *http://www.nhtsa.dot.gov.*

Issued on October 29, 2002.

Jeffrey W. Runge,

Administrator.

[FR Doc. 02–27998 Filed 10–31–02; 2:00 pm]

BILLING CODE 4910–59–P

Federal Register

Tuesday,
November 5, 2002

Part III

Securities and Exchange Commission

17 CFR Part 240

Definition of Terms in and Specific Exemptions for Banks, Savings Associations, and Savings Banks Under Sections 3(a)(4) and 3(a)(5) of the Securities Exchange Act of 1934; Proposed Rule

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–46745; File No. S7–41–02]

RIN 3235–AI19

Definition of Terms in and Specific Exemptions for Banks, Savings Associations, and Savings Banks Under Sections 3(a)(4) and 3(a)(5) of the Securities Exchange Act of 1934

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission is proposing to amend its rule granting an exemption to banks from dealer registration for certain de minimis riskless principal transactions, to amend certain of its rules that define terms used in the bank exceptions to dealer registration, and to grant a new exemption to banks from broker and dealer registration for certain securities lending under the Securities Exchange Act of 1934. These rules address certain of the exceptions for banks from the definitions of "broker" and "dealer" that were added to the Securities Exchange Act of 1934 by the Gramm-Leach-Bliley Act.

DATES: Comments should be submitted on or before December 5, 2002.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549–0609. Comments also may be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. S7–41–02; this file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, comments should be submitted by one method only. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 5th Street, NW., Washington, DC 20549–0102. Electronically submitted comment letters will be posted on the Commission's Internet site (*http://www.sec.gov*). Personal identifying information, such as names or e-mail addresses will not be edited from electronic submissions. Submit only information you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Catherine McGuire, Chief Counsel; Lourdes Gonzalez, Assistant Chief Counsel; or Linda Stamp Sundberg, Attorney Fellow; (202) 942–0073, Office of the Chief Counsel, Division of Market Regulation, Securities and Exchange Commission, 450 5th Street., NW, Washington, DC 20549–1001.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission ("Commission") is requesting public comment on the proposed amendments to Rules 3a5–1 [17 CFR 240.3a5–1] and 3b–18 (17 CFR 240.3b–18) under the Securities Exchange Act of 1934 ("Exchange Act"). The Commission also is requesting public comment on the proposed exemption from the definitions of "broker" and "dealer" for banks engaging in securities lending transactions pursuant to new Exchange Act Rule 15a–11 (17 CFR 240.15a–11).

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I. Introduction

A. Statutory Background—The Gramm-Leach-Bliley Act

On November 12, 1999, the President signed the Gramm-Leach-Bliley Act ("GLBA") into law.[1] The GLBA changed federal statutes governing the scope of permissible activities and the supervision of banks, bank holding companies, and their affiliates. The GLBA lowered barriers between the banking and securities industries erected by the Banking Act of 1933 (popularly known as the "Glass-Steagall Act")[2] and between the banking and the insurance industries erected by the 1982 amendments to the Bank Holding Company Act of 1956 (the "Bank Holding Company Act").[3]

When first enacted in 1934, the Exchange Act completely exempted banks from the regulatory scheme provided for brokers and dealers. Over the past 60 years, however, evolution of the financial markets driven by competition and technology eroded the separation that previously existed between banks, insurance companies, and securities firms. Regulators responded to these changes with interpretations that increasingly sought to accommodate these market changes.[4] In recent years, the Board of Governors of the Federal Reserve System ("Federal Reserve"), the Office of the Comptroller of the Currency ("OCC"), and the Federal Deposit Insurance Corporation ("FDIC") have permitted banks and bank holding companies to engage in retail and institutional securities brokerage and private placement activities.

The Commission supported modernizing the legal framework governing financial services consistent with a system of functional regulation to ensure that investors purchasing securities through banks received the same protections as when they purchased securities from registered broker-dealers.[5] The GLBA codified this

[1] Pub. L. No. 106–102, 113 Stat. 1338 (1999).

[2] Pub. L. No. 73–66, ch. 89, 48 Stat. 162 (1933) (as codified in various sections of 12 U.S.C.).

[3] The Garn-St. Germain Depository Institutions Act of 1982, Pub. L. No. 97–320, 96 Stat. 1469 (1982) (as codified in various sections of 12 U.S.C.), amending section 4(c)(8) of the Bank Holding Company Act, 12 U.S.C. 1841–1850 (1994).

[4] *See* Mayer, Martin, "Banking's Future Lies in its Past," *The New York Times*, Sec. 4, page 9, August 25, 2002.

[5] *See, e.g.*, letter from Arthur Levitt, Chairman, U.S. Securities and Exchange Commission, to Senator Phil Gramm, Chairman, Committee on Banking, Housing and Urban Affairs, U.S. Senate (Oct. 14, 1999) (stating that "the Securities and Exchange Commission has long supported financial modernization legislation that provides the protections of the securities laws to all investors."). [6] H.R. Rep. No. 106–74, pt. 3, at 113 (1999). [7] *Id.* at 113–14. [8] *See Board of Governors of Federal Reserve System* v. *Investment Co. Institute*, 450 U.S. 46, 61, 101 S. Ct. 973, 984, 67 L. Ed. 2d 36 (1981); 75 Cong. Rec. 9913–9914 (1932) (remarks of Sen. Bulkley). [9] *See* U.S. General Accounting Office, Report to Congressional Requesters: *Bank Mutual Sales Practices and Regulatory Issues* GAO/GGD–95–210, at p. 52 (Sept. 1995); U.S. General Accounting Office, Report to Congressional Requesters: *Banks' Securities Activities—Oversight Differs Depending on Activity and Regulator*, GAO/GGD–95–214, at p. 25 (Sept. 1995). [10] Exchange Act Sections 3(a)(4) and 3(a)(5) [15 U.S.C. 78c(a)(4) and 78c(a)(5)]. [11] Before the GLBA, Exchange Act Section 3(a)(4) defined the term "broker" as "any person engaged in the business of effecting transactions in securities for the account of others, but does not include a bank." Before the GLBA, Exchange Act Section 3(a)(5) defined the term "dealer" as "any person engaged in the business of buying and selling securities for his own account, through a broker or otherwise, but does not include a bank * * *." [12] Exchange Act Section 3(a)(6) [15 U.S.C. 78c(a)(6)] defines the term "bank" as:

(A) a banking institution organized under the laws of the United States, (B) a member bank of the Federal Reserve System, (C) any other banking institution, whether incorporated or not, doing business under the laws of any State or of the United States, a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to national banks under the authority of the Comptroller of the Currency * * * and which is supervised and examined by State or Federal authority having supervision over banks, and which is not operated for the purpose of evading the provisions of this title, and (D) a receiver, conservator, or other liquidating agent of any institution or firm included in clauses (A), (B), or (C) of this paragraph.

[13] Exchange Act Section 15(a) [15 U.S.C. 78o(a)] generally provides that:

[i]t shall be unlawful for any broker or dealer which is either a person other than a natural person or a natural person not associated with a broker or dealer which is a person other than a natural person (other than such a broker or dealer whose business is exclusively intrastate and who does not make use of any facility of a national securities exchange) to make use of the mails or any means or instrumentality of interstate commerce to effect any transactions in, or to induce or attempt to induce the purchase or sale of, any security (other than an exempted security or commercial paper, bankers' acceptances, or commercial bills) unless such broker or dealer is registered in accordance with [the provisions] of this section.

[14] Definition of Terms in and Specific Exemptions for Banks, Savings Associations, and Savings Banks Under Sections 3(a)(4) and 3(a)(5) of the Securities Exchange Act of 1934, Release No. 34–44291, 66 FR 27760 (May 18, 2001).

[15] 17 CFR 240.15a–7.

concept of functional regulation—that is, regulation of the same functions, or activities, by the same expert regulator, regardless of the type of entity engaging in those activities. Congress believed that, given the expansion of the activities and affiliations in the financial marketplace, functional regulation was important in building a coherent financial regulatory scheme.[6]

Accordingly, Title II of the GLBA amended the federal securities laws to provide for functional regulation of securities activities by eliminating the complete exception for banks from the definitions of "broker" and "dealer." As the legislative history noted, prior to the passage of the GLBA, the exception for banks from broker-dealer registration created a competitive disparity by permitting banks to engage in securities activities without being subject to the same regulatory requirements as broker-dealers. Indeed, Congress specifically expressed concern that the complete exception had permitted banks to engage in securities activities without being subject to the provisions of the federal securities laws that were designed to protect investors.[7]

The federal securities laws provide a comprehensive and coordinated system of regulation of securities activities under the oversight of a single regulator. The primary purpose of the federal securities laws is the protection of investors. The securities laws are also aimed at ensuring the maintenance of fair and orderly markets as well as fair competition among all participants in the securities markets. In contrast, the primary purpose of the federal banking laws is to protect the solvency of banks.[8] Bank securities activities have historically taken place outside of the coordinated system of securities regulation that is designed to protect investors. This led to regulatory disparities that, in part, fostered the GLBA.[9]

The GLBA is the product of many years of Congressional deliberation. It reflects a careful balance between providing investors with the same protections wherever they purchase securities, while not unnecessarily disturbing certain bank securities activities.

In particular, Sections 201 and 202 of the GLBA substantially amended the Exchange Act's definitions of "broker" and "dealer," respectively.[10] Before amendment, Sections 3(a)(4) and 3(a)(5) of the Exchange Act provided that the terms "broker" and "dealer" did not include a "bank."[11] Accordingly, banks[12] that engaged in securities activities were excepted from the requirement to register as broker-dealers under the Exchange Act.[13] The amended definitions narrowed this general exception for banks by specifying particular functional exceptions from broker-dealer registration for certain bank securities activities.

The amended definitions create eleven "broker" and four "dealer" exceptions for banks. The GLBA provided that these amended definitions had a delayed effective date of May 12, 2001. To accommodate the industry's compliance concerns, the Commission delayed the effective dates as more fully set forth below.

B. Regulatory and Procedural Background—the Interim Final Rules, Public Comment, and the Temporary Exemptions

Because the exceptions from the definition of "dealer" are exceptions to the Exchange Act, the Commission is statutorily charged with interpreting these exceptions. In response to interpretive questions as well as industry-specific concerns, the Commission adopted interim final rules ("the Rules") on May 11, 2001.[14] The Rules were designed to provide guidance by defining certain key terms used in the new statutory exceptions. The Rules also provided additional exemptions from the definition of broker for banks that were engaged in certain types of securities activities. Although the Rules were adopted as interim final rules, the Commission specifically solicited public comment on them. Moreover, in order to give banks time to comply, the Rules included a temporary exemption that effectively extended the general exception from broker-dealer registration until October 1, 2001.[15]

The Commission received over 200 letters commenting on the Rules. The vast majority of these letters came from banks or persons representing banks and the banking industry. Of those letters, 33 described concerns about the process of adopting the Rules, with most of those expressing concern about the lack of a comment period before adoption. Of those 33 letters, thirteen were from trade

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groups,[16] thirteen were from banks,[17] two were from eight Congressmen,[18] two were from mutual fund companies,[19] one was from a Senator,[20] one was from a law firm,[21] and one was from three Federal banking agencies.[22]

Commenters offered various reasons for their concern about adopting the Rules before considering public comment. Some of the Congressmen expressed concern that this process may have caused confusion and created a dilemma for banks. The banking agencies stated that there would be significant practical operational implications of potential approaches to implementing the statutory exceptions and they specifically urged that resolution of those issues could be greatly aided by an open process of public comment on a proposal. One trade group questioned whether the Commission had satisfied section 553 of the Administrative Procedure Act by publishing the Rules without prior notice and comment.[23]

Separate from the issue of public comment, the banking agencies, as well as some trade groups and individual banks, stated that the immediate effective date, coupled with exemptions that function only to suspend temporarily the Rules' effectiveness, placed banks in an untenable position. The banking agencies strongly urged the Commission to extend the effective date of these GLBA provisions (until after considering public comment and adopting final rules) and to provide banks with at least a one-year transition period after the revised rules become final.

In response to concerns that banks needed more time, and in recognition of the likelihood that the Rules would be amended in light of the continuing dialogue between the Commission and industry participants, we extended the effective date of the Rules on July 18, 2001.[24] At the same time, we extended the temporary exemption from the definitions of "broker" and "dealer" provided in Exchange Act Rule 15a–7. On May 8, 2002, we further extended the temporary exemption from the definition of "dealer" to November 12, 2002.[25] By separate order issued in conjunction with this release, we are further extending that temporary exemption to February 10, 2003.

II. Dealer Activities and the Dealer/Trader Distinction

Exchange Act section 3(a)(5) defines a "dealer" generally as a person that is "engaged in the business of buying and selling securities" for its own account through a broker or otherwise, but excepts persons, whether bank or non-bank, who do not buy or sell securities "as part of a regular business."[26] Undertaking the analysis of whether a bank's securities activities come within the definition of dealer under the federal securities laws is something that banks did not have to consider before the passage of the GLBA. Banks, however, can take advantage of several additional exceptions or exemptions from the "dealer" definition, as discussed below. If a bank's securities-related activities fall under the general definition of "dealer," the bank must register as a broker-dealer unless that bank can meet the terms of an exception or exemption from the dealer definition.

The question of whether a bank acts as a "dealer" that must register with the Commission therefore turns upon a two-stage analysis. The first stage focuses on two factual questions: (1) Whether the bank is "buying and selling securities" for its own account; and (2) whether the bank is "engaged in the business" of that activity "as part of a regular business." A bank would not be a dealer unless both of those factual tests are met. The second stage of the analysis focuses on whether the bank can take advantage of bank-specific exceptions or exemptions from the definition of dealer. If all of the bank's securities activities fall within one or more of those bank-specific exceptions or exemptions, the bank does not have to register as a broker-dealer.

As a result, a bank has flexibility in the way that it analyzes whether its securities activities would require it to register with the Commission as a dealer. A bank may opt first to consider whether its proprietary securities purchases and sales cause it to be "engaged in the business" of buying and selling securities for its own account "as part of a regular business." If the bank meets that part of the test, the bank then would have to consider whether those securities activities fall within one of the bank-specific exceptions or exemptions from the dealer definition in Exchange Act section 3(a)(5). Alternatively, a bank may simply analyze whether its proprietary securities purchases and sales fall within an exception or exemption from section 3(a)(5). If all of the bank's securities activities fall within one or more exception or exemption from the dealer definition, then the bank could avoid having to determine separately whether it satisfies the "engaged in the business" component of the definition.

As exemplified by the discussion of riskless principal transactions below, the question of whether a bank acts as a dealer under the securities laws is entirely separate from the question of whether it acts as a dealer under the banking laws, and it is possible for a bank to be a "dealer" under the securities laws but not under the banking laws. Banks therefore should look to the securities laws and the Commission's rules and interpretations in conducting the analysis under the Exchange Act. A bank also should continue to determine whether any proposed securities activity is permitted under banking law, and should consult its appropriate Federal banking agency to assist it in that analysis.

In addition, the bank-specific exceptions and exemptions from the definition of "dealer" for specific products or transactions are independent of the question of whether a person would satisfy the general definition of "dealer" in the first instance.[27]

A. Buying and Selling Securities for Own Account

The phrase "buying and selling securities for such person's own account" means purchasing or selling securities as principal, which includes so-called "riskless principal" transactions. Under the securities laws, "riskless principal" transactions are dealer activity.[28] Entities that engage in these transactions as a matter of course would be involved in the business of buying and selling securities for their own accounts, even if the risk associated with the transactions is minimal or non-existent.[29] Although the OCC and the Federal Reserve interpret "riskless" principal activity as equivalent to agency activity under the banking laws,[30] "riskless" principal activity requires registration under the securities laws unless an exception or exemption applies.

B. "Engaged in the Business" Test

As noted above, a person that is buying securities for its own account may still not be a "dealer" because it is not "engaged in the business" of buying and selling securities for its own account as part of a regular business. This exclusion is often referred to as the dealer/trader distinction. A "trader" does not have to register as a broker-dealer.

As developed over the years, the dealer/trader distinction recognizes that dealers normally have a regular clientele, hold themselves out as buying or selling securities at a regular place of business, have a regular turnover of business (or participate in the distribution of new issues), and generally transact a substantial portion of their business with investors (or, in the case of dealers who are market makers, principally trade with other professionals).[31] In contrast, traders have a less regular volume, do not handle others' money or securities, do not make a market, and do not furnish dealer-type services such as rendering investment advice, extending or arranging for credit, or lending securities.[32]

A person generally may satisfy the definition, and therefore, be acting as a dealer in the securities markets by conducting various activities: (1) Underwriting; (2) acting as a market maker or specialist on an organized exchange or trading system; (3) acting as a *de facto* market maker whereby market professionals or the public look to the firm for liquidity; or (4) buying and selling directly to securities customers together with conducting any of an assortment of professional market activities such as providing investment advice, extending credit and lending securities in connection with transactions in securities, and carrying a securities account. These principles demonstrate that the analysis of whether a person meets the definition of a dealer depends upon all of the relevant facts and circumstances.

A person must evaluate the totality of its securities activities to determine if those activities may constitute engaging in dealer activities for which there is no exception or exemption from the dealer registration requirements. By analogy when analyzing whether a security exists, some courts have used an analysis that turns on the "economic realities" underlying a transaction and not the name appended to the transaction.[33]

The GLBA bank "dealer" exceptions are outlined briefly below.[34]

- *Investment transactions:* permits banks to buy and sell securities for investment purposes for the bank and for its customers' trustee and fiduciary accounts.
- *Permissible securities transactions:* permits banks to buy and sell exempted securities, certain Canadian government obligations, and Brady bonds.
- *Identified banking products:* permits banks to buy and sell certain "identified banking products," as defined in Section 206 of the GLBA.
- *Asset-backed transactions:* permits banks through a grantor trust or other separate entity to issue and sell to qualified investors certain asset-backed securities representing obligations predominantly originated by a bank, an affiliate of the bank other than a broker-dealer, or a syndicate in which the bank is a member for some types of products.

With respect to the "dealer" exceptions, the Rules defined terms found in the asset-backed transactions exception and provided an exemption for a de minimis number of riskless principal transactions.

In general, the bank dealer exceptions apply to specified products and contain

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[16] *See* letter dated June 4, 2001 from James D. McLaughlin, Director, Regulatory and Trust Affairs, American Bankers Association and Beth L. Climo, Executive Director, ABA Securities Association; letter dated July 17, 2001 from Edward L. Yingling, Deputy Executive Vice President and Executive Director, American Bankers Association, and Beth L. Climo, Executive Director, ABA Securities Association; letter dated July 17, 2001 from John Duncan, American Bar Association Banking Law Committee of the Business Law Section; letter dated July 16, 2001 from Roger D. Wiegley, Chair, Committee on Banking Law, The Association of The Bar of the City of New York; letter dated July 17, 2001 from Charlotte M. Bahin, Director of Regulatory Affairs, Senior Regulatory Counsel, America's Community Bankers; letter dated July 17, 2001 from Robert M. Kurucza, General Counsel, Bank Securities Association ("the BSA letter"); letter dated July 17, 2001 from Neil Milner, President and CEO, the Conference of State Bank Supervisors; letter dated July 17, 2001 from Gerald M. Noonan, President, the Connecticut Bankers Association; letter dated July 17, 2001 from Richard M. Whiting, Executive Director, Financial Services Roundtable; letter dated July 17, 2001 from Robert I. Gulledge, Chairman, Independent Community Bankers of America ("the ICBA letter"); letter dated July 17, 2001 from Lawrence R. Uhlick, Executive Director and General Counsel, Institute of International Bankers; letter dated August 1, 2001 from Jeffrey P. Neubert, President and Chief Executive Officer, New York Clearing House ("the NYCH letter"); and letter dated July 17, 2001 from A. Michelle Roberts, Executive Director, The Trust Financial Services Division of the Texas Bankers Association.

[17] *See* letter dated July 16, 2001 from Alan R. Leach, President, BancorpSouth Investment Services, Inc.; letter dated July 16, 2001 from John M. Kramer, Deputy General Counsel, Bank One Corporation; letter dated September 10, 2001 from David P. Johnson, Investment Advisor, Bank Midwest; letter dated September 4, 2001 from Warren R. Jamieson, Chairman, Bonham State Bank; letter dated July 17, 2001 from Jeffrey S. Missman, Vice President, Director—Regulatory Compliance, Commerce Bancshares, Inc.; letter dated July 10, 2001 from William Nappi, CTCP, Trust Compliance Officer, FirstMerit Corp., N.A.; letter dated July 16, 2001 from William C. Mutterperl, Executive Vice President, General Counsel and Secretary, FleetBoston Financial Corporation; letter dated July 17, 2001 from Maureen W. Sullivan, Associate General Counsel, Manufacturers and Traders Trust Company; letter dated July 16, 2001 from David A. Daberko, Chairman and Chief Executive Officer, National City Corporation; letter dated July 17, 2001 from James S. Keller, Chief Regulatory Counsel, PNC Financial Services Group (PNC); letter dated July 17, 2001 from Norimichi Kanari, President and CEO, Union Bank of California; letter dated July 16, 2001 from W. David Hemingway, Chief Financial Officer Zions Bancorporation; and letter dated July 16, 2001 from A. Scott Anderson, President and Chief Executive Officer, Zions Bank Capital Markets, Zions First National.

[18] *See* letter dated July 19, 2001 from Representative Michael G. Oxley, Chairman, Committee on Financial Services, Representative Richard H. Baker, Chairman Subcommittee on Capital Markets, Insurance, and Government Sponsored Enterprises, Representative Spencer Bachus, Chairman, Subcommittee on Financial Institutions and Consumer Credit, Marge Roukema, Chairwoman, Subcommittee on Housing and Community Opportunity, Sue W. Kelly, Chairwoman, Subcommittee on Oversight and Investigations, Peter T. King, Chairman, Subcommittee on Domestic Monetary Policy, Technology, and Economic Growth, Doug Bereuter, Chairman, Subcommittee on International Monetary Policy and Trade, U.S. House of Representatives; and letter dated July 20, 2001 from Representative John J. LaFalce, Ranking Member, Committee on Financial Services, U.S. House of Representatives.

[19] *See* letter dated July 2, 2001 from Melanie L. Fein, Attorney at Law, on behalf of Federated Investors, Inc.; letter dated July 17, 2001 from Stewart P. Greene, Chief Counsel, Securities Law, Teachers Insurance and Annuity-College Retirement Equities Fund.

[20] *See* letter dated July 18, 2001 from Senator Phil Gramm, Ranking Member, Committee on Banking, Housing and Urban Affairs, United States Senate.

[21] *See* letter dated July 17, 2001 from Satish M. Kini of Wilmer, Cutler & Pickering.

[22] *See* letter dated June 29, 2001 from Alan Greenspan, Chairman, Board of Governors of the Federal Reserve System, Donna Tanoue, Chairman, Federal Deposit Insurance Corporation, and John D. Hawke, Comptroller of the Currency (collectively, "the banking agencies" and "the Banking Agencies' letter").

[23] The BSA letter.

[24] Release No. 34–44570.

[25] Release No. 34–45897. At the same time, we further extended the temporary exemption from the definition of broker until May 12, 2003.

[26] Exchange Act Section 3(a)(5) [15 U.S.C. 78c(a)(5)].

[27] The SEC's analysis of what constitutes "dealer" activity has not changed for persons that are not banks just because banks have exceptions and exemptions for specific securities activities and products. These exceptions and exemptions provide banks with legal certainty for their securities business.

[28] "Riskless principal" transactions are generally described as trades in which, after receiving an order to buy (or sell) from a customer, the broker-dealer purchases (or sells) the security from (or to) another person in a contemporaneous offsetting transaction. *See* Exchange Act Rule 10b–10(a)(2)(ii)(A) [17 CFR 240. 10b–10(a)(2)(ii)(A)]; Rel. No. 34–33743 (Mar. 9, 1994) at n.11.

[29] *See* Exchange Act Section 3(a)(5). The Commission has noted that "riskless" principal transactions are in many respects equivalent to transactions effected on an agency basis. *See Securities Confirmations*, Rel. No. 34–15219 (Oct. 6, 1978), 43 FR 47495 (Oct. 6, 1978).

[30] The OCC stated that, "riskless principal activities are the legal and economic equivalent of permissible brokerage activities inasmuch as riskless principal brokerage is conducted in a manner consistent with the express terms of section 16," of the Glass-Steagall Act. *See* OCC Interpretive Letter No. 371 (June 13, 1986). *See also* 1989 FRB 829 (October 30, 1989) and 1996 FRB 748 (June 13, 1996).

[31] See, *e.g.*, Rel. No. 34–11742 (October 5, 1975) (noting that a bank might be subject to registration as a municipal securities dealer if it engaged in underwriting, maintain a trading account or carried a dealer inventory, advertised itself as a dealer or otherwise held itself out as a dealer).

[32] *See generally* L. Loss & J. Seligman, SECURITIES REGULATION, §§ 8–A–2 and 8–A–3 nn.115 and 143 (3d ed. 2001).

[33] See *United Housing Foundation, Inc.* v. *Forman*, 421 U.S. 837, 849, *rehearing denied*, 423 U.S. 884 (1975).

[34] This outline is a summary. It does not describe the exceptions in full.

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certain limiting conditions. For example, some of the bank dealer exceptions permit a bank to buy and sell securities, but the asset-backed transactions exception only permits a bank to issue and sell securities through a grantor trust or other separate entity to qualified investors. The investment transactions exception only permits the bank to buy or sell securities "for investment purposes" for its own account or for the accounts for which it acts as a trustee or fiduciary.

As a bank considers its securities activities, the bank must evaluate the totality of its securities activities to determine if those activities are permissible under banking law, meet the definition of dealer (or broker) activities under the securities laws, and are excepted or exempted from the dealer registration requirements under the Exchange Act.[35]

III. Discussion of Comments Received on "Dealer" Rules

As outlined above, the GLBA provides four exceptions to banks from the definition of "dealer." Each of these exceptions permits a bank to act as a dealer with respect to the specified securities products if the bank complies with the enumerated statutory conditions. Only six comment letters addressed either the dealer statutory exceptions or the dealer exemption.[36]

In particular, the Risk Management Association ("RMA") addressed the need for interpretive relief or an exemption for noncustodial securities lending. A letter from a coalition of banks also addressed the need for clarification that would provide legal certainty for banks engaging in securities lending with entities that might not strictly meet the statutory definition of qualified investor in Exchange Act section 3(a)(54).

The Banking Agencies' and the NYCH addressed the definitions interpreting the statutory dealer exception for asset-backed activities. The remaining two commenters addressed the asset-backed exception and the de minimis exception. To more fully understand the concerns leading to these comments, the staff held meetings in person and by telephone with interested parties.

A. De Minimis Exception and Rule 3a5–1

Exchange Act section 3(a)(4)(B)(xi)[37] excepts a bank from the definition of broker, if the bank effects no more than 500 securities transactions per calendar year, other than transactions that qualify for one of the other statutory exceptions. A transaction in which a bank is acting as an agent for a customer would count as one transaction toward the 500-transaction limit. The GLBA provisions did not extend this *de minimis* exception to dealer transactions.

Questions arose as to whether banks can rely on the *de minimis* exception from the definition of broker when they engage in riskless principal transactions.[38] The Commission addressed this issue in the Rules by providing an exemption that permits riskless principal transactions as well as agency transactions to be counted under the 500-transaction limit. The Rules provide that a transaction in which the dealer bank is acting as a riskless principal intermediary between two non-broker-dealer customers counts as two trades (one with each customer) under the 500-transaction limit.

1. Discussion of Comments Received on Rule 3a5–1, the *De Minimis* Exemption

Two commenters addressed this exemption. Both commenters criticized the Rules for counting as two transactions something that they characterize as essentially being a single transaction.

2. Proposed Amendment to Rule 3a5–1, the *De Minimis* Exemption

As we explained in adopting the Rules, riskless principal transactions are "dealer" transactions under the securities laws. The GLBA did not provide an exception for dealer transactions, except for limited types of securities. Indeed, the GLBA did not provide any exception from the definition of dealer that would allow banks to continue to engage in riskless principal transactions. By allowing banks to use the *de minimis* transaction exception found in the broker exceptions for riskless principal transactions, the Commission was attempting to give banks more—not less—flexibility than provided under the literal terms of the GLBA. In other words, this exemption permits banks to continue to engage in a limited number of these transactions without having to register as a dealer.

We continue to believe that a *de minimis* exemption for a limited number of riskless principal transactions is appropriate. We believe that one reason that the GLBA may not have extended the de minimis exception to riskless principal transactions is the difference in the way riskless principal transactions are viewed under banking law as compared to the securities laws. In banking law, riskless principal transactions are considered agency activity because the principal does not assume principal risk.[39] Under the securities laws, however, riskless principal activity is conducted by a dealer, acting as principal, attempting to eliminate his principal risk. Because the exception is in the Exchange Act, the interpretation under the securities laws is controlling.

The Commission addressed this distinction in the Rules by providing that riskless principal transactions as well as agency transactions can be counted under the limit of 500 securities transactions per calendar year. Exchange Act Rule 3a5–1 counted a transaction in which the dealer bank is acting as a riskless principal intermediary between two non-broker-dealer customers as two trades under the 500-transaction limit.

In response to the two comments on this issue that expressed the view that counting a riskless principal transaction as two trades in certain circumstances may be needlessly restrictive, we propose amending the counting of the number of riskless principal transactions. Under the proposed amendment to Rule 3a5–1, a riskless principal transaction, even if it involves two separate counterparties, would count as only one transaction against the annual 500-transaction limit.[40] We believe that this change will simplify the rule and make it easier for banks to understand and apply its terms to a small annual number of riskless principal securities transactions.

We request comment on this proposed amendment to Exchange Act Rule 3a5–1 and whether this is an appropriate way to count transactions under this exemption.

B. Rule 3b–18—Definition of Terms Used in Asset-Backed Transaction Exception to Dealer Registration

The GLBA exception to the definition of dealer for banks engaging in certain asset-backed issuance and sale transactions provides that a bank may engage in the issuance or sale to qualified investors, through a grantor trust or other separate entity, of securities backed by or representing an interest in notes, drafts, acceptances, loans, leases, receivables, other obligations (other than securities of which the bank is not the issuer), or pools of any of these obligations predominantly originated by the bank, an affiliate of the bank other than a broker-dealer, or a syndicate in which the bank is a member.[41] As we explained when we adopted the Rules, this statutory exception allows banks to issue and sell asset-backed securities through a grantor trust or other separate entity. It does not, however, allow banks to deal in asset-backed securities. In other words, this exception is not broad enough to permit banks to regularly purchase and sell these securities in the secondary market.[42]

Exchange Act Rule 3b–18 defined terms used in the asset-backed transactions exception to clarify the parameters of this exception. In particular, Rule 3b–18 defined the terms: "affiliate," "consumer-related receivable," "member of a syndicate of banks," "obligation," "originated," "pool," "predominantly originated," and "syndicate of banks."

1. Discussion of Comments Received on Rule 3b–18—Definition of Terms Used in Asset-Backed Exception to Dealer Registration

Four commenters addressed these definitions.[43] All four commenters focused primarily on the definition of "predominantly originated." One commenter also addressed the requirement that a member of a syndicate originate more than 10% of the value of a pool of obligations.[44]

For the purpose of the asset-backed transaction exception, the Rules defined "predominantly originated" so that a bank could engage in the issuance or sale of asset-backed securities without registration as a dealer if at least 85% of the obligations underlying the securities were originated by the bank or its affiliates, other than its broker-dealer affiliates. The definition also stated that the bank and its affiliates include any financial institution with which the bank or its affiliates have merged but does not include the purchase of a pool of obligations or the purchase of a line of business.

Each of the commenters stated that the definition was too narrow and should be expanded to permit a greater percentage of the assets in a pool to be purchased. The commenters suggested that the percentage used in this definition should be reduced to a simple majority or 51% to permit a bank to issue asset-backed securities on pools with a smaller percentage of assets originated by the bank and its affiliates. Each of the commenters urged the Commission to consider the impact that a rule that discourages banks from selling assets could have on smaller banks.

One commenter also addressed the definition of the term, "syndicate of banks of which the bank is a member."[45] That commenter stated that Exchange Act Rule 3b–18 defines a "syndicate" in a manner that is wholly inconsistent with banking practice and, thus, effectively eliminates the statutory provisions authorizing syndicate transactions. In particular, the commenter stated that by defining a "syndicate" to mean "a group of banks that acts jointly, on a temporary basis, to loan money in one or more bank credit obligations," the rule reflected a fundamental misunderstanding of how syndicates function in the banking industry. This would effectively preclude banks from taking advantage of the syndicate portion of the asset-backed transactions exception in the GLBA, and will have "seriously deleterious effects on bank securitization activities."

One commenter addressed the requirement that each member of a syndicate of banks originate at least 10% of the value of a pool of obligations.[46] This commenter stated that this test is too high, that there is no reason to impose a minimum percentage on the concept of syndicate membership, and that the test discriminates against smaller banks that may be unable to securitize obligations individually and must participate in a syndicate.

2. Proposed Amendments to Rule 3b–18—Definition of Terms Used in Asset-Backed Exception to Dealer Registration

The asset-backed transactions exception permits a bank to create, issue, and sell through a grantor trust or other separate entity asset-backed securities predominantly originated by the bank and its affiliates. This exception does not permit a bank to be a dealer by regularly repurchasing and reselling the asset-backed securities that it issues.[47] However, a bank may purchase these asset-backed securities for investment purposes, so long as the bank is not acting as a dealer.[48]

We considered the comments we received as well as additional factual information that the staff learned during subsequent conversations with banking agencies and some individual banks.[49] After considering the banks' business practices, we propose to expand the definition of "originated" by considering obligations that a bank initially approves and underwrites, or agrees to purchase, to be "originated" by the bank as long as the bank meet two

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[35] A bank that contemplates a new securities activity may also seek an exemption or no-action relief from the Commission. Exchange Act Section 36 [15 U.S.C. 78mm] authorizes us to exempt any person, security, or transaction from the provisions of the Exchange Act, to the extent that such exemption is necessary or appropriate in the public interest, and consistent with the protection of investors. We authorized the Director of the Division of Market Regulation to consider, on a case-by-case basis, individual requests for exemptive relief from banks, savings associations, and savings banks. Exchange Act Rule 30–3 [17 CFR 200.30–3(a)(72)].

In appropriate circumstances, the staff also may provide guidance in the form of no-action letters. *See* Release No. 33–5127 (January 25, 1971). *See also* Release No. 33–6279 (December 5, 1980).

[36] *See* the ICBA letter, the NYCH letter, the Banking Agencies' letter, letter dated July 17, 2001 from Rick D. Burtenshaw, Senior Vice President, Investment Division, Zions First National Bank ("the Zions letter"). In addition, a letter dated October 16, 2002 from Elizabeth Shea Fries of Goodwin Proctor on behalf the Risk Management Association ("the RMA letter") addresses the need for an exemption for activities related to securities lending. Moreover, a letter to Annette Nazareth, Director, Division of Market Regulation, dated October 9, 2002, from Edward J. Rosen, Cleary, Gottlieb, Steen & Hamilton, on behalf of a coalition of banks actively involved in securities lending ("Coalition of Banks letter") suggests that the definition of "qualified investor" be clarified to cover all entities with at least $25 million in investments that are not otherwise covered under the statutory definition in connection with the securities lending exemption.

[37] 15 U.S.C. 78c(a)(4)(B)(xi).

[38] *See* description of riskless principal transactions under the securities laws at notes 28 to 30, *supra*.

[39] *See* Bankers Trust New York Corporation, 75 Fed. Res. Bull. 829 (1989); Bank of New York Company, Inc. (Order dated June 10, 1996); and OCC Interp. Ltr. No. 626, reprinted in [1993–1994 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ (July 7, 1993).

[40] If, however, a bank offsets the risk in a transaction with one counterparty by arranging multiple transactions with other counterparties, the bank must count each of the transactions on the side of the transaction that involves the largest number of transactions as a separate transaction against the annual 500 transaction-limit.

[41] Exchange Act section 3(a)(5)(C)(iii) [15 U.S.C. 78c(a)(5)(C)(iii)].

[42] 66 FR 27760 at 27785 (May 18, 2001).

[43] *See* note 36, *supra*.

[44] *See* the NYCH letter.

[45] *See* the Banking Agencies' letter.

[46] *See* the NYCH letter.

[47] *See* Section II, *supra*, for a discussion of dealer activities and the dealer/trader distinction.

[48] Exchange Act Section 3(a)(5)(C)(ii) [15 U.S.C. 78c(a)(C)(ii)]. In contrast, a bank also may deal in government securities, such as securities of the Federal National Mortgage Association ("Fannie Mae") and the Federal Home Loan Mortgage Corporation ("Freddie Mac"). Exchange Act Sections 3(a)(5)(C)(II) (exception from "dealer" for exempted securities) [15 U.S.C. 78c(a)(5)(C)(II)], 3(a)(12)(A) (exempted security defined) [15 U.S.C. 78c(a)(12)(A)], and 3(a)(42)(B) and (C) (government securities defined) [15 U.S.C. 78c(a)(42)(B) and (C)].

[49] We were informed that very few banks issue and sell asset-backed securities without employing a registered broker-dealer. The banking agencies identified only four banks that might have issued and sold asset-backed securities directly without using a broker-dealer within the past two years. Of these four banks, only two regularly issue and sell asset-backed securities without employing a broker-dealer. These two banks actively participate in making new small business, residential and automobile loans for securitization but employ loan distribution channels that would not permit the banks to meet the definition of "originated" in Exchange Act Rule 3b–18.

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conditions. First, the obligation would have to conform to the bank's underwriting standards or be evidenced on the bank's documents. This requirement is imposed to ensure that the bank and the entity from whom it obtains the loan have an established arrangement prior to the time the loan is made to either use the bank's underwriting standards or documentation prepared by the bank. Second, the bank would be required to fund the obligation in a timely manner, not to exceed six months after the obligation is created. We also continue to define an obligation that the bank funds at the time that the obligation is closed as "originated" by the bank.

Under this revised definition, a bank should be able to use loan origination channels such as automobile dealers, mortgage companies, and other banks, even though the bank does not "make and fund" the obligation at the exact time that the obligation is created. Conversely, a bank that purchases obligations that do not meet the conditions of this exemption would not have originated that particular obligation for the purpose of the 85% test. We believe that it is important to limit the time within which funding of the obligation must occur in order to give meaning to the term "originate" in the exception.

Although commenters urged the Commission to modify the definition of "predominantly originated" to permit banks to purchase more of the underlying obligations being securitized, we have not proposed to modify the 85% test because the test closely tracks the language of the statute.[50] To enhance clarity, however, we are modifying the definition to expressly set forth the meaning of the term in the context of a syndicate of banks. Thus, the banks, and their affiliates other than broker-dealer affiliates, participating in any such syndicate must have originated 85% of the obligations in any pool as measured by the value of the obligations.

We also propose to clarify the rule by replacing the definition of "member of a syndicate of banks" with two separate definitions. In particular, we first propose to define "member" as it relates to the term "syndicate of banks" to make clear that the individual banks and their affiliates other than their broker or dealer affiliates, originate the obligations, rather than the syndicate. The syndicate of banks only comes together to issue and sell the obligations. Second, we propose to modify the definition of "syndicate of banks" to mean a group of banks that acts jointly, on a temporary basis, to issue securities backed by obligations originated by each of the individual banks and their affiliates other than their broker or dealer affiliates. These definitions will make it clear that banks may join together for the purpose of issuing securities backed by the pool of obligations, rather than having to join together before the obligations are created.

We propose to retain the requirement that when a syndicate of banks issues asset-backed securities through a grantor trust or other separate entity, each bank and its affiliates other than its broker or dealer affiliates selling the securities, and thus acting as a dealer in the transaction, must have originated at least 10% of the value of the pool of obligations backing the securities. This 10% requirement is applicable only to the bank or banks that actively sell the securities backed by the pool because these are the only banks that need to use the dealer exception. We received only one comment on this requirement.[51] We believe that this commenter viewed the definition as applicable to all of the banks that provide assets to the pool but do not actually sell the securities.

We propose to retain this requirement because the legislative history indicates that each bank selling the securities should be more than an insignificant member of the syndicate.[52] The legislative history suggests that threshold is met when a bank together with its affiliates other than broker or dealer affiliates provided at least 10% of the obligations in the pool. We believe that it is reasonable as well as in accordance with the legislative history to retain this requirement for the bank or banks that need the exception because they sell the securities secured by the pool of obligations originated by banks that are members of a syndicate of banks. We did, however, modify the rule to clarify that the affiliates of the banks other than broker or dealer affiliates also may originate the obligations.

Based on our staff's conversations with those banks that sold asset-backed securities, we expect that the changes we propose will permit the banks that currently issue and sell asset-backed securities directly to continue to do so under the terms of the exception without having to employ a broker-dealer.

We request comment on all aspects of the proposed amendments to Rule 3b–18. In particular, we request comment from banks that currently sell asset-backed securities on the impact, if any, of the proposed definition of "originate" on them. We request that these banks confirm whether the proposed changes to the definitions will permit them to continue to conduct this business. We also request comment on the requirement to fund the loans in a timely manner not to exceed six months and whether this requirement will have any impact on the banks making or funding the loans. In addition, we request comment on the requirement that there be established relationships as shown by conforming loans to the underwriting standards of the bank or using documentation prepared by the bank to evidence the loans. Commenters are invited to discuss whether these requirements would impose any burdens on banks.

IV. Rule 15a–11 Exemption From the Definitions of "Broker" and "Dealer" for Banks Engaging in Securities Lending Transactions

Institutional investors often place securities in custody with banks. These custodian banks effect and administer securities loans in return for an agreed fee. Banks also may engage in securities lending transactions when they do not have custody of the securities. A non-custodial securities lending arrangement permits a customer to divide custody and securities lending management between two expert entities. For example, a custodian may be selected for efficiency and low cost, while a lending agent may be selected for its ability to maximize the profitability of the portfolio.

Although banks play a role in both custodial and non-custodial securities lending transactions, the GLBA bank exceptions to the definitions of broker and dealer provide only one exception for securities lending and borrowing

[50] In defining the term "predominantly," which modifies the term "originated," we looked to other sections of the GLBA in which the term is used. Section 103(a) of the GLBA uses the term "predominantly" to modify "financial" and to allow analysis of whether nonfinancial activities and affiliations may be retained. Bank Holding Company Act Section 4(n)(2) [12 U.S.C.1843(n)(2)]. Section 103(n)(2) of the GLBA expressly provides that a firm is predominantly engaged in financial activities when at least 85% of the annual gross revenues of the consolidated company derive from financial activities, excluding any revenue from banks. To be consistent, we applied the same numerical test found in Section 103(n)(2) of GLBA for loan product originations for the purpose of the asset-backed securities exception from the definition of dealer.

[51] *See* the NYCH letter.

[52] The legislative history states that, "[t]he Committee expects this provision shall be interpreted so that the bank will [have] not less than ten percent of the assets in the syndicate or pool of obligations." H.R. Rep. No. 106–74, pt. 3, at 171 (1999).

transactions. The need for an exemption to give banks legal certainty for securities lending transactions when the bank does not have custody of the securities was initially drawn to our attention through a letter from a trade group.[53]

Exchange Act section 3(a)(4)(B)(viii) addresses securities lending by custodian banks as an exception to the definition of broker.[54] Under paragraph (cc) of section 3(a)(4)(B)(viii), a bank is permitted, without being considered a broker, to effect securities lending or borrowing transactions by custodian banks with or on behalf of customers in two situations: (1) As part of the services provided to safekeeping and custody customers; and (2) when facilitating the transfer of funds or securities as a custodian or a clearing agency in connection with the settlement of customers' transactions in securities.

We have been advised that the existence of this limited bank exception from the definition of broker creates uncertainty for banks that may engage in securities lending or borrowing transactions without having custody of the underlying securities or in situations where a bank might meet the definition of dealer under the securities laws. To provide legal certainty to banks engaging in securities lending transactions, we propose to add an exemption from the definition of broker for banks engaging in non-custodial securities lending activities as well as an exemption from the definition of dealer for banks engaging in certain custodial and non-custodial securities lending activities. This exemption would also enhance legal certainty for banks that have custody of collateral or that have custody of the securities subject to a lending arrangement for less than the entire period of the stock loan.

Industry representatives have advised our staff that banks' primary role in securities lending transactions, whether operating with or without custody of the securities, is to act in an agency capacity. Less frequently, banks may engage in securities lending as principal while acting as a conduit between the parties.[55] In that role, a bank provides credit intermediation and anonymity by standing between the lender and borrower.

The proposed exemption would require a written securities lending agreement, which would be any contract to conduct securities lending transactions on behalf of a qualified investor. In connection with a securities lending transaction, the bank may select and negotiate with a borrower and execute, or direct the execution of, the loan with the borrower; receive, deliver, or take custody of loaned securities; receive, deliver, or take custody of collateral; provide mark-to-market, corporate action, recordkeeping or other services incidental to the administration of the securities lending transaction; reinvest, or direct the reinvestment of, cash collateral; or indemnify the lender of securities with respect to various matters.

We propose to make this exemption available for banks' current securities lending business. The exemption would be limited to transactions with "qualified investors," as defined in Exchange Act section 3(a)(54).[56] Commenters have suggested that both custodial and non-custodial banks should be able to act either as a conduit lender or as agent in order to offer to institutional investors the opportunity to select different banks to provide this service.[57]

We propose that a bank be required to deal with a qualified investor on both sides of the transaction as a condition of this exemption. We understand that borrowers of securities that are not qualified investors do not directly borrow securities from noncustodial banks. Any borrowers of securities that do not meet the qualified investor test generally borrow securities through intermediaries that would be qualified investors. We request comment on any business practices that involve banks engaging in noncustodial securities lending directly with persons that are not qualified investors.

We do not propose extending the securities lending exemption to banks borrowing securities for, or lending from, their own accounts except as a conduit lender.[58] For the purposes of this provision, the term conduit lender means a bank that borrows (or loans) securities, as principal, for its own account, and contemporaneously loans (or borrows) the same securities, as principal, for its own account. A bank that qualifies under this definition as a conduit lender at the commencement of a transaction would continue to qualify as long as the original securities lending transaction remains outstanding, even though substitutions of collateral may occur on the securities borrowing side of the transaction.

To the extent that banks may have a legitimate need to, on occasion, lend or borrow securities on their own behalf for hedging or for other reasons, they should be subject to the same dealer/trader distinction that applies to all other market participants.[59] In addition, the exemption is not indicative of whether banks or other persons may otherwise engage in securities lending as principal without being considered a dealer.

Even though we recognize that engaging in securities lending transactions involves taking risks that require effective internal controls, we have not proposed conditions to the exemption that would require that banks conform to the standards applicable to registered broker-dealers that engage in securities lending transactions.[60] We are proposing an exemption because we believe that it will assist institutional investors in obtaining stock loan services for banks that do not act as their custodians. We also believe that the exemption is appropriate in the public interest and is consistent with the protection of investors because it is limited to qualified investors.

We have asked bank regulators to advise us if this exemption would pose any risks that the Commission should address. We specifically request commenters to address our decision not to impose the kinds of conditions that are applicable to broker-dealers that engage in securities lending, which require them to take precautions against financial risks to the firm.

If conditions were to be imposed, we request comment on whether we should require banks to verify that: (1) The participants to the securities lending transactions are borrowing securities for a proper purpose; or (2) the participants to the transaction have been evaluated for their suitability to participate in the transaction, including their creditworthiness. Moreover, we request comment on whether this exemption should include a condition that it not be used to avoid U.S. margin requirements applicable to securities financing

[53] See the RMA letter, *supra*, note 36.

[54] 15 U.S.C. 78c(a)(4)(B)(viii).

[55] This conduit role is similar to a riskless principal transaction, but does not involve activities that could be characterized as running a matched book. Running a matched book of repurchase agreements or other stock loans has been characterized as a dealer activity because the "book running dealer" holds itself out as willing to buy and sell and as thus, engaged in the business of buying and selling securities. Unlike a riskless principal transaction, a conduit lender may on occasion substitute collateral on the securities borrowing side of the transaction while the original securities lending transaction remains outstanding.

[56] *See* discussion at Section V, *infra*.

[57] *See* the RMA letter, *supra* note 36.

[58] Under banking law, with some exceptions, banks are not permitted to own equity securities.

[59] *See* Section II, *supra*, for a discussion of dealer activities and the dealer/trader distinction.

[60] *See* Rule 15c3–3(b)(3) [17 CFR 240.15c3–3(b)(3)].

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transactions, or to avoid other restrictions on the alienability of securities. We also request comment on all other aspects of the proposed exemption for securities lending transactions.

V. Definition of "Qualified Investor"

In defining the term "qualified investor," Exchange Act section 3(a)(54) expressly provides authority to the Commission by rule or order to expand the definition to include any other person, taking into consideration such factors as the financial sophistication of the person, net worth, and knowledge and experience in financial matters.[61] In the context of the securities lending exemption, one commenter suggested that we use this authority to clarify the definition of "qualified investor" so that it would include any other person, plan, or legal entity of any kind that owns or invests on a discretionary basis not less than $25 million in investments, even if it is not expressly included in section 3(a)(54).[62]

The term "qualified investor" was defined as a part of the GLBA and has application to several of the bank exceptions from broker-dealer registration. Under the GLBA bank exceptions to broker and dealer registration, certain securities may only be sold to qualified investors. The sections that list the securities that may only be sold to qualified investors include: [63] (1) The broker exception for identified banking products when the product is an equity swap agreement; [64] (2) the dealer exception for identified banking products when the product is an equity swap agreement; [65] and (3) the dealer exception for asset-backed securities.[66]

With regard to the expansion of the definition of qualified investor in the context of the exemption for securities lending transactions, one commenter stated:

> As you are aware, banks provide custodial and non-custodial securities lending services to a variety of different types of lenders of securities. Frequently, these lenders include U.S. persons that are not organized as corporations, companies, or partnerships. For example, a significant number of lenders are organized as trusts. In addition, some banks regularly provide securities lending services to non-U.S. entities whose legal form has been established pursuant to applicable non-U.S. law. Such entities may be organized as trusts, pension plans managed by foreign banks or advisers qualified under local law (and as a result not included within Section 3(a)(54)(A)(v)), or as some other legal form that does not fit clearly within the U.S.-based concepts of a "corporation, company or partnership." [67]

Exchange Act section 3(a)(54) enumerates an extensive list of persons who qualify for the designation, "qualified investor." [68] Some of these entities qualify by merely being certain types of entities, while other entities must qualify by being both a certain type of entity and by meeting an ownership and investment test. For example, subsection (xi) of section 3(a)(54)(A) provides that "any corporation, company, or partnership that owns and invests on a discretionary basis, not less than $25,000,000 in investments" is a qualified investor.

In considering this definition, we first looked to Exchange Act section 3(a)(9), which defines the term "person" to mean "a natural person, company, government, or political subdivision, agency, or instrumentality of a government." [69] We also looked to Investment Company Act section 2(a)(8), which provides that the term "company" means a corporation, a partnership, an association, a joint-stock company, a trust, a fund, or any organized group of persons whether incorporated or not; or any receiver, trustee in a case under title 11 of the United States Code or similar official or any liquidating agent for any of the foregoing, in his capacity as such." [70]

In light of these other definitions, for the purposes of the GLBA provisions in the Exchange Act, we interpret the term "company" as used in the definition of "qualified investor" in subsection (xi) of section 3(a)(54) to have a broad meaning that encompasses any other type of entity not otherwise specifically listed in section 3(a)(54). We believe that interpreting the definition of qualified investor in this way is an appropriate way to enhance legal certainty for entities that are not as precisely described as others in the list of entities expressly listed as "qualified investors."

We believe that it may be appropriate to utilize this interpretation in all circumstances where the term is used in the GLBA exceptions as well as in the securities lending exemption. However, any type of entity that is specifically listed in Exchange Act section 3(a)(54) will continue to be subject to the requirements imposed by that section. For example, a government or political subdivision, agency, or instrumentality of a government is required to invest on a discretionary basis at least $50 million in investments in order to be considered a qualified investor.[71] The statutory requirement for these governmental entities would not be changed by this interpretation.

We request comment on all aspects of this interpretation, including whether there are any other entities that should be considered qualified investors or whether we should exclude any entities that might meet the qualifying investment threshold but that nonetheless should be excluded from the definition. In addition, we request comment on whether the expansion of the definition of "qualified investor" should apply: (1) Whenever the term is used in the GLBA exceptions; or (2) only to securities lending transactions. We also request comment on whether this interpretation brings sufficient clarity to provide legal certainty to banks and their customers.

VI. Procedural Matters

A. General Request for Comments

We are soliciting comments on all aspects of these proposed amendments as well as the portions of the Rules pertaining to banks' dealer activities that we are not proposing to amend. We will amend the Rules as appropriate in response to comments received when we adopt final rules relating to the exceptions from the definition of dealer and the new proposed exemption set forth in this proposal. We also specifically request comment on the timing of the final implementation of this proposal and the Rules relating to the exceptions from the definition of dealer as well as any specific extensions that individual banks may need.

[61] 15 U.S.C. 78c(a)(54). Under this definition qualified investors include investment companies, banks, small business investment companies, any State sponsored employee benefit plan, institutional trusts, market intermediaries, and natural persons, corporations or partnerships that own and invest on a discretionary basis more than $25,000,000.

[62] *See* Coalition of Securities Lending Banks letter.

[63] In addition to these three provisions, a participation in a loan to be an "identified banking product," also must either be sold to: (1) A qualified investor; or (2) to other persons that have an opportunity to review and assess any material information regarding the borrower's creditworthiness and based on such factors as financial sophistication, net worth, and knowledge and experience in financial matters, have the capability to evaluate the information available, as determined under generally applicable banking standards or guidelines. Thus, a bank utilizing the exceptions to broker and dealer registration to sell a participation interest would either have to sell such an interest to a qualified investor or undertake a more extensive factual assessment of the purchaser. *See* Section 206(a)(5) of Pub. L. 106–102 [15 U.S.C. 78c note] as incorporated into Exchange Act Section 3(a)(4)(B)(ix) [15 U.S.C. 78c(a)(4)(B)(ix)] and Section 3(a)(5)(C)(iv) [15 U.S.C. 78c(a)(5)(C)(iv)].

[64] Section 206(a)(6) of Pub. L. 106–102 [15 U.S.C. 78c note] as incorporated into Exchange Act Section 3(a)(4)(B)(ix) [15 U.S.C. 78c(a)(4)(B)(ix)].

[65] Section 206(a)(6) of Pub. L. 106–102 [15 U.S.C. 78c note] as incorporated into Exchange Act Section 3(a)(5)(C)(iv) [15 U.S.C. 78c(a)(5)(C)(iv)].

[66] Exchange Act Section 3(a)(5)(C)(iii) [15 U.S.C. 78c(a)(5)(C)(iii)].

[67] Coalition of Securities Lending Banks letter.

[68] Subsections (i) through (xiv) of Section 3(a)(54) list entities that are qualified investors.

[69] Exchange Act Section 3(a)(9) [15 U.S.C. 78c(a)(9)].

[70] Investment Company Act Section 2(a)(8) [15 U.S.C. 80a–2(a)(8)].

[71] Section 3(a)(54)(C)(xiii) of the Exchange Act [15 U.S.C. 78c(a)(54)(C)(xiii)].

B. Paperwork Reduction Act

These proposed rules do not impose recordkeeping or information collection requirements, or other collections of information that require approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.* Accordingly, the Paperwork Reduction Act does not apply.[72]

C. Consideration of Benefits and Costs

We believe that these proposed amendments and the new exemption are consistent with Congress's intent in enacting the GLBA and are responsive to the comments we received. These proposed amendments to the Rules are very limited in scope. The amendments propose three changes. In particular, we propose to: (1) Modify the way in which transactions are counted under the exemption from the definition of "dealer" for a bank engaged in riskless principal transactions, which would permit the bank to engage in more transactions under the *de minimis* exception to broker and dealer registration; (2) modify certain definitions under the exemption for asset-backed transactions exception to the "dealer" rules to permit banks to issue and sell more asset-backed securities; and (3) add a new exemption from the definitions of both "broker" and "dealer" to provide banks with enhanced legal certainty when they engage in securities lending transactions.

1. Benefits

Both of the proposed amendments to the existing Rules would modify the exceptions and the interpretations found in Rules 3a5–1 and 3b–18 in a way that expands the scope of activity in which banks may engage without registering as dealers. The new proposed exemption for banks to engage in securities lending transactions found in new Rule 15a–11 also grants increased legal certainty to banks. All of these proposals make it easier for banks to conduct these activities.

Amending Rule 3a5–1 to change the way riskless principal transactions are counted will allow banks to engage in more such transactions before triggering the dealer registration requirement.

Directly engaging in asset-backed transactions without employing a broker-dealer is very unusual for banks. We found only two banks that regularly issue and sell asset-backed securities. Based on the staff discussions with these two banks, we believe that the proposed amendments to Rule 3b–18 will permit these two banks to continue to utilize their existing business models with little or no change in their procedures. These proposed amendments modify the definition of "originate" to permit banks to use loan origination channels that would not be permitted under the Rules. We believe that the proposed amendments to the definitions under the asset-backed transactions exception will accommodate these banks' business without sacrificing the statutory limits Congress imposed on banks' dealer activities.

Lending securities is a highly specialized business for which Congress provided partial relief under the custody exception to broker registration. As discussed above, some banks were concerned about legal certainty for securities lending transactions that may not meet the terms of the custody exception to broker registration and to the extent that some securities lending transactions might be considered to be subject to dealer registration. The proposed amendments modify the definition of "originate" to permit banks to use loan pipelines that would not be permitted under the Rules. We believe that banks provide an important function in this market and that it is in the public interest that they continue to do so. The proposed exemption should provide banks that lend securities with enhanced legal certainty that will permit them to continue to engage in this activity without broker-dealer registration.

2. Costs

Although banks may incur certain costs to comply with the GLBA, these costs will be necessary because of the statutory change. Congress determined that all securities activities should be functionally regulated by the expert securities regulator to ensure investor protection, regardless of the entity in which the activities occur. Thus, any regulatory costs arise from Congress's determination that amendment of the Exchange Act was necessary. There are no out-of-pocket costs as a result of these proposals. Any costs would be those associated with moving the supervision of these limited securities transactions or products from the Commission and placing them under the banking agencies, which we do not believe to be significant.

In addition, because the types of dealer activities that are the subject of these rules are not the types of activities in which small banks or small broker-dealers participate, there should be no competitive costs to small broker-dealers due to the way in which these rules modify the terms of the bank exceptions and exemptions. None of the commenters on the dealer rules specifically identified costs to complying with those rules.

D. Consideration of Burden on Competition, and on Promotion of Efficiency, Competition, and Capital Formation

In accordance with our responsibilities under section 3(f) of the Exchange Act, we have considered both the protection of investors and whether these proposed amendments to certain of the Rules would promote efficiency, competition, and capital formation in determining whether they are consistent with the public interest.[73] In addition, section 23(a)(2) of the Exchange Act [74] requires us, in adopting rules under the Exchange Act, to consider the anticompetitive effects of such rules, if any, and to refrain from adopting a rule that will impose a burden on competition not necessary or appropriate in furthering the purpose of the Exchange Act.

We do not believe that the interpretations, definitions, and exemptions contained in these proposed amendments to certain of the Rules, or the proposed rules will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. The interim final rules define terms in the statutory exceptions to the definitions of broker and dealer added to the Exchange Act by Congress in the GLBA, and provide guidance to banks regarding the scope of those exceptions. The proposed rule amendments and proposed rules also do not impose any additional competitive burdens on banks engaging in a securities business, other than those imposed by Congress through functional regulation in the GLBA.

Because the types of dealer activities that are the subject of these rules are not the types of activities in which small banks or small broker-dealers directly

[72] We would expect banks, as a matter of good business practice, to be able to demonstrate that they meet the terms of a particular exemption. We also note that Section 203 of the GLBA specifically requires the bank regulators to promulgate recordkeeping requirements.

[72] 15 U.S.C. 78c(f).

[74] 15 U.S.C. 78w(a)(2).

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participate, there should be no competitive costs to small banks or small broker-dealers due to the way in which these rules modify the terms of the bank exceptions and exemptions.

The new conditional exemption from broker-dealer registration would provide banks increased legal certainty when they engage in securities lending transactions without any new burdens on banks seeking to use this limited exemption. Nothing in the proposed amendments to the Rules, in the new proposed exemption, or in the proposed rule will adversely affect capital formation. Banks that alter their securities-related activities in accordance with the GLBA will continue to be able to provide securities services to their customers. In enacting the GLBA, Congress determined that functional regulation was appropriate—that is, when a bank was conducting a securities business outside of the enumerated exceptions, that bank should be registered as a broker-dealer or shifted securities activities to a registered broker-dealer. In the interest of protecting the public and ensuring orderly markets, Congress determined that banks conducting a broad securities business should be subject to the same regulatory oversight as broker-dealers conducting the same types of activities. These amendments to the Rules and the new proposed exemption promote Congress' intent and make it easier for banks to comply with the requirements of the GLBA.

Since certain of these proposed amendments to the Rules define statutory exceptions mandated by Congress, we do not believe that those rules impose any extra-statutory adverse effects on efficiency, competition, or capital formation. With respect to the proposed amendment to a Rule that provides exemptive relief and the new proposed exemption for banks, both changes would make it easier for banks to comply with the GLBA and the Rules and give them enhanced legal certainty. We also do not believe that those rules impose any extra-statutory adverse effects on efficiency, competition, or capital formation. When Congress passed the GLBA, it effectively determined that regulation of banks conducting a securities operation outside of certain exceptions was necessary, appropriate, and in the public interest.

We are, however, interested in receiving comments regarding the effect of these proposed amendments to the Rules, the new proposed exemption, and the proposed rule may have on efficiency, competition, and capital formation. We will consider those comments in making any changes to the proposed amendments to the Rules, the new proposed exemption, and the new rule as necessary.

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, the Commission is also requesting information regarding the potential impact of the proposed rules and rule amendments on the economy on an annual basis. Commenters should provide empirical data to support their views.

E. Regulatory Flexibility Act Certification

Section 3(a) of the Regulatory Flexibility Act [75] requires the Commission to undertake an initial regulatory flexibility analysis of the effects of proposed rules and rule amendments on small entities, unless the Commission certifies that the rules and rule amendments, if adopted, would not have a significant economic impact on a substantial number of small entities.[76]

The Commission hereby certifies pursuant to 5 U.S.C. 605(b) that proposed amendments to Rules 3a5–1 and 3b–18 under the Exchange Act, and a proposed exemption for securities lending transactions in Rule 15a–11 under the Exchange Act under the Exchange Act contained in this release, if adopted, would not have a significant economic impact on a substantial number of small entities. The proposed amendments and proposed rules will not impose compliance requirements on depository institutions of any size. They impose no performance standards, no fees, no reporting or recordkeeping criteria, nor any other type of restriction or requirement with which depository institutions must comply. Furthermore, nothing in these rules prevents or impedes small banks from engaging in any of these activities. The activities addressed by these proposed amendments and proposed rules are not of a type that a small bank is likely to engage in. In addition, all of these rules remove impediments to any bank, including a small bank, engaging these activities.

First, the proposals would modify the method of counting a bank's riskless principal transactions for purposes of determining whether the volume of such transactions requires the bank to register as a dealer. The modification would, if anything, permit banks to engage in more transactions than would be permitted without registration under the Rules. Second, the proposals would amend a rule defining certain terms in section 3(a)(5) of the Exchange Act concerning exceptions to the statutory definition of "dealer" for certain bank activities. These amendments also would, if anything, permit banks to engage in more transactions than would be permitted without registration under the Rules. Third, the proposals would add a new rule permitting banks to engage in certain securities lending activities without triggering registration requirements. Again, this proposal would, if anything, permit banks to engage in more transactions than would be permitted without registration under the Rules. For these reasons, none of the proposals should have a significant economic impact on a substantial number of small entities.

We encourage written comments regarding this certification. We solicit comment as to whether the proposed changes could have an effect that we have not considered. We request that commenters describe the nature of any impact on small entities and provide empirical data to support the extent of the impact.

Statutory Authority

The Commission is proposing amendments to Rules 3a5–1 and 3b–18, and a new exemption for securities lending transactions in Rule 15a–11 under the Exchange Act, pursuant to authority set forth in sections 3(b), 15, 23(a), and 36 of the Exchange Act (15 U.S.C. 78c(b), 78o, 78w(a), and 78mm, respectively).

Text of Proposed Rules and Rule Amendments

List of Subjects in 17 CFR Part 240

Broker-dealers, Reporting and recordkeeping requirements, Securities.

Text of Amendment

For the reasons set forth in the preamble, title 17, chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for part 240 continues to read, in part, as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*, 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

2. Section 240.3a5–1 is revised to read as follows:

[75] 5 U.S.C. 603(a).

[76] 5 U.S.C. 605(b).

§ 240.3a5–1 Exemption from the definition of "dealer" for a bank engaged in riskless principal transactions.

(a) A bank is exempt from the definition of the term "dealer" solely for engaging in riskless principal transactions if the number of such riskless principal transactions during a calendar year combined with transactions in which the bank is acting as an agent for a customer pursuant to section 3(a)(4)(B)(xi) of the Act (15 U.S.C. 78c(a)(4)(B)(xi)) during that same year does not exceed 500.

(b) For purposes of this section, the term *riskless principal transaction* means a transaction in which, after having received an order to buy from a customer, the bank purchased the security from another person to offset a contemporaneous sale to such customer or, after having received an order to sell from a customer, the bank sold the security to another person to offset a contemporaneous purchase from such customer.

3. Section 240.3b–18 is revised to read as follows:

§ 240.3b–18 Definitions of terms used in Section 3(a)(5) of the Act.

For the purposes of section 3(a)(5)(C) of the Act (15 U.S.C. 78c(a)(5)(C):

(a) The term *affiliate* means any company that controls, is controlled by, or is under common control with another company.

(b) The term *consumer-related receivable* means any obligation incurred by any natural person to pay money arising out of a transaction in which the money, property, insurance, or services (being purchased) are primarily for personal, family, or household purposes.

(c) The term *member* as it relates to the term "syndicate of banks" means a bank that is a participant in a syndicate of banks and together with its affiliates other than its broker or dealer affiliates, originates no less than 10% of the value of the obligations in a pool of obligations used to back the securities issued through a grantor trust or other separate entity.

(d) The term *obligation* means any note, draft, acceptance, loan, lease, receivable, or other evidence of indebtedness that is not a security issued by a person other than the bank.

(e) The term *originated* means:

(1) Funding an obligation at the time that the obligation is created; or

(2) Initially approving and underwriting the obligation, or initially agreeing to purchase the obligation, provided that:

(i) The obligation conforms to the bank's own underwriting standards or is evidenced by the bank's own loan documents; and

(ii) The bank funds the obligation in a timely manner, not to exceed six months after the obligation is created.

(f) The term *pool* means more than one obligation or type of obligation grouped together to provide collateral for a securities offering.

(g) The term *predominantly originated* means that no less than 85% of the value of the obligations in any pool were originated by:

(1)The bank, or its affiliates other than its broker or dealer affiliates; or

(2) Banks that are members of a syndicate of banks and affiliates of such banks other than their broker or dealer affiliates, if the obligations or pool of obligations consist of mortgage obligations or consumer-related receivables.

(3) For this purpose, the bank and its affiliates include any financial institution with which the bank or its affiliates have merged but does not include the purchase of a pool of obligations or the purchase of a line of business.

(h) The term *syndicate of banks* means a group of banks that acts jointly, on a temporary basis, to issue through a grantor trust or other separate entity, securities backed by obligations originated by each of the individual banks or their affiliates other than their broker or dealer affiliates.

4. Section 240.15a–11 is added to read as follows:

§ 240.15a–11 Exemption from the definitions of "broker" and "dealer" for banks engaging in securities lending transactions.

(a) Except as otherwise provided in paragraph (d) of this section, a bank is exempt from the definitions of the terms "broker" and "dealer" under sections 3(a)(4) and 3(a)(5) of the Act (15 U.S.C. 78c(a)(4) and (a)(5)), solely to engage in or effect securities lending transactions with a qualified investor, pursuant to an agreement to provide securities lending services to a qualified investor, whether the bank acts as a conduit lender, or an agent.

(b) *Securities lending transaction* means a transaction in which the owner of a security lends the security temporarily to another party pursuant to a written securities lending agreement under which the lender retains the economic interests of an owner of such securities, and has the right to terminate the transaction and to recall the loaned securities on terms agreed by the parties.

(c) An *agreement to provide securities lending services* means any contract to conduct securities lending transactions on behalf of a qualified investor in connection with which the bank may:

(1) Select and negotiate with a borrower and execute, or direct the execution, of the loan with the borrower;

(2) Receive, deliver, or take custody of loaned securities;

(3) Receive, deliver, or take custody of collateral;

(4) Provide mark-to-market, corporate action, recordkeeping or other services incidental to the administration of the securities lending transaction;

(5) Reinvest, or direct the reinvestment of, cash collateral; or

(6) Indemnify the lender of securities with respect to various matters.

(d) For the purposes of this section, the term *conduit lender* means a bank that borrows (or loans) securities, as principal, for its own account, and contemporaneously loans (or borrows) the same securities, as principal, for its own account. A bank that qualifies under this definition as a conduit lender at the commencement of a transaction will continue to have that character as long as the original securities lending transaction remains outstanding, even though substitutions of collateral may occur on the securities borrowing side of the transaction.

(e) For the purposes of this section, the term *qualified investor* has the meaning set forth in section 3(a)(54) of the Act (15 U.S.C. 78c(a)(54)).

Dated: October 30, 2002.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

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To designate the United States courthouse to be constructed at 8th Avenue and Mill Street in Eugene, Oregon, as the "Wayne Lyman Morse United States Courthouse". (Oct. 29, 2002; 116 Stat. 1737; 1 page)

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To identify certain routes in the States of Texas, Oklahoma, Colorado, and New Mexico as part of the Ports-to-Plains Corridor, a high priority corridor on the National Highway System. (Oct. 29, 2002; 116 Stat. 1741; 2 pages)

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To designate the facility of the United States Postal Service located at 127 Social Street in Woonsocket, Rhode Island, as the "Alphonse F. Auclair Post Office Building". (Oct. 30, 2002; 116 Stat. 1745; 1 page)

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Rules and Regulations

Federal Register
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Wednesday, November 6, 2002

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 02–053–2]

Gypsy Moth Generally Infested Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the regulations by adding nine counties in Wisconsin to the list of generally infested areas based on the detection of infestations of gypsy moth in those counties. As a result of the interim rule, the interstate movement of regulated articles from those areas is restricted. The interim rule was necessary to prevent the artificial spread of gypsy moth to noninfested States.

EFFECTIVE DATE: The interim rule became effective on June 20, 2002.

FOR FURTHER INFORMATION CONTACT: Dr. Weyman P. Fussell, Program Manager, Invasive Species and Pest Management, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–5705.

SUPPLEMENTARY INFORMATION:

Background

The gypsy moth, *Lymantria dispar* (Linnaeus), is a destructive pest of forest and shade trees. The gypsy moth regulations (contained in 7 CFR 301.45 through 301.45–12 and referred to below as the regulations) restrict the interstate movement of regulated articles from generally infested areas to prevent the artificial spread of the gypsy moth.

In an interim rule effective and published in the **Federal Register** on June 20, 2002 (67 FR 41809–41810, Docket No. 02–053–1), we amended the regulations in § 301.45–3 by adding Columbia, Florence, Forest, Green Lake, Jefferson, Langlade, Portage, Rock, and Wood Counties in Wisconsin to the list of generally infested areas based on the detection of infestations of gypsy moth in those counties.

Comments on the interim rule were required to be received on or before August 19, 2002. We did not receive any comments. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule.

This action also affirms the information contained in the interim rule concerning Executive Orders 12866, 12372, and 12988, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived its review under Executive Order 12866.

Regulatory Flexibility Act

This rule affirms an interim rule that amended the regulations by adding nine counties in Wisconsin to the list of generally infested areas. As a result of the interim rule, the interstate movement of certain articles from those areas is restricted. The interim rule was necessary to prevent the artificial spread of the gypsy moth to noninfested States. The following analysis addresses the economic effects of the interim rule on small entities, as required by the Regulatory Flexibility Act.

The interim rule placed restrictions on the interstate movement of regulated articles and outdoor household articles (OHA's) from and through those counties in Wisconsin that were designated as generally infested areas. These restrictions will have their primary effect on persons moving OHA's, nursery stock, Christmas trees, logs and wood chips, and mobile homes interstate from a generally infested area into or through any area that is not generally infested.

Under the regulations, OHA's may not be moved interstate from a generally infested area into or through a noninfested area unless they are accompanied by either a certificate issued by an inspector or an OHA document issued by the owner of the articles, attesting to the absence of all life stages of the gypsy moth. Most individual homeowners moving their own articles who comply with the regulations choose to self-inspect and issue an OHA document. This takes a few minutes and involves no monetary cost. Individuals may also have State-certified pesticide applicators, trained by the State or the U.S. Department of Agriculture (USDA), inspect and issue certificates.

Generally, regulated articles (such as logs, pulpwood, wood chips, mobile homes, nursery stock, OHAs, and Christmas trees) may only be moved interstate from a generally infested area if they are accompanied by a certificate or limited permit issued by an inspector. However, logs, wood chips, and pulpwood may be moved without a certificate or limited permit if the person moving the articles attaches a signed accurate statement to the waybill as specified in the Gypsy Moth Program Manual, stating that he or she has inspected the articles and has found them free of all life stages of the gypsy moth. This exception minimizes the costs of moving logs, pulpwood, and wood chips interstate. Regulated articles may also be moved interstate from a generally infested area without a certificate if they are moved by the USDA for experimental or scientific purposes and they are accompanied by a permit issued by the Administrator of the Animal and Plant Health Inspection Service (APHIS).

Persons moving regulated articles interstate from a generally infested area may obtain a certificate or limited permit from an inspector or a qualified certified applicator. Inspectors will issue these documents at no charge, but costs may result from delaying the movement of commercial articles while waiting for the inspection. Certificates for the interstate movement of mobile homes from a generally infested area may also be obtained from qualified certified applicators.

When inspection of regulated articles or OHA's reveals the presence of gypsy moths, treatment is often necessary. The preferred treatment, scraping egg masses and spraying caterpillars, costs an average of $10 to $30 per shipment. Fumigation is another alternative, but it is more expensive, at $75 to $100 per shipment, and may damage the shipment. Treatment is done by qualified certified applicators, most of which are small businesses. These businesses might experience a small increase in income as a result of the interim rule.

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Nurseries and Christmas tree growers that move a substantial number of shipments interstate from the generally infested areas would be able to minimize treatment costs by treating their premises for gypsy moths under a compliance agreement with APHIS. These treatments cost businesses between $10 and $20 per acre. This alternative allows nurseries and Christmas tree growers to issue their own certificates provided they are under a compliance agreement and is less costly than treating individual shipments. The entities most likely to choose this option are nurseries that move a substantial number of shipments interstate and treat their premises for other pests in addition to the gypsy moth. Producers that do not operate under a compliance agreement with APHIS, but treat their premises under this option, would receive certification for each shipment from an inspector.

The economic effects of the interim rule will likely vary, depending on the size of the entities affected, the levels of infestation, and the size and number of shipments to noninfested areas. There are approximately 146 nurseries and Christmas tree growers that will incur costs from the interim rule in eight of the nine counties added to the list of generally infested areas (data are not available for Florence County). According to the size standards established by the Small Business Administration, all of these businesses are considered small entities. No information is available concerning the percentage of shipments moved by those entities into or through noninfested areas. Data on shipments of regulated articles from other generally infested areas in Wisconsin indicate that few shipments are moved from those areas into or through noninfested areas. If this pattern holds, little or no additional costs would be incurred by many of the 146 establishments as a result of the interim rule.

The regulatory requirements imposed by the interim rule are expected to cause a slight increase in costs for the affected entities. The relative negative impact that may result from the interim rule is very small when compared with the potential for harm to related industry and the U.S. economy as a whole resulting from the further spread of the pest. Since the total value of the regulated articles moved from infested to noninfested areas is a small fraction of the national total, the effect on national prices is expected to be slight. Additionally, since the rule is not prohibitive, articles that meet the requirements of the regulations would continue to enter the market. Therefore, the overall impact upon price and competitiveness is expected to be relatively insignificant.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant impact on a substantial number of small entities.

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR part 301 and that was published at 67 FR 41809–41810 on June 20, 2002.

Authority: 7 U.S.C. 166, 7711, 7712, 7714, 7731, 7735, 7751, 7752, 7753, and 7754; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 also issued under Sec. 204, Title II, Pub. L. 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 also issued under Sec. 203, Title II, Pub. L. 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

Done in Washington, DC, this 31st day of October 2002.

Bobby R. Acord,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–28157 Filed 11–5–02; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–SW–42–AD; Amendment 39–12936; AD 2002–17–51]

RIN 2120–AA64

Airworthiness Directives; Agusta S.p.A. Model A109E Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) 2002–17–51, which was sent previously to all known U.S. owners and operators of Agusta S.p.A. (Agusta) helicopters by individual letters. This AD requires installing a placard in the helicopter and marking the airspeed indication at 140 knots indicated airspeed (KIAS) to indicate a reduction in the helicopter never-exceed speed (Vne) of 28 KIAS; visually checking the tail roter blades on both sides for a crack before each start of the helicopter engines; visually inspecting the tail rotor blades with a 5x or higher magnifying glass at certain time intervals and anytime an increase in vibration occurs, and conducting a dye-penetrant inspection if necessary; and replacing any cracked tail rotor blade with an airworthy tail roter blade. The actions specified by this AD are intended to prevent failure of the tail roter blade and subsequent loss of control of the helicopter.

EFFECTIVE DATE: Effective November 21, 2002, to all persons except those persons to whom it was made immediately effective by Emergency AD 2002–17–51, issued on August 19, 2002, which contained the requirements of this amendment.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 21, 2002.

Comments for inclusion in the Rules Docket must be received on or before January 6, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2002–SW–42–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: *9-asw-adcomments@faa.gov.*

The applicable service information may be obtained from Agusta, 21017 Cascina Costa di Samarate (VA) Italy, Via Giovanni Agusta 520, telephone 39 (0331) 229111, fax 39 (0331) 229605–222595. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jim Grigg, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, Fort Worth, Texas 76193–0110, telephone (817) 222–5490, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: On July 9, 2002, the FAA issued Emergency AD 2002–14–51, Docket 2002–SW–35–AD, which applied to Agusta Model A109E and A119 helicopters. That AD required, before each flight, visually checking each tail rotor blade on both sides for a crack. That AD also required, within 5 hours TIS and thereafter at

intervals not to exceed 5 hours TIS, inspecting each tail rotor blade for a crack with a 5x or higher magnifying glass. If you were unable to determine by the visual inspection whether there was a crack, the AD required conducting a dye-penetrant inspection. Replacing any cracked tail rotor blade with an airworthy blade was also required before further flight. After issuance of that Emergency AD, the manufacturer determined, and we agreed, that reducing the Vne by 28 KIAS to 140 KIAS is necessary to reduce the tail rotor loading. The reduction in Vne supports the increase in the visual inspection interval from 5 hours TIS to 25 hours TIS. Further, we have determined that additional modifications are necessary for the Agusta Model A119 helicopters that are not required for the Model A109E helicopters, so on August 19, 2002, we superseded AD 2002–14–51 and issued a separate Emergency AD for each model. Emergency AD 2002–17–51, applicable to August Model A109E helicopters, requires reducing the helicopter Vne; checking and inspecting the tail rotor blades for cracks; and replacing any cracked tail rotor blades.

The FAA has reviewed Agusta Alert Bolletino Tecnico No. 109EP–30, Revision A, dated July 25, 2002 (BT), which describes procedures for checking and inspecting both sides of the tail rotor blades, part number (P/N) 109–8132–01–111, for a crack and reducing the helicopter Vne. The Ente Nazionale per l'Aviazione Civile, the airworthiness authority for Italy, classified the BT as mandatory and issued AD No. 2002–384, dated July 29, 2002, to ensure the continued airworthiness of this helicopter in Italy.

Since the unsafe condition described is likely to exist or develop on other Agusta Model A109E helicopters of the same type design, the FAA issued Emergency AD 2002–17–51 to prevent failure of the tail rotor blade and subsequent loss of control of the helicopter. The AD requires:

- Installing a placard in the helicopter and marking the airspeed indication at 140 KIAS to indicate a reduction in the helicopter Vne of 28 KIAS before further flight;
- Visually checking the tail rotor blades on both sides for a crack before each start of the helicopter engines;
- Visually inspecting the tail rotor blades with a 5× or higher magnifying glass within 25 hours TIS and thereafter at intervals not to exceed 25 hours TIS, and anytime an increase in vibration occurs, and conducting a dye-penetrant inspection if you are unable to determine by the visual inspection whether or not there is a crack; and
- Replacing any cracked tail rotor blade with an airworthy tail rotor blade before further flight.

The actions must be accomplished in accordance with the BT described previously. The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the controllability of the helicopter. Therefore, reducing the helicopter Vne; performing checks and inspections of the tail rotor blades for cracks; and replacing any cracked tail rotor blades are required before further flight, and this AD must be issued immediately.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued on August 19, 2002, to all known U.S. owners and operators of Agusta Model A109E helicopters. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to 14 CFR 39.13 to make it effective to all persons.

The FAA estimates that 48 helicopters of U.S. registry will be affected by this AD, that it will take approximately 0.5 work hour per helicopter to accomplish the visual inspection, 1 work hour per helicopter to accomplish the dye-penetrant inspection, and 1 work hour per helicopter to replace the tail rotor blade, if necessary. The average labor rate is $60 per work hour. Required parts will cost approximately $9,765 per tail rotor blade. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $506,160 per year, assuming, for each helicopter, 24 visual inspections, 1 tail rotor blade replacement, and no dye-penetrant inspections. The manufacturer states in its BT that they will provide the replacement blades at no cost to the owner/operator.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 2002–SW–42–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

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Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2002–17–51 Augusta S.p.A.: Amendment 39–12936. Docket No. 2002–SW–42–AD. Supersedes Emergency AD 2002–14–51, Docket No. 2002–SW–35–AD.

Applicability: Model A109E helicopters, with tail rotor blade, part number 109–8132–01–111, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the tail rotor blade and subsequent loss of control of the helicopter, accomplish the following:

(a) Before further flight, install a placard in the helicopter and mark the airspeed indicator at 140 knots indicated airspeed (KIAS) to indicate a reduction in the helicopter never exceed speed (Vne) of 28 KIAS in accordance with the Compliance Instructions, Part I, of Agusta Alert Bollettino Tecnico No. 109EP–30, Revision A, dated July 25, 2002 (BT).

(b) Before each start of the helicopter engines, visually check both sides of each tail rotor blade for a crack in the area depicted in Figure 1 of this AD. And owner/operator (pilot) holding at least a private pilot certificate may perform this visual check and must enter compliance with this paragraph into the aircraft maintenance records in accordance with 14 CFR 43.11 and 91.417(d)(2)(v). See Figure 1:

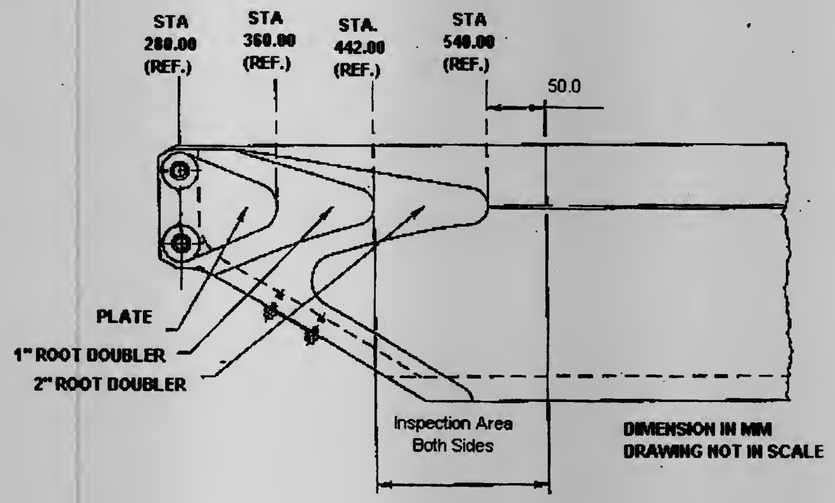

Part Number 109-8132-01-111 Tail Rotor Blade

FIGURE 1

Note 2: Paint irregularities on the tail rotor blade may be due to a crack.

(c) Within 25 hours time-in-service (TIS), and thereafter at intervals not to exceed 25 hours TIS, and anytime there is an increase in vibration levels, using a 5x or higher magnifying glass, visually inspect each tail rotor blade for a crack before further flight in accordance with the Compliance Instructions, Part III, paragraphs 1. through 5., of the BT. Reporting to Agusta Service Engineering is not required. If you are unable to determine by the visual inspection whether there is a crack, dye penetrant inspect the tail rotor blade for a crack in accordance with the Compliance Instructions, Part III, paragraph 6., of the BT.

(d) Replace any cracked tail rotor blade with an airworthy blade before further flight.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

(f) Special flight permits will not be issued.

(g) Installing the placard and inspecting for cracks shall be done in accordance with the Compliance Instructions, Part I and Part III, paragraphs 1 through 6, of Agusta Alert Bollettino Tecnico No. 109EP–30, Revision A, dated July 25, 2002. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Agusta, 21017 Cascina Costa di Samarate (VA) Italy, Via Giovanni Agusta 520, telephone 39 (0331) 229111, fax 39 (0331) 229605–222595. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on November 21, 2002, to all persons except those persons to whom it was made immediately effective by Emergency AD 2002–17–51, issued August 19, 2002, which contained the requirements of this amendment.

Note 4: The subject of this AD is addressed in Ente Nazionale per l'Aviazione Civile (Italy) AD No. 2002–384, dated July 29, 2002.

Issued in Fort Worth, Texas, on October 17, 2002.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 02–27792 Filed 11–5–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–SW–38–AD; Amendment 39–12935; AD 2002–22–10]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron Canada Limited Model 407 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD) for Bell Helicopter Textron Canada Limited (BHTCL) Model 407 helicopters that requires visually inspecting the brackets that attach the horizontal stabilizer slat (slat) to the stabilizer for a crack. If a crack is found, that AD also requires replacing the slat assembly before further flight. Also, that AD requires installing airworthy, segmented slat assemblies by a specified date. Installing segmented slat assemblies was considered terminating action for the requirements of that AD. This amendment requires, initially and at certain time intervals, checking each slat assembly for a cracked bracket and, if a crack is found, replacing any unairworthy slat assembly with an improved, airworthy slat assembly. This amendment also requires replacing, modifying, and installing identification plates on slats on certain helicopters at specified time intervals. This amendment is prompted by two additional reports of cracked brackets. The actions specified by this AD are intended to prevent a slat from separating, contacting a rotor blade, and resulting in subsequent loss of control of the helicopter.

DATES: Effective November 21, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 21, 2002.

Comments for inclusion in the Rules Docket must be received on or before January 6, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2002–SW–38–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: *9-asw-adcomments@faa.gov.*

The service information referenced in this AD may be obtained from Bell Helicopter Textron Canada Limited, 12,800 Rue de l'Avenir, Mirabel, Quebec J7J1R4, telephone (450) 437–2862 or (800) 363–8023, fax (450) 433–0272. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Sharon Miles, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations Group, Fort Worth, Texas 76193–0111, telephone (817) 222–5122, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: On September 29, 2000, the FAA issued AD 2000–20–18, Amendment 39–11930 (65 FR 62275, October 18, 2000), to require visually inspecting certain slat brackets for a crack and replacing any slat assembly that has a cracked bracket. Also, AD 2000–20–18 required installing a newly designed slat assembly on each affected model before flight after December 31, 2000. That action was prompted by an incident in which a slat separated from a helicopter. That condition, if not corrected, could result in a slat separating, contacting a rotor blade, and subsequent loss of control of the helicopter.

Since issuing that AD and since installing the newly designed slat assembly, part number (P/N) 407–023–001–101 on affected helicopters, two additional cracked slat brackets have been reported. These occurrences are attributed to a design flaw and improper installation of the slat assembly.

Bell Helicopter Textron has issued Alert Service Bulletin No. 407–02–52, dated March 20, 2002 (ASB). The ASB specifies checking the slats for a crack in the bracket on certain serial-numbered helicopters and replacing the existing slat assembly with a further improved, airworthy, slat assembly on another serial-numbered group of helicopters. The ASB also specifies modifying certain existing slat assemblies for another group of serial-numbered helicopters and installing and marking identification plates after the segmented slat assemblies are installed on certain other helicopters. Transport Canada classified this ASB as mandatory and issued AD CF–2000–09R1, dated June 6, 2002, to ensure the continued airworthiness of these helicopters in Canada.

This helicopter model is manufactured in Canada and is type certificated for operation in the United States under the provisions of 14 CFR 21.29 and the applicable bilateral agreement. Pursuant to the applicable bilateral agreement, Transport Canada has kept the FAA informed of the situation described above. The FAA has examined the findings of Transport Canada, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

This unsafe condition is likely to exist or develop on other BHTCL Model 407 helicopters of the same type design. Therefore, this AD supersedes AD 2000–20–18 and requires the following:

- Within 10 hours time-in-service (TIS) and thereafter before the first flight of each day:
- For helicopters serial number (S/N) 53000 through 53498 and 53500 through 53503, check each slat for a crack at the radius of each bracket, P/N 206–023–119–109, –110, or 407–023–801–127, –128, or 407–023–011–119, –120, or –121. An owner/operator (pilot) holding at least a private pilot certificate may perform this check. The pilot must enter compliance with this provision in

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accordance with 14 CFR 43.11 and 91.417(a)(2)(v). A pilot may perform this check because it involves only a visual check for a crack in the bracket for the slat and can be performed equally well by a pilot or a mechanic.

• If a crack is found, before further flight, replace slat assembly, P/N 407–023–002–117 or 407–023–001–101 with an airworthy, segmented slat assembly, P/N 407–023–001–103.

• Replacing slat assembly, P/N 407–023–002–117 or 407–023–001–101, with an airworthy, segmented slat assembly, P/N 407–023–001–103, is terminating action for the pilot check.

• Within 300 hours TIS, but not later than December 31, 2002, for helicopters:

• S/N 53000 through 53498, replace slat assembly, P/N 407–023–002–117 and 407–023–001–101, with an airworthy, segmented slat assembly, P/N 407–023–001–103.

• S/N 53500 through 53503, modify each segmented slat assembly, P/N 407–023–001–103.

• S/N 53504 through 53512, install and mark identification plates for each segmented slat assembly, P/N 407–023–001–103.

The actions must be accomplished in accordance with the ASB described previously. The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the structural integrity and controllability of the helicopter. Therefore, checking a certain group of slats for a crack at the radius of each bracket is required before the first flight of each day and must be replaced before December 31, 2002. Thus, this AD must be issued immediately.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

The FAA estimates that this AD will affect 289 helicopters and will require approximately:

• 3.5 work hours to replace the slat assembly for 280 helicopters;

• 3.5 work hours to reinstall the slat assembly for 4 helicopters;

• ¾ work hour to install and mark the ID plates for 9 helicopters;

• An average labor rate of $60 per work hour; and

• $5,657 for parts per helicopter. The manufacturer states that a 100 percent warranty credit is available for replacing the slat assembly if various conditions are met. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,644,005.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 2002–SW–38–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–11930 (65 FR 62275, October 18, 2000), and by adding a new airworthiness directive (AD), Amendment 39–12935, to read as follows:

2002–22–10 Bell Helicopter Textron Canada Limited: Amendment 39–12935. Docket No. 2002–SW–38–AD. Supersedes AD 2000–20–18, Amendment 39–11930, Docket No. 2000–SW–24–AD.

Applicability: Model 407 helicopters, serial number (S/N) 53000 through 53498 and 53500 through 53512, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent the horizontal stabilizer slat (slat) from separating, contacting a rotor blade, and resulting in subsequent loss of control of the helicopter, accomplish the following:

(a) For helicopters, S/N 53000 through 53498 and 53500 through 53503:

(1) Within 10 hours time-in-service (TIS) and thereafter before the first flight of each day, check each slat for a crack at the radius of each bracket, part numbers (P/N) 206–023–119–109, –110 or 407–023–801–127, –128, or 407–023–001–119, –120, or –121, as shown in Figure 1 of this AD:

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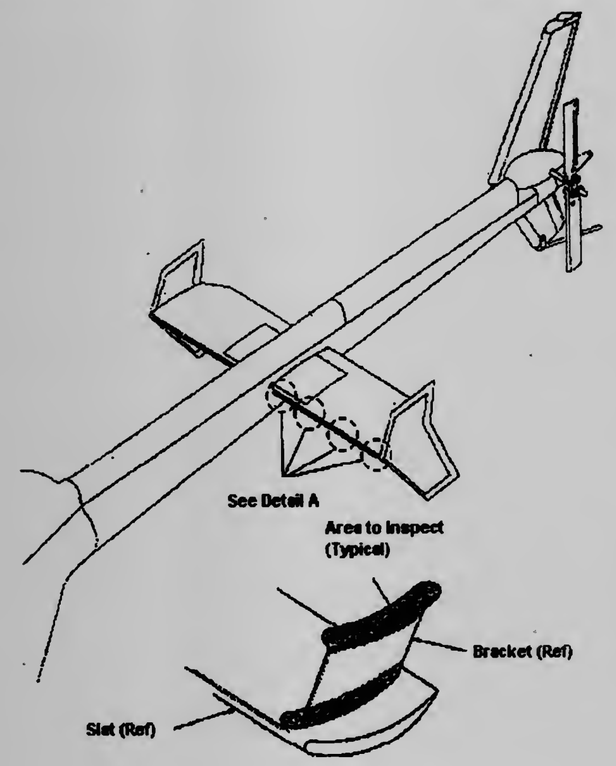

Detail A
(Typical Both Sides, Total 8 Places

Figure 1. Pre-Flight check of brackets, horizontal stabilizer slats.

BILLING CODE 4910–13–C

(2) An owner/operator (pilot) holding at least a private pilot certificate may perform the check required by paragraph (a)(1) of this AD. The pilot must enter compliance with this provision in accordance with 14 CFR 43.11 and 91.417(a)(2)(v).

(3) If a crack is found, before further flight, replace slat assembly, P/N 407–023–002–117 or 407–023–001–101, with an airworthy, segmented slat assembly, P/N 407–023–001–103.

(4) Replacing slat assembly, P/N 407–023–002–117 and 407–023–001–101, with an airworthy, segmented slat assembly, P/N 407–023–001–103, is terminating action for the check required by paragraph (a)(1) of this AD.

(b) Within 300 hours TIS but no later than December 31, 2002:

(1) For helicopters, S/N 53000 through 53498, replace slat assembly, P/N 407–023–002–117 and 407–023–001–101, with an airworthy, segmented slat assembly, P/N 407–023–001–103, in accordance with the Accomplishment Instructions, Part II, Bell Helicopter Textron Alert Service Bulletin 407–02–52, dated March 20, 2002 (ASB).

(2) For helicopters, S/N 53500 through 53503, modify each segmented slat assembly in accordance with the Accomplishment Instructions, Part III, of the ASB.

(3) For helicopters, S/N 53504 through 53512, install and mark identification plates for each slat assembly in accordance with the Accomplishment Instructions, Part IV, of the ASB.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, Rotorcraft Directorate, FAA.

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Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

(d) Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the helicopter to a location where the requirements of this AD can be accomplished.

(e) Replacing and modifying the slats and installing and marking the identification plates shall be done in accordance with the Accomplishment Instructions, Part II, Part III, and Part IV, respectively, of Bell Helicopter Textron Alert Service Bulletin 407–02–52, dated March 20, 2002. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bell Helicopter Textron Canada Limited, 12,800 Rue de l'Avenir, Mirabel, Quebec J7J1R4, telephone (450) 437–2862 or (800) 363–8023, fax (450) 433–0272. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on November 21, 2002.

Note 3: The subject of this AD is addressed in Transport Canada (Canada) AD CF–2000–09R1, dated June 6, 2002.

Issued in Fort Worth, Texas, on October 21, 2002.

Eric D. Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 02–27791 Filed 11–5–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–SW–36–AD; Amendment 39–12934; AD 2002–22–09]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model AS332C, L, and L1 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) for the specified Eurocopter France (ECF) model helicopters. This action requires, before further flight, inserting statements into the Limitations section of the Rotorcraft Flight Manual (RFM) prohibiting flight under certain atmospheric conditions. Also, this AD requires inspecting the bullet seal on the multi-purpose air intake (MPAI) to determine the pressure and, if the pressure is less than 3 bars on one or both of the sides, replacing the P2 pipe with an airworthy P2 pipe within a specified time interval. This amendment is prompted by the discovery of unairworthy P2 pipes, which might cause insufficient inflation of the bullet seal on the MPAI. This condition, if not detected, could restrict airflow into the engine inlet during flight in icing conditions, resulting in loss of engine power and subsequent loss of control of the helicopter.

DATES: Effective November 21, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 21, 2002.

Comments for inclusion in the Rules Docket must be received on or before January 6, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2002–SW–36–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: *9-asw-adcomments@faa.gov*.

The service information referenced in this AD may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ed Cuevas, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations Group, Fort Worth, Texas 76193–0111, telephone (817) 222–5355, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: The Direction Generale De L'Aviation Civile (DGAC), the airworthiness authority for France, notified the FAA that an unsafe condition may exist on the specified helicopter models. The DGAC advises of the discovery of noncompliant P2 pipes, which might cause insufficient inflation of the bullet seal and lead to engine flame-out during flight in icing condition.

Eurocopter has issued Alert Telex No. 30.00.52 R1, dated April 10, 2002 (Telex), which adds limitations for flight into icing conditions, provides procedures for checking the bullet seal, and specifies replacing any P2 pipe if the pressure on the pressure gage is below 3 bars on one or on both sides. The DGAC classified this Telex as mandatory and issued AD No. 2002–257–080(A), dated May 15, 2002, to ensure the continued airworthiness of these helicopters in France.

These helicopter models are manufactured in France and are type certificated for operation in the United States under the provisions of 14 CFR 21.29 and the applicable bilateral agreement. Pursuant to the applicable bilateral agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of these type designs that are certificated for operation in the United States.

This unsafe condition is likely to exist or develop on other helicopters of these same type designs registered in the United States. Therefore, this AD is being issued to prevent restricted airflow into the engine inlet during flight in certain atmospheric conditions conductive to icing that could result in loss of complete engine power and subsequent loss of control of the helicopter. This AD requires, before further flight, inserting statements into the Limitations section of the RFM prohibiting flight under certain atmospheric conditions. Also, this AD requires within 10 hours time-in-service (TIS), inspecting the bullet seal on the MPAI to determine the pressure. If the pressure is less than 3 bars on either side, this AD requires, within 100 hours TIS, replacing each unairworthy P2 pipe with an airworthy P2 pipe, which is terminating action for the requirements of this AD. The actions must be done in accordance with the Telex described previously.

None of the Model AS332C, L, or L1 helicopters currently on the U.S. Register have the MPAI installed. All helicopters that have the MPAI installed, included in the applicability of this rule, are currently operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject helicopters have the MPAI installed in the future.

Should an MPAI be installed on an affected helicopter in the future, the FAA estimates that it would require:

- 1 work hour to insert statements into the RFM,
- 3 work hours to conduct the pressure test,
- 15 work hours to replace both pipes,
- $60 per work hour labor rate, and
- $1400 in material costs to replace two pipes.

Based on these figures, the cost impact of this AD would be $2540 per helicopter.

Since this AD action does not affect any helicopter that is currently on the U.S. register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the **Federal Register**.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are unnecessary, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 2002–SW–36–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that notice and prior public comment are unnecessary in promulgating this regulation; therefore, it can be issued immediately to correct an unsafe condition in aircraft since none of these model helicopters are registered in the United States. The FAA has also determined that this regulation is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2002–22–09 Eurocopter France: Amendment 39–12934. Docket No. 2002–SW–36–AD.

Applicability: Model AS332C, L, and L1 helicopters, with an electrical multi-purpose air intake (MPAI) modified per MOD 332A07–25974, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent restricted airflow into the engine inlet during flight in icing conditions resulting in loss of engine power and subsequent loss of control of the helicopter, accomplish the following:

(a) Before further flight, insert the following statement into the Limitations section of the Rotorcraft Flight Manual (RFM).

"It is forbidden to fly into clouds or in fog at an outside air temperature (OAT) equal to or lower than plus 3° Celsius.

It is forbidden to fly in rain at an OAT within the following temperature ranges:

Equal to or above minus 3° Celsius and Equal to or lower than plus 3° Celsius.

It is forbidden to takeoff, hover, or fly in snow at an OAT equal to or above minus 3° Celsius."

(b) Within 10 hours TIS, inspect the bullet inflation on the electrical MPAI and determine the pressure in accordance with the Accomplishment Instructions, paragraphs 2.A. and 2.B. of Eurocopter Alert Telex No. 30.00.52 R1, dated April 10, 2002 (Telex).

(1) If the pressure reads three or more bars, the system is operating properly.

(2) If the pressure is less than 3 bars on either side, within 100 hours TIS, replace each unairworthy P2 pipe with an airworthy P2 pipe in accordance with the Accomplishment Instructions, paragraphs 2.D.1, 2.D.2, and 3. of the Telex.

(c) A satisfactory pressure check of less than 3 bars on both sides or replacing each unairworthy P2 pipe with an airworthy P2 pipe is terminating action for the requirements of this AD.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

Note 2: Information concerning the existence of approved alternative methods of

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compliance with this AD, if any, may be obtained from the Regulations Group.

(e) Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the helicopter to a location where the requirements of this AD can be accomplished.

(f) The inspection and pipe replacement shall be done in accordance with the Accomplishment Instructions, paragraphs 2.A., 2.B., 2.D.1, 2.D.2, and 3. of Eurocopter Alert Telex No. 30.00.52 R1, dated April 10, 2002. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on November 21, 2002.

Note 3: The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD No. 2002–257–080(A), dated May 15, 2002.

Issued in Fort Worth, Texas, on October 24, 2002.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 02–27790 Filed 11–5–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–251–AD; Amendment 39–12940; AD 2002–20–07 R1]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment revises an existing airworthiness directive (AD), applicable to all Boeing Model 737 series airplanes, that currently requires installation of a new rudder control system and changes to the adjacent systems to accommodate that new rudder control system. That amendment would have superseded seven existing ADs; however, this new amendment removes any reference to superseding four of those seven ADs. This new amendment is prompted by an FAA determination that the requirements of those four ADs must remain in effect until installation of the new rudder control system and corresponding changes to the adjacent systems. The actions specified in this AD are intended to prevent an uncommanded rudder hardover event and consequent loss of control of the airplane due to inherent failure modes, including single-jam modes, and certain latent failures or jams combined with a second failure or jam.

DATES: Effective November 12, 2002.

Comments for inclusion in the Rules Docket must be received on or before January 6, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–251–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-iarcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2001–NM–251–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The information concerning this amendment may be obtained from or examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

FOR FURTHER INFORMATION CONTACT: Kenneth W. Frey, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington; telephone (425) 227–2673; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: On September 27, 2002, the FAA issued AD 2002–20–07, amendment 39–12903 (67 FR 62341, October 7, 2002), applicable to all Boeing Model 737 series airplanes, to require installation of a new rudder control system and changes to the adjacent systems to accommodate that new rudder control system. That action was prompted by FAA determinations that the existing system design architecture is unsafe due to inherent failure modes, including single-jam modes and certain latent failures or jams, which, when combined with a second failure or jam, could cause an uncommanded rudder hardover event and consequent loss of control of the airplane. Additionally, the current rudder operational procedure is not effective throughout the entire flight envelope. The actions required by that AD are intended to prevent the identified unsafe condition.

Actions Since Issuance of Previous Rule

AD 2002–20–07 would have superseded seven existing ADs. However, since the issuance of that AD, the FAA finds that only three of those ADs should have been superseded. By superseding the other four ADs, we inadvertently eliminated the requirements of those four ADs as of the effective date of AD 2002–20–07, instead of upon accomplishment of the actions required by that AD. We find that retaining the requirements of those four ADs is necessary to maintain the current level of safety until the requirements of this new AD are accomplished. This finding does not impose any additional burden on any operator because the requirements of those four ADs already exist.

The requirements of the following four ADs remain in effect until installation of the new rudder control system and corresponding changes to the adjacent systems:

- AD 97–09–15 R1, amendment 39–10912 (63 FR 64857, November 24, 1998), applies to all Boeing Model 737–100, –200, –300, –400, and –500 series airplanes. That AD requires a one-time inspection of the engage solenoid valve of the yaw damper on the rudder power control unit (PCU) to determine the part number (P/N) of the valve, and replacement of certain valves with specified P/Ns if necessary. Retaining this requirement will ensure that the appropriate engage solenoid valve is installed on the rudder PCU of all affected airplanes until accomplishment of this new AD.
- AD 97–14–04, amendment 39–10061 (62 FR 35068, June 30, 1997), applies to all Boeing Model 737–100, –200, –300, –400, and –500 series airplanes. That AD requires tests of the main rudder PCU to detect excessive internal leakage of hydraulic fluid, stalling, or reversal, and to verify proper operation of the PCU; and replacement of the PCU with a unit having a different part number if necessary. That AD also requires replacement of the PCU and the vernier control rod bolts with newly designed units, leak tests of the PCU, and replacement of the PCU with a serviceable or newly designed unit if necessary. Retaining these requirements will ensure that the appropriate vernier control rod bolts and main rudder PCU are installed and properly maintained until accomplishment of this new AD.
- AD 99–11–05, amendment 39–11175 (64 FR 27905, May 24, 1999). A correction of that AD was published in the **Federal Register** on December 13, 1999 (64 FR 69392). That AD applies to all Boeing Model 737 series airplanes, and requires repetitive displacement tests of the secondary slide in the dual concentric servo valve of the PCU for the rudder, and replacement of the valve assembly with a modified valve assembly if necessary. Retaining these requirements will ensure that the repetitive displacement tests will continue to be performed until accomplishment of this new AD.

The AD number and **Federal Register** citation for AD 99–11–05 appeared incorrectly in AD 2002–20–07. This information is specified correctly in the preceding paragraph.

- AD 2000–22–02, amendment 39–11948 (65 FR 64134, October 26, 2000). A correction of that AD was published in the **Federal Register** on November 16, 2000 (65 FR 69239), as AD 2000–22–02 R1, which applies to all Boeing Model 737 series airplanes. Those ADs require revising an FAA-approved Airplane Flight Manual (AFM) procedure to simplify the instructions for correcting a jammed or restricted flight control condition. Retaining this AFM change will ensure that the flightcrew continues to be advised of the procedures necessary to address a condition involving a jammed or restricted rudder until accomplishment of this new AD.

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of this same type design, this new AD revises AD 2002–20–07, which would have superseded seven existing ADs. This new AD continues to require installation of a new rudder control system and changes to the adjacent systems to accommodate that new rudder control system. This new AD also removes any reference to superseding four of those seven existing ADs.

Paragraph (b) of this AD specifies that installation of a new rudder control system and changes to the adjacent systems to accommodate that new rudder control system terminates the requirements of ADs 97–09–15 R1, 97–14–04, 99–11–05, and 2000–22–02 R1.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001–NM–251–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9199 (60 FR 18981, April 14, 1995); amendment 39–9954 (62 FR 9679, March 4, 1997); and amendment 39–10283 (63 FR 1903, January 13, 1998); and by adding a new airworthiness directive (AD), amendment 39–12940, to read as follows:

2002–20–07 R1 Boeing: Amendment 39–12940. Docket 2001–NM–251–AD. Revises AD 2002–20–07, Amendment 39–12903. Supersedes AD 95–06–53, Amendment 39–9199; AD 97–05–10, Amendment 39–9954; and AD 98–02–01, Amendment 39–10283.

Applicability: All Model 737 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the

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requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent an uncommanded rudder hardover event and consequent loss of control of the airplane due to inherent failure modes, including single-jam modes, and certain latent failures or jams combined with a second failure or jam; accomplish the following:

Installation

(a) Within 6 years after November 12, 2002 (the effective date of AD 2002–20–07, amendment 39–12903), do the actions required by paragraphs (a)(1) and (a)(2) of this AD, in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA.

(1) Install a new rudder control system that includes new components such as an aft torque tube, hydraulic actuators, and associated control rods, and additional wiring throughout the airplane to support failure annunciation of the rudder control system in the flight deck. The system also must incorporate two separate inputs, each with an override mechanism, to two separate servo valves on the main rudder power control unit (PCU); and an input to the standby PCU that also will include an override mechanism.

(2) Make applicable changes to the adjacent systems to accommodate the new rudder control system.

Terminating Action

(b) Accomplishment of the actions required by paragraph (a) of this AD constitutes terminating action for the requirements of AD 97–09–15 R1, amendment 39–10912; AD 97–14–04, amendment 39–10061; AD 99–11–05, amendment 39–11175; and AD 2000–22–02 R1, amendment 39–11948.

Alternative Methods of Compliance

(c)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

(2) Alternative methods of compliance, approved previously in accordance with the ADs listed in the following table, are not considered to be approved as alternative methods of compliance with this AD:

TABLE—LIST OF SUPERSEDED ADS

AD No.	Amendment No.
95–06–53	39–9199
97–05–10	39–9954
98–02–01	39–10283

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Effective Date

(e) This amendment becomes effective on November 12, 2002.

Issued in Renton, Washington, on October 30, 2002.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–28111 Filed 11–5–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 510

New Animal Drugs; Change of Sponsor's Name

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor's name from Fort Dodge Animal Health, Division of American Home Products Corp. to Fort Dodge Animal Health, Division of Wyeth and to correct the sponsor's street address.

DATES: This rule is effective November 6, 2002.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center for Veterinary Medicine (HFV–104), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 301–827–8549, e-mail: *lluther@cvm.fda.gov.*

SUPPLEMENTARY INFORMATION: Fort Dodge Animal Health, Division of American Home Products Corp., 500 Fifth St. NW., Fort Dodge, IA 50501, has informed FDA of a change of name to Fort Dodge Animal Health, Division of Wyeth. Accordingly, the agency is amending the regulations in 21 CFR 510.600(c) to reflect the change. In addition, when this sponsor's address was first codifed (61 FR 5505, February 13, 1996), an incorrect street number was included. At this time, it is being corrected.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 510 is amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

§ 510.600 [Amended]

2. Section 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* is amended in the table in paragraph (c)(1) in the entry for "Fort Dodge Animal Health, Division of American Home Products Corp." by removing "American Home Products Corp." and "800" and by adding in their places, respectively, "Wyeth" and "500"; and in the table in paragraph (c)(2) in the entry for "000856" by removing "American Home Products Corp." and "800" and by adding in their places, respectively, "Wyeth" and "500".

Dated: October 28, 2002.

Andrew J. Beaulieu,

Acting Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 02–28154 Filed 11–5–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510, 520, 522, and 524

New Animal Drugs; Change of Sponsor

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor for 12 approved new animal drug applications (NADAs) from A. H. Robins Co. to Fort Dodge Animal Health, Division of Wyeth.

DATES: This rule is effective November 6, 2002.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center for Veterinary Medicine (HFV–104), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 301–827–8549, e-mail: lluther@cvm.fda.gov.

SUPPLEMENTARY INFORMATION: A. H. Robins Co., P.O. Box 518, Fort Dodge, IA 50501–0518, has informed FDA that it has transferred ownership of, and all rights and interest in, the following 12 approved NADAs to Fort Dodge Animal Health, Division of Wyeth, 800 Fifth St. NW., Fort Dodge, IA 50501:

NADA Number	Product Name
034–879	DOPRAM–V Injectable
038–838	ROBAXIN–V Injectable
045–715	ROBAXIN–V Tablets
091–065	ROBIZONE–V
093–105	ROBIZONE–V
098–640	ROBIZONE Injectable 20%
101–777	Robinul-V Injectable
106–111	Telazol
136–651	Guaifaxin
141–003	Derm-Otic Ointment
141–004	Robamox-V
141–005	Robamox-V Tablets

Accordingly, the agency is amending the regulations in 21 CFR 520.88b, 520.88f, 520.1380, 520.1720a, 522.775, 522.1066, 522.1085, 522.1380, 522.1720, 522.2470, and 524.1600a to reflect the transfer of ownership and to reflect current format.

Following this change of sponsorship, A. H. Robins Co. is no longer the sponsor of any approved application. Accordingly, 21 CFR 510.600(c) is being amended to remove the entries for A. H. Robins Co.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Parts 520, 522, and 524

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510, 520, 522, and 524 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

§ 510.600 [Amended]

2. Section 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* is amended in the table in paragraph (c)(1) by removing the entry for "A. H. Robins Co." and in the table in paragraph (c)(2) by removing the entry for "000031".

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

3. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 520.88b [Amended]

4. Section 520.88b *Amoxicillin trihydrate for oral suspension* is amended in paragraph (c) by removing "000031 and 000093" and by adding in its place "000093 and 000856".

§ 520.88f [Amended]

5. Section 520.88f *Amoxicillin trihydrate tablets* is amended in paragraph (b) by removing "000031 or 000093" and by adding in its place "000093 and 000856".

§ 520.1380 [Amended]

6. Section 520.1380 *Methocarbamol tablets* is amended in paragraph (c) by removing "000031" and by adding in its place "000856".

§ 520.1720a [Amended]

7. Section 520.1720a *Phenylbutazone tablets and boluses* is amended in paragraph (b)(3) by removing "000031".

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

8. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 522.775 [Amended]

9. Section 522.775 *Doxapram hydrochloride injection* is amended in paragraph (b) by removing "000031" and by adding in its place "000856".

§ 522.1066 [Amended]

10. Section 522.1066 *Glycopyrrolate injection* is amended in paragraph (b) by removing "000031" and by adding in its place "000856".

§ 522.1085 [Amended]

11. Section 522.1085 *Guaifenesin sterile powder* is amended in paragraph (b) by removing "No. 000031" and by adding in its place "Nos. 000856".

§ 522.1380 [Amended]

12. Section 522.1380 *Methocarbamol injection* is amended in paragraph (b) by removing "000031" and by adding in its place "No. 000856".

§ 522.1720 [Amended]

13. Section 522.1720 *Phenylbutazone injection* is amended in paragraph (b)(1) by removing "000031" and by numerically adding "000856".

§ 522.2470 [Amended]

14. Section 522.2470 *Tiletamine hydrochloride and zolazepam hydrochloride for injection* is amended in paragraph (b) by removing "000031" and by adding in its place "000856".

PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS

15. The authority citation for 21 CFR part 524 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 524.1600a [Amended]

16. Section 524.1600a *Nystatin, neomycin, thiostrepton, and triamcinolone acetonide ointment* is amended in paragraph (b) by removing "000031" and by numerically adding "000856".

Dated: October 28, 2002.

Andrew J. Beaulieu,

Acting Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 02–28156 Filed 11–5–02; 8:45 am]

BILLING CODE 4160–01–S

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 982

[Docket No. FR–4759–C–02]

RIN 2577–AC39

Housing Choice Voucher Program Homeownership Option: Eligibility of Units Owned or Controlled by a Public Housing Agency; Correction

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Interim rule; correction.

SUMMARY: On October 28, 2002, HUD published an interim rule establishing the eligibility of units owned or substantially controlled by a public housing agency (PHA) for purchase under the Housing Choice Voucher Program homeownership option. The interim rule inadvertently provided an incorrect designation for the paragraph being added to the voucher program regulations. This document makes the necessary technical correction.

DATES: *Effective Date:* This correction is effective on November 27, 2002.

Comment Due Date: The public comment period for the October 28, 2002 interim rule is unchanged. Comments on the interim rule are due on or before December 27, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding the October 28, 2002 interim rule to the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500. Communications should refer to the docket number and title of the interim rule. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for inspection and copying between 7:30 a.m. and 5:30 p.m. at the above address.

FOR FURTHER INFORMATION CONTACT: Gerald J. Benoit, Office of Public and Indian Housing, Department of Housing and Urban Development, Room 4210, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708–0477. (This is not a toll-free number.) Hearing- or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

On October 28, 2002 (67 FR 65864), HUD published an interim rule establishing the eligibility of units owned or substantially controlled by a public housing agency (PHA) for purchase under the Housing Choice Voucher Program homeownership option. The interim rule, which will become effective on November 27, 2002, inadvertently provided an incorrect designation for the paragraph being added to the voucher program regulations. Specifically, the interim rule provides that a new paragraph (c) is being added to § 982.628. The correct designation is § 982.628(d). This document makes the necessary technical correction to the October 28, 2002 interim rule.

PART 982—[CORRECTED]

Accordingly, the interim rule FR Doc. 02–27310, published on October 28, 2002, (67 FR 65864) is corrected as follows:

1. On page 65865, in the third column, correct amendatory instruction 2. and the paragraph heading to read as follows:

2. Add § 982.628(d) to read as follows:

§ 982. 628 Homeownership option: Eligible units.

* * * * *

(d) *PHA-owned units.* * * *

* * * * *

Dated: October 31, 2002.

Aaron Santa Anna,

Assistant General Counsel for Regulations.

[FR Doc. 02–28128 Filed 11–5–02; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 915

[IA–011–FOR]

Iowa Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), are approving an amendment to the Iowa regulatory program (Iowa program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Iowa proposed to revise its rules concerning inspections and enforcement. Iowa revised its program to be consistent with the corresponding Federal regulations.

EFFECTIVE DATE: November 6, 2002.

FOR FURTHER INFORMATION CONTACT: John W. Coleman, Mid-Continent Regional Coordinating Center. Telephone: (618) 463–6460. Internet address: *jcoleman@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Iowa Program
II. Submission of the Amendment
III. OSM's Findings
IV. Summary and Disposition of Comments
V. OSM's Decision
VI. Procedural Determinations

I. Background on the Iowa Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, "* * * a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act." *See* 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Iowa program effective April 10, 1981. You can find background information on the Iowa program, including the Secretary's findings, the disposition of comments, and conditions of approval, in the January 21, 1981, **Federal Register** (46 FR 5885). You can also find later actions concerning Iowa's program and program amendments at 30 CFR 915.10, 915.15, and 915.16.

II. Submission of the Amendment

By letter dated June 14, 2002 (Administrative Record No. IA–447), Iowa sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). Iowa sent the amendment in response to a letter dated June 17, 1997 (Administrative Record No. IA–440), that we sent to Iowa in accordance with 30 CFR 732.17(c).

We announced receipt of the amendment in the August 12, 2002, **Federal Register** (67 FR 52659). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the amendment. The public comment period ended on September 12, 2002. We received comments from one Federal agency.

III. OSM's Findings

Following are the findings we made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are approving the amendment as described below.

Iowa proposed to revise Iowa Administrative Code (IAC) 27–40.71(207) to incorporate by reference 30 CFR 840.11, as in effect on July 1, 2001. Previously, Iowa's provision incorporated by reference 30 CFR 840.11, as in effect on July 1, 1992. We find that Iowa's revision at IAC 27–40.71(207) is no less effective than the Federal regulations at 30 CFR 840.11. We also find that Iowa's revision partially satisfies the requirements of our letter dated June 17, 1997 (Administrative Record No. IA–440), that we sent to Iowa in accordance with 30 CFR 732.17(c).

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment, but did not receive any.

Federal Agency Comments

Under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Iowa program (Administrative Record No. IA–447.3). The Natural Resources Conservation Service responded on July 22, 2002 (Administrative Record No. IA–447.2), stating that it had no concern over this proposed amendment.

Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(ii), we are required to get a written concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Iowa proposed to make in this amendment pertain to air or water quality standards. Therefore, we did not ask EPA to concur on the amendment.

Under 30 CFR 732.17(h)(11)(i), we requested comments on the amendment from EPA (Administrative Record No. IA–447.3. EPA did not respond to our request.

State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On June 19, 2002, we requested comments on Iowa's amendment (Administrative Record No. IA–447.3), but neither responded to our request.

V. OSM's Decision

Based on the above finding, we approve the amendment Iowa sent us on June 14, 2002. We approve the regulations proposed by Iowa with the provision that they be fully promulgated in identical form to the rules submitted to and reviewed by OSM and the public.

To implement this decision, we are amending the Federal regulations at 30 CFR part 915, which codify decisions concerning the Iowa program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a) of SMCRA requires that the State's program demonstrate that the State has the capability of carrying out the provisions of the Act and meeting its purposes. Making this final rule effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

Effect of OSM's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any change of an approved State program be submitted to OSM for review as a program amendment. The Federal regulations at 30 CFR 732.17(g) prohibit any changes to State programs that are not approved by OSM. In the oversight of the Iowa program, we will recognize only the statutes, regulations, and other materials we have approved, together with any consistent implementing policies, directives, and other materials. We will require Iowa to enforce only approved provisions.

VI. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations "consistent with" regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866 and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

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Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 915

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 20, 2002.

Charles E. Sandberg,

Acting Regional Director, Mid-Continent Regional Coordinating Center.

For the reasons set out in the preamble, 30 CFR 915 is amended as set forth below:

PART 915—IOWA

1. The authority citation for part 915 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 915.15 is amended in the table by adding a new entry in chronological order by "Date of final publication" to read as follows:

§ 915.15 Approval of Iowa regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
June 14, 2002	November 6, 2002	IAC 27–40.71(207).

[FR Doc. 02–28203 Filed 11–5–02; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

[KY–238–FOR]

Kentucky Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule.

SUMMARY: We, the Office of Surface Mining (OSM) are approving, with certain conditions, an amendment to the Kentucky permanent regulatory program (hereinafter referred to as the Kentucky program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Kentucky proposed revisions to their State statutes pertaining to easement of necessity. To the extent that it is construed in the manner discussed in the findings below, Kentucky's proposed amendment is consistent with the corresponding Federal regulations.

EFFECTIVE DATE: November 6, 2002.

FOR FURTHER INFORMATION CONTACT: William J. Kovacic, Field Office Director, Telephone: (859) 260–8400. Address: Office of Surface Mining Reclamation and Enforcement, 2675 Regency Road, Lexington, Kentucky 40503.

SUPPLEMENTARY INFORMATION:

I. Background on the Kentucky Program
II. Submission of the Proposed Amendment
III. Director's Findings
IV. Summary and Disposition of Comments
V. Director's Decision
VI. Procedural Determinations

I. Background on the Kentucky Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act." See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Kentucky program on May 18, 1982. You can find background information on the Kentucky program, including the Secretary's findings, the disposition of comments, and conditions of approval in the May 18, 1982, **Federal Register** (47 FR 21404). You can also find later actions concerning Kentucky's program and program amendments at 30 CFR 917.11, 917.12, 917.13, 917.15, 917.16, and 917.17.

II. Submission of the Proposed Amendment

By letter dated April 25, 2002 (Administrative Record No. KY–1530), Kentucky sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). Kentucky sent the amendment

at its own initiative. A summary of the amended language follows. It amends the Kentucky Revised Statutes (KRS) at 350.280 and is referenced as Kentucky House Bill 809.

We announced receipt of the proposed amendment in the June 19, 2002, **Federal Register** (67 FR 41653). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the amendment's adequacy. The public comment period ended on July 19, 2002.

We did not hold a public hearing or meeting because no one requested one. We did, however, receive four comments; one of these was from an industry group and three were from Federal agencies.

III. Director's Findings

Following are the findings we made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are approving the amendment to the extent described below. Any revisions that we do not specifically discuss below concern non-substantive wording or editorial changes.

(a) Revisions to Kentucky's Statute That Are Not the Same as the Corresponding Provisions of the Federal Regulation(s) and/or Statute(s)

General

Kentucky submitted the following amendment to KRS 350.280, Section (1): Added subsection (a) in its entirety to read (at page 1, line 2) "As used in this section, 'he or she' includes 'person' as defined in KRS 350.010."

We find that this amended language is non-substantive and, as such, does not render the Kentucky program less stringent than SMCRA or less effective than the Federal regulations. The language is, therefore, approved.

Easements of Necessity for Cessation Orders Issued Due to Imminent Danger to the Public or Significant, Imminent Environmental Harm

Existing language in subsection (1) was renamed subdivision (b), and amendments were added. As now proposed, subdivision (b) reads as follows, with new language shown in italics:

(b) If a permittee or operator has been issued a notice or order directing abatement of a violation on the basis of an imminent danger to health and safety of the public or significant imminent environmental harm, *and the violation involves an order of cessation and immediate compliance or an order to abate and alleviate in which the cabinet directs the permittee or operator to begin immediate abatement of the violation,* and the notice or order requires access to property for which the permittee or operator does not have the legal right of entry necessary in order to abate that violation, and the owner or legal occupant of that property has refused access, an easement of necessity is recognized on behalf of the permittee or operator for the limited purpose of abating that violation. *The easement of necessity becomes effective, and the permittee or operator is authorized to enter the property to undertake immediate action to abate the violation if he or she concurrently:*

1. Provides to the property owner or legal occupant a copy of the cabinet's order;

2. Provides to the property owner or legal occupant and cabinet an affidavit that he or she has been denied access to the property; and

3. Provides to the property owner or legal occupant a statement that he or she, the permittee or operator, will obtain an appraisal completed by a certified real estate appraiser or other qualified appraiser of the damages to the property, including loss of use, that will result from the violation, as abated, and those that are likely to occur to the property when the permittee or operator enters the property in order to abate the violation, that the appraisal will be completed and provided to the property owner or legal occupant within three (3) doys of entry of the operator or permittee, and that he or she will pay the property owner or legal occupant the amount of the damages in the permittee or operator's appraisal at that time.

Kentucky also created new subdivisions (c)–(e), which read as follows:

(c) Following the effective date of the easement of necessity, the following procedure shall be followed with respect to the appraisal of the damages that will result from the violation, as abated, and those that are likely to occur to the property when the permittee or operator enters the property in order to abate the violation:

1. The permittee or operator shall have an appraiser on the site and have his or her appraisal completed and submitted to the property owner or legal occupant within three (3) days of entry on the property by the operator or permittee;

2. The property owner or legal occupant shall accept or reject this appraisal in writing within three (3) days of receipt of the completed appraisal;

3. If the property owner or legal occupant rejects this appraisal, he or she may hire a certified real estate appraiser or other qualified appraiser to appraise the damages, including loss of use, that will result from the violation, as abated, and those that are likely to occur to the property if the permittee or operator is allowed to enter the property in order to abate the violation. Upon receipt of the invoice the permittee or operator shall pay for the property owner or legal occupant's appraisal up to the amount he or she paid for his or her own appraisal; and

4. If the property owner or legal occupant has the appraisal done, he or she shall have it completed and provided to the permittee or operator within seven (7) days of receipt of the permittee or operator's completed appraisal.

(d) If the property owner or legal occupant has an appraisal done, and if, based on his or her appraisal and the permittee or operator's appraisal, an agreement is not reached on the appraised damages, the permittee or operator shall pay the property owner or legal occupant the amount of the permittee or operator's appraisal damages, and if the property owner or legal occupant's appraisal damages are for more than the permittee or operator's, the permittee or operator shall pay the difference to the Circuit Clerk, in the county in which the majority of the property lies, to be placed in an interest-bearing account in a bank until final resolution of the matter by agreement or court or jury judgment. If the property owner or legal occupant is granted award of some or all of the difference, he or she shall also receive the interest on that portion of the difference.

(e) If the property owner or legal occupant does not accept or reject the permittee or operator's appraisal and offer of funds for damages, the operator or permittee shall pay the appraised damages to the Circuit Clerk within three (3) business days of the nonocceptance. These funds shall be placed in an interest-bearing account in a bank until resolution of the matter by agreement or court or jury judgment.

We previously approved Kentucky's creation of an easement of necessity for a permittee or operator who lacks legal right of entry, or permission to enter, land in order to abate conditions that create imminent danger to the public or imminent, significant environmental harm, as cited in a notice or order of cessation under the approved Kentucky program. (66 FR 33020, 33021, June 20, 2001) However, subsection (1), as amended, creates a real property damage appraisal procedure that is not provided for in either SMCRA or the Federal regulations. While the language on its face does not appear inconsistent with SMCRA or its accompanying regulations, we are concerned that the appraisal process could delay the abatement of imminent dangers to the public or of imminent, significant environmental harm. Therefore, we find subsection (1), as amended, to be consistent with 30 CFR 843.11(b)(2), which requires expeditious abatement of imminent dangers and harms, but it is consistent only to the extent that the easement of necessity is created immediately after completion of the three steps contained in subsection (1)(b),and that the operator or permittee proceed immediately thereafter with abatement of the imminent danger to the public or the imminent, significant environmental harm that is the subject of the cessation order in the most expeditious manner physically possible, in accordance with the Federal regulations at 30 CFR 843.11(b)(2). As

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such, we are approving amended subsection (1) only to this extent.

Easements of Necessity for Abatement of Violations That Do Not Cause Imminent Danger to the Public or Significant, Imminent Environmental Harm

Kentucky has repealed existing new subsections (2) through (6), which we have previously declined to approve (66 FR at 33021), and replaced them with new subsections (2)–(7) (from page 3, line 24), which read as follows:

(2) If a permittee or operator has been issued a notice or order directing abatement of a violation other than one described in subsection (1) of this section, and the notice or order requires access to property for which the permittee or operator does not have the legal right of entry necessary in order to abate that violation, and the owner or legal occupant of that property has refused access, an easement of necessity is recognized on behalf of the permittee or operator, for the limited purpose of allowing a certified real estate appraiser or other qualified appraiser, chosen by the permittee or operator, to enter upon the property to which the owner or legal occupant has refused access in order for the appraiser to appraise the damages, including loss of use, that will result from the violation, as abated, and those that are likely to occur to the property if the permittee or operator is allowed to enter the property in order to abate the violation.

(3) (a) The easement for the limited purpose of allowing the appraisal shall be recognized and take effect when the operator or permittee:

1. Provides to the property owner or legal occupant a copy of the cabinet's order;

2. Provides to the property owner or legal occupant and cabinet a plan of remedial measures to abate the violation;

3. Provides to the property owner or legal occupant and cabinet an affidavit that he or she has been denied access to the property; and

4. Provides to the property owner or legal occupant a statement that he or she, the permittee or operator, will within seven (7) days of entry of the appraiser obtain an appraisal, by a certified real estate appraiser or other qualified appraiser, of the damages to the property including loss of use, that will result from the violation, as abated, and those that are likely to occur to the property when the permittee or operator enters the property in order to abate the violation, and that upon completion of the appraisal he or she will provide the appraisal to the property owner or legal occupant and pay the property owner or legal occupant the amount of the appraisal.

(a) When the easement takes effect, the property owner or legal occupant shall allow access for the permittee or operator's certified real estate appraiser or other qualified appraiser to conduct the appraisal.

(4) Following the effective date of the easement of necessity, the following procedure shall be followed with respect to the appraisal of the damages to the property that will result from the violation, as abated, and those that are likely to occur, under this subsection:

(a) The permittee or operator shall have an appraiser on the site and have his or her appraisal completed and submitted to the property owner or legal occupant within seven (7) days of the entry of the appraiser on the property.

(b) The property owner or legal occupant shall accept or reject this appraisal within three (3) days of receipt of the completed appraisal;

(c) If the property owner or legal occupant rejects this appraisal, he or she may hire a certified real estate appraiser or other qualified appraiser to appraise the damages to the property, including loss of use, that will result from the violation, as abated, and those that are likely to occur to the property if the permittee or operator is allowed to enter the property in order to abate the violation. Upon receipt of the invoice, the permittee or operator shall pay for the property owner or legal occupant's appraisal up to the amount he or she paid for his or her own appraisal; and (d) If the property owner or legal occupant has the appraisal done, he or she shall have it completed and provided to the permittee or operator within seven (7) days of receipt of the permittee or operator's appraisal.

(5) (a) If the property owner or legal occupant has an appraisal done, and if, based on his or her appraisal, an agreement is not reached on the appraised damages, the permittee or operator shall pay the property owner or legal occupant the amount of the permittee or operator's appraisal damages.

(b) If the property owner or legal occupant's appraisal damages are for more than the permittee or operator's, the permittee or operator shall pay the difference to the circuit clerk.

(c) The difference shall be placed in an interest-bearing account in a bank until final resolution of the matter by agreement or court or jury judgment.

(d) If the property owner or legal occupant is granted award of some or all of the difference, he or she shall also receive the interest on that portion of the difference.

(6) If the property owner or legal occupant does not accept or reject the permittee or operator's appraisal and offer of funds for damages, the operator or permittee shall pay the appraised damages to the Circuit Clerk within three (3) business days. These funds shall be placed in an interest-bearing account in a bank until resolution of the matter by agreement or court or jury judgment.

(7) In cases under subsection (2) of this section, when the procedures in subsections (4) and (5)(a) and (b) of this section, or subsections (4)(a) and (b) and (6) of this section, have been satisfied, the permittee or operator may enter the property to abate the violation."

As is the case with subsection (1), discussed above, subsection (2) creates a real property damage appraisal procedure that is not provided for in either SMCRA or the Federal regulations. While the procedure does not, on its face, appear inconsistent with SMCRA or its accompanying regulations, we are again concerned that the appraisal process could interfere with the timely abatement of violations. With respect to violations that do not create imminent danger to the public or imminent, significant harm to the environment, the maximum abatement period, subject to exceptions not applicable here, is 90 days. See SMCRA section 521(a)(3), 30 U.S.C. 1271(a)(3); 30 CFR 843.12(c). Therefore, we find that subsection (2) is consistent with these provisions of SMCRA and the Federal regulations, but only to the extent that the property damage appraisal process created in this subsection does not delay the abatement of violations beyond 90 days after their issuance. As such, we are approving subsection (2) only to this extent.

IV. Summary and Disposition of Comments

Public Comments

We received one public comment from an industry group.

The Kentucky Coal Association (KCA) commented by letter dated July 16, 2002 (Administrative Record No. KY–1551). The comment indicated that as a representative of large and small, surface and underground operators in the Kentucky coalfields, the KCA supports the amendment as proposed by Kentucky.

Federal Agency Comments

Under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Kentucky program (Administrative Record No. KY–1537).

We received three agency comments, two in response to our request and one as a response to the **Federal Register** notice of the proposed rule (67 FR 41653).

The U.S. Department of Labor's Mine Safety and Health Administration (MSHA) commented by letter dated July 18, 2002 (Administrative Record No. KY–1554). MSHA indicated that the proposed amendment has no apparent impact concerning its office.

The U.S. Fish and Wildlife Service (FWS) commented by letter dated July 15, 2002 (Administrative Record No. KY–1555). FWS indicated that the amendment does not appear to have the potential for resulting in negative environmental effects. As such, the FWS did not object to the proposed regulatory change.

The U.S. Department of Agriculture's Forest Service (USFS) commented by letter dated August 1, 2002 (Administrative Record No. KY–1557). USFS indicated that they do not believe that Federal authorization exists to access national forest land without Forest Service approval.

In response, we note that the amendment appears to be applicable whenever access to land upon which reclamation has been ordered is denied, whether the land be private or Federal. While we are sympathetic to USFS's concerns, we have found that the amendment, as construed above, is consistent with SMCRA and its implementing Federal regulations. In addition, no provision in SMCRA may be construed to vest in any regulatory authority the jurisdiction to adjudicate property title disputes, such as a dispute as to whether an easement of necessity is lawful if created on national forest land. See SMCRA Section 507(b)(9), 30 U.S.C. 1257(b)(9). Should a dispute occur over access to national forest land by a coal permittee or operator, the burden is on the permittee or operator to pursue all legal means to achieve reclamation. In any event, we trust that, in the great majority of cases, the USFS will be amenable to allowing access to national forest land upon which surface coal mining reclamation has been ordered by the Kentucky Regulatory Authority or by OSM.

Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(ii), we are required to get a written concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

None of the revisions that Kentucky proposed to make in this amendment pertain to air or water quality standards. Therefore, we did not ask EPA to concur on the amendment.

State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. None of the revisions that Kentucky proposed to make in this amendment pertain to or have a perceived effect on historic properties. Therefore, we did not specifically ask the SHPO or ACHP for comments.

V. Director's Decision

Based on the above findings we approve the Kentucky amendment, to the extent described, as submitted on April 25, 2002.

Effect of OSM's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary.

Similarly, 30 CFR 732.17(a) requires that any change of an approved State program be submitted to OSM for review as a program amendment.

The Federal regulations at 30 CFR 732.17(g) prohibit any changes to approved State programs that are not approved by OSM. In the oversight of the Kentucky program, we will recognize only the statutes, regulations, and other materials we have approved, together with any consistent implementing policies, directives, and other materials. We will require Kentucky to enforce only approved provisions.

VI. Procedural Determination

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations "consistent with" regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13211—Regulations That Significantly Affect The Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In

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making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal that is the subject of this rule is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 917

Intergovernmental relations, Surface mining, Underground mining.

Dated: October 8, 2002.

Allen D. Klein,

Regional Director, Appalachian Regional Coordinating Center.

For the reasons set out in the preamble, 30 CFR 917 is amended as set forth below:

PART 917—KENTUCKY

1. The authority citation for part 917 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 917.15 is amended in the table by adding a new entry in chronological order by November 6, 2002 to read as follows:

§ 917.15 Approval of Kentucky regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
April 25, 2002	November 6, 2002	2002 HB 809, Kentucky Revised Statutes at Chapter 350.

[FR Doc. 02–28198 Filed 11–5–02; 8:45 am]
BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 938

[PA–136–FOR]

Pennsylvania Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: We are approving a proposed amendment to the Pennsylvania regulatory program (the "Pennsylvania program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Pennsylvania proposed to revise its program at 25 Pa. Code Sections 86.37(a)(5), 87.160(a), 88.138(a), 88.231(a), 88.335(a), and 90.134(a) about criteria for permit approval or denial and for performance standards for retention of roads following completion of surface mining activities. Pennsylvania intended to revise its program to be consistent with the corresponding Federal regulations and SMCRA, and to clarify ambiguities.

EFFECTIVE DATE: November 6, 2002.

FOR FURTHER INFORMATION CONTACT: George Rieger, Telephone: (717) 782–4036. Email: *grieger@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Pennsylvania Program
II. Submission of the Proposed Amendment
III. OSM's Findings
IV. Summary and Disposition of Comments
V. OSM's Decision
VI. Procedural Determinations

I. Background on the Pennsylvania Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act." See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Pennsylvania program on July 30, 1982. You can find background information on the Pennsylvania program, including the Secretary's findings, the disposition of comments, and conditions of approval in the July 30, 1982, **Federal Register** (47 FR 33050). You can also find later actions concerning Pennsylvania's program and program amendments at 30 CFR 938.11, 938.12, 938.15 and 938.16.

II. Submission of the Proposed Amendment

By letter dated February 25, 2002, Pennsylvania sent us an amendment to its program (Administrative Record No. PA 889.00) under SMCRA (30 U.S.C. 1201 *et seq.*). Pennsylvania sent the amendment in response to the required program amendment at 30 C.F.R. 938.16(gggg) and to include changes made at its own initiative.

We announced receipt of the proposed amendment in the April 16, 2002, **Federal Register** (67 FR 18518). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the amendments adequacy. We did not hold a public hearing or meeting because no one requested one. The public comment period ended on May 16, 2002. We did not receive any comments.

III. OSM's Findings

Following are the findings we made concerning the amendment under SMCRA and the Federal regulations at

30 CFR 732.15 and 732.17. We are approving the amendment.

a. Revisions to Pennsylvania's Regulations That Have the Same Meaning as the Corresponding Provisions of the Federal Regulations

In response to the required amendment found at 30 CFR 938.16(gggg), Pennsylvania proposed a revision to 25 Pa. Code 90.134(a). The proposed amendment contains language making the rule similar to the corresponding sections of the Federal regulations.

30 CFR 938.16(gggg) requires Pennsylvania to amend its performance standards for coal refuse disposal by requiring that haul roads and access roads be designed, constructed, and maintained to control or prevent erosion. Pennsylvania proposed to satisfy this required amendment by adding the phrase, "erosion and" to 25 Pa. Code 90.134(a). The language of the section now reads, "[h]aul roads and access roads shall be designed, constructed and maintained to control or prevent: erosion and contributions of sediment to streams or runoff outside the affected area * * *" Since Pennsylvania added the required language, we find that the proposed rule satisfies the required amendment and are therefore approving the amendment.

We are also approving the State's proposed changes to 25 Pa. Code 86.37, which contains criteria for permit approval or denial. The current language of 86.37(a)(5) requires that the "proposed permit area" exclude several enumerated categories.

The amendment we are approving replaces the phrase "the proposed permit area" with "the area covered by the operator's bond and upon which the operator proposes to conduct surface mining activities within the boundary of the proposed surface or coal mining activities permit." Thus, the issue presented by this proposed amendment is whether the proposed language is no less effective than the Federal regulations at 30 CFR 773.15(c), which provide, as a precondition to permit approval, that the "permit area" not include certain protected lands. Based on the following discussion, we find that the proposed language is no less effective than its Federal counterpart.

The Federal definition of "permit area" is "the area of land, indicated on the approved map submitted by the operator with his or her application, required to be covered by the operator's performance bond under subchapter J of this chapter and which shall include the area of land upon which the operator proposes to conduct surface coal mining and reclamation operations under the permit, including all disturbed areas; provided that areas adequately bonded under another valid permit may be excluded from the permit area." 30 CFR 701.5. Like the Federal definition, Pennsylvania's proposed amendment includes the area covered by an operator's bond and upon which surface coal mining and reclamation operations will be conducted as designated in the permit. However, unlike the Federal definition, the proposed language does not explicitly include "all disturbed areas."

Although the proposed language does not explicitly cover all disturbed areas, it implicitly includes such areas by including the area covered by the operator's bond. Under 25 Pa. Code 86.143(b), an operator's bond must cover all disturbed areas. It states that "[a]n operator may not disturb surface acreage * * * prior to receipt of approval from the Department of a bond and issuance of a permit covering the surface acreage to be affected." Thus, all areas to be disturbed must be covered by a bond. Further, 25 Pa. Code 86.143(c) provides that liability on the bond shall cover activities within the permit area as well as "effects resulting from the mining of the permit area * * *" Therefore, because the proposed amendment refers to an area of land that is as inclusive as the "permit area," as defined in the Federal regulation, the amendment is no less effective than the Federal regulations at 30 CFR 773.15(c) and can be approved.

b. Deletions of Pennsylvania Regulatory Provisions With No Corresponding Federal Regulations or Statutes

We are approving Pennsylvania's proposed change regarding performance standards for haul roads and access roads. The State proposed to amend its regulations at 25 Pa. Code Sections 87.160(a), 88.138(a), 88.231(a), 88.335(a), and 90.134(a) by removing the requirement that a haul road's or an access road's maintenance plan must be approved as part of the postmining land use before the road can be retained at the conclusion of mining activities. We are approving the proposed amendment because no Federal statutory or regulatory requirement exists mandating that a maintenance plan for haul or access roads be approved as part of a postmining land use.

30 CFR 780.37(a) and 30 CFR 784.24(a) require that each applicant for a surface coal mining and reclamation permit submit plans and drawings for each road to be constructed, used, or maintained within the permit area. These requirements include plans to remove and reclaim each road not to be "retained under an approved postmining land use." 30 CFR 780.37(a)(6), 784.24(a)(6). Thus, while these Federal provisions imply that a road to be retained after mining and reclamation must be approved as part of the postmining land use, they do not require that a maintenance plan for such road be approved.

Similarly, 30 CFR 816.150(f) and 817.150(f) set forth reclamation requirements for roads not being retained under an approved postmining land use. Like 30 CFR 780.37(a) and 784.24(a), 30 CFR 816.150(f) and 817.150(f) only refer to roads, not any associated maintenance plans, as being approved as part of the postmining land use. Since neither SMCRA or its implementing regulations require a road maintenance plan to be approved as part of a postmining land use, the removal of such requirement by Pennsylvania does not render its program inconsistent with, less stringent than, or less effective than corresponding Federal law or regulations. Therefore, we are approving the amendment.

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment in an April 16, 2002 **Federal Register** notice, 67 FR 18518, but did not receive any specific comments. However, the Pennsylvania Coal Association (PCA) generally supported the amendment and urged us to approve it. It noted that the amendment will allow efficient and effective permitting and haul road maintenance practices.

Federal Agency Comments

Under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Pennsylvania program (Administrative Record No. 889.01). The Mine Safety and Health Administration merely noted that the modifications in the amendment appeared to be minor. The U.S. Environmental Protection Agency (EPA) stated that no apparent inconsistencies exist between the amendment and the Clean Water Act or other statutes or regulations under its jurisdiction.

(EPA) Concurrence

Under 30 CFR 732.17(h)(11)(ii), we are required to get a written concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under

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the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). We did not seek EPA concurrence on this amendment because we determined that it contains no such provisions.

State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On March 1, 2002, we requested comments on Pennsylvania's amendment (Administrative Record No. 889.01), but neither the SHPO nor the ACHP responded to our request.

V. OSM's Decision

Based on the above findings, we approve the amendment Pennsylvania sent us. To implement this decision, we are amending the Federal regulations at 30 CFR Part 938, which codify decisions concerning the Pennsylvania program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a) of SMCRA requires that the Pennsylvania program demonstrate that the State has the capability of carrying out the provisions of the Act and meeting its purposes. Making this regulation effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

VI. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations "consistent with" regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 938

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 4, 2002.

Allen D. Klein,

Regional Director, Appalachian Regional Coordinating Center.

For the reasons set out in the preamble, 30 CFR Part 938 is amended as set forth below:

PART 938—PENNSYLVANIA

1. The authority citation for Part 938 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 938.15 is amended in the table by adding a new entry in chronological order by November 6, 2002 to read as follows:

§ 938.15 Approval of Pennsylvania regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
February 25, 2002	November 6, 2002	25 Pa. Code 86.37, 87.160, 88.138, 88.231, 88.335, 90.134, 87.160.

§ 938.16 [Amended]

3. Section 938.16 is amended by removing and reserving paragraph (gggg).

[FR Doc. 02–28200 Filed 11–5–02; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 943

[SPATS No. TX–048–FOR]

Texas Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), are approving an amendment to the Texas regulatory program (Texas program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Texas proposed revisions to its regulations concerning valid existing rights. Texas intends to revise its program to be consistent with the corresponding Federal regulations.

EFFECTIVE DATE: November 6, 2002.

FOR FURTHER INFORMATION CONTACT: Michael C. Wolfrom, Director, Tulsa Field Office, Office of Surface Mining, 5100 East Skelly Drive, Suite 470, Tulsa, Oklahoma 74135–6548. Telephone: (918) 581–6430. Internet: *mwolfrom@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Texas Program
II. Submission of the Proposed Amendment
III. OSM's Findings
IV. Summary and Disposition of Comments
V. OSM's Decision
VI. Procedural Determinations

I. Background on the Texas Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, "* * * a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act." *See* 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Texas program on February 16, 1980. You can find background information on the Texas program, including the Secretary's findings, the disposition of comments, and the conditions of approval in the February 27, 1980, **Federal Register** (45 FR 12998). You can find later actions concerning the Texas program at 30 CFR 943.10, 943.15, and 943.16.

II. Submission of the Proposed Amendment

By letter dated July 25, 2001 (Administrative Record No. TX–653.02), Texas sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). Texas sent the amendment in response to our letter dated August 23, 2000 (Administrative Record No. TX–653), that we sent to Texas under 30 CFR 732.17(c). Texas proposed to amend Title 16 Texas Administrative Code Chapter 12.

We announced receipt of the amendment in the September 20, 2001, **Federal Register** (66 FR 48396). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the proposed amendment. The public comment period closed on October 22, 2001. We did not receive any comments and did not hold a public hearing or meeting because no one requested one.

During our review of the amendment, we identified incorrect reference citations and concerns relating to the definition of "valid existing rights." We notified Texas of these concerns by an e-mail dated September 24, 2001, and a letter dated June 14, 2002 (Administrative Record Nos. TX–653.04 and TX–653.07, respectively). By letters dated October 22, 2001, June 5, 2002, and June 18, 2002 (Administrative Record Nos. TX–653.05, TX–653.06, and TX–653.08, respectively), Texas sent us additional explanatory information and revisions to its program amendment.

Based upon Texas' additional explanatory information and revisions to its amendment, we reopened the public comment period in the August 13, 2002, **Federal Register** (67 FR 52664). The public comment period closed on August 28, 2002. We did not receive any comments.

III. OSM's Findings

Following are the findings we made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are approving the amendment. Any revisions that we do not specifically discuss below concern nonsubstantive wording or editorial changes, or revised cross-references and paragraph notations to reflect organizational changes resulting from this amendment.

A. Revisions to Texas' Regulations That Have the Same Meaning as the Corresponding Provisions of the Federal Regulations

The State regulations listed below contain language that is the same as or similar to the corresponding sections of the Federal regulations. Differences between the State regulations and the Federal regulations are minor.

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Topic	State regulation	Federal counterpart regulation
Areas where surface coal mining operations are prohibited or limited.	Section 12.71(a), Section 12.71(b)	30 CFR 761.11, 30 CFR 761.12.
Procedures for compatibility findings, public road closures and relocations, buffer zones, and valid existing rights determinations.	Section 12.72(a), Section 12.72(b), Section 12.72(c).	30 CFR 761.14, 30 CFR 761.15, 30 CFR 761.16.
Commission obligations at time of permit application review.	Section 12.73	30 CFR 761.17.
Applicability and restrictions on exploration on land designated as unsuitable for surface coal mining operations.	Section 12.77(a), Section 12.77(b)	30 CFR 762.14, 30 CFR 762.15.
General requirements: Exploration that will remove more than 250 tons of coal or that will occur on lands designated as unsuitable for surface coal mining operations.	Section 12.111(1)(H)	30 CFR 772.12(b)(14).
Applications: Approval or disapproval of exploration of more than 250 tons of coal or that will occur on lands designated as unsuitable for surface coal mining operations.	Section 12.112(b)(4)	30 CFR 772.12(d)(2)(iv).
Applications: Notice and hearing for exploration of more than 250 tons.	Section 12.113(a)	30 CFR 772.12(e)(1).
Relationship to areas designated unsuitable for mining (surface mining).	Section 12.118(a) and (c)	30 CFR 778.16(a) and (c).
Protection of public parks and historic places (surface mining).	Section 12.151(a)(2)	30 CFR 780.31(a)(2).
Relationship to areas designated unsuitable for mining (underground mining).	Section 12.158(a) and (c)	30 CFR 778.16(a) and (c).
Protection of public parks and historic places (underground mining).	Section 12.191(a)(2)	30 CFR 784.17(a)(2).
Public notices of filing of permit applications	Section 12.207(a)(5)	30 CFR 773.13(a)(1)(v).
Criteria for permit approval or disapproval	Section 12.216(4)(A)	30 CFR 773.15(c)(3)(ii).

Because the above State regulations have the same meaning as the corresponding Federal regulations, we find that they are no less effective than the Federal regulations. Therefore, we are approving them.

B. Texas Administrative Code (TAC) Section 12.3 Definitions

1. Texas proposed to remove its definition of "surface coal mining operations which exist on the date of enactment" found at TAC section 12.3(169). As a result of the removal of this definition, the State proposed to renumber the remaining definitions in this section. We are approving the removal of this definition and the subsequent renumbering of the remaining definitions because we removed the definition of "surface coal mining operations which exist on the date of enactment" from the Federal regulations at 30 CFR 761.5. Please see the **Federal Register** dated December 17, 1999 (64 FR 70831).

2. Texas proposed to revise its definition of "valid existing rights" found at TAC section 12.3(187) to be consistent with the corresponding Federal definition of "valid existing rights."

On December 17, 1999 (64 FR 70766), we published our final rule redefining the circumstances under which a person has valid existing rights to conduct surface coal mining operations on lands listed in section 522(e) of SMCRA. This section prohibits or restricts surface coal mining operations on certain lands. Our final rule included a revised definition of valid existing rights found at 30 CFR 761.5. In paragraph (a) of this revised definition, we added a clause clarifying that the provisions requiring the use of state law to interpret documents does not apply if federal law provides otherwise. The clause reads, "unless Federal law provides otherwise." Texas' proposed definition of "valid existing rights" is substantively the same as the Federal definition, except that the State did not include this clause in its proposed definition. Though it is unlikely that Texas will have to make a determination of "valid existing rights" that will require the State to use applicable federal law to interpret documents relied upon to establish property rights, Texas sent us a letter dated June 18, 2002 (Administrative Record No. TX–653.08), clarifying that it will make any such determinations using the applicable federal law. Because Texas' proposed definition of "valid existing rights" is substantively the same as the Federal definition of "valid existing rights," we are approving it.

C. TAC Section 12.74 Responsibility (Formerly Section 12.73)

Texas proposed to redesignate existing section 12.73 as new section 12.74. We are approving the redesignation because it does not change the content of the previously approved regulation in any way.

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment, but did not receive any.

Federal Agency Comments

Under 30 CFR 732.17(h)(11)(i) of the Federal regulations and section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Texas program (Administrative Record Nos. TX–653.03 and TX–653.10). We did not receive any comments.

Environmental Protection Agency (EPA)

Under 30 CFR 732.17(h)(11)(ii), we are required to get a written concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Texas proposed to make in this amendment pertain to air or water quality standards. Therefore, we did not ask EPA to concur on the amendment.

Under 30 CFR 732.17(h)(11)(i), we requested comments on the amendment from the EPA (Administrative Record Nos. TX–653.03 and TX–653.10). The EPA did not respond to our request.

State Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On August 6, 2001, we requested comments on Texas' amendment (Administrative Record Nos. TX–653.03 and TX–653.10), but neither responded to our request.

V. OSM's Decision

Based on the above findings, we approve the amendment as sent to us by Texas on July 25, 2001, and as revised on October 22, 2001, and June 5, 2002.

We approve the regulations that Texas proposed with the provision that they be published in identical form to the regulations sent to and reviewed by OSM and the public.

To implement this decision, we are amending the Federal regulations at 30 CFR part 943, which codify decisions concerning the Texas program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. SMCRA requires that the State's program demonstrates that the State has the capability of carrying out the provisions of the Act and meeting its purposes. Making this rule effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

VI. Procedural Determinations

Executive Order 12630—Takings

In this rule, the State is adopting valid existing rights standards that are similar to the standards in the Federal definition at 30 CFR 761.5. Therefore, this rule has the same takings implications as the Federal valid existing rights rule. The taking implications assessment for the Federal valid existing rights rule appears in Part XXIX.E. of the preamble to that rule. *See* 64 FR 70766, 70822–27, December 17, 1999.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations "consistent with" regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or

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tribal governments or the private sector cost of $100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 943

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 20, 2002.

Charles E. Sandberg,

Acting Regional Director, Mid-Continent Regional Coordinating Center.

For the reasons set out in the preamble, 30 CFR Part 943 is amended as set forth below:

PART 943—TEXAS

1. The authority citation for Part 943 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 943.15 is amended in the table by adding a new entry in chronological order by "Date of final publication" to read as follows:

§ 943.15 Approval of Texas regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
*	*	*
July 25, 2001	November 6, 2002	Sections 12.3(169) definition of "surface coal mining operations which exist on the date of enactment [removed] and 12.3(187) definition of "valid existing rights;" 12.71–.74; 12.77; 12.111(1)(H); 12.112(b)(4); 12.113(a); 12.118(a) and (c); 12.151(a)(2); 12.158(a) and (c); 12.191(a)(2); 12.207(a)(5); and 12.216(4)(A).

[FR Doc. 02–28199 Filed 11–5–02; 8:45 am]
BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 944

[SPATS No. UT–041–FOR]

Utah Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: We are approving a proposed amendment to the Utah regulatory program (the "Utah program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Utah proposed revisions to and additions of rules about water replacement, blaster certification, standards for surety companies, and inspection and enforcement. Utah revised its program to be consistent with the corresponding Federal regulations, provide additional safeguards, clarify ambiguities, and improve operational efficiency.

EFFECTIVE DATE: November 6, 2002.

FOR FURTHER INFORMATION CONTACT: James F. Fulton, Chief, Denver Field Division, telephone: (303) 844–1400, extension 1242; Internet address: *jfulton@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Utah Program
II. Submission of the Proposed Amendment
III. OSM's Findings
IV. Summary and Disposition of Comments
V. OSM's Decision
VI. Procedural Determinations

I. Background on the Utah Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act; * * * and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act." *See* 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Utah program on January 21, 1981. You can find background information on the Utah program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Utah program in the January 21, 1981, **Federal Register** (46 FR 5899). You can also find later actions concerning Utah's program and program amendments at 30 CFR 944.15 and 944.30.

II. Submission of the Proposed Amendment

By letter dated March 28, 2002, Utah sent us an amendment to its program (UT–041–FOR, Administrative Record No. UT–1160) under SMCRA (30 U.S.C. 1201 *et seq.*). Utah's original submittal included two separate proposed amendments. In a telephone conversation on April 2, 2002 (Administrative Record No. UT–1161), Utah agreed to our proposal to combine the two amendments into one amendment designated UT–041–FOR. Utah sent the amendment at its own initiative. The provisions of the Utah Administrative Rule (Utah Admin. R.) that Utah proposed to revise and add were: In its definitions at Utah Admin. R. 645–100–200, Utah proposed to remove the definition of "State-Appropriated Water Supply" and replace it with a new combined definition of the terms "Water Supply," "State-appropriated Water," and "State-appropriated Water Supply," all of which it intends to be synonymous and to mean "state appropriated water rights which are recognized by the Utah Constitution or Utah Code;" at Utah Admin. R. 645–105–314, Utah proposed to add a new blaster certification rule that would require candidates for certification to be twenty-one years of age or older; at Utah Admin. R. 645–301–525.130, Utah proposed to add a new provision requiring a permit applicant to give a copy of the pre-subsidence survey and any technical assessment or engineering evaluation to the water conservancy district, if any, where the mine is located; at Utah Admin. R. 645–301–525.700, the State proposed to add a new requirement that the underground mine operator mail a notification of proposed mining to the water conservancy district, if any, in which the mine is located; at Utah Admin. R. 645–301–728.350, the State proposed to revise its rule to require that determinations of probable hydrologic consequences include findings on whether underground coal mining and reclamation activities conducted after October 24, 1992, may result in contamination, diminution, or interruption of "State-appropriated Water" in existence within the proposed permit or adjacent areas at the time the application is submitted, and to delete the existing phrase "and used for legitimate purposes within the permit or adjacent areas * * *" at the end of that sentence; at Utah Admin. R. 645–301–860.110 through "860.112, Utah proposed to add new requirements for companies that issue surety bonds to meet to provide the State with standards by which to judge their financial stability; at Utah Admin. R. 645–400–162 and 645–400–381, the State proposed to change its existing references to section 40–10–22 of the Utah Code Annotated (UCA) to reference UCA 40–10–19 so on-site compliance conferences will not be considered inspections in the context of that statutory provision; in the enforcement rule at Utah Admin. R. 645–400–319, Utah proposed to change the existing reference to Utah Admin. R. 645–300–147 to cite Utah Admin. R. 645–300–148 instead, which requires permittees to submit ownership and control information to the Division of Oil, Gas and Mining (DOGM); and at Utah Admin. R. 645–400–322, the State proposed to add the phrase "* * * which does not create an imminent danger or harm for which a * * *" to complete the sentence and characterize situations in which it will issue notices of violation rather than cessation orders.

We announced receipt of the proposed amendment in the May 17, 2002, **Federal Register** (67 FR 35077). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the amendment's adequacy (Administrative Record No. UT–1163). We did not hold a public hearing or meeting because no one requested one. The public comment period ended on June 17, 2002. We received comments from one State agency and two Federal agencies.

III. OSM's Findings

Following are the findings we made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are approving the amendment.

A. Revisions to Utah's Rules That Have the Same Meaning as the Corresponding Provisions of the Federal Regulations

Utah's proposed revisions to the following rules contain wording that is the same as or similar to the corresponding sections of the Federal regulations (which are noted in parentheses):

1. Utah Admin. R. 645–400–162 and 645–400–381, changes existing references to section 40–10–22 of the Utah Code Annotated (UCA) to reference UCA section 40–10–19 instead, so on-site compliance conferences will not be considered inspections in the context of that statutory provision (30 CFR 840.16(b) and 843.20(a), respectively);

2. Utah Admin. R. 645–400–319, changes the existing reference to Utah Admin. R. 645–300–147 to reference 645–300–148 instead, which requires permittees to submit ownership and control information to DOGM (30 CFR 843.11(g)); and

3. Utah Admin. R. 645–400–322, adds the phrase "* * * which does not create an imminent danger or harm for which a * * *" to complete the sentence and characterize situations in which DOGM will issue notices of violation rather than cessation orders (30 CFR 843.12(a)(2)).

Because these proposed rules contain wording that is the same as or similar to the corresponding Federal regulations, we find that they are no less effective than the corresponding Federal regulations.

B. Revisions to Utah's Rules That Are Not the Same as the Corresponding Provisions of the Federal Regulations

1. Utah Admin. R. 645–100–200, Definition of "Water Supply," "State-appropriated Water," and "State-Appropriated Water Supply"

Utah proposes to delete its existing definition of "State-appropriated water supply" and replace it with a combined definition of the terms "water supply," "State-appropriated water," and "State-appropriated water supply." Under the proposed combined definition, the three terms "* * * are all synonymous and mean, for the purposes of the R645 Rules, state appropriated water rights which are recognized by the Utah Constitution or Utah Code." The Federal counterpart term "drinking, domestic or residential water supply" is defined at 30 CFR 701.5.

In the December 4, 2001, **Federal Register** (66 FR 62917), we approved the existing definition of "State-appropriated water supply" in amendment UT–037–FOR. We found Utah's definition of that term was no less effective than the Federal definition of the counterpart term "drinking, domestic, or residential water supply." As we approved it, "State-Appropriated Water Supply" meant "State-created water rights which are recognized under the provisions of the Utah Code." Our approval noted that Utah's definition was based on its use of the term "State-appropriated water" at UCA 40–10–18(15)(c). "State-appropriated water" is not defined in title 40 of Utah's Code. However, in a January 29, 1997, letter (Administrative Record No. UT–1094), Utah asserted that use of the term "State-appropriated water" in its Code provides broader water replacement protection than the Federal term because the State's term includes the "* * * universe of legal water uses by the universe of legal water users * * *." As such, "State-appropriated water" includes drinking, domestic, or residential water supplies from wells or springs and water used for other purposes, including agricultural irrigation and industrial water. The Federal term is limited to drinking, domestic or residential water supply from a well or spring unless the water supply is for direct human consumption, human sanitation, or domestic use. We accepted Utah's explanation in our August 4, 1997, approval of UT–035–FOR (62 FR 41845) and relied on it, in part, for our approval of Utah's definition of "State-appropriated water supply" in amendment UT–037–FOR (*Id.*)

Our approval of Utah's definition of "State-appropriated water supply" in UT–037–FOR also was based on information the State provided to us in response to a question we asked in our October 1, 1998, letter describing our concerns for that amendment (Administrative Record No. 1125). We asked Utah to further clarify its interpretation of the term "State-appropriated water supply" to address whether legal water rights exist in the State that are recognized by Utah law but are not created by the State. Utah responded to our questions in an October 31, 2000, letter (Administrative Record No. UT–1145). As we noted in our approval of UT–037–FOR (*Id.*, at 62928), Utah said the provisions of UCA 73–5–13 recognize water claims established by diversion ("diligence rights") before Utah became a State and before it established the State Engineer's Office. The State's response concluded that "State-appropriated water" includes territorial water rights. Because the definition of the term "State-appropriated water supplies" as proposed in amendment UT–037–FOR was based on Utah's interpretation of "State-appropriated water," we found it to be no less effective than the Federal term "drinking, domestic or residential water supply" and approved it.

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Utah's combined definition of "water supply," "State-appropriated water," and "State-appropriated water supply" as proposed in this amendment refers to State-appropriated water rights recognized by the Utah Constitution and the Utah Code. Replacing the phrase "State-created water rights" in the existing definition with the phrase "state appropriated water rights" in the proposed definition accommodates the assertion that water rights existing before Utah became a State were not created by the State but nevertheless are recognized by Utah law. Further, DOGM explained that referring to water rights recognized by the Utah Constitution gives additional support to recognizing existing water rights that were established before Utah became a State (Administrative Record No. UT–1167). It also recognizes that mining might affect those water rights.

We searched Utah's R645 rules for the terms "water supply," "State-appropriated water," and "State-appropriated water supply" to determine if there are any uses of those terms that would conflict with the proposed definition. Those terms appear separately or together in definitions of: "Community or industrial building;" "essential hydrologic functions;" "developed water resources" as referred to in the definition of "land use;" "renewable resource lands" as used for the purposes of Utah Admin. R. 645–103; "replacement of water supply;" and "State-appropriated water supply" (to be replaced by the proposed combined definition). Those terms also appear separately or in combination at: Utah Admin. R. 645–103–322.300; –525.110, 120, and 130; –525.214; –525.400 and 480; –525.550; –728.350; and –731.530, 710, and 800. Utah's proposed definition is consistent with the context in which the terms are used in these rules. Making the three terms synonymous makes their use consistent throughout Utah's rules, reducing uncertainty over their intended meaning.

As proposed, the combined definition of the terms "water supply," "State-appropriated water" and "State-appropriated water supply" recognizes water rights established before and after Utah became a State. Making the terms synonymous invokes the full protections provided by the State's rules wherever those terms appear for water rights that the Utah Constitution and Code recognize. The State's proposed definition also provides a potentially broader scope of water protection than does the Federal counterpart term "drinking, domestic or residential water supply." Based on this reasoning, we find Utah's proposed definition is no less effective than the counterpart term's definition.

2. Utah Admin. R. 645–105–312, –313, and –314, Blaster Training, Examination, and Certification: Minimum Age

Utah proposes to add a new rule at Utah Admin. R. 645–105–314 that requires candidates for blaster certification to be 21 years of age or older. It also proposes to change Utah Admin. R. 645–105–312 and –105–313 to remove and add the word "and" after each clause, respectively, in view of adding the new rule at 645–105–314. Utah proposes these changes to make its rules consistent with Federal law for explosives handling. There is no provision in the 30 CFR regulations or SMCRA that expressly requires candidates for blaster certification to be at least 21 years old.

Explosive materials are within the jurisdiction of the Bureau of Alcohol, Tobacco, and Firearms (ATF) of the U.S. Department of the Treasury (U.S. Treasury). Federal regulations at 27 CFR Chapter I, Part 55, establish requirements for the shipment, transportation, and possession of explosive materials. They also impose requirements on granting licenses to individuals to engage in the business of importing, manufacturing, and dealing in explosive materials. Further, those regulations include requirements imposed on issuing permits to people who intend to acquire explosive materials for use. ATF defines explosive materials as "explosives, blasting agents, water gels, and detonators." Subsections 55.26(c) and (c)(1) state that "[n]o person shall knowingly distribute explosive materials to any individual who * * * is under twenty-one years of age * * *." Further, section 55.49(b) and (b)(1) state that "[t]he Chief, Firearms and Explosives Licensing Center, shall approve a properly executed application for a license or permit, if * * * the applicant is 21 years of age or older * * *." Clearly, the intent of these Federal regulations is to restrict explosives handling, possession, and transport to individuals 21 years of age or older. Utah's proposed rule is consistent with these Federal regulations governing explosive materials.

In addition, Utah's rules for blaster training, examination and certification refer to knowledge of, and compliance with, Federal regulations and laws for explosives. At Utah Admin. R. 645–105–220, the State's rules note that "[t]raining includes, but is not limited to, the technical aspects of blasting operations, and Utah and Federal laws governing the storage, transportation, and use of explosives." The Federal counterpart for this rule is found at 30 CFR 850.13(a)(1) and is worded similarly. Utah Admin. R. 645–105–240 goes on to say that "Training will include course work in, and discuss the practical application of: * * * * 247. Current federal and Utah rules applicable to the use of explosives * * *." The Federal counterpart to this rule is 30 CFR 850.13(b)(7) and is worded the same. Utah Admin. R. 645–105–441.300 further provides that a blaster certification may be suspended or revoked for "[v]iolation of any provision of Utah or federal explosives laws or regulations * * *." The Federal counterpart regulation is found at 30 CFR 850.15(b)(iii) and is worded the same.

We find Utah's proposed rule is consistent with the intent of its rules and the counterpart Federal regulations for blaster training, examination, and certification in general. We also find that it is consistent with, and no less effective than, the ATF's regulations requiring persons engaging in the explosives business or using explosives to be at least 21 years of age.

3. Utah Admin. R. 645–301–525.130 and Utah Admin. R. 645–301–525.700, Pre-subsidence Surveys and Public Notice of Proposed Mining: To Whom a Permit Applicant Must Give Copies of Pre-subsidence Surveys

Utah proposes to include water conservancy districts among those to whom it gives pre-subsidence surveys and notices of proposed mining. Specifically, it proposes to revise Utah Admin. R. 645–301–525.130 by adding the phrase "* * * the water conservancy district, if any, in which the mine is located * * *" near the end of the last sentence. The resulting change requires permit applicants to give a copy of a pre-subsidence survey and any technical assessment or engineering evaluation to the water conservancy district, if any, where the mine is located in addition to giving copies to the property owner and DOGM. Such surveys describe the condition of certain buildings, dwellings and related structures and the quantity and quality of all State-appropriated water supplies in the permit and adjacent areas that might be adversely affected by subsidence. The proposed revision to Utah Admin. R. 645–301–525.700 adds the phrase "* * * to the water conservancy district, if any, in which the mine is located and * * *" to the second sentence. That change requires the underground mine

operator to mail a notification of proposed mining to the water conservancy district, if any, in which the mine is located in addition to all owners and occupants of surface property and structures above the underground workings at least six months prior to mining, or within a different period if approved by DOGM. This notice identifies specific areas where mining will occur, dates when specific areas will be undermined, and the location or locations where the operator's subsidence control plan may be examined.

Utah's existing rules provide for the same distribution of pre-subsidence surveys and public notices of proposed mining that the counterpart Federal regulations do. The Federal counterparts to Utah Admin. R. 645–301–525.130 and 645–301–525.700 are found at 30 CFR 784.20(a)(3) and 817.122, respectively. The existing Federal and State provisions require permit applicants to give pre-subsidence surveys, technical assessments, and engineering evaluations to property owners and to the regulatory authority and DOGM, respectively. DOGM is the regulatory authority in Utah. Both also require operators to mail public notices of proposed mining to all owners and occupants of surface property and structures above the underground workings. As currently written and approved, Utah's existing rules meet the minimum standard set by the Federal regulations.

Adding the new phrases to Utah's rules extends the distribution of its pre-subsidence surveys and public notices of proposed mining to more parties than required by the Federal regulations. The Federal regulations do not include water conservancy districts among the recipients of pre-subsidence surveys or public notices of proposed mining. That does not preclude Utah from including them in its rules, however. By including water conservancy districts among the recipients of pre-subsidence surveys and public notices of proposed mining, Utah recognizes the interest such districts have in the possible effects underground mining-related subsidence can have on State-appropriated water supplies and when those effects might begin to occur. Moreover, section 505(b) of SMCRA provides that "Any provision of any State law or regulation in effect upon the date of enactment of this Act, or which may become effective thereafter, which provides for more stringent land use and environmental controls and regulations of surface mining and reclamation operation than do the provisions of this Act or any regulations issued pursuant thereto shall not be construed to be inconsistent with this Act." We find Utah's rules are no less effective than the counterpart Federal regulations as proposed with the added phrases.

4. Utah Admin. R. 645–301–728.350, Probable Hydrologic Consequences Determinations for Underground Coal Mining and Reclamation Activities

Utah proposes to make three changes to Utah Admin. R. 645–301–728.350. The existing rule requires the probable hydrologic consequences (PHC) determination to include findings on whether underground coal mining and reclamation activities conducted after October 24, 1992, "* * * may result in contamination, diminution or interruption of State-appropriated water in existence at the time the application is submitted and used for legitimate purposes within the permit or adjacent areas." Utah proposes to replace the word "water" with "Water" (changing the small case "w" to upper case "W"). It also proposes to delete the final phrase that reads " * * * and used for legitimate purposes within the permit or adjacent areas * * *" and replace it with the phrase " * * * within the proposed permit or adjacent areas * * *" after the word "existence." As proposed, the rule would require PHC determinations to include findings on whether underground coal mining and reclamation activities conducted after October 24, 1992, may contaminate, diminish, or interrupt "* * * State-appropriated Water in existence within the proposed permit or adjacent areas at the time the application is submitted."

The counterpart Federal regulation is found at 30 CFR 784.14(e)(3)(iv). It requires the PHC determination to include findings on whether the underground mining activities conducted after October 24, 1992, may contaminate, diminish or interrupt "* * * a well or spring in existence at the time the permit application is submitted and used for domestic, drinking, or residential purposes within the permit or adjacent areas."

Utah's proposed rule differs from the counterpart Federal regulation in its use of the term "State-appropriated Water" where the Federal regulation refers to "a well or spring * * * used for domestic, drinking, or residential purposes * * *." As noted in our previous finding, Utah's proposed combined definition of "Water Supply," "State-appropriated Water," and "State-appropriated Water Supply," makes those terms synonymous to mean "* * * state appropriated water rights which are recognized by the Utah Constitution or Utah Code." In that finding, we concluded that Utah's proposed definition is no less effective than the definition of the Federal counterpart term "drinking, domestic or residential water supply" at 30 CFR 701.5. The Federal term "drinking, domestic or residential water supply" is defined in part to mean " * * * water received from *a well or spring* and any appurtenant delivery system that provides water for direct human consumption or household use" (emphasis added). As such, Utah's use of the term "State-appropriated Water" in its proposed rule is analogous to the counterpart Federal regulation's reference to "a well or spring * * * used for domestic, drinking, or residential uses * * *."

There are other differences between the wording of Utah's proposed rule and the counterpart Federal regulation. Utah's proposed rule requires the PHC determination to find if underground mining will adversely affect State-appropriated Water existing in the permit or adjacent areas when the application is submitted, but it does not expressly mention use of the water or where it is used. By comparison, the counterpart Federal regulation specifies that the PHC determination find if underground mining will adversely affect a well or spring existing at the time a permit application is submitted and used for domestic, drinking or residential purposes in the permit or adjacent areas. As stated before, in Utah's proposed combined definition, "State-appropriated Water" means State-appropriated water rights that are recognized by the Utah Constitution or Utah Code. We interpret section 717(a) of SMCRA as requiring deference to State water law on questions of water allocation and use (60 FR 16722, 16733; March 31, 1995). Title 73 of the Utah Code is entitled "Water and Irrigation." Under the prior appropriation system of Utah water law, a water user who first puts water to use has the water right, and a water right is perfected when water is put to use (sections 73–3–1 and 73–3–17, respectively). As the State quoted in its January 29, 1997, letter (Administrative Record No. UT–1094) the Utah Supreme Court's discussion of *J.J.N.P. Co.* v. *State of Utah ex rel. Division of Water Resources*, 655 P.2d 1133 (Utah 1982) cited the provision of section 73–1–3 of the Utah Code (entitled "Beneficial use basis of right to use") in explaining that:

> * * * individuals have no ownership interest as such in natural waters, only the right to put the water to certain uses. 'Beneficial use shall be the basis, the measure and the limit of all rights to the use of water in this state.' § 73–1–3, and the right to

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beneficial use may be acquired only by compliance with the legal procedures for appropriation of a given right.

Though Utah's proposed rule does not expressly mention water use, the term "State-appropriated Water" in its rule, by definition, invokes State-appropriated water rights recognized by the Utah Constitution or the Utah Code. Utah water rights, in turn, are based on putting water to beneficial use. In the context of water use in a predominantly semi-arid State such as Utah, we interpret the descriptive term "beneficial use" as stated by the Utah Supreme Court to include using water for domestic, drinking, and residential purposes. Therefore, we believe it is reasonable and consistent with Utah water law to interpret Utah's proposed rule as implying water use by referring to "State-appropriated Water."

Similar reasoning applies to the question of where the water use must occur to be considered in the PHC determination's finding of potential adverse effects under Utah's proposed rule. Proposed Utah Admin. R. 645–301–728.350 addresses State-appropriated Water in existence within the proposed permit or adjacent areas at the time the application is submitted. As explained above, water use is a basis for a water right, and the definition of "State-appropriated Water" means State-appropriated water rights that are recognized by the Utah Constitution or Utah Code. Therefore, we believe it is reasonable and consistent with Utah water law to interpret Utah's proposed rule as applying to beneficial use of State-appropriated Water in the proposed permit or adjacent areas. Removing the reference to use for "legitimate purposes" does not reduce the rule's effectiveness. By recognizing water use for beneficial purposes as the basis of a water right, Utah water law confers legitimacy on such use. Moreover, the counterpart Federal regulation does not refer to "use for legitimate purposes" in its description of water use for domestic, drinking, or residential purposes, either.

The State explained that removing the word "water" with a small case "w" and replacing it with "Water" in the term "State-appropriated Water" does not alter the meaning of that term (Administrative Record No. UT–1169). Utah explained that "State-appropriated Water" at Utah Admin. R. 645–301–728.350 has no meaning other than the one proposed in this amendment for the combined definition of "Water Supply," "State-appropriated Water," and "State-appropriated Water Supply" at Utah Admin. R. 645–100–200. We found Utah's definition to be no less effective than the definition of the counterpart Federal term "drinking, domestic and residential water supply" in finding III.B.1 of this final rule.

Based on the reasoning presented above, we find proposed Utah Admin. R. 645–301–728.350 is consistent with titles 40 and 73 of the Utah Code and is no less effective than the counterpart Federal regulation at 30 CFR 784.14(e)(3)(iv).

5. Utah Admin. R. 645–301–860.110, –860.111, and –860.112, Surety Bonds

The State proposed to revise and add requirements at Utah Admin. R. 645–301–860.110 through –860.112 that surety companies must meet in order to issue bonds for coal mines in Utah and that operators must comply with to ensure that they hold bonds issued by companies that meet the requirements of –860.110. Specifically, the State proposed to revise Utah Admin. R. 645–301–860.110 to require surety companies that issue bonds in Utah to have an A.M. Best rating of A – or better or an A.M. Best Financial Performance Rating (FPR) of 8 or better, and to be continuously listed in the current issue of the U.S. Treasury's *Circular 570*. *Circular 570* lists surety companies holding Certificates of Authority from the U.S. Treasury. Utah also proposed to add Utah Admin. R. 645–301–860.111, which gives operators 120 days to obtain a surety bond with companies that meet the standards of proposed –860.110 (if they do not have such a bond already) or face enforcement action. Under proposed Utah Admin. R. 645–301–860.112, if DOGM notifies an operator that a surety company guaranteeing its performance does not meet the standard of –860.110, the operator has 120 days to correct the problem or face enforcement action.

The Federal counterpart regulation at 30 CFR 800.20(a) only requires that "[a] surety bond shall be executed by the operator and a corporate surety licensed to do business in the State where the operation is located."

Utah intends to establish a more secure bonding program with these proposed additional rule requirements. In order to avoid inadequate bond coverage due to surety company insolvencies, Utah proposed to allow only surety companies deemed to be financially strong by A.M. Best and listed in *Circular 570* to issue bonds to guarantee coal mine reclamation performance in Utah.

A.M. Best is recognized as the leading provider of independent ratings of an insurance/surety company's financial strength and ability to meet its obligations. A.M. Best assigns a rating after it conducts an extensive quantitative and qualitative evaluation of a surety company's financial strength, operating performance, and market profile. While having an A – [excellent] rating or a Financial Performance Rating of 8 or better from A.M. Best is no guarantee that an insolvency will not occur, accepting surety bonds only from surety companies that meet the financial criteria to *earn* these ratings indicates that insolvency is far less likely.

A.M. Best's highest ratings are A++ and A+, which indicate a superior financial condition. A Best's rating of A – indicates that a company's overall financial condition is excellent. As A.M. Best stated, earning a Financial Performance Rating (FPR) of 8 or better from A.M. Best means a "* * * company has, on balance, very strong financial strength, operating performance and market profile when compared to the standards established by the A.M. Best Company. These companies, in [its] opinion, have a strong ability to meet their ongoing obligations to policy holders."

Requiring a surety company to be listed in the U.S. Treasury's *Circular 570* provides additional assurance that a surety company is able to meet its obligations according to the financial requirements at 31 CFR part 223. Utah's proposal to require that surety companies be listed in *Circular 570* applies to all of Utah's coal mining surety bonds, notwithstanding Federal lands and Federal co-obligees.

The U.S. Treasury establishes a per-bond underwriting limitation based on its in-depth financial analysis of a surety company that applies for authorization to write Federal bonds. Surety companies that are granted a Certificate of Authority are listed in *Circular 570*. Each year, surety companies have to re-apply to be listed. The U.S. Treasury requires listed companies to submit quarterly reports that list all bonds issued on which the United States is an obligee or co-obligee. If at any time the U.S. Treasury determines that a surety company no longer meets the financial criteria to be listed in *Circular 570*, the U.S Treasury terminates the surety company's Certificate of Authority. Often, A.M. Best's downgrades of surety companies correspond to the U.S. Treasury's terminations of surety companies. Utah's proposal provides the State with the ability to be pro-active in its efforts to maintain a more secure bonding program.

Utah's proposal to give operators 120 days to comply with the requirement to have bonds with companies that meet the new standards should provide adequate time for operators to seek surety bonds or other allowable forms of bond with surety companies that meet the proposed standards.

For the reasons described above, we find proposed Utah Admin. R. 645–301–860.110, –860.111, and –860.112 are no less stringent than SMCRA and no less effective than the Federal regulations.

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment in letters dated April 2, 2002, and in the May 17, 2002, **Federal Register** (Administrative Record Nos. UT–1163 and UT–1170, respectively). We received comments from one State agency and two Federal agencies. We did not receive any public comments on the proposed amendment.

Federal Agency Comments

Under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Utah program (Administrative Record No. UT–1163).

On April 9, 2002, the Ogden regional office of the U.S. Department of Agriculture, Forest Service, called us to say the Forest Service had no comments on the amendment (Administrative Record No. UT–1164).

In a letter dated April 18, 2002, the U.S. Department of the Interior, Fish and Wildlife Service responded to our request by stating that it had no comments on the amendment (Administrative Record No. UT–1168).

Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(i) and (ii), we are required to get concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

None of the revisions that Utah proposed to make in this amendment pertain to air or water quality standards. Therefore, we did not ask EPA to concur on the amendment. However, we requested EPA's comments on the amendment under 30 CFR 732.17(h)(11)(i) (Administrative Record No. UT–1163). EPA did not respond to our request.

State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. In letters dated April 2, 2002, we requested comments on Utah's amendment from the SHPO and ACHP (Administrative Record No. UT–1163).

The Utah SHPO responded to our request for comment in a letter dated April 12, 2002 (Administrative Record No. UT–1165). The SHPO found that the proposed amendment has no potential to affect cultural resources.

We did not receive any comments on the amendment from the ACHP.

V. OSM's Decision

We approve Utah's amendment based on the findings presented above.

To implement this decision, we are amending the Federal regulations at 30 CFR Part 944, which codify decisions concerning the Utah program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a) of SMCRA requires the State's program to demonstrate that the State has the capability of carrying out the provisions of the Act and meeting its purposes. Making this regulation effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

VI. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988—Civil Justice Reform

The Department of the Interior conducted the reviews required by section 3 of Executive Order 12988 and determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations "consistent with" regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13211—Regulations That Significantly Affect The Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211, which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a

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substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based on counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect on a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: a. Does not have an annual effect on the economy of $100 million; b. will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and c. does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises.

This determination is based upon the fact that the State submittal that is the subject of this rule is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 944

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 5, 2002.

Brent T. Wahlquist,

Regional Director, Western Regional Coordinating Center.

For the reasons set out in the preamble, 30 CFR 944 is amended as set forth below:

PART 944—UTAH

1. The authority citation for part 944 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 944.15 is amended in the table by adding a new entry in chronological order by November 6, 2002 to read as follows:

§ 944.15 Approval of Utah regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
*	*	*
March 28, 2002	November 6, 2002	Definition of "Water Supply," "State-appropriated Water," and "State-appropriated Water Supply" at Utah Admin. R. 645–100–200; Utah Admin. R. 645–105–310 through –314; R. 645–301–525.130 and –525.700; Utah Admin. R. 645–301–728.350; R. 645–301–860.110 through –860.112; R. 645–400–162; and R. 645–400–319, –322, and –381.

[FR Doc. 02–28197 Filed 11–5–02; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 950

[WY–029–FOR]

Wyoming Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), are approving a proposed amendment to the Wyoming regulatory program (the "Wyoming program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Wyoming proposed revisions to its Coal Rules about groundwater and surface water hydrology, coal mine waste impoundments, alluvial valley floors and threatened and endangered plant species. The State intended to revise its program to be consistent with the corresponding Federal regulations, provide additional safeguards and clarify ambiguities.

EFFECTIVE DATE: November 6, 2002.

FOR FURTHER INFORMATION CONTACT: Guy Padgett, Telephone: 307/261–6550, Internet address: *GPadgett@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Wyoming Program
II. Submission of the Proposed Amendment
III. OSM's Findings
IV. Summary and Disposition of Comments
V. OSM's Decision
VI. Procedural Determinations

I. Background on the Wyoming Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act"; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act." See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Wyoming program on November 26, 1980. You can find background information on the Wyoming program, including the Secretary's findings, the disposition of comments, and conditions of approval in the November 26, 1980, **Federal Register** (45 FR 78637). You can also find later actions concerning Wyoming's program and program amendments at 30 CFR 950.11, 950.12, 950.16 and 950.20).

II. Submission of the Proposed Amendment

By letter dated July 20, 2001, Wyoming sent us an amendment to its program (administrative record no. WY–34–01) under SMCRA (30 U.S.C. 1201 *et seq.*). Wyoming sent the amendment in response to a December 23, 1985, letter (administrative record no. WY–34–07) that we sent to Wyoming in accordance with 30 CFR 732.17(c), in response to the required program amendments at 30 CFR 950.16(d), (e), (h), (i), (ii)(2), (jj); State Program Amendment disapprovals at 30 CFR 950.12(a)(3) and (4); and to include the changes made at its own initiative. The provisions of its Coal Rules that Wyoming proposed to revise were: (1) Chapter 2, Section 2(a)(vi)(L)(III), water quantity descriptions; (2) Chapter 2, Section 2(a)(vi)(L)(IV), water quality sampling; (3) Chapter 2, Section 2(a)(vi)(L)(iv), surface water information—acidity; (4) Chapter 2, Section 2(a)(vi)(M)(III), sampling and analysis methodology; (5) Chapter 2, Section 2(a)(vi)(M)(III)(4), ground water information; (6) Chapter 2, Section 2(a)(vi)(O), probable hydrologic consequences determination; (7) Chapter 2, Section 2(b)(xi)(D)(I)(1), surface water monitoring plan; (8) Chapter 2, Section 2(b)(xi)(D)(I)(2), surface water monitoring plan contents; (9) Chapter 2, Section 2(b)(xi)(D)(I)(3), impacts of data upon hydrologic balance; (10) Chapter 2, Section 2(b)(xi)(D)(II)(1 and 2), groundwater monitoring plan and contents; (11) Chapter 2, Section 2(b)(xii), probable hydrologic consequences; (12) Chapter 3, Section 2(c)(viii)(D through G), alluvial valley floors; (13) Chapter 4, Section 2(c)(xii)(D)(IV), coal mine waste impoundments; (14) Chapter 4, Section 2(i), surface water and ground water quality and quantity monitoring; (15) Chapter 4, Section 2(i)(i), removes redundant groundwater language; (16) Chapter 4, Section 2(w), to prevent material damage to hydrologic balance outside the permit area; (17) Appendix A, Appendix IV, to change the list of plant species of special concern; (18) Codified Disapproval at 30 CFR 950.12(a)(4), elevations and locations of stations to monitor water quality, quantity, fish and wildlife and air quality; (19) Required Amendment at 30 CFR 950.16(ii)(2), fish and wildlife habitat and shrub density; and (20) Required Amendment at 30 CFR 950.16(jj), shrub standard for grazing land.

We announced receipt of the proposed amendment in the October 11, 2001, **Federal Register** (66 FR 51891). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the amendments adequacy (administrative record no. WY–34–10). We did not hold a public hearing or meeting because no one requested one. The public comment period ended on November 13, 2001. We received comments from one Federal agency.

III. OSM's Findings

Following are the findings we made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are approving the amendment.

A. Revisions to Wyoming's Rules That Contain Language That Is the Same or Similar to the Corresponding Sections of the Federal Regulations

1. Chapter 2, Section 2(a)(vi)(L)(IV), 30 CFR 780.21(b)(2), Surface Water Information—acidity.

2. Chapter 2, Section 2(a)(vi)(O), Probable Hydrologic Consequences (PHC) Determination.

3. Chapter 2, Section 2(b)(xi)(D)(I)(3), Use of Data to Determine Impacts of the Operation Upon Hydrologic Balance.

4. Chapter 3, Section 2(c)(viii)(D through G), Alluvial Valley Floors.

5. Chapter 4, Section 2(c)(xii)(D)(IV), Coal Mine Waste Impoundment.

6. Chapter 4, Section 2(w), Prevention of Material Damage to the Hydrologic Balance Outside of the Permit Area.

Because these proposed rules contain language that is the same as or similar to the corresponding Federal regulations, we find that they are no less effective than the corresponding Federal regulations.

B. Revisions to Wyoming's Rules That Are Not the Same as the Corresponding Provisions of the Federal Regulations

1. Chapter 2, Section 2(a)(vi)(L)(III), Water Quantity Descriptions

Wyoming's Coal Rules do not currently require the monitoring of "seasonal flow rates" within a surface water system to be included in a mine permit application. We pointed this out to Wyoming in a 30 CFR part 732 letter dated December 23, 1985, and cited the Federal rules at 30 CFR 780.21(b)(2).

Wyoming is now proposing to add, "Water quantity descriptions shall include, at a minimum, baseline information on seasonal flow rates * * *." With the addition of seasonal flow rates, this Wyoming regulation is as effective as its Federal counterpart.

2. Chapter 2, Section 2(a)(vi)(L)(IV), Water Quality Sampling

According to a December 23, 1985, 30 CFR part 732 letter that we sent to Wyoming, Chapter 2, Section 2(a)(VI)(L)(IV) of Wyoming's Coal Rules were less effective than the Federal counterpart rules at 30 CFR 780(21)(a). Wyoming is therefore now proposing new language to correct this problem. Specifically, whereas previously Wyoming's Coal Rules did not specify that all water quality sampling required water quality data sufficient to identify seasonal variation, the revised rule proposed by Wyoming in this amendment states that, "All surface water-quality sampling and analyses performed to meet the requirements of this Section shall be conducted according to the methodology in the 20th edition of 'Standards Methods for the Examination of Water and Wastewater,' or the methodology in 40 CFR Part 136—'Guidelines Establishing Test Procedures for the Analysis of Pollutants,' as amended on January 16, 2001. Contact the Wyoming Land Quality Division for information on how to obtain a copy of either reference materials." The new proposed rule goes on to specify what data is to be included. 40 CFR part 136 gives the procedures for water-quality analyses and, since this is referenced in the revised State rules, the State rule is as effective as the Federal regulation.

3. Chapter 2, Section 2(a)(vi)(M)(III), 30 CFR 780.21(a), Sampling and Analysis Methodology

The Federal regulations at 30 CFR 780.21(a) establish that water quality analyses must be performed according to the "Standard Methods for Examination of Water and Wastewater," or the methodology in 40 CFR parts 136 and 434.

Wyoming's proposal requires the analyses to be performed according to the "Standard Methods for Examination of Water and Wastewater" or 40 CFR part 136. Like 40 CFR part 136, part 434 pertains to the NPDES program. Wyoming states that the Land Quality Division is not responsible for the National Pollutant Discharge Elimination System (NPDES) program in Wyoming; the NPDES program is enforced by Wyoming's Water Quality Division (WQD). OSM understands that WQD will enforce NPDES water quality standards required under SMCRA, either using "Standard Methods * * *" or the methodology 40 CFR Parts 136 and 434.

On this basis Wyoming's provision at Chapter 2, Section 2(a)(vi)(M)(iii) is no less effective than 30 CFR 780.21(a).

4. Chapter 2, Section 2(a)(vi)(M)(III)(4), Ground water information

This revision will require that pH be included as one of the groundwater quality parameters to be measured and incorporated into the permit application because it is required in the Federal regulations at 30 CFR 780.21(b)(1).

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Wyoming is doing this pursuant to codified program amendment 30 CFR 950.16(h) that was published in the November 24, 1986, **Federal Register** (51 FR 42209, 42211). The State's proposed rule is no less effective than the Federal counterpart regulation.

5. Chapter 2, Section 2(b)(xi)(D)(I)(1), Surface Water Monitoring Plan

The State's proposal is very similar to its Federal counterpart (30 CFR 780.21(j)(1)) with the exception that it does not specifically mention that the monitored parameters should relate to the effluent limitations at 40 CFR part 434. This omission is irrelevant, however, since the proposed regulation allows the State to determine what parameters are necessary to protect the hydrologic balance, and it can include parameters monitored in the NPDES program if it's deemed necessary.

Therefore, the proposed revised rule is no less effective than its Federal counterpart.

6. Chapter 2, Section 2(b)(xi)(D)(I)(2), Surface-water Plan Contents (30 CFR 780.21(j)(3))

This amendment clarifies the minimum parameters that shall be sampled during monitoring and transfers language currently found in Chapter 4, Section 2(i). In addition, it prescribes quarterly monitoring (unless an alternate frequency is approved by the Administrator of Wyoming's Land Quality Division) but allows operators to keep the results on-site and report them in the annual report. The effectiveness of the alternate frequency is discussed under findings no. B.7 and B.8 below.

7. Chapter 2, Section 2(b)(xi)(D)(II)(1. and 2.), Groundwater Monitoring Plan and Plan Contents (30 CFR 780.21(i)(1)); and

8. Chapter 4, Section 2(i), Surface Water and Groundwater Quality and Quantity Monitoring (30 CFR 780.21(i))

Wyoming's proposal for surface water and ground water monitoring provide that monitoring shall be conducted quarterly unless an alternative frequency appropriate to the monitoring site is approved by the Administrator. The Federal counterpart for both surface and groundwater monitoring requires monitoring every three months.

The Federal regulations also require the monitoring data to be submitted to the regulatory authority every three months. However, we approved Wyoming's Land Quality Division's (LQD) approach to allowing operators to keep the results on-site and report them in the annual report. This approval was contained in the July 25, 1990, **Federal Register** notice (55 FR 30221, 30225).

In its amendment submission, Wyoming states:

Contrary to the Federal rule, these proposed rules contain language that allows for the Administrator of Wyoming's Land Quality Division (LQD) to approve alternative monitoring frequencies which vary from the three-month requirement prescribed by the U.S. Office of Surface Mining (OSM). The LQD is proposing alternative frequencies in recognition of the seasonal field conditions which occur in Wyoming that can make it difficult, if not impossible, to reasonably access a particular monitoring well location. In addition, the Federal and LQD rules do not make a distinction between wells monitoring undisturbed aquifers and those monitoring spoil recovery areas. Twenty-plus years of water quality and water level measurements collected on Wyoming mines has shown that in general, no useful additional information is obtained by monitoring an undisturbed aquifer quarterly. In selected cases, periodic monitoring (i.e., semi-annual or annual) is sufficient to detect natural or manmade changes to the undisturbed aquifer.

On the other hand, quarterly monitoring of a spoil well, in order to determine rates of recovery and direction flow, may be reasonable given the amount of change that can occur to this recovery area in three months time. On selected areas, there may be instances where it is necessary to require monitoring on a more frequent basis depending on the location and anticipated water changes. Such instances could include monitoring of alluvial wells or wells located in an area of surface water/groundwater interface. The LQD would like the rules to reflect this level of flexibility and afford the operator the opportunity to approach the LQD with the necessary information to apply for approval of alternate groundwater monitoring frequencies.

In our review of the amendment, we asked Wyoming (administrative record no. WY–34–13) for additional explanation of the provisions allowing the Administrator to approve an alternative frequency for surface water and groundwater monitoring. In a letter dated January 17, 2002 (administrative record no. WY–34–14), Wyoming stated:

Groundwater Monitoring

It was not LQD's intention that a less frequent monitoring schedule be accepted by the Administrator unless the operator could justify that the revised schedule would be appropriate. To date, no reduced groundwater monitoring schedules have been approved until at least several years of quarterly data have been collected to ensure the initial estimates of groundwater flow rates and directions and water quality variations over time were "on track" and that a change would not be missed under a reduced monitoring schedule. Changes to a monitoring schedule and the associated justification provided by the operator have been processed as permit changes, *e.g.*, Minor Revisions, to ensure that the justifications are part of the official permit record.

In the proposed LQD rule, the LQD was implicitly combining 30 CFR 780.21(i)(1) [quarterly monitoring to establish baseline and an operational track record] and 30 CFR 816.41(c)(3) [flexibility to adjust the monitoring schedule] based on mine operations to date. For example, in most alluvial aquifers, a reduced monitoring schedule has not been justified because of frequent water level changes in response to precipitation events. Similarly, as noted in the "Statement of Principal Reasons," it is unlikely that a reduced monitoring frequency would be allowed in a backfill (spoils) well because of on-going recharge. In contrast, in a confined aquifer at depths more than 100 feet below ground surface, a reduced schedule has been appropriate, particularly when no apparent seasonal or other temporal changes have been apparent for many years.

Even when LQD has allowed for a reduction in a mine's ground water monitoring schedule, water level measurements are generally required more frequently than water quality monitoring. In general, a water quality change is the result of a change in groundwater flow direction or rate or a change in recharge/discharge conditions. All of these changes generally impact water levels more rapidly than water quality; therefore, as "insurance," the water level monitoring schedule is reduced. As a further precaution, the monitoring frequency for the entire monitoring network is not reduced uniformly. Again, the frequency needs to be appropriate for the monitored site; wells farther from mining impacts might be monitored less frequently than those closer to projected impacts. The LQD Administrator has required a return to a more frequent monitoring schedule as mining approached a particular area. Such a variation in monitoring frequency is found in *Ground Water Study No. 8, Section 3.3, in Ground Water Information Manual: Coal Mine Permit Applications* (April 1987). This Section contains the following quote:

The frequency measurements in other wells ranged from monthly to annually depending upon location and anticipated water level changes.

Surface Water Monitoring

As indicated on page 13 of the July 20, 2001, Formal Program Amendment letter, an alternate surface water monitoring schedule could be approved in recognition of the climatic conditions that can occur in Wyoming. Many coal operators use an automated sampling system to monitor surface water quantity. As one might expect, there are normally times of the year when the water is frozen, the operator is still required to obtain a sample of the water for the quarterly quality assessment by breaking through the ice layer if possible. It is also of interest to note that most operators who utilize an automated system for quantity sampling take readings from those samplers on a continuous basis when water is flowing.

Permit revisions

Pages 13 and 17 of the Formal Program Amendment letter dated July 20, 2001,

contain the following phrase which was meant to indicate that an applicant would be required to change their permit by formal revision; "and afford the operator the opportunity to approach the LQD with the necessary information to apply for approval of alternate surface water (ground water) monitoring frequencies." This need to "apply" was meant to equate to the revision process. The ability to modify a surface water or groundwater monitoring schedule can only be accomplished if this proposed change has been reviewed by LQD staff and is formally incorporated into the permit.

Conclusion

The LQD believes rules at Chapter 2, Section 2(b)(xi)(D)(I)(2) and (II)(2) provide the same protection of the groundwater and surface water resources as the Federal counterpart rules and therefore are not less effective. The fact than any change to monitoring frequency is done through formal permit revision should alleviate concerns regarding the way in which such things are approved. Additionally, the LQD hydrology staff review all such requests and only agree to a modified monitoring frequency when such modification does not jeopardize their ability to ascertain whether: mining is causing material damage to surface or groundwater systems outside the permit area; water quality and quantity are suitable to support the approved postmining land use; and the water rights of other users are being protected or replaced.

We agree that Wyoming's rules at Chapter 2, Section 2(b)(xi)(D)(I)(2) and (II)(2) provide the same protection for groundwater and surface water resources as the Federal rules at 780.21(i) and (j) and are therefore no less effective.

9. Chapter 2, Section 2(b)(xii), Probable Hydrologic Consequences

In order to make its rule on Probable Hydrologic Consequences determinations no less effective than the Federal rules, Wyoming proposes the addition of the following language to its rule: "The PHC determination shall be based on baseline hydrologic, geologic and other information collected for the permit application and may include data statistically representative of the site." In a 30 CFR part 732 letter dated December 23, 1985, OSM required the State to do this and supplied the exact language to be used (which the State used). The State defines the term "general area" that it uses in this rule in Chapter 1, Section 2(an).

Based on the above, we find the revised State rule to be no less effective than the Federal rules.

10. Chapter 4, Section 2(i)(i), Removes Redundant Groundwater Language

The addition of language to Chapter 2, Section 2(b)(xi)(D)(II)(1 and 2) ["The plan shall provide for the monitoring of parameters that relate to the suitability of the groundwater for current and approved postmining land uses"] made that language at Chapter 4, Section 2(i)(i) redundant and therefore unnecessary. It is therefore proposed to be eliminated and will not make the State rule less effective than the Federal rule.

11. Appendix A, Appendix IV, to change the State's List of Plant Species of Special Concern

Although not required by Federal regulations, Wyoming lists its endangered and threatened species as well as its candidates for threatened and endangered species in an appendix to its regulations. The status of Wyoming's current list has changed requiring that it be updated in order to be accurate. Specifically, only one plant species had been listed as "threatened" or "endangered." Three other candidates were potential candidates for listing. Now, however, there is one threatened, one endangered and two potential candidates. In addition, Wyoming will add "species of special concern" to its list. This updated list is approved.

12. Chapter 2, Section 2(a)(vi)(J)(VIII), Application Content Requirements for Surface Coal Mining Operations (Disapproval Codified at 30 CFR 950.12(a)(4)))

We had codified at 30 CFR 950.12(a)(4) our disapproval of Wyoming's May 1, 1986, regulations at Chapter II, Section 3(a)(vi)(M) regarding the deletion of the locational data requirements for monitoring stations. In an informal submittal dated January 29, 1991, Wyoming asserted that the locational data requirements were present in its current rules at Chapter II, Section 3(a)(vi)(C)(VIII), now renumbered Chapter 2, Section 2(a)(vi)(J)(VIII). In a comment letter dated December 23, 1991, We agreed with Wyoming's explanation that the use of this regulation was the correct counter-part regulation to describe the locational data requirements of baseline data gathering stations, and is no less effective that the Federal regulations. Therefore, Wyoming's regulations at Chapter 2, Section 2(a)(vi)(J)(VIII) are in accordance with the Federal regulations and resolves the disapproval codified at 30 CFR 950.12(a)(4).

13. Required Amendment at 30 CFR 950.16(ii)(2), Fish and Wildlife Habitat and Shrub Density

Chapter 2, section 2(b)(iv)(C) of Wyoming's rules requires a plan to assure revegetation of all affected land in accordance with chapter iv, section 2(d). "The plan shall include the method and schedule of revegetation, including but not limited to species of plants, seeding rates, seeding techniques, mulching requirements or other erosion control techniques, and seeding times to be used in a given area for reclamation purposes. The standards and specifications adopted by the State Conservation Commission for mine reclamation shall be considered by the applicant during the preparation of the reclamation plan whenever practicable. The Wyoming Game and Fish Department (WGFD) shall be consulted and its approval shall be required for minimum stocking and planting arrangements of trees and shrubs, including species composition and vegetative ground cover for crucial and critical habitat. The WGFD shall be consulted for minimum stocking and planting arrangements of trees and shrubs, including species composition and vegetative ground cover for important habitat. The Wyoming Department Of Agriculture shall be consulted regarding croplands and erosion control techniques.

Chapter 4, section 2(d)(x)(e)(iii) of Wyoming's coal rules requires for areas containing designated critical or crucial habitat, the WGFD shall be consulted about, and its approval shall be required for, minimum stocking and planting arrangements of shrubs, including species composition. For areas determined to be important habitat, the WGFD shall be consulted for recommended minimum stocking and planting arrangements of shrubs, including species composition, that may exceed the programmatic standard discussed above.

Federal regulations at 30 CFR 950.16(ii)(2) require Wyoming to revise the rules at chapter 2, section 2(b)(iv)(C), and Chapter 4, section 2(d)(x)(E)(III), to require consultation with and approval by the WGFD of tree and shrub standards for all lands to be reclaimed for "fish and wildlife habitat" land use.

In the August 6, 1996, preamble (61 FR 40738), in discussing the required program amendment at 30 CFR 950.16(ii)(2), we indicated that the rules at Chapter 2, section 2(b)(iv)(C) and Chapter 4, section 2(d)(x)(E)(III) do not require consultation and approval on all surface mined lands to be reclaimed for a "fish and wildlife habitat" land use. The rules require consultation and concurrence on critical habitat and crucial habitat, but they do not require consultation and concurrence on lands to be reclaimed for the fish and wildlife habitat land use. The Federal regulations at 30 CFR 816.116(b)(3)(i)

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require, for areas to be developed for the fish and wildlife habitat land use, consultation and concurrence by the State agency responsible for the administration of the wildlife program on minimum stocking and planting arrangements for tree and shrub stocking. To the extent that the State rules at Chapter 2, section 2(b)(iv)(C), and chapter IV, section 2(d)(x)(E)(III), do not require consultation with and approval by the WGFD on minimum stocking and planting arrangements for tree and shrub stocking on lands to be reclaimed for the fish and wildlife habitat land use, we determined that they were less effective than the Federal regulations at 30 CFR 816.116(b)(3)(i). We approved the rules at chapter II, section 2(b)(iv)(C) and chapter IV, section 2(d)(x)(E)(III) but required Wyoming to revise them to require consultation with and approval by the WGFD of the tree and shrub standards for all lands to be reclaimed for the fish and wildlife habitat land use.

In response to the required amendment, Wyoming responded that this topic was discussed in the April 9, 1996. letter to us. In this letter, Wyoming explained that the Wyoming (Chapter 1, Section 2(bc)(viii) and Federal (30 CFR 701.5) definitions for fish and wildlife habitat are as follows:

> Fish and wildlife habitat means land dedicated wholly or partially to the production, protection or management of species of fish or wildlife.

In the entire state of Wyoming, there is very little habitat which is dedicated wholly or partially to the production, protection or management of species of fish or wildlife. Even habitat considered crucial or critical will in most cases be subject to livestock grazing and a host of recreational uses. Consequently, if limited to this definition, there would be little fish or wildlife habitat in Wyoming because of the multiple use so prevalent here. This fact was recognized by the participants in the shrub standard negotiations hosted by the WGFD. Consequently, Wyoming did not pursue the rule change requested by the required program amendment because it is not applicable to the way that fish and wildlife habitat is designated within the context of reclamation.

As a matter of compromise, all participants in the shrub standard negotiations agreed (including WGFD) that the WGFD would maintain very specific consultation and concurrence on critical and crucial habitats. Whereas, on habitats classified by the WGFD as important, the WGFD would limit their role to that of consultation only. In addition, the Wyoming rules at Chapter 4, section 2(d)(x)(E)(II) require that approved shrub species and seeding techniques be applied to all remaining grazing lands. This requirement has been part of Wyoming's rules since 1986, when the goal of one shrub per square meter on 10 percent of the affected area superseded the equal shrub density requirement. This requirement for additional seeding of shrubs was added in recognition of the need for shrubs to be applied to all surfaces reclaimed for dual use by wildlife and livestock.

WGFD reviews all reclamation plans proposed by coal operators prior to the approval of such plans. Consequently, the WGFD is consulted on such reclamation plans and is provided the opportunity to comment on proposed plans and request changes as needed. Further, the Wyoming rules also contain an entire section within Chapter 4, outlining the required fish and wildlife performance standards.

Operators must provide detailed information on how they will minimize disturbance and adverse impacts on fish, wildlife and related environmental values and achieve enhancement of such resources where practicable. The LQD relies on the expertise of the WGFD to review an operator's proposal and ask for changes needed to ensure that the above environmental values and enhancements are met.

In addition, the 1980 version of Wyoming's rules (Chapter 4, section 3(d)(6)(A)) required that when wildlife habitat is part of the postmining land use, shrubs and trees shall be returned to a density at least equal to that existing on the area before mining. This language was specifically aimed at the land use and not the designation of the habitat because of the restrictive wording in the definition of fish and wildlife habitat. The current rule at Chapter 4, section 2(d)(x)(E) also acknowledges the use of Wyoming's rangelands by wildlife with the following language: "The postmining density, composition and distribution of shrubs shall be based upon site specific evaluation of premining vegetation and wildlife use."

The State's response concludes that in recognition of the strong role the WGFD already plays in the review of coal mining permits and how reclamation is carried out, the very limiting definition for fish and wildlife habitat and the fact that the WGFD was part of the shrub density negotiations in 1994 and they concurred with all final decisions, the LQD does not feel it is necessary to specifically address the WGFD's role with respect to fish and wildlife habitat. All participants in the shrub density discussions, as well as the Wyoming Legislature, have indicated that the role of the WGFD in the oversight of Wyoming's coal mine reclamation has been appropriately delineated through the implementing statutes, rules and regulations.

Based on Wyoming's response, we have reevaluated the required program amendment. The currently approved shrub density standards are applicable to all grazing lands (the predominant postmining land use in Wyoming) where shrubs existed prior to mining. As stated in the State's definition of grazing land, this land use includes use by wildlife. The approved Wyoming shrub density standards are programmatic standards that were developed in consultation with and concurrence from the WGFD. WGFD consultation and concurrence is required for minimum planting and stocking arrangements of shrubs, including species composition, for areas containing critical and crucial wildlife habitat. It is our experience that in the West the vast majority of the reclaimed land is subject to multiple use by both livestock and wildlife. In such cases, the lands could be subject to the revegetation success standards of cover, production and shrub density. Under the Wyoming program, these multiple use lands would be defined as having a grazingland land use. These lands would be subject to the programmatic shrub density standards that were developed in consultation with, and with approval of, the WGFD also using the cover and production standards. The effect is the same.

In addition, the Wyoming LQD has a Memorandum of Understanding (MOU) with WGFD (administrative record no. WY–34–11). The MOU clearly defines the roles and responsibilities of both the agencies and provides procedures for timely disposition of issues regarding the effects of mining and reclamation activities on fish, wildlife, and their habitats in Wyoming. This provides further assurance that WGFD actively participates in the protection of fish and wildlife habitat in Wyoming.

Based on the information provided by Wyoming and the record on development of the existing programmatic shrub density, we have determined that Wyoming's program is consistent with and no less effective than the Federal regulations at 30 CFR 816.116(b)(3)(i) and remove the required program amendment at 30 CFR 950(ii)(2).

14. Required Amendment at 30 CFR 950.16(jj), Shrub Standard for Grazing Land

In 1995 Wyoming revised its regulations at Chapter 1, section 2(bc)(xi) to define "treated grazing land" as grazing land which has been altered to reduce or eliminate shrubs provided such treatment was applied at least five years prior to submission of the state program permit application. However, grazing land altered more than five years prior to submission of the state program permit application on which full shrubs have reestablished to a density of at least one per nine square meters does not qualify as treated grazing land.

In the August 6, 1996, preamble (61 FR 40740), in discussing the approval of the "treated grazing land" definition with a required program amendment at 30 CFR 950.16(jj), we indicated that we were requiring Wyoming to clarify the revegetation standard for grazingland that is affected after the date of our approval and that was treated less than 5 years prior to the submission of the permit application.

As set forth in the proposed definition for "treated grazing land" at Chapter 1, section 2(bc)(xi), grazing land that is disturbed after the date of our approval of these rules and that was treated less than 5 years prior to the submission of the permit application is not "treated grazing land." As set forth in the definition for "eligible land" at Chapter 1, section 2(ac), this grazing land is eligible land that is subject to the shrub standard set forth at chapter 4, Section 2(d)(x)(E), which at subsection (I) states that "[e]xcept where a lesser density is justified from premining conditions in accordance with Appendix A, at least 20 percent of the eligible land shall be restored to shrub patches supporting an average of one shrub per square meter."

The preamble indicates that given Wyoming's rationale that it wanted to take away any incentive for an operator to reduce premining shrub densities so that fewer shrubs would have to be established on reclaimed grazinglands, it is not likely that Wyoming intended that the postmining shrub reestablishment standard could be a lesser density than was based on the premining, treated condition. Even so, the language of the rules could be interpreted to allow this. Alternatively, it's possible that Wyoming intended that any operator treating grazing land less than 5 years prior to the submission of the permit application would then automatically have to reclaim to the maximum standard of at least one shrub per square meter on 20 percent of the eligible land.

There is no direct counterpart definition for "treated grazing land" in the Federal regulations. However, 30 CFR 816.116(b)(1) requires that standards for success shall be applied in accordance with the approved postmining land use and, at a minimum, for areas developed for use as grazingland, the ground cover and production of living plants on the revegetated area shall be at least equal to that of a reference area or "such other success standards approved by the regulatory authority."

The preamble (61 FR 40740) concluded that because Wyoming's rules are unclear as to the shrub reestablishment standard for grazingland that is affected after the date of our approval and that was treated less than 5 years prior to the submission of the permit application, we found that Wyoming's proposed definition for "treated grazing land" at chapter 1, section 2(bc)(xi), as applied in conjunction with the proposed definition for "eligible land" at Chapter 1, section 2(ac), the proposed rule at Chapter 4, section 2(d)(x)(E)(I), and appendix A to the rules at section VIII.E, did not clearly satisfy for this class of grazing land the Federal regulation at 30 CFR 816.116(b)(1)—that requires the regulatory authority to set standards of revegetation success for areas developed for grazing land. Therefore, we required Wyoming to revise the definition for "treated grazing land" at chapter 1, section 2(bc)(xi), to otherwise revise its rules, or to provide us with a policy statement, clarifying the shrub standard for grazingland that is affected after the date of our approval and that was treated less than 5 years prior to the submission of the permit application.

In response to the required amendment Wyoming does not propose to change any rules to address this question. Instead, the following policy has been adopted by the LQD. This policy was presented at a public workshop sponsored by the LQD held on September 30 and October 1, 1996. The purpose of this workshop was to explain the shrub density standard to coal operators, consultants and LQD staff members.

> If native acreage is disturbed in any way which removes shrubs between the August 6, 1996, OSM approval date and less than five years before the acreage is submitted as part of a coal permit application or coal permit amendment application, the shrub density existing on adjacent, undisturbed and representative lands will be used as the premine shrub density for this same acreage. This policy will be applied regardless of whether the disturbance was intentionally or accidentally applied (e.g., controlled burn, herbicide spraying or lightening strike). If this representative, undisturbed area was not sampled for shrub density and composition by the applicant as part of the application process, this same applicant will be required to sample the representative, undisturbed area.

In the regulations at 30 CFR 950.16(jj), we clearly allow the use of a policy statement to address the required amendment. For areas disturbed in any way that removes shrubs between the August 6, 1996, OSM approval date and less than five years before the acreage is submitted as part of a coal permit application or coal permit amendment application, the Wyoming policy statement clearly sets a shrub density standard based on the shrub density of adjacent, undisturbed representative lands. This adequately addresses our concern and resolves the outstanding required amendment. As proposed, the policy statement makes the definition of "treated grazing land" no less effective than the Federal regulations.

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment on July 26, 2001 (administrative record no. WY–34–6), but received none.

Federal Agency Comments

Under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Wyoming program (administrative record no. WY–34–6).

We subsequently received a September 18, 2001, letter from Marvin W. Nichols, Jr., Administrator for Coal Mine Safety, with the Department of Labor's Mine Safety and Health Administration (MSHA) (administrative record no. WY–34–9).

MSHA stated that only changes to Chapter 4 of the Wyoming Rules have any impact on the activities of MSHA, that they don't conflict with MSHA's requirements, and that some of Wyoming Rules have restrictions greater than MSHA's.

Wyoming having greater restrictions than MSHA, however, presents no problem.

Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(i) and (ii), we are required to get a written concurrence from EPA for those provisions of the program amendment

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that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

Under 30 CFR 732.17(h)(11)(i), we requested comments on the amendment from EPA (administrative record no. WY–34–5). EPA did not respond to our request.

State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On July 26, 2001, we requested comments on Wyoming's amendment (administrative record no. WY–34–4), but neither responded to our request.

V. OSM's Decision

Based on the above findings, we approve the amendment Wyoming sent to us.

We approve, as discussed in: finding no. 9, Chapter 2, Section 2(a)(vi)(L)(III) concerning water quantity descriptions; finding no. 10, Chapter 2, Section 2(a)(vi)(L)(IV), concerning water quality sampling; finding no. 1, Chapter 2, Section 2(a)(vi)(L)(v), concerning dissolved and suspended solids; finding no. 2, Chapter 2, Section 2(a)(vi)(M)(III), concerning sampling and analysis methodology; finding no. 11, Chapter 2, Section 2(a)(vi)(M)(III)(4), concerning ground water information; finding no. 3, Chapter 2, Section 2(a)(vi)(O), concerning probable hydrologic consequences determination; finding no. 12, Chapter 2, Section 2(b)(xi)(D)(I)(1), concerning surface water monitoring plans; finding no. 13, Chapter 2, Section 2(b)(xi)(D)(I)(2), concerning surface water plan contents; finding no. 4, Chapter 2, Section 2(b)(xi)(D)(I)(3), concerning impacts of data upon hydrologic balance; finding no. 14, Chapter 2, Section 2(b)(xi)(D)(II)(1 and 2), concerning groundwater monitoring plan and contents; finding no. 5, Chapter 2, Section 2(b)(xii), concerning probable hydrologic consequences determination; finding no. 6, Chapter 3, Section 2(c)(viii)(D through G), concerning alluvial valley floors; finding no. 7, Chapter 2, Section 2(b)(xi)(D)(I)(2); finding no. 14, Chapter 2, Section 2(b)(xi)(D)(XII)(1 and 2); finding no. 16, Chapter 4, Section 2(i)(i), concerning the removal of redundant groundwater language; finding no. 8, Chapter 4, Section 2(w), concerning the prevention of material damage to hydrologic balance outside the permit area; finding no. 17, Appendix A, Appendix IV, concerning a change in the list of plant species of special concern; finding no. 18, 30 CFR 950.12(a)(4), concerning why the codified required amendment for elevations and locations of stations to monitor water quality * * * should be removed; finding no. 19, 30 CFR 950.16(ii)(2), concerning why the codified required amendment for fish and wildlife habitat and shrub density should be removed; and finding no. 20, 30 CFR 950.16(jj), concerning why the codified disapproval for the shrub standard for grazing land should be removed.

To implement this decision, we are amending the Federal regulations at 30 CFR part 950, which codify decisions concerning the Wyoming program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a) of SMCRA requires that the Wyoming program demonstrates that Wyoming has the capability of carrying out the provisions of the Act and meeting its purposes. Making this regulation effective immediately will expedite that process. SMCRA requires consistency of Wyoming and Federal standards.

Effect of OSM's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any change of an approved State program be submitted to OSM for review as a program amendment. The Federal regulations at 30 CFR 732.17(g) prohibit any changes to approved State programs that are not approved by OSM. In the oversight of the Wyoming program, we will recognize only the statutes, regulations, and other materials we have approved, together with any consistent implementing policies, directives, and other materials. We will require Wyoming to enforce only approved provisions.

VI. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulations.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations "consistent with" regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 950

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 13, 2002.

Brent Wahlquist,

Regional Director, Western Regional Coordinating Center.

For the reasons set out in the preamble, 30 CFR 950 is amended as set forth below:

PART 950—WYOMING

1. The authority citation for part 950 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 950.15 is amended in the table by adding a new entry in chronological order by November 6, 2002 to read as follows:

§ 950.15 Approval of Wyoming regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
July 20, 2001	November 6, 2002	Ch. 2, Sec. 2(a)(vi)(L)(III); Ch. 2, Sec. 2(a)(vi)(L)(iv); Ch. 2, Sec. 2(a)(vi)(M)(III); Ch. 2, Sec. 2(a)(vi)(M)(III)(4); Ch. 2, Sec. 2(a)(vi)(O); Ch. 2, Sec. 2(b)(xi)(D)(I)(1); Ch. 2, Sec. 2(b)(xi)(D)(I)(2); Ch. 2, Sec. 2(b)(xi)(D)(I)(3); Ch. 2, Sec. 2(b)(xi)(D)(II)(1 and 2); Ch. 2, Sec. 2(b)(xii); Ch. 3, Sec. 2(c)(viii)(D)–(G); Ch. 4, Sec. 2(c)(xii)(D)(iv); Ch. 4, Sec. 2(i)(i); Ch. 4, Sec. 2(w); Appendix A, Appendix IV; 30 CFR 950.12(a)(4); 30 CFR 950.16(ii)(2); 30 CFR 950.16(jj).

§ 950.16 [Amended]

3. Section 950.16 is amended by removing and reserving paragraphs (ii) and (jj).

[FR Doc. 02–28201 Filed 11–5–02; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE TREASURY

31 CFR Part 103

RIN 1506–AA28

Financial Crimes Enforcement Network; Anti-Money Laundering Programs for Financial Institutions

AGENCY: Financial Crimes Enforcement Network (FinCEN), Treasury.

ACTION: Amendment of interim final rule.

SUMMARY: FinCEN is extending the provision in its regulations that temporarily defers, for certain financial institutions, the application of the anti-money laundering program requirements in section 352 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001.

DATES: This interim final rule is effective November 6, 2002.

FOR FURTHER INFORMATION CONTACT: Office of the Chief Counsel (FinCEN), (703) 905–3590; Office of the Assistant General Counsel for Enforcement (Treasury), (202) 622–1927; or the Office of the Assistant General Counsel for Banking & Finance (Treasury), (202) 622–0480 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

I. Background

A. USA PATRIOT Act Section 352

On October 26, 2001, the President signed into law the USA PATRIOT Act (Pub. L. 107–56) (the Act). Title III of the Act makes a number of amendments to the anti-money laundering provisions of the Bank Secrecy Act (BSA), which is codified in subchapter II of chapter 53 of title 31, United States Code. These amendments are intended to make it easier to prevent, detect, and prosecute international money laundering and the financing of terrorism. Section 352(a) of

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the Act, which became effective on April 24, 2002, amended section 5318(h) of the BSA. As amended, section 5318(h)(1) requires every financial institution to establish an anti-money laundering program that includes, at a minimum: (i) The development of internal policies, procedures, and controls; (ii) the designation of a compliance officer; (iii) an ongoing employee training program; and (iv) an independent audit function to test programs.

The definition of "financial institution" in sections 5312(a)(2) and (c)(1) is extremely broad. It includes institutions that are already subject to federal regulation such as banks, savings associations, credit unions, money services businesses (such as money transmitters and currency exchanges), and registered securities broker-dealers and futures commission merchants. The definition also includes dealers in precious metals, stones, or jewels; pawnbrokers; loan or finance companies; trust companies; private bankers; insurance companies; travel agencies; telegraph companies; sellers of vehicles, including automobiles, airplanes, and boats; persons engaged in real estate closings and settlements; investment bankers; investment companies; and commodity pool operators and commodity trading advisors that are registered or required to register under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*). Section 352 of the Act requires *all* of these businesses to establish anti-money laundering programs.

B. Prior Interim Rules Implementing Section 352

On April 29, 2002, FinCEN issued a series of interim final rules implementing section 352 of the Act. These rules prescribed requirements for anti-money laundering programs for banks, savings associations, credit unions, registered securities broker-dealers, futures commission merchants, and introducing brokers that are regulated by a federal functional regulator or a self-regulatory organization, and casinos [1]; money services businesses [2]; mutual funds [3]; and operators of credit card systems.[4] FinCEN also temporarily deferred, until October 24, 2002, the application of section 352 to all other financial institutions.[5] The temporary deferral applied to dealers in precious metals, stones, or jewels; pawnbrokers; loan or finance companies; private bankers; insurance companies; travel agencies; telegraph companies; sellers of vehicles, including automobiles, airplanes, and boats; persons engaged in real estate closings and settlements; certain investment companies; commodity pool operators; and commodity trading advisors.[6]

The purpose of the temporary deferral was to permit FinCEN and Treasury to continue studying the money laundering risks posed by these institutions in order to develop appropriate anti-money laundering program requirements. The extension of the anti-money laundering program requirement to these financial institutions, most of which have never been subject to federal financial regulation, raises many significant practical and policy issues. An inadequate understanding of the affected industries could result in poorly conceived regulations that impose unreasonable regulatory burdens with little or no corresponding anti-money laundering benefits. FinCEN and Treasury are also aware that many of these financial institutions are sole proprietors or small businesses, and that any regulations affecting them must recognize this fact. As a result of our review of these industries, FinCEN and Treasury have published proposed rules that would apply the anti-money laundering program requirements of section 352 to insurance companies [7] and certain investment companies.[8] FinCEN and Treasury are continuing to study the remainder of the deferred financial institutions and expect to issue proposed rules for all these financial institutions within the next six months. FinCEN and Treasury are today extending the temporary deferral concerning section 352 pending the issuance of final rules for these financial institutions.

II. Analysis of the Current Interim Final Rule

A. Extension of Temporary Deferral of Section 352 Requirements for Certain BSA Financial Institutions

As promulgated on April 29, 2002, 31 CFR 103.170 temporarily deferred, until October 24, 2002, the application of section 352 of the Act to dealers in precious metals, stones, or jewels; pawnbrokers; loan or finance companies; private bankers; insurance companies; travel agencies; telegraph companies; sellers of vehicles, including automobiles, airplanes, and boats; persons engaged in real estate closings and settlements; certain investment companies; commodity pool operators; and commodity trading advisors. This interim rule amends section 103.170 by removing the October 24, 2002, termination of the exemption for these financial institutions. As noted above, FinCEN and Treasury have issued proposed rules for some of these financial institutions, and expect to issue additional proposed rules in the coming months. FinCEN and Treasury believe it would be inappropriate to require these financial institutions to implement anti-money laundering programs during the pendency of the rulemaking process.

B. Clarification of Financial Institutions Subject to the Temporary Deferral

The temporary deferral in section 103.170 was intended to apply to all financial institutions other than those for which anti-money laundering program requirements were previously in effect or specifically prescribed pursuant to the April 29, 2002, interim final rules. Although the prior interim final rules did not prescribe anti-money laundering programs for certain financial institutions that are "banks" as defined in 31 CFR 103.11(c) but which lack a federal functional regulator, those financial institutions were not specifically included in the list of financial institutions subject to the temporary deferral. Section 103.170 is being amended to include these financial institutions (trust companies and certain state-chartered credit unions that are not federally insured, and private banks) within the temporary deferral.[9] For the same reason, section 103.170 is also being amended to include any person defined as a "financial institution" in 31 CFR 103.11(n)(7).[10]

C. Other Compliance Obligations Unaffected

Treasury and FinCEN emphasize that the temporary deferrals do not in any way relieve any business from their obligations under law or regulation, including the requirements in 31 U.S.C. 5331 and 26 U.S.C. 6050I that they report transactions in cash or currency, or certain monetary instruments, that exceed $10,000. The regulations under these sections are codified at 31 CFR 103.30 and 26 CFR 1.6050I, respectively. Every business must ensure that it has appropriate procedures to report such transactions to FinCEN and the IRS using the single Form 8300 jointly prescribed by those agencies. All financial institutions are further reminded of the importance of reporting suspected terrorist activities or otherwise suspicious transactions to the appropriate law enforcement authorities. In addition, Form 8300 contains a box that may be checked to indicate that a particular transaction appears suspicious.

III. Administrative Procedure Act

The provisions of section 352 of the Act, which requires all financial institutions to establish anti-money laundering programs, became effective April 24, 2002. This interim final rule imposes no requirements on any financial institution, and continues the exemption for certain financial institutions from these requirements. Accordingly, good cause is found to dispense with notice and public procedure as unnecessary pursuant to 5 U.S.C. 553(b)(B), and to make the provisions of the interim rule effective in less than 30 days pursuant to 5 U.S.C. 553(d)(1) and (3).

IV. Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this interim final rule, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

V. Executive Order 12866

This interim final rule is not a "significant regulatory action" as defined in Executive Order 12866. Accordingly, a regulatory assessment is not required.

List of Subjects in 31 CFR Part 103

Banks and banking, Brokers, Counter money laundering, Counter-terrorism, Currency, Foreign banking, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons set forth above, FinCEN is amending 31 CFR Part 103 as follows:

PART 103—FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FOREIGN TRANSACTIONS

1. The authority citation for part 103 is revised to read as follows:

Authority: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5314 and 5316–5332; title III, secs. 312, 313, 314, 319, 352, Pub. L. 107–56, 115 Stat. 307.

Subpart I—Anti-Money Laundering Programs

2. Section 103.170 is amended by revising the section heading and paragraphs (b) and (c), and adding paragraph (d) to read as follows:

§ 103.170 Exempted anti-money laundering programs for certain financial institutions.

* * * * *

(b) *Temporary exemption for certain financial institutions.* (1) Subject to the provisions of paragraphs (c) and (d) of this section, the following financial institutions (as defined in 31 U.S.C. 5312(a)(2) or (c)(1)) are exempt from the requirement in 31 U.S.C. 5318(h)(1) concerning the establishment of anti-money laundering programs:

(i) Dealer in precious metals, stones, or jewels;
(ii) Pawnbroker;
(iii) Loan or finance company;
(iv) Travel agency;
(v) Telegraph company;
(vi) Seller of vehicles, including automobiles, airplanes, and boats;
(vii) Person involved in real estate closings and settlements;
(viii) Private banker;
(ix) Insurance company;
(x) Commodity pool operator;
(xi) Commodity trading advisor; or
(xii) Investment company.

(2) Subject to the provisions of paragraphs (c) and (d) of this section, a bank (as defined in § 103.11(c)) that is not subject to regulation by a Federal functional regulator (as defined in § 103.120(a)(2)) is exempt from the requirement in 31 U.S.C. 5318(h)(1) concerning the establishment of anti-money laundering programs.

(3) Subject to the provisions of paragraphs (c) and (d) of this section, a person described in § 103.11(n)(7) is exempt from the requirement in 31 U.S.C. 5318(h)(1) concerning the establishment of anti-money laundering programs.

(c) *Limitation on exemption.* The exemptions described in paragraphs (a)(2) and (b) of this section shall not apply to any financial instittution that is otherwise required to establish an anti-money laundering program by this subpart I.

(d) *Compliance obligations of deferred financial institutions.* Nothing in this section shall be deemed to relieve an exempt financial institution from its responsibility to comply with any other applicable requirement of law or regulation, including title 31 of the U.S.C. and this part.

Dated: October 28, 2002.

James F. Sloan,

Director, Financial Crimes Enforcement, Network.

[FR Doc. 02–27770 Filed 11–5–02; 8:45 am]

BILLING CODE 4810–02–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–02–122]

RIN 2115–AE47

Drawbridge Operation Regulations; Shrewsbury River, NJ

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is temporarily changing the drawbridge operation regulations that govern the Monmouth County highway bridge, at mile 4.0, across the Shrewsbury River at Sea Bright, New Jersey. This temporary change to the drawbridge operation regulations allows the bridge to remain closed to navigation with required openings only at 6 a.m., 10 a.m., 2 p.m., and 6 p.m. after a twelve-hour advance notice is given, from November 8, 2002 through February 28, 2003. This action is necessary to facilitate structural repairs at the bridge.

DATES: This rule is effective from November 8, 2002 through February 28, 2003.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket (CGD01–02–122) and are available for inspection or copying at the First Coast Guard District, Bridge Administration Office, 408 Atlantic Avenue, Boston, Massachusetts, 02110–3350, between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Arca, Project Officer, First Coast Guard District, (212) 668–7165.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the

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[1] 67 FR 21110.
[2] 67 FR 21114.
[3] 67 FR 21117.
[4] 67 FR 21121.
[5] See 31 CFR 103.170 (67 FR 21113, April 29, 2002).
[6] The deferral did not extend to investment bankers because all such entities are either depository institutions or securities broker-dealers that were subject to anti-money laundering program requirements in the interim final rules.
[7] 67 FR 60625 (September 26, 2002).
[8] 67 FR 60617 (September 26, 2002).
[9] The financial institutions defined as "banks" in 31 CFR 103.11(c) correspond substantially to the types of banks included in the list of "financial institutions" in 31 U.S.C. 5312(a)(2)(A)–(F).
[10] 31 CFR 103.11(n)(7) defines generally as a financial institution "a person subject to supervision by any state or federal bank supervisory authority."

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Coast Guard finds that good cause exists for not publishing an NPRM and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

On July 12, 2001, the Coast Guard published an NPRM (66 FR 36527) [CGD01–01–095] entitled Drawbridge Operation Regulations Shrewsbury River, New Jersey. That NPRM requested public comment regarding the proposal to temporarily change the drawbridge operation regulations, from November 1, 2001 through February 28, 2002. Under that proposal the bridge would be required to open only four times each day provided a twelve-hour advance notice was given. No comments or objections were received in response to the NPRM published in 2001.

The repair project and temporary operating schedule for 2001 were cancelled for fiscal year 2001 due to contractual issues. As a result of the failure to resolve the contractual issues the project was rescheduled to start in November 2002, a year later than originally planned.

The bridge owner recently renewed its request to temporarily change the bridge operating regulations from November 8, 2002 through February 28, 2003. The temporary operating schedule in this rule is identical to the schedule previously published in the notice of proposed rulemaking last year, under which the bridge will be available to open for vessel traffic four times each day provided a twelve-hour notice is given.

Opening requests received at the Monmouth County highway bridge during the November to February time period each year have been relatively low. In addition, the Coast Guard coordinated the bridge repair project and related temporary bridge opening schedule with the mariners who operate on the Shrewsbury River. All those we contacted agreed that the proposed bridge opening schedule would meet the needs of waterway users. The effective period of this temporary rule is traditionally the most dormant season for vessel traffic on the Shrewsbury River and, accordingly, the best time to perform the necessary repairs at the bridge.

The Coast Guard believes that an NPRM is unnecessary because of the relatively low number of opening requests received at the bridge November through February and the advance coordination effort made by the Coast Guard to coordinate the temporary bridge opening schedule with the mariners.

Good cause exists for making this regulation effective in less than 30 days after publication in the **Federal Register** because any delay encountered in this regulation's effective date would be unnecessary and contrary to the public interest. Delaying the start of this project would also delay the completion date of this project, disrupting vehicular and marine traffic next spring when traffic is much heavier than during the winter months when this temporary operating schedule will be in effect.

Background and Purpose

The Monmouth County highway bridge, at mile 4.0, across the Shrewsbury River has a vertical clearance of 15 feet at mean high water and 17 feet at mean low water. The existing regulations are listed at 33 CFR 117.755.

The bridge owner, Monmouth County, asked the Coast Guard to temporarily change the drawbridge operation regulations to facilitate structural repairs at the bridge to be performed from November 2001 through February 2002.

The Coast Guard published a notice of proposed rulemaking in July 2001. That rule proposed that the bridge open only at 6 a.m., 10 a.m., 2 p.m., and 6 p.m., after a twelve-hour advance notice was given. It was scheduled to go into effect from November 1, 2001 through February 28, 2002, but the project was cancelled before the rulemaking resulted in a temporary final rule. It was subsequently postponed a year due to contractual problems.

The bridge owner has again asked the Coast Guard to temporarily change the regulations governing the Monmouth County highway bridge to allow the operating schedule proposed last year to go into effect this year from November 8, 2002 through February 28, 2003. The Coast Guard contacted the mariners who operate on the Shrewsbury River regarding this temporary operating schedule and no objections were received.

Discussion of Rule

This temporary change to the drawbridge operation regulations will require the bridge to open only at 6 a.m., 10 a.m., 2 p.m., and 6 p.m. after a twelve-hour advance notice is given. The timed openings and the advance notice requirement are necessary to allow the contractor sufficient time to remove equipment and materials from the bridge in order to provide bridge openings.

The number of requests to open the bridge from November through February in past years have been relatively low.

	1999–2000	2000–2001	2001–2002
November	68	85	137
December	31	38	55
January	14	6	19
February	7	13	8

The Coast Guard believes this temporary final rule is reasonable based upon the relatively low number of bridge opening requests during past years, November through February, and the fact that this work is necessary maintenance required to assure continued uninterrupted operation of the bridge.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3), of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

This conclusion is based on the fact that the bridge will continue to open for marine traffic on a set daily schedule.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b), that this rule will not have a significant economic impact on a substantial number of small entities.

This conclusion is based on the fact that the bridge will continue to open for marine traffic on a set schedule.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This final rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (32)(e), of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation because promulgation of changes to drawbridge regulations have been found to not have a significant effect on the environment. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. From November 8, 2002 through February 28, 2003, § 117.755 is temporarily amended by suspending paragraph (b) and adding a new paragraph (c) to read as follows:

§ 117.755 Shrewsbury River.

* * * * *

(c) The Monmouth County highway bridge, mile 4.0, at Sea Bright, shall open on signal at 6 a.m., 10 a.m., 2 p.m., and 6 p.m. after at least a twelve-hour advance notice is given. Advance notice may be given by calling the number posted at the bridge. The draw need not be opened at any time for a sailboat, unless it is under auxiliary power or is towed by a powered vessel. The owners of the bridge shall keep in good legible condition two clearance gages, with figures not less than eight inches high, designed, installed, and maintained according to the provisions of § 118.160 of this chapter.

Dated: October 28, 2002.

J.L. Grenier,

Captain, USCG, Acting Commander, First Coast Guard District.

[FR Doc. 02–28242 Filed 11–5–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD08–02–025]

RIN 2115–AE47

Drawbridge Operating Regulation; Illinois Waterway, Joliet, IL

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District has issued a temporary deviation from the regulation governing the operation of the Elgin, Joliet & Eastern Railway Drawbridge, across the Illinois Waterway, mile 290.1 at Joliet, Illinois. This deviation allows the drawbridge to remain closed to navigation for three separate 28-hour increments starting at 6 a.m., November 4, 2002, and ending at 10 a.m., November 15, 2002. Central Standard Time. The deviation is necessary to facilitate maintenance work on the bridge that is essential to the continued safe operation of the drawbridge.

DATES: This temporary deviation is effective from 6 a.m., November 4, 2002, until 10 a.m., November 15, 2002.

ADDRESSES: Materials referred to in this rule are available for inspection or copying at the office of the Eighth Coast Guard District, Bridge Administration Branch, Commander (obr), Eighth Coast Guard District, 1222 Spruce Street, St. Louis, MO 63103–2832, between 8 a.m. and 4 p.m., Monday through Friday, except federal holidays. The Bridge Administration Branch maintains the

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public docket for this temporary deviation.

FOR FUTHER INFORMATION CONTACT: Roger K. Wiebusch, Bridge Administrator, Commander (obr), Eighth Coast Guard District, 1222 Spruce Street, St. Louis, MO 63103–2832, (314).539–3900, extension 2378.

SUPPLEMENTARY INFORMATION: The Elgin, Joliet & Eastern Railway Company requested a temporary deviation on September 23, 2002, for the operation of the drawbridge to allow the bridge owner time for preventative maintenance. The drawbridge operation regulations found at 33 CFR 117.393(d) require that the drawbridge be maintained in the open-to-navigation position and close only for the passage of rail traffic. This deviation allows the bridge to remain closed to navigation for four separate 28-hour intervals from 6 a.m., November 4, 2002, until 10 a.m., November 5, 2002, from 6 a.m., November 7, 2002, until 10 a.m., November 8, 2002, from 6 a.m., November 11, 2002, until 10 a.m., November 12, 2002 and from 6 a.m., November 14, 2002, until 10 a.m., November 15, 2002. Vessels not exceeding the vertical clearance of the drawbridge may pass under the drawbridge during repairs. There are no alternate routes for vessels transiting through mile 290.1 on the Illinois Waterway. The drawbridge will be incapable of opening for emergencies during the 28-hour repair periods.

The Elgin, Joliet & Eastern Railway drawbridge provides a vertical clearance of 24.6 feet above normal pool in the closed to navigation position. Navigation on the waterway consists primarily of commercial tows and recreational watercraft. In order to repair and replace gear reducers, roller bearings, gears and shafts, the bridge must be kept inoperative and in the closed to navigation position. This deviation has been coordinated with waterway users. No objections were received.

In accordance with 33 CFR 117.35(c), this work will be performed with all due speed in order to return the bridge to normal operation as soon as possible. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: October 29, 2002.

Roger K. Wiebusch,

Bridge Administrator.

[FR Doc. 02–28134 Filed 11–5–02; 8:45 am]

BILLING CODE 4910–15–U

POSTAL RATE COMMISSION

39 CFR Part 3001

[Docket No. RM2002–1; Order No. 1349]

Electronic Filing

AGENCY: Postal Rate Commission.

ACTION: Final rule.

SUMMARY: This final rule establishes electronic filing as the standard method for filing most formal documents in Commission proceedings. It resembles the proposal in most respects. However, it severs, for a separate docket, changes in filing requirements for library references and computer analyses. Some other differences between the proposal and the final rule include the establishment of two types of account holders, elimination of a hardcopy filing requirement for certain lengthy documents, and the Commission's assumption of responsibility for facilitating service when a blanket waiver is granted. This rule is expected to contribute to more efficient administration of the Commission's workload.

DATES: Effective date: January 7, 2003.

ADDRESSES: Send correspondence to Steven W. Williams, Secretary of the Commission, 1333 H Street NW., Suite 300, Washington, DC 20268–0001.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 202–789–6818.

SUPPLEMENTARY INFORMATION: Issuance of notice and order: October 21, 2003;

Regulatory History

See 66 FR 33034, June 20, 2001 (request for comments and technical conference).

See 67 FR 35766, May 21,2002 (notice of proposed rulemaking).

Introduction

The Commission has concluded that it is feasible and desirable to make electronic filing of documents over the Internet the standard procedure for filing official documents with the Commission.

The Commission began laying the groundwork for the conversion from hardcopy to online filing in its notice and order concerning electronic filing (order no. 1317), issued June 13, 2001. That notice established docket no. T2002–1 as a vehicle for conducting a live test of its proposed online filing procedures. Drawing on its experience with that live test, the Commission issued its notice of proposed rulemaking in this docket on May 8, 2002. See order no. 1341, issued May 8, 2002, (67 FR 35766, Tuesday, May 21, 2002). That notice proposed amending the Commission's rules of practice to require that documents submitted to the Commission in official dockets be submitted online, unless a waiver is obtained. The notice included a User Guide describing proposed Filing Online operating procedures. Following publication of its proposed rules and operating procedures, the Commission conducted a Filing Online workshop on June 12, 2002 to provide those intending to participate in future dockets with instruction and hands-on training in those procedures.

Several times over the next several months, the Commission asked those who had participated in recent Commission proceedings to join it in testing Filing Online functions and system capacity. These tests were generally successful. The success of these training and testing procedures has led the Commission to conclude that the Filing Online system is sufficiently developed to warrant its immediate implementation as the standard system for receiving and disseminating documents in formal dockets.

The Commission has concluded that one part of its proposed rules requires further examination before it is implemented. That is the proposal that material filed as library references or computer analyses be filed in a form that can be read and executed on PC hardware. This proposal will be severed from this docket so that it can undergo an additional round of comment before it is implemented.

The rules implementing the Filing Online system that are adopted in this order will apply to subpart H of the Commission's rules of practice, which govern small post office closings. The Commission, however, contemplates making some refinements to subpart H procedures in the near future in order to take better advantage of the Filing Online system.

Summary

The amended rules of practice set out in attachment 1 to this order are final rules implementing the Filing Online system. They generally require that documents in formal proceedings before the Commission be filed through the Filing Online system. These final rules will take effect on January 7, 2003. They differ from the rules described in the notice of proposed rulemaking issued earlier in this docket (order No. 1341, issued May 8, 2002) in several minor respects.

The proposed rules provided for only one kind of account holder. The final rules distinguish between two types of account holders. Primary Account Holders are those who represent themselves or clients before the Commission. They take responsibility for ensuring that filings submitted through their accounts are authentic, accurate, and authorized by the participant for whom they have been filed. Agent Account Holders are those to whom Primary Account Holders have delegated their authority to file documents with the Commission.

Current account holders who meet the definition of Primary Account Holders will automatically be designated Primary Account Holders by the Secretary. Current account holders who do not meet the definition of Primary Account Holders must reapply to become Agent Account Holders. Primary Account Holders may delegate their authority to file documents with the Commission to other Primary or Agent Account Holders by designating them on their Filing Online Profile Page.

The proposed rules required that certain kinds of lengthy documents be filed both online and in hardcopy form. Under the final rules, the only documents that will be accepted in hardcopy form are those for which a waiver of the online filing requirement has been obtained, designations of written-cross examination, and formal Postal Service requests to change rates or classifications.

The proposed rules required that word processing files be submitted in text-based portable document format (pdf) format, and that all other files that could be converted to text-based pdf files also be submitted in that form. Non-word-processing files could be submitted in their native format, but this was not required.

The final rules require that word processing files be submitted in text-based pdf format, but do not require other files to be submitted in that format. They strongly encourage, but do not require, that word-processing files be submitted in their native format as well. The final rules require that non-word-processing files that are submitted as attachments to host documents be submitted in their native format. Such files may be submitted in text-based pdf on a voluntary basis.

The final rules require that notice be given to the Secretary if a scanned pdf file is being submitted.

The Secretary has expanded the capability of the Filing Online system. As before, a file can be converted to text-based pdf format on line. Now it is also possible to integrate multiple text-based pdf files into a single text-based pdf file on line. This should make it easier for account holders to produce a host document entirely in text-based pdf format.

The proposed rules required that participants serve documents in hardcopy form on other participants who had obtained a waiver of the online filing requirement. Under the final rules, the Commission has assumed the duty of serving hardcopy documents on participants who cannot receive service on line.

The proposed rules required that participants who had obtained a waiver of the online filing requirements serve their documents on others in hardcopy form. Under the final rules, those participants may submit hardcopy documents to the Secretary. The Secretary will serve them by posting them on the Commission's Web site or, if necessary, mailing them in hardcopy form.

The final rules allow complex cross-examination exhibits to be served two calendar days before the appearance of the witness by filing them on line, or by providing them in hardcopy form to the witness's counsel, at the option of the cross examiner.

Public Comments

Five sets of written comments were received in response to the notice of proposed rulemaking in this docket.[1] Of the five commenters, four supported the proposal to require documents in formal dockets to be filed online, essentially as proposed. Based on their experience with the test phase, they regarded the Filing Online system as technically well designed, reliable, and user friendly. They praised its potential to speed the availability of needed documents, to simplify the management of their documents, and to reduce costs. They noted that to realize this potential, online filing must become the standard procedure for filing documents. Carlson Comments at 1, Major Mailer Association (MMA) Comments at 1–2, Office of the Consumer Advocate (OCA) Comments at 1–2, Postal Service Comments at 1, 3.

Val-Pak Direct Marketing Systems, Inc. (Val-Pak). Val-Pak suggests that the Commission's proposal to convert to an online filing system is premature. It proposes that the Commission expand the categories of documents that would have to be dual filed (filed in hard copy as well as electronic form) to include all interrogatory responses, written testimony, briefs, and "anything that potentially can be included in the formal record." It argues that these documents need to be filed in hard copy form to ensure that the docket record is reliably preserved. It asserts that there are other benefits of requiring material to be filed in hard copy form. It contends that hard copy is easier to read, annotate, organize, and recall. It argues that it is more efficient for the originator of a document to produce a batch of hard copies on a high-speed copy machine than for each recipient of that document to produce its own hard copy. Val-Pak Comments at 2.

Val-Pak also criticizes the Commission's proposal not to require testimony and briefs to be filed in hard copy if they are 20 pages or less in length. It argues that it would be cumbersome for participants to ascertain which briefs fall under this threshold, and therefore should be printed out by the participant. *Id.* at 3.

There is little reason for Val-Pak to fear that the record will not be reliably preserved unless the documents that comprise it are filed with the Commission in hardcopy form. The Commission will print a hard copy of every document filed on line in a formal docket and archive it, at least for the duration of that docket. Val-Pak's concern that hardcopy documents are easier to work with should not interfere with the transition to the filing online. While hardcopy documents might be easier to work with, this is not a reason to require documents to be in hardcopy form when they are initially filed with the Commission. Participants who prefer to work with hardcopy documents may print them at any time after the Commission has posted them on its Web site.

A more legitimate concern is Val-Pak's argument that having different filing requirements for testimony and briefs depending on their length will make it difficult for participants to determine whether they have assembled a complete set of such documents. Val-Pak Comments at 3. The Commission agrees that this is likely to complicate the tracking and archiving of such documents. This is one reason that the Commission has decided to drop this

[1] Douglas F. Carlson Comments in Response to Order No. 1341 (Carlson Comments), were submitted on June 12, 2002. Comments of Major Mailers Association in Support of Proposed Filing Online Requirements (MMA Comments), Office of the Consumer Advocate Comments on Notice of Proposed Rulemaking to Require Filing of Documents in Electronic Form (OCA Comments), Comments of United States Postal Service on Postal Rate Commission Order No. 1341 Notice of Proposed Rulemaking to Require Filing of Documents in Electronic Form (Postal Service Comments), and Val-Pak Direct Marketing Systems, Inc. and Val-Pak Dealers' Association, Inc. Comments in Response to Commission Order No. 1341 (Val-Pak Comments) were submitted on June 21, 2002.

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proposal, and to apply the same filing requirements to all testimony and briefs, regardless of length.

Major Mailers Association (MMA). MMA generally supports the Commission's proposed Filing Online rules. It joins Val-Pak in criticizing the Commission's proposal to apply different filing requirements to testimony and briefs according to their length. It explains that in a typical rate proceeding it focuses on a few important issues, and regards remaining issues as "second tier" issues. It is only interested in receiving testimony and briefs in hardcopy form if they address issues it considers important. It believes that it is faster and more efficient to review testimony and briefs that address "second tier" issues if they are received only in electronic form. It argues that this belief is shared by most participants. Rather than requiring testimony and briefs over 20 pages to be filed in hardcopy form, it urges the Commission to adopt a "rule of reason" that would permit a participant to designate which testimony and briefs it would prefer to receive in hardcopy form. MMA Comments at 3–4. MMA's concern that it not be burdened with hard copies of testimony and briefs that it is unlikely to read in that form is resolved by the Commission's decision to drop its proposal to require that lengthy testimony and briefs must be filed in hardcopy form. Under the final rules adopted in this order, lengthy briefs and testimony will not be treated differently than other documents. Participants will be able to print lengthy testimony and briefs if they prefer to read them in hardcopy form.

MMA seeks clarification of one aspect of the Commission's proposed Filing Online procedures. It assumes that when an account holder uploads a file to the Commission's Web site in its native format, such as Microsoft Word, converts it to the required pdf format on the Commission's Web site, and submits it for filing, that the Commission posts both the native format file and the pdf file so that others can download them. When an account holder uses Adobe software to convert a file from native format to pdf on his own computer before submitting the document for filing, MMA asks whether the account holder is obligated to submit the file in native format as well. MMA argues that there should be such an obligation, since the native format file is likely to be more amenable to cutting, pasting, and searching than the pdf file. MMA also asks whether computer analyses, such as spreadsheets created in Microsoft Excel, are required to be filed and posted in their native format, and not just posted as a scanned pdf file. MMA Comments at 4–5. The Postal Service also emphasizes the benefits of filing text documents in their native format. Rather than asking that filing in both pdf and native formats be required, however, it asks that it be encouraged as a courtesy to other participants. Postal Service Comments at 7.

It is advantageous for participants to file word processing files in both pdf and native formats for all of the reasons that MMA and the Postal Service cite. The Commission, however, believes that it is premature to make it mandatory to file word processing files in native format. Filing such files in native format raises minor security concerns. For example, account holders could occasionally have hidden annotations or legislative formatting in their native-format text documents which others could retrieve. If the account holder is not aware that these annotations are present, and regards them as confidential, the account holder might regret having submitted the document in native format. One solution, of course, is to check the document for hidden annotations before submitting it for filing. The Commission is searching for technical tools that might facilitate this process. For now, however, the Commission strongly encourages account holders to submit word processing files in native format, but it will not make it mandatory. If the account holder converts a native format file to a pdf file on the Commissions Web site, the option of deleting the native file before submitting the filing record to the Commission is still available. If a filing record submitted to the Commission contains both the native file and the pdf file, the Commission will post both files on its Web site.

MMA also observes that filing computer analyses in native format should be considered mandatory under rule 31(k)(3)(i). It notes that common spreadsheet software allows the analyst to embed formulae and assumptions in spreadsheets that are lost if they are converted to pdf. It further notes that spreadsheets in pdf format must be converted back to their native format before they can be modified or manipulated. For these reasons, MMA urges the Commission to make it clear that account holders must file a native-format version of their computer analyses. MMA Comments at 5. The Postal Service expresses related concerns. It questions whether the Commission's admonition in its notice of proposed rulemaking that "[a]ny collateral files that can be produced in text-based pdf must also be submitted in that form" is well considered. It argues that some Excel files can be converted to a text-based pdf format, but that doing so eliminates most of their embedded utility.

In its notice of proposed rulemaking, the Commission proposed filing rules that did not make filing computer analyses or spreadsheet analyses in their native formats mandatory. The rules as proposed required computer analyses to be filed in text-based pdf form if they were part of a host document. If they were filed as attachments to a host document, the proposal required that they be filed in text-based pdf form where possible. Otherwise they allowed them to be filed in their native format. See order no. 1341, issued May 8, 2002, at 4.

The parties' comments have persuaded the Commission to reconsider how its format requirements should apply to computer and spreadsheet analyses. The Commission agrees that it is highly desirable to have computer and spreadsheet analyses filed in their native format for the reasons that MMA and the Postal Service cite. Filing such analyses in native format is already required in most circumstances to satisfy the Commission's documentation rules [such as rules 31(k)(2) and (3) and rule 54(o)]. This is because in most circumstances detailed assumptions, formulae, and sources for numbers are not fully disclosed in testimony or other text documents.

Computer and spreadsheet analyses are typically filed as attachments to host documents. The Filing Online rules authorized by this order require that computer and spreadsheet analyses filed as attachments to a host document be filed in their native format. Filing them in native format, such as Excel, Lotus, or Quattropro, will preserve the ability to read embedded formulae and the ability to manipulate the files. As the Postal Service points out, Excel and similar files are not very useful in pdf format because their embedded formulae cannot be read, and the numbers cannot be manipulated. Accordingly, the Filing Online rules authorized by this order do not require that computer and spreadsheet analyses filed as attachments to host documents be provided in pdf format. Text-based documents filed as attachments to host documents, however, are required to be submitted in text-based pdf format, whenever possible. This will maximize the amount of filed material that can be included in Filing Online's searchable database.

Another way to maximize the amount of material that will be included in Filing Online's searchable database is

for the Commission to be notified if an account holder has submitted a scanned pdf as an attachment to a host document. If the Commission is notified that an attached pdf was scanned, it can OCR it in an attempt to convert it to a searchable text-based pdf format. The Commission, however, cannot tell whether an attachment with a ".pdf" extension is text-based or scanned at the time that it is submitted without opening and testing it. To make sure that scanned pdfs are flagged and OCRed, the Filing Online User Guide will instruct the account holder to note in the "Comment" box provided on the "Create Filing Record" or the "Edit Filing Record" page if the pdf attached to a host document is a scanned pdf.

Rather than provide tables or graphs generated in Excel or similar formats in a separate file attached to a host document, an account holder may choose to integrate them into a host document and to explain and annotate them in the host document thoroughly enough to satisfy the Commission's documentation rules. The filing rules authorized by this order require that host documents and all their components be submitted in text-based pdf format. If such material is thoroughly documented in the host document, account holders will not be required to provide it as native format attachments as well. Supplemental files containing such material in native format are useful, however, for reasons already described, and account holders are encouraged to provide them.

Participants should be aware that the host document in text-based pdf format that they are required to provide under Filing Online must be a single file that reads continuously from beginning to end. If Excel-based tables or figures are inserted into the host document, or intended to be a part of the host document as appendices, they should not be submitted as separate files that other participants would have to download separately and reassemble in order to obtain a coherent host document. In order to make it easier for account holders to include material generated in Excel or similar formats in a host document that is a single text-based pdf file, an "Assemble PDF" function has been added to the Filing Online system.

The "Assemble PDF" function will allow an Account Holder to upload an Excel, Lotus, or Quattropro file, convert it to pdf format, print it, and then decide if it needs to be manipulated in one of several ways. One way would be to simply add it to the end of an existing text-based pdf file. The "Assemble PDF" function, however, also provides an account holder with a way to excerpt designated pages from one or more Excel files, reorder them, and append them to an existing pdf file. If an account holder wants to insert Excel-based material at various points in an existing pdf file, this is most easily done by "embedding" the material at the desired points, but it could also be done in a multi-step process using the "Assemble PDF" function that the Commission has provided.

Embedding, or the various features of the "Assemble PDF" function, will help the account holder produce a host document that consists of a single text-based pdf file in order to satisfy the requirements of the Filing Online system. These techniques will be effective if the analyst who has generated the Excel or similar material has set print areas appropriately, and provided any needed headers and footers, prior to converting the Excel material to pdf format.

Revised format requirements. Because the file format requirements for the Filing Online system that appear in the current User Guide differ in minor ways from those described in the notice of proposed Rulemaking, it will be helpful to summarize them.

- Host Documents and other word processing-based files must be submitted as text-based pdf files. The Commission urges that they be submitted as native files as well, but does not require it.
- Files that are not word-processing based (spreadsheet, computer language, scanned files, etc.) must be submitted as native files if they are attached to a host document. They may be submitted as text-based pdf files as well.
- Scanned pdf files must be designated as such at the time they are submitted.

Douglas F. Carlson. Douglas Carlson joins Val-Pak and MMA in criticizing the Commission's proposal to apply different filing requirements to testimony and briefs according to their length. He argues that few briefs or testimonies would avoid the hardcopy filing requirement since few would be less than the 20-page threshold. He complains that the expense of filing and serving such documents in hardcopy form discourages participation in Commission proceedings. He argues that raising the threshold to 30 pages would mitigate this burden, as well as the burden of downloading and printing large numbers of such documents filed by others on deadline days. The OCA supports this proposal. OCA Comments at 3.

Mr. Carlson assumes that the rationale for the Commission's proposed rule that lengthy briefs and testimonies be filed and served in hardcopy form as well as on line is a need to avoid the crush of downloading and printing numerous large documents on the same day and the need to avoid congestion in the Commission's docket section. As an alternative to raising the 20-page threshold, he proposes that briefs and testimonies filed in advance of the filing deadline be excused from the hardcopy requirement. Carlson Comments at 2. The OCA opposes this alternative. It argues that it would give opponents a procedural advantage if they were to receive advance notice of arguments in testimony or briefs, particularly for reply briefs. OCA Comments at 3.

The Commission has decided to drop its proposed rule that would have required lengthy testimony and briefs to be filed and served in hardcopy form. This will eliminate the source of the objections voiced by Mr. Carlson. The recent expansion of capacity of the Commission's Filing Online system, and the tests of that capacity, indicate that congestion of that system is unlikely, even on days of anticipated peak demand. Accordingly, account holders should be able both to upload documents, and to download and print documents on peak filing days, without unreasonable delay. Account holders will be able to print any briefs or testimony that they prefer to review in hardcopy form without having to first determine whether the documents fall on one side or the other of a page-based threshold.

Postal Service. The Postal Service generally supports the proposal to make online filing the standard filing procedure in formal dockets, although it cautions that some additional testing of the Postal Service's ability to download filed documents in live dockets would be desirable before a major case is filed. It suggests that further refining of the proposed Filing Online rules is needed in the following respects.

The Postal Service assumes that the portions of proposed rules 9, 10, and 11 that allow a waiver of the requirement that documents be filed online apply "only to a participant who is wholly excluded from Filing Online." Postal Service Comments at 4. It says that responses to discovery sometimes require that material other than electronic documents be provided, such as videotapes or Priority Mail envelopes, or documents that were generated by non-standard software. It reasons that paragraph (b)(2)(vii) of the current library reference rule (39 CFR 31(b)(2)(vii)) could still accommodate such material if it were made a library reference and an appropriate notice of

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filing the library reference were submitted online. It observes that this would increase the number of library references, but would avoid the need to process motions for waivers of the online-filing requirement. Id.

The Postal Service wrongly assumes that proposed rules 9 through 11 would not authorize waivers for individual filings. The language of those rules is explicit that both the online-filing requirement and waivers of that requirement apply on a document-by-document basis. Proposed rule 9(a) provides that "*[t]he filing of each written document* * * * shall be made using the Internet (Filing Online) * * * unless a waiver is obtained." Proposed rule 10(a) states that the online-filing requirement (as well as the account holder requirement) applies on a document-by-document basis. It provides that "*(e)ach document* filed with the Commission must be submitted through Filing Online by an account holder unless a waiver is obtained." Proposed rule 12(a)(2) states that the online service requirement and the exceptions to that requirement apply on a document-by-document basis. Proposed rule 12(a) provides that "*[e]ach document* filed in a proceeding via the Internet by an account holder shall be deemed served * * *. Proposed rule 12(a)(2) states that there is an exception to the online service requirement for "*[a] document* that must be served on a participant that the Commission or presiding officer has determined is unable to receive service through the Commission's Web site." (Emphasis in the above quotations has been supplied.) In contrast to the above quoted provisions, proposed rule 12(b) makes an exception to the online service requirement available to participants who are unable to file documents online.

Close reading of proposed rules 9 through 12 (which are made final rules by this order) makes it clear that waivers of the online filing requirement are available on both a document-by-document basis, and on a participant basis. If it is feasible to provide material to be filed in electronic form, participants are obligated under these rules to do so, and to file them online. Even if a participant did not originally obtain a document in electronic form, such as a newspaper clipping, but he can readily scan it to produce a legible pdf, he is obligated to do so, and to attach it to a host document, such as an interrogatory answer. A document is eligible to be treated as a library reference only if it is not feasible to generate a legible document in electronic form that can be attached to a host document and filed online. This is consistent with the Commission's policy to minimize the number of library references.

The Postal Service believes that a problem may be created by the gap that would occur between the time that the Filing Online system generates a receipt for a document that has been submitted for filing, and the time that it is accepted and posted on the Commission's Web site.

In its notice of proposed rulemaking, the Commission indicates that when the Filing Online system receives an electronic document that an account holder has submitted for filing, it will issue an electronic receipt to the account holder indicating the time that is was received. It explains that the Commission's docket section would then review the document for compliance with its rules before accepting it as filed. Acceptance would be indicated by posting the document on the Daily Listing page of the Commission's Web site. See order no. 1341, issued May 8, 2002, at 6–7.

The Postal Service speculates that under the current hardcopy system, when a document is submitted at the docket window the docket staff reviews it for compliance with the Commission's filing rules, and then applies a date stamp indicating that it has been accepted for filing. It contrasts this with the Commission's proposed Filing Online procedures, where the docket section would first issue an electronic receipt for a document, then review it for compliance with filing rules. The Postal Service suggests that the scope of the review that the docket section would perform prior to acceptance of a document submitted online would be broader than under the current hardcopy system (for example, determining whether a document is a single-or a multiple-purpose document) and that the authority for such review needs to be clarified. Postal Service Comments at 4–5.

Contrary to the Postal Service's assumption, under the current hardcopy filing system, the docket section date stamps a document when it is received. It then reviews it for compliance with the Commission's filing rules. The date stamp indicates only the time that the document was received. It does not indicate that the document was accepted for filing.

Proposed Filing Online procedures would parallel the current hardcopy procedure. The Commission would issue an electronic receipt to indicate the time that the document was received, and then review it for compliance with filing rules. The difference would be that under Filing Online, the Commission would affirmatively indicate that a document had been accepted for filing by posting it on its Web site. Under current hardcopy filing procedures, if a date-stamped document is determined to be in compliance with the Commission's filing rules, the Commission takes no further action.

The Postal Service is correct, however, that Filing Online would impose filing requirements beyond those that currently apply to hardcopy documents. While the general filing requirements will continue to be set forth in the Commission's rules of practice, some of the more detailed requirements, such as the role of the host document, and the formats that are acceptable, will be published only on the Commission's Web site in the Filing Online User Guide. Reserving such detailed filing requirements for the Filing Online User Guide is necessary because the technical features of the Filing Online system can be expected to continually evolve, and Filing Online procedures will need to evolve with them. It would not be practical to have to continually amend the Commission's rules of practice through notice and comment rulemaking procedures as the Filing Online system evolves.

The Postal Service points out that under rule 9 as it was proposed in the notice of proposed rulemaking, the Secretary is authorized to reject filings if they do not comply with an applicable "statute, rule, regulation, or order." It suggests that if Filing Online requirements do not take the form of a "statute, rule, regulation, or order" the Secretary may not use them as grounds for rejection. Postal Service Comments at 4–5.

To clarify the Secretary's rejection authority, final rule 9(d) includes non-compliance with "filing instructions published by the Secretary" among the grounds for which the Secretary may reject a filing. For purposes of rule 9(d), it will be sufficient if the Secretary's filing instructions have been published on the Commission's Web site.

The Postal Service was prompted to raise the issue of the Secretary's rejection authority by a comment made by the Secretary's staff during the Filing Online workshop held on June 12, 2002. The Postal Service understood the staff to have asserted that a pleading that serves two separate purposes would be rejected. Postal Service Comments at 5.

The Secretary's staff meant to articulate a more limited requirement. The staff meant to assert that pleadings that would normally be submitted as separate documents if they were filed in hardcopy form should be submitted in separate Filing Records if they are submitted online. As an example of documents that would be filed separately if they were in hardcopy form, the staff mentioned a motion to accept interrogatory answers as late filed, and the interrogatory answers themselves. The staff was emphasizing the importance of submitting only one host document per Filing Record. Associating each host document with a unique Filing Record makes it easier to identify and archive documents. The staff did not mean to assert that a host document could serve only one purpose.

The Postal Service's comments, however, have drawn the Commission's attention to the desirability of requiring that each host document have a separate procedural purpose. Compound pleadings and composite motions are difficult to track and archive. If each pleading has a distinct procedural purpose it will be easier to associate it with a unique Filing Record and unique set of record identifiers. This should make it easier to track and archive pleadings. In particular, it should make it easier to track motions. Because each motion will be submitted with its own Filing Record, and would have a unique file identifier, it will make it less likely that a motion would "fall through the cracks" and fail to be addressed. Accordingly, the requirement that each host document serve a separate procedural purpose will be included in the Filing Online User Guide.

Under this requirement, as noted, a motion for acceptance of late-filed interrogatory answers and the interrogatory answers themselves would be filed as separate host documents in separate Filing Records. Of course, a motion that is conditioned on the disposition of another motion should prominently refer to the motion upon which it is conditioned, even though it is filed separately.

Requiring participants to plead for distinct kinds of relief and file separate host documents submitted in separate Filing Records should not add significantly to the time or expense of filing those documents if they are filed electronically. It should, however, make tracking and archiving more efficient for both the Commission and the participants.

The Postal Service observes that under the proposed rules, a participant may obtain a blanket waiver of the requirement that documents be filed online. It notes that it will be difficult to reap the benefits that an online filing system can provide if blanket waivers are commonly granted. It argues that almost all participants in past Commission proceedings have demonstrated their ability to participate electronically. It observes that even if there are future participants who do not have their own Internet connections, they should be able to access the Commission's Web site from a public library. Under these circumstances, it argues, the bar should be set quite high for anyone desiring to be excused from participating online. Postal Service Comments at 5–6.

The Postal Service discusses the burden of serving hardcopy documents on a participant who has obtained a waiver, and the burden that such a participant has of serving hardcopy documents on others. It argues that the Commission should assume responsibility for serving documents on such participants. It asserts that the Commission could consolidate all documents that need to be served on such a participant each day, and send them in a single package. This, it contends, would avoid much duplication of effort by other participants. It argues that service of hardcopy documents by a participant with a waiver also should be facilitated by the Commission. It argues that such a participant could mail or fax documents to the Commission, which could then digitize them and post them on its Web site, again avoiding duplication of effort. It argues that to be consistent with the expedited service that would characterize the Filing Online system, a participant with a waiver should be required to mail its documents to the Commission by Express Mail or facsimile transmission. It goes on to argue that service of a hardcopy document by the Commission on behalf of a participant with a waiver should be considered to be effective on the date that it is received by the Commission, presumably because the Commission will have posted the document on the day that it was received. The Postal Service suggests that this would make service computation dates consistent for all participants, whether or not they were required to file online. Postal Service Comments at 5–6.

The Commission agrees with the Postal Service that almost all participants in recent Commission proceedings have shown that they can interact with the Commission's Web site and are likely to be able to participate in the Filing Online system. The Commission expects to be able to provide participants with sufficient technical assistance to ensure that they can effectively use the Filing Online system. Under these circumstances, a participant will have a heavy burden of persuasion to overcome if it wishes to obtain a blanket waiver of the online filing requirements adopted in this order.

If a participant were to obtain a blanket waiver, the Commission will assume responsibility for serving that participant with the documents filed by other participants. As the Postal Service validly observes, the Commission could avoid duplication of effort on the part of other participants by consolidating into a single mailing each day the documents that must be served on a participant with a blanket waiver. The assumption of this responsibility by the Commission is reflected in revised rule 12(a)(2). Similarly, if a participant were to obtain a blanket waiver, the Commission would facilitate service of documents by that participant on others. Under rule 12(b), a participant with a blanket waiver would deliver hardcopy documents that it wished to serve on others to the Secretary by hand or First-Class Mail. Such documents would be deemed served when they are posted on the Commission's Web site. If for some reason such documents cannot be converted to electronic form by the Commission and posted on its Web site, they will be deemed served when the Secretary posts them as First-Class Mail.

Under a system where filing documents online is the norm, the need for filing hard copies of documents with the Commission will remain, although these instances are expected to be rare. In the notice of proposed rulemaking, proposed rule 10(b) specified that when participants are required to file documents with the Commission in hardcopy form, that they must provide the Commission with an original and 24 conforming copies. Proposed rule 10(c) specified that when participants who have obtained a waiver of the online filing requirements choose to file documents on computer media, that they must provide the Commission with an original and three conforming copies. Upon further reflection, the Commission has determined that the number of conforming copies that must be provided to the Commission under either rule 10(b) or rule 10(c) should be reduced to two.

In the rare instance when a participant has a document that it cannot digitize and file online, yet it still can feasibly serve on participants in hardcopy form (perhaps a newspaper article that it is unable to scan), the Commission is likely to be able to digitize it and to distribute it internally by posting it on its Web site. Accordingly, the Commission generally will not need to be provided with

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enough hard copies of such documents to circulate them internally. Exceptions may be formal rate or classification requests. The Postal Service has been cooperative in providing as many copies of formal requests as the Commission needs.

Among the Filing Online rules contained in the notice of proposed rulemaking was rule 10(a)(2), which stated that "[d]ocuments filed online must satisfy computer system compatibility requirements specified by the Secretary." The notice indicated that the Secretary would publish these requirements on the Commission's Web site in the form of instructions in the Filing Online User Guide. See order no. 1341 at 11–12. To date, the Secretary has identified and published only a few technical requirements for interfacing with the Filing Online system.

For the basic document filing function, the only technical restrictions are the formats in which documents must be submitted. Enhanced functions, such as batch downloading and batch printing, require that specified utilities be downloaded from the Commission's server.

The Commission's Web site contains a list of word processing, browser, and PC/MAC combinations that have been tested and found to be compatible with the Filing Online system. In its comments, the Postal Service infers that this (rather than the Filing Online User Guide) is the list of system compatibility requirements that the Secretary is authorized to prescribe under proposed rule 10(a)(2). It observes that there are some word processing applications that are absent from that list even though they can produce rich text format (RTF) files. It argues that it would not be prudent to bar participants from using various applications or platforms simply because they have not yet been tested. Because this list of tested platforms does not actually prescribe software or hardware that must be used in order to participate in Filing Online, the Postal Service asks what effect proposed rule 10(a)(2) is intended to have. Postal Service Comments at 7.

In arriving at its conclusion that the list of tested platforms published on the Commission's Web site was meant to implement proposed rule 10(a)(2), the Postal Service apparently overlooked the portion of the discussion of rule 10(a)(2) in the notice of proposed rulemaking that explains that the Secretary will prescribe system compatibility requirements in the Filing Online User Guide. See order no. 1341 at 11–12. The Secretary has not attempted to restrict the applications, browsers, or hardware that an account holder may use to access the Filing Online system. The Commission agrees with the Postal Service that it would not be prudent to limit the software or hardware that account holders may use simply because they have yet not been tested by the Commission. The Secretary will continue to post on the Commission's Web site, separate from the list of technical requirements, a list of software/hardware combinations that have been tested and found to be compatible with the system. It should prove useful to participants that might be deciding how to configure systems that they expect to use to access Filing Online.

Proposed rule 10 has been revised to reflect the refinements described above to Filing Online's format requirements. As a result of these revisions, proposed rule 10(a)(2) now appears as final rule 10(a)(5).

Password security is the final issue that the Postal Service's comments address. The Postal Service notes the Commission's admonition that regular password changes augment security. It asks the Commission to consider adding software that would force account holders to make regular password changes. Postal Service Comments at 8. In the Commission's view, the benefits of this change could be outweighed by the inconvenience it would cause to account holders who properly manage their passwords.

Change in the definition of account holders. Additional experience with the Filing Online system since the notice of proposed rulemaking was issued has prompted the Commission to refine the definition and role of account holders. Currently, some account holders represent themselves in proceedings before the Commission, some are attorneys who represent clients in proceedings before the Commission, and some are paralegals or secretaries who file documents on behalf of attorney representatives.

Currently, account holders must undertake the duties and obligations associated with the subscription requirement that is found in rule 11(e). These include warranting that the material submitted for filing is authorized by the participant that the account holder represents, and is authentic and accurate. Authority to provide these assurances resides with the person appearing in a proceeding on his or her own behalf or on behalf of a participant, rather than with a secretary or paralegal. Accordingly, the Commission has decided that there is a need to distinguish between types of account holders to better reflect the duties that they assume. Principal account holders are those that are able to undertake the obligations of rule 11(e) because they are appearing on their own behalf or that of a client. An agent account holder is one to whom a principal account holder has delegated authority to submit material for filing on the principal's or a client's behalf. When an agent account holder files material, the subscription obligations of rule 11(e) remain with the principal account holder who authorized the filing.

The Commission's decision to distinguish between types of account holders will not require most current account holders to take further steps to retain their Filing Online account. If a current account holder represents himself, herself, or a client, before the Commission, the Filing Online system will automatically treat such an account holder as a principal account holder.

A current account holder who does not qualify as a principal account holder, however, will have to reapply for a Filing Online account to be recognized as an agent account holder. A revised account holder application that distinguishes between principal account holders and agent account holders is provided with this order as attachment 2. After receiving a new user name and password, the agent account holder's ability to file through Filing Online will depend on the delegations of authority that appear on the Profile Pages of principal account holders. Principals will have to update their Profile Pages by furnishing, in the space provided, the user name of each agent account holder to whom they wish to delegate authority to file documents online. Agent account holders may have multiple principals. Similarly, principals may delegate their authority to file documents to other principals, as well as to agents, by furnishing the appropriate user Names on their Profile Pages. Principals who delegate their authority to file to others must take responsibility for updating their Profile Pages to reflect any changes in the identity of their delegates or agents.

User Activity Pages will be modified to reflect the distinction between principal account holders and agent account holders. An agent account holder's User Activity Page will show each document that the agent is working on, or has submitted for filing in the previous two days, and which principal has authorized it. A principal account holder's User Activity Page will show each document that the principal is working on, or has submitted for filing in the previous two days, and any agent that is assisting with the document.

Designations. Under current rule 30(e)(2), designations of written cross-examination must be served in hardcopy form at least three working days before the witness is scheduled to appear for oral cross-examination. Under Filing Online, notice of these designations must be served by filing them online with the Commission. To make this clear, final rule 30(e)(2) will add the phrase "in accordance with rules 9 through 12" to the language imposing the requirement that designations be served. Current rule 30(e)(2), however, also requires that two hard copies of the designations served shall simultaneously be submitted to the Secretary of the Commission. The Commission then incorporates these hard copies in the set of designations for that witness that is received into the record during oral cross-examination. This Commission function will be performed more efficiently if the designations furnished to the Commission remain in hardcopy form. To clarify that designations of written cross-examination that are furnished to the Commission are to remain in hardcopy form, final rule 30(e)(2) will employ the phrase "two hard copies of the documents" to the language imposing this requirement.

Cross-examination exhibits. As initially proposed, rule 30(e)(3) would have required a participant who wished to employ complex exhibits in oral cross-examination of an opposing witness to file those exhibits online two calendar days before the scheduled appearance of the witness. As adopted in this order, rule 30(e)(3) gives the participant the option of filing such cross-examination exhibits online or providing them to counsel for the witness in hardcopy form. This flexibility will accommodate exhibits that cannot be digitized and submitted online.

The specific procedures that are proposed for filing documents online with the Secretary of the Commission are set forth in the Filing Online User Guide, which may be accessed from the Filing Online Login Page on the Commission's Web site (URL: *http://www.prc.gov*). A hardcopy of the Filing Online User Guide that has been revised to reflect the final Filing Online rules adopted in this order will also be mailed to each person who was on a service list of any Commission docket that was active within the past two years. It will also be mailed to anyone else that requests it.

Under the Filing Online procedures adopted in this order, each individual who wishes to represent a participant in a Commission proceeding must be a principal account holder. If a principal account holder wishes to delegate his authority to file documents in a proceeding, the individual to whom this authority is delegated must first become an agent account holder. An individual may become a principal account holder or an agent account holder by filling out the account holder application available by contacting the Secretary (See **ADDRESSES**) and mailing it to the Secretary. Order no. 1341, issued May 8, 2002, describes the contractual duties that an account holder undertakes, and the procedures to be followed in obtaining a permanent password.

Text of Amended Revisions

For the reasons discussed above, the Commission hereby amends subpart A of its rules of practice and procedure as set forth below to this order.

It is ordered:

1. The Commission adopts the provisions below as the final rules amending 39 CFR 3001.6, 9–13, 20, 20a, 26–28, 30, 31 and 42.

2. These rules will take effect on January 7, 2003.

3. Changes to 39 CFR 3001.31(b)(2)(vii) and 3001.31(k)(3) that were proposed in the notice of proposed rulemaking (order no. 1341, issued May 8, 2002), will be addressed in a subsequent docket.

4. The Secretary shall cause this notice and order adopting final rule to be published in the **Federal Register**.

By the Commission.

Steven W. Williams,

Secretary.

List of Subjects in 39 CFR Part 3001

Administrative practice and procedure, Postal Service

For the reasons stated in the Preamble, the Commission adopts the following amendments to 39 CFR part 3001.

PART 3001—RULES OF PRACTICE AND PROCEDURE

1. The authority citation for part 3001 continues to read as follows:

Authority: 39 U.S.C. 404(b); 3603, 3622–24, 3661, 3662, 3663.

Subpart A—Rules of General Applicability

2. Amend § 3001.6 by revising paragraphs (b) and (c) to read as follows:

§ 3001.6 Appearances.

* * * * *

(b) *Authority to act.* When an officer of any participant or an attorney acting in a representative capacity appears in person, submits a document to the Commission online as a Principal Account Holder, or signs a paper filed with the Commission, his/her personal appearance, online submission, or signature, shall constitute a representation to the Commission that he/she is authorized to represent the particular participant in whose behalf he/she acts. Any person appearing before or transacting business with the Commission in a representative capacity may be required by the Commission or the presiding officer to file evidence of his/her authority to act in such capacity.

(c) *Notice of appearance and withdrawal of appearance.* An individual intending to appear before the Commission or its presiding officer in a representative capacity for a participant in a proceeding shall file with the Commission a notice of appearance in the form prescribed by the Secretary unless that individual is named in an initial filing of the participant whom he/she represents as a person to whom communications from the Commission in regard to the filing are to be addressed. A person whose authority to represent a participant in a specific Commission proceeding has been terminated shall file a timely notice of withdrawal of appearance with the Commission.

* * * * *

3. Revise §§ 3001.9 through 3001.13 to read as follows:

§ 3001.9 Filing of documents.

(a) *Filing with the Commission.* The filing of each written document required or authorized by these rules or any applicable statute, rule, regulation, or order of the Commission, or by direction of the presiding officer shall be made using the Internet (Filing Online) pursuant to § 3001.10(a) at the Commission's Web site *http://www.prc.gov*, unless a waiver is obtained. If a waiver is obtained, a hardcopy document may be filed either by mailing or by hand delivery to the Office of the Secretary, Postal Rate Commission, 1333 H Street, NW., Suite 300, Washington, DC 20268–0001 during regular business hours on a date no later than that specified for such filing.

(b) *Account holder.* In order for a document to be accepted using Filing Online, it must be submitted to the Commission by a principal account holder or an agent account holder (Filing Online account holder). The authority of the principal account holder to represent the participant on whose behalf the document is filed must be valid and current, in conformance with § 3001.6. The authority of an agent account holder to submit documents for

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a principal account holder must be valid and current. A principal account holder must promptly inform the Secretary of any change in his/her authority to represent participants in a proceeding or any change in the authority delegated to an agent account holder to submit documents on his/her behalf.

(c) *Acceptance for filing.* Only such documents as conform to the requirements of this part and any other applicable rule or order authorized by the Commission shall be accepted for filing. In order for a document to be accepted using Filing Online, it must be submitted to the Commission by a Filing Online account holder.

(1) Subject to § 3001.9(d):

(i) A document submitted through Filing Online is filed on the date indicated on the receipt issued by the Secretary. It is accepted when the Secretary, after review, has posted it on the Daily Listing page of the Commission's Web site.

(ii) A hardcopy document is filed on the date stamped by the Secretary. It is accepted when the Secretary, after review, has posted it on the Daily Listing page of the Commission's Web site.

(2) Any document received after the close of regular business hours or on a Saturday, Sunday, or holiday, shall be deemed to be filed on the next regular business day.

(d) *Rejected filings.* Any filing that does not comply with any applicable rule or order authorized by the Commission may be rejected. Any filing that is rejected is deemed not to have been filed with the Commission. If a filing is rejected, the Secretary or the Secretary's designee will notify the person submitting the filing, indicating the reason(s) for rejection. Acceptance for filing shall not waive any failure to comply with this part, and such failure may be cause for subsequently striking all or any part of any document.

§ 3001.10 Form and number of copies of documents.

(a) *Documents.* Each document filed with the Commission must be submitted through Filing Online by an account holder, unless a waiver is obtained.

(1) The text of documents filed with the Commission shall be formatted in not less than one and one-half spaced lines except that footnotes and quotations may be single spaced. Documents must be submitted in Arial 12 point font, or such program, format, or font as the presiding officer may designate.

(2) The Secretary may prescribe additional format requirements for documents submitted through Filing Online.

(3) The form of documents filed as library references is governed by § 3001.31(b)(2)(iv).

(4) Requests for changes in rates and classifications, including supporting documentation, shall be filed both online and in hardcopy form pursuant to paragraph (b) of this section.

(5) Documents filed online must satisfy Filing Online system compatibility requirements specified by the Secretary in the Filing Online User Guide, which may be accessed from the Filing Online page on the Commission's Web site, *http://www.prc.gov.*

(6) Documents requiring privileged or protected treatment shall not be filed online.

(b) *Hard copies.* Each document filed in paper form must be produced on letter-size paper, 8 to 8½ inches wide by 10½ to 11 inches long, with left- and right-hand margins not less than 1 inch and other margins not less than .75 inches, except that tables, charts or special documents attached thereto may be larger if required, provided that they are folded to the size of the document to which they are attached. If the document is bound, it shall be bound on the left side. Copies of documents for filing and service must be printed from a text-based pdf version of the document, where possible. Otherwise, they may be reproduced by any duplicating process that produces clear and legible copies. Participants in proceedings conducted under subpart H who are unable to comply with these requirements may seek to have them waived. Each person filing a hardcopy document with the Commission must provide an original and 2 fully conformed copies of the document required or permitted to be filed under this part, except for a document filed under seal, for which only the original and two (2) copies need be filed. The copies need not be signed but shall show the full name of the individual signing the original document and the certificate of service attached thereto.

(c) *Computer media.* A participant that has obtained a waiver of the online filing requirement of § 3001.9(a) may submit a document on standard PC media, simultaneously with the filing of one printed original and two hard copies, provided that the stored document is a file generated in either Acrobat (pdf), Word, or WordPerfect, or Rich Text Format (rtf).

§ 3001.11 General contents of documents.

(a) *Caption and title.* The caption of each document filed with the Commission in any proceeding shall clearly show the docket designation and title of the proceeding before the Commission. The title of such document shall identify each participant on whose behalf the filing is made and include a brief description of the document or the nature of the relief sought therein (*e.g.*, motion for extension, brief on exceptions, complaint, notice of intervention, answer to complaint).

(b) *Designation of individuals to receive service.* Each notice of intervention filed pursuant to § 3001.20 or § 3001.20a must state the name, full mailing address, telephone number, and e-mail address of up to two individuals designated to receive service of hardcopy documents relating to the proceeding.

(c) *Contents.* In the event there is no rule, regulation, or order of the Commission which specifically prescribes the contents of any document to be filed, such document shall contain a proper identification of the parties concerned and a concise but complete statement of the relief sought and of the facts and citations of authority and precedent relied upon.

(d) *Improper matter.* Defamatory, scurrilous, or unethical matter shall not be included in any document filed with the Commission.

(e) *Subscription.* Each document filed with the Commission shall be subscribed. Subscription constitutes a certification that he/she has read the document being subscribed and filed; that he/she knows the contents thereof; that if executed in any representative capacity, the document has been subscribed and executed in the capacity specified in the document with full power and authority so to do; that to the best of his/her knowledge, information and belief every statement contained in the document is true and no such statements are misleading; and that such document is not filed for purposes of delay.

(1) For a document filed via the Internet by an account holder, the subscription requirement is met when the document is filed with the Commission.

(2) For a hardcopy document filed under either § 3001.10(b) or (c), the original shall be signed in ink by the individual filing the same or by an authorized officer, employee, attorney, or other representative and all other copies of such document filed with the Commission and served on the participants in any proceeding shall be fully conformed thereto.

(f) *Table of contents.* Each document filed with the Commission consisting of 20 or more pages shall include a table of contents with page references. For briefs see § 3001.34.

(g) *Certificate of service.* A certificate of service signed in ink must be attached to the original of each hardcopy document filed with the Commission showing service on all participants in a proceeding as prescribed by § 3001.12. All copies filed and served shall be fully conformed thereto.

§ 3001.12 Service of documents.

(a) *Service by account holders.* Each document filed in a proceeding via the Internet by an Account Holder shall be deemed served on all participants when it is accepted by the Secretary and posted on the Commission's Web site, except that:

(1) A document subject to § 3001.10(a)(4) must meet the service requirements that apply to hardcopy documents as well as those that apply to documents filed online.

(2) A document that must be served on a participant that the Commission or presiding officer has determined is unable to receive service through the Commission's Web site shall be served on such participant by the Secretary by First-Class Mail.

(b) *Service by others.* If the Commission or presiding officer has determined that a participant is unable to file documents online, documents filed by that participant must be delivered to the Secretary by hand or First-Class Mail. Such documents will be deemed served upon all participants when they are accepted by the Secretary and posted on the Commission's Web site. If such documents cannot be posted on the Commission's website, they will be deemed served on all participants when the Secretary posts them as First-Class Mail.

(c) *Service by the Commission.* Except as provided in this section, each document issued by the Commission or presiding officer shall be deemed served upon the participants in the proceeding upon its posting by the Commission on its website. Service of Commission documents on any participant that the Commission or presiding officer has determined is unable to receive service through the Commission Web site shall be by First-Class Mail.

(d) *Hardcopy documents.* Each participant filing a hardcopy document in a proceeding shall serve such document upon each person on the proceeding's service list, unless that person is subject to paragraph (b) of this section, or the Commission or presiding officer otherwise directs.

(e) *Limitation on extent of hardcopy service.* To avoid the imposition of an unreasonable burden upon participants, the Commission or the presiding officer may, by appropriate order, limit service of hardcopy documents to service upon participants intending to actively participate in the hearing, or upon a person or persons designated for properly representative groups, or by requiring the making of documents available for convenient public inspection, or by any combination of such methods.

(f) *Service list.* The Secretary shall maintain a current service list in each proceeding which shall include the participants in that proceeding and up to two individuals designated for service of documents by each participant. The service list for each current proceeding will be available on the Commission's Web site *http://www.prc.gov.* Each participant is responsible for ensuring that its listing on the Commission's Web site is accurate, and should promptly notify the Commission of any errors.

(g) *Method of hardcopy service.* Service of hardcopy documents may be made by First-Class Mail or personal delivery, to the address shown for the individuals designated on the Secretary's service list. Service of any hardcopy document upon the Postal Service shall be made by delivering or mailing six copies thereof to the address shown for the individual designated in the Secretary's service list.

(h) *Date of hardcopy service.* Whenever service is made by mail, the date of the postmark shall be the date of service. Whenever service is made by personal delivery, the date of such delivery shall be the date of service.

(i) *Form of hardcopy certificate of service.* The certificate of service of hardcopy documents shall show the name of the participant or his/her counsel making service, the date and place of service, and include the statement that "I hereby certify that I have this day served the foregoing document upon all participants of record in this proceeding in accordance with section 12 of the rules of practice.

§ 3001.13 Docket and hearing calendar.

The Secretary shall maintain a docket of all proceedings, and each proceeding as initiated shall be assigned an appropriate designation. The Secretary shall maintain a hearing calendar of all proceedings that have been set for hearing. Proceedings shall be heard on the date set in the hearing order, except that the Commission may for cause, with or without motion, at any time with due notice to the parties advance or postpone the date of hearing. All documents filed in a docket, other than matter filed under seal, and the hearing calendar may be accessed remotely via the Commission's Web site, or viewed at the Commission's docket section during regular business hours.

4. Amend § 3001.20 by revising paragraph (c) to read as follows:

§ 3001.20 Formal intervention.

* * * * *

(c) *Form and time of filing.* Notices of intervention shall be filed no later than the date fixed for such filing in any notice or order with respect to the proceeding issued by the Commission or its Secretary, unless in extraordinary circumstances for good cause shown, the Commission authorizes a late filing. Notices of intervention shall conform to the requirements of §§ 3001.9 through 3001.12.

* * * * *

5. Amend § 3001.20a by revising paragraph (a) to read as follows:

§ 3001.20a Limited participation by persons not parties.

* * * * *

(a) *Form of intervention.* Notices of intervention as a limited participator shall be in writing, shall set forth the nature and extent of the intervenor's interest in the proceeding, and shall conform to the requirements of §§ 3001.9 through 3001.12.

* * * * *

6. Amend § 3001.26 by revising paragraphs (a) through (c) and paragraph (e) to read as follows:

§ 3001.26 Interrogatories for purpose of discovery.

(a) *Service and contents.* In the interest of expedition and limited to information which appears reasonably calculated to lead to the discovery of admissible evidence, any participant may propound to any other participant in a proceeding written, sequentially numbered interrogatories, by witness, requesting nonprivileged information relevant to the subject matter in such proceeding, to be answered by the participant served, who shall furnish such information as is available to the participant. A participant through interrogatories may require any other participant to identify each person whom the other participant expects to call as a witness at the hearing and to state the subject matter on which the witness is expected to testify. The participant propounding the interrogatories shall file them with the Commission in conformance with §§ 3001.9 through 3001.12. Follow-up interrogatories to clarify or elaborate on the answer to an earlier discovery

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request may be filed after the initial discovery period ends. They must be filed within seven days of receipt of the answer to the previous interrogatory unless extraordinary circumstances are shown.

(b) *Answers.* Answers to discovery requests shall be prepared so that they can be incorporated as written cross-examination. Each answer shall begin on a separate page, identify the individual responding and the relevant testimony number, if any, the participant who asked the question, and the number and text of the question. Each interrogatory shall be answered separately and fully in writing, unless it is objected to, in which event the reasons for objection shall be stated in the manner prescribed by paragraph (c) of this section. The participant responding to the interrogatories shall file the answers in conformance with §§ 3001.9 through 3001.12 within 14 days of the filing of the interrogatories or within such other period as may be fixed by the Commission or presiding officer, but before the conclusion of the hearing.

(c) *Objections.* In the interest of expedition, the bases for objection shall be clearly and fully stated. If objection is made to part of an interrogatory, the part shall be specified. A participant claiming privilege shall identify the specific evidentiary privilege asserted and state the reasons for its applicability. A participant claiming undue burden shall state with particularity the effort that would be required to answer the interrogatory, providing estimates of cost and work hours required, to the extent possible. An interrogatory otherwise proper is not necessarily objectionable because an answer would involve an opinion or contention that relates to fact or the application of law to fact, but the Commission or presiding officer may order that such an interrogatory need not be answered until a prehearing conference or other later time. Objections shall be filed with the Commission in conformance with §§ 3001.9 through 3001.12 within 10 days of the filing of the interrogatories.

* * * * *

(e) *Compelled answers.* The Commission, or the presiding officer, upon motion of any participant to the proceeding, may compel a more responsive answer, or an answer to an interrogatory to which an objection has been raised if the objection is found not to be valid, or may compel an additional answer if the initial answer is found to be inadequate. Such compelled answers shall be filed in conformance with §§ 3001.9 through 3001.12 within seven days of the date of the order compelling an answer or within such other period as may be fixed by the Commission or presiding officer, but before the conclusion of the hearing.

* * * * *

7. Amend § 3001.27 by revising paragraphs (a) through (c) and paragraph (e) to read as follows:

§ 3001.27 Requests for production of documents or things for purpose of discovery.

(a) *Service and contents.* In the interest of expedition and limited to information which appears reasonably calculated to lead to the discovery of admissible evidence, any participant may serve on any other participant to the proceeding a request to produce and permit the participant making the request, or someone acting in his/her behalf, to inspect and copy any designated documents or things that constitute or contain matters, not privileged, that are relevant to the subject matter involved in the proceeding and that are in the custody or control of the participant to whom the request is addressed. The request shall set forth the items to be inspected either by individual item or category, and describe each item and category with reasonable particularity, and shall specify a reasonable time, place and manner of making inspection. The participant requesting the production of documents or things shall file its request with the Commission in conformance with §§ 3001.9 through 3001.12.

(b) *Answers.* The participant responding to the request shall file an answer with the Commission in conformance with §§ 3001.9 through 12 within 14 days after the request is filed, or within such other period as may be fixed by the Commission or presiding officer. The answer shall state, with respect to each item or category, that inspection will be permitted as requested unless the request is objected to pursuant to paragraph (c) of this section.

(c) *Objections.* In the interest of expedition, the bases for objection shall be clearly and fully stated. If objection is made to part of an item or category, the part shall be specified. A participant claiming privilege shall identify the specific evidentiary privilege asserted and state with particularity the reasons for its applicability. A participant claiming undue burden shall state with particularity the effort that would be required to answer the request, providing estimates of cost and work hours required, to the extent possible. Objections shall be filed with the Commission in conformance with §§ 3001.9 through 3001.12 within 10 days of the request for production.

* * * * *

(e) *Compelled answers.* Upon motion of any participant to the proceeding to compel a response to discovery, as provided in paragraph (d) of this section, the Commission or the presiding officer may compel production of documents or things to which an objection is found not to be valid. Such compelled documents or things shall be made available to the participant making the motion within seven days of the date of the order compelling production or within such other period as may be fixed by the Commission or presiding officer, but before the conclusion of the hearing. When complying with orders to produce documents or things, notice shall be filed in conformance with §§ 3001.9 through 3001.12. The Commission or the presiding officer may, on such terms and conditions as are just and reasonable, order that any participant in a proceeding shall respond to a request for inspection, and may make any protective order of the nature provided in § 3001.26(g) as may be appropriate.

8. Amend § 3001.28 by revising paragraphs (a) through (c) and paragraph (e) to read as follows:

§ 3001.28 Requests for admissions for purpose of discovery.

(a) *Service and content.* In the interest of expedition, any participant may serve upon any other participant a written request for the admission, for purposes of the pending proceeding only, of any relevant, unprivileged facts, including the genuineness of any documents or exhibits to be presented in the hearing. The participant requesting the admission shall file its request with the Commission in conformance with §§ 3001.9 through 3001.12.

(b) *Answers.* Each matter of which an admission is requested shall be separately set forth and is admitted unless within 14 days after the request is filed, or within such other period as may be fixed by the Commission or presiding officer, the participant to whom the request is directed files a written answer or objection pursuant to paragraph (c) of this section. A participant who answers a request for admission shall file its answer with the Commission in conformance with §§ 3001.9 through 3001.12.

(c) *Objections.* In the interest of expedition, the bases for objection shall be clearly and fully stated. If objection is made to part of an item, the part shall be specified. A participant claiming privilege shall identify the specific evidentiary privilege asserted and state the reasons for its applicability. A participant claiming undue burden shall state with particularity the effort that would be required to answer the request, providing estimates of cost and work hours required to the extent possible. Objections shall be filed with the Commission in conformance with §§ 3001.9 through 3001.12, within 10 days of the request for admissions.

* * * * *

(e) *Compelled answers.* Upon motion of any participant to the proceeding the Commission or the presiding officer may compel answers to a request for admissions to which an objection has been raised if the objection is found not to be valid. Such compelled answers shall be filed with the Commission in conformance with §§ 3001.9 through 3001.12 within seven days of the date of the order compelling production or within such other period as may be fixed by the Commission or the presiding officer, but before the conclusion of the hearing. If the Commission or presiding officer determines that an answer does not comply with the requirements of this rule, it may order either that the matter is admitted or that an amended answer be filed.

9. Amend § 3001.30 by revising paragraphs (e)(2) and (e)(3) to read as follows:

§ 3001.30 Hearings.

* * * * *

(e) * * *

(2) *Written cross-examination.* Written cross-examination will be utilized as a substitute for oral cross-examination whenever possible, particularly to introduce factual or statistical evidence. Designations of written cross-examination should be served in accordance with §§ 3001.9 through 3001.12 no later than three working days before the scheduled appearance of a witness. Designations shall identify every item to be offered as evidence, listing the participant who initially posed the discovery request, the witness and/or party to whom the question was addressed (if different from the witness answering), the number of the request and, if more than one answer is provided, the dates of all answers to be included in the record. (For example, "OCA–T1–17 to USPS witness Jones, answered by USPS witness Smith (March 1, 1997) as updated (March 21,.1997))." When a participant designates written cross-examination, two hard copies of the documents to be included shall simultaneously be submitted to the Secretary of the Commission. The Secretary of the Commission shall prepare for the record a packet containing all materials designated for written cross-examination in a format that facilitates review by the witness and counsel. The witness will verify the answers and materials in the packet, and they will be entered into the transcript by the presiding officer. Counsel may object to written cross-examination at that time, and any designated answers or materials ruled objectionable will be stricken from the record.

(3) *Oral cross-examination.* Oral cross-examination will be permitted for clarifying written cross-examination and for testing assumptions, conclusions or other opinion evidence. Notices of intent to conduct oral cross-examination should be filed three or more working days before the announced appearance of the witness and should include specific references to the subject matter to be examined and page references to the relevant direct testimony and exhibits. A participant intending to use complex numerical hypotheticals, or to question using intricate or extensive cross-references, shall provide adequately documented cross-examination exhibits for the record. Copies of these exhibits should be filed at least two calendar days (including one working day) before the scheduled appearance of the witness. They may be filed online or delivered in hardcopy form to counsel for the witness, at the discretion of the participant. If a participant has obtained permission to receive service of documents in hardcopy form, hardcopy notices of intent to conduct oral cross-examination of witnesses for that participant should be delivered to counsel for that participant and served three or more working days before the announced appearance of the witness, and cross-examination exhibits should be delivered to counsel for the witness at least two calendar days (including one working day) before the scheduled appearance of the witness.

* * * * *

10. Amend § 3001.31 by revising the first sentence of paragraph (b)(2)(iv) to read as follows:

§ 3001.31 Evidence.

* * * * *

(b) * * *

(2) * * *

(iv) Filing procedure. Participants filing material as a library reference shall file contemporaneous written notice of this action in conformance with §§ 3001.9 through 3001.12. * * *

* * * * *

11. Amend § 3001.42 by revising paragraph (a) to read as follows:

§ 3001.42 Public information and requests.

* * * * *

(a) *Notice and publication.* Service of intermediate and recommended decisions, advisory opinions and public reports upon parties to the proceedings is provided for in §§ 3001.12(c) and 3001.39(d). Descriptions of the Commission's organization, its methods of operation, statements of policy and interpretations, procedural and substantive rules, and amendments thereto will be filed with and published in the **Federal Register**, and are available on the Commission's Web site, *http://www.prc.gov*. Commission recommended decisions, advisory opinions and public reports, orders, and intermediate decisions will be released to the press and made available to the public promptly by posting on the Commission's Web site.

* * * * *

[FR Doc. 02–27784 Filed 11–5–02; 8:45 am]

BILLING CODE 7710–FW–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IA 159–1159a; FRL–7403–7]

Approval and Promulgation of Implementation Plans; State of Iowa

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving the State Implementation Plan (SIP) revision submitted by the state of Iowa. This revision pertains to orders and permits issued by the state to control particulate matter (PM_{10} missions from Holnam, Inc., and Lehigh Portland Cement Company at Mason City (Cerro Gordo County), Iowa. This approval will make the orders and permits Federally enforceable.

DATES: This direct final rule will be effective January 6, 2003, unless EPA receives adverse comments by December 6, 2002. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Comments may be mailed to Royan Teter, Environmental Protection Agency, Air Planning and Development

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Branch, 901 North 5th Street, Kansas City, Kansas 66101.

Copies of documents relative to this action are available for public inspection during normal business hours at the above-listed Region 7 location. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Royan Teter at (913) 551–7609.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This section provides additional information by addressing the following questions:

What is a SIP?
What is the Federal approval process for a SIP?
What does Federal approval of a state regulation mean to me?
What is being addressed in this document?
Have the requirements for approval of a SIP revision been met?
What action is EPA taking?

What Is a SIP?

Section 110 of the Clean Air Act (CAA) requires states to develop air pollution regulations and control strategies to ensure that state air quality meets the national ambient air quality standards (NAAQS) established by EPA. These ambient standards are established under section 109 of the CAA, and they currently address six criteria pollutants. These pollutants are: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each state must submit these regulations and control strategies to us for approval and incorporation into the Federally-enforceable SIP.

Each Federally-approved SIP protects air quality primarily by addressing air pollution at its point of origin. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

What Is the Federal Approval Process for a SIP?

In order for state regulations to be incorporated into the Federally-enforceable SIP, states must formally adopt the regulations and control strategies consistent with state and Federal requirements. This process generally includes a public notice, public hearing, public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a state rule, regulation, or control strategy is adopted, the state submits it to us for inclusion into the SIP. We must provide public notice and seek additional public comment regarding the proposed Federal action on the state submission. If adverse comments are received, they must be addressed prior to any final Federal action by us.

All state regulations and supporting information approved by EPA under section 110 of the CAA are incorporated into the Federally-approved SIP. Records of such SIP actions are maintained in the Code of Federal Regulations (CFR) at Title 40, Part 52, entitled "Approval and Promulgation of Implementation Plans." The actual state regulations which are approved are not reproduced in their entirety in the CFR outright but are "incorporated by reference," which means that we have approved a given state regulation with a specific effective date.

What Does Federal Approval of a State Regulation Mean to Me?

Enforcement of the state regulation (this can also include state orders and permits) before and after it is incorporated into the Federally-approved SIP is primarily a state responsibility. However, after the regulation is Federally approved, we are authorized to take enforcement action against violators. Citizens are also offered legal recourse to address violations as described in section 304 of the CAA.

What Is Being Addressed in This Document?

From 1993 to 1996, there were numerous exceedances of the 24-hour PM_{10} NAAQS at the ambient air monitor located in Mason City, Iowa. The measured exceedances ranged from 172 to 286 $\mu g/m^3$. The 24-hour standard is 150 $\mu g/m^3$. Additional exceedances were recorded during 1999 and 2000.

The two major stationary facilities identified as contributors to the monitored exceedances were Lehigh Portland Cement Company and Holnam, Inc. These companies operate Portland cement production facilities in the vicinity of the PM_{10} ambient air monitor which recorded the exceedances of the NAAQS.

The Iowa Department of Natural Resources (IDNR), Air Quality Bureau, over the course of several years, developed a control strategy for each company which requires emission controls on numerous point, area, and fugitive emission sources. These requirements were incorporated into Administrative Consent Orders (A.C.O.) for each company. Additionally, permit conditions were developed or revised to reflect the A.C.O. control requirements.

The orders and permits establish enforceable (1) emission rates, (2) limitations on hours of operations, (3) limitations on daily and annual process rates (throughput), and (4) limitations on size and location of storage piles for raw material, fuels, and clinker. Fugitive emissions are to be controlled by the application of dust suppressants, sweeping, adherence to established speed limits, and limiting the number of daily and annual truck trips. Both facilities must be fenced to preclude public access. In addition, at Lehigh the coal crusher (source ID 40) is to be operated only in an enclosed structure.

Specifically, we are approving Administrative Consent Order No. 1999–AQ–31 between the IDNR and Holnam, Inc., signed by the state on September 2, 1999, and the Consent Amendment to the same order signed by the state on May 16, 2001. We are also approving the construction permits related to the A.C.O.

We are approving Administrative Consent Order No. 1999-AQ–32 between the IDNR and Lehigh Portland Cement Company signed by the state on September 2, 1999. We are also approving the construction permits related to the A.C.O.

Air quality modeling results demonstrate that the control measures contained in the Administrative Consent Orders and permits will ensure attainment and maintenance of the PM_{10} NAAQS. Additional information concerning the state submittal is contained in the technical support document for this action which is available from the EPA contact above.

Have the Requirements for Approval of a SIP Revision Been Met?

The state submittal has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submittal also satisfied the completeness criteria of 40 CFR part 51, appendix V. In addition, as explained above and in more detail in the technical support document, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

What Action Is EPA Taking?

We are approving as a revision to the Iowa SIP, A.C.Os. for Holnam, Inc., and Lehigh Portland Cement Company in Mason City, Iowa. We are also approving the related construction permits for each company. We are processing this action as a final action because we do not anticipate any adverse comments. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment.

Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 6, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: October 23, 2002.

William W. Rice,

Acting Regional Administrator, Region 7.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart Q—Iowa

2. In § 52.820 paragraph (d) is amended by:

a. Revising the heading for paragraph (d).

b. Revising the heading for table (d).

c. Adding entries at the end of the table for Holnam, Inc., and Lehigh Portland Cement Company.

The revisions and additions read as follows:

§ 52.820 Identification of plan.

* * * * *

(d) EPA-approved State source-specific orders/permits

EPA-APPROVED IOWA SOURCE—SPECIFIC ORDERS/PERMITS

Name of source	Order/permit No.	State effective date	EPA approval date	Comments
•	•	•	•	•
Holnam, Inc	A.C.O. 1999-AQ–31	9/2/1999	November 6, 2002, and FR page citation	For a list of the 47 permits issued for individual emission points see IDNR letters to Holnam, Inc., dated 7/24/01.
Holnam, Inc	Consent Amendment to A.C.O. 1999–AQ–31.	5/16/2001	November 6, 2002, and FR page citation	For a list of the 47 permits issued for individual emission points see IDNR letters to Holnam, Inc., dated 7/24/01.

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EPA-APPROVED IOWA SOURCE—SPECIFIC ORDERS/PERMITS—Continued

Name of source	Order/permit No.	State effective date	EPA approval date	Comments
Holnam, Inc	Permits for 17–01–009, Project Nos. 99–511 and 00–468.	7/24/2001	November 6, 2002, and FR page citation	For a list of the 47 permits issued for individual emission points see IDNR letters to Holnam, Inc., dated 7/24/01.
Lehigh Portland Cement Company.	A.C.O. 1999–AQ–32	9/2/1999	November 6, 2002, and FR page citation	For a list of the 41 permits issued for individual emission points see IDNR letters to Lehigh dated 7/24/01 and 2/18/02.
Lehigh Portland Cement Company.	Permits for plant No. 17–01–005, Project Nos. 99–631 and 02–037.	2/18/2002	November 6, 2002, and FR page citation	For a list of the 41 permits issued for individual emission points see IDNR letters to Lehigh dated 7/24/01 and 2/18/02.

* * * * *

[FR Doc. 02–27838 Filed 11–5–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2002–0224; FRL–7277–9]

Diflubenzuron; Pesticide Tolerances Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: EPA issued a final rule in the **Federal Register** of September 19, 2002, establishing tolerances for the insecticide diflubenzuron (N-[[4-chlorophenyl)amino]-carbonyl]-2,6-difluorobenzamide) and its metabolites, 4-chlorophenylurea (CPU) and 4-chloroaniline (PCA) in or on various commodities. This document is being issued to correct inadvertent omissions in that document.

DATES: This document is effective on November 6, 2002.

FOR FURTHER INFORMATION CONTACT: Rita Kumar, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8291; e-mail address: *kumar.rita@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

The Agency included in the final rule a list of those who may be potentially affected by the action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket ID number OPP–2002–0224. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.* A frequently updated electronic version of 40 CFR part 180 is available at *http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_ 40/40cfr180_00.html,* a beta site currently under development.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket ID number.

II. What Does this Correction Do?

In the **Federal Register** of September 19, 2002 (67 FR 59006) (FRL–7200–4), EPA issued tolerances for the insecticide diflubenzuron (N-[[4-chlorophenyl)amino]-carbonyl]-2,6-difluorobenzamide) and its metabolites, 4-chlorophenylurea (CPU) and 4-chloroaniline (PCA) in or on various commodities. This document is being issued to correct two inadvertent omissions in that document.

FR Doc. 02–23818 is corrected as follows:

1. On page 59013, in the middle column, second full paragraph from the top, the fourth sentence should read: "There are reliable data that indicate there are no residual concerns for pre- and/or post-natal toxicity."

2. On page 59015, under Unit IV., section *B. International Residue Limits* should read: "Codex and Mexican maximum residue limits (MRLs) are established for residues of diflubenzuron *per se* in/on plums (including prunes) at 1 ppm. Mexican MRLs are established for residues of diflubenzuron *per se.* Use of diflubenzuron in Canada is limited to mosquito control; therefore, no Canadian MRLs have been established. Based on the current tolerance expression, the Codex and U.S. tolerance definitions are not compatible."

III. Why Is This Correction Issued as a Final Rule?

Section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(B), provides that, when an Agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a final rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making today's correction final without prior proposal and opportunity for comment, because EPA is merely inserting language that was inadvertently omitted from the previously published final rule. EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(B).

IV. Do Any of the Regulatory Assessment Requirements Apply to This Action?

This document makes minor corrections to the preamble of the final rule issued on September 19, 2002, and it does not otherwise impose or amend any requirements. As such, the Office of Management and Budget (OMB) has determined that a technical correction is not a "significant regulatory action" subject to review by OMB under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since this action does not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

V. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register.** This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 21, 20002.

Debra Edwards,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 02–27840 Filed 11–5–02; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[WC Docket No. 02–269; FCC 02–291]

Federal-State Joint Conference on Accounting Issues

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document the Commission appoints State representatives to the Federal-State Joint Conference on Accounting Issues (Joint Conference). Chairman Michael K. Powell also designates the Honorable Kevin J. Martin as the Chairman of the Joint Conference. The Honorable Michael J. Copps will serve as a participating federal member. The intended effect of this document is to provide a forum for an ongoing dialogue between the Commission and the states in order to ensure that regulatory accounting data and related information filed by carriers are adequate, truthful, and thorough. *See* 47 U.S.C. 410(b).

FOR FURTHER INFORMATION CONTACT: Joi Roberson Nolen, Wireline Competition Bureau, 202–418–1537.

SUPPLEMENTARY INFORMATION: Pursuant to section 410(b) of the Communications Act of 1934, as amended, 47 U.S.C. 410(b), the Commission appoints the following State representatives to the Joint Conference: the Honorable Nancy Brockway, Commissioner, New Hampshire Public Utilities Commission; the Honorable Terry Deason, Commissioner, Florida Public Service Commission; the Honorable Rebecca A. Klein, Chairman, Texas Public Utility Commission; the Honorable Loretta Lynch, President, California Public Utilities Commission; and the

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Honorable Diane Munns, Chairman, Iowa Utilities Board. The Honorable Kevin J. Martin is designated to serve as the Chairman of the Joint Conference. The Honorable Michael J. Copps will serve as a participating federal member. Henceforth, a copy of each filing in this proceeding shall be served on each member of the Joint Conference at the addresses listed in appendix A of the Order. Accordingly, *it is ordered* that, pursuant to section 410(b) of the Communications Act of 1934, as amended, 47 U.S.C. 410(b), this Order is adopted.

List of Subjects in 47 CFR Part 1

Administrative practices and procedures, Communications common carriers.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–27977 Filed 11–5–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–2694; MM Docket No. 99–322; RM–9762]

Radio Broadcasting Services; Ashville and Chillicothe, OH.

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In response to a petition for rule making in this filed by Secret Communications II, L.L.C. this document reallots Channel 227B from Chillicothe, Ohio, to Ashville, Ohio, and modifies the license of Station WFCB to specify Ashville as its community of license. *See* 64 FR 60150, November 1, 1999. The reference coordinates for the Channel 227B allotment at Ashville, Ohio, are 39–35–30 and 83–06–38. With this action, the proceeding is terminated.

DATES: Effective December 5, 2002.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Media Bureau (202) 418–2177.

SUPPLEMENTARY INFORMATION: This is a synopsis of the *Report and Order* in MM Docket No. 99–322 adopted October 16, 2002, and released October 18, 2002. The full text of this decision is available for inspection and copying during normal business hours in the FCC Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–402, Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2898, or via e-mail *qualixint@aol.com*.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Part 73 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Ohio, is amended by adding Ashville, Channel 227B and by removing Channel 227B at Chillicothe.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 02–28162 Filed 11–5–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–2695; MM Docket No. 02–119; RM–10435]

Radio Broadcasting Services; Clarksdale and Friars Point, MS

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In response to a *Notice of Proposed Rule Making*, 67 FR 39935 (June 11, 2002), this document upgrades Channel 268A, Station WWUN–FM, Clarksdale, Mississippi, to Channel 268C3, changes the community of license of Station WWUN-FM from Clarksdale to Friars Point, Mississippi, and provides Friars Point with its second local aural transmission service. The coordinates for Channel 268C3 at Friars Point are 34–25–30 North Latitude and 90–35–39 West Longitude, with a site restriction 7.8 kilometers (4.8 miles) northeast of Friars Point.

DATES: Effective December 2, 2002.

FOR FURTHER INFORMATION CONTACT: R. Barthen Gorman, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 02–119, adopted October 9, 2002, and released October 18, 2002. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC. This document may also be purchased from the Commission's duplicating contractors, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 reads as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Mississippi, is amended by removing Channel 268A at Clarksdale and by adding Channel 268C3 at Friars Point.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 02–28161 Filed 11–5–02; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 020329075–2124–03; I.D. 031902E]

RIN 0648–AP11

Fisheries of the Northeastern United States; Magnuson-Stevens Fishery Conservation and Management Act Provisions; Monkfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Extension of an emergency interim rule.

SUMMARY: NMFS informs the public that the emergency interim rule published on May 22, 2002, that temporarily amended the fishing mortality rate (F) criteria in the Monkfish Fishery Management Plan (FMP) to be consistent with the best scientific information available, and which implemented the management measures proposed in Framework 1 to the FMP, is extended through April 30, 2003. The purpose of this emergency interim rule extension is to delay further the implementation of restrictive Year–4 default management measures that were scheduled to become effective on May 1, 2002, in the FMP, and to continue measures implemented for the monkfish fishery that are based on the best scientific information.

DATES: The expiration date of the emergency interim rule, published May 22, 2002 (67 FR 35928), and effective on May 17, 2002, is extended from November 18, 2002, to April 30, 2003.

ADDRESSES: Copies of the small entity compliance guide prepared for the monkfish emergency rule are available from Patricia Kurkul, Regional Administrator, Northeast Regional Office, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930–2298. The guide is also accessible via the Internet at *http://www.nero.noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Allison Ferreira, Fishery Policy Analyst, (978) 281–9103, fax (978) 281–9135, e-mail *Allison.Ferreira@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Background

The directed monkfish fishery closed on May 1, 2002, due to the implementation of default management measures scheduled to take effect during Year 4 of the FMP (May 1, 2002 - April 30, 2003). The Year–4 default measures were included in the FMP to ensure that the FMP objectives were attained. These measures eliminate the directed monkfish fishery by allocating zero monkfish days-at-sea (DAS), and by allowing only incidental landings of monkfish. The New England and Mid-Atlantic Fishery Management Councils (Councils) developed Framework 1 to the FMP in order to delay the implementation of the Year–4 default management measures for 1 year, until May 1, 2003, and to implement alternative measures for Year–4, since a 3–year review of the status of the monkfish stock determined that the implementation of these restrictive default measures was not necessary. However, following the submission of Framework 1 by the Councils to NMFS, and the publication of a proposed rule, it was determined that Framework 1 was not consistent with the F criteria specified in the FMP. As a result, NMFS disapproved Framework 1 and implemented an emergency interim rule that temporarily amended the F criteria in the FMP to be consistent with the most recent stock assessment (SAW 34; January 2002). In this same regulatory action, NMFS implemented the measures proposed in Framework 1 because, with the amendment of the F criteria in the FMP through the emergency interim rule, the measures were found to be consistent with the best available scientific information.

This action extends the emergency interim measures for 163 days, effective November 19, 2002, through April 30, 2002. Emergency interim measures extended by this action include a target total allowable catch (TAC) of 19,595 metric tons (mt) for the 2002 fishing year (May 1, 2002 - April 30, 2003), with area-specific TACs of 11,674 mt and 7,921 mt for the Northern Fishery Management Area (NFMA) and the Southern Fishery Management Area (SFMA), respectively; allocation of 40 DAS to limited access monkfish vessels for the 2002 fishing year (May 1, 2002 - April 30, 2003); a revision to the monkfish trip limits in the SFMA to 550 lb (249 kg) (tail weight per DAS) for vessel permit categories A and C, and 450 lb (204 kg) (tail weight per DAS) for vessel permit categories B and D while fishing on a monkfish DAS in the SFMA; and maintenance of all other measures as established for Year 3 of the FMP, including less restrictive incidental catch limits.

Comments and Responses

Comment 1: NMFS failed to justify the need for emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The argument used by NMFS in justifying the emergency interim rule had no merit.

Response: There was substantial justification for the need for the emergency interim rule in the May 22, 2002, **Federal Register** rule implementing this action, and the accompanying environmental assessment (EA). These documents discuss in detail how the emergency interim rule meets the "emergency criteria" and "emergency justification" for determining the appropriateness of section 305 (c) rulemaking outlined in NMFS' Policy Guidelines for the Use of Emergency Rules (Emergency Guidelines) found at 62 FR 44421, *et seq.* (August 21, 1997). In summary, these documents stated that implementing the action through section 305(c) emergency authority is justifiable because the need to disapprove the framework action and immediately amend the FMP to make it compatible with the best scientific information available only became discoverable after NMFS had the time to fully evaluate the framework action after the public comment period had ended, thus creating a "recently discovered circumstance". In addition, to have delayed the incorporation of the newest science into the FMP and delayed implementation of the action necessary to avoid the default measures would have resulted in substantial, unwarranted and unnecessary economic harm to the industry and would have likely caused wasteful bycatch of monkfish in other fisheries.

Comment 2: The emergency action does not contain any analysis showing whether or not it will halt monkfish overfishing this year or allow rebuilding by 2009.

Response: NMFS considered all available information regarding the stock biomass level and fishing mortality rate in its decision to implement the emergency interim rule. The fact that stock biomass has increased significantly from 2000 to 2001 in both management areas at current landing levels indicates that the level of fishing mortality resulting from the measures in this action should allow the stock to continue rebuilding. Therefore, there is no evidence that these measures will prevent rebuilding by 2009. Furthermore, the emergency interim rule and this extension postpone the default measures for only 1 year; in the absence of any further management action, the default measures will become effective on May 1, 2003. Both Councils intend to reconsider fully the best available scientific information in the development of revised overfishing definitions in Framework 2, which is scheduled to be implemented at the start of the 2003 fishing year on May 1, 2003.

Comment 3: The emergency interim rule does not adequately assess and minimize the impacts on essential fish habitat (EFH). Of particular concern, the EA prepared for the emergency interim rule fails to discuss the impacts of fishing gear on deep sea corals in the continental slope habitats and on emergent epifauna on hard bottom.

Response: NMFS disagrees, and notes that the EA prepared for the emergency interim rule contains an EFH assessment as required by the Magnuson-Stevens Act. A comprehensive assessment of the adverse effects of fishing on EFH is not

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within the scope and context of this emergency action. Furthermore, the commenter is a party to the litigation that challenged the consideration of EFH in the FMP (American Oceans Campaign v. Daley (D.D.C. 2000)). NMFS and the litigants have signed a settlement agreement in that case, and have agreed that EFH will be fully reconsidered in Amendment 2 to the FMP, which is scheduled to be implemented during the fall of 2003. In the meantime, the settlement agreement contemplates that the comprehensive assessment of the adverse effects of fishing on EFH that was included in the New England Council's EFH amendment to the FMP (Amendment 1) may be relied upon. Further, since this action makes no change in effort from the prior year, there should be no change in habitat impacts from those described for the first 3 years of the FMP.

The commenter expressed specific concern about gillnet impacts on deep-sea corals. Such corals are not designated as EFH for any species in waters off of the northeastern United States, so it is not necessary to address impacts to deep-sea corals in order to comply with EFH requirements. Further, according to the NMFS Report on Fishing Gear Effects on Marine Habitats off the Northeastern United States (February 2002), there is very little sink gillnet fishing gear used in waters deeper than 100 m or in submarine canyons, which is where most of such corals exist.

Comment 4: The emergency interim rule fails to establish a standardized bycatch reporting methodology, or to minimize bycatch and bycatch mortality as required by the Sustainable Fisheries Act and recent case law. Of particular concern are the capture of deep-sea species such as deep-sea jelly fish, octopi, and sharks as the monkfish fishery extends its range further offshore.

Response: The existing data collection system requires vessel operators to provide bycatch data on mandatory Vessel Trip Reports that must be submitted for each fishing trip. In addition, detailed information is collected through the NMFS Observer Program, which deploys trained independent observers on commercial vessels. NMFS is currently increasing the amount of observer coverage on vessels fishing for Northeast multispecies, and this action will likely result in further information concerning monkfish, as well. NMFS agrees that, in the long term, it must improve the collection of bycatch information, but disagrees that the emergency interim rule should be suspended because it does not address this issue. As stated in the EA for the emergency interim rule, to effectively address bycatch assessment concerns would require a global set of measures applicable to all of the Northeast region's fisheries, since most vessels in the region are involved in a variety of fisheries, even during one fishing trip. NMFS is committed to improving bycatch assessment, as evidenced by the settlement agreement entered into with the other litigatory parties in *Conservation Law Foundation, et al.* v. *Evans, et al.* It is beyond the scope and context of the emergency interim rule process to require a global system of measures to be established to improve bycatch monitoring, assessment and reduction in only one fishery.

With respect to minimizing bycatch, NMFS notes that national standard 9 requires minimization of bycatch to the extent practicable. The EA prepared for the emergency interim rule notes that, with the stock biomass increasing, there is an increased likelihood that vessels targeting other species will incidentally harvest monkfish. Therefore, if the emergency interim rule were not extended and Year–4 default management measures became effective, the directed fishery would be completely eliminated and vessels that previously participated in that fishery would be expected to target other species. As such, the default measures would be expected to increase bycatch and bycatch mortality, providing no improved conservation to the stock.

With respect to the commenter's specific concern about bycatch of deep-sea animals, NMFS notes that the 2001 cooperative survey, upon which this comment is based, provided new information that will be fully considered by the Councils as they develop Amendment 2 to the FMP. NMFS also notes that the trip limits established for the SFMA fishery under the emergency interim rule and this emergency rule extension are restrictive and unlikely to support a directed fishery offshore.

Comment 5: The environmental analysis accompanying the emergency action is deficient, and the magnitude of the impacts require the preparation of an environmental impact statement (EIS) rather than an EA.

Response: Although NMFS agrees with the commenter that this action makes a modification from the measures contemplated for Year–4 in the FMP, NMFS has determined that this action does not have significant impacts that would require the preparation of an EIS, as discussed in the EA and its Finding of No Significant Impact (FONSI) statement. In support of their comment that an EIS should have been prepared for this action, the commenters mostly rely on comments already addressed herein concerning consistency of the action with FMP overfishing and rebuilding objectives, bycatch methodologies and minimization, and EFH concerns. These concerns are addressed under Responses to Comments 2, 3 and 4. As explained in the responses to these comments, because this action is for 1 year only, because an EIS is being prepared for Amendment 2, and for other reasons stated in the EA and its FONSI, NMFS concludes that an EA is appropriate for this emergency action.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), has determined that this extension is needed to prevent the restrictive Year–4 default management measures from taking effect on November 19, 2002. Extending the current management measures established by the emergency interim rule (67 FR 35928, May 22, 2002) through implementation of Framework 2 on May 1, 2003, is necessary to prevent substantial, unwarranted and unnecessary economic harm to the industry and a likely increase in monkfish bycatch in other fisheries as a result of terminating the directed monkfish fishery. Accordingly, the AA is extending the expiration date of this emergency interim rule until the effective date of the 2003 management measures, not to exceed 180 days.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

NMFS prepared a final regulatory flexibility analysis (FRFA) for this action. A summary of the FRFA follows.

A description of the objectives of the emergency interim rule and the need for this extension are explained in the preamble for this action and are not repeated here. This action does not contain any collection-of-information, reporting, record-keeping, or other compliance requirements. It does not duplicate, overlap, or conflict with any other Federal rules.

One public comment was received on the emergency interim rule. However this comment did not address any of the economic impacts associated with the implementation of this rule.

The measures contained in the emergency interim rule and its proposed extension potentially affect the approximately 704 vessels that currently hold a limited access monkfish permit. According to the analysis presented in the environmental assessment (EA) prepared for the emergency interim rule, the preferred alternative (implementation of the emergency interim rule) was expected to result in loss of income from fishing year 2000 levels for several vessel types. However, these projected losses in income were lower than the losses that would result from implementation of either the non-preferred or no action alternatives. Therefore, because the analysis showed that the emergency interim rule would have the least effect on small entities compared to the non-preferred and no action alternatives, this preferred alternative was selected.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) states that for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides". The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a small entity compliance guide (the guide) was prepared. Copies of the guide will be sent to all holders of permits issued for the monkfish fishery. The guide will be available on the Internet at *http://www.nero.noaa.gov*. Copies of the guide can also be obtained from the Regional Administrator (see **ADDRESSES**).

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 31, 2002.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 02–28196 Filed 11–1–02; 2:10 pm]

BILLING CODE 3510–22–S

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Proposed Rules

Federal Register
Vol. 67, No. 215
Wednesday, November 6, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 589

[Docket No. 02N–0273]

RIN 0910–AC37

Substances Prohibited From Use in Animal Food or Feed; Animal Proteins Prohibited in Ruminant Feed

AGENCY: Food and Drug Administration, HHS.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Food and Drug Administration (we) is soliciting information and views on some potential changes to its current regulation prohibiting the use of certain proteins in ruminant animal feed. We put this regulation in place to prevent the spread through animal feed of the agent of bovine spongiform encephalopathy (BSE) were it to enter the United States. In this regulation we determined that protein derived from mammalian tissues for use in ruminant feed is a food additive under the Federal Food, Drug, and Cosmetic Act (the act), and that use of certain mammalian proteins in ruminant feed causes the feed to be adulterated under the act. We are considering revising this regulation, and therefore we are asking the public for comment on certain possible modifications to the rule. This information may be used to help draft a proposed rule in the near future.

DATES: Submit written or electronic comments by February 4, 2003.

ADDRESSES: Submit written or electronic comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments.*

FOR FURTHER INFORMATION CONTACT: Linda Huntington, Executive Secretariat, Office of the Commissioner (HF–40), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4443.

SUPPLEMENTARY INFORMATION:

I. Background

We published the regulation, "Substances Prohibited From Use in Animal Food or Feed; Animal Proteins Prohibited in Ruminant Feed," (21 CFR 589.2000) in the **Federal Register** of June 5, 1997 (62 FR 30936).

On October 30, 2001, we held a public hearing in Kansas City, MO to hear views from the public on the adequacy of the present BSE feed regulation. We specifically invited comments, both oral and written, on 17 questions about ways the rule and its enforcement might be improved to achieve its original objectives of preventing the establishment and amplification of BSE in the United States. We appreciate the efforts of the many organizations and individuals who took the time to express the views of various segments of the animal feed industry, regulatory agencies, concerned consumers, and consumer organizations on the adequacy of the present feed rule.

Shortly after the public hearing, the U.S. Department of Agriculture (USDA) released a report prepared by the Harvard Center for Risk Analysis (*http://www.aphis.usda.gov/oa/bse/*) on the findings of a major 3-year initiative to develop a risk assessment model that allows evaluation of the impact of various risks and potential pathways for exposure of U.S. cattle and U.S. citizens to the BSE agent. The assessment of the present situation in the United States using this model concluded that, due to control measures already in place, the risk to U.S. cattle and to U.S. consumers from BSE is very low. The model also demonstrated that certain new control measures could reduce the small risk even further.

USDA's BSE surveillance program supports the findings of the Harvard study that measures implemented by the U.S. Government, such as early import restrictions and the feed ban, have been effective in preventing the entrance and establishment of BSE in the U.S. cattle population. The USDA surveillance program, which has been in place since May 1990 and which targets the highest risk cattle population, has found no cases of BSE to date. Although BSE has not been detected in the United States, the U.S. Government's response to BSE has always been proactive and preventive. Therefore, USDA and FDA are interested in exploring measures that could further reduce the already small risk that BSE will enter and become established in the United States. To that end, FDA is once again asking for information from the affected industries and the public on several ways that the animal feed regulation could be strengthened.

II. Agency Request for Information

We are soliciting information and comments from those with interest and expertise in any of the following five aspects of the BSE feed regulation:

1. Excluding Brain and Spinal Cord From Rendered Animal Products

The Harvard risk assessment identified removal of high risk tissues, such as brain, spinal cord, gut, and eyes, from human food and rendered material for animal feed, as a way to dramatically reduce the potential exposure of cattle and humans to the BSE agent. In response to the Harvard study, USDA's Food Safety Inspection Service is considering rulemaking to ban high risk tissues obtained from certain populations of cattle (also called specified risk materials or SRMs) from use in human food. Should USDA publish such a proposal, FDA may also propose that SRMs be prohibited from going into rendered material. Therefore, FDA is asking for comments on the following questions:

- Should high risk materials, such as brain and spinal cord from ruminants 2 years of age and older, be excluded from all rendered products?
- How feasible would it be for the rendering industry to implement such an exclusion?
- What will be the adverse and positive impacts (economic, environmental, health, etc.) resulting from a brain and spinal cord exclusion?

2. Use of Poultry Litter In Cattle Feed

In some parts of the country where cattle are raised in proximity to large poultry production areas, poultry litter, composed of excreta, bedding, spilled feed, and feathers, may be used as a feed ingredient for cattle. The Harvard risk-assessment said that the risk from the use of poultry litter as a feed supplement should be investigated further. For example, if the spilled feed contained ruminant protein, would this practice represent a significant break in the feed regulations? In order to further investigate possible risk, FDA is seeking information on the following questions:

- How extensive is the use of poultry litter in cattle feed in the United States?
- What is the level of feed spillage in poultry litter?
- What are the methods used to process poultry litter before inclusion in animal feed?
- What will be the adverse and positive impacts (economic, environmental, health, etc.) resulting from banning poultry litter in ruminant feed?

3. Use of Pet Food In Ruminant Feed

Under the current regulation, pet food for retail sale is exempt from the labeling requirement and need not bear the caution statement "Do not feed to cattle or other ruminants." However, if the pet food products are sold or are intended for sale as distressed or salvage items, then, under § 589.2000(d)(4), such products must state, "Do not feed to cattle or other ruminants." In order to assure that salvaged pet food is not used in ruminant feed despite the requirement that it be labeled with the caution statement, FDA is asking for comments on the following questions.

- Should pet food for retail sale be labeled with the statement "Do not feed to cattle or other ruminants."?
- What would be the adverse and positive impacts (economic, environmental, health, etc.) of such a labeling requirement?

4. Preventing Cross-Contamination

The Harvard risk assessment and the FDA public hearing identified cross-contamination of feed and facilities as a possible BSE risk. The current animal feed regulation permits feed and feed ingredients for ruminant animals to be processed in facilities that also process prohibited proteins. The rule requires that those firms handling both prohibited and nonprohibited material have a system in place and a written plan to prevent cross-contamination. We provided suggestions in the preamble to the final rule and in the small entity compliance guides on ways to prevent carry-over in shared equipment. Small entity compliance guides include: No. 67—Renderers; No. 68—Protein Blenders, Feed Manufacturers, and Distributors; No. 69—Feeders of Ruminant Animals With On-Farm Feed Mixing Operations; No. 70—Feeders of Ruminant Animals Without On-Farm Feed Mixing Operations; and No. 76—Questions and Answers, BSE Feed Regulation. You may see the small entity compliance guides on the Center for Veterinary Medicine (CVM) Internet site at *http://www.fda.gov/cvm* or by calling the CVM Communications Staff at 301–594–1755. For feed mills, these suggestions were based on medicated feed good manufacturing practices (GMPs) and included physical cleaning, flushing, or sequencing. For renderers, we suggested flushing, using one complete change of operating volume of the entire system.

The rule requires that those firms handling both prohibited and nonprohibited material have a system in place and a written plan to prevent cross-contamination. The only way to be sure that there is absolutely no potential for carry-over of, or cross-contamination with, prohibited material is to use completely separate facilities. We are interested in information on control measures, other than dedicated facilities, that apply specifically to transmissible spongiform encephalopathy (TSE) agents and in information on whether such measures can prevent carry-over of prohibited material. The agency is asking for comments on the following questions:

- Are there practical ways, other than dedicated facilities, for firms to demonstrate that the level of carry-over could not transmit BSE to cattle or other ruminants? If so, what is the safe level of carry-over in a feed mill; and
- What is the scientific rationale used to establish this safe level?
- What steps are firms currently taking to prevent cross-contamination of prohibited protein into ruminant feed, and what are the costs of those steps?

5. Elimination of the Plate Waste Exemption

The current regulation contains an exemption that permits "inspected meat products which have been cooked and offered for human food and further heat processed for feed (such as plate waste and used cellulosic food casings)" to be fed to ruminants. Although the Harvard study concluded that plate waste posed a minimal risk, FDA wishes to reconsider this exemption and is seeking information on the following questions.

- To what extent is plate waste used in ruminant feed?
- What is the composition of plate waste, and what are its sources?
- How is plate waste processed before inclusion in ruminant feed?
- What would be the adverse and positive impacts (economic, environmental, health, etc.) from excluding plate waste from ruminant feed?

III. Comments

You may submit written or electronic comments regarding the advance notice of proposed rulemaking (ANPRM) by February 4, 2003, to the Dockets Management Branch (see **ADDRESSES**). Please submit two copies of any comments, except that individuals may submit one copy. Identify your comments with the docket number found in brackets in the heading of this document. You may see received comments in the Dockets Management Branch reading room between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

You may submit comments electronically on the Internet at: *http://www.fda.gov/dockets/ecomments.* On this Internet site, select "02N–0273" and follow the directions.

This ANPRM is issued under sections 201, 402, 409, and 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, and 371) and under the authority of the Commissioner of Food and Drugs.

Dated: November 4, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–28373 Filed 11–5–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 300

[REG–103777–02]

RIN 1545–BA54

User Fees for Processing Offers to Compromise

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed amendments to the regulations relating to user fees to provide for the imposition of user fees for the processing of offers to compromise. The charging of user fees implements the Independent Offices Appropriations Act (IOAA). This document also contains a notice of public hearing on these proposed regulations.

DATES: Written and electronic comments must be received by February 4, 2003. Outlines of topics to be discussed at the public hearing scheduled for Thursday, February 13, 2003, must be received by Thursday, January 23, 2003.

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ADDRESSES: Send submissions to: CC:ITA:RU (REG–103777–02), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:ITA:RU (REG–103777–02), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. Alternatively, taxpayers may send submissions electronically directly to the IRS Internet site at *www.irs.gov/regs*. The public hearing will be held in Room 4718 of the Internal Revenue Service Building, 1111 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning submissions and/or to be placed on the building access list to attend the hearing, Treena Garrett, 202–622–7180; concerning cost methodology, Eva Williams, 202–622–6400; concerning the regulations, G. William Beard, 202–622–3620 (not toll free numbers).

SUPPLEMENTARY INFORMATION:

Offers To Compromise

Section 7122 of the Internal Revenue Code gives the IRS the authority to compromise any civil or criminal case arising under the internal revenue laws, prior to the referral of that case to the Department of Justice. Section 7122 also directs the IRS to prescribe guidelines for officers and employees of the IRS to determine whether an offer to compromise is adequate and should be accepted. Guidelines are contained in § 301.7122–1. Pursuant to § 301.7122–1(b), an offer may be accepted if there is doubt as to liability, if there is doubt as to collectibility, or if acceptance will promote effective tax administration. Pursuant to § 301.7122–1(b)(3), offers may be accepted to promote effective tax administration if either: (1) The IRS determines that, although collection in full could be achieved, collection of the full liability would cause the taxpayer economic hardship within the meaning of § 301.6343–1, or (2) there are no other grounds for compromise and there are compelling public policy or equity considerations.

When an offer to compromise is received, an initial determination is made as to whether the offer is processable. Currently, an offer is returned as nonprocessable if the taxpayer is in bankruptcy, has not filed required tax returns, or has not perfected the offer by properly preparing the offer to compromise form and submitting other required documents. Absent these conditions, the offer is accepted for processing and cannot be rejected without an independent administrative review of the decision to reject and, if the taxpayer chooses to appeal the rejection, independent review by the Office of Appeals. Even though an offer accepted for processing may later be returned to the taxpayer if the taxpayer fails to provide requested information or the IRS determines that the offer was submitted solely to delay collection, such an offer may not be returned before a managerial review of the proposed return is completed pursuant to § 301.7122–1(f)(5)(ii).

When the IRS accepts an offer, the taxpayer receives the benefit of resolving its tax liabilities for a compromised amount, provided the taxpayer complies with the terms of the compromise agreement. To ensure that the taxpayer complies with the terms of the compromise agreement, the IRS must continue to monitor the taxpayer for a period of five years after the compromise is reached.

Even if an offer is rejected, the taxpayer receives the benefit of having the IRS process the offer and make an individualized determination as to the adequacy of the amount offered. In order to make that determination, the IRS must value assets, verify income-earning potential, and compute allowable expenses. The taxpayer also receives the benefit of certain deferred collection activities. The IRS generally does not make any levies to collect liabilities that are the subject of an offer during the period the IRS is evaluating whether the offer will be accepted or rejected, for 30 days immediately following the rejection of an offer, and during any period when a timely appeal from the rejection is being considered by the Office of Appeals.

Establishment of User Fees on Offers To Compromise

The IRS is proposing user fees for the processing of certain offers to compromise tax liabilities pursuant to § 301.7122–1.

For the IRS to process an offer, proposed section 300.3 establishes a $150 fee. The user fee would be paid out of the amount determined to be collectible from the taxpayer and would be taken into account when considering whether the amount offered is acceptable. Thus, imposition of the fee would not change the net amount paid by the taxpayer to compromise the liabilities.

The proposed user fee would not apply to offers based on doubt as to liability, offers made by certain low income taxpayers, offers accepted to promote effective tax administration, and offers accepted based on doubt as to collectibility where there has also been a determination that, although an amount greater than the amount offered could be collected, collection of more than the amount offered would create economic hardship within the meaning of § 301.6343–1 (currently referred to as "special circumstances" under IRS procedures). In most of these circumstances, the fees would be waived before being collected from the taxpayer. However, if the fee is collected from the taxpayer, but the offer is accepted to promote effective tax administration or based on considerations of economic hardship, the processing fee either would be refunded to the taxpayer or applied to the amount of the offer.

Offers based on doubt as to liability would be excepted from the user fee based on the inequity of the IRS charging a fee to compromise an uncertain liability when a compromise is based upon a reassessment of the taxpayer's liability for a tax (and the agreed upon amount may, in fact, provide for the full payment of the amount actually owed).

Offers made by low income taxpayers would be excepted from the user fee in light of section 7122(c)(3)(A), which prohibits the IRS from rejecting an offer from a low income taxpayer solely on the basis of the amount offered. Section 7122(c)(3)(A) literally applies to the rejection of an offer rather than the return of an offer for failure to pay a user fee. However, requiring payment of a user fee from a low income taxpayer would undermine section 7122(c)(3)(A) in cases where the taxpayer does not have the ability to pay the fee. Offers from low income taxpayers therefore would be excepted.

Offers accepted to promote effective tax administration would be excepted from the user fee because the collection of a fee in these circumstances would undermine the purposes of these programs. Offers accepted based on doubt as to collectibility and a determination that collecting more than the amount offered would create economic hardship within the meaning of § 301.6343–1 would also be excepted because the criteria for these offers is the same as offers accepted to promote effective tax administration based on economic hardship.

Authority

The IOAA authorizes agencies to prescribe regulations that establish charges for services provided by the agency (user fees). The charges must be fair and be based on the costs to the Government, the value of the service to the recipient, the public policy or interest served, and other relevant facts. The IOAA provides that regulations implementing user fees are subject to policies prescribed by the President, which are currently set forth in OMB Circular A–25, 58 FR 38142 (July 15, 1993) (the OMB Circular).

The OMB Circular encourages user fees for Government-provided services that confer benefits on identifiable recipients over and above those benefits received by the general public. Under the OMB Circular, an agency that seeks to impose a user fee for Government-provided services must calculate its full cost of providing those services. In general, the amount of a user fee should recover the cost of providing the special service, unless the Office of Management and Budget (OMB) grants an exception. Pursuant to the guidelines in the OMB Circular, the IRS has calculated its cost of providing services under the offer in compromise program. The IRS has determined that the full cost of investigating doubt as to collectibility and effective tax administration offers averages $471 when streamlined procedures are used to investigate the financial condition of the taxpayer, and $3,983 when more detailed investigations are used. The IRS estimates that 70 percent of offers are processed under streamlined procedures. OMB has granted an exception to the "full cost" requirement of the OMB Circular.

The Treasury, Postal Service, and General Government Appropriations Act of 1995, Public Law 103–329 (108 Stat. 2382) (the 1995 Appropriations Act) provides that the Secretary may establish new fees for services provided by the IRS where such fees are authorized by another law, such as the IOAA.

The proposed user fees will be implemented under the authority of the IOAA, the OMB Circular, and the 1995 Appropriations Act.

Effective Date

These regulations are proposed to be effective thirty days after the date of publication in the **Federal Register** of the final regulations.

Special Analysis

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. This certification is based on the information that follows. The economic impact of these regulations on any small entity would result from the entity being required to pay a fee prescribed by these regulations in order to obtain a particular service. The dollar amount of the fee is not, however, substantial enough to have a significant economic impact on any entity subject to the fee. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed regulations and how they may be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for Thursday, February 13, 2003, at 10 a.m. in room 4718, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit electronic or written comments and an outline of the comments to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by Thursday, January 23, 2003. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is G. William Beard, Office of Associate Chief Counsel (Procedure and Administration), Collection, Bankruptcy and Summonses Division.

List of Subjects in 26 CFR Part 300

Estate taxes, Excise taxes, Gift taxes, Income taxes, Reporting and recordkeeping requirements, User fees.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 300 is proposed to be amended as follows:

PART 300—USER FEES

1. The authority citation for part 300 continues to read as follows:

Authority: 31 U.S.C. 9701.

2. Section 300.0 is amended as follows:

1. Paragraph (b)(3) is added.
2. Paragraph (c) is revised.

The addition and revision read as follows:

§ 300.0 User fees, in general.

* * * * *

(b) * * *

(3) Processing an offer to compromise.

(c) *Effective Date.* This part 300 is applicable March 16, 1995, except that the user fee for processing offers to compromise is applicable thirty days after the date of publication in the **Federal Register** of the final regulations.

3. Section 300.3 is added to read as follows:

§ 300.3 Offer to compromise fee.

(a) *Applicability.* This section applies to the processing of offers to compromise tax liabilities pursuant to § 301.7122–1 of this chapter. Except as provided in this section, this fee applies to all offers to compromise accepted for processing.

(b) *Fee.* (1) The fee for processing an offer to compromise is $150.00, except that no fee will be charged if an offer is—

(i) Based on doubt as to liability as defined in § 301.7122–1(b)(1) of this chapter; or

(ii) Made by a low income taxpayer, that is, a taxpayer who falls at or below the dollar criteria established by the poverty guidelines updated annually in the **Federal Register** by the U.S. Department of Health and Human Services under authority of section 673(2) of the Omnibus Budget Reconciliation Act of 1981 (95 Stat. 357, 511) or such other measure that is adopted by the Secretary.

(2) The fee will, in the taxpayer's discretion, either be refunded to the

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taxpayer or applied against the amount of the offer if the offer is—

(i) Accepted to promote effective tax administration pursuant to § 301.7122–1(b)(3) of this chapter; or

(ii) Accepted based on doubt as to collectibility and a determination that collection of an amount greater than the amount offered would create economic hardship within the meaning of § 301.6343–1 of this chapter.

(3) Except as otherwise provided in this paragraph (b), the fee will not be refunded to the taxpayer if the offer is accepted, rejected, withdrawn, or returned as nonprocessable after acceptance for processing.

(c) *Person liable for the fee.* The person liable for the processing fee is the taxpayer whose tax liabilities are the subject of the offer.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 02–28249 Filed 11–5–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 948

[WV–092–FOR]

West Virginia Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; reopening of public comment period.

SUMMARY:

We are reopening the public comment period on an amendment to the West Virginia surface mining regulatory program (the West Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The program amendment consists of changes to the Code of West Virginia (W. Va. Code) as contained in Senate Bill 603. We are reopening the comment period to provide an opportunity to review and comment on additional amendments to the W. Va. Code and the Code of State Regulations (CSR) provided by the State under Senate Bill 698. The amendments concern the Office of Coalfield Community Development, and relate to the West Virginia program.

This document gives the times and locations that the West Virginia program and the proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments on this amendment until 4 p.m. (local time), December 6, 2002. If requested, we will hold a public hearing on the amendment on December 2, 2002. We will accept requests to speak at a hearing until 4:00 p.m. (local time), on November 21, 2002.

ADDRESSES: You should mail or hand deliver written comments and requests to speak at the hearing to Mr. Roger W. Calhoun at the address listed below.

You may review copies of the West Virginia program, this amendment, the previous amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Charleston Field Office.

Mr. Roger W. Calhoun, Director, Charleston Field Office, Office of Surface Mining Reclamation and Enforcement, 1027 Virginia Street, East, Charleston, West Virginia 25301, Telephone: (304) 347–7158. E-mail: *chfo@osmre.gov.*

West Virginia Department of Environmental Protection, 10 McJunkin Road, Nitro, West Virginia 25143, Telephone: (304) 759–0510. The proposed amendment will be posted at the West Virginia Department of Environmental Protection's Internet home page: *http://www.dep.state.wv.us.*

In addition, you may review copies of the proposed amendment during regular business hours at the following locations:

Office of Surface Mining Reclamation and Enforcement, Morgantown Area Office, 75 High Street, Room 229, P.O. Box 886, Morgantown, West Virginia 26507, Telephone: (304) 291–4004 (By appointment only).

Office of Surface Mining Reclamation and Enforcement, Beckley Area Office, 313 Harper Park Drive, Beckley, West Virginia 25801, Telephone: (304) 255–5265.

FOR FURTHER INFORMATION CONTACT: Mr. Roger W. Calhoun, Director, Charleston Field Office; Telephone: (304) 347–7158. Internet address: *chfo@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the West Virginia Program
II. Description of the Proposed Amendment
III. Public Comment Procedures
IV. Procedural Determinations

I. Background on the West Virginia Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act***; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act." *See* 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the West Virginia program on January 21, 1981. You can find background information on the West Virginia program, including the Secretary's findings, the disposition of comments, and conditions of approval of the West Virginia program in the January 21, 1981 **Federal Register** (46 FR 5915). You can also find later actions concerning West Virginia's program and program amendments at 30 CFR 948.10, 948.12, 948.13, 948.15, and 948.16.

II. Description of the Proposed Amendment

By letter dated May 21, 2001 (Administrative Record Number WV–1217), the West Virginia Department of Environmental Protection (WVDEP) sent us a proposed amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). The proposed amendment consists of changes to the W. Va. Code at chapters 22–3 (West Virginia Surface Coal Mining and Reclamation Act) and 5B–2A (Office of Coalfield Community Development) as contained in Senate Bill 603.

We announced the receipt and provided an opportunity to comment on the amendment in the June 20, 2001, **Federal Register** (66 FR 33032) (Administrative Record Number WV–1219).

By letter and electronic mail dated August 12, 2002, WVDEP sent us additional amendments that relate to its program as contained in Senate Bill 698 (Administrative Record Numbers WV–1325 and WV–1326). The amendment consists of changes to W. Va. Code 5B–2A and implementing regulations at CSR 145–8. Enrolled Senate Bill 698 was signed by the Governor on March 21, 2002.

The State's provisions at W. Va. Code 5B–2A and CSR 145–8 have not been previously approved by OSM. The proposed rules at CSR 145–8 implement

and help clarify the statutory provisions at W. Va. Code 5B–2A. There are many cross-references in these provisions to the State's surface mining program at W. Va. Code 22–3. In general, the State's provisions at W. Va. Code 5B–2A and CSR 145–8 appear to be outside the scope of the State's surface coal mining regulatory program, and, as such, may not require our approval before the State can implement them. However, due to the many cross-references to the State's surface mining program in these provisions, the proposed provisions may modify the approved program in some ways. Therefore, we are asking for public comment on whether or not the proposed provisions submitted on August 12, 2002, and the earlier revisions submitted on May 21, 2001, modify the approved West Virginia program in any way, and whether or not such modifications render the West Virginia program less stringent than SMCRA or less effective than the Federal regulations.

The new statutory amendments are summarized below.

1. W. Va. Code 5B–2A. Office of Coalfield Community Development

In general, State Senate Bill 698 deletes W. Va. Code section 5B–2A–7, which required the Office of Coalfield Community Development (Office) to develop coalfield community development statements, and deletes references to such impact statements in sections 5B–2A–5, 8, 9 and 12. W. Va. Code is also amended by adding a subsection (b), which authorizes the promulgation of emergency rules at CSR 145–8 to incorporate the revisions to W. Va. Code 5B–2A.

5B–2A–7. Coalfield Community Development Statement

Coalfield community development statement provisions are deleted in their entirety. This section required that the Office of Coalfield Community Development coordinate the development of a coalfield community development statement that, among other requirements, shall include an evaluation of the future of the community once mining operations are completed.

5B–2A–5. Powers and Duties

Paragraph 5B–2A–5(2), which authorized the office to establish a procedure for developing and implementing coalfield community development statements, is deleted.

5B–2A–8. Determining and Developing Needed Community Assets

Paragraph 5B–2A–8(a) is amended by deleting language that refers to the coalfield community development statement that was required by the deleted section 5B–2A–7. As amended, subsection 5B–2A–8(a) provides as follows:

The office shall determine the community assets that may be developed by the community, county or region to foster its viability when surface mining operations are completed.

Subsection 5B–2A–8(c) is amended by deleting a phrase that includes reference to the coalfield community development statement that was required by deleted section 5B–2A–7. As amended, subsection 5B–2A–8(c) provides that "The operator shall be required to prepare and submit to the office the information set forth in this subsection as follows."

Paragraph 5B–2A–8(d)(4), which referred to the determinations made during the development of the coalfield community development statement that was required by deleted section 5B–2A–7, is deleted.

5B–2A–9. Securing Developable Land and Infrastructure

Subsection 5B–2A–9(a) is amended by deleting language that referred to the community development statement that was required by deleted section 5B–2A–7. As amended, subsection 5B–2A–9(a) provides as follows:

(a) The office shall determine the land and infrastructure needs in the general area of the surface mining operations.

Subsection 5B–2A–9(c) is amended by deleting a reference to the coalfield community development statement that was required by deleted section 5B–2A–7. As amended, 5B–2A–9(c) provides as follows:

(c) To assist the office the operator shall be required to prepare and submit to the office the information set forth in this subsection as follows:

Subsection 5B–2A–9(f) is amended by deleting a reference to the coalfield community development statement that was required by deleted section 5B–2A–7. As amended, 5B–2A–9(f) provides as follows:

The office may secure developable land and infrastructure for a development office or county through the preparation of a master land use plan for inclusion into a reclamation plan prepared pursuant to the provisions of section ten, article three, chapter twenty-two of this code. No provision of this section may be construed to modify requirements of article three of said chapter. Participation in a master land use plan is voluntary.

5B–2A–12. Rulemaking

Paragraph 5B–2A–12(a)(2), which referred to the coalfield community development statement required by deleted section 5B–2A–7, is deleted.

Subsection 5B–2A–12(b) is new. This provision provides as follows:

The office is authorized to promulgate emergency rules, prior to the first day of July, two thousand two, to incorporate the revisions to this article enacted during the two thousand two regular legislative session.

The new regulatory revisions are summarized below.

2. CSR 145–8. Community Development Assessment and Real Property Valuation Procedures for Office of Coalfield Community Development

145–8–1. General

145–8–1.1. concerning Scope, is amended by deleting reference to coalfield community development statements and adding language concerning master land use plans. As amended, 145–8–1.1. provides as follows:

1.1. Scope. This rule establishes the procedure for the creation of community impact statements by operators, the process to develop coalfield community development procedures which include asset development goals and infrastructure needs, the criteria for the development of a master land use plan by local, county regional development or redevelopment authorities, and the procedure for establishing the value of property to assist property owners who desire to voluntarily sell their property to an operator.

145–8–2. Definitions

145–8–2.1. definition of "Director" means the director of the office. This definition formerly defined "Chief."

145–8–2.3. definition of "Community Development Statement" is amended by deleting the term "statement" from the title of this definition and replacing that word with the word "Procedures." The definition is amended by deleting language related to the "statement" and adding language to read as follows:

2.3. Community Development Procedures—shall mean that the Office of Coalfield Community Development will incorporate and transfer community impact statement data with county governments and or economic development authorities as outlined by Section 5 of this rule.

145–8–2.5. definition of "Division." This definition is amended by deleting the word "division" in two places and replacing those words with the term "department."

145–8–2.6. definition of "Development Authority." This definition is new and provides that

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"Development Authority shall mean the appropriate state, local, county or regional development or redevelopment authority."

145–8–2.8. definition of "Infrastructure Component Standards." This definition is new and provides as follows:

2.8. Infrastructure Component Standards—shall mean those standards developed by a development authority which are to be applied to the infrastructure needs as determined by the development authority and as included in a master land use plan to ensure proper implementation of the plan. The standards shall be specific to each plan.

145–8–2.11. definition of "Master Land Use Plan." This definition is new and provides as follows:

2.11. Master Land Use Plan—shall mean a plan which addresses current and prospective uses for land which in whole or in part is or has been covered by a surface mining permit and which contains all the information required by section 6 of this rule.

145–8–2.12. definition of "Permit." This definition has been amended by adding a reference to W. Va. Code 22–3–8. As amended, "permit" means a permit to conduct surface mining operations issued pursuant to W. Va. Code 22–3–8.

145–8–2.13. definition of "Plan." This new definition provides that "plan" means "a master land use plan as defined in subsection 2.11 of this rule."

145–8–2.14. definition of "Reclamation Plan." This new definition provides that "reclamation plan" means "the reclamation plan established in W. Va. Code 22–3–10."

145–8–4. Community Impact Statement

145–8–4.2. has been amended by clarifying existing language and adding new language concerning when a community impact statement shall be filed. As amended, this provision is as follows:

4.2. For permits granted after June 11, 1999, a community impact statement shall also be filed by the operator within 90 days after the permit application is deemed by the department to be administratively complete, and within 90 days after the first five year incremental renewal date for all permits issued prior to June 11, 1999.

145–8–5. Coalfield Community Development Procedures

The title of this section is amended by deleting the word "Statement" and adding, in its place, the word "Procedures."

145–8–5.1. is amended by deleting a reference to a coalfield community development statement and adding language concerning a community impact statement. As amended, this provision is as follows:

The office shall coordinate and share information outlined in the community impact statement with the county development authority when an operator applies for any permit with the department.

145–8–5.1.a. is deleted and concerned the development of a coalfield community development statement when multiple permit applications are applied for in a county or contiguous area of an adjacent county.

145–8–5.1.b. is deleted and concerned dividing a coalfield community development statement into smaller areas if it was impracticable to make a countywide statement.

145–8–5.2. is amended by deleting language concerning a coalfield community development statement and adding language requiring an operator to provide notice of its intent to mine. As amended this provision is as follows:

5.2. Within 30 days after the community impact statement from the operator applying for the permit is filed with the office, the operator shall distribute notice that property is intended to be mined by the operator applying for the permit.

145–8–5.2.a. is deleted and concerned providing notice to owners of interest in the property intended to be mined.

145–8–5.3.a. is amended by deleting a reference to the coalfield community development statement and adding the phrase "of the proposed mining activity." As amended, this provision is as follows:

5.3. Within 30 days after the community impact statement from the operator applying for the permit is filed with the office, the operator shall notify individuals and business owners and operators in the affected communities of the proposed mining activity.

145–8–5.4. is amended by deleting reference to the Office of Coalfield Community Development and the coalfield community development statement. As amended, this provision is as follows:

5.4. A notice provided by the operator to affected persons and entities about coalfield community development shall contain the following information:

145–8–5.4.d. is amended by deleting language concerning preparing an initial community development statement or modifying an existing statement by the Office of Coalfield Community Development. As amended, the provision is as follows:

5.4.d. The notice shall inform its recipients that the office invites persons and entities in areas affected by the anticipated surface mining operations to submit written comments and other documentation to the chief [director] within 30 days after the date of the notice about how their communities are anticipated to be affected by the planned surface mining operations and the intended postmining land use; and

145–8–5.4.e. is amended by deleting language concerning a draft or modified community development statement and language concerning the issuance of the draft or modified community development statement. As amended, this provision is as follows:

5.4.e. The notice shall inform its recipients that the community impact statements for the planned surface mining operations were filed within 180 days from the date of the notice, and that persons and entities in the affected communities shall have 30 days after the date to submit written comments to the director.

145–8–5.5. is amended by deleting language concerning a public meeting concerning the draft or modified community development statement. In addition, language is added that requires the office to deliver public comments to the development authority and assist in incorporating the community impact statement into the land use master plan. As amended, this provision is as follows:

5.5. After the close of the public comment period, the office will deliver public comments to the development authority and assist in the incorporating of the community impact statement into the land use master plan.

145–8–5.6. is amended by deleting a requirement that the Office of Coalfield Community Development shall determine what shall be contained in the coalfield community development statement. Language is added that requires the office to coordinate and transfer information to development authorities in the affected county. As amended, the provision is as follows:

5.6. The office shall coordinate and transfer information, findings and recommendations to development authorities in the county affected.

145–8–5.6.c.4. is amended by deleting the word "statement" and adding in its place the word "procedures."

145–8–5.6.d. is amended by deleting the word "statement" and adding in its place the word "procedures." In addition, the word "determine" is deleted and replaced by the word "recommended." As amended this provision is as follows:

5.6.d. As part of the coalfield community development procedures, the office shall recommend the land and infrastructure needs in the county or counties in which the surface mining operations are being conducted, or any adjacent county.

145–8–5.7. is deleted, and required that the community development statement be completed within 180 days following the public meeting or issuance of a surface mining permit.

145–8–5.8. is renumbered as 5.7. and amended by deleting references to the community development statement.

145–8–5.9. is deleted and concerned the requirement that the office prepare an action report as part of the coalfield community development statement.

145.8.6. Master Land Use Plans

This section is new and provides as follows:

6.1. A master land use plan may be prepared by a development authority. If requested by a development authority, the office may assist in the preparation of a master land use plan.

6.2. A development authority must determine land and infrastructure needs within its jurisdiction as necessary in conjunction with its preparation of a master land use plan.

6.2.a. In making a determination of the land and infrastructure needs in its jurisdiction, the development authority shall evaluate at least the considerations set forth in subsection 5.6.e. of this rule. A development authority may satisfy this requirement by incorporating all or part of the determination of land and infrastructure needs of an area reflected in a community development statement [procedures] prepared in accordance with section 5 of this rule.

6.3. For any infrastructure needs identified by the development authority, consistent with the current and prospective uses described in the master land use plan, infrastructure component standards shall also be developed.

6.3.a. The infrastructure component standards developed by a development authority shall be approved by the appropriate county commission or commissions before such standards can be included in a master land use plan.

6.3.b. Before approving the infrastructure component standards, the county commission or commissions shall give notice to the public and provide a 30-day comment period.

6.4. Once a master land use plan has been prepared, the office shall review the plan. This review shall include an evaluation of the plan's impact on the development of economic and community assets and conformance with this rule.

6.5. A master land use plan shall be sufficiently complete to indicate its relationship to definite objectives of the development authority as to appropriate land uses and shall include at least the following:

6.5.a. The boundary of the area encompassed by the plan with a map showing the existing uses and conditions of the real property and any infrastructure components therein;

6.5.b. A land use plan showing the proposed uses of the area;

6.5.c. A statement of the proposed changes, if any, in zoning ordinances or maps, street and highway layouts, building codes and ordinances;

6.5.d. A site plan of the area;

6.5.e. A statement as to the kinds and number of additional public facilities or utilities which will be required to support the new land uses in the area after development;

6.5.f. A statement of the land and infrastructure needs as determined pursuant to subsection 6.2 of this rule which shall include a statement of infrastructure component standards; and

6.5.g. Any community impact statements and/or community development statements which may have been prepared and which e[a]ffect any property within the boundaries of the master land use plan.

6.6. An operator may include, in a surface mining permit application, a master land use plan which addresses postmining land uses in the reclamation plan developed pursuant to W. Va. Code 22–3–10. An operator may amend a reclamation plan approved but not implemented or a reclamation plan pending approval by including a master land use plan.

6.6.a. Any modifications in the postmining land use during mining must be made in accordance with 38 CFR 2–7.3.a. and 3.28.

6.7. The master land use plan must be approved by the department as part of the operator's reclamation plan before the master land use plan may be implemented.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the State program.

Written Comments

Send your written or electric comments to OSM at the address given above. Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. We will not consider or respond to your comments when developing the final rule if they are received after the close of the comment period (*see* **DATES**). We will make every attempt to log all comments into the administrative record, but comments delivered to an address other than the Charleston Field Office may not be logged in.

Electronic Comments

Please submit Internet comments as an ASCII or Word file avoiding the use of special characters and any form of encryption. Please also include "Attn: SPATS No. WV–092–FOR" and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Charleston Field Office at (304) 347–7158.

Availability of Comments

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public review in their entirety.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m. (local time), on December 6, 2002. If you are disabled and need special accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT.** We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES.**" We will make a written summary of each meeting a part of the administrative record.

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IV. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations "consistent with" regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13211—Regulations That Significantly Affect The Supply, Distribution, Or Use Of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 948

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 13, 2002.

Vann Weaver,

Acting Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 02–28202 Filed 11–5–02; 8:45 am]

BILLING CODE 4310–05–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IA 159–1159; FRL–7403–6]

Approval and Promulgation of Implementation Plans; State of Iowa

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the state of Iowa. This revision pertains to orders and permits issued by the state to control particulate matter (PM_{10}) emissions from Holnam, Inc., and Lehigh Portland Cement Company, at Mason City (Cerro Gordo County), Iowa.

In the final rules section of the **Federal Register**, EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no relevant adverse comments to this action. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this action. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed action. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment.

DATES: Comments on this proposed action must be received in writing by December 6, 2002.

ADDRESSES: Comments may be mailed to Royan Teter, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Royan Teter at (913) 551–7609.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule which is located in the rules section of the **Federal Register**.

Dated: October 23, 2002.

William W. Rice,

Acting Regional Administrator, Region 7.

[FR Doc. 02–27839 Filed 11–5–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL–7407–8]

RIN 2060–AK48

Protection of Stratospheric Ozone: Allocation of Essential Use Allowances for Calendar Year 2003

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: With this action, EPA is proposing to allocate essential-use allowances for import and production of class I stratospheric ozone depleting substances (ODSs) for calendar year 2003. Essential use allowances permit a person to obtain controlled ODSs as an exemption to the January 1, 1996 regulatory phase-out of production and import of these chemicals. EPA allocates essential-use allowances for exempted production or import of a specific quantity of class I ODS solely for the designated essential purpose. EPA is proposing to allocate essential-use allowances for production and import of ODSs for use in medical devices and the Space Shuttle and Titan Rockets.

DATES: Written comments on this proposed rule must be received on or before December 6, 2002, unles a public hearing is requested. Comments must then be received on or before 30 days following the public hearing. Any party requesting a public hearing must notify the contact listed below by 5 p.m. Eastern Standard Time on November 16, 2002. If a hearing is held, EPA will publish a document in the **Federal Register** announcing the hearing information.

ADDRESSES: Comments on this rulemaking should be submitted in duplicate to: Erin Birgfeld, Essential Use Program Manager, Global Programs Division, U.S. Environmental Protection Agency (6205J), 1200 Pennsylvania Avenue, NW., Washington, DC 20460. If you send comments using courier services or overnight express, please address comments to 501 3rd Street NW., Washington, DC 20001. Comments will be filed in EPA Air docket number A–93–39. Comments that contain confidential business information should be submitted in two versions, one clearly marked "Public", to be filed in the public docket, and the other clearly marked "Confidential" to be reviewed by authorized government personnel only. If the comments are not marked, EPA will assume they are public and contain no confidential information.

Materials relevant to this rulemaking are contained in Docket No. A–93–39. The Docket is located at 1301 Constitution Avenue, NW., Room B108; *Mail Code:* 6102T Washington, DC 20460. The materials may be inspected from 8 a.m. until 5:30 p.m. Monday through Friday. EPA may charge a reasonable fee for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Erin Birgfeld, U.S. Environmental Protection Agency, Global Programs Division, Office of Atmospheric Programs, 6205J, 1200 Pennsylvania Avenue, Washington, DC, 20460; (202) 564–9079; *birgfeld.erin@epa.gov.*

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F. Applicability of Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks
G. National Technology Transfer and Advancement Act
H. Executive Order 13132 (Federalism)
I. Executive Order 13211 (Energy Effects)

I. Background

The Montreal Protocol on Substances that Deplete the Ozone Layer (Protocol) is the international agreement to reduce and eventually eliminate production and consumption [1] of all stratospheric ozone depleting substances (ODSs). The elimination of production and consumption is accomplished through adherence to phase-out schedules for production and consumption of specific class I ODSs including chlorofluorocarbons (CFCs), halons, carbon tetrachloride, methyl chloroform, hydrochlorofluorocarbons, and methyl bromide. As of January 1996, production and import of class I ODSs [2] were phased out in all developed countries including the United States. However, the Protocol and the Clean Air Act (CAA or Act) provide exemptions which allow for the continued import and/or production of class I ODS for specific uses. Under the Montreal Protocol, exemptions are granted for uses that are determined by the Parties to be "essential." Decision IV/25, taken by the Parties in 1992, established criteria for determining

[1] "Consumption" is defined as the amount of a substance produced in the United States, plus the amount imported, minus the amount exported to Parties to the Montreal Protocol (see Section 601(6) of the Clean Air Act). Stockpiles of class I ODSs produced or imported prior to the 1996 phaseout can continue to be used for purposes not expressly banned at 40 CFR part 82.

[2] Class I ozone depleting substances are defined at 40 CFR Part 82, subpart A, appendix A.

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whether a specific use should be approved as essential, and set forth the international process for making determinations of essentiality. The criteria for an essential-use as set forth in paragraph 1 of Decision IV/25 are the following:

" (a) That a use of a controlled substance should qualify as "essential" only if:

(i) it is necessary for the health, safety or is critical for the functioning of society (encompassing cultural and intellectual aspects); and

(ii) there are no available technically and economically feasible alternatives or substitutes that are acceptable from the standpoint of environment and health;

(b) that production and consumption, if any, of a controlled substance for essential-uses should be permitted only if:

(i) all economically feasible steps have been taken to minimize the essential-use and any associated emission of the controlled substance; and

(ii) the controlled substance is not available in sufficient quantity and quality from existing stocks of banked or recycled controlled substances, also bearing in mind the developing countries' need for controlled substances."

The procedure set out by Decision IV/25 first calls for individual Parties to nominate essential-uses, and the amount of ODS needed for that essential-use on an annual basis. The Protocol's Technology and Economic Assessment Panel evaluates the nominated essential-uses and makes recommendations to the Protocol Parties. The Parties make the final decisions on whether to approve a Party's essential-use nomination at their annual meeting.

Once the U.S. nomination is approved by the Parties, EPA allocates essential-use exemptions to specific entities through notice-and-comment rulemaking in a manner consistent with the CAA. Under the CAA and the Montreal Protocol, EPA is authorized to allocate essential-use allowances in quantities below or equal to the amounts approved by the Parties. EPA cannot allocate essential-use allowances in amounts higher than is approved by the Parties.

II. Essential Use Allowances for Medical Devices.

A. How Were Essential-Use Allowances for Medical Devices Nominated and Approved by the Parties to the Montreal Protocol?

On November 1, 2000, EPA issued a **Federal Register** notice (65 FR 65311) requesting applications for essential-use allowances for the year 2003. The applications EPA received requested exemptions for the production and import of specific quantities of CFCs (CFC–11, CFC–12, and CFC–114) for use in metered dose inhalers (MDIs), and provided information in accordance with the criteria set forth in Decision IV/25 of the Protocol and the procedures outlined in the "1997 Handbook on Essential Use Nominations." Based on the information provided in these applications, and after consultation with the Food and Drug Administration (FDA), the U.S. forwarded a request for 3,270 metric tons of CFCs for use in metered dose inhalers to the Ozone Secretariat for consideration by the Technical and Economic Assessment Panel (TEAP) and the Aerosol Technical Options Committees (ATOC). The Parties approved the U.S. request for 3,270 metric tons of CFCs for essential-uses in Decision XIII/8 taken at the 2001 Meeting of the Parties.

B. How Does the Clean Air Act Authorize Essential-Use Allowances?

The CAA provides exemptions under section 604(d) to the phase-out of class I ODSs. With today's action, EPA is proposing to implement the exemption at 604(d)(2) of the Act which states that "notwithstanding the phase-out, EPA shall, to the extent consistent with the Montreal Protocol, authorize production of limited quantities of class I ODSs for use in medical devices, if FDA, in consultation with EPA, determines that such production is necessary for use in medical devices". The term "medical device" is defined in section 601(8) of the Clean Air Act as follows:

"[A]ny device (as defined in the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321)), diagnostic product, drug (as defined in the Federal Food, Drug, and Cosmetic Act), and drug delivery system

(A) If such device, product, drug, or drug delivery system utilizes a class I or class II substance for which no safe and effective alternative has been developed, and where necessary, approved by the Commissioner [of FDA]; and

(B) if such device, product, drug, or drug delivery system, has, after notice and opportunity for public comment, been approved and determined to be essential by the Commissioner [of FDA] in consultation with the Administrator [of EPA]."

With today's action, EPA is proposing to allocate essential-use allowances for use in MDIs that have previously been determined to fit the definition of medical device above. For a full discussion of the definition of "medical device", and how it has been interpreted and applied in today's rulemaking please, refer to the interim final rule for the year 2000 allocation of essential-use allowances (65 FR 716).

C. What Was the Allocation Process for Essential-Use Allowances for Medical Devices?

The following is a step-by-step list of actions EPA and FDA have taken thus far to implement the exemption for medical devices found at section 604(d)(2) of the Act for the 2003 control period.

1. On March 4, 2002, EPA sent letters to MDI manufacturers requesting the following information under section 114 of the Act ("114 letters"):

a. The MDI product where CFCs will be used;

b. The number of units of each MDI product produced from 1/1/02 to 12/31/01;

c. The number of units anticipated to be produced in 2003;

d. The gross target fill weight per unit (grams);

e. Total amount of CFCs to be contained in the MDI product for 2003;

f. The additional amount of CFCs necessary for production;

g. The total CFC request per MDI product for 2003.

The letters requesting information that EPA sent each company are available for review in the Air Docket No. A–93–39. The company's responses, however, are considered confidential business information and are not publicly available.

2. On May 24, 2002, EPA sent FDA the information MDI manufacturers provided in response to the 114 letters along with a letter requesting that FDA make a determination regarding the amount of CFCs necessary for MDIs for calendar year 2003.

3. On July 3, 2002, FDA sent a letter to EPA stating the amount of CFCs necessary for each MDI company in 2003. This letter is available in the public docket. In accordance with the determination made by FDA, today's action proposes to allocate essential-use allowances for a total of 3,270 metric tons of CFCs for use in MDIs for the year 2003 calendar year.

D. How Were the Decisions on the Amounts of Essential-Use Allowances for Each Company Made?

In their July 3, 2003 determination letter, FDA describes how the amount of CFCs necessary for use in MDIs was determined. They state the following: "Under our existing regulations and our proposed rule [3], we have interpreted the CAA definition of medical device to refer to any product that contains an active moiety [4] that appears on the essential-use list found at 21 CFR 2.125. We further understand that under the Montreal Protocol, and therefore under the CAA, only products for the treatment of asthma or chronic obstructive pulmonary disease (COPD) are eligible for essential-use nominations and allocations. Under this definition, the sponsor of any drug product produced under an approved new drug application, abbreviated new drug application, or valid investigational new drug application, approved for the treatment of asthma or COPD, and containing an active moiety on our essential use list may obtain CFCs. We also understand that under Decision XII/2 of the 12th Meeting of the Parties to the Montreal Protocol, any CFC metered-dose inhaler product (MDI) for the treatment of asthma and/or COPD approved after December 31, 2000, in a non-Article 5(1) Party is not an essential-use, unless the product meets the criteria set out in paragraph 1(a) of Decision IV/25.

"With these definitions in mind, we [FDA] have examined the information you [EPA] obtained from individual sponsors regarding their historical and intended use of CFCs in specific products. We compared this information to the number of CFC MDIS necessary to ensure the public health of the United States and the quantities of CFCs needed to ensure the manufacture and continuous availability of those necessary MDIs. In listing the amounts we believe to be necessary for use in medical devices, we referred to this information, eliminated any double-counting or redundancy we found, considered changes in the prevalence of asthma and COPD, and eliminated allocations for uses not considered essential by the Parties to the Montreal Protocol, even if those uses are currently listed in our regulations at 21 CFR 2.125(e)."

E. Will the Amounts Actually Allocated in the Final Rule Be the Same as the Amounts Listed in This Proposed Rule?

The amounts listed in this proposal are subject to additional review by EPA and FDA if new information demonstrates that the proposed allocations are either too high or too low. Commentors requesting increases or decreases of essential-use allowances should provide detailed information supporting their claim for additional or fewer CFCs. Any company that no longer needs the full amount listed in this proposal should notify EPA of the actual amount needed.

III. Exemption for Methyl Chloroform for Use in the Space Shuttle and Titan Rockets

EPA is proposing to allocate methyl chloroform (MCF) for use in solid rocket motor assemblies. The CAA exemption for continued production and import of methyl chloroform is found at 604(d)(1) and reads as follows:

(1) Essential Uses of Methyl Chloroform.—Notwithstanding the termination of production required by subsection (b), during the period beginning on January 1, 2002, and ending on January 1, 2005, the Administrator [of EPA], after notice and opportunity for public comment, may, to the extent such action is consistent with the Montreal Protocol, authorize the production of limited quantities of methyl chloroform solely for use in essential applications (such as nondestructive testing for metal fatigue and corrosion of existing airplane engines and airplane parts susceptible to metal fatigue) for which no safe and effective substitute is available. Notwithstanding this paragraph, the authority to produce methyl chloroform for use in medical devices shall be provided in accordance with paragraph (2).

Decision X/6 states that "* * * the remaining quantity of methyl chloroform authorized for the United States at previous meetings of the Parties [will] be made available for use in manufacturing solid rocket motors until such time as the 1999–2001 quantity of 176.4 tons (17.6 ODP-weighted tons) allowance is depleted, or until such time as safe alternatives are implemented for remaining essential-uses." According to the EPA tracking system, the total amount of MCF produced or imported by essential-use allowance holders from 1999 through 2001 was 28.3 metric tons, well below the limit of 176.4 metric tons. Based on the need for MCF for the space shuttle and Titan Rocket, EPA is proposing to allocate 13.2 metric tons of MCF for 2003.

Essential-use allowance holders should be aware that the exemption for MCF under section 604(d)(1) of the CAA expires in the year 2005. Thus, EPA will not have statutory authority to allocate essential-use allowances for MCF after that date.

IV. Allocation of Essential-Use Allowances for Medical Devices and the Space Shuttle and Titan Rockets for Calendar Year 2003

EPA is proposing to allocate essential-use allowances for calendar year 2003 to entities listed in Table I for exempted production or import of the specific quantity of class I controlled substances solely for the specified essential-use.

TABLE I.—ESSENTIAL USE ALLOCATION FOR CALENDAR YEAR 2003

Company	Chemical	Quantity (metric tons)
(i) Metered Dose Inhalers (for oral inhalation) for Treatment of Asthma and Chronic Obstructive Pulmonary Disease		
Armstrong Pharmaceuticals	CFC–11 or CFC–12 or CFC–114	574
Aventis	CFC–11 or CFC–12 or CFC–114	48
Boehringer Ingelheim Pharmaceuticals	CFC–11 or CFC–12 or CFC–114	907
GlaxoSmithKline	CFC–11 or CFC–12 or CFC–114	535
Schering-Plough Corporation	CFC–11 or CFC–12 or CFC–114	937

[3] Use of Ozone-Depleting Substances; Essential Use Determinations, September 1, 1999. (64 FR 47719). The final rule was published on July 24, 2002, and will take effect January 20, 2003 (67 FR 48370).

[4] An FDA regulation at 21 CFR 314.108(a) defines active moiety as " the molecule or ion excluding those appended portions of the molecule that cause the drug to be an ester, salt (including a salt with hydrogen or coordination bonds), or other noncovalent derivative (such as a complex, a chelate or clathrate) of the molecule, responsible for the physiological or pharmacological action of the drug substance."

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TABLE I.—ESSENTIAL USE ALLOCATION FOR CALENDAR YEAR 2003—Continued

Company	Chemical	Quantity (metric tons)
Sidmak Laboratories Inc.	CFC–11 or CFC–12 or CFC–114	136
3M Pharmaceuticals	CFC–11 or CFC–12 or CFC–114	133
(ii) Cleaning, Bonding and Surface Activation Applications for the Space Shuttle Rockets and Titan Rockets		
National Aeronautics and Space Administration (NASA)/Thiokol Rocket	Methyl Chloroform	9.8
United States Air Force/Titan Rocket	Methyl Chloroform	3.4

VI. Administrative Requirements

A. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector, since it merely provides exemptions the 1996 phaseout of class I ODSs. Similarly, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. Again, this is because this rule merely allocates essential use exemptions to entities as an exemption to the ban on production and import of class I ODSs.

B. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether this regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

C. Paperwork Reduction Act (PRA)

This action does not add any information collection requirements or increase burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The Office of Management and Budget (OMB) previously approved the information collection requirements contained in the final rule promulgated on May 10, 1995, and assigned OMB control number 2060–0170 (EPA ICR No. 1432.21).

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 1.

D. Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments)

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

This proposed rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Today's rule does not affect the communities of Indian tribal governments since the only entities directly affected by this rule are the companies that requested essential-use allowances. Thus, Executive Order 13175 does not apply to this rule. In the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and tribal governments, EPA specifically solicits additional comment on this proposed rule from tribal officials.

E. Regulatory Flexibility Act (RFA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et. seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impact of today's rule on small entities, small entities is defined as:(1) Pharmaceutical preparations manufacturing businesses (NAICS code 325412) that have less than 750 employees;(2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This is because this rule provides an otherwise unavailable benefit to those companies that are receiving essential use allowances.

Although this proposed rule will not have significant economic impact on a substantial number of small entities, we continue to be interested in the potential impact of the proposed rule on small entities and welcome comments related to these issues.

F. Applicability of Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

Executive Order 13045: "Protection of Children from Environmental Health risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This proposed rule is not subject to Executive Order 13045 because it implements the phase-out schedule and exemptions established by Congress in Title VI of the Clean Air Act.

G. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA), Pub. L. No. 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This proposed rule does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

H. Executive Order 13132 (Federalism)

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, Executive Order 13132 does not apply to this rule. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

I. Executive Order 13211 (Energy Effects)

This rule is not subject to Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Chemicals, Chlorofluorocarbons, Exports, Imports, Methyl chloroform, Ozone layer.

Dated: October 30, 2002.

Christine Todd Whitman,

Administrator.

40 CFR Part 82 is proposed to be amended as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

1. The authority citation for part 82 continues to read as follows:

Authority: 42 U.S.C. 7414, 7601,7671–7671q.

Subpart A—Production and Consumption Controls

2. Section 82.4 is amended by revising the table in paragraph (t)(2) to read as follows:

§ 82.4 Prohibitions.

* * * * *

(t) * * *

(2) * * *

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TABLE I.—ESSENTIAL USE ALLOCATION FOR CALENDAR YEAR 2003

Company	Chemical	Quantity (metric tons)
(i) Metered Dose Inhalers (for oral inhalation) for Treatment of Asthma and Chronic Obstructive Pulmonary Disease		
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Aventis	CFC–11 or CFC–12 or CFC–114	48
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GlaxoSmithKline	CFC–11 or CFC–12 or CFC–114	535
Schering-Plough Corporation	CFC–11 or CFC–12 or CFC–114	937
Sidmak Laboratories Inc.	CFC–11 or CFC–12 or CFC–114	136
3M Pharmaceuticals	CFC–11 or CFC–12 or CFC–114	133
(ii) Cleaning, Bonding and Surface Activation Applications for the Space Shuttle Rockets and Titan Rockets		
National Aeronautics and Space Administration (NASA)/Thiokol Rocket	Methyl Chloroform	9.8
United States Air Force/Titan Rocket	Methyl Chloroform	3.4

* * * * *

[FR Doc. 02–28212 Filed 11–5–02; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AI11

Endangered and Threatened Wildlife and Plants; Listing the Beluga Sturgeon (*Huso huso*) as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of public hearing and extension of comment period.

SUMMARY: The Fish and Wildlife Service (Service) gives notice that a public hearing will be held on the proposal to list the beluga sturgeon (*Huso huso*) under the Endangered Species Act of 1973. The proposal was published on July 31, 2002 (67 FR 49657), in response to a petition received from the Natural Resources Defense Council, the Wildlife Conservation Society, and SeaWeb. The hearing will allow all interested parties to submit additional comments regarding the proposal to list beluga sturgeon under the Endangered Species Act.

DATES: The comment period on the proposal is extended through December 28, 2002. The public hearing will be held from 1 to 4 p.m. on Thursday, December 5, 2002, in Arlington, Virginia.

ADDRESSES: The public hearing will be held in the first floor conference room of the Marymount University, Ballston Campus, 1000 North Glebe Road, Arlington, Virginia, on December 5, 2002. Written comments and materials should be sent to the Chief, Division of Scientific Authority, U.S. Fish and Wildlife Service, Room 750, 4401 N. Fairfax Drive, Arlington, Virginia 22203, or by fax, 703–358–2276, or by e-mail, *ScientificAuthority@fws.gov*. Comments and materials received will be available for public inspection, by appointment, from 8 a.m. to 4 p.m. at the above address.

FOR FURTHER INFORMATION CONTACT: Marie T. Maltese at the above address (telephone 703/358–1708).

SUPPLEMENTARY INFORMATION:

Background

Section 4 (b)(5)(E) of the Endangered Species Act (Act) requires that a public hearing be held on the proposed regulation if any person files a request for such a hearing within 45 days after the date of publication of general notice in the **Federal Register**. Public hearing requests were received during the allotted time period from Mark Berrigan, Chairman, Sturgeon Production Working Group, Florida Department of Agriculture and Consumer Services; Robert Ctvrtlik, Ciram Corporation; Mats Engstrom, President, Tsar Nicoulai Caviar, Inc.; and R. Sherman Wilhelm, Director, Division of Aquaculture, Florida Department of Agriculture and Consumer Services. Anyone expecting to make an oral presentation at these hearings is encouraged to provide a written copy of their statement to the hearing officer prior to the start of the hearing. In the event there is a large attendance, the time allotted for oral statements may have to be limited. Oral and written statements receive equal consideration. There are no limits to the length of written comments presented at this hearing or mailed to the Service. In order to accommodate the presently scheduled public hearing, the Service extends the public comment period. Written comments may now be submitted through December 28, 2002, to the office in the **ADDRESSES** section.

Author

The primary author of this notice is Marie T. Maltese (See **ADDRESSES** section).

Authority: The authority for this action is the Endangered Species Act (16 U.S.C. 1531–1544).

Dated: October 31, 2002.

Steve Williams,

Director, Fish and Wildlife Service.

[FR Doc. 02–28334 Filed 11–5–02; 8:45 am]
BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 67, No. 215
Wednesday, November 6, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Cooperative State Research, Education, and Extension Service

Request for Applications (RFA): Outreach and Assistance for Socially Disadvantaged Farmers and Ranchers

AGENCY: Cooperative State Research Education, and Extension Service, USDA.

ACTION: Notice of request for applications and request for input.

SUMMARY: The Cooperative State Research, Education, and Extension Service (CSREES) announces the availability of grant funds and requests applications for the Outreach and Assistance for Socially Disadvantaged Farmers and Ranchers Competitive Grants Program (OASDFR). This program provides outreach and technical assistance to encourage and assist socially disadvantaged farmers and ranchers to own and operate farms and ranches and to participate in agricultural programs. Appropriations for this program from fiscal years (FYs) 2002 and 2003 will be combined to support projects submitted in response to this Request for Applications (RFA). The amount available for FY 2002 is approximately $3,243,000. The FY 2003 appropriations is not known at the time this notice is being published but is currently anticipated between 3 and 8 million dollars. Grants will be made for proposals found to be meritorious by a peer review panel to the extent that funds are available. However, there is no commitment by USDA to fund any particular proposal or to make a specific number of awards.

This notice identifies the objectives for OASDFR projects, the eligibility criteria for projects and applicants, and the application forms and associated instructions needed to apply for an OASDFR grant. CSREES additionally requests stakeholder input from any interested party for use in the development of the next RFA for this program.

DATES: Applications must be received by close of business (COB) on January 31, 2003 (5 p.m. Eastern Time). Applications received after this deadline will not be considered for funding. Requests for Determination must be received by COB November 22, 2002. Comments regarding this RFA are requested within six months from the issuance of this notice. Comments received after that date will be considered to the extent practicable.

ADDRESSES: The address for hand-delivered applications, or applications submitted using an express mail or overnight courier service is: Outreach and Assistance for Socially Disadvantaged Farmers and Ranchers Competitive Grants Program; c/o Proposal Services Unit; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; Room 1420, Waterfront Centre; 800 9th Street, SW., Washington, DC 20024; *telephone:* (202) 401–5048. Requests for Determination should be delivered or e-mailed to the program contact identified in Part I.D.

Written stakeholder comments should be mailed to: Policy and Program Liaison Staff; Office of Extramural Programs; USDA–CSREES; STOP 2299; 1400 Independence Avenue, SW., Washington, DC 20250–2299; or via e-mail to: *RFP–OEP@reeusda.gov*. (This e-mail address is intended only for receiving comments regarding this RFA and not requesting information or forms.) In your comments, please state that you are responding to the Outreach and Assistance for Socially Disadvantaged Farmers and Ranchers Competitive Grants Program RFA.

FOR FURTHER INFORMATION CONTACT: Dr. Elizabeth Tuckermanty, Program Director, Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; STOP 2241, 1400 Independence Avenue, SW., Washington, DC 20250–2242; *telephone:* (202) 205–0241; fax: (202) 401–6488; *e-mail: etuckermanty@reeusda.gov*.

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Stakeholder Input

CSREES is requesting comments regarding this RFA from any interested party. These comments will be considered in the development of the next RFA for the program. Such comments will be used to meet the requirements of section 103(c)(2) of the Agricultural Research, Extension, and Education Reform Act of 1998 (7 U.S.C. 7613(c)(2)). This section requires the Secretary to solicit and consider input on a current RFA from persons who conduct or use agricultural research, education and extension for use in formulating future RFA's for competitive programs. Comments should be submitted as provided for in the **ADDRESSES** and **DATES** portions of this Notice.

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Catalog of Federal Domestic Assistance

This program is listed in the Catalog of Federal Domestic Assistance under 10.443, Outreach and Assistance for Socially Disadvantaged Farmers and Ranchers Program.

Part I—General Information

A. Legislative Authority and Background

Section 2501(a) of the Food, Agriculture, Conservation, and Trade Act of 1990, Public Law 101–624, November 28, 1990, (7 U.S.C. 2279(a)) authorizes the Secretary to make grants to eligible institutions and organizations so that they may provide outreach and technical assistance to encourage and assist socially disadvantaged farmers and ranchers to own and operate farms and ranches and to participate equitably in the full range of agricultural programs offered by the Department. This assistance shall enhance coordination of the outreach, technical assistance, and education efforts authorized under various agriculture programs and include information on and assistance with commodity, conservation, credit, rural, and business development programs, application and bidding procedures, farm and risk management, marketing and other activities essential to participation in agricultural and other programs of the Department.

The OASDFR brings the existing knowledge base to bear on farm and ranch management issues faced by socially disadvantaged farmers and ranchers throughout the Nation.

B. Purpose, Priorities, and Fund Availability

1. Purpose and Priorities

The primary purpose of the OASDFR is to deliver outreach and technical assistance, including educational programs, to enhance the potential of socially disadvantaged farmers and ranchers to successfully acquire, own, operate, and retain farms and ranches. The OASDFR will support a wide range of outreach and assistance activities in farm management, financial management, marketing, application and bidding procedures, and other areas.

Proposals need to identify the socially disadvantaged group(s) that is being targeted for assistance. (See Part VI.G., definition nos. 33 and 34.) Applicants must provide information to document why a targeted group(s) is appropriate for assistance under this program. If you are targeting a socially disadvantaged group not specified in the above definition(s), you must provide in-depth documentation justifying why this group(s) is socially disadvantaged. This document, entitled a Request for Determination, requests the Secretary to determine whether the targeted group qualifies under the Program. A determination by the Secretary or designated individual will be made and the applicant will be notified shortly thereafter. (See Part I.D., Request for Determination).

Proposed projects might include one or more of the following: The use of existing, and the formation of new, outreach and assistance networks focused on increasing participation in various USDA and other programs by socially disadvantaged agricultural producers; further development or modification of farm and ranch management (including marketing) and financial management curricula and materials designed to enhance the potential for farm and ranch ownership by socially disadvantaged farmers and ranchers; the development of innovative delivery systems that improve the effectiveness of these programs; and the development or improvement in the means by which assistance is provided to the targeted audiences.

Proposals need to incorporate a project evaluation component that will permit a qualitative and quantitative assessment of expected project impacts. How will success of the proposed project be measured? Such assessments need to relate to increases in participation rates in USDA programs and in increasing the ownership of farming and ranching operations by socially disadvantaged farmers and ranchers.

Priority will be given to projects that identify and document the outreach and assistance needs of socially disadvantaged farmers and ranchers as they exist at regional, State and local levels, and that propose effective educational and assistance programs that address those needs. It is incumbent upon the applicant(s) to adequately define and justify the needs of the disadvantaged group(s) the project is targeting. Proposed projects should, as appropriate, address needs as determined by: Producer audiences; commodity mixes in the area(s) of interest; types of outreach and assistance needs associated with available and appropriate USDA and other agricultural programs; production, marketing, financial, legal and human resource conditions in the area(s) being addressed; and/or other factors that hold the greatest potential for assisting these producers in gaining and maintaining ownership of their farms and ranches or that enhance the opportunity for ownership.

The OASDFR will also fund projects that provide OASDFR assistance in applying for and receiving aid under USDA programs administered by various agencies within the Department of Agriculture. These include but are not limited to loan programs, guaranteed loan programs, allocations of crop base in each program crop, and various conservation programs. Pertinent USDA agricultural programs include but are not limited to the following, identified by the Federal Domestic Assistance title and number: Emergency Conservation Program (10.054); Production and Flexibility Payments for Contract Commodities (10.055); Forestry Incentives Program (10.064); Conservation Reserve Program (10.069); Emergency Loans (10.404); Farm Ownership Loans (10.407); Great Plains Conservation (10.900); and Soil Survey (10.903). There may be other Federal and State agricultural programs that also could assist members of socially disadvantaged groups. Applicants should provide a brief, relevant synopsis on the program(s) they are incorporating in their proposed project.

2. Funds Availability

Appropriations for this program from fiscal years (FYs) 2002 and 2003 will be combined to support projects submitted in response to this Request for Applications. The amount available for FY 2002 is approximately $3,243,000. The FY 2003 appropriation is not known at the time this notice is being published but is currently anticipated between 3 and 8 million dollars. Grants will be made for proposals found to be meritorious by a peer review panel to the extent that funds are available. However, there is no commitment by USDA to fund any particular proposal or to make a specific number of awards.

Normally, awards will not exceed $100,000 per year for three years ($300,000 total) for Standard Projects (see Part II.A.). Any proposed project that exceeds these parameters will need to fully justify the increases. Conference/workshop awards will not normally exceed $10,000 and are limited to a one-year duration. However, conference/workshops that are regional or national in scope may receive larger awards, but normally will not exceed $25,000.

C. Eligibility

1. Applications may be submitted by:

(a) *Any community-based organization, network, or coalition of community-based organizations that:*

(i) has demonstrated experience in providing agricultural education or other agriculturally related services to socially disadvantaged farmers and ranchers;

(ii) as provided to the Secretary documentary evidence of work with socially disadvantaged farmers and ranchers during the two-year period preceding the submission of an application for assistance under this program (documentary evidence shall include a narrative providing specific information regarding: the scope of past projects, including the number of socially disadvantaged farmers and ranchers served or in the area served by the organization; activities conducted; community involvement; and copies of prior agreements, press releases, news articles, and other contemporaneous documents supporting the narrative); and

(iii) does not engage in activities prohibited under Section 501(c)(3) of the Internal Revenue Code of 1986.

(b) An 1890 institution or 1994 institution (as defined in section 2 of the Agricultural Research, Extension, and Education Reform Act of 1998 (7 U.S.C. 7601)), including West Virginia State College.

(c) An Indian Tribal Community College or an Alaska Native Cooperative College.

(d) An Hispanic-serving institution (as defined in section 1404 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3103)).

(e) Any other institution of higher education (as defined in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001)) that has demonstrated experience in providing agriculture education or other agriculturally related services to socially disadvantaged farmers and ranchers in a region.

(f) An Indian tribe (as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b)) or a national tribal organization that has demonstrated experience in providing agriculture education or other agriculturally related services to socially disadvantaged farmers and ranchers in a region.

(g) An organization or institution that received funding under this program before January 1, 1996, but only with respect to projects that the Secretary considers are similar to projects previously carried out by the organization or institution under this program.

Award recipients may subcontract to organizations not eligible to apply provided such organizations are necessary for the conduct of the project; however, the subcontracted amount may not exceed one-third of the total grant award.

D. Request for Determination

If an applicant proposes to fund a program targeted to a socially disadvantaged group(s) not specifically identified in the Definitions section of this RFA, the applicant must submit documentation supporting their request to CSREES by November 22, 2002. The Secretary or designated individual will determine whether the group or groups identified are eligible under this Program. The Request for Determination must be submitted as a separate letter (or e-mail to the program contact identified at the beginning of this RFA). The legend at the top of the letter must read "REQUEST FOR DETERMINATION." In addition the following information must be provided in the order specified below:

(a) Description of Racial or Ethnic Group Submitted for Determination; and

(b) Data or Studies Supporting Designation of Racial, Ethnic or Socially Disadvantaged Group.

Each applicant in this category will be notified as to the outcome of the determination. If the determination is positive, the applicant will be invited to submit an application as outlined in this RFA by January 31, 2003.

E. Indirect Costs

Pursuant to section 1462 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3310), indirect costs for this program are limited to 19 percent of the total Federal funds provided under each award. Therefore, the recovery of indirect costs under this program may not exceed the lesser of the institution's official negotiated indirect cost rate or the equivalent of 19 percent of total Federal funds awarded. Another method of calculating the maximum allowable is 23.456 percent of the total direct costs. (This limitation also applies to the recovery of indirect costs by any subawardee or subcontractor, and should be reflected in the subrecipient budget.) If no rate has been negotiated, a reasonable dollar amount (equivalent to or less than 19 percent of total Federal funds requested) in lieu of indirect costs may be requested, subject to approval by USDA. This same indirect cost limitation applies to subcontracts.

F. Matching Requirements

There is no requirement for grant recipients to provide matching funds under this program.

G. Funding Restrictions

Program funds may not be used for the renovation or refurbishment of research, education or extension space; the purchase or installation of fixed equipment in such space; or the planning, repair, rehabilitation, acquisition, or construction of buildings or facilities.

H. Type of Application

All applications submitted to this Request for Applications (RFA) will be new requests to CSREES. Previous recipients of funds under this program may apply to this RFA. All applications must contain information requested under the "Content of Applications" section of this RFA (see Part III.B.), be received by the deadline date shown in Part III.C., and will be reviewed competitively using the selection process and evaluation criteria described in Part IV., Review Process.

Part II—Program Description

A. Project Types

1. Standard Projects

Standard Projects are those that provide assistance and outreach to socially disadvantaged farmers and ranchers with the ultimate aim of increasing and retaining ownership. Standard projects that incorporate multiple collaborators, particularly community-based collaborators, are encouraged. It is incumbent upon the applicants to document the potential impact of their project upon socially disadvantaged farmers and ranchers. Information as to the degree to which partnerships and collaborations enhance the services to be delivered, and the areas and numbers of the targeted audience that are expected to be served in terms of assistance should be provided. Outreach designed to inform the targeted audience of the assistance available through the OASDFR, and the expected outcomes in terms of increased ownership of farms and ranches are also important considerations that should be explicitly discussed. While the development of a needs assessment is acceptable, applicants should understand that proposals that utilize an existing needs assessment to justify their proposed project are often more competitive than those that have as one of the project objectives the

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development of a needs assessment. In addition, proposals which document how certain methodologies or results are transferable to other areas also strengthens a proposal.

Standard Project applicants are encouraged to coordinate with any existing regional projects and complement pertinent and relevant cross-regional activities. Proposals that build on existing information networks and offer innovative or expanded activities are encouraged. Applicants are encouraged to closely examine the evaluation criteria noted in Part IV.B. as they prepare their proposals.

In addition to the above, Standard Project proposals should address or target one or more of the specific items below:

(a) Meet a specialized OASDFR need that is local, State-specific, regional or national in scope, (*e.g.*, national coordination of OASDFR efforts) and that has common characteristics that can be addressed in a single project. Projects that are local or State-specific need to provide evidence that the problem or need being addressed also exists elsewhere and that the methodologies and results may have application in these other areas.

(b) Be willing to share findings with other interested entities and organizations by providing information on methodologies, data, analytical techniques, findings, etc.

The amount requested must be commensurate with the activities proposed. Normally, Standard Project awards will not exceed $100,000 per year for a three-year duration (total of $300,000). However, with appropriate and compelling justification, larger awards may be granted and the time period may be extended to four years.

2. Conference and Workshop Proposals

Proposed conferences and workshops are important tools in providing assistance and outreach. They may be used by interested parties to gather and establish a needs assessment and determine priorities. Conference and workshops are an excellent vehicle to determine group needs, collect data and discuss other relevant issues. This information may, in turn, be used to develop a Standard Project proposal that addresses a group's needs. Alternatively, such meetings can serve to exchange information concerning past and present activities, and future needs. In addition, OASDFR conferences that promote program coordination, provide the opportunity to train educators on OASDFR project tools and methods, build community-based partnerships and collaborations, provide various techniques for individual project internal evaluations, and establish strategies that result in successful projects are also encouraged.

Conference and workshop applicants must set forth the purpose and need for the conference, ensure that an agenda is articulated, including a list of participant groups and experts on the proposed subject(s), and list speakers (invited and confirmed) with their expertise noted. (*See* Part III.B.5.) Awards for a conference or a workshop will normally not exceed $10,000. A larger amount may be awarded provided a conference is multi-regional or national in scope. Normally, these latter awards will not exceed $25,000.

B. Program Description

The primary purpose of the OASDFR is to deliver outreach and technical assistance, including educational programs, to enhance the potential of socially disadvantaged farmers and ranchers to successfully acquire, own, operate, and retain farms and ranches. The OASDFR will support a wide range of outreach and assistance activities in farm management, financial management, marketing, application and bidding procedures, and other areas. Proposed projects might include one or more of the following: The use of existing, and the formation of new, outreach and assistance networks focused on increasing participation in various USDA and other programs by socially disadvantaged agricultural producers; further development or modification of farm and ranch management (including marketing) and financial management curricula and materials designed to enhance the potential for farm and ranch ownership by socially disadvantaged farmers and ranchers; the development of innovative delivery systems that improve the effectiveness of these programs; and the development or improvement in the means by which assistance is provided to the targeted audiences.

Proposals need to incorporate a project evaluation component that will permit a qualitative and quantitative assessment of expected project impacts. How will success of the proposed project be measured? Such assessments need to relate to increases in participation rates in USDA programs and in increasing the ownership of farming and ranching operations by socially disadvantaged farmers and ranchers.

Priority will be given to projects that identify and document the outreach and assistance needs of socially disadvantaged farmers and ranchers as they exist at regional, State and local levels, and that propose effective educational and assistance programs that address those needs. It is incumbent upon the applicant(s) to adequately define and justify the needs of the disadvantaged group(s) the project is targeting. Proposed projects should, as appropriate, address needs as determined by: Producer audiences; commodity mixes in the area(s) of interest; types of outreach and assistance needs associated with available and appropriate USDA and other agricultural programs; production, marketing, financial, legal and human resource conditions in the area(s) being addressed; and/or other factors that hold the greatest potential for assisting these producers in gaining and maintaining ownership of their farms and ranches or that enhance the opportunity for ownership.

The OASDFR will also fund projects that provide OASDFR assistance in applying for and receiving aid under USDA programs administered by various agencies within the Department of Agriculture. These include but are not limited to loan programs, guaranteed loan programs, allocations of crop base in each program crop, and various conservation programs. Pertinent USDA agricultural programs include but are not limited to the following, identified by the Federal Domestic Assistance title and number: Emergency Conservation Program (10.054); Production and Flexibility Payments for Contract Commodities (10.055); Forestry Incentives Program (10.064); Conservation Reserve Program (10.069); Emergency Loans (10.404); Farm Ownership Loans (10.407); Great Plains Conservation (10.900); and Soil Survey (10.903). There may be other Federal and State agricultural programs that also could assist members of socially disadvantaged groups. Applicants should provide a brief, relevant synopsis on the program(s) they are incorporating in their proposed project.

Part III—Preparation of an Application

A. Program Application Materials

Program application materials are available at the CSREES Funding Opportunities Web site (*http://www.reeusda.gov/1700/funding/ourfund.htm*). If you do not have access to the Web page or have trouble downloading material and you would like a hard copy, you may contact the Proposal Services Unit, USDA/CSREES at (202) 401–5048. When calling the Proposal Services Unit, please indicate that you are requesting the RFA and associated application forms for the Outreach and Assistance for Socially Disadvantaged Farmers and Ranchers Competitive Grants Program. These materials also may be requested via Internet by sending a message with your name, mailing address (not e-mail) and phone number to *psb@reeusda.gov*. State that you want a copy of the Outreach and Assistance for Socially Disadvantaged Farmers and Ranchers Competitive Grants Program RFA and the associated application forms.

B. Content of Applications

The proposals should be prepared following the guidelines and the instructions below. Each proposal must contain the following elements in the order indicated:

1. General

Use the following guidelines to prepare an application. Proper preparation of applications will assist reviewers in evaluating the merits of each application in a systematic, consistent fashion:

(a) Prepare the application on only one side of the page using standard size (8½″ × 11″) white paper, one-inch margins, typed or word processed using no type smaller than 12 point font, and single or double spaced. Use an easily readable font face (*e.g.*, Geneva, Helvetica, Times Roman).

(b) Number each page of the application sequentially, starting with the Project Description, including the budget pages, required forms, and any appendices.

(c) Staple the application in the upper left-hand corner. Do not bind. An original and 10 copies (11 total) must be submitted in one package, along with 15 additional copies of the "Project Summary," Form CSREES–2003, as a separate attachment.

(d) Include original illustrations (photographs, color prints, *etc.*) in all copies of the application to prevent loss of meaning through poor quality reproduction.

(e) The contents of the application should be assembled in the following order:

(1) Proposal Cover Page (Form CSREES–2002)
(2) Table of Contents
(3) Project Summary (Form CSREES–2003)
(4) Project Description
(5) References
(6) Appendices to Project Description
(7) Key Personnel
(8) Collaborative Arrangements (including Letters of Support)
(9) Conflict-of-Interest List (Form CSREES–2007)
(10) Budget (Form CSREES–2004)
(11) Budget Narrative
(12) Current and Pending Support (Form CSREES–2005)
(13) Assurance Statement(s) (Form CSREES–2008)
(14) Compliance with the National Environmental Policy Act (NEPA) (Form CSREES–2006)
(15) Certification of Compliance to Section 501(c)(3) of the Internal Revenue Code of 1986
(16) Page B, Proposal Cover Page (Form CSREES–2002), Personal Data on Project Director

2. Proposal Cover Page (Form CSREES–2002)

Page A

Each copy of each grant application must contain a "Proposal Cover Page," Form CSREES–2002. One copy of the application, preferably the original, must contain the pen-and-ink signature(s) of the proposing Project Director(s) (PD) and the authorized organizational representative (AOR), the individual who possesses the necessary authority to commit the organization's time and other relevant resources to the project. If there are more than four co-PDs for an application, please list additional co-PDs on a separate sheet of paper (with appropriate information and signatures) and attach to the Proposal Cover Page (Form CSREES–2002). Any proposed PD or co-PD whose signature does not appear on Form CSREES–2002 or attached additional sheets will not be listed on any resulting grant award. Complete both signature blocks located at the bottom of the "Proposal Cover Page" form. Please note that Form CSREES–2002 is comprised of two parts—Page A, which is the "Proposal Cover Page", and Page B, which is the "Personal Data on Project Director."

Form CSREES–2002 serves as a source document for the CSREES grant database; it is therefore important that it be accurately completed in its entirety, especially the e-mail addresses requested in Blocks 4.c. and 18.c. However, the following items are highlighted as having a high potential for errors or misinterpretations:

(a) Type of Performing Organization (Block 6.a. and 6.b.). For Block 6.a., a check should be placed in the appropriate box to identify the type of organization which is the legal recipient named in Block 1. Only one box should be checked. For Block 6.b., please check as many boxes that apply to the affiliation of the PD listed in Block 16.

(b) Title of Proposed Project (Block 7.). The title of the project must be brief (140-character maximum, including spaces), yet represent the major thrust of the effort being proposed.

(c) Program to Which You Are Applying (Block 8.). Enter "Outreach and Assistance for Socially Disadvantaged Farmers and Ranchers Competitive Grants Program." Designate whether your application is for a "Standard Project," "Conference" or "Workshop."

(d) Type of Request (Block 14.). Check the block for New.

(e) Project Director (PD) (Blocks 16.–19.). Blocks 16.–18. are used to identify the PD and Block 19. to identify co-PDs. If needed, additional co-PDs may be listed on a separate sheet of paper and attached to Form CSREES–2002, the Proposal Cover Page, with the applicable co-PD information and signatures. Listing multiple co-PDs, beyond those required for genuine collaboration, is discouraged.

(f) Other Possible Sponsors (Block 21.). List the names or acronyms of all other public or private sponsors including other agencies within USDA to which your application has been or might be sent. In the event you decide to send your application to another organization or agency at a later date, you must inform the identified CSREES program contact as soon as practicable. Submitting your application to other potential sponsors will not prejudice its review by CSREES; however, submitting the same (*i.e.*, duplicate) application to another CSREES program is not permissible.

Page B .

Page B should be submitted only with the original signature copy of the application and should be placed as the last page of the original copy of the application. This page contains personal data on the PD(s). CSREES requests this information in order to monitor the operation of its review and awards processes. This page will not be duplicated or used during the review process. Please note that failure to submit this information will in no way affect consideration of your application.

3. Table of Contents

For consistency and ease in locating information, each application must contain a detailed Table of Contents immediately following the proposal cover page. The Table of Contents should contain page numbers for each component of the application. Page numbering should begin with the first page of the Project Description.

4. Project Summary (Form CSREES–2003)

The application must contain a "Project Summary," Form CSREES–2003. The summary should be

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approximately 250 words, contained within the box, placed immediately after the Table of Contents, and not numbered. The names and affiliated organizations of all PDs and co-PDs should be listed on this form, in addition to the title of the project. The summary should be a self-contained, specific description of the activity to be undertaken and should focus on: Overall project goal(s) and supporting objectives; plans to accomplish project goal(s); and relevance of the project to the goals of the Program. The importance of a concise, informative Project Summary cannot be overemphasized for this is the only document that is read by each of the peer panel review members. If there are more than four co-PDs for an application, please list additional co-PD's on a separate sheet of paper (with appropriate information) and attach to the Project Summary (Form CSREES–2003).

5. Project Description

PLEASE NOTE: The Project Description for a Standard Project request shall not exceed 15 pages of written text and up to five additional pages for figures and tables. The Project Description for a Conference or Workshop proposal is limited to five pages of written text. These limitations (15 pages for Standard Project requests and five pages for Conference/Workshop proposals) have been established to ensure fair and equitable competition.

(a) Standard Project

The Project Description should clearly and concisely indicate how the proposed project will meet the objectives and carry out the procedures identified in Part II—Program Description. This section should contain the following:

An introduction which states the goals and objectives of the proposed activities, documents needs, describes ongoing related activities and includes relevant data;

An approach which identifies (1) Proposed activities and methods, (2) expected outcomes, (3) how outcomes will benefit socially disadvantaged farmers and ranchers, and (4) indicators which will verify program results;

A timetable which specifies expected completion dates for each phase of the project; and

Identification of collaborative arrangements including description(s) of how they contribute to completion of the entire project.

(b) Conference and Workshops

An introduction that states goals and objectives and expected outcomes of the conference/workshop, the rationale and justification for the conference/workshop, and how it would advance the goals and objectives of the OASDFR;

A discussion of the topics to be discussed and why they are relevant to the conference/workshop goals and objectives;

An agenda that identifies the topics and speakers (if letters of commitment are not included in the proposal, list speakers as "invited," and when commitment letters are received provide signed copies to the CSREES Program Director or the Director of Integrated Programs). Letters of commitment should identify the topic the speaker will be presenting; and

How will the expected results be conveyed to target audiences? What means will be used? Any follow-up activities?

6. References

All references to works cited should be complete, including titles and all co-authors, and should conform to an acceptable journal format. References are not considered in the page limitation for the Project Description.

7. Appendices to Project Description

Appendices to the Project Description are allowed if they are directly germane to the proposed project. The addition of appendices should not be used to circumvent the text and/or figures and tables page limitations. The peer panel reviewers are evaluating a number of proposals; thus, to the extent possible, extraneous material should be kept to a minimum. Letters of commitment from collaborators/subcontractors and letters of support should be included as an appendix.

8. Key Personnel

The following should be included, as applicable:

(a) The roles and responsibilities of each PD and/or collaborator should be clearly described (and documented in the budget and budget justification if receiving project funds); and

(b) Vitae of the PD and each co-PD, senior associate, and other professional personnel. This section should include vitae of all key persons who are expected to work on the project, whether or not CSREES funds are sought for their support. The vitae should be limited to two (2) pages each in length, excluding publications listings. The vitae should include a presentation of academic and research credentials, as applicable; e.g., earned degrees, teaching experience, employment history, professional activities, honors and awards, and grants received. A chronological list of all publications in refereed journals during the past four (4) years, including those in press, must be provided for each project member for whom a curriculum vitae is provided. Also list only those non-refereed technical publications that have relevance to the proposed project. All authors should be listed in the same order as they appear on each paper cited, along with the title and complete reference as these usually appear in journals. Experience in developing and conveying outreach and assistance to the targeted populations are also significant factors that provide the reviewers with enough salient information as to the capabilities of the applicant(s). This material is very important not only in attesting to the qualifications of the project participants but also for determining necessary information for the Conflict-of-Interest form noted below.

9. Collaborative Arrangements

If it will be necessary to enter into formal consulting or collaborative arrangements with others, such arrangements should be fully explained and justified. If the consultant(s) or collaborator(s) are known at the time of application, a vitae or resume should be provided. In addition, evidence (e.g., letter of commitment) should be provided that details what the collaborators have agreed to provide and the costs of those services. The applicant also will be required to provide additional information on consultants and collaborators in the budget portion of the application. See instructions in the application forms for completing Form CSREES–2004, Budget.

10. Conflict-of-Interest List (Form CSREES–2007)

A "Conflict-of-Interest List," Form CSREES–2007, must be provided for all individuals who have submitted a vitae in response to item 8(b) of this part. Each Form CSREES–2007 should list alphabetically, by the last names, the full names of the individuals in the following categories: (a) All co-authors on publications within the past four years, including pending publications and submissions; (b) all collaborators on projects within the past four years, including current and planned collaborations; (c) all thesis or postdoctoral advisees/advisors within the past four years; and (d) all persons in your field with whom you have had a consulting or financial arrangement within the past four years, who stand to gain by seeing the project funded. This form is necessary to assist program staff in excluding from application review those individuals who have conflicts of interest or appearances of conflicts of interest with the personnel in the grant application. The CSREES Program Director or the Director of Integrated Programs must be informed of any additional conflicts of interest that arise after the application is submitted.

11. Budget

(a) *Budget Form (Form CSREES–2004)*

Prepare the Budget, Form CSREES–2004, in accordance with instructions provided with the application forms. A budget form is required for each year of requested support. In addition, a cumulative budget is required detailing the requested total support for the overall project period. The budget form may be reproduced as needed by applicants. Funds may be requested under any of the categories listed on the form, provided that the item or service for which support is requested is allowable under the authorizing legislation, the applicable statutes, regulations, and Federal cost principles, and these program guidelines, and can be justified as necessary for the successful conduct of the proposed project. Applicants also must include a budget narrative to justify their budget requests (see item 11(c) of this part).

(b) *Indirect Costs*

See Part I., E. for specific information about the recovery of indirect costs.

(c) *Budget Narrative*

All budget categories, with the exception of Indirect Costs, for which support is requested, must be individually listed (with costs) in the same order as the budget and justified on a separate sheet of paper and placed immediately behind the budget form.

12. Current and Pending Support (Form CSREES–2005)

All applications must contain Form CSREES–2005 listing other current public or private support (including in-house support) to which personnel (i.e., individuals submitting a vitae in response to item 8(b) of this part) identified in the application have committed portions of their time, whether or not salary support for person(s) involved is included in the budget. Please follow the instructions provided on this form. Concurrent submission of identical or similar applications to the possible sponsors will not prejudice application review or evaluation by the CSREES. However, an application that duplicates or overlaps substantially with an application already reviewed and funded (or to be funded) by another organization or agency will not be funded under this program. Please note that the project being proposed should be included in the pending section of the form.

13. Assurance Statement(s) (Form CSREES–2008)

A number of situations encountered in the conduct of projects require special assurances, supporting documentation, etc., before funding can be approved for the project. In addition to any other situation that may exist with regard to a particular project, applications involving any of the following elements must comply with the additional requirements as applicable.

(a) Recombinant DNA or RNA Research

As stated in 7 CFR Part 3015.205 (b)(3), all key personnel identified in the application and all endorsing officials of the proposing organization are required to comply with the guidelines established by the National Institutes of Health entitled, "Guidelines for Research Involving Recombinant DNA Molecules," as revised. If your project proposes to use recombinant DNA or RNA techniques, you must so indicate by checking the "yes" box in Block 20 of Form CSREES–2002 (the Proposal Cover Page) and by completing Section A of Form CSREES–2008. For applicable applications recommended for funding, Institutional Biosafety Committee approval is required before CSREES funds will be released. Please refer to the application forms for further instructions.

(b) Animal Care

Responsibility for the humane care and treatment of live vertebrate animals used in any grant project supported with funds provided by CSREES rests with the performing organization. Where a project involves the use of living vertebrate animals for experimental purposes, all key personnel identified in an application and all endorsing officials of the proposing organization are required to comply with the applicable provisions of the Animal Welfare Act of 1966, as amended (7 U.S.C. 2131 *et seq.*), and the regulations promulgated thereunder by the Secretary in 9 CFR parts 1, 2, 3, and 4 pertaining to the care, handling, and treatment of these animals. If your project will involve these animals, you should check "yes" in Block 20 of Form CSREES–2002 and complete Section B of Form CSREES–2008. In the event a project involving the use of live vertebrate animals results in a grant award, funds will be released only after the Institutional Animal Care and Use Committee has approved the project. Please refer to the application forms for further instructions.

(c) Protection of Human Subjects

Responsibility for safeguarding the rights and welfare of human subjects used in any grant project supported with funds provided by CSREES rests with the performing organization. Guidance on this issue is contained in the National Research Act, Public Law 93–348, as amended, and implementing regulations promulgated by the Department under 7 CFR Part 1c. If you propose to use human subjects in your project, you should check the "yes" box in Block 20 of Form CSREES–2002 and complete Section C of Form CSREES–2008. Please refer to the application forms for additional instructions.

14. Certifications

Note that by signing Form CSREES–2002 the applicant is providing the certifications required by 7 CFR part 3017, regarding Debarment and Suspension and Drug-Free Workplace, and 7 CFR part 3018, regarding Lobbying. The certification forms are included in the application package for informational purposes only. These forms should not be submitted with the application since by signing Form CSREES-2002 your organization is providing the required certifications. If the project will involve a subcontractor or consultant, the subcontractor/consultant should submit a Form AD–1048, Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions, to the grantee organization for retention in their records. This form should not be submitted to USDA.

15. Compliance with the National Environmental Policy Act (NEPA) (Form CSREES–2006)

As outlined in 7 CFR part 3407 (the Cooperative State Research, Education, and Extension Service regulations implementing NEPA), the environmental data for any proposed project is to be provided to CSREES so that CSREES may determine whether any further action is needed. In some cases, however, the preparation of environmental data may not be required. Certain categories of actions are excluded from the requirements of NEPA.

In order for CSREES to determine whether any further action is needed with respect to NEPA, pertinent information regarding the possible

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environmental impacts of a particular project is necessary; therefore, Form CSREES–2006, "NEPA Exclusions Form," must be included in the application indicating whether the applicant is of the opinion that the project falls within a categorical exclusion and the reasons therefore. If it is the applicant's opinion that the proposed project falls within the categorical exclusions, the specific exclusion(s) must be identified.

Even though a project may fall within the categorical exclusions, CSREES may determine that an Environmental Assessment or an Environmental Impact Statement is necessary for an activity, if substantial controversy on environmental grounds exists or if other extraordinary conditions or circumstances are present which may cause such activity to have a significant environmental effect.

16. Certification of Compliance to Section 501(c)(3) of the Internal Revenue Code of 1986

Applicants that are not recognized by the Internal Revenue Service as a Section 501(c)(3) organization must include, on a separate sheet of paper, a statement that they have not, and will not engage in any of the prohibited activities contained in Section 501(c)(3) of the Internal Revenue Code of 1986.

C. Submission of Applications

1. When to Submit (Deadline Date)

Requests for Determination must be submitted by COB on November 22, 2002.

Applications for Standard Projects or Conferences or Workshops must be received by COB on January 31, 2003 (5:00 p.m. Eastern Time). Applications received after this deadline will not be considered for funding.

2. What to Submit

Only a single copy of the Request for Determination (if applicable) is required.

An original and 10 copies of each application must be submitted. In addition, submit 15 copies of the application's Project Summary. All copies of the application and the Project Summary must be submitted in one package.

3. Where To Submit

Applicants must submit via letter or e-mail Requests for Determination to the program contact listed in Part I.D. and in the preamble.

Applicants are strongly encouraged to submit completed applications via overnight mail or delivery service to ensure timely receipt by the CSREES. The address for hand-delivered applications submitted using an express mail or overnight courier service, is:

Outreach and Assistance for Socially Disadvantaged Farmers and Ranchers Competitive Grants Program, c/o Proposal Services Unit, Cooperative State Research, Education, and Extension Service, U.S. Department of Agriculture, Room 1420, Waterfront Centre, 800 9th Street, SW., Washington, DC 20024, *Telephone:* (202) 401–5048.

Applications sent via the U.S. Postal Service must be sent to the following address:

Outreach and Assistance for Socially Disadvantaged Farmers and Ranchers Competitive Grants Program, c/o Proposal Services Unit, Cooperative State Research, Education, and Extension Service, U.S. Department of Agriculture, STOP 2245, 1400 Independence Avenue, SW., Washington, DC 20250–2245.

D. Acknowledgment of Applications

The receipt of all applications will be acknowledged by e-mail. Therefore, applicants are strongly encouraged to provide accurate e-mail addresses, where designated, on the Form CSREES–2002. If the applicant's e-mail address is not indicated, CSREES will acknowledge receipt of the application by letter.

If the applicant does not receive an acknowledgment within 60 days of the submission deadline, please contact the program contact. Once the application has been assigned a proposal number, please cite that number on all future correspondence.

Part IV—Review Process

A. General

Each application will be evaluated in a 2-part process. First, each application will be screened to ensure that it meets the administrative requirements as set forth in this RFA. Second, a number of expert reviewers will conduct a merit review based on the evaluation criteria. The views of the individual reviewers will be used by CSREES to determine which applications will be recommended to the Administrator for funding. Evaluated applications will be ranked based on merit. Final approval for those applications recommended for an award will be made by the Administrator.

Reviewers will be drawn from a number of areas, among them government, universities, community-based organizations, and other pertinent entities. Reviewers will be selected based upon training and experience in relevant scientific, extension, or education fields, or experience in community-based organizations, taking into account the following factors: (a) The level of relevant formal scientific, technical education, or extension experience of the individual, as well as the extent to which the individual is or has been engaged in providing outreach and assistance to disadvantaged groups; (b) the need to include as reviewers experts from various areas of specialization within relevant community-based organizations and/or scientific, education, or extension fields that provide outreach and assistance to disadvantaged groups; (c) the need to include as reviewers other experts (*e.g.*, members of community-based organizations, producers, range or forest managers/operators, and consumers) who can assess relevance of the applications to targeted audiences and to program needs; (d) the need to include as reviewers experts from a variety of organizational types (*e.g.*, colleges, universities, industry, state and Federal agencies, private profit and non-profit organizations) and geographic locations; (e) the need to maintain a balanced composition of reviewers with regard to minority and female representation and age distribution; and (f) the need to include reviewers who can judge the effective usefulness of outreach and assistance programs for socially disadvantaged farmers and ranchers.

B. Evaluation Criteria

The evaluation criteria noted below will be used in reviewing applications submitted in response to this RFA. The points assigned provide an indication of the relative importance of each section and will be used by the reviewers in evaluating the proposals.

1. Standard Project Proposals

(a) Statement of Work and Needs Being Addressed (50 points)

The degree to which the proposed project addresses the major purposes of the OASDFR and the severity and importance of the needs being addressed. The degree to which the statement of work reflects innovative strategies for providing outreach and assistance to socially disadvantaged groups and the potential for achieving project objectives. Reviewers will be examining originality, practicality, and creativity in developing successful solutions to the problems facing the targeted audience. Responsiveness to the need to provide information and assistance on application procedures and bidding protocols to gain entry into USDA programs, farm and financial management, and other information necessary to enhance participation in USDA and other pertinent programs, conducting successful farming operations, and gaining and maintaining ownership of those operations. Numbers of socially disadvantaged farmers and ranchers that the project intends to assist should be clearly specified. Applications that dovetail or mutually support other on-going related projects are encouraged.

(b) Capabilities of Project Personnel, Institutional Commitment and Collaborations (30 points)

Participating with other agencies, community-based organizations, and other institutions and organizations in undertaking and carrying out such projects often provides a higher level of confidence for project success. Having community involvement and "ownership" in such projects provides evidence that the needs are real, important, and will be successfully addressed. As important is the commitment of the applicant institution or organization in terms of experience and competencies of the project director and collaborators, and the availability of personnel and resources to direct and carry out the project.

(c) Internal Project Evaluation Plan and Verification of Outcomes (20 points)

Reviewers will judge applications as to the merits of a "self-evaluation" plan, or other means by which the project will be managed, significant outcomes achieved, and the reasonableness of timelines. How the Project Directors might react in recommending changes to processes and procedures as a result of unforeseen early successes or failures will be judged as well. The application should address the capacity to: (i) Assemble, summarize, and present data that verify OASDFR outcomes or impacts, and (ii) deliver project materials and results to socially disadvantaged farmers and ranchers, stakeholders, and other OASDFR project leaders.

2. Conferences and Workshops

(a) Rationale and Justification for the Conference/Workshop (30 points)

The degree to which the applicant makes clear the need to have the conference or workshop. Is the conference appropriately justified? Do the conference topic areas address the goals and objectives of the OASDFR? Are there components that could potentially improve or make more effective the OASDFR?

(b) Expected Outcomes (50 points)

Are the expected outcomes of the conference or workshop appropriate, given the goals and objectives of the OASDFR? Are the speakers and participants appropriate given the topic areas to be explored, the rationale and justification, and the goals and objectives of the OASDFR? Will the results be generally useful to other areas?

(c) Agenda (20 points)

Is the agenda logical and reasonable given the rationale and justification and the expected outcomes?

C. Conflicts of Interest and Confidentiality

During the peer evaluation process, extreme care will be taken to prevent any actual or perceived conflicts of interest that may impact review or evaluation. For the purpose of determining conflicts of interest, the academic and administrative autonomy of an institution shall be determined by reference to the 2002 Higher Education Directory, published by Higher Education Publications, Inc., 6400 Arlington Boulevard, Suite 648, Falls Church, Virginia 22042. Phone: (703) 532–2300. *Web site: http://www.hepinc.com.*

Names of submitting institutions and individuals, as well as application content and peer evaluations, will be kept confidential, except to those involved in the review process, to the extent permitted by law. In addition, the identities of peer reviewers will remain confidential throughout the entire review process. Therefore, the names of the reviewers will not be released to applicants.

Part V—Award Administration

A. General

Within the limit of funds available for such purpose, the awarding official of CSREES shall make grants to those responsible, eligible applicants whose applications are judged most meritorious under the procedures set forth in this RFA. The date specified by the awarding official of CSREES as the effective date of the grant shall be no later than September 30 of the Federal fiscal year in which the project is approved for support and funds are appropriated for such purpose, unless otherwise permitted by law. It should be noted that the project need not be initiated on the grant effective date, but as soon thereafter as practical so that project goals may be attained within the funded project period. All funds granted by CSREES under this RFA shall be expended solely for the purpose for which the funds are granted in accordance with the approved application and budget, the regulations, the terms and conditions of the award, the applicable Federal cost principles, and the Department's assistance regulations (parts 3015, 3016 and 3019 of 7 CFR).

B. Organizational Management Information

Specific management information relating to an applicant shall be submitted on a one-time basis as part of the responsibility determination prior to the award of a grant identified under this RFA, if such information has not been provided previously under this or another CSREES program. CSREES will provide copies of forms recommended for use in fulfilling these requirements as part of the preaward process. Although an applicant may be eligible based on its status as one of these entities, there are factors which may exclude an applicant from receiving Federal financial and nonfinancial assistance and benefits under this program (*e.g.*, debarment or suspension of an individual involved or a determination that an applicant is not responsible based on submitted organizational management information).

C. Award Document and Notice of Award

The grant award document will provide pertinent instructions and information, including at a minimum, the following:

1. Legal name and address of performing organization or institution to whom the Administrator has awarded a grant under the terms of this request for applications;
2. Title of project;
3. Name(s) and institution(s) of PDs chosen to direct and control approved activities;
4. Identifying grant number assigned by the Department;
5. Project period, specifying the amount of time the Department intends to support the project without requiring recompetition for funds;
6. Total amount of Departmental financial assistance approved by the Administrator during the project period;
7. Legal authority(ies) under which the grant is awarded;
8. Appropriate Catalog of Federal Domestic Assistance (CFDA) number;
9. Approved budget plan for categorizing allocable project funds to accomplish the stated purpose of the grant award; and

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10. Other information or provisions deemed necessary by CSREES to carry out its respective granting activities or to accomplish the purpose of a particular grant.

Part VI—Additional Information

A. Access to Review Information

Copies of reviews, not including the identity of reviewers, and a summary of the panel comments will be sent to the applicant PD after the review process has been completed.

B. Use of Funds; Changes

1. Delegation of Fiscal Responsibility

Unless the terms and conditions of the grant state otherwise, the grantee may not in whole or in part delegate or transfer to another person, institution, or organization the responsibility for use or expenditure of grant funds.

2. Changes in Project Plans

(a) The permissible changes by the grantee, PD(s), or other key project personnel in the approved project grant shall be limited to changes in methodology, techniques, or other similar aspects of the project to expedite achievement of the project's approved goals. If the grantee or the PD(s) is uncertain as to whether a change complies with this provision, the question must be referred to the Authorized Departmental Officer (ADO) for a final determination. The ADO is the signatory of the award document, not the program contact.

(b) Changes in approved goals or objectives shall be requested by the grantee and approved in writing by the ADO prior to effecting such changes. In no event shall requests for such changes be approved which are outside the scope of the original approved project.

(c) Changes in approved project leadership or the replacement or reassignment of other key project personnel shall be requested by the grantee and approved in writing by the ADO prior to effecting such changes.

(d) Transfers of actual performance of the substantive programmatic work in whole or in part and provisions for payment of funds, whether or not Federal funds are involved, shall be requested by the grantee and approved in writing by the ADO prior to effecting such transfers, unless prescribed otherwise in the terms and conditions of the grant.

(e) *Changes in Project Period:* The project period may be extended by CSREES without additional financial support, for such additional period(s) as the ADO determines may be necessary to complete or fulfill the purposes of an approved project, but in no case shall the total project period exceed five years. Any extension of time shall be conditioned upon prior request by the grantee and approval in writing by the ADO, unless prescribed otherwise in the terms and conditions of a grant.

(f) *Changes in Approved Budget:* Changes in an approved budget must be requested by the grantee and approved in writing by the ADO prior to instituting such changes if the revision will involve transfers or expenditures of amounts requiring prior approval as set forth in the applicable Federal cost principles, Departmental regulations, or grant award.

C. Expected Program Outputs and Reporting Requirements

Funded projects will be expected to verify program accomplishments. Evidence of actual or intended beneficial changes in the degree of ownership by socially disadvantaged farmers and ranchers is particularly desirable, in addition to documentation of producer involvement in program activities. The evidence is expected to include participants' assessment of the value of program outreach and assistance activities and suggestions for improvement. Grantees must prepare annual reports that document significant activities or events that show movement toward achieving goals and objectives of the project. The reports should specify performance targets for that period and contain evidence that verifies the extent to which these targets have been met. Approximately one month after the anniversary start date, an annual report format will be provided to the Project Director. This report will compare accomplishments against stated goals, and highlight those assistance and outreach methods that prove to be highly successful.

D. Applicable Federal Statutes and Regulations

Several Federal statutes and regulations apply to grant applications considered for review and to project grants awarded under this program. These include, but are not limited to:

7 CFR part 1, subpart A—USDA implementation of the Freedom of Information Act.

7 CFR part 3—USDA implementation of OMB Circular No. A–129 regarding debt collection.

7 CFR part 15, subpart A—USDA implementation of Title VI of the Civil Rights Act of 1964, as amended.

7 CFR part 3015—USDA Uniform Federal Assistance Regulations, implementing OMB directives (*i.e.*, OMB Circular Nos. A–21 and A–122) and incorporating provisions of 31 U.S.C. 6301–6308 (formerly the Federal Grant and Cooperative Agreement Act of 1977, Public Law No. 95–224), as well as general policy requirements applicable to recipients of Departmental financial assistance.

7 CFR part 3016—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

7 CFR part 3017—USDA implementation of Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants).

7 CFR part 3018—USDA implementation of Restrictions on Lobbying. Imposes prohibitions and requirements for disclosure and certification related to lobbying on recipients of Federal contracts, grants, cooperative agreements, and loans.

7 CFR part 3019—USDA implementation of OMB Circular A–110, Uniform Administrative Requirements for Grants and Other Agreements With Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations.

7 CFR part 3052—USDA implementation of OMB Circular No. A–133, Audits of States, Local Governments, and Non-profit Organizations.

7 CFR part 3407—CSREES procedures to implement the National Environmental Policy Act of 1969, as amended.

29 U.S.C. 794 (section 504, Rehabilitation Act of 1973) and 7 CFR part 15b (USDA implementation of statute)—prohibiting discrimination based upon physical or mental handicap in Federally assisted programs.

35 U.S.C. 200 *et seq.*—Bayh-Dole Act, controlling allocation of rights to inventions made by employees of small business firms and domestic nonprofit organizations, including universities, in Federally assisted programs (implementing regulations are contained in 37 CFR part 401).

E. Confidential Aspects of Applications and Awards

When an application results in a grant, it becomes a part of the record of CSREES transactions, available to the public upon specific request. Information that the Secretary determines to be of a confidential, privileged, or proprietary nature will be held in confidence to the extent permitted by law. Therefore, any information that the applicant wishes to have considered as confidential, privileged, or proprietary should be clearly marked within the application. The original copy of an application that does not result in a grant will be retained by the Agency for a period of one year. Other copies will be destroyed. Such an application will be released only with the consent of the applicant or to the extent required by law. An application may be withdrawn at any time prior to the final action thereon.

F. Regulatory Information

For the reasons set forth in the final Rule-related Notice to 7 CFR part 3015, subpart V (48 FR 29114, June 24, 1983), this program is excluded from the scope of the Executive Order 12372 which requires intergovernmental consultation with State and local officials. Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the collection of information requirements contained in this Notice have been approved under OMB Document No. 0524–0039.

G. Definitions

For the purpose of this program, the following definitions are applicable:

(1) *1890 Land-Grant Colleges* means one of those institutions eligible to receive funds under the Act of August 30, 1890, as amended (7 U.S.C. 321 *et seq.*), including Tuskegee University and West Virginia State College.

(2) *Administrator* means the Administrator of the Cooperative State Research, Education, and Extension Service (CSREES) and any other officer or employee of the Department to whom the authority involved is delegated.

(3) *Agricultural Programs* means those activities established or authorized by: the Agricultural Act of 1949 (7 U.S.C. 1421 *et seq.*); the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 *et seq.*); the Agricultural Adjustment Act of 1938 (7 U.S.C. 1281 *et seq.*); the Soil Conservation Act; the Domestic Allotment Assistance Act; the Food Security Act of 1985; and other such acts as determined by the Administrator, Cooperative State Research, Education, and Extension Service, USDA, on a case-by-case basis either at the Administrator's initiative or in response to a written request with supporting explanation for inclusion of an Act. Covered programs include, but are not limited to, agricultural conservation program, programs comprising the environmental conservation acreage reserve program (ECARP), conservation technical assistance program, emergency conservation program, forestry incentives program, Great Plains Conservation Program, integrated farm management option program, price support and production adjustment program, rural environmental conservation program, soil survey program, water bank program, and the farm loan programs (farm ownership, operating soil and water, and emergency loans).

(4) *Alaska Native* means a citizen of the United States who is a person of one-fourth degree or more Alaska Indian (including Tsimshian Indians not enrolled in the Metlaktla Indian Community), Eskimo, or Aleut blood, or combination thereof. It also includes, in the absence of proof of a minimum blood quantum, any citizen of the United States who is regarded as an Alaska Native by the Native Village or Native group of which he claims to be a member and whose father or mother is (or if deceased, was) regarded as Native by any village or group.

(5) *Alaska Native cooperative colleges* means any post-secondary education institution that at the time of application, has an enrollment of undergraduate students that is at least 20 percent Alaska Native students.

(6) *Assistance* means providing hands-on assistance through workshops, site visits and other means of contact with socially disadvantaged farmers and ranchers to enable them to understand the application process and to apply for or to take advantage of USDA and other relevant and pertinent programs. Assistance is also defined as providing guidance and help in understanding the process and procedures for applying for grants, loans, mortgages, or other financial resources that assist socially disadvantaged farmers and ranchers in gaining ownership of their farming and ranching operations.

(7) *Authorized departmental officer* means the Secretary or any employee of the Department who has the authority to issue or modify grant instruments on behalf of the Secretary.

(8) *Authorized organizational representative* means the president, director, chief executive officer, or other designated official of the applicant organization, who has the authority to commit the resources of the organization.

(9) *Budget period* means the interval of time (usually 12 months) into which the project period is divided for budgetary and reporting purposes.

(10) *Community-based organization* means a nongovernmental organization with a well-defined constituency that includes all or part of a particular community; *e.g.*, communities consisting of socially disadvantaged farmers and ranchers.

(11) *Department* or *USDA* means the United States Department of Agriculture.

(12) *Enrollment of needy students* means an enrollment at an institution with respect to which: (a) At least 50 percent of the degree students so enrolled are receiving need-based Federal financial assistance, including the Federal Work-study Program, in the second year preceding the fiscal year for which the determination is made (other than loans for which an interest subsidy is paid pursuant to 20 U.S.C. 1708); or (b) a substantial percentage of the students so enrolled are receiving Federal Pell Grants in the second fiscal year preceding the fiscal year for which determination is made, compared to the percentage of students receiving Federal Pell Grants at all such institutions in the second fiscal year preceding the fiscal year for which the determination is made.

(13) *Extension activity* means an act or process that delivers science-based knowledge and informal educational programs to people, enabling them to make practical decisions.

(14) *Farmer/Rancher* means an owner and/or operator who has a vested interest in the operation of the farm or ranch.

(15) *Grant* means the award by the Secretary of funds to an eligible organization or individual to assist in meeting the costs of conducting, for the benefit of the public, an identified project which is intended and designed to accomplish the purpose of the program as identified in these guidelines.

(16) *Grantee* means the organization designated in the grant award document as the responsible legal entity to which a grant is awarded.

(17) *Hispanic serving post-secondary educational institution* means a post-secondary educational institution that: (a) At the time of application, has an enrollment of undergraduate full-time equivalent students that is at least 25 percent Hispanic students; and (b) provides assurances that not less than 50 percent of the institution's Hispanic students are low-income individuals.

(18) *Indian Tribe or national tribal organization* means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) (43 U.S.C. 1601 *et seq.*), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

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(19) *Indian Tribal Community Colleges* means a post-secondary education institution which: (a) Is formally controlled, or has been officially sanctioned, or chartered, by the governing body of an Indian tribe or tribes, except no more than one such institution shall be recognized with respect to any such tribe; and (b) includes an institution listed in the Equity in Educational Land Grant Status Act of 1994, as amended (7 U.S.C. 301 note). The 1994 Land-Grant Institutions are: Bay Mills Community College, Blackfeet Community College, Cankdeska Cikana Community College, College of Menominee Nation, Crownpoint Institute of Technology, D–Q University, Dine Community College, Chief Dullknife Memorial College, Fond Du Lac Tribal and Community College, Fort Belknap College, Fort Berthold Community College, Fort Peck Community College, Haskell Indian Nations University, Institute of American Indian and Alaska Native Culture and Arts Development, Lac Courte Orielles Ojibwa Community College, Leech Lake Tribal College, Little Big Horn College, Little Priest Tribal College, Nebraska Indian Community College, Northwest Indian College, Oglala Lakota College, Salish Kootenai College, Sinte Gleska University, Sisseton Wahpeton Community College, Si Tanka/Huron University, Sitting Bull College, Southwestern Indian Polytechnic Institute, Stone Child College, Turtle Mountain Community College, United Tribes Technical College, and White Earth Tribal and Community College.

(20) *Institution of Higher Education* means an educational institution in any State that (a) Admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate; (b) is legally authorized within such State to provide a program of education beyond secondary education; (c) provides an educational program for which the institution awards a bachelor's degree or provides not less than a 2-year program that is acceptable for full credit toward such a degree; (d) is a public or other nonprofit institution; and (e) is accredited by a nationally recognized accrediting agency or association, or if not so accredited, is an institution that has been granted preaccreditation status by such an agency or association that has been recognized by the Secretary of Education for the granting of preaccreditation status, and the Secretary of Education has determined that there is satisfactory assurance that the institution will meet the accreditation standards of such an agency or association within a reasonable time.

(21) *Junior or Community College* means an institution of higher education: (a) That admits as regular students persons who are beyond the age of compulsory school attendance in the State in which the institution is located and who have the ability to benefit from the training offered by the institution; (b) that does not provide an educational program for which the institution awards a bachelor's degree (or an equivalent degree); and (c) that (i) provides an educational program for not less than 2 years in duration that is acceptable for full credit toward such a degree; or (ii) offers a 2-year program in engineering, mathematics, or the physical or biological sciences, designed to prepare a student to work as a technician or at the semiprofessional level in engineering, scientific, or other technological fields requiring an understanding and application of basic engineering, scientific, or mathematical principles of knowledge.

(22) *Low-income individual* means an individual from a family whose taxable income for the preceding year did not exceed 150 percent of an amount equal to the poverty level determined using criteria of poverty established by the Bureau of the Census.

(23) *Outreach* means the use of formal and informal educational presentations, materials, website materials, etc. that are designed to inform socially disadvantaged farmers and ranchers about USDA programs, other relevant and pertinent programs, and improvements in farm and ranch management in its many dimensions with the purpose of increasing participation in USDA programs and rates of ownership and operation of farms and ranches by members of socially disadvantaged groups.

(24) *Partnering* means a joint effort among two or more institutions, organizations and/or other entities with the capacity to conduct projects intended and designed to accomplish the purpose of the program.

(25) *Peer review* means an evaluation of a proposed project for scientific or technical quality and relevance performed by experts with the scientific knowledge and technical skills to conduct the proposed work or to give expert advice on the merits of a project.

(26) *Peer review panel* means a group of experts qualified by training and/or experience in particular fields to evaluate eligible proposals in those fields submitted under this RFA.

(27) *Performance target* means expected measurable accomplishments that can be used to document the extent of change brought about by the project.

(28) *Prior approval* means written approval evidencing prior consent by an authorized departmental officer as defined in (7) above.

(29) *Project* means the particular activity within the scope of the program supported by a grant award.

(30) *Project period* means the period, as stated in the award document, during which Federal sponsorship begins and ends.

(31) *Project Director* means the individual responsible for the technical direction and management of the project, as designated by the awardee in the proposal and approved by the Authorized Departmental Officer.

(32) *Secretary* means the Secretary of Agriculture and any other officer or employee of the Department to whom the authority involved is delegated.

(33) *Socially disadvantaged farmer or rancher* means a farmer or rancher who is a member of a socially disadvantaged group.

(34) *Socially disadvantaged group* means a group whose members have been subjected to racial or ethnic prejudices because of their identity as members of a group without regard to their individual qualities. Socially disadvantaged groups include, but are not limited to, African Americans, Native Americans, Alaskan Natives, Hispanics, Asians, and Pacific Islanders. The Secretary will determine on a case-by-case basis whether additional groups qualify under this definition, either at the Secretary's initiative or in response to a written request with supporting explanation.

Done at Washington, DC this 30th day of October, 2002.

Colien Hefferan,

Administrator, Cooperative State Research, Education, and Extension Service.

[FR Doc. 02–28159 Filed 11–5–02; 8:45 am]

BILLING CODE 3410–22–P

DEPARTMENT OF AGRICULTURE

Forest Service

Fuels Management Treatment Within the Main Boulder River Drainage, Big Timber MT, Gallatin National Forest, Sweet Grass County, MT

AGENCY: Forest Service, USDA

ACTION: Notice; intent to prepare environmental impact statement.

SUMMARY: The USDA, Forest Service, will prepare an environmental impact statement (EIS) to disclose the environmental effects of overstory and understory canopy thinning, prescribed burning, wildlife habitat enhancement, and hazardous fuels reduction located in the Main Boulder River drainage, Gallatin National Forest, Big Timber Ranger District, Sweet Grass County, Montana.

The Gallatin National Forest Land and Resource Management Plan (Forest Plan) provides overall guidance for land management activities, including vegetation, natural fuels and road management, within the area. The proposed actions of overstory and understory canopy thinning, prescribed burning, and hazardous fuels reductions are being considered together because they represent either connected or cumulative actions as defined by the Council on Environmental Quality (40 CFR 1508.25). This EIS will tier to the Gallatin Forest Plan Final EIS (September, 1987) as well as the Absaroka-Beartooth Wilderness Fire Management Guidebook (1993).

DATES: Written comments and suggestions should be received on or before December 6, 2002.

ADDRESSES: Submit written comments and suggestions on the proposed management activities or a request to be placed on the project mailing list to Bill Avey, District Ranger, Big Timber Ranger District, Gallatin National Forest, PO Box 1130, Big Timber, Montana, 59011–1130 (phone 406–932–5155).

SUPPLEMENTARY INFORMATION: A variety of fuel management treatments are proposed on approximately 1000 acres of forested land in the Main Boulder River drainage.

The Gallatin Forest Plan provides the overall guidance for management activities in the potentially affected area through its goals, objectives, standards and guidelines, and management area direction. The primary goals of this project are to: (1) Reduce fuel loadings, where possible, along the corridor, to be more consistent with natural presuppression levels; (2) reduce fire hazard along the river corridor to provide evacuation staging areas and the maximum time possible for public evacuation in the event of a wildfire; and (3) provide maximum fire fighter and public safety. Secondary goals include improving wildlife habitat and improving fire protection in the wildland urban interface located within the Main Boulder River drainage.

The project area consists of approximately 2500 acres of National Forest land located in T3S R12E, T4S R12E, T5S R12XE, and T6S R12E P.M. MT. The majority of the fuels treatments would occur within the Main Boulder River drainage and outside of the Absaroka-Beartooth Wilderness Area.

The Forest Service will consider a range of alternatives. One of these will be the "no action" alternative, in which none of the proposed activities would be implemented. Additional alternatives will examine varying levels and locations for the proposed activities in response to issues and other resource values.

The EIS will analyze the direct, indirect, and cumulative environmental effects of the alternatives. Past, present, and projected activities on both private and National Forest lands will be considered, including the effects caused by recent and past harvesting and road construction on public and private lands. The EIS will disclose the analysis of site-specific mitigation measures and their effectiveness.

Public participation is an important part of the analysis, commencing with the initial scoping process (40 CFR 1501.7), which will occur during October 2002. In addition to this initial scoping, the public may visit Forest Service officials at any time during the analysis and prior to the decision. The Forest Service will be seeking information, comments, and assistance from Federal, State, and local agencies and other individuals or organizations who may be interested in or affected by the proposed action. No public meetings are scheduled at this time.

Comments from the public and other agencies will be used in preparation of the Draft EIS. The scoping process will be used to:

1. Identify potential issues.
2. Identify issues to be analyzed in depth.
3. Eliminate insignificant issues or those which have been covered by a relevant previous environmental analysis, such as the Gallatin Forest Plan EIS.
4. Identify alternatives to the proposed action.
5. Identify potential environmental effects of the proposed action and alternatives (*i.e.*, direct, indirect, and cumulative effects.
6. Determine potential cooperating agencies and task assignments.

The Draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and available for public review in October 2004. At that time, the EPA will publish a Notice of Availability of the Draft EIS in the **Federal Register**. The comment period on the Draft EIS will be 45 days from the date the EPA's notice of availability appears in the **Federal Register**. It is very important that those interested in management of the Main Boulder River project area participate at that time. The Final EIS is scheduled to be completed by December 2004.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 533 (1978).* Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 30-day scoping comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in developing issues and alternatives. To assist the Forest Service in identifying and considering issues, comments should be as specific to this proposal as possible. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act et 40 CFR 1503.3 in addressing these points.

I am the responsible official for this environmental impact statement. My address is Big Timber Ranger District, PO Box 1130, Big Timber, MT 59011–1130.

Dated: October 16, 2002.

William Avey,

District Ranger.

[FR Doc. 02–28150 Filed 11–5–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Columbia County Resource Advisory Committee (RAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committees Act

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(Pub. L. 92–463), the Columbia County Resource Advisory Committee (RAC) will meet on November 4, 2002 in Dayton, Washington. The purpose of the meeting is to discuss future RAC actions including the consideration of possible Title II projects under Public Law 106–393, H.R. 2389, the Secure Rural Schools and Community Self-Determination Act of 2000, also called the "Payments to States" Act.

DATES: The meeting will be held on November 4, 2002 from 6 p.m. to 8 p.m.

ADDRESSES: The meeting will be held at the U.S. Post Office, 202 S. 2nd St., Dayton, Washington.

FOR FURTHER INFORMATION CONTACT: Monte Fujishin, Designated Federal Official, USDA, Umatilla National Forest, Pomeroy Ranger District, 71 West Main Street, Pomeroy, WA 99347. Phone: (509) 843–1891.

SUPPLEMENTARY INFORMATION: This meeting will focus on Title II project proposals. The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the committee at the time.

Dated: October 30, 2002.

Monte Fujishin,

Designated Federal Official.

[FR Doc. 02–28137 Filed 11–5–02; 8:45 am]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the California Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a planning meeting with briefing of the California Advisory Committee to the Commission will convene at 10 a.m. and adjourn at 3 p.m. on Friday, November 22, 2002, at the Family Center, 3355 Gage Avenue, Huntington Park, California 90255. The Committee will meet with the Huntington Park city officials to discuss the grievance procedure by employees and the complaint process by the citizens of Huntington Park.

Persons desiring additional information, or planning a presentation to the Committee, should contact Philip Montez, Director of the Western Regional Office, 213–894–3437 (TDD 213–894–3435). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, October 31, 2002.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 02–28191 Filed 11–5–02; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Vermont Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a planning and town hall meeting of the Vermont Advisory Committee to the Commission will convene at 2 p.m. and recess at 3 p.m. (planning session); reconvening at 3 p.m. and adjourning at 8 p.m. (town hall meeting) on Wednesday, November 20, 2002, at the Contois Auditorium, Burlington City Hall, 149 Church Street, Burlington, Vermont 05401. The Advisory Committee will hold a planning meeting to prepare for future town hall meetings to be held in various regions of the State. The Committee will then hold a town hall meeting with parents, public agency officials, educators, and community leaders to discuss efforts to address racism and harassment of minorities in Vermont public schools and communities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Marc Pentino of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, October 31, 2002.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 02–28190 Filed 11–5–02; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Wyoming Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a symposium of the Wyoming Advisory Committee to the Commission will convene at 1:30 p.m. and adjourn at 8 p.m. on Friday, November 22, 2002, at the Beta House, PO Box 3972, University of Wyoming, Laramie, Wyoming 82071. The Committee will conduct a symposium on education issues affecting minority and at-risk students in the Wyoming public secondary schools.

Persons desiring additional information, or planning a presentation to the Committee, should contact, John Dulles, Director of the Rocky Mountain Regional Office, 303–866–1040 (TDD 303–866–1049). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, October 31, 2002.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 02–28192 Filed 11–5–02; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: National Institute of Standards and Technology (NIST).

Title: NIST Three-Year Generic Request for Customer Service-Related Data Collections.

Form Number(s): None.

OMB Approval Number: 0693–0031.

Type of Review: Regular submission.

Burden Hours: 3,022.

Number of Respondents: 12,000.

Average Hours Per Response: The average response time is expected to be less than 30 minutes; less than 2 minutes for a response card; and 2 hours for focus group participation.

Needs and Uses: NIST conducts surveys, focus groups, and other customer satisfaction/service data collections. The collected information is needed and will be used to determine the kind and the quality of products, services, and information our key customers want and expect, as well as their satisfaction with and awareness of existing products, services and information.

Affected Public: Business or other for-profit organizations, not-for-profit institutions, and Federal, State, Local, or Tribal government.

Frequency: On occasion.

Respondent's Obligation: Providing the requested survey information is necessary to obtain accurate information regarding customer satisfaction with NIST products, services, and information.

OMB Desk Officer: David Rostker (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Office (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *Dhynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: October 31, 2002.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02–28135 Filed 11–5–02; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

Bureau of the Census

[Docket Number 021028259–2259–01]

Annual Retail Trade Survey

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of determination.

SUMMARY: The Bureau of the Census (Census Bureau) is conducting the Annual Retail Trade Survey. The Census Bureau has determined that it needs to collect data covering annual sales, e-commerce sales, percent of e-commerce sales to customers located outside the United States, year-end inventories, purchases, accounts receivables, and, for select industries, merchandise line sales, and percent of sales by class of customer. The Census Bureau is collecting this data because the detail provided is not available from any other source and this data provides valuable information for both the government as well as the public and industry.

FOR FURTHER INFORMATION CONTACT: Nancy Piesto, Service Sector Statistics Division, on (301) 763–2747.

SUPPLEMENTARY INFORMATION: The Annual Retail Trade Survey is a continuation of similar retail trade surveys conducted each year since 1951 (except 1954). It provides, on a comparable classification basis, annual sales, e-commerce sales, and purchases for 2002 and year-end inventories for 2001 and 2002. These data are not available publicly on a timely basis from non-governmental or other governmental sources.

The Census Bureau will require a selected sample of firms operating retail establishments in the United States to report in the 2002 Annual Retail Trade Survey. Sales size will determine the probability of a firm's selection; that is, larger firms will have a greater probability of being selected than smaller ones. We will furnish report forms to the firms covered by this survey and will require their submissions within thirty days after receipt. The sample will provide, with measurable reliability, statistics on the subjects specified above.

The Census Bureau is authorized to take surveys necessary to furnish current data on the subjects covered by the major censuses authorized by title 13, United States Code, sections 182, 224, and 225. This survey will provide continuing and timely national statistical data on retail trade for the period between economic censuses. For 2002, the economic census year, the survey will, as it has in the past, operate as a separate sample of retail companies. The data collected in this survey will be similar to that collected in the past and within the general scope and nature of those inquiries covered in the economic census. These data will provide a sound statistical basis for the formation of policy by various government agencies. These data also apply to a variety of public and business needs.

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a current valid Office of Management and Budget (OMB) control number. In accordance with the PRA, 44 United States Code, chapter 35, the OMB approved the Annual Retail Trade Survey under OMB Control Number 0607–0013. We will furnish report forms to organizations included in the survey. Additional copies are available on written request to the Director, U.S. Census Bureau, Washington, DC 20233–0101.

Based upon the foregoing, I have directed that an annual survey be conducted for the purpose of collecting these data.

Dated: November 1, 2002.

Charles Louis Kincannon,

Director, Bureau of the Census.

[FR Doc. 02–28186 Filed 11–5–02; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–812]

Furfuryl Alcohol From Thailand: Notice of Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of rescission of antidumping duty administrative review.

EFFECTIVE DATE: November 6, 2002.

SUMMARY: On August 27, 2002, the Department of Commerce (the Department) published in the **Federal Register** (67 FR 55000) a notice announcing the initiation of an administrative review of the antidumping duty order on furfuryl alcohol from Thailand, covering the period July 1, 2001, through June 30, 2002, and one manufacturer/exporter of the subject merchandise, Indorama Chemicals (Thailand) Ltd. (Indorama). We are now rescinding this review as a result of Indorama's withdrawal of its request for an administrative review.

FOR FURTHER INFORMATION CONTACT: Charles Riggle at (202) 482–0650 or Tisha Loeper-Viti at (202) 482–7425, AD/CVD Enforcement, Office 5, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the

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Department's regulations refer to the regulations codified at 19 CFR part 351 (April 2002).

Background

On July 31, 2002, Indorama, in accordance with 19 CFR 351.213(b), requested an administrative review of the antidumping duty order on furfuryl alcohol from Thailand. On August 27, 2002, in accordance with 19 CFR 351.221(c)(1)(i), we initiated an administrative review of this order for the period July 1, 2001, through June 30, 2002 (67 FR 55000). On October 18, 2002, Indorama withdrew its request for this review.

Rescission of Review

The Department's regulations at 19 CFR 351.213(d)(1) provide that the Department will rescind an administrative review if the party that requested the review withdraws its request for review within 90 days of the date of publication of the notice of initiation of the requested review, or withdraws its request at a later date if the Department determines that it is reasonable to extend the time limit for withdrawing the request. Indorama was the only party to request this review and it withdrew its request within the 90-day period. Accordingly, this review is rescinded.

This notice is issued and published in accordance with section 751 of the Act (19 U.S.C. 1675) and 19 CFR 351.213(d)(4).

Dated: October 30, 2002.

Bernard T. Carreau,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 02–28236 Filed 11–5–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No. 2003–C–003]

Performance Review Board (PRB)

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice; update membership list of the United States Patent and Trademark Office Performance Review Board.

SUMMARY: In conformance with the Civil Service Reform Act of 1978, 5 U.S.C. 4314(c)(4), the United States Patent and Trademark Office announces the appointment of persons to serve as members of its Performance Review Board.

ADDRESSES: Director, Office of Human Resources, United States Patent and Trademark Office, One Crystal Park, Suite 707, Washington, DC 20231.

FOR FURTHER INFORMATION CONTACT: Sydney Rose at (703) 305–8062.

SUPPLEMENTARY INFORMATION: The membership of the United States Patent and Trademark Office Performance Review Board is as follows:

Jonathan Dudas, Chair, Deputy Under Secretary of Commerce for Intellectual Property and Deputy Director of the United States Patent and Trademark Office, Washington, DC 20231, Term expires September 30, 2005.

Nicholas Godici, Commissioner for Patents, United States Patent and Trademark Office, Washington, DC 20231, Term expires September 30, 2003.

Anne Chasser, Commissioner for Trademarks, United States Patent and Trademark Office, Washington, DC 20231, Term expires September 30, 2003.

Douglas Bourgeois, Chief Information Officer, United States Patent and Trademark Office, Washington, DC 20231, Term expires September 30, 2004.

James Toupin, General Counsel, United States Patent and Trademark Office, Washington, DC 20231, Term expires September 30, 2004.

James Taylor, Director, Office of Financial Management and Deputy Chief Financial Officer, Department of Commerce, Washington, DC 20230, Term expires September 30, 2004.

K. David Holmes, Jr., Associate Under Secretary for Inspection, Department of Transportation, Transportation Security Administration, Washington, DC 20590, Term expires September 30, 2004.

Clarence Crawford, Director of the Office of Executive Resources Management, United States Office of Personnel Management, 1900 E Street, NW, Washington, DC 20415, Term Expires September 30, 2003.

Dated: October 31, 2002.

James E. Rogan,

Under Secretary of Commerce for Intellectual Property and, Director of the United States Patent and Trademark Office.

[FR Doc. 02–28189 Filed 11–5–02; 8:45 am]

BILLING CODE 3510–16–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Pakistan

October 31, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: November 6, 2002.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted, variously, for swing, changing donor categories for swing and special swing, and cancelling special shift and special swing.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 66 FR 65178, published on December 18, 2001). Also see 66 FR 63683, published on December 10, 2001.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 31, 2002.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 4, 2001, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products produced or manufactured in Pakistan and exported during the twelve-month period which began on January 1, 2002 and extends through December 31, 2002.

Effective on November 6, 2002, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Twelve-month restraint limit [1]
Specific limits	
219	13,091,616 square meters.
226/313	155,373,925 square meters.
237	355,050 dozen.
239pt. [2]	800,878 kilograms.
315	116,779,952 square meters.
331pt./631pt. [3]	1,059,992 dozen pairs.
335/635	657,825 dozen.
340/640	1,135,072 dozen of which not more than 515,830 dozen shall be in Categories 340–D/640–D [4].
341/641	1,381,384 dozen.
359–C/659–C [5]	1,242,728 kilograms.
625/626/627/628/629	96,051,811 square meters of which not more than 61,068,605 square meters shall be in Category 625; not more than 61,068,605 square meters shall be in Category 626; not more than 61,068,605 square meters shall be in Category 627; not more than 12,634,885 square meters shall be in Category 628; and not more than 61,068,605 square meters shall be in Category 629.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2001.

[2] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[3] Category 331pt.: all HTS numbers except 6116.10.1720, 6116.10.4810, 6116.10.5510, 6116.10.7510, 6116.92.6410, 6116.92.6420, 6116.92.6430, 6116.92.6440, 6116.92.7450, 6116.92.7460, 6116.92.7470, 6116.92.8800, 6116.92.9400 and 6116.99.9510; Category 631pt.: all HTS numbers except 6116.10.1730, 6116.10.4820, 6116.10.5520, 6116.10.7520, 6116.93.8800, 6116.93.9400, 6116.99.4800, 6116.99.5400 and 6116.99.9530.

[4] Category 340–D: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2025 and 6205.20.2030; Category 640–D: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2030, 6205.30.2040, 6205.90.3030 and 6205.90.4030.

[5] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.02–28194 Filed 11–5–02; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of an Import Limit for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Thailand

October 31, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting a limit.

EFFECTIVE DATE: November 6, 2002.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://www.otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limit for Categories 351/651 is being increased for swing.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 66 FR 65178, published on December 18, 2001). Also see 66 FR 63036, published on December 4, 2001.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 31, 2002.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 27, 2001, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Thailand and exported during the twelve-month period which began on January 1, 2002 and extends through December 31, 2002.

Effective on November 6, 2002, you are directed to increase the current limit for Categories 351/651 in Group II to 399,933 dozen [1], as provided for under the Uruguay Round Agreement on Textiles and Clothing

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs

[1] The limit has not been adjusted to account for any imports exported after December 31, 2001.

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exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 02–28120 Filed 11–5–02; 8:45 a.m.]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Determination under the African Growth and Opportunity Act (AGOA)

October 31, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Determination.

SUMMARY: The Committee for the Implementation of Textile Agreements (CITA) has determined that handloomed fabric and handmade articles made from such handloomed fabric that are produced in and exported from Botswana qualify for preferential treatment under Section 112(a) of the African Growth and Opportunity Act. Therefore, imports of eligible products from Botswana with an appropriate AGOA Visa will qualify for duty-free treatment under the AGOA.

EFFECTIVE DATE: November 18, 2002.

FOR FURTHER INFORMATION CONTACT: Anna Flaaten, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

SUPPLEMENTARY INFORMATION: The African Growth and Opportunity Act (Title I of the Trade and Development Act of 2000, Pub. L. No. 106-2000)(AGOA) provides preferential tariff treatment for imports of certain textile and apparel products of beneficiary sub-Saharan African countries. In a letter to the Commissioner of Customs dated January 18, 2001, the United States Trade Representative directed Customs to require that importers provide an appropriate export visa from a beneficiary sub-Saharan African country to obtain preferential treatment under section 112(a) of the AGOA (66 FR 7837). The first digit of the visa number corresponds to one of 9 groupings of textile and apparel products that are eligible for preferential tariff treatment. Grouping "9" is reserved for Handmade, handloomed, or folklore articles.

In Section 2 of Executive Order 13191 of January 17, 2001, CITA is authorized to "consult with beneficiary sub-Saharan African countries and to determine which, if any, particular textile and apparel goods shall be treated as being handloomed, handmade, or folklore articles" (66 FR 7272). Consultations were held on October 9, 2002, and CITA has now determined that handloomed fabrics and handmade articles made from such handloomed fabrics produced in and exported from Botswana are eligible for preferential tariff treatment under section 112(a) of the AGOA. In the letter published below, CITA directs the Commissioner of Customs to allow entry of such products of Botswana under Harmonized Tariff Schedule provision 9819.11.27, when accompanied by an appropriate export visa in grouping "9."

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 31, 2002.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Department of the Treasury, Washington, DC 20229.Dear Commissioner: The Committee for the Implementation of Textiles Agreements (CITA), pursuant to Sections 112(a) of the African Growth and Opportunity Act (Title I of Pub. L. No. 106-200) (AGOA) and Executive Order 13101 of January 17, 2001, has determined that, effective on November 18, 2002 handloomed fabric produced in Botswana and handmade articles produced in Botswana from such handloomed fabric shall be treated as being handloomed, handmade, or folklore articles under the AGOA, and that an export visa issued by the Government of Botswana for Grouping "9" is a certification by the Government of Botswana that the article is handloomed, handmade, or folklore. CITA directs you to permit duty-free entry of such articles accompanied by the appropriate visa and entered under heading 9819.11.27 of the Harmonized Tariff Schedule of the United States.

Sincerely,

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 02–28195 Filed 11–5–02; 8:45 am]

BILLING CODE 3510–DR–S

DEPARTMENT OF DEFENSE

Office of the Secretary

TRICARE; Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Fiscal Year 2003 Diagnosis Related Group (DRG) Updates

AGENCY: Office of the Secretary, DoD.

ACTION: Notice of DRG revised rates.

SUMMARY: This notice describes the changes made to the TRICARE DRG-based payment system in order to conform to changes made to the Medicare Prospective Payment System (PPS).

It also provides the updated fixed loss cost outlier threshold, cost-to-charge ratios and the Internet address for accessing the updated adjusted standardized amounts and DRG relative weights to be used for FY 2003 under the TRICARE DRG-based payment system.

DATES: The rates, weights and Medicare PPS changes which affect the TRICARE DRG-based payment system contained in this notice are effective for admissions occurring on or after October 1, 2002.

ADDRESSES: TRICARE Management Activity (TMA), Medical Benefits and Reimbursement Systems, 16401 East Centretech Parkway, Aurora, CO 80011–9066.

FOR FURTHER INFORMATION CONTACT: Marty Maxey, Medical Benefits and Reimbursement Systems, TMA, telephone (303) 676–3627.

Questions regarding payment of specific claims under the TRICARE DRG-based payment system should be addressed to the appropriate contractor.

SUPPLEMENTARY INFORMATION: The final rule published on September 1, 1987 (52 FR 32992) set forth the basic procedures used under the CHAMPUS DRG-based payment system. This was subsequently amended by final rules published August 31, 1988 (53 FR 33461), October 21, 1988 (53 FR 41331), December 16, 1988 (53 FR 50515), May 30, 1990 (55 FR 21863), October 22, 1990 (55 FR 42560), and September 10, 1998 (63 FR 48439).

An explicit tenet of these final rules, and one based on the statute authorizing the use of DRGs by TRICARE, is that the TRICARE DRG-based payment system is modeled on the Medicare PPS, and that, whenever practicable, the TRICARE system will follow the same rules that apply to the Medicare PPS. The Centers for Medicare and Medicaid Services (CMS) publishes these changes annually in the **Federal Register** and discusses in detail the impact of the changes.

In addition, this notice updates the rates and weights in accordance with our previous final rules. The actual changes we are making, along with a description of their relationship to the Medicare PPS, are detailed below.

I. Medicare PPS Changes Which Affect the TRICARE DRG-Based Payment System

Following is a discussion of the changes CMS has made to the Medicare PPS that affect the TRICARE DRG-based payment system.

A. DRG Classifications

Under both the Medicare PPS and TRICARE DRG-based payment system, cases are classified into the appropriate DRG by a Grouper program. The Grouper classifies each case into a DRG on the basis of the diagnosis and procedure codes and demographic information (that is, sex, age, and discharge status). The Grouper used for the TRICARE DRG-based payment system is the same as the current Medicare Grouper with two modifications. The TRICARE system has replaced Medicare DRG 435 with two age-based DRGs (900 and 901), and has implemented thirty-four (34) neonatal DRGs in place of Medicare DRGs 385 through 390. For admissions occurring on or after October 1, 2001, DRG 435 has been replaced by DRG 523.

The TRICARE system has replaced DRG 523 with the two age-based DRGs (900 and 901). For admissions occurring on or after October 1, 1995, the CHAMPUS grouper hierarchy logic was changed so the age split (age <29 days) and assignments to MDC 15 occur before assignment of the PreMDC DRGs. This resulted in all neonate tracheostomies and organ transplants to be grouped to MDC 15 and not to DRGs 480–483 or 495. For admissions occurring on or after October 1, 1998, the CHAMPUS grouper hierarchy logic was changed to move DRG 103 to the PreMDC DRGs and to assign patients to PreMDC DRGs 480, 103 and 495 before assignment to MDC 15 DRGs and the neonatal DRGs. For admissions occurring on or after October 1, 2001, DRGs 512 and 513 were added to the PreMDC DRGs, between DRGs 480 and 103 in the TRICARE grouper hierarchy logic.

For FY 2003, CMS will implement classification changes, including surgical hierarchy changes. The TRICARE Grouper will incorporate all changes made to the Medicare Grouper.

B. Wage Index and Medicare Geographic Classification Review Board Guidelines

TRICARE will continue to use the same wage index amounts used for the Medicare PPS. In addition, TRICARE will duplicate all changes with regard to the wage index for specific hospitals that are redesignated by the Medicare Geographic Classification Review Board.

C. Hospital Market Basket

TRICARE will update the adjusted standardized amounts according to the final updated hospital market basket used for the Medicare PPS according to CMS's August 1, 2002, final rule.

D. Outlier Payments

Since TRICARE does not include capital payments in our DRG-based payments, we will use the fixed loss cost outlier threshold calculated by CMS for paying cost outliers in the absence of capital prospective payments. For FY 2003, the fixed loss cost outlier threshold is based on the sum of the applicable DRG-based payment rate plus any amounts payable for IDME plus a fixed dollar amount. Thus, for FY 2003, in order for a case to qualify for cost outlier payments, the costs must exceed the TRICARE DRG base payment rate (wage adjusted) for the DRG plus the IDME payment plus $30,707 (wage adjusted). The marginal cost factor for cost outliers continues to be 80 percent.

E. Blood Clotting Factor

For FY 2003, the updated HCPCS codes and payment rates for blood clotting factors can be found in the TRICARE Reimbursement Manual, Chapter 6, Section 4, which is accessible through the Internet at *http://www.tricare.osd.mil* under the sequential headings TRICARE Beneficiaries, Other Resources, TRICARE Manuals, TRICARE Reimbursement Manual. TRICARE uses the same ICD–9–CM diagnosis codes as CMS for add-on payment for blood clotting factors.

F. Indirect Medical Education (IDME) Adjustment

Passage of The Benefits Improvement and Protection Act (BIPA) of 2000, modified the transition for the IDME adjustment that was first established by the Balanced Budget Act (BBA) of 1997 and revised by the Balanced Budget Refinement Act of 1999. The formula multiplier for the TRICARE IDME adjustment has been revised to 1.02 for FY 2003 and thereafter.

G. National Operating Standard Cost as a Share of Total Costs

The FY 2003 TRICARE National Operating Standard Cost as a Share of Total Costs used in calculating the cost outlier threshold is 0.915.

II. Cost to Charge Ratio

For FY 2003, the cost-to-charge ratio used for the TRICARE DRG-based payment system will be 0.5062, which is increased to 0.5132 to account for bad debts. This shall be used to calculate the adjusted standardized amounts and to calculate cost outlier payments, except for children's hospitals. For children's hospital cost outliers, the cost-to-charge ratio used is 0.5604.

III. Updated Rates and Weights

The updated rates and weights are accessible through the Internet at *http://www.tricare.osd.mil* under the sequential headings TRICARE Provider Information, Rates and Reimbursements, and DRG Information. Table 1 provides the ASA rates and Table 2 provides the DRG weights to be used under the TRICARE DRG-based payment system during FY 2003 and which is a result of the changes described above. The implementing regulations for the TRICARE/CHAMPUS DRG-based payment system are in 32 CFR part 199.

Dated: October 30, 2002.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–28108 Filed 11–5–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board will meet in closed session on January 20–30, 2003; May 21–22, 2003; and October 22–23, 2003, at the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings, the Defense Science Board will discuss interim findings and recommendations resulting from ongoing Task Force activities. The Board will also discuss plans for future consideration of scientific and technical aspects of specific strategies, tactics, and policies as they may affect the U.S. national defense posture and homeland security.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App. II), it has been determined that these Defense Science Board meetings concern matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly,

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these meetings will be closed to the public.

Dated: October 30, 2002.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–28106 Filed 11–?5–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee meeting.

SUMMARY: The Defense Science Board Task Force on the Smallpox Vaccine Down Select Process will meet in closed session on December 9, 2002, and February 6, 2003, at SAIC, 4001 N. Fairfax Drive, Arlington, VA. The Task Force will perform an independent evaluation of the Department of Defense and Department of Health and Human Services smallpox vaccine candidates.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings, the Task Force will evaluate each of the three smallpox vaccine candidates to include the following type of issues: Choice of cell line and viral strain used; preclinical data in appropriate animal models; review of vaccine production methodology to include rates of production and surge capacity; review of protocols for clinical trials to include adverse reaction rates; review of cost issues as they relate to production of the vaccine; review of critical regulatory, legal, and ethical issues associated with the use of the vaccine; and any other issues that the Task Force feels, based on its experience, are relevant.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. II), it has been determined that these Defense Science Board Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(4) and that, accordingly, these meetings will be closed to the public.

Dated: October 30, 2002.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–28107 Filed 11–5–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Department of the Air Force

Notice of Intent To Prepare an Environmental Impact Statement for Department of Defense Mission Closure at Johnston Atoll Airfield

Pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended (42 United States Code 4321, *et seq.*), the Council on Environmental Quality (CEQ) Regulations for implementing the procedural provisions of NEPA (40 Code of Federal Regulations [CFR] parts 1500–1508), and Air Force policy and procedures (32 CFR 989), Detachment 1 of the 15 Air Base Wing (ABW) intends to prepare an Environmental Impact Statement (EIS) for the DoD mission closure of Johnston Atoll Airfield. Johnston Atoll (JA) is an unincorporated territory (*i.e.*, possession) of the United States located approximately 717 nautical miles southwest of Honolulu, Hawaii, in the central Pacific Ocean. The Air Force and its implementing agent, Detachment 1, 15 ABW currently serves as the host-management agency for JA military missions. After December 31, 2003, no further military mission requirements have been identified for JA.

Detachment 1, 15 ABW will be the lead agency for the EIS. Since Honolulu is the closest population center to this remote Pacific atoll, Detachment 1, 15 ABW will conduct a Public Scoping Meeting, scheduled for November 6, 2002, in Honolulu, Hawaii at Washington Intermediate School, located at 1633 South King Street. The meeting's purpose is to determine the environmental issues and concerns to be analyzed, to solicit comments on the Proposed Action and alternatives, and to solicit input for other alternatives to be considered in the EIS.

The current proposal evaluates four alternatives—(1) No Action; (2) mission closure with declaration of excess to General Services Administration (GSA); (3) mission closure, but retain ownership of JA (do not excess property to GSA); and (4) caretaker status (mothball JA and retain for future missions). The Proposed Action is alternative (2); however, all comments received during the Scoping Meeting will be considered prior to the Air Force making a decision.

For further information concerning the DoD mission closure at JA or alternatives to the proposed action, please contact Ms. Fran Saunders, Chief, Johnston Atoll Program Office, OL–A, Detachment 1, 15 ABW, 200 Vickers Avenue, Bldg 1055, Hickam AFB, HI 96853–5271.

Pamela D. Fitzgerald,

Air Force Federal Register Liaison Officer.

[FR Doc. 02–28208 Filed 11–5–02; 8:45 am]

BILLING CODE 5001–5–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Government-Owned Invention; Available for Licensing

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The invention listed below is assigned to the United States Government as represented by the Secretary of the Navy and is available for licensing by the Department of the Navy. Navy Case No. 83,326, entitled "Use of Selective Electrodes for Illicit Drugs Analysis in Saliva and Surface Wipes".

ADDRESSES: Requests for information about the invention cited should be directed to the Naval Research Laboratory, Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320, and must include the Navy Case number.

FOR FURTHER INFORMATION CONTACT: Catherine M. Cotell, Ph.D., Head, Technology Transfer Office, NRL Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320, telephone (202) 767–7230. Due to temporary U.S. Postal Service delays, please fax (202) 404–7920, *E-Mail: cotell@nrl.navy.mil* or use courier delivery to expedite response.

(Authority: 35 U.S.C. 207, 37 CFR Part 404)

Dated: October 29, 2002.

R.E. Vincent II,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 02–28112 Filed 11–5–02; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education

SUMMARY: The Leader, Regulatory Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before December 6, 2002.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Karen Lee, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address *Karen_F._Lee@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: November 1, 2002.

John D. Tressler,

Leader, Regulatory Management Group, Office of the Chief Information Officer.

Office of Elementary and Secondary Education

Type of Review: Extension.

Title: Native Hawaiian Education Council.

Frequency: Annually.

Affected Public: Businesses or other for-profit; State, local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 100, Burden Hours: 200.

Abstract: The No Child Left Behind Act of 2001 authorized the Secretary of Education to establish a Native Hawaiian Education Council to help coordinate the educational and related services available to Native Hawaiians. The legislation states that the Education Council may consist of no more than 21 members, unless otherwise determined by a majority of the Council. Furthermore, at least 10 members of the Education Council must be Native Hawaiian service providers and 10 members must be Native Hawaiians or Native Hawaiian education consumers. In addition, membership must include a representative of the State of Hawaii Office of Hawaiian Affairs.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2062. When you access the information collection, click on "Download Attachments " to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivan.reese@ed.gov.* Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at her e-mail address *Kathy.Axt@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–28246 Filed 11–5–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education

SUMMARY: The Leader, Regulatory Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before December 6, 2002.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, *Attention:* Lauren Wittenberg, Acting Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address *Lauren_Wittenberg@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: November 1, 2002.

John D. Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Reinstatement, with change, of a previously approved collection for which approval has expired.

Title: FIPSE Comprehensive Program Grant Application.

Frequency: Annually.

Affected Public: Not-for-profit institutions (primary).

Reporting and Recordkeeping Hour Burden:

Responses: 1,650.

Burden Hours: 19,500.

Abstract: The Comprehensive program is a discretionary grant award program of the fund for the Improvement of Postsecondary Education (FIPSE). Applications are submitted in two stages—preliminary and final. The program supports innovative reform projects that hold promise as models for the resolution of important issues and problems in postsecondary education. Grants made under this program are expected to

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contribute new information in educational practice that can be shared with others. As its name suggests, the Comprehensive program may support activities in any discipline, program, or student service. Nonprofit institutions and organizations offering postsecondary education programs are eligible applicants. The Comprehensive Program has established a record of meaningful and lasting improvement to access, retention, and quality in postsecondary education.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2177. When you access the information collection, click on "Download Attachments " to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivan.reese@ed.gov*. Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to (202) 708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to SCHUBART at (202) 708–9266. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–28247 Filed 11–5–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12287–000]

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

October 31, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application*: Preliminary Permit.

b. *Project No.*: 12287–000.

c. *Date filed*: July 5, 2002.

d. *Applicant*: Greybull Valley Irrigation District.

e. *Name of Project*: Stonewall Project.

f. *Location*: On the Wood River, in Park County, Wyoming, utilizing the supply canal of an existing dam owned by the applicant. Part the project is located on land administered by the U.S. Bureau of Land Management.

g. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contact*: Mr. Norman L. Preator, Chairman, Greybull Valley Irrigation District, 949 Highway 20 West, P.O. Box 44, Emblem, WY 82422, (307)762–3317.

i. *FERC Contact*: Robert Bell, (202) 502–6062.

j. *Deadline for filing comments, protests, and motions to intervene*: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link. The Commission strongly encourages electronic filings. Please include the project number (P–12287–000) on any comments or motions filed.

The Commission's rules of practice and procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project*: The proposed project would consist of: (1) A proposed intake structure from the canal, (2) a proposed 1,500-foot-long penstock, (3) a proposed powerhouse containing one generating unit with an installed capacity of 2.5 MW, (4) a proposed 3-mile-long 15kV transmission line, and (5) appurtenant facilities.

Applicant estimates that the average annual generation would be 2 GWh and would be sold to a local utility.

l. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCONLINESUPPORT@FERC.GOV*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. Competing Development Application—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–28310 Filed 11–5–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL03–22–000]

California Independent System Operator Corporation, California Electricity Oversight Board, Public Utilities Commission of the State of California, and San Diego Gas & Electric Company, Complainants, v. Cabrillo Power I LLC, Respondent; Notice of Complaint

October 31, 2002.

Take notice that on October 30, 2002, the California Independent System Operator Corporation (the ISO), the California Electricity Oversight Board, the Public Utilities Commission of the State of California and San Diego Gas & Electric Company submitted a complaint pursuant to section 206 of the Federal Power Act, 16 U.S.C. 824e, against Cabrillo Power I LLC alleging that certain rates, referred to as the Fixed Option Payments, in the respective reliability must run (RMR) contracts between the ISO and respondent are unjust and unreasonable.

Complainants state that the allegations, facts, and relief requested in this proceeding are identical to those in Docket No. EL02–15–000, except that the complaint filed in that Docket did not include Encina unit number 4, which the ISO had not designated as an RMR unit for 2002. The ISO has indicated that unit number 4 will be designated as an RMR unit for the year 2003. Complainants ask that the Commission set a refund date of January 1, 2003, consolidate this proceeding with Docket No. EL02–15–000, and defer further action pending its decision on exceptions in Docket No. ER98–495–000.

Copies of the complaint were served on respondent and on other interested parties.

Any person desiring to be heard or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. The answer to the complaint and all comments, interventions or protests must be filed on or before November 19, 2002. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. The answer to the complaint, comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–28305 Filed 11–5–02; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EC02–23–004, et al.]

Trans-Elect, Inc., et al.; Electric Rate and Corporate Filings

October 29, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Trans-Elect, Inc.; Michigan Transco Holding, Limited Partnership, and ER02–320–006, Consumers Energy Company, and Michigan Electric Transmission Company.

[Docket Nos. EC02–23–004]

Take notice that on October 23, 2002, Michigan Electric Transmission Company, LLC submitted the response to Commission's letter issued on September 23, 2002 in the referenced proceedings.

Copies of the transmittal letter included as part of this filing were served on all parties on the Commission's official service list in these proceedings and on all affected state commissions.

Comment date: November 13, 2002.

2. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER03–86–000]

Take notice that on October 24, 2002, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) tendered for filing proposed revisions to

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its Open Access Transmission Tariff (OATT), FERC Electric Tariff, Second Revised Volume No. 1 in order to accommodate the participation of independent transmission companies (ITCs) in the Midwest ISO. The Midwest ISO has requested an effective date of December 23, 2002.

The Midwest ISO has requested waiver of the requirements set forth in 18 CFR 385.2010. The Midwest ISO has electronically served a copy of this filing upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, Policy Subcommittee participants, as well as all state commissions within the region. In addition, the filing has been electronically posted on the Midwest ISO's Web site at *www.midwestiso.org* under the heading "Filings to FERC" for other interested parties in this matter. The Midwest ISO will provide hard copies to any interested parties upon request.

Comment Date: November 14, 2002.

3. American Electric Power Service Corporation

[Docket No. ER03–87–000]

Take notice that on October 25, 2002, the American Electric Power Service Corporation (AEPSC) tendered for filing an executed Interconnection and Operation Agreement between Appalachian Power Company and Mirant Danville, LLC. The agreement is pursuant to the AEP Companies' Open Access Transmission Service Tariff (OATT) that has been designated as the Operating Companies of the American Electric Power System FERC Electric Tariff Third Revised Volume No. 6, effective July 31, 2001.

AEP requests an effective date of December 23, 2002. A copy of the filing was served upon Mirant Danville and Virginia State Corporation Commission.

Comment Date: November 15, 2002.

4. Cleco Utility Group, Cleco Utility Group, Inc. Docket No. OA97–325–002

[Docket No. OA97–282–002]

Take notice that on October 25, 2002, Cleco Power LLC submitted a filing in compliance with the Federal Regulatory Commission's September 25, 2002 Order.

Comment Date: November 25, 2002.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502–8222 or TTY, (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–28303 Filed 11–5–02; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EG03–9–000, et al.]

Twelvepole Creek, LLC, et al.; Electric Rate and Corporate Filings

October 30, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Twelvepole Creek, LLC

[Docket No. EG03–9–000]

Take notice that on October 28, 2002, Twelvepole Creek, LLC (Twelvepole Creek) tendered for filing an application for a new determination of exempt wholesale generator status, pursuant to section 32(a)(1) of the Public Utility Holding Company Act of 1935, as amended, (PUHCA), 15 U.S.C. 79z–5a(a)(1) (2000), and Section 365.8 of the regulations of the Federal Energy Regulatory Commission (Commission), 18 CFR 365.8.

Twelvepole Creek is a Delaware limited liability company that leases and operates an approximately 504–MW electric generating facility located in Wayne County, West Virginia. Twelvepole Creek states that it will be engaged directly, or indirectly through one or more affiliates as defined in Section 2(a)(11)(B) of PUHCA, and exclusively in the business of operating an eligible facility, and selling electric energy at wholesale.

Comment Date: November 20, 2002.

2. Edison Source

[Docket No. ER02–2563–001]

Take notice that on October 3, 2002, Edison Source tendered for filing with the Federal Energy Regulatory Commission (Commission) an amendment to its filing in the above-referenced docket concerning the termination of the PX Participation Agreement with the California Power Exchange Corporation, dated march 17, 1998, and its Addendum, dated March 17, 1998; and withdrawing Edison Source's Standing Request Relating to inter-Scheduling Coordinator Trades, dated June 5, 1998.

Edison Source requests that the above termination and withdrawal became effective October 16, 2002. *Comment Date:* November 12, 2002.

3. MidAmerican Energy Company

[Docket No. ER03–12–001]

Take notice that on October 28, 2002, MidAmerican Energy Company (MidAmerican), filed with the Commission a revised filing of the Electric Transmission Interconnection Agreement between Iowa Public Service Company n/k/a MidAmerican Energy Company, dated March 1, 1991, incorporating the Fifth Amendment to the Agreement, dated June 28, 2002, which was filed on October 3, 2002.

MidAmerican requests an effective date of the later of the effective date of the acceptance of this Agreement by the Commission or the approval of this Agreement, incorporating the Fifth Amendment by the Administrator of the Rural Utilities Service or the successor in interest to the Administrator, if the approval of the Administrator or such successor is required by law. MidAmerican has served a copy of the filing on the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission. *Comment Date:* November 18, 2002.

4. Liberty Electric Power, LLC

[Docket No. ER03–88–000]

Take notice that on October 28, 2002 Liberty Electric Power, LLC (Liberty) tendered for filing, pursuant to section 205 of the Federal Power Act (16 U.S.C. 824d), and Part 35 of the Federal Energy Regulatory Commission Rules of Practice and Procedure, a rate schedule for reactive power to be provided to the PJM Interconnection, LLC transmission grid. Liberty requests an effective date of December 1, 2002. *Comment Date:* November 18, 2002.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502–8222 or TTY, (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–28304 Filed 11–5–02; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12200–000]

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

October 31, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12200–000.

c. *Date filed:* June 10, 2002.

d. *Applicant:* McKay Hydro, LLC.

e. *Name of Project:* McKay Dam Project.

f. *Location:* On McKay Creek, in Umatilla County, Oregon utilizing the McKay Dam administered by the U.S. Bureau of Reclamation.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Brent L. Smith, President, Northwest Power Services, Inc., P.O. Box 535, Rigby, ID 83442, (208)745–0834.

i. *FERC Contact:* Robert Bell, (202) 502–6062.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings. Please include the project number (P–12200–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would utilize the existing U.S. Bureau of Reclamation's McKay Dam and would consist of: (1) A proposed intake structure, (2) a proposed 250-foot-long, 48-inch-diameter steel penstock, (3) a proposed powerhouse containing one generating unit having an installed capacity of 1 MW, (4) a proposed 1-mile-long, 25 kV transmission line, and (5) appurtenant facilities.

Applicant estimates that the average annual generation would be 4.56 GWh and would be sold to a local utility.

l. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail FERCONLINESUPPORT@FERC.GOV. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at McKay Hydro, LLC, 975 South State Highway, Logan, UT 84321, (435) 752–2580.

m. *Competing Preliminary Permit:* Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. *Competing Development Application:* Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. *Notice of Intent:* A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. *Proposed Scope of Studies Under Permit:* A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation

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of a development application to construct and operate the project.

q. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–28306 Filed 11–5–02; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12211–000]

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

October 31, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12211–000.

c. *Date filed:* June 6, 2002.

d. *Applicant:* Arbuckle Hydro, LLC.

e. *Name of Project:* Arbuckle Dam Project.

f. *Location:* On Rock Creek, in Murray County, Oklahoma utilizing the Arbuckle Dam administered by the U.S. Bureau of Reclamation.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Brent L. Smith, President, Northwest Power Services, Inc., P.O. Box 535, Rigby, ID 83442, (208)745–0834.

i. *FERC Contact:* Robert Bell, (202) 502–6062.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings. Please include the project number (P–12211–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would utilize the existing U.S. Bureau of Reclamation's Arbuckle Dam and would consist of: (1) A proposed intake structure, (2) a proposed 200-foot-long, 42-inch-diameter steel penstock, (3) a proposed powerhouse containing one generating unit having an installed capacity of 1 MW, (4) a proposed 2-mile-long, 15 kV transmission line, and (5) appurtenant facilities. Applicant estimates that the average annual generation would be 3.5 GWh and would be sold to a local utility.

l. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCONLINESUPPORT@FERC.COM.* For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at Arbuckle Hydro, LLC, 975 South State Highway, Logan, UT 84321, (435) 752–2580.

m. *Competing Preliminary Permit:* Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. *Competing Development Application:* Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. *Notice of Intent:* A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit

application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. *Proposed Scope of Studies under Permit:* A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–28307 Filed 11–5–02; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12285–000]

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

October 31, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12285–000.

c. *Date filed:* July 5, 2002.

d. *Applicant:* Greybull Valley Irrigation District.

e. *Name of Project:* Greybull Valley Dam Project.

f. *Location:* On Roach Gulch, in Park County, Wyoming, utilizing the Greybull Valley Dam owned by the applicant. Part of the project is located on land administered by the U. S. Bureau of Land Management.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Norman L. Preator, Chairman, Greybull Valley Irrigation District, 949 Highway 20 West, P.O. Box 44, Emblem, WY 82422, (307)762–3317.

i. *FERC Contact:* Robert Bell, (202) 502–6062.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings. Please include the project number (P–12285–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would consist of: (1) An existing 1,320-foot-long, 150 foot-high zoned earthen dam, (2) a reservoir having a surface area of 900 acres and storage capacity of 33,169 acre-feet and normal water surface elevation of 4,953 feet msl, (3) a proposed intake structure, (4) a proposed powerhouse containing two generating units having a total installed capacity of 5 MW, (5) a proposed 3-mile-long 15 kV transmission line, and (6) appurtenant facilities.

Applicant estimates that the average annual generation would be 15 GWh and would be sold to a local utility.

l. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail FERCONLINESUPPORT@FERC.GOV. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. *Competing Preliminary Permit:* Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. *Competing Development Application:* Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely

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notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. *Notice of Intent:* A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. *Proposed Scope of Studies under Permit:* A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–28308 Filed 11–5–02; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12286–000]

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

October 31, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application*: Preliminary Permit.

b. *Project No.*: 12286–000.

c. *Date filed*: July 5, 2002.

d. *Applicant*: Greybull Valley Irrigation District.

e. *Name of Project*: Greybull Valley Supply Canal Project.

f. *Location*: On the Greybull River, in Park County, Wyoming, utilizing the the supply canal of the existing Greybull Valley Dam owned by the applicant. Part of the project is located on land administered by the U.S. Bureau of Land Management.

g. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contact*: Mr. Norman L. Preator, Chairman, Greybull Valley Irrigation District, 949 Highway 20 West, P.O. Box 44, Emblem, WY 82422, (307)762–3317.

i. *FERC Contact*: Robert Bell, (202) 502–6062. j. *Deadline for filing comments, protests, and motions to intervene*: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link. The Commission strongly encourages electronic filings. Please include the project number (P–12286–000) on any comments or motions filed.

The Commission's rules of practice and procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. Description of Project: The proposed project would consist of: (1) A proposed intake from the canal, (2) a proposed 500-foot long steel penstock, (3) a proposed powerhouse containing two generating units having a total installed capacity of 5 MW, (4) a proposed 3-mile-long 15 kV transmission line, and (5) appurtenant facilities.

Applicant estimates that the average annual generation would be 7 GWh and would be sold to a local utility.

l. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCONLINESUPPORT@FERC.GOV*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. Competing Development Application—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of rules of practice and procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–28309 Filed 11–5–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7405–3]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Information Requirements for EPA Worker Protection Standards for Hazardous Waste Operations and Emergency Response

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Information Requirements for EPA Worker Protection Standards for Hazardous Waste Operations and Emergency Response, OMB Control No. 2050–0105, expiring October 31, 2002. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before December 6, 2002.

ADDRESSES: Send comments, referencing EPA ICR No. 1420.06 and OMB Control No. 2050–0105, to the following addresses: Susan Auby, U.S. Environmental Protection Agency, Collection Strategies Division (Mail Code 2822T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0001; and to Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR contact Susan Auby at EPA by phone at (202) 566–1672, by E-mail at *Auby.Susan@epa.gov*, or download off the Internet at *http://www.epa.gov/icr* and refer to EPA ICR No. 1420.06. For technical questions about the ICR contact Sella M. Burchette, OSWER/OERR/ERTC, 732–321–6726.

SUPPLEMENTARY INFORMATION:

Information Requirements for EPA Worker Protection Standards for Hazardous Waste Operations and Emergency Response, OMB Control No. 2050–0105, EPA ICR No. 1426.06, expiring October 31, 2002. This is a request for extension of a currently approved collection.

Abstract: This information collection request (ICR) addresses the information requirements for the U.S. Environmental Protection Agency's (EPA) worker protection standards for hazardous waste operations and emergency response under section 126(f) of the Superfund Amendments and Reauthorization Act of 1986 (SARA). SARA section 126(a) requires the Secretary of Labor to promulgate health and safety standards pursuant to section 6 of the Occupational Safety and Health Act of 1970 (OSH Act), for employees engaged in hazardous waste operations and emergency response. Section 126(b) lists eleven worker protection provisions that the Secretary of Labor was directed to include in the regulation (see attached copy of Section 126 of SARA, PL 99–499). These provisions include preparation of various written programs, plans, and records, monitoring of airborne hazards, training of employees, medical surveillance, and the dissemination of information to employees. Certain aspects of these provisions necessitate the collection of information by employers whose employees are engaged in hazardous

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waste operations and emergency response. These final standards do not specify any particular method of information collection. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on March 21, 2002 (67 FR 13139); no comments were received.

Burden Statement: The annual public reporting and record keeping burden for this collection of information is estimated to average 10.68 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: State and local workers.

Estimated Number of Respondents: 24,000.

Frequency of Response: Annually.

Estimated Total Annual Hour Burden: 255,427.

Estimated Total Annualized Capital, O&M Cost Burden: $0.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the addresses listed above. Please refer to EPA ICR No. 1426.06 and OMB Control No. 2050–0105 in any correspondence.

Dated: October 30, 2002.

Sara Hisel-McCoy,

Acting Director, Collection Strategies Division.

[FR Doc. 02–28215 Filed 11–5–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7405–1]

Interstate Lead Company (ILCO) Superfund Site/Leeds, Alabama; Notice of Proposed Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement.

SUMMARY: Under section 122(g) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), Namco Metals, Inc. (Respondent) entered into a *de minimis* Administrative Order on Consent with the Environmental Protection Agency (EPA), whereby the Respondent, in exchange for the United States' covenant not to sue, agrees to pay EPA $12,464.66 and the ILCO Site Remediation Group $30,516.94 for its share of the past and future response costs, including a premium, for the ILCO Superfund Site located in Leeds, Jefferson County, Alabama. EPA will consider public comments on the proposed settlement for thirty days. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper, or inadequate. Copies of the proposed settlement are available from: Ms. Paula V. Batchelor, U.S. Environmental Protection Agency, Region IV, CERCLA Program Services Branch, Waste Management Division, 61 Forsyth Street, SW., Atlanta, Georgia 30303. (404) 562–8887.

Written comment may be submitted to Ms. Brenita Richardson at the above address within 30 days of the date of publication.

Dated: October 21, 2002.

Anita L. Davis,

Acting Chief, CERCLA Program Services Branch, Waste Management Division.

[FR Doc. 02–28213 Filed 11–5–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7405–2]

Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) or Superfund, Section 104(k)(6); "Announcement of Implementation of Brownfields Job Training Grants"

AGENCY: Environmental Protection Agency.

ACTION: Notice of an opportunity to provide comments on EPA's draft fiscal year 2003 Brownfields job training grant application guidelines.

SUMMARY: The Environmental Protection Agency (EPA) is interested in obtaining the views of interested stakeholders on a draft of the Agency's fiscal year 2003 Brownfields job training grant application guidelines (FY 03 Job Training Guidelines). EPA will make the draft FY 03 Job Training Guidelines available to the public on the Agency's Web site at *http://www.epa.gov/brownfields.* Interested stakeholders and the public are encouraged to download and review the draft guidelines and provide comments by seven calendar days following the publication date of the federal register notice.

DATES: EPA will post the guidelines on the Agency's Web site on November 6, 2002. Those parties that wish to submit written comments on the draft Brownfields Grants Guidelines must submit their comments to EPA no later than one week (seven calendar days) after the publication of the **Federal Register** notice.

ADDRESSES: To ensure that EPA has adequate time to consider any written comments, the Agency encourages parties to submit their comments to the Agency in electronic format. Electronic comments may be submitted to EPA's Office of Brownfields Cleanup and Redevelopment at *BF.comments@epa.Gov.* Parties wishing to submit their comments via the united States Postal Service should address their comments to: Ms. LaKisha Odom, U.S. Environmental Protection Agency, Office of Brownsfields Cleanup and Redevelopment, MC–5105T, 1200 Pennsylvania Avenue NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: For additional information, contact EPA's Office of the Brownfields Cleanup and Redevelopment at 202–566–2777.

SUPPLEMENTARY INFORMATION: The FY 03 Job training Guidelines will be issued under section 104(k)(6) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERLA) as amended by the recently enacted Small Business Liability Relief and Brownfields Revitalization Act, PL 107–118 (SBLRBRA). Guidelines for grant programs are exempt from notice and comment requirements under 5 U.S.C. 552(a)(2). However, the Agency has decided that consultation with public stakeholders prior to issuing the final version of the FY 03 Job Training Guidelines is an appropriate step in effectively implementing SBLRBRA.

All written comments must be received by the Agency no later than seven calendar days from federal notice publication. The Agency will carefully consider written comments received during the public comment period, prior to issuing final Brownfields Job Training Grant Application Guidelines in November, 2002. 2002. However, due to the need to promptly provide the final FY 03 Job Training Guidelines to potential applicants, EPA does not plan to respond in writing to written comments.

Dated: October 24, 2002.

Linda Garczynski,

Director, Office of Brownfields Cleanup and Redevelopment, Office of Solid Waste and Emergency Response.

[FR Doc. 02–28211 Filed 11–5–02; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0262; FRL–7275–5]

Endosulfan; Availability of Reregistration Eligibility Decision Documents for Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces availability and starts a 60–day public comment period on the Reregistration Eligibility Decision (RED) document for the pesticide active ingredient endosulfan. The RED represents EPA's formal regulatory assessment of the health and environmental database of the subject chemical and presents the Agency's determination regarding which pesticidal uses are eligible for reregistration.

DATES: Comments, identified by docket ID number OPP–2002–0262, must be received on or before January 6, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Stacey Milan, Chemical Review Manager, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–2505; e-mail address: milan.stacey@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to persons who are or may be required to conduct testing of chemical substances under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) or the Federal Food, Drug, and Cosmetic Act (FFDCA); environmental, human health, and agricultural advocates; pesticides users; and members of the public interested in the use of pesticides. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2002–0262. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at http://www.epa.gov/fedrgstr/. To access RED documents and RED fact sheets electronically, go directly to the REDs table on the EPA Office of Pesticide Programs Home Page, at http://www.epa.gov/pesticides/reregistration/status.htm.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

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C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at http://www.epa.gov/edocket, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2002–0262. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to opp-docket@epa.gov, Attention: Docket ID Number OPP–2002–0262. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW.; Washington, DC 20460–0001, Attention: Docket ID Number OPP–2002–0262.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2002–0262. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the notice or collection activity.
7. Make sure to submit your comments by the deadline in this document.
8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background

A. What Action Is the Agency Taking?

The Agency has issued a RED for the pesticide active ingredient endosulfan. Under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended in 1988, EPA is conducting an accelerated reregistration program to reevaluate existing pesticides to make sure they meet current scientific and regulatory standards. The database to support the reregistration of endosulfan is substantially complete, and the Agency has identified risk mitigation measures that if adopted by the registrants will address the human health and ecological risks associated with the current uses of endosulfan. Additional mitigation measures for ecological risk may be warranted following the completion of a stakeholder process, which will be conducted to address environmental risks to especially vulnerable aquatic organisms. In addition, EPA is reevaluating existing pesticides and reassessing tolerances under the Food Quality Protection Act (FQPA) of 1996. The tolerances for those food uses that will remain, following mitigation identified in the RED, have been found to meet the FQPA Safety Standard.

All registrants of pesticide products containing endosulfan will be sent the appropriate RED, and in order to be reregistered, the risk concerns identified in the RED must be adequately addressed, including appropriate labeling changes. Further, the registrants must comply with product specific label requirements pending Office of Management and Budget (OMB) approval of the endosulfan Data-Call-In.

The reregistration program is being conducted under Congressionally mandated timeframes, and EPA recognizes the need both to make timely reregistration decisions and to involve the public. Therefore, EPA is issuing the endosulfan RED as a final document with a 60–day comment period. Although the 60–day public comment period does not affect the registrant's response due date, it is intended to provide an opportunity for public input and a mechanism for identifying any necessary amendments to the RED. All comments will be carefully considered by the Agency. If any comment significantly affects the endosulfan RED, EPA will amend the RED by publishing the amendment in the **Federal Register**.

B. What is the Agency's Authority for Taking this Action?

The legal authority for this RED falls under FIFRA, as amended in 1988 and 1996. Section 4(g)(2)(A) of FIFRA directs that, after submission of all data concerning a pesticide active ingredient, "the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration," before calling in product specific data on individual end-use products, and either reregistering products or taking "other appropriate regulatory action."

List of Subjects

Environmental protection, Chemicals, Pesticides and pests.

Dated: October 30, 2002.

Betty Shackleford,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 02–28216 Filed 11–5–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7404–9]

Koppers Charleston Superfund Site; Notice To Rescind Federal Register Notice Dated October 1, 2002

AGENCY: Environmental Protection Agency.

ACTION: Notice to rescind previous Federal Register notice.

SUMMARY: On October 1, 2002 at 67 FR 61624, the Environmental Protection Agency (EPA) published a Notice of Proposed Settlement for response costs incurred by EPA at the Koppers Charleston Superfund Site located in Charleston, Charleston County, South Carolina. That notice was published prematurely. The purpose of this notice is to rescind EPA's October 1, 2002 **Federal Register** Notice regarding the settlement of response costs at the Site. The Notice of Proposed Settlement for the Site may be republished in the future following final approval of the settlement.

FOR FURTHER INFORMATION CONTACT: Paula Batchelor at 404–562–8887.

Dated: October 23, 2002.

Anita L. Davis,

Acting Chief, CERCLA Program Services Branch, Waste Management Division.

[FR Doc. 02–28214 Filed 11–5–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[WC Docket No. 02–214; FCC 02–297]

Application by Verizon Virginia Inc., Verizon Long Distance Virginia, Inc., Verizon Enterprise Solutions Virginia Inc., Verizon Global Networks Inc., and Verizon Select Services of Virginia Inc., Pursuant to Section 271 of the Telecommunications Act of 1996, For Provision of In-Region, InterLATA Services in the State of Virginia

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Federal Communications Commission grants the section 271 application of Verizon Virginia Inc., *et al.* (Verizon) for authority to enter the interLATA telecommunications market in the state of Virginia. The Commission grants Verizon's application based on its conclusion that Verizon has satisfied all of the statutory requirements for entry, and opened its local exchange markets to full competition.

DATES: Effective November 8, 2002.

FOR FURTHER INFORMATION CONTACT: Uzoma Onyeije, Attorney-Advisor, Wireline Competition Bureau, at (202) 418–7827 or via the Internet at *uonyeije@fcc.gov*. The complete text of this Memorandum Opinion and Order is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY–A257, Washington, DC 20554. Further information may also be obtained by calling the Common Carrier Bureau's TTY number: (202) 418–0484.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order (MO&O) in WC Docket No. 02–214, FCC 02–297, adopted October 30, 2002, and released October 30, 2002. This full text may be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*. It is also available on the Commission's website at *http://www.fcc.gov/Bureaus/Wireline_Competition/in-region—applications*.

Synopsis of the Order

1. *History of the Application.* On August 1, 2002, Verizon filed an application pursuant to section 271 of the Telecommunications Act of 1996, with the Commission to provide in-region, interLATA service originating in the state of Virginia. Interested parties filed comments on August 21, 2002, and reply comments on September 12, 2002.

2. *The State Commission's Evaluation.* On March 15, 2002, Verizon made a compliance filing for section 271 approval with the Virginia Commission. On July 12, 2002, the Virginia Hearing Examiner issued a report recommending that the Virginia Commission "advise the FCC that this Commission supports granting Verizon authority to provide in-region interLATA services in Virginia." On August 1, 2002, the Virginia Commission forwarded the Virginia Hearing Examiner's Report to this Commission, reporting on the Virginia Hearing Examiner's section 271 proceeding and urging the Commission to consider his recommendations and findings.

3. The *Department of Justice's Evaluation.* The Department of Justice filed its evaluation on September 5, 2002, concluding that Verizon has generally succeeded in opening its markets to competition in most respects. Accordingly, the Department of Justice recommends approval of Verizon's application for section 271 authority in Virginia.

4. *Compliance with Section 271(c)(1)(A).* The Commission concludes that Verizon demonstrates that it satisfies the requirements of section 271(c)(1)(A) based on the interconnection agreements it has

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implemented with competing carriers in Virginia. The record demonstrates that competitive LECs serve business and residential customers using predominantly their own facilities and represents an "actual commercial alternative" to Verizon in the state of Virginia.

Primary Issues in Dispute

5. *State Consultation.* The Commission finds that the Virginia Hearing Examiner's Report constitutes the Virginia Commission's consultation pursuant to section 271(d)(2)(B). In previous section 271 orders, the Commission has noted that the weight assigned to a state's consultative report is affected by the procedures that the state commission follows to render its report. Consistent with that, the Commission will accord some weight to the Virginia Hearing Examiner's Report, recognizing that the Virginia Commission established evidentiary procedures that provided an opportunity for parties to participate in hearings and offer comments.

6. *Virginia Arbitration Proceeding.* WorldCom challenges this application based, in large part, on issues arising from the *Virginia Arbitration Order.* WorldCom argues that Verizon is in non-compliance with section 271 because Verizon does not have interconnection agreements in Virginia that fully comply with the Act; Verizon's application was not complete when filed because Verizon had not memorialized the agreements required by the *Virginia Arbitration Order* prior to its filing of its section 271 application; and Verizon is not operationally ready to implement the decisions of the *Virginia Arbitration Order.* The *Virginia Arbitration Order* was released on July 17, 2002, and the parties to that proceeding have had the opportunity to review the Bureau's decision and to seek reconsideration of any items in dispute. Interested parties were also able to review the Bureau's decisions and familiarize themselves with the new offerings Verizon was required to make available in Virginia. For these reasons, the Commission finds that the circumstances present in this instance warrant waiver of our procedural requirements, and allow consideration of Verizon's finalized interconnection agreements.

7. *Checklist Item 2—Unbundled Network Elements.* Based on the record, we find that Verizon's Virginia UNE rates are just, reasonable, and nondiscriminatory as required by section 251(c)(3), and are based on cost plus a reasonable profit as required by section 252(d)(1). Thus, Verizon's Virginia UNE rates satisfy checklist item 2. The Commission has previously held that it will not conduct a *de novo* review of a state's pricing determinations and will reject an application only if either "basic TELRIC principles are violated or the state commission make clear errors in the actual findings on matters so substantial that the end result falls outside the range that a reasonable application of TELRIC principles would produce."

8. The Commission finds that, while we have serious concerns as to whether the recurring rates established by the Virginia Commission in its state rate proceeding are TELRIC-compliant, Verizon's current recurring UNE rates in Virginia pass a benchmark comparison to New York UNE rates. The Commission confirms that it performs its benchmark analysis by aggregating non-loop rate elements. Although concerns were raised regarding Verizon's switching rate structure, the record does not support a finding that the Virginia Commission committed any clear error. Further, we reject challenges to Verizon's Virginia non-recurring charges and conclude that these rates also fall within the range of rates that a reasonable application of TELRIC principles would produce. Thus, we conclude that Verizon's Virginia UNE rates satisfy the requirements of checklist item 2.

9. *Checklist Item 4—Unbundled Local Loops.* Verizon demonstrates that it provides unbundled local loops in accordance with the requirements of section 271 and our rules, in that it provides "local loop transmission from the central office to the customer's premises, unbundled from local switching or other services." More specifically, Verizon establishes that it provides access to loop make-up information in compliance with the *UNE Remand Order* and nondiscriminatory access to stand alone xDSL-capable loops and high-capacity loops. Also, Verizon provides voice grade loops, both as new loops and through hot-cut conversions, in a nondiscriminatory manner. Finally, Verizon has demonstrated that it has a line-sharing and line-splitting provisioning process that affords competitors nondiscriminatory access to these facilities.

12. *Checklist Item 8—White Pages.* Section 271(c)(2)(b)(viii) requires a BOC to provide "white page directory listings for customers of the other carrier's telephone exchange service." A number of parties contend that Verizon does not provide directory listings to competing carriers with the same accuracy and reliability that it provides its own customers. Specifically, commenters argue that Verizon processing errors lead to lost and incorrect directory listings and that the listing verification process that Verizon has put in place in Virginia is inconsistent with the demands of section 271. The Commission concludes that Verizon provides sufficient tools and training for competitive LECs to review and correct errors in their directory listings prior to publication. In addition, it appears that the system modifications and processing changes have substantially increased the accuracy of the listings and significantly reduced the number of pre-production errors. Accordingly, the Commission finds that Verizon satisfies the requirements of checklist item 8.

Other Checklist Items

13. *Checklist Item 1—Interconnection.* Based on the evidence in the record, the Commission concludes that Verizon provides access and interconnection on terms and conditions that are just, reasonable and nondiscriminatory, in accordance with the requirements of section 251(c)(2) and as specified in section 271, and applied in the Commission's prior orders. Pursuant to this checklist item, Verizon must allow other carriers to interconnect their networks to its network for the mutual exchange of traffic, using any available method of interconnection at any available point in Verizon's network. Verizon's performance generally satisfies the applicable benchmark or retail comparison standards for this checklist item.

14. *Checklist Item 5—Unbundled Local Transport.* A BOC must demonstrate that it provides nondiscriminatory access to network elements in a manner that allows requesting carriers to combine such elements and that the BOC does not separate already-combined elements, except at the specific request of the competitive carrier. Based upon the evidence in the record, the Commission concludes that Verizon has demonstrated that it provides nondiscriminatory access to network element combinations as required by the Act and its rules.

15. *Checklist Item 6—Unbundled Local Switching.* Section 271(c)(2)(B)(vi) of the Act requires that a BOC provide "[l]ocal switching unbundled from transport, local loop transmission, or other services." Based on the record in this proceeding, the Commission concludes that Verizon has demonstrated that it satisfies the requirements of this checklist item in Virginia.

16. *Checklist Item 7—911/E911 Access Services.* Section 271(c)(2)(B)(vii) of the Act requires a BOC to provide "[n]on-discriminatory access to * * * E911 services." Based on the record before it, the Commission concludes that Verizon has demonstrated that it provides nondiscriminatory access to E911 services and databases using the same checklist-compliant processes and procedures that it uses in its section 271-approved states.

17. *Checklist Item 11—Number Portability.* Section 271(c)(2)(B) of the Act requires a BOC to comply with the number portability regulations adopted by the Commission pursuant to section 251. Section 251(b)(2) requires all LECs "to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission." Based on the evidence in the record, it concludes that Verizon complies with the requirements of checklist item 11.

18. *Remaining Checklist Items—3, 9, 10, 12, 13, and 14.* In addition to showing that it is in compliance with the requirements discussed above, an applicant under section 271 must demonstrate that it complies with checklist item 3 (access to poles, ducts, and conduits), item 9 (numbering administration), item 10 (databases and associated signaling), item 12 (local dialing parity), item 13 (reciprocal compensation), and item 14 (resale). Based on the evidence in the record, the Commission concludes that Verizon demonstrates that it is in compliance with checklist items 3, 9, 10, 12, 13, and 14, in Virginia.

19. *Section 272 Compliance.* Based on the record, Verizon provides evidence that it maintains the same structural separation and nondiscrimination safeguards in Virginia as it does in New Jersey, Connecticut, Maine, Pennsylvania, Rhode Island, Vermont, New York, Connecticut, and Massachusetts—where Verizon has already received section 271 authority. Therefore, the Commission concludes that Verizon has demonstrated that it is in compliance with the requirements of section 272.

20. *Public Interest Analysis.* The Commission concludes that approval of this application is consistent with the public interest. From its extensive review of the competitive checklist, which embodies the critical elements of market entry under the Act, the Commission finds that barriers to competitive entry in Virginia's local exchange market have been removed, and that the local exchange market is open to competition. It further finds that the record confirms the Commission's view that BOC entry into the long distance market will benefit consumers and competition if the relevant local exchange market is open to competition consistent with the competitive checklist.

21. *Section 271(d)(6) Enforcement Authority.* Working with Virginia Commission, the Commission intends to closely monitor Verizon's post-approval compliance to ensure that Verizon continues to meet the conditions required for section 271 approval. It stands ready to exercise its various statutory enforcement powers quickly and decisively in appropriate circumstances to ensure that the local market remains open in each of the states.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–28163 Filed 11–5–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Network Reliability and Interoperability Council; Meeting

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice advises interested persons of the third meeting of the Network Reliability and Interoperability Council VI (Council) under its charter renewed as of December 26, 2001. The meetings will be held at the Federal Communications Commission in Washington, DC.

DATES: Friday, December 6, 2002 from 10 a.m. to 1 p.m.

ADDRESSES: Federal Communications Commission, 445 12th St. SW., Room TW–C305, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jeffery Goldthorp at 202–418–1096 or TTY 202–418–2989

SUPPLEMENTARY INFORMATION: The Council was established by the Federal Communications Commission to bring together leaders of the telecommunications industry and telecommunications experts from academic, consumer and other organizations to explore and recommend measures that will enhance network reliability, network security, and network integrity. The Council will discuss the progress of working groups that are addressing the topics that are contained in the Council's charter and any additional issues that may come before it. Members of the general public may attend the meeting. The Federal Communications Commission will attempt to accommodate as many people as possible. Admittance, however, will be limited to the seating available. The public may submit written comments before the meeting to Jeffery Goldthorp, the Commission's Designated Federal Officer for the Network Reliability and Interoperability Council, by e-mail (*jgoldtho@fcc.gov*) or U.S. mail (7–A325, 445 12th St. SW., Washington, DC 20554). Real Audio and streaming video access to the meeting will be available at *http://www.fcc.gov/.*

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–28164 Filed 11–5–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Technological Advisory Council

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, this notice advises interested persons of the seventh meeting of the Technological Advisory Council ("Council") under its new charter.

DATES: Wednesday, December 4, 2002 beginning at 10 a.m. and concluding at 3 p.m.

ADDRESSES: Federal Communications Commission, 445 12th St. SW., Room TW–C305 Washington, DC 20554.

SUPPLEMENTARY INFORMATION: Continuously accelerating technological changes in telecommunications design, manufacturing, and deployment require that the Commission be promptly informed of those changes to fulfill its statutory mandate effectively. The Council was established by the Federal Communications Commission to provide a means by which a diverse array of recognized technical experts from different areas such as manufacturing, academia, communications services providers, the research community, etc., can provide advice to the FCC on innovation in the communications industry. The purpose of, and agenda for, the seventh meeting under the Council's new charter will be to review the progress that has been made and further direct the Council's efforts to fulfill its responsibilities under its charter. The Council will also consider such questions as the

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Commission may put before it. Members of the public may attend the meeting. The Federal Communications Commission will attempt to accommodate as many persons as possible. Admittance, however, will be limited to the seating available. Unless so requested by the Council's Chair, there will be no public oral participation, but the public may submit written comments to Jeffery Goldthorp, the Federal Communications Commission's Designated Federal Officer for the Technological Advisory Council, before the meeting. Mr. Goldthorp's e-mail address is *jgoldtho@fcc.gov*. His United States mail delivery address is Jeffery Goldthorp, Chief, Network Technology Division, Office of Engineering and Technology, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–28165 Filed 11–5–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting; Open Commission Meeting; Thursday, November 7, 2002

October 31, 2002.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, November 7, 2002, which is scheduled to commence at 9:30 a.m. in Room TW–C305, at 445 12th Street, SW., Washington, DC.

Item, Bureau, and Subject

1—International: The International Bureau will report on the outcome of the International Telecommunication Union Plenipotentiary Conference.

2—Wireless Telecommunications:
Title: Amendment of the Commission's Rules Regarding Dedicated Short-Range Communication Services in the 5.850–5.925 GHz Band (WT Docket No. 01–90); Amendment of Parts 2 and 90 of the Commission's Rules to Allocate the 5.850–5.925 GHz Band to the Mobile Service for Dedicated Short Range Communications of Intelligent Transportation Services.
Summary: The Commission will consider a Notice of Proposed Rulemaking and Order concerning allocation and service rules for the Dedicated Short-Range Communication Services in the 5.850–5.925 GHz Band.

3—Media:
Title: Review of the Commission's Broadcast and Cable Equal Employment Opportunity Rules and Policies (MM Docket No. 98–204).
Summary: The Commission will consider a Second Report and Order concerning new broadcast and MVPD equal employment opportunity rules and policies.

4—Office of Engineering and Technology:
Title: Amendment of Part 2 of the A Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, including Third Generation Wireless Systems (ET Docket No. 00–258).
Summary: The Commission will consider a Second Report and Order that would allocate spectrum in the 1.7 and 2.1 GHz bands that can be used to provide advanced wireless services (AWS), such as those services commonly identified as "3G" or "IMT–2000."

5—Wireless Telecommunications:
Title: Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands.
Summary: The Commission will consider a Notice of Proposed Rulemaking concerning service rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz bands.

6—Office of Engineering Technology: The Spectrum Policy Task Force will report on its findings and recommendations relating to the Commission's spectrum policy.

Additional information concerning this meeting may be obtained from Maureen Peratino or David Fiske, Office of Media Relations, telephone number (202) 418–0500; TTY 1–888–835–5322.

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, Qualex International (202) 863–2893; Fax (202) 863–2898; TTY (202) 863–2897. These copies are available in paper format and alternative media, including large print/type; digital disk; and audio tape. Qualex International may be reached by e-mail at *Qualexint@aol.com*.

This meeting can be viewed over George Mason University's Capitol Connection. The Capitol Connection also will carry the meeting live via the Internet. For information on these services call (703) 993–3100. Audio/Video coverage of the meeting will be broadcast live over the Internet from the FCC's Audio/Video Events web page at *http://www.fcc.gov/realaudio*. Audio and video tapes of this meeting can be purchased from CACI Productions, 341 Victory Drive, Herndon, VA 20170, telephone number (703) 834–1470, Ext. 19; fax number (703) 834–0111.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–28324 Filed 11–4–02; 11:44 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 011712–002.

Title: CMA CGM/CSG Slot Exchange, Sailing and Cooperative Working Agreement.

Parties: CMA CGM, S.A., China Shipping Container Lines Co. Ltd.

Synopsis: The amendment allows China Shipping to add five vessels to the agreement. The parties request expedited review.

Agreement No.: 201189–001.

Title: Passenger Cruise Wharfage and Dockage Agreement among Broward County, Worldwide Shore Services, Inc. and Carnival Corporation.

Parties: Broward County, Worldwide Shore Services, Inc., Carnival Corporation.

Synopsis: The amendment extends the term of the agreement by one year to September 30, 2010, and makes arrangements for potential berth changes caused by construction. The amendment also updates wharfage and dockage rates and minimum guarantees.

Dated: November 1, 2002.

By Order of the Federal Maritime Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 02–28232 Filed 11–5–02; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Revocations

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, effective on the corresponding date shown below:

License Number: 4644F
Name: D.J. Powers International, Inc.
Address: 4777 Aviation Parkway, Ste. O, College Park, GA 30349
Date Revoked: September 20, 2002.
Reason: Surrendered license voluntarily.

License Number: 2826F
Name: Reicar International Shipping Corporation
Address: P.O. Box 83–0746, Miami, FL 33283
Date Revoked: April 7, 2000.
Reason: Surrendered license voluntarily.

License Number: 16051F
Name: Trans-Net, Inc. dba Transnet
Address: 710-5th Avenue NW, Issaquah, WA 98027
Date Revoked: June 19, 2002.
Reason: Failed to maintain a valid bond.

Sandra L. Kusumoto,

Director, Bureau of Consumer Complaints and Licensing.

[FR Doc. 02–28235 Filed 11–5–02; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Reissuances

Notice is hereby given that the following Ocean Transportation Intermediary licenses have been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515.

License No.	Name/address	Date reissued
9806N	International Link Service Inc. 160–23 Rockaway Boulevard 1st Floor, Jamaica, NY 11434	August 14, 2002.
2662NF	La Flor De Mayo Express, Inc., 311 Bruckner Boulevard, Suite B, Bronx, NY 10454	July 24, 2002.
829F	Leyden Shipping Corporation, 30 Vesey Street, Suite 1000, New York, NY 10007	September 14, 2002.
15471NF	Navicargo, Inc., 8860 NW 102 St., Medley, FL 33178	July 23, 2002.
2328NF	Ross Freight Company, Inc., 26302 South Western Avenue #7, Lomita, CA 90717	June 6, 2002.
4350NF	Seabome International, Inc., dba Seabome Express Line, 11222 La Cienega Blvd., Ste. 470, Inglewood, CA 90304.	September 14, 2002.
3610NF	Sorenna 3051 E. Maria Street, Rancho Dominguez, CA 90221	May 25, 2002.
12629N	T & T Shipping Services, Inc., 2546 Pitkin Avenue, Brooklyn, NY 11208	August 14, 2002.

Sandra L. Kusumoto,

Director, Bureau of Consumer Complaints and Licensing.

[FR Doc. 02–28234 Filed 11–5–02; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR part 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel Operating Common Carrier Ocean Transportation Intermediary Applicants

Rye Express Logistics, LLC, 2010 NW 84th Avenue, Miami, FL 33122–1520, Officer: Victor Arana, President (Qualifying Individual).

Transamerica Logistics, Inc., 11511 Katy Freeway, Suite 425, Houston, TX 77079, Officers: Mark T. Cornelius, Vice President (Qualifying Individual), Zulfikar Momin, President.

Cibao Cargo, Inc., 1345 Cromwell Avenue, Bronx, NY 104528, Officer: Jose A. Perdomo, President (Qualifying Individual).

Interway USA, Inc., 510 Sylvan Avenue, Suite #202, Englewood Cliffs, NJ 07632, Officers: Hyo-Sup Shim, President (Qualifying Individual), Young Don Chung, Secretary.

Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants

Casasco & Nardi Inc., 372 Doughty Boulevard, Suite D, Inwood, NY 11096, Officers: Paolo Depasquali, Secretary (Qualifying Individual), Gian Luigi Ravera, President.

Direct Parcel Service Corp. dba DPS Cargo, 3550 NW 113 Ct., Miami, FL 33178, Officers: Milagros Garcia, Vice President (Qualifying Individual), Carlos M. Garcia, President.

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicant

MCI Logistics, 192 Cherry Hill Road NW, Cedar Rapids, IA 52405, Roxann M. Von Lienen, Sole Proprietor.

Dated: November 1, 2002.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 02–28233 Filed 11–5–02; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies

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owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 29, 2002.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. Elran (D.D.) Holdings Ltd., and Elran (D.D.) Investment, Ltd., both of Tel Aviv, Israel; in connection with its indirect ownership of Bank Hapoalim B.M., to become bank holding companies by acquiring indirect control of Signature Bank, New York, New York.

In connection with this application, Applicant also has applied to acquire Signature Securities Group Corporation, New York, New York, and thereby engage in financial and investment advisory services, pursuant to § 225.28(b)(6) of Regulation Y, and in agency transactional services for customer investments, pursuant to § 225.28(b)(7) of Regulation Y.

B. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. First State Associates, Inc., Hawarden, Iowa, and Old O'Brien Banc Shares, Inc., Sutherland, Iowa; to each acquire an additional 16.67 percent of the voting shares of Hawarden Banking Company, Hawarden, Iowa, and thereby indirectly acquire voting shares of First State Bank, Hawarden, Iowa, and Security State Bank, Sutherland, Iowa.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. Harrodsburg First Financial Bancorp, Inc., Harrodsburg, Kentucky; to acquire at least 22.5 percent of the voting shares of Independence Bancorp, New Albany, Indiana, and thereby indirectly acquire Independence Bank, New Albany, Indiana.

Board of Governors of the Federal Reserve System, October 31, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–28119 Filed 11–5–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 2, 2002.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. TCB-S-Corp, Inc., Greenwood, South Carlina; to become a bank holding company through the acquisition of Countybank, Greenwood, South Carolina (Countybank). The transaction would be accomplished through the merger of Countybank's parent company, TCB Corporation, Greenwood, South Carolina, into TCB-S-Corp, Inc.

Board of Governors of the Federal Reserve System, November 1, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–28248 Filed 11–5–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act Notice

TIME AND DATE: 9 a.m. (EST), November 18, 2002.

PLACE: 4th Floor, Conference Room, 1250 H Street, NW., Washington, DC.

STATUS: Parts will be open to the public and part closed to the public.

MATTERS TO BE CONSIDERED:

Parts Open to the Public

1. Approval of the minutes of the October 21, 2002, Board member meeting.
2. Thrift Savings Plan activity report by the Executive Director.
3. Review of KPMG LLP audit reports:

U.S. Department of Treasury Operations relating to the Thrift Savings Plan Investments in the Government Securities Investment Fund

System Enhancement and Software Change Controls of the Thrift Savings Plan at the United States Department of Agriculture, National Finance Center

Administrative Review of the Thrift Savings Plan Legacy System Subsystems at the United States Department of Agriculture, National Finance Center

Pre-Implementation Review of the New Thrift Savings Plan Record Keeping System

Preliminary report on the Thrift Savings Plan's Retention of the National Finance Center as Record Keeper

4. Semiannual review of status of audit recommendations.
5. Labor Department audit briefing.
6. Quarterly investment policy review.
7. Annual ethics briefing.

Part Closed to the Public

Discussion of litigation.

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: November 4, 2002.

David L. Hutner,

Secretary to the Board, Federal Retirement Thrift Investment Board.

[FR Doc. 02–28327 Filed 11–4–02; 11:46 am]

BILLING CODE 6760–01–M

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Submission for OMB Review; Comment Request

AGENCY: Federal Trade Commission (FTC).

ACTION: Notice.

SUMMARY: The FTC has submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act (PRA) information collection requirements contained in four product labeling rules enforced by the Commission. The FTC is seeking public comments on the proposal to extend through December 31, 2005 the current PRA clearance for information collection requirements contained in the regulations. That clearance expires on December 31, 2002.

DATES: Comments must be filed by December 6, 2002.

ADDRESSES: Send written comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10202, Washington, DC 20503, ATTN.: Desk Office for the Federal Trade Commission (comments in electronic form should be sent to *oira_docket@omb.eop.gov*), and to Secretary, Federal Trade Commission, Room H–159, 600 Pennsylvania Ave., NW., Washington, DC 20580 (comments in electronic form should be sent to *apparelpprwork@ftc.gov* as prescribed below). All comments should be captioned "Apparel Rules: Paperwork Comment."

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information requirements should be sent to Gary Greenfield, Attorney, Office of the General Counsel, Federal Trade Commission, 600 Pennsylvania Ave., NW., H–576, Washington, DC 20580, (202)326–2753.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. On August 20, 2002, the FTC sought comment on the information collection requirements associated with these product labeling rules. *See* 67 FR 53933. No comments were received. Pursuant to the OMB regulations that implement the PRA (5 CFR part 1320), the FTC is providing this second opportunity for public comment while seeking OMB approval to extend the existing paperwork clearance for the Rule.

IF a comment contains nonpublic information, it must be filed in paper form, and the first page of the document must be clearly labeled "confidential." Comments that do not contain any nonpublic information may instead be filed in electronic form (in ASCII format, WordPerfect, or Microsoft Word) as part of or as an attachment to email messages directed to the following email box: *apparelpprwork@ftc.gov*. Such comments will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's rules of practice, 16 CFR 4.9(b)(6)(ii)).

Staff's burden estimates for the four rules in question are based on data from the Bureau of Census, U.S. Customs and International Trade Commission, the Department of Labor, and data or other input from industry sources. The relevant information collection requirements within these rules and corresponding burden estimates follow.

1. Regulations Under the Fur Products Labeling Act, 15 U.S.C. 69 et seq. ("Fur Act") (Control Number: 3084–0099)

The Fur Act prohibits misbranding and false advertising of fur products. The Fur Act Regulations, 16 CFR 301, establish disclosure requirements that assist consumers in making informed purchasing decisions, and recordkeeping requirements that assist the Commission in enforcing these regulations. The Regulations also provide a procedure for exemption from certain disclosure provisions under the Act.

Estimated annual hours burden: 177,000 hours, rounded to the nearest thousand (62,400 hours for recordkeeping + 114,450 hours for disclosure).

Recordkeeping: The Regulations require that retailers, manufactures and processors, and imports keep certain records in addition to those they may keep in the ordinary course of business. Staff estimates that 1,500 retailers incur an average recordkeeping burden of about 13 hours per year (19,500 hours total); 225 manufacturers and fur processors combined incur an average recordkeeping burden of about 52 hours per year (11,700 total); and 1,200 importers of furs and fur products incur an average recordkeeping burden of 26 hours per year (31,200 hours total). The combined recordkeeping burden for the industry is approximately 62,400 hours annually.

Disclosure: Staff estimates that 1,710 respondents (210 manufacturers + 1,500 retail sellers of fur garments) each require an average of 20 hours per year to determine label content (34,200 hours total), and an average of five hours per year to draft and order labels (8,550 hours total). Staff estimates that manually attaching a label to an estimated 1,620,000 fur garments requires approximately two minutes per garment for a total of 54,000 hours annually. Thus, the total burden for labeling garments is 96,750 hours per year.

Staff estimates that the increment burden associated with the Regulations' invoice disclosure requirement, beyond the time that would be devoted to preparing invoices in its absence, is approximately 30 seconds per invoice.[1] The invoice disclosure requirement applies to fur garments, which are generally sold individually, and fur pelts, which are generally sold in groups of at least 50, on average. Assuming invoices are prepared for sales of 1,620,000 garments and 160,000 groups (an estimated 8 million pelts + 50) each of imported and domestic pelts, the invoice disclosure requirement entails an estimated total burden of 16,167 hours

Staff estimates that the regulations' advertising disclosure requirements impose an average burden of one hour per year for each of the approximately 1,500 domestic fur retailers, or a total of 1,500 hours.

Thus, staff estimates the total disclosure burden to be approximately 114,450 hours (96,750 hours for labeling + 16,167 hours for invoice + 1,500 hours for advertising.

Estimated annual cost burden: $2,303,000 rounded to the nearest thousand (solely relating to labor costs).

[1] The invoice disclosure burden for PRA purposes excludes the time that respondents would spend for invoicing, apart from the Fur Act Regulations, in the ordinary course of business. *See* 5 CFR 1320.3(b)(2).

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Task	Hourly rate	Burden hours	Labor cost
Determine label content	20.00	34,200	$684,000
Draft and order labels	13.00	8,500	111,150
Attach labels	[2] 8.50	54,000	459,000
Invoice disclosures	13.00	16,167	210,171
Prepare advertising disclosures	18.00	1,500	27,000
Recordkeeping	13.00	62,400	811,200
Total			2,302,521

Staff[2] believes that there are no current start-up costs or other capital costs associated with the regulations. Because the labeling of fur products has been an integral part of the manufacturing process for decades, manufacturers have in place the capital equipment necessary to comply with the Regulations' labeling requirements. Industry sources indicate that much of the information required by the Fur Act and its implementing regulations would be included on the product label even absent the regulations. Similarly, invoicing, recordkeeping, and advertising disclosures are tasks performed in the ordinary course of business so that covered firms would incur no additional capital or other non-labor costs as a result of the Act or the regulations.

2. Regulations Under the Wool Products Labeling Act, 15 U.S.C. 68 et seq. ("Wool Act") (Control Number: 3084–0100)

The Wool Act prohibits misbranding of wool products. The Wool Act Regulations, 16 CFR part 300, establish disclosure requirements that assist consumers in making informed purchasing decisions and recordkeeping requirements that assist the Commission in enforcing the Regulations.

Estimated annual hours burden: 556,000 hours, rounded to the nearest thousand (125,000 recordkeeping hours + 430,556 disclosure hours).

Recordkeeping: Staff estimates that approximately 5,000 wool firms are subject to the Regulations' recordkeeping requirements. Based on an average annual burden of 25 hours per firm, the total recordkeeping burden is 125,000 hours.

Disclosure: Approximately 10,000 wool firms, producing or importing about 500,000,000 wool products annually, are subject to the Regulations' disclosure requirements. Staff estimates the burden of determining label content to be 20 hours per year per respondent, or a total of 200,000 hours, and the burden of drafting and ordering labels to be 5 hours per respondent per year, or a total 50,000 hours. Staff believes that the process of attaching labels is now fully automated and integrated into other production steps for about 35 percent of all affected products. For the remaining 325,000,000 items (65 percent of 500,000,000), the process is semi-automated and requires an average of approximately two seconds per item, for total of 180,556 hours per year. Thus, the total estimated annual burden for all respondents is 430,556 hours. Staff believes that any additional burden associated with advertising disclosure requirements would be minimal (less than 10,000 hours) and can be subsumed within the burden estimates set forth above.

Estimated annual cost burden: $6,817,000, rounded to the nearest thousand (solely relating to labor costs).

Task	Hourly rate	Burden hours	Labor cost
Determine label content	$20.00	200,000	$4,000,000
Draft and order labels	13.00	50,000	650,000
Attach labels	[3] 3.00	180,556	541,668
Recordkeeping	13.00	125,000	1,625,000
Total			6,816,668

[3] For products that are imported, this work generally is done in the country where they are manufactured. According to information compiled by an industry trade association using data from the International Trade Commission, the U.S. Customs Service, and the U.S. Census Bureau, approximately 90% of apparel and other textile products used in the United States is imported. With the remaining 10% attributable to U.S. production at an approximate domestic hourly wage of $8.50 to attach labels, staff has calculated a weighted average hourly wage of $3 per hour attributable to U.S. and foreign labor combined. The estimated percentage of imports supplied by particular countries is based on trade data for 2001 compiled by the Office of Textiles and Apparel, International Trade Administration, U.S. Department of Commerce. Wages in major textile exporting countries, factored into the above hourly wage estimate, were based on data published in February 2000 by the U.S. Department of Labor, Bureau of International Labor Affairs. (See "Wages, Benefits, Poverty Line, and Meeting Workers' Needs in the Apparel and Footwear Industries of Selected Countries," Table I–2: "Prevailing or Average Wages in the Manufacturing Sector and in the Footwear and Apparel Industries in Selected Countries, Latest Available Year").

Staff believes that there are no current start-up costs or other capital costs associated with the regulations. Because the labeling of wool products has been an integral part of the manufacturing process for decades, manufacturers have in place the capital equipment necessary to comply with the regulations. Based on knowledge of the industry, staff believes that much of the information required by the Wool Act and its implementing regulations would be included on the product label even absent their requirements. Similarly, recordkeeping and advertising disclosures are tasks performed in the ordinary course of business so that covered firms would incur no additional capital or other non-labor costs as a result of the regulations.

[2] Per industry sources, most fur labeling is done in the U.S. and this rate is reflective of an average domestic hourly wage for such tasks. Conversely, attaching labels with regard to the others regulations discussed herein is mostly performed by foreign labor, as detailed in note 3.

3. Regulations Under the Textile Fiber Products Identification Act, 15 U.S.C. 70 et seq. ("Textile Act") (Control Number: 3084–0101)

The Textile Act prohibits misbranding and false advertising of textile fiber products. The Textile Act Regulations, 16 CFR part 303, establish disclosure requirements that assist consumers in making informed purchasing decisions, and recordkeeping requirements that assist the Commission in enforcing the regulations. The regulations also contain a petition procedure for requesting the establishment of generic names for textile fibers.

Estimated annual hours burden: approximately 7,547,000 hours, rounded to the nearest thousand (537,500 recordkeeping hours + 7,009,722 disclosure hours).

Recordkeeping: Staff estimates that approximately 21,500 textile firms are subject to the Textile Regulations' recordkeeping requirements. Based on an average burden of 25 hours per firm, the total recordkeeping burden is 537,500 hours.

Disclosure: Approximately 31,500 textile firms, producing or importing about 17.2 billion textile fiber products annually, are subject to the regulations' disclosure requirements.[4] Staff estimates the burden of determining label content to be 20 hours per year per respondent, or a total of 630,000 hours and the burden of drafting and ordering labels to be 5 hours per respondent per year, or a total of 157,500 hours. Staff believes that the process of attaching labels is now fully automated and integrated into other production steps for about 35 percent of all affected products. For the remaining 11.2 billion items (65 percent of 17.2 billion), the process is semi-automated and requires an average of approximately two seconds per item, for a total of 6,222,222 hours per year. Thus, the total estimated annual burden for all respondents is 7,009,722 hours. Staff believes that any additional burden associated with advertising disclosure requirements or the filing of generic fiber name petitions would be minimal (less than 10,000 hours) and can be subsumed within the burden estimates set forth above.

Estimated annual cost burden: $40,302,000, rounded to the nearest thousand (solely relating to labor costs.).

Task	Hourly rate	Burden hours	Labor cost
Determine label content	$20.00	630,000	$12,600,000
Draft and order labels	13.00	157,500	2,047,500
Attach labels	[5] 3.00	6,222,222	18,666,666
Recordkeeping	13.00	537,500	6,987,500
Total			40,301,666

[5] See note 3.

Staff believes that there are no current start-up costs or other capital costs associated with the regulations. Because the labeling of textile products has been an integral part of the manufacturing process for decades, manufacturers have in place the capital equipment necessary to comply with the regulations' labeling requirements. Industry sources indicate that much of the information required by the Textile Act and its implementing rules would be included on the product label even absent their requirements. Similarly, recordkeeping, invoicing, and advertising disclosures are tasks performed in the ordinary course of business so that covered firms would incur no additional capital or other non-labor costs as a result of the Regulations.

4. The Care Labeling Rule, 16 CFR Part 423 (Control Number: 3084–0103)

The Care Labeling Rule, 16 CFR part 423, requires manufacturers and importers to attach permanent care label to all covered textile clothing in order to assist consumers in making purchase decisions and in determining what method to use to clean their apparel. Also, manufacturers and importers of piece goods used to make textile clothing must provide the same care information on the end of each bolt or roll of fabric.

Estimated annual hours burden: 6,054,000 hours, rounded to the nearest thousand (solely relating to disclosure[6]).

Staff estimates that approximately 16,500 manufacturers or importers of textile apparel, producing about 15.2 billion textile garments annually, are subject to the Rule's disclosure requirements. The burden of developing proper care instructions may vary greatly among firms, primarily based on the number of different lines of textile garments introduced per year that require new or revised care instructions. Staff estimates the burden of determining care instructions to be 43 hours each year per respondent, for cumulative total of 709,500 hours. Staff further estimates that the burden of drafting and ordering labels is 2 hours each year per respondent, for a total of 33,000 hours. Staff believes that the process of attaching labels is fully automated and integrated into other production steps for about 35 percent of the approximately 14.7 billion garments that are required to have care instructions on permanent labels.[7] For the remaining 9.56 billion items (65 percent of 14.7 billion), the process is semi-automated and requires an average of approximately two seconds per item, for a total of 5,311,100 hours per year. Thus, the total estimated annual burden for all respondents is 6,053,600 hours.

Estimated annual cost burden: $30,552,000, rounded to the nearest thousand (solely relating to labor costs).

[4] The apparent consumption of garments in the U.S. in 2001 was 15.2 billion. Staff estimates that .5 billion garments are exempt from the Textile Act (i.e., any kind of headwear and garments made from something other than a textile fiber product, such as leather) or are subject to a special exemption for hosiery products sold in packages where the label information is contained on the package. Based on available data, staff estimates that an additional 3 billion household textile products (non-garments, such as sheets, towels, blankets) were consumed. However, approximately .5 billion of all of these combined products (garments and non-garments) are subject to the Wool Products Labeling Act, not the Textile Fiber Products Identification Act, because they contain some amount of wool. Thus, the estimated net total products subject to the Textile Fiber Products Identification Act is 17.2 billion.

[6] The Care Labeling Rule imposes no specific recordkeeping requirements. Although the Rule requires manufacturers and importers to have reliable evidence to support the recommended care instructions, companies may provide as support current technical literature or rely on past experience.

[7] About .5 billion of the 15.2 billion garments produced annually are either not covered by the Care Labeling Rule (gloves, hats, caps, fur, plastic, or leather garments) or are subject to an exemption that allows care instructions to appear on packaging (hosiery).

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Task	Hourly rate	Burden hours	Labor cost
Determine care instructions	$20.00	709,500	$14,190,000
Draft and order labels	13.00	33,000	429,000
Attach labels	[8]3.00	5,311,100	15,933,300
Total			30,552,300

Staff[8] believes that there are no current start-up costs or other capital costs associated with the Rule. Because the labeling of textile products has been an integral part of the manufacturing process for decades, manufacturers have in place the capital equipment necessary to comply with the Rule's labeling requirements. Based on knowledge of the industry, staff believes that much of the information required by the Rule would be included on the product label even absent those requirements.

John D. Graubert,

Acting General Counsel.

[FR Doc. 02–28160 Filed 11–5–02; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00N–1526]

Robert A. Fiddes; Debarment Order

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is issuing an order under the Federal Food, Drug, and Cosmetic Act (the act) debarring Dr. Robert A. Fiddes for 20 years from providing services in any capacity to a person that has an approved or pending drug product application. FDA bases this order on a finding that Dr. Fiddes was convicted of a felony under Federal law for conspiring to make false statements to a government agency, and was a material participant in offenses for which three other people are being debarred. Dr. Fiddes has failed to request a hearing and, therefore, has waived his opportunity for a hearing concerning this action.

DATES: This order is effective November 6, 2002.

ADDRESSES: Submit applications for termination of debarment to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm., 1061, Rockville, MD 20852.

[8] See note 3.

FOR FURTHER INFORMATION CONTACT: Mary Catchings, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION:

I. Background

On September 30, 1997, the U.S. District Court for the Central District of California accepted Dr. Fiddes' plea and entered judgment against him for one count of conspiring to make false statements to a government agency, the FDA, in violation of 18 U.S.C. 371 and 1001. This conspiracy conviction was based on Dr. Fiddes participating in, directing, and encouraging the submission of false information to sponsors in required reports for clinical studies used by FDA to evaluate the safety and effectiveness of drug products.

As a result of this conviction, FDA served Dr. Fiddes by certified mail on June 6, 2002, a notice proposing to debar him for 20 years from providing services in any capacity to a person that has an approved or pending drug product application. The proposal also offered Dr. Fiddes an opportunity for a hearing on the proposal. The debarment proposal was based on findings: (1) Under section 306(b)(2)(B)(i)(II) of the act (21 U.S.C. 335a(b)(2)(B)(i)(II)) that Dr. Fiddes was convicted of a felony under Federal law for conspiracy to make false statements to a government agency and, (2) under section 306(b)(2)(B)(iii) of the act that Dr. Fiddes was a material participant in offenses leading to the conviction and debarment of three other individuals. Dr. Fiddes was provided 30 days to file objections and to request a hearing. Dr. Fiddes did not request a hearing. His failure to request a hearing constitutes a waiver of his opportunity for a hearing and a waiver of any contentions concerning his debarment.

II. Findings and Order

Therefore, the Director, Center for Drug Evaluation and Research, under section 306(b)(2)(B) of the act, and under authority delegated to her (21 CFR 5.99), finds that Dr. Robert A. Fiddes: (1) Has been convicted of a felony under Federal law for conspiring to make false statements to a government agency, and (2) was a material participant in offenses leading to the conviction and debarment of three other individuals.

As a result of the foregoing findings, Dr. Robert A. Fiddes is debarred for 20 years (4 periods of 5 years, to run consecutively, based on his conviction of a Federal felony and his role as a material participant in the offenses leading to the conviction and debarment of three other individuals) from providing services in any capacity to a person that has an approved or pending drug product application under section 505, 512, or 802 of the act (21 U.S.C. 355, 360b, or 382), or under section 351 of the Public Health Service Act (42 U.S.C. 262) (see sections 306(c)(1)(B) and (c)(2)(A)(iii) and 201(dd) of the act (21 U.S.C. 321(dd))). Any person with an approved or pending drug product application who knowingly uses the services of Dr. Fiddes, in any capacity, during his period of debarment, will be subject to civil money penalties. If Dr. Fiddes, during his period of debarment, provides services in any capacity to a person with an approved or pending drug product application, he will be subject to civil money penalties. In addition, FDA will not accept or review any abbreviated new drug applications submitted by or with the assistance of Dr. Fiddes during his period of debarment.

Any application by Dr. Fiddes for termination of debarment under section 306(d)(4) of the act should be identified with Docket No. 00N–1526 and sent to the Dockets Management Branch (see **ADDRESSES**). All such submissions are to be filed in four copies. The public availability of information in these submissions is governed by 21 CFR 10.20(j). Publicly available submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: October 15, 2002.

Janet Woodcock,

Director, Center for Drug Evaluation and Research.

[FR Doc. 02–28256 Filed 11–5–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00N–1528]

Delfina Hernandez; Debarment Order

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is issuing an order under the Federal Food, Drug, and Cosmetic Act (the act) debarring Ms. Delfina Hernandez for 5 years from providing services in any capacity to a person that has an approved or pending drug product application. FDA bases this order on a finding that Ms. Hernandez was convicted of a felony under Federal law for conspiring to make false statements in matters within the jurisdiction of a government agency, and that Ms. Hernandez' conduct undermined the process for the regulation of drugs. Ms. Hernandez has failed to request a hearing and, therefore, has waived her opportunity for a hearing concerning this action.

DATES: This order is effective November 6, 2002.

ADDRESSES: Submit applications for termination of debarment to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Mary Catchings, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION:

I. Background

On October 22, 1997, the U.S. District Court for the Central District of California accepted Ms. Hernandez' plea of guilty to one count of conspiring to make false statements in matters within the jurisdiction of a government agency, FDA, a Federal felony offense under 18 U.S.C. sections 371 and 1001. This conviction was based on Ms. Hernandez' participation in falsifying data and information on clinical studies for use by FDA in determining the safety and effectiveness of drug products.

As a result of this conviction, FDA served Ms. Hernandez by certified mail on May 13, 2002, a notice proposing to debar her for 5 years from providing services in any capacity to a person that has an approved or pending drug product application. The proposal also offered Ms. Hernandez an opportunity for a hearing on the proposal. The debarment proposal was based on a finding, under section 306(b)(2)(B)(i)(II) and (a)(2) of the act (21 U.S.C. 335a(b)(2)(B)(i)(II) and (a)(2)) that Ms. Hernandez was convicted of a felony under Federal law for conspiring to make false statements in matters within the jurisdiction of a government agency, FDA, and that Ms. Hernandez' conduct undermined the process for the regulation of drugs. Ms. Hernandez was provided 30 days to file objections and to request a hearing. Ms. Hernandez did not request a hearing. Her failure to request a hearing constitutes a waiver of her opportunity for a hearing and a waiver of any contentions concerning her debarment.

II. Findings and Order

Therefore, the Director, Center for Drug Evaluation and Research, under section 306(b)(2) of the act, and under authority delegated to her (21 CFR 5.99), finds that Ms. Delfina Hernandez has been convicted of conspiracy to commit a felony under Federal law for conduct relating to the regulation of drug products and that Ms. Hernandez' conduct undermined the process for the regulation of drugs.

As a result of the foregoing finding, Ms. Delfina Hernandez is debarred for 5 years from providing services in any capacity to a person that has an approved or pending drug product application under section 505, 512, or 802 of the act (21 U.S.C. 355, 360b, or 382) or under section 351 of the Public Health Service Act (42 U.S.C. 262) (see sections 306(c)(1)(B) and (c)(2)(A)(iii) and 201(dd) of the act (21 U.S.C. 321(dd))). Any person with an approved or pending drug product application who knowingly uses the services of Ms. Hernandez, in any capacity during her period of debarment, will be subject to civil money penalties. If Ms. Hernandez, during her period of debarment, provides services in any capacity to a person with an approved or pending drug product application, she will be subject to civil money penalties. In addition, FDA will not accept or review any abbreviated new drug applications submitted by or with the assistance of Ms. Hernandez during her period of debarment.

Any application by Ms. Hernandez for termination of debarment under section 306(d)(4) of the act should be identified with Docket No. 00N–1528 and sent to the Dockets Management Branch (see **ADDRESSES**). All such submissions are to be filed in four copies. The public availability of information in these submissions is governed by 21 CFR 10.20(j). Publicly available submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: October 15, 2002.

Janet Woodcock,

Director, Center for Drug Evaluation and Research.

[FR Doc. 02–28255 Filed 11–5–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. 02M–0250, 02M–0203, 02M–0180, 02M–0218, 02M–0272, 02M–0271, 02M–0145, 02M–0311, 02M–0172, 02M–0217, 02M–0179, 02M–0255, 02M–0173, 02M–0235, 02M–0167, 02M–0174, 02M–0216, and 02M–0236]

Medical Devices; Availability of Safety and Effectiveness Summaries for Premarket Approval Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a list of premarket approval applications (PMAs) that have been approved. This list is intended to inform the public of the availability of safety and effectiveness summaries of approved PMAs through the Internet and the agency's Dockets Management Branch.

ADDRESSES: Submit written requests for copies of summaries of safety and effectiveness to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Please cite the appropriate docket number as listed in table 1 of this document when submitting a written request. *See* the **SUPPLEMENTARY INFORMATION** section for electronic access to the summaries of safety and effectiveness.

FOR FURTHER INFORMATION CONTACT: Thinh Nguyen, Center for Devices and Radiological Health (HFZ–402), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2186.

SUPPLEMENTARY INFORMATION:

I. Background

In January 1998, FDA revised 21 CFR 814.44(d) and 814.45(d) (63 FR 4571, January 30, 1998) to discontinue individual publication of PMA approvals and denials in the **Federal Register**, providing instead to post this information to FDA's home page at

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http://www.fda.gov on the Internet. In addition, the regulations provide that FDA publish a quarterly list of available safety and effectiveness summaries of PMA approvals and denials that were announced during that quarter. FDA believes that this procedure expedites public notification of these actions because announcements can be placed on the Internet more quickly than they can be published in the **Federal Register**, and FDA believes that the Internet is accessible to more people than the **Federal Register**.

In accordance with section 515(d)(4) and (e)(2) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(4) and (e)(2)), notification of an order approving, denying, or withdrawing approval of a PMA will continue to include a notice of opportunity to request review of the order under section 515(g) of the act. The 30-day period for requesting reconsideration of an FDA action under § 10.33(b) (21 CFR 10.33(b)) for notices announcing approval of a PMA begins on the day the notice is placed on the Internet. Section 10.33(b) provides that FDA may, for good cause, extend this 30-day period. Reconsideration of a denial or withdrawal of approval of a PMA may be sought only by the applicant; in these cases, the 30-day period will begin when the applicant is notified by FDA in writing of its decision.

The following is a list of approved PMAs for which summaries of safety and effectiveness were placed on the Internet in accordance with the procedure described above from April 1, 2002, through June 30, 2002. There were no denial actions during this period. The list provides the manufacturer's name, the product's generic name or the trade name, and the approval date.

TABLE 1.—LIST OF SAFETY AND EFFECTIVENESS SUMMARIES FOR APPROVED PMAS MADE AVAILABLE APRIL 1, 2002, THROUGH JUNE 30, 2002

PMA Number/Docket No.	Applicant	Trade Name	Approval Date
P000008/02M–0250	BioEntrics Corp.	LAP–BAND Adjustable Gastric Banding System	June 5, 2001.
P980033/02M–0203	Boston Scientific Scimed, Inc.	WALLSTENT Endoprosthesis	November 16, 2001.
P010027/02M–0180	Ophthalmic Innovations International, Inc.	ALLERGAN, INC. Model AC 21B Anterior Chamber Intraocular Lens (Cataract)	November 21, 2001.
P010033/02M–0218	Cellestis Ltd.	QUANTIFERON–TB	November 28, 2001.
P000049/02M–0272	Nitinol Medical Technologies, Inc.	CARDIOSEAL Septal Occlusion System With QWIKLOAD	December 5, 2001.
P000039/02M–0271	AGA Medical Corp.	THE AMPLATZER Septal Occluder (ASO) And AMPLATZER Exchange System	December 5, 2001.
P010030/02M–0145	Lifecor, Inc.	Wearable Cardioverter Defibrillator (WCD) 2000 "Lifevest" System	December 18, 2001.
H000002/02M–0311	VISX, Inc.	VISX EXCIMER LASER SYSTEM AND CUSTOM CONTOURED ABLATION PATTERN (CO–CAP) METHOD	December 19, 2001.
P980024(S1)/02M–0172	Vysis	PATHVYSION HER–2 DNA Probe Kit	December 31, 2001.
P9600009(S7)/02M–0217	Medtronic, Inc.	MEDTRONIC ACTIVA Parkinson's Control System	January 14, 2002.
P010054/02M–0179	Roche Diagnostics Co.	ELECSYS ANTI–HBS Immunoassay PRECICONTROL ANTI02M–HBS	February 28, 2002.
P000037(S1)/02M–0255	Medical Carbon Research Institute, LLC	ON–X Prosthetic Heart Valve, Models ONXM and ONXMC	March 6, 2002.
P010025/02M–0173	Hologic, Inc.	LORAD Digital Breast Imager	March 15, 2002.
P000033/02M–0235	SulzerIntra Therapeutics, Inc.	INTRACOIL Self-Expanding Peripheral Stent	April 3, 2002.
H000007/02M–0167	AGA Medical Corp.	AMPLATZER PFO Occluder	April 5, 2002.
P010018/02M–0174	Refractec, Inc.	VIEWPOINT CK SYSTEM	April 11, 2002.
P900033(S8)/02M–0216	Integra Lifesciences, Corp.	INTEGRA Dermal Regeneration Template	April 19, 2002.
P010012/02M–0236	Guidant Corp.	CONTAK CD/EASYTRAK Lead System, Models 4510, 4511, 4512, And 4513	May 2, 2002.

II. Electronic Access

Persons with access to the Internet may obtain the documents at http://www.fda.gov/cdrh/pmapage.html.

Dated: October 23, 2002.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 02–28155 Filed 11–5–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02D–0449]

"Draft Guidance for Industry: The Administrative New Animal Drug Application Process"; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry (#132) entitled "The Administrative New Animal Drug Application Process." The guidance defines what an administrative new animal drug application (NADA) is, the procedures that should be followed before a sponsor submits an administrative NADA, and the intended timeframe for review of administrative NADAs.

DATES: Submit written or electronic comments on the draft guidance by January 21, 2003, to ensure their adequate consideration in preparation of the final document. General comments on agency guidance documents are welcome at any time.

Submit written comments on the information collection requirements by January 6, 2003.

ADDRESSES: Submit written requests for single copies of the draft guidance document to the Communications Staff (HFV–12), Center for Veterinary Medicine (CVM), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

Submit written comments on the draft guidance document to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http:///www.fda.gov/dockets/ecomments.

Comments should be identified with the full title of the draft guidance document and the docket number found in the heading of this document.

Submit written comments on the collection of information requirements to the Dockets Management Branch (address above). Comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Gail Schmerfeld, Center for Veterinary Medicine (HFV–100), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–1796, e-mail: gschmer1@cvm.fda.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321 *et seq.*) prohibits the introduction into interstate commerce of new animal drugs that are not the subject of an approved NADA. Section 512(b) of the act (21 U.S.C. 360b) and part 514 (21 CFR part 514) describe the information that must be submitted to FDA, specifically CVM, as part of an NADA. CVM encourages sponsors to submit data for review at the most appropriate and productive times in the drug development process. Sponsors may submit, and CVM intends to review, data in support of discrete technical sections during the investigation of the new animal drug. The guidance explains phased review and direct review, describes the technical sections, tells sponsors how they should submit data or information in support of a technical section for review, and tells sponsors how they should submit an administrative NADA.

An administrative NADA is an NADA that is submitted after CVM has reviewed all of the technical sections containing the information required for the approval of the new animal drug and CVM has issued a technical section complete letter for each of those technical sections.

II. Significance of Guidance

The level 1 draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the agency's current thinking about the administrative NADA process. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such an approach satisfies the requirements of the applicable statutes and regulations.

III. The Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: The Administrative New Animal Drug Application Process.

Description: The act prohibits the introduction into interstate commerce of new animal drugs that are not the subject of an approved NADA. Section 512(b) of the act and the regulations in part 514 describe the information that must be submitted to FDA, specifically to CVM, as part of an NADA.

CVM encourages sponsors to submit data and information for review at the most appropriate and productive times in the drug development process rather than submitting all data and information at one time. Sponsors may submit, and CVM intends to review, data or information in support of discrete technical sections during the investigation of the new animal drug. This process is known as phased review. Sponsors may submit part or all of the data and information needed to support a technical section in a phased submission. The data submitted in

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support of each technical section are covered by an existing paperwork clearance under OMB control number 0910–0032. FDA is seeking new paperwork clearance for the cover letter, table of contents, and summary that should accompany each submission. The cover letter identifying the submission as a "phased submission" should: (1) Describe briefly the purpose of the submission and the information contained in it, (2) reference or attach any pertinent documentation regarding previous agreements or understandings between the sponsor and CVM, (3) identify persons CVM may contact regarding any specifics of the submission, and (4) convey any other information the sponsor considers important or necessary to facilitate the review of the submission. There are potentially eight technical sections: Chemistry, manufacturing and controls; effectiveness; target animal safety; human food safety; environmental impact; labeling; freedom of information (FOI) summary; and, all other information.

After a sponsor has received technical section complete letters for each technical section containing information required for the approval of the new animal drug, the sponsor may file an administrative NADA. The administrative NADA should include a cover letter identifying the submission as an "Administrative NADA," a signed FDA Form 356V, a table of contents, summary, copies of the technical section complete letters for each required technical section, complete facsimile labeling, and the FOI summary.

The cover letters that should be provided with each submission and with the administrative NADA and the copies of technical section complete letters represent new paperwork.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Administrative NADA applications	190	.24	47	4	188
Phased submissions	190	1.31	250	2	500

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA averaged the number of administrative NADA applications and phased submissions for the past 2 years. Hours per response took into account that cover letters submitted summarized information contained in the submission and did not require any new information.

IV. Comments

The draft guidance document is being distributed for comment purposes only and is not intended for implementation at this time. Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments regarding this draft guidance document. Submit electronic comments to http://www.fda.gov/dockets/ecomments. Two copies of any mailed comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document.

Submit written comments concerning the information collection requirements to the Dockets Management Branch. A copy of the document and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

V. Electronic Access

Electronic comments may be submitted on the Internet at http://www.fda.gov/dockets/ecomments. Once on the Internet site, select 02D–0449 "The Administrative New Animal Drug Application Process" and follow the directions. A copy of this document may be obtained on the Internet from the CVM home page at http://www.fda.gov/cvm.

Dated: October 28, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–28257 Filed 11–5–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Notice of Senior Executive Service Performance Review Board Membership

The Health Resources and Services Administration (HRSA) announces the appointment of members to the HRSA Senior Executive Service (SES) Performance Review Board (PRB). This action is being taken in accordance with Title 5, U.S.C., Section 4314(c)(4) of the Civil Service Reform Act of 1978, which requires members of performance review boards to be published in the **Federal Register**.

The function of the PRB is to ensure consistency, stability and objectivity in SES performance appraisals, and to make recommendations to the Administrator, HRSA, relating to the performance of senior executives in the Agency.

The following persons will serve on the HRSA SES Performance Review Board:

Dennis P. Williams, Neil Sampson, Stephen R. Smith, Katherine M. Marconi, Mary J. Horner, Douglas Morgan, Patricia L. Mackey, Catherine A. Flickinger, Merle G. McPherson, William D. Hobson, Marcia K. Brand, Peter C. van Dyck, J. Henry Montes, James Macrae, Jon L. Nelson, Denise H. Geolot, Samuel Shekar, Kerry Nesseler, Deborah Parham.

For further information about the HRSA Performance Review Board, contact Ms. Wendy Ponton, HRSA Office of Human Resources and Development, 5600 Fishers Lane, Room 14A43, Rockville, Maryland 20857.

Dated: October 30, 2002.

Elizabeth M. Duke,

Administrator.

[FR Doc. 02–28153 Filed 11–5–02; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; Patterns and Consequences of Alcohol Use in Non-Reservation Indians

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, regarding the opportunity for public comment on proposed data collection projects, the National Institute on Alcohol Abuse and Alcoholism (NIAAA), National Institutes of Health (NIH) will publish periodic summaries of proposed projects submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection: Title: Patterns and Consequences of Alcohol Use in Non-Reservation Indians. *Type of Information Collection Request:* New. *Form Number:* No form number has been assigned because this is a new survey. *Need and Use of Information Collection:* This survey will be done in preparation for a broader study to follow. The broader study will examine the enhanced vulnerability of some American Indian people to alcohol abuse, alcoholism and adverse consequences of drinking. Most of the existing research has been restricted to reservation-residing tribes. This study will examine non-reservation individuals and thus be better representative of the majority of American Indians. Second, the samples in existing studies are predominantly male. This fact may reflect the disproportionate occurrence of substance abuse disorders in American Indian males. However, it may also reflect a sampling bias. Third, sources of the reported heterogeneity among tribes in drinking practices and outcomes are seldom examined systematically. Therefore, there is a need for the systematic study of male and female non-reservation residing American Indians and their patterns/consequences of alcohol use. The proposed telephone survey is a feasibility study to ascertain: (a) The effectiveness of this research modality in reaching non-reservation American Indians in Oklahoma (as many as 25% of non-reservation American Indians do not have access to a private phone) (b) the appropriateness of the length of the instrument and (c) the clarity and specificity of the questions. Respondents will be asked twenty-eight questions about community perceptions of substance use, service availability, familial substance use, general health concerns, and current problems related to these issues. Respondents will be American Indian individuals over the age of 21 who meet initial criteria and who are reached by random telephone sampling within Oklahoma. Information gained and strategies tested in the telephone survey will also inform methodologies and survey protocols for subsequent in person and mail surveys of American Indians that will investigate American Indian health concerns. The NIAAA is the federal agency with primary responsibility for supporting and conducting biomedical and behavioral research on the causes, consequences, treatment, and prevention of alcoholism and alcohol-related problems. One of the Institute's goals is to examine and address alcohol consumption, its biomedical sequelae and the prevention and treatment of alcohol dependence and alcohol related pathology in specific American Indian populations. *Frequency of Response:* Once per respondent. *Affected Public:* Individuals. *Type of Respondents:* American Indian adults over 21 years of age. The reporting burden is as follows: *Estimated Number of Respondents:* 50. *Estimated Number of Responses per Respondent:* One response per respondent. *Average Burden Hours per Response:* One-third hour per individual. *Estimated Total Annual Burden Hours Requested:* 16.7 hours. There are no costs to respondents. There are no capital costs, operating costs or maintenance costs to report.

Request for Comments: Written comments and suggestions from the public and affected agencies are invited on the following points: (1) Whether the data collection is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Carmen M. Richardson, NIH/NIAAA/OCR, 6000 Executive Boulevard, Suite 302, MSC 7003, Bethesda, MD 20892–7003, or e-mail your request to: *crichard@mail.nih.gov*. Ms. Richardson can be contacted by telephone at 301–443–1285.

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Dated: October 29, 2002.

Stephen Long,

Executive Officer, NIAAA.

[FR Doc. 02–28110 Filed 11–5–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; Agricultural Health Study—A Prospective Cohort Study of Cancer and Other Diseases Among Men and Women in Agriculture—Influence of Corn Farming on the Immune System Sub-Study

SUMMARY: In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Cancer Institute (NCI), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection: Title: Agricultural Health Study—A Prospective Cohort Study of Cancer and Other Diseases Among Men and Women in Agriculture—Influence of Corn Farming on the Immune System Sub-study. *Type of Information Collection Request:* Revision of a currently approved collection (0925–0406, expiration 11/30/03). *Need and Use of Information Collection:* The Agricultural Health Study (AHS) is an ongoing prospective cohort study of 89,658 farmers, their spouses, and commercial applicators of pesticides from Iowa and North Carolina. The proposed collection of additional information is intended to assess the effects of corn farming activities and exposures during the farming season on the immune system. The collection is intended to determine whether there are immune changes or altered immune function occurring in corn farmers and whether such perturbations are associated with specific farming exposures or activities, such as exposure to certain pesticides during planting or grain dusts during harvesting. The characterization of any changes in immune function occurring in corn farmers may contribute to understanding of the etiology of immune-related diseases that have increased incidence among farmers, including non-Hodgkin's lymphoma and other immune-related cancers. In addition, identification of specific exposures associated with immune

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effects will assist in subsequent identification of specific etiologic agents for such immune-related effects will assist in subsequent identification of specific etiologic agents for such immune-related diseases. *Frequency of Response:* Single time reporting. *Affected Public:* Individuals or households, Farms. *Type of Respondents:* Male corn farmers who apply pesticides and male agriculture extension workers. The annual reporting burden is as follows: *Estimated Number of Respondents:* 25,552; *Estimated Number of Responses per Respondent:* 2.2; *Average Burden Hours Per Response:* 1.25; and Estimated Total Annual Burden Hours Requested: 14,046. The annualized cost to respondents is estimated at: $144,108. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumption used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Roel Vermeulen, Epidemiology and Biostatistics Program, Divisions of Cancer Etiology, National Cancer Institute, EPN 8109, 6120 Executive Boulevard, Rockville, MD 20852, or call (301) 496–9093, or E-mail your request, including your address, to: *vermeulr@mail.nih.gov*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Dated: October 31, 2002.

Reesa L. Nichols,

NCI Project Clearance Liaison.

[FR Doc. 02–28231 Filed 11–5–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institute of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Initial Review Group, Subcommittee C—Basic & Preclinical.

Date: December 10–12, 2002.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Michael B. Small, PhD, Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8040, Bethesda, MD 20892, (301) 402–0996.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: October 31, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–28227 Filed 11–5–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Review of R24 Applications.

Date: November 25, 2002.

Time: 1 PM to 4 PM.

Agenda: To review and evaluate grant applications.

Place: 6701 Rockledge Dr., Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Irina Gordienko, PhD, Division of Extramural Activities, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Room 7180, MSC 7924, Bethesda, MD 20892, 301–435–0725.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: October 30, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–28224 Filed 11–5–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel.

Date: November 18, 2002.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Richard J. Bartlett, PhD, Scientific Review Administrator, National Institute of Arthritis and Musculoskeletal and Skin Diseases, 6701 Democracy Plaza, Bethesda, MD 20892, (301) 594–4952.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: October 30, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–28225 Filed 11–5–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel, October 10, 2002, 1 p.m. to October 10, 2002, 2:30 p.m., Holiday Inn—Chevy Chase, Palladian East and Center Rooms, 5520 Wisconsin Avenue, Chevy Chase, MD, 20815, which was published in the **Federal Register** on September 20, 2002, 67 FR 59299–59300.

The meeting will be held on 11/18/2002 at 1 p.m.–2:30 p.m. at the Holiday Inn—Chevy Chase. The meeting is closed to the public.

Dated: October 30, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy

[FR Doc. 02–28226 Filed 11–5–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, Review of Conference Grant Applications (R13s).

Date: December 10, 2002.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: NIEHS, 79 T.W. Alexander Drive, Building 4401, Conference Room 122, Research Triangle Park, NC 27709, (Telephone Conference Call).

Contact Person: RoseAnne M. McGee, Associate Scientific Review Administrator, Scientific Review Branch, Office of Program Operations, Division of Extramural Research and Training, Nat. Inst. of Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, (919) 541–0752.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, Review of Conference Grant Applications (R13s).

Date: December 10, 2002.

Time: 4 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: NIEHS, 79 T.W. Alexander Drive, Building 4401, Conference Room 122, Research Triangle Park, NC 27709, (Telephone Conference Call).

Contact Person: RoseAnne M. McGee, Associate Scientific Review Administrator, Scientific Review Branch, Office of Program Operations, Division of Extramural Research and Training, Nat. Inst. of Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, (919) 541–0752.

(Catalogue of Federal Domestic Assistance Program Nos. 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences, National Institutes of Health, HHS)

Dated: October 31, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–28228 Filed 11–5–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel, ZAA1 DD (03) R21 Application Review.

Date: November 19, 2002.

Time: 10:30 a.m. to 11:30 a.m.

Agenda: To review and evaluate grant applications.

Place: 6000 Executive Boulevard, Suite 409, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Sathasiva B. Kandasamy, PhD, Scientific Review Administrator, Extramural Project Review Branch, Office of Scientific Affairs, National Institute on Alcohol, Abuse and Alcoholism, 6000 Executive Blvd, Suite 409, Bethesda, MD 20892–7003, (301) 443–2926, *skandaso@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

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Dated: October 31, 2002.

LaYerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–28229 Filed 11–5–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institutes of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institutes of Mental Health Special Emphasis Panel, Large Scale Research on Persons Living With HIV/AIDS.

Date: December, 2, 2002.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate applications.

Place: Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Richard E. Weise, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Boulevard, Room 6140, MSC9606, Bethesda, MD 20892–9606, (301) 443–1225. *rweise@mail.nig.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: October 31, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–28230 Filed 11–5–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 PBC (01) Protein Glycosylation.

Date: October 31, 2002.

Time: 3 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call.)

Contact Person: Zakir Bengali, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5150, MSC 7842, Bethesda, MD 20892. (301) 435–1742.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93–878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 28, 2002.

LaVerne Y. Springfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–28222 Filed 11–5–02; 8:45 am]

BILLING CODE 7140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SSS–2 (05) SBIR-Chemical Protein Synthesis.

Date: November 4, 2002.

Time: 3 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call.)

Contact Person: Prabha L. Atreya, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5156, MSC 7842, Bethesda, MD 20892. (301) 435–8367. *atreyap@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Vector and Parasites.

Date: November 7–8, 2002.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Jean Hickman, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4194, MSC 7808, Bethesda, MD 20892. (301) 435–1146.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Prokaryotic and Eukaryotic Molecular Biology and Genetics.

Date: November 7–8, 2002.

Time: 8 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Mary P. McCormick, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2208, MSC 7890, Bethesda, MD 20892. (301) 435–1047. *mccormim@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 CDF–

1 02 Panel on Molecular Mechanisms of Embryogenesis.

Date: November 7, 2002.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call.)

Contact Person: Michael H. Sayre, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5128, MSC 7840, Bethesda, MD 20892. (301) 435–1219.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business: Genetics, Genomics and Nucleic Acid Technologies.

Date: November 13–15, 2002.

Time: 7 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: The Governor's House, 1615 Rhode Island Avenue, NW., Washington, DC 20036.

Contact Person: Michael H. Schaefer, PhD, Scientific Review Administrator, Genetic Sciences IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6166, MSC 7890, Bethesda, MD 20892. (301) 435–2477. *schaefem@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Exposure to Toxins in Children.

Date: November 18, 2002.

Time: 12:30 p.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call.)

Contact Person: Cheri Wiggs, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3180, MSC 7848, Bethesda, MD 20892. (301) 435–1261.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, TIC Diseases.

Date: November 20, 2002.

Time: 1 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call.)

Contact Person: Jean Hickman, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4194, MSC 7808, Bethesda, MD 20892. (301) 435–1146.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Review of Multi-Center Study Grant.

Date: November 26, 2002.

Time: 11 p.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call.)

Contact Person: Abraham P. Bautista, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5102, MSC 7852, Bethesda, MD 20892. (301) 435–1506. *bautista@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 30, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–28223 Filed 11–5–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4739–N–45]

Notice of Proposed Information Collection: Comment Request; Inventory of Housing Units Designated for the Elderly/Persons With Disabilities

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* January 6, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8003, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Beverly J. Miller, Director, Office of Asset Management, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708–1320 (this is not a toll-free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Inventory of Housing Units Designated for the Elderly/Persons with Disabilities.

OMB Control Number, if applicable: 2502–0550.

Description of the need for the information and proposed use: The information collected will be used to obtain current data with respect to occupancy preferences, unit distribution, and unit features. This information will assist prospective applicants with locating multifamily housing units for which they are eligible.

Agency form numbers, if applicable: HUD–90059.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated total number of hours needed to prepare the information collection is 15,000; the number of respondents is 30,000 generating approximately 30,000 annual responses; the frequency of response is on occasion; and the estimated time needed to prepare the response is 30 minutes.

Status of the proposed information collection: Extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

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Dated: October 29, 2002.

John C. Weicher,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 02–28122 Filed 11–5–02; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4734–N–64]

Notice of Submission of Proposed Information Collection to OMB: HUD's Loss Mitigation Default Counseling Demonstration Program

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* December 6, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2502–0549) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; E-mail *Lauren_Wittenberg@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submission will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: HUD's Loss Mitigation Default Counseling Demonstration Program.

OMB Approval Number: 2502–0549.

Form Numbers: None.

Description of the Need for the Information and its Proposed Use: The information obtained from this collection requirement will be used during the course of the demonstration program to verify a payment voucher that will enable participating Housing Counseling Agencies and lenders to be reimbursed for their loss mitigation efforts.

Respondents: Individuals or households, business or other for-profit, not-for-profit institutions.

Frequency of Submission: On occasion, monthly.

	Number of respondents	×	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	11	....	749	....	0.5		4,120

Total estimated Burden Hours: 4,120.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: October 29, 2002.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 02–28121 Filed 11–6–02; 8:45 am]

BILLING CODE 4210–72–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4723–FA–05]

Announcement of Funding Awards for Fiscal Year 2002 Alaska Native/Native Hawaiian Institutions Assisting Communities Program

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this document notifies the public of funding awards for Fiscal Year 2002 Alaska Native/Native Hawaiian Institutions Assisting Communities Program. The purpose of this document is to announce the names, addresses and the amount awarded to the winners to be used to assist Alaska Native/Native Hawaiian institutions of higher education to expand their role and effectiveness in addressing communities in their localities, consistent with the purpose of title I of the Housing and Community Development Act of 1974, as amended.

FOR FURTHER INFORMATION CONTACT: Susan Brunson, Office of University Partnerships, U.S. Department of Housing and Urban Development, Room 8106, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–3061, ext. 3852. To provide service for persons who are hearing-or-speech-impaired, this number may be reached via TTY by Dialing the Federal Information Relay Service on 800–877–8339 or 202–708–1455. (Telephone number, other than "800" TTY numbers are not toll free.)

SUPPLEMENTARY INFORMATION: The Alaska Native/Native Hawaiian Institutions Assisting Communities Program was approved by Congress under section 107 of the Community Development Block Grant appropriations for the Fiscal Year 2002, and is administered by the Office of University Partnerships under the Assistant Secretary for Policy Development and Research. In addition to this program, the Office of University Partnerships administers HUD's ongoing grant programs to institutions of higher education as well as creates initiatives through which colleges and universities can bring their traditional missions of teaching, research, service, and outreach to bear on the pressing local problems in their communities.

The AN/NHIAC program provides funds for a wide range of CDBG-eligible activities including housing rehabilitation and financing, property demolition or acquisition, public facilities, economic development, business entrepreneurship, and fair housing programs. Of the $6.2 million available, $3.1 million was allotted to fund Alaskan Hawaiian institutions and $3.1 million to fund Native Hawaiian institutions. Each eligible campus was permitted to apply individually, for $600,000 the maximum amount that can be awarded for a period of 36 months.

The Catalog Federal Domestic Assistance number for this program is 14.515.

On March 26, 2002 (67 FR 13981), HUD published a notice of funding availability (NOFA) announcing the availability of $6.2 million in Fiscal Year 2002 funds for the AN/NHIAC Program. The Department reviewed, evaluated, and scored the applications received based on the criteria in the NOFA. As a result, HUD has funded the applications below, in accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is publishing details concerning the recipients of funding awards, as set forth below.

List of Awardees for Grant Assistance Under the FY 2002 Alaska Native/ Native Hawaiian Institutions Assisting Communities Program Funding Competition, by Institution, Address and Grant Amount

Pacific/Hawaii

1. University of Hawaii, Mr. Randall Francisco, Leeward Community College, 96–045 Ala Ike, Peal City, HI 96782. Grant: $579,586.

2. University of Hawaii, Dr. June Aono, West Oahu, 96–129 Ala Ike, Peal City, HI 96782. Grant: $599,875.

3. University of Hawaii, Ms. Sandra Okazaki, Windward Community College, 45–720 Kea'ahala Road, Kaneohe, HI 96744. Grant: $590,036.

Northwest/Alaska

4. University of Alaska Fairbanks, Lincoln Saito, Chukchi Campus, University of Alaska Fairbanks, PO Box 757880, Fairbanks, AK 99775–880. Grant: $395,000.

Dated: October 23, 2002.

Harold L. Bunce,

Deputy Assistant Secretary for Economic Affairs.

[FR Doc. 02–28124 Filed 11–5–02; 8:45 am]

BILLING CODE 4210–62–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4723–FA–18]

Announcement of Funding Awards for Fiscal Year 2002 Doctoral Dissertation Research Grant Program

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this document notifies the public of funding awards for the Fiscal Year (FY) 2002 Doctoral Dissertation Research Grant (DDRG) Program. The purpose of this document is to announce the names and addresses of the award winners and the amount of the awards to be used to help doctoral candidates complete dissertations on topics that focus on housing and urban development issues.

FOR FURTHER INFORMATION CONTACT: Susan Brunson, Office of University Partnerships, U.S. Department of Housing and Urban Development, Room 8106, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–3061, ext. 3852. To provide service for persons who are hearing-or-speech-impaired, this number may be reached via TTY by Dialing the Federal Information Relay Service on 800–877–8339 or 202–708–1455. (Telephone number, other than "800" TTY numbers are not toll free.)

SUPPLEMENTARY INFORMATION: The DDRG is administered by the Office of University Partnerships under the Assistant Secretary for Policy Development and Research (PD&R). This Office also administers PD&R's other grant programs for academics. The DDRG Program was created as a means of expanding the number of researchers conducting research on subjects of interest to HUD. Doctoral candidates can receive grants of up to $30,000 to complete work on their dissertations. Grants are for a two-year period.

The Office of University Partnerships under the Assistant Secretary for Policy Development and Research (PD&R) administers this program. This Office also administers PD&R's other grant programs for academics.

The Catalog of Federal Domestic Assistance number for this program is 14.516.

March 26, 2002 (67 FR 14617), HUD published a Notice of Funding Availability (NOFA) announcing the availability of $150,000 in FY 2002 funds for the EDSRG Program. The Department reviewed, evaluated and scored the applications received based on the criteria in the NOFA. As a result, HUD has funded the applications announced below, and in accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, U.S.C. 3545), the Department is publishing details concerning the recipients of funding awards, as set forth below. More information about the winners can be found at *www.oup.org.*

List of Awardees for Grant Assistance Under the FY 2001 Doctoral Dissertation Research Grant Program Funding Competition, by Name, Address, Grant Amount and Number of Students Funded

1. University of Louisville, Dr. Steven Bourassa, (502) 852–5720, Department of Urban and Public Affairs, 426 West Bloom Street, Louisville, KY 40208. *Grant:* $14,934 to Mark Wright.

2. Rutgers, the State University of New Jersey, Dr. Robert Lake, (732) 932–3133 ext. 521, Bloustein School of Planning & Policy Development, 33 Livingston Avenue, 4th Floor, New Burnswick, NJ 08901. *Grant:* $25,000 to Philip Ashton.

3. The Regents of the University of California, Professor Victoria Basolo, (949) 824–3521, Department of Urban and Regional Planning, 202 Social Ecology I, University Tower, Suite 300, Irvine, CA 92697–7600. *Grant:* $25,000 to Jennifer Gress.

4. University of Kentucky Research Foundation, Richard Schein, (859) 257–2119, Department of Geography, 201 Kinkead Hall, Lexington KY 40506–0057. *Grant:* $19,220 to James Hanlon.

5. University of Southern California, Dr. Lloyd Armstrong, Jr., (213) 821–1147, School of Policy, Planning and

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Development, RGL 312, Los Angeles, CA 90089–0626. *Grant:* $25,000 to Todd Gish.

6. University of California, Irvine, Katherine Tate, (949) 824–8762, 3151 Social Science Plaza, Irvine, CA 92697–5100. *Grant:* $10,080 to Kim DeFronzo.

7. University of Southern California, Dr. Lloyd Armstrong Jr., (213) 821–1147, School of Policy, Planning, and Development, VKC 363, University Park Campus, Los Angeles, CA 90089–0626. *Grant:* $25,000 to Zhou Yu.

8. Tulane University, Dr. Jeanette Jennings, (504) 862–3473, School of Social Work, Administrators of the Tulane Educational Funds, 6823 St. Charles Avenue, New Orleans, LA 70118. *Grant:* $24,512 to David Mainor.

9. George Washington University, Dr. Anthony Yezer, (202) 994–6755, Department of Economics, 2121 I Street, NW., Suite 601, Washington, DC 20052. *Grant:* $24,962 to Michael Hollar.

10. University at Albany, SUNY, Dr. John R. Logan, (518) 442–4656, Sociology Department, 1400 Washington Avenue, Albany, NY 12222. *Grant:* $25,000 to Deirdre Oakeley.

11. University of Texas, Dr. Robert Wilson, (512) 471–8947, LBJ School of Public Affairs, P.O. Box 7726, Austin, TX 78713–7726. *Grant:* $25, 000 to Mona Koerner.

12. University of Louisville, Professor Hank V. Savitch, (502) 852–7929, Department of Urban and Public Affairs, 426 West Bloom Street, Louisville, KY 40208. *Grant:* $25,000 to Grigoriy Ardashev.

13. University of Minnesota-Twin Cities, Dr. Ann Ziebarth, (612) 625–8795, Design, Housing and Apparel, 240 McNeal Hall, 1985 Buford Avenue, St. Paul, MN 55108. *Grant:* $17,902 to Eunju Hwang.

14. University of California, Los Angels, Dr. Jacqueline Leavitt, (310) 825–4380, Office of Contract and Grant Administrator, 10920 Wilshire Blvd., Suite 1200, Los Angeles, CA 90024–1406. *Grant:* $24,688 to Martha Matsuoka.

15. The Regents of the University of California, Professor Don Zimmerman, (805) 893–3422, Department of Sociology, Santa Barbara, CA 93106. *Grant:* $24,713 to Michele Wakin

16. Brandis University, Professor Mark Sciegaj, (781) 736–3800, Heller School for Social Policy and Management, P.O. Box 549110, MS#035, Waltham, MA 02454–9110. *Grant* $23,828 to William Bartosch.

17. Rutgers, the State University of New Jersey, Dr. Michael Greenberg, (732) 932–0387, ext. 673, School of Public Health of the University of Medicine & Dentistry, Bloustein School of Planning & Public Policy, 33 Livingston Avenue, Suite 300, New Brunswick, NJ 08901. *Grant:* $25,000 to Fred Ellerbush.

Dated: October 23, 2002.

Harold Bunce,

Deputy Assistant Secretary for Economic Affairs.

[FR Doc. 02–28126 Filed 11–5–02; 8:45 am]

BILLING CODE 4210–62–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4723–FA–17]

Announcement of Funding Awards for Fiscal Year 2002 Early Doctoral Student Research Grant Program

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this document notifies the public of funding awards for the Fiscal Year 2002 Early Doctoral Student Research Grant (EDSRG) Program. The purpose of this document is to announce the names and addresses of the award winners and the amount of the awards to be used to help doctoral students cultivate their research skills through the preparation of research manuscripts that focus on housing and urban development issues.

FOR FURTHER INFORMATION CONTACT: Susan Brunson, Office of University Partnerships, Department of Housing and Urban Development, Room 8106, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–3061, ext. 3852. To provide service for persons who are hearing-or-speech-impaired, this number may be reached via TTY by Dialing the Federal Information Relay Service on 800–877–8339 or 202–708–1455. (Telephone number, other than "800" TTY numbers are not toll free.)

SUPPLEMENTARY INFORMATION: The EDSRG Program provides funds to eligible doctoral students to cultivate their research skills through preparation of research manuscripts that focus on housing and urban development issues. Students, who are in the early stages of their doctoral studies, have 12 months to complete a major research study. The maximum amount to be awarded to doctoral student is $15,000.

The Office of University Partnerships under the Assistant Secretary for Policy Development and Research (PD&R) administers this program. This Office also administers PD&R's other grant programs for academics.

The Catalog of Federal Domestic Assistance number for this program is 14.517.

March 26, 2002 (67 FR 14607), HUD published a Notice of Funding Availability (NOFA) announcing the availability of $150,000 in FY 2002 funds for the EDSRG Program. The Department reviewed, evaluated and scored the applications received based on the criteria in the NOFA. As a result, HUD has funded the applications announced below, and in accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, U.S.C. 3545), the Department is publishing details concerning the recipients of funding awards, as set forth below. More information about the winners can be found at *www.oup.org*

List of Awardees for Grant Assistance Under the FY 2002 Early Doctoral Student Research Grant Program Funding Competition, by Name, Address, Grant Amount and Number of Students Funded

1. University of Pennsylvania, Mr. W. Stuart Watson, Real Estate, 1333 South 36th Street, Philadelphia, PA 19104. *Grant:* $12,000 to Kevin Gillen.

2. University of Pittsburgh, Mr. Michael M. Crouch, Public Policy and Public Administration, 3G07 Wesley W. Posvar Hall, Pittsburgh, PA 15260. *Grant:* $14,942 to Andrew Aurand.

3. Syracuse University, Mr. Stuart Taub, Economics, 113 Bowne Hall, Syracuse, NY 13244. *Grant:* $15,000 to Christopher Cunningham.

4. Harvard University, Robert Bloomberg, Public Policy, Holyoke Center #727, 1350 Massachusetts Avenue, Cambridge, MA 02138–3800. *Grant:* $13,050 to Jenny Schuetz.

5. University of Illinois, Mr. Eric A. Gislason, Economic Development, 1333 South 36th Street, Philadelphia, PA 19104. *Grant:* $15,000 to Raymond Massssssenburg.

6. University of California, Berkeley's, Mr. Steven Raphel, Public Policy, University of California, Berkeley, Berkeley, CA 94720–5940. *Grant:* $14,820 to Sarah R. Dunn.

7. Ohio State University, Mr. Richard D. Fortner, City & Regional Planning, 1960 Kenny Road, Columbus, OH 43210–1063. *Grant:* $14,611 to Katrin Britta Anacker.

8. Cornell University, Ms. Kimberly Hayes, City and Regional Planning, 115 Day Hall, Ithaca, NY 14853. *Grant:* $15,000 to Jonathan Martin.

9. University of Southern California, Mr. Lloyd Armstrong, Jr., School of Planning and Development, University Park, Los Angeles, CA 90089–1147. *Grant:* $15,000 to Duan Zhuang.

10. University of Arizona, Mr. Richard Powell, Sociology, P.O. Box 3308, Tucson, AZ 85722–3308. *Grant:* $15,000 to Laura Stephens.

Dated: October 23, 2002.

Harold Bunce,

Deputy Assistant Secretary for Economic Affairs.

[FR Doc. 02–28125 Filed 11–5–02; 8:45 am]

BILLING CODE 4210–62–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4723–FA–04]

Announcement of Funding Awards for Fiscal Year 2002 Historically Black Colleges and Universities Program

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this document notifies the public of funding awards for Fiscal Year 2002 Historically Black Colleges and Universities Program. The purpose of this document is to announce the names, addresses and the amount awarded to the winners to be used to help Historically Black Colleges and Universities (HBCUs) expand their role and effectiveness in addressing community development needs in their localities, consistent with the purposes of HUD's Community Development Block Grant program (CDBG).

FOR FURTHER INFORMATION CONTACT: Susan Brunson, Office of University Partnerships, U.S. Department of Housing and Urban Development, Room 8106, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–3061, ext. 3852. To provide service for persons who are hearing-or-speech-impaired, this number may be reached via TTY by Dialing the Federal Information Relay Service on 800–877–8339 or 202–708–1455. (Telephone number, other than "800" TTY numbers are not toll free.)

SUPPLEMENTARY INFORMATION: The Historically Black Colleges and Universities Program was enacted under section 107 of the CDBG appropriation for fiscal year 2002, as part of the "Veterans Administration, HUD and Independent Agencies Appropriations Act of 2002" and is administered by the Office of University Partnerships under the Assistant Secretary for Policy Development and Research. In addition to this program, the Office of University Partnerships administers HUD's ongoing grant programs to institutions of higher education as well as creates initiatives through which colleges and universities can bring their traditional missions of teaching, research, service, and outreach to bear on the pressing local problems in their communities.

The HBCU Program provides funds for a wide range of CDBG-eligible activities including housing rehabilitation and financing, property demolition or acquisition, public facilities, economic development, business entrepreneurship, and fair housing programs.

The Catalog Federal Domestic Assistance number for this program is 14.237.

On March 26, 2002 (67 FR 13949), HUD published a Notice of Funding Availability (NOFA) announcing the availability of $10.5 million in Fiscal Year 2002 funds for the HBCU Program. The Department reviewed, evaluated, and scored the applications received based on the criteria in the NOFA. As a result, HUD has funded the applications below, in accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is publishing details concerning the recipients of funding awards, as set forth below.

List of Awardees for Grant Assistance Under the FY 2002 Historically Black Program Funding Competition, by Institution, Address, and Grant Amount

Mid-Atlantic

1. Norfolk State University, Thomas Dawes, Community and Outreach Services, Norfolk State University, 700 Park Avenue, Norfolk, VA 23504. Grant: $500,000.

2. Hampton University, Department of Architecture, Hampton University, Hampton, VA 23668. Grant: $301,505.

3. Delaware State University, Dr. John N. Austin, School of Professional Studies and Management, Delaware State University, 1200 North Dupont Highway, Dover, DE 19901. Grant: $338,766.

Southeast/Caribbean

4. C.A. Fredd Technical College Campus of Shelton Community College, Branch Campus, Dr. Cordell Wynn, C.A. Fredd Technical College Campus of Shelton Community College, 3401 Martin Luther King, Jr. Blvd., Tuscaloosa, AL 35401. Grant: $549,990.

5. Stillman College, Dr. Eddie B. Thomas, Stillman College, 3600 Tuscaloosa Blvd., Tuscaloosa, AL 35403. Grant: $524,790.

6. Benedict College, Larry Salley, Benedict College, 1600 Harden Street, Columbia, SC 29204. Grant: $500,000.

7. South Carolina State University, Charles Q. Artis, South Carolina State University, 300 College Street, NE, Orangeburg, SC 29115. Grant: $549,945.

8. LeMoyne-Owen College, Jeffrey Higgs, LeMoyne-Owen College, 802 Walker Avenue, Suite 5, Memphis, TN 38126. Grant: $549,062.

9. Fisk University, Debbie Frank, Fisk University, 1000 17th Avenue North, Nashville, TN 37208. Grant: $550,000.

10.Morehouse College, Shirley Williams, Morehouse College, 830 Westview Drive, SW, Atlanta, GA 30314. Grant: $526,414.

11. North Carolina A&T State University, Valerie Howard, Department of Construction Management and Safety, North Carolina A& T State University, 1601 East Market Street, Greensboro, NC 27411. Grant: $548,000.

12. North Carolina Central University, Tyrone Eaton, Office of Research Programs, North Carolina Central University, 1801 Fayetteville Street, Durham, NC 27707. Grant: $549,479.

13. Gadsden State Community College, Dr. Brenda Crowe, Institutional Advancement and Community Services, Gadsden State Community College, P.O. Box 227, 1001 George Wallace Drive, Gadsden, AL 35902–0227. Grant: $424,000.

14. Florida A&M University, Thomas D. Pugh, Florida A&M University, 400 Foote Hilyer, Administration Center, Tallahassee, FL 32307. Grant: $542,674.

15. Rust College, David L. Beckley, Rust College, 150 East Rust Avenue, Holly Springs, MS 38635. Grant: $550,000.

16. Alcorn State University, Brenda T. Buck, Center for Rural Life and Economic Development, Alcorn State University, 1000 ASU Drive, #210, Alcorn State, MS 39096. Grant: $497,929.

Southwest

17. Dillard University, Dr. Edwina Frank, Research and Sponsored Programs, Dillard University, 2601 Gentilly Blvd., New Orleans, LA 70122. Grant: $550,000.

18. Southern University and A&M College, Dr. Alma Thornton, Center for Social Research, Southern University and A&M College, P.O. Box 9503, S.U.

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Branch, Baton Rouge, LA 70813–9503. Grant: $550,000.

19. Southern University At Shreveport, Jeanette H. Williams, Southern University At Shreveport, 3050 Martin Luther King Jr. Boulevard, Shreveport, LA 71107. Grant: $322,211.

20. Jarvis Christian College, Dr. Richard Groepper, Jarvis Christian College, P.O. Box 1470, Hawkins, TX 75765. Grant: $338,274.

21. Paul Quinn College, Dwight Fennell, Paul Quinn College, 3837 Simpson Stuart Road, Dallas, TX 75241. Grant: $550,000.

22. University of Arkansas at Pine Bluff, Henry Golatt, University of Arkansas at Pine Bluff, 1200 North University Drive, Mail Slot 4943, Pine Bluff, AR 71601. Grant: $368,330.

Dated: October 23, 2002.

Harold Bunce,

Deputy Assistant Secretary for Economic Affairs.

[FR Doc. 02–28123 Filed 11–4–02; 8:45 am]

BILLING CODE 4210–62–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4723–FA–20]

Announcement of Funding Awards for Fiscal Year 2002 Tribal Colleges and Universities Program

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102 (a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this document notifies the public of funding awards for Fiscal Year 2002 Tribal Colleges and Universities Program. The purpose of this document is to announce the names and addresses of the award winners and the amount of the awards which are to be used to enable tribal colleges and universities to build, expand, renovate, and equip their own facilities, especially those that are available to and used by the larger community.

FOR FURTHER INFORMATION CONTACT: Susan Brunson, Office of University Partnerships, Department of Housing and Urban Development, Room 8106, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–3061, ext. 3852. To provide service for persons who are hearing-or-speech-impaired, this number may be reached via TTY by Dialing the Federal Information Relay Service on 800–877–8339 or 202–708–1455 (Telephone number, other than "800" TTY numbers are not toll free).

SUPPLEMENTARY INFORMATION: The Tribal Colleges and Universities Program was enacted under section 107 of the CDBG appropriation for fiscal year 2002, as part of the "Veterans Administration, HUD and Independent Agencies Appropriations Act of 2002" and is administered by the Office of University Partnerships under the Assistant Secretary for Policy Development and Research. In addition to this program, the Office of University Partnerships administers HUD's ongoing grant programs to institutions of higher education as well as creates initiatives through which colleges and universities can bring their traditional missions of teaching, research, service, and outreach to bear on the pressing local problems in their communities.

The Tribal Colleges and Universities Program assist tribal colleges and universities to build, expand, renovate, and equip their own facilities. On March 26, 2002 (67 FR 13993), HUD published a Notice of Funding Availability (NOFA) announcing the availability of $3 million in Fiscal Year 2002 funds for the Tribal Colleges and Universities Program. The Department reviewed, evaluated and scored the applications received based on the criteria in the NOFA. As a result, HUD eight applications were funded.

The Catalog Federal Domestic Assistance number for this program is 14.519.

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is publishing details concerning the recipients of funding awards, as follows

List of Awardees for Grant Assistance Under the FY 2002 Tribal Colleges and Universities Program Funding Competition, by Institution, Address, and Grant Amount

Rocky Mountains

1. Fort Peck Community College, Warren Means, Fort Peck Community College, P.O. Box 398, Polar, MT 59255. *Grant:* $400,000.

2. Si Tanka College, Robert Hall, Si Tanka College, P.O. Box 220, Eagle Butte, SD 57652. *Grant:* $400,000.

3. Sisseton Wahpeton Community College, Dr. William Bray, Sisseton Wahpeton Community College, BIA Road 700, Box 689, Agency Village, SD 57268. *Grant:* $399,885.

4. Stone Child College, Edward Stamper, Stone Child College, RRI Box 1088, Box Elder, MT 59521. *Grant:* $400,000.

5. Cankdeska Cikana Community College, Walter R. Hollified, Cankdeska Cikana Community College, P.O. Box 269, Fort Totten, ND 58835. *Grant:* $400,000.

Midwest

6. Keweenaw Bay Ojibwa Community College, Treneice Marshall, Keweenaw Bay Ojibwa Community College, 409 Superior, P.O. Box 519, Baraga, MI 49908. *Grant:* $400,000.

7. Fond du Lac Tribal and Community College, Dawn Newman, Fond du Lac Tribal Community College, 2101 14th Street, Cloquet, MN 55720. *Grant:* $200,000.

Great Plains

8. Little Priest Tribal College, Ann Downs, Little Priest Tribal College, 601 East College Drive, Winnebago, NE 68071. *Grant:* $400,000.

Dated: October 23, 2002.

Harold L. Bunce,

Deputy Assistant Secretary for Economic Affairs.

[FR Doc. 02–28127 Filed 11–5–02; 8:45 am]

BILLING CODE 4210–62–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–130–1020–PF; GP3–0022]

Notice of Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Eastern Washington Resource Advisory Council (RAC), will meet as indicated below.

DATES: The meeting will be held November 20, 2002, in the conference room of the Spokane District BLM Office, beginning at 9 a.m. The public comment period will begin at approximately 11:30 a.m. and the meeting will adjourn at approximately 4 p.m.

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in Eastern Washington. At this meeting, topics we plan to discuss include:

District land exchanges
Orientation of new members
National video downlink, and other topics the council may raise.

All meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, tour transportation or other reasonable accommodations, should contact the BLM as provided below

FOR FURTHER INFORMATION CONTACT: Kathy Helm, Bureau of Land Management, Spokane District Office, 1103 N. Fancher Road, Spokane, Washington, 99212, or call (509) 536–1200.

Dated: October 31, 2002.

Joseph K. Buesing,

District Manager.

[FR Doc. 02–28151 Filed 11–5–02; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of extension of an information collection (1010–0048).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are inviting comments on a collection of information that we will submit to the Office of Management and Budget (OMB) for review and approval. The information collection request (ICR) concerns the paperwork requirements in the regulations under 30 CFR 251, "Geological and Geophysical (G&G) Explorations of the Outer Continental Shelf."

DATE: Submit written comments by January 6, 2003.

ADDRESSES: Mail or hand carry comments to the Department of the Interior; Minerals Management Service; Attention: Rules Processing Team, Mail Stop 4024, 381 Elden Street, Herndon, Virginia 20170–4817. If you wish to e-mail comments, the address is: *rules.comments@mms.gov*. Reference "Information Collection 1010–0048" in your e-mail subject line and mark your message for return receipt. Include your name and return address in your message.

FOR FURTHER INFORMATION CONTACT: Alexis London, Rules Processing Team, (703) 787–1600. You may also contact Alexis London to obtain a copy, at no cost, of the regulations that require the subject collection of information.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR Part 251, Geological and Geophysical (G&G) Explorations of the Outer Continental Shelf.

OMB Control Number: 1010–0048.

Abstract: The Outer Continental Shelf (OCS) Lands Act, as amended (43 U.S.C. 1331 *et seq.* and 43 U.S.C. 1801 *et seq.*), authorizes the Secretary of the Interior (Secretary) to prescribe rules and regulations to administer leasing of the OCS. Such rules and regulations will apply to all operations conducted under a lease. Operations on the OCS must preserve, protect, and develop oil and natural gas resources in a manner that is consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; to balance orderly energy resource development with protection of human, marine, and coastal environments; to ensure the public a fair and equitable return on the resources of the OCS; and to preserve and maintain free enterprise competition.

The OCS Lands Act (43 U.S.C. 1340) also states that "any person authorized by the Secretary may conduct geological and geophysical explorations in the [O]uter Continental Shelf, which do not interfere with or endanger actual operations under any lease maintained or granted pursuant to this OCS Lands Act, and which are not unduly harmful to aquatic life in such area." The section further requires that permits to conduct such activities may only be issued if it is determined that the applicant is qualified; the activities are not polluting, hazardous, or unsafe; they do not interfere with other users of the area; and do not disturb a site, structure, or object of historical or archaeological significance. Applicants for permits are required to submit form MMS–327 to provide the information necessary to evaluate their qualifications.

Regulations at 30 CFR part 251 implement these statutory requirements. We use the information to ensure there is no environmental degradation, personal harm or unsafe operations and conditions, damage to historical or archaeological sites, or interference with other uses; to analyze and evaluate preliminary or planned drilling activities; to monitor progress and activities in the OCS; to acquire G&G data and information collected under a Federal permit offshore; and to determine eligibility for reimbursement from the Government for certain costs. The information is necessary to determine if the applicants for permits or filers of notices meet the qualifications specified by the OCS Lands Act. The MMS uses information collected to understand the G&G characteristics of oil-and-gas bearing physiographic regions of the OCS. It aids the Secretary in obtaining a proper balance among the potentials for environmental damage, the discovery of oil and gas, and adverse impacts on affected coastal States. Information from permittees is necessary to determine the propriety and amount of reimbursement.

We will protect information from respondents considered proprietary under the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR part 2) and under regulations at 30 CFR parts 250, 251, and 252. No items of a sensitive nature are collected. Responses are mandatory or required to obtain or retain a benefit.

Frequency: On occasion, annual; and as specified in permits.

Estimated Number and Description of Respondents: Approximately 150 Federal OCS permittees or notice filers.

Estimated Reporting and Recordkeeping "Hour" Burden: The currently approved annual reporting burden for this collection is 8,109 hours. The following chart details the individual components and respective hour burden estimates of this ICR. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

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BURDEN BREAKDOWN

Citation 30 CFR 251	Reporting and recordkeeping requirement	Hour burden
251.4(a), (b); 251.5(a), (b), (d); 251.6; Permit Forms.	Apply for permits (form MMS–327) to conduct G&G exploration, including deep stratigraphic tests.	6
251.4(b); 251.5(c), (d); 251.6	File notices to conduct scientific research activities, including notice to MMS prior to beginning and after concluding activities.	6
251.6(b) 251.7(b)(5)(iii)	Notify MMS if specific actions should occur; report archaeological resources. (No instances reported since 1982.).	1
251.7	Submit information on test drilling activities under a permit, including form MMS–123 burden included under 30 CFR 250 information collection approvals.	
251.7(c)	Enter into agreement for group participation in test drilling, including publishing summary statement; provide MMS copy of notice/list of participants. (No agreements submitted since 1989.).	1
251.7(d)	Submit bond on deep stratigraphic test—burden included under 30 CFR part 256 (1010–0006).	
251.8(a)	Request reimbursement for certain costs associated with MMS inspections. (No requests in many years. OCS Lands Act requires Government reimbursement.).	
251.8(b), (c)	Submit modifications to, and status/final reports on, activities conducted under a permit	8
251.9(c)	Notify MMS to relinquish a permit	1/2
251.10(c)	File appeals—burden included under 1010–0121	
251.11; 251.12	Notify MMS and submit G&G data/information collected under a permit and/or processed by permittees or 3rd parties, including reports, logs or charts, results, analyses, descriptions, etc.	4
251.13	Request reimbursement for certain costs associated with reproducing data/info	20
251.14(a)	Submit comments on MMS intent to disclose data/info. to the public	1
251.14(c)(2)	Submit comments on MMS intent to disclose data/info. to an independent contractor/agent.	1
251.14(c)(4)	Contractor/agent submit written commitment not to sell, trade, license, or disclose data/info. without MMS consent.	1
Part 251	General departure and alternative compliance requests not specifically covered elsewhere in part 251 regulations.	2
Permit Forms	Request extension of permit time period	1
Permit Forms	Retain G&G data/information for 10 years and make available to MMS upon request	1

Estimated Reporting and Recordkeeping "Non-Hour Cost" Burden: We have identified no cost burdens for this collection.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Before submitting an ICR to OMB, PRA section 3506(c)(2)(A) requires each agency "* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *". Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Agencies must also estimate the "non-hour cost" burdens to respondents or recordkeepers resulting from the collection of information. Therefore, if you have costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information, monitoring, and record storage facilities. You should not include estimates for equipment or services purchased: (i) Before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

We will summarize written responses to this notice and address them in our submission for OMB approval. As a result of your comments, we will make any necessary adjustments to the burden in our submission to OMB.

Public Comment Policy: Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There may be circumstances in which we would withhold from the record a respondent's identity, as allowable by the law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach, (202) 208–7744.

Dated: October 30, 2002.

John V. Mirabella,

Acting Chief, Engineering and Operations Division.

[FR Doc. 02–28210 Filed 11–5–02; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf (OCS) Policy Committee of the Minerals Management Advisory Board; Notice and Agenda for Meeting

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of meeting.

SUMMARY: The OCS Policy Committee of the Minerals Management Advisory Board will meet at the Astor Crown Plaza New Orleans Hotel in New Orleans, Louisiana.

DATES: Wednesday, November 20, 2002, from 8:30 a.m. to 5 p.m. CST and Thursday, November 21, 2002, from 8:30 a.m. to 4 p.m CST.

ADDRESSES: The Astor Crown Plaza New Orleans Hotel, 739 Canal @ Bourbon, New Orleans, Louisiana 20170, telephone (504) 962–0500.

FOR FURTHER INFORMATION CONTACT: Ms. Jeryne Bryant at Minerals Management Service, 381 Elden Street, Mail Stop 4001, Herndon, Virginia 20170–4187. She can be reached by telephone at (703) 787–1211 or by electronic mail at *jeryne.bryant@mms.gov.*

SUPPLEMENTARY INFORMATION: The OCS Policy Committee represents the collective viewpoint of coastal States, environmental interests, industry and other parties involved with the OCS Program. It provides policy advice to the Secretary of the Interior through the Director of MMS on all aspects of leasing, exploration, development, and protection of OCS resources.

The agenda for November 20 will cover the following principal subjects:

Congressional/Legislative Update. This presentation will provide an update on current congressional issues related to the OCS Program.

Global Energy. This presentation will address the varying positions on future supply and demand scenarios.

Future of Energy. This presentation will provide a futuristic perspective on energy.

OCS Scientific Committee Update. This presentation will provide an update on the activities of the Scientific Committee. It will highlight activities that are related to mercury, energy issues/concerns, ocean issues, hard mineral activities, and any other topics that are relevant to both Committees.

Alternative Use Legislation. This presentation will provide an update on legislation concerning offshore liquefied natural gas terminals and other energy-related uses of the OCS.

Methane Hydrate—Status of Technology. This presentation will address future energy supply from offshore methane hydrates.

Oil in the Seas III: Inputs, Fates and Effects. This presentation will provide an overview of the findings from the Oil in the Sea Report that was funded by MMS, Department of Energy, U.S. Geological Survey, Environmental Protection Agency, U.S. Coast Guard, U.S. Navy, American Petroleum Institute, and National Ocean Industries Association. The presentation will also compare the recent findings with the 1985 report.

National Marine Sanctuaries. This presentation will address national marine sanctuaries, their location and characteristics, and their relevance to oil and gas development.

The agenda for November 21 will cover the following principal subjects:

Hard Minerals Subcommittee Update. This presentation will provide an update on subcommittee activities and other pertinent hard minerals information.

Coastal Erosion/Restoration—Louisiana's Perspective. This presentation will address the State of Louisiana's coastal situation, with emphasis on adverse impacts caused by offshore operations and on restoration efforts. It will also address the socioeconomic effects in coastal communities (*i.e.*, Port Fourchon, Morgan City, and Abbeville).

Mercury Update. This panel discussion will provide an update on relevant MMS activities since the May 2002 Policy Committee meeting. It will include an overview of the activities of the Interagency Working Group on Methylmercury; a brief description of findings from a recent offshore Gulf of Mexico platform sampling activity; and a report from the Scientific Subcommittee on Mercury.

Benthic Communities Studies. This presentation will address the results of MMS's $5.33 million deepwater benthos study.

Ocean Commission. This presentation will provide a brief update on the U.S. Commission on Ocean Policy's activities since May 2002.

Archeological Finds in the Gulf. This presentation will address recent discoveries in the Gulf of Mexico that have generated international acclaim. The MMS, through its responsibilities under the National Historic Preservation Act, requires operators to conduct remote sensing surveys to avoid potential targets which may be historically significant.

Education and Outreach. This presentation will provide the Committee with an update on the Education and Outreach Subcommittee's activities since May 2002. It will also address Eric Smith's work with risk perception, factors that shape public opinion regarding energy extraction, and any other pertinent information that could assist the Subcommittee in working towards a report for the full Committee's review.

MMS Regional Updates. The Regional Directors will highlight activities off the California and Alaska coasts and the Gulf of Mexico.

The meeting is open to the public. Approximately 100 visitors can be accommodated on a first-come-first-served basis.

Upon request, interested parties may make oral or written presentations to the OCS Policy Committee. Such requests should be made no later than November 13, 2002, to Jeryne Bryant. Requests to make oral statements should be accompanied by a summary of the statement to be made. Please see **FOR FURTHER INFORMATION CONTACT** section for address and telephone number.

Minutes of the OCS Policy Committee meeting will be available for public inspection and copying at the MMS in Herndon, Virginia.

Authority: Federal Advisory Committee Act, Pub. L. 92–463, 5 U.S.C. Appendix 1, and the Office of Management and Budget's Circular No. A–63, Revised.

Dated: October 28, 2002.

Thomas A. Readinger,

Associate Director for Offshore Minerals Management.

[FR Doc. 02–28148 Filed 11–5–02; 8:45 am]

BILLING CODE 4310–MR–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1021 (Preliminary)]

Malleable Iron Pipe Fittings from China

AGENCY: International Trade Commission.

ACTION: Institution of antidumping investigation and scheduling of a preliminary phase investigation.

SUMMARY: The Commission hereby gives notice of the institution of an investigation and commencement of

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preliminary phase antidumping investigation No. 731–TA–1021 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from China of malleable iron pipe fittings,[1] provided for in subheading 7307.19.90 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. Unless the Department of Commerce extends the time for initiation pursuant to section 732(c)(1)(B) of the Act (19 U.S.C. 1673a(c)(1)(B)), the Commission must reach a preliminary determination in antidumping investigations in 45 days, or in this case by December 16, 2002. The Commission's views are due at Commerce within five business days thereafter, or by December 23, 2002. For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: October 30, 2002.

FOR FURTHER INFORMATION CONTACT: Christopher Cassise (202–708–5408), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at *http://dockets.usitc.gov/eol/public.*

SUPPLEMENTARY INFORMATION:

Background.—This investigation is being instituted in response to a petition filed on October 30, 2002, by Anvil International, Inc., Portsmouth, NH, and Ward Manufacturing, Inc., Blossburg, PA.

Participation in the investigation and public service list.—Persons (other than petitioners) wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register.** Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this investigation available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigation under the APO issued in the investigation, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register.** A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.—The Commission's Director of Operations has scheduled a conference in connection with this investigation for 9:30 a.m. on November 20, 2002, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Christopher Cassise (202–708–5408) not later than November 15, 2002, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions.—As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before November 25, 2002, a written brief containing information and arguments pertinent to the subject matter of the investigation. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

By order of the Commission.

Issued: November 1, 2002.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 02–28221 Filed 11–5–02; 8:45 am]

BILLING CODE 7020–02–P

[1] For purposes of this investigation, "malleable iron pipe fittings" consists of malleable iron pipe and tube fittings, other than grooved fittings.

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–426 and 731–TA–984–985 (Final)]

Sulfanilic Acid From Hungary and Portugal

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission determines, pursuant to sections 705(b) and 735(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b) and 1673d(b)) (the Act), that an industry in the United States is materially injured by reason of imports from Hungary of sulfanilic acid, provided for in subheadings 2921.42.22 and 2921.42.90 of the Harmonized tariff Schedule of the United States, that have been found by the Department of Commerce to be subsidized by the Government of Hungary, and by reason of imports of sulfanilic acid from Hungary and Portugal that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

Background

The Commission instituted these investigations effective September 28, 2001, following receipt of a petition filed with the Commission and Commerce by National Ford Chemical Co. of Fort Mill, SC. The final phase of the investigations was scheduled by the Commission following notification of preliminary determinations by Commerce that imports of sulfanilic acid from Hungary were being subsidized within the meaning of section 703(b) of the Act (19 U.S.C. 1671b(b)) and that imports of sulfanilic acid from Hungary and Portugal were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. § 1673b(b)). Notice of the scheduling of the final phase of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of May 21, 2002 (67 FR 35832).[2] The hearing was held in Washington, DC, on September 24, 2002, and all person who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in these investigations to the Secretary of Commerce on November 1, 2002. The views of the Commission are contained in USITC Publication 3554 (November 2002), entitled Sulfanilic Acid from Hungary and Portugal: Investigations Nos. 701–TA–426 and 731–TA–984–985 (Final).

Issued: November 1, 2002.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 02–28220 Filed 11–5–02; 8:45 am]

BILLING CODE 7020–02–P

[2] A revised final phase schedule was published in the **Federal Register** of June 6, 2002 (67 FR 39041).

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree and Stipulation of Settlement and Order of Dismissal Under the Comprehensive Environmental Response, Compensation and Liability Act

Notice is hereby given that on October 15, 2002, two proposed settlement agreements were lodged with the United District Court of Northern District of Indiana in the matter of *United States* v. *American Standard, Inc. et al.*, Civil No. 3:01CV0513RM. One proposed agreement is titled "Consent Decree with Group Defendants and Other Potentially Responsible Persons for Recovery of Past Response Costs" ("Consent Decree") and the other is titled "Stipulation of Settlement and Order of Dismissal Between United States and Exide Corporation" ("Stipulation of Settlement").

In its Complaint, the United States seeks to recover response costs incurred by the United States in connection with the Four County Landfill Site in Fulton County, Indiana (the "Site"). The complaint alleges that the United States undertook response actions as a result of releases or threatened releases of hazardous substances at the Site, and that the defendants named in the complaint were jointly and severally liable for the costs of such response actions.

Under the proposed Consent Decree, a group of ten defendants (along with 28 additional parties who allegedly contributed hazardous wastes to the Site) will pay $213,915 to the Hazardous Substances Superfund as partial reimbursement of response costs that the United States paid in connection with the Site through April 30, 2002. Under the proposed Stipulation of Settlement, Exide has agreed to the entry of judgment against it for $35,405 in settlement of the United States' claims for recovery of response cost that the United States paid in connection with the Site through May 2, 2002. Exide filed a voluntary petition for bankruptcy in the United States Bankruptcy Court for the District of Delaware on April 15, 2000, which was docketed as *In Re Exide Technologies, et al.*, Bankruptcy No 02–11125. Under the terms of the Stipulation of Settlement, the United States shall be allowed a general unsecured claim in the bankruptcy proceeding for the agreed judgment amount of $35,405. Only the amount of cash received by Environmental Protection Agency ("EPA") on its general unsecured claim shall be credited by EPA to the Hazardous Substance Superfund.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree and the proposed Stipulation of Settlement. Comments should be addressed to the Assistant Attorney General, Environmental and Natural Resources Division, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *American Standard, Inc., et al.*, D.J. Ref. 90–11–3–07510.

The proposed Consent Decree and the proposed Stipulation of Settlement may be examined at the Office of the United States Attorney, 204 S. Main Street, South Bend, Indiana, 46601, and at U.S. EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604. A copy of the proposed Consent Decree, the proposed Stipulation of Settlement, or both, may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing a request to Tonia Fleetwood, fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy of the Consent Decree, please enclose a check in the amount of $7.25 (25 cents per page reproduction cost) payable to the U.S. Treasury. In requesting a copy of the Stipulation of Settlement, please enclose a check of $5.75 (25 cents per page) payable to the U.S. Treasury.

William D. Brighton,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–28239 Filed 11–5–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act and the Emergency Planning and Community Right-To-Know Act

Under 28 CFR 50.7, notice is hereby given that on October 21, 2002, a proposed Consent Decree ("Consent Decree") in *United States* v. *Color Communications, Inc.*, Civil Action No. 99 C 4489, was lodged with the United States District Court for the Northern District of Illinois.

The United States' complaint in this action asserts claims against Color Communications, Inc. ("CCI") for injunctive relief and civil penalties for violations of the Clean Air Act, 42 U.S.C. 7401 *et seq.* ("CAA"), and applicable provisions of a Federal Implementation Plan and a State Implementation Plan governing sources that emit volatile organic materials to the ambient air within the Chicago Metropolitan Area Ozone Non Attainment Area. The complaint also alleges that CCI failed to comply with the reporting requirements of the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. 11001 *et seq.* ("EPCRA") The State of Illinois intervened as a plaintiff in this action and asserted additional claims against

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CCI. Since the action was filed, CCI implemented measures that brought its facility into compliance with requirements that were the subject of this action. As a result, the relief provided under the proposed Decree addresses the alleged liability of CCI for civil penalties for past violations of applicable requirements under the CAA and EPCRA. The Consent Decree requires CCI to pay civil penalties totalling $435,000, plus interest, to the United States and the Plaintiff-Intervenor State of Illinois, in three separate installments,the last of which will be due two years after entry of the Consent Decree. Of this amount, CCI will pay $243,931, plus interest, to the United States, and $191,069, plus interest, to the State of Illinois. In addition, the proposed Consent Decree provides for CCI to implement Supplemental Environmental Projects, including the surrender of certain Illinois emission trading credits that CCI received by reducing facility emissions below levels otherwise allowed by law.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, PO Box 7611, U.S. Department of Justice, Washington, DC 20444–7611, and should refer to *United States* v. *Color Communications, Inc.*, D.J. Ref. 90–5–2–1–2105.

The Consent Decree may be examined at the Office of the United States Attorney, 219 South Dearborn Street, Chicago, IL 60604, and at U.S.-EPA Region 5, 77 West Jackson Boulevard, Chicago, IL 60604. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing a request to Tonia Fleetwood, fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy, please enclose a check in the amount of $5.50 (25 cents per page reproduction cost) payable to the U.S. Treasury.

William D. Brighton,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–28238 Filed 11–5–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—AAF Association, Inc.

Notice is hereby given that, on September 17, 2002, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), AAF Association, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Adobe Systems, Inc., San Jose, CA; Cakewalk, Boston, MA; da vinci Systems, Inc., Coral Springs, FL; Nucoda, London, England, United Kingdom; and the Post Group, Hollywood, CA have been added as parties to this venture. The following member has changed its name: techmath AG to blue order, Inc., Kaiserlautern, Germany. Grass Valley Group, Beaverton, OR was acquired by Thomson multimedia, Inc., Boulogne, cedex, France and will continue under the name of Thomson Valley Group. Also, Ascential Software, Oakland, CA; eMotion, Inc., Los Angeles, CA; and Omneon Video Networks, Sunnyvale, CA have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and AAF Association, Inc. intends to file additional written notification disclosing all changes in membership.

On March 28, 2000, AAF Association, Inc. filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on June 29, 2000 (65 FR 40127).

The last notification was filed with the Department on June 13, 2002. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on July 25, 2002 (67 FR 48670).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02–28142 Filed 11–5–02; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—IMS Global Learning Consortium, Inc.

Notice is hereby given that, on September 16, 2002, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), IMS Global Learning Consortium, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Fretwell Downing Informatics, Sheffield, England, United Kingdom; Texas Instruments, Inc., Dallas, TX; and The Open University, Milton Keyes, England, United Kingdom have been added as parties to this venture. Also NYUOnline, Inc., New York, NY has been dropped as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and IMS Global Learning Consortium, Inc. intends to file additional written notification disclosing all changes in membership.

On April 7, 2000, IMS Global Learning Consortium, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on September 13, 2000 (65 FR 55283).

The last notification was filed with the Department on June 26, 2002. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on August 13, 2002 (67 FR 52744).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02–28146 Filed 11–5–02; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—J Consortium, Inc.

Notice is hereby given that, on August 28, 2002, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), J Consortium, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Advanced Electronic Design, Massy, France has been added as a party to this venture. Also, A. Sh. Burhan (individual member), Lahore, Punjab, India; Gunukula Srikanth (individual member), Reddy, Nalgonda, India; M P Vikram (individual member), Karnataka, India; and Advantisys, Upland, CA have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and J Consortium, Inc. intends to file additional written notification disclosing all changes in membership.

On August 6, 1999, J Consortium, Inc. filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on March 21, 2000 (65 FR 15175).

The last notification was filed with the Department on May 30, 2002. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on June 27, 2002 (67 FR 43343).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02–28141 Filed 11–5–02; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—PKI Forum, Inc.

Notice is hereby given that, on September 5, 2002, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), PKI Forum, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Asia PKIForum, Tokyo, JAPAN has been added as a party to this venture. Also, Btexact Technologies, Ipswich, United Kingdom; CertCo, New York, NY; Communications Electronics Security Group, Cheltenham, Gloucestershire, United Kingdom; Deutsche Post Sign Trust GmbH, Bonn, Germany; Giesecke & Devrient, Munich, Germany; Mimos Berhard, Kuala Lumpur, Malaysia; nCipher, Inc., Woburn, MA; NEC Corporation, Tokyo, Japan; TC TrustCenter GmbH, Hamburg, Germany; U.S. Postal Services Headquarters, Washington, DC; and ValiCert, Mountain View, CA have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and PKI Forum, Inc. intends to file additional written notification disclosing all changes in membership.

On April 2, 2001, PKI Forum, Inc. filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on May 3, 2001 (66 FR 22260).

The last notification was filed with the Department on June 10, 2002. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on June 27, 2002 (67 FR 43343).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02–28143 Filed 11–5–02; 8:45 am]

BILLING CODE 4411–10–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Portland Cement Association

Notice is hereby given that, on October 1, 2002, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Portland Cement Association has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, National Cement Company, Inc., Encino, CA; National Cement Company of Alabama, Inc., Birmingham, AL; and National Cement Company of California, Inc., Encino, CA have been added as parties to this venture. Also, FMSC Group Inc., Bethlehem, PA (an Associate Member) has been dropped as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Portland Cement Association intends to file additional written notification disclosing all changes in membership.

On January 7, 1985, Portland Cement Association filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on February 5, 1985 (50 FR 5015).

The last notification was filed with the Department on July 22, 2002. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on August 13, 2002 (67 FR 52745).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02–28139 Filed 11–5–02; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Rotorcraft Industry Technology Association, Inc. ("RITA")

Notice is hereby given that, on September 27, 2002, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Rotorcraft Industry Technology Association, Inc. ("RITA") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership and production status. The notification were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, The University of Michigan, Ann Arbor, MI and Syracuse University, Syracuse, NY have been added as parties to this venture; and Kaman Aerospace Corporation, Bloomfield, CT has changed its membership status from Supporting Member to Principal Member. Additionally, RITA has entered into a Technology Investment Agreement with

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the U.S. Army Aviation and Applied Technology Directorate, on behalf of the U.S. Government, on February 23, 2002.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and RITA intends to file additional written notification disclosing all changes in membership.

On September 28, 1995, RITA filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on April 3, 1996 (61 FR 14817).

The last notification was filed with the Department of March 22, 2001. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on April 24, 2001 (66 FR 20686).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02–28138 Filed 11–9–02; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Salutation Consortium, Inc.

Notice is hereby given that, on September 17, 2002, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act") Salutation Consortium, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Richard Chen Xiaondong (individual member), Singapore, Singapore; and Institute of Certified E-Commerce Consultants, Amman, Jordan have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Salutation Consortium, Inc. intends to file additional written notification disclosing all changes in membership.

On March 30, 1995, Salutation Consortium, Inc. filed its original notification pursuant to Section 6(a) of the Act on August 13, 2002 (67 FR 52745).

The last notification was filed with the Department on July 3, 2002. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on August 13, 2002 (67 FR 52745).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02–28145 Filed 11–5–02; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Investigation of Soot Removal Testing Methods for Automotive Applications

Notice is hereby given that, on September 23, 2002, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Southwest Research Institute ("SwRI") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties are Baldwin Filters, Kearney, NE; Caterpillar, Inc., Mossville, IL; Champion Laboratories, Inc., West Salem, IL; Dana Corporation/Wix Filtration, Gastonia, NC; Donaldson Company, Inc., Minneapolis, MN; Filterwerk Mann+Hummel GmbH, Ludwigsbury, Germany; and Honeywell, Perrysburg, OH. The nature and objectives of the venture is to define soot removal test method(s), test contaminant, and analytical methods. The program will also refine an existing technique for producing synthetic soot, determine repeatability of synthetic soot generation, and define and refine soot removal testing method design and methodology.

Membership in this research group remains open, and the participants intend to file additional written notification disclosing all changes in membership or planned activities.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02–28140 Filed 11–5–02; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Zyvex

Notice is hereby given that, on August 28, 2002, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Zyvex has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identifies of the parties are Zyvex Corporation, Richardson, TX; and Honeywell International, Redmond, WA. The nature and objectives of the venture are to develop and demonstrate low-cost, computer controlled, microscale components, with extension of this technology to nanoscale assemblers for the commercialization of nanotechnology. The activities of this joint venture will be partially funded by an award from the Advanced Technology Program, National Institute of Standards and Technology, Department of Commerce.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02–28144 Filed 11–4–02; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

National Institute of Corrections

Solicitation for a Cooperative Agreement—Effective Supervision of Women Defendants and Offenders in the Community

AGENCY: National Institute of Corrections, Department of Justice.

ACTION: Solicitation for a cooperative agreement.

SUMMARY: The Department of Justice (DOJ), National Institute of Corrections NIC), announces the availability of funds in FY 2003 for a cooperative agreement to develop a 16-hour curriculum on *Effective Supervision of Women Defendants and Offenders in the Community.* NIC will work with a single cooperative agreement awardee to develop a curriculum for pre-service and in-service training of community

correction's managers and line staff on the effective supervision of women defendants and offenders in the community. The new curriculum will focus on the practical knowledge and skills that line probation, parole, and pretrial service officers need to enhance outcomes and improve rates of successful completion for women defendants and offenders in the community. It will employ adult learning techniques and develop modules which can be used in flexible training formats for a maximum of 16 hours. This agreement is for the design and development of a training curriculum. The piloting or direct delivery of the curriculum is not included within this scope of work. No funds will be transferred to State or local governments.

Background: While the majority of probation and parole populations remain predominantly male, there has been an increase in the percentage of women under community supervision while the percentage of males under community supervision has declined. In 2001 women comprised 22% of probation and 12% of parole caseloads. When compared to the 1991 data, this represents an increase of 22% for women on probation and an increase of 50% on parole compared to a 5% decline in probation for men and a 4% decline in the number of men released on parole. (BJA, 8/02).

Recent research literature on women offenders has identified to policy makers the differential risk and need presented by this population. Yet community supervision and treatment practices generally do not incorporate this information. The perception that women offenders are difficult to work with is due, in part, to the many competing issues, criminogenic and non-criminogenic, they bring when entering or re-entering the system. Existing correctional practices often miss the underlying causes of women's criminal behavior. System challenges such as cross-gender supervision, inappropriate staff/offender relationships, and staff uncertainty as to the existence and application of appropriate interventions for the female offender contribute to this misconception. The result is that established case planning, supervision, and treatment practices often have less than the desired impact and, in some cases, can exacerbate the problems women bring to the criminal justice system.

Over the years NIC has developed training materials and offered technical assistance on a wide-range of topics that impact women in the criminal justice system. These topics include policy development, staff sexual misconduct, prison health care for women, and operational issues in women's prisons. Like their male counterparts, the majority of incarcerated women will complete their sentence and return to their communities. The training materials and technical assistance that NIC has offered have provided helpful resources in working with women offenders.

Purpose: The National Institute of Corrections is seeking an applicant, organization, or team which offers curriculum design expertise and a broad knowledge of women offenders and the field of corrections. Specific expertise should include effective supervision practices and expertise in producing a competency-based curriculum. Producing the curriculum includes the writing, editing, formation, assembling, packaging, and expertise in adult learning theory and training.

The purpose of this cooperative agreement is:

1. To fully develop and refine one (1) 16-hour training curriculum package on *Effective Supervision of Women Defendants and Offenders in the Community.* The curriculum will have the following elements:

a. *Instructor's Guide with Lesson Plans.* This must include performance objectives that specify the knowledge, or skills/competencies that will be obtained by the participants. They must be detailed to the degree that other trainers with some experience in the topic can use them to deliver training.

b. *Participant Manual and Materials* that correlate with each module, topic by topic, as appropriate to deliver the training. These materials may include overviews, published articles (if copyrighted must obtain copyright release), check lists, key points outliners, examples of instruments, reports and other materials used by the participants to perform their work. Evaluation questions and strategies (if appropriate) that will be used pre or post delivery for the curriculum as well as resource materials such as video and audio tapes, books, journals and other information to support the objectives of the curriculum are to be included.

Work To Be Performed by the Awardee: The following represents the kinds of work activity required by the project and the expectations of the relationship between NIC and the awardee.

- Consult with the NIC Program Manager on an agreed time line to assure progress and understanding the scope of the work.
- Thoroughly review existing training materials developed by NIC, Office of justice Programs (OJP), or other agencies for relevant portions that could be re-written for application to this project. Key products include but are not limited to:
  - *Gender-Responsive Strategies: Research, Practice, and Guiding Principles for Women Offenders* (Bloom, Owen, Covington, 11/02)
  - *Critical Issues in Managing Women Offenders* (NIC, 02–I502)
  - *Responding to Women Offenders in the Community: Topics in Community Corrections* (NIC, Topics in Community Corrections, 2000)
  - *Sentencing Women Offenders: A training Curriculum for Judges* (NIC, Cicero and DeCostanzo, 2001)

  Each of those items can be downloaded via the website at *www.nicic.org/services/coop/03-women.htm.*
- The successful applicant would conduct necessary planning with content experts who have experience with supervision of women offenders, understand the importance of criminogenic and non-criminogenic factors in the lives of women, familiarity with cognitive behavioral and social learning approaches in effective interventions with offenders to generate the framework, concepts, modules, content, strategies and performance objectives. (All of the above is subject to final approval by the Program Manager).
- Assign and coordinate writing, developing and revisions of the modules and content areas for the curriculum including multi-media materials.
- Develop, edit, revise, format and package the curriculum, lesson plans, and other course materials.
- Submit preliminary draft for review by the Program Manager per the specified time line. Make revisions and submit second draft if requested.
- A camera-ready copy of the final document must be submitted along with the electronic files, including all graphic images used in the document, on a 3.5″ floppy, zip disk, or CD–ROM. The final document may be submitted in Word Perfect 7.0 (or higher) or Microsoft Word 97 (or higher). Graphic images should be print quality, 600 dpi or higher.

Application Requirements: Applicants must prepare a proposal that describes their plan to provide the project outcomes. The plan must include goals and objectives, methodology, deliverables, management plan, and an overall project budget for the full 12 months. Applicants must identify their key project staff and the relevant expertise of each, and address the manner in which they would

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perform all tasks in collaboration with the NIC Project Manager. Proposals are limited to twenty-five double-spaced pages in length, not including resume, other addenda, and SF–424 forms.

Authority: Public Law 93–415.

Funds Available: Project funds are limited to a maximum total of $70,000 for both direct and indirect costs for 12 months. NIC is committed to funding the full 12 month project and project activity must be completed within 12 months of the date of the award. Funds may only be used for activities that are linked to the desired outcomes of the project.

All products from this funding effort will be in the public domain and available to interested agencies through the National Institute of Corrections.

Antideficiency Act: Nothing contained herein shall be construed to obligate the parties to any expenditure or obligation of funds in excess or in advance of appropriation in accordance with the Antideficiency Act, 31 U.S.C. 1341.

Deadline for Receipt of Applications: Applications must be received by 4 p.m. on December 17, 2002. They should be addressed to: National Institute of Corrections, 320 First St., NW., Washington, DC 20534. Attention: Administrative Officer. Applicants are encouraged to use Federal Express, UPS or similar service to ensure delivery is not delayed. Hand delivered applications can be brought to 500 First Street, NW., Washington, DC 20534. The Front desk will call (202) 307–3106 ext. 0 for pickup. Faxed or e-mailed applications will not be accepted.

Addresses and Further Information: Application forms may be obtained through the NIC website: *http://www.nicic.org.* Under "Additional Opportunities" click on the appropriate cooperative agreement title. Requests for the application kit, which consists of a copy of this announcement and copies of the required forms, can also be directed to Rita Rippetoe, Cooperative Agreement Control Office, National Institute of Corrections by calling (800) 995–6429 extension 112. She can also be contacted by E-mail via *rrippetoe@bop.gov.*

Technical and/or programmatic questions concerning this announcement are encouraged and should be directed to Maureen Buell at the above address or by calling (800) 995–6423 extension 40121, or (202) 514–0121, or by E-mail via *mbuell@bop.gov.*

Eligible Applicants: An eligible applicant is any state or general unit of local government, public, or private agency, educational institution, organization, team, or individual with the requisite skills to successfully meet the outcome objectives of the project.

Review Considerations: Applications received under this announcement will be subjected to an NIC three to five member Peer Review Process.

Executive Order 12372: This project is not subject to the provisions of E.O. 12372.

Number of Awards: One (1).

NIC Application Number: 03C02. This number should appear as a reference line in the cover letter, in box 11 of Standard Form 424, and on the outside of the delivery envelope.

The Catalog of Federal Domestic Assistance Number is: 16.601. Title—Corrections: Staff Training and Development.

Dated: October 31, 2002.

Morris L. Thigpen,

Director, National Institute of Corrections.

[FR Doc. 02–28209 Filed 11–5–02; 8:45 am]

BILLING CODE 4410–36–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for NAFTA Transitional Adjustment Assistance

Petitions for transitional adjustment assistance under the North American Free Trade Agreement-Transitional Adjustment Assistance Implementation Act (Pub. L. 103–182), hereinafter called (NAFTA–TAA), have been filed with State Governors under Section 250 (b)(1) of Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended, are identified in the Appendix to this Notice. Upon notice from a Governor that a NAFTA–TAA petition has been received, the Director of the Division of Trade Adjustment Assistance (DTAA), Employment and Training Administration (ETA), Department of Labor (DOL), announces the filing of the petition and takes action pursuant to paragraphs (c) and (e) of Section 250 of the Trade Act.

The purpose of the Governor's actions and the Labor Department's investigations are to determine whether the workers separated from employment on or after December 8, 1993 (date of enactment of Pub. L. 103–182) are eligible to apply for NAFTA–TAA under Subchapter D of the Trade Act because of increased imports from or the shift in production to Mexico or Canada.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing with the Director of DTAA at the U.S. Department of Labor (DOL) in Washington, DC provided such request if filed in writing with the Director of DTAA not later than November 18, 2002.

Also, interested persons are invited to submit written comments regarding the subject matter of the petitions to the Director of DTAA at the address shown below not later than November 18, 2002.

Petitions filed with the Governors are available for inspection at the Office of the Director, DTAA, ETA, DOL, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 15th day of October, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

APPENDIX

Subject firm	Location	Date received at Governor's Office	Petition No.	Articles produced
58874X (CBO)	Dillingham, AK	09/05/2002	NAFTA–6,600	Fresh salmon.
56890B (CBO)	Dillingham, AK	09/05/2002	NAFTA–6,601	Fresh salmon.
61819K (CBO)	Dillingham, AK	09/05/2002	NAFTA–6,602	Fresh salmon.
66951P (CBO)	Dillingham, AK	09/05/2002	NAFTA–6,603	Fresh salmon.
57451Q (CBO)	Dillingham, AK	09/05/2002	NAFTA–6,604	Fresh salmon.
66925Q (CBO)	Dillingham, AK	09/05/2002	NAFTA–6,605	Fresh salmon.
68192C (CBO)	Dillingham, AK	09/05/2002	NAFTA–6,606	Fresh salmon.
60844R (CBO)	Dillingham, AK	09/05/2002	NAFTA–6,607	Fresh salmon.
57260F (CBO)	Dillingham, AK	09/05/2002	NAFTA–6,608	Fresh salmon.

APPENDIX—Continued

Subject firm	Location	Date received at Governor's Office	Petition No.	Articles produced
56780U (CBO)	Dillingham, AK	09/05/2002	NAFTA–6,609	Fresh salmon.
57286F (CBO)	Dillingham, AK	09/05/2002	NAFTA–6,610	Fresh salmon.
575460 (CBO)	Dillingham, AK	09/05/2002	NAFTA–6,611	Fresh salmon.
56865U (CBO)	Dillingham, AK	09/05/2002	NAFTA–6,612	Fresh salmon.
65631U (CBO)	Dillingham, AK	09/05/2002	NAFTA–6,613	Fresh salmon.
61392C (CBO)	Dillingham, AK	09/05/2002	NAFTA–6,614	Fresh salmon.
61393U (CBO)	Dillingham, AK	09/05/2002	NAFTA–6,615	Fresh salmon.
65917F (CBO)	Dillingham, AK	09/05/2002	NAFTA–6,616	Fresh salmon.
58144S (CBO)	Dillingham, AK	09/05/2002	NAFTA–6,617	Fresh salmon.
57752K (CBO)	Dillingham, AK	09/05/2002	NAFTA–6,618	Fresh salmon.
59338H (CBO)	Dillingham, AK	09/05/2002	NAFTA–6,619	Fresh salmon.
62266S (CBO)	Dillingham, AK	09/05/2002	NAFTA–6,620	Fresh salmon.
58572M (CBO)	Dillingham, AK	09/05/2002	NAFTA–6,621	Fresh salmon.
57496U (CBO)	Dillingham, AK	09/05/2002	NAFTA–6,622	Fresh salmon.
61948U (CBO)	Dillingham, AK	09/05/2002	NAFTA–6,623	Fresh salmon.
61408K (CBO)	Dillingham, AK	09/05/2002	NAFTA–6,624	Fresh salmon.
57496U (CBO)	Dillingham, AK	09/05/2002	NAFTA–6,625	Fresh salmon.
58548X (CBO)	Dillingham, AK	09/05/2002	NAFTA–6,626	Fresh salmon.
65136N (CBO)	Dillingham, AK	09/05/2002	NAFTA–6,627	Fresh salmon.
56231F (CBO)	Dillingham, AK	09/05/2002	NAFTA–6,628	Fresh salmon.
58075V (CBO)	Dillingham, AK	09/05/2002	NAFTA–6,629	Fresh salmon.
59311O (CBO)	Dillingham, AK	09/05/2002	NAFTA–6,630	Fresh salmon.
59555R (CBO)	Dillingham, AK	09/05/2002	NAFTA–6, 631	Fresh salmon.
61155V (CBO)	Dillingham, AK	09/05/2002	NAFTA–6, 632	Fresh salmon.
66431B (CBO)	Dillingham, AK	09/05/2002	NAFTA–6, 633	Fresh salmon.
59335F (CBO)	Dillingham, AK	09/05/2002	NAFTA–6, 634	Fresh salmon.
55222A (CBO)	Dillingham, AK	09/05/2002	NAFTA–6, 635	Fresh salmon.
58354J (CBO)	Dillingham, AK	09/05/2002	NAFTA–6, 636	Fresh salmon.
56925M (CBO)	Dillingham, AK	09/05/2002	NAFTA–6, 637	Fresh salmon.
67350U (CBO)	Dillingham, AK	09/05/2002	NAFTA–6, 638	Fresh salmon.
61292S (CBO)	Dillingham, AK	09/05/2002	NAFTA–6, 639	Fresh salmon.
58284V (CBO)	Dillingham, AK	09/05/2002	NAFTA–6, 640	Fresh salmon.
61907L (CBO)	Dillingham, AK	09/05/2002	NAFTA–6, 641	Fresh salmon.
59541A (CBO)	Dillingham, AK	09/05/2002	NAFTA–6, 642	Fresh salmon.
55694F (CBO)	Dillingham, AK	09/05/2002	NAFTA–6, 643	Fresh salmon.
64514S (CBO)	Dillingham, AK	09/05/2002	NAFTA–6, 644	Fresh salmon.
57398V (CBO)	Dillingham, AK	09/05/2002	NAFTA–6, 645	Fresh salmon.
64700S (CBO)	Dillingham, AK	09/05/2002	NAFTA–6, 646	Fresh salmon.
64636I (CBO)	Dillingham, AK	09/05/2002	NAFTA–6, 647	Fresh salmon.
54135R (CBO)	Dillingham, AK	09/05/2002	NAFTA–6, 648	Fresh salmon.
61300M (CBO)	Dillingham, AK	09/05/2002	NAFTA–6, 649	Fresh salmon.
59536O (CBO)	Dillingham, AK	09/05/2002	NAFTA–6, 650	Fresh salmon.
55589K (CBO)	Dillingham, AK	09/05/2002	NAFTA–6, 651	Fresh salmon.
67874E (CBO)	Dillingham, AK	09/05/2002	NAFTA–6, 652	Fresh salmon.
64659G (CBO)	Dillingham, AK	09/05/2002	NAFTA–6, 653	Fresh salmon.
59494I (CBO)	Dillingham, AK	09/05/2002	NAFTA–6, 654	Fresh salmon.
57363P (CBO)	Dillingham, AK	09/05/2002	NAFTA–6, 655	Fresh salmon.
58988Z (CBO)	Dillingham, AK	09/05/2002	NAFTA–6, 656	Fresh salmon.
59135M (CBO)	Dillingham, AK	09/05/2002	NAFTA–6, 657	Fresh salmon.
61985J (CBO)	Dillingham, AK	09/05/2002	NAFTA–6, 658	Fresh salmon.
61361Q (CBO)	Dillingham, AK	09/05/2002	NAFTA–6, 659	Fresh salmon.
61639N (CBO)	Dillingham, AK	09/05/2002	NAFTA–6, 660	Fresh salmon.
61386Z (CBO)	Dillingham, AK	09/05/2002	NAFTA–6, 661	Fresh salmon.
55223R (CBO)	Dillingham, AK	09/05/2002	NAFTA–6,662	Fresh salmon.
55366U (CBO)	Dillingham, AK	09/05/2002	NAFTA–6,663	Fresh salmon.
60068N (CBO)	Dillingham, AK	09/05/2002	NAFTA–6,664	Fresh salmon.
60688L (CBO)	Dillingham, AK	09/05/2002	NAFTA–6,665	Fresh salmon.
67569Q (CBO)	Dillingham, AK	09/05/2002	NAFTA–6,666	Fresh salmon.
60406B (CBO)	Dillingham, AK	09/05/2002	NAFTA–6,667	Fresh salmon.
58672V (CBO)	Dillingham, AK	09/05/2002	NAFTA–6,668	Fresh salmon.
61482N (CBO)	Dillingham, AK	09/05/2002	NAFTA–6,669	Fresh salmon.
56847J (CBO)	Dillingham, AK	09/05/2002	NAFTA–6,670	Fresh salmon.
59293X (CBO)	Dillingham, AK	09/05/2002	NAFTA–6,671	Fresh salmon.
61339M (CBO)	Dillingham, AK	09/05/2002	NAFTA–6,672	Fresh salmon.
55600F (CBO)	Dillingham, AK	09/05/2002	NAFTA–6,673	Fresh salmon.
64887H (CBO)	Dillingham, AK	09/05/2002	NAFTA–6,674	Fresh salmon.
64122W (CBO)	Dillingham, AK	09/05/2002	NAFTA–6,675	Fresh salmon.
61314F (CBO)	Dillingham, AK	09/05/2002	NAFTA–6,676	Fresh salmon.
67325N (CBO)	Dillingham, AK	09/05/2002	NAFTA–6,677	Fresh salmon.
64936J (CBO)	Dillingham, AK	09/05/2002	NAFTA–6,678	Fresh salmon.

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APPENDIX—Continued

Subject firm	Location	Date received at Governor's Office	Petition No.	Articles produced
613Q3O (CBO)	Dillingham, AK	09/05/2002	NAFTA–6,679	Fresh salmon.
60630I (CBO)	Dillingham, AK	09/05/2002	NAFTA–6,680	Fresh salmon.
62112B (CBO)	Dillingham, AK	09/05/2002	NAFTA–6,681	Fresh salmon.
66298R (CBO)	Dillingham, AK	09/05/2002	NAFTA–6,682	Fresh salmon.
62722B (CBO)	Dillingham, AK	09/05/2002	NAFTA–6,683	Fresh salmon.
57398V (CBO)	Dillingham, AK	09/05/2002	NAFTA–6,684	Fresh salmon.
57328L (CBO)	Dillingham, AK	09/05/2002	NAFTA–6,685	Fresh salmon.
57593B (CBO)	Dillingham, AK	09/05/2002	NAFTA–6,686	Fresh salmon.
50216C (CBO)	Dillingham, AK	09/05/2002	NAFTA–6,687	Fresh salmon.
57785G (CBO)	Dillingham, AK	09/05/2002	NAFTA–6,688	Fresh salmon.
61293L (CBO)	Dillingham, AK	09/05/2002	NAFTA–6,689	Fresh salmon.
57544E (CBO)	Dillingham, AK	09/05/2002	NAFTA–6,690	Fresh salmon.
64198L (CBO)	Dillingham, AK	09/05/2002	NAFTA–6,691	Fresh salmon.
61965N (CBO)	Dillingham, AK	09/05/2002	NAFTA–6,692	Fresh salmon.
61298X (CBO)	Dillingham, AK	09/05/2002	NAFTA–6,693	Fresh salmon.
619940 (CBO)	Dillingham, AK	09/05/2002	NAFTA–6,694	Fresh salmon.
58530L (CBO)	Dillingham, AK	09/05/2002	NAFTA–6,695	Fresh salmon.
59635G (CBO)	Dillingham, AK	09/05/2002	NAFTA–6,696	Fresh salmon.
55500V (CBO)	Dillingham, AK	09/05/2002	NAFTA–6,697	Fresh salmon.
59071A (CBO)	Dillingham, AK	09/05/2002	NAFTA–6,698	Fresh salmon.
64185L (CBO)	Dillingham, AK	09/05/2002	NAFTA–6,699	Fresh salmon.
64185L (CBO)	Dillingham, AK	09/05/2002	NAFTA–6,700	Fresh salmon.
65612Q (CBO)	Dillingham, AK	09/05/2002	NAFTA–6,701	Fresh salmon.
61305Z (CBO)	Dillingham, AK	09/05/2002	NAFTA–6,702	Fresh salmon.
64808Q (CBO)	Dillingham, AK	09/05/2002	NAFTA–6,703	Fresh salmon.
58327R (CBO)	Dillingham, AK	09/05/2002	NAFTA–6,704	Fresh salmon.
61396W (CBO)	Dillingham, AK	09/05/2002	NAFTA–6,705	Fresh salmon.
55716P (CBO)	Dillingham, AK	09/05/2002	NAFTA–6,706	Fresh salmon.
60008B (CBO)	Dillingham, AK	09/05/2002	NAFTA–6,707	Fresh salmon.
571900 (CBO)	Dillingham, AK	09/05/2002	NAFTA–6,708	Fresh salmon.
61671P (CBO)	Dillingham, AK	09/05/2002	NAFTA–6,709	Fresh salmon.
57738S (CBO)	Dillingham, AK	09/05/2002	NAFTA–6,710	Fresh salmon.
66298R (CBO)	Dillingham, AK	09/05/2002	NAFTA–6,711	Fresh salmon.
59609H (CBO)	Dillingham, AK	09/05/2002	NAFTA–6,712	Fresh salmon.
61361Q (CBO)	Dillingham, AK	09/05/2002	NAFTA–6,713	Fresh salmon.
61264K (CBO)	Dillingham, AK	09/05/2002	NAFTA–6,714	Fresh salmon.
56498G (CBO)	Dillingham, AK	09/05/2002	NAFTA–6,715	Fresh salmon.
57746H (CBO)	Dillingham, AK	09/05/2002	NAFTA–6,716	Fresh salmon.
66951P (CBO)	Dillingham, AK	09/05/2002	NAFTA–6,717	Fresh salmon.
56838E (CBO)	Dillingham, AK	09/05/2002	NAFTA–6,718	Fresh salmon.
56728W (CBO)	Dillingham, AK	09/05/2002	NAFTA–6,719	Fresh salmon.
57857G (CBO)	Dillingham, AK	09/05/2002	NAFTA–6,720	Fresh salmon.
64428C (CBO)	Dillingham, AK	09/05/2002	NAFTA–6,721	Fresh salmon.
64887H (CBO)	Dillingham, AK	09/05/2002	NAFTA–6,722	Fresh salmon.
61445Z (CBO)	Dillingham, AK	09/05/2002	NAFTA–6,723	Fresh salmon.
55585P (CBO)	Dillingham, AK	09/05/2002	NAFTA–6,724	Fresh salmon.
60635U (CBO)	Dillingham, AK	09/05/2002	NAFTA–6,725	Fresh salmon.
59682R (CBO)	Dillingham, AK	09/05/2002	NAFTA–6,726	Fresh salmon.
61444H (CBO)	Dillingham, AK	09/05/2002	NAFTA–6,727	Fresh salmon.
57995V (CBO)	Dillingham, AK	09/05/2002	NAFTA–6,728	Fresh salmon.
67321O (CBO)	Dillingham, AK	09/05/2002	NAFTA–6,729	Fresh salmon.
61321A (CBO)	Dillingham, AK	09/05/2002	NAFTA–6,730	Fresh salmon.
56145N (CBO)	Egegik, AK	09/05/2002	NAFTA–6,731	Fresh salmon.
59340P (CBO)	Egegik, AK	09/05/2002	NAFTA–6,732	Fresh salmon.
59807O (CBO)	Egegik, AK	09/05/2002	NAFTA–6,733	Fresh salmon.
57818W (CBO)	Egegik, AK	09/05/2002	NAFTA–6,734	Fresh salmon.
55224K (CBO)	Egegik, AK	09/05/2002	NAFTA–6,735	Fresh salmon.
61137K (CBO)	Egegik, AK	09/05/2002	NAFTA–6,736	Fresh salmon.
55887B (CBO)	Egegik, AK	09/05/2002	NAFTA–6,737	Fresh salmon.
61627G (CBO)	Egegik, AK	09/05/2002	NAFTA–6,738	Fresh salmon.
58725J (CBO)	Egegik, AK	09/05/2002	NAFTA–6,739	Fresh salmon.
63411J (CBO)	Egegik, AK	09/05/2002	NAFTA–6,740	Fresh salmon.
64068J (CBO)	Egegik, AK	09/05/2002	NAFTA–6,741	Fresh salmon.
62229F (CBO)	Egegik, AK	09/05/2002	NAFTA–6,742	Fresh salmon.
57937S (CBO)	Egegik, AK	09/05/2002	NAFTA–6,743	Fresh salmon.
55130F (CBO)	Egegik, AK	09/05/2002	NAFTA–6,744	Fresh salmon.
56189Z (CBO)	Egegik, AK	09/05/2002	NAFTA–6,745	Fresh salmon.
60501X (CBO)	Egegik, AK	09/05/2002	NAFTA–6,746	Fresh salmon.
57962A (CBO)	Egegik, AK	09/05/2002	NAFTA–6,747	Fresh salmon.
58417E (CBO)	Egegik, AK	09/05/2002	NAFTA–6,748	Fresh salmon.

APPENDIX—Continued

Subject firm	Location	Date received at Governor's Office	Petition No.	Articles produced
60501X (CBO)	Egegik, AK	09/05/2002	NAFTA–6,749	Fresh salmon.
56712U (CBO)	Egegik, AK	09/05/2002	NAFTA–6,750	Fresh salmon.
58346V (CBO)	Egegik, AK	09/05/2002	NAFTA–6,751	Fresh salmon.
59874W (CBO)	Egegik, AK	09/05/2002	NAFTA–6,752	Fresh salmon.
60824W (CBO)	Egegik, AK	09/05/2002	NAFTA–6,753	Fresh salmon.
64068J (CBO)	Egegik, AK	09/05/2002	NAFTA–6,754	Fresh salmon.
61137K (CBO)	Egegik, AK	09/05/2002	NAFTA–6,755	Fresh salmon.
67876N (CBO)	Egegik, AK	09/05/2002	NAFTA–6,756	Fresh salmon.
55836U (CBO)	Egegik, AK	09/05/2002	NAFTA–6,757	Fresh salmon.
56087G (CBO)	Egegik, AK	09/05/2002	NAFTA–6,758	Fresh salmon.
57464Q (CBO)	Egegik, AK	09/05/2002	NAFTA–6,759	Fresh salmon.
58675X (CBO)	Goodnews Bay, AK	09/05/2002	NAFTA–6,760	Fresh salmon.
67323E (CBO)	Goodnews Bay, AK	09/05/2002	NAFTA–6,761	Fresh salmon.
58886G (CBO)	Igiugig, AK	09/05/2002	NAFTA–6,762	Fresh salmon.
55961K (CBO)	Igiugig, AK	09/05/2002	NAFTA–6,763	Fresh salmon.
57815F (CBO)	Igiugig, AK	09/05/2002	NAFTA–6,764	Fresh salmon.
64881C (CBO)	Igiugig, AK	09/05/2002	NAFTA–6,765	Fresh salmon.
67340W (CBO)	Igiugig, AK	09/05/2002	NAFTA–6,766	Fresh salmon.
65113P (CBO)	Iliamna, AK	09/05/2002	NAFTA–6,767	Fresh salmon.
57814M (CBO)	Iliamna, AK	09/05/2002	NAFTA–6,768	Fresh salmon.
59760V (CBO)	Iliamna, AK	09/05/2002	NAFTA–6,769	Fresh salmon.
659101 (CBO)	Iliamna, AK	09/05/2002	NAFTA–6,770	Fresh salmon.
68181M (CBO)	Iliamna, AK	09/05/2002	NAFTA–6,770	Fresh salmon.
61725F (CBO)	Iliamna, AK	09/05/2002	NAFTA–6,772	Fresh salmon.
61725F (CBO)	Iliamna, AK	09/05/2002	NAFTA–6,773	Fresh salmon.
61512M (CBO)	Iliamna, AK	09/05/2002	NAFTA–6,774	Fresh salmon.
58360M (CBO)	Iliamna, AK	09/05/2002	NAFTA–6,775	Fresh salmon.
58538A (CBO)	Iliamna, AK	09/05/2002	NAFTA–6,776	Fresh salmon.
61946K (CBO)	Iliamna, AK	09/05/2002	NAFTA–6,777	Fresh salmon.
56840M (CBO)	King Salmon, AK	09/05/2002	NAFTA–6,778	Fresh salmon.
56614V (CBO)	King Salmon, AK	09/05/2002	NAFTA–6,779	Fresh salmon.
65026H (CBO)	King Salmon, AK	09/05/2002	NAFTA–6,780	Fresh salmon.
57478J (CBO)	King Salmon, AK	09/05/2002	NAFTA–6,781	Fresh salmon.
59451O (CBO)	King Salmon, AK	09/05/2002	NAFTA–6,782	Fresh salmon.
58843M (CBO)	King Salmon, AK	09/05/2002	NAFTA–6,783	Fresh salmon.
67594X (CBO)	King Salmon, AK	09/05/2002	NAFTA–6,784	Fresh salmon.
60136S (CBO)	King Salmon, AK	09/05/2002	NAFTA–6,785	Fresh salmon.
58196R (CBO)	King Salmon, AK	09/05/2002	NAFTA–6,787	Fresh salmon.
58319H (CBO)	King Salmon, AK	09/05/2002	NAFTA–6,788	Fresh salmon.
58662H (CBO)	King Salmon, AK	09/05/2002	NAFTA–6,789	Fresh salmon.
55574A (CBO)	King Salmon, AK	09/05/2002	NAFTA–6,790	Fresh salmon.
58446F (CBO)	King Salmon, AK	09/05/2002	NAFTA–6,791	Fresh salmon.
66997L (CBO)	King Salmon, AK	09/05/2002	NAFTA–6,792	Fresh salmon.
60215O (CBO)	King Salmon, AK	09/05/2002	NAFTA–6,793	Fresh salmon.
67507U (CBO)	King Salmon, AK	09/05/2002	NAFTA–6,794	Fresh salmon.
50167A (CBO)	King Salmon, AK	09/05/2002	NAFTA–6,795	Fresh salmon.
50073U (CBO)	King Salmon, AK	09/05/2002	NAFTA–6,796	Fresh salmon.
50075F (CBO)	King Salmon, AK	09/05/2002	NAFTA–6,797	Fresh salmon.
50075F (CBO)	King Salmon, AK	09/05/2002	NAFTA–6,798	Fresh salmon.
55933B (CBO)	Kokhanok, AK	09/05/2002	NAFTA–6,799	Fresh salmon.
59286C (CBO)	Kokhanok, AK	09/05/2002	NAFTA–6,800	Fresh salmon.
56376Q (CBO)	Kokhanok, AK	09/05/2002	NAFTA–6,801	Fresh salmon.
68179E (CBO)	Kokhanok, AK	09/05/2002	NAFTA–6,802	Fresh salmon.
64822I (CBO)	Koliganek, AK	09/05/2002	NAFTA–6,803	Fresh salmon.
58060L (CBO)	Koliganek, AK	09/05/2002	NAFTA–6,804	Fresh salmon.
57953U (CBO)	Koliganek, AK	09/05/2002	NAFTA–6,805	Fresh salmon.
57144U (CBO)	Koliganek, AK	09/05/2002	NAFTA–6,806	Fresh salmon.
55325L (CBO)	Koliganek, AK	09/05/2002	NAFTA–6,807	Fresh salmon.
56834J (CBO)	Koliganek, AK	09/05/2002	NAFTA–6,808	Fresh salmon.
56224J (CBO)	Koliganek, AK	09/05/2002	NAFTA–6,809	Fresh salmon.
56224J (CBO)	Koliganek, AK	09/05/2002	NAFTA–6,810	Fresh salmon.
65899N (CBO)	Koliganek, AK	09/05/2002	NAFTA–6,811	Fresh salmon.
55601W (CBO)	Koliganek, AK	09/05/2002	NAFTA–6,812	Fresh salmon.
57226R (CBO)	Koliganek, AK	09/05/2002	NAFTA–6,813	Fresh salmon.
61971Q (CBO)	Koliganek, AK	09/05/2002	NAFTA–6,814	Fresh salmon.
65918W (CBO)	Koliganek, AK	09/05/2002	NAFTA–6,815	Fresh salmon.
565513G (CBO)	Koliganek, AK	09/05/2002	NAFTA–6,816	Fresh salmon.
57257E (CBO)	Koliganek, AK	09/05/2002	NAFTA–6,817	Fresh salmon.
67350U (CBO)	Koliganek, AK	09/05/2002	NAFTA–6,818	Fresh salmon.

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APPENDIX—Continued

Subject firm	Location	Date received at Governor's Office	Petition No.	Articles produced
64949J (CBO)	Levelock, AK	09/05/2002	NAFTA–6,819	Fresh salmon.
58218G (CBO)	Levelock, AK	09/05/2002	NAFTA–6,820	Fresh salmon.
56084E (CBO)	Levelock, AK	09/05/2002	NAFTA–6,821	Fresh salmon.
56866M (CBO)	Levelock, AK	09/05/2002	NAFTA–6,822	Fresh salmon.
57694C (CBO)	Levelock, AK	09/05/2002	NAFTA–6,823	Fresh salmon.
56509B (CBO)	Levelock, AK	09/05/2002	NAFTA–6,824	Fresh salmon.
56230M (CBO)	Levelock, AK	09/05/2002	NAFTA–6,825	Fresh salmon.
60843A (CBO)	Levelock, AK	09/05/2002	NAFTA–6,826	Fresh salmon.
59850H (CBO)	Manokotak, AK	09/05/2002	NAFTA–6,827	Fresh salmon.
59510O (CBO)	Manokotak, AK	09/05/2002	NAFTA–6,828	Fresh salmon.
58785F (CBO)	Manokotak, AK	09/05/2002	NAFTA–6,829	Fresh salmon.
66860I (CBO)	Manokotak, AK	09/05/2002	NAFTA–6,830	Fresh salmon.
57523Q (CBO)	Manokotak, AK	09/05/2002	NAFTA–6,831	Fresh salmon.
58553J (CBO)	Manokotak, AK	09/05/2002	NAFTA–6,832	Fresh salmon.
55656X (CBO)	Manokotak, AK	09/05/2002	NAFTA–6,833	Fresh salmon.
55857I (CBO)	Manokotak, AK	09/05/2002	NAFTA–6,834	Fresh salmon.
63407P (CBO)	Manokotak, AK	09/05/2002	NAFTA–6,835	Fresh salmon.
60296O (CBO)	Manokotak, AK	09/05/2002	NAFTA–6,836	Fresh salmon.
58412Q (CBO)	Manokotak, AK	09/05/2002	NAFTA–6,837	Fresh salmon.
589050 (CBO)	Manokotak, AK	09/05/2002	NAFTA–6,838	Fresh salmon.
56513U (CBO)	Manokotak, AK	09/05/2002	NAFTA–6,839	Fresh salmon.
55486A (CBO)	Manokotak, AK	09/05/2002	NAFTA–6,840	Fresh salmon.
58475G (CBO)	Manokotak, AK	09/05/2002	NAFTA–6,841	Fresh salmon.
60325V (CBO)	Manokotak, AK	09/05/2002	NAFTA–6,842	Fresh salmon.
61475R (CBO)	Manokotak, AK	09/05/2002	NAFTA–6,843	Fresh salmon.
59565P (CBO)	Manokotak, AK	09/05/2002	NAFTA–6,844	Fresh salmon.
59688W (CBO)	Manokotak, AK	09/05/2002	NAFTA–6,845	Fresh salmon.
56810I (CBO)	Manokotak, AK	09/05/2002	NAFTA–6,846	Fresh salmon.
58402S (CBO)	Manokotak, AK	09/05/2002	NAFTA–6,847	Fresh salmon.
63407P (CBO)	Manokotak, AK	09/05/2002	NAFTA–6,848	Fresh salmon.
63405G (CBO)	Manokotak, AK	09/05/2002	NAFTA–6,849	Fresh salmon.
58046U (CBO)	Manokotak, AK	09/05/2002	NAFTA–6,850	Fresh salmon.
55104G (CBO)	Manokotak, AK	09/05/2002	NAFTA–6,851	Fresh salmon.
59829U (CBO)	Manokotak, AK	09/05/2002	NAFTA–6,852	Fresh salmon.
59829U (CBO)	Manokotak, AK	09/05/2002	NAFTA–6,853	Fresh salmon.
55470W (CBO)	Manokotak, AK	09/05/2002	NAFTA–6,854	Fresh salmon.
61913O (CBO)	Manokotak, AK	09/05/2002	NAFTA–6,855	Fresh salmon.
634081 (CBO)	Manokotak, AK	09/05/2002	NAFTA–6,856	Fresh salmon.
59986N (CBO)	Manokotak, AK	09/05/2002	NAFTA–6,857	Fresh salmon.
55654N (CBO)	Manokotak, AK	09/05/2002	NAFTA–6,858	Fresh salmon.
57411A (CBO)	Manokotak, AK	09/05/2002	NAFTA–6,859	Fresh salmon.
63413S (CBO)	Naknek, AK	09/05/2002	NAFTA–6,860	Fresh salmon.
57729N (CBO)	Naknek, AK	09/05/2002	NAFTA–6,861	Fresh salmon.
57554C (CBO)	King Salmon, AK	09/05/2002	NAFTA–6,862	Fresh salmon.
61224S (CBO)	King Salmon, AK	09/05/2002	NAFTA–6,863	Fresh salmon.
55888S (CBO)	King Salmon, AK	09/05/2002	NAFTA–6,864	Fresh salmon.
55066S (CBO)	Naknek, AK	09/05/2002	NAFTA–6,865	Fresh salmon.
63111I (CBO)	Naknek, AK	09/05/2002	NAFTA–6,866	Fresh salmon.
67004Z (CBO)	Naknek, AK	09/05/2002	NAFTA–6,867	Fresh salmon.
65037W (CBO)	Naknek, AK	09/05/2002	NAFTA–6,868	Fresh salmon.
61970Z (CBO)	Naknek, AK	09/05/2002	NAFTA–6,869	Fresh salmon.
61342N (CBO)	Naknek, AK	09/05/2002	NAFTA–6,870	Fresh Salmon.
64862Z (CBO)	Naknek, AK	09/05/2002	NAFTA–6,871	Fresh Salmon.
62002U (CBO)	Naknek, AK	09/05/2002	NAFTA–6,872	Fresh Salmon.
65045K (CBO)	Naknek, AK	09/05/2002	NAFTA–6,873	Fresh Salmon.
57536Q (CBO)	Naknek, AK	09/05/2002	NAFTA–6,874	Fresh Salmon.
57767U (CBO)	Naknek, AK	09/05/2002	NAFTA–6,875	Fresh Salmon.
57050O (CBO)	Naknek, AK	09/05/2002	NAFTA–6,876	Fresh Salmon.
85600J (CBO)	Naknek, AK	09/05/2002	NAFTA–6,877	Fresh Salmon.
60600O (CBO)	Naknek, AK	09/05/2002	NAFTA–6,878	Fresh Salmon.
59419M (CBO)	Naknek, AK	09/05/2002	NAFTA–6,879	Fresh Salmon.
59239P (CBO)	Naknek, AK	09/05/2002	NAFTA–6,880	Fresh Salmon.
59452H (CBO)	Naknek, AK	09/05/2002	NAFTA–6,881	Fresh Salmon.
57197L (CBO)	Naknek, AK	09/05/2002	NAFTA–6,882	Fresh Salmon.
58312I (CBO)	Naknek, AK	09/05/2002	NAFTA–6,883	Fresh Salmon.
64725B (CBO)	Naknek, AK	09/05/2002	NAFTA–6,884	Fresh Salmon.
62009Q (CBO)	Naknek, AK	09/05/2002	NAFTA–6,885	Fresh Salmon.
68340V (CBO)	Naknek, AK	09/05/2002	NAFTA–6,886	Fresh Salmon.
65007E (CBO)	Naknek, AK	09/05/2002	NAFTA–6,887	Fresh Salmon.
61249B (CBO)	Naknek, AK	09/05/2002	NAFTA–6,888	Fresh Salmon.

APPENDIX—Continued

Subject firm	Location	Date received at Governor's Office	Petition No.	Articles produced
60111L (CBO)	Naknek, AK	09/05/2002	NAFTA–6,889	Fresh Salmon.
56589N (CBO)	Naknek, AK	09/05/2002	NAFTA–6,890	Fresh Salmon.
58282J (CBO)	Naknek, AK	09/05/2002	NAFTA–6,891	Fresh Salmon.
58212Z (CBO)	Naknek, AK	09/05/2002	NAFTA–6,892	Fresh Salmon.
55324S (CBO)	Naknek, AK	09/05/2002	NAFTA–6,893	Fresh Salmon.
57729N (CBO)	Naknek, AK	09/05/2002	NAFTA–6,894	Fresh Salmon.
56999Q (CBO)	Naknek, AK	09/05/2002	NAFTA–6,895	Fresh Salmon.
56058F (CBO)	Naknek, AK	09/05/2002	NAFTA–6,896	Fresh Salmon.
56939F (CBO)	Naknek, AK	09/05/2002	NAFTA–6,897	Fresh Salmon.
55443G (CBO)	Naknek, AK	09/05/2002	NAFTA–6,898	Fresh Salmon.
63850R (CBO)	Naknek, AK	09/05/2002	NAFTA–6,899	Fresh Salmon.
61341V (CBO)	Naknek, AK	09/05/2002	NAFTA–6,900	Fresh Salmon.
57588P (CBO)	Naknek, AK	09/05/2002	NAFTA–6,901	Fresh Salmon.
61438E (CBO)	Naknek, AK	09/05/2002	NAFTA–6,902	Fresh Salmon.
61951V (CBO)	Naknek, AK	09/05/2002	NAFTA–6,903	Fresh Salmon.
58226Q (CBO)	Naknek, AK	09/05/2002	NAFTA–6,904	Fresh salmon.
61176J (CBO)	Naknek, AK	09/05/2002	NAFTA–6,905	Fresh salmon.
60541O (CBO)	Naknek, AK	09/05/2002	NAFTA–6,906	Fresh salmon.
60305A (CBO)	Naknek, AK	09/05/2002	NAFTA–6,907	Fresh salmon.
57954M (CBO)	New Stuyahok, AK	09/05/2002	NAFTA–6,908	Fresh salmon.
55926G (CBO)	New Stuyahok, AK	09/05/2002	NAFTA–6,909	Fresh salmon.
59312H (CBO)	New Stuyahok, AK	09/05/2002	NAFTA–6,910	Fresh salmon.
65630C (CBO)	New Stuyahok, AK	09/05/2002	NAFTA–6,911	Fresh salmon.
57954M (CBO)	New Stuyahok, AK	09/05/2002	NAFTA–6,912	Fresh salmon.
56717H (CBO)	New Stuyahok, AK	09/05/2002	NAFTA–6,913	Fresh salmon.
56941N (CBO)	New Stuyahok, AK	09/05/2002	NAFTA–6,914	Fresh salmon.
67327X (CBO)	New Stuyahok, AK	09/05/2002	NAFTA–6,915	Fresh salmon.
56222Z (CBO)	New Stuyahok, AK	09/05/2002	NAFTA–6,916	Fresh salmon.
63691J (CBO)	New Stuyahok, AK	09/05/2002	NAFTA–6,917	Fresh salmon.
56223Q (CBO)	New Stuyahok, AK	09/05/2002	NAFTA–6,918	Fresh salmon.
61912O (CBO)	New Stuyahok, AK	09/05/2002	NAFTA–6,919	Fresh salmon.
59026X (CBO)	New Stuyahok, AK	09/05/2002	NAFTA–6,920	Fresh salmon.
51469K (CBO)	New Stuyahok, AK	09/05/2002	NAFTA–6,921	Fresh salmon.
66411G (CBO)	New Stuyahok, AK	09/05/2002	NAFTA–6,922	Fresh salmon.
64808Q (CBO)	New Stuyahok, AK	09/05/2002	NAFTA–6,923	Fresh salmon.
56219X (CBO)	New Stuyahok, AK	09/05/2002	NAFTA–6,924	Fresh salmon.
63414L (CBO)	New Stuyahok, AK	09/05/2002	NAFTA–6,925	Fresh salmon.
60396X (CBO)	New Stuyahok, AK	09/05/2002	NAFTA–6,926	Fresh salmon.
61228N (CBO)	New Stuyahok, AK	09/05/2002	NAFTA–6,927	Fresh salmon.
64737J (CBO)	New Stuyahok, AK	09/05/2002	NAFTA–6,928	Fresh salmon.
66590F (CBO)	New Stuyahok, AK	09/05/2002	NAFTA–6,929	Fresh salmon.
56944P (CBO)	New Stuyahok, AK	09/05/2002	NAFTA–6,930	Fresh salmon.
57641L (CBO)	New Stuyahok, AK	09/05/2002	NAFTA–6,931	Fresh salmon.
603334B (CBO)	New Stuyahok, AK	09/05/2002	NAFTA–6,932	Fresh salmon.
58614S (CBO)	New Stuyahok, AK	09/05/2002	NAFTA–6,933	Fresh salmon.
56495E (CBO)	New Stuyahok, AK	09/05/2002	NAFTA–6,934	Fresh salmon.
56495E (CBO)	New Stuyahok, AK	09/05/2002	NAFTA–6,935	Fresh salmon.
95585U (CBO)	New Stuyahok, AK	09/05/2002	NAFTA–6,936	Fresh salmon.
56498G (CBO)	New Stuyahok, AK	09/05/2002	NAFTA–6,937	Fresh salmon.
64715E (CBO)	New Stuyahok, AK	09/05/2002	NAFTA–6,938	Fresh salmon.
63406X (CBO)	New Stuyahok, AK	09/05/2002	NAFTA–6,939	Fresh salmon.
56217N (CBO)	New Stuyahok, AK	09/05/2002	NAFTA–6,940	Fresh salmon.
50106V (CBO)	New Stuyahok, AK	09/05/2002	NAFTA–6,941	Fresh salmon.
56768N (CBO)	New Stuyahok, AK	09/05/2002	NAFTA–6,942	Fresh salmon.
66293G (CBO)	Newhalen AK	09/05/2002	NAFTA–6,943	Fresh salmon.
58538A (CBO)	Newhalen AK	09/05/2002	NAFTA–6,944	Fresh salmon.
65113P (CBO)	Newhalen AK	09/05/2002	NAFTA–6,945	Fresh salmon.
58052X (CBO)	Newhalen AK	09/05/2002	NAFTA–6,946	Fresh salmon.
59469B (CBO)	Newhalen AK	09/05/2002	NAFTA–6,947	Fresh salmon.
68340V (CBO)	Nondalton, AK	09/05/2002	NAFTA–6,948	Fresh salmon.
64438A (CBO)	Nondalton, AK	09/05/2002	NAFTA–6,949	Fresh salmon.
61359I (CBO)	Nondalton, AK	09/05/2002	NAFTA–6,950	Fresh salmon.
58396K (CBO)	Perryville, AK	09/05/2002	NAFTA–6,951	Fresh salmon.
56095S (CBO)	Pilot Point, AK	09/05/2002	NAFTA–6,952	Fresh salmon.
62030E (CBO)	Pilot Point, AK	09/05/2002	NAFTA–6,953	Fresh salmon.
68031O (CBO)	Pilot Point, AK	09/05/2002	NAFTA–6,954	Fresh salmon.
56815G (CBO)	Pilot Point, AK	09/05/2002	NAFTA–6,955	Fresh salmon.
57349Z (CBO)	Pilot Point, AK	09/05/2002	NAFTA–6,956	Fresh salmon.
59776X (CBO)	Pilot Point, AK	09/05/2002	NAFTA–6,957	Fresh salmon.
56815G (CBO)	Pilot Point, AK	09/05/2002	NAFTA–6,958	Fresh salmon.

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Subject firm	Location	Date received at Governor's Office	Petition No.	Articles produced
58084B (CBO)	Pilot Point, AK	09/05/2002	NAFTA–6,959	Fresh salmon.
65902U (CBO)	Pilot Point, AK	09/05/2002	NAFTA–6,960	Fresh salmon.
66897C (CBO)	Platinum, AK	09/05/2002	NAFTA–6,961	Fresh salmon.
61905B (CBO)	Port Alsworth, AK	09/05/2002	NAFTA–6,962	Fresh salmon.
58454R (CBO)	Port Heiden, AK	09/05/2002	NAFTA–6,963	Fresh salmon.
57861Z (CBO)	Port Heiden, AK	09/05/2002	NAFTA–6,964	Fresh salmon.
57378A (CBO)	Port Heiden, AK	09/05/2002	NAFTA–6,965	Fresh salmon.
58824J (CBO)	Port Heiden, AK	09/05/2002	NAFTA–6,966	Fresh salmon.
68057O (CBO)	Port Heiden, AK	09/05/2002	NAFTA–6,967	Fresh salmon.
61958R (CBO)	Port Heiden, AK	09/05/2002	NAFTA–6,968	Fresh salmon.
58130B (CBO)	Port Heiden, AK	09/05/2002	NAFTA–6,969	Fresh salmon.
64809J (CBO)	Port Heiden, AK	09/05/2002	NAFTA–6,970	Fresh salmon.
58536P (CBO)	Port Heiden, AK	09/05/2002	NAFTA–6,971	Fresh salmon.
64718G (CBO)	Port Heiden, AK	09/05/2002	NAFTA–6,972	Fresh salmon.
57591Q (CBO)	Port Heiden, AK	09/05/2002	NAFTA–6,973	Fresh salmon.
57218F (CBO)	Port Heiden, AK	09/05/2002	NAFTA–6,974	Fresh salmon.
58130B (CBO)	Port Heiden, AK	09/05/2002	NAFTA–6,975	Fresh salmon.
58396K (CBO)	Port Heiden, AK	09/05/2002	NAFTA–6,976	Fresh salmon.
55791L (CBO)	Port Heiden, AK	09/05/2002	NAFTA–6,977	Fresh salmon.
66896K (CBO)	Portafe Creek, AK	09/05/2002	NAFTA–6,978	Fresh salmon.
56215E (CBO)	Quinhagak, AK	09/05/2002	NAFTA–6,979	Fresh salmon.
66948O (CBO)	Quinhagak, AK	09/05/2002	NAFTA–6,980	Fresh salmon.
56029E (CBO)	Quinhagak, AK	09/05/2002	NAFTA–6,981	Fresh salmon.
58467R (CBO)	Quinhagak, AK	09/05/2002	NAFTA–6,982	Fresh salmon.
64247N (CBO)	South Naknek, AK	09/05/2002	NAFTA–6,983	Fresh salmon.
56961J (CBO)	South Naknek, AK	09/05/2002	NAFTA–6,984	Fresh salmon.
65086S (CBO)	South Naknek, AK	09/05/2002	NAFTA–6,985	Fresh salmon.
55096M (CBO)	South Naknek, AK	09/05/2002	NAFTA–6,986	Fresh salmon.
56260G (CBO)	South Naknek, AK	09/05/2002	NAFTA–6,987	Fresh salmon.
60847U (CBO)	South Naknek, AK	09/05/2002	NAFTA–6,988	Fresh salmon.
55824M (CBO)	South Naknek, AK	09/05/2002	NAFTA–6,989	Fresh salmon.
60074Q (CBO)	South Naknek, AK	09/05/2002	NAFTA–6,990	Fresh salmon.
68123K (CBO)	South Naknek, AK	09/05/2002	NAFTA–6,991	Fresh salmon.
58847H (CBO)	South Naknek, AK	09/05/2002	NAFTA–6,992	Fresh salmon.
61322R (CBO)	South Naknek, AK	09/05/2002	NAFTA–6,993	Fresh salmon.
55948L (CBO)	South Naknek, AK	09/05/2002	NAFTA–6,994	Fresh salmon.
61962L (CBO)	South Naknek, AK	09/05/2002	NAFTA–6,995	Fresh salmon.
57350P (CBO)	South Naknek, AK	09/05/2002	NAFTA–6,996	Fresh salmon.
59196Q (CBO)	Togiak, AK	09/05/2002	NAFTA–6,997	Fresh salmon.
66428A (CBO)	Togiak, AK	09/05/2002	NAFTA–6,998	Fresh salmon.
66813A (CBO)	Togiak, AK	09/05/2002	NAFTA–6,999	Fresh salmon.
56291Q (CBO)	Togiak, AK	09/05/2002	NAFTA–7,000	Fresh salmon.
58424Z (CBO)	Togiak, AK	09/05/2002	NAFTA–7,001	Fresh salmon.
58424Z (CBO)	Togiak, AK	09/05/2002	NAFTA–7,002	Fresh salmon.
68317Z (CBO)	Togiak, AK	09/05/2002	NAFTA–7,003	Fresh salmon.
60070W (CBO)	Togiak, AK	09/05/2002	NAFTA–7,004	Fresh salmon.
66964P (CBO)	Togiak, AK	09/05/2002	NAFTA–7,005	Fresh salmon.
66925Q (CBO)	Togiak, AK	09/05/2002	NAFTA–7,006	Fresh salmon.
68074I (CBO)	Togiak, AK	09/05/2002	NAFTA–7,007	Fresh salmon.
58063P (CBO)	Togiak, AK	09/05/2002	NAFTA–7,008	Fresh salmon.
58110G (CBO)	Togiak, AK	09/05/2002	NAFTA–7,009	Fresh salmon.
50187V (CBO)	Togiak, AK	09/05/2002	NAFTA–7,010	Fresh salmon.
50141A (CBO)	Togiak, AK	09/05/2002	NAFTA–7,011	Fresh salmon.
57596L (CBO)	Togiak, AK	09/05/2002	NAFTA–7,012	Fresh salmon.
56942G (CBO)	Togiak, AK	09/05/2002	NAFTA–7,013	Fresh salmon.
57308P (CBO)	Togiak, AK	09/05/2002	NAFTA–7,014	Fresh salmon.
57330U (CBO)	Togiak, AK	09/05/2002	NAFTA–7,015	Fresh salmon.
57321O (CBO)	Togiak, AK	09/05/2002	NAFTA–7,016	Fresh salmon.
65827S (CBO)	Togiak, AK	09/05/2002	NAFTA–7,017	Fresh salmon.
66968K (CBO)	Togiak, AK	09/05/2002	NAFTA–7,018	Fresh salmon.
67326G (CBO)	Togiak, AK	09/05/2002	NAFTA–7,019	Fresh salmon.
50159M (CBO)	Togiak, AK	09/05/2002	NAFTA–7,020	Fresh salmon.
58106M (CBO)	Togiak, AK	09/05/2002	NAFTA–7,021	Fresh salmon.
57307X (CBO)	Togiak, AK	09/05/2002	NAFTA–7,022	Fresh salmon.
58071B (CBO)	Togiak, AK	09/05/2002	NAFTA–7,023	Fresh salmon.
58201J (CBO)	Togiak, AK	09/05/2002	NAFTA–7,024	Fresh salmon.
60966H (CBO)	Togiak, AK	09/05/2002	NAFTA–7,025	Fresh salmon.
67570I (CBO)	Togiak, AK	09/05/2002	NAFTA–7,026	Fresh salmon.
51521N (CBO)	Togiak, AK	09/05/2002	NAFTA–7,027	Fresh salmon.
57322H (CBO)	Togiak, AK	09/05/2002	NAFTA–7,028	Fresh salmon.

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Subject firm	Location	Date received at Governor's Office	Petition No.	Articles produced
57310Z (CBO)	Togiak, AK	09/05/2002	NAFTA–7,029	Fresh salmon.
66895R (CBO)	Togiak, AK	09/05/2002	NAFTA–7,030	Fresh salmon.
60141A (CBO)	Togiak, AK	09/05/2002	NAFTA–7,031	Fresh salmon.
57616F (CBO)	Togiak, AK	09/05/2002	NAFTA–7,032	Fresh salmon.
57318N (CBO)	Togiak, AK	09/05/2002	NAFTA–7,033	Fresh salmon.
57959Z (CBO)	Togiak, AK	09/05/2002	NAFTA–7,034	Fresh salmon.
57360N (CBO)	Togiak, AK	09/05/2002	NAFTA–7,035	Fresh salmon.
58106M (CBO)	Togiak, AK	09/05/2002	NAFTA–7,036	Fresh salmon.
58037O (CBO)	Togiak, AK	09/05/2002	NAFTA–7,037	Fresh salmon.
59610X (CBO)	Togiak, AK	09/05/2002	NAFTA–7,038	Fresh salmon.
68757A (CBO)	Togiak, AK	09/05/2002	NAFTA–7,039	Fresh salmon.
56837L (CBO)	Togiak, AK	09/05/2002	NAFTA–7,040	Fresh salmon.
58078X (CBO)	Togiak, AK	09/05/2002	NAFTA–7,041	Fresh salmon.
61508S (CBO)	Togiak, AK	09/05/2002	NAFTA–7,042	Fresh salmon.
58626B (CBO)	Togiak, AK	09/05/2002	NAFTA–7,043	Fresh salmon.
55779F (CBO)	Togiak, AK	09/05/2002	NAFTA–7,044	Fresh salmon.
64764A (CBO)	Togiak, AK	09/05/2002	NAFTA–7,045	Fresh salmon.
57876J (CBO)	Togiak, AK	09/05/2002	NAFTA–7,046	Fresh salmon.
59292G (CBO)	Togiak, AK	09/05/2002	NAFTA–7,047	Fresh salmon.
57311Q (CBO)	Togiak, AK	09/05/2002	NAFTA–7,048	Fresh salmon.
57680K (CBO)	Togiak, AK	09/05/2002	NAFTA–7,049	Fresh salmon.
59350N (CBO)	Togiak, AK	09/05/2002	NAFTA–7,050	Fresh salmon.
57660O (CBO)	Togiak, AK	09/05/2002	NAFTA–7,051	Fresh salmon.
60668H (CBO)	Togiak, AK	09/05/2002	NAFTA–7,052	Fresh salmon.
57413K (CBO)	Togiak, AK	09/05/2002	NAFTA–7,053	Fresh salmon.
58640R (CBO)	Togiak, AK	09/05/2002	NAFTA–7,054	Fresh salmon.
58640R (CBO)	Togiak, AK	09/05/2002	NAFTA–7,055	Fresh salmon.
57383J (CBO)	Togiak, AK	09/05/2002	NAFTA–7,056	Fresh salmon.

[FR Doc. 02–28206 Filed 11–5–02; 8:45 am]

BILLING CODE 4510–30–M

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of the Board of Directors

Time and Date: The Board of Directors of the Legal Services Corporation will meet on November 9, 2002. The meeting will begin at 9 a.m. and continue until conclusion of the Board's agenda.

Location: The W Los Angeles Hotel, 930 Hilgard Avenue, Los Angeles, CA.

Status of Meeting: Open, except that a portion of the meeting may be closed pursuant to a vote of the Board of Directors to hold an executive session. At the closed session, the Corporation's General Counsel will report to the Board on litigation to which the Corporation is or may become a party, and the Board may act on the matters reported. The closing is authorized by the relevant provisions of the Government in the Sunshine Act [5 U.S.C. 552b(c) (10)] and the corresponding provisions of the Legal Services Corporation's implementing regulation [45 CFR 1622.5(h)]. A copy of the General Counsel's Certification that the closing is authorized by law will be available upon request.

Matters to be Considered:

Open Session

1. Approval of agenda.
2. Approval of the minutes of the Board's meeting of August 24, 2002.
3. Approval of the minutes of the Executive Session of the Board's meeting of August 24, 2002.
4. Chairman's Report.
5. Members' Report.
6. Acting Inspector General's Report.
7. President's Report.
8. Consider and act on the report of the Board's Committee on Provision for the Delivery of Legal Services.
9. Consider and act on the report of the Board's Operations and Regulations Committee.
10. Consider and act on the report of the Board's Finance Committee.
11. Report by the Mauricio Vivero, LSC Vice President for Governmental Relations & Public Affairs, on Legal Services Branding Project.
12. Consider and act on a proposal to authorize the President of LSC to lease up to an additional 2,000 square feet of office space for LSC's headquarters.

Closed Session

13. Briefing [1] by the Inspector General on the activities of the Office of Inspector General.
14. Consider and act on the Office of Legal Affairs' report on potential and pending litigation involving LSC.

Open Session

15. Consider and act on other business.
16. Public Comment.

Contact Person for Information: Victor M. Fortuno, Vice President for Legal Affairs, General Counsel & Corporate Secretary, at (202) 336–8800.

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Elizabeth S. Cushing, at (202) 336–8800.

[1] Any portion of the closed session consisting solely of staff briefings does not fall within the Sunshine Act's definition of the term "meeting" and, therefore, the requirements of the Sunshine Act do not apply to any such portion of the closed session. 5 U.S.C. 552(b)(e)(2) and (b). See also 45 CFR 1622.2 & 1622.3

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Dated: November 1, 2002.

Victor M. Fortuno,

Vice President for Legal Affairs, General Counsel & Corporate Secretary.

[FR Doc. 02–28297 Filed 11–4–02; 10:10 am]

BILLING CODE 7050–01–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of the Board of Directors

TIME AND DATE: The Board of Directors of the Legal Services Corporation will meet on November 8, 2002. The meeting will begin at 2 p.m. and continue until conclusion of the Board's agenda.

LOCATION: The W Los Angeles Hotel, 930 Hilgard Avenue, Los Angeles, CA.

STATUS OF MEETING: Open, except that a portion of the meeting may be closed pursuant to a vote of the Board of Directors to hold an executive session. At the closed session, the Corporation's General Counsel will report to the Board on litigation to which the Corporation is or may become a party, and the Board may act on the matters reported. The closing is authorized by the relevant provisions of the Government in the Sunshine Act [5 U.S.C. 552b(c)(10)] and the corresponding provisions of the Legal Services Corporation's implementing regulation [45 CFR 1622.5(h)]. A copy of the General Counsel's Certification that the closing is authorized by law will be available upon request.

MATTERS TO BE CONSIDERED:

Open Session

1. Approval of agenda.
2. Staff report on LSC Strategic Directions.
3. Board discussion on LSC Strategic Directions.
4. Consider and act on possible changes to LSC Strategic Directions.
5. Consider and act on other business.
6. Public Comment.

CONTACT PERSON FOR INFORMATION: Victor M. Fortuno, Vice President for Legal Affairs, General Counsel & Corporate Secretary, at (202) 336–8800.

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Elizabeth S. Cushing, at (202) 336–8800.

Dated: November 1, 2002.

Victor M. Fortuno,

Vice President for Legal Affairs, General Counsel & Corporate Secretary.

[FR Doc. 02–28298 Filed 11–4–02; 10:10 am]

BILLING CODE 7050–01–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of the Board of Directors Finance Committee

TIME AND DATE: The Finance Committee of the Legal Services Corporation Board of Directors will meet on November 8, 2002. The meeting will begin at 9 a.m. and continue until the Committee concludes its agenda.

LOCATION: The W Los Angeles Hotel, 930 Hilgard Avenue, Los Angeles, CA.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of agenda.
2. Approval of the minutes of the Committee's meeting of August 23, 2002.
3. Report on the Corporation's operating expenses for Fiscal Year 2002 through September 30, 2002.
4. Consider and act on other business.
5. Public comment.

FOR MORE INFORMATION CONTACT: Victor M. Fortuno, Vice President for Legal Affairs, General Counsel & Corporate Secretary, at (202) 336–8800.

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Elizabeth S. Cushing, at (202) 336–8800.

Dated: November 1, 2002.

Victor M. Fortuno,

Vice President for Legal Affairs, General Counsel & Corporate Secretary.

[FR Doc. 02–28299 Filed 11–4–02; 10:11 am]

BILLING CODE 7050–01–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of the Board of Directors Operations & Regulations Committee

TIME AND DATE: The Operations and Regulations Committee of the Legal Services Corporation Board of Directors will meet on November 8, 2002. The meeting will begin at 10:15 a.m. and continue until the Committee concludes its agenda.

LOCATION: The W Los Angeles Hotel, 930 Hilgard Avenue, Los Angeles, CA.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of agenda.
2. Approval of the minutes of the Committee's meeting of August 23, 2002.
3. Consider and act on Draft Notice of Proposed Rulemaking on LSC's Financial Eligibility regulation, 45 CFR Part 1611.
4. Consider and act on Draft Notice of Proposed Rulemaking on LSC's Disclosure of Information pursuant to the Freedom of Information Act regulation, 45 CFR part 1602.
5. Consider and act on Staff Report on the Rulemaking Protocol.
6. Consider and act on Limited English Proficiency Guidance for LSC recipients.
7. Staff report on other rulemakings.
8. Consider and act on other business.
9. Public comment.

CONTACT PERSON FOR INFORMATION: Victor M. Fortuno, Vice President for Legal Affairs, General Counsel & Corporate Secretary, at (202) 336–8800.

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Elizabeth S. Cushing, at (202) 336–8800.

Dated: November 1, 2002.

Victor M. Fortuno,

Vice President for Legal Affairs, General Counsel & Corporate Secretary.

[FR Doc. 02–28300 Filed 11–4–02; 10:11 am]

BILLING CODE 7050–01–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of the Board of Directors Committee on Provision for the Delivery of Legal Services

TIME AND DATE: The Committee on Provision for the Delivery of Legal Services of the Legal Services Corporation Board of Directors will meet on November 8, 2002. The meeting will begin at 9 a.m. and continue until the Committee concludes its agenda.

LOCATION: The W Los Angeles Hotel, 930 Hilgard Avenue, Los Angeles, CA

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of agenda.
2. Approval of the minutes of the Committee's meeting of August 23, 2002.
3. Panel presentations by three LSC-funded programs (Legal Aid of Orange County, Neighborhood Legal Services of Los Angeles County, and the Legal Aid Foundation of Los Angeles) in the Los Angeles Basin Region.

(1) An Overview of the Demographics of Poverty and Diversity in the Los Angeles Basin, including a presentation on the diversity of legal services to non-English speaking clients. Presented by program executive directors, staff, and community partners.

(2) An in-depth presentation of programs' substantive advocacy, with a specific focus on the problems of affordable housing and health care. Presented by programs' advocacy staff.

4. Consider and act on other business.
5. Public comment.

FOR MORE INFORMATION CONTACT: Victor M. Fortuno, Vice President for Legal Affairs, General Counsel & Corporate Secretary of the Corporation, at (202) 336–8800.

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Elizabeth S. Cushing, at (202) 336–8800.

Dated: November 1, 2002.

Victor M. Fortuno,

Vice President for Legal Affairs, General Counsel & Corporate Secretary.

[FR Doc. 02–28301 Filed 11–4–02; 10:12 am]

BILLING CODE 7050–01–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of the Board of Directors Ad Hoc Committee on Performance Reviews of the President and Inspector General

TIME AND DATE: The Ad Hoc Committee on Performance Reviews of the President and Inspector General of the Legal Services Corporation's Board of Directors will meet on November 9, 2002. The meeting will begin at 1 p.m. and continue until conclusion of the committee's agenda.

LOCATION: The W Los Angeles Hotel, 930 Hilgard Avenue, Los Angeles, CA

STATUS OF MEETING: Except for approval of the committee's agenda and any miscellaneous business that may come before the committee, the meeting will be closed to the public. The closing is authorized by the relevant provisions of the Government in the Sunshine Act [5 U.S.C. 552b(c)(2) & (6)] and the corresponding provisions of the Legal Services Corporation's implementing regulation [45 CFR 1622.5(a) & (e)]. A copy of the General Counsel's Certification that the closing is authorized by law will be available upon request.

MATTERS TO BE CONSIDERED:

Open Session:

1. Approval of agenda.

Closed Session:

2. Conduct a performance appraisal of the President of the Corporation.
3. Conduct a performance appraisal of the Acting Inspector General of the Corporation.

Open Session:

4. Consider and act on other business.

FOR MORE INFORMATION CONTACT: Victor M. Fortuno, General Counsel and Secretary of the Corporation, at (202) 336–8800.

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Elizabeth Cushing at (202) 336–8800.

Dated: November 1, 2002.

Victor M. Fortuno,

Vice President for Legal Affairs, General Counsel, and Corporate Secretary.

[FR Doc. 02–28302 Filed 11–4–02; 10:12 am]

BILLING CODE 7050–01–P

MERIT SYSTEMS PROTECTION BOARD

[MSPB Docket No. SF–844E–01–0309–B–1]

Opportunity To File Amicus Briefs in *Visitacion Ancheta* v. *Office of Personnel Management*

AGENCY: Merit Systems Protection Board.

ACTION: The Merit Systems Protection Board has issued an opinion and order in the above-captioned case, in which it notes that it is seeking amicus briefs from interested parties. The issues that the Board would like any amicus brief to address are set forth in the Summary below. The Board's decision can also be accessed on the Board's Web site, *www.mspb.gov.*

SUMMARY: The appellant petitioned for review of an initial decision that affirmed a denial by the Office of Personnel Management (OPM) of her application for disability retirement. In April, 1994, the appellant was appointed to a City Carrier position in the U.S. Postal Service. About a year later, in July, 1995, she sustained a work-related injury, subsequently stopped working, and began receiving compensation for wage-loss from the Office of Workers' Compensation Programs (OWCP). In August, 1997, she accepted the Postal Service's "(r)ehab job offer" of a Modified Letter Carrier (MLC) position, and returned to work. Effective February 10, 1998, she was removed from her City Carrier position for misconduct.

The appellant then filed an application for disability retirement under the Federal Employees' Retirement System (FERS). OPM denied the application in initial and reconsideration decisions, finding that she failed to establish she was disabled from performing the duties of the MLC position prior to her removal for misconduct. On appeal to the Board, the administrative judge (AJ) held a hearing and then issued the initial decision affirming OPM's final decision on the same grounds set forth by OPM. He found that: (1) The agency had, in effect, been able to accommodate the appellant's medical restrictions in the MLC position; and (2) the appellant did not show that she was unable to work in that position because of a disabling medical condition. The appellant timely filed a petition for review, arguing that the AJ erred by finding her capable of performing the MLC duties. OPM timely filed a response opposing the appellant's petition.

A claim for disability retirement under FERS may be allowed only if an application is filed with OPM before separation from the service or within one year thereafter, unless waiver of this time limit is warranted for mental incompetence. 5 U.S.C. 8453; 5 CFR 844.201(a). Upon filing a timely application, the applicant must establish that: (1) She completed at least eighteen months of creditable civilian service; (2) she was unable, because of disease or injury, to render useful and efficient service in her position; (3) her disabling medical condition is expected to continue for at least one year from the date the application is filed; (4) she was not afforded reasonable accommodation of her disabling condition in her position; and (5) she has not declined a reasonable offer of reassignment to a vacant position in the employing agency for which she is qualified, at the same or greater grade (or pay level), in her commuting area, and in which she is able to render useful and efficient service. 5 U.S.C. 8451(a); 5 CFR 844.103(a).

The record shows, and it is undisputed, that the appellant timely filed her application for disability retirement and that she had completed at least eighteen months of creditable civilian service. Both the AJ and OPM found that the appellant did not show she was disabled from performing the duties of the MLC position. However,

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neither considered whether the court's decision in *Bracey* v. *Office of Personnel Management*, 236 F.3d 1356 (Fed. Cir. 2001), applied to this case. The Board thus found that further proceedings to address this are necessary.

In *Bracey*, the Board's reviewing court considered whether an employee's assignment to the light-duty shop, where he retained the grade and pay of his Electronics Worker position of record but performed the lower-graded duties of Material Examiner and Identifier, constituted an accommodation precluding his disability retirement under the Civil Service Retirement System. The court held that an accommodation precludes disability retirement only if it: (1) Adjusts the employee's job or work environment, enabling him to perform the critical or essential duties of his current position of record, or (2) reassigns the employee to an established, vacant position at the same grade and pay. 236 F.3d at 1358–59, 1361.

The court explained that an agency's offer of a light duty position that is not officially classified and graded and consists of unclassified, ad hoc duties devised to fit an employee's particular medical restrictions does not qualify as a "vacant position," as that term is used in 5 U.S.C. 8337(a) and 5 CFR 831.1202, and therefore does not preclude disability retirement. *Id.* at 1359–60. The court in *Bracey* acknowledged that an employing agency may offer suitable work, under the Federal Employees' Compensation Act (FECA), which the employee must accept to continue receiving FECA benefits. 236 F.3d at 1362. The court stated, however, that "the employee is free to refuse the offer of such work and to take disability retirement instead of the FECA benefits' and that "there is nothing anomalous about the fact that an employee may be eligible for one set of benefits while being ineligible for the other." *Id.* The court thus concluded that Bracey's assignment to the light-duty shop did not constitute an accommodation within his position of record since he did not perform the critical and essential duties of the position but performed lower-graded duties instead. *Id.* at 1360–61. The court further concluded that the assignment did not constitute a reassignment to a vacant position since the light duty position consisted of "a set of duties selected on an ad hoc basis to fit the needs of a particular disabled employee" and was not a definite, preexisting position that is classified and graded according to its duties, responsibilities, and qualification requirements. *Id.* at 1359–60. In *Marino* v. *Office of Personnel Management*, 243 F.3d 1375, 1377 (Fed. Cir. 2001), the court held that this holding in Bracey applies equally to disability retirement applications under FERS, such as is involved here.

In finding that a "vacant position," as that term is used in the retirement statute and regulations, must be "an officially established position that is graded and classified," 236 F.3d at 1359, the court relied on 5 U.S.C. 5101(2), which requires that positions in agencies covered by 5 U.S.C. 5102 be "grouped and identified by classes and grades * * *" *Id.* at 1359–60. In *Bracey*, the appellant's employing agency, the Department of the Navy, was an executive agency and therefore covered by 5 U.S.C. 5101. *See* 5 U.S.C. 5102. In this case, however, the appellant was employed by the Postal Service, which is not an agency covered by section 5101. *See Robinson* v. *U.S. Postal Service*, 63 M.S.P.R. 307, 320 (1994)(acknowledging that the Postal Service is not covered by section 5101 but concluding, that, for RIF purposes, that agency was required to follow general classification principles, such as assigning grade levels to positions rather than to employees). In her dissenting opinion in *Bracey* v. *Office of Personnel Management*, 83 M.S.P.R. 400, 421 n.5 (1999), then-Vice Chair Slavet questioned whether the factors pertinent to the accommodation issue in that case might be inapplicable to disability retirement appeals involving the Postal Service. She noted that the Postal Service is exempt from "[m]any aspects of the executive branch personnel system," such as Title 5 classification rules, and is governed by a collective bargaining agreement that may bind the agency in accommodating disabled employees. *Id.* She found it unnecessary to resolve this question since *Bracey* did not involve the Postal Service, nor did the court address this issue. However, this issue is squarely presented in this case, which involves a former Postal Service employee who was covered by a collective bargaining agreement. The appellant was covered by the agreement between the Postal Service and the National Association of Letter Carriers, AFL–CIO.

Therefore, because the Board has not heretofore considered whether Bracey applies in the context of the Postal Service, the Board requests amicus briefs from the USPS, its bargaining agents, and all other interested individuals or organizations on this issue.

DATES: All briefs in response to this notice shall be filed with the Board's Western Regional Office on or before December 31, 2002.

ADDRESSES: All briefs should include the case name and docket number noted above (*Visitacion Ancheta* v. *Office of Personnel Management*, Docket No. SF–844E–01–0309–B–1) and be entitled "Amicus Brief." Briefs should be filed with the Western Regional Office, Merit Systems Protection Board, 250 Montgomery Street, Suite 400, San Francisco, CA 94104.

FOR FURTHER INFORMATION CONTACT: Shannon McCarthy, Deputy Clerk of the Board, or Matthew Shannon, Counsel to the Clerk, (202) 653–7200.

Dated: November 1, 2001.

Bentley M. Roberts, Jr.,

Clerk of the Board.

[FR Doc. 02–28254 Filed 11–5–02; 8:45 am]

BILLING CODE 7400–01–P

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Submission for OMB Review; Comment Request

AGENCY: National Endowment for the Humanities, NFAH.

ACTION: Notice.

SUMMARY: The National Endowment for the Humanities (NEH) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval as required by the provisions of the Paperwork Reduction Act of 1995 (Pub.L. 104–13,44 U.S.C. Chapter 35). Copies of this ICR, with applicable supporting documentation, may be obtained by calling Ms. Susan G. Daisey, Director, Office of Grant Management, at the National Endowment for the Humanities, (202–606–8494) or may be requested by e-mail to *sdaisey@neh.gov*. Comments should be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the National Endowment for the Humanities, Office of Management and Budget, Room 10235, Washington, DC 20503 (202–395–7316), within 30 days from the date of this publication in the **Federal Register**. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed above as soon as possible.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) is particularly interested in comments which:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond.

Agency: National Endowment for the Humanities.

Title of Proposal: My History is America's History Web site.

OMB Number: 3136–0136.

Frequency of Collection: Continual.

Affected Public: General Public.

Number of Respondents: Approximately 400,000 per year.

Estimated Time per Respondent: Approximately one quarter hour per response.

Estimated Total Burden Hours: 100,000.

Total Annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): 0.

Description: This submission requests approval from OMB within sixty days for a three-year extension of this currently approved collection of information.

FOR FURTHER INFORMATION CONTACT: Ms. Susan G. Daisey, Director, Office of Grant Management, National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW., Room 311, Washington, DC 20506, or by e-mail to: *sdaisey@neh.gov*. Telephone: 202–606–8494.

Lynne Munson,

Deputy Chairman.

[FR Doc. 02–28152 Filed 11–5–02; 8:45 am]

BILLING CODE 7536–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

[*Extension:* Rule 12a–5 and Form 26, SEC File No. 270–85, OMB Control No. 3235–0079; Rule 15c1–7, SEC File No. 270–146, OMB Control No. 3235–0134; Rule 15Aj–1, SEC File No. 270–25, OMB Control No. 3235–0044.]

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, D.C. 20549.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collections of information summarized below. The Commission plans to submit the existing collection of information to the Office of Management and Budget for extension and approval.

• Rule 12a–5—Temporary Exemption Substituted or Additional Securities

Rule 12a–5 of the Securities Exchange Act of 1934 (the "Act") generally makes it unlawful for any security to be traded on a national securities exchange unless such security is registered on the exchange in accordance with the provisions of the Act and the rules and regulations thereunder.

Rule 12a–5 and Form 26 were adopted by the Commission in 1936 and 1955 pursuant to sections 3(a)(12), 10(b), and 23(a) of the Act. Subject to certain conditions, Rule 12a–5 affords a temporary exemption (generally for up to 120 days) from the registration requirements of section 12(a) of the Act for a new security when the holders of a security admitted to trading on a national securities exchange obtain the right (by operation of law or otherwise) to acquire all or any part of a class of another or substitute security of the same or another issuer, or an additional amount of the original security. The purpose of the exemption is to avoid an interruption of exchange trading to afford time for the issuer of the new security to list and register it, or for the exchange to apply for unlisted trading privileges.

Under paragraph (d) of Rule 12a–5, after an exchange has taken action to admit any security to trading pursuant to the provisions of the rule, the exchange is required to file with the Commission a notification on Form 26. Form 26 provides the Commission with certain information regarding a security admitted to trading on an exchange pursuant to Rule 12a–5, including: (1) The name of the exchange, (2) the name of the issuer, (3) a description of the security, (4) the date(s) on which the security was or will be admitted to when-issued and/or regular trading, and (5) a brief description of the transaction pursuant to which the security was or will be issued.

The Commission generally oversees the national securities exchanges. This mission requires that, under section 12(a) of the Act specifically, the Commission receive notification of any securities that are permitted to trade on an exchange pursuant to the temporary exemption under Rule 12a–5. Without Rule 12a–5 and Form 26 the Commission would be unable to fully implement these statutory responsibilities.

There are currently eight national securities exchanges subject to Rule 12a–5. While approximately 40 Form 26 notifications are filed annually, the reporting burdens are not typically spread evenly among the exchanges.[1] For purposes of this analysis of burden, however, the staff has assumed that each exchange files an equal number (five) of Form 26 notifications. Each notification requires approximately 20 minutes to complete. Each respondent's compliance burden, then, in a given year would be approximately 100 minutes (20 minutes/report × 5 reports = 100 minutes), which translates to just over 13 hours in the aggregate for all respondents (8 respondents × 100 minutes/respondent = 800 minutes, or 13⅓ hours).

Based on the most recent available information, the Commission staff estimates that the cost to respondents of completing a notification on Form 26 is, on average, $14.35 per response. The staff estimates that the total annual related reporting cost per respondent is $71.75 (5 responses/respondent × $14.35 cost/response), for a total annual related cost to all respondents of $574 ($71.75 cost/respondent × 8 respondents).

• Rule 15c1–7—Discretionary Accounts

Rule 15c1–7 provides that any act of a broker-dealer designed to effect securities transactions with or for a customer account over which the broker-dealer (directly or through an agent or employee) has discretion will be considered a fraudulent, manipulative, or deceptive practice under the federal securities laws, unless a record is made of the transaction immediately by the broker-dealer. The record must include (a) The name of the customer, (b) the name, amount, and price of the security, and (c) the date and time when such transaction took place.

The information required by the rule is necessary for the execution of the Commission's mandate under the Act to prevent fraudulent, manipulative, and deceptive acts and practices by broker-dealers. This is used by the Commission and the various self-regulatory organizations in compliance examinations to determine whether such trades have occurred.

[1] In fact, some exchanges do not file any notifications on Form 26 with the Commission in a given year.

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Respondents to Rule 15c1–7 consist of broker-dealers that effect security transactions with or for a customer account over which the broker-dealer has discretion.

The Commission estimates that 500 respondents collect information annually under Rule 15c1–7 and that approximately 33,333 hours would be required annually for these collections.

• Rule 15Aj–1—Amendments and Supplements to Registration Statements of Securities Associations

Rule 15Aj–1 implements the requirements of sections 15A, 17, and 19 of the Act by requiring every association registered as, or applying for registration as, a national securities association or as an affiliated securities association to keep its registration statement up-to-date by making periodic filings with the Commission on Form X–15AJ–1 and Form X–15AJ–2.

Rule 15Aj–1 requires a securities association to promptly notify the Commission after the discovery of any inaccuracy in its registration statement or in any amendment or supplement thereto by filing an amendment to its registration statement on Form X–15AJ–1 correcting such inaccuracy. The rule also requires an association to promptly notify the Commission of any change which renders no longer accurate any information contained or incorporated in its registration statement or in any amendment or supplement thereto by filing a current supplement on Form X–15AJ–1. Rule 15Aj–1 further requires an association to file each year with the Commission an annual consolidated supplement on Form X–15AJ–2.

The information required by Rule 15Aj–1 and Forms X–15AJ–1 and X–15AJ–2 is intended to enable the Commission to carry out its statutorily mandated oversight functions and to assure that registered securities associations are in compliance with the Act. This information is also made available to members of the public. Without the requirements imposed by the rule, the Commission would be unable to fulfill its regulatory responsibilities.

There is presently only one registered securities association, which registered in 1939, subject to the rule. The burdens associated with Rule 15Aj–1 requirements have been borne by only one securities association since Rule 15Aj–1 was adopted. Furthermore, the burdens associated with Rule 15Aj–1 vary depending on whether amendments and current supplements are filed on Form X–15AJ–1 in addition to an annual consolidated supplement filed on Form X–15AJ–2. The Commission staff estimates the burden in hours necessary to comply with the rule by filing an amendment or a current supplement on Form X–15AJ–1 to be approximately one-half hour, with a related cost of $12, per response. The Commission staff estimates the burden in hours necessary to comply with the rule by filing an annual consolidated supplement on Form X–15AJ–2 to be approximately three hours, with a related cost of $96. Therefore, the Commission staff estimates that the total annual related reporting cost associated with the rule to be upwards of $96, assuming a minimum filing of an annual consolidated statement on Form X–15AJ–2, with additional filings on Form X–15AJ–1 correspondingly increasing such reporting cost.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Direct your written comments to Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549.

Margaret H. McFarland,

Deputy Secretary.

Dated: October 30, 2002.

[FR Doc. 02–28129 Filed 11–5–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Request For Public Comment

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

[Extension: Rule 2a–7, SEC File No. 270–258, OMB Control No. 3235–0268.]

Notice is hereby given that under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the "Commission") is soliciting public comments on the collections of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 2a–7 (17 CFR 270.2a–7) under the Investment Company Act of 1940 (15 U.S.C. 80a) (the "Act") governs money market funds. Money market funds are open-end management investment companies that differ from other open-end management investment companies in that they seek to maintain a stable price per share, usually $1.00. The rule exempts money market funds from the valuation requirements of the Act, and, subject to certain risk-limiting conditions, permits money market funds to use the "amortized cost method" of asset valuation or the "penny-rounding method" of share pricing.

Rule 2a–7 imposes certain recordkeeping and reporting obligations on money market funds. The board of directors of a money market fund, in supervising the fund's operations, must establish written procedures designed to stabilize the fund's net asset value ("NAV"). The board also must adopt guidelines and procedures relating to certain responsibilities it delegates to the fund's investment adviser. These procedures typically address various aspects of the fund's operations. The fund must maintain and preserve for six years a written copy of both these procedures and guidelines. The fund also must maintain and preserve for six years a written record of the board's considerations and actions taken in connection with the discharge of its responsibilities, to be included in the board's minutes. In addition, the fund must maintain and preserve for three years written records of certain credit risk analyses, evaluations with respect to securities subject to demand features or guarantees, and determinations with respect to adjustable rate securities and asset backed securities. If the board takes action with respect to defaulted securities, events of insolvency, or deviations in share price, the fund must file with the Commission an exhibit to Form N–SAR describing the nature and circumstances of the action. If any portfolio security fails to meet certain eligibility standards under the rule, the fund also must identify those securities in an exhibit to Form N–SAR. After certain events of default or insolvency relating to a portfolio security, the fund must notify the Commission of the event and the actions the fund intends to take in response to the situation.

The recordkeeping requirements in rule 2a–7 are designed to enable Commission staff in its examinations of money market funds to determine compliance with the rule, as well as to ensure that money market funds have established procedures for collecting the information necessary to make adequate credit reviews of securities in their portfolios. The reporting requirements of rule 2a–7 are intended to assist Commission staff in overseeing money market funds.

Commission staff estimates that approximately 891 money market funds are subject to the rule each year. The staff estimates that each of these funds spends an average of 539 hours each year to document credit risk analyses, and determinations regarding adjustable rate securities, asset backed securities, and securities subject to a demand feature or guarantee.[1] In addition, each year an estimated average of three money market funds each spends approximately one hour to record (in the board minutes) board determinations and actions in response to certain securities' failure to maintain eligibility standards, or certain events of default or insolvency, and to notify the Commission of the event.[2] Finally, Commission staff estimates that in the first year of operation, the board of directors, counsel, and staff of an average of 15 new money market fund each spends 38.5 hours to formulate and establish written procedures for stabilizing the fund's NAV and guidelines for delegating certain of the board's responsibilities to the fund's adviser. Based on these estimates, Commission staff estimates the total burden of the rule's paperwork requirements for money market funds to be 480,830 hours.[3] This is an increase from the previous estimate of 319,211 hours. The increase is attributable to updated information from money market funds regarding hourly burdens, a more accurate calculation of the component parts of some information collection burdens, and the significant differences in burden hours reported by the funds selected at random to be surveyed in different submission years.

These estimates of burden hours are made solely for the purposes of the Paperwork Reduction Act. The estimates are not derived from a comprehensive or even a representative survey or study of Commission rules.

In addition to the burden hours, Commission staff estimates that money market funds will incur costs to preserve records required under rule 2a–7. These costs will vary significantly for individual funds, depending on the amount of assets under fund management and whether the fund preserves its records in a storage facility in hard copy or has developed and maintains a computer system to create and preserve compliance records.[4] Commission staff estimates that the amount an individual fund may spend ranges from $100 per year to $300,000. Based on an average cost of $0.0000052 per dollar of assets under management for small and medium-sized funds to $0.0000024 per dollar of assets under management for large funds,[5] the staff estimates compliance with rule 2a–7 costs the fund industry approximately $5 million per year.[6] Based on responses from individuals in the money market fund industry, the staff estimates that some of the largest fund complexes have created computer programs for maintaining and preserving compliance records for rule 2a–7. Based on a cost of $0.0000097 per dollar of assets under management for large funds, the staff estimates that the total annualized capital/startup costs range from $0 for small funds to $20 million for all large funds. Commission staff further estimates, however, that even absent the requirements of rule 2a–7, money market funds would spend at least half of the amount for capital costs ($10 million) and for record preservation ($2.5 million) to establish and maintain these records and the systems for preserving them as a part of sound business practices to ensure diversification and minimal credit risk in a portfolio for a fund that seeks to maintain a stable price per share.

[1] This average is based on discussions with individuals at money market funds and their advisers. The actual number of burden hours may vary significantly depending on the type and number of portfolio securities held by individual funds.

[2] This number may vary significantly from year to year.

[3] This estimate is based on the following calculation: ((891 x 539) + (3 x 1) + (15 x 38.5) = 480,830.

[4] The amount of assets under management in money market funds ranges from approximately $100,000 to $60.9 billion.

[5] For purpose of this PRA submission. Commission staff used the following categories for fund sizes: (i) small—money market funds with $50 million or less in assets under management, (ii) medium—money market funds with more than $50 million up to and including $1 billion in assets under management; and (iii) large—money market funds with more than $1 billion in assets under management.

[6] The staff estimated the annual cost of preserving the required books and records by identifying the annual costs incurred by several funds and then relating this total cost to the average net assets of these funds during the year. With a total of $191.3 billion under management in small and medium funds, and $2,078 billion under management in large funds, the total amount was estimated as follows: ($0.0000052 x $191.3 billion) + ($0.0000024 x $2,078 billion) = $5 million.

The collections of information required by rule 2a–7 are necessary to obtain the benefits described above. Notices to the Commission will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments are requested on: (a) Whether the collections of information are necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burdens of the collection of information; (c) ways to enhance the quality, utility and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW, Washington, DC 20549.

Dated: October 30, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–28188 Filed 11–5–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT:

[67 FR 66433, October 31, 2002].

STATUS: Open Meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE AND TIME OF PREVIOUSLY ANNOUNCED MEETING: November 6, 2000.

CHANGE IN THE MEETING: Room Change.

The Open Meeting scheduled for Wednesday, November 6, 2002 at 10 a.m. will be held in Room 1C30, the William O. Douglas Room.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

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Dated: November 1, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–28325 Filed 11–4–02; 11:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46738; File No. SR–Amex–2001–32]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 thereto by American Stock Exchange LLC Relating to the Listing of Fixed Income Trust Receipts Under Rule 1000A.

October 29, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 25, 2001, the American Stock Exchange LLC (the "Amex" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission" or the "SEC") the proposed rule change as described in Items I and II, which Items have been prepared by the Exchange. On October 21, 2002, the Amex submitted Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and to grant accelerated approval.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Amex proposes to list under Amex Rule 1000A ("Index Fund Shares") "Fixed Income Trust Receipts" ("FITRs") issued by the Exchange Traded Fund ("ETF") Advisors Trust ("Trust"), as described below, whose portfolio will consist of investment grade government debt securities.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

Purpose

Amex Rule 1000A provides standards for listing Index Fund Shares, which are securities issued by an open-end management investment company (open-end mutual fund) for Exchange trading. These securities are registered under the Investment Company Act of 1940[4] ("1940 Act") as well as the Exchange Act.[5] The Exchange currently trades over 80 different index funds under Rule 1000A based on various stock indexes,[6] as well as indexes based on fixed income securities.

The Exchange proposes to list FITRs under Rule 1000A issued by index funds of ETF Advisors Trust ("Trust"), whose portfolio will consist of investment grade government debt securities (*e.g.*, securities issued or guaranteed by the U.S. Treasury, an agency or instrumentality of the U.S. government, or by a government-sponsored entity).[7]

1. Fixed Income Trust Receipts

The Trust is an open-end management investment company offering a number of separate investment portfolios of fixed income securities (each such portfolio an "Index Fund" or a "Fund"). These securities would be listed under Amex Rules 1000A *et. seq.*, including Amex Rule 1000A as it is proposed to be amended herein. Each Index Fund that is the subject of this filing will hold a portfolio of securities selected to reflect the duration, and which seek to closely match, before fees and expenses, the total return of a specified fixed income securities index (individually, an "Underlying Index" and collectively, the "Underlying Indexes").[8] The Underlying Indexes are the Ryan 10 Year Treasury Index,[9] the Ryan 5 Year Treasury Index,[10] the Ryan 2 Year Treasury Index,[11] and the Ryan 1 Year Treasury Index.[12] All of the Underlying Indexes[13] are based on total returns of various maturities of U.S. Treasury Securities (defined below).

The Underlying Indexes were created by Ronald J. Ryan and Ryan Holdings LLC, and are compiled and maintained by Ryan Labs Inc. (collectively, the "Index Provider"). Ryan Labs Inc. has calculated and published each Underlying Index or its equivalent predecessor and related data for over 10 years. The construction, calculation model and components of each Underlying Index are based upon measurable objective events, instruments and standards; these have remained consistent since initial publication in all cases except one where the 1-year Index had to be adjusted to reflect the U.S. Treasury's cessation of issuance of 1-year Treasury bills.

All of the Underlying Indexes are widely disseminated by various media. In particular, the information pertaining to the Underlying Indices are published on a daily (*e.g.*, Ryan Indexes,[14] Bloomberg, Reuters and Telerate), weekly (*e.g.*, Barrons and the New York Times), bi-weekly (*e.g.*, Grant's Interest Rate Observer), and monthly basis (*e.g.*, Bondweek, IOMA's Report on Managing 401(k) plans, DC Plan Investing, S&P Fund Services and Check-free Database).

The portfolio securities of the Index Funds will primarily consist of investment grade debt securities issued or guaranteed by the U.S. Treasury ("Treasury Securities"), by an agency or instrumentality of the U.S. Government, or by a government-sponsored entity such as the Government National Mortgage Association ("Ginnie Mae"), the Federal Home Loan Mortgage Corporation ("Freddie Mac") and Fannie Mae, formerly the Federal National Mortgage Corporation (collectively, "Agency Securities" and, together with "Treasury Securities," referred to herein as "Government Securities"). Government Securities may be backed by the full faith and credit of the U.S. Treasury, by the right to borrow from the U.S. Treasury, or by the agency or instrumentality issuing or guaranteeing the security.

Each Index Fund will issue, on a continuous offering basis, one or more groups of a fixed number of Fund Shares (*e.g.*, 50,000 shares) with a market value of approximately $5,000,000 to $10,000,000 for each such group of Index Fund Shares (a "Creation Unit Aggregation").

FITRs will not be individually redeemable; only FITRs combined into Creation Unit Aggregations will be redeemable. It is expected that the initial net asset value ("NAV") of FITRs will be established at approximately $85 per FITR.[15]

ALPs Distributors, Inc. is a broker-dealer registered under the Exchange Act. It will act as the distributor and principal underwriter of Creation Unit Aggregations of FITRs ("Distributor") on an agency basis. The Distributor is not an affiliated person of the Trust or the Advisor. The Bank of New York ("BNY") will act as administrator ("Administrator"), fund accountant, custodian ("Custodian"), transfer agent and dividend disbursing agent for each Index Fund, and securities lending agent of the portfolio of securities held by a fund ("Portfolio Securities").

FITRs will be registered in book-entry form only and the Index Funds will not issue individual share certificates. The Depository Trust Company ("DTC") or its nominee will be the record or registered owner of all outstanding FITRs. The records of DTC or DTC participants ("DTC Participants") will reflect the beneficial ownership of FITRs. FITRs will trade on the Exchange during the hours of 9:30 a.m. to 4:15 p.m., (Eastern Time ("ET")).

2. Investment Objectives and Principal Investment Strategies

Each Underlying Index is based on one or more specified debt security series issued by the U.S. Treasury. Each Underlying Index serves as a portfolio benchmark by specifying a selected debt instrument or instruments that correspond to a specified maturity on the U.S. Treasury yield curve. The Index Funds and Underlying Indexes that are subject of this Rule 19b–4 filing are as follows:

Name of Index Fund	Ryan Index
Treasury 10 FITR ETF.	Ryan 10 Year Treasury Index.
Treasury 5 FITR ETF	Ryan 5 Year Treasury Index.
Treasury 2 FITR ETF	Ryan 2 Year Treasury Index.
Treasury 1 FITR ETF	Ryan 1 Year Adjusted Treasury Index.

The Underlying Indexes, together with the other Treasury indexes maintained by the Index Provider, map the U.S. Treasury yield curve as described above.[16] The design principle behind each such index is that the most reliable measure of interest rates is the U.S. Treasury yield curve. The Ryan 10 Year, 5 Year, and 2 Year Treasury Indices and 1 year Adjusted Treasury Index also rely on the principle that the most liquid measure of every point on the U.S. Treasury yield curve is the "on-the-run" ("OTR") U.S. Treasury instrument in any given maturity range.[17]

The respective investment objective of each Index Fund will be to provide investment results that seek to closely match the total return, before fees and expenses, of the relevant Underlying Index. A fund's total return will be included in the prospectus in a manner consistent with the requirements of Form N–1A under the 1940 Act.[18] Each Index Fund will hold Portfolio Securities that in the aggregate will closely match the cash flows of its Underlying Index, meaning that each Fund will invest in a range of fixed income instruments based upon the Advisor's application of quantitative analytical procedures to provide a duration and cash flow profile similar to that of the Fund's respective Underlying Index. In seeking to achieve the respective investment objective of each Index Fund, the Advisor will invest at least 90% of each Fund's total assets in Treasury Securities and other Government Securities. This is a fundamental investment policy which can only be changed by shareholder vote. As a non-fundamental investment policy that can be changed by the Board of Trustees ("Board") without shareholder vote, each Fund will invest at least 80% of its total assets in Treasury Securities that are backed by the full-faith and credit of the U.S. Government. An Index Fund may also invest up to 10% of its total assets in repurchase agreements, futures contracts, options and other derivative instruments, only in furtherance of the objective of seeking to closely match the total return, before fees and expenses, of that Fund's Underlying Index. Applicants expect that the returns of each Fund should be highly correlated with the return of its Underlying Index and that the correlation coefficient between each Fund and its Underlying Index will exceed 98% over extended periods and that the annual tracking error will be less than one percentage point of total return relative to its Underlying Index. Annual tracking error will be monitored by the Advisor under the supervision of the Board of Directors of the Fund. Applicants expect that ongoing adjustments will be made in the portfolio of each Index Fund in order to provide investment results in keeping with its investment objective.

The Underlying Indices are based on the OTR Treasury Securities yield curve. An OTR Treasury Security in a given maturity range, such as the six-month bill, two, five and ten-year notes and thirty-year bond, is the most recently auctioned Treasury Security issue with that stated maturity. The OTR Treasury rates for a given maturity have been generally regarded as the

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[1] 15 U.S.C 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] This notice, representing Amendment No. 1, replaces the original Rule 19b–4 filing in its entirety.

[4] 15 U.S.C. 80a.

[5] 15 U.S.C. 78a.

[6] Standard & Poor's Depositary Receipts®, S&P MidCap SPDRs, DIAMONDS®, and NASDAQ–100 Index Tracking Stock(sm) are unit investment trust securities listed under Amex Rules 1000 *et seq.* applicable to Portfolio Depositary Receipts.

[7] The Commission previously approved amendments to Rule 1000A(b) to specify that Index Fund Shares (1) may be based on a portfolio of fixed income securities; (2) may be issued by an investment company in return for a specified portfolio of fixed income securities and/or cash, and (3) may be redeemed at a holder's request by the investment company, which will pay the redeeming holder fixed income securities and/or cash. See Securities Exchange Act Release No. 46252 (July 24, 2002), 67 FR 49715 (July 31, 2002) (Approving File No. SR–Amex–2001–35).

[8] The Trust, ETF Advisors, LLC. ("Advisor"), and ALPs Distributors, Inc. ("Applicants") have filed with the Commission an Application for Orders ("Application") under Section 6(c) of the 1940 Act for the purpose of exempting the Index Funds from various provisions of the 1940 Act and rules thereunder. *See* Investment Company Act Release No. 25725 (September 3, 2002) , 67 FR 57464 (September 10, 2002) (File No. 812–12843). The Commission granted the requested exemptive relief. *See* Investment Company Act Release No. 25759 (September 27, 2002). The information provided in this Rule 19b–4 filing relating to the Index Funds is based on information included in the Application. Additional information regarding the Index Funds is included in the Application.

[9] The Ryan 10 Year Treasury Index is based on the return of the most recently auctioned 10 year Treasury note. Calculated once each day, the Index is available for periods back to November 1, 1977. The 10 Year Treasury note is replaced at each new quarterly auction.

[10] The Ryan 5 Year Treasury Index is based on the return of the most recently auctioned 5 year Treasury note. Calculated once each day, the Index is available for periods back to August 28, 1979. The 5 Year Treasury note is replaced at each new quarterly auction.

[11] The Ryan 2 Year Treasury Index is based on the return of the most recently auctioned 2 year Treasury note. Calculated once each day, the Index is available for periods back to August 24, 1973. The 2 Year Treasury note is replaced at each new monthly auction.

[12] Since May 23, 2001, the Ryan 1 Year Adjusted Treasury Index has been based on (a) the return of the most recently auctioned 6 Month Treasury bill, weighted two-thirds, and (b) the return of the most recently auctioned 2 year Treasury note, weighted one-third. Calculated once each day, the original Index was created on December 31, 1988. The 6 Month Treasury bill is replaced at each weekly auction, and the 2 Year Treasury note is replaced at each new monthly auction.

[13] Except for the Ryan 1 Year Adjusted Treasury Index, the Underlying Indices listed above have been calculated daily since March 21, 1983; Underlying Indices for dates prior to March 21, 1983 have been constructed from historical databases.

[14] *See http://www.ryanindex.com* and *http://www.ryanlabs.com.*

[15] The Applicants believe that a convenient trading range will be between $50–$200 per FITR and each Index Fund reserves the right to declare a stock split or a reverse stock split if the trading price over time falls outside an appropriate trading range price. The Prospectus for each Index Fund will disclose these items, but such items may not be included the product description of the Funds.

[16] See notes 9–13, supra.

[17] "On the run" means the most recent auctioned U.S. Treasury Security in a specified maturity range (*e.g.*, 5 years).

[18] The product descriptions for the Index Funds may not be include information pertaining to a Fund's total return.

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"ultimate" fixed income benchmarks for U.S. dollar-denominated debt because the OTR Treasury instrument yield is the base yield for each maturity against which all other Treasury instruments and most other dollar-denominated fixed income instruments are evaluated. Other dollar-denominated debt instruments are usually traded or referenced at a spread to the appropriate OTR Treasury rate.

To ensure that each Underlying Index correctly reflects the current OTR rate, the Index Provider updates each such index by replacing the component security or securities of such index (the "Component Security or Securities"), so that the old OTR Treasury Security (now the most recent "off-the-run" Treasury Security) is replaced with the new OTR Treasury Security at the time such new Treasury Security is auctioned (this process is referred to as a "roll" strategy or "rolling" the old OTR position into the new OTR Treasury Security). For example, the Ryan 2 Year Treasury Index is updated by rolling the old OTR position in a two-year note to the new OTR two-year note at the time of each Treasury auction of a two-year note. Returns for each such Underlying Index are calculated to reflect the prices and yields of its component securities, based on the assumption that a "roll" strategy is employed.

3. Qualification as a Regulated Investment Company

Each Index Fund intends to qualify for and to elect treatment as a Regulated Investment Company ("RIC") for U.S. federal income tax purposes, with the result that each Fund effectively will be treated as if it were a separate entity and will generally not be subject to U.S. federal income tax on its income to the extent it distributes substantially all of its investment company taxable income and net capital gains and satisfies other applicable requirements of the Internal Revenue Code.

4. Description of the Underlying Indices and OTR Treasury Securities

Each Underlying Index is based on one or more specified debt security series issued by the U.S. Treasury. Each Underlying Index serves as a portfolio benchmark by specifying a selected debt instrument or instruments that correspond to a specified maturity on the U.S. Treasury yield curve.

Rather than matching an Index Fund's Portfolio Securities exclusively to the Component Security or Securities of its Underlying Index, the Advisor, when seeking to closely match the average dollar-weighted duration of the portfolio of the Index Fund to the duration of its Underlying Index, will also invest in Government Securities such as other Treasury Securities, Agency Securities, or related repurchase agreements, futures contracts, options and other derivative instruments. In addition to Government Securities, the Advisor may use repurchase agreements, futures, options and other derivative or synthetic instruments in constructing the portfolio of an Index Fund. The actual positions held in the portfolio of a Fund may consist of OTR Treasury Securities, "off-the-run" Treasury Securities,[19] other Treasury Securities such as STRIPS[20] of any duration, Agency Securities and related repurchase agreements, futures contracts, options and other derivative instruments, subject to limitations discussed in the Application.

The Advisor will be constrained when managing the portfolio of each Index Fund to an average effective duration for the entire Fund's portfolio that will differ by no more than 1 month from the duration of the Ryan 1 Year Adjusted Treasury Index for the 1 year FITRs, by no more than 2 months from the duration of the Ryan 2 Year Treasury Index for the 2 year FITRs, by no more than 6 months from the duration of the Ryan 5 Year Treasury Index for the 5 year FITRs, and by no more than 6 months from the duration of the Ryan 10 Year Treasury Index for the 10 year FITRs. If an Index Fund does not meet those standards at the close of trading on any Business Day, the portfolio of such Fund will be brought into compliance as quickly as practicable.

5. Sales of FITRs

FITRs of an Index Fund will be issued and sold only in Creation Unit Aggregations of a fixed number of shares (*e.g.*, 50,000 shares), as specified in the prospectus for such Fund. Creation Unit Aggregations will be sold through the Distributor on a continuous basis at the NAV per share next determined after an order in proper form is received. The NAV of each Index Fund is expected to be determined as of the close of the regular trading session on the New York Stock Exchange ("NYSE"), (ordinarily 4:00 p.m., (ET))[21] on each Business Day (defined immediately below), and the Trust will sell and redeem Creation Unit Aggregations of each Index Fund only on Business Days.[22]

Creation Unit Aggregations may be purchased only by or through an "Authorized Participant" which is any entity that is a DTC Participant, which has entered into a Participant Agreement (defined below) with the Administrator and the Distributor. Such Authorized Participant will agree pursuant to the terms of such agreement (a "Participant Agreement") on behalf of itself or any investor on whose behalf it will act, as the case may be, to certain conditions, including that such Authorized Participant will make available for each purchase of Creation Unit Aggregations an amount of cash sufficient to pay the Balancing Amount, once the NAV of a Creation Unit Aggregation is next determined after receipt of the purchase order in proper form, together with a Transaction Fee imposed by each Fund in connection with effecting purchases or redemptions. The Authorized Participant may require an investor to enter into an agreement with such Authorized Participant with respect to certain matters, including payment of the Balancing Amount. An investor does not have to be an Authorized Participant, but must place an order through, and make appropriate arrangements with, an Authorized Participant. An Authorized Participant is not required to be a member of the Exchange.

The Applicant states that in order to keep costs low and permit each Index Fund to be as fully invested as possible, FITRs of each Index Fund generally will be purchased in Creation Unit Aggregations in exchange for the purchaser's "in-kind" deposit of a portfolio of particular securities ("Deposit Securities"), together with the deposit of a specified cash payment ("Balancing Amount")(collectively with the Deposit Securities, a "Portfolio Deposit"). The Deposit Securities will consist of a portfolio of particular securities designated by the Advisor in the aggregate to closely match the total return of the relevant Underlying Index.[23]

[19] "Off-the-Run" means U.S. Treasury securities auctioned before the current on-the-run issue.

[20] Separate Trading of Registered Interest and Principal of Securities ("STRIPS").

[21] The nominal "closing time" for the Government Securities markets is generally 3:00 p.m., ET. Trading; however, although less active, continues in such markets after 3:00 p.m., ET.

[22] A "Business Day" is defined as any day that the (i) Government Securities markets in the United States, (ii) the Custodian and (iii) the NYSE, the Amex or relevant other exchange (as described in the Application) are open for business. The term Business Day, therefore does not include certain federal holidays when banks and the Government Securities market are closed but national securities exchanges are open, currently Columbus Day and Veterans Day.

[23] The Custodian of each Index Fund will make available, prior to the Exchange's opening, the Creation List identifying Deposit Securities required for a Creation Unit aggregation. *See* Dissemination of Fund Information, below.

The Balancing Amount is an amount equal to the difference between (1) The NAV (per Creation Unit Aggregation) of the Index Fund and (2) the total aggregate market value (per Creation Unit Aggregation) of the Deposit Securities (such sum referred to herein as the "Deposit Amount"). The Balancing Amount serves the function of compensating for differences, if any, between the NAV per Creation Unit Aggregation and the Deposit Amount.

6. Redemption of FITRs

It is presently expected that redemptions of Creation Unit Aggregations generally will be made by each Index Fund through delivery of designated Portfolio Securities ("Redemption Securities") and a specified cash payment ("Cash Redemption Payment") collectively, a "Redemption Payment." The Custodian, upon receipt of the relevant information from the Advisor, will cause to be published daily the list of Deposit Securities which a creator of Creation Unit Aggregations must deliver to an Index Fund ("Creation List") and the list of Redemption Securities which a redeemer will receive from the Index Fund ("Redemption List").

The Applicants note that in some circumstances it may not be practicable or convenient for an Index Fund to operate on an in-kind basis exclusively. Therefore, the Trust may permit, in its discretion, with respect to an Index Fund, under certain circumstances, an "in-kind" purchaser to substitute cash in lieu of depositing some or all of the requisite Deposit Securities. The Trust reserves the right to determine in the future that FITRs of an Index Fund may be purchased in Creation Unit Aggregations on a "cash-only" basis. The decision to permit cash-only purchases of Creation Unit Aggregations, to the extent made at all in the future, would be made if the Trust and the Advisor believed such method would reduce the Trust's transaction costs or would enhance the Trust's operating efficiency. This would likely happen only in limited circumstances.

The Custodian will make available through the National Securities Clearing Corporation ("NSCC") on each Business Day, prior to the opening of trading on the Amex (currently 9:30 a.m. ET) the Creation List which will contain the names and the required number and maturity of the Deposit Securities included in the current Portfolio Deposit (based on information at the end of the previous Business Day) for each Index Fund. Such Portfolio Deposit will be applicable, subject to any adjustments to the Balancing Amount as described below, in order to effect purchases of Creation Unit Aggregations of a given Index Fund until such time as the next-announced Portfolio Deposit composition is made available.

Creation Unit Aggregations of each Index Fund will be redeemable at their NAV per FITR next determined after receipt of a request for redemption by the relevant Index Fund. Each Index Fund has, pursuant to its organizational documents, the right to make redemption payments in respect of an Index Fund in cash, in-kind, or in a combination of each, provided the value of its redemption payments on a Creation Unit Aggregation basis equals the NAV per the appropriate number of FITRs of such Index Fund.

Applicants currently contemplate that Creation Unit Aggregations of each Index Fund will be redeemed principally "in-kind" by the delivery of Redemption Securities (together with the Cash Redemption Payment). Creation Unit Aggregations of any Index Fund will generally be redeemable on any Business Day in exchange for the Cash Redemption Payment and Redemption Securities in effect on the date a request for redemption is made, along with payment of a Transaction Fee. In addition, just as the Balancing Amount is delivered by the purchaser of Creation Unit Aggregations to the Index Fund, the Index Fund will also deliver to the redeeming beneficial owner (through the Authorized Participant) in cash the Cash Redemption Payment, which on any given Business Day will be an amount calculated in the same manner as that for the Balancing Amount, although the actual amounts may differ if the Redemption List is not identical to the Creation List. To the extent that the Redemption Securities on the Redemption List have a value greater than the NAV of FITRs being redeemed, a cash payment equal to the differential is required to be paid by the redeeming beneficial owner (through the Authorized Participant) to the Index Fund. The Index Fund will transfer the Cash Redemption Payment and the Redemption Securities to the redeeming beneficial owner on T+1, which is the Business Day following the Transmittal Date on which request for redemption is made. The Index Fund may also make redemptions in "cash in lieu" of transferring one or more Redemption Securities to a redeemer if the Index Fund determines, in its discretion, that such method is warranted in the interest of such fund.

7. Passive Management of the Index Funds

The Applicant characterizes the Index Funds as being passively managed. According to the Applicants, passive strategies attempt to track the performance of an underlying benchmark with a stated minimum degree of precision. The analytics behind these strategies focus on reducing negative benchmark tracking differences by bringing a fund's portfolio cash flows in line with those of its benchmark index. In contrast, active managers seek to outperform the benchmark by taking risks involving departures from the benchmark. According to the Applicants, the FITRs' index tracking objective and methodology identifies and classifies the FITRs with other index-based ETFs and fixed income index funds. The Applicants states that any incidental out-performance of an Index Fund's Underlying Index will be achieved without taking significant interest rate or credit risk; the Advisor will look for securities lending and valuation opportunities in cash flow packaging or will use instruments with similar cash flows which are temporarily selling at attractive prices. Applicants note that these are all common fixed income index fund techniques.

8. The FITRs and Creation Unit Aggregation Clearing Process

FITRs traded in the secondary market will be cleared and settled on a "regular way" basis, currently on T+3, through DTC and NSCC and therefore, these transactions will be processed and settled pursuant to DTC and NSCC procedures including the NSCC guarantee of settlement within the NSCC system. The Amex provides daily trade data to the NSCC for clearing in accordance with NSCC rules and procedures.

Purchases and redemptions of Creation Unit Aggregations of FITRs will settle according to the government securities markets' convention of T+1 settlement. Creation Unit Aggregations of FITRs will be debited or credited directly by BNY, as Transfer Agent, in the DTC accounts of the Authorized Participants. BNY will effect the Fund's side of the transaction (issuance of the FITRs owed to the Authorized Participant in the case of a creation, and the transfer of Redemption Securities to the Authorized Participant in the case of a redemption) only after confirmation of receipt of the Authorized Participant's incoming cash and/or security transfer (Deposit Securities and Balancing Amount in the case of a creation, and

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a Creation Unit Aggregation of FITRs and Cash Redemption Payment in the case of a redemption).

When purchasing FITRs in Creation Unit Aggregations, the Authorized Participant will tender to BNY in its capacity as Custodian, the Deposit Securities through Fedwire, the Government Securities Clearing Corporation or any other means acceptable to BNY for the delivery of Government Securities and Balancing Amount by any means acceptable to BNY. As Transfer Agent, BNY will observe the pending receipt of any Balancing Amount and the Deposit Securities go "final" on its settlement system, and take the necessary steps to release the FITRs in Creation Unit Aggregations and credit them in real time to the Authorized Participant's DTC account, completing the transaction. Once such FITRs are acknowledged and credited by DTC, the delivery will go "final" and appear in the Authorized Participant's DTC account, all on T+1.

Alternatively, Creation Unit Aggregations may be purchased by an Authorized Participant in advance of receipt by BNY of all or a portion of the applicable Deposit Securities. In these circumstances, the Authorized Participant must deposit with BNY, as Custodian, cash in an amount equal to the sum of (i) the Balancing Amount, plus (ii) 105% of the market value of any, or all, of the undelivered Deposit Securities (the "Additional Cash Deposit"). An additional amount of cash will be, required to be deposited with BNY pending delivery of the missing Deposit Securities to the extent necessary to maintain the Additional Cash Deposit with BNY in an amount at least equal to 105% of the daily market-to-market value of the missing Deposit Securities. To the extent that missing Deposit Securities are not received by 1:00 p.m., ET, on the first Business Day next following the day on which the purchase order is deemed received by the Distributor or in the event a market-to-market payment is not made within one Business Day following notification by the Distributor that such a payment is required, the Trust may instruct BNY to use the cash on deposit to purchase the missing Deposit Securities in order to complete the purchase order. The Authorized Participant will be liable to the Trust and Fund for the costs incurred by the Trust in connection with any such purchases. These costs will include the amount by which the actual purchase price of the Deposit Securities exceeds the market value of such Deposit Securities on the day the purchase order was deemed received by the Distributor plus the brokerage and related transaction costs associated with such purchases. BNY will return any unused portion of the Additional Cash Deposit once all of the missing Deposit Securities have been properly received by BNY or purchased by the Trust and deposited into the Trust.

When redeeming FITRS in Creation Unit Aggregations the Authorized Participant will transfer to BNY, as Transfer Agent for cancellation, the requisite amount of FITRs through DTC. The Authorized Participant will deliver to BNY as Custodian a cash payment equal to any differential that is required to be paid through the Fedwire. BNY will then transfer the requisite Redemption Securities and any Cash Redemption Payment for receipt by the Authorized Participant on T+1.

In all instances, if an order is not placed in proper form or federal funds in the appropriate amount are not received in accordance with the terms of the Participant Agreement, BNY may reject the order.

9. Dividend Distributions

Dividends from net investment income will be declared and paid at least annually by each Index Fund in the same manner as by other open-end investment companies. Certain of the Index Funds may pay dividends on a semi-annual or more frequent basis. Distributions of realized securities gains, if any, generally will be declared and paid once a year. The dividend amount paid by each Index Fund will be made available on *http://www.amextrader.com*.

The Trust will not make the DTC book-entry Dividend Reinvestment Service available for use by beneficial owners for reinvestment of their cash proceeds, but certain individual brokers may make a dividend reinvestment service available to their clients. The Statement of Additional Information ("SAI") will inform investors of this fact and direct interested investors to contact such investor's broker to ascertain the availability and a description of such a service through such broker.

The Trust will furnish notifications with respect to each distribution and an annual notification as to the tax status of such Fund's distributions to the DTC Participants for distribution to beneficial owners of FITRs of each Index Fund. The Trust will also distribute its annual report containing audited financial statements and copies of annual and semi-annual shareholder reports to the DTC Participants for distribution to beneficial owners of FITRs.

10. Dissemination of Fund Information

The Custodian of each Index Fund, through NSCC, will make available prior to the opening on the Exchange on each Business Day, the Creation List identifying by name and quantity the Deposit Securities required for a Creation Unit Aggregation, the Redemption List identifying by name and quantity the Redemption Securities for such Index Fund, as well as information regarding the Balancing Amount and the Cash Redemption Payment. The NAV for each Index Fund will be calculated and disseminated on each Business Day by the Custodian in the manner described in the SAI for each such Fund. On Business Days, the Amex with respect to each Index Fund intends to disseminate, every 15 seconds, during regular Amex trading hours, through the facilities of the Consolidated Tape Association ("CTA"), Network B, an amount per FITR for each Index Fund.

In this regard, the Amex will disseminate an amount per FITR every 15 seconds, as stated above, for each Index Fund representing its approximate intraday value: The IntraDay Proxy Value ("IDPV"). The data used to provide the IDPV for FITRs will come from third party pricing sources that frequently obtain dealers' yield quotes for the OTR Treasuries and also for the quoted spreads applicable to various off the run Treasuries and other government securities.

The IDPV will be calculated by the Amex but it will not be calculated on days the Government Securities markets are closed and the Amex is open. To calculate the IDPV, the Amex intends to obtain primary pricing information from Reuters but may use other or additional third-party pricing sources in the event that Reuters' pricing information becomes unavailable.[24] The Amex will not be involved in, or responsible for, the calculation of the estimated Balancing Amount nor will it guarantee the accuracy or completeness of the IDPV. Neither the Trust nor any Index Fund will be involved in, or responsible for, the calculation or dissemination of

[24] Applicants have chosen to use Reuters initially, as the source for primary bond pricing information because it is a major provider of financial data information, including bond-pricing information. Applicants have been advised that Reuters obtains Government Securities pricing information directly from major participants in the government securities markets and updates such information on a frequent basis. In the future, another third-party pricing data provider may be utilized if Applicants believe that such source provides equivalent or more accurate data, and such a change in the primary data provider will be fully disclosed.

the IDPV, and will make no warranty as to its accuracy.

The Trust intends to maintain a website that will include the Prospectus and SAI, as well as additional quantitative information on a per FITR basis, including, but not limited to: (a) The prior Business Day's NAV and the bid price (the "Bid Price") [25] at the time of calculation of such NAV, and a calculation of the premium or discount of the Bid Price against such NAV; and (b) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid Price against the NAV, within appropriate ranges, for each of the previous calendar quarters. The Amex intends to disseminate a variety of data with respect to each Index Fund listed on the Amex on a daily basis by means of CTA and CQ High Speed Lines; information with respect to recent NAV, dividends, shares outstanding, estimated cash amount, and total cash amount per Creation Unit Aggregation will be made available daily prior to the opening of the Amex. When and if yield and spread quotations for each Index Fund are made available, they will not be disseminated by the Index Fund. However, the yields of the underlying OTR Treasuries are widely available through various quotation services (*e.g.*, Bloomberg, Reuters, ILX Systems).

The Exchange states that daily and 3:00 p.m. market prices of each Index Fund's Deposit Securities are readily available from a variety of sources, including, as applicable, the Exchange, automated quotation systems, published or other public sources or on-line information services such as Dow Jones Capital Markets, Bridge and Bloomberg. Similarly, the Exchange states that information regarding market prices and volume of FITRs will be broadly available on a real time basis throughout the trading day. Information on the Underlying Indices will be limited or unavailable on days when the Government Securities markets are closed. The previous day's closing price and volume information for FITRs will be published daily in the financial sections of many newspapers.

11. Criteria for Initial and Continued Listing

FITRs are subject to the criteria for initial and continued listing of Index Fund Shares in Rule 1002A. A minimum of two Creation Units (*e.g.*, 50,000 FITRs per Creation Unit) will be required to be outstanding at the start of trading. This minimum number will be comparable to requirements that have been applied to previously listed series of Portfolio Depositary Receipts and Index Fund Shares.

The Exchange believes that the proposed minimum number of Shares outstanding at the start of trading is sufficient to provide market liquidity and to further the Fund's objective to seek to provide investment results that correspond generally to the price and yield performance of the applicable Index.

12. Original and Annual Listing Fees

The Amex original listing fee applicable to the listing of FITRs is $5,000 for each Index Fund. In addition, the annual listing fee applicable to the Fund under Section 141 of the Amex *Company Guide* will be based upon the year-end aggregate number of outstanding shares in all Index Funds of the Trust listed on the Exchange.

13. Stop and Stop Limit Orders

Amex Rule 154, Commentary .04(c) provides that stop and stop limit orders to buy or sell a security (other than an option, which is covered by Rule 950(f) and Commentary thereto) the price of which is derivatively priced upon another security or index of securities, may with the prior approval of a Floor Official, be elected by a quotation, as set forth in Commentary .04(c) (i–v). The Exchange has designated Index Fund Shares, including FITRs as eligible for this treatment.[26]

14. Rule 190

Rule 190, Commentary .04 applies to Index Fund Shares listed on the Exchange, including FITRs. Commentary .04 states that nothing in Rule 190(a) should be construed to restrict a specialist registered in a security issued by an investment company from purchasing and redeeming the listed security, or securities that can be subdivided or converted into the listed security, from the issuer as appropriate to facilitate the maintenance of a fair and orderly market.

15. Prospectus Delivery

The Exchange, in an Information Circular to Exchange members and member organizations, will inform members and member organizations, prior to commencement of trading, of the applicable Product Description delivery obligation to investors purchasing FITRs. The Trust's Application included a request for an exemptive order granting relief from certain prospectus delivery requirements under section 24(d) of the 1940 Act,[27] which the Commission granted.[28] Therefore, Amex Rule 1000A, Commentary .03 applies. The product description used in reliance on the section 24(d) exemption will comply with all representations made therein and all conditions thereto.

16. Trading Halts

In addition to other factors that may be relevant, the Exchange may consider factors such as those set forth in Rule 918C (b) in exercising its discretion to halt or suspend trading in Index Fund Shares, including FITRs. These factors would include, but are not limited to: (1) The extent to which trading is not occurring in securities underlying the index; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.[29] In addition, trading in Shares will be halted if the circuit breaker parameters under Amex Rule 117 have been reached.

17. Suitability

Prior to commencement of trading, the Exchange will issue an Information Circular informing members and member organizations of the characteristics of the Index Funds and of applicable Exchange rules, as well as of the requirements of Amex Rule 411 (Duty to Know and Approve Customers).

18. Purchases and Redemption in Creation Unit Size

In the Information Circular referenced above, members and member organizations will be informed that procedures for purchases and redemptions of Shares in Creation Unit Size are described in the Fund prospectus and Statement of Additional Information, and that Shares are not individually redeemable but are redeemable only in Creation Unit Size aggregations or multiples thereof.

19. Surveillance

Exchange surveillance procedures applicable to trading in the proposed FITRs are comparable to those

[25] The Bid Price per FITR of an Index Fund is determined using the highest bid price on the Exchange on which FITRs of such Index Fund are listed for trading as of the time of calculation of such Index Fund's NAV.

[26] *See* Securities Exchange Act Release No. 29063, note 9 (April 10, 1991), 56 FR 15652 (April 17, 1991) (File No. SR–Amex-90–31) regarding Exchange designation for equity derivative securities as eligible for such treatment under Rule 154, Commentary .04(c).

[27] *See* Investment Company Act Release No. 25725 (September 3, 2002), 67 FR 57464 (September 10, 2002).

[28] *See* Investment Company Act Release No. 25759 (September 27, 2002).

[29] *See* Amex Rule 918C.

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applicable to other Index Fund Shares currently trading on the Exchange. The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the FITRs.[30]

Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Exchange Act,[31] in general, and furthers the objectives of section 6(b)(5),[32] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transaction in securities, and in general to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful review, the Commission finds that implementation of the proposed rule change is consistent with the requirements of section 6 of the Exchange Act,[33] and the rules and regulations thereunder applicable to a national securities exchange.[34] Specifically, the Commission believes that the proposal is consistent with section 6(b)(5) of the Exchange Act.[35] The Commission believes that the Exchange's proposal to list and trade FITRs will provide investors with a convenient way of participating in the investment grade government debt securities.[36] The Exchange's proposal should help to provide investors with increased flexibility in satisfying their investment needs by allowing them to purchase and sell securities at negotiated prices throughout the business day that replicate the performance of several portfolios of fixed income securities. The Commission believes that the availability of the FITRs will provide an instrument for investors to achieve desired investment results that correspond generally to the price and yield performance of the underlying U.S. Treasury, Government/Credit, or Corporate Bond Index. The investment objective of each FITRs will be to provide investment results that correspond generally to the price and yield performance of the underlying index based on fixed income securities. Accordingly, the Commission finds that the Exchange's proposal will facilitate transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.[37]

The Commission finds that because of the nature of the particular debt securities to be included in the portfolios of the Index Fund Shares (*i.e.*, U.S. Government securities and investment grade government debt securities), the pricing information should be available. The Exchange has indicated that the underlying indexes are widely disseminated by various media such as Bloomberg, Reuters, Dow Jones Telerate. Additional analytical data and pricing information may also be obtained through vendors such as Barrons, the *New York Times*, Grants Interest Rate Observer, and Bondweek. In addition, the Ryan indexes are published daily on two Ryan websites.[38]

The Commission also believes that pricing information for the Treasury securities should also be available. Quote and trade information regarding Treasury securities is widely available to market participants from a variety of sources. The electronic trade and quote systems of the dealers and inter-dealer brokers are one such source. Groups of dealers and inter-dealer brokers also furnish trade and quote information to vendors such as Bloomberg, Reuters, Bridge, Moneyline, Telerate, and CQG.[39]

The Commission has also granted the issuer, ETF Advisors Trust, exemptive relief from section 24(d) of the 1940 Act[40] so that dealers may effect secondary market transaction in Barclays ETF shares without delivery of a prospectus to the purchaser. Instead, under the exemption and under Amex's listing standards, sales in the secondary market must be accompanied by a "product description," describing the ETF and its shares. The Commission believes a product description, which not only highlights the basic characteristics of the product and the manner in which the ETF shares trade in the secondary market, but also highlights the differences of the Index Fund Shares from existing equity ETFs and notes the unique characteristics and risks of this product, should provide market participants with adequate notice of the salient features of the product.

The Commission also notes that upon the initial listing of any ETF under Amex Rule 1000A the Exchange issues a circular to its members explaining the unique characteristics and risks of the security; in this instance, Fixed Income ETFs. In particular, the circular should include, among other things, a discussion of the risks that may be associated with the Index Fund Shares, in addition to details on the composition of the fixed income indices upon which they are based and how each Index Fund Shares would use a representative sampling strategy to track its index. The circular also should note Exchange members' responsibilities under Exchange Rule 411 ("know your customer rule") regarding transactions in such Fixed Income ETFs. Exchange Rule 411 generally requires that members use due diligence to learn the essential facts relative to every customer, every order or account accepted.[41] The circular also will address members' prospectus delivery requirements as well as highlight the characteristics of purchases in Index Fund Shares, including that they only are redeemable in Creation Unit size aggregations. Based on these factors, the Commission finds that the proposal to trade the Index Fund Shares is consistent with Section 6(b)(5) of the Exchange Act.[42]

The Commission also notes that the Exchange's rules and procedures should address the special concerns attendant to the trading of new derivative products. In particular, by imposing the Index Fund Share listing standards in Amex Rule 1000A, and addressing the suitability, disclosure, and compliance requirements noted above, the Commission believes that the Exchange has addressed adequately the potential problems that could arise from the derivative nature of the FITRs.

In particular, the Commission finds that adequate rules and procedures exist to govern the trading of Index Fund Shares, including FITRs. Index Fund Shares will be deemed equity securities subject to Amex rules governing the trading of equity securities. These rules include: General and Floor Rules, such as priority, parity, and precedence of orders, market volatility related trading halt provisions pursuant to Rule 117, members dealing for their own accounts, specialists, odd-lot brokers, and registered traders, and handling of orders and reports;[43] Office Rules, such as conduct of accounts, margin rules, and advertising; [44] and Contracts in Securities, such as duty to report transactions, comparisons of transactions, marking to the market, delivery of securities, dividends and interest, closing of contracts, and money and security loans.[45] The Amex also will consider halting trading in any series of Index Funds Shares under certain other circumstances including those set forth in Amex Rule 918C(b)(4) regarding the presence of other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market. The Commission believes that the application of these rules should strengthen the integrity of the FITRs.

The Commission believes that the Amex has appropriate surveillance procedures in place to detect and deter potential manipulation for similar index-linked products. By applying these procedures to the FITRs, the Commission believes that the potential for manipulation should be minimized, while protecting investors and the public interest.

The Exchange requests that the proposed rule change be approved on an accelerated basis pursuant to section 19(b) of the Exchange Act.[46] The Exchange believes there is good cause to grant accelerated approval insofar as the 1940 Act Application relating to the FITRs has been reviewed by the Division of Investment Management and notice of the Application has been published in the **Federal Register**.[47] No comments were submitted and the Commission granted the relief requested in the Application.[48] The FITRs will trade on the Exchange in the same manner as Index Fund Shares previously approved by the Commission, including Index Fund Shares based on an index of fixed income securities.[49] The proposed rule change presents no novel issues with respect to trading of Index Fund Shares. The Exchange anticipates that FITRs will be in a position to begin trading on the Exchange prior to the 30–35 period for Commission action under section 19(b) of the Exchange Act [50] and accelerated approval will permit Exchange trading to begin within the time frame established by the Trust. Based on the above, the Commission finds good cause to accelerate approval of the proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission believes, therefore, that granting accelerated approval of the proposed rule change is appropriate and consistent with section 6 of the Act.[51]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Exchange Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent Amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–AMEX–2001–32 and should be submitted by November 27, 2002.

It is therefore ordered, pursuant to section 19(b)(2) of the Exchange Act,[52] that the proposed rule change (File No. SR–Amex–2001–32), as amended, is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[53]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–28187 Filed 11–5–02; 8:45 am]

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[30] Telephone conversation between Michael Cavalier, Associate General Counsel, American Stock Exchange and Florence Harmon, Senior Special Counsel, and Marc McKayle, Special Counsel, Division of Market Regulation, Commission, on October 28, 2002.

[31] 15 U.S.C. 78f.

[32] 15 U.S.C. 78f(b)(5).

[33] 15 U.S.C. 78f.

[34] 15 U.S.C. 78f(b)(5).

[35] *Id.*

[36] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[37] Pursuant to Section 6(b)(5) of the Act, the Commission must predicate approval of exchange trading for new products upon a finding that the introduction of the product is in the public interest. Such a finding would be difficult with respect to a product that served no investment, hedging or other economic functions, because any benefits that might be derived by market participants would likely be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns.

[38] *See* note 14, *supra.*

[39] The Commission notes that the underlying index value is not disseminated every 15 seconds in contrast to the IDPV and notes that this is predicated on the income components in this product.

[40] 15 U.S.C. 80a–24(d).

[41] Amex Rule 411.

[42] 15 U.S.C. 78f(b)(f).

[43] Amex Rules 1–236.

[44] Amex Rules 300–590.

[45] Amex Rules 700–891.

[46] 15 U.S.C 78s(b).

[47] *See* Investment Company Act Release No. 25725 (September 3, 2002), 67 FR 57464 (September 10, 2002).

[48] *See* Investment Company Act Release No. 25759 (September 27, 2002).

[49] *See* Securities Exchange Act Release No. 46252 (July 24, 2002), 67 FR 49715 (July 31, 2002).

[50] 15 U.S.C. 78s(b).

[51] 15 U.S.C. 78f.

[52] 15 U.S.C. 78s(b)(2).

[53] 17 CFR 200.3–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46743; File No. SR–CBOE–2002–26]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. To Increase Position and Exercise Limits for Options on the DIAMONDS Trust

October 30, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on May 20, 2002, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to increase position and exercise limits for options on the DIAMONDS Trust ("DIA") to 300,000 contracts on the same side of the market. The Exchange's reporting requirements for DIAMONDS Trust options will serve to identify options holdings and information concerning

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

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the hedging of these positions. The text of the proposed rule change is set forth below. Proposed new language is *italicized;* proposed deletions are in brackets.

* * * * *

Chapter IV—Business Conduct

Rule 4.11. Position Limits NO CHANGE

* * * Interpretations and Policies:

.01 through .06 NO CHANGE.

.07 The position limits under Rule 4.11 applicable to options on shares or other securities that represent interests in registered investment companies (or series thereof) organized as open-end management investment companies, unit investment trusts or similar entities that satisfy the criteria set forth in Interpretation and Policy .06 under Rule 5.3 shall be the same as the position limits applicable to equity options under Rule 4.11 and Interpretations and Policies thereunder. The position limits under Rule 4.11 applicable to options on the Nasdaq-100 Index Tracking Stock℠ ("QQQ") *and the DIAMONDS Trust (DIA)* shall be 300,000 option contracts.

* * * * *

Rule 4.12. Exercise Limits NO CHANGE

* * * Interpretations and Policies:

.01 NO CHANGE.

.02 The exercise limits established under Rule 4.12 in respect of options on shares or other securities that represent interests in registered investment companies (or series thereof) organized as open-end management investment companies, unit investment trusts or similar entities that satisfy the criteria set forth in Interpretation and Policy .06 under Rule 5.3 shall be equivalent to the position limits prescribed for such options in Interpretation and Policy .07[6] under Rule 4.11, subject to any exemptions granted in respect of such position limits.

* * * * *

Rule 4.13. Reports Related to Position Limits

(a) NO CHANGE.

(b) In addition to the reporting requirement described in paragraph (a) of this Rule, each member (other than an Exchange market-maker or DPM) that maintains a position in excess of 10,000 non-FLEX equity option contracts or 100,000 QQQ or DIA contracts on the same side of the market on behalf of its own account or for the account of a customer, shall report information as to whether such positions are hedged, and provide documentation to as to how such contracts are hedged, in a manner and form prescribed by the Exchange. In addition, whenever the Exchange determines based on a report to the Department of Market Regulation or otherwise, that a higher margin requirement is necessary in light of the risks associated with an under-hedged QQQ or *DIA* option position in excess of 100,000 contracts or Non-FLEX equity option position in excess of 10,000 contracts on the same side of the market, the Exchange may consider imposing additional margin upon the account maintaining such under-hedged position, pursuant to its authority under Exchange Rule 12.10. Additionally, it should be noted that the clearing firm carrying the account will be subject to capital charges under SEC Rule 15c3–1 to the extent of any margin deficiency resulting from the higher margin requirements.

(c)–(d) NO CHANGE.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Commission has stated that position and exercise limits "must not be established at levels that are so low as to discourage participation in the options market by institutions and other investors with substantial hedging needs or to prevent specialists and market-makers from adequately meeting their obligations to maintain a fair and orderly market." [3]

The DIAMONDS Trust, based on the Dow Jones Industrial Average, is among the most actively traded exchange-traded funds, averaging 4.5 million shares per day during the previous six months. Moreover, the components comprising the fund are themselves among the most actively traded and widely held securities listed in the U.S. As shown in the following table, the average number of shares outstanding for the 30 components of the DJIA is 2.55 billion shares, ranging from a high of 9.9 billion shares (General Electric Co.) to a low of 291.7 million shares (Eastman Kodak Co.). The 6-month average daily trading volume ranges from a high of 48 million shares per day (Intel Corp.) to a low of 2 million shares per day (Caterpillar, Inc.).

Ticker	Company name	Shares out (millions)	Stock volume 6-mo ADV
1 INTC	INTEL CORP	6,703.00	48,065,436
2 MSFT	MICROSOFT CORP	5,415.46	29,527,880
3 GE	GENERAL ELECTRIC CO	9,935.63	23,410,290
4 C	CITIGROUP INC	5,165.40	13,221,095
5 T	AT&T CORP	3,566.31	12,964,184
6 XOM	EXXON MOBIL CORPORATION	6,792.60	10,953,032
7 HPQ	HEWLETT-PACKARD CO	3,019.17	10,634,250
8 JPM	JP MORGAN CHASE & CO	1,990.20	10,080,997
9 IBM	INTL BUSINESS MACHINES CORP	1,716.94	8,435,996
10 DIS	THE WALT DISNEY CO.	2,039.34	8,013,419
11 WMT	WAL-MART STORES INC	4,451.23	7,512,838
12 JNJ	JOHNSON & JOHNSON	3,047.15	7,264,796
13 SBC	SBC COMMUNICATIONS INC	3,340.17	7,064,081

[3] See H.R. Rep. No. IFC–3, 96th Cong., 1st Sess. At 189–91 (Comm. Print 1978).

Ticker	Company name	Shares out (millions)	Stock volume 6-mo ADV
14 HD	HOME DEPOT INC	2,350.05	6,898,992
15 MRK	MERCK & CO., INC.	2,271.09	6,878,693
16 MO	PHILIP MORRIS COMPANIES INC	2,147.30	5,855,147
17 AXP	AMERICAN EXPRESS CO	1,340.95	5,017,522
18 KO	COCA-COLA CO/THE	2,484.72	4,773,278
19 MCD	MCDONALD'S CORPORATION	1,271.96	4,682,622
20 BA	BOEING CO	838.71	3,947,814
21 GM	GENERAL MOTORS CORP	560.50	3,845,899
22 HON	HONEYWELL INTERNATIONAL INC	814.97	3,721,316
23 AA	ALCOA INC	846.65	3,578,749
24 PG	PROCTER & GAMBLE CO	1,299.61	3,223,338
25 DD	DU PONT (E.I.) DE NEMOURS	992.95	3,137,774
26 IP	INTERNATIONAL PAPER CO	482.72	2,851,071
27 EK	EASTMAN KODAK CO	291.74	2,811,618
28 UTX	UNITED TECHNOLOGIES CORP	472.86	2,540,922
29 MMM	3M CO	389.35	2,014,652
30 CAT	CATERPILLAR INC	343.45	1,988,112
	Average	2,546.07	8,830,527

The Exchange notes that there are currently no position limits for DJX options, which are the same size and have an equivalent economic payoff as options on DIAMONDS. Based on DIAMONDS portfolio holdings as of May 6, 2002, the proposed position limit of 300,000 contracts represents a holding of just over 2 million shares of each security comprising the DJIA, which is less than 1% of each components' outstanding shares and, in most cases, equal to no more than 1 day's trading volume. The 300,000 contract position limit is currently in place for options on the Nasdaq-100 Index Tracking Stock (QQQ). The Exchange believes that increasing position limits for this product will lead to a more liquid and competitive market environment for DIA options that will benefit customers interested in this product.

Reporting Requirements

Consistent with the reporting requirement for QQQ options, the Exchange will require that each member or member organization that maintains a position on the same side of the market in excess of 100,000 contracts in the DIA option class, for its own account or for the account of a customer report certain information. This data would include, but would not be limited to, the option position, whether such position is hedged and if so, a description of the hedge and if applicable, the collateral used to carry the position. Exchange market-makers (including DPMs) would continue to be exempt from this reporting requirement as market-maker information can be accessed through the Exchange's market surveillance systems. In addition, the general reporting requirement for customer accounts that maintain a position in excess of 200 contracts will remain at this level for DIA options.[4]

2. Statutory Basis

The Exchange represents that the proposed rule change is consistent with Section 6(b) of the Act,[5] in general, and furthers the objectives of Section 6(b)(5),[6] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

[4] See CBOE Rule 4.13(a).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All

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submissions should refer to the File No. SR–CBOE–2002–26 and should be submitted by November 27, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–28130 Filed 11–5–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46742; File No. SR–NASD–2002–123]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change and Amendment No. 1 by the National Association of Securities Dealers, Inc. Relating to Modification of the Trade or Move Process in the Nasdaq Order Collection and Display Facility ("SuperMontage")

October 30, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 19, 2002, the National Association of Securities Dealers, Inc. ("NASD" or "Association") through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I and II below, which Items have been prepared by Nasdaq.[3] The Commission is publishing this notice to solicit comments on the proposed rule change and Amendment No. 1 from interested persons and to approve the proposal, as amended, on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to amend NASD Rule 4613, "Character of Quotations," to permit Nasdaq, upon the filing of a complaint by a member or an Unlisted Trading Privilege ("UTP") Exchange, to declare null and void a Trade-or-Move Directed Order executed at or after 9:29:30 a.m. The text of the proposed rule change appears below. Proposed new language is in *italics*.

Rule 4613—Character of Quotations

(a)–(d) No Change.

(e) Locked and Crossed Markets.

(1) A market maker shall not, except under extraordinary circumstances, enter or maintain quotations in Nasdaq during normal business hours if:

(A) No Change.

(B) No Change.

(C) Obligations Regarding Locked/Crossed Market Conditions Prior to Market Opening

(i)–(vi) No Change.

(vii) A Trade or Move Directed Order that is executed at or after 9:29:30 may, upon the filing of a complaint by a member or UTP Exchange, be declared null and void in accordance with the procedures set forth in NASD Rule 11890.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) *Purpose*

NASD Rule 4613(e) sets out the obligations of market participants who enter locking/crossing quotations during the pre-market opening period.[4] The rule requires a market participant that locks or crosses the market between 9:20 a.m. and 9:29:30 a.m. to send a Directed Order(s) with a "Trade-or-Move" designator ("Trade-or-Move Directed Order") to the parties it is locking or crossing. The aggregate size of the Trade-or-Move Directed Order must be at least 10,000 shares for S&P 400 Index issues and Nasdaq 100 Index issues, and 5,000 shares for other issues.[5] Within ten seconds of the receipt of a Trade-or-Move Directed Order, the recipient must either trade in full with the incoming Trade-or-Move Directed Order or move its quote to a price that would unlock/uncross the market. In essence, the rule prohibits a market participant from locking/crossing the market during the ten minutes prior to the opening, unless the market participant is willing to commit the required number of shares.

Under the SuperMontage opening process, starting at 9:29:30 a.m., Nasdaq will take steps to resolve any outstanding locks/crosses by automatically executing any remaining overlapping buy and sell quotes using the most aggressively priced matching method contained in NASD Rule 4710(b)(3)(B). At the end of this automated process, which should be completed before the 9:30:00 a.m. market open, all locked /crossed markets will be eliminated.

A Trade-or-Move Directed Order has a minimum life of ten seconds by rule before it may be canceled, and the Directed Order process has a built-in five-second minimum life. Therefore, a market participant could receive an execution on a Trade-or-Move Directed Order sent in the final seconds before 9:29:30 a.m. and also receive an execution against its locking/crossing quote in the SuperMontage opening process. Thus, a market participant could be subject to a double execution (*i.e.*, against its quote during the SuperMontage opening process and for the outstanding Trade-or-Move Directed Order).

To address these potential double executions, Nasdaq believes that the recipient of a Trade-or-Move Directed Order should not execute the Trade-or-Move Directed Order after 9:29:30 a.m. and that members should consider Trade-or-Move Directed Orders pending at 9:29:30 a.m. to be null and void. According to Nasdaq, because member firms are concerned that they or others may inadvertently execute a Trade-or-Move Directed Order after 9:29:30 a.m. due to a system malfunction or human error, members have asked that Nasdaq staff be permitted to cancel trades resulting from the improper execution of a Trade-or-Move Directed Order.

NASD Rule 4613(e), as amended, will convey the authority to declare an execution null and void, and is based on the fact of executing a Trade-or-Move Directed Order at or after 9:29:30 a.m. Under the proposal, Nasdaq seeks the authority to declare null and void only the execution of the Trade-or-Move Directed Order, and not an execution against a quotation during the SuperMontage opening process. The execution of a market participant's Trade-or-Move Directed Order and against that market participant's locking/crossing quotation would constitute a double execution and, under the proposal, could trigger the filing of a complaint asking Nasdaq to declare null and void the Trade-or-Move Directed Order.

The procedures to declare an execution null and void are those contained in NASD Rule 11890, "Clearly Erroneous Transactions." While the execution of a Trade-or-Move Directed Order is not "clearly erroneous" as ordinarily used in the context of NASD Rule 11890, Nasdaq believes that the procedures contained in that rule are particularly well suited to resolving the improper execution of a Trade-or-Move Directed Order. Thus, Nasdaq staff will be required only to determine that a Trade-or-Move Directed Order was executed at or after 9:29:30 a.m. to declare that execution null and void after following the complaint procedures set forth in NASD Rule 11890.

In particular, NASD Rule 11890 provides Nasdaq with the authority to receive petitions from market participants requesting that designated officers of Nasdaq review the terms of a transaction and nullify or modify it if the transaction is found to be clearly erroneous. Under subsections (a) and (b) of current NASD Rule 11890, a market participant may seek review by submitting a written complaint to Nasdaq Market Operations within specified time parameters. Subsection (c) of current NASD Rule 11890 sets forth the procedures for designated Nasdaq officers to review transactions on their own motion. In this proposal, Nasdaq seeks the authority to declare transactions null and void in accordance with current subsections (a) and (b) of NASD Rule 11890, but not with current subsection (c) of that rule.[6]

(2) *Basis*

Nasdaq believes that the proposed rule change is consistent with section 15A of the Act,[7] and, in particular with section 15A(b)(6),[8] which requires, among other things, that a registered national securities association's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. Nasdaq believes that the proposed rule change is consistent with these requirements because the amendment will enhance the interaction of the Trade-or-Move rule with the SuperMontage opening, thereby ensuring a smooth opening of daily trading for the ultimate benefit of investors.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–2002–123 and should be submitted by November 27, 2002.

IV. Commission Findings and Order Granting Accelerated Approval of the Proposed Rule Change

Nasdaq has asked the Commission to approve the proposal on an accelerated basis to allow the implementation of SuperMontage, which began on October 14, 2002, to proceed smoothly. Nasdaq notes that market participants are familiar with the procedures used to declare a trade null and void, and that those procedures provide substantial protections to all parties.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association and, in particular, with the requirements of section 15A(b)(6) of the Act[9] in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest.[10] The Commission believes that the proposal will contribute to an orderly opening by facilitating the effective interaction of the Trade-or-Move requirements and the SuperMontage opening process. Specifically, the proposal will allow a member or UTP Exchange to file a complaint asking Nasdaq to declare null and void the execution of a Trade-or-Move Directed Order executed at or after 9:29:30 a.m., thereby providing a means to address the double execution that would result from the execution of a market participant's Trade-or-Move Directed Order at or after 9:29:30 a.m. and an execution against that market participant's locking/crossing quotation during the SuperMontage opening process. According to Nasdaq, market participants are concerned that a Trade-or-Move Directed Order pending at 9:29:30 a.m. could be executed inadvertently due to a system malfunction or human error. The Commission believes that the proposal provides a means to eliminate the double execution that could result from the inadvertent execution of a Trade-or-Move Directed Order during the SuperMontage opening process.

Under the proposal, a market participant must follow the procedures set forth in NASD Rule 11890 to ask Nasdaq to declare null and void a

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[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On October 16, 2002, Nasdaq filed Amendment No. 1 to the proposal. Amendment No. 1 revised the proposal to: (1) provide that Nasdaq may declare null and void a trade resulting from the execution of a Trade-or-Move Directed Order during the SuperMontage pre-opening process only upon the filing of a complaint by a member or by an Unlisted Trading Privilege ("UTP") Exchange; and (2) clarify that Nasdaq may declare null and void the execution of a Trade-or-Move Directed Order, not an execution against a quotation during the SuperMontage opening process.

[4] A locked market occurs when the quoted bid price is the same as the quoted ask price. A crossed market occurs when the quoted bid price is greater than the quoted ask price.

[5] See Securities Exchange Act Release No. 45990 (May 28, 2002), 67 FR 38535 (June 4, 2002 (order approving File No. SR–NASD–00–76).

[6] On September 23, 2002, Nasdaq filed proposed rule change SR–NASD–2002–127 to amend NASD Rule 11890 to clarify the scope of its authority to declare trades null and void. That proposal combines subsections (a) and (b) of current NASD Rule 11890 into a single subsection (a), and re-letters current subsection (c) as new subsection (b). If the Commission approves SR–NASD–2002–127, Nasdaq would have authority to review Trade-or-Move transactions only under new subsection (a) of NASD Rule 11890.

[7] 15 U.S.C. 78o–3.

[8] 15 U.S.C. 78o–3(b)(6).

[9] 15 U.S.C. 78o–3(b)(6).

[10] In approving the proposed rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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Trade-or-Move Directed Order.[11] The Commission concluded previously that the procedures in NASD Rule 11890 promote the fair and efficient resolution of disputes involving clearly erroneous transactions.[12] Similarly, the Commission believes that the procedures in NASD Rule 11890 will provide a fair and efficient means for addressing a double execution resulting from the execution of a market participant's Trade-or-Move Directed Order and an execution against that market participant's locking/crossing quotation during the SuperMontage opening process.

The Commission finds good cause for approving the proposed rule change and Amendment No. 1 prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Specifically, the Commission finds that the proposal will contribute to an orderly opening by facilitating the effective interaction of the Trade-or-Move requirements and the SuperMontage opening process. The Commission finds that Amendment No. 1 clarifies the proposal by indicating that Nasdaq will declare null and void the execution of a Trade-or-Move Directed Order only after a member or UTP Exchange files a complaint regarding the execution, and by specifying that Nasdaq would declare null and void the execution of a Trade-or-Move Directed Order rather than an execution against a locking/crossing quotation during the SuperMontage opening process. Accordingly, the Commission believes that there is good cause, consistent with sections 15A(b)(6) and 19(b)(2) of the Act,[13] to approve the proposal, as amended, on an accelerated basis.

It is therefore Ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (SR–NASD–2002–123), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–28132 Filed 11–5–02; 8:45 am]

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[11] As discussed more fully above, the proposal does not authorize Nasdaq on its own motion to declare null and void the execution of a Trade-or-Move Directed Order.

[12] *See* Securities Exchange Act Release No. 39550 (January 14, 1998), 63 FR 4333 (January 28, 1998) (order approving File No. SR-NASD–96–51).

[13] 15 U.S.C. 78o–3(b)(6) and 78s(b)(2).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46744; File No. SR–NASD–2002–150]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. to Extend the Pilot Nasdaq Transaction Services Pricing Package

October 30, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and rule 19b–4 thereunder,[2] notice is hereby given that on October 18, 2002, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in items I and II below, which items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to extend, through March 31, 2003, three components of the pilot Nasdaq Transaction Services pricing package currently in effect ("pricing pilot").[3] The components of the pricing pilot extended by this proposal include: (1) The $0.002 order execution fee for Nasdaq National Market Execution System ("NNMS" or "SuperSoes") orders; (2) the $0.001 per share rebate for liquidity providers on SuperSoes executions; and (3) the $0.01 quote update fee. Without such an extension, these pricing standards would terminate on October 31, 2002. The text of the proposed rule change is set forth below. Proposed new language is *italicized*; proposed deletions are in brackets.

* * * * *

7010. System Services

(a)–(i)(1) No change.

(i)(2) Nasdaq National Market Execution System (SuperSoes)

The following charges shall apply to the use of the Nasdaq National Market Execution System:

Order Entry Charge—$0.10 per order entry (entering party only)

Per share Charge—$0.001 per share executed for all fully or partially executed orders (entering party only)

Cancellation Fee—$0.25 per order cancelled (canceling party only)[4]

For a pilot period commencing on November 1, 2001 and lasting until [October] *March* 31, 200[2]*3*, the per share charge will be $0.002 per share executed for all fully or partially executed orders (entering party only).

(3) No change.

(4) Liquidity Provider rebate

For a pilot period commencing on November 1, 2001 and lasting until [October] *March* 31, 200[2]3:

(A) No change.

(B) No change.

(5) Quotation Updates

(A) Except as provided in subparagraph (B), for a pilot period commencing on February 1, 2002 and lasting until [October] *March* 31, 200[2]*3*, a fee of $0.01 per quotation update will be charged to NASD members that post quotations in the Nasdaq quotation montage. A "quotation update" includes any change to the price or size of a displayed quotation or reserve size.

(B) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq proposes to extend to March 31, 2003, three components of the pricing pilot. The components of the pricing pilot extended by this proposal include: (1) The $0.002 order execution fee for SuperSoes orders; (2) the $0.001 per share rebate for liquidity providers on SuperSoes executions; and (3) the $0.01 quote update fee. Without the extension, the pricing pilot will expire on October 31, 2002. Nasdaq represents that the pilot extension is needed in order to ensure pricing continuity throughout the rollout of SuperMontage,[5] which will not be complete by October 31, 2002.

Beginning on October 5, 2001,[6] Nasdaq instituted a pricing pilot program that increased the per share charge for the use of SuperSoes; and introduced a rebate to providers of liquidity in SuperSoes. Nasdaq represents that the program was introduced as part of Nasdaq's ongoing efforts to align the prices charged to market participants for using SuperSoes with the costs of providing services as well as the benefits provided to market participants. As a result of this program, the per share charge for orders entered and executed in SuperSoes increased from $0.001 per share to $0.002 per share.[7] This increase was accompanied by the institution of a rebate designed to enhance market efficiency and fairness by offering incentives to market participants that provide liquidity through SuperSoes. Nasdaq represents that the rebate was also structured to address competitive disparities that existed between electronic communications networks that charge non-subscribers fees for accessing their quotes, and market makers that are generally prohibited by the SEC from charging fees.

Beginning February 1, 2002,[8] Nasdaq instituted a quotation update fee applicable to NASD members of $0.01 per quotation update. Nasdaq represents that the quotation update fee was introduced in recognition of the fact that the ability to post quotes in the Nasdaq quotation montage provides market participants with the valuable opportunity to advertise the liquidity that they offer. In addition, by not charging for quotation updates, Nasdaq was allowing its participants to quote inefficiently. Nasdaq believes that the quotation update fee discouraged the practice of posting an excessive number of quote updates that resulted in very few executed trades, while still encouraging market makers to provide liquidity through the rebate program introduced in October 2001.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act,[9] in general and with sections 15A(b)(5) and 15A(b)(6) of the Act.[10] Section 15A(b)(5) requires that the rules of the NASD provide for the equitable allocation of reasonable fees, dues, and other charges among members and issuers and other persons using any facility of system which the NASD operates or controls. Section 15A(b)(6) requires rules that foster cooperation and coordination with persons engaged in facilitating transactions in securities and that are not designed to permit unfair discrimination between customers, issuers, brokers or dealers. Nasdaq believes that the proposed rule changes will ensure the fair and orderly operation of Nasdaq and the protection of investors by ensuring pricing continuity throughout the SuperMontage rollout.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Nasdaq has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act[11] and Rule 19b–4(f)(6)[12] thereunder because the proposal: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative prior to 30 days after the date of filing or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that Nasdaq has given the Commission notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such short time as designated by the Commission. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Act.

Nasdaq has requested that the Commission waive the five-day pre-filing notice requirement and the 30-day operative delay. The Commission believes that the proposed rule change is consistent with the protection of investors and the public interest and therefore believes there is good cause to waive the five-day pre-filing notice requirement and to designate the proposal as immediately operative upon filing. The Commission notes that the proposal extends a current pilot program already in place. Acceleration of the operative date will allow the pilot to operate continuously through March 31, 2003. For these reasons, the Commission finds good cause to waive the five-day pre-filing notice requirement and to designate that the proposal become operative immediately upon filing.[13]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The pricing pilot components to be extended by this proposal were established by Securities Exchange Act Release No. 44910 (Oct. 5, 2001), 66 FR 52167 (Oct. 12, 2001) (SR–NASD–2001–67); No. 45342 (Jan. 28, 2002), 67 FR 5019 (Feb. 1, 2002) (SR–NASD–2001–96); and No. 45379 (Jan. 31, 2002), 67 FR 5867 (Feb. 7, 2002) (SR–NASD–2001–64 and SR–NASD–2001–68).

[4] Nasdaq corrected a typographical error that appeared in the proposed rule language. Telephone conversation between Teri Nelson Jacoby, Assistant General Counsel, Nasdaq and Susie Cho, Special Counsel, Division of Market Regulation, Commission, October 23, 2002.

[5] On January 19, 2001, the Commission issued an order to approve a proposed rule change to establish SuperMontage, Nasdaq's new proprietary system for quote display and transaction execution. See Securities Exchange Act Release No. 43863 (Jan. 19, 2001), 66 FR 8020 (Jan. 26, 2001) (SR–NASD–99–53).

[6] *See* Securities Exchange Act Release No. 44910 (Oct. 5, 2001), 66 FR 52167 (Oct. 12, 2001) (SR–NASD–2001–67).

[7] The $0.002 per share charge for non-members became effective in February 2002. *See* Securities Exchange Act Release No. 45379 (Jan. 31, 2002), 67 FR 5867 (Feb. 7, 2002) (SR–NASD–2001–64 and SR–NASD–2001–68).

[8] *See* Securities Exchange Act Release No. 45342 (Jan. 28, 2002), 67 FR 5019 (Feb. 1, 2002) (SR–NASD–2001–96).

[9] 15 U.S.C. 78o–3.

[10] 15 U.S.C. 78o–3(b)(5) and (6).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6).

[13] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of Nasdaq. All submissions should refer to File No. SR–NASD–2002–150 and should be submitted by November 27, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–28133 Filed 11–5–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46747; File No. SR–NYSE–2002–57]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. Extending the Pilot Regarding Shareholder Approval of Stock Option Plans Through December 30, 2002, or Such Earlier Date as the NYSE's Pending Rule Proposal Requiring Shareholder Approval of Equity-Compensation Plans is Approved by the Commission

October 30, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 29, 2002, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend until December 30, 2002, or such earlier date as the NYSE's pending rule proposal requiring shareholder approval of equity-compensation plans[3] is approved by the Commission, the effectiveness of the amendments to Sections 312.01, 312.03 and 312.04 of the Exchange's Listed Company Manual with respect to the definition of a "broadly-based" stock option plan, which were approved by the Commission on a pilot basis (the "Pilot") on June 4, 1999.[4] The Pilot was subsequently amended and extended on March 30, 2001 until September 30, 2001.[5] The Pilot has since been extended until January 11, 2002,[6] March 11, 2002,[7] May 13, 2002,[8] June 30, 2002,[9] August 31, 2002,[10] and October 30, 2002.[11]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange has had the Pilot with respect to the definition of a "broadly-based" stock option plan since June 4, 1999.[12] On July 13, 2000, the Exchange filed a proposed rule change seeking to extend the effectiveness of the Pilot until September 30, 2003.[13] Following receipt of comments from interested parties and the SEC staff, on January 19, 2001, the Exchange amended the 2000 Extension Request to shorten the three-year extension request to one year and to amend the definition of "broadly based" under the Exchange's rule. While the 2000 Extension Request was under consideration, the Commission extended the Pilot to provide the Commission and the Exchange with additional time to review and evaluate comment letters.[14] On March 30, 2001, the Commission approved the 2000 Extension Request, which amended and extended the Pilot, on a pilot basis until September 30, 2001.[15] The Exchange's 2001 Extension Request extended the Pilot until January 11, 2002 to provide additional time to evaluate the issues presented by the Pilot.[16] The Pilot was again extended several times, most recently until October 30, 2002, for the same reasons.[17]

On October 7, 2002, in connection with the Exchange's corporate governance proposals, the Exchange filed a proposal with the Commission that would require shareholder approval for equity-compensation plans, making it unnecessary to continue the Pilot. That proposal was published in the **Federal Register** on October 11, 2002.[18] As directed by the Commission staff, the Exchange is requesting an extension of the effectiveness of the Pilot until December 30, 2002, or until such earlier date as the Exchange's proposal relating to shareholder approval of equity-compensation plans is approved by the Commission.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,[19] which

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 46620 (October 8, 2002), 67 FR 63486 (October 11, 2002) (File No. SR–NYSE–2002–46).

[4] *See* Securities Exchange Act Release No. 41479, 64 FR 31667 (June 11, 1999) (notice of filing and order granting accelerated approval, on a pilot basis, to File No. SR–NYSE–98–32) ("Original Pilot Approval Order").

[5] *See* Securities Exchange Act Release No. 44141, 66 FR 18334 (April 6, 2001) (order granting approval, on a pilot basis, to the File No. SR–NYSE–00–32).

[6] *See* Securities Exchange Act Release No. 44886 (September 28, 2001), 66 FR 51083 (October 5, 2001) (notice of filing and immediate effectiveness of File No. SR–NYSE–2001–37) ("2001 Extension Request").

[7] *See* Securities Exchange Act Release No. 45275 (January 14, 2002), 67 FR 2718 (January 18, 2002) (File No. SR–NYSE–2002–03).

[8] *See* Securities Exchange Act Release No. 45546 (March 12, 2002), 67 FR 10272 (March 18, 2002) (File No. SR–NYSE–2002–14).

[9] *See* Securities Exchange Act Release No. 45918 (May 13, 2002), 67 FR 35174 (May 17, 2002) (File No. SR–NYSE–2002–18).

[10] *See* Securities Exchange Act Release No. 46143 (June 28, 2002), 67 FR 35174 (July 5, 2002) (File No. SR–NYSE–2002–22).

[11] *See* Securities Exchange Act Release No. 46437 (August 29, 2002), 67 FR 57262 (September 9, 2002) (File No. SR–NYSE–2002–42).

[12] *See* Original Pilot Approval Order note 4 *supra*.

[13] *See* Securities Exchange Act Release No. 43111 (August 2, 2000), 65 FR 49046 (August 10, 2000) (notice of filing of File No. SR–NYSE–00–32) ("2000 Extension Request").

[14] *See* Securities Exchange Act Release Nos. 43329 (September 22, 2000), 65 FR 58833 (October 2, 2000) (notice of filing and immediate effectiveness of File No. SR–NYSE–00–38); 43647 (November 30, 2000), 65 FR 77407 (December 11, 2000) (notice of filing and immediate effectiveness of File No. SR–NYSE–00–52); and 44018 (February 28, 2001), 66 FR 13821 (March 7, 2001) (notice of filing and immediate effectiveness of File No. SR–NYSE–2001–04).

[15] *See* note 5 *supra*.

[16] *See* note 6 *supra*.

[17] *See* notes 7 through 11 *supra*.

[18] *See* note 3 *supra*.

[19] 15 U.S.C. 78f(b)(5).

requires, among other things, that an Exchange have rules designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[20] and Rule 19b–4(f)(6)[21] thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[22] normally does not become operative prior to 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii),[23] the Commission may designate a shorter time if such action is consistent with the protection of investors and public interest. The Exchange seeks to have the proposed rule change become operative on or before October 30, 2002, in order to allow the Pilot to continue in effect on an uninterrupted basis. In addition, under Rule 19b–4(f)(6)(iii), the Exchange is required to provide the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date or such shorter time as designated by the Commission. The Commission has waived the five-day pre-notice requirement for this proposed rule change. In addition, for the reasons discussed below, the Commission has also waived the thirty-day operative date requirement for this proposed rule change.

The Commission, consistent with the protection of investors and the public interest, has determined to make the proposed rule change, which will extend the Pilot through December 30, 2002, or such earlier date as the NYSE's pending rule proposal requiring shareholder approval of equity-compensation plans[24] is approved by the Commission, become operative on October 30, 2002. The Commission notes that unless the Pilot is extended, the Pilot will expire and the provisions of Sections 312.01, 312.03, and 312.04 of the Exchange's Listed Company Manual that were amended in the Pilot will revert to those in effect prior to June 4, 1999. The Commission believes that such a result could lead to confusion.

The Commission recognizes that the Pilot has generated many comment letters from commenters that do not support the NYSE's definition of "broadly-based" stock option plans under the Pilot.[25] The Commission also notes that many commenters were critical of the NYSE's existing rules on broadly-based plans prior to the adoption of the original Pilot. As noted above, if the Pilot is not extended, the rules prior to the Pilot will go into effect. The proposed rule change merely extends the duration of the Pilot for only a short period of time and does not deal with the substantive issues presented by the Pilot itself.

The Commission notes that once the Exchange's proposed rule change relating to shareholder approval of equity compensation plans has been approved by the Commission, those approved rules will supersede this Pilot because the concept of "broadly-based" stock option plans will no longer be retained in the Exchange's shareholder approval rules.

Based on these reasons, the Commission has determined that it is consistent with the protection of investors and the public interest that the proposed rule change, which will extend the Pilot through December 30, 2002, or such earlier date as the NYSE's pending rule proposal requiring shareholder approval of equity-compensation plans is approved by the Commission, become operative on October 30, 2002.[26] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the File No. SR–NYSE–2002–57 and should be submitted by November 27, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[27]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–28131 Filed 11–5–02; 8:45 am]

BILLING CODE 8010–01–P

[20] 15 U.S.C. 78s(b)(3)(A).

[21] 17 CFR 240.19b–4(f)(6).

[22] *Id.*

[23] 17 CFR 240.19b–4(f)(6)(iii).

[24] *See* note 3 *supra*.

[25] *See* Original Pilot Approval Order, note 4 *supra*.

[26] For purposes only of accelerating the operative date of this proposal, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[27] 17 CFR 200.30–3(a)(12).

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DEPARTMENT OF STATE

[Public Notice 4158]

United States International Telecommunication Advisory Committee; Preparations for Various Telecommunication Standardization Meetings: Notice of Meetings

The Department of State announces meetings of the U.S. International Telecommunication Advisory Committee (ITAC). The purpose of the Committee is to advise the Department on policy, technical and operational issues with respect to international telecommunications standardization bodies such as the International Telecommunication Union.

The ITAC will meet to debrief the ITU Plenipotentiary Meeting recently completed in Marrakech, Morocco on November 20, 2002 from 9:30–noon at the Department of State in a room to be announced.

Members of the public will be admitted to the extent that seating is available, and may join in the discussions, subject to the instructions of the Chair. Entrance to the Department of State is controlled; people intending to attend a meeting at the Department of State should send their clearance data by fax to (202) 647–7407 or e-mail to *worsleydm@state.gov* not later than 24 hours before the meeting. Please include the name of the meeting, your name, social security number, date of birth and organizational affiliation. One of the following valid photo identifications will be required for admittance: U.S. driver's license with your picture on it, U.S. passport, or U.S. Government identification. Directions to the meeting location may be obtained by calling the ITAC Secretariat at (202) 647–2592 or e-mail to *worsleydm@state.gov*.

Dated: October 25, 2002.

Marian Gordon,

Director, Telecommunicotion Development, Department of State.

[FR Doc. 02–28218 Filed 11–5–02; 8:45 am]

BILLING CODE 4710–45–P

DEPARTMENT OF STATE

[Public Notice 4179]

Advisory Committee Meeting on Law Applicable to Securities Intermediaries Meeting Notice

The State Department's Advisory Committee on Private International Law Study Group on International Securities Transactions will hold two meetings at the Federal Reserve Bank of New York on proposed treaty rules on determining the law applicable to securities intermediaries for cross-border arrangements, and in particular the law applicable to dispositions of securities held through an indirect holding system. The meeting will provide an opportunity for comment on current proposals for such rules, on which final agreement will be sought in December 2002.

A preliminary meeting will be held on Tuesday, October 29 from 10 a.m. until 4 p.m., and a final meeting on Wednesday, November 20 to review positions of the securities industry, agency authorities, and state and federal securities law and other related interests.

Finalization of the proposed rules, to be set out in multilateral treaty form, will be sought under the auspices of the Hague Conference on Private International Law, located at The Hague, Netherlands, an international private law body of which the United States is a member. Finalization of the proposed treaty rules does not in any manner commit the United States or any participant to implement the rules, and a review of the rules as adopted and full opportunity for comment will be initiated during the first quarter 2003.

Agenda: The meeting will review the latest draft rules which have been considered by a number of countries, organizations and industry representatives since work on this topic was initated in January 2001, together with proposed amendments thereto. Recommendations will also be sought on further amendments and provisions that may be suggested.

Subject to availability of time, the meeting will review developments involving direct and indirect holders of securities, transfers of interest, dematerialization and immobilization of securities, the systemic role of multiple indirect holding systems, and the balance of interests to be achieved through harmonization at the international level by treaty. Among other issues, an applicable law regime will need to address what law governs transfers of securities held through custodial accounts and financial intermediaries. Important in that regard will be the interface with existing state and federal law in the United States.

Time permitting, the desirability of new efforts to prepare substantive rules on securities intermediaries by other international bodies which could build on progress achieved at the Hague Conference will be discussed, including in particular UNIDROIT and the Organization of American States (OAS).

Documentation: The conference working documents are available at *http://www.hcch.net*, including the most recent draft provisions, in particular Preliminary Doc. Nos. 15 and 16, and the initial basic study by the Permanent Bureau of the Hague Conference, "Law applicable to disposition of securities held through indirect holding systems", Prel. Doc. No. 1.

Attendance: The public is invited to attend up to the capacity of the meeting room and may participate subject to the rulings of the chair. The meetings will take place at 10 a.m. to 4 p.m. at the New York Federal Reserve Bank, 33 Liberty Street, NYC. Since access to the building is controlled, persons wishing to attend should, not later than three (3) days prior to each meeting, notify Audrey Watson at 212–720–8403, fax 720–1756 of their participation, along with address, contact numbers and affiliation. For futher information on the proposed rules or the Hague Conference, please contact Joyce Hansen, Sr. Vice President, New York Federal Reserve, at 212–720–5024, fax 212–720–1756 or Harold Burman, Office of the Legal Adviser, State Department, 202–776–8421; fax 202–776–8482.

Dated: October 23, 2002.

Harold S. Burman,

Executive Director, Secretary of State's Advisory Committee on Private International Law, Department of State.

[FR Doc. 02–28219.Filed 11–5–02; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Preparation of an Environmental Impact Statement on the Expansion of Metropolitan Atlanta Rapid Transit Authority Transit Service From Hamilton E. Holmes Station in the City of Atlanta, Georgia to Fulton Industrial Boulevard in Fulton County, GA

AGENCY: Federal Transit Administration (FTA), Department of Transportation (DOT).

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Federal Transit Administration (FTA), in cooperation with the Metropolitan Atlanta Rapid Transit (MARTA), is issuing this notice to advise interested agencies and the public that, in accordance with National Environmental Policy Act (NEPA), an Environmental Impact Statement (EIS) will be prepared for an expansion of transit services westward from MARTA's Hamilton E. Holmes Station on its West Line to a logical terminus on Fulton Industrial Boulevard. Identified by MARTA's Board of Directors as the top priority for expansion of services, possible rail extensions and other types of transit service are outlined in MARTA's "Three Corridor Feasibility Study" (August 2000). As a part of an Alternatives Analysis and the ensuing EIS, the benefits and impacts of eighteen individual alternatives, including a no-build or no-action alternative, a transportation system management (TSM) alternative (also called New Starts Baseline alternative) and several build alternatives, will be examined. Scoping will be accomplished through coordination with interested persons, organizations, and federal, state and local agencies. FTA is serving as the federal lead agency for the project in anticipation of a grant application from MARTA for its construction through the Federal Section 5309 New Starts Program. Based on the results of the scoping process, FTA will establish the scope of the environmental review under NEPA, including the identification of environmental issues and effects to be addressed and reasonable alternatives to be retained for detailed evaluation. If a need to expand the study area west into Cobb and Douglas County can be demonstrated during the scoping process and if a project sponsor other than MARTA can be identified for that portion of the project, this NEPA undertaking will be accordingly augmented.

DATES: Interagency and public scoping and information meetings will be held on the following dates at the locations indicated:

- *Interagency Scoping Meeting:* Wednesday, November 13, 2002 from 10 AM to 12 Noon, at the URS Corporation Offices at 235 Peachtree St., NE, Suite 2000—North Tower, Atlanta, Georgia 30324.
- *Public Scoping Meetings:*

—Tuesday, November 19, 2002 from 6 pm to 8:30 pm, at the Peyton Forest Elementary School Gymnasium, 301 Peyton Road, SW, Atlanta Georgia 30311.

—Thursday, November 21, 2002 from 11:30 am to 2 pm, at the Comfort Inn, Meeting Room, 4330 Fulton Industrial Boulevard, SW, Atlanta, GA 30336.

—Thursday, November 21, 2002 from 6 am to 8:30 pm, at the Peyton Forest Elementary School Gymnasium, 301 Peyton Road, SW, Atlanta Georgia 30311.

—*Written Comments:* on the scope of the environmental study are welcome and should be sent by December 20, 2002 to Connie Cannon, Project Manager, MARTA, 2424 Piedmont Street, Atlanta, Georgia 30324.

Comments can also be emailed to *westline.comments@itsmarta.com*.

ADDRESSES: The addresses where scoping meetings will be held and where comments on the scope of study may be sent appear above in the *DATES* Section. A scoping booklet is available from Connie Cannon, Project Manager, MARTA, 2424 Piedmont Street NE, Atlanta, Georgia 30324 or by accessing the project Web site at *www.itsmarta.com*.

FOR FURTHER INFORMATION CONTACT: Tony Dittmeier, Transportation Program Specialist, Federal Transit Administration, Region IV Office, telephone 404.562.3512 or Connie Cannon, MARTA, 2424 Piedmont Street NE, Atlanta, Georgia 30324.

SUPPLEMENTARY INFORMATION:

I. Scoping

MARTA will hold interagency and public scoping meetings as presented in the **DATES** section above. At these meetings, MARTA will present preliminary results of an Alternatives Analysis and the alternatives proposed for detailed evaluation in the EIS. At the public meetings, interested persons will have an opportunity to speak individually with a MARTA representative. In addition, representatives will be available to receive written and record verbal comments on the scope of the NEPA review. All scoping meeting locations are accessible to persons with disabilities. Individuals who require special accommodations, such as a sign language interpreter, to participate in the meeting should contact Ms. Rosalyn V. Green, ADA Compliance Officer, MARTA, 2424 Piedmont Rd. NE, Atlanta, Georgia 30324 or by telephone at (404) 848–4800, TDD at (404) 848–5665 or TTY (404) 848–4931. Interested individuals, organizations, and public agencies are invited to attend the scoping meetings and participate in identifying any important environmental impact issues related to the proposed alternatives and suggesting alternatives which would be more economical or would have less environmental impact while achieving similar transportation objectives. An information packet, referred to as the Scoping Booklet, will be distributed to all public agencies and interested individuals and will be available at the meetings. Others may request the Scoping Booklet by contacting Brian Piascik at the address listed above in **ADDRESSES.** Anyone wishing to be placed on the project mailing list to receive meeting notices and further information as the project develops should also contact Connie Cannon at the address listed in **ADDRESSES** or call the project information line (404) 589–0929. Comments during the scoping period should focus on identifying the social, economic, and environmental concerns associated with the proposed action, and alternatives that deserve consideration, and not on a preference for a particular alternative. Comments regarding preference for a particular alternative may be submitted during subsequent public meetings or at a hearing on the Draft Environmental Impact Statement, when it is published. Scoping comments may be made at the scoping meetings or may be directed in writing to Connie Cannon, Project Manager, at the address given in **ADDRESSES.**

II. Description of the Project Area and Transportation Need

MARTA has identified an expansion of the West Line Transit Service as a top priority for meeting the travel needs within the Atlanta area. MARTA's long-range planning efforts identified resources to begin the required planning, environmental and design activities. MARTA has recently conducted preliminary activities to develop an aggressive, yet realistic plan for completing the required activities leading to the project's implementation. The current project, as included in the Atlanta Regional Commission's (ARC) Regional Transportation Plan (RTP), includes transit services beyond the MARTA West Line from the Hamilton E. Holmes Station to Fulton Industrial Boulevard. A new station is proposed near I–20 at Fulton Industrial Boulevard and a potential second station may be considered in the vicinity of Martin Luther King, Jr. Drive and Fairburn Road. MARTA has previously completed preliminary studies on the project.

In MARTA's previous work, several alignment options, technologies and station locations were identified and will be the subject of continued study. The West Line corridor parallels I–20, which is an identified congested facility in ARC's Congestion Management System (CMS). The CMS identifies I–20 as congested from I–285 to SR 5, serving approximately 140,000 vehicles per day. The primary congestion occurs eastbound during the morning peak period and westbound during the afternoon peak period.

MARTA's Three Corridors Feasibility Study demonstrated substantial mobility benefits of the proposed West Line extension. This previous evaluation demonstrated significant new transit trips as a result of the build

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alternative. Trips from outside the I–285 perimeter destined to Atlanta would be particularly well served by the project. The travel forecasts predicted over 13,800 daily transit boardings at the proposed Fulton Industrial station. ARC's Regional Transportation Plan, 2025 (RTP) also documents the existing and future travel patterns and levels of congestion within the corridor. The RTP lists planned transportation improvements including widening and addition of HOV lanes on I–20 and numerous surface street improvements. Even with those improvements, the RTP sites the expected continued increase in levels of congestion. The RTP also forecasts that substantial ridership can be attributed to extended transit service beyond the existing West Line terminus at Hamilton E. Holmes Station.

The Fulton Industrial Boulevard area is also developing into a major employment center for many MARTA service area residents, which requires a commute from the central area of Atlanta, South Fulton County and DeKalb County. A reduction in travel time to the Fulton Industrial Area could encourage a substantial increase in reverse commutes on the MARTA System.

III. Alternatives To Be Studied

An Alternatives Analysis will identify the transit service options for reconsideration, in detail, during the NEPA process. The alternatives expected to be considered in detail in the EIS include:

A no-build or no-action alternative that includes only those projects already committed as defined in the current Regional Long Range Transportation Plan.

A TSM Alternative that represents low cost infrastructure improvements and bus transit enhancements to the service already provided in the study area, including projects already committed as defined in the current Regional Long Range Transportation Plan.

A number of fixed guideway improvements along multiple alignments including, but not limited to, a heavy rail extension of the current MARTA West Line, bus rapid transit and light rail transit facilities. These alternatives would also include all facilities associated with the construction and operation of transit systems including right of way, structures, track (if necessary), stations, park and ride lots, storage and maintenance facilities and respective bus and rail operating plans.

IV. Probable Effects

The EIS will be prepared in accordance with NEPA and its implementing regulations (40 CFR parts 1500–1508), and the FTA regulation on environmental procedures shared with the Federal Highway Administration (23 CFR part 771). The EIS will evaluate the social (including environmental justice benefits and burdens analysis), economic, and environmental impacts of the alternatives. Primary concerns to be addressed include: safety at grade crossings, site contamination in railroad rights-of-way, property effects including business disruptions and relocation, impacts on local traffic and travel patterns, noise and vibration impacts, land use impacts, wetland impacts, and aesthetic/visual impacts. The cumulative impacts of the project together with other reasonably foreseeable actions and activities will be addressed.

V. FTA New Starts Procedures

Following public review of the Draft EIS, MARTA will request FTA approval to initiate Preliminary Engineering, in accordance with the FTA New Starts regulation (49 CFR part 611). FTA will consider the merits of the project in comparison with other projects across the nation competing for New Starts funding. FTA will either recommend or not recommend the preferred alternative's advancement into Preliminary Engineering.

Issued on: October 31, 2002.

Jerry Franklin,

Regional Administrator, Atlanta, Georgia.

[FR Doc. 02–28244 Filed 11–5–02; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Environmental Impact Statement for the Salt Lake City—Weber County Regional Transportation Corridor Project

AGENCY: Federal Transit Administration (FTA), Department of Transportation (DOT).

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Federal Transit Administration (FTA), in cooperation with the Utah Transit Authority (UTA), is issuing this notice to advise interested agencies and the public that, in accordance with the National Environmental Policy Act (NEPA), an Environmental Impact Statement (EIS) will be prepared for the proposed Salt Lake City—Weber County Regional Transportation Corridor project located in Weber, Davis, and Salt Lake Counties, Utah. An Environmental Impact Statement will be prepared to evaluate transportation improvements, including a potential commuter rail line, in the Salt Lake City-Weber County Regional Transportation Corridor.

A commuter rail transit alternative (*i.e.*, the Build Alternative), a No-Build Alternative, and any additional alternatives emerging from the Scoping Process will be evaluated. The EIS will consider any reasonable alternatives identified during scoping that provide similar transportation benefits while reducing or avoiding adverse impacts. Scoping will be accomplished through coordination with interested persons, organizations, and federal, state and local agencies. Three (3) public scoping meetings, one meeting in each of the three counties, and one (1) interagency scoping meeting are currently planned.

Based on the results of the Scoping Process, FTA will make the following determinations regarding the environmental review under NEPA:

1. Identification of environmental issues to be addressed;

2. Refinement of the alternatives for evaluation.

DATES: Public and agency scoping meetings will be held November 15 to 22, 2002.

Agency Scoping Meeting: November 15, 2002.

Public Scoping Meeting: November 19, 2002.

Public Scoping Meeting: November 20, 2002.

Public Scoping Meeting: November 21, 2002.

ADDRESSES: Written comments on the project should be sent to Michelle Rust, Strategic Planner, Utah Transit Authority, 3600 South 700 West, Salt Lake City, Utah 84130 (801) 262–5626, ext. 3255.

FOR FURTHER INFORMATION, CONTACT: Don Cover, Federal Transit Administration, 216–16th Street, Suite 650, Denver, Colorado 80202. Phone: (303)844–2174.

SUPPLEMENTARY INFORMATION:

I. Scoping

UTA will hold the Interagency Scoping meeting November 15, 2002 from 8:30 A.M to 10:30 A.M. at UTA's Meadowbrook Offices, in the Board Room, located at 3600 South 700 West, Salt Lake City, UT 84130. This location is accessible to individuals with disabilities. Individuals with special needs should contact Sherry L. Repscher, ADA Compliance Officer, UTA, 3600 South 700 West, Salt Lake City, Utah 84130 (801)-262–5626.

UTA will hold the following Public Scoping Meetings:

1. November 19, 2002 from 4 p.m. to 7 p.m. at the Davis County Library-North Branch located at 562 South 1000 East, Clearfield, UT 84015. This location is accessible to individuals with disabilities. Individuals with special needs should contact Sherry L. Repscher, ADA Compliance Officer, UTA, 3600 South 700 West, Salt Lake City, Utah 84130 (801)–262–5626.

2. November 20, 2002 from 4 p.m. to 7 p.m. at the Union Pacific Depot at the Gateway, located at 450 West 100 South, Salt Lake City, Utah 84101. The meeting location is service by the UTA TRAX Delta Center Station and is accessible to individuals with disabilities.

3. November 21, 2002 from 4 p.m. to 7 p.m. at the Ogden Union Station located at 2501 Wall Avenue, Ogden, Utah 84401. This location is also accessible to individuals with disabilities.

Interested individuals, organizations, and public agencies are invited to attend the Scoping Meetings. The purpose of the Scoping Meetings is: (1) To determine the scope of the NEPA evaluation including the identification of significant environmental or community issues and alternatives that would reduce or eliminate adverse impacts; and (2) to eliminate issues which are not significant or which have already been evaluated by the prior environmental review, the Inter-Regional Corridor Alternatives Analysis. An information packet, referred to as the Scoping Booklet, will be distributed to all public agencies and interested individuals and will be available at the meetings. Others may request the Scoping Booklet by contacting Michelle Rust of UTA at the address listed above in **ADDRESSES.**

If you wish to be placed on the mailing list to receive further information as the project develops, contact: Michelle Rust, Strategic Planner, Utah Transit Authority, 3600 South 700 West, Salt Lake City, Utah 84130 (801) 262–5626, ext. 3255.

II. Description of the Study Area and Project Need

The Weber County to Salt Lake City project corridor is centered on an existing rail corridor through Weber, Davis, and Salt Lake Counties. During the preparation of the Draft Environmental Impact Statement (EIS) UTA plans to submit an initial section 5309 New Starts evaluation to FTA in accordance with 49 CFR part 611, and request FTA approval to initiate Preliminary Engineering for the proposed commuter rail line. The Final EIS will reflect the results of Preliminary Engineering.

Recent passage of a ¼ cent regional sales tax increase indicates broad public support for expansion and improvement of transit services throughout Weber, Salt Lake, and Davis Counties. The project has undergone more than five years of planning and alternatives analysis conducted by the two Metropolitan Planning Organizations, Wasatch Front Regional Council (WFRC) and Mountainland Association of Governments (MAG), in association with UDOT and UTA. It has been included in the financially constrained Long-Range Transportation Plan most recently adopted by WFRC, in September 2001.

III. Alternatives

The Utah Transit Authority, the Wasatch Front Regional Council, the Mountainlands Association of Governments, and the Utah Department of Transportation conducted an alternatives analysis entitled the Inter-Regional Corridor Alternatives Analysis which looked at transit alternatives in a corridor from Brigham City to Payson in Utah. The alternatives considered included commuter rail, light rail and express bus. While the corridor covered by the Inter-Regional Corridor Alternatives Analysis was longer than the project proposed, the Study did completely encompass the Salt Lake City to Weber County corridor now being studied and recommended that the Commuter Rail Alternative be pursued. The Inter-Regional Corridor Alternatives Analysis (IRCAA) concluded that light rail and bus alternatives should be eliminated from further consideration. The analysis of the IRCAA will be incorporated into the EIS. During Scoping, that document is available for public review by contacting Michelle Rust of UTA at the address and phone number given above in **ADDRESSES.**

UTA and FTA are planning to evaluate the following two alternatives (and any others that emerge as the result of scoping) in the EIS:

- *No Build Alternative:* This alternative assumes that there will be no change in transportation services or facilities in the corridor beyond already committed projects. It includes the highway and transit improvements defined in the two MPOs' financially constrained Long-Range Transportation Plans but with the proposed commuter rail project removed and replaced by bus service comparable to the bus service levels in other similar parts of the metropolitan area. It includes the recently completed Intermodal Center in Ogden and the Intermodal Center in Salt Lake City, which is under development.
- *Build Alternative:* The Build Alternative consists of new commuter rail service from northern Weber County, through the recently completed Intermodal Center in Ogden to the Intermodal Center in Salt Lake City, which is under development. Intermediate stops are planned along the route. Ridership and costs have been estimated with the assumption that peak period and off-peak service would be provided in both directions along the line, even though the majority of the line will have single track. The distance between Ogden and Salt Lake City is approximately 37 miles.

IV. Probable Effects/Potential Impacts for Analysis

Among the primary transit issues to be evaluated are the effects on transit ridership and mobility for the corridor's transit dependent residents, the role of the project in a regional transit network that supports the region's air quality goals, capital outlays needed to construct the project, cost of operating and maintaining the facilities created by the project, and the financial impacts on the funding agencies.

In accordance with NEPA, the impacts on potentially affected environmental and social resources will be considered, including land use and neighborhood impacts, residential and business displacements and relocations, traffic and parking impacts near stations, traffic circulation, visual impacts, impacts on cultural and archaeological resources, and noise and vibration impacts. Impacts on air and water quality, groundwater, hazardous waste sites, and water resources will also be examined. The impacts will be evaluated both for the construction period and for the long-term period of operation to include direct, indirect, and cumulative analysis. Measures to mitigate adverse impacts will be considered.

V. FTA Procedures

The EIS will be prepared in accordance with NEPA and its implementing regulations including those of the Council on Environmental Quality (CEQ) implementing NEPA (40 CFR parts 1500–1508), and the FTA regulation on environmental procedures shared with the Federal Highway Administration (23 CFR part 771). The NEPA process will also be used to comply with the requirements of the Clean Air Act Amendments of 1990 (CAAA) and with Executive Order

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12898 on Environmental Justice. After publication, the draft NEPA document will be available for comment by the public and other agencies. The final NEPA review will consider the public and agency comments received during the public circulation of the draft EIS, will refine the project as appropriate in response to the comments, will continue with Preliminary Engineering of the Project, and will develop the preferred alternative, including committed mitigation measures. Opportunity for additional public comment will be provided throughout all phases of the project development, and will be announced through the mailing list, on the project website, or by other means.

Issued on: October 30, 2002.

Lee O. Waddleton,

Regional Administrator, Federal Transit Administration.

[FR Doc. 02–28245 Filed 11–5–02; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2001–10526; Notice 2]

Decision That Nonconforming 1999 Ferrari F355 Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of decision by NHTSA that nonconforming 1999 Ferrari F355 passenger cars are eligible for importation.

SUMMARY: This document announces the decision by NHTSA that 1999 Ferrari F355 passenger cars not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to vehicles originally manufactured for importation into and sale in the United States and certified by their manufacturer as complying with the safety standards (the U.S. certified version of the 1999 Ferrari F355), and they are capable of being readily altered to conform to the standards.

DATES: This decision is effective as of the date of its publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Luke Loy, Office of Vehicle Safety Compliance, NHTSA (202–366–5308).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards ("FMVSS") shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable FMVSS.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

J.K. Technologies, LLC, of Baltimore, MD, ("J.K.") (Registered Importer 90–006) petitioned NHTSA to decide whether 1999 Ferrari F355 passenger cars are eligible for importation into the United States. NHTSA published notice of the petition on September 24, 2001 (66 FR 48905) to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition.

Three comments were received in response to the notice of the petition. Only one of these, from Ferrari North America (FNA), the U.S. representative of the vehicle's manufacturer, provided substantive technical information relating to the petition. The other comments were in favor of granting the petition, with one party identifying a recall that would need to be addressed. The FNA comments and subsequent responses from J.K. and FNA with respect to each FMVSS that the comments addressed are discussed below.

Standard Nos. 208—Occupant Crash Protection, and 209—Seat Belt Assemblies

On October 24, 2001, FNA stated that J.K. failed to note differences between the U.S.-certified 1999 Ferrari F355 and non-U.S. certified versions of the vehicle with respect to 12 parts directly relating to Standard No. 208 and/or Standard No. 209. FNA stated that the seat belts in the U.S. version are different from those in the non-U.S. version with respect to labeling and the child seat ratchet mechanism. On April 11, 2002, J.K. stated that all modified vehicles will have the U.S. parts for all seat belt components and thus will comply with Standard Nos. 208 and 209. On May 6, 2002, FNA stated that NHTSA should condition the importation of non-U.S. certified 1999 Ferrari F355 passenger cars on a requirement that registered importers (RIs) replace any non-U.S. model parts related to Standard Nos. 208 and 209 with U.S. model parts. On June 3, 2002, J.K. agreed and reiterated that all components would be inspected for U.S. part numbers and, where necessary, U.S. parts will be installed.

Standard No. 214—Side Impact Protection

On October 24, 2001, FNA stated that only U.S. and Canadian versions of the 1999 Ferrari F355 were equipped with specially designed door beams that are needed to meet this standard. FNA stated that there was no practical method of installing door beams on the outside of the door frame, as was done on the U.S. certified version of the vehicle, without major disassembly of the door. FNA also stated that the door beam material was not available from FNA, as J.K. had claimed in the petition. FNA contended that the only way to achieve compliance with Standard No. 214 was to completely replace both the driver and passenger doors.

On April 11, 2002, J.K. responded that there are two ways to bring the non-U.S. certified 1999 Ferrari F355 into compliance with this standard: one method is to replace the non-U.S. model doors with U.S. model doors, as suggested by FNA; and the second method is to modify the non-U.S. model doors by installation of a door beam. [1] J.K. stated that beam stock that is identical to the door beam stock that Ferrari installs in the U.S. door is available from Ferrari's supplier. J.K. stated that the door beams can be installed from inside the door and mounted on the stock mounts, and asserted that the finished product would have door beam installations that are

[1] We note that for purposes of determining eligibility for importation, replacement of a door is a simple modification that clearly would meet the criteria of 49 U.S.C. 30141(a)(1)(A)(iv). However, J.K. stated that it would prefer to modify the vehicle by installing an additional door beam, since that would be far less expensive.

identical to those on the U.S. certified version of the vehicle.

On May 6, 2002, FNA stated that J.K. had not provided any basis to support its claim that the installation of a side impact door beam in a non-U.S. certified 1999 Ferrari F355 would allow the vehicle to meet the requirements of Standard No. 214. FNA reiterated its view that any door lacking an original equipment door beam would have to be replaced with an entire new U.S. model door.

On June 3, 2002, J.K. advised NHTSA that it would conduct a static Standard No. 214 test of its door beam installation and supply the test results to the Office of Vehicle Safety Compliance (OVSC). Subsequently, J.K. provided OVSC with the test report regarding a test conducted at the MGA test laboratory. The test report indicates that the door met the requirements of the standard, with a compliance margin of 17–21%. However, the MGA test did not actually test the strength of the door as mounted on a vehicle, since the door was mounted on a rigid (non-movable) fixture. The rigid fixture did not simulate the bending that would be associated with the door front hinge-to-A pillar and the rear door latch-to-B pillar connections during the application of test forces.

The agency has reviewed the test report prepared by MGA. In our view, because the boundary conditions used in the MGA test were too restrictive and added additional resistive force, a passing result in that test does not necessarily demonstrate that a vehicle equipped with a door constructed in the same manner as the one tested will be in conformance with the static test requirements of Standard No. 214. We note that a more convincing simulation would utilize boundary conditions that allow translation and rotation in the same way door hinges do to account for the vehicle body deformation. Nevertheless, given the margin of compliance in the MGA test, we cannot say that a vehicle modified in this way would not comply with the standard.

After considering all the circumstances, we have concluded that the 1999 non-U.S. certified Ferrari F355 is capable of being readily altered to comply with the static test requirements of the standard. We note, however, that J.K. did not provide a test demonstrating compliance of a vehicle equipped with the modified door with the dynamic crash test requirements of Standard No. 214. While it is likely that the non-U.S. certified version would meet these dynamic test requirements (and FNA has not contended otherwise), modification of the door could conceivably have an adverse effect, particularly if padding originally installed in the vehicle door is removed. Therefore, the agency will require any RI modifying a 1999 Ferrari F355 to reinstall any padding or other material taken out of the door during the installation of a door beam.

Standard No. 301—Fuel System Integrity

On October 24, 2001, FNA stated that, contrary to assertions in the petition, the rollover valve and the check valve are not the only safety-related components of the fuel system on the non-U.S. certified 1999 Ferrari F355 relevant to compliance with Standard No. 301. On April 11, 2002, J.K. responded that all parts of the fuel system, including the fuel tanks, fuel lines, rollover valves, carbon canisters, and purge valves, would be inspected during conversion. J.K. agreed that it would assure that all these parts would bear the U.S. model part number, and they would be mounted in the stock U.S. model location using the U.S. specification hardware. J.K. stated that the non-U.S. certified 1999 Ferrari F355 has the same mounting points as its non-U.S. certified counterpart. On May 6, 2002, FNA essentially agreed that if all non-U.S. model parts related to Standard No. 301 were replaced with U.S. model parts, there would be no compliance issue.

49 CFR Part 581—Bumper Standard

On October 24, 2001, FNA pointed out that J.K. had erroneously stated in its petition that the bumpers and the support structure for the bumpers on the non-U.S. certified 1999 Ferrari F355 were the same as those on the U.S. certified model. FNA stated that the U.S. model bumpers are stronger and heavier than those on the non-U.S. certified vehicle. FNA also stated that the bumper support trestle assembly is not part of the non-U.S. model bumper assembly.

On April 11, 2002, J.K. agreed that modifications would be needed to bring the non-U.S. certified 1999 Ferrari F355 into conformance with the Bumper Standard. J.K. identified two ways of doing this. One of those ways was for the bumpers and bumper mounting structures to be replaced with U.S. model parts. The second method would be to modify the non-U.S. model bumpers to meet the standard. J.K. stated that the bumpers on the non-U.S. certified 1999 Ferrari F355 are readily modifiable, in part because they are substantially similar to those on the U.S. certified version of the vehicle. J.K. stated that it planned to use the modifications that it used and tested in connection with its import eligibility petition for the 2001 Ferrari 360 (notice of grant published on April 10, 2002 at 67 FR 17483) to modify the bumper systems on the 1999 Ferrari F355.

On May 6, 2002, FNA contended that any bumper modification on non-U.S. certified 1999 Ferrari F355 vehicles must be tested to demonstrate conformance to the requirements of Part 581. On June 3, 2002, J.K. responded that it had performed testing of its modified bumper system on the 2001 Ferrari 360, and that the testing demonstrated the adequacy of its modification. J.K. also noted that other RIs might choose to install U.S. model bumpers and bumper support structures.

The agency notes that Bumper Standard compliance issues are not directly relevant to an import eligibility decision, as that decision is to be based on the capability of a non-U.S. certified vehicle to be readily altered to conform to the FMVSS, and the Bumper Standard in 49 CFR Part 581 is not an FMVSS. That matter aside, the agency is of the opinion that the test conducted by J.K. of the bumpers on the non-U.S. certified Ferrari 360 is sufficient to demonstrate that the non-U.S. certified 1999 Ferrari F355 is capable of being altered to meet the Bumper Standard.

In consideration of the foregoing, NHTSA has concluded that the non-U.S. certified 1999 Ferrari F355 is substantially similar to the non-U.S. certified version of the vehicle and that it is capable of being readily altered to meet all applicable FMVSS, as well as the Bumper Standard at 49 CFR part 581. Accordingly, the agency has decided to grant the petition.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final decision must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP–391 is the vehicle eligibility number assigned to vehicles admissible under this notice of final decision.

Final Decision

Accordingly, on the basis of the foregoing, NHTSA hereby decides that 1999 Ferrari F355 passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to 1999 Ferrari F355 passenger cars originally manufactured for importation into and sale in the United

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States and certified under 49 U.S.C. 30115, and are capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: November 1, 2002.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 02–28243 Filed 11–5–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34254]

CSX Transportation, Inc.—Trackage Rights Exemption—Norfolk Southern Railway Company

Norfolk Southern Railway Company (NS) has agreed to grant CSX Transportation, Inc. (CSXT) trackage rights on the "Lima Running Track" between the connection to NS's subdivision at Eire Junction near milepost SP 90.4 and milepost 91.9 along with associated yard and sidetrackage at South Lima Yard, at Lima, OH, a distance of approximately 1.5 miles.[1]

CSXT stated that it proposed to consummate the transaction on October 22, 2002, but the exemption did not become effective until October 24, 2002 (7 days after the exemption was filed).

The purpose of the trackage rights is to allow CSXT to achieve certain operating economies.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34254, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Natalie S. Rosenberg, 500 Water Street, JI50, Jacksonville, FL 32202.

Board decisions and notices are available on our Web site at *www.stb.dot.gov*.

Decided: October 29, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–28071 Filed 11–5–02; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Customs Service

Notice of Cancellation of Customs Broker Permit

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: Pursuant to section 641 of the Tariff Act of 1930, as amended, (19 U.S.C. 1641) and the Customs Regulations (19 CFR 111.51), the following Customs broker local permits are canceled without prejudice.

Name	Permit No.	Issuing port
Arthur Andersen LLP	93–008	Houston.
Arthur Andersen LLP	(no number)	Detroit.
US Express International, Inc.	D–09–01	Dallas/Ft. Worth.
Edward M. Jones Co., Inc.	093	Seattle.
Khosrow Khorraminejad	16001–P	San Francisco.
James F. Mooring	5386–056	Houston.
Fritz Companies, Inc.	007	Great Falls.
Independent Brokerage LLC	056	Great Falls.
Fritz Companies, Inc.	057	Seattle.
Tower Group International, Inc.	112	Seattle.

Dated: October 22, 2002.

Jayson P. Ahern,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 02–28253 Filed 11–5–02; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Notice of Revocation of Customs Broker License

AGENCY: Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: Pursuant to section 641 of the Tariff Act of 1930 as amended (19 U.S.C. 1641) and the Customs Regulations [19 CFR 111.45(a)], the following Customs broker license is revoked by operation of law.

Name	License No.	Port
General Shipping, Inc.	7650	New York.

Dated: October 22, 2002.

Jayson P. Ahern,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 02–28251 Filed 11–5–02; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Notice of Revocation of Customs Broker Permit

AGENCY: Customs Service, Department of the Treasury.

ACTION: General notice.

[1] An unredacted version of the Trackage Rights Agreement, as required by 49 CFR 1180.6[a](7)(ii), was concurrently filed under seal along with the motion for a protective order. That motion was granted and a protective order was issued in a decision served on October 24, 2002.

SUMMARY: Pursuant to section 641 of the Tariff Act of 1930 as amended (19 U.S.C. 1641) and the Customs Regulations [19 CFR 111.45(b)], the following Customs Broker Permit is revoked by operation of law.

Name	Permit No.	Issuing port
Leschaco, Inc. ...	96006	Los Angeles.

Dated: October 22, 2002.

Jayson P. Ahern,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 02–28252 Filed 11–5–02; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Notice of Cancellation of Customs Broker License

AGENCY: Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: Pursuant to section 641 of the Tariff Act of 1930, as amended, (19 U.S.C. 1641) and the Customs Regulations (19 CFR 111.51), the following Customs broker licenses and any and all associated local and national permits are canceled without prejudice.

Name	License No.	Issuing port
William F. Joffroy, Inc.	03897	Nogales.
American Customs Brokers, Inc.	11321	Duluth.
W.Y. Moberly, Inc.	02926	Great Falls.
Trans-Border Customs Services, Inc.	11408	Champlain.
Miles & Joffroy, Inc.	11296	San Diego.
Rudolph Miles & Sons, Inc.	04665	El Paso.
H.A. & J.L. Wood, Inc.	04057	Pembina.
Associated Customs Brokers, Inc.	10448	Pembina.
Galax, Inc	21362	New York.
Arthur Andersen LLP.	13678	Detroit.

Dated: October 22, 2002.

Jayson P. Ahern,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 02–28250 Filed 11–5–02; 8:45 am]

BILLING CODE 4820–02–P

UNITED STATES INSTITUTE OF PEACE

Sunshine Act Meeting Notice

DATE/TIME: Thursday, November 21, 2001; 9:30 a.m.—5:30 p.m.

LOCATION: 1200 17th Street, NW, Suite 200—Conference Room, Washington, DC 20036.

STATUS: Open Session—Portions may be closed pursuant to subsection (c) of section 552(b) of Title 5, United States Code, as provided in subsection 1706(h)(3) of the United States Institute of Peace Act, Public Law 98–525.

AGENDA: November 2002 Board Meeting; Approval of Minutes of the One Hundred Sixth Meeting (September 19, 2002) of the Board of Directors; Chairman's Report; President's Report; Committee Reports; Other General Issues.

CONTACT: Mr. John Brinkley, Director, Office of Public Outreach, Telephone: (202) 457–1700.

Dated: October 30, 2002.

Harriet Hentges,

Executive Vice President, United States Institute of Peace.

[FR Doc. 02–28380 Filed 11–4–02; 2:05 am]

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Federal Register

Wednesday,
November 6, 2002

Part II

Department of Energy

Federal Energy Regulatory Commission

18 CFR Parts 101, 201, and 352
Accounting and Reporting of Financial Instruments, Comprehensive Income, Derivatives and Hedging Activities; Final Rule

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 101, 201 and 352

[Docket No. RM02–3–000; Order No. 627]

Accounting and Reporting of Financial Instruments, Comprehensive Income, Derivatives and Hedging Activities

October 10. 2002.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission is amending its regulations to update the accounting and financial reporting requirements under its Uniform Systems of Accounts for jurisdictional public utilities and licensees, natural gas companies and oil pipeline companies. The Commission is establishing uniform accounting requirements and related accounts for the recognition of changes in the fair value of certain security investments, items of other comprehensive income, derivative instruments, and hedging activities. The Commission is adding new balance sheet accounts to the Uniform Systems of Accounts to record items of other comprehensive income and derivative instruments. The Commission is also adding new general instructions and revising certain account instructions to incorporate the above changes in the existing Uniform Systems of Accounts. And, the Commission is revising the following Annual Reports: FERC Form Nos. 1, 1–F, 2, 2–A and 6 to include the new accounts and a new schedule contained in the final rule.

The Commission is severing from this rulemaking proceeding the inquiry on whether independent and affiliated power marketers, and power producers should continue to be eligible, on a case by case basis, for waiver of the Commission's Uniform Systems of Accounts and blanket approval under part 34 of the Commission's regulations for the issuance of securities and the assumptions of liabilities. The Commission will consider separately the issue of accounting and reporting requirements by gas marketers, independent and affiliated power marketers, and power producers.

An important objective of the rule is to provide sound and uniform accounting and financial reporting for the above types of transactions and events. The new accounts and reporting schedule will add visibility, completeness and consistency of accounting and reporting changes in the fair value of certain financial instruments, items of other comprehensive income, derivative instruments and hedging activities, in the above mentioned FERC Forms.

EFFECTIVE DATE: The rule will become effective January 6, 2003.

FOR FURTHER INFORMATION CONTACT:

Mark Klose (Technical Information), Office of the Executive Director, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. (202) 502–8283.

Julia A. Lake (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. (202) 502–8370.

SUPPLEMENTARY INFORMATION:

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Before Commissioners: Pat Wood, III, Chairman; William L. Massey, Linda Breathitt, and Nora Mead Brownell.

I. Introduction

1. The Federal Energy Regulatory Commission (Commission) is amending its accounting and financial reporting regulations. In a notice of proposed rulemaking issued on December 20, 2001, and published in the **Federal Register** on January 8, 2002 (67 FR 1025), the Commission proposed to amend its Uniform Systems of Accounts [1] for public utilities and licensees,[2] natural gas companies [3] and oil pipeline companies [4] by establishing uniform accounting requirements for the recognition of changes in the fair value of certain security investments, items of other comprehensive income, derivative instruments, and hedging activities. The Commission is adding new balance sheet accounts to the Uniform Systems of Accounts to record items of other comprehensive income and changes in the fair value of derivative instruments. The Commission is also adding new general instructions for the accounting of derivative instruments and hedging activities along with new instructions for the accounting of items of other comprehensive income. Revisions to existing investment asset accounts and general instructions will incorporate fair value accounting for trading and available-for-sale type security investments.

2. Additionally, the Commission is revising the following Annual Reports: FERC Form No. 1, Annual Report of Major Public Utilities, Licensees and Others (Form 1); FERC Form No. 1–F, Annual Report of Nonmajor Public Utilities and Licensees (Form 1–F); FERC Form No. 2, Annual Report of Major Natural Gas Companies (Form 2); FERC Form No. 2–A, Annual Report of Nonmajor Natural Gas Companies (Form 2–A); and Form No. 6, Annual Report of Oil Pipeline Companies (Form 6) to include the new accounts and a new schedule.[5]

[1] Section 301(a) of the Federal Power Act (FPA), 16 U.S.C. 825(a), section 8 of the Natural Gas Act (NGA), 15 U.S.C. 717g and section 20 of the Interstate Commerce Act (ICA), 49 App. U.S.C. 20 (1988), authorize the Commission to prescribe rules and regulations concerning accounts, records and memoranda as necessary or appropriate for the purposes of administering the FPA, NGA and the ICA. The Commission may prescribe a system of accounts for jurisdictional companies and, after notice and opportunity for hearing, may determine the accounts in which particular outlays and receipts will be entered, charged or credited.

[2] Part 101 Uniform System of Accounts Prescribed for Public Utilities and Licensees Subject to the Provisions of the Federal Power Act. 18 CFR part 101 (2002).

[3] Part 201 Uniform System of Accounts Prescribed for Natural Gas Companies Subject to the Provisions of the Natural Gas Act. 18 CFR part 201 (2002).

[4] Part 352 Uniform System of Accounts Prescribed for Oil Pipeline Companies Subject to the Provisions of the Interstate Commerce Act. 18 CFR part 352 (2002).

[5] The FERC Annual Reports bear the following OMB approvals: Form No. 1 has OMB approval number 1902–0021; Form No. 1–F has OMB approval number 1902–0029; Form No. 2 has OMB approval number 1902–0028; Form No. 2–A has OMB approval number 1902–0030; and Form No. 6 has OMB approval number 1902–0022.

3. These revisions are being made to improve the usefulness of financial information provided to the Commission and other users of the FERC Forms by establishing uniform accounting and reporting requirements for items of other comprehensive income, changes in the fair value of investment securities, derivatives, and hedging activities. An important objective of the rule is to provide sound and uniform accounting and financial reporting for the above types of transactions and events. The Commission is of the view that such requirements are needed because these types of transactions and events are not specifically addressed in the existing Uniform Systems of Accounts or in FERC Forms 1, 1–F, 2, 2–A, and 6. This final rule is part of the Commission's ongoing effort to address emerging financial and accounting developments within the context of the Uniform Systems of Accounts.

II. Background

4. In recent years, fair value measurements have become useful in assisting investors, creditors and other users of the financial data in making rational investment, credit and similar decisions. The use of fair value as a measurement attribute for financial reporting has grown in importance and relevance. Despite this fact, the companies that this Commission regulates traditionally have had only a relatively small number of transactions for which fair value measurements would be appropriate. This, however, is changing. As the regulated industries restructure and a greater percentage of sales are based on other than cost-of-service, fair value will increasingly provide a relevant measure of economic effects for a growing number of transactions and events. The usefulness of fair value information has resulted in the Financial Accounting Standards Board (FASB) issuing new accounting pronouncements affecting the manner in which certain types of financial instruments, derivatives and hedging activities are measured and reported in the financial statements applicable to entities in general.[6]

5. The Commission considers the requirements contained in Financial Accounting Standards (FAS) 115, 130 and 133 to be an improvement in financial accounting and reporting practices if properly implemented and interpreted for filings made with this agency. While some companies have implemented certain aspects of these pronouncements, the implementation has not been uniform concerning the accounting and reporting to the Commission in the FERC Forms 1, 1–F, 2, 2–A, and 6.

6. On August 10, 2001, the Commission's Chief Accountant issued interim accounting guidance on the proper accounting and reporting requirements for financial instruments, comprehensive income, derivatives and hedging activities.[7] This interim accounting guidance was subsequently followed by a notice of proposed rulemaking (NOPR) issued on December 20, 2001, in which the Commission proposed changes to its accounting and financial reporting requirements to establish uniform accounting and reporting of the above mentioned items.[8]

7. The Commission received numerous comments from interested parties on its proposed changes to the accounting and financial reporting requirements. As more fully discussed below, the Commission is issuing this final rule to provide guidance on the proper interpretation and implementation of the principles and concepts set forth in FAS 115, 130 and 133 for accounting and financial reporting to the FERC.

III. Discussion

A. General

8. As discussed in the NOPR, the current accounting and financial reporting standards for certain investment securities, derivative instruments, and hedging activities were developed when companies that this Commission regulates had only a relatively small number of transactions for which fair value measurements would be appropriate. As a result of the increased usage of derivative instruments to manage risk along with recent developments in the accounting profession, the Commission proposed revisions to its accounting and financial reporting requirements to provide greater visibility and transparency of these transactions and to help minimize inconsistent accounting and reporting of the above mentioned items.

9. The Commission received 36 comments concerning various aspects of the proposed rule.[9] The majority of commenters were supportive of the Commission's effort to provide interpretative guidance on the application of generally accepted accounting principles to jurisdictional entities that presently file financial information to the Commission in Annual Report Forms 1, 1–F, 2, 2–A, and 6.[10] Additionally, some commenters did not find the new standards as reflected in the proposed regulations unduly burdensome and have already implemented the principles and concepts contained in FAS 115, 130 and 133.[11]

10. The addition of new accounts and related general instructions is intended to improve the visibility, completeness and consistency of accounting and reporting of changes in the fair value of certain investment securities, items of other comprehensive income, derivatives and hedging activities. The addition of new accounts will enhance the Commission's understanding of the nature and extent to which derivatives and hedging activities are used by regulated entities and the impact these transactions and events have on their financial condition. With a greater understanding of the financial impact that derivative instruments have on regulated entities the Commission will be in a better position to make more informed decisions that affect the industries it regulates.

11. Also, the addition of the new reporting requirements to the FERC Forms 1, 1–F, 2, 2–A and 6 will reduce regulatory uncertainty as to the proper accounting and reporting for these items, and minimize regulatory burden by reducing the potential differences in the manner in which these amounts are reported to shareholders and to the Commission.

B. Inquiry Concerning Waivers Given to Marketers and Others

12. There are a number of public utilities with market-based rates that have received waivers from the Commission's Uniform System of Accounts, and thus would not be subject to the rule, for as long as the Commission continues the waivers. For instance, parts 41, 101, and 141 of the Commission's regulations prescribe

[6] The accounting pronouncements issued by FASB were Financial Accounting Standards (FAS), 115, Accounting for Certain Investments in Debt and Equity Securities, 130, Reporting Comprehensive Income, and 133, Accounting for Derivative Instruments and Hedging Activities, as amended by 138, Accounting for Certain Derivative Instruments and Certain Hedging Activities. These accounting pronouncements may be obtained from FASB at (*http://accounting.rutgers.edu/raw/fasb/*).

[7] *See*, All Jurisdictional Public Utilities and Licensees, Natural Gas Companies, and Oil Pipeline Companies, 97 FERC 62,147 (2001).

[8] *See* 97 FERC 61,321 (2001).

[9] *See* appendix A for Listing of Commenters.

[10] *See* for example APGA at p. 1, EEI at p. 3, Dominion at p. 5, Pinnacle West at p. 3, Sempra at p. 1, Portland General at p. 3, NRECA at p. 6, Ohio PUC at p 2, NYPUC at p. 2, and Williams at p. 2.

[11] *See* for example Williams at p. 4.

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certain informational requirements that focus on the physical assets that a public utility owns. For market-based rate applications by public utilities, the Commission has taken the position that since a marketer does not own any electric power generation or transmission facilities, its jurisdictional facilities would be only corporate and documentary, its costs would be determined by utilities that sell power to it, and its earnings would not be defined and regulated in terms of an authorized return on invested capital, and that, accordingly, it would grant waivers to marketers of the requirements of these parts. The Commission has also granted power marketers and others their requests for blanket approval under part 34 of the Commission's regulations for all future issuances of securities and assumptions of liability, assuming that no party objects to such treatment during a notice period which the Commission provides.[12] The Commission concluded that since marketers do not obligate themselves to serve electric consumers, the requirements are inapplicable.[13]

13. As the development of competitive wholesale power markets continues, however, independent and affiliated power marketers, and power producers are playing more significant roles in the electric power industry. In light of the evolving nature of the electric power industry, the Commission sought comment in the NOPR on the extent to which these entities should be required to follow the Uniform System of Accounts, what financial information, if any, should be reported by these entities, how frequently it should be reported, and, in particular, whether these exempted entities should be subject to reporting the information required in the proposed regulations.

14. Furthermore, the Commission sought comments on whether it should rescind the part 34 blanket authorizations granted to independent and affiliated power marketers and power producers and require these entities to comply with the filing requirement of part 34 for all future issuances of securities and assumptions of liabilities. The purpose of requiring these marketers and producers to comply with these regulations would not be to ensure their financial viability under section 204 of the FPA. Rather, it would be to promote transparency and facilitate investor risk analysis which in the long run promotes infrastructure and competition, and makes rates more just and reasonable.

15. Most commenters stated that the Commission should not revoke the existing waivers. They argue that the basis for the Commission initially granting the waivers has not changed. They stated that marketers do not own any electric power generation or transmission facilities; their jurisdictional facilities are only corporate and documentary; their costs are determined by utilities that sell power to it; and their earnings are not defined and regulated in terms of an authorized return on invested capital.[14]

16. They also argue that the marketers would incur substantial costs if required to add new accounting systems at this time to capture data required by the Uniform System of Accounts.[15] Additionally, they assert that providing the data could place the marketers in a competitive disadvantage because the information is proprietary in nature.[16]

17. Furthermore, they argue that the application of the Uniform System of Accounts, and the approval of the issuance of securities does not work well with power marketers and power producers, because these requirements are focused on providing accurate information for the determination of cost-based rates, and the accounting rules are not relevant to entities with market-based rate authority.[17]

18. Regarding the filing requirements of part 34, some commenters stated that this regulation was intended to prevent the issuance of securities that might impair the company's ability to perform its public utility responsibilities, however independent and affiliated power marketers and power producers are not public utilities with such responsibilities. They state that applying part 34 to power marketers would be unreasonable because it is unclear how the Commission could determine whether particular issuances are compatible with the public interest and could force power marketers out of business.[18]

19. One commenter stated that there are indications within the NOPR that the Commission does not intend its proposed rule to apply to gas marketers. They requested that the Commission clarify its intent to exempt gas marketers from the Uniform System of Accounts and related annual reporting requirements, and continue to honor the existing waivers previously granted to these entities.[19] Others state that the new rules should not sweep in qualified facilities and other on-site generators that primarily serve host facilities.[20] Finally, some commenters stated that other government agencies such as the U.S. Securities and the Exchange Commission (SEC) and the Commodity Futures Trading Commission (CFTC) are better suited to regulate accounting and the use of financial derivatives.[21]

20. Some commenters however supported extending the accounting and reporting requirements to marketers, power producers, and affiliates with market based rates.[22] They argue that the events of the last few months justify these new requirements. In their view, in light of the public's better understanding of the role derivatives play in energy security, the need for the Commission to obtain such information outweighs the reasons for exempting such entities. They state that the Commission requires a comprehensive picture of the marketplace and that the picture is incomplete if these entities are exempted from reporting requirements.[23] In their view, the requirements would help state regulators in reviewing financial activities that may subject utilities to financial risk. Therefore, they recommend that affiliates of utilities be subject to existing and proposed Uniform System of Accounts requirements insofar as derivative and hedging transactions may impact and affect traditional utilities.

21. One commenter suggested the possibility of requiring independent and affiliated power marketers and power producers to maintain a translation matrix, certified by the company's ethics officer, that could quickly convert its current method of maintaining financial records into the Uniform System of Accounts. Thus, information need not be filed but would be available in a consistent and easily understandable format if necessary.[24] Another commenter recommended that the Commission expand its data collection on derivative instruments. The purpose for derivative data collection should be not only to assist the Commission in its monitoring efforts, but also to further the transparency of the energy derivatives markets. The Commission should collect and make summary data available to potential buyers and sellers in the market, and in essence provide market participants with a forward price curve, allowing them to benchmark proposed deals.[25]

22. Finally, some commenters indicated that the Commission needs to reform its data resources with regard to monitoring competitive electric markets and market based sellers. If any changes are to be considered with regard to information review, the Commission should employ a thoughtful stakeholder process, such as a technical conference, to identify its information needs.[26]

23. The Commission has decided to sever from this rulemaking proceeding the inquiry on whether independent and affiliated power marketers and power producers should continue to be exempt from the Commission's Uniform System of Accounts and other reporting requirements. The Commission thus will consider separately the issue of what information collection and recordkeeping requirements it may impose on gas marketers, independent and affiliated power marketers, and power producers. While the Commission is sensitive to the fact that independent and affiliated power marketers and power producers and their use of derivatives are playing a more significant financial role in this evolving electric power industry, we also recognize the need to reform the approach used to monitor competitive electric markets and market based sellers in the context of a number of current and ongoing Commission initiatives.

24. For example, there are several ongoing investigations that may impact on the direction the Commission may take *vis-a-vis* power marketers and power producers. In addition, the Commission is currently reviewing its existing reporting requirements to determine what new information needs to be collected to monitor competitive energy markets, the sources for that information, how often that information should be updated, and how the Commission should gain access to specific information as needed in order to effectively monitor energy markets. The Commission thus will hold technical conferences and outreach meetings on these matters.

C. Accounting for Trading and Available-for-Sale Type Securities

25. In May 1993, the FASB issued Financial Accounting Standard (FAS) 115, Accounting for Certain Investments in Debt and Equity Securities, effective for fiscal years beginning after December 15, 1993. This statement addressed the accounting and reporting for investments in equity securities that have a readily determinable fair value and for all investments in debt securities, and its major provisions were summarized in the NOPR.

26. Under the Commission's Uniform Systems of Accounts for public utilities and licensees, and natural gas companies, all types of securities are recorded at cost and subsequent changes in the fair value of security investments are normally not recognized in the financial statements until realized. The Uniform System of Accounts for oil pipeline companies however, permits the recognition of decreases in the carrying value of investment securities, but currently would not permit the carrying value to be increased.

27. The Commission is of the view that fair value measurement of the trading and available-for-sale type securities presents relevant and useful information to regulators and others. For example, fair value measurements provide useful information to the Commission concerning the status of certain amounts set aside to fund future obligations such as decommissioning nuclear plants.

28. The Commission therefore proposed to add language to its security investment accounts for public utilities and licensees, natural gas companies, and oil pipeline companies to permit the recognition of changes in the fair value of trading and available-for-sale types of securities due to unrealized holding gains and losses.[27] The Commission also proposed amending its oil pipeline General Instruction 1–15, accounting for marketable equity securities, and removing oil pipeline accounts 23, 24, and 75.5 to conform the regulations to the proposed changes.

29. The Commission received no objections concerning its proposal to include unrealized holding gains and losses on certain qualifying securities in the investment asset accounts, or to its proposal to amend its oil pipeline General Instruction 1–15 to conform the regulations to the proposed changes. Therefore the Commission will revise the instructions to its investment accounts and make conforming changes to the applicable oil pipeline General Instruction 1–15, to require the recording of unrealized holding gains and losses on certain eligible investment securities.

30. As part of the accounting for recording unrealized holding gains and losses on certain investment securities, the Commission proposed to include in a separate section of stockholders equity, the corresponding change in value of these securities. Some commenters stated that changes in the carrying value of certain securities that will be ultimately used in the development of future rates, such as nuclear decommissioning trust funds, are better reflected in a regulatory asset or a regulatory liability account rather than in accumulated other comprehensive income when it is probable that the customer, rather than the stockholder, will be affected by changes in the value of these securities. They indicated that it is prevailing practice within the electric industry to record regulatory assets or liabilities when it is probable that such changes in the fair market value will be considered by regulators in the setting of rates in future proceedings.[28] Such prevailing practice according to the commenters is in accordance with the provisions of FAS 71, "Accounting for the Effects of Certain Types of Regulation." In order to implement this change, the commenters recommended that the final rule should include revised account descriptions of accounts 182.3 and 254 to include certain items of other comprehensive and the new General Instruction for accounting for other comprehensive income should be revised accordingly.

31. The Commission agrees that under certain circumstances it may be appropriate for rate regulated entities to report unrealized holding gains and losses on certain investment securities as regulatory assets or regulatory liabilities pursuant to Order 552 which

[12] We note that the Commission's jurisdiction over issuances of securities and assumptions of liabilities under section 204 of the FPA applies only to entities that are public utilities as defined in the FPA and only where the public utilitity's security issues are not regulated by a State commission (see FPA section 204(f)).

[13] *See, e.g.*, St. Joe Minerals Corp, 21 FERC 61,323 (1982); Cliffs Electric Service Company, 32 FERC 61,372 (1985); Citizens Energy Corporation, 35 FERC 61,198 (1986); Howell Gas Management Company, 40 FERC 61,336 (1987); Citizens Power & Light Corporation, 48 FERC 61,210 (1989); National Electric Associates Limited Partnership, 50 FERC 61,378 (1990); and Nevada Sun-Peak Limited Partnership, 86 FERC 61,243 (1999).

[14] *See* for example, EEI at p. 14, Sempra at p. 1, and APX at p. 8.

[15] *See* for example, Sempra at p. 12.

[16] *See* for example, Avista at p. 7, Competitive at p. 16, and NEM at p. 5.

[17] *See* for example, EEI at p. 15, Dominion at p. 7.

[18] *See* for example, EEI at p. 16, Dominion at p. 7, Sempra at p. 13, Avista at p. 7, and Calpine at p. 6.

[19] *See* Sempra at p. 6 and 7.

[20] *See* American Forest at p. 5.

[21] *See* Calpine at p. 3.

[22] *See* NYPSC at p. 2 and 3, Ohio PUC at p. 5, APGA at p. 14, and NRECA at p. 5.

[23] *See* APGA at p. 15.

[24] *See* Ohio PUC at p. 5.

[25] *See* NRRECA at p. 5.

[26] *See* for example, Congentrix at p. 10, DENA at p. 10, EPSA at p. 3, and J. Aron at p. 11.

[27] The security investment accounts for public utilities and gas pipeline companies are: Account 124, other investments; account 125, sinking funds (major only); account 126, depreciation fund (major only); account 127, amortization fund (major only); account 128, other special funds (major only); and account 129, special funds (nonmajor only). The security investment asset accounts for oil pipelines are account 11, temporary investments; account 21, other investments; and account 22, sinking and other funds.

[28] *See* for example, EEI at p. 12, and NRECA at p. 8.

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adopted the accounting standards set forth in FAS 71.[29] The Commission will revise its proposed General Instruction for accounting of other comprehensive income and its existing regulatory asset and liability accounts accordingly.

D. Accounting for Other Comprehensive Income

32. In June 1997, the FASB issued FAS 130, Reporting Comprehensive Income. This statement established the standards for reporting comprehensive income in a full set of general-purpose financial statements effective for fiscal years beginning after December 15, 1997. Comprehensive income represents the change in equity of an entity during a period from transactions and other events and circumstances from nonowner sources. Comprehensive income is composed of traditional net income plus items of "other comprehensive income."[30] The major provisions of this statement were summarized in the NOPR.

33. The Commission proposed to revise the Uniform Systems of Accounts for public utilities and licensees, natural gas companies and oil pipeline companies to provide accounting for items of other comprehensive income, and proposed the creation of two new equity accounts to record the activity related to other comprehensive income. The proposed new accounts would require supporting records be maintained by each category of other comprehensive income for reporting the information in the FERC Forms 1, 1–F, 2, 2–A, and 6.

34. The Commission also proposed instructions to the other comprehensive income accounts for all jurisdictional entities that would require supporting records be maintained by each category of other comprehensive income. This level of record keeping is required so that the entity is able to identify the amounts associated with the item of other comprehensive income when it enters into the determination of net income in subsequent periods.

35. Many commenters questioned the need and the benefit of using two accounts for the recognition of other comprehensive income, along with the requirement to transfer amounts of other comprehensive income from account 219.1 to account 219 at the balance sheet date. In their view this was a duplicative requirement and therefore they recommended the use of only one equity account for the recognition of other comprehensive income.[31]

36. Based upon the comments received the Commission agrees that one equity account can accommodate all of the activity provided that sufficient detailed records are maintained in order to identify and display current years' activity for items of other comprehensive income, in addition to providing a year-to-date summary of the activity. Therefore, the Commission will create only one account for public utilities and licensees, and natural gas companies entitled account 219, accumulated other comprehensive income, and one account for oil pipeline companies entitled account 77, accumulated other comprehensive income, to record amounts for items of other comprehensive income in stockholders equity. However, the Commission will keep the requirements originally set forth in the NOPR that detailed records be maintained so that the current period activity, year-to-date activity, and reclassification adjustments related to items of other comprehensive income can be readily identified. Maintaining detailed records for items included in accumulated other comprehensive income are necessary so that an entity can readily identify amounts when the item is included in net income in subsequent periods and to periodically report this information in the new reporting schedule entitled Accumulated Other Comprehensive Income and Hedging Activities.

37. Finally, the NOPR proposed the need for reclassification adjustments for items of other comprehensive income to avoid double counting an item in net income and other comprehensive income. The proposed instructions would have required that reclassification adjustments be made directly to other comprehensive income. This proposed accounting treatment for reclassification adjustments would minimize the need for creating a new account to capture amounts solely related to reclassification adjustments.

38. No commenters objected to the proposed accounting for reclassification adjustments. The Commission will therefore adopt the proposed accounting for reclassification adjustments.

E. Accounting for Derivatives and Hedging Activities

1. General

39. In June 1998, the FASB issued FAS No. 133, Accounting for Derivative Instruments and Hedging Activities, as amended on June 2000, by FAS 138, Accounting for Certain Derivative Instruments and Certain Hedging Activities. This pronouncement was issued in a response to an increased use of derivatives and to resolve problems with the accounting and reporting practices for derivatives and hedging activities. These problems included incomplete and inconsistent accounting guidance on the effects of derivative transactions and hedging activities. The effects of derivatives were not transparent in the basic financial statements, and many derivative instruments were carried "off-balance-sheet" regardless of whether they were formally part of a hedging strategy. The NOPR summarized the key points of the pronouncement.

2. General Instructions for Fair Value and Cash Flow Hedges

40. The Commission proposed to add a new general instruction that would require public utilities and licensees, natural gas companies, and oil pipeline companies to record changes in the fair value of the derivative instrument designated as a cash flow hedge to other comprehensive income. The proposed instructions would also require jurisdictional entities to record changes in the fair value of a derivative instrument designated as a fair value hedge in the new derivative asset or liability account with a corresponding adjustment to a subaccount of the asset or liability that carries the item being hedged. The ineffective portion of the cash flow and fair value hedges would be charged to the same income or expense account that will be used when the hedged item enters into the determination of net income.

41. No commenters objected to the above proposal regarding the use of a subaccount to adjust the carrying amount of the asset or liability being hedged under a fair value hedge, or the proposal to include the ineffective portion of the hedge in the same income or expense account that will be used when the hedged item enters into the determination of net income.[32] Therefore, the Commission will implement this change as proposed.

[29] *See* Revisions to Uniform Systems of Accounts to Account for Allowances Under the Clean Air Act Amendments of 1990 and Regulatory-Created Assets and Liabilities and to Form Nos. 1, 1–F, 2 and 2–A. Order No. 552, 58 FR17982 (Apr. 7, 1993), FERC Stats & Regs. Regulations Preambles January 1991-June 1996 30,967 (Mar. 31, 1993).

[30] Comprehensive income is defined by FASB in Concepts Statement No. 6 as, "the change in equity [net assets] of a business enterprise during a period from transactions and other events and circumstances from nonowner sources. It includes all changes in equity during a period except those resulting from investments by owners and distributions to owners."

[31] *See*, for example, EEI at p. 5, AEP at p. 2, Dominion at p. 14, Southern at p. 1, and Pinnacle at p. 3.

[32] *See* FAS 133 as amended by FAS 138 for definition, examples and illustrations of assessing effectiveness and measuring ineffectiveness for fair value and cash flow hedges.

3. Changes to General Instruction 21 Allowances

42. The Commission proposed to make technical changes to its existing general instructions concerning the accounting for hedge transactions related to exchange traded allowance future contracts. General Instruction No. 21, allowances, of part 101, directs public utilities to defer in account 186, miscellaneous deferred debits, or account 253, other deferred credits, the costs and benefits from hedging transactions associated with exchange traded allowance future contracts. The Commission proposed to delete paragraph I to be consistent with proposed accounting for derivatives. The accounting framework proposed for derivatives would also include exchange traded future allowances. No commenters objected to the changes proposed to General Instruction 21, allowances, therefore, the Commission will implement the changes as proposed.

4. Accounting for Derivative Assets and Liabilities

a. Balance Sheet Classification for Derivative Assets and Liabilities

43. The NOPR proposed establishing new balance sheet accounts to record derivative assets and liabilities. Under the proposal, derivative assets and liabilities would be accounted for and reported to the Commission based upon their intended use. Derivatives used for hedging activities would be classified in accounts 176 and 245 for public utilities and licensees, and natural gas companies, and accounts 47 and 66 for oil pipeline companies.[33] Derivatives used in non-hedging activities would be classified in accounts 175 and 244 for public utilities and licensees, and natural gas companies, and accounts 46 and 65 for oil pipeline companies.

44. The Commission also noted in the NOPR that entities are required to classify derivative assets and liabilities as current or long-term on their financial statements reported to the U.S. Securities and Exchange Commission (SEC) and in Annual Reports to Stockholders. The Commission stated that entities may create current and long-term subaccounts associated with the proposed new derivative balance sheet accounts in order to facilitate reporting derivative assets and liabilities to shareholders in general purpose financial statements.

45. Some commenters responded that the Commission should create current and long-term accounts to record derivative assets and liabilities on the balance sheet.[34] They stated that the Commission's Uniform System of Accounts includes separate sections for current and accrued assets and deferred debits, as well as current liabilities and deferred credits, and that FERC requires that other items be reported as current or long-term. They also stated that the establishment of current and long-term accounts would reduce the potential for misclassifications between current and long-term subaccounts of the proposed new accounts.

46. At this time the Commission declines to adopt the commenters' suggestion that derivative assets and liabilities should be reported to the Commission based upon a current or long-term balance sheet distinction. It is important for the Commission to obtain information concerning the nature of the derivative transactions that jurisdictional entities have entered into to manage their financial and other business risks. By reporting to the Commission derivative instruments used to hedge business risks separately from those derivative instruments used for non-hedging activities, the Commission and other regulators will have enhanced information as to the positions regulated entities have at the balance sheet date related to the entities' hedging and non-hedging activities. This important distinction would not be transparent if derivative instruments were displayed in the FERC Forms 1, 1–F, 2, 2–A and 6 based upon a current or long-term balance sheet classification. Additionally, reporting derivative instruments based upon their intended use will assist regulators in assessing the activities of jurisdictional entities related to their traditional utility business as compared to their trading activities.

b. Income Statement Classifications for Changes in the Value of Derivative Instruments

47. The Commission proposed that public utilities and licensees, and natural gas companies would use account 421, miscellaneous nonoperating income, and oil pipeline companies would use account 660, miscellaneous income charges, to record on the income statement the change in the fair value of the derivative instruments not used in hedging activities.

48. One commenter specifically supported the use of account 421 to record gains and losses on non-hedge activities.[35] They indicated that using account 421 to record gains and account 426.5 to record losses did not provide valuable information and they found it very difficult to separate gains and losses due to the large volumes of derivative transactions from power trading activities. However, other commenters asserted that account 421 is appropriate when there is an increase in the fair value of a derivative instrument, and account 426.5 is appropriate when there is a decrease in the fair value of the derivative instrument.[36]

49. The Commission concurs with the commenters that a better accounting and financial presentation is not to net gains and losses in one income statement account, but rather to record gains from non-hedging activities in account 421 and losses in account 426.5, for electric and natural gas companies. The use of separate income statement accounts to record gains and losses on derivative instruments used in non-hedging activities follows our existing accounting practice for exchange traded emission allowances. Finally, the Commission will also require that oil pipelines record gains in account 640, miscellaneous income, and losses in account 660, miscellaneous income charges, to better reflect increases and decreases in the fair value of derivative instruments not used in hedging activities on the income statement.

50. This accounting will aid the Commission and other users of the FERC Forms 1, 1–F, 2, 2–A and 6 to see more clearly the extent to which gains or losses have been incurred on non-hedging derivative transactions. And, by separately recording changes in the value of derivative instruments in separate income and expense accounts, any subsequent reclassification of amounts will be better displayed if a regulator chooses to include a portion of the holding gains or losses, or realized gains or losses, in the development of rates.

51. While respondents did not object to the use of below-the-line income statement accounts to record both unrealized and realized gains or losses on derivative instruments used for non-hedging activities, there were many views on what the appropriate accounting should be in instances when a regulator incorporates all or part of the actual gain or loss in the development of rates. The Commission proposed that when a regulator explicitly approves the inclusion of the changes in fair value of derivative instruments in the

[33] *See* FAS 133 as amended by FAS 138 for discussion and examples of hedging activities.

[34] *See* for example EEI at p. 8 and 9, AEP at p. 2, and Dominion at p. 13.

[35] *See* Cinergy at p. 4.

[36] *See* for example Southern Company at p. 3 and EEI at p. 12.

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development of rates, the company should reclassify those amounts from the below-the-line income statement accounts to the appropriate utility operating revenue or expense account that will be charged with the derivative transaction when it settles.

52. Some commenters indicated that it is inappropriate to record the changes in the fair value of non-hedge type derivative instruments in a below-the-line account prior to settlement, only to reclassify some or all of the amount to the appropriate operating revenue or expense account when the transaction settles.[37] They believe that changes in the fair value that will be included in rates should be initially recorded in the appropriate operating revenue or expense account, so reclassification is not necessary. Others support a position that in situations where it is probable that realized gains and losses would be included in rates, then unrealized changes in fair value of the related derivative instrument should be deferred in an appropriate regulatory asset or regulatory liability account.

53. After reviewing the comments, the Commission is of the view that entities will avail themselves of the special accounting afforded derivative instruments when these instruments are entered into as part of a cash flow or fair value hedge transaction. Under the special accounting afforded qualifying hedges, any unrealized gains and losses effectively remain on the balance sheet and therefore do not enter into the determination of net income until the hedged item enters into the determination of net income. If the derivative instrument is not part of qualifying hedge, entities will record the unrealized, as well as realized, gains or losses in accounts 421 and 426.5 as appropriate. However, if the derivative instrument does not qualify for hedge accounting, but it is probable under the requirements of Order 552 that changes in the fair value of the derivative instrument will be used in the development of rates, the entity must follow the Commission's existing accounting regulations for the recognition of regulatory assets and regulatory liabilities.

c. Inclusion of the Normal Purchases and Sales Scope Exception

54. The Commission noted in the NOPR that certain types of contracts are exempted from the requirements of FAS 133. For example, normal purchases and normal sales contracts that provided for the purchase or sale of goods that will be delivered in quantities expected to be used or sold by the reporting entity over a reasonable period in the normal course of business are not treated as derivative instruments. This exception is commonly referred to as the normal purchases and normal sales scope exception. The exception would include typical purchases and sales of inventory items, certain insurance contracts, and employee compensation agreements, and certain electric power contracts.

55. Some commenters noted that the normal purchases and sales exception should also be specifically included in the Commission's regulations.[38] They indicate that most forward power and electric option contracts will meet the normal purchase and sales scope exception and therefore changes in the contracts' fair value will not be required to be reflected on the financial statements. The Commission agrees with the commenters that some electric power contracts will meet this exception and therefore changes in the fair value of those contracts will not be reflected in the financial statements.

56. It is the Commission's view that the existing normal purchases and sales accounting exception criteria should also be applied to transactions that jurisdictional entities account and report to the Commission in the FERC Forms 1, 1–F, 2, 2–A, and 6. The Commission will therefore include language in the General Instructions for the Accounting for Derivative Instruments and Hedging Activities that provides for the normal purchases and sales exceptions.[39]

F. Changes to the FERC Annual Report Forms

57. The accounting changes proposed in the NOPR would require one new schedule and changes to existing balance sheet schedules in the FERC Forms 1, 1–F, 2, 2–A, and 6 filed with the Commission by public utilities and licensees, natural gas companies, and oil pipeline companies. The proposed new schedule was shown in appendix A of the NOPR.

58. As stated in the NOPR, in order to provide consistent accounting and reporting of items of other comprehensive income the Commission proposed to add a new schedule with instructions on the proper footnote disclosures for the FERC Forms 1, 1–F, 2, 2–A, and 6. The proposed new schedule would show the components of other comprehensive income and required:

59. The reporting of categories of other comprehensive income on a net-of-tax basis, where appropriate, along with the reporting of the related tax effects allocated to each component, in a footnote to the schedule.

60. The reporting of accumulated other comprehensive income balances at year end by category, in a footnote to the schedule.

61. The reporting of fair value hedge balances at year end by category, in a footnote to the schedule.

62. Some commenters recommended format changes to the proposed new schedule to better display the items of other comprehensive income. A roll-forward format was recommended that would show the current years activity, in addition to the cumulative balances for items of other comprehensive income.[40] The revised format would display all of the information proposed in the NOPR without the use of reporting accumulated balances for certain items through the use of footnotes.

63. The Commission notes that the roll-forward format recommendation made by the commenters will improve the transparency of the data displayed and reduce the need for certain year end balances to be reported in a footnote. The Commission will adopt the roll-forward format that will display amounts of other comprehensive income during the current period as well as at the balance sheet date. The new schedule for reporting derivative information and other comprehensive income amounts is shown in appendix B entitled Statement of Accumulated Comprehensive Income and Hedging Activities.

G. Disclosure Requirements

64. For many years financial statements issued to the public have required the inclusion of a disclosure entitled "Management's Discussion and Analysis of Financial Condition and Results of Operations" commonly referred to as the MD&A. It requires a discussion of liquidity, capital resources, results of operations and other information necessary to understand the financial condition, changes in financial condition and results of operations of the entity.

65. On January 22, 2002, the U.S. Securities and Exchange Commission (SEC) issued a statement entitled *Commission Statement About Management's Discussion and Analysis of Financial Condition and Results of Operations.*[41] This statement set forth certain views of the SEC regarding disclosure that should be considered by registrants that address matters of liquidity and capital resources including off-balance sheet arrangements; certain trading activities that include non-exchange traded contracts accounted for at fair value; and effects of transactions with related and certain other parties. The SEC's interpretative guidance related to the MD&A did not create new legal requirements, but suggested steps that issuers of financial statements should consider in meeting their current disclosure obligations with respect to the matters described above.

66. In particular the SEC's interpretative guidance recommended certain disclosures about trading activities that include non-exchange traded contracts accounted for at fair value. The recommended disclosures include information concerning realized and unrealized changes in fair value of commodity contracts including derivatives, the source of the fair value price, and the fair value of the contracts at various maturity dates.

67. The Commission recognizes that there have been some concerns raised about how the fair value of derivative instruments have been determined. The information provided by entities in their MD&A will provide additional insight to regulators, investors, creditors, and other users of the financial statements into the valuation techniques and assumptions used to value the outstanding contracts as of the balance sheet date.

68. The Commission is of the view that the type of information disclosed by jurisdictional entities in their MD&A related to trading activities involving material commodity contracts that are accounted for at fair value is an important part of understanding the financial condition of entities that report financial information to the Commission in FERC Forms 1, 1–F, 2, 2–A, and 6. Therefore to the extent that a jurisdictional entity filing a FERC Form 1, 1–F, 2, 2–A, or 6 includes the above type of information on trading activities in its MD&A as part of its Annual Report to Shareholders and SEC filing, it must report the same information reported to the Commission on the schedule entitled Important Changes During the Year.[42] The instructions on this schedule require important information that appears in their Annual Reports to Shareholders and the SEC to also be included on this schedule. By including the derivative information presented in the MD&A to the FERC, the quality of the information received by this Commission will be no less than that provided by jurisdictional entities to shareholders and other users of the financial data.

69. The Commission notes that power marketers and power producers that file financial information with the SEC will also be subject to its recent interpretative guidance regarding additional disclosures concerning their trading activities. The SEC's information reporting initiatives may impact the Commission's need to require further reporting from these entities.

H. Miscellaneous Items

70. One commenter recommended that the Commission state it will not incorporate derivative instruments, hedging activities, and other comprehensive income into its ratemaking process for utilities, because the value of these instruments are certain to change over time and the Commission would set rates incorrectly.[43]

71. As stated in the NOPR, the proposed rule was not intended to prescribe the ratemaking treatment for items of other comprehensive income or for derivative instruments and hedging activities. The adoption of any particular rate treatment for these amounts is beyond the scope of this rulemaking. The Commission will decide the appropriate treatment, for these transactions on a case-by-case basis in individual rate proceedings.

72. Some commenters recommended that the Commission delay the effective date of the proposed changes for one year after the rulemaking is approved in order to allow for a complete review of the regulations and their prospective implementation.[44] One commenter indicated that the Commission's consideration of this accounting is premature at this time and delay its review and implementation until various regulatory bodies review current accounting procedures or until any reforms are adopted.[45] However, another commenter requested that the Commission make the proposed filing requirements retroactive and effective for 2001 reporting by requiring supplements to the Commission's Annual Report filings with the new schedules required under the proposed rule.[46]

73. The Commission is of the view that jurisdictional entities are already familiar with the accounting pronouncements contained in this final rule and have already implemented these requirements in their Annual Reports to Shareholders and in filings with the SEC. By delaying proper implementation of these new accounting and reporting standards, different and inconsistent sets of financial information would be reported to the Commission, and accounting and reporting guidance would continue to be required on how these transactions should be reported to FERC. Consequently, it is the Commission's view that little, if any, benefit would be gained by delaying the issuance of accounting and reporting guidance on these matters. In order to provide consistent accounting and reporting to the Commission on a timely basis, the Commission declines to postpone implementation for another year. The accounting and reporting changes will become effective 60 days after date of publication in the **Federal Register**.

74. The Commission acknowledges that with any new accounting and financial reporting standard, implementation issues may arise. Jurisdictional entities can seek clarification from the Chief Accountant concerning the proper application or implementation of any accounting standard under the Commission's existing regulations.

75. Finally, the Chief Accountant had previously issued guidance concerning the proper accounting for derivative and hedging activities pending further action by the Commission. That guidance letter provided for the recording of derivative assets and liabilities in miscellaneous deferred debit or credit accounts, or in other investment accounts, based upon the jurisdictional entities rationale for entering into the derivative transaction. In order to provide for consistent accounting and reporting treatment for all derivative transactions, the Commission will require that amounts previously accounted for under the Chief Accountant's guidance letter using existing asset, liability and equity accounts, be reclassified to the appropriate new derivative assets, derivative liabilities, and accumulated other comprehensive income account, established under this Final Rule.

[37] *See* for example, Cinergy at p. 5, Southern at p. 3, and Pinnacle at p. 4.

[38] For example *see* Cinergy at p. 3, Wisconsin Electric at p. 6, and EEI at p. 6.

[39] *See* FAS 133 as amended by FAS 138, Derivatives Implementation Group (DIG) conclusions, and the Emerging Issues Task Force (EITF) pronouncements. These accounting pronouncements may be obtained from FASB at (*http://accounting.rutgers.edu/raw/fasb/*).

[40] *See* for example, Dominion at p. 14, Southern at p. 2, and EEI's April 1, 2002, supplement to its March 11, 2002 filing.

[41] *See* SEC release nos. 34–45321; FR–61. This notice may be obtained from the SEC website at (*http://www.sec.gov/rules/other/33–8056.htm*)

[42] *See* FERC Form No. 1 p. 108, FERC Form No. 2 p. 108, and FERC Form No. 6 p. 108.

[43] *See* Sempra at p. 6.

[44] *See* EEI at p. 13, and Dominion at p. 15.

[45] *See* Wisconsin Electric at p. 4 and 5.

[46] *See* APGA at p. 3.

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IV. Regulatory Flexibility Act Certification

76. The Commission finds that most filing entities regulated by the Commission do not fall within the Regulatory Flexibility Act's definition of small entity.[47] This final rule will promote consistent reporting practices for all reporting companies and would not be a significant burden to industry since the information is already being captured by their accounting systems and generally being reported to shareholders and others at a company, or at a consolidated business level. However, if the reporting requirements represent an undue burden on small businesses, the entity affected may seek a waiver of the disclosure requirements from the Commission. Accordingly, the Commission certifies that this Final Rule will not have a significant economic impact on a substantial number of small entities.

V. Environmental Impact Statement

77. Commission regulations require that an environmental assessment or an environmental impact statement be prepared for any Commission action that may have a significant adverse effect on the human environment.[48] No environmental consideration is necessary for the promulgation of a rule that is clarifying, corrective, or procedural or does not substantially change the effect of legislation or regulations being amended,[49] and also for information gathering, analysis, and dissemination.[50] The proposed rule updates the parts 101, 201 and 352 of the Commission's regulations, and does not substantially change the effect of the underlying legislation or the regulations being revised or eliminated. In addition, the final rule involves information gathering, analysis and dissemination. Therefore, this final rule falls within categorical exemptions provided in the Commission's Regulations. Consequently, neither an environmental impact statement nor an environmental assessment is required.

VI. Information Collection Statement

78. The Office of Management and Budget (OMB) regulations require that OMB approve certain reporting and record keeping (collections of information) imposed by an agency. The information collection requirements in this final rule are contained in the following Annual Reports: FERC Form No. 1, Annual Report of Major Public Utilities, Licensees and Others (Form 1); FERC Form No. 1–F, Annual Report of Nonmajor Public Utilities and Licensees (Form 1–F); FERC Form No. 2, Annual Report of Major Natural Gas Companies (Form 2); FERC Form No. 2–A, Annual Report of Nonmajor Natural Gas Companies (Form 2–A); and Form No. 6, Annual Report of Oil Pipeline Companies (Form 6). Form 1 most recently received OMB approval on March 29, 2002, for the period through March 2005. Form 1–F received OMB approval on April 2, 2002, for the period through April 2005. Form 2 received approval on March 29, 2002, for the period through March 2005. Form 2–A received approval on April 2, 2002, for the period through April 2005. Form 6 was previously approved March 28, 2001 for the period through March 2004. OMB declined to take any action at the NOPR stage instead deciding to make a determination at the final rule stage.

79. Interested persons may obtain information on the reporting requirements by contacting the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 (Attention: Michael Miller, Office of the Chief Information Officer, (202) 502–8415) or from the Office of Management and Budget, Room 10202 NEOB, Washington, DC 20503 (Attention: Desk Officer for the Federal Energy Regulatory Commission, (202) 395–7318, fax: (202) 395–7285).

80. The regulated entity shall not be penalized for failure to respond to this collection of information unless the collection of information displays a valid OMB control number.

81. *Titles:* FERC Form No. 1, "Annual Report of Major Public Utilities, Licensees and Others"; FERC Form No. 1–F, "Annual Report of Nonmajor Public Utilities and Licensees"; FERC Form No. 2, "Annual Report of Major Natural Gas Companies"; FERC Form No. 2–A, "Annual Report of Nonmajor Natural Gas Companies"; and Form No. 6, "Annual Report of Oil Pipeline Companies."

82. *Action:* Revision of Currently Approved Collections of Information.

83. *OMB Control Nos.:* 1902–0021; 1902–0029; 1902–0028; 1902–0030; and 1902–0022.

84. *Respondents:* Business or other for profit.

85. *Frequency of Responses:* Annually.

86. *Reporting Burden:* The Commission estimated that adoption of the reporting requirements as identified in the NOPR, would result in an increase in reporting burden to the information collections identified above. Those increases were the following:

Data collection	Hours per respondent	Total hours for data coll.*	
		NOPR	Final rule
Form—1	2	420	432
Form—1–F	2	14	52
Form—2	2	114	114
Form–2–A	2	114	106
Form—6	2	318	318
Totals		980	1,022

*The changes in total hours reflect changes in the number of respondents filing the information collections based on the most recent submissions to the Commission. Forms 1 & 1–F had increases in the number of respondents filing while Form 2–A had a decrease in the number of respondents who filed. The Commission did not receive specific comments concerning its burden estimates and will therefore continue those estimates in the final rule. Comments on the substantive issues raised in the NOPR are addressed elsewhere in the final rule.

87. Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Attention: Michael Miller, Office of the Chief Information Officer, Phone: (202) 502–8415, fax: (202) 208–2425, e-mail: *mike.miller@ferc.gov.*

88. For submitting comments concerning the collections of information and the associated burden estimate(s), please send your comments to the contact listed above or to the Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503 (Attention: Desk Officer for the Federal Energy Regulatory Commission, phone (202) 395–7856, fax: (202) 395–7285).

VII. Document Availability

89. In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (*http://www.ferc.gov/*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

90. From FERC's Home Page on the Internet, this information is available in the Federal Energy Regulatory Records Information System (FERRIS). The full text of this document is available on FERRIS in PDF and WordPerfect format for viewing, printing, and/or downloading. To access this document in FERRIS, type the docket number excluding the last three digits of this document in the docket number field.

91. User assistance is available for FERRIS and the FERC website during normal business hours from our Help line at (202) 502–8222 or the Public Reference Room at (202) 502–8371 Press 0, TTY (202) 502–8659. E-mail the Public Reference Room at *public.referenceroom@ferc.gov.*

VIII. Effective Date and Congressional Notification

92. This Final Rule will take effect January 6, 2003. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget, that this rule is not a "major rule" within the meaning of section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996.[51] The Commission will submit the final rule to both houses of Congress and the General Accounting Office.[52]

[47] 5 U.S.C. 601(3), citing to section 3 of the Small Business Act, 15 U.S.C. 632. Section 3 of the Small Business Act defines a "small-business concern" as a business which is independently owned and operated and which is not dominate in its field of operation.

[48] Regulations Implementing National Environmental Policy Act, 52 FR 47897 (December 17, 1987). FERC Stats. & Regs. 30,783 (1987).

[49] 18 CFR 380.4(a)(2)(ii).

[50] 18 CFR 380.4(a)(5).

[51] 5 U.S.C. 804(2).

[52] 5 U.S.C. 801(a)(1)(A).

List of Subjects

18 CFR Part 101

Electric power, Electric utilities, Reporting and recordkeeping requirements, Uniform System of Accounts.

18 CFR Part 201

Natural gas, Reporting and recordkeeping requirements, Uniform System of Accounts.

18 CFR Part 352

Pipelines, Reporting and recordkeeping requirements, Uniform System of Accounts.

By the Commission.

Linwood A. Watson, Jr.,

Deputy Secretary.

In consideration of the foregoing, the Commission amends Parts 101, 201, and 352, Title 18 of the Code of Federal Regulations, as follows:

PART 101—UNIFORM SYSTEM OF ACCOUNTS PRESCRIBED FOR PUBLIC UTILITIES AND LICENSEES SUBJECT TO THE PROVISIONS OF THE FEDERAL POWER ACT

1. The authority citation for part 101 continues to read as follows:

Authority: 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352, 7651–7651o.

2. Amend part 101 as follows:

a. In General Instructions, section 21. Allowances, paragraph I is removed, and section 23. Accounting for other comprehensive income, and 24. Accounting for derivative instruments and hedging activities, are added to read as follows:

General Instructions

* * * * *

23. *Accounting for other comprehensive income.*

A. Utilities shall record items of other comprehensive income in account 219, Accumulated other comprehensive income. Amounts included in this account shall be maintained by each category of other comprehensive income. Examples of categories of other comprehensive income include, foreign currency items, minimum pension liability adjustments, unrealized gains and losses on available-for-sale type securities and cash flow hedge amounts. Supporting records shall be maintained for account 219 so that the company can readily identify the cumulative amount of other comprehensive income for each item included in this account.

B. When an item of other comprehensive income enters into the determination of net income in the current or subsequent periods, a reclassification adjustment shall be recorded in account 219 to avoid double counting of that amount.

C. When it is probable that an item of other comprehensive income will be included in the development of cost-of-service rates in subsequent periods, that amount of unrealized losses or gains will be recorded in Accounts 182.3 or 254 as appropriate.

24. *Accounting for derivative instruments and hedging activities.*

A. Utilities shall recognize derivative instruments as either assets or liabilities in the financial statements and measure those instruments at fair value, except those falling within recognized exceptions. Normal purchases or sales are contracts that provide for the purchase or sale of goods that will be delivered in quantities expected to be used or sold by the utility over a reasonable period in the normal course of business. A derivative instrument is a financial instrument or other contract with all of the following characteristics:

1. It has one or more underlyings and a notional amount or payment provision. Those terms determine the amount of the settlement or settlements, and, in some cases, whether or not a settlement is required.

2. It requires no initial net investment or an initial net investment that is smaller than would be required for other types of contracts that would be expected to have a similar response to changes in market factors.

3. Its terms require or permit net settlement, can readily be settled net by a means outside the contract, or provides for delivery of an asset that puts the recipient in a position not substantially different from net settlement.

B. The accounting for the changes in the fair value of derivative instruments depends upon its intended use and designation. Changes in the fair value of derivative instruments not designated as fair value or cash flow hedges shall be recorded in account 175, derivative instrument assets, or account 244, derivative instrument liabilities, as appropriate, with the gains recorded in account 421, miscellaneous nonoperating income, and losses recorded in account 426.5, other deductions.

C. A derivative instrument may be specifically designated as a fair value or cash flow hedge. A hedge is used to manage risk to price, interest rates, or foreign currency transactions. A company shall maintain documentation of the hedge relationship at the inception of the hedge that details the

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risk management objective and strategy for undertaking the hedge, the nature of the risk being hedged, and how hedge effectiveness will be determined.

D. If the utility designates the derivative instrument as a fair value hedge against exposure to changes in the fair value of a recognized asset, liability, or a firm commitment, it shall record the change in fair value of the derivative instrument to account 176, derivative instrument assets-hedges, or account 245, derivative instrument liabilities-hedges, as appropriate, with a corresponding adjustment to the subaccount of the item being hedged. The ineffective portion of the hedge transaction shall be reflected in the same income or expense account that will be used when the hedged item enters into the determination of net income. In the case of a fair value hedge of a firm commitment a new asset or liability is created. As a result of the hedge relationship, the new asset or liability will become part of the carrying amount of the item being hedged.

E. If the utility designates the derivative instrument as a cash flow hedge against exposure to variable cash flows of a probable forecasted transaction, it shall record changes in the fair value of the derivative instrument in account 176, derivative instrument assets-hedges, or account 245, derivative instrument liabilities-hedges, as appropriate, with a corresponding amount in account 219, accumulated other comprehensive income, for the effective portion of the hedge. The ineffective portion of the hedge transaction shall be reflected in the same income or expense account that will be used when the hedged item enters into the determination of net income. Amounts recorded in other comprehensive income shall be reclassified into earnings in the same period or periods that the hedged forecasted item enters into the determination of net income.

b. In Balance Sheet Accounts, accounts 124, paragraph A, 125, 126 and 127 are revised to read as follows:

Balance Sheet Accounts

* * * * *

124 *Other investments.*

A. This account shall include the book cost of investments in securities issued or assumed by nonassociated companies, investment advances to such companies, and any investments not accounted for elsewhere. This account shall also include unrealized holding gains and losses on trading and available-for-sale types of security investments. Include also the offsetting entry to the recording of amortization of discount or premium on interest bearing investments. (*See* account 419, interest and dividend income.)

* * * * *

125 *Sinking funds (Major only).*

This account shall include the amount of cash and book cost of investments held in sinking funds. This account shall also include unrealized holding gains and losses on trading and available-for-sale types of security investments. A separate account, with appropriate title, shall be kept for each sinking fund. Transfers from this account to special deposit accounts may be made as necessary for the purpose of paying matured sinking-fund obligations, or obligations called for redemption but not presented, or the interest thereon.

126 *Depreciation fund (Major only).*

This account shall include the amount of cash and book cost of investments which have been segregated in a special fund for the purpose of identifying such assets with the accumulated provisions for depreciation. This account shall also include unrealized holding gains and losses on trading and available-for-sale types of security investments.

127 *Amortization fund—Federal (Major only).*

This account shall include the amount of cash and book cost of investments of any investments of any fund maintained pursuant to the requirements of a federal regulatory body, as the cash and investments segregated for the purpose of identifying the specific assets associated with account 215.1, appropriated retained earnings—amortization reserve, federal. This account shall also include unrealized holding gains and losses on trading and available-for-sale types of security investments.

* * * * *

c. In Balance Sheet Accounts, account 128, introductory text above the note is revised to read as follows:

Balance Sheet Accounts

* * * * *

128 Other *special funds (Major only).*

This account shall include the amount of cash and book cost of investments which have been segregated in special funds for insurance, employee pensions, savings, relief, hospital, and other purposes not provided for elsewhere. This account shall also include unrealized holding gains and losses on trading and available-for-sale types of security investments. A separate account with appropriate title, shall be kept for each fund.

* * * * *

d. In Balance Sheet Accounts, account 129, introductory text preceding Note A, is revised to read as follows:

Balance Sheet Accounts

* * * * *

129 *Special funds (Nonmajor only).*

This account shall include the amount of cash and book cost of investments which have been segregated in special funds for bond retirements, property additions and replacements, insurance, employees' pensions, savings, relief, hospital, and other purposes not provided for elsewhere. This account shall also include unrealized holding gains and losses on trading and available-for-sale types of security investments. A separate account, with appropriate title, shall be kept for each fund.

* * * * *

e. In Balance Sheet Accounts, accounts 175 and 176 are added to read as follows:

Balance Sheet Accounts

* * * * *

175 *Derivative instrument assets.*

This account shall include the amounts paid for derivative instruments, and the change in the fair value of all derivative instrument assets not designated as cash flow or fair value hedges. Account 421, miscellaneous nonoperating income, shall be credited or debited, as appropriate, with the corresponding amount of the change in the fair value of the derivative instrument.

176 *Derivative instrument assets—Hedges.*

A. This account shall include the amounts paid for derivative instruments, and the change in the fair value of derivative instrument assets designated by the utility as cash flow or fair value hedges.

B. When a utility designates a derivative instrument asset as a cash flow hedge it will record the change in the fair value of the derivative instrument in this account with a concurrent charge to account 219, accumulated other comprehensive income, with the effective portion of the gain or loss. The ineffective portion of the cash flow hedge shall be charged to the same income or expense account that will be used when the hedged item enters into the determination of net income.

C. When a utility designates a derivative instrument as a fair value hedge it shall record the change in the fair value of the derivative instrument in this account with a concurrent charge to a subaccount of the asset or liability that carries the item being hedged. The ineffective portion of the fair value hedge shall be charged to the same income or expense account that will be used when the hedged item enters into the determination of net income.

* * * * *

f. In Balance Sheet Accounts, account 182.3, paragraph B is revised to read as follows:

Balance Sheet Accounts

* * * * *

182.3 *Other regulatory assets.*

* * * * *

B. The amounts included in this account are to be established by those charges which would have been included in net income, or accumulated other comprehensive income, determinations in the current period under the general requirements of the Uniform System of Accounts but for it being probable that such items will be included in a different period(s) for purposes of developing rates that the utility is authorized to charge for its utility services. When specific identification of the particular source of a regulatory asset cannot be made, such as in plant phase-ins, rate moderation plans, or rate levelization plans, account 407.4, regulatory credits, shall be credited. The amounts recorded in this account are generally to be charged, concurrently with the recovery of the amounts in rates, to the same account that would have been charged if included in income when incurred, except all regulatory assets established through the use of account 407.4 shall be charged to account 407.3, regulatory debits, concurrent with the recovery in rates.

* * * * *

g. In Balance Sheet Accounts, accounts 219, 244 and 245 are added to read as follows:

Balance Sheet Accounts

* * * * *

219 *Accumulated other comprehensive income.*

A. This account shall include revenues, expenses, gains, and losses that are properly includable in other comprehensive income during the period. Examples of other comprehensive income include foreign currency items, minimum pension liability adjustments, unrealized gains and losses on certain investments in debt and equity securities, and cash flow hedges. Records supporting the entries to this account shall be maintained so that the utility can furnish the amount of other comprehensive income for each item included in this account.

B. This account shall also be debited or credited, as appropriate, with amounts of accumulated other comprehensive income that have been included in the determination of net income during the period and in accumulated other comprehensive income in prior periods. Separate records for each category of items shall be maintained to identify the amount of the reclassification adjustments from accumulated other comprehensive income to earnings made during the period.

* * * * *

244 *Derivative instrument liabilities.*

This account shall include the change in the fair value of all derivative instrument liabilities not designated as cash flow or fair value hedges. Account 426, other deductions, shall be debited or credited as appropriate with the corresponding amount of the change in the fair value of the derivative instrument.

245 *Derivotive instrument liabilities-Hedges.*

A. This account shall include the change in the fair value of derivative instrument liabilities designated by the utility as cash flow or fair value hedges.

B. A utility shall record the change in the fair value of a derivative instrument liability related to a cash flow hedge in this account, with a concurrent charge to account 219, accumulated other comprehensive income, with the effective portion of the derivative's gain or loss. The ineffective portion of the cash flow hedge shall be charged to the same income or expense account that will be used when the hedged item enters into the determination of net income.

C. A utility shall record the change in the fair value of a derivative instrument liability related to a fair value hedge in this account, with a concurrent charge to a subaccount of the asset or liability that carries the item being hedged. The ineffective portion of the fair value hedge shall be charged to the same income or expense account that will be used when the hedged item enters into the determination of net income.

* * * * *

h. In Balance Sheet Accounts, account 254, paragraph B, is revised to read as follows:

Balance Sheet Accounts

* * * * *

254 *Other regulatory liabilities.*

* * * * *

B. The amounts included in this account are to be established by those credits which would have been included in net income, or accumulated other comprehensive income, determinations in the current period under the general requirements of the Uniform System of Accounts but for it being probable that: Such items will be included in a different period(s) for purposes of developing the rates that the utility is authorized to charge for its utility services; or refunds to customers, not provided for in other accounts, will be required. When specific identification of the particular source of the regulatory liability cannot be made or when the liability arises from revenues collected pursuant to tariffs on file at a regulatory agency, account 407.3, regulatory debits, shall be debited. The amounts recorded in this account generally are to be credited to the same account that would have been credited if included in income when earned except: All regulatory liabilities established through the use of account 407.3 shall be credited to account 407.4, regulatory credits; and in the case of refunds, a cash account or other appropriate account should be credited when the obligation is satisfied.

* * * * *

PART 201—UNIFORM SYSTEM OF ACCOUNTS PRESCRIBED FOR NATURAL GAS COMPANIES SUBJECT TO THE PROVISIONS OF THE NATURAL GAS ACT

3. The authority citation for part 201 continues to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7101–7352, 7651–7651o.

4. Amend part 201 as follows:

a. In General Instructions, sections 22, accounting for other comprehensive income, and 23, accounting for derivative instruments and hedging activities, are added to read as follows:

General Instructions

* * * * *

22. *Accounting for other comprehensive income.*

A. Utilities shall record items of other comprehensive income in account 219, accumulated other comprehensive income. Amounts included in this account shall be maintained by each category of other comprehensive income. Examples of categories of other comprehensive income include, foreign currency items, minimum pension liability adjustments, unrealized gains and losses on available-for-sale type securities and cash flow hedge amounts. Supporting records shall be maintained for account 219 so that the company can readily identify the cumulative amount of other comprehensive income for each item included in this account.

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B. When an item of other comprehensive income enters into the determination of net income in the current or subsequent periods, a reclassification adjustment shall be recorded in account 219 to avoid double counting of that amount.

C. When it is probable that an item of other comprehensive income will be included in the development of cost of service rates in subsequent periods, that amount of unrealized losses or gains shall be recorded in accounts 182.3 or 254 as appropriate.

23. *Accounting for derivative instruments and hedging activities.*

A. Utilities shall recognize derivative instruments as either assets or liabilities in the financial statements and measure those instruments at fair value, except those falling within recognized exceptions, the most common of which being the normal purchases and sales scope exception. Normal purchases or sales are contracts that provide for the purchase or sale of goods that will be delivered in quantities expected to be used or sold by the utility over a reasonable period in the normal course of business. A derivative instrument is a financial instrument or other contract with all three of the following characteristics:

(1) It has one or more underlyings and a notional amount or payment provision. Those terms determine the amount of the settlement or settlements, and, in some cases, whether or not a settlement is required.

(2) It requires no initial net investment or an initial net investment that is smaller than would be required for other types of contracts that would be expected to have similar response to changes in market factors.

(3) Its terms require or permit net settlement, can readily be settled net by a means outside the contract, or provides for delivery of an asset that puts the recipient in a position not substantially different from net settlement.

B. The accounting for the changes in the fair value of derivative instruments depends upon its intended use and designation. Changes in the fair value of derivative instruments not designated as fair value or cash flow hedges will be recorded in account 175, derivative instrument assets, or account 244, derivative instrument liabilities, as appropriate, with the gains recorded in account 421, miscellaneous nonoperating income, and losses recorded in account 426.4, other deductions.

C. A derivative instrument may be specifically designated as a fair value or cash flow hedge. A hedge may be used to manage risk to price, interest rates, or foreign currency transactions. Utilities shall maintain documentation of the hedge relationship at the inception of the hedge that details the risk management objective and strategy for undertaking the hedge, the nature of the risk being hedged, and how hedge effectiveness will be determined.

D. If the utility designates the derivative instrument as a fair value hedge against exposure to changes in the fair value of a recognized asset, liability, or a firm commitment, it will record the change in fair value of the derivative instrument to account 176, derivative instrument assets—hedges, or account 245, derivative instrument liabilities—hedges, as appropriate, with a corresponding adjustment to the subaccount of the item being hedged. The ineffective portion of the hedge transaction shall be reflected in the same income or expense account that will be used when the hedged item enters into the determination of net income. In the case of a fair value hedge of a firm commitment a new asset or liability is created. As a result of the hedge relationship, the new asset or liability will become part of the carrying amount of the item being hedged.

E. If the utility designates the derivative instrument as a cash flow hedge against exposure to variable cash flows of a probable forecasted transaction, it shall record changes in the fair value of the derivative instrument in account 176, derivative instrument assets—hedges, or account 245, derivative instrument liabilities—hedges, as appropriate, with a corresponding amount in account 219, accumulated other comprehensive income, for the effective portion of the hedge. The ineffective portion of the hedge transaction shall be reflected in the same income or expense account that will be used when the hedged item enters into the determination of net income. Amounts recorded in other comprehensive income shall be reclassified into earnings in the same period or periods that the hedged forecasted item enters into the determination of net income.

* * * * *

b. In Balance Sheet Accounts, accounts 124, paragraph A, 125, 126, and 128, introductory text preceding the Note, are revised to read as follows:

Balance Sheet Accounts

* * * * *

124 *Other investments.*

A. This account shall include the book cost of investments in securities issued or assumed by nonassociated companies, investment advances to such companies, and any investments not accounted for elsewhere. This account shall also include unrealized holding gains and losses on trading and available-for-sale types of security investments. Include also the offsetting entry to the recording of amortization of discount or premium on interest bearing investments. (*See* account 419, interest and dividend income.)

* * * * *

125 *Sinking funds.*

This account shall include the amount of cash and book cost of investments held in sinking funds. This account shall also include unrealized holding gains and losses on trading and available-for-sale types of security investments. A separate account, with appropriate title, shall be kept for each sinking fund. Transfers from this account to special deposit accounts may be made as necessary for the purpose of paying matured sinking-fund obligations, or obligations called for redemption but not presented, or the interest thereon.

126 *Depreciation fund.*

This account shall include the amount of cash and book cost of investments which have been segregated in a special fund for the purpose of identifying such assets with the accumulated provisions for depreciation. This account shall also include unrealized holding gains and losses on trading and available-for-sale types of security investments.

* * * * *

128 *Other special funds.*

This account shall include the amount of cash and book cost of investments which have been segregated in special funds for insurance, employee pensions, savings, relief, hospital, and other purposes not provided for elsewhere. This account shall also include unrealized holding gains and losses on trading and available-for-sale types of security investments. A separate account with appropriate title, shall be kept for each fund.

* * * * *

c. In Balance Sheet Accounts, accounts 175 and 176 are added to read as follows:

Balance Sheet Accounts

* * * * *

175 *Derivative instrument assets.*

This account shall include the amounts paid for derivative instruments, and the change in the fair value of all derivative instrument assets not designated as cash flow or fair value hedges. Account 421, miscellaneous nonoperating income, will be credited or debited as appropriate with the corresponding amount of the change in the fair value of the derivative instrument.

176 *Derivative instrument assets—Hedges.*

A. This account shall include the amounts paid for derivative instruments, and the change in the fair value of derivative instrument assets designated by the utility as cash flow or fair value hedges.

B. When a utility designates a derivative instrument asset as a cash flow hedge it will record the change in the fair value of the derivative instrument in this account with a concurrent charge to account 219, accumulated other comprehensive income, with the effective portion of the derivative gain or loss. The ineffective portion of the cash flow hedge shall be charged to the same income or expense account that will be used when the hedged item enters into the determination of net income.

C. When a utility designates a derivative instrument asset as a fair value hedge it shall record the change in the fair value of the derivative instrument in this account with a concurrent charge to a subaccount of the asset or liability that carries the item being hedged. The ineffective portion of the fair value hedge shall be charged to the same income or expense account that will be used when the hedged item enters into the determination of net income.

* * * * *

d. In Balance Sheet Accounts, account 182.3, paragraph B, is revised to read as follows:

Balance Sheet Accounts

* * * * *

182.3 *Other regulatory assets.*

* * * * *

B. The amounts included in this account are to be established by those charges which would have been included in net income, or accumulated other comprehensive income, determinations in the current period under the general requirements of the Uniform System of Accounts but for it being probable that such items will be included in a different period(s) for purposes of developing rates that the utility is authorized to charge for its utility services. When specific identification of the particular source of a regulatory asset cannot be made, such as in plant phase-ins, rate moderation plans, or rate levelization plans, account 407.4, regulatory credits, shall be credited. The amounts recorded in this account are generally to be charged, concurrently with the recovery of the amounts in rates, to the same account that would have been charged if included in income when incurred, except all regulatory assets established through the use of account 407.4 shall be charged to account 407.3, Regulatory debits, concurrent with the recovery in rates.

* * * * *

e. In Balance Sheet Accounts, accounts 219, 244 and 245 are added, to read as follows:

Balance Sheet Accounts

* * * * *

219 *Accumulated other comprehensive income.*

A. This account shall include revenues, expenses, gains, and losses that are properly includable in other comprehensive income during the period. Examples of other comprehensive income include foreign currency items, minimum pension liability adjustments, unrealized gains and losses on certain investments in debt and equity securities, and cash flow hedges. Records supporting the entries to this account shall be maintained so that the utility can furnish the amount of other comprehensive income for each item included in this account.

B. This account shall also be debited or credited, as appropriate, with amounts of accumulated other comprehensive income that have been included in the determination of net income during the period and in accumulated other comprehensive income in prior periods. Separate records for each category of items will be maintained to identify the amount of the reclassification adjustments from accumulated other comprehensive income to earnings made during the period.

* * * * *

244 *Derivative instrument liabilities.*

This account shall include the change in the fair value of all derivative instrument liabilities not designated as cash flow or fair value hedges. Account 426.5, other deductions, shall be debited or credited as appropriate with the corresponding amount of the change in the fair value of the derivative instrument.

245 *Derivative instrument liabilities—Hedges.*

A. This account shall include the change in the fair value of derivative instrument liabilities designated by the utility as cash flow or fair value hedges.

B. A utility shall record the change in the fair value of a derivative liability related to a cash flow hedge in this account, with a concurrent charge to account 219, accumulated other comprehensive income, with the effective portion of the derivative gain or loss. The ineffective portion of the cash flow hedge shall be charged to the same income or expense account that will be charged when the hedged item enters into the determination of net income.

C. A utility shall record the change in the fair value of a derivative instrument liability related to a fair value hedge in this account, with a concurrent charge to a subaccount of the asset or liability that carries the item being hedged. The ineffective portion of the fair value hedge shall be charged to the same income or expense account that will be charged when the hedged item enters into the determination of net income.

* * * * *

f. In Balance Sheet Accounts, account 254, paragraph B is revised, to read as follows:

Balance Sheet Accounts

* * * * *

254 *Other regulatory liabilities.*

* * * * *

B. The amounts included in this account are to be established by those credits which would have been included in net income, or accumulated other comprehensive income, determinations in the current period under the general requirements of the Uniform System of Accounts but for it being probable that: Such items will be included in a different period(s) for purposes of developing the rates that the utility is authorized to charge for its utility services; or refunds to customers, not provided for in other accounts, will be required. When specific identification of the particular source of the regulatory liability cannot be made or when the liability arises from revenues collected pursuant to tariffs on file at a regulatory agency, account 407.3, regulatory debits, shall be debited. The amounts recorded in this account generally are to be credited to the same account that would have been credited if included in income when earned except: All regulatory liabilities established through the use of account 407.3 shall be credited to account 407.4, regulatory credits; and in the case of refunds, a cash account or other appropriate account should be credited when the obligation is satisfied.

* * * * *

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PART 352—UNIFORM SYSTEM OF ACCOUNTS PRESCRIBED FOR OIL PIPELINE COMPANIES SUBJECT TO THE PROVISIONS OF THE INTERSTATE COMMERCE ACT

5. The authority citation for part 352 continues to read as follows:

Authority: 49 U.S.C. 60502; 49 App. U.S.C. 1–85 (1988).

6. Amend part 352 as follows:

a. In List of Instructions and Accounts, definition, paragraph 35(d) is revised to read as follows:

Definitions.

35 * * *

(d) *Cost,* as applied to a marketable equity security, refers to the original cost as adjusted for unrealized holding gains and losses.

* * * * *

b. In General Instructions, paragraph 1–15(a), (b) and (c) are revised, (d) and (e) are removed, and General Instructions paragraphs 1–17 and 1–18 are added to read as follows:

General Instructions

* * * * *

1–15 *Accounting for marketable securities owned.*

(a) Accounts 11 "Temporary investments," 20 "Investments in affiliated companies," and 21 "Other investments" shall be maintained in such a manner as to reflect the marketable equity portion (*see* definition 35) and other securities or investments.

(b) For the purpose of determining net ledger value, the marketable equity securities in account 11 shall be considered the current portfolio and the marketable equity securities in accounts 20 and 21 (combined) shall be considered the noncurrent portfolio.

(c) Carriers will categorize their security investments as held-to-maturity, trading, or available-for-sale. Unrealized holding gains and losses on trading type investment securities will be recorded in accounts 640, miscellaneous income, and 660, miscellaneous income charges, as appropriate. Unrealized holding gains and losses on available-for-sale type investment securities shall be recorded in account 77, accumulated other comprehensive income.

* * * * *

1–17 *Accounting for other comprehensive income.*

(a) Carriers shall record items of other comprehensive income in account 77, accumulated other comprehensive income. Amounts included in this account shall be maintained by each category of other comprehensive income. Examples of categories of other comprehensive income include, foreign currency items, minimum pension liability adjustments, unrealized gains and losses on available-for-sale type securities and cash flow hedge amounts. Supporting records shall be maintained for account 77 so that the company can readily identify the cumulative amount of other comprehensive income for each item included in this account.

(b) When an item of other comprehensive income enters into the determination of net income in the current or subsequent periods, a reclassification adjustment shall be recorded in account 77 to avoid double counting of that amount.

1–18 *Accounting for derivative instruments and hedging activities.*

(a) A carrier shall recognize derivative instruments as either assets or liabilities in the financial statements and measure those instruments at fair value, except those falling within recognized exceptions, the most common of which being the normal purchases and sales scope exception. Normal purchases or sales are contracts that provide for the purchase or sale of goods that will be delivered in quantities expected to be used or sold by the utility over a reasonable period in the normal course of business. A derivative instrument is a financial instrument or other contract with all three of the following characteristics:

(1) It has one or more underlyings and a notional amount or payment provision. Those terms determine the amount of the settlement or settlements, and, in some cases, whether or not a settlement is required.

(2) It requires no initial net investment or an initial net investment that is smaller than would be required for other types of contracts that would be expected to have similar response to changes in market factors.

(3) Its terms require or permit net settlement, can readily be settled net by a means outside the contract, or provides for delivery of an asset that puts the recipient in a position not substantially different from net settlement.

(b) The accounting for the changes in the fair value of derivative instruments depends upon its intended use and designation. Changes in the fair value of derivative instruments not designated as fair value or cash flow hedges shall be recorded in account 46, derivative instrument assets, or account 65, derivative instrument liabilities, as appropriate, with the gains recorded in account 640, miscellaneous income, and losses recorded in account 660, miscellaneous income charges.

(c) A derivative instrument may be specifically designated as a fair value or cash flow hedge. A hedge may be used to manage risk to price, interest rates, or foreign currency transactions. An entity shall maintain documentation of the hedge relationship at the inception of the hedge that details the risk management objective and strategy for undertaking the hedge, the nature of the risk being hedged, and how hedge effectiveness will be determined.

(d) If the carrier designates the derivative instrument as a fair value hedge against exposure to changes in the fair value of a recognized asset, liability, or a firm commitment, it shall record the change in fair value of the derivative instrument designated as a fair value hedge to account 47, derivative instrument assets-hedges, or account 66, derivative instrument liabilities-hedges, as appropriate, with a corresponding adjustment to the subaccount of the item being hedged. The ineffective portion of the hedge transaction shall be reflected in the same income or expense account that will be used when the hedged item enters into the determination of net income. In the case of a fair value hedge of a firm commitment, a new asset or liability is created. As a result of the hedge relationship, the new asset or liability will become part of the carrying amount of the item being hedged.

(e) If the carrier designates the derivative instrument as a cash flow hedge against exposure to variable cash flows of a probable forecasted transaction, it shall record changes in the fair value of the derivative instrument in account 47, derivative instrument assets-hedges, or account 66, derivative instrument liabilities-hedges, as appropriate, with a corresponding amount in account 77, accumulated other comprehensive income, for the effective portion of the hedge. The ineffective portion of the hedge transaction shall be reflected in the same income or expense account that will be used when the hedged item enters into the determination of net income. Amounts recorded in other comprehensive income shall be reclassified into earnings in the same period or periods that the hedged forecasted item enters into the determination of net income.

* * * * *

c. In Balance Sheet Accounts, accounts 11, 21, and 22, paragraph (a) are revised to read as follows:

Balance Sheet Accounts

* * * * *

11 *Temporary investments.*

(a) This account shall include the cost of securities and other collectible obligations acquired for the purpose of temporarily investing cash, such as United States Treasury certificates, marketable securities, time drafts receivable, demand loans, time deposits with banks and trust companies, and other similar investments of a temporary character. This account shall also include unrealized holding gains and losses on trading and available-for-sale types of security investments.

(b) This account shall be subdivided to reflect the marketable equity securities' portion and other temporary investments. (*See* Instruction 1–15).

* * * * *

21 *Other investments.*

This account shall include the cost of investments in securities of (other than securities held in special funds) and advances made to other than affiliated companies. This account shall also include unrealized holding gains and losses on trading and available-for-sale types of security investments. Separate records shall be maintained to show the securities pledged and the following classes of investments in each nonaffiliated company:

(a) Stocks.

(b) Bonds.

(c) Other secured obligations.

(d) Unsecured notes.

(e) Investment advances.

22 *Sinking and other funds.*

(a) This account shall include cash and cost of investments in securities and other assets, trusteed or otherwise restricted, that have been segregated in distinct funds for purposes of redeeming outstanding obligations; purchasing or replacing assets; paying pensions, relief, hospitalization, and other similar items. This account shall also include unrealized holding gains and losses on trading and available-for-sale types of security investments. The cash value of life insurance policies on the lives of employees and officers to the extent that the carrier is the beneficiary of such policies shall also be included in this account. Separate subsidiary records shall be maintained for each distinct fund.

* * * * *

d. In Balance Sheet Accounts, accounts 23, 24, and 75.5 are removed.

e. In Balance Sheet Accounts, accounts 46, 47, 65, 66 and 77 are added to read as follows:

Balance Sheet Accounts

* * * * *

46 *Derivative instrument assets.*

This account shall include the amounts paid for derivative instruments, and the change in the fair value of all derivative instrument assets not designated as cash flow or fair value hedges. Account 640, miscellaneous income, shall be credited or debited as appropriate with the corresponding amount of the change in the fair value of the derivative instrument.

47 *Derivative instrument assets-Hedges.*

(a) This account shall include the amounts paid for derivative instruments, and the change in the fair value of derivative instrument assets, designated by the utility as cash flow or fair value hedges.

(b) When a carrier designates a derivative instrument asset as a cash flow hedge, it will record the change in the fair value of the derivative instrument in this account with a concurrent charge to account 77, accumulated other comprehensive income, with the effective portion of the derivative gain or loss. The ineffective portion of the cash flow hedge shall be charged to the same income or expense account that will be used when the hedged item enters into the determination of net income.

(c) When a carrier designates a derivative instrument as a fair value hedge, it shall record the change in the fair value of the derivative instrument in this account with a concurrent charge to a subaccount of the asset or liability that carries the item being hedged. The ineffective portion of the fair value hedge shall be charged to the same income or expense account that will be used when the hedged item enters into the determination of net income.

* * * * *

65 *Derivative instrument liabilities.*

This account shall include the change in the fair value of all derivative instrument liabilities not designated as cash flow or fair value hedges. Account 660, miscellaneous income charges, shall be debited or credited as appropriate with the corresponding amount of the change in the fair value of the derivative instrument.

66 *Derivative instrument liabilities-Hedges.*

(a) This account shall include the change in the fair value of derivative instrument liabilities designated by the carrier as cash flow or fair value hedges.

(b) A carrier shall record the change in the fair value of a derivative instrument liability related to a cash flow hedge in this account, with a concurrent charge to account 77, accumulated other comprehensive income, with the effective portion of the derivative gain or loss. The ineffective portion of the cash flow hedge shall be charged to the same income or expense account that will be used when the hedged item enters into the determination of net income.

(c) A carrier shall record the change in the fair of a derivative instrument liability related to a fair value hedge in this account, with a concurrent charge to a subaccount of the asset or liability that carries the item being hedged. The ineffective portion of the fair value hedge shall be charged to the same income or expense account that will be used when the hedged item enters into the determination of net income.

* * * * *

77 *Accumulated other comprehensive income.*

(a) This account shall include revenues, expenses, gains, and losses that are properly includable in other comprehensive income during the period. Examples of other comprehensive income include foreign currency items, minimum pension liability adjustments, unrealized gains and losses on certain investments in debt and equity securities, and cash flow hedges. Records supporting the entries to this account shall be maintained so that the utility can furnish the amount of other comprehensive income for each item included in this account.

(b) This account shall also be debited or credited, as appropriate, with amounts of accumulated other comprehensive income that have been included in the determination of net income during the period and in accumulated other comprehensive income in prior periods. Separate records for each category of items shall be maintained to identify the amount of the reclassification adjustments from accumulated other comprehensive income to earnings made during the period.

* * * * *

Note: The following appendices will not be published in the Code of Federal Regulations.

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Appendix A—List of Commenters

Respondent	Abbreviation
1. American Forest & Paper Association, Process Gas Consumers Group, Georgia Industrial Group, Industrial Gas Users of Florida, Florida Industrial Gas Users.	American Forest.
2. American Electric Power System	AEP.
3. Automated Power Exchange, Inc.	APE.
4. American Public Gas Association	APGA.
5. Avista Energy, Inc.	Avista.
6. California Electric Oversight Board	Electric Board.
7. Calpine Corporation	Calpine.
8. Cinergy Services Inc.	Cinergy.
9. Cogentrix Energy, Inc.	Cogentrix.
10. Competitive Supply Commenters	Competitive.
11. Dominion Resources, Inc.	Dominion.
12. Duke Energy North America LLC	Duke Energy.
13. Edison Electric Institute	EEI.
14. Edison Mission Energy, Edison Mission Marketing & Trading, Inc.	Edison Mission.
15. Electric Power Supply Association	EPSA.
16. J. Aron & Company, Merrill Lynch Capital Services, Inc., Morgan Stanley Capital Group Inc.	J. Aron.
17. National Energy Marketers Association	NEM.
18. National Rural Electric Cooperative Assn.	NRECA.
19. Nicor Gas Company	Nicor.
20. Oneok Power Marketing Company	OPMC.
21. PanCanadian Energy Services, Inc.	PanCanadian.
22. Pinnacle West Capital Corporation	Pinnacle West.
23. Portland General Electric Company	Portland General.
24. Public Utilities Commission of Ohio	Ohio PUC.
25. Public Utilities Commission of the State of California	California PUC.
26. Reliant Resources, Inc.	RRI.
27. RWE Trading Americas, Inc.	RWE Trading.
28. Sempra Energy	Sempra.
29. Society for the Preservation of Oil Pipeline Shippers	Oil Pipeline Shippers.
30. Southern California Edison	Southern Cal Ed.
31. Southern Company	Southern.
32. State of New York Department of Public Service	NYPUC.
33. TXU Energy Trading Company LP	TXU.
34. UBS AG	UBS.
35. Williams Companies, Inc.	Williams.
36. Wisconsin Electric Power Company	Wisconsin Electric.

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Appendix B Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -1-

Name of Respondent	This Form is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

List of Schedules

Enter in column (c) the terms "none", "not applicable or "NA" as appropriate, where no information or amounts have been reported for certain pages. Omit pages where the respondents are "none," "not applicable," or "NA"

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Appendix B Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -2-

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

COMPARATIVE BALANCE SHEET (ASSETS AND OTHER DEBITS)

Line No	Title of Account (a)	Ref. Page No. (b)	Balance at Beginning of year (c)	Balance at End of Year (d)
1	UTILITY PLANT			
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3	Construction Work in Progress (107)	200-201		
4	TOTAL UTILITY PLANT (Enter Total of Lines 2 and 3)			
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6	Net Utility Plant (Enter Total of Line 4 less 5)	-		
7	Nuclear Fuel (120.1-120.4, 120.6)	202-203		
8	(Less) Accum. Prov. For Amort. Of Nucl. Fuel Assemblies (120.5)	202-203		
9	Net Nuclear Fuel (Enter Total of Lines 7 Less 8)	-		
10	Net Utility Plant (Enter Total of Line 6 and 9)	-		
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39	Other Material and Supplies (156)	227		
40	Nuclear Materials held for Sale (157)	202-203/227		
41	Allowances (158.1 and 158.2)	228-229		
42	(Less) Noncurrent Portion of Allowances	228-229		
43	Stores Expenses Undistributed (163)	-		
44	Gas Stored Underground-Current (164.1)	-		
45	Liquefied Natural Gas Stored and Held for Processing (164.2-164.3)	-		
46	Prepayments (165)	-		
47	Advances for Gas (166-167)	-		
48	Interest and Dividends Receivable (171)	-		
49	Rents Receivable (172)	-		
50	Accrued Utility Revenues (173)	-		
51	Miscellaneous Current and Accrued Assets (174)	-		

Appendix B Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -3-

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

COMPARATIVE BALANCE SHEET (ASSETS AND OTHER DEBITS) (Continued)

Line No.	Title of Account (a)	Ref Page No. (b)	Balance at Beginning of Year (c)	Balance at End of Year (d)
52	Derivative Instrument Assets (175)			
53	Derivative Instrument Assets - Hedges (176)			
54	TOTAL Current and Accrued Assets (Enter Total of Lines 24 thru 53)			
55	DEFERRED DEBITS			
56	Unamortized Debt Expenses (181)	-		
57	Extraordinary Property Losses (182.1)	230		
58	U n recovered Plant and Regulatory Study Costs (182.2)	230		
59	Other Regulatory Assets (182.3)	232		
60	Prelim. Survey and Investigation Charges (Elec) (183)	231		
61	Prelim. Sur. and Invest. Charges (Gas) (183.1, 183.2)	-		
62	Clearing Accounts (184)	-		
63	Temporary Facilities (185)	-		
64	Miscellaneous Deferred Debits (186)	233		
65	Def.-Losses from Disposition of Utility Plant (187)	-		
66	Research, Devel. and Demonstration Expend. (188)	352-353		
67	Unamortized Loss on Reacquired Debt (189)	-		
68	Accumulated Deferred Income Taxes (190)	234		
69	Unrecovered Purchased Gas Costs (191)	-		
70	TOTAL Deferred Debits (Enter Total of Lines 56 thru 69)			
71	TOTAL Assets and Other Debits *(Enter Total of Lines 10, 11, 12, 22, 54, and 70)*			

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Appendix B Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -4-

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

COMPARATIVE BALANCE SHEET (LIABILITIES AND OTHER CREDITS)

Line No.	Title of Account (a)	Ref Page No. (b)	Balance at Beginning of Year (c)	Balance at End of Year (d)
1	PROPRIETARY CAPITAL			
2	Common Stock Issued (201)	250-251		
3	Preferred Stock Issued (204)	250-251		
4	Capital Stocked Subscribed (202, 205)	252		
5	Stock Liability for Conversion (203, 206)	252		
6	Premium on Capital Stock (207)	252		
7	Other Paid-In Capital (208-211)	253		
8	Installments Received on Capital Stock (212)	252		
9	(Less) Discount on Capital Stock (213)	254		
10	(Less) Capital Stock Expense (214)	254		
11	Retained Earnings (215, 215.1, 216)	118-119		
12	Unappropriated Undistributed Subsidiary Earnings (216.1)	118-119		
13	(Less) Reacquired Capital Stock (217)	250-251		
14	Accumulated Other Comprehensive Income (219)	122(a)(b)		
15	TOTAL PROPRIETARY CAPITAL *(Enter Total of lines 2 thru 14)*			
16	LONG-TERM DEBT			
17	Bonds (221)	256-257		
18	(Less) Reacquired Bonds (222)	256-257		
19	Advances from Associated Companies (223)	256-257		
20	Other Long-term Debt (224)	256-257		
21	Unamortized Premium on Long-Term Debt (225)	-		
22	(Less) Unamortized Discount on Long-Term Debt - Debit (226)	-		
23	TOTAL Long-Term Debt (Enter Total of Lines 17 thru 22)			
24	OTHER NONCURRENT LIABILITIES			
25	Obligations Under Capital Leases - Noncurrent (227)	-		
26	Accumulated Provision for Property Insurance (228.1)	-		
27	Accumulated Provision for Injuries and Damages (228.2)	-		
28	Accumulated Provision for Pensions and Benefits (228.3)	-		
29	Accumulated Miscellaneous Operating Provisions (228.4)	-		
30	Accumulated Provision for Rate Refunds (229)	-		
31	TOTAL OTHER NONCURRENT LIABILITIES *(Enter Total of lines 25 thru 30)*			
32	CURRENT AND ACCRUED LIABILITIES			
33	Notes Payable (231)	-		
34	Accounts Payable (232)	-		
35	Notes Payable to Associated Companies (233)	-		
36	Accounts Payable to Associated Companies (234)	262-263		
37	Customer Deposits (235)	-		
38	Taxes Accrued (236)	-		
39	Interest Accrued (237)	-		
40	Dividends Declared (238)	-		
41	Matured Long-Term Debt (239)	-		
42	Matured Interest (240)	-		
43	Tax Collections Payable (241)	-		
44	Miscellaneous Current and Accrued Liabilities (242)	-		
45	Obligations under Capital Leases - Current (243)	-		
46	Derivative Instrument Liabilities (244)			
47	Derivative Instrument Liabilities -Hedges (245)			
48	TOTAL CURRENT & ACCRUED LIABILITIES (Enter Total of Lines 33-47)	-		

Appendix B Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -5-

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

COMPARATIVE BALANCE SHEET (LIABILITIES AND OTHER CREDITS) (Continued)

Line No.	Title of Account (a)	Ref Page No. (b)	Balance at Beginning of Year (c)	Balance at End of Year (d)
49	DEFERRED CREDITS			
50	Customer Advances for Construction (252)			
51	Accumulated Deferred Investment Tax Credits (255)	266-267		
52	Deferred Gains from Disposition of Utility Plant.(256)			
53	Other Deferred Credits (253)	269		
54	Other Regulatory Liabilities (254)	278		
55	Unamortized Gain on Reacquired Debt (257)	-		
56	Accumulated Deferred Income Taxes (281-283)	272-277		
57	TOTAL DEFERRED CREDITS *(Enter Total of lines 50 thru 56)*			
58				
59				
60				
61				
62				
63				
64				
65				
66				
67				
68				
69				
70				
71	TOTAL Liabilities and Other Credits *(Enter Total of lines 15, 23, 31, 48 and 57)*			

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Appendix B Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -6-

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

STATEMENT OF ACCUMULATED COMPREHENSIVE INCOME AND HEDGING ACTIVITIES

1. Report in columns (b) (c) (d) and (e) the amounts of accumulated other comprehensive income items, on a net-of-tax basis, where appropriate.
2. Report in columns (f) and (g) the amounts of other categories of other cash flow hedges.
3. For each category of hedges that have been accounted for as "fair value hedges", report the accounts affected and the related amounts in a footnote.

Line	Item (a)	Unrealized Gains and Losses on Available-for-Sale Securities (B)	Minimum Pension Liability adjustment (net amount) (C)	Foreign Currency Hedges (D)	Other Adjustments (E)
1	Balance of Account 219 at Beginning of Preceding Year				
2	Preceding yr. Reclassification from Account 219 to Net Income				
3	Preceding Year Changes in Fair Value				
4	Total (lines 2 and 3)				
5	Balance of Account 219 at End of Preceding Year/ Beginning of Current Year.				
6	Current Year Reclassification From Account 219 to Net Income				
7	Current Year Changes in Fair Value				
8	Total (lines 6 and 7)				
9	Balance of Account 219 at End of Current Year				

Appendix B Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -7-

Name of Respondent	This Report is: (1) An Original (2) A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

STATEMENT OF ACCUMULATED COMPREHENSIVE INCOME, COMPREHENSIVE INCOME, AND HEDGING ACTIVITIES

	Other Cash Flow Hedges [Insert Category] (F)	Other Cash Flow Hedges [Insert Category] (G)	Totals for each category of items recorded in Account 219 (H)	Net Income (Carried Forward from Page 117, Line 72) (I)	Total Comprehensive Income (J)
1					
2					
3					
4					
5					
6					
7					
8					
9					

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IV	Statement of Income for the Year	6-8
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VI	Statement of Cash Flows	10-11
VII	Statement of Accumulated Comprehensive Income and Hedging Activities 12(a)(b)	
VIII	Notes to Financial Statements	13-14
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X	Other Regulatory Assets	17
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III	Comparative Balance Sheet (110-113)
IV	Statement of Income for the Year (114-117)
V	Statement of Retained Earnings for the Year (118-119)
XXI	Summary of Utility Plant and Accumulated Provisions for Depreciation, Amortization and Depletion (200-201, 204-207)
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XVII	Electric Operating Revenues (300-301)
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XX	Purchased Power (326-327)

INSTRUCTIONS FOR FILING FERC Form No. 1-F

GENERAL INFORMATION

1. Purpose

This form is a regulatory requirement (18 CFR 141.2). It is designed to collect financial information from privately owned electric utilities and licensees who have generation, transmission, distribution and sales of electric energy, however produced throughout the United States and its possessions, subject to the jurisdiction of the Federal Energy Regulatory Commission.

II. Who Must Submit

Each Nonmajor Public Utility or Licensee, as classified in the Commission's Uniform System of Accounts Prescribed for Public Utilities and Licensees Subject to the Provisions of the Federal Power Act (18 CFR 101 (US of A.) must submit this form.

Each Nonmajor public utility or licensee classified as Class C or Class D prior to January 1, 1984, may continue to file only the basic financial statements -Parts 111, IV and V.

Note: Nonmajor means having total annual sales of 10,000 megawatt hours or more in the previous calendar year and not classified as "Major."

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report
			Dec 31, ____

PART III: COMPARATIVE BALANCE SHEET

	Assets and Other Debits (a)	Balance at Beginning of year (b)	Balance at End of Year (c)
01	Utility plant (101 - 107, 114, 118)		
02	Accumulated Provision for Depreciation and Amortization (110, 119)		
03	NET UTILITY PLANT (Enter total of line 01 less 02)		
04	Utility Plant Adjustments (116)		
05	Gas Stored Underground - Noncurrent		
06	Nonutility Property (121)		
07	Accumulated Provision For Depreciation and Amortization - Credit (122)		
08	Noncurrent Portion of Allowances		
09	Other Investments and Special Funds (124-129)		
10	CURRENT AND ACCRUED ASSETS:		
11	Cash and Working Funds (130)		
12	Temporary Cash Investments (136)		
13	Notes and Accounts Receivable (141, 142, 143, 145, 146)(Report amounts applicable to associated companies in a footnote)		
14	Accumulated provision for Uncollectible Accounts - Credit (144)		
15	Plant Materials and Operating Supplies (154)		
16	Allowances (158.1 and 158.2)		
17	(Less) Noncurrent Portion of Allowances		
18	Gas Stored (164.1, 164.2)		
19	Prepayments (165)		
20	Miscellaneous Current and Accrued Assets (174)		
21	Derivative Instrument Assets (175)		
22	Derivative Instruments Assets - Hedges (176)		
23	TOTAL CURRENT AND ACCRUED ASSETS (Enter total of lines 11 thru 22)		
24	DEFERRED DEBITS:		
25	Unamortized Debt Expense (181)		
26	Extraordinary Property Losses (182.1)		
27	Unrecovered Plant and Regulatory Study Costs (182.2)		
28	Other Regulatory sets (182.3)		
29	Miscellaneous Deferred Debits (186)		
30	Deferred Losses from Disposition of Utility Plant (187)		
31	Unamortized Loss on Reacquired Debt (189)		
32	Accumulated Deferred Income Taxes (190)		
33	Unrecovered Purchased Gas Costs (191)		
34	TOTAL DEFERRED DEBITS (Enter total of Lies 25 thru 33)		
35	TOTAL ASSETS AND OTHER DEBITS (Enter total lines 03 thru 09, 23 and 34)		

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Appendix B Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -10-

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

PART III: COMPARATIVE BALANCE SHEET (Continued)

	Liabilities and Other Credits (a)	Balance at Beginning of year (b)	Balance at End of Year (c)
01	Common Stock Issued (201)		
02	Preferred Stock Issued (204)		
03	Miscellaneous Paid-In Capital (211)		
04	Installments Received on Capital Stock (212)		
05	Discount on Capital Stock (213)		
06	Capital Stock Expenses - Debit (214)		
07	Retained Earnings (215-216)		
08	Reacquired Capital Stock - Debit (217)		
09	Noncorporate Proprietorship (218)		
10	Accumulated Other Comprehensive Income (219)		
11	TOTAL PROPRIETORSHIP CAPITAL (Enter Total of Lines 01 thru 10)		
12	Bonds (221)		
13	Advances from Associated Companies (223)		
14	Other Long-term Debt (Specify in footnote) (224)		
15	Unamortized Premium on Long-term Debt (225)		
16	Unamortized Discount on Long-term Debt - Debit (226)		
17	TOTAL LONG-TERM DEBT (Enter Total of Lines 12 thru 16)		
18	OTHER NONCURRENT LIABILITIES:		
19	Obligations Under Capital Leases - Noncurrent (227)		
20	Accumulated Provision for Property Insurance (228.1)		
21	Accumulated Provision for Injuries and Damages (228.2)		
22	Accumulated Provision for Pensions and Benefits (228.3)		
23	Accumulated Miscellaneous Operating Provisions (228.4)		
24	Accumulated Provision for Rate Refunds (229)		
25	TOTAL OTHER NONCURRENT LIABILITIES (Enter Total of Lines 19 thru 24)		
26	CURRENT AND ACCRUED LIABILITIES:		
27	Notes and Accounts Payable (Report amounts applicable to associated companies in a footnote) (231 to 234)		
28	Customer Deposits (235)		
29	Taxes Accrued (236)		
30	Interest Accrued (237)		
31	Miscellaneous Current and Accrued Liabilities (242)		
32	Obligations Under Capital Leases - Current (243)		
33	Derivative Instrument Liabilities (244)		
34	Derivative Instrument Liabilities - Hedges (245)		
35	TOTAL CURRENT AND ACCRUED LIABILITIES (Enter Total of Lines 27 thru 34)		
36	DEFERRED CREDITS:		
37	Customer Advances for Construction (252)		
38	Other Deferred Credits (253)		
39	Other Regulatory Liabilities (254)		
40	Accumulated Deferred Investment Tax Credits (255)		
41	Deferred Gains from Disposition of Utility Plant (256)		
42	Unamortized Gain on on Reacquired Debt (257)		
43	Accumulated Deferred Income Taxes (281-283)		
44	TOTAL DEFERRED CREDITS (Enter Total of Lines 37 thru 43)		
45	TOTAL LIABILITIES AND OTHER CREDITS (Enter Total of Lines 11, 17, 25, 35 and 44)		

Appendix B Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -11-

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

STATEMENT OF ACCUMULATED COMPREHENSIVE INCOME AND HEDGING ACTIVITIES

1. Report in columns (b) (c) (d) and (e) the amounts of accumulated other comprehensive income items, on a net-of-tax basis, where appropriate.

2. Report in columns (f) and (g) the amounts of other categories of other cash flow hedges.

3. For each category of hedges that have been accounted for as "fair value hedges", report the accounts affected and the related amounts in a footnote.

Line	Item (a)	Unrealized Gains and Losses on available-for-sale securities (B)	Minimum Pension liability Adjustment (net amount) (C)	Foreign Currency Hedges (D)	Other Adjustments (E)
1	Balance of Account 219 at Beginning of Preceding Year				
2	Preceding Year Reclassification from Account 219 to Net Income				
3	Preceding Year Changes in Fair Value				
4	Total (lines 2 and 3)				
5	Balance of Account 219 at End of Preceding Year/Beginning of Current Year				
6	Current Year Reclassifications From Account 219 to Net Income				
7	Current Year Changes in Fair Value				
8	Total (lines 6 and 7)				
9	Balance of Account 219 at End of Current Year				

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Appendix B Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -12-

Name of Respondent	This Report is: (1) An Original (2) A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

STATEMENT OF ACCUMULATED COMPREHENSIVE INCOME AND HEDGING ACTIVITIES

	Other Cash Flow Hedges [Insert Category] (F)	Other Cash Flow Hedges [Insert Category] (G)	Totals for each category of items recorded in Account 219 (H)	Net Income (Carried Forward from Page 8, Line 63) (I)	Total Comprehensive Income (J)
1					
2					
3					
4					
5					
6					
7					
8					
9					

Appendix B Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -13-

Name of Respondent	This Report is: ☐ An Original ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

List of Schedules

Enter in column (d) the terms "none," "not applicable," or "NA" as appropriate, where no information or amounts have been reported for certain pages Omit pages where the responses are "none," "not applicable," or "NA

Line No.	Title of Schedule (a)	Reference Page No. (b)	Date Revised (c)	Remarks (d)
	GENERAL CORPORATE INFORMATION AND FINANCIAL STATEMENTS			
1	General Information	101		
2	Control over Respondent	102		
3	Corporations Controlled by Respondent	103		
4	Security Holders and Voting Powers	107		
5	Important Changes During the Year	108		
6	Comparative Balance Sheet	110-113		
7	Statement of Income for the Year	114-116		
8	Statement of Accumulated Comprehensive Income and Hedging Activities	117		
9	Statement of Retained Earnings for the Year	118(a)(b)		
10	Statement of Cash Flows	120-121		
11	Notes to the Financial Statements	122		
	BALANCE SHEET SUPPORTING SCHEDULES (Assets and Other Debits)			
12	Summary of Utility Plant and Accumulated Provisions for Depreciation, Amortization, and Depletion	200-201		
13	Gas Plant in Service	204-209		
14	Gas Property and Capacity Leased from Others	212		
15	Gas Property and Capacity Leased to Others	213		
16	Gas Plant Held for Future Use	214		
17	Construction Work in Progress - Gas	216		
18	General Description of Construction Overhead Procedure	218		
19	Accumulated Provision for Depreciation of Gas Utility Plant	219		
20	Gas Stored	220		
21	Investments	222-223		
22	Investments in Subsidiary Companies	224-225		
23	Prepayment	230		
24	Extraordinary Property Losses	230		
25	Unrecovered Plant and Regulatory Study Costs	230		
26	Other Regulatory Assets	232		
27	Miscellaneous Deferred Debits	233		
28	Accumulated Deferred Income Taxes	234-235		
	BALANCE SHEET SUPPORTING SCHEDULES (Liabilities and Other Credits)			
29	Capital Stock	250-251		
30	Capital Stock Subscribed, Capital Stock Liability for Conversion, Premium on Capital Stock, and Installments Received on Capital Stock	252		
31	Other Paid-in Capital	253		
32	Discount on Capital Stock	254		
33	Capital Stock Expense	254		
34	Securities Issued or Assumed and Securities Refunded or Retired During the Year	255		
35	Long-Term Debt	256-257		
36	Unamortized Debt Expense, Premium, and Discount on Long-Term Debt	258-259		
37	Unamortized Loss and Gain on Reacquired Debt	260		
38	Reconciliation of Reported Net Income with Taxable Income for Federal Income Taxes	261		

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Appendix B Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -14-

Name of Respondent	This Report is: ☐ An Original ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, _____

LIST OF SCHEDULES (Natural Gas Company)

Enter in column (d) the terms "none," "not applicable," or "NA" as appropriate, where no information or amounts have been reported for certain pages Omit pages where the responses are "none," "not applicable," or "NA

Line No.	Title of Schedule (a)	Reference Page No. (b)	Date Received (c)	Remarks
	BALANCE SHEET SUPPORTING SCHEDULES (Liabilities and Other Credits) (Continued)			
39	Taxes Accrued, Prepaid, and Charged During Year	262-263		
40	Miscellaneous Current and Accrued Liabilities	268		
41	Other Deferred Credits	269		
42	Accumulated Deferred Income Taxes-Other Property	274-275		
43	Accumulated Deferred Income Taxes-Other	276-277		
44	Other Regulatory Liabilities	278		
	INCOME ACCOUNT SUPPORTING SCHEDULES			
45	Gas Operating Revenues	300-301		
46	Revenues from Transportation of Gas of Others Through Gathering Facilities	302-303		
47	Revenues from Transportation of Gas of Others Through Transmission Facilities	304-305		
48	Revenues from Storage Gas of Others	306-307		
49	Other Gas Revenues	308		
50	Gas Operation and Maintenance Expenses	317-325		
51	Exchange and Imbalance Transactions	328		
52	Gas Used in Utility Operations	331		
53	Transmission and Compression of Gas by Others	332		
54	Other Gas Supply Expenses	334		
55	Miscellaneous General Expenses-Gas	335		
56	Depreciation, Depletion, and Amortization of Gas Plant	336-338		
57	Particulars Concerning Certain income Deduction and Interest Charges Accounts	340		
	COMMON SECTION			
58	Regulatory Commission Expenses	350-351		
59	Distribution of Salaries and Wages	354-355		
60	Charges for Outside Professional and Other Consultative Services	357		
	GAS PLANT STATISTICAL DATA			
61	Compressor Stations	508-509		
62	Gas Storage Projects	512-513		
63	Transmission Lines	514		
64	Transmission System Peak Deliveries	518		
65	Auxiliary Peaking Facilities	519		
66	Gas Account-Natural Gas	520		
67	System Map	522		
68	Footnote Reference	551		
69	Footnote Text	552		
70	Stockholders' Reports (check appropriate box)			

☐ Four copies will be submitted
☐ No annual report to stockholders is prepared

Appendix B Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -15-

Name of Respondent	This Report is: ☐ An Original ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, _____

COMPARATIVE BALANCE SHEET (ASSETS AND OTHER DEBITS) (Continued)

Line No.	Title of Account (a)	Reference Page Number (b)	Balance at End of Current Year (in dollars) (c)	Balance at End of Previous Year (in dollars) (d)
44	Allowances (158 1 and 158 2)			
45	(Less) Noncurrent Portion of Allowances			
46	Stores Expenses Undistributed (163)			
47	Gas Stored Underground - Current (164 1)	220		
48	Liquefied Natural Gas stored and Held for Processing (164 2 thru 164 3)	220		
49	Prepayments (165)	230		
50	Advances for Gas (166 and 167)			
51	Interest and Dividends Receivable (171)			
52	Rents Receivable (172)			
53	Accrued Utility Revenues (173)			
54	Miscellaneous Current and Accrued Assets (174)			
55	Derivative Instrument Assets (175)			
56	Derivative Instrument Assets - Hedges (176)			
57	TOTAL Current and Accrued Assets (Total of lines 27 thru 56)			
58	DEFERRED DEBITS			
59	Unamortized Debt Expense (181)			
60	Extraordinary Property Losses (182 1)	230		
61	Unrecovered Plant and Regulatory Study Costs (182 2)	230		
62	Other Regulatory Assets (182 3)	232		
63	Preliminary Survey and Investigation Charges (Electric) (183)			
64	Preliminary Survey and Investigation Charges (Gas) (183 1 and 183 2)			
65	Clearing Accounts (184)			
66	Temporary Facilities (185)			
67	Miscellaneous Deferred Debits (186)	233		
68	Deferred Losses from Disposition of Utility Plant (187)			
69	Research, Development, and Demonstration Expend (188)			
70	Unamortized Loss on Reacquired Debt (189)			
71	Accumulated Deferred Income Taxes (190)	234-235		
72	Unrecovered Purchased Gas Costs (191)			
73	TOTAL Deferred Debits (Total of lines 59 thru 72)			
74	TOTAL Assets and Other Debits (Total of lines 10-15, 25, 57 and 73)			

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Appendix B Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -16-

Name of Respondent	This Report is: ☐ An Original ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

COMPARATIVE BALANCE SHEET (LIABILITIES AND OTHER CREDITS)

Line No.	Title of Account (a)	Reference Page Number (b)	Balance at End of Current Year (in dollars) (c)	Balance at End of Previous Year (in dollars) (d)
1	PROPRIETARY CAPITAL			
2	Common Stock Issued (201)	250-251		
3	Preferred Stock Issued (204)	250-251		
4	Capital Stock Subscribed (202, 205)	252		
5	Stock Liability for Conversion (203, 206)	252		
6	Premium on Capital Stock (207)	252		
7	Other Paid-In Capital (208-211)	253		
8	Installments Received on Capital Stock (212)	252		
9	(Less) Discount on Capital Stock (213)	254		
10	(Less) Capital Stock Expense (214)	254		
11	Retained Earnings (215, 215 1, 216)	118-119		
12	Unappropriated Undistributed Subsidiary Earnings (216 1)	118-119		
13	(Less) Reacquired Capital Stock (217)	250-251		
14	Accumulated Other Comprehensive Income (219)	118(a)(b)		
15	TOTAL Proprietary Capital (Total of line 2 thru 14)			
16	LONG TERM DEBT			
17	Bonds (221)	256-257		
18	(Less) Reacquired Bonds (222)	256-257		
19	Advances from Associated Companies (223)	256-257		
20	Other Long-Term Debt (224)	256-257		
21	Unamortized Premium on Long-Term Debt (225)	258-259		
22	(Less) Unamortized Discount on Long-Term Debt-Dr (226)	258-259		
23	(Less) Current Portion of Long-Term Debt			
24	TOTAL Long-Term Debt (Total of lines 17 thru 23)			
25	OTHER NONCURRENT LIABILITIES			
26	Obligations Under Capital Leases – Noncurrent (227)			
27	Accumulated Provision for Property Insurance (228 1)			
28	Accumulated Provision for Injuries and Damages (228 2)			
29	Accumulated Provision for Pensions and Benefits (228 3)			
30	Accumulated Miscellaneous Operating Provision (228 4)			
31	Accumulated Provision for Rate Refunds (229)			
32	TOTAL Other Noncurrent Liabilities (total of lines 26 thru 31)			

Appendix B Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -17-

Name of Respondent	This Report is: ☐ An Original ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

COMPARATIVE BALANCE SHEET (LIABILITIES AND OTHER CREDITS) (Continued)

Line No.	Title of Account (a)	Reference Page Number (b)	Balance at End of Current Year (in dollars) (c)	Balance at End of Previous Year (in dollars) (d)
33	CURRENT AND ACCRUED LIABILITIES			
34	Current Portion of Long-Term Debt			
35	Notes Payable (231)			
36	Accounts Payable (232)			
37	Notes Payable to Associated Companies (233)			
38	Accounts Payable to Associated Companies (234)			
39	Customer Deposits (235)			
40	Taxes Accrued (236)	262-263		
41	Interest Accrued (237)			
42	Dividends Declared (238)			
43	Matured Long-Term Debt (239)			
44	Matured Interest (240)			
45	Tax Collections Payable (241)			
46	Miscellaneous Current and Accrued Liabilities (242)	268		
47	Obligations Under Capital Leases – Current (243)			
48	Derivative Instrument Liabilities (244)			
49	Derivative Instrument Liabilities - Hedges (245)			
50	TOTAL Current and Accrued Liabilities (Total of lines 34 thru 49)			
51	DEFERRED CREDITS			
52	Customer Advances for Construction (252)			
53	Accumulated Deferred Investment Tax Credits (255)			
54	Deferred Gains from Disposition of Utility Plant (256)			
55	Other Deferred Credits (253)	269		
56	Other Regulatory Liabilities (254)	278		
57	Unamortized Gain on Reacquired Debt (257)	260		
58	Accumulated Deferred Income Taxes (281-283)			
59	TOTAL Deferred Credits (Total of lines 52 thru 58)			
60	TOTAL Liabilities and Other Credits (Total of lines 15, 24, 32, 50, and 59)			

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Appendix B Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -18-

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

STATEMENT OF ACCUMULATED COMPREHENSIVE INCOME AND HEDGING ACTIVITIES

1. Report in columns (b) (c) (d) and (e) the amounts of accumulated other comprehensive income items, on a net-of-tax basis, where appropriate.
2. Report in columns (f) and (g) the amounts of other categories of other cash flow hedges.
3. For each category of hedges that have been accounted for as "fair value hedges", report the accounts affected and the related amounts in a footnote.

Line	Item (a)	Unrealized Gains and Losses on available-for-sale securities (B)	Minimum Pension liability Adjustment (net amount) (C)	Foreign Currency Hedges (D)	Other Adjustments (E)
1	Balance of Account 219 at Beginning of Preceding Year				
2	Preceding Year Reclassification from Account 219 to Net Income				
3	Preceding Year Changes in Fair Value				
4	Total (lines 2 and 3)				
5	Balance of Account 219 at End of Preceding Year / Beginning of Current Year				
6	Current Year Reclassifications From Account 219 to Net Income				
7	Current Year Changes in Fair Value				
8	Total (lines 6 and 7)				
9	Balance of Account 219 at End of Current Year				

Appendix B Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -19-

Name of Respondent	This Report is: (1) An Original (2) A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

STATEMENT OF ACCUMULATED COMPREHENSIVE INCOME AND HEDGING ACTIVITIES

	Other Cash Flow Hedges [Insert Category] (F)	Other Cash Flow Hedges [Insert Category] (G)	Totals for each category of items recorded in Account 219 (H)	Net Income (Carried Forward from Page 116, Line 72) (I)	Total Comprehensive Income (J)
1					
2					
3					
4					
5					
6					
7					
8					
9					

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Appendix B Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -20-

Name of Respondent	This Report is: ☐ An Original ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

LIST OF SCHEDULES (Natural Gas Company)

Enter in column (d) the terms "none," "not applicable," or "NA" as appropriate, where no information or amounts have been reported for certain pages Omit pages where the responses are "none," "not applicable," or "NA

Line No	Title of Schedule (a)	Reference Page No (b)	Date Revised (c)	Remarks (d)
	GENERAL CORPORATE INFORMATION AND FINANCIAL STATEMENTS			
1	Security Holders and Voting Powers	107		
2	Comparative Balance Sheet	110-113		
3	Statement of Income for the Year	114-116		
4	Statement of Accumulated Comprehensive Income and Hedging Activities	117		
5	Statement of Retained Earnings for the Year	118-119		
6	Statements of Cash Flows	120-121		
7	Notes to Financial Statements	122		
	BALANCE SHEET SUPPORTING SCHEDULES (Assets and Other Debits)			
8	Gas Plant in Service	204-209		
9	General Information on Plant and Operations	211		
10	Gas Property and Capacity Leased From and to Others	212-213		
11	Accumulated Provision for depreciation of Gas Utility Plant	219		
12	Other Regulatory Assets - Gas	232		
	BALANCE SHEET SUPPORTING SCHEDULES (Liabilities and Other Credits)			
13	Capital Stock and Long-Term Debt Data	250		
14	Other Regulatory Liabilities	278		
	INCOME ACCOUNT SUPPORTING SCHEDULES			
15	Gas Operating Revenues	300-301		
16	Gas Operation and Maintenance Expenses	317-325		
	GAS PLANT STATISTICAL DATA			
17	Gas Account-Natural Gas	520		
18	Footnote Reference	551		
19	Footnote Text	552		

Appendix B Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -21-

Name of Respondent	This Report is: ☐ An Original ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

COMPARATIVE BALANCE SHEET (ASSETS AND OTHER DEBITS) (Continued)

Line No.	Title of Account (a)	Reference Page Number (b)	Balance at End of Current Year (in dollars) (c)	Balance at End of Previous Year (in dollars) (d)
44	Allowances (158 1 and 158 2)			
45	(Less) Noncurrent Portion of Allowances			
46	Stores Expenses Undistributed (163)			
47	Gas Stored Underground - Current (164 1)	220		
48	Liquefied Natural Gas stored and Held for Processing (164 2 thru 164 3)	220		
49	Prepayments (165)	230		
50	Advances for Gas (166 and 167)			
51	Interest and Dividends Receivable (171)			
52	Rents Receivable (172)			
53	Accrued Utility Revenues (173)			
54	Miscellaneous Current and Accrued Assets (174)			
55	Derivative Instrument Assets (175)			
56	Derivative Instrument Assets - Hedges (176)			
57	TOTAL Current and Accrued Assets (Total of lines 27 thru 56)			
58	DEFERRED DEBITS			
59	Unamortized Debt Expense (181)			
60	Extraordinary Property Losses (182 1)	230		
61	Unrecovered Plant and Regulatory Study Costs (182 2)	230		
62	Other Regulatory Assets (182 3)	232		
63	Preliminary Survey and Investigation Charges (Electric) (183)			
64	Preliminary Survey and Investigation Charges (Gas) (183 1 and 183 2)			
65	Clearing Accounts (184)			
66	Temporary Facilities (185)			
67	Miscellaneous Deferred Debits (186)	233		
68	Deferred Losses from Disposition of Utility Plant (187)			
69	Research, Development, and Demonstration Expend (188)			
70	Unamortized Loss on Reacquired Debt (189)			
71	Accumulated Deferred Income Taxes (190)	234-235		
72	Unrecovered Purchased Gas Costs (191)			
73	TOTAL Deferred Debits (Total of lines 59 thru 72)			
74	TOTAL Assets and Other Debits (Total of lines 10-15, 25, 57 and 73)			

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Appendix B Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -22-

Name of Respondent	This Report is: ☐ An Original ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

COMPARATIVE BALANCE SHEET (LIABILITIES AND OTHER CREDITS)

Line No.	Title of Account (a)	Reference Page Number (b)	Balance at End of Current Year (in dollars) (c)	Balance at End of Previous Year (in dollars) (d)
1	PROPRIETARY CAPITAL			
2	Common Stock Issued (201)	250-251		
3	Preferred Stock Issued (204)	250-251		
4	Capital Stock Subscribed (202, 205)	252		
5	Stock Liability for Conversion (203, 206)	252		
6	Premium on Capital Stock (207)	252		
7	Other Paid-In Capital (208-211)	253		
8	Installments Received on Capital Stock (212)	252		
9	(Less) Discount on Capital Stock (213)	254		
10	(Less) Capital Stock Expense (214)	254		
11	Retained Earnings (215, 215 1, 216)	118-119		
12	Unappropriated Undistributed Subsidiary Earnings (216 1)	118-119		
13	(Less) Reacquired Capital Stock (217)	250-251		
14	Accumulated Other Comprehensive Income (219)	117		
15	TOTAL Proprietary Capital (Total of line 2 thru 14)			
16	LONG TERM DEBT			
17	Bonds (221)	256-257		
18	(Less) Reacquired Bonds (222)	256-257		
19	Advances from Associated Companies (223)	256-257		
20	Other Long-Term Debt (224)	256-257		
21	Unamortized Premium on Long-Term Debt (225)	258-259		
22	(Less) Unamortized Discount on Long-Term Debt-Dr (226)	258-259		
23	(Less) Current Portion of Long-Term Debt			
24	TOTAL Long-Term Debt (Total of lines 17 thru 23)			
25	OTHER NONCURRENT LIABILITIES			
26	Obligations Under Capital Leases -- Noncurrent (227)			
27	Accumulated Provision for Property Insurance (228 1)			
28	Accumulated Provision for Injuries and Damages (228 2)			
29	Accumulated Provision for Pensions and Benefits (228 3)			
30	Accumulated Miscellaneous Operating Provision (228 4)			
31	Accumulated Provision for Rate Refunds (229)			
32	TOTAL Other Noncurrent Liabilities (total of lines 26 thru 31)			

Appendix B Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -23-

Name of Respondent	This Report is: ☐ An Original ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

COMPARATIVE BALANCE SHEET (LIABILITIES AND OTHER CREDITS) (Continued)

Line No.	Title of Account (a)	Reference Page Number (b)	Balance at End of Current Year (in dollars) (c)	Balance at End of Previous Year (in dollars) (d)
33	CURRENT AND ACCRUED LIABILITIES			
34	Current Portion of Long-Term Debt			
35	Notes Payable (231)			
36	Accounts Payable (232)			
37	Notes Payable to Associated Companies (233)			
38	Accounts Payable to Associated Companies (234)			
39	Customer Deposits (235)			
40	Taxes Accrued (236)	262-263		
41	Interest Accrued (237)			
42	Dividends Declared (238)			
43	Matured Long-Term Debt (239)			
44	Matured Interest (240)			
45	Tax Collections Payable (241)			
46	Miscellaneous Current and Accrued Liabilities (242)	268		
47	Obligations Under Capital Leases -- Current (243)			
48	Derivative Instrument Liabilities (244)			
49	Derivative Instrument Liabilities - Hedges (245)			
50	TOTAL Current and Accrued Liabilities (Total of lines 34 thru 49)			
51	DEFERRED CREDITS			
52	Customer Advances for Construction (252)			
53	Accumulated Deferred Investment Tax Credits (255)			
54	Deferred Gains from Disposition of Utility Plant (256)			
55	Other Deferred Credits (253)	269		
56	Other Regulatory Liabilities (254)	278		
57	Unamortized Gain on Reacquired Debt (257)	260		
58	Accumulated Deferred Income Taxes (281-283)			
59	TOTAL Deferred Credits (Total of lines 52 thru 58)			
60	TOTAL Liabilities and Other Credits (Total of lines 15, 24, 32, 50, and 59)			

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Appendix B Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -24-

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

STATEMENT OF ACCUMULATED COMPREHENSIVE INCOME AND HEDGING ACTIVITIES

1. Report in columns (b) (c) (d) and (e) the amounts of accumulated other comprehensive income items, on a net-of-tax basis, where appropriate.
2. Report in columns (f) and (g) the amounts of other categories of other cash flow hedges.
3. For each category of hedges that have been accounted for as "fair value hedges", report the accounts affected and the related amounts in a footnote.

Line	Item (a)	Unrealized Gains and Losses on available-for-sale securities (B)	Minimum Pension liability Adjustment (net amount) (C)	Foreign Currency Hedges (D)	Other Adjustments (E)
1	Balance of Account 219 at Beginning of Preceding Year				
2	Preceding Year Reclassification from Account 219 to Net Income				
3	Preceding Year Changes in Fair Value				
4	Total (lines 2 and 3)				
5	Balance of Account 219 at End of Preceding Year / Beginning of Current Year				
6	Current Year Reclassification From Account 219 to Net Income				
7	Current Year Changes in Fair Value				
8	Total (lines 7 and 8)				
9	Balance of Account 219 at End of Current Year				

Appendix B Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -25-

Name of Respondent	This Report is: (1) An Original (2) A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

STATEMENT OF ACCUMULATED COMPREHENSIVE INCOME, COMPREHENSIVE INCOME, AND HEDGING ACTIVITIES

	Other Cash Flow Hedges [Insert Category] (F)	Other Cash Flow Hedges [Insert Category] (G)	Totals for each category of items recorded in Account 219 (H)	Net Income (Carried Forward from Page 116, Line 63) (I)	Total Comprehensive Income (J)
1					
2					
3					
4					
5					
6					
7					
8					
9					

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Appendix B Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -26-

Name of Respondent	This Report Is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec. 31, 20___

LIST OF SCHEDULES

Enter in column (d) the terms "none," "not applicable," or "NA," as appropriate, where no information or amounts have been reported for certain pages. Omit pages where the responses are "none," "not applicable," or "NA."

Title of Schedule (a)	Reference Page No. (b)	Date Revised (c)	Remarks (d)
GENERAL CORPORATE INFORMATION AND FINANCIAL STATEMENTS			
General Information	101	ED 12-91	
Control Over Respondent	102	REV 12-95	
Companies Controlled by Respondent	103	NEW 12-95	
Principal General Officers	104	ED 12-91	
Directors	105	REV 12-95	
Important Changes During the Year	108-109	REV 12-95	
Comparative Balance Sheet Statement	110-113	REV 12-01	
Income Statement	114	ED 12-96	
Statement of Accumulated Comprehensive Income and Hedging Activities	115(a)(b)	NEW 12-01	
Appropriated Retained Income	118	REV 12-95	
Unappropriated Retained Income Statement	119	REV 12-95	
Dividend Appropriations of Retained Income	119	REV 12-95	
Statement of Cash Flows	120-121	REV 12-95	
Notes to Financial Statements	122-123	REV 12-95	
BALANCE SHEET SUPPORTING SCHEDULES (Assets and Other Debits)			
Receivables From Affiliated Companies	200	REV 12-00	
General Instructions Concerning Schedules 202 thru 205	201	REV 12-95	
Investments in Affiliated Companies	202-203	ED 12-91	
Investments in Common Stocks of Affiliated Companies	204-205	ED 12-91	
Companies Controlled Directly by Respondent Other Than Through Title to Securities	204-205	ED 12-91	
Instructions for Schedules 212 Thru 217	211	REV 12-00	
Carrier Property	212-213	REV 12-00	
Undivided Joint Interest Property	214-215	REV 12-00	
Accrued Depreciation-Carrier Property	216	REV 12-00	
Accrued Depreciation-Undivided Joint Interest Property	217	REV 12-00	
Amortization Base and Reserve	218-219	REV 12-95	
Noncarrier Property	220	REV 12-00	
Other Deferred Charges	221	REV 12-00	
BALANCE SHEET SUPPORTING SCHEDULES (Liabilities and Other Credits)			
Payables to Affiliated Companies	225	REV 12-00	
Long-Term Debt	226-227	ED 12-00	
Analysis of Federal Income and Other Taxes Deferred	230-231	REV 12-00	
Capital Stock	250-251	REV 12-95	
Capital Stock Changes During the Year	252-253	ED 12-91	
Additional Paid-In Capital	254	ED 12-87	

Appendix B Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -27-

Name of Respondent	This Report Is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec. 31, 20___

COMPARATIVE BALANCE SHEET STATEMENT - ASSETS

For instructions covering this schedule, see the text and instructions pertaining to Balance Sheet Accounts in the USofA. The entries in this balance sheet should be consistent with those in the supporting schedules on the pages indicated.

Line No.	Item (a)	Reference Page No. (b)	Balance at End of Current Year (In dollars) (c)	Balance at End of Previous Year (In dollars) (d)
	CURRENT ASSETS			
1	Cash (10)			
2	Special Deposits (10-5)			
3	Temporary Investments (11)			
4	Notes Receivable (12)			
5	Receivables from Affiliated Companies (13)	200		
6	Accounts Receivable (14)			
7	Accumulated Provision For Uncollectible Accounts (14-5)			
8	Interest and Dividends Receivable (15)			
9	Oil Inventory (16)			
10	Material and Supplies (17)			
11	Prepayment (18)			
12	Other Current Assets (19)			
13	Deferred Income Tax Assets (19-5)	230-231		
14	TOTAL Current Assets *(Total of lines 1 thru 13)*			
	INVESTMENTS AND SPECIAL FUNDS			
	Investments in Affiliated Companies (20):			
15	Stocks	202-203		
16	Bonds	202-203		
17	Other Secured Obligations	202-203		
18	Unsecured Notes	202-203		
19	Investment Advances	202-203		
20	Undistributed Earnings from Certain Invest. in Acct. 20	204		
	Other Investments (21):			
21	Stocks			
22	Bonds			
23	Other Secured Obligations			
24	Unsecured Notes			
25	Investment Advances			
26	Sinking and Other Funds (22)			
27	TOTAL Investment and Special Funds *(Total lines 15 thru 26)*			

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Appendix B Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -28-

Name of Respondent	This Report Is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec. 31, 20__

COMPARATIVE BALANCE SHEET STATEMENT - ASSETS (Continued)

1.) For instructions covering this schedule, see the text and instructions pertaining to Balance Sheet Accounts in the USofA. The entries in this balance sheet should be consistent with those in the supporting schedules on the pages indicated.

2.) On line 30, include depreciation applicable to investment in property.

Line No.	Item (a)	Reference Page No. (b)	Balance at End of Current Year (In dollars) (c)	Balance at End of Previous Year (In dollars) (d)
	TANGIBLE PROPERTY			
28	Carrier Property (30)	212-215		
29	(Less) Accrued Depreciation - Carrier Property (31)	216-217		
30	(Less) Accrued Amortization - Carrier Property (32)	218-219		
31	Net Carrier Property *(Line 28 less 29 and 30)*			
32	Operating Oil Supply (33)			
33	Noncarrier Property (34)	220		
34	Less Accrued Depreciation - Noncarrier Property			
35	Net Noncarrier Property *(Line 35 less 36)*			
36	TOTAL Tangible Property *(Total of lines 31, 32 and 35)*			
	OTHER ASSETS AND DEFERRED CHARGES			
37	Organization Costs and Other Intangibles (40)			
38	(Less) Accrued Amortization of Intangibles (41)			
39	Reserved			
40	Miscellaneous Other Assets (43)			
41	Other Deferred Charges (44)	221		
42	Accumulated Deferred Income Tax Assets (45)	230-231		
43	Derivative Instrument Assets (46)			
44	Derivative Instrument Assets - Hedges (47)			
45	TOTAL Other Assets and Deferred Charges *(37 thru 44)*			
46	TOTAL Assets *(Total of lines 14, 27, 36 and 45)*			

FERC FORM NO. 6 (REV. 10-02) Page 111

Appendix B Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -29-

Name of Respondent	This Report Is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec. 31, 20__

COMPARATIVE BALANCE SHEET STATEMENT - LIABILITIES (Continued)

For instructions covering this schedule, see the text and instructions pertaining to Balance Sheet Accounts in the USofA. The entries in this balance sheet should be consistent with those in the supporting schedules on the pages indicated.

Line No.	Item (a)	Reference Page No. (b)	Balance at End of Current Year (In dollars) (c)	Balance at End of Previous Year (In dollars) (d)
	CURRENT LIABILITIES			
47	Notes Payable (50)			
48	Payables to Affiliated Companies (51)			
49	Accounts Payable (52)			
50	Salaries and Wages Payable (53)			
51	Interest Payable (54)			
52	Dividends Payable (55)			
53	Taxes Payable (56)			
54	Long - Term Debt - Payable Within One Year (57)	226-227		
55	Other Current Liabilities (58)			
56	Deferred Income Tax Liabilities (59)	230-231		
57	TOTAL Current Liabilities *(Total of lines 47 thru 56)*			
	NONCURRENT LIABILITIES			
58	Long-Term Debt - Payable After One Year (60)	226-227		
59	Unamortized Premium on Long-Term Debt (61)			
60	(Less) Unamortized Discount on Long-Term Debt-Dr. (62)			
61	Other Noncurrent Liabilities (63)			
62	Accumulated Deferred Income Tax Liabilities (64)	230-231		
63	Derivative Instrument Liabilities (65)			
64	Derivative Instrument Liabilities - Hedges (66)			
65	TOTAL Noncurrent Liabilities *(Total of lines 58 thru 64)*			
66	TOTAL Liabilities *(Total of lines 57 and 65)*			
	STOCKHOLDERS' EQUITY			
67	Capital Stock (70)	250-251		
68	Premiums on Capital Stock (71)			
69	Capital Stock Subscriptions (72)			
70	Additional Paid-In Capital (73)	254		
71	Appropriated Retained Income (74)	118		
72	Unappropriated Retained Income (75)	119		
73	(Less) Treasury Stock (76)			
74	Accumulated Other Comprehensive Income (77)	115		
75	TOTAL Stockholders' Equity *(Total of lines 67 thru 74)*			
76	TOTAL Liabilities and Stockholders' Equity *(Total of lines 66 and 75)*			

FERC FORM NO. 6 (REV. 10-02) Page 113

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Appendix B Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -30-

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

STATEMENT OF ACCUMULATED COMPREHENSIVE INCOME AND HEDGING ACTIVITIES

1. Report in columns (b) (c) (d) and (e) the amounts of accumulated other comprehensive income items, on a net-of-tax basis, where appropriate.
2. Report in columns (f) and (g) the amounts of other categories of other cash flow hedges.
3. For each category of hedges that have been accounted for as "fair value hedges", report the accounts affected and the related amounts in a footnote.

Line	Item (a)	Unrealized Gains and Losses on available-for-sale securities (B)	Minimum Pension liability Adjustment (net- amount) (C)	Foreign Currency Hedges (D)	Other Adjustments (E)
1	Balance of Account 77 at Beginning of Preceding Year				
2	Preceding Year Reclassification from Account 77 to Net Income				
3	Preceding Year Changes in Fair Value				
4	Total (lines 2 and 3)				
5	Balance of Account 77 at End of Preceding Year / Beginning of Current Year				
6	Current Year Reclassifications From Account 77 to Net Income				
7	Current Year Changes in Fair Value				
8	Total				
9	Balance of Account 77 at End of Current Year				

FERC FORM NO. 6 (NEW 10-02) Page 115(a)

Name of Respondent	This Report is: (1) An Original (2) A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

STATEMENT OF ACCUMULATED COMPREHENSIVE INCOME AND HEDGING ACTIVITIES

	Other Cash Flow Hedges [Insert Category] (F)	Other Cash Flow Hedges [Insert Category] (G)	Totals for each category of items recorded in Account 77 (H)	Net Income (Carried Forward from Page 114, Line 29) (I)	Total Comprehensive Income (J)
1					
2					
3					
4					
5					
6					
7					
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Part III

General Services Administration

41 CFR Parts 101–37 and 102–33
Management of Government Aircraft; Final Rule

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GENERAL SERVICES ADMINISTRATION

[FPMR Amendment G–117]

41 CFR Parts 101–37 and 102–33

RIN 3090–AH63

Management of Government Aircraft

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Final rule.

SUMMARY: The General Services Administration (GSA) is revising the Federal Property Management Regulations (FPMR) by moving coverage on the management of aircraft into the Federal Management Regulation (FMR). A cross-reference is added to the FPMR to direct readers to the coverage in the FMR. The FMR coverage is written in plain language to provide agencies with updated regulatory material that is easy to read and understand.

DATES: *Effective Date:* November 6, 2002.

FOR FURTHER INFORMATION CONTACT: Peter Zuidema, Director, Aircraft Management Policy Division (MTA), 202–219–1377, or *peter.zuidema@gsa.gov*. For information pertaining to status or publication schedules, contact the Regulatory Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 208–7312. Please cite FPMR Amendment G–117.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule updates, streamlines, and clarifies FPMR part 101–37 and moves the part into the Federal Management Regulation (FMR). The rule is written in a plain language question and answer format. This style uses an active voice, shorter sentences, and pronouns. Unless otherwise indicated in the text, the pronouns "we," "you," and their variants refer to an executive agency. A question and its answer combine to establish a rule. The employee and the agency must follow the language contained in both the question and its answer.

As the FPMR part 101–37 was amended a number of times over the years, its organization became a patchwork of rules on various subjects. In the new FMR part 102–33, GSA has reorganized and streamlined the content to address the life-cycle of aircraft management, from acquisition through disposal, and to accommodate revised reporting requirements, as follows:

(1) FPMR part 101–37 contained guidance on cost accounting for Government aircraft. GSA has removed this detailed guidance because the information is contained in the Government Aircraft Cost Accounting Guide, published by GSA.

(2) FPMR part 101–37 contained regulations on reporting travel of senior Federal officials, approving travel on Government aircraft, and justifying and approving the use of Government aircraft to carry passengers. Because these regulations are essentially travel-related, GSA is moving them to 41 CFR chapters 300 and 301 of the Federal Travel Regulation (FTR). Both the Aircraft Management Policy Advisory Board, established by GSA in 1997 to assess the status of Federal aviation, and the Interagency Committee for Aviation Policy (ICAP) have endorsed this change.

(3) GSA has modified FPMR 101–37.3, Cost Comparisons for Acquiring and Using Aircraft, to focus on requirements for aircraft fleet modernization, including planning, budgeting, and contracting. This new subpart is titled, "Acquiring Government Aircraft and Aircraft Parts."

(4) FPMR part 101–37 contained two separate subparts dealing with "Accident and Incident Reporting and Investigation" and a "Federal Agency Aviation Safety Program." GSA has combined and streamlined these two subparts and incorporated them in FMR part 102–33, subpart C, Managing Government Aircraft and Aircraft Parts. This new subpart also incorporates policy contained in the "Safety Standards Guidelines for Federal Flight Programs," which the ICAP formally adopted in December 1998 and revised in December 1999. These ICAP Safety Standards Guidelines lay out the common requirements that executive agencies will follow to develop their own standards for aviation management/administration, operations, maintenance, training, and safety. Armed Forces aircraft follow safety programs established separately.

(5) GSA has clarified and expanded coverage of acquisition, management, and disposal of aircraft parts (particularly Flight Safety Critical Aircraft Parts (FSCAP) and life-limited parts) and included this guidance as appropriate throughout the subparts of the new rule.

(6) Sections 101–37.502 through 101–37.506 of the FPMR described the information that executive agencies were required to report using the old Federal Aviation Management Information System (FAMIS). GSA has closed down FAMIS, which was an outdated computer system, and is operating a new system, the Federal Aviation Interactive Reporting System (FAIRS), to collect, analyze, and report information about Federal aviation programs. The agencies' new responsibilities for reporting through FAIRS are described in subpart E of FMR part 102–33, Reporting Information on Government Aircraft. Both the methods of reporting and some of the information to be reported have changed. The agencies submitted their data to FAMIS using digital media or paper, and they had no ability to query the FAMIS database. Now, users submit their data to FAIRS using the Internet, and agencies may query the FAIRS database on an ad hoc basis or access a set of predefined reports. FAMIS generated five major reports; FAIRS eliminates two of these, the "Facilities" and "Aviation Support Services" reports.

(7) Two of the ICAP's subcommittees recommended adding a requirement to report aviation accident and incident data. This new requirement is contained in subpart E of FMR 102–33. GSA will collect aviation accident/incident data through an Internet-based system called the ICAP Aviation Accident and Incident Reporting System (AAIRS). Collecting accident and incident information allows GSA and the agencies to generate statistical reports on Federal aviation safety and gives agencies enhanced opportunity to benchmark their safety programs and set performance measures.

(8) In subpart C of FMR 102–33, GSA has added a requirement that the executive agencies disseminate a "Disclosure Statement for Crewmembers and Qualified Non-Crewmembers Flying on Board Government Aircraft." The statement describes the rights and benefits of crewmembers and qualified non-crewmembers who may be killed or injured while working aboard a Government aircraft operated as a public aircraft. The Department of Transportation in their report, "Development of Plans for Responding to Aviation Disasters Involving Civilians on Government Aircraft" (March 11, 1999), requested that GSA require the agencies to give this disclosure statement to persons who may fly on Government aircraft that are operated as public aircraft. (Government aircraft flying passengers may not operate as public aircraft per Public Law 106–181.)

Despite the major changes from FPMR part 101–37 described above, the overall purpose of the part is unchanged: to provide guidance and assistance to executive agencies on minimizing costs and improving the management and use of Government aviation resources (following direction to the Administrator of General Services found in Office of Management and Budget (OMB) Circular A–126, "Improving the Management and Use of Government Aircraft," revised May 22, 1992).

B. Executive Order 12866

GSA has determined that this final rule is not a significant rule for the purposes of Executive Order 12866 of September 30, 1993.

C. Regulatory Flexibility Act

A Regulatory Flexibility Analysis is not required under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because there is no requirement that this final rule be published in the **Federal Register** for notice and comment.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this final rule does not contain any information collection requirements that require the approval of the OMB under 44 U.S.C. 3501, *et seq.*

E. Small Business Regulatory Enforcement Fairness Act

This final rule is exempt from Congressional review prescribed under 5 U.S.C. 801 since it relates solely to agency management and personnel.

List of Subjects

41 CFR Part 101–37

Accounting, Aircraft, Aviation safety, Government property management.

41 CFR Part 102–33

Accounting, Aircraft, Aviation safety, Government property management.

For the reasons set forth in the preamble, GSA amends 41 CFR chapters 101 and 102 as follows:

CHAPTER 101—[AMENDED]

PART 101–37—GOVERNMENT AVIATION ADMINISTRATION AND COORDINATION

1. Revise the Table of Contents for part 101–37 to read as follows:

Sec.
101–37.000 Cross-reference to the Federal Management Regulation (FMR) (41 CFR chapter 102, parts 102–1 through 102–220).

Subpart 101–37.1—Definitions

101–37.100 Definitions.

Subparts 101–37.2–101–37.3 [Reserved]

Subpart 101–37.4—Use of Government-Owned and -Operated Aircraft

101–37.400 General.
101–37.401 [Reserved]
101–37.402 Policy.
101–37.403 Reimbursement for the use of Government aircraft.
101–37.404 Approving the use of Government aircraft for transportation of passengers.
101–37.405 Approving travel on Government aircraft.
101–37.406 Justification of the use of Government aircraft for transportation of passengers.
101–37.407 Documentation.
101–37.408 Reporting travel by senior Federal officials.

Subparts 101–37.5–101–37.14 [Reserved]

2. Revise the authority citation for part 101–37 to read as follows:

Authority: 40 U.S.C. 121(c); 486(c); 31 U.S.C. 101 *et seq.*; Reorganization Plan No. 2 of 1970, 35 FR 7959, 3 CFR, 1966–1970 Comp., p. 1070; Executive Order 11541, 35 FR 10737, 3 CFR 1966–1970 Comp., p. 939; and OMB Circular No. A–126 (Revised May 22, 1992), 57 FR 22150.

3. Revise § 101–37.000 to read as follows:

§ 101–37.000 Cross-reference to the Federal Management Regulation (FMR) (41 CFR chapter 102, parts 102–1 through 102–220).

(a) For information on Government aviation administration and coordination, see FMR part 102–33, Management of Government Aircraft, (41 CFR part 102–33).

(b) For information on travel on Government aircraft, continue to use the following subparts of the FPMR:

(1) Subpart 101–37.1—Definitions.

(2) Subpart 101–37.4—Use of Government-Owned and -Operated Aircraft.

Subparts 101–37.2, 101–37.3, 101–37.5, 101–37.6, 101–37.11, 101–37.12, 101–37.14 [Removed and Reserved]

4. Amend part 101–37 by removing and reserving subparts 101–37.2, 101–37.3, 101–37.5, 101–37.6, 101–37.11, 101–37.12, 101–37.14.

CHAPTER 102—[AMENDED]

5. Part 102–33 is added to subchapter B to read as follows:

PART 102–33—MANAGEMENT OF GOVERNMENT AIRCRAFT

Subpart A—How These Rules Apply

General

Sec.
102–33.5 To whom do these rules apply?
102–33.10 May we request approval to deviate from these rules?
102–33.15 How does this part relate to the Federal Aviation Regulations?
102–33.20 What definitions apply to this part?

Responsibilities

102–33.25 What are our responsibilities under this part?
102–33.30 What are the duties of an agency's Senior Aviation Management Official (SAMO)?
102–33.35 How can we get help in carrying out our responsibilities?
102–33.40 What are GSA's responsibilities for Federal aviation management?

Subpart B—Acquiring Government Aircraft and Aircraft Parts

Overview

102–33.45 What is a Government aircraft?
102–33.50 Under what circumstances may we acquire Government aircraft?
102–33.55 Are there restrictions on acquiring Government aircraft?
102–33.60 What methods may we use to acquire Government aircraft?
102–33.65 What is the process for acquiring Government aircraft?

Planning to Acquire Government Aircraft

102–33.70 What directives must we follow when planning to acquire Government aircraft?
102–33.75 What other guidance is available to us in planning to acquire Government aircraft?

OMB Circular A–76

102–33.80 Must we comply with OMB Circular A–76 before we acquire Government aircraft?
102–33.85 Where should we send our OMB Circular A–76 Cost-Comparison Studies?

The Process for Budgeting to Acquire Government Aircraft

102–33.90 What is the process for budgeting to acquire a Federal aircraft (including a Federal aircraft transferred from another executive agency)?
102–33.95 What is the process for budgeting to acquire commercial aviation services (CAS)?

Contracting to Acquire Government Aircraft

102–33.100 What are our responsibilities when contracting to purchase or lease-purchase a Federal aircraft or to award a CAS contract?
102–33.105 What special requirements must we put into our CAS contracts?

Acquiring Aircraft Parts

102–33.110 What are our responsibilities when acquiring aircraft parts?
102–33.115 Are there special requirements for acquiring military Flight Safety Critical Aircraft Parts (FSCAP)?
102–33.120 Are there special requirements for acquiring life-limited parts?

Subpart C—Managing Government Aircraft and Aircraft Parts

Overview

102–33.125 If we use Federal aircraft, what are our management responsibilities?
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102–33.135 Do we have to follow the direction in OMB Circular A–123, "Management Accountability and

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Control," June 21, 1995, for establishing management controls for our aviation program?

Establishing Flight Program Standards

102–33.140 What are Flight Program Standards?
102–33.145 Why must we establish Flight Program Standards?
102–33.150 Is any agency exempt from establishing Flight Program Standards under this part?
102–33.155 How must we establish Flight Program Standards?

Management/Administration

102–33.160 What standards must we establish or require (contractually, where applicable) for management/administration of our flight program?

Operations

102–33.165 What standards must we establish or require (contractually, where applicable) for operation of our flight program?

Maintenance

102–33.170 What standards must we establish or require (contractually, where applicable) for maintenance of our Government aircraft?

Training

102–33.175 What standards must we establish or require (contractually, where applicable) to train our flight program personnel?

Safety

102–33.180 What standards must we establish or require (contractually, where applicable) for flight program safety?
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Accounting for the Cost of Government Aircraft

102–33.190 What are the aircraft operations and ownership costs for which we must account?
102–33.195 Do we need an automated system to account for aircraft costs?
102–33.200 Must we periodically justify owning and operating Federal aircraft?
102–33.205 When we use our aircraft to support other executive agencies, must we recover the operating costs?

Accounting for the Use of Government Aircraft

102–33.210 How do we account for the use of our Government aircraft?
102–33.215 May we use Government aircraft to carry passengers?
102–33.220 What are the responsibilities of an agency's aviation program in justifying the use of a Government aircraft to transport passengers?

Managing Aircraft Parts

102–33.225 How must we manage aircraft parts?
102–33.230 May we use military FSCAP on non-military FAA-type certificated Government aircraft?
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Subpart D—Disposing of Government Aircraft and Aircraft Parts

Overview

102–33.240 What must we consider before disposing of aircraft and aircraft parts?
102–33.245 May we report as excess, or replace (*i.e.*, by exchange/sale), both operational and non-operational aircraft?
102–33.250 May we report as excess, or replace, declassified aircraft?
102–33.255 Must we document FSCAP or life-limited parts installed on aircraft that we will report as excess or replace?
102–33.260 When we report as excess, or replace, an aircraft (including a declassified aircraft), must we report the change in inventory to the Federal Aviation Interactive Reporting System (FAIRS)?

Reporting Excess Government Aircraft

102–33.265 What are our options if aircraft are excess to our needs?
102–33.270 What is the process for reporting an excess aircraft?

Replacing Aircraft Through Exchange or Sale

102–33.275 Are there restrictions on replacing aircraft by exchange or sale?
102–33.280 What are our options if we need a replacement aircraft?
102–33.285 Do we need to include any special disclaimers in our exchange/sale agreements for uncertificated aircraft or aircraft that we have operated as public aircraft (*i.e.*, not in compliance with the Federal Aviation Regulations, 14 CFR chapter I)?
102–33.290 What other disclaimers must we include in our exchange/sale agreements for aircraft?
102–33.295 May we exchange or sell an aircraft through reimbursable transfer to another executive agency?

Disposing of Aircraft Parts

102–33.300 What must we consider before disposing of aircraft parts?
102–33.305 May we report as excess, or replace, FSCAP and life-limited parts?
102–33.310 May we report as excess, or replace, unsalvageable aircraft parts?
102–33.315 What are the procedures for mutilating unsalvageable aircraft parts?
102–33.320 What must we do if we are unable to perform required mutilation of aircraft parts?
102–33.325 What documentation must we furnish with excess/surplus or replaced parts when they are transferred, donated, exchanged, or sold?

Reporting Excess Aircraft Parts

102–33.330 What must we do with aircraft parts that are excess to our needs?
102–33.335 What are the receiving agency's responsibilities in the transfer or donation of aircraft parts?
102–33.340 What are GSA's responsibilities in disposing of excess and surplus aircraft parts?
102–33.345 What are a State agency's responsibilities in the donation of Federal Government aircraft parts?

Replacing Aircraft Parts Through Exchange or Sale

102–33.350 Do we need approval from GSA to replace aircraft parts by exchange or sale?
102–33.355 May we do a reimbursable transfer of parts with another executive agency?
102–33.360 What is the process for selling or exchanging aircraft parts for replacement?
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Special Requirements for Disposing of Flight Safety Critical Aircraft Parts (FSCAP) and Life-Limited Parts

102–33.370 What must we do to dispose of military FSCAP or life-limited parts?
102–33.375 What is a FSCAP Criticality Code?

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Overview

102–33.380 Who must report information to GSA on Government aircraft?
102–33.385 Is any civilian executive agency exempt from the requirement to report information to GSA on Government aircraft?
102–33.390 What information must we report on Government aircraft?

Federal Aviation Interactive Reporting System (FAIRS)

102–33.395 What is FAIRS?
102–33.400 How must we report to FAIRS?
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Federal Inventory Data

102–33.410 What are Federal inventory data?
102–33.415 When may we declassify an aircraft and remove it from our Federal aircraft inventory?
102–33.420 How must we declassify an aircraft?

Federal Aircraft Cost and Utilization Data

102–33.425 What Federal aircraft cost and utilization data must we report?
102–33.430 Who must report Federal aircraft cost and utilization data?

Commercial Aviation Services (CAS) Cost and Utilization Data

102–33.435 What CAS cost and utilization data must we report?
102–33.440 Who must report CAS cost and utilization data?

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102–33.445 What accident and incident data must we report?
102–33.450 How must we report accident and incident data?

Common Aviation Management Information Standard (C–AMIS)

102–33.455 What is C–AMIS?
102–33.460 What is our responsibility in relation to C–AMIS?

Authority: 40 U.S.C. 121(c); 31 U.S.C. 101 *et seq.*; Reorganization Plan No. 2 of 1970, 35 FR 7959, 3 CFR, 1066–1970 Comp., p. 1070; Executive Order 11541, 35 FR 10737, 3 CFR, 1966–1970 Comp., p. 939; and OMB Circular No. A–126 (Revised May 22, 1992), 57 FR 22150.

Subpart A—How These Rules Apply

General

§ 102–33.5 To whom do these rules apply?

The rules in this part apply to all federally funded aviation activities of executive agencies of the U.S. Government, except those listed in paragraphs (a), (b), (c), and (d) of this section, who use Government aircraft to accomplish their official business.

(a) The Armed Forces are exempt from all but—

(1) Section 102–33.25(e) and (g), which concern responsibilities related to the Interagency Committee for Aviation Policy (ICAP); and

(2) Subpart D of this part.

(b) The President or Vice President and their offices are exempt.

(c) When an executive agency provides Government-furnished avionics for commercially owned or privately owned aircraft for the purpose of technology demonstration or testing, those aircraft are exempt.

(d) Privately owned aircraft that agency personnel use for official travel (even though such use is federally funded) are exempt.

§ 102–33.10 May we request approval to deviate from these rules?

Yes, see §§ 102–2.60 through 102–2.110 of subchapter A of this chapter for guidance on requesting a deviation from the requirements in this part. GSA may not grant deviations from the requirements in OMB Circular A–126, "Improving the Management of Government Aircraft," revised May 22, 1992. You should consult with GSA's Aircraft Management Policy Division (MTA) before you request a deviation. Also, you should fax a copy of your letter of request to MTA at 202–501–6742 at the same time you mail it to GSA's Regulatory Secretariat (see § 102–2.90 of subchapter A of this chapter). In most cases, GSA will respond to your written request within 30 days.

§ 102–33.15 How does this part relate to the Federal Aviation Regulations?

This part does not supersede any of the regulations in 14 CFR chapter I (Federal Aviation Regulations).

§ 102–33.20 What definitions apply to this part?

The following definitions apply to this part:

Acquisition date means the date that the acquiring executive agency took responsibility for the aircraft, *e.g.*, received title (through purchase, exchange, or gift), signed a bailment agreement with the Department of Defense (DOD), took physical custody (in the case of reassignment or interagency transfer), received a court order (in the case of forfeiture), put into operational status an aircraft that is newly manufactured by the agency, or otherwise accepted physical transfer (for example, in the case of a borrowed aircraft).

Aircraft Management Policy Division (MTA) is a division in the Office of Transportation and Personal Property, Office of Governmentwide Policy, GSA. Contact MTA staff at 1800 F Street, NW., Washington, DC 20405, Room 1221; (202) 501–4866; fax (202) 501–6742; Web site at *http://www.gsa.gov/aircraftpolicy.*

Aircraft part means an individual component or an assembly of components that is primarily designated for and used on aircraft.

Armed Forces means the Army, Navy, Air Force, Marine Corps, and Coast Guard, including their regular and Reserve components and members serving without component status. For purposes of this part, the National Guard is also included in the Armed Forces.

Aviation life support equipment (ALSE) means equipment that protects flight crewmembers and others aboard an aircraft, assisting their safe escape, survival, and recovery during an accident or other emergency.

Bailed aircraft means a Federal aircraft that is owned by one executive agency, but is in the custody of and operated by another executive agency under an agreement that may or may not include cost-reimbursement. Bailments are executive agency-to-executive agency agreements and involve only aircraft, not services.

Borrowed aircraft means an aircraft owned by a non-executive agency and provided to an executive agency for use without compensation. The executive agency operates and maintains the aircraft.

Chartered aircraft means an aircraft that an executive agency hires commercially under a contractual agreement specifying performance and one-time exclusive use. The commercial source operates and maintains a charter aircraft. A charter is one form of a full service contract.

Commercial aviation services (CAS) include—

(1) Leasing aircraft for exclusive use or lease-purchasing an aircraft with the intent of taking title;

(2) Chartering or renting aircraft for exclusive use;

(3) Contracting for full services (*i.e.*, aircraft and related aviation services for exclusive use) or obtaining full services through an inter-service support agreement (ISSA); or

(4) Obtaining related aviation services (*i.e.*, services but not aircraft) by commercial contract or ISSA, except those services acquired to support a Federal aircraft.

Crewmember means a person assigned to operate or assist in operating an aircraft during flight time. Crewmembers perform duties directly related to the operation of the aircraft (*e.g.*, as pilots, co-pilots, flight engineers, navigators) or duties assisting in operation of the aircraft (*e.g.*, as flight directors, crew chiefs, electronics technicians, mechanics). For related terms, see *Qualified non-crewmember* and *Passenger* elsewhere in this section.

Criticality code means a single digit code that DOD assigns to military Flight Safety Critical Aircraft Parts (FSCAP) (see § 102–33.370).

Data plate means a fireproof plate that is inscribed with certain information required by the Federal Aviation Regulations (14 CFR part 45) and secured to an aircraft, aircraft engine, propeller, or propeller blade. The information must be marked by etching, stamping, engraving, or other approved method of fireproof marking. The plate must be attached in such a manner that it is not likely to be defaced or removed during normal service or lost or destroyed in an accident. Data plates are required only on certificated aircraft; however, uncertificated aircraft may also have data plates.

Declassify means to remove a non-operational aircraft from the Federal aircraft inventory. Agencies may declassify only non-operational aircraft that they will retain for ground use only. Agencies must declassify an aircraft following the rules in §§ 102–33.415 and 102–33.420.

Disposal date means the date that the disposing executive agency relinquishes responsibility for an aircraft, for example, when the agency transfers title in the case of a sale or exchange; returns the aircraft to the lessor or bailer; declassifies it (for FAIRS, declassification is considered a "disposal" action, even though the agency retains the property); or relinquishes custody to another agency

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(*i.e.*, in the case of excess (transferred) or surplus (donated or sold) aircraft).

Donated aircraft means an aircraft disposed of as surplus by GSA through donation to a non-federal government, a tax-exempt nonprofit entity, or other eligible recipient, following the rules in part 102–37 of this subchapter. (Some agencies, for example DOD, may have independent donation authority.)

Exclusive use means a condition under which—

(1) An aircraft is operated for the sole benefit of the U.S. Government; and

(2) The executive agency using the aircraft has operational control of the aircraft and the authority to define departure times, origins and destinations of flights, and payloads, passengers, and cargo.

Executive agency means any executive department or independent establishment in the executive branch of the United States Government, including any wholly owned Government corporation. See 40 U.S.C. 472(a).

Federal Acquisition Regulation (48 CFR chapter 1, parts 1 through 53) is a codified regulation of the U.S. Government that provides uniform policies and procedures for acquisition of personal property and services by executive agencies.

Federal aircraft means an aircraft that an executive agency owns (*i.e.*, holds title to) or borrows for any length of time. When an executive agency loans or bails an aircraft that meets the criteria for Federal aircraft, that loaned or bailed aircraft is still considered a Federal aircraft in the owning agency's inventory except when DOD is the owning agency of a bailed aircraft. In that case, the aircraft is recorded in the inventory of the bailee.

Federal Aviation Interactive Reporting System (FAIRS). (See §§ 102–33.395 through 102–33.440.)

Federal Aviation Regulation (14 CFR chapter I) is a codified publication of the U.S. Government that describes uniform policies and procedures for regulating aviation within the national airspace system.

Federal Supply Service (FSS) is a component of GSA. FSS is organized by geographical regions. The FSS Property Management Division in GSA's Region 9, 450 Golden Gate Ave., 9FBP, San Francisco, CA 94102–3434, (415) 522–3029, has responsibility for disposing of excess and surplus aircraft.

Federal Travel Regulation (FTR) (41 CFR chapters 300–304) is a codified publication of the U.S. Government that describes uniform policies and procedures for managing travel of the executive agencies.

Flight Safety Critical Aircraft Part (FSCAP) means any military aircraft part, assembly, or installation containing a critical characteristic whose failure, malfunction, or absence could cause a catastrophic failure resulting in loss or serious damage to the aircraft or an uncommanded engine shut-down resulting in an unsafe condition.

Forfeited aircraft means an aircraft acquired by the Government either by summary process or by order of a court of competent jurisdiction pursuant to any law of the United States.

Full service contract means a contractual agreement through which an executive agency acquires an aircraft and related aviation services (for example, pilot, crew, maintenance, catering) for exclusive use. Aircraft hired under full service contracts are commercial aviation services (CAS), not Federal aircraft, regardless of the length of the contract.

Government aircraft means an aircraft that is operated for the exclusive use of an executive agency and is a—

(1) Federal aircraft, which an executive agency owns, bails, loans, or borrows; or

(2) Commercial aircraft hired as commercial aviation services (CAS), which an executive agency—

(i) Leases or lease-purchases with the intent to take title;

(ii) Charters or rents; or

(iii) Hires as part of a full service contract or an inter-service support agreement (ISSA).

Government Aircraft Cost Accounting Guide (CAG) means guidance published by GSA based on the cost elements defined in Attachments A and B to OMB Circular A–126 and in OMB Circular A–76, FAIRS, and the U.S. Government Standard General Ledger to account for Government aircraft costs.

Governmental function means a federally funded activity that an executive agency performs in compliance with its statutory authorities.

Intelligence agencies mean the following agencies or organizations within the U.S. intelligence community:

(1) Central Intelligence Agency.

(2) National Security Agency.

(3) Defense Intelligence Agency.

(4) National Reconnaissance Office.

(5) The Bureau of Intelligence and Research of the Department of State.

(6) Intelligence elements of the Army, Navy, Air Force, Marine Corps, Department of Justice, Department of the Treasury, and Department of Energy.

Inter-service support agreement (ISSA) means any agreement between two or more executive agencies (including the Department of Defense) in which one agency consents to perform aviation support services (*i.e.*, providing an aircraft and other aviation services or providing only services) for another agency with or without cost-reimbursement. An executive agency-to-executive agency agreement that involves only the use of an aircraft, not services, is a bailment, not an ISSA.

Leased aircraft means an aircraft hired under a commercial contractual agreement in which an executive agency has exclusive use of the aircraft for an agreed upon period of time. The acquiring executive agency operates and maintains the aircraft. Leased aircraft are hired as commercial aviation services (CAS).

Lease-purchase aircraft means a leased aircraft for which the leasing executive agency holds an option to purchase.

Life-limited part means any aircraft part that has an established replacement time, inspection interval, or other time-related procedure associated with it. For non-military parts, FAA specifies life-limited parts' airworthiness limitations in 14 CFR chapter I, §§ 21.50, 23.1529, 25.1529, 27.1529, 29.1529, 31.82, 33.4, and 35.5, and on product Type Certificate Data Sheets (TCDS) for products certified before airworthiness limitations were added to 14 CFR chapter I. Letters authorizing Technical Standards Orders (TSO) must also note or reference mandatory replacement or inspection of parts.

Loaned aircraft means a Federal aircraft owned by an executive agency, but in the custody of a non-executive agency under an agreement that does not include compensation.

Military aircraft part means an aircraft part used on an uncertificated aircraft that was developed for the Armed Forces.

Non-operational aircraft means a Federal aircraft that is not safe for flight and, in the owning executive agency's determination, cannot economically be made safe for flight. This definition refers to the aircraft's flight capability, not its mission-support equipment capability. An aircraft that is temporarily out of service for maintenance or repair and can economically be made safe for flight is considered operational.

Official Government business, in relation to Government aircraft—

(1) Includes, but is not limited to—

(i) Carrying crewmembers, qualified non-crewmembers, and cargo directly required for or associated with performing Governmental functions (including travel-related Governmental functions);

(ii) Carrying passengers authorized to travel on Government aircraft (see OMB Circular A–126); and

(iii) Training pilots and other aviation personnel.

(2) Does not include—

(i) Using Government aircraft for personal or political purposes, except for required use travel and space available travel as defined in OMB Circular A–126; or

(ii) Carrying passengers who are not officially authorized to travel on Government aircraft.

Operational aircraft means a Federal aircraft that is safe for flight or, in the owning executive agency's determination, can economically be made safe for flight. This definition refers to the aircraft's flight capability, not its mission-support capability. An aircraft temporarily out of service for maintenance or repair is considered operational.

Original equipment manufacturer means the person or company who originally designed, engineered, and manufactured, or who currently holds the data rights to manufacture, a specific aircraft or aircraft part.

Owned aircraft means an aircraft for which title or rights of title are vested in an executive agency. Owned aircraft are considered Federal aircraft.

Passenger means a person flying onboard a Government aircraft who is officially authorized to travel and who is not a crewmember or qualified non-crewmember.

Production approval holder means the person or company who holds a Production Certificate (PC), Approved Production Inspection System (APIS), Parts Manufacturer Approval (PMA), or Technical Standards Order (TSO) authorization, issued under provisions of 14 CFR part 21, Certification Procedures for Products and Parts, and who controls the design and quality of a specific aircraft part.

Qualified non-crewmember means a person flying onboard a Government aircraft whose skills or expertise are required to perform or are associated with performing the Governmental function for which the aircraft is being operated (qualified non-crewmembers may be researchers, law enforcement agents, fire fighters, agricultural engineers, biologists, etc.). *Qualified non-crewmembers* are not passengers.

Registration mark means the unique identification mark that is assigned by the Federal Aviation Administration and displayed on Government aircraft (including foreign aircraft hired as CAS). *Tail number* is commonly used for *registration mark.*

Related aviation services contract means a commercial contractual agreement through which an executive agency hires aviation services only (not aircraft), *e.g.*, pilot, crew, maintenance, cleaning, dispatching, or catering.

Rental aircraft means an aircraft hired commercially under an agreement in which the executive agency has exclusive use of the aircraft for an agreed upon period of time. The executive agency operates, but does not maintain, a rental aircraft.

Required use means use of a Government aircraft for the travel of an executive agency officer or employee to meet bona fide communications or security needs of the agency or to meet exceptional scheduling requirements. Required use travel must be approved as described in OMB Circular A–126.

Risk analysis and management means a systematic process for—

(1) Identifying risks associated with alternative courses of action involved in an aviation operation; and

(2) Choosing from among these alternatives the course(s) of action that will promote optimum aviation safety.

Safe for flight means approved for flight and refers to an aircraft, aircraft engine, propeller, appliance, or part that has been inspected and certified to meet the requirements of applicable regulations, specifications, or standards. When applied to an aircraft that an executive agency operates under the Federal Aviation Regulations (14 CFR chapter I), safe for flight means "airworthy," *i.e.*, the aircraft or related parts meet their type designs and are in a condition, relative to wear and deterioration, for safe operation. When applied to an aircraft that an executive agency uses, but does not operate or require to be operated under the Federal Aviation Regulations, safe for flight means a state of compliance with military specifications or the executive agency's own Flight Program Standards, and as approved, inspected, and certified by the agency.

Senior Aviation Management Official means the person in an executive agency who will be the agency's primary member of the Interagency Committee for Aviation Policy (ICAP). This person must be of appropriate grade and position to represent the agency and promote flight safety and adherence to standards.

Serviceable aircraft part means a part that is safe for flight, can fulfill its operational requirements, and is sufficiently documented to indicate that the part conforms to applicable standards/specifications.

Suspected unapproved part means a non-military aircraft part, component, or material that any person suspects of not meeting the requirements of an "approved part." Approved parts are those that are produced in compliance with the Federal Aviation Regulations (14 CFR part 21), are maintained in compliance with 14 CFR parts 43 and 91, and meet applicable design standards. A part, component, or material may be suspect because of its questionable finish, size, or color; improper (or lack of) identification; incomplete or altered paperwork; or any other questionable indication. See detailed guidance in FAA Advisory Circular 21–29, "Detecting and Reporting Suspected Unapproved Parts," available from FAA at *http://www.faa.gov.*

Tail number (See *registration mark*).

Traceable part means an aircraft part whose original equipment manufacturer or production approval holder can be identified by documentation, markings/characteristics on the part, or packaging of the part. Non-military parts are traceable if you can establish that the parts were manufactured under rules in 14 CFR part 21 or were previously determined to be airworthy under rules in 14 CFR part 43. Possible sources for making a traceability determination could be shipping tickets, bar codes, invoices, parts marking (*e.g.*, PMA, TSO), data plates, serial/part numbers, manufacturing production numbers, maintenance records, work orders, etc.

Training means instruction for flight program personnel to enable them to qualify initially for their positions and to maintain qualification for their positions over time.

Travel Management Policy Division (MTT) means GSA's Office of Transportation and Personal Property, Office of Governmentwide Policy. MTT is responsible for publishing the Federal Travel Regulation (41 CFR chapters 300 through 304), which contains policy for management of travel of U.S. Government personnel and certain others. Contact the MTT staff at 1800 F Street, NW., Washington, DC 20405, Room G–219; (202) 501–1538; see their Web site at *http://www.gsa.gov/travelpolicy.*

Unsalvageable aircraft part means an aircraft part that cannot be restored to a condition that is safe for flight because of its age, its physical condition, a non-repairable defect, insufficient documentation, or its non-conformance with applicable standards/specifications.

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Responsibilities

§ 102–33.25 What are our responsibilities under this part?

Under this part, your responsibilities are to—

(a) Acquire, manage, and dispose of Government aircraft (*i.e.*, Federal aircraft and commercial aviation services (CAS); see § 102–33.45) as safely, efficiently, and effectively as possible consistent with the nature of your agency's aviation missions;

(b) Document and report the—

(1) Types and numbers of your Federal aircraft;

(2) Costs of acquiring and operating Government aircraft;

(3) Amount of time that your agency uses Government aircraft; and

(4) Accidents and incidents involving Government aircraft;

(c) Ensure that your Government aircraft are used only to accomplish your agency's official Government business;

(d) Ensure that all passengers traveling on your agency's Government aircraft are authorized to travel on such aircraft (see OMB Circular A–126);

(e) Appoint (by letter to the Associate Administrator, Office of Governmentwide Policy, GSA) a Senior Aviation Management Official (SAMO), who will be your agency's primary member of the Interagency Committee for Aviation Policy (ICAP) (this paragraph (e) applies to all executive agencies that use aircraft, including the Department of Defense (DOD), the Federal Aviation Administration (FAA), and the National Transportation Safety Board (NTSB);

(f) Designate an official (by letter to the Associate Administrator, Office of Governmentwide Policy, GSA) to certify the accuracy and completeness of information reported by your agency through the Federal Aviation Interactive Reporting System (FAIRS) (this official may be the SAMO or may be another individual who has the appropriate authority). (Armed Forces agencies, which include DOD and the U.S. Coast Guard, are not required to report information to FAIRS.);

(g) Appoint representatives of the agency as members of ICAP subcommittees and working groups; and

(h) Ensure that your agency's internal policies and procedures are consistent with the requirements of OMB Circulars A–126 and A–76 and this part.

§ 102–33.30 What are the duties of an agency's Senior Aviation Management Official (SAMO)?

The SAMO's duties are to—

(a) Represent the agency's views to the ICAP and vote on behalf of the agency as needed; contribute technical and operational policy expertise to ICAP deliberations and activities; and serve as the designated approving official for FAIRS when the agency elects to have one person serve as both the SAMO and the designated official for FAIRS (DOD will not have a designated official for FAIRS); and

(b) Appoint representatives of the agency as members of ICAP subcommittees and working groups.

§ 102–33.35 How can we get help in carrying out our responsibilities?

To get help in carrying out your responsibilities under this part, you may—

(a) Call or write to GSA's Aircraft Management Policy Division (MTA) (see § 102–33.20); or

(b) Find more information on the Internet from the following Web sites:

(1) *http://www.gsa.gov/aircraftpolicy* (GSA Aircraft Management Policy Division).

(2) *http://www.gsa.gov/travelpolicy* (GSA Travel Management Policy Division).

§ 102–33.40 What are GSA's responsibilities for Federal aviation management?

Under OMB Circular A–126, "Improving the Management and Use of Government Aircraft," revised May 22, 1992 (available from *http://www.whitehouse.gov/omb*), GSA's chief responsibilities for Federal aviation management are to maintain—

(a) A single office (*i.e.*, MTA) for developing policy for improving the management of Federal aviation, including acquisition, operation, safety, and disposal of Government aircraft, and publishing that policy;

(b) An interagency committee (*i.e.*, the ICAP), whose members represent the executive agencies that use Government aircraft to conduct their official business (including FAA and NTSB specifically) and advise GSA on developing policy for managing Government aircraft; and

(c) A management information system to collect, analyze, and report information on the inventory, cost, usage, and safety of Government aircraft.

Note to § 102–33.40: See OMB Circular A–126 for a complete listing of GSA's responsibilities related to Federal aviation.

Subpart B—Acquiring Government Aircraft and Aircraft Parts

Overview

§ 102–33.45 What is a Government aircraft?

A Government aircraft is one that is operated for the exclusive use of an executive agency and is a—

(a) Federal aircraft, which an executive agency owns, bails, loans, or borrows; or

(b) Commercial aircraft hired as commercial aviation services (CAS), which an executive agency—

(1) Leases or lease-purchases with the intent to take title;

(2) Charters or rents; or

(3) Hires as part of a full service contract or an inter-service support agreement (ISSA).

§ 102–33.50 Under what circumstances may we acquire Government aircraft?

Your agency may acquire Government aircraft when you meet the requirements for operating an in-house aviation program contained in OMB Circular A–76, "Performance of Commercial Activities," August 4, 1983 (available from *http://www.whitehouse.gov/omb*), and when—

(a) For Federal aircraft—

(1) Aircraft are the optimum means of supporting your agency's official business;

(2) You do not have aircraft that can support your agency's official business safely (*i.e.*, in compliance with applicable safety standards and regulations) and cost-effectively;

(3) No commercial or other Governmental source is available to provide aviation services safely (*i.e.*, in compliance with applicable safety standards and regulations) and cost-effectively; and

(4) Congress has specifically authorized your agency to purchase, lease, or transfer aircraft and to maintain and operate those aircraft (see 31 U.S.C. 1343).

(b) For commercial aviation services (CAS)—

(1) Aircraft are the optimum means of supporting your agency's official business; and

(2) Using commercial aircraft and services is safe (*i.e.*, conforms to applicable laws, safety standards, and regulations) and is more cost effective than using Federal aircraft, aircraft from any other Governmental source, or scheduled air carriers.

§ 102–33.55 Are there restrictions on acquiring Government aircraft?

Yes, you may not acquire—

(a) More aircraft than you need to carry out your official business;

(b) Aircraft of greater size or capacity than you need to perform your Governmental functions cost-effectively; or

(c) Federal aircraft that Congress has not authorized your agency to acquire or Federal aircraft or commercial aircraft and services for which you have not followed the requirements in OMB Circular A–76.

§ 102–33.60 What methods may we use to acquire Government aircraft?

Following the requirements of §§ 102–33.50 and 102–33.55, you (or an internal bureau or sub-agency within your agency) may acquire Government aircraft by means including, but not limited to—

(a) Purchase;

(b) Borrowing from a non-federal source;

(c) Bailment from another executive agency;

(d) Exchange/sale (but only with approval from GSA; see § 102–33.275);

(e) Reimbursable transfer from another executive agency (see §§ 102–36.75 through 102–36.85 of this subchapter B);

(f) Transfer from another executive agency as approved by GSA;

(g) Reassignment from one internal bureau or subagency to another within your agency;

(h) Forfeiture (you must have specific authority to seize aircraft);

(i) Insurance replacement (*i.e.*, receiving a replacement aircraft);

(j) Lease or lease-purchase;

(k) Rent or charter;

(l) Contract for full services (*i.e.*, aircraft plus crew and related aviation services) from a commercial source; or

(m) Inter-service support agreements with other executive agencies for aircraft and services.

§ 102–33.65 What is the process for acquiring Government aircraft?

Acquiring aircraft generally follows a three-step process; planning, budgeting, and contracting, as described in §§ 102–33.70 through 102–33.105.

Planning To Acquire Government Aircraft

§ 102–33.70 What directives must we follow when planning to acquire Government aircraft?

When planning to acquire aircraft, you must follow the requirements in—

(a) 31 U.S. Code Section 1343, "Buying and Leasing Passenger Motor Vehicles and Aircraft";

(b) OMB Circular A–126, "Improving the Management and Use of Government Aircraft," revised May 22, 1992;

(c) OMB Circular A–11, Part 7, "Planning, Budgeting, Acquisition, and Management of Capital Assets," revised June 2002;

(d) OMB Circular A–76, "Performance of Commercial Activities," revised June 14, 1999; and

(e) OMB Circular A–94, "Guidelines and Discount Rates for Benefit-Cost Analysis of Federal Programs," revised January 22, 2002.

Note to § 102–33.70: OMB Circulars are available from *http://www.whitehouse.gov/omb.*

§ 102–33.75 What other guidance is available to us in planning to acquire Government aircraft?

You can find guidance for acquisition planning in the "ICAP Fleet Modernization Planning Guide," which is available from GSA, Aircraft Management Policy Division (MTA), 1800 F Street, NW., Washington, DC 20405, and in OMB's "Capital Programming Guide," which is a supplement to OMB Circular A–11.

OMB Circular A–76

§ 102–33.80 Must we comply with OMB Circular A–76 before we acquire Government aircraft?

Yes, before you acquire Government aircraft, you must comply with OMB Circular A–76 to assure that the private sector cannot provide Government aircraft or related aviation services more cost-effectively than you can provide Federal aircraft and related services (see particularly the Circular's Revised Supplemental Handbook's Appendix 6, Aviation Competitions).

§ 102–33.85 Where should we send our OMB Circular A–76 Cost-Comparison Studies?

You should forward copies of the completed A–76 Cost-Comparison studies to OMB upon request or as required by OMB Circular A–11 to justify aircraft purchases and to GSA, Aircraft Management Policy Division (MTA), 1800 F Street, NW., Washington, DC 20405, upon completion of a study.

The Process for Budgeting To Acquire Government Aircraft

§ 102–33.90 What is the process for budgeting to acquire a Federal aircraft (including a Federal aircraft transferred from another executive agency)?

(a) The process for budgeting to acquire a Federal aircraft or to accept a Federal aircraft transferred from another executive agency requires that you have specific authority from Congress in your appropriation, as called for in 31 U.S.C. 1343, to—

(1) Purchase, lease-purchase, or lease a Federal aircraft and to operate and maintain it; or

(2) Accept a Federal aircraft transferred from another executive agency and to operate and maintain it.

(b) For complete information on budgeting to own Government aircraft (*i.e.*, large purchase of a capital asset), see OMB Circular A–11, Part 7, and the "Capital Programming Guide," Supplement to Part 7, Appendix 7.

§ 102–33.95 What is the process for budgeting to acquire commercial aviation services (CAS)?

Except for leases and lease-purchases, for which you must have specific Congressional authorization as required under 31 U.S.C. 1343, you may budget to fund your commercial aviation services (CAS) hires out of your agency's operating budget.

Contracting To Acquire Government Aircraft

§ 102–33.100 What are our responsibilities when contracting to purchase or lease-purchase a Federal aircraft or to award a CAS contract?

In contracting to purchase or lease-purchase a Federal aircraft or to award a CAS contract, you must follow the Federal Acquisition Regulation (48 CFR chapter 1) unless your agency is exempt from following the Federal Acquisition Regulation.

§ 102–33.105 What special requirements must we put into our CAS contracts?

At a minimum, your contracts and agreements must require that any provider of CAS comply with—

(a) Civil standards in the Federal Aviation Regulations (14 CFR chapter I) applicable to the type of operations you are asking the contractor to conduct;

(b) Applicable military standards; or

(c) Your agency's Flight Program Standards (see §§ 102–33.140 through 102–33.185 for the requirements for Flight Program Standards).

Acquiring Aircraft Parts

§ 102–33.110 What are our responsibilities when acquiring aircraft parts?

When acquiring aircraft parts, you must do the following:

(a) Acquire the parts cost-effectively and acquire only what you need.

(b) Inspect and test (as appropriate) all incoming parts and ensure that they are documented as safe for flight before installing them.

(c) Obtain all logbooks and maintenance records (for guidance on maintaining records for non-military parts, see FAA Advisory Circular 43–9C, "Maintenance Records," which is

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available from the Federal Aviation Administration (FAA)) at *http://www.faa.gov*.

(d) Plan for adequate storage and protection.

(e) Report all Suspected Unapproved Parts (SUP) to the FAA, SUP Program Office, AVR–20, 45005 Aviation Drive, Suite 214, Dulles, VA 20166–7541, by telephone at 703–661–0580, or by calling the FAA Aviation Safety Hotline at 800–255–1111.

§ 102–33.115 Are there special requirements for acquiring military Flight Safety Critical Aircraft Parts (FSCAP)?

Yes, when you acquire military Flight Safety Critical Aircraft Parts (FSCAP), you must—

(a) Accept a FSCAP only when it is documented or traceable to its original equipment manufacturer (a FSCAP's DOD FSCAP Criticality Code should be marked or tagged on the part or appear on its invoice/transfer document; see § 102–33.375 for further explanation of the FSCAP Criticality Codes); and

(b) Not install undocumented, but traceable FSCAP until you have the parts inspected and recertified by the original equipment manufacturer or FAA-approved production approval holder (see § 102–33.370 on FSCAP).

§ 102–33.120 Are there special requirements for acquiring life-limited parts?

Yes, when you acquire new or used life-limited parts, you must—

(a) Identify and inspect the parts, ensuring that they have civil or military-certified documentation (*i.e.*, complete life histories); and

(b) Mutilate and dispose of any expired life-limited parts (see § 102–33.370 on handling life-limited parts).

Subpart C—Managing Government Aircraft and Aircraft Parts

Overview

§ 102–33.125 If we use Federal aircraft, what are our management responsibilities?

If you use Federal aircraft, you are responsible for—

(a) Establishing agency-specific Flight Program Standards, as defined in §§ 102–33.140 through 102–33.185;

(b) Accounting for the cost of acquiring, operating, and supporting your aircraft;

(c) Accounting for use of your aircraft;

(d) Maintaining and accounting for aircraft parts;

(e) Reporting inventory, cost, and utilization data (for reporting requirements, see subpart E of this part); and

(f) Properly disposing of aircraft and parts following this part and FMR subchapter B (41 CFR chapter 102, subchapter B).

§ 102–33.130 If we hire CAS, what are our management responsibilities?

If you hire CAS, you are responsible for—

(a) Establishing agency-specific Flight Program Standards, as defined in §§ 102–33.140 through 102–33.185, as applicable, and requiring compliance with these standards in your contracts and agreements;

(b) Accounting for the cost of your aircraft and services hired as CAS;

(c) Accounting for use of your aircraft hired as CAS; and

(d) Reporting the cost and usage data for your CAS hires (for reporting requirements, see subpart E of this part).

§ 102–33.135 Do we have to follow the direction in OMB Circular A–123, "Management Accountability and Control," June 21, 1995, for establishing management controls for our aviation program?

Yes, you must follow the direction in OMB Circular A–123, "Management Accountability and Control," June 21, 1995, for establishing management controls for your aviation program. (See Note to § 102–33.70.) The circular requires that you establish organizations, policies, and procedures to ensure that, among other things, your aviation program achieves its intended results and you use your resources consistently with your agency's missions.

Establishing Flight Program Standards

§ 102–33.140 What are Flight Program Standards?

Flight Program Standards are standards specific to your agency's aviation operations, including your commercial aviation services (CAS) contracts. Your Flight Program Standards must meet the requirements in §§ 102–33.155 through 102–33.185, and they must meet or exceed applicable civil or military rules. When civil or military rules do not apply, you must use risk management techniques to develop Flight Program Standards specifically for your program. In your standards, you must address all aspects of your program, *e.g.*, uncertificated aircraft, high-risk operations, special personnel requirements, that may not be addressed under the rules for civil aircraft in the Federal Aviation Regulations (14 CFR chapter I). The requirements for Flight Program Standards in §§ 102–33.155 through 102–33.185 incorporate and adapt the ICAP's "Safety Standards Guidelines for Federal Flight Programs," revised December 22, 1999, and available from GSA, Aircraft Management Policy Division (MTA), 1800 F Street, NW., Washington, DC 20405.

§ 102–33.145 Why must we establish Flight Program Standards?

You must establish Flight Program Standards to ensure that aircraft your agency uses are operated safely, effectively, and efficiently.

§ 102–33.150 Is any agency exempt from establishing Flight Program Standards under this part?

Yes, in addition to the Armed Forces and intelligence agencies, entities outside the executive branch of the Federal Government are exempt from establishing Flight Program Standards when using aircraft loaned to them by an executive agency (that is, owned by an executive agency, but operated by and on behalf of the loanee) unless the loanee—

(a) Uses the aircraft to conduct official Government business; or

(b) Is required to follow §§ 102–33.140 through 102–33.185 under a Memorandum of Agreement governing the loan.

§ 102–33.155 How must we establish Flight Program Standards?

To establish Flight Program Standards, you must write, publish (as appropriate), implement, and comply with detailed, agency-specific standards, which establish or require (contractually, where applicable) policies and procedures for—

(a) Management/administration of your flight program (in this part, "flight program" includes CAS contracts);

(b) Operation of your flight program;

(c) Maintenance of your Government aircraft;

(d) Training for your flight program personnel; and

(e) Safety of your flight program.

Management/Administration

§ 102–33.160 What standards must we establish or require (contractually, where applicable) for management/administration of our flight program?

For management/administration of your flight program, you must establish or require (contractually, where applicable) the following:

(a) A management structure responsible for the administration, operation, safety, training, maintenance, and financial needs of your aviation operation (including establishing minimum requirements for these items for any commercial contracts).

(b) Guidance describing the roles, responsibilities, and authorities of your flight program personnel, *e.g.*, managers, pilots and other crewmembers, flight safety personnel, maintenance personnel, and dispatchers.

(c) Procedures to record and track flight time, duty time, and training of crewmembers.

(d) Procedures to record and track duty time and training of maintenance personnel.

Operations

§ 102–33.165 What standards must we establish or require (contractually, where applicable) for operation of our flight program?

For operation of your flight program, you must establish or require (contractually, where applicable) the following:

(a) Basic qualifications and currency requirements for your pilots and other crewmembers, maintenance personnel, and other mission-related personnel.

(b) Limitations on duty time and flight time for pilots and other crewmembers.

(c) Compliance with owning-agency or military safety of flight notices and operational bulletins.

(d) Flight-following procedures to notify management and initiate search and rescue operations for lost or downed aircraft.

(e) Dissemination, as your agency determines appropriate, of a disclosure statement to all crewmembers and qualified non-crewmembers who fly aboard your agency's Government aircraft, as follows:

Disclosure Statement for Crewmembers and Qualified Non-Crewmembers Flying on Board Government Aircraft Operated as Public Aircraft

Generally, an aircraft used exclusively for the U.S. Government may be considered a "public aircraft" as defined in Public Law 106–181, provided it is not a Government-owned aircraft transporting passengers or operating for commercial purposes. A public aircraft is not subject to many Federal Aviation Regulations, including requirements relating to aircraft certification, maintenance, and pilot certification. If an agency transports passengers on a Government-owned aircraft or uses that aircraft for commercial purposes, the agency must comply with all Federal Aviation Regulations applicable to civil aircraft. If you have any questions concerning whether a particular flight will be a public aircraft operation or a civil aircraft operation, you should contact the agency sponsor of that flight.

You have certain rights and benefits in the unlikely event you are injured or killed while working aboard a Government-owned or operated aircraft. Federal employees and some private citizens are eligible for workers' compensation benefits under the Federal Employees' Compensation Act (FECA). When FECA applies, it is the sole remedy. For more information about FECA and its coverage, consult with your agency's benefits office or contact the Branch of Technical Assistance at the Department of Labor's Office of Workers' Compensation Programs at (202) 693–0044.

State or foreign laws may provide for product liability or "third party" causes of actions for personal injury or wrongful death. If you have questions about a particular case or believe you have a claim, you should consult with an attorney.

Some insurance policies may exclude coverage for injuries or death sustained while working or traveling aboard a Government or military aircraft or while within a combat area. You may wish to check your policy or consult with your insurance provider before your flight. The insurance available to Federal employees through the Federal Employees Group Life Insurance Program does not contain an exclusion of this type.

If you are the victim of an air disaster resulting from criminal activity, Victim and Witness Specialists from the Federal Bureau of Investigation (FBI) and/or the local U.S. Attorney's Office will keep you or your family informed about the status of the criminal investigation(s) and provide you or your family with information about rights and services, such as crisis intervention, counseling and emotional support. State crime victim compensation may be able to cover crime-related expenses, such as medical costs, mental health counseling, funeral and burial costs, and lost wages or loss of support. The Office for Victims of Crime (an agency of the Department of Justice) and the U.S. Attorneys Office are authorized by the Antiterrorism Act of 1996 to provide emergency financial assistance to State programs for the benefit of victims of terrorist acts or mass violence.

If you are a Federal employee. If you are injured or killed on the job during the performance of duty, including while traveling or working aboard a Government aircraft or other Government-owned or operated conveyance for official Government business purposes, you and your family are eligible to collect workers' compensation benefits under FECA. You and your family may not file a personal injury or wrongful death suit against the United States or its employees. However, you may have cause of action against potentially liable third parties.

You or your qualifying family member must normally also choose between FECA disability or death benefits, and those payable under your retirement system (either the Civil Service Retirement System or the Federal Employees Retirement System). You may choose the benefit that is more favorable to you.

If you are o private citizen not employed by the Federal government. Even if the Federal government does not regularly employ you, if you are rendering personal service to the Federal government on a voluntary-basis or for nominal pay, you may be defined as a Federal employee for purposes of FECA. If that is the case, you and your family are eligible to receive workars' compensation benefits under FECA, but may not collect in a personal injury or wrongful death lawsuit against the United States or its employees. You and your family may file suit against potentially liable third parties. Before you board a Government aircraft, you may wish to consult with the department or agency sponsoring the flight to clarify whether you are considered a Federal employee.

If the agency determines that you are not a "Federal employee," you and your family will not be eligible to receive workers' compensation benefits under FECA. If you are onboard the aircraft for purposes of official Government business, you may be eligible for workman's compensation benefits under state law. If an accident occurs within the United States, or its territories, its airspace, or over the high seas, you and your family may claim against the United States under the Federal Tort Claims Act or Suits in Admiralty Act. If you are killed aboard a military aircraft, your family may be eligible to receive compensation under the Military Claims Act, or if you are an inhabitant of a foreign country, under the Foreign Claims Act.

Note: This disclosure statement is not all-inclusive. You should contact your agency's personnel office, or if you are a private citizen, your agency sponsor or point-of-contact for further assistance.

(f) At the origin of each flight, creation of a manifest containing the full names of all persons on board for each leg of flight, a point of contact for each person, and phone numbers for the points of contact.

(g) Documentation of any changes in the manifest by leg, and retention of manifests for two years from the time of flight.

(h) Procedures for reconciling flight manifests with persons actually on board and a method to test those procedures periodically.

(i) At the origin of each flight, preparation of a complete weight and balance computation and a cargo-loading manifest, and retention of this computation and manifest for 30 days from the time of flight.

(j) Appropriate emergency procedures and equipment for specific missions.

(k) Procedures to ensure that required Aviation Life Support Equipment (ALSE) is inspected and serviceable.

Maintenance

§ 102–33.170 What standards must we establish or require (contractually, where applicable) for maintenance of our Government aircraft?

For maintenance of your Government aircraft, you must establish or require (contractually, where applicable) the following:

(a) Aircraft maintenance and inspection programs that comply with whichever is most applicable among—

(1) Programs for ex-military aircraft;

(2) Manufacturers' programs;

(3) FAA-approved programs (*i.e.*, following the Federal Aviation Regulations);

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(4) FAA-accepted programs (*i.e.*, those following ICAP guides that have been accepted by the FAA); or

(5) Your agency's self-prescribed programs.

(b) Compliance with owning-agency or military safety of flight notices, FAA airworthiness directives, or mandatory manufacturers' bulletins applicable to the types of aircraft, engines, propellers, and appliances you operate.

(c) Procedures for operating aircraft with inoperable equipment.

(d) Technical support, including appropriate engineering documentation and testing, for aircraft, powerplant, propeller, or appliance repairs, modifications, or equipment installations.

(e) A quality control system for acquiring replacement parts, ensuring that the parts you acquire have the documentation needed to determine that they are safe for flight and are inspected and tested, as applicable.

(f) Procedures for recording and tracking maintenance actions; inspections; and the flight hours, cycles, and calendar times of life-limited parts and FSCAP.

Training

§ 102–33.175 What standards must we establish or require (contractually, where applicable) to train our flight program personnel?

You must establish or require (contractually, where applicable) an instructional program to train your flight program personnel, initially and on a recurrent basis, in their responsibilities and in the operational skills relevant to the types of operations that you conduct. See § 102–33.180(a) for specific requirements for safety manager training.

Safety

§ 102–33.180 What standards must we establish or require (contractually, where applicable) for flight program safety?

For flight program safety, you must establish or require (contractually, where applicable) the following:

(a) The appointment of qualified aviation safety managers (*i.e.*, those individuals who are responsible for an agency's aviation safety program, regardless of title), who must be—

(1) Experienced as pilots or crewmembers or in aviation operations management/flight program management; and

(2) Graduated from an aviation safety officer course provided by a recognized training provider and authority in aviation safety before appointment or within one year after appointment.

(b) Risk analysis and risk management to identify and mitigate hazards and provide procedures for managing risk to an optimum level.

(c) Use of independent oversight and assessments (*i.e.*, unbiased inspections) to verify compliance with the standards called for in this part.

(d) Procedures for reporting unsafe operations to senior aviation safety managers.

(e) A system to collect and report information on aircraft accidents and incidents (as required by 49 CFR part 830 and §§ 102–33.445 and 102–33.450).

(f) A program for preventing accidents, which includes—

(1) Measurable accident prevention procedures (*e.g.*, pilot proficiency evaluations, fire drills, hazard analyses);

(2) A system for disseminating accident-prevention information;

(3) Safety training;

(4) An aviation safety awards program; and

(5) For Federal aircraft-owning agencies, a safety council.

§ 102–33.185 What standards must we establish or require (contractually, where applicable) for responding to aircraft accidents and incidents?

For responding to aircraft accidents and incidents, you must establish or require (contractually, where applicable) the following:

(a) An aircraft accident/incident reporting capability to ensure that you will comply with the NTSB's regulations (in 49 CFR parts 830 and 831), including notifying NTSB immediately when you have an aircraft accident or an incident as defined in 49 CFR 830.5.

(b) An accident/incident response plan, modeled on the NTSB's "Federal Plan for Aviation Accidents Involving Aircraft Operated by or Chartered by Federal Agencies," and periodic disaster response exercises to test your plan. You can see a copy of the NTSB's plan on the Web at *http://www.ntsb.gov/publictn/1999/SPC9904.pdf* or htm.

(c) Procedures (see 49 CFR 831.11) for participating as a party in NTSB's investigations of accidents or incidents involving aircraft that your agency owns or hires and for conducting parallel investigations, as appropriate.

(d) Training in investigating accidents/incidents for your agency's personnel who may be asked to participate in NTSB investigations.

(e) Procedures for disseminating, in the event of an aviation disaster that involves one of your Government aircraft, information about eligibility for benefits that is contained in the disclosure statement in § 102–33.165(e) to anyone injured, to injured or deceased persons' points of contact (listed on the manifest), and to the families of injured or deceased crewmembers and qualified non-crewmembers.

Note to § 102–33.185: This part does not supersede any of the regulations in 49 CFR part 830 or part 831. For definitions of terms and complete regulatory guidance on notifying NTSB and reporting aircraft accidents and incidents, see 49 CFR parts 830 and 831.

Accounting for the Cost of Government Aircraft

§ 102–33.190 What are the aircraft operations and ownership costs for which we must account?

You must account for the operations and ownership costs of your Government aircraft as described in the "Government Aircraft Cost Accounting Guide" (CAG), which follows OMB Circular A–126 and is available from GSA, Aircraft Management Policy Division (MTA), 1800 F Street, NW., Washington, DC 20405.

§ 102–33.195 Do we need an automated system to account for aircraft costs?

If you own Federal aircraft or operate bailed Federal aircraft, you must maintain an automated system to account for aircraft costs by collecting the cost data elements required by the Federal Aviation Interactive Reporting System (FAIRS). The functional specifications and data definitions for a FAIRS-compliant system are described in the "Common Aviation Management Information Standard" (C–AMIS), which is available from GSA, Aircraft Management Policy Division (MTA), 1800 F Street, NW., Washington, DC 20405. See §§ 102–33.395 and 102–33.460 for more information on FAIRS and C–AMIS. Agencies who use only CAS aircraft and do not have Federal aircraft must keep records adequate for reporting information through FAIRS, but are not required to have an automated system (see §§ 102–33.435 and 102–33.440 for the information on CAS that you must report through FAIRS).

§ 102–33.200 Must we periodically justify owning and operating Federal aircraft?

Yes, after you have held a Federal aircraft for five years, you must justify owning and operating the aircraft by reviewing your operations and establishing that you have a continuing need for the aircraft, as required in OMB Circular A–76. You must also establish the cost-effectiveness of all your aircraft operations following OMB-approved cost justification methodologies, which

are described in OMB Circular A–76 every five years.

§ 102–33.205 When we use our aircraft to support other executive agencies, must we recover the operating costs?

(a) Under 31 U.S.C. 1535 and other statutes, you may be required to recover the costs of operating aircraft in support of other agencies. Depending on the statutory authorities under which you acquired and operate your aircraft, you will use either of two methods for establishing the rates charged for using your aircraft:

(1) The variable cost recovery rate; or

(2) The full cost recovery rate.

(b) See the Government Aircraft CAG, which is available from GSA, Aircraft Management Policy Division (MTA), 1800 F Street, NW., Washington, DC 20405, for definitions of these terms.

Accounting for the Use of Government Aircraft

§ 102–33.210 How do we account for the use of our Government aircraft?

To account for the use of Government aircraft, you must document all flights and keep this documentation for two years after the date of the flight. For each flight, record the—

(a) Aircraft's registration mark;

(b) Owner and operator (*e.g.*, the owner may not be the operator, as is the case when a CAS aircraft, owned commercially, is operated by U.S. Government personnel);

(c) Purpose of the flight (*i.e.*, the Governmental function that the aircraft was dispatched to perform);

(d) Departure and destination points;

(e) Flight date(s) and times;

(f) A manifest (see §§ 102–33.165(g) and (h)); and

(g) Name(s) of the pilot(s) and crewmembers.

§ 102–33.215 May we use Government aircraft to carry passengers?

Yes, you may use Government aircraft to carry passengers with the following restrictions:

(a) You may carry passengers only on aircraft that you operate or require contractually to be operated according to the rules and requirements in Federal Aviation Regulations (14 CFR chapter I).

(b) For certain kinds of travel, your agency must justify passengers' presence on Government aircraft (see OMB Circular A–126 and the Government Aircraft Cost Accounting Guide (CAG) published by GSA for complete information on authorizing travel and analyzing costs before authorizing travel on Government aircraft).

§ 102–33.220 What are the responsibilities of an agency's aviation program in justifying the use of a Government aircraft to transport passengers?

(a) Upon request from an agency's travel approving authority, the agency's aviation program must provide cost estimates to assist in determining whether or not use of a Government aircraft to carry passengers is justified. See OMB Circular A–126 for more information on justifying travel on Government aircraft. See also the Government Aircraft Cost Accounting Guide (CAG) published by GSA (defined in § 102–33.20) for guidance on estimating the cost of using a Government aircraft. The cost of using a Government aircraft is—

(1) The variable cost of using a Federal aircraft;

(2) The amount your agency will be charged by a CAS provider; or

(3) The variable cost of using an aircraft owned by another agency as reported by the owning agency if you are not charged for the use of the aircraft.

(b) In weighing alternatives for travel on Government aircraft, you must also consider the following:

(1) If no follow-on trip is scheduled, all time required positioning the aircraft to begin the trip and to return the aircraft to its normal base of operations.

(2) If a follow-on trip requires repositioning, the cost for the repositioning should be charged to the associated follow-on trip.

(3) If an aircraft supports a multi-leg trip (a series of flights scheduled sequentially), the use of the aircraft for the total trip may be justified by comparing the total variable cost of the entire trip to the commercial aircraft cost (including charter) for all legs of the trip.

(4) The use of foreign aircraft as CAS is authorized when the agency has determined that an equivalent level of safety exists as compared to U.S. operations of a like kind. The safety of passengers shall be the overriding consideration for the selection of travel mode when comparing foreign sources of scheduled commercial airlines and CAS.

Managing Aircraft Parts

§ 102–33.225 How must we manage aircraft parts?

You must manage your aircraft parts by maintaining proper storage, protection, maintenance procedures, and records for the parts throughout their life cycles.

§ 102–33.230 May we use military FSCAP on non-military FAA-type certificated Government aircraft?

You may use dual-use military FSCAP on non-military aircraft operated under restricted or standard airworthiness certificates if the parts are inspected and approved for such installation by the FAA. See detailed guidance in FAA Advisory Circular 20–142, "Eligibility and Evaluation of U.S. Military Surplus Flight Safety Critical Aircraft Parts, Engines, and Propellers."

§ 102–33.235 What documentation must we maintain for life-limited parts and FSCAP?

For life-limited parts and FSCAP, you must hold and update the documentation that accompanies these parts for as long as you use or store them. When you dispose of life-limited parts or FSCAP, the up-to-date documentation must accompany the parts. (See § 102–33.370.)

Subpart D–Disposing of Government Aircraft and Aircraft Parts

Overview

§ 102–33.240 What must we consider before disposing of aircraft and aircraft parts?

Before disposing of aircraft and aircraft parts, you must first determine if the aircraft or parts are excess to your agency's mission requirements or if you will need replacements (*i.e.*, your aircraft or parts are not excess), as follows:

(a) If your aircraft/parts are ...	And ...	Then ...
No longer needed to perform, or cannot perform, any Governmental function for your agency, *i.e.*, they are excess to your needs,	You will not replace them, ...	You must report them to GSA as excess property (see part 102–36 of this subchapter B).

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(b) If your aircraft/parts are ...	But ...	Then ...
No longer suitable for performing their mission(s) for your agency,	You need to replace them to continue performing your mission(s).	You are prohibited from exchanging or selling your aircraft unless you ask for and receive approval from GSA to deviate from part 102–39 of this subchapter B. However, exchange/sale of aircraft parts is permitted.

§ 102–33.245 May we report as excess, or replace (*i.e.*, by exchange/sale), both operational and non-operational aircraft?

Yes, you may report as excess both operational and non-operational aircraft by following the rules governing excess property in part 102–36 of this subchapter B. Exchange or sale of aircraft is prohibited by part 102–39 of this subchapter B, so you will need approval from GSA to deviate from that part to replace operational or non-operational aircraft by exchange/sale. (See § 102–33.275 for further guidance on this restriction).

§ 102–33.250 May we report as excess, or replace, declassified aircraft?

Yes, you may report as excess, or replace, a declassified aircraft (see §§ 102–33.415 through 102–33.420 for information on declassifying aircraft). However, a declassified aircraft is no longer considered an aircraft, but may be considered as a group of aircraft parts or other property for ground use only. You must carry such "aircraft parts or other property" on your property records under the appropriate Federal Supply Classification group(s) (*e.g.*, miscellaneous property, but not as an "aircraft"). For disposal of the property remaining after declassification of an aircraft, you must follow the property disposal regulations in parts 102–36, 102–37, and 102–39 of this subchapter B.

§ 102–33.255 Must we document FSCAP or life-limited parts installed on aircraft that we will report as excess or replace?

Yes, you must comply with the documentation procedures described in § 102–33.370 if your aircraft and/or engines contain FSCAP or life-limited parts.

§ 102–33.260 When we report as excess, or replace, an aircraft (including a declassified aircraft), must we report the change in inventory to the Federal Aviation Interactive Reporting System (FAIRS)?

(a) Yes, when you report as excess, or replace, an aircraft, you must report the change in inventory to the Federal Aviation Interactive Reporting System (FAIRS). For complete information, see the "FAIRS User's Manual," which is available from GSA, Aircraft Management Policy Division (MTA), 1800 F Street, NW., Washington, DC 20405.

(b) Within 14 calendar days of the date you dispose of the aircraft, you must report—

(1) The disposal method (*e.g.*, reassignment, inter-agency transfer, donation, sale as surplus or scrap, declassification, or exchange/sale);

(2) The disposal date; and

(3) The identity and type of recipient (*e.g.*, State, educational institution, executive agency, commercial vendor).

Reporting Excess Government Aircraft

§ 102–33.265 What are our options if aircraft are excess to our needs?

If aircraft are excess to your needs, your options include first determining if any of your sub-agencies can use the aircraft. If so, you may reassign the aircraft within your agency. If not, you must report the aircraft as excess property to GSA (see parts 102–36 and 102–37 of this subchapter B). GSA will dispose of the property, giving priority first to transferring it to another Federal agency, next to donating it as surplus property, and finally to selling it to the public as surplus.

§ 102–33.270 What is the process for reporting an excess aircraft?

To report an excess aircraft, you must submit a Standard Form (SF) 120, Report of Excess Personal Property (see § 102–2.135 of this chapter), to GSA (Federal Supply Service (FSS) Region 9, 450 Golden Gate Ave., 9FBP, San Francisco, CA 94102–3434, (415) 522–3029). You may also report electronically to GSA's Federal Disposal System (FEDS). For information on reporting excess property electronically, contact the FSS Office of Transportation and Personal Property (FBP), 1941 Jefferson Davis Highway, Room 812, Arlington, VA 22202, (703) 305–7240.

Replacing Aircraft Through Exchange or Sale

§ 102–33.275 Are there restrictions on replacing aircraft by exchange or sale?

Yes, because aircraft are on GSA's exchange/sale prohibited list (see part 102–39 of this subchapter B), you may not exchange or sell aircraft unless you obtain approval from GSA to deviate from part 102–39 of this subchapter B (see § 102–33.10 on how to request a deviation). In your letter of request to GSA, you must include the full details of your situation and the proposed transaction and certify that—

(a) Your agency's mission is dependent upon receiving a replacement aircraft;

(b) You will be replacing the aircraft with similar-type property (see § 102–39.15 of this subchapter B for a definition of "similar");

(c) Your replacement will be on a one-for-one basis (you must request and justify a waiver from GSA, Aircraft Management Policy Division (MTA), 1800 F Street, NW., Washington, DC 20405, to deviate from the one-for-one rule); and

(d) The exchange or sale meets all other requirements in part 102–39 of this subchapter B.

Note to § 102–33.275: The requirement to get GSA's approval for an exchange/sale does not apply if a Federal statute specifically authorizes your agency to exchange or sell certain aircraft.

§ 102–33.280 What are our options if we need a replacement aircraft?

If you need to replace an aircraft, and you have GSA's prior written approval for a deviation (see § 102–33.275), your options include—

(a) Negotiating and conducting an exchange transaction directly with an aircraft provider and obtaining credit toward the purchase of a replacement aircraft, following the procurement rules applicable to your agency; or

(b) Selling the aircraft and using the proceeds to offset the cost of purchasing a replacement aircraft, following part 102–39 of this subchapter B. The GSA can conduct sales for you; contact GSA (Region 9) for more information.

§ 102–33.285 Do we need to include any special disclaimers in our exchange/sale agreements for uncertificated aircraft or aircraft that we have operated as public aircraft (*i.e.*, not in compliance with the Federal Aviation Regulations, 14 CFR chapter I)?

Yes, when you exchange or sell uncertificated aircraft or aircraft maintained as public aircraft, you must ensure that the exchange or sales offerings contain the following statement:

Warning to purchasers/recipients. The aircraft you have purchased or received in an exchange may not be in compliance with applicable FAA requirements. You are solely responsible for bringing the aircraft into compliance with 14 CFR chapter I, or other applicable standards, by obtaining all necessary FAA inspections or modifications.

§ 102–33.290 What other disclaimers must we include in our exchange/sale agreements for aircraft?

When you exchange or sell aircraft, you must ensure that the following disclaimer is signed by the purchaser/recipient and received by the Government before releasing the aircraft to the purchaser/recipient:

The purchaser/recipient agrees that the Government shall not be liable for personal injuries to, disabilities of, or death of the purchaser/recipient, the purchaser's/recipient's employees, or to any other persons arising from or incident to the purchase of this aircraft, its use, or disposition. The purchaser/recipient shall hold the Government harmless from any or all debts, liabilities, judgments, costs, demands, suits, actions, or claims of any nature arising from or incident to purchase, use, or resale of this item.

§ 102–33.295 May we exchange or sell an aircraft through reimbursable transfer to another executive agency?

Yes, you may exchange or sell aircraft through reimbursable transfer to another executive agency if you have prior written approval from GSA to deviate from part 102–39 of this subchapter B (see § 102–33.275). See part 102–39, subpart B, and part 102–36 of this subchapter B for more information on reimbursable transfer of property. Before offering to the public an aircraft that is eligible for exchange/sale, you should consult with other executive agencies to find out if any agency is interested in taking the aircraft for reimbursement in funds or in kind (as you are directed in part 102–39 of this subchapter B).

Note to § 102–33.295: Some agencies may also have special congressional authorization to recover costs.

Disposing of Aircraft Parts

§ 102–33.300 What must we consider before disposing of aircraft parts?

Before disposing of aircraft parts, you must determine if they are excess to your agency's mission requirements or if you will need replacements (*i.e.*, they are not excess). The table in § 102–33.240 shows the differences between excess and replacement parts.

§ 102–33.305 May we report as excess, or replace, FSCAP and life-limited parts?

Yes, you may report as excess, or replace, FSCAP and life-limited parts, but they require special handling. See the tables in § 102–33.370.

§ 102–33.310 May we report as excess, or replace, unsalvageable aircraft parts?

No, you may not report unsalvageable aircraft parts as excess or exchange or sell them for replacements. You must mutilate unsalvageable parts. You may sell the mutilated parts only as scrap or report that scrap to GSA for sale.

§ 102–33.315 What are the procedures for mutilating unsalvageable aircraft parts?

To mutilate unsalvageable aircraft parts, you must—

(a) Destroy the data plates, remove the serial/lot/part numbers, and cut, crush, grind, melt, burn, or use other means to prevent the parts from being misidentified or used as serviceable aircraft parts. See detailed guidance in the FAA's Advisory Circular 21-38, "Disposition of Unsalvageable Aircraft Parts and Materials," available from the FAA. Call your regional FAA Flight Standards District Office for additional guidance;

(b) Ensure that an authorized official of your agency witnesses and documents the mutilation; and

(c) Retain a signed certification and statement of mutilation.

§ 102–33.320 What must we do if we are unable to perform required mutilation of aircraft parts?

If you are unable to perform the required mutilation of aircraft parts, you must turn in the parts to a Federal or federally approved facility for mutilation and proper disposition. Ensure that any contractor follows the provisions of § 102–33.315 for mutilating and disposing of the parts.

§ 102–33.325 What documentation must we furnish with excess/surplus or replaced parts when they are transferred, donated, exchanged, or sold?

When you transfer, donate, exchange, or sell excess/surplus or replaced parts, you must—

(a) Furnish all applicable labels, tags, and historical and modification records for serviceable aircraft parts;

(b) Mark mutilated parts as unsalvageable (mutilated parts may be sold only for scrap; see § 102–33.315); and

(c) Ensure that all available tags, labels, applicable historical data, life-histories, and maintenance records accompany FSCAP and life-limited parts and that FSCAP criticality codes (see § 102–33.375) are perpetuated on documentation (see § 102–33.330 for additional requirements).

Reporting Excess Aircraft Parts

§ 102–33.330 What must we do with aircraft parts that are excess to our needs?

If you have aircraft parts that are excess to your needs, you must first determine if any of your sub-agencies can use the parts. If they can, you may reassign them within your agency. If they cannot, then you must report the excess parts to the GSA FSS Office in your region, using SF 120, Report of Excess Personal Property (see § 102–2.135 of subchapter A of this chapter). When reporting excess FSCAP, you must include the manufacturer's name, date of manufacture, part number, serial number, and the appropriate Criticality Code on the SF 120. You may report electronically using the FEDS system. For information on reporting excess property electronically, contact the FSS Office of Transportation and Personal Property (FBP), 1941 Jefferson Davis Highway, Room 812, Arlington, VA 22202, (703) 305–7240. See parts 102–36 and 102–37 of this subchapter B on disposing of excess property.

§ 102–33.335 What are the receiving agency's responsibilities in the transfer or donation of aircraft parts?

An agency that receives transferred or donated aircraft parts must:

(a) Verify that all applicable labels and tags and historical and modification records are furnished with serviceable aircraft parts (*i.e.*, parts that are intended for flight use). This requirement does not apply to parts for ground use only. See the tables at § 102–33.370.

(b) Mutilate all transferred or donated parts that you discover to be unsalvageable, and dispose of them properly, following the procedures in § 102–33.315.

§ 102–33.340 What are GSA's responsibilities in disposing of excess and surplus aircraft parts?

In disposing of excess aircraft parts, the GSA Federal Supply Service office in your region reviews your SF 120, Report of Excess Personal Property (see § 102–2.135 of subchapter A of this chapter) for completeness and accuracy (of status, condition, and FSCAP and demilitarization codes if applicable) and ensures that the following certification is included on disposal documents (*e.g.*, transfer orders or purchasers' receipts):

Because of the critical nature of aircraft parts' failure and the resulting potential safety threat, recipients of aircraft parts must ensure that any parts installed on an aircraft meet applicable Federal Aviation Regulations and must obtain required certifications. GSA makes no representation as to a part's

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conformance with the Federal Aviation Administration's requirements.

§ 102–33.345 What are a State agency's responsibilities in the donation of Federal Government aircraft parts?

When a State agency accepts surplus Federal Government aircraft parts for donation, the agency must—

(a) Review donation and transfer documents for completeness and accuracy, and ensure that the certification in § 102–33.340 is included;

(b) Ensure that when the donee determines the part to be unsalvageable, the donee mutilates the part following the procedures in § 102–33.315; and

(c) Ensure that the donee retains, maintains, and perpetuates all documentation for serviceable parts (*i.e.*, parts intended for flight use).

Replacing Aircraft Parts Through Exchange or Sale

§ 102–33.350 Do we need approval from GSA to replace aircraft parts by exchange or sale?

No, you don't need approval from GSA to replace parts by exchange or sale. However, you must follow the provisions of this subpart and part 102–39 of this subchapter B. Replacement parts do not have to be for the same type or design of aircraft, but you must use the exchange allowance or sales proceeds to purchase aircraft parts to support your aviation program to meet the "similarity" requirement in part 102–39 of this subchapter B.

§ 102–33.355 May we do a reimbursable transfer of parts with another executive agency?

Yes, you may request that the Federal Supply Service office in your region approve a reimbursable transfer of aircraft parts under the exchange/sale authority in part 102–39 of this subchapter B to another executive agency as a way to receive parts in exchange or money to be used to purchase replacement parts.

§ 102–33.360 What is the process for selling or exchanging aircraft parts for replacement?

(a) You or your agent (*e.g.*, another Federal agency or GSA, Federal Supply Service (FSS)) may transact an exchange or sale directly with a non-federal source or do a reimbursable transfer with another executive agency as long as you or your agent—

(1) Follow the provisions in this part and in part 102–39 of this subchapter B.

(2) Ensure that the applicable labels and tags, historical data and modification records accompany the parts at the time of sale, and that sales offerings on aircraft parts contain the following statement:

Warning to purchasers/recipients. The parts you have purchased or received in an exchange may not be in compliance with applicable FAA requirements. You are solely responsible for bringing the parts into compliance with 14 CFR part 21 or other applicable standards, by obtaining all necessary FAA inspections or modifications.

(3) Ensure that the following certification is signed by the purchaser/recipient and received by the Government before releasing parts to the purchaser/recipient:

The purchaser/recipient agrees that the Government shall not be liable for personal injuries to, disabilities of, or death of the purchaser/recipient, the purchaser's/recipient's employees, or to any other persons arising from or incident to the purchase of this item, its use, or disposition. The purchaser/recipient shall hold the Government harmless from any or all debts, liabilities, judgments, costs, demands, suits, actions, or claims of any nature arising from or incident to purchase, use, or resale of this item.

(b) GSA, Federal Supply Service (FSS), can conduct sales of aircraft parts for you. Contact your GSA Regional Office for more information.

§ 102–33.365 Must we report exchange or sale of parts to FAIRS?

No, you don't have to report exchange or sale of parts to FAIRS. However, you must keep records of the transactions, which GSA may request to see.

Special Requirements for Disposing of Flight Safety Critical Aircraft Parts (FSCAP) and Life-Limited Parts

§ 102–33.370 What must we do to dispose of military FSCAP or life-limited parts?

To dispose of military FSCAP or life-limited parts, you must use the following tables:

(a) Table 1 for disposing of uninstalled FSCAP and life-limited parts follows:

TABLE 1 FOR DISPOSING OF UNINSTALLED FSCAP AND LIFE-LIMITED PARTS

(1) If an Uninstalled FSCAP (*i.e.*, not installed in an aircraft or engine)—		
(i) Is documented	Then	(A) You may exchange or sell it or transfer it to another executive agency under parts 102–36 and 102–39 of this subchapter B and the rules in this part; (B) GSA may donate it for flight use under part 102–37 of this subchapter B; or (C) GSA may donate it for ground use only, after you mutilate and mark it, "FSCAP—NOT AIRWORTHY" (the State Agency for Surplus Property must certify that the part has been mutilated and marked before donation).
(ii) Is undocumented, but traceable to its original equipment manufacturer (OEM) or production approval holder (PAH)—	Then	(A) You may exchange or sell it only to the OEM or PAH under part 102–39 of this subchapter B; (B) GSA may transfer or donate it for flight use, but only by making it a condition of the transfer or donation agreement that the recipient will have the part inspected, repaired, and certified by the OEM or PAH before putting it into service (Note: Mark parts individually to ensure that the recipient is aware of the parts' service status); or (C) GSA may donate it for ground use only, after you mutilate and mark it, "FSCAP—NOT AIRWORTHY" (the State Agency for Surplus Property must certify that the part has been mutilated and marked before donation).
(iii) Is undocumented and untraceable, you must mutilate it, and—	Then	(A) GSA may transfer or donate it for ground use only, after you mark it, "FSCAP—NOT AIRWORTHY" (the State Agency for Surplus Property must certify that the part has been mutilated and marked before donation); or (B) You may sell it only for scrap under §§ 102–33.310 and 102–33.315.
(2) If an uninstalled life-limited part (*i.e.*, not installed in an aircraft or engine)—		
(i) Is documented with service life remaining.	Then	(A) You may exchange or sell it or transfer it to another executive agency under parts 102–36 and 102–39 of this subchapter B and the rules in this part; (B) GSA may donate it for flight use under part 102–37 of this subchapter B; or (C) GSA may donate it for ground use only, after you mutilate and mark it, "EXPIRED LIFE-LIMITED—NOT AIRWORTHY" (the State Agency for Surplus Property must certify that the part has been mutilated and marked before donation).
(ii) Is documented with no service life remaining, or undocumented, GSA may not transfer it to another executive agency for flight use—	But	(A) GSA may transfer or donate it for ground use only, after you mutilate and mark it, "EXPIRED LIFE-LIMITED—NOT AIRWORTHY" (the State Agency for Surplus Property must certify that the part has been mutilated and marked before donation); or (B) You must mutilate it and may sell it only for scrap.

(b) Table 2 for disposing of installed life-limited parts follows:

TABLE 2 FOR DISPOSING OF INSTALLED LIFE-LIMITED PARTS

(1) If a life-limited part is installed in an aircraft or an engine, and it—		
(i) Is documented with service life remaining—	Then	(A) You may exchange or sell the aircraft or engine, or GSA may tranfer the aircraft or engine to another executive agency under parts 102–36 and 102–39 of this subchapter B and the rules in this part; (B) GSA may donate the aircraft or engine for flight use; or (C) GSA may donate the aircraft or engine for ground use only, after you remove the part, mutilate it and mark it, "EXPIRED LIFE-LIMITED—NOT AIRWORTHY." (Note: An internal engine part may be left installed, if, as a condition of the donation agreement, the receiving donee agrees to remove and mutilate the part, and mark it (the State Agency for Surplus Property must certify that the part has been multilated and marked)).
(i) Is documented with service life remaining—	Then	(A) You may exchange or sell the aircraft or engine, or GSA may transfer the aircraft or engine to another executive agency under parts 102–36 and 102–39 of this subchapter B and the rules in this part; (B) GSA may donate the aircraft or engine for flight use; or (C) GSA may donate the aircraft or engine for ground use only, after you remove the part, mutilate it and mark it, "EXPIRED LIFE-LIMITED—NOT AIRWORTHY." (Note: An internal engine part may be left installed, if, as a condition of the donation agreement, the receiving donee agrees to remove and mutilate the part, and mark it (the State Agency for Surplus Property must certify that the part has been mutilated and marked)).

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TABLE 2 FOR DISPOSING OF INSTALLED LIFE-LIMITED PARTS—Continued

(ii) Is documented with no service life remaining, or undocumented—	Then	(A) You must remove and mutilate the part before you exchange or sell the aircraft or engine (see rules for disposing of uninstalled life-limited parts in Table 1 of paragraph (a) of this section). (Note: If an aircraft or engine is exchanged or sold to its OEM or PAH, you do not have to remove the expired life-limited part); (B) You must remove and mutilate it before GSA may transfer or donate the aircraft or engine for flight use (see the rules for disposing of uninstalled FSCAP in Table 1 in paragraph (a) of this section). (Note: An internal engine part may be left installed, if you identify the part individually to ensure that the receiving agency is aware of the part's service status and, as a condition of the transfer or donation agreement, the receiving agency agrees to remove and mutilate the part before the engine is put into service. You must certify mutilation for transfers, and the State Agency for Surplus Property must certify that the part has been mutilated for donations); or (C) GSA may donate the aircraft or engine for ground use only, after you remove the part, mutilate and mark it "EXPIRED LIFE-LIMITED—NOT AIRWORTHY." (Note: An internal engine part may be left installed, if, as a condition of the donation agreement, the receiving agency agrees to remove and mutilate the part and mark it (the State Agency for Surplus Property must certify that the part has been mutilated and marked)).

§ 102–33.375 What is a FSCAP Criticality Code?

A FSCAP Criticality Code is a code assigned by DOD to indicate the type of FSCAP: Code "F" indicates a standard FSCAP; Code "E" indicates a nuclear-hardened FSCAP. You must perpetuate a FSCAP's Criticality Code on all property records and reports of excess. If the code is not annotated on the transfer document that you received when you acquired the part, you may contact the appropriate military service or query DOD's Federal Logistics Information System (FLIS—FedLog) using the National Stock Number (NSN) or the part number. For assistance in subscribing to the FLIS service, contact the FedLog Consumer Support Office, 800–351–4381.

Subpart E—Reporting Information on Government Aircraft

Overview

§ 102–33.380 Who must report information to GSA on Government aircraft?

You must report information to GSA on Government aircraft if your agency—

(a) Is an executive agency of the United States Government; and

(b) Owns, lease-purchases, bails, borrows, loans, leases, rents, charters, or contracts for (or obtains by inter-service support agreement) Government aircraft.

§ 102–33.385 Is any civilian executive agency exempt from the requirement to report information to GSA on Government aircraft?

No civilian executive agency is exempt, however, the Armed Forces (including the U.S. Coast Guard, the Reserves, and the National Guard) and U.S. intelligence agencies are exempt from the requirement to report to GSA on Government aircraft.

§ 102–33.390 What information must we report on Government aircraft?

(a) You must report the following information to GSA, Aircraft Management Policy Division (MTA), 1800 F Street, NW., Washington, DC 20405:

(1) Inventory data on Federal aircraft through FAIRS.

(2) Cost and utilization data on Federal aircraft through FAIRS.

(3) Cost and utilization data on CAS aircraft and related aviation services through FAIRS.

(4) Accident and incident data through the ICAP Aircraft Accident Incident Reporting System (AAIRS).

(5) The results of cost-comparison studies in compliance with OMB Circular A–76 to justify purchasing, leasing, modernizing, replacing, or otherwise acquiring aircraft and related aviation services.

(b) Information on senior Federal officials and others who travel on Government aircraft to GSA, Travel Management Policy Division (MTT), 1800 F Street, NW., Washington, DC 20405 (see OMB Circular A–126 for specific rules and a definition of senior Federal official).

Federal Aviation Interactive Reporting System (FAIRS)

§ 102–33.395 What is FAIRS?

FAIRS is a management information system operated by GSA (MTA) to collect, maintain, analyze, and report information on Federal aircraft inventories and cost and usage of Federal aircraft and CAS aircraft (and related aviation services). Users access FAIRS through a highly-secure Web site. The "FAIRS User's Manual" contains the business rules for using the system and is available from GSA, Aircraft Management Policy Division (MTA), 1800 F Street, NW., Washington, DC 20405.

§ 102–33.400 How must we report to FAIRS?

You must report to FAIRS electronically through a secure Web interface to the FAIRS application on the Internet. For information on becoming a FAIRS user, call GSA, Aircraft Management Policy Division, (MTA).

§ 102–33.405 When must we report to FAIRS?

You must report any changes in your Federal aircraft inventory within 14 calendar days. You must report cost and utilization data to FAIRS at the end of every quarter of the fiscal year (December 31, March 31, June 30, and September 30). However, you may submit your information to FAIRS on a daily, weekly, or monthly basis. To provide enough time to calculate your cost and utilization data, you may report any one quarter's cost and utilization in the following quarter, as follows:

Quarter	Submit
QTR 1—October 1—December 31	Federal inventory for QTR 1. Federal cost and utilization for previous QTR 4. CAS cost and utilization for previous QTR 4.
QTR 2—January 1—March 31	Federal inventory for QTR 2. Federal cost and utilization for QTR 1. CAS cost and utilization for QTR 1.
QTR 3—April 1—June 30	Federal inventory for QTR 3. Federal cost and utilization for QTR 2. CAS cost and utilization for QTR 2.
QTR 4—July 1—September 30	Federal inventory for QTR 4. Federal cost and utilization for QTR 3. CAS cost and utilization for QTR 3.

Federal Inventory Data

§ 102–33.410 What are Federal inventory data?

Federal inventory data include information on each of the operational and non-operational Federal aircraft that you own, bail, borrow, or loan. See the "FAIRS User's Manual," published by GSA, Aircraft Management Policy Division (MTA), 1800 F Street, NW., Washington, DC 20405, for a complete listing and definitions of the FAIRS Federal inventory data elements.

§ 102–33.415 When may we declassify an aircraft and remove it from our Federal aircraft inventory?

When an aircraft is lost or destroyed, or is otherwise non-operational and you want to retain it, you may declassify it and remove it from your Federal aircraft inventory. When you declassify an aircraft, you remove the data plate permanently, and the resulting "aircraft parts or other property" are no longer considered an aircraft. See §§ 102–33.415 through 102–33.420 for rules on declassifying aircraft, and see part 102–36 or 102–37 of this subchapter B on reporting declassified aircraft as excess.

§ 102–33.420 How must we declassify an aircraft?

To declassify an aircraft, you must—

(a) Send a letter to GSA, Aircraft Management Policy Division (MTA), 1800 F Street, NW., Washington, DC 20405, requesting approval to declassify the aircraft and stating that the aircraft is non-operational (which includes lost or destroyed). In this letter, identify the Federal Supply Classification (FSC) group(s) that the declassified aircraft/parts will fall under if applicable, describe the condition of the aircraft (crash-damaged, unrecoverable, parts unavailable, etc.), and include photographs as appropriate.

(b) Within 14 calendar days of receiving GSA's approval to declassify the aircraft—

(1) Following applicable Federal Aviation Regulations (14 CFR 45.13), request approval from your local FAA Flight Standards District Office (FSDO) to remove the manufacturer's data plate;

(2) Within 14 calendar days of receiving approval from FAA to remove the data plate, inform GSA (MTA) of FAA's approval, send the data plate by courier or registered mail to the FAA, as directed by your FSDO, and remove any Certificate of Airworthiness and the aircraft's registration form from the aircraft, complete the reverse side of the registration form, and send both documents to the FAA.

(c) Delete the aircraft from your FAIRS inventory records and update your personal property records, deleting the declassified aircraft from the aircraft category and adding it to another Federal Supply Classification group or groups, as appropriate.

Federal Aircraft Cost and Utilization Data

§ 102–33.425 What Federal aircraft cost and utilization data must we report?

You must report certain costs for each of your Federal aircraft and the number of hours that you flew each aircraft. In reporting the costs of your Federal aircraft, you must report both the amounts you paid as Federal costs, which are for services the Government provides, and the amounts you paid as commercial costs in support of your Federal aircraft. For a list and definitions of the Federal aircraft cost and utilization data elements, see the "FAIRS User's Manual," which is available from GSA, Aircraft Management Policy Division (MTA), 1800 F Street, NW., Washington, DC 20405.

§ 102–33.430 Who must report Federal aircraft cost and utilization data?

Executive agencies, except the Armed Forces and U.S. intelligence agencies, must report Federal cost and utilization data on all Federal aircraft. Agencies should report Federal cost and utilization data for loaned aircraft only if Federal money was expended on the aircraft.

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Commercial Aviation Services (CAS) Cost and Utilization Data

§ 102–33.435 What CAS cost and utilization data must we report?

You must report the costs and flying hours for each CAS aircraft you hire. You must also report the costs and contractual periods for related aviation services that you hire (*i.e.*, by contract or through an inter-service support agreement (ISSA)). Report related aviation services that you hire commercially in support of Federal aircraft as "paid out" Federal aircraft costs—do not report them as CAS. See the "FAIRS User's Manual," available from GSA, Aircraft Management Policy Division (MTA), 1800 F Street, NW., Washington, DC 20405 for a complete description of the CAS data elements reportable to FAIRS.

§ 102–33.440 Who must report CAS cost and utilization data?

Executive agencies, except the Armed Forces and U.S. intelligence agencies, must report CAS cost and utilization data. You must report CAS cost and utilization data if your agency makes payments to—

(a) Charter or rent aircraft;

(b) Lease or lease-purchase aircraft;

(c) Hire aircraft and related services through an ISSA or a full service contract; or

(d) Obtain related aviation services through an ISSA or by contract except when you use the services in support of Federal aircraft.

Accident and Incident Data

§ 102–33.445 What accident and incident data must we report?

You must report within 14 calendar days to GSA, Aircraft Management Policy Division (MTA), 1800 F Street, NW., Washington, DC 20405, all aviation accidents and incidents that your agency is required to report to the NTSB. You may also report other incident information. The GSA and the ICAP will use the collected accident/incident information in conjunction with FAIRS' data, such as flying hours and missions, to calculate safety statistics for the Federal aviation community and to share safety lessons-learned.

§ 102–33.450 How must we report accident and incident data?

You must report accident and incident data through the ICAP Aviation Accident and Incident Reporting System (AAIRS), which is accessible from the Internet. Instructions for using the system and the data elements and definitions for accident/incident reporting are available through the system or from GSA, Aircraft Management Policy Division (MTA), 1800 F Street, NW., Washington, DC 20405.

Common Aviation Management Information Standard (C–AMIS)

§ 102–33.455 What is C–AMIS?

Common Aviation Management Information Standard (C–AMIS), jointly written by the ICAP and GSA and available from GSA, Aircraft Management Policy Division (MTA), 1800 F Street, NW., Washington, DC 20405, is a guide to assist agencies in developing or modernizing their internal aviation management information systems. C–AMIS includes standard specifications and data definitions related to Federal aviation operations.

§ 102–33.460 What is our responsibility in relation to C–AMIS?

If you use a management information system to provide data to FAIRS by batch upload, you are responsible for ensuring that your system is C–AMIS-compliant. For more information on compliance with C–AMIS, contact GSA, Aircraft Management Policy Division (MTA), 1800 F Street, NW., Washington, DC 20405.

Dated: September 11, 2002.

Stephen A. Perry,

Administrator of General Services.

[FR Doc. 02–26841 Filed 11–5–02; 8:45 am]

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Federal Register

Wednesday,
November 6, 2002

Part IV

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Parts 1, et al.

Federal Acquisition Regulation; Elimination of the Standard Form 129, Solicitation Mailing List Application; Proposed Rule

VOL 67 ISS 215 NO 6 2002 UMI

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 5, 14, 19, 22, 36, 52, and 53

[FAR Case 2001–032]

RIN: 9000–AJ50

Federal Acquisition Regulation; Elimination of the Standard Form 129, Solicitation Mailing List Application

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to remove the requirement for contracting offices to establish and maintain manual solicitation mailing lists and the need to use the Standard Form (SF 129, Solicitation Mailing List Application).

DATES: Interested parties should submit comments in writing on or before January 6, 2003 to be considered in the formulation of a final rule.

ADDRESSES: Submit written comments to—General Services Administration, FAR Secretariat (MVA), 1800 F Street, NW, Room 4035, ATTN: Laurie Duarte, Washington, DC 20405. Submit electronic comments via the Internet to— *farcase.2001–032@gsa.gov*.

Please submit comments only and cite FAR case 2001–032 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Ralph De Stefano, Procurement Analyst, at (202) 501–1758. Please cite FAR case 2001–032.

SUPPLEMENTARY INFORMATION:

A. Background

In order to broaden use and reliance on e-business applications, the Councils are working with the Office of Federal Procurement Policy to eliminate the need to maintain paper-based sources of contractor information. As part of this effort, the Councils are proposing to eliminate the SF 129, Solicitation Mailing List Application.

The SF 129 was created to enable contracting activities to obtain information from sources to develop a solicitation mailing list. At the time the form was developed, manual processes were the only means available to assure access to adequate sources of supplies and services. Today, by sharp contrast, there are multiple tools available to agencies that can provide the functionality of the SF 129, but in a more efficient and effective manner. With the Administration's encouragement, agencies are taking advantage of these tools.

For example, many agencies now require potential contractors to register in the Central Contractor Registration (CCR) system, a centrally located, searchable database, accessible via the Internet, as their tool of choice for developing, maintaining, and providing sources for future procurements. The CCR database enables prospective contractors to update their information in one place via a website (*http://www.CCR2000.com.gov*). As a single validated source of data on contractors doing business with the Government, contracting officers are now able to access, via the Internet, contractor data and industry information less expensively, and more efficiently identify sources for contracting opportunities. Additionally, information obtained manually on the SF 129 may now be obtained electronically through the Procurement Marketing and Access Network, "PRO–NET," *http://pro-net.sba.gov*. PRO–NET is an electronic gateway of procurement information for and about small businesses operated by the Small Business Administration. It is a search engine for contracting officers, a marketing tool for small firms, and a link to procurement opportunities and important information. Furthermore, agencies are continually working to develop new electronic means of matching interested businesses with Government contracting offices on "FedBizOpps," *http://www.fedbizopps.gov*, the designated single Governmentwide point of entry for public access to notices of procurement actions over $25,000. FedBizOpps.gov, through its interested vendors list, has the capability to generate a list of vendors who are interested in a specific solicitation for purposes of teaming opportunities, subcontracting opportunities, and other business relationships. In light of these electronic initiatives, we propose to eliminate the manual collection of contractor data using the SF 129.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Councils do not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory FlexibilityAct, 5 U.S.C. 601, *et seq.*, because the rule substitutes efficient electronic databases for solicitation mailing lists and the SF 129, Solicitation Mailing List Application. An Initial Regulatory Flexibility Analysis (IRFA) has been prepared and will be provided to the Chief Counsel for Advocacy for the Small Business Administration. The analysis is summarized as follows:

This proposed rule would eliminate the SF 129, Solicitation Mailing List Application, so that agencies may rely exclusively on more efficient means to access sources of supplies. For example, information obtained manually on the SF 129 can be obtained more efficiently through the Procurement Marketing and Access PRO–NET, which is sponsored by the Small Business Administration. PRO–NET is an electronic gateway of procurement information for and about small businesses. It is a search engine for contracting officers, a marketing tool for small firms, and a link to procurement opportunities and important information.

The proposed rule, when finalized, will apply to all large and small entities that seek contracts that are awarded by executive agencies. For fiscal year 2001, there were 176,258 contract actions awarded over the simplified acquisition threshold. The proposed rule imposes no reporting, recordkeeping, or other compliance requirements.

The FAR Secretariat has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the FAR Secretariat. The Councils will consider comments from small entities concerning the affected FAR parts in accordance with 5 U.S.C. 610. Comments must be submitted separately and should cite 5 U.S.C 601, *et seq.* (FAR case 2001–032), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act no longer applies because the proposed rule eliminates reporting and recordkeeping requirements currently approved under OMB Control Number 9000–0002. This rule will reduce the current OMB inventory by 464,000 hours.

List of Subjects in 48 CFR Parts 1, 5, 14, 19, 22, 36, 52, and 53

Government procurement.

Dated: November 1, 2002.

Al Matera,

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA propose amending 48 CFR parts 1, 5, 14, 19, 22, 36, 52, and 53 as set forth below:

1. The authority citation for 48 CFR parts 1, 5, 14, 19, 22, 36, 52, and 53 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

1.106 [Amended]

2. Amend section 1.106 in the table following the introductory paragraph by removing from FAR segment 14.205 its corresponding OMB Control Number "9000–0002" and adding "9000–0037" in its place; and by removing the FAR segments "14.205–4(c)" and "SF 129" and their corresponding OMB Control Numbers "9000–0037" and "9000–0002", respectively.

PART 5—PUBLICIZING CONTRACT ACTIONS

3. Amend section 5.205 by revising the fourth sentence of paragraph (a) to read as follows:

5.205 Special situations.

(a) * * * Contracting officers must consider potential sources which respond to advance notices for a subsequent solicitation. * * *

* * * * *

5.403 [Amended]

4. Amend section 5.403 by removing paragraph designation "(a)" and paragraph (b).

PART 14—SEALED BIDDING

14.103–1 [Amended]

5. Amend section 14.103–1 by removing paragraph (b) and redesignating paragraphs "(c)" and "(d)" as "(b)" and "(c)", respectively.

6. Amend section 14.201–6 by revising paragraph (e) to read as follows:

14.201–6 Solicitation provisions.

* * * * *

(e) Insert in all invitations for bids the provision at 52.214–10, Contract Award—Sealed Bidding.

* * * * *

7. Amend section 14.203–1 by revising the first sentence to read as follows:

14.203–1 Transmittal to prospective bidders.

Invitations for bids or presolicitation notices shall be provided in accordance with 5.102. * * *

8. Revise section 14.205 to read as follows:

14.205 Presolicitation notices.

In lieu of initially forwarding complete bid sets, the contracting officer may send presolicitation notices to concerns. The notice shall—

(a) Specify the final date for receipt of requests for a complete bid set;

(b) Briefly describe the requirement and furnish other essential information to enable concerns to determine whether they have an interest in the invitation; and

(c) Normally not include drawings, plans, and specifications. The return date of the notice must be sufficiently in advance of the mailing date of the invitation for bids to permit an accurate estimate of the number of bid sets required. Bid sets shall be sent to concerns that request them in response to the notice.

14.205–1 through 14.205–5 [Removed]

9. Remove sections 14.205–1, 14.205–2, 14.205–3, 14.205-4, and 14.205–5.

14.211 [Amended]

10. Amend section 14.211 in the first sentence of paragraph (a) by removing "14.205–4(c)" and adding "14.205" in its place.

11. Amend section 14.503–1 by revising the introductory text of paragraph (a) to read as follows:

14.503–1 Step one.

(a) Requests for technical proposals shall be synopsized in accordance with Part 5. The request must include, as a minimum, the following:

* * * * *

PART 19—SMALL BUSINESS PROGRAMS

19.202–2 [Amended]

12. Amend section 19.202–2 by removing paragraph (a) and redesignating paragraphs "(b)" and "(c)" as "(a)" and "(b)", respectively.

19.202–4 [Amended]

13. Amend section 19.202–4 by removing paragraph (c) and redesignating paragraph (d) as (c).

19.402 [Amended]

14. Amend section 19.402 in paragraph (c)(3) by removing the words "on solicitation mailing lists or".

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

15. Amend section 22.1009–2 by revising paragraph (b) to read as follows:

22.1009–2 Attempt to identify possible places of performance.

* * * * *

(b) Databases available via the Internet for lists of prospective offerors and contractors.

* * * * *

PART 36—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

36.213–3 [Amended]

16. Amend section 36.213–3 in the parenthetical in paragraph (d) by removing "14.205 and".

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.214–9 [Removed and Reserved]

17. Remove and reserve section 52.214–9.

52.214.10 [Amended]

18. Amend section 52.214–10 in the prescription by removing "14.201–6(e)(2)" and adding "14.201–6(c)" in its place.

PART 53—FORMS

53.214 [Amended]

19. Amend section 53.214 by removing and reserving paragraph (e).

53.301–129 [Removed]

20. Remove section 53.301–129.

[FR Doc. 02–28205 Filed 11–5–02; 8:45 am]

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Part V

Department of Justice

Immigration and Naturalization Service

Registration of Certain Nonimmigrant Aliens From Designated Countries; Notice

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DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[AG Order No. 2626–2002]

Registration of Certain Nonimmigrant Aliens From Designated Countries

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: This Notice requires certain nonimmigrant aliens to appear before, register with, and provide requested information to the Immigration and Naturalization Service on or before December 16, 2002. It applies to certain nonimmigrant aliens from one of the countries designated in this Notice who were last admitted to the United States on or before September 10, 2002, and who will remain in the United States until at least December 16, 2002. The specific requirements are set forth in the Notice.

EFFECTIVE DATES: This Notice is effective on November 15, 2002. Aliens described in this Notice are required to register and provide additional information to the Immigration and Naturalization Service on or before December 16, 2002.

FOR FURTHER INFORMATION CONTACT: Dan Brown, Office of the General Counsel, Immigration and Naturalization Service, 425 I Street, NW., Room 6100, Washington, DC 20536, telephone (202) 514–2895.

SUPPLEMENTARY INFORMATION: Section 265(b) of the Immigration and Nationality Act ("Act"), as amended, 8 U.S.C. 1305(b), provides that

> [t]he Attorney General may in his discretion, upon ten days notice, require the natives of any one or more foreign states, or any class or group thereof, who are within the United States and who are required to be registered under this subchapter, to notify the Attorney General of their current addresses and furnish such additional information as the Attorney General may require.

Additionally, section 263(a) of the Act, 8 U.S.C. 1303(a), provides that the Attorney General may "prescribe special regulations and forms for the registration and fingerprinting of * * * aliens of any other class not lawfully admitted to the United States for permanent residence."

The Attorney General has previously exercised his authority under these and other provisions of the Act to establish special registration procedures under 8 CFR 264.1(f). 67 FR 52584 (Aug. 12, 2002). These requirements are known as the National Security Entry—Exit Registration System. In accordance with the authority set forth in 8 CFR 264.1(f)(4), the Attorney General has determined that certain nonimmigrant aliens specified in this Notice shall be registered and required to provide specific information. The Attorney General has the sole discretion to make this determination.

In light of recent events, and based on intelligence information available to the Attorney General, the Attorney General has determined that the aliens described in paragraph (a) of this Notice must appear before the Immigration and Naturalization Service ("Service") and provide certain information. This Notice applies only to certain nonimmigrant aliens from one of the countries designated in this Notice who were last admitted to the United States on or before September 10, 2002, and who will remain until at least December 16, 2002. Based on intelligence information available to the Attorney General, the Attorney General has determined that registering all nonimmigrant aliens from the covered countries would not enhance national security. Moreover, the Attorney General has determined that it would not be administratively feasible at the present time to register all of the nonimmigrants from the specific countries covered by this Notice, and that the delay occasioned by registering all nonimmigrants from the countries covered by this Notice would jeopardize the national security. Accordingly, the Attorney General has determined that only males aged 16 years or older need to be registered at this time. Furthermore, the Attorney General has determined that aliens who have, prior to the date of publication of this Notice, applied for asylum, have already provided sufficient information in their applications for asylum, along with their fingerprints, to warrant exclusion from this Notice.

Although section 265(b) of the Act, 8 U.S.C. 1305(b), provides a minimum period of 10 days notice for covered aliens to provide their current address and other required information, this Notice allows an alien described by the Notice a period of more than 30 days to register. The Attorney General has determined that such additional time to register is in the best interests of the United States and has extended this time to register solely as a matter of discretion.

Finally, until further notice, once enrolled within the National Security Entry—Exit Registration System by registration under this Notice, an alien described in paragraph (a) of the Notice is required to register annually with the Service. All aliens described in paragraph (a) shall comply with all other provisions of 8 CFR 264.1(f)(5) through (f)(9).

A willful failure to comply with the requirements of this Notice constitutes a failure to maintain nonimmigrant status under section 237(a)(1)(C)(i) of the Act, 8 U.S.C. 1227(a)(1)(C)(i). See 8 CFR 214.1(f). Pursuant to section 237(a)(3)(A) of the Act, 8 U.S.C. 1227(a)(3)(A), an alien who fails to comply with the provisions of this Notice is deportable, unless the alien establishes to the satisfaction of the Attorney General that such failure was reasonably excusable or was not willful. Finally, if an alien subject to this Notice fails, without good cause, to comply with the requirement in 8 CFR 264.1(f)(8) that the alien must report to an inspecting officer of the Service when departing the United States, the alien shall thereafter be presumed to be inadmissible under, but not limited to, section 212(a)(3)(A)(ii) of the Act, 8 U.S.C. 1182(a)(3)(A)(ii). See 8 CFR 264.1(f)(8).

Notice of Requirements for Registration of Certain Nonimmigrant Aliens From Designated Countries

Pursuant to sections 261 through 266 of the Immigration and Nationality Act ("Act"), as amended, 8 U.S.C. 1302 through 1306, and particularly sections 263(a) and 265(b) of the Act, 8 U.S.C. 1303(a) and 8 U.S.C. 1305(b), and 8 CFR 264.1(f), I hereby order as follows:

(a) *Scope.* Except as provided in paragraph (g), an alien is required to register pursuant to this Notice if the alien:

(1) Is a male who was born on or before November 15, 1986;

(2) Is a national or citizen of one of the countries listed in paragraph (b) who was inspected by the Immigration and Naturalization Service and was last admitted to the United States as a nonimmigrant on or before the relevant date specified in paragraph (b); and

(3) Will remain in the United States at least until December 16, 2002.

(b) *Designated countries.* This Notice is applicable to nationals or citizens of Iran, Iraq, Libya, Sudan, or Syria who were inspected and last admitted to the United States on or before September 10, 2002. This Notice is applicable to any alien who is a national or citizen of a designated country, notwithstanding any dual nationality or citizenship.

(c) *Requirement to appear before an immigration officer.* All aliens described in paragraph (a) shall, on or before December 16, 2002, appear before an immigration officer at any of the locations listed in the appendix to this Notice.

(d) *Information to be provided.* All aliens described in paragraph (a) shall:

(1) Answer questions under oath before an immigration officer, which answers shall be recorded by the immigration officer;

(2) Present to such immigration officer:

(i) The alien's travel documents, including passport and the Form I–94 issued upon admission, and any other forms of government-issued identification;

(ii) Proof of residence, such as, but not limited to, title to land or a lease or a rental agreement, proof of matriculation at an educational institution, and proof of employment; and

(iii) Such other information as is requested by the immigration officer; and

(3) Shall be fingerprinted and photographed by the immigration officer.

(e) *Annual reporting obligations.* All aliens described in paragraph (a) shall appear, within 10 days of each anniversary of the date on which they were registered under this Notice, before an immigration officer at any of the locations listed in the appendix to this Notice and answer questions under oath. All aliens described in paragraph (a) shall comply with all other provisions of 8 CFR 264.1(f)(5)–(9).

(f) *Notice of Change of Address.* All aliens described in paragraph (a) shall advise the Immigration and Naturalization Service, through the filing of Form AR–11, of any change of address within 10 days of such change of address. If an alien fails to notify the Immigration and Naturalization Service in writing of a change of address and the new address, as required by section 265(a) of the Act, 8 U.S.C. 1305(a), the alien may be subject to prosecution under section 266(b) of the Act, 8 U.S.C. 1306(b), and may be deportable as provided in section 237(a)(3)(A) of the Act, 8 U.S.C. 1227(a)(3)(A). If it becomes necessary to place the alien in removal proceedings, the Immigration and Naturalization Service may use the most recent address provided by the alien for service of the Notice to Appear.

(g) *Inapplicability.* The requirements of this Notice do not apply to any alien who:

(1) Is presently in a nonimmigrant classification under section 101(a)(15)(A) or 101(a)(15)(G) of the Act, 8 U.S.C. 1101(a)(15)(A) or 8 U.S.C. 1101(a)(15)(G);

(2) Is lawfully admitted to the United States for permanent residence; or

(3) Has applied for asylum on or before November 6, 2002, or has been granted asylum, under section 208 of the Act, 8 U.S.C. 1158.

Dated: November 4, 2002.

John Ashcroft,

Attorney General.

Appendix

Designated INS Interviewing Offices for Special Registration

ALASKA—Anchorage, 620 East 10th Avenue, Anchorage, Alaska 99501
ARIZONA—Phoenix, 2035 North Central Avenue, Phoenix, Arizona 85004
ARIZONA—Tucson, 6431 South Country Club Road, Tucson, Arizona 85706–5907
ARKANSAS—Fort Smith, 4991 Old Greenwood Road, Fort Smith, Arkansas 72903
CALIFORNIA—Fresno, 865 Fulton Mall, Fresno, California 93721
CALIFORNIA—Los Angeles, 300 North Los Angeles Street, Room 2024, Los Angeles, California 90012
CALIFORNIA—Sacramento, 650 Capitol Mall, Sacramento, CA 95814
CALIFORNIA—San Bernardino, 655 West Rialto Avenue, San Bernardino,California 92410
CALIFORNIA—San Diego, 880 Front Street, Suite 1209, San Diego,California 92101
CALIFORNIA—San Francisco, 444 Washington Street, San Francisco,California 94111
CALIFORNIA—San Jose, 1887 Monterey Road, San Jose, California 95112
CALIFORNIA—Santa Ana, 34 Civic Center Plaza, Santa Ana, California 92701
COLORADO—Denver, 4730 Paris Street, Denver, CO 80239
CONNECTICUT—Hartford, 450 Main Street, 4th Floor, Hartford, Connecticut 06103
FLORIDA—Jacksonville, 4121 Southpoint Boulevard, Jacksonville, Florida 32216
FLORIDA—Miami, 7880 Biscayne Boulevard, Miami, Florida 33138
FLORIDA—Orlando, 9403 Tradeport Drive, Orlando, Florida 32827
FLORIDA—Tampa, 5524 West Cypress Street, Tampa, Florida 33607–1708
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Part VI

The President

Proclamation 7619—National Adoption Month, 2002
Proclamation 7620—National American Indian Heritage Month, 2002
Proclamation 7621—National Hospice Month, 2002

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Presidential Documents

Title 3—

The President

Proclamation 7619 of November 1, 2002

National Adoption Month, 2002

By the President of the United States of America

A Proclamation

Every year, thousands of American families are blessed by adoption. Whether through domestic or international adoption or through the adoption of children from foster care, the love of compassionate families embraces children of all ages and from every background. During National Adoption Month, we recognize the heartfelt commitment of these good citizens, and we renew our pledge to make adoption a more accessible and positive path for American families.

Children thrive in loving families where they are nurtured, comforted, and protected. We are making important progress in placing children in foster care with adoptive families; and the overall number of children being adopted continues to rise. In the past 5 years, adoptions have increased dramatically; and thus far in 2002, tens of thousands of children have already been adopted.

Twenty-three States and the Commonwealth of Puerto Rico received adoption incentive awards in FY 2001 for increasing the number of children they placed from foster care into permanent adoptive homes. These recipients have reinvested their bonuses to help improve their respective adoption and child welfare programs. Americans also continue to welcome children from other countries into their homes through international adoptions. Last year, families in the United States adopted over 19,000 children from around the world.

Despite the progress we have made in increasing our adoption rate, we still have much work to do. More than 130,000 children, ranging from toddlers to teenagers, still remain in foster care awaiting adoption. While foster parents offer temporary essential care, the children for whom they care need the stability of a permanent family. It is often challenging to find families for older children and those children who have special needs. Yet they deserve a future with a nurturing family.

To help States promote adoption and support families who adopt, I signed a tax relief bill last year that permanently eases the financial burden on families that adopt children. And in January 2002, I signed into law a bill to extend and expand the Promoting Safe and Stable Families Program. Through this legislation, we are strengthening families by promoting adoption, offering post-adoptive services to families that adopt, and providing education and training vouchers to older adopted children and foster youth.

In July 2002, my Administration launched the AdoptUSKids national campaign to increase awareness about adoption and its role in helping all children reach their full potential. We have also created the first Federal adoption photo-listing web site devoted to children awaiting adoption and families who adopt, www.AdoptUSKids.org. During its first year, the web site will feature pictures and profiles of more than 6,500 children awaiting adoption, as well as a database of approved adoptive families. This unique web site will help to connect children from across the country with loving adoptive families, and it will also serve as a great resource for all adoptive families.

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On November 23, dozens of communities will gather in courtrooms across the country to celebrate National Adoption Day. On this momentous day, thousands of adoptions will be finalized and celebrated. These efforts demonstrate our Nation's dedication to ensuring that every child can thrive in a secure, loving, and stable home.

Through adoption, Americans can forever change not only a child's life but also their own. By providing children in need with the opportunity to grow and succeed through adoption, we can help them become confident, compassionate, and successful members of society.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim November 2002 as National Adoption Month. I call on all Americans to observe this month with appropriate programs and activities to honor adoptive families, and to participate in efforts to find permanent homes for waiting children.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of November, in the year of our Lord two thousand two, and of the Independence of the United States of America the two hundred and twenty-seventh.

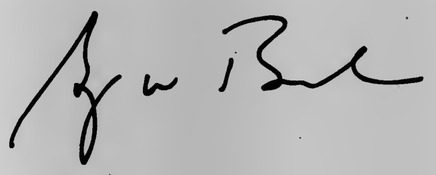

[FR Doc. 02–28432
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Presidential Documents

Proclamation 7620 of November 1, 2002

National American Indian Heritage Month, 2002

By the President of the United States of America

A Proclamation

During American Indian Heritage Month, we celebrate the rich cultural traditions and proud ancestry of American Indians and Alaska Natives, and we recognize the vital contributions these groups have made to the strength and diversity of our society.

American Indians and Alaska Natives have played a central role in our history. In 1805 and 1806, Sakajawea, a Shoshone Indian woman, helped guide Lewis and Clark on their historic expedition to explore the uncharted West. This remarkable journey, known as the "Voyage of Discovery," would not have been possible without her efforts, and today she remains a proud symbol of American Indian courage and strength.

We are also grateful to the Navajo Codetalkers for their service during World War II. Participating in every assault the U.S. Marines conducted in the Pacific from 1942–1945, the Navajo Codetalkers relayed secret messages that helped our Nation and the allies secure victory. The Congress recognized these heroes by authorizing the President to award them Congressional Gold Medals, which I was honored to present last year. These examples of our true American spirit reflect our shared history and serve as reminders of the unique heritage of American Indians and Alaska Natives. Upon its completion on the National Mall, the Smithsonian Institution's National Museum of the American Indian will help educate all Americans about the lives, contributions, and culture of our Native peoples.

Education is essential to the future success of tribal communities. We will work together to ensure that our Indian education programs offer high-quality instruction and job training that contribute to the vitality of our Native American communities. We will also work to maintain the legacy of American Indians and Alaska Natives by preserving irreplaceable languages and cultural traditions.

To enhance our efforts to help Indian nations be self-governing, self-supporting, and self-reliant, my Administration will continue to honor tribal sovereignty by working on a government-to-government basis with American Indians and Alaska Natives. We will honor the rights of Indian tribes and work to protect and enhance tribal resources.

My Administration is working to increase employment and expand economic opportunities for all Native Americans. Several Federal agencies recently participated in the National Summit on Emerging Tribal Economies to help us accomplish this goal. In order to build upon this effort, my Administration will work to promote cooperation and coordination among Federal agencies for the purpose of fostering greater economic development of tribal communities. By working together on important economic initiatives, we will strengthen America by building a future of hope and promise for all Native Americans.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim November 2002 as National

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American Indian Heritage Month. I call upon all Americans to commemorate this month with appropriate programs and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of November, in the year of our Lord two thousand two, and of the Independence of the United States of America the two hundred and twenty-seventh.

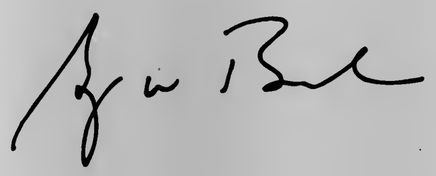

[FR Doc. 02–28433
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Presidential Documents

Proclamation 7621 of November 1, 2002

National Hospice Month, 2002

By the President of the United States of America

A Proclamation

Hospice organizations provide people who are near the end of their lives with family-centered, quality care, that emphasizes compassion, independence, respect, and dignity. During National Hospice Month, our Nation pays tribute to hospice care and the persons and organizations involved with it, by recognizing and honoring its value and importance for people who are dying, for their families and friends, and for our communities.

Hospice has emerged as a successful model of care that helps terminally ill individuals achieve practical, physical, psychological, and spiritual goals. According to the National Hospice and Palliative Care Organization (NHPCO), in 2001, an estimated 3,200 operating hospice programs in the United States admitted about 775,000 patients. Hospice care relies upon a team of committed physicians, nurses, medical social workers, therapists, counselors, and volunteers. This team provides medical services that are designed to improve the comfort of the patient, manage symptoms, provide proper nutrition, and deal with other difficulties such as emotional distress and grief. Hospice care also provides important emotional and spiritual support to families and friends as they cope with their impending loss.

While we have made great progress in encouraging hospice care, much work remains to be done to increase awareness of hospice and its benefits. The NHPCO reports that in 2000, 2.4 million people in our Nation died. It is estimated that one in four used hospice care and services. Also, many people at the end of life are referred to hospice only a few days before death. By strengthening and expanding hospice programs and working to promote, where appropriate, their services as a positive alternative for terminally ill patients, we can make a difference in the lives of countless Americans.

As we observe National Hospice Month, we applaud hospice organizations, health professionals, and other caregivers for their dedication to ensuring respect and quality of life for all. We also reaffirm our commitment as a Nation to honoring the dignity of every person and to promoting compassion and concern for our fellow citizens.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim November 2002 as National Hospice Month. I encourage Americans to increase their awareness of the importance and availability of hospice service and to observe this month with appropriate activities and programs.

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IN WITNESS WHEREOF, I have hereunto set my hand this first day of November, in the year of our Lord two thousand two, and of the Independence of the United States of America the two hundred and twenty-seventh.

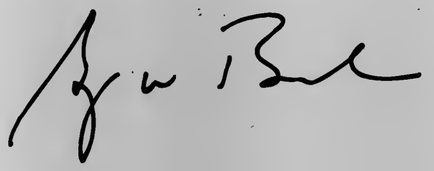

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H.R. 2215/P.L. 107–273

21st Century Department of Justice Appropriations Authorization Act (Nov. 2, 2002; 116 Stat. 1758)

H.R. 4967/P.L. 107–274

Border Commuter Student Act of 2002 (Nov. 2, 2002; 116 Stat. 1923)

H.R. 5542/P.L. 107–275

Black Lung Consolidation of Administrative Responsibility Act (Nov. 2, 2002; 116 Stat. 1925)

H.R. 5596/P.L. 107–276

To amend section 527 of the Internal Revenue Code of 1986 to eliminate notification and return requirements for State and local party committees and candidate committees and avoid duplicate reporting by certain State and local political committees of information required to be reported and made publicly available under State law, and for other purposes. (Nov. 2, 2002; 116 Stat. 1929)

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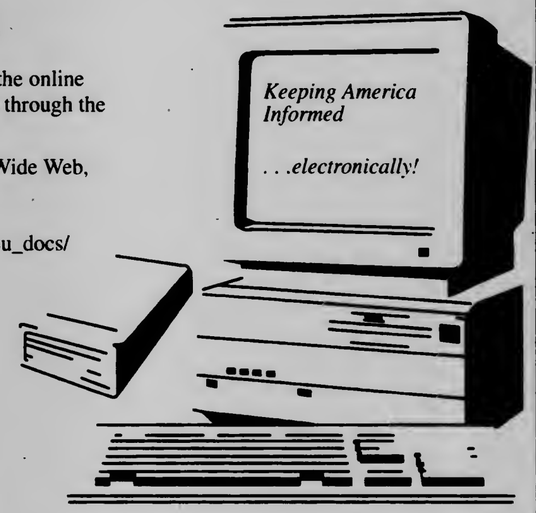

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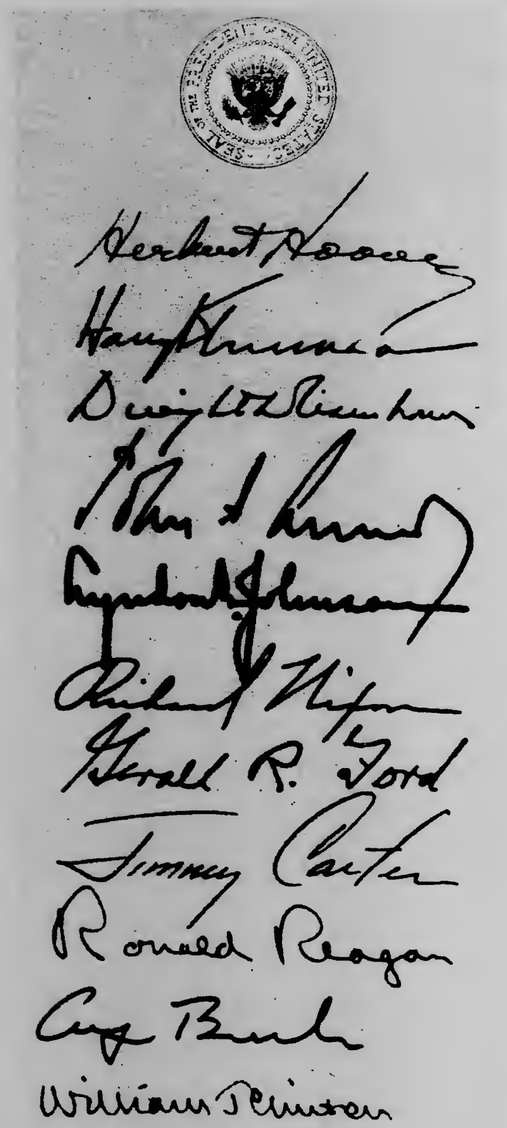

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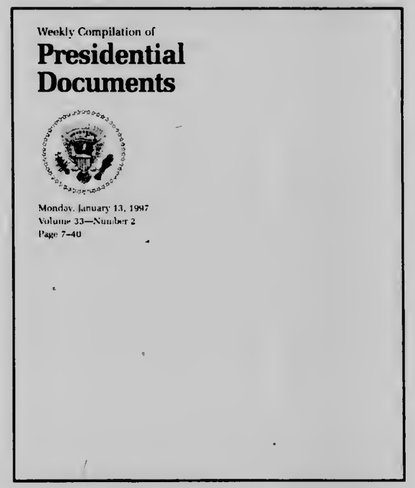

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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 01–093–3]

Mediterranean Fruit Fly; Removal of Quarantined Area

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the Mediterranean fruit fly regulations by removing a portion of Los Angeles County, CA, from the list of quarantined areas. The interim rule was necessary to relieve the restrictions that were no longer needed to prevent the spread of Mediterranean fruit fly to noninfested areas of the United States. As a result of the interim rule, there are no longer any areas in the continental United States quarantined because of the Mediterranean fruit fly.

EFFECTIVE DATE: The interim rule became effective on June 27, 2002.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen A Knight, Senior Staff Officer, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–8247.

SUPPLEMENTARY INFORMATION:

Background

The Mediterranean fruit fly (Medfly) regulations contained in 7 CFR 301.78 through 301.78–10 (referred to below as the regulations) restrict the interstate movement of regulated articles from quarantined areas to prevent the spread of Medfly to noninfested areas of the United States.

In an interim rule effective June 27, 2002, and published in the **Federal Register** on July 3, 2002 (67 FR 44523–44524, Docket No. 01–093–2), we amended the regulations by removing a portion of Los Angeles County, CA, from the list of quarantined areas in § 301.78–3(c). The interim rule was necessary to relieve restrictions that were no longer needed to prevent the spread of Medfly to noninfested areas of the United States. As a result of that action, there are no longer any areas in the continental United States quarantined because of the Medfly.

Comments on the interim rule were required to be received on or before September 3, 2002. We did not receive any comments. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule.

This action also affirms the information contained in the interim rule concerning Executive Orders 12866, 12372, and 12988, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived its review under Executive Order 12866.

Regulatory Flexibility Act

This action affirms an interim rule that amended the Medfly regulations by removing a portion of Los Angeles County, CA, from the list of quarantined areas. The interim rule was necessary to relieve restrictions on interstate movement of regulated articles from that area.

The entities most likely to be affected are fruit sellers, nurseries, growers, packinghouses, certified farmers markets, and swapmeets. The area that we removed from the list of quarantined areas is a predominantly residential area with many apartment buildings. Available information indicates that there are no entities in the area that sell, process, handle, or move regulated articles interstate.

In the interim rule, we solicited comments, particularly those pertaining to the number and kind of small entities that may incur benefits or costs as a result of the action. We received no comments.

We therefore expect the effect of the interim rule on any affected entities should be minimally positive, as they will no longer be required to treat regulated articles to be moved interstate for Medfly.

For this reason, the termination of the quarantine on that portion of Los Angeles County, CA, should have only a minimal economic effect on any affected entities operating in this area. We anticipate that the economic effect of lifting the quarantine, though positive, will be no more significant than was the minimal effect of its imposition.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant impact on a substantial number of small entities.

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR part 301 and that was published at 67 FR 44523–44524 on July 3, 2002.

Authority: 7 U.S.C. 166, 7711, 7712, 7714, 7731, 7735, 7751, 7752, 7753, and 7754; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 also issued under Sec. 204, Title II, Pub. L. 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 also issued under Sec. 203, Title II, Pub. L. 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

Done in Washington, DC, this 1st day of November 2002.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–28348 Filed 11–6–02; 8:45 am]

BILLING CODE 3410–34–P

FEDERAL RESERVE SYSTEM

12 CFR Parts 201 and 204

[Regulations A and D; Docket Nos. R–1123 and R–1134]

Extensions of Credit by Federal Reserve Banks; Reserve Requirements of Depository Institutions

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; technical amendment.

SUMMARY: The Board of Governors is publishing final amendments to

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Regulation A that replace the existing adjustment and extended credit programs with programs called primary and secondary credit and also reorganize and streamline existing provisions of Regulation A. The final rule leaves the existing seasonal credit program essentially unchanged. The final rule is intended to improve the functioning of the discount window and does not indicate a change in the stance of monetary policy.

The Board also is amending the penalty provision of Regulation D, which is calculated based on the discount rate, to conform the calculation of penalties for reserve deficiencies to the new discount rate framework.

DATES: This final rule will become effective on January 9, 2003.

FOR FURTHER INFORMATION CONTACT: Brian Madigan, Deputy Director (202/452–3828) or William Nelson, Senior Economist (202/452–3579), Division of Monetary Affairs; or Stephanie Martin, Assistant General Counsel (202/452–3198) or Adrianne Threatt, Counsel (202/452–3554), Legal Division; for users of Telecommunication Devices for the Deaf (TDD) only, contact 202/263–4869.

SUPPLEMENTARY INFORMATION:

Background

Existing Regulation A and the Board's Proposed Rule

Under existing Regulation A, three credit programs are available to depository institutions: (1) Adjustment credit, which is available for short periods of time, usually overnight, when a depository institution has exhausted other sources of funds; (2) extended credit, which is available for somewhat longer periods when assistance is not available from other sources; and (3) seasonal credit, which is available largely to small banks with a pronounced seasonal funding need. Over the past decade, the interest rate on adjustment credit has been 25 to 50 basis points below the federal funds rate, which is the rate that applies to uncollateralized overnight loans in the interbank market. The rates for extended and seasonal credit are set by formulas based on market interest rates and typically have been at or above the basic discount rate.

The below-market rate for adjustment credit creates incentives for an institution to borrow at the discount window to exploit the spread between the discount rate and the higher market rate for short-term funds. The current regulation therefore requires that an institution first exhaust other available sources of funds and explain its need for adjustment credit. The regulation also prohibits the use of discount window credit to finance the sale of federal funds. Because of these restrictions, a Reserve Bank must evaluate the financial situation of each borrower to determine that both the reason for borrowing at the discount window and the depository institution's use of borrowed funds are appropriate.

Reserve Bank administration of adjustment credit tends to create uncertainty among depository institutions about their access to discount window credit. In addition, institutions that have borrowed at the discount window after advertising their need for funds in the market have expressed concern that borrowing at the window signals weakness and is a source of stigma. Concerns such as these in some cases have deterred depository institutions from borrowing at the discount window during very tight money markets when doing so would have been appropriate. This in turn has hampered the ability of the discount window to buffer shocks to the money markets.

To improve the operation of the discount window, the Board proposed to replace the existing adjustment and extended credit programs with primary and secondary credit programs (67 FR 36544, May 24, 2002). The Board proposed that primary credit be available to generally sound institutions on a very short-term basis, usually overnight, with little or no administrative burden on the borrower and that borrowers of primary credit not be required to exhaust other sources of funds before obtaining short-term primary credit. The Board also proposed that primary credit be available for periods of up to a few weeks to generally sound institutions that cannot reasonably obtain such funding in the market. The Board proposed no restrictions on the purposes for which the borrower could use primary credit. The proposal contemplated that Reserve Banks would establish a System-wide set of criteria, based on supervisory and other relevant information, which would be used to determine whether an institution was in generally sound financial condition and thus eligible for primary credit. The Board proposed that primary credit normally be available at a rate above the target federal funds rate of the Federal Open Market Committee (FOMC) and that the initial primary credit rate be 100 basis points above the target federal funds rate.

Under the proposed rule, institutions not eligible for primary credit would be permitted to borrow secondary credit to meet temporary funding needs, consistent with the institution's timely return to a reliance on market funds. A Reserve Bank also could extend secondary credit to facilitate the resolution of serious financial difficulties of an institution. The Board proposed that the initial rate be set by formula 50 basis points above the primary credit rate. The Board's proposal contemplated that the secondary credit program would require more Reserve Bank administration than the primary credit program.

The proposed regulation retained the existing seasonal credit program without substantive change, although the Board specifically requested comment regarding whether that program was still necessary and, if so, what the applicable interest rate should be.

Overview of Comments Received

The Board received 61 comments on the proposed rule from depository institutions of various sizes, trade associations that represent depository institutions, individuals, and Reserve Banks. This section presents an overview of the main points contained in the comments received. The section-by-section analysis of the final rule, set forth below, discusses the comments in greater detail and responds to the major concerns expressed by commenters.

Support for the Proposal

Of the 30 letters that addressed the primary and secondary credit programs, approximately 14 generally supported moving to an above-market discount window framework. These commenters indicated that replacing the existing below-market discount window facility with an above-market framework would provide more easily accessible funding on more predictable and transparent terms with less burden on borrowers and would remove incentives to borrow in order to exploit interest rate spreads. Owing to the removal of the requirements that a borrower exhaust other funding sources and prove its need for credit and the addition of the requirement that primary credit borrowers be in generally sound financial condition, some supporters of the proposal thought that the stigma associated with discount borrowing would decrease. Commenters also indicated that an above-market framework would provide depository institutions with an incentive to manage their liquidity more prudently under normal market conditions in order to avoid paying the penalty rate but would make it easier for banks to obtain overnight funding during periods of very tight money markets. Supporters also stated that an above-market lending facility would be more akin to the lending facilities of other central banks.

Questions About the Need for Proposed Changes

Some commenters questioned the underlying reasons the Board gave for proposing an above-market framework. Several commenters questioned the Board's statement that some depository institutions were deterred from coming to the discount window because of perceptions that discount window borrowing indicated financial weakness. One commenter asserted that, because of limits on lending to undercapitalized institutions, borrowing at the window was more likely to indicate strength than weakness, while others asserted that market participants did not view borrowing as an important factor when assessing financial strength.[1] Still another commenter argued that the current low volume of borrowing did not indicate reluctance to borrow, but rather indicated that depository institutions were using the window appropriately as a backup rather than primary source of liquidity.[2] Other commenters questioned the need for an above-market rate for purposes of limiting volatility in the federal funds market because they thought that the existing controls and incentives adequately limited volatility.

Concerns About the Proposal

Sixteen commenters, eight of whom opposed the proposal, expressed various concerns about the proposal. Commenters' concerns focused mainly on the proposed 100-basis-point spread between the target federal funds and primary credit rates. Other commenters expressed concern that lending funds at an above-market rate inappropriately would introduce a profit motive into actions related to monetary policy, thereby creating a conflict of interest for the Federal Reserve System.[3]

Many commenters expressed concern that the proposal either would not address or would exacerbate the problems that the Board identified as reasons for changing to an above-market framework. Although some critics of the proposal thought that the new framework would prevent extreme spikes in the federal funds rate, many commenters thought that volatility, especially intraday volatility, would increase rather than decrease. Other commenters thought that depository institutions would be at least as reluctant as they are currently to seek discount window credit because stigma would remain or because the above-market rate would deter borrowing. Still other commenters asserted that the Board's proposal would not be less burdensome for borrowers. Suggested Alternatives to and Suggestions Regarding the Board's Proposal.

Some commenters who expressed general concern about the proposed above-market structure suggested that the Board modify or consider alternatives to its proposal. One commenter suggested that the problems with the current discount window programs were not burden and stigma, but rather were uncertainty about the programs and inconsistent requirements and expectations throughout the System. This commenter suggested leaving the current discount window programs in place but clarifying the Reserve Banks' credit policies, expectations, and requirements and applying those criteria more consistently throughout the Federal Reserve System.[4] Another commenter proposed that the Board try to cap the federal funds rate through late-day open market operations rather than change its credit programs. Other commenters thought that the Federal Reserve should make credit available continuously and at market rates.[5] Comments Regarding Seasonal Credit.

Over half the comments the Board received were in response to the Board's solicitation for comment about the continued need for the seasonal credit program. Forty-five commenters addressed the seasonal credit program, with 39 in favor of retaining and six in favor of eliminating the program. These comments are discussed in detail below in the section on seasonal credit.

Summary of Final Rule

For the reasons discussed in detail below in the section-by-section analysis, the Board's final amendments to Regulation A substantively are nearly identical to the rule the Board proposed in May 2002. Most notably, the final rule replaces the existing adjustment and extended credit programs with primary and secondary credit programs, and the Reserve Banks will offer these new types of credit at rates that exceed the FOMC's target federal funds rate. The Board has included in the final rule a section under which the primary credit rate could be lowered in a financial emergency in the absence of a quorum of the Board. The Board is retaining the seasonal credit program with only minor technical changes.

Section-by-Section Analysis

The Above-Market Lending Framework—§§ 201.4 and 201.51.

The Above Market Framework Generally and Market Volatility

A number of commenters argued that moving to an above-market discount window framework generally would increase volatility, especially in light of the proposed 100-basis-point initial spread of the primary credit rate over the target federal funds rate, and therefore would not accomplish one of the Board's stated goals.[6]

It is possible that certain measures of volatility of the federal funds rate—particularly those that give some weight to small deviations from the target, such as the intraday standard deviation of the federal funds rate—will increase under the above-market framework. However, the Board believes that an above-market framework will reduce the potential for more extreme, unintended movements in the funds rate. These extreme movements arguably are more problematic than smaller ones because they tend to occur in the context of, and can exacerbate, conditions of market stress. Most depository institutions will not have an incentive to borrow from the window until the federal funds rate rises to the primary credit rate, at which point institutions likely will view the window as an attractive alternative. The presence of the discount window as a funding option should ensure that the federal funds rate will not rise significantly above the primary credit

[1] One commenter argued that the manner in which discount window borrowing is reported makes it difficult to identify individual borrowers. Others thought that discount window activity was at best a secondary indicator of financial strength because market participants rely on other sources when determining an institution's soundness.

[2] The Board believes that a number of factors, including improved account management by depository institutions, contribute to the relatively low level of borrowing at recent spreads of the federal funds rate over the discount rate. However, the Board also believes that the current framework of below-market lending, with its attendant need to administer lending heavily, remains a potential deterrent to appropriate borrowing, especially during periods when the overall condition of the financial sector is weak.

[3] Another commenter argued that if a depository institution were to deteriorate as a result of reselling funds obtained through the primary credit program, the public might blame the Federal Reserve.

[4] The Board notes that the Federal Reserve System has taken steps over the past decade that have been intended to clarify requirements and decrease stigma.

[5] The Board notes that this approach would be inconsistent with operation of primary and secondary credit facilities as backup sources of liquidity and reserves for depository institutions.

[6] These commenters generally thought that an above-market structure would allow sellers routinely to increase the federal funds rate all the way up to the ceiling established by the discount rate, thereby increasing the cost of funds generally.

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rate, so the primary credit rate effectively will serve as a cap on and limit potential volatility in the federal funds rate.

Some commenters stated that an above-market discount window framework would place an upper limit on the federal funds rate but argued that the Board should not establish a ceiling on the federal funds rate without also establishing a floor, noting that net sellers of federal funds are disadvantaged by declines in the federal funds rate. The most effective means of establishing a floor would be for the Federal Reserve to pay interest on excess reserve account balances, because a depository institution would have no incentive to lend or sell reserves at a lower rate than the rate of interest those reserve balances could earn. However, the Federal Reserve does not have explicit statutory authority to pay interest on reserve balances at this time.

Although it might be desirable to limit both upward and downward volatility, those limits need not be implemented simultaneously in order to produce beneficial results. The potential advantages of the proposed discount window changes are considerable even in the absence of a rate floor, and delaying implementation of the above-market framework would unnecessarily defer those advantages without any countervailing benefit. The Board therefore has determined that implementation of the above-market framework should proceed without delay.

Primary Credit

Reserve Banks will extend primary credit at a rate above the target federal funds rate on a very short-term basis (typically overnight) to depository institutions that the Reserve Banks judge to be in generally sound financial condition. Reserve Banks will determine eligibility for primary credit according to a set of criteria that is uniform throughout the Federal Reserve System and based mainly on examination ratings and capitalization, although supplementary information, including market-based information when available, also could be used. An institution that is eligible to receive primary credit need not exhaust other sources of funds before coming to the discount window, nor will it be prohibited from using primary credit to finance sales of federal funds. However, in view of the above-market price of primary credit, the Board expects that a depository institution will continue to use the discount window as a backup source of liquidity, which is the intended purpose of a central bank lending facility, rather than as a routine one. Reserve Banks will extend primary credit on an overnight basis with minimal administrative requirements, unless an aspect of the request for funds suggests that the credit extension would not meet the conditions of primary credit. Reserve Banks also may extend primary credit to eligible institutions for periods of up to several weeks if such funding is not available from other sources. However, longer-term extensions of primary credit will be subject to greater administration than are overnight loans. The text of § 201.4(a) is essentially the same as that of the Board's proposal, although the final rule includes language highlighting the backup nature of the primary credit facility.

1. Interest Rates for Primary Credit

Several commenters supported the Board's proposal that the initial primary credit rate be 100 basis points above the target federal funds rate. These commenters thought that a 100-basis-point spread generally was appropriate and would encourage most financial institutions first to seek credit elsewhere. One commenter thought the proposed spread was acceptable because the Federal Reserve does a good job of keeping the federal funds rate near the target.

The Board received numerous comments, however, that expressed specific concern about the proposed initial primary credit rate. Many commenters, even those that generally supported the proposal, argued that the 100-basis-point spread the Board proposed was too wide and would undermine the Board's articulated goals for the primary credit program. These commenters thought that a discount rate of the target federal rate plus 100 basis points was too high because it was overly punitive, would deter institutions from borrowing at the discount window, and would allow sellers of federal funds to bid the federal funds rate up during periods of limited trading, low reserve volume, or late-day trading. Other commenters thought that a 100-basis-point spread between the target federal funds and discount rates would thwart the Board's efforts to remove the stigma associated with discount window borrowing and to encourage depository institutions and industry analysts to view the window as a normal liquidity source for sound institutions.

Several commenters liked the idea of setting the primary credit rate at rate above the target federal funds rate but suggested that a spread of as few as 25 to as many as 50 basis points would be preferable to the 100-basis-point initial spread the Board proposed.[7] Other commenters suggested alternative mechanisms for setting the rate, such as setting the rate at a certain percentage, rather than a certain number of basis points, above the target federal funds rate.[8]

The Board notes that an appreciable spread between the primary credit and target federal funds rate is necessary for the success of the above-market discount window programs. Given the large number of financial institutions in the United States and the tremendous variation in their sizes and other characteristics, the availability and price of market funding sources available to U.S. financial institutions also vary widely. If the primary credit rate were not at least as high as the highest rate on sources of comparable funding in the market, then some depository institutions frequently would find the primary credit program, rather than the open market, to be the most attractive source of funds. If routine use of the window occurred, the Federal Reserve still would need to administer the discount window heavily to deter institutions from making undue use of primary credit.

Although it is difficult to determine the appropriate rate at which to extend primary credit to ensure that it remains a backup funding source, empirical evidence from several sources suggests that 100 points above the target federal funds rate is an appropriate initial rate. These data cast doubt on whether a lesser spread would accomplish this goal of ensuring that the discount window remains a backup source of liquidity.

Experience with the Special Liquidity Facility (SLF) that the Federal Reserve System established to address unusual liquidity strains that arose during the months surrounding the date change on January 1, 2000, is instructive. The SLF was similar to the primary credit program in many ways because

[7] Although most commenters who suggested a particular rate did not explain their rationale, one commenter argued that a 50-basis-point spread would be appropriate because the commenter asserted that approximately half the large spikes in the federal funds rate were at about that level. Another commenter indicated that a 50- to 60-basis-point spread would be appropriate because that would ensure that the central bank rate was slightly higher than the market rate but would keep the market rate from becoming excessive.

[8] One of these commenters suggested that the amount of the spread should depend on the level of the target federal funds rate, such that the lower the federal funds rate, the lower the spread and vice versa. Another suggested tying the primary credit rate to the collateralized repo rate rather than the federal funds rate.

eligibility was limited to financially sound institutions, administration of the facility intentionally was quite limited, and funding was available at a fixed spread of 150 basis points above the federal funds rate. Despite the penalty rate, there were 42 instances in which institutions borrowed from the SLF for a period of two to ten consecutive days and 14 instances in which institutions borrowed for periods of more than ten consecutive days. This suggests that the SLF was an attractive source of longer-term, rather than overnight, funding for some institutions despite the 150-basis-point spread above market rates, which in turn suggests that those financially sound institutions might not have had access to cheaper funding in the open market.

In addition, Federal Reserve staff conversations with representatives of correspondent banks and other depository institutions found that the overnight funding options for banks without access to the national money markets were priced from 3/16 to 1 percentage point over the federal funds rate, with the largest spread being charged by an institution that preferred that its customers first exhaust other sources of short-term funding.

Moreover, a spread on the order of 100 basis points has been used by some, but not all, foreign central banks on their Lombard discount window facilities. Perhaps most notably, the European Central Bank generally has employed a spread of 100 basis points. Conversations with staff of some of these central banks indicate that the experience with spreads of this size generally has been positive and has been consistent with achieving those central banks' goals.

In view of the foregoing evidence, the Board believes that an initial spread of 100 basis points is appropriate and anticipates that a primary credit rate consistent with such a spread will be established as of January 9, 2003. The Board notes, however, that this is only the initial rate. The Reserve Banks are required to establish the primary credit rate, subject to the review and determination of the Board, at least every two weeks or more often if the Board deems necessary. The System therefore can set a primary credit rate at a lesser, or greater, spread above the federal funds rate as needed in light of actual experience with the primary credit program.[9]

Because a change in the stance of monetary policy between now and the recommended initiation of the new programs on January 9, 2003, cannot be ruled out, it is uncertain at this point what level of the primary credit rate will correspond with a spread of 100 basis points on that date. Section 201.51(a), which describes the primary credit rate, therefore at this time simply will state that the primary credit rate is a rate above the target federal funds rate of the FOMC. When the Reserve Banks establish and the Board determines the rate to be in effect on January 9, 2003, the Board will amend § 201.51(a) to indicate the initial primary credit rate for each Reserve Bank. The Board's amendment will be effective on January 9, 2003.

2. Eligibility Criteria

The Board proposed that eligibility for primary credit be determined mainly by a depository institution's supervisory ratings and capitalization, although supplementary information, when available, also could be used. Under the Board's proposed rule, institutions that were rated CAMELS 1 or 2 or SOSA 1 and at least adequately capitalized almost certainly would be eligible for primary credit, while institutions rated CAMELS 4 or 5 almost certainly would not be eligible. Institutions rated CAMELS 3 or SOSA 2 that are at least adequately capitalized might be eligible, depending on supplementary information.[10] The Board noted that this recommendation aligned very closely with the categorization of institutions for purposes of determining access to daylight credit.

Several commenters specifically addressed the eligibility criteria for primary credit. Most of these commenters thought that the proposed criteria generally were appropriate, although some suggested changes. Several commenters argued that the criteria should rely more heavily on examination ratings and minimize reliance on other types of information in determining eligibility for primary credit. One commenter thought that the guidelines would be more clear, concise, and uniform if the Federal Reserve only took supervisory ratings into account and did not allow supplementary information if a depository institutions were rated CAMELS 1 or 2.[11] Another commenter suggested that institutions that are rated CAMELS 5 or that are critically undercapitalized either should be precluded from obtaining credit or should be charged a much higher penalty rate than the Board proposed. In contrast, other commenters expressed concern that the proposed eligibility criteria relied too heavily on supervisory data. These commenters expressed concern that reliance on an institution's soundness was not appropriate in a system of secured lending and suggested that the Federal Reserve instead should base its lending programs and credit decisions on the type of collateral an institution offers.

The Board believes that, in order to ensure uniformity of credit eligibility throughout the Federal Reserve System, the criteria must rely heavily on objective supervisory data, which reflect determinations made by an institution's primary regulator after an extensive review process. However, the Board also recognizes that an institution could experience significant changes in its financial strength between examinations, in which case the institution's supervisory ratings might not reflect its current soundness and creditworthiness. To protect the Reserve Banks from the risks and to avoid the allocative distortions that could be involved in lending to such an institution, the Board believes that the eligibility criteria must allow for the use of some amount of supplementary information, including market-based information when available, to confirm that an institution's most recent supervisory data accurately reflect the institution's current condition.

Under the final rule, the Board anticipates that the Reserve Banks will initially adopt criteria that are substantially similar to those articulated in the Board's proposal with some additional elements that will make the eligibility criteria identical to those for daylight credit. The classification scheme used by Reserve Banks for determining access to daylight credit is well developed and provides a good measure of the general soundness of depository institutions. Reserve Banks and depository institutions already have extensive experience with these criteria,

[9] One commenter expressed concern that the Reserve Banks would establish and the Board determine the spread between the federal funds and primary credit rates, rather than setting the actual rate. The Board notes that the primary credit rate will not be determined by establishing a fixed spread above the federal funds rate or by using any other formula. Rather, the Reserve Banks will establish the actual primary credit rate, subject to the review and determination of the Board.

[10] CAMELS (Capital, Assets, Management, Earnings, Liquidity, and Sensitivity to market risk) ratings, applicable to domestically chartered institutions, are set on a scale of 1 through 5, with 5 representing the highest degree of supervisory concern. SOSA (Strength of Support Assessment) ratings, applicable to foreign banking organizations, are set on a scale of 1 through 3, with 3 indicating the highest degree of supervisory concern.

[11] This commenter argued that the other information the Board proposed to take into account was irrelevant to a Reserve Bank's risk regarding secured overnight loans and that considering such information would lead to uncertainty about borrowing privileges.

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and using them to determine eligibility for both the daylight credit and primary credit programs generally should be straightforward for the Reserve Banks and should be more transparent for borrowers. Using a single set of criteria for both programs also should simplify explanations of Reserve Bank credit programs to depository institutions and the public.

Under the criteria that would be applied at the outset of the program, institutions' eligibility would be based on CAMELS (or SOSA and ROCA) ratings, capitalization, and, at the Reserve Bank's discretion, supplementary information.[12] More specifically, institutions that are at least adequately capitalized and rated CAMELS 1 or 2 (or SOSA 1 and ROCA 1, 2, or 3) would almost certainly be eligible for primary credit. Institutions that are at least adequately capitalized and rated CAMELS 3 (or SOSA 2 and ROCA 1, 2, or 3) generally would be eligible. Institutions that are at least adequately capitalized and rated CAMELS 4 (or SOSA 1 or 2 and ROCA 4 or 5) would be eligible only if an ongoing examination indicated a substantial improvement in condition. Institutions that are not at least adequately capitalized, or that are rated CAMELS 5 (or SOSA 3 regardless of the ROCA rating), would not be eligible for daylight or primary credit.

In summary, eligibility for primary credit will be restricted to institutions that are in generally sound financial condition. The Reserve Banks will be responsible for determining the general soundness of the institutions in their districts. At the outset of the program, the Reserve Banks will use the criteria that are already used for determining eligibility for daylight credit.

3. Reduction of Burden and Stigma

Some commenters disagreed that the proposed revisions would reduce the stigma of borrowing at the discount window and in particular noted that analysts and counterparties might infer that the bank could not obtain funds at market rates and therefore might be in financial difficulty if there were evidence that the bank were paying a premium for funds. [13]

The Board believes that the Federal Reserve can reasonably expect to achieve, over time, some reduction in stigma as a result of the primary credit program. Only generally sound institutions will be eligible to borrow primary credit, and the Board expects that most institutions will be eligible for primary credit. Market participants would have no reasonable basis for inferring that an institution believed to have borrowed primary credit was unsound.[14] Also, with credit no longer offered at a subsidy rate, the Federal Reserve will no longer require a borrowing institution first to exhaust other funding sources. As a result, borrowers will not have to make their funding needs known to the market, which should eliminate a key source of stigma cited by depository institutions. Depository institutions and persons attempting to assess the strength of those institutions also should have no concerns that financial regulators will view occasional use of primary credit as a potential indication of difficulties. In addition, the borrowings of those institutions that are believed to be lending the proceeds of discount window credit into the federal funds market clearly will indicate nothing adverse about their financial condition. Finally, reflecting the incentives created by an above-market framework, a significant proportion of primary credit borrowing is likely to occur when the overall money market has tightened significantly. Because occasions of tightening markets are well known to all money market participants and analysts, it will be easy for them to recognize that borrowing at such times reflects a general market situation rather than conditions particular to a single institution.

Secondary Credit

The Reserve Banks will offer secondary credit to institutions that do not qualify for primary credit. As with primary credit, secondary credit will be available as a backup source of liquidity on a very short-term basis, provided that the loan is consistent with a timely return to a reliance on market sources of funds. Longer-term secondary credit would be available if necessary for the orderly resolution of a troubled institution, although any such loan would have to comply with the limitations of § 201.5 regarding lending to undercapitalized and critically undercapitalized institutions. Unlike the primary credit program, secondary credit will not be a minimal administration facility because the Reserve Banks will need to obtain sufficient information about a borrower's financial situation to ensure that an extension of credit complies with the conditions of the program. The description of secondary credit at § 201.4(b) closely tracks the language of the Board's proposed rule but states that short-term secondary credit is a backup funding source.

The rate for secondary credit will be set by formula and will be above the primary credit rate. Initially, the spread between the primary and secondary credit rates will be 50 basis points.[15] Less sound borrowers are riskier and might have an incentive to use discount window borrowings to expand their balance sheets in a manner that likely would distort resource allocation, and the higher rate on secondary credit is designed to reduce this incentive. Even with the higher rate, some institutions might tend to rely routinely on secondary credit, so administration of secondary credit remains necessary. If experience eventually suggests that a 50-basis-point spread above the primary credit rate is either too high or too low to achieve the objectives of the secondary credit program, the Federal Reserve could adopt a different formula.

Seasonal Credit

The Board's proposed rule left the seasonal credit intact with two technical revisions. The Board proposed removing the requirement that a potential borrower first demonstrate that it has exhausted special industry lenders as a funding source, because in practice the Reserve Banks have not used this criterion for some time. In addition, the Board proposed eliminating the requirement that the seasonal credit rate

[12] ROCA (Risk management, Operation controls, Compliance, and Asset quality) ratings apply to the U.S. operations of a foreign banking organization. They are set on a scale of 1 to 5; as with CAMELS ratings, higher numbers indicate increased supervisory concern.

[13] Several commenters thought that stigma would remain until senior bank management, equity analysts, investors, rating agencies, and other market participants consider the discount window to be a "normal" source of liquidity. Some of these commenters suggested that only an intensive education campaign by the Federal Reserve targeted at those whose opinions influence perception of the discount window would achieve this result. Other commenters thought that financially sound institutions would not borrow at the window because the market would not be able to tell whether they obtained primary or secondary credit.

[14] Although the Federal Reserve System does not publish information on individual banks' use of the discount window, it is required by law to publish a weekly balance sheet for each Reserve Bank. The Federal Reserve also publishes weekly data on the aggregate amount the Federal Reserve System has lent under each discount window program.

[15] Although the Board received few comments specifically about the secondary credit program, those commenters that did reference the program generally thought that the proposed rate of 50 basis points above the primary credit rate was appropriate. However, one commenter suggested that a higher secondary credit rate should not reflect a risk premium, because all secondary credit would be collateralized fully. This commenter suggested that the higher rate was justified only by its "incentive effect." Presumably this commenter was referring to the incentive a higher rate provides to less-sound institutions not to use discount window funding to expand their balance sheets inappropriately.

be at or above the basic discount rate, because that requirement would not be consistent with the pricing of primary credit. The Board specifically solicited comment on whether the seasonal credit program is still needed and, if so, whether the current formula for determining the rate remains appropriate. The majority of the comments that the Board received responded to this request.

Six commenters favored eliminating the seasonal credit program, arguing that small banks with seasonal needs had adequate access to other sources of liquidity and that the seasonal credit program was unnecessary. These commenters thought that the proposed primary and secondary credit programs could meet the needs of small banks. One commenter indicated that, if the Board kept the seasonal credit program, it should be available only to banks with less than $100 million in assets.

The Board received 39 comments from depository institutions, trade associations that represent small banks, and a Federal Reserve Bank urging the Board to retain the seasonal credit program, and most of these commenters also recommended retaining the existing rate formula.[16] The depository institutions argued that they continue to experience seasonal demand for which they have relatively few alternative funding sources. Some commenters indicated that they have no or very limited access to short-term capital markets and national money markets or that they can obtain credit through these channels only on unfavorable terms. Some small banks stated that they did not have access to the Federal Home Loan Banks (FHLBs), and some commenters with FHLB access stated that FHLB loans are for longer terms than needed to meet seasonal demand. Although many small banks indicated that their deposits generally have increased because of the recent decline in the equity markets, they expected that the availability of deposit funding would decrease as other investment options became more attractive. Some depository institutions also stated that obtaining liquidity by competing for additional deposits either was too expensive or was impossible because of a lack of core deposits in the community.

Several commenters indicated that eliminating the seasonal credit program would be harmful in other ways. Many institutions expressed concern that, without that program, the FHLBs would become their only viable alternative liquidity source and that they would be overly exposed to the FHLBs. Other depository institutions argued that if they could not obtain funding on terms comparable with those of the seasonal credit program, they in turn would not be able to compete effectively with other lenders, including the Farm Credit System, for agricultural loans.

Section 201.4(c) of the final rule leaves the seasonal credit unchanged, except for technical revisions contained in the Board's proposal.

Lowering the Primary Credit Rate in a Financial Emergency

In a financial emergency, lowering the discount rate would help to prevent an undue tightening of money markets, even if the Federal Reserve's ability to provide reserves through open market operations were constrained by the timing or effects of the conditions giving rise to the financial emergency. Especially in light of the events of September 11, 2001, when the System needed to make monetary policy and lending decisions quickly, the Board believes that it is desirable to ensure that the primary credit rate is lowered expeditiously in response to a financial emergency.

Section 201.51(d)(2) of the Board's rule defines a financial emergency as a significant disruption to the U.S. money markets resulting from an act of war, military or terrorist attack, natural disaster, or other catastrophic event. Ideally, a quorum of the Board would be present to review and determine the primary credit rate at the time a financial emergency occurred. However, to ensure that the Board's determination to lower the rate in response to a financial emergency could take effect even in the absence of a quorum, § 201.51(d) of the Board's final rule provides that the primary credit rate is reduced to the FOMC's target federal funds rate if in a financial emergency a Reserve Bank has requested that the primary credit rate be established at the target federal funds rate and the Chairman of the Board (or, in the absence of the Chairman, his designee) certifies at the time of the financial emergency that a quorum of the Board is not available. If the primary credit rate were lowered as a result of this provision, the primary credit rate then would float with the target federal funds rate, which the FOMC would continue to set. This provision of Regulation A implements the Board's decision that lowering the primary credit rate to the target federal funds rate in a financial emergency is the appropriate course of action. The Federal Reserve Banks are establishing analogous internal procedures to address the possibility that their boards of directors or other duly authorized officials might be unavailable or otherwise unable to communicate a rate request to the Board in a timely manner during a financial emergency.

Reorganization of and Changes to Other Provisions of Regulation A

Section 201.1 Authority, Purpose and Scope

The Board's final rule amends this section to include as sources of authority sections 11(i)–11(j) and 14(d) of the Federal Reserve Act, which respectively provide the Board with rulemaking authority and general supervisory authority over the Reserve Banks and authorize the Reserve Banks, subject to the review and determination of the Board, to establish discount rates. This section also gathers all existing provisions concerning the scope of Regulation A into one section by incorporating language from existing § 201.7(a) regarding the circumstances under which U.S. branches and agencies of foreign banks are subject to the regulation.

Section 201.2 Definitions

This section remains unchanged except for the deletion of five definitions. The definition of "eligible institution" (existing § 201.2(j)) is unnecessary because it related only to the SLF that was established for use during the months surrounding the January 1, 2000, date change. The definition of "targeted federal funds rate" (existing § 201.2(k)) also originally was used only in connection with the SLF. Although the new emergency rate procedure provision also refers to the target federal funds rate, that provision

[16] Commenters offered various suggestions regarding the seasonal credit program. Some thought that the seasonal credit rate should be even lower than the existing rate formula provides, and one asked that the Reserve Banks offer borrowers a choice of fixed or variable rates. Another commenter opined that the Reserve Banks should accept a broader range of assets as collateral, consider a "blanket pledging agreement" such as that used by the FHLBs, and stop demanding to take physical possession of the collateral. (The Board notes that in fact only a small fraction of collateral is held physically by the Reserve Banks. Most collateral is held by the pledging institution or pledged electronically.) One commenter suggested that Reserve Banks should allow depository institutions to borrow up to the entire amount of the assets they pledge as collateral (in other words, with no "haircut"). Some commenters indicated that the Federal Reserve should not require banks to demonstrate that their seasonal needs were for four consecutive weeks and should not vary an institution's seasonal credit line from month to month. Other commenters suggested that the Federal Reserve simplify both the eligibility criteria and the information requirements in connection with seasonal credit and requested that the Reserve Banks do more to promote awareness of the seasonal credit program.

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explains precisely what the term means. The Board therefore believes that there is no need to define the term "targeted federal funds rate" in the definition section.

The Board also is deleting the terms "liquidation loss," "increased loss," and "excess loss," (existing § 201.2(d)–(f), respectively). Liquidation loss and increased loss are used to derive the term excess loss, which is the amount the Board would owe the Federal Deposit Insurance Corporation (FDIC) under section 10B(b) of the Federal Reserve Act if outstanding Reserve Bank advances to a critically undercapitalized depository institution increased the FDIC's cost of liquidating that institution. Since the enactment of section 10B(b) in 1991, section 10B(b)'s payment provision has not been used. The Board continues to believe that the three definitions describe accurately and in detail the calculations required by section 10B(b) and, should it become necessary in the future, the Board would calculate the amount that it owed to the FDIC in accordance with the methods described in these three definitions. However, because the definitions only describe what the statute already requires, the Board believes that the regulation would be less cumbersome but no less accurate if § 201.5 of the final rule (regarding lending to undercapitalized and critically undercapitalized institutions) simply cross-referenced section 10B(b) of the Federal Reserve Act.

One commenter suggested that the Board amend its definition of "depository institution" to include bankers' banks, which specifically are excluded from the definition under existing Regulation A. The Board previously has determined that the discount window is an appropriate source of liquidity for depository institutions that are subject to reserve requirements, and the definition of the term "depository institution" in Regulation A therefore is based on the provisions in section 19 of the Federal Reserve Act and in the Board's Regulation D regarding those institutions that must maintain reserves. Those provisions specifically exempt bankers' banks from maintaining reserves, and because bankers' banks generally avail themselves of that exemption the Board continues to believe that bankers' banks also generally should not have access to the discount window. The Board therefore is not changing its definition of "depository institution" for purposes of Regulation A. However, the Board notes that bankers' banks are free to choose to be subject to the reserve requirements of section 19 of the Federal Reserve Act and Regulation D. The Board previously has allowed Reserve Banks to grant discount window access to a bankers' bank that voluntarily maintain reserves, and the Board expects that practice to continue under this final rule.

Section 201.3 General Requirements Governing Extensions of Credit

The Board is adopting § 201.3 as it appeared in the proposed rule. This section prescribes the Board's general rules governing a Federal Reserve Bank's extension of credit and combines in one place all the existing provisions of Regulation A that relate to the Reserve Bank's authority to extend credit, how credit is extended, and the requirements that apply to extensions of credit. This section states that credit to depository institutions generally will take the form of an advance but preserves a Reserve Bank's discretion to lend through discounting eligible paper if the Reserve Bank determines that a discount would be more appropriate for a particular depository institution. Section 201.3 cross-references the Reserve Banks' authority under section 13A of the Federal Reserve Act to lend to an institution that is part of the farm credit system, and accordingly the Board is deleting existing § 201.8 that deals with that topic.

Section 201.3 preserves existing text of Regulation A stating that a Reserve Bank has no obligation to make, increase, renew, or extend any advance or discount to a depository institution, and that any extension of credit the Reserve Bank chooses to make must be secured to the satisfaction of the Reserve Bank. The collateral policies of the Reserve Banks, as described in the Reserve Banks' Operating Circular No. 8, will remain unchanged. Section 201.3 contains existing text from § 201.4(d) providing that a Reserve Bank should ascertain whether an institution is undercapitalized or critically undercapitalized before extending credit to that institution and includes new text stating that if a Reserve Bank extends credit to such an institution then the Reserve Bank must follow special lending procedures.

Regarding the rules that apply to a borrower's use of central bank credit, § 201.3(d) contains new language that explicitly permits an institution that receives primary credit to use that credit to fund sales of federal funds without Reserve Bank permission. Recipients of secondary or seasonal credit would continue to need Reserve Bank permission to use Reserve Bank credit to fund sales of federal funds. The Board is deleting existing § 201.6(a), which provides that a depository institution may not use Federal Reserve credit as a substitute for capital, because the Board believes that other provisions of the statutes and regulations that it administers adequately address this issue. Section 201.5 Limitations on Availability and Assessments.

This section is unchanged from the proposed rule and describes the limitations on advances to an undercapitalized or critically undercapitalized depository institution set forth in section 10B(b) of the Federal Reserve Act and also applies those limitations to discounts for such institutions. In addition, § 201.5 discusses section 10B(b)'s requirement that the Board pay a specified amount to the FDIC if a Reserve Bank advance to a critically undercapitalized depository institution increases the loss the FDIC incurs when liquidating that institution. The existing regulation explains in detail through the definitions of "liquidation loss," "increased loss," and "excess loss" how the Board would calculate that amount. As discussed above, the proposed rule would delete these three definitions and simply provide that the Board will assess the Federal Reserve Banks for any amount the Board pays to the FDIC in accordance with section 10B(b) of the Federal Reserve Act.

Technical Amendment to Regulation D

In connection with its amendments to Regulation A, the Board is adopting a conforming amendment to § 204.7 of Regulation D. This section currently provides that the penalty charge for reserve deficiencies shall be 2 percentage points per year above the lowest rate (generally the adjustment credit rate) in effect for borrowings from the Federal Reserve Bank. In the recent past, the adjustment credit rate has consistently been set 50 basis points below the target federal funds rate, and the reserve deficiency charge therefore has been 150 basis points above the target federal funds rate.

The amendment to § 204.7 will base the charges for reserve deficiencies on the new primary credit rate in Regulation A and will authorize the Reserve Banks to assess charges for reserve deficiencies at a rate of 1 percentage point above the average primary credit rate. Under the revised formula, when the primary credit rate is 100 basis points above the target federal funds rate the reserve deficiency charge will be 200 basis points above the target federal funds rate. The conforming amendment will maintain approximate uniformity between the current and new levels of the deficiency charge.

The Board does not believe the slight difference between the current and new deficiency charge formulas is significant given the infrequency of reserve deficiency charges, the ability of the Reserve Banks to waive the charges under certain circumstances, and the future potential for variations in the spread between the target federal funds rate and the primary credit rate.

Administrative Procedure Act

The provisions of 5 U.S.C. 553(b), relating to notice and public participation, were not followed in connection with the adoption of the technical amendment to Regulation D because this change merely adjusts the penalty charged for reserve deficiencies to conform with the amended borrowing rates of Regulation A, while approximating the current level of the reserve deficiency charge. The Board for good cause finds that delaying the change in the penalty charge for reserve deficiencies in order to allow notice and public comment on the change is unnecessary.

Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Board certifies that the amendments to Regulation A will not have a significantly adverse economic impact on a substantial number of small entities.

Regulation A establishes rules under which Federal Reserve Banks may extend credit to depository institutions as a backup source of liquidity. The final rule replaces the existing adjustment and extended credit programs with primary and secondary credit programs. Like the existing regulation, the final rule does not require an institution to use those programs. The vast majority of institutions that choose to borrow under the new programs will be eligible for primary credit, which has fewer conditions, requirements, and administrative costs than the adjustment credit program that it replaces. The final rule does not materially alter the existing seasonal credit program, which is available to small depository institutions with pronounced seasonal funding needs, except to remove a prerequisite to borrowing that the Reserve Banks in practice have not used for some time.

Based on 2001 call report data, there are approximately 16,250 depository institutions in the United States that have assets of $150 million or less and thus are considered small entities for purposes of the Regulatory Flexibility Act. In 2001, approximately 161 small depository institutions received adjustment credit, none received extended credit, and approximately 156 received seasonal credit.[17] Although the Board solicited comment on the impact that the proposed rule would have on small depository institutions, no commenters specifically addressed that subject. However, the Board anticipates that the few small depository institutions that make use of the existing discount window programs will find the new programs to be comparatively more accessible and less burdensome, which should enable more efficient use of the discount window.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board has reviewed the final rule under the authority delegated to the Board by the Office of Management and Budget. The final rule contains no new collections of information and proposes no substantive changes to existing collections of information pursuant to the Paperwork Reduction Act.

List of Subjects in 12 CFR Parts 201 and 204

Banks, Banking, Federal Reserve System, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons set forth in the preamble, the Board is amending 12 CFR Chapter II as follows:

PART 201—EXTENSIONS OF CREDIT BY FEDERAL RESERVE BANKS (REGULATION A)

1. The authority citation for part 201 is revised to read as follows:

Authority: 12 U.S.C. 248(i)–(j), 343 *et seq.*, 347a, 347b, 347c, 348 *et seq.*, 357, 374, 374a, and 461.

2. Sections 201.1 through 201.5 are revised to read as follows:

§ 201.1 Authority, purpose and scope.

(a) *Authority.* This part is issued under the authority of sections 10A, 10B, 11(i), 11(j), 13, 13A, 14(d), and 19 of the Federal Reserve Act (12 U.S.C. 248(i)–(j), 343 *et seq.*, 347a, 347b, 347c, 348 *et seq.*, 357, 374, 374a, and 461).

(b) *Purpose and scope.* This part establishes rules under which a Federal Reserve Bank may extend credit to depository institutions and others. Except as otherwise provided, this part applies to United States branches and agencies of foreign banks that are subject to reserve requirements under Regulation D (12 CFR part 204) in the same manner and to the same extent as this part applies to depository institutions. The Federal Reserve System extends credit with due regard to the basic objectives of monetary policy and the maintenance of a sound and orderly financial system.

§ 201.2 Definitions.

For purposes of this part, the following definitions shall apply:

(a) *Appropriate federal banking agency* has the same meaning as in section 3 of the Federal Deposit Insurance Act (FDI Act) (12 U.S.C. 1813(q)).

(b) *Critically undercapitalized insured depository institution* means any insured depository institution as defined in section 3 of the FDI Act (12 U.S.C. 1813(c)(2)) that is deemed to be critically undercapitalized under section 38 of the FDI Act (12 U.S.C. 1831o(b)(1)(E)) and its implementing regulations.

(c)(1) *Depository institution* means an institution that maintains reservable transaction accounts or nonpersonal time deposits and is:

(i) An *insured bank* as defined in section 3 of the FDI Act (12 U.S.C. 1813(h)) or a bank that is eligible to make application to become an insured bank under section 5 of such act (12 U.S.C. 1815);

(ii) A *mutual savings bank* as defined in section 3 of the FDI Act (12 U.S.C. 1813(f)) or a bank that is eligible to make application to become an insured bank under section 5 of such act (12 U.S.C. 1815);

(iii) A *savings bank* as defined in section 3 of the FDI Act (12 U.S.C. 1813(g)) or a bank that is eligible to make application to become an insured bank under section 5 of such act (12 U.S.C. 1815);

(iv) An *insured credit union* as defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752(7)) or a credit union that is eligible to make application to become an insured credit union pursuant to section 201 of such act (12 U.S.C. 1781);

(v) A *member* as defined in section 2 of the Federal Home Loan Bank Act (12 U.S.C. 1422(4)); or

(vi) A *savings association* as defined in section 3 of the FDI Act (12 U.S.C. 1813(b)) that is an insured depository institution as defined in section 3 of the act (12 U.S.C. 1813(c)(2)) or is eligible to apply to become an insured depository institution under section 5 of the act (12 U.S.C. 15(a)).

(2) The term *depository institution* does not include a financial institution

[17] The Board notes that the volume for seasonal credit in 2001 was below average.

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that is not required to maintain reserves under § 204.1(c)(4) of Regulation D (12 CFR 204.1(c)(4)) because it is organized solely to do business with other financial institutions, is owned primarily by the financial institutions with which it does business, and does not do business with the general public.

(d) *Transaction account* and *nonpersonal time deposit* have the meanings specified in Regulation D (12 CFR part 204).

(e) *Undercapitalized insured depository institution* means any insured depository institution as defined in section 3 of the FDI Act (12 U.S.C. 1813(c)(2)) that:

(1) Is not a critically undercapitalized insured depository institution; and

(2)(i) Is deemed to be undercapitalized under section 38 of the FDI Act (12 U.S.C. 1831o(b)(1)(C)) and its implementing regulations; or

(ii) Has received from its appropriate federal banking agency a composite CAMELS rating of 5 under the Uniform Financial Institutions Rating System (or an equivalent rating by its appropriate federal banking agency under a comparable rating system) as of the most recent examination of such institution.

(f) *Viable*, with respect to a depository institution, means that the Board of Governors or the appropriate federal banking agency has determined, giving due regard to the economic conditions and circumstances in the market in which the institution operates, that the institution is not critically undercapitalized, is not expected to become critically undercapitalized, and is not expected to be placed in conservatorship or receivership. Although there are a number of criteria that may be used to determine viability, the Board of Governors believes that ordinarily an undercapitalized insured depository institution is viable if the appropriate federal banking agency has accepted a capital restoration plan for the depository institution under 12 U.S.C. 1831o(e)(2) and the depository institution is complying with that plan.

§ 201.3 Extensions of credit generally.

(a) *Advances to and discounts for a depository institution.* (1) A Federal Reserve Bank may lend to a depository institution either by making an advance secured by acceptable collateral under § 201.4 of this part or by discounting certain types of paper. A Federal Reserve Bank generally extends credit by making an advance.

(2) An advance to a depository institution must be secured to the satisfaction of the Federal Reserve Bank that makes the advance. Satisfactory collateral generally includes United States government and federal-agency securities, and, if of acceptable quality, mortgage notes covering one-to four-family residences, state and local government securities, and business, consumer, and other customer notes.

(3) If a Federal Reserve Bank concludes that a discount would meet the needs of a depository institution or an institution described in section 13A of the Federal Reserve Act (12 U.S.C. 349) more effectively, the Reserve Bank may discount any paper indorsed by the institution, provided the paper meets the requirements specified in the Federal Reserve Act.

(b) *No obligation to make advances or discounts.* A Federal Reserve Bank shall have no obligation to make, increase, renew, or extend any advance or discount to any depository institution.

(c) *Information requirements.* (1) Before extending credit to a depository institution, a Federal Reserve Bank should determine if the institution is an undercapitalized insured depository institution or a critically undercapitalized insured depository institution and, if so, follow the lending procedures specified in § 201.5.

(2) Each Federal Reserve Bank shall require any information it believes appropriate or desirable to ensure that assets tendered as collateral for advances or for discount are acceptable and that the borrower uses the credit provided in a manner consistent with this part.

(3) Each Federal Reserve Bank shall:

(i) Keep itself informed of the general character and amount of the loans and investments of a depository institution as provided in section 4(8) of the Federal Reserve Act (12 U.S.C. 301); and

(ii) Consider such information in determining whether to extend credit.

(d) *Indirect credit for others.* Except for depository institutions that receive primary credit as described in § 201.4(a), no depository institution shall act as the medium or agent of another depository institution in receiving Federal Reserve credit except with the permission of the Federal Reserve Bank extending credit.

§ 201.4 Availability and terms of credit.

(a) *Primary credit.* A Federal Reserve Bank may extend primary credit on a very short-term basis, usually overnight, as a backup source of funding to a depository institution that is in generally sound financial condition in the judgment of the Reserve Bank. Such primary credit ordinarily is extended with minimal administrative burden on the borrower. A Federal Reserve Bank also may extend primary credit with maturities up to a few weeks as a backup source of funding to a depository institution if, in the judgment of the Reserve Bank, the depository institution is in generally sound financial condition and cannot obtain such credit in the market on reasonable terms. Credit extended under the primary credit program is granted at the primary credit rate.

(b) *Secondary credit.* A Federal Reserve Bank may extend secondary credit on a very short-term basis, usually overnight, as a backup source of funding to a depository institution that is not eligible for primary credit if, in the judgment of the Reserve Bank, such a credit extension would be consistent with a timely return to a reliance on market funding sources. A Federal Reserve Bank also may extend longer-term secondary credit if the Reserve Bank determines that such credit would facilitate the orderly resolution of serious financial difficulties of a depository institution. Credit extended under the secondary credit program is granted at a rate above the primary credit rate.

(c) *Seasonal credit.* A Federal Reserve Bank may extend seasonal credit for periods longer than those permitted under primary credit to assist a smaller depository institution in meeting regular needs for funds arising from expected patterns of movement in its deposits and loans. An interest rate that varies with the level of short-term market interest rates is applied to seasonal credit.

(1) A Federal Reserve Bank may extend seasonal credit only if:

(i) The depository institution's seasonal needs exceed a threshold that the institution is expected to meet from other sources of liquidity (this threshold is calculated as a certain percentage, established by the Board of Governors, of the institution's average total deposits in the preceding calendar year); and

(ii) The Federal Reserve Bank is satisfied that the institution's qualifying need for funds is seasonal and will persist for at least four weeks.

(2) The Board may establish special terms for seasonal credit when depository institutions are experiencing unusual seasonal demands for credit in a period of liquidity strain.

(d) *Emergency credit for others.* In unusual and exigent circumstances and after consultation with the Board of Governors, a Federal Reserve Bank may extend credit to an individual, partnership, or corporation that is not a depository institution if, in the judgment of the Federal Reserve Bank, credit is not available from other sources and failure to obtain such credit would adversely affect the economy. If the collateral used to secure emergency credit consists of assets other than obligations of, or fully guaranteed as to principal and interest by, the United States or an agency thereof, credit must be in the form of a discount and five or more members of the Board of Governors must affirmatively vote to authorize the discount prior to the extension of credit. Emergency credit will be extended at a rate above the highest rate in effect for advances to depository institutions.

§ 201.5 Limitations on availability and assessments.

(a) *Lending to undercapitalized insured depository institutions.* A Federal Reserve Bank may make or have outstanding advances to or discounts for a depository institution that it knows to be an undercapitalized insured depository institution, only:

(1) If, in any 120-day period, advances or discounts from any Federal Reserve Bank to that depository institution are not outstanding for more than 60 days during which the institution is an undercapitalized insured depository institution; or

(2) During the 60 calendar days after the receipt of a written certification from the chairman of the Board of Governors or the head of the appropriate federal banking agency that the borrowing depository institution is viable; or

(3) After consultation with the Board of Governors. In unusual circumstances, when prior consultation with the Board is not possible, a Federal Reserve Bank should consult with the Board as soon as possible after extending credit that requires consultation under this paragraph (a)(3).

(b) *Lending to critically undercapitalized insured depository institutions.* A Federal Reserve Bank may make or have outstanding advances to or discounts for a depository institution that it knows to be a critically undercapitalized insured depository institution only:

(1) During the 5-day period beginning on the date the institution became a critically undercapitalized insured depository institution; or

(2) After consultation with the Board of Governors. In unusual circumstances, when prior consultation with the Board is not possible, a Federal Reserve Bank should consult with the Board as soon as possible after extending credit that requires consultation under this paragraph (b)(2).

(c) *Assessments.* The Board of Governors will assess the Federal Reserve Banks for any amount that the Board pays to the FDIC due to any excess loss in accordance with section 10B(b) of the Federal Reserve Act. Each Federal Reserve Bank shall be assessed that portion of the amount that the Board of Governors pays to the FDIC that is attributable to an extension of credit by that Federal Reserve Bank, up to 1 percent of its capital as reported at the beginning of the calendar year in which the assessment is made. The Board of Governors will assess all of the Federal Reserve Banks for the remainder of the amount it pays to the FDIC in the ratio that the capital of each Federal Reserve Bank bears to the total capital of all Federal Reserve Banks at the beginning of the calendar year in which the assessment is made, provided, however, that if any assessment exceeds 50 percent of the total capital and surplus of all Federal Reserve Banks, whether to distribute the excess over such 50 percent shall be made at the discretion of the Board of Governors.

§§ 201.6–201.9 [Removed]

3. Sections 201.6, 201.7, 201.8, and 201.9 are removed.

4. Section 201.51 is revised to read as follows:

§ 201.51 Interest rates applicable to credit extended by a Federal Reserve Bank.

(a) *Primary credit.* The rate for primary credit provided to depository institutions under § 201.4(a) is a rate above the target federal funds rate of the Federal Open Market Committee.

(b) *Secondary credit.* The rate for secondary credit extended to depository institutions under § 201.4(c) is a rate above the primary credit rate.

(c) *Seasonal credit.* The rate for seasonal credit extended to depository institutions under § 201.4(b) is a flexible rate that takes into account rates on market sources of funds.

(d) *Primary credit rate in a financial emergency.* (1) The primary credit rate at a Federal Reserve Bank is the target federal funds rate of the Federal Open Market Committee if:

(i) In a financial emergency the Reserve Bank has established the primary credit rate at that rate; and

(ii) The Chairman of the Board of Governors (or, in the Chairman's absence, his authorized designee) certifies that a quorum of the Board is not available to act on the Reserve Bank's rate establishment.

(2) For purposes of this paragraph (d), a financial emergency is a significant disruption to the U.S. money markets resulting from an act of war, military or terrorist attack, natural disaster, or other catastrophic event.

§ 201.52 [Removed]

5. Section 201.52 is removed.

PART 204—RESERVE REQUIREMENTS OF DEPOSITORY INSTITUTIONS (REGULATION D)

1. The authority citation for part 204 continues to read as follows:

Authority: 12 U.S.C. 248(a), 248(c), 371a, 461, 601, 611, and 3105.

2. Amend § 204.7 by revising the second sentence of paragraph (a)(1) to read as follows:

§ 204.7 Penalties.

(a) * * *

(1) * * * Federal Reserve Banks are authorized to assess charges for deficiencies in required reserves at a rate of 1 percentage point per year above the primary credit rate, as provided in § 201.51(a) of this chapter, in effect for borrowings from the Federal Reserve Bank on the first day of the calendar month in which the deficiencies occurred. * * *

* * * * *

By order of the Board of Governors of the Federal Reserve System, October 31, 2002.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 02–28115 Filed 11–6–02; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Docket No. FAA–2002–13624; Airspace Docket No. 02–AEA–17]

RIN 2120–AA66

Revocation of Restricted Area R–5207, Romulus, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action removes Restricted Area R–5207 (R–5207), Romulus, NY. The FAA is taking this action in response to the Department of the Army's notification that the military no longer has an operational need for the restricted area.

EFFECTIVE DATE: 0901 UTC, January 23, 2003.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

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SUPPLEMENTARY INFORMATION:

Background

The Department of the Army's position on special use airspace is that it will efficiently utilize only that airspace necessary to accomplish its mission. In keeping with that policy, since the Army has closed the Seneca Army Depot there is no longer a requirement for R–5207 and the Army has requested that the FAA take action to remove the restricted area.

The Rule

This action amends 14 CFR part 73 by removing R–5207, Romulus, NY. The FAA is taking this action at the request of the Department of the Army. This action returns this airspace for public use.

Since this action only involves removal of restricted airspace, the solicitation of comments would only delay the return of airspace to public use without offering any meaningful right or benefit to any segment of the public. Therefore, I find that notice and public procedures under 5 U.S.C. 553(b) are unnecessary.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this action: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Section 73.52 of 14 CFR part 73 was republished in FAA Order 7400.8K, dated September 26, 2002.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1D, Policies and Procedures for Considering Environmental Impacts," and the National Environmental Policy Act of 1969. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73 as follows:

PART 73—SPECIAL USE AIRSPACE

1. The authority citation for part 73 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 73.52 [Amended]

2. § 73.52 is amended as follows:

* * * * *

R–5207 Romulus, NY [Removed]

* * * * *

Issued in Washington, DC, on October 31, 2002.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 02–28364 Filed 11–6–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Docket No. FAA–2002–13525; Airspace Docket No. 02–AWP–08]

RIN 2120–AA66

Amendment to Using Agency for Restricted Area 2301W Ajo West, AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action changes the using agency of R–2301W, Ajo West, AZ. On August 12, 2002, the United States Air Force (USAF) and United States Marine Corps (USMC) requested that the FAA change the using agency for R–2301W from "U.S. Air Force, 58th Fighter Wing Luke AFB, AZ," to "Commanding Officer, USMC Air Station, Yuma, AZ," to reflect an administrative change of responsibility for the restricted area. This action responds to this request and does not change the boundaries; designated altitudes; time of designation; or activities conducted within the affected restricted area.

EFFECTIVE DATE: 0901 UTC, January 23, 2003.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

The Rule

This action amends title 14 Code of Federal Regulations (CFR) part 73 by changing the using agency of R–2301W, Ajo West, AZ. On August 12, 2002, the USAF and USMC requested that the FAA change the using agency for R–2301W from, "U.S. Air Force, 58th Fighter Wing Luke AFB, AZ," to "Commanding Officer, USMC Air Station, Yuma, AZ," to reflect an administrative change of responsibility for the restricted area. This action is an administrative change and does not affect the current boundaries; designated altitudes; time of designation; or activities conducted within the affected restricted area. Therefore, notice and public procedures under 5 U.S.C. 553(b) are unnecessary.

The FAA has determined that this action only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The coordinates for this airspace docket are based on North American Datum 83. Section 73.22 of part 73 of the Federal Aviation Regulations was republished in FAA Order 7400.8J, dated September 20, 2001.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1D, Policies and Procedures for Considering Environmental Impacts. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73, as follows:

PART 73—SPECIAL USE AIRSPACE

1. The authority citation for part 73 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 73.23 [Amended]

2. § 73.23 is amended as follows:

* * * * *

R–2301W [Amended]

By removing the words "Using agency. U.S. Air Force, 58th Fighter Wing Luke AFB, AZ," and inserting the words "Using agency. Commanding Officer, USMC Air Station, Yuma, AZ."

* * * * *

Issued in Washington, DC, October 29, 2002.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 02–28365 Filed 11–6–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 874

[Docket No. 02P–0241]

Medical Devices; Ear, Nose, and Throat Devices; Classification of the Transcutaneous Air Conduction Hearing Aid System

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is classifying the transcutaneous air conduction hearing aid system (TACHAS) into class II (special controls). Elsewhere in this issue of the **Federal Register**, FDA is announcing the availability of a guidance document that will serve as the special control for the device. The agency is taking this action in response to a petition submitted under the Federal Food, Drug, and Cosmetic Act (the act) as amended by the Medical Device Amendments of 1976 (the amendments), the Safe Medical Devices Act of 1990, and the Food and Drug Administration Modernization Act of 1997 (FDAMA). The agency is classifying this device into class II (special controls) in order to provide a reasonable assurance of safety and effectiveness of the device.

DATES: This rule is effective November 7, 2002.

FOR FURTHER INFORMATION CONTACT: Eric Mann, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2080.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with section 513(f)(1) of the act (21 U.S.C. 360c(f)(1)), devices that were not in commercial distribution before May 28, 1976, the date of enactment of the amendments, generally referred to as postamendments devices, are classified automatically by statute into class III without any FDA rulemaking process. These devices remain in class III and require premarket approval, unless and until the device is classified or reclassified into class I or II or FDA issues an order finding the device to be substantially equivalent, in accordance with section 513(i) of the act, to a predicate device that does not require premarket approval. The agency determines whether new devices are substantially equivalent to previously marketed devices by means of premarket notification procedures in section 510(k) of the act (21 U.S.C. 360(k)) and 21 CFR part 807 of the FDA regulations. Section 513(f)(2) of the act provides that any person who submits a premarket notification under section 510(k) of the act for a device that has not previously been classified may, within 30 days after receiving an order classifying the device in class III under section 513(f)(1) of the act, request FDA to classify the device under the criteria set forth in section 513(a)(1) of the act. FDA shall, within 60 days of receiving such a request, classify the device by written order. This classification shall be the initial classification of the device. Within 30 days after issuing an order classifying the device, FDA must publish a document in the **Federal Register** announcing the classification.

On June 21, 2002, FDA received a petition submitted under section 513(f)(2) of the act by Auric Hearing Systems Inc., seeking an evaluation of the automatic class III designation of its RetroX device. This device is intended to compensate for impaired hearing without occluding the ear canal. In accordance with section 513(f)(1) of the act, FDA issued an order automatically classifying the RetroX device in class III because it was not substantially equivalent to a device that was introduced or delivered for introduction into interstate commerce for commercial distribution before May 28, 1976, or a device that was subsequently reclassified into class I or II. After reviewing information submitted in the petition, FDA determined that the RetroX device and substantially equivalent devices can be classified in class II with the establishment of special controls. FDA believes that class II special controls, in addition to the general controls, will provide reasonable assurance of the safety and effectiveness of the device.

FDA has identified the following risks to health associated specifically with this type of device: (1) Infection /local inflammation, (2) injury to the ear canal, and (3) ineffective amplification.

Therefore, in addition to the general controls of the act, the device is subject to a special control guidance document entitled "Class II Special Controls Guidance Document: Transcutaneous Air Conduction Hearing Aid System (TACHAS); Guidance for Industry and FDA."

FDA believes the following controls identified in the class II special controls guidance document for a TACHAS device, when combined with the general controls of the act, will provide reasonable assurance of the safety and effectiveness of this type device: (1) Electro-acoustic testing, (2) fatigue testing, (3) strength test validation, (4) biocompatibility, (5) sterility, (6) clinical information, and (7) labeling to include prescription labeling in accordance with 21 CFR 801.109.

FDA believes that adherence to the class II special controls addresses the risks to health identified previously in this section of this document and provides a reasonable assurance of the safety and effectiveness of the device.

Section 510(m) of the act provides that FDA may exempt a class II device from the premarket notification requirement under section 510(k) of the act, if FDA determines that premarket notification is not necessary to provide reasonable assurance of the safety and effectiveness of the device. For this type of device, FDA has determined that premarket notification is necessary to provide reasonable assurance of safety and effectiveness and, therefore, the device is not exempt from the premarket notification requirements. The device is used as a wearable sound-amplifying device intended to compensate for impaired hearing without occluding the ear canal. FDA review of key design

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features, data sets from bench studies and clinical trials, other relevant performance data, and labeling will ensure that acceptable levels of performance for both safety and effectiveness are addressed before marketing clearance. Thus, persons who intend to market this device type must submit to FDA a premarket notification submission containing information on the TACHAS they intend to market prior to marketing the device.

On August 20, 2002, FDA issued an order classifying the RetroX device and substantially equivalent devices of this generic type into class II under the generic name, transcutaneous air conduction hearing aid system. FDA identifies this generic type of device as:

A wearable sound-amplifying device intended to compensate for impaired hearing without occluding the ear canal. The device consists of an air conduction hearing aid attached to a surgically fitted tube system, which is placed through soft tissue between the post auricular region and the outer ear canal.

The order also identifies a special control applicable to this device a guidance document entitled "Class II Special Controls Guidance Document: Transcutaneous Air Conduction Hearing Aid System (TACHAS); Guidance for Industry and FDA." Any firm submitting a 510(k) premarket notification for the device would need to address the issues covered in the special control guidance. However, the firm would need to show only that its device meets the recommendations of the guidance or in some other way provides equivalent assurances of safety and effectiveness.

FDA is now codifying the classification and the special control by adding new § 874.3950. For the convenience of the reader, FDA is also adding a new § 874.1(e) to inform the reader where to find guidance documents referenced in 21 CFR part 874.

II. Environmental Impact

The agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

III. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866, and the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive order. In addition, the final rule is not a significant regulatory action as defined by the Executive order and so it is not subject to review under the Executive order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. FDA knows of only one manufacturer of this type of device. Classification of these devices from class III to class II will relieve manufacturers of the device of the cost of complying with the premarket approval requirements of section 515 of the act (21 U.S.C. 360e), and may permit small potential competitors to enter the marketplace by lowering their costs. The agency, therefore, certifies that the final rule will not have a significant impact on a substantial number of small entities. In addition, this final rule will not impose costs of $100 million or more on either the private sector or State, local, and tribal governments in the aggregate and, therefore, a summary statement of analysis under section 202(a) of the Unfunded Mandates Reform Act is not required.

IV. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the agency has concluded that the rule does not contain policies that have federalism implications as defined in the order and, consequently, a federalism summary impact statement is not required.

V. Paperwork Reduction Act of 1995

This final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

List of Subjects in 21 CFR Part 874

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 874 is amended as follows:

PART 874—EAR, NOSE, AND THROAT DEVICES

1. The authority citation for 21 CFR part 874 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

2. Section 874.1 is amended by adding paragraph (e) to read as follows:

§ 874.1 Scope.

* * * * *

(e) Guidance documents referenced in this part are available on the Internet at http://www.fda.gov/cdrh/guidance.html

3. Section 874.3950 is added to subpart D to read as follows:

§ 874.3950 Transcutaneous air conduction hearing aid system.

(a) *Identification.* A transcutaneous air conduction hearing aid system is a wearable sound-amplifying device intended to compensate for impaired hearing without occluding the ear canal. The device consists of an air conduction hearing aid attached to a surgically fitted tube system, which is placed through soft tissue between the post auricular region and the outer ear canal.

(b) *Classification.* Class II (special controls). The special control for this device is FDA's guidance document entitled "Class II Special Controls Guidance Document: Transcutaneous Air Conduction Hearing Aid System (TACHAS); Guidance for Industry and FDA." See § 874.1 for the availability of this guidance document.

Dated: October 28, 2002.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 02–28398 Filed 11–6–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

Paroling, Recommitting, and Supervising Federal Prisoners: Prisoners Serving Sentences Under the United States and District of Columbia Codes

AGENCY: United States Parole Commission, Justice.

ACTION: Interim rule with request for comment.

SUMMARY: The U.S. Parole Commission is amending its procedures governing the mandatory release of military prisoners confined in federal civilian prisons. Such mandatory release is earned through good time credits. The amendment implements a Department of Defense Instruction that permits the U.S. Parole Commission to place a military prisoner who is released from a federal civilian prison under "mandatory supervision as if on parole" until the expiration of the sentence imposed, if the Commission determines that such supervision is necessary for the orderly transition of the offender back into community.

DATES: *Effective Date:* These rule amendments are effective December 9, 2002.

Comment Date: Comments must be received by December 23, 2002.

ADDRESSES: Send comments to the Office of General Counsel, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815.

FOR FURTHER INFORMATION CONTACT: Office of General Counsel, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815, telephone (301) 492–5959. Questions about this publication are welcome, but inquiries concerning individual cases cannot be answered over the telephone.

SUPPLEMENTARY INFORMATION: Former Department of Defense regulations did not permit any military prisoner who was released by operation of law due to good time credits to be subject to supervision in the community for the remainder of the imposed sentence. This was in contrast to the requirement that applies to federal civilian prisoners who are eligible for but denied parole. Prisoners sentenced by military courts martial and then transferred to a federal institution come under the exclusive jurisdiction of the U.S. Parole Commission for parole purposes pursuant to 10 U.S.C. 858. Thus, in the absence of any rule authorizing post-release supervision for military mandatory releasees, there was a gap in the Commission's authority to require post-release supervision for military prisoners mandatorily released on good time from institutions operated by the Federal Bureau of Prisons. (The Bureau of Prisons considered former 18 U.S.C. 4164—which authorizes mandatory release supervision for federal civilian prisoners eligible for parole—to be inapplicable to military prisoners who committed their crimes on or after November 1, 1987.) Thus, if the Commission denied parole and continued a military prisoner to the expiration of his sentence, the Commission was not able to supervise the offender. However, if the Commission paroled the military prisoner prior to the mandatory release date, the Commission could supervise the military offender just as any other parolee to the expiration of the prisoner's sentence.

At the request of the Attorney General of the United States, the Department of Defense has amended its regulations regarding the mandatory release of military prisoners, including prisoners in the custody of the Bureau of Prisons. *See* DoD Instruction 1325.7, "Administration of Military Correctional Facilities and Clemency and Parole Authority," July 17, 2001. These regulations generally allow for the supervision of military prisoners mandatorily released with good time deductions.[1] In the regulations, the Department of Defense adopted a policy to use mandatory supervision in all cases except where the Service Clemency and Parole Boards find it inappropriate. The regulations also permit the Parole Commission to place military prisoners who are in federal civilian custody on "mandatory supervision" after they are mandatorily released, if the Commission finds that such supervision is appropriate "to provide an orderly transition to civilian life for released prisoners and to protect the communities into which the prisoners are released." *See* DoD Instruction 1325.7 (6.20.8). However, the DoD Instruction is silent as to whether the Commission should, as the Department of Defense has done, adopt a general presumption that mandatory supervision is appropriate. Additionally, the new DoD instruction may be applied only to offenders who committed their crimes 30 days or more after the rule change. Therefore, under the terms of the DoD instruction, the Commission can only require supervision if the prisoner committed his crime on or after August 16, 2001.

The Commission is adopting a paragraph at the end of 28 CFR 2.35 so that the Commission's rules will conform to the Department of Defense regulations and policy regarding the mandatory release of military prisoners. Pursuant to the DoD Instruction, the amended rule states that when the Commission orders a military offender continued to expiration, the military prisoner will be placed on "mandatory supervision" until the expiration of his sentence if the Commission finds that the DoD criteria are met. The Commission is adopting this rule in order to give military offenders incarcerated in federal civilian prisons notice that, if the Commission denies the prisoner parole and continues the prisoner to the expiration of the prisoner's sentence, the prisoner may be required to serve a period of mandatory supervision after the prisoner's release. Although the Commission already has the authority under Department of Defense regulations to order mandatory supervision for military prisoners who committed their offenses on or after August 16, 2001, this rule further clarifies the Commission's authority and explains the Commission's general statement of policy regarding mandatory supervision.

The amended rule also includes the presumption that supervision is appropriate for all military mandatory releasees unless case-specific factors indicate that supervision is not appropriate. *See* DoD Instruction 1325.7 (6.20.1). The Commission is adopting this presumption for several reasons. First, the presumption in favor of supervision conforms with the presumption in the DoD Instruction. The inclusion of the presumption in favor of supervision after mandatory release will thus result in a uniform application of the Instruction among military offenders released from military and civilian institutions. Most importantly, the Commission agrees with the Department of Defense's general assessment that supervision in the community is, for the majority of cases, a highly effective technique to provide for a transition into the community and to protect the communities into which the prisoners are released. Therefore, the rule states that mandatory supervision shall be presumed unless the Commission finds case-specific factors illustrating that such supervision is inappropriate.

Finally, the rule makes it clear that, a prisoner on "mandatory supervision" will be subject to the conditions of parole at 28 CFR 2.40 and will be eligible for early termination of the supervision under 28 CFR 2.43. Thus, under the rule, military prisoners released on mandatory supervision will be subject to the same conditions and will have the same prospect for early termination of their supervision as federal offenders under parole or mandatory supervision.

[1] Mandatory supervision for military offenders differs from mandatory release for "old law" U.S. Code offenders under 18 U.S.C. 4164 since such supervision runs to the full term without the 180 -day reduction that applies to civilian, "old law" mandatory releasees.

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Implementation

This interim rule will be implemented for any military offender mandatorily released on good time deductions from a federal civilian prison if the offender committed his offense after August 15, 2001.

Regulatory Assessment Requirements

The U.S. Parole Commission has determined that this interim rule does not constitute a significant rule within the meaning of Executive Order 12866. The interim rule will not have a significant economic impact upon a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 605(b), and is deemed by the Commission to be a rule of agency practice that does not substantially affect the rights or obligations of non-agency parties pursuant to Section 804(3)(c) of the Congressional Review Act.

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, Prisoners, Probation and Parole.

The Amended Rule

Accordingly, the U.S. Parole Commission is adopting the following amendments to 28 CFR Part 2.

PART 2—[AMENDED]

1. The authority citation for 28 CFR Part 2 continues to read as follows:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

Subpart A—United States Code Prisoners and Parolees

2. Section 2.35 is amended by adding the following paragraph (d):

§ 2.35 Mandatory release in the absence of parole.

* * * * *

(d) If the Commission orders a military prisoner who is under the Commission's jurisdiction for an offense committed after August 15, 2001 continued to the expiration of his sentence (or otherwise does not grant parole), the Commission shall place such prisoner on mandatory supervision after release if the Commission determines that such supervision is appropriate to provide an orderly transition to civilian life for the prisoner and to protect the community into which such prisoner is released. The Commission shall presume that mandatory supervision is appropriate for all such prisoners unless case-specific factors indicate that supervision is inappropriate. A prisoner who is placed on mandatory supervision shall be deemed to be released as if on parole, and shall be subject to the conditions of release at § 2.40 until the expiration of the maximum term for which he was sentenced, unless the Commission terminates the supervision early under § 2.43.

Dated: October 31, 2002.

Edward F. Reilly, Jr.,

Chairman, U.S. Parole Commission.

[FR Doc. 02–28318 Filed 11–6–02; 8:45 am]

BILLING CODE 4410–31–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AL20

Service Connection by Presumption of Aggravation of a Chronic Preexisting Disease

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs (VA) adjudication regulations concerning presumptive service connection to reflect a statutory presumption that a chronic disease that preexisted the veteran's entry into military service but was first manifest to a 10-percent degree of disability within a specified period after service was aggravated by the veteran's military service. This amendment is necessary to make the regulations conform with the statute and the Court's decision.

DATES: *Effective Date:* November 7, 2002.

FOR FURTHER INFORMATION CONTACT: John Bisset, Jr., Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue, NW., Washington, DC 20420, telephone (202) 273–7213.

SUPPLEMENTARY INFORMATION: Section 1112(a), 38 U.S.C., states that, "a chronic disease becoming manifest to a degree of 10 percent or more within one year from the date of separation from such service * * * shall be considered to have been incurred in or aggravated by such service, notwithstanding there is no record of evidence of such disease during the period of service."

In the VA General Counsel Precedent Opinion 14–98 (VAOPGCPREC 14–98 (October 2, 1998)), the General Counsel held that Section 1112(a) of title 38, United States Code, does not establish a presumption of aggravation for a chronic disease that existed prior to service but first became manifest to a compensable degree within the presumptive period following service.

In *Splane* v. *West*, 216 F. 3d 1058 (2000), the United States Court of Appeals for the Federal Circuit concluded, among other things, that the General Counsel's interpretation of 38 U.S.C. 1112(a) was not in accordance with law and was therefore in excess of statutory authority. The Court held that 38 U.S.C. 1112(a) establishes not only a presumption of service incurrence for chronic diseases first manifest after service, but also a presumption of aggravation for chronic diseases that existed prior to service but first became manifest to a degree of disability of 10 percent or more within the presumption period after service. The Court vacated that portion of the General Counsel Precedent Opinion which interpreted 38 U.S.C. 1112(a).

VA regulations currently prohibit establishing service connection for aggravation of a preexisting chronic disease that first becomes manifest to a degree of 10 percent or more following discharge from military service. This prohibition is inconsistent with the statute as interpreted by the United States Court of Appeals for the Federal Circuit. Therefore, we are amending 38 CFR 3.307(a), (c), (d), and 3.309(a), to conform to the plain language of the statute and the conclusions of the Court.

Presently, 38 CFR 3.307(a), (c), and (d) provide only for a presumption of service incurrence. Accordingly, it is necessary to revise those paragraphs to include a presumption of aggravation.

38 CFR 3.307(d) currently states the factors to be considered in determining whether the presumption of service incurrence has been rebutted. The current regulation is based on the invalid conclusion that the presumption is one of service incurrence only. This provision is inconsistent with *Splane* because *Splane* establishes that 38 U.S.C. 1112(a) includes a presumption of aggravation of pre-existing diseases that were not incurred in service. Accordingly, it is necessary to revise 38 CFR 3.307(d) to state separately the criteria for rebutting the presumption of service incurrence (in cases where the chronic disease did not exist prior to service) and the criteria for rebutting the presumption of aggravation (in cases where the chronic disease did exist prior to service).

A current VA regulation, 38 CFR 3.306(a), provides that a presumption of aggravation based on an increase in the severity of a preexisting condition during service may be rebutted by evidence that the increase was due to the natural progress of the disease. Additionally, section 1113(a) of title 38, United States Code, indicates that a presumption of service connection based on manifestations of disability subsequent to service may be rebutted by affirmative evidence to the contrary or evidence to establish that such disability is due to an intercurrent disease or injury suffered after separation from service. We are revising § 3.307(d) to reflect these principles. Although *Splane* did not discuss the criteria for rebutting the presumption of aggravation, we believe that inclusion of these rebuttal standards is necessary to the implementation of that decision.

Administrative Procedure Act

Changes made by this final rule merely reflect the statutory requirements or the decision of the United States Court of Appeals for the Federal Circuit. Accordingly, there is a basis for dispensing with prior notice and comment and delayed effective date provisions of 5 U.S.C. 552 and 553.

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of $100 million or more in any given year. This rule would have no consequential effect on State, local, or tribal governments.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

Executive Order 12866

This document has been reviewed by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This amendment would not directly affect any small entities. Only individuals could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance program numbers are 64.109 and 64.110.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Individuals with disabilities, Pensions, Veterans.

Approved: September 9, 2002.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, the Department of Veterans Affairs amends 38 CFR part 3 as follows:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

2. Section 3.307 is amended by:

A. In paragraph (a) introductory text, removing "incurred in" and adding, in its place, "incurred in or aggravated by".

B. In paragraph (c), removing the last sentence "The consideration of service incurrence provided for chronic diseases will not be interpreted to permit any presumption as to aggravation of a preservice disease or injury after discharge.".

C. Revising paragraph (d) and the authority citation at the end of the section.

The revision reads as follows:

§ 3.307 Presumptive service connection for chronic, tropical or prisoner-of-war related disease, or disease associated with exposure to certain herbicide agents; wartime and service on or after January 1, 1947.

* * * * *

(d) *Rebuttal of service incurrence or aggravation.* (1) Evidence which may be considered in rebuttal of service incurrence of a disease listed in § 3.309 will be any evidence of a nature usually accepted as competent to indicate the time of existence or inception of disease, and medical judgment will be exercised in making determinations relative to the effect of intercurrent injury or disease. The expression "affirmative evidence to the contrary" will not be taken to require a conclusive showing, but such showing as would, in sound medical reasoning and in the consideration of all evidence of record, support a conclusion that the disease was not incurred in service. As to tropical diseases the fact that the veteran had no service in a locality having a high incidence of the disease may be considered as evidence to rebut the presumption, as may residence during the period in question in a region where the particular disease is endemic. The known incubation periods of tropical diseases should be used as a factor in rebuttal of presumptive service connection as showing inception before or after service.

(2) The presumption of aggravation provided in this section may be rebutted by affirmative evidence that the preexisting condition was not aggravated by service, which may include affirmative evidence that any increase in disability was due to an intercurrent disease or injury suffered after separation from service or evidence sufficient, under § 3.306 of this part, to show that the increase in disability was due to the natural progress of the preexisting condition.

(Authority: 38 U.S.C 1113 and 1153)

§ 3.309 [Amended]

3. Section 3.309(a) is amended by removing "incurred in" and adding, in its place, "incurred in or aggravated by".

[FR Doc. 02–28267 Filed 11–6–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 222 and 223

[Docket No. 021031262–2262–01; I.D. 103002A]

RIN 0648–AQ56

Sea Turtle Conservation; Shrimp Trawling Requirements

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; request for comments.

SUMMARY: NMFS issues this temporary authorization to allow the use of limited tow times by shrimp trawlers as an alternative to the use of Turtle Excluder Devices (TEDs) in certain waters off Louisiana and Alabama. The exempted area in Louisiana consists of all the Louisiana state waters east of 92° 20′ W. long. (approximately at Fresh Water Bayou in Vermilion Parish, Louisiana); Federal waters are not included. The

Implementation

This interim rule will be implemented for any military offender mandatorily released on good time deductions from a federal civilian prison if the offender committed his offense after August 15, 2001.

Regulatory Assessment Requirements

The U.S. Parole Commission has determined that this interim rule does not constitute a significant rule within the meaning of Executive Order 12866. The interim rule will not have a significant economic impact upon a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 605(b), and is deemed by the Commission to be a rule of agency practice that does not substantially affect the rights or obligations of non-agency parties pursuant to Section 804(3)(c) of the Congressional Review Act.

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, Prisoners, Probation and Parole.

The Amended Rule

Accordingly, the U.S. Parole Commission is adopting the following amendments to 28 CFR Part 2.

PART 2—[AMENDED]

1. The authority citation for 28 CFR Part 2 continues to read as follows:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

Subpart A—United States Code Prisoners and Parolees

2. Section 2.35 is amended by adding the following paragraph (d):

§ 2.35 Mandatory release in the absence of parole.

* * * * *

(d) If the Commission orders a military prisoner who is under the Commission's jurisdiction for an offense committed after August 15, 2001 continued to the expiration of his sentence (or otherwise does not grant parole), the Commission shall place such prisoner on mandatory supervision after release if the Commission determines that such supervision is appropriate to provide an orderly transition to civilian life for the prisoner and to protect the community into which such prisoner is released. The Commission shall presume that mandatory supervision is appropriate for all such prisoners unless case-specific factors indicate that supervision is inappropriate. A prisoner who is placed on mandatory supervision shall be deemed to be released as if on parole, and shall be subject to the conditions of release at § 2.40 until the expiration of the maximum term for which he was sentenced, unless the Commission terminates the supervision early under § 2.43.

Dated: October 31, 2002.

Edward F. Reilly, Jr.,

Chairman, U.S. Parole Commission.

[FR Doc. 02–28318 Filed 11–6–02; 8:45 am]

BILLING CODE 4410–31–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AL20

Service Connection by Presumption of Aggravation of a Chronic Preexisting Disease

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs (VA) adjudication regulations concerning presumptive service connection to reflect a statutory presumption that a chronic disease that preexisted the veteran's entry into military service but was first manifest to a 10-percent degree of disability within a specified period after service was aggravated by the veteran's military service. This amendment is necessary to make the regulations conform with the statute and the Court's decision.

DATES: *Effective Date:* November 7, 2002.

FOR FURTHER INFORMATION CONTACT: John Bisset, Jr., Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue, NW., Washington, DC 20420, telephone (202) 273–7213.

SUPPLEMENTARY INFORMATION: Section 1112(a), 38 U.S.C., states that, "a chronic disease becoming manifest to a degree of 10 percent or more within one year from the date of separation from such service * * * shall be considered to have been incurred in or aggravated by such service, notwithstanding there is no record of evidence of such disease during the period of service."

In the VA General Counsel Precedent Opinion 14–98 (VAOPGCPREC 14–98 (October 2, 1998)), the General Counsel held that Section 1112(a) of title 38, United States Code, does not establish a presumption of aggravation for a chronic disease that existed prior to service but first became manifest to a compensable degree within the presumptive period following service.

In *Splane* v. *West*, 216 F. 3d 1058 (2000), the United States Court of Appeals for the Federal Circuit concluded, among other things, that the General Counsel's interpretation of 38 U.S.C. 1112(a) was not in accordance with law and was therefore in excess of statutory authority. The Court held that 38 U.S.C. 1112(a) establishes not only a presumption of service incurrence for chronic diseases first manifest after service, but also a presumption of aggravation for chronic diseases that existed prior to service but first became manifest to a degree of disability of 10 percent or more within the presumption period after service. The Court vacated that portion of the General Counsel Precedent Opinion which interpreted 38 U.S.C. 1112(a).

VA regulations currently prohibit establishing service connection for aggravation of a preexisting chronic disease that first becomes manifest to a degree of 10 percent or more following discharge from military service. This prohibition is inconsistent with the statute as interpreted by the United States Court of Appeals for the Federal Circuit. Therefore, we are amending 38 CFR 3.307(a), (c), (d), and 3.309(a), to conform to the plain language of the statute and the conclusions of the Court.

Presently, 38 CFR 3.307(a), (c), and (d) provide only for a presumption of service incurrence. Accordingly, it is necessary to revise those paragraphs to include a presumption of aggravation.

38 CFR 3.307(d) currently states the factors to be considered in determining whether the presumption of service incurrence has been rebutted. The current regulation is based on the invalid conclusion that the presumption is one of service incurrence only. This provision is inconsistent with *Splane* because *Splane* establishes that 38 U.S.C. 1112(a) includes a presumption of aggravation of pre-existing diseases that were not incurred in service. Accordingly, it is necessary to revise 38 CFR 3.307(d) to state separately the criteria for rebutting the presumption of service incurrence (in cases where the chronic disease did not exist prior to service) and the criteria for rebutting the presumption of aggravation (in cases where the chronic disease did exist prior to service).

A current VA regulation, 38 CFR 3.306(a), provides that a presumption of aggravation based on an increase in the severity of a preexisting condition during service may be rebutted by evidence that the increase was due to the natural progress of the disease. Additionally, section 1113(a) of title 38, United States Code, indicates that a presumption of service connection based on manifestations of disability subsequent to service may be rebutted by affirmative evidence to the contrary or evidence to establish that such disability is due to an intercurrent disease or injury suffered after separation from service. We are revising § 3.307(d) to reflect these principles. Although *Splane* did not discuss the criteria for rebutting the presumption of aggravation, we believe that inclusion of these rebuttal standards is necessary to the implementation of that decision.

Administrative Procedure Act

Changes made by this final rule merely reflect the statutory requirements or the decision of the United States Court of Appeals for the Federal Circuit. Accordingly, there is a basis for dispensing with prior notice and comment and delayed effective date provisions of 5 U.S.C. 552 and 553.

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of $100 million or more in any given year. This rule would have no consequential effect on State, local, or tribal governments.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

Executive Order 12866

This document has been reviewed by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This amendment would not directly affect any small entities. Only individuals could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance program numbers are 64.109 and 64.110.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Individuals with disabilities, Pensions, Veterans.

Approved: September 9, 2002.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, the Department of Veterans Affairs amends 38 CFR part 3 as follows:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

2. Section 3.307 is amended by:

A. In paragraph (a) introductory text, removing "incurred in" and adding, in its place, "incurred in or aggravated by".

B. In paragraph (c), removing the last sentence "The consideration of service incurrence provided for chronic diseases will not be interpreted to permit any presumption as to aggravation of a preservice disease or injury after discharge.".

C. Revising paragraph (d) and the authority citation at the end of the section.

The revision reads as follows:

§ 3.307 Presumptive service connection for chronic, tropical or prisoner-of-war related disease, or disease associated with exposure to certain herbicide agents; wartime and service on or after January 1, 1947.

* * * * *

(d) *Rebuttal of service incurrence or aggravation.* (1) Evidence which may be considered in rebuttal of service incurrence of a disease listed in § 3.309 will be any evidence of a nature usually accepted as competent to indicate the time of existence or inception of disease, and medical judgment will be exercised in making determinations relative to the effect of intercurrent injury or disease. The expression "affirmative evidence to the contrary" will not be taken to require a conclusive showing, but such showing as would, in sound medical reasoning and in the consideration of all evidence of record, support a conclusion that the disease was not incurred in service. As to tropical diseases the fact that the veteran had no service in a locality having a high incidence of the disease may be considered as evidence to rebut the presumption, as may residence during the period in question in a region where the particular disease is endemic. The known incubation periods of tropical diseases should be used as a factor in rebuttal of presumptive service connection as showing inception before or after service.

(2) The presumption of aggravation provided in this section may be rebutted by affirmative evidence that the preexisting condition was not aggravated by service, which may include affirmative evidence that any increase in disability was due to an intercurrent disease or injury suffered after separation from service or evidence sufficient, under § 3.306 of this part, to show that the increase in disability was due to the natural progress of the preexisting condition.

(Authority: 38 U.S.C 1113 and 1153)

§ 3.309 [Amended]

3. Section 3.309(a) is amended by removing "incurred in" and adding, in its place, "incurred in or aggravated by".

[FR Doc. 02–28267 Filed 11–6–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 222 and 223

[Docket No. 021031262–2262–01; I.D. 103002A]

RIN 0648–AQ56

Sea Turtle Conservation; Shrimp Trawling Requirements

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; request for comments.

SUMMARY: NMFS issues this temporary authorization to allow the use of limited tow times by shrimp trawlers as an alternative to the use of Turtle Excluder Devices (TEDs) in certain waters off Louisiana and Alabama. The exempted area in Louisiana consists of all the Louisiana state waters east of 92° 20′ W. long. (approximately at Fresh Water Bayou in Vermilion Parish, Louisiana); Federal waters are not included. The

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exempted area in Alabama consists of the inshore waters (inshore waters are landward of the COLREGS demarcation line) of Bon Secour Bay, Mobile Bay, and Mississippi Sound, south of the Intracoastal Waterway. This exemption will be in effect for 30 days and is necessary to relieve the economic hardship on shrimpers while ensuring adequate protection of threatened and endangered sea turtles.

DATES: This action is effective from November 1, 2002 through December 2, 2002. Comments on this action are requested, and must be received by December 2, 2002.

ADDRESSES: Comments on this action should be addressed to the Chief, Endangered Species Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Bob Hoffman, 727–570–5312, or Barbara A. Schroeder, 301–713–1401.

SUPPLEMENTARY INFORMATION:

Background

All sea turtles that occur in U.S. waters are listed as either endangered or threatened under the Endangered Species Act of 1973 (ESA). The Kemp's ridley (*Lepidochelys kempii*), leatherback (*Dermochelys coriacea*), and hawksbill (*Eretmochelys imbricata*) turtles are listed as endangered. The loggerhead (*Caretta caretta*) and green (*Chelonia mydas*) turtles are listed as threatened, except for breeding populations of green turtles in Florida and on the Pacific coast of Mexico, which are listed as endangered.

The incidental take and mortality of sea turtles as a result of trawling activities have been documented in the Gulf of Mexico and along the Atlantic Ocean seaboard. Under the ESA and its implementing regulations, taking sea turtles is prohibited, with exceptions identified in 50 CFR 223.206 and 50 CFR 224.104. The regulations require most shrimp trawlers and summer flounder trawlers operating in the southeastern United States (Atlantic Area, Gulf Area, and Summer flounder fishery-sea turtle protection area, all as defined in 50 CFR 222.102) to have a NMFS-approved TED installed in each net that is rigged for fishing to provide for the escape of sea turtles. TEDs currently approved by NMFS include single-grid hard TEDs and hooped hard TEDs conforming to a generic description, two types of special hard TEDs (the flounder TED and the Jones TED), and one type of soft TED (the Parker soft TED).

The TEDs incorporate an escape opening, usually covered by a webbing flap, that allows sea turtles to escape from trawl nets. To be approved by NMFS, a TED design must be shown to be at least 97 percent effective in excluding sea turtles during experimental TED testing (50 CFR 223.207(e)). The TED must meet generic criteria based upon certain parameters of TED design, configuration, and installation, including height and width dimensions of the TED opening through which the turtles escape. In the Atlantic Area, these requirements are currently ≥35 inches (≥89 cm) in width and ≥12 inches (≥30 cm) in height. In the Gulf Area, the requirements are ≥32 inches (≥81 cm) in width and ≥10 inches (≥25 cm) in height.

The regulations governing sea turtle take prohibitions and exemptions provide for the use of limited tow times as an alternative to the use of TEDs for vessels with certain specified characteristics or under certain special circumstances. For example, debris can clog a TED which renders the TED ineffective at catching shrimp as well as excluding turtles. The provisions of 50 CFR 223.206 (d)(3)(ii) specify that the NOAA Assistant Administrator for Fisheries (AA) may authorize compliance with tow time restrictions as an alternative to the TED requirement for up to 30 days, if the AA determines that the presence of algae, seaweed, debris, or other special environmental conditions in a particular area makes trawling with TED-equipped nets impracticable. The provisions of 50 CFR 223.206(d)(3)(i) specify the maximum tow times that may be used when tow-time limits are authorized as an alternative to the use of TEDs. The tow times may be no more than 55 minutes from April 1 through October 31 and no more than 75 minutes from November 1 through March 31 as measured from the time that the trawl doors enter the water until they are removed from the water. These tow time limits are designed to minimize the level of mortality of sea turtles that are captured by trawl nets not equipped with TEDs.

Recent Events

On October 10 and 23, 2002, the NMFS Southeast Regional Administrator received requests from the Secretary of the Louisiana Department of Wildlife and Fisheries (LADWF) and the Director of the Alabama Department of Conservation and Natural Resources' (ALDCNR) Marine Resources Division, respectively, to allow the use of tow times as an alternative to turtle excluder devices (TEDs) in state waters because of excessive storm-related debris on the fishing grounds. The increase in debris on the shrimping grounds was the result of Tropical Storm Isidore and Hurricane Lili. After an investigation, the LADWF and ALDCNR determined that this debris is affecting the fishermen's ability to use TEDs effectively. Both Louisiana and Alabama have stated that their marine enforcement agencies will enforce the tow time restrictions.

NMFS gear technicians interviewed fishermen and surveyed parts of the affected areas in Louisiana and Alabama on October 23 and 24, 2002. The interviews and surveys conducted by the gear technicians and phone conversations between NMFS Southeast Region Protected Resources staff and state resource agency staffs confirmed that there are problems with debris in Louisiana from the Mississippi/Louisiana border around the mouth of the Mississippi River to approximately Fresh Water Bayou in Vermilion Parish, Louisiana and in Alabama from Bon Secour Bay to the Alabama/Mississippi border between the Intracoastal Waterway and the barrier islands.

Special Environmental Conditions And Alternative to Required Use of TEDs

The AA finds that debris washed into portions of state waters of Louisiana and Alabama from Tropical Storm Isidore and Hurricane Lili have created special environmental conditions that make trawling with TED-equipped nets impracticable. Therefore, the AA issues this notification to authorize the use of restricted tow times as an alternative to the use of TEDs in the state waters of Louisiana (no Federal waters are included with this authorization) from east of 92° 20′ W. long. (approximately at Fresh Water Bayou, in Vermilion Parish, Louisiana) and in Alabama inshore waters (inside the COLREGS demarcation line) including Bon Secour Bay, Mobile Bay, and Mississippi Sound south of the Intracoastal Waterway. This authorization will be in effect for a period of 30 days, unless terminated earlier. Instead of the required use of TEDs, shrimp trawlers may opt to comply with the sea turtle conservation regulations found at 50 CFR 223.206(d)(3)(i) by using restricted tow times. A shrimp trawler utilizing this authorization must limit tow times to no more than 75 minutes measured from the time trawl doors enter the water until they are retrieved from the water.

The ALDCNR and LADWF are continuing to monitor the situation and will cooperate with NMFS in determining the ongoing extent of the debris problem in these areas. Moreover, the marine enforcement agencies of these states have stated that they will enforce the restricted tow times. Ensuring compliance with tow time restrictions is critical to effective sea turtle protection, and the commitment from these agencies to enforce tow time restrictions is an important factor enabling NMFS to issue this authorization. NMFS and the respective state marine enforcement agencies will monitor the situation to ensure there is adequate protection for sea turtles in these areas and to determine whether debris in these areas continues to make TED use impracticable.

Continued Use of TEDs

NMFS encourages shrimp trawlers in the affected areas to continue to use TEDs if possible, even though they are authorized under this action to use restricted tow times. NMFS studies have shown that the problem of clogging by seagrass, algae or by other debris is not unique to TED-equipped nets. When fishermen trawl in problem areas, they may experience clogging with or without TEDs. A particular concern of fishermen, however, is that clogging in a TED-equipped net may hold open the turtle escape opening and increase the risk of shrimp loss. On the other hand, TEDs also help exclude certain types of debris and allow shrimpers to conduct longer tows.

NMFS' gear experts have provided several general operational recommendations to fishermen to maximize the debris exclusion ability of TEDs that may allow some fishermen to continue using TEDs without resorting to restricted tow times. To exclude debris, NMFS recommends the use of hard TEDs made of either solid rod or of hollow pipe that incorporate a bent angle at the escape opening, in a bottom-opening configuration. In addition, the installation angle of a hard TED in the trawl extension is an important performance element in excluding debris from the trawl. High installation angles can result in debris clogging the bars of the TED; NMFS recommends an installation angle of 45°51′, relative to the normal horizontal flow of water through the trawl, to optimize the TED's ability to exclude turtles and debris. Furthermore, the use of accelerator funnels, which are allowable modifications to hard TEDs, is not recommended in areas with heavy amounts of debris or vegetation. Lastly, the webbing flap that is usually installed to cover the turtle escape opening may be modified to help exclude debris quickly: the webbing flap can either be cut horizontally to shorten it so that it does not overlap the frame of the TED or be slit in a fore-and-aft direction to facilitate the exclusion of debris. The use of the leatherback modification or the double cover flap TED will also aid in debris exclusion.

All of these recommendations represent legal configurations of TEDs for shrimpers fishing in the affected areas. This action does not authorize any other departure from the TED requirements, nor does it authorize use of any TED modified in such a manner that it no longer meets the requirements for any of the TEDs approved pursuant to 50 CFR 223.207. In particular, if TEDs are installed in trawl nets, they may not be sewn shut.

Alternative to Required Use of TEDs; Termination

The AA, at any time, may modify the alternative conservation measures through publication in the **Federal Register**, if necessary to ensure adequate protection of endangered and threatened sea turtles. Under this procedure, the AA may modify the affected area or impose any necessary additional or more stringent measures, including more restrictive tow times or synchronized tow times, if the AA determines that the alternative authorized by this temporary rule is not sufficiently protecting turtles, as evidenced by observed lethal takes of turtles aboard shrimp trawlers, elevated sea turtle strandings, or insufficient compliance with the authorized alternative. The AA may also terminate this authorization for these same reasons, or if compliance cannot be monitored effectively, or if conditions do not make trawling with TEDs impracticable. A document will be published in the **Federal Register** announcing any additional sea turtle conservation measures or the termination of the tow time option in the affected areas. This authorization will expire automatically on December 2, 2002, unless it is explicitly extended through another notification published in the **Federal Register**.

Classification

This action has been determined to be not significant for purposes of Executive Order 12866.

The AA has determined that this action is necessary to respond to an emergency situation to allow more efficient fishing for shrimp, while providing adequate protection for endangered and threatened sea turtles pursuant to the ESA and applicable regulations.

Pursuant to 5 U.S.C. 553(b)(B), the AA finds that there is good cause to waive prior notice and opportunity to comment on this rule, because it is impracticable. The AA finds that unusually high amounts of debris are creating special environmental conditions that make trawling with TED-equipped nets impracticable. The AA has determined that the use of limited tow times for the described area and time would not result in a significant impact to sea turtles. Notice and opportunity to comment are impracticable in this instance because providing notice and comment would prevent the agency from providing relief soon enough to provide the intended benefit. The public was provided with notice and an opportunity to comment on 50 CFR 223.206(d)(3)(ii) which authorizes the use of this emergency exemption.

Pursuant to 5 U.S.C. 553(d)(3), for the same reasons the AA determined that there was good cause to waive prior notice and opportunity to comment, the AA finds good cause to waive the 30–day delay in effective date. NMFS is making the rule effective November 1, 2002 through December 2, 2002.

Since prior notice and an opportunity for public comment are not required to be provided for this action by 5 U.S.C. 553, or by any other law, the analytical requirements of 5 U.S.C. 601 *et seq.* are inapplicable.

The AA prepared an Environmental Assessment (EA) for this rule. Copies of the EA are available (see **ADDRESSES**).

Dated: November 1, 2002.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 02–28281 Filed 11–01–02; 4:23 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 222 and 223

[Docket No. 021030260–2260–01; I.D. 102502A]

RIN 0648–AQ52

Sea Turtle Conservation; Shrimp Trawling Requirements

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; request for comments.

SUMMARY: NMFS issues this temporary action to allow the use of limited tow times by shrimp trawlers as an

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alternative to the use of Turtle Excluder Devices (TEDs) in the waters off Mississippi in an area from the coastline of Mississippi at its intersection with the line of longitude 89° 30' W., thence southward to its intersection with the line of latitude 30° 10' N., thence eastward to the line of longitude 89° 05.5' W. (approximately even with the southern tip of Cat Island), thence northward to the line of latitude 30° 13.8' N. (approximately even with the western tip of Cat Island), thence westward to the line of longitude 89° 10' W., thence northward to its intersection with the coastline of Mississippi, thence continuing along the coastline to the original point. This action would remain in effect for a period of 20 days and is necessary to relieve the economic hardship on shrimpers while ensuring adequate protection of threatened and endangered sea turtles.

DATES: This action is effective from November 1, 2002 through November 21, 2002. Comments on this action are requested, and must be received by November 21, 2002.

ADDRESSES: Comments on this action should be addressed to the Chief, Endangered Species Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Bob Hoffman, 727–570–5312, or Barbara A. Schroeder, 301–713–1401.

SUPPLEMENTARY INFORMATION:

Background

All sea turtles that occur in U.S. waters are listed as either endangered or threatened under the Endangered Species Act of 1973 (ESA). The Kemp's ridley (*Lepidochelys kempii*), leatherback (*Dermochelys coriacea*), and hawksbill (*Eretmochelys imbricata*) turtles are listed as endangered. The loggerhead (*Caretta caretta*) and green (*Chelonia mydas*) turtles are listed as threatened, except for breeding populations of green turtles in Florida and on the Pacific coast of Mexico, which are listed as endangered.

The incidental take and mortality of sea turtles as a result of trawling activities have been documented in the Gulf of Mexico and along the Atlantic Ocean seaboard. Under the ESA and its implementing regulations, taking sea turtles is prohibited, with exceptions identified in 50 CFR 223.206 and 50 CFR 224.104. The regulations require most shrimp trawlers and summer flounder trawlers operating in the southeastern United States (Atlantic Area, Gulf Area, and Summer flounder fishery-sea turtle protection area, all as defined in 50 CFR 222.102) to have a NMFS-approved TED installed in each net that is rigged for fishing to provide for the escape of sea turtles. TEDs currently approved by NMFS include single-grid hard TEDs and hooped hard TEDs conforming to a generic description, two types of special hard TEDs (the flounder TED and the Jones TED), and one type of soft TED (the Parker soft TED).

The TEDs incorporate an escape opening, usually covered by a webbing flap, that allows sea turtles to escape from trawl nets. To be approved by NMFS, a TED design must be shown to be at least 97 percent effective in excluding sea turtles during experimental TED testing (50 CFR 223.207(e)). The TED must meet generic criteria based upon certain parameters of TED design, configuration, and installation, including height and width dimensions of the TED opening through which the turtles escape. In the Atlantic Area, these requirements are currently ≥35 inches (≥89 cm) in width and ≥12 inches (≥30 cm) in height. In the Gulf Area, the requirements are ≥32 inches (≥81 cm) in width and ≥10 inches (≥25 cm) in height.

The regulations provide for the use of limited tow times as an alternative to the use of TEDs for vessels with certain specified characteristics or under certain special circumstances. For example, debris can clog a TED which renders the TED ineffective at catching shrimp as well as excluding turtles. The provisions of 50 CFR 223.206 (d)(3)(ii) specify that the Assistant Administrator for Fisheries, NOAA (AA), may authorize compliance with tow time restrictions as an alternative to the TED requirement, if the AA determines that the presence of algae, seaweed, debris, or other special environmental conditions in a particular area makes trawling with TED-equipped nets impracticable. The provisions of 50 CFR 223.206(d)(3)(i) specify the maximum tow times that may be used when tow-time limits are authorized as an alternative to the use of TEDs. The tow times may be no more than 55 minutes from April 1 through October 31 and no more than 75 minutes from November 1 through March 31. These tow time limits are designed to minimize the level of mortality of sea turtles that are captured by trawl nets not equipped with TEDs.

Recent Events

On October 16, 2002, the NMFS Southeast Regional Administrator received a request from the Mississippi Director of Marine Resources to allow the use of tow times as an alternative to TEDs in Mississippi state waters because of excessive storm related debris on the fishing grounds. After an investigation, the Mississippi Department of Marine Resources (DMR) has determined that this debris is affecting the fishermen's ability to use TEDs effectively. As part of the request, the DMR sent photo documentation of the debris. Mississippi's Marine Patrol director has also sent NMFS a letter dated October 21, 2002, stating that the Mississippi Marine Patrol will enforce the tow time restrictions.

NMFS gear technicians surveyed the western and central portion of Mississippi Sound on October 8 and 9, 2002. They focused their survey on areas where vessels were actively fishing in concentrated groups. Some areas that fishermen indicated were untrawlable were not able to be surveyed because no trawlers were working those areas. The survey found that there were larger than normal amounts of grass on the tickler chains of the trawls but no large debris was observed in any of the nets in any of the surveyed areas and most of the boats seemed to be satisfied with the shrimp catch, despite excessive grass. During a phone conversation between NMFS Southeast Regional Office Protected Resources staff and DMR staff, DMR staff indicated that their investigation showed that the majority of the problems and the complaints from fishermen were concentrated west of the Cat Island Channel which was not in the area surveyed by NMFS gear technicians. The boundaries for the use of tow times encompass the areas indicated by the DMR as having problems with excessive debris, and include the western extreme of Mississippi Sound and Cat Island Channel.

The duration for this authorization will be set initially for 20 days. Although regulations at 50 CFR 223.206 (d)(3)(v) allow such authorizations to be valid for up to 30 days, the levels of debris documented by DMR and NMFS are not extreme and several weeks have already passed since the storms. Therefore, NMFS believes that a shorter authorization will be sufficient.

NMFS and the DMR Marine Patrol will monitor the situation to ensure there is adequate protection for sea turtles in this area and to determine whether debris in these areas continues to make TED use impracticable. The intent of this action is to relieve the economic hardship on shrimpers while ensuring adequate protection of threatened and endangered sea turtles.

Special Environmental Conditions And Alternative to Required Use of TEDs

The AA finds that debris washed into portions of Mississippi sound from Tropical Storm Isidore and Hurricane Lili have created special environmental conditions that make trawling with TED-equipped nets impracticable. Therefore, the AA issues this notification to authorize the use of restricted tow times as an alternative to the use of TEDs in the waters off Mississippi in an area from the coastline of Mississippi at its intersection with the line of longitude 89° 30' W., thence southward to its intersection with the line of latitude 30 10' N., thence eastward to the line of longitude 89° 05.5' W. (approximately even with the southern tip of Cat Island), thence northward to the line of latitude 30° 13.8' N. (approximately even with the western tip of Cat Island), thence westward to the line of longitude 89° 10' W., thence northward to its intersection with the coastline of Mississippi, thence continuing along the coastline to the original point. This authorization will remain in effect for a period of 20 days. Instead of the required use of TEDs, shrimp trawlers may opt to comply with the sea turtle conservation regulations found at 50 CFR 223.206(d)(3)(i) by using restricted tow times. Through October 31, 2002, a shrimp trawler utilizing this authorization must limit tow times to no more than 55 minutes, measured from the time trawl doors enter the water until they are retrieved from the water. Starting November 1, 2002, tow times must be limited to no more than 75 minutes measured from the time trawl doors enter the water until they are retrieved from the water.

DMR Marine Patrol is continuing to monitor the situation and will cooperate with NMFS in determining the ongoing extent of the debris problem in this portion of Mississippi Sound. Moreover, the DMR Director of the Marine Patrol has stated that the DMR Marine Patrol will enforce the restricted tow times. Ensuring compliance with tow time restrictions is critical to effective sea turtle protection, and the commitment from the DMR Director of the Marine Patrol to enforce tow time restrictions is an important factor enabling NMFS to issue this authorization.

Continued Use of TEDs

NMFS encourages shrimp trawlers in the affected areas to continue to use TEDs if they can be used effectively, even though they are authorized under this action to use restricted tow times. NMFS studies have shown that the problem of clogging by seagrass, algae or by other debris is not unique to TED-equipped nets. When fishermen trawl in problem areas, they may experience clogging with or without TEDs. A particular concern of fishermen, however, is that clogging in a TED-equipped net may hold open the turtle escape opening and increase the risk of shrimp loss. On the other hand, TEDs also help exclude certain types of debris and allow shrimpers to conduct longer tows.

NMFS' gear experts have provided several general operational recommendations to fishermen to maximize the debris exclusion ability of TEDs that may allow some fishermen to continue using TEDs without resorting to restricted tow times. To exclude debris, NMFS recommends the use of hard TEDs made of either solid rod or of hollow pipe that incorporate a bent angle at the escape opening, in a bottom-opening configuration. In addition, the installation angle of a hard TED in the trawl extension is an important performance element in excluding debris from the trawl. High installation angles can result in debris clogging the bars of the TED; NMFS recommends an installation angle of 45°, relative to the normal horizontal flow of water through the trawl, to optimize the TED's ability to exclude turtles and debris. Furthermore, the use of accelerator funnels, which are allowable modifications to hard TEDs, is not recommended in areas with heavy amounts of debris or vegetation. Lastly, the webbing flap that is usually installed to cover the turtle escape opening may be modified to help exclude debris quickly: the webbing flap can either be cut horizontally to shorten it so that it does not overlap the frame of the TED or be slit in a fore-and-aft direction to facilitate the exclusion of debris. The use of the leatherback modification or the double cover flap TED will also aid in debris exclusion.

All of these recommendations represent legal configurations of TEDs for shrimpers fishing in the affected areas of Mississippi Sound. This action does not authorize any other departure from the TED requirements, nor does it authorize the use of any TED modified in such a manner that it no longer meets the requirements for any of the TEDs approved pursuant to 50 CFR 223.207. In particular, if TEDs are installed in trawl nets, they may not be sewn shut.

Alternative to Required Use of TEDs; Termination

The AA, at any time, may modify the alternative conservation measures through publication in the **Federal Register**, if necessary to ensure adequate protection of endangered and threatened sea turtles. Under this procedure, the AA may modify the affected area or impose any necessary additional or more stringent measures, including more restrictive tow times or synchronized tow times, if the AA determines that the alternative authorized by this temporary rule is not sufficiently protecting turtles, as evidenced by observed lethal takes of turtles aboard shrimp trawlers, elevated sea turtle strandings, or insufficient compliance with the authorized alternative. The AA may also terminate this authorization for these same reasons, or if compliance cannot be monitored effectively, or if conditions do not make trawling with TEDs impracticable. A document will be published in the **Federal Register** announcing any additional sea turtle conservation measures or the termination of the tow time option in Mississippi Sound. This authorization will expire automatically on November 21, 2002, unless it is explicitly extended through another notification published in the **Federal Register**.

Classification

This action has been determined to be not significant for purposes of Executive Order 12866.

The AA has determined that this action is necessary to respond to an emergency situation to allow more efficient fishing for shrimp, while providing adequate protection for endangered and threatened sea turtles pursuant to the ESA and other applicable law.

Pursuant to 5 U.S.C. 553(b)(B), the AA finds that there is good cause to waive prior notice and opportunity to comment on this rule, because it is impracticable. The AA finds that unusually high amounts of debris are creating special environmental conditions that may make trawling with TED-equipped nets impracticable. The AA has determined that the use of limited tow times for the described area and time would not result in a significant impact to sea turtles. Notice and comment are impracticable in this instance because providing notice and comment would prevent the agency from providing relief soon enough to provide the intended benefit. The public was provided with notice and an opportunity to comment on 50 CFR 223.206(d)(3)(ii).

Pursuant to 5 U.S.C. 553(d)(3), for the same reasons the AA determined that there was good cause to waive prior notice and opportunity to comment, the AA finds good cause to waive the 30–day delay in effective date. NMFS is

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making the rule effective November 1, 2002 through November 21, 2002.

Since prior notice and an opportunity for public comment are not required to be provided for this action by 5 U.S.C. 553, or by any other law, the analytical requirements of 5 U.S.C. 601 *et seq.* are inapplicable.

The AA prepared an Environmental Assessment (EA) for this action. Copies of the EA are available (see **ADDRESSES**).

Dated: November 1, 2002.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 02–28280 Filed 11–01–02; 4:23 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 011218304–1304–01; I.D. 103102A]

Fisheries of the Exclusive Economic Zone Off Alaska; Trawl Gear in the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NationalOceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Modification of a closure.

SUMMARY: NMFS is opening directed fishing by vessels using trawl gear in the Gulf of Alaska (GOA). This action is necessary to fully use the 2002 halibut bycatch allowance for trawl gear in the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), November 6, 2002, until 1200 hrs, A.l.t., November 10, 2002.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

NMFS closed the directed fishery by vessels using trawl gear in the GOA pursuant to § 679.21(d)(7)(i) on October 13, 2002 (67 FR 64066, October 17, 2002). As of October 24, 2002, 67 metric tons of halibut remain in the trawl halibut bycatch allowance in the GOA. Therefore, NMFS is terminating the previous closure and is opening directed fishing by vessels using trawl gear in the GOA from 1200 hrs, A.l.t., November 6, 2002, until 1200 hrs, A.l.t., November 10, 2002.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA) finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is contrary to the public interest. This requirement is contrary to the public interest as it would delay the opening of the fishery, prevent the full use of the 2002 halibut bycatch allowance specified for trawl gear in the GOA, and therefore reduce the public's ability to use and enjoy the fishery resource.

The AA also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.21 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 1, 2002.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–28336 Filed 11–4–02; 1:11 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 67, No. 216
Thursday, November 7, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 300 and 319

[Docket No. 02–026–2]

Importation of Fruits and Vegetables; Correction

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule; correction.

SUMMARY: We are correcting errors in the preamble to a proposed rule that would amend the fruits and vegetables regulations. This proposed rule was published in the **Federal Register** on October 1, 2002 (67 FR 61547–61564, Docket No. 02–026–1).

DATES: We invite you to comment on the proposed rule (Docket No. 02–026–1), as corrected by this document. We will consider all comments that we receive on or before December 2, 2002.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 02–026–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 02–026–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 02–026–2" on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: Dr. Inder P. Gadh, Import Specialist, Phytosanitary Issues Management Team, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1236; (301) 734–6799.

SUPPLEMENTARY INFORMATION: We published a proposed rule in the **Federal Register** on October 1, 2002 (67 FR 61547–61564, Docket No. 02–026–1) to amend the fruits and vegetables regulations to, among other things, provide for the importation of certain commodities from specified regions and recognize areas in several countries as free from certain fruit flies.

This document corrects errors in the **SUPPLEMENTARY INFORMATION** section of the proposed rule. Under the headings *Tomatoes From Spain* (page 61552, first column) and *Peppers From Spain* (page 61553, second column), we incorrectly stated that the Government of Spain provided APHIS with data that demonstrate that certain areas meet the criteria of the regulations and International Standards for Phytosanitary Measures (ISPM) No. 4 for freedom from *Ceratitis capitata* (Medfly). Medfly is present in Spain, and the phytosanitary measures contained in the regulations for peppers and tomatoes from Spain are designed to mitigate the risk of the tomatoes and peppers introducing Medfly.

In addition, under the heading *Persimmons From the Republic of Korea* (page 61553, third column), we incorrectly stated that the Government of the Republic of Korea had provided APHIS with data that demonstrate that the orchards where persimmons are grown are free of the pests of concern in accordance with the regulations and ISPM No. 4. While the information received from the Republic of Korea indicates that the pests of concern are not known to occur in the orchards, the orchards are not considered pest-free areas in accordance with the regulations and ISPM No. 4. As stated in the proposal, we believe that the proposed inspection, phytosanitary certificate, and labeling requirements are adequate to prevent the introduction of quarantine pests into the United States with persimmons imported from the Republic of Korea.

Therefore, this document corrects the **SUPPLEMENTARY INFORMATION** section of the proposal as follows:

SUPPLEMENTARY INFORMATION—(CORRECTED)

1. On page 61552, column 2, the last paragraph, beginning with the words "The Government of Spain," is corrected to read as follows:

The Government of Spain has stated that pink or red tomatoes from the Murcia Province and the municipalities of Albuñol and Carchuna in the Granada Province of Spain would be produced, packed, and shipped in accordance with the systems approach described above. We believe that these measures would ensure that tomatoes from those areas would be free of Medfly. Therefore, we propose to amend §§ 319.56–2t and 319.56–2dd(a)(1) and (a)(7) to allow the importation of pink or red tomatoes grown in greenhouses in the Murcia Province and the municipalities of Albuñol and Carchuna in the Province of Granada in Spain.

2. On page 61553, column 2, the first paragraph under the heading *Peppers From Spain*, is corrected by removing the second sentence beginning with the word "Data".

3. On page 61554, column 1, line 5, is corrected by removing the sentence beginning with the word "Data" and adding in its place the sentence "The information received from the Republic of Korea indicates that the pests of concern are not known to occur in the orchards."

Done in Washington, DC, this 1st day of November 2002.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–28349 Filed 11–6–02; 8:45 am]

BILLING CODE 3410–34–P

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NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

[Docket No. PRM–50–79]

Lawrence T. Christian, et. al.; Receipt of Petition for Rulemaking; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; notice of receipt; correction.

SUMMARY: On November 1, 2002 (67 FR 66588), the U.S. Nuclear Regulatory Commission (NRC) published for public comment a notice of receipt of a petition for rulemaking, dated September 4, 2002, which was filed with the Commission by Lawrence T. Christian, et. al. The petition was docketed by the NRC on September 23, 2002, and has been assigned Docket No. PRM–50–79. The petition requests that the NRC amend its regulations regarding offsite emergency plans for nuclear power plants to insure that all day care centers and nursery schools in the vicinity of nuclear power facilities are properly protected in the event of a radiological emergency. This action corrects an erroneous Agencywide Documents Access and Management System (ADAMS) accession number cited for the petition under the **ADDRESSES** heading in the notice of receipt. This action also corrects two typographical errors in the body of the notice.

DATES: Submit comments by January 15, 2003.

FOR FURTHER INFORMATION CONTACT: Michael T. Lesar, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone: 301–415–7163 or Toll-free: 1–800–368–5642. E-mail: *MTL@nrc.gov*.

SUPPLEMENTARY INFORMATION: In FR Doc. 02–27861, published on November 1, 2002 (67 FR 66588), the following corrections are made.

On page 66589, in the first column, in the second full paragraph, the final sentence is corrected to read as follows:

The ADAMS accession number for the petition is ML022630462.

On page 66590, in the second column, in the sixth full paragraph, the final sentence is corrected to read as follows:

The petitioners' stated reasons for requesting that the NRC amend its rules to mandate these emergency planning measures are as follows:

On page 66591, in the first column, in the third full paragraph, the second sentence is corrected to read as follows:

Since the ingestion of KI protects against this damage, the petitioners contend that KI should be stocked by daycare centers and nursery schools in the evacuation zone for distribution to the children in their charge in case of radiological emergency.

Dated at Rockville, Maryland, this 4th day of November, 2002.

For the Nuclear Regulatory Commission.

Michael T. Lesar,

Federal Register Liaison Officer.

[FR Doc. 02–28360 Filed 11–6–02; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2002–13247; Airspace Docket No. 02–AAL–5]

Proposed Modification and Revocation of Federal Airways; AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to revise jet route 133 (J–133), and revoke jet route 711 (J–711), in Alaska. The FAA is proposing to realign J–133 from Biorka Island, AK, to Sitka, AK, which would overfly the LAIRE intersection. The proposed realignment of J–133 would eliminate the need for J–711. This proposed action would enhance aircraft operations and improve system efficiency in Alaska.

DATES: Comments must be received on or before December 23, 2002.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2001–13247/ Airspace Docket No. 02–AAL–5, at the beginning of your comments.

You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, 222 West 7th Avenue, #14, Anchorage, AK 99533.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers and be submitted to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2002–13247/Airspace Docket No. 02–AAL–05." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule.

The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov*. Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Document's Web page at *http://www.access.gpo.gov/nara*.

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should call the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (CFR) part 71 to revise J–133, and revoke J–711, in Alaska. The FAA is proposing this action to realign J–133 from Biorka Island, AK, to Sitka, AK, which would overfly the LAIRE intersection. The proposed realignment of J–133 would eliminate the need for J–711. This proposed action would enhance aircraft operations and improve system efficiency in Alaska.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Jet routes are published in paragraph 2004, of FAA Order 7400.9K dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The jet routes listed in this document would be published subsequently in the order.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p.389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 2004—Jet Routes

* * * * *

J–133 [Revised]

From Sitka, AK, NDB; INT Hinchinbrook, AK, NDB 117° and Yakutat, AK 213° radial; to Hinchinbrook, AK, NDB; Johnstone Point, AK; Anchorage, AK; Galena, AK.

* * * * *

J–711 [Revoke]

* * * * *

Issued in Washington, DC, October 29, 2002.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 02–28366 Filed 11–6–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2002–13524; Airspace Docket No. 02–AWP–07]

Proposed Revision of VOR Federal Airway 257

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revise VOR Federal Airway 257 (V–257) between the Phoenix, AZ, Very High Frequency Omnidirectional Radio Range and Tactical Air Navigation Aids (VORTAC) and the Drake, AZ, VORTAC. This proposed change is part of the FAA's National Airspace Redesign effort and is intended to improve the management of aircraft operations near the Phoenix, AZ, terminal area.

DATES: Comments must be received on or before December 9, 2002.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW.,Washington, DC 20590–0001. You must identify the docket number FAA–2002–13524/ Airspace Docket No. 02–AWP–07, at the beginning of your comments.

You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the proposal; any comments received; and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, 15000 Aviation Boulevard, Hawthorne, CA 90261.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers and be submitted to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2002–13524/Airspace Docket No. 02–AWP–07." The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before

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taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *http://www.faa.gov* or the Superintendent of Document's web page at *http://www.access.gpo.gov/nara.*

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should call the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, notice of proposed rulemaking distribution system, which describes the application procedure.

The Proposal

The FAA is proposing an amendment to title 14 Code of Federal Regulations (CFR) part 71 to revise V–257 between the Phoenix, AZ, VORTAC, and the Drake, AZ, VORTAC. This proposed change is part of the FAA's National Airspace Redesign effort and is intended to improve the management of aircraft operations near the Phoenix, AZ, terminal area. Although the change will slightly increase the length of the route, the proposed action will coincide with revisions made to V–105, and align this route to facilitate Air Traffic Management operations in the Phoenix Terminal Area.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Domestic VOR Federal airways are published in paragraph 6010(a), of FAA Order 7400.9K dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The VOR Federal airway listed in this document would be published subsequently in the order.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p.389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 6010(a) Domestic VOR Federal Airways

* * * * *

V–257 [Revised]

From Phoenix, AZ; INT Phoenix 333° (321°M) and Drake, AZ, 182° (168° M) radials; Drake; INT Drake 003° and Grand Canyon, AZ, 211° radials; Grand Canyon; 38 miles 12 AGL, 24 miles 125 MSL, 16 miles 95 MSL, 26 miles 12 AGL, Bryce Canyon, UT; INT Bryce Canyon 338° and Delta, UT, 186° radials, Delta; 39 miles, 105 MSL INT Delta 004° and Malad City, ID, 179° radials; 20 miles, 118 MSL, Malad City; Pocatello, ID; DuBois, ID; Dillon, MT; Coppertown, MT; INT Coppertown 002° and Helena, MT, 272° radials; INT Helena 272° and Great Falls, MT, 222° radials; Great Falls; 73 miles, 56 MSL, Havre, MT. The airspace within Restricted Area R–6403 is excluded.

* * * * *

Issued in Washington, DC, on October 29, 2002.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 02–28367 Filed 11–6–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 31

[REG–209116–89]

RIN 1545–AN40

Requirement of Making Quarterly Payments of the Railroad Unemployment Repayment Tax

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Withdrawal of notice of proposed rulemaking.

SUMMARY: This document withdraws the notice of proposed rulemaking relating to the time and manner of making payments of the railroad unemployment repayment tax. The proposed regulations were published in the **Federal Register** on May 13, 1993. The railroad unemployment repayment tax provisions are no longer operative; therefore, these proposed regulations are obsolete.

FOR FURTHER INFORMATION CONTACT: Kyle Finizio at (202) 622–6040 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On May 13, 1993, the IRS published a notice of proposed rulemaking (EE–79–89) in the **Federal Register** (58 FR 28374) that proposed amendments to the Employment Tax Regulations under sections 6011, 6157, and 6302 of the Internal Revenue Code (Code) of 1986. These proposed regulations stated the time and manner of making payments of the railroad unemployment repayment tax (sections 3321–3322 of the Code). Section 3321(c) of the Code provides for the termination of the tax when certain loans to the railroad unemployment fund are repaid. Because this repayment occurred on June 29, 1993, the railroad unemployment repayment tax provisions are no longer operative. Thus, no railroad unemployment repayment taxes are payable with respect to rail wages paid after July 1, 1993. See Announcement 93–128 (1993–30 I.R.B. 88). Therefore, proposed regulations §§ 31.6011(a)–3A, 31.6157–1 and 31.6302(c)–2A are hereby withdrawn.

List of Subjects in 26 CFR Part 31

Employment taxes, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social security, Unemployment compensation.

Withdrawal of Notice of Proposed Rulemaking

Accordingly, under the authority of 26 U.S.C. 7805 and 26 U.S.C. 6302, proposed regulations §§ 31.6011(a)–3A, 31.6157–1, and 31.6302(c)–2A published in the **Federal Register** on May 13, 1993 (58 FR 28374) are withdrawn.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 02–28401 Filed 11–6–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AF67

Endangered and Threatened Wildlife and Plants; Withdrawal of Proposed Rule To Remove the Northern Populations of the Tidewater Goby From the List of Endangered and Threatened Wildlife

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; withdrawal.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), withdraw the proposed rule, published in the **Federal Register** on June 24, 1999, to remove the northern populations of tidewater goby (*Eucyclogobius newberryi*) from the list of endangered and threatened wildlife and the concurrent proposal to keep listed as endangered a distinct population segment (DPS) of tidewater goby in Orange and San Diego Counties, CA. The tidewater goby will remain listed throughout its range as an endangered species under the Endangered Species Act of 1973, as amended (Act). Our withdrawal is based on comments and additional information received from the public, the scientific community, industry, other concerned governmental agencies, and other parties interested in the proposed delisting rule. We are convinced by the information provided by the scientific community that our assessment of the importance of new tidewater goby populations and the recolonization ability of the tidewater goby in the proposed delisting rule were premature. We agree with a number of the commenters that it is prudent to wait and assess the persistence of these populations for a longer period of time. Withdrawing the delisting proposal for the northern populations of the tidewater goby makes the retention of a southern California DPS as endangered unnecessary, and therefore, we also withdraw our proposal to retain as listed a southern California DPS.

DATES: This action is made on December 9, 2002.

ADDRESSES: The supporting record for this withdrawal is available for inspection, by appointment, during normal business hours at our Ventura Fish and Wildlife Office, 2493 Portola Road, Suite B, Ventura, CA 93003.

FOR FURTHER INFORMATION CONTACT: Carl Benz at the above address (telephone: 805–644–1766).

SUPPLEMENTARY INFORMATION:

Background

The tidewater goby (*Eucyclogobius newberryi*) is the only member of the genus *Eucyclogobius* in the family Gobiidae. The species was first described as *Gobius newberryi* by Girard in 1857. Gill (1862) studied Girard's specimens and created the genus *Eucyclogobius* for this fish species. The majority of scientists have accepted this classification (*e.g.*, Bailey *et al.* 1970, Miller and Lea 1972, Hubbs *et al.* 1979, Eschmeyer *et al.* 1983, Robins *et al.* 1991). A few older works and Ginsburg (1945) placed the tidewater goby and the eight related eastern Pacific species into the genus *Lepidogobius.* This classification included the currently recognized genera *Lepidogobius, Clevelandia, Ilypnus, Quietula,* and *Eucycloglobius.*

Crabtree's (1985) allozyme (enzyme) work on tidewater gobies from 12 localities throughout the range identified fixed allelic (genetic) differences at the extreme northern and southern ends of the range, with the more centrally distributed populations more similar to one another. The results suggest a low level of gene movement between populations in the northern, central and southern parts of the range. However, the sites Crabtree sampled were widely separated geographically, and his results may not indicate gene flow on more local levels, as noted by Lafferty *et al.* (1999, cited in proposed delisting as in prep.).

More recently, David Jacobs (Department of Organismic Biology, Ecology and Evolution, University of California, Los Angeles, *in litt.*, 1998; Dawson *et al.* 2001) conducted an analysis of mitochondrial DNA (mtDNA) from tidewater goby populations ranging from Humboldt to San Diego Counties. Results suggested that San Diego tidewater gobies (*i.e.*, the southernmost tidewater goby populations) began diverging from the remainder of tidewater gobies more than 100,000 years ago and are therefore genetically distinct from individuals across the rest of the range.

The tidewater goby is a small elongate fish seldom exceeding 50 millimeters (mm), about 2 inches (in), standard length. This goby is characterized by large, dusky pectoral fins and a ventral sucker-like disk formed by the complete fusion of the pelvic fins. It is nearly transparent, with a mottled brownish upper surface, and often with spots or bars on dusky dorsal and anal fins. The mouth is large and oblique with the upper jaw extending nearly to the rear edge of the eye. The eyes are widely spaced. The tidewater goby is a short-lived species, apparently having an annual life cycle (Eschmeyer *et al.* 1983, Irwin and Soltz 1984, Swift *et al.* 1997).

The tidewater goby is endemic to California and restricted to coastal brackish water habitats. This species historically ranged from Tillas Slough (mouth of the Smith River, Del Norte County) near the Oregon border to Agua Hedionda Lagoon (northern San Diego County). Within this range, shallow brackish water habitats occur in two relatively distinct situations: (1) The upper edge of tidal bays, such as Tomales, Bolinas, and San Francisco Bays near the entrance of freshwater tributaries, and (2) the coastal lagoons formed at the mouths of small to large coastal rivers, streams, or seasonally wet canyons along the coast of California. Overall, the tidewater goby occupies a very small portion of the California coast (probably less than 5 percent) (C. Swift, Emeritus, Section of Fishes, Natural History Museum of Los Angeles County, CA, *in litt.* 1999).

Tidewater gobies can tolerate a wide range of salinities (from 0 to 60 parts per thousand (ppt)) and are frequently found throughout lagoons (Swift *et al.* 1989, 1997; Worcester 1992; Worcester and Lea 1996). However, tidewater gobies are often found in waters of low salinities (about 10 ppt) in the uppermost brackish zone of larger estuaries and coastal lagoons. In some cases, tidewater gobies may also be found in habitats that are essentially fresh with little or no tidal influence

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(*e.g.*, San Mateo Creek, Arroyo Laguna) (D. Holland, University of Southwestern Louisiana, Lafayette, *in litt.* 1999). Few well documented records of this species are known from marine environments outside of coastal lagoons and estuaries, but specimens have been collected from salinities up to 42 ppt (Swift *et al.* 1989) and 55 ppt (Swift and Holland 1998 as cited in D. Holland, *in litt.* 1999). Ocean seawater salinity is about 32 ppt. This goby can tolerate salinities up to 60 ppt for varying time periods (Swift *et al.* 1989, Worcester and Lea 1996).

Tidewater gobies usually are collected from water depths of less than 1 meter (m) (3 feet (ft)) and many localities are no deeper than this (Wang 1982, Irwin and Soltz 1984, Swenson 1995). They have been found, however, at water depths greater than 1 m (3 ft) (Worcester 1992, Lafferty and Altstatt 1995, Swift *et al.* 1997, Smith 1998). The lack of collections of tidewater gobies from depths greater than 1 m (3 ft) in lagoons and estuaries with deeper water may be due to the inadequacy of the sampling methods used, rather than the absence of tidewater gobies (Worcester 1992, Smith 1998).

Tidewater gobies may be preyed upon by native species, such as steelhead (*Oncorhynchus mykiss*) (Swift *et al.* 1989), and are documented prey items of prickly sculpin (*Cottus asper*), staghorn sculpin (*Leptocottus armatus*), and starry flounder (*Platichthys californicus*) (Swift *et al.* 1997). However, tidewater gobies were found in stomachs of only 6 percent of nearly 120 of the latter three species examined and comprised less that 20 percent by volume of the prey. Predation by the Sacramento perch (*Archoplites interruptus*) and tule perch (*Hysterocarpus traski*) may have prevented tidewater gobies from inhabiting the Sacramento-San Joaquin River delta (Swift *et al.* 1989). Nonnative predators, such as striped bass (*Morone saxatilis*), may have also contributed to the absence of tidewater gobies in the San Francisco Bay area (Swift *et al.* 1989, 1990). Although direct documentation of this is lacking, Shapalov and Taft (1954) and Wang (1982) noted predation by striped bass on tidewater goby.

Tidewater gobies may also be preyed upon by nonnative species other than striped bass, such as the African clawed frog (*Xenopus laevis*) (Lafferty and Page 1997), shimofuri goby (*Tridentiger bifasciatus*) (Swenson and Matern 1995), chameleon goby (*Tridentiger trigonocephalus*) (D. Holland, *in litt.* 1999), yellowfin goby (*Acanthogobius flavimanus*) (Wang 1984), centrarchid fish (Swift *et al.* 1989, 1997), mosquitofish (*Gambusia affinis*) (D. Holland, *in litt.* 1999), and rainwater killifish (*Lucania parva*) (C. Swift, *in litt.* 1999). Chameleon and yellowfin gobies may also compete with tidewater gobies. Some of these fish, such as sunfish and black bass (*Centrarchidae*) are relatively widespread (M. Capelli, University of California, Santa Barbara, *in litt.* 1999). Predation and competition by nonnative species is further discussed in Factors C and E of the Summary of Factors Affecting the Species below.

Distinct Population Segments

Prior to publishing the proposed rule to delist the northern populations of the tidewater goby, we analyzed tidewater goby populations based on the joint National Marine Fisheries Service and U.S. Fish and Wildlife Service Policy Regarding the Recognition of Distinct Vertebrate Populations (61 FR 4722). Concurrently with the proposed delisting of the northern tidewater goby populations, we proposed a distinct population segment for the southern California portion of the tidewater goby range.

When determining whether a distinct vertebrate population segment could be treated as threatened or endangered under the Act, we consider three elements: discreteness, significance, and conservation status in relation to the standards for listing. Discreteness refers to the isolation of a population from other members of the species and is based on two criteria: (1) Marked separation from other populations of the same taxon resulting from physical, physiological, ecological, or behavioral factors, including genetic discontinuity, or (2) populations delimited by international boundaries. Significance is determined by the importance or contribution, or both, of a discrete population to the species throughout its range. The policy (61 FR 4722) lists four examples of factors that may be used to determine significance:

(1) Persistence of the discrete population segment in an ecological setting unusual or unique for the taxon;

(2) Evidence that loss of the discrete population segment would result in a significant gap in the range of the taxon;

(3) Evidence that the discrete population segment represents the only known surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historic range; and

(4) Evidence that the discrete population segment differs markedly from other populations of the taxon in genetic characteristics.

If we determine that a population segment is both discrete and significant, we evaluate it for endangered or threatened status based on the Act's standards.

For the tidewater goby, we determined that the southern California portion of the range met the discreteness criterion based on (1) allozyme and mtDNA differences between the northern and southern portions of the tidewater goby range (Crabtree 1985; D. Jacobs, *in litt.* 1998) and (2) the geographic distance between the southern California tidewater gobies and the closest extant populations to the north (129 kilometers (km), 80 miles (mi)). Further, we determined that the southern California portion of the range was significant because it constitutes the most genetically divergent tidewater goby group (D. Jacobs, *in litt.* 1998). Its loss would result both in loss of a genetically unique tidewater goby group and in a reduction in range of tidewater gobies of approximately 129 km (80 mi). Upon analyzing the status of the tidewater goby in southern California, based on the Act's standards, we determined that it was appropriate to propose that the southern portion of the range remain listed as an endangered distinct population segment. Some of our rationale regarding status of the southern California populations is discussed further below in the Summary of Factors Affecting the Species. Our rationale for withdrawing the proposal to retain as listed a southern California DPS of tidewater goby is discussed below in the Summary of Comments and Recommendations and in the Finding and Withdrawal section.

Previous Federal Action

We first classified the tidewater goby as a Category 2 candidate species in 1982 (47 FR 58454). Category 2 candidate species were species for which information then in our possession indicated that proposing to list the species as endangered or threatened was possibly appropriate, but for which substantial data on biological vulnerability and threats were not currently known or on file to support proposed rules. We reclassified the tidewater goby as a Category 1 species in 1991 (56 FR 58804). Category 1 candidate species were species for which we had sufficient information on biological vulnerability and threats to support preparation of listing proposals. On October 24, 1990, we received a petition to list the tidewater goby as endangered. Our finding (signed March 22, 1991) that the requested action might be warranted was published in a proposal to list the tidewater goby as

endangered on December 11, 1992 (57 FR 58770). We determined endangered status for the tidewater goby throughout its entire range on February 4, 1994 (59 FR 5494). At that time, we found that critical habitat was not determinable because we lacked sufficient information to perform the economic analysis.

On June 24, 1999, we proposed to remove all of the tidewater goby populations north of Orange County, CA (64 FR 33816) from protection under the Act. Because we felt the southern portion of the range met the definition of a DPS and was subject to continuing threats, we concurrently proposed that it be retained as an endangered DPS when the northern portion of the range was delisted. We invited public comments and suggestions to this proposal in three comment periods. The first comment period ended August 23, 1999. Late in that comment period, we received new information on the potential marine dispersal of tidewater gobies, with additional information provided after the comment period closed. On February 15, 2000, we reopened the comment period (65 FR 7483) from February 15 to March 31, 2000, to request additional review of our proposal and to solicit the interpretations of appropriate and independent specialists and the public on the new information. On January 3, 2001 (66 FR 345), we reopened the comment period for a second time. We requested additional public and peer review comment from January 3 to February 2, 2001, on: (1) Our assertion that the original listing rule exaggerated the risk of extinction by overestimating the rate of local population extinction; (2) any information either supporting or contradicting the information in the proposed delisting rule that suggested the tidewater goby was not, in 1994 when it was listed, nor was currently, in danger of extinction due to a high rate of local extinctions; and (3) any new information that suggested a reasonable causal link between any of the threats, or combination of threats, and a high risk of extinction of the tidewater goby.

In addition to our proposal to delist the tidewater goby and the three public comment periods during 1999 to 2001, we designated critical habitat for the tidewater goby in 2000. The Natural Resources Defense Council, Inc., filed a lawsuit on September 18, 1998, in the United States District Court for the Central District of California, against the Service for our failure to designate critical habitat for the tidewater goby. The court ordered, on April 5, 1999, that we "publish a proposed critical habitat designation for the tidewater goby in 120 days' (*Natural Resources Defense Council, Inc.* v. *U.S. Department of the Interior et al.*, CV 98–7596, C.D. Cal.). We proposed critical habitat for the tidewater goby on August 3, 1999 (64 FR 42250). The final rule designating critical habitat for the tidewater goby was published on November 20, 2000 (65 FR 69693). It includes 10 coastal stream segments in Orange and San Diego Counties, CA, totaling about 14.5 linear km (9 linear miles) of streams, including the stream channels and their associated wetlands, floodplains, and estuaries.

Tidewater Goby Proposed Delisting

In our proposed rule to delist the northern populations of the tidewater goby, we identified three major reasons for our proposed action: (1) There are more populations in the north than were known at the time of listing, (2) threats to those populations are less severe than previously believed, and (3) the tidewater goby has a greater ability than was known to recolonize sites from which it is temporarily absent. We believed that a number of populations had been recolonized following the end of the drought of the late 1980s and early 1990s and that the original listing of the tidewater goby was in error (66 FR 345). Commenters seriously disagreed with all three premises, but the most compelling information and arguments addressed premises 1 and 3. These commenters included a number of scientists with extensive experience with tidewater goby. The commenters' opinions and analyses and additional information received during the comment periods form the basis of this withdrawal. They are discussed in detail below in the Summary of Comments and Recommendations and the Summary of Factors Affecting the Species.

Summary of Comments and Recommendations

We received a total of 45 written responses from individuals, agencies, or other entities during three public comment periods: June 24 to August 23, 1999 (64 FR 33816), February 15 to March 31, 2000 (65 FR 7483), and January 3 to February 2, 2001 (66 FR 345). Of those 45 written responses, 38 opposed delisting; two supported delisting all northern and southern populations; one supported delisting the northern populations; three requested the Service first delist all populations of the tidewater goby before proposing, if warranted, establishment of a southern distinct population segment; and, one commenter provided new information on the collection of two tidewater gobies near Diablo Cove, south of Morro Bay, CA. Several commenters submitted multiple responses.

Peer Review

During the second and third comment periods, we requested peer review from independent scientists in compliance with our peer review policy (59 FR 34270; July 1, 1994). During the second comment period, one peer reviewer responded and supported the delisting. During the third comment period, we asked two fish biologists familiar with fish ecology, genetics, and the evolution of fish to review the proposed tidewater goby delisting and the designation of a southern California DPS. Both reviewers recommended that we keep the species listed as endangered and provided suggestions for our future review of this species' population dynamics and population genetics. One concluded that the tidewater goby data used and our interpretations were insufficient to support the delisting. Their responses are included in the totals above, and their specific comments are addressed below along with the public comments.

We grouped comments of a similar nature into a single issue for response. Where applicable, we have revised this notice based on factual information provided by the commenters.

Issue 1: Procedural and Legal Compliance

The following comments and responses deal with compliance with the Act and other laws, regulations, and policies, and the public involvement in the delisting process.

Comment 1: One commenter felt that we had improperly proposed the tidewater goby DPS in the south. The commenter felt that the species must be delisted before a DPS may be designated. In addition, the commenter felt we violated the notice provisions of the Administrative Procedure Act (APA) by failing to give adequate notice of the listing of a DPS, suggesting that the proposal to retain the southern California portion of the range as a DPS was not adequately noticed for public comment.

Our Response: We believe we followed proper procedure in proposing the southern California tidewater goby DPS. Typical rulemaking procedures dictate that we propose an action, provide the public an opportunity to comment on the proposed action, and then make a final determination. The public was given the opportunity to comment on the proposed actions during three separate comment periods. Based on comments received from the public and from peer reviewers, we

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have decided to withdraw the proposal to delist the northern populations of the tidewater goby and the concurrent proposal to retain the southern populations as a DPS.

Comment 2: One commenter referred to the designation of critical habitat for the tidewater goby and felt we violated section 4 of the Act by preceding a listing determination with a critical habitat designation. The commenter felt the outcome of this proposed delisting rule was predetermined by the critical habitat designation, violating the APA and the Endangered Species Act.

Our Response: The critical habitat designation the commenter refers to (65 FR 69693) is not a designation of critical habitat for a southern California DPS of the tidewater goby. The critical habitat designation is for the tidewater goby throughout its range. At the time of the designation, we believed the only areas essential to the conservation of the tidewater goby were in southern California. Therefore, we only designated critical habitat in southern California. We issued this designation of critical habitat as the result of a court order.

Comment 3: One commenter felt the proposed action was based on unpublished data which was not made available to the public for review.

Our Response: The commenter did not identify specific data that he felt were not available for public review. The proposed action was the subject of three public comment periods. All the supporting documentation, including comments received, were available for inspection at the Ventura Fish and Wildlife Office.

Comment 4: One commenter stated that we must establish objective recovery criteria before a species can be delisted. Several commenters suggested that we ignored the draft tidewater goby recovery plan in the formulation of the delisting proposal and that, in so doing, we contradicted the recommendations and recovery criteria of the draft plan. Others recommended retaining the endangered status of the tidewater goby and focusing our efforts on finalizing and implementing the draft tidewater goby recovery plan.

Our Response: Species can be delisted for any one of three reasons: (1) The species is extinct; (2) the species has recovered; or (3) the original data for listing, or the interpretation of those data, are in error (50 CFR 424.11(d)). In the first and third cases, we would not necessarily have recovery criteria by which to gauge delisting. Our delisting proposal for the tidewater goby was published because we felt that the original data or their interpretation were in error (*see also* the notice reopening the comment period for the third time, 66 FR 345).

We wish to clarify that, while a preliminary draft recovery plan for the tidewater goby has been circulated among tidewater goby experts, we have not approved a draft recovery plan. The preliminary draft plan was never published and made available to the public for comment. Because they have not yet been published in an official draft recovery plan available for public comment, the recommendations and recovery criteria in the preliminary draft recovery plan are not our official guidance. We agree that the most appropriate course of action, given our withdrawal of this proposed delisting, is to proceed with the recovery planning process for the tidewater goby.

Comment 5: One commenter felt that monitoring for the tidewater goby is required if it is delisted.

Our Response: According to the Act, monitoring is required for a delisted species only if the species was delisted due to recovery. We had proposed delisting of the northern populations of the tidewater goby based on new information, not recovery. Furthermore, we have decided to withdrawal the proposal to delist the northern populations.

Comment 6: One commenter suggested that the proposed delisting rule violates both the APA and the fifth amendment of the U.S. Constitution, by selectively imposing the regulatory burdens of the Endangered Species Act on certain landowners, without legal or scientific authority.

Our Response: We believe we were in compliance with the APA (*see also* responses to comments 1 through 3) throughout this rulemaking process. Furthermore, the regulations governing listing and delisting (50 CFR 424.11(b)) state that listing and delisting of a species as threatened or endangered are made "*solely* (emphasis added) on the basis of the best available scientific and commercial information regarding a species' status, without reference to possible economic or other impacts of such a determination."

Had we decided to finalize the proposal to retain a southern DPS as listed, the regulatory situation for landowners in southern California would not have changed because tidewater goby was already listed as endangered in southern California. However, we are withdrawing the proposal to retain a southern California DPS as listed, along with the withdrawal of the proposal to delist the northern populations.

Issue 2: Data Adequacy, Data Interpretation and Biological Concerns

The following comments and responses deal with issues related to the adequacy of the scientific information used for proposing the delisting and establishing the southern California distinct vertebrate population segment. We received comments that challenged our assessment of the available information at the time we proposed delisting the northern populations of the tidewater goby, and we received comments that introduced new information on the species. Comments were received on issues such as: the genetics of the northern and southern portions of the tidewater goby's range (including the determination that southern California constitutes a DPS), the number of known tidewater goby populations and its relevance, metapopulation theory and population dynamics, natural recolonization by marine dispersal of tidewater goby larvae, salinity tolerance, and alternative interpretations of the data.

General Comments

Comment 7: A number of commenters suggested that (1) additional data or analyses are needed on some aspects of tidewater goby biology or threats (*e.g.*, 4 years of population data, encompassing only one dry-wet climate cycle, were collected since the listing), (2) we had misinterpreted or omitted existing scientific data (*e.g.*, misinterpretation of stringency of habitat requirements), (3) we failed to provide data, citations, or references to support numerous statements, (4) we relied on unpublished and unreviewed sources, and (5) we had ignored the professional opinions of tidewater goby experts. Most suggested that the entire species should remain listed. One commenter felt that the entire species should be delisted, in part because of Congress's charge that we list species "sparingly."

Our Response: We agree that additional data and analysis would be valuable, that there are alternate interpretations of the available data, and that additional supporting documentation (*i.e.*, references) would have strengthened our proposal. The arguments the commenters presented regarding the need for additional analysis, their presentation of alternative interpretations, and their call for additional documentation and reliance on published or peer reviewed sources have led us to withdraw the proposed rule to delist the northern populations of the tidewater goby. Withdrawing the proposed delisting makes retention of a southern DPS as endangered unnecessary; therefore, we are also withdrawing the proposal to retain as listed the southern California portion of the range as an endangered DPS. Details of the commenters' arguments are presented throughout the remainder of the Summary of Comments and Recommendations and in the Summary of Factors Affecting the Species.

Comment 8: One peer reviewer felt that the information presented in our proposal to delist the tidewater goby populations north of Orange and San Diego Counties was thorough and well documented and that the conclusion to delist the northern populations appears justified.

Our Response: The bulk of the argument we received during the comment periods and the valid concerns raised regarding the meaning of the increased population levels identified indicates that withdrawing the proposal is appropriate at this time. Our reasoning is provided throughout the remainder of the Summary of Comments and Recommendations and in the Summary of Factors Affecting the Species.

Genetic Data and DPS Determination

Comment 9: A number of commenters questioned the adequacy of the available genetic data, suggesting that (1) Crabtree's (1985) allozyme work had various limitations, including geographically sporadic sampling and low sample sizes, and is not a thorough population genetic analysis, (2) at the time of the proposed delisting rule, the mtDNA analysis was incomplete, preliminary, and had not yet been published or peer reviewed, (3) the sample sizes of the mtDNA analysis were small (based on 2 to 4 fish per population), and (4) more study would be warranted. They were concerned that the best available genetic data for tidewater goby did not provide a credible scientific foundation for determining that the southern portion of the range constitutes a DPS. They suggested more study would allow analysis of larger sample sizes, additional tidewater goby populations and different genetic markers. One commenter was concerned by the use of mtDNA, which is maternally inherited; he advocated the use of biparentally inherited or paternally inherited markers. He also commented extensively on the use of mtDNA variation in these sorts of decision-making processes.

Our Response: We are required to use the best available scientific and commercial data in making our decisions. We used the best genetic data that were available at the time of the proposed delisting rule. We have relied upon comments from scientists and the public to help us evaluate the sufficiency of these data, and based on their comments, we have decided to withdraw the proposal to delist the northern populations of the tidewater goby and the proposal to retain a southern California DPS.

Comment 10: A number of commenters questioned our interpretation of the recent genetic data of Jacobs (cited as D. Jacobs, *in litt.* 1998 in the proposed delisting). These commenters suggested that the data do not support a simple bifurcation into northern and southern portions of the range. The commenters felt we did not consider the differentiation Jacobs identified within the northern portion of the range, which suggests there are also genetically isolated units on a more local level. One commenter indicated that the tidewater goby is the "most genetically subdivided vertebrate with marine dispersal on the West Coast" and that its local genetic subdivision exceeds that which has been used to differentiate steelhead DPSs along coastal California. He felt the genetic evidence supports division of the tidewater goby's northern populations into four or five distinct populations segments. Another commenter suggested that Crabtree's (1985) older results also indicated significant levels of genetic differentiation in tidewater goby.

Our Response: In our proposal to delist the northern portion of the tidewater goby range and retain the listing of the southern portion as a DPS, we did not include an attempt to identify all possible distinct population segments. We felt, at the time of the proposal, that the threats to the northern portion of the tidewater goby range did not warrant its continued listing and that genetic differences exhibited by tidewater gobies between the northern and southern portions of the range were large enough, along with the geographic gap in the range, to allow its distinction as a DPS. We did not intend to imply that the tidewater gobies in the northern portion of the range were genetically uniform. We understand that more complete genetic data have been published recently that underscore genetic differences within the northern portion of the range. Based on comments questioning our interpretation of the population data and our assumptions regarding recolonization we have decided to withdraw the proposal.

Comment 11: One commenter asked whether it is adequate to use only molecular genetics data to designate a tidewater goby DPS. He felt that, while Jacobs mtDNA data (cited as D. Jacobs, *in litt.* 1998 in the proposed delisting) showed different haplotypes in the north than in the south, they give no indication that the divergence is of evolutionary significance. He suggested we have no actual evidence that the data reflect meaningful adaptive differentiation or the populations are "evolutionarily significant," noting that such judgements are subjective. He felt the data do not warrant a DPS determination and, instead of a DPS, he suggested the southern populations could simply be considered a management unit. Such a management unit could then be the subject of a management plan to maintain existing southern tidewater goby populations, precluding the need to list the tidewater goby.

Our Response: While we would like to have specific data reflecting adaptive differentiation and evolutionary significance of various portions of the tidewater goby range, we can only use information available when making our decisions. Based on our DPS policy, published on February 7, 1996 (61 FR 4722), we must evaluate whether the segment under consideration is discrete and significant. Genetic data can be used for either determination. However, genetic data are only one kind of data that are typically used; we also evaluate physical, physiological, ecological, or behavioral factors in making a determination. In the case of the tidewater goby, we used the best available genetic data (in this case, mtDNA data), along with information on the geographic distribution of the species (*i.e.*, we identified a 126 km (80 mi) geographic gap between the southern California tidewater gobies and the next closest extant population) to determine whether the southern portion of the range might constitute a DPS. However, given the comments of many scientists on the sufficiency of the available data and on our interpretation of them, we have decided to withdraw the proposal to delist the northern portion of the range and the proposal to retain as listed a southern California DPS. Because the species will remain listed, we cannot consider the southern portion of the range as a management unit that might preclude listing.

Comment 12: Several commenters suggested it was inappropriate to propose southern California as a DPS. One felt that, because all tidewater goby populations are characterized by some degree of reproductive isolation and because extensive natural gaps in its distribution occur, each population can

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be viewed as discrete and significant under our DPS policy. Identification of only southern California as discrete and significant is inherently subjective and arbitrary. Another felt that we recognized, *de facto*, a second DPS comprised of the remaining northern populations from Los Angeles County to Oregon. A northern DPS is defined by default, with no specific reference to population structure, population dynamics, or genetic differences with this northern DPS. They suggested we created, by definition, a limited range and number of southern tidewater goby populations to support our conclusion that the southern DPS is endangered. Conversely, we created, again by definition, a northern tidewater goby population that is not endangered because of its much larger range and number of populations.

Our Response: We acknowledge that the proposed establishment of a southern DPS would create an area of multiple populations in the north that could be treated as a DPS. We believe our proposal was in compliance with our DPS policy (61 FR 4722). However, based on the arguments of numerous scientific commenters, we have decided to withdraw the proposal to delist the northern populations of the tidewater goby. This decision makes it unnecessary to pursue further the retention of an endangered DPS in southern California; therefore, we are withdrawing that proposal as well.

Number of Tidewater Goby Locations

Comment 13: A number of commenters noted that one of the main reasons for the proposed delisting was that tidewater gobies actually occur in more locations than known at the time of listing. One commenter stated that it was not uncommon to discover new populations once a species is listed because focused, systematic surveys are conducted. Most who commented on the discovery of new populations were concerned that we merely counted the number of extant tidewater goby populations, failing to evaluate the size, trend, threats, and viability of newly documented populations. They felt we considered all populations equally important, rather than evaluating whether the populations are small and marginal or large and likely to persist over longer time periods. Several commenters felt many of the recently documented tidewater goby populations were small and vulnerable to extirpation. One commenter considers only about 50 tidewater goby populations likely to persist for the long term. Others attempted similar calculations or noted they could not understand (or disagreed with) our estimates of the number of extant populations and what percentage of tidewater goby populations had been extirpated (*i.e.*, our estimates were inconsistent with their data or knowledge of the tidewater goby's status). One commenter noted we had not attempted to take into account the possibility that un-sampled populations had been extirpated. One commenter noted that, although many "new populations" occur in a series of small estuaries in a mostly undeveloped area of Santa Barbara County and probably have a fairly high probability of persistence, this is not likely to be the general case in California where many tidewater goby populations are more isolated.

Our Response: We agree that not all populations contribute equally to the long-term persistence of a species. We relied heavily on the documentation of new populations as a rationale for our delisting proposal. One of the major reasons we have decided to withdraw this proposal is the convincing case made by numerous commenters that further information is needed to evaluate new locations.

Comment 14: One comment letter, received during the third comment period in early 2001, noted that a number of the "new" populations had not been surveyed for years and that some of those that were surveyed no longer contained tidewater goby populations. Consequently, they were concerned we are relying on outdated population data.

Our Response: At the time of the proposed delisting rule, we used the best available information to evaluate the presence or absence of new populations. Clearly, as time goes by, the situation can change. As noted above, we agree that further evaluation of the new locations is prudent.

Metapopulation Theory and Population Dynamics

Comment 15: Several commenters were concerned that the proposed delisting rule did not consider current understanding about metapopulation or "source-sink" dynamics in evaluating the likelihood of tidewater goby persistence. The long-term persistence of a metapopulation is complex, depending on specific habitat conditions, the spatial arrangement of habitats, environmental fluctuations, local population dynamics, dispersal probabilities, and other factors, many of which are site-specific. A number of commenters expressed their opinions that tidewater goby populations likely exhibit "source-sink" dynamics, where not all local populations contribute to the overall persistence of the metapopulation. They suggested that larger populations contribute individuals to smaller sites that are not, by themselves, sustainable. One commenter estimated that less than 50 percent of tidewater goby populations can be considered "sources," and 30 to 50 percent are either extirpated or "sinks." Another stated that the additional twenty or so populations we reported since the 1994 listing are probably intermittent populations that could be sinks for the species as a whole, suggesting that the extinction risk is higher than we indicated in the proposed delisting rule. One commenter presented a very preliminary metapopulation viability analysis.

Our Response: Given the comments we received, we agree that we did not fully evaluate (1) metapopulation dynamics in the long-term persistence of local populations of tidewater gobies and (2) whether or not some local populations might behave as "sinks" for tidewater gobies from other populations. We agree with the commenters that such considerations are important in evaluating the likelihood of persistence of the tidewater goby. Comments on this topic contributed to our decision to withdraw the proposed delisting.

Comment 16: One peer reviewer noted that true metapopulations are exceedingly rare in nature and that other spatially structured models may be more appropriate for the tidewater goby. He would not advise using a "true" metapopulation model.

Our Response: We cannot evaluate whether the other commenters were referring to "true" metapopulations or whether they were using the terms more loosely, as often occurs. We agree that tidewater goby dynamics should probably be evaluated using the most appropriate of the more complex models that deal with population dynamics.

Natural Recolonization

Comment 17: Our delisting proposal relied heavily on our conclusion that the tidewater goby has a greater ability than previously thought to recolonize habitat from which it is temporarily absent. We felt that such ability was associated with an increased likelihood the species would persist. Many commenters disagreed with this interpretation, suggesting strongly that we had overestimated the tidewater goby's potential for recolonization. A number stated that (1) the tidewater goby's ability to recolonize habitats is limited, (2) it is not known to occur beyond 10 km (6 mi) from source populations, (3) the tidewater goby has a weak swimming ability for long distances and against the currents of an estuarine system, and (4) because of prevailing currents, recolonization is most likely to occur to the south rather than the north. Many noted recolonization is much less likely in areas where populations are more widely separated, have geographic barriers, or where there is no nearby population to the north, as occurs in a number of areas. One commenter suggested that delisting the northern populations of tidewater goby is particularly problematic given the apparent one-way movement southward, going with the prevailing southerly ocean currents. In one study cited by a commenter, a high rate of extinction appeared to be related to a low rate of recolonization from outside sources. Another commenter noted that just because some recolonization occurs does not mean recolonization *rates* are sufficient to maintain a tidewater goby metapopulation. In contrast, one commenter suggested that some, perhaps many, of the new populations discovered following the drought were due to recolonization from adjacent areas where tidewater gobies remained, although he thought it would occur over a relatively short distance and might not always be possible (*e.g.*, if a lagoon mouth does not open).

Our Response: Of the 45 total responses from commenters, 20 were identified with tidewater goby experts (multiple responses from some commenters) and a majority of these indicated that we overestimated the likelihood of natural recolonization of tidewater goby over any substantial distance. We are convinced by the commenters' arguments that additional time is needed to assess whether natural recolonization is as frequent as we assumed in the proposed delisting rule. Our delisting proposal relied heavily on our conclusion that recolonization was more frequent than previously thought. One of the major reasons we have decided to withdraw the proposal is the commenters' convincing case that an alternative interpretation may be more appropriate.

Comment 18: One commenter suggested that we consider tidewater goby recolonization in the context of a long-term tidewater goby recovery plan. One peer reviewer strongly recommended additional study to document if natural recolonization is actually occurring between localities where the tidewater goby exists. The peer reviewer and one commenter noted the delisting rule presented no alternatives to natural recolonization to explain presence/absence data. One alternative to our recolonization hypothesis is that local populations periodically experience very low abundances under very unfavorable environmental conditions, and then, when conditions become favorable, repopulate through local reproduction (rather than from recolonization from another locality). Repopulation through local reproduction, along with little migration, could lead to losses of genetic diversity in local populations through bottleneck effects. The peer reviewer suggested approaches to evaluate whether this local reproduction hypothesis is correct.

Our Response: We agree that further study would be beneficial and that such a study would be appropriate as part of a tidewater goby recovery plan. In addition, we have added a brief discussion of susceptibility of small populations to extirpation from random demographic, environmental and/or genetic events to Factor E of the Summary of Factors Affecting the Species.

Comment 19: We stated that a lack of collection efforts at appropriate times may explain the absence of well authenticated records of the tidewater goby from marine environments outside of enclosed coastal lagoons and estuaries. If such collections had been made, we implied, tidewater gobies might have been found, providing evidence of marine movements consistent with natural recolonization. One commenter stated that this argument selectively employs absence of evidence. Another noted that some survey work has actually been done by Larry Allen of California State University, Northridge, and by James Allen, of Marine Environmental Consultants. The commenter noted that, based on their negative survey results, it is clear that marine incursions by tidewater gobies are very rare and involve very few fish.

Our Response: As noted above, there are other equally plausible interpretations of the data. Accordingly, we have reconsidered our rationale regarding recolonization.

Comment 20: Several commenters noted that a new research paper was published, since the time of the proposed delisting, that bears on the issue of recolonization as well as metapopulation dynamics.

Our Response: An unpublished draft of this manuscript was used in the preparation of the proposed delisting rule, cited as Lafferty *et al.* in prep. The work has now been published and is cited in this notice as Lafferty *et al.* 1999.

Salinity Tolerance

Comment 21: In the proposed delisting rule, we reasoned that the tidewater goby's tolerance of relatively high salinities indicated their potential for successful marine dispersal and recolonization of unoccupied habitat. Many commenters strongly disagreed with our interpretation. One peer reviewer noted that demonstrating laboratory survival in high salinities is not equivalent to showing migration through high salinity habitats is likely. He suggested that it is necessary to show documented movement of tidewater gobies from one estuary to another, either directly through tag and recapture studies, or indirectly through targeted genetic studies to show that recolonization occurs. Commenters noted that tidewater gobies prefer low salinities, that the species is most widespread and abundant in low salinity conditions, and that the species is much more restricted in saltier systems. Some gave site-specific examples to support their assertions. For example, Devereux Lagoon, which becomes hypersaline, no longer supports tidewater goby. In addition, the proposed delisting did not discuss long-term effects of high salinity on reproductive behavior, feeding or successful rearing of juveniles.

Our Response: As noted above, the commenters arguments regarding the likelihood of recolonization are compelling, and we are convinced that additional information is necessary to determine whether natural recolonization is as frequent as we assumed in the proposed delisting rule. We also agree that tolerance to high salinity does not necessarily indicate that natural recolonization occurs or is likely. Our proposed delisting relied heavily on our conclusion that recolonization was more frequent than previously thought. One of the major reasons we have decided to withdraw the proposal is the commenters' convincing case that an alternative conclusion may be more appropriate.

Morro Bay Collection

Comment 22: We reopened the comment period for the first time in response to new information that putative tidewater goby larvae had been collected in Morro Bay. The new information came from sampling done by Tenera Associates (G. McLaughlin, U.S. Fish and Wildlife Service, *in litt.* undated; Tenera, *in litt.* undated). We asked the public to provide input on how the collection might influence our interpretation of the frequency of marine dispersal by tidewater gobies. A

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number of commenters responded, and none felt that the collection should change our interpretation of the tidewater goby's recolonization potential. One commenter suggested that, even if new information indicated substantial numbers of tidewater gobies were found in nearshore marine waters, it does not change the fact that their colonization of new habitats is an uncommon event that occurs close to the source population. Several noted that the collection was made within Morro Bay and not in the open water, where there were also sampling stations. One commenter stated that the appearance of tidewater goby larvae in Morro Bay does not indicate the species has recovered. In addition, several noted that the species identification was not certain. In fact, later genetic analysis showed the specimens were not tidewater gobies.

Our Response: Genetic data, mentioned by commenters, indicate that the specimens collected during sampling by Tenera Associates were not, in fact, tidewater gobies. Since the specimens were not tidewater gobies, the new collection data are not relevant to the frequency of marine dispersal by tidewater gobies. As noted above, we find that the commenters arguments regarding the potential for tidewater goby recolonization provide a convincing case for more study. One of the major reasons we have decided to withdraw the proposal is the commenters' arguments that the proposed rule overstated the recolonization ability of the tidewater goby merit consideration.

Issue 3: Threats to the Tidewater Goby

The following comments and responses are related to our evaluation of threats to the tidewater goby. Some comments provided new information; where applicable, this new information was incorporated into this withdrawal notice.

Comment 23: Several commenters objected to our characterization of the tidewater goby's status relative to environmental regulations, coastal development, and habitat loss and modification north of Orange and San Diego Counties. They pointed out that we offered no evidence to support our contention that environmental regulations have appreciably reduced the potential for substantial habitat loss and modification. Rather, we inferred the conclusion from the relatively small number of known population extirpations since the implementation of major environmental programs in the early 1970s. In fact, the commenters note, the other environmental regulatory mechanisms are most effective in conjunction with the Act, and some local agencies have already discounted the significance of potential effects to the tidewater goby based on the proposed delisting.

Our Response: We are required to use the best available scientific and commercial data in making our decisions. We are unaware of any studies demonstrating the adequacy or inadequacy of environmental regulations enacted since the 1970's. We agree that documentation of this would be useful. See additional discussion in Factor D below in the Summary of Factors Affecting the Species.

Comment 24: Several commenters felt that we did not adequately, or accurately, assess the current and future threats to the tidewater goby, including the threat to tidewater goby populations from coastal and upstream development projects, the threat of predation and competition by nonnative species, and the cumulative effects of threats in combination. One of these commenters noted that smaller wetlands, which can be "stepping stones" between larger tidewater goby habitats, are vulnerable to random events such as drought. On the other hand, larger wetlands tend to be susceptible to human activities.

Our Response: We agree that further analysis of the impacts of coastal and upstream development projects, the threat of predation and competition by nonnative species, and the cumulative effects of threats in combination is needed (*see also* comment 25 below).

Comment 25: A number of commenters stated that we were inconsistent in our evaluation of the northern versus southern portions of the tidewater goby range, suggesting that northern and southern populations of tidewater goby face the same threats from development, bridge and highway maintenance projects, dredging projects, artificial breaching, and inadequate regulatory mechanisms. Several commenters questioned our speculation that tidewater goby biology may differ in the southern portion of the range, a speculation used, in part, as a rationale for north-south distinctions in the rule. One commenter noted that we had failed to identify any substantive differences in population demographics, habitat variation, and response to disturbance between northern and southern tidewater gobies.

Our Response: We have addressed threats to the tidewater goby range-wide in the Summary of Factors Affecting the Species below. To the extent that threats remain, it appears that the distinctions between threats to the northern and southern portions of the tidewater goby range may be less pronounced than we previously believed. Furthermore, there currently appears to be little evidence that northern and southern tidewater gobies differ in biology.

Comment 26: One commenter supporting the proposed delisting of tidewater goby asked whether tidewater gobies in the northern part of the range are threatened or endangered with extinction. He stated that whether or not the local populations in the northern range have limited gene flow among them does not address the basic question of whether the species, as a whole, is endangered. He suggested that new data obtained by Dr. Jacobs (presumably since the delisting proposal was published) only reveal insights to the genetic structure of the species' populations.

Our Response: We agree that Dr. Jacobs's data do not address the status of the tidewater goby in the north. As discussed below in the Summary of Factors Affecting the Species and in the other comments and responses in this section, we believe it is prudent to withdraw the proposal to delist the northern populations. Our decision is based primarily on scientific comments received during the three comment periods questioning the conclusions we drew based on the population increases. Specifically, the commenters felt we overemphasized the importance of the discovery of new tidewater goby populations and overstated the recolonization ability of the tidewater goby. The alternate interpretations of the data presented by the commenters have led us to believe that additional time is necessary to fully understand the dynamic of tidewater goby populations.

Comment 27: One commenter suggested that one wet-dry climate cycle is insufficient to evaluate the resiliency of tidewater goby populations.

Our Response: We agree that data from one wet and dry cycle is subject to multiple interpretations—none of which is conclusive. We discuss the effects of drought in Factor E of the Summary of Factors Affecting the Species.

Issue 4: Site-Specific Comments

The following comments and responses involve site-specific issues. Most site-specific issues were incorporated into the withdrawal, as appropriate. Two are addressed specifically below.

Comment 28: The Marine Corps Base, Camp Pendleton, provided comments that the proposed southern DPS exists in its entirety on Camp Pendleton and that it is not endangered. They provided specific information to support this contention, including an increase in

tidewater goby populations from three to eight and expansion or recolonization of all available tidewater goby habitat. They felt that (1) considering the southern DPS to be endangered is inconsistent with our 1995 Biological Opinion for Riparian and Estuarine/Beach Ecosystems on Camp Pendleton which set a recovery goal of six tidewater goby populations in six of the eight estuaries on the base, (2) we failed to consider and evaluate Camp Pendleton's natural resource management plans and efforts, and (3) the proposed southern DPS should be viewed as viable and self-sustaining, and not nearing extinction.

Our Response: There were 13 historic locations of tidewater goby in Orange and San Diego counties, of which 8 are intermittently extant on Camp Pendleton. All eight localities are relatively pristine coastal wetlands and are all crossed or just downstream of Interstate 5 and the coastal railway. They are, from north to south, San Mateo Creek, San Onofre Creek, Las Flores Creek, Hidden Creek, Aliso Creek, French Creek, Cockleburr Creek, and the Santa Margarita River.

Currently all locations are occupied on Camp Pendleton except French Creek and the Santa Margarita River. As recently as 1991, the number of occupied tidewater goby localities was only three (Swift and Holland 1998, D. Holland, *in litt.* 1999). Based on survey information, San Onofre Lagoon and Los Flores have been consistently occupied since 1987 (Camp Pendleton INRMP, 2001).

In 1995, the Service issued a programmatic biological opinion on the "Programmatic Activities and Conservation Plans in Riparian and Estuarine/Beach Ecosystems on Marine Corps Base, Camp Pendleton," including an Estuarine/Beach Ecosystems Conservation Plan (U.S. Fish and Wildlife Service, Biological Opinion 1–6–95–F 02, 1995). The reasonable and prudent measures of the biological opinion require the Marines to adopt and implement the Estuarine/Beach Ecosystem Conservation Plan.

The Estuarine/Beach Ecosystem Conservation Plan is structured to minimize the effects to listed species resulting from potential impacts associated with ongoing and future training, maintenance, recreation, and construction activities. The Marines have the authority to carry out the measures in the plan, and because the terms and conditions are mandatory, there are assurances that the Conservation Plan will be implemented. While the Conservation Plan focuses primarily on avian species and does address the tidewater goby generally, it does not contain specific biological objectives, recovery criteria, or recovery goals for the tidewater goby. While an internal draft recovery plan for the tidewater goby had been informally released in 1996, we have not formalized and published a draft or final recovery plan for the species that establishes recovery criteria and goals for delisting.

In 2001, Camp Pendleton completed an Integrated Natural Resource Management Plan (INRMP) for the Base that addresses the tidewater goby. However, the INRMP, does not provide conservation and management measures for the tidewater goby beyond those indicated in the Conservation Plan.

In addition, other conditions related to the recent drought conditions in southern California and the presence of non-native predators have threatened tidewater goby populations. For example, Hidden Creek appears to have perennial water flow but may become so hypersaline in a severe drought as to be unsuitable for any fish species (Swift and Holland 1998). Aliso Creek, French Creek, and Cockleburr Creek are all relatively ephemeral and have not supported tidewater gobies in times of drought. The Santa Margarita River seemed to contain a large stable population until 1991, but tidewater gobies disappeared in 1991, shortly after the nonnative yellowfin goby became abundant in the estuary.

Overall, taking into consideration the measures in the Conservation Plan for the tidewater goby, the continued threats to the species and its habitat, and the species' intermittent occupancy in the drainages on Camp Pendleton as discussed above, we believe that the populations of tidewater goby on Camp Pendleton still require the protection afforded it under the Act.

Comment 29: The proposed delisting rule overstates the impact of the Foothill (South) Transportation Corridor.

Our Response: The proposed "CP alignment" of the Foothill Transportation Corridor South (FTCS), if constructed, has the potential to negatively impact the tidewater goby, specifically in San Mateo and San Onofre Creeks (Michael Brandman and Associates 1998). The lagoons at the mouth of San Mateo and San Onofre Creeks are occupied by tidewater gobies, and these two lagoons are capable of supporting large tidewater goby populations from several thousand to approximately 70,000 tidewater gobies (Swift and Holland 1998). These two populations, along with Las Flores Creek, are the largest and most persistent in the region and are thought to serve as source populations for dispersal into the ephemeral estuaries and streams in the area. Thus, these populations are important to the recovery of the tidewater goby.

A preliminary investigation of the impacts to tidewater gobies from the CP alignment found that adverse impacts would be less than significant after mitigation (Michael Brandman and Associates 1998). However, mitigation proposals have not been included as part of the project description, and the alternatives for this project are still being developed for an Environmental Impact Statement. Absent complete mitigation being incorporated into the project, the FTCS CP alignment may have both short-term and long-term impacts to tidewater gobies in the San Mateo Creek and San Onofre Creek drainage and accompanying watershed (Michael Brandman and Associates 1998). Short-term impacts could include mortality and temporary loss of habitat for breeding, feeding, and sheltering due to blockage or diversion of water flow, increased siltation from the required earthen cut and fill, and the disturbance of low oxygen sediments. Long-term impacts could include: the alteration of the hydrologic regime, primarily in changes to flow regimes, temperature patterns, and sediment movement characteristics of the streams; loss of habitat for breeding, feeding, and sheltering due to siltation; and deterioration in water quality of the streams from the input of heavy metals and other contaminants. These types of changes to the abiotic elements of a stream are often associated with corresponding changes to the ichthyofauna (fish species assemblage within a region). Generally, this kind of disturbance results in an increase of exotic fish species to the detriment of the indigenous (native) ichthyofauna (Moyle and Light 1996). Currently, projects in coastal streams are regulated by the California Environmental Quality Act (CEQA), the State of California's streambed alteration permit program, the Army Corps of Engineers 404 permits and California's delegated authorities under the Clean Water Act which regulates stormwater runoff from highways and during construction. While such effects as are enumerated are possible, they may be remediated in whole or in part by these regulatory controls prior to project approval and construction.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Act and regulations implementing the listing provisions of the Act (50 CFR part 424)

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set forth the procedures for adding species to the Federal list of threatened and endangered species. We must consider the five factors described in section 4(a)(1) of the Act when determining whether any species is an endangered or threatened species. These factors and their application to our decision to withdraw the proposal to delist the tidewater goby are described below:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.*

Coastal development and habitat modification/loss. The final rule listing the tidewater goby indicated that coastal development projects that result in the loss of coastal saltmarsh habitat were the major threat adversely affecting the tidewater goby. Our delisting proposal, on the other hand, stated that north of Orange and San Diego Counties such projects, including dredging of waterways for navigation and harbors and road construction that severed the connections of marshes with the Pacific Ocean, were responsible for *historical* loss of tidewater goby populations. Having reevaluated the number of tidewater goby extirpations resulting from coastal development and habitat modification and loss, we stated that the potential for the significant habitat loss and modification that occurred historically has been substantially reduced in the northern portion of the tidewater goby range. We postulated that this was largely due to the implementation of key environmental regulation required by the Clean Water Act, Coastal Zone Management Act, and related California environmental statutes. We cited only five permanent extirpations resulting from destruction or modification of habitat since the initial promulgation of environmental regulations in the early 1970s.

In Orange and San Diego Counties, we identified several recent human activities that may have adversely affected the tidewater goby. We specifically discussed activities at San Onofre Creek Lagoon and San Mateo Creek Lagoon. We thought both of these locations might be important sources of dispersing tidewater gobies, appearing to be two of the three most stable populations in the area. We felt that population losses or reductions of the San Onofre and San Mateo tidewater goby populations were very serious and illustrated ongoing adverse impacts of earthmoving activities in and around creeks and lagoons in the southern portion of the tidewater goby range.

As noted above in the Summary of Comments and Recommendations, several commenters objected to our characterization of the tidewater goby's status relative to coastal development and habitat loss and modification north of Orange and San Diego Counties. They state that we inferred that environmental regulations have substantially reduced the potential for habitat loss and modification from the relatively small number of known population extirpations since the implementation of major environmental programs in the early 1970s (J. Buse, Environmental Defense Center, *in litt.* 1999, M. Capelli, *in litt.* 1999). Review of pending development projects within the California Coastal Zone indicates that development pressure continues (M. Capelli, *in litt.* 1999) and economic signs point to dramatic human population increases in California in the near future, greatly increasing infrastructure needs that could impact coastal watersheds and drainages (Swift, Emeritus, Section of Fishes, Natural History Museum of Los Angeles County, California, *in litt.* 2001). Some counties, such as San Luis Obispo, are expected to expand by 175 percent by 2010, potentially having significant impacts on tidewater goby habitat (S. Christie, Environmental Center of San Luis Obispo, *in litt.* 1999). Human-made impacts, combined with the effects of drought, could lead to a situation in which a marginal tidewater goby population may not recover from the drought as we would predict based on their life history (Hight, California Department of Fish and Game, *in litt.* 2001). The tidewater goby's estuarine and coastal lagoon habitats are potentially the most highly altered aquatic environments in the state. They are threatened by the impacts from coastal development projects and urban development, and these threats are likely to continue into the near future. Research has shown a pronounced trend toward extirpation when a cyclic species encounters drastic anthropogenic disturbance (M. Marchetti, California State University, Chico, *in litt.* 2001).

Water diversions and groundwater overdrafting. The final listing rule stated that upstream water diversions and groundwater overdrafting may adversely affect the tidewater goby by altering downstream flows. This alteration would diminish the extent of marsh habitats that historically occurred at the mouths of most rivers and creeks and potentially affect the species' breeding and foraging activities. The rule further suggested that alterations of flows upstream of coastal lagoons resulting in changes in downstream salinity regimes might affect the tidewater goby due to its presumed narrow salinity tolerances. The delisting proposal, on the other hand, noted that the San Antonio Creek in Santa Barbara County, which was used as an example of the adverse effects of groundwater overdrafting, was occupied by tidewater gobies in 1995 (but C. Swift, *in litt.* 1999 suggests the proposed delisting rule was in error and should have referred to Santa Rosa Creek).

Scientists who commented on the proposed delisting pointed out that extirpation is not the only effect we ought to be concerned about. Effects short of complete extirpation should be considered as well. For example, population size and stability are important considerations, as is the combination of human influences and natural perturbations (M. Capelli, *in litt.* 1999). In fact, the final listing rule also noted that negative impacts of water diversions and alterations of flows may extend to breeding and foraging activities.

The delisting proposal also included a lengthy discussion of the salinity tolerances of tidewater gobies, suggesting that the tidewater goby appears tolerant of a broad range of salinity conditions and implying, therefore, that salinity changes due to upstream flow alterations would not have adverse effects on the tidewater gobies. Some scientists commenting on the proposed delisting suggested that we confused salinity tolerance with the natural preference of tidewater gobies for mildly brackish water (M. Capelli, *in litt.* 1999, T. Frink, American Fisheries Society, *in litt.* 1999, R. Swenson, The Nature Conservancy, *in litt.* 1999). Most researchers have found that the species is most widespread and abundant in low salinity conditions, and much more restricted in saltier systems (T. Frink, *in litt.* 1999; R. Swenson, *in litt.* 1999). The proposed delisting rule cites only simple extreme saline water experiments; one commenter questioned the long-term effects of saline conditions on critical reproductive behavior, feeding, or the successful rearing of juveniles (M. Capelli, *in litt.* 1999). Furthermore, the response to salinity of benthic invertebrates on which tidewater gobies feed may also be critical in evaluating the long-term response of tidewater gobies to high salinities (T. Frink, *in litt.* 1999; R. Swenson, *in litt.* 1999).

Channelization. The final listing rule noted that channelization of rivers inhabited by the tidewater goby threatens the species because of the scouring effects of high winter flows in the restricted channels and the lack of protective habitat. The delisting proposal stated that, with the exception of Waddell Creek, Santa Cruz County, we were unable to identify population extirpation due to channelization and that in Waddell Creek, tidewater gobies were reestablished in 1991.

Some scientists who commented on the proposed delisting disagreed with both our characterization of the threat from channelization and our characterization of the situation at Waddell Creek. The effect of channelization is not limited to the increased probability of tidewater gobies being swept into marine environments and to lack of refugia but also includes direct loss of habitat area and increased rate of urban runoff (M. Capelli, *in litt.* 1999). Additionally, the significance of reestablishment in Waddell Creek is questionable because it has not been demonstrated that tidewater gobies were extirpated there or whether instead they were depressed to the point of not being detectable (M. Capelli, *in litt.* 1999) and because they likely have been eliminated again from the lagoon (C. Swift, *in litt.* 1999). Finally, one scientist pointed out that, even if tidewater gobies had recolonized, it is not appropriate to extrapolate that finding to all localities (M. Capelli, *in litt.* 1999).

Cattle and feral pigs. The final listing rule identified cattle grazing and feral pig activity as threats to the tidewater goby, stating that these activities have resulted in increased sedimentation of coastal lagoons and riparian habitats, removal of vegetative cover, increased ambient water temperatures, and elimination of plunge pools and collapsed undercut banks used by tidewater gobies. The proposed delisting rule, on the other hand, argued that many lagoons receiving agricultural and sewage effluents are occupied by tidewater gobies and they are the most abundant fish species present (*e.g.*, in Santa Barbara County lagoons (Ambrose *et al.* 1993)). Tidewater gobies were also found in high numbers in areas with low levels of dissolved oxygen (0.2–1.7 mg/l) (Worcester 1992, Swift *et al.* 1997). We concluded, therefore, that the tidewater goby appears to be tolerant of agricultural and sewage effluents as well as a wide range of dissolved oxygen levels.

Commenters noted that sedimentation and erosion has also been caused by vineyard conversions in some areas (P. Ashley, *in litt.* 1999; S. Christie, *in litt.* 1999). Scientists who commented on the proposal stated that our analysis is insufficient because we have not assessed how many populations persist when subject to siltation and topsoil runoff (D. Holland, *in litt.* 1999).

Presence of tidewater gobies in a particular situation does not mean that tidewater gobies are doing well (P. Ashley, biologist, *in litt.* 1999; C. Swift, *in litt.* 1999). They believe that despite tidewater gobies being present, and even abundant, siltation and topsoil runoff and waste discharge may still influence tidewater goby declines and future viability of tidewater gobies and may be important because of other potential effects (*e.g.*, effects of waste discharges on tidewater goby food supply) (M. Capelli, *in litt.* 1999).

Numbers of populations/resiliency/recolonization. In the final listing rule, we stated that extirpated localities had left remaining tidewater goby populations so widely separated that we felt recolonization was unlikely. Many lagoons inhabited by tidewater gobies were small and widely separated. According to Swift *et al.* (1990), only eight extant localities, all north of San Francisco Bay, contained populations considered both large enough and free enough from habitat degradation to be safe for the immediate future. The remaining lagoons were so small or modified that tidewater goby populations were restricted in distribution and vulnerable to elimination (Swift *et al.* 1989, 1990).

In the proposed delisting rule, we stated that new information and analyses showed that the tidewater goby is very well adapted to the climatically dynamic system in which it evolved and that intermittent occupancy of some sites was a normal aspect of the species biology (Swift *et al.* 1994, 1997; Lafferty *et al.* 1999 (cited in proposed delisting as in prep.)). We noted that at the end of the 1987–1992 drought at least 14 populations thought to be extirpated were found to be extant. In addition to these 14 sites, following a return to normal or above average rainfall, tidewater gobies were found in approximately 20 other sites. Our interpretation of this information was that recolonization is possible, and in fact, is a normal process following habitat variation due to climatic fluctuation (Swift *et al.* 1994, 1997; Lafferty *et al.* 1999 (cited in proposed delisting as in prep.)). We determined that the continued survival of tidewater goby populations, after the drought of the late 1980s and early 1990s, indicated we were incorrect in concluding that most tidewater goby populations were extremely vulnerable to extirpation. However, based on the comments we received, we believe it is appropriate to review our interpretations of (1) the meaning of additional tidewater goby locations, and (2) the likelihood of tidewater gobies recolonizing temporarily unoccupied sites. These two premises were fundamental to our rationale to propose delisting the northern populations of the tidewater goby; each is discussed briefly below.

The commenters' arguments that a simple enumeration of locations where tidewater gobies have been identified is not sufficient to evaluate the vulnerability of this species have merit. Information on population sizes, trends and/or viabilities is needed to accurately assess whether the species or individual populations are likely to persist (M. Capelli, *in litt.* 1999; D. Holland, *in litt.* 1999; J. Smith, San Jose State University, San Jose, California, *in litt.* 1999; C. Swift, *in litt.* 2001). A number of scientists noted that not all local tidewater goby populations contribute equally to the overall persistence of the species. The additional populations reported since the 1994 listing are likely to be sink populations, smaller sites that receive individuals from larger sites, and are not by themselves sustainable (C. Swift, *in litt.* 1999; R. Swenson, The Nature Conservancy, *in litt.* 2001). Therefore, evaluating the vulnerability of the tidewater goby will likely require an understanding of the interaction among populations or a demonstration of their persistence or repeat recolonization (*i.e.*, metapopulation structure, source-sink dynamics, other spatial structure) (R. Ambrose, University of California, Los Angeles, *in litt.* 1999; C. Swift, *in litt.* 1999, 2001; R. Swenson, *in litt.* 2001). As noted by Richard Ambrose (*in litt.* 1999), the long-term persistence of a metapopulation depends on numerous factors, including specific habitat conditions, the spatial arrangement of habitats, environmental fluctuations, local population dynamics, dispersal probabilities, and other site-specific factors. In the proposed delisting, we did not evaluate the likelihood of tidewater goby persistence in terms of this complexity, and we feel that it is worthy of further consideration.

A second reason we proposed to delist the northern populations of the tidewater goby was because we felt that the tidewater goby's ability to recolonize temporarily unoccupied habitat was greater than we had previously thought. We felt that such ability was associated with an increased likelihood that the species would persist. As evidence that recolonization occurred, we noted the reappearance of tidewater gobies after cessation of the drought and tidewater goby salinity tolerance. However, recolonization is not the only possible explanation for the reappearance of tidewater gobies after the drought (*e.g.*,

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M. Capelli, *in litt.* 1999; T. Turner, University of New Mexico, *in litt.* 2001). In addition, salinity tolerance, particularly as determined in laboratory experiments, does not necessarily indicate that tidewater gobies will travel through the marine environment to recolonize temporarily unoccupied sites (M. Capelli, *in litt.* 1999; T. Frink, *in litt.* 1999; R. Swenson, *in litt.* 1999; T. Turner, *in litt.* 2001). We believe, based on the evidence presented by the commenters, that the tidewater goby's potential for recolonization may be lower than we believed at the time of the proposed delisting rule (*see also* comments 15 to 20 above). Information presented by the commenters suggests the tidewater goby's ability to recolonize is very limited, perhaps no more than 10 km (6 mi) (T. Frink, *in litt.* 1999; R. Swenson, *in litt.* 1999; Swift *et al.* 1997 as cited in D. Holland, *in litt.* 1999; Lafferty *et al.* 1999; C. Swift, *in litt.* 1999). Recolonization appears to be much less likely where populations are more widely separated, have geographic barriers, or where there is no nearby population to the north (T. Frink, *in litt.* 1999; R. Swenson, *in litt.* 1999). Given this possible interpretation, we feel the tidewater goby may be more vulnerable than we thought at the time of the delisting proposal. We believe it is prudent to evaluate its vulnerability in more detail before delisting any portion of the species.

Artificial lagoon breaching. Although not discussed in the final listing rule, the proposed delisting also discussed artificial lagoon breaching during the dry season as a potential threat to the tidewater goby. We considered significant decreases in water level, exposure of tidewater goby breeding burrows and bottom habitat, and increased salinity resulting from breaching as possible threats to the tidewater goby from breaching during the dry season. However, we noted, in the northern portion of the tidewater goby range, the species continues to persist at numerous locations where unseasonable breaching has occurred (Lafferty 1995, Swenson 1995, Lafferty and Alstatt 1995, Heasly *et al.* 1997; D. W. Alley, *in litt.* 1998). Because we had no records of breaching-related extirpations, we concluded that breaching does not pose a significant threat to the northern populations of the species. In the southern portion of the range, we were aware of adverse effects on tidewater goby from an artificial breaching at San Onofre Creek Lagoon.

The argument we presented in the proposed delisting rule with respect to unseasonable breaching was couched entirely in terms of extirpation (M. Capelli, *in litt.* 1999; D. Holland, *in litt.* 1999; K. Lafferty, U.S. Geological Survey and University of California, Santa Barbara, *in litt.* 1999). Commenters noted a significant threat to tidewater goby populations via loss of individuals, a significant portion of a population, and/or changes in the quality or quantity of habitat may well occur during breaching (M. Capelli, *in litt.* 1999; D. Holland, *in litt.* 1999; K. Lafferty, *in litt.* 1999). Commenters opined that repeated disturbance from breaching events could also jeopardize food supplies for tidewater gobies in lagoon habitats (Swenson 1999 as cited in R. Swenson, *in litt.* 1999). Although breaching can reduce population densities and alter hydrology in ways that may be detrimental to tidewater gobies, several populations manage to persist with regular breaching and it is not possible, given the information available, to determine when and where breaching will lead to extirpation (K. Lafferty, *in litt.* 1999).

One reason we proposed delisting the northern populations of tidewater goby was that we felt threats to the populations were less severe than we believed at the time of listing. Some commenters provided information suggesting that there is cause for concern about the impacts of coastal development, habitat modification and loss, water diversions, channelization, cattle and pigs, and artificial lagoon breaching on tidewater goby populations throughout its range. As noted below in Factors C and E, such impacts may also exacerbate threats from other sources (*e.g.*, predation by non-native fish). In light of these considerations, we believe the prudent course of action is to withdraw the proposed delisting.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Overutilization is not known to be applicable; there is no change in this factor since the delisting proposal in 1999.

C. *Disease or predation.* Disease was not identified as a threat in the final listing rule or the delisting proposal, nor is it known to be a threat at this time.

Trematodes. The proposed delisting rule noted that the digenean trematode (a flatworm or fluke) *Cryptocotyle lingua* could have been a factor in the apparent population decline of tidewater gobies in Pescadero Lagoon in 1992 and 1993 (Swenson 1995). The trematode species also had been reported from Corcoran (Rodeo) Lagoon in Santa Cruz County (Swift *et al.* 1989), where we felt it did not affect tidewater goby populations. In fact, there has been no appropriate investigation to determine whether trematodes are a significant source of mortality in tidewater gobies. However, they are known to be an important mortality source in other fish species. For example, trematodes can cause up to a 30-fold increase in killifish mortality (Lafferty and Morris 1996 as cited in K. Lafferty, *in litt.* 1999).

Nonnative predators. The final listing rule stated that introduced predators, especially centrarchid fish, may have contributed to the elimination of the tidewater goby from several localities in California (Swift *et al.* 1989). We noted that the present day absence of the tidewater goby from the Sacramento-San Joaquin River delta and San Francisco Bay area may well be explained by the presence of introduced predators such as striped bass and native predators including Sacramento perch (Swift *et al.* 1989, 1990) (*see also* Background section). At that time, two recent disappearances of tidewater gobies were also likely due to the presence of exotic largemouth bass (*Micropterous salmoides*) and green sunfish (*Lepomis cyanellus*), in Old Creek of San Luis Obispo County and San Onofre Creek of San Diego County, respectively (Swift *et al.* 1989). Additionally, we were concerned that direct predation on adults, larvae, or eggs by other nonnative predators, such as crayfish (*Cambarus* spp.) and mosquitofish, might threaten the tidewater goby.

In the delisting proposal, we asserted that tidewater goby populations north of Orange and San Diego Counties were not particularly vulnerable to these introduced fish. Centrarchid fish were known, at the time, to exist at many sites inhabited by large populations of tidewater gobies (e.g., Santa Clara River, Las Pulgas Creek, San Mateo Creek). The threat of tidewater goby extirpation throughout its habitat as a result of predation by these nonnatives was thought to be minimal because (1) tidewater goby populations were large and able to repopulate from adjacent streams and (2) tidewater gobies have a wider range of salinity tolerance than the nonnative fish do. Although nonnative fish consume tidewater gobies, we felt the predation was not a serious threat. We also noted that tidewater gobies occur in large numbers in at least one location (Santa Clara River) occupied by African clawed frogs, which also feed on tidewater gobies. We implied that the co-occurrence of both African frogs and nonnative fish with tidewater gobies meant that predation was not a threat.

In contrast, we felt that nonnative predation could be a threat to tidewater gobies in Orange and San Diego Counties when combined with other factors such as habitat disturbance. We noted that nonnative predators could prevent or contribute to significant reductions in dispersal and recolonization of sites in southern California. Nonnative fish were thought to have played a role in population losses or declines in San Onofre Creek and the Santa Margarita River. In addition, yellowfin goby was, by that time, established in most lagoons inhabited by tidewater gobies in Orange and San Diego Counties. We received no comments that allay our concerns that ongoing impacts continue to endanger the tidewater goby in southern California.

Based on comments and new information we received, it appears that nonnative predators are likely to be a threat to tidewater gobies throughout their range. We implied in the proposed delisting that the presence of tidewater gobies with nonnative species (*i.e.*, co-occurrence) indicated that predation by nonnatives was not a threat. In fact, co-occurrence does not necessarily suggest that long-term co-existence is likely (K. Lafferty, *in litt.* 1999; C. Swift, *in litt.* 1999). Although direct evidence that introductions of nonnatives led to extirpations of tidewater gobies is lacking, tidewater gobies did disappear from several localities soon after centrarchid fish were introduced (Swift *et al.* 1989, 1994; Rathbun *et al.* 1991). Commenters noted specific examples of situations where predation by nonnatives may have negatively affected tidewater goby populations (M. Capelli, *in litt.* 1999; D. Holland, *in litt.* 1999; C. Swift, *in litt.* 1999). In the Santa Ynez River system, tidewater gobies accounted for 61 percent of the prey volume of 55 percent (10 of 18) of the juvenile largemouth bass sampled (Swift *et al.* 1997, M. Capelli, *in litt.* 1999). The decline and subsequent recovery of the tidewater goby population in Las Pulgas Creek closely tracked the absence of green sunfish from the lagoon in this system (Swift and Holland 1998 as cited in D. Holland, *in litt.* 1999). The elimination of tidewater gobies from the Santa Margarita may have been due to the combined influence of nonnative species and decreasing habitat available for the tidewater goby (Swift and Holland 1998 as cited in D. Holland, *in litt.* 1999). Largemouth bass in Old Creek of San Luis Obispo County are likely responsible for the elimination and prevention of re-establishment of tidewater gobies there (D. Holland, *in litt.* 1999). The evidence suggests that nonnative fish are often introduced to tidewater goby habitats, prey on tidewater gobies, and in some documented cases, may lead to the extirpation of tidewater gobies. This evidence, though indirect, suggests that some nonnative predators can have negative impacts on tidewater gobies, including extirpation (K. Lafferty, *in litt.* 1999). In addition, predation by nonnatives may have negative effects short of extirpation, reducing tidewater goby population sizes and, thereby, rendering populations more vulnerable over the long-term to extirpation as a result of natural perturbations of habitat conditions at the site (M. Capelli, *in litt.* 1999).

Some commenters believed that tidewater gobies may have limited ability to repopulate from adjacent streams. We suggested that the ability to repopulate, along with sufficiently large population sizes, made predation by nonnatives a minimal threat. The commenters questioned how many tidewater goby populations might be considered large and how population fluctuations might affect vulnerability (D. Holland, *in litt.* 1999, *see also* comments 13 and 15). In addition, as noted elsewhere (*see* comments 17 to 22 and Factor A), the dispersal ability of tidewater gobies may be very limited, making repopulation of extirpated sites problematic (D. Holland, *in litt.* 1999).

Our argument that tidewater gobies are not threatened by nonnatives because tidewater gobies have a wider salinity tolerance was not supported by scientists commenting on the proposal. The commenters assert that many of the species known or thought to prey on tidewater goby have a wide range of salinity tolerance, including striped bass, chameleon gobies, yellowfin gobies and shimfuri gobies (D. Holland, *in litt.* 1999). Additionally, some commenters asserted that the habitat of the tidewater goby may be essentially freshwater for part, or even much, of the year (Swift and Holland 1998 as cited in D. Holland, *in litt.* 1999), making tidewater gobies vulnerable even to nonnative species with limited salinity tolerance, including largemouth bass, green sunfish, African clawed frogs, and others (M. Capelli, *in litt.* 1999; D. Holland, *in litt.* 1999).

Finally, commenters speculated that ranges of current nonnative species may expand (*e.g.*, African clawed frog, yellowfin goby), and new nonnative species (*e.g.*, Chinese mitten crabs (*Eriocheir sinensis*)) may become a problem in the future. Some establishment and movement of nonnatives may be facilitated by water redistribution plans (D. Holland, *in litt.* 1999).

We received comments to the effect that there is cause for concern about the impacts of nonnative species on tidewater gobies (M. Capelli, *in litt.* 1999; D. Holland, *in litt.* 1999; K. Lafferty, *in litt.* 1999; C. Swift, *in litt.* 1999). The commenters surmise that if nonnative species are not responsible for tidewater goby declines by themselves, they may be important in concert with factors such as drought, habitat loss or alteration, and natural or anthropogenically induced fluctuations in population size (M. Capelli, *in litt.* 1999; D. Holland, *in litt.* 1999).

D. *The inadequacy of existing regulatory mechanisms.* A number of existing State, local, and Federal regulatory requirements provide some protection to the tidewater goby. Section 10 of the Rivers and Harbors Act, section 404 of the Clean Water Act, the National Environmental Policy Act (NEPA), the California Environmental Quality Act (CEQA), the California Coastal Act, the California Department of Fish and Game's streambed alteration permit program, and the State Water Resources Control Board's stormwater control program all provide some level of protection for the goby and its habitat. At the time of the original listing, however, we concluded that the existing regulatory mechanisms were inadequate to protect the tidewater goby.

In the proposed delisting rule, we changed our position, stating that there is little evidence to support the conclusion that existing regulatory mechanisms inadequately protect the tidewater goby or are contributing to substantial or widespread population decline and loss in the northern portion of the species' range. We stated that (1) review and permitting of projects under sections 10 and 404 was unlikely to allow the extent of destruction and modification of habitat that occurred prior to their implementation, (2) measures included in section 404 permits because of the presence of other listed and sensitive species (*e.g.*, California red-legged frog (*Rana aurora draytonii*), steelhead trout (*Oncorhynchus mykiss*), unarmored threespine stickleback (*Gasterosteus aculeatus williamsoni*)) provide protection of tidewater goby habitat, (3) a review of the Environmental Protection Agency's (EPA's) AQUIRE on-line database found no contaminant data directly relating to tidewater goby, and (4) in the current regulatory environment, little evidence exists to support the conclusion that water diversions, groundwater overdrafting, and modifications in salinity regimes, or the discharge of effluents are posing a

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significant threat to the tidewater goby. In contrast, we felt that existing regulatory mechanisms failed to protect tidewater gobies in the southern portion of the range. We were concerned because the small number of extant tidewater goby populations in Orange and San Diego Counties would make the loss of any one population a greater cause for concern than in the northern portion of the range.

Several commenters expressed concern over our changed perspective about the northern range. They stated that we presented no evidence to support the contention that environmental regulations have substantially reduced the potential for the substantial habitat loss and modification that occurred historically, instead inferring the conclusion from the relatively small number of known population extirpations since the implementation of major environmental programs in the early 1970s (J. Buse, *in litt.* 1999). Commenters also claimed that our assertion that tidewater goby will be protected by measures for other listed and sensitive species assumes that the species have substantially the same requirements, have the same timing of life history stages, or share the same habitats (J. Buse, *in litt.* 1999; M. Capelli, *in litt.* 1999; T. Frink, *in litt.* 1999; D. Holland, *in litt.* 1999; S. Manion, Resource Conservation District of the Santa Monica Mountains, *in litt.* 1999; J. Smith, *in litt.* 1999; R. Swenson, *in litt.* 1999; A. Wetzler and M. Gold, *in litt.* 1999). This may not be the case; in fact, there is not complete overlap in the distribution of these species and the tidewater goby (*e.g.*, J. Buse, *in litt.* 1999; D. Holland, *in litt.* 1999; R. Swenson, *in litt.* 1999). For example, steelhead and unarmored threespine stickleback are not found in all locations where tidewater gobies occur (J. Buse, *in litt.* 1999; R. Swenson, *in litt.* 1999). Similarly, the range of the California red-legged frog only extends to the vicinity of Point Reyes National Seashore, leaving tidewater gobies north of that area no protection from those regulations protecting the frog (D. Holland, *in litt.* 1999).

Several comments also suggested that regulatory agencies (*e.g.*, Corps, California Coastal Commission) and some local governments have only become aware of the tidewater goby since it was listed and that the Act has, in fact, protected populations of the tidewater goby (J. Buse, *in litt.* 1999; M. Capelli, *in litt.* 1999). We agree that listing the goby under the Endangered Species Act has provided focused protection to this species and that, if the tidewater goby remains listed, proposed and future project proponents and agencies will be more likely to specifically consider the tidewater goby in their planning. That benefit notwithstanding, we have not changed our view that review and permitting of projects under sections 10 and 404 as well as other state and local programs is unlikely to allow the extent of destruction and modification of habitat that occurred prior to the listing.

Finally, several comments took issue with our interpretation of the results of our search of EPA's AQUIRE database. They indicated that a vast body of literature documents the effects of effluents, runoff and contaminants on aquatic organisms and habitats. Even if species-specific data about effects to the goby are lacking, this body of literature suggests effluents, runoff, and contaminants could be a threat to the tidewater goby (D. Holland, *in litt.* 1999), to the extent that they remain even after the prevention and remediation measures required by various local, State, and Federal regulations.

We continue to believe that existing State, local, and Federal regulatory mechanisms provide substantial protections to the tidewater goby. We recognize that these existing mechanisms may not address all the threats to the goby discussed in this notice, and are not in themselves sufficient basis to delist the species.

E. *Other natural or manmode factors affecting their continued existence.*

Drought. In the final listing rule, we stated that the most significant natural factor adversely affecting the tidewater goby was drought and the resultant deterioration of coastal and riparian habitats. At the time, California had recently experienced five consecutive years of lower than average rainfall. We felt that these drought conditions, when combined with human-induced water reductions, degraded coastal and riparian ecosystems and created extremely stressful conditions for aquatic species. Formerly large tidewater goby populations declined in numbers at this time because of the reduced availability of suitable lagoon habitats (*e.g.*, San Simeon Creek, Pico Creek). Other tidewater goby populations disappeared when lagoons dried (*e.g.*, Santa Rosa Creek).

The proposed delisting rule reported that, since the end of the drought, 14 sites believed to be extirpated had been recolonized. The survival and recovery of these populations following the drought alleviated the concern that drought exacerbated by human-induced water reductions would result in significant permanent population decline and loss. In southern California, however, we stated that the loss of many of the larger tidewater goby populations had made recolonization of smaller intermittent lagoons much more unlikely. Therefore, we concluded that extended droughts, along with other physical alterations to the lagoons, threatened the southern California portion of the tidewater goby range.

Periodic droughts are a historical feature of California, which has been repeatedly subject to prolonged droughts (M. Capelli, *in litt.* 1999; T. Frink, *in litt.* 1999; D. Holland, *in litt.* 1999; R. Swenson, *in litt.* 1999). We have documentation in the final listing rule and the proposed delisting rule of the dramatic effects drought can have on the tidewater goby. It is not unexpected that species respond to climatic fluctuations, booming when conditions are favorable and declining sharply when conditions are adverse (T. Frink, *in litt.* 1999; R. Swenson, *in litt.* 1999; W. Watson, fisheries biologist, *in litt.* 2000; M. Marchetti, *in litt.* 2001). Such natural population fluctuations assume a different character when considered in conjunction with other threats to the species, such as coastal development projects, freshwater diversions, pollution, siltation, urban development, and introduced species. A large body of scientific research has demonstrated that when a cyclic species encounters drastic anthropogenic disturbance, there is pronounced threat of extirpation (M. Marchetti, *in litt.* 2001). When coupled with the other human-related modifications to the habitat of the tidewater goby, these droughts increase in significance, and will undoubtedly be repeated in the future (M. Capelli, *in litt.* 1999; D. Holland, *in litt.* 1999). In addition, because the tidewater goby has life history characteristics that make it vulnerable to extirpation (*e.g.*, short lifespan, preference for still water and low-salinity habitats that have a limited distribution, and lack of marine dispersal in all but wet years), there may be little buffer for the species when drought returns (Swenson, *in litt.* 1999). Finally, widely dispersed populations of tidewater gobies occur in the northern portion of the range as well as in the southern portion (M. Capelli, *in litt.* 1999). We argued in the proposed delisting rule that tidewater gobies in the southern portion of the range were threatened by extended droughts because many of the larger tidewater goby populations had been lost, making recolonization of smaller intermittent lagoons much more unlikely. Because it appears that recolonization may not occur over anything but short distances

(*i.e.*, 10 km (6 mi)) (*see* comments 17 to 22 and Factor A above) and because populations in the northern portion of the range appear to be widely separated, we believe we need to reevaluate our assertion that only southern tidewater goby populations are threatened by drought.

We have reconsidered our analysis of the tidewater goby's status with respect to drought. When evaluating the status of a species which fluctuates widely in response to climatic conditions, we should consider a time period which includes the full range of climatic variation. In proposing to delist the tidewater goby, we considered only one drought cycle. Drought can have dramatic negative effects on tidewater goby, at least decreasing goby populations to very low levels (perhaps to the point where they are undetectable) and at most extirpating populations (see final listing rule and delisting proposal). Because future droughts in California are a certainty, we know that tidewater gobies will be subject to the negative effects of drought again. We need to consider the potential magnitude and importance of these drought events on long-term persistence of the tidewater goby prior to delisting any portion of the range of the species.

Flooding. In the final listing rule we indicated that events such as river flooding and heavy rainfall have reportedly destroyed tidewater goby burrows and washed tidewater gobies out to sea. While the tidewater goby was undoubtedly subjected to natural flood events before major human alteration of drainage basins, urbanization and channelization increased the frequency, and perhaps the intensity, of the events. Increased isolation of tidewater goby populations through extirpation of intervening populations reduces the likelihood of successful recolonization after a population is lost in a flood event.

In the proposed delisting rule, we changed our position, stating that flood events have been shown to have no significant adverse effect on tidewater goby populations. Instead, we felt the flushing action of floods was probably the primary mechanism for colonization of other habitats along the coast (Lafferty *et al.* 1996, Swift *et al.* 1997). In southern California, however, we observed that the historic extirpation of many tidewater goby populations has left the remaining populations more isolated. Thus, tidewater gobies must travel greater distances and from smaller source populations, making natural recolonization much more uncertain and difficult. We implied that, on balance, this isolation made flooding more detrimental in southern California than it was in northern California.

As has been mentioned above, we may have overestimated the tidewater goby's potential for recolonization. If the tidewater goby's ability to recolonize sites is actually highly restricted (*i.e.*, no more than 10 km (6 mi) (T. Frink, *in litt.* 1999; R. Swenson, *in litt.* 1999; Swift *et al.* 1997 as cited in D. Holland, *in litt.* 1999), the degree of isolation of tidewater goby populations in northern California is greater than we estimated at the time of the delisting proposal.

Competition with nonnative species. In the final listing rule we stated that competition with introduced species is a potential threat to the tidewater goby. At the time, no problems had been reported, but we were concerned that the spread of the introduced yellowfin goby and chameleon goby might have a detrimental effect of the tidewater goby. In the proposed delisting rule, we stated that no documented extirpation or population decline can be directly attributed to these or other introduced competing species. However, as noted by Holland (*in litt.* 1999), direct evidence of extirpation or population decline through competition is rarely forthcoming, especially without focused surveys. Further research may clarify the impact of competition on tidewater goby.

Population size. Tidewater goby populations are known to fluctuate in size within and between years (Swift *et al.* 1989, Holland 1992, Swift and Holland 1998 as cited in D. Holland, *in litt.* 1999). Populations that are continuously small, or that fluctuate to small size (as tidewater goby populations tend to do), are more susceptible to extirpation from random demographic, environmental, and genetic events than larger populations are. Demographic events that may put small populations at risk involve chance variation in age, sex ratios, and other population characteristics, which can change birth and death rates (Shaffer 1981, 1987; Lande 1988; Meffe and Carroll 1997; Primack 1998). Small, isolated populations are also vulnerable to genetic drift (random changes in gene frequencies) and inbreeding (mating between close relatives). Genetic drift and inbreeding may lead to reductions in the ability of individuals to survive and reproduce (*i.e.*, reductions in fitness) in small populations. In addition, reduced genetic variation in small populations may decrease the potential for persistence in the face of long-term environmental change (Shaffer 1981, 1987; Primack 1998).

Finding and Withdrawal

We proposed to delist the northern portion of the tidewater goby range because we felt the original listing was in error. Specifically, we believed that new evidence showed that (1) there were more populations in the northern portion of the range at the time of the delisting proposal than at the time of the listing, (2) the threats to those populations were less severe than previously believed, and (3) the tidewater goby has a greater ability to recolonize than was known at the time of the listing. We received 45 responses from individuals, agencies or other parties. Thirty-eight of the responses opposed our proposal to remove the northern populations of the tidewater goby from the list of endangered and threatened wildlife. Most commenters did not agree that the original listing was in error. Further, our specific conclusions in the proposal were not corroborated by the comments we received during the three comment periods. In particular, the commenters, including many tidewater goby scientific researchers, suggested that we overemphasized the importance of the discovery of new tidewater goby populations, that we minimized the severity of the threats in the northern portion of the range, and that we overstated the recolonization ability of the tidewater goby. After review of the information presented, we find the commenters' arguments with respect to the goby's ability to recolonize compelling and believe that it is prudent to withdraw the proposed delisting. Withdrawing the delisting proposal for the northern populations of the tidewater goby makes the establishment of an endangered southern California DPS unnecessary. We will focus instead on proceeding with the recovery planning process that will both guide conservation activities for the species and make explicit under what criteria the tidewater goby should be considered for delisting.

We conclude, therefore, based on our review of the best information currently available, including these comments and the recommendations of two scientific peer reviewers, and for the reasons discussed throughout this withdrawal notice, that the tidewater goby should remain listed as an endangered species throughout its range. We withdraw our June 24, 1999, proposal to remove the northern populations of tidewater goby from the list of endangered and threatened wildlife and the concurrent proposal to establish an endangered distinct population segment of tidewater goby in Orange and San Diego

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Counties, CA (64 FR 33816).

References Cited

A complete list of all references we cited, as well as others, is available on request from our Ventura Fish and Wildlife Office (see **ADDRESSES** section).

Dated: November 1, 2002.

Steve Williams,

Director, Fish and Wildlife Service.

[FR Doc. 02–28282 Filed 11–6–02; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register

Vol. 67, No. 216

Thursday, November 7, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Cooperative State Research, Education, and Extension Service

Notice of Intent To Revise and Reinstate an Expired Information Collection

AGENCY: Cooperative State Research, Education, and Extension Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chap. 35) and the Office of Management and Budget (OMB) regulations at 5 CFR part 1320 (60 FR 44978, August 29, 1995), this notice announces the Cooperative State Research, Education, and Extension Service's (CSREES) intention to request approval of an information collection in support of authorizations to use the 4–H Club Name and/or Emblem. Authorization of a similar information collection expired on July 31, 2002.

DATES: Comments on this notice must be received on or before January 13, 2003 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Dr. Nancy Valentine; National 4–H Program Leader; Families, 4–H, and Nutrition; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; Stop 2225; 1400 Independence Avenue, SW.; Washington, DC 20250–2225; Telephone: (202) 720–2908; E-mail: *nvalentine@reeusda.gov*.

SUPPLEMENTARY INFORMATION:

Title: Application for Authorization to Use the 4–H Club Name and/or Emblem.

OMB Number: 0524–0034.

Expiration Date of Approval: July 31, 2002.

Type of Request: Intent to request approval of an information collection.

Summary of Collection: Use of the 4–H Club Name and/or Emblem is authorized by an Act of Congress (18 U.S.C. 707). Use of the 4–H Club Name and/or Emblem by anyone other than 4–H Clubs and those duly authorized by them, representatives of the United States Department of Agriculture, the land-grant colleges and universities, and persons authorized by the Secretary of Agriculture is prohibited by the provisions of 18 U.S.C. 707. The Secretary of Agriculture has delegated authority to the Administrator of CSREES to authorize others to use the 4–H Club Name and Emblem. The Administrator has promulgated regulations at 7 CFR Part 8 that govern such use. The regulatory requirements for use of the 4–H Club Name and/or Emblem reflect the high standards of 4–H and its educational goals and objectives. Pursuant to provisions of 7 CFR § 8.6, anyone requesting authorization from the Administrator to use the 4–H Club Name and Emblem is asked to describe the proposed use in a formal application. The collection of this information is used to determine whether the applicant's proposed use will meet the regulatory requirements in 7 CFR part 8 and whether an authorization for use should be granted.

Need and Use of the Information: CSREES will collect information on the name of the individual, partnership, corporation, or association; the organizational address; the name of an authorized representative; the telephone number, fascimile number, and e-mail address; the proposed use of the 4–H Club Name or Emblem; and the plan for sale or distribution of the product bearing the 4–H Club Name or Emblem. The information collected by CSREES will be used to determine if those applying to use the 4–H Club Name or Emblem meet the regulatory requirements. If the information is not collected, it would not be possible to ensure that the products, services, and materials meet the regulatory requirements as well as 4–H educational goals and objectives.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .5 hours per response.

Respondents: Individuals or households and business or other for-profit or not-for-profit institutions.

Estimated Number of Respondents: 60.

Estimated Number of Responses per Respondent: 2.

Estimated Total Annual Burden on Respondents: 60 hours.

Copies of this information collection can be obtained from Dr. Nancy Valentine, National 4–H Program Leader, 202–720–2908, *jkahler@reeusda.gov*. Information also is available at *http://www.national4-hheadquarters.gov/4h_name.htm*.

Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: Dr. Nancy Valentine, National 4–Program Leader, Families, 4–H, and Nutrition; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; Stop 2225; Independence Avenue, SW.; Washington, DC 20250–2225; Telephone: (202) 720–2908; E-mail: *jkahler@reeusda.gov*.

All responses to this notice will be summarized and included in the request to OMB for approval. All comments will become a matter of public record.

Done at Washington, DC, on this 18th day of October 2002.

Colien Hefferan,

Administrator, Cooperative State Research, Education, and Extension Service.

[FR Doc. 02–28350 Filed 11–6–02; 8:45 am]

BILLING CODE 3410–22–P

DEPARTMENT OF AGRICULTURE

Opal Creek Scenic Recreation Area (SRA) Advisory Council

AGENCY: Forest Service, USDA Forest Service.

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ACTION: Notice of meeting.

SUMMARY: The Opal Creek Scenic Recreation Area Advisory Council is scheduled to meet on Sunday, November 17, 2002 for a field visit to the Opal Creek Scenic Recreation Area. The field visit will provide a general overview of the area to some of the new council members and the current situation related to recreation use for implementing the management plan, and developing transportation and monitoring plans. The tour is scheduled to begin at 8:30 a.m., and will conclude at approximately 3 p.m. The tour will begin at the Oregon Department of Forestry Office at 22965 North Fork Road in Mehama, Oregon.

The Opal Creek Wilderness and Opal Creek Scenic Recreation Area Act of 1996 (Opal Creek Act) (Pub. L. 104–208) directed the Secretary of Agriculture to establish the Opal Creek Scenic Recreation Area Advisory Council. The Advisory Council is comprised of thirteen members representing state, county and city governments, and representatives of various organizations, which include mining industry, environmental organizations, inholders in Opal Creek Scenic Recreation Area, economic development, Indian tribes, adjacent landowners and recreation interests. The council provides advice to the Secretary of Agriculture on preparation of a comprehensive Opal Creek Management Plan for the SRA, and consults on a period and regular basis on the management of the area.

The public comment period will begin at 10 a.m. and the field tour will begin after the last presentation. Time allotted for individual presentations will be limited to 3 minutes. Written comments are encouraged, particularly if the material cannot be presented within the time limits of the comment period. Written comments may be submitted prior to the November 17 meeting by sending them to Designated Federal Stephanie Phillips at the address given below. The public is welcome to attend the tour, however individuals must provide their own transportation throughout the tour and bring a lunch.

FOR FURTHER INFORMATION CONTACT: For more information regarding this meeting, contact Designated Federal Official Stephanie Phillips; Willamette National Forest, Detroit Ranger District, HC 73 Box 320, Mill City, OR 97360; (503) 854–3366.

Dated: October 31, 2002.

Y. Robert Iwamoto,

Deputy Forest Supervisor.

[FR Doc. 02–28322 Filed 11–6–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Ravalli County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Ravalli County Resource Advisory Committee will be meeting to discuss 2003 project development and 2002 project monitoring. Agenda topics will include project monitoring reports and a public forum (question and answer session). The meeting is being held pursuant to the authorities in the Federal Advisory Committee Act (Public Law 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Public Law 106–393). The meeting is open to the public.

DATES: The meeting will be held on November 26, 2002, 6:30 p.m.

ADDRESSES: The meeting will be held at the Ravalli County Administrative Building, 215 S. 4th Street, Hamilton, Montana. Send written comments to Jeanne Higgins, District Ranger, Stevensville Ranger District, 88 Main Street, Stevensville, MT 59870, by facsimile (406) 777–7423, or electronically to *jmhiggins@fs.fed.us*.

FOR FURTHER INFORMATION CONTACT: Jeanne Higgins, Stevensville District Ranger and Designated Federal Officer, Phone: (406) 777–5461.

Dated: October 30, 2002.

David T. Bull,

Forest Supervisor.

[FR Doc. 02–28275 Filed 11–6–02; 8:45 am]

BILLING CODE 3510–05–M

BROADCASTING BOARD OF GOVERNORS

Sunshine Act Meeting

DATE AND TIME: November 12, 2002; 11:30 A.M.–12:30 P.M.

PLACE: Cohen Building, Room 3321, 330 Independence Ave., SW., Washington, DC 20237.

CLOSED MEETING: The members of the Broadcasting Board of Governors (BBG) will meet in closed session to review and discuss a number of issues relating to U.S. Government-funded non-military international broadcasting. They will address internal procedural, budgetary, and personnel issues, as well as sensitive foreign policy issues relating to potential options in the U.S. international broadcasting field. This meeting is closed because if open it likely would either disclose matters that would be properly classified to be kept secret in the interest of foreign policy under the appropriate executive order (5 U.S.C. 552b. (c)(1)) or would disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action. (5 U.S.C. 552b. (c)(9)(B)) In addition, part of the discussion will relate solely to the internal personnel and organizational issues of the BBG or the International Broadcasting Bureau. (5 U.S.C. 552b. (c)(2) and (6))

FOR FURTHER INFORMATION CONTACT: Persons interested in obtaining more information should contact either Brenda Hardnett or Carol Booker at (202) 401–3736.

Dated: November 4, 2002.

Carol Booker,

Legal Counsel.

[FR Doc. 02–28461 Filed 11–5–02; 10:16 am]

BILLING CODE 8230–01–M

DEPARTMENT OF COMMERCE

[I.D. 110102G]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Monitoring of Fish Trap Fishing in the Gulf of Mexico.

Form Number(s): None.

OMB Approval Number: 0648–0392.

Type of Request: Regular submission.

Burden Hours: 184.

Number of Respondents: 63.

Average Hours Per Response: 5 minutes.

Needs and Uses: Persons using fish traps to participate in the commercial reef fish fishery in the Gulf of Mexico must make an appointment with NMFS in order for the fish traps to be inspected. This is a one-time requirement. Fishermen will also be required to make telephone reports when initiating and terminating fishing trips. The information is needed to monitor fish trap fishing.

Affected Public: Business or other for-profit organizations, and individuals or households.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: October 31, 2002.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02–28339 Filed 11–6–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

[I.D. 110102H]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Southeast Region Electronic Reporting Survey.

Form Number(s): None.

OMB Approval Number: None.

Type of Request: Regular submission.

Burden Hours: 657.

Number of Respondents: 3,940.

Average Hours Per Response: 10 minutes (0.166).

Needs and Uses: This collection would be a one-time survey of all vessel owners and seafood dealers that have an active Federal fisheries permit. The purpose of the survey is to determine the availability of personal computers and access to the Internet. This information would be used to help evaluate the potential for optional electronic reporting of catch and effort or other mandatory data.

Affected Public: Business or other for-profit organizations, and individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: October 31, 2002.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02–28340 Filed 11–6–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–848]

Freshwater Crawfish Tail Meat From the People's Republic of China: Extension of Time Limit for Final Results of Antidumping Duty New-Shipper Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: November 7, 2002.

FOR FURTHER INFORMATION CONTACT: Holly Hawkins or Thomas Gilgunn, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0414 and (202) 482–4236, respectively.

The Applicable Statute

Unless otherwise indicated, all citations are to the Tariff Act of 1930, as amended (the Act). In addition, unless otherwise indicated, all citations to the Department's regulations are codified at 19 CFR part 351 (2001).

Background

On September 20, 2001, the Department of Commerce received a request from Shouzhou Huaxiang Foodstuffs, Co., Ltd. to conduct a new shipper review of the antidumping duty order on freshwater crawfish tail meat from the People's Republic of China. On September 28, 2001, the Department received a similar request from North Supreme Seafood (Zhejiang) Co., Ltd. On November 8, 2001, the Department found that the requests for review met all of the regulatory requirements set forth in section 351.214(b) of the Department's regulations and initiated these new shipper antidumping reviews covering the period September 1, 2001, through August 31, 2001. *See "Freshwater Crawfish Tail Meat From the People's Republic of China: Initiation of New Shipper Antidumping Review,"* 66 FR 56536 (November 8, 2001). The preliminary results were published on August 12, 2002. *See "Notice of Preliminary Results of Antidumping Duty New Shipper Reviews: Freshwater Crawfish Tail Meat from the People's Republic of China,"* 67 FR 52442 (August 12, 2002).

Extension of Time Limits for Final Results

Pursuant to section 751(a)(2)(B)(iv) of the Act and section 351.214(i)(2) of the Department's regulations, the Department may extend the deadline for completion of the final results of a new shipper review if it determines that the case is extraordinarily complicated. The Department has determined that this case is extraordinarily complicated, and the final results of these new shipper reviews cannot be completed within the statutory time limit of 90 days after the date on which the preliminary results were issued. The Department needs more time to analyze the issues raised in the parties' briefs with respect to valuation and the *bona fides* of the sales. Given these issues, the Department finds that these reviews are extraordinarily complicated. Accordingly, the Department is extending the time limit for the completion of the final results by 44 days, to December 17, 2002, in accordance with section 751(a)(2)(B)(iv) of the Act and section 351.214(i)(2) of the Department's regulations.

Dated: November 1, 2002.

Joseph A. Spetrini,

Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 02–28342 Filed 11–6–02; 8:45 am]

BILLING CODE 3510–DS–P

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–848]

Freshwater Crawfish Tail Meat From the People's Republic of China: Initiation of Antidumping Duty New Shipper Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) has received timely requests to conduct new shipper reviews of the antidumping duty order on freshwater crawfish tail meat from the People's Republic of China. In accordance with 19 CFR 341.214(d), we are initiating a review for Qingdao Jin Yong Xiang Aquatic Foods Co. Ltd. (Qingdao JYX) and its producer Hefei Zhongbao Aquatic Co., Ltd. (Hefei Zhongbao); Siyang Foreign Trading Corporation (Siyang) and its producer Anhui Golden Bird Agricultural Products Development Co., Ltd. (Anhui). We are also initiating a new shipper review for Hubei Qianjiang Houhu Frozen & Processing Factory (Hubei Houhu) and for Zhoushan Huading Seafood Co., Ltd. (Zhoushan Huading), each of which both produced and exported freshwater crawfish tail meat from the People's Republic of China ("PRC").

EFFECTIVE DATE: November 7, 2002.

FOR FURTHER INFORMATION CONTACT: Holly Hawkins, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–0414.

Applicable Statute and Regulations

Unless otherwise indicated, all citations are references to the provisions of the Tariff Act of 1930, as amended ("the Act"). In addition, unless otherwise indicated, all citations are to the Department's regulations, codified at 19 CFR part 351 (April 2002).

SUPPLEMENTARY INFORMATION:

Background

The Department received timely requests from Hubei Houhu, Qingdao JYX, Siyang, and Zhoushan Huading, in accordance with 19 CFR 351.214(c), for new shipper reviews of the antidumping duty order on freshwater crawfish tail meat from the PRC, which has a September anniversary month.

As required by 19 CFR 351.214(b)(2)(i), (ii), and (iii)(A), each company identified above has certified that it did not export freshwater crawfish tail meat to the United States during the period of investigation ("POI"), and that it has never been affiliated with any exporter or producer which did export freshwater crawfish tail meat during the POI. Pursuant to 19 CFR 341.214(b)(2)(iii)(B), the company has further certified that its export activities are not controlled by the central government of the PRC. Further, pursuant to the Department's regulations at 19 CFR 351.214(b)(2)(iv), each company submitted documentation establishing the date on which it first shipped the subject merchandise to the United States, the date of entry of that first shipment, the volume of that shipment and subsequent shipments, and the date of the first sale to an unaffiliated customer in the United States. For Siyang and Qingdao JYX, both of which exported the subject merchandise but did not produce it, complete certifications, as required by section 351.214(b)(2)(ii), were also submitted by Anhui (the producer of crawfish tail meat exported by Siyang) and by Hefei Zhongbao (the producer of crawfish tail meat exported by Qingdao JYX).

In accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214(b) of the Department's regulations, we find that the requesters (Hubei Houhu, Zhoushan Huading, Siyang and its producer Anhui, and Qingdao JYX and its producer Hefei) submitted all of the information required by the statute and the Department's regulations.

Initiation of Review

In accordance with section 751(a)(2)(B)(ii)(I) of the Act and 19 CFR 351.214(d)(1), we are initiating new shipper reviews of the antidumping duty order on freshwater crawfish tail meat from the PRC. We intend to issue the preliminary results of these reviews no later than 180 days after the date on which the review is initiated.

Antidumping Duty New Shipper Review Proceedings	Period to be reviewed
Hubei Qianjiang Houhu Frozen and Processing Factory; Qingdao Jin Yong Xiang Aquatic Foods Co., Ltd./Hefei Zhongbao Aquatic Foods Co., Ltd. Siyang Foreign Trading Corporation/Anhui Golden Bird Agricultural Products Development Co., Ltd. Zhoushan Huading Seafood Co., Ltd	09/01/01–08/31/02

We will instruct the Customs Service to allow, at the option of the importer, the posting, until the completion of the review, of a bond or security in lieu of a cash deposit for each entry of the subject merchandise from the above-listed companies. Zhoushan Huading and Hubei Houhu each have certified that they both produce and export the subject merchandise, the sales of which were the basis of these new shipper review requests. Therefore, we will apply the bonding option under 19 CFR 251.107(b)(1)(i) only to subject merchandise for which each is both the producer and exporter. Qingdao JYX has identified Hefei Zhongbao Aquatic Co., Ltd. as the producer of the subject merchandise for the sales under review. in addition, Siyang has identified Anhui Golden Bird Agricultural Products Development Co., Ltd. (Anhui) as the producer of the subject merchandise for the sales under review. We will apply the bonding option under 19 CFR 351.107(b)(1)(i) only to entries of subject merchandise from these two exporters for which the respective producers under review are the suppliers.

Interested parties that need access to proprietary information in this new shipper review should submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305 and 351.306.

This initiation and notice are in accordance with section 751(a)(2)(B) of the Act (19 U.S.C. 1675(a)(2)(B)) and 19 CFR 351.214(d).

Dated: November 1, 2002.

Joseph A. Spetrini,

Deputy Assistant Secertary for Import Administration, Group III.

[FR Doc. 02–28343 Filed 11–6–02; 8:45 am]

BILLING CODE 3516–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–816]

Certain Stainless Steel Butt-Weld Pipe Fittings From Taiwan: Extension of Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit for final results of antidumping duty administrative review.

SUMMARY: The Department of Commerce ("the Department") is extending the time limit for the final results of the review of stainless steel butt-weld pipe fittings from Taiwan. This review covers the period June 1, 2000, through May 31, 2001.

EFFECTIVE DATE: November 7, 2002.

FOR FURTHER INFORMATION CONTACT: James Doyle, Enforcement Group III—Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–0159.

Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR part 351 (2001).

Background

On July 23, 2001, the Department published a notice of initiation of this antidumping duty administrative review for the period of June 1, 2000, through May 31, 2001 (66 FR 38252). We published the preliminary results of review on July 9, 2002 (67 FR 45467).

Extension of Time Limit for Final Results

Section 751(a)(3)(A) of the Act states that if it is not practicable to complete the review within the time specified, the administering authority may extend the 120-day period, following the date of publication of the preliminary results, to issue its final results by an additional 60 days. Completion of the final results within the 120-day period is not practicable for the following reasons:

- This review involves certain complex Constructed Export Price ("CEP") adjustments including but not limited to CEP Profit and CEP Offset which were raised by respondent and petitioners after the verification and after the preliminary results of review.
- The review involves a large number of transactions and complex adjustments other than those mentioned above.

Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time period for issuing the final results of review by 30 days until December 6, 2002.

Dated: November 1, 2002.

Joseph A. Spetrini,

Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 02–28345 Filed 11–6–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–822]

Stainless Steel Sheet and Strip in Coils From Mexico; Antidumping Duty Administrative Review; Time Limits

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limits.

SUMMARY: The Department of Commerce (the Department) is extending the time limits for the final results of the 2000–2001 administrative review of the antidumping duty order on stainless steel sheet and strip in coils from Mexico. This review covers one manufacturer/exporter of the subject merchandise to the United States, ThyssenKrupp Mexinox S.A. de C.V., and the period July 1, 2000, through June 30, 2001.

EFFECTIVE DATE: November 7, 2002.

FOR FURTHER INFORMATION CONTACT: Deborah Scott at (202) 482–2657 or Robert James at (202) 482–0649, Antidumping and Countervailing Duty Enforcement Group III, Office Eight, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION: On August 7, 2002, we published the preliminary results of the administrative review of stainless steel sheet and strip in coils from Mexico for the period July 1, 2000, through June 30, 2001. *See "Stainless Steel Sheet and Strip in Coils from Mexico; Preliminary Results of Antidumping Duty Administrative Review,"* 67 FR 51204 (August 7, 2002). Currently, the final results of this administrative review are due on December 5, 2002. However, we determine it is not practicable to complete the final results of this review within the original time limit due to a number of significant case issues. Petitioners' and respondent's case and rebuttal briefs raise complicated issues related to the further manufacturing of subject merchandise in the United States, level of trade, and cost of production, such as material costs and the calculation of interest and general and administrative expenses. Making a determination with respect to each of these issues, particularly those related to further manufacturing and cost of production, requires considerable scrutiny of respondent's questionnaire and supplemental questionnaire responses. Therefore, because it is not practicable to complete this review within the normal statutory time limit, the Department is extending the time limits for completion of the final results until February 3, 2003, in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Tariff Act).

This extension is in accordance with section 751(a)(3)(A) of the Tariff Act (19 U.S.C. 1675 (a)(3)(A) (2001)).

Dated: November 1, 2002.

Joseph A. Spetrini,

Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 02–28344 Filed 11–6–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[Case Numbers: A–822–805, A–821–818, A–823–814]

Postponement of the Final Determinations in the Less-Than-Fair-Value Investigations of Urea Ammonium Nitrate Solutions From Belarus, the Russian Federation, and Ukraine

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: November 7, 2002.

FOR FURTHER INFORMATION CONTACT: Thomas Martin at (202) 482–3936, Paige Rivas at (202) 482–0651 or Crystal Crittenden at (202) 482–0989, AD/CVD Enforcement, Office 4, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave, NW., Washington, DC 20230.

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SUMMARY: The Department of Commerce is postponing the final determinations in the less-than-fair-value investigations of urea ammonium nitrate solution (UANS) from Belarus, the Russian Federation, and Ukraine. The Department will make its final determinations not later than February 18, 2003.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR part 351 (2000).

Background

On October 3, 2002, the Department of Commerce (the Department) published notices of preliminary determination of sales at less than fair value for UANS from Belarus, the Russian Federation and Ukraine. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Urea Ammonium Nitrate Solutions From Belarus*, 67 FR 62015 (October 3, 2002); *Notice of Preliminary Determination of Sales at Less Than Fair Value: Urea Ammonium Nitrate Solutions From the Russian Federation*, 67 FR 62008 (October 3, 2002); *Notice of Preliminary Determination of Sales at Less Than Fair Value: Urea Ammonium Nitrate Solutions From Ukraine*, 67 FR 62013 (October 3, 2002). The final determinations for these investigations are currently due no later than December 10, 2002. Pursuant to section 735(a)(2) of the Act, on October 15, 2002, Grodno Production Republican Enterprise of Belarus (Grodno) and JSC Nevinnomysskij Azot of the Russian Federation (Nevinka) requested that the Department postpone its final determinations in these investigations until 135 days after the date of the publication of the preliminary determination in the **Federal Register**. On October 31, 2002, the Trade and Economic Mission of Ukraine on behalf of the government of Ukraine submitted its request for the Department to postpone a final determination in the investigation of UANS from Ukraine pursuant to section 735(a)(2) of the Act. Additionally, Grodno, Nevinka, and the Ukrainian government requested that the Department extend the application of the provisional measures prescribed under 19 CFR 351.210(e)(2) to not more than six months.

Postponement of Final Determination and Extension of Provisional Measures

In accordance with 19 CFR 351.210(b), because (1) our preliminary determinations are affirmative, (2) the requesting exporters account for a significant proportion of exports of the subject merchandise from their respective countries, and (3) no compelling reasons for denial exist, we are granting Grodno's, Nevinka's, and the Ukrainian government's requests and are fully extending the time for the final determinations, until no later than February 18, 2003. Where applicable, suspension of liquidation will be extended accordingly.

This notice is issued and published pursuant to Section 735(a)(2) of the Act and 19 CFR 351.210(g).

Dated: November 1, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–28341 Filed 11–6–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 102402B]

Gulf of Mexico Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of cancellation of a public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) has cancelled a joint meeting of the Reef Fish Management and Artificial reef Committees that was scheduled for Wednesday, November 13, 2002, from 8:30 to 9:30 a.m. The meeting was announced in the **Federal Register** on October 29, 2002.

FOR FURTHER INFORMATION CONTACT: Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council; telephone (813)228–2815.

SUPPLEMENTARY INFORMATION: The initial notice was published on October 29, 2002 (67 FR 65954). All other previously published information remains the same.

Dated: November 1, 2002.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–28338 Filed 11–6–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 110102B]

Mid-Atlantic Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Mid-Atlantic Fishery Management's Council's Summer Flounder Monitoring Committee, Scup Monitoring Committee, and Black Sea Bass Monitoring Committee will hold a public meeting.

DATES: The meeting will be held on Thursday, November 21, 2002, beginning at 9 a.m. with the Summer Flounder Monitoring Committee, followed by the Scup Monitoring Committee and the Black sea Bass Monitoring Committee.

ADDRESSES: The meeting will be held at the Holiday Inn BWI, 890 Elkridge Landing Road, Baltimore, MD' telephone 410–859–8400.

Council address: Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19904, telephone: 302–674–2331.

FOR FURTHER INFORMATION CONTACT: Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council, telephone: 302–674–2331, ext. 19.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to recommend the 2003 recreational management measures for summer flounder, scup, and black sea bass.

Although non-emergency issues not contained in this agenda may come before the Committee for discussion, those issues may not be the subject of formal Committee action during this meeting. Committee action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 205 (c) of the Magnuson-Stevens Act, provided the public has been notified of the Committee's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at the Council (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: November 1, 2002.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–28402 Filed 11–6–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 102802D]

Endangered and Threatened Species; Take of Anadromous Fish

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of applications for scientific research permit (1407) and request for comment.

SUMMARY: Notice is hereby given that NMFS has received an application for scientific research from California Department of Fish and Game (CDFG) in Chico, CA (1407). This permit would affect three Evolutionarily Significant Units (ESUs) of salmonids identified in Supplementary Information below. This document serves to notify the public of the availability of the permit application for review and comment before a final approval or disapproval is made by NMFS.

DATES: Written comments on the permit applications must be received at the appropriate address or fax number (*see* **ADDRESSES**) no later than 5 p.m. Pacific Standard Time on December 9, 2002.

ADDRESSES: Written comments on the modification request should be sent to the appropriate office as indicated below. Comments may also be sent via fax to the number indicated for the request. Comments will not be accepted if submitted via e-mail or the Internet. The applications and related documents are available for review, by appointment, for permit 1407: Protected Resources Division, NMFS, 650 Capitol Mall, Suite 8–300, Sacramento, CA 95814 (ph: 916–930–3600, fax: 916–930–3629). Documents may also be reviewed by appointment in the Office of Protected Resources, F/PR3, NMFS, 1315 East-West Highway, Silver Spring, MD 20910 3226 (301–713–1401).

FOR FURTHER INFORMATION CONTACT: Rosalie del Rosario at phone number 916–930–3600, or e-mail: *Rosalie.delRosario@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Authority

Issuance of permits and permit modifications, as required by the Endangered Species Act of 1973 (16 U.S.C. 1531 1543) (ESA), is based on a finding that such permits/modifications: (1) are applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. Authority to take listed species is subject to conditions set forth in the permits. Permits and modifications are issued in accordance with and are subject to the ESA and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 222 226).

Those individuals requesting a hearing on an application listed in this notice should set out the specific reasons why a hearing on that application would be appropriate (*see* ADDRESSES). The holding of such a hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in the permit action summaries are those of the applicant and do not necessarily reflect the views of NMFS.

Species Covered in This Notice

This notice is relevant to three federally listed salmonid ESUs: endangered Sacramento River Winter-run Chinook salmon (*Oncorhynchus tshawytscha*), threatened Central Valley Spring-run Chinook salmon (*O. tshawytscha*), and threatened Central Valley steelhead (*O. mykiss*).

New Applications Received

CDFG requests a 5–year permit for takes of adult and juvenile threatened Central Valley Spring-run Chinook salmon and threatened Central Valley steelhead to study their life history. The goal of the study is to provide baseline population information for evaluating restoration efforts in Butte and Big Chico creeks and to provide information for the recovery of the species.

Dated: November 1, 2002.

Margaret Lorenz,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–28337 Filed 11–6–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Advisory Panel To Assess the Capabilities for Domestic Response to Terrorist Attacks Involving Weapons of Mass Destruction

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and summary agenda for the next meeting of the Panel to Assess the Capabilities for Domestic Response to Terrorist Attacks Involving Weapons of Mass Destruction. Notice of this meeting is required under the Federal Advisory Committee Act.

DATES: November 7 and 8, 2002.

ADDRESSES: RAND, 1200 S. Hayes Street, 4th floor, Arlington, VA 22202–5050.

PROPOSED SCHEDULE AND AGENDA: Panel to Assess the Capabilities for Domestic Response to Terrorist Attacks Involving Weapons of Mass Destruction will meet from 8:30 a.m. until 5:30 p.m. on November 7, 2002 and from 8:30 a.m. until 2 p.m. on November 8, 2002. Time will be allocated for public comments by individuals or organizations at the end of the meeting on November 8.

FOR FURTHER INFORMATION CONTACT: RAND provides information about this Panel on its web site at *http://www.rand.org/organization/nsrd/terrpanel;* it can also be reached at (703) 413–1100 extension 5321. Public comment presentations will be limited to two minutes each and must be provided in writing prior to the meeting. Mail written presentations and requests to register to attend the open public session to: Nancy Rizor, RAND, 1200 South Hayes Street, Arlington, VA 22202–5050. Public seating for this meeting is limited, and is available on a first-come, first-served basis.

Dated: October 31, 2002.

L.M. Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–28283 Filed 11–6–02; 8:45 am]

BILLING CODE 5001–08–M

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DEPARTMENT OF DEFENSE

Department of the Air Force

HQ USAF Scientific Advisory Board; Meeting

AGENCY: Department of the Air Force, DoD.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of the forthcoming meeting of the 311th Human Systems Wing Advisory Group. The purpose of the meeting is to provide technical advice and assessment to the Commander, 311th Human System Wing. Because classified and contractor-proprietary information will be discussed, this meeting will be closed to the public.

DATES: November 24–27, 2002.

ADDRESSES: Brooks City Base, San Antonio, Texas.

FOR FURTHER INFORMATION CONTACT: Major John Pernot, Air Force Scientific Advisory Board Secretariat, 1180 Air Force Pentagon, Room 5D982, Washington DC 20330–1180, (703) 697–4811.

Pamela D. Fitzgerald,

Air Force Federal Register Liaison Officer.

[FR Doc. 02–28285 Filed 11–6–02; 8:45 am]

BILLING CODE 5001–5–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineer

Intent To Prepare a Draft Supplemental Environmental Impact Statement for the Big Sunflower River Maintenance Feasibility Report

AGENCY: Department of the Army, U.S. Army Corps of Engineer, DoD.

ACTION: Notice of Intent.

SUMMARY: Authorized channel improvements in the Big Sunflower River Basin began in the 1940s and were completed in the 1960s. The work consisted of channel improvements on a number of streams including the Big Sunflower and Little Sunflower Rivers and Bogue Phalia; channel improvements consisted primarily of clearing and snagging, with some channel enlargement and channel cleanout. The Big Sunflower River Basin has experienced extensive flooding to agricultural land and urban areas in recent years. Results of surveys taken and engineering data collected indicated the lower reaches of the project streams had experienced loss of designed capacity due to vegetation growth and sediment accumulation, thereby requiring major maintenance. Corrective maintenance actions will require extensive channel cleanout, channel clearing, and snagging within the Big Sunflower channel system.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and Draft Supplemental Environmental Impact Statement (DSEIS) should be directed to: Mr. Marvin Cannon, Vicksburg District Corps of Engineers, 4155 Clay Street, CEMVK–PP–PQ, Vicksburg, MS 39183–3435 or telephone (601) 631–5437.

SUPPLEMENTARY INFORMATION: This project is authorized by the Flood Control Act (FCA) of December 22, 1944 (House Document [HD] 516–78–2), as amended by FCAs of July 24, 1946, and May 17, 1950, October 23, 1962 (HD–358–89–2), and October 27, 1965 (HD–308–88–2).

1. A Final Environmental Impact Statement (FEIS), Flood Control, Mississippi River and Tributaries, Yazoo Basin, Mississippi, was completed in December 1975, covering the original flood control project on Big Sunflower River. A Final Supplemental No. 2 to the FEIS, Flood Control, Mississippi River and Tributaries, Yazoo Basin, Mississippi, Big Sunflower River Maintenance Project was completed in July 1996, for maintenance of the original flood control project on the Big Sunflower River. A Draft Environmental Assessment (EA) was prepared in February 2002 to supplement the information contained in Supplement No. 2 to the FEIS, Flood Control, Mississippi River and Tributaries, Yazoo Basin, Mississippi, Big Sunflower River Maintenance Project. The Draft EA was circulated for agency and public review and comment. To ensure the environmental sustainability of this project, the District Engineer has decided to prepare a DSEIS No. 3 to the FEIS, Flood Control, Mississippi River and Tributaries, Yazoo Basin, Mississippi, Big River Maintenance Project.

2. The proposed action involves evaluating several non-structural and structural alternatives of channel cleanout of sediment and debris from the channel bottoms and channel clearing and snagging to restore the project channels to authorized design capacities.

3. A public scoping meeting will be held in December 2002 in Rolling Fork, MS. Significant issues identified during this scoping process will be analyzed in depth in the DSEIS. The following agencies are invited to cooperate: The U.S. Coast Guard; Natural Resources Conservation Service; U.S. Forest Service; U.S. Environmental Protection Agency; U.S. Fish and Wildlife Service; Mississippi Department of Environmental Quality; and Mississippi Department of Wildlife, Fisheries and Parks. Federally recognized Indian Tribes will also be invited to cooperate. These agencies and tribes will be asked to participate in the review of study data and the DSEIS.

4. Upon completion, the DSEIS will be distributed for agency and public review and comment. Additionally, a public meeting will be held to present results of the DSEIS evaluations and the recommended plan.

5. The DSEIS is estimated to be completed in November 2003.

Frederick L. Clapp, Jr.,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 02–28358 Filed 11–6–02; 8:45 am]

BILLING CODE 3710–PU–M

DEPARTMENT OF DEFENSE

Department of Army; Corps of Engineers

Intent To Prepare A Joint Environmental Impact Statement/ Environmental Impact Report for the Peninsula Beach Feasibility Study, Long Beach, Los Angeles County, CA

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of Intent.

SUMMARY: The U.S. Army Corps of Engineers (Corps) and the city of Long Beach propose to assess the feasibility of providing additional storm damage protection for a portion of the Peninsula Beach between the Alamitos Bay west jetty and approximately 54th Place..

DATES: A scoping meeting will be held on November 13, 2002, at 6:30 p.m., in the Belmont Plaza Pool, 4000 Olympic Plaza, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Questions regarding the scoping process or preparation of the Environmental Impact Statement/Environmental Impact Report (EIS/EIR) may be directed to Mr. Paul Rose, Chief, Environmental Resources Branch, U.S. Army Corps of Engineers, PO Box 532711, Los Angeles, CA 90053–2325, (213) 452–3840.

SUPPLEMENTARY INFORMATION:

1. *Proposed Action:* Peninsula Beach is a chronically narrow beach that has undergone repeat nourishment projects by the City of Long Beach to provide an adequate beach width for protection of homes and beach facilities, and recreation opportunities for local residents and other beach users.

The gap between the tip of Alamitos Bay west jetty and the east end of the Long Beach Breakwater allows waves to pass through and to directly impact the shoreline at Peninsula Beach. The long-term trend in sediment transport is expected to be to the west. The Corps has estimated the annual sediment loss to be about 55,000 cubic meters.

Due to the sediment loss, there is a potential danger of flooding when wave runup overtops the bulkhead or goes around either end and runs into homes.

2. *Alternatives:* Alternatives that may be considered include beach nourishment, perched beach, revetment/seawall, submerged breakwater, groins and/or t-groins, and no-project.

3. *Scoping Process:* The Corps and the City of Long Beach are preparing a joint EIS/EIR to address potential impacts associated with the proposed project. The Corps is the Lead Federal Agency for compliance with National Environmental Policy Act (NEPA) for the project, and the City of Long Beach is the Lead State Agency for compliance with the California Environmental Quality Act (CEQA) for the non-Federal aspects of the project. The Draft EIS/EIR (DEIS/EIR) document will incorporate public concerns in the analysis of impacts associated with the Proposed Action and associated project alternatives. The DEIS/EIR will be sent out for a 45-day public review period, during which time both written and verbal comments will be solicited on the adequacy of the document. The Final EIS/EIR (FEIS/EIR) will address the comments received on the DEIS/EIR during public review, and will be furnished to all who commented on the DEIS/EIR, and is made available to anyone that requests a copy during the 30-day public comment period. The final step involves, for the federal EIS, preparing a Record of Decision (ROD) and, for the state EIR, certifying the EIR and adopting a Mitigation Monitoring and Reporting Plan. The ROD is a concise summary of the decisions made by the Corps from among the alternatives presented in the FEIS/EIR.

The ROD can be published immediately after the FEIS public comment period ends. A certified EIR indicates that the environmental document adequately assesses the environmental impacts of the proposed project with the respect to CEQA. A formal scoping meeting to solicit public comment and concerns on the proposed action and alternatives will be held on Wednesday, November 13, 2002 (see **DATES**).

Dated: October 31, 2002.

Richard G. Thompson,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 02–28359 Filed 11–6–02; 8:45 am]

BILLING CODE 3710–KF–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Government-Owned Inventions; Available for Licensing

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The inventions listed below are assigned to the United States Government as represented by the Secretary of the Navy and are available for licensing by the Department of the Navy. Navy Case No. 83,913, entitled "Modular, Interoperable Software Definable Command Control Computer Communications Intelligence (C41) Operations Center" and Navy Case No. 84,339, entitled "Infrastructure Linkage and Augmentation System (INFRALYNX)".

ADDRESSES: Requests for information about the inventions cited should be directed to the Naval Research Laboratory, Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320, and must include the Navy Case number.

FOR FURTHER INFORMATION CONTACT: Catherine M. Cotell, Ph.D., Head, Technology Transfer Office, NRL Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320, telephone (202) 767–7230. Due to temporary U.S. Postal Service delays, please fax (202) 404–7920, e-mail: *cotell@nrl.navy.mil* or use courier delivery to expedite response.

Authority: 35 U.S.C. 207, 37 CFR part 404.

Dated: October 31, 2002.

R.E. Vincent II,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 02–28276 Filed 11–6–02; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Secretary of Education's Commission on Opportunity in Athletics; Meeting

AGENCY: Secretary of Education's Commission on Opportunity in Athletics; Department of Education.

ACTION: Notice of open meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming public meeting of the Secretary of Education's Commission on Opportunity in Athletics (the Commission). The Commission invites comments from the public regarding the application of current Federal standards for ensuring equal opportunity for men and women and boys and girls to participate in athletics under Title IX of the Education Amendments of 1972 ("Title IX"). The meeting will take place in San Diego, California.

Individuals who will need accommodations for a disability in order to attend the meetings should notify the Commission office no later than November 13, 2002. We will attempt to meet requests after this date, but cannot guarantee availability of the requested accommodation. The meeting site is accessible to individuals with disabilities.

Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

DATES: November 20–21, 2002.

Location: Wyndham San Diego at Emerald Park Hotel, 400 West Broadway, San Diego, California, 92101.

Times: November 20: 9 a.m.–12:30 p.m., 2 p.m.–5 p.m. November 21: 9 a.m.–1 p.m.

Meeting Format: This meeting will be held according to the following schedule:

1. Date: November 20, 2002, Time: 9 a.m.–12:30 p.m., 2 p.m.–5 p.m.

2. Date: November 21, 2002, Time: 9 a.m.–1 p.m.

Attendees: If you would like to attend any or all of the above listed meetings, we ask that you register with the Commission office by email or fax to the address listed under **ADDRESSES.** Please provide us with your name and contact information.

Participants: The meeting scheduled for November 20, 2002, will begin with presentations from panels of invited speakers. After the presentations by invited speakers, there will be time reserved for comments from the public.

The meeting scheduled for November 21, 2002, will consist of review and discussion by the Commissioners of the information from the previous public meetings in preparation for the Commission's forthcoming report to the Secretary of Education. The public is invited to observe this meeting; however there will not be opportunity for public comment.

If you are interested in participating in the public comment period to present comments on the Federal standards for ensuring equal opportunity for men and

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women to participate in athletics under Title IX at this meeting, you are requested to reserve time on the agenda of the meeting by contacting the Commission office by email or fax.

We request that you submit a request to the Commission office by email or fax. Please include your name, the organization you represent if appropriate, and a brief description of the issue you would like to present. Participants will be allowed approximately three to five minutes to present their comments, depending on the number of individuals who reserve time on the agenda. At the meeting, participants are also encouraged to submit two written copies of their comments. Persons interested in making comments are encouraged to address the issues and questions discussed under **SUPPLEMENTARY INFORMATION.**

Given the expected number of individuals interested in providing comments at the meetings, reservations for presenting comments should be made as soon as possible. Persons who are unable to obtain reservations to speak during the meetings are encouraged to submit written comments. Written comments will be accepted at each meeting site or may be mailed to the Commission at the address listed under **ADDRESSES.**

In addition to making reservations, individuals attending the public meetings, for security purposes, must be prepared to show photo identification in order to enter the meeting location.

Request for Written Comments: In addition to soliciting input during the public meetings, we invite the public to submit written comments relevant to the Commission.

DATES: We would like to receive your written comments on the Act by November 29, 2002.

ADDRESSES: Submit all comments to the Commission using one of the following methods:

1. *Internet.* We encourage you to send your comments through the Internet to the following address: *OpportunityinAthletics@ed.gov.*

2. *Mail.* You may submit your comments to The Secretary of Education's Commission on Opportunity in Athletics, 400 Maryland Avenue, SW., ROB–3 Room 3060, Washington, DC 20202. Due to delays in mail delivery caused by heightened security, please allow adequate time for the mail to be received.

3. *Facsimile.* You may submit comments by facsimile at (202) 260–4560.

FOR FURTHER INFORMATION CONTACT: See the Commission address under the **ADDRESSES** section of this notice. View the Commission's web site at: *http://www.ed.gov/inits/commissionsboards/athletics.* The Commission office number is 202–708–7417.

SUPPLEMENTARY INFORMATION: The nation is commemorating the 30th anniversary of the passage of Title IX, the landmark legislation prohibiting recipients of Federal funds from discriminating on the basis of sex. Since this legislation was enacted, there has been a dramatic increase in the number of women participating in athletics at the high school and college levels. The Secretary of Education has determined that this anniversary provides an appropriate time to review the application of Title IX to educational institutions' efforts to provide equal opportunity in athletics to women and men. In order to do so, the Secretary established the Commission on Opportunity in Athletics. The Commission will produce a report no later than January 31, 2003, outlining its findings relative to the opportunities for men and women in athletics in order to improve the effectiveness of Title IX.

Comments are encouraged on the following priority areas:

1. Are Title IX standards for assessing equal opportunity in athletics working to promote opportunities for male and female athletes?

2. Is there adequate Title IX guidance that enables colleges and school districts to know what is expected of them and to plan for an athletic program that effectively meets the needs and interests of their students?

3. Is further guidance or are other steps needed at the junior and senior high school levels where the availability or absence of opportunities will critically affect the prospective interests and abilities of student athletes when they reach college age?

4. How should activities such as cheerleading or bowling factor into the analysis of equitable opportunities?

5. How do revenue producing and large-roster teams affect the provision of equal athletic opportunities? The Department has heard from some parties that whereas some men athletes will "walk-on" to intercollegiate teams—without athletic financial aid and without having been recruited—women rarely do this. Is this accurate and, if so, what are its implications for Title IX analysis?

6. In what ways do opportunities in other sports venues, such as the Olympics, professional leagues, and community recreation programs, interact with the obligations of colleges and school districts to provide equal athletic opportunity? What are the implications for Title IX?

7. Apart from Title IX enforcement, are there other efforts to promote athletic opportunities for male and female students that the Department might support, such as public-private partnerships to support the efforts of schools and colleges in this area?

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To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

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Dated: November 1, 2002.

Rod Paige,

Secretary of Education.

[FR Doc. 02–28288 Filed 11–6–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; List of Correspondence

AGENCY: Department of Education.

ACTION: List of correspondence from April 1, 2002 through June 30, 2002.

SUMMARY: The Secretary is publishing the following list pursuant to section 607(d) of the Individuals with Disabilities Education Act (IDEA). Under section 607(d) of IDEA, the Secretary is required, on a quarterly basis, to publish in the **Federal Register** a list of correspondence from the Department of Education received by individuals during the previous quarter that describes the interpretations of the Department of Education of IDEA or the regulations that implement IDEA.

FOR FURTHER INFORMATION CONTACT: Melisande Lee or JoLeta Reynolds. Telephone: (202) 205–5507.

If you use a telecommunications device for the deaf (TDD) you may call (202) 205–5637 or the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain a copy of this notice in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to Katie Mincey, Director of the Alternate Format Center. Telephone: (202) 205–8113.

SUPPLEMENTARY INFORMATION:

The following list identifies correspondence from the Department issued from April 1, 2002 through June 30, 2002.

Included on the list are those letters that contain interpretations of the requirements of IDEA and its implementing regulations, as well as letters and other documents that the Department believes will assist the public in understanding the requirements of the law and its regulations. The date and topic addressed by a letter are identified, and summary information is also provided, as appropriate. To protect the privacy interests of the individual or individuals involved, personally identifiable information has been deleted, as appropriate.

Part A—General Provisions

Section 602—Definitions.

Topic Addressed: Special Education AND Related Services

- Letter dated April 19, 2002 to individual, (personally identifiable information redacted), regarding the circumstances under which transportation must be provided as a related service; and clarifying that IDEA does not address whether parents are entitled to reimbursement for transporting their child if transportation is not a required related service on the individualized education program.

Part B—Assistance for Education of All Children With Disabilities

Section 611—Authorization; Allotment; Use of Funds; Authorization of Appropriations.

Topic Addressed: Distribution of Funds

- OSEP memorandum 02–06 dated April 26, 2002, regarding implementation of the new funding formula under IDEA, specifically the year of age cohorts for which a free appropriate public education (FAPE) is ensured.

Topic Addressed: Use of Funds

- Letter dated May 22, 2002 to Louisiana Department of Education, Division of Appropriation Control Director Kitty Littlejohn regarding the ability to add program income, generated from registration fees assessed on participants at conferences conducted by the State Department of Education, to the IDEA Part B grant award.

Section 612—State Eligibility.

Topic Addressed: Condition of Assistance and Annual Count

- Letter dated April 2, 2002 to individual, (personally identifiable information redacted), clarifying that (1) the Florida Department of Education (FDE) operates a one-tier due process system; (2) the FDE is revising its eligibility documents which will be reviewed by the Office of Special Education Programs; (3) the FDE is developing a State Improvement Plan; and (4) a school district may include in its annual count children placed by their parents in private schools through Florida's program of Scholarships to Public or Private Schools of Choice for Students with Disabilities if these children are being provided special education or related services under 34 CFR 300.452–300.462.

Topic Addressed: State Educational Agency General Supervisory Authority

- Letter dated June 27, 2002 to Dina O. Harris, Esq., John F. Walsh, Esq. and Arizona Assistant Attorney General Kacey Gregson, regarding the ability of a State educational agency (SEA) to reduce or withhold funds from a local educational agency (LEA) that is not meeting its obligation to provide FAPE to all students with disabilities it is responsible for serving.

Topic Addressed: Personnel Standards

- Letter dated April 2, 2002 to G. Emerson Dickman, Esquire, clarifying requirements regarding qualifications of personnel under both the IDEA and the No Child Left Behind Act (NCLB Act) and a parent's right to be informed about the qualifications of individuals providing services to a child.

Section 614—Evaluations, Eligibility Determinations, Individualized Education Programs, and Educational Placements

Topic Addressed: Individualized Education Programs

- Letter dated June 27, 2002 to Illinois State Board of Education Director of Special Education Dr. Anthony E. Sims, clarifying that, although the Part B "at no cost" requirement does not preclude incidental fees normally charged to nondisabled students or their parents as part of the regular education program, it would be impermissible for a public agency to charge parents a fee for extended school year services if summer school services, for which incidental fees are charged, are not a part of the extended school year services provided to the student.

Section 615—Procedural Safeguards

Topic Addressed: Timelines For Appeals

- Letter dated June 26, 2002 to Connecticut Department of Education Bureau Chief George P. Dowaliby clarifying that to require that issues be raised at a planning and placement team meeting before they can be addressed at a due process hearing establishes impermissible notice and exhaustion burdens inconsistent with the IDEA and its implementing regulations.

- Letters dated June 25, 2002 to Minnesota Department of Children Families and Learning Director of Special Education Norena A. Hale, Mississippi State Department of Education Program Improvement and Outreach Bureau Director Dr. Melody Bounds, and Missouri Department of Elementary and Secondary Education Coordinator of Special Education Services Melodie Friedebach, clarifying that the States must revise or delete their 30-day time limits because Circuit Court decisions applicable to these States have specifically rejected a 30-day time for appealing due process hearing decisions since it conflicts with the policies and purposes of the IDEA.

- Letter dated June 4, 2002 to Arkansas Department of Education Associate Director of Special Education Marcia Harding, requesting that Arkansas revise its 30-day time limit for filing a civil action under IDEA to be consistent with a case involving the Arkansas time limit.

- Letters dated June 4, 2002 to Minnesota Department of Children, Families and Learning Director of Special Education Norena A. Hale, Mississippi State Department of Education Program Improvement and Outreach Bureau Director Dr. Melody Bounds, Missouri Department of Elementary and Secondary Education Coordinator of Special Education Services Melodie Friedebach, and Nebraska Department of Education Special Populations Administrator Gary M. Sherman, requesting that the States either explain why case law rejecting a 30-day time limit for judicial review of IDEA claims is not applicable to civil actions in their States or revise their 30-day time limits.

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Part C—Infants and Toddlers with Disabilities

Section 636—Individualized Family Service Plan

Topic Addressed: Early Intervention Services

• Letter dated June 11, 2002 to Kentucky Acting Part C Coordinator Ms. Trish Howard, clarifying that (1) guidelines established by a State to assist teams in developing an individualized family service plan (IFSP) may not be implemented in a manner that restricts the authority and responsibility of the IFSP team and (2) that the IFSP team makes the final determination of the frequency and intensity of early intervention services needed by the child.

Other Letters Relevant to the Administration of IDEA Programs

Topic Addressed: Free Appropriate Public Education

• Dear Colleague letter dated June 14, 2002 regarding preliminary guidance for programs which must be implemented by the 2002–2003 school year on public school choice, supplemental education services, and collective bargaining agreements under the provisions of the NCLB Act.

• Letter dated May 10, 2002 to Florida Department of Education Bureau of Instructional Support and Community Services Chief Shan Goff, regarding Florida's obligation under Federal civil rights laws to ensure that its Scholarship Program for Students with Disabilities is administered in a nondiscriminatory manner.

Topic Addressed: Personnel Standards

• Letter dated April 30, 2002 to Alabama Superintendent of Education Edward R. Richardson, clarifying Title I paraprofessional requirements under the NCLB Act.

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(Catalog of Federal Domestic Assistance Number 84.027, Assistance to States for Education of Children with Disabilities)

Dated: October 31, 2002.

Robert H. Pasternack,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 02–28363 Filed 11–6–02; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7405–8]

Agency Information Collection Activities: Proposed Collection; Comment Request: Federal Plan Requirements for Municipal Solid Waste Landfills That Commenced Construction Prior to May 30, 1991 and Have Not Been Modified or Reconstructed Since May 30, 1991; EPA ICR Number 1893.03; OMB Control Number 2060–0430; Expiration Date February 28, 2003

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): Federal Plan Requirements for Municipal Solid Waste Landfills That Commenced Construction Prior to May 30, 1991 and Have Not Been Modified or Reconstructed Since May 30, 1991; EPA ICR Number 1893.03; OMB Control Number 2060–0430; expiration date February 28, 2003. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before January 6, 2003.

ADDRESSES: Compliance Assessment and Media Programs Division, Office of Compliance, Office of Enforcement and Compliance Assurance, Mail Code 2223A, United States Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. A hard copy of a specific ICR may be obtained without charge by calling or sending an E-mail to the contact person listed in this notice.

FOR FURTHER INFORMATION CONTACT: Sharie A. Centilla of the Office of Compliance at (202) 564–0697 or via E-mail at *Centilla.Sharie@epa.gov* and ask for EPA ICR Number 1893.03; OMB Control Number 2060–0430; expiration date February 28, 2003.

SUPPLEMENTARY INFORMATION:

Title: Federal Plan Requirements for Municipal Solid Waste Landfills That Commenced Construction Prior to May 30, 1991 and Have Not Been Modified or Reconstructed Since May 30, 1991 (40 CFR Part 62, Subpart GGG); EPA ICR Number 1893.03; OMB Control Number 2060–0430; expiration date February 28, 2003.

Affected Entities: Entities potentially affected by this action are owners or operators of existing municipal solid waste landfills that are located in any State for which a State plan has not been approved and become effective.

Abstract: The Agency has determined that the emissions from municipal solid waste landfills cause, or contribute significantly to air pollution that may reasonably be anticipated to endanger public health or welfare. The Administrator is charged under Section 111 of the Clean Air Act (CAA) to establish procedures for each State to submit a plan that would establish standards of performance for any existing source for any air pollutant. If the State has not developed such a plan, then the Administrator may require any person who owns or operates any emission source or is subject to any requirements of the CAA, to establish and maintain reports; make reports; install, use, and maintain monitoring equipment or methods; sample emissions; and provide any other information as required.

All owners and operators of existing municipal solid waste landfills must submit an initial design capacity report. If the design capacity of an existing landfill is equal to or greater than 2,500,000 megagrams in weight and equal to or greater than 2,500,000 cubic meters in volume, the owner or operator is required to determine the facility's annual, nonmethane, organic compound (NMOC) emission rate. Based on a three-tier emission rate calculation system, the owner or operator is required to either install a collection and control system, or perform emission test using the criteria specified at the next tier level. If the NMOC emission rate is determined to be less than 50 megagrams per year, as determined by Tier 1, Tier 2, or Tier 3 emission rate calculations, no further calculations or testing is required for that year.

For landfills required to install collection and control systems, submission of a collection and control system design plan is required. After review of the design plan and installation of the collections and control system, and initial performance test and report for the system is required. There after, annual compliance reports are required. Owners or operators are required to keep continuous monitoring records of the parameters reported in the initial performance report and records of monthly monitoring of surface methane concentration.

Burden Statement: The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) enhance the quality, utility, and clarity of the information to be collected; and

(iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

In the previously approved ICR, the estimated number of respondents for this information collection was 3,837 with 384 responses per year. The annual industry reporting and recordkeeping burden for this collection of information was 15,110 hours. On the average, each respondent reported approximately 0.10 times per year and approximately 39 hours were spent preparing each response. The total annual reporting and recordkeeping cost burden for this collection of information was $890,000. This included an annual cost of $788,000 associated with capital/startup costs and $102,000 associated with the annual operation and maintenance costs.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: October 29, 2002.

Michael M. Stahl,

Director, Office of Compliance.

[FR Doc. 02–28355 Filed 11–6–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7405–4]

Notice of Public Scoping Meeting on the Preparation of an Environmental Impact Statement (EIS) on the Federal Funding, Construction, Operation and Monitoring of a Coastal Wetlands Restoration Project, the Mississippi River Water Reintroduction into Maurepas Swamp

On April 26, 2002, the U.S. Environmental Protection Agency, Region 6 (EPA) published a Notice of Intent (NOI) in the **Federal Register** that it was planning to develop an environmental impact statement on the restoration project as the Federal member of the Task Force created by the Coastal Wetlands Planning, Protection and Restoration Act, Public Law 101–646 (CWPPRA) designated to carry out the project. The EPA will hold a Scoping Meeting for the EIS on December 11, 2002, at the Garyville/Mt. Airy Magnet School, 240 Highway 54, in Garyville, LA 70051. Formal meeting presentations will begin at 6:30 p.m.; the meeting room will be open with poster displays at 5:30 p.m. Individuals, groups, officials, and Federal, State, Tribal, and local agencies are invited to participate in the scoping process to help determine impacts on resources, issues, and alternatives to be examined in detail in the EIS.

Purpose: EPA has determined that the proposed wetlands restoration effort is a Major Federal Action significantly impacting the human environment. The purpose of the EIS is to ensure that decisions are made in accordance with the policies and purposes of the National Environmental Policy Act. The EIS will be considered by the CWPPRA Task Force in its decisions on funding, construction, operations, monitoring and on alternative features and activities associated with carrying out the project.

Summary of Project: The proposed action provides for the reintroduction of Mississippi River water into swamps south of Lake Maurepas in Louisiana for the purpose of restoring the ecological health and productivity of the swamps. Over time, hydrologic modifications to the riverine system have eliminated the natural inputs of freshwater, nutrients, and sediment that built and maintained the wetlands. These swamps are stressed and dying due to saltwater intrusion and excessive flooding, which is due to subsidence and insufficient accumulation of sediment. The project will divert in excess of 1,500 cubic feet per second of fresh river water through a proposed box-culvert diversion structure in the levee of the Mississippi River, then through an outflow channel for a distance of approximately five miles, and into the Maurepas swamps. The presently proposed water diversion would be constructed in the Garyville, Louisiana area, connecting to the existing Hope Canal north of U.S. Highway 61. As part of this alternative, the Hope Canal is proposed to be enlarged in order to accommodate the estimated flows. The project is estimated to benefit more than 36,000 acres of cypress-tupelo swamps by increasing input of freshwater, sediments, nutrients, and oxygen. The EIS will consider impacts of this project with existing and/or proposed flood control measures of the foreseeable future. Efforts will be made to ensure that severity of existing local drainage problems is not increased as a result of this project. Information from reconnaissance level studies for project development included preliminary site reviews; hydrologic modeling of existing conditions and basic diversion scenarios; baseline ecological field studies; and surveys of elevations and cross-sections, and will be provided in the EIS.

Alternative Actions: The CWPPRA Task Force may determine to fund and construct the restoration project; the CWPPRA Task Force may deny funding and construction of the restoration project; or, the Task Force may determine to take no final action until additional funds are available. The EIS will be utilized in other actions such as the Clean Water Act Section 404 Permit which (1) may be issued as requested, (2) may be issued with conditions, or (3) may be denied.

To Submit Scoping Comments, To Request Additional Information, or To Be Placed on the EIS Mailing List, Contact: Jeanene Peckham at EPA Water Quality Protection Field Office, 707 Florida Blvd., Suite B–21, Baton Rouge, LA, 70801; telephone (225) 389–0736, e-mail *peckham.jeanene@epa.gov.*

Estimated Date for Release of Draft EIS: Spring 2004.

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Responsible Official: Gregg A. Cooke, Regional Administrator.

Oscar Ramirez, Jr.,

Acting Director, Water Quality Protection Division (6WQ).

[FR Doc. 02–28352 Filed 11–6–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7405–9]

Notification of the National Advisory Council for Environmental Policy and Technology (NACEPT) Standing Committee on Compliance Assistance Meeting; Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification of public NACEPT standing committee on compliance assistance meeting on December 3, 2002.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the U.S. Environmental Protection Agency (EPA) will hold an open meeting of the NACEPT Standing Committee on Compliance Assistance (Committee) on Tuesday, December 3, 2002 from 8 a.m. to 4 p.m. The meeting will be held at the Adams Mark Hotel at 111 Pecan Street East, San Antonio, Texas 78205. Seating at the meeting will be on a first-come basis and limited time will be provided for public comment. The meeting will focus on the areas of the Compliance Assistance program on which the Committee has been asked to advise the EPA. These are: (1) Strengthening the national compliance assistance network by helping identify opportunities to enhance communication among compliance assistance providers and by promoting collaboration in compliance assistance planning and tool development; (2) developing and testing performance measurement systems to demonstrate the effectiveness and environmental outcomes of compliance assistance; and (3) acting as a sounding board to provide feedback on compliance assistance policies, strategies or other related matters. A formal agenda will be available at the meeting.

SUPPLEMENTARY INFORMATION: NACEPT is a federal advisory committee under the Federal Advisory Committee Act, Public Law 92–463. NACEPT provides advice and recommendations to the EPA Administrator and other EPA officials on a broad range of domestic and international environmental policy issues. NACEPT consists of a representative cross-section of EPA's partners and principal constituents who provide advice and recommendations on policy issues and serve as a sounding board for new strategies. Over the last two years, EPA has undertaken a number of actions to improve our compliance assistance activities. To ensure that the Agency's efforts to improve compliance assistance are implemented in a way that continues to reflect stakeholder needs, NACEPT created a new Standing Committee on Compliance Assistance. This will provide a continuing Federal Advisory Committee forum from which the EPA can continue to receive valuable stakeholder advice and recommendations on compliance assistance activities. For further information concerning the NACEPT Standing Committee on Compliance Assistance, including the upcoming meeting, contact Joanne Berman, Designated Federal Officer (DFO), on (202) 564–7064, or e-mail: *berman.joanne@epa.gov.*

Inspection of Subcommittee Documents: Documents relating to the above topics will be publicly available at the meeting.

Dated: October 31, 2002.

Frederick F. Stiehl,

Acting Director, Office of Compliance.

[FR Doc. 02–28354 Filed 11–6–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0301; FRL–7279–4]

Experimental Use Permit; Receipt of Application

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of an application 67979–EUP–E from Syngenta Seeds requesting an experimental use permit (EUP) for the plant-incorporated protectant *Bacillus thuringiensis* VIP3A. The Agency has determined that the application may be of regional and national significance. Therefore, in accordance with 40 CFR 172.11(a), the Agency is soliciting comments on this application.

DATES: Comments, identified by docket ID number OPP–2002–0301, must be received on or before December 9, 2002.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Leonard Cole, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5412; e-mail address: cole.leonard@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to those persons who are interested in agricultural biotechnology or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA), or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of This Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2002–0301. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at http://www.epa.gov/fedrgstr/.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at http://www.epa.gov/edocket, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2002–0301. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to opp-docket@epa.gov, Attention: Docket ID Number OPP–2002–0301. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency (7502C), 1200 Pennsylvania Ave., NW., Washington, DC, 20460–0001, Attention: Docket ID Number OPP–2002–0301.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA., Attention: Docket ID Number OPP–2002–0301. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI To the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI.

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Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the notice.
7. Make sure to submit your comments by the deadline in this document.
8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background

Syngenta Seeds, 3054 Cornwallis Road, Research Triangle Park, North Carolina 27709–2257, has applied for an EUP for field testing of the plant-incorporated protectant *Bacillus thuringiensis* VIP3A insect control protein as expressed in cotton plants. The proposed states are Alabama, Arizona, Arkansas, California, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, and Texas. The total acreage for this plant-incorporated protectant EUP will be 904.5.

III. What Action is the Agency Taking?

Following the review of the Syngenta Seeds application and any comments and data received in response to this notice, EPA will decide whether to issue or deny the EUP request for this EUP program, and if issued, the conditions under which it is to be conducted. Any issuance of an EUP will be announced in the **Federal Register**.

IV. What is the Agency's Authority for Taking this Action?

The Agency's authority for taking this action is under 40 CFR part 172.

List of Subjects

Environmental protection, Experimental use permits.

Dated: October 29, 2002.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 02–28356 Filed 11–6–02; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL RESERVE SYSTEM

[Docket No. R–1133]

Federal Reserve Bank Services

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice.

SUMMARY: The Board has approved the fee schedules for Federal Reserve priced services and electronic connections and a private-sector adjustment factor (PSAF) for 2003 of $171.7 million. These actions were taken in accordance with the requirements of the Monetary Control Act of 1980, which requires that, over the long run, fees for Federal Reserve priced services be established on the basis of all direct and indirect costs, including the PSAF.

DATES: The new fee schedules become effective January 2, 2003.

FOR FURTHER INFORMATION CONTACT: For questions regarding the fee schedules: Joseph Baressi, Financial Services Analyst, (202/452–3959); William Driscoll, Financial Services Analyst, check payments, (202/452–3117); Edwin Lucio, Financial Services Analyst, ACH payments, (202/736–5636); Gregory Cannella, Financial Services Analyst, Fedwire funds transfer, Fedwire securities, and noncash collection services, (202/530–6214); Marybeth Butkus, Senior Financial Services Analyst, special cash services, (202/452–3917); or Amy Pierce, Senior IT Analyst, electronic connections, (202/736–5675), Division of Reserve Bank Operations and Payment Systems. For questions regarding the PSAF: Brenda Richards, Senior Financial Analyst, (202/452–2753) or Gregory Evans, Manager, Financial Accounting, (202/452–3945), Division of Reserve Bank Operations and Payment Systems. For users of Telecommunications Device for the Deaf (TDD) *only*, please call 202/263–4869. Copies of the 2003 fee schedules for the check service are available from the Board, the Federal Reserve Banks, or the Reserve Banks' financial services Web site at *http://www.frbservices.org*.

SUPPLEMENTARY INFORMATION:

I. Priced Services

A. Discussion

Over the period 1992 through 2001, the Reserve Banks recovered 99.8 percent of their total costs for providing priced services, including special project costs, imputed expenses, and targeted after-tax profits or return on equity (ROE).[1]

Table 1 summarizes the priced services' actual, estimated, and budgeted cost recovery rates for 2001, 2002, and 2003 respectively. Cost recovery is estimated to be 92.2 percent in 2002 and budgeted to be 94.4 percent in 2003. The aggregate cost-recovery rates are heavily influenced by the performance of the check service, which accounts for approximately 85 percent of the total cost of priced services. The electronic services (FedACH, Fedwire funds transfer, Fedwire securities, and national settlement) account for approximately 15 percent of costs, while noncash and special cash services represent a de minimis amount.

[1] Imputed costs, such as taxes that would have been paid and return on equity that would have been provided had the services been furnished by a private business firm, are referred to as the private-sector adjustment factor (PSAF). The ten-year recovery rate is based upon the pro forma income statements for Federal Reserve priced services published in the Board's *Annual Report*. Beginning in 2000, the PSAF included additional financing costs associated with pension assets attributable to priced services. This ten-year cost recovery rate has been computed as if these costs were not included in the PSAF calculations prior to 2000. If these costs were included in the calculations, and assuming that the Reserve Banks would not have made any contemporaneous cost or revenue adjustments, the 10-year recovery rate would be 98.7 percent.

TABLE 1.—PRO FORMA COST AND REVENUE PERFORMANCE

[$ millions]

Year	1[a] Revenue	2[b] Total expense	3 Net income (ROE) [1–2]	4[c] Target ROE	5 Recovery rate after target ROE [1/(2+4)]
2001	960.4	901.9	58.5	109.2	95.0%
2002 (Estimate)	912.9	898.0	14.8	92.5	92.2%
2003 (Budget)	933.7	883.9	49.8	104.7	94.4%

[a] Includes net income on clearing balances (NICB). Clearing balances, net of imputed reserve requirements and balances used to finance priced-services assets, are assumed to be invested in three-month Treasury bills. NICB equals the income from this imputed investment less earnings credits granted to clearing balance holders at the federal funds rate.

[b] The calculation of total expense includes operating expenses and imputed expenses. Imputed expenses include taxes, FDIC insurance, Board of Governors priced services expenses, the cost of float, and interest on imputed debt, if any. Credits related to the accounting for pensions under FAS 87 are also included.

[c] Target ROE is the ROE included in the PSAF.

Table 2 presents an overview of the 2001 actual, budgeted 2002, estimated 2002, and projected 2003 cost recovery performance by category of priced-service.

TABLE 2.—PRICED SERVICES COST RECOVERY

[Percent]

Priced service	2001 Actual	2002 Budget	2002 Estimate	2003 Budget
All services	95.0	96.4	92.2	94.4
Check	93.9	95.5	90.9	93.0
ACH	103.7	101.4	102.5	101.6
Fedwire funds transfer	99.5	101.1	95.9	104.1
Fedwire securities	90.2	100.4	98.7	104.9
Noncash collection	111.9	94.3	93.1	110.3
Special cash	103.3	103.4	91.1	77.5

1. *2002 Estimated Performance*—In 2002, the Reserve Banks estimate that they will recover 92.2 percent of the costs of providing priced services, compared with the budgeted recovery rate of 96.4 percent. The Reserve Banks expect to recover fully actual and imputed expenses, earning net income of $14.8 million, which is $77.7 million less than the budgeted net income, or ROE, of $92.5 million. The shortfall from the 2002 budget is largely driven by declining check volume. The Reserve Banks estimate that check revenue in 2002 will be $45.3 million below budget. Though the Reserve Banks have taken steps to reduce check operating costs, these reductions are largely offset by increases in non-operating factors.

Forward-processed check volume in 2002 was budgeted to be 2.9 percent higher than in 2001. The Reserve Banks now estimate, however, that 2002 volume will be 1.8 percent lower than in 2001. Even this estimate may be optimistic, as processed check volume through August 2002 is 3.4 percent below 2001 volume for the same period. The deterioration in the Reserve Banks' check volume appears to be consistent with nationwide trends away from check use and toward greater use of electronic payment methods. The Federal Reserve System's recent retail payments research shows that the number of checks written in the United States appears to have been declining since the mid-1990s.[2] Lower volumes in 2002 may also have been influenced by slower growth in the overall economy.

2. *2003 Projected Performance*—For 2003, the Reserve Banks project a priced services cost recovery rate of 94.4 percent, with net income of $49.8 million, as compared to target net income, or ROE, of $104.7 million. The primary factor affecting 2003 cost recovery is the continued check volume decline.

The primary risks to the Reserve Banks' ability to achieve their budget targets are (1) cost overruns in the check modernization projects, (2) significantly lower-than-projected returns on pension assets, and (3) a steeper decline in the Reserve Banks' check volume than the projected 2.8 percent annual decline.[3] To address the apparent continuing decline in check volumes, the Reserve Banks are developing a business and operational strategy that will position the service to achieve its financial and payment system objectives over the long term.

3. *2003 Pricing*—The following summarizes the Reserve Banks' changes in fee structures and levels for priced services:

Check

- The Reserve Banks are raising fees for forward-collection check products 2.5 percent, return check products 4.0 percent, and payor-bank check products 4.8 percent compared with January 2002 fees.

[2] Gerdes, Geoffrey R. and Jack K. Walton II, "The Use of Checks and Other Noncash Payment Instruments in the United States," Federal Reserve Bulletin, August 2002, pp. 360–374. (This article is available on line at *www.federalreserve.gov/pubs/bulletin/default.htm*). During the late 1990s, the volume of checks processed by the Reserve Banks rose, albeit slowly, which implies that the proportion of interbank checks cleared through the Reserve Banks increased.

[3] Check modernization is a multiyear initiative to standardize the processing of checks at all Reserve Banks, adopt a common platform for processing and researching check-adjustment cases, create a national system for archiving and retrieving check images, and deliver check services to depository institutions using web technology. Check modernization should improve the operational efficiency and cost-effectiveness of the Reserve Banks' check services once fully implemented. It will also improve the consistency, quality, and uniformity of the check services that Reserve Banks deliver to their customers and allow new services to be developed and deployed more quickly.

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- Since 1996, the price index for check services has increased 31 percent.[4]

FedACH

- The Reserve Banks will (1) Retain current per-item origination fees for items in large files, (2) reduce per-item origination fees for items in small files from $0.004 to $0.003, and (3) reduce per-item receipt fees (for all items) from $0.0035 to $0.0025.[5]
- The ACH price index has decreased 61 percent since 1996.

Fedwire Funds Transfer and National Settlement Services[6]

- The Reserve Banks will reduce fees in all volume tiers: from $0.31 to $0.30 per transfer if less than 2,501 transfers per month, from $0.22 to $0.20 per transfer if between 2,501 and 80,000 transfers per month, and from $0.15 to $0.10 per transfer if more than 80,000 transfers per month.
- The price index for Fedwire funds transfer and national settlement services has decreased 60 percent since 1996.

Fedwire Securities Service

- The Reserve Banks will reduce the on-line transfer origination and receipt fees from $0.66 to $0.40.
- The price index for the Fedwire securities service has decreased 34 percent since 1996.

4. *2003 Price Index*—The price index for electronic payment services (ACH, Fedwire funds transfer and national settlement, Fedwire securities, and electronic check) and electronic connections is projected to decline 5 percent in 2003. By contrast, the index for paper-based payment services (check, special cash, and noncash collection) is expected to increase about 3 percent in 2003. The overall 2003 price index for all Federal Reserve priced services is projected to increase less than 1 percent. Since 1996, the overall price index has declined by about 2 percent. Figure 1 compares the Federal Reserve's price index for priced services with the GDP price deflator.

FIGURE 1
FEDERAL RESERVE PRICE INDEX
Chained Fisher ideal index compared with GDP price deflator

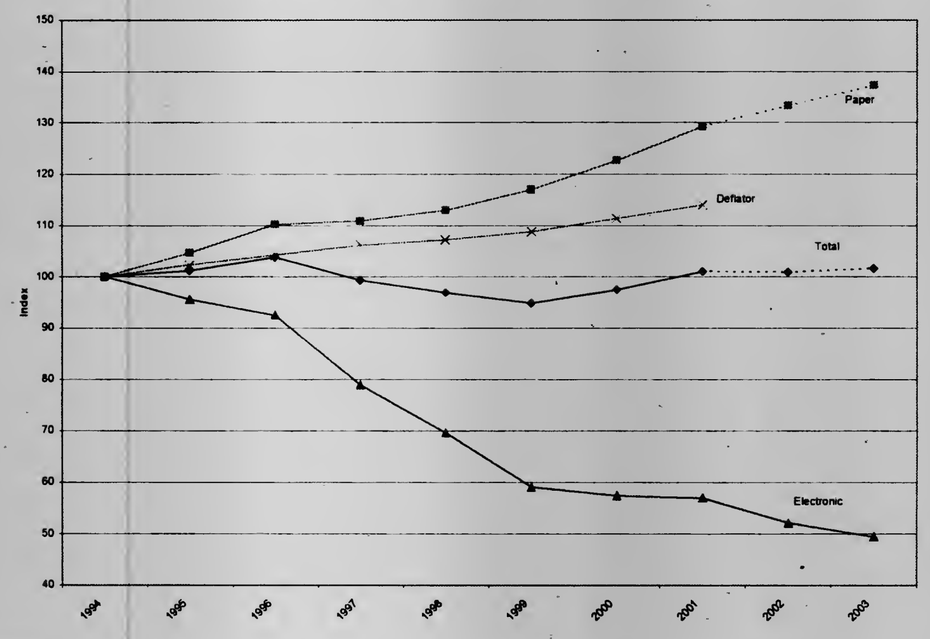

B. Check

Table 3 shows the actual 2001, estimated 2002, and projected 2003 cost-recovery performance for the check service.

[4] The price index estimates are based on a chained Fisher ideal price index. This index is not adjusted for quality changes in Federal Reserve priced services. Data elements used in calculating the index include explicit fee revenue from priced services and volumes associated with those services. For 2003, the year-over-year percentage change in the index is based on a comparison of the 2003 projections with the 2002 estimates for priced services revenues and volumes. The price index is calculated based on 1994–2001 actual, 2002 estimated, and 2003 projected revenues and volumes.

[5] Files containing fewer than 2,500 items are small; files with 2,500 or more items are large.

[6] The name of the net settlement service was changed to national settlement service effective August 2002.

TABLE 3.—CHECK PRO FORMA COST AND REVENUE PERFORMANCE
[$ millions]

Year	1 Revenue	2 Total expense	3 Net income (ROE) [1–2]	4 Target ROE	5 Recovery rate after target ROE [1/(2+4)]
2001	793.2	754.4	38.9	90.2	93.9%
2002 (Estimate)	760.0	758.3	1.7	78.2	90.9%
2003 (Budget)	789.0	758.7	30.3	89.4	93.0%

1. *2001 Performance*—The check service recovered 93.9 percent of total costs in 2001, including imputed expenses and targeted ROE, which was below the targeted recovery rate of 97.6 percent. The volume of checks collected decreased 0.5 percent from 2000 levels, partly because of a decline in fine-sort volumes as banks presented more checks directly. Revenue grew from 2000 levels primarily because of price increases, but revenue was $22 million below the budgeted amount. Costs exceeded the budgeted amount by $18.5 million because of lower-than-budgeted pension credits, somewhat offset by lower-than-budgeted check modernization costs.

2. *2002 Performance*—Through August 2002, the check service has recovered 93.0 percent of total costs, including imputed expenses and targeted ROE. For the full year, the Reserve Banks expect to recover all direct and indirect costs of providing check services and a modest portion of the targeted return on equity. Specifically, the Reserve Banks estimate that the check service will recover 90.9 percent of its total costs for the full year compared with the budgeted 2002 recovery rate of 95.5 percent, amounting to a $39 million shortfall.[7] The lower-than-budgeted recovery rate is primarily due to lower-than-budgeted revenues. Service revenue is estimated to be $57 million below budget, due to lower-than-expected volume in forward-collection, return-collection, and electronic check products. Additionally, in the current low-interest-rate environment, depository institutions select lower-priced, later-availability check products. Major factors are summarized in Table 4.

TABLE 4.—CHECK 2002 BUDGET VS. 2002 ESTIMATE
[millions of dollars]

	Budget	Estimate	Variance
Operating revenue	820.0	763.3	−56.7
NICB	−14.7	−3.3	−11.4
Total revenue	805.3	760.0	−45.3
Operating costs	692.2	681.0	11.3
Check modernization	106.2	101.4	4.8
Pension credits	−66.6	−41.0	−25.7
PSAF	111.2	95.1	16.1
Total cost	843.0	836.4	6.5
Net revenue	−37.7	−76.5	−38.8
Recovery rate (percent)	95.5	90.9	

Reserve Banks expect lower-than-budgeted pension credits to offset estimated local cost reductions of $27 million. The estimated full-year recovery rate is lower than the rate through August as severance expenses are recognized and data processing and data communications charges increase during the fourth quarter.

The volume of checks handled by the Reserve Banks has declined (as shown in table 5) reflecting a broader market trend in which the number of checks written each year appears to be declining, as discussed in a recent Federal Reserve check study.[8] Year-to-date forward-collection check product volume through August, excluding electronic fine sort volume, declined 3.6 percent, compared with the 0.6 percent increase for the similar period last year.[9] For the full year 2002, the Reserve Banks estimate that forward-processed volume will decline 1.8 percent, compared with a budgeted 2.9 percent growth rate. (The decline is due to lower local volumes, partly offset by higher nonlocal volumes, from both large and small banks.) The full-year rate of decline is less than the decline to date because of recent volume growth in several Districts. There is some risk, however, that the full-year rate of decline may exceed the estimate. Return-check volume has declined 3.8 percent through August 2002, and full-year volume is expected to decline 4.7 percent, as depository institutions seek alternative ways to return checks at

[7] The cost-recovery estimate does not reflect reduced depreciation expense for some check-sorting equipment of approximately $1 million, resulting from a recent System re-evaluation of the useful life of such equipment.

[8] Gerdes, Geoffrey R. and Jack K. Walton II, "The Use of Checks and Other Noncash Payment Instruments in the United States," Federal Reserve Bulletin, August 2002, pp. 360–374.

[9] Electronic fine-sort is a service offered by two Reserve Banks that allows depository institutions to exchange fine-sort information electronically with paper checks to follow. Presentment occurs when the paper checks are delivered.

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lower cost because of the Reserve Banks' continuing price increases for return products.

TABLE 5.—PAPER CHECK PRODUCT VOLUME CHANGES

[percent]

	Budgeted 2002 change	Year-to-date change through August 2002	Estimated 2002 change
Total forward-collection[a]	3.6	−3.6	−1.7
Forward-processed	2.9	−3.4	−1.8
Fine-sort[a]	13.1	−6.5	0.0
Returns	−2.3	−3.8	−4.7

[a] These rates exclude electronic fine-sort volume. Including the electronic fine-sort product, fine-sort volume growth was budgeted to increase 8.7 percent in 2002 and is now estimated to increase 9.0 percent.

Reversing a trend over the past few years, electronic check volumes have declined. Recent data are summarized in table 6. Reserve Banks provide payor banks with electronic check data or images for about 38 percent of the checks they collect. Year-to-date 2002 image volumes have declined about 5 percent, to approximately 884 million check images, which represents about 8.4 percent of all checks collected by the Reserve Banks. The decline in image volume, compared with the target growth of 25.6 percent, is likely due to delays in implementing FedImage services.[10] The Board believes that Reserve Banks' estimates for electronic check service volume for the full year, which reflect a higher rate of growth than experienced through August, may be somewhat optimistic.

TABLE 6.—ELECTRONIC CHECK PRODUCT SHARE AND VOLUME CHANGES

	Volume change through August 2002 (percent)	Estimated 2002 change (percent)	Share of checks collected through August 2002 (percent)
Electronic check presentment	−2.4	−0.2	23.0
Truncation	−6.1	−5.6	5.3
Non-truncation	−0.2	1.5	17.6
Electronic check information	−10.4	−8.8	6.7
Images	−4.8	1.9	8.4

3. *2003 Pricing*—For the coming year, the Reserve Banks will continue to focus on check modernization initiatives to standardize check processing across all Reserve Bank offices. The Reserve Banks will incur significant transition costs associated with these initiatives, at least through 2003 (costs in 2003 are discussed below). These initiatives, however, are expected to reduce steady-state production costs and improve service over the long term.

In 2003, fees for all check products are increasing 2.8 percent on a volume-weighted basis compared with current fees, as shown in table 7.[11] Forward-collection fee increases of 2.5 percent are composed of an increase in forward-processing cash letter fees of 10 percent and per-item fee increases of 1.5 percent. The average volume-weighted fees for payor bank services will increase 4.8 percent compared with current fees. Fees for electronic check products are increasing faster than fees for paper check products because the Reserve Banks are instituting more consistent fees for these products that better reflect the value they provide to depository institution customers.

TABLE 7.—2003 FEE CHANGES

[percent]

Product	Fee change
Total check service	2.8
Forward-collection	2.5
Returns	4.0
Payor bank services	4.8
Electronic check presentment	7.1
Electronic check information	7.3
Image services	4.0

Table 8 summarizes ranges of selected check fees for 2002 and 2003, and shows 2003 price changes in bold type.

TABLE 8.—SELECTED CHECK FEES

	Current fee ranges	2003 fee ranges
Items:	(per item)	(per item)
Forward-processed:		
City	$0.005 to 0.079	$0.005 to 0.080
RCPC	0.003 to 0.350	0.003 to 0.340
Forward fine-sort:		
City	0.005 to 0.021	0.005 to 0.021
RCPC	0.005 to 0.036	0.005 to 0.036
Qualified returned checks:		
City	0.08 to 0.80	0.08 to 0.80
RCPC	0.10 to 1.10	0.10 to 1.10
Raw returned checks:		
City	1.50 to 5.00	1.50 to 5.00
RCPC	1.30 to 5.00	1.30 to 5.00
Consolidated shipment[a]	0.004 to 0.036	0.004 to 0.036
Cash letters:	(per cash letter)	(per cash letter)
Forward-processed[b]	2.00 to 36.00	2.00 to 37.00
Forward fine-sort	4.00 to 14.00	6.00 to 14.00
Returned checks: raw/qualified	2.25 to 14.00	2.00 to 16.00
Payor bank services:	(Fixed) (per item)	(Fixed) (per item)
MICR information	2–15 0.0030–0.0170	5–15 0.0030–0.0150
Electronic presentment	1–12 0.0005–0.0130	2–15 0.0005–0.0110
Truncation	2–7 0.0020–0.0180	2–7 0.0020–0.0180
Image capture	2–15 0.0020–0.0170	2–15 0.0020–0.0150
Image delivery	Varies[c] 0.0020–0.0080	Varies[c] 0.0020–0.0080
Image archive	N/A 0.0010–0.0060	N/A 0.0007–0.0060
Image retrieval	N/A 0.25–5.00	N/A 0.30–5.00

Note: Bold indicates change from 2002 prices.
[a] Per-item fees for consolidated shipments include a half mill surcharge due to higher fuel costs.
[b] Cash letter fees for forward-processed items transported by the Reserve Banks include a fifty-cent surcharge due to higher fuel costs.
[c] Fixed fee varies by media type.

4. *2003 Projected Cost Recovery*—For 2003, the Reserve Banks project that the check service will recover 93.0 percent of total costs, including imputed expenses, costs associated with the check modernization project, and targeted ROE. In total, the Reserve Banks expect to recover all direct and indirect costs of providing check services, but only a portion of targeted return on equity.

Total adjusted costs before taxes are projected to increase approximately $6.8 million, or 0.8 percent, from estimated 2002 expenses.[12] These costs for 2003 include $102.8 million in costs for the four check modernization projects, representing an increase of $1.5 million over the 2002 estimate. Budgeted 2003 local costs, aside from local check modernization costs and offsets, are $18.2 million lower than 2002 estimated costs, a 3.1 percent reduction, which slightly exceeds the projected percentage decline in forward-processed volume.

Total check revenue is projected to increase $29 million, or 3.8 percent, from the 2002 estimate due to increased fees for payor-bank products and return-check products. (Increases in fees for forward-collection products are projected to be more than offset by lower volumes and shifts to lower-priced products due to low interest rates.) In 2003, revenues from paper-based services, electronic services, and other operating and imputed revenues are expected to represent about 83 percent, 12 percent, and 5 percent, respectively, of the check service's budgeted $789.0 million in revenue.

In 2003, forward-processed check volume is projected to be 14.4 billion, a decrease of 2.7 percent compared with the 2002 estimate, with the decline coming mostly from large banks, perhaps partly due to their customers' shift to electronic payment instruments. Fine-sort check volume is expected to continue to decline by 41 million checks, or 3.7 percent, from the 2002 estimate. Total returns are projected to be 166 million, a decrease of 2.3 percent compared with the 2002 estimate.

The Reserve Banks expect an increase in payor-bank service volumes. The Reserve Banks project electronic presentment volume to increase 5.5 percent in 2003 and truncation volume to increase 0.9 percent. Image services volume is projected to grow 8.4 percent in 2003, compared with an estimated 2002 increase of 1.9 percent. Image volume growth is expected to be driven by the increased functionality of FedImage services (for example, electronic access to archived check images using web technology). MICR information volume is projected to increase 0.2 percent in 2003, compared with a 9 percent decline estimated for 2002.

The Board believes that the greatest risks to achieving the projected cost-recovery rate for the check service of 93.0 percent are (1) challenges in meeting System volume projections and related revenue projections, (2) challenges in reducing local costs as budgeted, (3) potential downward revisions to priced pension credits, and (4) potential check modernization cost overruns.

C. Automated Clearinghouse (ACH)

Table 9 presents the actual 2001, estimated 2002, and projected 2003 cost-recovery performance for the commercial ACH service.

[10] The rollout of Reserve Bank FedImage services has taken longer than expected due to complexities associated with developing the application.

[11] This discussion evaluates volume-weighted changes in the direct fees for check products. The price index, discussed earlier, evaluates the average change in costs that would be incurred by a customer purchasing an average market basket of Federal Reserve check products.

[12] This estimate does not reflect reduced depreciation expense for check sorting equipment of approximately $3.5 million, resulting from a recent System re-evaluation of the useful life of such equipment.

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TABLE 9.—ACH PRO FORMA COST AND REVENUE PERFORMANCE

[$ millions]

Year	1 Revenue	2 Total expense	3 Net income (ROE) [1–2]	4 Target ROE	5 Recovery rate after target ROE [1/(2+4)]
2001	79.4	67.7	11.8	8.9	103.7%
2002 (Estimate)	70.8	62.6	8.2	6.5	102.5%
2003 (Budget)	69.9	61.2	8.7	7.5	101.6%

1. *2001 Performance*—In 2001, the ACH service recovered 103.7 percent of total expenses, including imputed costs and targeted ROE, compared with a targeted recovery rate of 101.3 percent. Commercial ACH volume was 16.2 percent higher than 2000 volume, compared with the 11.1 percent increase originally projected for 2001. The Reserve Banks changed their prices on October 1, 2001, to reflect better the cost structure of the ACH service, which is characterized by high fixed and low variable costs. The Reserve Banks decreased per-item fees for large-volume files and increased monthly fixed fees, thereby lowering overall fees to large and medium-sized customers. Also on October 1, the Reserve Banks implemented pricing agreements with other ACH operators for interoperator ACH transactions. Under the new interoperator agreements, the Reserve Banks stopped charging per-item fees to depository institutions that are customers of other ACH operators. Instead, the Reserve Banks and the other ACH operators began to charge each other fees for interoperator transactions. Thus, for ACH items originated by a Reserve Bank customer but sent to a customer of another ACH operator, the Reserve Banks now pay a fee to the other operator and no longer assess per-item fees to that ACH operator's customer.

2. *2002 Estimate*—The Reserve Banks estimate that the ACH service will recover 102.5 percent of total expenses in 2002, compared with the budgeted recovery rate of 101.3 percent. The difference from targeted recovery rate is mainly due to higher-than-projected volume. The $5.1 million year-over-year expense decrease results primarily from consolidating the twelve Districts' ACH customer support operations into two offices. On February 1, 2002, the Reserve Banks reduced fees to reflect lower operating costs following the consolidation. Despite this price reduction, total revenue is projected to be $4.3 million or 6.5 percent above the 2002 budget figure.

The Reserve Banks estimate that their 2002 commercial ACH volume will be 9.1 percent higher than experienced in 2001, which is 20.3 percent higher than budgeted. Year-to-date through August 2002, the Reserve Banks' ACH volume increased 10.8 percent from the same period in 2001. The full-year projection reflects the Reserve Banks' expectation that some large depositors will continue to shift some volume to another ACH operator, or at least split their transactions between the Federal Reserve and another operator.

3. *2003 Pricing*—The Reserve Banks project that the ACH service will recover 101.6 percent of its costs in 2003 including imputed expenses and targeted ROE. For the third time since January 2001, the Reserve Banks are reducing fees, which would decrease revenue by 1.3 percent from the 2002 estimate. The fee to originate items in files with fewer than 2,500 transactions will be reduced from $0.004 to $0.003, and the receipt fee for all items will be reduced from $0.0035 to $0.0025. These changes should reduce costs for low-to medium-volume customers. Assuming constant volume, the lower fees would reduce revenue by $5.4 million. The Reserve Banks expect a 3.7 percent increase in transaction volume, reflecting growth of at least that amount in nationwide use of ACH transactions, however, which would offset somewhat the revenue effect from the lower fees. The Board believes that the Reserve Banks' volume and revenue projections are reasonable.

D. Fedwire Funds Transfer and National Settlement

Table 10 presents the actual 2001, estimated 2002, and projected 2003 cost-recovery performance for the funds transfer and national settlement services.

TABLE 10.—FEDWIRE FUNDS AND NATIONAL SETTLEMENT SERVICE PRO FORMA COST AND REVENUE PERFORMANCE

[$ millions]

Year	1 Revenue	2 Total expense	3 Net income (ROE) [1–2]	4 Target ROE	5 Recovery rate after target ROE [1/(2+4)]
2001	63.8	56.7	7.1	7.4	99.5%
2002 (Estimate)	56.0	53.0	3.0	5.5	95.9%
2003 (Budget)	51.9	44.5	7.4	5.4	104.1%

1. *2001 Performance*—The funds transfer and national settlement service recovered 99.5 percent of total costs in 2001, including imputed expenses and targeted ROE, below the targeted recovery rate of 101.2 percent. Expenses for 2001 were $1.6 million (2.5 percent) more than original budget projections, primarily because of higher-than-anticipated Federal Reserve Information Technology costs, while service revenue was only $0.6 million (1.0 percent) more than original budget projections.

2. *2002 Performance*—Through August 2002, the funds transfer and national settlement services recovered 100.0 percent of total costs, including imputed expenses and targeted ROE. For full-year 2002, the Reserve Banks estimate that the funds transfer and national settlement services will recover 95.9 percent of total expenses, compared with a targeted recovery rate of 101.1 percent. The underrecovery is attributed to several factors, including lower pension credits, an unbudgeted FedLine for Web project, and a FedLine for Windows write-off. Funds transfer volume through August has decreased 0.5 percent relative to the same period in 2001. For the full year, the Reserve Banks estimate a 0.5 percent volume decrease, compared with a budgeted decline of 1.1 percent.

3. *2003 Fedwire Funds Transfer Pricing*—The Reserve Banks are maintaining the current thresholds for volume-based discounts but reducing the per-transfer fees for each threshold. Specifically, the Reserve Banks are lowering the transfer fee for the first volume tier (≤2,500 transfers per month) $0.01 from $0.31 to $0.30 (3.0 percent), lowering the transfer fee for the second volume tier (2,501–80,000 transfers per month) $0.02 from $0.22 to $0.20 (9.1 percent), and lowering the transfer fee for the third volume tier (>80,000 transfers per month) $0.05 from $0.15 to $0.10 (33.3 percent). The average (volume-weighted) per-transfer price would decline from its current level of $0.2009 to $0.1679 (16.4 percent). In addition, the Reserve Banks are retaining the off-line surcharge at its current level.

Reserve Banks project that the Fedwire funds transfer service will recover 104.1 percent of total costs in 2003, including imputed expenses and targeted ROE. Total costs are expected to decline $8.6 million (14.7 percent) from the 2002 estimate because of lower data communications charges and the full-year effect of savings from the consolidation of local on-line operations support.[13] Volume for 2003 is expected to remain flat compared with the 2002 estimate. The Reserve Banks project total funds transfer revenue to decline by $4.1 million (7.4 percent) in 2003 from the 2002 estimate primarily because of the effect of the 2003 price reductions, which is partially offset by increases in electronic connection revenue and NICB. The Board believes that the Reserve Banks' projections for 2003 funds transfer volume and revenue are reasonable.

4. *2003 National Settlement Service Pricing*—Continued consolidations among check clearinghouses in 2003 that use the national settlement service are expected to decrease transaction volume. The Reserve Banks expect this decrease to be offset by volume from new customers such as securities exchanges and card networks. On balance, the Reserve Banks are retaining the current national settlement service fees for 2003. In addition, the Reserve Banks will retain the monthly $60 minimum account maintenance fee per arrangement. The Reserve Banks expect settlement entry and file volumes to remain stable in 2003 compared with the 2002 estimate.

[13] Specifically, the Reserve Banks consolidated on-line funds transfer operations to two sites and consolidated computer interface testing. The consolidation began in September 2001 and was completed in May 2002.

E. Fedwire Securities Service[14]

Table 11 presents the actual 2001, estimated 2002, and projected 2003 cost-recovery performance for the Fedwire securities service.[15]

TABLE 11.—FEDWIRE SECURITIES SERVICE PRO FORMA COST AND REVENUE PERFORMANCE

[$ millions]

Year	1 Revenue	2 Total expense	3 Net income (ROE) [1–2]	4 Target ROE [1/(2+4)]	5 Recovery rate after target ROE
2001	19.7	19.5	0.2	2.3	90.2%
2002 (Estimate)	23.2	21.3	1.9	2.2	98.7%
2003 (Budget)	20.6	17.4	3.2	2.2	104.9%

1. *2001 Performance*—The Fedwire securities service recovered 90.2 percent of total costs in 2001, including imputed expenses and targeted ROE, below the target recovery rate of 95.6 percent. Total costs for 2001 were $0.9 million (4.4 percent) more than budgeted, and service revenue was approximately $0.3 million (1.4 percent) less than budgeted. The lower revenue was due to the delay in the scheduled addition of Ginnie Mae securities to the service caused by the events of September 11. Total securities transfer volume increased 18.8 percent from the 2000 level.

2. *2002 Performance*—Through August 2002, the Fedwire securities service recovered 98.7 percent of total costs, including imputed expenses and targeted ROE. For full-year 2002, the Reserve Banks estimate that the Fedwire securities service will also recover 98.7 percent of total costs, compared with a targeted recovery rate of 100.4 percent. The underrecovery is attributed to several factors, including unbudgeted costs associated with the postponed addition and testing of Ginnie Mae securities, the FedLine for the Web project, and a write-off associated with the FedLine for Windows project.

Through August 2002, total Fedwire securities transfer volume has increased 22.5 percent compared with volume during the same period in 2001. For the full year, the Reserve Banks estimate that total Fedwire securities volume will increase 25.4 percent from 2001, compared with a budgeted 21.0 percent increase. The increased volume is primarily due to the addition of Ginnie Mae securities to the Fedwire securities service earlier this year. Higher-than-anticipated mortgage refinancing activity has also contributed to the overall increase in volume.

3. *2003 Pricing*—The Reserve Banks are reducing the on-line transfer origination and receipt fee $0.26 from $0.66 to $0.40 (39.4 percent) and lowering the per-issue, per-account

[14] Includes purchase and sale activity.

[15] The Reserve Banks provide securities transfer services for securities issued by the U.S. Treasury, federal government agencies, government-sponsored enterprises, and certain international institutions. The priced component of this service, reflected in this memorandum, consists of revenues, expenses, and volumes associated with the transfer of all non-Treasury securities. For Treasury securities, the U.S. Treasury assesses fees for the securities transfer component of the service. The Reserve Banks assess a fee for the funds settlement component of a Treasury securities transfer, this component is not treated as a priced service.

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maintenance fee $0.01 from $0.41 to $0.40 (2.4 percent). The Reserve Banks are retaining the off-line surcharge and account maintenance fee at their current levels. In addition, the Reserve Banks implemented a new automated claim adjustment processing feature to support automated claim adjustments related to failed securities transactions, interim accounting for securities with an accrual date different than the record date, and repurchase agreement tracking.[16] Phased in during the past year, this new feature allows participants to add information to transfer messages that the Fedwire securities service can use to calculate cash payments owed to counterparties involved with related transfers. Only participants that use this functionality (currently fewer than 100) will be charged a fee. The Reserve Banks are establishing a $0.38 fee per automated claim adjustment entry.

With the consolidation of operational support for processing joint custody collateral, costs for this labor-intensive product can be clearly identified and explicitly recovered by a new surcharge. The Reserve Banks, therefore, are establishing a $22.00 surcharge per customer-initiated joint custody account withdrawal, effective July 2003.

After many years of declining volume, the business of executing orders for the purchase and sale of Fedwire-eligible securities by the Reserve Banks will be discontinued as of year-end 2002. Banking industry consolidation and the availability of discount brokerage services have reduced significantly the need for the Reserve Banks to continue this accommodation for customers. The purchase and sale activity represents less than 0.5 percent of the costs and revenues of the securities service line.

The Reserve Banks project that the Fedwire securities service will recover 104.9 percent of costs in 2003, including imputed expenses and targeted ROE. Total costs are expected to decline $3.9 million (16.5 percent) from the 2002 estimate, primarily due to lower data communication charges, and the full-year impact of savings from the consolidation of local on-line operations support.[17] The Board believes that the 2003 cost projections are reasonable.

The Reserve Banks project that the volume of agency securities transfers in 2003 will increase 4.3 percent from the 2002 estimate and total revenue will decrease 11.2 percent from the 2002 estimate. The volume increase is primarily due to the full-year effect of adding Ginnie Mae securities to the service.[18] The Board believes the 2003 securities volume and revenue projections are reasonable.

F. Noncash Collection Service

Table 12 lists the actual 2001, estimated 2002, and projected 2003 cost-recovery performance for the noncash collection service.

TABLE 12.—NONCASH COLLECTION PRO FORMA COST AND REVENUE PERFORMANCE

[$ millions]

Year	1 Revenue	2 Total expense	3 Net Income (ROE) [1 – 2]	4 Target ROE	5 Recovery rate after target ROE [1/(2+4)]
2001	2.0	1.6	0.4	0.2	111.9%
2002 (Estimate)	1.6	1.5	0.0	0.2	93.1%
2003 (Budget)	1.9	1.6	0.4	0.2	110.3%

1. *2001 Performance*—The noncash collection service recovered 111.9 percent of total expenses in 2001, including imputed expenses and targeted ROE, exceeding the targeted recovery rate of 102.5 percent. Volume for 2001 declined 20.7 percent from 2000 levels, compared with a budgeted decline of 20.9 percent, and revenue declined 16.8 percent from 2000 levels, compared with a budgeted decline of 17.7 percent. Total costs for 2001 decreased 19.5 percent over 2000 levels, compared with a 12.4 percent budgeted decline.

2. *2002 Performance*—Through August 2002, the noncash collection service recovered 105.5 percent of its costs. For full-year 2002, the Reserve Banks estimate that the noncash collection service will recover 93.1 percent of costs, including imputed expenses and targeted ROE, compared with the targeted recovery rate of 94.3 percent. This drop in the recovery rate for the year is primarily due to a 26.4 percent decrease in the average volume for the remaining four months of the year, compared with the first eight months of the year. The Board believes that full-year cost recovery will be higher than the Reserve Bank estimate.

3. *2003 Pricing*—As the number of outstanding physical municipal securities continues to decline, the volume of coupons and bonds presented for collection also declines. New issues of bearer municipal securities effectively ceased in 1983 when the Tax Equity and Fiscal Responsibility Act of 1982 removed tax advantages for investors. To simplify the pricing structure in a small and rapidly declining business, the Reserve Banks are eliminating the practice of charging variable cash letter and coupon envelope prices and establishing a single price regardless of deposit size. Specifically, the Reserve Banks are establishing a single fee per cash letter of $13.00 and a single fee per coupon envelope of $4.50. In addition, the Reserve Banks are implementing a $15.00 increase (75.0 percent), from $20 to $35, in the return-item fee and a $15 increase (38.0 percent), from $40 to $55, in the bond-collection fee. The Reserve Banks project that the noncash collection service will recover 110.3 percent of total costs, including imputed expenses and targeted ROE, in 2003. The Board believes that the Reserve Banks' projections are reasonable.

G. Special Cash Services

Special cash services represent a small portion (less than one tenth of one percent) of overall priced services provided by the Reserve Banks to depository institutions. In 2002, special cash services included wrapped coin, nonstandard packaging of currency orders and deposits, and registered mail shipments of currency and coin. The two offices that offered registered mail shipments discontinued this service in 2002. The one office that currently offers wrapped coin will discontinue this service in 2003. In 2004, nonstandard packaging of currency will be the only remaining special cash service. Table 13 presents the actual 2001, estimated 2002, and projected 2003 cost-recovery performance for special cash services.

[16] The new feature is currently available only for mortgage-backed securities; functionally for Treasury securities and other agency debt may be incorporated later.

[17] Specifically, the Reserve Banks consolidated on-line securities operations to two sites, joint custody collateral processing to one site, and consolidated computer interface testing. The consolidation began in September 2001 and was completed in May 2002.

[18] Ginnie Mae securities were added to the Fedwire securities service in March 2002.

TABLE 13.—SPECIAL CASH PRO FORMA COST AND REVENUE PERFORMANCE

[$ millions]

Year	1 Revenue	2 Total expense	3 Net income (ROE) [1–2]	4 Target ROE	5 Recovery rate after target ROE [1/(2+4)]
2001	2.3	2.1	0.2	0.1	103.3%
2002 (estimate)	1.4	1.4	−0.1	0.1	91.1%
2003 (budget)	0.4	0.5	0.0	0.1	77.5%

1. *2001 Performance*—In 2001, special cash services recovered 103.3 percent of total expenses, including imputed expenses and targeted ROE, compared with a targeted recovery rate of 104.4 percent.

2. *2002 Performance*—Through August 2002, special cash services recovered 103.2 percent of total expenses, including imputed expenses and targeted ROE. For full-year 2002, the Reserve Banks estimate that recovery for special cash services will decline to 91.1 percent, compared with a targeted recovery rate of 103.8 percent. The estimated underrecovery is due primarily to the Kansas City and Helena offices discontinuing registered mail shipments of currency in 2002. Kansas City discontinued this service in August 2002 primarily because of rising insurance and postage rates. In response to these increasing costs, the office increased the surcharge for registered mail shipments, which resulted in a significant volume decline, though Kansas City will continue to incur support costs for the remainder of the year. Helena discontinued the registered mail service in October 2002 and will continue to incur support charges for the remainder of the year. In addition, coin-wrapping volume in Helena is down 23.0 percent from its 2002 budgeted volumes.

3. *2003 Pricing*—For 2003, the Reserve Banks project that special cash services will recover 77.5 percent of costs, including imputed expenses and targeted ROE. Relative to 2002 estimates, total costs are projected to decrease $0.9 million, or 60.0 percent, and revenue is expected to decrease $0.9 million, or 67.6 percent. Helena will discontinue the coin-wrapping service in 2003 and expects coin-wrapping volumes to decline significantly during the transition period, though it will continue to incur support costs through the end of 2003. The Board believes that the Reserve Banks' projections are reasonable.

II. Private-Sector Adjustment Factor

A. Background

Each year, as required by the Monetary Control Act of 1980, the Reserve Banks set fees for priced services provided to depository institutions. These fees are set to recover, over the long run, all direct and indirect costs and imputed costs, including financing costs, return on equity (profit), taxes, and certain other expenses that would have been incurred if a private business firm provided the services. These imputed costs are based on data developed in part from a model comprising consolidated financial data for the nation's fifty largest bank holding companies (BHCs).[19] The imputed costs and imputed profit are collectively referred to as the PSAF. In a comparable fashion, investment income is imputed and netted with related direct costs associated with clearing balances to estimate net income on clearing balances (NICB).

1. *Private Sector Adjustment Factor*—The method for calculating the financing and equity costs in the PSAF requires determining the appropriate levels of debt and equity to impute and then applying the applicable financing rates. This process requires developing a pro forma priced services balance sheet using actual Reserve Bank assets and liabilities associated with priced services and imputing the remaining elements that would exist if the Reserve Banks' priced services were provided by a private sector business firm.

The amount of the Reserve Banks' assets that will be used to provide priced services during the coming year is determined using Reserve Bank information on actual assets and projected disposals and acquisitions. The priced portion of mixed-use assets is determined based on the allocation of the related depreciation expense. The priced portion of actual Reserve Bank liabilities consists of balances held by Reserve Banks for clearing priced services transactions (clearing balances), estimated based on historical data, and other liabilities such as accounts payable and accrued expenses.

Long-term debt is imputed only when core clearing balances and long-term liabilities are not sufficient to fund long-term assets or if the interest rate risk sensitivity analysis indicates that estimated risk will exceed a change in cost recovery of more than two percentage points.[20, 21] Short-term debt is imputed only when clearing balances not used to finance long-term assets and short-term liabilities are not sufficient to fund short-term assets. Equity is imputed to meet the FDIC definition of a well-capitalized institution, which is currently 5 percent of total assets and 10 percent of risk-weighted assets.

a. *Financing Rates*—When needed to impute short-and long-term debt, the debt rates are derived based on these elements in the BHC model. Equity financing rates are based on the average

[19] The peer group of the fifty largest bank holding companies is selected based on total deposits.

[20] A portion of clearing balances is used as a funding source for priced services assets. Long-term assets are partially funded from an initial core amount of $4 billion clearing balances. Core clearing balances are considered the portion of the balances that has remained stable over time without regard to the magnitude of actual clearing balances.

[21] The PSAF methodology includes an analysis of interest rate risk sensitivity, which compares rate-sensitive assets with rate-sensitive liabilities and measures the effect on cost recovery of a change in interest rates of up to 200 basis points.

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of the return on equity (ROE) results of three economic models using data from the BHC model.[22]

For simplicity, given that federal corporate tax rates are graduated, state tax rates vary, and various credits and deductions can apply, a specific tax rate is not calculated for Reserve Bank priced services. Instead, the use of a pre-tax ROE captures imputed taxes. The resulting ROE influences the dollar level of the PSAF and Federal Reserve price levels because this is the return a shareholder would expect in order to invest in a private business firm. The use of the pre-tax return on equity assumes 100 percent recovery of expenses, including the targeted return on equity. The recommended PSAF is, therefore, based on a matching of revenues and actual and imputed costs. Should the pre-tax earnings be greater or less than the targeted ROE, the PSAF is adjusted for the tax expense or savings associated with the adjusted recovery. The imputed tax rate is the median of the rates paid by the BHCs over the past five years adjusted to the extent that BHCs have invested in municipal bonds.

b. *Other Costs*—The PSAF also includes the estimated priced services-related expenses of the Board of Governors and imputed sales taxes based on Reserve Bank expenses. An assessment for FDIC insurance, when required, is imputed based on current FDIC rates and projected clearing balances held with the Federal Reserve.

2. *Net Income on Clearing Balances*—The NICB calculation is made each year along with the PSAF calculation and is based on the assumption that Reserve Banks invest clearing balances net of imputed reserve requirements and balances used to finance priced-services assets. Based on these net clearing balance levels, Reserve Banks impute an investment in three-month Treasury bills. The calculation also involves determining the priced services cost of earnings credits (amounts available to offset future service fees) on contracted clearing balances held, net of expired earnings credits, based on the federal funds rate. The rates and clearing balance levels used in the NICB estimate are based on the actual rates and balances from the six months before the calculation date. Because clearing balances are held for clearing priced services transactions, they are directly related to priced services. Therefore, the net earnings or expense attributed to the imputed Treasury-bill investments and the cost associated with holding clearing balances are considered net income for priced services activities.

B. Discussion

The increase in the 2003 PSAF is primarily due to a significant increase in clearing balances on which investments in marketable securities are imputed and the resulting increase in total assets. Because required imputed equity is based on five percent of total assets, priced services equity and cost of equity increased.

1. *Asset Base*—The total estimated cost of Federal Reserve assets to be used in providing priced services is reflected in table 14. Total assets have increased $3,664.3 million, or 30.9 percent. Growth of $3,416.9 million in imputed investments in marketable securities and $365.3 million in imputed reserve requirements, which are based on the level of clearing balances, explains the majority of this increase. These increases are offset by a decrease of $166.5 million in items in process of collection.

While assets financed through the PSAF such as premises, receivables, and prepaid expenses have decreased, most priced service assets, including the prepaid pension costs, furniture and equipment, and Board of Governors' assets have increased. Table 15 shows that the short-term assets funded with short-term payables and clearing balances total $103.8 million. This amount represents a decrease of $9.5 million, or 8.4 percent, from the short-term assets funded in 2002. Long-term assets funded with long-term liabilities, equity, and core clearing balances are projected to total $1,537.4 million. This amount represents an increase of $58.1 million, or 3.9 percent, from the long-term assets funded in 2002. Growth of $35.9 million in prepaid pension costs explains the majority of the increase, while increases in Reserve Bank leasehold improvements and long-term prepayments and furniture and equipment assets explain an additional $23.5 million. These increases are offset by a decrease of $1.3 million in Reserve Bank premises assets.

2. *Debt and Equity Costs and Taxes*—As previously mentioned, core clearing balances from the NICB calculation are available as a funding source for priced services assets. Table 15 shows that $503.9 million in clearing balances are used to fund priced services assets in 2003. The interest rate sensitivity analysis in table 16 indicates that potential T-bill and federal funds rate decreases of 200 basis points produce a decrease in cost recovery of 0.4 percentage points. The established threshold for change to cost recovery is two percentage points; therefore, interest rate risk associated with using these balances is within acceptable levels and no long-term debt is imputed.

Table 17 shows the imputed PSAF elements, the pre-tax return on equity, and other required PSAF recoveries approved for 2003 and 2002. The significant increase in clearing balances from which marketable security investments are imputed increases total assets. An increase in total assets, and the resulting increase in imputed equity, increases expenses associated with the return on equity. Although the pre-tax return on equity rate decreased from 22.1 percent for 2002 to 19.4 percent for 2003, with increased imputed equity, the pre-tax return on equity increased $19.6 million. As indicated previously, the pre-tax return on equity is calculated using the combined results of three models. The effective tax rate used in 2003 also increased to 30.4 percent from 29.3 percent in 2002.

3. *Capital Adequacy and FDIC Assessment*—As shown in table 18, the amount of equity imputed for the 2003 PSAF is $775.6 million, an increase of $183.3 million from imputed equity of $592.3 million in 2002. As noted above, equity is based on 5 percent of total assets, as required by the FDIC for a well-capitalized institution in its definition for purposes of assessing insurance premiums. In both 2003 and 2002, the capital to risk-weighted asset ratio and the capital to total assets ratio both exceed regulatory guidelines. As a result, no FDIC assessment is imputed for either year.

III. Analysis of Competitive Effect

All operational and legal changes considered by the Board that have a substantial effect on payments system participants are subject to the competitive impact analysis described in the March 1990 policy statement "The Federal Reserve in the Payments System."[23] Under this policy, the Board assesses whether the proposed change would have a direct and material adverse effect on the ability of other service providers to compete effectively with the Federal Reserve in providing similar services because of differing legal powers or constraints or because of a dominant market position of the Federal Reserve deriving from such legal differences. If the fees or fee structures create such an effect, the Board must further evaluate the changes to assess whether their benefits—such as contributions to payment system efficiency, payment system integrity, or other Board objectives—can be retained while reducing the hindrances to competition.

The 2003 fees result in a projected ROE below the target established using a model that is based, in part, on the consolidated results over time of the largest fifty bank holding companies. To the extent that these bank holding companies expect a mature, declining business, such as check processing, to have the same return on equity as the organization as a whole, the Reserve Banks' underrecovery could have an adverse competitive effect. Given the current market environment, however, greater fee increases are not likely to materially improve the Reserve Banks' cost recovery and might even reduce the revenue that the Reserve Banks receive as depository institutions seek lower-cost alternatives. Overall, the Board believes that the proposed fees are reasonable.

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[22] The pre-tax return on equity (ROE) is determined using the results of the comparable accounting earnings model (CAE), the discounted cash-flow model (DCF), and the capital asset pricing model (CAPM). Within the CAPM and DCF models, the ROE is weighted based on market capitalization, and within the CAE model, the ROE calculation is equally weighted. The results of the three models are averaged to impute the PSAF pre-tax ROE.

[23] Federal Reserve Regulatory Service 7–145.2.

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Table 14
Comparison of Pro Forma Balance Sheets
for Federal Reserve Priced Services
(millions of dollars – average for year)

	2003	2002
Short-term assets		
Imputed reserve requirement on clearing balances[24]	$ 1,043.8	$ 678.5
Imputed investment in marketable securities[24]	8,889.9	5,473.0
Receivables	77.4	81.7
Materials and supplies	3.0	3.8
Prepaid expenses	23.4	27.8
Items in process of collection[25]	3,936.3	4,102.8
Total short-term assets	13,973.8	10,367.6
Long-term assets		
Premises [26]	429.8	431.1
Furniture and equipment	188.3	177.7
Leasehold improvements and long-term prepayments	83.3	70.4
Prepaid pension costs	836.0	800.1
Total long-term assets	1,537.4	1,479.3
Total assets	$15,511.2	$11,846.9
Short-term liabilities[27]		
Clearing balances and balances arising from early credit of uncollected items	$10,508.5	$7,377.5
Deferred credit items[25]	3,865.4	3,509.8
Short-term payables	77.0	103.9
Total short-term liabilities	14,450.9	10,991.2
Long-term liabilities[27]		
Postemployment/retirement benefits	284.7	263.4
Total liabilities	14,735.6	11,254.6
Equity	775.6	592.3
Total liabilities and equity	$15,511.2	$11,846.9

[24] Funded with clearing balances.
[25] Represents float costs that are directly estimated at the service level.
[26] Includes allocations of Board of Governors' assets to priced services of $1.5 million for 2003 and $1.1 million for 2002.
[27] No debt is imputed because clearing balances are used as an available funding source.

Table 15
Portion of Clearing Balances used
to Fund Priced Services Assets
(millions of dollars)

	2003		2002	
A. Short-term asset financing				
Short-term assets to be financed:				
Receivables	$ 77.4		$ 81.7	
Materials and supplies	3.0		3.8	
Prepaid expenses	23.4		27.8	
Total short-term assets to be financed	$103.8		$113.3	
Short-term funding sources:				
Short-term payables	77.0		103.9	
Portion of short-term assets funded with clearing balances[28]		$26.8		$ 9.4
B. Long-term asset financing				
Long-term assets to be financed:				
Premises	$429.8		$431.1	
Furniture and equipment	188.3		177.7	
Leasehold improvements and long-term prepayments	83.3		70.4	
Prepaid pension costs	836.0		800.1	
Total long-term assets to be financed	$1,537.4		$1,479.3	
Long-term funding sources:				
Postemployment/retirement benefits	284.7		263.4	
Imputed equity[29]	775.6		592.3	
Total long-term funding sources	1,060.3		855.7	
Portion of long-term assets funded with core clearing balances[28]		$477.1		$623.6
C. Total clearing balances used for funding priced-services assets		$503.9		$633.0

[28] Clearing balances shown on table 14 are available for financing priced-services assets. Using these balances reduces the amount available for investment in Treasury bills for the net income on clearing balances calculation. Long-term assets are financed with core clearing balances; a total of $4 billion in balances is available for this purpose. Short-term assets are financed with clearing balances not used to finance long-term assets. No short- or long-term debt is imputed.
[29] See table 17 for calculation of required imputed equity amount.

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Table 16
2003 Interest Rate Sensitivity Analysis
(millions of dollars)

	Rate Sensitive	Rate Insensitive	Total
Assets			
Imputed reserve requirement on clearing balances		$1,043.8	$1,043.8
Imputed investment in marketable securities	$8,889.9		$8,889.9
Receivables		77.4	77.4
Materials and supplies		3.0	3.0
Prepaid expenses		23.4	23.4
Items in process of collection[30]	70.9	3,865.4	3,936.3
Long-term assets		1,537.4	1,537.4
Total assets	$8,960.8	$6,550.4	$15,511.2
Liabilities			
Clearing balances and balances arising from early credit of uncollected items[31]	$8,699.8	$1,808.7	$10,508.5
Deferred credit items		3,865.4	3,865.4
Short-term payables		77.0	77.0
Long-term liabilities		284.7	284.7
Total liabilities	$8,699.8	$6,035.8	$14,735.6

[30] The amount designated rate sensitive represents the amount of cash items in process of collection that are invested in three-month Treasury bills.
[31] The amount designated rate insensitive represents clearing balances on which earnings credits are not paid.

Table 16
2003 Interest Rate Sensitivity Analysis
(millions of dollars)
(Continued)

Rate change results		200 basis point decrease in both rates
Asset yield ($8,960.8 x -.02)		$(179.2)
Liability cost ($8,699.8 x -.02)		(174.0)
Effect of 200 basis point decrease		$ (5.2)
2003 budgeted revenue	933.7	
Effect of decrease	(5.2)	
Revenue adjusted for effect of interest rate decrease	$928.5	
2003 budgeted total expenses	883.9	
2003 budgeted target ROE	104.7	
Tax effect of interest rate decrease ($-5.2 x 30.4%)	(1.6)	
Total recovery amounts	$987.0	
Recovery rate before interest rate decrease	94.4%	
Recovery rate after interest rate decrease	94.0%	
Effect of interest rate decrease on cost recovery[32]	- 0.4%	

[32] Effect of a potential change in rates is less than a 2 percentage point change in cost recovery, therefore, no long-term debt is imputed for 2003.

Table 17
Derivation of the 2003 and 2002 PSAF
(millions of dollars)

		2003			2002	
A. Imputed elements						
Short-term debt[33]		$ 0.0			$ 0.0	
Long-term debt[34]		$ 0.0			$ 0.0	
Equity						
Total assets from table 14	$15,511.2			$11,846.99		
Required capital ratio[35]	5%			5%		
Total equity		$775.6			$592.3	
B. Cost of Capital						
1. Financing rates/costs						
Short-term debt		N/A			N/A	
Long-term debt		N/A			N/A	
Pre-tax return on equity[36]		19.4%			22.1%	
2. Elements of capital costs						
Short-term debt			$ 0.0			$ 0.0
Long-term debt			0.0			0.0
Equity	$775.6 x	19.4% =	150.5	$592.3 x	22.1% =	130.9
			$150.5			$130.9
C. Other required PSAF recoveries						
Sales taxes		$14.8			$14.1	
Federal Deposit Insurance assessment		0.0			0.0	
Board of Governors expenses		6.4			5.1	
			21.2			19.2
D. Total PSAF recoveries			$171.7			$150.1
As a percent of assets		1.1%				1.3%
As a percent of expenses[37]		22.4%				19.0%
E. Tax rates		30.4%				29.3%

[33] No short-term debt is imputed because clearing balances are used as a funding source for those assets that are not financed with short-term payables.
[34] No long-term debt is imputed because clearing balances are used as a funding source.
[35] Based on the Federal Deposit Insurance Corporation's definition of a well-capitalized institution for purposes of assessing insurance premiums.
[36] One component of the pre-tax return on equity is based on the average after-tax rate of return on equity, adjusted by the effective tax rate to yield the pre-tax rate of return on equity for each bank holding company for each year. These data are then averaged over five years to yield the pre-tax return on equity for use in the PSAF. The final pre-tax rate of return on equity is determined averaging the result from this component (22.9%), along with results from a capital asset pricing model (13.8%), and a discounted cash flow model (21.6%).
[37] System 2003 budgeted priced services expenses less shipping are $765.2 million.

Table 18
Computation of 2003 Capital Adequacy
for Federal Reserve Priced Services
(millions of dollars)

	Assets	Risk Weight	Weighted assets
Imputed reserve requirement on clearing balances	$1,043.8	0.0	$0.0
Imputed investment in marketable securities	8,889.9	0.0	0.0
Receivables	77.4	0.2	15.5
Materials and supplies	3.0	1.0	3.0
Prepaid expenses	23.4	1.0	23.4
Items in process of collection	3,936.3	0.2	787.3
Premises	429.8	1.0	429.8
Furniture and equipment	188.3	1.0	188.3
Leases, leasehold improvements & long-term prepayments	83.3	1.0	83.3
Prepaid pension costs	836.0	1.0	836.0
Total	$15,511.2		$2,366.6

Imputed equity for 2003	$775.6
Capital to risk-weighted assets	32.8%
Capital to total assets	5.0%

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Automated Clearing House Fee Schedule

	Fee
Origination (per item or record):[38]	
Items in small files	**$0.0030**
Items in large files	$0.0025
Addenda record	$0.0010
Input file-processing fee (per file)	$5.00
Receipt (per item or record):[39]	
Item	**$0.0025**
Addenda record	$0.0010
Monthly fee (per routing number):	
Account servicing fee[40]	$25.00
FedACH settlement[41]	$20.00
Information extract file	$10.00
Voice response return item/notification of change (NOC) fee:[42]	$2.00
Nonelectronic input/output fee:[43]	
Tape input/output	$25.00
Paper output	$15.00
Facsimile return/NOC[44]	$15.00
Cross-border fee:	
Cross-border item surcharge[45]	$0.039
Same-day recall of item at receiving gateway operator	$3.50
Same-day recall of item not at receiving gateway operator	$5.00
Item trace	$5.00
Microfiche	$3.00

Note: Bold indicates change from 2002 prices.

[38] Small files contain fewer than 2,500 items and large files contain 2,500 or more items. These origination fees do not apply to items that the Reserve Banks receive from other operators.
[39] These receipt fees do not apply to items that the Reserve Banks send to other operators.
[40] The account-servicing fee applies only to routing numbers that have received or originated transactions that are processed by the Reserve Banks. Institutions that receive only U.S. government transactions or that elect to use another operator exclusively are not assessed the account-servicing fee.
[41] The fee for FedACH settlement is applied to any routing number with activity during a month. This fee does not apply to routing numbers that use the Reserve Banks for government transactions only.
[42] The fee includes the transaction fee in addition to the voice-response fee. The Reserve Banks also assess a $15 fee for every government paper return/NOC they process. This service is not considered a priced service. The fee includes the transaction fee in addition to the conversion fee.
[43] These services are offered in contingency situations only.
[44] The fee includes the transaction fee in addition to the conversion fee.
[45] The cross-border item surcharge is assessed in addition to the standard item, addenda, and file-processing fees.

Fedwire Funds Transfer and National Settlement Service Fee Schedule

	Fee
Fedwire funds transfer service:	
Basic volume-based transfer fee (originations and receipts)	
Per transfer for the first 2,500 transfers per month	**$0.30**
Per transfer for additional transfers up to 80,000 per month	**$0.20**
Per transfer for every transfer over 80,000 per month	**$0.10**
Surcharge	
Off-line transfer originated	$15.00
National Settlement Service:	
Basic	
Settlement entry fee	$0.80
Settlement file fee	$14.00
Surcharge	
Off-line surcharge	$25.00
Minimum monthly charge (account maintenance)[46]	$60.00
Special settlement arrangements[47]	
Fee per day	$100.00

Note: Bold indicates change from 2002 prices.

[46] This minimum monthly charge will only be assessed if total settlement charges during a calendar month are less than $60. The fee will be reduced by the total amount of any per entry and per settlement charges incurred during the month.
[47] Special settlement arrangements use Fedwire funds transfers to effect settlement. Participants in arrangements and settlement agents are also charged the applicable Fedwire funds transfer fee for each transfer into and out of the settlement account.

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Fedwire Securities Service Fee Schedule
(Agency Securities)

	Fee
Basic transfer fee	
Transfer or reversal originated or received	**$0.40**
Surcharge	
Off-line transfer or reversal originated or received	$25.00
Monthly maintenance fees	
Account maintenance (per account)	$15.00
Issues maintained (per issue/per account)	**$0.40**
Claims adjustment fee:	**$0.38**
Joint custody fee:[48]	**$22.00**

Note: Bold indicates change from 2002 prices.

[48] Price implementation for joint custody will begin July 1, 2003.

Noncash Collection Fee Schedule

Coupon collection:	Fee
Cash letters fee	**$13.00**
Coupon envelopes	**$4.50**
Return items	**$35.00**
Bond collection (per bond):[49]	**$55.00**

Note: Bold indicates change from 2002 prices.

[49] Plus actual shipping costs.

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Special Cash Services Fee Schedule

	Fee
Wrapped coin (per box)[50]	
Helena	$4.00
Nonstandard packaging	
Seventh District offices	
(per currency order or deposit)[51]	$12.00
Registered mail fees	
Helena	Discontinued October 2002
Tenth District offices	Discontinued August 2002

Note: Bold indicates change from 2002 prices.

[50] There are fifty rolls of coin in each box.
[51] This service only applies to the $1 through $20 denominations.

Electronic Connection Fee Schedule

There are three types of electronic connections by which depository institutions access the Reserve Banks' priced services: FedLine for DOS, FedLine for the Web, and computer interface (mainframe to mainframe). The Reserve Banks allocate their costs and revenues associated with these electronic connections to the various priced services. In 2003, the Reserve Banks recommend retaining connection fees at current levels and adding three new fees associated with the rollout of FedLine for the Web: a one-time setup fee of $50, a monthly institution-level fee of $25, and a monthly per-subscriber fee of $10. (Bold indicates change from 2002 prices.)

Dial – receive and send, FedLine for DOS (monthly)	$75.00
FedLine® for the Web:	
Setup fee (one time)	**$50.00**
Institution-level fee (monthly)	**$25.00**
Basic subscriber fee (monthly)	**$10.00**
Frame relay network (monthly):	
Frame Relay-FedLine @ up to 19.2 kbps	$500.00
Frame Relay-Computer Interface (CI) @ 56 kbps	$1,000.00
Frame Relay-CI @ 256 kbps	$2,000.00
Frame Relay-CI T1	$2,500.00

Test and contingency options:

Connection type	Full circuit backup[a]	Frame connection only[b]	Redundant component set[c]
FedLine @ up to 19.2 kbps only	$500	$420	N/A
FedLine @ up to 19.2 kbps Spare Part Set	N/A	N/A	$155
CI @ 56 kbps	$845	$765	N/A
CI @ 256 kbps	$1,750	$1,585	N/A
CI T1	$2,230	$2,010	N/A

a) Applies to production and test systems, or production and contingency systems, that are located at separate facilities, including another bank office or a third-party contingency site. This option replicates full production technology and costs; only one set of equipment components is provided. Prices shown are for full-circuit backup only located at the customer site. Multiple customers sharing a single disaster-recovery connection at a third-party provider require custom implementations.

b) Applies to production and test systems, or production and contingency systems, that are located at separate facilities. The institution uses a frame relay link connection with no ISDN dial-up backup. Only one set of equipment components is provided. Prices shown are for frame connection only located at the customer site. Multiple customers sharing a single disaster recovery connection at a third-party provider require custom implementations.

c) Includes a Cisco router, a digital service unit, and a link encryptor.

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By order of the Board of Governors of the Federal Reserve System, October 31, 2002.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 02–28116 Filed 11–6–02; 8:45 am]

<FNP>

GENERAL SERVICES ADMINISTRATION

Governmentwide Per Diem Advisory Board

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that the Governmentwide Per Diem Advisory Board will hold an open meeting from 2:00 p.m. to 4:00 p.m. on Thursday, November 14, 2002. The meeting will be held at The Crystal City Marriott, 1999 Jefferson Davis Highway, Arlington, VA 22202. This meeting is open to the public. Members of the public who wish to file a written statement with the Board may do so in writing c/o Rob Miller, Designated Federal Officer (MTT), General Services Administration, 1800 F St., NW, Room G–219, Washington, DC 20405, or via e-mail at *robl.miller@gsa.gov*. Due to critical mission and schedule requirements, there is insufficient time to provide the full 15 calendar days' notice in the **Federal Register** prior to this meeting, pursuant to the final rule on Federal Advisory Committee management codified at 41 CFR 102–3.150.

Purpose: To review the current process and methodology that is used by GSA's Office of Governmentwide Policy to determine the per diem rates for destinations within the continental United States (CONUS). The Board will receive recommendations for improvements to the current process and methodology used to establish the federal per diem rates within CONUS, and receive best practice recommendations for developing a Governmentwide lodging program.

For security and building access: (1) ADA accessible facility; (2) Public seating may be limited.

FOR FURTHER INFORMATION CONTACT: Rob Miller, Designated Federal Officer, on (202) 501–4621, or Joddy Garner on (202) 501–4857, Per Diem Program Manager, General Services Administration. Also, inquiries may be sent to *robl.miller@gsa.gov*.

Dated: November 4, 2002.

Becky Rhodes,

Deputy Associate Administrator, Offiee of Transportation and Personal Property.

[FR Doc. 02–28510 Filed 11–6–02; 8:45 am]

BILLING CODE 6820–14–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services (HHS) announces the following advisory committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS).

Time and Date: November 19, 2002—9 a.m.–6 p.m. November 20, 2002—9 a.m.–4 p.m.

Place: Hubert H. Humphrey Building, 200 Independence Avenue, SW., Room 705A, Washington, DC 20201.

Status: Open.

Purpose: At this meeting the Committee will hear presentations and hold discussions on several health data policy topics. On the first day the full Committee will hear updates and status reports from the Department on several topics including the implementation of the administrative simplification provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA). There will also be a discussion of the Committee's proposed recommendations to the Department on privacy and code sets for medical records. There will be Subcommittee breakout sessions late in the afternoon of the first day and prior to the full Committee meeting on the second day. Agendas for these breakout sessions may be found on the NCVHS website (URL below). On the second day the Committee will hear presentations on data issues on minority health and population-based health. Each of the NCVHS Subcommittees will report on their breakout sessions and other activities. Finally, the agendas for future NCVHS meetings will be discussed.

Contact Person for More Information: Substantive program information as well as summaries of meetings and a roster of committee members may be obtained from Marjorie S. Greenberg, Executive Secretary, NCVHS, National Center for Health Statistics, Centers for Disease Control and Prevention, Room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone (301) 458–4245. Information also is available on the NCVHS home page of the HHS Web site: *http://www.ncvhs.hhs.gov/*, where further information including an agenda will be posted when available.

Dated: October 29, 2002.

James Scanlon,

Acting Director, Office of Science and Data Policy, Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. 02–28293 Filed 11–6–02; 8:45 am]

BILLING CODE 4151–05–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

Statement of Organization, Functions, and Delegations of Authority

Part T (Agency for Toxic Substances and Diseases Registry) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (50 FR 25129–25130, dated June 17, 1985, as amended most recently at 62 FR 1119–1120, dated January 8, 1997) is amended to abolish the Office of Federal Programs, Office of the Assistant Administrator, Agency for Toxic Substances and Disease Registry.

Section T–B, Organization and Functions, is hereby amended as follows:

Delete the title and functional statement for the *Office of Federal Program (TBB)* in their entirety.

Dated: October 29, 2002.

Julie Louise Gerberding,

Administrator.

[FR Doc. 02–28320 Filed 11–6–02; 8:45 am]

BILLING CODE 4160–70–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01P–0350]

Determination That Sodium Tetradecyl Sulfate Injection Was Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined that sodium tetradecyl sulfate injection (Sotradecol) was not withdrawn from sale for reasons of safety or effectiveness. This determination will allow FDA to approve abbreviated new drug applications (ANDAs) for sodium tetradecyl sulfate injection.

FOR FURTHER INFORMATION CONTACT: J. Kenneth Borgerding, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION: In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products approved under an ANDA procedure. ANDA sponsors must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the "listed drug," which is a version of the drug that was previously approved under a new drug application (NDA). Sponsors of ANDAs do not have to repeat the extensive clinical testing otherwise necessary to gain approval of an NDA. The only clinical data required in an ANDA are data to show that the drug that is the subject of the ANDA is bioequivalent to the listed drug.

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the "Approved Drug Products with Therapeutic Equivalence Evaluations," which is generally known as the "Orange Book." Under FDA regulations, drugs are withdrawn from the list if the agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162). Regulations also provide that the agency must make a determination as to whether a listed drug was withdrawn from sale for reasons of safety or effectiveness, before an ANDA that refers to that listed drug may be approved (21 CFR 314.161(a)(1)). FDA may not approve an ANDA that does not refer to a listed drug.

Sodium tetradecyl sulfate injection is the subject of NDA 5–970. On August 13, 1946, Elkins Sinn received approval to market sodium tetradecyl sulfate injection. During 2000, Elkins Sinn discontinued manufacture of this product.

On August 13, 2001, Bennett and Company submitted a citizen petition (Docket No. 01P–0350/CP1) under § 10.30 (21 CFR 10.30) to FDA requesting that the agency determine whether sodium tetradecyl sulfate injection was withdrawn from sale for reasons of safety or effectiveness. In addition, on December 6, 2001, Omega Laboratories, Ltd., submitted a citizen petition (Docket No. 01P–0350/CP2) under § 10.30 to FDA making the same request. FDA has reviewed its records and has found no information to indicate that sodium tetradecyl sulfate injection was withdrawn from the market for safety or efficacy reasons. Therefore, FDA concludes that the decision to not manufacture and market the product was not due to safety or efficacy concerns. Accordingly, the agency will maintain sodium tetradecyl sulfate injection in the "Discontinued Drug Product List" section of the Orange Book. The "Discontinued Drug Product List" delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. ANDAs that refer to sodium tetradecyl sulfate injection may be approved by the agency.

Dated: October 28, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–28400 Filed 11–6–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02D–0439]

Medical Devices; Class II Special Controls Guidance Document: Transcutaneous Air Conduction Hearing Aid System; Guidance for Industry and FDA; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the guidance entitled "Class II Special Controls Guidance Document: Transcutaneous Air Conduction Hearing Aid System; Guidance for Industry and FDA." This document describes a means by which transcutaneous air conduction hearing aid systems (TACHAS) may comply with the requirement of special controls for class II devices. Elsewhere in this issue of the **Federal Register**, FDA is publishing a final rule classifying TACHAS into class II (special controls).

DATES: Submit written or electronic comments on this guidance by February 5, 2003.

ADDRESSES: Submit written requests for single copies on a 3.5" diskette of the guidance document entitled "Class II Special Controls Guidance Document: Transcutaneous Air Conduction Hearing Aid System; Guidance for Industry and FDA" to the Division of Small Manufacturers, International, and Consumer Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 301–443–8818. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

Submit written comments concerning this guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Comments should be identified with the docket number found in brackets in the heading of this document. Submit electronic comments to http://www.fda.gov/dockets/ecomments.

FOR FURTHER INFORMATION CONTACT: Eric M. Mann, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2080.

SUPPLEMENTARY INFORMATION:

I. Background

The TACHAS is intended to compensate for impaired hearing without occluding the ear canal. It consists of an air conduction hearing aid attached to a surgically fitted tube system, which is placed through the soft tissues between the post auricular region and the outer ear canal. This special control guidance document lists the risks to health identified by FDA and describes measures that, if followed by manufacturers and combined with the general controls, will generally address the risks associated with these devices.

Elsewhere in this issue of the **Federal Register**, FDA is publishing a final rule classifying TACHAS into class II (special controls) under section 513(f)(2) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c(f)(2)). This guidance document will serve as the special control for the TACHAS device. Section 513(f)(2) of the act provides that any person who submits a premarket notification under section 510(k) of the act (21 U.S.C. 360(k)) for a device that has not previously been classified may,

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within 30 days after receiving an order classifying the device in class III under section 513(f)(1) of the act, request FDA to classify the device under the criteria set forth in section 513(a)(1) of the act. FDA shall, within 60 days of receiving such a request, classify the device by written order. This classification shall be the initial classification of the device. Within 30 days after the issuance of an order classifying the device, FDA must publish a notice in the **Federal Register** announcing such classification. Because of the timeframes established by section 513(f)(2) of the act, FDA has determined, under § 10.115(g)(2) (21 CFR 10.115(g)(2)), that it is not feasible to allow for public participation before issuing this guidance as a final guidance document. Therefore, FDA is issuing this guidance document as a level 1 guidance document that is immediately in effect. FDA will consider any comments that are received in response to this notice to determine whether to amend the guidance document.

II. Significance of Guidance

This guidance is being issued consistent with FDA's good guidance practices (GGPs) regulation (§ 10.115). The guidance represents the agency's current thinking on TACHAS. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations. This guidance document is issued as a level 1 guidance consistent with GGPs.

III. Electronic Access

In order to receive the "Class II Special Controls Guidance Document: Transcutaneous Air Conduction Hearing Aid System; Guidance for Industry and FDA" via your fax machine, call the CDRH Facts-On-Demand system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. Press 1 to enter the system. At the second voice prompt press 1 to order a document. Enter the document number (1414) followed by the pound sign (#). Follow the remaining voice prompts to complete your request.

You may obtain a copy of the guidance from the Internet. CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that you may download to a personal computer. Updated on a regular basis, the CDRH home page includes device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturers' assistance, information on video conferencing and electronic submissions, Mammography Matters, and other device-oriented information. You may access the CDRH home page at http://www.fda.gov/cdrh. You may search for all CDRH guidance documents at http://www.fda.gov/cdrh/guidance.html. Guidance documents are also available on the Dockets Management Branch Internet site at http://www.fda.gov/ohrms/dockets.

IV. Comments

Interested persons may submit to Dockets Management Branch (see **ADDRESSES**) written comments regarding this immediately in effect guidance by (see **DATES**). Two copies of any comments are to be submitted, except that individuals may submit one copy. Identify comments with the docket number found in brackets in the heading of this document. The guidance document and comments received may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: October 28, 2002.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 02–28399 Filed 11–6–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4734–N–66]

Notice of Submission of Proposed Information Collection to OMB: Requirements for Notification of Lead-Based Paint Hazards in Federally-Owned Residential Properties and Housing Receiving Federal Assistance

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* December 9, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2539–0009) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–2974; E-mail *Lauren_Wittenberg@omb.cop.gov.*

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice Also Lists the Following Information

Title of Proposal: Requirements for Notification of Lead-Based Paint Hazards in Federally-Owned Residential Properties and Housing Receiving Federal Assistance.

OMB Approval Number: 2539–0009.

Form Numbers: None.

Description of the Need for the Information and its Proposed Use: Requirements to provide a pamphlet on lead poisoning prevention to tenants and purchasers, provision of a notice to occupants on the results of hazard evaluation and hazard reduction actions, and special reporting requirements if there is a child with an environmental intervention blood lead level residing in the unit, and record keeping requirements.

Respondents: Not-for-profit institutions, Business or other for-profit, State, Local or Tribal Governments.

Frequency of Submission: On occasion.

Reporting Burden:

Number of respondents	Annual responses	×	Hours per response	=	Burden hours
80,637	2,355,621		0.1		253,742

Total Estimated Burden Hours: 253,742.

Status: Extension of a currently approved collection.

Authority: Sec. 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: October 31, 2002.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 02–28289 Filed 11–6–02; 8:45 am]

BILLING CODE 4210–72–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4734–N–65]

Notice of Submission of Proposed Information Collection to OMB: Application Submission Requirements—Section 202 Supportive Housing for the Elderly

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* December 9, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2502–0267) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; E-mail *Lauren_Wittenberg@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Application Submission Requirements—Section 202 Supportive Housing for the Elderly.

OMB Approval Number: 2502–0267.

Form Numbers: HUD–92015–CA, HUD 92041, (SF424, SFLLL *et.al.*

Description of the Need for the Information and its Proposed Use: To apply for capital advances for HUD's Section 202 Program, prospective private nonprofit organizations submit completed Section 202 Supportive Housing for the Elderly Application Kits.

Respondents: Not-for profit institutions.

Frequency of Submission: On occasion.

Reporting Burden:

Number of respondents	Annual responses	×	Hours per response	=	Burden hours
400	1		40.4		16,164

Total Estimated Burden Hours: 16,164.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: October 31, 2002.

Wayne Eddins,

Departmental Reports Management Officer, Officer of the Chief Information Officer.

[FR Doc. 02–28290 Filed 11–6–02; 8:45 am]

BILLING CODE 4210–72

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4768–C–04]

Notice of Funding Availability for Revitalization of Severely Distressed Public Housing HOPE VI Revitalization Grants Fiscal Year 2002; Notice of Technical Corrections

AGENCY: Office of Public and Indian Housing, HUD.

ACTION: Notice of Funding Availability for Revitalization of Severely Distressed Public Housing, HOPE VI Revitalization Grants, Notice of Technical Corrections.

SUMMARY: This notice makes two technical corrections to HUD's Fiscal Year (FY) 2002 Notice of Funding Availability for Revitalization of Severely Distressed Public Housing, HOPE VI Revitalization Grants.

DATES: Application Due Date. Revitalization grant applications are due

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to HUD Headquarters on or before 5:15 p.m., Eastern Time, on December 6, 2002.

FOR FURTHER INFORMATION CONTACT: Milan Ozdinec, Deputy Assistant Secretary for Public Housing Investments, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4130, Washington, DC 20410; telephone (202) 401–8812; fax (202) 401–2370 (these are not toll free numbers). Persons with hearing-or speech-impairments may call via TTY by calling the Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: On July 31, 2002 (67 FR 49766), HUD published its Fiscal Year (FY) 2002 Notice of Funding Availability for Revitalization of Severely Distressed Public Housing, HOPE VI Revitalization Grants (HOPE VI NOFA), which announced the availability of approximately $492.5 million in FY 2002 funds for the HOPE VI Revitalization Program. The July 31, 2002, HOPE VI NOFA provided an application due date of November 29, 2002. Because November 29, 2002, falls on the Friday after Thanksgiving, HUD extended the application due date under the July 31, 2002, HOPE VI NOFA for one week to Friday, December 6, 2002, in a notice published on September 27, 2002 (67 FR 61150). Additionally, in a notice published on October 23, 2002 (67 FR 65139), HUD announced a number of additional technical corrections. This notice makes two additional technical corrections to the July 31, 2002 HOPE VI NOFA.

In Section XIV(B)(4), HUD will reduce the time requirement by the length of the application deadline extension (7 days), meaning that an option must extend for least 173 days after the application deadline of December 6, 2002.

In Section XVI(A)(3) a new paragraph (e) will be added because the page limit of 150 pages of attachments stated under Section XVI(A)(2((b) does not apply to the NOFA criteria under Section XIV(B)(4) and Section XIV(B)(5)(a). Accordingly, documentation provided for attachments 27 and 28, as described in the 2002 HOPE VI Revitalization Application Kit, will not be counted.

Accordingly, FR Doc. 02–19276, the Fiscal Year (FY) 2002 Notice of Funding Availability for Revitalization of Severely Distressed Public Housing, HOPE VI Revitalization Grants, published in the **Federal Register** on July 31, 2002 (67 FR 49766) is corrected as follows:

1. On page 49783, Section XIV(B)(4) in column 3, remove the number "180" and insert in its place the number "173".

2. On page 49785, Section XVI(A)(3), add paragraph (e) to read as follows:

(e) Documentation for NOFA criteria under Section XIV(B)(4) and Section XIV(B)(5)(a) (Mixed Income Communities).

Dated: November 5, 2002.

Michael Liu,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 02–28480 Filed 11–5–02; 1:56 pm]

BILLING CODE 4210–33–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Exxon Valdez Oil Spill Trustee Council; Renewal of the Public Advisory Committee Charter

AGENCY: Office of the Secretary, Department of the Interior.

ACTION: Notice.

SUMMARY: This notice is published in accordance with 41 CFR part 102–3, subpart B, How Are Advisory Committees Established, Renewed, Reestablished, and Terminated. Following the recommendation and approval of the *Exxon Valdez* Oil Spill Trustee Council, the Secretary of the Interior hereby renews the *Exxon Valdez* Oil Spill Public Advisory Committee Charter to continue for approximately 2 years, to September 30, 2004.

FOR FURTHER INFORMATION CONTACT: Douglas Mutter, Department of the Interior, Office of Environmental Policy and Compliance, 1689 "C" Street, Room 119, Anchorage, Alaska, (907) 271–5011.

SUPPLEMENTARY INFORMATION: On March 24, 1989, the T/V *Exxon Valdez* ran aground on Bligh Reef in Prince William Sound in Alaska spilling approximately 11 million gallons of North Slope crude oil. Oil moved into the Gulf of Alaska, along the Kenai coast to Kodiak Island and the Alaska Peninsula—some 600 miles from Bligh Reef. Massive clean-up and containment efforts were initiated and continued to 1992. On October 8, 1991, an agreement was approved by the United States District Court for the District of Alaska that settled claims of the United States and the State of Alaska against the Exxon Corporation and the Exxon Shipping Company for various criminal and civil violations. Under the civil settlement, Exxon agreed to pay to the governments $900 million over a period of 10 years. An additional 5-year period was established to possibly make additional claims.

The *Exxon Valdez* Oil Spill Trustee Council was established to manage the funds obtained from the civil settlement of the *Exxon Valdez* Oil Spill. The Trustee Council is composed of three State of Alaska trustees (Attorney General; Commissioner, Department of Environmental Conservation; and Commissioner, Department of Fish and Game) and three Federal representatives appointed by the Federal Trustees (Secretary, U.S. Department of Agriculture; the Administrator of the National Oceanic and Atmospheric Administration; and the Secretary, U.S. Department of the Interior).

The Public Advisory Committee was created pursuant to Paragraph V.A.4 of the Memorandum of Agreement and Consent Decree entered into by the United States of America and the State of Alaska on August 27, 1991 and approved by the United States District Court for the District of Alaska in settlement of *United States of America* v. *State of Alaska*, Civil Action No. A91–081 CV. The Public Advisory Committee was originally chartered as the Pubic Advisory Group by the Secretary of the Interior on October 23, 1992, and functions solely as an advisory body, and in compliance with the provisions of the Federal Advisory Committee Act, as amended (5 U.S.C. app.).

The Public Advisory Committee was established to advise the Trustee Council, and began functioning in October 1992. The Public Advisory Committee consists of 20 members representing the following principal interests: Sport hunting and fishing, conservation and environmental, public-at-large, recreation users, commercial tourism, local government, science/technical, subsistence, commercial fishing, aquaculture and mariculture, marine transportation, regional monitoring programs, tribal government, and Native landowners. Members are appointed to serve a 2-year term.

To carry out its advisory role, the Public Advisory Committee makes recommendations to, and advises, the Trustee Council in Alaska on the following matters:

All decisions related to injury assessment, restoration activities, or other use of natural resource damage recovery monies obtained by the governments, including all decisions regarding:

a. Planning, evaluation and allocation of available funds;

b. Planning, evaluation and conduct of injury assessment and restoration activities;

c. Planning, evaluation and conduct of long-term monitoring and research activities; and

d. Coordination of a, b, and c.

Trustee Council intentions regarding the importance of obtaining a diversity of viewpoints is stated in the *Public Advisory Committee Background and Guidelines:* "The Trustee Council intends that the Public Advisory Committee be established as an important component of the Council's public involvement process." The Council continues, stating their desire that "* * * a wide spectrum of views and interest are available for the Council to consider as it evaluates, develops, and implements restoration activities. It is the

Certification

I hereby certify that the renewal of the Charter of the Public Advisory Committee, an advisory committee to make recommendations to and advise the *Exxon Valdez* Oil Spill Trustee Council in Alaska, is necessary and in the public interest in connection with the performance of duties mandated by the settlement of *United States* v. *State of Alaska*, No. A91–081 CV, and is in accordance with the comprehensive Environmental Response, Compensation and Liability Act of 1980 as amended and supplemented.

Dated: August 20, 2002.

Gale A. Norton,

Secretary of the Interior.

[FR Doc. 02–28357 Filed 11–6–02; 8:45 am]

BILLING CODE 4310–RG–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Endangered Species Recovery Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications.

SUMMARY: The following applicants have applied for a scientific research permit to conduct certain activities with endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*). We, the U.S. Fish and Wildlife Service, solicit review and comment from local, State, and Federal agencies, and the public on the following permit requests.

DATES: Comments on these permit applications must be received on or before December 9, 2002, to receive consideration by us.

ADDRESSES: Written data or comments should be submitted to the Chief, Endangered Species, Ecological Services, U.S. Fish and Wildlife Service, 911 NE. 11th Avenue, Portland, Oregon 97232–4181 (fax: 503–231–6243). Please refer to the respective permit number for each application when submitting comments. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 20 days of the date of publication of this notice to the address above (telephone: 503–231–2063). Please refer to the respective permit number for each application when requesting copies of documents.

SUPPLEMENTARY INFORMATION:

Permit No. TE–797234

Applicant: LSA Associates, Inc., Point Richmond, California.

The permittee requests an amendment to take (harass by survey, capture, handle, collect tail tissue, collect voucher specimens, and release) the Sonoma distinct population segment (DPS) of the California tiger salamander (*Ambystoma californiense*) in conjunction with demographic research in Sonoma County, California for the purpose of enhancing its survival.

Permit No. TE–027296

Applicant: Michael Fawcett, Bodega, California.

The permittee requests an amendment to take (harass by survey, capture, handle, collect tail tissue, collect voucher specimens, release, and recapture) the Sonoma distinct population segment (DPS) of the California tiger salamander (*Ambystoma californiense*) in conjunction with demographic research in Sonoma County, California for the purpose of enhancing its survival.

Permit No. TE–825572

Applicant: Jeff Dreier, San Rafael, California.

The permittee requests an amendment to take (harass by survey, capture, handle, and release) the Sonoma distinct population segment (DPS) of the California tiger salamander (*Ambystoma californiense*) in conjunction with demographic research in Sonoma County, California for the purpose of enhancing its survival.

Permit No. TE–032713

Applicant: California Department of Transportation, Fresno, California.

The applicant requests a permit to take (capture) the Fresno kangaroo rat (*Dipodomys nitratoides exilis*) and the Buena Vista Lake shrew (*Sorex ornatus relictus*) in conjunction with surveys throughout the species range in California for the purpose of enhancing their survival.

Permit No. TE–063230

Applicant: Jim Rocks, San Diego, California.

The applicant requests a permit to take (survey by pursuit) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with demographic research in San Diego, Riverside, Orange, and Imperial Counties, California, for the purpose of enhancing its survival.

Permit No. TE–062391

Applicant: Shauna A. McDonald, Riverside, California.

The applicant requests a permit to take (capture, mark) the Stephens' kangaroo rat (Dipodomys stephensi) in conjunction with surveys and demographic studies throughout the species range in California for the purpose of enhancing its survival.

Permit No. TE–802089

Applicant: Patricia Tatarian, Petaluma, California.

The permittee requests an amendment to take (harass by survey, capture, handle, tag, mark, release, and recapture) the Sonoma distinct population segment (DPS) of the California tiger salamander (*Ambystoma californiense*) in conjunction with demographic research in Sonoma County, California for the purpose of enhancing its survival.

Permit No. TE–063608

Applicant: Brian Lohstroh, San Diego, California.

The applicant requests a permit to take (survey by pursuit) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with demographic research in San Diego, Riverside, Orange, and Imperial Counties, California, for the purpose of enhancing its survival.

Permit No. TE–063427

Applicant: Sarah Powell, Carmichael, California.

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The applicant requests a permit to take (harass by survey) the Conservancy fairy shrimp (*Branchinecta conservatio*), the longhorn fairy shrimp (*Branchinecta longiantenna*), the Riverside fairy shrimp (*Streptocephalus wootoni*), the San Diego fairy shrimp (*Branchinecta sandiegonensis*), the vernal pool fairy shrimp (*Branchinecta lynchi*), and the vernal pool tadpole shrimp (*Lepidurus packardi*) in conjunction with surveys throughout the range of each species for the purpose of enhancing their survival.

Permit No. TE–063429

Applicant: California Department of Water Resources, Fresno, California.

The applicant requests a permit to take (capture, mark, and release) the Fresno kangaroo rat (*Dipodomys nitratoides exilis*), the giant kangaroo rat (*Dipodomys ingens*), the Tipton's kangaroo rat (*Dipodomys nitratoides nitratoides*), and the Buena Vista Lake shrew (*Sorex ornatus relictus*) in conjunction with surveys in Fresno, Kern, Kings, Madera, Merced, Monterey, San Benito, San Luis, Stanislaus, and Tulare Counties, California, for the purpose of enhancing their survival.

Dated: October 24, 2002.

Rowan W. Gould,

Acting Regional Director, Region 1, Portland, Oregon.

[FR Doc. 02–28321 Filed 11–6–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–020–03–7122–DS–64GG]

New Mexico; Notice of Agency and Public Scoping Meetings for the Amendment to the Taos Resource Management Plan and Associated Environmental Impact Statement

AGENCY: Bureau of Land Management, Taos Field Office.

ACTION: Taos Resource Management Plan Amendment and Environmental Impact Statement Scoping Meeting schedule for December 2002.

SUMMARY: The following dates, times and locations have been identified for scoping meetings to discuss the Taos Resource Management Plan Amendment and Environmental Impact Statement. The Bureau of Land Management Taos Field Office is considering an amendment to the Taos Resource Management Plan (RMP) to provide for the possible disposal of approximately 160 acres of public land in Rio Arriba County, New Mexico. The land would be used by the North Central Solid Waste Authority for a new regional landfill. The public is invited to provide scoping comments on the issues that should be addressed in the plan amendment and environmental impact statement.

- Agency Scoping Meeting—Wednesday, December 4—at El Convento in Espanola, NM 2 p.m.–4 p.m.
- Public Scoping Meeting 1—Wednesday, December 4—at El Convento in Espanola, NM, 6 p.m.–8 p.m.
- Public Scoping Meeting 2—Thursday, December 5—at the Ojo Caliente Elementary School Cafeteria, Ojo Caliente, NM, 6 p.m.–8 p.m.

For meeting updates please call the BLM—Taos Field office at (505) 751–4709.

FOR FURTHER INFORMATION CONTACT: Lora Yonemoto, Realty Specialist, Bureau of Land Management, Taos Field Office, 226 Cruz Alta Rd., Taos, NM 87571, or call (505) 751–4709.

Dated: November 1, 2002.

Sam DesGeorges,

Assistant Field Office Manager.

[FR Doc. 02–28319 Filed 11–6–02; 8:45 am]

BILLING CODE 4310–FB–U

INTERNATIONAL TRADE COMMISSION

[USITC SE–02–035]

Sunshine Act Meeting

Agency Holding the Meeting: United States International Trade Commission.

Time and Date: November 19, 2002 at 11 a.m.

Place: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

Status: Open to the public.

Matters to Be Considered:

1. Agenda for future meetings: none.
2. Minutes.
3. Ratification List.
4. Inv. Nos. 701–TA–430 and 731–TA–1019 (Preliminary)(Durum and Hard Red Spring Wheat from Canada)—briefing and vote. (The Commission is currently scheduled to transmit its determination to the Secretary of Commerce on or before November 25, 2002; Commissioners' opinions are currently scheduled to be transmitted to the Secretary of Commerce on or before December 3, 2002.)
5. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: November 5, 2002.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 02–28465 Filed 11–5–02; 10:44 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

[Civil Case No. 02–1768]

Proposed Final Judgment and Competitive Impact Statement; United States v. Archer-Daniels-Midland Company and Minnesota Corn Processors, LLC

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)–(h), that a proposed Final Judgment, Stipulation and Order, and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States* v. *Archer-Daniels-Midland Company and Minnesota Corn Processors, LLC*, Civil Case No. 1:02 CV 01768 (JDB). The proposed Final Judgment is subject to approval by the Court after the expiration of the statutory 60-day public comment period and compliance with the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h).

On September 6, 2002, the United States filed a Complaint alleging that the proposed acquisition by Archer-Daniels-Midland Company of Minnesota Corn Processors, LLC would violate section 7 of the Clayton Act, 15 U.S.C. 18, by substantially lessening competition in the manufacture and sale of corn syrup and high fructose corn syrup ("HFCS") in the United States and Canada. ADM and MCP are twe of the largest corn wet millers in the United States, competing against only four other firms in the manufacture and sale of corn syrup and HFCS. MCP sells these products through an exclusive sales joint venture that it formed in December 2000 with another corn wet miller, Corn Products International, Inc. To preserve competition, the proposed Final Judgment requires the defendants to dissolve the joint venture that MCP formed with CPI by December 31, 2002, thus allowing CPI to compete independently. A Competitive Impact Statement, filed by the United States, describes the Complaint, the proposed Final Judgment, and remedies available to private litigants. Copies of the Complaint, the proposed Final Judgment, Stipulation and Order, and Competitive Impact Statement are available for inspection at the U.S. Department of Justice, Antitrust Division, Suite 215 North, 325 7th Street, NW., Washington, DC 20530 (telephone: 202/514–2692), and at the Clerk's Office of the U.S. Court for the District of Columbia, 333 Constitution Avenue, NW., Washington, DC 20001.

Public comment is invited within 60-days of the date of the notice. Such comments and responses thereto will be published in the **Federal Register** and filed with the Court. Comments may be filed with the Department of Justice in either paper or electronic form. Comments filed in paper form should be directed to Roger W. Fones, Chief, Transportation, Energy, and Agriculture Section, Antitrust Division, U.S. Department of Justice, 325 7th Street, NW., Suite 500, Washington, DC 20530 (facsimile 202/307–2784). Comments filed in electronic form should be submitted to the following e-mail address: *ADM–MCP.atr@usdoj.gov*.

Constance K. Robinson,

Director of Operations, Antitrust Division.

Stipulation and Order

It is hereby *stipulated* by and between the undersigned parties, subject to approval and entry by the Court, that:

1. The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the United States District Court for the District of Columbia.

2. The parties stipulate that a Final Judgment in the form hereto attached may be filed with and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedure and Penalties Act (15 U.S.C. 16), and without further notice to any party or other proceedings, provided that the United States has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court.

3. Defendants shall abide by and comply with the provisions of the proposed Final Judgment pending entry of the Final Judgment by the Court, or until expiration of time for all appeals of any Court ruling declining entry of the proposed Final Judgment, and shall, from the date of the signing of this Stipulation by the parties, comply with all the terms and provisions of the proposed Final Judgment as though they were in full force and effect as an order of the Court.

4. This Stipulation shall apply with equal force and effect to any amended proposed Final Judgment agreed upon in writing by the parties and submitted to the Court.

5. If the United States has withdrawn its consent, as provided in paragraph 2 above, or if the proposed Final Judgment is not entered pursuant to this Stipulation, the time has expired for all appeals of any Court ruling declining entry of the proposed Final Judgment, and the Court has not otherwise ordered continued compliance with the terms and provisions of the proposed Final Judgment, then the parties are released from all further obligations under this Stipulation, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

6. Defendants represent that the required actions set forth in Sections IV and V of the proposed Final Judgment can and will be made, and that the defendants will later raise no claims of hardship, or difficulty of compliance as grounds for asking the Court to modify any of the provisions contained therein.

Respectfully submitted,

For Plaintiff, United States of America:

Michael P. Haronis,
Pennsylvania State Bar #17994, Attorney, Antitrust Division, U.S. Department of Justice, 325 Seventh St., NW., Suite 500, Washington, DC 20530. Telephone: (202) 307–6357. Facsimile: (202) 307–2784.
Dated: September 6, 2002.

For Defendant,

Archer-Daniels-Midland Company:

David James Smith,
State of Illinois Bar No. 3128392, Vice President, Secretary & General Counsel, 4666 Faries Parkway, Decatur, IL 62526. Telephone: (217) 424–6183. Facsimile: (217) 424–6196.

For Defendant, Minnesota Corn Processors, LLC:

Joseph Bennett,
State of Minnesota Bar No. 0289991, Secretary and General Counsel, Minnesota Corn Processors, LLC, 901 North Highway 59, Marshall, MN 52658. Telephone: (507) 537–2674. Facsimile: (507) 537–2641.

Order

It is *so ordered*, this __ day of _____, 2002.

_____

United States District Court Judge.

Final Judgment

Whereas plaintiff, United States of America, having filed its Complaint herein, plaintiff and defendants, Archer-Daniels-Midland Company ("ADM") and Minnesota Corn Processors, LLC ("MCP"), by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or admission by any party regarding any issue of fact of law;

And whereas, the defendants agree to be bound by the provisions of this Final Judgment pending its approval by the Court;

And whereas, prompt and certain dissolution of CornProductsMCP Sweeteners LLC ("CPMCP") is the essence of this agreement;

And whereas, the United States requires defendants to effect the dissolution of CPMCP for the purpose of remedying the loss of competition alleged in the Complaint;

And whereas, defendants have represented to the United States that they will effect the dissolution of CPMCP as provided in this Final Judgment and that defedants will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the provisions on dissolution contained below:

Now therefore, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is *ordered, adjudged and decreed:*

I. Jurisdiction

This Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states a claim upon which relief may be granted against defendants under Section 7 of the Clayton Act, as amended, 15 U.S.C. 18.

II. Definitions

As used in this Final Judgment:

A. "ADM" means defendant Archer-Daniels-Midland Company, a corporation organized and existing under the laws of the state of Delaware, with its principal offices in Decatur, Illinois, its successors and assigns, and its parents, subsidiaries, divisions, groups, and their officers, managers, agents, and employees.

B. "CPI" means Corn Products International, Inc., a corporation organized and existing under the laws of the state of Delaware, with its principal offices in Bedford Park, Illinois, its successors and assigns, and its parents, subsidiaries, divisions, groups, and their officers, managers, agents, and employees.

C. "CPMCP" means CornProductsMCP Sweeteners LLC, a joint venture between CPI and MCP, which serves as the exclusive sales and distribution outlet in the United States, Canada, and Mexico for CPI and MCP in designated product categories, including

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corn syrup and high fructose corn syrup.

D. "MCP" means defendant Minnesota Corn Processors, LLC, a limited liability company organized and existing under the laws of the state of Colorado, with its principal offices in Marshall, Minnesota, its successors and assigns, and it parents, subsidiaries, divisions, groups, and their officers, managers, agent, and employees.

E. "Transaction" means ADM's proposed acquisition of MCP.

III. Applicability

This Final Judgment applies to ADM and MCP, as defined above, and all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

IV. Dissolution of CPMCP

A. The defendants are hereby ordered and directed to effect the dissolution of CPMCP on or prior to December 31, 2002. Defendants are further ordered and directed to provide to the General Counsel of CPI in its Westchester, Illinois offices written notice of their election to dissolve CPMCP prior to or simultaneously with the closing of the Transaction.

B. On the same day that the defendants provide written notice to CPI's General Counsel, as required pursuant to Section IV(A) of this Final Judgment, the defendants shall in writing relieve CPI, effective immediately, of any and all obligations to defendants or CPMCP to the full extent necessary to permit CPI to conduct independent operations in competition with defendants and CPMCP.

V. Participation by the Defendants in the Operation of CPMCP Prior to the Effective Date of Dissolution

From the date the defendants provide CPI's General Counsel written notice of their election to dissolve CPMCP until the effective date of the dissolution of CPMCP, defendants shall refrain from selling, marketing, or pricing any products in cooperation or coordination with CPMCP or CPI and shall compete independently of CPMCP and CPI. Nothing in this Final Judgment affects or alters any obligations of defendants to facilitate or ensure that CPMCP completes the performance of any existing contracts or commitments to its customers.

VI. Affidavits

Twenty (20) calendar days from the date of the filing of this Final Judgment, and every thirty (30) calendar days thereafter until the final accounting after dissolution of CPMCP has been completed under this Final Judgment, the defendants shall deliver to the United States an affidavit as to the fact and manner of compliance with Sections IV and V of this Final Judgment. Assuming that the information set forth in the affidavit is true and complete, any objection by the United States to the information provided by the defendants, including limitations on the information, shall be made within fourteen (14) calendar days of receipt of such affidavit. Unit one year after the defendants have completed the final accounting, the defendants shall maintain full records of the dissolution of CPMCP.

VII. Compliance Inspection

A. For the purposes of determining or securing compliance with this Final Judgment, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time duly authorized representatives of the United States Department of Justice, including consultants and other persons retained by the United States, shall, upon written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendants, be permitted:

(1) Access during defendants' office hours to inspect and copy, or at plaintiff's option, to require defendants to provide copies of, all books, ledgers, accounts, records and documents in the possession, custody, or control of defendants, relating to any matters contained in this Final Judgment; and

(2) to interview, either informally or on the record, defendants' officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by defendants.

B. Upon the written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, defendants shall submit written reports, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this section shall be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by defendants to the United States, defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and defendants mark each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then the United States shall give defendants ten (10) calendar days notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

VIII. Retention of Jurisdiction

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

IX. Public Interest Determination

Entry of this Final Judgment is in the public interest.

X. Expiration of Final Judgment

Unless this Court grants an extension, this Final Judgment shall expire ten years from the date of its entry.

Date:_____

_____

United States District Court Judge

Case Number: 1:02CV02768.

Judge: John D. Bates.

Deck Type: Antitrust.

Competitive Impact Statement

Pursuant to Section 5(b) of the Clayton Act, as amended by Section 2 of the Antitrust Procedures and Penalties Act (codified at 15 U.S.C. 16(b)–(h) ("Tunney Act")), the United States files this Competitive Impact Statement relating to the Proposed Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

On September 6, 2002, the United States of American filed a civil antitrust Complaint alleging that the proposed acquisition by Archer-Daniels-Midland Company ("ADM") of Minnesota Corn Processors, LLC ("MCP") would violate Section 7 of the Clayton Act. 15 U.S.C.

18. The Complaint alleges that ADM and MCP are two of the largest corn wet millers in the United States and compete in the manufacture and sale of corn syrup and high fructose corn syrup ("HFCS") in the United States and Canada. The Complaint further alleges that through its acquisition of MCP, ADM will eliminate this competition and increase concentration in the already highly concentrated corn syrup and HFCS markets, making anticompetitive coordination among the few remaining competitors more likely. The request for relief in the Complaint seeks: (1) A judgment that the proposed acquisition would violate Section 7 of the Clayton Act; (2) a permanent injunction preventing consummation of the merger agreement; (3) an award of costs to the plaintiff; and (4) such other relief as the Court may deem just and proper.

When the Complaint was filed, the United States also filed a proposed Final Judgment that would permit ADM's acquisition of MCP, but would preserve competition by requiring, *inter alia*, the defendants to dissolve the marketing and sales joint venture that MCP formed with another corn wet miller, Corn Products International ("CPI").[1] The defendants are required to provide written notice to CPI of their election to dissolve the joint venture no later than consummation of ADM's acquisition of MCP and to complete the dissolution of the joint venture no later than December 31, 2002. On the same day the defendants give written notice to CPI, the proposed Final Judgment also provides that the defendants are prohibited from selling, marketing, or pricing any products in cooperation or coordination with the joint venture or CPI, and they must notify CPI that it is relieved of all obligations under the joint venture that would prevent it from competing fully with the defendants. The proposed Final Judgment does not affect or alter any obligations of ADM and MCP to perform existing contracts or commitments to its customers.

The United States and the defendants have stipulated that the proposed Final Judgment may be entered after compliance with the Tunney Act. Entry of the proposed Final Judgment would terminate the action, except that the Court would retain jurisdiction to construe, modify, or enforce provisions of the proposed Final Judgment and to punish violations thereof.

[1] The defendants entered into a Stipulation (filed contemporaneously with the Final Judgment) in which they agreed to be bound by the proposed Final Judgment pending final determination of this matter by the Court.

II. Description of the Events Giving Rise to the Alleged Violation

A. The Defendants and the Proposed Transaction

ADM is a Delaware corporation, with its principal offices located in Decatur, Illinois. ADM is engaged in the processing and sale of agricultural products, including corn syrup and HFCS, which are among the products it produces from corn through the wet milling process at domestic plants in Cedar Rapids Iowa, Clinton, Iowa, and Decatur, Illinois. Its net sales in 2001 were approximately $20 billion. Its sales of corn wet milled products in the United States in 2001 exceeded $1 billion, including HFCS sales of approximately $480 million and corn syrup sales of approximately $66 million.

MCP is a Colorado limited liability company, with its principal offices in Marshall, Minnesota. MCP is an agricultural processing and marketing business that operates corn wet milling facilities in Marshall, Minnesota and Columbus, Nebraska. MCP's net sales in 2001 were approximately $620 million. MCP's 2001 sales of corn wet milled products in the United States totaled approximately $402 million, with HFCS sales of approximately $153 million and corn syrup sales of approximately $56 million.

MCP sells its corn wet milled products through a joint venture that it formed in December 2000 with CPI. The joint venture, known as CornProductsMCP Sweeteners LLC ("CPMCP"), is the exclusive outlet for MCP's and CPI's corn syrup and HFCS products.

On July 11, 2002, ADM and MCP entered into an agreement under which ADM would acquire MCP. This transaction, which would increase concentration in the already highly concentrated corn syrup and HFCS markets precipitated the government's suit.

B. Corn Syrup and High Fructose Corn Syrup Markets

Corn syrup and HFCS are manufactured by wet mill processing of corn. In the wet milling process, corn kernels are first soaked in water, then ground and separated from other components of the kernel, producing a starch slurry. To manufacture corn syrup and HFCS, the corn wet millers add enzymes and/or acid that convert the starch slurry to sugars, such as dextrose and fructose.

Corn syrup is used as a sweetener in the preparation of assorted food products, including confectionery, baker, and dairy products, salad dressing, condiments, jams, and jellies, lunch meats, canned food, and vegetables. Specific applications require different grades of corn syrup with different sweetening effect. The corn wet millers that manufacture corn syrup can and do make most or all the various grades of corn syrup.

There are two grades of HFCS—HFCS 42 and HFCS 55—with the numbers referring to the percentage of fructose in the product. HFCS 42 is used as a sweetener in jam, jellies, baked goods, canned food, diary products, and some beverages. HFCS 55 is used mainly in the soft-drink industry as a substitute for sugar.

There are no realistic substitutes for corn syrup or HFCS to which customers could switch in the event of a small, but significant and non-transitory price increase. Corn syrup in its various grades. HFCS 42, and HFCS 55 are each distinct products without practical substitutes, differing from all other sweeteners and one another in their physical characteristics, means of production, many uses, and pricing. Although sugar is functionally interchangeable with corn syrup, HFCS 42 and HFCS 55 in many applications, it is significantly more expensive.

C. Harm to Competition as a Consequence of the Acquisition

The markets in the United States and Canada for corn syrup, HFCS 42 and HFCS 55 are already highly concentrated. ADM competes against only four other firms in the manufacture and sale of corn syrup, HFCS 42 and HFSCS 55 in the United States or Canada. In these markets, ADM accounts for about 10% of all corn syrup manufacturing capacity, 33% of all HFCS 42 manufacturing capacity, and 25% of all HFCS 55 manufacturing capacity. MCP, in its joint venture with CPI, accounts for more than 20% of all corn syrup manufacturing capacity, more than 15% of all HFCS 42 manufacturing capacity, and more than 15% of all HFCS 55 manufacturing capacity.

If ADM acquires MCP and succeeds to MCP's position in its joint venture with CPI, the markets in the United States and Canada for corn syrup, HFCS 42 and HFCS 55 will become substantially more concentrated. The number of independent competitors will be reduced from five to four, increasing the likelihood of anticompetitive coordination among the few remaining corn wet millers that manufacture and sell corn syrup and HFCS 42 and HFCS 55.

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Entry by a new competitor would not be timely or likely to prevent this harm to competition. Successful entry into the manufacture and sale of corn syrup, HFCS 42 and HFCS 55 is difficult time consuming, and costly. Construction of an efficient corn wet milling facility likely would take more than two years from the time of site selection to production of commercial quantities of corn wet milled products.

As the Complaint alleges, the transaction would likely have the following effects, among others: actual competition between the defendants in the corn syrup and HFCS markets will be eliminated; competition generally in the manufacture and sale of corn syrup and HFCS throughout the United States and Canada will lessen substantially; the prices for corn syrup and HFCS will increase; and the amounts of corn syrup and HFCS produced will decrease.

III. Explanation of the Proposed Final Judgment

The provisions of the proposed Final Judgment are designed to eliminate the anticompetitive effects resulting from ADM's acquisition of MCP and succession to MCP's interest in the joint venture with CPI and to preserve competition in the manufacture and sale of corn syrup and HFCS. The proposed Final Judgment contains three principal forms of relief. First, it requires the defendants to dissolve the joint venture by December 31, 2002. This relief is intended to ensure that the acquisition does not reduce the number of independent competitors in the corn syrup and HFCS markets in the United States and Canada. Prior to the acquisition, there were five competitors and with the dissolution of CPMCP, there will still be five. Second, the proposed Final Judgment also requires that, prior to or simultaneously with the closing of ADM's acquisition of MCP, the defendants must provide CPI written notice of their election to dissolve CPMCP. Upon written notice of their election to dissolve CPMCP, the defendants are additionally required to provide CPI written notice that CPI is permitted to conduct independent operations in competition with the defendants and CPMCP. This relief is intended to ensure that, prior to accomplishment of the dissolution of CPMCP, CPI is permitted to independently market and sell corn syrup and HFCS. Third, the proposed Final Judgment further requires the defendants to complete independently of CPMCP and CPI. The proposed final Judgment does not affect or alter any obligations of ADM and MCP to facilitate or ensure that CPMCP completes the performance of any existing contracts or commitments to its customers.

Thus, the decree will ensure that there are at least five independent competitors in the corn syrup and HFCS markets, and will preserve and encourage ongoing competition between ADM and CPI.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in a federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorney's fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against defendants.

V. Procedures Available for Modification of the Proposed Final Judgment

The United States and the defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the Tunney Act, provided that the United States has not withdrawn its consent. The Tunney Act conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The Tunney Act provides a period of at least 60 days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within 60 days of the date of publication of this Competitive Impact Statement in the **Federal Register**. The United States will evaluate and respond to the comments. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to entry. The comments and the response of the United States will be filed with the Court and published in the Federal Register. Written comments should be submitted to: Roger W. Fones, Chief, Transportation, Energy & Agriculture Section, Antitrust Division, United States Department of Justice, 325 Seventh Street, NW., Suite 500, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against the defendants. The United States is satisfied, however, that the dissolution of the joint venture and other relief contained in the proposed Final Judgment will preserve competition in the production and sale of corn syrup and HFCS and that the proposed Final Judgment would achieve all of the relief that the government would have obtained through litigation, but avoids the time and expense of trial. The United States is satisfied that the proposed relief will prevent the acquisition from having anticompetitive effects in this market. The dissolution of the joint venture will preserve the existence of five independent competitors, thus eliminating the likelihood that the acquisition would have facilitated industry coordination.

VII. Standard of Review Under the Tunney Act for Proposed Final Judgment

The Tunney Act requires that proposed consent judgments in antitrust cases brought by the United States be subject to a 60-day comment period, after which the Court shall determine whether entry of the proposed Final Judgment "is in the public interest." In making that determination, the Court may consider—

(1) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;

(2) the impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e). As the Court of Appeals for the District of Columbia Circuit has held, the Tunney Act permits the Court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. See *United States* v. *Microsoft*, 56 F. 3d 1448 (D.C. Cir. 1995).

In conducting this inquiry, "the Court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process."[2] Rather,

> absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.

United States v. *Mid-America Dairymen, Inc.*, 1977–1 Trade Cas. ¶ 61,508 at 71,980 (W.D. Mo. 1977).

Accordingly, with respect to the adequacy of the relief secured by the decree, a court may not "engage in an unrestricted evaluation of what relief would best serve the public." *United States* v. *BNS, Inc.*, 858 F.2d 456, 462 (9th Cir. 1988), quoting United States v. Bechtel Corp., 648 F.2d 660, 666 (9th Cir.), cert. denied, 454 U.S. 1083 (1981); see also Microsoft, 56 F. 3d 1448 (D.C. Cir. 1995). Precedent requires that

> [t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the pubioc in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is "within the reaches of the one that will best serve society, but whether the settlement is "within the reaches of the public interest." More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

Bechtel, 648 F.2d at 666 (citations omitted) (emphasis added).[3]

[2] 119 Cong. Rec. 24598 (1973); see also *United States* v. *Gillette Co.*, 406 F. Supp. 713, 715 (D. Mass. 1975). A "public interest" determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the Tunney Act. Although the Tunney Act authorizes the use of additional procedures, 15 U.S.C. 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and and that further proceedings would aid the court in resolving those issues. See H.R. 93–1463, 93d Cong. 2d Sess. 8–9, reprinted i (1974) U.S.C.C.A.N. 6535, 6538.

[3] See also *United States* v. *BNS, Inc.*, 858 F.2d at 463; *United States* v. *National Broadcasting Co.*, 449 F. Supp. 1127, 1143 (C.D. Cal. 1978); Gillette, 406 F. Supp. at 716; *United States* v. *American Cyanamid Co.*, 719 F.2d 558, 565 (2d Cir. 1983).

The proposed Final Judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. "[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.'" *United States* v. *American Tel. & Tel. Co.*, 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted), aff'd sub nom. *Maryland* v. *United States*. 460 U.S. 1001 (1983), quoting Gillette, 406 F. Supp. at 716[4]

Moreover, the Court's role under the Tunney Act is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its complaint, and the Act does not authorize the Court to "construct [its] own hypothetical case and then evaluate the decree against that case." Microsoft, 56 F.3d at 1459. Since "[t]he court's authroity to review the decree depends entirely on the government's exercising its prosecurtorial discretion by bringing a case in the first place," it follows that the court "is only authorized to review the decree itself," and not to "effectively redraft the complaint" to inquire into other matters that the United States might have, but did not, pursue. Id. at 1459–60.

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the Tunney Act that were considered by the United States in formulating the proposed Final Judgment.

Dated: September 13, 2002.

Respectfully submitted,

For Plaintiff United States of America:

Michael P. Harmonis,

Pennsylvania Bar No. 17994, Antitrust Division, U.S. Department of Justice, 325 7th Street, NW., Suite 500, Washington, DC 20530, Telephone: (202) 307–6357. Facsimile: (202) 307–2784.

Certificate of Service

I hereby certify that on this 13th day of September, 2002. I have caused a copy of the foregoing United State's Competitive Impact Statement to be served by first class mail, postage prepaid, and by facsimile on counsel for defendants in this matter:

David James Smith,

Vice President, Secretary & General Counsel, Archer-Daniels-Midland Company, 4666 Faries Parkway, Decatur, IL 62526. Telephone: (217) 424–6183. Facsimile: (217) 424–6196. Counsel for Defendant Archer-Danbiels-Midland.

Joseph Bennett,

Secretary and General Counsel, Minnesota Corn Processors, LLC, 901 North Highway 59, Marshall, MN 56258. Telephone: (507) 537–2674. Facsimile: (507) 537–2641. Counsel for Defendant Minnesota Corn Processors, LLC.

Michael P. Harmonis,

Pennsylvania State Bar No. 17994, Attorney, Antitrust Division, U.S. Department of Justice, 325 Seventh St., NW., Suite 500, Washington, DC 20530. Telephone: (202) 307–6357. Facsimile: (202) 307–2784.

Certificate of Service

I hereby certify that on this 13th day of September, 2002, I have caused a copy of the foregoing United State's Competitive Impact Statement to be served by first class mail, postage prepaid, and by facsimile on counsel for defendants in this matter:

David James Smith,

Vice President, Secretary & General Counsel, Archer-Daniels-Midland Company, 4666 Faries Parkway, Decatur, IL 62526. Telephone: (217) 424–6183. Facsimile: (217) 424–6196. Counsel for Defendant Archer-Daniels-Midland.

Joseph Bennett,

Secretary and General Counsel, Minnesota Corn Processors, LLC, 901 North Highway 59, Marshall, MN 56258. Telephone: (507) 537–2674. Facsimile: (507) 537–2641. Counsel for Defendant Minnesota Corn Processors, LLC.

Michael P. Harmonis,

Pennsylvania State Bar No. 17994, Attorney, Antitrust Division, U.S. Department of Justice, 325 Seventh St., NW., Suite 500, Washington, DC 20530. Telephone: (202) 307–6357. Facsimile: (202) 307–2784.

[FR Doc. 02–28333 Filed 11–6–02; 8:45 am]

BILLING CODE 4410–11–M

[4] See also *United States* v. *Alcan Aluminum Ltd.*, 605 F. Supp. 619, 622 (w.D. Ky. 1985).

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importation of Controlled Substances; Notice of Application

Pursuant to Section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under Section

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1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with Section 1301.34 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on May 13, 2002, Chattem Chemicals, Inc., 3801 St. Elmo Avenue, Building 18, Chattanooga, Tennessee 37409, made application by renewal to the Drug Enforcement Administration to be registered as an importer of methamphetamine (1105), a basic class of controlled substance listed in Schedule II.

The firm plans to import the listed controlled substance to bulk manufacture controlled substance.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.43 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed, in quintuplicate, to the Deputy Assistant Administration, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than (30 days from publication).

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1301.34(a), (b), (c), (d), (e), and (f) are satisfied.

Dated: October 25, 2002.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 02–28312 Filed 11–6–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to section 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on May 21, 2002, Aldrich Chemical Company Inc., dba Isotec, 3858 Benner Road, Miamisburg, Ohio 45342–4304, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Cathinone (1235)	I
Methcathinone (1237)	I
N-Ethylamphetamine (1475)	I
N,N-Dimethylamphetamine (1480)	I
Aminorex (1585)	I
Gamma hydroxybutyric acid (2010).	I
Methaqualone (2565)	I
Lysergic acid dethylamide (7315)	I
Tetrahydrocannabinols (7370)	I
Mescaline (7381)	I
2,5-Dimethoxyamphetamine (7396).	I
3,4-Methylenedioxyamphetamine (7400).	I
3,4-Methylenedioxy-N-ethylamphetamine (7404).	I
3,4-Methylenedioxy-methamphetamine (7405).	I
4-Methoxyamphetamine (7411)	I
Psilocybin (7437)	I
Psilocyn (7438)	I
N-Ethyl-1-phenylcyclohexylamine (7455).	I
Dihydromorphine (9145)	I
Normorphine (9313)	I
Acetylmethadol (9601)	I
Alphacetylmethadol Except Levo-Alphacetylmethadol (9603).	I
Normethadone (9635)	I
3-Methylfentanyl (9813)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Methylphenidate (1724)	II
Amobarbital (2125)	II
Pentobarbital (2270)	II
Secobarbital (2315)	II
1-Phenylcyclohexylamine (7460)	II
Phencyclidine (7471)	II
Phenylacetone (8501)	II
1-Piperidinocyclohexane-carbonitrile (8603).	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Benzoylecgonine (9180)	II
Ethylmorphine (9190)	II
Hydrocodone (9193)	II
Isomethadone (9226)	II
Meperidine (9230)	II
Meperidine intermediate-A (9232)	II
Merperidine intermediate-B (9233)	II
Methadone (9250)	II
Methadone intermediate (9254)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273).	II
Levo-Alphacetylmethadol (9648)	II
Oxymorphone (9652)	II
Fentanyl (9801)	II

The firm plans to manufacture small quantities of the listed controlled substances to produce standards for analytical laboratories.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than January 6, 2003.

Dated: October 25, 2002.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 02–28314 Filed 11–6–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to section 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on May 28, 2002, Abbott Laboratories, DBA Knoll Pharmaceutical Company, 30 North Jefferson Road, Whippany, New Jersey, 07981, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Dihydromorphine (9145)	I
Hydromorphone (9150)	II

The firm plans to produce bulk product and finished dosage units for distribution to its customers.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than January 6, 2003.

Dated: October 25, 2002.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 02–28315 Filed 11–6–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importation of Controlled Substances; Notice of Application

Pursuant to Section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under Section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with Section 1301.34 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on June 23, 2002, Noramco Inc., 1440 Olympic Drive, Athens, Georgia 30601, made application by renewal to the Drug Enforcement Administration to be registered as an importer of phenylacetone (8501), a basic class of controlled substance listed Schedule II.

The firm plans to import phenylacetone for the production of amphetamine.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.43 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than (30 days from publication).

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42(a), (b), (c), (d), (e), and (f) are satisfied.

Dated: October 25, 2002.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 02–28311 Filed 11–6–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated April 11, 2002, and published in the **Federal Register** on April 26, 2002, (67 FR 20828), Novartis Pharmaceutical Corporation, 59 Route 10, East Hanover, New Jersey 07936, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of methylphenidate (1724), a basic class of controlled substance listed in Schedule II.

The firm plans to manufacture finished product for distribution to its customers.

DEA has considered the factors in Title 21, United States Code, Section 823a and determined that the registration of Novartis Pharmaceutical Corporation to manufacture methylphenidate is consistent with the public interest at this time. DEA has investigated Novartis Pharmaceutical Corporation on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated: October 25, 2002.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 02–28316 Filed 11–6–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances Notice of Registration

By Notice dated April 11, 2002, and published in the **Federal Register** on April 26, 2002, (67 FR 20828), Organichem Corporation, 33 Riverside Avenue, Rensselaer, New York 12144, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Amphetamine (1100)	II
Pentobarbital (2270)	II
Methylphenidate (1724)	II
Meperidine (9230)	II

The firm plans to manufacture bulk products for distribution to its customers.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, section 823(a) and determined that the registration of Organichem Corporation to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated Organichem Corporation to ensure that the company's registration is consistent with the public interest. The investigation included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk

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manufacturer of the basic classes of controlled substances listed above is granted.

Dated: October 25, 2002.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 02–28317 Filed 11–6–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importation of Controlled Substances; Notice of Application

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with section 1301.34 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on June 13, 2002, Research Triangle Institute, Kenneth H. Davis, Jr., Hermann Building, East Institute Drive, P.O. Box 12194, Research Triangle Park, North Carolina 27709, made application by renewal to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Marihuana (7360)	I
Cocaine (9041)	II

The firm plans to import small quantities of the listed controlled substances for the National Institute of Drug Abuse and other clients.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of these basic classes of controlled substances may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.43 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than December 9, 2002.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import the basic classes of any controlled substances in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1301.34(a), (b), (c), (d), (e), and (f) are satisfied.

Dated: October 25, 2002.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 02–28313 Filed 11–6–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

October 31, 2002.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation, contact Darrin King on (202) 693–4129 or e-Mail: *King-Darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for Department of Labor, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

AGENCY: Women's Bureau.

Type of Review: Extension of a currently approved collection.

Title: Women in Apprenticeship and Nontraditional Occupations (WANTO) Act Grant application and Reporting Requirements.

OMB Number: 1225–0080.

Frequency: Annually and Quarterly.

Affected Public: Not-for-profit institutions.

Number of Respondents: 55.

Requirement	Frequency	Estimated number of responses	Average response time (hours)	Estimated annual burden hours
Grant Application:				
Previous Applicant	Annually	40	6	240
New Applicant	Annually	15	12	180
Quarterly Reports:				
Previous Applicant	Quarterly	36	2	72
New Applicant	Quarterly	8	5	40
Final Report:				
Previous Applicant	Annually	9	4	36

Requirement	Frequency	Estimated number of responses	Average response time (hours)	Estimated annual burden hours
New Applicant	Annually	2	10	20
Totals		110		588

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: This collection of information is needed for the Department of Labor to select annual Women in Apprenticeship and Nontraditional Occupations (WANTO) grant awardees and to monitor awardees' administration of the grant.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 02–28379 Filed 11–6–02; 8:45 am]

BILLING CODE 4510–23–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

October 25, 2002.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Marlene Howze at (202) 693–4158 or e-mail *Howze-Marlene@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for ESA, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Type of Review: Extension of a currently approved collection.

Agency: Employment Standards Administration (ESA).

Title: Agreement and Undertaking.

OMB Number: 1215–0034.

Affected Public: Business or other-for-profit.

Frequency: On Occasion.

Number of Respondents: 300.

Number of Annual Responses: 300.

Estimated Time Per Response: 15 minutes.

Total Burden Hours: 75.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: Coal Mine Operators and Longshore companies desiring to be self-insurers are required by law (30 U.S.C. 933 BL and 33 U.S.C. 932 LS) to produce security in terms of an indemnity bond, security deposit, or for Black Lung only, a letter of credit or 501(c)(21) trust. The OWCP–1 is a joint use form (Longshore and Black Lung Programs) completed by employers to provide the Secretary of Labor with authorization to sell securities or to bring suit under indemnity bonds deposited by the self-insured employers in the event there is a default in the payment benefits. If this Agreement and Undertaking were not required, OWCP would not be empowered to utilize the company's security deposit to meet its financial responsibilities for the Coal Mine or Longshore benefits in case of default.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 02–28382 Filed 11–6–02; 8:45 am]

BILLING CODE 4510–CF–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

October 30, 2002.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Marlene Howze at (202) 693–4158 or e-mail *Howze-Marlene@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, Office of Management and Budget, Room 10235, Washington, DC 20503 (202) 395–7316), within 30 days from the date of this publication to the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Type of Review: Revision of a currently approved collection.

Agency: Bureau of Labor Statistics (BLS).

Title: Cognitive and Psychological Research.

OMB Number: 1220–0141.

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Affected Public: Individuals or households.
Frequency: One-time.
Number of Respondents: 4,000.
Number of Annual Responses: 4,000.
Estimated Time Per Response: 1 hour.
Total Annualized Capital/Startup Costs: $0.
Total Annual Costs (operating/maintaining systems or purchasing services): $0.
Description: The Bureau of Labor Statistics' Behavioral Science Research Laboratory conducts psychological research focusing on the design and execution of the data collection process in order to improve the quality of data collected by the Bureau. The proposed laboratory research will be conducted from Fiscal Year (FY) 2003 through FY 2005 and is expected to: (1) Improve the data collection instruments employed by the Bureau; (2) increase the accuracy of the economic data produced by BLS and on which economic policy decisions are based; (3) increase the ease of administering survey instruments for both respondents and interviewers; (4) increase response rates in panel surveys as a result of reduced respondent burden; and (5) enhance BLS's reputation resulting in greater confidence and respect in survey instruments used by BLS.

Ira L. Mills,
DOL Clearance Officer.
[FR Doc. 02–28383 Filed 11–6–02; 8:45 am]
BILLING CODE 4510–24–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

October 30, 2002.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13. 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor, Departmental Clearance Officer, Ira Mills (202) 693–4122) or by e-Mail to *Mills-Ira@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–6881), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Occupational Safety and Health Administration (OSHA).
Title: Hazardous Waste Operations and Emergency Response (HAZWOPER) (29 CFR 1910.120).
OMB Number: 1218–0202.
Frequency: Varies (on occasion; annually).
Affected Public: Business or other for-profit; Not-for-profit institutions; Federal Government; State, Local, or Tribal Government.
Number of Respondents: 37,762.
Estimated Time per Response: Varies from five minutes (.08 hour) to 64 hours.
Total Burden Hours: 1,404,369.
Total Annual Cost: $4,668,300.
Description: Section 126(e) of the "Superfund Amendments and Reauthorization Act of 1986" (SARA) (Pub. L. 99–499) which became law on October 17, 1986, required the Secretary of Labor, pursuant to Section 6(b) of the Occupational Safety and Health Act 1970 (the Act), to promulgate standards for the safety and health protection of employees engaged in hazardous waste operations and emergency response. Section 126(a) of SARA also specified that those standards were to become effective a year after publication. Section 126(b) lists 11 worker protection provisions that the Secretary of Labor had to include in OSHA's final standard. Those provisions require OSHA to address the preparation of various written programs, plans and records; the training of employees; the monitoring of airborne hazards; the conduct of medical surveillance; and the distribution of information to employees. The provisions also require the collection of information from employers engaged in hazardous waste operations and their emergency response to such operations. The final standard covers the provisions mandated in SARA.

Ira L. Mills,
Departmental Clearance Officer.
[FR Doc. 02–28384 Filed 11–6–02; 8:45 am]
BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,761]

Glen Oaks Industries, Inc., Dallas, TX; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on August 29, 2002, applicable to workers of Glen Oaks Industries, Marietta Sportswear Manufacturing Company, Inc., Dallas, Texas. The certification was amended on September 25, 2002, to include workers formerly employed at Marietta Sportswear Manufacturing Co., Inc., Marietta, Oklahoma. The notice will soon be published in the **Federal Register**.

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New information provided by the company official shows that wages for the six workers engaged in the production of men's slacks at the Dallas, Texas, location were reported to the Unemployment Insurance (UI) tax account for Glen Oaks Industries in Oklahoma. The company official also reports that Marietta Sportswear Manufacturing Co., Inc., is no longer an entity of Glen Oaks Industries, and thus, not applicable to this worker group.

Also, the Department has learned from the State that all six workers have been separated from employment and there is no need to have the certification in effect for two years from the date of issuance.

Based on this new information, the Department is again amending the certification to limit coverage to workers producing men's slacks at Marietta Sportswear Manufacturing Co., Inc., Dallas, Texas, whose wages were reported to the State of Oklahoma under the UI tax account for Glen Oaks Industries. Furthermore, the certification will expire October 4, 2002.

The amended notice applicable to TA–W–41,761 is hereby issued as follows:

Workers producing men's slacks at Glen Oaks Industries, Dallas, Texas, whose wages were reported to Glen Oaks Industries in Marietta, Oklahoma, who became totally or partially separated from employment on or after June 16, 2001 through October 4, 2002, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed in Washington, DC, this 4th day of October, 2002.

Richard Church,
Certifying Officer, Division of Trade Adjustment Assistance.
[FR Doc. 02–28385 Filed 11–6–02; 8:45 am]
BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–42,193]

Vulcan Chemicals, Wichita, KS; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on September 30, 2002, in response to a petition filed by a company official on behalf of workers at Vulcan Chemicals, Wichita, Kansas.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 15th day of October, 2002.

Richard Church,
Certifying Officer, Division of Trade Adjustment Assistance.
[FR Doc. 02–28386 Filed 11–6–02; 8:45 am]
BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–7582]

BBA Nonwovens Washougal, Inc., Washougal, WA; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with section 250(a), subchapter D, chapter 2, title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 27, 2002, in response to a petition filed by Association of Western Pulp and Paper Workers, Local 5 on behalf of workers at BBA Nonwovens Washougal, Inc., Washougal, Washington.

The petitioner has requested that the petition be withdrawn. Consequently further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 21st day of October, 2002.

Linda G. Poole,
Certifying Officer, Division of Trade Adjustment Assistance.
[FR Doc. 02–28393 Filed 11–6–02; 8:45 am]
BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–7152]

Permit No. 64872Z, Dillingham, AK; Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002, in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, Permit #64872Z, Dillingham, Alaska.

The workers stopped fishing in July 2001, more than one year from the September 5, 2002, petition date. Section 223(b)(1) of the Trade Act of 1974, as amended, provides that a certification may not apply to a worker whose separation from employment occurred more than one year prior to the date the petition was filed.

Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 25th day of October 2002.

Linda G. Poole,
Certifying Officer, Division of Trade Adjustment Assistance.
[FR Doc. 02–28391 Filed 11–6–02; 8:45 am]
BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–06414]

Harris Welco (Excluding the Plastics Department) Division of J.W. Harris Co., Inc., Kings Mountain, North Carolina; Amended Certification Regarding Eligibility To Apply for NAFTA Transitional Adjustment Assistance

In accordance with Section 250(A), Subchaper D, Chaper 2, Title II, of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification for NAFTA Transitional Adjustment Assistance on September 23, 2002 applicable to workers of Harris Welco, Division of J.W. Harris Co., Inc., Flux Department, Kings Mountain, North Carolina. The notice was published in the **Federal Register** on October 10, 2002 (67 FR 63160).

At the request of the company, the Department reviewed the certification for workers of the subject firm. Findings show that the Department limited its certification coverage to workers of the subject firm's Flux Department.

New information provided by the company show additional worker separations are scheduled and the remaining production of flux coated welding rods and support functions are being shifted to Mexico. The entire plant will close by the end of 2002.

Accordingly, the Department is amending the certification determination to properly reflect this matter.

It is the intent of the Department's certification to include all workers of Harris Welco who were adversely affected by a shift in production of flux coated welding rods to Mexico. Workers of the Plastics Department that was previously certified for NAFTA–TAA on June 24, 2002, remains in effect (NAFTA–6102).

The amended notice applicable to NAFTA—06414 is hereby issued as follows:

"All workers of Harris Welco: Division of J.W. Harris Co., Inc., excluding workers of the Plastics Department, Kings Mountain, North Carolina, who became totally or partially separated from employment on after July 26, 2001, through September 23, 2004, are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974."

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Signed at Washington, DC this 23rd day of October, 2002.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–28389 Filed 11–6–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–5171 and NAFTA–5171A]

Huntsman Polymers Corporation; Huntsman Polymers Corporation Utilities Division, Odessa, TX; Notice of Determinations on Reopening

The Department, on its own motion, reopened on September 3, 2002, the certification regarding eligibility for workers of the subject firm to apply for North American Free Trade Agreement-Transitional Adjustment Assistance (NAFTA–TAA), applicable to workers and former workers of the subject firm engaged in activities related to the production of styrene monomers (NAFTA–5171). The certification was issued on August 29, 2001, and was published in the **Federal Register** on September 11, 2001 (66 FR 47241).

The petition investigation was reopened because the Department failed to include a determination as to whether workers in the Utilities Division of Huntsman Polymers Corporation, Odessa, Texas are eligible to apply for NAFTA–TAA. The workers at Huntsman Polymers are separately identifiable by product produced at the plant.

The findings of the investigation on reopening show that workers of Huntsman Polymers Corporation, Utilities Division, Odessa, Texas, "managed" the water supply and other raw materials utilized in the various manufacturing processes performed at the subject firm.

The investigation revealed that the workers of the subject firm do not produce an article within the meaning of section 250(a) of the Trade Act of 1974. The Department of Labor has consistently determined that the performance of services does not constitute production of an article, as required by the Trade Act of 1974. Workers of the subject facility may be certified only if their separation was caused importantly by a reduced demand for their services from a parent firm, a firm otherwise related to the subject firm by ownership, or a firm related by control.

The investigation revealed that the workers in the Utilities Division spent some of their time in support of the production of styrene monomers, but the majority of their work was in support of other production operations at the Odessa, Texas plant.

Conclusion

The certification applicable to workers engaged in activities related to the production of styrene monomers at Huntsman Polymers Corporation, Odessa, Texas (NAFTA–5171), remains in effect through August 29, 2003.

After careful review of the findings of the investigation on reopening, I conclude that workers of Huntsman Polymers Corporation, Utilities Division, Odessa, Texas (NAFTA–5171A), are denied eligibility to apply for NAFTA–TAA under section 250 of the Trade Act.

Signed in Washington, DC this 23rd day of October, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 02–28387 Filed 11–6–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–7592]

JSI Industries, Inc., Fort Atkinson, WI; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with section 250(a), subchapter D, chapter 2, title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on October 7, 2002, in response to a petition filed on behalf of workers at JSI Industries, Inc, Fort Atkinson, Wisconsin.

The petitioner has requested that the petition be withdrawn. Consequently further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 16th day of October, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–28394 Filed 11–6–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA—7573]

Pass & Seymour/Legrand, Whitsett, NC; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 24, 2002, in response to a petition filed by the company on behalf of workers at Pass & Seymour/Legrand, Whitsett, North Carolina.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 10th day of October, 2002.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–28392 Filed 11–6–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–5108]

Peck Manufacturing Company of North Carolina, Inc.; Warrenton, NC; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on April 18, 2002 in response to a petition filed by the company on behalf of workers at Peck Manufacturing Company of North Carolina, Inc., Warrenton, North Carolina.

The Department of Labor was unable to locate an official of the company to obtain the information necessary to render a decision. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 18th day of October, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–28388 Filed 11–6–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–06536]

Wisconsin Automated Machinery Corp., Oshkosh, WI; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 9, 2002, in response to a petition filed by the International Association of Machinists and Aerospace Workers Union, District #10 and a company official on behalf of workers at Wisconsin Automated Machinery Corporation, Oshkosh, Wisconsin.

The petitioners have requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose and the investigation has been terminated.

Signed at Washington, DC, this 10th day of October 2002.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 02–28390 Filed 11–6–02; 8:45 am]

BILLING CODE 4510–30–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 02–129]

NASA Advisory Council, Earth Science Technology Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of a NASA Advisory Council (NAC), Earth Systems Science and Applications Advisory Committee (ESSAAC).

DATES: Tuesday, November 12, 2002, 1 p.m. to 5 p.m.

ADDRESSES: Channel Inn Hotel, Suite 250, 650 Water Street SW, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Mr. Granville Paules, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–0706.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Opening/Welcome
—Meeting Logistics
—Review of Agenda and Opening Comments
—Earth Science Enterprise Technology Strategy Update
—Science and Applications Roadmaps and Focused Technology Support
—Homeland Defense Initiatives
—Executive Summary and Actions

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

June W. Edwards,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 02–28332 Filed 11–6–02; 8:45 am]

BILLING CODE 7510–01–P

OFFICE OF NATIONAL DRUG CONTROL POLICY

Cancellation of Meeting of the Advisory Commission on Drug Free Communities

Federal Register Citation of Previous Announcement: October 29, 2002 (Volume 67, Number 209, page 66004).

AGENCY: Office of National Drug Control Policy.

ACTION: Notice of cancellation of meeting.

Previously Announced Time and Date of Meeting: November 13, 2002, 9 a.m. to 5 p.m.

Changes in the Meeting: The meeting has been cancelled.

FOR FURTHER INFORMATION CONTACT: Linda V. Priebe, (202) 395–6622.

Dated: November 1, 2002.

Linda V. Priebe,

Assistant General Counsel.

[FR Doc. 02–28295 Filed 11–6–02; 8:45 am]

BILLING CODE 3180–02–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* Billing Instructions for NRC Cost Type Contracts.

2. *Current OMB approval number:* 3150–0109.

3. *How often the collection is required:* Monthly.

4. *Who is required or asked to report:* NRC Contractors.

5. *The number of annual respondents:* 55.

6. *The number of hours needed annually to complete the requirement or request:* 1,070 (754 hours-Billing Burden + 316 hours License Fee Recovery Cost Summary).

7. *Abstract:* The NRC Division of Contracts in administering its contracts provides Billing Instructions for its contractors to follow in preparation of invoices. These instructions stipulate the level of detail in which supporting data must be submitted for NRC review. The review of this information ensures that all payments made by NRC for valid and reasonable costs in accordance with the contract terms and conditions.

Submit, by January 6, 2003, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD

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20852. OMB clearance requests are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html*. The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 E6, Washington, DC 20555–0001, by telephone at 301–415–7233, or by Internet electronic mail to *INFOCOLLECTS@NRC.GOV*.

Dated at Rockville, Maryland, this 1st day of November 2002.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–28361 Filed 11–6–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review for new collections approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* Request for Non-Agreement States Information, as authorized by Section 274(a) of the Atomic Energy Act.

2. *Current OMB approval number:* New collection.

3. *How often the collection is required:* One-time or as-needed.

4. *Who is required or asked to report:* The 18 States that have not signed Section 274(b) Agreements with NRC (Non-Agreement States).

5. *The number of annual respondents:* 18 Non-Agreement States.

6. *The number of hours needed annually to complete the requirement or request:* 135 hours (18 responses per year × 7.5 hours per response).

7. *Abstract:* Occasionally, requests will be made of the Non-Agreement States for information similar to that requested from the Agreement States. Requests will be made on a one-time or as-needed basis, e.g., to respond to a specific incident, to gather information on licensing and inspection practices and other technical statistical information. These information requests will primarily refer to naturally occurring and accelerator-produced radioactive materials which may be subject to State regulations since they do not come under the purview of the Atomic Energy Act, as amended. The reason for requesting such information is that the information can assist the Commission in its considerations and decisions involving Atomic Energy Act materials programs in an effort to make the national nuclear materials programs more uniform and consistent.

Submit, by January 6, 2003, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html*. The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 E6, Washington, DC 20555–0001, by telephone at 301–415–7233, or by Internet electronic mail to *INFOCOLLECTS@NRC.GOV*.

Dated at Rockville, Maryland, this 1st day of November 2002.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–28362 Filed 11–6–02; 8:45 am]

BILLING CODE 7590–01–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

November 14, 2002 Board of Directors Meeting

Time and Date: Thursday, November 14, 2002, 1:30 p.m. (Open Portion), 1:45 p.m. (Closed Portion).

Place: Offices of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue, NW., Washington, DC.

Status: Meeting Open to the Public from 1:30 p.m. to 1:45 p.m. Closed portion will commence at 1:45 p.m. (approx.).

Matters to Be Considered:

1. President's Report.
2. Approval of September 12, 2002 Minutes (Open Portion).

Further Matters to Be Considered: (Closed to the Public 1:45 p.m.).

1. Finance Project in Russia and NIS.
2. Approval of September 12, 2002 Minutes (Closed Portion).
3. Pending Major Projects.
4. Reports.

Contact Person for Information: Information on the meeting may be obtained from Connie M. Downs at (202) 336–8438.

Dated: November 5, 2002.

Connie M. Downs,

Corporate Secretary, Overseas Private Investment Corporation.

[FR Doc. 02–28578 Filed 11–5–02; 3:58 pm]

BILLING CODE 3210–01–M

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

SUMMARY: In accordance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and purpose of information collection: Survivor Questionnaire; OMB 3220–0032.

Under Section 6 of the Railroad Retirement Act (RRA), benefits that may be due on the death of a railroad employee *or* a survivor annuitant include (1) a lump-sum death benefit, (2) a residual lump-sum payment, (30 accrued annuities due but unpaid at death, and (4) monthly survivor insurance payments. The requirements for determining the entitlement of possible beneficiaries to these benefits are prescribed in 20 CFR 234.

When the RRB receives notification of the death of a railroad employee or survivor annuitant, an RRB field office utilizes Form RL–94–F, *Survivor Questionnaire,* to secure additional information from surviving relatives needed to determine if any further benefits are payable under the RRA. Completion is voluntary. One response is requested of each respondent.

The RRB proposes no changes to Form RL–94–F. The completion time for the RL–94–F is estimated at between 5 to 11 minutes. The RRB estimates that approximately 8,000 responses are received annually.

FOR FURTHER INFORMATION CONTACT: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092. Written comments should be received within 60 days of this notice.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 02–28286 Filed 11–6–02; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27591]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

November 1, 2002.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by November 26, 2002, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After November 26, 2002, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

FirstEnergy Corp., et al. (70–10102)

FirstEnergy Corp. ("FirstEnergy"), a registered holding company, 76 South Main Street, Akron, Ohio, 44308, and GPU Diversified Holdings LLC ("GPUDH"), its wholly owned direct nonutility subsidiary, 300 Madison Avenue, Morristown, New Jersey 07962, have filed an application with the Commission under sections 9(a) and 10 of the Act and rule 54 under the Act.

By orders dated December 17 and December 26, 1996,[1] the Commission authorized GPU International, Inc.; ("GPUI"), which at the time was a wholly owned nonutility subsidiary of GPU, Inc. ("GPU"), a registered holding company, to invest up to $30 million to acquire: (1) Voting and preferred shares of Ballard Generation Systems Inc.; ("BGS"),[2] a joint venture with Ballard Power Systems Inc. ("BPS"), a nonassociate Canadian company; (2) options to acquire specified additional amounts of voting and preferred stock of BGS; and (3) warrants to purchase BPS stock ("BPS Warrants").[3] The Prior Orders authorized GPUI to acquire 9.9% of the voting shares and twenty percent of the total equity of BGS, including shares obtained through the exercise of the purchased options. Correspondingly, GPUI made the following acquisitions of BGS stock: 300,001 voting and 290,300 preferred shares on December 24, 1996; 250,000 voting shares on October 24, 1997; 150,000 voting and 100,000 preferred shares on November 24, 1997; 300,000 voting and 100,000 preferred shares on June 12, 1998; and 400,000 preferred shares on March 29, 2000. In December of 2000, GPUDH acquired from GPUI all of its voting and preferred GBS stock, and GPU acquired the BPS Warrants from GPUI.[4] In June of 2001, GPUDH acquired an additional 425,000 voting shares of BGS stock. Currently, GPUDH owns 1,425,001 voting and 890,300 preferred shares of BGS stock (collectively, "BGS Shares"), representing approximately 8.7% and 12.6% of BGS' outstanding voting and equity securities, respectively.

By order dated October 29, 2001,[5] the Commission authorized GPU to merge with and into FirstEnergy. GPU did not survive the merger, and FirstEnergy is its successor in interest.

Applicants now propose to restructure their investment. Specifically, they request authority for GPUDH to exchange the BGS Shares for a number of restricted shares[6] of BPS common stock that has a value equal to the value of the BGS Shares. For the purpose of this exchange, each BGS Share would be valued at $19.50, and exchanged for a number of BPS shares equal in value as determined by the current market value of BPS' common shares. As a result of the proposed investment, GPUDH will not own, directly or indirectly, ten percent or more of the outstanding BPS voting common shares.

The principal business of BPS and its associated companies is the development, manufacture and commercialization of proton exchange membranes ("PEM") fuel cells and PEM fuel cell systems for use in transportation, stationary, portable and other power operations. All of BPS' sales revenue is derived from PEM fuel cell products.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–28328 Filed 11–06–02; 8:45 am]

BILLING CODE 8010–01–M

[1] HCAR No. 26631 and HCAR No. 26635, respectively (collectively, "Prior Orders").

[2] BGS is a Canadian company that develops, manufactures and markets stationary electric power systems employing fuel cell technology.

[3] The Commission reserved jurisdiction over GPUIs exercise of the warrants, pending completion of the record. *See* Prior Orders.

[4] Subsequently, GPUI was acquired by a nonassociate company.

[5] *See FirstEnergy Corp.*, HCAR No. 27459.

[6] All BPS shares issued to GPUDH would have a holding period of up to twelve months. Sales in the United States after one year would be limited by the constraints of rule 144 under the Securities Act of 1933, as amended. Sales in Canada would be restricted for four months, in accordance with Canadian provincial securities laws.

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SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: (67 FR 66433, October 31, 2002).

STATUS: Closed Meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

ANNOUNCEMENT OF CLOSED MEETING: Additional Meeting.

The Securities and Exchange Commission will hold an additional meeting during the week of November 4, 2002: An additional Closed Meeting will be held on Tuesday, Novefnber 5, 2002 at 4 p.m.

Commissioner Atkins, as duty officer, determined that no earlier notice thereof was possible. The subject matter of the Closed Meeting to be held on Tuesday, November 5, 2002, will be an investigation.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(5), (6), (7), and (10) and 17 CFR 200.402(a)(5), (6), (7), and (10), permit consideration of the scheduled matter at the Closed Meeting.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942–7070.

Dated: November 5, 2002.

Jonathan G. Katz,

Secretary.

[FR Doc. 02–28486 Filed 11–5–02; 12:26 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46750; File No. SR–AMEX–2002–19]

Self-Regulatory Organizations; American Stock Exchange LLC; Order Approving a Proposed Rule Change and Amendment Nos. 1 and 2 Thereto and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 3, 4, and 5 Thereto Relating to Performance Evaluation Procedures for Specialists Trading Securities Pursuant to Unlisted Trading Privileges

October 30, 2002.

I. Introduction and Description of the Proposal

On March 14, 2002, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt Amex Rule 29, Market Quality Committee, to codify the Exchange's performance evaluation procedures for specialists trading securities admitted to dealings on an unlisted trading privileges ("UTP") basis. On May 6, 2002, Amex filed Amendment No. 1 to the proposed rule change,[3] and, on May 28, 2002, Amex filed Amendment No. 2 to the proposed rule change.[4] The proposed rule change, as amended by Amendment Nos. 1 and 2, was published in the **Federal Register** on July 19, 2002.[5] The Commission received no comment letters on the proposal. On July 29, 2002, the Amex filed Amendment No. 3 to the proposed rule change,[6] on October 11, 2002, the Amex filed Amendment No. 4 to the proposed rule change,[7] and, on October 15, 2002, the Amex filed Amendment No. 5 to the proposed rule change.[8] This order approves the proposed rule change, as amended. In addition, the Commission is publishing notice to solicit comment on and is simultaneously approving, on an accelerated basis, Amendment Nos. 3, 4, and 5 to the proposal.

The Exchange is proposing a new program to evaluate and regulate UTP specialist performance. Under the proposal, as amended, a new committee, the Market Quality Committee, would administer the Exchange's program to evaluate and enhance UTP specialist performance. The Committee is proposed to consist of seven persons: the Chief Executive Officer of the Exchange, three members of the Exchange's senior management selected by the Chief Executive Officer, and three members selected by the Chief Executive Officer from among Exchange Officials, Senior Floor Officials and Floor Governors. The Committee would regularly evaluate UTP specialists to determine whether they have fulfilled standards relating to: (1) Quality of markets, (2) competition with other market centers, (3) administrative matters, and (4) willingness to promote the Exchange as a marketplace. The Committee also would review transfers of specialist registrations in UTP securities to ensure that the Exchange's institutional interests are protected. As proposed, the Market Quality Committee could take certain actions against a UTP specialist if it finds that a UTP specialist's performance is inadequate.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Geraldine Brindisi, Vice President and Corporate Secretary, Amex, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission (May 3, 2002) ("Amendment No. 1").

[4] *See* letter from Geraldine Brindisi, Vice President and Corporate Secretary, Amex, to Nancy J. Sanow, Assistant Director, Division, Commission (May 24, 2002) ("Amendment No. 2").

[5] *See* Securities Exchange Act Release No. 46196 (July 12, 2002), 67 FR 47579.

[6] *See* letter from William Floyd-Jones, Assistant General Counsel, Amex, to Nancy J. Sanow, Assistant Director, Division, Commission (July 26, 2002) ("Amendment No. 3"). In Amendment No. 3, the Exchange made non-substantive, technical corrections and changed the composition of the Amex Market Quality Committee to match that of the Amex UTP Allocations Committee (*See* Securities Exchange Act Release No. 45698 (April 5, 2002), 67 FR 18051 (April 12, 2002) ("UTP Allocations Committee Pilot Approval")).

[7] *See* letter from William Floyd-Jones, Assistant General Counsel, Amex, to Kelly McCormick-Riley, Division, Commission (October 10, 2002) ("Amendment No. 4"). In Amendment No. 4, the Exchange made non-substantive, technical corrections, provided the Exchange's rationale for matching the composition of the Market Quality Committee with that of the UTP Allocations Committee, and clarified that the Chief Executive Officer of the Exchange will designate the members that serve on the Market Quality Committee. With respect to the rationale for matching the composition of the Market Quality Committee with that of the UTP Allocations Committee, the Amex noted that it believes that the two committees serve closely related functions and that it is desirable for them to have overlapping memberships. The Exchange also stated that it believes that the UTP Allocations Committee structure has worked well in practice and it wishes to ensure that persons serving on the UTP Allocations Committee are available to serve on the Market Quality Committee as well.

[8] *See* letter from William Floyd-Jones, Assistant General Counsel, Amex, to Kelly McCormick-Riley, Division, Commission (October 14, 2002) ("Amendment No. 5"). In Amendment No. 5, the Exchange specified that only Exchange Officials that do not spend a substantial portion of their time on the Floor may participate by telephone in meetings of the Market Quality Committee. These Exchange Officials that participate in meetings by telephone will be provided with all materials so that they can fully participate in Committee activities. See, *e.g.*, Amex Rule 21, Appointment of Floor Officials. *See also* Securities Exchange Act Release No. 46061 (June 11, 2002), 67 FR 41547 (June 18, 2002) (permitting Amex Performance Committee members to attend meetings by telephone).

II. Discussion

The Commission finds that the proposed rule change, as amended, is consistent with the Act and the rules and regulations promulgated thereunder applicable to a national securities exchange, and, in particular, with the requirements of section 6(b)[9] of the Act. Specifically, the Commission finds that approval of the proposed rule change is consistent with section 6(b)(5)[10] of the Act because it is designed to promote just and equitable principles of trade, and, in general, to protect investors and the public interest by encouraging good performance and competition among markets and specialists.

Specialists play a crucial role in providing stability, liquidity, and continuity to the trading of securities. Among the obligations imposed upon specialists by the Exchange, and by the Act and the rules thereunder, is the maintenance of fair and orderly markets in their designated securities.[11] To ensure that specialists fulfill these obligations, it is important that the Exchange develop and maintain procedures and policies for monitoring the performance of specialists. Furthermore, it is critical that these procedures and policies explicitly provide for the actions to be taken against specialists whose performance proves to be inadequate. The Commission believes that the proposed rules should provide the Amex with the ability to monitor specialists trading securities pursuant to UTP and take appropriate action in the event that such a specialist's performance proves to be inadequate.

Because the proposed rule change, as amended, institutes a new process for evaluating the performance of specialists that trade securities pursuant to UTP and because the Commission is approving amendments, which relate to the composition of the Market Quality Committee, on an accelerated basis, the Commission believes that the proposal should be approved on a pilot basis through April 5, 2003.[12] The Commission expects the Amex to report to the Commission about its experience with the new performance evaluation process in any future proposal it files to extend the effectiveness of the proposed rule or approve it on a permanent basis.

Moreover, the Commission, pursuant to section 19(b)(2)[13] of the Act, finds good cause for approving Amendment Nos. 3, 4, and 5 prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Commission believes that granting accelerated approval to Amendment Nos. 3, 4, and 5, on a pilot basis, will enhance immediately the Amex's self-regulatory abilities for the benefit of investors generally. Enhancing such abilities in a timely fashion is critical because Amex UTP specialists currently are trading securities pursuant to UTP and the Amex should be enabled to regulate such activity effectively.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment Nos. 3, 4, and 5, including whether the amendments are consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–2002–19 and should be submitted by November 29, 2002.

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[14] that the proposed rule change (SR–Amex–2002–19), as amended, is hereby approved on a pilot basis through April 5, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–28331 Filed 11–6–02; 8:45 am]

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[9] 15 U.S.C. 78f(b). In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78f(b)(5).

[11] *See* 17 CFR 240.11b–1.

[12] The Commission notes that this is the date on which the UTP Allocations Committee Pilot will expire.

[13] 15 U.S.C. 78s(b)(2).

[14] 15 U.S.C. 78s(b)(2).

[15] 17 CFR 200.30–2(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46757; File No. SR–NASD–2002–155]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Extend a Pilot That Permits SuperSOES to Trade Through the Quotations of UTP Exchanges That Do Not Participate in the Nasdaq National Market Execution Service

October 31, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 31, 2002, the National Association of Securities Dealers, Inc. ("NASD"), acting through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the NASD. The NASD filed the proposal pursuant to section 19(b)(3)(A)[3] of the Act, and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective on filing with the Commission.[5] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

There is no new language. The pilot rule language is as follows:

4710. Participant Obligations in NNMS

(a)–(e) No Change.

(f) UTP Exchanges.

(i) A UTP Exchange may voluntarily participate in the NNMS System according to the approved rules for the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] Nasdaq asked the Commission to waive the 5-day pre-filing notice requirement and the 30-day operative delay. See Rule 19b–4(f)(6)(iii), 17 CFR 240.19b–4(f)(6)(iii).

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NNMS System if it executes a Nasdaq Workstation Subscriber Agreement, as amended, for UTP Exchanges.

(ii) If a UTP Exchange does not participate in the NNMS System, the UTP Exchange's quote will not be accessed through the NNMS, and the NNMS will not include the UTP Exchange's quotation for order processing and execution purposes.

(iii) For purposes of this rule the term "UTP Exchange" shall mean any registered national securities exchange that has unlisted trading privileges in Nasdaq-listed securities pursuant to the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination Of Quotation and Transaction Information For Exchange-Listed Nasdaq/National Market System Securities Traded On Exchanges On An Unlisted Trading Privilege Basis ("Nasdaq UTP Plan").

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose [6]

Nasdaq is proposing to extend an existing pilot, which specifies that if a UTP Exchange elects not to participate in SuperSOES, SuperSOES will not include the UTP Exchange's quotation for order processing and execution purposes.[7] Nasdaq believes that this will be the final extension of this pilot for the SuperSOES system because Nasdaq anticipates completing its transition to the Nasdaq Order Display and Collection Facility, commonly known as "SuperMontage," in early December of 2002. Nasdaq seeks to extend the pilot until February 28, 2003, or until Nasdaq completes the transition of its execution systems from SuperSOES to SuperMontage whichever is earlier. Rule language effectuating this pilot program is already in place for SuperMontage.[8]

Background. On January 14, 2000, the Commission approved a rule change to establish the Nasdaq National Market Execution System ("NNMS") and to modify Nasdaq's SelectNet Service with respect to Nasdaq National Market ("NNM") securities.[9] On July 30, 2001, NNMS and the changes to SelectNet were implemented for all NNM issues. As approved and implemented, Nasdaq market participants can use two systems to trade NNM issues: a reconfigured Small Order Execution System ("SOES")—the NNMS—and a reconfigured SelectNet system. SuperSOES is an automated execution system that allows the entry of orders for up to 999,999 shares.[10] By removing the size and capacity restrictions from its principal automatic execution system, Nasdaq intended for most of the orders executed through Nasdaq's systems to migrate to SuperSOES. Consistent with that approach, access to SelectNet was limited to certain types of non-liability orders that require negotiation with the receiving market participant.[11]

As was the case with SOES, Nasdaq market makers are required to participate in SuperSOES and, therefore, to accept automatic execution against their displayed quotations. However, UTP Exchanges are not required to accept automatic executions. Whereas Nasdaq can require, by rule, that its member ECNs provide immediate response to an inbound SelectNet order, it has no authority to extend that requirement to a UTP Exchange. As a result, without the implementation of the instant pilot, if a UTP Exchange was alone at the best bid/best offer for a particular security, that UTP Exchange could cause SuperSOES to stop processing orders in that security and hold those orders in queue for up to 90 seconds.

In such a case, if after 90 seconds, a SuperSOES market participant did not join the current best bid/best offer, or the UTP Exchange did not move its quote, SuperSOES would return the orders that were in queue and the system would shut down for that security. The system would only resume once the UTP Exchange moved its quote away from the inside. Nasdaq believes that such delays would adversely affect Nasdaq's ability to ensure the proper functioning of its market through a major Nasdaq market system, and to enable market participants to obtain executions for their customers.

Pilot Description. To address these problems, Nasdaq proposed, and the Commission approved, a pilot to amend NASD Rule 4710 to require that UTP Exchanges that choose to trade Nasdaq securities through Nasdaq market systems either participate fully in the automatic executions through SuperSOES, or have their quotations removed from the SuperSOES execution and order processing functionality. Specifically, if a UTP Exchange elects not to participate in SuperSOES, SuperSOES will trade through the UTP Exchange's quote. Nasdaq believes that this should prevent a UTP Exchange that is not otherwise accessible via SuperSOES from effectively shutting down the market in that security. [12]

UTP Exchanges that choose not to participate in SuperSOES would be accessible by telephone as contemplated in the Nasdaq UTP Plan,[13] or via a mutually agreed-upon alternative bilateral link created by the UTP Exchange.[14] Nasdaq welcomes the opportunity to explore the possibility of bilateral linkages, which Nasdaq anticipates could be formed via separate agreement between Nasdaq and the exchange(s).

Nasdaq proposed the pilot for a number of reasons. First, significant changes in market conditions have resulted in the need for Nasdaq, via SuperSOES, to increase the speed of executions and improve the access of all market participants to the full depth of a security's trading interest. The volume and speed at which trading occurs in Nasdaq have increased dramatically since SuperSOES was first proposed nearly two and a half years ago. Market participants demand and require the ability to access liquidity at the best prices instantaneously. SuperSOES is a significant improvement over prior Nasdaq execution systems, and has become the backbone of Nasdaq's marketplace by providing market participants with a more efficient trading platform as evidenced by faster executions, higher fill rates, larger orders, and prices at the best bid or best offer.

Nasdaq wants to ensure that the market in a particular security does not shut down—thereby harming investors and the market—if there is an unresponsive UTP Exchange setting the current best bid/best offer for that security. Nasdaq recognizes the importance of maintaining price priority and ensuring that market participants receive the best possible price in the market. As such, SuperSOES was originally designed not to trade through the best quote that appears in the Nasdaq montage. However, that premise assumed all quotes would be immediately accessible.[15] SuperSOES must be able to continue operating when a particular quote is not accessible by market participants. To that end, if a UTP Exchange chooses not to participate in SuperSOES, and that UTP Exchange sets the inside bid or ask, Nasdaq will enable SuperSOES not to include that UTP Exchange's quotation for order processing and execution.

Participation in SuperSOES by a UTP Exchange is a voluntary action by each exchange. Nasdaq is not obligated to provide UTP Exchanges with access to any of Nasdaq's proprietary systems. Nasdaq's voluntary action, designed to improve efficiency and maintain an orderly market, should not become an opportunity for a Nasdaq competitor to harm the ability of Nasdaq to improve its markets.

Overall, Nasdaq believes it was appropriate to alter the terms under which a UTP Exchange participates in The Nasdaq Stock Market to address all of the concerns described in this proposal. For the same reasons, it is important to continue the pilot program to preserve the status quo as additional UTP Exchanges prepare to commence trading Nasdaq securities.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act,[16] in that the proposal is designed to facilitate transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. In particular, Nasdaq believes that modifying SuperSOES to trade through quotations of non-automatic execution UTP Exchanges is necessary for the fair and orderly operation of The Nasdaq Stock Market by helping to reduce the potential for order queuing or for system stoppages, when a UTP Exchange's quote is inaccessible and is alone at the best bid or best offer.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) impose any significant burden on competition; and

(iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act [17] and Rule 19b–4(f)(6), thereunder.[18] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Nasdaq has requested that the Commission waive the 5-day pre-filing notice requirement and the 30-day operative delay. The Commission believes that waiving both the 5-day pre-filing notice requirement and the 30-day operative delay is consistent with the protection of investors and the public interest. Acceleration of the operative date will permit the NASD pilot to continue in operation without interruption. Nasdaq states that the pilot reduces the potential for a shut down in Nasdaq's automatic execution systems. Nasdaq's inability to maintain the status quo during that period would create unnecessary, harmful uncertainty. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.[19]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2002–155 and should be submitted by November 29, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[20]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–28329 Filed 11–6–02; 8:45 am]

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[6] The NASD requested that the Commission correct various verbiage inconsistencies and delete extraneous purpose language from the proposal. Telephone discussion between Jeffrey S. Davis, Associate General Counsel, Nasdaq, and Terri Evans, Assistant Director, and Christopher Stone, Attorney, Division of Market Regulation, Commission (October 31, 2002).

[7] The temporary approval of the pilot expires October 31, 2002. *See* Exchange Act Release No. 46016 (May 31, 2002), 67 FR 39457 (June 7, 2002).

[8] *See* Securities Exchange Act Release No. 46343 (August 13, 2002), 67 FR 53822 (August 19, 2002).

[9] *See* Exchange Act Release No. 42344 (January 14, 2000), 65 FR 3987 (January 25, 2000).

[10] SOES was limited to small agency orders for customers.

[11] As originally proposed, market participants were permitted to enter into the modified SelectNet only: (1) Those orders that specify a minimum acceptable quantity for a size that is at least 100 shares greater than the posted quote of the receiving market participant; or (2) All-or-None orders that are at least 100 shares in excess of the displayed bid/offer size. Since the original proposal, the SEC has also approved the entry of non-liability, inferior-priced orders through SelectNet.

[12] The Nasdaq UTP Plan governs the trading of Nasdaq-listed securities pursuant to unlisted trading privileges. Subsection (b) of Section IX of the Nasdaq UTP Plan states, in pertinent part, that Plan participants "shall have direct telephone access to the trading desk of each Nasdaq market participant in each [e]ligible [s]ecurity in which the [p]articipant displays quotations." *See* Section IX, Market Access, of the Nasdaq UTP Plan.

[13] We note that this currently is the method that the Cincinnati Stock Exchange has elected to use for trading Nasdaq securities under the Nasdaq UTP Plan.

[14] This proposal would not preclude a UTP Exchange from forming a link with Nasdaq outside Nasdaq's market system or the parameters of an NMS plan.

[15] Order Entry ECNs are not subject to inbound automatic executions in SuperSOES. However, as NASD members, Order Entry ECNs are subject to NASD Rules and the enforcement and disciplinary powers granted therein. As non-members, UTP Exchanges are not subject to the same regulatory infrastructure.

[16] 15 U.S.C. 78o–3(b)(6).

[17] 15 U.S.C. 78s(b)(3)(A).

[18] 17 CFR 240.19b–4(f)(6).

[19] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[20] 17 CFR 200.30–3(a)(12).

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46755; File No. SR–Phlx–2002–46]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the Philadelphia Stock Exchange, Inc. Amending Various Phlx By-Laws and Rules to Remove References to the Secretary and Office of the Secretary to Properly Reflect Functions Performed by the Membership Services Department and its Director, the Director of the Examinations Department and the Floor Procedure Committee

October 31, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 2, 2002, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. On October 28, 2002, the Phlx filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.[4]

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to amend Phlx By-Law Article V, Section 5–7; Article XII, Sections 12–1(f)(1), (f)(2), (f)(4), (f)(5), (f)(8); 12–4(a), (d); Article XV, Sections 15–1, 15–11, 15–12; Article XVII, Sections 17–1, 17–3; and Phlx Rules 21, 404, 600, 601, 602, 949, and 1024 by removing references to Secretary and Office of the Secretary to properly reflect functions performed by the Phlx Membership Services Department and its Director, the Director of the Examinations Department and the Floor Procedure Committee.

The text of the proposed rule change, as amended, is available at the Office of the Secretary, the Phlx, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Phlx proposes to substitute references to Office of the Secretary and the Secretary with references to the Membership Services Department and its Director, primarily, in the various Exchange By-Law Article sections and Exchange rules relating to the membership processing performed at the Phlx. The proposed amendments recognize the functional split of responsibilities and functions now performed by the Phlx's Membership Services Department as opposed to the Phlx's Office of the Secretary. The Phlx's Membership Services Department, among other things, processes applications for membership, maintains mail and membership lists, conducts the market for memberships and foreign currency options participations, registers inactive nominees as well as compiles and issues the Exchange's Bulletin.

Approximately a year ago, the Membership Services Department was created by the Phlx to align membership, foreign currency options participation, inactive nominee and approved lessor processing and functions in a single, dedicated department. Over time, the role of the Phlx's Office of the Secretary respecting these matters has been transferred. The Phlx's Office of the Secretary now relies on the Phlx's Membership Services Department to compile and keep current the membership, approved lessor, foreign currency options participant and inactive nominee lists. Thus, the Phlx represents that the purpose of the changes to Phlx Bylaw Article V, Section 5–7, and Phlx Rules 600 and 601 are to reflect this situation. In the course of performing the processing functions, the Phlx's Membership Services Department compiles and issues the Exchange's Bulletin. This function is codified and the Phlx is eliminating the reference to the Secretary's Weekly Bulletin in Phlx By-Law Article XII, Section 12–4(d), Article XV, Section 15–1, as well as in Phlx Rule 949. The proposed changes to the following membership provisions also reflect a transfer of such functions: Phlx By-Law Article XII, Sections 12–1(f) and 12–4(a), Article XV, Sections 15–11 and 15–12, as well as Phlx Rules 21, 602, 949 and 1024.

Additionally, with respect to the proposed amendment to Phlx By-Law Article XVII Section 17–3, Investigation of Insolvency, the reference to the Secretary is being substituted by the Director, Membership Services Department and the Director of the Examinations Department because the Phlx believes that they are the appropriate staff officials to contact respecting an investigation for insolvency of a member or member organization.

Similarly, the amendment to Phlx Rule 404 deletes the reference to the Secretary as the Exchange official referenced to officially close an Exchange contract in securities that has not been fulfilled according to its terms and substitutes the Floor Procedure Committee to perform that function because the Phlx believes that they are the appropriate entity to address the matter under the Exchange rules.[5]

The Phlx believes that the proposed amendments are administrative in function and were reviewed by various Phlx Standing Committees, the Phlx Board and the membership without comment.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with section 6(b) of the Act[6] in general, and section 6(b)(5) of the Act[7] in particular, in that it is designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices, and protect investors and the public interest by promoting the efficient processing and maintenance of the Exchange's membership, approved lessor, foreign currency options participation and inactive nominee lists and files.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received written comments.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change, as amended, has become effective on October 28, 2002, the date of filing of Amendment No. 1, pursuant to section 19(b)(3)(A)(iii) of the Act[8] and subparagraph (f)(3) of Rule 19b–4 thereunder[9] because it is concerned solely with the administration of the Exchange. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–2002–46 and should be submitted by November 29, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–28284 Filed 11–6–02; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Murray L. Ross, Vice President and Secretary, Phlx, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated October 25, 2002 ("Amendment No. 1"). In Amendment No. 1, the Phlx made technical corrections to its proposal and replaced the filing in its entirety.

[4] For purposes of calculating the effective date and the 60-day abrogation period, the Commission considers the period to commence on October 28, 2002, the date that the Exchange filed Amendment No. 1.

[5] The Phlx represents that the Floor Procedure Committee is the appropriate entity to address this matter because, currently, under Exchange Rule 124, trading disputes occurring on or related to the trading floor, if not settled by an agreement between the members interested, will be settled by a vote of the members knowing of the transaction in question; and if the dispute is still not settled, then it will be settled by a Floor Official. Exchange Rule 124 also provides that Floor Official rulings are reviewable by the Exchange's Floor Procedure Committee. The Phlx also represents that this proposed amendment to current Exchange Rule 404 will not affect appeal or arbitration rights. Telephone conversation between Murray L. Ross, Vice President and Secretary, Phlx, and Sapna C. Patel, Attorney, Division, Commission, on October 31, 2002.

[6] U.S.C. 78f(b).

[7] U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A)(iii).

[9] 17 CFR 240.19b–4(f)(3).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46758; File No. SR–Phlx–2002–11]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Philadelphia Stock Exchange, Inc. Proposing to Amend Phlx Rule 201A(b), Alternate Specialist Assignment

October 31, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 11, 2002, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange"), filed with the Securities and Exchange Commission ("Commission"), the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Phlx. The Exchange filed Amendment No. 1 with the Commission on September 10, 2002.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to amend Phlx Rule 201A(b), Alternate Specialist Assignment, to delete restrictions on members, member organizations and persons affiliated with member organizations from acting as an alternate specialist while that member, member organization or person affiliated with member organization is either a specialist in the options overlying the equity issue or a Registered Options Trader ("ROT") with an assignment in the overlying options. The text of the proposed rule change is set forth below. Deleted text is in brackets.

Rule 201A (a) No change.

(b) *Assignment.* The Allocation, Evaluation and Securities Committee may assign one or more alternate specialists in a particular equity issue and may assign an alternate specialist to one or more equity issues after consultation with the Floor Procedure Committee. [No alternate specialist shall be assigned in an equity issue in which the alternate specialist, or any person associated with the alternate specialist or the member organization with which the alternate specialist is affiliated, is either a specialist in the options overlying that equity issue, or a Registered Options Trader with an assignment in the overlying options].

(c) No change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Phlx has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to delete restrictions on assignment of members and member organizations as alternate specialists if the member, member organization or persons affiliated with the member is the options specialist or an assigned ROT in the options overlying the equity issue. The Phlx does not have any similar restrictions on registered equity specialists (*i.e.*, primary specialists), their members or affiliated persons of such member organizations, nor is there a Commission rule on point. The Phlx believes that in an era of intense

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On September 10, 2002, the Exchange filed a Form 19b–4, which replaced the original filing in its entirety ("Amendment No. 1"). In Amendment No. 1, the Exchange enhanced the purpose of the proposed rule change.

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competitive market making in multiple market centers, with continued consolidation of broker-dealer specialist units operating on multiple markets, the restriction on *alternate* specialist privileges because a member organization has a ROT assigned in the overlying options or is the options specialist on the Phlx is no longer relevant or appropriate.

The instant restrictions were approved by the Commission in 1987.[4] According to the Phlx, the order makes only cursory reference to the restrictions and gives no rationale for them. Given the fact that there are no comparable restrictions on *primary* equity specialists at the Phlx, as well as the fact that appointments of alternate specialists and their association or affiliation with either a firm that is the specialist in the overlying option or with a ROT would be monitored by the Phlx's Market Surveillance Department to ensure compliance with Phlx and Commission rules, the Phlx does not believe the present restrictions are appropriate. The Phlx notes that its alternate specialist program allows existing registered Phlx equities specialists to provide liquidity on demand in the execution of customer orders in certain other securities traded on the Exchange and in other market centers.

The Phlx's Market Surveillance and Examinations Departments maintain and review any account activity of alternate specialists. Should the restrictions on appointment be deleted, the Phlx's Market Surveillance Department would coordinate their reviews of any corresponding options activity by an alternate specialist's member firm that may be a registered options specialist or have an affiliated ROT active in the related options to assure compliance with Phlx

The Phlx believes that deleting the restriction on alternate specialist appointment on the Phlx, generally a non-primary market for equities and other securities, would be consistent with the Commission's previous approval of proposals by several of the regional stock exchanges to allow stock specialists on those exchanges to take positions (not limited to hedging positions) in listed options on their specialty stock.[5] Specifically, the Phlx notes that the Commission staff Report of the Special Study of the Options Markets[6] cited the fact that the Commission determined to permit specialists and odd-lot dealers on the floors of the regional stock exchanges (Chicago Stock Exchange, Inc., Pacific Exchange, Inc., and the Phlx) to trade options on their specialty stocks and to allow floor traders on those exchanges to trade listed options with respect to underlying securities in which such floor traders held a position.[7] Further, in the Options Study, the staff noted that "the Commission was of the view that the potential for manipulative activity that might result from such "concurrent trading" was "relatively insignificant" on the secondary stock exchanges due to the small percentage of stock order flow directed to them."[8]

Further, the Phlx notes that Phlx *primary* equity specialists may already take non-hedged positions in overlying options directly and are not restricted from being associated with the options specialist or having an associated ROT trade in the overlying options. In addition, the Commission recently approved an American Stock Exchange LLC ("Amex") proposal that permitted limited side-by-side trading and integrated market making in certain securities (specified Exchange-Traded Fund Shares ("ETFs") or Trust Issued Receipts ("TIRs")) and their related options under certain conditions, as well as allowed limited integrated market making by permitting specialists in securities admitted to dealings on an unlisted basis to act as specialists, or other registered market makers in the related options provided certain exchange-approved information barriers are established and enforced.[9]

The Phlx believes that a Phlx alternate specialist will have little or no competitive or market informational advantages accruing to him or his firm in part due to the physical separation of the Phlx options and equity trading floors. The Phlx alternate equity specialist in an underlying security is physically separated from where an options specialist unit or an associated ROT would trade options and therefore, the Phlx believes that alternate specialists would have limited opportunities or abilities to engage in any potential manipulative or other improper trading practices.

On the Phlx, an alternate specialist's primary function is to afford an opportunity to assist in providing liquidity on the Phlx market if requested by the Phlx registered equity specialist. The Phlx believes that it is, therefore, rather doubtful that any possible conflicts between stock and options market making obligations may arise.

The Phlx believes it is inappropriate to restrict alternate specialist assignment due to the affiliation with an options specialist unit or an associated ROT in an environment of multiple market centers participating in trading of the equities and overlying options when the Phlx primary equities specialist is allowed to have such affiliations.

2. Basis

The Phlx believes that proposed rule change is consistent with section 6 of the Act[10] in general, and with section 6(b)(5) of the Act,[11] in particular, in that it is designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices and protect investors and the public interest by expanding the number of actively trading broker-dealers eligible to act as alternate specialists to increase liquidity and competitiveness of the Exchange's equities trading floor.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Phlx has neither solicited nor received written comments with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Phlx consents, the Commission will:

(A) by order approve such proposed rule change, or,

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–2002–11 and should be submitted by November 29, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–28330 Filed 11–6–02; 8:45 am]

BILLING CODE 8010–01–P

[4] *See* Securities Exchange Act Release No. 24820 (August 19, 1987), 52 FR 32235 (August 26, 1987) (SR–Phlx–87–04).

[5] *See, e.g.*, Securities Exchange Act Release Nos. 13269 (February 16, 1977), 11 SEC Docket 1741 (March 1, 1977); 13270 (February 16, 1977); 11 SEC Docket 1742 (March 1, 1977), 13271 (February 16, 1977), 11 SEC Docket 1743 (March 1, 1977); and 13272 (February 16, 1977), 11 SEC Docket 1744 (March 1, 1977).

[6] *See* Report of the Special Study of the Options Markets to the Securities and Exchange Commission, H.R. Rep. No. IFC 3, 96th Cong. 1st sess. (Comm. Print 1978) ("Options Study").

[7] *See supra* note 5.

[8] *See* Options Study, *supra* note 6 at pp. 872–873.

[9] *See* Securities Exchange Act Release No. 46213 (July 16, 2002), 67 FR 48232 (July 23, 2002) (SR–AMEX–2002–21).

[10] 15 U.S.C. 78f.

[11] 15 U.S.C. 78f(b)(5).

[12] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 4201]

Culturally Significant Objects Imported for Exhibition Determinations: "Einstein: Changing the World"

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the object to be included in the exhibition "Einstein: Changing the World," imported from abroad for temporary exhibition within the United States, is of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owner. I also determine that the exhibition or display of the exhibit objects at the American Museum of Natural History, New York, NY from on or about November 10, 2002 to on or about August 10, 2003, the Field Museum, Chicago, IL from on or about October 18, 2003 to on or about January 11, 2004, the Museum of Science, Boston, MA from on or about March 13, 2004 to on or about June 6, 2004, the Skirball Cultural Center, Los Angeles, CA from on or about September 9, 2004 to on or about May 29, 2005, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State, (telephone: (202) 619–6981). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: November 1, 2002.

Patricia S. Harrison,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 02–28397 Filed 11–6–02; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 4200]

Culturally Significant Objects Imported for Exhibition Determinations: "Great Asian Dinosaurs"

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the object to be included in the exhibition "Great Asian Dinosaurs," imported from abroad for temporary exhibition within the United States, is of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owner. I also determine that the exhibition or display of the exhibit objects at The Museum of Arts and Sciences, Daytona Beach, FL from on or about February 20, 2003 to on or about June 20, 2003, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State, (*telephone:* (202) 619–6981). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: November 1, 2002.

Patricia S. Harrison,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 02–28396 Filed 11–6–02; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 4151]

Overseas Security Advisory Council (OSAC) Renewal

The Department of State has renewed the Charter of the Overseas Security Advisory Council. This advisory council will continue to interact on overseas security matters of mutual interest between the U.S. Government and the American private sector. The Council's initiatives and security publications provide a unique contribution to protecting American private sector interests abroad. The Under Secretary for Management has determined that the Council is necessary and in the public interest.

The Council consists of representatives from four (4) U.S. Government agencies and thirty (30) American private sector companies and organizations. The Council will follow the procedures prescribed by the Federal Advisory Committee Act (FACA) (Pub. L. 92–463). Meetings will be open to the public unless a determination is made in accordance with section 10(d) of the FACA, 5 U.S.C. 552b(c)(1) and (4), that a meeting or a portion of the meeting should be closed to the public. Notice of each meeting will be provided in the **Federal Register** at least 15 days prior to the meeting.

For more information contact Marsha Thurman, Overseas Security Advisory

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Council, Bureau of Diplomatic Security, U.S. Department of State, Washington, DC 20522–1003, *phone:* (202) 663–0533.

Dated: November 1, 2002.

Peter E. Bergin,

Director of the Diplomatic Security Service, Department of State.

[FR Doc. 02–28395 Filed 11–6–02; 8:45 am]

BILLING CODE 4710–24–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG 2002–13126]

Information Collection Under Review by the Office of Management and Budget (OMB): 2115–0141

AGENCY: Coast Guard, DOT.

ACTION: Request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this request for comments announces that the Coast Guard has forwarded one Information Collection Report (ICR) abstracted below to the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB) for review and comment. Our ICR describes the information we seek to collect from the public. Review and comment by OIRA ensures that we impose only paperwork burdens commensurate with our performance of duties.

DATES: Please submit comments on or before December 9, 2002.

ADDRESSES: To make sure that your comments and related material do not enter the docket [USCG 2002–13126] more than once, please submit them by only one of the following means:

(1)(a) By mail to the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001. (b) By mail to OIRA, 725 17th Street NW., Washington, DC 20503, to the attention of the Desk Officer for the Coast Guard. Caution: Because of recent delays in the delivery of mail, your comments may reach the Facility more quickly if you choose one of the other means described below.

(2)(a) By delivery to room PL–401 at the address given in paragraph (1)(a) above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329. (b) By delivery to OIRA, at the address given in paragraph (1)(b) above, to the attention of the Desk Officer for the Coast Guard.

(3) By fax to (a) the Docket Management Facility at 202–493–2251 and (b) OIRA at 202–395–5806, or e-mail to OIRA at *oira_docket@omb.eop.gov* attention: Desk Officer for the Coast Guard.

(4)(a) Electronically through the Web Site for the Docket Management System at *http://dms.dot.gov.* (b) OIRA does not have a website on which you can post your comments.

The Docket Management Facility maintains the public docket for this notice. Comments and material received from the public, as well as documents mentioned in this notice as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 (Plaza level), 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at http://dms.dot.gov.

Copies of the complete ICR are available for inspection and copying in public dockets. They are available in docket USCG 2002–13126 of the Docket Management Facility between 10 a.m. and 5 p.m., Monday through Friday, except Federal holidays; for inspection and printing on the internet at *http://dms.dot.gov;* and for inspection from the Commandant (G–CIM–2), U.S. Coast Guard, room 6106, 2100 Second Street SW., Washington, DC, between 10 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Barbara Davis, Office of Information Management, 202–267–2326, for questions on this document; Dorothy Beard, Chief, Documentary Services Division, U.S. Department of Transportation, 202–366–5149, for questions on the docket.

SUPPLEMENTARY INFORMATION

Regulatory History

This request constitutes the 30-day notice required by OIRA. The Coast Guard has already published (67 FR 54009, August 20, 2002) the 60-day notice required by OIRA. That notice elicited no comments.

Request for Comments

The Coast Guard invites comments on the proposed collection of information to determine whether the collection is necessary for the proper performance of the functions of the Department. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the collection; (2) the accuracy of the Department's estimated burden of the collection; (3) ways to enhance the quality, utility, and clarity of the information that is the subject of the collection; and (4) ways to minimize the burden of collection on respondents, including the use of automated collection techniques or other forms of information technology.

Comments, to DMS or OIRA, must contain the OMB Control Number of the ICR addressed. Comments to DMS must contain the docket number of this request, USCG 2002–13126. Comments to OIRA are best assured of having their full effect if OIRA receives them 30 or fewer days after the publication of this request.

Information Collection Request

Title: 46 CFR Subchapter Q; Lifesaving, Electrical, and Engineering Equipment, Construction, and Materials.

OMB Control Number: 2115–0141.

Type of Request: Extension of a currently approved collection.

Affected Public: Manufacturers of safety equipment and materials.

Form: C6HQ–10030.

Abstract: The Coast Guard needs to collect this information so it can ensure compliance with rules governing specific types of safety equipment and material installed on commercial vessels and pleasure craft. Manufacturers must submit drawings, specifications, and laboratory test reports to the Coast Guard before it grants any approval.

Annual Estimated Burden Hours: The estimated burden is 16,880 hours a year.

Dated: October 31, 2002.

J.E. Evans,

Acting Director of Info & Tech.

[FR Doc. 02–28241 Filed 11–6–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Advisory Circular (AC) 43–HAB, Hot Air Balloon Inspection and Repair: Acceptable Methods, Techniques, and Practices

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability and request for comments on the proposed AC.

SUMMARY: This notice announces a proposed AC to be used by the Hot Air Balloon community as acceptable methods, techniques, and practices associated with the inspection and repair of Hot Air Balloons. This notice is necessary to give all interested persons the opportunity to present their views on the proposed AC. Hot air balloons derive lift from self-contained, generated heated air and are considered by definition a lighter-than-air aircraft. The owner or operator of a hot air balloon is primarily responsible for maintaining the balloon in an airworthy condition. The persons performing maintenance are responsible for the manner of performance and the approval for return to service after work is completed.

DATES: Comments must be received on or before January 6, 2003.

ADDRESSES: Send all comments on the proposed AC to: DOT/FAA, Standardization Branch, AFS–640, *Attn:* George Torres, 6500 S. MacArthur Boulevard, ARB Room 304A, Oklahoma City, Oklahoma 73125, or electronically to *george.torres@faa.gov.*

FOR FURTHER INFORMATION CONTACT: George Torres, AFS–640, at the address above, *by telephone:* (405) 954–6923, *by fax:* (405) 954–4104, or by *e-mail: george.torres@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The proposed AC is available on the FAA Web site at *http://www1.airweb.faa.gov/Regulatory_and_Guidance_Library/rgDAC.nsf/MainFrame?OpenFrameSet,* under AC No. 43–HAB. A copy of the proposed AC may be obtained by contacting the person named above under **FOR FURTHER INFORMATION CONTACT.** Interested persons are invited to comment on the proposed AC by submitting such written data, views, or arguments, as they may desire. Please identify AC 43–HAB, Hot Air Balloon Inspection and Repair: Acceptable Methods, Techniques, and Practices, and submit comments, either hard copy or electronically, to the appropriate address listed above. Comments may be inspected at the above address between 9 a.m. and 4 p.m. weekdays, except Federal holidays.

Issued in Washington, DC, on November 1, 2002.

Louis C. Cusimano,

Deputy Director, Flight Standards Service.

[FR Doc. 02–28372 Filed 11–6–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advisory Circular No. 00–62, Internet Communications of Aviation Weather and NOTAMs

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability and disposition of comments.

SUMMARY: This notice announces the availability of Advisory Circular No. 00–62, Internet Communications of Aviation Weather and NOTAMs, and disposes of comments received on an earlier proposed draft.

FOR FURTHER INFORMATION CONTACT: Steven R. Albersheim, Aerospace Weather Policy Division, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, (202) 385–7704, or *steven.albersheim@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

On January 14, 2002 the FAA issued a draft Advisory Circular (AC) on Internet Communications of Aviation Weather and NOTAMs. The FAA requested comment on all aspects of the proposed AC. This AC sets forth the process to become a Qualified Internet Communications Provider (QICP) and addresses issues that relate to accessing aviation weather and NOTAM information from approved QICPs.

Disposition of Comments

Comments were submitted from industry, special interest groups, and private individuals. The comments covered various issues, but were principally concerned with how a vendor would meet the provisions of reliability, accessibility, and security to be approved as a QICP by the FAA. The following addresses the issues raised by the commenters:

Several commenters questioned and/or did not support that the AC does not address the quality of a QICP's service or the quality of the QICP's data. As stated in the draft AC and reiterated here, the FAA does not intend to provide quality control of QICP data or approve the data accessed from a QICP. While the FAA requires air carriers certificated under 14 CFR parts 121 and 135 to use an FAA-approved source for weather information, the FAA does not approve the information supplied to these carriers, or to pilots conducting operations under part 91. This AC does not change the agency's current position on approving quality of data, or sources for other than part 121 and 135 carriers. A fundamental change such as approving data and/or sources for part 91 operations would require rulemaking with a public process for notice and comment. While these comments are noted, the purpose and goal of this AC are not to add these requirements. The FAA finds value in ensuring that the provider's facility, as an approved source for part 121 and 135 operators, is reliable, accessible and secure. This value may be realized by part 91 operators utilizing QICP vendors, if they so choose. To further clarify that an approved QICP does not include FAA approval of data source or quality, the FAA has added as part of the approval process, the provider's agreement to display a label on its internet site with the following recommended language. Failure to display this label may result in losing QICP status.

This Qualified Internet Communication Provider's (QICP) servers and communication interfaces are approved by the FAA as secure, reliable, and accessible in accordance with AC 00–62.

(1) This QICP does not ensure the quality and currency of the information transmitted to you.

(2) You assume the entire risk related to the information and its use.

Several commenters questioned the nature of the Quality of Service (QOS) agreements. Each approved QICP's maintenance plan has a QOS agreement with each user that addresses how the provider will meet measures of accessibility, reliability, and security. The QOS agreement should at most, only reference the standards and provide for complaint procedures if they are not maintained, allowing the parties to freely negotiate appropriate remedies and limitations of liability in the event the standards cannot be met for some period of time.

Comments were received on the use of standard security technology to ensure site authentication/data integrity. Specifically, a commenter disagreed with the use of Secure Sockets Layer (SSL) because SLL is not a formal standard and there are known bugs in early versions of SSL that allow an attacker to defeat any authentication and integrity assurances that it might provide, with a similar effort to altering data from an unsecured HTTP session.

The FAA agrees with this comment and has changed the AC to reflect that approved QICP's should maintain a security system that is applicable to current state-of-the-art technology. This also allows the applicant greater flexibility in implementing a system that complies with the AC while serving its customers and minimizing costs. In addition, it is noted that this change assists in preventing unauthorized access to or modification of provider data, software and hardware.

One commenter states that this AC inadequately describes the disaster recovery and contingency measures. The FAA does not believe it is necessary to provide specific details on every possible incident that could occur and believes that the AC provides guidance

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to applicants in devising individual security plans. The applicants need to demonstrate in their application that their security plans will maintain the integrity of the data. It is up to each applicant to show how they will maintain their operation 24 hours per day, seven days a week during any event that could disrupt service.

One commenter states that the FAA's response to an Application or a Letter of Denial following a Capability Demonstration should clearly define the standards/requirements to be met to allow the applicant to have its Application accepted and move on to the Capability Demonstration, or to have its Capability Demonstration completed successfully and qualify as a QICP.

In the event that a vendor's application is unsuccessful initially, the FAA will recommend revisions and inform the applicant of any needed changes. Similarly, a Letter of Denial will indicate the reasons for the denial so that the vendor could make appropriate changes to successfully complete its Capability Demonstration.

A commenter suggested that the approval period last for one or two years with a mandatory performance review of any extension and conduct interim review upon request.

The FAA finds that a six-month review is appropriate. QICPs are to provide facility performance statistics semiannually or upon request. This review assists in ensuring that QICPs are meeting the criteria of this AC.

One commenter argued that the required time for a QICP to respond to a user's Quality of Service complaints should be reduced from 14 calendar days to one business day following receipt.

The FAA maintains the 14-calendar day response period because while some complaints may be resolved in a very short time frame, other complaints may be more difficult to address. Each QICP has the option of implementing a more stringent response period in its QOS agreement. However, the agency finds that at a minimum, some latitude is necessary and that 14 calendar days provides that latitude.

One comment questioned the necessity for QICPs to authenticate users and limit access to authorized users, in order to provide users with information that is publicly available to anyone via other sources. This commenter contends that user authentication can increase the costs of providing such services.

User authentication is only a recommended practice. The significant aspect is that digital authentication is used so that the user knows that he/she has signed on to an approved QICP site. The FAA does not discourage those vendors who choose to provide a value-added service with password restriction to their customers. In accordance with this AC, QICPs are to meet the minimum-security protocol, which is to verify the authenticity of the source of information.

Comments were received on the need to further address the provisions of reliability and accessibility, in that the measures are too stringent. FAA disagrees with this position. In order to meet the purpose of this AC, a QICP's server and communication interface should have very little down time. In developing this measure of service, the FAA consulted with industry and the National Weather Service and believes this is achievable and easily maintained and consistent with current industry practices. FAA did not receive any comments on the burden of meeting the criteria in the AC in response to the solicitation for comments addressing reports requirements under the Paper Work Reduction Act of 1995.

A commenter recommends that the FAA consider the feasibility of requiring a certificate of authority for providers of aviation information, or that other means be identified to provide authentication and integrity protection.

It is recognized that no form of Internet security is totally risk free. The agency's intent with this AC is to reduce the risk to an acceptable level. The use of server digital certificates is consistent with current business practices, which the FAA finds to be an acceptable level. However, a QICP and user have the option of agreeing upon the use of a specific server certificate of their choice if they believe greater security linkage is warranted.

On September 17, 2002 the FAA published a proposed Revision to Operations Specifications (OpSpecs) A010, Aeronautical Weather Data in the **Federal Register**, which proposed a new requirement for 14 CFR part 121 and part 135 certificate holders that obtain approved weather data via the public Internet for use in flight operations. Under this proposal, these carriers must use a QICP for Internet communications of aviation weather and NOTAMs. OpSpec A010, would be amended to read as follows:

"For Internet communications of aviation weather and NOTAMS used in flight operations, all part 121 and 135 operators are required to use an approved Qualified Internet Communications Provider (QICP):

(1) The QICPs used by the operator must be listed in OpSpec A010.

(2) The QICP used must be obtained from the approved list provided by the FAA.

(3) For more detailed information with regard to QICPs, refer to the appropriate AC pertaining to Internet Communications of Aviation Weather and NOTAMs and Volume 3, Chapter 7, Section 5, of this Order."

In response to this Notice, the Air Transport Association commented that it supports the proposal and one air carrier requested clarification as to when a Part 121 operator could use an Internet provider for aviation weather services.

The Internet AC addresses measures to be taken by a QICP to assure the security, availability, and accessibility of Internet communications link for providing weather and NOTAM information. Some of the service providers that become QICP will likely provide a very comprehensive service while others will provide a narrower service focus. FAA will approve QICP status to both types of providers who meet the communications capabilities in the interest of enabling providers of weather and NOTAM service to use the public Internet.

Availability of the Advisory Circular

Aviation weather information is available on the public Internet from a variety of government and vendor sources with minimal quality control. Users of the National Airspace System, dispatchers, pilots and air traffic controllers/specialists have expressed interest in the ability to utilize the public Internet to retrieve aviation weather text and graphic products for operational decision-making. The FAA issued Advisory Circular 00–62 "Internet Communications of Aviation Weather and NOTAMS" on November 1, 2002 and is available on the FAA Web page at, *http://www.faa.gov/ats/ars/qicp*.

Issued in Washington, DC, on November 1, 2002.

James H. Washington,

Director, Air Traffic System Requirements Service.

[FR Doc. 02–28371 Filed 11–6–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Advisory Circular (AC) 145–MAN, Guide for Developing and Evaluating Repair Station and Quality Control Manuals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability of a proposed AC and request for comments.

SUMMARY: This notice announces the availability of a proposed AC which provides an acceptable means, but not the only means, of developing manuals that are required by regulation for aeronautical repair stations. This notice is necessary to give all interested persons the opportunity to present their views about the proposed AC.

DATES: Comments about the proposed AC must be received on or before November 22, 2002.

ADDRESSES: Send comments about the proposed AC to Diana L. Frohn, General Aviation and Commercial Branch (AFS–340), Room 827, Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591; telephone (202) 267–7027; *e-mail: diana.frohn@faa.gov*. You can also submit comments electronically using the Internet on the "Draft AW documents" page at *http://www.opspecs.com*. Comments may be inspected at the above office between 9 a.m. and 4 p.m. weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Diana L. Frohn at the above address, e-mail address, or telephone number.

Availability of the Proposed Advisory Circular

You can get a copy of the proposed AC by contacting the person named under **FOR FURTHER INFORMATION CONTACT.** You can also get an electronic copy of the proposed AC using the Internet on the "Draft AW documents" page at *http://www.opspecs.com* or on the FAA's "Regulatory Guidance Library" page at *http://www1.airweb.faa.gov/Regulatory_and_Guidance_Library/rgDAC.nsf/MainFrame?OpenFrameSet*.

Comments Invited

Interested persons are invited to comment about the proposed AC by sending written data, views, or arguments. Commenters should indicate AC 145–MAN, Guide for Developing and Evaluating Repair Station and Quality Control Manuals, in the comment and send comments to the address specified above. The Continuous Airworthiness Maintenance Division will consider all comments before issuing the final AC.

Background

This proposed AC is the result of an amendment to part 145 of Title 14, Code of Federal Regulations (14 CFR), published in the **Federal Register** on August 6, 2001. The final rule changed procedures and requirements for aeronautical repair stations and requires repair stations to develop a repair station manual and a quality control manual. The current AC (AC 145–3, dated February 13, 1981) does not incorporate these new procedures and requirements, nor does it reflect industry practices used by certificated repair stations today. FAA, therefore, finds it necessary to discard current guidance material and proposed new guidance material. This proposed AC would replace AC 145–3.

The proposed AC incorporates several examples of quality systems that repair stations may choose from to determine which best suits their individual needs. The proposed AC also incorporates several "checklists" to determine if the repair station has fully considered all its options and requirements. Further, this AC aids in the development of procedures and programs to assist the harmonization efforts of FAA with the European Joint Aviation Authority and other regulatory authorities.

FAA will consider each comment about the proposed AC and incorporate appropriate changes. This proposed AC will be reviewed in conjunction with the regulatory requirements of 14 CFR parts 43, 65, and 121, as applicable. This proposed AC would not change, add, or delete any requirement or authorize any deviation from part 43, 65, or 121.

Dated: Issued in Washington, DC, on October 29, 2002.

Louis C. Cusimano,

Deputy Director, Flight Standards Service.

[FR Doc. 02–28376 Filed 11–6–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Third Party War Risk Liability Insurance

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of extension of Aviation Insurance.

SUMMARY: This notice contains the text of a memo from the Secretary of Transportation to the President regarding the extension of the provision of aviation insurance coverage for U.S. flag commercial air carrier service in domestic and international operations.

DATES: Dates of extension from October 16, 2002 through December 15, 2002.

FOR FURTHER INFORMATION CONTACT: Helen Kish, Program Analyst, APO–3, or Eric Nelson, Program Analyst, APO–3, Federal Aviation Administration, 800 Independence Ave., SW, Washington, DC 20591, telephone 202–267–9943 or 202–267–3090. Or online at FAA Insurance Web site: *http://insurance.faa.gov*.

SUPPLEMENTARY INFORMATION: On October 15, 2002, the Secretary of Transportation authorized a 60-day extension of aviation insurance provided by the Federal Aviation Administration as follows:

Memorandum to the President

"Pursuant to the authority delegated to me in paragraph (3) of Presidential Determination No. 01–29 of September 23, 2001, I have extended that determination to allow for the provision of aviation insurance and reinsurance coverage for U.S. Flag commercial air carrier service in domestic and international operations for an additional 60 days.

Pursuant to section 44306(c) of Chapter 443 of 49 U.S.C., Aviation Insurance, the period for provision of insurance shall be extended from October 16, 2002, through December 15, 2002."

/s/Norman Y. Mineta

Affected Public: Air Carriers who currently have Third Party War-Risk Liability Insurance with the Federal Aviation Administration.

Issued in Washington, DC, on October 30, 2002.

Nan Shellabarger,

Deputy Director, Office of Aviation Policy and Plans.

[FR Doc. 02–28375 Filed 11–6–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Extension of Scoping Comment Period, Until December 9, 2002, on the Notice of Intent To Prepare Draft and Final Environmental Impact Statements for a Replacement Airport at St. George, UT

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

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The Northwest Mountain Region, Airports Division, Federal Aviation Administration (FAA), announces it has extended, until December 9, 2002, the scoping comment period pertaining the FAA Notice of Intent to prepare Draft and Final Environmental Impact Statements (EIS) for the construction of a replacement airport at St. George, Utah.

Background

On January 30, 2001, the Federal Aviation Administration (FAA) issued a Record of Decision/Finding of No Significant Impact document for the construction of a replacement airport at St. George, Utah. On December 22, 2001, the Grand Canyon Trust filed suit against the FAA in the U.S. Circuit Court of Appeals for the District of Columbia Circuit. On May 24, 2002, the court issued it's decision on the issues. In summary, the court found that "the FAA must evaluate the cumulative impact of noise pollution of the Park (Zion National Park) as a result of construction of the proposed replacement airport in light of air traffic near and over the Park, from whatever airport, air tours near or in the Park, and the acoustical data collected by the NPS in the Park in 1995 and 1998 mentioned in comments on the draft Environmental Assessment (EA)". The court remanded the case [to the FAA] "because the record is insufficient for the court to determine whether an EIS is required".

The purpose of the Draft and final EIS's will be to address the court's issues and any other environmental issues that have changed since issuance of the final environmental assessment in January of 2001.

In previously issued notices (**Federal Register** and *The Specturn Newspaper*, St. George, Utah) some misunderstanding may have existed regarding the use of the word "Park" in the Background text. This notice clarifies that the Park in question is Zion National Park. Further, the FAA has extended the scoping comment period until December 9, 2002, to insure an adequate comment period with a clear understanding that the "Park" is Zion National Park.

Proposed Action and Alternatives

The proposed action is the construction of a replacement airport at St. George, Utah. Alternatives to be evaluated include:

a. No-Build (continue using the existing airport as is).

b. Build a replacement airport at the preferred site (which is a combination of alternative sites 1 and 1A), and

c. Alternative sites 1, 1A, and 2 as described on pages 32–40 of the final EA.

Scoping Process

The proposed action was the subject of a Final Environmental Assessment (FEA) report prepared in January 2001. Persons wishing to review the FEA in order to better understand the proposed action or provide comments regarding environmental concerns may review the FEA at the following locations:

Federal Aviation Administration, Airports Division, ANM–600, 1601 Lind Avenue, SW., Renton, Washington, 98055–4056.

Denver Airports District Office, 26805 E. 68th Ave., Suite 224, Denver, CO 80249–6361.

City of St. George, Public Works Office, 175 East 200 North, St. George, UT 84770.

Washington County Library, St. George Branch, 50 S. Main, St. George, Utah.

In order to insure that all significant issues related to the proposed action are identified and given consideration, letters containing environmental concerns must be received by Dennis Ossenkop, 1601 Lind Ave. SW., Suite 315, Renton, WA 98055–4056 by December 9, 2002.

Release of Draft EIS

Approximate Release of Draft EIS: Unknown at this time.

Point of Contact for Information

Dennis Ossenkop, 1601 Lind Ave. SW., Suite 315, Renton, WA 98055–4056, Telephone: 425 227 2611.

Dated: October 29, 2002.

Lowell H. Johnson,

Manager, Airports Division, Northwest Mountain Region.

[FR Doc. 02–28377 Filed 11–6–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 03–10–C–00–BNA To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Nashville International Airport, Nashville, TN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Nashville International Airport under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before December 9, 2002.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Memphis Airports District Office, 3385 Airways Boulevard, Suite 302, Memphis, Tennessee 38116–3841.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Raul Regalado, President of the Metropolitan Nashville Airport Authority at the following address ONe Terminal Drive, Suite 501, Nashville, Tennessee, 37214. Air carriers and foreign air carriers may submit copies of written comments previously provided to the Metropolitan Nashville Airport Authority under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Cynthia K. Wills, Program Manager, Memphis Airports District Office, 3385 Airways Boulevard, Suite 302, Memphis, Tennessee 38116–3841, (901) 544–3495. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Nashville International Airport under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On October 29, 2002, the FAA determined that the application to impose and use the revenue from a PFC submitted by Metropolitan Nashville Airport Authority was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than February 11, 2003.

The following is a brief overview of the application.

Proposed charge effective date: October 1, 2004.

Proposed charge expiration date: March 31, 2007.

Level of the proposed PFC: $3.00.

Total estimated PFC revenue: $8,883,800.

Brief description of proposed project(s): Land Acquisition (East Side); Land Acquisition (Extended Runway Approach Areas), Public Address System, Security Enhancements, Airfield Pavement Rehabilitation, Widen Three (3) Taxiway Fillets, Airport Vehicle Driving Simulator.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Part 135, Air Taxi.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports office located at: Southern Region Headquarters, 1701 Columbia Avenue, College Park, Georgia, 30337

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Metropolitan Nashville Airport Authority.

Dated: Issued in Memphis, Tennessee on October 29, 2002.

LaVerne F. Reid,

Manager, Memphis Airports District Office, Southern Region.

[FR Doc. 02–28378 Filed 11–6–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Shelby County, TN

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Shelby County, Tennessee.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Doctor, Field Operations Team Leader, Federal Highway Administration, 640 Grassmere Park Suite 112, Nashville, Tennessee 37211, Telephone: (615) 781–5788.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Tennessee Department of Transportation, will prepare an environmental impact statement (EIS) on a proposal to improve and extend North Second Street from Interstate 40 to the State Route 300/U.S. 51 (Thomas Street) interchange in Memphis. This proposed transportation improvement project is identified in the Memphis Metropolitan Area Long Range Transportation Plan as a Priority One facility. The main project purpose is to provide a transportation facility that improves accessibility and promotes economic development opportunities for the north Memphis, Frayser, and downtown Memphis communities.

Alternatives to be considered are: (1) Taking no action; (2) improve existing North Second Street and North Third Street as one-way pairs from I–40 to Henry Avenue and widen North Second Street north of Henry Avenue as a two-way street with three-lanes in each direction; (3) improve existing Auction Avenue and U.S. 51 (Thomas Street) as a six-lane facility; and (4) other alternatives that may arise from public and agency input.

Initial coordination letters describing the proposed action and soliciting comments were previously sent to appropriate Federal, State and local agencies, and to private organizations and citizens who have previously expressed or are known to have an interest in this proposal. Two public information meetings and two preliminary inter-agency scoping meetings have been held for the project and a public hearing will be scheduled upon completion of the Draft EIS. Public notice will be given of the time and place of the hearing. The Draft EIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: October 28, 2002.

Mark A. Doctor,

Field Operations Team Leader, Tennessee Division, Nashville, Tennessee.

[FR Doc. 02–28335 Filed 11–6–02; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34264]

Connotton Valley Railway, Inc.—Lease and Operation Exemption—Wheeling & Lake Erie Railway Company

Connotton Valley Railway, Inc. (CVR), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to lease and operate, pursuant to an agreement with Wheeling & Lake Erie Railway Company (W&LE), approximately 10.4 miles of rail line. The line extends from milepost 5.1 in Cleveland, OH, to milepost 15.5 at Falls Junction, in Glenwillow, OH (including access to the yard at Falls Junction and all existing siding and run-around tracks within and between said points). CVR certifies that its projected annual revenues as a result of this transaction will not exceed those that would qualify it as a Class III rail carrier, and further certifies that its projected annual revenues will not exceed $5 million.

The parties report that they intend to consummate the transaction on or after the effective date of the exemption. The earliest the transaction could have been consummated was October 15, 2002 (7 days after the exemption was filed).

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34264, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Barbara Williams, 14 South Main Street, PO Box 261, West Salem, OH 44287.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: October 30, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–28072 Filed 11–6–02; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network; Proposed Collection; Comment Request; Currency Transaction Report by Casinos ("CTRC").

AGENCY: Financial Crimes Enforcement Network ("FinCEN"), Treasury.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, FinCEN invites comment on a proposed extension of an existing information collection requirement contained in the form, "Currency Transaction Report by Casinos (CTRC)." This request for comments is being

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made pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments are welcome and must be received on or before January 6, 2003.

ADDRESSES: Written comments should be submitted to: Office of Chief Counsel, Financial Crimes Enforcement Network, Department of the Treasury, P.O. Box 39, Vienna, Virginia 22183, Attention: PRA Comments—CTRC Form. Comments also may be submitted by electronic mail to the following address: *regcomments@fincen.treas.gov*, again with a caption, in the body of the text, "Attention: PRA Comments—CTRC Form."

Inspection of comments. Comments may be inspected, between 10 a.m. and 4 p.m., in the FinCEN reading room in Washington, DC. Persons wishing to inspect the comments submitted must request an appointment by telephoning (202) 354–6400.

FOR FURTHER INFORMATION CONTACT: Leonard Senia, Senior Regulatory Program Specialist; or Russell Stephenson, Regulatory Program Analyst, Office of Compliance and Regulatory Enforcement, FinCEN, at (202) 354–6015; and Judith R. Starr, Chief Counsel and Christine L. Schuetz, Attorney-Advisor, Office of Chief Counsel, FinCEN, at (703) 905–3590.

SUPPLEMENTARY INFORMATION:

Title: Currency Transaction Report by Casinos (CTRC).

OMB Number: 1506–0005.

Form Number: 8362.

Abstract: The statute generally referred to as the "Bank Secrecy Act," Titles I and II of Public Law 91–508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5332, authorizes the Secretary of the Treasury, inter alia, to require financial institutions to keep records and file reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory matters, or in the conduct of intelligence or counter-intelligence activities, to protect against international terrorism, and to implement counter-money laundering programs and compliance procedures.[1] Regulations implementing Title II of the Bank Secrecy Act appear at 31 CFR part 103. The authority of the Secretary to administer the Bank Secrecy Act has been delegated to the Director of FinCEN.

Section 5313(a) authorizes the Secretary to issue regulations that require a report when "a domestic financial institution is involved in a transaction for the payment, receipt, or transfer of United States coins or currency (or other monetary instruments the Secretary of the Treasury prescribes), in an amount, denomination, or amount and denomination, or under circumstances the Secretary prescribes." Regulations implementing section 5313(a) are found at 31 CFR 103.22. In general, the regulations require the reporting of transactions in currency in excess of $10,000 a day. Casinos as defined in 31 U.S.C. 5312(a)(2)(X) and 31 CFR 103.11(n)(7)(i) are financial institutions subject to the currency transaction reporting requirement. Card clubs, as defined in 31 CFR 103.11(n)(8)(i), are casinos subject to currency transaction reporting. (*See* 63 FR 1919, January 13, 1998.) The Currency Transaction Report by Casinos, IRS Form 8362, is the form casinos and card clubs use to comply with the currency transaction reporting requirements.

Type of Review: Extension of a currently approved information collection.

Affected public: Business or other for-profit institutions.

Frequency: As required.

Estimated Burden: Reporting average of 19 minutes per response.[2] Form record keeping average of 5 minutes per response, for a total of 24 minutes.

Estimated number of respondents=550.

Estimated Total Annual Responses=237,000.

Estimated Total Annual Burden Hours: 94,800.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Records required to be retained under the Bank Secrecy Act must be retained for five years.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected: (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance and purchase of services to provide information.

Dated: October 31, 2002.

James F. Sloan,

Director, Financial Crimes Enforcement Network.

[FR Doc. 02–28287 Filed 11–6–02; 8:45 am]

BILLING CODE 4810–02–P

[1] Language expanding the scope of the Bank Secrecy Act to intelligence or counter-intelligence activities to protect against international terrorism was added by Section 358 of the Uniting and strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001 (the "USA Patriot Act"), Public Law 107–56.

[2] This burden relates to the completion of the CTRC form only. The recordkeeping burden of 31 CFR 103.22 is reflected in the final rule requiring casinos and card clubs to file currency transaction reports of suspicious activity.

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 02–61]

Recordation of Trade Name: "ORTHOTEC"

ACTION: Notice of Application for Recordation of Trade Name.

SUMMARY: Application has been filed pursuant to section 133.12, Customs Regulations (19 CFR 133.12), for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name "ORTHOTEC". The trade name is owned by Orthotec, LLC, a Delaware Limited Liability Company organized and created in the State of Delaware, 9595 Wilshire Blvd., Suite 502, Beverly Hills, California 90212.

The application states that the trade name is used on medical devices, more specifically, surgical implants made of stainless steel or titanium for spinal surgery, comprised of hooks, bolts, screws, rods, instruments and containers to hold the goods and instruments.

The merchandise is manufactured in the United States.

Before final action is taken on the application, consideration will be given to any relevant data, views, or arguments submitted in writing by any person in opposition to the recordation of this trade name. Notice of the action taken on the application for recordation of this trade name will be published in the **Federal Register**.

This item previously appeared in the Customs Bulletin on October 23, 2002. The time for public comments has since been extended to 60 days from the date of this publication in the **Federal Register**.

DATES: Comments must be received or on before January 6, 2003.

ADDRESSES: Written comments should be addressed to U.S. Customs Service, Attention: Office of Regulations & Rulings, Intellectual Property Rights Branch, 1300 Pennsylvania Avenue, NW. (Mint Annex), Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Gwendolyn Savoy, Intellectual Property Rights Branch, 1300, Pennsylvania Avenue, NW., Washington, DC 20229, (202) 572–8710.

Dated: November 4, 2002.

Joanne Roman Stump,

Chief, Intellectual Property Rights Branch.

[FR Doc. 02–28347 Filed 11–6–02; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Fee Schedule for the Transfer of U.S. Treasury Book-Entry Securities Held on the National Book-Entry System

AGENCY: Bureau of the Public Debt, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury is announcing a new fee schedule for the transfer of book-entry securities maintained on the National Book-Entry System (NBES). This fee schedule will take effect on January 2, 2003. The basic fee for the transfer of a Treasury book-entry security will decrease from $.49 to $.27, a 45 percent fee reduction from CY 2002. Concurrent with Treasury's fee reduction, the Federal Reserve will be decreasing the fee for the movement of funds from $.06 to $.05. These changes will result in a combined fee of $.32 for a Treasury security transfer. This represents a $.23 fee reduction from CY 2002.

In addition to the basic fee, off-line transfers have a surcharge. The surcharge for an off-line Treasury book-entry transfer in CY 2003 will be $25.00, unchanged from CY 2002.

EFFECTIVE DATE: January 2, 2003.

FOR FURTHER INFORMATION CONTACT:

Edward C. Leithead, Director, Primary & Secondary Market Fixed Income Securities (Financing), Bureau of the Public Debt, Suite 3014, 26 Federal Plaza, New York, NY 10278, telephone (212) 264–6358.

John M. Lilly, Financial Systems Analyst, Bureau of the Public Debt, Room 510, 999 E Street NW., Washington, DC 20239–0001, telephone (202) 691–3550.

SUPPLEMENTARY INFORMATION: On October 1, 1985, the Department of the Treasury established a fee structure for the transfer of Treasury book-entry securities maintained on NBES.

Based on the latest review of book-entry costs and volumes, Treasury will decrease its basic fee from the levels currently in effect. Effective January 2, 2003, the basic fee will decrease from $.49 to $.27 for each Treasury securities transfer and reversal sent and received, a 45 percent fee reduction from CY 2002. The surcharge for an off-line Treasury book-entry transfer in CY 2003 will be $25.00, unchanged from CY 2002.

The basic transfer fee assessed to both sends and receives is reflective of costs associated with the processing of a security transfer. The off-line surcharge reflects the additional processing costs associated with the manual processing of off-line securities transfers.

The Treasury does not charge a fee for account maintenance, the stripping and reconstituting of Treasury securities, original issues, or interest and redemption payments. The Treasury currently absorbs these costs and will continue to do so.

The fees described in this notice apply only to the transfer of Treasury book-entry securities held on NBES. The Federal Reserve System assesses a fee to recover the costs associated with the processing of the funds component of Treasury book-entry transfer messages, as well as the costs of providing book-entry services for government agencies on NBES. Information concerning book-entry transfers of government Agency securities, which are priced by the Federal Reserve System, is set out in a separate **Federal Register** notice published by the Board of Governors of the Federal Reserve System in this issue of the **Federal Register** (Federal Reserve Docket No. R–1133).

The following is the Treasury fee schedule that will take effect on January 2, 2003, for the book-entry transfers on NBES:

TREASURY-NBES FEE SCHEDULE [1]

[Effective January 2, 2003, (in dollars)]

Transfer type	Basic fee	Off-line Surcharge	Funds [2] movement fee	Total fee
On-line transfer originated	.27	.00	.05	.32
On-line transfer received	.27	.00	.05	.32
On-line reversal transfer originated	.27	.00	.05	.32
On-line reversal transfer received	.27	.00	.05	.32
Off-line transfer originated	.27	25.00	.05	25.32
Off-line transfer received	.27	25.00	.25	25.32
Off-line account switch received	.27	.00	.05	.32
Off-line reversal transfer originated	.27	25.00	.05	25.32
Off-line reversal transfer received	.27	25.05	25	25.32

[1] The Treasury does not charge a fee for account maintenance, the stripping and reconstituting of Treasury securities, original issues, or interest and redemption payments. The Treasury currently absorbs these costs and will continue to do so.

[2] The funds movement fee is not a Treasury fee, but is charged by the Federal Reserve for the cost of moving funds associated with the transfer of a Treasury book-entry security.

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Authority: 31 CFR 357.45

Dated: October 23, 2002.

Donald V. Hammond,

Fiscal Assistant Secretary.

[FR Doc. 02–28117 Filed 11–6–02; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Proposed Agency Information Collection Activities; Comment Request—Branch Offices

AGENCY: Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and continuing information collections, as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3507. The Office of Thrift Supervision within the Department of the Treasury will submit the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. Today, OTS is soliciting public comments on the proposal.

DATES: Submit written comments on or before January 6, 2003.

ADDRESSES: Send comments, referring to the collection by title of the proposal or by OMB approval number, to Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552; send a facsimile transmission to (202) 906–6518; or send an e-mail to *infocollection.comments@ots.treas.gov*. OTS will post comments and the related index on the OTS Internet Site at *www.ots.treas.gov*. In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *publicinfo@ots.treas.gov*, or send a facsimile transmission to (202) 906–7755.

FOR FURTHER INFORMATION CONTACT: You can request additional information about this proposed information collection from Nadine Washington, Information Systems, Administration & Finance, (202) 906–6706, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number. As part of the approval process, we invite comments on the following information collection.

Comments should address one or more of the following points:

a. Whether the proposed collection of information is necessary for the proper performance of the functions of OTS;

b. The accuracy of OTS's estimate of the burden of the proposed information collection;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of the information collection on respondents, including through the use information technology.

We will summarize the comments that we receive and include them in the OTS request for OMB approval. All comments will become a matter of public record. In this notice, OTS is soliciting comments concerning the following information collection.

Title of Proposal: Branch Offices.

OMB Number: 1550–0006.

Form Number: OTS Forms 1450 and 1558.

Regulation requirement: 12 CFR 545.92 and 545.95.

Description: 12 CFR 545.92 and 545.95 require Federally-chartered institutions proposing to establish a branch office or to change the location of a branch office to file an application or notice with OTS.

Type of Review: Renewal.

Affected Public: Savings Associations.

Estimated Number of Respondents: 1,089.

Estimated Frequency of Response: Event-generated.

Estimated Burden Hours per Response: 1.5 hours.

Estimated Total Burden: 1,634 hours.

Clearance Officer: Marilyn K. Burton, (202) 906–6467, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: October 31, 2002.

Deborah Dakin,

Deputy Chief Counsel, Regulations and Legislation Division.

[FR Doc. 02–28261 Filed 11–6–02; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Proposed Agency Information Collection Activities; Comment Request—Charter Conversions

AGENCY: Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and continuing information collections, as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3507. The Office of Thrift Supervision within the Department of the Treasury will submit the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. Today, OTS is soliciting public comments on the proposal.

DATES: Submit written comments on or before January 6, 2003.

ADDRESSES: Send comments, referring to the collection by title of the proposal or by OMB approval number, to Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552; send a facsimile transmission to (202) 906–6518; or send an e-mail to *infocollection.comments@ots.treas.gov*. OTS will post comments and the related index on the OTS Internet Site at *http://www.ots.treas.gov*. In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *publicinfo@ots.treas.gov*, or send a facsimile transmission to (202) 906–7755.

FOR FURTHER INFORMATION CONTACT: You can request additional information about this proposed information collection from Nadine Washington, Information Systems, Administration & Finance, (202) 906–6706, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number. As part of the approval process, we invite comments on the following information collection.

Comments should address one or more of the following points:

a. Whether the proposed collection of information is necessary for the proper performance of the functions of OTS;

b. The accuracy of OTS's estimate of the burden of the proposed information collection;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of the information collection on respondents, including through the use information technology.

We will summarize the comments that we receive and include them in the OTS request for OMB approval. All comments will become a matter of public record. In this notice, OTS is soliciting comments concerning the following information collection.

Title of Proposal: Application for conversion from: (a) OTS-regulated, state-chartered savings association to Federal savings association; (b) national bank, commercial bank, state savings bank, or credit union to Federal savings association.

OMB Number: 1550–0007.

Form Number: OTS Forms 1582.

Regulation requirement: 12 CFR 543.8, 543.9, and 552.2–6.

Description: Section 5(i) of the Home Owners' Loan Act and 12 CFR 543.8 and 552.2 require OTS to act on requests by state-chartered institutions and credit unions proposing to convert to Federal savings association charters.

Type of Review: Renewal.

Affected Public: Savings Associations.

Estimated Number of Respondents: 18.

Estimated Frequency of Response: Event-generated.

Estimated Burden Hours per Response: 4 hours.

Estimated Total Burden: 72 hours.

Clearance Officer: Marilyn K. Burton, (202) 906–6467, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: October 31, 2002.

Deborah Dakin,

Deputy Chief Counsel, Regulations and Legislation Division.

[FR Doc. 02–28262 Filed 11–6–02; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Proposed Agency Information Collection Activities; Comment Request—Outside Borrowings

AGENCY: Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and continuing information collections, as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3507. The Office of Thrift Supervision within the Department of the Treasury will submit the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. Today, OTS is soliciting public comments on the proposal.

DATES: Submit written comments on or before January 6, 2003.

ADDRESSES: Send comments, referring to the collection by title of the proposal or by OMB approval number, to Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552; send a facsimile transmission to (202) 906–6518; or send an e-mail to *infocollection.comments@ots.treas.gov*. OTS will post comments and the related index on the OTS Internet Site at *http://www.ots.treas.gov*. In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *publicinfo@ots.treas.gov*, or send a facsimile transmission to (202) 906–7755.

FOR FURTHER INFORMATION CONTACT: You can request additional information about this proposed information collection from Nadine Washington, Information Systems, Administration & Finance, (202) 906–6706, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number. As part of the approval process, we invite comments on the following information collection.

Comments should address one or more of the following points:

a. Whether the proposed collection of information is necessary for the proper performance of the functions of OTS:

b. The accuracy of OTS's estimate of the burden of the proposed information collection;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of the information collection on respondents, including through the use information technology.

We will summarize the comments that we receive and include them in the OTS request for OMB approval. All comments will become a matter of public record. In this notice, OTS is soliciting comments concerning the following information collection.

Title of Proposal: Outside Borrowings.

OMB Number: 1550–0061.

Form Number: N/A.

Regulation requirement: 12 CFR 563.80.

Description: Information is collected from savings associations that do not meet capital requirements. These institutions must give ten days' prior notification before making long-term borrowings. Information submitted by the institutions is used to monitor their safety and soundness.

Type of Review: Renewal.

Affected Public: Savings Associations.

Estimated Number of Respondents: 1.

Estimated Frequency of Response: Event-generated.

Estimated Burden Hours per Response: 4 hours.

Estimated Total Burden: 4 hours.

Clearance Officer: Marilyn K. Burton, (202) 906–6467, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: October 31, 2002.

Deborah Dakin,

Deputy Chief Counsel, Regulations and Legislation Division.

[FR Doc. 02–28263 Filed 11–6–02; 8:45 am]

BILLING CODE 6720–01–P

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DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Proposed Agency Information Collection Activities; Comment Request—Request for Service Corporation Activity

AGENCY: Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and continuing information collections, as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3507. The Office of Thrift Supervision within the Department of the Treasury will submit the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. Today, OTS is soliciting public comments on the proposal.

DATES: Submit written comments on or before January 6, 2003.

ADDRESSES: Send comments, referring to the collection by title of the proposal or by OMB approval number, to Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552; send a facsimile transmission to (202) 906–6518; or send an e-mail to *infocollection.comments@ots.treas.gov*. OTS will post comments and the related index on the OTS Internet Site at *http://www.ots.treas.gov*. In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *publicinfo@ots.treas.gov*, or send a facsimile transmission to (202) 906–7755.

FOR FURTHER INFORMATION CONTACT: You can request additional information about this proposed information collection from Nadine Washington, Information Systems, Administration & Finance, (202) 906–6706, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number. As part of the approval process, we invite comments on the following information collection.

Comments should address one or more of the following points:

a. Whether the proposed collection of information is necessary for the proper performance of the functions of OTS;

b. The accuracy of OTS's estimate of the burden of the proposed information collection;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of the information collection on respondents, including through the use of information technology.

We will summarize the comments that we receive and include them in the OTS request for OMB approval. All comments will become a matter of public record. In this notice, OTS is soliciting comments concerning the following information collection.

Title of Proposal: Request for Service Corporation Activity.

OMB Number: 1550–0013.

Form Number: N/A.

Regulation requirement: 12 CFR 545.74 and 559.12.

Description: 12 CFR 545.74 requires savings associations to obtain approval or notify OTS prior to engaging in activities through a service corporation that are not preapproved by regulation. It also contains a recordkeeping requirement for securities brokerage activities. 12 CFR 559.12 governs the issuance of securities. These requirements allow OTS to review service corporation activities and to ensure that they will not adversely affect an institution's safety and soundness.

Type of Review: Renewal.

Affected Public: Savings Associations.

Estimated Number of Respondents: 114.

Estimated Frequency of Response: Event-generated.

Estimated Burden Hours per Response: 2 hours.

Estimated Total Burden: 228 hours.

Clearance Officer: Marilyn K. Burton, (202) 906–6467, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: October 31, 2002.

Deborah Dakin,

Deputy Chief Counsel, Regulations and Legislation Division.

[FR Doc. 02–28264 Filed 11–6–02; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Proposed Agency Information Collection Activities; Comment Request—Change of Control

AGENCY: Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The Department of the Treasury, as part-of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and continuing information collections, as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3507. The Office of Thrift Supervision within the Department of the Treasury will submit the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. Today, OTS is soliciting public comments on the proposal.

DATES: Submit written comments on or before January 6, 2003.

ADDRESSES: Send comments, referring to the collection by title of the proposal or by OMB approval number, to Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552; send a facsimile transmission to (202) 906–6518; or send an e-mail to *infocollection.comments@ots.treas.gov*. OTS will post comments and the related index on the OTS Internet Site at *http://www.ots.treas.gov*. In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *publicinfo@ots.treas.gov*, or send a facsimile transmission to (202) 906–7755.

FOR FURTHER INFORMATION CONTACT: You can request additional information about this proposed information collection from Nadine Washington, Information Systems, Administration & Finance, (202) 906–6706, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number. As part of the approval process, we invite comments on the following information collection.

Comments should address one or more of the following points:

a. Whether the proposed collection of information is necessary for the proper performance of the functions of OTS;

b. The accuracy of OTS's estimate of the burden of the proposed information collection;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of the information collection on respondents, including through the use information technology.

We will summarize the comments that we receive and include them in the OTS request for OMB approval. All comments will become a matter of public record. In this notice, OTS is soliciting comments concerning the following information collection.

Title of Proposal: Change of Control.

OMB Number: 1550–0032.

Form Number: OTS Form 1622.

Regulation requirement: 12 CFR part 574.

Description: 12 CFR part 574 contains filing requirements for change of control applications. Section 1818(j) of the Federal Deposit Insurance Act requires a notice to be filed with OTS when an insured institution undergoes a change of control.

Type of Review: Renewal.

Affected Public: Savings Associations.

Estimated Number of Respondents: 29.

Estimated Frequency of Response: Event-generated.

Estimated Burden Hours per Response: 34.5 hours.

Estimated Total Burden: 1,000.50 hours.

Clearance Officer: Marilyn K. Burton, (202) 906–6467, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: October 31, 2002.

Deborah Dakin,

Deputy Chief Counsel, Regulations and Legislation Division.

[FR Doc. 02–28265 Filed 11–6–02; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Proposed Agency Information Collection Activities; Comment Request—Notice of Hiring or Indemnifying Senior Executive Officers or Directors

AGENCY: Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and continuing information collections, as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3507. The Office of Thrift Supervision within the Department of the Treasury will submit the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. Today, OTS is soliciting public comments on the proposal.

DATES: Submit written comments on or before January 6, 2003.

ADDRESSES: Send comments, referring to the collection by title of the proposal or by OMB approval number, to Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552; send a facsimile transmission to (202) 906–6518; or send an e-mail to *infocollection.comments@ots.treas.gov*. OTS will post comments and the related index on the OTS Internet Site at *www.ots.treas.gov*. In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *publicinfo@ots.treas.gov*, or send a facsimile transmission to (202) 906–7755.

FOR FURTHER INFORMATION CONTACT: You can request additional information about this proposed information collection from Nadine Washington, Information Systems, Administration & Finance, (202) 906–6706, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number. As part of the approval process, we invite comments on the following information collection.

Comments should address one or more of the following points:

a. Whether the proposed collection of information is necessary for the proper performance of the functions of OTS;

b. The accuracy of OTS's estimate of the burden of the proposed information collection;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of the information collection on respondents, including through the use information technology.

We will summarize the comments that we receive and include them in the OTS request for OMB approval. All comments will become a matter of public record. In this notice, OTS is soliciting comments concerning the following information collection.

Title of Proposal: Notice of Hiring or Indemnifying Senior Executive Officers or Directors.

OMB Number: 1550–0047.

Form Number: OTS Forms 1624, 1623, and 1606.

Regulation requirement: 12 CFR 545.121(c)(iii).

Description: Congress requires agency notification and approval for new senior executive officers and directors of financial institutions. Forms 1624 and 1623 are used to evaluate the competence, experience, and integrity of individuals considered for directorships and senior executive positions. Form 1606 is an Applicant Certification as to lack of criminal background.

Type of Review: Renewal.

Affected Public: Savings Associations.

Estimated Number of Respondents: 41.

Estimated Frequency of Response: Event-generated.

Estimated Burden Hours per Response: 39.5 hours.

Estimated Total Burden: 1,619.50 hours.

Clearance Officer: Marilyn K. Burton, (202) 906–6467, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: October 31, 2002.

Deborah Dakin,

Deputy Chief Counsel, Regulations and Legislation Division.

[FR Doc. 02–28266 Filed 11–6–02; 8:45 am]

BILLING CODE 6720–01–P

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DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0458]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before December 9, 2002.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov.* Please refer to "OMB Control No. 2900–0458."

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0458" in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Certification of School Attendance or Termination, VA Form 21–8960 and VA Form 21–8960–1.

OMB Control Number: 2900–0458.

Type of Review: Extension of a currently approved collection.

Abstract: The information collected on the forms is necessary to determine continued eligibility for benefits for a child between the ages of 18 and 23 years old who is attending school.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on August 7, 2002, at pages 51323–51324.

Affected Public: Individuals or Households.

Estimated Annual Burden: 11,667 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: Annually.

Estimated Number of Respondents: 70,000.

Dated: October 15, 2002.

By direction of the Secretary.

Ernesto Castro,

Director, Records Management Service.

[FR Doc. 02–28268 Filed 11–6–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0108]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before December 9, 2002.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8130, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov.* Please refer to "OMB Control No. 2900–0108."

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0108" in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Report of Income from Property or Business, VA Form 21–4185.

OMB Control Number: 2900–0108.

Type of Review: Extension of a currently approved collection.

Abstract: The form is used to derive net income from property or business. The information is used to determine whether the beneficiary is eligible for VA benefits and, if eligibility exists, to determine the proper rate of benefits.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on July 30, 2002, at pages 49391—49392.

Affected Public: Individuals or households.

Estimated Annual Burden: 29,500 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 59,000.

Dated: October 15, 2002.

By direction of the Secretary.

Ernesto Castro,

Director, Records Management Service.

[FR Doc. 02–28269 Filed 11–6–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0061]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before December 9, 2002.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov.* Please refer to "OMB Control No. 2900–0061."

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0061" in any correspondence.

SUPPLEMENTARY INFORMATION:

Titles: Request for Supplies (Chapter 31—Vocational Rehabilitation), VA Form 28–1905m.

OMB Control Number: 2900–0061.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 28–1905m is used to request supplies for veterans in rehabilitation facilities. The official at the facility providing rehabilitation services to the veteran completes the form and certifies that the veteran needs the supplies for his or her program and that the veteran does not have the requested item in his or her possession. The veteran also certifies that he or she is not in possession of any of the supplies listed on the form.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on July 19, 2002, at page 47632.

Affected Public: Not-for-profit institutions, individuals or households, business or other for-profit.

Estimated Annual Burden: 1,000 hours.

Estimated Average Burden Per Respondent: 1 hour.

Frequency of Response: On occasion.

Estimated Number of Respondents: 1,000.

Dated: October 15, 2002.

By direction of the Secretary:

Ernesto Castro,

Director, Records Management Service.

[FR Doc. 02–28270 Filed 11–6–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0548]

Agency Information Collection Activities Under OMB Review

AGENCY: Board of Veterans' Appeals, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Board of Veterans' Appeals (BVA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before December 9, 2002.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030 or FAX (202) 273–5981 or *e-mail: denise.mclamb@mail.va.gov.* Please refer to "OMB Control No. 2900–0548."

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0548" in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Generic Clearance for Board of Veterans' Appeals Customer Satisfaction with Hearing Survey, VA Form 0745.

OMB Control Number: 2900–0548.

Type of Review: Reinstatement, with change, of a previously approved collection for which approval has expired.

Abstract: The presiding official at hearings conducted by the BVA will, at the conclusion of the proceeding, present the appellant with a Customer Satisfaction with Hearing Survey, VA Form 0745 to complete. The appellant is informed that participation is voluntary, anonymous and will have no bearing on the outcome of the hearing. BVA will use the information to assess the effectiveness of current procedures used in conducting hearings and to develop better methods of serving veterans.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on July 19, 2002 at pages 47631—47632.

Affected Public: Individuals or households.

Estimated Annual Burden: 600 hours.

Estimated Average Burden Per Respondent: 6 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 6,000.

Dated: October 21, 2002.

By direction of the Secretary.

Ernesto Castro,

Director, Records Management Service.

[FR Doc. 02–28271 Filed 11–6–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–New]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before December 9, 2002.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or *e-mail: denise.mclamb@mail.va.gov.* Please refer to "OMB Control No. 2900–New."

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–New" in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Questionnaire For Coroners and Medical Examiners, VA Form 21–0766.

OMB Control Number: 2900–New.

Type of Review: New collection.

Abstract: VA Form 21–0766 is used by medical examiners and coroners to help identify unclaimed decedents as veterans who are entitled to burial benefits. The information collected is needed to determine how often medical examiners and coroners attempt to verify veteran status, how long records of decedents are maintained and who the medical examiners and coroners contact to verify veteran status.

An agency may not conduct or sponsor, and a person is not required to

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respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on August 14, 2002, at page 53046.

Affected Public: State, Local or Tribal Government.

Estimated Annual Burden: 525 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 3,158.

Dated: October 15, 2002.

By direction of the Secretary:

Ernesto Castro,

Director, Records Management Service.

[FR Doc. 02–28272 Filed 11–6–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0107]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before December 9, 2002.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov*. Please refer to "OMB Control No. 2900–0107."

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0107" in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Certificate as to Assets, VA Form 21–4709.

OMB Control Number: 2900–0107.

Type of Review: Extension of a currently approved collection.

Abstract: VA is required to supervise benefits paid to fiduciaries on behalf of beneficiaries who are incompetent or under legal disability. Supervision includes a requirement that the fiduciary account periodically for the funds he/she has received on behalf of the beneficiary. VA Form 21–4709 is used by estate analysts employed by VA to verify investments in saving bonds and other securities reported in the beneficiary's estate.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published July 30, 2002, at page 49391.

Affected Public: Individuals or households, Business or other for-profit, Not-for-profit institutions, Federal Government and State, Local or Tribal Government.

Estimated Annual Burden: 863 hours.

Estimated Average Burden Per Respondent: 12 minutes.

Frequency of Response: Annually.

Estimated Number of Respondents: 4,316.

Dated: October 15, 2002.

By direction of the Secretary:

Ernesto Castro,

Director, Records Management Service.

[FR Doc. 02–28273 Filed 11–6–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0399]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before December 9, 2002.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov*. Please refer to "OMB Control No. 2900–0399."

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0399" in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Student Beneficiary Report—REPS (Restored Entitlement Program For Survivors), VA Form 21–8938.

OMB Control Number: 2900–0399

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 21–8938 is used to verify that an individual who is receiving REPS (Restored Entitlement Program for Survivors) benefits based on schoolchild status is in fact enrolled full-time in an approved school and is otherwise eligible for continued benefits. The form is released each March and sent to all student beneficiaries.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on August 23, 2002, at page 54698.

Affected Public: Individuals or households.

Estimated Annual Burden: 1,767 hours.

Estimated Average Burden Per Respondent: 20 minutes.

Frequency of Response: Annually.

Estimated Number of Respondents: 5,300.

Dated: October 22, 2002.

By direction of the Secretary:

Ernesto Castro,

Director, Records Management Service.

[FR Doc. 02–28274 Filed 11–6–02; 8:45 am]

BILLING CODE 8320–01–P

Corrections

Federal Register

Vol. 67, No. 216

Thursday, November 7, 2002

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent to Prepare a Draft Environmental Impact Statement for the PCS Phosphate Mine Continuation, Aurora, Beaufort County, NC

Correction

In notice document 02–27720 beginning on page 66386 in the issue of Thursday, October 31, 2002, make the following corrections:

1. On page 66386, in the third column, under the heading **FOR FURTHER INFORMATION CONTACT**, in the sixth line, "DC" should read, "NC".

2. On page 66387, in the first column, in the table, in the column "Proposed impacts", in number 5., "Scrub-Scrub" should read, "Scrub-Shrub".

[FR Doc. C2–27720 Filed 11–6–02; 8:45 am]

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Federal Register

Thursday,
November 7, 2002

Part II

Department of Agriculture

Agriculture Marketing Service

7 CFR Parts 1000, et al.
Milk in the Northeast and Other Marketing Areas; Decision on Proposed Amendments to Tentative Marketing Agreement and to Order; Proposed Rule

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1000, 1001, 1005, 1006, 1007, 1030, 1032, 1033, 1124, 1126,1131, and 1135

[Docket No. AO–14–A69, et al.: DA–00–03]

Milk in the Northeast and Other Marketing Areas; Decision on Proposed Amendments to Tentative Marketing Agreement and To Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule; Final Decision.

7 CFR part	Marketing area	AO Nos.
1001	Northeast	AO–14–A69.
1005	Appalachian	AO–388–A11.
1006	Florida	AO–356–A34.
1007	Southeast	AO–366–A40.
1030	Upper Midwest	AO–361–A34.
1032	Central	AO–313–A43.
1033	Mideast	AO–166–A67.
1124	Pacific Northwest	AO–368–A27.
1126	Southwest	AO–231–A65.
1131	Arizona-Las Vegas	AO–271–A35.
1135	Western	AO–380–A17.

SUMMARY: This decision adopts revised product-price formulas for establishing Class III and Class IV milk prices. The formulas are applicable to all Federal milk marketing orders. The orders amended by this decision require producer approval. Referenda will be conducted in two markets, and dairy farmer cooperatives will be polled in the other nine markets to determine whether dairy farmers approve the issuance of the orders as amended.

This final decision differs from the recommended decision by modifying the Class III and IV formulas to include farm-to-plant component losses. Modifications are adopted to the butterfat price formula, the protein price formula, the other solids price formula, and the nonfat milk solids price formula. Additionally, this decision converts the Class III and IV formula divisors to multipliers in order to simplify and promote consistency with all end-product pricing formulas.

FOR FURTHER INFORMATION CONTACT: Clifford M. Carman, Associate Deputy Administrator, USDA/AMS/Dairy Programs, Order Formulation and Enforcement Branch, Stop 0231, Room 2968, South Building, 1400 Independence Avenue, Washington, DC 20250–0231, (202) 720–6274, e-mail address *clifford.carman@usda.gov*.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code and therefore is excluded from the requirements of Executive Order 12866.

These proposed amendments have been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have a retroactive effect. If adopted, this proposed rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may request modification or exemption from such order by filing with the Department a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Department will rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Department's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Regulatory Flexibility Analysis

This final decision responds to a Congressional mandate to reconsider the Class III and Class IV pricing formulas included in the final rule for the consolidation and reform of Federal milk orders. The mandate was included in the Consolidated Appropriations Act, 2000 (Pub. L. 106–113, 115 Stat. 1501).

In accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities and has prepared this regulatory flexibility analysis. When preparing such analysis an agency shall address: The reasons, objectives, and legal basis for the anticipated proposed rule; the kind and number of small entities which would be affected; the projected recordkeeping, reporting, and other requirements; and federal rules which may duplicate, overlap, or conflict with the proposed rule. Finally, any significant alternatives to the proposal should be addressed. This regulatory flexibility analysis considers these points and the impact of this proposed regulation on small entities. The legal basis for this action is discussed in the preceding section.

The RFA seeks to ensure that, within the statutory authority of a program, the regulatory and informational requirements are tailored to the size and nature of small businesses. For the purpose of the RFA, a dairy farm is considered a "small business" if it has an annual gross revenue of less than $750,000, and a dairy products manufacturer is a "small business" if it has fewer than 500 employees. For the purposes of determining which dairy farms are "small businesses," the $750,000 per year criterion was used to establish a production guideline of 500,000 pounds per month. Although this guideline does not factor in additional monies that may be received by dairy producers, it should be an inclusive standard for most "small" dairy farmers. For purposes of determining a handler's size, if the plant is part of a larger company operating multiple plants that collectively exceed the 500-employee limit, the plant will be considered a large business even if the local plant has fewer than 500 employees.

USDA has identified as small businesses approximately 62,240 of the 65,464 dairy producers (farmers) that have their milk pooled under a Federal order. Thus, small businesses constitute approximately 95 percent of the dairy farmers in the United States. On the processing side, there are approximately 1,621 plants associated with Federal orders, and of these plants, approximately 928 qualify as "small businesses," constituting about 57 percent of the total.

During January 2002, there were approximately 410 fully regulated handlers (of which 148 were small businesses), 75 partially regulated handlers (of which 39 were small businesses), and 46 producer-handlers (of which 24 were considered small businesses) for the purpose of this regulatory flexibility analysis. In addition, there were ninety-three exempt handlers with Class I sales of less than 150,000 pounds during the month.

Producer deliveries of milk used in Class I products (mainly fluid milk products) totaled 4.085 billion pounds in January 2002, representing 37.7 percent of total Federal order producer deliveries. The volume of milk pooled under Federal orders represents 76 percent of all milk marketed in the U.S. and is estimated at 78 percent of the milk of bottling quality (Grade A) sold in the country. More than 200 million Americans reside in Federal order marketing areas, representing approximately 81 percent of the total U.S. population (2001).

In order to accomplish the goal of imposing no additional regulatory burdens on the industry, a review of the current reporting requirements was completed pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). In light of this review, it was determined that these proposed amendments would have no impact on reporting, recordkeeping, or other compliance requirements because these would remain identical to the current Federal order program. No new forms have been proposed, and no additional reporting would be necessary.

This proposed rule does not require additional information collection that requires clearance by the OMB beyond the currently approved information collection. The primary sources of data used to complete the forms are routinely used in most business transactions. The forms require only a minimal amount of information which can be supplied without data processing equipment or a trained statistical staff. Thus, the information collection and reporting burden is relatively small. Requiring the same reports for all handlers does not significantly disadvantage any handler that is smaller than the industry average.

No other burdens are expected to fall upon the dairy industry as a result of overlapping Federal rules. This proposed rulemaking does not duplicate, overlap or conflict with any existing Federal rules.

Consideration of Impacts on Small Businesses

To ensure that small businesses are not unduly or disproportionately burdened based on these proposed amendments, consideration was given to mitigating negative impacts.

A comment filed in regard to the tentative final decision by the managing partner of a large dairy farm argued that dairy producers selling less than 326,000 pounds of milk per month may comprise the majority of dairy farms, but not the majority of milk sold. The comment further stated that it is not appropriate to identify one sector and imply that they are most in need of protection and preservation.

Under the Regulatory Flexibility Act, the definition of a "small" dairy farm has been redefined from a business having an annual gross revenue of less than $500,000 to a business having an annual gross revenue of less than $750,000. Therefore, the production guideline of 326,000 pounds per month has been increased to 500,000 pounds per month in identifying "small" dairy farms.

The production guideline of 500,000 pounds per month in identifying "small" dairy farms is an attempt to relate a measure of size for which data is available (pounds of production per farm) with the criteria specified by the Small Business Administration (revenue from sales), for which data is not readily available to USDA on an individual farm basis. The Regulatory Flexibility Analysis does not represent an attempt to create special privileges for farms defined as small, but to examine the regulations to assure that they do not create a disproportionate burden or competitive disadvantage for such farms.

As was stated in the RFA in the recommended decision, one of the principal issues considered at the hearing was the source of price data that should be used to generate prices for milk components and, thereby, prices to be paid to producers. The options considered were the National Agricultural Statistics Service (NASS) surveys of selling prices of manufactured dairy products, Chicago Mercantile Exchange (CME) prices, and producer costs of production. The recommended decision selected the NASS-reported prices as the most appropriate for use in determining product prices because of the considerably larger volume of product represented in those price series than in the CME price data. Producer cost of production was not included in the calculation of prices because assuring dairy farmers that their costs of production will be covered addresses only the milk supply side of the market and ignores factors underlying demand or changes in demand for milk and milk products.

Various proposals to reduce or increase the levels of the manufacturing (make) allowances of butter, nonfat dry milk, cheddar cheese and dry whey were considered. The present method adjusted these make allowances from the levels adopted under Federal order reform on the basis of data and testimony contained in the hearing record. Most of the adjustments are minimal. Primarily, manufacturing cost surveys performed by USDA's Rural Cooperative Business Service (RBCS) and the California Department of Food and Agriculture (CDFA) were used to determine the most appropriate levels of make allowance for the products used in calculating Federal order class prices.

The only other actual collection of manufacturing cost data for cheddar cheese and dry whey that was cited in the hearing record was a survey of cheddar cheese and dry whey manufacturing costs arranged for by the National Cheese Institute (NCI). This survey was conducted by persons unfamiliar with the dairy industry among cheese processors who did not

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testify about the data that they submitted for the survey and was entered into the hearing record by a witness who had no firsthand knowledge of the data included. As a result, the NCI survey should be relied upon to a lesser degree than the two studies used to determine the cheddar cheese make allowance. In the case of the RBCS study, the person who gathered the data testified about its collection and what it represented. In the case of the CDFA-collected data, a manual detailing the method by which the data was collected and presented was made available, and several witnesses familiar with the survey testified about it.

In addition, one nonfat dry milk manufacturer testified to costs of manufacture that exceeded those of the two studies by a significant amount, mostly in the areas of return on investment and marketing costs. The data did not include any information about the pounds of product manufactured and could not have been weighted with the data from the two other studies.

Several proposals to change the factor reflecting the yield of nonfat dry milk from nonfat solids in milk would have increased the nonfat solids price and the Class IV skim price, but ignored the need to reflect the generally lower price and higher manufacturing cost of buttermilk powder that also must be considered in calculating the Class IV nonfat solids price. Testimony and data in the record were used to determine a factor more representative of nonfat dry milk yield and the effect of buttermilk powder price and cost. The alternatives to the formula adopted either did not include consideration of the price, cost, and volume of buttermilk powder relative to those of nonfat dry milk or gave those factors too great an influence.

Proposals were made to reduce the butter and cheese product prices used in calculating the butterfat price and the Class III component prices. The record of this proceeding continues to support the use of the product prices adopted in the final rule in the Federal milk order reform process as representing accurately the values of these products. In the case of adjusting the Grade AA butter price to reflect the value of Grade A butter, the record fails to reveal any source of information for obtaining current prices for Grade A butter. In the case of proposals to remove the 3-cent adjustment between the barrel and 40-pound block cheese prices, there was no testimony about the actual difference in cost between the two types of packaging that overcame testimony that 3 cents is the actual cost difference, or any data that indicates that the customary price difference is not at least 3 cents.

Proposals to reconsider the class price relationships in the orders were considered, although a proposal to use a weighted average of the Class III and Class IV prices as a Class I price mover was not noticed for hearing in this proceeding. The hearing record supports the continued relationships between the Class IV and Class II prices and between the higher of the manufacturing class prices and the Class I price.

A proposal that the Class II differential be changed to negate any changes in the Class IV price formula that would affect the current price relationship between nonfat dry milk and Class II failed to consider that the Class II–Class IV price difference adopted in Federal order reform is based on the difference in the value of milk used to make dry milk and the value of milk used to make Class II products.

Proposals that any increases resulting from changes to the Class III and Class IV price formulas not be allowed to result in increases in Class I prices did not address the rationale for the current Class I price differentials above the manufacturing price levels for the purpose of obtaining an adequate supply of milk for fluid (drinking) use.

The changes to the Class III and Class IV price formulas included in the recommended decision would have had no special impact on small handler entities. All handlers manufacturing dairy products from milk classified as Class III or Class IV would remain subject to the same minimum prices regardless of the size of their operations. Such handlers would also be subject to the same minimum prices to be paid to producers. These features of minimum pricing are required by the Agricultural Marketing Agreement Act and should not raise barriers to the ability of small handlers to compete in the marketplace. It is similarly expected that small producers would not experience any particular disadvantage to larger producers as a result of any of the proposed amendments.

An analysis was performed on the effects of the alternatives selected and is summarized below.

Final Decision Analysis

In order to assess the impact of changes in Federal order milk pricing formulas, the Department conducted an economic analysis. While the primary purpose of this decision is to amend the product pricing formulas used to price milk regulated under Federal milk marketing orders and classified as either Class III or Class IV milk, these product price formulas also affect the prices of regulated milk classified as Class I and Class II.

The modifications in this decision are analyzed simultaneously as a change from the set of Court-ordered formulas as implemented in January 2001. This analysis focuses on impacts on milk marketed under Federal milk marketing orders. Milk marketed in California, milk marketed under other state regulations, and unregulated milk are treated separately.

Scope of Analysis

Impacts are measured as changes from the model baseline as adapted from the USDA baseline developed in June 2002 for the mid-session budget review. The baseline projections are a Departmental consensus on a long-run scenario for the agricultural sector. Included is a national, annual projection of the supply-demand-price situation for milk. The mid-term review reflects the provisions of the Farm Security and Rural Investment Act of 2002. Baseline assumptions for dairy are: (1) The price support program will extend through December 31, 2007, supporting the price of milk (3.67 percent butterfat) at $9.90; (2) the Dairy Export Incentive Program will continue to be utilized; (3) the Federal Milk Marketing Order Program will continue as reformed on January 1, 2000, as modified by the Select, *et al.* vs. Veneman decision in January 2001, and (4) the National Dairy Market Loss Program will make payments to dairy farmers when the Class I price in Boston is less than $16.94 per cwt.

In the model the U.S. is divided into 14 milk marketing regions, 11 that generally correspond to the Federal order areas, California, other West, and Alaska-Hawaii. The 11 Federal orders share of the U.S. milk marketings is about 70 percent. About 83 percent of all fluid milk and about 65 percent of all manufactured milk is marketed under Federal order regulations. Given the prominence of Federal order marketings, prices paid for both fluid and manufactured milk outside of the order system are generally aligned with prices paid in the Federal order system. California stands out as the state with the highest production and has its own set of comprehensive market regulations similar to the Federal order system. California milk marketings are estimated as a function of the California pool price. Milk marketed through the Federal order system is the predominant subset of milk marketings in the United States. Fluid grade milk prices for the 11 Federal order regions are estimated as functions of Federal order minimum prices and dairy product prices. The regional all-milk prices, which are used in the regional milk supply responses, are in turn estimated from the regional fluid grade milk price and the national dairy product prices.

Demands for fluid milk and manufactured dairy products are functions of per capita consumption and population. Per capita consumption for the major milk and dairy products are estimated as functions of own prices, substitute prices, and income. Retail and wholesale margins are assumed unchanged from the baseline. The regional demands for fluid milk and soft manufactured products are satisfied first by the eligible supply of milk. The milk supply for manufacturing hard products is the volume of milk marketings remaining after satisfying the volumes demanded for fluid and soft manufactured products. Milk is manufactured into cheese or butter/nonfat dry milk according to returns to manufacturing in each class. Wholesale prices for cheese, butter, nonfat dry milk, and dry whey reflect national supply and demand for these products. These prices underlie the Federal order pricing system.

Summary of Results

The impacts of the changes to the Class III and Class IV formulas that are adopted in this decision are summarized using annualized five-year, 2003–2007, average changes from the model baseline. The results presented for the Federal order system are in the context of the larger U.S. market. In particular, the Federal order price formulas use national manufactured dairy product prices.

The formula changes increase the protein prices and reduce the prices for butterfat and nonfat solids. The results are higher Class III prices, lower Class IV and Class II prices, and lower Class I prices. The advanced Class I base price is the higher of the Class III or Class IV advance pricing factors. The Class I base price is the Class IV price in all years of the analytical period for the baseline, while Class III becomes the Class I base price in 2003 through 2005 under this decision. The Class I price falls in 2003, 2006 and 2007. The resulting increases in Class I and Class II demand for nonfat and fat solids, sufficiently absorbs production increases to very slightly increase cheese and butter prices and only slightly decrease nonfat dry milk prices.

Producers. Over the five-year period, the Federal order minimum Class price for milk at test increases about $0.06 per hundredweight. The average fluid grade price for Federal order regions, which includes premiums, increases by about $0.03 per hundredweight. Federal order marketings increase by an average 58 million pounds annually due to the production increase in response to higher producer prices. Federal order milk cash receipts increase by an average $47.2 million annually (0.28 percent) from baseline receipts of $16,729 million.

The distribution of the 2003–2007 annual average changes in the Federal order minimum blend prices across the 11 orders range from (–)$0.05 to (+)$0.08 per hundredweight, reflecting declines in premiums associated with Class III milk. Estimates of annual average price and quantity changes by order are provided in the economic analysis for this decision.

The five-year annual average U.S. all-milk price increases by $0.03 per hundredweight over the baseline. U.S. milk marketings increase by an average 73 million pounds annually (0.04 percent), yielding an average cash receipts increase of $67.2 million annually (0.29 percent) from average baseline receipts of $23,535 million.

Milk Manufacturers and Processors. Annual Class IV and Class II skim milk prices decline each year for an average of $0.07 per hundredweight (1.0 percent) for the 2003–2007 period. This decline results from changing the conversion factor for nonfat dry milk to nonfat solids from 1.0 to 0.99. The minimum butterfat prices decline from baseline levels by an average of 2.1 cents per pound. This decline is the result of recognizing farm-to-plant losses of milk which reduce the yield factor from the equivalent of 1.22 pounds of butter per pound of butterfat to 1.20. The Class IV price at test (about 8.45 percent butterfat) declines by an average of $0.26 per hundredweight, and the Class II price at test (7.92 percent butterfat) declines by an average $0.23 per hundredweight over 2003–2007.

The annual average Class III price increase at test (3.52 percent butterfat) is about $0.23 over baseline (1.9 percent), increasing steadily from $0.15 in 2003 to $0.34 in 2007. The increase is the result of the protein price increase of $0.14 per pound, ranging from $0.10 to $0.18 per pound. The increase in the protein price is the result of reducing the impact of the butterfat price on the protein price. The butterfat price effect is reduced by multiplying the butterfat price by 0.90, reflecting a 90 percent butterfat retention rate in the cheese, and replacing the 1.28 factor with 1.17 reflecting the butterfat to protein ratio of milk standardized at 3.5 percent butterfat and 2.99 percent protein.

The Class I base price shifts from the Class IV to the Class III price in 2003–05. The Class I skim milk price increases over baseline levels on average by nearly $0.04 cents per hundredweight, ranging from increases of about 18 cents in 2004–05 to declines of about 7 cents in 2006–07. The Class I price at test (about 2 percent butterfat) declines by an average $0.01 per hundredweight from the baseline, and is similar to the skim milk price change pattern, ranging from 13-cent increases to 12-cent declines.

Consumers. The expected $0.01 per hundredweight decrease in the minimum Class I price for 2003–2007 results in an average $0.001 decrease in the price per gallon of fluid milk for consumers. Annual consumer costs for fluid milk over 2003–2007 are estimated to decrease on average by about $3.25 million in the Federal order system and by $4.1 million in the U.S.

The price for manufactured dairy products are estimated to increase over baseline by an average $0.004 per pound for butter and $0.001 per pound of cheese. Average annual consumer expenditures over the five-year period are estimated to increase over baseline levels by $5.6 million on butter, and by $4.1 million on American cheese.

A complete Economic Analysis for the Final Decision on Class III and Class IV Price Formulas is available upon request from Howard McDowell, Senior Economist, USDA/AMS/Dairy Programs, Office of the Chief Economist, Room 2753, South Building, U.S. Department of Agriculture, Washington, DC 20250, (202) 720–7091, e-mail address *howard.mcdowell@usda.gov*.

Civil Rights Impact Statement

This final decision is based on the record of a public hearing held May 8–12, 2000, in Alexandria, Virginia, in response to a mandate from Congress included in the Consolidated Appropriations Act, 2000, that required the Secretary of Agriculture to conduct a formal rulemaking proceeding to reconsider the Class III and Class IV milk pricing formulas included in the final rule for the consolidation and reform of Federal milk orders. The consolidated orders were implemented on January 1, 2000. A tentative final decision on the issues considered at the hearing was issued November 29, 2000 (65 FR 76832), and an interim final order (65 FR 82832) became effective January 1, 2001. A preliminary injunction enjoining portions of the interim final order was granted in the U.S. District Court for the District of Columbia on January 31, 2001.

Pursuant to Departmental Regulation (DR) 4300–4, a comprehensive Civil Rights Impact Analysis (CRIA) was

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conducted and published with the final decision on Federal milk order consolidation and reform. That CRIA included descriptions of (1) the purpose of performing a CRIA; (2) the civil rights policy of the U.S. Department of Agriculture; and (3) basics of the Federal milk marketing order program to provide background information. Also included in that CRIA was a detailed presentation of the characteristics of the dairy producer and general populations located within the former and current marketing areas.

The conclusion of that analysis disclosed no potential for affecting dairy farmers in protected groups differently than the general population of dairy farmers. All producers, regardless of race, national origin, or disability, who choose to deliver milk to handlers regulated under a Federal order will receive the minimum blend price. Federal orders provide the same assurance for all producers, without regard to sex, race, origin, or disability. The value of all milk delivered to handlers competing for sales within a defined marketing area is divided equally among all producers delivering milk to those handlers.

The issues addressed at the May 2000 hearing are issues that were addressed as part of Federal milk order consolidation and reform. Establishing representative make allowances in the formulas that price milk used in Class III and Class IV dairy products is an issue that affects the obligations of handlers of those products to the Federal milk order pool, and similarly the pool obligations of Class I and Class II handlers. The decision should result in no differential benefits in dividing the pool among all producers delivering milk to those regulated handlers. Therefore, USDA sees no potential for affecting dairy farmers in protected groups differently than the general population of dairy farmers.

Decisions on proposals to amend Federal milk marketing orders must be based on testimony and evidence presented on the record of the proceeding. The hearing notice in this proceeding invited interested persons to address any possible civil rights impact of the proposals being considered in testimony at the hearing. No such testimony was received.

Copies of the Civil Rights Impact Analysis done for the final decision on Federal milk order consolidation and reform can be obtained from AMS Dairy Programs at (202) 720–4392; any Milk Market Administrator office; or via the Internet at: *http://www.ams.usda.gov/dairy/*.

Prior documents in this proceeding:

Notice of Hearing: Issued April 6, 2000; published April 14, 2000 (65 FR 20094).

Tentative Final Decision: Issued November 29, 2000; published December 7, 2000 (65 FR 76832).

Interim Final Rule: Issued December 21, 2000; published December 28, 2000 (65 FR 82832).

Recommended Decision: Issued October 19, 2001; published October 25, 2001 (66 FR 54064).

Extension of Time: Issued November 26, 2001; published November 29, 2001 (66 FR 59546).

Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this final decision with respect to proposed amendments to the tentative marketing agreements and orders regulating the handling of milk in the Northeast and other marketing areas. This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900).

The Hearing Notice specifically invited interested persons to present evidence concerning the probable regulatory and informational impact of the proposals on small businesses. To the extent that this issue was raised, it is considered in the following findings and conclusions.

This final decision responds to a Congressional mandate to reconsider the Class III and Class IV pricing formulas included in the final rule for the consolidation and reform of Federal milk orders. The mandate was included in the Consolidated Appropriations Act, 2000 (Pub. L. 106–113, 115 Stat. 1501). The findings and conclusions set forth below are based on the record of a public hearing to consider proposals submitted by the industry to change the pricing formulas in the marketing agreements and the orders regulating the handling of milk in the Northeast and ten other marketing areas held in Alexandria, Virginia, on May 8–12, 2000. Notice of such hearing was issued on April 6, 2000, and published on April 14, 2000 (65 FR 20094).

The recommended decision responded to comments received on the tentative final decision (issued November 29, 2000; 65 FR 76832) on the above hearing and was consistent with the injunction issued by the U.S. District Court for the District of Columbia on January 31, 2001. This final decision responds to comments received on the recommended decision (issued October 19, 2001; 66 FR 54064).

Material Issues to Class III and IV Formulas

As instructed by the legislation requiring this proceeding, the Class III and IV pricing formulas and all of the elements of the formulas were reconsidered in developing the tentative final decision, the recommended decision, and this final decision.

The material issues on the record of the hearing relate to:

1. Role of producer costs of production.
2. Commodity prices (CME vs. NASS).
3. Commodity and component price issues.
   a. General approaches on make allowances.
   b. Class IV butterfat and nonfat solids prices.
   c. Class III butterfat, protein, and other nonfat solids prices.
   d. Effects of changes to Class III and Class IV price formulas.
4. Class price relationships.
5. Class I price mover.
6. Miscellaneous and conforming changes.
   a. Advance Class I butterfat price.
   b. Classification.
   c. Distribution of butterfat value to producers.
   d. Inclusion of Class I other source butterfat in producer butterfat price computation.
7. Reopening of hearing or issuance of a final decision.

Summary of Changes to the Interim Amendments

The recommended decision differed from the tentative final decision in several respects and included summaries of comments submitted on each of the issues within the discussion of the issue. The key changes that were made to the interim order amendments in the recommended decision were as follows:

1. In Issue 3c, changes were made to the formulas for calculating the protein and other solids prices, and the Class III butterfat price would be the same as that calculated for Class IV on the basis of butter.
2. In Issue 3d, the changes made in the Class III component price formulas would result in different effects on Class III component, skim, and hundredweight prices.
3. In Issue 6b, the classification of frozen cream, plastic cream and anhydrous milkfat would be changed back to Class III.
4. In Issue 6c, butterfat values would be pooled for the purpose of calculating producer butterfat prices in the orders in which producers are not paid on a component basis. In orders under which producers are paid on a multiple component basis, however, the producer butterfat price would be the same as that for butterfat used in Classes III and IV.
5. In Issue 6d, the butterfat in other source milk used in Class I is included in calculating the producer butterfat price in marketwide pools that do not use multiple component pricing, but would continue to be included in the producer price differential calculation in multiple component pricing pools.
6. Issue 7 was changed to explain the reasons for issuing a recommended decision at this point in this proceeding, instead of a final decision.

Summary of Changes to the Recommended Decision by This Final Decision

The changes to the recommended decision formulas by this final decision are primarily the result of incorporating a farm-to-plant product loss:

1. In issue 3a, an adjustment to the component price formula yield factors to account for farm-to-plant component losses is added.
2. In issue 3b, changes are made to the yield factor used for computing both the nonfat solids price and the Class III and Class IV butterfat price to reflect farm-to-plant component losses. In addition, the yield factor used for computing the nonfat solids price and the butterfat price is converted from a divisor to a multiplier.
3. In issue 3c, the yield factors used to compute the protein price are adjusted to account for farm-to-plant component losses and to reflect a reevaluation of the quantity of casein retained in the cheese making process. The other solids yield factor is adjusted to account for farm-to-plant component losses. In addition, the yield factor used for computing the other solids price is converted from a divisor to a multiplier.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. Role of Producer Cost of Production

Proposal 29 in the hearing notice proposed that producers' costs of production be incorporated into the Class III and Class IV pricing formulas. A number of dairy farmer witnesses testified that, just as manufacturing processors are assured that their costs of processing milk products will be covered, dairy farmers should also have some assurance that they will be able to continue to operate their dairy farms without losing money. Under the current system, according to the National Farmers Union (NFU) witness, incorporating a make allowance for processors but not for producers leaves dairy farmers to bear the entire burden of changes in supply and demand.

Support for using cost of production in the Class III and IV pricing formulas was reiterated in the comments received in response to the tentative final decision issued November 29, 2000, and the recommended decision of October 25, 2001. The NFU comments expressed disappointment that no portions of the milk pricing formulas were based on producer cost of production. The American Raw Milk Producers Pricing Association suggested that the USDA ignored existing law as written in the 1937 Agricultural Agreement Act, section 608c(18). Two dairy farmers also mentioned their concern about the need to follow 608c(18). Another dairy farmer advocated a producer-influenced supply control/price control system.

Comments filed by the Maine Dairy Industry Association (MDIA) in response to the recommended decision joined in supporting cost of production as a part of the pricing formulas. They expressed the opinion that cost of production should be included because their producers' costs are higher than the price received. The MDIA also voiced the unfairness of processors' being assured some ability to offset their costs through product make allowances while producers are not able to receive such adjustment. Comments received from Schreiber Foods indicated agreement with the recommended decision to not use the cost of production in setting Class prices.

As explained in both the proposed rule and final decision under Federal order reform and in the tentative final decision and the recommended decision in this proceeding, assuring producers that their costs of production will be covered addresses only the milk supply side of the market and ignores factors underlying demand or changes in demand for milk and milk products. As noted by the Dairy Farmers of America (DFA) witness, although pricing proposals incorporating cost of production have been noticed and reviewed several times in the last decade without success, if a sound mechanical concept could be advanced that overcomes the objections relative to supply and demand, it should be considered.

The proposals by NFU and National Farmers Organization (NFO) that advocated adoption of make allowances that would be adjusted for changes in indexes reflecting dairy farmers' production costs are discussed under Issue 3a, General Approaches on Make Allowances.

In this final decision, consideration has again been given to cost of production proposals. As noted by the NFO witness, the current pricing system uses the interaction of supply and demand for milk products as an indirect method of meeting the pricing requirements of the Agricultural Marketing Agreement Act of 1937 (the Act) for milk. According to the recommended decision, the record contained no new dairy farmer cost of production data that could be used to reflect both the supply and demand sides of the market for dairy products. The recommended decision continued to state that there was no evidence in the record that either USDA's Economic Research Service or the CDFA costs of production had ever been used to price milk.

The Act stipulates that the price of feeds, the availability of feeds, and other economic conditions which affect market supply and demand for milk and its products be taken into account in the determination of milk prices. This requirement currently is fulfilled by the Class III and Class IV component price calculations. If conditions increase supply costs, the quantity of milk produced would be reduced due to lower profit margins. As the milk supply declines, plants buying manufacturing milk would pay a higher price to maintain an adequate supply of milk to meet their needs. As the resulting farm profit margins increase, so should the supply of milk. Likewise, the reverse would occur if economic conditions reduce supply costs. The price of feed is not directly included in the determination of the price for milk, but rather is one economic condition which may cause a situation in which the price of milk may increase or decrease. A change in feed prices may not necessarily result in a change in milk prices. For instance, if the price of feed increases but the demand for cheese declines, the milk price may not increase since milk plants would need less milk and therefore would not bid the price up in response to lower milk supplies. Also, other economic conditions could more than offset a change in feed prices and thus not necessitate a change in milk prices.

The pricing system, according to the recommended decision, accounted for changes in feed costs, feed supplies, and other economic conditions, as explained above. The product price formulas adopted in the recommended decision would reflect accurately the market

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values of the products made from producer milk used in manufacturing. As supply costs increase with a resulting decline in production, commodity prices would increase as manufacturers secure additional milk to meet their needs. Such increases in commodity prices would mean higher prices for milk. The opposite would be true if supply costs were declining. Additionally, since Federal order prices are minimum prices, handlers may increase their pay prices in response to changing supply/demand conditions even when Federal order prices do not increase.

Additionally, the pricing formulas contained in the recommended decision and this final decision are applicable to handlers, since handlers are the regulated parties under Federal milk order regulation. The formulas are used to establish minimum prices for milk used in making particular dairy products, not for determining payments to dairy farmers.

2. Commodity Prices (CME vs. NASS)

As adopted in the interim final rule in this proceeding (published on December 28, 2000 (65 FR 82832)), commodity prices determined by surveys conducted by USDA's National Agricultural Statistics Service (NASS) continue to be used in the component price formulas that replaced the BFP. The recommended decision proposed no changes in the source of product price data. Likewise, this final decision adopts no changes in the source of product price data.

Several proposals (1, 5, 10 and 19) were considered during the current proceeding that recommended using prices reported by the Chicago Mercantile Exchange (CME) instead of the NASS surveys to determine commodity prices. Both the CME and the NASS surveys were supported by testimony at the hearing and in briefs. Several comments to the recommended decision supported continuing to use the NASS surveys.

The CME is a cash market where speculators, producers, and processors can buy and sell products. It is a mechanism for establishing prices on which the dairy industry relies. Thus, many contracts to buy and sell dairy products are based on CME prices. A USDA witness testified that he is unaware of any other indices used to price cheese in the U.S. According to several witnesses, cheese and butter processors generally base their contract sales on CME prices.

The NASS price survey gathers selling prices of cheddar cheese, Grade AA butter, nonfat dry milk, and dry whey from a number of manufacturers of these products nationwide. At the time the proposed rule on Federal order reform was published (January 30, 1998), the NASS survey included prices for cheddar cheese only. This survey began in March 1997. In September 1998, before the final decision was published in April 1999, NASS began surveys of Grade AA butter prices, dry whey prices, and nonfat dry milk prices. In developing these commodity surveys, input was obtained from the dairy industry on appropriate types of products, packaging, and package sizes to be included for the purpose of obtaining unbiased representative prices. A sale is considered to occur when a transaction is completed, the product is shipped out, or title transfer occurs. In addition, all prices are f.o.b. the processing plant/storage center, with the processor reporting total volume sold and total dollars received or price per pound. NASS Dairy Product Prices reports wholesale cheddar cheese prices for both 500-pound barrels and 40-pound blocks, USDA Grade AA butter, USDA Extra Grade or USPH Grade A non-fortified dry milk, and USDA Extra Grade edible non-hygroscopic dry whey. A more detailed description of the surveys can be found in the final decision of April 2, 1999 (64 FR 16093).

The proponents of proposal 1, Western States Dairy Producers Trade Association, *et al.* (WSDPTA), a group of several trade associations and cooperatives, proposed that the NASS commodity prices for butter, cheese, and nonfat dry milk that currently are used for computing the Federal order component prices be replaced with prices determined by trading on the CME. Dry whey was not included in the proposal because there is no dry whey cash contract traded on the CME. A witness from WSDPTA did not oppose the collection and reporting of NASS data, but expressed the opinion that while it serves an important function as information, it should not be used to establish prices. The proponents presented several benefits of using the CME over the NASS survey for commodity prices.

Proponents explained that by using CME prices in the formulas, prices would be known immediately rather than a week later when the NASS prices are published, reflecting more quickly the supply-demand conditions for dairy products. The one-week delay is caused by the time necessary to collect data. A witness for NFO noted that interested persons are able to check the CME value of products on a daily basis and use the reported prices as a factor in establishing what they will pay, or what they will be paid, for cheese.

A witness from WSDPTA went on to explain that buyers, sellers, and speculators trade the CME, trying to obtain a price in their favor, while the price actually is determined by supply and demand forces. He described the rules as fair and the results as transparent, with participants having a number of interests. The witness continued by noting that the CME price result is instant and results cannot be altered. In contrast, he stated, NASS prices are reported by sellers only, who are not disinterested parties. He argued that NASS respondents can modify their numbers or file an initial report after calculating the price impact of the latest reports.

The proponents also concluded that the urging by many hearing participants that the NASS price series include mandatory participation and be audited proves that the NASS series is not reliable enough to be used as a price–discovery method.

Finally, the witness from WSDPTA expressed the view that the NASS price series would feed on itself and result in price setting, not price discovery. He continued by noting that plants and their buyers will obtain prices one week and sell the commodity in the following week at a price derived in large part from the price obtained in the prior week. The witness compared the NASS survey to the CDFA survey of powder prices which, he claimed, results in a circular pricing system that is mathematically incapable of fully reflecting the top of the market price for powder because so little of the survey volume is priced off of the spot market. Proponents expressed the belief that this circularity causes prices to remain lower than they would without it and that prices would increase more slowly and decrease more rapidly than would prices on the CME, causing overall lower prices for dairy farmers.

In the comments filed on the tentative final decision, the proponents of changing from NASS to CME prices commented only that USDA should reconsider the use of NASS prices. A partner/manager of a dairy farm stated that there is little correlation between the NASS and wholesale prices, and questioned the accuracy of NASS survey numbers. He also stated that block and barrel cheese is traded only between manufacturers and that they therefore have an influence on setting the price, especially if the percentage of the product traded is very low. He argued that a fair price would reflect retail prices or at least true wholesale price, not the value of the last pound of product produced.

Opponents of changing from NASS to CME prices to compute component prices included International Dairy Foods Association (IDFA), DFA, and National Milk Producers Federation (NMPF). Witnesses for these parties argued that the NASS survey includes pricing based on a significantly larger volume of product than does the CME. In the case of the nonfat dry milk market, the table of 1999 monthly CME Cash Markets data from the 1999 Annual Dairy Market Statistics showed that there were no sales reported for either extra grade or Grade A in the year 1999.

According to a witness from IDFA, the volume of cheddar cheese in the NASS survey is equal to 26.4 percent of all cheddar cheese production in the U.S. for the period September 1998 through February 2000. During the same period, the CME volume of cheddar cheese traded represented only 1.7 percent of U.S. cheddar cheese production. The witness stated that for the same 18-month period, the NASS survey volumes represented 14.4 percent of all U.S. butter production while CME trading consisted of only 2.6 percent. He also noted that switching from the NASS survey data to the CME data would result in a change from a very broad to an extremely thin representation of actual product transactions.

Opponents to the proposal to use CME prices also pointed out that prices at the CME are Chicago or Midwest prices based on the delivery location specification of the contract. Therefore, they argued, the scope of the reported prices for cheese, butter, and nonfat dry milk are not national. A witness for Kraft noted that reliance on the CME alone would exclude the substantial and growing volume of cheese produced in the western United States (U.S.), particularly California. A witness for Northwest Dairy Association suggested that a transportation credit would need to be used with CME prices, at least in the West, to reduce the value of the CME to a more representative level. Opponents went on to explain that since the NASS survey contains data from plants located all over the United States, NASS prices represent a national scope of the prices of each of the particular commodities.

Several of the comments filed in response to the tentative final decision supported use of the NASS price series to determine product prices. Furthermore, there were several comments filed on the recommended decision and they all supported using NASS prices. The Michigan Milk Producers Association (MMPA) comment noted that NASS "provides the broadest range of price information and is representative of the product prices realized by the dairy industry." In response to the recommended decision, DFA indicated that legislation enacted subsequent to the recommended decision improved the reliability, completeness, and integrity of the NASS price surveys. On November 22, 2000, the Dairy Market Enhancement Act of 2000 was enacted thereby authorizing mandatory and verifiable price reporting.

According to the testimony in the record and a number of the briefs, cheese and butter sellers and buyers look to the CME to identify the most current price levels. As a result, prices move in response to supply and demand conditions in the marketplace as reflected at the CME. Since the transaction prices of commodities are based off of the CME, it is difficult to see how the NASS survey can cause, or result in, circularity. The NASS prices reflect the CME prices with a short lag but are based on a much greater volume, enhancing the stability of the price series. Continued use of the NASS price survey appears to be the best method of obtaining reliable data about commodity prices.

As stated in the final decision on Federal order reform, NASS data traditionally has been collected via a survey with voluntary participation. The price information, like most NASS data, has not been audited. NASS, however, applies various statistical techniques and cross-checking with other sources to provide the most reliable information available. The issue of mandatory and audited NASS data was not within the scope of the rulemaking and could not be addressed on the basis of the hearing record. At the time of the hearing NASS was not authorized to conduct such activities. As noted above, however, the Dairy Market Enhancement Act of 2000 authorized mandatory and verifiable price reporting.

3. Commodity and Component Price Issues

a. General Approaches on Make Allowances

Make Allowances. Changes to the make allowances for each of the product formulas used in calculating component prices were proposed and discussed at length during this proceeding. Except in the case of dry whey, make allowances adopted in the component price formulas in the recommended decision were calculated using a weighted average of the most recent California Department of Food and Agriculture (CDFA) study and the Rural Business Cooperative Service (RBCS) study. A marketing cost of $0.0015 per pound is added to both the CDFA costs and the RBCS costs, and the CDFA value for return on investment is used to adjust the RBCS cost. This is generally the same approach used to determine the appropriate make allowances under Federal order reform, and results in values that differ little from the formulas adopted at that time.

For the calculation of the Class III "other nonfat solids" price, neither the CDFA nor RBCS studies included information on the cost of making dry whey. The tentative final decision determined that the make allowance for dry whey should remain the same as that for nonfat dry milk. However, the results of a survey conducted for this proceeding under the auspices of IDFA were included in the recommended decision to determine the make allowance for dry whey.

A number of the proposals considered in this proceeding would change the manufacturing, or make, allowances adopted for the pricing formulas under Federal order reform. There was considerable testimony on the appropriate factors to be considered in establishing make allowances, and several sources of data were cited as the most accurate to use for such a purpose.

Two surveys of product manufacturing costs that were averaged for use in calculating make allowances under Federal order reform were the CDFA study, which is done annually and includes nearly 100 percent of dairy products manufactured in California, and the RBCS study, which is conducted annually by USDA as an in-plant benchmark study for participating cooperative associations. These two surveys had both been updated since earlier versions had been used in determining the manufacturing allowances used in the component pricing formulas adopted under Federal order reform. In addition, the National Cheese Institute (NCI), an affiliate of International Dairy Foods Association (IDFA), contracted with a third party to conduct a survey of the costs of manufacturing cheese and whey powder for use in this proceeding.

A witness for National Milk Producers Federation (NMPF) stated that make allowances should reflect the costs incurred by average plants manufacturing the particular dairy product used in the component/Class price formulas: butter, nonfat dry milk, cheese, and dry whey. The witness went

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on to explain that the procedure used by the Department for determining the make allowances under Federal order reform, using an average of the CDFA cost of production studies and the RBCS study, was sound and that the same procedure should be used as a result of this hearing, using the updated data from both surveys. In calculating an appropriate make allowance, the witness supported the addition of a marketing cost of $0.0015 per pound to both the CDFA costs and the RBCS costs, as under Federal order reform, and the CDFA value for return on investment used to adjust the RBCS costs under Federal order reform. The witness explained that both of these factors should be included as they are legitimate and necessary costs incurred in operating manufacturing plants. The witness for IDFA supported inclusion of the CDFA cost studies in the computation of the make allowance; however, the witness stated that the appropriate procedure for computing the make allowance for cheese was to compute a weighted average of the CDFA cost studies and the NCI survey. The witness explained that the RBCS study does not include all the necessary costs that must be recovered in the make allowance and that the NCI survey is needed to determine what the additional cost values should be. The costs that the IDFA witness pointed out—those which are not included in the RBCS survey but which are included in the NCI survey—are general plant administrative costs, such as the plant manager's salary and corporate overhead, return on investment or capital costs, and marketing costs.

The IDFA representative testified that the danger inherent in regulated prices is setting the manufacturing allowance at a level too low to assure that manufacturers will be able to recover their costs of manufacturing finished products and to have the money needed to invest in new plants. The witness pointed out that an inadequate make allowance would force manufacturers either to move to areas that do not have regulated pricing or go out of business. At the very least, the witness explained, the manufacturers would not invest in new plants and equipment, which in the long run would cause a decline in the productivity of the dairy industry. A number of briefs filed on the basis of the hearing transcript emphasized the importance of covering all handlers' costs of manufacturing and not just average costs.

The IDFA witness explained that if make allowances are established at too low a level, proprietary plants are placed at a competitive disadvantage relative to cooperative-owned plants. The witness explained that since cooperatives do not have to pay their producers the minimum order price, as proprietary plants are required to do, cooperative plants can reduce the prices paid to member producers to make up the difference in cost.

The IDFA witness explained further that the problem with a make allowance established below the amount needed to cover plant costs occurs because the plant sells the finished product at the same price that is used in the formula for establishing the minimum price the plant must pay for the raw material (milk). The manufacturing allowances are the only place the plant has the opportunity to cover its costs, and those allowances are fixed in the formula that determines the raw material price.

The witness for IDFA asserted that there is very little risk in setting a make allowance too high. He explained that if the make allowance is established at a level above plant costs, the additional revenue stream will be corrected through market forces by requiring the plant operators to pay competitive over-order premiums to milk suppliers to obtain an adequate supply of milk.

A witness for WSDPTA explained that the most important part of determining a manufacturing allowance is to pick a method and stick with that method. The witness testified that the appropriate method is to use the results of the RBCS study with adjustments to include factors for marketing costs and for capital costs. The witness pointed out that use of the RBCS study is appropriate because the study is voluntary and represents the costs of making the particular commodities, and the plants are geographically widely dispersed. The WSDPTA witness stated that including the results of the CDFA study in the computation of the make allowance for pricing Federal order milk is inappropriate since there is no logical reason for considering the manufacturing costs of plants that do not procure any of the milk that would be priced using those costs.

Witnesses testifying on behalf of NFU and NFO both supported the concept of variable make allowances, in which changes in dairy farmer production cost indexes would be used to adjust handler make allowances. The NFU proposal would use an average national cost of production, presumably as published by USDA's Economic Research Service, and the NFO proposal would use the CDFA milk production cost index. The witnesses supported such an approach as a means of addressing the problem of manufacturers being insulated from changes in supply and demand by their fixed make allowances.

The NFU and NFO witnesses explained that a fixed make allowance, as contained in the current pricing system, does not vary with market conditions and creates a situation in which manufacturers will not respond to market signals since the manufacturers will receive a profit no matter what the supply and demand is for the finished products. The witnesses testified that as long as the make allowance allows manufacturers a sufficient return, the manufacturers will continue to produce the finished product even if there is limited demand for the product, thus resulting in a continued low price paid to producers for their milk. As a result, they argued, producers are left to bear the burden of changes in supply and demand. The NFO witness characterized a variable make allowance tied to the cost of producing milk as a market-oriented system.

The NFU witness described the California milk pricing system, in which manufacturers' production costs are covered through the make allowance, as an example of the problems encountered by producers with the use of product price formulas incorporating make allowances. He testified that California continues to produce a large quantity of lower-valued products because the pricing system makes the manufacturer immune to the supply of and demand for the products. The witness blamed the California make allowance system for the traditionally low milk prices in California that, he claimed, result in expansion of dairy herds to make up for reduced cash flow. The witness predicted that if the Federal order system follows the same pricing path, the same production patterns as witnessed in California would follow in the rest of the United States.

In comments filed in response to the tentative final decision, NFU stated that producers, as well as processors, will fail if they don't attain their costs of production. NFU also argued in its comments that under a variable make allowance, processors can avoid reduced make allowances by increasing product prices.

The NFU comment overlooks the fact that the make allowances included in the component price formulas do not cover all of the costs of all processors, and probably allow for greater costs than are experienced by some processors. In this sense, the margins experienced by processors under product price formulas are variable between plants. Also, it is likely that processors share some of their margin with producers in the form of over order prices. The degree to which this sharing occurs certainly may vary with producers' cost/price situations, as perceived by processors. Although increased product prices would have the effect of increasing manufacturing margins, the ability of processors to increase prices while maintaining sales is limited by the fact that the marketplace in which they sell their products is competitive.

There appears to be no logical or economic reason for changing make allowances for processing plants because of a change in the cost of producing milk. If milk is to clear the market, plants must be willing to accept it. Make allowances that decline as a result of increasing milk production costs would squeeze plant margins, and manufacturers will have to choose between not receiving milk, refusing to receive pooled milk, or paying less than order prices to cooperative associations for milk used in manufactured products. None of these outcomes would be in the best long-term interests of dairy farmers, processors, or consumers. Many dairy farmers, facing increased costs of production, would have to find alternative outlets for their milk. Decisions on the part of many processors to cease operating, use only nonpool milk, or buy milk below order prices likely would result in very disorderly conditions among dairy farmers looking for outlets for their milk.

Most hearing participants agreed that the make allowance should cover the cost of converting milk to a finished manufactured dairy product. However, several participants disagreed with the IDFA contention that there is very little risk in setting the make allowance too high. They argued that if the make allowance is set in excess of the cost to manufacture finished products, the additional revenue would be kept by the manufacturing plants as higher profits and not distributed to the producers supplying milk to the plant. They explained that in many parts of the country there is little if any competition for the dairy farmers' milk and therefore no incentive for a plant to pay above the minimum Federal order price. These plants, according to the witnesses, could be expected to keep the extra make allowance for themselves. Comments filed by Michigan Milk Producers Association (MMPA) on the tentative final decision and the recommended decision continued to urge caution against logic that suggests a low risk of setting make allowances too high. The cooperative stated that not all of its 2,700 members might survive a market adjustment period if make allowances were set too high, even if theoretically greater premiums might be returned to producers.

Several witnesses opposed the idea of setting make allowances at levels that guarantee plants a profit, or at least a return on investment, when the dairy farmers supplying milk to the manufacturing plants have no similar assurances for covering the costs of producing milk. These witnesses pointed to the Agricultural Marketing Agreement Act of 1937, sec. 608c(18), as justification for setting a lower make allowance for plants, resulting in higher milk prices that would come closer to covering dairy farmers' costs of producing milk.

As supported by most of the hearing participants, the make allowances incorporated in the component price formulas under the Federal milk orders should cover the costs of most of the processing plants that receive milk pooled under the orders. In part, this approach is necessary because pooled handlers must be able to compete with processors whose milk receipts are not priced in regulated markets. The principal reason for this approach, however, is to assure that the market is cleared of reserve milk supplies.

In comments on the tentative final decision, IDFA continued to argue that some legitimate manufacturing costs are excluded from the RBCS survey and attacked the data gathered as "inherently suspicious and unreliable." IDFA also stated that the survey is not taken seriously by some of its participants. Both IDFA and Leprino Foods Company argued in comments on the tentative final decision that adding factors for costs excluded in the RBCS study constitutes a less accurate result than if those costs were included in a comprehensive study. IDFA also commented that the need to allow for changes in cost factors that might occur over time (such as recent increases in energy costs) also supports the need for a make allowance that is too high rather than one that is too low.

Several comments filed on the recommended decision indicated opposition to establishing make allowances based on an average of plant manufacturing costs. Agri-Mark Dairy Cooperative argued that using an average manufacturing cost in the pricing formulas would result in half of all handlers having higher manufacturing costs. IDFA noted in their comments that mechanically adopting a make allowance survey "would by definition mean that the one-half of cheese produced in plants with greater than average costs would be forced out of business." Comments received from Northwest Dairy Association and Westfarm Foods, Inc., stated that USDA's use of "a simple average risks half the industry."

This final decision finds that continuing to use an average make allowance of dairy manufacturing plants' costs is appropriate. Reliance on product-price formulas necessitates the need to reflect and to offset the manufacturing costs incurred and is supported by the record even though there is disagreement on exactly how to accomplish this. Using an average make allowance provides a reasonable measure to reflect and offset manufacturing costs and is the only reasonable measure that can be supported by the record evidence.

Although the RBCS survey does not include such costs as general plant administrative costs, return on investment or capital costs, and marketing costs, it is a survey that has been done for sixteen years with the same fundamental methodology and with some continuity of participants. Because the survey is done for the benefit of the participating organizations (cooperatives) to help them identify their costs and compare them with those of their peer group, there is every reason to believe that the costs provided are as accurate as possible. In addition, the years of experience with the survey have enabled USDA to shape the questions to obtain more accurate results.

When the RBCS survey results are adjusted to include the factors that were mentioned above as not included by using the values for those factors from the CDFA survey, the two surveys' costs are comparable, especially considering that the RBCS survey represents manufacturing plants with a wide distribution around the U.S., while the CDFA survey includes only California plants. The CDFA survey is also done every year and is done according to a published procedure manual, with the costs being audited by personnel employed by the State for that purpose. Although no CDFA employee was available to respond to questions about the conduct of the survey, official notice was taken of the procedure manual and of California publications associated with manufacturing cost data. In addition, several witnesses who are deeply involved with the California dairy industry testified regarding the perceived reliability of the survey results.

The use of manufacturing plant data from California plants that do not procure any of the milk that would be priced using those costs should not

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cause concern. The costs of manufacturing dairy products may vary slightly by region, but adoption of representative make allowances in product price formulas should not fail to use a well-documented study that includes a large amount of audited data, such as the CDFA survey.

In contrast to the RBCS and CDFA surveys, the survey of cheese and whey powder manufacturing costs arranged for by NCI was developed solely for the purpose of establishing costs to be used in determining make allowances for this proceeding. The survey was conducted by persons unfamiliar with the dairy industry among cheese processors who would benefit from the adoption of overgenerous make allowances. No one who actually conducted the survey was made available to testify, and although the IDFA witness stated that survey participants would testify regarding their responses to the survey later in the hearing, none of the participating firms' witnesses would respond to questions about their firms' results.

Although less weight must be given the NCI survey than either the RBCS or the CDFA surveys for the reasons stated above, the NCI survey's resulting manufacturing costs for cheese are not considerably different from a weighted average of the RBCS and the CDFA surveys. In fact, although the IDFA hearing participants went to great lengths to discredit the RBCS study for use in identifying an appropriate level of manufacturing costs, the hearing record reflects that the NCI survey of cheese and dry whey manufacturing costs used the RBCS 1996 survey results to identify outliers (plus or minus 10 percent) in the study commissioned by NCI.

In comments filed regarding the tentative final decision, IDFA urged that USDA use the NCI and CDFA studies for use in determining make allowances for cheese and whey powder rather than using the RBCS and CDFA studies. IDFA stated that the RBCS study was neutral and was not developed or commissioned for use in this proceeding. Cooperative associations attending the National Milk Producers Federation annual meeting were encouraged to participate in the survey so the results could be used in this proceeding. Since the RBCS study was developed and has continued for sixteen years for purposes other than establishing make allowances, and the methodology did not change from past years for the study used in the hearing, it is unlikely that it was designed for any purpose other than the one for which it was developed and has been used for that period. If the comment is intended to raise concerns that cooperative associations generally favor lower make allowances, it should be noted that only manufacturing cooperatives were surveyed. The record contains ample evidence that many manufacturing cooperatives desire make allowances just as generous as those favored by proprietary manufacturers.

A comment filed on behalf of the Association of Dairy Cooperatives in the Northeast (ADCNE), some of which are national in scope, argued that use of the NCI data would demean the importance of sworn first-hand testimony that is subject to cross-examination.

As a result of the differences in conduct of the three surveys, manufacturing costs used to determine appropriate make allowances for cheddar cheese, butter, and nonfat dry milk in this proceeding are calculated primarily from a weighted average of the RBCS and CDFA surveys, with a check against the NCI survey cost of manufacturing cheddar cheese. Since the record lacks any other data regarding the cost of making whey powder, the NCI survey results are used for the make allowance in the other solids formula.

One proposal included in the hearing notice would have eliminated any marketing allowance from the make allowances, and a number of witnesses' testimony objected to the inclusion of return on investment. The American Farm Bureau witness questioned the need for a marketing allowance since producers already pay a 15-cent assessment for promotion and research. A brief filed by the proponent of eliminating the marketing allowance stated that the allowance appears to be an "adjustment" or a "hedge," since it is not defined in the final decision in the Federal order reform process.

There was general agreement among those testifying that a marketing allowance should be included in manufacturing costs, but no consensus about the appropriate number. Some of the costs covered by the marketing allowance include maintaining and staffing warehouses, supporting a marketing and sales staff, and transporting product to market, as well as accounting costs associated with the sale of products. The NCI survey identified a marketing cost of $0.0011 per pound of product, while the DFA witness stated that DFA's costs were approximately $0.0018. The DFA witness testified that because the costs included in the activities designated as marketing generally fall within a common department under common management, it is appropriate to apply the same allowance to each product.

A witness for Northwest Dairy Association (NDA), a cooperative association in the Pacific Northwest, stated that NDA's marketing costs are $0.0026 but identified costs associated with the aging of cheese as included in that number. Since the NASS survey price does not include cheese intended for aging, the marketing allowance certainly should not include costs of aging cheese. The Associated Milk Producers, Inc. (AMPI), witness used a $0.0024 marketing allowance in the calculation of AMPI's proposed make allowance for nonfat dry milk. The witness for Agri-Mark, Inc., a large Northeast cooperative association with several processing plants, stated that Agri-Mark's estimates of marketing costs ranged from $0.0025 to $0.005 per pound.

The costs identified as those included in a marketing allowance are necessarily incurred in getting a product to market and are not related to the consumer education and advertising activities covered by the National Dairy Board assessment. The recommended decision stated that since the marketing cost determined by NCI was the only estimate included in the hearing record that was supported by a survey. It varies from the $0.0015 rate included in Federal order reform by only 4 one-hundredths of a cent and applies only to cheese and dry whey. The recommended decision concluded that there was no basis for making any change to the marketing allowance.

Some producer witnesses objected to the inclusion of any allowance for return on investment in manufacturing allowances on the basis that dairy farmers are assured of no such return. The CDFA manufacturing cost surveys include allowances for depreciation, which is included in the non-labor processing costs; and for return on investment, which represents the opportunity cost of the processors' resources invested in the business. These costs are supported by audited data.

Both the marketing allowance and return on investment factors should be included in the manufacturing allowances provided in the component price formulas at the rates supported by the CDFA data. If processors are not provided enough of a manufacturing allowance to market the product they process, or to earn any return on investment, they will not continue to provide processing capacity for producers' milk. At the same time, the manufacturing allowances incorporated in the formulas will not provide enough of an allowance to assure that every processor, no matter how inefficient or high-cost, will earn a profit. Allowances set at such a level certainly could result in the situation warned of by producer groups in which processors manufacture greater volumes of product than the market demands because they are guaranteed a profit on all their production. As a result, the only way to market all of the product would be to reduce prices, with a profit to processors still locked in through the make allowance, which would result in decreasing prices paid to producers. In addition, manufacturers who are assured a profit on all of their output would have a lesser incentive to make a sufficient quantity of milk available for fluid use—a basic goal of the Federal milk order program.

Farm-to-plant losses. One area addressed by several hearing participants in testimony and in briefs as appropriate to consider in establishing make allowances or yields was the loss of milk components during manufacturing processes.

Two cheese manufacturers, IDFA and Land O'Lakes (LOL), continued to argue in their comments on the tentative final decision that make allowances should be increased, or yields reduced, to reflect shrinkage between farms and warehouses.

The tentative final decision and the recommended decision stated that orders have always provided an allowance for shrinkage and that inflating costs of production or reducing yield factors to reflect shrinkage would not properly reflect the value of producers' milk used in manufactured products. The recommended decision also stated that processing costs determined by surveys underlie the manufacturing costs incorporated in the pricing formulas and were expressed in cents per pound of end product manufactured, not in the cost per hundredweight of converting milk to manufactured products. The recommended decision went on to state that the component pricing formulas were based on the content of those components in the finished products for which a manufacturing cost per pound had been established. The recommended decision concluded that both the CDFA and RBCS cost surveys allocated all plant costs to actual end products and that the yield factors in the formulas referred to the amount of finished product resulting from the processing of a given volume of input or to the amount of component present in the finished product.

Comments on the recommended decision from Kraft Foods, Inc., Leprino Foods Company, IDFA, Hilmar Cheese Company, Agri-Mark Dairy Cooperative, Davisco Foods International, Glanbia Foods, Inc., Winger Cheese, Inc., and Northwest Dairy Association and WestFarm Foods (NDA) expressed concern that the Class III and IV milk pricing formulas offered in the recommended decision do not sufficiently address the costs incurred in the assembly, transportation, and delivery of milk and its components. Kraft, Leprino, Hershey, Dairy Farmers of America (DFA), and Dr. David Barbano of Cornell University testified at the hearing as to the need to specifically account for the losses in milk solid components that occur between moving milk from the farm or diverting plants and the receiving manufacturing plant. The witnesses and comments provided testimony that these losses are inherent in the handling of milk and that this issue was inadequately addressed in the recommended decision. This final decision finds the arguments for specific consideration of the impact of shrinkage in the product price formula persuasive.

The hearing testimony as well as comments to the recommended decision provide sufficient evidence to conclude that the recommended decision formulas do not properly consider farm-to-plant losses that occur. Testimony indicates that these losses are 0.25 percent on all milk solids, and that butterfat solid losses are an additional 0.015 pounds per hundredweight of milk. These losses need to be represented in the pricing formula, according to these claimants, to account for the out-of-plant losses that occur prior to processing raw milk into finished products such as cheese or butter/powder.

Witnesses for Kraft, Leprino, DFA, and Hershey, among others, testified that the difference between the quantity of milk, including components, received at the plant should be accounted for in the price formulas, since the formulas are based on yields attributable to components received at the plant. Milk unrecoverable in the movement from farm-to-plant cannot yield finished product.

Comments received from Select Milk Producers, Inc., and Continental Dairy Products, Inc., supported the Class III and IV pricing formulas as offered in the recommended decision, offering that including an adjustment for farm-to-plant loss would cause confusion.

As indicated earlier, Federal orders have always contained provisions for "shrinkage." Since handlers have to account for all receipts and utilization, the shrinkage provision allows assigning a value to milk losses at the lowest priced class, providing explicit recognition that some milk loss is inevitable in farm-to-plant movement. If, however, the loss exceeds the allowable level, the excess shrinkage is priced at Class I. This "shrinkage," as discussed above, refers to milk losses associated with how the order classifies and pools milk. Current shrinkage provisions are associated with pool distributing plants that produce fluid milk products. In this context, shrinkage provisions also provide fluid milk handlers the ability to assign milk losses to a lower class use value within certain parameters.

The loss allowances in the Class III and IV formulas are intended to reflect actual losses that are beyond the processing handler's ability to control. In addition, farm-to-plant losses cannot be assigned to a lower class value since the milk solids unavailable for processing effectively have no value in the Class III and IV formulas.

The price formulas in the recommended decision included typical plant losses associated with the conversion of raw milk to the final dairy product and relied on Federal order reform findings that the value of Class III and IV milk would be determined from the NASS survey prices collected on butter, cheese, dry whey, and nonfat dry milk. Pricing formulas generally include both yield factors and make allowances which together account for the entire conversion of raw milk to a final dairy product. Comments received on the recommended decision indicated that milk solid losses between the farm and the receiving plant are real, unavoidable, and common.

Prior to Federal order reform, milk pricing for all Federal milk marketing orders relied on the Grade B Minnesota-Wisconsin (M–W) price series and later the Basic Formula Price (BFP). These prices were determined by manufacture milk plant survey reports of Grade B milk purchases free of government price regulation and represented a competitive pay price for milk. The competitive pay price factored the entire cost of processing milk purchased from farms into finished dairy products. In contrast to the competitive pay prices, Federal order reform could no longer rely on a competitive pay price and purposefully chose NASS surveys of end-product prices and sales to establish Class III and IV prices with product price formulas. Many of the plants reporting to NASS purchase large quantities of milk from individual producer cooperatives. The end-product pricing formulas developed under reform were based in part upon the cost to process raw milk into finished dairy products.

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After reevaluation of the hearing testimony and comments, this final decision reverses the recommended decision by including an adjustment for farm-to-plant losses of butterfat and nonfat solids. It is necessary to include such an adjustment in using end-product pricing formulas for determining component prices. Since the handlers receiving milk from producers pay the producers on the basis of farm weights and tests, handlers do not receive all of the milk components due to farm-to-plant losses. An adjustment to the price formulas to account for the difference in milk components paid for versus components actually received is appropriate. Based on the hearing record and comments filed by numerous parties, the farm-to-plant adjustment will reflect a 0.25 percent loss of nonfat solids, including protein and other solids, and a 0.25 percent loss of butterfat plus a 0.015 pounds loss of butterfat. These adjustments are reasonable and are reflected in the respective yield factors used for computing the milk component prices.

These loss allowances are adopted into the Class III and IV pricing formulas. The farm-to-plant losses are reflected on the end-products that result from Class III and IV milk, namely, cheese, dry whey, nonfat dry milk, and butter. They are reflected in this way to ease the concerns raised by Select Milk and Continental Dairy who indicated that reflecting farm-to-plant losses on the front-end of the product formulas (based on farm milk) may cause confusion.

A detailed description of the amendments to each of the respective pricing formulas is provided below. This final decision incorporates an adjustment to the respective yield coefficients of each milk component. The adjustment is based on an overall factor of 0.25 percent loss of each milk component and an additional 0.015 pounds of butterfat lost between the farm and the receiving plant.

In-plant losses. Several handlers commented that in-plant losses should be included in the formulas used for computing the component prices. In this regard in-plant losses represent milk that cannot be processed into dairy products due to the handling of milk by the plant. This final decision does not include an adjustment for in-plant losses because a manufacturing plant has control over the magnitude of in-plant losses and therefore should not be compensated for such losses, unlike the farm-to-plant loss which is outside the control of the plant operator. This adjustment is reflected by recognizing that the cost of converting 100 pounds of milk into a finished product is not significantly affected by the quantity of finished product produced. For example, if it costs $20 to convert 100 pounds of milk into 10 pounds of cheese assuming absolutely no losses, the make allowance would be $2 per pound. However, if there is a loss of a half pound of cheese prior to the final packaging of the cheese, only 9.5 pounds of cheese is "produced." In this example, the make allowance would be $2.11 per pound of finished product. Thus the make allowance based on pounds of product produced does account for at least a portion of in-plant losses.

Ratemaking. In comments received to the recommended decision, Kraft, joined by NDA, argued that including make allowances in the pricing formulas was "ratemaking." Kraft stated that the make allowances formulated and used in the Class III and Class IV formulas have not followed the standards needed to comply with ratemaking. Kraft stated that the make allowances are not constitutionally valid because they do not ensure that manufacturing costs provide for a reasonable rate of return for manufacturers.

In seeking to characterize the provisions of make allowances in Class III and Class IV pricing formulas as ratemaking, the commentors are ignoring the unique and longstanding treatment of the milk pricing provisions, including make allowances, in Federal milk marketing order regulations. The make allowances in the Class III and Class IV pricing formulas do not constitute ratemaking despite arguments that they do. The make allowances adopted are used in establishing minimum prices for milk under the authority and requirements of the Agricultural Marketing Agreement Act and are different in kind from the ratemaking referred to by the commentors.

Other issues. A comment filed by Lamers Dairy to the tentative final decision argued that using make allowances to calculate Class III and Class IV prices but not Class I and Class II prices constitutes unequal treatment. The comment disregarded that make allowances in the Class III and Class IV price calculations are used to determine prices for milk used in those classes, and that the prices for milk used in Classes I and II are based on those milk prices. The Class I and II prices are determined for the purpose of valuing milk in uses that are alternatives to manufacturing uses. Once the Class III and IV prices have been established, the Class I and II prices can be calculated using differentials from the base prices. No further comments on this issue were received.

b. Class IV Butterfat and Nonfat Solids Prices

Butterfat Price. This final decision continues to use the NASS price for Grade AA butter in calculating the butterfat price to be used in Class IV, and uses the current and the recommended decision's make allowance of $0.115. However, this final decision changes the use of a 0.82 divisor in the price formula to a multiplier of 1.20 in order to provide consistency to price formulas and to account for farm-to-plant milk losses.

The recommended decision continued to use the NASS price for Grade AA butter for calculating the butterfat price to be used in Class IV, and it continued to change the manufacturing allowance in the butterfat formula by 1/10 of a cent per pound of butter from the allowance used under Federal order reform. The recommended decision also recommended that the 0.82 divisor in the price formula be unchanged. The make allowance change is the same as that included in the tentative final decision, and neither it nor the other factors were affected by the injunction. However, the injunction resulted in the same butterfat price formula being used to value both Class III butterfat and Class IV butterfat.

Several proposals were heard that would reduce butterfat prices, either by reducing the butter price used in the computation of the butterfat prices for all classes or by subtracting a fixed amount from the butterfat price computed for Class IV. Proposals also were made that would change the make allowance used in calculation of the butterfat prices. There were no proposals to change the butterfat divisor of 0.82, although one witness representing a western cooperative association suggested that it be reconsidered as he felt it did not include a shrinkage factor.

Product Price (Butter). This final decision continues to use the NASS price for Grade AA butter in calculating the butterfat price to be used in Class IV. Several witnesses for proprietary processor proponents of the proposal to deduct six cents from the butter price before computing the butterfat price stated that historically the value of butterfat in the Federal milk orders has been based on the price of Grade A butter. The witnesses explained that an equivalent price determination had been issued in 1998 (when the CME discontinued trading Grade A butter)

where nine cents would be subtracted from the Grade AA butter price for use in calculating Federal order butterfat prices. This equivalent price, according to the witnesses, was found to be "essential" to the continued operation of the Federal milk order program. Further, they argued that its adoption continued the policy of basing butterfat pricing under the Federal milk orders on a value below that of Grade AA butter.

The witnesses complained that under Federal order reform the butterfat value is determined by using the NASS Grade AA price of butter, which effectively increases the butterfat value under Federal milk orders. According to proponents' calculations, the increase does not amount to a full nine cents but is tempered by the use of the NASS Grade AA price, which has averaged approximately three cents below the CME Grade AA price, in the butterfat pricing formula. Therefore, they stated, the actual increase in the butter price used to calculate butterfat prices is approximately six cents. According to the witnesses, subtraction of six cents from the NASS butter price would return the relationship between the butterfat value under the orders and the selling price of butter to the relationship that existed prior to Federal order reform.

Several witnesses explained that when handlers must pay for butterfat on the basis of the Grade AA butter market they cannot then sell cream or finished products at a price that would allow them to recover their costs. They testified that cream is sold at a price that is termed a "multiple" of the butter price, and that the multiples used when the butterfat price was calculated from the Grade A butter price have not adjusted to the new pricing formula using Grade AA butter.

The IDFA witness pointed out that the IDFA proposal to subtract six cents from the NASS Grade AA butter price would apply not only to the butterfat formula for Class II, Class III, and Class IV but would apply to the advance butterfat formula used for computing the Class I butterfat price. The witness testified that by applying the same formula to all classes of butterfat, the current relationship between the class prices would be maintained. The witness contended that there is no justification for changing the relationships between the class prices, particularly if the adjustment would widen the class price spreads or, in effect, increase the Class I and Class II differentials.

Witnesses for NMPF and several large cooperative associations testified in support of NMPF's proposal to reduce the calculated butterfat price by six cents, with the reduction applied to Class IV butterfat only. Under this proposal, the computation of the butterfat prices for other classes would not contain the six-cent adjustment. Several witnesses representing cooperative associations that process butter explained that butter manufacturers incur additional costs when procuring cream used for manufacturing butter as opposed to the cost of converting producer milk to butter. The witnesses explained that these additional costs include transportation, additional handling, and additional pasteurization. The witness for LOL testified that the additional costs amounted to 4.57 cents per pound of butterfat for transportation and 0.4 cents per pound for receiving, storing, and repasteurization. A witness for Agri-Mark stated that Agri-Mark's transportation costs are slightly less than LOL's, probably due to the proximity of the Agri-Mark plant to the sources of cream, but that the other additional costs are slightly higher than the LOL costs, at 0.5 cents per pound of butterfat.

The proponents of reducing the Class IV butterfat value also referred to the computation of the California Class 4a butterfat price, which involves a subtraction of 4.5 cents per pound from the CME Grade AA butter price to adjust for the costs of moving butter from the west coast to the Midwest.

Those parties who favored reducing the butter price before using the butterfat price formula to calculate any of the butterfat prices disagreed vehemently with the proposal to reduce only the Class IV butterfat price. They argued that such a reduction would distort the relationship between the Class II and Class IV prices, resulting in a greatly-increased price for Class II butterfat in relation to Class IV butterfat. Specifically, the projected increase in the Class II–Class IV butterfat price difference was cited as 6.7 cents per pound (from the current difference of 0.7 cents). These parties argued that butterfat values would most appropriately be reduced by the same degree in all classes.

The price to be used for butterfat in Class III and Class IV should be computed by subtracting a make allowance of 0.115 dollars per pound from the monthly average NASS Grade AA butter price and dividing the result by 0.82 since 1.2213 pounds of butter can be made from 1 pound of butterfat. The Class II butterfat price should continue to be the Class IV butterfat price plus 0.007 cents, while the Class I butterfat price will be the advance butterfat price plus the applicable Class I differential.

Contrary to the belief stated by some witnesses, the use of the Grade AA butter price for computing the butterfat price under Federal order reform was not an "oversight." Trading of Grade A butter on the CME ended June 26, 1998 (not by USDA, as implied in one brief, but by the CME) because the volume of Grade A butter traded was not great enough to warrant maintaining a trading venue. One brief argued that the Grade A butter price represents a minimum price, and that there is no need for concern that there will not be an available market for Grade A and Grade B butter. However, with the end of trading in Grade A butter on the CME, there is no published (or any other known) source for obtaining a price for Grade A butter.

The use of the Grade AA butter price for establishing butterfat prices is appropriate since that is the only grade of butter that has significant enough trading volume to warrant a publicly-reported price. Grade AA butter prices are the only butter prices regularly available and represent the vast majority (about 95 percent) of the butter sold. Although the "multiples" of the butter price apparently had not adjusted to the use of the Grade AA price during the first 4 months of experience under the revised orders and probably should not be expected to adjust during the period in which this proceeding is under consideration, the marketplace should, in time, make the needed adjustments.

Various witnesses estimated that Grade A and Grade B butter combined make up 3–7 percent of the butter in the U.S. Although a witness noted that the Minnesota-Wisconsin (M–W) price for non-Grade A milk continued to be surveyed even after the percentage of milk eligible for the survey had fallen below a 5 percent level, it was widely recognized for some time that a pricing alternative to the M–W must be found because the M–W eventually would no longer provide a representative price for a large volume of unregulated milk. Similarly, with the decline of Grade A butter (and the unavailability of prices for that product), the only alternative available for determining price is Grade AA butter. A finding in the equivalent price determination that a Grade A butter price was "essential" to continued operation of the orders referred solely to the fact that the Grade A price was specified in all of the orders at that time, not that the butterfat value under Federal milk orders could never be based on any other price.

Making an adjustment to a clearly valid price series to approximate a price

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series that has been discontinued for several years due to insufficient volume for trading is inappropriate. Comments to the tentative final decision from IDFA and Schreiber Foods continued to encourage the use of an estimate of the discontinued Grade A price series for the current formulas. Since it has been about four years since a publicly-traded price for Grade A butter has been available, it is impossible to determine what the current difference between these prices would be because there are no reports of the Grade A price available. The vast majority of butter made and sold in the U.S. is Grade AA, and that is the appropriate product to which to base a value of butterfat used in producing butter.

The 3-cent average difference between the CME and NASS butter prices makes up ⅔ of the 4.5-cent adjustment made by CDFA in calculating the value of butterfat used in butter. An additional 6 cents deducted from the butterfat price calculated from the NASS price would much more than make up the remaining 1.5-cent difference. Also, the 4.5-cent CDFA adjustment is made for the purpose of reflecting the cost of moving butter from California to Chicago. The butterfat price calculated under the Federal order program is not intended to apply to only one state. The NASS price is a nationwide survey and likely includes a significant representation of California butter prices. If there are additional costs involved in making butter, they would more appropriately be included in the make allowance for butter.

Make Allowance (Butter). This final decision continues to use the current and the recommended decision's make allowance of $0.115. The make allowance factor in the butterfat price formula should be derived from a combination of the manufacturing costs determined by CDFA and by RBCS, as they were in the tentative final and recommended decision. The CDFA cost data is divided into two groups representing high cost and low cost butter plants, with the four plants in the high cost group manufacturing, on average, about the same average number of pounds of butter as the seven plants in the RBCS study. Use of the data for the CDFA high-cost group of butter plants is more appropriate than use of the weighted average cost for all of the California plants because it is more likely that the high-cost plants, like the plants in the RBCS survey, serve a predominately balancing function.

When the RBCS data is adjusted for packaging cost, general and administrative costs, and return on investment with the CDFA data for the high cost group, and with a marketing allowance of $0.0015 added to both sets of data, the weighted average of the two data sets is $0.115. This butter manufacturing allowance was very close to the Federal order reform allowance of $0.114. As adopted in the tentative final decision, the make allowance of $0.115 continues to represent the costs of making butter in plants that serve a balancing function.

The increased costs of making butter, not including transportation, cited by the proponents of reducing the butterfat price are expected to be included in this manufacturing allowance, which exceeds the low cost group in the CDFA survey by 3 cents per pound. The only class of use for which adjustments for transportation have regularly been included under Federal order regulation is Class I. Assuring that the order provides an allowance for moving milk used in manufactured products would interfere with provisions designed to assure an adequate supply of milk for fluid use.

Comments to the recommended decision from IDFA again encouraged lowering the Grade AA butter price by subtracting six cents from the NASS Grade AA butter price before computing the Class III and Class IV butterfat prices. IDFA added that if the Grade AA butter price was not reduced then the make allowance should be increased by 4.5 cents.

For the same reasons as stated above in response to comments on the tentative final decision and the recommended decision, this final decision will continue to use the NASS Grade AA butter price to compute the ClassIII and Class IV butterfat price.

Yield (Butter). As discussed above, this final decision provides an allowance for butterfat lost in moving milk from the farm to the processing plant. In response to the recommended decision, numerous Class III and IV processors provided comments expressing concern that the Class III and IV milk pricing formulas did not allow for general and common losses associated with the assembly, transportation, and delivery of milk and its components. The record supports concluding that the Class III and IV butterfat losses from the farm-to-the plant be computed as follows:

Class III & IV Fat Loss = (Fat Pounds × 0.0025) + 0.015

The loss allowance for butterfat will be reflected by adjusting the 0.82 divisor in the butterfat price formula. Testimony and comments indicate that farm-to-plant losses on all milk solids is 0.25 percent (0.0025) with butterfat incurring an additional loss of 0.015 per 100 pounds of milk. The butterfat price formula is determined as follows:

- For every pound of butterfat, 0.0025 pounds is lost in the farm-to-plant transfer (1.000 − 0.0025 = 0.9975).
- In addition, for every pound of butterfat, there is an additional 0.0150 farm-to-plant loss on butterfat solids (0.9975 − 0.0150 = 0.9825 pounds of butterfat).
- Dividing 0.9825 by 0.82 results in a butterfat factor of 1.20 (0.9825/0.82 = 1.20).
- Therefore, the Class III and IV butterfat value per pound is computed as follows:

(NASS butter price − 0.115) × 1.20

This final decision chooses to multiply the NASS butter price by 1.20 instead of dividing the NASS butter price by 0.82. This change in the formula from division to multiplication is made to simplify and provide consistency in the pricing formulas used for all milk components and includes an allowance for farm-to-plant losses.

Although one witness suggested that the divisor in the butter price formula that reflects the butterfat content of butter be reconsidered, he did not indicate any number more appropriate than the 0.82 divisor used in the current formula. There was no other testimony in the record questioning the butter content factor. In fact, the only data in the record applicable to the issue was a CDFA report on butter and powder yields at California plants in 1996 that was included in an exhibit. This report shows a 1.2213 weighted average butter yield (1 pound of butterfat results in 1.2213 pounds of butter), which corresponds to the use of the 0.82 divisor.

The record does not support adoption of a Class IV butterfat price that is not reflected directly in the Class II butterfat price. There was testimony from several witnesses that the current Class IV–Class II price relationship is rational and appropriate, and an adjustment to the Class IV butterfat price that is not reflected in the Class II butterfat price would disrupt the current relationship. In addition, it would seem reasonable that some of the extra costs claimed by butter manufacturers, such as transportation costs for supplemental cream supplies, butterfat standardization of outside cream sources, and additional pasteurization would be as applicable for Class II manufacturers of high-fat products using surplus cream as for butter makers. Accordingly, reduction of the Class IV butterfat price only is not considered appropriate.

This final decision modifies the Class III and IV butterfat price formula as follows:

(NASS AA Butter Price − 0.115) × 1.20

Class IV Nonfat Solids Price. This final decision maintains the use of the NASS survey price reported for nonfat dry milk and maintains the make allowance of 14 cents per pound of nonfat dry milk as indicated in the previous decisions issued in this proceeding. This final decision also changes the divisor from 1 to 0.99 in order to account for farm-to-plant losses of nonfat solids and to simplify and provide consistency to price formulas. Nonfat milk solids in buttermilk are removed from the computation of the Class IV nonfat solids price.

The tentative final decision eliminated the 1.02 divisor in the nonfat solids price formula to reflect the incorporation of dry buttermilk (with a lower product price and higher make allowance).

Six proposals to change some part of the nonfat solids price formula were considered at the hearing. Three of the proposals dealt with the manufacturing allowance for nonfat dry milk (NFDM), with two of the proposals advocating use of the RBCS survey results and one proposal supporting an increase in the make allowance. The other three proposals supported changes in the yield factor of the nonfat solids price formula that would reflect greater powder yield from a pound of nonfat solids. Two of the proposals to change yield factors included using CME NFDM prices instead of the NASS survey. As discussed in the recommended decision, the product prices used in the component pricing formulas will continue to be obtained from the NASS survey.

Product Price (Nonfat dry milk). This final decision maintains the use of the NASS survey price reported for nonfat dry milk. No proposals were considered that would have changed the product price used in the nonfat solids price formula, and the record contains no basis for making any change in this formula factor.

Make Allowance (Nonfat dry milk). This final decision maintains the make allowance of $0.140 per pound of nonfat dry milk as indicated in the previous decisions issued in this proceeding. At the time the hearing notice was issued, the most recent RBCS data were not available, and those costs were not specified in the proposals. By the time the hearing was held, however, the RBCS data had been released and were included in the information introduced at the hearing. NMPF supported continued use of a weighted average of the CDFA and the RBCS manufacturing cost surveys, with inclusion of a marketing allowance and the CDFA factor for return on investment. NMPF proposed that the NFDM make allowance be $0.140 per pound.

Southeast Dairy Farmers Association also proposed that the RBCS survey be used to determine a make allowance for NFDM, but did not propose that a marketing allowance be included. The necessity of including a marketing allowance was discussed in the recommended decision.

Associated Milk Producers, Inc. (AMPI), proposed that the NFDM manufacturing allowance be increased from $0.137 to $0.1563 per pound, a rate based on AMPI's cost of making NFDM at its own three plants in the Upper Midwest over a 5-year period. The AMPI witness stated that in addition to a processing and packaging cost of $0.1254, the make allowance should include a marketing allowance of $0.0024 and return on investment of $0.026, for a total allowance of $0.1538 per pound, modified from the level proposed in the hearing notice. The witness testified that the three AMPI plants operate at approximately 80 percent of capacity.

No comments were filed that specifically addressed the adopted make allowance for use in the nonfat solids price.

On the basis of the data and testimony included in the hearing record, the manufacturing cost level that appears to be most appropriate for use in the pricing formula for nonfat solids is $0.14 per pound. This value is calculated by using a weighted average of the RBCS survey and the two less-cost California groups of plants, adding the CDFA General and Administrative costs and Return on Investment expenses for those two groups to the RBCS numbers, and adding a $0.0015 marketing allowance to both sets of data. The basis for using the two lower-cost groups of California plants is that the mid-cost group is of a similar average size as the group included in the RBCS survey, and that the lowest-cost California group has a very similar total cost to the mid-cost group. These three groups of plants (the RBCS plants and the two California groups) are similar enough in size and cost to consider as fairly representative, and should encompass those plants that perform a market balancing function. The highest-cost California group should not be included since its average cost is more than ten cents per pound of NFDM above the RBCS group or either of the other two California groups.

The AMPI cost numbers cannot be included in the weighted average since the number of pounds of NFDM associated with those costs is not available. When the AMPI marketing allowance and return on investment estimates are replaced with the more moderate numbers used in the make allowance calculation, the AMPI manufacturing costs do not differ much from the other two sources. This is true despite the wide discrepancy in the capacity utilization percentage estimates for the two data sets (80 percent for the AMPI plants versus less than 50 percent for the plants in the RBCS survey). Inclusion of the AMPI costs in the RBCS survey would have included a larger representation of NFDM manufactured outside California. However, the record indicates that a high percentage of the NFDM manufactured in the U.S. comes from California and the proportion of cost data representing California in the manufacturing allowance is reasonable.

"Yield" (Nonfat solids). This final decision adopts changes to the Class IV nonfat solids formula in order to account for farm-to-plant losses, more accurately reflect the value of the nonfat milk solids in nonfat dry milk and buttermilk powder, and provide simplification and consistency to the milk price formulas.

The tentative and recommended decisions included buttermilk solids in the value of nonfat milk solids. However, a reevaluation of the Class IV nonfat solids pricing formula finds that recognizing a minimum value for buttermilk powder does not materially affect the Class IV skim milk price. Record evidence indicates that the price of buttermilk powder can be a low of 70 percent of the nonfat dry milk price for the same period. In addition, according to the record, the make allowance of buttermilk powder is an additional 2 cents per pound higher than the nonfat dry milk make allowance. Official notice of weekly Dairy Product Prices published by the National Agricultural Statistics Service for January 2000 through May 2002 is hereby taken. Copies of Dairy Product Prices can be located at the Web site: *http://www.usda.mannlib.cornell.edu/reports/nassr/price/dairy/.*

Using the 2-cent higher make allowance for buttermilk and prices for nonfat dry milk and buttermilk powder for the period of January 2000 through May 2002 it was determined that the effect of including buttermilk powder in the nonfat solids price and the Class IV skim milk price was negligible. Therefore, this decision eliminates the

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consideration of nonfat solids that end up in buttermilk powder from the Class IV nonfat solids pricing formula.

According to the Economic Research Services publication *Weights, Measures, and Conversion Factors for Agricultural Commodities and Their Products,* nonfat milk solids in dry buttermilk are 0.0479 pounds per pound of nonfat milk solids and are calculated as follows:

- For every pound of dry buttermilk there are 0.919 pounds of nonfat milk solids.
- Assuming a dry buttermilk yield of 0.0521, the nonfat milk solids that end up in dry buttermilk are 0.0479 pounds per pound of nonfat dry milk solids ($0.919 \times 0.0521 = 0.0479$).

The Class IV nonfat milk solids price can therefore be calculated as follows:

- For every pound of nonfat milk solids (nfms), 0.0025 pounds is lost in the farm-to-plant transfer.
- One pound of nfms minus the farm-to-plant loss of 0.0025 equals 0.9975 pounds of nfms at the plant.
- For every pound of nfms, 0.0479 pounds of these solids end up in dry buttermilk powder.
- 0.9975 pounds of nfms minus the 0.0479 pounds of solids in dry buttermilk equals 0.9496 pounds of nfms in the form of nonfat dry milk.
- Since each pound of nonfat dry milk contains 96.2 percent nfms (3.8 percent moisture) then, 0.9496/0.962 = 0.9871 (rounded to 0.99)

Therefore, the Class IV nonfat milk solids price per pound is computed as follows:

(NASS nonfat dry milk price—0.14) × 0.99

A considerable portion of the testimony dealing with the nonfat solids pricing formula pertained to the 1.02 divisor. The divisor is not strictly a yield factor but is intended to reflect the amount of nonfat solids in NFDM, with an adjustment for the small amount of buttermilk powder that is made in conjunction with the manufacture of butter and NFDM. Testimony by a number of witnesses asserted that the product price minus the make allowance should be either multiplied by a number greater than 1 (such as 1.02) or divided by a number smaller than 1 (such as 0.99 or 0.975) to reflect the fact that more than 1 pound of NFDM can be expected to be manufactured from 1 pound of nonfat solids due to the moisture content of NFDM.

Many of the hearing participants supported the 1.02 divisor, adopted under Federal order reform, and expressed understanding of the approach of adjusting the "yield" of NFDM to compensate for the fact that some of the powdered product made from Class IV milk is buttermilk powder (BMP). Although 1.03 to 1.05 pounds of NFDM generally can be obtained per pound of nonfat solids, the formula also recognizes a lower value and higher manufacturing cost for BMP.

Several witnesses correctly assessed an alternate solution to the dilemma of calculating a component price from two commodities with different prices and different make allowances as one requiring addition of dry buttermilk as another component price in the Federal milk order pricing system. As described by at least one witness, such an undertaking would require adding dry buttermilk to the NASS price survey, determining a separate make allowance, and calculating a yield factor. This procedure would be a burdensome undertaking for very little benefit, since dry buttermilk represents only about 5 percent of the dry products resulting from the manufacture of butter and nonfat dry milk. The issue that remains is how best to reflect the value of nonfat solids used in both NFDM and BMP in the same component pricing formula.

The IDFA witness testified that for the 19-month period beginning with September 1998, the Central States' dry buttermilk price had averaged $0.798 per pound, while the Central States' "mostly" price for NFDM averaged $1.043. The LOL witness similarly testified that the 1999 Northeast "mostly" price for NFDM averaged $1.0389, while the BMP price was $0.7686 per pound. On the basis of these numbers, it would appear that the price of BMP is roughly 75 percent that of NFDM. However, comparison of BMP and NFDM prices for the years of 1996 through 1999 and into 2000 reflects a more complex relationship between these prices than the hearing testimony would indicate. The BMP price as a percentage of the nonfat dry milk price (using Western prices) was 100.9 percent in 1996, 94.5 percent in 1997, 88 percent in 1998, and 71 percent in 1999. During the first third of 2000, BMP prices generally averaged less than 70 percent of NFDM prices. As the year 2000 progressed, however, the percentage increased, being at levels up to 100 percent in late July and remaining above 85 percent for the second half of the year in all areas.

The witness representing Agri-Mark stated that Agri-Mark employees engaged in manufacturing operations had estimated that the costs of producing BMP range from 1 to 3 cents more per pound than those of producing NFDM. Given that the manufacturing costs estimated by the Agri-Mark witness for other products were somewhat higher than those supported by the bulk of the hearing record, it is reasonable to consider the extra cost of manufacturing BMP to be generally not more than 2 cents in excess of the cost of manufacturing NFDM. In addition, it is difficult to justify increasing the powder make allowance for all of the powdered product represented in the make allowance since the RBCS witness testified that manufacturing costs of BMP manufactured at the plants included in the RBCS survey are included in the powder costs reported by RBCS.

Testimony regarding actual yields of NFDM and BMP were provided by only one witness representing a manufacturing plant operator. The numbers provided, while not complete enough for an exact accounting of the ultimate disposition of the plant's receipts of producer milk, indicate strongly that the approximate loss of nonfat solids used in the manufacture of NFDM at the specific plant was 3 percent, with 16 percent lost in the manufacture of BMP, for a combined weighted average loss of more than 3.5 percent of nonfat solids. In comparison, data published by the State of California showed a weighted average loss of solids not fat of 2.13 percent in the manufacture of butter and powdered products.

The California data indicate a weighted average powder yield of 1.0252 pounds of NFDM and BMP from 1 pound of nonfat solids. One witness discounted this data by observing that the "high" California yield was reported as 1.0406, which would represent a higher-than-allowable moisture content. This number may be influenced by the "high" reported BMP yield of 0.0749.

As noted above, the general impression conveyed by testimony in the hearing record, that BMP is worth considerably less than NFDM and that the cost of processing it is significantly greater than that of processing NFDM, is misleading. The average BMP price over the period 1996–July 2000 is approximately 87 percent of the NFDM price, and the cost of manufacturing BMP is, on the basis of the information available, no more than 2 or 3 cents in excess of the $0.14 recommended as the NFDM make allowance.

The following information from the hearing record was used to determine a multiplier or divisor for the total nonfat solids pricing formula that would result in a minimum price for nonfat solids while incorporating the data and testimony in the record about the manufacture of NFDM and BMP. To assure that the result represents a minimum price, the low or high areas of ranges of numbers related to the manufacture of these two products were used. The CDFA report on butter and powder yield in California plants in 1996 was used in making some of the calculations regarding this factor.

a. The price of BMP represents roughly 80 percent of the price of NFDM (80 percent is less than the average historical relationship of these prices over the past 5 years).

b. The cost of manufacturing BMP is not more than 2 cents greater than the make allowance for manufacturing NFDM.

c. Using a theoretical yield of 1.03 pounds of powder containing 3 percent moisture made from milk containing 8.62 percent nonfat solids would result in 0.054 pounds of BMP and 0.976 pounds of NFDM.

d. Adjusting the theoretical yield of 1.03 pounds to the minimal yield of 1.01 pounds (the "low" yield in the CDFA report) and prorating the BMP and NFDM to 1.01 pounds instead of to 1.03 pounds, the amount of BMP manufactured from a pound of nonfat solids used in butter/powder is approximately 0.053 pounds. When the NFDM yield is prorated, the resulting minimum yield is 0.957 pounds.

Using a NFDM price of $1.03 per pound, a make allowance of $0.14 cents per pound of NFDM, and a divisor of 1, the resulting calculation is: $1.03 – $0.14 = $0.89 per pound of nonfat solids. The same result is achieved through a more complicated calculation using both product prices and make allowances, as follows:

Buttermilk powder:

($1.03 × 0.80) – $0.16 = $0.664

$0.664 × 0.053 = $0.03519 + Nonfat dry milk:

$1.03 – $0.014 = $0.89

$ 0.89 × 0.957 = *$0.85173*

$0.88692 (Rounded to $0.89)

On the basis of this analysis, no multiplier or divisor would be necessary in this formula (same as a multiplier or divisor of 1).

A number of comments were filed in response to this aspect of the tentative final decision, with some supporting the use of a divisor of "1," two comments suggesting that a divisor of 1.01 would be more appropriate (but one determining that such a change would not be possible on the record of this proceeding), and several insisting that the above analysis is flawed by use of incorrect or inappropriate data and that the divisor should be returned to the 1.02 level in effect before January 1, 2001.

The IDFA comments stated that, in the interest of establishing minimum pricing, no more than 70 percent of the NFDM value should be assumed for the BMP price and that 3 cents should be added to the BMP make allowance instead of 2. IDFA also indicated that the formula should include shrinkage. NDA and LOL criticized the use of the California yield data in determining the comparative yields of NFDM and BMP, both because some of the data reflected information that included powder with higher-than-allowable moisture and because no witnesses who had participated in the survey were present to testify about it. LOL criticized USDA's use of Western prices rather than the Northeast and Central prices quoted by witnesses who discussed the relative values of NFDM and BMP.

Comments filed by Agri-Mark protested elimination of the 1.02 divisor, arguing that USDA relied on a casual remark about the difference between the cost of manufacturing BMP and NFDM rather than on detailed cost information as in the other make allowances. Agri-Mark also stated that the role of Class IV in balancing surplus cream from Class I use increases the ratio of BMP to NFDM over that calculated from an assumption about uses of the nonfat solids in producer milk.

Criticism of use of the Western BMP and NFDM price series to analyze the relative values of BMP and NFDM in the tentative final decision did not consider the fact that the Western price (mostly) series is the only one with an uninterrupted data series for the five years considered. In addition, the percentage of the NFDM price represented by the BMP price for the Western region was lower during each of the years 1996–2000 than for the Central region; and very similar, with some years averaging higher and some lower, to the Northeast region. Criticism of the CDFA yield data ignores the fact that the yield factors used in the initial analysis for the tentative final decision adjusted the relative "weighted average" yields of BMP and NFDM to the "low" yield.

The hearing record contains enough information on the issue of the relative weights, values, and costs of manufacturing NFDM and BMP to support the conclusion reached in the tentative final decision about the appropriate divisor in the nonfat solids price formula. The 0.96 divisor considered in the proposed rule on Federal order reform represented the pounds of nonfat solids in NFDM rather than the yield of nonfat dry milk from nonfat solids. Use of the divisor of 1 recommended in the tentative final decision accounted for all of the nonfat solids used in Class IV and resulted in 3–4 cents less per pound of nonfat solids (over a NFDM price range of $0.86–$1.10) than the value that would be calculated if the formula attributed all of the Class IV skim value to NFDM.

The Agri-Mark comment emphasized that the ratio of BMP to NFDM milk considered in the nonfat solids price calculation should be calculated on the basis of the butterfat content in Class IV because butterfat surplus to Class I use is used in butter. The Agri-Mark comment observed that the butterfat percentage of milk used in Class IV in the Northeast over a 3-month period averaged 5.67 percent.

Even if the national average of butterfat in Class IV (6.4 percent) is used to determine the breakdown between nonfat solids used in BMP and nonfat solids used in NFDM, less than 0.8 pounds of nonfat solids out of the 8.4 contained in a hundredweight of Class IV milk at 6.4 percent butterfat should be attributed to use in BMP. In effect, the price of each of the 8.4 pounds would be reduced by 3–4 cents. Such a calculation results in 25.2–33.6 cents per hundredweight of milk containing 6.4 percent butterfat to cover the additional costs of making 0.8 pounds of BMP and the lower value of 0.8 pounds of BMP compared to the NFMP manufacturing cost and price. A 3-cent additional cost per pound of manufacturing 0.8 pounds of BMP would equal 2.4 cents, and a 25-percent reduction of the BMP value from that of NFDM would equal approximately 20 cents. These calculations would still leave 2.8–11.2 cents per hundredweight to cover any additional costs of making and selling BMP over those of NFDM.

The recommended decision noted that the additional 3 cents per pound cost of making BMP is on the high end of the information in the hearing record, and that the 25 percent reduction in value of BMP compared to NFDM is on the low end. It was also noted that over the past 5 years, only during the period cited by witnesses testifying about the relative values of BMP and NFDM and during the first 4 months of 2000 had the BMP price as a percentage of the NFDM price fallen below eighty percent. It was also mentioned in the recommended decision that calculations assumed that all of the nonfat solids not used in NFDM were used in BMP, whereas some are used in whole milk powder, which has a higher value than either NFDM or BMP.

In considering all of the above discussion, the record supports the finding that this final decision's incorporation of a Class IV nonfat dry

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milk yield factor of 0.99 is appropriate. The formula is as follows:

((NASS nonfat milk solids price–0.14) × 0.99

c. Class III Butterfat, Protein, and Other Nonfat Solids Prices

In a change from the orders promulgated under the Federal order reform process, the tentative final decision calculated a Class III butterfat price from the value of butterfat in cheese rather than using the butterfat price calculated from the value of butter for both Classes III and IV. The Class III butterfat price in the tentative final decision was calculated to represent the value of the component in the NASS cheddar cheese price, as was a revised protein price formula.

Before the interim final rule became effective on January 1, 2001, several petitions were filed requesting the Secretary to delay implementation because industry participants objected to the effects of the separate Class III butterfat price.

Implementation could not be stayed because of the Congressional deadline on the rulemaking procedure, and partial implementation was not possible because the interim final rule had been approved by producers in its entirety. Before the separate Class III and Class IV butterfat prices could become effective, implementation of the separate butterfat prices was enjoined in the Federal District Court for the District of Columbia at the urging of organizations representing most of the interests in the dairy industry. The Court's order returned the price formulas for the Class III components to their earlier forms, with the new make allowances and cheese moisture adjustment incorporated.

By the end of the comment period on the tentative final decision, comments representing nearly 100 interested parties from most segments of the industry were received that objected to separating the Class III and Class IV butterfat prices and reducing the level of the protein price. The comments urged USDA to continue to calculate the Class III butterfat price on the basis of the value of butterfat in butter, and return to the Class III price formula formats in use before effectuation of the interim final rule.

Several reasons were given for rejecting the change to Class III component prices based on the contribution of butterfat and protein to cheese yield. Numerous commenters cited the negative effects of a marked increase in the cost of milk for use in high-fat cheeses and the incentive created for handlers to substitute lower-valued Class IV forms of butterfat for use in cheese-making. Others stressed the difficulties created by the decision in marketing cream. Several commenters argued that the shift in value from protein to butterfat caused by the decision did not make sense in light of the importance of protein in cheese-making, and that the reduced protein price would send incorrect economic signals to dairy farmers. One particular concern was the potential significant reduction in the Class I skim value if the Class III price at 3.5 percent butterfat became the mover for the Class I price.

Based on comments received, this final decision determines that the Class III butterfat price be the same as the Class IV butterfat price, calculated from the value of butterfat in butter. In addition, the portion of the protein price formula that adjusts the protein price to accommodate the differential value of butterfat in cheese, as opposed to butter, will continue to be incorporated into the protein price formula. The technical corrections to the protein price formula made in the recommended decision to make the protein price correlate somewhat more closely with the cheese price are adopted in this final decision.

The tentative final decision made only one modification to the specifications of the cheese price, currently a weighted average of the prices of cheese sold in 40-pound blocks and 500-pound barrels (with a 3-cent addition to the barrel price). That change, to adjust the price of 500-pound barrels to 38 percent moisture instead of the 39 percent moisture price currently reported by NASS, is continued in this final decision. Also, as in the tentative final and recommended decisions, this final decision reduces the make allowance for cheese from $0.1702 to $0.165 per pound.

As proposed in the recommended decision, the other nonfat solids price adopted in this final decision will continue to be calculated by subtracting the make allowance from the NASS-reported price for dry whey. However, the result will now be multiplied by 1.03 instead of dividing by 0.968. In addition, the recommended make allowance of 15.9 cents per pound of dry whey is also adopted.

Class III Product Price (Cheese). As proposed in the recommended decision, this final decision continues to utilize the NASS cheese price survey as a basis for determining a value for protein in computing a Class III milk price. The NASS 40-pound block price will continue as presently used. In addition, the NASS 500-pound barrel price will continue to be used as previously recommended at 38 percent moisture and a 3-cent addition to the barrel price.

Several proposals included in the hearing notice would, if adopted, have changed the NASS cheese price used in the Class III pricing formulas. One proposal would limit the cheese prices included to 40-pound blocks reported by the CME, while another would add 640-pound blocks to the prices surveyed by NASS for inclusion in the cheddar cheese price. A third proposal would replace the current 3-cent price adjustment between 500-pound barrel prices and 40-pound block prices to a value that reflects the actual differential industry cost of making 40-pound blocks over 500-pound barrels. Still another proposal would adjust 40-pound block cheese prices for moisture, as 500-pound barrel prices are adjusted.

As discussed above in Issue 2, CME commodity prices should not be used as the basis for calculating component prices. Eliminating 500-pound barrels, which represent approximately two-thirds of the cheese represented in the NASS survey, from calculation of the market value of cheddar cheese would reduce greatly the degree to which the current product prices represent U.S. cheddar cheese prices. The record of this hearing provides no support for relying solely on prices for 40-pound blocks to identify a market price of cheddar cheese.

Several parties testified that the NASS weighted average cheese price should include the value of 640-pound block cheese in the cheese price computation. They contended that such inclusion would improve the reliability of the average cheese price by adding a substantial quantity of cheese to the price survey. Witnesses' estimates of the percentage of U.S. cheddar cheese production represented by 640-pound blocks ranged from 20 to 27 percent. Witnesses testified that the increased volume would better reflect the true value of cheese and additionally would reduce the potential for price distorting manipulation by individual handlers.

In comments filed on the tentative final decision, IDFA stated that USDA had erred by excluding 640-pound blocks. IDFA reiterated the argument that 640-pound blocks represent as much as 27 percent of total cheddar cheese production. Furthermore, the comment noted that past data-collection problems are irrelevant because "all participation in NASS surveys regarding data used to calculate federal order minimum prices is now mandatory." IDFA concluded that the argument that 640-pound blocks should not be used due to their being made on a custom basis to customers' specifications is not valid because adjustments can be made, as they are for moisture in barrel cheese.

Opponents to inclusion of the 640's in the cheese price computation explained that the vast majority of 640's are made on a custom basis to customers' specifications and therefore are not sufficiently uniform to have a standard identity. One witness noted that much of the commerce in 640's is made on a long-term contractual basis and as such would rarely be reflective of changing market conditions.

The Association of Dairy Cooperatives in the Northeast (ADCNE) comments on the tentative final decision reiterated USDA's position, stating that "the market in 640-pound blocks of cheddar cheese does not involve sufficient buyers and sellers in arms-length transactions to provide good data to establish the Class III price for producer milk in all federal milk orders." As stated in the tentative final decision, standardized pricing cannot be developed without a standard identity for the product, which 640-pound blocks lack. In addition, there appears to be an insufficient volume of 640-pound block cheese transactions to warrant inclusion. At the beginning of the NASS survey, price data for 640-pound blocks was collected but was discontinued due to lack of volume and too few participants to allow disclosure of data. Even earlier (1995–96), the former National Cheese Exchange attempted to include trading in 640-pound blocks but discontinued doing so because of lack of interest. Testimony from witnesses representing organizations that manufacture cheese in 640-pound blocks, and who favored inclusion of such product in the NASS survey, stated that the 640-pound blocks manufactured by their organizations are used internally, making that cheese ineligible for inclusion. Therefore, even though price reporting is now mandatory, 640-pound blocks of cheese do not meet the criteria necessary for the prices of these products to be eligible for inclusion in the NASS survey.

Elimination or reduction to one cent of the three-cent adjustment that is added to the barrel price for computing the weighted average cheese price was advocated in testimony at the hearing, comments contained in post-hearing briefs, and comments responding to the tentative final decision. The witnesses argued that since the barrel cheese price is adjusted to 39 percent moisture and block cheese is approximately 38 percent moisture, at least 2 cents of the observed difference in price between 40-pound blocks and 500-pound barrels is due to moisture and has nothing to do with actual differences in costs. In fact, they argued that there is no difference in packaging costs between block and barrel cheese.

The witness for DFA, a cooperative that manufactures cheese packaged in both 40-pound blocks and 500-pound barrels, testified that three cents is an acceptable and reasonable spread between blocks and barrels and that there is no compelling reason to change the three-cent addition to the barrel price. The witness for LOL testified that the three cents is an appropriate difference between blocks and barrels and that adding three cents to the barrel price when computing the weighted cheese price is an appropriate adjustment. DFA and ADCNE argued, in a brief filed on behalf of both parties, that the record supports a conclusion that the 3-cent adjustment of the barrel price is attributable to volume utility and cost differences in packaging and handling.

The National Cheese Institute, which proposed reducing or eliminating the 3-cent adjustment, argued that the adjustment should include only the actual cost differences involved in manufacturing and packaging the two sizes of cheese. Although a number of witnesses representing cheese manufacturers testified in favor of reducing or eliminating the adjustment, including one whose employer makes both sizes of cheddar, none of them addressed the actual cost differences of packaging and manufacturing 40-pound blocks and 500-pound barrels. Instead, the only testimony that was offered involved attributing a 2-cent difference to the moisture-adjusted value of the two sizes of cheese packages. In comments responding to the tentative final decision, ADCNE argued that the 3-cent adjustment is representative of the historical difference in market value between barrel cheese and block cheese after adjustments for moisture.

If the difference between the block and barrel prices were due to the difference in moisture, the difference between the prices should widen as the cheese price increases since the moisture adjustment is based on the price and moisture of the cheese. An analysis of historical cheese prices indicates that the difference between the block cheese and barrel cheese prices does not change with changes in price level. In fact, three of the largest differences between the block and barrel prices occurred at approximately the 40-month NASS weighted average monthly prices.

In comments filed by Leprino Foods Company (Leprino) on the tentative final decision, Leprino argued that comparisons of the block and barrel cheese prices from May 1995 through December 1999 are not valid because of artificial market distortions. Leprino stated that valid relative price data is available only for calendar year 2000, during which the average spread is 1.54 cents. Leprino continued, in its comment, that the price spread between blocks and barrels does not move in lock-step because it is affected by many factors, and will continue to be driven by current market forces.

In comments to the recommended decision, Kraft reiterated their position that at equal moisture tests of 38 percent, the appropriate value to add to the barrel price is 1-cent. In comments to the recommended decision, Glanbia stated that the difference in cost of production between blocks and barrels is $0.008 per pound of cheese at their plant. In comments received to the recommended decision, DFA and Select indicated that the 3-cent adjustment is the correct adjustment to the barrel price.

The record contains no basis for concluding that the actual cost of manufacturing and packaging the two sizes of cheese is not the historical 3-cent price spread. In fact, during the period September 1998 through June 2000 the difference between the block and barrel prices has been 4.4 cents per pound. The record supports maintaining the 3-cent addition to the barrel cheese price.

An expert witness, and several other witnesses, testified that the moisture content of the cheese used for determining the NASS cheese prices and the moisture content used in the Van Slyke cheese yield formula used for computing the "yield" coefficients in the protein formula should be the same. The witnesses explained that failure to align the formula and the moisture content represented by the cheese price survey would result in overstating or understating the formula coefficients.

The expert witness explained that the barrel cheese price is reported at 39 percent moisture after being adjusted from the actual moisture, while the block cheese price is reported at an unknown moisture level. The only testimony dealing with the actual moisture level of block cheese indicates that it averages about 38 percent.

The coefficients originally used for determining the Class III protein price and the Class III butterfat price and used in the formulas in the recommended decision were derived from using the Van Slyke cheese yield formula at 38 percent moisture. Therefore, it is appropriate to use cheese prices that reflect cheese containing 38 percent moisture. The current practice of using

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the 40-pound block cheese price unadjusted for moisture and the 500-lb barrel price adjusted for moisture should be continued, but with the barrel price adjusted to 38 percent moisture instead of 39.

In several comments on the tentative final decision, commenters stated that the 38-percent moisture adjustment to the barrel price requires an adjustment to 1 cent and not 3 cents for the price spread between 500-pound barrels and 40-pound blocks. Other interested persons filed comments supporting both adjustments. DFA argued in its comment that eliminating either adjustment should result in use of only 40-pound block cheese prices.

The hearing record provides no basis for altering the composition of cheese prices surveyed for use in the Class III pricing formulas or for changing the calculation of the NASS weighted average cheese price, other than the moisture adjustment to 38 percent for 500-pound barrels.

Several witnesses testified that types of cheeses other than cheddar should be included in the NASS price survey as a more comprehensive basis for identifying a cheese price, although such a proposal was not included in the hearing notice. The cheddar cheese included in the NASS survey meets certain standard criteria that makes prices for the reported cheese sales comparable. If the survey included other descriptions of cheddar and other types of cheese, such as mozzarella, it would not be possible to consider the reported price as representative of the value of any particular product. Further, the manufacturing costs surveyed are, to a great extent, limited to the costs of processing cheddar cheese.

Class III Make Allowance (Cheese). As in the tentative final and recommended decisions, this final decision reduces the make allowance for cheese from $0.1702 to $0.165 per pound. Several proposals to adjust the manufacturing allowance for cheese were included in the hearing notice and considered at the hearing. The NMPF witness testified that the organization had determined that the most appropriate cheese make allowance would be a weighted average of the updated RBCS and CDFA surveys, with addition of a marketing allowance. Thus, the NMPF supported adoption of a cheese make allowance of $0.1536 per pound of cheese. Several witnesses representing cooperative associations supported the NMPF $0.1536 proposal but also would have included a cost factor for return on investment. One witness testified that the make allowance should be based on data from actual plant operations through the surveys conducted by RBCS and CDFA and testimony from individual plant operators; that it should include California data, as California plants represent a large proportion of cheese manufacture; and that it should be generous enough to assure adequate plant capacity for continued manufacture of cheese.

The witness representing NCI testified that the cheese make allowance should be no less that $0.1687, the weighted average of the NCI-sponsored and CDFA surveys with the addition of a marketing cost of $0.0011. He stated that such an allowance would represent the production of 24 cheese plants and 53 percent of U.S. cheese. Several cheese manufacturer representatives supported use of the NCI-supported make allowance, stressing the importance of adoption of an allowance that covers *all* of the costs of manufacturing cheese.

A witness representing Farmers Union and the American Farm Bureau witness both supported adoption of a make allowance of $0.1521, as a weighted average of RBCS and CDFA data; and a witness for National Farmers Organization supported a make allowance of $0.141 composed of the RBCS cost with the addition of a marketing allowance and return on investment.

Although ADCNE, in its comments on the tentative final decision, supported the use of California data as compiled and audited by a state agency, ADCNE disagreed with inclusion in the cheese make allowance of the CDFA "general and administrative expense" item, which added 1.9 cents per pound to the make allowance. ADCNE described this allowance as "generous, to say the least," as it represents $2–$3.5 million for the newest, largest, and most efficient cheese plants, and stated a preference for having some basis in testimony before building that sort of expense level into plant costs at the expense of minimum producer prices.

The general and administrative expense was one of the cost factors included in the CDFA weighted average cost study, but not in the RBCS study. Therefore, it must be added to the RBCS data to make the two cost studies comparable.

The make allowance used for computing the Class III protein and butterfat prices, $0.165, was determined by combining the CDFA plant survey with the RBCS survey. As was pointed out by several witnesses at the hearing, several cost factors that are necessary to maintain the viability of processing plants are not represented in one or both of the RBCS and the CDFA studies. These cost factors include marketing costs, return on investment, and general and administrative expenses. A discussion of these expenses is included earlier. Neither the CDFA nor the RBCS survey included a marketing cost, so the $0.0015 marketing allowance was added to both studies. In addition, the CDFA return on investment cost of $0.0103 and the general and administrative expense of $0.0190, both of which were included in the CDFA weighted average cost, were added to the RBCS study, which included neither factor. The resulting adjusted costs for each survey are $0.1708 for CDFA and $0.15996 for RBCS. A weighted average of the two studies was computed using the respective adjusted make allowances and the pounds of cheese reported in each study—466,396,548 for the CDFA study and 633,142,812 for the RBCS study—to arrive at the Class III price make allowance of $0.165.

In a comment filed in response to the tentative final decision, NFU stated that the reduction in the cheese make allowance should have been greater than $0.0052, but that the cooperative could support an increased make allowance if it were tied to producer cost of production and market price through implementation of a variable make allowance. The $0.165 make allowance is based on actual costs discovered by two surveys, the conduct of which were open to review in the hearing record, and is very close to the results of another that was conducted in a somewhat less accessible manner. There is no basis in the record for adopting a lower make allowance and, as discussed earlier, no acceptable rationale for implementing variable make allowances.

Class III Butterfat Price. As discussed in the introductory portion of the Class III price section of the recommended decision, the Class III butterfat price adopted in the tentative final decision was changed by a court injunction to be the same as the Class IV butterfat price. This final decision continues to calculate butterfat prices for all classes based on the value of butterfat in butter. The order will refer to both the Class III and Class IV butterfat prices as "the butterfat price," as it did previously.

The tentative final decision was based on the observation that market distortions occur due to using the Class IV butterfat price calculated from the value of butterfat in butter to also represent the value of butterfat in cheese (Class III), and trying to incorporate the difference in value in the protein price. Analysis shows that there is very little relationship between the cheese price and either the current butterfat price or the current protein price.

As a result, instances have occurred when the protein price declines while, at the same time, the cheese price is increasing. This outcome is contrary to the concept of pricing components on the basis of the value of the products in which they are used. The same inverse price scenario has affected the butterfat price, with occurrences in which the Class III butterfat price increases because the butter price has increased while the cheese market has been declining.

Although reflection of the value of a manufactured product in the prices for the milk components that are instrumental in the yield of that product would require that the Class III protein and butterfat prices be tied more directly to their value in cheese than the result obtained from the Federal order reform price formulas, that outcome cannot be accomplished on the basis of this hearing record. However, any distortion between the Class III butterfat and protein prices and the cheese price should be ameliorated partially by the following changes included in the protein formula.

Protein price. The protein price in this final decision is changed from the recommended decision by changing the 1.405 factor to 1.383 to reflect an adjustment for farm-to-plant losses and to reflect a change from a 0.8325 casein factor to a casein factor of 0.822 based on a reevaluation of the hearing record and comments filed in response to the recommended decision. In addition, the butterfat yield coefficient is changed from 1.582 to 1.572 to reflect the farm-to-plant butterfat losses. The remainder of the protein price formula is unchanged.

The tentative final decision on the hearing record for this proceeding derived formulas for calculating a Class III butterfat price and a protein price that considered only the contribution of each of those components to cheese yield and resulted in a 100 percent correlation with the cheese market. Therefore, the individual factors in the portion of the earlier protein price formula that adjusted the contribution of protein to cheese yield to account for differences in value between butterfat used in cheese and in butter and accounted for much debate in the hearing record were not considered in any detail.

The protein price formula resulting from the tentative final decision took the following form:

(NASS weighted average cheese price $-0.165) \times 1.405$.

This formula eliminated the following butterfat adjustment portion of the earlier protein price formula:

+{[(NASS weighted average cheese price $-0.165) \times 1.582$] $-$[the butterfat price]} $\times 1.28$

This butterfat adjustment portion of the formula represents the difference between the value of butterfat used in cheese and the value of butterfat used in butter. The butterfat adjustment portion became unnecessary when the Class III butterfat price was calculated from the value of butterfat in cheese in the tentative final decision.

Reconsideration of the protein formula in light of the determination that there should be only one butterfat price for Class III and Class IV resulted in the following recommended protein price formula:

[(NASS weighted average cheese price $-0.165) \times 1.405$] + ({[(NASS weighted average cheese price $-0.165) \times 1.582$]–[the butterfat price $\times 0.9$]} $\times 1.17$).

Leprino, in response to the tentative final decision, urged that the 1.405 factor used to reflect the yield effect of one pound of protein in milk be reduced to 1.367 because the 1.405 factor assumes that true protein contains more casein (83.3 percent) than is supported by testimony in the record (82.2–82.4 percent).

The hearing record contained much discussion of the derivation of the 1.32 cheese yield factor per pound of crude protein used to determine the 1.405 cheese yield factor per pound of true protein. Two explanations of the factor were advanced. The first involved assumption of 75 percent casein retention, 90 percent butterfat retention, and 38 percent moisture content in the cheese. Holding butterfat and moisture constant and changing the protein content by 0.1 results in a 0.1318 (rounded to 0.132) pound change in the cheese yield, or a one percent change in protein results in a 1.32 pound change in cheese yield. The second method assumes 78 percent casein retention, 90 percent butterfat retention, and a 38 percent moisture content in the cheese. In this second method the cheese yield is computed using a 3.2 percent protein and zero butterfat. The resulting cheese yield is divided by 3.2 to arrive at 1.316 pounds of cheese per pound of protein. The 1.316 was rounded to 1.32. Given these particular assumptions, both methods resulted in the same answer—1.32. A witness for National All Jersey testified that the second method is the appropriate procedure and was the one used to compute the 1.32 yield factor in past Federal order protein price decisions. However, if 78 percent is a more appropriate factor to use as the appropriate value for casein retention, then the first method yields a 1.37 yield factor. The 1.32 factor was used in the protein price formula in the Federal order reform proposed rule and in the five Upper Midwest markets beginning in January 1996 to compute the protein price prior to Federal order reform. The 1.32 yield factor generally has been accepted as an appropriate factor to use for computing a protein price.

When the final decision on Federal order reform was issued, the protein price computation was changed to compute the protein price on the basis of true protein rather than crude protein, which had been the basis for protein price computations in the past. As in determining the 1.32 factor, certain assumptions were made to arrive at the current 1.405 yield factor. The 1.405 factor was computed based on the assumption that milk testing 3.3 percent crude protein has an equivalent true protein test of 3.1 percent. The relationship between crude protein and true protein was based on the results of laboratory testing of producer milk for both crude and true protein. The resulting percentage change in protein is 1.0645 (3.3/3.1), which was then multiplied by 1.32 to arrive at 1.405. In addition, use of the 1.405 yield factor when pricing true protein results in a protein value equivalent to use of the 1.32 factor in pricing crude protein.

Regardless of which procedure is used, assumptions must be made with regard to the various factors used in the formulas. These assumptions directly affect the outcome of the factors used in the protein formula and the resulting protein price and value. Since use of the 1.405 factor resulted in an equivalent protein value to use of 1.32—and there was no testimony or comments filed that the 1.32 factor was not appropriate—there was no reason to change the 1.405 cheese yield factor in the recommended decision.

Leprino argued that the appropriate casein recovery should be 82.3 percent which, when using the second procedure above with a 2.99 true protein level, would result in a factor of 1.388. However, the majority (2/3) of the difference between 1.405 and the 1.367 factor advocated by Leprino accounts for shrinkage between the farm and the cheese vat. The issue of including shrinkage as an additional make allowance or yield factor in the calculation of component prices was discussed in the tentative final decision and was determined to be inappropriate at that time. Eliminating shrinkage from the 1.367 protein factor resulted in a

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factor close to the recommended decision's 1.405. The recommended decision also stated that using the second procedure and a 82.95 casein recovery, which an expert witness testified was equivalent to the 78 percent casein recovery used for crude protein, and a true protein test of 3 percent, which was equivalent to the 3.2 percent used in the second procedure, the protein factor would have been 1.3997, again, not significantly less than the recommended decision's 1.405. Testimony from other parties also stated that the 1.405 was appropriate and should be continued. Based on the hearing record, comments filed in response to the hearing and tentative final decision, and the analysis prior to the recommended decision, it was determined that there was no justification for reducing the 1.405 cheese yield factor.

Comments received from Leprino, IDFA, Kraft, NDA and others explained that the recommended decision did not correct what these parties considered as errors in the protein price formula. With regard to the protein price computation, the parties argued that the percentage of casein in true protein used in the Van Slyke formula was too high. They were of the opinion that since the Van Slyke formula is generally used to analyze in-plant efficiencies, an adjustment needs to be made for applying the formula to milk priced on farm weights and tests. Leprino, commenting on behalf of cheese processors, stated that, "In order to properly adopt the Van Slyke formula for use in setting milk price policy * * * it is critical to understand the context for its use." Leprino further commented that the Van Slyke formula is commonly used by the industry to measure in-plant operational performance, namely, product yield. Leprino expressed the importance of including an allowance in the Van Slyke formula for farm-to-plant shrinkage. Leprino stated that "The Van Slyke yield formula can be used to determine cheddar yields of milk measured at the farm, but only if component losses [farm-to-plant] are accounted for. Although the Van Slyke yield formula was developed to measure production efficiency starting at the vat, the yield formula can still be useful in determining the yield of farm level milk. However, if the Van Slyke formula is to be used for this purpose, component losses prior to the vat must be accounted for to accurately reflect the composition of milk actually entering the vat." Nine other comments supported Leprino's position on the need to include an allowance for farm-to-plant losses within the Van Slyke cheese yield computation in order for it to accurately determine the value of Class III farm milk.

This final decision finds that good reason exists to provide for incorporating farm-to-plant loss allowances into the Van Slyke cheese yield formula for determining the Class III milk price. As explained earlier in this final decision, the record supports a finding that such losses are 0.25 percent on all milk solid components and that butterfat losses are fractionally higher. Butterfat losses are an additional 0.015 pounds on top of the 0.25 percent farm-to-plant loss. When farm-to-plant losses are incorporated into the Van Slyke cheese yield formula, the Van Slyke formula results in the protein price factors from which the Class III protein price is derived.

The Van Slyke formula as proposed under reform and in the recommended decision utilized a casein-to-protein ratio of 83.25 percent or 0.8325.

Comments received on the recommended decision indicated that the cheese industry considers 82.2 percent casein as a reasonable and appropriate reflection of milk composition nationally. An expert witness testified that the casein from true protein ranges between 0.822 and 0.824. In this regard, according to Leprino, "The Hearing Record contains clear evidence regarding milk chemistry * * * that true protein contains 82.20 percent casein."

This final decision finds that using a casein percentage of 82.2 is appropriate. The 0.822 is at the lower end of the range indicated by the expert witness and is appropriate for use in determining minimum Federal order prices. This casein-to-protein ratio is included in the Van Slyke formula for determining the Class III protein formula factors. In addition, this final decision computes the protein yield factor by dividing the cheese yield attributable to protein by the protein test. This method is consistent with record evidence and, according to comments received in response to the recommended decision, is superior to using the additional cheese yield that occurs when additional protein is added. This results in reducing the 1.405 factor in the protein price formula to 1.383. The computation of 1.383 is shown later in this discussion.

As was proposed in the recommended decision, this final decision adopts a butterfat-to-protein ratio of 1.17. The recommended decision proposed a fat-to-protein ration of 1.17 that was based upon the fat-to-protein ratio of standard milk at the dairy farm (3.5/2.9915 = 1.17). The recommended decision concluded that a 1.17 (or lower) butterfat-to-protein ratio assured that the value adjustment for butterfat in butter to the value of butterfat in cheese (included in the protein price formula) would account for the total value of butterfat in producer milk.

Comments received in response to the recommended decision from NMPF, Select, Leprino and others supported the use of the 1.17 butterfat-to-protein ratio in the protein price formula. This final decision continues to use the 1.17 factor.

This final decision uses the following variables in the Van Slyke formula for computing the protein and butterfat yield factors used for computing the protein price:

1. *Butterfat at the farm:* 3.50 pounds per hundredweight.
2. *Protein at the farm:* 2.9915 pounds per hundredweight.
3. *Butterfat retention:* 0.9.
4. *Casein to true protein ratio:* 0.822.
5. *Moisture:* 38 percent.

For illustration purposes how the Van Slyke cheese yield formula has been relied upon since Federal order reform is provided below for ease in comparing the adopted changes to previous formulas.

The Van Slyke Formula Used Under Order Reform

- Cheddar cheese pounds attributable to butterfat = ((0.9 × 3.5) × 1.09)/(1–0.38) = 5.5379 pounds of cheddar cheese
- Cheddar cheese pounds attributable to protein = ((0.8325 × 2.9915) − 0.01) ×1.09/(1–0.38) = 4.2025 pounds of cheddar cheese
- Cheddar cheese pounds attributable to standard farm milk =

5.5379	pounds of cheese from butterfat
+4.2025	pounds of cheese from protein
9.7404	total pounds of cheese from standard milk

- Cheddar cheese yield contribution per pound of fat at farm = 5.5379 pounds of cheddar/3.5 pounds of fat at farm = 1.582
- Cheddar cheese yield contribution per pound of protein at farm = 4.2025 pounds of cheddar/2.9915 pounds of protein at farm = 1.405
- Protein pounds in standard milk = 3.1 × 0.965 = 2.9915
- The butterfat-to-protein ratio factor used under reform was a fixed 1.28

The Van Slyke Formula as Proposed Under the Recommended Decision

- Cheddar cheese pounds attributable to butterfat = ((0.9 × 3.5) × 1.09)/(1–0.38) = 5.5379 pounds of cheddar cheese
- Cheddar cheese pounds attributable to protein = ((0.8325 × 2.9915) − 0.01) ×1.09/(1–0.38) = 4.2025 pounds of cheddar cheese
- Cheddar cheese pounds attributable to standard farm milk =

5.5379	pounds of cheese from butterfat
+4.2025	pounds of cheese from protein
9.7404	total pounds of cheese from standard milk

- Cheddar cheese yield contribution per pound of fat at farm = 5.5379 pounds of cheddar/3.5 pounds of fat at farm = 1.582
- Cheddar cheese yield contribution per pound of protein at farm = 4.2025 pounds of cheddar/2.9915 pounds of protein at farm = 1.405
- The butterfat-to-protein ratio factor proposed under the recommended decision was 1.17 and was derived by dividing the butterfat in standard milk by the protein in standard farm milk (*i.e.* 3.5 pounds of butterfat/2.9915 pounds of protein = 1.17).

The Van Slyke Formula Used in This Final Decision

- Cheddar cheese pounds attributable to butterfat = ((0.9 × 3.5) × 1.09 / (1 − 0.38) = 5.5379 pounds of cheddar cheese
- Cheddar cheese pounds lost due to the 0.015 farm-to-plant butterfat loss = ((0.9 × 3.5) × 1.09 / (1 − 0.38) = 0.0237 pounds of cheddar cheese, 5.5379 − 0.0237 = 5.5142 of cheese after farm-to-plant loss.
- Cheddar cheese pounds lost due to the 0.25 percent solids loss on fat solids = 5.5142 pounds of cheese from butterfat × (1 − 0.0025), 5.5142 × 0.9975 = 5.5004 pounds of cheese from farm butterfat
- Cheddar cheese yield contribution per pound of fat at farm = 5.5004 pounds of cheddar / 3.5 pounds of fat at farm = 1.572
- Cheddar cheese pounds attributable to protein = ((0.8220 × 2.9915) − 0.01) × 1.09 / (1 − 0.38) = 4.1473 pounds of cheddar cheese
- Cheddar cheese pounds lost due to the 0.25 percent solids loss on protein solids = 4.1473 pounds of cheese from protein × (1 − 0.0025) for farm-to-plant loss = 4.1473 × 0.9975 = 4.1369 pounds of cheese from farm protein
- Cheddar cheese yield contribution per pound of protein at farm = 4.1369 pounds of cheddar / 2.9915 pounds of protein at farm = 1.383
- Cheddar cheese pounds from standard farm milk =

5.5004	pounds of cheese from standard farm butterfat
+4.1369	pounds of cheese from standard farm protein
9.6615	total pounds of cheese from standard farm milk

- The butterfat-to-protein ratio factor in this final decision is 1.17 and is derived by dividing the farm butterfat by the farm protein (*i.e.* 3.5 pounds of butterfat / 2.9915 pounds of protein = 1.17).

The results of the above computations yield the following protein price formula:

((NASS cheese price − 0.165) × 1.383) + (((NASS cheese price − 0.165) × 1.572) − (butterfat price × 0.9)) × 1.17

As stated in the recommended decision, since all of the butterfat used in Class III is to be priced on the basis of its value in butter, an adjustment must be made to account for the difference in butterfat values between cheese and butter. The butterfat adjustment portion of the protein price formula is the method chosen for making that adjustment. The first part of the butterfat adjustment portion of the protein price formula calculates the value of butterfat in Cheddar cheese using the Van Slyke formula, assuming a 90 percent recovery of butterfat in the finished cheese. The resulting cheese yield factor attributable to butterfat is a multiplier of 1.582. Testimony in the hearing record and comments on the tentative final decision urged adoption of different multipliers in the butterfat adjustment portion of the protein price formula that represents the effects of butterfat on cheese yield. Suggestions to increase the butterfat recovery factor of 1.582 (to 1.6 or 1.617) were made by DFA; Select, Elite, et. al; and National All-Jersey, Inc. These commenters relied on hearing testimony that butterfat recovery in cheddar cheese generally ranges between 90 and 93 percent, although Kraft testified that their butterfat recovery is lower. The commenters favored use of a factor that reflected 91 or 92 percent fat recovery because that level of recovery is common. In a comment filed by Leprino, the cheese manufacturer urged that the 1.582 factor not be increased, as any increase would exacerbate the overvaluation of whey fat in the current formula and because the 90 percent recovery factor reflects results from many cheese vats installed prior to the late 1980's.

The recommended decision stated that even though many cheese makers may be able to achieve a higher fat retention in cheese, the use of the 1.582 factor representing 90 percent fat recovery in cheese continued to be appropriate. The recommended decision also stated that as a result of the 90 percent level, butterfat in cheese was not overvalued, and those cheese makers who fail to recover more than 90 percent of the fat would not suffer a competitive disadvantage. The preponderance of the record indicates that most cheese manufacturers should be able to obtain a 90 percent butterfat recovery.

In testimony at the hearing and comments filed on the tentative final decision the issue was raised of whether the butterfat adjustment portion of the protein price formula in which the value of butterfat in butter is subtracted from the value of butterfat in cheese is based on equivalent amounts of butterfat. The 1.582 factor represents 90 percent recovery in cheese of one pound of butterfat used in its manufacture, while the butterfat price represents the value of one pound of butterfat used to make butter. Clearly, subtracting the value of a pound of butterfat in butter from the value of 0.9 pounds of butterfat in cheese reduces the actual value of butterfat used in cheese. Therefore, the value of butterfat used in butter should be reduced by 10 percent in this calculation.

Comments received from Select, NMPF, LOL and National All-Jersey (NAJ), in response to the recommended decision, supported the use of the factor resulting from multiplying the butterfat price by 0.9 prior to subtracting the butterfat price from the value of butterfat in cheese. NAJ was of the opinion that the 0.9 adjustment is appropriate in that it recognizes that only ninety percent of the butterfat is retained in cheese. Select explained that using an adjustment to the value of butterfat in cheese (the 0.9) provides an important factor for correcting the relatively low butterfat retention in cheese, but maintained that the butterfat retention factor should be larger. LOL supported the addition of the 0.9 factor and indicated that it represented a more consistent margin across a wide range of butter and cheese prices.

Opponents to the use of the 0.9 adjustment factor to the butterfat value included Leprino, Kraft, IDFA, and the Wisconsin Cheese Makers Association (WCMA). These parties instead favored using a 0.95 factor. They explained that

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not all of the butterfat attributable to the 0.9 factor is represented in whey cream, but rather is lost in the handling process. They were of the opinion that the portion that is lost in the handling process should be accounted for in the protein price by using a factor of 0.95. They explained that butterfat in whey cream is overvalued in the Class III pricing formulas and that sweet cream is worth approximately 40 cents more than whey cream. In addressing this difference in value, the commenters suggested subtracting 2-cents from the butterfat adjustment portion of the protein price formula.

As explained in the previous discussion on shrinkage, this final decision makes a purposeful adjustment for farm-to-plant milk losses, but not for in-plant losses. The use of the 0.9 factor is more appropriate than a 0.95 factor since the Van Slyke formula uses a 0.9 butterfat retention factor for computing the cheese yield attributable to butterfat. The aforementioned adjustment for farm-to-plant loss is also contained in the butterfat factor (1.572) used for computing the protein price, as well as an adjustment for farm-to-plant losses in the Class III butterfat price. It would not be appropriate to include additional reductions in the protein price for butterfat losses. This finding is also supported by testimony by several witnesses indicating that whey cream is often returned to the cheese vat for use in cheese making, thus increasing the value of whey cream above the value of whey cream used for whey butter, which is not accounted for in the protein formula.

As stated in the recommended decision, testimony at the hearing and analysis of the relationship between the current cheese, butterfat, and protein prices revealed that the current Class III pricing formulas cause inequities in producer payments based on the relationship between producers' butterfat and protein tests. The inequities were attributed to the use of the 1.28 factor used in the portion of the protein price formula that is designed to incorporate the butterfat value of milk used in cheese that is not already accounted for by the Class III and IV butterfat price. Such a factor is necessary to reflect the fact that there is more than one pound of butterfat in cheese for every pound of protein. The record supports a conclusion that when the price of butter increases, the price paid for milk used in cheese and for milk delivered by producers will decline if the milk has a fat to protein ratio of less than 1.28, and decline at a more rapid rate than that at which the butter price increases. According to the record and numerous comments filed, most milk delivered by producers has a fat-to-protein ratio less than 1.28.

In a number of the comments filed in response to the tentative final decision, commenters argued that this factor should be reduced—to 1.22, 1.19, or 1.17—to better reflect the fat-to-protein ratio in producer milk. The factor, which originally appeared in a comment filed early in the Federal order reform process as 1.20, was calculated by dividing 1.582 by 1.32. When the change was made from crude protein to true protein, 1.20 was multiplied by 1.0645 to reflect that change, becoming 1.28. The recommended factor of 1.17 in the protein price formula represented a minimum value for the ratio of butterfat to true protein in producer milk. Its use assures that the value adjustment for butterfat in butter to butterfat in cheese included in the protein price formula accounts for the full amount of butterfat in producer milk.

The Alliance of Western Milk Producers argued in a comment filed in response to the tentative final decision that the Class III component price formulas adopted in that decision would lead to disorderly marketing and provide an incentive for processors to seek alternative sources of butterfat, resulting in negative effects on producer income. The Alliance favored a return to the Federal order reform Class III component price formulas, but suggested that a snubber to prevent the butterfat value adjustment to the protein price from becoming negative would mitigate the potential for undervaluing protein under the formula.

This final decision concludes that the Class III protein formula to be adopted is as follows:

((NASS Cheese
Price − 0.165) × 1.383) +
((((NASS Cheese
Price − 0.165) × 1.572) −
(Class III & IV Butterfat
Price × 0.9)) × 1.17)

Class III—Other Nonfat Solids price (Dry Whey). As discussed above, this final decision provides a loss allowance for the other solids lost in moving milk from the farm to the processing plant. This loss is reflected in the Class III dry whey formula by adjusting the 0.968 divisor for farm-to-plant losses. The divisor is also converted to a multiplier in order to provide simplification and consistency in the price formulas.

As proposed in the recommended decision, the manufacturing allowance for dry whey is increased from the 14 cents per pound adopted in the tentative final decision to 15.9 cents per pound of dry whey to reflect a higher cost of drying whey relative to the cost of drying nonfat dry milk.

The hearing included several proposals that would change the dry whey or other solids price formula by changing the make allowance. Although the hearing notice included a proposal to use the CME average dry whey price, the proponent withdrew support for the proposal when it became apparent that the CME has no cash exchange market for dry whey. The NASS survey that currently is being used to identify commodity prices has included price data on dry whey since September 1998. There were no proposals to change the 0.968 yield factor in the other solids price formula. The 0.968 factor reflects the solids content of dry whey, given a 3.2 percent moisture content.

As explained earlier in this decision, an adjustment factor for farm-to-plant losses on all milk solids is 0.0025. Application of this loss adjustment to the other solids price computation formula is as follows:

- One pound of dry whey minus 0.0025 farm-to-plant solids loss equals 0.9975 pounds of dry whey.
- Since each pound of dry whey contains 96.8 percent milk solids, 0.9975 is divided by 0.968 to equal a dry whey factor of 1.03.
- Therefore, the Class III dry whey price per pound is computed as follows:

(NASS butter price − 0.159) × 1.03

The other solids formula divisor is converted to a multiplier to simplify and provide consistency with the other formulas contained in this final decision.

Make Allowance (Dry Whey). This final decision continues to use a dry whey make allowance of 0.159 as contained in the recommended decision.

Since the most recent CDFA and RBCS cost surveys did not include costs for drying whey, there is no information from those two studies to use for computing the dry whey make allowance. A witness from NMPF suggested using the nonfat dry milk manufacturing cost allowance for dry whey since both products involve similar processing equipment and then adding $0.01 per pound to reflect the additional energy and higher equipment costs incurred in drying whey. Since the make allowance for nonfat dry milk adopted under the tentative final decision is $0.140, this procedure would result in a dry whey make allowance of $0.150. DFA proposed a dry whey make allowance of $0.1478 per pound based on costs at its plant at Smithfield, Utah. The plant is a cheddar block plant running throughout the year

that condenses and dries whey from the cheese manufactured in this Smithfield plant only. The DFA costs include both direct and indirect costs, and return on investment and marketing cost data.

A witness from Western States Dairy Producers Trade Association, et al. (WSDPTA) testified that there is no reason to change the other solids price computation from the current formula, and that it is a necessary component of the cheese pricing formula. He noted that the use of dry whey as a commodity is correct and that the 0.968 factor in the pricing formula reflects 96.8 pounds of solids in 100 pounds of dry whey.

Most witnesses who testified about the cost of drying whey expressed the belief that drying whey costs more than drying nonfat dry milk. Two cooperative association witnesses testified that their organizations have determined that the returns from whey powder with the current make allowance would not cover the costs associated with building and operating whey powder plants. At the hearing, IDFA presented the results of the survey contracted for by NCI. The IDFA witness testified that the survey showed a dry whey manufacturing cost of at least $0.1592. The IDFA witness testified that using the nonfat dry milk make allowance significantly understates the manufacturing cost of dry whey due to the relatively higher percentage of water in liquid whey compared to skim milk and the additional crystallization process required.

A witness representing Leprino testified on the differences in the manufacturing processes for dry whey and nonfat dry milk that result in higher costs to produce whey powder. The witness concluded that the cost of making dry whey is $0.02559 above the cost of drying nonfat dry milk.

The brief submitted by Leprino argued that the additional costs of processing whey powder over those of processing nonfat dry milk should include additional staffing, cleaning, and maintenance associated with the additional equipment for whey product.

A witness from Kraft agreed that the dry whey manufacturing costs are about 2.6 cents per pound greater than the nonfat dry milk manufacturing costs. Although Kraft described its Tulare plant as large and efficient, it also represents a recent capital investment, meaning that depreciation costs are likely higher than average.

Comments on the dry whey make allowance portion of the tentative final decision generally followed the lines of the testimony in the hearing record. WSDPTA favored maintaining the 14-cent make allowance adopted in the tentative final decision, and ADCNE/DFA supported not using the NCI survey on the manufacturing cost of dry whey. IDFA, Leprino, and Northwest Dairy Association advocated adoption of a dry whey make allowance of at least 15.92 cents per pound, the level determined in the NCI survey. These comments cited testimony in the record that the cost of drying whey is as much as 2.6 cents greater than that of drying skim milk, a calculation that would result in a make allowance of 16.6 cents. Kraft favored adding a value reflecting the reduced value of butterfat in whey to the whey make allowance and increasing the make allowance by at least 2 cents.

Since information regarding the costs of drying whey was not available from the sources used for determining the other make allowances in product price formulas, the tentative final decision determined that the dry whey make allowance should remain the same as that for nonfat dry milk. However, in the recommended decision it was determined that the dry whey make allowance should be changed to reflect testimony and other evidence in the hearing record that the cost of drying whey is greater than that of drying nonfat dry milk.

The recommended decision concluded that the other solids price would be computed by subtracting the make allowance of $0.159 from the NASS weighted average dry whey price and dividing the result by 0.968. The differential costs of manufacturing whey powder, from one source, over those of nonfat dry milk, from others, did not provide close enough agreement with the NCI-sponsored survey to use them with any confidence. Neither of the witnesses who testified that the extra costs of drying whey are 2.6 cents greater than the costs of drying nonfat dry milk testified about the total costs of either operation.

In lieu of other studies and direct evidence of the total cost of drying whey, the recommended decision concluded that the NCI-commissioned study results, rounded to the nearest 1/10 cent, should be used for determining the dry whey make allowance. National Milk Producers, in their comments on the recommended decision, stated that the dry whey make allowance was acceptable. Schreiber and Leprino also stated that they supported the dry whey make allowance of 0.1592 (essentially 0.159).

DFA and Select/Continental, in their comments to the recommended decision, opposed the recommended decision's proposed increase from 0.14 to 0.159. They based their opposition on lack of credible evidence.

The comments opposing the recommended decision's increase to the dry whey make allowance are not persuasive. This final decision concludes that the NCI-commissioned study should be utilized in the absence of other studies or direct evidence of the total cost of drying whey. This final decision adopts the $0.159 make allowance as proposed in the recommended decision.

Snubber/Other Solids Price. The tentative final decision snubbed the other solids price at zero. Thus, if the NASS dry whey price minus the make allowance resulted in a negative number, the other solids price would become zero. Michigan Milk Producers Association supported the inclusion of such a "snubber" concept for the whey price in a brief, citing testimony in which the DFA witness referred to the difficulty of explaining to producers a negative component price. Snubbing the other solids price to zero would have prevented it from negatively affecting the value of other Class III components or having a negative impact on the producer price differential. Support was expressed for use of the snubber in two additional comments received on the tentative final decision.

The snubber in the other solids price formula was opposed in comments filed by two parties. Leprino stated that sound policy should allow not only positive, but negative net revenues to be reflected in the milk price to prevent overvaluing milk. IDFA opposed the snubber on the grounds that it would prevent manufacturers of dry whey from covering all manufacturing costs if wholesale prices for dry whey failed to fully cover manufacturing costs. Both commenters suggested that if the component price were to become negative, the negative value could be pooled as part of the producer price differential, as inferred by the DFA witness.

The prices calculated for the components in Class III milk are intended to reflect the value of those components in the products from which the prices are calculated. Use of a snubber to limit the other nonfat solids price would be inconsistent with the purpose of a pricing formula to reflect a component value and would appear to be an arbitrary adjustment to the price formula. After a thorough review of the record, including briefs and the comments on the tentative final decision and the recommended decision, USDA has determined that the snubber on the other solids price should be eliminated.

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d. Effects of Changes to Class III and Class IV Price Formulas

The changes to the Class III and Class IV component price formulas discussed above would result not only in changes to the respective component prices, but also to the resulting Class III and Class IV skim milk and hundredweight milk prices at 3.5 percent butterfat. The changes discussed are relative to the formulas resulting from Federal order reform. The calculations that were made in the recommended decision showed some increase in the level of the Class III price. USDA believed that the Class III pricing formulas incorporated in the recommended decision were more technically correct than those adopted as a result of Federal order reform because they were based on more complete information derived through the formal rulemaking process. The product-price formulas adopted as part of Federal order reform have contributed to further industry analysis and participation in developing more precise and accurate measures of determining the pricing formulas adopted herein.

It is important to note that these calculated class price differences, or the "static effect" of the recommended changes, are based on historical product price data and not on product prices that will occur in the future. The price differences calculated in this portion of the decision cannot be used to calculate or estimate changes in revenue that would have occurred or may occur in the future because changing intersections of supply and demand for each product result in different prices.

The 19-month comparisons included in the recommended decision were calculated based on the NASS weighted average commodity prices from January 2000 through July 2001. NASS weighted average commodity prices for that time period were available, and no estimates of the relevant commodity prices were needed. Although that time period was relatively short, a number of interesting price relationships occurred in the data series.

For instance, during that period the cheddar cheese (39 percent moisture) market ranged from a low of $1.0245 per pound during November 2000 to a high of $1.6434 per pound during July 2001. The November low was about 7.5 cents below the $1.10 per pound support price for 40-pound blocks of cheddar. During this same 19-month period the NASS weighted average nonfat dry milk price showed little movement until July 2001, ranging from a high of $1.0165 per pound during January 2001 to a low of $0.9634 per pound during July 2001. The July 2001 decline was the result of a reduced support price. In fact, the nonfat dry milk price stayed within about one cent of support over the January 2000 through June 2001 period.

Unlike the cheese and nonfat dry milk market, the butter price did not trade anywhere near the butter support price of $0.65 per pound or the revised support price of $0.8548 per pound. The butter price traded in a range from a low of $0.8820 per pound during January 2000 to a high of $1.9263 per pound during June 2001. It is important to keep in mind that since all milk is priced on the basis of butterfat and skim or nonfat components under Federal orders, focusing on the calculated hundredweight prices at 3.5 percent butterfat that are announced for comparison purposes may result in misleading conclusions.

The formulas used for computing the Class IV prices in the recommended decision were unchanged from those contained in the tentative final decision which currently are being used.

Changing the butterfat price make allowance from $0.114 to $0.115 would have resulted in a calculated average decline in the Class IV butterfat price of $0.0012 over the 19-month period included in the recommended decision. The two changes to the Class IV nonfat solids formula—increasing the make allowance from $0.137 to $0.140 and eliminating the 1.02 divisor—would have resulted in a net increase of $0.0141 per pound in the Class IV nonfat solids price in the absence of any other changes. Since the Class II prices were to continue to be computed on the basis of the Class IV formulas plus the Class II differential of $0.70 per hundredweight, changes to the Class II prices would have been the same as the changes to the Class IV prices. The calculated Class IV skim milk price would have increased by an average of $0.127 per hundredweight. The calculated 3.5 percent Class IV milk price would have increased by an average of $0.118 per hundredweight, reflecting the net difference between the increase in the skim milk price and the very small decline in the Class IV butterfat price.

As a result of the 38 percent moisture adjustment to barrel cheese prices, the NASS weighted average cheese price used for computing the Class III protein price would have been calculated to be higher by $0.011 per pound over the 19-month period January 2000 through July 2001. Use of this cheese price increase in the recommended protein price formula would have resulted in an increase of 3.6 cents per pound of protein. The decrease in the make allowance from $0.1702 to $0.165 in the recommended protein price formula would have accounted for an increase of 1.7 cents per pound of protein. The two changed factors in the protein price formula (0.9 and 1.17), using data for the 19-month period, would have resulted in an increase in the calculated protein price averaging approximately 14.8 cents. The total increase in the protein price as a result of three changes to aspects of the Federal order reform protein price formula (moisture adjustment, make allowance, and formula changes) would have been approximately 20.6 cents above the price that would have been computed based on the formula prior to 2001.

At the same time, the increase from $0.137 to $0.159 in the dry whey make allowance for calculating the other solids price would have resulted in a calculated decline in the other solids price of $0.0227 over the 19-month period. Elimination of the snubber on the other solids price would have made no difference during the period considered. The combination of the changes in both the protein price and the other solids price would have resulted in an average of about $0.50 per hundredweight increase in the Class III skim milk price over the 19-month period if cheese and dry whey prices were unchanged.

The recommended decision showed that the changes in the protein price formula improved significantly the relationship between the cheese price and the protein price, from a correlation coefficient of 0.54, using the Federal order reform protein formula, to a correlation coefficient of 0.70 using the formula recommended in that decision. In addition to improving the relationship between the cheese price and the protein price, the recommended protein formula reduced the variability of the protein price and moderated the extremes that occurred under the Federal order reform protein formula, thereby giving producers a more consistent and positive protein price signal.

The calculation of the Class III price at 3.5 percent butterfat, based on the formulas contained in the recommended decision, would have averaged about $0.48 per hundredweight above the 3.5 percent Class III price based on the Class III formulas implemented under Federal order reform.

In comments filed in response to the tentative final decision, IDFA and Leprino urged that in no case should the Class III price be enhanced relative to price levels under Federal order reform. Leprino reiterated the importance of assuring that yield factors not be too high or make allowances too low for cheese plants to retain sufficient revenue to maintain their operations. IDFA focused on the negative long-term effects on producer prices, as described in USDA's analysis, of adopting enhanced Class III and Class IV prices. As described in detail above (in Issue 3c), the factors incorporated in the Class III component price calculations are based solidly on testimony and data in the hearing record.

The recommended decision stated that the record provided ample basis for believing that the margins provided in the formulas would have been adequate for cheesemakers to maintain their operations. As observed at the hearing and in comments filed in response to the tentative final decision by the expert witness from Cornell, a break-even point would be where the value of cheese plus whey cream plus whey powder equals the value of the milk price plus the make allowances. According to the witness, under Federal order reform, and to a greater extent in the tentative final decision, the total value of these products exceeded the sum of the milk price and the make allowances.

The discussion at the hearing centered specifically on the make allowance used in the protein formula, with the implication that it represented the entire make allowance for cheese. The recommended decision stated that unlike the Class IV price formulas, where the make allowances used in the butterfat and nonfat solids price formulas can be attributed directly to butter and nonfat dry milk, the make allowances used for butterfat, protein, and other solids in the pricing formulas for Class III must be looked at in aggregate. The recommended decision also stated that all three components are involved in the cheesemaking process and have a significant effect on cheesemakers' costs and returns.

The recommended decision stated that gross margins (including make allowances) could be compared using both the cost of milk based on the Federal order reform Class III formulas, and the cost of milk based on the Class III formulas. For this purpose, gross margins in the recommended decision were defined as the difference between the sum of the selling price of cheese and dry whey based on monthly average NASS prices and whey butter, estimated at nine cents below the NASS AA butter price, and the cost of milk under the two sets of formulas. The gross margins therefore reflected the amount of money available to processors to procure, process, and market the end products of milk used in Class III: cheese, whey butter and dry whey.

The recommended decision stated that using Class III component tests from the Upper Midwest market to estimate product yields, the estimated gross margins would have averaged approximately $3.00 per hundredweight using the Federal order reform Class III formulas and $2.52 per hundredweight over the 19-month period of January 2000 through July 2001 if the recommended Class III formulas had been in effect. The gross margins indicated in the recommended decision were significantly different than the cheese make allowances of $0.1702 and $0.165 used in the formulas, which would have been equivalent to approximately $1.70 and $1.65 per hundredweight of milk with an estimated yield of 10 pounds of cheese. Such a difference was expected since the make allowances for whey butter and dry whey were significantly lower than the cheese make allowance. Any residual value could have been used by the handler to improve returns or increase producer pay prices. Also, the lower gross margins under the recommended formulas could have lead to reduced over-order premiums to reflect increased milk costs and maintain current gross margins.

Comments received from Leprino, IDFA, and NDA expressed concern with the accuracy of gross margin analysis contained in the recommended decision. Comments received from Select and Continental stated that the gross margins presented in the recommended decision effectively restored the margins to their computed "implied margin" offered in their testimony at the hearing. Because of industry concerns regarding the accuracy of the gross margin analysis together with the industry's concern regarding the definition of "implied margin," the gross margin analysis was not considered in adopting the provisions contained in this final decision.

This final decision compares prices over the period of January 2000 through May 2002 instead of the more limited 19-month price period from January 2000 to July 2001. Nevertheless, the 29-month period from January 2000 through May 2002 used in this final decision arrives at similar conclusions as those reached in the recommended decision. In particular, the conclusions made in the recommended decision regarding make allowances continue to be valid. Product yield formulas have been amended to include a farm-to-plant loss allowance and to provide simplification and consistency in pricing formulas. The effects on class prices are different due to the amendments adopted in this final decision together with their application to the expanded 29-month period.

It is important to again note that these calculated class price differences, or the "static effect" of the following adopted changes, are based on historical product price data and not on product prices that will occur in the future. The price differences calculated in this portion of the decision cannot be used to calculate or estimate changes in revenue that would have occurred or may occur in the future because changing intersections of supply and demand for each product result in different prices.

Class III Butterfat. When the Class III formulas adopted in this decision are applied to the 29-month period from January 2000 through May 2002, the value of Class III fat would have been $0.0247 per butterfat pound lower from the announced price of $1.5126 per butterfat pound. The adopted formula results in an average of $1.4879 per butterfat pound. As proposed in the recommended decision, Class III formulas would have resulted in an average butterfat price of $1.5121. The following table is provided for comparison purposes:

CLASS III BUTTERFAT PRICE

[$/lb]

	Announced price	Recommended decision	Final decision
2000 average	1.2522	1.2509	1.2309
2001 average	1.8480	1.8480	1.8184
Jan-May 2002 average	1.3325	1.3325	1.3112
29-month average	1.5126	1.5121	1.4879

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Class III Protein. Using the same 29-month period, the Class III protein price would have been higher if the formula adopted herein had been used. The Class III protein price would have increased from the announced average of $1.8610 per protein pound to $2.0213 per protein pound. The Class III protein price as proposed in the recommended decision would have resulted in an average protein price of $2.0334. The following table is provided for comparison purposes:

CLASS III PROTEIN PRICE
[$/lb]

	Announced price	Recommended decision	Final decision
2000 average	1.6938	1.8631	1.8513
2001 average	1.9613	2.1612	2.1498
Jan-May 2002 average	2.0218	2.1352	2.1210
29-month average	1.8610	2.0334	2.0313

Class III Other Solids. Using the 29-month period, the Class III other solids price would have been lower if the formula adopted herein had been used. Most of this difference is explained by using the increased dry whey make allowance of $0.159 instead of $0.140. Under the same conditions, the Class III other solids price would have decreased from the announced average of $0.0904 per other solids pound to $0.0692 per other solids pound. The Class III other solids price as proposed in the recommended decision would have resulted in an average other solids price of $0.0694. The following table is provided for comparison purposes:

CLASS III OTHER SOLIDS PRICE
[$/lb]

	Announced price	Recommended decision	Final decision
2000 average	0.0509	0.0282	0.0281
2001 average	0.1343	0.1146	0.1143
Jan-May 2002 average	0.0796	0.0600	0.0598
29-month average	0.0904	0.0694	0.0692

Class III Standard Skim. Using the 29-month period, the Class III standard skim milk price would have been higher if the formula adopted herein had been used. The Class III standard skim price would have increased from the announced average of $6.30 per hundredweight to $6.67 per hundredweight. The Class III skim price as proposed in the recommended decision would have resulted in an average Class III skim price of $6.71 per hundredweight. The following table is provided for comparison purposes:

CLASS III STANDARD SKIM MILK PRICE
[$/cwt]

	Announced price	Recommended decision	Final decision
2000 average	5.55	5.94	5.90
2001 average	6.87	7.38	7.34
Jan-May 2002 average	6.74	6.97	6.93
29-month average	6.30	6.71	6.67

Class III Standard Milk. Using the 29-month period, the Class III standard milk price would have been higher if the formula adopted herein had been used. The Class III standard milk price would have increased from the announced average of $11.38 per hundredweight to $11.65 per hundredweight. The Class III milk price as proposed in the recommended decision would have resulted in an average Class III standard milk price of $11.77 per hundredweight. The following table is provided for comparison purposes:

CLASS III STANDARD MILK PRICE
[$/cwt]

	Announced price	Recommended decision	Final decision
2000 average	9.74	10.11	10.01
2001 average	13.10	13.59	13.45
Jan-May 2002 average	11.16	11.39	11.27
29-month average	11.38	11.77	11.65

Class IV Butterfat (same as Class III butterfat). When the Class IV formulas adopted in this decision are applied to the 29-month period from January 2000 through May 2002, the value of Class IV fat would have been $0.0247 per butterfat pound lower from the announced price of $1.5126 per butterfat pound. The adopted formula results in an average of $1.4879 per butterfat pound. As proposed in the recommended decision, Class IV formulas would have resulted in an average butterfat price of $1.5121. The following table is provided for comparison purposes:

CLASS IV BUTTERFAT PRICE
[$/lb]

	Announced price	Recommended decision	Final decision
2000 average	1.2522	1.2509	1.2309
2001 average	1.8480	1.8480	1.8184
Jan-May 2002 average	1.3325	1.3325	1.3112
29-Month average	1.5126	1.5121	1.4879

Class IV Nonfat Milk Solids (NFMS). When the Class IV formulas in this decision are applied to the 29-month period the prices of Class IV nonfat milk solids would have been lower. Using the 29-month period, the Class IV NFMS solids price would have decreased from an average of $0.8340 per NFMS pound to $0.8315 per NFMS pound. Class IV NFMS as proposed in the recommended decision would have resulted in an average NFMS price of $0.8399 per hundredweight. The following table is provided for comparison purposes:

CLASS IV NONFAT MILK SOLIDS PRICE
[$/lb]

	Announced price	Recommended decision	Final decision
2000 average	0.8574	0.8715	0.8629
2001 average	0.8391	0.8391	0.8306
Jan-May 2002 average	0.7656	0.7658	0.7580
29-month average	0.8340	0.8399	0.8315

Class IV Standard Skim. Using the 29-month period, the Class IV standard skim milk price would have been lower if the pricing formulas adopted herein had been used. The Class IV standard skim milk price would have decreased from the announced average of $7.51 per hundredweight to $7.48 per hundredweight. The Class IV skim milk price as proposed in the recommended decision would have resulted in an average Class IV skim price of $7.56 per hundredweight. The following table is provided for comparison purposes:

CLASS IV STANDARD SKIM MILK PRICE
[$/cwt]

	Announced price	Recommended decision	Final decision
2000 average	7.72	7.84	7.77
2001 average	7.55	7.55	7.48
Jan-May 2002 average	6.89	6.89	6.82
29-month average	7.51	7.56	7.48

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Class IV Standard Milk. The Class IV milk price over the 29-month period would have decreased from the announced average price of $12.54 per hundredweight to a $12.43 per hundredweight price (a decrease of $0.11/cwt) if the formulas adopted herein had been used. Class IV milk as proposed in the recommended decision would have resulted in an average Class IV milk price of $12.59 per hundredweight. The following table is provided for comparison purposes:

CLASS IV STANDARD MILK PRICE

[$/cwt]

	Announced price	Recommended decision	Final decision
2000 average	11.83	11.95	11.80
2001 average	13.76	13.76	13.58
Jan-May 2002 average	11.31	11.31	11.17
29-month average	12.54	12.59	12.43

Class Price Relationships

The price relationships between Classes I, II , III and IV established under the Federal order reform process should be maintained. One proposal heard in this proceeding would have reduced the Class IV butterfat price without affecting the computation of other butterfat or product prices. That proposal is addressed specifically in the Class IV Butterfat price.

The current pricing system uses the same formulas for computing the advance component prices used to compute the Class I skim milk and butterfat prices and Class II skim milk price as are used to calculate the Class III and Class IV component prices. Several witnesses testified as to what the class price relationships should be if changes were made to any of the Class III or Class IV component price formulas. The witness for IDFA and several other parties stated that any changes to the Class III and Class IV formulas should also apply to the advance price formulas used for computing the Class I and Class II prices. The witness explained that failure to use the same formulas between the related classes of use would result in a direct impact on the Class I and Class II differentials which was clearly not the intent of Congress when it instructed the Secretary to conduct a rulemaking proceeding concerning the Class III and Class IV price formulas.

A witness for Hershey Foods pointed out that the Secretary went to great lengths to justify the 70-cent Class II differential above the Class IV price. In support of Proposal 31, the witness said that there is no justification or new evidence for changing the current price relationship that exists between the manufactured products (butter and nonfat dry milk) and the Class II price if the Class IV formulas were revised as suggested in several proposals. The witness stated that such changes in price relationships clearly were not the intent of Congress. A brief filed on behalf of IDFA in support of Proposal 31 stated that the correct price relationship between NFDM and Class II is 70 cents and that the record provides no basis for changing that relationship. Actually, as explained in the final decision on Federal order reform, 70 cents represents the correct price relationship between milk used to make dry milk powder and milk used in Class II, as nearly as can be determined from the information available.

A proposal (Proposal 30) by two parties that any increases resulting from changes to the Class III and Class IV price formulas not be allowed to result in increases in Class I prices was supported in testimony by one of the parties, who argued that any increases in the Class I price mover should be balanced with reductions in Class I differentials. The witness stated that the proponents want to be sure that Class I prices are not further decoupled from Class III and Class IV pricing formulas, or that Class I prices are not artificially inflated.

Neither Proposal 30 nor Proposal 31 was adopted under the tentative final decision.

In comments on the tentative final decision filed by ADCNE and fully supported by DFA, consideration of Proposal 30 was opposed as being beyond the scope of the Congressional mandate and not fully debated at the hearing. ADCNE further opposed any modifications to Proposal 30, such as the Family Dairies' testimony supporting a weighted average Class I price mover, or to a similar proposal relative to the Class II price, that would change the basis for Class I and Class II prices or Class I and Class II differentials. ADCNE continued that there was no evidence presented at the hearing that would support the substantial revenue reductions to farmers throughout the Federal order system which Proposals 30 and 31 would cause. ADCNE urged that the conclusions of the tentative final decision to deny proposals 30 and 31 be affirmed.

The recommended decision also did not adopt Proposal 30 or Proposal 31. Comments received on the recommended decision from DFA indicated agreement with the Department's reasoning for rejecting these proposals and any modifications to those proposals that called for changing how Class I and Class II prices as established. Accordingly, this final decision continues with the findings contained in the recommended decision for not adopting Proposal 30 or 31.

According to the recommended decision, neither the price relationships established in the tentative final decision between milk used in Class III and Class IV, nor milk used in Classes I and II, should be changed. The recommended decision stated that changes should be reflected in the Class I and Class II prices to the extent that there may be differences in the Class III or Class IV prices between the current prices as a result of adjustments to the component pricing formulas. Any reevaluation of the formulas used to price the components used in manufactured products should be carried through to the class prices that are based on those component prices. A change in the computation of the nonfat solids price, for instance, is intended to better reflect the value of those solids in dry milk products. If the new nonfat solids price formula results in an increase in the Class IV price, the record provides no basis for changing the difference in the value of the milk used in those solids between Class IV and Class II use. Similarly, the availability of milk for use in Class I is related to the higher of the alternative manufacturing values for that milk. The current relationships should be maintained.

California Price Relationships

Many witnesses provided comments on the recommended decision in regard to the relationship of Federal order Class III prices as compared to the California 4b prices. These two prices are considered to be minimum prices that reflect the value of producer milk used to make cheese. Multiple comments received indicated the importance of maintaining a close relationship between these prices.

Northwest Dairy Association expressed concern that the recommended decision "simply ignored" the "issue of price alignment with the nation's largest dairy producing state" and that there are "differences between the Federal and California pricing systems that the Department has utterly failed to explore and explain."

A comment received from Agri-Mark stated that "USDA must take in consideration the competitive situation between California and Federal Order Class III and IV plants."

In their comments, Dairylea stated that "It is important that manufacturers buying Federal order milk pay Class prices that are competitive with similar manufacturers in California and Idaho."

A comment received from Western United Dairymen stated that, "It is imperative that California's prices maintain a close relationship with Federal order prices."

Lastly, a comment received from Select Milk Producers and Continental Dairy Products stated that, "Considering the fact that California has transformed itself into the number one dairy state and soon to be number one cheese producing state in little more than a decade, it is appealing to consider modeling the decision in this hearing off the California system." They go on to state that "Producer groups in California along with others are now seeking to have California adjust to the Federal scheme. It would be a sad day indeed if the [Department] reduced prices to meet California's while California was in the process to make such an effort unnecessary."

Class III and Class IV prices established under the Federal milk order program should not be based upon, aligned with, or identical to the equivalent class prices established for milk under California's State milk order program. The equivalent class prices established under the California milk order program are based largely on the conditions unique to California while the Class III and Class IV prices established under Federal milk orders are based on national dairy product prices which reflect the national supply and demand conditions of milk used in these two classes. The California milk program is single-state oriented while the Federal program is national in scope.

Class III and Class IV dairy products compete in a national market. Because of this, Class III and Class IV milk prices established for all Federal milk marketing order areas are the same. The Federal milk order program gradually adopted the Minnesota-Wisconsin (M–W) price as the Class III price in all Federal milk marketing orders. Although the M–W was first adopted in 1963, it was not until the mid 1970's that the M–W established a uniform class price for milk used in Class III products in all Federal milk orders. Observations of the market place for cheese, butter, and nonfat dry milk provided the basis for concluding that these products compete in a market that is national in scope. Such findings were upheld with the adoption of the Basic Formula Price (BFP), which provided an interim pricing method for milk (due largely to the declining statistical reliability of the M–W price series) until a more long-term pricing method could be developed.

The implementation of milk order reform in January 2000 continued finding that Class III and Class IV dairy products compete in a national marketplace. However, a competitive price for milk, as represented by the M–W and BFP prices, was no longer viable. As an intended long-term method, the Federal milk order program has adopted end-product price formulas, valuing Class III and Class IV milk on the basis of the value of Class III and Class IV end-products in the marketplace. The NASS price survey for dairy products used as a basis for establishing Class III and Class IV prices includes all dairy product prices and sales volumes in all regions of the country, including California. In this regard, the Federal order program has and will continue to reflect California's impact on dairy product prices while establishing Class III and Class IV prices that are reflective of national supply and demand conditions.

With the adoption of end-product pricing formulas under order reform, the need for periodic adjustments that would arise with the changes in marketing conditions is acknowledged. Although the relationship of Federal Order prices to California prices is important, the record does not indicate how California and Federal order prices should be aligned or what the appropriate relationship between the California and the Federal order program should be.

5. Class I Price Mover

A proposal that was not included in the hearing notice was made at the hearing by a Family Dairies, USA, witness on behalf of that cooperative and the Midwest Dairy Coalition, which represents 13 additional organizations of dairy farmers. The proposal would change the Class I price mover from the higher of the Class III and Class IV prices to a weighted average of the two. The witness for Family Dairies testified that the results of the current regulation are disturbing and unanticipated with the unexpected strength of the Class IV price relative to Class III.

In testimony at the hearing, the Family Dairies representative complained that 10 percent of production under Federal orders (milk used to make nonfat dry milk) has been driving the Class I price that applies to 40 percent of the milk. As a result, he testified, milk production for fluid purposes is encouraged in markets with high Class I differentials and relatively high Class I use at a time when marketing conditions (an oversupply of milk) should have the opposite effect. As fluid-oriented markets are receiving increased prices relative to markets in which cheese is the dominant use, he complained, inequities in blend prices between markets are increasing.

A group representing Upper Midwest producer interests filed a brief describing the recent movement of milk from the Upper Midwest pool onto the Central and Mideast marketwide pools as disorderly marketing caused by increases of Class I prices in these higher-Class I use markets.

An argument in another brief stated that since the 1960's the dairy industry has used a Class I mover tied to a market-clearing price represented by a weighted average of milk used in butter, cheese, and powder.

In several briefs it was argued that the Regulatory Impact Analysis (RIA) published with the final decision on Federal order reform stated that the price formulas adopted therein were expected to generate a sufficient quantity of milk, and that both the adoption of Class I pricing option IA and use of the higher of the Class III and IV prices as the price mover have worked to enhance Class I price levels.

A brief filed by a group representing fluid milk handlers suggested that USDA should give careful consideration to the proposal to use a weighted average of the Class III and Class IV prices to move Class I prices.

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Based on analysis of the hearing record and briefs filed by interested persons, the tentative final decision continued use of the higher of the advance Class III or Class IV prices as the mover for Class I prices.

In comments on the tentative final decision, the Midwest Dairy Coalition repeated its position that the existing mover should be changed to a weighted average of the advanced Class III and advanced Class IV prices, with the weight based on the portion of manufacturing milk used for Class III and Class IV during the prior year. The Coalition stated that using the higher of Class III or Class IV prices could result in setting a minimum fluid milk price that is actually above the market clearing price for milk, especially if the higher of the Class III and IV prices were not representative of manufacturing markets. The Coalition also expressed concern that the tentative final decision adopted, as an unnoticed and unsupported change, the higher of the advanced Class III or Class IV milk prices at 3.5 percent butterfat as the new Class I mover instead of using the skim value.

In comments, NMPF noted that significant fluctuation that could occur in the Class I skim milk price mover due to using the higher of the advanced Class III or Class IV prices at 3.5 percent butterfat. Several parties noted that use of the advanced price at 3.5 percent butterfat could cause the Class III price to be the Class I price mover, even with a very low Class III skim milk price, causing significant month-to-month changes in the Class I skim milk price.

Michigan Milk Producers Association (MMPA) filed comments, stating that using a weighted average to set the Class I mover would severely impact fluid users' ability to attract sufficient quantities of milk when there were large differences between Class III and Class IV prices. MMPA and NMPF supported the continued use of the higher of the Class III or Class IV prices as the Class I mover.

ADCNE's comments to the tentative final decision, fully supported by DFA, expressed opposition to the Family Dairies' proposal for a weighted average Class I price mover or any other proposal that would change the basis for Class I and Class II prices or Class I and Class II differentials. ADCNE argued that there was no evidence presented at the hearing that would support the substantial revenue reductions to farmers throughout the Federal order system which would result from adoption of the weighted average Class I price mover. ADCNE urged that the conclusions of the tentative final decision to continue to use the higher of the advanced Class III and IV prices as the basis for calculating the Class I price mover be affirmed.

The shift in the pooling of milk from the Upper Midwest to higher-valued markets complained of in one Upper Midwest brief has been a long-sought outcome on the part of Upper Midwest producer groups. It is difficult to understand why it is now seen as a manifestation of disorderly marketing.

Those briefs that cited the sufficient level of milk production projected under the RIA for Federal order reform appeared to base their arguments in opposition to use of the "higher of" Class I price mover on that projection. It should be noted that Congressional action relative to Class I prices following issuance of the final decision on Federal order reform applied only to the Class I pricing surface. Use of the higher of the Class III and IV prices as the Class I price mover was included in Federal order reform and in the accompanying RIA.

The Upper Midwest Coalition's concern that the tentative final decision adopted the higher of the advanced Class III or Class IV milk prices at 3.5 percent butterfat instead of using the skim value as the new Class I mover, and the NMPF criticism that doing so would result in significant fluctuations in the Class I skim price is now moot because of the return to the use of one butterfat price. Use of the same butterfat price for the Class III and Class IV prices will result in the "higher of" the two being determined by the relative skim milk prices. Therefore, the recommended decision concluded that fluctuations in the Class I skim milk price projected under the tentative final decision should be reduced.

The price referred to in the brief expressing preference for the historical use of a weighted average of prices paid for milk used in butter, cheese, and powder was, at first, the Minnesota-Wisconsin price series (the M–W). The M–W, and later the M–W adjusted by a weighted average of current product prices for manufactured products, was specific to the Upper Midwest area and included very little NFDM, since that area manufactures a higher percentage of cheese, relative to NFDM, than the rest of the U.S. The current pricing system is much more representative of national supply and demand for manufactured dairy products than either of the versions of the former Class I mover.

As explained in the final decision on Federal order reform, the higher of the Class III or Class IV prices are used to move the Class I price to assure that fluid plants will be better able to attract milk away from manufacturing uses. Use of the weighted average of the two prices when there is a significant difference between them would provide no assurance that milk would be available as needed for fluid uses and would be more likely to result in Class price inversions (where the Class I price falls below one or more of the manufacturing class prices). In addition, use of a weighted average Class I price mover would increase the occurrence of the blend price falling below the Class III or IV price in markets with low Class I utilization.

Aside from the fact that the proposal to use a weighted average of the Class III and Class IV prices as the Class I mover was not noticed for consideration in this proceeding, it should be rejected on the basis of its lack of merit.

Comments received on the recommended decision from the Kroger Company opposed using the higher of Class III or Class IV for establishing the Class I price for milk. They suggested a review of alternatives that would not lead to higher Class I milk prices. Comments received from MMPA and DFA on the recommended decision, however, continued to express their support for using the "higher of." MMPA was of the opinion that using the higher of the Class III or Class IV prices as the Class I mover establishes farm milk prices that assure priority in providing milk for Class I uses. After consideration of the entire record on this proceeding this final decision adopts the recommended decision provision to continue to use the higher of the advance Class III or Class IV prices for establishing the Class I base price or, as it is sometimes referenced, the Class I mover.

6. Miscellaneous and Conforming Changes

a. *Advanced Class I butterfat price.* Because of the change made between the interim rule and this final decision—to use only one butterfat price for butterfat used in both Class III and Class IV—the conforming change made in the interim final rule to the procedure for calculating the Class I butterfat and hundredweight prices is no longer necessary. The advanced butterfat price used for pricing Class I butterfat will continue to be calculated by the application of the Class III and Class IV price formulas to the advanced NASS prices as announced.

b. *Classification.* The classification of anhydrous milkfat, butteroil, and plastic cream was changed in the tentative final decision from Class III to Class IV as a conforming change required by the adoption of separate butterfat prices for the two classes. The hearing notice contained no proposal to change the classification of these products, and there was no testimony in the record of the proceeding supporting their re-classification. Therefore, with the elimination of the separate Class III butterfat price, the sole basis for the change in classification also is eliminated.

As noted in the tentative final decision, a difference between the classification of these products, which have a very high butterfat content, and butter should not cause any market dislocation in a pricing plan where butterfat used in Class III products has the same value as butterfat used in Class IV products. One commenter to the tentative final decision opposed changing the classification of these products.

In comments to the recommended decision, MMPA disagreed with returning anhydrous milkfat, butteroil, and plastic cream back to Class III classification because, in their opinion, the products compete with butter and therefore should have a cost base similar to butterfat. Comments received from NDA and WestFarm Foods also indicated opposition to returning these products back to Class III.

As a result of the elimination of the separate Class III butterfat price, this final decision finds that anhydrous milkfat, butteroil, and plastic cream is most appropriately classified as Class III.

In a comment filed in response to the tentative final decision, Hershey Foods urged that the Federal orders adopt a 2-class pricing system. Such a suggestion is entirely outside the scope of the current proceeding.

c. *Distribution of Butterfat Value to Producers.* There were several responses in comments on the tentative final decision to the issue of whether the butterfat price paid to producers should be the result of pooling butterfat prices from the different classes or continue to reflect the value of butterfat in Class III. A witness from Northwest Dairy Association testified that being able to line up the Class III price to plants with the component value calculation for producers is helpful, especially with regard to forward pricing. In a brief filed on behalf of DFA and ADCNE, the co-op groups supported continued use of the Class III butterfat price as the producer butterfat price. According to the brief, changes in direct pricing to the producer are not prudent at this time, and any change between the Class III and Class IV butterfat price should be settled through the producer price differential mechanism in the market order pools. The brief continued that the producer price differential is a blending of various debits and credits in the pooling process and the additional equalizing of any butterfat pricing adjustments through this procedure currently makes the most sense.

In a post-hearing brief, National All-Jersey (NAJ) urged that USDA retain the current practice of using Class III milk component values to price producer component values. NAJ noted that this scenario makes it easier to use accepted hedging tools, such as Class III futures contracts, and helps simplify pricing for producers. NAJ further stated that the current procedure maintains the same producer butterfat price in all Federal orders with multiple component pricing (MCP).

Seventy-nine dairy organizations supported payment to producers on the basis of the milk components priced in Class III, including the Class III butterfat price instead of a pooled butterfat price, plus the producer price differential in a comment filed in response to the tentative final decision. The commenters argue that payment to producers on the basis of Class III components facilitates the use of risk management tools by producers and avoids wider fluctuations in Class I and producer fat, skim, and component values.

One of the principal reasons given in the tentative final decision for changing the pooling provisions of the MCP orders was that potential large differences between the Class III and Class IV/II butterfat prices would be likely to result in significant distortions in the effect of those differences on the producer price differential. The recommended decision also concluded that according to observation made under the tentative final decision, it was possible that pool calculations in some markets would result in a negative producer price differential if the producer butterfat price was not changed to represent a blend of the values of butterfat in the four classes of use.

The reversal to calculate separate Class III and Class IV butterfat prices invalidated the principal reason for pooling butterfat under the MCP orders.

Therefore, in the recommended decision it was determined that producer payments under the MCP orders would continue to be made on the basis of the prices for milk components used in Class III rather than pooling the butterfat values of the four classes and this continues in this final decision. The four orders that do not have component pricing will continue to pool the class use butterfat values and return a weighted average butterfat price to producers. The difference adopted in this final decision may result in some inconsistency between the producer butterfat prices under MCP and non-MCP orders. However, it is expected that such inconsistency will not result in disorderly marketing.

d. *Inclusion of Class I other source butterfat in producer butterfat price computation.* In the process of promulgating the tentative final decision, it was determined that the value associated with the occasional classification of other source milk as Class I should be included in pooling the class butterfat values to determine butterfat prices to producers. For the orders under which butterfat is pooled, this change was made in the interim final rule and should continue so that the value of all of the butterfat in the pool will be reflected in the producer butterfat price.

In the component pricing orders, the changes made in the interim final rule to include the Class I other source butterfat value in the butterfat pool should be reversed. Although the District Court's injunction had the effect of reversing these changes and the Federal order reform language has continued in effect, the order language in the Code of Federal Regulations reflects the provisions adopted in the interim final rule. The proposed order language amendments in the recommended decision and in this final decision reflect the language that is currently in effect in the MCP orders, reversing the changes that were made to include Class I other source butterfat in the butterfat pool.

7. Issue of Reopening of the Hearing, or Issuance of a Final Decision

The statute requiring that this proceeding be held to reconsider the Class III and Class IV pricing formulas also required that a final decision be published by December 1, 2000, with any amendments to the orders to be effective January 1, 2001.

The hearing record reflected unanimity among those addressing the issue that the industry should be afforded the opportunity to comment on a decision before its content results in a final rule. Consequently, a tentative final decision was issued affording interested persons an opportunity to comment even though the amendments adopted in the decision were to become effective January 1, 2001. An injunction was issued on January 31, 2001, to prevent some of the provisions adopted in the interim final rule from becoming effective.

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The recommended decision noted that several interested parties commented in opposition to reopening the proceeding with regard to the Class III butterfat and protein price formulas. The only commenter that favored revisiting any of the issues involved stated that some way of reflecting increased energy costs in make allowances should be explored. The commenter seemed to refer to conducting an entirely new proceeding rather than reopening the current proceeding. At that time it was decided that reopening the proceeding would not be considered due to the lack of interest in pursuing development of Class III component prices that are more closely correlated with cheese prices.

Two commenters on the tentative final decision urged that USDA act quickly to conclude the proceeding. The most rapid conclusion to the proceeding was through issuance of a tentative final decision, followed by a determination of producer approval and issuance of a final rule for the orders approved. However, because significant changes were made to the tentative final decision by the District Court order and by the recommended decision, interested parties were given an additional opportunity to comment on those changes. Therefore, USDA issued the recommended decision and provided for a 30-day comment period. Additional time to file comments was requested by a number of proprietary and cooperative handlers in order to allow for more thorough analysis of the impacts of the technical changes in the pricing formulas.

Several comments on the recommended decision were received urging prompt implementation of the amendments recommended. The National Milk Producers Federation (NMPF) supported the recommended decision's amendments in their entirety. They stated that, "In the absence of a clear-cut industry consensus for change, and without clear evidence of a market failure caused by federal order provisions, we believe it would be detrimental to the industry to reopen these proceedings in the near future."

Several comments from both processors and producers on the recommended decision suggested reopening the hearing. A few comments noted the outdated nature of some of the data, while other comments indicated a need to further study the impacts that new price formulas would have on cheese plants that are small businesses. The proceeding is not being reopened and this final decision is being issued.

Rulings on Proposed Findings and Conclusions

Briefs, proposed findings and conclusions, and comments on the tentative final decision and the recommended decision were filed on behalf of certain interested parties. These briefs, the proposed findings and conclusions, the comments, and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this final decision.

General Findings

The findings and determinations hereinafter set forth supplement those that were made when each of the aforesaid orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

The following findings are hereby made with respect to each of the aforesaid tentative marketing agreements and orders;

(a) The tentative marketing agreements and the orders, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the aforesaid marketing areas, and the minimum prices specified in the tentative marketing agreements and the orders, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreements and the orders, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, marketing agreements upon which a hearing has been held.

Rulings on Exceptions

In arriving at the findings and conclusions, and the regulatory provisions adopted in this final decision, all exceptions received were considered in conjunction with the record evidence. To the extent that the findings and conclusions and the regulatory provisions of this final decision are at variance with any of the exceptions, such exceptions are hereby overruled for the reasons previously stated in this final decision.

Marketing Agreement and Order

Annexed hereto and made a part hereof are two documents, a Marketing Agreement regulating the handling of milk, and an Order amending the orders regulating the handling of milk in the Northeast and other marketing areas, which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered that this entire decision and the two documents annexed hereto be published in the **Federal Register**.

Referendum Order to Determine Producer Approval; Determination of Representative Period; and Designation of Referendum Agent

It is hereby directed that referenda be conducted and completed on or before the 30th day from the date this decision is issued, in accordance with the procedure for the conduct of referenda (7 CFR 900.300–311), to determine whether the issuance of the orders as amended and as hereby proposed to be amended, regulating the handling of milk in the Northeast and Mideast marketing areas are approved or favored by producers, as defined under the terms each of the orders, as amended and as hereby proposed to be amended, who during such representative period were engaged in the production of milk for sale within the aforesaid marketing areas.

The representative period for the conduct of such referenda is hereby determined to be May 2002.

The agents of the Secretary to conduct such referenda are hereby designated to be the respective market administrators of the aforesaid orders.

Determination of Producer Approval and Representative Period for All Other Orders

May 2002 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the orders, as amended and as hereby proposed to be amended, regulating the handling of milk in the Appalachian, Florida, Southeast, Upper Midwest, Central, Pacific Northwest, Southwest, Arizona Las-Vegas, and Western marketing areas is approved or favored by producers, as defined under

the terms of each of these orders as amended and as hereby proposed to be amended, who during such representative period were engaged in the production of milk for sale within the aforesaid marketing areas.

List of Subjects in 7 CFR Parts 1000, 1001, 1005, 1006, 1007, 1030, 1032, 1033, 1124, 1126, 1131, and 1135.

Milk marketing orders.

Dated: October 25, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

Order Amending the Orders Regulating the Handling of Milk in the Northeast and Other Marketing Areas

(This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.)

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) *Findings.* A public hearing was held upon certain proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the Northeast and other marketing areas. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure (7 CFR part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said orders as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the aforesaid marketing areas. The minimum prices specified in the orders as hereby amended are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said orders as hereby amended regulate the handling of milk in the same manner as, and are applicable only to persons in the respective classes of industrial or commercial activity specified in marketing agreements upon which a hearing has been held.

Order Relative to Handling

It is therefore ordered, that on and after the effective date hereof, the handling of milk in the Northeast and other marketing areas shall be in conformity to and in compliance with the terms and conditions of the order, as amended, and as hereby amended, as follows:

The provisions of the proposed marketing agreements and orders amending the orders contained in the recommended decision issued by the Associate Administrator, Agricultural Marketing Service, on October 19, 2001, and published in the **Federal Register** on October 25, 2001 (66 FR 54064), as modified herein, shall be and are the terms and provisions of this order, amending the orders, and are set forth in full herein.

1. The authority citation for 7 CFR parts 1000, 1001, 1005, 1006, 1007, 1030, 1032, 1033, 1124, 1126, 1131, and 1135 continues to read as follows:

Authority: 7 U.S.C. 601–674.

PART 1000—GENERAL PROVISIONS OF FEDERAL MILK MARKETING ORDERS

1. Section 1000.40 is amended by adding paragraph (c)(1)(ii) and revising paragraph (d)(1)(i) to read as follows:

§ 1000.40 Classes of Utilization.

* * * * *

(c) * * *

(1) * * *

(ii) Plastic cream, anhydrous milkfat, and butteroil; and

* * * * *

(d) * * *

(1) * * *

(i) Butter; and

* * * * *

2. Section 1000.50 is amended by revising the last sentence of the introductory text; by revising paragraphs (a), (b), (c), (g), (h), (j), (l), (m), (n), (o), (p)(1), and (q)(3); and by removing paragraph (q)(4) to read as follows:

§ 1000.50 Class prices, component prices, and advanced pricing factors.

* * * The price described in paragraph (d) of this section shall be derived from the Class II skim milk price announced on or before the 23rd day of the month preceding the month to which it applies and the butterfat price announced on or before the 5th day of the month following the month to which it applies.

(a) *Class I price.* The Class I price per hundredweight, rounded to the nearest cent, shall be 0.965 times the Class I skim milk price plus 3.5 times the Class I butterfat price.

(b) *Class I skim milk price.* The Class I skim milk price per hundredweight shall be the adjusted Class I differential specified in § 1000.52 plus the higher of the advanced pricing factors computed in paragraph (q)(1) or (2) of this section.

(c) *Class I butterfat price.* The Class I butterfat price per pound shall be the adjusted Class I differential specified in § 1000.52 divided by 100, plus the advanced butterfat price computed in paragraph (q)(3) of this section.

* * * * *

(g) *Class II butterfat price.* The Class II butterfat price per pound shall be the butterfat price plus $0.007.

(h) *Class III price.* The Class III price per hundredweight, rounded to the nearest cent, shall be 0.965 times the Class III skim milk price plus 3.5 times the butterfat price.

* * * * *

(j) *Class IV price.* The Class IV price per hundredweight, rounded to the nearest cent, shall be 0.965 times the Class IV skim milk price plus 3.5 times the butterfat price.

* * * * *

(l) *Butterfat price.* The butterfat price per pound, rounded to the nearest one-hundredth cent, shall be the U.S. average NASS AA Butter survey price reported by the Department for the month less 11.5 cents, with the result multiplied by 1.20.

(m) *Nonfat solids price.* The nonfat solids price per pound, rounded to the nearest one-hundredth cent, shall be the U.S. average NASS nonfat dry milk survey price reported by the Department for the month less 14 cents and multiplying the result by 0.99.

(n) *Protein price.* The protein price per pound, rounded to the nearest one-hundredth cent, shall be computed as follows:

(1) Compute a weighted average of the amounts described in paragraphs (n)(1)(i) and (ii) of this section:

(i) The U.S. average NASS survey price for 40-lb. block cheese reported by the Department for the month; and

(ii) The U.S. average NASS survey price for 500-pound barrel cheddar cheese (38 percent moisture) reported by the Department for the month plus 3 cents;

(2) Subtract 16.5 cents from the price computed pursuant to paragraph (n)(1) of this section and multiply the result by 1.383;

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(3) Add to the amount computed pursuant to paragraph (n)(2) of this section an amount computed as follows:

(i) Subtract 16.5 cents from the price computed pursuant to paragraph (n)(1) of this section and multiply the result by 1.572; and

(ii) Subtract 0.9 times the butterfat price computed pursuant to paragraph (l) of this section from the amount computed pursuant to paragraph (n)(3)(i) of this section; and

(iii) Multiply the amount computed pursuant to paragraph (n)(3)(ii) of this section by 1.17.

(o) *Other solids price.* The other solids price per pound, rounded to the nearest one-hundredth cent, shall be the U.S. average NASS dry whey survey price reported by the Department for the month minus 15.9 cents, with the result multiplied by 1.03.

(p) * * *

(1) Multiply 0.0005 by the weighted average price computed pursuant to paragraph (n)(1) of this section and round to the 5th decimal place;

* * * * *

(q) * * *

(3) An advanced butterfat price per pound, rounded to the nearest one-hundredth cent, shall be calculated by computing a weighted average of the 2 most recent U.S. average NASS AA Butter survey prices announced before the 24th day of the month, subtracting 11.5 cents from this average, and multiplying the result by 1.20.

PART 1001—MILK IN THE NORTHEAST MARKETING AREA

1. Section 1001.60 is amended by revising paragraphs (c)(3), (d)(2), and (h) to read as follows:

§ 1001.60 Handler's value of milk.

* * * * *

(c) * * *

(3) Add an amount obtained by multiplying the pounds of butterfat in Class III by the butterfat price.

(d) * * *

(2) Add an amount obtained by multiplying the pounds of butterfat in Class IV by the butterfat price.

* * * * *

(h) Multiply the difference between the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received and the Class III price by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1000.43(d) and § 1000.44(a)(3)(i) and the corresponding step of § 1000.44(b) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(8) and the corresponding step of § 1000.44(b), excluding such skim milk and butterfat in receipts of fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

* * * * *

2. Section 1001.61 is revised to read as follows:

§ 1001.61 Computation of producer price differential.

For each month, the market administrator shall compute a producer price differential per hundredweight. The report of any handler who has not made payments required pursuant to § 1001.71 for the preceding month shall not be included in the computation of the producer price differential, and such handler's report shall not be included in the computation for succeeding months until the handler has made full payment of outstanding monthly obligations. Subject to the conditions in this paragraph, the market administrator shall compute the producer price differential in the following manner:

(a) Combine into one total the values computed pursuant to § 1001.60 for all handlers required to file reports prescribed in § 1001.30;

(b) Subtract the total of the values obtained by multiplying each handler's total pounds of protein, other solids, and butterfat contained in the milk for which an obligation was computed pursuant to § 1001.60 by the protein price, other solids price, and the butterfat price, respectively;

(c) Add an amount equal to the minus location adjustments and subtract an amount equal to the plus location adjustments computed pursuant to § 1001.75;

(d) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(e) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1001.60(h); and

(f) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (e) of this section. The result, rounded to the nearest cent, shall be known as the producer price differential for the month.

3. Section 1001.62 is amended by revising paragraphs (e) and (g) to read as follows:

§ 1001.62 Announcement of producer prices.

* * * * *

(e) The butterfat price;

* * * * *

(g) The statistical uniform price for milk containing 3.5 percent butterfat computed by combining the Class III price and the producer price differential.

4. Section 1001.71 is amended by revising paragraphs (b)(2) and (b)(3) to read as follows:

§ 1001.71 Payments to the producer-settlement fund.

* * * * *

(b) * * *

(2) An amount obtained by multiplying the total pounds of protein, other solids, and butterfat contained in producer milk by the protein, other solids, and butterfat prices respectively; and

(3) An amount obtained by multiplying the pounds of skim milk and butterfat for which a value was computed pursuant to § 1001.60(h) by the producer price differential as adjusted pursuant to § 1001.75 for the location of the plant from which received.

5. Section 1001.73 is amended by revising paragraphs (a)(2)(ii) and (b)(3)(vi) to read as follows:

§ 1001.73 Payments to producers and to cooperative associations.

(a) * * *

(2) * * *

(ii) Multiply the pounds of butterfat received by the butterfat price for the month;

* * * * *

(b) * * *

(3) * * *

(vi) Multiply the pounds of butterfat in Class III and Class IV milk by the butterfat price for the month;

* * * * *

PART 1030—MILK IN THE UPPER MIDWEST MARKETING AREA

1. Section 1030.60 is amended by revising paragraphs (c)(3), (d)(2), and (i) to read as follows:

§ 1030.60 Handler's value of milk.

* * * * *

(c) * * *

(3) Add an amount obtained by multiplying the pounds of butterfat in Class III by the butterfat price.

(d) * * *

(2) Add an amount obtained by multiplying the pounds of butterfat in Class IV by the butterfat price.

* * * * *

(i) Multiply the difference between the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received and the Class III price by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1000.43(d) and § 1000.44(a)(3)(i) and the corresponding step of § 1000.44(b) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(8) and the corresponding step of § 1000.44(b), excluding such skim milk and butterfat in receipts of fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

* * * * *

2. Section 1030.61 is revised to read as follows:

§ 1030.61 Computation of producer price differential.

For each month the market administrator shall compute a producer price differential per hundredweight. The report of any handler who has not made payments required pursuant to § 1030.71 for the preceding month shall not be included in the computation of the producer price differential, and such handler's report shall not be included in the computation for succeeding months until the handler has made full payment of outstanding monthly obligations. Subject to the conditions of this paragraph, the market administrator shall compute the producer price differential in the following manner:

(a) Combine into one total the values computed pursuant to § 1030.60 for all handlers required to file reports prescribed in § 1030.30;

(b) Subtract the total values obtained by multiplying each handler's total pounds of protein, other solids, and butterfat contained in the milk for which an obligation was computed pursuant to § 1030.60 by the protein price, other solids price, and the butterfat price, respectively, and the total value of the somatic cell adjustment pursuant to § 1030.30(a)(1) and (c)(1);

(c) Add an amount equal to the minus location adjustments and subtract an amount equal to the plus location adjustments computed pursuant to § 1030.75;

(d) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(e) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1030.60(i); and

(f) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (e) of this section. The result shall be known as the producer price differential for the month.

3. Section 1030.62 is amended by revising paragraphs (e) and (h) to read as follows:

§ 1030.62 Announcement of producer prices.

* * * * *

(e) The butterfat price;

* * * * *

(h) The statistical uniform price for milk containing 3.5 percent butterfat, computed by combining the Class III price and the producer butterfat price differential.

4. Section 1030.71 is amended by revising paragraphs (b)(2) and (b)(4) to read as follows:

§ 1030.71 Payments to the producer-settlement fund.

* * * * *

(b) * * *

(2) An amount obtained by multiplying the total pounds of protein, other solids, and butterfat contained in producer milk by the protein, other solids, and butterfat prices respectively;

* * * * *

(4) An amount obtained by multiplying the pounds of skim milk and butterfat for which a value was computed pursuant to § 1030.60(i) by the producer price differential as adjusted pursuant to § 1030.75 for the location of the plant from which received.

5. Section 1030.73 is amended by revising paragraphs (a)(2)(ii), (c)(2)(v), and (c)(3)(ii) to read as follows:

§ 1030.73 Payments to producers and to cooperative associations.

(a) * * *

(2) * * *

(ii) The pounds of butterfat received times the butterfat price for the month;

* * * * *

(c) * * *

(2) * * *

(v) The pounds of butterfat in Class III and Class IV milk times the butterfat price;

* * * * *

(3) * * *

(ii) The pounds of butterfat received times the butterfat price for the month;

* * * * *

PART 1032—MILK IN THE CENTRAL MARKETING AREA

1. Section 1032.60 is amended by revising paragraphs (c)(3), (d)(2), and (i) to read as follows:

§ 1032.60 Handler's value of milk.

* * * * *

(c) * * *

(3) Add an amount obtained by multiplying the pounds of butterfat in Class III by the butterfat price.

(d) * * *

(2) Add an amount obtained by multiplying the pounds of butterfat in Class IV by the butterfat price.

* * * * *

(i) Multiply the difference between the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received and the Class III price by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1000.43(d) and § 1000.44(a)(3)(i) and the corresponding step of § 1000.44(b) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(8) and the corresponding step of § 1000.44(b), excluding such skim milk and butterfat in receipts of fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

* * * * *

2. Section 1032.61 is revised to read as follows:

§ 1032.61 Computation of producer price differential.

For each month the market administrator shall compute a producer price differential per hundredweight. The report of any handler who has not made payments required pursuant to § 1032.71 for the preceding month shall not be included in the computation of the producer price differential, and such handler's report shall not be included in the computation for succeeding months until the handler has made full payment of outstanding monthly obligations.

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Subject to the conditions of this paragraph, the market administrator shall compute the producer price differential in the following manner:

(a) Combine into one total the values computed pursuant to § 1032.60 for all handlers required to file reports prescribed in § 1032.30;

(b) Subtract the total values obtained by multiplying each handler's total pounds of protein, other solids, and butterfat contained in the milk for which an obligation was computed pursuant to § 1032.60 by the protein price, the other solids price, and the butterfat price, respectively, and the total value of the somatic cell adjustment pursuant to § 1032.30(a)(1) and (c)(1);

(c) Add an amount equal to the minus location adjustments and subtract an amount equal to the plus location adjustments computed pursuant to § 1032.75;

(d) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(e) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1032.60(i); and

(f) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (e) of this section. The result shall be known as the producer price differential for the month.

3. Section 1032.62 is amended by revising paragraphs (e) and (h) to read as follows:

§ 1032.62 Announcement of producer prices.

* * * * *

(e) The butterfat price;

* * * * *

(h) The statistical uniform price for milk containing 3.5 percent butterfat, computed by combining the Class III price and the producer price differential.

4. Section 1032.71 is amended by revising paragraphs (b)(2) and (b)(4) to read as follows:

§ 1032.71 Payments to the producer-settlement fund.

* * * * *

(b) * * *

(2) An amount obtained by multiplying the total pounds of protein, other solids, and butterfat contained in producer milk by the protein, other solids, and butterfat prices respectively;

* * * * *

(4) An amount obtained by multiplying the pounds of skim milk and butterfat for which a value was computed pursuant to § 1032.60(i) by the producer price differential as adjusted pursuant to § 1032.75 for the location of the plant from which received.

5. Section 1032.73 is amended by revising paragraphs (a)(2)(ii), (c)(2)(v), and (c)(3)(ii) to read as follows:

§ 1032.73 Payments to producers and to cooperative associations.

(a) * * *

(2) * * *

(ii) The pounds of butterfat received times the butterfat price for the month;

* * * * *

(c) * * *

(2) * * *

(v) The pounds of butterfat in Class III and Class IV milk times the butterfat price;

* * * * *

(3) * * *

(ii) The pounds of butterfat received times the butterfat price for the month;

* * * * *

PART 1033—MILK IN THE MIDEAST MARKETING AREA

1. Section 1033.60 is amended by revising paragraphs (c)(3), (d)(2), and (i) to read as follows:

§ 1033.60 Handler's value of milk.

* * * * *

(c) * * *

(3) Add an amount obtained by multiplying the pounds of butterfat in Class III by the butterfat price.

(d) * * *

(2) Add an amount obtained by multiplying the pounds of butterfat in Class IV by the butterfat price.

* * * * *

(i) Multiply the difference between the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received and the Class III price by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1000.43(d) and § 1000.44(a)(3)(i) and the corresponding step of § 1000.44(b) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(8) and the corresponding step of § 1000.44(b), excluding such skim milk and butterfat in receipts of fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

* * * * *

2. Section 1033.61 is revised to read as follows:

§ 1033.61 Computation of producer price differential.

For each month the market administrator shall compute a producer price differential per hundredweight. The report of any handler who has not made payments required pursuant to § 1033.71 for the preceding month shall not be included in the computation of the producer price differential, and such handler's report shall not be included in the computation for succeeding months until the handler has made full payment of outstanding monthly obligations. Subject to the conditions of this paragraph, the market administrator shall compute the producer price differential in the following manner:

(a) Combine into one total the values computed pursuant to § 1033.60 for all handlers required to file reports prescribed in § 1033.30;

(b) Subtract the total values obtained by multiplying each handler's total pounds of protein, other solids, and butterfat contained in the milk for which an obligation was computed pursuant to § 1033.60 by the protein price, the other solids price, and the butterfat price, respectively, and the total value of the somatic cell adjustment pursuant to § 1033.30(a)(1) and (c)(1);

(c) Add an amount equal to the minus location adjustments and subtract an amount equal to the plus location adjustments computed pursuant to § 1033.75;

(d) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(e) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1033.60(i); and

(f) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (e) of this section. The result shall be known as the producer price differential for the month.

3. Section 1033.62 is amended by revising paragraphs (e) and (h) to read as follows:

§ 1033.62 Announcement of producer prices.

* * * * *

(e) The butterfat price;

* * * * *

(h) The statistical uniform price for milk containing 3.5 percent butterfat, computed by combining the Class III price and the producer price differential.

4. Section 1033.71 is amended by revising paragraphs (b)(2) and (b)(4) to read as follows:

§ 1033.71 Payments to the producer-settlement fund.

* * * * *

(b) * * *

(2) An amount obtained by multiplying the total pounds of protein, other solids, and butterfat contained in producer milk by the protein, other solids, and butterfat prices, respectively;

* * * * *

(4) An amount obtained by multiplying the pounds of skim milk and butterfat for which a value was computed pursuant to § 1033.60(i) by the producer price differential as adjusted pursuant to § 1033.75 for the location of the plant from which received.

5. Section 1033.73 is amended by revising paragraphs (a)(2)(ii) and (b)(3)(v) to read as follows:

§ 1033.73 Payments to producers and to cooperative associations.

(a) * * *

(2) * * *

(ii) The pounds of butterfat received times the butterfat price for the month;

* * * * *

(b) * * *

(3) * * *

(v) The pounds of butterfat in Class III and Class IV milk times the butterfat price;

* * * * *

PART 1124—MILK IN THE PACIFIC NORTHWEST MARKETING AREA

1. Section 1124.60 is amended by revising paragraphs (c)(3), (d)(2), and (h) to read as follows:

§ 1124.60 Handler's value of milk.

* * * * *

(c) * * *

(3) Add an amount obtained by multiplying the pounds of butterfat in Class III by the butterfat price.

(d) * * *

(2) Add an amount obtained by multiplying the pounds of butterfat in Class IV by the butterfat price.

* * * * *

(h) Multiply the difference between the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received and the Class III price by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1000.43(d) and § 1000.44(a)(3)(i) and the corresponding step of § 1000.44(b) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(8) and the corresponding step of § 1000.44(b), excluding such skim milk and butterfat in receipts of fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

* * * * *

2. Section 1124.61 is revised to read as follows:

§ 1124.61 Computation of producer price differential.

For each month the market administrator shall compute a producer price differential per hundredweight. The report of any handler who has not made payments required pursuant to § 1124.71 for the preceding month shall not be included in the computation of the producer price differential, and such handler's report shall not be included in the computation for succeeding months until the handler has made full payment of outstanding monthly obligations. Subject to the conditions of this paragraph, the market administrator shall compute the producer price differential in the following manner:

(a) Combine into one total the values computed pursuant to § 1124.60 for all handlers required to file reports prescribed in § 1124.30;

(b) Subtract the total values obtained by multiplying each handler's total pounds of protein, other solids, and butterfat contained in the milk for which an obligation was computed pursuant to § 1124.60 by the protein price, the other solids price, and the butterfat price, respectively;

(c) Add an amount equal to the minus location adjustments and subtract an amount equal to the plus location adjustments computed pursuant to § 1124.75;

(d) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(e) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1124.60(h); and

(f) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (e) of this section. The result shall be known as the producer price differential for the month.

3. Section 1124.62 is amended by revising paragraphs (e) and (g) to read as follows:

§ 1124.62 Announcement of producer prices.

* * * * *

(e) The butterfat price;

* * * * *

(g) The statistical uniform price for milk containing 3.5 percent butterfat, computed by combining the Class III price and the producer price differential.

4. Section 1124.71 is amended by revising paragraphs (b)(2) and (b)(3) to read as follows:

§ 1124.71 Payments to the producer-settlement fund.

* * * * *

(b) * * *

(2) An amount obtained by multiplying the total pounds of protein, other solids, and butterfat contained in producer milk by the protein, other solids, and butterfat prices respectively; and

(3) An amount obtained by multiplying the pounds of skim milk and butterfat for which a value was computed pursuant to § 1124.60(h) by the producer price differential as adjusted pursuant to § 1124.75 for the location of the plant from which received.

5. Section 1124.73 is amended by revising paragraphs (a)(2)(ii), (c)(2)(v), and (c)(3)(ii) to read as follows:

§ 1124.73 Payments to producers and to cooperative associations.

(a) * * *

(2) * * *

(ii) The pounds of butterfat received times the butterfat price for the month;

* * * * *

(c) * * *

(2) * * *

(v) The pounds of butterfat in Class III and Class IV milk times the butterfat price;

* * * * *

(3) * * *

(ii) The pounds of butterfat received times the butterfat price for the month;

* * * * *

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PART 1126—MILK IN THE SOUTHWEST MARKETING AREA

1. Section 1126.60 is amended by revising paragraphs (c)(3), (d)(2), and (i) to read as follows:

§ 1126.60 Handler's value of milk.

* * * * *

(c) * * *

(3) Add an amount obtained by multiplying the pounds of butterfat in Class III by the butterfat price.

(d) * * *

(2) Add an amount obtained by multiplying the pounds of butterfat in Class IV by the butterfat price.

* * * * *

(i) Multiply the difference between the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received and the Class III price by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1000.43(d) and § 1000.44(a)(3)(i) and the corresponding step of § 1000.44(b) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(8) and the corresponding step of § 1000.44(b), excluding such skim milk and butterfat in receipts of fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

* * * * *

2. Section 1126.61 is revised to read as follows:

§ 1126.61 Computation of producer price differential.

For each month the market administrator shall compute a producer price differential per hundredweight. The report of any handler who has not made payments required pursuant to § 1126.71 for the preceding month shall not be included in the computation of the producer price differential, and such handler's report shall not be included in the computation for succeeding months until the handler has made full payment of outstanding monthly obligations. Subject to the conditions of this paragraph, the market administrator shall compute the producer price differential in the following manner:

(a) Combine into one total the values computed pursuant to § 1126.60 for all handlers required to file reports prescribed in § 1126.30;

(b) Subtract the total of the values obtained by multiplying each handler's total pounds of protein, other solids, and butterfat contained in the milk for which an obligation was computed pursuant to § 1126.60 by the protein price, other solids price, and the butterfat price, respectively, and the total value of the somatic cell adjustment pursuant to § 1126.30(a)(1) and (c)(1);

(c) Add an amount equal to the minus location adjustments and subtract an amount equal to the plus location adjustments computed pursuant to § 1126.75;

(d) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(e) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1126.60(i); and

(f) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (e) of this section. The result shall be known as the producer price differential for the month.

3. Section 1126.62 is amended by revising paragraphs (e) and (h) to read as follows:

§ 1126.62 Announcement of producer prices.

* * * * *

(e) The butterfat price;

* * * * *

(h) The statistical uniform price for milk containing 3.5 percent butterfat, computed by combining the Class III price and the producer price differential.

4. Section 1126.71 is amended by revising paragraphs (b)(2) and (b)(4) to read as follows:

§ 1126.71 Payments to the producer-settlement fund.

* * * * *

(b) * * *

(2) An amount obtained by multiplying the total pounds of protein, other solids, and butterfat contained in producer milk by the protein, other solids, and butterfat prices respectively;

* * * * *

(4) An amount obtained by multiplying the pounds of skim milk and butterfat for which a value was computed pursuant to § 1126.60(i) by the producer price differential as adjusted pursuant to § 1126.75 for the location of the plant from which received.

5. Section 1126.73 is amended by revising paragraphs (a)(2)(ii) and (b)(3)(v) to read as follows:

§ 1126.73 Payments to producers and to cooperative associations.

(a) * * *

(2) * * *

(ii) Multiply the pounds of butterfat received times the butterfat price for the month;

* * * * *

(b) * * *

(3) * * *

(v) The pounds of butterfat in Class III and Class IV milk times the butterfat price;

* * * * *

PART 1135—MILK IN THE WESTERN MARKETING AREA

1. Section 1135.60 is amended by revising paragraphs (c)(3), (d)(2) and (h) to read as follows:

§ 1135.60 Handler's value of milk.

* * * * *

(c) * * *

(3) Add an amount obtained by multiplying the pounds of butterfat in Class III by the butterfat price.

(d) * * *

(2) Add an amount obtained by multiplying the pounds of butterfat in Class IV by the butterfat price.

* * * * *

(h) Multiply the difference between the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received and the Class III price by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1000.43(d) and § 1000.44(a)(3)(i) and the corresponding step of § 1000.44(b) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(8) and the corresponding step of § 1000.44(b), excluding such skim milk and butterfat in receipts of fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

* * * * *

2. Section 1135.61 is revised to read as follows:

§ 1135.61 Computation of producer price differential.

For each month the market administrator shall compute a producer price differential per hundredweight. The report of any handler who has not made payments required pursuant to § 1135.71 for the preceding month shall not be included in the computation of the producer price differential, and such handler's report shall not be included in the computation for succeeding months until the handler has made full payment of outstanding monthly obligations. Subject to the conditions of this paragraph, the market administrator shall compute the producer price differential in the following manner:

(a) Combine into one total the values computed pursuant to § 1135.60 for all handlers required to file reports prescribed in § 1135.30;

(b) Subtract the total values obtained by multiplying each handler's total pounds of protein, other solids, and butterfat contained in the milk for which an obligation was computed pursuant to § 1135.60 by the protein price, the other solids price, and the butterfat price, respectively;

(c) Add an amount equal to the minus location adjustments and subtract an amount equal to the plus location adjustments computed pursuant to § 1135.75;

(d) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(e) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1135.60(h); and

(f) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (e) of this section. The result shall be known as the producer price differential for the month.

3. Section 1135.62 is amended by revising paragraphs (e) and (g) to read as follows:

§ 1135.62 Announcement of producer prices.

* * * * *

(e) The butterfat price;

* * * * *

(g) The statistical uniform price for milk containing 3.5 percent butterfat computed by combining the Class III price and the producer price differential.

* * * * *

4. Section 1135.71 is amended by revising paragraph (b)(2) and removing and reserving paragraph (b)(3) to read as follows:

§ 1135.71 Payments to the producer-settlement fund.

* * * * *

(b) * * *

(2) An amount obtained by multiplying the total pounds of protein, other solids, and butterfat contained in producer milk by the protein, other solids, and butterfat prices respectively; and

(3) [Reserved]

* * * * *

5. Section 1135.73 is amended by revising paragraphs (a)(2)(ii) and (b)(3)(v) to read as follows:

§ 1135.73 Payments to producers and to cooperative associations.

(a) * * *

(2) * * *

(ii) The pounds of butterfat received times the butterfat price for the month;

* * * * *

(b) * * *

(3) * * *

(v) The pounds of butterfat in Class III and Class IV milk times the butterfat price;

* * * * *

Marketing Agreement Regulating the Handling of Milk in Certain Marketing Areas

The parties hereto, in order to effectuate the declared policy of the Act, and in accordance with the rules of practice and procedure effective thereunder (7 CFR Part 900), desire to enter into this marketing agreement and do hereby agree that the provisions referred to in paragraph I hereof as augmented by the provisions specified in paragraph II hereof, shall be and are the provisions of this marketing agreement as if set out in full herein.

I. The findings and determinations, order relative to handling, and the provisions of §§ _____ [1] to _____, all inclusive, of the order regulating the handling of milk in the (_____ Name of order _____) marketing area (7 CFR PART _____ [2]) which is annexed hereto; and

II. The following provisions: § _____ [3] Record of milk handled and authorization to correct typographical errors.

(a) Record of milk handled. The undersigned certifies that he/she handled during the month of _____ [4], hundredweight of milk covered by this marketing agreement.

(b) Authorization to correct typographical errors. The undersigned hereby authorizes the Deputy Administrator, or Acting Deputy Administrator, Dairy Programs, Agricultural Marketing Service, to correct any typographical errors which may have been made in this marketing agreement.

§ _____ [3] Effective date. This marketing agreement shall become effective upon the execution of a counterpart hereof by the Secretary in accordance with Section 900.14(a) of the aforesaid rules of practice and procedure.

In Witness Whereof, The contracting handlers, acting under the provisions of the Act, for the purposes and subject to the limitations herein contained and not otherwise, have hereunto set their respective hands and seals.

Signature By (Name) _____

(Title) _____

(Address) _____

(Seal)

Attest

[FR Doc. 02–27570 Filed 11–6–02; 8:45 am]

BILLING CODE 3410–02–P

[1] First and last sections of order.

[2] Appropriate Part number.

[3] Next consecutive section number.

[4] Appropriate representative period for the order.

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Part III

Department of Labor

Occupational Safety and Health Administration

29 CFR Part 1910

Exit Routes, Emergency Action Plans, and Fire Prevention Plans; Final Rule

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DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

RIN 1218–AB82

Exit Routes, Emergency Action Plans, and Fire Prevention Plans

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Final rule.

SUMMARY: The Occupational Safety and Health Administration (OSHA) is revising its standards for means of egress. The purpose of this revision is to rewrite the existing requirements in clearer language so they will be easier to understand by employers, employees, and others who use them.

The revisions reorganize the text, remove inconsistencies among sections, and eliminate duplicative requirements. The rules are performance-oriented to the extent possible, and more concise than the original, with fewer subparagraphs, and fewer cross-references to other OSHA standards. Additionally, a table of contents has been added that is intended to make the standards easier to use.

Also, OSHA is changing the name of the subpart from "Means of Egress" to "Exit Routes, Emergency Action Plans, and Fire Prevention Plans" to better describe the contents.

Finally, OSHA has evaluated the National Fire Protection Association's Standard 101, Life Safety Code, 2000 Edition (NFPA 101–2000), and has concluded that the standard provides comparable safety to the Exit Routes Standard. Therefore, employers who wish to comply with the NFPA 101–2000 instead of the OSHA standards for Exit Routes may do so.

DATES: The final rule becomes effective December 9, 2002.

ADDRESSES: In accordance with 28 U.S.C. 2112(a), the Agency designates the Associate Solicitor of Labor for Occupational Safety and Health, Office of the Solicitor of Labor, Room S–4004, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 to receive petitions for review of the final rule.

FOR FURTHER INFORMATION CONTACT: OSHA, Ms. Bonnie Friedman, Director, Office of Public Affairs, N–3647, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–1999. For additional copies of this **Federal Register** document, contact: OSHA, Office of Publications, U.S. Department of Labor, Room N–3103, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–1888.

For electronic copies of this **Federal Register** document, as well as news releases, fact sheets, and other relevant documents, visit OSHA's homepage at *http://www.osha.gov.*

SUPPLEMENTARY INFORMATION: References to comments and testimony in the rulemaking record (Docket S–052) are found throughout the text of the preamble. In the preamble comments are identified by an assigned exhibit number as follows: "Ex. 5–1" means Exhibit 5–1 in Docket S–052. For quoted material in the preamble, the page number where the quote can be located is included if other than page one. The transcript of the public hearing is cited by the page number as follows: Tr. 37. A list of the exhibits, copies of the exhibits, and transcripts are available in the OSHA Docket Office.

I. Background

In 1971 and 1972, OSHA adopted hundreds of national consensus and established Federal standards under section 6(a) of the Occupational Safety and Health Act of 1970. Section 6(a) allowed the Agency to adopt these standards for a limited period of time without going through traditional rulemaking. Many of these "start-up standards" have been criticized for being overly wordy, difficult to understand, repetitive and internally inconsistent.

On September 10, 1996, OSHA published a proposed rule in the **Federal Register** (61 FR 47712) proposing to revise subpart E of part 1910. OSHA proposed to rewrite the existing requirements of subpart E in plain language so that the requirements would be easier to understand by employers, employees, and others who use them. The proposal did not intend to change the regulatory obligations of employers or the safety and health protection provided to employees by the original standard.

OSHA proposed two versions of the revision of subpart E. The first version was organized in the traditional regulatory format characteristic of most OSHA standards. The second version was in a question and answer format. OSHA invited interested parties to comment on the content and effectiveness of the proposed changes and to indicate which version they preferred. Both versions left unchanged the regulatory obligations placed on employers and the safety and health protection provided to employees. Based on the majority of comments (*e.g.*, Exs. 5–13, 17, 24–26, 45–47, 58–60) OSHA has decided to use its traditional regulatory text format for this final rule. OSHA believes that the revised subpart E is more performance-oriented and more compliance options will be available to employers.

In the proposal, OSHA stated what it expected to achieve by revising subpart E: (1) To maintain the safety and health protection provided to employees without increasing the regulatory burden on employers; (2) to create a regulation that is easily understood and; (3) to state employers' obligations in performance-oriented language to the extent possible.

The proposal attempted to simplify, rather than to substantively revise, OSHA's means of egress standards. In finalizing this proposal, the Agency has been careful to ensure that the protections afforded employees were not weakened. Employers who are in compliance with the original subpart E will continue to be in compliance with the revised subpart E that is being promulgated in this rule.

In developing the proposal, OSHA reviewed relevant OSHA decisions of the Federal courts, the Occupational Safety and Health Review Commission, and Agency letters of interpretation (Ex. 2) to determine how each provision of subpart E has been interpreted. Also, OSHA reviewed comparable State regulations, training materials and current consensus standards including the National Fire Protection Association's Life Safety Code, NFPA 101 (at that time the 1994 Edition). This review enabled OSHA to reorganize subpart E, eliminate duplicative provisions, and have confidence that the revisions did not diminish the safety and health protection afforded by existing rules.

OSHA discovered during the review process that some provisions of subpart E were outdated and not consistent with contemporary fire safety options in then current NFPA 101, Life Safety Code, 1994 Edition. Where it was possible to expand permissible employer compliance options without lessening employee safety, the proposal included these expanded options. For example, OSHA incorporated NFPA 101, 1994 Edition, the Life Safety Code's option to exit to a refuge area rather than to the outside (proposed paragraph 1910.36(f)(3)). The proposal also permitted the use of self-luminous and electroluminescent exit signs (proposed paragraph 1910.37(c)(6)). (*E.g.*, Exs. 5–18, 40, 45, 54.) The proposal enabled employers to avail themselves of these newer options or continue with current compliance methods. In this way OSHA increased compliance flexibility without reducing safety.

OSHA did not substitute performance-oriented language for current language where doing so would either eliminate a requirement that protects employee safety and health, or expand an employer's compliance obligation. For example, the proposal continued the existing requirement that a means of egress must be at least 28 inches wide (proposed paragraph 1910.37(j)). The Agency chose not to substitute performance-oriented criteria for this provision (such as "means of egress be of adequate width to support building occupants") because this change would eliminate the existing minimum width specification and might not provide adequate protection to employees leaving the workplace in an emergency. For this reason, OSHA decided not to revise the minimum clearance requirement.

OSHA noted in the proposal that for some employers, reliance on performance-oriented standards might create confusion as to the specific precautions necessary in a variety of situations. In the past, OSHA has used NFPA 101 as an aid in interpreting subpart E. OSHA intends to continue to rely on NFPA 101 as guidance in implementing performance-oriented provisions of revised subpart E.

In addition to organizing the requirements of the revised subpart E in a logical and understandable manner, OSHA has organized the requirements around three aspects of exit routes: (1) Design and construction requirements; (2) maintenance, safeguards, and operational requirements; and (3) requirements for warning employees of the need to escape. Reorganizing subpart E in this manner has enabled OSHA to eliminate many duplicative provisions. For example, in existing subpart E, both paragraph 1910.36(b)(8) and paragraph 1910.37(e) contain the design requirements that where workplaces are required to have two means of egress, these means of egress must be located as far away as practical (remote) from one another.

Other significant revisions to subpart E include: Removal of obligations that are not related to employee protection but pertain to the protection of the general public, and the deletion of any recommended as opposed to required actions (*i.e.*, provisions that use "should" or "may").

II. Regulatory Format

As noted above, OSHA proposed two versions of subpart E; a traditional regulatory text version and a question and answer version. The traditional regulatory text version was preceded by a descriptive section heading that told the reader what information could be found in that section. The question and answer version was written in a form by which an employer might ask a question about the rule, and this question was then followed by an answer that told the employer about the requirement.

Other efforts to make subpart E more user-friendly included: removal of unused terms and ordinary terms from the definitions; elimination of cross-references to other standards; removal of overly technical terms in favor of more common words; use of the active voice; and, the use of positive as opposed to negative sentences.

The Agency invited public comment and requests for a hearing on the proposed revision to subpart E. An informal public hearing was requested by the National Fire Protection Association (Ex. 5–18) and Hallmark Cards (Ex. 5–51).

On March 3, 1997, OSHA published a notice in the **Federal Register** (62 FR 9402) announcing an informal public hearing and a reopening of the written comment period. Written comments on the proposed standard were to be postmarked by April 19, 1997. The hearing was held in Washington, DC on April 29–30, 1997.

In the hearing notice, OSHA invited comment on ten issues that will be discussed below in more detail. In summary, OSHA asked: (1) How OSHA should use the Life Safety Code in the final rule; (2) how or if OSHA should use model building codes; (3) whether the use of performance language creates new enforcement problems; (4) how OSHA should address the issues of exit capacity and the number of required exits; (5) whether or not the exit sign provisions were too general; (6) whether or not the revised requirements for exit illumination were too general; (7) whether or not there were still provisions or terms in the proposed revision that were too technical or difficult to understand; (8) whether OSHA achieved in the proposed revision its goal of not changing employers obligations; (9) whether any of the proposed provisions provided greater protection than in the original subpart E; and (10) whether any of the requirements presented technological feasibility problems for affected employers.

The subpart E rulemaking record contains 23 exhibits, 69 comments, 170 pages of testimony and four post-hearing comments.

III. Summary and Explanation of the Final Rule

This section contains an analysis of the record evidence and policy decisions pertaining to the various provisions of revised subpart E.

As stated previously, OSHA's goals in revising subpart E were to maintain the safety and health protection provided to employees in subpart E without increasing the regulatory burden on employers, create a regulation that is easily understood, and, to the extent possible, express employers' obligations in performance-oriented language.

The majority of commenters supported OSHA's use of plain language. Owens Manufacturing, Inc. (Ex. 5–1) stated they were "in favor of this change as it allows the production people in our manufacturing area to understand the scope and meaning of this regulation much easier." United Refining Company (Ex. 5–2) remarked "For those individuals who occasionally reference a standard the Plain English version will be beneficial." The commenter from Medical Environment, Inc. (Ex. 5–7) stated "I commend your actions in correcting the highly technical language into wording that is understandable to the average person. I have read your proposed changes, and find them to be significantly improved." The Institute for Interconnecting and Packaging Electronic Circuits (IPC) (Ex. 5–25) observed that:

> * * * Because IPC members are predominantly small companies, they have limited resources to track down, read, understand, and comply with the substantial volume of federal, state, and local regulations. In many firms, the company president, plant manager, or production supervisor is responsible for facility-wide health and safety compliance in addition to running production and perhaps running the company.
>
> Given IPC members' commitment to advancing employee health and safety, IPC applauds OSHA's proposed Means of Egress rule. The proposed changes are designed to make the standard more understandable and, therefore promote industry compliance. "Translating" OSHA's current regulations into "plain English" is an outstanding activity that should be aggressively applied to ALL federal regulations—not just OSHA regulations, and IPC supports OSHA's actions to effect such change.

The International Brotherhood of Teamsters (Ex. 5–31) commended OSHA for undertaking the revision effort and stated that the International:

> [I]s pleased to see the Occupational Safety and Health Administration attempt to develop plain English standards. This International Union feels that this approach to safety and health standards will enable our members and other workers across the

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country to better understand their OSHA rights and their employer's obligations.

The National Institute for Occupational Safety and Health (NIOSH, Ex. 5–42) also supported the effort observing that "By revising the Means of Egress rule in easy to understand terms as part of a shorter, performance-oriented standard, the standard will be easier to use and provide more compliance options for employers."

Schirmer Engineering Corporation (Ex. 5–57) stated:

> Review of the revisions introduced in the proposed rule indicates an effort to provide language which is more condensed and clear, with the removal of verbose wording. The sections that were deleted from the original version did not greatly affect the overall life safety concept as it pertains to egress from a building. In addition, the reorganization helps to clarify some of the requirements of the code which, in turn, facilitates overall compliance.

(*See also* Exs. 5–5, 12, 13, 15–17, 20–24, 26, 27, 29, 30, 34, 35, 37, 39, 43, 45, 47, 51, 52, 54–56, 58, 59, 60, 61, 70.)

On the other hand, some commenters did object to the revision of subpart E on the grounds either that it was not productive for OSHA to re-write these standards, or that the revised language actually changed the requirements. For example, James R. Hutton, a fire protection engineer (Ex. 5–9), believed the "proposed revisions will complicate and cause more difficulties, not less, for smaller businesses who do not have the resources to undergo the time or expense required to develop "custom solutions" to "plain English" requirements." OSHA disagrees. The revised subpart E only makes compliance requirements clearer and it refers employers and employees to NFPA 101 for added details, when necessary.

It was also suggested by some commenters that instead of finalizing the proposed revision, OSHA should adopt NFPA 101, the Life Safety Code, or that OSHA should rely on building codes, instead of revising subpart E. (*See e.g.*, Exs. 5–10, 15, 18, 19, 26, 41, 46, 48, 61, 68; Tr. 14, 23; Ex. 10.)

The National Fire Protection Association (NFPA, Ex. 5–18) remarked:

> NFPA agrees with several of the goals as contained in the OSHA/NPRM but find serious flaws in the methodology being proposed to attain these goals. Specifically, NFPA applauds OSHA's goal "to maintain the safety and health protection provided to employees by subpart E * * *" and "to create a regulation that is easily understood." We also applaud OSHA's desire "to allow employers the flexibility of relying on more contemporary compliance approaches."

However, we do not believe these goals can be achieved by either "plain English" alternative taken together or separately as being proposed by OSHA in the NPRM. Specifically, NFPA recommends OSHA abandon its attempt to rewrite a 25-year old standard as represented in the first alternative of the NPRM * * *.

Further, NFPA asserted that OSHA's rewrite would make enforcement more difficult especially when performance-oriented language is substituted for specifications; that the proposal drops all references to the NFPA Life Safety Code even though the proposal indicated OSHA would continue to rely on that Code; and, that the proposed rewrite did not specifically allow for contemporary compliance options as contemplated by OSHA and as set forth in the current edition of NFPA 101 (1994). NFPA recommended that:

> [T]he first alternative be abandoned [traditional regulatory text] and that OSHA instead adopt by reference the 1994 edition of NFPA 101 * * * Further, NFPA believes the adoption of the 1994 edition of NFPA 101, together with a supplemental Q&A (question and answer) format as proposed in the second NPRM alternative, would be the best approach to achieve the desired goals as stated by OSHA in the NPRM.

At the time of the proposal, the latest version of NFPA 101 was the 1994 Edition. NFPA subsequently issued a 1997 edition and then a 2000 edition. OSHA has reviewed the NFPA 101–2000 edition carefully and found that compliance with its provisions would protect employees as well as the parallel provisions of subpart E. Adopting NFPA 101 as an OSHA standard would require OSHA to conduct a full rulemaking under section 6(b) of the OSH Act, scrutinizing each provision, accounting for each cost impact on employers, justifying why the new standard is reasonably necessary and appropriate, and showing that the adoption would reduce significant risk to employees. This would be inconsistent with the goal of this project which was to clarify employer obligations without increasing compliance burdens. However, OSHA has been convinced by commenters that consideration should be given to compliance with NFPA 101.

The 2000 Life Safety Code goes far beyond the requirements of OSHA's standard, both in details of compliance and flexibility for unique workplace conditions. If an employer complies with NFPA 101–2000, OSHA will deem such compliance to be compliance with the OSHA standard. OSHA believes that allowing employers to comply with NFPA 101 as an alternative to the revised Exit Routes standard will provide greater flexibility to employers who want to go beyond OSHA's basic provisions. Additionally, the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 3701 (1996)) directs Federal agencies to use voluntary consensus standards to the extent practicable. Under section 6(b)(8) of the OSH Act, the Agency must consider using national consensus standards as the basis for its safety and health standards wherever possible. By allowing employers to comply with the exit route provisions of NFPA 101–2000, OSHA has struck a balance that is consistent with its goals for this rulemaking as well as the spirit of the National Technology Transfer and Advancement Act.

OSHA has evaluated NFPA 101–2000 and has concluded that an employer who complies with the provisions of that code for means of egress will provide employees with safety that is comparable with compliance with OSHA's revised Exit Routes standard. OSHA is adding a new § 1910.35 to the final rule to recognize NFPA 101–2000 in this regard.

The South Carolina Department of Labor, Licensing & Regulation (Ex. 5–49, p.2) remarked that "It is a shame to spend this amount of time to adjust the wording when the whole standard is in need of repair."

Others criticized the proposal, feeling that it did not achieve its stated goal. For example, the American Health Care Association (Ex. 53) indicated that by "Developing new terminology for traditional means of egress requirements, we firmly believe, is a step backward and counter to OSHA's stated goal of creating a regulation that is easily understood." The United Steelworkers of America (Ex. 5–69) objected "to the very general performance language of this proposal. The language gives little, if any direction to employers and employees on how to comply with this proposed standard * * * Further, the proposed standard is somewhat confusing." (*See also* Exs. 5–33, 38, 40, 62, 66–68, 71).

OSHA does not agree with commenters who have concluded that OSHA has failed to meet its goals of (1) maintaining the safety and health protection provided to employees by subpart E without increasing the regulatory burden; (2) creating a regulation that is easily understood; and, (3) stating employers' obligations in performance-oriented language to the extent possible. Many commenters suggested improvements and language changes. Unfortunately in some cases the recommendations would have made substantive changes in the requirements of subpart E (*e.g.*, Exs. 5–4, 11, 18, 21, 24, 40, 47, 49, 63). OSHA has considered and incorporated many comments that improve the clarity of the text, without making substantive changes in the obligations and protections offered by existing subpart E. The final rule as revised and reorganized, incorporates many commenter suggestions. OSHA strongly believes the final rule fulfills its goal of providing employers and employees with much clearer standards in subpart E. In addition, as already discussed, employers may take advantage of a more recent version of NFPA 101 under § 1910.35 which recognizes compliance with the 2000 Edition of the Life Safety Code.

In response to comments, OSHA has changed the name of subpart E to better reflect the contents of the final rule. OSHA proposed to call the subpart "Exit Routes," but several commenters (Exs. 5–24, 40, 45) noted that the subpart contains provisions not only for exit routes but also for emergency action plans, and fire prevention plans. OSHA agrees with these commenters and has therefore changed the name of subpart E to reflect its coverage of Exit Routes, Emergency Action Plans, and Fire Prevention Plans.

In the preamble to the proposal OSHA stated that it included a table of contents to make it easier to access the provisions. The table was inadvertently left out of the proposed regulatory language in the **Federal Register** notice. OSHA believes that a table of contents will be helpful to employers and employees in locating provisions in the subpart and therefore, is including a table of contents in § 1910.33.

As indicated in the Regulatory Format section above, the proposed rule offered two versions of a revised subpart E. The first version was written in the traditional format of OSHA standards. The second version was written in a question and answer format.

Commenters who addressed this issue indicated a preference for the traditional regulatory format as opposed to the question and answer format. For example, Medical Environment, Inc. (Ex. 5–7) supported the traditional "regulatory format, because this is what everyone is used to seeing. The question/answer format seemed too "loose" to find an answer to a specific question." Similarly, the International Dairy Foods Association (IDFA) (Ex. 5–22) believed "that the "traditional" plain English version is the preferred version. In contrast, we find that the question and answer format quickly becomes condescending, and to a degree, annoying."

The American Petroleum Institute (API) (Ex. 5–29, p.2) supported the traditional format because of perceived pitfalls in the question and answer format.

> While the Q/A version has some appeal in terms of better first-impression, API believes that the traditional format makes it easier to understand the rule in total, and to locate specific requirements.
>
> Another API concern is that of confusion. The Q/A format could be associated with OSHA's Field Directives, in which questions and answers are sometimes used to explain requirements. The questions and answers in Field Directives, however, do not hold the same weight as regulatory language. As a result, confusion could be caused by the use of questions and answers in both the OSHA standards and in Field Directives.
>
> API is also concerned that the potential for inadvertent change of requirements is greater during a Q/A conversion. This is because more structural revision and reorganization is required to accommodate the Q/A approach, as demonstrated by comparison of the two approaches in this pilot conversion. It follows that the Q/A approach would face even greater conversion problems for other, more complicated safety and health regulations.

In addition, the International Brotherhood of Teamsters recommended that OSHA not adopt the question and answer format because the union believed that the format is neither well organized nor easy to read. (*See also* Exs. 5–2, 3, 12, 13, 14, 15, 16, 17, 20, 21, 24, 25, 26, 27, 30, 31, 34, 36, 37, 40, 41, 43, 45, 46, 47, 49.)

Several commenters stated that either version would be acceptable (Exs. 5–12, 17, 25). Other commenters supported the question and answer version (Exs. 5–16, 23, 32, 42, 48). Some suggested that the question and answer version be included in an appendix or some other OSHA publication (Exs. 5–20, 24, 26, 45, 54, 59). The Agency, after considering the comments, has decided to use the traditional format in the final rule. The Agency believes that including the question and answer version in an appendix might result in confusion. OSHA does use the question and answer format for other, non-regulatory documents, and will consider that format for future guidance in this area.

Additional comments ranged from remarks that OSHA should do nothing, revise subpart E and reference NFPA 101, or adopt NFPA 101 entirely (Exs. 5–10, 18, 28, 38, 41, 47, 53, 62, 66, 68, 71). The subject of how to address NFPA 101 in the plain language revision was also issue 1 in the hearing notice (at 62 FR 9403). Liberty Mutual Insurance Group (Ex. 5–19) recommended that OSHA "include a provision that compliance with a national consensus standard such as NFPA 101, Life Safety Code * * *would be recognized as compliance with the OSHA standard." The Building Owners and Managers Association (BOMA) stated that it believed that "it is essential for OSHA to add appendix language stating that compliance with the Life Safety Codes NFPA 101, constitutes compliance with subpart E. Current OSHA practices essentially recognize this now (Tr. 23)."

OSHA's intention in the proposed rule was to simplify subpart E, not to replace it. First, OSHA could not simply adopt "NFPA 101" as an OSHA standard, because it can only consider versions of that standard that are currently in existence. To do otherwise (*i.e.*, attempting to approve a future edition) would result in an illegal delegation of agency authority. Second, adoption of NFPA 101–2000 as the OSHA standard goes beyond the limited purpose of this rulemaking. Such action would involve substantive rulemaking, including detailed analysis of the differences between OSHA current rules and NFPA 101–2000, including costs to employers and benefits to employees.

As discussed earlier, OSHA has reviewed NFPA 101–2000 and has determined that compliance with that standard will provide comparable protection to subpart E. Although the Agency is not adopting NFPA 101–2000, an employer who demonstrates compliance with that standard will be deemed to be in compliance with §§ 1910.34, 1910.36, and 1910.37 of subpart E. Many commenters (*e.g.*, Exs. 5–10, 18, 19, 41, 46, 48, 61) supported language that would allow employers to comply with the NFPA 101 standard as an alternative to the OSHA standard for Exit Routes. OSHA has incorporated such language into § 1910.35 of the final rule.

Some commenters also asserted that OSHA should base its standard on the model building codes or allow compliance with the various national building codes (Exs. 5–19, 27, 47, 67; Tr. 23, 26, 32, 43). At the time of the rulemaking, there were three different national building codes in the United States: The Building Officials and Code Administrators' (BOCA) National Building Code, the International Conference of Building Officials' (ICBO) Uniform Building Code, and the Southern Building Code Congress International's (SBCCI) Standard Building Code.

OSHA emphasizes again that it did not propose to substantively revise subpart E, nor did it propose to allow the use of building codes to comply with subpart E. OSHA is not familiar enough with the detailed requirements

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of the various building codes to determine unequivocally whether compliance with any or all of them could be considered to fulfill employer obligations imposed by subpart E. Moreover the contents of these building codes were not analyzed, evaluated or considered as part of this rulemaking. The BOCA, ICBO, and SBCCI Codes vary considerably in their requirements and coverage relating to areas covered by subpart E. This rulemaking was not designed to address these differences, nor was it intended to expand the coverage of subpart E. Accordingly, OSHA declines to extend recognition to building codes as a means of determining compliance with subpart E. This decision only involves the narrow issue of whether compliance with a given building code demonstrates compliance with subpart E. OSHA recognizes and acknowledges the importance and the value of building codes in assuring that buildings are constructed safely.

Final Rule

Section 1910.34, Coverage and Definitions

In the proposal, § 1910.35 was entitled "Coverage." It noted that all general industry employers were covered by subpart E, and that "exits" and "exit routes" were covered. The section went on to define these unique terms in the proposal. OSHA has retitled this section as "coverage and definitions," and has moved it to § 1910.34 of the final rule. The "coverage" paragraph, § 1910.34(a), specifies that the standard covers all workplaces in general industry except mobile workplaces. Paragraph (b) sets forth the "coverage" of the subpart: The minimum requirements for exit routes, emergency action plans, and fire prevention plans. Paragraph (c) of § 1910.34 includes the definitions pertinent to the subpart.

In the proposal, OSHA included definitions for "Exit" and "Exit Route," eliminating all other definitions, believing they were unnecessary. However, commenters thought that OSHA went too far by not defining other terms or inappropriately failed to define other important terms (*e.g.*, Exs. 5–18, 21, 24, 28, 41, 45, 47, 49.) After due consideration, OSHA agrees with these commenters and in the final rule (now paragraph 1910.34(c)) has added and clarified definitions for words used in the proposal that commenters found unclear. OSHA has clarified the terms "exit" and "exit route" and has added definitions for electroluminescent, exit access, exit discharge, high hazard area, occupant load, refuge area, and self-luminous.

Section 1910.35, Compliance With NFPA 101–2000, Life Safety Code

As discussed previously in this preamble, this section provides that an employer who complies with corresponding provisions of NFPA 101–2000 is deemed to be in compliance with subpart E, sections 1910.34–1910.37.

Section 1910.36, Design and Construction Requirements for Exit Routes

Section 1910.36 contains requirements for the design and construction of exit routes. It includes a requirement that exit routes be permanent, addresses fire resistance-ratings of construction materials used in exit stairways (exits), describes openings into exits, defines the minimum number of exit routes in workplaces, addresses exit discharges, and discusses locked exit route doors, and exit route doors. It also addresses the capacity, height and width of exit routes, and finally, it sets forth requirements for exit routes that are outside a building.

Many of these requirements are identical or nearly the same as those proposed, but have been rearranged in a more logical order or reworded so that the requirements are clearer and easier to understand and follow.

Paragraph (a)(1) of 1910.36 (proposed paragraph 1910.36(a)), requires that exit routes be a permanent part of the workplace. This provision remains as proposed. OSHA believes that exit routes must be a permanent part of a structure and that employees must know the route to safety. Otherwise, during an emergency, employees may become confused and take the wrong path to safety.

Paragraph (a)(2) of 1910.36 (proposed paragraph 1901.36(d)), specifies the fire resistance-rating of construction materials used to separate exits from other parts of the workplace (*e.g.*, stairways). For example, where an exit stairway connects three or fewer stories, it must be constructed of materials having a 1-hour fire resistance-rating. If the exit stairway connects four or more stories, it must be constructed of materials having a 2-hour fire resistance-rating.

One commenter, IMC Global, Inc. (Ex. 5–54), suggested that OSHA include information in the standard or the appendix that would specify what construction materials or combination of materials would meet the fire resistance-ratings required by the standard. They explained that the information would be used by in-house personnel who make alterations or repairs to the building. OSHA believes that the reference to NFPA 101 in § 1910.35 will assist employers and employees in answering these questions.

IMC Global, Inc. also recommended that OSHA define the term "story," suggesting that OSHA use the definition used in the NFPA 101, Life Safety Code, but did not provide any rationale or support to demonstrate that the failure to include a definition would have a negative impact on worker safety or health. OSHA notes that the NPFA 101–2000, defines the term "story" to mean "That portion of a building between the upper surface of a floor and the upper surface of the floor or roof next above." OSHA believes this definition to be generally understood and has determined not to include a definition of "story" in the regulatory text of the final rule.

Another commenter, the American Trucking Association (Ex. 5–52), suggested that OSHA reword proposed paragraph 1910.36(d), to make it similar to the wording in the existing subpart E concerning fire resistant-materials (paragraphs 1910.37(b)(1) and (b)(2)). That wording requires that for exits protected by separation from other parts of the building, the separation shall meet certain construction requirements. The commenter noted that the proposed wording appears to require all exits to be separated by fire resistant-materials. OSHA agrees that the provision was not clearly worded and has revised the language of the final rule to specify the required fire resistance-rating of materials used to construct separations, *i.e.*, enclosed stairways. The revised language reflects the concerns raised by the commenter.

Paragraph (a)(3) of 1910.36 (proposed paragraph 1910.36(c)), restricts the number of openings into exits to those openings necessary to allow access to the exit from occupied areas of the workplace, or from the exit to the exit discharge. It also specifies that openings must be protected by a self-closing fire door that remains closed unless the fire door automatically closes in an emergency when the fire alarm or employee alarm system is sounded.

The final rule differs from the proposal in that it permits fire doors to remain open as long as they close automatically during an emergency. This change was made in response to comments from H. M. Bucci and the NFPA (Exs. 5–10, 18). Both pointed out that NFPA 101, Life Safety Code, permits the exception. OSHA notes that

the additional flexibility provided from this provision is in keeping with the Agency's intent in rewriting subpart E, *i.e.*, to add flexibility if it does not detract from employee safety or health and does not impose additional costs or compliance obligations.

A commenter, Dennis Kirson (Ex. 5–4), noted that the proposed provision did not provide guidance on the fire rating for fire doors opening into an exit. Such ratings are based on the purpose of the door. To be listed or approved as a fire door, the door would have to meet the fire rating set by a nationally recognized testing laboratory (see next paragraph).

Paragraph 1910.36(a)(3) (proposed paragraph 1910.36(c)), requires that each fire door, including its frame and hardware, be listed or approved by a nationally recognized testing laboratory. The International Dairy Foods Association (Ex. 5–22), suggested that OSHA include the definition of the terms "listed," "approved," and "nationally recognized testing laboratory" in the regulatory language of the final rule instead of giving a cross-reference to another section of the standards. Section 1910.7 contains what employers need to know about "listed," "approved," and "nationally recognized testing laboratory." OSHA does not agree that adding additional definitions, which are duplicated elsewhere in part 1910, to the standard would be particularly helpful. Therefore, OSHA has retained in the final rule the cross-reference to the standard containing the terms.

Two commenters (Exs. 5–10, 11) commented on OSHA's failure to address other openings in exits made for electrical and mechanical systems. One commenter (Ex. 5–11) suggested that OSHA delete the provision because it precludes the use of protected openings when such openings are necessary for certain mechanical or electrical penetrations. The other commenter (Ex. 5–10) asked OSHA to address such openings by requiring that they be sealed with an approved fire barrier sealant or fire stop. The existing rule does not contain requirements addressing such openings and, as discussed above, the purpose of the revision is not to add new requirements that would impose new obligations on employers. If an employer has these openings, OSHA notes that such openings into exits are addressed in NFPA 101. The employer may use NFPA 101–2000 for guidance even though the final rule does not address this issue.

Paragraph 1910.36(b) of the final rule, the proposal, and issue 4 in the hearing notice (at 62 FR 9403), all address the general requirement that all workplaces have at least two exit routes, as far away as practical from each other, to ensure that all employees and other building occupants can promptly and safely evacuate the workplace during an emergency. Where two are insufficient, the employer must have additional exit routes (see NFPA 101–2000 for guidance). The number of exit routes can be reduced to one where the number of employees, the size of the building, its occupancy, or the arrangement of the workplace is such that all employees would be able to evacuate safely during an emergency.

Although OSHA does not have direct authority to regulate non-employee occupants of a building, in assuring the safe evacuation of employees, the impact of other occupants in a building must be taken into consideration to assure a safe evacuation of all employees. Thus, OSHA refers to "other building occupants" generally as it does in the existing subpart E.

"As far away as practical" ("remote" in the proposal) means that exit routes must be located far enough apart so that if one exit route is blocked by fire or smoke, employees can evacuate using the second exit route. The paragraph also provides a note that employers must consider the number of employees, the size of the building, its occupancy, and the arrangement of the workplace to determine the correct number of exit routes, recommending that employers consult the NFPA 101–2000 for the number of exit routes appropriate to their particular workplace.

The provision in the final rule differs from the proposed rule in that it has been reworded to state specifically that an employer must have at least two exits (final paragraph 1910.36(b)(1)), or a sufficient number of exit routes (final paragraph 1910.36(b)(2)) to ensure that all occupants can safely and promptly leave the workplace during an emergency. An exception to the two-exit route rule is provided in those circumstances where an employer can demonstrate that the number of employees, size of the building or arrangement of the workplace is such that one exit route alone is sufficient (final paragraph 1910.36(b)(3)).

There were a number of comments on the required number of exit routes provision in the proposal (*e.g.*, Exs. 5–4, 5, 8, 11, 18, 24, 26, 40, 41, 43, 45, 47, 49, 54, 63) with many commenters suggesting that the provision be rewritten to state clearly that two exit routes are required. Commenters also suggested that OSHA more fully explain how to determine when one exit route would be permitted or suggested that this exception be eliminated (Exs. 5–4, 5, 8, 26, 40, 41, 43, 45, 49, 54, 63).

OSHA agrees with some of the commenters in part, and has made it clear that employers must have at least two exit routes, except where one exit route would be sufficient to allow all employees to evacuate the workplace safely and promptly. OSHA has added a note to the provision stating that employers may consult NFPA 101–2000 for guidance on how to determine the appropriate number of exit routes.

Other commenters suggested that the expression in proposed paragraph 1910.36(b)(2), "other means of escape * * * should be available," invited confusion, made the provision vague, and was unenforceable, and that OSHA should remove it in the final rule (Exs. 5–4, 11, 24, 40). OSHA agrees with the commenters and has eliminated the advisory wording in the final provision.

Paragraph 1910.36(c)(1) of the final rule (proposed paragraph 1910.36(f)) requires that each exit discharge lead directly outside or to a street, walkway, refuge area, public way, or open space with access to the outside. Paragraph 1910.36(c)(2) requires that the street, walkway, refuge area, public way, or open space to which an exit discharge leads must be large enough to accommodate the building occupants likely to use the exit.

Lastly, paragraph 1910.36(c)(3) (proposed paragraph 1910.36(f)(4)) requires that exit stairs that continue beyond the level on which the exit discharge is located must be interrupted at that level by doors, partitions, or other effective means to make clear the direction to go to the exit discharge. This paragraph differs from the proposed provision. It has been reworded to make it clear that where exit stairs continue beyond the level of the exit discharge, there must be some effective way to direct occupants to the exit discharge. This rewording responds to comments questioning the clarity of the provision as proposed (Exs. 5–22, 41).

A number of commenters indicated their support for allowing exit discharges to lead to a refuge area as proposed in paragraph 1910.36(f)(3) (Exs. 5–24, 29, 40, 45); they also suggested that the paragraph heading and the definition of exit route needed to be reworded to reflect the acceptability of refuge areas. The American Petroleum Institute remarked:

> Section 1910.35(b)(2) should be revised to clarify that an exit route does not necessarily lead to the outside but could lead to a refuge area * * *.

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As currently written, section 1910.35(b)(2) incorrectly defines an 'exit route' as a means of travel to safety 'outside' and further states that one part of an 'exit route' is the way from the exit to the 'outside.' is incorrectly misleads users into thinking that the only endpoint for an exit route is outside.

Similarly, the heading of section 1910.36(f) incorrectly states that an exit must lead to the outside. This heading should be amended to include the endpoint of a refuge area. Organization Resources Counselors, Inc. (5–45, p. 3) stated that it "agrees that the concept of refuge areas is one that should be adopted by OSHA."

In response to the comments, OSHA has revised the definition of exit route (paragraph 1910.34(c) of the final rule) to reflect the acceptability of refuge areas. Also, the heading to paragraph 1910.36(f) of the proposal, "An Exit Must Lead Outside," has been changed to "Exit Discharge" in final rule paragraph 1910.36(c).

Paragraphs 1910.36(d)(1), (2), and (3) of the final rule (proposed as paragraph 1910.36(g)), address locking exit route doors. Paragraph 1910.36(d)(1) specifies that employees must be able to open an exit route door from the inside at all times without keys, tools, or special knowledge. Devices that only lock from the outside at the exit discharge door, such as panic bars, are permitted. Paragraph 1910.36(d)(2) specifies that exit route doors must be free of any device or alarm that could restrict emergency use of the exit route if the device or alarm fails. Finally, paragraph 1910.36(d)(3) of the final rule states that in mental, penal or correctional facilities, an exit route door may be locked from the inside if supervisory personnel are continuously on duty and the employer has a plan to remove occupants from the facility during an emergency.

The final rule requirements on locking exit doors are essentially those in the proposal, except that the provisions are now located in paragraph 1910.36(d) in the final rule (instead of paragraph 1910.36(g) in the proposal). There were three comments on the proposal addressing locking exit doors. Commenter Dennis Kirson (Ex. 5–4) suggested that OSHA delete the sentence "A device that locks from the outside such as a panic bar is permitted because," he said, "it deals with ingress (to be locked out) rather than egress (to be locked in), it serves no purpose." Mr. Kirson further noted that this sentence did not modify the first sentence. OSHA has not made the suggested change because to avoid any misunderstandings it believes that the rule should include specific language to indicate what is acceptable. The Agency believes it is necessary in this context to state what is permitted along with what is not permitted, because of the widespread use of panic bars. The commenter also suggested OSHA delete the reference to mental, penal, or correctional institutions because they did not appear to fit the definition of general industry worksites. OSHA has not made the suggested change because such institutions are indeed "general industry" establishments and employees in these establishments are afforded the same protections as employees in other general industry workplaces. In recognition of the unique problems these institutions have with regard to the need to ensure occupants remain inside the facilities, OSHA is providing specific language to indicate clearly the performance to be achieved at these worksites.

Another commenter, the Department of Energy (Ex. 5–11), suggested that this last provision should also reflect national security at Federal locations and that OSHA should add "or other facility requiring security from unauthorized access." While OSHA does not disagree with the commenter, it has not made the suggested change because the inclusion of this additional language is beyond the stated scope of this proceeding. However the Agency will consider adding the suggested language in the future when substantive revisions are made to this subpart.

Paragraph 1910.36(e) (proposed paragraph 1910.36(h)), sets out requirements for doors leading to an exit route. The paragraph requires that a side-hinged door must be used to connect any room to an exit route and that the door that connects any room to an exit route must swing out in the direction of exit travel if the room is designed to be occupied by more than 50 people or if the room is used as a high hazard area (*i.e.*, contains contents that are likely to burn with extreme rapidity or explode).

The final rule provision in paragraph 1910.36(e) is essentially the same as the proposed provision (paragraph 1910.36(h) in the proposal) with minor reorganizing to emphasize the requirements of the provisions. OSHA has divided the paragraph into two concise paragraphs in the final rule, paragraphs 1910.36(e)(1) and (2). Two commenters recommended changing the language of the proposed provision that required exit doors "swing out." Mr. Dennis Kirson (Ex. 5–4) suggested adding an exception to the provision that doors swing out, to allow for containment of hazardous materials, because of the greater hazard (to the public) of loss of containment of such materials. Such a change is beyond the scope of this project but the Agency may consider such a change as part of a future rulemaking. Tenneco (Ex. 5–41) suggested the phrase be changed to "swing with the exit travel" for further clarity. OSHA has revised the provision to incorporate the recommended change.

Eastman Kodak Company (Ex. 5–21) asked if security pass-through gates/turnstiles that free wheel when an alarm goes off would be considered an exit. Another commenter (Ex. 5–18) suggested that sliding doors be acceptable to OSHA if their operation is maintained to NFPA 101 specifications. The commenter noted that the current code (at that time NFPA 101–1994) allows vertical and sliding doors. OSHA has not modified the provision to address sliding doors or turnstiles because it would be a substantive change to the Exit Routes standard. However, these configurations are addressed in NFPA 101–2000. Employers who comply with that standard for the requirements concerning gates, turnstiles, and vertical or sliding doors, will be deemed to comply with this provision of subpart E.

Final rule paragraph 1910.36(f) (proposed paragraph 1910.36(i)) and issue 4 in the hearing notice (at 62 FR 9403)), address the required capacity for exit routes. The paragraph requires that exit routes be able to support the maximum permitted occupant load for each floor served by the exit routes, and that the capacity of exit routes may not decrease in the direction of exit route travel to the exit discharge.

OSHA has divided this proposed provision into two provisions in the final rule. The Agency has also made an editorial change in response to a concern raised by the Tennessee Valley Authority (TVA) (Ex. 5–47). TVA pointed out that in the existing standard, each exit route does not have to support the maximum permitted occupant load; rather, the existing standard requires that the combined capacity of the exits must support the maximum permitted occupant load for that floor. OSHA agrees with the commenter and has revised final paragraph 1910.36(f) accordingly.

Several commenters (Exs. 5–14, 36) expressed concerns about how to determine adequate capacity or the expected occupancy load for each floor. Argonne National Laboratory (Ex. 5–14) suggested that OSHA adopt the latest NFPA 101 to determine "whether or not adequate exiting capacity is provided from an area." Another commenter, Mr. Donald R. Delano (Ex. 5–36), suggested that OSHA define "maximum permitted occupant load" and "expected occupant load." IMC Global, Inc. (Ex. 5–54) asked that OSHA define "occupant load." In response to these comments OSHA has added a definition for the term "occupant load" and explained generally how to calculate the occupant load in the definition. The calculation can be done in accordance with NFPA 101–2000, since there are a wide variety of general industry occupancies which may be subject to different considerations.

Final rule paragraph 1910.36(g) (proposed paragraph 1910.36(j)) addresses the height and width requirements for exit routes and specifies that the ceiling of an exit route must be at least seven feet six inches (2.3 m) high. The paragraph specifies that any projection from the ceiling cannot decrease the space between the projection and the floor to less than six feet eight inches (2.0 m). Paragraph 1910.36(g) also specifies that the width of an exit access must be at least 28 inches (71.1 cm) wide at all points and that where a single way of exit access leads to an exit, its width must be at least equal to the width of the exit to which it leads.

Final paragraph 1910.36(g) also specifies that the width of an exit route must be sufficient to accommodate the maximum permitted occupant load of each floor served by the exit route. Lastly, the paragraph specifies that any objects that project into the exit route must not reduce the width of the exit route to less than the minimum width requirements for exit routes.

Paragraphs 1910.36(h)(1) through (4) (proposed paragraphs 1910.36(k)(1)(i) through (iv)), set out special requirements for exit routes that are outside of a building. The paragraphs require that each outdoor exit route must meet the minimum height and width requirements for indoor exit routes and must also meet certain other requirements. Specifically, (1) an outdoor exit route must have guardrails to protect unenclosed sides if a fall hazard exists; (2) an outdoor exit route must be covered if snow or ice is likely to accumulate along the route, unless the employer can demonstrate that any snow or ice accumulation will be removed before it presents a slipping hazard; (3) an outdoor exit route must be reasonably straight and have smooth, solid, substantially level walkways; and (4) an outdoor exit route must not have a dead-end that is longer than 20 feet (6.2 m).

Several commenters addressed this paragraph. Two commenters (Exs. 5–29, 40) suggested adding the wording "if a fall hazard exists" to the requirement for guardrails. OSHA agrees that guardrails only need to protect unenclosed sides if a fall hazard exists. One commenter (Ex. 5–10) suggested that the Agency use a 50 foot dead-end rather than a 20 foot dead-end. This would be a significant change and appears to be a decrease in safety to employees during emergencies and therefore OSHA has not changed the length of a dead-end. Other changes to these provisions are editorial only.

Section 1910.37, Maintenance, Safeguards, and Operational Features for Exit Routes

OSHA proposed in § 1910.37 to include provisions covering the operation and maintenance of exit routes. OSHA has expanded the name from the proposal's "Operation and Maintenance Requirements for Exit Routes" to better reflect its contents. In the final rule, § 1910.37 is entitled "Maintenance, safeguards, and operational features for exit routes." Provisions of this section include the safe use of exit routes during an emergency, lighting and marking exit routes, fire retardant paints, exit routes during construction, repairs, or alterations, and employee alarm systems.

OSHA has made several changes to paragraph 1910.37(a) of the proposed rule, by combining related provisions. In the final rule, paragraph 1910.37(a) remains titled "The Danger To Employees Must Be Minimized" and addresses furnishings and decorations (proposed paragraph 1910.37(a)(2)), travel toward a high hazard area (proposed paragraph 1910.37(a)(3)), unobstructed access to exit routes (proposed paragraph 1910.36(e)), and properly operating safeguards designed to protect employees (proposed paragraphs 1910.37(a) and 1910.37(e)). Minor editorial changes have been made to these paragraphs, with the exception that final paragraph 1910.37(a)(2) has been modified because commenters found the requirement confusing (Exs. 5–5, 18, 26, 63). This confusion resulted from OSHA's use of the terminology "An exit route must not require employees to travel toward materials that burn very quickly, emit poisonous fumes, or are explosive." OSHA has modified the language to more closely reflect the current subpart E language: "Exit routes must be arranged so that employees will not have to travel toward a high hazard area, unless the path of travel is effectively shielded from the high hazard area by suitable partitions or other physical barriers." In addition, OSHA added a definition for "high hazard area" to the final rule's definition section, 1910.34. The new definition is from NFPA–101 with slight editorial changes.

In the proposal, paragraph 1910.37(b) required that exit route lighting be adequate, and paragraph 1910.37(c) required that exits be marked appropriately. OSHA has combined these paragraphs into paragraph 1910.37(b) in the final rule, in part because the provisions are closely related and the Agency believes that the standard will be easier to understand and use if all the requirements covering lighting and marking of exit routes are arranged together. The content of these paragraphs remains virtually the same in the final rule except for editorial clarifications (*e.g.*, "lighted" instead of "illuminated") and the addition of specifications (issue 5 in the hearing notice at 62 FR 9403) for exit signs in response to comments (*e.g.*, Exs. 5–4, 14, 18, 21, 43, 54). OSHA believes that these changes will enable employers and employees to have better and clearer information concerning the requirements for exit routes.

Issue 6 in the hearing notice (62 FR at 9403) asked whether the proposed requirements for exit lighting were too general. Some commenters objected to OSHA's use of the word "adequate" to describe the required amount of lighting in exit routes (Exs. 5–4, 18, 19, 22, 54, 57, 63, 64). (Issue 6 in the hearing notice at 62 FR 9403.) OSHA's current subpart E uses the term "adequate" (existing paragraph 1910.36(b)(6)); OSHA did not revise the word "adequate" in the proposal because specifying a level of lighting could be viewed as a substantive change. However, OSHA has clarified in the final rule (paragraph 1910.37(b)(1)), to make it clear and performance-oriented. The revised provision requires that employees with normal vision be able to see their way along an exit route. Therefore, OSHA has retained the word "adequate" but clarified its meaning in the final rule. Employers and employees can refer to NFPA 101–2000 for more detailed guidance.

Final paragraph 1910.37(b)(4) (proposed paragraphs 1910.37(c)(3) and (c)(4)), addresses the marking of the direction of travel to an exit. Signs would be redundant where the direction of travel is apparent. Therefore, OSHA has added the existing subpart E language to the final rule "where the direction of travel to the nearest exit is not immediately apparent" because such signs are needed only in that situation (Exs. 5–4, 14, 21, 64).

Final paragraph 1910.37(b)(5) (proposed paragraph 1910.37(c)(5)), requires that doors that could be mistaken for exit doors must be marked

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to indicate the actual use of the door. In the proposal, OSHA required the use of the term "Not an Exit" on such doors. Doing so eliminated the provision's performance nature. In the final rule OSHA has added the language currently found in subpart E (paragraph 1910.37(q)(2)) ("'Not an Exit" or similar designation"). This change allows employers to comply with the current OSHA language or the NFPA language. (*E.g.*, Exs. 5–14, 36).

In final paragraph 1910.37(b)(6) (proposed paragraph 1910.37(c)(6)), OSHA has restored the language from subpart E referring to the color of exit signs. In the proposal OSHA stated "An exit sign must show a designated color." OSHA has changed the language back to the current subpart E language, "distinctive in color" (paragraph 1910.37(q)(4)) at the request of several commenters (Exs. 5–30, 41). OSHA does not believe that the proposed language improved the provision and has accordingly changed it back to existing subpart E as recommended by commenters. This paragraph also retains the use of "electroluminescent" and "self-luminous" signs and has defined the terms in the definition section (§ 1910.34).

Paragraph 1910.37(b)(7) of the final rule was not in the proposed rule. OSHA proposed to delete the following requirement from current subpart E (paragraph 1910.37(q)(8)) "Every exit sign shall have the word 'Exit' in plainly legible letters not less than 6 inches high, with the principal strokes of letters not less than three-fourths-inch wide." The Agency believed that this requirement could be handled without specifications (issue 5 in the hearing notice at 62 FR 9403). Commenters disagreed and suggested that the current exit sign dimensions also be included in the final rule. For example, Donald R. Delano, P.E., (Ex. 5–36, p. 3) remarked:

> Deletion of reference to design parameters for exit signs leaves no adequate frame of reference. Exit signs need to be of a minimum size and design, just as a national standard exists for a highway STOP sign.

Further, Tenneco Newport News Shipbuilding (NNS, Ex. 5–41, p.2) stated:

> The exit signs as dictated by the current standard have become traditional and easily recognized by the general public. An employer's interpretation of 'clearly visible' may not create an *easily recognized* sign. Therefore, *in an emergency* the lack of the traditional and consistent format may be detrimental. NNS suggests that the text from the current standard stay in effect.

(*See also* Exs. 5–5, 14, 18, 31, 39, 63.) OSHA agrees with these commenters and has included in the final rule new paragraph 1910.37(b)(7) specifying the height and stroke width of exit signs (as it appears in the existing subpart E, paragraph 1910.37(q)(8)).

Final paragraph 1910.37(c) (proposed paragraph 1910.37(d)), addresses the upkeep of fire-retardant properties of paints or solutions used in the workplace that might impact the safety of an exit route. In the proposal, OSHA stated that an employer must maintain the fire retardant properties of paints or other coatings used in the workplace. Commenters suggested that OSHA return to the existing subpart E language because the proposed language is vague and harder to understand than the existing language (*e.g.*, Exs. 5–4, 18, 21, 43, 54). OSHA believes the language in the final rule has been made clearer by returning to the subpart E language fire-retardant paints or "solutions," rather than "coatings." OSHA has further clarified the requirement by specifying that paints or solutions used in an exit route must be renewed as often as necessary to maintain the necessary flame retardant properties.

Final paragraph 1910.37(d) (proposed paragraph 1910.37(f)) addresses the maintenance of exit routes during construction, repairs, or alterations. "Alterations" were not included in the heading of the proposed provision; however, in the final rule, the heading has been modified to include "alterations." Both the proposal and final rule include the word "alterations" in the regulatory text.

The first paragraph concerning new construction remains the same as proposed and is now paragraph 1910.37(d)(1). Minor editorial changes have been made to final paragraph 1910.37(d)(2) that address repairs and alterations. Final paragraph 1910.37(d)(3) concerning flammable and explosive substances or equipment used during construction, repairs, or alterations, remains the same as proposed except for some minor changes. As discussed above OSHA has added the word "alterations" to the proposed language. In addition, the Agency returned to the use of "substances" instead of "materials." Finally, OSHA has added "equipment" to the paragraph. The words "substances" and "equipment" are in the present subpart E requirement (paragraph 1910.37(c)(3)) but were inadvertently left out of the proposal. OSHA has changed the proposed language "flammable or explosive materials used during construction or repair must not expose employees to hazards * * *" to "Employees must not be exposed to hazards of flammable or explosive substances or equipment used during construction, repairs, or alterations, that are beyond the normal permissible conditions in the workplace * * *."

Final rule paragraph 1910.37(e) (proposed paragraph 1910.37(g)), requires the installation and maintenance of an employee alarm system meeting § 1910.165, unless employees can promptly see or smell a fire or other hazard. This requirement remains unchanged from the proposed rule.

Section 1910.38, Emergency Action Plans, and Section 1910.39, Fire Prevention Plans

In the final rule, OSHA has retained the separate sections for emergency action plans and fire prevention plans, §§ 1910.38 and 1910.39 respectively. OSHA believes it is clearer for the plans and their requirements to be contained in separate sections. Because commenters tended to address both plans at the same time in their comments or their comments were quite similar about the plans, OSHA is discussing them together.

Final paragraph 1910.38(a) states that an emergency action plan is required, and final paragraph 1910.39(a) states that a fire prevention plan is required, when an OSHA standard requires such a plan. A number of commenters (Exs. 5–14, 20, 21, 23, 40, 49) recommended that OSHA include a listing of all OSHA standards that require an emergency action plan or a fire prevention plan. The Agency considered modifying the appendix to add a list of such standards. Instead, OSHA has issued a Compliance Directive that contains a list of current OSHA standards that require emergency action plans or fire prevention plans. The Agency has included this information in a Compliance Directive instead of an appendix to the standard because it is easier to amend the Compliance Directive as needed to keep it current.

For informational purposes, OSHA has identified the following general industry standards that require an emergency action plan or a fire prevention plan.

1. Process Safety Management of Highly Hazardous Chemicals, paragraph 1910.119(n), emergency action plan.

2. Hazardous Waste Operations and Emergency Response, paragraphs 1910.120(l)(1)(ii), (p)(8)(i), (q)(1), and (q)(11)(ii), emergency action plan.

3. Portable Fire Extinguishers, paragraphs 1910.157(a) and (b)(1), emergency action plan and fire prevention plan.

4. Grain Handling Facilities, paragraph 1910.272(d), emergency action plan.

5. Ethylene Oxide, paragraph 1910.1047(h)(1)(iii), emergency action plan and fire prevention plan.

6. Methylenedianiline, paragraph 1910.1050(d)(1)(iii), emergency action plan and fire prevention plan.

7. 1,3-Butadiene, paragraph 1910.1051(j), emergency action plan and fire prevention plan.

Final paragraph 1910.38(b) and paragraph 1910.39(b) address written emergency action plans and fire prevention plans respectively. They require that the plans must be in writing and available; and for employers with 10 or fewer employees the plan may be transmitted orally rather than in writing. In the final rule, proposed paragraphs 1910.38(a)(2) and (a)(3) are combined into one paragraph, 1910.38(b), and proposed paragraphs 1910.39(a)(2) and (a)(3) become final paragraph 1910.39(b). Combining these paragraphs involved some minor editorial changes.

The Department of Energy (Ex. 5–11, p. 2) suggested that plans should be communicated orally to a "limited number" of employees rather than the 10 or fewer required by OSHA because the intent would be better served by not using an arbitrary number. OSHA disagrees with this suggestion. Since their promulgation in 1980, the emergency action plan and the fire prevention plan have used 10 as a reasonable number of employees for a plan to be communicated orally.

The International Brotherhood of Teamsters (IBT) (Ex. 5–31, p. 6) did not agree with the language in proposed paragraph 1910.38(a)(2) and paragraph 1910.39(a)(2), which stated that "the plan must be made available to employees on request." IBT asked the Agency to use the current language of subpart E, requiring the plans "be available for employees to review." The IBT believed the proposed language added an obstacle to employees by making them request to see the plan. OSHA agrees; in the proposal it had inadvertently changed the language from the current subpart E. OSHA fully believes that the plan should be available for employee review and in the final rule the language reflects this intent.

OSHA has reordered final paragraph 1910.38(c), containing the elements of an emergency action plan, to better reflect the order of an emergency response. Final paragraph 1910.38(c)(1) (proposed paragraph 1910.38(b)(3)) requires that the plan include procedures for reporting a fire or other emergency. OSHA believes reporting a fire or other emergency should be the first thing done in an emergency. The rest of the elements remain in the same order.

Final paragraphs 1910.38(c)(2), (3), and (4) remain for the most part the same as the proposed paragraphs—procedures for evacuation and exit route assignments, procedures to be followed by employees who remain to operate critical plant operations before they evacuate, and procedures to account for all employees after evacuation.

Final paragraph 1910.38(c)(3) concerning emergency operations or shutdown of plant equipment during an emergency has been changed back to the current subpart E language. This was done to clarify that this element of the plan does not apply to all employees and all plants, only to those plants that use employees for these emergency or shutdown procedures (Exs. 5–4, 18, 54).

Eastman Kodak Company (Ex. 5–21, p.3) suggested that OSHA delete the wording that addresses accounting for employees (final paragraph 1910.38(c)(4)):

> • Procedures to assure that the fire area is clear of employees, visitors and contractors. Expectations to track employees such as maintenance personnel, service providers, or engineers is very burdensome. In today's work environment many transient employees work in multiple locations making it difficult to track who will be in any work area in an emergency. Hence, many emergency plans require the use of trained searchers to assure that the area being evacuated is clear of all personnel regardless of their normal work locations.

OSHA disagrees with this commenter and believes that accounting for employees after an emergency is critically important information to rescuers. Employees could, for example, be assigned designated locations away from the facility at which to meet.

In final paragraph 1910.38(c)(5), which requires that the plan include procedures for rescue or medical duties, OSHA has added language to clarify that the requirements only apply to those employees who will be performing such duties. This language parallels more closely the current subpart E language (paragraph 1910.38(a)(2)(iv)). The Agency has also changed "rescue and medical duties" in the proposal to "rescue *or* medical duties" (emphasis added) since employees may do one or the other but not necessarily both.

Final paragraph 1910.38(c)(6), which addresses names or job titles of employees to be contacted for more information or for an explanation of duties, has been revised from the proposal and is closer to the current language in subpart E (paragraph 1910.38(a)(2)(vi)). The change clarifies the requirement.

A few commenters (*e.g.*, Ex. 5–4) contended that proposed paragraphs 1910.38(d) and 1910.37(g), are redundant. However, while both paragraphs require alarm systems, the two provisions are different. Proposed paragraph 1910.37(g) (paragraph 1910.37(e) in the final rule) requires that an employee alarm system be installed and maintained, unless employees can promptly see or smell a fire or other hazard. It applies regardless of whether the employer must have an emergency action plan. Paragraph 1910.38(d) requires that employers have and maintain an alarm system when an employer is required to have an emergency action plan by another OSHA standard. That alarm system must be provided even if employees can promptly see or smell a fire or other hazard. These paragraphs remain the same as proposed in the final rule.

Final paragraph 1910.38(e), regarding training of designated employees to assist in a safe and orderly evacuation of other employees, remains as proposed except for minor reorganization.

Final paragraph 1910.38(f) (proposed paragraph 1910.38(e)) requires that employers review the emergency action plan with each employee when the plan is developed or the employee is assigned initially to a job, when responsibility under the plan changes or the plan changes. Only minor editorial changes have been made to the final provision.

With regard to 29 CFR 1910.39, fire prevention plans, final paragraph 1910.39(c) (proposed paragraph 1910.39(b)) remains the same as proposed. Few comments were received with respect to the elements of the fire prevention plan.

Final rule paragraph 1910.39(d) (proposed rule paragraph 1910.39(c)) requires employers to inform employees of workplace fire hazards and review those parts of the fire prevention plan necessary for the employee's self-protection. Only minor editorial changes were made to this paragraph.

Miscellaneous Changes

OSHA is also amending the sections listed in the preamble's discussion of 1910.38 and 1910.39 above (*e.g.*, 29 CFR 1910.120, 1910.157, etc.). These changes are necessary to conform with new section and paragraph designations for Emergency Action Plans and Fire Protection Plans found in this revised subpart E.

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Other Hearing Issues

As discussed earlier in this preamble, OSHA asked a series of questions in its hearing notice (62 FR 9402). To the extent possible, OSHA has included the questions with the pertinent discussions in the preamble. For example, the use of performance-oriented language in the proposal was discussed earlier in this preamble (issue 3). "Are terms too technical" (issue 7) was discussed by commenters addressing the definitions of the standard or when commenters identified unclear language. However, some of the issues raised in the questions were more general and the vast majority of commenters did not definitively respond to these questions. These issues were numbered 3, 7, 8, 9, and 10 in the hearing notice (62 FR at 9403), and they asked: Would performance-oriented standards create compliance problems; are there terms that might be too technical; whether the revision imposes additional obligations; whether any requirements result in greater safety; and whether any requirements present technical feasibility problems. The questions raised in the hearing notice were intended to assure that various aspects of the proposal were fully considered. Some commenters addressed the issues through their comments regarding specific provisions of the proposal and did not respond to the questions specifically set forth in the hearing notice. To the extent that interested persons commented on these issues, OSHA has responded to these comments in the context of specific provisions of the proposed rule.

III. Legal Considerations

Because the final rule is only a plain language redrafting of a former Agency subpart, it is not necessary to determine significant risk or the extent to which the final rule reduces that risk. As noted above, most of the provisions of subpart E were adopted under section 6(a) of the Occupational Safety and Health Act, which gave the Secretary of Labor the authority, for a limited period of time, to adopt as occupational safety and health standards any established Federal Standard or national consensus standards unless the promulgation of such a standard would not result in improved safety and health for designated employees. By including section 6(a) in the OSH Act, Congress implicitly found that the promulgation of occupational safety and health standards was reasonably necessary or appropriate to provide safe or healthful employment and places of employment. In *Industrial Union Department, AFL–CIO* v. *American Petroleum Institute*, 448 U.S. 607 (1980), the Supreme Court ruled that before OSHA can increase the protection afforded by a standard, the Agency must find that the hazard being regulated poses a significant risk to employees and that a new, more protective standard is "reasonably necessary and appropriate" to reduce that risk. The final rule that replaces the Agency's former rules regulating means of egress, emergency action plans, and fire prevention plans does not directly increase or decrease the protection afforded to employees, nor does it increase employers' compliance obligations. Therefore, no finding of significant risk is necessary.

The Agency believes, however, that improved employee protection is likely to result from promulgation of the final rule because employers and employees who clearly understand a rule's requirements are more likely to comply with that rule. In addition, employers may find it easier to comply with the final rule because the final rule is more performance-oriented than the former rule.

IV. Economic Analysis

This final rule has been designated as significant and reviewed by the Office of Management and Budget under Executive Order 12866. It is not an economically significant rule under Executive Order 12866 or a major rule under the Unfunded Mandates Reform Act or section 801 of the Small Business Regulatory Enforcement Fairness Act (SBREFA). The final rule imposes no additional costs on any private or public sector entity and does not meet any of the criteria for an economically significant or major rule specified by the Executive Order or the other statutes. Certain provisions of the rule that add flexibility, such as permitting fire doors to remain open as long as they close automatically during an emergency and modifying the definition of exit route to reflect the acceptability of refuge areas, may even reduce costs for employers. Because the rule does not impose any additional costs on employers for exit routes, emergency action plans, and fire prevention plans, no economic or regulatory flexibility analysis of the final rule is required.

V. Regulatory Flexibility Certification

In accord with the Regulatory Flexibility act, 5 U.S.C. 601 *et seq.* (as amended), OSHA has examined the regulatory requirements of the final rule to determine if it will have a significant economic effect on a substantial number of small entities. As indicated in the previous section of this preamble, the final rule does not increase employers' compliance costs, and may even reduce the regulatory burden on all affected employers, both large and small. Accordingly, the Agency certifies that the final rule does not have a significant economic effect on a substantial number of small entities.

VI. Environmental Impact Assessment

OSHA has reviewed the final rule in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*), of the Council on Environmental Quality regulations (40 U.S.C. part 1500 *et seq.*), and the Department of Labor's NEPA regulations (29 CFR part 11). As noted earlier in this preamble, the final rule imposes the same requirements on employers as the standards it replaces. Consequently, the final rule has no additional impact beyond the impact imposed by OSHA's former standards for means of egress on the environment, including no impact on the release of materials that contaminate natural resources or the environment.

VII. Paperwork Reduction Act

The final rule contains no information collection requirements (paperwork) that are subject to the Paperwork Reduction Act. Therefore, approval under the Paperwork Reduction Act is unnecessary.

VIII. Unfunded Mandates

For the purposes of the Unfunded Mandates Reform Act of 1995, this rule does not include any Federal mandate that may result in increased expenditures by State, local, and tribal governments, or increased expenditures by the private sector of more than $100 million in any year.

IX. Federalism

OSHA has reviewed this final rule in accordance with the Executive Order on Federalism (Executive Order 13132, 64 FR 43255) which requires that agencies, to the extent possible, refrain from limiting state policy options, consult with states prior to taking any actions that would restrict state policy options, and take such actions only when there is clear constitutional authority and the presence of a problem of national scope. The Order provides for preemption of State law only if there is a clear Congressional intent for the Agency to do so. Any such preemption is to be limited to the extent possible.

Section 18 of the Occupational Safety and Health (OSH) Act (29 U.S.C. 651 *et seq.*) expresses Congress' intent to preempt state laws where OSHA has promulgated occupational safety and health standards. Under the OSH Act, a state can avoid preemption on issues covered by Federal standards only if it submits, and obtains Federal approval of, a plan for the development of such standards and their enforcement (State-Plan state). 29 U.S.C. 667. Occupational safety and health standards developed by such State-Plan states must, among other things, be at least as effective in providing safe and healthful employment and places of employment as the Federal standards. Subject to these requirements, State-Plan states are free to develop and enforce their own requirements for exit routes, emergency action plans, and fire prevention plans. Having already adopted OSHA's former standards on means of egress, emergency action plans, and fire prevention plans, (or having developed alternative standards acceptable to OSHA), State-Plan states are not obligated to adopt the final rule; they may, however, choose to adopt the final rule, and OSHA encourages them to do so.

Although Congress has expressed a clear intent for OSHA standards to preempt State job safety and health rules in areas involving the safety and health rules of employees, this rule nevertheless limits State policy options to a minimal extent.

OSHA concludes that this action does not significantly limit State policy options.

X. State Plan States

OSHA encourages the 26 States and Territories with their own OSHA-approved occupational safety and health plans to revise their standards regulating means of egress, emergency action plans, and fire prevention plans according to the final rule that resulted from this rulemaking. These states include Alaska, Arizona, California, Connecticut (state and local government employees only), Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Jersey (state and local government employees only), New Mexico, New York (state and local government employees only), North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Virgin Islands, Washington, and Wyoming.

List of Subjects in 29 CFR 1910

Means of egress, Exit, Exit route, Emergency action plan, Fire prevention, Occupational safety and health, Reporting and recordkeeping, Signs and symbols.

XI. Authority and Signature

This document was prepared under the direction of John L. Henshaw, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Authority: Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 3–2000 (65 FR 50017) and 29 CFR part 1911.

Signed in Washington, DC, this 21st day of October, 2002.

John L. Henshaw,

Assistant Secretary of Labor.

OSHA amends 29 CFR part 1910 as follows:

PART 1910—OCCUPATIONAL SAFETY AND HEALTH STANDARDS

1. The authority citation for subpart E of part 1910 is revised to read as follows:

Authority: Secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order Nos. 12–71 (36 FR 8754), (8–76 41 FR 25059), 9–83 (48 FR 35736) or 1–90 (55 FR 9033), 6–96 (62 FR 111), or 3–2000 (65 FR 50017), as applicable.

2.a. In subpart E, §§ 1910.33, 1910.34, and 1910.39 are added, and §§ 1910.35 through 1910.38 are revised.

b. In the appendix to subpart E to part 1910, the heading is revised, and in the third sentence of section 1, "in paragraph 1910.38(a)(2)" is revised to read "in paragraph 1910.38(c)".

The added and revised text is set forth as follows:

Subpart E—Exit Routes, Emergency Action Plans, and Fire Prevention Plans

§ 1910.33 Table of contents.

This section lists the sections and paragraph headings contained in §§ 1910.34 through 1910.39.

§ 1910.34 Coverage and definitions.
(a) Every employer is covered.
(b) Exit routes are covered.
(c) Definitions.
§ 1910.35 Compliance with NFPA 101–2000, Life Safety Code.
§ 1910.36 Design and construction requirements for exit routes.
(a) Basic requirements.
(b) The number of exit routes must be adequate.
(c) Exit discharge.
(d) An exit door must be unlocked.
(e) A side-hinged exit door must be used.
(f) The capacity of an exit route must be adequate.
(g) An exit route must meet minimum height and width requirements.
(h) An outdoor exit route is permitted.
§ 1910.37 Maintenance, safeguards, and operational features for exit routes.
(a) The danger to employees must be minimized.
(b) Lighting and marking must be adequate and appropriate.
(c) The fire retardant properties of paints or solutions must be maintained.
(d) Exit routes must be maintained during construction, repairs, or alterations.
(e) An employee alarm system must be operable.
§ 1910.38 Emergency action plans.
(a) Application.
(b) Written and oral emergency action plans.
(c) Minimum elements of an emergency action plan.
(d) Employee alarm system.
(e) Training.
(f) Review of emergency action plan.
§ 1910.39 Fire prevention plans.
(a) Application.
(b) Written and oral fire prevention plans.
(c) Minimum elements of a fire prevention plan.
(d) Employee information.

§ 1910.34 Coverage and definitions.

(a) *Every employer is covered.* Sections 1910.34 through 1910.39 apply to workplaces in general industry except mobile workplaces such as vehicles or vessels.

(b) *Exits routes are covered.* The rules in §§ 1910.34 through 1910.39 cover the minimum requirements for exit routes that employers must provide in their workplace so that employees may evacuate the workplace safely during an emergency. Sections 1910.34 through 1910.39 also cover the minimum requirements for emergency action plans and fire prevention plans.

(c) *Definitions.*

Electroluminescent means a light-emitting capacitor. Alternating current excites phosphor atoms when placed between the electrically conductive surfaces to produce light. This light source is typically contained inside the device.

Exit means that portion of an exit route that is generally separated from other areas to provide a protected way of travel to the exit discharge. An example of an exit is a two-hour fire resistance-rated enclosed stairway that leads from the fifth floor of an office building to the outside of the building.

Exit access means that portion of an exit route that leads to an exit. An example of an exit access is a corridor on the fifth floor of an office building that leads to a two-hour fire resistance-rated enclosed stairway (the Exit).

Exit discharge means the part of the exit route that leads directly outside or to a street, walkway, refuge area, public way, or open space with access to the outside. An example of an exit

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discharge is a door at the bottom of a two-hour fire resistance-rated enclosed stairway that discharges to a place of safety outside the building.

Exit route means a continuous and unobstructed path of exit travel from any point within a workplace to a place of safety (including refuge areas). An exit route consists of three parts: The exit access; the exit; and, the exit discharge. (An exit route includes all vertical and horizontal areas along the route.)

High hazard area means an area inside a workplace in which operations include high hazard materials, processes, or contents.

Occupant load means the total number of persons that may occupy a workplace or portion of a workplace at any one time. The occupant load of a workplace is calculated by dividing the gross floor area of the workplace or portion of a workplace by the occupant load factor for that particular type of workplace occupancy. Information regarding "Occupant load" is located in NFPA 101–2000, Life Safety Code.

Refuge area means either:

(1) A space along an exit route that is protected from the effects of fire by separation from other spaces within the building by a barrier with at least a one-hour fire resistance-rating; or

(2) A floor with at least two spaces, separated from each other by smoke-resistant partitions, in a building protected throughout by an automatic sprinkler system that complies with § 1910.159 of this part.

Self-luminous means a light source that is illuminated by a self-contained power source (*e.g.*, tritium) and that operates independently from external power sources. Batteries are not acceptable self-contained power sources. The light source is typically contained inside the device.

§ 1910.35 Compliance with NFPA 101–2000, Life Safety Code.

An employer who demonstrates compliance with the exit route provisions of NFPA 101–2000, the Life Safety Code, will be deemed to be in compliance with the corresponding requirements in §§ 1910.34, 1910.36, and 1910.37.

§ 1910.36 Design and construction requirements for exit routes.

(a) *Basic requirements.* Exit routes must meet the following design and construction requirements: (1) *An exit route must be permanent.* Each exit route must be a permanent part of the workplace.

(2) *An exit must be separated by fire resistant materials.* Construction materials used to separate an exit from other parts of the workplace must have a one-hour fire resistance-rating if the exit connects three or fewer stories and a two-hour fire resistance-rating if the exit connects four or more stories.

(3) *Openings into an exit must be limited.* An exit is permitted to have only those openings necessary to allow access to the exit from occupied areas of the workplace, or to the exit discharge. An opening into an exit must be protected by a self-closing fire door that remains closed or automatically closes in an emergency upon the sounding of a fire alarm or employee alarm system. Each fire door, including its frame and hardware, must be listed or approved by a nationally recognized testing laboratory. Section 1910.155(c)(3)(iv)(A) of this part defines "listed" and § 1910.7 of this part defines a "nationally recognized testing laboratory."

(b) *The number of exit routes must be adequate.* (1) *Two exit routes.* At least two exit routes must be available in a workplace to permit prompt evacuation of employees and other building occupants during an emergency, except as allowed in paragraph (b)(3) of this section. The exit routes must be located as far away as practical from each other so that if one exit route is blocked by fire or smoke, employees can evacuate using the second exit route.

(2) *More than two exit routes.* More than two exit routes must be available in a workplace if the number of employees, the size of the building, its occupancy, or the arrangement of the workplace is such that all employees would not be able to evacuate safely during an emergency.

(3) *A single exit route.* A single exit route is permitted where the number of employees, the size of the building, its occupancy, or the arrangement of the workplace is such that all employees would be able to evacuate safely during an emergency.

Note to paragraph 1910.36(b): For assistance in determining the number of exit routes necessary for your workplace, consult NFPA 101–2000, Life Safety Code.

(c) *Exit discharge.* (1) Each exit discharge must lead directly outside or to a street, walkway, refuge area, public way, or open space with access to the outside.

(2) The street, walkway, refuge area, public way, or open space to which an exit discharge leads must be large enough to accommodate the building occupants likely to use the exit route.

(3) Exit stairs that continue beyond the level on which the exit discharge is located must be interrupted at that level by doors, partitions, or other effective means that clearly indicate the direction of travel leading to the exit discharge.

(d) *An exit door must be unlocked.* (1) Employees must be able to open an exit route door from the inside at all times without keys, tools, or special knowledge. A device such as a panic bar that locks only from the outside is permitted on exit discharge doors.

(2) Exit route doors must be free of any device or alarm that could restrict emergency use of the exit route if the device or alarm fails.

(3) An exit route door may be locked from the inside only in mental, penal, or correctional facilities and then only if supervisory personnel are continuously on duty and the employer has a plan to remove occupants from the facility during an emergency.

(e) *A side-hinged exit door must be used.* (1) A side-hinged door must be used to connect any room to an exit route.

(2) The door that connects any room to an exit route must swing out in the direction of exit travel if the room is designed to be occupied by more than 50 people or if the room is a high hazard area (*i.e.*, contains contents that are likely to burn with extreme rapidity or explode).

(f) *The capacity of an exit route must be adequate.* (1) Exit routes must support the maximum permitted occupant load for each floor served.

(2) The capacity of an exit route may not decrease in the direction of exit route travel to the exit discharge.

Note to paragraph 1910.36(f): Information regarding "Occupant load" is located in NFPA 101–2000, Life Safety Code.

(g) *An exit route must meet minimum height and width requirements.* (1) The ceiling of an exit route must be at least seven feet six inches (2.3 m) high. Any projection from the ceiling must not reach a point less than six feet eight inches (2.0 m) from the floor.

(2) An exit access must be at least 28 inches (71.1 cm) wide at all points. Where there is only one exit access leading to an exit or exit discharge, the width of the exit and exit discharge must be at least equal to the width of the exit access.

(3) The width of an exit route must be sufficient to accommodate the maximum permitted occupant load of each floor served by the exit route.

(4) Objects that project into the exit route must not reduce the width of the exit route to less than the minimum width requirements for exit routes.

(h) *An outdoor exit route is permitted.* Each outdoor exit route must meet the minimum height and width requirements for indoor exit routes and must also meet the following requirements:

(1) The outdoor exit route must have guardrails to protect unenclosed sides if a fall hazard exists;

(2) The outdoor exit route must be covered if snow or ice is likely to accumulate along the route, unless the employer can demonstrate that any snow or ice accumulation will be removed before it presents a slipping hazard;

(3) The outdoor exit route must be reasonably straight and have smooth, solid, substantially level walkways; and

(4) The outdoor exit route must not have a dead-end that is longer than 20 feet (6.2 m).

§ 1910.37 Maintenance, safeguards, and operational features for exit routes.

(a) *The danger to employees must be minimized.* (1) Exit routes must be kept free of explosive or highly flammable furnishings or other decorations.

(2) Exit routes must be arranged so that employees will not have to travel toward a high hazard area, unless the path of travel is effectively shielded from the high hazard area by suitable partitions or other physical barriers.

(3) Exit routes must be free and unobstructed. No materials or equipment may be placed, either permanently or temporarily, within the exit route. The exit access must not go through a room that can be locked, such as a bathroom, to reach an exit or exit discharge, nor may it lead into a dead-end corridor. Stairs or a ramp must be provided where the exit route is not substantially level.

(4) Safeguards designed to protect employees during an emergency (*e.g.*, sprinkler systems, alarm systems, fire doors, exit lighting) must be in proper working order at all times.

(b) *Lighting and marking must be adequate and appropriate.* (1) Each exit route must be adequately lighted so that an employee with normal vision can see along the exit route.

(2) Each exit must be clearly visible and marked by a sign reading "Exit."

(3) Each exit route door must be free of decorations or signs that obscure the visibility of the exit route door.

(4) If the direction of travel to the exit or exit discharge is not immediately apparent, signs must be posted along the exit access indicating the direction of travel to the nearest exit and exit discharge. Additionally, the line-of-sight to an exit sign must clearly be visible at all times.

(5) Each doorway or passage along an exit access that could be mistaken for an exit must be marked "Not an Exit" or similar designation, or be identified by a sign indicating its actual use (*e.g.*, closet).

(6) Each exit sign must be illuminated to a surface value of at least five foot-candles (54 lux) by a reliable light source and be distinctive in color. Self-luminous or electroluminescent signs that have a minimum luminance surface value of at least .06 footlamberts (0.21 cd/m^2) are permitted.

(7) Each exit sign must have the word "Exit" in plainly legible letters not less than six inches (15.2 cm) high, with the principal strokes of the letters in the word "Exit" not less than three-fourths of an inch (1.9 cm) wide.

(c) *The fire retardant properties of paints or solutions must be maintained.* Fire retardant paints or solutions must be renewed as often as necessary to maintain their fire retardant properties.

(d) *Exit routes must be maintained during construction, repairs, or alterations.* (1) During new construction, employees must not occupy a workplace until the exit routes required by this subpart are completed and ready for employee use for the portion of the workplace they occupy.

(2) During repairs or alterations, employees must not occupy a workplace unless the exit routes required by this subpart are available and existing fire protections are maintained, or until alternate fire protection is furnished that provides an equivalent level of safety.

(3) Employees must not be exposed to hazards of flammable or explosive substances or equipment used during construction, repairs, or alterations, that are beyond the normal permissible conditions in the workplace, or that would impede exiting the workplace.

(e) *An employee alarm system must be operable.* Employers must install and maintain an operable employee alarm system that has a distinctive signal to warn employees of fire or other emergencies, unless employees can promptly see or smell a fire or other hazard in time to provide adequate warning to them. The employee alarm system must comply with § 1910.165.

§ 1910.38 Emergency action plans.

(a) *Application.* An employer must have an emergency action plan whenever an OSHA standard in this part requires one. The requirements in this section apply to each such emergency action plan.

(b) *Written and oral emergency action plans.* An emergency action plan must be in writing, kept in the workplace, and available to employees for review. However, an employer with 10 or fewer employees may communicate the plan orally to employees.

(c) *Minimum elements of an emergency action plan.* An emergency action plan must include at a minimum:

(1) Procedures for reporting a fire or other emergency;

(2) Procedures for emergency evacuation, including type of evacuation and exit route assignments;

(3) Procedures to be followed by employees who remain to operate critical plant operations before they evacuate;

(4) Procedures to account for all employees after evacuation;

(5) Procedures to be followed by employees performing rescue or medical duties; and

(6) The name or job title of every employee who may be contacted by employees who need more information about the plan or an explanation of their duties under the plan.

(d) *Employee alarm system.* An employer must have and maintain an employee alarm system. The employee alarm system must use a distinctive signal for each purpose and comply with the requirements in § 1910.165.

(e) *Training.* An employer must designate and train employees to assist in a safe and orderly evacuation of other employees.

(f) *Review of emergency action plan.* An employer must review the emergency action plan with each employee covered by the plan:

(1) When the plan is developed or the employee is assigned initially to a job;

(2) When the employee's responsibilities under the plan change; and

(3) When the plan is changed.

§ 1910.39 Fire prevention plans.

(a) *Application.* An employer must have a fire prevention plan when an OSHA standard in this part requires one. The requirements in this section apply to each such fire prevention plan.

(b) *Written and oral fire prevention plans.* A fire prevention plan must be in writing, be kept in the workplace, and be made available to employees for review. However, an employer with 10 or fewer employees may communicate the plan orally to employees.

(c) *Minimum elements of a fire prevention plan.* A fire prevention plan must include:

(1) A list of all major fire hazards, proper handling and storage procedures for hazardous materials, potential ignition sources and their control, and the type of fire protection equipment necessary to control each major hazard;

(2) Procedures to control accumulations of flammable and combustible waste materials;

(3) Procedures for regular maintenance of safeguards installed on

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heat-producing equipment to prevent the accidental ignition of combustible materials;

(4) The name or job title of employees responsible for maintaining equipment to prevent or control sources of ignition or fires; and

(5) The name or job title of employees responsible for the control of fuel source hazards.

(d) *Employee information.* An employer must inform employees upon initial assignment to a job of the fire hazards to which they are exposed. An employer must also review with each employee those parts of the fire prevention plan necessary for self-protection.

"Appendix E To Part 1910—Exit Routes, Emergency Action Plans, and Fire Prevention Plans."

* * * * *

Subpart H—Hazardous Materials

3. The authority citation for subpart H of part 1910 is revised to read as follows:

Authority: Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Orders Nos. 12–71 (36 FR 8754), 8–76 (41 FR 25059, 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), 3–2000 (65 FR 50017), as applicable; and 29 CFR part 1911.

Sections 1910.103, 1910.106 through 1910.111, and 1910.119, 1910.120, and 190.122 through 126 also issued under 29 CFR part 1911.

Section 1910.119 also issued under section 304, Clean Air Act Amendments of 1990 (Pub. L. 101–549), reprinted at 29 U.S.C. 655 Note.

Section 1910.120 also issued under section 126, Superfund Amendments and Reauthorization Act of 1986 as amended (29 U.S.C. 655 Note), and 5 U.S.C. 553.

4. In § 1910.119, the first sentence of paragraph (n) is revised to read as follows:

§ 1910.119 Process safety management of highly hazardous chemicals.

* * * * *

(n) *Emergency planning and response.* The employer shall establish and implement an emergency action plan for the entire plant in accordance with the provisions of 29 CFR 1910.38.* * *

* * * * *

5. In § 1910.120, paragraphs (l)(1)(ii), (p)(8)(i), (q)(1), and the first sentence of paragraph (q)(11)(ii) are revised to read as follows:

§ 1910.120 Hazardous waste operations and emergency response.

* * * * *

(l) * * *

(1)(i) * * *

(ii) Employers who will evacuate their employees from the danger area when an emergency occurs, and who do not permit any of their employees to assist in handling the emergency, are exempt from the requirements of this paragraph if they provide an emergency action plan complying with 29 CFR 1910.38.

* * *

* * * * *

(p) * * *

(8) * * *

(i) *Emergency response plan.* An emergency response plan shall be developed and implemented by all employers. Such plans need not duplicate any of the subjects fully addressed in the employer's contingency planning required by permits, such as those issued by the U.S. Environmental Protection Agency, provided that the contingency plan is made part of the emergency response plan. The emergency response plan shall be a written portion of the employer's safety and health program required in paragraph (p)(1) of this section. Employers who will evacuate their employees from the worksite location when an emergency occurs and who do not permit any of their employees to assist in handling the emergency are exempt from the requirements of paragraph (p)(8) if they provide an emergency action plan complying with 29 CFR 1910.38.

* * * * *

(q) * * *

(1) *Emergency response plan.* An emergency response plan shall be developed and implemented to handle anticipated emergencies prior to the commencement of emergency response operations. The plan shall be in writing and available for inspection and copying by employees, their representatives and OSHA personnel. Employers who will evacuate their employees from the danger area when an emergency occurs, and who do not permit any of their employees to assist in handling the emergency, are exempt from the requirements of this paragraph if they provide an emergency action plan in accordance with 29 CFR 1910.38.

* * * * *

(11) * * *

(i) * * *

(ii) Where the clean-up is done on plant property using plant or workplace employees, such employees shall have completed the training requirements of the following: 29 CFR 1910.38, 1910.134, 1910.1200, and other appropriate safety and health training made necessary by the tasks they are expected to perform such as personal protective equipment and decontamination procedures. * * *

* * * * *

Subpart L—Fire Protection

6. The authority citation for subpart L of part 1910 is revised to read as follows:

Authority: Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 F 35736), 6–96 (62 FR 111), or 3–2000 (65 FR 50017), as applicable; and 29 CFR part 1911.

7. In § 1910.157, paragraphs (a) and (b)(1) are revised to read as follows:

§ 1910.157 Portable fire extinguishers.

(a) *Scope and application.* The requirements of this section apply to the placement, use, maintenance, and testing of portable fire extinguishers provided for the use of employees. Paragraph (d) of this section does not apply to extinguishers provided for employee use on the outside of workplace buildings or structures. Where extinguishers are provided but are not intended for employee use and the employer has an emergency action plan and a fire prevention plan that meet the requirements of 29 CFR 1910.38 and 29 CFR 1910.39 respectively, then only the requirements of paragraphs (e) and (f) of this section apply.

(b) *Exemptions.* (1) Where the employer has established and implemented a written fire safety policy which requires the immediate and total evacuation of employees from the workplace upon the sounding of a fire alarm signal and which includes an emergency action plan and a fire prevention plan which meet the requirements of 29 CFR 1910.38 and 29 CFR 1910.39 respectively, and when extinguishers are not available in the workplace, the employer is exempt from all requirements of this section unless a specific standard in part 1910 requires that a portable fire extinguisher be provided.

* * * * *

Subpart R—Special Industries

8. The authority citation for subpart R of part 1910 is revised to read as follows:

Authority: Sections 4, 6, 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 6–96 (62 FR 111), or 3–2000 (65 FR 50017), as applicable; and 29 CFR part 1911.

9. In § 1910.268, paragraph (b)(1)(iii) is revised to read as follows:

§ 1910.268 Telecommunications.

* * * * *

(b) * * *

(1) * * *

(i) * * *

(ii) * * *

(iii) *Working spaces.* Maintenance aisles, or wiring aisles, between equipment frame lineups are working spaces and are not an exit route for purposes of 29 CFR 1910.34.

* * * * *

10.a. In § 1910.272, paragraph (d) is revised.

b. In Appendix A to § 1910.272, under the heading "2. Emergency Action Plans" the second sentence is revised.

The revised text is set forth as follows:

§ 1910.272 Grain handling facilities.

* * * * *

(d) *Emergency action plan.* The employer shall develop and implement an emergency action plan meeting the requirements contained in 29 CFR 1910.38.

* * * * *

Appendix A to § 1910.272 Grain Handling Facilities

* * * * *

2. Emergency Action Plan

* * * The emergency action plan (§ 1910.38) covers those designated actions employers and employees are to take to ensure employee safety from fire and other emergencies. * * *

* * * * *

Subpart Z—Toxic and Hazardous Substances

11. The authority citation for subpart Z of part 1910 is revised to read as follows:

Authority: Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, and 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), and 3–2000 (65 FR 50017), as applicable, and 29 CFR part 1911.

All of subpart Z issued under section 6(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C 653), except those substances that have exposure limits in Tables Z–1, Z–2, and Z–3 of 29 CFR 1910.1000. Section 1910.1000 also issued under section (6)(a) of the Act (29 U.S.C. 655(a)). Section 1910.1000, Tables Z–1, Z–2, and Z–3 also issued under 5 U.S.C. 553, but not under 29 CFR part 1911, except for the inorganic arsenic, benzene, and cotton dust listings.

Section 1910.1001 also issued under section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333) and 5 U.S.C. 553.

Section 1910.1002 also issued under 5 U.S.C. 553, but not under 29 U.S.C. 655 or 29 CFR part 1911.

Sections 1910.1018, 1910.1029, and 1910.1200 also issued under 29 U.S.C. 653.

12. In § 1910.1047, paragraph (h)(1)(iii) is revised to read as follows:

§ 1910.1047 Ethylene oxide.

* * * * *

(h) * * *

(1) * * *

(i) * * *

(ii) * * *

(iii) The plan shall include the elements prescribed in 29 CFR 1910.38 and 29 CFR 1910.39, "Emergency action plans" and "Fire prevention plans," respectively.

* * * * *

13. In § 1910.1050, paragraph (d)(1)(iii) is revised to read as follows:

§ 1910.1050 Methylenedianiline

* * * * *

(d) * * *

(1) * * *

(i) * * *

(ii) * * *

(iii) The plan shall specifically include provisions for alerting and evacuating affected employees as well as the elements prescribed in 29 CFR 1910.38 and 29 CFR 1910.39, "Emergency action plans" and "Fire prevention plans," respectively.

* * * * *

14. In § 1910.1051, paragraph (j) is revised to read as follows:

§ 1910.1051 1,3–Butadiene

* * * * *

(j) *Emergency situations. Written plan.* A written plan for emergency situations shall be developed, or an existing plan shall be modified, to contain the applicable elements specified in 29 CFR 1910.38 and 29 CFR 1910.39, "Emergency action plans" and "Fire prevention plans," respectively, and in 29 CFR 1910.120, "Hazardous Waste Operations and Emergency Response," for each workplace where there is the possibility of an emergency.

* * * * *

[FR Doc. 02–27251 Filed 11–6–02; 8:45 am]

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Part IV

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for *Eriodictyon capitatum* (Lompoc yerba santa) and *Deinandra increscens* ssp. *villosa* (Gaviota tarplant); Final Rule

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AG88

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for *Eriodictyon capitatum* (Lompoc yerba santa) and *Deinandra increscens* ssp. *villosa* (Gaviota tarplant)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), designate critical habitat pursuant to the Endangered Species Act of 1973, as amended (Act), for *Eriodictyon capitatum* (Lompoc yerba santa) and *Deinandra increscens* ssp. *villosa* [= *Hemizonia increscens* ssp. *villosa*] (Gaviota tarplant). Approximately 6,519 hectares (ha) (16,110 acres (ac)) in Santa Barbara County, California, are within the boundaries of the critical habitat designation.

Critical habitat identifies specific areas, both occupied and unoccupied, that are essential to the conservation of a listed species and that may require special management considerations or protection.

Section 7(a)(2) of the Act requires that each Federal agency shall, in consultation with and with the assistance of the Service, insure that any action authorized, funded or carried out by such agency is not likely to jeopardize the continued existence of an endangered or threatened species or result in the destruction or adverse modification of critical habitat. Section 4 of the Act requires us to consider economic and other relevant impacts of specifying any particular area as critical habitat.We solicited data and comments from the public on all aspects of the proposal, including data on economic and other impacts of the designation.

DATES: This rule is effective December 9, 2002.

ADDRESSES: Comments and materials received, as well as supporting documentation, used in the preparation of this final rule are available for public inspection, by appointment, during normal business hours at the Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, CA 93003.

FOR FURTHER INFORMATION CONTACT: Diane Noda, Field Supervisor, Ventura Fish and Wildlife Office (see **ADDRESSES** section) (telephone 805/644–1766; facsimile 805/644–3958). Information regarding this designation is available in alternate formats upon request.

SUPPLEMENTARY INFORMATION:

Background

We proposed to designate critical habitat for *Eriodictyon capitatum* (Lompoc yerba santa) and *Deinandra increscens* ssp. *villosa* (Gaviota tarplant) on November 15, 2001 (66 FR 57559). In the proposed rule, we also included a proposal to designate critical habitat for *Cirsium loncholepis* (La Graciosa thistle).

During the public comment period, we received a recommendation from a peer reviewer to delay the publication of a final rule for *Cirsium loncholepis* pending the determination of its taxonomic status. Recent research on *C. loncholepis* raises significant questions regarding the taxonomy of the species. The taxonomic relationship between *C. loncholepis* and *C. scariosum* (elk thistle), which is widespread in montane wetland areas in California, is under review (Dr. David Keil, California Polytechnic University, San Luis Obispo, California, pers. comm., 2002). *Cirsium loncholepis* may be proposed as a new taxon, *C. scariosum* var. *citrinum*, in *The Flora of North America*, which will be submitted for peer review in December of 2002. Due to the uncertainty in the taxonomic status of *C. loncholepis*, we and the plaintiffs agreed to a 1-year extension to the date by which the final rule for *C. loncholepis* critical habitat is to be submitted for publication.

Eriodictyon capitatum and *Deinandra increscens* ssp. *villosa* [=*Hemizonia increscens* ssp. *villosa*] occur along the south central California coast. They are restricted to a narrow area in northern and western Santa Barbara County, in declining or altered habitats including central maritime chaparral, valley needlegrass grassland, and southern bishop pine forest (Holland 1986; Schoenherr 1992).

Eriodictyon capitatum

Eriodictyon capitatum (Lompoc yerba santa) was collected by Hoffman in 1932, near Lompoc, growing under *Pinus muricata* (bishop pine), and described the following year (Eastwood 1933). *Eriodictyon capitatum* is a shrub in the waterleaf family (Hydrophyllaceae) with narrow, sticky stems up to 3 meters (m) (10 feet (ft)) tall. The head-like inflorescence has lavender corollas that are 6 to 15 millimeters (mm) (0.2 to 0.6 inch (in)) long. It is distinguished from related species by its narrow, entire (margins with smooth or continuous edges) leaves and its head-like inflorescence. The fruits are 4-valved capsules that are 1 to 3 mm (0.03 to 0.1 in) wide, and contain up to 5 seeds (Halse 1993). However, seed set is typically much less; Elam (1994) found that flowers that were intentionally cross-pollinated produced a mean of 1.77 seeds per fruit, while flowers that were intentionally self-pollinated produced an average of 0.03 seeds per fruit.

Eriodictyon capitatum also spreads vegetatively through the production of rhizomes. New stems emerging from these rhizomes are referred to as ramets. For plants that spread vegetatively, ramet is a general term used to describe above-ground stems, regardless of their underground physiological connection. In recent observations, new stems were found to be emerging 30 m (100 ft) or more away from the nearest visible ramet, suggesting there is a long distance spread of the root system (Diane Pratt and Connie Rutherford, Service, pers. obs., 2002; Chris Gillespie, Vandenberg Air Force Base, pers. comm., 2002).

Eriodictyon capitatum occurs in maritime chaparral with *Dendromecon rigida* (bush poppy), *Quercus berberidifolia* (California scrub oak), *Q. parvula* (scrub oak), and *Ceanothus cuneatus* (buck brush), and in southern bishop pine forests that intergrade with chaparral comprised primarily of *Arctostaphylos* spp. (manzanita) and *Salvia mellifera* (black sage) (Smith 1983). These maritime chaparral and bishop pine forests are found inland from the active dunes, where there are remnants of prehistoric uplifted dunes that have formed a weakly cemented sandstone that has weathered to produce a sandy, extremely well drained, and nearly infertile soil (Davis *et al.* 1988). This substrate has a limited distribution, occurring on the following mesas in San Luis Obispo and Santa Barbara counties: Nipomo Mesa; Casmalia Hills; San Antonio Terrace; Burton Mesa; Lompoc Terrace; and Purisima Hills. Central coast maritime chaparral is the primary habitat that occurs on the sand hills and has been the focus of several studies (Ferren *et al.* 1984; Davis *et al.* 1988; Philbrick and Odion 1988; Davis *et al.* 1989; Odion *et al.* 1992). Seven local endemic plant species, and at least 16 other uncommon plant species, are also components of this habitat. This community type is an exceptional biological resource due to the concentration of rare plants found within it, but most of it has been converted to other land uses, fragmented, or degraded by non-native species invasion (Davis *et al.* 1988; Odion *et al.* 1992). Central coast maritime chaparral is considered threatened and sensitive by the California Department of Fish and Game's (CDFG) Natural Heritage Division (Holland 1986). Southern bishop pine forest is scattered in the Purisima Hills and intergrades with the central coast maritime chaparral (Holland 1986).

The soils associated with *Eriodictyon capitatum* are extremely variable, but all tend to be slightly to strongly acidic. Sites on ridgetops have very shallow soils that consist of exposed parent material. Permeability ranges from low (high clay content), in the Santa Ynez Mountains, to excessively drained (Arnold sands with a low clay content) in the Solomon Hills. The Burton Mesa population occurs on an upper highly permeable soil (Tangair sands) underlain by a shale substrate of low permeability. The Pine Canyon population occurs in the bottom of the drainage in a highly gullied landscape (C. Gillespie, Vandenberg Air Force Base, pers. comm., 2002).

The four locations currently known to be occupied by *Eriodictyon capitatum* are in western Santa Barbara County. Based on the presence of appropriate soils and associated species, we believe that other populations may occur on the mesas listed above, but have not yet been detected by botanists.

Two of the known locations of *Eriodictyon capitatum* are on Vandenberg Air Force Base (Vandenberg); these two locations are referred to herein as Vandenberg East (comprised of two groups) and Vandenberg West (comprised of one group). The other two locations are in oil fields south of Orcutt, referred to as the Solomon Hills location (comprised of one group), and Santa Ynez Mountains location (comprised of three groups) found at the western end of the mountains, all on private land. Based on enzyme analysis, Elam (1994) determined that all of the Santa Ynez Mountains groups, and one of the Vandenberg groups (within the Vandenberg East location), were made up of several genetically distinct individuals (genets). Each genet is typically composed of many ramets produced by its spreading root system. The genetic information to date suggests that the other two Vandenberg groups are composed of a single genet, that is to say that there is only one genetic individual with several above surface ramets that may encompass a large area (Elam 1994). However, other genetic individuals may exist in the soil seed bank. The Solomon Hills location was not studied due to inaccessibility. The three Santa Ynez Mountains groups ranged from 11 to 20 genets each; the single group on Vandenberg that was composed of multiple genetic individuals had 18 genets. *Eriodictyon capitatum* is self-incompatible (*i.e.*, it requires pollen from genetically different plants to produce seed), and its fruits appear to be parasitized by an insect (Elam 1994).

Because *Eriodictyon capitatum* evolved in fire-adapted vegetation communities, fire likely plays an important role in the persistence and reproduction of populations of the taxon. Fire cues, such as heat and charate (charred wood) have been found to significantly increase germination of other *Eriodictyon* species (Keeley 1987). If a seed bank remains within a location of *Eriodictyon capitatum*, it may be expressed following fire. However, if the soil seed bank is depauperate (impoverished), an intense burn that kills existing plants may eliminate an entire clone or population.

A study of one of the groups at Vandenberg that is potentially composed of one genet showed that *Eriodictyon capitatum* resprouted successfully from the base of the plant after a prescribed fire. However, several stems died, and no seedling recruitment occurred, which is consistent with Jacks *et al.* (1984) theory that a single genetic, self-incompatible individual would be expected to produce little or no seed. Following a burn in 1999, the group potentially composed of one genet at Vandenberg West expanded from approximately 80 to 150 individual ramets. Since that time, there have been no observations of evidence of seed production at this location (C. Gillespie, *in litt.*, 2002).

Some biologists have suggested that disturbance other than fire (*e.g.*, road scraping) favors persistence, growth, and reproduction of populations of *Eriodictyon capitatum* (Dr. Neil Havlik, botanist, City of San Luis Obispo, *in litt.*, 2002). The population of *Eriodictyon capitatum* in the Solomon Hills appears to have responded well to ongoing disturbance along roads and near facilities associated with fire control practices (Sue Foley, Nuevo Energy Company, pers. comm., 2002). Such disturbance may encourage stem production and the spread of individual genets. However, road scraping and ongoing maintenance and removal of vegetation for fire control may destroy individual ramets or damage the root structure of *Eriodictyon capitatum* plants. It is not known how these activities may affect sexual reproduction and influence the dispersal and expression of the soil seed bank.

Incompatible fire management practices (*e.g.*, prescribed fires that are too frequent or poorly-timed), habitat loss, invasive non-native plant species, low seed productivity, residential and commercial development, and naturally occurring catastrophic events pose significant threats to the long-term survival of this species. Habitat for *Eriodictyon capitatum* may be degraded by the presence of non-native species, such as veldt grass and iceplant, that may compete with native vegetation. These fast-spreading species are difficult to control, particularly after an area has been denuded by wildfire. *E. capitatum* was listed as rare by the State of California in 1979 (CDFG 1992).

Deinandra increscens ssp. villosa

Deinandra increscens ssp. *villosa* is a member of the sunflower family. Tanowitz (1982) described this plant from collected material, as well as a specimen gathered from Gaviota in 1902 by Elmer, as *Hemizonia increscens* ssp. *villosa*. Recent studies on the evolution of a related group of the tarplants of North America have resulted in the reinstatement of the genus name *Deinandra* for *Hemizonia increscens* ssp. *villosa* (Baldwin 1999). *Deinandra increscens* spp. *villosa* is a yellow-flowered, variable gray-green, soft, hairy annual that is 30 to 90 cm (12 to 35 in) tall with stems branching near the base. The lower leaves are 5 to 8.6 cm (2 to 3.4 in) long. The inflorescence is rounded to flat-topped typically with mostly 13-ray flowers and 18 to 31 usually sterile, disk flowers. The seeds produced by the ray flowers (achenes) are three-angled and about 2 mm (0.08 in); the seeds of this genus lack the long set of awns that assist in wind dispersal, as are found in many other members of the sunflower family (Keil 1993). The seeds most likely are dispersed by adhesion of the sticky bracts clasping the ray achenes to animal fur or feathers (B. Baldwin, *in litt.*, 2001). Two other subspecies, *D. increscens* ssp. *increscens* (grassland tarweed) and *D. increscens* ssp. *foliosa* (leafy tarplant), differ from *D. increscens* ssp. *villosa* by their stiff-bristly, deep green foliage; however, chemical composition is the best means to differentiate these species (Keil 1993; Katherine Rindlaub, biological consultant, *in litt.*, 1998). There are occasional observations of 13-rayed *D. increscens* ssp. *increscens* that are reported as *D. increscens* ssp. *villosa* (K. Rindlaub, *in litt.*, 1998).

Deinandra increscens ssp. *villosa* blooms from June through September. Pollinators observed on the flowers of *D. increscens* ssp. *villosa* include several species of flies, bees, skippers, and

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butterflies (Tanowitz in Howald 1989). *Deinandra increscens* ssp. *villosa* depends on the successful transfer of pollen between plants in order to produce seeds. Most *Deinandra* species are strongly self-incompatible (Tanowitz 1982; B. Baldwin, *in litt.*, 2001), meaning that self-fertilization is impossible and insects are necessary for the transfer of pollen. The type of incompatibility system that *Deinandra* species possess (sporophytic) makes their ability to reproduce particularly vulnerable to loss of genetic variation within and between populations (B. Baldwin, *in litt.*, 2001).

As is typical of annual plant species, the number of individuals present above-ground from one year to the next varies dramatically, most likely depending on climatic conditions such as amount of rainfall, timing of rainfall, and temperature regimes during critical stages of germination and seedling growth. There are some years when patches may contain few to no individuals (Howald 1989), but a seed bank likely persists in the soil. In 1995 and 1997, the species was not abundant at the locations known at the time (K. Rindlaub, *in litt.*, 1998).

Deinandra increscens ssp. *villosa* has a highly localized distribution in western Santa Barbara County, where it is associated with needlegrass grasslands comprised of native *Nassella* spp. (needlegrass), the non-native *Avena* spp. (wild oats) and *Bromus diandrus* (ripgut brome), and other herbs and grasses. The grasslands intergrade with coastal sage scrub composed of *Artemisia californica* (California sagebrush), *Baccharis pilularis* (coyote bush), *Hazardia squarrosa* (sawtooth golden bush), and *Eriogonum fasciculatum* (California buckwheat) (CNDDB 2001).

Until several years ago, populations of *Deinandra increscens* ssp. *villosa* were only known from marine terraces in the vicinity of Gaviota. However, populations were recently observed at approximately seven new locations ranging westward from Gaviota along the coast and in the Santa Ynez Mountains to Point Arguello (Mary Meyer, CDFG, pers. comm., 2001; Hendrickson *et al.* 1998). This species is found on sandy soils associated with marine terraces and uplifted marine sediments, ranging from 46 m (150 ft) in elevation along the lowest terraces to 305 m (1000 ft) (Hendrickson *et al.*1998; CNDDB 2001; Dieter Wilken, *in litt.*, 1998). At this higher elevation, the taxon is known to occur in grasslands above the 215 m (700 ft) contour line west of Sudden Peak (CNDDB 2001; D. Wilken, *in litt.*, 1998). One disjunct population occurs in grassland and openings within coastal sage scrub just south of Point Sal on Vandenberg Air Force Base (C. Gillespie, pers. comm., 2001; CNDDB 2001).

Soil characteristics have been studied most extensively near the Gaviota location. There, the plant is restricted to Conception and Milpitas-Positas soils, which consist of acidic, fine, sandy loams (All American Pipeline Company (AAPC) 1995). A subsurface clay layer 2.5 to 90 cm (1 to 36 in) deep may serve as a reservoir of soil moisture in an area otherwise characterized by summer drought (Howald 1989). However, *Deinandra increscens* ssp. *villosa* consistently occurs where the depth to clay is only 2.5 to 5 cm (1 to 2 in) (K. Rindlaub, *in litt.*, 1998).

The narrow coastal terrace at Gaviota is bisected lengthwise by Highway 101, a railroad, and several pipelines. Most of the habitat for *Deinandra increscens* ssp. *villosa* lies on the north side of the highway on private lands owned by the petroleum industry; CDFG is in the process of acquiring an 86 ha (35 ac) parcel to establish a *D. increscens* ssp. *villosa* preserve. A few colonies occur on the south side of Highway 101 on land owned by California Department of Parks and Recreation (CDPR). Most of the other populations west of Gaviota are located on private land; certain petroleum companies have leased land for their facilities and access to them at Government Point, just east of Point Conception. Two populations, one near Point Arguello and one near Point Sal, are located on Vandenberg Air Force Base (CNDDB 2001; C. Gillespie, pers. comm., 2001).

Deinandra increscens ssp. *villosa* is threatened by destruction of individual plants, habitat loss, and habitat degradation from the development and decommissioning of oil and gas facilities, including pipelines, incompatible fire management practices, residential and commercial development, and competition with non-native weeds (65 FR 14892). Within the last 5 years, two aggressive non-native grasses, *Ehrharta calycina* (veldt grass) and *Phalaris aquaticus* (harding grass), have invaded the Gaviota site and pose a serious threat to *D. increscens* ssp. *villosa* and the remaining coastal prairie habitat at this site (K. Rindlaub, pers. comm., 2001; M. Meyer, pers. comm., 2001).

Until recently, the overall trend for this species has been characterized as one of decline (CDFG 1992); this was based primarily on impacts occurring on the Gaviota populations. The populations in the vicinity of Point Conception and Government Point were discovered in the year 2000. The populations in this area face similar threats to those in the Gaviota area, specifically from activities associated with the decommissioning of oil and gas facilities, and from alteration of habitat due to the spread of iceplant (*Carpobrotus edulis*) and veldt grass (M. Meyer, pers. comm., 2001). However, some of the populations found within the last 3 years are in remote areas in the Santa Ynez Mountains and do not appear to be threatened at this time.

Deinandra increscens ssp. *villosa* was listed as endangered by the State of California in 1990 (CDFG 1992). In 1989, when the species was first proposed for State listing, CDFG recommended several recovery and management actions including: (1) Research on the reproductive biology and habitat requirements so that essential habitat can be more clearly defined and protection requirements can be formulated; (2) working with Santa Barbara County and private landowners to establish a long-term monitoring program and protected status for *D. increscens* ssp. *villosa*; and (3) working with Santa Barbara County and private landowners to assure that future impacts to *D. increscens* ssp. *villosa* are avoided or adequately mitigated (Howald 1989). In their role as the lead permitting agency for the California Environmental Quality Act, the County has worked with CDFG and the petroleum industry over the past decade to develop a strategy to mitigate for impacts to *D. increscens* ssp. *villosa* resulting from oil and gas activities in the Gaviota area.

At least two decommissioning efforts will be undertaken in the near future in areas where *Deinandra increscens* ssp. *villosa* has been found within the last 3 years. These include the decommissioning of Texaco's Hollister Ranch facility pipelines that stretch from Gaviota west to Saint Augustine, and Unocal's production facilities from Point Conception east to the Cojo Marine Terminal. The County will be working with CDFG, the Service, and the California Coastal Commission to ensure appropriate measures are taken to conserve the *D. increscens* ssp. *villosa*, as well as other federally listed wildlife species that occur in these areas. Unocal is proposing to restore disturbed areas and contribute towards CDFG's Gaviota Tarplant Ecological Reserve, which was established to compensate for impacts resulting from previous oil and gas activities along the Gaviota Coast (Padre Associates 2002).

Previous Federal Action

Federal action on these plants began as a result of section 12 of the Act (16 U.S.C. 1531 *et seq.*), which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be threatened, endangered, or extinct in the United States. This report (House Document No. 94–51) was presented to Congress on January 9, 1975, and included *Eriodictyon capitatum* as endangered. We published a notice in the July 1, 1975, **Federal Register** (40 FR 27823) of our acceptance of the Smithsonian Institution report as a petition within the context of section 4(c)(2) (petition provisions are now found in section 4(b)(3)) of the Act), and our intention to review the status of the plant species named therein.

On June 16, 1976, we published a proposal in the **Federal Register** (41 FR 24523) to determine approximately 1,700 vascular plant species to be endangered species pursuant to section 4 of the Act. *Eriodictyon capitatum* was included in that **Federal Register** publication. Comments received in relation to the 1976 proposal were summarized in an April 26, 1978, **Federal Register** publication (43 FR 17909). The Endangered Species Act Amendments of 1978 required that all proposals more than two years old be withdrawn. A one-year grace period was given to those proposals already more than 2 years old. On December 10, 1979 (44 FR 70796), we published a notice of withdrawal of the June 16, 1976, proposal along with four other proposals that had expired.

We published an updated Notice of Review (NOR) for plants on December 15, 1980 (45 FR 82480). This notice included *Eriodictyon capitatum* as category 1 candidate species. Category 1 candidates were those species for which we had on file substantial information on biological vulnerability and threats to support preparation of listing proposals, but issuance of the proposed rule was precluded by other pending listing activities of higher priority.

The NOR for plants was revised on September 27, 1985 (50 FR 39526). In this notice, *Eriodictyon capitatum* was again included as a category 1 candidate. On February 21, 1990 (55 FR 6184), and September 30, 1993 (58 FR 51144), revised NORs were published that included *E. capitatum* and *Deinandra increscens* ssp. *villosa* as category 1 candidates. On February 28, 1996, the NOR for Plant and Animal Taxa that are Candidates for Listing as Endangered or Threatened Species (61 FR 7596) included as candidates only those species meeting the former definition of category 1, and included *E. capitatum* and *D. increscens* ssp. *villosa*.

A proposed rule to list *Eriodictyon capitatum* and *Deinandra increscens* ssp. *villosa*, along with *Cirsium loncholepis* and *Lupinus nipomensis* (Nipomo mesa lupine), as endangered was published in the **Federal Register** on March 30, 1998 (63 FR 15164). The final rule listing *C. loncholepis*, *E. capitatum*, *D. increscens* ssp. *villosa*, and *L. nipomensis* as endangered species was published on March 20, 2000 (65 FR 14888).

Section 4(a)(3) of the Act, as amended, and our implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. Our regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist: (1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species. At the time *Eriodictyon capitatum* and *Deinandra increscens* ssp. *villosa* were listed, we found that designation of critical habitat for these taxa was prudent but not determinable, and that designation of critical habitat would occur once we had gathered the necessary data.

On June 17, 1999, our failure to issue final rules for listing *Eriodictyon capitatum* and *Deinandra increscens* ssp. *villosa* and seven other plant species as endangered or threatened, and our failure to make a final critical habitat determination for the nine species, was challenged in *Southwest Center for Biological Diversity and California Native Plant Society* v. *U.S. Fish and Wildlife Service et al.* (Case No. C99–2992 (N.D.Cal.)). On May 22, 2000, the judge signed an order for us to propose critical habitat for the species by September 30, 2001 and to make a final critical habitat designation by May 1, 2002. In mid-September 2001, plaintiffs agreed to a brief extension of this due date until October 19, 2001. Subsequently, the parties agreed to extend the date by which a proposal of critical habitat was to be submitted for publication to November 2, 2001, and the final critical habitat designation submitted for publication on or before October 25, 2002.

The proposed rule to designate critical habitat for the species was signed on November 2, 2001, and sent to the **Federal Register**. It was published on November 15, 2001 (66 FR 57559). In the proposal, we proposed to designate approximately 27,046 ha (66,830 ac) of land in Santa Barbara and San Luis Obispo Counties as critical habitat for *Cirsium loncholepis*, *Eriodictyon capitatum*, and *Deinandra increscens* ssp. *villosa*. Publication of the proposed rule opened a 60-day public comment period, which closed on January 14, 2002.

On May 7, 2002, we published a notice announcing the reopening of the comment period on the proposal to designate critical habitat for *Cirsium loncholepis*, *Eriodictyon capitatum*, and *Deinandra increscens* ssp. *villosa*, and a notice of availability of the draft economic analysis on the proposed determination (67 FR 30641). This second public comment period closed on June 6, 2002.

In August 2002, we agreed through a joint stipulation with the plaintiffs (Southwest Center for Biological Diversity and California Native Plant Society) to extend the deadline by which the Service shall submit for publication the final rule for *Cirsium loncholepis* critical habitat to October 25, 2003. Please refer to the Background section of this rule for more information regarding *C. loncholepis* taxonomic issues.

Summary of Comments and Recommendations

We contacted appropriate Federal, State, and local agencies, scientific organizations, and other interested parties and invited them to comment on the proposal to designate critical habitat for *Cirsium loncholepis*, *Eriodictyon capitatum*, and *Deinandra increscens* ssp. *villosa*. In addition, we invited public comment through the publication of a notice in the San Luis Obispo Tribune on November 18, 2001, and the Santa Barbara News-Press on November 27, 2001.

We received individually written letters from 11 parties, which included 4 designated peer reviewers, 1 Federal agency, and 1 State agency. Of the 11 parties responding individually, 6 supported the proposed designation, 3 were neutral, and 2 were opposed.

In accordance with our peer review policy published on July 1, 1994 (59 FR 34270), we solicited independent opinions from four knowledgeable individuals who have expertise with the species, with the geographic region where the species occurs, and/or familiarity with the principles of conservation biology. All four of the peer reviewers supported the proposal

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and provided us with comments, which are included in the summary below and incorporated into the final rule.

We reviewed all comments received from the peer reviewers and the public for substantive issues and new information regarding critical habitat and *Cirsium loncholepis*, *Eriodictyon capitatum*, and *Deinandra increscens* ssp. *villosa*. Comments regarding *E. capitatum* and *D. increscens* ssp. *villosa* critical habitat are addressed in the summary below. We also addressed the peer review comment relating to the uncertainty in taxonomic status of *C. loncholepis*. However, we do not include comments on *C. loncholepis* critical habitat because of the removal of this species from this final designation of critical habitat for the three taxa.

Similar comments were grouped according to peer review or public comments into three general issues relating specifically to the proposed critical habitat determination. We did not receive any comments on the draft economic analysis of the proposed determination. However, we did receive one comment on economic issues during the first comment period on the proposed designation.

Peer Review Comments

(1) *Comment:* One reviewer suggested that we delay publication of a final rule for *Cirsium loncholepis* pending the determination of its taxonomic status. Recent research on *C. loncholepis* raises significant questions regarding the taxonomy of the species.

Our Response: We acknowledge the uncertainty in the taxonomy of *Cirsium loncholepis*. We concur that the publication of a final rule for *C. loncholepis* critical habitat should be delayed until the results of further research can direct future action relating to the status of the species. Please refer to the Background section of this rule for information regarding the study of the taxonomic relationship between *C. loncholepis* and *C. scariosum*.

We discussed with the plaintiffs, the Center for Biological Diversity and CNPS, appropriate action on the critical habitat designation given the questions raised by the recent review of *Cirsium loncholepis* taxonomy. We agreed, through a joint stipulation with the plaintiffs, to a one-year extension to the date by which a final rule for *C. loncholepis* critical habitat must be submitted for publication.

(2) *Comment:* One peer reviewer recommended that we include all apparently suitable unoccupied habitat within the range of the species in our critical habitat designation. The reviewer stated that it is unclear from the proposed rule how many unoccupied areas or unsurveyed areas within the historical range of these taxa have been excluded from the proposed rule. Including these areas would improve the chances for recovery by increasing the habitat that would be protected and thus available for colonization.

Our Response: We acknowledge that all areas within the historical range of *Deinandra increscens* ssp. *villosa* and *Eriodictyon capitatum* have not been surveyed. It is possible that suitable habitat for the two taxa exists but remains unidentified. While additional surveys would help in further defining the distribution of these taxa, we are required to designate those areas we know to be critical habitat, using the best information available to us. We included in our critical habitat designation areas that we know contain the soil types and vegetation communities necessary to support *D. increscens* ssp. *villosa* and *E. capitatum* and that are contiguous with known locations of these taxa.

We agree that future conservation of the species depends not only on the areas that it currently occupies, but also on providing the opportunity for it to shift in distribution over time, and to expand its current distribution. We have addressed this by designating as critical habitat the areas that surround existing populations and that contain the primary constituent elements. This is particularly important for annual plant species such as *Deinandra increscens* ssp. *villosa*, whose populations of observable plants fluctuate in extent from year-to-year. The number and location of standing plants (*i.e.*, above-ground expression) in a population varies annually due to a number of factors, including the amount and timing of rainfall, temperature, soil conditions, and the extent and nature of the seedbank.

Within the geographic area occupied by the species, we designate only areas currently known to be essential. Essential areas already have the features and habitat characteristics that are necessary to sustain the species. We do not speculate about what areas might be found to be essential if better information became available, or what areas may become essential over time. If the information available at the time of designation did not show that an area provides essential life cycle needs of the species, then the area was not included in the critical habitat designation. Within the geographic area occupied by the species, we do not designate areas that do not now have the primary constituent elements, as defined at 50 CFR 424.12(b), which provide essential life cycle needs of the species.

We recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. Critical habitat designations do not signal that habitat outside the designation is unimportant or not required for recovery. Areas outside the critical habitat designation continue to be subject to the regulatory protections afforded by section 7 and the applicable prohibitions of section 9 of the Act, as determined on the basis of the best available information at the time of the action.

(3) *Comment:* A peer reviewer noted that the information on which the designation of *Deinandra increscens* ssp. *villosa* was based was not as complete as the information used for *Eriodictyon capitatum*. The list of sites visited for development of the proposed rule did not explicitly include any for *D. increscens* ssp. *villosa*. Since Dr. Bruce Baldwin and his colleagues are working on the taxonomic revision of the subspecies, they may possess additional information on the presence of *Deinandra* in other locations.

Our Response: We have incorporated all available information on the *Deinandra increscens* ssp. *villosa* localities in our critical habitat designation. Most of the distribution information on *D. increscens* ssp. *villosa* is a result of findings from within the past 5 years. During the development of this rule, we visited Gaviota State Beach (within Gaviota-Point Conception unit), and the Point Arguello and Sudden Peak units at Vandenberg, as we mention in the methods section of this rule. We also contacted Dr. Bruce Baldwin of the Jepson Herbarium and Department of Integrative Biology (University of California at Berkeley), who is investigating relationships within *D. increscens* and the classification of the currently recognized subspecies, including *D. increscens* ssp. *villosa*. In conjunction with this work, he has not discovered any information on additional localities of *D. increscens* ssp. *villosa* (Dr. Bruce Baldwin, pers. comm., 2002). Dr. Baldwin and his colleagues hope to visit sites within the known range of the taxon in the summer of 2002 to acquire additional samples for the purpose of investigating fine-scale diversity within *D. increscens* (B. Baldwin, *in litt.*, 2002).

While additional surveys would help in further defining the distribution of the taxon, we are required to designate those areas we know to be critical habitat, using the best information available to us. Due to time constraints

inherent in the critical habitat process, we may not have the information necessary at the time of designation to identify all areas that are essential for the conservation of the species. As the reviewer commented, we have acknowledged that there are gaps in what is known about the distribution and abundance of the taxon by stating that additional habitat outside the designated areas may later be discovered to be critical for the recovery of the species.

Public Comments

Issue 1: Biological Justification and Methodology

(4) *Comment:* One commenter stated that designation of critical habitat for *Deinandra increscens* ssp. *villosa* is premature until there is more definitive information on the habitats on which this taxon is likely to occur; the subspecies has been found recently in several distinct habitats.

Our Response: Most of the distribution information on *Deinandra increscens* ssp. villosa is a result of findings from within the past 5 years. *D. increscens* ssp. *villosa* occurs in grasslands and openings in coastal sage scrub. We have taken into account that this taxon is an annual species with a soil seed bank that likely covers a larger area than the extent of observable plants seen in a given year. Therefore, it is reasonable to assume that the entire spatial distribution of all populations has not been mapped.

When we designate critical habitat we are required to use the best available information. This final critical habitat designation is based on our best assessment at this time of the areas that are needed for the conservation of the taxon. We have encompassed those areas we believe provide some or all of the habitat components that are currently known to be essential for the conservation of *Deinandra increscens* ssp. *villosa*.

Issue 2: Site-Specific Areas and Other Comments

(5) *Comment:* We received a comment that designation of critical habitat for *Eriodictyon capitatum* on Vandenberg Air Force Base would not provide any additional benefit for the species. Protection of areas beyond the limits of the existing populations on Vandenberg is not essential to the conservation of the species because expansion or creation of new populations is not likely, considering the ecology of the species.

Our Response: Existing populations of *Eriodictyon capitatum* may expand into adjacent areas through continued vegetative spread, as well as through seed germination following fire (see the Background section for more information on the species). We determined that the populations of *E. capitatum* on Vandenberg are important and that habitat adjacent to the existing populations is essential to the conservation of the species. However, we are excluding Vandenberg Air Force Base from the final designation of critical habitat because the Air Force has committed to include long-term conservation measures and adaptive management for Eriodictyon capitatum in their INRMP. We have determined that lands on Vandenberg Air Force Base should be excluded under subsection 4(b)(2) of the Act because the benefits of exclusion outweigh the benefits of inclusion and will not cause the extinction of the species. See the section entitled "Relationship of Critical Habitat to Military Lands" for further information.

(6) *Comment:* Arguello, Inc. (Arguello) requested exclusion of its oil and gas facilities from the Conception-Gaviota Unit of *Deinandra increscens* ssp. *villosa* critical habitat. Specifically, Arguello requested exclusion of its Gaviota Facility until such time as it is removed and the site restored. Arguello also requested exemption for maintenance and repair activities to crude oil and natural gas pipelines and their associated right of way (ROW). In situations where Arguello would need a section 404 authorization from the U.S. Army Corps of Engineers (Corps), any additional consultation requirements to address critical habitat would result in a three to four month delay in completing urgent and/or critical maintenance and repairs of the Gaviota Facility, pipelines, and associated ROW.

Our Response: Industrial sites that are paved and developed, such as the Gaviota Facility, would not contain the primary constituent elements and therefore, are not considered critical habitat. Due to mapping and time constraints, we did not map critical habitat in sufficient detail to exclude all developed areas that lack the primary constituent elements essential for the conservation of these taxa, but such areas that remain within the mapped units are not considered critical habitat. Federal activities limited to paved and developed areas would not trigger a section 7 consultation unless they affect the species or primary constituent elements in adjacent critical habitat.

While the developed site itself may not currently be considered critical habitat, the area within which Aruguello's facilities is located is essential to the conservation of *Deinandra increscens* ssp. *villosa*. The Conception-Gaviota Unit supports most of the known populations of *D. increscens* ssp. *villosa* that occur along the immediate coast. Arguello's Gaviota Facility is within the area of the historical Gaviota population, which was once large but is currently in decline; *D. increscens* ssp. *villosa* was first collected from the Gaviota area in 1902. The pipelines and ROW stretch along the portion of the Gaviota coastline that currently supports the taxon. The unit is essential because it encompasses multiple populations that occur on marine terraces supporting coastal grasslands, as well as intervening suitable habitat that is important for the expansion of existing populations, and maintenance of connectivity for pollinators and dispersal between these populations. Therefore, we have determined that the conservation of the entire Conception-Gaviota critical habitat unit is necessary to the conservation of the species. We did not exclude Arguello's Gaviota Facility or pipeline ROW from the final designation, although paved and developed areas are excluded by definition from the designation.

For ongoing pipeline maintenance activities that require Corps permits or other Federal authorization, consultation requirements under the Act can be addressed through a programmatic biological opinion. In the event that emergency repair or maintenance of the Gaviota Facility, pipelines and associated ROW is necessary, regulations for section 7 provide a modified consultation procedure allowing us to respond in an expedited manner if consultation on *Deinandra increscens* ssp. *villosa* or its critical habitat is needed (50 CFR 402.05). This procedure allows emergency consultation to occur through informal means (*e.g.*, a telephone call) and, therefore, promotes rapid responses to emergency situations. The emergency consultation provision applies to situations involving acts of God, disasters, casualties, national defense or security emergencies, etc. (50 CFR 402.05).

(7) *Comment:* California Department of Transportation (Caltrans) requested an exclusion of areas within the Caltrans operating ROW in several, unspecified units of critical habitat for *Eriodictyon capitatum* and *Deinandra increscens* ssp. *villosa*, where they overlap with the transportation system of California. Caltrans requested an exclusion to reduce the need for habitat effects determinations for the taxa where routine disturbance occurs as a

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result of regular maintenance and operational improvements.

Our Response: In the region covered by this critical habitat designation, State and Federal roads appear to be within the Conception-Gaviota unit of *Deinandra increscens* ssp. *villosa*. Within this unit, the majority of the documented occurrences of the taxon are north and south of Highway 101 along a narrow coastal terrace; we have determined that the coastal terrace is essential for the conservation of the species.

We are not including roads that border the critical habitat units in our designation. For this final rule, we adjusted unit boundaries to exclude roads whenever possible. However, due to mapping and time constraints, we did not map critical habitat in sufficient detail to exclude all roads, although these would not contain the primary constituent elements essential for the conservation of *Eriodictyon capitatum* and *Deinandra increscens* ssp. *villosa*. Federal activities limited to roads and other paved or gravelled areas would not trigger a section 7 consultation unless they affect the species or one or more of the primary constituent elements in adjacent critical habitat. To streamline the regulatory process, Caltrans may request section 7 consultation at a programmatic level for ongoing activities that would result in adverse effects to the taxon or its critical habitat.

Issue 3: Economic Issues

(8) *Comment:* We received one comment recommending that we use the contingent valuation method (CVM) to determine the hypothetical non-use values for *Eriodictyon capitatum* and *Deinandra increscens* ssp. *villosa* and their habitats that comprise this rulemaking.

Our Response: Some economists recognize that in addition to a "use value" that society places on natural resources these goods may also exhibit a "non-use value" by society. For example, while many people may elect to visit a public park and "use" it for a variety of recreational purposes, the presence of this park may provide a variety of benefits to additional members of society even though their enjoyment may not be directly observable. Certain individuals may also derive benefits from the park because of the protection it offers to certain natural resources including a diverse ecosystem that harbors endangered and threatened species. While these members of society may value the park merely for its existence, their behavior is not directly observable and thus economists have developed certain tools, including the CVM, for measuring these values.

CVM is an approach used by some economists to directly elicit non-use values from individuals through the use of carefully designed survey instruments. A CVM study will provide respondents with a framework wherein they are asked to value the resource given the parameters of the framework. For the CVM to work properly, and provide meaningful information on non-use values, considerable resources must be expended to adequately design and administer this tool. We have not employed CVM studies to capture the non-use values certain individuals may place on critical habitat designation.

Summary of Changes From the Proposed Rule

In preparation for development of our final designation of critical habitat for *Eriodictyon capitatum* and *Deinandra increscens* ssp. *villosa*, we reviewed comments received on the proposed designation of critical habitat. Other than minor clarifications and incorporation of additional information on the species' biology, we made three changes to our proposed designation, as follows:

(1) For *Eriodictyon capitatum*, we shortened the list of the primary constituent elements from three to two elements. We removed the third primary constituent element (habitat directly adjacent upslope and downslope from known populations, as this species appears to spread primarily through vegetative reproduction) because it did not add any additional value or purpose in defining critical habitat. We determined that the two primary constituent elements adequately captured the habitat features necessary for the conservation of the species.

(2) We deleted one of the units of *Eriodictyon capitatum* and two units of *Deinandra increscens* ssp. *villosa* proposed critical habitat. These units are comprised entirely of lands under the Federal jurisdiction of Vandenberg Air Force Base. In addition, we modified boundaries to exclude portions of the Sudden Peak and Conception-Gaviota Units of *Deinandra increscens* ssp. *villosa* critical habitat that consisted of lands on Vandenberg Air Force Base. The Sudden Peak Unit of *Deinandra increscens* ssp. *villosa* critical habitat was reduced from 694 ha (1,715 ac) in the proposed rule to 320 ha (791 ac) in the final designation. The Conception-Gaviota Unit of *Deinandra increscens* ssp. *villosa* critical habitat was reduced from 3,668 ha (9,115 ac) in the proposed rule to 3,176 ha (7,848 ac) in the final designation.

In total, the removal of lands on Vandenberg resulted in a reduction of 2,126 ha (5,253 ac), approximately 23 percent of the area that had been proposed as *Eriodictyon capitatum* and *Deinandra increscens* ssp. *villosa* critical habitat. The reasons for excluding Vandenberg from this final critical habitat designation are discussed in the section entitled "Relationship of Critical Habitat to Military Lands".

(3) We modified the boundaries of one unit of *Eriodictyon capitatum* (Solomon Hills) and one unit of *Deinandra increscens* ssp. *villosa* (Santa Ynez) critical habitat due to the availability of better mapping resources and additional information received during the development of the final rule. In total, these modifications resulted in a reduction of 467 ha (1,152 ac), approximately 5 percent of the area proposed as critical habitat for *Eriodictyon capitatum* and *Deinandra increscens* ssp. *villosa*.

The new boundary lines were drawn within the boundaries previously defined; in no case was the new boundary line drawn outside of that described in the legal description for the units in the proposed designation. The purpose of these changes was to exclude areas that do not appear to contain the primary constituent elements, and for which we were unable to draw more precise boundaries at the time of the proposed designation. New information provided during the preparation of the final rule, along with recently acquired high resolution aerial photographs dating from April 2000, enabled us to undertake the more precise mapping. We received maps of vegetation within the Santa Ynez, Santa Ynez Mountains, and Conception-Gaviota Units from the Hollister Ranch Conservancy, and information from the Nuevo Energy Company regarding the Solomon Hills Unit. We found it appropriate to modify boundaries of the Solomon Hills and Santa Ynez Unit, upon consideration of the new information and high resolution aerial photographs, as described below

(1) The Solomon Hills Unit of *Eriodictyon capitatum* critical habitat was reduced from 1,311 ha (3,239 ac) in the proposed rule to 906 ha (2,239 ac) in the final designation. According to high resolution aerial photography and communication with representatives of Nuevo Energy Company, portions of the low-lying areas are characterized primarily by grassland that do not contain vegetation associated with *E. capitatum*.

(2) The Santa Ynez Unit of *Deinandra increscens* ssp. *villosa* critical habitat was reduced from 495 ha (1,222 ac) in the proposed rule to 433 ha (1,070 ac) in the final designation. Using vegetation maps from Hollister Ranch Conservancy and aerial photography, we modified the western boundary of the unit to exclude a portion that appears to be dominated by chaparral and oak woodland vegetation communities.

Critical Habitat

Section 3 of the Act defines critical habitat as—(i) the specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed upon a determination that such areas are essential for the conservation of the species.

"Conservation" means the use of all methods and procedures that are necessary to bring an endangered or a threatened species to the point at which listing under the Act is no longer necessary.

Critical habitat receives protection under section 7 of the Act through the prohibition against destruction or adverse modification of critical habitat that with regard to actions authorized, funded, or carried out by a Federal agency. Section 7 of the Act also requires conferences on Federal actions that are likely to result in the destruction or adverse modification of proposed critical habitat. Aside from the added protection that may be provided under section 7, the Act does not provide other forms of protection to lands designated as critical habitat. Because consultation under section 7 of the Act does not apply to activities on private or other non-Federal lands that do not involve a Federal nexus, critical habitat designation would not afford any additional regulatory protections under the Act against such activities.

Critical habitat also provides non-regulatory benefits to the species by informing the public and private sectors of areas that are important for species recovery and where conservation actions would be most effective. Designation of critical habitat can help focus conservation activities for a listed species by identifying areas that contain the physical and biological features essential for the conservation of that species, and can alert the public as well as land-managing agencies to the importance of those areas. Critical habitat also identifies areas that may require special management considerations or protection, and may help provide protection to areas where significant threats to the species have been identified, by helping people to avoid causing accidental damage to such areas.

In order to be included in a critical habitat designation, the habitat must first be "essential to the conservation of the species." Critical habitat designations identify, to the extent known, and using the best scientific and commercial data available, habitat areas that are essential to the conservation of the species. Section 3(5)(C) of the Act states that not all areas that can be occupied by a species should be designated as critical habitat except in those circumstances determined by the Secretary. Our regulations (50 CFR 424.12(e)) also state that, "The Secretary shall designate as critical habitat areas outside the geographic area presently occupied by the species only when a designation limited to its present range would be inadequate to ensure the conservation of the species."

Section 4(b)(2) of the Act requires that we take into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. We may exclude areas from critical habitat designation when the benefits of exclusion outweigh the benefits of including the areas within critical habitat, provided the exclusion will not result in extinction of the species.

Our Policy on Information Standards Under the Endangered Species Act, published in the **Federal Register** on July 1, 1994 (59 FR 34271), provides criteria, establishes procedures, and provides guidance to ensure that our decisions represent the best scientific and commercial data available. This policy requires our biologists, to the extent consistent with the Act and with the use of the best scientific and commercial data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, a primary source of information should be the listing package for the species. Additional information may be obtained from a recovery plan, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments or other unpublished materials.

Section 4 of the Act requires that we designate critical habitat based on what we know at the time of designation. Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. For these reasons, it is important to understand that critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery. Areas outside the critical habitat designation will continue to be subject to conservation actions that may be implemented under section 7(a)(1) of the Act and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard and the applicable prohibitions of section 9 of the Act, as determined on the basis of the best available information at the time of the action. Federally funded or assisted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

Methods

As required by the Act and regulations (section 4(b)(2) and 50 CFR 424.12), we used the best scientific and commercial data available to determine areas that contain the physical and biological features that are essential for the conservation of *Eriodictyon capitatum* and *Deinandra increscens* ssp. *villosa*. This information included information from the CNDDB (2001), soil survey maps (U.S. Soil Conservation Service 1972, 1981), aerial photography, recent biological surveys and reports, additional information provided by interested parties, and discussions with representatives of CDFG, the County of Santa Barbara Planning Department, and botanical experts. We also conducted site visits at several locations managed by local, State or Federal agencies, including Vandenberg Air Force Base and Gaviota State Beach. We also visited the Solomon Hills site, which is owned by Nuevo Energy Company.

The proposed critical habitat units for *Eriodictyon capitatum* and *Deinandra increscens* ssp. *villosa* were delineated by creating data layers in a geographic information system (GIS) format of the areas of known occurrences of the two taxa using the information sources

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described above and aerial photographs available through TerraServer (*http://terraserver.homeadvisor.msn.com*). These data layers were created on a base of USGS 7.5′ quadrangles obtained from the State of California's Stephen P. Teale Data Center. We defined the boundaries for the proposed critical habitat units using roads and known landmarks and, where necessary, township, range, and section numbers from the public land survey.

For the final rule, we then modified the boundaries of proposed critical habitat using recent aerial imagery dated from April 2000 (AirPhoto USA), and additional maps of vegetation submitted by the Hollister Ranch Conservancy. The boundaries of the final critical habitat units are defined by Universal Transverse Mercator (UTM).

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat, we consider those physical and biological features (primary constituent elements) that are essential to the conservation of the species and that may require special management considerations or protection. These include, but are not limited to: Space for individual and population growth, and for normal behavior; food, water, air, light, minerals or other nutritional or physiological requirements; cover or shelter; sites for germination or seed dispersal; and habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

All areas designated as critical habitat for *Eriodictyon capitatum* and *Deinandra increscens* ssp. *villosa* are within each species' historic range and contain one or more of the physical or biological features (primary constituent elements) identified as essential for the conservation of each taxon. Much of what is known about the specific physical and biological requirements of *E. capitatum* and *D. increscens* ssp. *villosa* is described in the Background section of this final rule.

The designated critical habitat, combined with those areas located on Vandenberg Air Force Base that are critical to the species' survival but were excluded from the final designation, is intended to provide sufficient habitat to maintain self-sustaining populations of *Eriodictyon capitatum* and *Deinandra increscens* ssp. *villosa* throughout each species' range, and provide those habitat components essential for the conservation of each taxon. Habitat components that are essential for *E. capitatum* are found in vegetation communities classified as maritime chaparral and in southern bishop pine forests that intergrade with chaparral where physical processes, such as occasional dry-season fires, support patch dynamics within the pine forest and chaparral communities. Habitat components that are essential for *D. increscens* ssp. *villosa* are found in needlegrass grassland and coastal sage scrub communities with a clay layer found below the sandy soil surface.

Eriodictyon capitatum

Based on our knowledge to date, the primary constituent elements of critical habitat for *Eriodictyon capitatum* consist of:

(1) Soils with a large component of sand and that tend to be acidic; and

(2) Plant communities that support associated species, including maritime chaparral, particularly where the following associated species are found: *Dendromecon rigida* (bush poppy), *Quercus berberidifolia* (California scrub oak), Quercus parvula (Santa Cruz Island oak), and Ceanothus cuneatus (buck brush); and in southern bishop pine forests that intergrade with chaparral *Arctostaphylos* spp. (manzanita) and *Salvia mellifera* (black sage).

Deinandra increscens ssp.villosa

Based on our knowledge to date, the primary constituent elements of critical habitat for *Deinandra increscens* ssp. *villosa* are:

(1) Sandy soils associated with coastal terraces adjacent to the coast or uplifted marine sediments at interior sites up to 5.6 km (3.5 mi) inland from the coast; and

(2) Plant communities that support associated species, including needlegrass grassland and coastal sage scrub communities, particularly where the following associated species are found: needlegrass species (*Nassella* spp.), California sagebrush (*Artemisia californica*), coyote bush (*Baccharis pilularis*), sawtooth golden bush (*Hazardia squarrosa*), and California buckwheat (*Eriogonum fasciculatum*).

Special Management Considerations or Protections

Special management considerations or protections may be needed to maintain the primary constituent elements for the two taxa within the units being designated as critical habitat. In some cases, protection of existing habitat and current ecological processes may be sufficient to ensure that populations of the plants are maintained at those sites, and have the ability to reproduce and disperse in surrounding habitat. In other cases, however, active management may be needed to maintain the primary constituent elements for the two taxa. We have outlined below the kinds of special management and protection that these two taxa would most likely require. These recommendations for management and protection are general in nature. Specific management actions should be developed according to local site conditions. Not all of these will apply to each plant taxon equally.

(1) Existing soil conditions should be protected by avoiding activities that cause the erosion or compaction of soils. Maintaining an intact soil profile may be necessary to maintain edaphic features such as a horizon of permeable sandy soils on the surface layer. For example, *Deinandra increscens* ssp. *villosa* is thought to be restricted to acidic, fine sandy loams with a subsurface clay layer that may act as a reservoir of soil moisture.

(2) Existing hydrologic conditions should be protected by avoiding activities that cause a change in surface or subsurface water flows upon which the plant taxa depend. For example, development of areas adjacent to a population may result in an increase in runoff and surface water flow. This alteration may affect the soil moisture content to which the local population has adapted.

(3) In all plant communities where these taxa occur, invasive, non-native species, such as harding grass (*Phalaris aquaticus*), veldt grass (*Ehrharta calycina*), and iceplant (*Carpobrotus edulis*), should be actively managed. Invasive non-natives pose a serious threat to the survival of *Deinandra increscens* ssp. *villosa* and *Eriodictyon capitatum* and remaining habitat of the taxa. For example, accumulated dead leaves and stems (thatch) from non-native grass species that dominate the habitat effectively prevent the establishment of *D. increscens* ssp. *villosa* at a site. Iceplant is known to invade native maritime chaparral vegetation occupied by *Eriodictyon capitatum*. Once non-native grasses and other invasive plants (*e.g.*, iceplant) have become established, they cannot be removed without great expenditure of time and effort.

(4) The composition of the native plant and animal communities associated with the taxa must be maintained. Native plant diversity may limit the ability of aggressive non-native plants to invade a population (Dukes 2002). In addition, a decline in biodiversity may increase the potential impact of invasive plants on a community (*e.g.*, suppression of growth). Recent research suggests that grassland communities with fewer species may be more likely to decline as a consequence of invasion (Dukes 2001). In addition, native plant diversity may increase pollinator activity and therefore enhance the conservation of a plant species. Biologists have suggested that a plant population may persist as long as it occurs within an area of a diversity of plant species that are attractive to pollinators (Kwak 1988). Habitat fragmentation and isolation of species-rich grasslands, with intervening areas of no or low diversity of native plants, has been found to negatively affect plant-pollinator interactions (Stephann-Dewenter and Tscharntke 1999).

(5) The local distribution of plant communities should be managed to provide for the physical requirements of the taxa (*e.g.*, space for establishment). For some grassland areas, it may be important to maintain openings within or between coastal scrub communities that might otherwise encroach upon grassland patches that support *Deinandra increscens* ssp. *villosa*.

(6) Certain areas where these taxa occur may need fencing to protect them from accidental or intentional trampling by humans and livestock. Portions of three of the five units are currently used by livestock.

Criteria Used To Identify Critical Habitat

Throughout this designation, when selecting areas of critical habitat we made an effort to avoid developed areas, such as housing developments, that are unlikely to contribute to the conservation of *Eriodictyon capitatum* and *Deinandra increscens* ssp. *villosa*. However, we did not map critical habitat in sufficient detail to exclude all developed areas, or other lands unlikely to contain the primary constituent elements essential for the conservation of *E. capitatum* and *D. increscens* ssp. *villosa*. Areas within the boundaries of the mapped units, such as buildings, roads, parking lots, railroads, airport runways and other paved areas, lawns, and other urban landscaped areas will not contain any of the primary constituent elements. Therefore, Federal actions limited to these areas would not trigger a section 7 consultation unless it is determined that such actions may affect the species and/or adjacent designated critical habitat (*e.g.* certain actions may affect the species or its critical habitat in an adjacent area).

During the development of this rule, we considered the role of unoccupied habitat in the conservation of *Eriodictyon capitatum* and *Deinandra increscens* ssp. *villosa*. Due to the historic loss of the habitats that supported the two taxa, we believe that future conservation and recovery of these taxa depends not only on protecting them in the limited areas that they currently occupy, but also on providing the opportunity to expand their distribution by protecting currently unoccupied habitat that contains the necessary primary constituent elements within their historic ranges.

Portions of the critical habitat units designated for *Deinandra increscens* ssp. *villosa* include areas that are currently unoccupied by the taxon. Determining the specific areas that this taxon occupies is difficult for several reasons: (1) The methods for mapping the current distribution of *D. increscens* ssp. *villosa* can be variable, depending on the scale at which groups of individuals are recorded (*e.g.*, many small groups versus one large group); and (2) depending on the climate and other annual variations in habitat conditions, the extent of the above-ground distributions may either shrink and temporarily disappear, or, as a residual soil seed bank is expressed, enlarge and cover a more extensive area. Therefore, the inclusion of currently unoccupied habitat interspersed with patches of occupied habitat in the critical habitat units reflects the essential conservation needs of this species, the dynamic nature of the habitat, and the life history characteristics of this taxon.

When designating critical habitat, we assess whether the areas determined to be essential for conservation may require special management considerations or protections. We considered the status of habitat conservation plan (HCP) efforts during the development of this rule. As discussed in the section entitled "Relationship to Habitat Conservation Plans", we may exclude HCPs from critical habitat designation if the benefits of excluding them would outweigh the benefits of including them. Currently, there are no HCPs that include *Eriodictyon capitatum* or *Deinandra increscens* ssp. *villosa* as covered species.

If we determine that essential areas on military lands do not require special management considerations or protections, we may be able to exclude them from critical habitat, as discussed in the section entitled "Relationship of Critical Habitat to Military Lands." The Air Force has developed a Draft Integrated Natural Resources Management Plan (INRMP) for Vandenberg. Although measures to provide for the conservation of *Eriodictyon capitatum* or *Deinandra increscens* ssp. *villosa* are not currently included in the draft INRMP, the Air Force has committed to incorporate into their INRMP, and implement, specific measures that will address the conservation of these species and their habitat where they occur on Vandenberg. Based on this commitment, we have, therefore, determined that lands on Vandenberg Air Force Base should be excluded under subsection 4(b)(2) of the Act because the benefits of exclusion outweigh the benefits inclusion and will not cause the extinction of the species. For this reason, we are excluding from the designated critical habitat those proposed units and portions of proposed units that were located on Vandenberg. This is discussed in greater detail in the section on military lands referred to above.

We also evaluated areas that may be in need of special management considerations or protections in the context of a recovery strategy and broader regional planning efforts. Because *Deinandra increscens* ssp. *villosa* and *Eriodictyon capitatum* were federally listed in the year 2000, we have not yet developed recovery plans for these taxa. *Eriodictyon capitatum* has been State-listed since 1979 and *D. increscens* ssp. *villosa* has been State-listed since 1990. Therefore, the conservation needs of these taxa have been considered during the review of individual projects by the County of Santa Barbara, as lead California Environmental Quality Act agency, and CDFG. Numerous initiatives and planning efforts, described below, all recognize the significance and sensitivity of the coastal habitats and biological resources along this portion of the central California coast that supports the two taxa. These local and regional projects aid in identifying essential areas that are in need of special management or protection. Ongoing conservation planning efforts may also provide the opportunity to develop more focused management plans that would ensure that the essential areas for *E. capitatum* and *D. increscens* ssp. *villosa* are adequately protected.

Certain areas, such as the Gaviota Coast, have been the target of broader planning efforts due to the development and operation of oil and gas facilities and pipelines in environmentally sensitive areas. The Gaviota Coast constitutes one of the critical habitat units for *Deinandra increscens* ssp. *villosa*. This taxon overlaps in large part

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with the South Coast Consolidation Planning Area, which is a designation conferred by the SBPDED. The South Coast Consolidation Planning Area is where multiple oil and gas facilities already exist and additional oil and gas production and processing could occur (SBPDED 1982). The South Coast Consolidation Planning Area designation concentrates the establishment and operation of oil and gas facilities into two areas, one of which is near the historic *D. increscens* ssp. *villosa* Gaviota location.

As mitigation for the development of its oil and gas facilities in this area, All-American Pipeline and Chevron provided for the establishment of the Gaviota Tarplant Reserve as a mitigation bank in its Mitigation and Management Plan (AAPC, *in litt.*, 1993; AAPC 1995; K. Rindlaub, *in litt.*, 1996). Arguello, a subsidiary of All-American and the property owner, is in the process of transferring the 35 ha (86 ac) parcel to CDFG for the Gaviota Tarplant Reserve. In its mitigation plan for the Molino Gas Project, located within the South Coast Consolidation Planning Area (described above) along the coast east of Gaviota, Molino Energy Company committed to purchase mitigation credits and contribute an endowment for the management of the Gaviota Tarplant Reserve (K. Rindlaub, *in litt.*, 1996). The Gaviota Tarplant Reserve was intended to provide mitigation for oil and gas projects along this stretch of the Gaviota coast that historically supported an abundance of *Deinandra increscens* ssp. *villosa* (M. Meyer, pers. comm., 2002). Unocal is proposing to contribute a management endowment for the reserve to mitigate for impacts that would result from the decommissioning of its Cojo Marine Terminal and Point Conception Facilities, located near Government Point along the Gaviota coast (Padre Associates 2002). The Gaviota tarplant reserve has been included in the designation because there are currently no restrictions on public use of this area, and the threat of accidental or intentional trampling by humans and livestock to the species still exists.

The County established Coastal Resource Enhancement Fund (CREF) in 1987 to help mitigate significant impacts of offshore oil and gas development to environmentally sensitive coastal resources, among other impacts (SBPDED 2002b). Santa Barbara County has awarded 195 grants for a total of $13.3 million from its CREF. Half of these mitigation funds have been used to acquire or establish conservation easements on coastal properties to protect environmentally sensitive coastal habitats. One of the grants from the CREF contributed to the purchase of Rancho Arroyo Hondo by the Land Trust of Santa Barbara (SPDED 2002c). Rancho Arroyo Hondo consists of 316 ha (782 ac) that extend from the top of the Santa Ynez Mountains down to the ocean along the Gaviota Coast. The boundaries of the ranch follow the ridgelines on either side of the canyon, encompassing nearly the entire watershed of Arroyo Hondo Creek. This area overlaps with one of the *Eriodictyon capitatum* critical habitat units and one of the *Deinandra increscens* ssp. *villosa* critical habitat units.

Critical Habitat Designation

The critical habitat areas described below include one or more of the primary constituent elements described above and constitute our best assessment at this time of the areas needed for the conservation of each of the two taxa. Critical habitat includes habitat throughout the species' current range in Santa Barbara County, California. Lands designated as critical habitat are under State, local, and private ownership. State lands include areas owned and managed by the CDPR and the CDFG. Local lands include parks owned by the County of Santa Barbara. Private lands include areas that are being managed for conservation by private landowners, as well as those that are being managed for agriculture, ranchlands, or oil production. We are designating critical habitat on lands that are considered essential to the conservation of each of the two taxa. Each of the critical habitat units is considered to be occupied by either seeds as part of the seed bank or standing plants, and contain habitat that includes the specific soils, hydrology, and plant communities that are associated with each of the two species. Portions within the units may be currently unoccupied by the species, but still contain habitat that includes the specific soils, hydrology, and plant communities that are associated with the species.

Eriodictyon capitatum

We are designating critical habitat for *Eriodictyon capitatum* in two units encompassing two of the locations currently occupied by the species. The areas being designated as critical habitat are in western Santa Barbara County and include the appropriate sandy, acidic soils and chaparral and southern bishop pine forest habitat that supports *E. capitatum*.

Protection of each of the locations where *Eriodictyon capitatum* occurs is essential for the conservation of this species to reduce the risks inherent in having so few extant populations. The sizes of the *E. capitatum* populations and elevation, coastal influence, and soil type vary between the two critical habitat units. Environmental variations such as these are important in shaping the phenological (*e.g.*, timing of reproduction), morphological (*i.e.*, physical structure and form), and physiological adaptations of plant populations to specific environments (Clausen *et al.* 1948; Clausen 1951). For example, elevation and distance from the coast influence precipitation and average daily temperatures to which a population is subjected, while soil type can influence nutrient and water availability. The heritable local adaptations that develop as a result of such environmental variations reflect genetic variability within the species. Preserving this genetic variability in endemic species that allows for adaptation to changing climatic and other environmental influences is important to improve the likelihood that the species will be able to survive and adapt to such future environmental changes (Falk 1992).

We are designating approximately 2,590 ha (6,401 ac) of land as critical habitat for *Eriodictyon capitatum*. The area that we are designating as critical habitat consists entirely of private lands (Table 1).

TABLE 1.—APPROXIMATE DESIGNATED CRITICAL HABITAT UNIT AREAS FOR *Eriodictyon capitatum* IN HECTARES (HA) (ACRES (AC)) BY LAND OWNERSHIP [1]

Unit name	State	Private	County and other local jurisdictions	Federal	Total
Solomon Hills	0 ha (0 ac)	906 ha (2,239 ac)	0 ha (0 ac)	0 ha (0ac)	906 ha (2,239 ac).
Santa Ynez Mountains	0 ha (0 ac)	1,684 ha (4,162 ac)	0 ha (0 ac)	0 ha (0 ac)	1,684 ha (4,162 ac).
Total	0 ha (0 ac)	2,590 ha (6,401 ac)	0 ha (0 ac)	0 ha (0 ac)	2,590 ha (6,401 ac)

[1] Approximate hectares have been converted to acres (1 ha = 2.47 ac).

The two units of critical habitat for *Eriodictyon capitatum* support populations of the species and contain surrounding habitat essential for maintaining the ecological processes that allow the populations and the primary constituent elements to persist. Areas within the units that are adjacent to, but not currently occupied by *E. capitatum*, also provide habitat for the expansion of existing populations.

In summary, these critical habitat units support two of the four locations of a species endemic to western Santa Barbara County, California. They support the ecological associates (*e.g.* pollinators, seed dispersers, mycorhizzal fungi) that maintain the extant populations and the primary constituent elements, as well as provide space for population expansion that is essential to the conservation of the species.

A brief description of each critical habitat unit is given below:

Solomon Hills Unit

The Solomon Hills Unit consists of a low hill (locally known as Orcutt Hill) located southeast of the community of Orcutt and west of Highway 1. This unit encompasses 906 ha (2,239 ac) and is privately owned, primarily by a single corporation. Habitat in this unit has been dissected by roads, pads, and pipelines associated with oil well drilling. This unit is approximately 24 km (15 mi) from the nearest *Eriodictyon capitatum* location to the south at Vandenberg.

The Solomon Hills Unit includes watersheds from the ridgelines downslope to the bottoms of the nearest drainages. Sites on the ridgetops have very shallow soils consisting of exposed parent material; soils in this unit are unique in that they are excessively drained (Arnold sands with a low clay content). The inland location of this unit, combined with its well-drained soils, may subject this population to warmer, drier, conditions than the other known populations. It is likely that the *Eriodictyon capitatum* population here is locally adapted to the conditions unique to this unit. Preserving genetic variability in the species that has allowed it to adapt to these slightly different environmental influences is important to improve the likelihood that the species will be able to survive and adapt to future environmental changes (Faulk 1992).

The unit contains scattered Bishop pine and live oak, along with maritime chaparral comprised primarily of *Arctostaphylos* spp. (manzanita) and *Salvia mellifera* (black sage), which is a habitat type that supports *Eriodictyon capitatum* at only one other location (Vandenberg East). This bishop pine-chaparral community type is an exceptional biological resource because of the concentration of rare plants found within it, including *E. capitatum*.

The *Eriodictyon capitatum* population in this unit has been documented to occur along the ridgelines and has recently been observed to extend further downslope than previously known (S. Foley, pers. comm., 2002). Therefore, it is important to preserve the downslope habitat, encompassed within this designation, to allow expansion of the existing population.

Santa Ynez Mountains Unit

The Santa Ynez Mountains Unit consists of an 8 km (5 mi) long segment of the Santa Ynez Mountains between the Canada del Coho and Arroyo Bullito drainages. This is the larger of the two units, encompassing 1,684 ha (4,162 ac), and is privately owned. This unit includes several populations of *Eriodictyon capitatum* scattered among *Lithocarpus densiflorus* (tanbark oak), *Quercus agrifolia* (live oak), and numerous chaparral species. The downslope limit of this unit on its south-facing side lies along the shift in vegetation from chaparral at the higher elevations to grasslands at the lower elevations. The vegetation community in this unit differs in its species composition from the other unit. In addition, the soils here are of low permeability (high clay content), unlike those at any other location that supports *E. capitatum*. The populations in this unit are likely subjected to greater seasonal temperature extremes than the other known populations, as they are at the highest elevation (455 m (1500 ft)). In addition, very large individuals (7.6 cm (3 in) diameter at base) have been documented from this unit that were not found at other locations (Melissa Mooney, *in litt.*, 1986).

Deinandra increscens ssp. villosa

We are designating critical habitat for *Deinandra increscens* ssp. *villosa* in three units that encompass areas currently known to be occupied by the species. The areas being designated as critical habitat are in the Santa Ynez Mountains and along the Gaviota coast of western Santa Barbara County. They include the appropriate soils and associated grassland and coastal sage scrub plant communities that support *D. increscens* ssp. *villosa*.

Protection of each of the units where *Deinandra increscens* ssp. *villosa* occurs is essential for conservation of this species in order to reduce the risks inherent in having so few extant populations. The three critical habitat units for *D. increscens* ssp. *villosa* vary in their elevation, coastal influence, and topography. Environmental variations such as these are important in shaping the phenological, morphological, and physiological adaptations of plant populations to specific environments (Clausen *et al.* 1948; Clausen 1951). For instance, elevation and distance from the coast influence the precipitation levels and average daily temperatures to which a population is subjected. The heritable local adaptations that develop as a result of such environmental variations are indicative of genetic variability in the species. Preserving this genetic variability in endemic species that allows for adaptation to changing climatic and other environmental influences is important to improve the likelihood that the species will be able to survive and adapt to such future environmental changes (Falk 1992).

Encompassed within each critical habitat unit we are designating for *Deinandra increscens* ssp. *villosa* are the areas currently occupied by the populations, as well as intervening

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suitable habitat that provides space for population expansion, formation of new colonies, and shifts in population location which may occur over decades as habitat suitability changes due to geomorphic or other events (*e.g.*, slope failure, wildfire). In addition, the three units contain habitat needed to support the ecological associates (*e.g.*, pollinators, seed dispersal agents, mycorhizzal fungi) that maintain the extant populations and primary constituent elements for *D. increscens* ssp. *villosa*.

Preserving habitat within a population and the surrounding area is essential to maintain the plant-animal interactions on which movement of pollen and seeds depends. For example, groups of flowering plants that are isolated from native plant communities (*e.g.*, grasslands) can have diminished abundance and species richness of pollinators (Steffan-Dewenter and Tscharntke 1999). Most *Deinandra* species are strongly self-incompatible (Tanowitz 1982; B. Baldwin, *in litt.*, 2001), meaning that self-fertilization is impossible and insects are necessary for the transfer of pollen. *Deinandra increscens* ssp. *villosa* depends on the successful transfer of pollen between plants in order to produce seeds. Pollinators observed on the flowers of *D. increscens* ssp. *villosa* include several species of flies, bees, skippers, and butterflies (Tanowitz in Howald 1989). A decrease in abundance and species richness of pollinators due to habitat isolation can directly reduce seed set in a self-incompatible species such as *D. increscens* ssp. *villosa*.

Intervening native habitat between populations within each unit is also necessary to promote gene flow between populations of *Deinandra increscens* ssp. *villosa* through pollinators and dispersal agents. Gene flow is necessary to maintain genetic variation within and between populations; loss of genetic variation is harmful for reasons discussed below. Habitat connectivity provides opportunity for long-distance movement by pollinators as well as dispersal agents between existing populations. Seed dispersal agents for the taxon are likely the same as those for other *Deinandra* species. Seeds of these species are thought to be dispersed by large and small mammals and birds when the sticky parts of reproductive structures adhere to animal fur and feathers (B. Baldwin, *in litt.*, 2001).

Isolation of small populations from one another can lead to loss of genetic variation due to genetic drift and increased inbreeding (Hamrick and Godt 1996). Genetic drift, which are genetic changes in the allelic composition or allelic frequencies, occurs in small or suddenly depauperate bottleneck populations. A population bottleneck is an episode of reduction in population size due to such things as environmental stress or habitat fragmentation. Genetic consequences of drift and loss of genetic variation include loss of adaptability to change and inbreeding, which is the mating of individuals likely to share some of their genes due to common ancestry. Inbreeding depression is thought to reduce fitness of individual plants; it may negatively affect components such as seed viability, germination success, and flower and fruit production (Falk 1992). Therefore, preservation of genetic variation is essential to promote adaptability to change and the reproductive success necessary for the conservation of the species.

Preserving gene flow between colonies that are scattered across the landscape, as in the Conception-Gaviota Unit, is especially important for this species due to its breeding system. The type of incompatibility system that *Deinandra* species possess makes their ability to reproduce particularly vulnerable to loss of genetic variation within and between populations (B. Baldwin, *in litt.*, 2001). The critical need to preserve gene flow between a large number of individuals and populations has been emphasized for other rare plant species which share this type of incompatibility system (*e.g. Aster furcatus*) (Les *et al.* 1991).

In summary, maintaining the habitat surrounding and between the current *Deinandra increscens* ssp. *villosa* populations is essential to allow the expansion, movement, and founding of populations; to provide habitat for the pollinators and other associates which directly affect the conservation of the *D. increscens* ssp. *villosa*; and to sustain gene flow between populations of *D. increscens* ssp. *villosa* to conserve the genetic variation in this taxon.

We are designating approximately 3,929 ha (9,709 ac) of land as critical habitat for *Deinandra increscens* ssp. *villosa*. Almost all of the area designated as critical habitat consists of private lands (98 percent). Approximately 2 percent consists of State lands (Table 2).

TABLE 2.—APPROXIMATE DESIGNATED CRITICAL HABITAT UNIT AREAS FOR *Deinandra increscens* SSP. *villosa* IN HECTARES (HA) (ACRES (AC)) BY LAND OWNERSHIP [1].

Unit name	State	Private	County and other local jurisdictions	Total
Sudden Peak	0 ha (0 ac)	320 ha (791 ac)	0 ha (0 ac)	320 ha (791 ac).
Santa Ynez	0 ha (0 ac)	433 ha (1,070 ac)	0 ha (0 ac)	433 ha (1,070 ac).
Conception Gaviota	76 ha (187 ac)	3,100 ha (7,661 ac)	0 ha (0 ac)	3,176 ha (7,848 ac).
Total	76 ha (187 ac)	3,853 ha (9,522 ac)	0 ha (0 ac)	3,929 ha (9,709 ac).

[1] Approximate acres have been converted to hectares (1 ha = 2.47 ac).

A brief description of each critical habitat unit is given below:

Sudden Peak Unit

The Sudden Peak Unit consists of a 5-km (3-mi) stretch of ridgeline in the western portion of the Santa Ynez Mountains west of Sudden Peak, and generally includes grasslands above the 215-meter (700-foot) contour line. This unit is 320 ha (791 ac) and is comprised entirely of privately owned lands. Vandenberg Air Force Base holds an easement on a portion of these private lands. This unit includes two populations of *Deinandra increscens* ssp. *villosa* that comprised over 1,000 individuals in 1998. This unit is known to support populations away from the immediate coast and is at higher elevation than any other known *D. increscens* ssp. *villosa* location (425 m (1400 ft)). As a result, the populations in this unit experience more extreme seasonal temperatures and a lack of summer fog than most other populations which occur directly on the coast.

Santa Ynez Unit

The Santa Ynez Unit consists of a 9.7-km (6-mi) stretch of ridgeline of the Santa Ynez Mountains, ranging from Cañada de las Agujas east to Cañada del Agua Caliente. This unit of 433 ha (1,070 ac) is comprised entirely of privately owned lands. *Deinandra increscens* ssp. *villosa* occurs at 305 m (1,000 ft) in this unit, on the sandy mountain ridgelines. This unit supports two known populations of *D. increscens* ssp. *villosa* that comprised approximately 400 individuals in 1998. The terrain here differs from most other known locations in that it is characterized primarily by slopes that intergrade with flatter areas, rather than a flat marine terrace.

Conception-Gaviota Unit

The Conception-Gaviota Unit consists of a 51.5-km (23-mi) long stretch of habitat along the coast from Point Conception, east to Gaviota, and encompasses 3,176 ha (7,848 ac). At its widest point, this unit extends inland approximately 3.2 km (2 mi). This unit is comprised almost entirely of privately owned lands (98 percent). This unit also consists of State lands at Gaviota State Beach and lands in the process of being transferred to CDFG for the Gaviota Tarplant Reserve (2 percent). This unit is particularly important because it supports most of the known populations of *Deinandra increscens* ssp. *villosa* that occur along the immediate coast. This includes the Gaviota population which was once extensive but is currently in decline, two small patches discovered in 1998 between Gaviota and Point Conception, and an extensive population discovered in 2000 that ranges from Government Point to the area near Jalama Beach County Park. Given these recent observations and the proximity to existing populations, we believe that there may be additional unsurveyed areas within the unit that may support *D. increscens* ssp. *villosa*. The populations here occur on a flat marine terrace along the immediate coast and likely experience summer fog and a mild maritime climate.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7 of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out do not destroy or adversely modify critical habitat. Destruction or adverse modification of critical habitat occurs when a Federal action directly or indirectly alters critical habitat to the extent it appreciably diminishes the value of critical habitat for the conservation of the species. Individuals, organizations, States, local governments, and other non-Federal entities are affected by the designation of critical habitat only if their actions occur on Federal lands, require a Federal permit, license, or other authorization, or involve Federal funding.

Section 7(a) of the Act requires Federal agencies, including the Service, to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened, and with respect to its critical habitat, if any is designated or proposed. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a species proposed for listing, or result in destruction or adverse modification of proposed critical habitat. Conference reports provide conservation recommendations to assist the action agency in eliminating conflicts that may be caused by the proposed action. The conservation recommendations in a conference report are advisory.

We may issue a formal conference report, if requested by the Federal action agency. Formal conference reports include an opinion that is prepared according to 50 CFR 402.14, as if the species was listed or critical habitat designated. We may adopt the formal conference report as the biological opinion when the species is listed or critical habitat designated, if no substantial new information or changes in the action alter the content of the opinion (see 50 CFR 402.10(d)).

If a species is listed or critical habitat is designated, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Through this consultation, the Federal action agency would ensure that the permitted actions do not destroy or adversely modify critical habitat.

If we issue a biological opinion concluding that a project is likely to result in the destruction or adverse modification of critical habitat, we also provide "reasonable and prudent alternatives" to the project, if any are identifiable. Reasonable and prudent alternatives are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid the likelihood of jeopardizing the continued existence of listed species, or resulting in the destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where critical habitat is subsequently designated and the Federal agency has retained discretionary involvement or control over the action or such discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation or conference with us on actions for which formal consultation previously has been completed if those actions may affect designated critical habitat or adversely modify or destroy proposed critical habitat.

Activities on Federal lands that may affect *Eriodictyon capitatum* and *Deinandra increscens* ssp. *villosa* or their critical habitat will require consultation under section 7 of the Act. Activities on private or State lands that require a permit from a Federal agency, such as a permit from the Corps under section 404 of the Clean Water Act (33 U.S.C. 1344 *et seq.*), a section 10(a)(1)(B) permit from the Service, or any other activity requiring Federal action (*i.e.*, funding or authorization) will also continue to be subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat, as well as actions on non-Federal lands that are not federally funded, authorized, or permitted, do not require section 7 consultation with respect to these taxa.

All of the units we are designating are known to be occupied by either above-ground plants or a seed bank of the two taxa, and Federal agencies already consult with us on activities in areas where the species may be present to ensure that their actions do not jeopardize the continued existence of the species. Each unit also contains some areas which are considered unoccupied. However, we believe, and the economic analysis discussed below illustrates, that the designation of critical habitat is not likely to result in a significant regulatory burden above that already in place due to the presence of the listed taxa. Few additional consultations are likely to be conducted due to the designation of critical habitat. Actions on which Federal agencies

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consult with us include, but are not limited to:

(1) Development on private lands requiring permits from Federal agencies, such as 404 permits from the U.S. Army Corps of Engineers or permits from other Federal agencies such as Housing and Urban Development;

(2) Military activities of the U.S. Department of Defense (Air Force) on their lands or lands under their jurisdiction;

(3) Activities of the BLM on their lands or lands under their jurisdiction;

(4) Watershed management activities sponsored by the Natural Resources Conservation Service;

(5) Activities of the Federal Aviation Authority on their lands or lands under their jurisdiction;

(6) The release or authorization of release of biological control agents by the U.S. Department of Agriculture;

(7) Regulation of activities affecting point source pollution discharges into waters of the United States by the Environmental Protection Agency under section 402 of the Clean Water Act; and

(8) Construction of communication sites licensed by the Federal Communications Commission, and authorization of Federal grants or loans.

Where federally listed wildlife species occur on private lands proposed for development and an HCP is submitted by an applicant to secure a permit to take according to section 10(a)(1)(B) of the Act, our issuance of such a permit would be subject to the section 7 consultation process. In those situations where *Eriodictyon capitatum* or *Deinandra increscens* ssp. *villosa* may occur or their critical habitat is present within the area covered by the HCP, the consultation process would include consider all federally listed species affected by the HCP, including plants.

Section 4(b)(8) of the Act requires us to evaluate briefly and describe, in any proposed or final regulation that designates critical habitat, those activities involving a Federal action that may adversely modify such habitat or that may be affected by such designation. Activities that may destroy or adversely modify critical habitat would be those that alter the primary constituent elements to the extent that the value of critical habitat for the conservation of *Eriodictyon capitatum* and *Deinandra increscens* ssp. *villosa* is appreciably reduced. We note that such activities may also jeopardize the continued existence of the species.

Activities that, when carried out, funded, or authorized by a Federal agency, may directly or indirectly destroy or adversely modify critical habitat for *Eriodictyon capitatum* include, but are not limited to:

(1) Activities that alter watershed characteristics in ways that would appreciably alter or reduce the ability of the chaparral habitat to maintain a mosaic of stands in different age classes, such as maintaining an unnatural fire regime either through fire suppression or prescribed fires that are too frequent or poorly-timed; residential and commercial development, including road building and golf course installations; agricultural activities, including orchardry, viticulture, row crops, and livestock grazing; and vegetation manipulation such as brush clearance in the watershed upslope from *Eriodictyon capitatum;* and

(2) Activities that appreciably degrade or destroy native maritime chaparral and oak woodland communities at interior sites, including but not limited to livestock grazing, clearing, discing, introducing or encouraging the spread of nonnative species, and heavy recreational use.

Activities that, when carried out, funded, or authorized by a Federal agency, may directly or indirectly destroy or adversely modify critical habitat for *Deinandra increscens* ssp. *villosa* include, but are not limited to:

Activities that alter watershed characteristics in ways that would appreciably alter or reduce the ability of the coastal terraces to maintain healthy grassland communities, such as maintaining an unnatural fire regime either through fire suppression or prescribed fires that are too frequent or poorly-timed; residential and commercial development, including road building and golf course installations; agricultural activities, including orchardry, viticulture, row crops, and livestock grazing, oil field development, oil contamination remediation, and construction and decommissioning of pipelines and utility corridors.

Several other wildlife species that are listed under the Act occur in the same general areas as *Eriodictyon capitatum* and *Deinandra increscens* ssp. *villosa*. Along the coast between Jalama Beach County Park and Gaviota, Western snowy plovers (*Charadrius alexandrinus nivosus*) and their critical habitat, California red-legged frogs (*Rana aurora draytonii*) and their critical habitat, and tidewater gobies (*Eucyclogobius newberryi*) overlap with the Conception-Gaviota unit being designated for *Deinandra increscens* ssp. *villosa* critical habitat. When federally listed wildlife species occur on private lands for development, any HCPs submitted by the applicant to secure a permit for take under section 10(a)(1)(B) of the Act would be subject to the section 7 consultation process.

If you have questions regarding whether specific activities will likely constitute adverse modification of critical habitat, contact the Field Supervisor, Ventura Fish and Wildlife Office (see **ADDRESSES** section). Requests for copies of the regulations on listed wildlife and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Portland Regional Office, 911 NE 11th Avenue, Portland, OR 97232–4181 (telephone 503/231–6131; facsimile 503/231–6243).

Relationship of Critical Habitat to Military Lands

Section 3(5)(A) and Exclusions Under Section 4(b)(2)

Special management and protection for the species are not required if adequate management and protection are already in place. Adequate management or protection is provided by a legally operative plan/agreement that addresses the maintenance and improvement of the primary constituent elements important to the species, and that manages for the long-term conservation of the species. If any areas containing the primary constituent elements are currently being managed to address the conservation needs of *Eriodictyon capitatum* and *Deinandra increscens* ssp. *villosa* management or protection, these areas would not meet the definition of critical habitat in section 3(5)(A)(i) of the Act and would not be included in this final rule.

We consider several factors to determine if a plan provides adequate management or protection. These factors are: (1) Whether there is a current plan specifying the management actions and whether such actions provide sufficient conservation benefit to the species; (2) whether the plan provides assurances that the conservation management strategies will be implemented; and (3) whether the plan provides assurances that the conservation management strategies will be effective (*i.e.*, provide for periodic monitoring, adaptive management, and revisions as necessary). If all of these criteria are met, then the lands covered under the plan would likely no longer meet the definition of critical habitat and designation would no longer be appropriate.

In determining if management strategies are likely to be implemented, we consider whether: (a) A management plan or agreement exists that specified the management actions being implemented or to be implemented; (b) there is a timely schedule for implementation; (c) there is a high probability that the funding source(s) or other resources necessary to implement the actions will be available; and (d) the party(ies) have the authority and long-term commitment to implement the management actions, as demonstrated, for example, by a legal instrument providing enduring protection and management of the lands.

In determining whether an action is likely to be effective, we consider whether: (a) The plan specifically addresses the management needs, including reduction of threats to the species; (b) such actions have been successful in the past; (c) there are provisions for monitoring and assessment of the effectiveness of the management actions; and (d) adaptive management principles have been incorporated into the plan.

The Sikes Act Improvements Act of 1997 (Sikes Act) requires each military installation that encompasses land and water suitable for the conservation and management of natural resources to have completed, by November 17, 2001, an Integrated Natural Resources Management Plan (INRMP). An INRMP integrates implementation of the military mission of the installation with stewardship of the natural resources found there. Each INRMP includes an assessment of the ecological needs of the installation, including needs to provide for the conservation of species listed as threatened or endangered pursuant to the Endangered Species Act; a statement of goals and priorities; a detailed description of management actions to be implemented to provide for these ecological needs; and a monitoring and adaptive management plan.

As required by section 7 of the Act, consultation is conducted on the development and implementation of INRMPs for installations with listed species. We believe that military installations that have completed and approved INRMPs which address the needs of species generally do not meet the definition of critical habitat discussed above, as they require no additional special management or protection. Therefore, we generally do not include these areas in critical habitat designations if they meet the following three criteria: (1) A current INRMP must be complete and provide a benefit to the species; (2) the plan must provide assurances that the conservation management strategies will be implemented; and (3) the plan must provide assurances that the conservation management strategies will be effective, by providing for periodic monitoring and revisions as necessary. If all of these criteria are met, then the lands covered under the plan would not meet the definition of critical habitat.

As discussed above, the Sikes Act requires that Vandenberg Air Force Base develop an INRMP. In 1997, the Air Force developed and submitted for Service review a Draft INRMP for the Air Force Base, which is intended to provide an adaptive management approach to natural resource issues on Vandenberg (Tetra Tech, Inc. 1997). Because we determined that the 1997 Draft INRMP did not provide any specific measures to address the conservation and recovery of *Eriodictyon capitatum* and *Deinandra increscens* ssp. *villosa*, it is not considered at this time to provide adequate special management for the plants such that the Service could exclude Vandenberg from the critical habitat designation pursuant to section 3(5)(A) of the Act. Vandenberg is currently revising the Draft INRMP to include provisions for special management and protection for the two taxa. In a letter dated October 9, 2002, the Air Force committed to include a management strategy for *E. capitatum* and *D. increscens* ssp. *villosa* in Vandenberg's INRMP that will contribute to the long-term conservation of these taxa. The management strategy consists of designation of populations of *Eriodictyon capitatum* and *Deinandra increscens* ssp. *villosa* and their habitats as Sensitive Resource Protection Areas (SRPA). Within these areas, no development of new facilities or build-out will occur unless mission requirements necessitate such development. If development is required, the Air Force will designate, upon mutual agreement with the Service, SRPAs in adjacent similar habitat equivalent to that lost to development. The areas included in Vandenberg's SRPAs will include all areas proposed by the Service for critical habitat designation for the species. The Air Force further indicates that where additional populations of *Deinandra increscens* ssp. *villosa* are located, the SRPA for that area may be changed by mutual agreement but the total acreage for the SRPA on Vandenberg will be maintained at the 3,100 acres proposed by the Service for designation for this species.

As part of its management strategy, the Air Force will also address measures to meet management goals for the following activities on Vandenberg Air Force Base: Grazing; fire control; maintenance activities, and vegetation management. The Air Force will work with the Service and research groups to develop methods for enhancement of *Eriodictyon capitatum* populations on Vandenberg. In the INRMP, the Air Force will also include plans to conduct ongoing surveys of suitable habitat for *Deinandra increscens* ssp. *villosa*.

The INRMP will also provide for an annual assessment of the Air Force's management plan. As part of the INRMP, the Air Force will develop a peer-reviewed monitoring plan to assess the status of *Eriodictyon capitatum* and *Deinandra increscens* ssp. *villosa* on Vandenberg Air Force Base. An annual report including data on the abundance and distribution of populations of *E. capitatum* and *D. increscens* ssp. *villosa* on Vandenberg Air Force Base, the success of management activities designed to promote the taxa, and the effects of Air Force activities and natural events on these taxa will be provided to the Service for our review. Each year, based on the results of the annual monitoring report, the Air Force will assess its current management goals and activities for *E. capitatum* and *D. increscens* ssp. *villosa* and their habitats, and adjust them as needed to best benefit their recovery.

The Air Force will give their proposed protection and management actions a high funding and implementation priority. The Air Force has committed to submit the revised Draft INRMP to the Service by January 15, 2003, and will implement the Final INRMP no later than 90 days following our approval.

The Service considers these proposed measures for the protection and management of the two species to be sufficient to constitute adequate "special management." However, because the measures have not yet been included in the INRMP, the Service cannot conclude at this time that Vandenberg does not meet the definition of critical habitat under section 3(5)(A) of the Act for these species. However, section 4(b)(2) of the Act allows the Service to exclude areas form critical habitat designation if the benefits of such exclusion outweigh the benefits of specifying such areas as critical habitat, unless exclusion would result in the extinction of the species.

The Service has analyzed the benefits of including Vandenberg Air Force Base as part of the critical habitat designation and the benefits of excluding these areas, and determined that the benefits of exclusion outweigh those of inclusion. A major factor in that analysis was that, even if excluded, the proposed units on Vandenberg will nonetheless receive special management and protection through Vandenberg's revised INRMP, due to be submitted in

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January 2003, which will designate the proposed critical habitat units as Sensitive Resource Protection Areas. Under Vandenberg's proposal, the species will also benefit from monitoring, restoration, enhancement, and survey efforts. The Service has also determined that exclusion would not result in the extinction of the species.

(1) Benefits of Inclusion

There are few additional benefits of including Vandenberg Air Force Base in this critical habitat designation beyond what will be achieved thru implementation of Vandenberg's INRMP. The principal benefit of any designated critical habitat is that activities in and affecting such habitat require consultation under section 7 of the Act. Such consultation would ensure that adequate protection is provided to avoid destruction or adverse modification of critical habitat. If adequate protection can be provided in another manner, the benefits of including any area in critical habitat are minimal.

Because Vandenberg's INRMP is not complete, the area may require special management. However, we have evaluated the protection measures the Air Force has proposed for *Eriodictyon capitatum* and *Deinandra increscens* ssp. *villosa* on Vandenberg and have found them to be adequate and of benefit to the species. The Air Force has provided assurances that it will provide mechanisms by which the conservation management strategies will be implemented, monitored, and revised as necessary. Because the Air Force has committed to incorporating these measures into its INRMP, protections for the species will be available without designation. Section 7 consultation under the jeopardy standards will still be required for activities affecting these listed plants on Vandenberg. Vandenberg has committed not to develop or build-out in the areas proposed for critical habitat (thus, including those areas of units which are unoccupied) unless the military mission so requires. If development or build-out is required, then, in consultation with the Service, Vandenberg will designate additional areas for protection in similar habitat equivalent to that lost to the development. Therefore, designation of critical habitat in these areas would provide minimal, if any, benefit to the species beyond the protections to which the Air Force has committed. The designation would provide only additional certainty that Vandenberg will adequately address the conservation needs of the species.

The development and implementation of Vandenberg's amended INRMP will provide other important conservation benefits, including the development of biological information to guide conservation efforts and assist in species recovery and the creation of innovative solutions to conserve species while allowing for development. The educational benefits that might follow critical habitat designation, such as providing information to the military of areas that are important for the long-term survival and conservation of the species, are essentially the same as those that will occur in the development of the INRMP. For these reasons, then, we believe that designation of critical habitat would have few, if any, additional benefits beyond those that will result from continued consultation under the jeopardy standard and Vandenberg's revision of its draft INRMP to provide for species management and protection.

(2) Benefits of Exclusion

The benefits of excluding Vandenberg from being designated as critical habitat are more significant. Our economic analysis prepared for this rule cites an impact of approximately $650,000 on activities relating to Vandenberg. As noted above, designation of unoccupied areas within units may require consultation under section 7 of the Act for projects affecting those areas; absent the designation of critical habitat, these consultations may not be required if there are no plants present.

The proposed critical habitat designation included 4,532 acres of Vandenberg land. Most of this land is zoned as open space by Vandenberg's INRMP, but various activities on these lands may be affected by the designation. Lompoc Federal Penitentiary has a lease to graze cattle on 23,500 acres within Vandenberg. Approximately 1,470 of these acres (six percent) are within the designation. Of these, approximately 150 acres are in the Arguello unit, 850 acres are in the Sudden Peak unit, and 470 acres are in the Conception-Gaviota unit. The Service does not expect that the penitentiary will stop grazing these areas but may recommend a modified grazing plan to accommodate the needs of the tarplant. One formal consultation will likely be initiated on behalf of the grazing land in all three units.

In order to accommodate the needs of the tarplant, the Lompoc Federal Penitentiary, which leases land from Vandenberg, will likely only graze the proposed units before and after the months during which the tarplant blooms (June through September), stopping one month in advance of the ordinary grazing routine. The penitentiary already operates a grazing system of rest and rotation. As a result, the penitentiary will lose profits on the amount of meat they could have sold if the calves were able to gain weight for an additional month. Assuming that the calves gain two and a half pounds (lbs) per day and there are 30 days in a month, this would be 75 lbs per calf per month. At a price of $.90 per lb, this would be a loss of $68 per calf. This per calf amount probably overstates losses, because the costs of caring for the calves for an additional month are not netted out of the sale price. Approximately 390 calves would graze these lands, which would result in a total loss of $26,520. Over a ten-year period, this will be a $265,200 loss for the penitentiary.

The Arguello unit also contains a site, Space Lodge Complex-6 (SLC–6), that will begin space launches in 2003. Because the site is fully constructed and acidic deposition resulting from each launch is likely to be very localized, the impact of this activity is not anticipated to be great. A formal consultation was initiated with Vandenberg in December 1999, over a different space launch site; this consultation addressed the beach layia, a federally listed plant, as well as the snowy plover and the southwestern willow flycatcher. Based on this similar past consultation, and because it is difficult to state conclusively at this time whether the PCEs for the tarplant are present at the site, the analysis conservatively predicted that there will be a formal consultation regarding the activity.

For the SLC–6 launch site, located within the Arguello unit, the project modifications are likely to be similar to those proposed by the Service in the December 1999, consultation over a different launch site. In that case, the Service suggested a program of monitoring both the level of acid deposition around the site and the state of the plants before and after each launch. Vandenberg anticipates that this type of monitoring program will cost approximately $10,000 per launch and that there will be approximately 32 launches in the next ten years, for a total cost of $320,000.

Some of the economic effects to Vandenberg resulting from the critical habitat designation would remain if critical habitat were not designated on the base. However, the Service concludes that not designating critical habitat on Vandenberg would have benefits beyond those of a reduced economic effect. Moreover, the economic losses discussed above may still result, at least in part, if

Vandenberg is excluded from the designation due to the effects of consultation under the jeopardy standard. This would have the practical effect of reducing the benefits of exclusion. Due to the extent that this is true, whatever minimal benefits of inclusion exist will likewise be reduced, leading to the same conclusion in the balancing of the benefits of inclusion versus exclusion. The benefits of excluding Vandenberg will include encouraging the continued development of good management practices on the base. For instance, Vandenberg commits to several ongoing management, restoration, enhancement, and survey activities that would not necessarily result from the critical habitat designation. Vandenberg has committed not to develop or build-out in the areas proposed for critical habitat (thus, including those areas of units which are unoccupied) unless the military mission so requires. If development or build-out is required, then, in consultation with the Service, Vandenberg will designate additional areas for protection in similar habitat equivalent to that lost to the development.

In summary, the benefits of including Vandenberg in critical habitat for these species are small, and are limited to additional certainty about the availability of adequate special management for the species. The benefits of excluding Vandenberg from being designated as critical habitat for the two plant species are more significant, and include encouraging the continued development and implementation of the protective measures Vandenberg plans to take to establish Sensitive Resource Protection Areas for the plants in the areas proposed for critical habitat designation; the monitoring, survey, enhancement, and restoration activities Vandenberg will undertake that will provide additional benefits to the species; and the encouragement that this decision provides to Vandenberg for positive environmental protection programs on base and partnerships that may lead to future conservation. We find that the benefits of excluding these areas from critical habitat designation outweigh the benefits of including these areas. We intend to complete a section 7 of the Act consultation on the amended INRMP when it becomes available, and will be able to address any effects that might pose jeopardy at that time. However, we are not expecting any such effects.

(3) Risk of Extinction

Under section 4(b)(2) of the Act, the Service may exclude areas from the critical habitat designation, as discussed above, but only if it is determined, "based on the best scientific and commercial data available, that the failure to designate such area as critical habitat will result in the extinction of the species concerned." Here, we have determined that exclusion of Vandenberg from the critical habitat designation for *Eriodictyon capitatum* and *Deinandra increscens* ssp. *villosa* will not result in the extinction of these two species. This determination is based upon the following:

(1) Activities on Vandenberg that may affect *Eriodictyon capitatum* and *Deinandra increscens* ssp. *villosa* will still require consultation under section 7 of the Act. Section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of listed species. Therefore, even without critical habitat designation on lands managed by Vandenberg, they are still required to ensure that the activities on the base do not jeopardize the continued existence of *Eriodictyon capitatum* and *Deinandra increscens* ssp. *villosa*.

(2) Vandenberg has committed to designating the areas proposed as critical habitat for both species as Sensitive Resource Protection Areas (SRPA), that will be protected and managed according to the revised INRMP. Vandenberg has committed that no development of new facilities or build-out will occur in these areas unless its military mission so requires; and in this eventuality, that it will identify other adjacent similar habitat for replacement lands for the SRPAs. In short, Vandenberg has committed to protect the same acreage amounts for these two species as were proposed for critical habitat.

With these protections in place, we have concluded that this exclusion from critical habitat will not result in the extinction of these two species. Accordingly, we have determined that lands on Vandenberg Air Force Base should be excluded under subsection 4(b)(2) of the Act because the benefits of exclusion outweigh the benefits of inclusion and will not cause the extinction of the species. For this reason, we are excluding from this critical habitat designation those proposed units and portions of proposed units that were located on Vandenberg.

Relationship to Habitat Conservation Plans

Section 10(a)(1)(B) of the Act authorizes us to issue permits for the take of listed wildlife species incidental to otherwise lawful activities. An incidental take permit application must be supported by an HCP that identifies conservation measures that the permittee agrees to implement for the species to minimize and mitigate the impacts of the permitted incidental take. Although take of listed plants is not prohibited by the Act, listed plant species may also be covered in an HCP for wildlife species. Currently, there are no HCPs that include *Eriodictyon capitatum* or *Deinandra increscens* ssp. *villosa* as covered species.

Subsection 4(b)(2) of the Act allows us to exclude from critical habitat designation areas where the benefits of exclusion outweigh the benefits of designation, provided the exclusion will not result in the extinction of the species. We believe that in most instances the benefits of excluding HCPs from critical habitat designations will outweigh the benefits of including them. In the event that future HCPs are developed within the boundaries of proposed or designated critical habitat, we will work with applicants to ensure that the HCPs provide for protection and management of habitat areas essential for the conservation of the species. This will be accomplished by either directing development and habitat modification to nonessential areas, or appropriately modifying activities within essential habitat areas so that such activities will not adversely modify the critical habitat. We will provide technical assistance and work closely with applicants throughout the development of any future HCPs to identify lands essential for the long-term conservation of *Eriodictyon capitatum* and *Deinandra increscens* ssp. *villosa* and appropriate management for those lands. Furthermore, we will complete intra-Service consultation on our issuance of section 10(a)(1)(B) permits for these HCPs to ensure permit issuance will not destroy or adversely modify critical habitat.

Economic Analysis

Section 4(b)(2)of the Act requires us to designate critical habitat on the basis of the best scientific and commercial information available and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as critical habitat. We cannot exclude such areas from critical habitat when such exclusion will result in the extinction of the species concerned.

Following the publication of the proposed critical habitat designation,

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we conducted a draft Economic Analysis to estimate the potential economic effect of the designation. The draft analysis was made available for public review on May 7, 2002 (67 FR 30641). We accepted comments on the draft analysis until June 6, 2002.

Our draft Economic Analysis evaluated the potential future effects associated with the listing of *Cirsium loncholepis*, *Eriodictyon capitatum* and *Deinandra increscens* ssp. *villosa* as endangered species under the Act, as well as any potential effect of the critical habitat designation above and beyond those regulatory and economic impacts associated with listing. Because *C. loncholepis* was included in the proposed critical habitat rule, the draft Economic Analysis included the potential economic effects resulting from the listing and designation of critical habitat for this species, in addition to those related to *E. capitatum* and *D. increscens* ssp. *villosa*. Therefore, the following discussion of potential economic effects and the values presented below assumes the listing and designation of critical habitat for all three taxa. Because we are not designating critical habitat for *C. loncholepis* at this time, the values presented below are likely an overestimate of the potential economic effects resulting from this final critical habitat rule.

In addition, the draft Economic Analysis analyzed costs incurred through consultations and modifications of activities on lands under the Federal jurisdiction of Vandenberg Air Force Base; the following discussion of potential economic effects and the values presented below assumes the inclusion of these lands in the critical habitat designation. However, we are excluding lands owned by Vandenberg from the area designated as critical habitat for *Eriodictyon capitatum* and *Deinandra increscens* ssp. *villosa*, resulting in the entire removal of three units and modification of 2 units.

To quantify the proportion of total potential economic impacts attributable to the critical habitat designation, the analysis evaluated a "without critical habitat" baseline and compared it to a "with critical habitat" scenario. The "without critical habitat" baseline represented the current and expected economic activity under all modifications prior to the critical habitat designation, including protections afforded the species under Federal and State laws. The difference between the two scenarios measured the net change in economic activity attributable to the designation of critical habitat. The categories of potential costs considered in the analysis included the costs associated with: (1) Conducting section 7 consultations associated with the listing or with the critical habitat, including reinitiated consultations and technical assistance; (2) modifications to projects, activities, or land uses resulting from the section 7 consultations, (3) uncertainty and public perceptions resulting from the designation of critical habitat; and (4) potential offsetting beneficial costs associated with critical habitat including educational benefits.

Our economic analysis recognizes that there may be costs from delays associated with reinitiating completed consultations after the critical habitat designation is made final. There may also be economic effects due to the reaction of the real estate market to critical habitat designation, as real estate values may be lowered due to a perceived increase in the regulatory burden.

Based on our economic analysis, we concluded that the designation of critical habitat would not result in a significant economic impact, and estimated the potential economic effects over a 10-year period would range from $3.1 to $3.65 million. The total estimated costs associated with the Lompoc Yerba Santa and the Gaviota Tarplant is estimated to range between $2.5 and $2.8 million. Based on the U.S. Office of Management and Budget's prescribed seven percent discount rate, the annualized cost of compliance with the designation of critical habitat for these two species is estimated to be between $247,200 and $286,400 with a corresponding total present value between $1.7 and $2.0 million. While the potential economic impact associated with the listing of the taxa and critical habitat designation appears to be large, it must be considered in the context of the economic activity in the region. Given a total value of $1.09 billion in income (over 10 years) from farming, agricultural services, construction, and oil and gas extraction activities in Santa Barbara County, the annualized total cost of section 7 implementation represents less than 0.3 percent of the total value of affected economic activities, as estimated in the economic analysis.

The total consultation costs attributable exclusively to the critical habitat provision of section 7 may range from $2,300,000 to $2,700,000. Economic impacts due to consultations and modifications of oil and gas activities, primarily in the Conception-Gaviota Unit, are estimated to be approximately $1,481,900. Costs of consultations and modifications of private development projects, primarily in the Santa Ynez Mountains, Santa Ynez, and Conception-Gaviota units, are estimated at $1,083,600. Costs of consultations and modifications of agricultural activities, distributed among six of the units, are estimated to be $194,800. Costs of consultations and modifications of activities at Parks, Recreational Areas, and the National Wildlife Refuge, primarily in the Pismo-Orcutt Unit (of the proposed *Cirsium loncholepis* critical habitat), are estimated to be $249,300. Costs of consultations and modifications of activities at Vandenberg Air Force Base, primarily in the Arguello and Sudden Peak units, were estimated in the Economic Analysis to total approximately $639,800. The cost estimates described above are based on the high estimates for the potential cost of consultations presented in the Economic Analysis.

Total costs resulting from technical assistance, formal and informal consultations, development of biological assessments, and project modifications due to listing and critical habitat designation are presented in the economic analysis, according to land use activities and individual critical habitat units. A per-effort cost is developed for section 7 consultations incurred by the Service, a Federal action agency, and a third party. Cost estimates of an individual formal or informal consultation are developed from a review and analysis of the section 7 history of a number of Service field offices around the country. Cost estimates for technical assistance are based on an analysis of past technical assistance efforts by the Service with agencies in this area. Per-effort costs for project modifications are based on an estimated hourly rate of botanist and total time to implement the project modification.

Costs to third parties (*e.g.*, oil and gas companies) result from technical assistance, consultations, and development of a biological assessment. Costs to Federal action agencies include those incurred from consultations. Costs to the Service result from technical assistance and consultations. Project modifications affect private, State, local, and Federal landowners.

Technical assistance associated with the listing and critical habitat is estimated to occur primarily for agricultural activities; a total of 60 efforts are anticipated over the next 10 years, based on estimates of future consultations. Informal consultations are estimated to occur primarily on private development projects; a total of 10 efforts, most likely associated with Army Corps of Engineers (ACOE) permits, are expected over the next 10 years, based on estimates of future consultations. Formal consultations are estimated to occur primarily on oil and gas activities; a total of 29 efforts are expected over the next 10 years, based on the likelihood of maintenance of pipeline right of way and decommissioning of oil pipes by 6 oil/gas companies, conducted over the Conception-Gaviota and Pismo-Orcutt units, requiring a permit from the ACOE. Oil and gas (*e.g.*, production and decommissioning) activities in the Conception-Gaviota and Pismo-Orcutt Units and private development in the Pismo-Orcutt, Conception-Gaviota, Santa Ynez, and Santa Ynez Mountains Units would likely be the most affected due to project modifications, because of the current projected activities in these units and the lower probability of similar activities on the other units.

We did not receive any comments on the draft economic analysis of the proposed determination. Following the close of the comment period, the economic analysis was finalized. There were no revisions or additions to the draft economic analysis. The values presented above are likely to be an overestimate of the potential economic effects of this final critical habitat designation because we have removed *C. loncholepis* from the designation, resulting in a reduction of 17,934 ha (44,315 ac). In addition, we reduced the acreage designated as *E. capitatum* and *D. increscens* ssp. *villosa* critical habitat from the proposal by 2,593 ha (6,405 ac).

A copy of the final economic analysis and a description of the exclusion process with supporting documents are included in our administrative record and may be obtained by contacting our Ventura Fish and Wildlife Office (see **ADDRESSES** section).

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant rule and has been reviewed by the Office of Management and Budget (OMB), as OMB determined that this rule may raise novel legal or policy issues. As required by Executive Order 12866, we have provided a copy of the rule, which describes the need for this action and how the designation meets that need, and the economic analysis, which assesses the costs and benefits of this critical habitat designation, to OMB for review.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA also amended the Regulatory Flexibility Act (RFA) to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic effect on a substantial number of small entities. SBREFA also amended the RFA to require a certification statement. In this rule, we are certifying that the critical habitat designation for *Eriodictyon capitatum* and *Deinandra increscens* ssp. *villosa* will not have a significant effect on a substantial number of small entities. The following discussion explains the factual basis for this certification.

Small entities include small organizations, such as independent non-profit organizations, small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents, as well as small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we consider the types of activities that might trigger regulatory impacts under this rule as well as the types of project modifications that may result. In general, the term "significant economic impact" is meant to apply to a typical small business firm's business operations.

To determine if the rule would affect a substantial number of small entities, we consider the number of small entities affected within particular types of economic activities (*e.g.*, housing development, grazing, oil and gas production, timber harvesting, etc.). We apply the "substantial number" test individually to each industry to determine if certification is appropriate. While SBREFA does not explicitly define either "substantial number" or "significant effect," the Small Business Administration as well as other Federal agencies, has interpreted these terms to represent an impact on 20 percent or greater of the number of small entities in any industry and an effect equal to three percent or more of a business' annual sales. Thus a "substantial number" of small entities is more than 20 percent of those small entities affected by the regulation, out of the total universe of small entities in the industry or, if appropriate, industry segment. In some circumstances, especially with critical habitat designations of limited extent, we may aggregate across all industries and consider whether the total number of small entities affected is substantial. In estimating the numbers of small entities potentially affected, we also consider whether their activities have any Federal involvement; some kinds of activities are unlikely to have any Federal involvement and so will not be affected by critical habitat designation.

Designation of critical habitat only affects activities conducted, funded, or permitted by Federal agencies. Some kinds of activities are unlikely to have any Federal involvement and so will not be affected by critical habitat designation. In areas where the species may be present, Federal agencies already are required to consult with us under section 7 of the Act on activities that they fund, permit, or implement that may affect *Eriodictyon capitatum* and *Deinandra increscens* ssp. *villosa*. Federal agencies also must consult with us if their activities may affect critical habitat. Designation of critical habitat therefore, could result in an additional economic impact on small entities due to the requirement to reinitiate consultation for ongoing Federal activities. Since *E. capitatum* and *D. increscens* ssp. *villosa* have only been listed since March 2000, there have not been any consultations on the two species. Therefore, the requirement to reinitiate consultations for ongoing projects will not affect a substantial number of small entities.

Our Economic Analysis found that private development, oil and gas production, and agriculture (particularly, vineyard conversion) are the primary activities anticipated to take

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place within the area that was proposed to be designated as critical habitat for *Cirsium loncholepis*, *Eriodictyon capitatum*, and *Deinandra increscens* ssp. *villosa*. There are approximately 114 development and real estate, 73 oil and gas, and 93 agriculture small companies within the previously proposed critical habitat area. The area that we are designating as critical habitat in this final rule is substantially smaller than the area proposed as critical habitat. This is primarily a result of our decision to exclude critical habitat from this final rule for *C. loncholepis* and those critical habitat units proposed on Vandenberg. The Economic Analysis included the potential economic effects resulting from the listing and designation of critical habitat for *C. loncholepis* in addition to those related to proposed units for *E. capitatum* and *D. increscens* ssp. *villosa* on Vandenberg, which have been excluded from the final designation.. Therefore, the number of consultations, impacts to small businesses, and total economic costs (discussed below) are likely to be an overestimate of the potential effects of listing and the final designation of critical habitat for *E. capitatum* and *D. increscens* ssp. *villosa*.

To be conservative (*i.e.*, more likely overstate impacts than understate them), the Economic Analysis assumed that a unique business entity would undertake each of the projected consultations in a given year. Therefore, the number of businesses affected annually is equal to the total annual number of consultations (both formal and informal).

On average, over the 10 year period of analysis, in each year there could be between 1 and 2 consultations for private development projects. Assuming each consultation involves a different business, approximately less than 1 percent of the total number of small private development companies could be affected annually by the designation of critical habitat for *Eriodictyon capitatum* and *Deinandra increscens* ssp. *villosa*.

On average, over the 10 year period of analysis, in each year there could be approximately three consultations for oil and gas production activities. Assuming each consultation involves a different business, approximately 3 to 4 percent of the total number of small gas and oil companies could be affected annually by the designation of critical habitat for *Eriodictyon capitatum* and *Deinandra increscens* ssp. *villosa*.

On average, over the 10 year period of analysis, in each year there could be approximately less than one consultation for agriculture (vineyard) activities. Assuming each consultation involves a different business, approximately less than 1 percent of the total number of small agriculture companies could be affected annually by the designation of critical habitat for *Eriodictyon capitatum* and *Deinandra increscens* ssp. *villosa*.

The percentage of small businesses that could be affected by this designation is far less than the 20 percent threshold that would be considered "substantial." Therefore, the economic analysis concludes that the designation of critical habitat for *Eriodictyon capitatum* and *Deinandra increscens* ssp. *villosa* will not result in a significant economic impact on a substantial number of small entities.

In general, two different mechanisms in section 7 consultations could lead to additional regulatory requirements for the approximately four small businesses, on average, that may be required to consult with us each year regarding their project's impact on *Eriodictyon capitatum* and *Deinandra increscens* ssp. *villosa* and their habitat. First, if we conclude, in a biological opinion, that a proposed action is likely to jeopardize the continued existence of a species or adversely modify its critical habitat, we can offer "reasonable and prudent alternatives." Reasonable and prudent alternatives are alternative actions that can be implemented in a manner consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that would avoid jeopardizing the continued existence of listed species or resulting in adverse modification of critical habitat. A Federal agency and an applicant may elect to implement a reasonable and prudent alternative associated with a biological opinion that has found jeopardy or adverse modification of critical habitat. An agency or applicant could alternatively choose to seek an exemption from the requirements of the Act or proceed without implementing the reasonable and prudent alternative. However, unless an exemption were obtained, the Federal agency or applicant would be at risk of violating section 7(a)(2) of the Act if it chose to proceed without implementing the reasonable and prudent alternatives. Secondly, if we find that a proposed action is not likely to jeopardize the continued existence of a listed animal or plant species, we may identify reasonable and prudent measures designed to minimize the amount or extent of take and require the Federal agency or applicant to implement such measures through non-discretionary terms and conditions. We may also identify discretionary conservation recommendations designed to minimize or avoid the adverse effects of a proposed action on listed species or critical habitat, help implement recovery plans, or to develop information that could contribute to the recovery of the species.

Based on our experience with consultations pursuant to section 7 of the Act for all listed species, virtually all projects-including those that, in their initial proposed form, would result in jeopardy or adverse modification determinations in section 7 consultations—can be implemented successfully with, at most, the adoption of reasonable and prudent alternatives. These measures, by definition, must be economically feasible and within the scope of authority of the Federal agency involved in the consultation. As we have no consultation history for *Eriodictyon capitatum* and *Deinandra increscens* ssp. *villosa*. we can only describe the general kinds of actions that may be identified in future reasonable and prudent alternatives. These are based on our understanding of the needs of the species and the threats they face, as described in the final listing rule and this critical habitat designation.

It is likely that a developer or other project proponent could modify a project or take measures to protect *Eriodictyon capitatum* and *Deinandra increscens* ssp. *villosa*. Based on the types of modifications and measures that have been implemented in the past for plant species, a project proponent may take such steps as installing fencing or re-aligning the project to avoid sensitive areas. Potential costs associated with such measures are estimated at $20,000 for materials and labor to install two miles of fencing and $25,000 for costs associated with project redesigns. It should be noted that a developer likely would already be required to undertake such measures due to regulations in the California Environmental Quality Act (CEQA). These measures are not likely to result in a significant economic impact to project proponents.

As required under section 4(b)(2) of the Act, we conducted an analysis of the potential economic impacts of this critical habitat designation, and that analysis was made available for public review and comment before finalization of this designation.

Based on estimates provided in the economic analysis, the total economic costs associated with the listing and critical habitat designation for *Cirsium loncholepis*, *Eriodictyon capitatum*, and *Deinandra increscens* ssp. *villosa* over the next 10 years may range from approximately $3,100,000 to $3,650,000. Out of this, about 40 percent ($1,481,900) are expected to result from consultations and modifications of oil and gas activities; 30 percent ($1,083,600) are expected to result from consultations and modifications of private development projects; and 5 percent ($194,800) will result from consultations and modifications of agricultural activities. While the potential economic impact associated with the listing of the taxa and critical habitat designation appears to be large, it must be considered in the context of the economic activity in the region. Given a total value of $1.09 billion in income (over 10 years) from farming, agricultural services, construction, and oil and gas extraction activities in Santa Barbara County, the annualized total cost of section 7 implementation represents approximately 0.3 percent of the total value of affected economic activities, as estimated in the economic analysis.

In summary, we have considered whether this rule would result in a significant economic effect on a substantial number of small entities. We have determined, for the above reasons, that it will not affect a substantial number of small entities. Furthermore, we believe that the potential compliance costs for the number of small entities that may be affected by this rule will not be significant. Therefore, we are certifying that the designation of critical habitat for *Eriodictyon capitatum* and *Deinandra increscens* ssp. *villosa* will not have a significant economic impact on a substantial number of small entities. A regulatory flexibility analysis is not required.

Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2))

OMB's Office of Information and Regulatory Affairs has determined that this rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. In the economic analysis, we determined whether designation of critical habitat would cause (a) any effect on the economy of $100 million or more, (b) any increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, or (c) any significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. Refer to the final economic analysis for a discussion of the effects of this determination.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

(a) This rule will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required. Small governments will be affected only to the extent that they must ensure that any activities involving Federal funds, permits, or other authorized activities will not adversely affect the critical habitat.

(b) This rule will not produce a Federal mandate of $100 million or greater in any year; that is, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on State or local governments.

Executive Order 13211

On May 18, 2001, the President issued an Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Although this rule is a significant regulatory action under Executive Order 12866, it is not expected to significantly affect energy supplies, distribution, or use. In our Economic Analysis, we did not identify energy production or distribution as being significantly affected by this designation, and we received no comments indicating that the proposed designation could significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Takings

In accordance with Executive Order 12630 ("Government Actions and Interference with Constitutionally Protected Private Property Rights"), we have analyzed the potential takings implications of designating critical habitat for *Eriodictyon capitatum* and *Deinandra increscens* ssp. *villosa* in a takings implication assessment. The takings implications assessment concludes that this final rule does not pose significant takings implications.

Federalism

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. As discussed above, the designation of critical habitat in areas currently occupied by *Eriodictyon capitatum* and *Deinandra increscens* ssp. *villosa* would have little incremental impact on State and local governments and their activities. The designations may have some benefit to these governments in that the areas essential to the conservation of these species are more clearly defined, and the primary constituent elements of the habitat necessary to the survival of the species are identified. While making this definition and identification does not alter where and what federally sponsored activities may occur, it may assist these local governments in long range planning, rather than waiting for case-by-case section 7 consultation to occur.

Civil Justice Reform

In accordance with Executive Order 12988, the Department of the Interior's Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have designated critical habitat in accordance with the provisions of the Endangered Species Act, as amended. The rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of *Eriodictyon capitatum* and *Deinandra increscens* ssp. *villosa*.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any information collection requirements for which OMB approval under the Paperwork Reduction Act is required. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB Control Number.

National Environmental Policy Act

We have determined that an Environmental Assessment and/or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969 need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act, as amended. We published a notice outlining our reason for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This determination does not constitute a major Federal action significantly affecting the quality of the human environment.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations

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With Native American Tribal Governments" (59 FR 22951), Executive Order 13175, and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a Government-to-Government basis. The designated critical habitat for *Eriodictyon capitatum* or *Deinandra increscens* ssp. *villosa* does not contain any federally recognized Tribal lands or lands that we have identified as impacting Tribal trust resources.

References Cited

A complete list of all references cited herein, as well as others, is available upon request from the Ventura Fish and Wildlife Office (see **ADDRESSES** section).

Authors

The primary authors of this final rule are Diane Gunderson and Diane Steeck, Ventura Fish and Wildlife Office (See **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. In § 17.12(h), add an entry for *Deinandra increscens* ssp. *villosa*, revise the entry for *Eriodictyon capitatum*, and remove the entry for *Hemizonia increscens* ssp. *villosa*, under "FLOWERING PLANTS" to read as follows:

§ 17.12 Endangered and threatened plants.

(h) * * *

Species		Historic Range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common Name						
FLOWERING PLANTS							
Deinandra increscens ssp. villosa.	Gaviota tarplant	U.S.A. (CA)	Asteraceae sunflower.	E	691	17.96(a)	NA
Eriodictyon capitatum.	Lompoc yerba santa	U.S.A. (CA)	Hydrophyllaceae-waterleaf.	E	691	17.96(a)	NA

3. In § 17.96, amend paragraph (a) by adding entries for *Deinandra increscens* ssp. *villosa*, in alphabetical order under Family Asteraceae, and adding an entry for *Eriodictyon capitatum* under Family Hydrophyllaceae to read as follows:

§ 17.96 Critical habitat—plants.

(a) * * *

Family—Asteraceae: Deinandra increscens ssp. villosa (Gaviota tarplant)

(1) Critical habitat units are depicted for Santa Barbara County, California, on the maps below.

(2) The primary constituent elements of critical habitat for *Deinandra increscens* ssp. *villosa* are the habitat components that provide:

(i) Sandy soils associated with coastal terraces adjacent to the coast or uplifted marine sediments at interior sites up to 5.6 km (3.5 mi) inland from the coast, and

(ii) Plant communities that support associated species, including needlegrass grassland and coastal sage scrub communities, particularly where the following associated species are found: Needlegrass species (*Nassella* spp.), California sagebrush (*Artemisia californica*), coyote bush (*Baccharis pilularis*), sawtooth golden bush (*Hazardia squarrosa*), and California buckwheat (*Eriogonum fasciculatum*).

(3) Critical habitat does not include existing features and structures, such as buildings, roads, aqueducts, railroads, airports, other paved areas, lawns, and other urban landscaped areas not containing one or more of the primary constituent elements.

Critical Habitat Map Units

(i) Data layers defining map units were mapped using Universal Transverse Mercator (UTM) coordinates.

(ii) **Note:** Index map follows:

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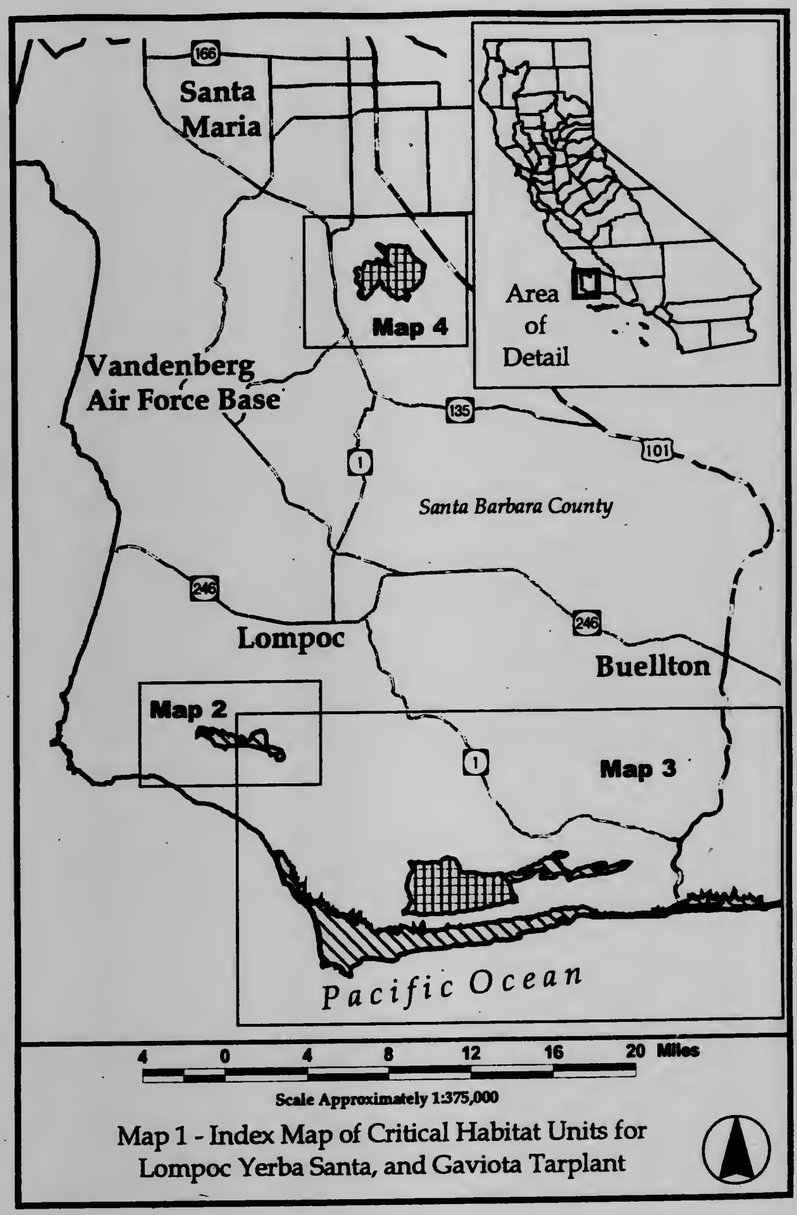

Map 1 - Index Map of Critical Habitat Units for Lompoc Yerba Santa, and Gaviota Tarplant

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(4) Sudden Peak Unit: Santa Barbara County, California.

(i) From USGS 1:24,000 quadrangle maps Tranquillon Mountain, Lompoc Hills, Santa Rosa Hills, lands bounded by the following UTM zone 10 NAD83 coordinates (E,N): 729958, 3827610; 729742, 3827440; 729579, 3827450; 729425, 3827600; 729439, 3827710; 729508, 3827830; 729376, 3827830; 729212, 3827800; 729116, 3827760; 729008, 3827960; 728870, 3828070; 727858, 3828370; 727151, 3828380; 726435, 3828390; 726349, 3828300; 726296, 3828210; 726142, 3828370; 725873, 3828420; 725662, 3828470; 725478, 3828790; 724801, 3829170; 724588, 3829000; 724595, 3829180; 724666, 3829350; 724689, 3829390; 724710, 3829420; 724742, 3829500; 724748, 3829510; 724772, 3829520; 724802, 3829490; 724864, 3829440; 724894, 3829450; 724903, 3829460; 724923, 3829490; 724952, 3829510; 724982, 3829500; 724993, 3829460; 725000, 3829450; 725013, 3829430; 725045, 3829430; 725100, 3829430; 725105, 3829430; 725116, 3829420; 725120, 3829410; 725124, 3829350; 725129, 3829320; 725139, 3829300; 725145, 3829290; 725196, 3829290; 725210, 3829290; 725229, 3829280; 725242, 3829270; 725252, 3829260; 725266, 3829230; 725267, 3829200; 725289, 3829140; 725294, 3829130; 725325, 3829110; 725354, 3829110; 725375, 3829150; 725383, 3829160; 725444, 3829140; 725456, 3829150; 725460, 3829160; 725460, 3829180; 725452, 3829200; 725437, 3829230; 725430, 3829260; 725427, 3829310; 725432, 3829350; 725406, 3829410; 725427, 3829420; 725435, 3829420; 725496, 3829400; 725526, 3829410; 725556, 3829420; 725581, 3829410; 725586, 3829410; 725617, 3829380; 725651, 3829330; 725679, 3829310; 725708, 3829340; 725738, 3829340; 725774, 3829300; 725786, 3829260; 725796, 3829240; 725862, 3829220; 725869, 3829220; 725888, 3829190; 725912, 3829130; 725917, 3829120; 725956, 3829090; 725986, 3829080; 726017, 3829070; 726048, 3829070; 726056, 3829090; 726061, 3829130; 726069, 3829170; 726090, 3829220; 726100, 3829280; 726112, 3829300; 726130, 3829310; 726163, 3829290; 726242, 3829220; 726253, 3829200; 726284, 3829170; 726314, 3829160; 726333, 3829160; 726478, 3829080; 726500, 3829060; 726529, 3829020; 726558, 3829050; 726570, 3829080; 726584, 3829090; 726616, 3829100; 726651, 3829100; 726738, 3829050; 726768, 3829040; 726799, 3829020; 726830, 3829000; 726907, 3828970; 726925, 3828950; 726935, 3828920; 726942, 3828910; 726964, 3828860; 726961, 3828830; 726952, 3828800; 726957, 3828760; 726995, 3828750; 727013, 3828740; 727022, 3828720; 727026, 3828680; 727046, 3828620; 727053, 3828560; 727083, 3828570; 727121, 3828590; 727140, 3828600; 727145, 3828620; 727143, 3828660; 727168, 3828720; 727186, 3828780; 727223, 3828840; 727232, 3828870; 727242, 3828940; 727251, 3828960; 727273, 3828970; 727281, 3828970; 727291, 3828960; 727312, 3828930; 727343, 3828910; 727414, 3828880; 727433, 3828870; 727521, 3828760; 727579, 3828670; 727659, 3828660; 727724, 3828680; 727806, 3828720; 727873, 3828820; 728014, 3829090; 728073, 3829130; 728179, 3829170; 728262, 3829210; 728345, 3829230; 728412, 3829250; 728414, 3829240; 728688, 3829280; 728783, 3829210; 728830, 3829050; 728820, 3828900; 728839, 3828590; 728863, 3828400; 728940, 3828300; 729160, 3828270; 729685, 3828110; 729721, 3828100; 729755, 3828070; 729958, 3827610.

(ii) **Note:** Map 2 follows:

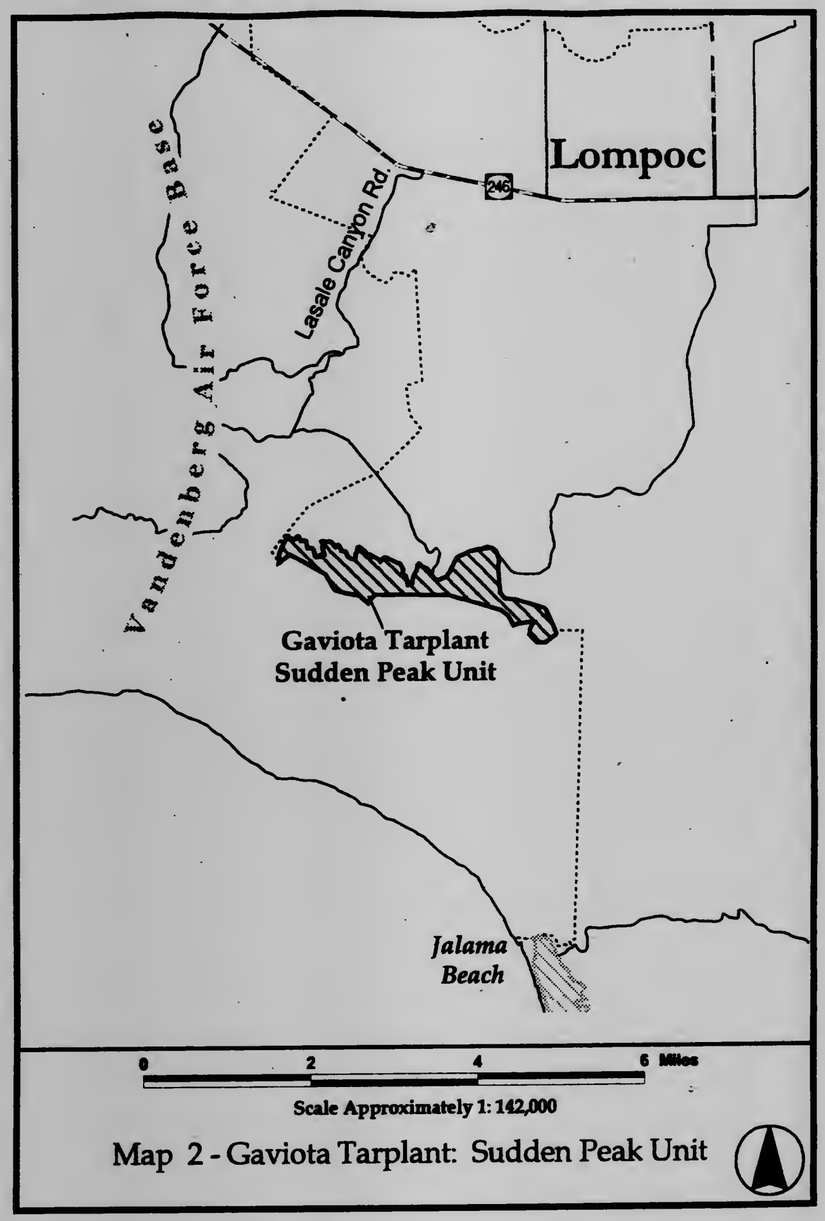

Map 2 - Gaviota Tarplant: Sudden Peak Unit

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(5) Conception-Gaviota Unit: Santa Barbara County, California.

(i) From USGS 1:24,000 quadrangle maps Gaviota, Lompoc Hills, Point Conception, Sacate, and Tranquillon Mountain, lands bounded by the following UTM zone 10 NAD83 coordinates (E,N): 729837, 3821770; 729855, 3821690; 729971, 3821490; 730078, 3821250; 730181, 3821200; 730191, 3821100; 730302, 3820990; 730393, 3820950; 730490, 3820870; 730490, 3820840; 730445, 3820790; 730431, 3820750; 730455, 3820690; 730520, 3820630; 730464, 3820600; 730344, 3820590; 730333, 3820570; 730346, 3820500; 730377, 3820470; 730496, 3820520; 730587, 3820480; 730593, 3820450; 730530, 3820400; 730514, 3820360; 730523, 3820330; 730625, 3820210; 730716, 3820200; 730731, 3820190; 730718, 3820160; 730653, 3820100; 730646, 3819980; 730614, 3819910; 730617, 3819860; 730679, 3819780; 730729, 3819750; 730822, 3819770; 730967, 3819830; 730997, 3819830; 731013, 3819810; 730970, 3819750; 730793, 3819640; 730748, 3819560; 730764, 3819530; 730761, 3819440; 730779, 3819410; 730783, 3819260; 730921, 3819080; 731051, 3819040; 731073, 3819060; 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(ii) **Note:** Map 3 follows:

BILLING CODE 4310-55-P

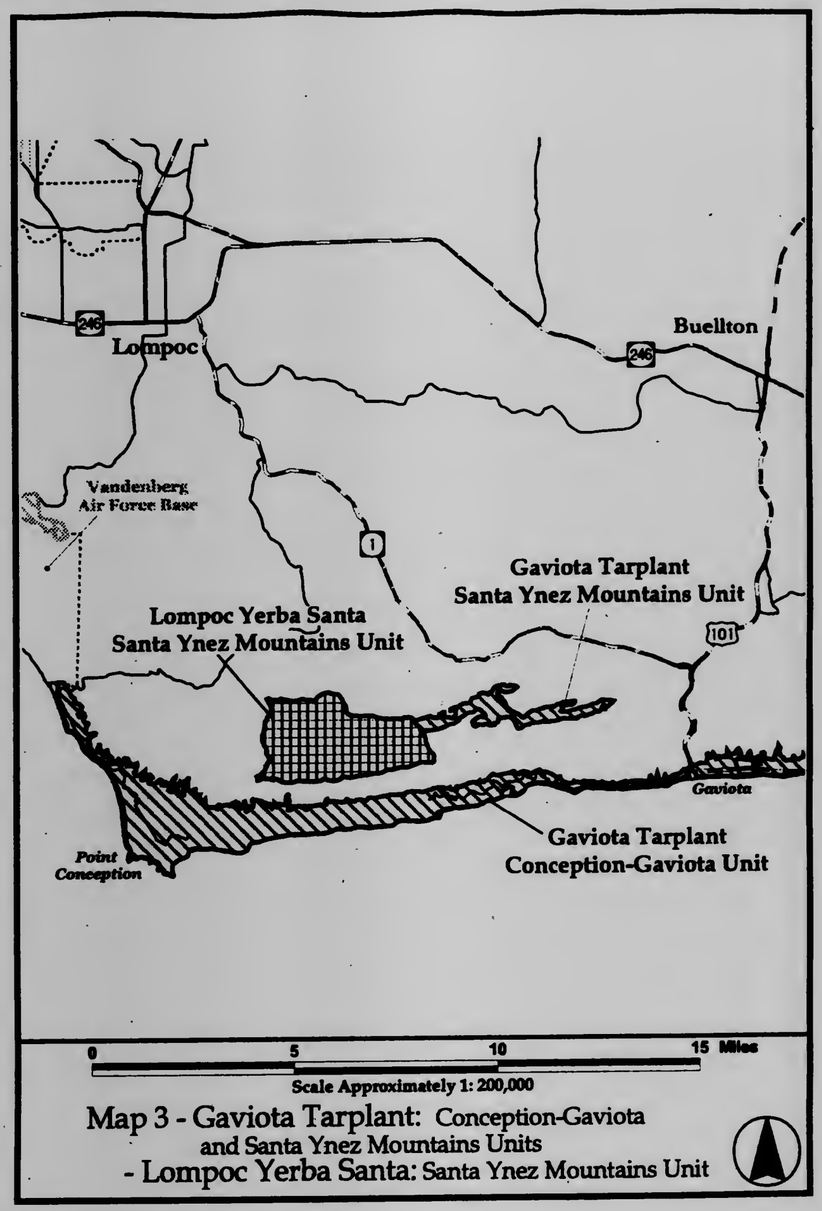

Map 3 - Gaviota Tarplant: Conception-Gaviota and Santa Ynez Mountains Units
- Lompoc Yerba Santa: Santa Ynez Mountains Unit

BILLING CODE 4310-55-C

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(6) Santa Ynez Mountains Unit (Gaviota tarplant): Santa Barbara County, California.

(i) From USGS 1:24,000 quadrangle maps Santa Rosa Hills and Sacate, lands bounded by the following UTM zone 10 NAD83 coordinates (E,N): 747710, 3821530; 747708, 3821520; 747676, 3821490; 747651, 3821470; 747601, 3821430; 747545, 3821390; 747491, 3821350; 747409, 3821330; 747383, 3821320; 747323, 3821300; 747288, 3821300; 747240, 3821300; 747204, 3821310; 747150, 3821330; 747123, 3821340; 747104, 3821350; 747051, 3821380; 747023, 3821380; 746956, 3821370; 746929, 3821340; 746918, 3821330; 746903, 3821290; 746900, 3821270; 746909, 3821240; 746925, 3821220; 746945, 3821200; 746980, 3821180; 746998, 3821150; 747011, 3821140; 747023, 3821130; 747042, 3821120; 747072, 3821090; 747081, 3821080; 747092, 3821050; 747102, 3820980; 747108, 3820960; 747124, 3820950; 747134, 3820940; 747194, 3820930; 747216, 3820900; 747220, 3820890; 747230, 3820860; 747231, 3820820; 747257, 3820730; 747344, 3820660; 747492, 3820540; 747783, 3820400; 747831, 3820350; 747902, 3820290; 747931, 3820270; 747964, 3820290; 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Family Hydrophyllaceae: Eriodictyon capitatum (Lompoc yerba santa)

(1) Critical habitat units are depicted for Santa Barbara County, California, on the maps below.

(2) The primary constituent elements of critical habitat for *Eriodictyon capitatum* are the habitat components that provide:

(i) Soils with a large component of sand and that tend to be acidic; and

(ii) Plant communities that support associated species, including maritime chaparral, particularly where the following associated species are found: *Dendromecon rigida* (bush poppy), *Quercus berberidifolia* (California scrub oak), *Quercus parvula* (Santa Cruz Island scrub oak), and *Ceanothus cuneatus* (buck brush); and in southern bishop pine forests that intergrade with chaparral *Arctostaphylos* spp. (manzanita) and *Salvia mellifera* (black sage).

(3) Critical habitat does not include existing features and structures, such as buildings, roads, aqueducts, railroads, airports, other paved areas, lawns, and other urban landscaped areas not containing one or more of the primary constituent elements.

(4) Critical Habitat Map Units

Data layers defining map units were mapped using Universal Transverse Mercator (UTM) coordinates.

(5) Santa Ynez Mountains Unit (Lompoc yerba santa). Santa Barbara County, California

(i) From USGS 1:24,000 quadrangle maps Lompoc Hills, Point Conception, Sacate, lands bounded by the following UTM zone 10 NAD83 coordinates (E,N): 739493, 3817820; 739352, 3817850; 739008, 3817860; 738828, 3817800; 738440, 3817810; 738377, 3817820; 738294, 3817900; 738288, 3817900; 738104, 3817960; 738034, 3817960; 738028, 3817900; 738026, 3817900; 737925, 3817940; 737892, 3817950; 737726, 3817950; 737666, 3818000; 737619, 3817970; 737540, 3817910; 737423, 3817890; 737416, 3817960; 737414, 3818040; 737489, 3818070; 737612, 3818160; 737622, 3818190; 737676, 3818230; 737715, 3818280; 737744, 3818320; 737757, 3818380; 737791, 3818440; 737809, 3818500; 737838, 3818550; 737862, 3818600; 737916, 3818660; 737924, 3818710; 737903, 3818760; 737865, 3818820; 737823, 3818880; 737791, 3818950; 737804, 3819010; 737791, 3819100; 737774, 3819180; 737701, 3819270; 737662, 3819360; 737624, 3819450; 737611, 3819560; 737633, 3819670; 737661, 3819750; 737679, 3819800; 737708, 3819870; 737731, 3819930; 737729, 3820000; 737717, 3820070; 737725, 3820140; 737753, 3820210; 737777, 3820240; 737816, 3820290; 737829, 3820360; 737868, 3820430; 737942, 3820490; 738005, 3820560; 738019, 3820610; 737996, 3820700; 737947, 3820820; 737893, 3820930; 737840, 3821030; 737813, 3821090; 737897, 3821130; 738005, 3821060; 738136, 3821070; 738167, 3821060; 738214, 3821020; 738264, 3821030; 738308, 3821050; 738328, 3821090; 738373, 3821110; 738439, 3821080; 738520, 3821060; 738581, 3821060; 738652, 3821060; 738698, 3821030; 738759, 3821030; 738830, 3821010; 738891, 3821010; 738951, 3821010; 739027, 3821020; 739077, 3821020; 739111, 3821060; 739161, 3821090; 739227, 3821090; 739288, 3821070; 739384, 3821050; 739541, 3821060; 739607, 3821020; 739669, 3820990; 739714, 3821020; 739762, 3821080; 739796, 3821140; 739825, 3821180; 739969, 3821260; 740158, 3821340; 740234, 3821350; 740295, 3821320; 740387, 3821280; 740453, 3821280; 740503, 3821280; 740575, 3821270; 740631, 3821250; 740677, 3821220; 740710, 3821150; 740767, 3821070; 740784, 3821010; 740786, 3820950; 740822, 3820930; 740869, 3820870; 740917, 3820790; 740919, 3820720; 740917, 3820630; 740945, 3820540; 741007, 3820480; 741084, 3820430; 741186, 3820400; 741298, 3820400; 741383, 3820400; 741510, 3820380; 741666, 3820390; 741747, 3820400; 741808, 3820400; 741863, 3820390; 741990, 3820390; 742184, 3820310; 742250, 3820300; 742356, 3820290; 742458, 3820280; 742554, 3820270; 742604, 3820280; 742645, 3820260; 742690, 3820260; 742741, 3820260; 742817, 3820270; 742907, 3820270; 742973, 3820280; 743029, 3820250; 743100, 3820250; 743139, 3820280; 743224, 3820310; 743315, 3820320; 743406, 3820320; 743461, 3820320; 743528, 3820300; 743579, 3820260; 743632, 3820200; 743644, 3820130; 743686, 3820090; 743727, 3820040; 743779, 3819990; 743826, 3819960; 743857, 3819910; 743889, 3819860; 743926, 3819820; 743958, 3819770; 743999, 3819720; 744026, 3819680; 744028, 3819620; 744039, 3819570; 744061, 3819530; 744067, 3819490; 744074, 3819420; 744096, 3819360;

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(6) Solomon Hills Unit. Santa Barbara County, California.

(i) From USGS 1:24,000 quadrangle map Orcutt, lands bounded by the following UTM zone 10 NAD83 coordinates (E,N): 737417, 3856100; 737363, 3856080; 737307, 3856040; 737239, 3856000; 737175, 3856000; 737140, 3856010; 737105, 3856070; 737059, 3856130; 736981, 3856170; 736919, 3856190; 736825, 3856180; 736785, 3856210; 736755, 3856250; 736747, 3856310; 736677, 3856370; 736618, 3856410; 736583, 3856440; 736581, 3856480; 736669, 3856620; 736664, 3856670; 736629, 3856680; 736545, 3856600; 736451, 3856570; 736373, 3856590; 736298, 3856650; 736258, 3856730; 736239, 3856830; 736217, 3856960; 736147, 3857020; 736067, 3857040; 736018, 3857030; 735919, 3856920; 735881, 3856830; 735798, 3856740; 735620, 3856630; 735534, 3856390; 735378, 3856240; 735233, 3856110; 735139, 3856060; 735052, 3856040; 734942, 3856040; 734875, 3856060; 734778, 3856160; 734716, 3856270; 734705, 3856380; 734792, 3856490; 734985, 3856680; 734902, 3856760; 734811, 3856770; 734747, 3856930; 734572, 3857050; 734549, 3857170; 734576, 3857260; 734640, 3857350; 734687, 3857490; 734576, 3857560; 734488, 3857710; 734512, 3857810; 734582, 3857880; 734687, 3857900; 734802, 3857860; 734945, 3857850; 735007, 3857890; 735042, 3857970; 735063, 3858170; 735141, 3858250; 735367, 3858250; 735539, 3858220; 735720, 3858150; 735768, 3858170; 735803, 3858200; 735870, 3858370; 735919, 3858410; 736045, 3858370; 736228, 3858140; 736354, 3858150; 736497, 3858060; 736637, 3858070; 736403, 3858210; 736363, 3858320; 736363, 3858410; 736384, 3858450; 736443, 3858460; 736494, 3858470; 736519, 3858500; 736497, 3858560; 736446, 3858650; 736287, 3858850; 736024, 3859120; 735900, 3859270; 735905, 3859310; 735935, 3859340; 735972, 3859350; 736126, 3859280; 736336, 3859170; 736524, 3859030; 736580, 3859030; 736605, 3859080; 736607, 3859190; 736683, 3859240; 736779, 3859250; 736868, 3859260; 737000, 3859190; 737102, 3859190; 737186, 3859210; 737240, 3859240; 737430, 3859200; 737572, 3859160; 737721, 3859160; 737818, 3859200; 737915, 3859040; 737934, 3858970; 738022, 3858840; 738108, 3858670; 738286, 3858510; 738364, 3858370; 738498, 3858350; 738646, 3858230; 738754, 3858160; 738859, 3858100; 738907, 3858050; 738905, 3857960; 738883, 3857860; 738810, 3857710; 738808, 3857600; 738811, 3857490; 738800, 3857370; 738770, 3857240; 738734, 3857130; 738675, 3857000; 738613, 3856960; 738509, 3856890; 738452, 3856830; 738398, 3856710; 738240, 3856630; 738188, 3856580; 738149, 3856550; 738100, 3856580; 738059, 3856570; 737904, 3856510; 737780, 3856510; 737635, 3856540; 737608, 3856510; 737632, 3856470; 737687, 3856410; 737833, 3856320; 737890, 3856260; 737928, 3856160; 737869, 3856080; 737787, 3855920; 737740, 3855950; 737651, 3856020; 737576, 3856050; 737484, 3856100; 737417, 3856100.

(ii) **Note:** Map 4 follows:

BILLING CODE 4310–55–P

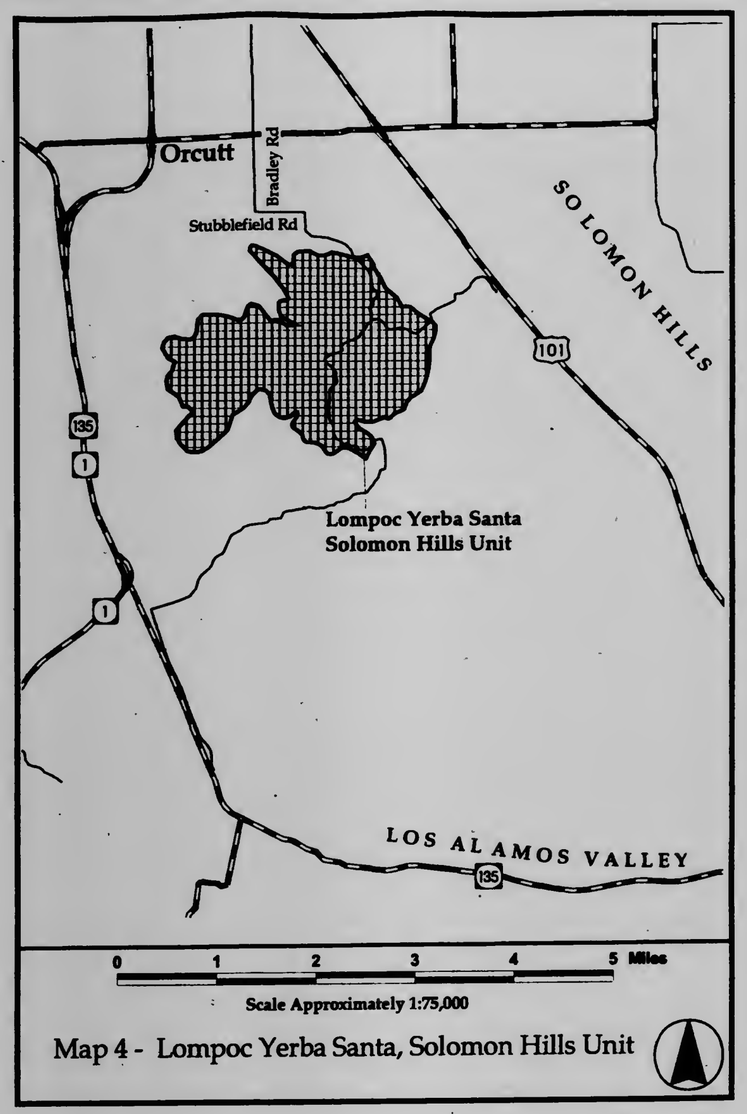

Map 4 - Lompoc Yerba Santa, Solomon Hills Unit

Dated: October 25, 2002.

Paul Hoffman,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 02–27873 Filed 11–6–02; 8:45 am]

BILLING CODE 4310–55–C

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2002
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Federal Register

Thursday,
November 7, 2002

Part V

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for *Lomatium cookii* (Cook's Lomatium) and *Limnanthes floccosa* ssp. *grandiflora* (Large-Flowered Woolly Meadowfoam) From Southern Oregon; Final Rule

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AF84

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for *Lomatium cookii* (Cook's Lomatium) and *Limnanthes floccosa* ssp. *grandiflora* (Large-Flowered Woolly Meadowfoam) From Southern Oregon

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), determine endangered status for two plants, *Lomatium cookii* (Cook's lomatium) and *Limnanthes floccosa* ssp. *grandiflora* (large-flowered woolly meadowfoam), pursuant to the Endangered Species Act of 1973, as amended (Act). Both of these plants inhabit seasonally wet habitats known as vernal pools in the Agate Desert, an area north of the city of Medford (Jackson County), Oregon. *Lomatium cookii* and *Limnanthes floccosa* ssp. *grandiflora* are known to occur at about 15 sites each, in the Agate Desert. This is based on the last observation of those sites, which vary year to year, depending on location and survey effort. *Lomatium cookii* is also known to occur on seasonally wet soils at about 21 sites in Josephine County, Oregon (referred to as the French Flat/Illinois Valley sites) which are immediately west of Jackson County. The continued existence of *Lomatium cookii* and *Limnanthes floccosa* ssp. *grandiflora* is threatened primarily by destruction of their specialized habitat by industrial and residential development, including road and powerline construction and maintenance. Agricultural conversion, certain grazing practices, off-road vehicle use, and competition with non-native plants also contribute to population declines and local extirpations. *Lomatium cookii* sites in Josephine County are additionally threatened by habitat alteration associated with gold mining and woody species encroachment resulting from fire suppression. This rule implements Federal protection and recovery provisions of the Act to *Lomatium cookii* and *Limnanthes floccosa* ssp. *grandiflora*.

DATES: This rule is effective December 9, 2002.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at U.S. Fish and Wildlife Service, Oregon Fish and Wildlife Office, 2600 SE. 98th, Suite 100, Portland, OR 97266.

FOR FURTHER INFORMATION CONTACT: Kemper McMaster, Oregon Fish and Wildlife Office (*see* ADDRESSES section) (telephone 503/231–6179; facsimile 503/231–6195). Information regarding this designation is available in alternate formats upon request.

SUPPLEMENTARY INFORMATION:

Background

Vernal pools are seasonal wetlands that form only in regions where specialized soil and climatic conditions exist. During fall and winter rains, water collects in shallow depressions in areas where downward percolation of water is prevented by the presence of an impervious hard pan or clay pan layer below the soil surface (Keeley and Zedler 1998). Later in the spring when rains decrease and the weather warms, the water evaporates, and the pools generally disappear by May. These shallow depressions then remain relatively dry until late fall and early winter with the advent of greater precipitation and cooler temperatures. Vernal pools thus provide unusual "flood and drought" habitat conditions to which certain plants and animals have specifically adapted. *Lomatium cookii* (Cook's lomatium) and *Limnanthes floccosa* ssp. *grandiflora* (large-flowered woolly meadowfoam) are two such plant taxa which occur in vernal pool habitats in a small area of Jackson County, southwestern Oregon. *Lomatium cookii* also occurs in seasonally wet habitats at a few sites in Josephine County, the adjacent county to the west. The *Limnanthes floccosa* ssp. *grandiflora* is believed to be extant in only about 15 sites in Jackson County, while *Lomatium cookii* is known to occur at about 15 sites in Jackson and 21 sites in Josephine County (Oregon Natural Heritage Information Center (ONHIF) Database 2002; Mabel Jones, Bureau of Land Management, pers. comm., 2002).

Lomatium cookii

A perennial forb in the carrot family (Apiaceae), *Lomatium cookii* grows 1.5 to 5 decimeters (dm) (6 to 20 inches (in)) tall, from a slender, twisted taproot. Leaves are smooth, finely dissected, and strictly basal (growing directly above the taproot on the ground, not along the stems). One to four groups of clustered, pale yellow flowers produce boat-shaped fruits 8 to 13 millimeters (mm) (0.3 to 0.5 in) long with thickened margins. The taproot can often branch at ground level to produce multiple stems. The branching taproot distinguishes *L. cookii* from *L. bradshawii* (Bradshaw's desert-parsley) that is indigenous to wet prairies from southern Willamette Valley, Oregon to southwest Washington, and *L. humile* (Caraway leaf lomatium) that is found in vernal pools in northern California (Kagan 1986). *Lomatium utriculatum* (Fine-leaved desert-parsley), found on mounds adjacent to pools in the Agate Desert, is distinguished from *L. cookii* by its more intensely yellow flowers, the different shape of its involucel bracklets (leaf-like structures below the flowers), and thin-winged fruits (Kagan 1986). *Lomatium tracyi* (Tracy's lomatium), occurring in California and the Illinois Valley, has a similar appearance to *L. cookii*, but *L. tracyi* has slender-margined fruits and can grow on dry sites. *Lomatium cookii* has boat or pumpkin-shaped fruits and grows on seasonally wet sites (Lincoln Constance, Prof. Emeritus, University of California, Berkeley, pers. comm., 1992). Recent genetic research has shown *L. cookii* to be most closely related to *L. bradshawii*. *Lomatium marginatum* (Butte desert-parsley) and probably *L. tracyi* are likely the next closely related species (M. Gitzendanner, University of Florida, pers. comm., 2002).

James Kagan first collected *Lomatium cookii* in 1981 from vernal pools in the Agate Desert, Jackson County, Oregon, and subsequently described the species (Kagan 1986). Additional populations were found at French Flat in the Illinois Valley, Josephine County, Oregon in 1988 (ONHIC database 2002). Plants in the French Flat/Illinois Valley sites grow on seasonally wet soils. Slight morphological differences exist between *L. cookii* populations in the Agate Desert and French Flat, but these differences are not considered significant enough to separate the species into subspecies. Recent genetic research found no evidence of significant genetic differences between the Agate Desert and French Flat *L. cookii* populations warranting the separation of the species into subspecies (M. Gitzendanner and P. Soltis, pers. comm., 2001).

Limnanthes floccosa ssp. grandiflora

A delicate annual in the meadowfoam, or false mermaid, family (Limnanthaceae), *Limnanthes floccosa* ssp. *grandiflora* grows 5 to 15 centimeters (cm) (2 to 6 in) tall, with 5-cm (2-in) leaves divided into five to nine segments. The stems and leaves are sparsely covered with short, fuzzy hairs. The flowers, and especially the sepals, are densely covered with woolly hairs. Each of the five yellowish to white petals has two rows of hairs near their base.

In his monograph of the genus *Limnanthes*, Mason (1952) described three varieties of *Limnanthes floccosa*, but did not recognize the subspecies *grandiflora* as distinct. Based on her study of specimens grown under controlled conditions from field-collected seed, Arroyo (1973) elevated Mason's varieties to subspecies and described two additional subspecies, *californica* and *grandiflora*. Arroyo (1973) distinguished *grandiflora* from the other subspecies of *L. floccosa* by a combination of: petal length 7.5 to 9 mm (0.30 to 0.35 in); sepal length 8.5 to 9 mm (0.33 to 0.35 in); sepal pubescence (dense on inner surface and sparse to absent on outer surface); sparsely hairy stems and leaves; two lines of hairs at the petal base; relative flowering time; and, occurrence relative to soil moisture (Arroyo 1973). Over much of its range, the subspecies *grandiflora* is sympatric or closely related with *L. floccosa* ssp. *floccosa*; however, the subspecies *floccosa* grows on the slightly drier, outer fringes of the pools, whereas ssp. *grandiflora* grows on the relatively wetter, inner fringe of the pools (Arroyo 1973; D. Borgias, The Nature Conservancy (TNC), pers. comm., 1998).

Occurrences

Limnanthes floccosa ssp. *grandiflora* and *Lomatium cookii* both occur in and around vernal pools within an 83-square kilometer (km^2) (32-square mile (mi^2)) landform in southwestern Oregon known as the Agate Desert in Jackson County. Located on the floor of the Rogue River basin north of Medford, the Agate Desert is characterized by shallow, Agate-Winlow complex soils; a relative lack of trees; sparse prairie vegetation; and agates commonly found on the soil surface (Oregon Natural Heritage Program (ONHP) 1997).

Lomatium cookii also occurs in another area encompassing some 10-km^2 (4-mi^2) in adjacent Josephine County. This area, referred to as French Flat, is located within the Illinois Valley near the Siskiyou Mountains. The 21 French Flat/Illinois Valley sites are located at: French Flat in south central Josephine County; Rough and Ready Creek Forest Wayside State Park, southwestern Josephine County; both east and west of Cave Junction, Oregon; east and southeast of Woodcock Mountain near Woodcock Creek; and a few scattered sites are northeast of Kerby, Oregon, near Reeves Creeks. These sites are collectively referred to as the French Flat/Illinois Valley sites.

The Agate Desert landscape consists of a gentle mound-swale topography with a characteristic appearance in aerial photographs that is sometimes referred to as "patterned ground." During the fall and winter rainy season, a striking pattern of shallow pools develops in the swales. These vary in size from 1 to 30 meters (m) (3 to 100 feet (ft)) across, and attain a maximum depth of about 30-cm (12-in) (ONHP 1997). Plants native to these pools, including *Limnanthes floccosa* ssp. *grandiflora* and *Lomatium cookii*, are specially adapted to grow, flower, and set seed during the short time that water is available in the spring, finishing their life cycle before the dry hot summers. Special assemblages of plants blooming in concentric rings toward the deepest part of the pools can be seen as soil moisture recedes throughout the spring (ONHP 1997). Native plants that occur with *Lomatium cookii* and *Limnanthes floccosa* ssp. *grandiflora* in these vernal pools include: *Plagiobothrys bracteatus* (popcorn flower); *Juncus uncialis* (a rush); *Navarretia* spp. (Navarretia); *Limnanthes floccosa* ssp. *floccosa* (common woolly meadowfoam); *Deschampsia danthonides;* and *Triteliea hyacinthina* (Kagan 1987; D. Borgias, *in litt.* 2002).

The historical range for *Limnanthes floccosa* ssp. *grandiflora* and *Lomatium cookii* in the Agate Desert may have originally encompassed over 130 km^2 (50 mi^2), within an 18-km (11-mi) radius of White City, Oregon (ONHP 1997). Vernal pool habitat, formerly widespread south of the Rogue River, is now almost completely eliminated (Brock 1987, ONHP 1997).

In the French Flat/Illinois Valley area, *Lomatium cookii* grows in wet meadow areas underlain with floodplain bench deposits that contain sufficient clay to form a clay pan at 60 to 90 cm (24 to 35 in) below the soil surface (U.S. Department of Agriculture 1983). The clay pan creates seasonally wet areas similar to the vernal pools of the Agate Desert, but mostly lacking the latter area's distinctive mound-swale topography. Common plants associated with *Lomatium cookii* in the French Flat/Illinois Valley sites include: *Danthonia californica* (oatgrass); *Plagiobothrys bracteatus; Horkelia congesta* (horkelia); *Calochortus uniflorus* (mariposa lily); and *Erythronium howellii* (trout lily). The surrounding forest contains *Pinus ponderosa* (Ponderosa pine) and *Pinus jeffreyi* (Jeffrey pine). Shrub species that grow on serpentine soils, such as *Ceanothus cuneatus* (buckbrush) and *Arctostaphylos* ssp., are found within the area of *Lomatium cookii* sites (Kaye 2001).

The historical range of *Lomatium cookii* in the French Flat/Illinois Valley area may have included seasonally wet meadows along the East Fork of the Illinois River. Fire suppression, grazing, residential development, and extensive gold mining (Shenon 1933) altered *Lomatium cookii* habitat in this area. However, some native perennial communities remain in wet meadows that were not affected by mining. Gold mining imminently threatens *Lomatium cookii* habitat at the French Flat site (Mark Mousseaux, BLM, pers. comm., 2002).

In the Agate Desert, there are believed to be about 15 sites containing *Lomatium cookii* and about 15 sites containing *Limnanthes floccosa* ssp. *grandiflora*. Mapped habitat compiled in 1998 for these species in the Agate Desert totals approximately 54 hectares (ha) (133 acres (ac)) for *Lomatium cookii* and 80 ha (198 ac) for *Limnanthes floccosa* ssp. *grandiflora* (ONHIC database 2002). However, due to recent alteration and destruction of vernal pools in the Agate Desert (ONHP 1997), areas currently occupied by these plants is considerably less, an estimated 28 ha (69 ac) and 47 ha (116 ac) for *Lomatium cookii* and *Limnanthes floccosa* ssp. *grandiflora*, respectively (ONHIC database 2002). The two plants occur in five of the same vernal pool systems constituting three different sites. At the French Flat/Illinois Valley sites, there are believed to be about 21 known locations of *Lomatium cookii*, occupying up to 61 ha (150 ac) of habitat, but many of these sites are very small (50 individuals or less), and their current status is not well known.

Two sites each of *Lomatium cookii* and *Limnanthes floccosa* ssp. *grandiflora* occur entirely or partially within the Agate Desert Preserve (Preserve), owned by TNC. The Preserve contains the only large populations on private land specifically managed for the protection of these species.

Two known sites of each taxon are on State land, mainly in the Ken Denman Wildlife Area, where much of the habitat has been altered and planted to grasses. Two sites containing *Lomatium cookii* are located on land managed by Jackson County; one of these has been largely extirpated by construction of a baseball sports complex. Portions of two *Lomatium ceokii* and three *Limnanthes floccosa* ssp. *grandiflora* sites are on lands owned by the City of Medford, within an area designated as the Whetstone Industrial Park. Portions of two *Limnanthes floccosa* ssp. *grandiflora* and four *Lomatium cookii*

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sites are located in highway or powerline rights-of-way (ONHIC database 2002), where they are subject to herbicide spraying and other maintenance activities conducted by the State or counties. Fifteen sites containing *Lomatium cookii* in Josephine County are located partially or entirely on land managed by BLM. The remaining sites of *Lomatium cookii* and *Limnanthes floccosa* ssp. *grandiflora* occur primarily on private land.

Each year, plant populations exhibit some natural variation in numbers, related primarily to temperature and rainfall conditions for that year. In general, numbers of annual plants, such as *Limnanthes floccosa* ssp. *grandiflora* may fluctuate more widely than those of perennial plants, such as *Lomatium cookii*. The year 2000 saw a large increase in the number of *Limnanthes floccosa* ssp. *grandiflora* plants due to the wet conditions, but in 2001, a dry year, the number of individuals plummeted in many areas. For example, on a protected site owned by TNC, one *Limnanthes floccosa* ssp. *grandiflora* occurrence declined from 68,000 in 2000 to 39,000 in 2001. However in 2002, even with average rainfall figures still below normal, the population increased back to about 63,000 plants. A site owned by the City of Medford, contained some 10,000 *Limnanthes floccosa* ssp. *grandiflora* individuals in the year 2000, while only 112 individuals were noted at this site in 2001 (D. Borgias, *in litt.* 2002). Year-to-year changes of this magnitude may be within the normal range of variation for this annual plant. However, it is possible that a number of consecutive drought years could eliminate some populations of *Limnanthes floccosa* ssp. *grandiflora*. In contrast, numbers of *Lomatium cookii* in the Agate Desert were generally stable or increased during 2000–2002 (D. Borgias, *in litt.* 2002).

Information regarding three status changes considered outside the natural range of year-to-year variation for these plants became available to the Service between May 15, 2000, when the proposed rule was published in the **Federal Register** (65 FR 30941) and January 14, 2002, when the comment period was reopened for these plants (67 FR 1712). Two of these involve increased population sizes at historical *Lomatium cookii* sites. One of these sites, on private land, was believed to contain some 6,000 plants historically. Surveys in 2000 and 2001 revealed an estimated 580,000 flowering individuals. Another population, located on City of Medford airport property, that was previously estimated at some 1,000 plants, was found in 1999 to contain over 5,000 flowering *Lomatium cookii* plants. However, this larger population was bisected in 2001 by development of a new taxiway at this airport (K. O'Hara, David Evans & Associates, *in litt.* 2002). The third status change is that, in the year 2000, *Limnanthes floccosa* ssp. *grandiflora* was discovered at two new sites on private land. One comprises approximately 1,000 flowering individuals and the other about 170 individuals in three patches.

The 2000–2002 observations of these two vernal pool plant species must be considered within the context of the status and trends of their habitat overall. Recent studies of the Agate Desert vernal pool hydrology and vegetation indicate that no undisturbed vernal pool habitat remains (ONHP 1997, 1999). The latter study (ONHP 1999) indicates that the highest quality remaining Agate Desert vernal pool habitat, that with intact hydrology and altered vegetation, is now present on approximately 17.6 percent of the area that historically contained vernal pools. This is a decrease from the earlier study (ONHP 1997), cited in the May 15, 2000, proposed rule, which estimated that this highest quality remaining habitat occurred on 23.1 percent of the area. This reported decrease in the amount of best available habitat is partially due to better-refined mapping techniques, but there is evidence that additional land leveling also occurred between the two studies (ONHP 1999). Both reported and unreported fills of Agate Desert vernal pool wetlands are occurring continually (C. Tuss, Service biologist, pers. comm., 2001). ONHP (1999) reports that over 19 percent of Agate Desert vernal pool habitat has been leveled, and development (structures, roads, and other impermeable surfaces) has occurred on an additional 41 percent of this area (ONHP 1999). Thus, over 60 percent of the habitat of these plants in the Agate Desert has been destroyed, and none of the remaining habitat has escaped the invasion of weedy competitors. This compares with just under 60 percent habitat destruction reported in ONHP 1997 and in the proposed rule (65 FR 30941).

Recent evidence also indicates that non-native annual grasses, particularly medusahead (*Taeniatherum medusae*), are a greater problem than previously believed for *Lomatium cookii*, particularly in the Agate Desert (D. Borgias, *in litt.* 2002). Unlike native perennial bunchgrasses that originally occupied the area, annual grasses die back each year, creating a buildup of thatch from the dead leaves that interferes with germination of *Lomatium cookii* seeds. Current observations indicate that, without control of annual grasses through mowing, grazing, or prescribed burns, *Lomatium cookii* populations tend to decrease over time, and could be extirpated within a relatively short timeframe due to this competition with non-native grasses (D. Borgias, *in litt.* 2002). In many cases, non-native plants have been purposefully planted for livestock and other reasons in the Agate Desert. For example, the Ken Denman Wildlife Reserve, encompassing some 720 ha (1,780 ac) of Agate Desert land, is managed by the State primarily for waterfowl production. Much of this Reserve has been covered with log deck debris, plowed in strips and planted with non-native wildlife food plants (Brock 1987).

Populations of *Lomatium cookii* in Josephine County are becoming even more highly threatened by off-road vehicle (ORV) use than they were at the time of the proposal. Over the past few years, gates erected by the BLM to direct ORV traffic away from *Lomatium cookii* habitat have been repeatedly vandalized, and the intrusion into these areas continues. Particularly in the springtime, when the ground is wet and muddy (and *Lomatium cookii* plants are flowering), ORVs cause major rutting and disruption of *Lomatium cookii* habitat (L. Mazzu, BLM botanist, pers. comm., 2001).

Previous Federal Action

Federal action on *Limnanthes floccosa* ssp. *grandiflora* began with section 12 of the Endangered Species Act (Act) of 1973 as amended (16 U.S.C. 1531 *et seq.*), which directed the Secretary of the Smithsonian Institution to prepare a report on plants considered to be endangered, threatened, or extinct. That report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. On July 1, 1975, we published a notice (40 FR 27823) accepting the Smithsonian Institution report as a petition within the context of section 4(c)(2) (now section 4(b)(3)(A)) of the Act. The notice further indicated our intention to review the status of plant species, which included *Limnanthes floccosa* ssp. *grandiflora*. On June 16, 1976, we published a proposed rule, pursuant to section 4 of the Act, proposing endangered status for approximately 1,700 vascular plant species, including *Limnanthes floccosa* ssp. *grandiflora* (41 FR 24523).

In 1978, amendments to the Act required that all proposals over two

years old be withdrawn. A 1 year grace period was given to proposals already over 2 years old. On December 10, 1979, we published a notice in the **Federal Register** (44 FR 70796) withdrawing that portion of the June 16, 1976, proposal that had not been made final, including the proposal to list *Limnanthes floccosa* ssp. *grandiflora*. We published an updated notice of review (NOR) for plants on December 15, 1980 (50 FR 82480), including *Limnanthes floccosa* ssp. *grandiflora* as a category 1 candidate species. At the time, category 1 species were defined as we presently define candidates, *i.e.*, those species for which we have on file substantial information on biological vulnerability and threats to support the preparation of proposals to list as threatened or endangered. Category 1 status was maintained for *Limnanthes floccosa* ssp. *grandiflora* in the November 28, 1983, supplement to the notice (48 FR 53657). However, in the September 27, 1985, NOR (50 FR 39526), the status of this taxon was changed to category 2. Category 2 was defined at the time to include taxa for which data in our possession indicated that listing was possibly appropriate, but for which substantial information on biological vulnerability and threats was not currently known or on file to support proposed rules. Category 2 status was maintained for *Limnanthes floccosa* ssp. *grandiflora* in the NOR published on February 21, 1990 (55 FR 6184). *Lomatium cookii* was first included in that 1990 NOR as a category 1 candidate species. In the September 30, 1993, NOR (58 FR 51144), the status of both taxa remained unchanged.

Upon publication of the February 28, 1996, NOR (61 FR 7596), we ceased using category designations and included as candidates only those taxa previously designated as category 1, *i.e.*, those for which we had on file sufficient information to support listing proposals. Accordingly, *Lomatium cookii* was maintained as a candidate species, but *Limnanthes floccosa* ssp. *grandiflora* was not. The plant NOR, published on September 19, 1997 (62 FR 49398), includes both *Limnanthes floccosa* ssp. *grandiflora* and *Lomatium cookii* as candidate species. The October 25, 1999, (64 FR 57534) and June 13, 2002 (67 FR 40657) NORs list both species as candidates.

Section 4(b)(3)(B) of the Act requires the Secretary to make certain findings on pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. This was the case for *Limnanthes floccosa* ssp. *grandiflora* because of our acceptance of the 1975 Smithsonian Report as a petition. On October 13, 1983, we found that the petitioned listing of this species was warranted, but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act. Notice of this finding was published on January 20, 1984 (49 FR 2485). Such a finding requires the petition to be reviewed annually pursuant to section 4(b)(3)(C)(i) of the Act. For the purpose of making these annual petition findings, we made an administrative decision to treat all candidate plants as if their listings had been petitioned prior to 1982. Therefore, the "warranted but precluded" finding also applies to *Lomatium cookii*, which first appeared on the February 21, 1990, NOR. The warranted but precluded finding for both species has been reviewed annually through 1997. Publication of the proposed listing rule for these two species constituted the final finding for the petitioned action.

On May 15, 2000, the Service published a proposed rule to list *Lomatium cookii* and *Limnanthes floccosa* ssp. *grandiflora* as endangered species and requested public comment for 60 days (65 FR 30941). On August 28, 2001, Siskiyou Regional Educational Project filed a citizen suit alleging that the Service had failed to make a timely final determination on the listing of these two plants, consistent with the timeframes set forth in section 4 of the Act (*Siskiyou Regional Educational Project* v. *Norton*, Civil No. 01–1208–KI (D. Ore). We entered into a settlement agreement with the plaintiff and agreed to submit a final listing decision for publication in the **Federal Register** on or before October 31, 2002. On January 14, 2002, the Service reopened the comment period on the proposed endangered status of the two plant species to seek updated information on the status, abundance, and distribution of these plants, as well as to provide updated information acquired by the Service since the proposed rule was published. This comment period closed on March 15, 2002 (67 FR 1712). This final rule is made in accordance with the judicially approved settlement agreement.

Summary of Comments and Recommendations

We contacted Federal and State agencies, county governments, scientific organizations, and other interested parties and asked that they comment. We requested that all interested parties submit factual reports or information that might contribute to the development of this final rule. We received a total of 19 comment letters over two comment periods. Four letters were received during the first comment period and fifteen letters were received during the second comment period. Of the nineteen total responses, sixteen were in support and three opposed the listing action. Two responses were from groups that commented during both comment periods, expressing the same or similar viewpoints in both letters. No comments were received from Federal, State, or community government agencies. All responses were submitted by individuals or groups.

This final rule reflects the comments and information we received during the comment period. We addressed opposing comments and other substantive comments concerning the rule below. Comments of a similar nature or point are grouped together (referred to as issues for the purpose of this summary) below, along with our response to each.

Issue 1: The proposed listing rule was not based on the best scientific information available and was not from independent sources.

Our Response: We thoroughly reviewed all available scientific data. We sought and reviewed historic and recent publications and unpublished reports concerning *Lomatium cookii* and *Limnanthes floccosa* ssp. *grandiflora* and other related species, as well as literature documenting the decline of the vernal pool ecosystem in general. This included reliable unpublished reports, non-literature documentation, and personal communications with experts. The public reviewed the proposed rule and an update on the species' status when the comment period was reopened. The proposed rule was peer reviewed according to our policy (see "Peer Review" section). In the process of updating the proposed rule, some citations may have changed due to publication, in peer reviewed journals, of some data originally cited as personal communications, unpublished manuscripts, or thesis. We used our best professional judgment and based our decision on the best scientific and commercial data available, as required by section 4(b)(1) of the Act.

Issue 2: The effects of cattle grazing are not based on research demonstrating the positive and negative effects of cattle grazing and seem to be contradictory.

Our Response: Research conducted by TNC included monitored plots of *Lomatium cookii* and *Limnanthes floccosa* ssp. *grandiflora* populations on the Agate Desert. The results indicated that both *Lomatium cookii* and *Limnanthes floccosa* ssp. *grandiflora*

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populations increased in the plots where livestock grazing was excluded. Ungrazed plots containing *Limnanthes floccosa* ssp. *grandiflora* continued to have population increases over time. However, *Lomatium cookii* population gains of the first year were lost by the third year when thatch build-up impeded plant growth and seedling abundance (D. Borgias, *in litt.* 2002).

The perceived ambiguity between the positive and negative effects of grazing on these species may lie in how the effects differ depending on the time of year, intensity, and duration of grazing within vernal pools. Prevailing livestock practices on the Agate Desert are considered "moderate" grazing. In Jackson County, 37,000 head of cattle and 3,000 head of sheep were pastured in 2000. The Natural Resources Conservation Service, U.S. Department of Agriculture, soil survey for Jackson County (Soil Conservation Service 1993) determined that the winter production on the Agate Desert soils amounts to 362 kilograms (kg) (800 pounds (lbs.)) of forage per acre, annually. This amount of forage is just above the estimated requirements of a cow/calf pair for a month (or 353 kg "animal unit month" or 12 kg per day) (780 lbs. "animal unit month" or 26 lbs. per day). Stocking rates in the Agate Desert are about one cow/calf pair for each 2.5 to 4 or more acres and typically grazing occurs in the late fall, winter and early spring (D. Borgias, *in litt.* 2002). These are averages and can be affected by changes in weather (*e.g.*, above or below normal rainfall). However, even moderate grazing can affect *Limnanthes floccosa* ssp. *grandiflora* and *Lomatium cookii* populations either positively and/or negatively since time of year and duration must be considered.

Preliminary survey results indicate early fall grazing may be beneficial to *Lomatium cookii* and *Limnanthes floccosa* ssp. *grandiflora* species through reductions in the populations of non-native competitors. Spring grazing may be detrimental to these species' populations from the direct effects of herbivory and trampling (D. Borgias, *in litt.* 2002; Kagan *in litt.* 2002). Precise management recommendations to benefit these species are in development while research continues.

Issue 3: The proposed rule ignores protections already in place.

Our Response: Lomatium cookii and *Limnanthes floccosa* ssp. *grandiflora* are listed by the State of Oregon as State endangered species under the Oregon Endangered Species Act. Despite the State listing, population losses of *Lomatium cookii* and *Limnanthes floccosa* ssp. *grandiflora* continue to occur. The inadequacy of existing Federal laws and regulations to protect these species are addressed in greater detail in the section titled, "Summary of Factors Affecting the Species."

Issue 4: The proposed rule does not address the economic impacts to the surrounding communities, especially the agricultural communities.

Our Response: The Act requires us to base our listing decisions on the best scientific and commercial information available, without regard to the effects, including economic effects, of listing a species. (*See* the section titled "Summary of Factors Affecting the Species"). However, the range of these species overlaps considerably with the range of the federally-listed vernal pool fairy shrimp, *Branchinecta lynchi*, in southwest Oregon. Actions on Federal property or proposed actions that have a Federal nexus are already required to conduct section 7 consultations if their actions may affect listed species. The listing of *Lomatium cookii* and *Limnanthes floccosa* ssp. *grandiflora* should not lead to greater restrictions on privately owned property as the Endangered Species Act controls take of endangered plants on private land only when it involves knowing violation of state law. Economic impacts will be analyzed in detail during the process of designating critical habitat.

Issue 5: Rainfall and weather conditions were not discussed to explain population declines.

Our Response: When the proposed rule was published, May 15, 2000, (65 FR 30941) it contained the best available information to us on the status of the species at that time. Additional information on the species was solicited from experts, and public comments were sought to update information on the status, abundance, and distribution of these plants. The proposed rule to reopen the comment period was published in the **Federal Register** on January 14, 2002 (67 FR 1712). It contained updated population numbers and addressed the year to year changes in population size from the effects of annually fluctuating environmental factors such as rainfall and weather conditions.

Issue 6: Critical habitat was not designated.

Our Response: The Northwest Environmental Defense Center wrote in support of the listing of *Lomatium cookii* and *Limnanthes floccosa* ssp. *grandiflora* and recommended that critical habitat be designated for these two species. Due to funding constraints we are unable to designate critical habitat at this time. We will prepare a critical habitat determination in the future as resources allow. (*See* Critical Habitat section).

Issue 7: Fire, used as an alternative to grazing to remove thatch, would kill plants or overly stress the plants, damaging crown and roots.

Our Response: Research results on the effects of prescribed burning on the Agate Desert have shown that early summer fire is neutral to *Limnanthes floccosa* ssp. *grandiflora* and beneficial toward *Lomatium cookii*. Seedling recruitment in the second year post burn, and juvenile recruitment in the third year post burn far surpassed that in unburned units. The crowns are dry at the time when fire can carry through such stands, and the roots are insulated from the heat generated by the short lasting fuels of a grassland fire (D. Borgias, *in litt.* 2002).

Issue 8: Land that is totally protected could result in decreased population numbers. Because *Lomatium cookii* repopulated an area that was leveled in the 1940's, this indicates that this species is an "early invader."

Our Response: Populations of *Lomatium cookii* have not been shown to increase with disturbance. Habitat modification has been shown to be a leading contributor to population declines. One explanation for the "repopulation" of the Antelope Road site may be that the seeds lying dormant in the soil were stimulated to grow by the immediate hydrological conditions. Vernal pool species have very specialized conditions in which they have evolved and often have physical structures on the parent plant to hold the seed onto the plant. Almost a fifth of vernal pool species have mechanisms or structures that restrict dispersal (Zedler 1990). This insures the seed will be deposited in the same area where the parent plant successfully reproduced. Dispersal outside the vernal pool environment is not an advantage to highly specialized vernal pool plants because dispersal would increase the chance of landing in inhospitable habitat.

Issue 9: The species range may be wider than acknowledged and is not being looked at on a broad enough scale or on other soils.

Our Response: Many amateur and professional botanists, trained in plant taxonomy and the geographic distribution of plant species, devote large amounts of their time collecting and identifying plants. These experts look specifically for range extensions of known species and species new to science (F. Lang, Prof. Emeritus, Southern Oregon University, pers. comm., 2000). Factors controlling the distribution of *Lomatium cookii* and the *Limnanthes floccosa* ssp. *grandiflora* include the local geological and hydrological conditions. The seasonal wetland habitat inhibits plant species not specifically adapted to the wet/dry habitat (D. Borgias, pers. comm., 2000).

Peer Review

In accordance with our July 1, 1994 (59 FR 34270), Interagency Cooperative Policy on Peer Review, we requested the expert opinion of at least three independent specialists regarding pertinent scientific or commercial data and assumptions relating to supportive biological and ecological information in the proposed rule. The purpose of such a review is to ensure that the listing decision is based on scientifically sound data, assumptions and analyses, including input of appropriate experts and specialists.

We requested peer review from six individuals who possess expertise on *Lomatium cookii* or *Limnanthes floccosa* ssp. *grandiflora* natural history and ecology to review the proposed rule and provide any relevant scientific data relating to taxonomy, distribution, or to the supporting biological data used in our analyses of the listing factors. We received responses from four peer reviewers. All expressed their belief that the data supported the protection of the two plant species under the protection of the Act. We have incorporated their comments into the final rule, as appropriate, and briefly summarized their observations below.

All four peer reviewers agreed with our conclusion to list these species as endangered. Each supported the scientific basis for our decision and addressed the urgency of the threats to the species. The peer reviewers' comments included suggestions to correct technical errors, clarify differences between *Limnanthes* subspecies, and a correction regarding an absent referenced citation. The peer reviewers' suggested changes are noted below and/or have been incorporated into this final rule document as appropriate.

Summary of Changes from the Proposed Rule and Reopening of Comment Period

An error was found in our taxonomic description of *Limnanthes floccosa* ssp. *grandiflora* published in the proposed rule which distinguishes it from other *Limnanthes* subspecies. The corrected description and the proper literature citation have been incorporated in this final rule.

Population data regarding the status of both taxa was supplied to us by the ONHP which transferred their data to Oregon State University Institute for Natural Resources. As of June 28, 2002, the organization name was changed to Oregon Natural Heritage Information Center. The change in citation has been noted in this final rule.

A peer reviewer suggested a name change to differentiate three *Lomatium cookii* occurrence sites collectively referred to as the French Flat occurrence located in the Illinois Valley. The peer reviewer believes there is the potential for confusion because the southernmost site is located in an area known as French Flat, while the other populations are further north, some adjacent to Cave Junction and others located at the westernmost edge of the Illinois Valley or further north. Additional descriptors have been added where appropriate to define the specific area being addressed or are referred to as French Flat/Illinois Valley sites in this final rule.

Special concern was expressed regarding the population of *Lomatium cookii* located on the west side of the Illinois Valley. Due to a large wildfire just west of the Illinois Valley, in the Kalmiopsis Wilderness Area, fire suppression related activities, such as fireline construction or the use of heavy equipment, may be a new additional threat to *Lomatium cookii*. Because the effects of the suppression action will not be known until after the publication of the final rule, these potential threats are not likely to reduce the need to list the species as endangered and will not be addressed in the final rule.

Summary of Factors Affecting the Species

Section 4 of the Act and its implementing regulations (50 CFR part 424) set forth the procedures for adding species to the Federal lists. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Lomatium cookii* and *Limnanthes floccosa* ssp. *grandiflora* are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The vernal pools and other seasonally wet soils where *Lomatium cookii* and *Limnanthes floccosa* ssp. *grandiflora* grow are susceptible to various land-use disturbances. The primary threats to the vernal pool habitat of *Lomatium cookii* and *Limnanthes floccosa* ssp. *grandiflora* in the Agate Desert are industrial, commercial, and residential development and related road and utilities construction and maintenance, including mowing, herbicide spraying, firebreak construction, and hydrologic alteration, particularly the conversion of non-irrigated land to irrigated agricultural use (D. Borgias, *in litt.* 2002). Competition, particularly from introduced annual grass species (*see* Factor E), and grazing, especially during the fall and winter months, can also reduce or eliminate populations of these species (Kagan 1987; James Kagan, ONHP, pers. comm., 1998; D. Borgias, *in litt.* 2002). Josephine County populations of *Lomatium cookii* are additionally threatened by proposed gold mining operations, the uncontrolled use of ORVs in the areas occupied by this plant, timber sale activities, and tree encroachment into open areas associated with fire suppression.

Human-related impacts to vernal pool habitat in the Agate Desert began in the mid-1800s, when the area was grazed by cattle and sheep (ONHP 1997). In 1905, a land speculation company acquired a large part of the area and attempted to establish pear orchards by constructing an extensive system of shallow irrigation ditches and in some cases, blasting through the hardpan layer. This failed, and grazing continued as the dominant use until 1942, when the U.S. military purchased a large segment of the Agate Desert for a training center. When this center was decommissioned in 1946, a 158-ha (390-ac) portion of the area west of Highway 62 was purchased by a timber industry consortium, and a timber mill industrial center began to grow (ONHP 1997). Other industries were drawn to the area, and around 1980, the City of Medford established the 290-ha (720-ac) Whetstone Industrial Park. Much of this area has been leveled and compacted, destroying any vernal pools, although some potential vernal pool habitat remains in the area (ONHP 1997). Another area west of Highway 62, encompassing some 728-ha (1,800-ac), is State land, managed by the Oregon Department of Fish and Wildlife, as the Ken Denman Wildlife Area (ONHP 1997). Devoted to waterfowl production, much of this area has been covered with log deck debris, plowed in strips, and planted with non-native wildlife food plants (Brock 1987; J. Kagan, pers. comm., 1997).

East of Highway 62, much of the Agate Desert landform was subdivided into 2-ha (5-ac) homesites in the 1950s, many of which were leveled. This area harbors some intact vernal pool habitat (Brock 1987, ONHP 1997).

The southernmost section of the historical Agate Desert has been largely modified by cultivation for pasture. The Medford-Jackson County Airport occupies some 374 ha (925 ac) at the southern limit of the landform. A Foreign Trade Zone at this airport has

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been under development (Bern Case, Director, Medford Jackson County Airport, pers. comm., 2002). However, construction associated with this facility has not directly impacted *Lomatium cookii* plants at the site to date.

Jackson County is experiencing a rapid human population increase. Between 1990 and 2000 the population of Jackson County increased 23.8 percent (U.S. Department of Commerce, Census Bureau 2000). It is the seventh fastest growing county in Oregon, and the majority of this growth is centered in the Medford area (Portland State University, Population Research Center. 2000). Much development has occurred in and around *Lomatium cookii* and *Limnanthes floccosa* ssp. *grandiflora* habitat near the City of Medford and White City.

A habitat assessment map and report (ONHP 1997) indicated that residential, commercial and industrial development, along with land leveling, have claimed nearly 60 percent of the historic Agate Desert vernal pool landscape. According to this assessment, no pristine vernal pool habitat remains due to the presence of introduced plants throughout the Agate Desert. The highest quality remaining vernal pool habitat occurs on 23 percent of the landform. By overlaying ONHIC plant occurrence polygons on the habitat assessment base map, one can determine that over 50 percent of *Lomatium cookii* sites and nearly 50 percent of *Limnanthes floccosa* ssp. *grandiflora* sites originally mapped in the Agate Desert during the 1980's have been severely altered. Habitat alterations in the Agate Desert are continuing as indicated by numerous examples below.

In 1992, a sewage line was built by the City of Medford across the southwest corner of the Cardinal Avenue site in the Agate Desert. A large department store was built on land adjacent to this site. The Cardinal Avenue site, with a population of approximately 140 *Lomatium cookii* individuals, was graded in January 1993 (J. Kagan, pers. comm., 1998). The landowner was contacted by TNC to request permission to remove some plants for experimental transplantation. The landowner agreed to allow removal of the plants, but TNC was only able to obtain one individual prior to completion of grading, and was unable to successfully transplant the individual (D. Borgias, pers. comm., 1999).

In 1986, private lands with 4 ha (10 ac) of *Lomatium cookii* habitat and some 500 individual plants were developed into a sports park complex by Jackson County with Federal Land and Water Conservation Funds. The area was leveled and playing fields and parking lots were constructed. Approximately 80 percent of the available habitat was removed at this site. Inventory of this site in 1992 documented 150 plants at this location (Kagan 1992). Based on preliminary surveys in 1997, these plants may have since become extirpated (J. Kagan, pers. comm., 1998).

Another project related to development in the Agate Desert area that adversely affected *Lomatium cookii* and *Limnanthes floccosa* ssp. *grandiflora* habitat is a 500-kilovolt powerline that Pacific Power and Light constructed in June 1992 (Gerald Nielsen, Pacific Power Co., pers. comm., 1992). The powerline directly affected 7.5 ha (18.5 ac) out of a total of 80 ha (198 ac), or 9.3 percent, of the existing *Limnanthes floccosa* ssp. *grandiflora* habitat in the Agate Desert. About 2.6 ha (6.4 ac), out of a total of 54 ha (133 ac), or 4.8 percent, of the existing *Lomatium cookii* habitat was affected in the Agate Desert. Maintenance activities along the powerline corridor may continue to adversely impact *Lomatium cookii* and *Limnanthes floccosa* ssp. *grandiflora* habitat.

Two sites where *Limnanthes floccosa* ssp. *grandiflora* was collected in 1969 have been destroyed, one by construction of a mill, and another 1.6 ha (4.0 ac) occurrence by construction of a large industrial plant (J. Kagan, pers. comm., 1997). A number of additional sites with *Limnanthes floccosa* ssp. *grandiflora* occurrences (50 percent of the total extant) have been severely degraded, as follows (J. Kagan, pers. comm., 1998): (1) One site, at the intersection of three major roads, has been reduced to a few fragmented patches. The site is ringed with development with two fast-food restaurants on one side, a powerline on another, and residential development to the east. The isolation of this site may eventually result in the loss of these plants especially if the number of individual plants is too small to be self-sustaining; (2) another site occurs at the corner of a building adjacent to railroad tracks and has been reduced to approximately 5 square meters (54-square feet), again, leaving no avenue for site conservation; (3) a sewer plant for the City of Medford has reduced the type locality for this taxon to two small pools; (4) the two sites on Denman Wildlife Area have been leveled and scraped for planting tall wheatgrass as wildlife food. In 1985, *Limnanthes floccosa* ssp. *grandiflora* was estimated to cover some 16 ha (40 ac) at one of these sites, but by 1993, coverage had been reduced to 1.2 ha (3 ac), a 92 percent reduction; and (5) more recently, over two-thirds of another site (29.5 ha (73 ac) in size) has been leveled, grazed, and piped for irrigation.

In the early 1990's, a proposed highway connector between Interstate 5 and Highway 140 across the Agate Desert would have impacted a number of sites of both *Lomatium cookii* and *Limnanthes floccosa* ssp. *grandiflora*. Although that specific project is no longer under consideration, the Oregon Department of Transportation (ODOT) is currently considering a number of alternatives for moving traffic through the area, some of which could impact vernal pools. An additional potential impact to vernal pool habitat from the highway project is future industrial and residential development that may result from increased access to the area from Interstate 5.

The only *Lomatium cookii* and/or *Limnanthes floccosa* ssp. *grandiflora* habitat currently protected from industrial, residential, or commercial development in the Agate Desert area is the habitat located on the Agate Desert, Whetstone Savanna, and Rogue River Plains Preserves and managed by TNC. These three areas encompass approximately 21 ha, 20 ha, and 53 ha (53, 50, and 132 acres), respectively. The Rogue River Plains Preserve only contains *Limnanthes floccosa* ssp. *grandiflora*, while the other two properties also contain *Lomatium cookii*.

The Agate Desert Preserve, supporting the largest populations of *Lomatium cookii* and *Limnanthes floccosa* ssp. *grandiflora*, is located in an area that may soon be surrounded by commercial and industrial developed land. Although the Preserve land is protected, the alteration of land adjacent to the Preserve could disrupt the hydrologic processes within the Preserve. For example, a road was built along the southern edge of the Preserve in 1988. Water runs off the road into a ditch after rainstorms, where it would have normally remained in pools in the Preserve. This ditch drained several of the vernal pools on the southern portion of the Preserve, further reducing approximately 0.2 ha (0.5 ac) of vernal pools available to *Lomatium cookii* and *Limnanthes floccosa* ssp. *grandiflora* in the Preserve (J. Kagan, pers. comm., 1998). In addition, potential habitat that borders the west side of the Preserve was partitioned and developed into industrial property in January 1993 (J. Kagan, pers. comm., 1998). Hydrology and available management (*e.g.*, prescribed burning) were also altered by the development.

During development of land west of the Preserve, land-moving equipment trespassed onto a portion of the Preserve. At the time, vernal pools on the Preserve had no fences or physical barriers to prevent trespass by ORVs or earth-moving equipment (D. Borgias, pers. comm., 1998).

To summarize these plants' current status in the Agate Desert, existing *Limnanthes floccosa* ssp. *grandiflora* plant numbers are relatively stable. However, they do vary considerably from year to year, likely being influenced by seasonal precipitation levels. Two new sites were recorded in 2000, with one site containing about 1,000 plants and the other about 170 in that year. Numbers of *Lomatium cookii* plants over the past few years are stable to increasing in the Agate Desert. One site exhibited a dramatic increase from an average of about 5,500 plants to over 500,000 plants in 2001 in a 6 ha (15 acre) area on private land. Habitat originally mapped for these species and believed to be occupied in the Agate Desert totaled some 54 ha (133 ac) for *Lomatium cookii* and 80 ha (198 ac) for *Limnanthes floccosa* ssp. *grandiflora* (ONHP Database 1998). However, habitat currently occupied by these plants is considerably less, an estimated 28 ha (69 ac) and 47 ha (116 ac) for *Lomatium cookii* and *Limnanthes floccosa* ssp. *grandiflora*, respectively (ONHIC database 2002). Thus, while some populations show local increases in abundance, overall the ranges of both plants have declined by roughly 50 percent in the Agate Desert, and habitat loss or degradation continues to be a significant threat to these species.

Sites containing *Lomatium cookii* in Josephine County in the French Flat and Illinois Valley regions are also subject to numerous threats. The only habitat for this plant on federally-owned land is located near French Flat and managed by BLM. Gold mining operations threaten approximately 10 percent of the federally-owned portion of this habitat. Approximately 600 plants occur in the area threatened by mining. Mining activities could result in direct habitat loss for the species and limit recovery at this site. If existing mining claims on BLM lands are pursued, habitat destruction would be substantially increased beyond 20 percent.

Indirect effects from mining operations in French Flat could also occur due to off-site activities such as road construction, which are likely to alter hydrologic cycles at *Lomatium cookii* habitat sites. These changes could cause seasonally saturated soils to drain and could impede seed germination or lead to death of seedlings and mature plants. Currently, no safeguards exist to protect habitat in the French Flat area from mining operations.

ORV use damages other *Lomatium cookii* habitat on BLM-managed lands at French Flat. In 1992, ORV use damaged a large wet meadow in this area, creating ruts that punctured the clay pan layer and allowed soil moisture to drain from the wet meadow habitat (Linda Knight, pers. comm., 1992). Heavy ORV use of *Lomatium cookii* habitat in the area is continuing. To date, ORV use has caused puncturing and draining of at least 6 ha (15 ac) of meadow habitat in the French Flat population. As a result, at least 20 percent of the remaining *Lomatium cookii* habitat on federally managed land has been destroyed. BLM has gated part of the area and closed access roads to discourage ORV trespass, but restricting access to this large open area is difficult (Linda Mazzu, BLM, pers. comm., 1998; Joan Seevers, Medford District BLM, pers. comm., 1998; Mark Mousseaux, Medford District BLM, pers.com., 2002).

The Oregon Parks & Recreation Department has undertaken protective measures for *Lomatium cookii* in Illinois River Forks State Park. Their entrance road was recently fenced to exclude ORV use from areas near the road where this plant occurs.

Several sites containing *Lomatium cookii* at Indian Hill and Rough and Ready Creek are threatened by encroachment of woody species from the surrounding forest. The invasion of these trees and shrubs, which could shade out *Lomatium cookii* plants and decrease available water, is likely associated with fire suppression activities (L. Mazzu, pers. comm., 1998).

Residential development and road building in the Illinois Valley also threaten populations of *Lomatium cookii*. For example, construction of a residential driveway and roto-tilling on private ground extirpated a Josephine County population of this species in 1991 (J. Kagan, pers. comm., 1998).

Therefore, the on-going and future threats associated with mining, ORV use, and development may lead to continued loss of individual plants and/or habitat throughout the Illinois Valley.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* *Lomatium cookii* has no known commercial, recreational, or scientific use at this time. There is no evidence of overcollection by botanists and/or horticulturists at this time. However, *Limnanthes floccosa* ssp. *grandiflora* may be of interest to collectors and researchers since some members of the genus have the potential to become important new crop plants because they possess a seed oil which exhibits stability at high temperature and pressure. This oil could be used as a lubricant for various industrial uses (Savonen, *in litt.* 1998). *Limnanthes alba*, a wildflower found in California, is now poised to become a multi-million dollar crop in the Willamette Valley of Oregon for its oil (Savonen in litt. 1998). To domesticate the species and improve strains, seeds have been, and continue to be, collected from wild *Limnanthes alba*, as well as other *Limnanthes* species, including *Limnanthes floccosa* ssp. *grandiflora* to cross with the domesticated plants. *Limnanthes floccosa* ssp. grandiflora was crossed with *Limnanthes alba* to develop a self-pollinating *Limnanthes* variety (Jolliff *et al.* 1984). This species may continue to be sought for collection, if its rarity and population locations become well known. The relatively few remaining populations of the species are easily accessed and so small that even limited collecting pressure could have significant adverse impacts.

About 80 percent of the *Lomatium cookii* sites and 40 percent of the *Limnanthes floccosa* ssp. *grandiflora* sites consist of 2 ha (5 ac) of land or less. Easy access exists to these plants in the Agate Desert, and to *Lomatium cookii* sites near Cave Junction, since they occur near heavily traveled roads. Most sites for these species lack fences or other measures to discourage collectors or others from accessing the sites.

C. *Disease or predation.* No data exists to substantiate whether disease threatens *Lomatium cookii* or *Limnanthes floccosa* ssp. *grandiflora*. An unidentified *Ascomycete* fungus was responsible for the mortality of four *Lomatium cookii* plants in a single population (Kagan 1987). Since this fungus has not been observed at other sites, no conclusions can be drawn regarding the threat of the fungus to the species as a whole. Predation has been observed on *Lomatium cookii* from gophers, other rodents, and black-tailed jackrabbits (*Lepus californicus*) feeding on vegetative portions, wireworms and other insect larvae eating the roots of plants, and insects preying on *Lomatium cookii* seeds (Kagan 1987).

Cattle grazing can cause substantial impacts to *Lomatium cookii* and *Limnanthes floccosa* ssp. *grandiflora*. Tracts heavily grazed from October to April are less likely to support these taxa. The majority of the seasonal growth occurs during the winter. If the plants are grazed during fall and winter and spring, they are less likely to survive to produce seed in the spring or early summer (Brock 1987).

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The effects of cattle grazing on *Lomatium cookii* and *Limnanthes floccosa* ssp. *grandiflora* are exemplified by the history of land use on what is now TNC's Agate Desert Preserve. Prior to TNC's acquisition of this tract, the area was grazed for a number of years. An estimated 480 individuals of *Limnanthes floccosa* ssp. *grandiflora* were noted at this site between 1984–1987. Cattle were removed in 1987, and in 1988, the *Limnanthes floccosa* ssp. *grandiflora* population had soared to over 7,000 individuals. By 1991, the population had grown to an estimated 17,600 plants, and in 2002 was at over 63,000 and is stable or increasing (D. Borgias, *in litt.* 2002). Despite the potential deleterious effects of fall to spring cattle grazing, carefully managed and timed grazing may actually reduce competition with introduced grass species (*see* Factor E).

D. *The inadequacy of existing regulatory mechanisms.* The majority of *Lomatium cookii* and all *Limnanthes floccosa* ssp. *grandiflora* plants grow in association with vernal pools that can contain water from November to March (Brock 1987). In accordance with the Clean Water Act of 1977 (91 Stat. 1566), these vernal pools are classified as wetlands, since they meet the requirement of containing water for at least two weeks during the growing season. Under section 404 of the Clean Water Act, the U.S. Army Corps of Engineers (Corps) regulates discharge of fill into waters of the United States, including wetlands (33 CFR parts 320–330). To be in compliance with the Clean Water Act, parties are generally required to notify the Corps prior to undertaking any activity that would result in the discharge of fill, including soil, into wetlands under the Corps' jurisdiction. An individual permit is required in many cases.

A ruling by the Supreme Court (*Solid Waste Agency of Northern Cook County* v. *U.S. Army Corps of Engineers*, 148 L. Ed. 2d. 576 (2001)) on January 9, 2001, involved statutory challenges to the assertion of Clean Water Act jurisdiction over isolated, non-navigable, intrastate waters used as habitat by migratory birds. This Supreme Court ruling provided some limitations to regulatory jurisdiction of isolated, non-navigable waters under the Clean Water Act. Based on our experience with the Portland District's jurisdictional determinations since the SWANCC ruling, we anticipate that the majority of the vernal pools occupied by these species will still be regulated under the jurisdiction of the Corps pursuant to section 404 of the Clean Water Act.

The Nationwide Permit Program (33 CFR Part 330) was recently revised in January 2002 (67 FR 2020) and became effective March 18, 2002. The Nationwide Permit Program was designed to eliminate the need for individual permits, requiring agency review and public comment, for some activities involving relatively small amounts of discharge or fill into waters of the U.S. Nationwide Permit (NWP) number 14, addressing liner transportation projects; NWP 39, addressing residential, commercial, and institutional developments; NWP 40, addressing agricultural activities; NWP 42, addressing recreational activities; and NWP 44, addressing mining activities allow the discharge of fill affecting up to only 0.2 ha (0.5 ac) of non-tidal wetlands. For NWPs 14, 39, 40, and 42 the permittee must notify the Corps prior to discharge if the discharge causes the loss of greater than 0.04-ha (0.10-ac) of non-tidal wetland and must generally provide a compensatory mitigation proposal to offset the permanent loss of wetlands. Under NWP 44, the permittee must avoid and minimize discharges into wetlands to the maximum extent practicable, and the Corps must be notified in a written statement detailing compliance with this provision.

The Clean Water Act does not regulate drainage of wetlands unless that action results in the discharge of dredged or fill material into a wetland. In addition, normal farming, silviculture, and ranching activities do not require permits for discharge or fill activities (*see* 33 CFR 323.4).

Most *Lomatium cookii* and *Limnanthes floccosa* ssp. *grandiflora* sites occupy wetlands less than a few hectares in size. Therefore, activities resulting in the filling of even less than 0.2 ha (0.5 ac) of vernal pools can have a measurable effect on their habitats. While compensatory mitigation may be required, vernal pools are location specific and cannot likely be created, but only restored. Currently, the Corps is not required to request consultation on fill activities which may affect *Lomatium cookii*, *Limnanthes floccosa* ssp. *grandiflora*, or other unlisted species. When *Lomatium cookii* and *Limnanthes floccosa* ssp. *grandiflora* are listed, section 7 consultation under the Act would be required by the Nationwide Permit conditions prior to the Corps' authorization of an activity that would affect the species. The Portland District of the Corps has issued General Regulatory Conditions that accompany all nationwide permits. One of these conditions indicates that if at any time the permittee becomes aware of the presence of a listed species within the authorized project area, all work activity must cease immediately, the Corps must be notified, and work must not resume until approved by the Corps. When *Lomatium cookii* and *Limnanthes floccosa* ssp. *grandiflora* are listed, these regulatory conditions will offer some Federal protection for them in the ephemeral wetlands they occupy.

State of Oregon wetland laws do not protect many *Lomatium cookii* or *Limnanthes floccosa* ssp. *grandiflora* sites due to their small size and their susceptibility to small fills. The Removal-Fill Law of 1989 (ORS 196.800–196.990), administered by the Oregon Division of State Lands, does not regulate activities that involve less than 38 cubic meters (50 cubic yards) of fill. Such an amount of fill could seriously impact many smaller vernal pool wetlands in which *Lomatium cookii* and *Limnanthes floccosa* ssp. *grandiflora* occur.

Lomatium cookii and *Limnanthes floccosa* ssp. *grandiflora* are listed as endangered species under the State of Oregon threatened or endangered plant law (OAR 603–073–0070). In general, State-listed plant populations on private lands are afforded very little protection by this law. The law prohibits the "take" of State-listed plants only on State, county, and city-owned or leased lands. On these lands, the State law does not guarantee the protection of State-listed plants because it allows for the loss of populations if a proposed project or activity is considered to be a public benefit. State-listed plants may be "taken" on private lands, provided the land owner provides their written permission.

With the listing of *Lomatium cookii*, BLM generally will provide a protection buffer when a plant population may be impacted by a project (L. Mazzu, pers. comm., 1999).

E. *Other natural or manmade factors affecting its continued existence.* Herbicide spraying, mowing, grading, and other road maintenance activities threaten small *Lomatium cookii* sites adjacent to roads, on private lands near Cave Junction in the Illinois Valley. In the Agate Desert, *Lomatium cookii* and *Limnanthes floccosa* ssp. *grandiflora* individuals in road or powerline rights-of-way could be accidentally destroyed by local public works departments, highway districts, fire departments, or private citizens when carrying out maintenance activities (Rose Hayden-Owens, ODOT, pers. comm., 1998).

Invasion of non-native annual plants in the Agate Desert has altered native perennial plant communities (Brock 1987) where *Lomatium cookii* and *Limnanthes floccosa* ssp. *grandiflora* grow. Native bunch grasses on mounds between vernal pools have been replaced by introduced European grasses such as *Bromus mollis* (brome grass), *Taeniatherum caput-medusae* (medusahead), *Cynosurus echinatus* (dogtail), and *Poa bulbosa* (bluegrass). *Taeniatherum caput-medusae* competes with *Lomatium cookii* and *Limnanthes floccosa* ssp. *grandiflora* on seasonally wet mounds between the pools. Seeds of both the native taxa are not able to germinate under the dense thatch produced by introduced annual species. Competition with introduced plant species is exacerbated on the Denman Wildlife Area, where game bird food plots are seeded with non-native plant species. Brock (1987) supports the contention that the main cause of the reduction of *Lomatium cookii* populations has been intensive cattle grazing accompanied by the negative competitive effects of introduced grasses, specifically *Taeniatherum caput-medusae*.

Mowing, burning, light grazing, or even raking of vernal pool habitat after *Lomatium cookii* and *Limnanthes floccosa* ssp. *grandiflora* seeds have matured, but before the fall growth period, may help reduce plant cover from exotic annual plants (Brock 1987). In a small experiment conducted on the Preserve, germination and seedling survivorship of the rare plants was increased on plots that were raked, as compared with untreated, or raked and scarified plots (D. Borgias, pers. comm., 1998).

Catastrophic events, such as severe fire, could eliminate the large areas of *Lomatium cookii* and *Limnanthes floccosa* ssp. *grandiflora*, located on the Preserve (J. Kagan, pers. comm., 1998). Demographic extinction is possible for nine other sites of *Lomatium cookii*, mostly in the French Flat area, because of their small size (fewer than 100 plants). Many of the known French Flat sites are found directly adjacent to roads, increasing the possibility of extirpation, due to road and road right-of-way maintenance activities, human-caused wildfire, and other activities or effects commonly associated with roads.

Summary of Five Listing Factors

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by *Lomatium cookii* and *Limnanthes floccosa* ssp. *grandiflora* in determining to publish this final rule. In the Agate Desert, these species occupy an extremely restricted geographic range, with an estimated 28 ha (69 ac) and 47 ha (116 ac) of known occupied habitat for *Lomatium cookii* and *Limnanthes floccosa* ssp. *grandiflora*, respectively. *Lomatium cookii* is found in an additional approximately 61 ha (150 ac) in the French Flat/Illinois Valley area. The majority of the known sites are small in area and/or contain relatively few individuals which makes them susceptible to extirpation. Individual sites can have widely fluctuating plant numbers from year to year, which is likely at least in part based upon annual weather variation. Even with increased population numbers, their range is limited by specific habitat requirements. Vernal pool habitats are a unique feature in the Agate Desert and they likely cannot be recreated. Past and on-going leveling and drainage activities in both the Agate Desert and Illinois Valley have permanently changed the hydrology in many instances such that restoration is not feasible. The majority of these plants' remaining occupied habitat is threatened by commercial, industrial, and residential development, road and utilities construction and maintenance, including herbicide spraying, leveling for agriculture or pasture, grazing or mowing at the inappropriate time of year, competition with introduced plants, mining, ORV use, certain timber sale activities, encroachment of trees and shrubs associated with fire suppression, and random natural events. In view of the limited, historically available habitat for these plants, the past and present habitat alteration and destruction, and numerous threats cited above, both plants are in danger of extinction throughout all or a significant portion of their range, fitting the definition of endangered under the Act. Based on this evaluation, listing *Lomatium cookii* and *Limnanthes floccosa* ssp. *grandiflora* as endangered is warranted.

Critical Habitat

Critical habitat is defined in section 3(5)(A) of the Act as—(i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed in accordance with the provisions of section 4 of the Act, upon a determination by the Secretary that such areas are essential for the conservation of the species.

"Conservation" means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Critical habitat designation, by definition, affects Federal agency actions including actions involving private lands, through consultation under section 7(a)(2) of the Act. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or destroy or adversely modify its critical habitat.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, we designate critical habitat at the time the species is determined to be endangered or threatened. Our regulations (50 CFR 424.12(a)) further state that the designation of critical habitat is not prudent when one or both of the following situations exist—(1) the species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

The Final Listing Priority Guidance for FY 1999/2000 (64 FR 57114) states that the processing of critical habitat determinations (prudency and determinability decisions) and proposed or final designations of critical habitat will be funded separately from other section 4 listing actions and will no longer be subject to prioritization under the Listing Priority Guidance. Critical habitat determinations, which were previously included in final listing rules published in the **Federal Register**, may now be processed separately, in which case stand-alone critical habitat determinations will be published as notices in the **Federal Register**. We will undertake critical habitat designations as funding and priorities allow. As explained in detail in the Listing Priority Guidance, our listing budget is currently insufficient to allow us to immediately complete all of the listing actions required by the Act.

Recent Interior appropriations bills have included language limiting the amount of funds that could be expended on listing actions to only the amount specifically appropriated for that purpose. The Fiscal Year 2002 appropriations bill also placed a cap on the amount that could be spent on designation of critical habitat for already listed species.

Lomatium cookii and *Limnanthes floccosa* ssp. *grandiflora* are potentially

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vulnerable to unrestricted over-collection, vandalism, or disturbance due to their small number of known sites and mostly small populations. We are concerned that these threats might be exacerbated by the publication of critical habitat maps and further dissemination of locational information. However, at this time we do not have specific evidence of over-collection or intentional vandalism of these species.

The deferral of the critical habitat designation for these species will allow us to concentrate our limited resources on higher priority listing actions, while allowing us to put in place protections needed for the conservation of *Lomatium cookii* and *Limnanthes floccosa* ssp. *grandiflora* without further delay. This is consistent with section 4(b)(6)(C)(i) of the Act, which states that final listing decisions may be issued without concurrent designation of critical habitat if it is essential to the conservation of the species that such determinations be promptly published. We will prepare a critical habitat determination for this species in the future at such time as resources allow.

We plan to employ a priority system for deciding which outstanding critical habitat designations should be addressed first. We will focus our efforts on those designations that will provide the most conservation benefit, taking into consideration the efficacy of critical habitat designation in addressing the threats to the species and the magnitude and immediacy of those threats. Currently, and for the immediate future, most of the Service's listing budget must be directed to complying with numerous court orders and settlement agreements, as well as due and overdue final listing determinations.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing results in public awareness and conservation actions by Federal, State, and local agencies, private organizations, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery plans be developed for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened, and with respect to its critical habitat if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) of the Act requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a species proposed for listing, or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with us.

Several Federal agencies are expected to have involvement under section 7 of the Act regarding these species. BLM currently has about 15 sites containing *Lomatium cookii* on its property. The association of *Lomatium cookii* and *Limnanthes floccosa* ssp. *grandiflora* with vernal pools and/or areas of wet soil conditions can result in the Corps becoming involved through its responsibilities and permitting authority under section 404 of the Clean Water Act. The Federal Highway Administration may be affected through potential funding of future highway construction or maintenance affecting these species. The Department of Housing and Urban Development may become involved through the granting of loans for housing. The Federal Aviation Administration may become involved through their oversight of the City of Medford Airport. The Natural Resources Conservation Service and the Farm Services Agency of the U.S. Department of Agriculture may become involved through administering their programs and services directed towards farming, ranching, and general land management.

Listing *Lomatium cookii* and *Limnanthes floccosa* ssp. *grandiflora* provides for the development and implementation of recovery plans for these species. Recovery plans bring together Federal, State, local agency, and private efforts for conservation of the species. A recovery plan establishes a framework for interested parties to coordinate their recovery efforts. Recovery plans set recovery priorities, assign responsibilities, and estimate the costs of the tasks necessary to accomplish the priorities. They also describe the site specific management actions necessary to achieve conservation and recovery of the species. Additionally, pursuant to section 6 of the Act, we will be able to grant funds to the state of Oregon for the management actions promoting the protection and recovery of these species. Based on the biology and current status of these species, attention should be given to preservation of as many different sites as possible, and protecting the sites from direct effects of habitat destruction or degradation and the indirect effects of encroachment by invasive non-native species.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered plants. All prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale in interstate or foreign commerce, or remove and reduce the species to possession from areas under Federal jurisdiction. In addition, for plants listed as endangered, the Act prohibits malicious damage or destruction on areas under Federal jurisdiction and the removal, cutting, digging up, or damaging or destroying of such plants in knowing violation of any State law or regulation, including State criminal trespass law. Certain exceptions to the prohibitions apply to our agents and State conservation agencies.

The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered plants under certain circumstances. Such permits are available for scientific purposes and to enhance the propagation or survival of the species. We anticipate that few trade permits would ever be sought or issued for *Lomatium cookii* because this plant is not in cultivation or common in the wild. Since *Limnanthes* ssp. are being cultivated to produce oil and there continues to be research into developing strains suitable for wide-scale commercial propagation, there may be a greater demand for permits to collect or cultivate *Limnanthes floccosa* ssp. *grandiflora*.

It is our policy, published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of this listing on proposed and ongoing activities within the species' range. *Limnanthes floccosa* ssp. *grandiflora* is not presently known to occur on Federal land, although two sites are known from the vicinity of Table Rock, near where BLM manages some land. *Lomatium cookii* is known to occur on lands under the jurisdiction of the BLM. Collection, damage, or destruction of endangered plants on public lands is prohibited, although in appropriate cases a Federal endangered species permit may be issued to allow collection. Removal, cutting, digging up, damaging or destroying endangered plants on non-Federal lands also constitutes a violation of section 9 of the Act if conducted in knowing violation of State law or regulations, including State criminal trespass law. We are not aware of any otherwise lawful activities being conducted or proposed by the public that will be affected by application the section 9 to this listing.

Questions regarding whether specific activities will constitute a violation of section 9 should be directed to the State Supervisor of our Oregon Fish and Wildlife Office (see **ADDRESSES**). Requests for copies of the regulations concerning listed plants and general inquiries regarding prohibitions and issuance of permits under the Act may be addressed to the U.S. Fish and Wildlife Service, Ecological Services, Endangered Species Permits, 911 NE. 11th Avenue, Portland, OR, 97232–4181 (telephone 503/231–2063; facsimile 503/231–6243).

National Environmental Policy Act

We have determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Paperwork Reduction Act

This rule does not contain any new collections of information that require approval by Office of Management and Budget (OMB) under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This rule will not impose record keeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Information collections associated with endangered species permits are covered by an existing OMB approval and are assigned control number 1018–0093, which expires March 31, 2004.

Executive Order 13211

On May 18, 2001, the President issued an Executive Order on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This rule is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

References Cited

A complete list of all references cited herein is available upon request from the State Supervisor, Oregon Fish and Wildlife Office (see **ADDRESSES**).

Author(s)

The authors of this final rule are Richard Szlemp, Anne Walker, and Judy Jacobs, U.S. Fish and Wildlife Service, Oregon Fish and Wildlife Office (see **ADDRESSES**).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and record keeping requirements, and Transportation.

Regulation Promulgation

Accordingly, we hereby amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Section 17.12(h) is amended by adding the following, in alphabetical order under Flowering Plants, to the List of Endangered and Threatened Plants to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
. . .	. . .	. . .	. . .	. . .	. . .	. . .	. . .
Limnanthes floccosa ssp. *grandiflora.*	large-flowered woolly meadowfoam.	U.S.A. (OR) ...	Limnanthaceae.	E	733	NA	NA
. . .	. . .	. . .	. . .	. . .	. . .	. . .	. . .
Lomatium cookii	Cook's lomatium	U.S.A. (OR) ...	Apiaceae	E	733	NA	NA
. . .	. . .	. . .	. . .	. . .	. . .	. . .	. . .

Dated: October 30, 2002.

Steve Williams,

Director, Fish and Wildlife Service.

[FR Doc. 02–28237 Filed 11–6–02; 8:45 am]

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To provide for improvement of Federal education research, statistics, evaluation, information, and dissemination, and for other purposes. (Nov. 5, 2002; 116 Stat. 1940)

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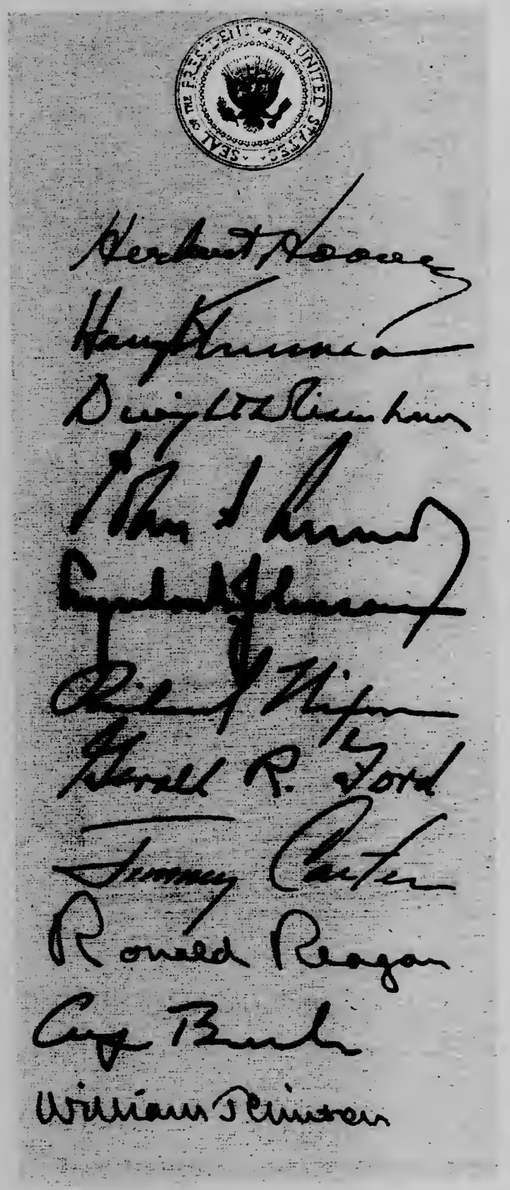

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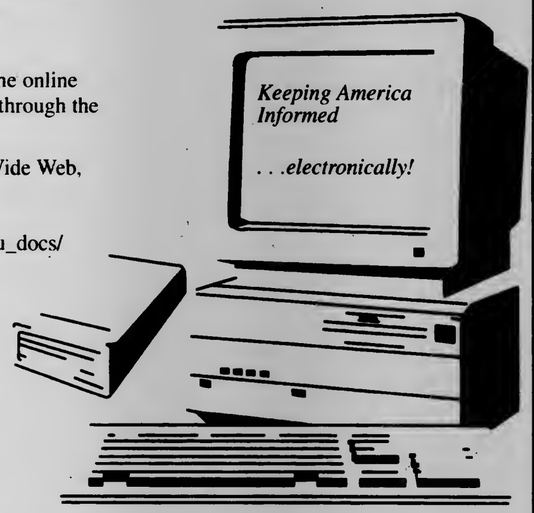

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Presidential Documents

Title 3—

The President

Proclamation 7622 of November 5, 2002

In Celebration of the Centennial of the West Wing of the White House, 2002

By the President of the United States of America

A Proclamation

For 100 years, the West Wing of the White House has served as the workplace of the President of the United States and his staff. Now housing the Oval Office, the Roosevelt Room, Cabinet Room, offices of the President's senior staff, and the James C. Brady Press Briefing Room, the West Wing has become the center of executive branch operation.

Prior to 1902, the President and his staff worked out of offices housed in the White House Residence, causing crowded staff conditions and a lack of privacy for the President's family. This overcrowding prompted planning for the construction of a new wing to serve as offices for the President and his staff. While plans were reviewed during several Administrations, construction did not begin until Theodore Roosevelt's presidency. The wing was completed in 1902, and the Presidential Offices were then moved from the Residence to the new addition. The wing underwent a major expansion in 1909, doubling its size, and further renovations were done in 1929, 1934, and 1969.

Following a Christmas Eve fire in 1929, renovations and restoration displaced Herbert Hoover for several months while new and improved facilities were built. In 1934 the Oval Office was moved to its current location on the southeast corner, over looking the Rose Garden. In the 1940's, the building became known as the "West Wing."

For a century, the West Wing has served as the headquarters of White House staff members who work to address national and international concerns, advance democracy, and secure a future of opportunity for all. Government and military leaders, Olympic athletes, college champions, artists, entertainers, and citizens from around the world have been welcomed to the West Wing to attend briefings, meetings, bill signing ceremonies, and countless activities that have contributed to the prosperity and security of our Nation and the world. As we celebrate its 100th anniversary, I encourage all Americans to recognize the vital role the West Wing has played in the ongoing work to ensure that the United States of America remains a beacon of freedom, and symbol of hope.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim Wednesday, November 6, 2002, as West Wing Centennial Day. I encourage all Americans to commemorate this occasion with appropriate programs and activities, thereby celebrating this important part of our American heritage and the values it represents and upholds for our Nation and the world.

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IN WITNESS WHEREOF, I have hereunto set my hand this fifth day of November, in the year of our Lord two thousand two, and of the Independence of the United States of America the two hundred and twenty-seventh.

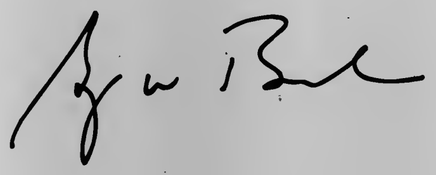

[FR Doc. 02–28711
Filed 11–7–02; 8:45 am]
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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 948

[Docket No. FV02–948–2 FR]

Irish Potatoes Grown in Colorado; Reduction of Membership on the Area No. 3 Colorado Potato Administrative Committee

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule reduces the number of members on the Area No. 3 Colorado Potato Administrative Committee (Committee) established under the Colorado potato marketing order (order). The order regulates the handling of Irish potatoes grown in Colorado and is administered locally by the Committee. This rule decreases the number of positions on the Committee from five producer and four handler members to three producer and two handler members, respectively. The number of producers and handlers in Area No. 3 has decreased significantly in recent years and the industry has been unable to fill several positions on the Committee. Reducing Committee membership will allow the Committee to function more effectively while still providing equitable representation for producers and handlers.

EFFECTIVE DATE: This final rule becomes effective November 9, 2002.

FOR FURTHER INFORMATION CONTACT: Teresa Hutchinson, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, suite 385, Portland, Oregon 97204; telephone: (503) 326–2724, Fax: (503) 326–7440; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement No. 97 and Order No. 948, both as amended (7 CFR part 948), regulating the handling of Irish potatoes grown in Colorado, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This final rule decreases the number of positions on the Committee from five producer and four handler members to three producer and two handler members, respectively. Each position will continue to have an alternate. The Committee has been unable to fill several positions on the Committee and has been unable to conduct business at some meetings because of the lack of a quorum. Reducing Committee membership will allow the Committee to function more effectively while still providing equitable representation for producers and handlers.

Section 948.50 of the order establishes three areas within the State of Colorado and provides authority for the establishment of a committee to be the administrative agency for each area. This section further provides that each area committee shall be comprised of members and alternates as set forth in that section or as reestablished by § 948.53. Section 948.53 provides authority for the reestablishment of each area committee.

Section 948.150 of the order's administrative rules and regulations prescribes the membership on each area committee. Prior to this final rule, the Area No. 3 Committee consisted of five producers and four handlers. Three producers and two handlers were from Weld County, and two producers and two handlers were from all other counties in Area No. 3.

At its meeting on June 13, 2002, the Committee did not have enough members in attendance to constitute a quorum. Those members present recommended that a mail vote be held by the Committee to reduce the number of positions on the Committee from five producer and four handler members to three producer and two handler members, respectively. In addition, they recommended the removal of all requirements that positions be filled from nominees from certain counties. A subsequent mail vote to all Committee members and alternates was conducted. Seven Committee members voted in favor of this change and one member voted against it. The member who voted against the motion supported suspension of regulations because of the decline in the size of the industry. One handler member and alternate position was not voted as both positions were vacant.

The number of Area No. 3 potato producers and handlers has decreased significantly in recent years. Reasons for this decline include low potato prices, water shortages, and increasing

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production costs. With a total of only 13 producers and handlers (several producers are also handlers), the Committee was unable to fill the 18 positions (nine members and nine alternates) on the Committee. One member and six alternate positions were vacant. This resulted in the Committee being unable to conduct business at certain meetings because of the lack of a quorum. The Committee believed that the requirement that only producers and handlers from specific counties be nominated to certain positions did not serve any useful purpose. They believed that those requirements, in some instances, contributed to the difficulty the Committee had in filling positions. This reduction in Committee membership will allow the Committee to function more effectively while still providing equitable representation for producers and handlers.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

Based on Committee data, there are 12 producers, (9 of whom are also handlers) and 10 handlers (9 of whom are also producers) in the production area subject to regulation under the order. Small agricultural producers are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $750,000, and small agricultural firms are defined as those whose annual receipts are less than $5,000,000.

Based on Committee data, the production of Area No. 3 Colorado potatoes for the 2001–2002 marketing year was 773,053 hundredweight. Based on National Agricultural Statistics Service data, the average producer price for Colorado summer potatoes for the 2001–2002 marketing year was $7.63 per hundredweight. The average annual producer revenue for the 12 Colorado Area No. 3 potato producers is therefore calculated to be approximately $491,533. Using Committee data regarding each individual handler's total shipments during the 2001–2002 marketing year and a Committee estimated average F.O.B. price during the 2001–2002 marketing year of $9.83 per hundredweight ($7.63 per hundredweight plus estimated packing and handling costs of $2.10 per hundredweight), all of the Colorado Area No. 3 potato handlers ship under $5,000,000 worth of potatoes. In view of the foregoing, it can be concluded that the majority of the Colorado Area No. 3 potato producers and handlers may be classified as small entities.

This final rule decreases the number of positions on the Committee from five producer and four handler members to three producer and two handler members, respectively. Each position will continue to have an alternate.

The number of Area No. 3 potato producers and handlers has decreased significantly in recent years. Reasons for this decline include low potato prices, water shortages, and increasing production costs. With a total of only 13 producers and handlers, the Committee was unable to fill the 18 positions (nine members and nine alternates) on the Committee. One member and six alternate member positions were vacant. This resulted in the Committee being unable to conduct business at certain meetings because of the lack of a quorum. This reduction in Committee membership will allow the Committee to function more effectively while still providing equitable representation for producers and handlers.

This rule is expected to slightly decrease the costs of administering the order. With a smaller Committee, meeting costs should decline slightly and the ability of the Committee to obtain a quorum and conduct business should increase. The benefits of this rule are not expected to be disproportionately greater or less for small producers or handlers than for larger entities.

The Committee discussed alternatives to this change, including not reducing the Committee membership. The Committee also considered suspension of all regulations and activities under Area No. 3. However, the Committee believes that the regulations issued under the order are beneficial to the Colorado Area No. 3 potato industry and the benefits of the program outweigh the costs.

This final rule decreases the number of positions on the Committee. Accordingly, this action will not impose any additional reporting or recordkeeping requirements on either small or large Area No. 3 Colorado potato handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

As noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this final rule.

In addition, the Committee's meeting was widely publicized throughout the Area No. 3 Colorado potato industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the June 13, 2002, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

A proposed rule concerning this action was published in the **Federal Register** on September 11, 2002 (67 FR 57537). Finally, the rule was made available through the Internet by the Office of the Federal Register and USDA. A 15-day comment period ending September 26, 2002, was provided to allow interested persons to respond to the proposal. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant matter presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because this rule needs to be in place as soon as possible so that the Colorado Area No. 3 potato industry can nominate members and alternates to the new Committee as soon as possible. Further, the Colorado Area No. 3 potato industry is aware of this rule, which was recommended at a public meeting. Also, a 15-day comment period was provided for in the proposed rule, and no comments were received.

List of Subjects in 7 CFR Part 948

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR Part 948 is amended as follows:

PART 948—IRISH POTATOES GROWN IN COLORADO

1. The authority citation for 7 CFR part 948 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 948.150 is amended by revising paragraph (b) to read as follows:

§ 948.150 Reestablishment of committee membership.

* * * * *

(b) *Area No. 3:* Three producers and two handlers selected as follows: Three (3) producers and two (2) handlers from any county in Area No. 3.

Dated: November 4, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–28474 Filed 11–7–02; 8:45 am]

BILLING CODE 3410–02–U

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 93 and 98

[Docket No. 02–064–1]

Canadian Border Ports; Blaine and Lynden, WA

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Direct final rule.

SUMMARY: We are amending the regulations by removing Blaine and Lynden, WA, from the lists of Canadian border ports designated as ports of entry for the importation of certain animals, birds, poultry, and animal germ plasm into the United States. We are removing the ports of Blaine and Lynden, WA, from the lists of designated Canadian border ports for the importation of animals, birds, poultry, or germ plasm into the United States because neither port has been used for those purposes in approximately 4 years. This rule will update the regulations so that they accurately reflect the ports used for the importation of certain animals and animal semen into the United States.

DATES: This rule will be effective on January 7, 2003, unless we receive written adverse comments or written notice of intent to submit adverse comments on or before December 9, 2002. If we receive written adverse comments or written notice of intent to submit adverse comments, we will publish a document in the **Federal Register** withdrawing this rule before the effective date..

ADDRESSES: You may submit comments or notice of intent to submit adverse comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies (an original and three copies) to: Docket No. 02–064–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 02–064–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 02–064–1" on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: Dr. Gary Colgrove, Chief Staff Veterinarian, Sanitary Issues Management Staff, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737–1231; (301) 734–4356.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR parts 93 and 98 (referred to below as the regulations) restrict the importation of specified animals, birds, poultry, and their products into the United States to prevent the introduction of communicable diseases of livestock and poultry. The regulations designate land border ports along the U.S.-Canadian border that have inspection facilities for the importation of certain animals, birds, poultry, and animal germ plasm requiring inspection.

The regulations in part 93 specify, among other things, the Canadian border ports through which certain animals may be imported into the United States. The designated Canadian border ports for ratites are listed in § 93.107(b)(2); for poultry, in § 93.203(b); for horses, in § 93.303(b)(1); for ruminants, in § 93.403(b); for swine, in § 93.503(b); and for miscellaneous animals, in § 98.703(a)(2). In part 98, § 98.6 provides that animal embryos regulated under subpart A of part 98 may be imported at the ports of entry listed in § 93.303 for horses, § 93.403 for ruminants, or § 93.503 for swine, and § 98.33(b) lists the Canadian border ports through which certain animal semen from Canada may be imported.

Blaine, Lynden, and Sumas, WA, which are in geographical proximity to one another, are among the ports of entry currently listed in the regulations. Of those three ports, Sumas, WA, is now used exclusively for the importation of certain animals, ratites, poultry, and animal germ plasm into the United States because Blaine and Lynden, WA, have not been used as ports of entry for those purposes in approximately 4 years. Therefore, in accordance with the procedures explained below under "Dates," we are amending § 93.107(b)(2) by removing Blaine, WA, from the list of Canadian border ports for ratites from Canada, and by removing Blaine and Lynden, WA, from the lists of Canadian border ports in §§ 93.203(b), 93.303(b)(1), 93.403(b), 93.503(b), 93.703(a)(2), and 98.33(b).

Removing Blaine and Lynden, WA, from the lists of Canadian border ports will update the regulations so that they accurately reflect the ports of entry for the importation of certain animals, birds, poultry, and animal germ plasm into the United States.

Dates

We are publishing this rule without a prior proposal because we view this action as noncontroversial and anticipate no adverse public comment. This rule will be effective, as published in this document, on January 7, 2003, unless we receive written adverse comments or written notice of intent to submit adverse comments on or before December 9, 2002.

Adverse comments are comments that suggest the rule should not be adopted or that suggest the rule should be changed.

If we receive written adverse comments or written notice of intent to submit adverse comments, we will publish a document in the **Federal Register** withdrawing this rule before the effective date. We will then publish a proposed rule for public comment.

As discussed above, if we receive no written adverse comments or written

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notice of intent to submit adverse comments that are postmarked, delivered, or e-mailed within 30 days of publication of this direct final rule, this direct final rule will become effective 60 days following its publication. We will publish a document in the **Federal Register** before the effective date of this direct final rule, confirming that it is effective on the date indicated in this document.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review under Executive Order 12866.

This rule will remove Blaine, WA, as a port of entry for the importation of ratites into the United States. It will also remove Blaine and Lynden, WA, as ports of entry for the importation of poultry, horses, ruminants, swine, and animal germ plasm. We are taking these actions because neither port has been used for the importation of animals or animal germ plasm in over 4 years. These actions would update the regulations so that they accurately reflect the ports used for the importation of certain animals and germ plasm into the United States.

Since the ports of Blaine and Lynden, WA, have not been used to inspect animals and animal germ plasm imported into the United States in approximately 4 years, this action will have no economic effect on any entity. Small entities located at or around the ports of Blaine and Lynden, WA, will not be affected by this proposed rule for the same reason that no economic entity of any size will be affected.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects

9 CFR Part 93

Animal diseases, Imports, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements.

9 CFR Part 98

Animal diseases and Imports.

Accordingly, we are amending 9 CFR parts 93 and 98 as follows:

PART 93—IMPORTATION OF CERTAIN ANIMALS, BIRDS, AND POULTRY, AND CERTAIN ANIMAL, BIRD, AND POULTRY PRODUCTS; REQUIREMENTS FOR MEANS OF CONVEYANCE AND SHIPPING CONTAINERS

1. The authority citation for part 93 is revised to read as follows:

Authority: 7 U.S.C. 1622, 8303, 8306–8308, 8310, 8313, and 8315; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

§ 93.107 [Amended]

2. In § 93.107, paragraph (b)(2) is amended by removing the words "Blaine, WA;".

§§ 93.203, 93.303, 93.403, 93.503, and 93.703 [Amended]

3. Sections 93.203(b), 93.303(b)(1), 93.403(b), 93.503(b), and 93.703(a)(2) are amended by removing the words "Blaine, Lynden," and by removing the comma immediately after the word "Oroville".

PART 98—IMPORTATION OF CERTAIN ANIMAL EMBRYOS AND ANIMAL SEMEN

4. The authority citation for part 98 is revised to read as follows:

Authority: 7 U.S.C. 1622, 8303, 8306, 8307, 8313, and 8315; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

§ 98.33 [Amended]

5. In § 98.33, paragraph (b) is amended by removing the words "Blaine, Lynden," and by removing the comma immediately after the word "Oroville".

Done in Washington, DC, this 5th day of November 2002.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–28476 Filed 11–7–02; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NE–33–AD; Amendment 39–12937; AD 2002–22–11]

RIN 2120–AA64

Airworthiness Directives; Turbomeca Artouste III Series Turboshaft Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), that is applicable to Turbomeca Artouste III series turboshaft engines with injection wheels part numbers (P/N's) 218.25.700.0, 218.25.704.0, 243.25.709.0, 243.25.713.0, 0.218.27.705.0, 0.218.27.709.0, and 0.218.27.713.0 installed. That AD currently requires smoke emission checks after every ground engine shutdown. If smoke is detected, that AD requires inspecting for fuel flow. If fuel flow is not detected, the engine may have injection wheel cracks, which requires removing the engine from service for repair. If fuel flow is detected, the engine may have a malfunctioning electric fuel cock, which requires removing the electric fuel cock from service and replacing with a serviceable part. This amendment has similar requirements as the original AD, except that the smoke emissions are to be checked after the last flight of the day, as opposed to after every flight, as required by the original AD. This amendment also requires inspection of central labyrinths not previously inspected or not replaced after the engine logged 1,500 operating hours, and, replacement of these labyrinths if necessary. This amendment is prompted by reports and analyses of in-flight shutdowns (IFSD's) occurring since the issuance of AD 2000–06–12. The actions specified by this AD are intended to prevent injection wheel cracks and excessive central labyrinth wear, which could result in an IFSD.

DATES: Effective December 13, 2002. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 13, 2002.

ADDRESSES: The service information referenced in this AD may be obtained from Turbomeca, 40220 Tarnos, France; telephone +33 05 59 64 40 00, fax +33 05 59 64 60 80. This information may be examined, by appointment, at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Antonio Cancelliere, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7751; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 2000–06–12, Amendment 39–11653 (65 FR 19300, April 11, 2000), which is applicable to Turbomeca Artouste III B, B1, and D series turboshaft engines with injection wheels part numbers (P/N's) 218.25.700.0, 218.25.704.0, 243.25.709.0, 243.25.713.0, 0.218.27.705.0, 0.218.27.709.0, and 0.218.27.713.0 installed, was published in the **Federal Register** on May 10, 2002, 67 FR 31737). That action proposed to require in accordance with Turbomeca Artouste III alert service bulletin (ASB) No. A218 72 0099, Update 1, dated June 6, 2001, smoke emission checks after every ground engine shutdown. If smoke is detected, that action proposed to require inspecting for fuel flow. If fuel flow is not detected, the engine may have injection wheel cracks, which would require removing the engine from service for repair. If fuel flow is detected, the engine may have a malfunctioning electric fuel cock, which would require removing the electric fuel cock from service and replacing with a serviceable part. That action also proposed to require the smoke emissions to be checked after the last flight of the day as opposed to after every flight as required by the original AD. That action also proposed to require inspection of central labyrinths not previously inspected or not replaced after the engine logged 1,500 operating hours, and, replacement if necessary, in accordance with Turbomeca Artouste III ASB No. A218 72 0100, Update 1, dated March 13, 2001. That action also proposed to require the removal of injection wheels at a new lower life limit.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comment received.

Injection Wheels Not Life-Limited

One commenter, the manufacturer, states that injection wheels on Turbomeca Artouste III series turboshaft engines are not life-limited. The commenter requests that the FAA remove paragraph (c) and (d) of the proposal. Paragraph (c) states that injection wheels are now life-limited to no more than 3,000 flight hours time-since-new (TSN) or time-since-overhaul (TSO), or 6,000 cycles-since-new (CSN) or cycles-since overhaul (CSO), whichever occurs first. Paragraph (d) requires replacement of all injection wheels that are over the life limits, before further flight, and to replace all other injection wheels before reaching the new life limits.

The FAA agrees. The FAA misunderstood the intent of the Direction Generale de L'Aviation Civile (DGAC), which is the airworthiness authority for France, regarding their reference in AD 2001–235(A) to the use of injection wheel limits. The 3,000 flight hours TSN or TSO, and 6,000 CSN or CSO limits are in the manufacturer's manual and are not mandated by the DGAC. Therefore, the FAA has removed the paragraphs for life limits from the final rule.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Regulatory Analysis

This final rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this final rule.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–11653 (65 FR 19300, April 11, 2000) and by adding a new airworthiness directive, Amendment 39–12937, to read as follows:

2002–22–11 Turbomeca: Amendment 39–12937. Docket No. 99–NE–33–AD. Supersedes AD 2000–06–12. Amendment 39–11653.

Applicability: This airworthiness directive (AD) is applicable to Turbomeca Artouste III B, B1, and D series turboshaft engines with injection wheels part numbers (P/N's) 218.25.700.0, 218.25.704.0, 243.25.709.0, 243.25.713.0, 0.218.27.705.0, 0.218.27.709.0, and 0.218.27.713.0. These engines are installed on, but not limited to Eurocopter SA 315 LAMA and SA 316 Alouette III helicopters.

Note 1: This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Compliance with this AD is required as indicated, unless already done.

To prevent injection wheel cracks and excessive central labyrinth wear, which could result in an in-flight shutdown (IFSD), do the following:

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Smoke Check

(a) Do the following in accordance with Turbomeca Artouste III Alert Service Bulletin (ASB) No. A218 72 0099, Update 1, dated June 6, 2001:

(1) After the last flight of every day, check for smoke emission through the exhaust pipe, air intake, or turbine casing drain during rundown.

(2) If smoke is detected, inspect for fuel flow in accordance with paragraph 2.B.(1) and 2.B.(2) of the ASB.

(i) If fuel flow is not detected, remove the engine from service and replace with a serviceable engine before further flight.

(ii) If fuel flow is detected, remove the electric fuel cock from service and replace with a serviceable part in accordance with section 2.B.(4) and 2.B.(5) of the referenced ASB.

(iii) Before entry into service, perform an engine ground run and check the fuel system again for smoke emission through the exhaust pipe, air intake, or turbine casing drain during engine rundown and after shutdown. If smoke emission still remains after replacement of the electric fuel cock, before further flight, remove the engine from service and replace with a serviceable engine.

Central Labyrinth Inspection

(b) If the central labyrinth has not been inspected or replaced since engine accumulation of 1,500 flight hours (FH) or more time-since-new (TSN) or time-since-last-overhaul (TSO), perform the checks and inspections, and, if necessary, replace the central labyrinth, in accordance with paragraph 2 of the Instructions of Turbomeca Artouste III ASB No. A218 72 0100, Update 1, dated March 13, 2001 and the following Table 1:

TABLE 1.—INSPECTION SCHEDULE

For engine hours TSN, or TSO that are:	And cycles/FH ratio is:	Then inspect central labyrinth:
(1) More than 1,500 but fewer than 2,000.	(i) Above 2 cycles	Within 250 FH time-in-service (TIS) after the effective date of this AD.
	(ii) Below or equal to 2 cycles	Within 500 FH TIS after the effective date of this AD.
(2) 2,000 or more	Not applicable	Within 50 FH TIS or 6 months after the effective date of this AD, whichever occurs first.

(c) For the purpose of this AD, a serviceable engine is defined as an engine that does not exhibit smoke emission.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). Operators must submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

Special Flight Permits

(e) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be done.

Documents That Have Been Incorporated by Reference

(f) The checks, inspections, and replacements must be done in accordance with the following Turbomeca Artouste III alert service bulletins (ASB's):

Document No.	Pages	Revision	Date
ASB A218 72 0099 Total pages: 5	All	1	June 6, 2001.
ASB A218 72 0100 Total pages: 7	All	1	March 13, 2001.

These incorporations by reference were approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Turbomeca, 40220 Tarnos, France; telephone +33 05 59 64 40 00; fax +33 05 59 64 60 80. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Direction Generale de L'Aviation Civile airworthiness directive 2001–235(A), dated June 13, 2001.

Effective Date

(g) This amendment becomes effective on December 13, 2002.

Issued in Burlington, Massachusetts, on October 28, 2002.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 02–28114 Filed 11–7–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NE–57–AD; Amendment 39–12938; AD 2002–22–12]

RIN 2120–AA64

Airworthiness Directives; Titeflex Corporation

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), that is applicable to certain Titeflex Corporation high-pressure and medium-pressure hoses. This amendment requires inspecting certain Titeflex hoses for a date of manufacture, and if necessary, replacing the hose with a serviceable part. This amendment is prompted by reports of hoses that failed to meet the fire test requirements during laboratory testing. The actions specified by this AD are intended to prevent failure of a hose when exposed to fire.

DATES: Effective December 13, 2002. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 13, 2002.

ADDRESSES: The service information referenced in this AD may be obtained from Titeflex Corporation, 603 Hendee Street, P.O. Box 90054, Springfield, MA 01139; telephone (413) 271–8244. This information may be examined, by appointment, at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Terry Fahr, Aerospace Engineer, Boston Aircraft Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7155; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that is applicable to certain Titeflex Corporation high-pressure and medium-pressure hoses was published in the **Federal Register** on June 3, 2002 (67 FR 38212). That action proposed to require inspecting certain Titeflex hoses for a date of manufacture, and if necessary, replacing the hose with a serviceable part, in accordance with Titeflex Corporation service bulletin (SB) 73–2, dated November 27, 2000.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Canadair Airplanes

Two commenters state that the only Canadair airplane having suspect hoses installed is the CL–600 1A11. The commenters request that the final rule applicability be corrected to list only the Canadair CL–600 1A11 airplane.

The FAA agrees and has revised the applicability accordingly.

CFM56–5C Engine

One commenter states that the only CFM56 engine having suspect hoses installed is the CFM56–5C. The commenter requests that the final rule applicability be corrected to list only the CFM56–5C engine.

The FAA agrees and has revised the applicability accordingly.

Boeing Airplanes

One commenter states that in accordance with the Titeflex Corporation service bulletin (SB) 73–2, the applicable Boeing airplane models stated in the NPRM should have been "all Boeing models except 737–600, 737–700, 737–800, 737–900, and 777."

The FAA agrees that the NPRM is in error and in addition has verified with Boeing Co. that the applicable Boeing models are DC–8, 707, 727, 737–200, 737–200C, 747, 757, and 767 airplanes. Therefore, the final rule has been revised to list these models.

One commenter approves of the AD as proposed.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Regulatory Analysis

This final rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this final rule.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2002–22–12 Titeflex Corporation: Amendment 39–12938. Docket No. 2000–NE–57–AD.

Applicability: This airworthiness directive (AD) is applicable to certain part number (P/N) Titeflex Corporation high-pressure and medium-pressure hoses that were fabricated at the Titeflex Springfield, MA, facility from January 1996 through June 2000. These hoses are installed on Airbus A300, A310, A340 airplanes, Boeing airplane models 707, 727, 737–200, 737–200C, 747, 757, and 767, Bombardier CL–600 1A11, BAE Avro 146 and BAE 146, McDonnell Douglas Corporation DC8 series, and Cessna 650 airplanes, and General Electric CF6–80C and CFM–56 series, and Honeywell International Inc., ALF502 and LF507 series turbofan engines.

Note 1: This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Compliance with this AD is required within 48 months after the effective date of this AD, unless already done.

To prevent failure of a hose when exposed to fire, do the following:

(a) Perform a general visual inspection of all high-pressure and medium-pressure hoses, with a P/N specified in paragraph 1.A. of Titeflex Corporation service bulletin (SB) 73–2.

(b) If the hose has a brown, integral firesleeve, no further action is required. If the hose has an orange, slip-on firesleeve, then inspect the metal tag for the assembly location.

(1) If the assembly location on the metal tag is TITEFLEX/API, TITEFLEX/API LGB, TITEFLEX E, TITEFLEX EUROPE, or SHAC 1S353, no further action is required.

(2) If the assembly location on the metal tag is TITEFLEX, inspect for a date and disposition as specified in the following Table:

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If the hose is	And the date is	Then
(i) High-pressure	(A) Before January 1996 or after June 2000	No further action is required.
	(B) January 1996 through June 2000	Replace hose with a serviceable part.
(ii) Medium-pressure	(A) Before February 2000 or after May 2000	No further action is required.
	(B) February 2000 through May 2000	Replace hose with a serviceable part.

Definition of a Serviceable Hose

(c) For the purposes of this AD, a serviceable hose is defined as a hose that has an assembly location listed in paragraph (b)(1) of this AD, that has an integral brown firesleeve, as a high-pressure hose that was fabricated before January 1996 or after June 2000, and as a medium-pressure hose that was fabricated before February 2000 or after May 2000.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Boston Aircraft Certification Office (ACO). Operators must submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Boston ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Boston ACO.

Special Flight Permits

(e) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be done.

Documents That Have Been Incorporated By Reference

(f) The inspections and replacements must be done in accordance with Titeflex Corporation service bulletin (SB) 73–2, dated November 27, 2000. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Titeflex Corporation, 603 Hendee Street, P.O. Box 90054, Springfield, MA 01139, telephone (413) 271–8244. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(g) This amendment becomes effective on December 13, 2002.

Issued in Burlington, Massachusetts, on October 28, 2002.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 02–28113 Filed 11–7–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–SW–42–AD; Amendment 39–12941; AD 2002–22–14]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron, Inc. Model 204B, 205A, 205A–1, 205B, 212, 214B, and 214B–1 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD) for specified Bell Helicopter Textron, Inc. (BHTI) model helicopters that requires reducing the retirement time for certain main rotor tension-torsion (TT) straps on those models and on the Model UH–1 series helicopters. This document contains the same requirements as the existing AD but removes the Model UH–1 series restricted category helicopters and adds the BHTI Model 205A and 205B helicopters to the applicability. This amendment is prompted by the issuance of a separate AD for the Model UH–1 series helicopters and the need to add the BHTI Model 205A and 205B helicopters to the applicability because the affected straps are eligible for installation on these model helicopters. The actions specified by this AD are intended to prevent failure of a TT strap, loss of a main rotor blade, and subsequent loss of control of the helicopter.

DATES: Effective December 13, 2002.

FOR FURTHER INFORMATION CONTACT: Michael Kohner, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Certification Office, Fort Worth, Texas 76193–0170, telephone (817) 222–5447, fax (817) 222–5783.

SUPPLEMENTARY INFORMATION: A proposal to amend 14 CFR part 39 to include an AD for specified model helicopters was published in the **Federal Register** on May 21, 2002 (67 FR 35763). On July 31, 1980, the FAA issued AD 80–17–09, Amendment 39–3876 (45 FR 54014, August 14, 1980), Docket No. 80–ASW–25. That AD requires replacing certain TT straps on or before attaining 1200 hours time in service (TIS) or 24 months, whichever occurs first, for the BHTI Model 204B, 205A–1, 212, 214B, 214B–1, and the Model UH–1 series military helicopters. That action was prompted by an offshore accident of a BHTI Model 212 helicopter in which a TT strap reportedly failed in flight after 2,140 hours TIS with resulting loss of the main rotor blade. The requirements of that AD are intended to prevent failure of a TT strap, loss of a main rotor blade, and subsequent loss of control of the helicopter.

Since the issuance of that AD, a separate AD was issued (67 FR 61771, October 2, 2002) for the military surplus restricted category helicopters that includes the Model UH–1 series helicopters, hence the removal of the Model UH–1 series helicopters from the applicability of this AD. Also, further review indicates that the affected TT straps are eligible for installation on the BHTI Model 205A and 205B helicopters. Therefore, this AD includes those models in the applicability.

To further address this unsafe condition that is likely to exist or develop on other helicopters of these same type designs, this AD supersedes AD 80–17–09. This AD contains the requirements of AD 80–17–09 but changes the applicability by removing the restricted category Model UH–1 series helicopters and adding the BHTI Model 205A and 205B helicopters.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial changes. These changes will neither increase the economic burden on operators nor increase the scope of the AD.

The FAA estimates that this AD will affect 168 helicopters of U.S. registry. The FAA also estimates that it will take 8 work hours to replace the TT straps at an average labor rate of $60 per work hour. The TT straps will cost approximately $10,484 per helicopter. Based on these figures, the total cost

impact of the AD on U.S. operators is estimated to be $1,840,352.

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–3876 (45 FR 54014, August 14, 1980) and by adding a new airworthiness directive (AD), Amendment 39–12941, to read as follows:

2002–22–14 Bell Helicopter Textron, Inc.: Amendment 39–12941. Docket No. 2001–SW–42–AD. Supersedes AD 80–17–09, Amendment 39–3876, Docket No. 80–ASW–25.

Applicability: Model 204B, 205A, 205A–1, 205B, 212, 214B, and 214B–1 helicopters, with main rotor tension-torsion (TT) strap, part number (P/N) 204–012–122–1, –5, or 214–010–179–1, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent separation of a TT strap, loss of a main rotor blade, and subsequent loss of control of the helicopter, accomplish the following:

(a) Before further flight, remove and replace any TT strap with 1,200 or more hours time-in-service (TIS) or 24 or more months since initial installation on any helicopter, whichever occurs first.

(b) This AD revises the Limitations section of the maintenance manual by establishing a life limit for the TT straps, P/N 204–012–122–1, –5, or 214–010–179–1, of 1200 hours TIS or 24 months since initial installation on any helicopter, whichever occurs first.

(c) Special flight permits will not be issued.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Rotorcraft Certification Office, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Certification Office.

(e) This amendment becomes effective on December 13, 2002.

Issued in Fort Worth, Texas, on October 28, 2002.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 02–28411 Filed 11–7–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 4, 19, 122, 123, 127, 141, 142 and 178

[T.D. 02–65]

RIN 1515–AC57

General Order Warehouses

AGENCY: Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations principally to create a new class of bonded warehouse exclusively for the receipt of general order merchandise, and to include procedures for authorizing and operating general order warehouses. This amendment of the Customs Regulations is in response to a recent increase in the amount of unentered merchandise being moved into general order facilities. This increase has resulted from changes in the law, and it has prompted the importing community to request that Customs put in place uniform, national procedures for approving and operating warehouses receiving general order merchandise.

In addition, changes are made to the Customs Regulations to implement certain amendments to the law made by the Customs modernization portion of the North American Free Trade Agreement Implementation Act. The amendments concern the circumstances where the title to unclaimed and abandoned merchandise vests in the Government, in lieu of sale of the merchandise at public auction.

EFFECTIVE DATE: December 9, 2002.

FOR FURTHER INFORMATION CONTACT: Tim Sushil, Office of Field Operations, 202–927–0564.

SUPPLEMENTARY INFORMATION:

Background

Title VI of the North American Free Trade Agreement Implementation Act, 107 Stat. 2057 (Pub. L. 103–182; December 8, 1993), popularly known as the Customs Modernization Act (Mod Act), amended a number of Customs and navigation laws.

Some of these amendments affected the treatment of general order merchandise. General order merchandise is merchandise that is required to be deposited in a bonded warehouse at the risk and expense of the consignee because it is not timely entered as provided by law or regulation, entry for it is incomplete because estimated duties, fees or interest has not been paid, entry cannot be made for it due to lack of proper documentation or other cause, or because it is not correctly or legally invoiced. *See* 19 U.S.C. 1490(a). Customs has denominated the type of bonded warehouse in which this type of merchandise must be deposited as a general order warehouse. *See* 19 CFR 127.1.

In particular, section 656 of the Mod Act amended 19 U.S.C. 1448(a) to provide, among other things, that the

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owner or master of any vessel or vehicle, or agent thereof, would be required to notify Customs of any merchandise or baggage unladen from the vessel or vehicle, for which entry was not made within the time prescribed by law or regulation; and if entry were not made within the prescribed time, the master or person in charge of the importing vessel or vehicle, or agent thereof, would be responsible for such unentered merchandise until it was removed from the carrier's control and placed in general order status in accordance with 19 U.S.C. 1490.

In concert with this, section 658 of the Mod Act amended 19 U.S.C. 1490 by deleting the requirement that a Customs officer take unentered merchandise into Customs custody and send it to a bonded warehouse. Instead, carriers are now required to notify both Customs and a bonded warehouse of the unentered merchandise, and the bonded warehouse is then responsible for arranging for the transportation and storage of the merchandise at the risk and expense of the consignee.

These, and related, statutory amendments were implemented by a final rule document amending the Customs Regulations, that was published in the **Federal Register** (63 FR 51283) on September 25, 1998, as T.D. 98–74.

Based on the statutory amendments, and the Customs Regulations implementing them, imported merchandise could not remain at the wharf, pier or other place of unlading more than 15 calendar days after its landing; or, if transferred from the arriving carrier to any party under a Customs-authorized permit to transfer or in-bond entry, the merchandise could not remain in the custody of that party more than 15 calendar days after its receipt under a Customs-authorized permit to transfer or more than 15 calendar days after its arrival at the port of destination, as provided in §§ 4.37, 122.50, 123.10, Customs Regulations (19 CFR 4.37, 122.50, 123.10). There is no provision in these regulations for any extension of this 15-day period.

Customs and the trade have consequently seen an increase in the amount of unentered merchandise moving into general order facilities, including merchandise, such as hazardous materials, requiring specialized storage facilities. Due to this increase in merchandise moving into temporary storage in general order status, the trade community has sought the establishment of national, uniform criteria for the approval and operation of general order warehouses.

Accordingly, by a document published in the **Federal Register** (65 FR 42893) on July 12, 2000, Customs proposed that a new class of bonded warehouse, a class 11 warehouse, be established exclusively to handle the receipt of general order merchandise as described in § 127.1, Customs Regulations (19 CFR 127.1).

It was further proposed that a class 3, 4, or 5 bonded warehouse, as described in § 19.1(a)(3), (4), or (5), Customs Regulations (19 CFR 19.1(a)(3), (4), or (5)), could likewise be used for the deposit of general order merchandise, but only if there were no class 11 warehouse otherwise available to receive the merchandise, and provided the class 3, 4, or 5 warehouse had also been certified by the port director as meeting the criteria for a class 11 warehouse, following an application under § 19.2, Customs Regulations (19 CFR 19.2).

To this end, § 19.1 was proposed to be amended to include provisions for general order warehouses. Matters relating to inventory control and minimum space requirements for general order warehouses were also addressed in the proposed rule, in §§ 19.2 and 19.12, respectively.

Additionally, an amendment to § 19.2(f) was proposed to allow the port director to require a business entity seeking approval to establish a Customs bonded warehouse to submit fingerprints, as part of the application process, for all its employees, as opposed to only those of all officers and managing officials of the business entity, as is currently the case; this proposed change would pertain to an application by a business entity to establish any Customs bonded warehouse, including a general order warehouse.

Furthermore, the proposed rule put forth amendments to §§ 4.37, 19.9, 122.50 and 123.10, Customs Regulations (19 CFR 4.37, 19.9, 122.50 and 123.10), that would make it the responsibility of the warehouse proprietor to prepare a Customs Form (CF) 6043 (Delivery Ticket), or other similar Customs document as designated by the port director or an electronic equivalent as authorized by Customs, that covered the proprietor's receipt of the merchandise and its transport to the warehouse from the custody of the carrier (or from any other party to whom custody of the merchandise had been transferred by a Customs-authorized permit to transfer or in-bond entry). This was intended to recognize and specifically implement the existing requirement described above that the warehouse proprietor be responsible for the transportation and storage in general order status of unentered merchandise following due notification by the arriving carrier or other bonded carrier of the presence of such merchandise.

Moreover, §§ 4.37, 122.50 and 123.10 were to be amended to provide that if a carrier or other party to whom the original carrier had properly transferred unclaimed and abandoned goods refused to relinquish custody over the goods to a general order warehouse proprietor, the carrier or other party would be liable for liquidated damages under the international carrier or custodial bond, as applicable; and §§ 4.37, 122.50 and 123.10 were to be further amended to provide that in cases where the warehouse proprietor was unable to accept goods into general order because the goods were required to be exported or destroyed, or for other good cause, the carrier or other party to whom the original carrier had properly transferred the goods would be responsible under bond for exporting or destroying the goods, as necessary. It was further proposed that § 127.13, Customs Regulations (19 CFR 127.13), be changed consistent with §§ 4.37, 122.50 and 123.10.

Also, the proposed rule would revise § 127.14 to require that the warehouse proprietor assume the responsibility and expense for the destruction of general order merchandise, in the event that such destruction were found to be warranted under the circumstances (*i.e.*, where the port director concludes that the merchandise has no commercial value or cannot be disposed of at public auction (unsalable)); however, before destroying the merchandise, the warehouse proprietor would first have to make a reasonable effort to identify and inform the importer (owner) or consignee of the merchandise regarding its intended destruction.

Mod Act Changes; Title to Unclaimed Merchandise Vesting in Government

In addition, under the proposed rule, § 127.14(a) would be revised and a new subpart E would be added to part 127 essentially to conform with and implement a number of amendments made by section 659 of the Mod Act to 19 U.S.C. 1491 concerning the provision that under certain conditions title to unclaimed and abandoned merchandise could vest in the United States, as an alternative to the Government having to sell such merchandise at public auction.

Time Limit Within Which To Make Entry; Conforming Changes

Finally, in conformance with the changes already made under T.D. 98–74 to §§ 4.37, 122.50, and 123.10, as discussed above, the proposed rule would similarly revise §§ 141.5 and 142.2, Customs Regulations (19 CFR 141.5, 142.2), to require that the entry of merchandise be made within 15 calendar days (as opposed to 5 working days) after landing from a vessel, aircraft or vehicle, or after arrival at the port of destination in the case of merchandise transported in bond.

Discussion of Comments

Six commenters responded to the notice of proposed rulemaking. A description of the issues raised by these commenters, and Customs response to each issue, is set forth below.

It is initially noted, however, that one commenter made certain suggestions during the proposed rulemaking comment period that were outside the scope of the notice, in particular: in connection with the unentered merchandise described in §§ 4.37(b), 122.50(b) and 123.10(b), to require that a carrier notify a general order warehouse of the presence of such unentered merchandise within the 15-day period, as opposed to the 20-day period, described in those sections; and to add a requirement in part 127 that carriers provide all information to the warehouse that they have on the consignee of unclaimed merchandise in order to facilitate the preparation of notices of sale for the merchandise. Such recommendations which, while related, fell outside the scope of the original notice of proposed rulemaking, are not addressed in this document. If found warranted, they would need to be the subject of another rulemaking document.

General Order Warehouses; Part 19

Comment

One commenter objected to the provision in proposed § 19.1(c) requiring that an available class 11 (General Order) warehouse be used to handle general order merchandise, in preference to another available general order (G.O.) warehouse of class 3, 4, or 5. The commenter asserted that a mandatory requirement to this effect would be unfair, would competitively disadvantage G.O. warehouses of class 3, 4 or 5, and would eliminate choice for the importing public in this area.

Customs Response

Customs agrees. Section 19.1(c) is revised to eliminate any requirement to use a class 11 warehouse over an existing class 3, 4 or 5 warehouse that has been approved to handle general order merchandise. Carriers and the importing community should, and will, continue to have a choice as to the particular G.O. warehouse to which their shipments may be sent.

Comment

One commenter suggested that class 11 G.O. warehouses be allowed to rent or lease additional space for the storage of G.O. merchandise.

Customs Response

Section 19.1(c) already provides for this. Any warehouse eligible to receive general order merchandise (a class 3, 4, 5, or 11 warehouse) may rent or lease suitable premises for the storage of such merchandise, if there is no space at the warehouse otherwise available.

Comment

Several commenters requested that Customs elaborate on the provision in proposed § 19.2(d) regarding minimum space requirements and other criteria for becoming a G.O. facility. In particular, one commenter asked that Customs impose regulatory limits on the number of G.O. warehouses that could operate in a port and, furthermore, that Customs specify in its regulations those parties that could not qualify to operate a G.O. warehouse.

Customs Response

Customs does not believe that further elaboration upon these matters in the regulations is warranted. Both the number of facilities and the space required for G.O. merchandise will vary from port to port; therefore no one standard can or should be applied.

Comment

One commenter objected to proposed § 19.2(f) which provided that the port director "may" require a business entity seeking to establish a Customs bonded warehouse to submit fingerprints from all its employees, as part of the application process, instead of limiting the submission of fingerprints to those of all officers and managing officials of the business entity, as is currently the case. On the other hand, several commenters wanted the word "may" in proposed § 19.2(f) replaced with "should".

Customs Response

Customs disagrees with both views. The port director should have the discretion to determine the extent of scrutiny that is called for in given circumstances with respect to a business entity that is applying for approval to establish a Customs bonded warehouse, including the ability to require fingerprints from all employees of the business entity.

Comment

In proposed § 19.12(a), one commenter was concerned about the expense of an automated inventory system that would be a requirement for a general order warehouse. The commenter requested that small warehouses be allowed to continue with a manual system. In the alternative, it was suggested that Customs should bear some of the costs associated with an automated inventory system.

Customs Response

Customs has concluded that the requirement for an automated inventory system should apply to all general order warehouses. Most warehouses already have an automated system that could likewise be extended to include G.O. merchandise; against this backdrop, automation should not impose an unreasonable cost. In addition, it is noted that in § 19.12(a) existing G.O. warehouses will be given a phase-in period of 2 years within which to automate their recordkeeping. This time frame should be adequate and provide ample time especially for smaller operators to defray some of the costs that they incur with automation. In this regard, Customs will not be involved in the cost, support, or maintenance of an automated inventory system. It is properly the responsibility of the warehouse proprietor to choose an automated system that best suits the particular needs of the warehouse and that fulfills Customs regulatory requirements.

Comment

In proposed § 19.12(a), several commenters thought that the "phase-in" period for automation was overly long.

Customs Response

Customs finds that this two-year phase-in allowance is reasonable and prudent. As already observed, it will afford some of the smaller G.O. warehouses needed time to acquire and install an automated record system and to defray their cost in so doing.

Transferring Unentered Merchandise to a G.O. Warehouse; Sections 4.37, 122.50 and 123.10

Comment

One commenter asked that an explicit statement be included in §§ 4.37(b), 122.50(b) and 123.10(b) limiting to 15 calendar days the period during which unentered merchandise may remain in the custody of the arriving carrier or other bonded carrier to whom such merchandise was properly transferred.

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Customs Response

Customs believes that this 15 calendar-day limitation is already clearly set forth in the cited regulatory provisions and that no change is needed.

Comment

Two commenters objected to the provision in proposed §§ 4.37(c), 19.9(a), 122.50(c) and 123.10(c) making it the responsibility of the G.O. warehouse proprietor to prepare the transfer documentation (CF 6043 or other approved form or an electronic equivalent) to cover the proprietor's receipt of unentered merchandise and its transport to the G.O. warehouse from the custody of the arriving carrier (or other bonded carrier).

Customs Response

Customs agrees. The preparation of the transfer documentation (CF 6043 or other approved form or electronic equivalent) should remain with the bonded carrier (or other party to which the bonded carrier has properly transferred the merchandise). Customs acknowledges that this is the existing procedure in most ports. As a practical matter, the G.O. warehouse proprietor does not have sufficient information as to the identity and quantity of the unentered cargo to expeditiously and knowledgeably prepare such transfer documentation prior to acceptance of the goods. Thus, shifting the responsibility for preparation of the delivery ticket from the arriving carrier (or other bonded carrier) to the warehouse proprietor would unnecessarily delay the transfer of unentered merchandise to general order. Sections 4.37(c), 19.9(a), 122.50(c) and 123.10(c) are changed accordingly.

Comment

Two commenters suggested that the phrase "Customs-approved bonded warehouse" appearing in proposed §§ 4.37(d), 122.50(d), and 123.10(d) should be replaced by "Customs-approved bonded General Order warehouse".

Customs Response

Customs agrees. Sections 4.37(d), 122.50(d), and 123.10(d) are changed accordingly.

Comment

One commenter requested clarification as to the difference between the liquidated damages provision in proposed § 4.37(d) and the penalties authorized under § 4.37(a). This commenter also requested that the phrase "carrier or other party may be liable for* * *" in proposed § 4.37(d) be changed to "the carrier shall, as determined by the port director, be liable for* * *".

Customs Response

The penalty contained in § 4.37(a) (also *see* §§ 122.50(a) and 123.10(a)) may be assessed against the master or owner of an arriving vessel, or the agent of the master or owner, for failing to timely notify Customs of the presence of unclaimed merchandise that has been unladen from the vessel. The penalty is up to $1,000 per bill of lading; however, if the value of the unclaimed merchandise on the bill is less than $1,000, the penalty will simply be equal to the value of such merchandise.

Liquidated damages in § 4.37(d) (also *see* §§ 122.50(d) and 123.10(d)) may be assessed against an arriving carrier or other party to whom the arriving carrier has properly transferred the unentered, unreleased merchandise if the carrier or other party fails to timely relinquish custody over the merchandise to a warehouse authorized to receive it. To this end, § 4.37(d) is changed to make clear that liquidated damages would only apply if the carrier fails to "timely" relinquish custody over the subject merchandise. Sections 122.50(d) and 123.10(d) are likewise changed. However, Customs finds that the change suggested by the commenter is not needed. If applicable, liquidated damages would be assessed under the international carrier bond of the arriving carrier or the custodial bond of the other party, as appropriate.

Comment

With respect to proposed §§ 4.37(e), 122.50(e) and 123.10(e), several commenters wanted to give G.O. warehouse proprietors the right to refuse any shipments that they did not want to accept. One commenter wanted a right to return merchandise to the carrier, and asked that a provision be added to the regulations that the carrier must accept the return of such merchandise, if the merchandise was sent to the warehouse improperly because it was hazardous material or was otherwise required to be exported or destroyed.

Customs Response

A bonded warehouse proprietor may not lawfully decline to accept general order merchandise that the warehouse is eligible to receive and is capable of storing. The underlying general order statute (19 U.S.C. 1490(a)) does not envision an unfettered right on the part of the warehouse proprietor to refuse general order goods. However, as already stated in §§ 4.37(e), 122.50(e) and 123.10(e), if the port director finds that the warehouse proprietor cannot accept goods because they are required by law to be exported or destroyed, or for other good cause, such goods will remain in the custody of the arriving carrier or other bonded carrier for purposes of export or destruction. It is incumbent upon the warehouse proprietor to take reasonable steps to inquire about and ascertain the nature and condition of the goods before accepting them. Once goods are accepted into the custody of the warehouse proprietor, the appropriate disposition of the goods would at that point accordingly become the responsibility of the proprietor.

Title to Unclaimed Merchandise Vesting in Government; Part 127

Comment

Several commenters objected to the provisions in proposed subpart E of part 127 regarding unclaimed merchandise the title to which vests in the U.S. Government. In particular, they wanted to be compensated by the Government for their storage and transportation charges on cargo to which the Government decides to take title and retain for its own use. These commenters contended that not being reimbursed for any expenses they incurred for the six-month G.O. period would impose a great financial burden upon them.

Customs Response

Customs believes that the commenters' concerns are unfounded. It is true that under the conditions specified in 19 U.S.C. 1491(b), the title to unclaimed merchandise may vest in the U.S. Government free and clear of any liens or encumbrances. Yet, while the Government may retain title to unclaimed merchandise free and clear of any liens or encumbrances, all transfer and storage charges or expenses accruing on the merchandise are, nevertheless, required to be paid by the Federal, State or local government agency that receives the merchandise, pursuant to 19 U.S.C. 1491(c). Such transfer and storage charges would include those accruing with respect to the merchandise while subject to general order. Section 127.42(b) is revised to make this clear.

Adoption of Proposal

In view of the foregoing, and following careful consideration of the comments received and further review of the matter, Customs has concluded that the proposed amendments with the modifications discussed above and the additional changes discussed below should be adopted as a final rule.

Additional Changes

Section 19.1(b) is amended to provide that a class 11 (general order) warehouse may be designated as a constructive manipulation (class 8) warehouse when the exigencies of the service so require.

Also, § 127.21 is changed to grant port directors the authority to defer sales of unclaimed and abandoned (general order) merchandise. Currently, § 127.21 requires that unclaimed and abandoned merchandise be sold at the first regular sale held after the merchandise becomes subject to sale, unless a deferment on selling it is authorized by the Commissioner of Customs. Customs has decided that this deferral authority be at the port level.

Furthermore, § 127.28(a) is changed so as to more clearly emphasize the necessity that drugs, seeds, plants, nursery stock and other articles, when so required, must be inspected by a representative of the Department of Agriculture to determine whether the articles comply with the law and regulations administered by that Department, especially given that, where found to be in noncompliance, such articles would need to be immediately destroyed.

Finally, Customs has decided that § 127.41(a) should be revised to state that the port director may provide for the vesting of title to unclaimed and abandoned merchandise in the United States, with the concurrence of the Assistant Commissioner, Office of Field Operations, rather than with the concurrence of the Commissioner of Customs, as initially proposed.

Regulatory Flexibility Act and Executive Order 12866

The amendments primarily dealing with general order warehouses are intended to expedite the handling and disposition of general order merchandise, and to further facilitate consistent and uniform treatment in the administration of general order warehouses. Also, the amendments dealing with the Mod Act are intended to conform with, implement and enforce the provisions of the statutory law and ensure the protection of the revenue. As such, pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that these amendments will not have a significant economic impact on a substantial number of small entities. Accordingly, the amendments are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604. Nor do they meet the criteria for a "significant regulatory action" as specified in E.O. 12866.

Paperwork Reduction Act

The collections of information in this final rule document had in part already been reviewed by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) and assigned OMB Control Numbers 1515–0121 (Information to be supplied by owner or lessee in support of application to establish a bonded warehouse facility); and 1515–0220 (Notification regarding imported merchandise or baggage for which entry has not been made). This document restates these collections of information without material change.

The remaining collection of information in this final rule document was submitted for review and has been approved by the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1515–0224. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

This latter collection of information is contained in §§ 4.37(c), 19.9(a), 122.50(c), and 123.10(c). This information is necessary to: Expedite the handling and disposition of general order merchandise; ensure that merchandise and baggage imported into the United States has been properly accounted for in accordance with the requirements of the statutory law; and facilitate consistent and uniform treatment in the administration of general order warehouses. The likely respondents and/or recordkeepers are business organizations, including importers and carriers. The estimated average annual burden associated with this information collection is 33 hours per respondent or recordkeeper.

Comments on the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503. A copy should also be sent to the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., 3rd Floor, Washington, DC 20229.

Part 178, Customs Regulations (19 CFR part 178), containing the list of approved information collections, is appropriately revised to reflect this additional information collection.

List of Subjects

19 CFR Part 4

Cargo vessels, Common carriers, Customs duties and inspection, Entry, Exports, Imports, Maritime carriers, Passenger vessels, Reporting and recordkeeping requirements, Shipping, Vessels.

19 CFR Part 19

Bonds, Customs duties and inspection, Freight, Imports, Licensing, Reporting and recordkeeping requirements, Warehouses.

19 CFR Part 122

Air carriers, Aircraft, Airports, Air transportation, Baggage, Bonds, Customs duties and inspection, Foreign commerce and trade statistics, Freight, Imports, Reporting and recordkeeping requirements.

19 CFR Part 123

Aircraft, Canada, Customs duties and inspection, Imports, International boundaries, International traffic, Mexico, Motor carriers, Railroads, Reporting and recordkeeping requirements, Trade agreements, Vehicles, Vessels.

19 CFR Part 127

Customs duties and inspection; Exports, Freight, Reporting and recordkeeping requirements.

19 CFR Part 141

Customs duties and inspection, Entry of merchandise, Release of merchandise, Reporting and recordkeeping requirements.

19 CFR Part 142

Administrative practice and procedure, Common carriers (Carrier initiative program), Customs duties and inspection, Entry of merchandise (Line release), Reporting and recordkeeping requirements.

19 CFR Part 178

Administrative practice and procedure, Collections of information, Imports, Paperwork requirements, Reporting and recordkeeping requirements.

Amendments to the Regulations

Parts 4, 19, 122, 123, 127, 141, 142 and 178, Customs Regulations (19 CFR parts 4, 19, 122, 123, 127, 141, 142 and 178), are amended as set forth below.

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PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

1. The general authority citation for part 4 and the relevant specific authority citation continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1431, 1433, 1434, 1624; 46 U.S.C. App. 3, 91.

* * * * *

Section 4.37 also issued under 19 U.S.C. 1448, 1457, 1490;

* * * * *

2. Section 4.37 is amended as follows:

a. By adding a sentence after the third sentence in paragraph (c),

b. By redesignating paragraphs (d), (e), (f), and (g), respectively, as paragraphs (e), (f), (g), and (h), and adding a new paragraph (d), and

c. By adding two sentences at the end of redesignated paragraph (e).

The additions and revisions read as follows:

§ 4.37 General order.

* * * * *

(c) * * * The arriving carrier (or other party to whom custody of the merchandise was transferred by the arriving carrier under a Customs-authorized permit to transfer or in-bond entry) is responsible for preparing a Customs Form (CF) 6043 (Delivery Ticket), or other similar Customs document designated by the port director or an electronic equivalent as authorized by Customs, to cover the proprietor's receiptof the merchandise and its transport to the warehouse from the custody of the arriving carrier (or other party to whom custody of the merchandise was transferred by the carrier under a Customs-authorized permit to transfer or in-bond entry) (*see* § 19.9 of this chapter). * * *

(d) If a carrier or any other party to whom custody of the unentered merchandise has been transferred by means of a Customs-authorized permit to transfer or in-bond entry fails to timely relinquish custody of the merchandise to a Customs-approved bonded General Order warehouse, the carrier or other party may be liable for liquidated damages equal to the value of that merchandise under the terms and conditions of his international carrier or custodial bond, as applicable.

(e) * * * If the port director finds that the warehouse operator cannot accept the goods because they are required by law to be exported or destroyed (*see* § 127.28 of this chapter), or for other good cause, the goods will remain in the custody of the arriving carrier or other party to whom the goods have been transferred under a Customs-authorized permit to transfer or in-bond entry. In this event, the carrier or other party will be responsible under bond for exporting or destroying the goods, as necessary (*see* §§ 113.63(c)(3) and 113.64(b) of this chapter).

* * * * *

PART 19—CUSTOMS WAREHOUSES, CONTAINER STATIONS, AND CONTROL OF MERCHANDISE THEREIN

1. The general and relevant specific authority citations for part 19 continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States), 1624;

Section 19.1 also issued under 19 U.S.C. 1311, 1312, 1555, 1556, 1557, 1560, 1561, 1562;

* * * * *

2. Section 19.1 is amended as follows:

a. By adding a heading to paragraph (a),

b. By revising paragraph (a)(1),

c. By reserving paragraph (a)(10) and adding a new paragraph (a)(11),

d. By revising paragraph (b), and

e. By adding a new paragraph (c).

The additions and revisions read as follows:

§ 19.1 Classes of customs warehouses.

(a) *Classifications.* * * *

(1) *Class 1.* Premises that may be owned or leased by the Government, when the exigencies of the service as determined by the port director so require, and used for the storage of merchandise undergoing examination by Customs, under seizure, or pending final release from Customs custody. Merchandise will be stored in such premises only at Customs direction and will be held under "general order."

* * * * *

(11) *Class 11.* Bonded warehouses, known as "general order warehouses," established for the storage and disposition exclusively of general order merchandise as described in § 127.1 of this chapter.

(b) *Manipulation.* The whole or a part of any warehouse of class 1, 2, 3, 4, 5, 6, 7, or 11 may be designated a constructive manipulation (class 8) warehouse when the exigencies of the service so require.

(c) *General order.* General order merchandise as described in § 127.1 of this chapter may be stored and disposed of in a class 11 warehouse or a warehouse of class 3, 4, or 5, provided the class 3, 4, or 5 warehouse has also been certified by the port director as meeting the criteria for a class 11 warehouse, following an application under § 19.2. So far as such warehouses are used for the purpose of handling general order goods, they will also be considered general order (class 11) warehouses. If there is no space at a warehouse of any of these classes available, the proprietor of such a warehouse, with the approval of the port director of the port nearest to where the warehouse is located, may rent or lease additional suitable premises for the storage of general order merchandise.

3. Section 19.2 is amended by adding a new paragraph (d) and by revising the second sentence of paragraph (f) to read as follows:

§ 19.2 Applications to bond.

* * * * *

(d) An applicant desiring to establish a general order warehouse may need to establish, as a condition of approval of the application, that the warehouse will meet minimum space requirements imposed by the port director to accommodate the storage of general order merchandise. Any space requirements will be posted by written notice at the customhouse and on the appropriate Customs-authorized electronic data interchange system. An applicant will not be subject to any minimum space requirements that are posted after the filing of his application.

* * * * *

(f) * * * The port director may require an individual applicant to submit fingerprints on form FD 258 or electronically at the time of filing the application, or in the case of applications from a business entity, may require the fingerprints, on form FD 258 or electronically, of all employees of the business entity.

* * * * *

4. Section 19.9 is amended by revising paragraph (a) to read as follows:

§ 19.9 General order, abandoned, and seized merchandise.

(a) *Acceptance of merchandise.* The arriving carrier (or other party to whom custody of the merchandise was transferred by the carrier under a Customs-authorized permit to transfer or in-bond entry) is responsible for preparing a Customs Form (CF) 6043 (Delivery Ticket), or other similar Customs document as designated by the port director or an electronic equivalent as authorized by Customs, to cover the proprietor's receipt of the merchandise and its transport to the warehouse from the custody of the arriving carrier (or other party to whom custody of the merchandise was transferred by the carrier under a Customs-authorized permit to transfer or in-bond entry). A joint determination will be made by the warehouse proprietor and the bonded carrier of the quantity and condition of the goods or articles so delivered to the warehouse. Within two working days of the joint determination, the warehouse proprietor will report to the port director any discrepancy between the quantity and condition of the goods and that reported on CF 6043, or other similar Customs document as designated by the port director or an electronic equivalent as authorized by Customs.

* * * * *

5. Section 19.12 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 19.12 Inventory control and recordkeeping system.

(a) *Systems capability.* The proprietor of a class 11 general order warehouse as described in § 19.1 must have an automated inventory control and recordkeeping system. Proprietors of existing class 3, 4, or 5 warehouses as described in § 19.1 certified before December 9, 2002, to receive general order merchandise must have automated inventory control and recordkeeping systems in place with respect to general order merchandise after a period of 2 years from December 9, 2002. All other warehouse proprietors have a choice of maintaining manual or automated inventory control and recordkeeping systems or a combination of manual and automated systems. All inventory control and recordkeeping systems must be capable of:

* * * * *

PART 122—AIR COMMERCE REGULATIONS

1. The authority citation for part 122 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58b, 66, 1433, 1436, 1448, 1459, 1590, 1594, 1623, 1624, 1644, 1644a.

2. Section 122.50 is amended as follows:

a. By revising the heading,

b. By adding a sentence after the third sentence in paragraph (c),

c. By redesignating paragraphs (d), (e) and (f), respectively, as paragraphs (e), (f) and (g), and adding a new paragraph (d), and

d. By adding two sentences at the end of redesignated paragraph (e).

The revisions and additions read as follows:

§ 122.50 General order merchandise.

* * * * *

(c) * * * The arriving carrier (or other party to whom custody of the merchandise was transferred by the carrier under a Customs-authorized permit to transfer or in-bond entry) is responsible for preparing a Customs Form (CF) 6043 (Delivery Ticket), or other similar Customs document as designated by the port director or an electronic equivalent as authorized by Customs, to cover the proprietor's receipt of the merchandise and its transport to the warehouse from the custody of the arriving carrier (or other party to whom custody of the merchandise was transferred by the carrier under a Customs-authorized permit to transfer or in-bond entry) (*see* § 19.9 of this chapter). * * *

(d) If the carrier or any other party to whom custody of the unentered merchandise has been transferred by a Customs-authorized permit to transfer or in-bond entry fails to timely relinquish custody of the merchandise to a Customs-approved bonded General Order warehouse, the carrier or other party may be liable for liquidated damages equal to the value of that merchandise under the terms and conditions of his international carrier or custodial bond, as applicable.

(e) * * * If the port director finds that the warehouse proprietor cannot accept the goods because they are required by law to be exported or destroyed (*see* § 127.28 of this chapter), or for other good cause, the goods will remain in the custody of the arriving carrier or other party to whom the goods have been transferred under a Customs-authorized permit to transfer or in-bond entry. In this event, the carrier or other party will be responsible under bond for exporting or destroying the goods, as necessary (*see* §§ 113.63(c)(3) and 113.64(b) of this chapter).

* * * * *

PART 123—CUSTOMS RELATIONS WITH CANADA AND MEXICO

1. The general authority citation for part 123 continues to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States (HTSUS)), 1431, 1433, 1436, 1448, 1624.

* * * * *

2. Section 123.10 is amended as follows:

a. By revising the heading,

b. By adding a sentence after the third sentence in paragraph (c),

c. By redesignating paragraphs (d), (e) and (f), respectively, as paragraphs (e), (f) and (g), and adding a new paragraph (d), and

d. By adding two sentences at the end of redesignated paragraph (e).

The revisions and additions read as follows:

§ 123.10 General order merchandise.

* * * * *

(c) * * * The arriving carrier (or other party to whom custody of the merchandise was transferred by the carrier under a Customs-authorized permit to transfer or in-bond entry) is responsible for preparing a Customs Form (CF) 6043 (Delivery Ticket), or other similar Customs document as designated by the port director or an electronic equivalent as authorized by Customs, to cover the proprietor's receipt of the merchandise and its transport to the warehouse from the custody of the arriving carrier (or other party to whom custody of the merchandise was transferred by the carrier under a Customs-authorized permit to transfer or in-bond entry) (*see* § 19.9 of this chapter).

(d) If the carrier or any other party to whom custody of the unentered merchandise has been transferred by a Customs-authorized permit to transfer or in-bond entry fails to timely relinquish custody of the merchandise to a Customs-approved bonded General Order warehouse, the carrier or other party may be liable for liquidated damages equal to the value of that merchandise under the terms and conditions of his international carrier or custodial bond, as applicable.

(e) * * * If the port director finds that the warehouse proprietor cannot accept the goods because they are required by law to be exported or destroyed (*see* § 127.28 of this chapter), or for other good cause, the goods will remain in the custody of the arriving carrier or other party to whom the goods have been transferred under a Customs-authorized permit to transfer or in-bond entry. In this event, the carrier or other party will be responsible under bond for exporting or destroying the goods, as necessary (*see* §§ 113.63(c)(3) and 113.64(b) of this chapter).

* * * * *

PART 127—GENERAL ORDER, UNCLAIMED AND ABANDONED MERCHANDISE

1. The general authority citation for part 127 is revised, and specific sectional authority citations are added, to read as follows:

Authority: 19 U.S.C. 66, 1311, 1312, 1484, 1485, 1490, 1491, 1492, 1493, 1506, 1559, 1563, 1623, 1624, 1646a; 26 U.S.C. 5753.

Section 127.12 also issued under 19 U.S.C. 1753;

Section 127.14 also issued under 19 U.S.C. 1555, 1556, 1557;

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Section 127.21 also issued under 19 U.S.C. 1753;

Section 127.28 also issued under 15 U.S.C. 2612, 26 U.S.C. 5688;

Sections 127.31, 127.36, 127.37 also issued under 19 U.S.C. 1753.

2. Part 127 is amended by removing the statutory authority citations that appear in parentheses immediately below the texts of §§ 127.1, 127.2, 127.11 through 127.14, 127.21, 127.23 through 127.29, and 127.31 through 127.37.

3. Section 127.13 is amended by revising paragraph (a) to read as follows:

§ 127.13 Storage of unclaimed and abandoned merchandise.

(a) *Place of storage.* A class 11 bonded warehouse or warehouse of class 3, 4, or 5, certified by the port director as qualified to receive general order merchandise, will be responsible for the transportation and storage of unclaimed and abandoned merchandise, upon due notification to the proprietor of the warehouse by the arriving carrier (or other party to whom the carrier has transferred the merchandise under a Customs-authorized permit to transfer or in-bond entry), as provided in §§ 4.37(c), 122.50(c), and 123.10(c) of this chapter. If no warehouse of these classes is available to receive general order merchandise, or if the merchandise requires specialized storage facilities which are unavailable in a bonded facility, the port director, after having received notice of the presence of unentered merchandise or baggage in accordance with the provisions of this section, will direct the storage of the merchandise by the carrier or by any other appropriate means.

* * * * *

4. Section 127.14 is amended by revising paragraph (a) to read as follows:

§ 127.14 Disposition of merchandise in Customs custody beyond time fixed by law.

(a) *Merchandise subject to sale or other disposition.*—(1) *General.* If storage or other charges due the United States have not been paid on merchandise remaining in Customs custody after the expiration of the bond period in the case of merchandise entered for warehouse, or after the expiration of the general order period, as defined in § 127.4, in any other case, even though any duties due have been paid, such merchandise will be sold as provided in subpart C of this part, retained for official use as provided in subpart E of this part, destroyed, or otherwise disposed of as authorized by the Commissioner of Customs under the law, unless the merchandise is entered or withdrawn for consumption in accordance with paragraph (b) of this section.

(2) *Destruction of merchandise.*—(i) *Proprietor responsibility.* If the port director concludes that merchandise in general order has no commercial value or is otherwise unsalable and cannot be disposed of at public auction (*see* § 127.29), and that its destruction is warranted, the warehouse proprietor must assume responsibility under bond, including the expense, for destroying the merchandise (*see* § 113.63(c)(3) of this chapter). The port director will authorize such destruction on Customs Form (CF) 3499, or on a similar Customs document as designated by the port director or an electronic equivalent as authorized by Customs.

(ii) *Notice of destruction.* Before destroying the merchandise, the warehouse proprietor must first make a reasonable effort under bond (*see* § 113.63(b) and (c) of this chapter), to identify and inform the importer (owner) or consignee regarding the intended destruction of the merchandise. When the appropriate party is identified, notice of destruction will be provided to the party on Customs Form (CF) 5251, appropriately modified, or other similar Customs document as designated by the port director or an electronic equivalent as authorized by Customs, at least 30 calendar days prior to the date of intended destruction.

* * * * *

5. Section 127.21 is amended by revising its first sentence to read as follows:

§ 127.21 Time of sale.

All unclaimed and abandoned merchandise will be sold at the first regular sale held after the merchandise becomes subject to sale, unless a deferment of its sale is authorized by the port director. * * *

6. Section 127.28 is amended by revising the first sentence of paragraph (a) to read as follows:

§ 127.28 Special merchandise.

(a) *Drugs, seeds, plants, nursery stock, and other articles required to be inspected by the Department of Agriculture.* Drugs, seeds, plants, nursery stock, and other articles required to be inspected by the Department of Agriculture must be inspected by a representative of the Department of Agriculture to ascertain whether they comply with the requirements of the law and regulations of that Department. * * *

* * * * *

7. Part 127 is amended by adding a new subpart E to read as follows:

Subpart E—Title to Unclaimed and Abandoned Merchandise Vesting in Government

Sec.

127.41 Government title to unclaimed and abandoned merchandise.
127.42 Disposition of merchandise owned by Government.
127.43 Petition of party for surplus proceeds had merchandise been sold.

Subpart E—Title to Unclaimed and Abandoned Merchandise Vesting in Government

§ 127.41 Government title to unclaimed and abandoned merchandise.

(a) *Vesting of title in Government.* At the end of the 6-month period noted in § 127.11 of this part, at which time merchandise having thus remained in Customs custody is considered as unclaimed and abandoned, the port director, with the concurrence of the Assistant Commissioner, Office of Field Operations, may, in lieu of sale of the merchandise as provided in subpart C of this part, provide notice to all known interested parties under paragraph (b) of this section that the title to such merchandise will be considered as vesting in the United States, free and clear of any liens or encumbrances, as of the 30th day after the date of the notice unless, before the 30th day, the merchandise is entered or withdrawn for consumption and all duties, taxes, fees, transfer and storage charges, and any other expenses that may have accrued on the merchandise are paid.

(b) *Notice to known interested parties.* Notice that the title to unclaimed and abandoned merchandise will vest in the United States, as described in paragraph (a) of this section, will be sent to the following parties on Customs Form (CF) 5251, appropriately modified, or other similar Customs document as designated by the port director or an electronic equivalent as authorized by Customs:

(1) Importer, if known;

(2) Consignee, if name and address can be ascertained;

(3) Shipper, or the shipper's representative or agent, if merchandise is consigned to order or the consignee cannot be ascertained; and

(4) Any other known interested parties.

(c) *Appraisement of merchandise.* Before title to unclaimed and abandoned merchandise is vested in the United States, the merchandise will be appraised in accordance with section 402, Tariff Act of 1930, as amended (19 U.S.C. 1401a).

§ 127.42 Disposition of merchandise owned by Government.

(a) *Disposition.* If title to any unclaimed and abandoned merchandise vests in the United States under § 127.41, the merchandise may be retained by Customs for its official use, or in Customs discretion, the merchandise may be transferred to any other Federal, state or local agency, destroyed or disposed of otherwise.

(b) *Payment of charges and expenses.* All transfer and storage charges or expenses accruing on retained or transferred merchandise will be paid by the receiving agency. Such transfer and storage charges or expenses will include those accruing with respect to the merchandise while subject to general order.

§ 127.43 Petition of party for surplus proceeds had merchandise been sold.

(a) *Filing of petition.* Under section 491(d), Tariff Act of 1930, as amended (19 U.S.C. 1491(d)), any party who can satisfactorily establish title to or a substantial interest in unclaimed and abandoned merchandise, the title to which has vested in the United States, may file a petition for the amount that would have been payable to the party had the merchandise been sold and a proper claim made under section 493, Tariff Act of 1930, as amended (19 U.S.C. 1493).

(b) *When and with whom filed.* The petition may be filed with the port director at whose direction the title to the merchandise was vested in the United States. If the party received notice under § 127.41(b), the petition must be filed within 30 calendar days after the day on which title vested in the United States. If the party can satisfactorily establish that such notice was not received, the party must file the petition within 30 calendar days of learning of the vesting but not later than 90 calendar days from the vesting.

(c) *Evidence required.* The petition must show the party's title to or interest in the merchandise, and be supported, as appropriate, with the original bill of lading, bill of sale, contract, mortgage, or other satisfactory documentary evidence, or a certified copy of the foregoing. Also, if applicable, the petition must be supported by satisfactoryproof that the petitioner did not receive notice that title to the merchandise would vest in the United States and was in such circumstances as prevented the receipt of notice.

(d) *Payment of claim.* If the claim of the owner, consignee, or other party having title to or a substantial interest in the merchandise, is properly established as provided in this section, the party may be paid out of the Treasury of the United States the amount that it is believed the party would have received under 19 U.S.C. 1493 had the merchandise been sold and a proper claim for the surplus of the proceeds of sale been made under that provision (*see* § 127.36 of this part). In determining the amount that may have been payable under 19 U.S.C. 1493, given that the merchandise was not in fact sold at public auction under 19 U.S.C. 1491(a), the appraisement of the merchandise, as provided in § 127.41(c), will be taken into consideration. By virtue of the authority delegated to the port director in this matter, any payment made as provided under this paragraph in connection with the filing of a petition under paragraph (b) of this section will be final and conclusive on all parties.

(e) *Doubtful claim.* Any doubtful claim for payment along with all pertinent documents and information available to the port director will be forwarded to the Assistant Commissioner, Office of Finance, for instructions. The decision of the Assistant Commissioner, Office of Finance, with respect to any petition filed under this section will be final and conclusive on all parties.

PART 141—ENTRY OF MERCHANDISE

1. The general authority citation for part 141 continues to read as follows:

Authority: 19 U.S.C. 66, 1448, 1484, 1624.

2. Section 141.5 is revised to read as follows:

§ 141.5 Time limit for entry.

Merchandise for which entry is required will be entered within 15 calendar days after landing from a vessel, aircraft or vehicle, or after arrival at the port of destination in the case of merchandise transported in bond. Merchandise for which timely entry is not made will be treated in accordance with § 4.37 or § 122.50 or § 123.10 of this chapter.

PART 142—ENTRY PROCESS

1. The authority citation for part 142 continues to read as follows:

Authority: 19 U.S.C. 66, 1448, 1484, 1624.

2. Section 142.2 is amended by revising paragraph (a) to read as follows:

§ 142.2 Time for filing entry.

(a) *General rule: After arrival of merchandise.* Merchandise for which entry is required will be entered within 15 calendar days after landing from a vessel, aircraft or vehicle, or after arrival at the port of destination in the case of merchandise transported in bond.

* * * * *

PART 178—APPROVAL OF INFORMATION COLLECTION REQUIREMENTS

1. The authority citation for part 178 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 1624; 44 U.S.C. 3501 *et seq.*

2. Section 178.2 is amended by adding new listings in the table in appropriate numerical order to read as follows:

§ 178.2 Listing of OMB numbers.

19 CFR section	Description	OMB control No.
. .	. . . . .	.
§ 4.37(c)	Preparation of delivery ticket for transfer of merchandise to general order	1515–0224
. .	. . . . .	.
§ 19.9(a)	Preparation of delivery ticket for transfer of merchandise to general order	1515–0224
. .	. . . . .	.
§ 122.50(c)	Preparation of delivery ticket for transfer of merchandise to general order	1515–0224
. .	. . . . .	.
§ 123.10(c)	Preparation of delivery ticket for transfer of merchandise to general order	1515–0224
. .	. . . . .	.

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Approved: November 4, 2002.
Robert C. Bonner,
Commissioner of Customs.
Timothy E. Skud,
Deputy Assistant Secretary of the Treasury.
[FR Doc. 02–28346 Filed 11–7–02; 8:45 am]
BILLING CODE 4820–02–P

INTERNATIONAL TRADE COMMISSION

19 CFR Part 201

Rules of General Application

AGENCY: International Trade Commission.

ACTION: Notice of final rulemaking.

SUMMARY: The United States International Trade Commission (Commission) hereby amends its rules of practice and procedure (rules) to permit persons the option of filing certain documents with the Commission in electronic form instead of in paper form only. The Commission also amends its rules of practice and procedure to allow electronic service of documents in limited circumstances and to require persons to complete and submit a standard cover sheet when filing documents, either in paper form or in electronic form, with the Commission.

DATES: The effective date of these amendments is December 9, 2002.

FOR FURTHER INFORMATION CONTACT: Irene H. Chen, Esq., Office of the General Counsel, United States International Trade Commission, telephone 202–205–3112. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal at 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*).

SUPPLEMENTARY INFORMATION:

Background

On April 26, 2002, the Commission published a notice of proposed rulemaking (NOPR) in the **Federal Register**. 67 FR 20709, April 26, 2002. In the NOPR, the Commission proposed amending its rules of practice and procedure to (a) permit persons the option of filing certain documents electronically instead of just in paper form; (b) allow electronic service of documents in limited circumstances; and (c) require persons to complete and submit a standard cover sheet, whether filing electronically or in paper form. In its NOPR, the Commission invited public comment on its proposed rule amendments and the EDIS–II cover sheet (cover sheet) for use in filing documents in the Commission's Electronic Document Information System (EDIS–II). The Commission received a total of three sets of comments from the ITC Trial Lawyers Association (ITCTLA) and two law firms. The Commission carefully considered all comments that it received. The Commission's response to those comments that relate to the rule amendments is provided below in a section-by-section analysis. Since the NOPR was published, the Office of Management and Budget (OMB) has determined that the cover sheet does not require OMB approval because of the minimal paperwork burden on the public; nevertheless, the Commission has summarized below comments to the cover sheet and its response thereto. The Commission appreciates the time and effort the commenters took to present their views, and believes that the comments have improved the amendments and the cover sheet. The Commission is also publishing a notice containing the Handbook on Electronic Filing Procedures (Handbook) referenced in amended § 201.8 of the rules, which includes information regarding registration for electronic filing and the list of documents that may be filed electronically. Please review the Handbook in its entirety prior to registering for electronic filing.

Regulatory Analysis

The Commission has determined that these amended rules do not meet the criteria described in section 3(f) of Executive Order 12866 (58 FR 51735, Oct. 4, 1993) and thus do not constitute a significant regulatory action for purposes of the Executive Order. The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) and Executive Order 13272 (67 FR 53461, Aug. 13, 2002) are inapplicable to this rulemaking because it is not one for which a NOPR is required under 5 U.S.C. 553(b) of the APA or any other statute. Although the Commission published a NOPR, these proposed regulations are "agency rules of procedure and practice," and thus are exempt from the notice requirement imposed by 5 U.S.C. 553(b). These amended rules do not contain federalism implications warranting the preparation of a federalism summary impact statement pursuant to Executive Order 13132 (64 FR 43255, Aug. 4, 1999). No actions are necessary under the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 *et. seq.*) because the amended rules will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and will not significantly or uniquely affect small governments. The amended rules are not major rules as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et. seq.*). Moreover, they are exempt from the reporting requirements of the Contract With America Advancement Act of 1996 (Pub. L. 104–121) because they concern rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties.

Section-by-Section Analysis of the Regulations

Section 201.8

The Commission has amended § 201.8 by adding paragraphs 201.8(f) and (g). Section 201.8(f) provides that persons may file certain documents electronically at the Commission's Internet website without violating the relevant provisions of the rules that govern paper filing of documents. The Commission did not receive any specific comments with respect to § 201.8(f). Section 201.8(g) requires that persons filing documents either in paper form or electronically must complete a cover sheet to be submitted to the Commission along with their filings. The law firm of Adduci, Mastriani & Schaumberg, L.L.P. proposed amending § 201.8 to state that filings without a cover sheet will be accepted, and that cover sheets may be submitted the following business day. The Commission has determined to retain the requirement that filers must complete and submit a cover sheet with their filings, whether the filings are in electronic or paper form, because the information in the cover sheet is required for EDIS–II to docket filings. The Commission has revised § 201.8(g) to require parties submitting paper filings to fill-out the cover sheet on-line and print it out for submission to the Office of the Secretary with the paper filing. Persons filing documents electronically are required to complete and submit the cover sheet on-line with the electronic filing. This cover sheet requirement is to ensure accurate processing of filings.

Section 201.16

The Commission has amended § 201.16 by adding paragraph (e) to permit persons the option of serving documents on other parties electronically, if the Secretary consents to such electronic service. However, electronic service is not permitted in

proceedings under section 337 of the Tariff Act of 1930 unless parties obtain the prior permission of the presiding administrative law judge. The ITCTLA proposed amending the final sentence of the proposed Rule to require a party who participates in electronic service to notify all parties if it withdraws its consent to electronic service. The Commission has incorporated the comment of the ITCTLA into § 201.16(e). The law firm of Collier Shannon Scott, PLLC, commented that the Commission should not leave all disputes regarding electronic service of documents to be resolved among the parties themselves; rather, the Commission should establish procedures and remedies to address electronic service failures. Because electronic service is on a voluntary basis, the Commission has determined, in the initial phase of electronic filing, to retain the requirement that electronic service disputes should be resolved by the parties themselves, without the Commission's involvement. Collier Shannon Scott, PLLC, commented that § 201.16(e) should be amended to state that, even if a dispute regarding electronic service of a document arises among parties in a Commission proceeding, such a dispute will not affect the Commission's acceptance of the document for filing. Because § 201.16(e) already provides that electronic service disputes must be resolved by the parties themselves, without the Commission's involvement, any such disputes will not affect the Commission's acceptance or rejection of a document for filing. Therefore, the Commission finds that it is not necessary to make any further amendments to § 201.16(e).

EDIS–II Cover Sheet

The ITCTLA suggested three changes to the cover sheet that appeared in the NOPR. First, the ITCTLA commented that the name of the "Security" field on the cover sheet should be changed to "Confidential or Public." Second, the ITCTLA commented that the name of the "Document Type" field on the cover sheet should be changed to include a list of document types typically received by the Commission. Third, the ITCTLA recommended that the "Add Attachments" field on the cover sheet should include a citation to the "Document" definition in section II(A) of the Handbook to clarify that this field only applies to electronic filings. As to the first comment, the Commission has determined not to make the proposed change because the "drop-down" list next to the "Security" field also contains a reference to "privileged documents for internal use." As to the second comment, the Commission has adopted the ITCTLA's recommendation by including a list of document types normally filed with the Commission in the "Document Type" field of the cover sheet. The public is advised, however, that the "drop-down" menu of document types may be altered as experience dictates. The Commission also has adopted the ITCTLA's third comment to the cover sheet by adding a reference to the EFP Handbook's "document" definition in the "Add Attachments" field.

List of Subjects in 19 CFR Part 201

Administrative practice and procedure, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, the Commission amends 19 CFR part 201 as follows:

PART 201—RULES OF GENERAL APPLICATION

1. The authority citation for part 201 continues to read as follows:

Authority: Sec. 335 of the Tariff Act of 1930 (19 U.S.C. 1335), and sec. 603 of the Trade Act of 1974 (19 U.S.C. 2482), unless otherwise noted.

2. Amend § 201.8 to add paragraphs (f) and (g) to read as follows:

§ 201.8 Filing of documents.

* * * * *

(f) *Electronic filing.* Notwithstanding the relevant provisions of §§ 201.8, 201.12, 201.13, 201.16, 206.8, 207.3, 207.10, 207.15, 207.25, 207.30, 207.62, 207.67, 207.68, 207.93, 210.4, and 210.8 of the Commission's rules of practice and procedure (19 CFR 201.8, 201.12, 201.13, 201.16, 206.8, 207.25, 207.3, 207.10, 207.15, 207.30, 207.62, 207.67, 207.68, 207.93, 210.4, and 210.8) governing the filing of documents in paper form with the Commission, a person may instead or in addition choose to file electronically certain documents at *http://edis.usitc.gov.* A person so choosing shall comply with the procedures set forth in the Commission's Handbook on Electronic Filing Procedures, which is available at the Office of the Secretary and at *http://edis.usitc.gov.* The Commission's Handbook on Electronic Filing Procedures will include a description of documents that are permitted to be filed with the Commission in electronic form.

(g) *Cover Sheet.* When making a paper filing, parties must complete the cover sheet on-line at *http://edis.usitc.gov* and print out the cover sheet for submission to the Office of the Secretary with the paper filing. For documents that are filed electronically, parties must complete the cover sheet for such filing on-line at *http://edis.usitc.gov* at the time of the electronic filing. The party submitting the cover sheet is responsible for the accuracy of all information contained in the cover sheet, including, but not limited to, the security status and the investigation number, and must comply with applicable limitations on disclosure of business proprietary information or confidential information under § 201.6 and §§ 206.8, 206.17, 207.3, and 207.7 of this chapter.

3. Amend § 201.16 to add paragraph (e) to read as follows:

§ 201.16 Service of process and other documents.

* * * * *

(e) *Electronic Service.* With the prior consent of the Secretary, parties may serve documents by electronic means in all matters before the Commission, except for proceedings conducted under section 337 of the Tariff Act of 1930 that are before an administrative law judge. In the case of proceedings under section 337 of the Tariff Act of 1930, parties may serve documents by electronic means with the prior consent of the presiding administrative law judge while the proceeding is before an administrative law judge. Parties may only effect electronic service on recipients who have provided written consent thereto to the Secretary or the presiding administrative law judge. If electronic service is permitted, paragraphs (a), (b) and (d) of this section shall not apply. However, any dispute that arises among parties regarding electronic service must be resolved by the parties themselves, without the Commission's involvement.

A party may, upon notice to all parties, withdraw its consent to electronic service and require service under paragraphs (a) and (b) of this section.

By Order of the Commission.

Issued: November 4, 2002.

Marilyn R. Abbott,
Secretary to the Commission.
[FR Doc. 02–28404 Filed 11–7–02; 8:45 am]
BILLING CODE 7020–02–P

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–7406–6]

RIN 2060–AE78

National Emission Standards for Hazardous Air Pollutants for Secondary Aluminum Production

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction of effective date.

SUMMARY: On September 24, 2002, EPA promulgated final rule amendments to the national emission standards for hazardous air pollutants for secondary aluminum production at 65 FR 59787. Due to errors in the composition of the notice, an incorrect effective date of November 25, 2002 was published. However, under Clean Air Act (CAA) section 112(d)(10), the final rule amendments published on September 24, 2002 were legally effective upon promulgation, and the correct effective date for those amendments was September 24, 2002. This document corrects the erroneous effective date.

EFFECTIVE DATE: November 8, 2002.

ADDRESSES: Docket A–2002–06, containing supporting information used in developing the final rule to which this correction notice refers, is available for public inspection and copying between 8:30 a.m. to 5:30 p.m., Monday through Friday, excluding Federal holidays, at the following address: U.S. EPA, Air and Radiation Docket and Information Center, Room B–108, 1301 Constitution Avenue, NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Mr. John Schaefer, U.S. EPA, Minerals and Inorganic Chemicals Group (C504–05), Emission Standards Division, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina 27711, telephone number (919) 541–0296, facsimile number (919) 541–5600, electronic mail address: *schaefer.john@epa.gov*.

SUPPLEMENTARY INFORMATION: *Docket.* The docket is an organized and complete file of the administrative record compiled by EPA in the development of the final rule to which this correction document refers. The docket is a dynamic file because material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so they can effectively participate in the rulemaking process. Along with the proposed and promulgated rules and their preambles, the contents of the docket will serve as the record in the case of judicial review. Other material related to this rulemaking is available for review in the docket or copies may be mailed on request from the Air Docket by calling (202) 260–7548. A reasonable fee may be charged for copying docket materials.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of this action will also be available through the WWW. Following signature, a copy of this action will be posted on EPA's Technology Transfer Network (TTN) policy and guidance page for newly proposed or promulgated rules: *http://www.epa.gov/ttn/oarpg*. The TTN at EPA's web site provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN help line at (919) 541–5384.

Regulated Entities. Regulated categories and entities are secondary aluminum production facilities and include:

Category	NAICS code	SIC code	Examples of regulated entities
Industry	331314	3341	Secondary smelting and alloying of aluminum facilities.
			Secondary aluminum production facility affected sources that are collocated at:
	331312	3334	Primary aluminum production facilities.
	331315	3353	Aluminum sheet, plate, and foil manufacturing facilities.
	331316	3354	Aluminum extruded product manufacturing facilities.
	331319	3355	Other aluminum rolling and drawing facilities.
	331521	3363	Aluminum die casting facilities.
	331524	3365	Aluminum foundry facilities.
State/local/tribal governments			Not affected.
Federal government			Not affected.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that the Agency is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility is regulated by this action, you should carefully examine the applicability criteria in § 63.1500 of the rule. If you have questions regarding the applicability of this action to a particular entity, consult the contact person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

SUPPLEMENTARY INFORMATION: We promulgated final rule amendments to the national emission standards for hazardous air pollutants for secondary aluminum production, 40 CFR part 63, subpart RRR, on September 24, 2002 at 65 FR 59787. However, due to errors in the composition of the those amendments, an incorrect effective date of November 25, 2002 was published in two places. Under CAA section 112(d)(10), those amendments became legally effective on the date of promulgation—September 24, 2002. Today's document corrects the effective date of those amendments.

In the **EFFECTIVE DATE** section of the published document, the date was published as November 25, 2002. The correct effective date is September 24, 2002. We also incorrectly identified the effective date in the *Congressional Review Act* section of the final rule. The correct language for that section should have read as follows:

"J. *Congressional Review Act*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until

60 days after it is published in the **Federal Register**. These final rule amendments are not a "major rule" as defined by 5 U.S.C. 804(2). These amendments will be effective on September 24, 2002."

We are taking this action to correct the erroneous effective date in the September 24, 2002 notice in part because the rule as it existed prior to the amendments might have been construed to impose certain compliance obligations on affected sources prior to November 25, 2002. Since one of the stated purposes of the amendments was to eliminate confusion concerning these same compliance obligations, failure to correct the erroneous effective date would frustrate this purpose. We do not believe that any affected source will be adversely impacted by correction of the effective date.

Administrative Requirements

Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866 (58 FR 5173, October 4, 1993), the EPA must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in standards that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this correction notice does not constitute a "significant regulatory action" because it does not meet any of the above criteria. Consequently, this action was not submitted to OMB for review under Executive Order 12866.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Reporting and recordkeeping requirements.

Dated: November 4, 2002.

Jeffrey R. Holmstead,

Assistant Administrator for Air and Radiation.

[FR Doc. 02–28501 Filed 11–7–02; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 131

[FRL–7406–1]

Withdrawal of Federal Human Health and Aquatic Life Water Quality Criteria for Toxic Pollutants Applicable to Michigan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to amend the Federal regulations to withdraw water quality criteria applicable to Michigan. In 1992, EPA promulgated Federal regulations establishing water quality criteria for priority toxic pollutants for 12 States and two territories, including Michigan, that had not fully complied with Clean Water Act (CWA); these regulations are known as the "National Toxics Rule" or "NTR". Thereafter, EPA published regulations pursuant to section 118 of the CWA to establish consistent enforceable protections for the Great Lakes system (Water Quality Guidance for the Great Lakes System). In compliance with the Water Quality Guidance for the Great Lakes System, Michigan adopted water quality standards on July 29, 1997, which included numeric water quality criteria and methodologies for deriving numeric criteria for the same priority toxic pollutants included in the NTR. EPA approved these standards on August 4, 2000. Since Michigan now has criteria, effective under the CWA, for the same priority toxic pollutants in the NTR, EPA has determined that the Federally promulgated criteria are no longer needed. In this direct final rule, EPA is withdrawing Michigan from the NTR without prior proposal because EPA views this action as noncontroversial and does not anticipate adverse comment.

DATES: This rule is effective on February 6, 2003 without further notice, unless EPA receives adverse comment by December 9, 2002. If EPA receives such comment, EPA will publish a timely withdrawal of this direct final rule in the **Federal Register** informing the public that this rule will not take effect. Comments postmarked after this date may not be considered.

ADDRESSES: Please send an original and three copies of comments and enclosures (including references) to W–01–15, WQCR Comment Clerk; Water Docket, U.S. EPA, 1200 Pennsylvania Ave NW, MC–4101T, Washington, DC 20460. Alternatively, comments may be submitted electronically in ASCII or Word Perfect 5.1, 5.2, 6.1, or 8.0 formats avoiding the use of special characters and any form of encryption to *OW–Docket@epa.gov*. Identify electronic comments by the docket number W–01–15. Submit hand delivered comments to W–01–15, EPA's Water Docket, U.S. EPA, EPA West, 1301 Constitution Ave NW, Room B135, Washington DC 20460. No facsimiles (faxes) will be accepted. Comments will be available at the Water Docket, 202–566–2426, Monday through Friday, excluding legal holidays, during normal business hours of 8:30 a.m. to 4:30 p.m.

The supporting record for this rulemaking may be inspected at EPA Region 5, Office of Water, 77 West Jackson Boulevard, 16th Floor, Chicago, IL 60604–3507, Monday through Friday, excluding legal holidays, during normal business hours of 9 a.m. to 5 p.m.. Please contact Dave Pfeifer, as listed in the **FOR FURTHER INFORMATION CONTACT** section, before arriving.

A copy of Michigan's water quality standards may be obtained electronically from EPA's Water Quality Standards Repository, at *http://www.epa.gov/waterscience/standards/wqslibrary/mi/mi.html*.

FOR FURTHER INFORMATION CONTACT: Manjali Gupta Vlcan at EPA Headquarters, Office of Water (4305T). 1200 Pennsylvania Ave NW., Washington, DC., 20460 (tel: 202–566–0373, fax 202–566–0409) or email at *vlcan.manjali@epa.gov* , or Dave Pfeifer in EPA's Region 5 at 312–353–9024 or e-mail at *pfeifer.david@epa.gov*.

SUPPLEMENTARY INFORMATION:

Potentially Regulated Entities

No one is regulated by this rule. This rule merely withdraws Federal water quality criteria applicable to Michigan.

Background

In 1992, EPA promulgated a final rule known as the "National Toxics Rule," or "NTR," to establish numeric water quality criteria for 12 States and two Territories, including Michigan, (hereafter "States") that had not complied fully with section 303(c)(2)(B) of the CWA (57 FR 60848). The criteria, codified at 40 CFR 131.36, became the applicable water quality standards in

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those 14 States for all purposes and programs under the CWA effective February 5, 1993.

As described in the preamble to the final NTR, when a State adopts, and EPA approves, water quality criteria that meet the requirements of section 303(c)(2)(B) of the CWA, EPA will issue a rule amending the NTR to withdraw the Federal criteria for that State. If the State's criteria are no less stringent than the promulgated Federal criteria, EPA will withdraw its criteria without notice and comment rulemaking because additional comment on the criteria is unnecessary (*see* 65 FR 19659). However, if a State adopts criteria that are less stringent than the federally promulgated criteria, but that in the Agency's judgment fully meet the requirements of the Act, EPA will provide an opportunity for public comment before withdrawing the federally promulgated criteria. (*See* 57 FR 60860, December 22, 1992) Michigan adopted water quality standards, effective July 29, 1997, pursuant to the requirements of 40 CFR part 132, Water Quality Guidance for the Great Lakes System (60 FR 15366), hereafter referred to as the "GLI." These standards include numeric criteria for the protection of aquatic life for 15 toxic pollutants and numeric criteria for the protection of human health for 18 toxic pollutants. Michigan also adopted a methodology to derive numeric criteria and values as needed to implement the State's narrative criteria of "no toxic in toxic amounts". EPA approved these water quality standards on August 4, 2000 (65 FR 47864–47874). All waters in the State of Michigan are within the Great Lakes drainage basin. Therefore, the standards that were adopted and approved to comply with 40 CFR part 132 (which applies to all waters in the Great Lakes basin) apply statewide.

In 1988, EPA published guidance to States on how to adopt water quality standards to comply with CWA section 303(c)(2)(B) (*see* Rebecca W. Hanmer memo, December 12, 1988, "Guidance for State Implementation of Water Quality Standards for CWA Section 303(c)(2)(B)" at *www.epa.gov/waterscience/library/wqstandards/finalguidance.pdf*). This guidance was reflected in the preamble to the National Toxics Rule (57 FR 60853, December 22, 1992). EPA described three options for satisfying the requirements of CWA section 303(c)(2)(B). These options are:

Option 1: Adopt statewide numeric criteria in State water quality standards for all section 307(a) toxic pollutants for which EPA has published criteria guidance.

Option 2: Adopt specific numeric criteria in State standards for section 307(a) toxic pollutants, as necessary, to protect the designated uses.

Option 3: Adopt a procedure to derive a numeric criterion, as necessary, from a narrative water quality standard provision that prohibits toxicity in receiving waters.

As described earlier, Michigan's water quality standards include a procedure to derive a numeric criterion from a narrative water quality criterion that prohibits toxicity in receiving waters. EPA's guidance describes numerous conditions that EPA indicated, if satisfied, would ensure acceptable scientific quality and full involvement of the public and EPA and therefore allow the State to use Option 3 to satisfy the requirements of section 303(c)(2)(B). Michigan has satisfied these conditions:

(1) Michigan adopted a procedure to calculate numeric criteria and values for the protection of designated uses.

(2) Michigan adopted the procedure identified in 40 CFR part 132. Therefore, EPA determines that Michigan's procedure results in numeric criteria that are sufficiently protective to meet the goals of the Act.

(3) Michigan provided full opportunity for public participation during the adoption of the procedure.

(4) The procedure was formally adopted as a State rule and is mandatory in application.

(5) The procedure was submitted to EPA for review and approval as part of the State's water quality standards regulation.

By adopting numeric criteria for some priority toxic pollutants and a methodology to translate the narrative criterion into numeric values for the remaining priority toxic pollutants, Michigan has complied with the requirements of section 303(c)(2)(B) of the CWA to have numeric criteria for priority toxic pollutants. As mentioned earlier, EPA approved these water quality standards on August 4, 2000 (65 FR 47864–47874). Since Michigan now has criteria, effective under the Clean Water Act, for the same priority toxic pollutants in the NTR, EPA has determined that the Federally-promulgated criteria are no longer needed.

While EPA has determined that Michigan has fully complied with the requirements of CWA section 303(c)(2)(B), EPA recognizes that Michigan's standards differ from NTR criteria in certain respects because Michigan's standards reflect EPA's most recent guidance as published by EPA in the GLI. Under the procedures set out in the NTR, EPA would normally take comment prior to withdrawal from the NTR. However, as required by the GLI, EPA took comment on its decision to approve the portion of Michigan's standards relevant to today's action in a notice published in the **Federal Register** on September 14, 1999 (64 FR 49803). Because the public had the opportunity to comment both on the State's adoption of criteria and EPA's approval of the State's criteria, EPA does not anticipate any adverse comments on withdrawal of Michigan from the NTR. For this reason, EPA is taking this action in a direct final rule. However, in the "Proposed Rules" section of today's **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to withdraw Federal water quality criteria for toxic pollutants applicable to Michigan if adverse comments are filed. This rule will be effective on February 6, 2003 without further notice unless EPA receives adverse comment by December 9, 2002. If EPA receives adverse comment, the Agency will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

Statutory and Executive Order Reviews

Executive Order 12866—Regulatory Planning and Review

This action withdraws Federal requirements applicable to Michigan and imposes no regulatory requirements or costs on any person or entity, does not interfere with the action or planned action of another agency, and does not have any budgetary impacts or raise novel legal or policy issues. Thus, it has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to OMB review.

Paperwork Reduction Act

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 because it is administratively withdrawing Federal requirements that no longer need to apply to Michigan.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, generally requires an agency to prepare a regulatory flexibility analysis of a rule that is subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have significant economic impact on a substantial number of small entities. This rule imposes no regulatory requirements or costs on any small entity. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act

Title III of the Unfunded Mandates Reform Act (UMRA) (Pub. L. 104–4) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, Tribal, and local governments and the private sector. Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, Tribal, or local governments or the private sector because it imposes no enforceable duty on any of these entities. Thus, today's rule is not subject to the requirements of UMRA sections 202 and 205 for a written statement and small government agency plan. Similarly, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments and is therefore not subject to UMRA section 203.

Executive Order 13132—Federalism

Executive Order 13132, entitled Federalism (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure State and local government officials have an opportunity to provide input in the development of regulatory policies that have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of governments. This rule imposes no regulatory requirements or costs on any State or local governments, therefore, it does not have federalism implications under Executive Order 13132.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

Again, this rule imposes no regulatory requirements or costs on any Tribal government. It does not have substantial direct effects on Tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000).

Executive Order 13045—Protection of Children from Environmental Health and Safety Risks

This rule is not subject to Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant and EPA has no reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

Executive Order 13211—Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

National Technology Transfer and Advancement Act

The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply because this rule does not involve technical standards.

Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2) and will be effective on February 6, 2003.

List of Subjects in 40 CFR Part 131

Environmental protection, Indians—land, Intergovernmental relations, Reporting and recordkeeping requirements, Water pollution control.

Dated: November 1, 2002.

Christine Todd Whitman,

Administrator.

For the reasons set out in the preamble, 40 CFR part 131 is amended as follows:

PART 131—WATER QUALITY STANDARDS

1. The authority citation for part 131 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

§ 131.36 [Amended]

2. Section 131.36 is amended by removing and reserving paragraph (d)(7).

[FR Doc. 02–28497 Filed 11–7–02; 8:45 am]

BILLING CODE 6560–50–U

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 244

[FRA Docket No. 1999–4985, Notice No. 5]

RIN 2130–AB24

Regulations on Safety Integration Plans Governing Railroad Consolidations, Mergers, and Acquisitions of Control

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Final rule; response to petitions for reconsideration.

SUMMARY: On March 15, 2002, the Federal Railroad Administration ("FRA") and the Surface Transportation Board ("STB" or "Board") published joint final rules on regulations on safety integration plans ("SIPs" or "plans") governing railroad mergers, consolidations, and acquisitions of control, and procedures governing the STB's consideration of SIPs in cases involving these type of transactions. Two interested parties filed petitions for reconsideration of FRA's final rule, addressing certain issues and concerns relating to the agency's rule text or regulatory impact statement. (The Board received no petitions for reconsideration of its final rule.) In this document, FRA responds to the petitions and clarifies and amends discrete provisions of the final rule, where appropriate.

DATES: *Effective Date:* The amendments to the final rule are effective November 8, 2002.

FOR FURTHER INFORMATION CONTACT: Jon Kaplan, Trial Attorney, Office of Chief Counsel, FRA, 1120 Vermont Avenue, NW, Mail Stop 10, Washington, DC 20590 (telephone: (202) 493–6053 and E-mail: *jonathan.kaplan@fra.dot.gov*).

SUPPLEMENTARY INFORMATION:

Background

On March 15, 2002, FRA and the STB published joint final rules in the

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Federal Register establishing procedures for developing and implementing SIPs by a Class I railroad proposing to engage in certain specified merger, consolidation, or acquisition of control transactions with another Class I railroad, or a Class II railroad with which it proposes to amalgamate operations. 67 FR 11582, 11604, and 11607, March 15, 2002. The effective date of the final rules was April 15, 2002. *Id.* at 11583. FRA and the STB invited interested persons to file petitions for reconsideration of the final rules, *id.*, with FRA requiring that a petition summarize the complaint and explain "why compliance with the rule is not possible, is not practicable, is unreasonable, or is not in the pubic interest." 49 CFR 211.29(a).

Two parties—the Association of American Railroads ("AAR") and the Canadian National Railway Company ("CN") filed petitions with FRA, seeking amendments to FRA's final rule governing SIPs. (The STB received no petitions and accordingly, its final rule remains unchanged.) The parties request that FRA revise its regulations concerning the approval of SIPs and SIP amendments and personnel staffing information required in a SIP. (Collaterally, CN raises questions about the agency's Regulatory Impact Analysis ("RIA") and information collection requirements ("ICRs") under the Paperwork Reduction Act of 1995 ("PRA"), 44 U.S.C. 3501 *et seq.*)

In response to the petitions, FRA agrees that certain amendments to its final rule are warranted. The changes, which are fully discussed in the "Section-by-Section Analysis" portion of the preamble, are practicable and consistent with the public interest. The agency, however, denies other aspects of the petitions for the reasons provided below.

Discussion of Petitions for Reconsideration

A. Disposition of Proposed SIPs and Amendments Thereto

1. Petitions for Reconsideration

As summarized earlier, the AAR and CN request that FRA reconsider the regulation governing the approval of SIPs and SIP amendments. Under § 244.19, FRA reviews and approves a railroad's SIP based on the plan's "reasonable assurance of safety at every step of a transaction," and the company's execution of the elements in the plan, including any amendments thereto. *See* 49 CFR 244.19(a), (b) at 67 FR 11607. Both the AAR and CN take issue with the agency's formal review process codified in the rule text. They assert that FRA's authority to approve a SIP, and amendments to it, seems to duplicate the STB's approval of the transaction as a whole. The petitioners also claim that the paradigm invites confusion and uncertainty in the application process vis-a-vis FRA's and the STB's respective roles.

Concurrently, the AAR and CN maintain that the process does not promote flexibility in responding to new information and experience that an informal iteration process facilitates. During an application process, the parties assert that integration plans, targets, and programs are fluid based on new information received, experience of the parties that are participants in the transactions, and unforeseen circumstances. CN, for example, cites its mergers with the Illinois Central Railroad Company [1] and the Wisconsin Central Transportation Corporation [2] in support of establishing an informal "collaborative relationship" with FRA in developing and implementing SIPs rather than the formal approval process currently provided in FRA's SIP rules. Petition of Canadian National Railway Company for Reconsideration of Federal Railroad Administration Rules ("CN Petition") 5 (filed April 5, 2002). Informal consultations, the petitioners reiterate, promote expeditious changes to a plan or its implementation, whereas the approval process invites delay in reviewing a SIP and correspondingly, imposes added costs on the applicant. At bottom, the AAR and CN suggest that FRA amend its rule to reflect the agency's consultative role on SIPs in past mergers.

In the event that FRA maintains the SIP approval requirement, the petitioners ask the agency to modify the procedures for handling SIP amendments. The parties submit that the current amendment process, which requires the agency to approve all amendments to a plan that are requested by an applicant before they take effect, should be changed to authorize approval of any amendment filed with FRA absent any objections by the agency. The AAR and CN propose that the amendment would promote flexibility in addressing a change in circumstances, reduce regulatory delay in the application process, conserve regulatory resources, and facilitate implementation of time-sensitive changes to a SIP while enabling the agency to reject an amendment within its discretion. This change, the parties contend, would prove beneficial to both the regulated community and FRA without any compromise to railroad safety.

2. FRA's Response to Request That FRA Adopt a Consultative Role Rather Than an Approval Role on SIPs

The basic arguments advanced by the petitions in support of their position that FRA should adopt the informal SIP consultative process used in the past were fully considered and rejected by the agency when it issued the final rule. The agency's reasoning was discussed in detail in the preamble to the final rule and is reaffirmed by this response to the petitions for reconsideration. Rather than fully restating this discussion, FRA will only lightly touch upon some of the points made in the preamble.

First, the agency restates that a SIP and its implementation present critical safety issues during the merger, consolidation, or acquisition of a Class I or Class II railroad. FRA's approval process provides a mechanism to oversee railroad operations subject to a transaction and enables the agency to exercise its expertise in the railroad disciplines—operating practices, motive power and equipment, signal and train control, track safety, and hazardous materials—that are the subject of those operations. *See* 67 FR 11585. FRA believes that its approval process will provide a forum for the agency to coordinate informally with an applicant in approving a SIP and monitoring its implementation, thereby meeting the flexibility needs of an applicant. *See id.* at 11586, 11599. FRA thus concludes that an approval process regulates the safety aspects of a SIP in a coordinated, consistent, and efficient manner.

Second, FRA disagrees with the petitioner's assertion that its approval process overlaps with the STB's approval process. As the agency explained in its final rule:

> FRA believes that it and the STB have so interpreted their respective statutes and jurisdiction as to reconcile them seamlessly, thereby serving the public interest by assuring that all parts of the affected statutes are given effect and the purposes of Congress are fully carried out.

Id. at 11585. FRA recognizes that it has "primary jurisdiction, expertise, and oversight responsibility in rail safety matters," *id.* at 11586, whereas the STB "has sole authority to regulate * * * economic transactions." *Id.* at 11585. Within this rubric, the agencies have framed their respective roles in the SIP process, with FRA reviewing and approving or disapproving plans and the implementation thereof, and the STB approving or vetoing a proposed transaction. *See id.* at 11587. FRA's role is to "provide expert advice to the STB on safety issues presented by a proposed transaction," *id.*, by filing its findings and conclusions on a SIP to the STB, which then independently reviews the transaction and plan. *See* 49 CFR 1106.4(b). Therefore, FRA's and the STB's final rules clearly define the roles and responsibilities of the respective agencies, obviating any confusion or duplication during the application process.

More important, FRA posits that the approval process is necessary to provide a baseline for enforcement. Contrary to the consultative process proposed, an approval process enables the agency to take enforcement action if a railroad fails either to obtain an approved SIP or implement the approved plan. *See* 67 FR 11586, 11599. Such remedies include assessing civil penalties, issuing compliance, disqualification, or emergency orders, seeking the issuance of an injunction, or referring certain matters to the Department of Justice for criminal investigation and prosecution. *See id.* at 11591–92; 63 FR 72225, 72229, Dec. 31, 1998. Put another way, the approval process ensures that an applicant "obtain[s] agency approval of a proposed SIP before implementing a regulated transaction." 67 FR 11592. SIP compliance and railroad safety thus mandate that FRA retain the approval process. Accordingly, FRA reaffirms its approval process and denies the petitioners' request to eliminate the formal SIP approval provision from its regulations at § 244.19(b).

3. FRA's Response to Request That FRA Modify Its Procedures for Handling SIP Amendments

FRA agrees with the petitioners that amendments to a SIP should be presumed approved unless it rejects the changes because the modifications do not, *e.g.*, provide a logical and workable transition or are insufficiently detailed to provide "a reasonable assurance of safety." *See id.* at 11586; 49 CFR 244.19(a). The AAR proposed that the amendments become effective 20 days after their submission to FRA unless rejected by the agency. This is too short of a time period for adequate agency review of amendments that may have serious safety consequences. Instead, FRA will amend § 244.19(c)(1) to provide for a 30-day review period before proposed amendments can become effective absent earlier FRA approval or disapproval.

B. Personnel Staffing

1. Petition for Reconsideration

The AAR requests that FRA modify the personnel staffing rule (49 CFR 244.13(j)). As currently worded, § 244.13(j) requires an applicant to identify in its SIP the number of current and proposed employees in each of eight job classification categories when there is a projected change of operations that will impact workforce duties or responsibilities. The AAR requests that § 244.13(j) be changed to require the applicant to provide information on personnel staffing with respect to only those job categories that are impacted by a transaction. The organization believes that this modification would narrow the safety issues of job categories that an applicant would be required to address, obviating the need to file extraneous or irrelevant personnel staffing information in a plan.

2. FRA's Response

FRA agrees with the AAR's suggestion that § 244.13(j) should be clarified, and has adopted the language proposed by the organization. The agency intended to require a railroad to "only address the personnel staffing element when it project[ed] a change of operations that [would] impact workforce duties or responsibilities." 67 FR 11597. An applicant "may omit this section if it expects operations will remain constant after the transaction is consummated." *Id.*

C. Regulatory Evaluation Concerns

1. Petition for Reconsideration

In its petition, CN questions FRA's RIA based on its experience in the *CN/IC* and *CN/WCTC* mergers. Specifically, CN argues that the agency erred in its cost/benefits analysis because the costs identified are based on transactions that were consummated before the final rule was effective, and the benefits identified do not show any material gain in adopting a formal rather than an informal review process. Consequently, CN contends that the agency's regulatory impact statement is arbitrary and capricious, in violation of the Administrative Procedure Act, 5 U.S.C. 706(2)(A).[3]

2. FRA's Response

FRA believes that CN's analysis is misplaced. Consistent with Executive Order 12866, the agency issued its RIA that evaluated the potential costs and benefits of its final rule, and addressed the assumptions, inferences, and conclusions employed in its assessment. *See* 67 FR 11600–01. The cost estimates are premised on the transactions cited in the final rules, namely, the *Conrail Acquisition*,[4] which was the first transaction in which the parties—Norfolk Southern Railway Company and CSX Transportation, Incorporated—prepared SIPs. The agency analyzed the railroads' individual and collective expenses in establishing the cost figures identified in its final rule. Evidence in the administrative record supports the cost estimates, which FRA incorporated in the preamble to its final rule. *See id.* at 11600.

Likewise, the benefits measured are founded on, for example, the merger of the Union Pacific Railroad Company and the Southern Pacific Transportation Company and societal losses associated with the service difficulties caused by the disruption of safety and operating practices during the merger. *See id.* The RIA also considered alternatives to the rulemaking action, but concluded that the SIP process ensured that safety programs were continued and closely monitored. *See id.* Accordingly, FRA's assessment satisfies the regulatory analysis requirements under the Executive Order.

Finally, FRA notes that CN's efforts to draw a distinction between voluntary and required information filed in a SIP is irrelevant. The model used in the RIA is predicated on a SIP/no SIP analysis because SIPs were not prepared as a matter of normal business practice before the *Conrail Acquisition* proceeding. *See* 63 FR 72228; *Conrail Acquisition*, STB Decision No. 52, served Nov. 3, 1997. This model provides the necessary analytical tools in determining the costs and benefits associated with the rule given the lack of any such planning before the *Conrail Acquisition*. *See* Administrative Conference of the United States Recommendation 85–02, *Agency Procedures for Performing Regulatory Analysis of Rules*, 50 FR 28364, July 12,

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[1] *Canadian National Railway Company, Grand Trunk Corporation, and Grand Trunk Western Railroad Incorporated—Control—Illinois Central Corporation, Illinois Central Railroad Company, Chicago, Central and Pacific Railroad Company, and Cedar River Railroad Company*, STB Finance Docket No. 33556 (STB Decision Nos. 5 and 6, served June 23, 1998, and Aug. 14, 1998) (hereinafter "*CN/IC*").

[2] *Canadian National Railway Company, et al.—Control—Wisconsin Central Transportation Corporation. et al.*, STB Finance Docket No. 34000, 66 FR 23757 (May 9, 2001) (hereinafter "*CN/WCTC*").

[3] CN also alleges in a footnote that FRA's costs associated with the ICRs in its final rule appear to be "unrealistically low." *See* CN Petition at 9 n. 6. The railroad cites no authority and provides no basis for the allegation. Absent evidence to the contrary, FRA maintains that the ICRs, which the Office of Management and Budget reviewed and approved, are accurate and satisfy the requirements under the PRA.

[4] *CSX Corporation and CSXT Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company—Control and Operating Leases/Agreements—Conrail Inc. and Consolidated Rail Corporation*, STB Finance Docket No. 33388 (hereinafter "*Conrail Acquisition*").

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1985 (agency should discuss selected set of models employed in regulatory analysis). FRA submits that this model comports with the Executive Order and thus withstands judicial review. *See Center for Auto Safety v. Peck*, 751 F.2d 1336, 1342 (D.C. Cir. 1985) (court will not substitute its judgment for that of an agency "when the agency is called upon to weigh the costs and benefits of alternative policies, since such cost-benefit analyses epitomize the types of decisions that are most appropriately entrusted to the expertise of an agency") (internal quotations and citation omitted); *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Ins. Co.*, 463 U.S. 29, 43 (1983) ("arbitrary and capricious" standard of review requires an agency to "examine the relevant data and articulate a satisfactory explanation for its action, [including] a rational connection between the facts found and the choice made"); *Western Coal Traffic League* v. *Surface Transportation Board*, 216 F.3d 1168, 1177 (D.C. Cir. 2000) (agency action is not arbitrary and capricious when it provides "ample opportunity for public comment in its proceeding [and] ample justification for its decision"); *State of Louisiana* v. *Verity*, 853 F.2d 322, 327 (5th Cir. 1988) ("agency's decision need not be ideal * * * so long as [it] gave at least minimal consideration to relevant facts contained in the record").

Section-by-Section Analysis

FRA is making minor modifications to certain provisions of 49 CFR part 244 in response to the petitions for reconsideration. This section of the preamble explains the changes made to the final rule in response to the petitions. FRA respectfully refers interested parties to the agency's Section-by-Section Analysis of the final rule and the Notice of Proposed Rulemaking for a full discussion of those aspects of the rulemaking action that remain unchanged. *See* 67 FR 11590–600; 63 FR 72228–35.

Subpart B—Safety Integration Plans

Section 244.13(j)—Personnel Staffing

Paragraph (j) of this section is modified in response to the AAR's suggestion that the regulatory text be clarified to reflect that an applicant need only provide information on personnel staffing with respect to those job categories that are impacted by a transaction. The amendment requires an applicant to identify the number of employees by job category, currently and proposed, to perform the types of functions enumerated at § 244.13(j)(1)–(8) when there is a projected change of operations that will impact workforce duties or responsibilities for employees of that job category.

Section 244.19—Disposition

FRA is revising paragraph (c)(1) of this section in response to the AAR's and CN's petitions for reconsideration. As amended, the regulation authorizes an applicant to amend its SIP, provided it explain the need for the amendment and inform FRA about the change. An amendment to a plan is presumed approved and takes effect no sooner than 30 days after it is filed with FRA, unless the agency either approves or disapproves the change within that period. Consistent with FRA's approval of a plan, the agency must determine that the amendment does not provide "a reasonable assurance of safety" should it reject the modification. *See* 49 CFR 244.19(a), (b).

FRA agrees with the petitioners that this revision promotes flexibility in enabling a railroad to address a change in circumstances should it decide to amend its SIP. This change, which is consistent with the agency's Railroad Workplace Safety and Qualification and Certification of Locomotive Engineers rules at 49 CFR 214.307(c) and 240.103(c), respectively, facilitates a railroad's ability to implement time-sensitive changes to a plan yet retains agency discretion to intervene should circumstances warrant.

Regulatory Impact of FRA's Final Rule

Executive Order 12866 and DOT Regulatory Policies and Procedures

The response to petitions for reconsideration of the final rule has been evaluated in accordance with Executive Order 12866 and DOT policies and procedures. Although the final rule met the criteria for being considered a significant rule under those policies and procedures, the amendments contained in the response to the petitions are not considered significant because they either clarify requirements currently contained in the final rule or allow for greater flexibility in complying with the rule. The economic impact of the amendments and clarifications contained in this response will generally reduce the cost of compliance with the rule.

The cost reduction, however, is not easily quantified and does not significantly alter FRA's original analysis of the costs and benefits associated with the original final rule. Additionally, the agency believes that the modifications and clarifications increase the benefits associated with the final rule by facilitating amendments to a SIP and conserving agency resources in reviewing and approving a plan. Accordingly, FRA reaffirms the economic arguments and estimates advanced in its RIA for the final rule.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 ("RFA"), 5 U.S.C. 601 *et seq.*, requires an assessment of the impact of rules on "small entities." FRA certifies that the response to petitions for reconsideration does not have a significant impact on a substantial number of small entities. Because the amendments contained in this document either clarify requirements currently contained in the final rule or allow for greater flexibility in complying with the rule, FRA has concluded that there is no substantial economic impact on small units of government, businesses, or other organizations.

Proper Consideration of Small Entities in Agency Rulemaking

The response to petitions for reconsideration of the final rule has been reviewed in accordance with Executive Order 13272 (67 FR 53461, August 16, 2002), which requires agencies to assess and take appropriate account of the potential impact on small businesses, small governmental jurisdictions, and small organizations, as provided by RFA. FRA certifies that this rulemaking action does not have a significant economic impact on these entities under the RFA.

Paperwork Reduction Act

The response to petitions for reconsideration of the final rule does not significantly change any of the ICRs contained in the original final rule.

Environmental Impact

FRA has evaluated the response to petitions for reconsideration of the final rule in accordance with its "Procedures for Considering Environmental Impacts" (64 FR 28545, May 26, 1999) as required by the National Environmental Policy Act, 42 U.S.C. 4321 *et seq.*, other environmental statutes, Executive Orders, and related regulatory requirements. FRA has determined that this document is not a major FRA action for environmental purposes.

Federalism Implications

The response to petitions for reconsideration of the final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, and it has been determined that this action does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Statement of Energy Effects

The response to petitions for reconsideration of the final rule has been reviewed in accordance with Executive Order 13211 (66 FR 28355, May 22, 2001), which requires agencies to prepare a Statement of Energy Effects describing the effects of certain regulatory actions on energy supply, distribution, or use when such measures are identified as "significant energy actions." FRA certifies that this rulemaking action is not a significant energy action to warrant the preparation of such a statement.

List of Subjects in 49 CFR Part 244

Administrative penalties, practice and procedure, Railroad safety, Railroads, Safety Integration Plans.

In consideration of the foregoing, FRA amends part 244 of chapter II of title 49, Code of Federal Regulations, to read as follows:

PART 244—[AMENDED]

1. The authority citation for Part 244 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 21301; 5 U.S.C. 553 and 559; Sec. 31001(s)(1), Pub. L. No. 104–134, 110 Stat. 1321–373 (28 U.S.C. 2461 note); and 49 CFR 1.49.

2. Section 244.13 is amended by revising paragraph (j) introductory text to read as follows:

§ 244.13 Subjects to be addressed in a Safety Integration Plan involving an amalgamation of operations.

* * * * *

(j) *Personnel staffing.* Each applicant shall identify the number of employees by job category, currently and proposed, to perform the following types of functions when there is a projected change of operations that will impact workforce duties or responsibilities for employees of that job category:

* * * * *

3. Section 244.19 is amended by revising paragraph (c)(1) to read as follows:

§ 244.19 Disposition.

* * * * *

(c) * * *

(1) *By the applicant.* The applicant may amend its Safety Integration Plan, from time to time, provided it explains the need for the proposed amendment in writing to FRA. Any amendment shall take effect no earlier than 30 days after its submission to FRA, unless it is either approved or disapproved by FRA within that period. Any disapproval of an amendment shall be in accordance with the requirements prescribed in paragraph (b) of this section.

* * * * *

Issued in Washington, DC on October 30, 2002.

Allan Rutter,

Federal Railroad Administrator.

[FR Doc. 02–28096 Filed 11–7–02; 8:45 am]

BILLING CODE 4910–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[I.D. 110102E]

Atlantic Highly Migratory Species Fisheries; Atlantic Bluefin Tuna

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Opening of General category Atlantic bluefin tuna New York Bight set-aside fishery.

SUMMARY: NMFS opens the Atlantic bluefin tuna (BFT) General category New York Bight set-aside fishery. This action is being taken to provide for General category fishing opportunities in the New York Bight.

DATES: Effective 1 a.m. on November 5, 2002, until the date that the set-aside quota is determined to have been taken, which will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Brad McHale or Dianne Stephan, 978–281–9260.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. Section 635.27 subdivides the U.S. BFT landings quota recommended by the International Commission for the Conservation of Atlantic Tunas among the various domestic fishing categories. The General category landings quota, including time-period subquotas and the New York Bight set-aside, are specified annually as required under § 635.27(a)(1). The 2002 fishing year General category quota and effort control specifications were issued October 1, 2002 (67 FR 61537).

Opening of the New York Bight Fishery

The New York Bight set-aside area is defined as the waters south and west of a straight line originating at a point on the southern shore of Long Island where the shoreline intersects 72° 27′ W. long. (Shinnecock Inlet) and running SSE 150 true, and north of 38° 47′ N. lat. (Delaware Bay). Under § 635.27(a)(1)(iii), NMFS may make available all or part of the 10 mt landings quota set aside for the New York Bight area when the coastwide General category fishery has been closed in any quota period. NMFS closed the coastwide General category fishery on October 25, 2002 (67 FR 66072). At that time, NMFS announced that it would open the New York Bight fishery when it is determined that large medium and giant BFT are available in the New York Bight area. Allowing a few days transition between the closure of the coastwide fishery and the opening of the New York Bight fishery reduces concerns regarding enforcement of regulations applicable to that area. Based on the presence of large medium and giant BFT in the New York Bight area, fishermen have contacted NMFS requesting an opportunity to participate in this fishery. Since the coastwide General category fishery is closed and large medium and giant BFT are now available in the New York Bight, NMFS will open the New York Bight set-aside fishery effective 1 a.m., November 5, 2002, until the date that the set-aside quota of 10 mt is determined to have been taken, which will be published in the **Federal Register**.

For vessels permitted in the General category: upon the effective date of the New York Bight opening, retaining or landing large medium or giant BFT is authorized only within the set- aside area, until the set aside quota for that area has been harvested. The daily retention limit for the set-aside fishery will be one large medium or giant BFT (measuring 73 inches (185 cm) or larger) per vessel per day. BFT harvested from waters outside the defined set-aside area may not be brought into the set-aside area. General category permit holders may tag and release BFT in all areas while the General category is closed, subject to the requirements of the tag-and-release program at § 635.26.

For vessels permitted in the Highly Migratory Species (HMS) Charter/Headboat category: when participating in the General category New York Bight fishery, i.e., fishing for large medium and giant BFT intended for sale, HMS Charter/Headboat category vessels are subject to the same rules as General category vessels. HMS Charter/Headboat

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category vessels may continue to fish in all areas under the Angling category regulations while the Angling category is open. Vessels permitted in the HMS Charter/Headboat category that are still eligible for the Angling category trophy fish allowance under § 635.23(c)(1) or (2) may land one large medium or giant trophy BFT prior to May 31, 2003. Trophy BFT may not be sold and must be reported.

The announcement of the New York Bight fishery closure date will be filed with the Office of the **Federal Register**, and further communicated through the HMS Fax Network, the Atlantic Tunas Information Line, HMS web sites, NOAA weather radio, and Coast Guard Notice to Mariners. Although notification of the closure will be provided as far in advance as possible, fishermen are encouraged to call the Atlantic Tunas Information Line or check the HMS web sites to verify the status of the fishery before leaving for a fishing trip. The phone numbers for the Atlantic Tunas Information Line are (978) 281–9305 and (888) USA-TUNA. The web sites are www.nmfspermits.com and www.nmfs.noaa.gov/sfa/hmspg.html.

Classification

This action is taken under § 635.27(a)(1) and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: November 4, 2002.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–28494 Filed 11–5–02; 3:20 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 67, No. 217
Friday, November 8, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–CE–37–AD]

RIN 2120–AA64

Airworthiness Directives; Quality Aerospace, Inc., S2R Series and Model 600 S2D Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to supersede Airworthiness Directive (AD) 2000–11–16, which currently applies to certain Quality Aerospace, Inc. (Quality Aerospace) (formerly Ayres Corporation) S2R series and Model 600 S2D airplanes. AD 2000–11–16 requires you to repetitively inspect the ¼-inch and 5/16-inch bolt hole areas on the lower spar caps for fatigue cracking; replace or repair any lower spar cap where fatigue cracking is found; and report any fatigue cracking found. AD 2000–11–16 resulted from an accident of an Ayres S2R series airplane where the wing separated from the airplane in flight. Since AD 2000–11–16, additional airplanes have been identified that were manufactured with a similar design to those affected by the AD and a third repair option has been developed. This proposed AD would retain the repetitive inspections and replacement (if necessary) requirements of the lower spar caps that are currently required in AD 2000–11–16, add additional airplanes to the Applicability of the AD, and add a third repair option. The actions specified by this proposed AD are intended to detect and correct fatigue cracking of the lower spar caps, which could result in the wing separating from the airplane with consequent loss of control of the airplane.

DATES: The Federal Aviation Administration (FAA) must receive any comments on this proposed rule on or before January 15, 2003.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2001–CE–37–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. You may also send comments electronically to the following address: *9–ACE–7–Docket@faa.gov*. Comments sent electronically must contain "Docket No. 2001–CE–37–AD" in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII text.

You may get service information that applies to this proposed AD from Quality Aerospace, Inc., P.O. Box 3050, Albany, Georgia 31706–3050; telephone: (229) 883–1440; facsimile: (229) 883–9790. You may also view this information at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Cindy Lorenzen, Aerospace Engineer, FAA, Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone: (770) 703–6078; facsimile: (770) 703–6097.

SUPPLEMENTARY INFORMATION:

Comments Invited

How Do I Comment on This Proposed AD?

The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments to the address specified under the caption **ADDRESSES.** We will consider all comments received on or before the closing date. We may amend this proposed rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of this proposed AD action and determining whether we need to take additional rulemaking action.

Are There Any Specific Portions of This Proposed AD I Should Pay Attention To?

The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this proposed rule that might suggest a need to modify the rule. You may view all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each contact we have with the public that concerns the substantive parts of this proposed AD.

How Can I Be Sure FAA Receives My Comment?

If you want FAA to acknowledge the receipt of your mailed comments, you must include a self-addressed, stamped postcard. On the postcard, write "Comments to Docket No. 2001–CE–37–AD." We will date stamp and mail the postcard back to you.

Discussion

Has FAA Taken Any Action to This Point?

An accident on an Ayres S2R series airplane where the wing separated from the airplane in flight caused us to issue AD 2000–11–16, Amendment 39–11764 (65 FR 36055, June 7, 2000). This AD requires the following on certain Quality Aerospace S2R series and Model 600 S2D airplanes:

—Repetitively inspect the ¼-inch and 5/16-inch bolt hole areas on the lower spar caps for fatigue cracking;

—Replacing or repairing any lower spar cap where fatigue cracking is found; and

—Reporting any fatigue cracking to FAA.

AD 2000–11–16 superseded AD 97–17–03, Amendment 39–10195 (62 FR 43296, August 18, 1997), which required accomplishing the following:

—Inspecting the ¼-inch and 5/16-inch bolt hole areas on the lower spar caps for fatigue cracking;

—Replacing any lower spar cap where fatigue cracking is found; and

—Reporting any fatigue cracking to FAA.

AD 2000–11–16 made the inspections required in AD 97–17–03 repetitive, added additional airplanes to the Applicability of the AD, changed the initial compliance time for all airplanes, and arranged the affected airplanes into six groups based on usage and configuration.

AD 97–17–03 superseded AD 97–13–11, Amendment 39–10071 (62 FR

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36978, July 10, 1997), which required accomplishing the following:

—Inspecting the 1/4-inch and 5/16-inch bolt hole areas on the lower spar caps for fatigue cracking;

—Replacing any lower spar cap where fatigue cracking is found; and

—Reporting any fatigue cracking to FAA.

AD 97–13–11 incorrectly referenced the Ayres Model S2R–R1340 airplanes as Model S2R–1340R. AD 97–17–03 corrected the model designation and retained the actions of AD 97–13–11.

What Has Happened Since AD 2000–11–16 To Initiate This Action?

Since AD 2000–11–16, FAA has identified additional airplanes with the same type design that should be added to the Applicability of the AD. The manufacturer has issued update service information that gives the owners/operators of the affected airplanes an additional repair option. We have also identified several minor typographical errors in AD 2000–11–16.

Is There Service Information That Applies to This Subject?

Quality Aerospace (formerly Ayres Corporation) has issued these service bulletins:

—Ayres Service Bulletin No. SB–AG–39, dated September 17, 1996;

—Ayres Custom Kit No. CK–AG–29, dated December 23, 1997; and

—Quality Aerospace Custom Kit No. CK–AG–30, dated December 6, 2001.

What Are the Provisions of This Service Information?

These service bulletins include procedures for:

—Inspecting the 1/4-inch and 5/16-inch bolt hole areas on the lower spar caps for fatigue cracking;

—Reworking the spar cap if a small crack is found in the 1/4-inch spar cap hole;

—Replacing the butterfly center splice plate, part number 20211–3, from the aft surface of the wing spar join area; and

—Installing a splice block that improves the chances of salvaging a spar cap that has small cracks in the 1/4-inch and 5/16-inch bolt holes.

The FAA's Determination and an Explanation of the Provisions of This Proposed AD

What Has FAA Decided?

After examining the circumstances and reviewing all available information related to the incidents described above, we have determined that:

—The unsafe condition referenced in this document exists or could develop on other Quality Aerospace S2R series and Model 600 S2D airplanes of the same type design;

—The actions specified in the previously-referenced service information should be accomplished on the affected airplanes; and

—AD action should be taken in order to correct this unsafe condition.

What Would This Proposed AD Require?

This proposed AD would supersede AD 2000–11–16 with a new AD that would:

—Retain the repetitive inspections and replacement (if necessary) requirements of AD 2000–11–16;

—Add an additional repair option of installing a splice block to improve the chances of salvaging a spar cap that has small cracks in the 1/4-inch and 5/16-inch bolt holes; and

—Add additional airplanes to the Applicability of the AD.

Cost Impact

How Many Airplanes Would This Proposed AD Impact?

We estimate that this proposed AD affects 1,015 airplanes in the U.S. registry.

What Would be the Cost Impact of This Proposed AD on Owners/Operators of the Affected Airplanes?

We estimate the following costs to accomplish each proposed inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
3 workhours × $60 = $180	$417	$597	1,015 × $597 = $605,955

We estimate the following costs to accomplish any necessary cold work of bolt holes that would be required based on the results of the proposed inspection. We have no way of determining the number of airplanes that may need such repair:

Labor cost	Parts cost	Total cost per airplane
1 workhour × $60= $60	$100	$160

We estimate the following costs to accomplish any necessary installation of a butterfly splice plate that would be required based on the results of the proposed inspection. We have no way of determining the number of airplanes that may need such installation:

Labor cost	Parts cost	Total cost per airplane
70 workhours × $60 = $4,200	$700	$4,900

We estimate the following costs to accomplish any necessary reaming of outer holes to 5/16-inch diameter that would be required based on the results of the proposed inspection. We have no way of determining the number of airplanes that may need such repair:

Labor cost	Parts cost	Total cost per airplane
1 workhour × $60 = $60	None	$60

We estimate the following costs to accomplish any necessary drilling and reaming of outer holes and adding three holes to install a splice block that would be required based on the results of the proposed inspection. We have no way of determining the number of airplanes that may need such modification:

Labor cost	Parts cost	Total cost per airplane
65 workhours × $60 = $3,900	$4,100	$8,000

We estimate the following costs to accomplish any necessary spar cap replacement that would be required based on the results of the proposed inspection. We have no way of determining the number of airplanes that may need such replacement:

Labor cost per spar cap	Parts cost per spar cap	Total cost per spar cap
200 workhours X $60 = $12,000	$2,316	$14,316

What Is the Difference Between the Cost Impact of This Proposed AD and the Cost Impact of AD 2000–11–16?

The differences between this proposed AD and the cost impact of AD 2000–11–16 are:

—The addition of an optional repair to install a splice block; and

—The addition of 15 airplanes of similar design.

Regulatory Impact

Would This Proposed AD Impact Various Entities?

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposed rule would not have federalism implications under Executive Order 13132.

Would This Proposed AD Involve a Significant Rule or Regulatory Action?

For the reasons discussed above, I certify that this proposed action: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by removing Airworthiness Directive (AD) 2000–11–16, Amendment 39–11764 (65 FR 36055, June 7, 2000), and by adding a new AD to read as follows:

**** ** ** Quality Aerospace, Inc. (Ayres Corporation formerly held Type Certificate (TC) No. A4SW):** Docket No. 2001–CE–37–AD; Supersedes AD 2000–11–16, Amendment 39–11764.

(a) *What airplanes are affected by this AD?* This AD affects the following airplane models and serial numbers that are certificated in any category:

Model	Serial Numbers	Group
(1) S–2R	5000R through 5099R, except 5010R, 5031R, 5038R, 5047R, and 5085R	1
(2) S2R–G1	G1–101 through G1–106	1
(3) S2R–R1820	R1820–001 through R1820–035	1
(4) S2R–T15	T15–001 through T15–033	1
(5) S2R–T34	6000R through 6049R, T34–001 through T34–143, T34–144, T34–147 through T34–167, T34–171, T34–180, and T34–181.	1
(6) S2R–G10	G10–101 through G10–136, G10–138, G10–140, and G10–141	2
(7) S2R–G5	G5–101 through G5–105	2
(8) S2R–G6	G6–101 through G6–147	2
(9) S2RHG–T65	T65–002 through T65–018	2
(10) S2R–R1820	R1820–036	2
(11) S2R–T34	T34–144, T34–146, T34–168, T34–169, T34–172 through T34–179, and T34–189 through T34–232, and T34–234.	2

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Model	Serial Numbers	Group
(12) S2R–T45	T45–001 through T45–014	2
(13) S2R–T65	T65–001 through T65–018	2
(14) 600 S2D	All serial numbers beginning with 600–1311D	3
(15) S–2R	1380R and 1416R through 2592R	3
(16) R1340	R1340–001 through R1340–035	3
(17) S2R–R3S	R3S–001 through R3S–011	3
(18) S2R–T11	T11–001 through T11–005	3
(19) S2R–G1	G1–107, G1–108, and G1–109	4
(20) S2R–G10	G10–137, G10–139, and G10–142	4
(21) S2R–T34	T34–225, T34–236, T34–237, and T34–238	4
(22) S2R–G1	G1–110 through G1–115	5
(23) S2R–G10	G10–143 through G10–165	5
(24) S2R–G6	G6–148 through G6–155	5
(25) S2RHG–T34	T34HG–102	5
(26) S2R–T15	T15–034 through T15–040	5
(27) S2R–T34	T34–239 through T34–270	5
(28) S2R–T45	T45–015	5
(29) S2R	5010R, 5031R, 5038R, 5047R, and 5085R	6

Note 1: The serial numbers of the Model S2R–T15 airplanes could incorporate T15–xxx and T27–xxx. This AD applies to both of these serial number designations as they are both Model S2R–T15 airplanes.

Note 2: The serial numbers of the Model S2R–T34 airplanes could incorporate T34–xxx, T36–xxx, T41–xxx, or T42–xxx. This AD applies to all of these serial number designations as they are all Model S2R–T34 airplanes.

Note 3: Any Group 3 airplane that has been modified with a hopper of a capacity more than 410 gallons, a piston engine greater than 600 horsepower, or any gas turbine engine, makes the airplane a Group 1 airplane for the purposes of this AD. Inspect the airplane at the Group 1 compliance time specified in this AD.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to detect and correct fatigue cracking of the lower spar caps, which could result in the wing separating from the airplane with consequent loss of control of the airplane.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

(1) Repetitively inspect, using magnetic particle, ultrasonic, or eddy current procedures, the ¼-inch and 5/16-inch bolt hole areas on each lower spar cap for fatigue cracking. Reference paragraph (e)(3) and (e)(4) of this AD (including all subparagraphs) to obtain the initial and repetitive inspection compliance times.

(i) The cracks may emanate from the bolt hole on the face of the spar cap or they may occur in the shaft of the hole.

(ii) You must inspect both of these areas.

(iii) If using the magnetic particle method for the inspection, perform the inspection using the "Inspection" portion of the "Accomplishment Instructions" and "Lower Splice Fitting Removal and Installation Instructions" in Ayres Service Bulletin No. SB–AG–39, dated September 17, 1996. You must follow American Society for Testing Materials (ASTM) E1444–94A, using wet particles meeting the requirements of the Society for Automotive Engineers (SAE) AMS 3046. The inspection must be performed by or supervised by a Level 2 or Level 3 inspector certified for magnetic particle inspection method using the guidelines established by the American Society for Nondestructive Testing or MIL–STD–410. CAUTION: You must firmly support the wings during the inspection to prevent movement of the spar caps when the splice blocks are removed. This will allow easier realignment of the splice block holes and the holes in the spar cap for bolt insertion.

(iv) If using ultrasonic or eddy current methods for the inspection, a procedure must be sent to the FAA Atlanta Aircraft Certification Office for approval prior to performing the inspection. Send your proposed procedure to the FAA Atlanta Aircraft Certification Office (ACO), Attn: Cindy Lorenzen, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia 30349. You are not required to remove the splice block for either the ultrasonic or eddy current inspections, unless corrosion is visible.

(2) If any cracking is found during any inspection required by this AD, you must accomplish the following:

(i) Repair or replace:

(A) Use the cold work process to ream out small cracks as defined in Ayres Service Bulletin No. SB–AG–39, dated September 17, 1996; or

(B) ream the ¼-inch bolt holes to 5/16 inches diameter as defined in Part I of Ayres Custom Kit No. CK–AG–29, dated December 23, 1997; or

(C) install Kaplan Splice Blocks as defined in Quality Aerospace, Inc. Custom Kit No. CK–AG–30, dated December 6, 2001; or

(D) replace the affected spar cap in accordance with the maintenance manual.

(ii) Submit a report of inspection findings to the Manager, Atlanta ACO, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia 30349; facsimile: (770) 703–6097. You must include:

(A) The airplane serial number and engine model number;

(B) The total number of flight hours on the lower spar cap that is cracked;

(C) Time on the spar cap since last inspection, if applicable;

(D) The procedure (magnetic particle, ultrasonic, or eddy current) used for the last inspection;

(E) Indicate if cold working has been accomplished or modifications incorporated such as installation of big butterfly plates;

(F) Indicate the time on the spar cap when the cold working or modifications were accomplished; and

(G) Indicate which bolt hole is cracked and the length of the crack.

Note 4: Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(e) *What is the compliance time of this AD?* The compliance times for each of the actions of this AD are as follows:

(1) Any required repair or replacement: Prior to further flight after the inspection where the crack(s) was/were found.

(2) Reporting requirement:

(i) Submit the report within 10 days after finding any crack(s) during any inspection required by this AD.

(ii) For airplanes where cracking was found during any inspection accomplished in accordance with AD 2000–11–16, which is superseded by this AD; or by AD 97–17–03, which was superseded AD 2000–11–16; or by AD 97–13–11, which was superseded by AD 97–17–03, submit the report within 10 days after the effective date of this AD, unless already accomplished.

(3) Initial inspection: Required unless already accomplished (compliance with AD 2000–11–16, or AD 97–17–03, or AD 97–13–11) within 50 flight hours after the effective date of this AD or upon the accumulation of these hours time-in-service (TIS) on each lower spar cap, whichever occurs later:

Airplane group	Lower spar cap hours TIS
(i) 1	2,000.
(ii) 2	2,200.
(iii) 3	6,400.
(iv) 4	2,500.

Airplane group	Lower spar cap hours TIS
(v) 5	6,200.
(vi) 6	For S/N 5010R: 5,530. For S/N 5038R: 5,900.
	For S/N 5031R: 6,400. For S/N 5047R: 6,400. For S/N 5085R: 6,290.

(4) Repetitive inspections: The following table gives the required repetitive inspection intervals based on the work performed and the method of inspection utilized. Each time is hours TIS after the last inspection:

Work previously performed	Magnetic particle hours TIS	Ultrasonic hours TIS	Eddy current hours TIS
(i) One of the following where the airplane does not have butterfly plates, part number (P/N) 20211–09 and P/N 20211–11, installed per CK–AG–29, Part II (A) No cracks found previously on wing spar; or (B) Small cracks repaired through cold work (or done as an option if never cracked) accomplished per SB–AG–39; or (C) Small cracks repaired through ¼-inch bolt hole reamed to 5/16 inches diameter (or done as an option if never cracked) per CK–AG–29, Part I; or (D) Small cracks repaired through previous Alternative Methods of Compliance; or (E) Small cracks repaired by installation of Kaplan Splice Blocks, part number 22515–1/–3 or 88–251 (or done as an option if never cracked) per CK–AG–30 and inspection of the six outboard bolt holes on both lower spars is required	500	550	700
(ii) One of the following where the airplane has butterfly plates, part number (P/N) 20211–09 and P/N 20211–11, installed per CK–AG–29, Part II (A) No cracks found previously on wing spar; or (B) Small cracks repaired through cold work (or done as an option if no cracks found) accomplished per SB–AG–39; or (C) Small cracks repaired through ¼-inch bolt hole reamed to 5/16 inches diameter (or done as an option if no cracks found) per CK–AG–29, Part I; or (D) Small cracks repaired through previous Alternative Methods of Compliance; or (E) Small cracks repaired by installation of Kaplan Splice Blocks, part number 22515–1/–3 or 88–251 (or done as an option if never cracked) per CK–AG–30 and inspection of the six outboard bolt holes on both lower spar caps is required	900	950	1,250
(iii) Cracked wing spar found during previous inspection with wing spar replacement: For all inspection methods (magnetic particle, ultrasonic, or eddy current), time for initial and repetitive inspection intervals start over when wing spar is replaced.			

Note 5: Aircraft S/Ns T45–007DC and T45–010DC had modified splice block assemblies installed at Ayres (Ayres/Kaplan Assembly No. 88–251) and must still follow the repetitive inspection intervals listed here.

Note 6: If a crack is found, the reaming associated with the cold work process may remove a crack if it is small enough. Some aircraft owners/operators were issued alternative methods of compliance with AD 97–17–03 to ream the ¼-inch bolt hole to 5/16 inches diameter to remove small cracks. Ayres CK–AG–29, Part I, also provides procedures to ream the ¼-inch bolt hole to 5/16 inches diameter. If you use either of these two methods to remove cracks and the airplane is reinspected immediately with no cracks found, you may continue to follow the repetitive inspection intervals listed above.

Note 7: Group 4 and Group 5 airplanes had the butterfly plates installed at the factory and may follow the repetitive inspection interval listed in paragraph (e)(4)(ii).

(f) *Can I comply with this AD in any other way?*

(1) You may use an alternative method of compliance or adjust the compliance time if:

(i) Your alternative method of compliance provides an equivalent level of safety; and

(ii) The Manager, Atlanta ACO, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

(2) Alternative methods of compliance approved in accordance with AD 2000–11–16, which is superseded by this AD, are approved as alternative methods of compliance with this AD.

Note 8: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(g) *Where can I get information about any already-approved alternative methods of compliance?* Contact Cindy Lorenzen, Aerospace Engineer, FAA, Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone: (770) 703–6078; facsimile: (770) 703–6097.

(h) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD provided that:

(1) The hopper is empty;

(2) Vne is reduced to 126 miles per hour (109 knots) indicated airspeed (IAS); and

(3) Flight into known turbulence is prohibited.

(i) *How do I get copies of the documents referenced in this AD?* You may get copies of the documents referenced in this AD from Quality Aerospace, Inc., P.O. Box 3050, Albany, Georgia 31706–3050; telephone: (229) 883–1440; facsimile: (229) 883–9790. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

(j) *Does this AD action affect any existing AD actions?* This amendment supersedes AD 2000–11–16, Amendment 39–11764.

Issued in Kansas City, Missouri, on October 31, 2002.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–28407 Filed 11–7–02; 8:45 am]

BILLING CODE 4910–13–P

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–CE–66–AD]

RIN 2120–AA64

Airworthiness Directives; Robert E. Rust Models DeHavilland DH.C1 Chipmunk 21, 22, and 22A Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Robert E. Rust (R.E. Rust) Models DeHavilland DH.C1 Chipmunk 21, 22, and 22A airplanes. This proposed AD would require you to check the airplane logbook to determine whether certain modifications have been incorporated on the airplane and incorporate the modifications that have not already been accomplished. This proposed AD is the result of the manufacturer performing a design study on the structural integrity of certain parts and reports of service failure of other parts installed on the affected airplanes. The actions specified by this proposed AD are intended to prevent reduced structural integrity in the primary structure of the airplane, which could result in failure of the rudder torque tube, elevator fasteners, and the vertical fin rear spar, or jamming or damage to the elevator. Such failures could lead to loss of control of the airplane.

DATES: The Federal Aviation Administration (FAA) must receive any comments on this proposed rule on or before January 13, 2003.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–CE–66–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. You may also send comments electronically to the following address: *9–ACE–7–Docket@faa.gov*. Comments sent electronically must contain "Docket No. 2000–CE–66–AD" in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII text.

You may get service information that applies to this proposed AD from DeHavilland Support Limited, Duxford Airfield, Bldg. 213, Cambridgeshire, CB2 4QR, United Kingdom, telephone: +44 1223 830090, facsimile: +44 1223 830085, e-mail: *info@dhsupport.com*. You may also view this information at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Cindy Lorenzen, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia; telephone: (770) 703–6078; facsimile: (770) 703–6097.

SUPPLEMENTARY INFORMATION:

Comments Invited

How Do I Comment on This Proposed AD?

The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments to the address specified under the caption **ADDRESSES**. We will consider all comments received on or before the closing date. We may amend this proposed rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of this proposed AD action and determining whether we need to take additional rulemaking action.

Are There Any Specific Portions of This Proposed AD I Should Pay Attention To?

The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this proposed rule that might suggest a need to modify the rule. You may view all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each contact we have with the public that concerns the substantive parts of this proposed AD.

How Can I Be Sure FAA Receives My Comment?

If you want FAA to acknowledge the receipt of your mailed comments, you must include a self-addressed, stamped postcard. On the postcard, write "Comments to Docket No. 2000–CE–66–AD." We will date stamp and mail the postcard back to you.

Discussion

What Events Have Caused This Proposed AD?

The FAA has received reports that an unsafe condition may exist on certain R.E. Rust Models DeHavilland DH.C1 Chipmunk 21, 22, and 22A airplanes. Failure reports of the rudder torque tube and elevator control fasteners on in-service airplanes and design studies by the manufacturer on the structural integrity of the glider towing attachment bolt and the vertical fin rear spar prompted us to issue this proposed AD.

We have determined that failure of the rudder torque tube, the elevator control fasteners, the vertical fin rear spar, and the glider towing attachment bolt is caused by fatigue cracking and overload. As a result of the design studies, the manufacturer developed specific modifications to strengthen the affected areas of the airplane.

What Are the Consequences If the Condition Is Not Corrected?

These conditions, if not corrected, could result in failure of the rudder torque tube, elevator fasteners, and the vertical fin rear spar, or jamming or damage to the elevator. Such failures could lead to loss of control of the airplane.

Is There Service Information That Applies to This Subject?

British Aerospace Aerostructures Limited (now DeHavilland Support Limited) has issued BAe Aircraft Technical News Sheet CT (C1) No. 200, Issue 1, dated March 1, 1997.

What Are the Provisions of This Service Information?

The service information includes procedures for inspecting the airplane to:

- Determine if Modifications H 225, H 269, and H 360 are incorporated for all affected airplanes; and
- Determine if Modification H 275 is incorporated for airplanes that incorporate Modification H 197 (glider towing capabilities).

The service information also specifies incorporating these modifications if not already incorporated.

The FAA's Determination and an Explanation of the Provisions of This Proposed AD

What Has FAA Decided?

After examining the circumstances and reviewing all available information related to the incidents described above, we have determined that:

- the unsafe condition referenced in this document exists or could develop on other R.E. Rust Models DeHavilland DH.C1 Chipmunk 21, 22, and 22A airplanes of the same type design;
- the actions specified in the previously-referenced service information should be accomplished on the affected airplanes; and
- AD action should be taken in order to correct this unsafe condition.

What Would This Proposed AD Require?

This proposed AD would require you to check the airplane logbook to determine whether certain modifications have been incorporated on the airplane and incorporate the modifications that have not already been accomplished

Cost Impact

How Many Airplanes Would This Proposed AD Impact?

We estimate that this proposed AD affects 54 airplanes in the U.S. registry.

What Would Be the Cost Impact of This Proposed AD on Owners/Operators of the Affected Airplanes?

We estimate the following costs to accomplish any necessary modifications that would be required based on the results of the proposed logbook check We have no way of determining the number of airplanes that may need such modification.

Modification	Labor cost	Parts cost	Total cost per airplane
H 225	40 workhours × 60 = $2,400	$1,470	$2,400 + $1,470 = $3,870.
H 269	4 workhours × 60 = $240	$203 each (2 per airplane)	$240 + $406 ($203 × 2) = $646.
H 275	43 workhours × $60 = $180	$203 each (2 per airplane)	$180 + $406 ($230 × 2) = $586.
H 360	20 workhours × $60 = $1,200	$1,150	$1,200 + $1,150 = $2,350.

Compliance Time of This Proposed AD

What Would Be the Compliance Time of This Proposed AD?

The compliance time of this proposed AD is "within the next 90 days after the effective date of this AD."

Why Is the Proposed Compliance Time Presented in Calendar Time Instead of Hours Time-in-Service (TIS)?

Failure of the rudder torque tube, the elevator control fasteners, the vertical fin rear spar, and the glider towing attachment bolt is only unsafe during airplane operation. However, this unsafe condition is not a result of the number of times the airplane is operated. The chance of this situation occurring is the same for an airplane with 50 hours time-in-service (TIS) as it would be for as airplane with 1,000 hours TIS.

For this reason, the FAA has determined that a compliance based on calendar time should be utilized in this proposed AD in order to assure that the unsafe condition is addressed on all airplanes in a reasonable time period.

Regulatory Impact

Would This Proposed AD Impact Various Entities?

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposed rule would not have federalism implications under Executive Order 13132.

Would This Proposed AD Involve a Significant Rule or Regulatory Action?

For the reasons discussed above, I certify that this proposed action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

Actions	Compliance	Procedures
(1) Check the airplane logbook ..... (i) For all affected airplanes: to determine if Modifications H 225, H 269, and H 360 are incorporated; and (ii) For only these airplanes that incorporate Modification H 197 (glider towing capabilities): to determine if Modification H 275 is incorporated.	Within the next 90 days after the effective date of this AD.	The owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7) may check the airplane logbook.

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new airworthiness directive (AD) to read as follows:

Robert E. Rust: Docket No. 2000-CE–66-AD

(a) *What airplanes are affected by this AD?* This AD affects R.E. Rust Models DeHavilland DH.C1 Chipmunk 21, 22, and 22A airplanes, serial numbers C1–001 through C1–1014, that are type certificated in any category.

Note 1: We recommend all owners/operators of DeHavilland DH.C1 Chipmunk 21, 22, and 22A airplanes, serial numbers C1–001 through C1–1014, with experimental airworthiness certificates comply with the actions required in this AD.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to prevent reduced structural integrity in the primary structure of the airplane, which could result in failure of the rudder torque tube, elevator fasteners, and the vertical fin rear spar, or jamming or damage to the elevator. Such failures could lead to loss of control of the airplane.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

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Actions	Compliance	Procedures
(2) If, by checking the airplane logbook, you can positively determine that all the applicable modifications in paragraphs (d)(1)(i) and (d)(1)(ii) are incorporated, you must make an entry into the aircraft records that shows compliance with paragraphs (d)(1) and (d)(2) of this AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).	Not applicable	The owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7) may check the airplane logbook.
(3) If, by checking the airplane logbook, you determine that all the applicable modifications in paragraphs (d)(1)(i) and (d)(1)(ii) are not incorporated, or you cannot positive show that they are incorporated.. (1) Incorporate each missing modification; and (ii) You must make an entry into the aircraft records that shows compliance with this portion of the AD in accordance with seciton 43.9 of the Federal Aviation Regulations (14 CFR 43.9)	Within the next 90 days after the effective date of this AD, unless already accomplished.	British Aerospace Aerostructures Limited has issued BAE Aircraft Technical News Sheet CT (C1) No. 200, Issue 1, dated March 1, 1997.
(4) Do not incorporate Modification H 197 unless Modification H 275 has also been incorporated.	As of the effective date of this AD	British Aerospace Aerostructures Limited has issued BA3 Aircraft Technical News Sheet CT (C1) No. 200, Issue 1, dated March 1, 1997.

Note 2: Although not required by this AD, FAA highly recommends you incorporate Modification H 282.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Atlanta Aircraft Certification Office (ACO), approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note 3: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Cindy Lorenzen, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia; telephone: (770) 703–6078; facsimile: (770) 703–6097.

(g) *What if I need to fly the oirplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *How do I get copies of the documents referenced in this AD?* You may get copies of the documents referenced in this AD from DeHavilland Support Limited, Duxford Airfield, Bldg. 213, Cambridgeshire, CB2 4QR, United Kingdom, telephone: +44 1223 830090, facsimile: +44 1223 830085, e-mail: *info@dhsupport.com*. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on October 31, 2002.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–28409 Filed 11–7–02; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 228, 229 and 249

[Release Nos. 33–8144; 34–46767, International Series Release No. 1264, File No. S7–42–02]

RIN 3235–AI70

Disclosure in Management's Discussion and Analysis About Off-Balance Sheet Arrangements, Contractual Obligations and Contingent Liabilities and Commitments

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: As directed by new section 13(j) of the Securities Exchange Act of 1934, added by section 401(a) of the Sarbanes-Oxley Act of 2002, we propose to require disclosure of off-balance sheet transactions, arrangements, obligations (including contingent obligations), and other relationships of an issuer with unconsolidated entities or other persons that have, or may have, a material effect on financial condition, changes in financial condition, revenues or expenses, results of operations, liquidity, capital expenditures or capital resources. The new disclosure would be located in the "Management's Discussion and Analysis of Financial Condition and Results of Operations" ("MD&A") section in a company's disclosure documents. The proposals would require a registrant to provide, in a separately captioned subsection of MD&A, a comprehensive explanation of its off-balance sheet arrangements. The proposals also would require a registrant (other than small business issuers) to provide an overview of its aggregate contractual obligations in a tabular format and contingent liabilities and commitments in either a textual or tabular format.

DATES: Comments should be received by December 9, 2002.

ADDRESSES: You should send three copies of your comments to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. In the alternative, you may submit your comments electronically to the following address: *rule-comments@sec.gov*. To help us process and review your comments more efficiently, comments should be sent by hard copy or e-mail, but not by both methods. All comment letters should refer to File No. S7–42–02. This file number, along with the name of your organization, should be included in the subject line if you use electronic mail. Comment letters will be available for public inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549–0102. We will post electronically-submitted comment letters on the Commission's Internet Web site *(http://www.sec.gov)*. We do not edit personal identifying information, such as names or electronic mail addresses, from electronic submissions. Submit only information that you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Questions about this release should be referred to Andrew Thorpe, Division of Corporation Finance (202–942–2910) or Jenifer Minke-Girard or Eric Schuppenhauer, Office of the Chief Accountant (202–942–4400), Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: We are proposing amendments to item 303[1] of regulation S–K,[2] item 303[3] of regulation S–B,[4] item 5 of form 20–F[5] and general instruction B of form 40–F[6] under the Securities Exchange Act of 1934.[7]

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[1] 17 CFR 229.303.
[2] 17 CFR 229.10 *et seq.*
[3] 17 CFR 228.303.
[4] 17 CFR 228.10 *et seq.*
[5] 17 CFR 249.220f.
[6] 17 CFR 249.240f.
[7] 15 U.S.C. 78a *et seq.*

I. Background

On July 30, 2002, the Sarbanes-Oxley Act of 2002 was enacted.[8] Section 401(a) of the Sarbanes-Oxley Act, entitled "Disclosures in Periodic Reports," adds section 13(j) to the Securities Exchange Act of 1934, which requires the Commission to adopt final rules by January 26, 2003 (180 days after the date of enactment) to require each annual and quarterly financial report required to be filed with the Commission, to disclose "all material off-balance sheet transactions, arrangements, obligations (including contingent obligations), and other relationships of the issuer with unconsolidated entities or other persons, that may have a material current or future effect on financial condition, changes in financial condition, results of operations, liquidity, capital expenditures, capital resources, or significant components of revenues or expenses."[9] That legislative mandate is wholly consistent with the series of rulemaking and other initiatives that we have undertaken to improve the transparency and quality of corporate disclosure. Furthermore, much of the language in section 401(a) (*e.g.*, "financial condition, changes in financial condition, results of operations, liquidity, capital expenditures, capital resources and significant components of revenues or expenses") mirrors the language currently found in the MD&A rules. Moreover, much of the language and many of the concepts embodied in the legislation are consistent with the language and concepts embodied in the Commission's January 2002 statement, which discussed the desirability of enhanced disclosure in MD&A of off-balance sheet arrangements.[10] Accordingly, we are proposing to implement this provision of the Sarbanes-Oxley Act, and to simultaneously advance our initiatives to improve disclosure, by amending the current MD&A rules.[11]

The Commission has long recognized that there is a need for a narrative explanation of financial statements and accompanying footnotes and has developed MD&A over the years to fulfill this need.[12] The disclosure in MD&A is of paramount importance in increasing the transparency of a company's financial performance and providing investors with the disclosure necessary to evaluate a company and to make informed investment decisions. After the financial statements themselves, MD&A is generally the most important portion of a company's disclosure. This is so because MD&A is designed to achieve three interrelated purposes:

- To provide a narrative explanation of a company's financial statements that enables investors to see the company through the eyes of management;
- To improve overall financial disclosure and provide the context within which financial statements should be analyzed; and
- To provide information about the quality, and potential variability, of a company's earnings and cash flow, so that investors can ascertain the likelihood that past performance is indicative of future performance.

MD&A disclosure should provide investors with an understanding of management's view of the financial performance and condition of the company, as well as an appreciation of what the financial statements show and do not show, important trends and risks that have shaped the past and trends and risks that are reasonably likely to shape the future.

The MD&A rules already require disclosure regarding off-balance sheet arrangements and other contingencies. The MD&A rules are designed to cover a wide range of corporate events, including events, variables and uncertainties not otherwise required to be disclosed under U.S. generally accepted accounting principles ("GAAP").[13] For example, the current MD&A rules require disclosure of:

[8] Pub. L. 107–204, 116 Stat. 745 (2002).

[9] Pub. L. 107–204 sec. 401(a) (15 U.S.C. 78m(j)).

[10] *See* release no. 33–8056, FR–61 (Jan. 22, 2002) [67 FR 3746]. That statement was issued in response to a petition from Arthur Andersen LLP, Deloitte and Touche LLP, Ernst & Young LLP, KPMG LLP, and PricewaterhouseCoopers LLP, with the endorsement of the American Institute of Certified Public Accuuntants, for an interpretive release to facilitate enhanced MD&A disclosures. *See*, rulemaking petition No. 4–450 (Dec. 31, 2001).

[11] The Sarbanes-Oxley Act exempts from section 401 investment companies registered under section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a–8). *See* Pub. L. 107–204 sec. 405 (15 U.S.C. 7263). Therefore, registered investment companies are excluded from the scope of the proposals. The proposed rules would apply, however, to business development companies. Business development companies are defined in section 2(a)(48) of the Investment Company Act of 1940. *See* 15 U.S.C. 80a–2(a)(48). Business development companies are a category of closed-end investment companies that are not required to register under the Investment Company Act, but file forms 10–K and 10–Q, and also include MD&A in their annual reports to shareholders.

[12] *See, e.g.*, Release No. 33–5443 (Dec. 12, 1973) [39 FR 829].

[13] In *In the Matter of Caterpillar Inc.*, Release No. 34–30532 (March 31, 1992), the Commission found that Caterpillar had violated section 13(a) of the Exchange Act [15 U.S.C. 78m(a)] by failing to have disclosed the magnitude of its Brazilian subsidiary's contribution to Caterpillar's overall earnings.

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- Information necessary to an understanding of the registrant's financial condition, changes in financial condition and results of operations; [14]
- Any known trends, demands, commitments, events or uncertainties that will result in, or that are reasonably likely to result in, the registrant's liquidity increasing or decreasing in any material way; [15]
- The registrant's internal and external sources of liquidity, and any material unused sources of liquid assets; [16]
- The registrant's material commitments for capital expenditures as of the end of the latest fiscal period; [17]
- Any known material trends, favorable or unfavorable, in the registrant's capital resources, including any expected material changes in the mix and relative cost of capital resources, considering changes between debt, equity and any off-balance sheet financing arrangements.[18]
- Any unusual or infrequent events or transactions or any significant economic changes that materially affected the amount of reported income from continuing operations and, in each case, the extent to which income was so affected.[19]
- Significant components of revenues or expenses that should, in the company's judgment, be described in order to understand the registrant's results of operations; [20]
- Known trends or uncertainties that have had or that the registrant reasonably expects will have a material favorable or unfavorable impact on net sales or revenues or income from continuing operations.[21]
- Matters that will have an impact on future operations and have not had an impact in the past; [22] and
- Matters that have had an impact on reported operations and are not expected to have an impact upon future operations.[23]

The MD&A rules are intentionally flexible to elicit more meaningful disclosure and to avoid boilerplate discussions.[24] Therefore, while only one item in our current MD&A rules specifically identifies off-balance sheet arrangements,[25] the other requirements clearly require disclosure of off-balance sheet arrangements if necessary to an understanding of a registrant's financial condition, changes in financial condition and results of operations.

We have focused a great deal of our attention on enhancing MD&A disclosure in a continuing effort to improve transparency and restore investor confidence. In December 2001, we issued cautionary advice emphasizing the need for MD&A disclosure regarding a company's critical accounting policies.[26] In January 2002, we issued a statement focusing on the need for improved MD&A disclosure in the following three specific areas of concern: (1) Liquidity and capital resources, including off-balance sheet arrangements; (2) certain trading activities involving non-exchange traded contracts accounted for at fair value; and (3) relationships and transactions with persons or entities that derive benefits from their non-independent relationships with the registrant or the registrant's related parties.[27] In each of those releases, we stated our intention to consider disclosure rules that would codify our views as expressed in those releases. In May of this year, we began the codification process by proposing rules to mandate improved MD&A disclosure about a company's application of its critical accounting policies.[28] We also reiterated our intention to continue improving MD&A by proposing additional disclosure rules.[29] In keeping with those intentions, and in accordance with the mandates in the Sarbanes-Oxley Act, we now are proposing additional rules that would require companies to more effectively fulfill the purposes of MD&A.[30] As discussed below, the proposed rules would, under some circumstances, lower the threshold that triggers disclosure of off-balance sheet arrangements, require that disclosure relating to off-balance sheet arrangements must be set apart in a designated section of MD&A, and (except in the case of small business issuers) require disclosure of aggregate contractual obligations and contingent liabilities and commitments.[31]

II. Discussion of Proposed Rules

A. Objectives of the Proposed Rules

The proposals seek to improve transparency of a company's off-balance sheet arrangements and to provide an overview of aggregate contractual obligations and contingent liabilities and commitments. We believe that improvements in the quality of information in these areas is necessary for investors to better understand a company's current and future financial position and current and future sources of liquidity. Moreover, because management is in the best position to monitor and assess those aspects of its business, it also is in the best position to provide clear explanations and analysis to investors. Our objectives are:

- To implement the legislative mandate in section 401(a) of the Sarbanes-Oxley Act;
- To provide investors with the information and analysis necessary to gain a more comprehensive understanding of the implications of a company's obligations and contingencies from off-balance sheet arrangements that are neither readily apparent nor easily understood from a reading of the financial statements alone; and
- To better inform investors of the aggregate impact of short- and long-term contractual obligations and contingent liabilities and commitments, from both on- and off-balance sheet activities, by presenting a total picture in a single location.

With a greater understanding of off-balance sheet arrangements, contractual obligations and contingent liabilities and commitments, investors should be better able to understand how a company conducts significant aspects of its business (including financing), to assess the quality of earnings and to understand the risks that are not apparent on the face of the financial statements.

B. Off-Balance Sheet Arrangements

1. Background

Off-balance sheet arrangements often are used to provide financing, liquidity, market or credit risk support or to engage in leasing, hedging or research and development services. Some companies use off-balance sheet arrangements to obtain financing at a lower cost of capital than otherwise would be available to a company. Another common use of off-balance sheet arrangements is to allocate risks among third parties. Off-balance sheet arrangements may involve the use of complex structures, including structured finance or special purpose entities, to facilitate a company's transfer of, or access to, assets. In many cases, the transferor of assets has some continuing involvement with the transferred assets that may assume different forms, such as financial guarantees, retained interests, keepwell agreements [32] or other contingent arrangements designed to reduce risks to the special purpose entities or other third parties. The use of off-balance sheet arrangements may play a significant role in the continued availability of liquidity and capital resources for the transferor of assets. It also may be a source of potential risks to a company's future liquidity or results of operations.

One common off-balance sheet arrangement is used for selling financial assets through a process known as securitization.[33] For example, a company may have loans receivable or trade accounts receivable recorded on its books that it wishes to sell in order to generate liquidity, to transfer the risk of defaults to other parties or to protect itself against changes in interest rates. To securitize its receivables, a company sponsors the establishment of entities that are commonly known as special purpose entities. Once a special purpose entity has been established, it purchases the receivables from the company with cash proceeds received from issuing debt or equity securities, backed by the cash flows from the receivables, to interested investors. The company that sold the receivables to the special purpose entity may be required to provide financial support to the special purpose entity. For example, the company may agree to repurchase receivables from the special purpose entity if the receivables are in default, or the company may guarantee a specified level of cash flows on the receivables held by the special purpose entity. Alternatively, the sponsoring company may retain a subordinated interest in a pool of receivables, so that the senior interests have a cushion in the event that a portion of receivables are in default. Accordingly, the company that sold the receivables may continue to have certain obligations to the special purpose entity or a continuing interest in, and risk related to, the transferred assets. Depending on the nature of the obligations and the related accounting treatment under GAAP, the company's financial statements may not fully reflect the company's obligations in respect of the special purpose entity or its arrangements.

Transactions with special purpose entities commonly are structured so that the company that establishes or sponsors the special purpose entity and engages in transactions with it is not required to consolidate the special purpose entity into its financial statements under GAAP. The determination of whether or not to consolidate a special purpose entity begins with an analysis of whether the sponsor has a controlling financial interest in a special purpose entity.[34] Under GAAP, the usual condition for a controlling financial interest is the ownership of a majority voting interest.[35] The theory underlying consolidation is that "boundaries between separate corporate entities must be ignored to report the business carried on by a group of affiliated corporations as the economic and financial whole that it actually is."[36] Off-balance sheet arrangements, however, often are structured so that the sponsor does not have a controlling financial interest because the sponsor neither owns a majority voting interest, nor exercises control over the management of the special purpose entity. For example, a special purpose entity may be a legal entity, such as a trust, that does not issue voting stock. In addition, the activities and business decisions of the management of a special purpose entity may be subject to legally imposed limitations and therefore the control traditionally contemplated by GAAP may not exist.

Accounting standard setters in the U.S. are currently reevaluating the accounting guidance for consolidation of special purpose entities.[37] Regardless of current standards for consolidation and regardless of how those standards change as a result of the ongoing reevaluation, disclosure of off-balance sheet arrangements is vital to investor understanding.

2. Off-Balance Sheet Arrangements Covered Under the Proposals

In light of the increasing complexity of off-balance sheet arrangements and the plain language of section 401(a) of the Sarbanes-Oxley Act,[38] we believe that the proposed disclosure should address a wide variety of arrangements. Accordingly, the proposed rules define the term "off-balance sheet arrangement" as any transaction, agreement or other contractual arrangement to which an entity that is not consolidated with the registrant is a party, under which the registrant, whether or not a party to the arrangement, has, or in the future may have:

- Any obligation under a direct or indirect guarantee or similar arrangement;
- A retained or contingent interest in assets transferred to an unconsolidated entity or similar arrangement;
- Derivatives, to the extent that the fair value thereof is not fully reflected as a liability or asset in the financial statements; or
- Any obligation or liability, including a contingent obligation or liability, to the extent that it is not fully

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Disclosure of the extent of that contribution was required under the MD&A disclosure requirements, even though disclosure was not required under GAAP, because the subsidiary's earnings materially affected Caterpillar's reported income from continuing operations. *See* item 303(a)(3)(i) of regulation S–K [17 CFR 229.303(a)(3)(i)]. Furthermore, Caterpillar's MD&A should have discussed various factors which contributed to the subsidiary's earnings, such as currency translation gains, export subsidies, interest income, and Brazilian tax loss carry-forwards, because such items were significant components of its revenues that should have been identified and addressed in order for a reader of the company's financial statements to understand Caterpillar's results of operations. *Id.*

[14] *See* item 303(a) of regulation S–K [17 CFR 229.303(a)].

[15] *See* item 303(a)(1) of regulation S–K [17 CFR 229.303(a)(1)].

[16] *Id.*

[17] *See* item 303(a)(2)(i) of regulation S–K [17 CFR 229.303(a)(2)(i)].

[18] *See* item 303(a)(2)(ii) of regulation S–K [17 CFR 229.303(a)(2)(ii)].

[19] *See* item 303(a)(3)(i) of regulation S–K [17 CFR 229.303(a)(3)(i)].

[20] *Id.*

[21] *See* item 303(a)(3)(iii) of regulation S–K [17 CFR 229.303(a)(3)(ii)].

[22] *See* instruction 3(A) to item 303(a) of regulation S–K [17 CFR 229.303(a)].

[23] *See* instruction 3(B) to item 303(a) of regulation S–K [17 CFR 229.303(a)].

[24] *See* Release No. 33–6711 (April 17, 1987) [52 FR 13715].

[25] *See* item 303(a)(2)(ii) of regulation S–K [17 CFR 229.303(a)(2)(ii)].

[26] *See* Release No. 33–8040, FR–60 (Dec. 12, 2001) [66 FR 65013].

[27] *See* Release No. 33–8056, FR–61 (Jan. 22, 2002) [67 FR 3746].

[28] *See* Release No. 33–8098 (May 10, 2002) [67 FR 35620].

[29] *Id.* at 35622. In a separate proposal, for example, we proposed rules to require current disclosure on form 8–K of the creation of a material direct or contingent financial obligation of a registrant and about events triggering a direct or contingent financial obligation of a registrant. *See* proposed items 2.03 and 2.04 of form 8–K [17 CFR 249.308], Release No. 33–8106 (June 17, 2002) [67 FR 42914]. While that disclosure would not be included in MD&A, it would provide investors with current disclosure of contingent obligations when they become material. The proposed periodic MD&A disclosure of off-balance sheet arrangements would provide more comprehensive information than the proposed current disclosure.

[30] While section 401(a) of the Sarbanes-Oxley Act requires us to adopt new disclosure requirements only for periodic reports, we propose to include Securities Act registration forms that require MD&A disclosure within the scope of the proposals because the policies underlying section 401(a) apply to such registration statements.

[31] *See* section II.B.

[32] A "keepwell agreement" includes any agreement or undertaking under which a company is, or would be, obligated to provide or arrange for the provision of funds or property to an affiliate or third party.

[33] The term "securitization" refers to the process of transforming financial assets into securities.

[34] *See* Accounting Research Bulletin No. 51, *Consolidated Financial Statements* (Aug. 1959), paragraph 1.

[35] *See* FASB SFAS No. 94, *Consolidation of all Majority-Owned Subsidiaries* (Oct. 1987), paragraph 13 (amending paragraph 2 of Accounting Research Bulletin No. 51).

[36] *Id.* at paragraph 30.

[37] *See* FASB Exposure Draft, *Proposed Interpretation, Consolidation of Certain Special-Purpose Entities* (June 2002).

[38] Pub. L. 107–204 sec. 401 (15 U.S.C. 78m(j)).

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reflected in the financial statements (excluding the footnotes thereto).[39] This definition could encompass arrangements between a company and an entity conducting off-balance sheet activities, as well as arrangements between that entity and third parties and between the company and third parties.[40]

The proposed definition of off-balance sheet arrangements slightly diverges from the exact language of section 401(a) of the Sarbanes-Oxley Act. For example, the proposed definition refers to "any obligation, including a contingent obligation, that is not fully reflected in the financial statements," whereas section 401(a) refers to "obligations (including contingent obligations), and other relationships of the issuer with unconsolidated entities or other persons." The proposed definition is more focused than the language of section 401(a) in order to aid companies in disclosing off-balance sheet arrangements that warrant more focused and precise disclosure.[41] An overly broad definition could elicit unnecessarily voluminous and repetitive disclosure.[42]

Another aspect of the proposals that is not explicitly stated in the Sarbanes-Oxley Act is that the arrangements are contractual. We believe that the contemplated arrangements would be contractual and that it is appropriate to include them within our policy regarding MD&A disclosure of preliminary negotiations. Therefore, the proposals include an instruction that no obligation to make disclosure of an off-balance sheet arrangement shall arise until an unconditionally binding definitive agreement, subject only to customary closing conditions exists or, if there is no such agreement, when settlement of the transaction occurs.[43] That proposed instruction is consistent with the Commission policy set forth in an interpretive release in 1989 on disclosure of preliminary negotiations for the acquisition or disposition of assets not in the ordinary course of business.[44] In the 1989 Interpretive Release, the Commission stated that, "where disclosure is not otherwise required, and has not otherwise been made, the MD&A need not contain a discussion of the impact of [preliminary negotiations for the acquisition and or disposition of assets not in the ordinary course of business] where, in the registrant's view, inclusion of such information would jeopardize completion of the transaction."[45]

The proposed definition specifically identifies four characteristics of off-balance sheet arrangements. First, the proposed definition addresses any obligation under a direct or indirect guarantee or similar arrangement.[46] GAAP currently requires disclosure in the footnotes to the financial statements of the nature and amount of the guarantee even though the possibility of loss may be remote.[47] We believe that, with regard to off-balance sheet arrangements involving guarantees, MD&A disclosure is warranted in addition to footnote disclosure when the possibility of loss is higher than remote.[48] Second, the proposed definition includes off-balance sheet arrangements that involve a retained or contingent interest in assets transferred to an unconsolidated entity.[49] Those interests may be used to provide credit enhancement to a special purpose entity and can subsequently have a material effect on a registrant's results of operations or liquidity. Third, the proposed definition includes derivatives that are not fully reflected as liabilities or assets in the financial statements.[50] That item is designed to capture, for example, derivatives that are classified as stockholder's equity under GAAP.[51]

The proposed definition also includes any obligation or liability, including a contingent obligation or liability, to the extent that it is not "fully reflected" on the face of the financial statements.[52] This item is designed to include certain contingent liabilities that would not be classified as guarantees under GAAP and that are not recorded at fair value as of the date of the financial statements.[53] For purposes of the proposed definition, obligations or liabilities that are not considered to be fully reflected on the face of financial statements include:

- Obligations that are not classified as a liability according to GAAP;[54]
- Contingent liabilities which, as of the date of the financial statements, are not probable or, if probable, are not reasonably estimable;[55] or
- Liabilities as to which the amount recognized in the financial statements is less than the reasonably possible maximum exposure to loss under the obligation as of the date of the financial statements.[56]

The last bullet point includes within the scope of the proposed definition of off-balance sheet arrangements contingent liabilities that are partially accrued according to GAAP, but excludes liabilities recorded at fair value as of the date of the financial statements. For example, GAAP requires an accrual for a loss if information available prior to issuance of the financial statements indicates that it is probable that a liability has been incurred and the amount of the loss can be reasonably estimated.[57] In some instances where a liability is probable, a company can reasonably estimate a range of losses. A company may determine that one amount within the range is more probable than any other amount within the range. FASB interpretation no. 14 states that in that situation, a company should accrue its best estimate within the range and disclose in the notes to the financial statements the additional exposure to loss if there is at least a reasonable possibility of loss in excess of the amount accrued.[58] In that case, the contingent obligation would fall within the scope of the proposed definition because the amount accrued reflects only the most probable estimate, but does not reflect other probabilities of losses as of the date of the financial statements.

In contrast, a liability is considered to be fully reflected in the financial statements, and therefore outside the scope of the proposed definition, if it is recorded at its fair value. The fair value of a liability represents the amount at which a liability could be incurred or settled in a current transaction between willing parties other than in a forced or liquidation sale.[59] To determine fair value of a liability, management often must make an estimate of the resources that a company will have to sacrifice to settle the liability.[60] That estimate is the expected present value of the liability, and accordingly reflects the present value of all probabilities of all possible outcomes within a range. Because contingent liabilities recorded at fair value reflect the present value of all probabilities of all possible outcomes, as opposed to the most probable estimate within a range, they are considered to be fully reflected in the financial statements. For example, in some circumstances a company is required to recognize certain liabilities, such as derivatives and recourse obligations, at fair value. Under the proposed definition of off-balance sheet arrangement, those liabilities would be considered to be fully reflected in the financial statements, and outside of the scope of the proposed definition, even though the fair value of those liabilities may substantially increase in the future in response to changing events or circumstances.[61]

3. Proposed Disclosure Threshold

The structure of an off-balance sheet arrangement is not as important as the effects that the off-balance sheet arrangement may have on a company. Consistent with the language in section 401(a) of the Sarbanes-Oxley Act, the threshold for disclosure of off-balance sheet arrangements falling within the proposed definition is whether they "may have a current or future material effect on the company's financial condition, changes in financial condition, results of operations, revenues or expenses, liquidity, capital expenditures or capital resources."[62] The proposed disclosure would be required if management determines either that an off-balance sheet arrangement is material in the current period or that it may become material in the future. Disclosure would not be required for off-balance sheet arrangements where the likelihood of either the occurrence of an event, or the materiality of its effect, is remote.[63]

In the 1989 interpretive release, the Commission stated that a registrant has a duty to disclose prospective information in its MD&A where a trend, demand, event, commitment or uncertainty is both presently known to management and reasonably likely to have future material effects on the registrant's financial condition or results of operations.[64] Therefore, "reasonably likely" is the existing disclosure threshold under which information that could have a material effect on financial condition, changes in financial condition or results of operations must be included in MD&A.[65] The Commission also stated that "[r]egistrants preparing their MD&A disclosure should determine and carefully review what trends, demands, commitments, events or uncertainties are known to management."[66] According to the 1989 interpretive release, if management were unable to determine the reasonable likelihood of the occurrence of a future event or the materiality of its effect, then disclosure would be required.[67]

The 1989 interpretive release also stated that the probability/magnitude test for materiality approved by the Supreme Court in *Basic* v. *Levinson*[68] is inapposite to MD&A disclosure.[69] In articulating the probability/magnitude test, the Supreme Court stated that the materiality of speculative or contingent information or events "will depend at any given time upon the balancing of both the indicated probability that the event will occur and the anticipated magnitude of the event in light of the totality of the company activity."[70] In contrast, disclosure of prospective information in MD&A does not depend upon the balancing of probability and magnitude because the MD&A rules and

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[39] *See* proposed item 303(c)(3) of regulation S–B [17 CFR 228.303(c)(3)]; proposed item 303(a)(4)(iii) of regulation S–K [17 CFR 229.303(a)(4)(iii)]; proposed item 5.E.3 of form 20–F [17 CFR 249.220f]; and proposed general instruction 7(iii) of form 40–F [17 CFR 249.240f].

[40] For example, a loan agreement entered into by an entity unconsolidated with the registrant or third party that benefits from a pre-existing guarantee or keepwell agreement of the registrant would be included within the definition whether or not the registrant is a party to the loan agreement.

[41] Some arrangements that could be characterized as "off-balance sheet" are already subject to disclosure requirements. For example, we are proposing to exclude from the definition "contingent liabilities arising out of litigation, arbitration or regulatory actions (not otherwise related to off-balance sheet arrangements)." *See* proposed item 303(c)(3)(iv) of regulation S–B [17 CFR 228.303(c)(3)(iv)]; proposed item 303(a)(4)(iii)(D) of regulation S–K [17 CFR 229.303(a)(4)(iii)(D)]; proposed item 5.E.3(d) of form 20–F [17 CFR 249.220f]; and proposed general instruction 7(iii)(D) of form 40–F [17 CFR 249.240f].

[42] Generally accepted accounting principles address situations involving off-balance sheet arrangements in many differing contexts (*See, e.g.*, FASB SFAS No. 5, *Accounting for Contingencies* (Mar. 1975); FASB SFAS No. 13, *Accounting for Leases* (Nov. 1976); FASB SFAS No. 47, *Disclosure of Long-Term Obligations* (Mar. 1981); and FASB SFAS No. 129, *Disclosure of Information about Capital Structure* (Feb. 1997)). We do not intend for those generally accepted accounting principles to limit or modify the breadth of the proposed definition of "off-balance sheet arrangement."

[43] *See* proposed Instruction 1 to paragraph (c) of item 303 of regulation S–B [17 CFR 228.303(c)]; proposed instruction 13 to paragraph 303(a) of item 303 of regulation S–K [17 CFR 229.303(a)]; proposed instruction 1 to item 5.E. of form 20–F [17 CFR 249.220f], and proposed general instruction 7(iv) to form 40–F [17 CFR 249.240f].

[44] *See* Release No. 33–6835 (May 18, 1989) [54 FR 22427]. Hereinafter referred to as "1989 Interpretive Release."

[45] *Id.* at 22436.

[46] See proposed item 303(c)(3)(i) of regulation S–B [17 CFR 228.303(c)(3)(i)]; proposed item 303(a)(4)(iii)(A) of regulation S–K [17 CFR 229.303(a)(4)(iii)(A)]; proposed item 5.E.3(a) of form 20–F [17 CFR 249.220f]; and proposed general instruction 7(iii)(A) of form 40–F [17 CFR 249.240f]. In May 2002, the FASB proposed a new interpretation that would affect the accounting for guarantees. *See* FASB Exposure Draft, *Proposed Interpretation, Guarantor's Accounting and Disclosure Requirements for Guarantees, Including Indirect Guarantees of Indebtedness of Others* (May 2002).

[47] *See* FASB SFAS No. 5, *Accounting for Contingencies* (Mar. 1975), paragraph 12.

[48] *See* section II.B.3.

[49] *See* proposed item 303(c)(3)(ii) of regulation S–B [17 CFR 228.303(c)(3)(ii)]; proposed item 303(a)(4)(iii)(B) of regulation S–K [17 CFR 229.303(a)(4)(iii)(B)]; proposed item 5.E.3(b) of form 20–F [17 CFR 249.220f]; and proposed general instruction 7(iii)(B) of form 40–F [17 CFR 249.240f].

[50] *See* proposed item 303(c)(3)(iii) of regulation S–B [17 CFR 228.303(c)(3)(iii)]; proposed item 303(a)(4)(iii)(C) of regulation S–K [17 CFR 229.303(a)(4)(iii)(C)]; proposed item 5.E.3(c) of form 20–F [17 CFR 249.220f]; and proposed general instruction 7(iii)(C) of form 40–F [17 CFR 249.240f]. The proposals are distinct from and are not intended to duplicate the disclosures required by item 305 of regulation S–K [17 CFR 229.305] or FASB SFAS No. 133, *Accounting for Derivative Instruments and Hedging Activities* (June 1998).

[51] *See* FASB Emerging Issues Task Force Issue No. 00–19 *Accounting for Derivative Financial Instruments Indexed to, and Potentially Settled in, a Company's Own Stock* (Jan. 2001).

[52] *See* proposed item 303(c)(3)(iv) of regulation S–B [17 CFR 228.303(c)(3)(iv)]; proposed item 303(a)(4)(iii)(D) of regulation S–K [17 CFR 229.303(a)(4)(iii)(D)]; proposed item 5.E.3(d) of form 20–F [17 CFR 249.220f]; and proposed general instruction 7(iii)(D) of form 40–F [17 CFR 249.240f].

[53] *See, e.g.*, FASB Exposure Draft, *Proposed Interpretation, Guarantor's Accounting and Disclosure Requirements for Guarantees, Including Indirect Guarantees of Indebtedness of Others* (May 2002), paragraphs A8–A9.

[54] *See* FASB, Statement of Financial Accounting Concepts No. 6, *Elements of Financial Statements* (Dec. 1985), paragraphs 35–40.

[55] *See* FASB SFAS No. 5, *Accounting for Contingencies* (Mar. 1975), paragraph 8.

[56] *See* FASB Interpretation No. 14, *Reasonable Estimation of a Loss* (Sept. 1976), paragraph 3.

[57] *See* FASB SFAS No. 5, *Accounting for Contingencies* (Mar. 1975), paragraph 8.

[58] *See* FASB Interpretation No. 14, *Reasonable Estimation of a Loss* (Sept. 1976), paragraph 3.

[59] *See* FASB SFAS No. 107, *Disclosures about Fair Value of Financial Instruments* (Dec. 1991), paragraph 5.

[60] *See Id.* at paragraph 11.

[61] While not within the scope of the proposed definition of off-balance sheet arrangements, existing MD&A disclosure rules require disclosure of known trends, demands, commitments, events or uncertainties that are reasonably likely to have a material effect on the registrant's financial condition, changes in financial condition and results of operations. In addition, disclosure of assets and liabilities recorded at fair value currently is required with respect to a registrant's market risk. *See, e.g.*, item 305 of regulation S–K [17 CFR 229.305].

[62] *See* proposed item 303(c)(1) of regulation S–B [17 CFR 228.303(c)(1)]; proposed item 303(a)(4)(i) of regulation S–K [17 CFR 229. 303(a)(4)(i)]; proposed item 5.E.1 of form 20-F [17 CFR 249.220f]; and proposed general instruction 7.(i) of form 40–F [17 CFR 249.240f].

[63] *Id.* While this exclusion is not present in section 401(a) of the Sarbanes-Oxley Act, we believe that the exclusion is consistent with that legislative mandate and that it would aid companies in applying the rule to provide meaningful disclosure.

[64] *See* release no. 33–6835 (May 18, 1989) [54 FR 22427].

[65] In the January 2002 Commission statement, we indicated our view that "reasonably likely" is a lower disclosure threshold than "more likely than not." *See* release no. 33–8056, FR–61 (Jan. 22, 2002) [67 FR 3746].

[66] *See* release no. 33–6835 (May 18, 1989) [54 FR 22427].

[67] *Id.* at 22430. The Commission identified two assessments management must make where a trend, demand, commitment, event or uncertainty is known: (1) Is the known trend, demand, commitment, event or uncertainty likely to come to fruition? If management determines that it is not reasonably likely to occur, no disclosure is required. (2) If management cannot make that determination, it must evaluate objectively the consequences of the known trend, demand, commitment, event or uncertainty, on the assumption that it will come to fruition. Disclosure is then required unless management determines that a material effect on the registrant's financial condition or results of operations is not reasonably likely to occur.

[68] 485 U.S. 224 (1988).

[69] *See* release no. 33–6835 (May 18, 1989) [54 FR 22427 at fn. 27].

[70] *Basic* at 238, (quoting *SEC* v. *Texas Gulf Sulphur Co.*, 401 F. 2d 833, 849 (2nd Cir. 1968)).

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interpretive guidance specify the level of probability that would require disclosure of prospectively material information.

We read the legislative mandate in the Sarbanes-Oxley Act as suggesting a lower disclosure threshold for prospectively material information related to off-balance sheet arrangements. Instead of adopting the "reasonably likely" standard, it directs us to adopt a rule to require disclosure of items that "may" have a material current or future effect.[71] We believe that an appropriate interpretation of the disclosure threshold is best captured by the concept of "remoteness." Accordingly, the proposals would require disclosure of off-balance sheet arrangements under circumstances where management concludes that the likelihood of the occurrence of a future event and its material effect is higher than remote.[72] In other words, an off-balance sheet arrangement "may" have a current or future material effect, and disclosure would be required, unless management determines that the occurrence of an event and the materiality of its effect is outside of the realm of reasonable possibility.[73]

To apply the proposed disclosure threshold, management must make assessments similar to those required for current MD&A disclosure of known trends, demands, commitments, events or uncertainties.[74] Under the proposed disclosure threshold, management first must identify and carefully review the registrant's direct or indirect guarantees, retained interests, equity-linked or -indexed derivatives and obligations (including contingent obligations) that are not fully reflected on the face of the financial statements. Second, management must assess the likelihood of the occurrence of any known trend, demand, commitment, event or uncertainty that could either require performance of a guarantee or other obligation, or require the registrant to recognize an impairment. If management concludes that the likelihood of occurrence is remote, then no disclosure would be required under the proposed rules.[75] If management cannot make that determination, it would have to evaluate objectively the consequences of the known trend, demand, commitment, event or uncertainty on the assumption that it will come to fruition. Disclosure then would be required unless management concludes that likelihood of the event having a material effect is remote. Consistent with other disclosure threshold determinations that management must make in drafting MD&A, the assessment of remoteness must be objectively reasonable, viewed as of the time the determination is made.[76]

4. Proposed Disclosure About Off-Balance Sheet Arrangements

The proposals explicitly require a registrant to disclose the facts and circumstances that provide investors with a clear understanding of the registrant's business activities, financial arrangements and financial statements.[77] To filter out disclosure of insignificant details, the proposals require disclosure of enumerated items only to the extent necessary to an understanding of the effect of the off balance sheet arrangements on the registrant's financial condition, changes in financial condition, revenues and expenses, results of operations, liquidity, capital expenditures and capital resources.[78]

Under the proposals, a registrant would have to disclose the nature and business purpose of the off-balance sheet arrangements.[79] This disclosure should explain to investors why and how a registrant engages in off-balance sheet arrangements. For example, a registrant may indicate that the arrangements enable the company to lease certain facilities rather than acquire them, where the latter would require the registrant to recognize a liability for the financing. Other possible disclosure under this proposed requirement may indicate that the off-balance sheet arrangement enables the registrant to readily obtain cash through sales of groups of loans to a trust; to finance inventory, transportation or research and development costs without recognizing a liability; or to lower borrowing costs of affiliates by extending guarantees to their creditors.

In addition, a registrant would have to disclose, to the extent material to an understanding of the proposed disclosure, the significant terms and conditions of the arrangements.[80] This disclosure requirement may include disclosure of the terms of credit or liquidity enhancement provided by a registrant, leases, limitations on the activities or life of a special purpose entity, contracts between the registrant and a special purpose entity for goods or services or specific rights of third parties to participate in the management of a special purpose entity. This proposed disclosure requirement applies to arrangements to which a registrant is a party and to arrangements under which the registrant may have a direct or contingent obligation even though the company is not a party to the arrangement.[81] That disclosure should inform investors of the significant terms and conditions of any arrangements that may implicate a company's pre-existing guarantees, keepwell agreements or other arrangements. Terms and conditions that are not necessary to an understanding of the disclosure required under the proposals are not required to be disclosed.

The proposals would require a registrant to disclose the nature and amount of the total assets and total obligations and liabilities (including contingent obligations and liabilities) of an entity in which off-balance sheet activities are conducted.[82] This disclosure should provide the information that investors need to understand the dynamics and business activities of a registrant's off-balance sheet arrangements. For example, a registrant would have to identify the total amount of assets that it transferred to the off-balance sheet entity, amounts receivable or payable and any debt obligations incurred by the entity. This information also should provide insight into an off-balance sheet entity's risk exposure, which in turn could expose the registrant to material risk.

The proposed disclosure would provide investors with insight into the overall magnitude of a company's off-balance sheet activities, the specific impact of the arrangements on a registrant and the circumstances that could cause material contingent obligations or liabilities to come to fruition. Specific disclosure would be required of:

- The amounts of revenues, expenses, and cash flows arising from the arrangements;
- The nature and total amount of any interests retained, securities issued and other indebtedness incurred; and
- The nature and amount of any other obligations or liabilities (including contingent obligations or liabilities) of the registrant arising from the arrangements that are, or may become, material and the triggering events or circumstances that could cause them to arise.[83]

For example, this disclosure includes identification of the class and amount of any debt or equity securities issued by the registrant, either to the entity or to third parties, amounts of any guarantees, lines of credit, standby letters of credit, take-or-pay contracts or throughput contracts. This proposed disclosure requirement also includes provisions in financial guarantees or commitments, debt or lease agreements or other arrangements that could trigger a requirement for an early payment, additional collateral support, changes in terms, acceleration of maturity or the creation of an additional financial obligation. In addition, the proposals require disclosure of the circumstances under which the registrant's obligations and liabilities (including contingencies) could arise, such as adverse changes in the registrant's credit rating, financial ratios, earnings, cash flows, or stock price, or changes in the value of underlying, linked or indexed assets.[84]

Under the proposals, a registrant would have to provide management's analysis of the material effects of the off-balance sheet arrangements and resulting obligations and liabilities on the registrant's financial condition, changes in financial condition, revenues or expenses, results of operations, liquidity, capital expenditures and capital resources.[85] Possible disclosure may include a discussion of the amounts of gains or losses that were derived from sales of assets to special purpose entities in current and past periods, including the reasons for changes from period to period. If necessary, a registrant also may be required to disclose changes in the amount of third-party at-risk equity of special purpose entities and the material consequences of those changes. To adequately inform investors of the effect an off-balance sheet arrangement on liquidity and capital resources, a registrant may have to disclose that an off-balance sheet arrangement requires the registrant to maintain a certain balance of liquid assets for an extended period of time. In that instance, the disclosure should include the amount and source of the assets required to be maintained and how that restriction on capital resources will affect ongoing operations. To inform investors of the material effects of the contingent obligations that arise from off-balance sheet arrangements, a registrant would be required to disclose the amount of assets that may be required to settle any contingent obligation, the potential sources of necessary funding and whether or not circumstances indicate that a contingency will come to fruition.

The proposed analytical disclosure should provide investors with management's insight into the impact and proximity of the potential risks that may arise from material off-balance sheet arrangements. In addition, to increase investor understanding of circumstances that would have common effects with respect to a number of off-balance sheet arrangements, the proposals require registrants to disclose managements' analyses in the aggregate.[86] For example, if particular triggering events or circumstances would either require a registrant to become directly obligated, or accelerate its obligations, under a number of off-balance sheet arrangements, and the overall obligations would be material, then the proposed rules would require an analysis of the circumstances and their aggregate effect to the extent it increases understanding.

Under the proposals, management would have to provide an analysis of the degree to which the registrant relies on off-balance sheet arrangements for its liquidity and capital resources or market risk or credit risk support or other benefits.[87] This disclosure should provide investors with an understanding of the importance of off-balance sheet arrangements to the continuing operations of a registrant's business. For example, if a registrant relies on off-balance sheet arrangements for its liquidity and capital resources, a registrant may be required to disclose how often it securitizes financial assets, to what degree its securitizations are a material source of liquidity, whether it has increased or decreased securitizations from past periods and to explain such increase or decrease. If the registrant relies on off-balance sheet arrangements for market risk or credit risk support, disclosure may be required of the extent to which a group of assets has been overcollateralized and the extent to which the registrant has continuing exposure to loss. Together with the other disclosure requirements, registrants should provide information sufficient for investors to assess the extent of the risks that have been transferred and retained as a result of the arrangements.

Management also would have to discuss the effects of a termination or material reduction in the benefits of off-balance sheet arrangements.[88] If under a contractual provision, or as a result of a known event, demand, commitment, trend or uncertainty, it is reasonably likely that an off-balance sheet arrangement that materially benefits the registrant will be terminated or the benefits of the arrangement will be materially reduced, disclosure would be required of the circumstances under which such termination or reduction may occur and the material effects.[89] Under the proposals a registrant would have to disclose any contractual provisions calling for the termination or material reduction of an off-balance sheet arrangement. The disclosure would also address factors that are reasonably likely to affect the registrant's ability to continue using off-

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[71] Pub. L. 107–204 sec. 401(a) [15 U.S.C. 78m(j)].

[72] GAAP requires disclosure of some information about off-balance sheet arrangements in footnotes to the financial statements. *See, e.g.*, fn. 41. While parts of the proposed MD&A disclosure may overlap the disclosure presented in the footnotes to the financial statements, the proposed MD&A disclosure is designed to provide more comprehensive information and analysis than that which is provided in the footnotes. We believe this possible overlap to be warranted because it is consistent with our long-standing position that the financial statements and accompanying footnotes alone may be insufficient for an investor to judge the quality of earnings and the likelihood that past performance is indicative of future performance. *See* release no. 33–6711 [April 17, 1987] [52 FR 13715].

[73] "Remote" and "reasonably possible" are long-standing probability thresholds used in financial disclosure. *See* FASB SFAS No. 5, *Accounting for Contingencies* (Mar. 1975).

[74] While this proposal lowers the disclosure threshold for prospectively material information with respect to off-balance sheet arrangements, we are not proposing to lower the pre-existing "reasonably likely" threshold for other MD&A disclosure requirements.

[75] Even if management determines that the likelihood of the occurrence of an event is remote, disclosure may be required if the information is otherwise material under the probability/magnitude test. *See* Securities Act Rule 408 [17 CFR 230.408] and Exchange Act Rule 12b–20 [17 CFR 240.12b–20].

[76] *See* release no. 33–6835 (May 18, 1989) [54 FR 22427].

[77] *See* proposed item 303(c) of regulation S–B [17 CFR 228.303(c)]; proposed item 303(a)(4) of regulation S–K [17 CFR 229. 303(a)]; proposed item 5.E of form 20–F [17 CFR 249.220f]; and proposed general instruction 7 of form 40–F [17 CFR 249.240f].

[78] *Id.*

[79] *See* proposed item 303(c)(1)(i) of regulation S–B [17 CFR 228.303(c)(1)(i)]; proposed item 303(a)(4)(i)(A) of regulation S–K [17 CFR 229. 303(a)(4)(i)(A)]; proposed item 5.E.1(a) of form 20–F [17 CFR 249.220f]; and proposed general instruction 7(i)(*A*) of form 40–F [17 CFR 249.240f].

[80] *Id.*

[81] *See supra* fn. 40.

[82] *See* proposed item 303(c)(1)(ii) of regulation S–B [17 CFR 228.303(c)(1)(ii)]; proposed item 303(a)(4)(i)(B) of regulation S–K [17 CFR 229.303(a)(4)(i)(B)]; proposed item 5.E.1(b) of form 20–F [17 CFR 249.220f]; and proposed general instruction 7(i)(B) of form 40–F [17 CFR 249.240f].

[83] *See* proposed item 303(c)(1)(iii) of regulation S–B [17 CFR 228.303(c)(1)(iii)]; proposed item 303(a)(4)(i)(C) of regulation S–K [17 CFR 229.303(a)(4)(i)(C)]; proposed item 5.E.1(c) of form 20–F [17 CFR 249.220f]; and proposed general instruction 7(i)(*C*) of form 40–F [17 CFR 249.240f].

[84] *Id.*

[85] *See* proposed item 303(c)(1)(iv) of regulation S–B [17 CFR 228.303(c)(1)(iv)]; proposed item 303(a)(4)(i)(D) of regulation S–K [17 CFR 229.303(a)(4)(i)(D)]; proposed item 5.E.1(d) of form 20–F [17 CFR 249.220f]; and proposed general instruction 7(i)(D) of form 40–F [17 CFR 249.240f].

[86] *Id.*

[87] *Id.*

[88] *See* proposed item 303(c)(2) of regulation S–B [17 CFR 228.303(c)(2)]; proposed item 303(a)(4)(ii) of regulation S–K [17 CFR 229.303(a)(4)(ii)]; proposed item 5.E.2 of form 20–F [17 CFR 249.220f]; and proposed general instruction 7(ii) of form 40–F [17 CFR 249.240f].

[89] *Id.*

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balance sheet arrangements. For example, if a registrant's credit rating were to fall below a certain level, some off-balance sheet arrangements may require a registrant to purchase the assets or assume the liabilities of a special purpose entity. In addition, a change in a registrant's credit rating could either preclude or materially reduce the benefits to the registrant of engaging in off-balance sheet arrangements. In such cases, the registrant would have to disclose known circumstances that would be reasonably likely to cause its credit rating to fall to the specified level and discuss the material consequences.

Request for Comment

- Have we appropriately tailored the proposed definition of the term "off-balance sheet arrangement" and the proposed disclosure to filter out disclosure that is unimportant to investors? If not, how should we change the proposed definition or disclosure requirements?
- Is the proposed definition too narrow? If so, how should we change it to include other off-balance sheet arrangements that are significant to investors?
- Is the proposed definition of an "off-balance sheet arrangement" sufficiently clear to enable registrants to determine which derivative instruments are included in the proposed disclosure requirements and which are not?
- Is it appropriate to apply our existing policy of excluding preliminary negotiations from MD&A disclosure to off-balance sheet arrangements?
- Is the proposed "remote" disclosure threshold appropriate and consistent with the language in section 401(a) of the Sarbanes-Oxley Act? If not, how should we change it?
- Would it be appropriate under the language in section 401(a) of the Sarbanes-Oxley Act to apply the "reasonably likely" disclosure threshold applicable elsewhere in MD&A to disclosure about off-balance sheet arrangements? If so, should we adopt the "reasonably likely" standard for disclosure of off-balance sheet arrangements?
- Would the application of the disparate disclosure threshold proposed to apply to disclosure of off-balance arrangements, in comparison to the "reasonably likely" standard used elsewhere in MD&A, attribute undue prominence to information about off-balance sheet arrangements in relation to other significant information?
- Should we consider amending current MD&A rules to lower the existing "reasonably likely" disclosure threshold to be consistent with the threshold in the proposals?
- Would the proposed disclosure threshold for prospectively material information related to off-balance sheet arrangements yield comparable disclosures among registrants?
- Is there any basic information not required by the proposals that would be necessary to understand a registrant's off-balance sheet arrangements? If so, what additional disclosure should be required?
- Do the proposals provide enough flexibility to companies to fully and clearly describe their off-balance sheet arrangements? Would a more flexible approach, such as the current MD&A requirements for liquidity and capital resources, result in better disclosure?
- Would a registrant be able to monitor and provide disclosure about arrangements to which it is not a party, yet that may create direct or contingent liabilities or obligations for the registrant?
- Is there any management analysis not required by the proposals that would be necessary for an investor to gain an understanding of the magnitude and proximity of risk exposures and financial impact of a registrant's off-balance sheet arrangements? If so, what additional disclosure should be required?

C. Contractual Obligations and Contingent Liabilities and Commitments

Disclosure of contractual obligations and contingent liabilities and commitments currently is dispersed throughout various parts of a registrant's filings. While section 401(a) of the Sarbanes-Oxley Act does not direct us to adopt a disclosure requirement, we believe that aggregated information about contractual obligations and contingent liabilities and commitments in a single location would improve transparency of a registrant's short- and long-term liquidity and capital resource needs and demands. It also would provide appropriate context for investors to assess the relative role of off-balance sheet arrangements with respect to liquidity and capital resources. We therefore propose to require certain registrants to include tabular disclosure about contractual obligations, and either tabular or textual disclosure about contingent liabilities and commitments in the MD&A section.[90] The disclosure would include information about a registrant's known contractual obligations and contingent liabilities and commitments, encompassing both on- and off-balance sheet arrangements as of the latest balance sheet date.[91] We are not proposing that this requirement apply to small business issuers.[92]

1. Proposed Tabular Disclosure in MD&A

The proposed table requires disclosure of the amounts of contractual obligations, aggregated by type of contractual obligation, for at least the periods specified in the table below.[93] To provide flexibility for company-specific disclosure, a registrant may either use the categories of obligations specified in the proposed table or other categories suitable for its business.[94] The table should be accompanied by footnotes necessary to describe provisions that create, increase or accelerate obligations, or other pertinent data.

Contractual Obligations	Payments due by period				
	Total	Less than 1 year	1–3 years	3–5 years	More than 5 years
[Long-Term Debt]					
[Capital Lease Obligations]					
[Operating Leases]					

[90] *See* proposed item 303(a)(5) of regulation S–K [17 CFR 229.303(a)(5)]; proposed item 5.F of form 20–F [17 CFR 249.220f]; and proposed general instruction 8 of form 40–F [17 CFR 249.240f].

[91] *Id.*

[92] "Small business issuer" is defined to mean any entity that (1) has revenues of less than $25,000,000; (2) is a U.S. or Canadian issuer; (3) is not an investment company; and (4) if a majority-owned subsidiary, has a parent corporation that also is a small business issuer. An entity is not a small business issuer, however, if it has a public float (the aggregate market value of the outstanding equity securities held by non-affiliates) of $25,000,000 or more. *See* 17 CFR 228.10.

[93] *See* proposed item 303(a)(5)(i) of regulation S–K [17 CFR 229.303(a)(5)(i)]; proposed item 5.F.1 of form 20–F [17 CFR 249.220f]; and proposed general instruction 8(i) of form 40–F [17 CFR 249.240f].

[94] *Id.*

Contractual Obligations	Payments due by period				
	Total	Less than 1 year	1–3 years	3–5 years	More than 5 years
[Unconditional Purchase Obligations]					
[Other Long-Term Obligations]					
[Total Contractual Obligations]					

2. Proposed Disclosure of Contingent Liabilities or Commitments

Under the proposals, a registrant would have to disclose, either in tabular format or in text, the expected amount, range of amounts or maximum amount of contingent liabilities or commitments that are expected to expire in less than one year, from one to three years, from three to five years, and more than five years. The disclosure should indicate whether the amount disclosed is an expected amount or maximum amount if a range is not presented. The contingent liabilities or commitments must be aggregated by type in a manner that is suitable for the registrant's business. Examples of contingent liabilities or commitments that would be covered under the proposals are lines of credit, standby letters of credit, guarantees, and standby repurchase obligations. The disclosure should address, in footnotes to the table or in the text, provisions of contingent liabilities that create, increase or accelerate obligations, or other pertinent data.

As with other MD&A requirements, a registrant would have to disclose material changes to the amounts of contractual obligations and contingent liabilities and commitments.[95] The registrant would not be required to include the table or repeat the other proposed required textual disclosure in quarterly reports.[96] Instead, the registrant may disclose material changes by including a discussion of the relevant changes.

Request for Comment

- Should we require the proposed table to be accompanied by additional narrative disclosure regarding liquidity and capital resources above and beyond that which already exists in MD&A?
- Should we adopt definitions of "contractual obligations" and "contingent liabilities or commitments" If so, what should they be?
- To avoid potential abuses and to promote comparable disclosure among companies, should we include an instruction to the table that would limit the extent to which a registrant may adapt the table to its particular circumstances? If so, what limits should we impose?
- Should the proposed rules state that no disclosure is required with respect to the issuance of notes, drafts, acceptances, bills of exchange or other commercial instruments with a maturity of one year or less issued in the ordinary course of the registrant's business?

D. Presentation of Proposed Disclosure

1. Separate Disclosure Sections

The proposals would require a registrant to present the proposed disclosure about off-balance sheet arrangements set apart in a designated section of MD&A. In contrast, a registrant may place the tabular and textual disclosure of known contractual obligations and contingent liabilities and commitments in an MD&A location that it deems to be appropriate. While the proposed disclosure in the separate section may relate to other aspects of MD&A, such as the results of operations or liquidity and capital resources, a distinct presentation of the information would highlight it for readers of MD&A and enable investors to more easily compare disclosure of different companies. Investors will often find information relating to a particular matter more meaningful if it is disclosed in a single location, rather than presented in a fragmented manner throughout the MD&A. In addition, a distinct presentation of each section would layer the MD&A, which would enable investors with varying levels of interest and financial acumen to easily obtain desired information.

2. Language and Format

The proposed MD&A discussion should be presented in language and a format that is clear, concise and understandable. It should not be presented in such a manner that only an investor who is also an accountant or financial expert or an expert on a particular industry would be able to fully understand it. Boilerplate disclosures that do not specifically address the registrant's particular circumstances and operations also would not satisfy the proposed requirements. Under the proposals, a registrant should aggregate similar arrangements to the extent practicable, but the registrant must discuss important distinctions in terms and effects of the aggregated arrangements.[97] Disclosure that could easily be transferred from year to year, or from company to company, with no change would neither inform investors adequately nor reflect the independent thinking that must accompany the assessment by management that is intended under the proposal.

Request for Comment

- Should we require the proposed disclosure to be presented in a separate MD&A section or should it be integrated into other closely related MD&A discussions of financial condition, changes in financial condition, results of operations and liquidity and capital resources?
- To facilitate the layering of MD&A, should we amend the MD&A rules to require separate captions for the required discussions of results of operations, liquidity and capital resources?

E. Other MD&A Disclosure

While certain elements of the information required by these proposals are subsumed by existing MD&A requirements, financial statement disclosure requirements and materiality standards, we believe that more focused and specific disclosure requirements would best achieve our objectives and effectuate the will of Congress. The proposals are intended to complement and clarify the more general MD&A disclosure provisions that require a registrant to provide information about how known trends or uncertainties affect its liquidity, capital resources and results of operations, and other information necessary to an understanding of its financial condition, changes in financial condition and results of operations.[98] While that

[95] *See*, e.g., item 303(b) of regulation S–K [17 CFR 229.303(b)].

[96] *See* proposed instruction 7 to paragraph (b) of item 303 of regulation S–K [17 CFR 229.303(b)].

[97] *See* proposed item 303(c)(1) of regulation S–B [17 CFR 228.303(c)(1)]; proposed item 303(a)(4)(i) of regulation S–K [17 CFR 229. 303(a)(4)(i)]; proposed item 5.E.1 of Form 20–F [17 CFR 249.220f]; and proposed general instruction 7(i) of Form 40–F [17 CFR 249.240f].

[98] *See* item 303(a) of regulation S–K [17 CFR 229.303(a)].

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disclosure mandate is general in nature, the responsive MD&A disclosures should be sufficiently detailed and tailored to the registrant's individual circumstances.[99]

In an effort to provide guidance to public companies, our January 2002 statement presents a number of factors that management should consider to identify the trends, demands, commitments, events and uncertainties that require disclosure with respect to liquidity and capital resources.[100] It also addresses MD&A disclosure of relationships and transactions with persons or entities that derive benefits from their non-independent relationships with the registrant or the registrant's related parties.[101] We believe that existing disclosure requirements, including the January 2002 Commission statement, address disclosure in those areas. Therefore, to avoid unnecessary duplication of disclosure we are only proposing to codify the positions in our January 2002 statement as they relate to off-balance sheet arrangements. We believe that the factors addressed in our January 2002 statement remain useful for management to consider in meeting its MD&A disclosure obligations of liquidity and capital resources and transactions with persons or entities that derive benefits from their non-independent relationships with the registrant or the registrant's related parties.

There are some transactions that, while referred to as "off-balance sheet arrangements," may not fall within the scope of the proposals. For example, some off-balance sheet arrangements do not create contingent liabilities or obligations. A registrant may routinely securitize financial assets without providing any recourse or credit or liquidity support to a special purpose entity. Existing requirements may require a registrant to discuss those activities in its MD&A discussion of liquidity and capital resources.[102] If an off-balance sheet arrangement does not fall within the scope of the proposed disclosure requirements, yet disclosure would be required under the other provisions of MD&A, a registrant may choose whether or not to provide the disclosure in the separately-captioned section required by this proposal. We would encourage that any such disclosure in the MD&A be organized so that it is most useful and understandable to investors.

Request for Comment

- Should we further amend the MD&A rules to require more specific disclosure about liquidity and capital resources? If so, what specific disclosure items should we include?
- Should we further amend the MD&A rules to require more specific disclosure about relationships and transactions with persons or entities that derive benefits from their non-independent relationships with the registrant or the registrant's related parties? If so, what specific disclosure items should we include?
- Should we codify the factors that we identified in our January 2002 Commission statement for management's consideration in identifying the trends, demands, commitments, events and uncertainties that require disclosure with respect to liquidity and capital resources? Are there other factors that should be included in such a codification?

F. Application of the Proposals to Foreign Private Issuers

The proposed MD&A disclosure requirements would apply to foreign private issuers[103] that file annual reports on Form 20–F[104] or on Form 40–F.[105] Because section 401(a) of the Sarbanes-Oxley Act does not distinguish between foreign private issuers and U.S. companies, we interpret Congress' directive to the Commission to adopt rules requiring expanded disclosure about off-balance sheet transactions in annual reports filed with the Commission to apply equally to Form 20–F or 40–F annual reports filed by foreign private issuers as well as to Form 10–K or 10–KSB annual reports filed by domestic issuers.[106]

There are two additional reasons for applying the proposed rules to foreign private issuers' annual reports filed with the Commission. First, investors and others would enjoy the same benefits from expanded off-balance sheet disclosure in foreign private issuers' annual reports as they would from this disclosure in domestic issuers' annual reports. Second, for Form 20–F annual reports, the existing MD&A-equivalent requirements for foreign private issuers currently mirror the substantive MD&A requirements for U.S. companies. We believe this desirable policy should continue.[107]

The disclosure provided by Canadian issuers that file form 40–F is generally that required under Canadian law. We have, however, supplemented these disclosure requirements with specific required items of information.[108] We have proposed additional disclosure requirements under form 40–F as a result of the Sarbanes-Oxley Act.[109] Although an issuer prepares its MD&A discussion contained in a form 40–F registration statement or annual report in accordance with Canadian disclosure standards, we believe that requiring disclosure of off-balance sheet arrangements in accordance with SEC rules is not inconsistent with the principles of the MJDS, is consistent with the Sarbanes-Oxley Act, and, most importantly, will provide investors with useful information that is comparable to that provided by U.S. and other foreign companies that file reports under the Exchange Act.

Section 401(a) of the Sarbanes-Oxley Act also requires the Commission to adopt off-balance sheet disclosure rules that apply to "each quarterly financial report required to be filed with the Commission."[110] Since foreign private issuers are not required to file "quarterly" reports with the Commission, the proposed rules would not apply to Form 6–K reports submitted by foreign private issuers to provide copies of materials required to be made public in their home jurisdictions.[111] Thus, unless a foreign private issuer files a Securities Act registration statement that must include interim period financial statements and related MD&A disclosure, it would not be required to update the proposed MD&A disclosure more frequently than annually.[112]

Request for Comment

- Should we apply the proposed rules to foreign private issuers' annual reports on Form 20–F or 40–F, as proposed? Or should we exempt these foreign private issuer annual reports from the scope of the proposed rules? If so, why?
- Should we exempt Form 40–F, the MJDS annual report filed by qualified Canadian issuers, from the scope of the proposed rules? If so, why?
- If we should require foreign private issuers to provide some expanded disclosure regarding off-balance sheet transactions and other similar items in their annual reports, should we adopt rules that apply different standards for foreign private issuers compared to the standards adopted for domestic issuers but that would be consistent with the Sarbanes-Oxley Act? If so, what standards would you substitute for the proposed rules?
- Should we exempt form 6–K reports from the scope of the proposed rules, as proposed? Or should we apply the proposed rules to form 6–K reports that include quarterly financial statements?

G. Proposed Safe Harbor for Forward-Looking Information

Some of the disclosure required by the proposals would require disclosure of forward-looking information.[113] To encourage the type of information and analysis necessary for investors to understand the impact of off-balance sheet arrangements, the proposals include a safe harbor for forward-looking information.[114] The proposed safe harbor explicitly applies the statutory safe harbor protections (sections 27A of the Securities Act and 21E of the Exchange Act)[115] to forward-looking information that would be required to be disclosed by the proposals.

The statutory safe harbors contain provisions to protect forward-looking statements against private legal actions that are based on allegations of a material misstatement or omission.[116] The statutory safe harbors provide three separate bases for a registrant to claim the protection against liability for forward-looking statements made in the registrant's MD&A. First, a forward-looking statement would fall within the safe harbors if it is identified as forward-looking and accompanied by meaningful cautionary statements that identify important factors that could cause actual results to differ materially from those in the forward-looking statement. Second, the safe harbors protect from private liability any forward-looking statement that is not material. Finally, the safe harbors preclude private liability if a plaintiff fails to prove that the forward-looking statement was made by or with the approval of an executive officer of the registrant who had actual knowledge that it was false or misleading. The statutory safe harbors cover statements by reporting companies, persons acting on their behalf, outside reviewers retained by them, and their underwriters (when using information from, or derived from, the companies).

Because we believe that it would promote more meaningful disclosure, we are invoking rulemaking authority under sections 27A and 21E to ensure the application of the statutory safe harbors to the forward-looking statements that would be required under the proposed rules.[117] The proposed safe harbors are designed to remove possible ambiguity about whether the statutory safe harbors would apply to some of the statements made in response to the proposed disclosure requirements. The proposed safe harbor specifies that, except for historical facts, some of the disclosure would be deemed to be a "forward looking statement" as that term is defined in the statutory safe harbors.[118] Under the proposed MD&A safe harbor, all of the conditions of the statutory safe harbors must be met. Accordingly, we urge companies preparing the proposed MD&A disclosure to consider the terms, conditions and scope of the statutory safe harbors in drafting their disclosure and to tailor the required cautionary language to the specific forward-looking statements being made.

Request for Comment

- Should the proposed safe harbor be expanded to apply to all forward-looking information in MD&A, regardless of whether the information

[99] In addition to the information specifically required, a company would be required to provide any other information necessary to keep its disclosure from being materially misleading. *See* Securities Act Rule 408 [17 CFR 230.408] and Exchange Act Rule 12b–20 [17 CFR 240.12b–20].

[100] *See* release No. 33–8056, FR–61 (Jan. 22, 2002) [67 FR 3746], section II.A.1.

[101] *Id.* at section II.C.

[102] *See* item 303(a)(2)(ii) of regulation S–K [17 CFR 229.303(a)(2)(ii)]. This section provides that the description of known material trends in capital resources must consider off-balance sheet financing arrangements.

[103] A foreign private issuer is a non-U.S. company except for a company that has more than 50% of its outstanding voting securities owned by U.S. investors and has a majority of its officers and directors residing in or being citizens of the U.S., has a majority of its assets located in the U.S., or has its business principally administered in the U.S. *See* Exchange Act Rule 3b–4 [17 CFR 240.3b–4].

[104] 17 CFR 249.220f.

[105] 17 CFR 249.240f. Form 40–F is the form used by qualified Canadian issuers to file their Exchange Act registration statements and annual reports with the Commission in accordance with Canadian disclosure requirements under the U.S.-Canadian Multijurisdictional Disclosure System ("MJDS").

[106] Similarly, the Commission recently adopted rules pertaining to the certification requirements under section 302 of the Sarbanes-Oxley Act that apply to both Form 20–F and Form 40–F annual reports as well as to those filed on the domestic forms. *See* Release no. 33–8124 (August 29, 2002) [67 FR 57276].

[107] Although we revised the wording of the MD&A item in Form 20–F in 1999, the adopting release noted that we interpret that item as requiring the same disclosure as item 303 of regulation S–K. *See* Release No. 33–7745 (September 28, 1999) [64 FR 53900 at 59304]. In addition, instruction 1 to item 5 in Form 20–F provides that issuers should refer to the Commission's 1989 interpretive release on MD&A disclosure under item 303 of regulation S–K for guidance in preparing the discussion and analysis by management of the company's financial condition and results of operations required in Form 20–F. *See* Release No. 33–6835 (May 18, 1989) [54 FR 22427].

[108] For example, under general instruction C.2 of Form 40–F, the issuer must usually include financial information that is reconciled to U.S. generally accepted accounting principles.

[109] We have recently proposed to amend Form 40–F to require disclosure concerning whether the issuer has adopted a code of ethics applicable to certain officers and whether it has a financial expert on its audit committee. *See* Release No. 33–8138 (October 22, 2002) [67 FR 66208].

[110] Exchange Act section 13(j) [15 U.S.C. 78m(j)].

[111] A foreign private issuer must furnish under cover of Form 6–K material information that it makes public or is required to make public under its home country laws or the rules of its home country stock exchange or that it distributes to security holders. While foreign private issuers may submit interim financial information under cover of Form 6–K, they do so pursuant to their home country requirements and not because of a Commission requirement to submit updated financial information for specified periods and according to specified standards. Therefore, we do not believe that a Form 6–K constitutes a "periodic" or "quarterly" report analogous to a Form 10–Q or 10–QSB for which expanded disclosure is required. We similarly exempted Form 6–K reports from the recently adopted section 302 certification requirements. *See* Release No. 33–8124 at n. 50.

[112] Similar to our treatment of Securities Act registration statements filed by domestic issuers, we are including within the scope of the proposals Securities Act registration statements filed by foreign private issuers on Forms F–1, F–2, F–3 and F–4 [17 CFR 239.31–239.34]. Each of these registration statements references Form 20–F's disclosure requirements. The proposed rules would not apply to Securities Act registration statements filed by Canadian issuers under the MJDS because we believe them to be outside the scope of the directive in section 401(a) of the Sarbanes-Oxley Act, which addresses only periodic reports. These MJDS registration statements are based on Canadian disclosure requirements. We believe that extending the disclosure requirements to Securities Act registration statements filed under the MJDS would be contradictory to the policies underlying the MJDS.

[113] *See, e.g.*, proposed item 303(c)(1)(iv) of regulation S–B [17 CFR 228.303(c)(1)(iv)]; proposed item 303(a)(4)(i)(D) of regulation S–K [17 CFR 229.303(a)(4)(i)(D)]; proposed item 5.E.1(d) of Form 20–F [17 CFR 249.220f]; and proposed general instruction 7(i)(D) of Form 40–F [17 CFR 249.240f].

[114] *See* proposed item 303(d) of regulation S–B [17 CFR 228.303(d)]; proposed item 303(c) of regulation S–K [17 CFR 229. 303(c)]; proposed item 5.G of Form 20–F [17 CFR 249.220f]; and proposed general instruction 9 of Form 40–F [17 CFR 249.240f].

[115] *See* 15 U.S.C. 77z–2 and 78u–5.

[116] While the statutory safe harbors by their terms do not apply to forward-looking statements included in financial statements prepared in accordance with U.S. GAAP, they do cover MD&A disclosures. The statutory safe harbors would not apply, however, if the MD&A forward-looking statement were made in connection with: an initial public offering, a tender offer, an offering by a partnership or a limited liability company, a roll-up transaction, a going private transaction, an offering by a blank check company or a penny stock issuer, or an offering by an issuer convicted of specified securities violations or subject to certain injunctive or cease and desist actions. *See* 15 U.S.C. 77z–2(b) and 78u–5(b).

[117] *See* proposed item 303(d)(1) of regulation S–B [17 CFR 228.303(d)(1)]; proposed item 303(c)(i) of regulation S–K [17 CFR 229. 303(c)(i)]; proposed item 5.G.1 of form 20–F [17 CFR 249.220f]; and proposed general instruction 9(i) of form 40–F [17 CFR 249.240f].

[118] *See* proposed item 303(d)(2) of regulation S–B [17 CFR 228.303(d)(2)]; proposed item 303(c)(ii) of regulation S–K [17 CFR 229. 303(c)(ii)]; proposed item 5.G.2 of form 20–F [17 CFR 249.220f]; and proposed general instruction 9(ii) of form 40–F [17 CFR 249.240f].

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relates to off-balance sheet arrangements?

• Is there any need for the proposed safe harbor, or would the statutory safe harbors afford sufficient protection to encourage the type of information and analysis necessary for investors to understand the impact of off-balance sheet arrangements?

H. Other Safe Harbors for Forward-Looking Information

Notwithstanding the proposed safe harbor for forward looking statements, the statutory safe harbor, by its terms, may be available for some of the disclosure required by the proposals. Companies preparing disclosure under the proposals that would constitute a forward-looking statement should consider the conditions under which several existing safe harbors apply. As defined in the relevant statutory provisions, a "forward-looking statement" generally is:

• A statement containing a projection of revenues, income (or loss), earnings (or loss) per share, capital expenditures, dividends, capital structure, or other financial items;

• A statement of the plans and objectives of management for future operations, including plans or objectives relating to the products or services of the issuer;

• A statement of future economic performance, including any such statement contained in MD&A;

• Any statement of assumptions underlying or relating to any statement described in the three bullet points above; or

• Any report issued by an outside reviewer retained by an issuer, to the extent that the report assesses a forward-looking statement made by the issuer.[119]

In addition, two Commission rules under those Acts that pre-date the adoption of the statutory safe harbors also provide protection for forward-looking statements. The Commission safe harbor rules that apply to forward-looking statements are Securities Act rule 175 and Exchange Act rule 3b–6.[120] Under those rules, a forward-looking statement made by or on behalf of a registrant is deemed not to be a fraudulent statement if it is made in good faith and made or reaffirmed with a reasonable basis. The rule-based safe harbors apply to a registrant if it is a reporting company at the time it makes the forward-looking statement. These safe harbors also apply to a registrant that is not a reporting company, but makes the statement in a Securities Act registration statement[121] or an Exchange Act registration statement. The safe harbors cover forward-looking statements in filed documents, in annual reports to shareholders[122] and in part 1 of forms 10–Q and 10–QSB.[123]

[119] *See* 15 U.S.C. 77z–2 and 78u–5.

[120] See 17 CFR 230.175 and 17 CFR 240.3b–6.

[121] Thus, unlike the statutory safe harbors, the rule 175 safe harbor would protect MD&A forward-looking statements made in a registration statement or prospectus for an initial public offering.

[122] *See* Exchange Act rule 14a–3 [17 CFR 240.14a–3].

[123] The rule safe harbors also cover statements that reaffirm forward-looking statements made in those documents and forward-looking statements made prior to filing or submission of those documents that are reaffirmed in those documents. In addition to the statutory and rule safe harbors directed at forward-looking statements, companies preparing the proposed MD&A disclosure also could be protected by the "bespeaks caution" legal doctrine that has developed through case law and is recognized by most circuit courts of appeal. *See, e.g., Lilley* v. *Charren*, 2001 U.S. App. LEXIS 19430 (9th Cir. 2001); *EP Medsystems, Inc.* v. *Echocath Inc.*, 235 F.3d 865; (3d Cir. 2000); *Parnes* v. *Gateway 2000*, 122 F.3d 539 (8th Cir. 1997). The bespeaks caution doctrine recognizes that forecasts, projections and expectations must be read in context and that accompanying cautionary language can render a misstatement or omission immaterial or render a plaintiff's reliance on it unreasonable. For a forward-looking statement to be covered by the bespeaks caution doctrine, there must be adequate cautionary language that warns investors of the potential risks related to the forward-looking statement.

III. General Request for Comment

The Commission is proposing these amendments to the MD&A requirements to improve the quality and relevance of explanatory disclosure about a registrant's financial condition, changes in financial condition, results of operations and reasonably likely trends, demands, commitments, events and uncertainties affecting a registrant. We welcome your comments. We solicit comment, both specific and general, upon each component of the proposals. If you would like to submit written comments on the proposals, to suggest additional changes or to submit comments on other matters that might affect the proposals, we encourage you to do so.

Request for Comment

• Is the additional information elicited by the proposals useful to investors, other users of company disclosure and readers of a company's financial statements? If not, how can it be improved to achieve that goal?

• In addition to the requirements we propose, are there particular aspects of off-balance sheet arrangements, contractual obligations and contingent liabilities and commitments that the proposals should specifically require companies to address? If so, what are they?

• If the proposed disclosure would involve competitive or other sensitive information, are there any mechanisms that would ensure full and accurate disclosure while reducing a company's risk of competitive harm?

• Are there aspects of the proposed disclosure that should be retained while other parts of the proposed disclosure are eliminated? We solicit comment on the desirability of adopting some sections of the proposed rules, but not all sections.

Any interested person wishing to submit written comments on any aspect of the proposals, as well as on other matters that might have an impact on the proposals, is requested to do so. In addition, we request comment on whether any further changes to our rules and forms are necessary or appropriate to implement the objectives of the proposals. Please submit three copies of your comment letter to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. You may also submit comments electronically to the following e-mail address: *rule-comments@sec.gov*.[124] To help us process and review your comments more efficiently, comments should be sent by hard copy or e-mail, but not by both methods. All comments should refer to file number S7–42–02. If you are commenting by e-mail, include this file number in the subject line, as well as the name of your organization. We will make comments available for public inspection and copying in the Commission's public reference room at 450 Fifth Street, NW., Washington, DC 20549–0102. In addition, we will post electronically submitted comments on our Internet website (*www.sec.gov*).

IV. Paperwork Reduction Act

A. Background

The proposed amendments to regulations S–B, S–K,[125] form 20–F and form 40–F contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 ("PRA").[126] We are submitting the proposal to the Office of Management and Budget ("OMB") for review in accordance with the PRA.[127]

[124] For more information on how to submit comments electronically, *see www.sec.gov/rules/submitcomments.htm*.

[125] Although we are proposing amendments to regulations S–B and S–K, the burden is imposed through the forms that refer to the disclosure regulations. To avoid a Paperwork Reduction Act inventory reflecting duplicative burdens, we estimate the burdens imposed by regulations S–B and S–K to be one hour.

[126] 44 U.S.C. 3501 *et seq.*

[127] 44 U.S.C. 3507(d) and 5 CFR 1320.11.

titles for the collections of information are:

(1) "Form S–1" (OMB Control No. 3235–0065);

(2) "Form F–1" (OMB Control No. 3235–0258);

(3) "Form SB–2" (OMB Control No. 3235–0418);

(4) "Form S–4" (OMB Control No. 3235–0324);

(5) "Form F–4" (OMB Control No. 3235–0325);

(6) "Form 10" (OMB Control No. 3235–0064);

(7) "Form 10–SB" (OMB Control No. 3235–0419);

(8) "Form 20–F" (OMB Control No. 3235–0288);

(9) "Form 40–F" (OMB Control No. 3235–0381);

(10) "Form 10–K" (OMB Control No. 3235–0063);

(11) "Form 10–KSB" (OMB Control No. 3235–0420);

(12) "Proxy Statements—Regulation 14A (Commission Rules 14a–1 through 14a–15) and Schedule 14A" (OMB Control No. 3235–0059);

(13) "Information Statements—Regulation 14C (Commission Rules 14c–1 through 14c–7 and Schedule 14C)" (OMB Control No. 3235–0057);

(14) "Form 10–Q" (OMB Control No. 3235–0070);

(15) "Form 10–QSB" (OMB Control No. 3235–0416);

(16) "Regulation S–K" (OMB Control No. 3235–0071); and

(17) "Regulation S–B" (OMB Control No. 3235–0417).

These regulations and forms were adopted pursuant to the Securities Act and the Exchange Act and set forth the disclosure requirements for annual and quarterly reports, registration statements and proxy and information statements filed by companies to ensure that investors are informed. The hours and costs associated with preparing, filing, and sending these forms constitute reporting and cost burdens imposed by each collection of information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Under the proposals, we would require public companies to include a discussion of material off-balance sheet arrangements, contractual obligations and contingent liabilities and commitments in the MD&A section of their filings with the Commission. We are proposing these rules pursuant to the legislative mandate in section 401(a) of the Sarbanes-Oxley Act of 2002.[128] Compliance with the revised disclosure requirements would be mandatory. There would be no mandatory retention period for the information disclosed, and responses to the disclosure requirements would not be kept confidential.

For purposes of the Paperwork Reduction Act, we estimate the annual incremental paperwork burden for all companies to prepare the disclosure that would be required under our proposals to be approximately 366,337 hours of company personnel time and a cost of approximately $44,795,000 for the services of outside professionals.[129] That estimate includes the time and the cost of in-house preparers, reviews by executive officers, in-house counsel, outside counsel, independent auditors and members of the audit committee.[130]

B. Methodology

1. Initial Calculation of Preparation Time

We derived the above estimates first by estimating the total amount of time it would take to a company prepare each item of the proposed disclosure. We estimate that in the first year, the proposed off-balance sheet disclosure would take 14.5 hours for annual reports and proxy statements, 16 hours for registration statements and 10 hours for quarterly reports. We estimate that in the first year, the proposed disclosure of contractual obligations and contingent liabilities would take 7.5 hours for annual reports and proxy statements, 8.5 hours for registration statements and 3 hours for quarterly reports. Our estimates for the preparation time for all of the proposed disclosure items in the first year are 22 hours for annual reports and proxy statements, 24.5 hours for registration statements and 15.5 hours for quarterly reports.

Because the Paperwork Reduction Act estimates represent the average burden over a three-year period, we adjusted the first-year preparation time estimates to account for the fact that companies should become more efficient at preparing the proposed disclosure after the first year. Accordingly, to calculate an estimate of the amount of time it would take to prepare the proposed disclosure in year two, we assumed that the amount of time to prepare the proposed disclosure would be reduced by 20%. In year three, we assumed the amount of time to prepare the proposed disclosure would be reduced by 10%. After we averaged the estimated preparation times for the three-year period and rounded to the nearest whole-number, the estimates for the amount of time it would take companies to prepare the disclosure are 18 hours for annual reports and proxy statements, 21 hours for registration statements and 11 hours for quarterly reports.

2. Adjustments to Estimated Preparation Times

Since not all companies engage in off-balance sheet arrangements, we made adjustments to estimated preparation time. Based on a review of a random sample of filings, we estimate that 80% of public companies engage in off-balance sheet arrangements.[131] Therefore, we estimate that the same percentage of public companies would have to disclose off-balance sheet arrangements under the proposals. To reflect the fact that not all of the forms for which we estimate a burden would include the proposed new disclosure, we reduced the incremental burden hour estimates for the affected forms accordingly.

In addition, we recognize that some issuers may have to include an MD&A section in more than one filing covering the same period. To account for this, we estimate that 40% of the forms S–1, 65% of forms F–1, 38% of forms S–4, 34% of forms F–4 and 5% of schedules 14A and 14C would be required to carry the full burden of preparing entirely new MD&A disclosure about off-balance arrangements.[132] To reflect this, we further reduced the incremental burden hours for forms by the percentage of respondents who would not be required to carry the full burden of preparing new disclosure pursuant to the proposals. After making those adjustments for our estimate of preparation time for year one, we then derived a three-year average by reducing the preparation time by 20% and 10%

[128] Pub. L. 107–204 sec. 401(a) [15 U.S.C. 78m(j)].

[129] For convenience, the estimated PRA hour burdens have been rounded to the nearest whole number, and the estimated PRA cost burdens have been rounded to the nearest $1,000.

[130] In connection with other recent rulemakings, we have had discussions with several private law firms to estimate an hourly rate of $300 as the cost of outside professionals that assist companies in preparing these disclosures. For Securities Act registration statements, we also consider additional reviews of the disclosure by underwriter's counsel and underwriters.

[131] The sample consisted of approximately 175 firms listed on the NYSE and the Nasdaq that disclosed securitizations, guarantees, operating leases or other off-balance sheet arrangements.

[132] We derived these percentages from the proportion of new issuers to total issuers from our internal database. The adjustments to schedules 14A and 14C represent our best estimate based on our belief that the percentage of companies that would actually be required to carry the full burden of preparing the proposed disclosure would be minimal.

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for years two and three, and averaging the sum.

C. Registration Statements

Table 1 below illustrates the total annual compliance burden of the proposed collection of information in hours and in cost for registration statements under the Securities Act and the Exchange Act. The burden was calculated by multiplying the estimated number of responses by the estimated average number of hours each entity spends completing the form. We have based our estimated number of annual responses on the actual number of filers during the 2002 fiscal year. To determine the average total number of hours each entity spends completing each form, we added the estimated hour increment to the current burden hour estimate for each form reported to OMB. For registration statements, we estimate that 25% of the burden of preparation is carried by the company internally and that 75% of the burden of preparation is carried by outside professionals retained by the company at an average cost of $300 per hour. The portion of the burden carried by outside professionals is reflected as a cost, while the portion of the burden carried by the company internally is reflected in hours.

The incremental cost of outside professionals for registration statements would be approximately $4,400,000 per year and the incremental company burden would be approximately 4,888 hours per year. For purposes of our submission to OMB under the PRA, the total cost of outside professionals for registration statements would be approximately $868,882,000 per year and the company burden would be approximately 965,425 hours per year.

TABLE 1.—REGISTRATION STATEMENTS

[Columns "25% company" and "$300 prof. cost" are the PRA burdens submitted to OMB]

	Annual responses (A)	Total hours/form (B)	Total burden (C)=(A)*(B)	25% company (D)=(C)*0.25	75% professional (E)=(C)*0.75	$300 prof. cost (F)=(E)*$300	Added hours/form
S–1	433	1,749	757,317	189,329	567,987.75	$170,396,000	7
F–1	43	1,918	82,474	20,619	61,855.50	18,557,000	12
SB–2	650	593	385,450	96,363	289,087.50	86,726,000	11
S–4	631	3,980	2,511,380	627,845	1,883,535.00	565,061,000	7
F–4	61	1,329	81,069	20,267	60,801.75	18,241,000	6
10	71	144	10,224	2,556	7,668.00	2,300,000	18
10–SB	254	133	33,782	8,446	25,336.50	7,601,000	11
Total				965,425		868,882,000	

D. Annual Reports and Proxy/Information Statements

Table 2 below illustrates the total annual compliance burden of the collection of information in hours and in cost for annual reports and proxy and information statements under the Exchange Act. The burden was calculated by multiplying the estimated number of responses by the estimated average number of hours each entity spends completing the form. We have based our estimated number of annual responses on the actual number of filers during the 2002 fiscal year. For Exchange Act reports and proxy and information statements, we estimate that 75% of the burden of preparation is carried by the company internally and that 25% of the burden of preparation is carried by outside professionals retained by the company at an average cost of $300 per hour.[133] The portion of the burden carried by outside professionals is reflected as a cost, while the portion of the burden carried by the company internally is reflected in hours.

The incremental cost of outside professionals for annual reports and proxy/information statements would be approximately $18,436,000 per year and the incremental company burden would be approximately 141,864 hours per year. For purposes of our submission to OMB under the PRA the total cost of outside professionals for annual reports and proxy/information statements would be approximately $2,110,552,000 per year and the company burden would be approximately 15,878,892 hours per year.

TABLE 2.—ANNUAL REPORTS AND PROXY/INFORMATION STATEMENTS

[Columns "75% company" and "$300 prof. cost" are the PRA burdens submitted to OMB]

	Annual responses (A)	Total hours/form (B)	Total burden (C)=(A)*(B)	75% company (D)=(C)*0.75	25% professional (E)=(C)*0.25	$300 prof. cost (F)=(E)*$300	Added hours/form
20–F	1,194	2,185	2,608,890	652,223	1,956,667.50	$587,000,000	16
40–F	134	33	4,422	1,106	3,316.50	995,000	16
10–K	8,484	1,810	15,351,798	11,513,849	3,837,949.50	1,151,385,000	16
10–KSB	3,820	1,260	4,811,290	3,608,468	1,202,822.50	360,847,000	10
SCH 14A	7,661	17	130,237	97,678	32,559.25	9,768,000	1

[133] This allocation of the burden is a departure from our past PRA submissions for Exchange Act periodic reports and proxy and information statements, for which we estimated that the company carried 25% of the burden internally and 75% of the burden of preparation was carried by outside professionals retained by the company. We believe that this new allocation more accurately reflects current practice for annual and quarterly reports and proxy and information statements. We estimate, however, that the traditional 25% company and 75% outside professional allocation remains applicable for forms 20–F and 40–F because those forms are prepared by foreign private issuers who rely more heavily on outside counsel for their preparation.

TABLE 2.—ANNUAL REPORTS AND PROXY/INFORMATION STATEMENTS—Continued

[Columns "75% company" and "$300 prof. cost" are the PRA burdens submitted to OMB]

	Annual responses (A)	Total hours/form (B)	Total burden (C)=(A)*(B)	75% company (D)=(C)*0.75	25% professional (E)=(C)*0.25	$300 prof. cost (F)=(E)*$300	Added hours/form
SCH 14C	464	16	7,424	5,568	1,856.00	557,000	1
Total				15,878,892		2,110,552,000	

E. Quarterly Reports

Table 3 below illustrates the total annual compliance burden of the collection of information in hours and in cost for quarterly reports under the Exchange Act. The burden was calculated by multiplying the estimated number of responses by the estimated average number of hours each entity spends completing the form. We have based our estimated number of annual responses on the actual number of filers during the 2002 fiscal year. For quarterly reports, we estimate that 75% of the burden of preparation is carried by the company internally and that 25% of the burden of preparation is carried by outside professionals retained by the company at an average cost of $300 per hour. The portion of the burden carried by outside professionals is reflected as a cost, while the portion of the burden carried by the company internally is reflected in hours. Additionally, there would be no change to the estimated burden of the collection of information entitled "Regulation S–B" and "Regulation S–K" because the burdens are already reflected in our estimates for the forms.

The incremental cost of outside professionals for quarterly reports would be approximately $21,959,000 per year and the incremental company burden would be approximately 219,585 hours per year. For purposes of our submission to OMB under the PRA, the total cost of outside professionals for quarterly reports and Regulations S–K and S–B would be approximately $475,105,000 per year and the company burden would be 4,751,056 hours per year.

TABLE 3.—QUARTERLY REPORTS AND REGULATIONS S–K AND S–B

[Columns "%75 company" and "$300 prof. cost" are the PRA burdens submitted to OMB]

	Annual responses (A)	Total hours/form (B)	Total burden (C)=(A)*(B)	75% company (D)=(C)*0.75	25% professional (E)=(C)*0.25	$300 prof. cost (F)=(E)*$300	Added hours/form
10–Q	23,743	184	4,368,712	3,276,534	1,092,178.00	$327,653,000	9
10–QSB	11,299	174	1,966,026	1,474,520	491,506.50	147,452,000	7
Reg. S–K	0	1	1	1	0.00	0	0
Reg. S–B	0	1	1	1	0.00	0	0
Total				4,751,056		475,105,000	

F. Solicitation of Comment

Pursuant to 44 U.S.C. 3506(c)(2)(B), we solicit comments to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (ii) evaluate the accuracy of our estimate of the burden of the proposed collection of information; (iii) determine whether there are ways to enhance the quality, utility and clarity of the information to be collected; and (iv) evaluate whether there are ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Persons submitting comments on the collection of information requirements should direct the comments to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and should send a copy to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, with reference to File No. S7–42–02. Requests for materials submitted to OMB by the Commission with regard to these collections of information should be in writing, refer to File No. S7–42–02, and be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services. OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this release. Consequently, a comment to OMB is assured of having its full effect if OMB receives it within 30 days of publication.

V. Cost-Benefit Analysis

A. Background

In accordance with the directive of section 401(a) of the Sarbanes-Oxley Act,[134] the Commission is proposing disclosure rules regarding a company's off-balance sheet arrangements. The proposals would require disclosure to improve investors' understanding of a company's overall financial condition, changes in financial condition and results of operations. The proposals would require companies that are reporting, raising capital in the registered public markets or asking shareholders for their votes to discuss certain aspects and effects of their off-balance sheet arrangements and to provide an aggregate overview of their known contractual obligations and contingent liabilities and commitments.

[134] Pub. L. 107–204 sec. 401(a) [15 U.S.C. 78m(j)].

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B. Objectives of Proposed Disclosure

The proposals seek to improve transparency of a company's off-balance sheet arrangements and to improve an investor's understanding of the liquidity and capital resource needs and demands by requiring disclosure of aggregate contractual obligations and contingent liabilities and commitments. We believe that the quality of information in these areas could be improved. Our objectives are:

- To implement the legislative mandate in section 401(a) of the Sarbanes-Oxley Act;
- To provide investors with the information and analysis necessary to gain a more comprehensive understanding of the implications of a company's obligations and contingencies from off-balance sheet arrangements that cannot be easily understood from the financial statements alone; and
- To better inform investors of the aggregate impact of short- and long-term contractual obligations, contingent liabilities and commitments, from both on and off-balance sheet activities, by presenting a total picture in a single location.

With a greater understanding of a company's off-balance sheet arrangements, contractual obligations and contingent liabilities and commitments, investors would be better able to understand how a company conducts significant aspects of its business and to assess the quality of a company's earnings and the risks that are not apparent on the face of the financial statements.

C. Regulatory Approach

Although the Sarbanes-Oxley Act requires that the Commission issue rules to require disclosure of off-balance sheet arrangements, we considered alternative regulatory approaches for achieving our goal to promote greater transparency of a company's off-balance sheet arrangements. As one possible approach, we considered proposing a general MD&A requirement that companies disclose information regarding off-balance sheet arrangements that they believe to be necessary to an understanding of its financial condition, changes in financial condition and results of operations. In the alternative, we considered proposing more rigid disclosure requirements that would mandate the particular content of disclosure, regardless of whether it would be necessary to an understanding of the registrant's financial condition, changes in financial condition and results of operations. After due consideration of both approaches, we propose an approach somewhere in between these two alternatives as the most effective. Accordingly, the proposal enumerates specific disclosure items regarding off-balance sheet arrangements, but requires disclosure only to the extent necessary to an understanding of a registrant's off-balance sheet arrangements and their effect on financial condition, changes in financial condition and results of operations.

With regard to the proposed tabular disclosure of contractual obligations, we believe that a more specific approach is necessary to elicit disclosure that is comparable among firms. For example, the proposed table and/or textual disclosure of contractual obligations and contingent liabilities and commitments requires registrant to include specific time periods for payments due under contractual obligations.[135] We have, however, attempted to provide flexibility for registrants where doing so would yield more relevant disclosure and reduce the burden for registrants. For example, our proposals allow registrants to use either specified categories of obligations or other categories suitable to its business.[136] We have also provided flexibility with regard to the proposed disclosure of contingent liabilities and commitments. For example, the proposals allow registrants to disclose contingent liabilities and commitments either in text or in tabular format.[137] In addition, under the proposals a registrant may disclose either the expected amount, range of amounts or maximum amount of contingent liabilities or commitments.[138]

Current MD&A rules require disclosure of off-balance sheet arrangements that have a material effect on a company's liquidity and capital resources.[139] In addition, MD&A must include other information that management believes to be necessary to an understanding of its financial condition, changes in financial condition and results of operations.[140] These requirements provide companies with significant flexibility in drafting the MD&A disclosure. Although some public companies provide more detailed information in their financial statements about off-balance sheet arrangements, other companies provide arcane disclosure that may not be materially misleading in a legal sense, but it nevertheless does not provide investors with the information and analysis necessary to assess the impact of off-balance sheet arrangements. To stimulate higher quality disclosures regarding off-balance sheet arrangements, we are proposing more specific disclosure requirements in the MD&A.

The proposed disclosures are designed to result in a more focused and descriptive discussion of the registrant's material off-balance sheet arrangements. The proposals attempt to mitigate the possibility that investors would be overwhelmed with voluminous disclosure by requiring disclosure "to the extent necessary to an understanding of the registrant's off-balance sheet arrangements and their effect on financial condition, changes in financial condition and results of operations."[141] This approach attempts to balance the need for registrants to have flexibility when drafting financial disclosure, with investors' needs for more transparency.

D. Potential Benefits of the Proposed Rules

The primary anticipated benefit of the proposed rules is to increase transparency of the financial condition, changes in financial condition and operating results of companies and possibly to reduce the information asymmetry between management and investors. Current market events have evidenced a need to provide investors with a clearer understanding of how a company's off-balance sheet arrangements materially affect the financial statements and company performance.[142] The proposed disclosure is intended to enhance the utility of the disclosure in the MD&A section by providing more information, including management's analysis, of off-balance sheet arrangements. In addition, the proposed tabular and/or textual disclosure of contractual obligations and contingent liabilities and commitments is designed to provide investors with an understanding of the liquidity and capital resource need and demands in short- and long-term time horizons.

By making information about off-balance sheet arrangements, contractual obligations and contingent liabilities and commitments available and more understandable, the proposals would benefit investors both directly and indirectly through the financial analysts and the credit rating agencies whose analyses investors consider.[143] In addition, the proposed disclosures should benefit investors because the enumerated disclosure under the proposed rule would likely be more comparable across all firms and consistent over time. Greater transparency would thus enable investors to make more informed investment decisions and to allocate capital on a more efficient basis.

Request for Comment

- We solicit quantitative data to assist our assessment of the benefits of identifying off-balance sheet arrangements and analyzing their effects on the financial statements and preparing a table of contractual obligations and contingent liabilities.

E. Potential Costs of Proposed Rules

We estimate that proposed rules would impose a new disclosure requirement on approximately 9,850 public companies.[144] We estimate that the disclosure would involve multiple parties, including in-house preparers, senior management, in-house counsel, outside counsel, outside auditors, and audit committee members. For purposes of the Paperwork Reduction Act,[145] we estimated that company personnel would spend approximately 366,337 hours per year (37 hours per company) to prepare, review and file the proposed disclosure. Based on our estimated cost of in-house staff time, we estimated the PRA hour-burden would translate into an approximate cost of $45,792,000 ($5,000 per company).[146] We also estimated that companies would spend approximately $44,795,000 ($5,000 per company) on outside professionals to comply with the disclosure.[147] We also estimate that companies will incur some additional printing and dissemination costs, as the proposals may result in more detailed disclosure. We are unable to estimate the potential printing and dissemination costs because there is a wide possible range of paper and ink available and different companies will print a different number of reports depending on their shareholder base.

We believe our proposals would not substantially increase the costs to collect the information necessary to prepare the proposed disclosure. This information should largely be readily available from each company's books and records. Since management should be fully apprised of off-balance sheet arrangements, contractual obligations and contingent liabilities and commitments in the ordinary course of managing the company, the proposed disclosure may not impose significant incremental costs for the collection and calculation of data.

Request for Comment

- What types of expenses would companies incur in order to comply with the proposed disclosure requirements?
- What would the average printing and dissemination costs be for each firm?
- We solicit quantitative data to assist our assessment of the compliance costs of identifying off-balance sheet arrangements and the table of contractual obligations and contingent liabilities and commitments in the manner proposed.

F. Foreign Private Issuers

We propose to apply to foreign private issuers the same MD&A disclosure requirements that would apply to U.S. companies. Foreign private issuers, however, are not required to file quarterly reports with the Commission. Thus, unless a foreign private issuer files a registration statement that must include interim period financial statements and related MD&A disclosure, it generally would not be required to update the proposed MD&A disclosure more frequently than annually. Therefore, the cost of compliance could be lower for foreign private issuers than for U.S. companies. It is possible, however, that foreign private issuers would incur greater expenses in connection with the required reconciliation to U.S. GAAP.

G. Small Business Issuers

We have proposed not to require that small businesses provide tabular and/or textual disclosure about the contractual obligations and contingent liabilities and commitments. This information is currently required to be disclosed in various locations in filings. While it would be useful to investors if this information were disclosed in a single location, we believe that excluding small business issuers from this requirement is consistent with the policies underlying the small business issuer disclosure system.

H. Request for Comments

To assist the Commission in its evaluation of the costs and benefits of the proposed disclosure discussed in this release, we request that commenters provide views and data relating to any costs and benefits associated with the proposed rules.

VI. Effects on Efficiency, Competition and Capital Formation

Section 23(a)(2) of the Exchange Act[148] requires us, when adopting rules under the Exchange Act, to consider the anti-competitive effects. The proposed rules are intended to make information about off-balance sheet arrangements and their implications for the presentation of a public company's financial condition, changes in financial condition and operating results more understandable to investors. The proposed rules also would provide an overview of a company's known contractual obligations and contingent liabilities and commitments. We have identified one possible area where the proposed rules could potentially place a burden on competition. There is some possibility that a company's competitors could be able to infer proprietary or sensitive information from disclosure about off-balance sheet arrangements. To the extent that all companies make the proposed disclosure, that impact may diminish. We request comment regarding the degree to which our proposed disclosure requirements would create competitively harmful effects upon public companies, and how to minimize those effects. We also request comment on any disproportionate cross-sectional burdens among the firms affected by our proposals that could have anti-competitive effects.

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[135] *See, e.g.*, proposed item 303(a)(5)(i) of regulation S–K [17 CFR 229.303(a)(5)(i)).

[136] *Id.*

[137] *See, e.g.*, proposed item 303(a)(5)(ii) of regulation S–K [17 CFR 229.303(a)(5)(ii)).

[138] *Id.*

[139] *See* item 303(a)(2)(ii) of regulation S–K [17 CFR 229.303(a)(2)(ii)).

[140] *See* item 303(a) of regulation S–K [17 CFR 229.303(a)).

[141] *See* proposed item 303(c)(1) of regulation S–B [17 CFR 228.303(c)(1)); proposed item 303(a)(4)(i) of regulation S–K [17 CFR 229. 303(a)(4)(i)); proposed item 5.E.1 of form 20–F [17 CFR 249.220f]; and proposed general instruction 7(i) of form 40–F [17 CFR 249.240f].

[142] *See, e.g.*, Paquita Y. Davis-Friday *et. al.*, *The Value Relevance of Financial Statement Recognition vs. Disclosure: Evidence from SFAS No. 106*, 74 The Accounting Review 403 (Oct. 1999).

[143] See, *e.g.*, Kent L. Womack, *Do Brokerage Analysts' Recommendations hove Investment Value?* 51 Journal of Finance 137 (1996). *See also*, R. Mear and M. Firth, *Risk Perceptions of Financial Analysts and the Use of Market and Accounting Data*, 18 Accounting and Business Research 335 (1988).

[144] We estimate that about 80% of the number of registrants who filed annuel reports last year would be required to provide the proposed disclosure.

[145] 44 U.S.C. 3501 *et seq.*

[146] We estimate the average hourly cost of in-house personnel to be $125. This cost estimate is based on data obtained from *The SIA Report on Management and Professionol Earnings in the Securities Industry* (Oct. 2001).

[147] To derive our estimates for the Paperwork Reduction Act, we multiplied the number of filers for each form by the incremental hours per form. The portion of the product carried by the company is reflected in hours and the portion carried by outside professionals is reflected as a cost.

[148] 15 U.S.C. 78w(a)(2).

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Section 2(b) of the Securities Act [149] and section 3(f) of the Exchange Act [150] require us, when engaging in rulemaking that requires us to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition and capital formation. We believe the proposed disclosure may promote market efficiency by making information about off-balance sheet arrangements, and their impact on the presentation of the company's financial position, more understandable. As a result, we believe that investors may be able to make more informed investment decisions and capital may be allocated on a more efficient basis. The possibility of these effects, their magnitude if they were to occur and the extent to which they would be offset by the costs of the proposals are difficult to quantify. We request comment on these matters and how the proposed amendments, if adopted, would affect efficiency and capital formation. Commenters are requested to provide empirical data and other factual support to the extent possible.

VII. Initial Regulatory Flexibility Analysis

This Initial Regulatory Flexibility Analysis has been prepared in accordance with 5 U.S.C. 603. It relates to proposed revisions to item 303 of regulation S–K,[151] item 303 of regulation S–B,[152] item 5 of form 20–F [153] and general instruction B of form 40–F.[154] The proposals require public companies to discuss off-balance sheet arrangements and to disclose aggregate contractual obligations and contingent liabilities and commitments. The new disclosure would be included in the MD&A section of a company's annual reports, quarterly reports, registration statements and proxy and information statements.

A. Reasons for the Proposed Action

On July 30, 2002, the Sarbanes-Oxley Act of 2002 was enacted.[155] Section 401 of the Sarbanes-Oxley Act, entitled "Disclosures in Periodic Reports," requires the Commission to adopt final rules by January 26, 2003 (180 days after the date of enactment) that require a company, in each annual and quarterly financial report that it files with the Commission, to disclose "all material off-balance sheet transactions, arrangements, obligations (including contingent obligations), and other relationships of the issuer with unconsolidated entities or other persons, that may have a material current or future effect on financial condition, changes in financial condition, results of operations, liquidity, capital expenditures, capital resources, or significant components of revenues or expenses."[156] To implement that legislative mandate, the Commission is proposing rules that would improve the transparency of off-balance sheet arrangements. The potential consequences of not taking this action to require disclosure regarding the off-balance sheet arrangements are: (a) Less transparency in the presentation of companies' financial statements and, correspondingly, a lesser understanding of companies' financial condition, changes in financial condition and results of operations when making investment decisions; and (b) a potential decrease in investor confidence in the full and fair disclosure system that is the hallmark of the U.S. capital markets.

B. Objectives

The proposals seek to improve transparency of a company's off-balance sheet arrangements, aggregate contractual obligations and contingent liabilities and commitments. We believe that improvements in the quality of information in these areas would promote investor understanding of a company's current and future financial position. Our objectives are:

- To implement the legislative mandate in section 401(a) of the Sarbanes-Oxley Act;
- To provide investors with the information and analysis necessary to gain an understanding of the financial implications of a company's obligations and contingencies that cannot be easily understood from the financial statements alone; and
- To better inform investors of the aggregate impact of a company's contractual obligations, contingent liabilities and commitments by presenting a total picture in a single location.

With a greater understanding of a company's off-balance sheet arrangements, contractual obligations and contingent liabilities and commitments, investors would be better able to understand how a company conducts significant aspects of its business and to assess the quality of a company's earnings and the risks that are not apparent on the face of the financial statements.

C. Legal Basis

We are proposing the amendments under the authority set forth in sections 7, 10, 19, 27A and 28 of Securities Act of 1933 and sections 12, 13, 14, 21E, 23 and 36 of the Securities Exchange Act of 1934. We are also proposing the amendments pursuant to sections 3(a) and 401(a) of the Sarbanes-Oxley Act of 2002.

D. Small Entities Subject to the Proposed Regulation and Rules

The proposals would affect companies that are small entities. Securities Act rule 157 [157] and Exchange Act rule 0–10(a) [158] define a company, other than an investment company, to be a "small business" or "small organization" if it had total assets of $5 million or less on the last day of its most recent fiscal year. We estimate that there were approximately 2,500 companies, other than investment companies, that may be considered small entities. The proposed disclosure requirements would apply to any small entity that fulfills its disclosure obligations by complying with our standard disclosure requirements [159] or in our optional disclosure system available only to small businesses.[160]

We believe that the off-balance sheet arrangements involving small entities would most likely be operating leases. In our Paperwork Reduction Act analysis, we estimated that the cost of in-house staff time would translate into an approximate cost of $4,000 per company.[161] This figure may be lower for a small entity if its average hourly cost for its personnel were lower than $125. We also estimated that companies would spend approximately $5,000 per company on outside professionals to comply with the disclosure.[162] This figure may be lower for a small entity if its average hourly cost of outside professionals was lower than $300. While we believe that the costs of compliance with the proposals may be lower for small entities, we are unable to quantify that number.

We request comment on the number of small entities that would not be required to comply with our proposals because they do not engage in off-balance sheet arrangements and whether the relative costs of company personnel and outside professionals for small entities would be lower than for larger entities.

E. Reporting, Recordkeeping and Other Compliance Requirements

Small entities would either utilize existing personnel or hire an outside professional to provide the proposed disclosure. This would impose incremental costs on small entities in connection with drafting, reviewing, filing, printing and disseminating additional disclosure in annual reports, registration statements, proxy and information statements and quarterly reports. The data underlying the proposed disclosure should be readily available from a company's books and records. Since management should be fully apprised of material off-balance sheet arrangements through its internal controls, the proposed disclosure may not impose significant incremental costs for the collection and calculation of data.

To further ease the regulatory burden on small entities, we are excluding small business issuers from the proposed tabular and/or textual disclosure about the contractual obligations and contingent liabilities and commitments. This information is currently required to be disclosed in various locations in filings. While it may be useful to investors if this information were disclosed in a single location, we believe that excluding small business issuers from this requirement is consistent with the policies underlying the small business issuer disclosure system.

F. Duplicative, Overlapping or Conflicting Federal Rules

We believe that there are no rules that conflict with or completely duplicate the proposed rules. There is a partial overlap with financial statement requirements requiring disclosures about off-balance sheet arrangements and risks and uncertainties that could materially affect the financial statements. There also is a partial overlap with existing MD&A requirements that may require some discussion of off-balance sheet arrangements that are essential to an understanding of a company's financial condition, changes in financial condition or results of operations. However, those requirements do not include much of the information specifically targeted for inclusion in the proposed rules.

G. Significant Alternatives

The Regulatory Flexibility Act directs the Commission to consider significant alternatives that would accomplish the stated objective, while minimizing any significant adverse impact on small entities. In connection with the proposals, we considered the following alternatives:

(a) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;

(b) The clarification, consolidation, or simplification of disclosure for small entities;

(c) The use of performance rather than design standards; and

(d) An exemption for small entities from coverage under the proposals.

We have drafted the proposed disclosure rules to require clear and straightforward disclosure of off-balance sheet arrangements in MD&A. Separate disclosure requirements regarding off-balance sheet arrangements for small entities would not yield the disclosure that we believe to be necessary to achieve our objectives. In addition, the informational needs of investors in small entities are typically as great as the needs of investors in larger companies. Therefore, it does not seem appropriate to develop separate requirements with regard to off-balance sheet arrangements for small entities involving clarification, consolidation or simplification of the proposed disclosure. We have, however, excluded small business issuers from the proposals that require tabular and/or textual disclosure of contractual obligations and contingent liabilities and commitments.

We have used design rather than performance standards in connection with the proposals for three reasons. First, we believe the proposed disclosure would be more useful to investors if there were enumerated informational requirements. The proposed mandated disclosures may be likely to result in a more focused and comprehensive discussion of the company's off-balance sheet arrangements. Second, mandated disclosures regarding off-balance sheet arrangements may benefit investors in small entities because the enumerated disclosure under the proposed rule would likely be more comparable across all firms and consistent over time. Third, a mandated discussion of a company's off-balance sheet arrangements is uniquely suited to the MD&A disclosure in light of MD&A's emphasis on the identification of significant uncertainties and events and favorable or unfavorable trends. Therefore, adding a disclosure requirement to the existing MD&A appears to be the most effective method of eliciting the disclosure.

H. Solicitation of Comments

We encourage the submission of comments with respect to any aspect of this Initial Regulatory Flexibility Analysis. In particular, we request comments regarding: (i) The number of small entities that may be affected by the proposals; (ii) the existence or nature of the potential impact of the proposals on small entities discussed in the analysis; and (iii) how to quantify the impact of the proposed revisions. Commenters are asked to describe the nature of any impact and provide empirical data supporting the extent of the impact. Such comments will be considered in the preparation of the Final Regulatory Flexibility Analysis, if the proposals are adopted, and will be placed in the same public file as comments on the proposed amendments themselves.

VIII. Small Business Regulatory Enforcement Fairness Act

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA"),[163] a rule is "major" if it has resulted, or is likely to result in:

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers or individual industries; or
- Significant adverse effects on competition, investment or innovation.

We request comment on whether our proposals would be a "major rule" for purposes of SBREFA. We solicit comment and empirical data on: (a) The potential effect on the U.S. economy on an annual basis; (b) any potential increase in costs or prices for consumers or individual industries; and (c) any potential effect on competition, investment or innovation.

IX. Codification Update

The Commission proposes to amend the "Codification of Financial Reporting Policies" announced in Financial Reporting Release No. 1 (April 15, 1982):

By adding section 501.12, captioned "Off-balance Sheet Arrangements" to include the text in the adopting release

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[149] 15 U.S.C. 77b(b).
[150] 15 U.S.C. 78c(f).
[151] 17 CFR 229.303.
[152] 17 CFR 228.303.
[153] 17 CFR 249.220f.
[154] 17 CFR 249.240f.
[155] Pub. L. 107–204, 116 stat. 745 (2002).
[156] Pub. L. 107–204 sec. 401 [15 U.S.C. 78m(j)].
[157] 17 CFR 230.157.
[158] 17 CFR 270.0–10(a).
[159] Regulation S–K, 17 CFR 229.10–229.1016.
[160] Regulation S–B, 17 CFR 228.10–228.701.
[161] We estimate the average hourly cost of in-house personnel to be $125. This cost estimate is based on data obtained from *The SIA Report on Management and Professional Earnings in the Securities Industry* (Oct. 2001).
[162] To derive our estimates for the Paperwork Reduction Act, we multiplied the number of filers for each form by the incremental hours per form. The portion of the product carried by the company is reflected in hours and the portion carried by outside professionals is reflected as a cost.
[163] Pub. L. No. 104–121, title II, 110 stat. 857 (1996).

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that discusses the final rules, which, if the proposed rules are adopted, would be substantially similar to section II of this release.

The Codification is a separate publication of the Commission. It will not be published in the Code of Federal Regulations.

Statutory Bases and Text of Proposed Amendments

We are proposing amendments to Commission's existing rules under the authority set forth in sections 7, 10, 19, 27A and 28 of the Securities Act and sections 12, 13, 14, 21E, 23 and 36 of the Exchange Act. We are also proposing the amendments pursuant to sections 3(a) and 401(a) of the Sarbanes-Oxley Act of 2002.

List of Subjects in 17 CFR Parts 228, 229 and 249

Reporting and recordkeeping requirements, Securities.

Text of Proposed Amendments

In accordance with the foregoing, the Securities and Exchange Commission proposes to amend title 17, chapter II of the Code of Federal Regulations as follows:

PART 228—INTEGRATED DISCLOSURE SYSTEM FOR SMALL BUSINESS ISSUERS

1. The authority citation for part 228 is amended by adding the following citation in numerical order to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77jjj, 77nnn, 77sss, 78*l*, 78m, 78n, 78o, 78u–5, 78w, 78*ll*, 78mm, 80a–8, 80a–29, 80a–30, 80a–37 and 80b–11.

Section 228.303 is also issued under secs. 3(a) and 401(a), Pub. L. No. 107–204, 116 Stat. 745.

* * * * *

2. Section 228.303 is amended by:

a. Removing the phrase "paragraph (a)" and adding, in its place, the phrase "paragraphs (a) and (c)" in the first sentence of the introductory text;

b. Removing the phrase "paragraph (b)" and adding, in its place, the phrase "paragraphs (b) and (c)" in the second sentence of the introductory text; and

c. Adding paragraphs (c) and (d) and an instruction to paragraph (c) of item 303 before instructions to item 303.

The additions read as follows:

§ 228.303 (Item 303) Management's Discussion and Analysis or Plan of Operation.

* * * * *

(c) *Off-balance sheet arrangements.* (1) For the periods set forth in paragraphs (a) and (b) of this item, include a separately-captioned section discussing the small business issuer's off-balance sheet arrangements that may have a current or future material effect on the small business issuer's financial condition, changes in financial condition, revenues or expenses, results of operations, liquidity, capital expenditures or capital resources. Disclosure under this paragraph (c) of an arrangement is not necessary if the likelihood of either the occurrence of an event implicating an off-balance sheet arrangement, or the materiality of its effect, is remote. Disclosure regarding similar arrangements should be aggregated to the extent practicable, but important distinctions in terms and effects must be discussed. Disclose the following items to the extent necessary to an understanding of the effect of the off-balance sheet arrangements on the small business issuer's financial condition, changes in financial condition, revenues and expenses, results of operations, liquidity, capital expenditures and capital resources:

(i) The nature and business purpose of the small business issuer's off-balance sheet arrangements and, to the extent necessary to an understanding of the disclosures under this paragraph (c), the significant terms and conditions of the arrangements, including those between the small business issuer and any entity in which off-balance sheet activities are conducted and between the small business issuer or that entity and other persons;

(ii) With respect to an entity in which off-balance sheet activities are conducted, the nature and amount of the total assets and of the total obligations and liabilities (including contingent obligations and liabilities) of that entity;

(iii)The amounts of revenues, expenses and cash flows of the small business issuer arising from the arrangements; the nature and amount of any interests retained, securities issued and other indebtedness incurred by the small business issuer; and any other obligations or liabilities (including contingent obligations or liabilities) of the small business issuer arising from the arrangements that are or may become material and the triggering events or circumstances that could cause them to arise; and

(iv) Management's analysis of the material effects of any of the items identified in paragraphs (c)(1)(i), (ii) and (iii) of this item on the small business issuer's financial condition, changes in financial condition, revenues or expenses, results of operations, liquidity, capital expenditures and capital resources. Effects that are common or similar with respect to a number of off-balance sheet arrangements must be analyzed in the aggregate to the extent the aggregation increases understanding. An analysis of the degree to which the small business issuer relies on off-balance sheet arrangements for its liquidity and capital resources or market risk or credit risk support or other benefits also must be disclosed.

(2) If under a contractual provision or as a result of a known event, demand, commitment, trend or uncertainty, an off-balance sheet arrangement that materially benefits the small business issuer will be terminated or the benefits thereof to the small business issuer will be materially reduced, or it is reasonably likely that such a termination or reduction will occur, describe the circumstances under which such termination or reduction may occur and discuss any material effects thereof.

(3) As used in this paragraph (c), the term *off-balance sheet arrangement* means any transaction, agreement or other contractual arrangement to which an entity unconsolidated with the small business issuer is a party, under which the small business issuer, whether or not a party to the arrangement, has, or in the future may have:

(i) Any obligation under a direct or indirect guarantee or similar arrangement;

(ii) A retained or contingent interest in assets transferred to an unconsolidated entity or similar arrangement;

(iii) Derivatives to the extent that the fair value thereof is not fully reflected as a liability or asset in the financial statements; or

(iv) Any obligation or liability, including a contingent obligation or liability, to the extent that it is not fully reflected in the financial statements (excluding the footnotes thereto). Obligations or liabilities that are not fully reflected in the financial statements (excluding the footnotes thereto) include, without limitation: obligations that are not classified as a liability according to generally accepted accounting principles; contingent liabilities as to which, as of the date of the financial statements, it is not probable that a loss has been incurred or, if probable, is not reasonably estimable; or liabilities as to which the amount recognized in the financial statements is less than the reasonably possible maximum exposure to loss under the obligation as of the date of the financial statements. Contingent liabilities arising out of litigation, arbitration or regulatory actions (not otherwise related to off-balance sheet arrangements) are not off-balance sheet arrangements.

Instruction to paragraph (c): No obligation to make disclosure under paragraph (c) of this item shall arise in respect of an off-balance sheet arrangement until a definitive agreement that is unconditional or subject only to customary closing conditions exists or, if there is no such agreement, when settlement of the transaction occurs.

(d) *Safe harbor.* (1) The safe harbor provided in section 27A of the Securities Act of 1933 (15 U.S.C. 77z–2) and section 21E of the Securities Exchange Act of 1934 (15 U.S.C. 78u–5) ("statutory safe harbors") shall apply to forward-looking information provided pursuant to paragraph (c) of this item, provided that the disclosure is made by: An issuer; a person acting on behalf of the issuer; an outside reviewer retained by the issuer making a statement on behalf of the issuer; or an underwriter, with respect to information provided by the issuer or information derived from information provided by the issuer.

(2) For purposes of this paragraph (d) only, all information required by paragraphs (c)(1)(iv) and (c)(2) of this item is deemed to be a "forward looking statement" as that term is defined in the statutory safe harbors, except for historical facts.

* * * * *

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

3. The authority citation for part 229 is revised to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78l, 78m, 78n, 78o, 78u–5, 78w, 78ll(d), 78mm, 79e, 79j, 79n, 79t, 80a–8, 80a–9, 80a–20, 80a–29, 80a–30, 80a–31(c), 80a–37, 80a–38(a), 80a–39 and 80b–11, unless otherwise noted.

Section 229.303 is also issued under secs. 3(a) and 401(a), Pub. L. No. 107–204, 116 Stat. 745.

Section 229.307 is also issued under secs. 3(a), 302 and 404, Pub. L. No. 107–204, 116 Stat. 745.

4. Section 229.303 is amended by:

a. Removing the authority citation following § 229.303;

b. Removing the phrase "paragraphs (a)(1), (2) and (3)" and adding, in its place, the phrase "paragraphs (a)(1), (2), (3) and (4) of this section" in the second sentence of the introductory text of paragraph (a);

c. Removing the phrase "or for those fiscal years beginning after December 25, 1979," in paragraph (a)(3)(iv);

d. Adding paragraphs (a)(4) and (a)(5) before the "Instructions to Paragraph 303(a)";

e. Adding instruction 13 to "Instructions to Paragraph 303(a)";

f. Adding instruction 7 to "Instructions to Paragraph (b) of Item 303"; and

g. Adding paragraph (c).

The additions read as follows:

§ 229.303 (Item 303) Management's discussion and analysis of financial condition and results of operations.

(a) * * *

(4) *Off-balance sheet arrangements.* (i) In a separately-captioned section, discuss the registrant's off-balance sheet arrangements that may have a current or future material effect on the registrant's financial condition, changes in financial condition, revenues or expenses, results of operations, liquidity, capital expenditures or capital resources. Disclosure under this paragraph (a)(4) of an arrangement is not necessary if the likelihood of either the occurrence of an event implicating an off-balance sheet arrangement, or the materiality of its effect, is remote. Disclosure regarding similar arrangements should be aggregated to the extent practicable, but important distinctions in terms and effects must be discussed. Disclose the following items to the extent necessary to an understanding of the effect of the off-balance sheet arrangements on the registrant's financial condition, changes in financial condition, revenues and expenses, results of operations, liquidity, capital expenditures and capital resources:

(A) The nature and business purpose of the registrant's off-balance sheet arrangements and, to the extent necessary to an understanding of the disclosures under this paragraph (a)(4), the significant terms and conditions of the arrangements, including those between the registrant and any entity in which off-balance sheet activities are conducted and between the registrant or that entity and other persons;

(B) With respect to an entity in which off-balance sheet activities are conducted, the nature and amount of the total assets and of the total obligations and liabilities (including contingent obligations and liabilities) of that entity;

(C) The amounts of revenues, expenses and cash flows of the registrant arising from the arrangements; the nature and amounts of any interests retained, securities issued and other indebtedness incurred by the registrant; and any other obligations or liabilities (including contingent obligations or liabilities) of the registrant arising from the arrangements that are or may become material and the triggering events or circumstances that could cause them to arise; and

(D) Management's analysis of the material effects of any of the items identified in paragraphs (a)(4)(i)(A), (B) and (C) of this item on the registrant's financial condition, changes in financial condition, revenues or expenses, results of operations, liquidity, capital expenditures and capital resources. Effects that are common or similar with respect to a number of off-balance sheet arrangements must be analyzed in the aggregate to the extent the aggregation increases understanding. An analysis of the degree to which the registrant relies on off-balance sheet arrangements for its liquidity and capital resources or market risk or credit risk support or other benefits also must be disclosed.

(ii) If under a contractual provision or as a result of a known event, demand, commitment, trend or uncertainty, an off-balance sheet arrangement that materially benefits the registrant will be terminated or the benefits thereof to the registrant will be materially reduced, or it is reasonably likely that such a termination or reduction will occur, describe the circumstances under which such termination or reduction may occur and discuss any material effects thereof.

(iii) As used in this paragraph (a)(4), the term *off-balance sheet arrangement* means any transaction, agreement or other contractual arrangement to which an entity unconsolidated with the registrant is a party, under which the registrant, whether or not a party to the arrangement, has, or in the future may have:

(A) Any obligation under a direct or indirect guarantee or similar arrangement;

(B) A retained or contingent interest in assets transferred to an unconsolidated entity or similar arrangement;

(C) Derivatives to the extent that the fair value thereof is not fully reflected as a liability or asset in the financial statements; or

(D) Any obligation or liability, including a contingent obligation or liability, to the extent that it is not fully reflected in the financial statements (excluding the footnotes thereto). Obligations or liabilities that are not fully reflected in the financial statements (excluding the footnotes

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thereto) include, without limitation: obligations that are not classified as a liability according to generally accepted accounting principles; contingent liabilities as to which, as of the date of the financial statements, it is not probable that a loss has been incurred or, if probable, is not reasonably estimable; or liabilities as to which the amount recognized in the financial statements is less than the reasonably possible maximum exposure to loss under the obligation as of the date of the financial statements. Contingent liabilities arising out of litigation, arbitration or regulatory actions (not otherwise related to off-balance sheet arrangements) are not off-balance sheet arrangements.

(5) *Tabular disclosure of contractual obligations.* (i) In a tabular format, provide the information specified in this paragraph (a)(5) with respect to the registrant's known contractual obligations as of the latest balance sheet date. The tabular presentation should include at least the periods set forth in the columns in the table following this paragraph (a)(5)(i). The registrant shall provide amounts, aggregated by type of contractual obligation, and may use the categories of obligations specified in the table or other categories suitable to its business. A presentation of total contractual obligations for at least the periods specified shall be included. The tabular presentation may be accompanied by footnotes to describe provisions that create, increase or accelerate obligations, or other pertinent data.

Contractual obligations	Payments due by period				
	Total	Less than 1 year	1–3 years	3–5 years	More than 5 years
[Long-Term Debt]					
[Capital Lease Obligations]					
[Operating Leases]					
[Unconditional Purchase Obligations]					
[Other Long-Term Obligations]					
Total Contractual Obligations					

(ii) *Contingent liabilities and commitments.* Disclose, either in text or in a tabular format, the expected amount, range of amounts or maximum amount of contingent liabilities or commitments, aggregated by type in a manner that is suitable for the registrant's business, that are expected to expire in less than one year, in one to three years, in three to five years, and more than five years. Unless a range of amounts is disclosed, specify whether the amount disclosed is the expected or maximum amount.

Instructions to Paragraph 303(a)

* * * * *

13. No obligation to make disclosure under paragraph (a)(4) of this item shall arise in respect of an off-balance sheet arrangement until a definitive agreement that is unconditional or subject only to customary closing conditions exists or, if there is no such agreement, when settlement of the transaction occurs.

(b) * * *

Instructions to Paragraph (b) of Item 303:

* * * * *

7. The registrant is not required to include the table required by paragraph (a)(5) of this item in a quarterly report on form 10–Q (§ 249.308a of this chapter). Instead, the registrant may disclose material changes by including a discussion of the relevant changes.

(c) *Safe harbor.* (1) The safe harbor provided in section 27A of the Securities Act of 1933 (15 U.S.C. 77z–2) and section 21E of the Securities Exchange Act of 1934 (15 U.S.C. 78u–5) ("statutory safe harbors") shall apply to forward-looking information provided pursuant to paragraph (a)(4) of this item, provided that the disclosure is made by: An issuer; a person acting on behalf of the issuer; an outside reviewer retained by the issuer making a statement on behalf of the issuer; or an underwriter, with respect to information provided by the issuer or information derived from information provided by the issuer.

(2) For purposes of paragraph (c) of this item only, all information required by paragraphs (a)(4)(i)(D) and (a)(4)(ii) of this item is deemed to be a "forward looking statement" as that term is defined in the statutory safe harbors, except for historical facts.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

5. The authority citation for part 249 is amended by revising the sectional authority for 249.220f and 249.240f to read as follows:

Authority: 15 U.S.C. 78a, *et seq.*, unless otherwise noted.

Section 249.220f is also issued under secs. 3(a), 302, and 401(a), Pub. L. No. 107–204, 116 Stat. 745.

Section 249.240f is also issued under secs. 3(a), 302, and 401(a), Pub. L. No. 107–204, 116 Stat. 745.

* * * * *

6. Form 20–F (referenced in § 249.220f), item 5 is amended by:

a. Adding items 5.E. through 5.G.; and

b. Adding an instruction to 5.F. to read as follows:

Note: Form 20–F does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 20–F

* * * * *

Item 5—Operating and Financial Review and—Prospects

* * * * *

E. Off-balance sheet arrangements

1. In a separately-captioned section, discuss the company's off-balance sheet arrangements that may have a current or future material effect on the company's financial condition, changes in financial condition, revenues or expenses, results of operations, liquidity, capital expenditures or capital resources. Disclosure under this item 5.E. of an arrangement is not necessary if the likelihood of either the occurrence of an event implicating an off-balance sheet arrangement, or the materiality of its effect, is remote. Disclosure regarding similar arrangements should be aggregated to the extent practicable, but important distinctions in terms and effects must be discussed. Disclose the following items to the extent necessary to an understanding of the effect of the off-balance sheet arrangements on the company's financial condition, changes in financial condition, revenues and expenses, results of operations, liquidity, capital expenditures and capital resources:

(a) The nature and business purpose of the company's off-balance sheet arrangements and, to the extent necessary to an understanding of the disclosures under this item 5.E, the significant terms and conditions of the arrangements, including those between the company and any entity in which off-balance sheet activities are conducted and between the company or that entity and other persons;

(b) With respect to an entity in which off-balance sheet activities are conducted, the nature and amount of the total assets and of the total obligations and liabilities (including contingent obligations and liabilities) of that entity;

(c) The amounts of revenues, expenses and cash flows of the company arising from the arrangements; the nature and amounts of any interests retained, securities issued and other indebtedness incurred by the company; and any other obligations or liabilities (including contingent obligations or liabilities) of the company arising from the arrangements that are or may become material and the triggering events or circumstances that could cause them to arise; and

(d) Management's analysis of the material effects of any of the items identified in paragraphs (a), (b) or (c) of this item on the company's financial condition, changes in financial condition, revenues or expenses, results of operations, liquidity, capital expenditures and capital resources. Effects that are common or similar with respect to a number of off-balance sheet arrangements must be analyzed in the aggregate to the extent it increases understanding. An analysis of the degree to which the company relies on off-balance sheet arrangements for its liquidity and capital resources or market risk or credit risk support or other benefits also must be disclosed.

2. If under a contractual provision or as a result of a known event, demand, commitment, trend or uncertainty, an off-balance sheet arrangement that materially benefits the company will be terminated or the benefits thereof to the company will be materially reduced, or it is reasonably likely that such a termination or reduction will occur, describe the circumstances under which such termination or reduction may occur and discuss any material effects thereof.

3. As used in this item 5.E., the term *off-balance sheet arrangement* means any transaction, agreement or other contractual arrangement to which an entity unconsolidated with the company is a party, under which the company, whether or not a party to the arrangement, has, or in the future may have:

(a) Any obligation under a direct or indirect guarantee or similar arrangement;

(b) A retained or contingent interest in assets transferred to an unconsolidated entity or similar arrangement;

(c) Derivatives to the extent that the fair value thereof is not fully reflected as a liability or asset in the financial statements; or

(d) Any obligation or liability, including a contingent obligation or liability, to the extent that it is not fully reflected in the financial statements (excluding the footnotes thereto). Obligations or liabilities that are not fully reflected in the financial statements (excluding the footnotes thereto) include, without limitation: obligations that are not classified as a liability according to generally accepted accounting principles; contingent liabilities as to which, as of the date of the financial statements, it is not probable that a loss has been incurred or, if probable, is not reasonably estimable; or liabilities as to which the amount recognized in the financial statements is less than the reasonably possible maximum exposure to loss under the obligation as of the date of the financial statements. Contingent liabilities arising out of litigation, arbitration or regulatory actions (not otherwise related to off-balance sheet arrangements) are not off-balance sheet arrangements.

F. Tabular disclosure of contractual obligations

1. In a tabular format, provide the information specified in this item 5.F.1. with respect to the company's known contractual obligations as of the latest balance sheet date. The tabular presentation should include at least the periods set forth in the columns in the table below. The company shall provide amounts, aggregated by type of contractual obligation, and may use the categories of obligations specified in the table below or other categories suitable to its business. A presentation of total contractual obligations for at least the periods specified shall be included. The tabular presentation may be accompanied by footnotes to describe provisions that create, increase or accelerate obligations, or other pertinent data.

Contractual obligations	Payments due by period				
	Total	Less than 1 year	1–3 years	3–5 years	More than 5 years
[Long-Term Debt]					
[Capital Lease Obligations]					
[Operating Leases]					
[Unconditional Purchase Obligations]					
[Other Long-Term Obligations]					
Total Contractual Obligations					

2. *Contingent liabilities and commitments.* Disclose, either in text or in a tabular format, the expected amount, range of amounts or maximum amount of contingent liabilities or commitments, aggregated by type in a manner that is suitable for the company's business, that are expected to expire in less than one year, in one to three years, in three to five years, and more than five years. Unless a range of amounts is disclosed, specify whether the amount disclosed is the expected or maximum amount.

G. Safe harbor

1. The safe harbor provided in section 27A of the Securities Act and section 21E of the Exchange Act ("statutory safe harbors") shall apply to forward-looking information provided pursuant to item 5.E., provided that the disclosure is made by: an issuer; a person acting on behalf of the issuer; an outside reviewer retained by the issuer making a statement on behalf of the issuer; or an underwriter, with respect to information provided by the issuer or information derived from information provided by the issuer.

2. For purposes of paragraph 5.G.1. of this item only, all information required by paragraphs 5.E.1(d) and 5.E.2 of this item is deemed to be a "forward looking statement" as that term is defined in the statutory safe harbors, except for historical facts.

* * * * *

Instruction to item 5.A:

* * * * *

Instruction to Item 5.F.: 1. The company is not required to include the table required by paragraph 5.F.1. of this item for interim periods. Instead, the company may disclose material changes in the table by including a discussion of the relevant changes.

* * * * *

7. Form 40–F (referenced in § 249.240f) is amended by adding paragraphs 7 through 9 to General Instruction B to read as follows;

Note: The text of Form 40–F does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 40–F

* * * * *

General Instructions

* * * * *

B. Information To Be Filed on This Form.

* * * * *

7. *Off-balance sheet arrangements.* (i) In a separately-captioned section, discuss the registrant's off-balance sheet arrangements that may have a current or future material effect on the registrant's financial condition, changes in financial condition, revenues or expenses, results of operations, liquidity, capital expenditures or capital resources. Disclosure under this general instruction B.7. of an arrangement is not necessary if the likelihood of either the occurrence of an event implicating an off-balance sheet arrangement, or the materiality of its effect, is remote. Disclosure regarding similar arrangements should be aggregated to the extent practicable, but important distinctions in terms and effects must be discussed. Disclose the following items to the extent necessary to an understanding of the effect of the off-

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balance sheet arrangements on the registrant's financial condition, changes in financial condition, revenues and expenses, results of operations, liquidity, capital expenditures and capital resources:

(A) The nature and business purpose of the registrant's off-balance sheet arrangements and, to the extent necessary to an understanding of the disclosures under this general instruction B.7., the significant terms and conditions of the arrangements, including those between the registrant and any entity in which off-balance sheet activities are conducted and between the registrant or that entity and other persons;

(B) With respect to an entity in which off-balance sheet activities are conducted, the nature and amount of the total assets and of the total obligations and liabilities (including contingent obligations and liabilities) of that entity;

(C) The amounts of revenues, expenses and cash flows of the registrant arising from the arrangements; the nature and amount of any interests retained, securities issued and other indebtedness incurred by the registrant; and any other obligations or liabilities (including contingent obligations or liabilities) of the registrant arising from the arrangements that are or may become material and the triggering events or circumstances that could cause them to arise; and

(D) Management's analysis of the material effects of any of the items identified in paragraphs (A), (B) and (C) of this general instruction on the registrant's financial condition, changes in financial condition, revenues or expenses, results of operations, liquidity, capital expenditures and capital resources. Effects that are common or similar with respect to a number of off-balance sheet arrangements must be analyzed in the aggregate to the extent it increases understanding. An analysis of the degree to which the registrant relies on off-balance sheet arrangements for its liquidity and capital resources or market risk or credit risk support or other benefits also must be disclosed.

(ii) If under a contractual provision or as a result of a known event, demand, commitment, trend or uncertainty, an off-balance sheet arrangement that materially benefits the registrant will be terminated or the benefits thereof to the registrant will be materially reduced, or it is reasonably likely that such a termination or reduction will occur, describe the circumstances under which such termination or reduction may occur and discuss any material effects thereof.

(iii)As used in this general instruction B.7., the term *off-bolance sheet arrangement* means any transaction, agreement or other contractual arrangement to which an entity unconsolidated with the registrant is a party, under which the registrant, whether or not a party to the arrangement, has, or in the future may have:

(A) Any obligation under a direct or indirect guarantee or similar arrangement;

(B) A retained or contingent interest in assets transferred to an unconsolidated entity or similar arrangement;

(C) Derivatives to the extent that the fair value thereof is not fully reflected as a liability or asset in the financial statements; or

(D) Any obligation or liability, including a contingent obligation or liability, to the extent that it is not fully reflected in the financial statements (excluding the footnotes thereto). Obligations or liabilities that are not fully reflected in the financial statements (excluding the footnotes thereto) include, without limitation: obligations that are not classified as a liability according to generally accepted accounting principles; contingent liabilities as to which, as of the date of the financial statements, it is not probable that a loss has been incurred or, if probable, is not reasonably estimable; or liabilities as to which the amount recognized in the financial statements is less than the reasonably possible maximum exposure to loss under the obligation as of the date of the financial statements. Contingent liabilities arising out of litigation, arbitration or regulatory actions (not otherwise related to off-balance sheet arrangements) are not off-balance sheet arrangements.

(iv) No obligation to make disclosure under this general instruction B.7. shall arise in respect of an off-balance sheet arrangement until a definitive agreement that is unconditional or subject only to customary closing conditions exists or, if there is no such agreement, when settlement of the transaction occurs.

8. *Tabular disclosure of contractual obligations.* (i) In a tabular format, provide the information specified in this general instruction B.8. with respect to the registrant's known contractual obligations as of the latest balance sheet date. The tabular presentation should include at least the periods set forth in the columns in the table below. The registrant shall provide amounts, aggregated by type of contractual obligation, and may use the categories of obligations specified in the table below or other categories suitable to its business. A presentation of total contractual obligations for at least the periods specified shall be included. The tabular presentation may be accompanied by footnotes to describe provisions that create, increase or accelerate obligations, or other pertinent data.

Contractual obligations	Payments due by period				
	Total	Less than 1 year	1–3 years	3–5 years	More than 5 years
[Long-Term Debt]					
[Capital Lease Obligations]					
[Operating Leases]					
[Unconditional Purchase Obligations]					
[Other Long-Term Obligations]					
Total Contractual Obligations					

(ii) *Contingent liabilities and commitments.* Disclose, either in text or in a tabular format, the expected amount, range of amounts or maximum amount of contingent liabilities or commitments, aggregated by type in a manner that is suitable for the registrant's business, that are expected to expire in less than one year, in one to three years, in three to five years, and more than five years. Unless a range of amounts is disclosed, specify whether the amount disclosed is the expected or maximum amount.

9. *Safe Harbor.* (i) The safe harbor provided in section 27A of the Securities Act and section 21E of the Exchange Act ("statutory safe harbors") shall apply to forward-looking information provided pursuant to general instruction B.7. of this form 40–F, provided that the disclosure is made by: an issuer; a person acting on behalf of the issuer; an outside reviewer retained by the issuer making a statement on behalf of the issuer; or an underwriter, with respect to information provided by the issuer or information derived from information provided by the issuer.

(ii) For purposes of paragraph (i) of this general instruction B.9. only, all information required by general instruction B.7.(i)(D) and B.7.(ii) of this form 40–F is deemed to be a "forward looking statement" as that term is defined in the statutory safe harbors, except for historical facts.

* * * * *

Dated: November 4, 2002.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 02–28431 Filed 11–7–02; 8:45 am]

BILLING CODE 8010–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 131

[FRL–7406–2]

Withdrawal of Federal Human Health and Aquatic Life Water Quality Criteria for Toxic Pollutants Applicable to Michigan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to amend the Federal regulations to withdraw water quality criteria applicable to Michigan.

In the "Rules and Regulations" section of this **Federal Register**, EPA is promulgating a direct final rule withdrawing the Federal water quality criteria applicable to Michigan because EPA views this as a noncontroversial action and anticipates no adverse comment. EPA has explained our reasons for this action in the preamble to the direct final rule. If EPA receives no adverse comments, the Agency will not take further action on this proposed rule. If EPA receives adverse comment, the Agency will withdraw the direct final rule and it will not take effect. EPA will address all public comments in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

DATES: EPA will accept public comments on its proposed withdrawal of these criteria until December 9, 2002. Comments postmarked after this date may not be considered.

ADDRESSES: Please send an original and three copies of comments and enclosures (including references) to W–01–15, WQCR Comment Clerk; Water Docket, U.S. EPA, 1200 Pennsylvania Ave NW, MC–4101T, Washington, DC 20460. Alternatively, comments may be submitted electronically in ASCII or Word Perfect 5.1, 5.2, 6.1, or 8.0 formats avoiding the use of special characters and any form of encryption to *OW-Docket@epa.gov*. Identify electronic comments by the docket number W–01–15. Submit hand delivered comments to W–01–15, EPA's Water Docket, U.S. EPA, EPA West, 1301 Constitution Ave NW, Room B135, Washington DC 20460. No facsimiles (faxes) will be accepted. Comments will be available at the Water Docket, 202–566–2426, Monday through Friday, excluding legal holidays, during normal business hours of 8:30 am to 4:30 p.m.

The supporting record for this rulemaking may be inspected at EPA Region 5, Office of Water, 77 West Jackson Boulevard, 16th Floor, Chicago, IL 60604–3507, Monday through Friday, excluding legal holidays, during normal business hours of 9 a.m. to 5 p.m. Please contact Dave Pfeifer, as listed in the **FOR FURTHER INFORMATION CONTACT** section, before arriving.

A copy of Michigan's water quality standards may be obtained electronically from EPA's Water Quality Standards Repository, at *http://www.epa.gov/waterscience/standards/wqslibrary/mi/mi.html*.

FOR FURTHER INFORMATION CONTACT: Manjali Gupta Vlcan at EPA Headquarters, Office of Water (4305T), 1200 Pennsylvania Ave NW., Washington, DC, 20460 (tel: 202–566–0373, fax 202–566–0409) or email at *vlcan.manjali@epa.gov*, or Dave Pfeifer in EPA's Region 5 at 312–353–9024 or e-mail at *pfeifer.david@epa.gov*.

SUPPLEMENTARY INFORMATION: This action concerns EPA's withdrawing of the Federal water quality criteria applicable to Michigan from 40 CFR 31.36 (the NTR). For further information, including the various statutes and executive orders that require findings for rulemakings, please see the information provided in the direct final rule titled "Withdrawal of Federal Human Health and Aquatic Life Water Quality Criteria for Toxic Pollutants Applicable to Michigan" located in the "Rules and Regulations" section of this **Federal Register** Publication.

List of Subjects in 40 CFR Part 131

Environmental protection, Indians—land, Intergovernmental relations, Reporting and recordkeeping requirements, Water pollution control.

Dated: November 1, 2002.

Christine Todd Whitman,

Administrator.

[FR Doc. 02–28498 Filed 11–7–02; 8:45 am]

BILLING CODE 6560–50–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 27 and 90

[WT Docket No. 96–86; FCC 02–272]

The Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Agency Communication Requirements Through the Year 2010

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) proposes various technical and operational rules and policies regarding emission limitations in the narrowband portion of the 764–776 MHz and 794–806 MHz bands. This action follows recommendations proposed by the Private Radio Section (PRS) of the Telecommunication Industry Association (TIA). These Commission actions will facilitate public safety capabilities in the 700 MHz Band.

DATES: Comments are due on or before December 9, 2002, and reply comments are due on or before December 23, 2002.

ADDRESSES: Federal Communications Commission 445 12th Street, SW., TW–A325, Washington, DC 20554. *See* **SUPPLEMENTARY INFORMATION** for filing instructions.

FOR FURTHER INFORMATION CONTACT: Roberto Mussenden, Esq., *rmussend@fcc.gov*, Policy and Rules Branch, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, at (202) 418–0680, or TTY (202) 418–7233.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Sixth Notice of Proposed Rulemaking*, FCC

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02–272, adopted on September 27, 2002, and released on October 4, 2002. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the Commission's copy contractor, Qualex International, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The full text may also be downloaded at: *www.fcc.gov*. Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365 or at *bmillin@fcc.gov*.

1. In this Sixth Notice of Proposed Rule Making (Sixth NPRM), the Commission requests comment on its tentative conclusion that adopting revisions to section 90.543 of the Commission's Rules as proposed herein would serve the public interest. These proposed rule changes would align the Commission's rules with industry standards documents and revise the values for Adjacent Channel Coupled Power ("ACCP") emission limits for public safety transmitters operating in the 764–776 and 794–806 MHz frequency bands ("700 MHz band"). The proposed values reflect an industry consensus in response to the Commission's request in the Second Memorandum Opinion and Order in this proceeding

I. Procedural Matters

A. Ex Parte Rules—Permit-But-Disclose Proceeding

2. This is a permit-but-disclose notice and comment rule making proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's Rules.

B. Paperwork Reduction Act

3. This Sixth NPRM does not contain either a proposed or modified information collection.

C. Regulatory Flexibility Act

4. Initial Regulatory Flexibility Certification. The Commission has prepared an Initial Regulatory Flexibility Certification concerning the impact on small entities of the policies and rules proposed by this Sixth NPRM. The Initial Regulatory Flexibility Certification is set forth below.

D. Comment Dates

5. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, §§ 1.415 and 1.419, interested parties may file comments are due on or before December 9, 2002, and reply comments on or before December 23, 2002. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See* Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121, May 1 1998.

6. Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html*. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

7. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although the Commission continues to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

II. Initial Regulatory Flexibility Certification

8. The Regulatory Flexibility Act (RFA) requires that an agency prepare a regulatory flexibility analysis for notice-and-comment rulemaking proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A "small business concern" is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

9. In this Sixth Notice of Proposed Rule Making (Notice), the Commission continues its evaluation of rules applicable to the use of public safety spectrum in the frequencies at 764–776 MHz and 794–806 MHz (the 700 MHz public safety band) and the spectrally proximate 700 MHz guard bands at 746–747 MHz, 762–764 MHz, 776–777 MHz, and 792–794 MHz. The Commission proposes the following changes in the Sixth Notice:

- Revising values in the emission limit tables to ensure technological feasibility;
- Deleting the column entitled "Maximum ACCP (dbm)" from the table governing ACCP requirements for mobile transmitters because these values are inconsistent with the Commission's decision not to require mobile transmitters to utilize Automatic Power Control;
- Changing the terminology "Adjacent Channel Coupled Power" to "adjacent Channel Power" to align the Commission's rules with industry standards.

These changes, which are intended to ensure that the Commission's rules reflect the latest technical and industry. standards, and to correct typographical or ministerial errors in the Commission's Rules, are exclusively of an administrative nature. The changes will not have a significant economic impact on small entities because they are technologically neutral and will affect all entities equally.

10. The Commission therefore certifies, pursuant to the RFA, that the proposals in this Notice, if adopted, will not have a significant economic impact on a substantial number of small entities. If commenters believe that the proposals discussed in the Notice require additional RFA analysis, they should include a discussion of these issues in their comments and additionally label them as RFA comments.

11. The Commission will send a copy of the Notice, including a copy of this Initial Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the SBA. This initial certification will also be published in the **Federal Register**.

III. Ordering Clauses

12. Pursuant to sections 4(i), 303(f), 332, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(f), 332, 337, 405, this notice of proposed rulemaking is hereby adopted.

13. The Commission's Consumer and Government Affairs Bureau, Reference Information Center, shall send a copy of this notice of proposed rule making, including the Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

47 CFR Part 27

Communications common carriers, Communications equipment, Radio.

47 CFR Part 90

Communications equipment, Radio

Federal Communications Commission.

Marlene H. Dortch,
Secretary.

Rule Changes

Parts 27 and 90 of title 47 of the Code of Federal Regulations is proposed to be amended as follows:

PART 27—MISCELLANEOUS WIRELESS COMMUNICATIONS SERVICES

1. The authority citation for Part 27 continues to read as follows:

Authority: 47 U.S.C. 154, 301, 302, 303, 307, 309, 332, 336, and 337 unless otherwise noted.

2. Section 27.53 is amended by revising paragraph (d) to read as follows:

§ 27.53 Emission limitations.

* * * * *

(d) For operations in the 746–747 MHz, 762–764 MHz, 776–777 MHz, and 792–794 MHz bands, transmitters must meet the following emission limitations:

(1) The adjacent channel power (ACP) requirements for transmitters designed for various channel sizes are shown in the following tables. Mobile station requirements apply to handheld, car mounted and control station units. The tables specify a value for the ACP as a function of the displacement from the channel center frequency and measurement bandwidth. In the following tables, "(s)" indicates a swept measurement may be used.

Offset from center frequency (kHz)	Measurement bandwidth (kHz)	Maximum ACP (dBc)
6.25 kHz Mobile Transmitter ACP Requirements		
6.25	6.25	−40
12.5	6.25	−60
18.75	6.25	−60
25.00	6.25	−65
37.50	25.00	−65
62.50	25.00	−65
87.50	25.00	−65
150.00	100.00	−65
250.00	100.00	−65
350.00	100.00	−65
>400 kHz to 12 MHz	30 (s)	−75
12 MHz to paired receive band	30 (s)	−75
In the paired receive band	30 (s)	−100
12.5 kHz Mobile Transmitter ACP Requirements		
9.375	6.25	−40
15.625	6.25	−60
21.875	6.25	−60
37.50	25.00	−60
62.50	25.00	−65
87.50	25.00	−65
150.00	100	−65
250.00	100	−65
350.00	100	−65
>400 to 12 MHz	30 (s)	−75
12 MHz to paired receive band	30 (s)	−75
In the paired receive band	30 (s)	−100
25 kHz Mobile Transmitter ACP Requirements		
15.625	6.25	−40
21.875	6.25	−60
37.50	25	−60
62.50	25	−65
87.50	25	−65
150.00	100	−65
250.00	100	−65
350.00	100	−65
>400kHz to 12 MHz	30 (s)	−75
12 MHz to paired receive band	30 (s)	−75

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Offset from center frequency (kHz)	Measurement bandwidth (kHz)	Maximum ACP (dBc)
In the paired receive band	30 (s)	−100

Offset from center frequency (kHz)	Measurement Bandwidth (kHz)	Maximum ACP relative (dBc)	Maximum ACP absolute (dBc)
150 kHz Mobile Transmitter ACP Requirements			
100	50	−40	Not specified [1]
200	50	−50	−35
300	50	−50	−35
400	50	−50	−35
600–	1000	30(s)	−60
1000 to receive band	30(s)	−70	−55
In the receive band	30(s)	−100	−75

Offset from center frequency (kHz)	Measurement bandwidth (kHz)	Maximum ACP (dBc)
6.25 kHz Base Transmitter ACP Requirements		
6.25	6.25	−40
12.50	6.25	−60
18.75	6.25	−60
25.00	6.25	−65
37.50	25	−65
62.50	25	−65
87.50	25	−65
150.00	100	−65
250.00	100	−65
350.00	100	−65
>400 to 12 MHz	30 (s)	−80
12 MHz to paired receive band 30(s)	−80	
In the paired receive band	30 (s)	−100
12.5 kHz Base Transmitter ACP Requirements		
9.375	6.25	−40
15.625	6.25	−60
21.875	6.25	−60
37.5	25	−60
62.5	25	−65
87.5	25	−65
150	100	−65
250	100	−65
350.00	100	−65
>400 kHz to 12 MHz	30 (s)	−80
12 MHz to paired receive band	30 (s)	−80
In the paired receive band	30 (s)	−100
25 kHz Base Transmitter ACP Requirements		
15.625	6.25	−40
21.875	6.25	−60
37.5	25	−60
62.5	25	−65
87.5	25	−65
150	100	−65
250	100	−65
350	100.00	−65
>400 kHz to12 MHz 30(s)	−80	
12 MHz to paired receive band	30 (s)	−80
In the paired receive band	30 (s)	−100
150 kHz Base Transmitter ACP Requirements		
100	50	−40
200	50	−50
300	50	−55
400	50	−60
600–1000	30(s)	−65
1000 to receive band	30(s)	−75
In the receive band	30(s)	−100

[1] Not specified.
[2] Continues at −6dB/Oct.

(2) *ACP measurement procedure.* The following procedures are to be followed for making ACP transmitter measurements. For time division multiple access (TDMA) systems, the measurements are to be made under TDMA operation only during time slots when the transmitter is on. All measurements must be made at the input to the transmitter's antenna. Measurement bandwidth used below implies an instrument that measures the power in many narrow bandwidths (*e.g.* 300 Hz) and integrates these powers across a larger band to determine power in the measurement bandwidth.

(i) *Setting reference level:* Using a spectrum analyzer capable of ACP measurements, set the measurement bandwidth to the channel size. For example, for a 6.25 kHz transmitter, set the measurement bandwidth to 6.25 kHz; for a 150 kHz transmitter, set the measurement bandwidth to 150 kHz. Set the frequency offset of the measurement bandwidth to zero and adjust the center frequency of the spectrum analyzer to give the power level in the measurement bandwidth. Record this power level in dBm as the "reference power level".

(ii) *Non-swept power measurement:* Using a spectrum analyzer capable of ACP measurements, set the measurement bandwidth as shown in the tables above. Measure the ACP in dBm. These measurements should be made at maximum power. Calculate the coupled power by subtracting the measurements made in this step from the reference power measured in the previous step. The absolute ACP values must be less than the values given in the table for each condition above.

(iii) *Swept power measurement:* Set a spectrum analyzer to 30 kHz resolution bandwidth, 1 MHz video bandwidth and sample mode detection. Sweep #6 MHz from the carrier frequency. Set the reference level to the RMS value of the transmitter power and note the absolute power. The response at frequencies greater than 600 kHz must be less than the values in the tables above.

(3) *Out-of-band emission limit.* On any frequency outside of the frequency ranges covered by the ACP tables in this section, the power of any emission must be reduced below the unmodulated carrier power (P) by at least 43 + 10 log (P) dB.

(4) *Authorized bandwidth.* Provided that the ACP requirements of this section are met, applicants may request any authorized bandwidth that does not exceed the channel size.

* * * * *

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

3. The authority citation for Part 90 continues to read as follows:

Authority: Sections 4(i), 11, 303(g), 303(r), and 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7).

4. Section 90.543 is amended by revising paragraph (a) to read as follows:

§ 90.543 Emission limitations.

* * * * *

(a) The adjacent channel power (ACP) requirements for transmitters designed for various channel sizes are shown in the following tables. Mobile station requirements apply to handheld, car mounted and control station units. The tables specify a value for the ACP as a function of the displacement from the channel center frequency and measurement bandwidth. In the following tables, "(s)" indicates a swept measurement may be used.

* * * * *

Offset from center frequency (kHz)	Measurement bandwidth	Maximum ACP (dBc)
6.25 kHz Mobile Transmitter ACP Requirements		
6.25	6.25	−40
12.5	6.25	−60
18.75	6.25	−60
25.00	6.25	−65
37.50	25.00	−65
62.50	25.00	−65
87.50	25.00	−65
150.00	100.00	−65
250.00	100.00	−65
350.00	100.00	−65
>400 kHz to 12 MHz	30 (s)	−75
12 MHz to paired receive band	30 (s)	−75
In the paired receive band	30 (s)	−100
12.5 kHz Mobile Transmitter ACP Requirements		
9.375	6.25	−40
15.625	6.25	−60
21.875	6.25	−60
37.50	25.00	−60
62.50	25.00	−65
87.50	25.00	−65
150.00	100	−65
250.00	100	−65
350.00	100	−65
>400 kHz to 12 MHz	30 (s)	−75
12 MHz to paired receive band	30 (s)	−75
In the paired receive band	30 (s)	−100
25 kHz Mobile Transmitter ACP Requirements		
15.625	6.25	−40

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Offset from center frequency (kHz)	Measurement bandwidth	Maximum ACP (dBc)
21.875	6.25	−60
37.50	25	−60
62.50	25	−65
87.50	25	−65
150.00	100	−65
250.00	100	−65
350.00	100	−65
>400 kHz to 12 MHz	30 (s)	−75
12 MHz to paired receive band	30 (s)	−75
In the paired receive band	30 (s)	−100

Offset from center frequency (kHz)	Measurement bandwidth (kHz)	Maximum ACP relative (dBc)	Maximum ACP absolute (dBc)
150 kHz Mobile Transmitter ACP Requirements			
100	50	−40	Not specified
200	50	−50	−35
300	50	−50	−35
400	50	−50	−35
600–1000	30(s)	−60	−45
1000 to receive band	30(s)	−70	−55
In the receive band	30(s)	−100	−75

Offset from center frequency (kHz)	Measurement bandwidth (kHz)	Maximum ACP (dBc)
6.25 kHz Base Transmitter ACP Requirements		
6.25	6.25	−40
12.50	6.25	−60
18.75	6.25	−60
25.00	6.25	−65
37.50	25	−65
62.50	25	−65
87.50	25	−65
150.00	100	−65
250.00	100	−65
350.00	100	−65
>400 kHz to 12 MHz	30 (s)	−80
12 MHz to paired receive band	30 (s)	−80
In the paired receive band	30 (s)	−100
12.5 kHz Base Transmitter ACP Requirements		
9.375	6.25	−40
15.625	6.25	−60
21.875	6.25	−60
37.5	25	−60
62.5	25	−65
87.5	25	−65
150	100	−65
250	100	−65
350	100	−65
>400 kHz to 12 MHz	30 (s)	−80
12 MHz to paired receive band	30 (s)	−80
In the paired receive band	30 (s)	−100
25 kHz Base Transmitter ACP Requirements		
15.625	6.25	−40
21.875	6.25	−60
37.5	25	−60
62.5	25	−65
87.5	25	−65
150	100	−65
250	100	−65
350	100.00	−65
>400 kHz to 12 MHz	30 (s)	−80
12 MHz to paired receive band	30 (s)	−80
In the paired receive band	30 (s)	−100

Offset from center frequency (kHz)	Measurement bandwidth (kHz)	Maximum ACP (dBc)
150 kHz Base Transmitter ACP Requirements		
100	50	−40
200	50	−50
300	50	−55
400	50	−60
600–1000	30 (s)	−65
1000 to receive band	30 (s)	[1] −75
In the receive band	30 (s)	−100

Continues at 6dB/Oct.

(b) *ACP measurement procedure.* The following are the procedures for making the transmitter ACP measurements. For all measurements modulate the transmitter as it would be modulated in normal operating conditions. For time division multiple access (TDMA) systems, the measurements are to be made under TDMA operation only during procedures for making transmitter measurements. For time division multiple access (TDMA) systems, the measurements are to be made under TDMA operation only during time slots when the transmitter is active. All measurements are made at the transmitter's output port. If a transmitter has an integral antenna, a suitable power coupling device shall be used to couple the RF signal to the measurement instrument. The coupling device shall substantially maintain the proper transmitter load impedance. The ACP measurements may be made with a spectrum analyzer capable of making direct ACP measurements. "Measurement bandwidth", as used for non-swept measurements, implies an instrument that measures the power in many narrow bandwidths equal to the nominal resolution bandwidth and integrates these powers to determine the total power in the specified measurement bandwidth.

(1) *Setting reference level.* Set transmitter to maximum output power. Using a spectrum analyzer capable of ACP measurements, set the measurement bandwidth to the channel size. For example, for a 6.25 kHz transmitter, set the measurement bandwidth to 6.25 kHz; for a 150 kHz transmitter, set the measurement bandwidth to 150 kHz. Set the frequency offset of the measurement bandwidth to zero and adjust the center frequency of the instrument to the assigned center frequency to measure the average power level of the transmitter. Record this power level in dBm as the "reference power level".

(2) *Non-swept power measurement:* Using a spectrum analyzer capable of ACP measurements, set the measurement bandwidth and frequency offset from the assigned center frequency as shown in the tables in § 90.543(a) above. Any value of resolution bandwidth may be used as long as it does not exceed 2% of the specified measurement bandwidth. Measure the power level in dBm. These measurements should be made at maximum power. Calculate ACP by subtracting the reference power level measured in (b)(1) from the measurements made in this step. The absolute value of the calculated ACP must be greater than or equal to the absolute value of the ACP given in the table for each condition above.

(3) *Swept power measurement:* Set a spectrum analyzer to 30 kHz resolution bandwidth, 1 MHz bandwidth and average, sample, or RMS detection. Set the reference level of the spectrum analyzer to the RMS value of the transmitter power. Sweep above and below the carrier frequency to the limits defined in the tables. Calculate ACP by subtracting the reference power level measured in (b)(1) from the measurements made in this step. The absolute value of the calculated ACP must be greater than or equal to the absolute value of the ACP given in the table for each condition above.

(c) *Out-of-band emission limit.* On any frequency outside of the frequency ranges covered by the ACP tables in this section, the power of any emission must be reduced below the mean output power (P) by at least 43 + 10log (P) dB measured in 100 kHz bandwidth for frequencies less than 1 GHz, and in a 1 MHz bandwidth for frequencies greater than 1GHz.

(d) *Authorized bandwidth.* Provided that the ACP requirements of this section are met, applicants may request any authorized bandwidth that does not exceed the channel size.

(e) For operations in the 764 to 776 MHz and 794 to 806 MHz bands, all emissions including harmonics in the band 1559–1610 MHz shall be limited to −70 dBW/MHz dBW/MHz equivalent isotropically radiated power (EIRP) for wideband signals, and −80 dBW EIRP for discrete emissions of less than 700 Hz bandwidth. For the purpose of equipment authorization, a transmitter shall be tested with an antenna that is representative of the type that will be used with the equipment in normal operation.

(f) When an emission outside of the authorized bandwidth causes harmful interference, the Commission may, at its discretion, require greater attenuation than specified in this section.

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Notices

Federal Register
Vol. 67, No. 217
Friday, November 8, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Privacy Act of 1974; Report of a New System of Records

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of New Privacy Act System of Records.

SUMMARY: Notice is hereby given that the United States Department of Agriculture (USDA) proposes to create a new Privacy Act system of records, FCIC–10, entitled "Policyholder." The system will be maintained by the Federal Crop Insurance Corporation (FCIC), a wholly-owned Government Corporation administered by the Risk Management Agency (RMA), an agency of USDA. The primary purpose the policyholder system is to aid in the administration and management of the Federal crop insurance program.

EFFECTIVE DATE: This notice will be adopted without further publication on December 9, 2002 unless modified by a subsequent notice to incorporate comments received from the public. Although the Privacy Act requires only that the portion of the system which describes the "routine uses" of the system be published for comment, USDA invites comment on all portions of this notice. Comments must be received by the contact person listed below on or before December 9, 2002.

FOR FURTHER INFORMATION CONTACT: Director, Actuarial Division, Risk Management Agency, Federal Crop Insurance Corporation, 6501 Beacon Drive, Stop 0814, Kansas City, Missouri 64133–4676. Telephone: (816) 926–6487.

SUPPLEMENTARY INFORMATION: Pursuant to the Privacy Act, 5 U.S.C. 552a, USDA is creating a new system of records, FCIC–10, entitled "Policyholder" to be maintained by the Federal Crop Insurance Corporation (FCIC), a wholly-owned Government Corporation administered by the Risk Management Agency (RMA), an agency of USDA.

The policyholder system contains records of insured producers' and their policy information. Included in this information is: Name and tax identification numbers (including social security numbers) of the insured and all persons with a substantial beneficial interest in the insured, the crops insured, coverage levels, price elections, production and yield history; acreage report information including acres, farming practices, planting dates, premium and liability data; a legal description and identification of insured's land; and, if applicable, associated loss data on the insured's land as submitted to RMA by private insurance companies.

The purpose of the policyholder system is to administer the Federal crop insurance program; identify and support compliance and agency oversight efforts to mitigate fraud, waste and abuse; evaluate and analyze program performance as an element of determining actuarial soundness; support data reconciliation with the Farm Service Agency; assemble data for the purpose of establishing sound actuarial bases for insurance on agricultural commodities; research and develop new crop and risk management programs; analyze, evaluate or modify existing programs, internal controls and program performance; perform cost benefit analysis to support program rules, changes and modifications; provide historical records of program performance for research and development related to rating and coverage; and provide insured producers' policy information to private insurance companies as required by the Standard Reinsurance Agreement between the FCIC and the private insurance companies.

The policyholder system is maintained by the Actuarial Division, Research and Development, located in the RMA Kansas City office.

A report on a new system, as required by 5 U.S.C. 552a(r) and implemented by OMB Circular A–130, was sent to the Chairman, Committee on Governmental Affairs, United States Senate; the Chairman, Committee on Government Reform, U.S. House of Representatives; and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget, on November 4, 2002.

Signed at Washington, DC, on November 4, 2002.

Ann M. Veneman,
Secretary of Agriculture.

USDA/FCIC–10

SYSTEM NAME:
Policyholder.

SECURITY CLASSIFICATION:
None.

SYSTEM LOCATION:
Kansas City Office, Federal Crop Insurance Corporation, Risk Management Agency, 501 Beacon Drive, Stop 0814, Kansas City, Missouri 64133–4676 and regional offices for the Federal Crop Insurance Corporation. Addresses of the regional offices may be obtained from the Deputy Administrator, Insurance Services, Risk Management Agency, United States Department of Agriculture, 1400 Independence Avenue, SW., Stop 0805, room 6709–S, Washington, DC 20250–0803.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:
The system consists of information on any individual or other legal entity that has, or has had in the past, insurance with the Federal Crop Insurance Corporation (FCIC) or a private insurance company reinsured by the FCIC.

CATEGORIES OF RECORDS IN THE SYSTEM:
The system consists of standardized records containing identifying information on individuals or other legal entities such as name, address, tax identification number (social security number or employer identification number) of the insured and any person with a substantial beneficial interest in the insured. The system also contains crops insured by crop years, the amount of premium paid by the insured, the amount of indemnity paid to the insured, the cause of loss, loss ratio of each crop insured under the policy, the number of years of no loss, the total number of years a premium discount was earned, the number of years an indemnity was paid, insured acreage, acreage location, crop yield history, and other individual information related to the operation of the crop insurance program. The system consists of a complete file containing information from all basic insurance documents: *i.e.*, the application for insurance, the annual acreage report, inspection reports, claim forms, etc.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:
7 U.S.C. 1501 *et seq.*

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:
Records contained in this system may be used as follows:

(1) Referral to the appropriate agency, whether Federal, State, local or foreign including the Department of Justice, charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing a statute, rule, regulation or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute or by rule, regulation or order issued pursuant thereto.

(2) Disclosure to a court, magistrate or administrative tribunal or to opposing counsel in a proceeding before a court, magistrate, or administrative tribunal, of any record within the system that constitutes evidence in that proceeding, or which is sought in the course of discovery, to the extent that FCIC determines that the records sought are relevant to the proceeding.

(3) Disclosure to a congressional office in response to any inquiry from the congressional office made at the request of that individual.

(4) Disclosure to private insurance companies for any purpose relating to the sale, service, and administration of the Federal crop insurance program and the policies insured under the authority of the Federal Crop Insurance Act (Act).

(5) Disclosure to other Federal agencies and contractors, cooperators, and partners of FCIC for the purpose of conducting research, development, analyses, and evaluation into all aspects relating to new and existing crop insurance programs and other risk management tools.

(6) Disclosure to contractors or other Federal agencies to conduct research and analysis to identify patterns, trends, anomalies, instances and relationships of private insurance companies, agents, loss adjusters and policyholders that may be indicative of fraud, waste, and abuse.

(7) Disclosure to private insurance companies, contractors, and other applicable Federal agencies to determine whether information has been accurately provided to FCIC and the private insurance companies and to determine compliance with program requirements.

(8) Disclosure to private insurance companies, contractors, cooperators, partners of FCIC, and other Federal agencies for any purpose relating to the sale, service, administration, analysis and evaluation of the Federal crop insurance program.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:
Records are maintained electronically, on computer printouts, and in the file folders at the Kansas City Office.

RETRIEVABILITY:
Records are indexed by State, county and policy number. Records may be indexed and retrieved by name of individual, tax identification number (social security number or employer identification number), or policy number.

SAFEGUARDS:
Records are accessible only to authorized personnel and are maintained in offices that are locked during non-duty hours. The electronic records are controlled by password protection and the computer network is protected by means of a firewall. File folders and other hard copy records are stored in locked file cabinets.

RETENTION AND DISPOSAL:
Electronic records are maintained indefinitely. Hard copy records are maintained until expiration of the records retention period established by the National Archivist.

SYSTEM MANAGER(S) AND ADDRESS:
Director, Actuarial Division, Risk Management Agency, Federal Crop Insurance Corporation, 6501 Beacon Drive, Stop 0814, Kansas City, Missouri 64133–4676. Telephone: (816) 926–6487.

NOTIFICATION PROCEDURE:
An individual may request information regarding this system of records or information as to whether the system contains records pertaining to such individual from the Kansas City Office. The request for information should contain the individual's name and address; tax identification number (social security number or employer identification number); State(s) and county(ies) where such individual farms; and individual crop insurance policy numbers, if known. Before information about any record is released, the System Manager requires the individual to provide proof of identity or requires the requester to furnish a notarized written authorization from the individual to permit release of information.

RECORD ACCESS PROCEDURES:
An individual may obtain information as to the procedures for gaining access to a record in the system, which pertains to such individual, by submitting a written request to the Privacy Act Officer, Risk Management Agency, Program Support Staff, Room 6620–SB, AG Stop 0821, 1400 Independence Avenue, SW., Washington, DC 20250–0821. The envelope and letters should be marked "Privacy Act Request." A request for information should contain: name, address, ZIP code, tax identification number (social security number or employer identification number), name of the system of records, year of records in question, and any other pertinent information to help identify the file.

CONTESTING RECORD PROCEDURES:
Procedures for contesting records are the same as the procedures for record access. Include the reason for contesting the record and the proposed amendment to the information with supporting documentation to show how the record is inaccurate.

RECORD SOURCE CATEGORIES:
Information in this system comes primarily from the insurance company, or from other Federal agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:
None.

[FR Doc. 02–28475 Filed 11–7–02; 8:45 am]
BILLING CODE 3410–08–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. FV03–944–1 NC]

Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request an extension for and revision to a currently approved information collection for specified exempt import commodities.

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DATES: Comments on this notice must be received by January 7, 2003.

ADDITIONAL INFORMATION OR COMMENTS: Contact Valerie L. Emmer-Scott, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., room 2525–S., STOP 0237, Washington, DC 20250–0237; Fax: (202) 205–2829, or e-mail: *moab.docketclerk@usda.gov*.

Small businesses may request information on this notice by contacting Jay Guerber, Regulatory Fairness Representative, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., room 2525–S., Stop 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or e-mail: *Jay.Guerber@usda.gov*.

SUPPLEMENTARY INFORMATION:

Title: Specified Commodities Imported into the United States Exempt from Import Requirements.

OMB Number: 0581–0167.

Expiration Date of Approval: May 31, 2003.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: Section 8e of the Agricultural Marketing Agreement Act of 1937 (Act), as amended (7 U.S.C. 601–674) requires that whenever the Secretary of Agriculture issues grade, size, quality, or maturity regulations under domestic marketing orders for certain commodities, the same or comparable regulations on imports of those commodities must be issued. Import regulations apply only during those periods when domestic marketing order regulations are in effect. Currently, the following commodities are subject to Section 8e import regulations: avocados, dates (other than dates for processing), hazelnuts, grapefruit, table grapes, kiwifruit, limes (suspended), olives (other than Spanish-styles olives), onions, oranges, Irish potatoes, prunes, raisins, tomatoes, and walnuts. However, imports of these commodities are exempt from such requirements if they are imported for such outlets as processing, charity, animal feed, seed, and distribution to relief agencies, when those outlets are exempt under the applicable marketing order.

Safeguard procedures in the form of importer and receiver importing requirements are used to ensure that the imported commodity is provided to authorized exempt outlets. The safeguard procedures are similar to the reports currently required by most domestic marketing orders. The import regulations require importers and receivers of imported fruit, vegetable, and specialty crops to submit a form, as provided in sections 944.350, 980.501, and 999.500.

An importer wishing to import commodities for exempt purposes must complete, prior to importation, an Importer's Exempt Commodity Form (FV–6), which is a four-part form. Copy one is presented to the U.S. Customs Service. The importer files copy two with the Marketing Order Administration Branch (MOAB) of the Fruit and Vegetable Programs, AMS, within two days after the commodity enters the United States. The third copy of the form accompanies the exempt shipment to its intended destination. The receiver certifies that the commodity has been received and that it will be utilized for authorized exempt purposes. The receiver then files copy three with MOAB, within two days after receiving the commodity. The fourth copy is retained by the importer.

The Department of Agriculture (Department) utilizes this information to ensure that imported goods destined for exempt outlets are given no less favorable treatment than that afforded to domestic goods destined for such exempt outlets. These exemptions are consistent with Section 8e import regulations under the Act.

This form requires the minimum amount of information necessary to effectively carry out the requirements of the Act, and its use is necessary to fulfill the intent of the Act, and to administer Section 8e compliance activities.

In addition, included in this extension and revision of a currently approved information collection is another form titled, "Civil Penalty Stipulation Agreement" (FV–7). This form provides AMS with an additional tool to obtain resolution of certain cases under the Act without the cost of going to a hearing. Stipulation agreements may be appropriate for, but limited to, instances of minor violations of a marketing order or marketing agreement or Section 8e of the AMAA. However, AMS is not under any obligation to issue stipulation agreements. The only requirement for this form is a signature, therefore, there is no burden on the person if they agree to the Agreement and return it.

The information collected is used primarily by authorized representatives of the Department, including AMS, Fruit and Vegetable Programs' regional and headquarters staff. AMS is the primary user of the information.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .17 hours per response.

Respondents: Importers and receivers of exempt commodities.

Estimated Number of Respondents: 300.

Estimated Number of Responses per Respondent: 50.

Estimated Total Annual Burden on Respondents: 2,550 hours.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments should reference OMB No. 0581–0167 and be mailed to Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., room 2525–S., STOP 0237, Washington, DC 20250–0237; Fax: (202) 205–2829, or e-mail: *moab.docketclerk@usda.gov*. Comments should reference the docket number and the date and page number of this issue of the **Federal Register**. All comments received will be available for public inspection in the Office of the Docket Clerk during regular USDA business hours at 14th and Independence Ave., SW., Washington, DC, room 2525–S.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: November 4, 2002.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 02–28424 Filed 11–7–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. FV02–502–N]

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request an extension for a currently approved information collection for Fruit and Vegetable Market News.

DATES: Comments received by January 7, 2003 will be considered.

ADDITIONAL INFORMATION OR COMMENTS: Contact Terry C. Long, Chief; Fruit and Vegetable Market News Branch, Fruit and Vegetable Programs, AMS–USDA, 1400 Independence Avenue, SW, Stop-0238, Washington, DC 20250–0238; Telephone: (202) 720–2175, Fax: (202) 720–0547. All comments will be available for public inspection at this address during the hours of 8 a.m. to 4 p.m. Monday through Friday.

SUPPLEMENTARY INFORMATION:

Title: Fruit and Vegetable Market News.

OMB Number: 0581–0006.

Expiration Date of Approval: April 30, 2003.

Type of Request: Extension of a currently approved information collection.

Abstract: Collection and dissemination of information for fruit, vegetable and ornamental production and to facilitate trading by providing a price base used by producers, wholesalers, and retailers to market product.

The Agricultural Marketing Act of 1946 (7 U.S.C. 1621-*et seq.*), section 203(g) directs and authorizes the collection and dissemination of marketing information including adequate outlook information, on a market area basis, for the purpose of anticipating and meeting consumer requirements, aiding in the maintenance of farm income and to bring about a balance between production and utilization.

The fruit and vegetable industry provides information on a voluntary basis, and is gathered through confidential telephone and face-to-face interviews by market reporters. Reporters request supplies, demand, and prices of over 400 fresh fruit, vegetable, nut ornamental, and other specialty crops.

The fruit and vegetable market news reports are used by academia, but are primarily used by the fruit, vegetable and ornamental trade, which includes packers, processors, brokers, retailers, and producers. The fruit and vegetable industry requested that the Department of Agriculture issue price and supply market reports for commodities of regional, national and international significance in order to assist them in making immediate production and marketing decisions and as a guide to the amount of product in the supply channel.

Many government agencies use the reports to make their market outlook projections. Data from these reports is included in the information forwarded to the Secretary's office and staff, as needed, to keep them appraised of the current market conditions and movement of fruit, vegetable, and ornamental commodities in the United States. Economists at most major agricultural colleges and universities use the reports to make both short and long term market projections. The data is used extensively by consulting firms and private economists to aid them in determining available supplies and current pricing.

The information is collected, compiled, and disseminated by an impartial third party, in a manner which protects the confidentiality of the reporter. Further, since the Government is a purchaser of fruits and vegetables, a system to monitor the collection and reporting of data is needed.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .033 hours per response.

Respondents: Fruit, vegetable, and ornamental industry, or other for-profit businesses, individuals or households, farms.

Estimated Number of Respondents: 18,347.

Estimated Number of Responses per Respondent: 200.

Estimated Total Annual Burden on Respondents: 120,964.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: Terry C. Long, Chief, Fruit and Vegetable Market News Branch, Fruit and Vegetable Programs, AMS–USDA, 1400 Independence Avenue, SW, Stop-0238, Washington, DC 20250–0238.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: November 4; 2002.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 02–28425 Filed 11–7–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Forest Service

North Fork Eel Grazing Allotments EIS—Six Rivers National Forest

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Six Rivers National Forest will prepare an environmental impact statement (EIS) on a proposal to authorize grazing 591 cow-calf pairs on five allotments encompassing approximately 72,558 acres of National Forest System lands in the North Fork Eel River Watershed in Trinity County, California. The allotments within the analysis area include Zenia, Hoaglin, Soldier Creek, Long Ridge and Van Horn. Small portions of the latter three allotments extend into adjacent watersheds, for which separate environmental analyses would be conducted. They are located in all or portions of the following townships: T2SR6E, T2SR7E, T3SR6E, T3SR7E, T3SR8E, T4S6E, T4S7E, T4SR8E, T5SR6E, T5SR7E, Humboldt Meridian; T25NR12W, Mount Diablo Meridian.

The purposes of the proposal are to authorize grazing in the five cattle allotments under a strategy that protects heritage and natural resource values and maintains the biological diversity of rangelands. If approved, the Six Rivers National Forest would authorize grazing through term grazing permits for up to 10 years. The EIS will be designed to satisfy the requirements of the Federal Land Policy and Management Act of 1976 and implementing regulations (43 CFR 2310.1).

DATES: Comments concerning the scope of the analysis must be received on or before 30 days after publication of this notice in the Federal Register. The draft environmental impact statement is expected in March 2003 and the final environmental impact statement is expected in June 2003.

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ADDRESSES: Send written comments to S. E., "Lou" Woltering, Forest Supervisor, Six Rivers National Forest, 1330 Bayshore Way, Eureka, CA 95501–3834. For further information, mail correspondence to Ruben Escatell, EIS Team Leader, Mad River Ranger District, Star Route Box 300, Bridgeville, CA 95526. A public meeting scheduled for December 3, 2002 will be held at the Mad River Community Hall located at 155-C Van Duzen Road, Mad River, CA 95552. Comments may be mailed electronically to *rescatell@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Ruben Escatell or Clara Bambauer Cross, EIS Team Leaders at (707) 574–6233.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

The purpose of this analysis is to evaluate the grazing management on five allotments within the North Fork Eel River watershed and to determine the level and conditions of grazing to be authorized on federal lands managed by the Six Rivers National Forest, Mad River Ranger District. The allotments within the project area are Hoaglin, Long Ridge, Soldier Creek, Van Horn and Zenia. The Six Rivers National Forest Land and Resource Management Plan (LRMP) designates the North Fork Eel Watershed as a Key Watershed, part of a system of watersheds that serve as refugia for at-risk stocks of anadromous salmonids and resident fish species. Land management allocations across the analysis area include Matrix, Late-successional Reserve, Riparian Reserves, Wilderness and Wild River.

Allotment Management Plans (AMP's) developed from this analysis would meet resource protection and enhancement goals in the Six Rivers National Forest LRMP, while protecting outstandingly remarkable values associated with the segment of the river designated as Wild under the Wild and Scenic Rivers Act (1968). These goals and values include the following:

- Maintenance of water quality for aquatic ecosystems, particularly anadromous fish.
- Maintenance of rangeland biologic diversity and productivity.
- Protection of heritage resources.
- Protection of habitat for wildlife and plant species of concern.
- Maintenance of values associated with inclusive Wilderness and Wild River designations.
- Maintenance of economic stability for the local community that relies on public rangelands.
- Fulfillment of a trust responsibility to the Round Valley Indian Tribes to manage grazing activities and policies so as to not adversely impact tribal trust properties and rights downriver of the analysis area.

A number of laws, including the Multiple-Use Sustained Yield Act (1960), the Wilderness Act (1964), the California State Wilderness Act (1984), the Forest and Rangeland Renewable Resources Planning Act (1974), the Federal Land Policy and Management Act (1976), and the National Forest Management Act (1976), provide direction for grazing on public lands. The Six Rivers National Forest LRMP contains provisions to implement this direction.

Proposed Action

The Forest Service proposes to authorize grazing for 591 cow-calf pairs on National Forest Systems lands on five cattle allotments within the North Fork Eel River watershed and prepare Allotment Management Plans to incorporate the elements included within the resulting decision. Grazing practices, and construction or restoration of range improvements, would be prescribed to protect aquatic systems, water quality, anadromous fish habitat, improve livestock distribution, and enhance rangeland health and biodiversity.

Responsible Official

S.E. "Lou" Woltering, Forest Supervisor, Six Rivers National Forest, USDA Forest Service, 1330 Bayshore Way, Eureka, CA 95501–3834, is the Responsible Official for any decision to authorize grazing and manage rangelands in the five cattle allotments within the North Fork Eel River watershed on National Forest system lands. He will document his decisions and rationale in a Record of Decision.

Nature of Decision To Be Made

The Forest Supervisor will make the following decision: whether or not to authorize cattle grazing in allotments within the North Fork Eel River watershed, and if so, the terms and conditions required for the term grazing permits and AMP's.

Scoping Process

The public is encouraged to take part in the scoping process and is encouraged to visit with Forest Service officials at any time during the analysis and prior to the decision. The Forest Service will be seeking information, comments and assistance from Federal, State and local agencies and other individuals or organizations who may be interested in, or affected by, the proposed action. While public participation in this analysis is welcome at any time, comments received within 30 days of the publication of this notice will be especially useful in the preparation of the Draft EIS. A public meeting associated with the project will be held to gain a better understanding of public issues and concerns. The meeting will be held in Mad River, California at the Mad River Community Hall on December 3, 2002 from 6 to 8 p.m.

Information from the meeting will be used in preparation of the draft and final EIS. The scoping process will include identifying: potential issues, significant issues to be analyzed in depth, alternatives to the proposed action, and potential environmental effects of the proposal and alternatives.

Early Notice of Importance of Public Participation in Subsequent Environmental Review

A draft environmental impact statement will be prepared for comment. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2wd 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement.

Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21)

Dated: October 31, 2002.

S.E. "Lou" Woltering,

Forest Supervisor, Six Rivers National Forest.

[FR Doc. 02–28458 Filed 11–7–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Sunshine Act Meeting

AGENCY: Rural Telephone Bank, USDA.

ACTION: Privatization committee meeting.

TIME AND DATE: 9 a.m., Thursday, November 14, 2002.

PLACE: Conference Room 104–A, Jamie L. Whitten Federal Building, U.S. Department of Agriculture, 12th & Jefferson Drive, SW., Washington, DC.

STATUS: Open.

MATTERS TO BE DISCUSSED: The business advisor will report on the status of current privatization projects.

ACTION: Staff Briefing for the Board of Directors.

TIME AND DATE: 2 p.m., Thursday, November 14, 2002.

PLACE: Conference Room 104–A, Jamie L. Whitten Federal Building, U.S. Department of Agriculture, 12th & Jefferson Drive, SW., Washington, DC.

STATUS: Open.

MATTERS TO BE DISCUSSED:

1. Current telecommunications industry issues.
2. Administrative issues.

ACTION: Board of Directors Meeting.

TIME AND DATE: 9 a.m., Friday, November 15, 2002.

PLACE: Conference Room 104–A, Jamie L. Whitten Federal Building, U.S. Department of Agriculture, 12th & Jefferson Drive, SW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The following matters have been placed on the agenda for the Board of Directors meeting:

1. Call to order.
2. Report on board election results.
3. Oath of office for new board members.
4. Election of board officers: Chairperson, Vice Chair, Secretary, and Treasurer.
5. Action on Minutes of the August 15, 2002, board meeting.
6. Secretary's Report on loans approved in FY 2002.
7. Treasurer's Report.
8. Privatization Committee Report.
9. Consideration of resolution to reestablish the Privatization Committee.
10. Governor's Remarks.
11. Establish dates and locations for Year 2003 board meeting.
12. Adjournment.

CONTACT PERSON FOR MORE INFORMATION: Roberta D. Purcell, Assistant Governor, Rural Telephone Bank, (202) 720–9554.

Dated: November 1, 2002.

Hilda Gay Legg,

Governor, Rural Telephone Bank.

[FR Doc. 02–28673 Filed 11–6–02; 12:31 pm]

BILLING CODE X3410–15–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Addition

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Proposed Addition to Procurement List—Change of Nonprofit Agency.

SUMMARY: The Committee is republishing a proposed addition to the Procurement List for a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities because of a change in the nonprofit agency proposed to provide the service.

Comments Must Be Received On or Before: November 22, 2002.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION: The nonprofit agency identified in the original **Federal Register** notice (67 FR 58015, September 13, 2002) has been replaced by another nonprofit agency, Peckham Vocational Industries. We are extending the comment period on the proposed addition to the Procurement List to provide an opportunity for interested parties to comment on this change or to revise previously submitted comments.

This notice is published pursuant to 41 U.S.C. 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed addition, the entity of the Federal Government identified in the notice will be required to procure the service listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the service to the Government.
2. If approved, the action will result in authorizing small entities to furnish the service to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following service is proposed for addition to Procurement List for production by the nonprofit agencies listed:

Service

Service Type/Location: Personal Environmental Protection & Survival Equipment Warehousing and Distribution Service. U.S. Army Natick Research Development & Engineering Center, Natick, Massachusetts.

NPA: Peckham Vocational Industries, Inc., Lansing, Michigan.

Contract Activity: U.S. Army Natick Soldier Center, Natick, Massachusetts.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 02–28552 Filed 11–7–02; 8:45 am]

BILLING CODE 6353–01–P

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COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Deletions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Proposed Deletions from Procurement List.

SUMMARY: The Committee is proposing to delete from the Procurement List products previously furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: December 8, 2002.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed deletions.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products to the Government.
2. If approved, the action will result in authorizing small entities to furnish the products to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products proposed for deletion from the Procurement List.

The following products are proposed for deletion from the Procurement List:

Products:

Product/NSN: Card Set, Guide, File.
7530–00–861–1263.
7530–00–861–1272.
NPA: Georgia Industries for the Blind, Bainbridge, Georgia.
Contract Activity: Office Supplies & Paper Products Acquisition Center, New York, New York.
Product/NSN: Disk, Flexible.
7045–01–251–7527.
7045–01–365–2070.
7045–01–365–2071.
7045–01–209–2193.
NPA: North Central Sight Services, Inc., Williamsport, Pennsylvania.
Contract Activity: Defense Supply Center Philadelphia, Philadelphia, Pennsylvania.
Product/NSN: Tape, Computer.
7045–01–119–6357.
NPA: North Central Sight Services, Inc., Williamsport, Pennsylvania.
Contract Activity: Defense Supply Center Columbus, Columbus, Ohio.
Product/NSN: Tape, Electronic Data Processing.
7045–01–338–6542.
NPA: North Central Sight Services, Inc., Williamsport, Pennsylvania.
Contract Activity: Defense Supply Center Columbus, Columbus, Ohio.

Sheryl D. Kennerly,
Director, Information Management.
[FR Doc. 02–28553 Filed 11–7–02; 8:45 am]
BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and Deletions from Procurement List.

SUMMARY: This action adds to the Procurement List products and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List products previously furnished by such agencies.

EFFECTIVE DATE: December 8, 2002.

ADDRESS: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION:

Additions:

On April 26, August 9, August 30, and September 6, 2002, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (67 F.R. 20726, 51819, 55776, 56981) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and services and impact of the additions on the current or most recent contractors, the Committee has determined that the products and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the Government.
2. The action will result in authorizing small entities to furnish the products and services to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and services proposed for addition to the Procurement List.

Accordingly, the following products and services are added to the Procurement List:

Products:

Product/NSN: Easel, Wallboard, Magnetic.
7520–00-NIB–1368 (18" x 24").
7520–00-NIB–1369 (24" x 36").
7520–00-NIB–1371 (36" x 48").
NPA: The Lighthouse for the Blind, Inc., Seattle, Washington.
Contract Activity: Office Supplies & Paper Products Acquisition Center, New York, New York.

Services:

Service Type/Location: Janitorial/Custodial, CDC/NIOSH, Spokane Research Laboratory, Spokane, Washington.
NPA: Pre-Vocational Training Center, Spokane, Washington.
Contract Activity: Center for Disease Control-NIOSH, Spokane, Washington.
Service Type/Location: Janitorial/Custodial, U.S. Attorney Building, Springfield, Illinois.
NPA: Challenge Unlimited, Inc., Alton, Illinois.
Contract Activity: GSA Public Buildings Service, Springfield, Illinois.
Service Type/Location: Miscellaneous Support Services, Central Arkansas Veterans Healthcare System, Little Rock/North Little Rock, Arkansas.
NPA: Pathfinder Schools, Inc., Jacksonville, Arkansas.
Contract Activity: Veterans Affairs Medical Center, North Little Rock, Arkansas.
Service Type/Location: Recycling, End of Life Electronics, U.S. Mint, Washington, DC.
NPA: ServiceSource, Inc., Alexandria, Virginia.
Contract Activity: U.S. Mint, Washington, DC.
Service Type/Location: Storage and Distribution Service Springs for DSCP, Defense Supply Center Philadelphia, Philadelphia, Pennsylvania.
NPA: Arizona Industries for the Blind, Phoenix, Arizona.
NPA: Industries of the Blind, Inc., Greensboro, North Carolina.
Contract Activity: Defense Supply Center Philadelphia, Philadelphia, Pennsylvania.

Deletions:

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action may not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products to the Government.
2. The action may result in authorizing small entities to furnish the products to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products deleted from the Procurement List.

After consideration of the relevant matter presented, the committee has determined that the products listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Accordingly, the following products are deleted from the Procurement List:

Products:

Product/NSN: Clamp, Loop.
5340–00–410–2973.
5340–01–120–1320.
5340–01–413–2977.
5340–01–418–5763.
NPA: None currently authorized.
Contract Activity: Defense Supply Center Philadelphia, Philadelphia, Pennsylvania.

Sheryl D. Kennerly,
Director, Information Management.
[FR Doc. 02–28554 Filed 11–7–02; 8:45 am]
BILLING CODE 6353–1–P

COMMISSION ON CIVIL RIGHTS

Sunshine Act Notice

AGENCY: U.S. Commission on Civil Rights.

DATE AND TIME: Friday, November 15, 2002, 8:30 a.m.

PLACE: Holiday Inn on the Bay Hotel, 1355 North Harbor Drive, San Diego, CA 92101.

Status:

Agenda

I. Approval of Agenda
II. Approval of Minutes of July 19 Meeting; Acknowledgment September 13 and October 11, 2002 "Meetings"
III. Announcements
IV. Staff Director's Report
V. State Advisory Committee Appointments for Arkansas, Georgia, Illinois, New Hampshire, New York, Oklahoma, Texas and Tennessee
VI. State Advisory Committee Report: Civil Rights Issues in West Virginia (West Virginia)
VII. FY–2004 Budget Estimate to OMB
VIII. Discussion of Status of Commission Projects
IX. Presentations from Western Regional SAC members representing Arizona and California on recent activities and other civil rights developments in their states
X. Presentations and Discussion Relating to Challenges of Equal Opportunity in Higher Education

CONTACT PERSON FOR FURTHER INFORMATION: Les Jin, Press and Communications (202) 376–7700.

Debra A. Carr,
Deputy General Counsel.
[FR Doc. 02–28719 Filed 11–6–02; 2:56 pm]
BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Industry and Security.
Title: BIS Program Evaluation.
Agency Form Number: N/A.
OMB Approval Number: 0694–0125.
Type of Request: Extension of a currently approved collection.
Burden: 500 hours.
Average Time Per Response: 10 minutes per response.
Number of Respondents: 3,000 respondents.
Needs and Uses: This form is used by BIS seminar instructors at seminar programs throughout the year. Seminar participants are asked to fill out the evaluation form during the program and turn it in at the end of the program. The responses to these questions provide useful and practical information that BIS can use to determine that it is providing a quality program and gives BIS information useful to making recommended improvements.
Affected Public: Individuals, businesses or other for-profit institutions.
Respondent's Obligation: Voluntary.
OMB Desk Officer: David Rostker.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, DOC Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20230.

Dated: November 4, 2002.

Madeleine Clayton,
Management Analyst, Office of the Chief Information Officer.
[FR Doc. 02–28418 Filed 11–7–02; 8:45 am]
BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1251]

Approval of Processing Activity Within Foreign-Trade Zone 113, Midlothian, Texas; Siemens Westinghouse Power Corporation (Inc.) (Industrial Power Generation Equipment); Notice of Correction

The **Federal Register** notice (67 FR 64095, 10–17–2002) describing Foreign-Trade Zones Board Order 1251 approving authority for Siemens Westinghouse Power Corporation (Inc.) to process industrial power generation equipment under FTZ procedures within FTZ 113 in Midlothian, Texas, is corrected as follows:

Paragraph 2, Sentence 1, should read "WHEREAS, Trade Zone Operations, Inc.,* * *"

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Paragraph 7, Sentence 1, should read "Signed in Washington, DC, this 7th day of October, 2002."

Dated: October 31, 2002.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 02–28526 Filed 11–7–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Materials Processing Equipment Technical Advisory Committee; Notice of Open Meeting

The Materials Processing Equipment Technical Advisory Committee will meet on December 5, 2002 at 9 a.m. in room 6087B of the Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW., Washington, DC. The committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to materials processing equipment and related technology.

Agenda

1. Election of Chairman.
2. Presentation of papers or comments by the public.
3. Update on the Wassenaar Arrangement with discussion on machine tool issues.
4. Review of laser measuring equipment.

The meeting will be open to the public and a limited number of seats will be available. Reservations are not accepted. To the extent that time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the Committee suggests that presenters forward the public presentation materials two weeks prior to the meeting date to the following address: Ms. Lee Ann Carpenter, Advisory Committees MS: 3876, Bureau of Industry and Security, U.S. Department of Commerce, Washington, DC 20230.

For more information contact Lee Ann Carpenter at 202–482–2583.

Dated: November 5, 2002.

Lee Ann Carpenter,

Committee Liaison Officer.

[FR Doc. 02–28466 Filed 11–7–02; 8:45 am]

BILLING CODE 3510–JT–M

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

National Infrastructure Advisory Council; Notice of Partially Closed Meeting

The National Infrastructure Advisory Council (NIAC) will meet on Tuesday, November 26, 2002, from 2 p.m. until 4 p.m. at the Truman Room of the White House Conference Center, 726 Jackson Place, NW., Washington, DC 20503. Limited seating will be available for the open sessions of the meeting. Reservations are not accepted. The Council advises the President of the United States on the security of information systems for critical infrastructure supporting other sectors of the economy, including banking and finance, transportation, energy, manufacturing, and emergency government services. At this meeting, the Council will continue deliberations concerning comments it is formulating for the President concerning the draft National Strategy to Secure Cyberspace.

Agenda

Open Session

I. Welcome—Mr. Davidson, Mr. Clarke, and Mr. Juster.
II. Review and approval of Summary of Conclusions from November 15 meeting.

Closed Session

III. Closed briefing—PCIPB Staff.
IV. Discussion of NIAC comments on draft National Strategy to Secure Cyberspace—Mr. Davidson, NIAC members, PCIPB Staff.
V. Adoption of NIAC comments—NIAC members.

Open Session

VI. NIAC Priorities—Mr. Davidson and Mr. Clarke.
VII. New Business.
VIII. Adjourn.

Written comments may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Council members, the Council suggests that presenters forward the public presentation materials, ten days prior to the meeting date, to the following address: Ms. Wanda Rose, Critical Infrastructure Assurance Office, Bureau of Industry and Security, U.S. Department of Commerce, Room 6095, 14th Street & Constitution Avenue, NW., Washington, DC 20230.

The Office of the Chief Financial Officer and Assistant Secretary for Administration, U.S. Department of Commerce, formally determined on September 19, 2002, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of this Council and of any Subcommittees thereof, dealing with information, the premature disclosure of which would be likely significantly to frustrate implementation of proposed agency action shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act, 5 U.S.C. 552b(c)(9)(B). The remaining series of meetings or portions thereof will be open to the public.

For more information contact Eric T. Werner on (202) 482–7470.

Dated: November 8, 2002.

Eric T. Werner,

Council Liaison Officer.

[FR Doc. 02–28712 Filed 11–7–02; 8:45 am]

BILLING CODE 3510–JT–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–007]

Barium Chloride From the People's Republic of China: Preliminary Results and Rescission in Part of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results and Rescissions in Part of Antidumping Duty Administrative Review of Barium Chloride from the People's Republic of China.

SUMMARY: In response to a request from the petitioner, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on barium chloride from the People's Republic of China (PRC). The period of review (POR) is October 1, 2000 through September 30, 2001. The petitioner requested a review of 11 exporters. One company reported that it had no shipments of subject merchandise to the United States during the POR, and we have confirmed that claim with the U.S. Customs Service (Customs). Accordingly, we are preliminary rescinding the review with respect to this firm. Because the remaining exporters have not responded to our questionnaire, we have preliminary determined to use facts otherwise available for cash-deposit and assessment purposes for all producers/exporters of the subject merchandise.

We invite interested parties to comment on these preliminary results. Parties who submit comments are requested to submit with each argument: (1) A statement of the issue and (2) a brief summary of the argument.

EFFECTIVE DATE: November 8, 2002.

FOR FURTHER INFORMATION CONTACT: John Conniff or Drew Jackson, AD/CVD Enforcement, Office 4, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–1009 or (202) 482–4406, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended, (the Act) are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 CFR part 351 (2001).

Period of Review

The POR is October 1, 2000 through September 30, 2001.

Background

On October 17, 1984, the Department published in the **Federal Register** (49 FR 40635) the antidumping duty order on barium chloride from the PRC (antidumping duty order). On October 1, 2001, the Department published in the **Federal Register** (66 FR 49923) a notice of "Opportunity to Request Administrative Review" of antidumping duty order covering the period October 1, 2000 through September 30, 2001. In response to the notice of opportunity to request an administrative review for this POR, the petitioner, Chemical Products Corporation (CPC) requested by letter dated October 31, 2001 that the Department conduct an administrative review of the following Chinese manufacturers/exporters of the subject merchandise: Zhangjiaba Salt Chemical Plant (Zhangjiaba), Hebei Xinji Chemical Plant, Tianjin Chemical Industry Corporation, Qingdao Red Star Chemical Group Co., Tianjin Bohai Chemical United Import/Export Company, Sichuan Emeishan Salt Chemical Industry Group Company, Ltd., Hengnan, Kunghan, Linshu, Tangshan, and China National Chemicals Import and Export Corporation (Sinochem).

On November 21, 2001, the Department published a notice of initiation of an administrative review of the producers/exporters named by the petitioner in its review request (66 FR 58432). On December 21, 2001, we received a letter from Zhangjiaba stating that "during the * * * POR, Zhangjiaba Chemical made no shipments or sales of subject barium chloride to the United States."

On January 14, 2002, the Department sent antidumping questionnaires to all of the parties named in the notice of initiation for whom we could find addresses.[1] We requested that the PRC Ministry of Foreign Trade and Economic Cooperation (MOFTEC) deliver the questionnaires to four named parties for whom we could not find addresses. Subsequently, four questionnaires sent directly to named parties by the Department were returned as undeliverable due to incorrect addresses or contact information. On January 30, 2002, the Department sent copies of the questionnaire to MOFTEC requesting that it deliver them to the four parties for whom the questionnaires were returned. On March 4, 2002, we sent letters to all of the parties named in the notice of initiation requesting that they notify the Department in writing by March 18, 2002, if they did not have any U.S. Customs entries, sales or shipments of the subject merchandise during the POR. With the exception of the December 21, 2001, letter from Zhangjiaba, we received no response from any of the parties from whom we requested information.

On February 11, 2002, the petitioner submitted a request that the Department calculate a new adverse facts available margin for the PRC-wide entity. In the submission, the petitioner included Indian factor values, factor usage rates (based on its production experience), and an average U.S. price (based on U.S. import values during the POR) with which to calculate a new PRC-wide margin. On August 23, 2002, Zhangjiaba submitted comments opposing the petitioner's request. The petitioner responded to Zhangjiaba's comments on September 6, 2002. For a complete discussion of the issue raised by the petitioner, see the "Adverse Facts Available Rate" section of this notice below.

Pursuant to section 751(a)(3)(A) of the Act, the Department may extend the deadline for completion of the preliminary results of an administrative review if it determines that it is not practicable to complete the preliminary results of a review within the statutory time limit of 245 days. On July 8, 2002, in accordance with the Act, the Department extended the time limit for the preliminary results of this review until September 30, 2002. *See Barium Chloride from the People's Republic of China: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review*, 67 FR 45088 (July 8, 2002). On August 8, 2002, the Department again extended the time limit for the preliminary results. *See Barium Chloride from the People's Republic of China: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review*, 67 FR 51535 (August 8, 2002). The second extension was until October 31, 2002.

The Department is conducting this administrative review in accordance with section 751 of the Act.

Scope of the Review

The imports covered by this review are shipments of barium chloride, a chemical compound having the formulas $BaCl_2$ or $BaCl_2 \cdot 2H_2O$, currently classifiable under item number 2827.39.45.00 of the Harmonized Tariff Schedule of the United States (HTSUS).[2] Although the HTSUS item number is provided for convenience and for Customs purposes, the written description remains dispositive.

Preliminary Partial Rescission

We are preliminarily rescinding this review with respect to Zhangjiaba because it reported that it made no shipments of subject merchandise to the United States during the POR and our review of Customs data supports that assertion.

Separate Rates Determination

In proceedings involving nonmarket economy (NME) countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single antidumping deposit rate. It is the Department's policy to assign all exporters of merchandise subject to review in an NME country this single

[1] Section A of the questionnaire requests separate rates information and general information concerning a company's corporate structure, business practices, sales practices and products, including the merchandise under consideration. Section C requests a complete listing of U.S. sales of the merchandise under consideration. Section D requests information regarding the factors of production of the merchandise under consideration. Section E requests information regarding further manufacturing of the merchandise under consideration in the United States.

[2] The scope reflects the HTS item number currently in effect.

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rate, unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. Because none of the companies for which an administrative review has been requested for this POR has demonstrated that it is entitled to a separate rate, all are deemed to be included in the PRC-wide entity and will be assigned a single margin as discussed below.

Facts Available

Section 776(a)(1) of the Act mandates that the Department shall, subject to section 782(d) of the Act, use facts available in reaching its determination if necessary information is not available on the record of an antidumping proceeding. In addition, section 776(a)(2) of the Act mandates that the Department use facts available when an interested party or any other person: (A) Withholds information requested by the Department; (B) fails to provide requested information by the requested date or in the form and manner requested; (C) significantly impedes an antidumping proceeding; or (D) provides information that cannot be verified. In the instant review, none of the named respondents, other than Zhangjiaba, answered the Department's questionnaire. Thus, pursuant to section 776(a) of the Act, the margin for the PRC-wide entity must be based on facts available.[3]

In selecting from among the facts otherwise available, section 776(b) of the Act provides that if the Department finds that an interested party failed to cooperate by not acting to the best of its ability to comply with a request for information, the Department may use an inference that is adverse to the interests of the party. This section of the Act goes on to note that such an adverse inference may include reliance on information derived from the petition, a final determination in an antidumping investigation or review, or any other information placed on the record. Because all but one of the named respondents failed to reply to our questionnaire and our inquiry regarding shipments, we preliminarily determine that these entities did not act to the best of their abilities to comply with our requests. Therefore, pursuant to section 776(b) of the Act, we are basing the margin for the PRC-wide entity on adverse facts available.

[3] Since we received no responses to our questionnaire, section 782(d) of the Act, which directs the Department to provide parties with an opportunity to remedy deficient responses, is not applicable.

Adverse Facts Available Rate

Although the Department's general practice is to use as an adverse facts available rate, the highest rate from any segment of the proceeding, including the current segment (*see Sigma Corp.* v. *U.S.*, 117 F.3rd 1401, 1411 (Fed. Cir. July 7, 1997) (stating that Commerce has a "long-standing practice of assigning to respondents who fail to cooperate with Commerce's investigation the highest margin calculated for any party in the less-than-fair-value investigation or in any administrative review"), the petitioner urges the Department to base the adverse facts available rate on information it placed on the record of this review, rather than using the highest rate from any segment of the proceeding. (*i.e.*, 60.84 percent, the rate calculated in the 1985–1986 administrative review that is currently applicable to all imports of subject merchandise). Specifically, the petitioner contends that the 60.84 percent rate is not an appropriate adverse facts available rate because it is based on outdated information which does not reflect current market conditions and it has neither stopped injurious dumping nor induced named respondents to participate in administrative reviews subsequent to the 1985–1986 review. According to the petitioner, since the 1985–1986 POR, there have been various changes in the process used by Chinese companies to produce barium chloride and in the prices of inputs used in that production process. Therefore, the petitioner claims that it is likely that a recalculated adverse facts available rate, based on the information it has placed on the record, would reflect current marketplace behavior better than the 1985–1986 margin. The petitioner also claims that a recalculated margin would enable the Department to meet its obligation to "determin(e) current margins as accurately as possible." *See Rhone Poulenc, Inc.* v. *U.S.*, 899 F.2d 1185, 1191 (Fed. Cir. 1990). In addition, the petitioner points to the more than 150 percent increase in the volume of U.S. imports of barium chloride from the PRC between the years 1996 and 2000, and the extremely low U.S. import prices for barium chloride, as evidence that the existing adverse facts available rate has provided neither a sufficient incentive for PRC producers to begin trading barium chloride fairly in the United States, nor a sufficient restraint on imports to ameliorate the effects of unfair trade on the U.S. industry. *See* Memorandum to the File from Drew Jackson regarding factual information used in our analysis, dated concurrently with this notice (Factual Information Memorandum).

In urging the Department to calculate an adverse facts available rate based on the information it submitted, the petitioner points out that section 776(b) of the Act permits the Department to calculate an adverse facts available rate based upon information from the petition, other administrative reviews, or any other information placed on the record. The petitioner contends that the information it placed on the record of this review (*i.e.*, Customs import data, factor values from publicly available sources, and factor usage information based on its own expertise as a manufacturer of barium chloride) satisfies the statutory requirements for use by the Department as facts available under sections 773(c) (outlining NME methodology) and 776(b) (use of adverse inferences) of the Act.

Further, the petitioner notes that the Department has used new record information in administrative reviews to calculate antidumping rates higher than that alleged in the petition or found in earlier proceedings where the new information was probative and verified. Citing *Stainless Steel Plate in Coils from Belgium: Final Results of Antidumping Duty Administrative Review*, 66 FR 56272 (Nov. 7, 2001) (*SSPC from Belgium*), the petitioner points out that the Department has used financial ratio information from the publicly available financial reports of a non-cooperating respondent to calculate a margin that was higher than any margin alleged in the petition or calculated during a previous review. Additionally, the petitioner notes that in *Petroleum Wax Candles from the People's Republic of China: Final Results of the Antidumping Duty Administrative Review*, 66 FR 14545 (Mar. 13, 2001) (*Petroleum Wax Candles*), although the Department rejected the proposed calculation submitted by the petitioner in that case as being inconsistent with the methods of calculating normal value, it nevertheless acknowledged that, where an adverse inference is warranted, the use of "any other information placed on the record" is an appropriate source of information for calculating an adverse facts available margin.

Zhangjiaba contends that the Department should dismiss the petitioner's argument because its assertions are unsubstantiated and its request unsupported by the cases to which it cited. In particular, Zhangjiaba notes that the petitioner provided nothing to support its claim that there have been changes in the production process and input prices for barium chloride since the 1985–1986 POR, nor did it provide anything to support the alleged increase in the volume of barium chloride imported into the United States. In addition, Zhangjiaba maintains that the petitioner has not shown that the factors of production it provided for the recalculation have any relevance to the PRC producer's factors of production, nor has it shown that the prices of U.S. imports of barium chloride from the PRC have decreased or not kept pace with the costs of production in the PRC. Moreover, Zhangjiaba argues that the petitioner's reliance on *SSPC from Belgium* is misplaced because, unlike the petitioner in *SSPC from Belgium*, the petitioner here has placed non-publicly available and uncorroborated information on the record, and therefore, the Department may not rely upon this information to calculate an adverse facts available rate. Additionally, Zhangjiaba notes that the courts have required some connection between the data used to calculate a dumping margin and the respondents' actual dumping margins, and that the data used must be neither aberrationally high nor based on uncorroborated information. Citing *F. Lli De Cecco di Filipino Fara S. Martino S.p.A* v. *United States*, 216 F.3d 1027, 1033 (Fed. Cir. 2000) (*De Cecco*), Zhangjiaba notes that a federal circuit court has found that "Congress could not have intended for (the Department's) discretion to include the ability to select unreasonably high rates with no relationship to respondent's actual dumping margin." *See F. Lli De Cecco di Filipino Fara S. Martino S.p.A* v. *United States*. Zhangjiaba also points out that in *Petroleum Wax Candles* the Department rejected the petitioner's proposed calculations.

Further, with respect to its own situation, Zhangjiaba contends that it should not receive an adverse facts available rate because, given that it had no shipments during the POR, it did not fail to supply anything requested of it by the Department. Zhangjiaba goes on to note that an adverse facts available rate can only be applied to a respondent that withholds information, fails to provide requested information, significantly impedes an investigation, or provides information that cannot be used.[4] Finally, Zhangjiaba notes that in the final results of the sunset review (64 FR 5633 (February 4, 1999)), the most recent determination in this proceeding, the Department found that revocation of the order on barium chloride from the PRC would likely lead to dumping at 14.50 percent.[5] In the absence of any evidence on the record that the magnitude of dumping has increased, Zhangjiaba argues that there is no basis for recalculating the PRC-wide rate; however, if the PRC-wide rate is changed, it should be changed to 14.50 percent, the rate identified in the most recent determination.

In response to Zhangjiaba's comments, the petitioner reasserts its position that it is appropriate for the Department to calculate an adverse facts available margin using information placed on the record of this review because the adverse facts available rate previously used in this proceeding is more than 15 years old and does not take into account changes in sales and input prices or changes in the methodology used by the Department of NME cases. The petitioner notes that in *Sodium Thiosulphate from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review*, 57 FR 58792 (Dec. 11, 1992) (*Sodium Thiosulphate from the PRC*, the Department recalculated the facts available rate (at that time referred to as the best information available (BIA) rate) using information placed on the record by the petitioner because the previous BIA rate was "no longer sufficiently adverse to induce respondents to submit timely accurate, and complete responses," (the Department continued to follow this approach in the final results of that review). The petitioner also contends that updating the adverse facts available rate is consistent with the language and policy of the Act. The petitioner argues that in the absence of subpoena power, the Department's only incentive to induce respondents to participate in antidumping proceedings is the potential that a producer will receive an adverse facts available dumping margin. The petitioner also notes that the adverse facts available margin serves the important policy goal of ensuring that respondents who choose not to participate in the process do not obtain more favorable rates than cooperating parties.

Additionally, the petitioner argues that an adverse facts available rate that is not sufficient to compel cooperation by respondents is subject to change. Citing *Steel Wire Rope from the Republic of Korea: Final Results of Antidumping Duty Administrative Review and Revocation on Part of Antidumping Duty Order*, 63 FR 17986 (April 13, 1998) (*Steel Wire Rope*), the petitioner notes that the Department determined that an adverse facts available rate calculated during a previous administrative review did not offer an adequate sanction to induce the respondents to cooperate in the proceeding, and therefore it revised the adverse facts available rate from 1.51 percent to 13.79 percent.

Moreover, the petitioner dismisses Zhangjiaba's claim that the Department has no basis for using facts otherwise available or deriving an adverse inference with respect to Zhangjiaba. The petitioner points out that in *Final Determination of Sales at Less Than Fair Value: Foundry Coke Products from the People's Republic of China*, 66 FR 39487 (July 31, 2001), the Department determined that a producer of subject merchandise that made no shipments during the POR was not entitled to a separate rate. Therefore, the petitioner argues that Zhangjiaba, which reported that it made no shipments of barium chloride to the United States during the POR, is not entitled to a separate rate and should receive the PRC-wide rate.

Additionally, the petitioner claims that Zhangjiaba's assertions about an increase in imports of barium chloride into the United States are without merit. The petitioner contends that its statement that U.S. imports of barium chloride from the PRC rose by more than 150 percent between 1996 and 2000 is a statement of fact appropriately filed within the deadline for submitting factual information (interested parties may submit factual information on the record within 140 days after the last day of the anniversary month for the review; *see* 19 CFR 351.301(b)(2)). The petitioner argues that, according to the Department's regulations, it is not required to provide any additional support for its statement. Moreover, the petitioner claims that any party that takes issue with this statement should provide their own factual information as rebuttal.

Furthermore, the petitioner dismisses Zhangjiaba's claim that its information cannot be used to relocate the PRC-wide margin because the information is not public, is uncorroborated, and is unrelated to the PRC barium chloride industry. The petitioner notes that while it did supply proprietary consumption quantities for factors, the Act does not require that all information submitted for the Department's consideration in calculating margins be public information (*e.g.*, petition rates are invariably based on sensitive information). *See* section 776(b)(4) of this Act. Moreover, the petitioner claims

[4] Zhangjiaba citing section 776(a) of the Act. (19 U.S.C. 1677e(a)).

[5] Consistent with the guidance provided in the *Sunset Policy Bulletin*, the Department found that revocation of the order on barium chloride from the PRC would likely lead to dumping at the rate from the investigation. The investigation margin is 14.50 percent.

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that the information it submitted to the Department has probative value because it consists of U.S. government imports statistics, which need not be corroborated, factor values from sources consistently used by the Department, and consumption quantities which can be relied upon based on the petitioner's extensive experience as a producer of barium chloride. Further, the petitioner maintains that in claiming that the petitioner's data is not related to the Chinese barium chloride industry's factors of production, Zhangjiaba has failed to recognize that the Department must seek other sources of information in light of the consistent failure of named respondents to submit information requested by the Department.

Finally, the petitioner argues that the margin from the sunset review is irrelevant because it is the margin from the investigation which reflects the behavior of exporters without the discipline of the order, rather than current market conditions, and thus it does not serve as an appropriate measure of dumping during the instant POR.

Section 776(b) of the Act permits the Department to base adverse facts available upon "any other information placed on the record." The issue before the Department here, is whether the facts in this case provide a sufficient basis for calculating the adverse facts available rate using information placed on the record of this review, rather than using as adverse facts available the highest margin from any segment of the proceeding. In making this determination, it is instructive to consider the guidance regarding adverse inferences provided by the Statement of Administrative Act (SAA) and the courts. In employing adverse inferences, the SAA instructs the Department to consider "the extent to which a party may benefit from its own lack of cooperation," noting that adverse inferences are made "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully. *See* H.R. Doc. 103–316, Vol. 1 at 80 (1994). However, with respect to selecting an adverse facts available rate, the Court of International Trade (CIT) noted that Congress "intended for an adverse facts available rate to be a reasonably accurate estimate of the respondents's actual rate, albeit with some built-in increase intended as a deterrence to non-compliance." *See DeCecco*, 216 F.3d at 1032. Furthermore in *Ferro Union, Inc.* v. *United States*, 44 F Supp.2d 1310, 1335 (CIT 1999) (*Ferro Union*), the CIT noted that "Commerce cannot select a rate which focuses only on inducing the exporter to cooperate and ignores the interest in selecting a margin which relates to the past practices of the industry." The Court went on to note that "Commerce must assure itself that the margin it applies is relevant and not outdated, or lacking a rational relationship to {the respondent}." *See Ferro Union*, 44 F. Supp.2d at 1335.

In light of the above, we have examined sales prices and import trends concerning PRC barium chloride to determine whether the highest margin calculated in any segment of this proceeding is sufficiently adverse to induce cooperation from the named respondents (*i.e.*, we considered the extent to which the named respondents may benefit from their lack of cooperation). Over the 16 years following the 1985–1986 POR, prices for the majority of U.S. imports of barium chloride from the PRC have remained virtually unchanged. The average unit value (AUV) of barium chloride imported from the PRC into the United States during the instant POR is 238.97 U.S. dollars per metric tone while the AUV of barium chloride imports during the 1985–1986 POR is 232.46 U.S. dollars per metric tone. *See* Factual Information Memorandum. With respect to the normal value of PRC barium chloride, pursuant to the Department's NME methodology, we have examined the constructed value rather than actual sales prices. Given that none of the named respondents provided any information on which to base constructed value, we calculated constructed value using the factors of production data provided by the petitioner. We valued the factors of production using surrogate values from India. For details regarding our selection of India as the surrogate country, see the "Calculation of the Adverse Facts Available Rate" section of this notice below. Comparing constructed value to the AUV of imports of subjected merchandise during the instant POR yields a margin significantly greater than the 60.84 percent margin calculated in the 1985–1986 administrative review (the highest margin calculated in any segment of this proceeding). The foregoing analysis suggests that the 60.84 percent margin from the 1985–1986 administrative review may not bear a rational relationship to the practices of the PRC-wide entity during the instant POR because input values have increased significantly and, therefore, the margin no longer reflects current market behavior. More importantly, it indicates the margin is not adverse, as respondents would benefit from use of this margin.

The production costs calculated from the data submitted by the petitioner are based on surrogate values derived from transactions that are contemporaneous with the instant POR; and, based on our corroboration standard, we believe it is reasonable to preliminarily find that a rational relationship does exist between the margin calculated using these data and the practices of the PRC-wide entity during the instant POR. *See* the "Corroboration" section of this notice below.

With respect to the question of whether the 60.84 percent margin calculated in the 1985–1986 administrative review is sufficiently adverse to induce cooperation from the named respondents, we note that since completing the 1985–1986 administrative review, the Department has conducted one administrative review of the antidumping duty order on barium chloride from the PRC (the 1997–1998 administrative review).[6] The firms named as respondents in the instant administrative review were also named as respondents in the 1997–1998 administrative review. None of these firms responded to the questionnaire issued in the 1997–1998 administrative review. In addition, the Department conducted a sunset review of the antidumping duty order on barium chloride from the PRC in which it received no response from any respondent interested party. However, U.S. Customs records indicate that at least one named respondent exported subject merchandise to the United States during he instant POR. *See* Factual Information Memorandum. Moreover, import statistics from the International Trade Commission confirm the petitioner's assertion that the volume of imports of barium chloride from the PRC has increased approximately 158 percent between the years 1996 and 2000. In fact, the quantity of barium chloride imported into the United States from the PRC has increased by 170.5 percent between the years 1996–2001. *See* Factual Information Memorandum. Despite the fact that the volume of U.S. imports of barium chloride from the PRC is increasing—and there are indications that at least some of the named respondents are participating in the U.S. market at the 60.84 percent antidumping duty rate—none of the respondents have participated in the Department's two most recent administrative reviews of barium chloride from the PRC. This fact, when considered in light of our concerns as to whether the 60.84 percent margin reflects the current practices of the PRC-wide entity, leads us to conclude that the 60.84 margin is not sufficiently adverse to induce cooperation from the named respondents. Because the margin calculated from the information placed on the record by the petitioner bears a rational relationship to the practices of the PRC-wide entity during the instant POR and is higher than the 60.84 percent rate, we find it reasonable to use the margin as adverse facts available. Furthermore, with respect to the 14.50 percent margin advocated by Zhangjiaba, we agree with the petitioner that this is not an appropriate measure of dumping in this review because, as noted above, information placed on the record of this review indicates that production costs, and hence constructed value, have change significantly and, therefore, the margin no longer reflects current market behavior. Moreover, even without the information provided by the petitioner, the 14.50 percent rate would not reflect an adverse inference in light of the 60.84 percent rate that is currently applicable to all imports of subject merchandise. Based on the foregoing, including virtually constant AUVs, likely increases in factor values, and significant increases in import volumes, we have preliminary decided to calculate the PRC-wide rate using information placed on the record of this review by the petitioner.

As noted above, this approach was taken by the Department in previous cases in which it considered the adverse facts available rate to be inappropriate. *See, e.g., Sodium Thiosulphate from the PRC.*

Further, with respect to Zhangjiaba's claim that it should not receive an adverse facts available rate because it did not fail to supply anything requested of it by the Department, we note that Zhangjiaba shipped no subject merchandise to the United States during this POR, and thus, it is not possible to conduct an antidumping analysis of the company. Therefore, we are preliminary rescinding this review with respect to Zhangjiaba. Because Zhangjiaba has never been assigned a separate rate, there is no basis to assign Zhangjiaba a rate distinct from the PRC-wide rate. *See Final determination of Sales at Less Than Fair Value: Foundry Coke Products From the People's Republic of China*, 66 FR 39487 (July 31, 2001) and accompanying Decision Memorandum at Comment 8.

[6] The Department rescinded its administrative reviews of the order on barium chloride from the PRC covering the period October 1, 1986 through September 30, 1987 (the petitioner withdrew its request for review) and October 1, 1990 through September 30, 1991 (the sole respondent made no shipments of barium chloride to the United States).

Calculation of the Adverse Facts Available Rate

We have calculated an adverse facts available rate for the PRC-wide entity using the factor usage rates, average U.S. price, and certain surrogate values placed on the record of this review by the petitioner. Where possible, we have updated or revised the surrogate values placed on the record by the petitioner to include Indian import statistics covering the entire POR. Additionally, where the petitioner has used price lists to value a factor, we have valued the factor using Indian import statistics covering the entire POR.

The Department has identified India as an appropriate surrogate for the PRC in each segment of this proceeding in which it calculated an antidumping duty margin. *See, e.g., Final Determination of Sales at Less Than Fair Value; Barium Chloride From the People's Republic of China*, 49 FR 33916 (August 27, 1984) (where the Department stated that "India would be the most appropriate surrogate selection."). Moreover, in this review, the Department's Office of Policy has identified as a country at a level of economic development comparable to the PRC. See Memorandum from Jeffrey May to Holly Kuga dated February 28, 2002. Finally, we note that the petitioner placed evidence on the record of this review demonstrating that India is a producer of barium chloride. *See* the petitioner's February 11, 2002 submission at Exhibit 1. Therefore, we find the petitioner's use of India as its source of surrogate values to be appropriate. For details regarding our calculation, see the memorandum from Drew Jackson to The File, "Calculation of the Adverse Facts Available Rate in the 2000–2001 Administrative Review of Barium Chloride From the People's Republic of China" dated concurrently with this notice.

Corroboration of Information

Section 776(c) of the Act provides that the Department shall, in using facts otherwise available, to the extent practicable, corroborate secondary information from independent sources reasonably at its disposal. The SAA provides that "corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value. *See* SAA at 870. To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. However, where corroboration is not practicable, the Department may use uncorroborated information. *See Steel Wire Rope From the Republic of Korea; Final Results of Antidumping Duty Administrative Review and Partial Rescission of Antidumping Duty Administrative Review*, 64 FR 17995, 17996, (April 3, 1999) (noting "where corroboration is not practicable, the Department may use uncorroborated information"). Publicly available data from independent sources that relate to the relevant time period are generally considered to be both relevant and reliable because they are contemporaneous with the period under consideration and not generated for purposes of the trade action. Therefore, we consider the AUVs and factor values placed on the record of this review to be corroborated. *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Non-Malleable Cast Iron Pipe Fittings From the People's Republic of China*, 67 FR 60214, 60214 (September 25, 2002) (wherein the Department found export prices, based on U.S. government statistics, and Indian surrogate values, based on publicly available information, to be sufficiently corroborated).

Due to the lack of information from the named respondents, it is not practicable to corroborate the factor usage rates placed on the record by the petitioner. It is worth noting that the implementing regulation for section 776 of the Act states, "(t)he fact that the corroboration may not be practicable in a given circumstance will not prevent the Secretary from applying an adverse inference as appropriate and using the secondary information in question." *See* 19 CFR 351.308(d) Therefore, given that we have been able to corroborate average unit values and factor values placed on the record by the petitioner, we consider the calculation using the petitioner's facts to be sufficiently corroborated. *See, e.g., Notice of the Final Determination Sales at Less Than Fair Value and Critical Circumstances: Certain Cold-Rolled Carbon Steel Flat Products from the Russian Federation*, 67 FR 621121–01 (October 3, 2002).

Preliminary Results of Review

As a result of our review, we preliminarily determine that the following weighted-average percentage dumping margin exists for the period October 1, 2000 through September 30, 2001:

Exporter/manufacturer	Margin (percent)
PRC-wide rate	153.88

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The Department will disclose to parties to the proceeding any calculations performed in connection with these preliminary results within 5 days of the date of publication of this notice. *See* § 351.224(b) of the Department's regulations. Interested parties may submit case briefs within 21 days of the date of publication of this notice. Rebuttal briefs, whose content is limited to the issues raised in the case briefs, must be filed within five days after the deadline for the submission of case briefs. *See* §§ 351.309 and 351.310 of the Department's regulations. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. Further, we request that parties submitting briefs and rebuttal briefs provide the Department with a copy of the public version of such briefs on diskette.

In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity comment on arguments raised in case of rebuttal briefs. If a request for a hearing is made, we will tentatively hold the hearing two days after the deadline for submission of rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, at a time and in a room to be determined. Parties should confirm by telephone the date, time, and location of the hearing 48 hours before the scheduled date. Interested parties who wish to request a hearing, or to participate in a hearing if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 10 days of the date of publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. At the hearing, oral presentations will be limited to issues raised in the briefs. *See* 19 CFR 351.310(c).

The Department will publish a notice of final results of this administrative review, which will include the results of its analysis of issues raised in any comments, not later than 120 days after the date of publication of these preliminary results.

Duty Assessment Rates

Upon completion of the final results in this administrative review, the Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. We intend to issue assessment instructions to Customs within 15 days of publication of the final results of review. If these preliminary results are adopted in the final results of review, we will direct Customs to assess the resulting assessment rate against the entered customs values for the subject merchandise on each of the importer's entries during the review period.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of barium chloride from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) The cash deposit rate for all Chinese exporters will be the rate established in the final results of this review; and (2) for non-PRC exporters of subject merchandise from the PRC, the cash deposit rate will be the rate applicable to their PRC suppliers. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a preliminary reminder to importers of their responsibility under § 351.402(f) of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)), 777(i) of the Act (19 U.S.C. 1677f(i)), and 19 CFR 351.221.

Dated: October 31, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–28525 Filed 11–7–02; 8:45 am]

BILLING CODE 3510–05–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–437–804 and A–471–806]

Notice of Antidumping Duty Orders: Sulfanilic Acid From Hungary and Portugal

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Antidumping Duty Orders: Sulfanilic Acid from Hungary and Portugal.

EFFECTIVE DATE: November 8, 2002.

FOR FURTHER INFORMATION CONTACT: Audrey Twyman or John Brinkmann for Hungary, telephone: (202) 482–3534 or (202) 482–4126, respectively; and S. Anthony Grasso for Portugal, telephone: (202) 482–3853. Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act effective January 1, 1995 ("the Act"). In addition, unless otherwise indicated, all citations to the Department of Commerce's ("the Department") regulations are to 19 CFR part 351 (April 2001).

Scope of Orders

Imports covered by these orders are all grades of sulfanilic acid ("sulfanilic acid" or "subject merchandise"), which include technical (or crude) sulfanilic acid, refined (or purified) sulfanilic acid, and sodium salt of sulfanilic acid.

Sulfanilic acid is a synthetic organic chemical produced from the direct sulfonation of aniline and sulfuric acid. Sulfanilic acid is used as a raw material in the production of optical brighteners, food colors, specialty dyes, and concrete additives. The principal differences between the grades are the undesirable quantities of residual aniline and alkali insoluble materials present in the sulfanilic acid. All grades are available as dry, free flowing powders.

Technical sulfanilic acid, currently classifiable under the subheading 2921.42.22 of the *Harmonized Tariff Schedule* ("HTS"), contains 96 percent minimum sulfanilic acid, 1.0 percent maximum aniline, and 1.0 percent maximum alkali insoluble materials. Refined sulfanilic acid, also currently classifiable under 2921.42.22 of the HTS, contains 98 percent minimum sulfanilic acid, 0.5 percent maximum aniline, and 0.25 percent maximum alkali insoluble materials.

Sodium salt (sodium sulfanilate), currently classifiable under the HTS subheading 2921.42.90, is a powder, granular, or crystalline material which contains 75 percent minimum equivalent sulfanilic acid, 0.5 percent maximum aniline based on the equivalent sulfanilic acid content, and 0.25 percent maximum alkali insoluble materials based on the equivalent sulfanilic acid content.

Although the HTS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

Antidumping Duty Orders

In accordance with section 735(d) of the Act, on September 25, 2002, the Department published in the **Federal Register** the *Notice of Final Determination of Sales at Less Than Fair Value: Sulfanilic Acid from Hungary*, 67 FR 60221, and the *Notice of Final Determination of Sales at Less Than Fair Value: Sulfanilic Acid from Portugal*, 67 FR 60219.

On November 1, 2002, in accordance with section 735(d) of the Act, the U.S. International Trade Commission notified the Department that a U.S. industry is "materially injured," within the meaning of section 735(b)(1)(A)(i) of the Act, by reason of imports of sulfanilic acid from Hungary and Portugal.

Therefore, in accordance with section 736(a)(3) of the Act, on or after the date of publication of this notice in the **Federal Register**, the U.S. Customs Service officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, cash deposits for the subject merchandise equal to the estimated weighted-average dumping margins as noted below. The "All Others" rates apply to all exporters of sulfanilic acid from Hungary and Portugal not specifically listed below. The cash deposit rates are as follows:

Producer/exporter	Margin (percent)
Hungary:	
Nitrokemia 2000 Rt.	20.98
All Others	20.98
Portugal:	
Quimigal—Quimica de Portugal S.A.	74.14
All Others	74.14

Moreover, in accordance with section 736(a)(1) of the Act, the Department will direct the Customs Service to assess, upon further advice by the Department following the completion of a review requested under 19 CFR 351.213(b) or 19 CFR 351.214(b) (or if a review is not requested, in accordance with 19 CFR 351.212(c)), antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price of the merchandise of all entries of sulfanilic acid from Hungary and Portugal.

Pursuant to section 736(a)(1) of the Act, if appropriate, based on the above-noted further advice from the Department, for all producers and exporters of sulfanilic acid from Hungary and Portugal, antidumping duties will be assessed on all unliquidated entries of sulfanilic acid entered, or withdrawn from warehouse, for consumption on or after May 6, 2002, the date of publication of the Department's preliminary determinations with respect to sulfanilic acid from Hungary and Portugal in the **Federal Register** (*see Notice of Preliminary Determination of Sales at Less Than Fair Value: Sulfanilic Acid from Hungary*, 67 FR 30358, and *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Sulfanilic Acid from Portugal*, 67 FR 30362).

This notice constitutes the antidumping duty orders with respect to sulfanilic acid from Hungary and Portugal, pursuant to section 736(a) of the Act. Interested parties may contact the Central Records Unit, Room B–099 of the Main Commerce Building for copies of an updated list of antidumping duty orders currently in effect.

These antidumping duty orders are published in accordance with section 736(a) of the Act and 19 CFR 351.211.

Dated: November 4, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–28523 Filed 11–7–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–437–805]

Notice of Countervailing Duty Order: Sulfanilic Acid From Hungary

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Countervailing Duty Order: Sulfanilic Acid from Hungary.

EFFECTIVE DATE: November 8, 2002.

FOR FURTHER INFORMATION CONTACT: Melani Miller or Daniel J. Alexy, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0116 or (202) 482–1540, respectively.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act effective January 1, 1995 ("the Act"). In addition, unless otherwise indicated, all citations to the Department of Commerce's ("the Department") regulations are to 19 CFR part 351 (April 2001).

Scope of Order

Imports covered by this order are all grades of sulfanilic acid ("sulfanilic acid" or "subject merchandise"), which include technical (or crude) sulfanilic acid, refined (or purified) sulfanilic acid, and sodium salt of sulfanilic acid.

Sulfanilic acid is a synthetic organic chemical produced from the direct sulfonation of aniline and sulfuric acid. Sulfanilic acid is used as a raw material in the production of optical brighteners, food colors, specialty dyes, and concrete additives. The principal differences between the grades are the undesirable quantities of residual aniline and alkali insoluble materials present in the sulfanilic acid. All grades are available as dry, free flowing powders.

Technical sulfanilic acid, currently classifiable under the subheading 2921.42.22 of the *Harmonized Tariff Schedule* ("HTS"), contains 96 percent minimum sulfanilic acid, 1.0 percent maximum aniline, and 1.0 percent maximum alkali insoluble materials. Refined sulfanilic acid, also currently classifiable under 2921.42.22 of the HTS, contains 98 percent minimum sulfanilic acid, 0.5 percent maximum aniline, and 0.25 percent maximum alkali insoluble materials.

Sodium salt (sodium sulfanilate), currently classifiable under the HTS subheading 2921.42.90, is a powder, granular, or crystalline material which contains 75 percent minimum equivalent sulfanilic acid, 0.5 percent maximum aniline based on the equivalent sulfanilic acid content, and 0.25 percent maximum alkali insoluble materials based on the equivalent sulfanilic acid content.

Although the HTS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

Countervailing Duty Order

On September 25, 2002, the Department published in the **Federal Register** the *Final Affirmative Countervailing Duty Determination: Sulfanilic Acid from Hungary*, 67 FR 60223 (September 25, 2002).

On November 1, 2002, in accordance with section 705(d) of the Act, the U.S. International Trade Commission notified the Department that a U.S. industry is "materially injured," within the meaning of section 705(b)(1)(A)(i) of

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the Act, by reason of imports of sulfanilic acid from Hungary.

Therefore, in accordance with section 706(a)(3) of the Act, on or after the date of publication of this notice in the **Federal Register**, Customs Service officers must require, at the same time as importers would normally deposit estimated duties, cash deposits for the subject merchandise equal to the countervailing duty rates as noted below. The "All Others" rate applies to all exporters of sulfanilic acid from Hungary not specifically listed below:

Producer/exporter	Ad valorem subsidy rate (percent)
Nitrokemia 2000 Rt.	2.87
All Others	2.87

Moreover, in accordance with section 706(a)(1) of the Act, the Department will direct the Customs Service to assess, upon further advice by the Department following the completion of a review requested under 19 CFR 351.213(b) or 19 CFR 351.214(b) (or if a review is not requested, in accordance with 19 CFR 351.212(c)), countervailing duties equal to the amount of the net countervailable subsidy determined to exist for entries of sulfanilic acid from Hungary.

Pursuant to section 706(a)(1) of the Act, if appropriate, based on the above-noted advice from the Department, for all producers and exporters of sulfanilic acid from Hungary, countervailing duties will be assessed on all unliquidated entries of sulfanilic acid from Hungary entered, or withdrawn from warehouse, for consumption on or after March 4, 2002, the date of publication of the Department's preliminary determination in the **Federal Register** (*see Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination: Sulfanilic Acid from Hungary*, 67 FR 9696 (March 4, 2002)), and before July 2, 2002, the date the Department instructed Customs to discontinue the suspension of liquidation in accordance with section 703(d) of the Act (*see also*, The Statement of Administrative Action, H. Doc. No. 103–316, Vol. 1 at 874 (1994), reprinted in 1994 U.S.C.C.A.N. 3773, 4163), and on all subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this countervailing duty order in the **Federal Register**.

This notice constitutes the countervailing duty order with respect to sulfanilic acid from Hungary, pursuant to section 705(a) of the Act. Interested parties may contact the Central Records Unit, Room B–099 of the Main Commerce Building for copies of an updated list of countervailing duty orders currently in effect.

This countervailing duty order is published in accordance with sections 706(a) and 777(i) of the Act and 19 CFR 351.211.

Dated: November 4, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–28524 Filed 11–7–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Availability of Seats for the Monterey Bay National Marine Sanctuary Advisory Council

AGENCY: National Marine Sanctuary Program (NMSP), National Ocean Service (NOS), National Oceanic and Atmospheric Administration, Department of Commerce (DOC).

ACTION: Notice and request for applications.

SUMMARY: The Monterey Bay National Marine Sanctuary (MBNMS or Sanctuary) is seeking applicants for the following seat on its Sanctuary Advisory Council: Citizen-At-Large. Applicants are chosen based upon their particular expertise and experience in relation to the seat for which they are applying; community and professional affiliations; philosophy regarding the protection and management of marine resources; and possibly the length of residence in the area affected by the Sanctuary. The MBNMS is recruiting a primary and alternate representative for this Citizen-At-Large seat, which was vacated by the previously appointed representatives before their term had expired. Applicants who are chosen for this seat should expect to serve until February 2005.

DATES: Applications are due by December 11, 2002.

ADDRESSES: Application kits may be obtained from Nicole Capps at the Monterey Bay National Marine Sanctuary, 299 Foam Street, Monterey, California 93940. Completed applications should be sent to the same address.

FOR FURTHER INFORMATION CONTACT: Nicole Capps at (831) 647–4201, or *Nicole.Capps@noaa.gov*.

SUPPLEMENTARY INFORMATION: The MBNMS Advisory Council was established in March 1994 to assure continued public participation in the management of the Sanctuary. Since its establishment, the Advisory Council has played a vital role in decisions affecting the Sanctuary along the central California coast.

The Advisory Council's twenty voting members represent a variety of local user groups, as well as the general public, plus seven local, state and federal governmental jurisdictions. In addition, the respective managers or superintendents for the four California National Marine Sanctuaries (Channel Islands National Marine Sanctuary, Cordell Bank National Marine Sanctuary, Gulf of the Farallones National Marine Sanctuary and the Monterey Bay National Marine Sanctuary) and the Elkhorn Slough National Estuarine Research Reserve sit as non-voting members.

Four working groups support the Advisory Council: the Research Activity Panel (RAP) chaired by the Research Representative, the Sanctuary Education Panel (SEP) chaired by the Education Representative, the Conservation Working Group (CWG) chaired by the Conservation Representative, and the Business and Tourism Activity Panel (BTAP) chaired by the Business/Industry Representative, each dealing with matters concerning research, education, conservation and human use. The working groups are composed of experts from the appropriate fields of interest and meet monthly, or bi-monthly, serving as invaluable advisors to the Advisory Council and the Sanctuary Superintendent.

The Advisory Council represents the coordination link between the Sanctuary and the state and federal management agencies, user groups, researchers, educators, policy makers, and other various groups that help to focus efforts and attention on the central California coastal and marine ecosystems.

The Advisory Council functions in an advisory capacity to the Sanctuary Superintendent and is instrumental in helping develop policies, program goals, and identify education, outreach, research, long-term monitoring , resource protection, and revenue enhancement priorities. The Advisory Council works in concert with the Sanctuary Superintendent by keeping him or her informed about issues of concern throughout the Sanctuary, offering recommendations on specific issues, and aiding the Superintendent in achieving the goals of the Sanctuary program within the context of California's marine programs and policies.

Authority: 16 U.S.C Sections 1431, *et seq.*

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: October 31, 2002.

Alan Neuschatz,

Associate Assistant Administrator for Management.

[FR Doc. 02–28463 Filed 11–7–02; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Availability of Seats for the Olympic Coast National Marine Sanctuary Advisory Council

AGENCY: National Marine Sanctuary Program (NMSP), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice and request for applications.

SUMMARY: The Olympic Coast National Marine Sanctuary (OCNMS or Sanctuary) is seeking applicants for the following vacant seats on its Sanctuary Advisory Council (Council): Member and alternate for the Conservation seat, Member and alternate for the Research seat. Applicants are chosen based upon their particular expertise and experience in relation to the seat for which they are applying; community and professional affiliations; philosophy regarding the conservation and management of marine resources; and possibly the length of residence in the area affected by the Sanctuary. Applicants who are chosen as members should expect to serve three-year terms, pursuant to the Council's Charter.

DATES: Applications are due by November 29, 2002.

ADDRESSES: Application kits may be obtained from Andrew Palmer, OCNMS, 138 West First St., Port Angeles, WA 98362 Completed applications should be sent to the same address.

FOR FURTHER INFORMATION CONTACT: Andrew Palmer at (360) 457–6622 x. 30 or *andrew.palmer@noaa.gov*.

SUPPLEMENTARY INFORMATION: The Sanctuary Advisory Council provides NOAA with advice on the management of the Sanctuary. Members provide advice to the Olympic Coast Sanctuary Superintendent on Sanctuary issues. The Council, through its members, also serves as liaison to the community regarding Sanctuary issues and acts as a conduit, relaying the community's interests, concerns, and management needs to the Sanctuary.

The Sanctuary Advisory Council members represent public interest groups, local industry, commercial and recreational user groups, academia, conservation groups, government agencies, and the general public.

Authority: 16 U.S.C. Section 1431 *et seq.*

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: October 31, 2002.

Alan Neuschatz,

Associate Assistant Administrator for Management.

[FR Doc. 02–28462 Filed 11–7–02; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 000817236–2242–04, I.D. No. 082702F]

General Grant Administration Terms and Conditions of theCoastal Ocean Program for FY2003

AGENCY: National Centers for Coastal Ocean Sciences/Center for Sponsored Coastal Ocean Research, Coastal Ocean Program (NCCOS/CSCOR/COP), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice for financial assistance for project research grants and cooperative agreements.

SUMMARY: It is the intent of NOAA/NOS/NCCOS/CSCOR/COP to provide direct financial assistance in the form of discretionary research grants and cooperative agreements under its program for the management of coastal ecosystems.

This document does not solicit proposals but rather describes the general grant administration terms and conditions of the NCCOS/CSCOR/COP program for fiscal year 2003. It is NCCOS/CSCOR/COP's intent to issue supplemental Announcements of Opportunities (AOs) to request proposals on specific projects throughout the year according to the appropriations issued by Congress. AOs will be issued through the **Federal Register**. Information regarding these announcements will be made available on the NCCOS/CSCOR/COP Home Page and NCCOS/CSCOR/COP's e-mail list. These announcements will provide specific program descriptions.

DATES: Effective November 8, 2002.

ADDRESSES: Center for Sponsored Coastal Ocean Research/Coastal Ocean Program, National Oceanic and Atmospheric Administration, 1305 East West Highway, SSMC4, Room 8218, Silver Spring, MD 20910–3282

FOR FURTHER INFORMATION CONTACT: Leslie McDonald, NCCOS/CSCOR/COP Grants Administrator, (301)713–3338/x155.

SUPPLEMENTARY INFORMATION:

Electronic Access

NOAA Standard Form and COP-specific application forms are accessible with instructions on the following COP Internet Site: *http://www.cop.noaa.gov*, under the COP Grants Information section, Part D, Application Forms for Initial Proposal Submission.

Forms may be viewed and in most cases filled in by computer. All forms must be printed, completed, and mailed to NCCOS/CSCOR/COP with original signatures. If you are unable to access this information, you may call COP at 301–713–3338 to leave a mailing request.

General information about the COP's projects and publications is also available on the NCCOS/CSCOR/COP Internet Site.

Background

(1) *Program Authority(s)*: 16 U.S.C. 1456c; 33 U.S.C. 883d; 33 U.S.C. 1442; 15 U.S.C. 1540; and/or Pub.L. 105–383.

(2) *Catalog of Federal Domestic Assistance (CFDA)*: 11.478 Coastal Ocean Program.

(3) *Program Description*: NOAA's NCCOS/CSCOR/COP provides predictive capability for managing coastal ecosystems through sponsorship of research. NCCOS/CSCOR/COP seeks to deliver the highest quality science in a timely manner for important coastal decisions. It supports research on critical issues that exist in the Nation's estuaries, coastal waters, and Great Lakes and translates its findings into accessible information for coastal managers, planners, lawmakers, and the public. The COP also supports educational activities at the graduate and undergraduate level to facilitate the development of qualified professionals in the fields of coastal science, management, and policy.

Coastal Ecosystem Oceanography

NCCOS/CSCOR/COP supports the conservation and management of marine ecosystems through sponsorship of improved ecological and oceanographic predictions for resource management. Studies focus on (1) understanding

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critical processes that control the abundance, distribution, and replenishment of fishery resources; (2) determining critical habitat processes that influence fishery ecosystems; and (3) quantifying ecosystem species interactions to develop models that can be used in management decisions. Current efforts support studies dealing with cod and haddock on Georges Bank, and salmon in the Pacific Northwest.

Cumulative Coastal Impacts

NCCOS/CSCOR/COP sponsors a series of regional watershed projects on the causes and impacts of multiple stresses on coastal ecosystems. Studies focus on (l) developing indicators of stress; (2) predicting impacts of multiple stresses (3) valuing natural resources in ecological and economical terms; and (4) predicting the outcomes of management strategies. Current efforts are located in Chesapeake Bay, Florida Bay and the Keys, the coastal areas of South Carolina, the Pacific Northwest, and coral reefs in Florida and Hawaii.

Harmful Algal Blooms (HABs) and Hypoxia

NCCOS/CSCOR/COP also sponsors studies on the ecology and oceanography of harmful algal blooms (HABs), focusing on identifying and modeling linkages between the physiology, ecology, behavior and toxicity of HABs and local/regional circulation patterns and water quality. These results will not only generate greater general knowledge of problematic species in the U.S. coastal waters, but also provide a foundation for development of regional HAB forecasting capabilities, eventually providing a means to assess the effectiveness of prevention, control, and mitigation strategies developed in the programs. Current regional efforts are located in the Gulf of Maine, the Pacific Northwest, Hawaii, eastern Long Island, the coastal regions of the mid-Atlantic States, the Great Lakes, and the western coast of Florida.

Eutrophication and resulting hypoxia have become common problems affecting living marine resources and recreational uses of coastal waters. The NCCOS/CSCOR/COP supports research examining the influences of nutrient loading, physical forcing, climate change, and extent of hypoxic conditions (i.e., the "dead zone") on the ecosystem and fisheries of the northern Gulf of Mexico.

Benefits of the NCCOS/CSCOR/COP

Continued population pressures on the Nation's coastal areas and ongoing changes in the environment will continue to stress our coastal waters, bays, and estuaries and the Great Lakes. NCCOS/CSCOR/COP has focused on developing information for longer range U.S. management and policy at large and complex scales. NCCOS/CSCOR/COP research will help the U.S. respond to the major challenges of the next century and to balance the needs of economic growth with those of conserving the environment and its coastal resources.

(4) *Funding Availability*: On average, annual funding for each Announcement of Opportunity is approximately $1,000,000. Each NCCOS/CSCOR/COP project generally consists of several coordinated investigations with separate awards, ranging from $5,000 to $500,000. Actual funding levels will depend upon the final budget appropriations for the fiscal year. Individual AOs will be released with specific applicable dollar amounts.

The funding history of NCCOS/CSCOR/COP's Direct Financial Assistance is as follows: FY99 $8.5M; FY00 $15M, FY01 15.5M; FY02 $20M; and FY03 is estimated at $22.2M. Publication of this notice does not obligate Commerce/NOAA to any specific award or to obligate any part of the entire amount of funds available. Recipients and subrecipients are subject to all Federal laws and agency policies, regulations, and procedures applicable to Federal financial assistance awards.

If an application for a financial assistance award is selected for funding, NCCOS/CSCOR/COP has no obligation to provide any additional prospective funding in connection with that award in subsequent years.

(5) *Matching Requirements*: None.

(6) *Type of Funding Instrument*: They are project grants and cooperative agreements.

(a) Research Project Grants: A research project grant is one in which substantial programmatic involvement by NOAA is not anticipated by the recipient during the project period. Applicants for grants must demonstrate an ability to conduct the proposed research with minimal assistance, other than financial support, from NOAA.

(b) Cooperative Agreements: A cooperative agreement implies that NOAA will assist recipients in conducting the proposed research. The application should be presented in a manner that demonstrates the applicant's ability to address the research problem in a collaborative manner with NOAA. A cooperative agreement is appropriate when substantial NOAA involvement is anticipated. This means that the recipient can expect substantial agency collaboration, participation, or intervention in project performance. Substantial involvement exists when: responsibility for the management, control, direction, or performance of the project is shared by the assisting agency and the recipient; or the assisting agency has the right to intervene (including interruption or modification) in the conduct or performance of project activities.

(c) Determination of which instrument to use: Applicants must specify the type of award for which they are applying, either a grant or a cooperative agreement. The funding agency will review the applications in accordance with the evaluation criteria. Before issuing awards, NOAA will determine whether a grant or cooperative agreement is the appropriate instrument based upon the need for substantial NOAA involvement in the project.

(d) In an effort to maximize the use of limited resources, applications from non-Federal, non-NOAA Federal and NOAA Federal applicants will be competed against each other. Research proposals selected for funding from non-Federal researchers will be funded through a project grant or cooperative agreement.

Research proposals selected for funding from non-NOAA Federal applicants will be funded through an interagency transfer, provided legal authority exists for the Federal applicant to receive funds from another agency. PLEASE NOTE: Before non-NOAA Federal applicants may be funded, they must demonstrate that they have legal authority to receive funds from another Federal agency in excess of their appropriation. Because this announcement is not proposing to procure goods or services from the applicants, the Economy Act (31 U.S.C. section 1535) is not an appropriate basis. Support may be solely through COP or partnered with other Federal offices and agencies.

Proposals deemed acceptable from NOAA Federal researchers will be funded through an intraagency transfer.

(7) *Eligibility Criteria*: Eligible applicants are institutions of higher education, other non-profits, state, local, Indian Tribal Governments, and Federal agencies that possess the statutory authority to receive financial assistance.

(i) Researchers must be employees of an eligible institution listed above; and proposals must be submitted through that institution. Non-Federal researchers should comply with their institutional requirements for proposal submission.

(ii) Non-NOAA Federal applicants will be required to submit certifications or documentation showing that they have specific legal authority to receive funds from the Department of Commerce (DOC) for this research.

(iii) NCCOS/CSCOR/COP will accept proposals that include foreign researchers as collaborators with a researcher, who has met the above stated eligibility requirements; and who also is an employee of an eligible institution listed above.

(iv) Non-Federal researchers affiliated with NOAA-University Joint Institutes should comply with joint institutional requirements; they will be funded through grants either to their institutions or to joint institutes.

(8) *Award Period*: Typically, NCCOS/CSCOR/COP's projects average 1 to 5 years in length. Projects covering more than 1 year will usually be funded on an annual basis.

(9) *Indirect Costs*: Regardless of any approved indirect cost rate applicable to the award, the maximum dollar amount of allocable indirect costs for which DOC will reimburse the recipient shall be the lesser of (a) the line item amount for the Federal share of indirect costs contained in the approved budget of the award or (b) the Federal share of the total allocable indirect costs of the award based on the indirect cost rate approved by a cognizant or oversight Federal agency and current at the time the cost was incurred, provided the rate is approved on or before the award end date.

(10) *Application Forms*: When applying for financial assistance under a published AO, applicants will be able to obtain both the standard NOAA application forms and COP-specific application forms at the COP home page. Forms may be viewed and, in most cases, filled in by computer. All forms must be printed, completed, and mailed to NCCOS/CSCOR/COP with original signatures in blue ink. If you are unable to access this information, you may also call (301)713–3338 to leave a mail request. At time of submission, the applicant will follow the proposal requirements presented in the funding announcement.

At time of original application for financial assistance, all applicants are required to submit the NOAA Standard Form 424 (Rev July 1997), "Application for Federal Assistance" and a COP Summary Proposal Budget Form for each fiscal year increment in lieu of the NOAA Standard Form 424A (Rev July 1997),"Budget Information for Non-Construction Programs." Applicants shall also include a budget narrative/justification that supports all proposed budget categories. The SF–424A shall be requested only from those recipients subsequently recommended for award. Multi-institution proposals must include a Summary Proposal Budget Form from each institution.

Disposition of Unsuccessful Application: Applications not adhering to these stated guidelines will be returned to the applicant without further review.

In addition, other forms required as part of a complete application package from only those recipients subsequently recommended for award include the NOAA Standard Form 424–B, "Assurances for Non-Construction Programs"; the CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying"; the CD–512, "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" (this certification is to remain with the recipient and is not forwarded to the Grants Officer); the CD–346, "Applicant for Funding Assistance"(for non-profit organizations) and the SF-LLL, "Disclosure of Lobbying Activities" (if applicable).

(11) *Project Funding Priorities*: Priority considerations will be given to proposals that promote balanced coverage of the science objective stated in the later AOs, avoid duplication of completed or ongoing work, and increase geographic diversity. Additional and/or other priorities may be detailed in NCCOS/CSCOR/COP AOs.

(12) *Evaluation Criteria*: Unless otherwise stated in an individual funding announcement, the following criteria and evaluation weightings will be used for evaluating both solicited and unsolicited proposals:

(a) Scientific Merit (20 percent): Intrinsic scientific value of the proposed work and the likelihood that it will lead to fundamental advancements, new discoveries or will have substantial impact on progress in that field;

(b) Research Performance Competence (20 percent): The capability of the investigator and collaborators to complete the proposed work as evidenced by past research accomplishments, previous cooperative work, timely communication, and the sharing of findings, data, and other research products;

(c) Relevance (20 percent): Likelihood that the research will make substantial contributions or develop products leading to improved management of coastal resources;

(d) Technical Approach (20 percent): The proposed work has focused science objectives and a complete and efficient strategy for making measurements and observations in support of the objectives. The approach is sound and logically planned throughout the cycle of the proposed work;

(e) Linkages (10 percent): Connections to existing or planned studies, or demonstrated cooperative arrangements to provide or use data or other research results to achieve the objectives.

(f) Costs (10 percent): Adequacy of the proposed resources to accomplish the proposed work, and the appropriateness of the requested funding with respect to the total available funds.

(13) *Selection Procedures*: All proposals will be evaluated and scored individually in accordance with the assigned weights of the above evaluation criteria by independent peer mail review and/or by independent peer panel review. Both Federal and non-Federal experts in the field may be used in this process. The peer mail reviewers will be several individuals with expertise in the subjects addressed by particular proposals. Each mail reviewer will see only certain individual proposals within his or her area of expertise, and score them individually on a scale of one to five, where scores represent respectively: Excellent (1), Very Good (2), Good (3), Fair (4), Poor (5).

The peer panel will comprise of 4 to 12 individuals, with each individual having expertise in a separate area, so that the panel, as a whole, covers a range of scientific expertise. The panel will have access to all mail reviews of proposals, and will use the mail reviews in discussion and evaluation of the entire slate of proposals. All proposals will be evaluated and scored individually. The peer panel shall rate the proposals using the evaluation criteria and scores provided above and used by the mail reviewers. The individual peer panelist scores shall be averaged for each application and presented to the program officers. No consensus advice will be given by the independent peer mail review or the review panel.

The program officers will neither vote or score proposals as part of the independent peer panel nor participate in discussion of the merits of the proposal. Those proposals receiving an average panel score of "Fair" or "Poor" will not be given further consideration, and proposers will be notified of non-selection.

For the proposals rated by the panel as either "Excellent," "Very Good," or "Good", the program officers will (a) select the proposals to be recommended for funding by average panel ratings,

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and/or by applying the project funding priorities listed in section 11 and specific objectives published in the AO; (b) determine the total duration of funding for each proposal; and (c) determine the amount of funds available for each proposal subject to the availability of fiscal year funds. Awards may not necessarily be made in rank order. In addition, proposals rated by the panel as either "Excellent," "Very Good," or "Good" that are not funded in the current fiscal period, may be considered for funding in another fiscal period without having to repeat the competitive, review process.

Recommendations for funding are then forwarded to the selecting official, the Director of NCCOS/CSCOR/COP, for the final funding decision. The Director shall make his final funding decisions based upon the program officials' recommendations, project funding priorities and availability of funds.

Investigators may be asked to modify objectives, work plans or budgets, and provide supplemental information required by the agency prior to the award. When a decision has been made (whether an award or declination), verbatim anonymous copies of reviews and summaries of review panel deliberations, if any, will be made available to the proposer. Declined applications will be held in the NCCOS/CSCOR/COP for the required 3 years in accordance with the current retention requirements, and then destroyed.

(14) *Other Requirements*:

(a) The Department of Commerce Pre-Award Notification of Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of October 1, 2001 (66 FR 49917), as amended by the **Federal Register** notice published on October 30, 2002 (67 FR 66109), is applicable to this solicitation.

(b) Intergovernmental Review: (a) Applications under this program are not subject to Executive Order (E.O.) 12372, "Intergovernmental Review of Federal Programs." (b) It has been determined that this notice is not significant for purposes of E.O. 12866. Pursuant to 5 U.S.C. 553 (a)(2), an opportunity for public notice and comment is not required for this notice relating to grants, benefits and contracts. Because this notice is exempt from the notice and comment provisions of the Administrative Procedure Act, a Regulatory Flexibility Analysis is not required, and none has been prepared. It has been determined that this notice does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

(c) Data Archiving: Any data collected in projects supported by NCCOS/CSCOR/COP should be delivered to a National Data Center (NDC), such as the National Oceanographic Data Center (NODC), in a format to be determined by the institution, the NODC, and the Program Officer. It is the responsibility of the institution for the delivery of these data; the DOC will not provide additional support for delivery beyond the award. Additionally, all biological cultures established, molecular probes developed, genetic sequences identified, mathematical models constructed, or other resulting information products established through support provided by NCCOS/CSCOR/COP are encouraged to be made available to the general research community at no or modest handling charge (to be determined by the institution, Program Officer, and DOC).

(d) Please note that NOAA is developing a policy on internal overhead charges, NOAA scientists considering submission of proposals should contact the appropriate NCCOS/CSCOR/COP Program Manager for the latest information.

(e) Paperwork Reduction Act: This notification involves collection-of-information requirements subject to the Paperwork Reduction Act. The use of Standard Forms 424, 424A, 424B, and SF-LLL has been approved by the Office of Management and Budget (OMB) under control numbers 0348–0043, 0348–0044, 0348–0040 and 0348–0046.

The following requirements have been approved by OMB under control number 0648–0384; a Summary Proposal Budget Form (30 Minutes per response), a Project Summary Form (30 minutes per response), a standardized format for the Annual Performance Report (5 hours per response), a standardized format for the Final Report (10 hours per response), and the submission of up to 20 copies of proposals (10 minutes per response). The response estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Leslie.Mcdonald@noaa.gov. Copies of these forms and formats can be found on the COP home page under the Grants Information section.

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection displays a currently valid OMB control number.

Dated: October 31, 2002.

Alan Neuschatz,

Associated Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 02–28511 Filed 11–7–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 110102C]

North Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of committee meeting.

SUMMARY: The North Pacific Fishery Management Council's (Council) Gulf of Alaska Working Group will meet in Anchorage, AK.

DATES: The meeting will be held on November 25–26, 2002.

ADDRESSES: The meeting will be held at the Anchorage Hilton Hotel, 500 W 3rd Avenue, Top of the World Room, Anchorage, AK 99501.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Council Staff: 907–271–2809

SUPPLEMENTARY INFORMATION: On Monday, November 25, the committee will meet starting at 10 a.m. and on Tuesday, November 26, the meeting will begin at 8 a.m. to review: data on rockfish bycatch rates; International Pacific Halibut Commission discussion paper on managing halibut bycatch in a rationalized Pacific cod hook and line fishery; proposals for catcher/processor elements and options and finalize elements and options for analysis.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen, 907–271–2809, at least 5 working days prior to the meeting date.

Dated: November 5, 2002.

Theophilus R. Brainerd,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–28546 Filed 11–7–02; 8:45 am]

BILLING CODE 3510–22–S

CONSUMER PRODUCT SAFETY COMMISSION

Petition Requesting Standard for Bunk Bed Cornerposts

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: The Commission has received a petition (CP–03–1/ HP–03–1) requesting that the Commission establish a standard for bunk bed cornerposts. The Commission solicits written comments concerning the petition.

DATES: The Office of the Secretary must receive comments on the petition by January 7, 2003.

ADDRESSES: Comments, preferably in five copies, on the petition should be mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, telephone (301) 504–0800, or delivered to the Office of the Secretary, Room 501, 4330 East-West Highway, Bethesda, Maryland 20814. Comments may also be filed by telefacsimile to (301) 504–0127 or by email to *cpsc-os@cpsc.gov*. Comments should be captioned "Petition CP–03–1/ HP–03–1, Petition on Bunk Bed Cornerposts." A copy of the petition is available for inspection at the Commission's Public Reading Room, Room 419, 4330 East-West Highway, Bethesda, Maryland, and on the Commission's website at *http://www.cpsc.gov*.

FOR FURTHER INFORMATION CONTACT: Rockelle Hammond, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0800, ext. 1232.

SUPPLEMENTARY INFORMATION: The Commission has received correspondence from the Danny Foundation requesting that the Commission establish a standard to address the hazard of strangulation posed by bunk bed cornerposts. The Commission is docketing this request as a petition under the Consumer Product Safety Act, 15 U.S.C. 2057, and the Federal Hazardous Substances Act, 15 U.S.C. 1261(q)(1)(A). The petitioner asserts that, due to the height of bunk beds, cornerposts on bunk beds pose a substantial risk to children when their clothing, bedding or other items become caught on the cornerposts. In such circumstances, children can hang from the caught item and die. The petitioner states that such incidents have resulted in fourteen deaths to American children since 1993.

Interested parties may obtain a copy of the petition by writing or calling the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0800. Copies of the petition are also available for inspection from 8:30 a.m. to 5 p.m., Monday through Friday, in the Commission's Public Reading Room, Room 419, 4330 East-West Highway, Bethesda, Maryland, or from the Commission's website at *http://www.cpsc.gov*.

Dated: November 4, 2002.

Todd Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 02–28420 Filed 11–7–02; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

The Joint Staff; National Defense University (NDU), Board of Visitors (BOV) Meeting

AGENCY: Department of Defense.

ACTION: Notice of meeting.

SUMMARY: The President, National Defense University has scheduled a meeting of the Board of Visitors.

DATES: The meeting will be held on November 14th and 15th 2002, from 18:00 to 21:00 on the 14th and continuing on the 15th from 08:30 to 17:00.

ADDRESSES: The meeting will be held in Room 115, Marshall Hall, Building 62, National Defense University, 300 5th Avenue, Fort McNair, Washington, DC 20319–5066.

FOR FURTHER INFORMATION CONTACT: NDU Assistant Vice President for Administration and Deputy Chief of Staff, National Defense University, Fort Lesley J. McNair, Washington, DC 20319–6200. To reserve space, interested persons should contact Mr. Michael Mann, @ (202) 685–3903 and/ or e-mail: *mannm@ndu.edu*.

SUPPLEMENTARY INFORMATION: The agenda will include past, present, and future Joint Professional Military Education and National Security/Home Land Security Policy issues that drive mission requirements for the National Defense University and its many Components. The meeting is open to the public with limited space available for observers to be allocated on a first come, first served basis.

POC: Michael Mann, BOV Executive Secretary, @ *mannm@ndu.edu* and/or (202) 685–3903.

Dated: October 31, 2002.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–28413 Filed 11–7–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

United States Military Cancer Institute

Sunshine Act Meeting Notice

AGENCY: United States Military Cancer Institute.

TIME AND DATE: 0830 to 1500, November 14, 2002.

PLACE: Eisenhower Suite, WRAMC 6900 Georgia Ave., NW., Washington, DC 20307.

STATUS: Open—under "Government in the Sunshine Act" (5 U.S.C. 552b(e)(3)).

MATTERS TO BE CONSIDERED: USMCI goals and objectives.

8:30 a.m. Meeting—Committee of Scientific Advisors

(1) Welcome

(2) Introduction

(3) Overview of various Oncology Programs

(4) Committee and Director Executive Session

CONTACT PERSON FOR MORE INFORMATION: Mr. William Mahr, Associate Director for Administration—USMCI, (202) 782–0552.

Dated: November 4, 2002.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–28720 Filed 11–6–02; 3:32 pm]

BILLING CODE 5001–08–M

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DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Proposed Information Collection; Headquarters, U.S. Marine Corps

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The U.S. Marine Corps announces a proposed extension of an approved information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimated of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by January 7, 2003

ADDRESSES: Send written comments and recommendations on the proposed information collection to Marine Corps Recruiting Command, (Code MROR), 3280 Russell Road, Quantico, VA 22134–5103.

FOR FURTHER INFORMATION CONTACT: To request additional information or to obtain a copy of the proposal and associated collection instruments, contact Gunnery Sergeant Ricardo Hudson at (703) 784–9449.

SUPPLEMENTARY INFORMATION:

Form Title and OMB Number: Personal Information Questionnaire; OMB Control No. 0703–0012.

Needs and Uses: The Personal Information Questionnaire is used to provide Headquarters, U.S. Marine Corps with a standardized method in rating officer program applicants in the areas of character, leadership, ability, and suitability for a service as a commissioned officer.

Affected Public: Individuals or households.

Annual Burden Hours: 8,350.

Number of Respondents: 16,700.

Responses per Respondent: 1.

Average Burden per Response: 30 minutes.

Frequency: On occasion.

(Authority: 44 U.S.C. Sec. 3506(c)(2)(A)).

Dated: October 30, 2002.

R.E. Vincent, II,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 02–28490 Filed 11–7–02; 8:45 am]

BILLING CODE 3810–FF–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Proposed Information Collection; Chief of Naval Education and Training

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Chief of Naval Education and Training announces a proposed extension of an approved public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by January 6, 2003.

ADDRESSES: Send written comments and recommendations on the proposed information collection to CDR K. Looney (N79A21), 250 Dallas Street, Pensacola, FL 32508–5220.

FOR FURTHER INFORMATION CONTACT: To request additional information or to obtain a copy of the proposal and associated collection instruments, contact CDR K. Looney at (850) 452–9387.

SUPPLEMENTARY INFORMATION:

Form Title and OMB Number: Application Forms Booklet, Naval Reserve Officers Training Corps (NROTC) Scholarship Program; OMB Control No. 0703–0026.

Needs and Uses: This collection of information is used to make a determination of an applicant's academic and/or leadership potential and eligibility for an NROTC scholarship. The information collected is used to select the best-qualified candidates.

Affected Public: Individuals or households.

Annual Burden Hours: 56,000.

Number of Respondents: 14,000.

Responses per Respondent: 1.

Average Burden per Response: 4 hours.

Frequency: On occasion.

(Authority: 44 U.S.C. Sec. 3506(c)(2)(A))

Dated: October 30, 2002.

R.E. Vincent II,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 02–28491 Filed 11–7–02; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Proposed Information Collection; Commander, Navy Recruiting Command

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: Commander, Navy Recruiting Command announces a proposed extension of an approved public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimated of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by January 7, 2002.

ADDRESSES: Send written comments and recommendations on the proposed information collection to Commander, Navy Recruiting Command, 5722 Integrity Drive, Millington, TN 38054–5057.

FOR FURTHER INFORMATION CONTACT: To request additional information or to obtain a copy of the proposal and associated collection instruments, contact Mrs. Judy Birmingham at (901) 874–9210.

SUPPLEMENTARY INFORMATION:

Form Title and OMB Number: Application for Commission or Warrant Rank, USN or USNR; OMB Control No. 0703–0029.

Needs and Uses: All persons interested in entering the U.S. Navy or Naval Reserve in a commissioned status must provide various personal data in order for a Selection Board to determine their qualifications for naval service and for specific fields of endeavor which the applicant intends to pursue. This information is used to recruit and select applicants who are qualified for commission in the U.S. Navy or Naval Reserve.

Affected Public: Individuals or households.

Annual Burden Hours: 23,400.

Number of Respondents: 11,700.

Responses per Respondent: 1.

Average Burden per Response: 2 hours.

Frequency: On occasion.

(Authority: 44 U.S.C. Sec. 3506(c)(2)(A)).

Dated: October 30, 2002.

R.E. Vincent II,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 02–28492 Filed 11–7–02; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Proposed Information Collection; United States Naval Academy

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The United States Naval Academy announces a proposed extension of a currently approved public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by January 7, 2003.

ADDRESSES: Send written comments and recommendations on the proposed information collection to the Admissions Office, United States Naval Academy, 117 Decatur Road, Annapolis, MD 21402–5017.

FOR FURTHER INFORMATION CONTACT: To request additional information or to obtain a copy of the proposal and associated collection instruments, contact Mr. Nick Pantelides, telephone (410) 293–1803.

SUPPLEMENTARY INFORMATION:

Form Title and OMB Number: Application Procedures for United States Naval Academy; OMB Control Number 0703–0036.

Needs and Uses: This collection of information is necessary to determine the eligibility and evaluate overall competitive standing of candidates for appointment to the United States Naval Academy. An analysis of the information collected is made by the Admissions Board during the process in order to gauge the qualifications of individual candidates.

Affected Public: Individuals or households, Federal agencies or employees.

Annual Burden Hours: 30,000.

Number of Respondents: 10,000.

Responses per Respondent: 1.

Average Burden per Response: 3 hours.

Frequency: On occasion.

(Authority: 44 U.S.C. Sec. 3506(c)(2)(A)).

Dated: October 30, 2002.

R.E. Vincent II,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 02–28493 Filed 11–7–02; 8:45 am]

BILLING CODE 3810–FF–P

DELAWARE RIVER BASIN COMMISSION

Notice of Commission Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission ("Commission") will hold an informal conference followed by a public hearing on Monday, November 25, 2002. The hearing will be part of the Commission's regular business meeting. Both the conference session and business meeting are open to the public and will be held at the Commission offices at 25 State Police Drive, West Trenton, New Jersey.

The conference among the Commissioners and staff will begin at 10:00 a.m. Topics of discussion include: a status report on the PCB TMDL for the Delaware Estuary; a progress report on development of the Commission's new comprehensive plan; a presentation on the I–MAP Delaware Basin Internet mapping project; and a discussion regarding a resolution to amend the Commission's Comprehensive Plan and Water Code relating to the operation of Lake Wallenpaupack during drought watch, drought warning and drought conditions.

The dockets scheduled for public hearing are as follows:

1. *Borough of Collingswood D–89–3 CP RENEWAL.* A renewal of a surface water and ground water withdrawal project to supply up to 155 million gallons (mg)/30 days of water to the applicant's distribution system from all wells and Newton Creek. The project is located in Collingswood Borough, Camden County, New Jersey. No increase in the requested allocation is sought.

2. *Township of Harrison D–2002–36 CP.* An upgrade and expansion project of a 0.4 million gallons per day (mgd) secondary level sewage treatment plant (STP) to provide advanced secondary treatment of 0.8 mgd. The STP will continue to serve residential and commercial development in Harrison Township, Gloucester County, New Jersey. The plant is located in Harrison Township off Creek Road about one mile west of State Route 45. A new outfall will be constructed to discharge to the non-tidal portion of Raccoon Creek, a tributary of the Delaware River.

3. *Musconetcong Sewerage Authority D–2002–40 CP.* A project to expand a 3.81 mgd tertiary STP by adding a 0.5 mgd tertiary treatment plant that will operate in parallel mode. The project is located in Mount Olive Township, Morris County, New Jersey, just north of the Route 206 intersection with Interstate 80. The project will continue to serve Stanhope Borough in Sussex County and Netcong Borough in Morris County, plus portions of Mount Olive Township, Mount Arlington Borough, and Roxbury Township, also within Morris County. The expansion is primarily needed to serve residents of various communities around Lake Hopatcong, where some failing on-lot septic systems need to be phased out of service. A portion of the existing service area is located outside of the Delaware River Basin, in the Raritan River Basin, as documented in Docket No. D–92–80 CP, approved by the Commission on August 4, 1993. STP effluent will continue to be discharged to the Musconetcong River, a tributary of the Delaware River.

4. *Little Washington Wastewater Company d/b/a Suburban Wastewater Company D–2002–42.* A project to rerate the White Haven STP from 0.34 mgd to 0.45 mgd, while continuing to provide advanced secondary level of treatment via an activated sludge process. The project will continue to serve White

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Haven Borough and a portion of Dennison Township, both in Luzerne County, Pennsylvania. The project is located in the Borough of White Haven, approximately 300 feet south of Route 940 on the bank of the Lehigh River, to which it will continue to discharge.

In addition to the public hearing items, the Commission will address the following at its 1 p.m. business meeting: Minutes of the August 28, 2002 business meeting; announcements; a report on Basin hydrologic conditions; a report by the executive director; a report by the Commission's general counsel; a resolution concerning the drought emergency declared by the Commission on December 18, 2001; and a resolution to amend the Comprehensive Plan and Water Code relating to the operation of Lake Wallenpaupack during drought watch, drought warning and drought conditions. A hearing on the Lake Wallenpaupack resolution was held on October 16, and the written comment period on that item was held open through November 15.

Draft dockets scheduled for public hearing on November 25, 2002 are posted on the Commission's web site, *http://www.drbc.net*, where they can be accessed through the Notice of Commission Meeting and Public Hearing. Documents relating to the dockets and other items may be examined at the Commission's offices. Please contact Thomas L. Brand at 609–883–9500 ext. 221 with any docket-related questions.

Persons wishing to testify at this hearing are requested to register in advance with the Commission Secretary at 609–883–9500 ext. 203. Individuals in need of an accommodation as provided for in the Americans With Disabilities Act who wish to attend the hearing should contact the Commission Secretary directly at 609–883–9500 ext. 203 or through the Telecommunications Relay Services (TRS) at 711, to discuss how the Commission may accommodate your needs.

Dated: November 4, 2002.

Pamela M. Bush, Esq.,

Commission Secretary.

[FR Doc. 02–28460 Filed 11–7–02; 8:45 am]

BILLING CODE 6360–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before December 9, 2002.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW, Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address *Lauren_Wittenberg@omb.eop.gov*.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: November 4, 2002.

John D. Tressler,

Leader, Regulatory Management Group, Office of the Chief Information Officer.

Federal Student Aid

Type of Review: New.

Title: Federal PLUS Program Master Promissory Note.

Frequency: On occasion.

Affected Public: Individuals or households; Businesses or other for-profit; Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 33,333.

Burden Hours: 16,667.

Abstract: This promissory note is the means by which a Federal PLUS Program loan borrower promises to repay his or her loan.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2096. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address vivan.reese@ed.gov. Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Lew Oleinick at *Lew.Oleinick@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–28478 Filed 11–7–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before December 9, 2002.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address *Lauren_Wittenberg@omb.eop.gov*.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: November 4, 2002.

John D. Tressler,

Leader, Regulatory Management Group, Office of the Chief Information Officer.

Federal Student Aid

Type of Review: New.

Title: Federal Direct PLUS Loan Application and Master Promissory Note (PLUS MPN), and Endorser Addendum.

Frequency: On occasion.

Affected Public: Individuals or households.

Reporting and Recordkeeping Hour Burden:

Responses: 225,000.

Burden Hours: 112,500.

Abstract: The PLUS MPN is the means by which an individual applies for and agrees to repay a Federal Direct PLUS Loan. If an application for a Federal Direct PLUS Loan is determined to have an adverse credit history and obtains an endorser, the Endorser Addendum is the means by which an endorser agrees to repay the loan if the borrower does not repay it.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2112. When you access the information collection, click on "Download Attachments " to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivan.reese@ed.gov*. Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Lew Oleinick at *lew.oleinick@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–28479 Filed 11–7–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No.: 84.017A]

Office of Postsecondary Education; International Research and Studies Program

ACTION: Notice of reopening and correction of the International Research and Studies Program fiscal year (FY) 2003 competition.

Notice to Applicants: On September 26, 2002 the Secretary published in the **Federal Register** (67 FR 60645 through 60646) a notice inviting applications for new awards for FY 2003 for the International Research and Studies Program. This notice corrects the notice published on September 26, 2002 by replacing the absolute priority and the two invitational priorities with a single invitational priority, and reopening this competition.

In order to broaden the programmatic impact on the field of language, area and international studies, the Secretary replaces the entire section on priorities in the notice of September 26, 2002 with the following:

Invitational Priority

This competition focuses on projects designed to meet the priority in the regulations for this program (34 CFR 660.34(a)(2)).

Specific languages or regions for study or materials development: We are particularly interested in projects that include studies and the development of instructional materials on the Middle East, Central Asia, and South Asia and the languages spoken in these regions.

Under 34 CFR 75.105(c)(1) we do not give an application that meets the invitational priority a competitive or absolute preference over other applications. The competition is reopened to provide applicants time to prepare applications in accordance with this notice of correction.

New Deadline for Transmittal of Applications: January 17, 2003.

For Applications and Further Information Contact: The application for this program is available at: *http://www.ed.gov/offices/OPE/HEP/iegps/irs.html*.

Jose L. Martinez, U.S. Department of Education International Education and Graduate Programs Service, 1990 K Street NW., Suite 6000, Washington, DC 20006–8521. Telephone: (202) 502–7635, or via Internet: *jose.martinez@ed.gov*.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR APPLICATIONS AND FURTHER INFORMATION CONTACT.**

Individuals with disabilities may obtain a copy of the application package in an alternative format by contacting that person. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/legislation/FedRegister*.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have any questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html*.

Program Authority: 20 U.S.C. 1125.

Dated: November 4, 2002.

Sally L. Stroup,

Assistant Secretary, Office of Postsecondary Education.

[FR Doc. 02–28419 Filed 11–7–02; 8:45 am]

BILLING CODE 4000–01–P

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DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Hanford

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Hanford. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Thursday, December 5, 2002, 9 a.m.–5 p.m.; Friday, December 6, 2002, 8:30 a.m.–4 p.m.

ADDRESSES: Radisson Hotel-Portland, 1441 N.E Second Avenue, Portland, OR. Phone: (503) 244–2401, Fax: (503) 233–0498.

FOR FURTHER INFORMATION CONTACT: Yvonne Sherman, Public Involvement Program Manager, Department of Energy Richland Operations Office, 825 Jadwin, MSIN A7–75, Richland, WA 99352; Phone: (509) 376–6216; Fax: (509) 376–1563.

SUPPLEMENTARY INFORMATION: Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

Thursday, December 5, 2002

- Groundwater Protection Program
  - —Overview of the Hanford Groundwater Strategy
  - —Key Activities from the Master Schedule
  - —Systems Assessment Capability
- Long-Term Stewardship: Hanford Plan
  - —Workshop Update
  - —Draft Advice on the Plan (tentative)
- 116N–1 Trench
  - —Discussion on Proposed Significant Difference from Record of Decision
  - —Draft Advice (tentative)
- Public Involvement Process on the B/C Pilot (i.e., final remediation of a reactor area)
  - —Draft Advice (tentative)
- Public Comment Period

Friday, December 6, 2002

- Board discussion and adoption of draft advice
- Committee Updates
- Discussion of Hanford Advisory Board 2003 Meeting Dates and Locations
- Public Comment Period

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Yvonne Sherman's office at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided equal time to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available by writing to Yvonne Sherman, Department of Energy Richland Operations Office, 825 Jadwin, MSIN A7–75, Richland, WA 99352, or by calling her at (509) 376–1563.

Issued at Washington, DC, on November 5, 2002.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 02–28468 Filed 11–7–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Bonneville Power Administration

McNary-John Day Transmission Line Project

AGENCY: Bonneville Power Administration (BPA), Department of Energy (DOE).

ACTION: Notice of availability of Record of Decision (ROD).

SUMMARY: This notice announces the availability of the ROD to construct the McNary-John Day Transmission Line Project in Benton and Klickitat Counties, Washington, and Sherman and Umatilla Counties, Oregon. This decision is based on input from public processes and information in the McNary-John Day Transmission Line Project Final Environmental Impact Statement (DOE/EIS–0332, August 2002). The proposed action consists of building 79 miles of 500-kilovolt transmission line between BPA's McNary and John Day Substations, including several short-line routing alternatives. Construction of this transmission line is needed to allow new power, which is expected to be generated in southeast Washington and northeast Oregon, to be transmitted over BPA's transmission system. Some initial project activities will occur in 2003, with complete construction occurring when financing is secured from the parties who will utilize the line capacity.

ADDRESSES: Copies of the McNary-John Day Transmission Line Project ROD and the McNary-John Day Transmission Line EIS may be obtained by calling BPA's toll-free document request line: 1–800–622–4520.

FOR FURTHER INFORMATION CONTACT: Stacy L. Mason, KEC–4, Bonneville Power Administration, PO Box 3621, Portland, Oregon, 97208–3621, telephone number 503–230–5455; fax number 503–230–5699; e-mail *slmason@bpa.gov*.

Issued in Portland, Oregon, on October 30, 2002.

Stephen J. Wright,

Administrator and Chief Executive Officer.

[FR Doc. 02–28467 Filed 11–7–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–434–000]

ANR Pipeline Company; Notice of Site Visit

November 1, 2002.

On November 21, 2002, the Office of Energy Projects (OEP) staff will conduct a pre-certification site visit of ANR Pipeline Company's (ANR) WestLeg Project in McHenry County, Illinois and Walworth and Rock Counties, Wisconsin. We will examine the proposed project route by automobile and on foot. Representatives of ANR will be accompanying the OEP staff.

All interested parties may attend. Those planning to attend must provide their own transportation. Those interested in attending should meet at 8 .a.m at the following location: Holiday Inn Express (lobby), 2790 Milwaukee Rd., Beloit, WI 53511.

For additional information, please contact the Commission's Office of External Affairs at 1–866–208–FERC.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–28438 Filed 11–7–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–612–003]

ANR Pipeline Company; Notice of Compliance Filing

November 1, 2002.

Take notice that on October 28, 2002, ANR Pipeline Company (ANR), tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, with an effective date of March 31, 2002:

First Revised Sheet No. 106
First Revised Sheet No. 141A

ANR states that the tariff sheets are being filed in compliance with the Commission's September 26, 2002 order accepting ANR's proposed Associated Liquefiables tariff revisions. This filing also incorporates the required language that permits Shippers to trade PTR imbalances when known and provides the procedures used for making PTR nominations and determining PTR imbalances.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–28444 Filed 11–7–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–301–057]

ANR Pipeline Company; Notice of Negotiated Rate Filing

November 1, 2002.

Take notice that on October 29, 2002, ANR Pipeline Company (ANR) tendered for filing and approval Amendments to two Service Agreements between ANR and Wisconsin Public Service Corporation, which revise the MDQ under such Agreements. ANR requests that the Commission accept and approve the agreements to be effective November 1, 2002.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–28450 Filed 11–7–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP00–241–000 and RP00–241–006

Public Utilities Commission of the State of California v. El Paso Natural Gas Company, El Paso Merchant Energy-Gas, L.P., and El Paso Merchant Energy Company; Notice of Scheduling Oral Argument

November 1, 2002.

1. On October 9, 2001, the Chief Administrative Law Judge (Chief ALJ) issued an Initial Decision in Phase I of this proceeding (Docket No. RP00–241–000).[1] On September 23, 2002, the Chief ALJ issued a separate Initial Decision in Phase II of this proceeding (Docket No. RP00–241–006).[2] The parties have asked the Commission to provide for oral argument before the Commission.

2. Because oral argument will assist the Commission in its decision making in this case, we are scheduling oral argument to be held on December 2, 2002, at 10 a.m. in the Commission Meeting Room at 888 First Street, NE., Washington, DC 20426.

3. The Public Utilities Commission of the State of California and the parties aligned with it will be allotted a total of one and one-half hours to present their arguments, a portion of which may be reserved for rebuttal purposes. El Paso Natural Gas Company and El Paso Merchant Energy, L.P. also will be allotted one and one-half hours to present their arguments. No later than November 15, 2002, these parties must notify the Commission of the number of representatives they wish to present and the manner in which they desire to allocate their allotted time. The parties must be prepared to address all aspects of this case.

4. A transcript of the oral argument will be available immediately from Ace Reporting Company (202–347–3700 or 1–800–336–6646) for a fee. A transcript also will be available for the public on the Commission's FERRIS system two weeks after the oral argument. Additionally, Capitol Connection offers the opportunity for remote listening and viewing of the oral argument. It is available for a fee, live over the Internet, via C-Band Satellite. Persons interested in receiving the broadcast or needing information on making arrangements

[1] *Public Utilities Commission of the State of California* v. *El Paso Natural Gas Co.*, 97 FERC ¶ 63,004 (2001).

[2] *Public Utilities Commission of the State of California* v. *El Paso Natural Gas Co.*, 100 FERC ¶ 63,041 (2002).

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should contact David Reininger or Julia Morelli at the Capitol Connection (703–993–3100) as soon as possible or visit the Capitol Connection Web site at *http://www.capitolconnection.gmu.edu* and click on "FERC."

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–28443 Filed 11–7–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–216–002]

CenterPoint Energy Gas Transmission Company; Notice of Crediting Report

November 1, 2002.

Take notice that on October 29, 2002, CenterPoint Energy Gas Transmission Company (CEGT) tendered for filing a revision to its Annual Crediting Report for 2001 as directed by the Commission's order dated October 10, 2002.

CEGT states that copies of the filing has been mailed to each party listed on the official service list.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before November 8, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–28445 Filed 11–7–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–45–000]

ANR Pipeline Company; Notice of Tariff Filing

November 1, 2002.

Take notice that on October 29, 2002, ANR Pipeline Company (ANR), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Third Revised Sheet No. 148, with an effective date of December 1, 2002.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–28448 Filed 11–7–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–7–000]

Colorado Interstate Gas Company; Notice of Application

November 1, 2002.

Take notice that on October 23, 2002, Colorado Interstate Gas Company (CIG), P.O. Box 1087, Colorado Springs, Colorado 80944, filed in the above referenced docket, an application pursuant to Section 7(c) of the Natural Gas Act (NGA) and part 157 of the Commission's Rules and Regulations, for a certificate of public convenience and necessity authorizing the construction, ownership, and operation of facilities in Colorado to enhance the summer season capacity on that portion of its pipeline system known as the Valley Line (Summer-time Enhancement Project), and to incrementally increase capacity to meet the needs of certain Valley Line customers subscribing to additional capacity during a recent open season (Valley Line 2003 Expansion Project). This application is on file with the Commission and open to public inspection. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659.

Specifically, CIG proposes to construct and operate the following facilities:

(1) A 1,775 horsepower (ISO) "jumper" compressor unit that will compress gas from CIG's Line Nos. 5A and 5B into its newly constructed Line No. 5C. This facility will be located at CIG's existing Cheyenne Compressor Station in Weld County, Colorado, (2) a 7,800 horsepower (ISO) turbine compressor unit to be installed on CIG's Line No. 5C, also to be located at the Cheyenne Compressor Station, and

(3) A 1,650 horsepower (ISO) facility that will blend air into the gas stream in CIG's recently constructed Line No. 212A. This blending facility is necessary to stabilize the heat content of gas delivered to CIG's customers on the Valley Line. This facility is to be constructed immediately adjacent to CIG's Drennan Road Meter Station in Colorado Springs, Colorado.

CIG states that the proposed facilities will provide Valley Line customers with 50,000 Dth per day of flexibility during the summer season and an additional 42,150 Dth per day of incremental capacity. CIG estimates that the cost of the proposed Summer-time Enhancement Project facilities will be $9,753,100 and that cost of the Valley Line 2003 Expansion Project will be $13,237,800 for a total cost of $22,990,900. CIG states that it will not initially seek any rate recovery for the costs associated with the Summer-time Enhancement Project. CIG states that it seeks rolled-in rate treatment for the costs associated with the Valley Line 2003 Expansion Project facilities.

Any questions regarding this application should be directed to Robert T. Tomlinson, Director, Regulatory Affairs, Colorado Interstate Gas Company, P.O. Box 1087, Colorado Springs, Colorado 80944 at (719) 520–3788 or by fax at (719) 667–7534 or Judy Heineman, Vice President and General Counsel, Colorado Interstate Gas Company, P.O. Box 1087, Colorado Springs, Colorado 80944 at (719) 520–4829 or by fax at (719) 520–4898.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before November 21, 2002, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project.

This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–28439 Filed 11–7–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–44–000]

Enbridge Pipelines (UTOS) L.L.C.; Notice of Filing of Offer of Settlement

November 1, 2002.

Take notice that on October 28, 2002, Enbridge Pipelines (UTOS) L.L.C. (UTOS), pursuant to Rule 602 of the Commission's Rules of Practice and Procedure, 18 CFR 385–602 (2002), filed an Offer of Settlement (Settlement) in the captioned proceedings.

UTOS states that the Settlement resolves UTOS's general Section 4(e) rate filing obligation presently set for January 2, 2003, pursuant to the Commission's October 8, 1998 Notice of Extension of Time in Docket Nos. RP94–161–000, *et al.* UTOS further states that shippers representing approximately 91% of its present system throughput either did not oppose or took no position relative to the Settlement.

According to UTOS, under the Settlement, it will not be required to make such general rate filing, thus permitting its currently effective rates to remain in effect until subsequently changed. As a result, UTOS says, the Settlement promotes administrative efficiencies by providing rate certainty for all concerned, while at the same time avoiding the time and expense that would otherwise be attendant to a general Section 4(e) rate filing.

Pursuant to Rule 602(f)(2) Initial Comments on the Settlement are due by November 18, 2002, and Reply Comments are due by November 27, 2002.

This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The

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Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–28447 Filed 11–7–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–220–013]

Great Lakes Gas Transmission Limited Partnership; Notice of Negotiated Rate Agreement

November 1, 2002.

Take notice that on October 30, 2002, Great Lakes Gas Transmission Limited Partnership (Great Lakes) filed for disclosure, a transportation service agreement pursuant to Great Lakes' Rate Schedule FT entered into by Great Lakes and Nexen Marketing U.S.A. Inc. (Nexen) (FT Service Agreement). The FT Service Agreement being filed reflects a negotiated rate arrangement between Great Lakes and Nexen commencing November 1, 2002.

Great Lakes states that the FT Service Agreement is being filed to implement a negotiated rate contract as required by both Great Lakes' negotiated rate tariff provisions and the Commission's Statement of Policy on Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines and Regulation of Negotiated Transportation Services of Natural Gas Pipelines, issued January 31, 1996, at Docket Nos. RM95–6–000 and RM96–7–000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–28449 Filed 11–7–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–533–000]

Kinder Morgan Interstate Gas Transmission, LLC; Notice of Request for Waiver

November 1, 2002.

Take notice that on September 4, 2002, Kinder Morgan Interstate Gas Transmission LLC (KMIGT) tendered for filing a request for a one-time waiver of certain notice and timing requirements of Section 29.a of its FERC Gas Tariff, Fourth Revised Volume No. I–B, relating to the assessment of an Operational Flow Order (OFO) penalty to Kansas Gas Service, a Division of OneOk, Inc.

KMIGT states that copies of the filing have been served upon transportation and storage shippers and affected state regulatory bodies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before November 8, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–28446 Filed 11–7–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL03–12–000]

Kinder Morgan Michigan, LLC, Complainant, v. Michigan Electric Transmission Company, LLC, Respondent; Notice of Complaint

October 18, 2002.

Take notice that on October 15, 2002, Kinder Morgan Michigan, L.L.C. (KMM) filed with the Federal Energy Regulatory Commission (Commission) a complaint under section 206 of the Federal Power Act, 16 U.S.C. 824e (1994), and section 206 of the Commission's Rules of Practice and Procedure, 18 CFR 206, against Michigan Electric Transmission Company, LLC (METC) requesting that the Commission find that the terms and conditions of KMM's Generator Interconnection and Operating Agreement with METC violate Commission policy and precedent, and are unjust and unreasonable.

Any person desiring to be heard or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. The answer to the complaint and all comments, interventions or protests must be filed on or before October 25, 2002 . This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202)502–8222 or for TTY, (202) 502–8659. The answer to the complaint, comments, protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–28575 Filed 11–7–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ES02–54–001]

Midwest Independent Transmission System Operator, Inc.; Notice of Application

October 18, 2002.

Take notice that on October 17, 2002, Midwest Independent Transmission System Operator submitted an amendment to its original application in this proceeding, pursuant to section 204 of the Federal Power Act. The amendment seeks a waiver of the Commission's competitive bidding and negotiated placement requirements at 18 CFR 34.2.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502–8222 or TTY, (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: October 25, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–28576 Filed 11–7–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ES03–7–000]

Old Dominion Electric Cooperative; Notice of Application

October 18, 2002.

Take notice that on October 17, 2002, Old Dominion Electric Cooperative (Old Dominion) submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to refund a lease and leaseback transaction previously approved by the Commission, including the issuance of up to $15,000,000 in bonds.

Old Dominion also requests a waiver of the Commission's competitive bidding and negotiated placement requirements under 18 CFR 34.2.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502–8222 or TTY, (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: November 8, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–28577 Filed 11–7–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–32–002]

Texas Eastern Transmission, LP; Notice of Compliance Filing

October 18, 2002.

Take notice that on October 1, 2002, Texas Eastern Transmission, LP (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1 ("Tariff"), the tariff sheets listed in Appendix A of the filing proposed to be effective on November 1, 2002.

Texas Eastern states that the purpose of this filing is to comply with Ordering Paragraph (B) of the Commission's Order Issuing Certificate issued June 28, 2002, in Docket No. CP02–32–000 ("June 28 Order"). Texas Eastern states that the tariff sheets listed in Appendix A establish the maximum recourse rate and the related negotiated rate for service on Texas Eastern's TIME Project facilities, as required by the June 28 Order, and incorporate references to the new incremental TIME service into Rate Schedule FT–1 and the General Terms and Conditions of the Tariff, including the reference in Section 3 of Rate Schedule FT–1 specifically required by the Commission in Ordering Paragraph (B)(4) of the June 28 Order.

Texas Eastern states that copies of its filing have been mailed to all affected customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make

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protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202)502–8222 or for TTY, (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–28572 Filed 11–7–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC03–1–000, *et al.*]

Calpine Energy Services, Inc., *et al.*; Electric Rate and Corporate Regulation Filings

October 18, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Calpine Energy Services, L.P.

[Docket No. EC03–1–000]

Take notice that on October 11, 2002, Calpine Energy Services, L.P. tendered for filing with the Federal Energy Regulatory Commission (Commission) an application under section 204 of the Federal Power Act for approval of the acquisition of the securities of Calpine Northbrook Energy Marketing, LLC, an affiliated public utility.

Comment Date: November 1, 2002.

2. Southern California Edison Company

[Docket Nos. ER97–2355–007, ER98–1261–003, and ER98–1685–002]

Take notice that on October 15, 2002, Southern California Edison Company (SCE) tendered for filing a request for authority to refund to retail customers on December 1, 2002, transmission revenues associated with the reduction in SCE's Base Transmission Revenue Requirement that was ordered by the Federal Energy Regulatory Commission (Commission) in this docket, excluding any refund associated with the overhead allocation issue still pending at the Commission.

Comment Date: November 5, 2002.

3. Duquesne Light Company

[Docket No. ER03–47–000]

Take notice that on October 16, 2002, Duquesne Light Company (DLC) filed a Service Agreement for Retail Network Integration Transmission Service and a Network Operating Agreement for Retail Network Integration Transmission Service dated October 16, 2002 with Select Energy, Inc. under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement and Network Operating Agreement adds Select Energy, Inc. as a customer under the Tariff.

DLC requests an effective date of October 16, 2002 for the Service Agreement.

Comment Date: November 6, 2002.

4. Tampa Electric Company

[Docket No. ER03–48–000]

Take notice that on October 16, 2002, Tampa Electric Company (Tampa Electric) tendered for filing proposed changes to the rates for Transmission and Ancillary services under its Open Access Transmission Tariff. Tampa Electric states that the changes include increases in the rates for transmission services, and both increases and decreases in rates for ancillary services. Tampa Electric requests that the rate changes be made effective on December 16, 2002.

Copies of the filing have been served on all customers under Tampa Electric's open access tariff and the Florida Public Service Commission.

Comment Date: November 6, 2002.

5. Riverside Energy Center, LLC

[Docket No. ER03–49–000]

Take notice that on October 16, 2002, Riverside Energy Center, LLC (the Applicant) tendered for filing, under section 205 of the Federal Power Act (FPA), a request for authorization to make wholesale sales of electric energy, capacity, replacement reserves, and ancillary services at market-based rates, to reassign transmission capacity, and to resell firm transmission rights. Applicant proposes to own and operate a 600 megawatt gas-fired, combined cycle electric generating facility in the Town of Beloit, Rock County, Wisconsin.

Comment Date: November 6, 2002.

6. Louisville Gas and Electric Company/Kentucky Utilities Company

[Docket No. ER03–51–000]

Take notice that on October 16, 2002, Louisville Gas and Electric Company (LG&E)/Kentucky Utilities (KU) (hereinafter Companies) tendered for filing an executed Service Sales Agreement between Companies and Northern States Power Company under the Companies' Rate Schedule MBSS. This executed agreement replaces the Unexecuted Agreement filed with the Commission on June 18, 2002, Docket No. ER02–2086–000.

Comment Date: November 6, 2002.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.

Deputy Secretary.

[FR Doc. 02–28573 Filed 11–7–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EL03–19–000, et al.]

Consolidated Edison Company, et al.; Electric Rate and Corporate Filings

October 31, 2002.

The following filings have been made with the Commission. The filings are

listed in ascending order within each docket classification.

1. Southern California Edison Company v. Enron Generating Facilities: Victory Garden Phase IV Partnership, Sky River Partnership, Cabazon Power Partners LLC, Zond Wind System Partners, Ltd. Series 85–A, and Zond Wind System Partners, Ltd. Series 85–B

[Docket Nos. EL03–19–000, QF90–43–005, QF91–59–006, QF95–186–005, QF85–687–002, and QF85–686–002]

Take notice that on October 28, 2002, Southern California Edison Company tendered for filing a petition for declaratory order requesting revocation of qualifying facility status for certain Enron-affiliated generating facilities and a complaint and motions for investigation and hearing, and for just and reasonable rates and refunds.

Comment Date: November 18, 2002.

2. Virginia Electric and Power Company

[Docket No. ER01–247–007]

Take notice that on October 29, 2002, Virginia Electric and Power Company, doing business as Dominion Virginia Power, hereby tenders for filing a revision to Dominion Virginia Power's generator interconnection procedures (Interconnection Procedures) in compliance with the Commission's Order issued in this docket on August 2, 2002. Dominion Virginia Power respectfully requests that the revision to its Interconnection Procedures become effective October 30, 2002, the day after filing.

Comment Date: November 19, 2002.

3. Nevada Power Company

[Docket No. ER03–89–000]

Take notice that on October 29, 2002, Nevada Power Company, tendered for filing pursuant to Section 205 of the Federal Power Act, an executed Service Agreement for Network Integration Transmission Service (Service Agreement) between Nevada Power Company and the City of Needles, California. The Service Agreement is being filed in compliance with Section 29.5 of Sierra Pacific Resources Operating Companies' Open Access Transmission Tariff.

Nevada Power Company has requested that the Commission accept the Service Agreement and permit service in accordance therewith effective October 1, 2002.

Comment Date: November 19, 2002.

4. Nevada Power Company

[Docket No. ER03–90–000]

Take notice that on October 29, 2002, Nevada Power Company (Nevada Power) tendered for filing in accordance with 18 CFR part 35 of the Commission's Rules and Regulations, a Notice of Cancellation of the Agreement for the Sale of Electric Power and for Transmission Service Between Nevada Power Company and the City of Needles, California. Nevada Power has requested an effective date for the cancellation of October 1, 2002.

This Notice of Cancellation is filed pursuant to the termination notice given by the City of Needles to Nevada Power Company, appropriate to the Agreement for the Sale of Electric Power and for Transmission Service. Copies of the filing were served upon the City of Needles, the California Public Utilities Commission, and the Public Utilities Commission of Nevada.

Comment Date: November 19, 2002.

5. Otter Tail Power Company

[Docket No. ER03–91–000]

Take notice that on October 29, 2002, Otter Tail Power Company (Otter Tail) tendered for filing an executed service agreement with the Midwest Independent Transmission System Operator (Midwest ISO), for services provided under Otter Tail's Control Area Services and Operations Tariff. Otter Tail requests an effective date of October 30, 2002 for this executed service agreement.

A copy of the filing was served on representatives of the Midwest ISO and other affected parties.

Comment date: November 19, 2002.

6. Idaho Power Company

[Docket No. ER03–92–000]

Take notice that on October 29, 2002, Idaho Power Company filed a Service Agreement for Firm Point-to-Point Transmission Service between Idaho Power Company and Pinnacle West Capital Corporation under its open access transmission tariff in the above-captioned proceeding.

Comment Date: November 19, 2002.

7. El Paso Electric Company

[Docket No. ER03–93–000]

Take notice that on October 29, 2002, El Paso Electric Company filed an unexecuted transmission service agreement with Public Service Company of New Mexico in this proceeding.

Comment Date: November 19, 2002.

8. NorthWestern Corporation

[Docket No. ES03–8–000]

Take notice that on October 25, 2002, NorthWestern Corporation (NorthWestern) submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to assume no more than $355,402,000 of First Mortgage Bonds; $67,010,325 of Junior Subordinated Debentures; $40,000,000 of Medium-Term Notes; and $62,700,000 of Transition Bonds of NorthWestern Energy, L.L.C., formerly known as Montana Power Company. NorthWestern also requested a waiver from the Commission's competitive bidding and negotiated placement requirements at 18 CFR 34.2.

Comment Date: November 12, 2002.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502–8222 or TTY, (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–28441 Filed 11–7–02; 8:45 am]

BILLING CODE 6717–01–P

VOL 67 ISS 217 NO 8 2002 UMI

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EC03–7–000, et al.]

Georgia Power Company, et al.; Electric Rate and Corporate Filings

November 1, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Georgia Power Company

[Docket No. EC03–7–000]

Take notice that on October 29, 2002, Georgia Power Company filed with the Federal Energy Regulatory Commission (Commission) an application pursuant to section 203 of the Federal Power Act requesting all necessary authorizations for the transfer of certain transmission facilities from the Municipal Electric Authority of Georgia to Georgia Power Company in exchange for certain real property.

Comment Date: November 29, 2002.

2. EPCOR Energy (U.S.), G.P., EPCOR Merchant and Capital (US) Inc. EPCOR Power Development, Inc. EPDC, Inc., and Frederickson Power L.P.

[Docket No. EC03–8–000]

Take notice that on October 29, 2002, EPCOR Energy (U.S.), G.P., EPCOR Merchant and Capital (US) Inc., EPCOR Power Development, Inc., EPDC, Inc., and Frederickson Power L.P. (the Applicants) filed with the Federal Energy Regulatory Commission (Commission) an application pursuant to Section 203 of the Federal Power Act for authorization of an intracorporate reorganization of the Applicants under a to-be-established U.S. parent, EPCOR Energy (U.S.), G.P.

Comment Date: November 29, 2002.

3. Twin Oaks Power, LP

[Docket No. EG03–10–000]

Take notice that on October 28, 2002, Twin Oaks Power, LP (Twin Oaks) filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Twin Oaks will acquire, own, and operate a two unit, 300 MW lignite-fired electric generating plant known as the TNP One Generating Station, located in Robertson County, Texas. Twin Oaks' principal business offices are located at 101 Ash Street, San Diego, California.

Comment Date: November 22, 2002.

4. Nordic Energy of Ashtabula, L.L.C.

[Docket No. EG03–11–000]

Take notice that on October 30, 2002, Nordic Energy of Ashtabula, L.L.C. (NEA), filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

NEA states that it will be engaged either directly or indirectly and exclusively in the business of owning and operating electric generation facilities. Specifically, NEA is developing an electric generating unit in the vicinity of Ashtabula, Ohio.

Comment Date: November 22, 2002.

5. City of Riverside, California

[Docket No. EL03–20–000]

Take notice that on October 29, 2002, the City of Riverside, California (Riverside) submitted a Petition for a Declaratory Order (1) determining that Riverside's proffered Transmission Revenue Requirement (TRR) is appropriate under the California Independent System Operator Corporation's Tariff on file at the Commission for purposes of Riverside's becoming a Participating Transmission Owner; (2) approving Riverside's Transmission Owner (TO) Tariff; (3) waiving the filing fee otherwise applicable to a petition for declaratory order; and (4) granting any other relief or waivers necessary or appropriate for approval or implementation of Riverside's TRR and TO Tariff effective as of the later of January 1, 2003 or the effective date of a Transmission Control Agreement acceptable to Riverside.

Comment Date: November 21, 2002.

6. City of Banning, California

[Docket No. EL03–21–000]

Take notice that on October 29, 2002, the City of Banning, California (Banning) submitted a Petition for a Declaratory Order (1) determining that Banning's proffered Transmission Revenue Requirement (TRR) is appropriate under the California Independent System Operator Corporation's Tariff on file at the Commission for purposes of Banning's becoming a Participating Transmission Owner; (2) approving Banning's Transmission Owner (TO) Tariff; (3) waiving the filing fee otherwise applicable to a petition for declaratory order; and (4) granting any other relief or waivers necessary or appropriate for approval or implementation of Banning's TRR and TO Tariff effective as of the later of January 1, 2003 or the effective date of a Transmission Control Agreement acceptable to Banning.

Comment Date: November 21, 2002.

7. California Independent System Operator Corporation Investigation of Wholesale Rates Of Public Utility Sellers of Energy and Ancillary Services In the Western Electricity Coordinating Council

[Docket Nos. ER02–1656–008 and EL01–68–024]

Take notice that on October 29, 2002, the California Independent System Operator Corporation (ISO) submitted a filing in compliance with the Commission's October 11, 2002 "Order On Rehearing And Compliance Filing," 100 FERC ¶ 61,061 (2002), and the Commission's October 24, 2002 "Notice of Extension of Time" extending the date for submitting the instant compliance filing, issued in the above-referenced dockets.

The ISO has served this filing upon the Public Utilities Commission of the State of California, the California Energy Commission, the California Electricity Oversight Board, all parties with effective Scheduling Coordinator Service Agreements under the ISO Tariff, and all parties in Docket Nos. EL00–95 and ER02–1656. In addition, the ISO has posted a copy of the filing on its Home Page.

Comment Date: December 2, 2002.

8. Sun River Electric Cooperative, Inc.

[Docket No. ES03–9–000]

Take notice that on October 28, 2002, Sun River Electric Cooperative, Inc. (Sun River) submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to make long-term borrowings under a loan agreement with the National Rural Utilities Cooperative Finance Corporation in an amount not to exceed $13,700,812 at any one time over a two-year period.

Sun River also requests a waiver from the Commission's competitive bidding and negotiated placement requirements at 18 CFR 34.2.

Comment date: November 22, 2002.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding.

Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502–8222 or TTY, (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–28440 Filed 11–7–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG03–3–000, et al.]

Sithe/Independence Power Partners, L.P., et al.; Electric Rate and Corporate Regulation Filings

October 17, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Sithe/Independence Power Partners, L.P.

[Docket No. EG03–3–000]

Take notice that on October 15, 2002, Sithe/Independence Power Partners, L.P. (Sithe Independence) filed with the Commission an application for determination of exempt wholesale generator (EWG) status pursuant to part 365 of the Commission's regulations. Sithe Independence requested that the Commission determine that Sithe Independence is an EWG on and as of the future date that the Qualifying Facility status of its 1,060 MW electric generating facility in Oswego County, New York is terminated.

Comment Date: November 7, 2002.

2. Wolfskill Energy Center, LLC

[Docket No. EG03–4–000]

Take notice that on October 15, 2002, Wolfskill Energy Center, LLC tendered for filing with the Federal Energy Regulatory Commission (Commission) an application for Commission determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Wolfskill, a Delaware limited liability company, proposes to own and operate a nominally rate 45 MW natural gas-fired, simple cycle electric generating facility to be located in Solano County, California. Wolfskill intends to sell the output at wholesale to an affiliated marketer.

Comment Date: November 7, 2002.

3. Appalachian Power Company

[Docket No. ER01–3122–003]

Take notice that on October 11, 2002, the American Electric Power Service Corporation (AEPSC) tendered for filing in compliance with the Letter Order issued in this Docket on May 6, 2002, an executed amended Interconnection and Operation Agreement between Appalachian Power Company and Duke Energy Wythe, LLC . The agreement is pursuant to the AEP Companies' Open Access Transmission Service Tariff (OATT) that has been designated as the Operating Companies of the American Electric Power System FERC Electric Tariff Second Revised Volume No. 6, effective June 15, 2000.

AEP requests an effective date of November 26, 2001. A copy of the filing was served upon the Virginia State Corporation Commission.

Comment Date: November 1, 2002.

4. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–488–003]

Take notice that on October 11, 2002, the Midwest Independent Transmission System Operator, Inc., (Midwest ISO) tendered for filing certain revisions to its Operating Protocols for Existing Generators, FERC Electric Tariff, Original Rate Schedule No. 4, pursuant to the Commission's Order, Midwest Independent Transmission System Operator, Inc., 100 FERC 61,262. The Midwest ISO has requested an effective date of April 16, 2002.

The Midwest ISO has served a copy of its filing on each person whose name is listed on the official service list maintained by the Secretary in this proceeding. In addition, the Midwest ISO has electronically served a copy of this filing, with attachments, upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, Policy Subcommittee participants, as well as all state commissions within the region and has electronically posted this filing on the Midwest ISO's website www.midwestiso.org under the heading "Filing to FERC" for other interested parties in this matter. The Midwest ISO will provide hard copies to any interested partied upon request.

Comment Date: November 1, 2002.

5. Southern Company Services, Inc.

[Docket No. ER03–38–000]

Take notice that on October 15, 2002, Southern Company Services, Inc. (SCS) filed with the Federal Energy Regulatory Commission (Commission) a Tariff for the Sale, Assignment or Transfer of Transmission Rights (Tariff). The Tariff would allow SCS to reassign transmission rights to other eligible transmission customers. An effective date of October 16, 2002 has been requested.

Comment Date: November 1, 2002.

6. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER03–39–000]

Take notice that on October 15, 2002, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) tendered for filing proposed revisions to Attachment T of the Midwest ISO Open Access Transmission Tariff (OATT), FERC Electric Tariff, Second Revised Volume No. 1, which reflect that the provisions in Attachment T concerning Michigan Retail Access only apply to American Transmission Company, LLC load (*i.e.*,Edison Sault Electric Company and Upper Peninsula Power Co.) located in the Upper Peninsula of Michigan and not generically to the Lower Peninsula of Michigan. The Midwest ISO has requested an effective date of November 25, 2002.

The Midwest ISO has electronically served a copy of this filing upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, Policy Subcommittee participants, as well as all state commissions within the region. In addition, the filing has been electronically posted on the Midwest ISO's website at www.midwestiso.org under the heading "Filings to FERC" for other interested parties in this matter. The Midwest ISO will provide hard copies to any interested parties upon request.

Comment Date: November 5, 2002.

7. Accent Energy Midwest LLC

[Docket No. ER03–40–000]

Take notice that on October 15, 2002, Accent Energy Midwest LLC (Accent

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Energy) tendered for filing a Notice of Succession in the above-referenced docket involving Accent Energy FERC Electric Tariff, Original Volume No. 1, Original Sheet Nos. 1–2.

Comment Date: November 5, 2002.

8. Puget Sound Energy, Inc.

[Docket No. ER03–41–000]

Take notice that on October 15, 2002, Puget Sound Energy, Inc. (PSE), tendered for filing Revision 3 to Exhibit C of the General Transmission Agreement, effective as of July 8, 2002 (Revision 3), amending the General Transmission Agreement entered into as of December 1, 1994, by the United States of America, Department of Energy, acting by and through the Bonneville Power Administration (BPA) and PSE. A copy of the filing was served upon BPA.

PSE states that the IR Agreement relates to integrated transmission service by BPA with respect to certain of PSE's resources and to certain other contractual arrangements between BPA and PSE affecting such transmission service.

Comment Date: November 5, 2002.

9. Sithe/Independence Power Partners, L.P.

[Docket No. ER03–42–000]

Take notice that on October 15, 2002, Sithe/Independence Power Partners, L.P. (Sithe Independence) petitioned the Commission to (1) accept for filing Sithe Independence's FERC Electric Tariff No. 1 (Tariff No. 1) and grant Sithe Independence the blanket authority to make market-based sales of energy, capacity and ancillary services under its Tariff No. 1; (2) accept for filing the Amended and Restated Energy Purchase Agreement By and Between Sithe Independence and Consolidated Edison Company of New York, Inc. dated September 1, 2000 and amended on June 3, 2002, designated as Sithe Independence's Original Service Agreement No. 1; (3) accept for filing the Energy Purchase Agreement Between Sithe Independence and Niagara Mohawk Power Corporation dated July 24, 1992, and amended on November 16, 1992 and June 28, 2001 and supplemented by a letter on March 29, 2000, designated as Sithe Independence's Original Service Agreement No. 2; (4) grant Sithe Independence a waiver of the code of conduct requirement and the restriction on sales to two of its public utility affiliates with franchised service territories, PECO Energy Company and Commonwealth Edison Company; (5) grant Sithe Independence such waivers and authorizations as have been granted by the Commission to other entities authorized to transact at market-based rates; (6) grant Sithe Independence a waiver of the 60-day and 120-day notice requirements in Section 35.3 of the Commission's regulations, 18 CFR 35.3, to the extent necessary to permit this filing to become effective conditioned on and as of the future date that the Qualifying Facility status of its 1,060 MW electric generating facility in Oswego County, New York, is terminated; and (7) grant Sithe Independence a waiver of the Commission's filing requirements if and to the extent that the Commission determines that Sithe Independence's Original Service Agreement Nos. 1 and/or 2 are not in full compliance with the requirements of Order No. 614.

Comment Date: November 5, 2002.

10. Arizona Public Service Company

[Docket No. ER03–43–000]

Take notice that on October 15, 2002, Arizona Public Service Company tendered for filing a Notice of Cancellation for APS–FPC Rate Schedule No. 21 effective date August 13, 1963.

Notice of the proposed cancellation has been served to Electrical District No. 5 and The Arizona Corporation Commission.

Comment Date: November 5, 2002.

11. BOC Energy Services, Inc.

[Docket No. ER03–44–000]

Take notice that on October 15, 2002, BOC Energy Services, Inc. (BOC) petitioned Federal Energy Regulatory Commission (Commission) for acceptance of BOC Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity and certain ancillary services at market-based rates; and the waiver of certain Commission regulations.

BOC intends to engage in wholesale electric power and energy purchases and sales as a marketer. BOC is not in the business of generating or transmitting electric power. BOC is a Delaware corporation engaged primarily in the business of serving the load of affiliate air separation facilities.

Comment Date: November 5, 2002.

12. Virginia Electric and Power Company

[Docket No. ER03–45–000]

Take notice that Virginia Electric and Power Company (the Company) on October 15, 2002, respectfully tendered for filing A Notice of Cancellation of the Service Agreements with Sempra Energy Trading Corp., effective December 16, 2002, designated as Seventh Revised Service Agreement No. 253 under FERC Electric Tariff, Second Revised Volume No. 5, Firm Point to Point Transmission Service Agreement and Seventh Revised Service Agreement No. 49 under FERC Electric Tariff, Second Revised Volume No. 5, Non-Firm Point-to-Point Transmission Service Agreement.

Copies of the filing were served upon Sempra Energy Trading Corp., the Virginia State Corporation Commission, and the North Carolina Utilities Commission.

Comment Date: November 5, 2002.

13. Minnesota Power Superior Water, Light & Power Company and Rainy River Energy Corporation

[Docket No. ER03–46–000]

Take notice that on October 15, 2002, Minnesota Power and its affiliates Superior Water, Light & Power Company and Rainy River Energy Corporation filed an application requesting that the Commission waive the code of conduct requirement for Rainy River Energy Corporation (RREC) in order to permit its affiliate Split Rock Energy LLC to assist in the sale of RREC's resources to unaffiliated third-parties.

Comment Date: November 5, 2002.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–28574 Filed 11–7–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP02–396–000 and PF01–1–000]

Greenbrier Pipeline Company, LLC; Notice of Meetings for the Greenbrier Pipeline Project Draft Environmental Impact Statement

November 1, 2002.

The Federal Energy Regulatory Commission (FERC) will conduct comment meetings on environmental issues for the proposed Greenbrier Pipeline Project filed in the above-referenced dockets.

The meetings will start at 6:30 p.m. and end at 10 p.m. at the locations listed below:

Monday, November 18, 2002 Person County Office Building, Roxboro, North Carolina304 South Morgan Street, Roxboro, North Carolina 27573, (336) 597–1720.

Monday, November 18, 2002 Floyd County High School, Floyd, Virginia, 721 Baker Street, Floyd, Virginia 24091, (540) 745–9450.

Tuesday, November 19, 2002 Laurel Park High School, Martinsville, Virginia, 280 Laurel Park Avenue, Martinsville, Virginia 24112, (276) 632–7216.

Tuesday, November 19, 2002 Fayetteville High School, Fayetteville, West Virginia 515 W. Maple Avenue, Fayetteville, West Virginia 25840 (304) 574–0560.

Additional information may be obtained from the Commission's Office of External Affairs at 1 866 208–FERC (3372).

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–28437 Filed 11–7–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Ready For Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

November 1, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 7000–015.

c. *Date filed:* January 30, 2002.

d. *Applicant:* Orion Power New York GP II, Inc.

e. *Name of Project:* Newton Falls Project.

f. *Location:* On the Oswegatchie River, in St. Lawrence County, New York. This project does not affect federal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)—825(r).

h. *Applicant Contact:* Jerry Sabattis, Reliant Energy, 225 Greenfield Parkway, Suite 201, Liverpool, NY 13088, (315) 413–2787 or Sam Hirschey Reliant Energy, 225 Greenfield Parkway, Suite 201, Liverpool, NY 13088, (315) 413–2790.

i. *Commission Contact:* Any questions concerning this notice should be addressed to Janet Hutzel, e-mail address *janet.hutzel@ferc.gov*, or telephone (202) 502–8675.

j. *Deadline for filing comments, recommendations, terms and conditions, and prescriptions:* 60 days from the issuance of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, recommendations, terms and conditions, and prescriptions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site (*http://www.ferc.gov*) under the "e-Filing" link.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Status of environmental analysis:* This application has been accepted for filing and is now ready for environmental analysis. At this time we do not anticipate the need for preparing a draft EA. We intend to prepare one environmental document. The EA will include our recommendations for operating procedures and environmental enhancement measures that should be part of any new license issued by the Commission. Recipients will have 45 days to provide the Commission with any comments on that document. All comments on the EA, filed with the Commission, will be considered in an Order taking final action on the license application. However, should substantive comments requiring reanalysis be received on the NEPA document, we would consider preparing a subsequent NEPA document.

l. The Newton Falls Project consists of two developments and has a total installed capacity of 2,220 kilowatts. The upper development includes a 600-foot-long dam, a 650-acre reservoir, a 1,200-foot-long bypassed reach, and a powerhouse with three turbine-generator units having a combined installed capacity of 1,540 kW. The lower development includes a 350-foot-long dam, a 9-acre reservoir, a 300-foot-long bypassed reach, and a powerhouse with one turbine-generator unit having an installed capacity of 680 kW. The upper development powerhouse discharges directly to the lower development impoundment and the project is operated in a storage-and-release peaking mode. The project produces an average of approximately 9,500 megawatt-hours of energy per year.

m. A copy of the application is on file with the Commission and is available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

n. The Commission directs, pursuant to Section 4.34(b) of the Regulations (*see* Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the

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issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice. Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "COMMENTS", "REPLY COMMENTS", "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–28442 Filed 11–7–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[Docket ID Nos. OAR–2002–0041 and OAR–2002–0036; AD–FRL–7406–4]

RIN 2060–AK34

National Emission Standards for Hazardous Air Pollutants: Revision of Source Category List for Standards Under Section 112(c)(6) and 112(k) of the Clean Air Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of revisions to the area source category list and inventory.

SUMMARY: This notice removes five area source categories of hazardous air pollutants (HAP) (*i.e.*, asphalt hot-mix production, fabricated metal products, paint and allied products, paper coated and laminated, packaging and transportation equipment manufacturing) from the list developed under section 112(c)(6) of the Clean Air Act (CAA). It also removes an additional area source category, Open Burning of Scrap Tires, from the anthropogenic stationary source categories included in the inventory analysis for section 112(c)(6) and 112(k). Consequently, that source category will no longer be a candidate for regulation under either section 112(c)(6) or 112(k). The revisions in this notice have not been reflected in any previous notices and are being made without public comment on the Administrator's own motion. Such revisions are deemed by EPA to be without need for public comment based on the nature of the actions.

EFFECTIVE DATE: November 8, 2002.

ADDRESSES: The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara B. Driscoll, Policy, Planning and Standards Group, Emission Standards Division (MD–C439–04), U.S. EPA, Research Triangle Park, North Carolina 27711, facsimile number (919) 541–0942, telephone number (919) 541–1051, electronic mail (e-mail): *driscoll.barbara@epa.gov.*

SUPPLEMENTARY INFORMATION:

Docket

The EPA has established an official public docket for this action under the Docket ID Nos. OAR–2002–0041 and OAR–2002–0036. The official public docket consists of the documents specifically referenced in this action, any public comments received and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Docket is (202) 566–1742. A reasonable fee may be charged for copying docket materials.

Electronic Access

You may access this Federal Register document electronically through the EPA Internet under the "Federal Register" listings at *http://www.epa.gov/fedrgstr/.* An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in this document. Once in the system, select "search," then key in the appropriate docket identification.

Worldwide Web (WWW)

In addition to being available in the docket, an electronic copy of today's notice will also be available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of the notice will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules, *http://www.epa.gov/ttn/oarpg.* The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

I. Revisions to the Section 112(c)(6) Source Category List

A. What Is the History of the Source Category List for the Seven HAP Specified Under Section 112(c)(6)?

Section 112(c)(6) of the CAA instructs us to list categories and subcategories of sources to assure that sources accounting for not less than 90 percent of the aggregated emissions of each of seven specific HAP (alkylated lead compounds, polycyclic organic matter (POM), hexachlorobenzene (HCB), mercury, polychlorinated biphenyls, 2,3,7,8-tetrachlorodibenzofurans (TCDF) and 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD)) are subject to standards under section 112(d)(2) or (d)(4). The EPA published a list of categories for section 112(d)(2) rulemaking pursuant to section 112(c)(6) on April 10, 1998 (63 FR 17838). In the April 1998 **Federal Register** notice, we provided a summary table of 1990 emissions inventory data for known sources of the seven specific HAP titled "Summary of 1990 Emission Inventory Data for Section 112(c)(6) Pollutants (tons/yr)." Emissions inventories consist of estimates of annual emissions to the air from all the sources for which data are available such as power plants, chemical plants, automobiles, and wildfires. Using these inventory data, we identified the sources of the total emissions of these seven HAP. However, we did not further evaluate certain types of sources that are not considered appropriate for section 112 regulation. The sources excluded

from further evaluation are wildfires and prescribed burning, mobile sources (cars, airplanes, etc.), residential combustion sources (fireplaces, woodstoves, oil and coal heaters), pesticide application, cigarette smoke, utility boilers, gasoline distribution stage II (evaporative emissions from gas stations), and consumer products usage.

The April 1998 **Federal Register** notice also contains a table of source categories subject to regulation which is titled "1990 Anthropogenic Stationary Source Category Percentage Contributions and Associated Regulations." This table provides the individual percentage contributions for each source category toward the total 1990 anthropogenic stationary source emissions of each of the seven HAP. The table also lists any associated regulation for each source category. A review of the available data indicated that a substantial majority of source categories emitting the seven HAP had already been listed for regulation under section 112(d)(2) of the CAA or were subject to substantively equivalent regulation under other CAA authorities. Consequently, in April 1998, we listed only two additional source categories in response to the requirements in section 112(c)(6) to ensure that sources accounting for not less than 90 percent of the emissions of the seven HAP had been targeted for regulation. These were Open Burning of Scrap Tires and Gasoline Distribution (Aviation Fuel), which includes evaporative losses associated with the distribution and storage of aviation gasoline containing lead.

In addition to these two new source categories, EPA's list of categories subject to regulation in the April 1998 notice included both the major and area source components of many source categories for which we had not yet promulgated a section 112(d) regulation. We stated that:

> When the regulations for each of those categories are developed, EPA will analyze the data specific to those sources and determine, under section 112(d), in what manner requirements will be established. Some area categories may be negligible contributors to the 90 percent goal, and as such pose unwarranted burdens for subjecting to standards. These trivial source categories will be removed from the listing as they are evaluated since they will not contribute significantly to the 90 percent goal. (63 FR 17841)

B. Why Is EPA Revising the Section 112(c)(6) List?

This notice announces the removal of five area source categories, all of which are emission sources of POM, from the air toxics source category list identified in the April 1998 **Federal Register** notice (63 FR 17838). We are also removing an additional area source category, Open Burning of Scrap Tires, an emission source of POM, from the anthropogenic stationary source categories considered in the section 112(c)(6) inventory analysis. Consequently, Open Burning of Scrap Tires will no longer be a candidate for regulation under section 112(c)(6). With these changes, EPA is still able to meet the requirement to list categories and subcategories of sources to assure that sources accounting for not less than 90 percent of the aggregated emissions of each of seven HAP specified in section 112(c)(6) are subject to standards.

Specifically, we have determined that the following five area source categories of POM are not needed to achieve the statutory requirement to subject to standards those sources accounting for 90 percent of the aggregated emissions of POM: Asphalt Hot-Mix Production; Fabricated Metal Products; Paint and Allied Products; Paper Coated and Laminated, Packaging; and Transportation Equipment Manufacturing. This is because we now include the area source contribution of Gasoline Distribution (Stage 1) toward the 90 percent requirement for POM. We included this category as a candidate for listing in the April 1998 notice, but at that time it was not counted toward the 90 percent requirement since we had not yet determined whether we would develop regulations for the area source component of Gasoline Distribution (Stage 1). Subsequently, we added this category to the list of area source categories for regulation under a July 1999 **Federal Register** notice for the Integrated Urban Air Toxics Strategy (64 FR 38706) and, therefore, now list it as a source category subject to regulation under section 112(c)(6).

We are removing a seventh area source category of POM, Open Burning of Scrap Tires, from the list of anthropogenic stationary source categories subject to section 112(c)(6) inventory analysis; consequently it is no longer a candidate for regulation under section 112(c)(6). For reasons similar to our rationale for exclusion of a number of other source categories (*e.g.*, wildfires), we do not consider Open Burning of Scrap Tires to be a source category appropriate for regulation under section 112 of the CAA. Open burning of scrap tires is generally a result of arson, accident, or lightning. There is no business or industry that uses open burning of scrap tires. Moreover, this activity is already banned in all 50 States either through State statute or under health and public safety codes.

For the section 112(c)(6) inventory analysis, we used three surrogates for POM which are described in the April 1998 **Federal Register** notice (63 FR 17845). These are: (1) Extractable organic matter (EOM), (2) the sum of the seven polynuclear aromatic hydrocarbon (PAH) compounds that are probable human carcinogens (7–PAH), and (3) the sum of the sixteen polynuclear aromatic hydrocarbon compounds measured in EPA test method 610 (16–PAH). The area source category revisions in this notice impact the section 112(c)(6) analysis for two of these POM surrogates: 7–PAH and 16–PAH.

Because the area source category of Open Burning of Scrap Tires was estimated to represent 294 tons per year of 16–PAH in 1990, we removed this tonnage from the total 1990 emissions of 16–PAH subject to section 112(c)(6) analysis. Similarly, because Open Burning of Scrap Tires was estimated to contribute 52.5 tons per year of 7–PAH in 1990, we removed this tonnage from the total 1990 emissions of 7–PAH subject to section 112(c)(6) analysis.

Table 1 of this notice provides an updated summary based on the changes described in this notice of the source categories that emit 16–PAH and the percentage of 1990 emissions attributable to each category. Table 2 of this notice provides the same information for source categories that emit 7–PAH. In both Tables 1 and 2, we list the area and major source emissions contributions for each source category separately to show the relative contributions. For 16–PAH, Table 1 reflects an update of major versus area source contributions to emissions for two source categories: Primary Aluminum Production and Blast Furnaces and Steel Mills. For 7–PAH, Table 2 reflects an update of the major versus area source emissions contributions for Primary Aluminum Production. Table 3 of this notice contains the revised emissions contributions as a result of the updates to the major and area source contributions for each of these source categories. The update reflects that both Primary Aluminum Production and Blast Furnaces and Steel Mills are source categories consisting of 100 percent major sources.

Consistent with the discussion in the October 18, 2000 **Federal Register** notice on the National Emission Standards for Hazardous Air Pollutants: Rubber Tire Manufacturing (65 FR 62414), Table 2 in today's notice reflects the removal of the source category and

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POM emissions (7 tons in the form of 16–PAH) from Tire Manufacturing. This is because the POM emissions from this source category are due to combustion associated with the use of steam boilers in the rubber tire manufacturing process. We believe that these emissions are already accounted for under the POM (16–PAH) emission estimates for boilers.

In Tables 1 and 2 of this notice, we sum the percentage contributions for each pollutant to show the total emissions of 16–PAH and 7–PAH subject to standards. For 16–PAH, the total is 92.2 percent (of 8,404.69 tons per year) and for 7–PAH, it is 99.1 percent (of 314.4 tons per year).

II. Revisions to the Section 112(k) Area Source Category Inventory

A. What Is the History of the Emissions Inventory Development for POM Under Section 112(k)?

As discussed in the July 19, 1999 **Federal Register** notice on the National Air Toxics Program: The Integrated Urban Strategy (64 FR 38706), section 112(k)(3)(B) of the CAA requires us to identify not less than 30 HAP that are estimated to pose the greatest threat to public health in the largest number of urban areas as a result of emissions from area sources. The EPA's list of area source HAP includes POM. For the evaluation of POM as a potential public health threat in urban areas, and for the subsequent source category analysis, we used 7–PAH as a surrogate for the much larger, more complex and diverse mixture of POM.

Under section 112(k), we are required to identify sufficient area source categories to assure that sources accounting for 90 percent or more of the aggregate emissions of each of the 30 identified HAP are subject to standards under section 112(d). In determining the aggregate area source emissions of 7–PAH, EPA considered area source categories that were subject to existing standards, or which were expected to be subject to standards based on their inclusion in the existing regulatory agenda for area source categories. Since Open Burning of Scrap Tires was identified in the April 1998 **Federal Register** notice for section 112(c)(6) as an area source category we intended to regulate, we included it as a category for regulation under section 112(k) and counted its emissions of 7–PAH toward the total subject to the 90 percent requirement.

B. Why Is EPA Removing Open Burning of Scrap Tires From the Section 112(k) Inventory of Area Sources?

As previously discussed in today's notice, we do not consider Open Burning of Scrap Tires to be a source category appropriate for regulation under section 112 of the CAA. Therefore, it is no longer a candidate for regulation under section 112(k).

Because the area source category of Open Burning of Scrap Tires was estimated to contribute 45.5 tons per year of 7–PAH in urban areas in 1990, we removed this tonnage from the total 1990 emissions of 7–PAH subject to the section 112(k) area source category analysis. The effect of this change in the area source categories being listed under section 112(k) will be addressed in a future **Federal Register** notice.

III. Administrative Requirements

Today's notice is not a rule; it is essentially an information-sharing activity which does not impose regulatory requirements or costs. Therefore, the requirements of Executive Order 13045 (Protection of Children from Environmental Health Risks and Safety Risks), Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments), Executive Order 13132 (Federalism), Executive Order 13211 (Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use), the Regulatory Flexibility Act, the National Technology Transfer and Advancement Act, and the Unfunded Mandates Reform Act do not apply to today's notice. Also, this notice does not contain any information collection requirements and, therefore, is not subject to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Under Executive Order 12866 (58 FR 51735, October 4, 1993), a regulatory action determined to be "significant" is subject to the Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Executive Order defines "significant" regulatory action as one that is likely to lead to a rule that may either

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. The OMB has determined that this action is not significant under the terms of Executive Order 12866.

Dated: November 4, 2002.

Robert Brenner,

Acting Assistant Administrator for Air and Radiation.

TABLE 1.—1990 ANTHROPOGENIC STATIONARY SOURCE CATEGORY EMISSIONS (TONS/YEAR) AND PERCENTAGE CONTRIBUTIONS OF 16–PAH

Source category	Area emissions	Major emissions	Percentage of emissions	Cumulative percent
Aerospace Industry (Surface Coating)		1.64e+03	19.51	19.5
Petroleum Refining: All Processes		1.07e+03	12.77	32.3
Primary Aluminum Production		6.62e+03	7.88	40.2
Pulp and Paper Kraft Recovery Furnaces		6.49e+02	7.72	47.9
Coke Ovens: Charging, Topside & Door Leaks		5.39e+02	6.41	54.3
Coke Ovens: Pushing, Quenching & Battery Stack		5.17e+02	6.15	60.4
Blast Furnace and Steel Mills		4.99e+02	5.94	66.4
Industrial Organic Chemicals Manufacturing		2.23e+02	2.65	69.0
Pulp and Paper— Lime Kilns		1.83e+02	2.18	71.2
Industrial Coal Combustion		1.10e+02	1.31	72.5
Plastic Foam Products Manufacturing		1.08e+02	1.29	73.8
Fabricated Metals Products		1.07e+02	1.28	75.1
Chemical Manufacturing: Cyclic Crude and Intermediate Production		1.01e+02	1.20	76.3
Coke Ovens: By-Product Recovery Plants		7.78e+01	0.93	77.2

TABLE 1.—1990 ANTHROPOGENIC STATIONARY SOURCE CATEGORY EMISSIONS (TONS/YEAR) AND PERCENTAGE CONTRIBUTIONS OF 16–PAH—Continued

Source category	Area emissions	Major emissions	Percentage of emissions	Cumulative percent
Industrial Wood/Wood Residue Combustion		5.50e+01	0.65	77.9
Paper Coated and Laminated, Packaging		5.43e+01	0.65	78.5
Napthalene Production		4.52e+01	0.54	79.5
Portland Cement Manufacture: Non-Hazardous Waste Kilns		3.83e+01	0.46	79.9
Transportation Equipment Manufacturing (SICs combined)		3.87e+01	0.46	80.4
Asphalt Roofing Production		3.72e+01	0.44	80.8
Secondary Lead Smelting		3.64e+01	0.43	81.2
Industrial Oil Combustion		3.56e+01	0.42	81.7
Gasoline Distribution (Stage 1)		3.55e+01	0.42	82.1
Commercial Coal Combustion		3.45e+01	0.41	78.9
Commercial Printing, Gravure		2.87e+01	0.34	82.8
Industrial Stationary IC Engines: Natural Gas		2.86e+01	0.34	82.8
Paints and Allied Products		2.37e+01	0.28	83.1
Phthalic Anhydride Production		1.83e+01	0.22	83.3
(Surface Coating) Ship Building and Repair		1.36e+01	0.16	83.4
Wood Household Furniture Manufacturing		1.11e+01	0.13	83.6
Commercial Oil Combustion		1.07e+01	0.13	83.7
Portland Cement Manufacturing: Hazardous Waste Kilns		1.26e+01	0.15	83.8
Commercial Wood/Wood Residue Combustion		7.16e+00	0.09	83.9
Industrial Stationary IC Engines: Diesel		3.51e+00	0.04	84.0
Chloroalkali Production		1.36e+00	0.02	84.0
AREA SOURCES				
Gasoline Distribution (Stage 1)	3.20e+02		3.80	87.8
Commercial Coal Combustion	1.38e+02		1.64	89.4
Industrial Coal Combustion	4.71e+01		0.56	90.9
Commercial Oil Combustion	4.26e+01		0.51	89.9
Secondary Lead Smelting	3.36e+01		0.40	90.3
Commercial Wood/Wood Residue Combustion	2.86e+01		0.34	91.2
Napthalene Production	1.94e+01		0.23	91.5
Industrial Stationary IC Engines: Natural Gas	1.90e+01		0.23	91.7
Industrial Oil Combustion	1.53e+01		0.18	91.9
Industrial Wood/Wood Residue Combustion	1.38e+01		0.16	92.0
Phthalic Anhydride Production	7.86e+00		0.09	92.1
Chloroalkali Production	3.16e+00		0.04	92.2
Chemical Manufacturing: Cyclic Crude and Intermediate Production	3.20e+00		0.04	92.2
Plastic Foam Products Manufacturing	1.56e+00		0.02	92.2
Industrial Stationary IC Engines: Diesel	1.51e+00		0.02	92.2
Total:	694	7060		

TABLE 2.—1990 ANTHROPOGENIC STATIONARY SOURCE CATEGORY EMISSIONS (TONS/YEAR) AND PERCENTAGE CONTRIBUTIONS OF 7–PAH

Source category	Area emissions	Major emissions	Percentage of emissions	Cumulative percent
Primary Aluminum Production		1.41e+02	44.85	44.8
Coke Ovens: Charging, Topside & Door Leaks		7.18e+01	22.84	67.7
Coke Ovens: Pushing, Quenching & Battery Stacks		3.01e+01	9.57	77.3
Petroleum Refining: All Processes		1.60e+01	5.09	82.3
Commercial Coal Combustion		7.20e+00	2.29	84.6
Pulp and Paper: Kraft Recovery Furnaces		3.74e+00	1.19	85.8
Industrial Coal Combustion		2.16e+00	0.69	88.8
Portland Cement Manufacturing: Non-Hazardous Waste Kilns		2.08e+00	0.66	86.5
Portland Cement Manufacturing: Hazardous Waste Kilns		2.08e+00	0.66	87.1
Asphalt Roofing Production		1.43e+00	0.46	87.6
Industrial Wood/Wood Residue		9.68e-01	0.31	87.9
Industrial Stationary IC Engines: Natural Gas		6.18e – 01	0.20	88.1
Pulp and Paper: Lime Kilns		2.50e – 01	0.08	88.9
Commercial Wood/Wood Residue		2.02e – 01	0.06	88.9
Industrial Stationary IC Engines: Diesel		6.25e – 02	0.02	89.0
Industrial Oil Combustion		2.10e – 02	0.01	89.0
AREA SOURCES				
Commercial Coal Combustion	2.88e+01		9.16	98.1
Industrial Coal Combustion	9.27e – 01		0.29	98.7
Commercial Wood/Wood Residue Combustion	8.08e – 01		0.26	98.4
Portland Cement Manufacturing: Non-Hazardous Waste Kilns	5.20e – 01		0.17	98.8
Industrial Stationary IC Engines: Natural Gas	4.12e – 01		0.13	99.0
Industrial Wood/Wood Residue Combustion	2.42e – 01		0.08	99.1
Industrial Stationary IC Engines: Diesel	2.68e – 02		0.01	99.1

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TABLE 2.—1990 ANTHROPOGENIC STATIONARY SOURCE CATEGORY EMISSIONS (TONS/YEAR) AND PERCENTAGE CONTRIBUTIONS OF 7–PAH—Continued

Source category	Area emissions	Major emissions	Percentage of emissions	Cumulative percent
Commercial Oil Combustion	2.40e–02		0.01	99.1
Total:	31.8	280		

TABLE 3.—REVISED MAJOR/AREA SOURCE DISTRIBUTIONS OF 1990 EMISSIONS

Source category	Major source contributions, percent	Area source contribution, percent
Blast Furnace and Steel Mills	100	0
Primary Aluminum Production	100	0

[FR Doc. 02–28502 Filed 11–7–02; 8:45 am]
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ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6634–7]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/compliance/nepa.*

Weekly receipt of Environmental Impact Statements filed October 23, 2002, through November 01, 2002, pursuant to 40 CFR 1506.9.

EIS No. 020445, DRAFT EIS, COE, Lake Sidney Lanier Project, To Continue the Ongoing Operation and Maintenance Activities Necessary of Flood Control, Hydropower Generation, Water Supply, Recreation, Natural Resources Management, and Shoreline Management, Section 10 and 404 permits, Dawson, Forsyth, Lumpkin, Hill and Gwinnett Counties, GA, Comment Period Ends: December 23, 2002, Contact: Charles H. McGregor (817) 886–1708.

EIS No. 020446, DRAFT EIS, JUS, AZ, Programmatic EIS—U.S. Border Patrol Activities within Borders Areas of the Tucson and Yuma Sectors, To Gain, Maintain, and Extend Control of the Border to Prevent Unlawful Entry of Persons into the U.S., Cochise, Santa Cruz, Pina and Yuza Counties, AZ, Comment Period Ends: December 23, 2002, Contact: Charles H. McGregor (817) 886–1708.

EIS No. 020447, FINAL EIS, COE, NJ, South River, Raritan River Basin Hurricane and Storm Damage Reduction and Ecosystem Restoration, Implementation, Middlesex County, NJ, Wait Period Ends: December 9, 2002, Contact: Josephine R. Axt (212) 264–5119.

EIS No. 020448, FINAL EIS, FRC, ID, C.J. Strike Hydroelectric Project (FERC NO. 2055), New License Issuance, Snake and Bruneau Rivers, Owyhee and Elmore Counties, ID, Wait Period Ends: December 9, 2002, Contact: John Blair (202) 502–6092.

EIS No. 020449, DRAFT EIS, AFS, MT, Windmill Timber Sale and Road Decomissioning Project, To Implement Timber Harvesting, Road Construction and Road Decommissioning in the Mill Creek Drainage of the Absaroka Mountain Range, Gallatin National Forest, MT, Comment Period Ends: December 23, 2002, Contact: Mike Dettori (406) 222–1892.

EIS No. 020450, FINAL SUPPLEMENT, FHW, WV, VA, Appalachians Corridor H, To Construct a 16-mile Highway Between Kerene to Parsons, Battlefield Avoidance, Randolph and Tucker Counties, WV, Wait Period Ends: December 27, 2002, Contact: Thomas J. Smith (304) 347–5928.

EIS No. 020451, FINAL SUPPLEMENT, NOA, ME, VT, CT, NH, MA, RI, Federal Lobster Management in the Exclusive Economic Service, Implementation, American Lobster Fishery Management Plan, NY, NH and MA, Wait Period Ends: December 09, 2002, Contact: Harold Mears (202) 482–5181.

EIS No. 020452, FINAL SUPPLEMENT, AFS, GA, AL, FL, SC, LA, NC, MS, TX, Vegetation Management in the Coastal Plain/ Piedmont, Proposal to Clarify Direction for Conducting Project-Level Inventories for Biological Evaluations (BEs), US Forest Service Southern Region, AL, GA, FL, SC, NC, LA, MS and TX, Wait Comment Ends: December 9, 2002, Contact: Robert Wilhelm (404) 347–7076.

This document is available on the Internet at: *http://www.ferc.gov.*

EIS No. 020453, FINAL SUPPLEMENT, AFS, AL, GA, KY, NC, SC, TN, VA, WV, Vegetation Management in the Appalachian Mountains, Proposal to Clarify Direction for Conducting Project-Level Inventories for Biological Evaluations (WAS), AL, GA, KY, NC, SC, TN, VA and WV, Wait Period Ends: December 9, 2002, Contact: Robert Wilhelm (404) 347–7076. This document is available on the Internet at: *http://www.apo.lc.usbr.gov.*

EIS No. 020454, FINAL SUPPLEMENT, AFS, OK, AR, Vegetation Management in the Ozark/Quachita Mountains, Proposal to Clarify Direction for Conducting Project-Level Inventories for Biological Evaluations (WAS), Qzark, Quachita and St. Francis National Forests, AR and McCurtain and LeFLore Counties, OR , Wait Period Ends: December 09, 2002, Contact: Robert Wilhelm (404) 347–7076. This document is available on the Internet at: *http://www.southregion.fs.fed.us/planning/vmeis/index.htm.*

EIS No. 020455, FINAL EIS, IBR, CA, Imperial Irrigation District Water Conservation and Transfer Project and Draft Habitat Conservation Plan (HCP), To Implement a Grant and Section 10 Permit to Authorize the Incidental Take, Colorado River, Imperial County, CA , Wait Period Ends: December 09, 2002, Contact: John A. Johnson (202) 513–0673. This document is available on the Internet at: *http://www.lc.usbr.gov/lcrivops/html.*

EIS No. 020456, FINAL EIS, IBR, AZ, NV, CA, Implementation Agreement (IA), Inadvertent Overrun and Payback Policy (IOP), and Related Federal Actions, Implementation, Quantification Settlement Agreement (QSA), Lower Colorado River, in the States of AZ, CA and NV, Wait Period Ends: December 9, 2002, Contact: John A. Johnson (202) 513–0673. This document is available on the Internet at: *http://www.lc.usbr.gov/lcrivops/html.*

Amended Notices

EIS No. 020370, DRAFT EIS, IBR, NM, UT, CO, Navajo Reservoir Operations, Proposed Operational Changes to Navajo Dam and Reservoir, Endangered Species Act (ESA), Related Flow Recommendations, Navajo Unit-San Juan River, NM, CO and UT, Due: December 4, 2002, Contact: Ken Beck (970) 385–6558. Revision of FR Notice Published on 9/6/2002: CEQ Comment Period Ending 11/4/2002 has been Extended to 12/4/2002.

EIS No. 020376, DRAFT EIS, IBR, CA, Fish Passage Improvement Project at the Red Bluff Diversion Dam (RBDD), Improvements of Anadromous Fish Passage both Upstream and Downstream, Tehama-Colusa Canal Authority (TCCA), Tehama, Glenn, Colusa and Yolo Counties, CA, Comment Period Ends: November 30, 2002, Contact: Max Stodolski (530) 529–3895. Revision of FR Notice Published on 9/6/2002: CEQ Comment Period Ending on 10/21/2002 has been Extended to 11/30/2002.

Dated: November 5, 2002.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 02–28505 Filed 11–7–02; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6634–8]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 12, 2002 (67 FR 11992).

Draft EISs

ERP No. D–AFS–L65395–AK Rating EC2, Otter Lake Timber Sale(s) Project, Implementation, Plan to Harvest and Sell Timber, Hoonah Ranger District, Tongass National Forest, AK.

Summary: EPA expressed environmental concerns about adverse impacts to water and air quality, cultural resources and to threatened and endangered species.

ERP No. D–AFS–L67041–OR Rating EO2, Granite Area Mining Projects, Proposals to Approve Plans of Operation on 16 Mining Claims within the Granite Creek Watershed, Implementation North Fork John Day Ranger District, Umatilla National Forest, Grant County, OR.

Summary: EPA expressed environmental objections with the preferred alternative because preliminary determinations indicate that 10 of 16 mine plans would likely adversely affect listed mid-Columbian steel head, potential impacts to listed bull trout and Forest Service sensitive fish species, and a lack of alternatives to mitigate already impacted aquatic resources. EPA recommends that the final EIS include sufficient measures to protect and restore impaired water bodies and habitats of listed species.

ERP No. D–FAA–C51022–NJ Rating LO, Atlantic City International Airport, Air Service Improvements, Economic Development and Enhanced Efficiency and Safety, Airport Layout Plan Approval, Atlantic County, NJ.

Summary: EPA has a lack of objections with the project due to our early coordination with the FAA on the proposed action.

ERP No. D–FHW–F40408–00 Rating EC2, Trunk Highway 60 Reconstruction Project, Improvements from 1.8 miles south of the Minnesota-Iowa Border (120th Street) to I–90 north of the City of Worthington, Funding, U.S. Army COE Section 404 and NPDES Permits Issuance, Nobles County, MN and Osceola County, IA.

Summary: EPA expressed environmental concerns regarding water quality and natural resource impacts in addition to historic and cultural resource impacts. EPA requested further analyses in the FEIS and stronger purpose and need discussion in relation to the project.

ERP No. D–MMS–L02028–AK Rating EO2, Beaufort Sea Planning Area Multiples Sale 186, 195 and 202 Oil and Gas Lease Sales, Alaska Outer Continental Shelf, Offshore Marine Environment, Beaufort Sea Coastal Plain, and the North Slope Borough of Alaska.

Summary: EPA expressed environmental objections to the proposed action since it did not include the deferral lease blocks that were associated with the four deferral alternatives that would protect subsistence whale areas. EPA also expressed concern about the sufficiency of analyses addressing impacts of potential oil spills and noise disturbances to whale hunting, environmental justice, and threatened eiders. EPA recommended that the EIS's proposed alternative include deferral blocks that protects subsistence whaling and address EPA's concerns with additional information and analyses.

ERP No. D–SFW–L02029–AK Rating EC2, Swanson River Satellites Natural Gas Exploration and Development Project, Evaluation of a Right-of-Way Permit Application and U.S. Army COE Section 404 and NPDES Permits Issuance, Kenai National Wildlife Refuge, Kenai Peninsula, AK.

Summary: EPA identified environmental concerns related to the need to (1) minimize impacts from exploration activities, (2) maximize the reclamation and reuse of gravel, (3) minimize impacts to wetlands and their functions and (4) provided technical support of impact characterizations. EPA also recommended that government-to-government consultation with affected Tribal governments be conducted before issuance of the final EIS.

ERP No. DS–COE–L32010–00 Rating EC2, Columbia River Channel Improvement Project, Additional Information to Update the Disposal Plan and to Update the Project Economics, Columbia and Lower Willamette River Federal Navigation Channel, OR.

Summary: EPA expressed environmental concerns and recommended that the Corps prepare a cumulative effects analysis, explain how this project will affect the goals and objectives of the Comprehensive Conservation and Management Plan for the lower Columbia River estuary, and improve the discussion on project monitoring.

Final EISs

ERP No. F–AFS–L65387–AK Helicopter Landing Tours on the Juneau Icefield 2002 to 2006, Combination Fixed-Wing and Helicopter Landing Tour Operations to Antler Glacier Lake, Special Use Permits Issuance, Tongass National Forest, City and Borough of Juneau, AK.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–BIA–K03026–CA Teayawa Energy Center, Construction and Operation of a 600 megawatt (MW)(nominal output), Natural-Gas-Fired, Combined-Cycle Energy Center, On Indian Trust Land, Torres Martinez

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Desert Cahuilla Indians Tribe, Coachella Valley, Riverside County, CA.

Summary: EPA reviewed the FEIS and found that the document adequately addresses the issues raised in our comment letter on the DEIS.

ERP No. F–FHW–C40155–NY NY–17, Horseheads Project, Reconstruction from RM 17–6205–1069 to RM 14–6201–3040, Funding, Town and Village of Horseheads, Chemung County, NY.

Summary: EPA's comments on the DEIS were adequately addressed.

ERP No. F–FHW–G40168–LA Bayou Barataria Bridge/LA–302 Replacement, LA–45/Jean Lafitte Boulevard to LA–3257/Privateer Boulevard, Funding and U.S. Army COE Section 404 and US Coast Guard Bridge Permits Issuance, Communities of Jean Lafitte and Barataria, Jefferson Parish, LA.

Summary: EPA expressed no further comments on the Final EIS and has no objection to the selection of the preferred alternative. EPA's comments were adequately addressed in the Final EIS.

ERP No. F–FRC–L05223–WA Martin Creek Hydroelectric Project (FERC Project No.10942), Construction, Operation and Maintenance of a 10.2-Megawatt (MW) Hydroelectric Run-of-River Facility, License Approval, Cascade Mountains, Martin and Kelley Creeks, Mt. Baker-Snoqualmie National Forest, King County, WA.

Summary: EPA continues to have environmental objections to the proposed project because it would undermine the environmental and biological protection provisions of the Northwest Forest Plan and would degrade water quality in Martin Creek, designated an "extraordinary" water body by the State of Washington. EPA recommended selection of the No Action alternative based on the negative environmental effects, negative net power benefits, and extremely small amount of power that would be generated by the project.

ERP No. F–NPS–C67000–NJ Maurice National Scenic and Recreational River (NS&RR) Comprehensive Management Plan, Implementation, Atlantic and Cumberland Counties, NJ.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–NPS–G61040–TX Fort Davis National Historic Site, General Management Plan, Implementation, Fort Davis, TX.

Summary: EPA has no objection to the selection of the preferred alternative since the final EIS adequately responded to comments offered on the Draft EIS.

ERP No. FS–FRC–L05208–WA Irene Creek Hydroelectric Project, (FERC No.10100-002) and Anderson Creek Hydroelectric Project (FERC No. 10416–003), Construction and Operation, Issuance of Amended License Applications, Skagit and Whatcom Counties, WA.

Summary: EPA continues to have environmental objections to the proposed projects (and alternatives to it) because they would undermine Northwest Forest Plan protections, degrade pristine water quality found in Irene and Anderson Creek, and likely affect listed bull trout. Analyses in the EIS show that it would cost more to operate projects than the value of power produced and that an extremely small amount of power would be generated. For these reasons, EPA recommends that FERC select the No Action Alternative.

Dated: November 5, 2002.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 02–28506 Filed 11–7–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7406–3]

Additional Data Available on Wastes Studied in the Report to Congress on Cement Kiln Dust

AGENCY: Environmental Protection Agency.

ACTION: Extension of period for public comment.

SUMMARY: The Environmental Protection Agency (EPA) is today announcing an extension of the public comment period for its July 25, 2002 (67 FR 48648) Notice of Data Availability (NODA) on cement kiln dust to December 9, 2002.

DATES: The comment period for the Additional Data Available on Wastes Studied in the Report to Congress on Cement Kiln Dust is extended and will close on December 9, 2002.

ADDRESSES: You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

1. *Electronically.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket,* and follow the online instructions for submitting comments. Once in the system, select "search," and then key in Docket ID No. RCRA–1999–0011. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

Comments may be sent by electronic mail (e-mail) to *[RCRA-docket@epamail.epa.gov]*, Attention Docket ID No. RCRA–1999–0011. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

You may submit comments on a disk or CD ROM that you mail to the mailing address identified below. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

Commenters should not submit electronically any confidential business information (CBI). An original and two copies of CBI must be submitted under separate cover to: RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S. EPA, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Confidential information submitted by hand delivery or courier should be taken to the RCRA CBI Document Control Officer, U.S. EPA Crystal Station, 2800 Crystal Drive (7th floor), Arlington, VA 22202.

2. *By Mail Send your comments to:* RCRA Docket Information Center (5305T), U.S. Environmental Protection Agency, EPA West, 1200 Pennsylvania Ave., NW., Room B–102, Washington, DC, 20460, Attention Docket ID No. RCRA–1999–0011.

3. *By Hand Delivery or Courier.* Deliver your comments to: RCRA Docket Information Center (5305T), U.S. Environmental Protection Agency, 1301 Constitution Ave., NW., Room B–102, Washington, DC, 20460. Attention Docket ID No. RCRA–1999–0011. Such deliveries are only accepted during the Center's normal hours of operation as identified below.

Public comments and supporting materials are available for viewing in the RCRA Docket Information Center (RIC), located at 1301 Constitution Ave., NW., Room B–102, Washington, DC 20460. The RIC is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding federal holidays. To review docket materials, it is recommended that the public make an appointment by calling (202) 566–0270. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15 per page. The public comments and supporting materials are also available electronically. See the **ADDRESSES:** Electronically section above for information on electronic access.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at (800) 424–9346 or (703) 412–9810. For more detailed information on specific aspects of today's action, contact Anthony Carrell, U.S. Environmental Protection Agency (5306W), 1200 Pennsylvania Ave, NW., Washington, DC 20460, at (703) 308–0458, or e-mail: *carrell.anthony@epa.gov.*

SUPPLEMENTARY INFORMATION:

Customer Service

In developing the Final Rule, we are trying to address the concerns of all our stakeholders. Your comments will help us improve this regulatory action. We invite you to provide different views on the new data received. Your comments will be most effective if you follow the suggestions below:

- Explain your views as clearly as possible and why you feel that way.
- Provide solid technical and cost data to support your views.
- If you estimate potential costs, explain how you arrived at the estimate.
- Tell us which parts you support, as well as those you disagree with.
- Provide specific examples to illustrate your concerns.
- Offer specific alternatives.
- Refer your comments to specific sections of the report.
- Make sure to submit your comments by the deadline in this notice.
- Be sure to include the name, date, and docket number with your comments.

Copies of the NODA, titled Additional Data Available on Wastes Studied in the Report to Congress on Cement Kiln Dust, are available for inspection and copying at the EPA Headquarters library, at the RCRA Docket (RIC) office identified in **ADDRESSES** above, at all EPA Regional Office libraries, and in electronic format at the following EPA Web site: *http://www.epa.gov/epaoswer/other/ckd/index.htm.* Printed copies of the proposal and related documents, can also be obtained by calling the RCRA/Superfund Hotline at (800) 424–9346 or (703) 412–9810.

Background

The Agency issued a proposed rule titled Standards for the Management of Cement Kiln Dust on August 20, 1999 (64 FR 45631). In the proposed rule, EPA established a 90-day public comment period, which was extended to February 17, 2000. The Agency received a total of 52 comments. On May 11, 2001 the American Portland Cement Alliance (APCA) submitted a rulemaking petition to EPA pursuant to 7004(a) of the RCRA. EPA met with APCA on July 6, 2001 to discuss the petition. APCA provided groundwater monitoring data for 18 CKD disposal facilities from a collection of information on 35 plants that together acccounted for approximately 95 percent of the CKD landfilled in the United States in 2000. In a Notice of Data Availability, published July 25, 2002 (67 FR 48648), the Agency established a 60-day period to inspect and make public comment on the data. Subsequently, the Agency received a request from a stakeholder to extend the comment period another 30 days. EPA supports the request for an extension, and the comment period will be extended from September 23, 2002 to December 9, 2002.

Dated: October 31, 2002.

Robert Springer,

Director, Office of Solid Waste.

[FR Doc. 02–28503 Filed 11–7–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 10:30 a.m. on Tuesday, November 12, 2002, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous Board of Directors' meetings.

Summary reports, status reports, and reports of actions taken pursuant to authority delegated by the Board of Directors.

Memorandum and resolution re: Part 366—Minimum Standards of Integrity and Fitness for an FDIC Contractor.

Discussion Agenda:

Memorandum re: BIF Assessment Rates for the First Semiannual Assessment Period of 2003.

Memorandum re: SAIF Assessment Rates for the First Semiannual Assessment Period of 2003.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, DC.

The FDIC will provide attendees with auxiliary aids (e.g., sign language interpretation) required for this meeting. Those attendees needing such assistance should call (202) 416–2089 (Voice); (202) 416–2007 (TTY), to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at (202) 898–6757.

Dated: November 5, 2002.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 02–28608 Filed 11–5–02; 4:51 pm]

BILLING CODE 6714–01–M

FEDERAL ELECTION COMMISSION

Sunshine Act Notice

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, November 7, 2002, meeting open to the public. This meeting was cancelled.

DATE AND TIME: Thursday, November 14, 2002 at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.

Draft Advisory Opinion 2002–13: Democratic Senatorial Campaign Committee and Democratic Congressional Campaign Committee by counsel, Robert F. Bauer; National Republican Senatorial Committee by counsel, Alexander N. Vogel; National Republican Congressional Committee by General Counsel, Donald F. McGahn II.

Final Audit Report—Campbell for Senate.

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Final Audit Report—Committee to Elect Lindsey Graham.
Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,
Secretary of the Commission.
[FR Doc. 02–28642 Filed 11–06–02; 11:08 am]
BILLING CODE 6715–01–M

FEDERAL HOUSING FINANCE BOARD

Sunshine Act Notice; Announcing an Open Meeting of the Board

TIME AND DATE: 10 a.m., Wednesday, November 13, 2002.

PLACE: Board Room, Second Floor, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

STATUS: The entire meeting will be open to the public.

MATTER TO BE CONSIDERED:

- Approval of the 2003 Administrative and Non-Administrative Budget for the Financing Corporation.
- Amendment to the Federal Home Loan Bank of Cincinnati Capital Plan.

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Secretary to the Board, (202) 408–2837.

Arnold Intrater,
General Counsel.
[FR Doc. 02–28692 Filed 11–6–02; 2:34 pm]
BILLING CODE 6725–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 22, 2002.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. Donald Dean Nolan, Hawarden, Iowa; to acquire additional voting shares of First State Associates, Inc., Hawarden, Iowa, and thereby indirectly acquire additional voting shares of The Hawarden Banking Company, Hawarden, Iowa, and First State Bank, Hawarden, Iowa.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. Stephen R. Green Revocable Trust, Stephen R. Green, Trustee, Farmington, Missouri; to acquire additional voting shares of New Era Bancorporation, Inc., Fredericktown, Missouri, and thereby indirectly acquire additional voting shares of New Era Bank, Fredericktown, Missouri.

Board of Governors of the Federal Reserve System, November 4, 2002.

Robert deV. Frierson,
Deputy Secretary of the Board.
[FR Doc. 02–28415 Filed 11–7–02; 8:45 am]
BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center Web site at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 2, 2002.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. CenterState Banks of Florida, Inc., Winter Haven, Florida; to acquire 100 percent of the voting shares of CenterState Bank of Florida, Winter Haven, Florida.

Board of Governors of the Federal Reserve System, November 4, 2002.

Robert deV. Frierson,
Deputy Secretary of the Board.
[FR Doc. 02–28414 Filed 11–7–02; 8:45 am]
BILLING CODE 6210–01–S

OFFICE OF GOVERNMENT ETHICS

Submission for OMB Review; Comment Request: Proposed Somewhat Revised OGE Form 201 Ethics Act Access Form

AGENCY: Office of Government Ethics (OGE).

ACTION: Notice.

SUMMARY: The Office of Government Ethics has submitted to the Office of Management and Budget (OMB) a somewhat revised OGE Form 201 used by persons for requesting access to executive branch public financial reports and other covered records for three-year approval under the Paperwork Reduction Act. This proposed somewhat revised version of the form will replace the existing one.

DATES: Comments by the agencies and the public on this proposal are invited and should be received by December 9, 2002.

ADDRESSES: Comments should be sent to Mr. Stuart Shapiro, Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503; Telephone: 202–395–7316.

FOR FURTHER INFORMATION CONTACT: Mary T. Donovan at the Office of Government Ethics; Telephone: 202–208–8000, ext. 1185; TDD: 202–208–8025; FAX: 202–208–8037. A copy of the proposed somewhat revised OGE Form 201 and the rest of the OGE submission package to OMB may be obtained, without charge, by contacting Ms. Donovan.

SUPPLEMENTARY INFORMATION: The Office of Government Ethics has submitted to OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), a proposed somewhat revised OGE Form 201 "Request to Inspect or Receive Copies of SF 278 Executive Branch Personnel Public Financial Disclosure Reports or Other Covered Records" (OMB control # 3209–0002).

The Office of Government Ethics, as the supervising ethics office for the executive branch of the Federal Government under section 109(18)(D) of the Ethics in Government Act (the Ethics Act), 5 U.S.C. app. § 109(18)(D), is planning to modify and update the existing access form. That form, the OGE Form 201, collects information from, and provides certain information to, persons who seek access to SF 278 reports and other covered records. The form reflects the requirements of the Ethics Act and OGE's implementing regulations that must be met by a person before access can be granted. These requirements relate to information about the identity of the requester, as well as any other person on whose behalf a record is sought, and a notification of prohibited uses of SF 278 reports. See section 105(b) and (c) of the Ethics Act, 5 U.S.C. app. § 105(b) and (c), and 5 CFR 2634.603(c) and (f) of OGE's executive branchwide regulations thereunder. Executive branch departments and agencies are encouraged to utilize the OGE Form 201, but they can, if they so choose, continue to use or develop their own forms as long as they contain all the required information.

The revisions proposed to part I of the OGE Form 201 would create: more space for requesters to enter their name, address, and organization; received date and filled date blocks for agency use to facilitate internal administrative processing; and a type of applicant block to make internal processing easier. The Office of Government Ethics is also proposing a couple of minor stylistic changes to the form title (to pluralize the references to SF 278 reports and other covered records) and to reflect the new 2002 edition date, in addition to updating the OGE paperwork contact official to reflect recent OGE organizational changes.

Also, OGE proposes to add reference in part III of the form, on "other covered records," to two additional types of records that requesters may obtain by submitting the OGE Form 201. These types of "covered records" are: cover letters for OGE-approved gifts reporting waiver requests and cover letters for OGE-approved public reporting waiver requests for certain less than 130-day special Government employees. See sections 102(a)(2)(C) and 101(i) of the Ethics Act, 5 U.S.C. app. §§ 102(a)(2)(C) and 101(i) and 5 CFR 2634.304(f)(2) and 2634.205(b)(4) of OGE's executive branchwide regulations thereunder.

In addition, OGE proposes to modify the Privacy Act Statement in part II of the form. The Office of Government Ethics is in the process of updating the OGE/GOVT–1 system of records notice (covering SF 278 Public Financial Disclosure Reports and other name-retrieved ethics program records, and in which completed OGE Form 201s can be maintained). As a result, the Privacy Act Statement, which includes paraphrases of the routine uses, on the proposed modified OGE Form 201 will be revised. A summary of the anticipated changes relevant to that OGE Form 201 statement has been prepared for inclusion with the mark-up copy of the form as proposed for revision, which is available from OGE upon request. Once the new language in OGE's forthcoming Privacy Act notice is finalized (anticipated completion date is early in 2003), OGE will request permission from OMB to modify the OGE Form 201 (with notice to OMB at that time) without further paperwork clearance even though the final new wording will take effect after reclearance of the renewed form.

In part II of the form, OGE notes that it will adjust the referenced civil monetary penalty for prohibited uses of an SF 278 to which access has been gained when it is again adjusted in the next year or two. The penalty, under section 104(a) of the Ethics Act, 5 U.S.C. app. § 104(a), will likely be raised from the current $11,000 figure once OGE and the Department of Justice issue their next respective inflation adjustment rulemakings, anticipated in the summer or fall of 2003, in accordance with the 1996 Debt Collection Improvement Act revisions to the 1990 Federal Civil Penalties Inflation Adjustment Act. See 28 U.S.C. 2461 note. The civil monetary penalty was last adjusted in 1999 (see OGE's final rule at 64 FR 47095–47097 (August 30, 1999) and the Justice Department's final rule as codified at 5 CFR 85.3(a)(4) in particular, at 64 FR 47099–47104 on the same date). The future OGE rulemaking will again revise 5 CFR 2634.703 of the executive branch financial disclosure regulation to reflect the adjusted penalty. The Office of Government Ethics will request permission from OMB to revise the OGE Form 201 penalty amount reference once that adjustment takes effect (with notice to OMB at that time) without further paperwork clearance, even though the adjustment occurs after reclearance of the revised form. Moreover, any periodic future adjustments to that civil monetary penalty, pursuant to further rulemakings by OGE and the Justice Department under the inflation adjustment laws, will also be reflected in future editions of the form.

Since publication of the first round paperwork notice, and upon further evaluation of the business process associated with the OGE Form 201, OGE is withdrawing two of its previously proposed modifications to the form, and is proposing additional minor revisions to the form. The Office of Government Ethics proposes these further revisions to facilitate internal administrative processing and to expedite the transfer of copies of the records to the requester. These further proposed changes are described in detail below. The mark-up copy of the OGE Form 201 as proposed for revision, which is available from OGE (see the **FOR FURTHER INFORMATION CONTACT** section above), shows all the changes that would be made.

The Office of Government Ethics proposes adding OGE's address, phone number, and fax number to the form header, moving the form number and edition date to the end of the form title, and moving the OMB control number to the lower right-hand corner of the first page of the form.

Also, in part I of the form, OGE proposes withdrawing OGE's initial proposal of including an office FAX number block and request date block. Moreover, OGE proposes adding a date field in the applicant's signature block and creating a block for applicants to indicate whether they would like to pick up the requested records or have OGE mail the records to them. Furthermore, OGE proposes removing the word "Optional" in the office telephone number block.

In addition, in part II of the form (Notice of Action), OGE proposes removing the "Other. Explanation:" block and adding a signature and date block for persons picking up the requested records.

Finally, under part II.C (Public Burden Information) of the form, OGE proposes replacing the phrase "upper right-hand corner" with "lower right-hand corner" to reflect the proposed location of the OMB control number.

In light of OGE's experience over the past three years (1999–2001), with a total of 667 non-Federal access requests received, the estimate of the average number of access forms expected to be filed annually at OGE by members of the public (primarily by news media, public interest groups and private citizens) is proposed to be adjusted from the current estimate of 172 to 222 (not

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counting access requests by other Federal agencies or Federal employees). The estimated average amount of time to complete the form, including review of the instructions, remains at ten minutes. Thus, the overall estimated annual public burden for the OGE Form 201 for forms filed at OGE will increase from 29 hours in the current OMB paperwork inventory listing (172 forms × 10 minutes per form—number rounded off) to 37 hours (222 forms × 10 minutes per form—number rounded off). For the entire executive branch, OGE estimates that the overall usage of the form each year will average some 1,600.

The Office of Government Ethics expects that the revised form should be ready, after OMB clearance, for dissemination to executive branch departments and agencies in the winter of 2002. The OGE Form 201 as revised will continue to be made available free-of-charge as a downloadable Portable Document Format (PDF) file to the public as well as departments and agencies on OGE's Internet Web site (Uniform Resource Locator address: *http://www.usoge.gov*). The Office of Government Ethics will continue to permit departments and agencies to use the copy of the OGE Form 201 available on OGE's Web site or to develop and utilize their own, electronic versions of the OGE form, provided that they precisely duplicate the original to the extent possible. Agencies can also develop their own access forms, provided all the information required by the Ethics Act and OGE regulations is placed on such forms, along with the appropriate Privacy Act and paperwork notices with any attendant clearances being obtained by the agencies therefor.

For now, OGE itself accepts filing of a completed OGE Form 201 by mail, FAX, or in person, but does not permit E-mail or Internet online transmission. Similarly, requested copies of reports or other covered records are supplied by OGE as hard (paper) copies.

On June 19, 2002, OGE published its first round notice of the forthcoming request for paperwork clearance for the proposed somewhat revised OGE Form 201. *See* 67 FR 41728–41729). The Office of Government Ethics did not receive any comments in response to that notice, though one agency requested a copy of the proposed revised form.

In this second notice, public comment is again invited on the proposed somewhat revised OGE Form 201 as set forth in this notice, including specifically views on: the need for and practical utility of this proposed modified collection of information; the accuracy of OGE's burden estimate; the enhancement of quality, utility and clarity of the information collected; and the minimization of burden (including the use of information technology). The Office of Government Ethics, in consultation with OMB, will consider all comments received, which will become a matter of public record.

Approved: November 1, 2002.

Amy L. Comstock,

Director, Office of Government Ethics.

[FR Doc. 02–28488 Filed 11–7–02; 8:45 am]

BILLING CODE 6345–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

Public Meeting of the Inter-tribal Council on Hanford Health Projects (ICHHP) in Association With the Citizens Advisory Committee on Public Health Service (PHS) Activities and Research at Department of Energy (DOE) Sites: Hanford Health Effects Subcommittee

Name: Public meeting of the Inter-tribal Council on Hanford Health Projects (ICHHP) in association with the Citizens Advisory Committee on PHS Activities and Research at DOE Sites: Hanford Health Effects Subcommittee (HHES).

Time and Date: 9:30 a.m.–4 p.m., January 29, 2003.

Place: WestCoast Tri-Cities Hotel, 1101 North Columbia Center Blvd., Kennewick, WA. Telephone: (509) 783–0611.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 25 people.

Background: Under a Memorandum of Understanding (MOU) signed in October 1990 and renewed in September 2000 between ATSDR and DOE. The MOU delineates the responsibilities and procedures for ATSDR's public health activities at DOE sites required under sections 104, 105, 107, and 120 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or "Superfund"). These activities include health consultations and public health assessments at DOE sites listed on, or proposed for, the Superfund National Priorities List and at sites that are the subject of petitions from the public; and other health-related activities such as epidemiologic studies, health surveillance, exposure and disease registries, health education, substance-specific applied research, emergency response, and preparation of toxicological profiles.

In addition, under an MOU signed in December 1990 with DOE and replaced by an MOU signed in 2000, the Department of Health and Human Services (HHS) has been given the responsibility and resources for conducting analytic epidemiologic investigations of residents of communities in the vicinity of DOE facilities, workers at DOE facilities, and other persons potentially exposed to radiation or to potential hazards from non-nuclear energy production and use. HHS has delegated program responsibility to CDC. Community Involvement is a critical part of ATSDR's and CDC's energy-related research and activities and input from members of the ICHHP is part of these efforts. The ICHHP will work with the HHES to provide input on American Indian health effects at the Hanford, Washington site.

Purpose: The purpose of this meeting is to address issues that are unique to tribal involvement with the HHES, and agency updates.

Matters to Be Discussed: Agenda items will include a dialogue on issues that are unique to tribal involvement with the HHES. This will include presentations and discussions on each tribal members respective environmental health activities, and agency updates.

Agenda items are subject to change as priorities dictate.

Contact Persons for More Information: Alan Crawford, Executive Secretary, or Marilyn Palmer, Committee Management Specialist, Division of Health Assessment and Consultation, ATSDR, 1600 Clifton Road, NE M/S E–32 Atlanta, Georgia 30333, telephone 1–888–42-ATSDR (28737), fax 404/498–1744.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: October 31, 2002.

John Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 02–28457 Filed 11–7–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

Citizens Advisory Committee on Public Health Service (PHS) Activities and Research at Department of Energy (DOE) Sites: Oak Ridge Reservation Health Effects Subcommittee

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Agency for Toxic Substances and Disease Registry (ATSDR) and the Centers for Disease Control and Prevention (CDC) announce the following meeting.

Name: Citizens Advisory Committee on PHS Activities and Research at DOE Sites: Oak Ridge Reservation Health Effects Subcommittee (ORRHES).

Time and Date: 12 p.m.–8 p.m., December 3, 2002.

Place: YWCA of Oak Ridge, 1660 Oak Ridge Turnpike, Oak Ridge, Tennessee, 37830. Telephone: (865) 482–9922.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 100 people.

Background: Under a Memorandum of Understanding (MOU) signed in October 1990 and renewed in September 2000 between ATSDR and DOE. The MOU delineates the responsibilities and procedures for ATSDR's public health activities at DOE sites required under sections 104, 105, 107, and 120 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or "Superfund"). These activities include health consultations and public health assessments at DOE sites listed on, or proposed for, the Superfund National Priorities List and at sites that are the subject of petitions from the public; and other health-related activities such as epidemiologic studies, health surveillance, exposure and disease registries, health education, substance-specific applied research, emergency response, and preparation of toxicological profiles. In addition, under an MOU signed in December 1990 with DOE and replaced by an MOU signed in 2000, the Department of Health and Human Services (HHS) has been given the responsibility and resources for conducting analytic epidemiologic investigations of residents of communities in the vicinity of DOE facilities, workers at DOE facilities, and other persons potentially exposed to radiation or to potential hazards from non-nuclear energy production and use. HHS has delegated program responsibility to CDC.

Purpose: This subcommittee is charged with providing advice and recommendations to the Director, CDC, and the Administrator, ATSDR, pertaining to CDC's and ATSDR's public health activities and research at this DOE site. Activities shall focus on providing the public with a vehicle to express concerns and provide advice and recommendations to CDC and ATSDR. The purpose of this meeting is to receive updates from ATSDR and CDC, and to address other issues and topics, as necessary.

Matters to be Discussed: The agenda includes a discussion of the public health assessment, updates from the Public Health Assessment, Health Needs Assessment, Agenda, and Outreach and Communications, and the Guidelines and Procedures Workgroups. Agenda items are subject to change as priorities dictate.

FOR FURTHER INFORMATION CONTACT:

La Freta Dalton, Designated Federal Official, or Marilyn Palmer, Committee Management Specialist, Division of Health Assessment and Consultation, ATSDR, 1600 Clifton Road, NE, M/S E–54, Atlanta, Georgia 30333, telephone 1–888–42–ATSDR(28737), fax 404/498–1744.

The Director, Management Analysis and Services Office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: October 31, 2002.

John Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 02–28452 Filed 11–7–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

Citizens Advisory Committee on Public Health Service (PHS) Activities and Research at Department of Energy (DOE) Sites: Hanford Health Effects Subcommittee

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Agency for Toxic Substances and Disease Registry (ATSDR) and the Centers for Disease Control and Prevention (CDC) announce the following meeting.

Name: Citizens Advisory Committee on PHS Activities and Research at DOE Sites: Hanford Health Effects Subcommittee (HHES).

Times and Dates: 8:30 a.m.–5:30 p.m., January 30, 2003. 5:30 p.m.–7:30 p.m., January 30, 2003. 8:30 a.m.–4 p.m., January 31, 2003.

Place: West Coast Tri-Cities, 1101 North Columbia Center Blvd., Kennewick, WA 99336. Telephone: (509) 783–0611.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 100 people.

Background: Under a Memorandum of Understanding (MOU) signed in October 1990 and renewed in September 2000 between ATSDR and DOE. The MOU delineates the responsibilities and procedures for ATSDR's public health activities at DOE sites required under sections 104, 105, 107, and 120 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or "Superfund"). These activities include health consultations and public health assessments at DOE sites listed on, or proposed for, the Superfund National Priorities List and at sites that are the subject of petitions from the public; and other health-related activities such as epidemiologic studies, health surveillance, exposure and disease registries, health education, substance-specific applied research, emergency response, and preparation of toxicological profiles. In addition, under an MOU signed in December 1990 with DOE and replaced by an MOU signed in 2000, the Department of Health and Human Services (HHS) has been given the responsibility and resources for conducting analytic epidemiologic investigations of residents of communities in the vicinity of DOE facilities, workers at DOE facilities, and other persons potentially exposed to radiation or to potential hazards from non-nuclear energy production and use. HHS has delegated program responsibility to CDC.

Purpose: This subcommittee is charged with providing advice and recommendations to the Director, CDC, and the Administrator, ATSDR, regarding community, American Indian Tribes, and labor concerns pertaining to CDC's and ATSDR's public health activities and research at this DOE site. The purpose of this meeting is to receive an update from the Inter-tribal Council on Hanford Health Projects; to review and approve the Minutes of the previous meeting; to receive updates from ATSDR/NCEH and NIOSH; to receive reports from the Outreach, Public Health Assessment, Public Health Activities, and the Studies Workgroups; and to address other issues and topics, as necessary.

Matters to be Discussed: Agenda items include a presentation and discussion on introduction to public health assessment, continued discussion of the Hanford Community Health Project, agency updates, and an evening session with an endocrinologist.

Agenda items are subject to change as priorities dictate.

Contact Persons for More Information: French Bell, Executive Secretary HHES, or Marilyn Palmer, Committee

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Management Specialist, Division of Health Assessment and Consultation, ATSDR, 1600 Clifton Road, NE M/S E–32, Atlanta, Georgia 30333, telephone 1–888–42–ATSDR (28737), fax 404/498–1744.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: October 31, 2002.

John Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 02–28453 Filed 11–7–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60 Day–03–11]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Seleda Perryman , CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: Case-Control Study of Environmental Exposures and Genetic Susceptibility in Individuals with Multiple Sclerosis in Three Geographic Areas—New—The Agency for Toxic Substances and Disease Registry (ATSDR) is mandated pursuant to the 1980 Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and its 1986 Amendments, the Superfund Amendments and Re-authorization Act (SARA), to serve the public by using the best science, taking responsive public health actions, and providing trusted health information to prevent harmful exposures and disease related to toxic substances. This legislation was, in part, in response to the lack of scientific information about potential adverse health effects resulting from exposure of a general population to hazardous substances.

Citizens across the nation living near hazardous waste sites have expressed concern about a perceived increase of multiple sclerosis (MS) in their communities and many believe this occurrence is directly linked to exposure to hazardous substances. Evidence indicates that multiple sclerosis is a complex disease with a multifactorial etiology determined by both environmental factors and genetic susceptibility. Although the specific biological mechanism of MS is unknown, one possibility is that an environmental exposure triggers an inappropriate type of immune response where the T-lymphocytes become sensitized to myelin which slows or blocks signals transmitted to the central nervous system. Unfortunately, basic epidemiologic data does not exist regarding the number of people affected with this disease, but estimates range from 250,000 to 400,000 people in the Unites States. MS differentially affects women, people in the 30 to 60 year-old age group, and Caucasians.

Recently, ATSDR collaborated with researchers from the Texas Department of Health, the Ohio Department of Health, and the Jackson County Missouri Health Department to conduct a prevalence study in order to respond to community concerns of multiple sclerosis and possible associations with hazardous waste sites. This research was conducted to establish methodologies for estimating MS prevalence and to determine the prevalence rates for this disease in three geographic areas near source(s) of hazardous waste: Lorain County, Ohio; the cities of Independence and Sugar Creek, Missouri; and a 19-county area surrounding Lubbock, Texas. Medical records of individuals from neurologists' offices were used to ascertain cases and a consulting neurologist for each geographic area reviewed the clinical and laboratory data available in the patient's medical record to verify diagnosis. No patients were contacted in this study.

ATSDR is currently proposing a case-control study that will examine specific environmental exposures that affect the immune system as well as specific genes that are associated with an immune response. Cases will include individuals who have been diagnosed with MS and were identified through the prevalence study conducted in Ohio, Missouri and Texas. Controls will be selected from patients who attended the same neurologists' office from which the cases arose and who meet eligibility requirements. Study participants will be asked to complete a questionnaire to ascertain exposure to heavy metals and other toxic chemicals either through occupational exposures, hobbies or lifestyle activities, or due to residential proximity to industry or hazardous waste sites. Participants will also be asked to provide a blood sample to test for exposure to possible infectious agents and to evaluate specific candidate genes as potential risk factors of disease.

To reduce the amount of time required by the respondents, Computer Assisted Telephone Interviews (CATI) will be conducted. Following completion of all respondent interviews, the data will be tabulated and analyzed, comparing high versus low exposed participants. The information collected in this proposed study will provide information on the potential role of environmental exposures and genetic factors in the development of multiple sclerosis.

There is no cost to respondents other than their time to participate in the study.

Respondents	Number of respondents	Number of responses/respondent	Average burden/response (in hours)	Total burden (in hours)
Cases	500	1	1	500
Controls	1,000	1	1	1,000
Total				1,500

Dated: October 30, 2002.

Kathy Cahill,

Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 02–28454 Filed 11–7–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60 Day–03–13]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Seleda Perryman , CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: A Research Program to Develop Optimal NIOSH Alerts in Farming (OMB No. 0920–0501)—REVISION—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

The mission of the National Institute for Occupational Safety and Health (NIOSH) is to promote "safety and health at work for all people through research and prevention." Alerts are some of the primary publications by which NIOSH communicates health and safety recommendations to at-risk workers. Each Alert is mailed to workers affected by a particular health or safety hazard and contains information about the nature of the hazard, as well as recommendations for avoiding or controlling it. Despite the important role of Alerts in conveying health and safety information to workers, these publications have not been routinely pretested and evaluated for effectiveness. Therefore, it is important to continue research that examines the degree to which the NIOSH Alerts produce risk awareness, as well as comprehension, acceptance and use of the recommended health and safety measures.

The OMB-approved project, "A Research Program to Develop Optimal NIOSH Alerts in Farming" (0920–0501), applied theoretical advances in communication research to the development of NIOSH Alerts to ensure maximal effectiveness in conveying health and safety information to workers. This project applied psychology and communication theories to experimentally manipulate features of the NIOSH Alerts and examine the effects of these manipulations on the effectiveness of the Alert. To design these theory-based Alerts, the concepts of goal attainment imagery and risk imagery were applied. Goal attainment imagery asks the readers to imagine themselves carrying out the safety recommendations provided in the Alert, while risk imagery asks the readers to imagine themselves in a high risk situation where the safety recommendations are not followed.

Field research from the project, which applied these two types of imagery, has shown that farmers who received an Alert containing goal attainment imagery found the Alert easier to visualize, stronger, more convincing and more attention getting than a standard Alert. Farmers who received an Alert with goal attainment imagery reported heightened perceptions of risk awareness and more positive attitudes toward engaging in safety recommendations. In addition, they reported that they would be more likely to pass the information on to other farmers. No differences were found between farmers who received Alerts containing risk imagery and farmers who received a standard Alert. Therefore, goal attainment imagery seemed to have the strongest effect when included in the Alerts.

The original OMB-approved protocol proposed that a national mail-out survey would be conducted in order to test the generalizability of the data collected in the field. Farmers would receive an experimental (high imagery) or a standard version of an Alert along with a survey to complete and return to NIOSH. However, based on results from similar projects, we have learned that mail surveys generate low response rates. We propose changing the data collection format from a mail survey to a telephone survey. Farmers would receive an experimental version of the Alert and then be contacted approximately two weeks later to complete a telephone survey.

This change to the data collection format would serve three purposes. It is expected that the response rate for the telephone survey would be considerably higher than the response rate for the mail survey. Also, surveying a national sample of farmers would allow us to generalize the results to the broader population of farmers. Finally, the distribution of the experimental Alerts is similar to the way in which NIOSH Alerts are distributed to at risk workers and would present an opportunity to test the effectiveness of this distribution method. There is no cost to respondents.

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Respondent	Number of respondents	Number of responses respondent	Average burden response (in hours)	Total burden (in hours)
Farmers	400	1	20/60	133
Total				133

Dated: November 4, 2002.

Nancy E. Cheal,

Acting Associate Director for Policy, Planning and Evaluation Centers for Disease Control and Prevention.

[FR Doc. 02–28455 Filed 11–7–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60 Day–03–12]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: National Disease Surveillance Program—II. Disease Summaries (0920–0004)—Extension—National Center for Infectious Diseases (NCID), Centers for Disease Control and Prevention. Surveillance of the incidence and distribution of disease has been an important function of the U.S. Public Health Service (PHS) since 1878. Through the years, PHS/CDC has formulated practical methods of disease control through field investigations. The CDC Surveillance Program is based on the premise that diseases cannot be diagnosed, prevented, or controlled until existing knowledge is expanded and new ideas developed and implemented. Over the years, the mandate of CDC has broadened to include preventive health activities and the surveillance systems maintained have expanded.

CDC and the Council of State and Territorial Epidemiologists (CSTE) collect data on disease and preventable conditions in accordance with jointly approved plans. Changes in the surveillance program and in reporting methods are effected in the same manner. At the onset of this surveillance program in 1968, the CSTE and CDC decided on which diseases warranted surveillance. These diseases are reviewed and revised based on variations in the public's health. Surveillance forms are distributed to the State and local health departments who voluntarily submit these reports to CDC at variable frequencies, either weekly or monthly. CDC then calculates and publishes weekly statistics via the Morbidity and Mortality Weekly Report (MMWR), providing the states with timely aggregates of their submissions.

The following diseases/conditions are included in this program: influenza, respiratory and enterovirus, arboviral encephalitis, rabies, Salmonella, Campylobacter, Shigella, foodborne outbreaks, waterborne outbreaks, and enteric virus. These data are essential on the local, state, and Federal levels for measuring trends in diseases, evaluating the effectiveness of current prevention strategies, and determining the need for modifying current prevention measures.

This request is for extension of the data collection for three years. Because of the distinct nature of each of the diseases, the number of cases reported annually is different for each.

The total estimated annualized burden is 6,048 hours. There is no cost to respondents.

Respondents	Number of respondents	Number of responses/ respondent	Average burden/response (in hrs.)	Total burden in Hours
State and local health officials in 50 states/territories	864	28	15/60	6,048
Total				6,048

Dated: November 1, 2002.

Nancy E. Cheal,

Acting Associate Director for Policy, Planning and Evaluation Centers for Disease Control and Prevention.

[FR Doc. 02–28456 Filed 11–7–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention (CDC)

Advisory Committee for Injury Prevention and Control, Centers for Disease Control and Prevention: Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act (Pub. L. 92–463) of October 6, 1972, that the charter for the Advisory Committee for Injury Prevention and Control of the Centers for Disease Control and Prevention, Department of Health and Human Services, has been renewed for a 2-year period, through October 28, 2004.

For further information, contact Louise Galaska, Executive Secretary, Advisory Committee for Injury Prevention and Control, Centers for Disease Control and Prevention, of the Department of Health and Human Services, 4770 Buford Highway, NE., M/S K02, Atlanta, Georgia 30341, telephone 770/488–4694 or fax 770/488–1670.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: October 31, 2002.

John Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 02–28451 Filed 11–7–02; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of Public Meetings/Opportunity for Public Comment: Interagency Committee on Smoking and Health (ICSH) Cessation Subcommittee

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following Subcommittee Meeting.

Agency: Department of Health and Human Services, Centers for Disease Control and Prevention's Office on Smoking and Health.

Date and Time: November 14, 2002, 8:30 a.m.–1 p.m.

Place: The Westin Westminster, 10600 Westminster Boulevard, Westminster, Colorado, 80020, Telephone 303/410–5000.

Date and Time: December 3, 2002, 8:30 a.m.–1:00 p.m.

Place: Hyatt Regency O'Hare at O'Hare International Airport, 9300 West Bryn Mawr Avenue, Rosemont, Illinois 60018, Telephone (847) 696–1234.

Purpose: The ICSH Cessation Subcommittee is convening two public meetings and soliciting comments to obtain input from key audiences who must work in a coordinated manner to successfully promote tobacco use cessation. Input should be focused on (1) opportunities to promote tobacco use cessation, (2) the strategies to overcome barriers and challenges faced by each group to ensure these objectives are implemented, and (3) the types of support DHHS could provide. Individuals and organizations are encouraged to comment in one or both of the following ways: (1) In writing, by submission through the mail, or e-mail; (2) in person, at two public meetings that will be convened in Denver, CO, and Chicago, IL. Comments will also be accepted during the public meetings.

Status: Open to the public, limited only by the space and time available. If you would like to attend the public meetings, you are encouraged to register by providing your name, title, organization name, address, and telephone number to Ms. Jessica Porras, (address below). If you would like to speak at the meetings, please notify Ms. Porras when you register. Written comments may be submitted until December 20, 2002.

To submit electronic comments, send via e-mail to *jporras@cdc.gov*. To submit comments by mail, send to: ICSH Cessation Subcommittee Public Comments (Attn: Ms. Jessica Porras), Office on Smoking and Health, 200 Independence Avenue, SW., Room 317B, Washington, DC 20201.

Matter to be Discussed: The ICSH Cessation Subcommittee is charged with making recommendations on how best to promote tobacco use cessation. The Subcommittee will develop a report, to be submitted by the Chair of the ICSH to the Secretary of HHS, which contains action steps for both a Secretary's initiative and public-private partnerships to achieve this outcome. Background documents on the ICSH and the ICSH Cessation Subcommittee are available at *http://www.cdc.gov/tobacco/ICSH/index.htm*. Submitted comments will be posted on the Internet at *http://www.cdc.gov/tobacco/ICSH/index.htm*.

For Further Information Contact: Ms. Jessica Porras, Office on Smoking and Health, 200 Independence Avenue, SW., Suite 317B, Washington, DC 20201, Telephone 202/205–8500 or facsimile 202/205–8313 or e-mail: *jporras@cdc.gov*.

The November 14, 2002 meeting notice is being published less than 15 days prior to the meeting due to difficulty of coordinating the attendance of members because of conflicting schedules.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: November 4, 2002.

John Burckhardt,

Acting Director, Management Analysis and Services Office Centers for Disease Control and Prevention.

[FR Doc. 02–28436 Filed 11–7–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[CMS–29/30, CMS–317, CMS–319, CMS–2746, and CMS–R–293]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension of a currently approved collection.

Title of Information Collection: Request for Certification as Rural Health Clinic and Rural Health Clinic Survey Report Form and Supporting Regulations in 42 CFR 491.1–491.11.

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Form No.: CMS–0029/0030 (OMB# 0938–0074).

Use: The Form CMS–29 is utilized as an application to be completed by suppliers of RHC services requesting participation in the Medicare/Medicaid programs. This form initiates the process of obtaining a decision as to whether the conditions for certification are met as a supplier of RHC services. It also promotes data reduction or introduction to and retrieval from the Online Survey and Certification and Reporting System (OSCAR) by the CMS Regional Offices (RO). The Form CMS–30 is an instrument used by the State survey agency to record data collected in order to determine RHC compliance with individual conditions of participation and to report it to the Federal government. The form is primarily a coding worksheet designed to facilitate data reduction (keypunching) and retrieval into OSCAR at the CMS ROs. The form includes basic information on compliance (i.e., met, not met and explanatory statements) and does not require any descriptive information regarding the survey activity itself.

Frequency: Annually.

Affected Public: State, Local, or Tribal Government.

Number of Respondents: 661.

Total Annual Responses: 661; Total Annual Hours: 1,157.

2. *Type of Information Collection Request:* Extension of a currently approved collection.

Title of Information Collection: State Medicaid Eligibility Quality Control (MEQC) Sampling Plan and Supporting Regulations in 42 CFR 431.800–431.865.

Form No.: CMS–317 (OMB# 0938–0146).

Use: The State MEQC sampling plan is necessary for CMS to monitor the States' operation of the MEQC system for States performing the traditional sampling process. The sampling plan includes all data involved in the States' sample selection process—population sizes and sample frame lists, sample sizes, sample selection procedures, and claim collection procedures.

Frequency: Semi-annually.

Affected Public: State, Local, or Tribal Government.

Number of Respondents: 55.

Total Annual Responses: 110.

Total Annual Hours: 2,640.

3. *Type of Information Collection Request:* Extension of a currently approved collection;

Title of Information Collection: State Medicaid Eligibility Quality Control (MEQC) Sample Section Lists and Supporting Regulations in 42 CFR 431.800—431.865.

Form No.: CMS–0319 (OMB# 0938–0147).

Use: The sample selection lists contain identifying information on Medicaid beneficiaries and is the basis for the cases that States review to determine the accuracy of the Medicaid eligibility determinations. The Regional Office uses this list to monitor State review activity.

Frequency: Monthly.

Affected Public: State, Local or Tribal Government.

Number of Respondents: 55.

Total Annual Responses: 660.

Total Annual Hours: 5,280.

4. *Type of Information Collection Request:* Extension of a currently approved collection.

Title of Information Collection: End Stage Renal Disease Death Notification 42 CFR 405.2133.

Form No.: CMS–2746 (OMB# 0938–0448).

Use: This form is completed by all Medicare approved ESRD facilities upon the death of an ESRD patient. The form's primary purpose is to collect fact and cause of death. Reports of deaths are used to show cause of death and demographic characteristics of these patients.

Frequency: On occasion.

Affected Public: Business or other for-profit, Not-for-profit institutions, Federal Government.

Number of Respondents: 4,000.

Total Annual Responses: 56,258.

Total Annual Hours: 9,564.

5. *Type of Information Collection Request:* Extension of a currently approved collection.

Title of Information Collection: Medicare Telephone Customer Satisfaction Survey.

Form No.: CMS–R–293 (OMB# 0938–0780).

Use: In response to the National Partnership for Reinventing Government and Government Performances and Results Act (GPRA), CMS is implementing a number of initiatives to measure and then improve the customer service that is provided by Medicare Call Centers, that service over 21 million calls annually.

Frequency: On occasion, simi-annually, other (single 800# survey).

Affected Public: Individuals or Households; Number of Respondents: 50,000.

Total Annual Responses: 50,000.

Total Annual Hours: 3,500.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web site address at *http://cms.hhs.gov/regulations/pra/default.asp*, or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov*, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Brenda Aguilar, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: October 31, 2002.

John P. Burke, III,

Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances.

[FR Doc. 02–28423 Filed 11–7–02; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)

Centers for Medicare & Medicaid Services

Notice of Hearing: Reconsideration of Disapproval of Maryland State Plan Amendment 02–05

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice of hearing.

SUMMARY: This notice announces an administrative hearing to be held on December 19, 2002, Suite 216, The Public Ledger Building, 150 S. Independence Mall West, Philadelphia, Pennsylvania 19106, at 10 a.m., to reconsider our decision to disapprove Maryland State Plan Amendment 02–05.

CLOSING DATE: Requests to participate in the hearing as a party must be received by the presiding officer by (15 days after publication).

FOR FURTHER INFORMATION CONTACT: Kathleen Scully-Hayes, Presiding Officer, Office of Hearings, Centers for Medicare & Medicaid Services, Suite L, 2520 Lord Baltimore Drive, Baltimore, Maryland 21244–2670, Telephone: (410) 786–2055.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider our decision to disapprove Maryland State Plan Amendment (SPA) 02–05. This SPA was disapproved on August 26, 2002.

In this amendment, Maryland proposes to cover targeted case management services for abused and neglected children under foster care. At issue is whether the Centers for Medicare & Medicaid Services properly concluded as a basis for disapproving the amendment that: (1) The State had not demonstrated that the proposed services were within the statutory definition of case management services found in section 1915(g)(2) of the Social Security Act (the Act); (2) the proposed services are available without charge to the user and thus payment under the amendment is not reasonable and necessary and would duplicate payment under other program authorities; and (3) the amendment would restrict beneficiary freedom of choice by limiting providers to employees of public welfare agencies.

Medicaid coverage of targeted case management is authorized by section 1915(g) of the Act, which defines case management as services that assist beneficiaries in gaining access to needed services and does not include the direct provision of those services. Because the services proposed as Medicaid targeted case management are segments of child welfare services related to the foster care program, CMS is of the belief that they are integral components of the direct services and administrative functions of child welfare services.

During conversations between CMS and the State of Maryland, the State cited section 8435 of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647. In this section Congress clarified that the Secretary may not deny approval of either a SPA or a claim on the basis that the state is required to provide such services under state law, or is, or was otherwise paying for the services using non-Federal funds. However, section 8435 also expressly stated that this was not to be construed to require the Secretary to make payment for case management services that are provided without charge to the users of such services. Approval of SPA 02–05 would be contrary to this express statutory provision, since this SPA seeks payment from Medicaid program for services that are available without charge to the users.

In addition, while states are free to set qualifications for providers, a state must comply with Medicaid law and regulations concerning freedom of choice at section 1902(a)(23) of the Act and the implementing regulation at 42 CFR 431.51. These provisions require that a state plan permit beneficiaries to obtain services from any qualified provider that undertakes to provide the services. Section 1915(g)(1) of the Act states "The provision of case management services under this subsection shall not restrict the choice of the individual to receive assistance in violation of section 1902(a)(23)."

Section 1116 of the Act and 42 CFR, part 430 establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a state plan or plan amendment. The CMS is required to publish a copy of the notice to a state Medicaid agency that informs the agency of the time and place of the hearing and the issues to be considered. If we subsequently notify the agency of additional issues that will be considered at the hearing, we will also publish that notice.

Any individual or group that wants to participate in the hearing as a party must petition the presiding officer within 15 days after publication of this notice, in accordance with the requirements contained at 42 CFR 430.76(b)(2). Any interested person or organization that wants to participate as amicus curiae must petition the presiding officer before the hearing begins in accordance with the requirements contained at 42 CFR 430.76(c). If the hearing is later rescheduled, the presiding officer will notify all participants. Therefore, based on the reasoning set forth above, and after consultation with the Secretary as required under 42 CFR 430.15(c)(2), CMS disapproved Maryland SPA (02–05).

The notice to Maryland announcing an administrative hearing to reconsider the disapproval of its SPA reads as follows:

Georges C. Benjamin, M.D.
Secretary, Department of Health and Mental Hygiene, 201 West Preston Street, Baltimore, MD 21201.

Dear Dr. Benjamin: I am responding to your request for reconsideration of the decision to disapprove Maryland State Plan Amendment (SPA) 02–05. This SPA was disapproved on August 26, 2002.

In this amendment, Maryland proposes to cover targeted case management services for abused and neglected children under foster care. At issue is whether the Centers for Medicare & Medicaid Services (CMS) properly concluded as a basis for disapproving the amendment that: (1) The State had not demonstrated that the proposed services were within the statutory definition of case management services found in section 1915(g)(2) of the Social Security Act (the Act); (2) the proposed services are available without charge to the user and thus payment under the amendment is not reasonable and necessary and would duplicate payment under other program authorities; and (3) the amendment would restrict beneficiary freedom of choice by limiting providers to employees of public welfare agencies.

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In addition, while states are free to set qualifications for providers, a state must comply with Medicaid law and regulations concerning freedom of choice at section 1902(a)(23) of the Act and the implementing regulations at 42 CFR 431.51. These provisions require that a state plan permit beneficiaries to obtain services from any qualified provider that undertakes to provide the services. Section 1915(g)(1) of the Act states "The provision of case management services under this subsection shall not restrict the choice of the individual to receive assistance in violation of section 1902(a)(23)." Therefore, based on the reasoning set forth above, and after consultation with the Secretary as required under 42 CFR 430.15(c)(2), CMS disapproved Maryland SPA 02–05.

I am scheduling a hearing on your request for reconsideration to be held on December 19, 2002, Suite 216, The Public Ledger Building, 150 S. Independence Mall West, Philadelphia, Pennsylvania 19106, at 10 a.m. to reconsider our decision to disapprove Maryland SPA 02–05.

If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties. The hearing will be governed by the procedures prescribed at 42 CFR, part 430.

I am designating Ms. Kathleen Scully-Hayes as the presiding officer. If these arrangements present any problems, please contact the presiding officer. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the presiding officer to indicate acceptability of the hearing date that has been scheduled and provide names of the individuals who will represent the State at the hearing. The presiding officer may be reached at (410) 786–2055.

Sincerely,
Thomas A. Scully.

Sec. 1116 of the Social Security Act (42 U.S.C. section 1316); 42 CFR 430.18)

(Catalog of Federal Domestic Assistance Program No. 13.714, Medicaid Assistance Program)

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Dated: November 4, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 02–28469 Filed 11–7–02; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–2912]

Final Guidance for Industry on the Development of Supplemental Applications for Approved New Animal Drugs; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a final guidance for industry (#82) entitled "Guidance for Industry: Development of Supplemental Applications for Approved New Animal Drugs." This guidance explains how and when drug sponsors may use data collected for original new animal drug applications (NADAs) to support the technical sections of a supplemental NADA. The guidance also explains when the Center may, under existing statutes or regulations, require the submission of new data. Finally, the guidance delineates the instances in which a sponsor will generally need to file a new NADA rather than a supplemental application.

DATES: Submit written or electronic comments on agency guidances at any time.

ADDRESSES: Submit written requests for single copies of the final guidance to the Communications Staff (HFV–12), Center for Veterinary Medicine, Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the final guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments.* See the **SUPPLEMENTARY INFORMATION** section for electronic access to the final guidance document.

FOR FURTHER INFORMATION CONTACT: Marilyn N. Martinez, Office of New Animal Drug Evaluation (HFV–130), Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7577, e-mail: *mmartine@cvm.fda.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On November 21, 1997, the Food and Drug Administration Modernization Act (FDAMA) (Public Law 105–115) was signed into law. Section 403 of FDAMA requires FDA to provide information regarding approval of supplemental applications for approved products.

Section 403(b)(2) of FDAMA requires that FDA issue guidance on specific data requirements for supplemental NADAs in order to prevent duplication of previously submitted data. In the **Federal Register** of February 8, 2000 (65 FR 6214), FDA announced the availability of a draft guidance for industry entitled "Guidance for Industry: Development of Supplemental Applications for Approved New Animal Drugs." The draft guidance illustrated the various types of supplemental applications and their dependence on new data. This draft guidance explained how and when drug sponsors could use data accepted in support of an original application to support supplemental applications. The draft guidance also explained when a sponsor should submit a new NADA rather than a supplemental NADA. The agency received no comments on the draft guidance. The content of the final guidance is the same as the draft.

"Guidance for Industry: Development of Supplemental Applications for Approved New Animal Drugs" demonstrates the agency's dedication to assisting the sponsor in creating a project development strategy and to fostering a discussion between the sponsor and the agency. With this in mind, the guidance is organized in a user-friendly format with two distinctive sections. The first section separates supplemental applications into two categories: Category I includes applications that do not ordinarily require additional data and category II includes applications that may require additional data. The guidance then lists the 14 types of supplemental applications in each category as well as the instances in which a sponsor generally will need to file a new NADA rather than a supplemental NADA.

The second section is dedicated to clarification of category II supplemental applications and the data to meet the technical section requirements. The data CVM would recommend be submitted for each category II supplement are provided in tables. The tables indicate if: (1) New data will generally be needed, (2) existing data included in a previously approved application will generally suffice, or (3) the nature of the supplemental application will dictate whether or not new data are generally needed. A comment section follows each table providing explanations and suggestions to the sponsor. The guidance also cross-references several FDA documents relating to the processing of supplemental applications, providing further assistance to the sponsor.

This final level 1 guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the agency's current thinking on the development of supplemental applications for approved new animal drugs. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

As with all of FDA's guidances, the public is encouraged to submit written or electronic comments pertinent to this guidance. FDA will periodically review the comments in the docket and, where appropriate, will amend the guidance. The agency will notify the public of any such amendments through a notice in the **Federal Register**.

Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments on this final guidance at any time. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The final guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at *http://www.fda.gov/cvm.*

Dated: October 10, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–28472 Filed 11–7–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Proposed Information Collection

AGENCY: Indian Health Service, HHS.

ACTION: Request for Public Comment: 30-day Proposed Information Collection: Indian Health Service Loan Repayment Program.

SUMMARY: In compliance with section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed information collection projects, the (HHS) has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection project was published in the Federal Register (67 FR 53956) and allowed 60 days for public comment. No public comment was received in response to the notice. The purpose of this notice is to allow 30 days for public comment to be submitted to OMB.

Proposed Collection:

Title: 09–17–0014, "Indian Health Service Loan Repayment Program."

Type of Information Collection Request: Extension of a currently approved collection.

Form Number: None.

Forms: The IHS Loan Repayment Program Information Booklet contains the instructions and the application formats.

Need and Use of Information Collection: The IHS Loan Repayment Program (LRP) identifies health professionals with pre-existing financial obligations for education expenses that meet program criteria and who are qualified and will to serve at, often remote, IHS health care facilities. Under the program, eligible health professionals sign a contract under which the IHS agrees to repay part or all of the indebtedness for professional training education. In exchange, the health professionals agree to serve for a specified period of time in IHS health care facilities. Eligible health professionals that wish to apply must submit an application to participate in the program. The application requests personal, demographic and educational training information, including information on the educational loans of the individual for which repayment is being requested (*i.e.*, date, amount, account number, purpose of each loan, interest rate, the current balance, etc.). The data collected is needed and used to evaluate applicant eligibility; rank and prioritize applicants by specialty; assign applicants to IHS health care facilities; determine payment amounts and schedules for paying the lending institutions; and to provide data and statistics for program management review and analysis.

Affected Public: Individual and households.

Type of Respondents: Individuals.

Burden Hours: The table below provides the estimated burden hours for this information collection.

Burden is the time it takes for respondents to complete the data collection instruments:

Estimated Burden Hours

Data collection instrument	Estimated no. of respondents	Responses per respondent	Average burden hour per response*	Total annual burden hrs
Section I	425	1	0.25 (15 mins)	106.0
Section II	425	1	0.50 (30 mins)	213.0
Section III	425	4	0.25 (15 mins)	425.0
Contract	425	1	0.33 (20 mins)	140.0
Affidavit	425	1	0.17 (10 mins)	72.0
Lender Certificate	1700	1	0.25 (15 mins)	425.0
Total	2125			1381

*For ease of understanding, burden hours are also provided in actual minutes.

There are no Capital Costs, Operating Costs and/or Maintenance Costs to report.

Request for Comments: Your written comments and/or suggestions are invited on one or more of the following points: (a) Whether the information collection activity is necessary to carry out an agency function; (b) whether the IHS processes the information collected in a useful and timely fashion; (c) the accuracy of the public burden estimate (the estimated amount of time needed for individual respondents to provide the requested information); (d) whether the methodology and assumptions used to determine the estimate are logical; (e) ways to enhance the quality, utility, and clarity of the information being collected; and (f) ways to minimize the public burden through the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB: Written comments and/or suggestions regarding the proposed information collection contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to: Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for IHS.

FOR FURTHER INFORMATION CONTACT: Copies of the proposed information collection and supporting documents may be obtained from Mr. Lance Hodahkwen, Sr., M.P.H., IHS Reports Clearance Officer, 12300 Twinbrook Parkway, Suite 450, Rockville, MD 20852.1601. Telephone non-toll free (301) 443–5938; Fax: (301) 443–2316, or e-mail: *lhodahkw@hqe.ihs.gov.*

Comment Due Date: Comments regarding this information collection are best assured of having their full effect if received on or before December 9, 2002.

Dated: October 24, 2002.

Charles W. Grim,

Assistant Surgeon General, Interim Director, Indian Health Service.

[FR Doc. 02–28471 Filed 11–7–02; 8:45 am]

BILLING CODE 4160–16–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute: Chemical Optimization of Molecular-Targeted Anticancer, Antiviral and Antimicrobial Drug Leads

An opportunity is available for a Cooperative Research and Development Agreement (CRADA) for the purpose of collaborating with the National Cancer Institute (NCI), Developmental

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Therapeutics Program (DTP), Screening Technologies Branch (STB), on further research and development to optimize chemical structures of lead compounds exhibiting molecular-targeted anticancer, antiviral and/or antimicrobial activities.

AGENCY: National Cancer Institute, National Institutes of Health, PHS, DHHS.

ACTION: Notice of opportunities for cooperative research and development.

SUMMARY: Pursuant to the Federal Technology Transfer Act of 1986 (FTTA, 15 U.S.C. 3710, as amended; and Executive Order 12591 of April 10, 1987), the National Cancer Institute (NCI) of the National Institutes of Health (NIH) of the Public Health Service (PHS) of the Department of Health and Human Services (DHHS) seeks a Cooperative Research and Development Agreement (CRADA) for collaborative optimization of small-molecule screening leads for potency and pharmaceutical properties consistent with clinical development. The leads have been identified by STB using high-throughput screening and preliminary structure/activity study of >140,000 samples from the NCI Repository addressing a number of molecular targets of potential therapeutic significance. More specifically, a medicinal chemistry partner is sought for collaborative R&D to identify and resolve potential structural problems/features related to toxicity, formulation, chemical stability, metabolism, etc. Based on this analysis, lead compounds may be directly subjected to secondary and *in vivo* testing or a series of derivatives/analogs may be designed to obviate problems. In a second stage, *in vivo* active compounds will be subjected to additional analysis and analogs will be synthesized to further optimize structure/activity properties. Any CRADA for the biomedical use of this technology will be considered. The CRADA would have an expected duration of one to five years. The goals of the CRADA include the rapid publication of research results and timely commercialization of products, diagnostics and treatments that result from the research. The CRADA Collaborator will have an option to elect a non-exclusive or exclusive commercialization license to subject inventions arising under the CRADA and which are subject of the CRADA Research Plan.

ADDRESSES: Proposals and questions about this CRADA opportunity may be addressed to Bjarne Gabrielsen, Ph.D., Technology Transfer Branch, National Cancer Institute-Frederick, Fairview Center, Room 500, Frederick, MD 21701 (phone: 301–846–5465, fax: 301–846–6820).

Scientific inquiries should be directed to: Robert Shoemaker, Ph.D., Chief, Screening Technologies Branch, Developmental Therapeutics Program, Bldg. 440, P.O. Box B, National Cancer Institute, Frederick, MD 21702 (phone 301–846–6845; FAX 301–846–6844; e-mail: *shoemaker@dtpax2.ncifcrf.gov.*)

DATES: Inquiries regarding CRADA proposals and scientific matters may be forwarded at any time. Confidential CRADA proposals, preferably two pages or less, must be submitted to the NCI. Review of proposals will begin within 90 days from date of this publication and will continue until a suitable collaborator(s) is identified. Guidelines for preparing full CRADA proposals will be communicated shortly thereafter to all respondents with whom initial confidential discussions will have established sufficient mutual interest.

SUPPLEMENTARY INFORMATION:

Technology Available

DTP scientists within the STB have extensive experience with both cell-free and cell-based molecular targeted screens and a track record of moving screening discoveries into clinical testing. Targeting the HIF–1–α (Hypoxia Inducible Factor-1) and CEBP–α (CCAAT/Enhancer Binding Protein α) signaling pathways relevant to cancer are among the current top priorities. Substantial effort has also been directed recently towards identification of novel inhibitors of HIV–1 assembly. Additional opportunities are anticipated.

Technology Sought

Accordingly, DHHS now seeks collaborative arrangements for chemical optimization of drug screening leads. The successful Collaborator should possess experience in the following areas at a minimum: Evaluation of structural features of lead molecules, design of derivative molecules with advantageous properties, solid and solution phase synthesis of individual compounds and focused libraries, molecular modeling of ADME drug properties, etc. For collaborations with the commercial sector, a Cooperative Research and Development Agreement (CRADA) will be established to provide equitable distribution of intellectual property rights developed under the CRADA. CRADA aims will include rapid publication of research results as well as development of the technology toward commercialization. The role of the National Cancer Institute-Screening Technologies Branch in this CRADA will include, but not be limited to:

1. Providing intellectual, scientific, and technical expertise and experience to the research project.
2. Providing the Collaborator with pertinent available reagents (such as authentic standards for lead molecules) for investigation/evaluation.
3. Planning research studies and interpreting research results.
4. Publishing research results.

The role of the CRADA Collaborator may include, but not be limited to:

1. Providing significant intellectual, scientific, and technical expertise or experience to the research project.
2. Planning research studies and interpreting research results.
3. Providing technical expertise as outlined in the CRADA Research Plan.
4. Accomplishing objectives according to an appropriate timetable to be outlined in the CRADA Collaborator's proposal.
5. The willingness to commit best effort and demonstrated resources to the research, development and commercialization of this technology.
6. The demonstration of expertise in the commercial development, production, marketing and sales of products related to this area of technology.
7. The willingness to cooperate with the National Cancer Institute in the timely publication of research results.
8. The agreement to be bound by the appropriate DHHS regulations relating to human subjects, and all PHS policies relating to the use and care of laboratory animals.
9. The willingness to accept the legal provisions and language of the CRADA with only minor modifications, if any. These provisions govern patent rights to CRADA inventions.

Dated: November 1, 2002.

Kathleen Sybert,

Chief, Technology Transfer Branch, National Cancer Institute, National Institutes of Health.

[FR Doc. 02–28540 Filed 11–7–02; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

New Gene Expressed in Prostate Cancer and Methods of Use

TK Bera, C Wolfgang, I Pastan (NCI), B Lee, J Vincent;

DHHS Reference No. E–005–2002 filed Nov. 14, 2001;

Licensing Contact: Jonathan Dixon; 301/435–5559; *dixonj@od.nih.gov.*

A new polypeptide is described in this invention that is specifically detected in the cells of the prostate. This polypeptide has been termed Novel Gene Expressed In Prostate (NGEP). There are potential claims to the NGEP gene, polynucleotides encoding NGEP, antibodies to NGEP, methods for using an NGEP polypeptide, polynucleotide, or antibody, and pharmaceutical compositions containing any of the above NGEP-related molecules. This invention might be useful in prostate cancer diagnostics, such as an assay to detect prostate cancer, or as a therapeutic directed towards prostate cancer.

Use of Interferon-Inducible 2',5'-Oligoadenylate-Dependent RNase in the Diagnosis, Prognosis, and Treatment of Prostate Cancer

J. Carpten (NHGRI), J. Trent (NHGRI), J. Smith, P. Walsh, W. Isaacs, D. Stephan, and N. Nupponen (NHGRI);

PCT Application PCT/US02/19516 (DHHS Ref. E–196–01/1), claiming priority to a U.S. Provisional Patent Application filed on June 20, 2001;

Licensing Contact: Brenda Hefti; 301/435–4632; *heftib@od.nih.gov.*

This invention pertains to the use of interferon-inducible 2',5'-oligoadenlyate-dependent RNase L in the diagnosis, prognosis and treatment of cancer, particularly prostate cancer. The inventors have identified a potential prostate cancer susceptibility locus, which has been designated HPC1 due to its putative link to hereditary prostate cancer. HPC1 may lead to an early, sensitive and accurate method for detecting cancer or a predisposition to cancer, especially prostate cancer, in a mammal. In addition, such claimed methods can be used to monitor onset and progression of cancer, as well as a patient's response to a particular treatment.

Signal Transduction Inhibitor Compounds in Clinical Trials as Cancer Therapeutics

Elise C. Kohn, Lance A. Liotta, Christian C. Felder (NCI);

U.S. Patent 5,359,078 issued October 25, 1994;

U.S. Patent 5,482,954 issued January 9, 1996;

U.S. Patent 5,498,620 issued March 12, 1996;

U.S. Patent 5,705,514 issued January 6, 1998;

U.S. Patent 5,880,129 issued March 9, 1999;

Licensing Contact: Brenda Hefti; 301/435–4632; *heftib@od.nih.gov.*

The above issued patents relate to azole, diazole, and triazole compounds that appear to inhibit signal transduction and inhibit invasion and metastasis of malignant solid tumors. A number of these compounds are in phase I, II and III clinical trials for specific indications, and might be useful in other indications as well.

These issued patents claim a number of compositions of matter, pharmaceutical compositions of said compounds, and methods of using said compounds.

Dated: November 4, 2002.

Jack Spiegel,

Director, Division of Technology, Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 02–28536 Filed 11–7–02; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Tissue Microosmometer

Ferenc Horkay, Peter J. Basser, Adam Berman (NICHD)

DHHS Reference No. E–280–2002/0 filed Aug. 07, 2002

Licensing Contact: Dale Berkley; 301/435–5019; *berkleyd@od.nih.gov*

This new tissue microosmometer allows for the quantification of minor changes in the swelling properties of different tissues (e.g. cartilage) using very small amounts of tissue, and can be used as a potential diagnostic technique to detect early stages of cell or tissue injury such as cartilage degeneration or disorder. Varying the vapor pressure in the environment of the device induces controlled changes in the osmotic pressure of a tissue layer attached to the surface of a flat quartz crystal. Variation in the swelling degree is measured with high sensitivity and reliability by monitoring the change in resonance frequency of the quartz crystal. The device requires less than one microgram of sample, and the small tissue sample allows for an extremely fast response time. The device is well suited to the study of expensive or limited availability biological or macromolecular samples.

Method for Convection Enhanced Delivery of Therapeutic Agents

Edward H. Oldfield (NINDS)

DHHS Reference No. E–202–2002/0 filed Sep. 24, 2002

Licensing Contact: Dale Berkley; 301/435–5019; *berkleyd@od.nih.gov*

The invention is a method for monitoring the spatial distribution of therapeutic substances by MRI or CT that have been administered to tissue using convection-enhanced delivery, a technique that is the subject of NIH-owned U.S. Patent No. 5,720,720. In one embodiment, the tracer is a molecule.

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detectable by MRI or CT, which functions as a surrogate for the motion of the therapeutic agent through the solid tissue. In other particular embodiments, the tracer is the therapeutic agent conjugated to an imaging moiety. The method of this invention uses non-toxic macromolecular MRI contrast agents comprised of chelated Gd(III). In particular, the surrogate tracer used in this invention is a serum albumin conjugated with either a gadolinium chelate of 2-(p-isothiocyanotobenzyl)-6-methyldiethylenetriamine pentaacetic acid or with iopanoic acid. These macromolecular imaging agents have clearance properties that mimic the pharmacokinetic properties of co-administrated drugs, so as to be useful in quantifying the range and dosage level of therapeutic drugs using MR imaging.

Refinement of Isointensity Surfaces

Peter Yim (CC)
DHHS Reference No. E–078–2002/0 filed Feb 22, 2002
Licensing Contact: Dale Berkley; 301/435–5019; *berkleyd@od.nih.gov*

The invention is a method for reconstructing arterial geometry from magnetic resonance angiography (MRA) using isosurfaces deformed to conform to the boundaries of objects in the image with minimal a priori assumptions of object shape. The method determines the degree of stenosis in digital phantoms with an accuracy of at least 10%. This method, unlike previous techniques, does not require the imposition of a pre-defined surface mesh onto the image or user interaction for definition of the vessel axes. Here, the deformable model surface mesh is generated by the isosurface algorithm. Accordingly, the new method requires minimal user interaction and provides highly accurate results when applied to the evaluation of vascular stenoses. The methodology may also be applicable for reconstruction of the geometry of vascular aneurysms from MRA. Other potential applications include precision surface reconstruction of vascular surfaces from computed tomographic angiography (CTA) and precision reconstruction of the surface of the colon from computed tomography (CT).

Automated Centerline Detection Algorithm for Colon-Like 3D Surfaces

Gheorghe Iordanescu (CC), Ronald Summers (CC), Juan Cebral
DHHS Reference No. E–311–2001 filed Dec. 27, 2001
Licensing Contact: Dale Berkley; 301/435–5019; *berkleyd@od.nih.gov*

The invention is a method for obtaining the centerline of a colon-like surface, which is an important tool for virtual colonoscopy. The invention uses only three steps: (1) Computing a shrunken version of the colon surface (2) modeling the shrunken colon by an ordered group of 3D points and (3) selecting equally distanced planes to define equal length segments along the centerline. The centerline is a vital parameter for any virtual colonoscopy technique as it defines a navigation path along which the imaging proceeds and it provides a natural coordinate system for describing polyp detections. A virtual colonoscopy method is described and claimed in NIH-owned U.S. Patent No. 6,246,784. However, detecting the centerline of the colon is a challenging problem for which a number of approaches have been developed. Most of these approaches are not fully automatic, are slow and require the original CT images. The method of this invention is fully automatic, relatively quick and uses only the 3D surface rather than the original CT images.

Discovery of Novel Inhibitors of HIV–1 Integrase That Can Be Used for the Treatment of Retroviral Infection Including AIDS

Terrence R. Burke, Jr., Xuechen Zhang, Godwin C. G. Pais, Christophe Marchand, Evguenia Svarovskaia, Vinay K. Pathak, and Yves Pommier (NCI)
DHHS Reference No. E–317–2001/0 filed Dec. 07, 2001
Licensing Contact: Sally Hu; 301/435–5606; *hus@od.nih.gov*

This invention provides azido group-containing diketo acids that can inhibit HIV–1 integrase in vitro efficiently while being highly selective for the strand transfer step of the integration reaction. Human Immunodeficiency Virus (HIV) and other retroviruses require three viral enzymes for replication: Reverse transcriptase, protease and integrase. The prognosis of AIDS has been improved recently by the discovery and application of reverse transcriptase and protease inhibitors. However, a significant fraction of patients fail to respond to such treatments and viral resistance remains a major problem. Furthermore, anti-AIDS combinations are often not well tolerated. Thus, HIV integrase is a rational target for AIDS therapy because genetic studies demonstrated that the enzyme is essential for viral replication while being without a cellular equivalent. Therefore, specific integrase inhibitors should be effective and devoid of toxicity. Since this invention involves the discovery of novel HIV–1 integrase inhibitors that are derived from diketo acids with a different anti-HIV mechanism from that of reverse transcriptase and protease inhibitors, these azide group-containing compounds may represent potential new therapeutics for treatment of retroviral infections, including AIDS.

Dated: November 4, 2002.

Jack Spiegel,

Director, Division of Technology, Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 02–28537 Filed 11–7–02; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Regulation of INS (3456) P4 Signalling by a Reversible Kinase/Phosphatase and Methods and Compositions Related Thereto

Dr. Stephen Shears (NIEHS)
DHHS Reference No. E–105–2002/0 filed Mar 18, 2002
Licensing Contact: Marlene Shinn; 301/435–4426; *shinnm@od.nih.gov.*

Signaling entities are frequently controlled by quite delicate shifts in the dynamic balance of regulatory signals with competing impacts. Ion channels provide particularly impressive examples of the degree of signal amplification that can result; switching the conductance state of a single channel can influence the transmembrane movement of millions of ions per second. Both stimulatory (Ca^{2+} and CaMKII) and inhibitory ($Ins(3,4,5,6)P_4$ signals converge on the family of so-called "Ca^{2+}-activated" Cl^- channels. Thus receptor-dependent changes in $Ins(3,4,5,6)P_4$ levels is a topic of general biological significance, in that it impacts upon regulation of salt and fluid secretion from epithelial cells, cell volume homeostasis, and electrical excitability in neurons and smooth muscle. Unfortunately, understanding of the cellular control on $Ins(3,4,5,6)P_4$-signaling has been rudimentary, because the pathway of $Ins(3,4,5,6)P_4$ synthesis has not previously been characterized.

The NIH announces new treatment methods for asthma, bronchitis and cystic fibrosis. The treatments consist of either increasing or decreasing the activity of inositol 1,3,4,5,6 pentakisphosphate 1-phosphatase in a patient, thereby controlling $Ins(3,4,5,6)P_4$-signaling which in turn affects the choride channels and mucus secretion produced. This modulation of inositol 1,3,4,5,6 pentakisphosphate 1-phosphatase is accomplished with the help of an inositol phosphate kinase, which can also act as an inositol pentakisphosphate 1-phosphatase.

Mutated Constitutively Active Nuclear Orphan Receptor

Masahiko Negishi, Akiko Ueda, Lars C. Pedersen, Satoru Kakizaki, Tatsuya Sueyoshi (NIEHS)
DHHS Reference No. E–034–2002/0 filed Feb. 19, 2002
Licensing Contact: Marlene Shinn; 301/435–4426; *shinnm@od.nih.gov.*

The constitutively active nuclear orphan receptor (CAR) activates transcription of genes encoding various drug-metabolizing enzymes such as cytochromes P450 in response to drug exposures. Induction of these enzymes confers on organisms a higher metabolic capability to defend themselves against xenochemical toxicity and/or carcinogenicity. Direct drug responses, however, have not been demonstrated with CAR in a cell-mediated transfectin assay, due to its *in vitro* constitutive activity.

The NIH announces the creation of an altered CAR molecule, with decreased constitutive activity *in vitro* using site-directed mutagenesis to the receptor. This alteration allows the CAR molecule to be directly activated by drugs and can be used for *in vitro* drug screening that will make the screenings more efficient and cost effective.

Bone-Forming Composition, Methods for Making and Methods of Use

Mahesh H. Mankani, Sergei Kuznetsov, Pamela G. Robey (NIDCR)
DHHS Reference No. E–263–2001/0 filed Jan. 25, 2002
Licensing Contact: Marlene Shinn; 301/435–4426; *shinnm@od.nih.gov.*

Transplantation of bone marrow stromal cells (BMSCs) offers a method for repairing and/or closing large bone defects. Although most bone defects occur as a result of trauma, bone loss can also arise from congenital disorders, neoplasms, and/or infections. To make BMSC transplantation most useful as a method for engineering new bone, it would be helpful to optimize the growth rate, extent, and strength of newly formed bone. Current methods of transplantation produce bone that is nonuniform in size, shape and form, making it difficult to compare bone samples directly.

The NIH announces a new method of forming bone tissue based on using a combination of bone marrow stromal cells and hydroxyapatite/tricalcium phosphate particles. The newly created bone has desired dimensions, which are similar, consistent, and/or identical to the shapes of the preformed compositions. When the composition is made with human BMSCs derived from pathological tissue, and transplanted into immunodeficient mice, the new bone reproduces features of the original disease, allowing for the testing of agents that inhibit, stimulate, or modify bone formation.

Methods of Making, Using and Pharmaceutical Formulations Comprising 7-Alpha,11-Beta-Dimethyl-17-Beta-Hydroxyestra-4,14-Dien-3-One and 17 Esters Thereof and 7-Alpha,11-Beta-Dimethyl-17-Beta-Hydroxyestra-4-en-3-One 17-Undecanoate

Drs. Richard Blye and H.K. Kim (NICHD)
DHHS Reference No. E–069–2000/3 filed Mar. 29, 2002 (PCT–CIP Patent Application)
Licensing Contact: Marlene Shinn; 301/435–4426; *shinnm@od.nih.gov.*

The NIH announces a new technology that relates to compounds that possess potent androgenic activity. These compounds offer a potential therapeutic benefit in the treatment of hypogonadism, regardless of cause, as an adjuvant in hormone replacement therapy for both men and women and for androgen stimulation of anabolism in a broad spectrum of disease entities involving debilitation.

These compounds exhibit both oral and parenteral androgenic activity. Oral activity appears greater than that of methyltestosterone. Parenteral activity as an aqueous suspension is substantially longer than that produced by testosterone enanthate or testosterone cypionate. Since these compounds lack a 17-alkyl moiety, they are expected to show less hepatotoxicity upon oral administration. Claims in this patent application are drawn to the new androgenic compounds themselves, their method of preparation, pharmaceutical formulations containing the new androgens and their utility and use in a wide spectrum of therapeutic applications.

Dated: November 4, 2002.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 02–28538 Filed 11–7–02; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Notice of Meeting; Interagency Autism Coordinating Committee

The National Institutes of Health (NIH) hereby announces a meeting of the Interagency Autism Coordinating Committee (IACC) to be held on November 22, 2002, on the NIH campus in Bethesda, Maryland.

The Children's Health Act of 2000 (Pub. L. 106–310), Title I, section 104, mandated the establishment of an Interagency Autism Coordinating Committee (IACC) to coordinate autism research and other efforts within the Department of Health and Human Services (DHHS). In April 2001, Secretary Tommy Thompson delegated the authority to establish the IACC to the National Institutes of Health (NIH). The National Institute of Mental Health (NIMH) at the NIH has been designated the lead for this activity.

The IACC meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the contact person listed below in advance of the meeting.

Name of Committee: Interagency Autism Coordinating Committee.

Date: November 22, 2002.

Time: 8:30 a.m.–5:15 p.m.

Agenda: Discussion of autism activities across Federal agencies.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31,

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Conference Room 10 (6th floor), Bethesda, Maryland 20892.

Contact Person: Ann Wagner, Ph.D., Division of Services and Intervention Research, National Institute of Mental Health, NIH, 6001 Executive Boulevard, Room 7142, MSC 9633, Bethesda, Maryland 20892. Email: < *awagner@mail.nih.gov* > Phone: 301–443–4283.

Any member of the public interested in presenting oral comments to the committee may notify the contact person listed on this notice at least 5 days in advance of the meeting. Interested individuals and representatives of organizations may submit a letter of intent, a brief description of the organization represented, and a short description of the oral presentation. Presentations may be limited to 5 minutes; both printed and electronic copies are requested for the record. In addition, any interested person may file written comments with the committee by forwarding his/her statement to the contact person listed on this notice. The statement should include the name, address, telephone number and, when applicable, the business or professional affiliation of the interested person.

Information about the meeting is also available on-line on the NIMH Home Page at < *http://www.nimh.nih.gov/iacc/index.cfm* >.

Dated: October 31, 2002.

Ruth L. Kirschstein,

Deputy Director, National Institutes of Health.

[FR Doc. 02–28539 Filed 11–7–02; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Minority Institution/Cancer Centers Partnerships: CA03–009, CA03–008, CA03–010.

Date: December 3–4, 2002.

Time: 7 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Ray Bramhall, Ph.D., Scientific Review Administrator, Special Review, Referral and Resources Branch, Division of Extramural Affairs, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Suite 8060, Rockville, MD 20892, (301) 594–1403.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: November 1, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–28533 Filed 11–7–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the meeting of the National Cancer Advisory Board.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

A portion of the meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4), and 552b(6), as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Advisory Board.

Dates: December 4–5, 2002.

Open: December 4, 2002, 8:45 a.m. to 3:15 p.m.

Agenda: Program reports and presentations; Business of the Board.

Place: National Cancer Institute, 9000 Rockville Pike, Building 31, C Wing, 6th Floor, Conference Room 10, Bethesda, MD 20892.

Contact Person: Dr. Marvin R. Kalt, Executive Secretary, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, 8th Floor, Room 8001, Bethesda, MD 20892–8327, (301) 496–5147.

Name of Committee: National Cancer Advisory Board, Subcommittee on Planning and Budget.

Open: December 4, 2002, 11:05 a.m. to 11:55 a.m.

Agenda: To discuss activities related to the Subcommittee on Planning and Budget.

Place: National Cancer Institute, 9000 Rockvill Pike, Building 31, C Wing, 6th Floor, Conference Room 10, Bethesda, MD 20892.

Contact Person: Ms. Cherie Nichols, Executive Secretary, Subcommittee on Planning and Budget, National Cancer Institute, National Institutes of Health, 9000 Rockville Pike, Building 31, Room 11A03, Bethesda, MD 20892, (301) 496–5515.

Name of Committee: National Cancer Advisory Board.

Closed: December 4, 2002, 3:15 p.m. to Recess.

Agenda: Review intramural program site visit outcomes; Discussion of confidential personnel issues.

Place: National Cancer Institute, 9000 Rockville Pike, Building 31, C Wing, 6th Floor, Conference Room 10, Bethesda, MD 20892.

Contact Person: Dr. Marvin R. Kalt, Executive Secretary, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, 8th Floor, Room 8001, Bethesda, MD 20892–8327, (301) 496–5147.

Name of Committee: National Cancer Advisory Board.

Open: December 5, 2002, 8:30 a.m. to 12 p.m.

Agenda: Program reports and presentations; Business of the Board.

Place: National Cancer Institute, 9000 Rockville Pike, Building 31, C Wing, 6th Floor, Conference Room 10, Bethesda, MD 20892.

Contact Person: Dr. Marvin R. Kalt, Executive Secretary, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, 8th Floor, Room 8001, Bethesda, MD 20892–8327, (301) 496–5147.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

Information is also available on the Institute's/Center's home page: *deainfo.nci.nih.gov/advisory/ncab.htm*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: November 1, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–28534 Filed 11–7–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel, T32's.

Date: November 12–14, 2002.

Time: 7 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Ave., Chevy Chase, MD 20815.

Contact Person: Jeffrey M. Chernak, Ph.D., The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Aging Special Emphasis Panel, Human Genetics.

Date: November 18–19, 2002.

Time: 7 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Iberville Suites—New Orleans, 910 Iberville Street, New Orleans, LA 70112.

Contact Person: Alicja L. Markowska, Ph.D., DSC, Scientific Review Office, Gateway Building/Suite 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20817.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Aging Special Emphasis Panel, Intervention Panel.

Date: November 21, 2002.

Time: 8 a.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20814.

Contact Person: Arthur D. Schaerdel, DVM, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: November 4, 2002.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–28527 Filed 11–7–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel, Gordon Conference Review.

Date: December 2, 2002.

Time: 1:30 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: One Democracy Plaza, 6701 Democracy Blvd., Suite 800, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Tracy A Shahan, Ph.D., Scientific Review Administrator, National Institute of Arthritis and Musculoskeletal and Skin Diseases, 6701 Democracy Plaza, Bethesda, MD 20892, (301) 594–4952.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: November 4, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–28528 Filed 11–7–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institutes on Drug Abuse; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, Program Project.

Date: November 20, 2002.

Time: 10 am to 2 pm.

Agenda: To review and evaluate grant applications.

Place: 6001 Executive Boulevard, Suite 3158, Bethesda, MD 20892–9547 (Telephone Conference Call).

Contact Person: Khursheed Asghar, Ph.D., Chief, Basic Sciences Review Branch, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 443–2620.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, Minority Institutions' Drug Abuse Research Development Program (MIDARP).

Date: December 5, 2002.

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Time: 9 am to 5 pm.
Agenda: To review and evaluate grant applications.
Place: Radisson Barcelo, 2121 P Street, NW., Washington, DC 20037.
Contact Person: Marina L. Volkov, Ph.D., Health Scientist Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 435–1433.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, Program Project.
Date: December 16, 2002.
Time: 10 am to 2 pm.
Agenda: To review and evaluate grant applications.
Place: Fairmont Hotel, 2401 M Street, NW., Washington, DC 20037.
Contact Person: Khursheed Asghar, Ph.D., Chief, Basic Sciences Review Branch, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 443–2620.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: November 4, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–28529 Filed 11–7–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel, Bone Marrow.
Date: December 2, 2002.
Time: 12 p.m. to 1 p.m.
Agenda: To review and evaluate grant applications.
Place: 1 Democracy, 6701 Democracy Blvd., Suite 707 MSC 4879, (Telephone Conference Call).
Contact Person: Tracy A. Shahan, Ph.D., Scientific Review Administrator, National Institute of Arthritis and Musculoskeletal and Skin Diseases, Natcher Building, MSC 6500, 45 Center Drive, 5AS–25H, Bethesda, MD 20892, (301) 594–4952.

Name of Committee: National Institute of Arthritis and Skin Diseases Special Emphasis, Panel. R03's Small Grants for New Investigators.
Date: December 16, 2002.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.
Contact Person: Richard J. Bartlett, Ph.D., Scientific Review Administrator, National Institute of Arthritis and Musculoskeletal and Skin Diseases, 6701 Democracy Plaza, Bethesda, MD 20892, (301) 594–4952.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: November 4, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–28530 Filed 11–7–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel, 03–27 Review of R21 Grants.
Date: December 12, 2002.
Time: 3 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: 45 Center Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: H. George Hausch, Ph.D., Acting Director, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institute of Health, Bethesda, MD 20892, (301) 594–2372.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel, 03–14 Review of R44 Grants.
Date: December 19, 2002.
Time: 1 p.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: 45 Center Drive, Bethesda, MD 20892, (Telephone Conference Call).
Time: 1 p.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: 45 Center Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Philip Washko, Ph.D., DMD, Scientific Review Administrator, 45 Center Drive, Natcher Building, Rm. 4AN44F, National Institute of Health, Bethesda, MD 20892, (301) 594–2372.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel, 03–28 Review of R01 Grants.
Date: December 20, 2002.
Time: 1 p.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: 45 Center Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Philip Washko, Ph.D., DMD, Scientific Review Administrator, 45 Center Drive, Natcher Building, Rm. 4AN44F, National Institute of Health, Bethesda, MD 20892, (301) 594–2372.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: November 4, 2002.

LaVerne Y. Springfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–28531 Filed 11–07–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institute of Dental & Craniofacial Research; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel, 03–27 Review of R21 Grants.
Date: December 12, 2002.
Time: 3 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: 45 Center Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: H. George Hausch, Ph.D., Acting Director, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institute of Health, Bethesda, MD 20892, (301) 594–2372.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel, 03–14 Review of R44 Grants.
Date: December 19, 2002.
Time: 1 p.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: 45 Center Drive, Bethesda, MD 20892, (Telephone Conference Call).
Time: 1 p.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: 45 Center Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Philip Washko, Ph.D., DMD, Scientific Review Administrator, 45 Center Drive, Natcher Building, Rm. 4AN44F, National Institute of Health, Bethesda, MD 20892, (301) 594–2372.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel, 03–28 Review of R01 Grants.
Date: December 20, 2002.
Time: 1 p.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: 45 Center Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Philip Washko, Ph.D., DMD, Scientific Review Administrator, 45 Center Drive, Natcher Building, Rm. 4AN44F, National Institute of Health, Bethesda, MD 20892, (301) 594–2372.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: November 4, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–28532 Filed 11–7–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Family-Based Interventions to Influence Diet and Physical Activity.
Date: November 14, 2002.
Time: 11 a.m. to 12 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Michael Micklin, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3178, MSC 7848, Bethesda, MD 20892, (301) 435–1258, *micklinm@csr.nih.gov.*
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 BBGB (1) 40 Chemistry/Biophysics Program Project Panel.
Date: November 18, 2002.
Time: 8 a.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: The Latham Hotel, 3000 M Street, NW., Washington, DC 20007.
Contact Person: Arnold Revzin, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4184, MSC 7824, Bethesda, MD 20892, (301) 435–1153.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Risk for Violence.
Date: November 18, 2002.
Time: 2 p.m. to 3:15 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Mariela Shirley, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4112, MSC 7848, Bethesda, MD 20892, (301) 435–3554, *shirleym@csr.nih.gov.*
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Immunology: Autoimmune Disease Antagonists.
Date: November 19, 2002.
Time: 1 p.m. to 2 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Stephen M. Nigida, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4112, MSC 7812, Bethesda, MD 20892, (301) 435–3565.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 MEDB (02) Identification of Histone Gene Regulation Sequences.
Date: November 21, 2002.
Time: 12:30 p.m. to 2:30 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Alec S. Liacouras, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5154, MSC 7842, Bethesda, MD 20892, (301) 435–1740.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Immunology Computer Modeling.
Date: November 22, 2002.
Time: 10 a.m. to 11 a.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Stephen M. Nigida, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4112, MSC 7812, Bethesda, MD 20892, (301) 435–3565.

Name of Committee: Center for Scientific Review Special Emphasis Panel, CDF R01 Conflict Reviews.
Date: December 2, 2002.
Time: 1 p.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Richard D. Rodewald, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5142, MSC 7840, Bethesda, MD 20892, (301) 435–1024, *rodewalr@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 PTHA (02) M: Molecular Pharmacology of Shingosine-1-Phosphate.
Date: December 2, 2002.
Time: 1:15 p.m. to 2:15 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Larry Pinkus, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4132, MSC 7802, Bethesda, MD 20892, (301) 435–1214.

Name of Committee: Center for Scientific Review Special Emphasis Panel, BDCN–5 (05).
Date: December 2, 2002.
Time: 2 p.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Sherry L. Stuesse, Ph.D., Scientific Review Administrator, Division of Clinical and Population-Based Studies, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room 5188, MSC 7846, Bethesda, MD 20892, *stuesses@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Respiratory.
Date: December 2, 2002.
Time: 2 p.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Bernard F. Driscoll, Phd, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5158, MSC 7844, Bethesda, MD 20892, (301) 435–1242.

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Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SNEM–5 (06) M Member Conflict Health Services Research.

Date: December 2, 2002.

Time: 2 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Ann Hardy, DRPH, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3158, MSC 7770, Bethesda, MD 20892, *hardyan@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 IFCN–7 (10) Neuroscience–SBIR/STTR.

Date: December 3, 2002.

Time: 8:30 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: The River Inn, 924 Twenty-Fifth Street, NW. Washington, DC 20037.

Contact Person: Bernard F. Driscoll, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5158, MSC 7844, Bethesda, MD 20892, (301) 435–1242.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Reviewer Conflict Applications.

Date: December 3, 2002.

Time: 11 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Abraham P. Bautista, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5102, MSC 7852, Bethesda, MD 20892, (301) 435–1506, *bautista@csr.nih.gov.*

Nome of Committee: Center for Scientific Review Special Emphasis Panel, Review of Investigator Interactive Research Projects.

Date: December 5, 2002.

Time: 11 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Abraham P. Bautista, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5102, MSC 7852, Bethesda, MD 20892, (301) 435–1506. *bautista@csr.nih.gov.*

Nome of Committee: Center for Scientific Review Special Emphasis Panel, Drosphila.

Date: December 5, 2002.

Time: 2:30 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Bernard F. Driscoll, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5158, MSC 7844, Bethesda, MD 20892, (301) 435–1242.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Regulation of eNOS.

Date: December 5, 2002.

Time: 4 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Joyce C. Gibson, DSC, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4172, MSC 7804, Bethesda, MD 20892, (301) 435–4522, *gibsonj@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: November 1, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–28535 Filed 11–07–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4730–N–45]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: November 8, 2002.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, Department of Housing and Urban Development, Room 7262, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: November 1, 2002.

John D. Garrity,

Director, Office of Special Needs Assistance Programs.

[FR Doc. 02–28291 Filed 11–7–02; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of approved Tribal-State Compact.

SUMMARY: Pursuant to Section 11 of the Indian Gaming Regulatory Act of 1988, Pub. L. 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III gaming activities on Indian lands. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved the Tribal-State Compact for Class III Gaming between the Shoalwater Indian Tribe and the State of Washington, which was executed on September 4, 2002.

EFFECTIVE DATE: November 8, 2002.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Office of Indian Gaming Management, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: October 24, 2002.

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

[FR Doc. 02–28426 Filed 11–7–02; 8:45 am]

BILLING CODE 4310–4N–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–090–03–9971–EK]

Conservation Helium Sales

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice requesting comment to proposed conservation helium sale.

SUMMARY: The purpose of this action is to request comments on the proposed method of sale to begin implementation of the terms of the Helium Privatization Act (HPA) of 1996 dealing with the conservation helium reserve sell off. The Act requires the Department of the Interior to offer for sale, beginning no later than 2005, a portion of the conservation helium stored underground at the Cliffside Field north of Amarillo, TX. The Department of the Interior in consultation with the private helium industry has determined that private companies with refining capacity along the crude helium pipeline will need a supply of helium in excess of that available from their own storage accounts and that available from crude helium extractors in the region. This is the first of 12 annual sales that the Department will conduct to dispose of the conservation helium stored underground at the Cliffside Field. The annual sales are being conducted in a manner intended to prevent market disruptions occurring from a shortage of crude helium. This first sale will be used to test the disposal process with subsequent sales adjusted as needed.

DATES: Submit comments on or before December 9, 2002.

ADDRESSES: Comments: If you wish to comment, you may submit your comments by any one of several methods. You may mail comments to Bureau of Land Management; Amarillo Field Office; 810 S. Fillmore, Suite 500; Amarillo, TX 79101; Attention: Crude Helium Sale or e-mail them to *AmFOFMO@blm.gov* with Crude Helium Sale in the subject line.

FOR FURTHER INFORMATION CONTACT: Timothy R. Spisak, (806) 356–1002 Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

1.01 What Is the Purpose of the Sale?

The purpose of this sale is to begin implementation of the terms of the Helium Privatization Act (HPA) of 1996 dealing with the conservation helium reserve sell off. The Act requires the Department of the Interior to offer for sale, beginning no later than 2005, a portion of the conservation helium stored underground at the Cliffside Field north of Amarillo, TX. The Department of the Interior in consultation with the private helium industry has determined that private companies with refining capacity along the crude helium pipeline will need a supply of helium in excess of that available from their own storage accounts and that available from crude helium extractors in the region. This is the first of 12 annual sales that the Department will conduct to dispose of the conservation helium stored underground at the Cliffside Field. The annual sales are being conducted in a manner intended to prevent market disruptions occurring from a shortage of crude helium. This first sale will be used to test the disposal process with subsequent sales adjusted as needed.

1.02 What Terms Do I Need To Know to Understand This Sale?

Allocated sale—That portion of the annual sale volume of conservation helium that will be set aside for purchase by the crude helium refiners.

Annual conservation helium sale—The sale of a certain volume of conservation helium to private entities conducted annually beginning no later than 2005.

Bidder—Any entity or person who submits a request for purchase of a volume of the annual conservation helium sale and has met the qualifications contained in part 1.05 in this notice.

BLM—The Bureau of Land Management.

Conservation helium—The crude helium purchased by the U.S. Government under the authority of the Helium Act of 1960 and stored underground in the Cliffside Field.

Crude helium—A partially refined gas containing about 70 percent helium and 30 percent nitrogen. However, the helium concentration may typically vary from 50 to 95 percent.

Crude helium refiners—Those entities with a capability of refining crude helium and having a connection point on the crude helium pipeline and a valid helium storage contract as of the date of a conservation helium sale.

Excess volumes—Allocated sale volumes not requested by the crude helium refiners.

Helium storage contract—A contract between the BLM and a private entity allowing the private entity to store crude helium in underground storage at the Cliffside Field.

HPA—The Helium Privatization Act of 1996.

In-kind crude helium—Conservation helium purchased by private refiners in exchange for like amounts of pure helium sold to Federal Agencies and their contractors in accordance with the HPA.

MMcf—One million cubic feet of gas measured at standard conditions of 14.65 pounds per square inch (psi) and 60° F.

Mcf—One thousand cubic feet of gas measured at standard conditions of 14.65 psi and 60° F.

Non-allocated sale—That portion of the annual sale volume of conservation helium that will be offered to all qualified Bidders.

1.03 What Volume of Conservation Helium Will Be Offered in the Year 2003 Annual Conservation Helium Sale?

The volume of helium available for this sale is 2,100 MMcf. In accordance with the HPA, this volume was determined by dividing the total volume of stored conservation helium less the statutory required reservation of 600 MMcf for Government purposes less estimated in-kind crude helium transfers for 12 years divided by 12.

1.04 At What Price Will the Conservation Helium Be Sold?

The conservation helium will be sold at the same price as in-kind crude helium. For fiscal year 2003 that price is $52.50 per Mcf.

1.05 Am I Qualified To Purchase Conservation Helium at This Sale?

Any person, firm, partnership, joint stock association, corporation, or other domestic or foreign organization operating partially or wholly within the United States who meets one or more of the following requirements is qualified to submit a purchase request:

- Operates a helium purification plant within the U.S., or
- Operates a crude helium extraction plant within the U.S., or
- Is a wholesaler of pure helium or purchases helium for resale within the U.S., or
- Is a consumer of pure helium within the U.S.

All entities requesting participation in the non-allocated sale must submit proof of being qualified to purchase conservation helium and must either have a helium storage contract with the BLM or have a third party agreement in place with a valid storage contract holder.

1.06 When Will the Conservation Helium Be Offered for Sale?

The BLM, Amarillo Field Office, will accept requests for purchase of conservation helium from final publication of this notice until January 15, 2003. On January 16, 2003, requests to purchase conservation helium will be opened and evaluated. Thereafter, volumes of this conservation helium sale will be apportioned and allocated according to the sale rules described in this notice.

1.07 What Must I Do To Submit a Request for Purchase?

You must submit the following information to the BLM, Amarillo Field Office:

- Billing address information and name(s) of principle officers of the company.
- Proof of being an entity qualified to purchase conservation helium at this sale as defined in part 1.05 above. Documents such as invoices for sale or purchase of helium, helium storage

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contracts, or other relevant documents may be submitted as proof of qualification.

- The amount (in Mcf) of conservation helium requested.
- Certified check or money order in the amount of $1,000 made payable to the Bureau of Land Management. This money will be used to cover administrative expenses to conduct this sale and is nonrefundable.

1.08 Where Do I Send My Request for Purchase?

All requests for purchase of helium as part of this sale must be sent by certified mail to: Bureau of Land Management, Amarillo Field Office, 810 S. Fillmore, Suite 500, Amarillo, TX 79101, Attention: Crude Helium Sale.

1.09 When Do I Need to Submit Payment for Any Conservation Helium Sold to Me?

Successful purchasers will submit payments according to the following schedule: 25% by February 28, 2003; 25% by April 30, 2003; 25% by June 30, 2003; 25% by September 30, 2003.

Conservation helium will not be transferred to the purchaser's storage account until payment is received for that portion. Successful purchasers may, at their option, accelerate the purchase schedule.

1.10 To Whom Do I Make Payments for Awarded Conservation Helium Volumes?

Make checks payable to the Bureau of Land Management at the address listed in part 1.08 of this notice.

1.11 Are There Any Penalties for Not Paying for the Conservation Helium in a Timely Manner?

If a payment is not received by the due date, the purchaser will forfeit the remainder of its allotment unless the purchaser can show that payment was late through no fault of its own. However, penalty interest will be accessed in accordance with the Debt Collection Act of 1982, 31 U.S.C. 951–953.

1.12 How Will I Know if I Have Been Successful in My Purchase Request?

Successful purchasers will be notified in writing by BLM no later than January 31, 2003, with the awarded volumes and payment schedule.

Allocated Sale

2.01 What Is the Allocated Sale?

That portion of the annual sale volume of Conservation Helium that will be set aside for purchase by the crude helium refiners.

2.02 Who Will Be Allowed To Purchase Conservation Helium in The Allocated Sale?

Only those who meet the definition of crude helium refiners as defined in part 1.01 of this notice.

2.03 What Volume of Conservation Helium is Available in the Allocated Sale?

The amount available will be 90 percent of the total volume of the annual conservation helium sale—1,890 MMcf.

2.04 How Will the Conservation Helium Be Apportioned Among the Refiners?

The apportionment to each crude helium refiner will be based on its percentage share of the total refining capacity as of October 1, 2000, connected to the BLM crude helium pipeline.

2.05 What Will Happen if a Refiner or Refiners Request an Amount Other Than Their Share of What is Offered for Sale?

- If one or more refiners request less than their allocated share, any other refiner(s) that requested more than their share will be allowed to purchase the excess volume based on proportionate shares of remaining refining capacities.
- Requests by the crude helium refiners that are in excess of the amount available above will be carried over to the non-allocated sale and considered a separate bid under the non-allocated sale rules.

2.06 What Will Happen if the Total Amount Requested By the Crude Helium Refiners is Less Than the 1,890 MMcf Offered in the Allocated Sale?

Any excess volume not sold to the crude helium refiners will be added to the non-allocated Sale volume.

2.07 Do You Have a Hypothetical Example of How an Allocated Sale Would Be Conducted?

2,100 MMcf available for total sale with 90 percent available for allocated sale (1,890 MMcf).

Bidder—allocated sale	Installed refining capacity (percent)	Refiner bid volume*	Allocated volume*	Excess volume requested*	Proration percent	Excess allocated*	Total allocated*	Carry over to non-allocated sale*
Refiner A	10	225	189	36	20	36	225	0
Refiner B	50	750	750	0	0	0	750	0
Refiner C	40	985	756	229	80	156+3	915	70
Total	100	1,960	1,695	265	100	195	1,890	70

*All volumes in MMcf.

After the initial allocation, refiner B has received all requested. However, 265 MMcf is deemed excess of the total in the first iteration of the Allocated Sale and reallocated to the two remaining refiners based on the refining capacity between them. With the reallocation, refiner A gets all requested, but refiner C is still short by 73 MMcf. Additionally, 3 MMcf remains unallocated and without any other refiners is awarded to refiner C, who now has a remaining request of 70 MMcf that is posted into the non-allocated sale.

Non-Allocated Sale

3.01 What Is the Non-Allocated Sale?

That portion of the annual sale Volume of conservation helium that will be offered to all qualified bidders.

3.02 What Is the Minimum Volume I Can Request? The Minimum Request Is 5 MMcf.

3.03 What Volume of Conservation Helium Is Available for the Non-Allocated Sale?

The total volume of conservation helium available for this portion of the sale is 210 MMcf plus any additional helium that is not sold as part of the allocated sale.

3.04 How Is the Ratio of Allocated to Non-Allocated Sale Volumes Determined?

According to the terms of the HPA, the BLM must conduct the annual conservation helium sales in a manner not to cause undue helium market disruptions; and therefore, the majority of the conservation helium is being offered as part of the allocated sale. Currently, the crude helium refiners have refining capacity roughly double what can be supplied through the annual conservation helium sales. Although there are other crude helium supplies available to the crude helium refiners, these supplies are declining each year. The BLM must be sensitive to the crude helium refiners requirements while maintaining a balance with other helium industry requirements. The exact ratio of allocated to non-allocated sale volumes may change for subsequent annual conservation helium sales.

3.05 How Will the Non-Allocated Conservation Helium Be Apportioned Among the Bidders?

The conservation helium will be apportioned equally in 1 Mcf increments among the bidders with no prospective bidder receiving more than its request.

3.06 What Will Happen if the Bidders Request More Than What Is Made Available for Sale in Part 3.03 of This Notice?

- If one or more bidders request less than their apportioned amount, any other bidder(s) that requested more than its apportioned amount will be allowed to purchase equally apportioned amounts of the remaining volume available for this sale.
- If all bidders request more than their apportioned amount each bidder will receive its apportioned amount as determined in part 3.05 of this notice.

3.07 What Will Happen if a Bidder Requests Less Than Its Apportioned Amount?

Any bidder requesting less than the calculated apportioned volume, will receive the amount of its request and amounts remaining will be reapportioned in accordance with part 3.03 of this notice.

3.08 What Will Happen if the Total Requests From All Bidders Are Less Than That Offered for Sale in the Non-Allocated Sale?

If the total non-allocated volume requested is less than the non-allocated volume offered for this portion of the sale, the excess amount will not be sold and will be held in storage for future sales.

3.09 Do You Have a Hypothetical Example of How a Non-Allocated Sale Would Be Conducted?

2,100 MMcf available for total sale with 10 percent available for non-allocated sale (210 MMcf).

Bidder—Non-allocated sale	Bid volume*	Apportioned volume*	Excess volume requested*	Proration percent	Excess apportioned*	Total apportioned*	Amount requested not received*
Refiner C	70	52.5	17.5	50	15	67.5	2.5
Company D	100	52.5	47.5	50	15	67.5	32.5
Company E	50	50	0	0	0	50	0
Company F	25	25	0	0	0	25	0
Total	245	180	65	100	30	210	35

*All volumes in MMcf.

In this example, three companies submit a request and there is a carryover amount from one of the crude helium refiners in the allocated sale that is considered as a separate request. Each bidder would be apportioned 52.5 MMcf, (*i.e.*, 210 MMcf of non-allocated conservation helium ÷ 4 bidders = 52.5 MMcf per bidder).

After the initial allocation, companies E & F have received all they requested. However, 30 MMcf is deemed excess in the first iteration of the non-allocated sale and reallocated to the two remaining bidders. With the reallocation, refiner C and company D each receives an additional 15 MMcf. No more helium is available, refiner C and company D do not receive all that they requested, and the sale is complete.

Dated: October 9, 2002.

Richard A. Whitley,

Acting State Director, New Mexico.

[FR Doc. 02–28702 Filed 11–7–02; 1:50 pm]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–926–03–1420–BJ]

Montana: Filing of Plat of Amended Protraction Diagram

AGENCY: Bureau of Land Management, Montana State Office, Interior.

ACTION: Notice of Filing of Plat of Amended Protraction Diagram.

SUMMARY: The Bureau of Land Management (BLM) will file the plat of the amended protraction diagram of the lands described below in the BLM Montana State Office, Billings, Montana, (30) days from the date of publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Robert L. Brockie, Cadastral Surveyor, Branch of Cadastral Survey, Bureau of Land Management, 5001 Southgate Drive, PO 36800, Billings, Montana 59107–6800, telephone (406) 896–5125 or (406) 896–5009.

SUPPLEMENTARY INFORMATION: The amended protraction diagram was prepared at the request of the U.S. Forest Service, and was necessary to accommodate Revision of Primary Base Quadrangle Maps for the Geometronics Service Center. The lands for the prepared amended protraction diagram are:

Principal Meridian, Montana

Tps. 11, 12, and 13 S., Rs. 12, 13, and 15 W.

The plat, representing the Amended Protraction Diagram 55 Index of unsurveyed Townships 11, 12, and 13 South, Ranges 12, 13, and 15 West, Principal Meridian, Montana, was accepted October 24, 2002.

T. 11 S., R. 15 W.

The plat, representing Amended Protraction Diagram 55 of unsurveyed Township 11 South, Range 15 West, Principal Meridian, Montana, was accepted October 24, 2002.

T. 12 S., R.15 W.

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The plat, representing Amended Protraction Diagram 55 of unsurveyed Township 12 South, Range 15 West, Principal Meridian, Montana, was accepted October 24, 2002.

T. 12 S., R. 13 W.

The plat, representing Amended Protraction Diagram 55 of unsurveyed Township 12 South, Range 13 West, Principal Meridian, Montana, was accepted October 24, 2002.

T. 12 S., R. 12 W.

The plat, representing Amended Protraction Diagram 55 of unsurveyed Township 12 South, Range 12 West, Principal Meridian, Montana, was accepted October 24, 2002.

T. 13 S., R. 12 W.

The plat, representing Amended Protraction Diagram 55 of unsurveyed Township 13 South, Range 12 West, Principal Meridian, Montana, was accepted October 24, 2002.

We will place a copy of the plat of the amended protraction diagram we described in the open files. It will be available to the public as a matter of information.

If BLM receives a protest against this amended protraction diagram, as shown on this plat, prior to the date of the official filing, we will stay the filing pending our consideration of the protest.

We will not officially file this plat of the amended protraction diagram until the day after we have accepted or dismissed all protests and they have become final, including decisions on appeals.

Dated: October 31, 2002.

Thomas M. Deiling,

Chief Cadastral Surveyor, Division of Resources.

[FR Doc. 02–28470 Filed 11–7–02; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Boundary Amendment—Harpers Ferry National Historical Park

AGENCY: Department of the Interior, National Park Service.

ACTION: Notice of boundary amendment—Harpers Ferry National Historical Park.

SUMMARY: Notice is hereby given that the National Park Service (NPS) is amending the boundary of Harpers Ferry National Historical Park to include three additional tracts of land containing 160 acres.

FOR FURTHER INFORMATION CONTACT: Chief, Land Resources Program Center, National Capital Region, National Park Service, 1100 Ohio Drive, SW., Washington, DC 20242.

SUPPLEMENTARY INFORMATION: The Act of June 30, 1944, c. 328, 58 Stat. 645 (codified as amended and supplemented, 16 U.S.C. 450bb–450bb–6), which established Harpers Ferry National Historical Park, provides the Secretary of the Interior with authority to make minor revisions in the boundary of the Park. Such boundary revisions may be made, when necessary, after advising the appropriate Congressional committees, and following publication of a revised boundary map, drawing, or other boundary description in the **Federal Register**.

In order to properly interpret and preserve the historic and scenic character of Harpers Ferry National Historical Park, it is necessary to revise the existing boundary to include three additional tracts of land comprising approximately 160 acres. The inclusion of these tracts within the boundary will increase the acreage of the Park to approximately 2,505 acres, the existing acreage ceiling for the Park as set forth by Pub. L. 101–109, approved October 6, 1989. The properties will be acquired by purchase.

Notice is hereby given that the exterior boundary of Harpers Ferry National Historical Park is revised to include the following tracts of land described as follows:

Tract Number P102–01

Beginning at a point in the centerline of West Virginia Route 27 (Bakerton Road) said point also being a corner common to Wallich thence with said centerline the following nine (9) courses:

1. South 20°06′32″ West 96.87 feet, thence
2. South 23°28′14″ West 151.46 feet, thence
3. South 23°14′14″ West 462.57 feet, thence
4. South 23°30′40″ West 198.75 feet, thence
5. South 23°59′38″ West 594.37 feet, thence
6. South 23°40′44″ West 395.36 feet, thence
7. South 23°17′36″ West 163.64 feet, thence
8. South 23°04′41″ West 198.57 feet, thence
9. South 23°43′59″ West 330.97 feet, thence
10. South 23°30′42″ West 137.18 feet, thence departing said centerline and running through the following three (3) courses:
11. North 66°31′59″ West 903.11 feet passing through a set #5 rebar and cap from the beginning thereof, to a set #5 rebar and cap thence
12. North 23°21′50″ East 811.82 feet to a fence post thence
13. North 23°26′52″ East 1,842.14 feet to a set #5 rebar and cap at the base of a fence and corner to aforesaid Wallich thence with said Wallich the following three (3) courses
14. South 21°07′45″ East 14.20 feet to a set #5 rebar and cap thence
15. South 72°11′45″ East 829.96 feet to a set #5 rebar and cap thence
16. South 69°41′45″ East 69.78 feet passing through a set #5 rebar and cap distant 15.00 feet from the end thereof to the point of beginning containing 56.00 acres, including that portion of WV Route 27 right-of-way and a proposed 40-foot wide access easement leading from WV Route 27 to the remainder of the property.

Being a part of the same property conveyed to the Civil War Preservation Trust from Anita D. Brown, Executrix of the Estate of Dixie D. Kilham, by a deed dated June 4, 2002, and recorded among the Land Records of Jefferson County, West Virginia in Deed Book 961, Page 219.

Tract Number P102–02

All those three certain tracts or parcels of real estate containing 3.93 acres, more or less, in the aggregate, designated as "WILT T.M. 6A/10, 11, 12 W.B. EE/346" on a plat of survey thereof dated June 9, 1995, prepared by Peter H. Lorenzen, L.P.S., entitled "PLAT OF RESURVEY for Norman Lester Wilt, Jr.," to which said plat reference is hereby made for a more complete and accurate description by metes and bounds of the parcels; TOGETHER WITH a perpetual non-exclusive easement for purposes of ingress and egress to and from the property over and across that certain area designated as "20' ROW (NOT IN USE)" and "40' ROW (NOT IN USE)."

Being the same property conveyed to Scot M. Faulkner by Norman L. Wilt, Sr. and Susan M. Wilt, husband and wife, by Deed dated June 9, 1995, and recorded among the Land Records of Jefferson County, West Virginia, in Deed Book 807, Page 394.

Tract Number P103–01

All of the land together with improvements situated thereon as shown on a Final Plat entitled "MURPHY'S LANDING" dated May 2001, and prepared by R. Michael Shepp, P.S. of Appalachian Surveys of West Virginia, L.L.C.

Being all of the land acquired by Karen Dixon Fuller from Margaret Murphy by dated Deed December 30, 1997, and recorded among the Land Records of Jefferson County, West Virginia, in Deed Book 885, Page 444, AND all of the land acquired by Josephine K. Curtis and Karen Dixon Fuller from Recreational Adventures Campgrounds, Limited Liability Company by a Deed of Exchange dated February 1, 1999, and recorded among the Land Records of Jefferson County, West Virginia in Deed Book 923, Page 450.

Subject to all restrictive covenants, conditions easements, rights-of-way and limitations of record.

The above described parcels of land contain in the aggregate 160 acres of land and are depicted on Harpers Ferry National Historical Park Land Status Map numbered 385/80085, Segments 102 and 103, dated July, 2002.

All maps and drawings referenced are on file and available for inspection in the offices of the Land Resources Program Center, National Capital Region, National Park Service, Department of Interior, 1100 Ohio Drive, SW., Washington, DC 20242.

Dated: September 25, 2002.

Terry R. Carlstrom,

Regional Director, National Capital Region.

[FR Doc. 02–28520 Filed 11–7–02; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Concession Contracts and Permits: Expiring Contracts; Extension For up to One Year

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Pursuant to 36 CFR 51.23, public notice is hereby given that the National Park Service proposes to extend the following expiring concession contracts for a period of up to one year, or until such time as a new contract is executed, whichever occurs sooner.

SUPPLEMENTARY INFORMATION: All of the listed concession authorizations will expire by their terms on or before December 31, 2002. The National Park Service has determined that the proposed short-term extensions are necessary in order to avoid interruption of visitor services and has taken all reasonable and appropriate steps to consider alternatives to avoid such interruption. These extensions will allow the National Park Service to complete and issue prospectuses leading to the competitive selection of concessioners for new long-term concession contracts covering these operations.

Conc ID Number	Concessioner name	Park
DENA005–98	Rainier Mountaineering, Inc	Denali National Park.
DENA006–98	Mountain Trip, Inc	Denali National Park.
DENA008–98	Alaska Mountaineering School	Denali National Park.
DENA009–98	Alpine Ascents International	Denali National Park.
DENA010–98	American Alpine Institute	Denali National Park.
DENA011–98	NOLS	Denali National Park.
DENA013–98	DNP Wilderness Centers	Denali National Park.
DENA015–98	Kantishna Roadhouse	Denali National Park.
DENA016–98	Denali National Park Backcountry Lodge	Denali National Park.
DENA022–97	Alpine Air	Denali National Park.
DENA023–97	Doug Geeting Aviation	Denali National Park.
DENA024–97	Hudson Air Service	Denali National Park.
DENA025–97	K2-Rustair	Denali National Park.
DENA027–98	McKinley Air Service	Denali National Park.
DENA028–97	Fly Denali National Park	Denali National Park.
DENA029–97	Talkeetna Air Taxi	Denali National park.
DENA030–97	Kantishna Air Taxi	Denali National park.
DENA018–98	EarthSong Lodge Dog Sled Adv	Denali National Park.
DENA021–98	Denali National Park West Lodge	Denali National Park.
DENA001–81	ARAMARK	Denali National Park.
ARO001–98	Alaska Natural History Assn	AK Parks.
GLBA008–98	Alaska Discovery, Inc	Glacier Bay National Park and Preserve.
GLBA009–98	Alaska Discovery, Inc	Glacier Bay National Park and Preserve.
GLBA010–98	Gray, Gary C., Reg. Guide	Glacier Bay National Park and Preserve.
GLBA011–98	Chilkat Guides	Glacier Bay National Park and Preserve.
GLBA012–98	Colorado River/Trail Exp., Inc	Glacier Bay National Park and Preserve.
GLBA013–98	James Henry River Journeys	Glacier Bay National Park and Preserve.
GLBA014–98	Mountain Travel/Sobek	Glacier Bay National Park and Preserve.
GLBA017–98	Wilderness River Outfitters	Glacier Bay National Park and Preserve.
GLBA015–98	Chicagaof Charters	Glacier Bay National Park and Preserve.
GLBA016–98	Grand Pacific Charters	Glacier Bay National Park and Preserve.
GLBA018–98	Glacier Guides	Glacier Bay National Park and Preserve.
GLBA019–98	Marine Adventure Sailing Tours	Glacier Bay National Park and Preserve.
GLBA025–98	Princeton Hall Ltd	Glacier Bay National Park and Preserve.
GLBA026–98	Lisianski Charters	Glacier Bay National Park and Preserve.
GLBA027–98	Gustavus Marine Charters	Glacier Bay National Park and Preserve.
GLBA028–98	Eltin Cove Sportfishing Lodge	Glacier Bay National Park and Preserve.
GLBA021–98	Seawind Charters	Glacier Bay National Park and Preserve.
GLBA030–98	Dolphin Charters	Glacier Bay National Park and Preserve.
GLBA031–98	Glacier Bay National Park and Preserve Country Inn	Glacier Bay National Park and Preserve.
GLBA032–98	Sea Wolf Wilderness Adventures	Glacier Bay National Park and Preserve.
GLBA020–98	Northern Lights Haven	Glacier Bay National Park and Preserve.
GLBA029–98	Johnny's East River Lodge	Glacier Bay National Park and Preserve.
GLBA033–98	Gray, Gary C., Reg. Guide	Glacier Bay National Park and Preserve.
GLBA035–98	Glacier Bay National Park and Preserve Sea Kayaks	Glacier Bay National Park and Preserve.
GLBA037–98	New World Ship Management	Glacier Bay National Park and Preserve.
GLBA038–98	Lindblad Expeditions, Inc	Glacier Bay National Park and Preserve.

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Conc ID No.	Concessioner name	Park
GLBA039–99	Alaska Sightseeing/Cruise West	Glacier Bay National Park and Preserve.
GLBA041–98	Glacier Bay National Park and Preserve Park Concessions	Glacier Bay National Park and Preserve.
GLBA044–98	Glacier Bay National Park and Preserve Adventures	Glacier Bay National Park and Preserve.
GLBA901–98	Gray, Gary C., Reg. Guide	Glacier Bay National Park and Preserve.
GLBA902–98	Latham, John H., Reg. Guide	Glacier Bay National Park and Preserve.
NOAT901–98	Philip E. and Carol M. Driver	Noatak National Preserve.
NOAT906–98	David Leonard	Noatak National Preserve.
NOAT904–98	Jake & Patricia Jacobson	Noatak National Preserve.
KATM005–98	Branch River Air Service	Katmai National Park.
KATM006–98	Bristol Bay Sportfishing	Katmai National Park.
KATM002–98	No See Um Lodge	Katmai National Park.
KATM007–98	Mike Cusack's King Salmon Lodge	Katmai National Park.
KATM004–98	Shaska Ventures	Katmai National Park.

EFFECTIVE DATE: January 2, 2003.

FOR FURTHER INFORMATION CONTACT: Cynthia Orlando, Concession Program Manager, National Park Service, Washington, DC, 20240, Telephone 202/513–7156.

Dated: October 24, 2002.

Richard G. Ring,

Associate Director, Administration, Business Practices and Workforce Development.

[FR Doc. 02–28514 Filed 11–7–02; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Concession Contracts and Permits: Expiring Contracts; Extension for up to One Year

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Pursuant to the terms of existing concession permits, with the exception of construction on National Park Service lands, public notice is hereby given that the National Park Service intends to provide visitor services under the authority of a temporary concession contract with a term of up to one year from the date of permit expirations.

SUPPLEMENTARY INFORMATION: The permits listed below have been extended to the maximum allowable under 36 CFR 51.23. Under the provisions of current concession permits, with one exception, and pending the development and public solicitation of a prospectus for a new concession permit, the National Park Service authorizes continuation of visitor services under a temporary concession contract for a period of up to one year from the expiration of the current concession permit. The exception precludes construction on National Park Service lands, regardless of whether the current permit authorizes such activity. The temporary contract does not affect any rights with respect to selection for award of a new concession contract.

Conc ID No.	Concessioner name	Park
ANIA904–98	King Guiding Service	Aniakchak National Monument.
ANIA903–98	Katmai Guide Service	Aniakchak National Monument.
ANIA906–98	Cinder River Lodge	Aniakchak National Monument.
LACL901–96	Northward Bound	Lake Clark National Park.
LACL902–95	Alaska Wilderness Trips	Lake Clark National Park.
GAAR001–95	Richard A. Guthrie	Gates of the Arctic National Preserve.
GAAR002–96	Rob Holt	Gates of the Arctic National Preserve.

EFFECTIVE DATE: January 2, 2003.

FOR FURTHER INFORMATION CONTACT: Cynthia Orlando, Concession Program Manager, National Park Service, Washington, DC 20240, Telephone, 202/513–7156.

Dated: October 24, 2002.

Richard G. Ring,

Associate Director, Administration, Business Practices and Workforce Development.

[FR Doc. 02–28515 Filed 11–7–02; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Golden Gate National Recreation Area; Comprehensive Transportation Management Plan; Marin County, CA; Notice of Intent To Prepare an Environmental Impact Statement

Summary: In accord with § 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), the National Park Service—and in coordination with Marin County (California) and the California Department of Transportation—is initiating a conservation planning and environmental impact analysis process regarding transportation access and facility improvements to the roadway network between U.S. Highway 101 (at the U.S. Highway 101-State Highway 1 interchange) and Stinson Beach (Pacific Ocean). This roadway network is one of the principal travel corridors connecting the urban centers of Marin, San Francisco and the East Bay with National Park sites in southwest Marin County and the State Park site of Mount Tamalpais (the national park sites include the Muir Woods National Monument, Muir Beach, Stinson Beach, and Tennessee Valley). The Comprehensive Transportation Management Plan Environmental Impact Statement (EIS) will assess alternatives for improving access to and between various park sites to reduce automobile impacts. A key objective will be to identify options to reduce traffic congestion and lower negative effects of existing transportation infrastructure on priority ecological systems. Notice is hereby given that a public scoping process has been initiated with the purpose of eliciting public comment regarding the full spectrum of issues and concerns, including a suitable range of alternatives, the nature and extent of potential environmental impacts and appropriate mitigation strategies, and perceived ecological benefits that should be addressed in drafting the forthcoming EIS.

Background: The project area comprises a network of roads, bridges, trails and parking areas providing access to Muir Woods, Muir Beach, Tennessee Valley and Stinson Beach. Some of the key connecting roads include California Highway 1, Panoramic Highway, and Muir Woods, Frank Valley, and Tennessee Valley Roads. Peak-hour congestion and failing levels of service on some of these roads have become concerns for local jurisdictions and communities as well as the National Park Service (NPS). Also of particular concern is the fact that certain features of the existing transportation system encroaches upon and impact natural systems within the park lands. These include effects on wetlands, floodplains, and riparian corridors. Significant ecological systems within the project area include the fresh water streams and riparian areas of the Redwood Creek watershed, Coyote Creek, and Easkoot Creek.

The Golden Gate National Recreation Area (GGNRA) is partnering with Marin County to prepare a combined Environmental Impact Statement—Environmental Impact Report. The GGNRA and Marin County are co-lead agencies for the environmental review under the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA), respectively.

The project alternatives will identify actions that improve modes of transportation for accessing the national and state park sites in the project study area. Alternative transportation modes could include public transit, or shuttles. Reservation systems and paid parking also will be considered. Another key component of the project will be to identify improvements that either reduce or eliminate existing impacts of transportation infrastructure (such as roads, parking lots and drainage structures) on ecological systems. Key goals and objectives for the project are:

- Identify and design transportation, access, and facility improvements that protect park resources;
- Improve alternative access and circulation for visitors and residents within the project area;
- Reduce traffic congestion in the project area, and on roadways to and between national and state park sites;
- Improve the quality of the visitor experience, including trip travel, while ensuring that access remains safe, dependable and affordable;
- Improve the health of the ecological resources and systems adversely affected by transportation infrastructure within the project area;
- Improve/enhance design elements for efficient and effective transit access to park sites in the project area;
- Implement effective transportation links with clean technologies to access park sites;
- Provide for an effective transit intercept facility for visitors to Marin national and state park lands (Note: An intercept facility is a parking area or structure providing visitor support services, where visitors may leave their automobiles and travel to park sites via an alternate system such as buses or shuttle systems—rather than driving on congested roadways).

Public Process to Date: Preliminary public and agency planning meetings for the Comprehensive Transportation Management Plan were begun in 1999. The GGNRA, with the assistance of the regional Metropolitan Transportation Commission, convened an interagency group of transportation and resource agencies in the San Francisco Bay Area to develop plans for reducing traffic congestion on the regional roadway system serving park lands. The Park Lands Transportation Taskforce (Taskforce) membership includes GGNRA, Marin County, Federal Highway Administration, California Department of Transportation, City of Sausalito, California State Parks, and the Golden Gate Bridge and Highway Transportation District among other regional agencies.

Under the supervision of the Taskforce, a public research project was conducted in the project area during 2001–2002, and a public survey of persons visiting park sites polled approximately 4,000 individuals at five park sites during peak, shoulder, and off-peak seasons. Information collected included visitor origin and destination, area of residence by park site visited, degree of perceived traffic congestion, and the purpose or recreation activity related to park visits.

The GGNRA and Marin County plan to make informal presentations at community meetings adjacent to the study areas such as Stinson Beach and Muir Beach through September 2002, in addition to a presentation to the GGNRA Advisory Commission meeting in July 2002. Five public scoping workshops are then planned for Fall 2002. These include workshops at the GGNRA Advisory Commission, Stinson Beach, Muir Beach, Tamalpais Valley, and in the city of Berkeley (in the East Bay).

GGNRA and Marin County will develop conceptual approaches to identifying action alternatives for the public scoping workshops. Following the scoping phase, a full range of preliminary action alternatives will be developed and evaluated. The GGNRA and Marin County will then host workshops to review these proposed action alternatives with the public. GGNRA and Marin County anticipate that approximately three action alternatives will be formulated, in addition to the No Action Alternative.

Comments and Public Scoping: As noted, scoping meetings will be held during Fall 2002. The locations, dates and time of scoping meetings will be announced through a direct mailing, a weblink with both GGNRA and Marin County websites, and via local and regional media. All interested individuals, organizations and agencies are encouraged to attend these meetings to comment orally and/or provide written comments or suggestions. Interested persons may also refer to GGNRA web site *www.nps.gov/goga/admin/planning/index.htm* for more information on this project.

A scoping background document will also be available at the above Web site, and also can be obtained by writing or telephoning as noted below. Comments, suggestions, or relevant information (or requests to be added to the project mailing list) should be sent to: Golden Gate National Recreation Area, CTMP EIS, Attn: Stephen Laughlin, Building 201, Fort Mason, San Francisco, CA 94123 [telephone (415) 561–4941]

All written comments for the scoping phase of the EIS must be postmarked no later than 60 days following the publication of this notice in the **Federal Register**. If individuals submitting comments request that their name or/and address be withheld from public disclosure, it will be honored to the extent allowable by law. Such requests must be stated prominently in the beginning of the comments. There also may be circumstances wherein the NPS will withhold a respondent's identity as allowable by law. As always: NPS will make available to public inspection all submissions from organizations or businesses and from persons identifying

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themselves as representatives or officials of organizations and businesses; and, anonymous comments may not be considered.

Decision Process: Availability of the draft EIS for review and written comment will be announced in the **Federal Register** notice, as well as local and regional news media, GGNRA website, and via direct mailing to the project mailing list. At this time, the draft EIS is anticipated to be available for public review in the first quarter of the year 2004. To ensure further opportunity to comment on the draft EIS after it is distributed, additional public meetings will be held (dates and locations to be determined). Notice of the availability of the final EIS likewise will be published in the **Federal Register**. As a delegated EIS, the official responsible for the final NEPA decision is the Regional Director, Pacific West Region. Subsequently, the official responsible for implementing the selected Plan would be the Superintendent, Golden Gate National Recreation Area.

Dated: August 21, 2002.

Arthur E. Eck,

Acting Regional Director, Pacific West Region.

[FR Doc. 02–28519 Filed 11–7–02; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Cape Cod National Seashore, South Wellfleet, Massachusetts; Cape Cod National Seashore Advisory Commission Two Hundred Thirty Ninth Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770, 5 U.S.C. App 1, section 10), that a meeting of the Cape Cod National Seashore Advisory Commission will be held on Friday, November 22, 2002.

The Commission was reestablished pursuant to Public Law 87–126 as amended by Public Law 105–280. The purpose of the Commission is to consult with the Secretary of the Interior, or his designee, with respect to matters relating to the development of Cape Cod National Seashore, and with respect to carrying out the provisions of sections 4 and 5 of the Act establishing the Seashore.

The Commission members will meet at 1 p.m. at Headquarters, Marconi Station, Wellfleet, Massachusetts for the regular business meeting to discuss the following:

1. Adoption of Agenda
2. Approval of minutes of previous meeting (September 27, 2002)
3. Reports of Officers
4. Reports of Subcommittees
5. Superintendent's Report
   Salt Pond Visitor Center
   Pheasant Program
   Penniman House
   Highlands Center
   Restoration Projects
   a. Hatches Harbor
   b. East Harbor
   c. Mary Chase Salt Marsh
   Doane Road
   Provincetown Municipal Airport
   Marconi Celebration
   News from Washington
6. Old Business
   Invasive Species
7. New Business
8. Date and agenda for next meeting
9. Public comment and
10. Adjournment

The meeting is open to the public. It is expected that 15 persons will be able to attend the meeting in addition to Commission members.

Interested persons may make oral/written presentations to the Commission during the business meeting or file written statements. Such requests should be made to the park superintendent at least seven days prior to the meeting. Further information concerning the meeting may be obtained from the Superintendent, Cape Cod National Seashore, 99 Marconi Site Road, Wellfleet, MA 02667.

Dated: October 23, 2002.

Michael B. Murray,

Acting Superintendent.

[FR Doc. 02–28516 Filed 11–7–02; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Oregon State Museum of Anthropology, University of Oregon, Eugene, Oregon and U.S. Department of the Interior, National Park Service, Whitman Mission National Historic Site, Walla Walla, WA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, Sec. 5, of the completion of an inventory of human remains in the possession of Oregon State Museum of Anthropology, University of Oregon, Eugene, Oregon and in the control of U.S. Department of the Interior, National Park Service, Whitman Mission National Historic Site, Walla Walla, WA. These human remains were removed from a burial site at Whitman Mission National Historic Site.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003, Sec. 5 (d)(3). The determinations within this notice are the sole responsibility of the National Park unit that has control of these Native American human remains. The Manager, National NAGPRA Program is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by National Park Service and Oregon State Museum of Anthropology professional staff and an expert on aboriginal burial practices in the Plateau culture area of North America in consultation with representatives of the Confederated Tribes of the Umatilla Reservation, Oregon.

In October 1960, human remains representing a minimum of one individual were removed from a burial at Whitman Mission National Historic Site in Walla Walla, Washington during legally authorized excavations by NPS archeologist Paul Schumacher. The human skeletal remains had been in a flexed position and were thought to be the remains of a Native American. They were removed from the burial site at Whitman Mission and delivered to University of Oregon where they were inspected and described by David L. Cole in November 1960. The skeletal remains were confirmed to be those of a Native American woman who had been between 50 and 60 years of age at the time of death. No known individuals were identified. No funerary objects are present. To honor the request of the Confederated Tribes of the Umatilla Reservation, Oregon these human remains continue to be in the possession of the Oregon State Museum of Anthropology, University of Oregon.

All available documentation on the human remains from the NPS, including an archival photograph of the skeletal remains in situ, and from the University of Oregon was submitted to Professor Roderick Sprague, an expert on aboriginal burial practices in the Plateau culture area of North America with over 40 years of professional experience, for his review and assessment. On the basis of both the flexed position of the burial and the absence of grave goods, Dr. Sprague concluded that this set of human remains dates to the protohistoric period of from A.D. 1700–1800.

Whitman Mission National Historic Site commemorates the history of a mission established by Marcus and Narcissa Whitman in the 1830s on land that was primarily occupied by Cayuse Indians at the time. The site of the mission settlement is widely recognized as having been part of a larger aboriginal Cayuse territory and is within the judicially established area that is officially recognized as the Cayuse homeland. Immediately to the west of the Cayuse territory was the aboriginal homeland of the Walla Walla tribe. To the west of the Cayuse and southwest of the Walla Walla was the recognized aboriginal homeland of the Umatilla tribe. The Cayuse, the Walla Walla and the Umatilla are all constituent tribes of the present-day Confederated Tribes of the Umatilla Reservation, Oregon.

Officials of Whitman Mission National Historic Site have determined that, pursuant to 25 U.S.C. 3001, Sec. 2 (9-10), the human remains listed above represent the physical remains of one individual of Native American ancestry. Lastly, officials of Whitman Mission National Historic Site have determined that, pursuant to 25 U.S.C. 3001, Sec. 2 (2), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and the Confederated Tribes of the Umatilla Reservation, Oregon.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Superintendent Francis T. Darby, Whitman Mission National Historic Site, 328 Whitman Mission Road, Walla Walla, Washington 99362-9699, telephone (509) 522-6360, before December 9, 2002. Repatriation of these human remains to the Confederated Tribes of the Umatilla Reservation, Oregon may begin after that date if no additional claimants come forward.

Whitman Mission National Historic Site is responsible for notifying the Confederated Tribes of the Umatilla Reservation, Oregon that this notice has been published.

Dated: October 7, 2002.

Paula Molloy,

Acting Manager, National NAGPRA Program.

[FR Doc. 02–28522 Filed 11–7–02; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before October 19, 2002.

Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register Historic Places, National Park Service, 1849 C St. NW, 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service,1201 Eye St. NW., 8th floor, Washington DC 20005; or by fax, 202–343–1836. Written or faxed comments should be submitted by November 25, 2002.

Beth L. Savage,

Acting Keeper of the National Register of Historic Places.

ALASKA

Juneau Borough—Census Area

Sentinel Island Light Station (Light Stations of the United States MPS), Sentinel Island, Juneau, 02001407

CALIFORNIA

Shasta County

Phillips Brothers Mill, Approx. 30 mi. NE of Redding, Oak Run, 02001406

COLORADO

Fremont County

Rouch Gulch Bridge (Highway Bridges in Colorado MPS), US 50 at milepost 230.12, Swissvale, 02001410

Larimer County

Bee Farm, 4320 E. Cty Rd. 58, Fort Collins, 02001409

Rio Grande County

Creede Branch, Denver and Rio Grande Railroad (Railroads in Colorado, 1858–1948 MPS), Along the D&RGW right-of-way bet. South Fork and Creede, South Fork, 02001408

GEORGIA

Gordon County

Taylor, William, House, 3032 Battlefield Parkway, Resaca, 02001414

ILLINOIS

Macon County

West End Historic District, Roughly bounded by S. Fairview Ave., Park Place, Fairview Park, Westdale Ave., W. Main St., Glencoe Ave., Sunset Ave., Decatur, 02001444

Tazewell County

Dement—Zinser House, 105 Zinser Place, Washington, 02001411

MAINE

Knox County

Manana Island Fog Signal Station (Light Stations of the United States MPS), Monhegan Island, Monhegan Island, 02001412

Lincoln County

Cuckolds Light Station (Light Stations of the United States MPS), The Cuckolds, Southport, 02001413

MARYLAND

Anne Arundel County

Baltimore Light Station (Light Stations of the United States MPS), Gibson Island, Gibson Island, 02001417

Sandy Point Shoal Light Station (Light Stations of the United States MPS), Approx. 0.5 mi. off of Sandy Pt., Skidmore, 02001424

Baltimore County

Craighill Channel Lower Range Front Light Station (Light Stations of the United States MPS), 3.5 mi. SE of Fort Howard, Baltimore, 02001420

Cut-Off Channel Range Front Light Station (Light Stations of the United States MPS), SW of Fort Howard, Fort Howard, 02001415

Cut-off Channel Range Rear Light Station (Light Stations of the United States MPS), Sparrows Point, Edgemore, 02001423

Craighill Channel Lower Range Rear Light Station (Light Stations of the United States MPS), Edgemere Area, Edgemere, 02001418

Cecil County

Turkey Point Light Station, (Light Stations of the United States MPS), South Elk Neck State Park, North East, 02001421

Dorchester County

Hooper Island Light Station, (Light Stations of the United States MPS), Approx. 5 mi. S of Cove Pt, Hooperville, 02001426

Queen Anne's County

Bloody Point Bar Light Station, (Light Stations of the United States MPS), Near Claiborne, Claiborne, 02001416

Somerset County

Solomons Lump Light Station, (Light Stations of the United States MPS), 1.5 mi. N of Abrahams Pt., Crisfield, 02001422

St. Mary's County

Point No Point Light Station,

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(Light Stations of the United States MPS),
Approx. 2 mi. ESE of Point No Point, Dameron, 02001425

Massachusetts

Middlesex County

Minute Man National Historical Park, Minute Man National Historical Park, Lexington, 02001445

Missouri

Greene County

Palace Hotel,
(Springfield, Missouri MPS (Additional Documentation)),
501 College St.,
Springfield, 02001419

St. Louis Independent City

Luyties Homeopathic Pharmacy Company Building,
4200 Laclede Ave., St. Louis (Independent City), 02001442
Missouri Pacific Building,
210 N. 13th St., St. Louis (Independent City), 02001441

Pennsylvania

Dauphin County

Millersburg Passenger Rail Station,
127 W. Center St.,
Millersburg, 02001430

Monroe County

Delaware, Lackawanna and Western Railroad Water Gap Station,
Waring Dr.,
Delaware Water Gap, 02001431

Montgomery County

Lower Merion Academy—Cynwyd Elementary School—Bala Cynwyd Junior High
School Complex,
506 Bryn Mawr Ave.,
Bala Cynwyd, 02001429

Philadelphia County

Lorraine Apartments,
699 N. Broad St.,
Philadelphia, 02001427

South Dakota

Lake County

Lake Badus Rural Agricultural Historic District,
Roughly bounded by U.S. 81, Cty Rd. 16, Cty Rd 37, and Cty Rd. 20,
Nunda, 02001428

Virginia

Bristol Independent City

Virginia Hill Historic District,
Sections of Moore, Lee, Russell, Clinton, Spencer, W. Mary and Buchanan Sts.,
Bristol (Independent City), 02001447

Hampton Independent City

Thimble Shoal Light Station,
(Light Stations of the United States MPS),
Approx. 1.5 mi. E of Fort Monroe Military Reservation,
Hampton City (Independent City), 02001436

Mathews County

Wolf Trap Light Station,
(Light Stations of the United States MPS), SE of New Point Comfort,
Poquoson East, 02001434

New Kent County

Spring Hill,
11221 Carriage Rd.,
Providence Forge, 02001448

Newport News Independent City

Newport News Middle Ground Light Station,
(Light Stations of the United States MPS),
Approx. 2 mi. SSE of Newport News,
Newport News (Independent City), 02001438

Northumberland County

Smith Point Light Station,
(Light Stations of the United States MPS),
Bamboo Island,
Smith Point, 02001437

Norton Independent City

Grandin Road Commercial Historic District,
Grandin Rd. SW, and Memorial Ave.,
Roanoke (Independent City), 02001450

Pittsylvania County

Locust,
7408 Ward's Rd.,
Hurt, 02001449

Richmond Independent City

Forest Hill Park, Bet. Riverside Dr., Forest Hill Ave., and 42nd St., and 34th St.,
Richmond (Independent City), 02001446

Virginia Beach Independent City

Cape Henry (Second Tower) Light Station,
(Light Stations of the United States MPS), Atlantic Ave.,
Fort Story, 02001439

Westmoreland County

Mount Pleasant,
317 Coles Point Rd.,
Hague, 02001440

Wisconsin

Dane County

Shorewood Historic District,
Roughly bounded by Lake Mendota Dr., Tallyho Ln., and Shorewood Blvd.,
Village of Shorewood Hills, 02001432
United States Post Office and Federal Courthouse,
215 Martin Luther King Junior Blvd.,
Madison, 02001443

[FR Doc. 02–28517 Filed 11–7–02; 8:45 am]
BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before October 26, 2002. Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register Historic Places, National Park Service, 1849 C St., NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service,1201 Eye St. NW., 8th floor, Washington DC 20005; or by fax, 202–343–1836. Written or faxed comments should be submitted by November 25, 2002.

Carol D. Shull,
Keeper of the National Register of Historic Places.

ALASKA

Southeast Fairbanks Borough—Census Area

Haines, John, Homestead, Mi. 296 Richardson Hwy., Delta, 02001461

Valdez-Cordova Borough—Census Area

Copper River and Northwestern Railway Bunkhouse and Messhouse, Third St., Chitina, 02001460

COLORADO

La Plata County

Smiley Junior High School, 1309 E 3rd Ave., Durango, 02001462

KENTUCKY

Bourbon County

Cane Ridge Rural Historic District, Canal Ridge Rd., Paris, 02001463

Calloway County

Murray Commercial Historic District, Roughly bounded by Walnut St., L.P. Miller St., Poplar St. and 6th St., Murray, 02001464

Campbell County

Third Street Motor Car Company Building, 216 E. Third St., Newport, 02001465

Green County

Downtown Greensburg Historic District, (Green County MRA) Public Square and bounded by N. and S. Main St., and E. and W. Court Sts., Greensburg, 02001466

Hardin County

Woodard, George, House, (Hardin County MRA) 232 W. Poplar St., Elizabethtown, 02001467

Jefferson County

Duncan, Stuart E. and Annie L., Estate, (Louisville and Jefferson County MPS) 404 Mockingbird Valley Rd., Louisville, 02001468
Stewart, W.K., Bookstore, 550 S. Fourth St., Louisville, 02001469

McCracken County

Masonic Temple, 501–505 S. 7th St., Paducah, 02001470

Massachusetts

Bristol County

Mount Pleasant Cemetery, Crocker, Cohannet, and Barnum Sts., Taunton, 02001474

Hampden County

Friedrich Block, 449–461 Main St., Holyoke, 02001473
Robert, Clovis, Block, 338–348 Main St., Holyoke, 02001472

Worcester County

Dean, Frank L. and Mabel H., House, 10 Cedar St., Worcester, 02001471

Nebraska

Cass County

Nehawka Public Library, Jct. of Elm and Master Sts., Nehawka, 02001481

Chase County

Texas Trail Stone Corral, Address Restricted, Imperial, 02001478

Douglas County

Shafer, M.F., and Co. Building, 1624 Webster, Omaha, 02001477

Keith County

Gainsforth, Dr. Burdette and Myrna, House, 1300 East A St., Ogallala, 02001476

Lancaster County

Hitchcok, W.F., House, 2733 Sheridan Blvd., Lincoln, 02001482
Thayer, John M., House, 1901 Prospect St., Lincoln, 02001479

Nuckolls County

Nelson Cemetery Walk, Northeast edge of Nelson, Nelson, 02001480

Saunders County

Barnes Oil Company, Jct. of Silver St. and U.S. 6, Ashland, 02001475

New Jersey

Somerset County

Staats House, 17 Von Steuben Ln., South Bound Brook Borough, 02001483

Oregon

Columbia County

Oregon-American Lumber Company Mill Office, 511 East Bridge St., Vernonia, 02001485

Lane County

Log Cabin Inn Ensemble, 156483 McKenzie Highway, McKenzie Bridge, 02001486

Multnomah County

Clarke-Mossman House, 1625 NW 29th Ave., Portland, 02001484

Virginia

Goochland County

Springdale, 2048 Cardwell Rd., Crozier, 02001490

Washington

King County

Shuey, Henry Owen, House, 5218 16 Ave. NE, 02001487

Spokane County

Latah School, 515 North Main, Latah, 02001489
Ralston, John and Mary, House, 2421 W. Mission Ave., Spokane, 02001488

[FR Doc. 02–28518 Filed 11–7–02; 8:45 am]
BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: U.S. Department of the Interior, National Park Service, Whitman Mission National Historic Site, Walla Walla, WA

AGENCY: National Park Service, Interior.
ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, Sec. 5, of the completion of an inventory of human remains and associated funerary objects in the possession of Whitman Mission National Historic Site, Walla Walla, WA. These human remains and cultural items were removed from a burial site at Whitman Mission National Historic Site.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003, Sec. 5 (d)(3). The determinations within this notice are the sole responsibility of the National Park unit that has control of these Native American human remains and associated funerary objects. The Manager, National NAGPRA Program is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by National Park Service and Oregon State Museum of Anthropology professional staff in consultation with representatives of the Confederated Tribes of the Umatilla Reservation, Oregon.

In July 1961, human remains representing a minimum of one individual were removed from a burial at Whitman Mission National Historic Site in Walla Walla, Washington during legally authorized excavations by NPS archeologist Paul Schumacher. The human skeletal remains were removed from Whitman Mission and were delivered to the University of Oregon. In January 1962 David L. Cole completed a detailed description of the skeletal remains and identified them as representing a male Native American individual who had been approximately 45-55 years old at the time of death. The burial was characterized as a Christian burial in a coffin that dated to the early historic period (1830s) when the Whitmans operated a mission among the Cayuse. In preparation for repatriation the NPS took possession of this set of human remains in August 1996. No known individuals were identified. The 20 associated funerary objects are 6 fragments of wood from a coffin, 1 bag of wood particles, 8 corroded nails with some attached wood pieces, 1 copper brad, 2 bone buttons, 1 shell button and 1 dentalia shell bead.

Whitman Mission National Historic Site commemorates the history of a mission established by Marcus and Narcissa Whitman in the 1830s on land that was primarily occupied by Cayuse Indians at the time. The site of the mission settlement is widely recognized as having been part of a larger aboriginal Cayuse territory and is within the judicially established area that is officially recognized as the Cayuse homeland. Immediately to the west of the Cayuse territory was the aboriginal homeland of the Walla Walla tribe. To the west of the Cayuse and southwest of the Walla Walla was the recognized aboriginal homeland of the Umatilla tribe. The Cayuse, the Walla Walla and the Umatilla are all constituent tribes of the present-day Confederated Tribes of the Umatilla Reservation, Oregon.

Officials of Whitman Mission National Historic Site have determined that, pursuant to 25 U.S.C. 3001, Sec. 2 (9-10), the human remains listed above represent the physical remains of one individual of Native American ancestry. Officials of Whitman Mission National Historic Site also have determined that, pursuant to 25 U.S.C. 3001, Sec. 2 (3)(A), the 20 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of

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the death rite or ceremony. Lastly, officials of Whitman Mission National Historic Site have determined that, pursuant to 25 U.S.C. 3001, Sec. 2 (2), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and the Confederated Tribes of the Umatilla Reservation, Oregon.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Superintendent Francis T. Darby, Whitman Mission National Historic Site, 328 Whitman Mission Road, Walla Walla, Washington 99362-9699, telephone (509) 522-6360, before December 9, 2002. Repatriation of these human remains and associated funerary objects to the Confederated Tribes of the Umatilla Reservation, Oregon may begin after that date if no additional claimants come forward.

Whitman Mission National Historic Site is responsible for notifying the Confederated Tribes of the Umatilla Reservation, Oregon that this notice has been published.

Dated: October 7, 2002.

Paula Molloy,

Acting Manager, National NAGPRA Program.

[FR Doc. 02-28521 Filed 11-7-02; 8:45 am]

BILLING CODE 4310-70-S

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[INT-FES-02-34]

Reach 11 Recreation Master Plan, Central Arizona Project, Arizona

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability of a final environmental impact statement (EIS).

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended, and the Council on Environmental Quality's Regulations for Implementing the Procedural Provisions of NEPA, the Bureau of Reclamation (Reclamation), in conjunction with the City of Phoenix (City), has prepared a final EIS for a Recreation Master Plan for the Reach 11 Recreation Area (Reach 11), located in the northeast portion of the city of Phoenix, Maricopa County, Arizona. The final EIS considers the proposed approval and implementation of a recreation master plan for a 1,500-acre area adjacent to the Central Arizona Project (CAP) canal, between Cave Creek and Scottsdale roads. The land is owned by Reclamation and is managed for recreational purposes by the City's Parks and Recreation Department (PRD) under a 1986 Recreation Land Use Agreement (RLUA). The final EIS describes the anticipated environmental effects associated with a new recreation master plan for Reach 11. A proposed action and two action alternative master plans have been considered in the EIS. A No Action Alternative is also described, which provides a baseline for comparing the impacts of the three action alternatives.

DATES: No decision will be made on the proposed action until 30 days after the release of the final EIS. After the 30-day waiting period, Reclamation will complete a Record of Decision (ROD).

ADDRESSES: Copies of the final EIS are available for public inspection and review at the locations listed in the Supplementary Information section below.

FOR FURTHER INFORMATION CONTACT: Ms. Sandra Eto, Bureau of Reclamation, Phoenix Area Office (PXAO-1500), PO Box 81169, Phoenix, AZ 85069-1169, telephone 602-216-3857.

SUPPLEMENTARY INFORMATION: The final EIS considers the effects of approving a new Recreation Master Plan for Reach 11. Reach 11 is managed for recreational purposes by the PRD, consistent with the 1986 RLUA pursuant to Title 28, Federal Water Project Recreation Act of 1965 (Pub. L. 89-72, as amended). The current master plan was approved in 1987. The City and Reclamation determined a comprehensive planning effort for a new master plan should be carried out, due to the major population growth that has occurred and future growth anticipated for the area. This effort included conducting a recreation needs assessment to inventory existing facilities in the vicinity of Reach 11, and evaluating needs based upon established park standards, existing capacity, and public interest in or opposition to various recreation uses. The purpose and need for a new Recreation Master Plan is to optimize recreational use of Reach 11 based upon the needs of the City and community, while ensuring compatibility with the primary flood control function of Reach 11. A master plan would accommodate and respect the full range of current and future recreation demands of this growing area of Phoenix, Arizona. The final EIS considers three alternative master plan scenarios. All three provide a level of development established for a City district park. Under the Proposed Action, high-demand recreation needs would be balanced with passive recreation uses and maintenance of quality habitat areas. Two other alternative action alternatives are considered: One that would provide less active recreation-oriented development and emphasizes passive recreation-oriented activities (Alternative 1), and one that would maximize development of active-recreation oriented recreation facilities (Alternative 2). The No Action Alternative assumes the existing 1987 master plan, (which does not meet current PRD district park standards), would continue to be implemented. The alternative ultimately selected and implemented is expected to be developed in phases by PRD, as funding becomes available.

The draft EIS was issued November 9, 2001. Responses to comments received from interested organizations and individuals on the draft EIS are addressed in the final EIS.

Locations for public inspection and review of the final EIS:

- Department of the Interior, Natural Resources Library, 1849 C Street, NW, Washington, DC 20240.
- Bureau of Reclamation, Denver Office Library, Building 67, Room 167, Denver Federal Center, 6th and Kipling, Denver CO 80225.
- Arizona Department of Library Archives and Public Records, 1700 West Washington St., Phoenix AZ 85007.
- North Central Regional County Library, 17811 N. 32nd St., Phoenix AZ 85032.
- Phoenix Public Library (Burton Barr Central), 1221 N. Central Ave., Phoenix AZ 85004.
- Government Document Service, Arizona State University, Tempe, AZ 85281.
- Arizona State University—West Library, 4701 W. Thunderbird Rd., Glendale AZ 85306.

After release of the final EIS and the end of the 30-day waiting period, Reclamation will complete a Record of Decision (ROD). The ROD will state the action that will be implemented and will discuss all factors leading to the decision.

Dated: Ocotber 11, 2002.

Lorri Gray,

Acting Regional Director, Lower Colorado Region.

[FR Doc. 02-28509 Filed 11-7-02; 8:45 am]

BILLING CODE 4310-MN-P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[FES-02-36]

Imperial Irrigation District Water Conservation and Transfer Project, California

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability of a final environmental impact report/environmental impact statement (EIR/EIS).

SUMMARY: The Bureau of Reclamation (Reclamation) has issued an October 2002 Final EIR/EIS on the Imperial Irrigation District (IID) Water Conservation and Transfer Project, which would conserve and transfer the right to use up to 300,000 acre-feet per year of Colorado River water, which IID would otherwise divert for use within IID's water service area in Imperial County, California. The conserved water would be transferred to San Diego County Water Authority (SDCWA), Coachella Valley Water District (CVWD) and/or The Metropolitan Water District of Southern California (MWD).

DATES: No decision will be made on the proposed action until at least 30 days after the United States Environmental Protection Agency's (EPA) Notice of Availability for the Final EIR/EIS has been published in the **Federal Register**. At this time, it is anticipated the Secretary of the Interior (Secretary) will complete a Record of Decision (ROD) for Reclamation's action prior to December 31, 2002.

ADDRESSES: A copy of the October 2002 Final EIR/EIS is available for public inspection and review at the locations listed in the Supplementary Information section. An Internet version of the document is available on Reclamation's Lower Colorado River Operations Web site at *http://www.lc.usbr.gov/lcrivops.html*. In addition, hard copy or computer diskette versions of the document are also available upon request from Ms. Janet Steele, Boulder Canyon Operations Office, Bureau of Reclamation, BCOO-4601, PO Box 61470, Boulder City, Nevada 89006, telephone 702-293-8551, faxogram 702-293-8042.

FOR FURTHER INFORMATION CONTACT: Questions regarding the Final EIR/EIS should be directed to Mr. Bruce D. Ellis at Reclamation's Phoenix Area Office (PXAO-1500), PO Box 81169, Phoenix, AZ 85069-1169, telephone 602-216-3854.

SUPPLEMENTARY INFORMATION: The water transfers, which are to remain in effect for up to 75 years, would facilitate efforts to reduce California's diversion of Colorado River water in normal years to its annual 4.4 million acre-feet apportionment. Approval of the Secretary of the Interior (Secretary) will be required to change the point of delivery for the water transferred to SDCWA and MWD water.

IID is seeking a permit from the U.S. Fish and Wildlife Service (FWS) pursuant to section 10(a)(1)(B) of the Endangered Species Act (ESA) that would authorize the incidental take of covered species associated with IID's water conservation and transfer project as well as its ongoing operation and maintenance activities within the IID water service area, the right-of-way of the All American Canal, and the Salton Sea. As a condition of applying for a Section 10 permit, IID is developing a Habitat Conservation Plan (HCP) in consultation with FWS, a draft of which is appended to this Final EIR/EIS.

Both Reclamation's approval of the change in point of delivery of Colorado River water and FWS' potential future issuance of a Section 10 permit are Federal actions that require compliance with the National Environmental Policy Act (NEPA) of 1969, as amended. Reclamation and the FWS issued the Draft EIR/EIS as a means to streamline the NEPA process and concurrently analyze the effects of both Reclamation's action and the FWS permit action. The FWS was a cooperating agency in the development of the Draft EIR/EIS and associated draft HCP, and evaluation of the impacts associated with the proposed issuance of a permit pursuant to Section 10 of the Federal ESA. However, at this time the FWS is not making a decision relative to the Section 10 permit.

This October 2002 Final EIR/EIS has been prepared pursuant to NEPA and the Council on Environmental Quality's Regulations for Implementing the Procedural Provisions of NEPA, and is being issued by Reclamation as the lead agency for its action. The FWS is a cooperating agency. Both agencies intend to use the EIR/EIS document to issue separate RODs. Some of the analyses in this October 2002 Final EIR/EIS document are relevant and may be used at a later date to support the decision for the Section 10 permit. It is anticipated the FWS would issue a supplemental or amended EIS for that decision at that later date.

The terms of IID's water conservation and transfer transactions are set forth in the "Agreement for Transfer of Conserved Water" (IID/SDCWA Transfer Agreement), executed by IID and SDCWA in 1998 (as amended), and a proposed Quantification Settlement Agreement (QSA) to be executed by IID, CVWD, and MWD. The QSA establishes a framework of conservation measures and water transfers within southern California for up to 75 years, and would facilitate California's efforts to reduce its diversions of Colorado River water in normal years to its annual 4.4 million acre-feet apportionment, thus benefitting the entire Colorado River Basin. It would authorize the transfer of up to 200,000 acre-feet to SDCWA pursuant to the IID/SDCWA Transfer Agreement, and provide for the transfer of up to 100,000 acre-feet of water conserved by IID to CVWD and/or MWD.

The Secretary of the Interior (Secretary), pursuant to the Boulder Canyon Project Act of 1928 and *Arizona v. California* 1964 Supreme Court Decree (376 U.S. 340), proposes to take Federal actions necessary to support California's efforts. One of these actions is execution of an Implementation Agreement (IA) that would commit the Secretary to make Colorado River water deliveries to facilitate implementation of the QSA. The Secretary's execution of the IA is the subject of Reclamation's IA, Inadvertent Overrun and Payback Policy, and Related Federal Actions Final EIS (FES-02-35), which is being filed with EPA concurrently with this October 2002 Final EIR/EIS. Impacts to the Colorado River, that would result from the change in point of delivery of IID's conservation and transfer of up to 300,000 acre-feet of Colorado River water, are incorporated into an analysis of all changes in the point of delivery proposed in the IA and included in the QSA.

IID filed a Notice of Completion with California's State Clearinghouse on January 17, 2002, indicating the Draft EIR/EIS was available for review, pursuant to the California Environmental Quality Act (CEQA). On January 18, 2002, Reclamation filed the Draft EIR/EIS with EPA. IID and Reclamation made the Draft EIR/EIS available for a 90-day public review and comment period, from January 25, 2002 to April 26, 2002. Public hearings were held on April 2, 3, and 4, 2002, in La Quinta, El Centro, and San Diego, California, respectively. A total of 30 speakers provided oral comments at the public hearings. In addition, 300 written comment letters were received.

In June 2002, a Final EIR/EIS was prepared for consideration by the IID Board of Directors (Board) as the lead agency under CEQA. The June 2002 Final EIR/EIS incorporated the Draft

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EIR/EIS, together with modifications and additions thereto set forth in an Errata, copies of all written and oral comments received on the Draft EIR/EIS, and responses to those comments. On June 28, 2002, the IID Board certified the June 2002 Final EIR/EIS pursuant to the requirements of Section 15090 of the CEQA Guidelines. In order to comply with Council on Environmental Quality regulations implementing NEPA related to the use of errata (40 CFR part 1503.4(c)), Reclamation has prepared this fully integrated, stand alone October 2002 Final EIR/EIS.

The Final EIR/EIS identifies and summarizes the impacts to the Colorado River associated with IID's proposed change in point of delivery of up to 300,000 acre-feet of Colorado River water, under either the IID/SDCWA Transfer Agreement or QSA. It also describes the anticipated impacts associated with the water conservation measures to be undertaken. IID's proposed methods of conserving the water to be transferred, and use of that water, are also described in the Final EIR/EIS.

The Final EIR/EIS includes an analysis of impacts that may be relevant when evaluating the impacts of IID's water transfer and conservation project and operation and maintenance activities associated with its permit request. However, the FWS currently does not anticipate issuing a Section 10 permit concurrent with Reclamation's decision regarding the change in point of delivery of Colorado River water; thus, discussion regarding the HCP and Section 10 permit is not included here.

Copies of the October 2002 Final EIR/EIS are available for public inspection and review at the following locations:

- Department of the Interior, Natural Resources Library, 1849 C St., NW, Washington, DC 20240
- Bureau of Reclamation, Denver Office Library, Building 67, Room 167, Denver Federal Center, 6th and Kipling, Denver, CO 80225
- Bureau of Reclamation, Lower Colorado Regional Office, Nevada Highway and Park St., Boulder City, NV 89006
- Bureau of Reclamation, Yuma Area Office, 7301 Calle Agua Salada, Yuma, AZ 85364–9763
- Brawley Public Library, 400 Main Street, Brawley, CA 92227
- Carlsbad City Library, 1775 Dove Lane, Carlsbad, CA 92009
- El Centro Public Library, 539 State Street, El Centro, CA 92243
- Los Angeles Central Library, 630 W. 5th St., Los Angeles, CA 90071
- Mohave County Library, 1170 Hancock Rd., Bullhead City, AZ 86442
- Palo Verde Valley Library, 125 W. Chanslor Way, Blythe, CA 92225
- Parker Public Library, 1001 S. Navajo Ave., Parker, AZ 85344
- Riverside Central Library, Government Documents Section, 3581 Mission Inn Avenue, Riverside, CA 92501
- San Bernardino County Library, 104 West 4th Street, San Bernardino, CA 92401
- San Diego County Public Library, 201 E. Douglas Street, El Cajon, CA 92020
- Yuma County Library, 350 S. 3rd Ave., Yuma, AZ 85364

No decision will be made regarding the proposed Federal action until at least 30 days after EPA's Notice of Availability for this October 2002 Final EIR/EIS, and the Final IA EIS. It is anticipated the Secretary will complete a ROD for Reclamation's proposed action prior to December 31, 2002. The ROD will state the action that will be implemented and will discuss all factors leading to the decision. Any changes that have been to the proposed water conservation and transfer project will be evaluated prior to decision-making to determine what, if any, additional environmental compliance documentation is needed. These determinations will be addressed in the ROD.

Dated: October 29, 2002.

Willie Taylor,

Director, Office of Environmental Policy and Compliance.

[FR Doc. 02–28507 Filed 11–7–02; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[FES–02–35]

Implementation Agreement, Inadvertent Overrun and Payback Policy and Related Federal Actions, Lower Colorado River, Arizona, California and Nevada

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability of a final environmental impact statement (EIS).

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended, and the Council on Environmental Quality's Regulations for Implementing the Procedural Provisions of NEPA, the Bureau of Reclamation (Reclamation) has issued the Implementation Agreement, Inadvertent Overrun and Payback Policy and Related Federal Actions Final EIS (Final IA EIS). Execution of the Implementation Agreement (IA) would commit the Secretary of the Interior (Secretary) to make Colorado River water deliveries in accordance with the terms and conditions of the IA to enable certain southern California water agencies (participating agencies) to implement the proposed Quantification Settlement Agreement (QSA).

DATES: No decision will be made on the proposed action until at least 30 days after the United States Environmental Protection Agency's (EPA) Notice of Availability for the Final IA EIS has been published in the **Federal Register**. At this time, it is anticipated the Secretary of the Interior (Secretary) will complete a Record of Decision (ROD) prior to December 31, 2002.

ADDRESSES: A copy of the Final IA EIS is available for public inspection and review at the locations listed in the **SUPPLEMENTARY INFORMATION** section. An internet version of the document is available on Reclamation's Lower Colorado River Operations Web site at *http://www.lc.usbr.gov/lcrivops.html*. In addition, hard copy or computer diskette versions of the document are also available upon request from Ms. Janet Steele, Boulder Canyon Operations Office, Bureau of Reclamation, BCOO–4601, PO Box 61470, Boulder City, Nevada 89006, telephone 702–293–8551, faxogram 702–293–8042.

FOR FURTHER INFORMATION CONTACT: Questions regarding the Final IA EIS should be directed to Mr. Bruce D. Ellis, Phoenix Area Office, Bureau of Reclamation, PXAO–1500, PO Box 81169, Phoenix Arizona 85069–1169; telephone 602–216–3854, faxogram 602–216–4006.

SUPPLEMENTARY INFORMATION: The Secretary, pursuant to the Boulder Canyon Project Act of 1928 and *Arizona* v. *California* 1964 Supreme Court Decree (376 U.S. 340), proposes to take Federal actions necessary to support the implementation of the QSA. The QSA is an agreement in principle among the participating agencies. It establishes a framework of conservation measures and water transfers within southern California for up to 75 years. It provides a substantial mechanism for California to reduce its diversions of Colorado River water in normal years to its 4.4 million acre-feet per year apportionment.

The purpose of the Federal action is to facilitate implementation of the QSA. The need for the Federal action is to assist California's efforts to reduce its use of Colorado River water to its 4.4 million acre-feet apportionment in a normal year. This reduction in California's use of Colorado River water would benefit the entire Colorado River Basin. The proposed Federal action includes the following components: Execution of an IA, wherein the Secretary agrees to changes in the amount and/or location of deliveries of Colorado River water that are necessary to implement the QSA; adoption of an Inadvertent Overrun and Payback Policy (IOP), which establishes requirements for payback of inadvertent overuse of Colorado River water by Colorado River water users in Arizona, California, and Nevada; and implementation of biological conservation measures to offset potential impacts from the proposed action that could occur to federally listed fish and wildlife species.

The Final IA EIS describes the potential environmental impacts of the three components that make up the proposed Federal action. Because the purpose of the proposed action is to provide Federal approval of an agreement negotiated among the participating agencies, no other action alternatives to the IA are considered in the Final IA EIS. Similarly, the biological conservation measures proposed to be implemented under the proposed action relate specifically to the water transfers specified in the IA and QSA. These measures were developed and agreed to by Reclamation and the U.S. Fish and Wildlife Service (FWS) in response to Reclamation's August 2000 Biological Assessment, and were incorporated into a FWS January 2001 Biological Opinion; no alternatives to the biological conservation measures are considered in the Final IA EIS. With regard to the IOP, in response to scoping comments received, Reclamation developed an alternative that would eliminate the forgiveness of payment aspect of the proposed policy. This alternative has been evaluated and is described in the Final IA EIS.

The Final IA EIS describes the direct impacts of changing the point of delivery of up to 388,000 acre-feet per year (KAFY) of Colorado River water, from Imperial Dam to Parker Dam, such as changes in Colorado River flow and reservoir storage. The Final IA EIS also describes and incorporates by reference analyses of off-river impacts that would result from actions taken by the QSA participating agencies as a result of implementing the QSA. This is because the changes in water deliveries agreed to by the Secretary in the IA will enable the QSA to be fully implemented. The non-Federal actions carried out by the participating agencies pursuant to the QSA need to comply with the California Environmental Quality Act, California Endangered Species Act, and other State and local requirements. Toward that end, an Environmental Impact Report/Environmental Impact Statement was prepared for the IID Water Conservation and Transfer Project (IID EIR/EIS).

The IID EIR/EIS describes the potential impacts from IID's proposed project that would conserve and transfer the right to use up to 300 KAFY of Colorado River water, which IID would otherwise divert for use within IID's water service area in Imperial County, California. The conserved water would be transferred to San Diego County Water Authority, Coachella Valley Water District and/or The Metropolitan Water District of Southern California. These transfers are associated with the QSA and would remain in effect for up to 75 years. The change in delivery point of up to 300 KAFY associated with the IID Water Conservation and Transfer Project is included as part of the 388 KAFY change in point of delivery evaluated in the Final IA EIS. In concert with the water conservation actions associated with the IID Water Conservation and Transfer Project, IID has developed a Habitat Conservation Plan (HCP), which would mitigate impacts to covered species from those water conservation actions (as well as ongoing IID operation and maintenance activities). The HCP would provide the basis for FWS to issue "take" authorization (under section 10 of the ESA) to IID for its potential impacts to listed species. FWS has indicated it does not anticipate taking an action on the HCP at this time. Because issuance of the section 10 permit by FWS is uncertain, Reclamation has initiated a consultation with FWS under section 7 of the ESA on the voluntary implementation of certain biological conservation measures, which could provide an alternative mechanism for obtaining "take" authorization for the California water agencies. The section 7 approach and its impacts are described in this Final IA EIS. A more detailed description of IID's water conservation actions and the HCP are included in the IID Final EIR/EIR (FES–02–36), which is being filed with EPA concurrently with this Final IA EIS.

A copy of the Final IA EIS is available for public inspection and review at the following locations:

- Department of the Interior, Natural Resources Library, 1849 C St., NW., Washington, DC 20240.
- Bureau of Reclamation, Denver Office Library, Building 67, Room 167, Denver Federal Center, 6th and Kipling, Denver, CO 80225.
- Bureau of Reclamation, Lower Colorado Regional Office, Nevada Highway and Park St., Boulder City, NV 89006.
- Bureau of Reclamation, Phoenix Area Office, 2222 W. Dunlap Ave., Suite 100, Phoenix, AZ 85021.
- Bureau of Reclamation, Southern California Area Office, 27710 Jefferson Ave., Suite 201, Temecula, CA 92590–2628.
- Bureau of Reclamation, Yuma Area Office, 7301 Calle Agua Salada, Yuma, AZ 85364–9763.
- Bureau of Reclamation, Upper Colorado Regional Office, 125 S. State St., Salt Lake City, UT 84138–1102.
- Lake Havasu City Library, 1787 McCulloch Blvd. North, Lake Havasu City, AZ 86403.
- Mohave County Library, 1170 Hancock Rd., Bullhead City, AZ 86442.
- Parker Public Library, 1001 S. Navajo Ave., Parker, AZ 85344.
- Phoenix Public Library (Burton Barr Central), 1221 N. Central Ave., AZ 85004.
- Yuma County Library, 350 S. 3rd Ave., Yuma, AZ 85364.
- Los Angeles Central Library, 630 W. 5th St., Los Angeles, CA 90071.
- Palo Verde Valley Library, 125 W. Canslor Way, Blythe, CA 92225.
- San Bernardino County Library, 1111 Bailey Ave., Needles, CA 92363.
- San Diego Central Library, 820 E St., San Diego, CA 92101.
- Henderson District Public Library, 280 South Water St., Henderson, NV 89015.
- Salt Lake City Public Library, 209 E 500 S, Salt Lake City, UT 84111.

No decision will be made on the proposed action until at least 30 days after EPA's Notices of Availability for the Final IA EIS and the October 2002 Final IID EIR/EIS have been published in the **Federal Register**. At this time, it is anticipated the Secretary will complete a ROD prior to December 31, 2002. The ROD will state the action that will be implemented and will discuss all factors leading to the decision. Any changes that have been made to the proposed species conservation plan will be evaluated prior to decision-making to determine what, if any, additional environmental compliance documentation is needed. These determinations will be addressed in the ROD.

Dated: October 29, 2002.

Willie Taylor,

Director, Office of Environmental Policy and Compliance.

[FR Doc. 02–28508 Filed 11–7–02; 8:45 am]

BILLING CODE 4310–MN–P

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to request renewed approval for the collections of information for 30 CFR 870.18, Abandoned mine reclamation fund—fee collection and coal production reporting; and 30 CFR part 735—Grants for Program Development and Administration and Enforcement, and 30 CFR part 886—State and Tribal Reclamation Grants. These collection requests have been forwarded to the Office of Management and Budget (OMB) for review and comment. The information collection requests describe the nature of the information collections and the expected burden and cost.

DATES: OMB has up to 60 days to approve or disapprove the information collections but may respond after 30 days. Therefore, public comments should be submitted to OMB by December 9, 2002 in order to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: To request a copy of either information collection request, explanatory information and related forms, contact John A. Trelease at (202) 208–2783, or electronically *to jtreleas@osmre.gov.*

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR part 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [see 5 CFR 1320.8(d)]. OSM has submitted two requests to OMB to renew its approval of the collections of information contained in: 30 CFR 870.18, Abandoned mine reclamation fund—fee collection and coal production reporting; 30 CFR part 735—Grants for Program Development and Administration and Enforcement, and 30 CFR part 886—State and Tribal Reclamation Grants. OSM is requesting a 3-year term of approval for each information collection activity.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for part 870.18 is 1029–0090 and 30 CFR part 735 and 886 that require grant submittals are currently approved under OMB control number 1029–0059.

As required under 5 CFR 1320.8(d), a **Federal Register** notice soliciting comments on these collections of information was published on July 22, 2002 (67 FR 47828). No comments were received. This notice provides the public with an additional 30 days in which to comment on the following information collection activities:

Title: 30 CFR part 735—Grants for Program Development and Administration and Enforcement, and 30 CFR part 886—State and Tribal Reclamation Grants

OMB Control Number: 1029–0059.

Summary: State and Tribal reclamation and regulatory authorities are requested to provide specific budget and program information as part of the grant application and reporting processes authorized by the Surface Mining Control and Reclamation Act.

Bureau Form Numbers: OSM–47, OSM–49 and OSM–51.

Frequency of Collection: Semi-annually, annually and once.

Description of Respondents: State and Tribal regulatory and reclamation authorities.

Total Annual Responses: 132.

Total Annual Burden Hours: 655 hours.

Title: 30 CFR Part 870.18—Abandoned mine reclamation fund—fee collection and coal production reporting.

OMB Control Number: 1029–0090.

Summary: Section 402 of SMCRA requires fees to be paid to the Abandoned Mine Reclamation Fund by coal operators on the basis of coal tonnage produced. This information collection request is needed to support verification of the moisture deduction allowance. The information will be used by OSM during audits to verify that the amount of excess moisture taken by the operator is appropriate.

Frequency of Collection: Quarterly.

Description of Respondents: Coal mine operators.

Total Annual Responses: 933.

Total Annual Burden Hours: 700.

Send comments on the need for the collections of information for the performance of the functions of the agency; the accuracy of the agency's burden estimates; ways to enhance the quality, utility and clarity of the information collections; and ways to minimize the information collection burdens on respondents, such as use of automated means of collections of the information, to the following addresses. Please refer to OMB control number 1029–0059 for parts 735 and 886 and the three grant forms, and 1029–0090 for Part 870.18 in your correspondence.

ADDRESSES: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Department of Interior Desk Officer, 725 17th Street, NW., Washington, DC 20503. Also, please send a copy of your comments to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave, NW, Room 210—SIB, Washington, DC 20240, or electronically to *jtreleas@smre.gov.*

Dated: October 15, 2002.

Richard G. Bryson,

Chief, Division of Regulatory Support.

[FR Doc. 02–28477 Filed 11–7–02; 8:45 am]

BILLING CODE 4310–05–M

INTERNATIONAL TRADE COMMISSION

Handbook on Electronic Filing Procedures

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Consistent with the Government Paperwork Elimination Act, the United States International Trade Commission (Commission) has implemented procedures to permit persons to electronically file certain documents with the Commission. The Commission also is publishing a notice of final rulemaking to permit electronic filing. In conjunction with that notice, the Commission is issuing a final version of a Handbook on Electronic Filing Procedures that sets forth the requirements governing electronic filing of documents (Handbook). The Handbook was finalized after consideration of public comments to the initial draft of the Handbook on Electronic Filing Procedures (EFP), which was published in the **Federal Register** on April 26, 2002 (67 FR 20822, April 26, 2002) (Draft Handbook).

DATES: The effective date of the Handbook as printed in this notice will be announced in a notice to be published in the **Federal Register** at a later date.

FOR FURTHER INFORMATION CONTACT: Irene H. Chen, Esq., Office of the General Counsel, United States International Trade Commission, telephone 202–205–3112. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal at 202–205–1810. General information concerning the Commission may also be obtained by accessing its website *(http://www.usitc.gov).*

SUPPLEMENTARY INFORMATION:

Background

On April 26, 2002, the Commission published a notice in the **Federal Register** to solicit public comments on the draft Handbook (April 2002 Notice). 67 FR 20822, April 26, 2002. In its notice, the Commission proposed certain electronic filing procedures in the draft Handbook and requested public comment on those procedures.

The Commission received a total of six sets of comments from the ITC Trial Lawyers Association (ITCTLA) and five law firms. The Commission carefully evaluated all comments received. The Commission's response to those comments is set forth below. The comments are organized by Handbook section. Please refer to the draft Handbook published in the April 2002 notice when reading the comments discussed below.

The Commission considered those public comments in developing the Handbook, which will be maintained and distributed by the Secretary. The Handbook is being promulgated in conjunction with § 201.8(f) of the Commission's rules of practice and procedure (rules), as amended. Section 201.8(f) allows persons the option of filing certain documents electronically without violating the relevant rules requiring paper filings at the Commission. Please review the entire Handbook before you begin electronic filing. The Handbook follows the analysis of public comments and the Commission's response thereto.

Analysis of Public Comments to Draft Handbook and Commission's Response

1. *Handbook, section II(A) "Definitions and Instructions:"* The ITCTLA commented that the Commission should add a definition of "cover sheet" to the definitions and instructions section of the Handbook. The law firm of Adduci, Mastriani & Schaumberg L.L.P. commented that the Commission should add a definition for "Notice of Electronic Filing" to the definitions and instructions section of the Handbook. The Commission has added these two definitions to section II(A) of the Handbook.

2. *Handbook, section II(B) "Registration as an EFP User and Assignment of Passwords":* The law firm of Miller & Chevalier commented that the Commission should consider three alternatives in issuing user IDs and passwords: (1) Whether to limit user IDs and passwords to only a few per law firm; (2) whether to issue user IDs and passwords to secretaries and legal assistants; and (3) whether to issue different user IDs and passwords for each new case to prevent disclosure of business proprietary information (BPI) or confidential business information (CBI). The Commission has determined to issue one user ID and password to each registered user for use in Commission proceedings instead of a different user ID and password in each new proceeding because party representatives are not permitted at this time to file documents containing BPI or CBI or to view such documents in the Commission's Electronic Document Information System (EDIS–II). If and when that policy changes, the Commission will revisit the issue of whether a user must register more than once. The Commission also has decided not to restrict the issuance of user IDs and passwords to a certain group of registered users in order to encourage persons to register for electronic filing.

The ITCTLA and Adduci, Mastriani & Schaumberg L.L.P., suggested that the Commission clarify that an EFP user need only register once for electronic filing. The Commission has revised this section to state that electronic filers need to register only once for a user ID and password. Registered users of the electronic filing system need only submit a registration form to the Secretary once; however, registered users are responsible for notifying the Secretary in the event of any changes to their registration information.

3. *Handbook, section II(B)(5)(a):* The ITCTLA commented that the Commission should incorporate instructions to nonparties in the Handbook instead of separately on the website. The Commission will post instructions for electronic filing to nonparties on the website because nonparties typically do not file the same type of documents as parties do. It will be easier for nonparties to access filing instructions directly on the website instead of having to review the Handbook for instructions.

4. *Handbook, section II(C) "Types of Documents":* The ITCTLA commented that the Commission should permit electronic filing of documents listed in categories (2) through (7) of section II(C) of the Handbook, followed by paper filings of those documents the following day. Alternatively, the ITCTLA and the law firm of Stewart and Stewart commented that the Commission should not require the concurrent filing of paper copies of certain electronically filed documents as specified in the Handbook. The Commission has determined to adopt the ITCTLA's comment to permit electronic filing of documents listed in categories (2) through (7) of section II(C) of the Handbook, followed by a corresponding paper filing of the same document no later than one business day after the electronic filing.

Adduci, Mastriani & Schaumberg commented that the Commission should first permit only public electronic filings under 5 megabytes, and then progress to public and confidential e-filings over 5 megabytes once system flaws have been discovered and fixed. The ITCTLA and Miller & Chevalier commented that the Commission should allow electronic filing of documents containing BPI or CBI. The Commission has determined not to permit the electronic filing of documents containing BPI or CBI at this time. Once EDIS–II has operated for a time, the Commission may reevaluate its prohibition on electronic filing of documents containing BPI or CBI. As for Adduci's comment regarding the size of electronic filings, the Commission has determined that any electronic filing may exceed five megabytes, so long as none of the attachments in the filing is over five megabytes.

The ITCTLA commented that the Commission should consider granting counsel electronic access to BPI or CBI materials on EDIS–II in each investigation upon the filing of a notice of appearance and APO application. The ITCTLA proposed that, in the alternative, the Commission should phase-in access to confidential material in EDIS–II by permitting only parties' counsel (on the APO list) and ALJs in selected investigations to access BPI or CBI in the first phase; permitting a limited number of counsel (on the APO list) in any investigation to access BPI or CBI in the second phase; and all counsel (on the APO list) in any investigation to access BPI or CBI in the third phase. The Commission has determined not to provide counsel electronic access to BPI or CBI immediately because the agency wants to operate EDIS–II for a time before considering permitting such access.

The ITCTLA proposed rewording of section II(C) of the draft Handbook to avoid possible confusion over which type of documents may be filed electronically. Stewart & Stewart commented that the Commission should

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provide an "express instruction" regarding the type of documents that may be filed electronically, as the Court of International Trade does in its electronic filing procedures (instead of listing several categories of documents that can be filed electronically). Wilmer, Cutler & Pickering commented that the Commission should not prohibit electronic filing of public versions of documents containing BPI or CBI. Although the Draft Handbook does permit the electronic filing of public versions of documents containing BPI or CBI, the Commission has determined to clarify the language of section II(C) in the Handbook by largely adopting the proposed language of the ITCTLA. The Commission considers that such language will provide sufficient instructions to filers.

The ITCTLA commented that the Commission should explicitly address how the "24 hour" rule is to be applied in electronic filing of documents in title VII investigations. Currently, paper filers can choose to submit either the corrected confidential document in its entirety or the corrected portion of the confidential document under the "one day" rule. However, because inserting replacement pages into a PDF document would pose technical difficulties, the Commission has determined that, for electronic filings, the entire document containing "one day" changes must be refiled electronically. The Commission has amended the language in the Handbook to incorporate the requirement that complete copies of documents with "one day" changes must be filed, instead of just pages containing "one day" changes, as is currently done with paper copies of documents.

5. *Handbook, section II(D) "Where Documents Are To Be Filed Electronically":* The ITCTLA commented that the Commission should incorporate instructions for electronic filing and hardware/software requirements in the Handbook, instead of on the website. The Commission has determined to add a set of Adobe Acrobat standards, and instructions on attachment creation and redaction methodology to the Handbook, but sees no need to duplicate other instructions posted on the website.

Stewart & Stewart commented that the Commission should provide a warning to electronic filers that text-based PDF files may permit others to retrieve "masked" confidential material. The Commission has added such a warning in the Handbook.

6. *Handbook, section II(E) "Notice of Electronic Receipt":* Stewart & Stewart commented that the Commission should consider including the start time of the registered user's electronic transmission of the document on the notice of electronic receipt, in the event that the document is not received in its entirety by EDIS–II until after 5:15 p.m. The Commission has determined not to include the start time of the electronic transmission on the notice of electronic receipt due to technical limitations of EDIS–II.

7. *Handbook, section II(F): "Deadline for Electronic Filing of Documents:"* The ITCTLA commented that the Commission should treat an electronic filing as timely if transmission of the electronic document to EDIS–II begins on or before 5:15 p.m. on the filing deadline date (not when the transmission to EDIS–II is completed). The ITCTLA also commented that the Commission should consider extending the electronic filing deadline beyond 5:15 p.m. to encourage filers to choose electronic filing over paper filing.

The Commission intends to adhere to 5:15 p.m. as the deadline for receipt of electronic documents in its entirety by EDIS–II so that electronic filers do not have an undue advantage over paper filers. The Commission notes that, even though the 5:15 p.m. deadline is applicable to both electronic and paper filings, paper filers must still factor in time for printing, assembly and manual delivery of paper documents. Electronic documents not received in their entirety by 5:15 p.m. will be treated as filed on the next Commission business day.

Adduci, Mastriani & Schaumberg commented that the Commission should amend section II(F) of the Handbook to state that filers should contact the Secretary's office in the event of a technical failure during an electronic filing transmission. The Secretary should assign an authorization number for the filer to include in a declaration filed with the original document the following business day. The Commission has decided not to adopt the comment of Adduci, Mastriani & Schaumberg that filers who experience a technical failure during actual electronic filing of a document may contact the Secretary for an authorization number to file a document the following business day. Authorization numbers will only be issued by the Secretary if the EDIS–II website experiences a technical failure for a period of time greater than 1 hour after 12 p.m. on a Commission business day. In all other cases, filers may submit a request for late filing if they experience technical difficulties in electronic filing.

8. *Handbook, section II(G) "Technical Failures":* Stewart & Stewart, Miller & Chevalier, and the ITCTLA commented that the Commission should correct the draft Handbook to state that the EDIS–II website will be deemed subject to a technical failure if the site is "unable to accept filings continuously or intermittently over the course of any period of time greater than one hour after 12 noon * * *" or "* * * any period of time after 12 noon * * *" The Commission has corrected the Draft Handbook to state "* * * any period of time greater than one hour after 12 noon * * *"

9. *Handbook, section II(H) "Requests for Late Filing":* Adduci, Mastriani & Schaumberg commented that if a filer begins an electronic filing transmission prior to 5:15 p.m. but receives the notice of electronic filing after 5:15 p.m., a request for late filing should be granted by the Secretary. As previously noted above, the filing deadline for electronic documents is 5:15 p.m. If the electronic document is not received in its entirety by EDIS–II by no later than 5:15 p.m., the filer may submit a request for late filing to the Secretary, requesting that the Commission accept the late filing. The Commission has determined that requests for late filing will be granted or denied based on the circumstances of each late filing.

Miller & Chevalier commented that the Commission should specify the type of documentation that should be attached to a request for late filing to show that a document was electronically filed prior to 5:15 p.m. The Commission has determined not to require that documentation be attached to a request for late filing. Instead, the registered user should include, in the request for late filing, an unsworn declaration attesting to the start time of the electronic transmission to EDIS–II.

10. *Handbook, section II(I): "Format of Documents":* Stewart & Stewart commented that the Commission should consider requiring electronic filers to include specific information regarding security and permission settings in the document properties section of the PDF file being transmitted to the Commission to assist it in handling of the document. The Commission has included in the Handbook certain security and permission settings that all Registered Users must implement for their electronic filings.

The ITCTLA commented that the Commission should post on the EDIS–II website a template that contains the standardized settings for Adobe Acrobat PDF documents that are electronically filed. The Commission has determined to list in the Handbook portable document format (.pdf) standards for electronically filed documents.

The ITCTLA commented that the Commission should implement word count limits for electronically filed documents to avoid inadvertent violations of page limits due to pagination problems with Adobe Acrobat PDF format. The Commission has decided to retain in the initial phase the same page limits requirements as are applicable to paper filings because of the system's technical limitations.

Miller & Chevalier commented that the Commission should not discourage filing of image-based PDF files because they can also be made searchable via certain steps that the Commission could require filers to perform. At this time, the Commission will retain the language in the Draft Handbook regarding image-based PDF files due to the large size of such files and technical limitations of EDIS–II with respect to conversion of image-based PDF files.

11. *Handbook, section II(J): "Size of Electronic Transmission":* Miller & Chevalier commented that the Commission should clarify whether each attachment of an electronic submission or the entire electronic submission is limited to no more than five (5) megabytes. Miller & Chevalier suggested the following revision: "An electronic transmission as a whole can exceed 5 megabytes so long as no one attachment exceeds 5 megabytes." The Commission has determined to adopt Miller & Chevalier's proposed language regarding the size of attachments to an electronic transmission.

Miller & Chevalier commented that the Commission should provide detailed instructions on how to label each separate attachment for an electronic filing. The Commission has incorporated in the Handbook detailed instructions on how to label each separate attachment for an electronic filing.

12. *Handbook, section II(K)(4)(c): "Signatures":* The ITCTLA commented that, once electronic filing of documents containing confidential material is permitted, the Commission should note the potential conflict between section II(K)(4)(c) (requiring the retention of documents containing two or more original signatures for one year after the conclusion of an investigation and resulting appeals) and Commission rules that require the return or destruction of materials released under APO after completion of certain proceedings. The Commission has determined to amend the language in this section to state that electronic filers must retain documents containing two or more original signatures until the earlier of (i) Commission deadline for destruction of APO materials, if applicable; or (ii) one year after the conclusion of the investigation and resulting appeals.

Adduci, Mastriani & Schaumberg commented that the Commission should require that a party who electronically files a document containing multiple signatures must maintain a hard copy of the document containing the facsimile signatures (instead of the original signatures) for one year after completion of the investigation. The Commission has determined to retain the requirement of maintaining a hard copy of a document containing multiple signatures for easier verification of signatures.

13. *Handbook, section II(L): "Limitations on Service of Electronic Documents":* Miller & Chevalier and the ITCTLA commented that, in Commission proceedings, the Commission should not require the Secretary's or ALJ's prior approval for electronic service since parties already reach private agreements among themselves regarding service arrangements. Instead, the Commission could either permit the Secretary or ALJ to impose deadlines for electronic service or delete the prior consent requirement altogether. The Commission has determined to retain the requirement of prior consent to electronic service by the Secretary or ALJ so that a record of proceedings subject to electronic service may be maintained by the Secretary or ALJ.

Miller & Chevalier and the ITCTLA commented that the Commission should serve its own documents such as orders and opinions on parties either via email or other electronic means. The Commission has determined not to serve electronically its own documents on parties in the initial phase because of technical and security concerns.

Stewart & Stewart commented that the Commission should clarify in the Handbook how an electronic filer should effect service of paper versions of electronic text-based PDF documents containing hyperlinks to exhibits, decisions published by courts on official websites, decisions available in commercial legal databases, or other material available on the internet. Options for paper service of hyperlinked materials include submitting supporting materials on optical disks, revising page or file size limitations. Stewart & Stewart also raised the issue of whether service of paper copies that do not contain the enhancements of the electronic version is sufficient under the rules. The Commission has added a section in the Handbook to prohibit hyperlinks to other documents unless the actual hyperlinked material is included in its entirety in any corresponding paper copy to be filed with the Commission and served on other parties. In addition, the Commission has added a section in the Handbook that states that hyperlinked materials in electronic form will not be considered part of the official record of the Commission proceeding (*See, e.g.* 19 CFR 207.50(b)).

14. *Handbook, section II(N) "Official Administrative Record in Electronic Filings":* Stewart & Stewart commented that the Commission should specify in the Handbook how it intends to treat electronically filed documents for purposes of compiling the official record (*See, e.g.* 19 CFR 207.50(b)), given that documents filed electronically may differ from corresponding paper versions. The ITCTLA commented that the Commission should deem the first-filed copy as the governing or "official copy" in the event of disputes over filing dates/times or discrepancies between electronically filed and paper copies, unless other arrangements are made by the filing party. The Commission has determined, for consistency, to designate the electronic version of a document as being the "official copy" for purposes of compiling the official administrative record and in the event of any dispute or discrepancy between electronic and paper versions of a document.

15. *Other electronic filing comments:* The ITCTLA commented that the Commission should send an email notification to each counsel of record in an investigation concurrently with uploads to EDIS–II identifying all documents filed. The Commission has determined, in the initial pilot phase, not to send email notifications to each counsel of record in an investigation in order to allow counsel time to register as users of the electronic filing system. Moreover, the current form of EDIS–II does not include a function to send email notifications to each counsel of record. The Commission has included a feature on the EDIS–II home page that permits users to quickly identify all documents filed with the Commission on a daily basis.

Miller & Chevalier commented that the Commission should post a frequently asked questions (FAQs) section on its website to address both general filing guidelines and technical questions. The Commission has determined to post a FAQs section on its website.

The ITCTLA commented that the Commission should only maintain a single website for both electronic filing and EDIS–II access, instead of

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establishing another website (*http://edis.usitc.gov*) for electronic filing. The Commission has determined to retain the second website (*http://edis.usitc.gov*) for electronic filing in order to maintain the security of EDIS–II. A link to the EDIS–II website will be posted on the Commission's Web site at *http://www.usitc.gov*.

The ITCTLA commented that the Commission should develop and post on the EDIS–II website tools for redaction of BPI or CBI from filed documents so that counsel do not inadvertently breach APO obligations. The Commission has determined not to develop nor post on its website standard tools for redaction of BPI or CBI, given the variety of differing software/hardware systems used by parties, counsel, and other persons appearing before the Commission.

Miller & Chevalier commented that the Commission should implement a trial period whereby law firms can perform test filings to determine whether there are any technical problems with either the ITC system or with the law firms' own computer systems. The Commission is considering whether to conduct a trial period.

Handbook on Electronic Filing Procedures

The Handbook is printed in its entirety below. The Commission anticipates that EDIS–II will be operational and available for public use in December 2002. However, before persons will be permitted to register for electronic filing and to submit filings electronically to EDIS–II, the Commission will publish a notice in the **Federal Register** advising the public of the date that electronic filing will begin.

In issuing this Handbook, the Commission does not intend to maintain all of the procedures set forth in the Handbook indefinitely. Rather, the Commission anticipates that, as persons register for and utilize the electronic filing system, Handbook procedures *may need to be amended*. In particular, the Commission may consider expanding the list of documents that can be filed electronically.

International Trade Commission

Commission Handbook on Electronic Filing Procedures

I. Introduction

A. This Handbook provides instructions for persons who wish to file documents electronically with the United States International Trade Commission (Commission) pursuant to § 201.8(f) of the Commission's rules of practice and procedure (19 CFR 201.8(f)).

B. In any conflict between the Commission's rules of practice and procedure (rules) and this Handbook, the rules shall govern. This Handbook is designed to be read in conjunction with the rules. This Handbook does not alter or waive any provisions in the rules governing the filing of documents with entities and/or persons other than the Commission, including but not limited to the United States Secretary, NAFTA Secretariat.

C. If you choose to file in paper form, you must comply with the relevant provisions of the rules governing such filing. The Commission does not permit filing by means other than paper filing in accordance with the relevant rules or electronic filing in accordance with § 201.8(f) and this Handbook. Thus, for example, filing by facsimile and by electronic mail (*i.e.*, sending a document to a Commission electronic mail address) are not permitted.

II. Electronic Filing Procedures (EFP)

A. *Definitions and Instructions:*

(1) "EFP" means the Commission's Electronic Filing Procedures.

(2) "Secretary" means the Secretary to the Commission (500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000). The EFP is administered by the Secretary and any questions about EFP should be directed to the Secretary.

(3) "Business hours" or "Business days" refers to the hours and days that the Commission is open (*i.e.*, from 8:45 a.m. to 5:15 p.m., Washington, DC local time, from Monday through Friday, excepting Saturdays, Sundays and Federal legal holidays).

(4) The "Web site" refers to the Commission's world wide Web site at *http://edis.usitc.gov*.

(5) "EDIS–II" refers to the Commission's Electronic Document Information System, which will receive electronic transmission of documents through the Commission's Web site.

(6) "Cover sheet" refers to the EDIS–II cover sheet that all filers must complete pursuant to § 201.8(g) of the Commission's rules and regulations.

The cover sheet may be completed either on-line at the Web site for electronic filings or in paper form for paper filings.

(7) "Document" refers to the cover sheet and attachments that comprise an electronic filing with the Commission.

(8) "Electronic receipt" means that an electronic transmission of a document to EDIS–II via the Commission's Web site has been successfully completed in its entirety.

(9) "Electronic filing" means the electronic transmission of a document and the Secretary's acceptance of the document for filing. As discussed below, the electronic transmission and receipt of a document does not necessarily mean that the document has been filed.

(10) "Registered user" means a person that registers to file documents electronically with the Commission.

(11) "E-mail address of record" means the electronic mail address of a registered user which he or she has provided to the Secretary.

(12) "Notice of electronic receipt" will be provided in two forms: (a) An on-screen notice of receipt once the electronic transmission of the document is complete; and (b) an e-mail sent to the registered user's e-mail address of record. The notice of electronic receipt only conveys that the document is physically present at the Commission and does not mean that the document has been accepted by the Secretary for filing in EDIS–II.

(13) "Notice of electronic filing" will be e-mailed to the registered user's e-mail address of record upon acceptance of the electronic document for filing in EDIS–II by the Secretary.

B. *Registration as an EFP user and assignment of passwords:*

(1) Except as provided in paragraph B(5) below, to file electronically, you must first register to become a "registered user" of the Web site. To register, you should fill-out the "EFP user registration form" (hereinafter called "registration form") both on-line at the Web site and in paper form by printing-out a paper copy directly from the Web site. You should mail or deliver the completed and signed paper copy of the registration form to the Secretary. The registration form will require identification of your name, firm affiliation (if any), address, telephone number and e-mail address of record, and your original signature (on the paper copy). You must have and maintain a working e-mail address to be a registered user. you should also designate a user ID and password on the on-line version of the registration form; however, you may not use your user ID and password for electronic filing until the Secretary has reviewed the paper copy of your registration form and has sent you a notice of activation of user ID and password by mail. Electronic filers need only submit the registration form to the Secretary once to become a registered user of the Web site. Once the Secretary has sent the registered user a notice of activation of user ID and password, the registered user will be permitted to file certain documents electronically in Commission proceedings in which he or she has filed an entry of appearance or otherwise represents a party.

(2) A registered user may authorize another person to file a document with the Commission using the user ID and password of the registered user; however, the registered user assumes responsibility for any authorized use of his or her user ID and password. The registered user and all persons who participate in the preparation of or are signatories to a document shall retain responsibility with respect to any duties and obligations pertaining to the document under the rules. A registered user must comply with applicable limitations on disclosure of BPI and CBI when providing his or her user ID and password to another person. As provided in paragraph II(K)(2), a document filed using a registered user's user ID and password will be deemed signed by that registered user.

(3) Upon learning of the potential compromise of the confidentiality of his/her password, the registered user shall immediately change the password. The registered user must also notify the Secretary of the perceived breach and the period of compromise. If the registered user has provided his/her password to an employee of the registered user's firm, such as a paralegal, legal assistant, or secretary who subsequently leaves the firm, the registered user must change the password when that employee's access should be terminated. Unless there is a perceived breach of confidentiality, in such instances, no notification of the Secretary is needed.

(4) Every registered user shall be responsible for keeping his or her registration information current.

(5) You may not electronically file documents with the Commission unless you have registered with the Commission pursuant to the procedures set forth in subparagraph (1) above, with the following exception:

(a) If you do not represent a party to an investigation pending before the Commission (*i.e.*, you are not an attorney, consultant, officer, owner, shareholder, employee, agent, director, or other representative of a party to an investigation), and you would like to submit a document to the Commission regarding the pending investigation, please follow the relevant instructions on the Web site for non-registered users.

C. *Types of documents:*

(1) The following documents cannot be filed electronically and must be filed in paper form in accordance with the rules: A document (i) that contains confidential business information ("CBI") or business proprietary information ("BPI") as defined in 19 CFR 201.6, (ii) that exceeds the size limit set forth in paragraph II(I) of this Handbook, or (iii) that contains exhibits of original documents, such as certified copies.

(2) All other documents may be filed electronically. However, for the following six categories of documents, you must also file the document in paper form pursuant to the rules no later than one business day after the electronic filing.

(a) Briefs for which no BPI or CBI version is filed, including those subject to 19 CFR 201.13, 207.15, 207.23, 207.25, 207.65, 207.67, and 210.40, except that briefs filed in proceedings subject to section 332 of the Tariff Act of 1930 for which no CBI version is filed may be filed electronically without corresponding paper copies;

(b) Comments on questionnaires for which no BPI or CBI version is filed, subject to 19 CFR 207.20 and 207.63;

(c) Final comments for which no BPI version is filed, subject to 19 CFR 207.68 and 207.30;

(d) Petitions for review for which no CBI version is filed subject to 19 CFR 210.43 and 210.46;

(e) Petitions, including those subject to 19 CFR 202.2, 206.2, 206.14, 206.33, 206.43, 206.54, 207.10, 210.47; and

(f) Complaints, including those subject to 19 CFR 210.12.

For these six categories of documents, you must include a printout of a copy of the cover sheet that accompanied the electronic filing and submit it with the paper version.

If a standard form has been prescribed to be used when filing any document, you must use that standard form when filing such document electronically. You must complete the electronic cover sheet on EDIS–II at the time that you make your electronic filing. EDIS–II will consider the cover sheet and one or more attachments to be the complete filing. For example, a cover letter addressed to the Secretary is one attachment. Multiple attachments may be filed as part of the same electronic transmission as long as each attachment does not exceed the size limitation set forth in paragraph II(I) of this Handbook. You may submit any number of attachments per document. However, each individual pleading or submission must be accompanied by a unique cover sheet. For example, each motion filed in connection with an investigation conducted pursuant to section 337 must have a unique cover sheet even if several motions are filed sequentially. In addition, a motion and a memorandum in support thereof must be filed separately (*i.e.*, the memorandum cannot be attached to the motion). Likewise, a notice of appearance and APO application for access to BPI or CBI each must have a separate cover sheet even if filed jointly.

If you are electronically filing 24-hour changes to a document pursuant to §§ 206.8 or 207.3 of the Commission's rules of practice and procedure (19 CFR 206.8 and 207.3), you must file the entire corrected document again, not just portions of the document containing the 24-hour changes. If you are filing both an electronic version and a paper version of a document, you must state in your cover letter to the Secretary that you are making filings of the same document in both electronic and paper form. The cover letter to the Secretary must be included in both the electronic version and the paper version of the document.

Any hyperlinked materials contained in an electronic filing must be reproduced in their entirety as an attachment to the document. Please note that any hyperlinked material contained in the electronic version of a document must be printed in its entirety in the corresponding paper copy, in conformance with all applicable page limits under the Rules.

D. *Where documents are to be filed electronically:*

If you want to file a document electronically, you should visit the Web site and follow the instructions for submitting a document electronically to EDIS–II, including completion of the cover sheet for each filing. The instructions will include the applicable hardware and software requirements for electronic filing.

E. *Notice of electronic receipt:*

Upon completion of the electronic transmission of your document and upload at the Commission, EDIS–II will provide you with an on-screen notice of electronic receipt. In addition, EDIS–II will generate and send an e-mail notice of electronic receipt to the official e-mail address associated with the user ID. Receipt of a notice of electronic receipt does not constitute acknowledgment by the Commission that the document has been properly filed pursuant to the rules or this Handbook. Moreover, such notification does not constitute service of the document on the parties to an investigation.

If you do not receive a notice of electronic receipt following transmission of a document for filing or get an error message, the document will not be deemed transmitted to EDIS–II and consequently, will not be received by the Secretary for filing. You must

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attempt to (i) re-transmit the document electronically until such a notice is received, (ii) file in paper form, or (iii) contact the Secretary in accordance with the provisions of paragraph II(G) permitting delayed filings.

If the document is electronically received by EDIS–II on a Saturday, Sunday, or Federal legal holiday, or after business hours on a business day, the effective filing date and time of the document will be the next business day, assuming the document is accepted. If the document is electronically received by EDIS–II during business hours, then the effective filing date and time of the document is the date and time that the document has been electronically received by EDIS–II.

Subsequent to the notice of electronic receipt, the Secretary will send you a second notice (notice of electronic filing) notifying you that the document has been accepted by the Secretary for filing in EDIS–II.

F. *Deadline for electronic filing of documents:*

When the Commission has imposed a deadline on the filing of a document, the Secretary will consider the document timely filed electronically only if it is received successfully in its entirety by EDIS–II by 5:15 p.m., Washington, DC local time, on the day that the document is due to be filed. However, prior to that time, you may electronically transmit a document to EDIS–II at any time of the day (*i.e.*, twenty-four hours/day) and on any day of the week (including weekends and holidays). You should preserve the notice of electronic receipt, which states the time and date that EDIS–II received the document, for your records. From time to time, EDIS–II may be unavailable for electronic filing due to periodic maintenance. The Commission will try to schedule EDIS–II maintenance to those times when EDIS–II is least likely to be used. Scheduled downtime of EDIS–II will be posted on the Web site.

G. *Technical failures:*

(1) The Secretary shall deem the website to be subject to a technical failure on a given day if the website is unable to accept electronic filings continuously or intermittently over the course of any period of time greater than one hour after 12 noon, Washington, DC local time, on that day. If you are unable to file a document electronically by the deadline imposed by the Commission because the website is experiencing a technical failure, you should contact the Office of the Secretary immediately to report the technical failure of the website and to seek authorization from the Secretary to file your document after the Commission's deadline governing the filing of your document. If the Secretary grants you such an authorization, the Secretary shall give you an authorization number that you should include on the cover sheet and/or cover letter accompanying your document when you do file your document. When you do file your document subject to the authorization, you should also file an unsworn declaration as described in paragraph II(K)(4)(d) stating (i) the fact that the website's technical failure prevented your making a timely filing, (ii) the dates and times of the attempted filing, (iii) your contacts with the Office of the Secretary to report the website's technical failure, (iv) the Secretary's granting of authorization to file after deadline to you, and (v) the authorization number.

If you are making a late filing for reasons unrelated to the operating status of the website, you should follow the normal procedures in the rules for late filings.

(2) If you discover that the version of the document available for viewing on EDIS-II does not conform to the document that you transmitted, you should send or transmit to the Commission a replacement document with an explanatory cover letter. After receipt, the Secretary will review the documents and provide you with notification of acceptance or rejection.

H. *Requests for late filing:*

If you electronically transmit your document prior to 5:15 p.m., but the document is not received in its entirety by EDIS-II by 5:15 p.m., you may file a "Request for Late Filing" with the Secretary requesting that the your late filing be accepted because you began electronically transmitting the document to EDIS-II prior to 5:15 p.m. In the request for late filing, you should include an unsworn declaration as described in paragraph II(K)(4)(d) by the registered user attesting to the start time of the electronic transmission.

Please be aware that many filers wait until near the end of the business day to file documents. Please be mindful of the heavy volume of filings at the end of the day and try to transmit your document as early in the day as possible.

I. *Size of electronic transmission:*

An electronic transmission as a whole can exceed 5 megabytes so long as no one attachment exceeds 5 megabytes. A filing with an attachment that exceeds the foregoing size limitation may only be filed in paper form pursuant to the rules. All page limits set forth in the rules shall remain in effect for purposes of this Handbook.

J. *Format of documents:*

(1) Documents filed electronically pursuant to this Handbook must be submitted in Adobe Acrobat portable document format (PDF). Please be aware that some special characters used in certain word-processing applications may not convert easily to PDF. The conversion process to PDF may affect pagination as well as the conversion of special characters. Filers are responsible for the accuracy of the documents submitted.

The Commission encourages the submission, when practicable, of documents converted to PDF from word-processed text over that of documents converted to PDF from images because the former normally are significantly smaller in terms of megabytes than the latter, and because the former are more easily searchable within EDIS-II. EDIS-II will create a searchable text version of an image-based document through an optical character recognition process, but that text version is likely to contain some conversion errors.

The Commission will post on the website information that will assist users with document conversion to PDF.

(2) Each page of an electronically filed document must be in letter-sized format (*i.e.*, 8 ½ inches by 11 inches when printed by the Secretary).

(3) Documents filed electronically cannot exceed the smaller of the page limits set forth in the rules or the size limit set forth herein.

(4) Text-based PDF files may permit others to retrieve "masked" or "whited-out" BPI or CBI. Please remove all "masked" or "whited-out" BPI or CBI before filing any electronic document with the Commission.

(5) *PDF submission requirements:* When preparing PDF documents for filing, you must comply with the following requirements. PDF documents that do not comply with these requirements will be rejected by EDIS-II. (**Note:** When installing Adobe Acrobat 5.0, the default setting must meet all requirements.)

(a) PDF version must be Version 1.3 or greater. (**Note:** Use of Acrobat is not required, but if it is used, it must be Acrobat 4 or greater. This is because only Acrobat 4 or later produces PDF version 1.3.)

(b) Documents must not have Type 3 fonts. Use of Type 1 fonts is recommended.

(c) Only Roman and Cyrillic alphabet may be used in PDF format. Other foreign language documents must be scanned. Special characters should be checked on conversion to ensure that they were not changed during the distilling process.

(d) Do not attach any embedded files to your PDF document for electronic filing. This includes all comments (note tool, pencil tool, highlights tool, digital signature tool, embedded files, embedded sounds or other multimedia); forms actions; JavaScript actions; external cross references, and image alternates.

(e) Document security setting must have a PDF file security setting of "none."

(6) *PDF submission recommendations:* When preparing PDF documents for submission, the following are recommendations that will enhance the usability of the document.

(a) PDF creation should be via distiller.

(b) Font embedding should be default distiller setting.

(c) Resolution standard for scanning to PDF should be at least 200 dpi and not more than 300 dpi and NMT 300. 300 dpi is recommended. This will allow readable images without causing undue size.

(d) *Linearization:* You should select optimize for web view as distiller setting.

(e) *Scanning vs. conversion from native format:* Whenever possible, you should create PDF from native format.

(f) *Selecting printer/distiller:* You should select distiller as printer before creating document.

(g) *Document properties/associated index:* You should not use this field in your PDF document for electronic filing.

(h) *Recommended template for PDF files:* A sample "usitc.joboptions" file is located on the website as a template for your PDF documents. Persons interested in using this template should go directly to the website.

(7) *Document attachment requirements:*

(a) You must not include attachments or embedded objects within the PDF file. Examples of embedded objects include all comments (note tool, pencil tool, highlights tool, digital signature tool, embedded files, embedded sounds or other multimedia); forms actions; JavaScript actions; external cross references, web links, and image alternates.

(8) *Document attachment guide lines:*

(a) Attachments should be created in the proper sequence; if both electronic and paper versions of a document are filed, the two versions should be in the same sequence.

(b) Attachments should conform with the following naming convention:

(i) All attachments relating to a single filing must have the same root name, which would be the "document name" given by the filer;

(ii) Each attachment should be called a segment and must be numbered sequentially in the order that they appear within the document, followed by the total number of segments (*e.g.*, "Posthearing Brief Segment 1 of 13").

(c) Use logical break points in creating attachments. Avoid breaking attachments in the middle of a section (*e.g.*, main textual document, exhibit, appendix) of the filing. An entire section should be contained in a single attachment, if possible.

(d) A single document of less than 5 megabytes should not be broken into multiple attachments.

(e) The main textual document (*e.g.*, brief, petition, motion) should be contained in a separate attachment from material appended to the filing (*e.g.*, exhibits), unless the entire document is less than 5 megabytes. Cover letters need not be filed separately from the main textual document.

(f) Material appended to the main textual document (*e.g.*, exhibits, appendices) may be combined into a single attachment, as long as the entire attachment does not exceed 5 megabytes in size.

(9) When redacting BPI or CBI from a document, you should use redaction methodology that does not change the pagination of the public version, when compared with the BPI or CBI version.

K. Signatures:

(1) A document filed with the Commission electronically shall be deemed to be signed by a person (the "signatory") when the document identifies the person as a signatory and the filing complies with subparagraph (2), (3) or (4). When the document is filed with the Commission in accordance with any of these methods, the filing shall bind the signatory as if the document were physically signed and filed, and shall function as the signatory's signature, whether for the purpose of complying with the Commission's rules, to attest to the truthfulness of an affidavit or declaration, or for any other purpose.

(2) In the case of a signatory who is a registered user as described in paragraph II (B)(1), such document shall be deemed signed, regardless of the existence of a physical signature on the document, provided that such document is filed using the user ID and password of the signatory. The page on which the physical signature would appear if filed in non-electronic form must be filed electronically, but need not be filed in an optically scanned format displaying the signature of the signatory. In such cases, the electronically filed document shall indicate a typed "electronic signature", *e.g.*, "s/ Jane Doe".

(3) In the case of a signatory who is not a registered user, or who is a registered user but whose user ID and password will not be utilized in the electronic filing of the document, such document shall be deemed signed and filed when the document is physically signed by the signatory, the document is filed electronically, and the signature page is filed in optically scanned form pursuant to and consistent with the EFP.

(4) *In the case of a document to be signed by two or more persons, the following procedure shall be used:*

(a) The filing person shall initially confirm that the content of the document is acceptable to all persons required to sign the document. The filing person then shall attest that original signatures have been obtained from each of the other signatories on a paper copy of the document. If the filing person complies with the foregoing requirements, the Commission shall presume that the filing person has the authority to file the document on behalf of all other persons required to sign such document.

(b) The filing person shall then file the document electronically, indicating the original signatures that have been obtained, *e.g.*, "s/ Jane Doe," "s/John Doe," etc.

(c) The filing person must retain the hard copy of the document containing the original signatures until the earlier of: (i) The Commission deadline for destruction of APO materials, if applicable; or (ii) one year after the conclusion of the investigation and resulting appeals.

(d) For a document that requires a signature in the presence of a notary public (*e.g.*, affidavits), the document instead should contain an unsworn declaration clause to be signed by the signatory under penalty of perjury. The language for unsworn declarations under penalty of perjury is provided in 28 U.S.C. 1746.

L. Limitation on Service of Electronic Documents:

Documents filed electronically in all pending matters before the Commission, except for proceedings under section 337 of the Tariff Act of 1930, are not to be served electronically on other parties without the prior agreement of the Secretary. In the case of proceedings before an administrative law judge under section 337 of the Tariff Act of 1930, the presiding administrative law judge shall determine whether electronic service of documents by parties will be permitted in that

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proceeding. Parties may only effect electronic service on recipients who have provided written consent thereto to the Secretary or the presiding administrative law judge. Persons who have filed documents electronically with the Commission must comply with the rules in effecting service of the electronically filed document on parties in accordance with 19 CFR 201.16. All electronically filed documents must be accompanied by a certificate of service.

M. Copyright and Other Proprietary Rights:

(1) The website shall bear a prominent notice as follows: "The contents of each filing in EDIS–II may be subject to copyright and other proprietary rights (with the exception of the notices, orders, and opinions of the ITC). It is the user's obligation to determine and satisfy copyright or other use restrictions when publishing or otherwise distributing material found in EDIS–II. Transmission or reproduction of protected items beyond that allowed by fair use requires the written permission of the copyright owners. Users must make their own assessments of rights in light of their intended use."

(2) By filing any material with the Commission electronically, a person shall be deemed to consent to all uses of such materials by all parties to the action solely in connection with and for the purposes of the action, including the electronic filing in the action (by a party who did not originally file or produce such materials) of portions, excerpts, quotations, or selected exhibits from such filed materials as part of motion papers, pleadings or other filings with the Commission.

(3) Any dispute that arises among persons regarding the use of materials subject to copyright and other proprietary rights must be resolved among the persons themselves, without the Commission's involvement.

N. *Official record of commission proceedings:*

The electronic version of any document filed by a party in a Commission proceeding will be considered the "official version" for purposes of compiling the record in a Commission proceeding. Materials referenced by hyperlink in an electronic document will not be considered part of the document or of the record in a Commission proceeding unless they are reproduced in their entirety in an attachment to the document. The filer, however, must take into consideration paragraph II(M) when reproducing such materials.

III. Duration

A. This Handbook is effective as of the date specified in a notice published in the **Federal Register**. These electronic filing procedures shall remain in effect until superceded or rescinded.

B. The Secretary shall, from time to time, amend this Handbook as necessary.

(Authority: 19 CFR 201.8(f))

By Order of the Commission.

Issued: November 4, 2002.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 02–28405 Filed 11–7–02; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 701–TA–431 (Preliminary)]

Drams and Dram Modules From Korea

AGENCY: United States International Trade Commission.

ACTION: Institution of countervailing duty investigation and scheduling of a preliminary phase investigation.

SUMMARY: The Commission hereby gives notice of the institution of an investigation and commencement of preliminary phase countervailing duty investigation No. 701–TA–431 (Preliminary) under section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Korea of DRAMs and DRAM modules, provided for in subheadings 8473.30.10 and 8542.21.80 of the Harmonized Tariff Schedule of the United States, that are alleged to be subsidized by the Government of Korea. Unless the Department of Commerce extends the time for initiation pursuant to section 702(c)(1)(B) of the Act (19 U.S.C. 1671a(c)(1)(B)), the Commission must reach a preliminary determination in countervailing duty investigations in 45 days, or in this case by December 16, 2002. The Commission's views are due at Commerce within five business days thereafter, or by December 23, 2002.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's rules of practice and procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: November 1, 2002.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS-ON-LINE) at *http://dockets.usitc.gov/eol/public.*

SUPPLEMENTARY INFORMATION:

Background. This investigation is being instituted in response to a petition filed on November 1, 2002, by Micron Technology, Inc., Boise, ID.

Participation in the investigation and public service list. Persons (other than petitioners) wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in §§ 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list. Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this investigation available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigation under the APO issued in the investigation, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**.

A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference. The Commission's Director of Operations has scheduled a conference in connection with this investigation for 9:30 a.m. on November 22, 2002, at the U.S. International Trade Commission Building, 500 E Street SW, Washington, DC. Parties wishing to participate in the conference should contact Mary Messer (202–205–3193) not later than November 20, 2002, to arrange for their appearance. Parties in support of the imposition of countervailing duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions. As provided in §§ 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before November 27, 2002, a written brief containing information and arguments pertinent to the subject matter of the investigation. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

By order of the Commission.

Issued: November 4, 2002.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 02–28403 Filed 11–7–02; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Southwest Research Institute: Clean Diesel III

Notice is hereby given that, on October 1, 2002, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Southwest Research Institute: Clean Diesel III has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, The Lubrizol Corporation, Wickliffe, OH has been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Southwest Research Institute: Clean Diesel III intends to file additional written notification disclosing all changes in membership.

On January 12, 2000, Southwest Research Institute: Clean Diesel III filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on June 26, 2000 (65 FR 39429).

The last notification was filed with the Department on March 12, 2001. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on April 5, 2001 (66 FR 32439).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02–28422 Filed 11–7–02; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—VSI Alliance

Notice is hereby given that, on October 9, 2002, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), VSI Alliance has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Adelante Technologies, Leuven, Belgium; HCL Technologies, Ltd., Chennai, India; Palmchip Corporation, San Jose, CA; Alfred Kwok (individual member), San Jose, CA; Hardy Pottinger (individual member), Rolla, MO; and Kumar Venkatramani (individual member), Saratoga, CA have been added as parties to this venture.

Also, Artisan Components, Inc., Sunnyvale, CA; D. K. Arvind (individual member), Edinburgh, Scotland, United Kingdom; Atmos Corporation, Toronto, Ontario, Canada, Mark Buckner (individual member), Oak Ridge, TN; Jean-Paul Calvez (individual member), Nantes, France; Circuit Semantics, Inc., San Jose, CA; Ellipsis Digital Systems, Inc., Carlsbad, CA; Frontier Design, Leuven, Belgium; Dr. Peter Green (individual member), Manchester, England, United Kingdom; Ken Hodor (individual member), Sunnyvale, CA; Jennie Ltd., South Yorkshire, England, United Kingdom; David Laone (individual member), San Jose, CA; Edward Lee (individual member), Berkeley CA; Tsung Lee (individual member), Kao-Hsiung, Taiwan; Malardalen University, Vasteras, Sweden; Nsine Limited, Reading, England, United Kingdom; Brahmaji Potu (individual member), Cupertino, CA; Wolfram Putzke-Roming (individual member), Oldenburg, Germany; Sandeep Shukla (individual member), Blacksburg, VA; Silicon Integration Initiative (SI2), Austin, TX; Sirius Communications NV, Rotselaar, Belgium; Sony Corporation, Tokyo, Japan; Teleraty Systems, Inc., Sunnyvale, CA; University of Kitakyushu (Dept. of Information), Fukuoka-ken, Japan; Vulcan Machines Limited, Royston, England, United Kingdom; Xi'an Swip Co., Ltd., Shaangxi, People's Republic of China; and Xylon, Zagreb, Croatia have been dropped as parties to this venture.

No other changes have been made in either the membership of planned activity of the group research project. Membership in this group research project remains open, and VSI Alliance intends to file additional written notification disclosing all changes in membership.

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On November 29, 1996, VSI Alliance filed its original notification pursuant to section 6(a) of this Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act of March 4, 1997 (62 FR 9812).

The last notification was filed with the Department on July 12, 2002. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on August 13, 2002 (67 FR 52746).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02–28421 Filed 11–7–02; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF LABOR

Employment and Training Administration

Senior Community Service Employment Program Grants for PY 2003

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of availability of funds and solicitation for grant applications (SGA) for the national grants portion of the Senior Community Service Employment Program.

SUMMARY: All applicants for grant funds should read this notice in its entirety. The U.S. Department of Labor (DOL or the Department), Division of Older Worker Programs (DOWP) of the Employment and Training Administration (ETA), announces a grant competition for the Senior Community Service Employment Program (SCSEP) authorized under title V of the Older Americans Act Amendments of 2000 (OAA Amendments), Pub. L. 106–501; 42 U.S.C. 3056 *et seq.* These projects will promote part-time employment opportunities in community service activities for unemployed, low-income individuals who are age 55 and over, and will foster increased prospects for their economic self-sufficiency. Under this solicitation, DOWP anticipates that approximately $342,000,000 will be available for grant awards in Program Year (PY) 2003 (July 1, 2003–June 30, 2004).

This notice describes the background, application process, program activities, and evaluation criteria for this SGA, and the current reporting requirements for SCSEP. The information and forms contained in the Supplementary Information Section constitute the official application package. All of the information needed to apply for grant funding is included. Additional information can be located on the SCSEP Web site at: *http://wdsc.doleta.gov/seniors.*

Notice: Federal regulations for the SCSEP are being developed. When final, they may change reporting and/or other requirements. Applicants must abide by the requirements that are in place at the time the grants are awarded. Note, however, that the requirements, including the regulations, may be revised during the grant period. Successful applicants will be responsible for adhering prospectively to any revised requirements that go into effect during the grant period, including, but not limited to, final regulations.

Closing Date: Applications, including those hand-delivered, must be received at the address below no later than 4:45 p.m., Eastern Time, February 6, 2003.

Notice: All applicants are advised that U.S. mail delivery in the Washington, DC area has been erratic due to the recent concerns involving anthrax contamination. All applicants must take this into consideration when preparing to meet the application deadline, as each applicant assumes the risk for ensuring a timely submission of its application. If, because of these mail problems, the Department does not receive an application or receives it too late to give it proper consideration, even if the application was timely mailed, the Department will not consider the application. Therefore, it is recommended that applicants confirm receipt of their applications by contacting Lorraine Saunders, U.S. Department of Labor, Employment and Training Administration, telephone (202) 693–3336 before the closing deadline. [This is not a toll-free number].

ADDRESSES: Applications must be directed to the U.S. Department of Labor, Employment and Training Administration, Division of Federal Assistance, Attention: Lorraine Saunders, Room S–4203, 200 Constitution Avenue, NW., Washington, DC 20210. Her e-mail address is *lsaunders@doleta.gov.*

FOR FURTHER INFORMATION: Questions should be faxed to Jacquelyn Carter, Grants Management Specialist, Division of Federal Assistance, Fax (202) 693–2879. [This is not a toll-free number]. All inquiries should include the SGA number (DFA–02–111) and a contact name, fax and phone numbers. This announcement will be published on the Internet on ETA's Division of Older Worker Programs' homepage at *http://wdsc.doleta.gov/seniors.* Award notifications will also be published on the ETA homepage.

SUPPLEMENTARY INFORMATION:

I. Purpose and Background

The U.S. Department of Labor, Division of Older Worker Programs of the Employment and Training Administration is requesting grant applications for the provision of community service employment and unsubsidized placement of eligible participants (sometimes also referred to as enrollees) in accordance with title V of the Older Americans Act Amendments of 2000, Pub. L. 106–501, 42 U.S.C. § 3056 *et seq.* SCSEP is the only nationwide Federal program that focuses on training and placing older individuals into community service positions and unsubsidized employment.

SCSEP is currently authorized through 2005 and provides for at least 60,000 positions in which approximately 100,000 participants are served each year through part-time employment opportunities in community service activities. The purpose of the program is to foster useful part-time opportunities in community service activities for unemployed low-income persons who are 55 years or older and who have poor employment prospects, and to foster individual economic self-sufficiency by increasing the number of participants who receive the benefits of unsubsidized employment in the public and private sectors. Program participants work at community service agencies usually for 20 hours a week and are paid the higher of the Federal or State minimum wage. (OAA Amendments § 502(b)(1)(J)).

The Department is holding a full and open competition for SCSEP national grant funds in order to provide better services to SCSEP participants, host agencies, employers, and the communities that the national grant program serves. Open competition is not only the preferred vehicle for obtaining new grantees, but in most cases, it is the required vehicle for obtaining new grantees. (Pub. L. 95–224; 43 FR 36860–65; DMLS–2 § 836 at 8–12; OAA Amendments). The Department favors full and open competition because it provides the Department with an opportunity to ensure that the best applicants are awarded grants and the program is administered to its full potential. It also allows new and different entities, including faith-based and community-based organizations, to become a part of the grantee community.

The Department is committed to minimizing disruptions to the extent possible and the requirements that applicants and grantees must meet reflect this commitment. A selected grantee may be required to negotiate with the Department on the geographic areas it will serve so that all positions are located in the same State and county in which positions are currently located, and to ensure that all geographic areas that are currently served continue to be served. Therefore, a winning grantee may not be awarded all areas that it proposes to serve and in some cases, a selected grantee may be required to serve one or more areas not included in its application. The Department will assure, through the selection and negotiation process, that all areas currently served continue to be served.

Currently, participants occupy nearly all SCSEP positions. If transitions are made from one grantee to another as a result of this competition, these participants must be given the opportunity to continue in the program. Therefore, selected grantees must agree to offer incumbent SCSEP participants in authorized positions the first opportunity to continue in an SCSEP position in the grantee's program (*e.g.*, "right of first refusal"). As such, selected grantees must offer incumbent SCSEP participants the opportunity to continue in the SCSEP program in a position in the same geographic area, but not necessarily in the same host agency. Selected grantees may choose to move participants into new host agencies, or they may continue to utilize the current host agencies.

Further, the Department will work with the grantees to promote a seamless transition, if there is a new grantee in an area. Such transition assistance includes technical assistance, the approval to purchase equipment, obtaining office space, *etc.*, prior to the start of the grant period. The Department intends to hold a conference after it makes awards, which will allow grantees to network with each other and learn how to establish the necessary partnerships to make the SCSEP a more successful program.

II. Application Process

A. Eligible Applicants

Applicants may apply to receive a grant under one or more of the following three (3) categories.

(1) *General National Grant Funds.* Applications for general SCSEP national grant funds will be accepted from public and private nonprofit agencies and organizations, including faith-based and community-based organizations, and tribal organizations in accordance with section 502(b)(1) of the OAA Amendments, which have familiarity with the areas and populations to be served and can administer an effective program. "Nonprofit" is defined as an agency, institution, or organization which is, or is owned and operated by, one or more corporations or associations no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual. (OAA Amendments § 101(4)). "Tribal organizations" means the recognized governing body of any Indian tribe, or any legally established organization of Indians which is controlled, sanctioned, or chartered by such governing body. (OAA Amendments § 101(7)). In any case in which a contract is let or grant made to an organization to perform services benefiting more than one Indian tribe, the approval of each such Indian tribe is a prerequisite to the letting or making of such contract or grant. Applicants must mark a "G" on the application and state specifically in the application that they are applying for general SCSEP national grant funds.

(2) *Indian and Native American Grant Funds.* Applications for Indian and Native American national grant funds will be accepted from public or nonprofit national Indian aging organizations with the ability to provide employment services to older Indians as required by section 506(a)(3) of the OAA Amendments. "Indian" means a person who is a member of an Indian tribe. (OAA Amendments § 101(5)). "Indian tribe" means any tribe, band, nation, or other organized group or community of Indians (including Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act) which (A) is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians; or (B) is located on, or in proximity to, a Federal or State reservation or rancheria. (OAA Amendments § 101(6)).

Applicants must mark an "INA" on the application and state specifically in the application that they are applying for Indian national grant funds.

(3) *Pacific Island and Asian American National Grant Funds.* Applications for Pacific Island and Asian American national grant funds will be accepted from national public or nonprofit Pacific Island and Asian American aging organizations with the ability to provide employment to older Pacific Island and Asian Americans as required by section 506(a)(3) of the OAA Amendments. "Pacific Island and Asian American" means Americans having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands. (OAA Amendments § 516(3)). Applicants must mark an "AP" on the application and state specifically in the application that they are applying for Asian Pacific national grant funds.

Applicants applying for more than one category above must submit separate applications for each category for which they are applying.

Each applicant must submit a copy of its application to the Governor in each State that it proposes to serve before submitting an application to the Department as required by section 503(a)(5) of the OAA Amendments. Under this provision, the Governor of each State may submit a recommendation to the Secretary relating to the anticipated effect of an applicant's proposal on the overall distribution of positions within the State; recommendations for redistribution of positions to underserved areas; and recommendations for distribution of newly available positions.

Before receiving an award, applicants must meet the eligibility criteria and responsibility tests established in section 514 of the OAA Amendments and any applicable regulations.

Before receiving funding, all selected applicants must certify that they will comply with uniform cost principles and circulars issued by the Office of Management and Budget, keep records, and submit reports to the Department.

Before receiving funding, all selected applicants must agree to be evaluated on performance measures as a condition of the grant award. (OAA Amendments § 513(a)(5)).

Entities may apply as a consortium, but *each* member of the consortium must meet all eligibility and responsibility tests. Entities applying as a consortium are also jointly and severally liable for meeting all requirements for administering this Federally-funded program.

Section 18 of the Lobbying Disclosure Act of 1995, Pub. L. 104–65, prohibits the award of Federal funds to entities described in section 501(c)(4) of the Internal Revenue Code that engage in lobbying activities. Therefore, such entities are not eligible to receive funds under this announcement.

The Grant Officer's determination for award under this SGA constitutes a final agency action. The receipt of funding in any prior year does not guarantee an award under this SGA.

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B. Jurisdictions To Be Served

The OAA Amendments provide that when funds are awarded competitively, it should be done in a manner that minimizes disruptions of services to participants to the extent possible. National SCSEP resources are distributed by a formula to each State. At the sub-State level SCSEP positions are distributed largely on a proportional basis depending on the eligible population living in each county. Consequently, SCSEP participants are located in nearly every county in the nation. The geographic areas an applicant proposes to serve and the number of positions it proposes to place in each area must be based on the present location of positions. In developing this application, applicants must identify the area(s) they would serve. See Appendix E on the ETA homepage at *http://wdsc.doleta.gov/seniors* for a listing of the locations of current positions and the number of authorized positions by State and county. If selected, negotiations may result in the selected applicant serving areas that it did not propose to serve and not serving areas it included in its application. To ensure the integrity of the program and to minimize disruptions to current participants and community services, the Department retains the authority to approve or disapprove the distribution of all positions.

Currently, SCSEP national grantees operate projects in all States (including Puerto Rico and the District of Columbia) except Alaska, Delaware, Hawaii, and the territories. Projects in these latter jurisdictions are not covered by this SGA. Alaska, Delaware, and Hawaii have not been served by national grantees in the past. As a result of the "hold harmless" provisions in the current legislation, there is currently no available funding to support projects in these areas by national grantees. To compensate for the lack of national grantees in these areas, the Department has sufficiently funded these States to provide equitable services to their SCSEP participants. The territories, which include Guam, American Samoa, the U.S. Virgin Islands, and the Commonwealth of the Northern Mariana Islands, receive funds directly through a specific reservation under the OAA Amendments.

C. Funding Levels

The total amount of funds available for this SGA is approximately $342,000,000. It is anticipated that from 10 to 20 awards may be made under this SGA, including at least one award to an Indian and Native American organization and at least one to an Asian Pacific Islander organization. The Department reserves the right to negotiate the amounts to be awarded under this competition.

No request for funds may be less than $6,000,000. In applying, applicants must list the location of positions by State(s) and counties where they plan to operate. The positions located in the combination of counties and State(s) where the applicant proposes to operate must not be less than 840. A grant request of $6,000,000 provides for approximately 840 positions. Please be advised that requests under $6,000,000 / 840 positions will not be considered and will be deemed non-responsive.

The Department has established this minimum level for grant requests based on the statutory 13.5 percent administrative cost limitation in the OAA Amendments at section 502(c)(3). Historically, the Department's smallest grant for this program has been $6,000,000. Based on experience, the Department believes that it becomes increasingly more difficult to provide administrative payroll systems, program oversight, and to maintain the fiduciary duties required of program oversight under the current statutory administrative cost limitations with a grant smaller than $6,000,000.

D. Administrative Requirements

Administrative Costs. The SCSEP has legislated limitations on the expenditure of Title V funds. The administrative cost limitation of an SCSEP project is 13.5 percent of the Federal share; however, the OAA Amendments allow the Secretary to increase this limit, but only up to 15 percent of the Federal share. (OAA Amendments § 502(c)(3)). Any applicant requesting an administrative cost higher than 13.5 percent must justify such a request as a part of its application. Note, however, that justification alone does not entitle the applicant to approval of a higher administrative cost limit. Any decision to approve a higher administrative limit will be made on a case-by-case basis.

Wages and Fringe Benefits. There is a minimum or "floor" on the amount that must be spent on participant wages and fringe benefits. That floor is 75 percent of the total Federal share, which reflects Congressional concern that low-income program participants be the primary beneficiaries of the funding. (OAA Amendments § 502(c)(6)(B)). The difference between (1) the total grant allotment and (2) the sum of the administrative costs and participant wages and fringe benefits is called "Other Participant Costs." [total grant allotment—(administrative costs + wages and fringe benefits) = Other Participant Costs].

Other Participant Costs. Costs that are to be used for participant training, counseling, job development, and similar activities are called "Other Participant Costs" (OAA Amendments § 502(c)(6)(A)). The available Federal share for Other Participant Costs is that part of the Federal grant allocation that is not used for administrative costs or participant wages and fringe benefits.

Federal and non-Federal share. Applicants are reminded that not all project costs are Federal. The Federal share must not exceed 90 percent of the total project. (OAA Amendments § 502(c)(1)). The non-Federal share may be in cash or in-kind, but cannot be other Federal funds and must otherwise be an allowable charge used for SCSEP purposes.

Start-up costs. Specific start-up costs are not statutorily provided for SCSEP projects. However, according to section 502(c)(4) of the OAA Amendments, the cost of administration (limited to 13.5 percent or 15 percent with Department approval), includes the costs associated with goods and services, such as rental or purchase of equipment, utilities, office supplies, postage, and rental and maintenance of office space. Generally, these costs are incurred after the beginning of a grant period. However, the Department will allow new grantees to obtain such items up to one month before the beginning of the program year (July 1, 2003) to assist with the transition between incumbents and new grantees. This intent will be conveyed through the grant agreement with such grantees.

E. Period of Performance

Successful applicants under this SGA are expected to commence program operations on July 1, 2003. The period of performance will initially be for one (1) year, with an option to be funded for an additional two (2) years at the Department's discretion, if regulations are finalized and performance measures are established as required by section 514(a) of the OAA Amendments.

F. Submission of Proposals

A cover letter, an original plus two (2) copies of the proposal, and one (1) blue ink-signed original SF 424 must be timely submitted to the U.S. Department of Labor, Employment and Training Administration, Division of Financial Assistance, Room S–4203, 200 Constitution Avenue, NW., Washington, DC 20210. This proposal must have two parts: (1) A technical proposal; and (2) a cost proposal.

G. Acceptable Methods of Submission

Notice: All applicants are advised that U.S. mail delivery in the Washington, DC area has been erratic due to the recent concerns involving anthrax contamination. All applicants must take this into consideration when preparing to meet the application deadline, as each applicant assumes the risk for ensuring a timely submission of its application. If, because of these mail problems, the Department does not receive an application or receives it too late to give it proper consideration, even if the application was timely mailed, the Department will not consider the application. Therefore, it is recommended that applicants confirm receipt of their application by contacting Lorraine Saunders, U.S. Department of Labor, Employment and Training Administration, telephone (202) 693–3336 prior to the closing deadline. [This is not a toll-free number].

Hand-delivered applications. To be considered for funding, hand-delivered applications must be received not later than 4:45 p.m., Eastern Time, on the closing date, at the specified address.

Electronic applications. Due to the erratic mail delivery in the Washington, DC area, in addition to using the U.S. Postal Service or overnight delivery services, applicants have the option of submitting their applications via e-mail to Lorraine Saunders at *lsaunders@doleta.gov*. Should the applicant choose to use e-mail, the return receipt option must be utilized in order to verify receipt of the application (*see instructions below*), and an originally signed signature sheet of the SF 424, along with a copy of the grantee's e-mail/written verification of receipt, must follow *via* overnight mail. E-mailed applications will be accepted in Microsoft WORD only.

Before sending the e-mail, click on "file," go to "properties, return notification," and finally click on "mail receipt." The sender will automatically receive an e-mail notification when the e-mail is opened.

Please note that faxed applications will not be accepted. Applications not received by the deadline will not be accepted.

Withdrawal of applications. Applications may be withdrawn by written notice or telegram (including mail gram) received at any time before an award is made. Applications may be withdrawn in person by the applicant or by an authorized representative, if the representative's identity is made known and the representative signs a receipt for the application.

Failure to adhere to the above instructions will be basis for a determination of non-responsiveness.

H. Required Content

An application must consist of two (2) separate and distinct parts: a technical proposal and a cost proposal.

The technical proposal must consist of a narrative not to exceed forty (40) double-spaced pages, including all attachments with the exception of required vitae and the list of prior government grants and contracts, with a font size of no less than 11 pt., and typewritten on one side of the paper only. The required vitae will not count against the page limitation and must be attached as a separate appendix to the SGA. Applicants must include as a separate appendix, a list of all government grants and contracts that it or any of its affiliates has had in the past three (3) years, including grant officer contact information. For purposes of this SGA, the term "affiliate" refers to the applicant's subsidiaries, divisions, predecessors, and successors. All other attachments count against the 40-page limitation and must be limited to meaningful information that contributes to, and/or verifies the proposed activities, such as letters of commitment. The content of the technical proposal is described in section III of this SGA.

The cost proposal must contain the required standard forms and budget information as described in section IV.

III. The Technical Proposal

A. Program Components

The purpose of this section is to give applicants a better sense of how the SCSEP operates and what functions and responsibilities are important to the program. It is not intended to be an all-inclusive description and does not reflect all the requirements of the program. Applicants that wish to learn more about the SCSEP are encouraged to review the legislation at Pub. L. 106–501 (42 U.S.C. § 3056). The legislation at section 502 contains a number of criteria that each grant must meet. An applicant's failure to demonstrate that its proposed program meets these criteria will make the application non-responsive. Applicants should also review the current regulations at 20 CFR Part 641 and the Older Worker (OW) Bulletins, which may be found on ETA's Division of Older Worker Program's homepage at *http://wdsc.doleta.gov/seniors*. Applicants may use this information when drafting their responses to the Rating Criteria in section III.C. of this SGA. The Department also intends to hold bidder's conferences for all interested applicants that want to learn more about the program and the competition process. The times and locations for these conferences will be posted on the Division of Older Worker Program's homepage at *http://wdsc.doleta.gov/seniors*. Applicants may review ETA's homepage at *http://wdsc.doleta.gov/sga/pdf/ApplyingGrants.pdf* for information on applying for ETA grants and *http://wdsc.doleta.gov/sga/* for forms and information relating to competition for ETA grants. Further, regulations covering the OAA Amendments are being developed and updates will be posted on the Division of Older Worker Program's homepage throughout the regulatory process.

Individual Employment Plans (IEP). Each SCSEP participant must be assessed to determine the skills and employment-related needs of that individual, and a plan must be developed to improve the participant's employability. The IEP generally includes an employment goal and an appropriate sequence of services for that participant based on the assessment. (Some programs may call this type of plan an IDP, or Individual Development Plan.)

Community Service Employment. Providing subsidized community service employment is a significant part of the SCSEP's purpose. Community service may include, but is not limited to, such activities as social, health, welfare and educational services, counseling services, including tax counseling, environmental efforts, weatherization efforts and economic development. Community service assignments are usually made at host agencies. Participants receive wages paid for by the grant.

Training. Training is an important tool to make the most effective use of the skills and talents of participants, to help them succeed in their community service assignments and to facilitate placement of participants in unsubsidized employment. How much training, and what types of training are necessary are based on each individual participant's IEP.

Services for Individuals with Multiple Barriers to Employment. One emphasis of this program is addressing the needs of minority, limited English-speaking, and, where applicable, Indian eligible individuals as well as eligible individuals who have the greatest economic need to remove their barriers to obtaining employment. "Greatest economic need" is defined as need resulting from an income level at or below the poverty line and need caused

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by non-economic factors, which may include: physical and mental disabilities; language barriers; and cultural, social, or geographical isolation, including isolation caused by racial or ethnic status, that restricts the ability of an individual to perform normal daily tasks or threatens the capacity of the individual to live independently. (OAA Amendments § 101(27)).

Coordination with the Workforce Investment Act, One-Stop Career Centers and State and Area Agencies on Aging. All SCSEP activities are required to be coordinated with One-Stop centers operated under the Workforce Investment Act (WIA), Pub. L. 105–220 and the State aging network. With regard to One-Stops, the SCSEP is a required partner under WIA. As such, SCSEP activities must be coordinated with WIA. For instance, participant assessments of eligibility, needs, and competence under SCSEP will satisfy any condition for an assessment under WIA and vice-versa. Coordination with State and Area Agencies on Aging is required to ensure a "seamless program," which ultimately benefits program participants. ETA also encourages grantees to coordinate efforts with other SCSEP grantees.

Host Agencies. Host agencies provide the worksites for program participants and may be public or private 501(c)(3) organizations, including community-based and faith-based organizations, authorized Federal agencies, State agencies, or local agencies. It is not uncommon for many of the SCSEP national grantees to function as host agencies by utilizing their organizations as the worksite for participants. Host agencies are an important component in that they serve the purposes of the program by supplying community service work assignments and by providing training and work experience for participants. The quality of the host agency directly affects the value of the work experience for the participants, and the participants' ability to obtain unsubsidized employment.

Geographic Areas. The Department allocates SCSEP positions or slots on an equitable basis, by State based on Census data of unemployed, low-income people who are 55 or older. (OAA Amendments § 503(a)(4)). ETA strives to ensure the equitable distribution of positions to cover both rural areas and urban areas adequately. Current positions are available at Appendix E, which is posted only on the ETA homepage at *http://wdsc.doleta.gov/seniors.* Currently, a State may have one or more grantees serving within its territory. Several grantees may operate in large population centers, focusing on the needs of specific population groups. To give applicants a better picture of how the positions and grantees work together currently within a State, applicants may review the ETA homepage at *http://wdsc.doleta.gov/seniors/html_docs/directory.html* for more information.

Placement into Unsubsidized Employment. One of the SCSEP objectives is to foster economic self-sufficiency through unsubsidized employment. The SCSEP program has a legislatively mandated, minimum placement goal of 20 percent of the number of authorized positions for each program grantee, and an overall Government Performance and Results Act of 1993 (GPRA) placement goal of 37 percent. The ability of a grantee to meet the unsubsidized placement goal depends largely on how successful the grantee is at targeting occupations, identifying job openings, training its participants, and successfully matching participants and jobs.

B. Rating Criteria for Award

A DOL panel will use the point scoring system and the Rating Criteria format specified below to review applications. Applications will be ranked based on the score assigned by the panel after careful evaluation by each panel member. It is required that all applicants use the Rating Criteria format when developing their SGAs.

The ranking will be the primary basis used to identify applicants as potential grantees. The Department may establish a competitive range, based upon the application evaluation, for the purpose of selecting qualified applicants. The panel's conclusions are advisory in nature and not binding on the Grant Officer. In deciding whether to award a grant to an applicant the Grant Officer may, when appropriate, also take into account the applicant's past performance in its prior Federal grants or contracts for the past three (3) years as it relates to the applicant's or its affiliate's demonstration of financial and administrative responsibility and program performance. The information the Grant Officer considers may include: (1) The applicant's level of cooperation with grant officer(s), the applicant's Federal technical representatives, and Federal auditors and investigators; and (2) the sufficiency of the administrative costs to subgrantees, subcontractors, or other affiliates. (A list of the applicant's prior grants and contracts must be attached to the proposal as described in section II. H. of this Solicitation). The Department reserves the right to ask for clarification or hold discussions, but is not obligated to do so. The Department further reserves the right to select applicants out of rank order if such a selection would, in its opinion, result in the most effective and appropriate combination of funding, administrative costs (*e.g.*, cost per enrollment and placement), program goals (*e.g.*, serving the needs of minorities, limited English speakers, Indian eligible individuals, and those of greatest economic need), and geographical service areas. Such items will be negotiated before we award a grant. If the negotiations do not result in an acceptable submission, the Department has the right to decline to fund an applicant's proposal.

Before receiving an award, applicants must meet the eligibility criteria and responsibility tests established in section 514 of the OAA Amendments and any applicable regulations, regardless of the applicant's rating score.

Scoring: The following full review criteria totaling a maximum score of 100 points apply to all applicants.

(1) Program Design—Approach, Population(s) and Area(s) Served (20 Points)

The applicant must describe the overall plan for how it will realize the purposes of the program, which are to promote useful part-time employment opportunities in community service activities for unemployed, low-income persons, and to foster individual economic self-sufficiency, and to increase the number of persons who may enjoy the benefits of unsubsidized employment.

Although selected grantees must provide "the right of first refusal" to current participants, vacancies may occur for a number of reasons. Therefore, the applicant must describe the expected characteristics of the specific population(s) it will serve, including: those with greatest economic need (as defined by OAA Amendments § 101(27)), greatest social need (as defined by OAA Amendments § 101(28)), poor employment history or prospects, and those individuals who are over age 60, the range of services it will offer to meet the needs of the population(s), and the geographic area(s) that will be served by the proposed program.

The applicant must describe the methodology it will use to identify the population(s) it will serve. Applicants must include the number and percentage of those individuals who are expected to have multiple barriers to employment, including minorities, limited English-speaking, Indian eligible individuals, and eligible individuals who have the greatest economic needs, and address how the services it will provide will overcome the barriers faced by individuals in the population(s) proposed to be served.

The applicant must describe its plan to recruit and select participants and must:

—Explain how eligibility will be determined and documented; and
—Describe efforts to assure participation of minority groups, those with greatest economic need and those with poor employment prospects.

The applicant must describe how it will certify the income of each participant upon entry into the program and re-certify the income of each participant at least once each program year. The applicant must indicate the schedule for certifying income eligibility of participants, and indicate what actions the applicant will take for those found to be no longer eligible. Applicants must also indicate where eligibility records will be maintained. (Information related to these requirements may be found in Older Worker Bulletins Nos. 96–5, 95–5, and 98–31. These and other bulletins and information may be found at *http://wdsc.doleta.gov/seniors*).

The applicant must include a detailed list of the States, counties, and in a few instances, cities where the project and its subprojects will be conducted, including the number of authorized positions to be established in each jurisdiction. The distribution of authorized positions by county and the estimated allocation of funds for each State should be listed. As discussed earlier, the Department and selected grantees may negotiate final State dollar amounts and number of positions that will be awarded to each grantee. For those applicants with a proposed project located in a city but also serving surrounding counties, the county where the city is located (unless the city is not in a county as listed in Appendix E) and the surrounding counties must be listed with the number of authorized positions. See Appendix E for a listing of the location of current projects and the number of authorized positions under each of these projects. Applicants will find Appendix E posted only on the ETA homepage at *http://wdsc.doleta.gov/seniors.*

The applicant must provide an outline of the procedures it will use to ensure that program participants will not displace other employees, (including partial displacement such as in the reduction of hours worked or benefits), workers on layoff or contract employees, as required by section 502(b)(1)(F) of the OAA Amendments.

The applicant must briefly discuss the complaint resolution system that it will use in cases where a participant wishes to dispute an adverse action or in cases where an applicant for enrollment wishes to dispute an unfavorable determination of eligibility. If available, provide as an attachment an example of the written explanation of the complaint resolution system that is to be given to each participant.

(2) Program Services—Community Services and Participant Services (20 Points)

Although a selected grantee may choose to use existing SCSEP positions or to create new ones and must offer incumbent participants the right of first refusal for continued participation, it must nonetheless discuss its preferred approach to selecting and providing community services. The applicant must describe the types of community services that will be provided by participants employed under its SCSEP projects. An applicant that chooses to take over existing positions must discuss its vision of how community services are to be provided. The applicant must list the types of services and agencies that will host participants to perform them. (A matrix format is suggested for ease of display within a limited page allocation). The applicant must also describe the method it will use to select and/or develop the host agencies and their community services, and how it proposes to maintain relationships with them. The applicant must outline how it will review these agencies to ensure on-the-job training, participant satisfaction, satisfactory health and safety conditions, adequate supervision, and fiscal integrity. The applicant must explain how it will ensure that these employment opportunities will be made available to participants in their immediate communities or nearby, and how the community services offered will benefit the community.

Host agencies providing the worksites for program participants must be publicly owned and operated facilities, or projects sponsored by 501(c)(3) organizations, including community-based and faith-based organizations. (OAA Amendments § 502(b)(1)(C)).

The applicant must describe the services that will be provided to the participants, either directly, through the One-Stop Center System, or through other service providers.

Physical Examinations. Applicants must describe the arrangements that will be made to offer physical examinations to participants.

Orientation. Applicants must describe participant and host agency orientation procedures. The description must include discussion of participant and agency responsibilities, permissible political activities, grievance procedures, etc.

Assessment. Applicants must describe the procedures to be followed in assessing the job aptitudes, job readiness, and job preferences of participants, as well as their potential for transition into unsubsidized employment. Applicants must address the types of training and supportive service that it will provide as part of a participant's assessment.

Individual Employment Plan (IEP). Applicants must describe how the assessment will be used to develop the IEP for each participant. The IEP includes the participant's goal and the steps to achieve that goal.

Training. Applicants must describe the training that will be provided to participants. Training should be related to the participant's assessment and IEP. Training may be related to the participant's community service job duties, unsubsidized employment goal, or it may be developmental, (*i.e.*, the skills developed will enhance the participant's unsubsidized employment opportunities).

Placement into Community Service Employment. Applicants must describe the methods to be used to place participants into community service employment. Include such factors as:

—The types of community service activities that will be emphasized in assigning participants to community service jobs;
—The extent to which participants will be placed in work assignments involving the administration of the project itself;
—The criteria for selecting work assignments;
—The average number of hours in participant work weeks;
—The average participant wage rate;
—Participant fringe benefits; and
—The procedures for assuring participants are given adequate work site supervision.

Supportive services. Applicants must describe the supportive services to be provided to participants and the source(s) of these services.

Participant transportation. Where applicable, applicants must describe the arrangements that will be made to provide transportation assistance to participants and/or the reimbursement rate for transportation.

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(3) Program Services—Unsubsidized Placements (20 Points)

Placement into unsubsidized employment. Each year the grantee must place a minimum of 20 percent of the number of authorized positions (with a goal of 37%) into unsubsidized employment. Therefore, applicants must:

—Describe the steps that will be taken to transition participants into unsubsidized employment.
—Include examples or anticipated content of the cooperative arrangements that will be made with the Workforce Investment Board and One-Stop centers. (OAA Amendments Section 502(b)(1)(O)).
—Describe placement follow-up efforts that will be utilized.

Work with area employers. The applicant must describe how it plans to identify what the needs of area employers are, the skills in demand, how any skills gaps might be filled, the jobs expected to be available in the area, the strategies that it will use to provide participants with the skills needed by employers, and strategies it will use to match participants with employers.

(4) Program Coordination and Oversight (20 Points)

Coordination. The applicant must describe its plans for coordinating with One-Stop centers and State aging networks, and for recruiting host agencies, including community-based and faith-based organizations, in the communities it proposes to serve. The applicant must indicate any other cooperative relationships, or information-sharing arrangements that will assist program performance and assure equitable access to the program.

Program Oversight. The applicant must describe its procedures for managing any proposed subgrantees to ensure effective program operations. The applicant must provide, for example, an explanation of how it will ensure that adequate resources are made available for local level operations, and how it will establish a mechanism for the tracing of funds to a level of expenditure adequate to ensure that funds have been spent lawfully.

The applicant must describe the methods and procedures to be used to monitor and evaluate project activities, subgrantees, host agencies and contractors to determine if the project is being administered in accordance with Federal guidelines and regulations and if project goals and timetables are being met. Include in this explanation:

—How frequently monitoring/evaluation visits will be made to projects (generally local projects should be monitored no less than annually);
—Who will be responsible for monitoring/evaluation;
—What criteria will be used to monitor and evaluate project activities;
—What methods will be used for prescribing remedial action when necessary;
—What follow-up procedures will be used to ensure that any identified problem has been remedied; and
—How subgrantee or project reports will be validated and made part of permanent files.

Minimizing Disruptions. The applicant must describe its plan for carrying out activities designed to ensure minimal disruptions to existing participants in the event that the applicant replaces an incumbent grantee. The applicant must describe how on-board participants of the former grantee(s) (if applicable) will be transferred to its program with a minimum of disruption. It must describe how it will administer the participants' "right of first refusal." The description must include an explanation of how and when the participants will be notified, what records will be turned over (if applicable), what efforts will be made to maintain the privacy of individual records, what efforts will be made to place program participants into other employment and training opportunities, if needed, and what other services might be provided to ease the transition. The applicant must describe its timeline for developing and initiating program operations and this transition process following notification of award.

Applicants must describe a plan for reassuring participants that efforts will be made to minimize disruptions to them in the program.

(5) Management Structure and Fiscal Integrity (20 Points)

Management Structure. The applicant must describe the management structure for the proposed project. The applicant must include a staffing plan or project organizational chart describing the relationship between it and planned subgrantees and/or key host agencies. The chart must identify staff with key management responsibilities and show their expected portion of time dedicated to the project (if less than 100 percent). The applicant must include a brief description of its specific, relevant experience (and, as appropriate, the experience of significant subgrantees) in serving senior populations, serving people with barriers to employment, and/or in administering other employment related or other Federal programs. The applicant must also include position descriptions and, if available, vitae for key staff in management and participant services.

Subgrants. Applicants that are considering utilizing subgrantees are also required to submit the criteria they plan to use in selecting subgrantees. Applicants must also demonstrate the sufficiency of the proposed level of administrative funding for such subgrantees. Applicants that intend to hold a competition for subgrantees are required to submit their criteria for that competition. Such applicants must provide a timeframe for competing and/or awarding subgrants, whether awarded competitively or non-competitively, including the planned dates of the awards and performance.

Program and Fiscal Integrity. The applicant must describe the mechanisms it plans to use to establish and maintain program and fiscal oversight and maintain appropriate program and fiscal management information/records, including a brief description of computer hardware and software support. The applicant must describe a record keeping system that is sufficient to prepare required reports, and to trace funds to adequate levels of expenditures to ensure lawful spending.

Financial Monitoring. Applicants must describe how the financial management system of subgrantees and projects will be monitored, including:

—who will be responsible for monitoring subgrantee and affiliate expenditures;
—how frequently monitoring of expenditures will be done;
—how financial reports will be validated; and
—what follow-up procedures will be used.

Audits. Applicants must describe coverage plans to audit projects as well as plans to audit the headquarters activities. If a current grantee, the applicant must provide specific references to the most recent audit and include the name of the audit firm and the date of that audit.

Points Summary

(1) Program Design—Approach, Population(s) and Area(s) Served (20 points)
(2) Program Services—Community Services and Participant Services (20 points)
(3) Program Services—Unsubsidized Placements (20 points)
(4) Program Coordination and Oversight (20 points)
(5) Management Structure and Fiscal Integrity (20 points)

Total=100 points.

IV. The Cost Proposal Requirements

A. Budget Forms and Narrative Information

Each applicant must submit a cost proposal containing a completed Standard Form 424, "Application for Federal Assistance;" a Standard Form 424A (Budget Information Form); and a detailed cost breakout for each column and line item from Section B of the Standard Form 424A. Copies of all required forms along with the instructions for completing the forms are provided in the appendices to this SGA and can be found on the ETA homepage at *http://wdsc.doleta.gov/seniors.*

In addition to these forms, the applicant must submit a "detailed cost break out" that provides specific information on each of the expenditures listed under Section B of the Standard Form 424A, including both Federal and non-Federal funds. Each expenditure will fall under one of the three major cost categories: Administrative; Enrollee Wages and Fringe Benefits; or Other Participant Costs. Explanations of these categories can be found earlier in these documents and in the SCSEP regulations at 20 CFR 641.404.

In addition to the cost proposal, applicants must include the Assurance and Certification signature page, provided in Appendix D.

B. Fiscal and Performance Reporting Requirments

Applicants must have current computer technology and ensure that their organizations have the capability to link to the Internet. Reporting must be done through the Internet.

In accordance with 29 CFR 97.40 or 29 CFR 95.51, each grantee must submit a Senior Community Service Employment Program Quarterly Progress Report (QPR). This report must be prepared to coincide with the ending dates for Federal fiscal year quarters and must be submitted to the Department no later than 30 days after the end of the quarterly reporting period. If the grant period ends on a date other than the last day of a federal fiscal year quarter, the last quarterly report covering the entire grant period must be submitted no later than 30 days after the ending date. The Department will provide instructions for the preparation of this report.

In accordance with 29 CFR 97.41 or 29 CFR 95.52, the following financial reporting requirements apply to title V grants:

—An SF–269, Financial Status Report (FSR), must be submitted to the Department within 30 days after the ending of each quarter of the program year.
— A final FSR must be submitted within 45 days after the end of the grant.
— All FSRs must be prepared on an accrual basis.

Signed at Washington, DC, this 5th day of November, 2002.

Emily Stover DeRocco,

Assistant Secretary, Employment and Training Administration.

Appendices

Appendix A: Application for Federal Assistance, Standard Form 424
Appendix B: Budget Information Sheet, Standard Form 424–A
Appendix C: Standard Form 424–A Clarifying Instructions
Appendix D: Assurances and Certifications Signature Page

Appendix E: Listing of Current Locations and Potential Areas to be Served— posted at *http://wdsc.doleta.gov/seniors*

BILLING CODE 4510–30–P

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APPENDIX A

APPLICATION FOR FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

		2. DATE SUBMITTED	Applicant Identifier
1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction		3. DATE RECEIVED BY STATE	State Application Identifier
		4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address *(give city, county, State, and zip code)*:	Name and telephone number of person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER *(EIN)*: ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

A. State — H. Independent School Dist.
B. County — I. State Controlled Institution of Higher Learning
C. Municipal — J. Private University
D. Township — K. Indian Tribe
E. Interstate — L. Individual
F. Intermunicipal — M. Profit Organization
G. Special District — N. Other (Specify) _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es) ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other*(specify)*:

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐ – ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(Cities, Counties, States, etc.)*:

13. PROPOSED PROJECT		**14. CONGRESSIONAL DISTRICTS OF:**	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:		**16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?**
a. Federal	$ .00	a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON: DATE _____
b. Applicant	$ .00	b. No. ☐ PROGRAM IS NOT COVERED BY E. O. 12372 ☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW
c. State	$ .00	
d. Local	$ .00	
e. Other	$ .00	
f. Program Income	$ .00	
g. TOTAL	$ 0.00	**17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?** ☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Type Name of Authorized Representative	b. Title	c. Telephone Number
d. Signature of Authorized Representative		e. Date Signed

Previous Edition Usable
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Standard Form 424 (Rev. 7-97)
Prescribed by OMB Circular A-102

INSTRUCTIONS FOR THE SF-424

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0043), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1. Self-explanatory.

2. Date application submitted to Federal agency (or State if applicable) and applicant's control number (if applicable).

3. State use only (if applicable).

4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.

5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.

6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.

7. Enter the appropriate letter in the space provided.

8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:

   -- "New" means a new assistance award.

   -- "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.

   -- "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.

9. Name of Federal agency from which assistance is being requested with this application.

10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.

11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item: Entry:

12. List only the largest political entities affected (e.g., State, counties, cities).

13. Self-explanatory.

14. List the applicant's Congressional District and any District(s) affected by the program or project.

15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.

16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.

17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.

18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

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INSTRUCTIONS FOR THE SF-424A

Public reporting burden for this collection of information is estimated to average 180 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0044), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary Lines 1-4 Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the Catalog program title and the Catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the Catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the Catalog program title on each line in *Column* (a) and the respective Catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a seperate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate spece for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g)

For new applications, leave Column (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 - Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Line 6a-i - Show the totals of Lines 6a to 6h in each column.

Line 6j - Show the amount of indirect cost.

Line 6k - Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7 - Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program

INSTRUCTIONS FOR THE SF-424A (continued)

narrative statement the nature and source of income. The estimated amount of program income may be considered by the Federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal Resources

Lines 8-11 Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a) - Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) - Enter the contribution to be made by the applicant.

Column (c) - Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d) - Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) - Enter totals of Columns (b), (c), and (d).

Line 12 - Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13 - Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14 - Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 - Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16-19 - Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 - Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 - Use this space to explain amounts for individual direct object class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 - Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 - Provide any other explanations or comments deemed necessary.

APPENDIX B

BUDGET INFORMATION - Non-Construction Programs OMB Approval No. 0348-0044

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. Totals		$	$	$	$	$

SECTION B - BUDGET CATEGORIES

6. Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY (1)	(2)	(3)	(4)	Total (5)
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges *(sum of 6a-6h)*					
j. Indirect Charges					
k. TOTALS *(sum of 6i and 6j)*	$	$	$	$	$
7. Program Income	$	$	$	$	$

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Previous Edition Usable

Standard Form 424A (Rev. 7-97)
Prescribed by OMB Circular A-102

SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTAL *(sum of lines 8-11)*	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. Non-Federal					
15. TOTAL *(sum of lines 13 and 14)*	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years) (b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTAL *(sum of lines 16-19)*	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION

21. Direct Charges:	22. Indirect Charges:
23. Remarks:	

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Standard Form 424A (Rev. 7-97) Page 2

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INSTRUCTIONS FOR THE SF-424A

Public reporting burden for this collection of information is estimated to average 180 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0044), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary Lines 1-4 Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the Catalog program title and the Catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the Catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the Catalog program title on each line in *Column* (a) and the respective Catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g)

For new applications, leave Column (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 - Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Faderal) by object class categories.

Line 6a-i - Show the totals of Lines 6a to 6h in each column.

Line 6j - Show the amount of indirect cost.

Line 6k - Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7 - Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount, Show under the program

INSTRUCTIONS FOR THE SF-424A (continued)

narrative statement the nature and source of income. The estimated amount of program income may be considered by the Federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal Resources

Lines 8-11 Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a) - Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) - Enter the contribution to be made by the applicant.

Column (c) - Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d) - Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) - Enter totals of Columns (b), (c), and (d).

Line 12 - Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13 - Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14 - Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 - Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16-19 - Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 - Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 - Use this space to explain amounts for individual direct object class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 - Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 - Provide any other explanations or comments deemed necessary.

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APPENDIX C

STANDARD FORM 424A CLARIFYING INSTRUCTIONS

The applicant must prepare the proposed budget using Standard Form 424A or comparable format.

Sections A, B, C, and D of the Budget Information Form should include budget estimates for the entire grant period. In Sections A and B, four basic grant function areas are required. They are: (1) Headquarters Administration; (2) Local Administration; (3) Enrollee Wages and Fringe Benefits; and (4) Other Enrollee Costs. Costs attributable to these functional areas are described in the regulations and Older Worker Bulletins. Applicants must ensure that the proportional distribution of the Federal funds among these functional areas meets the program requirements.

The following information is intended to clarify instructions for completing each section of the budget forms. The regulations at 20 CFR sections 641.401-407 should be reviewed as well as OW Bulletins. Local administration includes estimated sums associated with the administration of State and local SCSEP project activities, including subgrantees, subcontractors, or other affiliates. (Older Americans Act Amendments of 2000 § 502(b)(1)(R)).

Section A - Budget Summary

Lines 1 - 4, Columns (a) and (b).

Under Column (a), enter the following:

Line 1 - "Administration";
Line 2- "Local Admin. (Administration);
Line 2 - "EW/FB" (Enrollee Wages and Fringe Benefits);
Line 3 - "OEC" (Other Enrollee Costs).

Under Column (b) on Line 1, enter "17.235".

Lines 1 - 4, Column (c) through (g). Leave Columns (c) and (d) blank. For each line entry under Column (a), enter in Columns (e) (Federal), (f) (Non-Federal), and (g) (Total) the appropriate amounts of funds needed to support the project for the grant period.

Line 5. Show totals for all columns used. Applicants should note that the non-Federal share must be no less than 10 percent of the total cost of the project. The requirement for providing non-Federal funds is found in the legislation at section 502(c).

Section B - Budget Categories

In the column headings at Line 6 titled "Object Class Categories" columns (1) through (4), enter the titles of the grant program function areas (Administration, Local Admin., EW/FB, and OEC) shown on Lines 1 - 4, Column (a), Section A. For each program functional area fill in the total funds needed (Federal plus non-Federal) by object class categories. The object class categories are those listed in lines 6a. through 6k. including totals.

On Lines 6a. through 6h. (Personnel, Fringe Benefits, Travel, etc.) enter the estimated amount (include the Federal and non-Federal share) for each direct object class category under each column used. The columns represent the grant program function areas: Administration, EWFB, and OEC. All costs to be incurred under subgrants, contracts or affiliates should be reflected in line 6f (Contractual). The costs to be incurred under individual subgrants, subcontract, or affiliates must be properly attributed among the four basic program function areas (i.e., Administration, Local Administration, EW/FB, and OEC).

Under the Enrollee Wages and Fringe Benefits (EW/FB) column, entries may be made in three object class categories (line items): "Personnel", "Fringe Benefits" or "Contractual" (when funds for enrollee wages and fringe benefits are to be included in subgrants, subcontracts, or affiliates).

Line 6i. Show the total of entries made for lines 6a through 6h in each column.

Line 6j. Show the amount of indirect costs. A copy of the CURRENT indirect cost rate agreement must be sent with the application. If it is not available please provide an explanation and an estimate as to when it will be available.

Line 6k. Enter the totals of the amounts indicated on lines 6i and 6j. For all applications, the total amount in Column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. Indeed all of the Totals found in line K of Section B should match those in Column (g) of Section A for the respective program function.

Line 7. Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Under the project narrative statement describe the nature and source of such income. Remember: Income generated by SCSEP projects must be used for SCSEP activities.

Section C - Source of Non-Federal Resources

Line 8. Enter amounts of non-Federal resources by source that will be used in the grant.

On Line (8) column (a) the only entry should be "SCSEP" (Senior Community Service Employment Program). A breakdown by functional areas is not necessary. Use Line (8) for entries under all columns. It is not necessary to make an entry under each column.

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Column (b). Enter the amount of applicant cash and/or in-kind contributions to be made by the applicant organization.

Column (c). Enter the State government(s) contribution, if any.

Column (d). Enter the amount of cash and/or in-kind contributions to be made from all other sources.

Column (e). Enter totals of Columns (b), (c), and (d). The amount under Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Lines 9-11 should be left blank for all columns.

Line 12. Totals. Under each column enter the same figure entered in Line (8).

Section D - Forecasted Cash Needs

Make no entries.

Section E - Budget Estimates of Federal Funds Needed for Balance of Project

Make no entries.

Section F - Other Budget Information

Line 21 - Direct Charges. In the space provided type "A Detailed Cost Breakout is Attached."

A Detailed Cost Breakout is required with the grant application package. It is an attachment to the B In categorizing costs and their allocability, all sponsors must follow the Regulations at 20 CFR Part 641 Subpart D, sections 641.401, 402, 403, 404, 405, 406 and 407.

All applicants should prepare and submit a Detailed Cost Breakout. This Detailed Cost Breakout should be prepared so that the amounts can be traced to the individual entries on the SF 424A by object cost category and program function. It will provide in narrative form the detailed factors that were used to arrive at the numbers entered on the SF 424A. The applicant may be requested to provide additional information on the basis of its estimated costs by line item including the detail for the "Other" line item. Applicants are encouraged to provide sufficient information so that reviewers (panel members) can determine the nature and basis for the entries on the 424A. Extraordinary cost items such as planned conferences, travel, or unusual expenses should be described. When sponsors divide costs between the "Administration" and "Other Enrollee Cost" categories they should describe the basis for that division and include mention of surveys

or other methodologies used to determine the allocations to these two program functions. (See OW Bulletin 97-26).

Applicants must submit a copy of their travel policy as an attachment to the Detailed Cost Breakout. The Department of Labor reserves the right to require additional information on any budget line item or program function category.

Line 22 - Indirect Charges

Enter the type of indirect rate (provisional, predetermined, final, or fixed) that will be in effect during the grant period, and the nature and the amount of the base to which the rate is applied, and the total indirect charges.

The Grant Officer will advise the grant applicant of the documents and materials that must accompany the grant application in support of the request. Where indirect charges are approved, the terms and conditions relating to the payment of indirect costs, which are subject to negotiation by the Department, will be specified in the grant document. Those national nonprofit grantees proposing to utilize an indirect cost rate must submit a roster showing all positions and individuals that are direct grant charges and those positions that are in the indirect cost pool.

Include a copy of your agency's approved indirect cost rate agreement. It should cover the entire grant period. If not, state that a new one will be provided when available.

Line 23 - Remarks. Provide any other explanations or comments deemed necessary.

NOTE: APPLICANTS SHOULD HAVE CURRENT COMPUTER TECHNOLOGY AND ENSURE THEIR ORGANIZATIONS HAVE THE CAPABILITY TO LINK TO THE INTERNET. REPORTING WILL BE DONE THROUGH THE INTERNET.

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APPENDIX D

OMB Approval No. 0348-0040

ASSURANCES - NON-CONSTRUCTION PROGRAMS

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0040), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

NOTE: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333), regarding labor standards for federally-assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. §§2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

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APPENDIX E

DISTRIBUTION OF SENIOR COMMUNITY SERVICE EMPLOYMENT PROGRAM NATIONAL SPONSOR (SCSEP) PARTICIPANTS BY COUNTY

The following information represents the location of national grantee SCSEP program participants by county. The information was obtained mainly from Equitable Distribution Reports that were submitted in the spring of 2002. When preparing their grant applications for program year 2003, applicants may use this information as a guide in deciding which areas it wishes to serve. Applicants are reminded that all current participants in authorized positions are to be offered employment (the right of first refusal) in those areas where the applicant will operate. The attached information is the best available but changes occur regularly as some participants leave and vacancies are filled but these changes are modest and should not significantly impact the proposal development. Moreover, since this information was collected there has been a minor increase in the Program Year 2002 national grantee positions in a few States. The information for South Dakota and Montana includes both the State Share and the national sponsor portion. Those positions are not currently distinguishable. If proposing service in these two states the applicant should propose to serve no more than 333 positions in South Dakota and 298 positions in Montana.

[FR Doc. 02–28489 Filed 11–7–02; 8:45 am]
BILLING CODE 4510–30–C

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for NAFTA Transitional Adjustment Assistance

Petitions for transitional adjustment assistance under the North American Free Trade Adjustment-Transitional Adjustment Assistance Implementation Act (P.L. 103–182), hereinafter called (NAFTA–TAA), have been filed with State Governors under Section 250(b)(1) of Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended, are identified in the Appendix to this Notice. Upon notice from a Governor that a NAFTA–TAA petition has been received, the Director of the Division of Trade Adjustment Assistance (DTAA), Employment and Training Administration (ETA), Department of Labor (DOL), announces the filing of the petition and takes action pursuant to paragraphs (c) and (e) of Section 250 of the Trade Act.

The purpose of the Governor's actions and the Labor Department's investigations are to determine whether the workers separated from employment on or after December 8, 1993 (date of enactment of P.L. 103–182) are eligible to apply for NAFTA–TAA under Subchapter D of the Trade Act because of increased imports from or the shift in production to Mexico or Canada.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing with the Director of DTAA at the U.S. Department of Labor (DOL) in Washington, DC provided such request is filed in writing with the Director of DTAA not later than November 10, 2002.

Also, interested persons are invited to submit written comments regarding the subject matter of the petitions to the Director of DTAA at the address shown below not later than November 18, 2002.

Petitions filed with the Governors are available for inspection at the Office of the Director, DTAA, ETA, DOL, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 21st day of October, 2002.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

Subject firm	Location	Date received at Governor's Office	Petition No.	Articles produced
60966H (CBO)	Togiak, AK	09/05/2002	NAFTA–7,057	Fresh salmon.
67326G (CBO)	Togiak, AK	09/05/2002	NAFTA–7,058	Fresh salmon.
60161A (CBO)	Togiak, AK	09/05/2002	NAFTA–7,059	Fresh salmon.
58898N (CBO)	Togiak, AK	09/05/2002	NAFTA–7,060	Fresh salmon.
58927U (CBO)	Togiak, AK	09/05/2002	NAFTA–7,061	Fresh salmon.
57914V (CBO)	Togiak, AK	09/05/2002	NAFTA–7,062	Fresh salmon.
57325J (CBO)	Togiak, AK	09/05/2002	NAFTA–7,063	Fresh salmon.
57453B (CBO)	Togiak, AK	09/05/2002	NAFTA–7,064	Fresh salmon.
58423H (CBO)	Togiak, AK	09/05/2002	NAFTA–7,065	Fresh salmon.
57312J (CBO)	Togiak, AK	09/05/2002	NAFTA–7,066	Fresh salmon.
57355C (CBO)	Togiak, AK	09/05/2002	NAFTA–7,067	Fresh salmon.
66920F (CBO)	Togiak, AK	09/05/2002	NAFTA–7,068	Fresh salmon.
55947S (CBO)	Togiak, AK	09/05/2002	NAFTA–7,069	Fresh salmon.
57329E (CBO)	Togiak, AK	09/05/2002	NAFTA–7,070	Fresh salmon.
64825K (CBO)	Togiak, AK	09/05/2002	NAFTA–7,071	Fresh salmon.
66967R (CBO)	Togiak, AK	09/05/2002	NAFTA–7,072	Fresh salmon.
55724E (CBO)	Twin Hills, AK	09/05/2002	NAFTA–7,073	Fresh salmon.
55914X (CBO)	Twin Hills, AK	09/05/2002	NAFTA–7,074	Fresh salmon.
57299F (CBO)	Twin Hills, AK	09/05/2002	NAFTA–7,075	Fresh salmon.
57448P (CBO)	Twin Hills, AK	09/05/2002	NAFTA–7,076	Fresh salmon.
57448P (CBO)	Twin Hills, AK	09/05/2002	NAFTA–7,077	Fresh salmon.
58467R (CBO)	Twin Hills, AK	09/05/2002	NAFTA–7,078	Fresh salmon.
67875V (CBO)	Twin Hills, AK	09/05/2002	NAFTA–7,079	Fresh salmon.
67324V (CBO)	Twin Hills, AK	09/05/2002	NAFTA–7,080	Fresh salmon.
57297U (CBO)	Ugashik, AK	09/05/2002	NAFTA–7,081	Fresh salmon.
60547S (CBO)	Ugashik, AK	09/05/2002	NAFTA–7,082	Fresh salmon.
55889N (CBO)	Aleknagik, AK	09/05/2002	NAFTA–7,083	Fresh salmon.
64904I (CBO)	Aleknagik, AK	09/05/2002	NAFTA–7,084	Fresh salmon.
64752U (CBO)	Aleknagik, AK	09/05/2002	NAFTA–7,085	Fresh salmon.
56109S (CBO)	Aleknagik, AK	09/05/2002	NAFTA–7,086	Fresh salmon.
65164Z (CBO)	Aleknagik, AK	09/05/2002	NAFTA–7,087	Fresh salmon.
60495Q (CBO)	Aleknagik, AK	09/05/2002	NAFTA–7,088	Fresh salmon.
60812Q (CBO)	Aleknagik, AK	09/05/2002	NAFTA–7,089	Fresh salmon.
57747B (CBO)	Aleknagik, AK	09/05/2002	NAFTA–7,090	Fresh salmon.
59461O (CBO)	Aleknagik, AK	09/05/2002	NAFTA–7,091	Fresh salmon.
65831O (CBO)	Chignik Lake, AK	09/05/2002	NAFTA–7,092	Fresh salmon.
55106R (CBO)	Clarks Point, AK	09/05/2002	NAFTA–7,093	Fresh salmon.
57412U (CBO)	Clarks Point, AK	09/05/2002	NAFTA–7,094	Fresh salmon.
60455A (CBO)	Clarks Point, AK	09/05/2002	NAFTA–7,095	Fresh salmon.
58778L (CBO)	Clarks Point, AK	09/05/2002	NAFTA–7,096	Fresh salmon.
64708K (CBO)	Clarks Point, AK	09/05/2002	NAFTA–7,097	Fresh salmon.
65877K (CBO)	Clarks Point, AK	09/05/2002	NAFTA–7,098	Fresh salmon.
56082V (CBO)	Dillingham, AK	09/05/2002	NAFTA–7,099	Fresh salmon.
58240K (CBO)	Dillingham, AK	09/05/2002	NAFTA–7,100	Fresh salmon.
57764U (CBO)	Dillingham, AK	09/05/2002	NAFTA–7,101	Fresh salmon.

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64914G (CBO)	Dillingham, AK	09/05/2002	NAFTA–7,102	Fresh salmon.
65891B (CBO)	Dillingham, AK	09/05/2002	NAFTA–7,103	Fresh salmon.
60028Z (CBO)	Dillingham, AK	09/05/2002	NAFTA–7,104	Fresh salmon.
64735B (CBO)	Dillingham, AK	09/05/2002	NAFTA–7,105	Fresh salmon.
63231O (CBO)	Dillingham, AK	09/05/2002	NAFTA–7,106	Fresh salmon.
59800U (CBO)	Dillingham, AK	09/05/2002	NAFTA–7,107	Fresh salmon.
64913N (CBO)	Dillingham, AK	09/05/2002	NAFTA–7,108	Fresh salmon.
57924V (CBO)	Dillingham, AK	09/05/2002	NAFTA–7,109	Fresh salmon.
64740M (CBO)	Dillingham, AK	09/05/2002	NAFTA–7,110	Fresh salmon.
60472S (CBO)	Dillingham, AK	09/05/2002	NAFTA–7,111	Fresh salmon.
59043S (CBO)	Dillingham, AK	09/05/2002	NAFTA–7,112	Fresh salmon.
59907A (CBO)	Dillingham, AK	09/05/2002	NAFTA–7,113	Fresh salmon.
61422E (CBO)	Dillingham, AK	09/05/2002	NAFTA–7,114	Fresh salmon.
61422E (CBO)	Dillingham, AK	09/05/2002	NAFTA–7,115	Fresh salmon.
59644N (CBO)	Dillingham, AK	09/05/2002	NAFTA–7,116	Fresh salmon.
59644N (CBO)	Dillingham, AK	09/05/2002	NAFTA–7,117	Fresh salmon.
65485N (CBO)	Dillingham, AK	09/05/2002	NAFTA–7,118	Fresh salmon.
60404S (CBO)	Dillingham, AK	09/05/2002	NAFTA–7,119	Fresh salmon.
64748B (CBO)	Dillingham, AK	09/05/2002	NAFTA–7,120	Fresh salmon.
57727G (CBO)	Dillingham, AK	09/05/2002	NAFTA–7,121	Fresh salmon.
63231O (CBO)	Dillingham, AK	09/05/2002	NAFTA–7,122	Fresh salmon.
64849C (CBO)	Dillingham, AK	09/05/2002	NAFTA–7,123	Fresh salmon.
65147G (CBO)	Dillingham, AK	09/05/2002	NAFTA–7,124	Fresh salmon.
65905Z (CBO)	Dillingham, AK	09/05/2002	NAFTA–7,125	Fresh salmon.
60323N (CBO)	Dillingham, AK	09/05/2002	NAFTA–7,126	Fresh salmon.
59969W (CBO)	Dillingham, AK	09/05/2002	NAFTA–7,127	Fresh salmon.
57969Z (CBO)	Dillingham, AK	09/05/2002	NAFTA–7,128	Fresh salmon.
58935K (CBO)	Dillingham, AK	09/05/2002	NAFTA–7,129	Fresh salmon.
61256Z (CBO)	Dillingham, AK	09/05/2002	NAFTA–7,130	Fresh salmon.
58935K (CBO)	Dillingham, AK	09/05/2002	NAFTA–7,131	Fresh salmon.
60557S (CBO)	Dillingham, AK	09/05/2002	NAFTA–7,132	Fresh salmon.
60577O (CBO)	Dillingham, AK	09/05/2002	NAFTA–7,133	Fresh salmon.
56631Q (CBO)	Dillingham, AK	09/05/2002	NAFTA–7,134	Fresh salmon.
61851O (CBO)	Dillingham, AK	09/05/2002	NAFTA–7,135	Fresh salmon.
56229X (CBO)	Dillingham, AK	09/05/2002	NAFTA–7,136	Fresh salmon.
65639L (CBO)	Dillingham, AK	09/05/2002	NAFTA–7,137	Fresh salmon.
56023B (CBO)	Dillingham, AK	09/05/2002	NAFTA–7,138	Fresh salmon.
60320L (CBO)	Dillingham, AK	09/05/2002	NAFTA–7,139	Fresh salmon.
57362A (CBO)	Dillingham, AK	09/05/2002	NAFTA–7,140	Fresh salmon.
57362A (CBO)	Dillingham, AK	09/05/2002	NAFTA–7,141	Fresh salmon.
59208H (CBO)	Dillingham, AK	09/05/2002	NAFTA–7,142	Fresh salmon.
65123P (CBO)	Dillingham, AK	09/05/2002	NAFTA–7,143	Fresh salmon.
56667O (CBO)	Dillingham, AK	09/05/2002	NAFTA–7,144	Fresh salmon.
56667O (CBO)	Dillingham, AK	09/05/2002	NAFTA–7,145	Fresh salmon.
56693N (CBO)	Dillingham, AK	09/05/2002	NAFTA–7,146	Fresh salmon.
59888Q (CBO)	Dillingham, AK	09/05/2002	NAFTA–7,147	Fresh salmon.
59799X (CBO)	Dillingham, AK	09/05/2002	NAFTA–7,148	Fresh salmon.
64766M (CBO)	Dillingham, AK	09/05/2002	NAFTA–7,149	Fresh salmon.
60928C (CBO)	Dillingham, AK	09/05/2002	NAFTA–7,150	Fresh salmon.
65823B (CBO)	Dillingham, AK	09/05/2002	NAFTA–7,151	Fresh salmon.
64872Z (CBO)	Dillingham, AK	09/05/2002	NAFTA–7,152	Fresh salmon.
64872Z (CBO)	Dillingham, AK	09/05/2002	NAFTA–7,153	Fresh salmon.
58717H (CBO)	Dillingham, AK	09/05/2002	NAFTA–7,154	Fresh salmon.
59093I (CBO)	Dillingham, AK	09/05/2002	NAFTA–7,155	Fresh salmon.
64681M (CBO)	Dillingham, AK	09/05/2002	NAFTA–7,156	Fresh salmon.
65650A (CBO)	Dillingham, AK	09/05/2002	NAFTA–7,157	Fresh salmon.
60323N (CBO)	Dillingham, AK	09/05/2002	NAFTA–7,158	Fresh salmon.
598980 (CBO)	Dillingham, AK	09/05/2002	NAFTA–7, 159	Fresh salmon.
55581X (CBO)	Dillingham, AK	09/05/2002	NAFTA–7, 160	Fresh salmon.
59758O (CBO)	Dillingham, AK	09/05/2002	NAFTA–7, 161	Fresh salmon.
64746Q (CBO)	Dillingham, AK	09/05/2002	NAFTA–7, 162	Fresh salmon.
57250J (CBO)	Dillingham, AK	09/05/2002	NAFTA–7, 163	Fresh salmon.
57251B (CBO)	Dillingham, AK	09/05/2002	NAFTA–7, 164	Fresh salmon.
58769G (CBO)	Dillingham, AK	09/05/2002	NAFTA–7, 165	Fresh salmon.
58769G (CBO)	Dillingham, AK	09/05/2002	NAFTA–7, 166	Fresh salmon.
60868K (CBO)	Dillingham, AK	09/05/2002	NAFTA–7, 167	Fresh salmon.
59840L (CBO)	Dillingham, AK	09/05/2002	NAFTA–7, 168	Fresh salmon.
64912V (CBO)	Dillingham, AK	09/05/2002	NAFTA–7, 169	Fresh salmon.
59044L (CBO)	Dillingham, AK	09/05/2002	NAFTA–7, 170	Fresh salmon.
66515L (CBO)	Dillingham, AK	09/05/2002	NAFTA–7, 171	Fresh salmon.
65848J (CBO)	Dillingham, AK	09/05/2002	NAFTA–7, 172	Fresh salmon.

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64971P (CBO)	Dillingham, AK	09/05/2002	NAFTA–7, 173	Fresh salmon.
60476N (CBO)	Dillingham, AK	09/05/2002	NAFTA–7, 174	Fresh salmon.
64925V (CBO)	Dillingham, AK	09/05/2002	NAFTA–7, 175	Fresh salmon.
59799X (CBO)	Dillingham, AK	09/05/2002	NAFTA–7, 176	Fresh salmon.
59802F (CBO)	Dillingham, AK	09/05/2002	NAFTA–7, 177	Fresh salmon.
65417N (CBO)	Dillingham, AK	09/05/2002	NAFTA–7, 178	Fresh salmon.
58140B (CBO)	Dillingham, AK	09/05/2002	NAFTA–7, 179	Fresh salmon.
59971G (CBO)	Dillingham, AK	09/05/2002	NAFTA–7, 180	Fresh salmon.
64749S (CBO)	Dillingham, AK	09/05/2002	NAFTA–7, 181	Fresh salmon.
59909K (CBO)	Dillingham, AK	09/05/2002	NAFTA–7, 182	Fresh salmon.
60506M (CBO)	Dillingham, AK	09/05/2002	NAFTA–7, 183	Fresh salmon.
64124J (CBO)	Dillingham, AK	09/05/2002	NAFTA–7, 184	Fresh salmon.
64806J (CBO)	Dillingham, AK	09/05/2002	NAFTA–7, 185	Fresh salmon.
64739V (CBO)	Dillingham, AK	09/05/2002	NAFTA–7, 186	Fresh salmon.
59092P (CBO)	Dillingham, AK	09/05/2002	NAFTA–7, 187	Fresh salmon.
65124I (CBO)	Dillingham, AK	09/05/2002	NAFTA–7, 188	Fresh salmon.
60348V (CBO)	Dillingham, AK	09/05/2002	NAFTA–7, 189	Fresh salmon.
55949G (CBO)	Dillingham, AK	09/05/2002	NAFTA–7, 190	Fresh salmon.
64929P (CBO)	Dillingham, AK	09/05/2002	NAFTA–7, 191	Fresh salmon.
65868F (CBO)	Dillingham, AK	09/05/2002	NAFTA–7, 192	Fresh salmon.
59885O (CBO)	Dillingham, AK	09/05/2002	NAFTA–7, 193	Fresh salmon.
61231Q (CBO)	Dillingham, AK	09/05/2002	NAFTA–7, 194	Fresh salmon.
59801M (CBO)	Dillingham, AK	09/05/2002	NAFTA–7, 195	Fresh salmon.
61256Z (CBO)	Dillingham, AK	09/05/2002	NAFTA–7, 196	Fresh salmon.
64699Z (CBO)	Dillingham, AK	09/05/2002	NAFTA–7, 197	Fresh salmon.
59896F (CBO)	Dillingham, AK	09/05/2002	NAFTA–7, 198	Fresh salmon.
56740G (CBO)	Dillingham, AK	09/05/2002	NAFTA–7, 199	Fresh salmon.
64416W (CBO)	Dillingham, AK	09/05/2002	NAFTA–7, 200	Fresh salmon.
59862Q (CBO)	Dillingham, AK	09/05/2002	NAFTA–7, 201	Fresh salmon.
64920J (CBO)	Dillingham, AK	09/05/2002	NAFTA–7, 202	Fresh salmon.
59261W (CBO)	Dillingham, AK	09/05/2002	NAFTA–7, 203	Fresh salmon.
60356J (CBO)	Dillingham, AK	09/05/2002	NAFTA–7, 204	Fresh salmon.
59859P (CBO)	Dillingham, AK	09/05/2002	NAFTA–7, 205	Fresh salmon.
64790B (CBO)	Dillingham, AK	09/05/2002	NAFTA–7, 206	Fresh salmon.
60660E (CBO)	Dillingham, AK	09/05/2002	NAFTA–7, 207	Fresh salmon.
59580B (CBO)	Dillingham, AK	09/05/2002	NAFTA–7, 208	Fresh salmon.
60455A (CBO)	Dillingham, AK	09/05/2002	NAFTA–7, 209	Fresh salmon.
64726V (CBO)	Dillingham, AK	09/05/2002	NAFTA–7,210	Fresh salmon.
55445R (CBO)	Dillingham, AK	09/05/2002	NAFTA–7,211	Fresh salmon.
67337X (CBO)	Dillingham, AK	09/05/2002	NAFTA–7,212	Fresh salmon.
57123J (CBO)	Egegik, AK	09/05/2002	NAFTA–7,213	Fresh salmon.
60370A (CBO)	Egegik, AK	09/05/2002	NAFTA–7,214	Fresh salmon.
61882A (CBO)	Egegik, AK	09/05/2002	NAFTA–7,215	Fresh salmon.
65878C (CBO)	Egegik, AK	09/05/2002	NAFTA–7,216	Fresh salmon.
59796V (CBO)	Egegik, AK	09/05/2002	NAFTA–7,217	Fresh salmon.
59914V (CBO)	Egegik, AK	09/05/2002	NAFTA–7,218	Fresh salmon.
59825C (CBO)	Egegik, AK	09/05/2002	NAFTA–7,219	Fresh salmon.
59436I (CBO)	Egegik, AK	09/05/2002	NAFTA–7,220	Fresh salmon.
68161S (CBO)	Egegik, AK	09/05/2002	NAFTA–7,221	Fresh salmon.
60957E (CBO)	Egegik, AK	09/05/2002	NAFTA–7,222	Fresh salmon.
60819N (CBO)	Egegik, AK	09/05/2002	NAFTA–7,223	Fresh salmon.
59300B (CBO)	Egegik, AK	09/05/2002	NAFTA–7,224	Fresh salmon.
60833F (CBO)	Egegik, AK	09/05/2002	NAFTA–7,225	Fresh salmon.
64412C (CBO)	Egegik, AK	09/05/2002	NAFTA–7,226	Fresh salmon.
60920N (CBO)	Egegik, AK	09/05/2002	NAFTA–7,227	Fresh salmon.
58934R (CBO)	Iliamna, AK	09/05/2002	NAFTA–7,228	Fresh salmon.
59918P (CBO)	Iliamna, AK	09/05/2002	NAFTA–7,229	Fresh salmon.
60644C (CBO)	Iliamna, AK	09/05/2002	NAFTA–7,230	Fresh salmon.
60661V (CBO)	Iliamna, AK	09/05/2002	NAFTA–7,231	Fresh salmon.
63415G (CBO)	Iliamna, AK	09/05/2002	NAFTA–7,232	Fresh salmon.
59918P (CBO)	Iliamna, AK	09/05/2002	NAFTA–7,233	Fresh salmon.
56549U (CBO)	Iliamna, AK	09/05/2002	NAFTA–7,234	Fresh salmon.
59463Z (CBO)	Iliamna, AK	09/05/2002	NAFTA–7,235	Fresh salmon.
60440P (CBO)	King Salmon, AK	09/05/2002	NAFTA–7,236	Fresh salmon.
56816A (CBO)	King Salmon, AK	09/05/2002	NAFTA–7,237	Fresh salmon.
56862U (CBO)	King Salmon, AK	09/05/2002	NAFTA–7,238	Fresh salmon.
57459I (CBO)	King Salmon, AK	09/05/2002	NAFTA–7,239	Fresh salmon.
59910B (CBO)	King Salmon, AK	09/05/2002	NAFTA–7,240	Fresh salmon.
60768B (CBO)	King Salmon, AK	09/05/2002	NAFTA–7,241	Fresh salmon.
57388A (CBO)	King Salmon, AK	09/05/2002	NAFTA–7,242	Fresh salmon.
64891C (CBO)	King Salmon, AK	09/05/2002	NAFTA–7,243	Fresh salmon.

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58575Q (CBO)	King Salmon, AK	09/05/2002	NAFTA–7,244	Fresh salmon.
60091M (CBO)	King Salmon, AK	09/05/2002	NAFTA–7,245	Fresh salmon.
65619P (CBO)	King Salmon, AK	09/05/2002	NAFTA–7,246	Fresh salmon.
61514Z (CBO)	King Salmon, AK	09/05/2002	NAFTA–7,247	Fresh salmon.
64924O (CBO)	King Salmon, AK	09/05/2002	NAFTA–7,248	Fresh salmon.
60024F (CBO)	King Salmon, AK	09/05/2002	NAFTA–7,249	Fresh salmon.
58844H (CBO)	King Salmon, AK	09/05/2002	NAFTA–7,250	Fresh salmon.
65824S (CBO)	King Salmon, AK	09/05/2002	NAFTA–7,251	Fresh salmon.
64903P (CBO)	King Salmon, AK	09/05/2002	NAFTA–7,252	Fresh salmon.
58418X (CBO)	King Salmon, AK	09/05/2002	NAFTA–7,253	Fresh salmon.
59115S (CBO)	King Salmon, AK	09/05/2002	NAFTA–7,254	Fresh salmon.
59894U (CBO)	King Salmon, AK	09/05/2002	NAFTA–7,255	Fresh salmon.
60964Z (CBO)	King Salmon, AK	09/05/2002	NAFTA–7,256	Fresh salmon.
60314I (CBO)	King Salmon, AK	09/05/2002	NAFTA–7,257	Fresh salmon.
60363F (CBO)	King Salmon, AK	09/05/2002	NAFTA–7,258	Fresh salmon.
56843Q (CBO)	King Salmon, AK	09/05/2002	NAFTA–7,259	Fresh salmon.
58261X (CBO)	King Salmon, AK	09/05/2002	NAFTA–7,260	Fresh salmon.
56033Z (CBO)	King Salmon, AK	09/05/2002	NAFTA–7,261	Fresh salmon.
56034Q (CBO)	King Salmon, AK	09/05/2002	NAFTA–7,262	Fresh salmon.
64829H (CBO)	Kokhanok, AK	09/05/2002	NAFTA–7,263	Fresh salmon.
60827B (CBO)	Kokhanok, AK	09/05/2002	NAFTA–7,264	Fresh salmon.
64724L (CBO)	Kokhanok, AK	09/05/2002	NAFTA–7,265	Fresh salmon.
64928X (CBO)	Kokhanok, AK	09/05/2002	NAFTA–7,266	Fresh salmon.
59457V (CBO)	Kokhanok, AK	09/05/2002	NAFTA–7,267	Fresh salmon.
64830X (CBO)	Kokhanok, AK	09/05/2002	NAFTA–7,268	Fresh salmon.
56934U (CBO)	Koliganek, AK	09/05/2002	NAFTA–7,269	Fresh salmon.
60435F (CBO)	Koliganek, AK	09/05/2002	NAFTA–7,270	Fresh salmon.
57450B (CBO)	Levelock, AK	09/05/2002	NAFTA–7,271	Fresh salmon.
65875A (CBO)	Levelock, AK	09/05/2002	NAFTA–7,272	Fresh salmon.
58445O (CBO)	Levelock, AK	09/05/2002	NAFTA–7,273	Fresh salmon.
56856Q (CBO)	Levelock, AK	09/05/2002	NAFTA–7,274	Fresh salmon.
66980S (CBO)	Levelock, AK	09/05/2002	NAFTA–7,275	Fresh salmon.
60097Q (CBO)	Levelock, AK	09/05/2002	NAFTA–7,276	Fresh salmon.
65876R (CBO)	Levelock, AK	09/05/2002	NAFTA–7,277	Fresh salmon.
64927G (CBO)	Manokotak, AK	09/05/2002	NAFTA–7,278	Fresh salmon.
60517C (CBO)	Manokotak, AK	09/05/2002	NAFTA–7,279	Fresh salmon.
64911E (CBO)	Manokotak, AK	09/05/2002	NAFTA–7,280	Fresh salmon.
58255U (CBO)	Manokotak, AK	09/05/2002	NAFTA–7,281	Fresh salmon.
65919Q (CBO)	Manokotak, AK	09/05/2002	NAFTA–7,282	Fresh salmon.
64953F (CBO)	Manokotak, AK	09/05/2002	NAFTA–7,283	Fresh salmon.
59976R (CBO)	Manokotak, AK	09/05/2002	NAFTA–7,284	Fresh salmon.
58784O (CBO)	Manokotak, AK	09/05/2002	NAFTA–7,285	Fresh salmon.
65874I (CBO)	Manokotak, AK	09/05/2002	NAFTA–7,286	Fresh salmon.
60242I (CBO)	Manokotak, AK	09/05/2002	NAFTA–7,287	Fresh salmon.
55655I (CBO)	Manokotak, AK	09/05/2002	NAFTA–7,288	Fresh salmon.
65003L (CBO)	Manokotak, AK	09/05/2002	NAFTA–7,289	Fresh salmon.
64753M (CBO)	Manokotak, AK	09/05/2002	NAFTA–7,290	Fresh salmon.
60691O (CBO)	Manokotak, AK	09/05/2002	NAFTA–7,291	Fresh salmon.
57684H (CBO)	Manokotak, AK	09/05/2002	NAFTA–7,292	Fresh salmon.
65401L (CBO)	Manokotak, AK	09/05/2002	NAFTA–7,293	Fresh salmon.
64733Q (CBO)	Manokotak, AK	09/05/2002	NAFTA–7,294	Fresh salmon.
64733Q (CBO)	Manokotak, AK	.....	NAFTA–7,295	Fresh salmon.
60785U (CBO)	Manokotak, AK	09/05/2002	NAFTA–7,296	Fresh salmon.
65873P (CBO)	Manokotak, AK	09/05/2002	NAFTA–7,297	Fresh salmon.
64868G (CBO)	Manokotak, AK	09/05/2002	NAFTA–7,298	Fresh salmon.
58083L (CBO)	Manokotak, AK	09/05/2002	NAFTA–7,299	Fresh salmon.
60027H (CBO)	Manokotak, AK	09/05/2002	NAFTA–7,300	Fresh salmon.
65405G (CBO)	Manokotak, AK	09/05/2002	NAFTA–7,301	Fresh salmon.
64983X (CBO)	Manokotak, AK	09/05/2002	NAFTA–7,302	Fresh salmon.
58837L (CBO)	Manokotak, AK	09/05/2002	NAFTA–7,303	Fresh salmon.
64973A (CBO)	Manokotak, AK	09/05/2002	NAFTA–7,304	Fresh salmon.
65439S (CBO)	Manokotak, AK	09/05/2002	NAFTA–7,305	Fresh salmon.
58531G (CBO)	Manokotak, AK	09/05/2002	NAFTA–7,306	Fresh salmon.
64871H (CBO)	Manokotak, AK	09/05/2002	NAFTA–7,307	Fresh salmon.
57390J (CBO)	Manokotak, AK	09/05/2002	NAFTA–7,308	Fresh salmon.
64734J (CBO)	Manokotak, AK	09/05/2002	NAFTA–7,309	Fresh salmon.
64992S (CBO)	Manokotak, AK	09/05/2002	NAFTA–7,310	Fresh salmon.
65424J (CBO)	Manokotak, AK	09/05/2002	NAFTA–7,311	Fresh salmon.
64686Z (CBO)	Manokotak, AK	09/05/2002	NAFTA–7,312	Fresh salmon.
59828F (CBO)	Manokotak, AK	09/05/2002	NAFTA–7,313	Fresh salmon.
59877B (CBO)	Manokotak, AK	09/05/2002	NAFTA–7,314	Fresh salmon.

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64750K (CBO)	Manokotak, AK	09/05/2002	NAFTA–7,315	Fresh salmon.
65434H (CBO)	Manokotak, AK	09/05/2002	NAFTA–7,316	Fresh salmon.
61881I (CBO)	Manokotak, AK	09/05/2002	NAFTA–7,317	Fresh salmon.
65478R (CBO)	Manokotak, AK	09/05/2002	NAFTA–7,318	Fresh salmon.
64765U (CBO)	Manokotak, AK	09/05/2002	NAFTA–7,319	Fresh salmon.
58629G (CBO)	Manokotak, AK	09/05/2002	NAFTA–7,320	Fresh salmon.
62119A (CBO)	Manokotak, AK	09/05/2002	NAFTA–7,321	Fresh salmon.
64901G (CBO)	Manokotak, AK	09/05/2002	NAFTA–7,322	Fresh salmon.
65887I (CBO)	Manokotak, AK	09/05/2002	NAFTA–7,323	Fresh salmon.
57353U (CBO)	Manokotak, AK	09/05/2002	NAFTA–7,324	Fresh salmon.
57507R (CBO)	Naknek, AK	09/05/2002	NAFTA–7,325	Fresh salmon.
61297I (CBO)	Naknek, AK	09/05/2002	NAFTA–7,326	Fresh salmon.
59937S (CBO)	Naknek, AK	09/05/2002	NAFTA–7,327	Fresh salmon.
59906I (CBO)	Naknek, AK	09/05/2002	NAFTA–7,328	Fresh salmon.
65507Z (CBO)	Naknek, AK	09/05/2002	NAFTA–7,329	Fresh salmon.
57511L (CBO)	Naknek, AK	09/05/2002	NAFTA–7,330	Fresh salmon.
65830W (CBO)	Naknek, AK	09/05/2002	NAFTA–7,331	Fresh salmon.
65846Z (CBO)	Naknek, AK	09/05/2002	NAFTA–7,332	Fresh salmon.
58138R (CBO)	Naknek, AK	09/05/2002	NAFTA–7,333	Fresh salmon.
57456G (CBO)	Naknek, AK	09/05/2002	NAFTA–7,334	Fresh salmon.
60891H (CBO)	Naknek, AK	09/05/2002	NAFTA–7,335	Fresh salmon.
55415Z (CBO)	Naknek, AK	09/05/2002	NAFTA–7,336	Fresh salmon.
55630A (CBO)	Naknek, AK	09/05/2002	NAFTA–7,337	Fresh salmon.
58023Z (CBO)	Naknek, AK	09/05/2002	NAFTA–7,338	Fresh salmon.
65135X (CBO)	Naknek, AK	09/05/2002	NAFTA–7,339	Fresh salmon.
58646Z (CBO)	Naknek, AK	09/05/2002	NAFTA–7,340	Fresh salmon.
60440P (CBO)	Naknek, AK	09/05/2002	NAFTA–7,341	Fresh salmon.
58494L (CBO)	Naknek, AK	09/05/2002	NAFTA–7,342	Fresh salmon.
59332F (CBO)	Naknek, AK	09/05/2002	NAFTA–7,343	Fresh salmon.
60565H (CBO)	Naknek, AK	09/05/2002	NAFTA–7,344	Fresh salmon.
65846Z (CBO)	Naknek, AK	09/05/2002	NAFTA–7,345	Fresh salmon.
60096Z (CBO)	Naknek, AK	09/05/2002	NAFTA–7,346	Fresh salmon.
57450B (CBO)	Naknek, AK	09/05/2002	NAFTA–7,347	Fresh salmon.
59912L (CBO)	Naknek, AK	09/05/2002	NAFTA–7,348	Fresh salmon.
60840A (CBO)	Naknek, AK	09/05/2002	NAFTA–7,349	Fresh salmon.
58965E (CBO)	Naknek, AK	09/05/2002	NAFTA–7,350	Fresh salmon.
57416O (CBO)	Naknek, AK	09/05/2002	NAFTA–7,351	Fresh salmon.
59919I (CBO)	Naknek, AK	09/05/2002	NAFTA–7,352	Fresh salmon.
60518U (CBO)	Naknek, AK	09/05/2002	NAFTA–7,353	Fresh salmon.
58022H (CBO)	Naknek, AK	09/05/2002	NAFTA–7,354	Fresh salmon.
64847R (CBO)	Naknek, AK	09/05/2002	NAFTA–7,355	Fresh salmon.
56629I (CBO)	Naknek, AK	09/05/2002	NAFTA–7,356	Fresh salmon.
59852S (CBO)	Naknek, AK	09/05/2002	NAFTA–7,357	Fresh salmon.
59853L (CBO)	Naknek, AK	09/05/2002	NAFTA–7,358	Fresh salmon.
59854E (CBO)	Naknek, AK	09/05/2002	NAFTA–7,359	Fresh salmon.
65821Q (CBO)	Naknek, AK	09/05/2002	NAFTA–7,360	Fresh salmon.
59881U (CBO)	Naknek, AK	09/05/2002	NAFTA–7,361	Fresh salmon.
64955O (CBO)	Naknek, AK	09/05/2002	NAFTA–7,362	Fresh salmon.
57535B (CBO)	Naknek, AK	09/05/2002	NAFTA–7,363	Fresh salmon.
58641M (CBO)	Naknek, AK	09/05/2002	NAFTA–7,364	Fresh salmon.
600940 (CBO)	Naknek, AK	09/05/2002	NAFTA–7,365	Fresh salmon.
59906I (CBO)	Naknek, AK	09/05/2002	NAFTA–7,366	Fresh salmon.
62878G (CBO)	Naknek, AK	09/05/2002	NAFTA–7,367	Fresh salmon.
59358F (CBO)	Naknek, AK	09/05/2002	NAFTA–7,368	Fresh salmon.
60473L (CBO)	Naknek, AK	09/05/2002	NAFTA–7,369	Fresh salmon.
58673P (CBO)	Naknek, AK	09/05/2002	NAFTA–7,370	Fresh salmon.
59941M (CBO)	Naknek, AK	09/05/2002	NAFTA–7,371	Fresh salmon.
64414M (CBO)	Naknek, AK	09/05/2002	NAFTA–7,372	Fresh salmon.
57646A (CBO)	Naknek, AK	09/05/2002	NAFTA–7,373	Fresh salmon.
60473L (CBO)	Naknek, AK	09/05/2002	NAFTA–7,374	Fresh salmon.
60707W (CBO)	Naknek, AK	09/05/2002	NAFTA–7,375	Fresh salmon.
59934Q (CBO)	Naknek, AK	09/05/2002	NAFTA–7,376	Fresh salmon.
59883F (CBO)	Naknek, AK	09/05/2002	NAFTA–7,377	Fresh salmon.
60241P (CBO)	Naknek, AK	09/05/2002	NAFTA–7,378	Fresh salmon.
59928N (CBO)	Naknek, AK	09/05/2002	NAFTA–7,379	Fresh salmon.
64867N (CBO)	Naknek, AK	09/05/2002	NAFTA–7,380	Fresh salmon.
60941B (CBO)	Naknek, AK	09/05/2002	NAFTA–7,381	Fresh salmon.
60849H (CBO)	Naknek, AK	09/05/2002	NAFTA–7,382	Fresh salmon.
58976S (CBO)	Naknek, AK	09/05/2002	NAFTA–7,383	Fresh salmon.
65892S (CBO)	Naknek, AK	09/05/2002	NAFTA–7,384	Fresh salmon.
65851K (CBO)	Naknek, AK	09/05/2002	NAFTA–7,385	Fresh salmon.

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68176E (CBO)	Naknek, AK	09/05/2002	NAFTA–7,386	Fresh salmon.
66424I (CBO)	Naknek, AK	09/05/2002	NAFTA–7,387	Fresh salmon.
63412E (CBO)	Naknek, AK	09/05/2002	NAFTA–7,388	Fresh salmon.
604110 (CBO)	Naknek, AK	09/05/2002	NAFTA–7,389	Fresh salmon.
66551I (CBO)	Naknek, AK	09/05/2002	NAFTA–7,390	Fresh salmon.
59942F (CBO)	Naknek, AK	09/05/2002	NAFTA–7,391	Fresh salmon.
65872X (CBO)	Naknek, AK	09/05/2002	NAFTA–7,392	Fresh salmon.
57957Q (CBO)	Naknek, AK	09/05/2002	NAFTA–7,393	Fresh salmon.
65838L (CBO)	Naknek, AK	09/05/2002	NAFTA–7,394	Fresh salmon.
65134G (CBO)	Naknek, AK	09/05/2002	NAFTA–7,395	Fresh salmon.
65896N (CBO)	Naknek, AK	09/05/2002	NAFTA–7,396	Fresh salmon.
51572W (CBO)	Naknek, AK	09/05/2002	NAFTA–7,397	Fresh salmon.
58225B (CBO)	Naknek, AK	09/05/2002	NAFTA–7,398	Fresh salmon.
64437K (CBO)	Naknek, AK	09/05/2002	NAFTA–7,399	Fresh salmon.
60851P (CBO)	Naknek, AK	09/05/2002	NAFTA–7,400	Fresh salmon.
58455M (CBO)	Naknek, AK	09/05/2002	NAFTA–7,401	Fresh salmon.
59876J (CBO)	Naknek, AK	09/05/2002	NAFTA–7,402	Fresh salmon.
59879L (CBO)	New Stuyahok, AK	09/05/2002	NAFTA–7,403	Fresh salmon.
60427Q (CBO)	New Stuyahok, AK	09/05/2002	NAFTA–7,404	Fresh salmon.
56574B (CBO)	New Stuyahok, AK	09/05/2002	NAFTA–7,405	Fresh salmon.
65153J (CBO)	New Stuyahok, AK	09/05/2002	NAFTA–7,406	Fresh salmon.
65036H (CBO)	New Stuyahok, AK	09/05/2002	NAFTA–7,407	Fresh salmon.
57929I (CBO)	New Stuyahok, AK	09/05/2002	NAFTA–7,408	Fresh salmon.
65881E (CBO)	New Stuyahok, AK	09/05/2002	NAFTA–7,409	Fresh salmon.
56867H (CBO)	Newhalen, AK	09/05/2002	NAFTA–7,410	Fresh salmon.
56738W (CBO)	Newhalen, AK	09/05/2002	NAFTA–7,411	Fresh salmon.
58233O (CBO)	Newhalen, AK	09/05/2002	NAFTA–7,412	Fresh salmon.
66587G (CBO)	Nondalton, AK	09/05/2002	NAFTA–7,413	Fresh salmon.
65030C (CBO)	Nondalton, AK	09/05/2002	NAFTA–7,414	Fresh salmon.
65175O (CBO)	Nondalton, AK	09/05/2002	NAFTA–7,415	Fresh salmon.
65886P (CBO)	Nondalton, AK	09/05/2002	NAFTA–7,416	Fresh salmon.
64782N (CBO)	Nondalton, AK	09/05/2002	NAFTA–7,417	Fresh salmon.
64951U (CBO)	Nondalton, AK	09/05/2002	NAFTA–7,418	Fresh salmon.
64670W (CBO)	Nondalton, AK	09/05/2002	NAFTA–7,419	Fresh salmon.
65111I (CBO)	Nondalton, AK	09/05/2002	NAFTA–7,420	Fresh salmon.
58779E (CBO)	Pedro Bay, AK	09/05/2002	NAFTA–7,421	Fresh salmon.
59935J (CBO)	Pedro Bay, AK	09/05/2002	NAFTA–7,422	Fresh salmon.
59954M (CBO)	Pilot Point, AK	09/05/2002	NAFTA–7,423	Fresh salmon.
58234H (CBO)	Pilot Point, AK	09/05/2002	NAFTA–7,424	Fresh salmon.
58352B (CBO)	Pilot Point, AK	09/05/2002	NAFTA–7,425	Fresh salmon.
65050X (CBO)	Pilot Point, AK	09/05/2002	NAFTA–7,426	Fresh salmon.
59641L (CBO)	Pilot Point, AK	09/05/2002	NAFTA–7,427	Fresh salmon.
65907J (CBO)	Pilot Point, AK	09/05/2002	NAFTA–7,428	Fresh salmon.
58385W (CBO)	Pilot Point, AK	09/05/2002	NAFTA–7,429	Fresh salmon.
58139K (CBO)	Port Alsworth, AK	09/05/2002	NAFTA–7,430	Fresh salmon.
58140B (CBO)	Port Alsworth, AK	09/05/2002	NAFTA–7,431	Fresh salmon.
65423Q (CBO)	Port Heiden, AK	09/05/2002	NAFTA–7,432	Fresh salmon.
59894U (CBO)	Port Heiden, AK	09/05/2002	NAFTA–7,433	Fresh salmon.
65856W (CBO)	Port Heiden, AK	09/05/2002	NAFTA–7,434	Fresh salmon.
59857G (CBO)	South Naknek, AK	09/05/2002	NAFTA–7,435	Fresh salmon.
59927V (CBO)	South Naknek, AK	09/05/2002	NAFTA–7,436	Fresh salmon.
60834W (CBO)	South Naknek, AK	09/05/2002	NAFTA–7,437	Fresh salmon.
60290M (CBO)	South Naknek, AK	09/05/2002	NAFTA–7,438	Fresh salmon.
58833Q (CBO)	South Naknek, AK	09/05/2002	NAFTA–7,439	Fresh salmon.
60185R (CBO)	South Naknek, AK	09/05/2002	NAFTA–7,440	Fresh salmon.
57510S (CBO)	South Naknek, AK	09/05/2002	NAFTA–7,441	Fresh salmon.
58777S (CBO)	South Naknek, AK	09/05/2002	NAFTA–7,442	Fresh salmon.
51572W (CBO)	South Naknek, AK	09/05/2002	NAFTA–7,443	Fresh salmon.
57783X (CBO)	South Naknek, AK	09/05/2002	NAFTA–7,444	Fresh salmon.
59897W (CBO)	South Naknek, AK	09/05/2002	NAFTA–7,445	Fresh salmon.
55165M (CBO)	South Naknek, AK	09/05/2002	NAFTA–7,446	Fresh salmon.
58751S (CBO)	South Naknek, AK	09/05/2002	NAFTA–7,447	Fresh salmon.
58963S (CBO)	South Naknek, AK	09/05/2002	NAFTA–7,448	Fresh salmon.
58296E (CBO)	South Naknek, AK	09/05/2002	NAFTA–7,449	Fresh salmon.
59803W (CBO)	South Naknek, AK	09/05/2002	NAFTA–7,450	Fresh salmon.
58117F (CBO)	South Naknek, AK	09/05/2002	NAFTA–7,451	Fresh salmon.
56213V (CBO)	South Naknek, AK	09/05/2002	NAFTA–7,452	Fresh salmon.
57389R (CBO)	South Naknek, AK	09/05/2002	NAFTA–7,453	Fresh salmon.
65820Z (CBO)	South Naknek, AK	09/05/2002	NAFTA–7,454	Fresh salmon.
58296E (CBO)	South Naknek, AK	09/05/2002	NAFTA–7,455	Fresh salmon.
58963S (CBO)	South Naknek, AK	09/05/2002	NAFTA–7,456	Fresh salmon.

Subject firm	Location	Date received at Governor's Office	Petition No.	Articles produced
60431K (CBO)	South Naknek, AK	09/05/2002	NAFTA–7,457	Fresh salmon.
59811K (CBO)	South Naknek, AK	09/05/2002	NAFTA–7,458	Fresh salmon.
59938L (CBO)	South Naknek, AK	09/05/2002	NAFTA–7,459	Fresh salmon.
65617G (CBO)	South Naknek, AK	09/05/2002	NAFTA–7,460	Fresh salmon.
65649J (CBO)	South Naknek, AK	09/05/2002	NAFTA–7,461	Fresh salmon.
64743O (CBO)	South Naknek, AK	09/05/2002	NAFTA–7,462	Fresh salmon.
58418X (CBO)	South Naknek, AK	09/05/2002	NAFTA–7,463	Fresh salmon.
59903G (CBO)	South Naknek, AK	09/05/2002	NAFTA–7,464	Fresh salmon.
65623J (CBO)	South Naknek, AK	09/05/2002	NAFTA–7,465	Fresh salmon.
57797P (CBO)	South Naknek, AK	09/05/2002	NAFTA–7,466	Fresh salmon.
65069C (CBO)	South Naknek, AK	09/05/2002	NAFTA–7,467	Fresh salmon.
59863J (CBO)	South Naknek, AK	09/05/2002	NAFTA–7,468	Fresh salmon.
60044A (CBO)	South Naknek, AK	09/05/2002	NAFTA–7,469	Fresh salmon.
65860P (CBO)	South Naknek, AK	09/05/2002	NAFTA–7,470	Fresh salmon.
60854R (CBO)	South Naknek, AK	09/05/2002	NAFTA–7,471	Fresh salmon.
65820Z (CBO)	South Naknek, AK	09/05/2002	NAFTA–7,472	Fresh salmon.
65633H (CBO)	South Naknek, AK	09/05/2002	NAFTA–7,473	Fresh salmon.
59882M (CBO)	South Naknek, AK	09/05/2002	NAFTA–7,474	Fresh salmon.
59892K (CBO)	South Naknek, AK	09/05/2002	NAFTA–7,475	Fresh salmon.
60491W (CBO)	Togiak, AK	09/05/2002	NAFTA–7,476	Fresh salmon.
65928W (CBO)	Togiak, AK	09/05/2002	NAFTA–7,477	Fresh salmon.
60128I (CBO)	Togiak, AK	09/05/2002	NAFTA–7,478	Fresh salmon.
68318S (CBO)	Togiak, AK	09/05/2002	NAFTA–7,479	Fresh salmon.
60853A (CBO)	Togiak, AK	09/05/2002	NAFTA–7,480	Fresh salmon.
59973P (CBO)	Togiak, AK	09/05/2002	NAFTA–7,481	Fresh salmon.
64444G (CBO)	Togiak, AK	09/05/2002	NAFTA–7,482	Fresh salmon.
64738E (CBO)	Togiak, AK	09/05/2002	NAFTA–7,483	Fresh salmon.
66267J (CBO)	Togiak, AK	09/05/2002	NAFTA–7,484	Fresh salmon.
60019S (CBO)	Togiak, AK	09/05/2002	NAFTA–7,485	Fresh salmon.
65849B (CBO)	Togiak, AK	09/05/2002	NAFTA–7,486	Fresh salmon.
59797N (CBO)	Togiak, AK	09/05/2002	NAFTA–7,487	Fresh salmon.
59917X (CBO)	Togiak, AK	09/05/2002	NAFTA–7,488	Fresh salmon.
66274F (CBO)	Togiak, AK	09/05/2002	NAFTA–7,489	Fresh salmon.
64729X (CBO)	Togiak, AK	09/05/2002	NAFTA–7,490	Fresh salmon.
60708O (CBO)	Togiak, AK	09/05/2002	NAFTA–7,491	Fresh salmon.
65416V (CBO)	Togiak, AK	09/05/2002	NAFTA–7,492	Fresh salmon.
60432C (CBO)	Togiak, AK	09/05/2002	NAFTA–7,493	Fresh salmon.
60766Q (CBO)	Togiak, AK	09/05/2002	NAFTA–7,494	Fresh salmon.
65438B (CBO)	Togiak, AK	09/05/2002	NAFTA–7,495	Fresh salmon.
56241F (CBO)	Togiak, AK	09/05/2002	NAFTA–7,496	Fresh salmon.
65839E (CBO)	Togiak, AK	09/05/2002	NAFTA–7,497	Fresh salmon.
59702V (CBO)	Togiak, AK	09/05/2002	NAFTA–7,498	Fresh salmon.
60875G (CBO)	Togiak, AK	09/05/2002	NAFTA–7,499	Fresh salmon.
64943H (CBO)	Togiak, AK	09/05/2002	NAFTA–7,500	Fresh salmon.
60764H (CBO)	Togiak, AK	09/05/2002	NAFTA–7,501	Fresh salmon.
57326E (CBO)	Togiak, AK	09/05/2002	NAFTA–7,502	Fresh salmon.
65434H (CBO)	Togiak, AK	09/05/2002	NAFTA–7,503	Fresh salmon.
65068M (CBO)	Togiak, AK	09/05/2002	NAFTA–7,504	Fresh salmon.
64683W (CBO)	Togiak, AK	09/05/2002	NAFTA–7,505	Fresh salmon.
59648I (CBO)	Togiak, AK	09/05/2002	NAFTA–7,506	Fresh salmon.
61253W (CBO)	Togiak, AK	09/05/2002	NAFTA–7,507	Fresh salmon.
60519M (CBO)	Togiak, AK	09/05/2002	NAFTA–7,508	Fresh salmon.
65018V (CBO)	Togiak, AK	09/05/2002	NAFTA–7,509	Fresh salmon.
59976R (CBO)	Togiak, AK	09/05/2002	NAFTA–7,510	Fresh salmon.
64734J (CBO)	Togiak, AK	09/05/2002	NAFTA–7,511	Fresh salmon.
56196W (CBO)	Togiak, AK	09/05/2002	NAFTA–7,512	Fresh salmon.
63410S (CBO)	Togiak, AK	09/05/2002	NAFTA–7,513	Fresh salmon.
65397M (CBO)	Togiak, AK	09/05/2002	NAFTA–7,514	Fresh salmon.
57394E (CBO)	Togiak, AK	09/05/2002	NAFTA–7,515	Fresh salmon.
64199G (CBO)	Togiak, AK	09/05/2002	NAFTA–7,516	Fresh salmon.
60931E (CBO)	Togiak, AK	09/05/2002	NAFTA–7,517	Fresh salmon.
66266Q (CBO)	Togiak, AK	09/05/2002	NAFTA–7,518	Fresh salmon.
59167R (CBO)	Togiak, AK	09/05/2002	NAFTA–7,519	Fresh salmon.
65880L (CBO)	Togiak, AK	09/05/2002	NAFTA–7,520	Fresh salmon.
64982G (CBO)	Togiak, AK	09/05/2002	NAFTA–7,521	Fresh salmon.
64744H (CBO)	Togiak, AK	09/05/2002	NAFTA–7,522	Fresh salmon.
64429W (CBO)	Togiak, AK	09/05/2002	NAFTA–7,523	Fresh salmon.
60354Z (CBO)	Togiak, AK	09/05/2002	NAFTA–7,524	Fresh salmon.
59878S (CBO)	Togiak, AK	09/05/2002	NAFTA–7,525	Fresh salmon.
65826E (CBO)	Togiak, AK	09/05/2002	NAFTA–7,526	Fresh salmon.
64840V (CBO)	Togiak, AK	09/05/2002	NAFTA–7,527	Fresh salmon.

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55487S (CBO)	Togiak, AK	09/05/2002	NAFTA–7,528	Fresh salmon.
60085J (CBO)	Togiak, AK	09/05/2002	NAFTA–7,529	Fresh salmon.
59948J (CBO)	Togiak, AK	09/05/2002	NAFTA–7,530	Fresh salmon.
60709H (CBO)	Togiak, AK	09/05/2002	NAFTA–7,531	Fresh salmon.
60958V (CBO)	Togiak, AK	09/05/2002	NAFTA–7,532	Fresh salmon.
66268B (CBO)	Togiak, AK	09/05/2002	NAFTA–7,533	Fresh salmon.
55895Q (CBO)	Togiak, AK	09/05/2002	NAFTA–7,534	Fresh salmon.
56932K (CBO)	Togiak, AK	09/05/2002	NAFTA–7,535	Fresh salmon.
56933C (CBO)	Togiak, AK	09/05/2002	NAFTA–7,536	Fresh salmon.
64719A (CBO)	Togiak, AK	09/05/2002	NAFTA–7,537	Fresh salmon.
64695F (CBO)	Togiak, AK	09/05/2002	NAFTA–7,538	Fresh salmon.
64763K (CBO)	Togiak, AK	09/05/2002	NAFTA–7,539	Fresh salmon.
65091H (CBO)	Togiak, AK	09/05/2002	NAFTA–7,540	Fresh salmon.
60764H (CBO)	Togiak, AK	09/05/2002	NAFTA–7,541	Fresh salmon.
65886U (CBO)	Twin Hills, AK	09/05/2002	NAFTA–7,542	Fresh salmon.
66274F (CBO)	Twin Hills, AK	09/05/2002	NAFTA–7,543	Fresh salmon.
55786C (CBO)	Ugashik, AK	09/05/2002	NAFTA–7,544	Fresh salmon.
58333X (CBO)	Ugashik, AK	09/05/2002	NAFTA–7,545	Fresh salmon.
60018B (CBO)	Ugashik, AK	09/05/2002	NAFTA–7,546	Fresh salmon.

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BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment Standards Administration; Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department.

Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Modification to General Wage Determination Decisions

The number of the decisions listed to the Government Printing Office document entitled "General Wage Determination Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

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California
CA020001 (Mar. 01, 2002)
CA020002 (Mar. 01, 2002)
CA020004 (Mar. 01, 2002)
CA020009 (Mar. 01, 2002)
CA020013 (Mar. 01, 2002)
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CA020035 (Mar. 01, 2002)
CA020036 (Mar. 01, 2002)
CA020037 (Mar. 01, 2002)
Hawaii
HI020001 (Mar. 01, 2002)
Nevada
NV020005 (Mar. 01, 2002)
NV020009 (Mar. 01, 2002)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

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Signed at Washington, DC, this 31st day of October, 2002.

John Frank,

Acting Chief, Branch of Construction Wage Determinations.

[FR Doc. 02–28207 Filed 11–7–02; 8:45 am]
BILLING CODE 4510–27–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 02–130]

NASA Advisory Council, Space Science Advisory Committee; Structure and Evolution of the Universe Subcommittee Meeting

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council (NAC), Space Science Advisory Committee (SScAC), Structure and Evolution of the Universe Subcommittee (SEUS).

DATES: Tuesday, December 3, 2002, 8:30 a.m. to 5:30 p.m., and Wednesday, December 4, 2002, 8:30 a.m. to 5:30 p.m.

ADDRESSES: NASA Headquarters, room 9H40, 300 E Street, SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Marian Norris, Code SB, National Aeronautics and Space Administration, Washington, DC 20546, (202) 358–4452.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. The agenda for the meeting includes the following topics:

Status of Astronomy and Physics Programs
—Status of Explorer Program
—Report on Space Science Strategic Plan
—Report from Astronomy & Physics Working Group
—Report from Space Archives Working Group
—Report from National Astronomy & Astrophysics Advisory Committee

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

June W. Edwards,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 02–28416 Filed 11–7–02; 8:45 am]
BILLING CODE 7510–01–P

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NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 02–131]

NASA Advisory Council, Space Science Advisory Committee, Astronomical Search for Origins and Planetary Systems Subcommittee

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council (NAC), Space Science Advisory Committee (SScAC), Astronomical Search for Origins and Planetary Systems Subcommittee (OS).

DATES: Monday, December 2, 2002, 8:30 a.m. to 5:30 p.m., and Tuesday, December 3, 2002, 8:30 a.m. to 5:30 p.m.

ADDRESSES: NASA Headquarters, Conference Room 6H46, 300 E Street, SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Marian Norris, Code SB, National Aeronautics and Space Administration, Washington, DC 20546, (202) 358–4452.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. The agenda for the meeting includes the following topics:

—James Webb Space Telescope
—Wide Field Camera 3
—Committee on the Origin and Evolution of Life
—Origins Roadmap
—Structure and Evolution of the Universe Roadmap
—Astronomy & Physics Working Group
—Science Archives Working Group
—National Astronomy & Astrophysics Committee

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

June W. Edwards,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 02–28417 Filed 11–7–02; 8:45 am]

BILLING CODE 7510–01–P

NUCLEAR REGULATORY COMMISSION

[IA–02–022]

Ms. Patricia A. McGinn; Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately)

From December 1995 to May 2000, Ms. Patricia A. McGinn was a Human Resources Coordinator for Cataract/RCM Technologies, Inc., (Cataract/RCM or Contractor) located at 2500 McClellan Avenue, Suite 350, Pennsauken, New Jersey 08109. Cataract/RCM was a contractor to facilities licensed by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 50.

On September 29, 2000, the NRC's Office of Investigations (OI) initiated an investigation to determine whether Patricia A. McGinn, while employed by Cataract/RCM Technologies, Inc., deliberately falsified background information that was used to support the granting of unescorted access authorizations at Tennessee Valley Authority (TVA) and other NRC licensee facilities.

As background, 10 CFR 73.56, "Personnel access authorization requirements for nuclear power plants," requires that background investigations be conducted prior to allowing unescorted access to protected and vital areas of nuclear power plants. At a minimum, a background investigation must verify an individual's true identity, and develop information concerning an individual's employment history, education history, credit history, criminal history, military service, and verify an individual's character and reputation.

The investigation determined that on January 6, 1998, TVA received the results of an employee's (Employee A) criminal history check from the Federal Bureau of Investigation (FBI) indicating that Employee A had prior misdemeanor charges. This information had not been highlighted or identified during the process conducted by Cataract/RCM to issue Employee A a temporary unescorted access authorization clearance. This process included documenting answers to criminal history questions from the employee that reasonably should have revealed the existence of the prior misdemeanor charges. No such history was documented in the records produced by Cataract/RCM. When confronted, Employee A indicated that he had not been questioned about his criminal history. Ms. McGinn, the Cataract/RCM Human Resources Coordinator at the time, claimed that the employee had been asked the questions, yet had not disclosed anything derogatory.

Subsequently, the TVA Office of the Inspector General (OIG) conducted an investigation. The TVA OIG investigation concluded that Ms. McGinn did not contact four of the five references for Employee A which she documented as having contacted. TVA OIG also concluded that Ms. McGinn had falsified information in Cataract/RCM's security files for three other individuals. TVA OIG determined from the background investigation files for three other individuals that documentation of reference checks existed for references who either did not exist, did not remember being contacted by Ms. McGinn, or did not make the statements attributed to them.

OI contacted 13 individuals whom Ms. McGinn reportedly contacted in the course of her background investigations for other licensees. These individuals denied knowing or providing the names given by the Human Resources Coordinator as developed references. Some questioned the responses attributed to them, stating that the information provided on the Cataract/RCM Reference Forms was, in part, inaccurate or incomplete.

OI subsequently interviewed Ms. McGinn. During that interview Ms. McGinn provided similar information as she did during the TVA OIG interview. Based on the interviews and records reviews discussed above, OI concluded she deliberately falsified Cataract/RCM background investigations, allowing unescorted access for numerous contractors at TVA and other NRC-licensed facilities.

Based on the above, the NRC has concluded that Ms. McGinn's actions constitute a violation of 10 CFR 50.5(a)(2), which prohibits an individual from deliberately submitting to the NRC, a licensee, or a licensee's contractor, information that the person submitting the information knows to be incomplete or inaccurate in some respect material to the NRC. The inaccurate information was material in that it was relied upon to grant unescorted access to individuals who potentially could have presented a security threat to nuclear power plants.

Ms. McGinn's actions in deliberately falsifying information relating to numerous background investigations, and her unresponsiveness to the NRC, have raised serious doubt as to whether she can be relied upon to comply with NRC requirements.

Consequently, I lack the requisite reasonable assurance that licensed activities can be conducted in compliance with the Commission's requirements and that the health and safety of the public will be protected if Ms. McGinn were permitted at this time to be involved in NRC licensed activities. Therefore, the public health, safety and interest require that Ms. McGinn be prohibited from any involvement in NRC-licensed activities for a period of three years from the date of this Order. Additionally, Ms. McGinn is required to notify the NRC of her first employment in NRC-licensed activities at any time following the prohibition period. Furthermore, pursuant to 10 CFR 2.202, I find that the deliberate nature of Ms. Patricia A. McGinn's conduct described above, in a sensitive area like nuclear security, is such that the public health, safety and interest require that this Order be immediately effective.

Accordingly, pursuant to Sections 53, 103, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR 50.5, and 10 CFR 150.20, *it is hereby ordered, effective immediately, that:*

1. Ms. Patricia A. McGinn is prohibited for three years from the date of this Order from engaging in NRC-licensed activities. NRC-licensed activities are those activities that are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20.

2. If Ms. Patricia A. McGinn is currently involved with another licensee in NRC-licensed activities, she must immediately cease those activities, and inform the NRC of the name, address and telephone number of the employer, and provide a copy of this order to the employer.

3. At any time after the three year period of prohibition has expired, Ms. Patricia A. McGinn shall, within 20 days of acceptance of her first employment offer involving NRC-licensed activities or her becoming involved in NRC-licensed activities, as defined in Paragraph IV.1 above, provide notice to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, of the name, address, and telephone number of the employer or the entity where she is, or will be, involved in the NRC-licensed activities. In the notification, Ms. McGinn shall include a statement of her commitment to compliance with regulatory requirements and the basis why the Commission should have confidence that she will now comply with applicable NRC requirements.

The Director, Office of Enforcement, may, in writing, relax or rescind any of the above conditions upon demonstration by Ms. Patricia A. McGinn of good cause.

In accordance with 10 CFR 2.202, Ms. Patricia A. McGinn must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Ms. Patricia A. McGinn or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Attn: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, to the Regional Administrator, NRC Region II, 61 Forsyth St. SW, Suite 23T85, Atlanta, GA 30303–8931, and to Ms. Patricia A. McGinn if the answer or hearing request is by a person other than Ms. Patricia A. McGinn. Because of continuing disruptions in delivery of mail to United States Government offices, it is requested that answers and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov* and also to the Office of the General Counsel either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. If a person other than Ms. Patricia A. McGinn requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).[1]

If a hearing is requested by Ms. Patricia A. McGinn or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), Ms. Patricia A. McGinn, may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be effective and final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received. An answer or a request for hearing shall not stay the immediate effectiveness of this order.

Dated this 31st day of October 2002.

For the Nuclear Regulatory Commission.

William F. Kane,

Deputy Executive Director for Reactor Programs.

[FR Doc. 02–28482 Filed 11–7–02; 8:45 am]

BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

2003 Railroad Experience Rating Proclamations, Monthly Compensation Base and Other Determinations

AGENCY: Railroad Retirement Board.

ACTION: Notice.

SUMMARY: Pursuant to section 8(c)(2) and section 12(r)(3) of the Railroad Unemployment Insurance Act (Act) (45 U.S.C. 358(c)(2) and 45 U.S.C. 362(r)(3), respectively), the Board gives notice of the following:

1. The balance to the credit of the Railroad Unemployment Insurance

[1] The most recent version of Title 10 of the Code of Federal Regulations, published January 1, 2002, inadvertently omitted the last sentence of 10 CFR 2.714 (d) and paragraphs (d)(1) and (d)(2) regarding petitions to intervene and contentions. For the complete, corrected text of 10 CFR 2.714 (d), please see 67 FR 20884; April 29, 2002.

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(RUI) Account, as of June 30, 2002, is $39,708,270.49;

2. The September 30, 2002, balance of any new loans to the RUI Account, including accrued interest, is $8,008,135.40;

3. The system compensation base is $3,138,111,805.91 as of June 30, 2002;

4. The cumulative system unallocated charge balance is ($246,803,499.90) as of June 30, 2002;

5. The pooled credit ratio for calendar year 2003 is zero;

6. The pooled charged ratio for calendar year 2003 is zero;

7. The surcharge rate for calendar year 2003 is 2.5 percent;

8. The monthly compensation base under section 1(i) of the Act is $1,120 for months in calendar year 2003;

9. The amount described in section 1(k) of the Act as "2.5 times the monthly compensation base" is $2,800 for base year (calendar year) 2003;

10. The amount described in section 2(c) of the Act as "an amount that bears the same ratio to $775 as the monthly compensation base for that year as computed under section 1(i) of this Act bears to $600" is $1,447 for months in calendar year 2003;

11. The amount described in section 3 of the Act as "2.5 times the monthly compensation base" is $2,800 for base year (calendar year) 2003;

12. The amount described in section 4(a–2)(i)(A) of the Act as "2.5 times the monthly compensation base" is $2,800 with respect to disqualifications ending in calendar year 2003;

13. The maximum daily benefit rate under section 2(a)(3) of the Act is $55 with respect to days of unemployment and days of sickness in registration periods beginning after June 30, 2003.

DATES: The balance in notice (1) and the determinations made in notices (3) through (7) are based on data as of June 30, 2002. The balance in notice (2) is based on data as of September 30, 2002. The determinations made in notices (5) through (7) apply to the calculation, under section 8(a)(1)(C) of the Act, of employer contribution rates for 2003. The determinations made in notices (8) through (12) are effective January 1, 2003. The determination made in notice (13) is effective for registration periods beginning after June 30, 2003.

ADDRESSES: Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611–2092.

FOR FURTHER INFORMATION CONTACT: Marla L. Huddleston, Bureau of the Actuary, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611–2092, telephone (312) 751–4779.

SUPPLEMENTARY INFORMATION: The RRB is required by section 8(c)(1) of the Railroad Unemployment Insurance Act (Act) (45 U.S.C. 358(c)(1)) as amended by Pub. L. 100–647, to proclaim by October 15 of each year certain system-wide factors used in calculating experience-based employer contribution rates for the following year. The RRB is further required by section 8(c)(2) of the Act (45 U.S.C. 358(c)(2)) to publish the amounts so determined and proclaimed. The RRB is required by section 12(r)(3) of the Act (45 U.S.C. 362(r)(3)) to publish by December 11, 2002, the computation of the calendar year 2003 monthly compensation base (section 1(i) of the Act) and amounts described in sections 1(k), 2(c), 3 and 4(a–2)(i)(A) of the Act which are related to changes in the monthly compensation base. Also, the RRB is required to publish, by June 11, 2003, the maximum daily benefit rate under section 2(a)(3) of the Act for days of unemployment and days of sickness in registration periods beginning after June 30, 2003.

Surcharge Rate

A surcharge is added in the calculation of each employer's contribution rate, subject to the applicable maximum rate, for a calendar year whenever the balance to the credit of the RUI Account on the preceding June 30 is less than the greater of $100 million or the amount that bears the same ratio to $100 million as the system compensation base for that June 30 bears to the system compensation base as of June 30, 1991. If the RUI Account balance is less than $100 million (as indexed), but at least $50 million (as indexed), the surcharge will be 1.5 percent. If the RUI Account balance is less than $50 million (as indexed), but greater than zero, the surcharge will be 2.5 percent. The maximum surcharge of 3.5 percent applies if the RUI Account balance is less than zero.

The system compensation base as of June 30, 1991 was $2,763,287,237.04. The system compensation base for June 30, 2002 was $3,138,111,805.91. The ratio of $3,138,111,805.91 to $2,763,287,237.04 is 1.13564445. Multiplying 1.13564445 by $100 million yields $113,564,445. Multiplying $50 million by 1.13564445 produces $56,782,223. The Account balance on June 30, 2002, was $39,708,270.49. Accordingly, the surcharge rate for calendar year 2003 is 2.5 percent.

Monthly Compensation Base

For years after 1988, section 1(i) of the Act contains a formula for determining the monthly compensation base. Under the prescribed formula, the monthly compensation base increases by approximately two-thirds of the cumulative growth in average national wages since 1984. The monthly compensation base for months in calendar year 2003 shall be equal to the greater of (a) $600 or (b) $600 [1 + {(A − 37,800)/56,700}], where A equals the amount of the applicable base with respect to tier 1 taxes for 2003 under section 3231(e)(2) of the Internal Revenue Code of 1986. Section 1(i) further provides that if the amount so determined is not a multiple of $5, it shall be rounded to the nearest multiple of $5.

The calendar year 2003 tier 1 tax base is $87,000. Subtracting $37,800 from $87,000 produces $49,200. Dividing $49,200 by $56,700 yields a ratio of 0.86772487. Adding one gives 1.86772487. Multiplying $600 by the amount 1.86772487 produces the amount of $1,120.63, which must then be rounded to $1,120. Accordingly, the monthly compensation base is determined to be $1,120 for months in calendar year 2003.

Amounts Related to Changes in Monthly Compensation Base

For years after 1988, sections 1(k), 2(c), 3 and 4(a–2)(i)(A) of the Act contain formulas for determining amounts related to the monthly compensation base.

Under section 1(k), remuneration earned from employment covered under the Act cannot be considered subsidiary remuneration if the employee's base year compensation is less than 2.5 times the monthly compensation base for months in such base year. Multiplying 2.5 by the calendar year 2003 monthly compensation base of $1,120 produces $2,800. Accordingly, the amount determined under section 1(k) is $2,800 for calendar year 2003.

Under section 2(c), the maximum amount of normal benefits paid for days of unemployment within a benefit year and the maximum amount of normal benefits paid for days of sickness within a benefit year shall not exceed an employee's compensation in the base year. In determining an employee's base year compensation, any money remuneration in a month not in excess of an amount that bears the same ratio to $775 as the monthly compensation base for that year bears to $600 shall be taken into account. The calendar year 2003 monthly compensation base is $1,120. The ratio of $1,120 to $600 is 1.86666667. Multiplying 1.86666667 by $775 produces $1,447. Accordingly, the amount determined under section 2(c) is $1,447 for months in calendar year 2003.

Under section 3, an employee shall be a "qualified employee" if his/her base year compensation is not less than 2.5 times the monthly compensation base for months in such base year. Multiplying 2.5 by the calendar year 2003 monthly compensation base of $1,120 produces $2,800. Accordingly, the amount determined under section 3 is $2,800 for calendar year 2003.

Under section 4(a–2)(i)(A), an employee who leaves work voluntarily without good cause is disqualified from receiving unemployment benefits until he has been paid compensation of not less than 2.5 times the monthly compensation base for months in the calendar year in which the disqualification ends. Multiplying 2.5 by the calendar year 2003 monthly compensation base of $1,120 produces $2,800. Accordingly, the amount determined under section 4(a–2)(i)(A) is $2,800 for calendar year 2003.

Maximum Daily Benefit Rate

Section 2(a)(3) contains a formula for determining the maximum daily benefit rate for registration periods beginning after June 30, 1989, and after each June 30 thereafter. Legislation enacted on October 9, 1996, revised the formula for indexing maximum daily benefit rates. Under the prescribed formula, the maximum daily benefit rate increases by approximately two-thirds of the cumulative growth in average national wages since 1984. The maximum daily benefit rate for registration periods beginning after June 30, 2003, shall be equal to 5 percent of the monthly compensation base for the base year immediately preceding the beginning of the benefit year. Section 2(a)(3) further provides that if the amount so computed is not a multiple of $1, it shall be rounded down to the nearest multiple of $1.

The calendar year 2002 monthly compensation base is $1,100. Multiplying $1,100 by 0.05 yields $55.00, an even multiple of $1. Accordingly, the maximum daily benefit rate for days of unemployment and days of sickness beginning in registration periods after June 30, 2003, is determined to be $55.

Dated: November 4, 2002.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 02–28459 Filed 11–7–02; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–25792; File No. 812–12875]

Allstate Life Insurance Company, et al.; Notice of Application

November 4, 2002.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for an amended order under Section 6(c) of the Investment Company Act of 1940, as amended ("Act") granting exemptions from the provisions of Sections 2(a)(231) and 27(i)(2)(A) of the Act and Rule 22c–1 thereunder.

APPLICANTS: Allstate Life Insurance Company ("Allstate"), Allstate Life Insurance Company of New York ("Allstate Life of New York"), Glenbrook Life & Annuity Company ("Glenbrook"), Lincoln Benefit Life Company ("Lincoln Benefit"), Northbrook Life Insurance Company ("Northbrook," together with Allstate, Allstate Life of New York, Glenbrook and Lincoln Benefit, the "Life Companies"), Allstate Life Insurance Company Separate Account A ("Allstate Separate Account A"), and Allstate Distributors, L.L.C., ("Allstate Distributors") (collectively, the "Applicants").

SUMMARY OF APPLICATION: Applicants seek an order to amend an Existing Order (described below) to grant exemptions from the provisions of Sections 2(a)(32) and 27(i)(2)(A) of the Act and Rule 22c–1 thereunder to the extent necessary to permit Applicants to recapture certain bonuses applied to contributions made under (a) certain amended deferred variable annuity contracts an certificates, described herein, including certain amended certificate data pages and endorsements, that Allstate will issue in the future through Allstate Separate Account A (the "Amended Contracts"), and (b) under contracts and certificates, including certain certificate data pages and endorsements, that the Life Companies may issue in the future through any separate account of the Life Companies ("Future Account") and that are substantially similar in all material respects to the Amended Contracts ("Future Contracts"). Applicants also request that the order being sought extend to the Allstate LifeContracts," "Future Contracts" (hereinafter "Future Contracts Covered by the Existing Order"), and "Affiliated Broker-Dealers" as defined in the application for the Existing Order ("Prior Application") which definitions are described below, and to broker-dealers who are not affiliated with the Life Companies ("Unaffiliated Broker-Dealers").

FILING DATE: The application ("Application") was filed on August 28, 2002.

HEARING OR NOTIFICATION OF HEARING: An order granting the Application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on December 4, 2002, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requester's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, Angela King, Esq., Assistant Counsel, Allstate Life Insurance Company, 3100 Sanders Road, Northbrook, Illinois 60062; with a copy to Richard T. Choi, Esq., Foley & Lardner, 3000 K Street, NW, Suite 500, Washington, DC 20007.

FOR FURTHER INFORMATION CONTACT: Alison Toledo, Senior Counsel, or Lorna MacLeod, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the Application. The complete Application is available for a fee from the Public Reference Branch of the Commission, 450 Fifth Street, NW., Washington, DC 20549–0102, (202) 942–8090.

Applicant's Representations

1. On June 5, 2001, the Commission issued an order ("Existing Order")[1] exempting certain transactions of the Life Companies, the Existing Separate Accounts (defined below), Allstate Distributors, and ALFS, Inc. ("ALFS") (collectively, the "Prior Applicants"), from the provisions of Sections 2(a)(32) and 27(i)(2)(A) of the Act and Rule 22c–1, thereunder. The Existing Order provides relief to the extent necessary to permit the recapture, under specified circumstances, of certain credits

[1] *Allstate Life Insurance Company*, Investment Company Act Release No. 24998 (June 5, 2001)(File No. 812–12386).

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("Credits") applied to contributions made under Contracts or Future Contracts Covered by the Existing Order (defined below).

2. As described in the Prior Application, Allstate, Allstate New York, Lincoln Benefit, and Northbrook are all stock life insurance companies organized under the law of Illinois, New York, Nebraska, and Illinois respectively. Glenbrook is a stock life insurance company organized under the laws of Illinois and redomesticated under the laws of Arizona in 1998.

3. The Existing Order covers "Contracts," which the Prior Application defines to mean certain deferred variable annuity contracts and certificates issued by Allstate, Lincoln Benefit, and Glenbrook (hereinafter, the "Allstate Contracts, the "Lincoln Benefit Contracts," and the "Glenbrook Contracts," respectively). The Existing Order also covers "Future Contracts covered by the Existing Order," which the Prior Application defines to mean certain other deferred variable annuity contracts and certificates that the Life Companies may issue in the future through the Existing Separate Accounts (defined below) or through other separate accounts that the Life Companies may establish in the future, and that are substantially similar in all material respects to the Contracts. The Existing Order also covers "Affiliated Broker-Dealers," which, under the Prior Application, means any other NASD member broker-dealer controlling or controlled by, or under common control with, Allstate whether existing or created in the future, that serves as a distributor or principal underwriter for Contracts or Future Contracts Covered by the Existing Order.

4. The Existing Separate Accounts covered by the Existing Order include: Allstate Separate Account A, Allstate Life Insurance Company of New York Separate Account A ("ALNY Separate Account"), Glenbrook Life & Annuity Company Variable Annuity Account, Glenbrook Life Multi-Manager Variable Account, Glenbrook Life & Annuity Company Separate Account A ("Glenbrook Separate Account A"), Glenbrook Scudder Variable Account (A), and Lincoln Benefit Life Variable Annuity Account ("Lincoln Separate Account") (collectively, the "Existing Separate Accounts"). Glenbrook Life & Annuity Company Variable Annuity Account, Glenbrook Life Multi-Manager Variable Account, Glenbrook Separate Account A, and Glenbrook Scudder Variable Account (A) are hereinafter referred to as the "Glenbrook Separate Accounts."

5. Each of the Existing Separate Accounts is a segragated asset account of the corresponding Life Company that serves as its depositor, and each is registered with the Commission as unit investment trust under the 1940 Act. Each of the Existing Separate Accounts is divided into multiple subaccounts, each of which invests in shares of a corresponding portfolio ("Portfolio") that serves as an investment option under Contracts issued through the separate account.

6. As described in the Prior Application, Allstate Distributors and ALFS each serves as distributor of certain deferred variable annuity contracts, including certain Contracts, issued by the Life Companies through the Existing Separate Accounts. Each is registered with the Commission as a broker-dealer under the Securities Exchange Act of 1934 (the "1934 Act") and is a member of the National Association of Securities Dealers, Inc. ("NASD"). The Contracts issued by Allstate are offered through registered representatives of broker-dealers that are registered under the 1934 Act and members of the NASD, and that have selling agreements with Allstate Distributors. The Contracts (other than the Contracts issued by Allstate) are offered through registered representatives of broker-dealers that are registered under the 1934 Act and members of the NASD, and that have selling agreements with ALFS.

7. As described in the Prior Application, all of the Life Companies, Allstate Distributors, and ALFS are direct or indirect wholly-owned subsidiaries of Allstate Insurance Company.

8. The variable portions of the Lincoln Benefit Contracts, Glenbrook Contracts, and Allstate Contracts are registered under the Securities Act of 1933 (the "1933 Act"). The variable portions of the Future Contracts Covered by the Existing Order also will be registered under the 1933 Act. That portion of the assets of each Existing Separate Account that is equal to the reserves and other contract liabilities with respect to Contracts is not chargeable with liabilities arising out of any other business of the corresponding Life Company. Any income, gains or losses, realized or unrealized, from assets allocated to a Existing Separate Account will be, in accordance with such Account's Contracts, credited to or charged against such Existing Separate Account, without regard to other income, gains or losses of the corresponding Life Company.

9. Under the Allstate Contracts, Glenbrook Contracts, and Lincoln Benefit Contracts, each time the relevant Life Company receives a purchase payment from an owner of such a Contract, it will add the applicable Credit to the owner's contract value, and will allocate the Credit among the available Portfolios according to the allocation instructions in effect for the purchase payments. Each Life Company will fund Credits from its general account assets.

10. Under the Allstate Contracts and Lincoln Benefit Contracts, the Credit is equal to 4% of the purchase payment amount. Under the Glenbrook Contracts, there are two credit options available as follows:

a. Under option 1, Glenbrook will add to the owner's contract value a Credit equal to 4% of the purchase payment amount.

b. Under option 2, Glenbrook will add to the owner's contract value a Credit equal to 2% of the purchase payment amount. In addition, on every 5th contract anniversary during the accumulation phase, Glenbrook will add to the owner's contract value a Credit equal to 2% of the owner's contract value as of such contract anniversary.

11. The Allstate Contracts, Glenbrook Contracts, and Lincoln Benefit Contracts all provide for various surrender options, annuity benefits and annuity payout options, as well as transfer privileges among subaccounts, dollar cost averaging, and other features.

12. The Allstate Contracts contain the following charges: (a) A withdrawal charge as a percentage of purchase payments surrendered, which is 8% in years one, two, and three, 7% in year four, 6% in year five, 5% in year six, 3% in year eight, and 9% thereafter; (b) a mortality and expense risk fee of 1.60% annually; and (c) a transfer fee of .50% of the amount transferred on transfers in excess of twelve within a calendar year. (The Allstate Contract does not assess an annual contract maintenance charge or annual administrative fee.)

13. The Lincoln Benefit Contracts contain the following charges: (a) A contingent deferred sales charge as a percentage of purchase payments surrendered, which is 8% in year one, 7% in years two and three, 6% in years four and five, 5% in year six, 4% in year seven, 3% in year eight, and 0% thereafter; (b) a $35 annual administrative charge (which is waived if total purchase payments exceed $50,000); (c) a mortality and expense risk fee of 1.30% annually; (d) an administrative charge of 0.10% annually; and (e) a transfer fee of $10 per transfer with certain exceptions, which currently is being waived.

14. The Glenbrook Contracts contain the following charges: (a) A withdrawal charge as a percentage of purchase payment surrendered, which is 8% in year one and two, 7% in years three and four, 6% in year five, 5% in year six, 4% in year seven, 3% in year eight, and 0% thereafter; (b) a $35 annual administrative charge (which is waived if total purchase payments exceed $50,000); (c) a mortality and expense risk fee of 1.40% annually; and (d) a transfer fee of $10 on transfers in excess of twelve in any Contract year, which currently is being waived.

15. Under the Allstate Contracts, Glenbrook Contracts and Lincoln Benefit Contracts, each Life Company also deducts any applicable state or local premium taxes up to 4.0%, depending on the owner's state of residence or the state in which the Contract was sold. In addition, assets invested in the subaccounts are charged with the operating expenses of the Portfolios.

16. The Existing Order provides exemptive relief to the extent necessary to permit the recapture of Credits if an Allstate Contract is returned during the free look period.

17. Applicants believe that the Allstate Contracts covered by the Existing Order and the Amended Contracts are substantially similar in all material respects relevant to the Existing Order and that the Amended Contracts would constitute Future Contracts covered by the Existing Order. Nevertheless, Applicants are filing the Application to avoid any uncertainty that may arise as a result of the following differences between the Allstate Contracts and the Amended Contracts:

(a) Separate Account Charges

Allstate Contracts have a mortality and expense risk charge at the annual rate of 1.60% and no administrative expense charge. Amended Contracts have a lower mortality and expense risk charge at the annual rate of 1.40%, and an administrative expense charge of 0.19%. Allstate reserves the right to raise the administrative expense charge to 0.35%. However, Allstate will not increase the charge for a Contract once it issues a Contract.

(b) Death Benefit Options and Death Benefit Charges

Allstate Contracts offer a basic death benefit including a "maximum anniversary value" death benefit at no additional charge, and an "enhanced beneficiary protection option" for an additional morality and expense risk charge at the annual rate of 0.15%. Amended Contracts offer a basic death benefit. The Amended Contracts also offer the following optional death benefits for the following additional mortality and expense risk charges:

MAV Death Benefit Option.	0.15% (up to 0.30% for Options added in the future).
Enhanced Beneficiary Protection Option.	0.15% (up to 0.30% for Options added in the future).
Earnings Protection Death Benefit Option (issue age 0–70).	0.25% (up to 0.35% for Options added in the future).
Earnings Protection Death Benefit Option (issue age 71–79).	0.40% (up to 0.50% for Options added in the future).
Spousal Protection Benefit Option.	0.00% (up to 0.15% for Options added in the future).

(c) Income Benefit

Allstate Contracts offer nine income plans to receive payments. Amended Contracts offer seven income plans to receive income payments, and allow owners to modify the length and frequency of income payments during the payout phase. Allstate Contracts offer a Retirement Income Guarantee ("RIG") Rider for a rider fee at the annual rate of 0.05% of the income base in effect on each Contract anniversary, and a second RIG Rider for a rider fee at the annual rate of 0.30% of the income base in effect on each Contract anniversary. Amended Contracts offer different RIG options with different charges. Amended Contracts offer a RIG Option for a rider fee at the annual rate of 0.25% (up to 0.50% for Options added in the future) of the income base in effect on a Contract anniversary, and a second RIG Option for an additional rider fee at the annual rate of 0.45% (up to 0.75% for Options added in the future) of the income base in effect on a Contract anniversary. Amended Contracts also offer an Income Protection Benefit Option for a charge of 0.50% (up to 0.75% for Options added in the future) of the average daily net separate account assets supporting the variable income payments to which the Income Protection Benefit Option applies. The charge for the Income Protection Benefit Option applies during the payout phase.

(d) Contract Maintenance Charge

Allstate Contracts do not impose a contract maintenance fee. Amended Contracts have an annual contract maintenance fee of $30 (deducted from account value on each contract anniversary, or upon full surrender). The charge is waived once total purchase payments equal $50,000 or more, or if all money is allocated to the fixed account.

(e) Transfer Charges

Under Allstate Contracts Allstate may assess a charge on transfers among investment options equal to 0.50% of the amount transferred. The charge applies to transfers in excess of 12 in a contract year. The charge is currently waived. Under Amended Contracts Allstate may assess a charge on transfers among investment options equal to 1.00% (up to 2.00% in the future) of the amount transferred. The charge applies to transfers in excess of 12 in a contract year.

(f) Contract Withdrawal Charge

Allstate Contracts and Amended Contracts impose a withdrawal charge equal to a percentage of contributions determined by the contract year in which such contributions are withdrawn as follows:

COMPLETE YEARS SINCE ALLSTATE RECEIVED PAYMENT BEING WITHDRAWN

[In percent]

	0	1	2	3	4	5	6	7	8+
Charge (Allstate Contracts)	8	8	8	7	6	5	4	3	0
Charge (Amended Contracts)	8.5	8.5	8.5	7.5	6.5	5.5	4	2.5	0

Allstate Contracts offer an annual "free withdrawal amount" equal to 15% of purchase payments. Amended Contracts offer an annual "free withdrawal amount" equal to 15% of all purchase payments that are subject to a

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withdrawal charge as of the beginning of that contract year, plus 15% of the purchase payments added to the contract during the contract year.[2]

(g) Fixed Investment Options

Allstate Contracts offer a standard fixed account option. Amended Contracts offer a standard fixed account option, a dollar cost averaging fixed account option, and a market value adjusted fixed account option.

(h) Minimum Purchase Payments

Allstate Contracts require a minimum initial purchase payment of $500 for qualified contracts. Amended Contracts require a minimum initial purchase payment of $2,000 for qualified contracts. Subsequent purchase payments must be at least $500 for all Allstate Contracts. Subsequent purchase payments must be at least $1,000 for all Amended Contracts.

(i) Change of Annuitant

Allstate Contracts permit a new annuitant to be named upon the death of the current annuitant. Amended Contracts do not permit a change of annuitant.

(j) Credits

Allstate Contracts offer 4% Credits on purchase payments. Under Allstate Contracts, the oldest contract owner and oldest annuitant must be age 85 or younger on the date Allstate receives the completed application for the contract ("Application Date"). Amended Contracts offer credits of up to 5% ("5% Credits") as follows:

- 4% credits on purchase payments if the oldest contract owner and oldest annuitant are age 85 or younger on the Application Date,
- 2% credits on purchase payments if the oldest contract owner or oldest annuitant is age 86 or older and both are 90 or younger on the Application Date,
- an additional 0.5% credit on purchase payments if the cumulative purchase payments less cumulative withdrawals exceed $500,000, and
- an additional 1% credit on purchase payments if the cumulative purchase payments less cumulative withdrawals exceed $1,000,000.

18. Allstate Separate Account A will fund the variable benefits available under the Amended Contracts. Units of interest in Allstate Separate Account A under the Amended Contracts they fund will be registered under the 1933 Act. Allstate may issue Future Contracts through Allstate Separate Account A. Allstate also may issue Future Contracts through Future Accounts.

19. That portion of the assets of Allstate Separate Account A that is equal to the reserves and other Amended Contract liabilities with respect to Allstate Separate Account A is not chargeable with liabilities arising out of any other business of Allstate. Any income, gains or losses, realized or unrealized, from assets allocated to Allstate Separate Account A are, in accordance with Allstate Separate Account A's Amended Contracts, credited to or charged against Allstate Separate Account A, without regard to other income, gains or losses of Allstate. The same will be true of any Future Account of the Life Companies.

20. Allstate will recapture the 5% Credit if the owner returns the Amended Contract for a refund during the free look period applicable under state law. Allstate will not seek to recapture 5% Credits under Amended Contracts under any other circumstance.

21. The free look period is the period during which an owner may return an Amended Contract after it has been delivered and received a full refund of the contract value, less any 5% Credits. No other charges will apply to the refund, but the owner bears the investment risk from the time of purchase until he or she returns the Amended Contract. The owner also will bear any expenses charged with respect to the credit amount incurred prior to return of the Amended Contract, e.g., any mortality and expense risk charge. The refund amount may be more or less than the purchase payment the owner made, unless state insurance law requires that the full amount of the purchase payment be refunded.

Applicants' Legal Analysis

1. Section 6(c) of the act authorizes the Commission to exempt any person, security or transaction, or any class or classes of persons, securities or transactions from the provisions of the Act and the rules promulgated thereunder if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

2. Applicants submit that the recapture of 5% Credits under the Amended Contracts will not raise concerns under sections 2(a)(32) and 27(i)(2)(A) of the Act, and Rule 22c–1 thereunder, for the same reasons given in support of the Existing order, namely:

(a) It is not administratively feasible to track the 5% Credit amount in the subaccounts of Allstate Separate Account A. Accordingly, the asset-based charges applicable to the subaccounts will be assessed against the entire amounts held in the subaccounts, including the 5% Credit amount, during the "free look" period. As a result, during such period, the aggregate asset-based charges assessed against an owner's annuity account value will be higher than those that would be charged if the owner's contract value did not include the 5% Credit.

(b) The 5% Credit recapture provisions of the Amended Contracts would not deprive an owner of his or her proportionate share of the issuer's current net assets. Applicants state that an owner's interest in the 5% Credit amount allocated to his or her contract value upon receipt of a purchase payment is not vested until the applicable free-look period has expired without return of the Amended Contract. Until the free look period has expired and any 5% Credit amount is vested, Applicants submit that Allstate retains the right and interest in the 5% Credit amount, although not in the earnings attributable to the amount. Thus, Applicants argue that when Allstate recaptures any 5% Credit, it is merely retrieving its own assets, and the owner has not been deprived of a proportionate share of Allstate Separate Account A's assets.

(c) Permitting an owner to retain a 5% Credit under a contract upon the exercise of the free look period would not only be unfair, but would also encourage individuals to purchase an Amended Contract with no intention of keeping it, and simply to return it for a quick profit.

(d) The 5% Credit will be attractive to and in the interest of investors because it will permit owners to put from 102% to 105% of their purchase payments to work for them in the selected subaccounts. In addition, the owner will retain any earnings attributable to the 5% Credit, as well as the principal amount of the 5% Credit if he or she does not cancel the Amended Contract.

(e) The recapture of a 5% Credit does not involves either of the evils that Rule 22c–1 was intended to eliminate or reduce, namely: (a) The dilution of the value of outstanding redeemable securities of registered investment companies through their sale at a price below net asset value or their redemption or repurchase at a price above it, and (b) other unfair results including speculative trading practices. To effect a recapture of a 5% Credit, Allstate will redeem an owner's interest in a subaccount at a price determined on the basis of current net asset value of the subaccount. The amount recaptured will equal the amount of the 5% Credits paid out of its general account assets. Although the owner will be entitled to retain any investment gain attributable to the 5% Credit, the amount of such gain will be determined on the basis of the current net asset value of the relevant subaccounts. Thus, no dilution will occur upon the recapture of the 5% Credit. Also, the second harm that Rule 22c–1 was designed to address, namely, speculative trading practices calculated to take advantage of backward pricing, will not occur as a result of the recapture of the 5% Credit. However, to avoid any uncertainty as to full compliance with the Act, Applicants request an exemption from the provisions of Rule 22c–1 to the extent deemed necessary to permit the recapture of the 5% Credits under the Amended Contracts and Future Contracts.

3. Applicants submit that their request for an order, which applies to any Future Contracts that are substantially similar in all material respects to the Amended Contracts described herein, to Contracts described herein, and Future Contracts Covered by the Existing Order, that are substantially similar in all material respects to the Contracts, is appropriate in the public interest. Applicants state that such an order would promote competitiveness in the viable annuity market by eliminating the need to file redundant exemptive applications in the future, thereby reducing administrative expenses and maximizing the efficient use of Applicants' resources. Applicants state that requiring them to file additional Applications would impair their ability effectively to take advantage of business opportunities as they arise, and that investors would not receive any benefit or additional protection by requiring Applicants to repeatedly seek exemptive relief that would present no issue under the Act that has not already been addressed in this Application.

Conclusion

Applicants submit that their request for an order of exemption that applies to the recapture of bonus credits paid on the Amended Contracts described herein or Future Contracts that are substantially similar in all material respects to the Amended Contracts and underwritten or distributed by Allstate Distributors, Affiliated Broker-Dealers, or Unaffiliated Broker-Dealers, and to Future Accounts Covered by the Existing Order, Contracts and Future Contracts Covered by the Existing Order, is appropriate in the public interest for the reasons described above. Applicants submit, based on the ground summarized above, that their exemptive request meets the standards set out in section 6(c) of the Act, namely, that the exemptions requested are necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act, and that, therefore, the Commission should grant the requested order.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

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[2] The free withdrawal amount applicable to Charitable Remainder Trusts is described in the prospectus for the Amended Contracts (File No. 333–96115).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46759; File No. SR–BSE–2002–14]

Self-Regulatory Organizations; Order Granting Accelerated Approval to Proposed Rule Change by the Boston Stock Exchange, Inc. Relating to an Interpretation of its Execution Guarantee Rule

November 1, 2002.

I. Introduction

On September 5, 2002, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to render voluntary a CHX specialist's obligation to fill limit orders in the specialist's book following a primary market trade-through, if such trade-through occurs in an exchange-traded funds ("ETFs") tracking the Nasdaq-100 Index ("QQQs"), the Dow Jones Industrial Average ("DIAMONDs"), and the Standard & Poor's 500 Index ("SPDRs").

The proposed rule change was published for comment in the **Federal Register** on October 8, 2002.[3] No comments were received on the proposal. This order approves the proposal.

II. Description of the Proposal

A. Background

The BSE is a participant in the Intermarket Trading System ("ITS"). The ITS is an order routing network designed to facilitate intermarket trading in exchange-listed equity securities among participating self-regulatory organizations ("SROs") based on current quotation information emanating from their markets. The terms of the linkage are governed by the ITS Plan, a national market system plan approved by the Commission pursuant to Section 11A of the Act and Rule 11Aa3–2 thereunder.[4]

Section 8(d)(i) of the ITS Plan provides that absent reasonable justification or excuse, a member of a Participant Exchange should not effect trade-throughs.[5] If, however, a trade-through does occur and a complaint is received through ITS from the party whose bid or offer was traded through, the party who initiated the trade-through may be required to satisfy the bid or offer traded through or take other remedial action.[6] Each Participant Exchange, including the Phlx,[7] has adopted and obtained Commission approval of a "trade-through rule," which is substantively the same as that provided in the ITS Plan.

In a recent Order, the Commission recognized that the ITS trade-through provisions were designed to encourage market participants to display their trading interest, and to help achieve best execution for customer orders in exchange-listed securities.[8] The Commission also acknowledged, however, that these rules were designed at a time when "the order routing and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See Securities Exchange Act Release No. 46580 (October 1, 2002), 67 FR 62839. The proposed rule change is currently in effect as a pilot. See Securities Exchange Act Release Nos. 46482 (September 10, 2002), 67 FR 58662 (September 17, 2002) (notice of immediate effectiveness of pilot for the period September 4, 2002 to October 4, 2002); 46651 (October 11, 2002), 67 FR 64669 (October 21, 2002) (notice of immediate effective of extension of pilot to November 3, 2002.)

[4] See Securities Exchange Act Release No. 19456 (January 27, 1983), 48 FR 4938 (February 3, 1983). The SROs participating in ITS include the American Stock Exchange LLC ("Amex"), the Boston Stock Exchange, Inc. ("BSE"), the Chicago Board Options Exchange, Inc. ("CBOE"), the Chicago Stock Exchange, Inc. ("CSE"), the Cincinnati Stock Exchange, Inc. ("Cincinnati"), the National Association of Securities Dealers, Inc. ("NASD"), the New York Stock Exchange, Inc. ("NYSE"), the Pacific Stock Exchange, Inc. ("PCX"), and the Phlx (collectively "Participant Exchanges").

[5] A trade-through results when a member purchases (or sells) a security at a price that is higher (lower) than the price offered in one or more of the other ITS participant's markets. See ITS Plan, Section 8(d)(i).

[6] See ITS Plan, Exhibit B.

[7] See Phlx Rule 2001A.

[8] See Securities Exchange Act Release No. 46428 (August 28, 2002), 67 FR 56607 (September 4, 2002) at 56607 ("ITS Exemption Order").

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execution facilities of markets were much slower, intermarket competition was less keen, and the minimum quote increment for exchange-listed securities was ⅛ of a dollar ($ 0.125)." [9] The Commission noted that with the introduction of decimal pricing and technology changes that greatly reduced execution times, the trade-through provisions of the ITS Plan have limited the ability of a Participant to provide an automated execution when a better price is displayed by another Participant that does not offer automated executions.[10] In support of this conclusion, the Commission explained that certain electronic systems are able to deliver executions in a fraction of a second, while ITS participants have, at a minimum, thirty seconds to respond to a commitment to trade. Because of this, "an ITS Participant seeking to execute a transaction at a price inferior to the price quoted by another ITS Participant must generally either (i) attempt to access the other Participant's quote, which could delay the customer's transaction by thirty seconds or more, or (ii) become potentially liable to the other Participant for the amount by which its quote was traded through." [11]

In its Order, the Commission stated that the ITS trade-through provisions were particularly restrictive in the case of the QQQs, DIAMONDs and SPDRs, as these ETFs are highly liquid securities, and their value is derived form the values of the underlying shares. The Commission noted that immediate execution of these securities might be more important than the opportunity to obtain a better price to certain investors.[12] To address this issue, the Commission granted a *de minimis* exemption from the trade-through provisions of the ITS Plan with respect to transactions in the QQQs, DIAMONDs and SPDRs that are effected at a price no more than three cents away from the best bid and offer quoted in the Consolidated Quote System ("CQS"). This exemption, which went into effect on September 4, 2002 and will remain in effect until June 4, 2003, allows Participants to execute transactions, through automatic execution or otherwise, without attempting to access the quotes of other Participants when the expected price improvement would not be significant.[13]

B. Applicability to the BSE

Chapter II, *Dealings on the Exchange*, Section 33, *Execution Guarantee*, of the BSE Rules paragraph (c)(2) states that "(a)ll agency limit orders will be filled if one of the following conditions occur * * * (2) there has been price penetration of the limit in the primary market * * *" There are similar provisions in various sections of Chapter XV, *Dealer Specialists*.[14] These provisions, in particular those set forth in Chapter II, guarantee that a limit order in a BSE specialist's book will be filled if the primary market trades through the limit price. When the BSE specialist provides this trade-through protection to its customer limit orders, he is permitted to seek relief through ITS.

Under the Commission's ITS Exemption Order, however, certain primary market trades-through in the QQQs, DIAMONDS and SPDRs will constitute exempt trades-through, and therefore the specialist will no longer be able to seek recourse to seek satisfaction through ITS from the primary market even though the BSE Rules will require the BSE specialists to provide trade-through protection. Therefore, the BSE has proposed to add Paragraph .07 to the Interpretations and Policies section of Chapter II, *Dealings on the Exchange*, Section 33, *Execution Guarantee*, of the BSE that will permit the Exchange to not enforce the provisions of Paragraph (c)(2) of Section 33 following a *de minimis* trade through of certain ETFs outlined in the ITS Exemption Order.

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[15] In particular, the Commission finds that the proposed rule is consistent with the requirements of section 6(b)(5) of the Act [16] because it is designed to facilitate transactions in securities; to remove impediments to and perfect the mechanism of a free and open market and a national market system; and, in general, to protect investors and the public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of the publication of notice thereof in the **Federal Register**. By adopting the proposed exemption, the Exchange removes the specialist's obligation to provide trade-through protection in situations where it will not be permitted to seek satisfaction through ITS from the primary market. This obligation was one the BSE assumed voluntarily in order to make its market more attractive to sources of order flow, not an obligation the Act imposes on a market. The Commission believes that the business decision to potentially forego order flow by no longer providing print protection is a judgment the Act allows the BSE to make.[17] Further the Commission notes that it approved similar proposed rule changes for the Chicago Stock Exchange, Inc. ("CHX") and the Philadelphia Stock Exchange, Inc. ("PHLX"), and believes that it is appropriate to grant the same relief to the BSE in a timely manner.[18]

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[19] that the proposed rule change (SR–BSE–2002–14) is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[20]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 02–28430 Filed 11–7–02; 8:45 am]

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[9] *Id.*

[10] *Id.*

[11] *Id.* at 56607–8.

[12] *Id.*

[13] *Id.* at 56608.

[14] *See, e.g.*, the Commentary to Section 1, *Specialists*, which sets forth a specialist's obligations in relation to buying and selling on a principal basis while holding unexecuted orders in his book; Section 2, *Responsibilities*, which sets forth, in part, a specialist's primary duties as agent; Section 4, *Precedence to Orders in the Book*, which sets forth the precedence parameters a specialist must adhere to; and Section 18, *Procedures for Competing Specialists*, which sets forth, in various paragraphs, obligations which may conflict with the *de minimis* exemption in the Order.

[15] In approving this rule proposal, the Commission notes that it has also considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[16] 15 U.S.C. 78f(b)(5).

[17] The Commission notes that the BSE's proposed rule change will remain in effect only until the expiration of the Commission's ITS Exemption Order on June 4, 2003.

[18] *See* Securities Exchange Act Release Nos. 46760 (November 1, 2002) (order approving SR–CHX–2002–31); and 46761 (November 1, 2002)(order approving SR–Phlx–2002–49.

[19] 15 U.S.C. 78f(b)(2).

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46760; File No. SR–CHX–2002–31]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Chicago Stock Exchange, Inc. Relating to Execution of Limit Orders Following Exempted ITS Trade-Through

November 1, 2002.

I. Introduction

On September 20, 2002, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to render voluntary a CHX specialist's obligation to fill limit orders in the specialist's book following a primary market trade-through, if such trade-through occurs in an exchange-traded funds ("ETFs") tracking the Nasdaq–100 Index ("QQQs"), the Dow Jones Industrial Average ("DIAMONDs"), and the Standard & Poor's 500 Index ("SPDRs").

The proposed rule change was published for comment in the **Federal Register** on October 2, 2002.[3] No comments were received on the proposal. This order approves the proposal.

II. Description of the Proposal

A. Background

The CHX is a participant in the Intermarket Trading System ("ITS"). The ITS is an order routing network designed to facilitate intermarket trading in exchange-listed equity securities among participating self-regulatory organizations ("SROs") based on current quotation information emanating from their markets. The terms of the linkage are governed by the ITS Plan, a national market system plan approved by the Commission pursuant to Section 11A of the Act and Rule 11Aa3–2 thereunder.[4]

Section 8(d)(i) of the ITS Plan provides that absent reasonable justification or excuse, a member of a Participant Exchange should not effect trade-throughs.[5] If, however, a trade-through does occur and a complaint is received through ITS from the party whose bid or offer was traded through, the party who initiated the trade-through may be required to satisfy the bid or offer traded through or take other remedial action.[6] Each Participant Exchange, including the Phlx,[7] has adopted and obtained Commission approval of a "trade-through rule," which is substantively the same as that provided in the ITS Plan.

In a recent Order, the Commission recognized that the ITS trade-through provisions were designed to encourage market participants to display their trading interest, and to help achieve best execution for customer orders in exchange-listed securities.[8] The Commission also acknowledged, however, that these rules were designed at a time when "the order routing and execution facilities of markets were much slower, intermarket competition was less keen, and the minimum quote increment for exchange-listed securities was ⅛ of a dollar ($ 0.125)." [9] The Commission noted that with the introduction of decimal pricing and technology changes that greatly reduced execution times, the trade-through provisions of the ITS Plan have limited the ability of a Participant to provide an automated execution when a better price is displayed by another Participant that does not offer automated executions.[10] In support of this conclusion, the Commission explained that certain electronic systems are able to deliver executions in a fraction of a second, while ITS participants have, at a minimum, thirty seconds to respond to a commitment to trade. Because of this, "an ITS Participant seeking to execute a transaction at a price inferior to the price quoted by another ITS Participant must generally either (i) attempt to access the other Participant's quote, which could delay the customer's transaction by thirty seconds or more, or (ii) become potentially liable to the other Participant for the amount by which its quote was traded through." [11]

In its Order, the Commission stated that the ITS trade-through provisions were particularly restrictive in the case of the QQQs, DIAMONDs and SPDRs, as these ETFs are highly liquid securities, and their value is derived from the values of the underlying shares. The Commission noted that immediate execution of these securities might be more important than the opportunity to obtain a better price to certain investors.[12] To address this issue, the Commission granted a *de minimis* exemption from the trade-through provisions of the ITS Plan with respect to transactions in the QQQs, DIAMONDs and SPDRs that are effected at a price no more than three cents away from the best bid and offer quoted in the Consolidated Quote System ("CQS"). This exemption, which went into effect on September 4, 2002 and will remain in effect until June 4, 2003, allows Participants to execute transactions, through automatic execution or otherwise, without attempting to access the quotes of other Participants when the expected price improvement would not be significant.[13]

B. Applicability to the CHX

CHX Article XX, Rules 37(a)(3) and 37(b)(6) govern the execution of limit orders in a CHX specialist's book. Specifically, these rules require a CHX specialist to fill limit orders in his book if there is a trade-through of the limit price in the primary market. The CHX specialist, in turn, is entitled to seek satisfaction for these orders pursuant to the ITS Plan's provisions governing trade-throughs.

However, pursuant to the Commission's ITS Exemption Order, certain primary market trade-throughs in the QQQs, DIAMONDS and SPDRs that would trigger a CHX specialist's obligation to provide trade-through protection will now be permitted, and thus will leave the CHX specialist without recourse to seek satisfaction from the primary market. Therefore, the Exchange is proposing to amend CHX Article XX, Rules 37(a)(3) and 37(b)(6) to permit, but not require, a CHX specialist to fill limit orders in his book

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 46556 (September 26, 2002), 67 FR 61940. The proposed rule change is currently in effect as a pilot. *See* Securities Exchange Act Release Nos. 46577 (September 26, 2002), 67 FR 61941 (October 2, 2002)(notice of immediate effectiveness of pilot for the period September 4, 2002 to October 4, 2002); 46615 (October 8, 2002), 67 FR 63719 (October 15, 2002)(notice of immediate effective of extension of pilot to November 3, 2002.)

[4] *See* Securities Exchange Act Release No. 19456 (January 27, 1983), 48 FR 4938 (February 3, 1983). The SROs participating in ITS include the American Stock Exchange LLC ("Amex"), the Boston Stock Exchange, Inc. ("BSE"), the Chicago Board Options Exchange, Inc. ("CBOE"), the Chicago Stock Exchange, Inc. ("CSE"), the Cincinnati Stock Exchange, Inc. ("Cincinnati"), the National Association of Securities Dealers, Inc. ("NASD"), the New York Stock Exchange, Inc. ("NYSE"), the Pacific Stock Exchange, Inc. ("PCX"), and the Phlx (collectively "Participant Exchanges").

[5] A trade-through results when a member purchases (or sells) a security at a price that is higher (lower) than the price offered in one or more of the other ITS participant's markets. *See* ITS Plan, Section 8(d)(i).

[6] *See* ITS Plan, Exhibit B.

[7] *See* Phlx Rule 2001A.

[8] *See* Securities Exchange Act Release No. 46428 (August 28, 2002), 67 FR 56607 (September 4, 2002) at 56607 ("ITS Exemption Order").

[9] *Id.*

[10] *Id.*

[11] *Id.* at 56607–8.

[12] *Id.*

[13] *Id.* at 56608.

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when a trade-through that is exempted pursuant to the Commission's ITS Exemption Order occurs in the primary market.

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[14] In particular, the Commission finds that the proposed rule is consistent with the requirements of section 6(b)(5) of the Act[15] because it is designed to facilitate transactions in securities; to remove impediments to and perfect the mechanism of a free and open market and a national market system; and, in general, to protect investors and the public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

By adopting the proposed exemption, the Exchange removes the specialist's obligation to provide trade-through protection in situations where it will not be permitted to seek satisfaction through ITS from the primary market. This obligation was on the CHX assumed voluntarily in order to make its market more attractive to sources of order flow, not an obligation the Act imposes on a market. The Commission believes that the business decision to potentially forego order flow by no longer providing print protection is a judgment the Act allows the CHX to make.[16]

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[17] that the proposed rule change (SR–CHX–2002–31) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 02–28428 Filed 11–7–02; 8:45 am]

BILLING CODE 8010–01–P

[14] In approving this rule proposal, the Commission notes that it has also considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[15] 15 U.S.C. 78f(b)(5).

[16] The Commission notes that the CHX's proposed rule change will remain in effect only until the expiration of the Commission's ITS Exemption Order on June 4, 2003.

[17] 15 U.S.C. 78f(b)(2).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46762; File No. SR–CHX–2002–30]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Incorporated Relating to Eligibility of Limit Orders for Trade Through Protection and Amendment No. 1 Thereto

November 1, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice hereby is given that on September 13, 2002, the Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Exchange filed the proposal pursuant to section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. On October 30, 2002, the Exchange filed Amendment No. 1 to the proposed rule change.[5]

The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend CHX Article XX, Rule 37(a)(3) to clarify the rules relating to the execution of limit orders in the specialist's book in the event of a trade through in the primary market. The proposed rule change mirrors a change made to another CHX rule relating to the automated execution of limit orders, which required that a limit order be resident in the specialist's book for a time period of 0–15 seconds (as designated by the specialist) before it would be eligible for limit order protection. The text of the proposed rule change is available from the Office of the Secretary, the Commission, and the CHX.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* letter from Kathleen M. Boege, Assistant General Counsel, CHX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated October 29, 2002 ("Amendment No. 1"). In Amendment No. 1, the Exchange corrected typographical errors contained in the proposed rule text.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received regarding the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On January 11, 2002, the Commission approved a proposed rule change submitted by the Exchange amending Article XX, Rule 37(b)(6) of the Exchange's rules, which, among other things, governs execution of limit orders in the specialist's book in the event of a trade through in the primary market.[6] That proposal required that a limit order be resident in the specialist's book for a time period of 0–15 seconds (as designated by the specialist) before it would be eligible for limit order protection.

Another provision of the CHX rules, however, also addresses the execution of agency limit orders and should have been amended as part of the Exchange's original proposal.[7] Through this submission, the Exchange modifies CHX Article XX, Rule 37(a)(3) to eliminate any confusion about the impact of the earlier rule change.

2. Statutory Basis

The CHX believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of section 6(b).[8] Specifically, the proposed rule is consistent with section 6(b)(5) of the Act[9] in that it is designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

[6] *See* Securities Exchange Act Release No. 45271, 66 FR 2712 (January 18, 2002)(order approving SR–CHX–2001–17).

[7] *See* CHX Article XX, Rule 37(a)(3).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement of Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments Regarding the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change does not:

(1) Significantly affect the protection of investors or the public interest;

(2) Impose any significant burden on competition; and

(3) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, and the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five days prior to the filing date, it has become effective pursuant to section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6) thereunder.[11] At any time within 60 days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purpose of the Act.

The Exchange requested that the Commission accelerate the operative date of the proposed rule change. The Commission believes that accelerating the operative date of the proposed rule change is consistent with the protection of investors and the public interest. The Commission notes that the substance of the proposed rule change has already been subject to a full notice and comment period as part of another proposal, which was approved by the Commission.[12] The instant proposed rule change simply amends another Exchange rule to be consistent with the previously approved change. As a result, the Commission designates the proposed rule change to be effective and operative upon filing with the Commission.[13]

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] *See* note 6, *supra.*

[13] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation.

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CHX–2002–30 and should be submitted by November 25, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–28485 Filed 11–7–02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46756; File No. SR–NASD–2002–156]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc., Relating to the Primex Auction System'

October 31, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 31, 2002, the National Association of Securities Dealers, Inc., through its subsidiary The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. Nasdaq has designated this proposal as effective upon filing pursuant to Section 19(b)(3)(A)(iii) of the Act,[3] and subparagraph (f)(2) of Rule 19b–5.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq is filing a proposed rule change to continue operating Nasdaq's application of the Primex Auction System" ("Primex" or "System") as a Pilot Trading System, pursuant to Rule 19b–5 of the Act,[5] until November 30, 2002, or until the Commission permanently approves Primex, whichever period is shorter. Pursuant to paragraph (f) of Rule 19b–5,[6] Nasdaq is filing this proposed rule change as effective immediately. This filing does not propose any rule language changes.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Primex Auction System is a facility of Nasdaq that has been operating as a Pilot Trading System ("PTS"), as defined in paragraph (c)(2) of Rule 19b–5 of the Act.[7] As such, Nasdaq was not required to file a proposed rule change under Rule 19b–4 of the Act[8] as long as the Primex maintained its status as a PTS. Under paragraph (c)(2) of Rule 19b–5, a system

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–5(f)(2).

[5] 17 CFR 240.19b–5.

[6] 17 CFR 240.19b–4(f).

[7] 17 CFR 240.19b–5(c)(2).

[8] 17 CFR 240.19b–4.

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must comply with three criteria to maintain its status as a PTS.[9] One such criteria is that, for each security traded in the PTS, the PTS cannot trade more than one percent of the average daily consolidated trading volume of any such security, during at least two of the last four consecutive calendar months. Nasdaq represents that Primex exceeded this threshold for many securities. Therefore, Nasdaq filed a proposed rule change seeking permanent approval of Primex.[10] Nasdaq also filed a proposed rule change to continue operating the System for up to six months while the Commission considered granting permanent approval.[11] This six-month period expires on October 31, 2002. The Commission is still considering Nasdaq's filing seeking permanent approval of Primex. Accordingly, Nasdaq is filing this proposed rule change to continue operating Primex as a PTS until November 30, 2002, or until the Commission grants permanent approval, whichever period is shorter. Primex continues to operate in the manner described in the Form PILOT filing, as amended.[12]

2. Statutory Basis

Nasdaq believes the proposed rule change is consistent with the provisions of Sections 15A(b)(6)[13] and 11A(a)(1) of the Act.[14] Section 15A(b)(6) of the Act [15] requires the rules of the NASD to be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Section 11A(a)(1) of the Act [16] sets forth a finding of Congress that new data processing and communications techniques create opportunity for more efficient and effective market operations.

Nasdaq believes this proposed rule change is consistent with the NASD's obligations under the Act, as well as the finding of Congress, because it will allow Nasdaq to continue operating Primex while the Commission considers permanent approval. Among other things, the System provides members with an additional electronic, execution system, which is designed to provide members with flexibility in executing orders and the opportunity to obtain price improvement. To ensure the protection of investors, orders will not be executed at prices inferior to the National Best Bid or Offer.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to section 19(b)(3)(A)(iii) of the Act,[17] and subparagraph (f)(2) of Rule 19b–5 thereunder,[18] because the proposal will permit Nasdaq to continue operating Primex as a PTS while the Commission considers granting permanent approval. The proposal does not modify any rule or the operation of Primex.

At any time within 60 days of the filing of a rule change pursuant to Section 19(b)(3)(A) of the Act,[19] the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2002–156 and should be submitted by November 29, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[20]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 02–28429 Filed 11–7–02; 8:45 am]

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[9] Pursuant to Rule 19b–5(c)(2), to qualify as a Pilot Trading System, a system must: (1) Be in operation for less than two years; (2) with respect to each security traded on such Pilot Trading System, during at least two of the last four consecutive calendar months, has traded no more than one percent of the average daily trading volume in the United States; and (3) with respect to all securities traded on such Pilot Trading System, during at least two of the last four consecutive calendar months, has traded no more than 20 percent of the average daily trading volume of all trading systems operated by the self-regulatory organization.

[10] Securities Exchange Act Release No. 45983 (May 23, 2002) 67 FR 38152 (May 31, 2002).

[11] Securities Exchange Act Release No. 45982 (May 23, 2002) 67 FR 38163 (May 31, 2002).

[12] Form PILOT–NASD–2001–01.

[13] 15 U.S.C. 78*o*–3(b)(6).

[14] 15 U.S.C. 78k–1(a)(1).

[15] 15 U.S.C. 78*o*–3(b)(6).

[16] 15 U.S.C. 78k–1(a)(1).

[17] 15 U.S.C. 78s(b)(3)(A)(iii).

[18] 17 CFR 240.19b–4(f)(5).

[19] 15 U.S.C. 78s(b)(3)(A).

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46761; File No. SR–Phlx–2002–49]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to PACE Guarantee Exemption

November 1, 2002.

I. Introduction

On September 12, 2002, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to exempt specialists from the requirement to execute certain orders that are traded-through by another

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

market if those orders are for the exchange-traded funds ("ETFs") tracking the Nasdaq-100 Index ("QQQs"), the Dow Jones Industrial Average ("DIAMONDs"), and the Standard & Poor's 500 Index ("SPDRs").[3]

The proposed rule change was published for comment in the **Federal Register** on October 2, 2002.[4] No comments were received on the proposal. This order approves the proposal.

II. Description of the Proposal

A. Background

The Phlx is a participant in the Intermarket Trading System ("ITS"). The ITS is an order routing network designed to facilitate intermarket trading in exchange-listed equity securities among participating self-regulatory organizations ("SROs") based on current quotation information emanating from their markets. The terms of the linkage are governed by the ITS Plan, a national market system plan approved by the Commission pursuant to Section 11A of the Act and Rule 11Aa3–2 thereunder.[5]

Section 8(d)(i) of the ITS Plan provides that absent reasonable justification or excuse, a member of a Participant Exchange should not effect trade-throughs.[6] If, however, a trade-through does occur and a complaint is received through ITS from the party whose bid or offer was traded through, the party who initiated the trade-through may be required to satisfy the bid or offer traded through or take other remedial action.[7] Each Participant Exchange, including the Phlx,[8] has adopted and obtained Commission approval of a "trade-through rule," which is substantively the same as that provided in the ITS Plan.

In a recent Order, the Commission recognized that the ITS trade-through provisions were designed to encourage market participants to display their trading interest, and to help achieve best execution for customer orders in exchange-listed securities.[9] The Commission also acknowledged, however, that these rules were designed at a time when "the order routing and execution facilities of markets were much slower, intermarket competition was less keen, and the minimum quote increment for exchange-listed securities was ⅛ of a dollar ($ 0.125)."[10] The Commission noted that with the introduction of decimal pricing and technology changes that greatly reduced execution times, the trade-through provisions of the ITS Plan have limited the ability of a Participant to provide an automated execution when a better price is displayed by another Participant that does not offer automated executions.[11] In support of this conclusion, the Commission explained that certain electronic systems are able to deliver executions in a fraction of a second, while ITS participants have, at a minimum, thirty seconds to respond to a commitment to trade. Because of this, "an ITS Participant seeking to execute a transaction at a price inferior to the price quoted by another ITS Participant must generally either (i) attempt to access the other Participant's quote, which could delay the customer's transaction by thirty seconds or more, or (ii) become potentially liable to the other Participant for the amount by which its quote was traded through."[12]

In its Order, the Commission stated that the ITS trade-through provisions were particularly restrictive in the case of the QQQs, DIAMONDs and SPDRs, as these ETFs are highly liquid securities, and their value is derived from the values of the underlying shares. The Commission noted that immediate execution of these securities might be more important than the opportunity to obtain a better price to certain investors.[13] To address this issue, the Commission granted a *de minimis* exemption from the trade-through provisions of the ITS Plan with respect to transactions in the QQQs, DIAMONDs and SPDRs that are effected at a price no more than three cents away from the best bid and offer quoted in the Consolidated Quote System ("CQS"). This exemption, which went into effect on September 4, 2002 and will remain in effect until June 4, 2003, allows Participants to execute transactions, through automatic execution or otherwise, without attempting to access the quotes of other Participants when the expected price improvement would not be significant.[14]

B. Applicability to the Phlx

Phlx Rule 229.10(a)(iii) requires a Phlx specialist to execute certain orders that are traded-through by another market center.[15] Although the Exchange Rule imposes this obligation on the specialist, the specialist is entitled to satisfaction of those orders pursuant to Section 8(d) of the ITS Plan. However, for trade-throughs that are enumerated in the ITS Exemption Order and therefore are no longer prohibited by the ITS Plan, the specialist does not have recourse to seek satisfaction for these orders and is alone responsible for those executions. Therefore, the Phlx believes that its provision guaranteeing an execution no longer makes sense, and further believes that the provision now unduly burdens specialists by requiring a specialist to execute orders in situations where the specialist does not have access to trading at that price. Thus, the Exchange is proposing to amend Phlx Rule 229 Supplementary Material Section 10(a)(iii) to state that the obligations described therein shall not apply to the ETFs that are the subject of the ITS Exemption Order for so long as the exemption granted in the order remains in effect.

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. [16] In particular, the

[3] The Exchange does not currently trade DIAMONDs or SPDRs but may determine to do so in the future. The Exchange does trade QQQs.

[4] *See* Securities Exchange Act Release No. 46545 (September 24, 2002), 67 FR 61944. The proposed rule change is currently in effect as a pilot. *See* Securities Exchange Act Release Nos. 46481 (September 10, 2002), 67 FR 58669 (September 17, 2002)(notice of immediate effectiveness of pilot for the period September 4, 2002 to October 4, 2002); 46615 (October 8, 2002), 67 FR 63723 (October 15, 2002)(notice of immediate effectiveness of extension of pilot to November 3, 2002.)

[5] *See* Securities Exchange Act Release No. 19456 (January 27, 1983), 48 FR 4938 (February 3, 1983). The SROs participating in ITS include the American Stock Exchange LLC ("Amex"), the Boston Stock Exchange, Inc. ("BSE"), the Chicago Board Options Exchange, Inc. ("CBOE"), the Chicago Stock Exchange, Inc. ("CSE"), the Cincinnati Stock Exchange, Inc. ("Cincinnati"), the National Association of Securities Dealers, Inc. ("NASD"), the New York Stock Exchange, Inc. ("NYSE"), the Pacific Stock Exchange, Inc. ("PCX"), and the Phlx (collectively "Participant Exchanges").

[6] A trade-through results when a member purchases (or sells) a security at a price that is higher (lower) than the price offered in one or more of the other ITS participant's markets. *See* ITS Plan, Section 8(d)(i).

[7] *See* ITS Plan, Exhibit B.

[8] *See* Phlx Rule 2001A.

[9] *See* Securities Exchange Act Release No. 46428 (August 28, 2002), 67 FR 56607 (September 4, 2002) at 56607 ("ITS Exemption Order").

[10] *Id.*

[11] *Id.*

[12] *Id.* at 56607–8.

[13] *Id.*

[14] *Id.* at 56608.

[15] Specifically, this Rule provides that if 100 or more shares print through the limit price on any exchange(s) eligible to compose the PACE Quote, which is the best bid/ask quote among the Amex, BSE, Cincinnati, CSE, NYSE, PCX, Phlx, and the Intermarket Trading System/Computer Assisted Execution System ("ITS/CAES"), after the time of entry of any such order into PACE, the specialist shall execute all such orders at the limit price without waiting for an accumulation of 1000 shares to price at the limit price on the NYSE. *See also* Phlx Rule 229, Supplementary Material Section .10(a)(ii).

[16] In approving this rule proposal, the Commission notes that it has also considered the

Continued

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Commission finds that the proposed rule is consistent with the requirements of Section 6(b)(5) of the Act [17] because it is designed to facilitate transactions in securities; to remove impediments to and perfect the mechanism of a free and open market and a national market system; and, in general, to protect investors and the public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

By adopting the proposed exemption, the Exchange removes the specialist's obligation to provide trade-through protection in situations where it will not be permitted to seek satisfaction through ITS from the primary market. This obligation was one the Phlx assumed voluntarily in order to make its market more attractive to sources of order flow, not an obligation the Act imposes on a market. The Commission believes that the business decision to potentially forego order flow by no longer providing print protection is a judgment the Act allows the Phlx to make.[18]

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[19] that the proposed rule change (SR–Phlx–2002–49) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[20]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 02–28427 Filed 11–7–02; 8:45 am]

BILLING CODE 8010–01–P

proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[17] 15 U.S.C. 78f(b)(5).

[18] The Commission notes that the Phlx's proposed rule change will remain in effect only until the expiration of the Commission's ITS Exemption Order on June 4, 2003.

[19] 15 U.S.C. 78f(b)(2).

[20] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 4202]

Culturally Significant Objects Imported for Exhibition Determinations: "Old Master Galleries"

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the object to be included in the exhibition "Old Master Galleries," imported from abroad for temporary exhibition within the United States, is of cultural significance. The object is imported pursuant to loan agreement with the foreign owner. I also determine that the exhibition or display of the exhibit object at The Metropolitan Museum of Art, New York, NY, from on or about November 17, 2002, to on or about November 17, 2004, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit object, contact Julianne Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State, (telephone: 202/619–6529). The address is U.S. Department of State, SA–44, 301 4th Street, S.W., Room 700, Washington, D.C. 20547–0001.

Dated: November 4, 2002.

Patricia S. Harrison,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 02–28513 Filed 11–7–02; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 02–04–C–00–BUF To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Buffalo Niagara International Airport, and Use Only at Niagara Falls International Airport, New York

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Buffalo Niagara International Airport and use only at Niagara Falls International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before December 9, 2002.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: FAA, New York Airports District Office, 600 Old Country Road, Suite 446, Garden City, NY 11530.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Vito J. Sportelli, of the Niagara Frontier Transportation Authority at the following address: 181 Ellicott Street, Buffalo, New York 14203.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Niagara Frontier Transportation Authority under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Eleanor Schifflin, PFC Program Manager, Regional Office, 1 Aviation Plaza, Jamaica, New York 11434–4848 at (718) 553–3354. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Buffalo Niagara International Airport and use at Niagara Falls International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On October 9, 2002, the FAA determined that the application to impose and use the revenue from a PFC submitted by Niagara Frontier Transportation Authority was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than January 18, 2003.

The following is a brief overview of the application.

PFC Application No.: 02–04–C–00–BUF.

Level of the proposed PFC: $3.00.

Proposed charge effective date: May 1, 2006.

Proposed charge expiration date: January 1, 2010.

Total estimated PFC revenue: $24,561,653.

Brief description of proposed project(s) at Buffalo Niagara International Airport:

—Relocation of Security Checkpoints.
—Perform Runway 14–32 Safety Area Improvements.
—Purchase Safety Equipment—Air Rescue Fire Fighting Vehicles.

—Purchase Snow Removal Equipment (for both Buffalo Niagara International and Niagara Falls International).
—Purchase Passenger Movement Shuttle Buses.
—Procurement of Security Vehicles.
—Upgrade Security Badging System.
—PFC Planning and Program Administration.
—Series 1999 Debt Service—East Concourse Terminal Extension, and Apron Expansion, and East Access Improvement.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi/Commercial Operators (ATCO) filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional airports office located at: 1 Aviation Plaza, Airports Division, AEA–610, Jamaica, New York, 114.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Niagara Frontier Transportation Authority.

Issued in Jamaica, New York on October, 2002.

Eleanor Schifflin,

PFC Program Manager, Eastern Region.

[FR Doc. 02–28374 Filed 11–06–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; City of Kokomo, Howard County, Tipton County, IN

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for highway improvements on U.S. Route 31 corridor in the City of Kokomo, Howard County, and Tipton County, Indiana.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Dirks, Environmental Engineer, Federal Highway Administration, Room 254, Federal Office Building, 575 North Pennsylvania Street, Indianapolis, Indiana 46204, telephone (317) 226–7492, or email *robert.dirks@fhwa.dot.gov;* or Mr. James Juricic, Manager of the Environmental Assessment Section, Indiana Department of Transportation, Room N848, 100 N. Senate Avenue, Indianapolis, Indiana 46204, telephone (317) 232–5305, or email *jjuricic@indot.state.in.us.* Please refer to Project Designation Number 0200094 in any correspondence.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Indiana Department of Transportation (INDOT), will prepare an Environmental Impact Statement (EIS) to identify and evaluate alternatives for improvements to the U.S. Route 31 corridor in the City of Kokomo, Howard County, and the northern end of Tipton County, Indiana. The project's logical termini, or the rational end points for the sufficient review of environmental impacts, are located approximately two miles south of State Road 26 at the southern end of the project and one mile north of U.S. Route 35 at the northern end of the project, a distance of approximately 12 miles. The proposed project is part of the state's effort to provide a Statewide Mobility Corridor between I–465 North Leg in Indianapolis and US 20 in South Bend. Preparation of the EIS follows the completion of the U.S. Route 31 Howard County Major Investment Study (MIS) in May of 1995.

Early Coordination Letters will be distributed with initial project information to the appropriate federal, state, and local agencies. Section 106 Consulting Parties will also be identified and contacted for participation in the project. Following early coordination, the project's purpose and need will be determined and documented based on existing and future traffic congestion, safety, and local and statewide planning.

The range of alternatives under consideration include the no-action alternative; alternatives that use other transportation modes; alternatives that maximize the efficiency of the present transportation system; alternatives that reduce highway capacity needs by reducing travel demand; and different build alternatives that would increase the capacity of U.S. Route 31, including adding lanes to the existing U.S. Route 31 facility; upgrading U.S. Route 31 to a fully access-controlled, multilane highway; and possible relocations of the existing U.S. Route 31 facility. A preliminary alternatives' screening process will be conducted to determine which alternatives will be carried forward for more detailed analysis in the Draft EIS.

The public involvement program for the project will consist of the establishment of a project web site; distribution of three project newsletters; two public meetings; three citizen advisory group meetings, and one public hearing following the distribution of the Draft EIS.

Three interagency review meetings will be held at project milestones in order to provide project information to the appropriate Federal, State, and local agencies and to obtain their input and comments. Meetings and coordination with the Section 106 Consulting Parties will be conducted.

To ensure that the full range of issues related to this proposed action is addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205 Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on federal programs and activities apply to this program.)

Issued on: November 1, 2002.

Robert Dirks,

Environmental Engineer, FHWA, Indianapolis, Indiana.

[FR Doc. 02–28406 Filed 11–7–02; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2002–13746]

Application of Foreign Underwriters To Write Marine Hull Insurance

The Maritime Administration (MARAD) has received an application under 46 CFR Part 249 from AXIS Specialty Ltd. of Bermuda, to write marine hull insurance on Title XI program vessels.

In accordance with 46 CFR 249.7(b), interested persons are hereby afforded an opportunity to bring to MARAD's attention any discriminatory laws or practices relating to the placement of marine hull insurance which may exist in the applicant's country of domicile.

Comments regarding this information collection should refer to the docket number which appears at the top of this document. Written comments may be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. Comments may also be submitted by electronic means via the internet at *http://dmses.dot.gov/submit.* All comments received will be available for examination at the above address between 10 a.m. and 5 p.m., EST

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Monday through Friday, except federal holidays. An electronic version of this document is available on the World Wide Web at *http://dms.dot.gov.*

Dated: November 5, 2002.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–28487 Filed 11–7–02; 8:45 am]

BILLING CODE 4910–61–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–156 (Sub–No. 22X)]

Delaware & Hudson Railway Company d/b/a Canadian Pacific Railway—Discontinuance of Trackage Rights Exemption—in Niagara County, NY

Delaware & Hudson Railway Company d/b/a Canadian Pacific Railway (D&H) has filed a notice of exemption under 49 CFR 1152 subpart F—*Exempt Abandonments and Discontinuances of Service and Trackage Rights* to discontinue trackage rights over a 0.15-mile portion of trackage owned by Canada Southern Railway Company (CSR) from a point on the international railway bridge at Niagara Falls, milepost 0.15, to a point where the trackage joins the CSX Transportation, Inc. trackage, milepost 0.0, in Niagara County, NY.[1] The line traverses United States Postal Service Zip Code 14305.

D&H has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the discontinuance shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on December 10, 2002, unless stayed pending reconsideration. Petitions to stay and formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] must be filed by November 18, 2002. Petitions to reopen[3] must be filed by November 29, 2002, with: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to D&H representative: Diane P. Gerth, Leonard, Street and Deinard Professional Association, 150 South Fifth Street, Suite 2300, Minneapolis, MN 55402.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

Board decisions and notices are available on our Web site at *WWW.STB.DOT.GOV.*

Decided: October 29, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–28070 Filed 11–7–02; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–550 (Sub–No. 2X)]

R.J. Corman Railroad Company/ Allentown Lines, Inc.—Abandonment Exemption—In Erie County, NY

R.J. Corman Railroad Company/ Allentown Lines, Inc. (RJCN) has filed a notice of exemption under 49 CFR 1152 subpart F—*Exempt Abandonments* to abandon: (1) The Walden Running Track between approximately milepost 413.90 and approximately milepost 418.50; and (2) the JD Industrial Track between approximately milepost 0.00 and approximately milepost 0.60, a total distance of approximately 5.20 miles in Erie County, NY.[1] The line traverses United States Postal Service Zip Codes 14086, 14031, 14225, 14227, and 14206.

RJCN has certified that: (1) No local traffic has moved over the line for the past 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on December 11, 2002 unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by November 18, 2002. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by November 29, 2002, with: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to RJCN's representative: Edward J. Fishman, Kirkpatrick & Lockhart LLP, 1800 Massachusetts Avenue—2nd Floor, Washington, DC 20036.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

RJCN has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. SEA will issue an environmental assessment (EA) by November 15, 2002. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1552. (Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.) Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), RJCN shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned its line. If consummation has not been effected by RJCN's filing of a notice of consummation by November 8, 2003, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *WWW.STB.DOT.GOV.*

Decided: October 29, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–28073 Filed 11–7–02; 8:45 am]

BILLING CODE 4915–00–P

[1] D&H notes that the 0.15-mile trackage rights sought to be discontinued are overhead rights over trackage owned by CSR, for which CSR is seeking abandonment authority in *Canada Southern Railway Company—Abandonment Exemption—in Niagara County, NY*, STB Docket No. AB–584 (Sub-No. 1X) (STB served Oct. 22, 2002).

[2] Each OFA must be accompanied by the filing fee, which currently is set at $1,100. *See* 49 CFR 1002.2(f)(25).

[3] Because this is a discontinuance proceeding, trail use/rail banking and public use conditions are not appropriate. This proceeding is exempt from environmental and historic reporting requirements. D&H only intends to discontinue service over the line. Because D&H's discontinuance of trackage rights will merely result in the cessation of service over the line, and has not sought abandonment authority, this proceeding is exempt from the reporting requirements listed above and no environmental documentation will be prepared. *See* 49 CFR 1105.6(c)(6) and 1105.8(a) and (b). Because CSR is seeking abandonment authority with respect to this line in STB Docket No. AB–584 (Sub-No. 1X), *See* supra note 1, environmental issues related to abandonment will be addressed in this proceeding.

[1] RJCN notes that it acquired the subject line from Consolidated Rail Corporation pursuant to an offer of financial assistance in *Consolidated Rail Corporation—Abandonment Exemption—in Erie County, NY*, STB Docket No. AB–167 (Sub-No. 1164X) (Served Sept. 30, 1996).

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[3] Each OFA must be accompanied by the filing fee, which currently is set at $1,100. *See* 49 CFR 1002.2(f)(25).

DEPARTMENT OF TRANSPORTATION

Transportation Security Administration

[Docket No. TSA–2002–11604]

Security Programs For Aircraft 12,500 Pounds or More

AGENCY: Transportation Security Administration (TSA), DOT.

ACTION: Notice.

SUMMARY: This notice extends the date on which operators must be in compliance with the Twelve-Five Standard Security Program, from December 1, 2002 to February 1, 2003.

DATES: Compliance date: February 1, 2003.

FOR FURTHER INFORMATION CONTACT: Emily Chodkowski, Transportation Security Specialist, Office of Security Regulation and Policy, telephone: (202) 385–1838, email: *Emily.Chodkowski@tsa.dot.gov.*

SUPPLEMENTARY INFORMATION: On February 22, 2002, TSA published a final rule in the **Federal Register** (67 FR 8205), known as the "Twelve-Five Rule," that, in part, required new security measures for operators of aircraft with a maximum certificated takeoff weight of 12,500 pounds or more. See 49 CFR part 1544. Under the rule, these operators must adopt and carry out certain security measures approved by TSA, generally known as the "Twelve-Five Security Program." As published, the effective date of the Twelve-Five Rule was June 24, 2002. This document does not alter that date. On August 28, 2002, TSA published a notice in the **Federal Register** (67 FR 55308) announcing that it would issue the Twelve-Five Security Program to affected entities for review and comment. Security programs constitute sensitive security information (SSI), which can be disclosed only to persons with a need to know, in accordance with 49 CFR part 1520. Therefore, the Twelve-Five Security Program could be distributed only to affected operators for comment. TSA also stated in the Notice that all operators were required to operate in accordance with the security program by December 1, 2002.

Many of the operators subject to the Twelve-Five Security Program are small entities that were not subject to aviation security regulations prior to issuance of this rule. Consequently, these operators have not previously conducted fingerprint-based criminal history record checks (CHRC) on their employees, trained staff, and flight crew on security measures, or operated in accordance with a security program. There are approximately 850 operators subject to this new standard, and many are having a great deal of difficulty completing the CHRC and training requirements, for a variety of reasons.

Many operators are located in remote areas where there are no aviation organizations available that typically assist with the fingerprinting process. Some operators have attempted to capture fingerprints by using a local law enforcement agency or other security establishment, and the fingerprints are not taken correctly, or the appropriate chain of custody does not exist, and so these prints must be disqualified. In addition, many of the operators do not have access to the databases that contain CHRC information, and so completing the search is not possible. Finally, many of the operators have just one or two employees, and so special procedures must be put in place to prevent an operator from reviewing his or her own CHRC information, or the CHRC of an employee who may be a family member or friend. TSA is working internally and with these operators to establish processes that will facilitate completing the CHRC requirement to avoid all of these problems. However, it is clear that a large number of affected operators will not be able to meet the December 1, 2002, compliance date on flight crew CHRCs.

The security program requires security training for individuals involved in Twelve-Five operations. Due to the high number of operators, their lack of prior exposure to security training programs, and the decentralized nature of this sector of the industry, an organized training regime has not been established. TSA is developing a template curriculum that will provide operators with the appropriate information to create a security training program.

For all of the foregoing reasons, TSA has determined that the compliance date for the Twelve-Five Security Program must be extended to February 1, 2003.

Issued in Washington, DC, on November 1, 2002.

Thomas Blank,

Associate Under Secretary for Security Regulation and Policy.

[FR Doc. 02–28644 Filed 11–6–02; 12:02 pm]

BILLING CODE 4910–62–P

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DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

FEDERAL RESERVE SYSTEM

FEDERAL DEPOSIT INSURANCE CORPORATION

Proposed Agency Information Collection Activities; Comment Request

AGENCIES: Office of the Comptroller of the Currency (OCC), Treasury; Board of Governors of the Federal Reserve System (Board); and Federal Deposit Insurance Corporation (FDIC).

ACTION: Joint notice and request for comment.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the OCC, the Board, and the FDIC (the "agencies") may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The Federal Financial Institutions Examination Council (FFIEC), of which the agencies are members, has approved the agencies' publication for public comment of proposed revisions to the Country Exposure Report (FFIEC 009) and the Country Exposure Information Report (FFIEC 009a), which are currently approved collections of information. At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the FFIEC should modify the proposed revisions prior to giving its final approval. The agencies will then submit the revisions to OMB for review and approval.

DATES: Comments must be submitted on or before January 7, 2003.

ADDRESSES: Interested parties are invited to submit written comments to any or all of the agencies. All comments, which should refer to the OMB control number(s), will be shared among the agencies.

OCC: Comments should be sent to the Public Information Room, Office of the Comptroller of the Currency, Mailstop 1–5, Attention: 1557–0100, 250 E Street, SW, Washington, DC 20219. Due to delays in the OCC's mail service since September 11, 2001, commenters are encouraged to submit comments by fax or e–mail. Comments may be sent by fax to (202) 874–4448, or by e–mail to regs.comments@occ.treas.gov. You can inspect and photocopy the comments at the OCC's Public Information Room, 250 E Street, SW, Washington, DC 20219. You can make an appointment to inspect the comments by calling (202) 874–5043.

Board: Written comments, which should refer to "Country Exposure Report, 7100-0035," may be mailed to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW, Washington, DC 20551. However, because paper mail in the Washington area and at the Board of Governors is subject to delay, please consider submitting your comments by electronic mail to regs.comments@Federalreserve.gov, or faxing them to the Office of the Secretary at (202) 452–3819 or (202) 452–3102. Comments addressed to Ms. Johnson may also be delivered to the Board's mail facility in the West Courtyard between 8:45 a.m. and 5:15 p.m., located on 21st Street between Constitution Avenue and C Street, NW. Members of the public may inspect comments in room M–P–500 between 9 a.m. and 5 p.m. on weekdays pursuant to section 261.12, except as provided in 261.14, of the Board's Rules Regarding Availability of Information, 12 CFR 261.12 and 261.14.

FDIC: Written comments should be addressed to Robert E. Feldman, Executive Secretary, Attention: Comments/Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW, Washington, DC 20429. All comments should refer to "Country Exposure Report, 3064–0017." Commenters are encouraged to submit comments by fax or electronic mail [Fax number: (202) 898–3838; Internet address: comments@fdic.gov]. Comments also may be hand–delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m. Comments may be inspected and photocopied in the FDIC Public Information Center, Room 100, 801 17th Street, NW, Washington, DC, between 9 a.m. and 4:30 p.m. on business days.

A copy of the comments may also be submitted to the OMB desk officer for the agencies: Joseph F. Lackey, Jr., Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503 or electronic mail to jlackeyj@omb.eop.gov.

FOR FURTHER INFORMATION CONTACT: additional information or a copy of the collection may be requested from any of the agency clearance officers whose names appear below.

OCC: Jessie Dunaway, OCC Clearance Officer, or Camille Dixon, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

Board: Cindy Ayouch, Board Clearance Officer, (202) 452–3829, Division of Research and Statistics, Board of Governors of the Federal Reserve System, 20th and C Streets, NW, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may call (202) 263–4869.

FDIC: Tamara R. Manly, Management Analyst (Regulatory Analysis), (202) 898–7453, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429:

SUPPLEMENTARY INFORMATION: Proposal to Revise the Filing Method and to Extend For Three Years The Following Currently Approved Collections of Information.

Report Title: Country Exposure Report/Country Exposure Information Report

Form Number: FFIEC 009 and FFIEC 009a Frequency of Response: Quarterly

Affected Public: Business or other for profit

For OCC:

OMB Number: 1557–0100

Estimated Number of Respondents: 21 (FFIEC 009); 21 (FFIEC 009a)

Estimated Average Time per Response: 30 burden hours (FFIEC 009); 5.25 burden hours (FFIEC 009a)

Estimated Total Annual Burden: 2,520 burden hours (FFIEC 009); 441 burden hours (FFIEC 009a)

For Board:

OMB Number: 7100–0035

Estimated Number of Respondents: 31 (FFIEC 009); 16 (FFIEC 009a)

Estimated Average Time per Response: 30 burden hours (FFIEC 009); 5.25 burden hours (FFIEC 009a)

Estimated Total Annual Burden: 3720 burden hours (FFIEC 009); 336 burden hours (FFIEC 009a)

For FDIC:

OMB Number: 3064–0017

Estimated Number of Respondents: 22 (FFIEC 009); 22 (FFIEC 009a)

Estimated Average Time per Response: 30 burden hours (FFIEC 009); 5.25 burden hours (FFIEC 009a)

Estimated Total Annual Burden: 2,640burden hours (FFIEC 009); 462 burden hours (FFIEC 009a)

General Description of Reports

These information collections are mandatory: 12 U.S.C. 161 and 1817 (for national banks), 12 U.S.C. 248(a), 1844(c), and 3906 (for state member banks and bank holding companies); and 12 U.S.C. 1817 and 1820 (for insured state nonmember commercial and savings banks). The FFIEC 009 information collection is given confidential treatment (5 U.S.C. 552(b)(4) and (b)(8)). The FFIEC 009a information collection is not given confidential treatment. Small businesses (i.e., small banks) are not affected.

Abstract

The Country Exposure Report (FFIEC 009) is filed quarterly with the agencies and provides information on international claims of U.S. banks and bank holding companies that is used for supervisory and analytical purposes. The information is used to monitor country exposure of banks to determine the degree of risk in their portfolios and the possible impact on U.S. banks of adverse developments in particular countries. The Country Exposure Information Report (FFIEC 009a) is a supplement to the FFIEC 009 and provides publicly available information on material foreign country exposures (all exposures to a country in excess of one percent of total assets or 20 percent of capital, whichever is less) of U.S. banks and bank holding companies that file the FFIEC 009 report. As part of the Country Exposure Information Report, reporting institutions must also furnish a list of countries in which they have lending exposures above 0.75 percent of total assets or 15 percent of total capital, whichever is less.

Current Action

The agencies propose to require electronic submission of all FFIEC 009 and 009a reports effective with the March 31, 2003, report date. The agencies would no longer accept paper (hard copy) reports from banks and bank holding companies after the December 31, 2002, report date. The submission deadline would remain 45 calendar days after the report date. No changes are proposed to the FFIEC 009 and 009a reporting forms.

Type of Review: Revision of a currently approved collection.

Proposed Change in Submission Method

The agencies propose to require electronic submission of the FFIEC 009 and 009a reports as part of an ongoing effort to improve data quality and the efficiency of the data collection process. Over the past five years, the agencies have implemented an electronic submission requirement for bank Reports of Condition and Income (Call Reports) and have realized efficiencies in the collection process with minimal increase in burden to reporting institutions. In addition, the agencies have allowed foreign banks to electronically submit the Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks (FFIEC 002) and the Report of Assets and Liabilities of Non–U.S. Branches that are Managed or Controlled by a U.S. Branch or Agency of a Foreign Bank (FFIEC 002s), which has improved the efficiency of the collection process for those reports. The agencies believe that requiring electronic submission of FFIEC 009 and 009a reports can result in similar benefits.

The agencies propose to have the Board collect and process the FFIEC 009 and 009a reports on their behalf via the Federal Reserve System's Internet Electronic Submission (IESUB) system. The Board, which collects and processes the FFIEC 002 and 002s for the three agencies, currently allows foreign banks to submit these reports via IESUB. Electronic filing capability via IESUB is available on the Internet through the use of data entry or a file transfer feature. These methods are secure and result in a minimal burden to banks and bank holding companies. Reporting institutions must enroll and be authenticated before IESUB will accept a report submission.

The file transfer feature allows institutions to submit reports over the Internet in a pre–defined file format. The files can be created from a spreadsheet (e.g., Microsoft Excel (c), Lotus 123 (c)) or any other back–end system that a reporting institution uses to generate its data. When an institution submits its FFIEC 009 and 009a reports either through data entry or a pre–defined file format, IESUB will check the validity of the data and provide the institution with a receipt containing the data submitted and the date and time that IESUB received the file. A complete description of IESUB, including the system requirements, security and file transfer features is available at the Federal Reserve System reporting website http://www.reportingandreserves.org/req.html.

The agencies believe that this revision would not be a significant burden to banks or bank holding companies because of advancements in, and the common use of, computer technology currently available for the filing of regulatory reports.

Request for Comment

Public comment is requested on all aspects of this proposal. In addition, comments are invited on:

(a) Whether the proposed revisions to the FFIEC 009 and 009a collections of information are necessary for the proper performance of the agencies' functions, including whether the information has practical utility;

(b) The accuracy of the agencies' estimates of the burden of the information collections as they are proposed to be revised, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of information collections on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information.

Comments submitted in response to this Notice will be shared among the agencies and will be summarized or included in the agencies' requests for OMB approval. All comments will become a matter of public record. Written comments should address the accuracy of the burden estimates and ways to minimize burden as well as other relevant aspects of the information collection request.

Dated: October 28, 2002.

Mark J. Tenhundfeld,

Assistant Director, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency.

Board of Governors of the Federal Reserve System, October 31, 2002.

Jennifer J. Johnson,

Secretary of the Board.

Dated at Washington, D.C., this 28th day of October, 2002.

FEDERAL DEPOSIT INSURANCE CORPORATION

Robert E. Feldman,

Executive Secretary.

[FR Doc. 02–28118 Filed 11–7–02; 8:45 am]

BILLING CODES OCC: 4810–33–S 1/3; Board: 6210–01–S 1/3; FDIC: 6714–01–S 1/3

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

FEDERAL RESERVE SYSTEM

FEDERAL DEPOSIT INSURANCE CORPORATION

Proposed Agency Information Collection Activities; Comment Request

AGENCIES: Office of the Comptroller of the Currency (OCC), Treasury; Board of Governors of the Federal Reserve

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System (Board); and Federal Deposit Insurance Corporation (FDIC).

ACTION: Joint notice and request for comment.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the OCC, the Board, and the FDIC (the "agencies") may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The Federal Financial Institutions Examination Council (FFIEC), of which the agencies are members, has approved the agencies' publication for public comment of proposed revisions to the Consolidated Reports of Condition and Income (Call Report), which are currently approved collections of information. At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the FFIEC should modify the proposed revisions prior to giving its final approval. The agencies will then submit the revisions to OMB for review and approval.

DATES: Comments must be submitted on or before January 7, 2003.

ADDRESSES: Interested parties are invited to submit written comments to any or all of the agencies. All comments, which should refer to the OMB control number(s), will be shared among the agencies.

OCC: Comments should be sent to the Public Information Room, Office of the Comptroller of the Currency, Mailstop 1–5, Attention: 1557–0081, 250 E Street, SW., Washington, DC 20219. Due to disruptions in the OCC's mail service since September 11, 2001, commenters are encouraged to submit comments by fax or e–mail. Comments may be sent by fax to (202) 874–4448, or by e–mail to *regs.comments@occ.treas.gov*. You can inspect and photocopy the comments at the OCC's Public Information Room, 250 E Street, SW., Washington, DC 20219. You can make an appointment to inspect the comments by calling (202) 874–5043.

Board: Written comments, which should refer to "Consolidated Reports of Condition and Income, 7100–0036," may be mailed to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551. Due to temporary disruptions in the Board's mail service, commenters are encouraged to submit comments by electronic mail to *regs.comments@federalreserve.gov*, or by fax to the Office of the Secretary at 202–452–3819 or 202–452–3102. Comments addressed to Ms. Johnson also may be delivered to the Board's mailroom between 8:45 a.m. and 5:15 p.m. weekdays, and to the security control room outside of those hours. Both the mailroom and the security control room are accessible from the Eccles Building courtyard entrance on 20th Street between Constitution Avenue and C Street, NW. Comments received may be inspected in room M–P–500 between 9 a.m. and 5 p.m. on weekdays pursuant to sections 261.12 and 261.14 of the Board's Rules Regarding Availability of Information, 12 CFR 261.12 and 261.14.

FDIC: Written comments should be addressed to Robert E. Feldman, Executive Secretary, Attention: Comments/Legal, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. All comments should refer to "Consolidated Reports of Condition and Income, 3064–0052." Commenters are encouraged to submit comments by fax or electronic mail [Fax number: (202) 898–3838; Internet address: *comments@fdic.gov*]. Comments also may be hand–delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m. Comments may be inspected and photocopied in the FDIC Public Information Center, Room 100, 801 17th Street, NW., Washington, DC, between 9 a.m. and 4:30 p.m. on business days.

A copy of the comments may also be submitted to the OMB desk officer for the agencies: Joseph F. Lackey, Jr., Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503 or electronic mail to *jlackeyj@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: Draft copies of the proposed revisions to the Call Report forms may be requested from any of the agency clearance officers whose names appear below.

OCC: Jessie Dunaway, OCC Clearance Officer, or Camille Dixon, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

Board: Cynthia M. Ayouch, Board Clearance Officer, (202) 452–2204, Division of Research and Statistics, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may call (202) 263–4869.

FDIC: Tamara R. Manly, Management Analyst (Regulatory Analysis), (202) 898–7453, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION: Proposal to revise the following currently approved collections of information:

The effect of the proposed revisions in reporting requirements will vary from bank to bank depending on (1) the bank's involvement with the types of activities or transactions to which proposed new items relate, (2) whether the bank has or has had more than one foreign office, and (3) the number and type of edit exceptions the agencies' validation process identifies in the bank's Call Report. The agencies estimate that, on average for all 8,700 banks, each bank would need approximately an additional 0.5 to 1.5 hours to complete its Call Report each quarter if the revisions were implemented as proposed. However, the proposed revisions may result in a significantly larger increase in burden, perhaps as much as 40 hours, for about 40 banks, including the very largest banks in the U.S. The following burden estimates include the proposed revisions.

Report Title: Consolidated Reports of Condition and Income (Call Report)

Form Number: FFIEC 031 (for banks with domestic and foreign offices) and FFIEC 041 (for banks with domestic offices only).

Frequency of Response: Quarterly.

Affected Public: Business or other for–profit.

For OCC:

OMB Number: 1557–0081.

Estimated Number of Respondents: 2,200 national banks.

Estimated Time per Response: 43.29 burden hours.

Estimated Total Annual Burden: 381,000 burden hours.

For Board:

OMB Number: 7100–0036.

Estimated Number of Respondents: 978 state member banks.

Estimated Time per Response: 49.50 burden hours.

Estimated Total Annual Burden: 193,644 burden hours.

For FDIC:

OMB Number: 3064–0052.

Estimated Number of Respondents: 5,480 insured state nonmember banks.

Estimated Time per Response: 33.91 burden hours.

Estimated Total Annual Burden: 743,393 burden hours.

The estimated time per response for the Call Report is an average, which varies by agency because of differences in the composition of the banks under each agency's supervision (e.g., size distribution of institutions, types of activities in which they are engaged, and number of banks with foreign offices). For the Call Report, the time per response for a bank is estimated to range from 15 to 600 hours, depending on individual circumstances.

General Description of Reports

These information collections are mandatory: 12 U.S.C. 161 (for national banks), 12 U.S.C. 324 (for state member banks), 12 U.S.C. 1817 (for insured state nonmember commercial and savings banks, and for all banks for deposit information). Except for selected items, this information collection is not given confidential treatment. Small businesses (i.e., small banks) are affected.

Abstract

Banks file Call Reports with the agencies each quarter for the agencies' use in monitoring the condition, performance, and risk profile of reporting banks and the industry as a whole. In addition, Call Reports provide the most current statistical data available for evaluating bank corporate applications such as mergers, for identifying areas of focus for both on–site and off–site examinations, and for monetary and other public policy purposes. Call Reports are also used to calculate all banks' deposit insurance and Financing Corporation assessments and national banks' semiannual assessment fees.

Current Action

I. Overview

The agencies' request for comment addresses a number of different types of changes to the Call Report requirements. These changes relate to the content of the Call Report itself, the submission deadline for certain banks, and the agencies' process for validating and releasing the data that banks report. First, the agencies are proposing several revisions to the content of the Call Report that are focused on improving the information they collect from banks that engage in certain specific activities. This focus means that the proposed new or revised Call Report items that pertain to each of these activities will be applicable to small percentages of banks rather than to most or all banks. The agencies also would clarify an instruction and the scope of one group of items. This first group of proposed revisions, which would take effect as of March 31, 2003, include:

- adding five items dealing with accrued fees and finance charges on credit card accounts, allowances for uncollectible accrued fees and finance charges, and charge–offs of such accrued amounts, which would be reported by banks with a significant volume of credit card activity;
- breaking down the existing item in the securitization schedule (Schedule RC–S) for seller–provided credit enhancements to the bank's securitization structures (other than credit–enhancing interest–only strips) into separate items for those enhancements that are in the form of on–balance sheet assets and those enhancements that are in some other form;
- splitting the current income statement (Schedule RI) item for income from insurance activities into separate items for insurance underwriting income and income from other insurance activities;
- adding a yes/no question asking whether any of the bank's Internet Web sites has transactional capability, i.e., allows the bank's customers to execute transactions on their accounts;
- eliminating the exemption from disclosing the fair values of derivative contracts for banks with less than $100 million in assets in Schedule RC–L – Derivative and Off–Balance Sheet Items, because accounting standards require derivatives to reported on the balance sheet as assets or liabilities at fair value;
- changing the income statement (Schedule RI) item in which banks report any provisions for allocated transfer risk, which also affects the reconciliation of the allowance for loan and lease losses in Schedule RI–B, part II, and a related disclosure in the explanations schedule (Schedule RI–E);
- creating a supplement to the Call Report, in which the agencies, in response to a future event giving rise to an immediate and critical need for specific information, would be authorized to collect a limited amount of data from certain banks;
- clarifying the instructions to describe the limited circumstances in which loans may be reported as held for trading purposes; and
- explaining on both the report form and in the instructions that, for the Memorandum items in the insurance assessments schedule (Schedule RC–O) on the number and amount of deposit accounts by size of account, the dollar amount for the size of an account (currently $100,000) represents the deposit insurance limit in effect on the report date.

Second, the agencies are proposing to shorten the Call Report submission deadline for certain banks with foreign offices so that the same submission deadline applies to all banks. In general, banks with more than one foreign office currently are permitted to take an additional 15 days beyond the standard 30 days applicable to all other banks for filing their Call Reports. The agencies are proposing a reduction in the filing period to 30 days effective June 30, 2003, for banks with more than one foreign office. In a related change, the agencies are proposing to authorize the FDIC, in connection with its responsibility to set insurance premium assessment rates semiannually, to obtain certain deposit data from those banks with foreign offices whose March 2003 Call Reports have not been filed within the standard 30–day filing period. The FDIC would contact these banks in early May 2003 and direct them to disclose to the agency the amounts then available from their Call Report preparation process for two Call Report items: total domestic office deposits and estimated uninsured deposits.

Third, beginning perhaps as early as the March 31, 2003, Call Reports, the agencies would begin to make individual bank Call Reports available to the public on the FDIC's Web site as soon as the data validation process for a bank's report had been completed. At present, all of the Call Reports for a specific report date are released to the public simultaneously some 60–75 days after the quarter–end report date. Under this proposal, after the edit exceptions, if any, in an individual bank's Call Report have been resolved and the analysis of the report has been completed, the report will be made publicly available. This will make individual bank data available to the public on a more timely basis than at present.

Finally, the agencies' currently plan to implement a new business model for collecting and validating Call Reports in March 2004. In connection with the introduction of this new business model, the agencies are proposing that a bank's Call Report must pass all validity edits and must include an explanatory comment addressing each quality edit exception identified in the bank's report in order for the agencies to accept the bank's Call Report submission. Otherwise, the bank's report will not be accepted and the bank will need to make appropriate corrections to its report data, add any required explanatory comments, and resubmit its data file by the submission deadline.

Type of Review: Revision of a currently approved collection.

The proposed revisions to the Call Report have been approved for publication by the FFIEC. Unless otherwise indicated, the agencies would implement these proposed Call Report changes as of the March 31, 2003, report date. Nonetheless, as is customary for Call Report changes, banks are advised that, for the March 31, 2003, report date only, reasonable estimates may be provided for any new or revised item

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taking effect as of that date for which the requested information is not readily available. The specific wording of the captions for the new and revised Call Report items discussed in this proposal and the numbering of these items in the report forms should be regarded as preliminary.

The agencies note that on July 12, 2002, they requested comment on the addition of a proposed new Call Report schedule that would collect data on consumer loans in subprime lending programs beginning March 31, 2003 (67 FR 46250). The agencies are currently reviewing the comments received on this separate proposal.

II. Discussion of Proposed Revisions

A. Charge–offs of Accrued Fees and Finance Charges on Credit Card Accounts

Many institutions engaged in credit card lending have adopted the practice of "purifying" charge–offs for financial reporting purposes. "Purification" refers to the practice of reversing uncollectible accrued fees and finance charges against earnings rather than accounting for them as charge–offs against the allowance for loan and lease losses. This practice obscures charge–off ratios (i.e., charge–offs divided by loan balances) because the charged–off amount does not include the accrued fees and finance charges while the aggregate loan balance does include them. Thus, the transparency of financial reports is diminished.

Further, the effect of this practice on credit card lending institutions' financial statements has become more material as the level of accrued but uncollected finance charges and fees have become more significant during the past several years. Most if not all of the accrued fees and finance charges reversed under the purification practice are included in credit card loan balances, or in other words, have been capitalized into the credit card loan balances.

The proposed additional Call Report items will collect information on reversals of credit card fees and finance charges that are not reported as charge–offs against the loan loss allowance. The proposed additions will also collect information on the outstanding amount of fees and finance charges included in credit card receivables and the related allowance, whether it is a component of the allowance for loan and lease losses or a separate contra–asset account. These new items will cover both bank–owned portfolios and securitized portfolios of credit cards. The five proposed items would be included as memorandum items in Schedule RI–B, parts I and II, Schedule RC–C, part I, and Schedule RC–S. Additionally, these proposed changes to the Call Report include clarifications to the instructions for four items: Schedule RC–S, items 1, 5.a, and 8, column C, and Schedule RI, item 1.a.(3)(a) on the FFIEC 041 (item 1.a.(1)(d)(1) on the FFIEC 031). The proposed items with their instructions and the instructional clarifications are presented at the end of this section.

The proposed changes will improve financial reporting transparency for losses on credit card accounts and permit Call Report users to calculate loss rates for credit card loan receivables that are comparable across credit card lending institutions. Users of Call Report data will have more complete loss information relating to credit card fees and finance charges that are written off as uncollectible. Furthermore, the changes will provide better information regarding the composition of and level of credit risk in credit card loan receivables that the institution manages both for its own account and in securitizations. The items regarding outstanding credit card fees and finance charges will provide useful information to facilitate the agencies' supervision of credit card lending activities.

The proposed new items would be completed only by those banks that: (1) either individually or on a combined basis with their affiliated depository institutions, report outstanding credit card receivables that exceed, in the aggregate, $500 million as of the report date. Outstanding credit card receivables will be measured as the sum of Schedule RC–C, part I, item 6.a (column B on the FFIEC 041, column A on the FFIEC 031); Schedule RC–S, item 1, column C; and Schedule RC–S, item 6.a, column C. (Include comparable data on managed credit card receivables for any affiliated savings association.) or (2) are credit card specialty banks as defined for purposes of the Uniform Bank Performance Report (UBPR). According to the UBPR Users Guide, credit card specialty banks are currently defined as those that exceed 50% for the following two criteria:

(a) Credit Cards plus Securitized and Sold Credit Cards divided by Total Loans plus Securitized and Sold Credit Cards.

(b) Total Loans plus Securitized and Sold Credit Cards divided by Total Assets plus Securitized and Sold Credit Cards.

Based on these reporting criteria, the agencies estimate that fewer than 100 banks will be subject to this proposed new reporting requirement.

The proposed new items, with their instructions, are as follows:

(1) Schedule RI–B, part I, Memorandum item 4, "Uncollectible credit card fees and finance charges reversed against income (i.e., not included in charge–offs against the allowance for loan and lease losses)." Report the amount of credit card fees and finance charges that the bank reversed against either interest and fee income or a separate contra–asset account during the calendar year–to–date. Exclude from this item credit card fees and finance charges reported as charge–offs against the allowance for loan and lease losses in Schedule RI–B, part I, item 5.a, column A.

(2) Schedule RI–B, part II, Memorandum item 1, "Separate valuation allowance for uncollectible credit card fees and finance charges." Report the amount of any valuation allowance or contra–asset account that the bank maintains separate from the allowance for loan and lease losses to account for uncollectible credit card fees and finance charges. Because this amount is separate from the amount included in Schedule RC, item 4.c, and Schedule RI–B, part II, item 7, this Memorandum item is only applicable for those banks that maintain an allowance or contra–asset account separate from the allowance for loan and lease losses.

(3) Schedule RI–B, part II, Memorandum item 2, "Amount of allowance for loan and lease losses attributable to credit card fees and finance charges." Report in this item the amount of the allowance for loan and lease losses that is attributable to outstanding credit card fees and finance charges. This amount should have been included within the amount reported in Schedule RC, item 4.c, and Schedule RI–B, part II, item 7.

(4) Schedule RC–C, part I, Memorandum item 6, "Outstanding credit card fees and finance charges." Report the amount of fees and finance charges included in the amount of credit card receivables reported in Schedule RC–C, part I, item 6.a (column A on the FFIEC 031; column B on the FFIEC 041).

(5) Schedule RC–S, Memorandum item 4, "Outstanding credit card fees and finance charges." Report the amount of fees and finance charges included in the credit card receivables that the bank has reported as securitized and sold in Schedule RC–S, item 1, column C.

As proposed, these five new items would be added to four separate schedules. However, as indicated above, the agencies will collect this information from a limited number of banks, i.e., banks with a significant volume of credit card lending. The agencies therefore request comment on whether it would be preferable to group these items together in a separate Call Report schedule that would be completed only by these credit card banks rather than having the five items appear at scattered locations in the Call Report.

The proposed clarifications to existing instructions are as follows:

(1) Schedule RI, item 1.a.(3)(a) on the FFIEC 041, item 1.a.(1)(d)(1) on the FFIEC 031, "Interest and fee income on credit cards." The following sentence would be added to the instructions for this item: Include in this item, as a reduction of income, the amount of uncollectible credit card fees and finance charges the bank has reversed against interest and fee income and the amount charged to earnings for additions to any contra–asset account for uncollectible credit card fees and finance charges that the bank maintains and reports separately from its allowance for loan and lease losses.

(2) Schedule RC–S, item 1, "Outstanding principal balance of assets sold and securitized by the reporting bank with servicing retained or with recourse or other seller–provided credit enhancements." The following sentence would be added to the instructions for this item: For credit card receivables, include in column C any fees and finance charges capitalized into the credit card receivable balances that the reporting bank has securitized and sold.

(3) Schedule RC–S, item 5.a, "Charge–offs" [on assets sold and securitized with servicing retained or with recourse or other seller–provided credit enhancements (calendar year–to–date)]. The following sentence would be added to the instructions for this item: Include in column C charge–offs or reversals of uncollectible credit card fees and finance charges that had been capitalized into the credit card receivable balances that have been securitized and sold.

(4) Schedule RC–S, item 8.a, "Charge–offs" [on loan amounts included in interests reported as securities in item 6.a (calendar year–to–date)]. The following sentence would be added to the instructions for this item: Include in column C the amount of credit card fees and finance charges written off as uncollectible that were attributable to the credit card receivables included in ownership interests reported as securities in item 6.a, column C.

B. Breakdown of Seller–provided Credit Enhancements to the Bank's Securitization Structures

Banks currently report the maximum amount of credit exposure from seller–provided credit enhancements to securitization structures (other than credit–enhancing interest–only strips, which are reported separately) in Schedule RC–S, item 2.b. These credit enhancements include both on–balance sheet assets (such as subordinated securities, spread accounts, and cash collateral accounts) and enhancements that are not assets (such as recourse liabilities and standby letters of credit). When credit enhancements are in the form of assets, credit losses on the securitized loans result in reduced cash inflows to the asset holder. In contrast, when seller–provided credit enhancements take some other form, cash outflows from the seller are required to cover credit losses on the securitized loans. In addition, under the agencies' risk–based capital standards that were revised as of January 1, 2002, seller–provided credit enhancements that are on–balance sheet assets are "residual interests" subject to a dollar–for–dollar capital charge unless they qualify for the ratings–based approach. The capital charge for enhancements that are not assets generally is capped at 8 percent of the assets enhanced.

To distinguish between the amount of a bank's seller–provided credit enhancements that are on–balance sheet assets (other than credit–enhancing interest–only strips) and those that are not, item 2.b would be split into two items. This proposed revision will enable the agencies to better understand the types of credit support that banks are providing to their securitizations, including which types are typically used for different types of securitized loans. In revised item 2.b, banks would disclose the carrying value of "Subordinated securities and other residual interests" carried as on–balance sheet assets that have been retained in connection with the securitization structures reported in Schedule RC–S, item 1. In new item 2.c, "Standby letters of credit and other enhancements," banks would disclose the unused portion of standby letters of credit and the maximum contractual amount of recourse or other credit exposure not in the form of an on–balance sheet asset that have been provided or retained in connection with the securitization structures reported in Schedule RC–S, item 1.

C. Income from Insurance Activities

In Schedule RI, item 5.h, "Insurance commissions and fees," banks report their income from insurance and reinsurance underwriting, sales of insurance and annuities, insurance agency and brokerage operations, and management fees for insurance products. The risks arising from insurance and reinsurance underwriting are significantly different from those arising from other insurance activities. Given this distinction in risk, the agencies are proposing to split the current single income statement item for insurance–related income into two items so that underwriting income can be separately identified. This will enable the agencies to more clearly identify institutions engaged in underwriting and to better monitor the results of these underwriting activities.

In new item 5.h.(1), "Insurance and reinsurance underwriting income," banks would report all income from insurance and reinsurance underwriting, including the amount of premiums earned by property–casualty insurers and the amount of premiums written by life and health insurers. This item would also include the bank's proportionate share of the income or loss before extraordinary items and other adjustments from its investments in equity method investees that are principally engaged in insurance and reinsurance underwriting.

In new item 5.h.(2), "Income from other insurance and reinsurance activities," banks would report income from insurance agency and brokerage operations (including sales of annuities and supplemental contracts); service charges, commissions, and fees from the sale of insurance (including credit life insurance), reinsurance, and annuities; and management fees from separate accounts, deferred annuities, and universal life products. This item would also include the bank's proportionate share of the income or loss before extraordinary items and other adjustments from its investments in equity method investees that are principally engaged insurance activities other than insurance underwriting.

The agencies request comment on whether the instructional language in the two preceding paragraphs clearly describes insurance activities, including underwriting, and the types of income to be reported in each item.

D. Transactional Capability of Bank Web Sites

An increasing number of banks' Internet Web sites allow customers to execute transactions on their accounts at the bank. These transactional Web sites present greater security risks to a bank than sites that provide only information to customers and the public. For examination planning and risk scoping purposes and to monitor industry trends in this area, the agencies are proposing to add a yes/no question to the Call Report (as new item 8 of Schedule RC–M) asking "Do any of the bank's Internet Web sites have transactional capability, i.e., allow the bank's customers to execute transactions on their accounts through the Web site."

E. Disclosure of the Fair Value of Derivative Contracts

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Schedule RC–L, item 15, collects data on the fair values of derivatives, with gross positive and negative fair values reported separately by type of exposure for contracts held for trading (items 15.a.(1) and (2)) and for those held for purposes other than trading (items 15.b.(1) and (2)). At present, banks with domestic offices only and less than $100 million in assets are exempt from this disclosure requirement. This exemption originated when derivative contracts were considered off–balance sheet items and predates FASB Statement No. 133, Accounting for Derivative Instruments and Hedging Activities (FAS 133), which took effect in 2001. FAS 133 requires all derivatives to be measured at fair value and reported on the balance sheet as assets or liabilities. Because banks with less than $100 million in assets that have derivatives now have to regularly determine their fair value for balance sheet purposes, these banks have the information necessary to disclose the fair value of their derivatives in Schedule RC–L. Accordingly, the agencies are proposing to eliminate this disclosure exemption. The fair value data on derivatives will complement the data that banks with less than $100 million in assets currently report on the notional amount of their derivative contracts. The number of banks in this size range that have derivative contracts and will therefore be affected by this proposed change is less than 200.

F. Provisions for Allocated Transfer Risk

Prior to 2001, the Call Report income statement (Schedule RI) included a specific line item for "Provision for allocated transfer risk," but amounts were reported in this item only infrequently and only by a small number of banks. This separate item was removed from the face of the income statement in 2001 and banks were instructed to include these provisions in "Other noninterest expense" on Schedule RI (item 7.d). However, in reviewing the continuing merits of this instructional change, the agencies found that institutions exposed to transfer risk generally view these provisions more like provisions for loan losses than a noninterest expense. As a result, the agencies concluded that it would be preferable for banks to include the "Provision for allocated transfer risk" with the "Provision for loan and lease losses" in item 4 on the Call Report income statement and are proposing to make this change.

In addition, in order for the end–of–period allowance in the reconciliation of the "Allowance for loan and lease losses" in Schedule RI–B, part II, to equal the loan loss allowance on the balance sheet (Schedule RC, item 4.c), which excludes the "Allocated transfer risk reserve," the instructions for Schedule RI–B, part II, will also be revised. More specifically, the instructions for Schedule RI–B, part II, item 6, "Adjustments," will direct banks to report as a negative number in item 6 the amount of any "Provision for allocated transfer risk" included in the amount of "Provision for loan and lease losses" reported in item 4 of the income statement (Schedule RI). Additionally, as with all items reported in Schedule RI–B, part II, item 6, "Adjustments," the amount of any "Provision for allocated transfer risk" would need to be itemized and described in item 6 of the explanations schedule (Schedule RI–E).

G. Call Report Supplement for Future Data Needs

The agencies are proposing to obtain authority to collect a supplement to the Call Report so that, should there be an immediate need for the agencies to collect certain critical information from a segment of the banking industry, the necessary items could be collected on this supplement to the Call Report at the earliest practicable date. Such a need could arise, for example, because of a statutory change or an unexpected market event or change in credit conditions that has a material effect on certain institutions. While the Paperwork Reduction Act has emergency procedures for obtaining authority to collect information on a one–time basis, the agencies believe it would be preferable to take a proactive approach and establish in advance of a possible critical future data need their authority to collect such data. The agencies further note that the Board currently has comparable authority to collect a supplement to the FR Y–9C bank holding company report.

The agencies would expect to use their authority to collect a Call Report supplement infrequently. Furthermore, to ensure that the exercise of this authority is subject to proper oversight and control, the agencies would require the members of the Federal Financial Institutions Examination Council to approve the specific use of the supplement. Thus, the Examination Council's Reports Task Force would not have the delegated authority to institute a data collection using the Call Report supplement.

For purposes of obtaining the authority for this supplement for future data needs, the agencies estimate that the burden of any data collection using this supplement would be imposed on no more than 10 percent of the banks under each agencies' supervision. In addition, the estimated reporting burden imposed on these banks in connection with reporting the requested data on the supplement would not exceed one hour per quarter. As a consequence, the burden of any specific supplemental items that the Examination Council would approve for collection under this authority in the future could not exceed the approved burden estimates. The burden estimates disclosed above for the three agencies include the estimated burden of this proposed supplement.

H. Loans Held for Trading Purposes

The General Instructions for Schedule RC–C, Part I – Loans and Leases, advise banks to exclude from Schedule RC–C "all loans and leases held for trading purposes" and to report them instead as "Trading assets" on the Call Report balance sheet (Schedule RC, item 5) and in Schedule RC–D – Trading Assets and Liabilities, if this latter schedule is applicable. However, the instructions for the balance sheet item for "Trading assets" and for Schedule RC–D do not explicitly refer to loans (and leases) as trading assets, nor does the Glossary entry for "Trading Account." Accordingly, questions have been raised concerning the circumstances in which it may be appropriate to categorize certain loans (and leases) as trading assets. Trading assets are carried on the balance sheet at fair value, with changes in fair value (unrealized holding gains and losses) recognized in earnings.

The agencies have reviewed the accounting literature for guidance on the financial statement presentation and disclosure of loans designated as held for trading. This review included consideration of Financial Accounting Standards Board (FASB) No. 65, Accounting for Certain Mortgage Banking Activities (FAS 65), as amended; FASB Statement No. 91, Accounting for Nonrefundable Fees and Costs Associated with Originating or Acquiring Loans and Initial Direct Costs of Leases (FAS 91), as amended; FASB Statement No. 115, Accounting for Certain Investments in Debt and Equity Securities (FAS 115); the FASB staff's Implementation Guide for FAS 115; and chapters 5, 6, and 8 of the current (May 2000) edition of Audit and Accounting Guide – Banks and Savings Institutions (Audit Guide), published by the American Institute of Certified Public Accountants.

In particular, paragraph 6.74 of the Audit Guide's chapter on loans explains that "management's disclosure in the summary of significant accounting policies should include the basis of accounting for loans and lease financings, both held in a portfolio and held for sale." In the two introductory paragraphs of the loan chapter's section

entitled "Accounting and Financial Reporting" (paragraphs 6.48 and 6.49), the Audit Guide describes the basis of reporting for "portfolio" loans and "held–for–sale" loans, neither of which is the market (fair) value reporting basis applicable to trading assets. Paragraph 6.01 of the Audit Guide notes that banks "sell loans or portions of loans, and securitize loans" and states that these two activities are discussed in chapter 8, but does not mention loans held for trading purposes. A review of chapter 8, "Mortgage Banking Activities and Loan Sales," also reveals no references to loans held for trading purposes or carried at market (fair) value.

Question 35 in the FASB staff's Implementation Guide for FAS 115 asks whether an institution that acquires a security without the intent to sell it in the near term may classify the security in the trading category. The staff answered this question is in the affirmative, stating that the "[c]lassification of a security as trading is not precluded simply because the enterprise does not intend to sell it in the near term." However, Appendix C (paragraph 137) of FAS 115 defines both "security" and "debt security" for purposes of this accounting standard. The definition of the term "debt security" states that "loans receivable arising from consumer, commercial, and real estate lending activities of financial institutions are examples of receivables that do not meet the definition of security; thus, those receivables are not debt securities (unless they have been securitized, in which case they would meet the definition)." Therefore, loans do not fall within the scope of FAS 115.

Given the relatively extensive amount of guidance in the accounting literature on accounting for loans as "portfolio" loans and "held–for–sale" loans, but the sparse guidance on loans "carried at market value" or designated as trading assets, the agencies believe that, under generally accepted accounting principles, it is appropriate in only limited circumstances for banks to designate loans as held for trading and account for them at fair value, with changes in fair value recognized in earnings. In this regard, the agencies do not believe that the trading classification option accorded securities at acquisition by the FASB's response to Question 35 in the FAS 115 Implementation Guide should be extended to loans.

Accordingly, the agencies propose to provide guidance for regulatory reporting purposes on the use of the trading account designation for loans by revising the Glossary entry for "Trading Account" in the Call Report instructions. Conforming changes would be made elsewhere in the instructions where appropriate. A new second paragraph of the "Trading Account" Glossary entry would read as follows:

There is a rebuttable presumption that loans and leases (hereafter, loans) should not be reported as trading assets. In order to overcome this presumption for particular loans, a bank must demonstrate, from the pattern and practice of its activity, that it is acquiring these loans principally for the purpose of selling them in the near term with the objective of generating profits on short–term differences in price. Thus, such loans are held for only a short period of time (generally not months or years). This presumption is not overcome if a bank acquires loans (through origination or purchase) with the intent or expectation that they may or will be sold at some date in the future. In addition, loans acquired and held for securitization purposes should not be reported as trading assets, but should be reported as loans held for sale.

I. Number and Amount of Deposit Accounts

Schedule RC–O, Memorandum item 1, collects information on the number and amount of deposit accounts of (a) $100,000 or less and (b) more than $100,000. This information provides the basis for calculating "simple estimates" of the amount of insured and uninsured deposits. The captions for these memorandum items explicitly refer to $100,000, which is the current deposit insurance limit. Given the purpose of these memorandum items, the dollar amount cited in the caption would need to be changed if the deposit insurance limit were to change, which Congress is considering. To ensure that the dollar amount cited in the caption changes automatically as a function of the deposit insurance limit in effect on the report date, the caption for Memorandum item 1 would be footnoted to state that the specific dollar amounts used as the basis for reporting the number and amount of deposit accounts in Memorandum items 1.a and 1.b reflect the deposit insurance limits in effect on the report date. The instructions for this Memorandum item would be similarly clarified.

J. Reduction in the Filing Period for Banks with More than One Foreign Office

Banks are required to submit their Call Reports electronically so that the reported data are received by the banking agencies' electronic collection agent no later than 30 days after the quarter–end report date, e.g., by July 30 for the June 30 report. This 30–day filing period applies to nearly all banks. However, fewer than one half of one percent of all banks are permitted an additional 15 days to file their Call Report data, e.g., by August 14 for the June 30 report. The approxmiately 40 banks that are eligible for this lengthier filing period are institutions that have more than one foreign office, other than a "shell" branch or an International Banking Facility. Of these banks, nearly half have only 2 foreign offices and just 6 have more than 20 foreign offices. The 9 largest banks with more than one foreign office each have more than $100 billion in total assets, with the assets of the remaining banks ranging down to less than $5 billion.

The number of banks with between $5 and $100 billion in total assets that do not have more than one foreign office exceeds the number in this size range that have more than one foreign office. The banks in this former group are required to submit their Call Reports within 30 days after quarter–end, while the banks in the latter group have the additional 15–day filing period available to them.

The longer filing period for banks with more than one foreign office delays the availability to the agencies, as well as to banks and the general public, of timely data on the condition and performance of the banking industry and the direction in which various indicators, such as deposit flows and earnings, are moving. Critical to the agencies' analyses of the industry are the data from the largest banks, nearly all of which have 45 days in which to file their Call Reports because they have more than one foreign office. With more timely receipt of Call Report data from all institutions, the agencies can identify the risks in the banking industry sooner and provide the results of their analyses back to bankers and the marketplace earlier when the data may be more useful for decision–making purposes. The importance of making information available to the marketplace within shorter timeframes can be seen in the Securities and Exchange Commission's decision on August 27, 2002, to accelerate the filing deadlines for the quarterly and annual reports that are required from larger public companies under the federal securities laws.

Accordingly, the agencies are proposing to eliminate the additional 15–day period that banks with more than one foreign office have for filing their Call Reports, effective with the reports for June 30, 2003. Thus, the submission deadline for the second quarter 2003 Call Reports for all banks would be July 30, 2003.

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The agencies acknowledge that banks with foreign offices are asked to report a larger amount of data in their Call Reports than banks without foreign offices are required to provide in their reports. The agencies also recognize, from comments received on previous proposals to reduce the filing period for banks with more than one foreign office and from more recent conversations with bankers, that shortening this period will impose additional costs on the affected institutions. These banks will need to implement changes in their systems and quality review processes to ensure that their publicly–available Call Report data continue to be of high quality despite the reduced amount of time for completing these reports. Therefore, the agencies believe that scheduling the effective date for the reduction in the filing period to be June 30, 2003, rather than March 31, 2003, the quarter when changes in Call Report requirements are customarily implemented, will provide a more reasonable amount of time for affected banks to update their systems and processes in a manner that considers both the burden of this change and the benefit of expedited collection of the data.

K. Early Collection of Deposit Items from Certain Banks with Foreign Offices

The FDIC is required to maintain the deposit insurance funds that it administers at a minimum level known as the Designated Reserve Ratio, which is set at 1.25 percent of estimated insured deposits.[1] The insurance fund ratios are calculated by dividing the insurance fund level by the estimated amount of insured deposits. The FDIC Board of Directors is required semiannually to set assessment rates for the premiums to be paid by insured depository institutions to ensure that the insurance fund ratios are maintained at the Designated Reserve Ratio. To do this effectively and without burdening institutions with unnecessary insurance premiums, the FDIC needs a timely and reliably estimated measure of insurance fund ratios, particularly when those levels are likely to be near or below the statutory target of 1.25 percent.

Among the information that banks report in the Call Report is the amount of total deposits in domestic offices (Schedule RC, item 13.a) and the estimated amount of uninsured deposits (Schedule RC–O, Memorandum item 2). These amounts are used to calculate the insurance fund ratio. For most banks, Call Reports must be received not later than 30 days after the end of the quarter. However, for banks with more than one foreign office, which includes most of the largest banks in the United States, the Call Report must be received not later than 45 days after quarter–end until the proposed elimination of this extended filing period takes effect in June 2003 as discussed above. About 40 banks are eligible for this 45–day submission period.

Because of the timing of the semiannual assessment rate–setting schedule and the proposed June 2003 effective date for the elimination of the extended filing period, the FDIC may need insured deposit data from the banks that have 45 days in which to file their March 2003 Call Report earlier than the May 15, 2003, submission deadline for these banks. To meet statutory and regulatory timeframes, which currently require the FDIC Board to announce the semiannual assessment rate schedules on approximately May 15 and November 15 each year, the Board must meet to decide on the rate schedule for the next semiannual period in early May and November. If any of the banks with more than one foreign office files its March 2003 Call Report near the 45–day submission deadline of May 15, 2003, then the most reliable estimate of the amount of insured deposits available to the FDIC Board when it sets assessment rates for the next semiannual period early in those months will include Call Report data that is approximately 4 1/2 months old, i.e., data as of the preceding December 31.

Using 4 1/2–month old data is problematic for the FDIC when there is a reasonable likelihood that an insurance fund ratio, such as the Bank Insurance Fund ratio, could fall below its 1.25 percent Designated Reserve Ratio, which is a distinct possibility any time that a fund ratio is near that target ratio. If the data that the FDIC Board uses to determine an insurance fund ratio suggests that the ratio has fallen below the Designated Reserve Ratio, the Board may determine that it is necessary to charge institutions higher insurance premiums to increase assessment revenue and bring the fund ratio ratio back up to its statutory requirement.

Using incomplete Call Report data also could lead the FDIC Board to make improper pricing decisions about insurance premiums. The data on domestic office deposits and estimated uninsured deposits received from institutions that file their Call Reports within 30 days of the March 31, 2003, report date may not be representative of the overall industry–wide trend for that date. Accordingly, the absence of the March 31, 2003, data from institutions that file their reports within 45 days after this dates could contribute to a decision by the FDIC Board that results in an overpricing or underpricing of assessment rates.

Thus, the FDIC proposes to obtain information on the level of domestic office deposits and estimated uninsured deposits from certain institutions on or about May 1, 2003, which is approximately two weeks before the date by which these institutions are required to submit this information in their Call Reports. This information–gathering effort would be accomplished via telephone calls from the FDIC to appropriate staff at these institutions, who would then supply the requested information over the telephone, by e–mail, or by fax. At that stage in their Call Report preparation process, the FDIC expects that these institutions will already have at least preliminary numbers for these two deposit items. Based on historical experience, fewer than 20 institutions with multiple foreign offices would be directed to provide the FDIC with the amounts then available for these two items from their Call Report preparation process. The preliminary information reported by these institutions will not be provided to the public. Nevertheless, with this information, the FDIC staff will be able to more confidently advise the FDIC Board of the insurance fund ratios in early May 2003 and thereby avoid mispricing decisions.

The FDIC has separately requested and received approval from OMB pursuant to OMB's emergency processing procedures to collect information in early November 2002 on domestic office deposits and estimated uninsured deposits as of September 30, 2002, from not more than 20 large banks with multiple foreign offices. (OMB Control No. 3064–0144, which expires December 31, 2002.) (See 67 Fed. Reg. 60684, September 26, 2002.) Under these emergency processing procedures, however, OMB's approval of the FDIC's proposal enables the FDIC to contact these institutions on a one–time basis in early November 2002. Accordingly, the FDIC is now seeking the authority to collect these two items on a preliminary basis in May 2003 from not more than 20 banks with multiple foreign offices. The FDIC would exercise this authority only if the insurance fund ratio as of May 31, 2003, is expected to be at or near the Designated Reserve Ratio level of 1.25 percent.

L. Earlier Release of Individual Bank Call Reports

At present, the agencies wait until they have completed the data validation process for all 8,500 banks that file Call Reports before the Call Reports for a particular quarter–end report date are made available to the public. This simultaneous release of all bank Call Reports occurs some 60–75 days after the report date. However, the data validation process for most bank Call Reports is generally completed at a much earlier date. By delaying the release of these reports, the information about a bank's condition and performance contained in its most recent quarter–end report is less useful to the public than if the report data had been made available at an earlier date.

Because the usefulness of a bank's report data goes hand–in–hand with the timeliness of the data, the agencies are proposing to change their release date for individual bank Call Reports. Under this proposal, beginning perhaps as early as the Call Reports for March 31, 2003, the agencies would begin to make each bank's Call Report available to the public on the FDIC's Internet Web site (*www.fdic.gov*) as soon as they complete the data validation process for that bank's report. This would mean that, after any edit exceptions identified in a bank's Call Report have been resolved and the analysis of the report has been completed, the public would be able to access the report (except for any confidential information). As a result, individual bank data would be available to the public on a more timely basis than at present.

M. Criteria for Acceptance of Call Reports

On August 1, 2002, the FFIEC, on behalf of the agencies, issued a Request for Proposal for the design and implementation of a new business model for processing Call Reports with a target effective date of March 2004. A principal feature of this new model would be a central data repository to collect, validate, manage and distribute Call Report information. As part of the introduction of this new business model, the agencies would change the manner in which Call Reports would be edited.

Currently, after the agencies receive a bank's electronically submitted Call Report, the report is subjected to numerous edit checks to assess the accuracy and reasonableness of the data the bank has submitted. Validity edits verify the accuracy of reported data, e.g., whether the individual items in a report schedule add up to the reported total and whether an item reported in one schedule agrees with the amount reported for the same item in another schedule. Validity edits include both mathematical and logical tests. Quality edits test the reasonableness of data and include tests against historical performance and other relational tests, e.g., whether the amount reported for a year–to–date item is greater than or equal to the amount reported for the same item in the previous quarter and whether the fair value reported for a category of securities falls within a specified range of the amortized cost reported for these securities.

If this validation process identifies any edit exceptions in a bank's report, an agency Call Report analyst normally contacts the bank and explains the edit exceptions detected in the bank's report. The bank then reviews the reported data associated with these edit exceptions and provides the Call Report analyst with any necessary corrections and/or describes the underlying facts and circumstances that explain why the data are correct as reported. The agencies' follow–up with a bank on edit exceptions typically occurs by telephone and takes place anywhere from one day to three or four weeks after a bank has submitted its report.

Under the new business model, the validation process will take place in conjunction with a bank's submission of its Call Report data to the agencies. The central data repository will contain all of the edit criteria and formulas, where they would be publicly available. This will enable the edits to be incorporated into the Call Report software a bank uses to prepare and submit its report to the agencies, which means that edit exceptions will be identified while a bank is completing its report. The bank will then be able to correct its report data to eliminate any validity edit exceptions. The bank will also be provided a method for supplying explanatory comments concerning any quality edit exceptions.

Once the central data repository is implemented, which is targeted for March 2004, the agencies are proposing that they will not accept a bank's Call Report submission if it contains any validity edit exceptions and lacks explanatory comments for any quality edit exceptions. Because a bank will be aware of any edit exceptions while its staff is completing its Call Report, the bank's follow–up on these exceptions will be immediate rather than after–the–fact as it is under the agencies' current approach to data validation. Thus, although the agencies are proposing to change the manner in which banks provide information to respond to edit exceptions identified in their Call Reports, including requiring the submission of explanatory comments concerning quality edit exceptions, this change should produce a net decrease in reporting burden on banks by reducing subsequent questions from the agencies. Furthermore, it should result in quicker validation, acceptance, disclosure and use of individual bank Call Report data.

In anticipation of this change in the data validation process, the agencies note that they have established a single set of validation criteria and have published the criteria for the March, June and September 2002 Call Report data on the FFIEC web site for banks' reference and use. The agencies also have made this material available to the Call Report software vendors. Beginning in September 2002, some Call Report software products will include a feature that enables a bank, at its option, to provide explanatory comments for edit exceptions to the banking agencies.

III. Request for Comment

Public comment is requested on all aspects of this proposal. In addition, comments are invited on:

(a) Whether the proposed revisions to the Call Report collections of information are necessary for the proper performance of the agencies' functions, including whether the information has practical utility;

(b) The accuracy of the agencies' estimates of the burden of the information collections as they are proposed to be revised, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of information collections on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information.

Comments submitted in response to this Notice will be shared among the agencies and will be summarized or included in the agencies' requests for OMB approval. All comments will become a matter of public record. Written comments should address the accuracy of the burden estimates and ways to minimize burden as well as other relevant aspects of the information collection request.

Dated: October 23, 2002.

Mark J. Tenhundfeld,

Assistant Director, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency.

Board of Governors of the Federal Reserve System, November 4, 2002.

Jennifer J. Johnson,

Secretary of the Board.

Dated at Washington, D.C., this the 23rd day of October, 2002.

[1] See Section 7(b)(2)(A)(iv)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)(2)(A)(iv)(1)).

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FEDERAL DEPOSIT INSURANCE CORPORATION

Robert E. Feldman,

Executive Secretary

[FR Doc. 02–28435 Filed 11–7–02; 8:45 am]

BILLING CODE: OCC: 4810–33–S 1/3; Board: 6210–01–S; 1/3; FDIC: 6714–01–S; 1/3

DEPARTMENT OF THE TREASURY

Customs Service

Modification and Clarification of Procedures of the National Customs Automation Program Test Regarding Reconciliation; Correction

AGENCY: Customs Service, Treasury.

ACTION: General notice; correction.

SUMMARY: On September 27, 2002, Customs published a document in the **Federal Register** which announced modifications to the Customs Automated Commercial System (ACS) Reconciliation prototype test and clarified certain aspects of the test. The notice stated that among the topics related to the test for which Customs was providing clarifications and reminders was the "right to file Reconciliation entries." The language reminding test participants who has the right to file entries under the test was inadvertently omitted from the notice. This document sets forth the omitted language.

DATES: Effective as of November 8, 2002.

FOR FURTHER INFORMATION CONTACT: Mr. John Leonard at (202) 927–0915 or Ms. Christine Furgason at (202) 927–2293. Additional information regarding the test can be found at *http://www.customs.gov/recon*. Email inquiries may be sent to: *Recon.Help@customs.treas.gov*.

SUPPLEMENTARY INFORMATION:

Background

A general notice document was published in the **Federal Register** (67 FR 61200) on Friday September 27, 2002, to announce certain modifications to the Automated Commercial System (ACS) Reconciliation Prototype test regarding NAFTA Reconciliation entries, the method for filing Reconciliation entries covering flagged entry summaries for which liquidated damages have been assessed, acceptance of compact disks for Reconciliation spreadsheets, and applicability to test participants of previously suspended regulatory provisions of part 111, Customs Regulations. The notice also provided clarifications and reminders to test participants regarding certain other aspects of the test and announced a new address for Reconciliation submissions for the port of NY/Newark.

In the third paragraph of the "Background" section of the general notice, it stated that among the topics related to the test for which Customs was providing clarifications and reminders was the "right to file Reconciliation entries." Inadvertently, the language reminding Reconciliation test participants who has the right to file entries under the test was omitted from the "Clarifications and Reminders" section of the notice.

This document sets forth the omitted language.

Correction

In general notice FR Doc 02–24588, published on September 27, 2002 (67 FR 61200), make the following correction:

On page 61204, in the second column, immediately before the section entitled "Updated Address and ABI Filing Information for NY/Newark Port 1001," insert the following section:

Right to File Reconciliation Entries

Customs reminds test participants that the filing of a Reconciliation entry, like the filing of a regular consumption entry, is governed by 19 U.S.C. 1484 and can be done only by the importer of record as defined in that statute.

Dated: November 5, 2002.

Jayson P. Ahern,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 02–28464 Filed 11–7–02; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[PS–54–89]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, PS–54–89 (TD 8444). Applicable Conventions Under the Accelerated Cost Recovery System (§ 1.168(d)–1(b)(7)).

DATES: Written comments should be received on or before January 7, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Larnice Mack (202) 622–3179, or through the Internet (*Larnice.Mack@irs.gov*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Applicable Conventions Under the Accelerated Cost Recovery System.

OMB Number: 1545–1146. Regulation Project Number: PS–54–89 Final.

Abstract: The regulations describe the time and manner of making the notation required to be made on Form 4562, under certain circumstances when the taxpayer transfers property in certain non-recognition transactions. The information is necessary to monitor compliance with section 168 of the Internal Revenue Code.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, and farms.

Estimated Number of Respondents: 700.

Estimated Time Per Respondent: 6 min.

Estimated Total Annual Burden Hours: 70 hours.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 1, 2002.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 02–28545 Filed 11–7–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Minority Veterans, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that a meeting of the Advisory Committee on Minority Veterans will be held from Wednesday, November 20, 2002, through Friday, November 22, 2002, from 8:30 a.m. until 5 p.m. each day, at the Department of Veterans Affairs, 810 Vermont Avenue, NW., Room 230, Washington, DC. The meeting is open to the public.

The purpose of the Committee is to advise the Secretary on the administration of VA benefits and services to minority veterans, to assess the needs of minority veterans, and to evaluate whether VA compensation, medical and rehabilitation services, outreach, and other programs are meeting those needs. The Committee will make recommendations to the Secretary regarding such activities.

On November 20, the Committee will review its prior years' annual report recommendations and discuss methods to effectively measure results and streamline its reporting process. During the afternoon session, the Committee will receive briefings from key VA staff members concerning the recommendations submitted to the Secretary in its 8th Annual Report (2002). Briefings will be conducted by Veterans Health Administration, Veteran Benefits Administration, Acquisition Policy, Office of Small and Disadvantaged Business, National Cemetery and Memorial Affairs, Office of Human Resources and Native American Home Loan Program.

On November 21, the Committee will focus on its strategic plan for 2003, determine achievable strategic goals and develop an executable plan of action. On November 22, the Committee will meet with the VA Deputy Secretary in the morning. The Center for Minority Veterans will brief the Committee on recent site visits and findings related to minority veterans and the latest initiatives undertaken by the Center.

No time will be allocated for oral presentations from the public. However, the Committee will accept written comments from interested parties on issues outlined in the meeting agenda, as well as other issues affecting minority veterans. Such comments should be referred to the Committee at Advisory Committee on Minority Veterans, Center for Minority Veterans (00M), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. Any member of the public wishing to attend the meeting or further information should contact Ms. Ruby Miller at (202) 273–6708.

Dated: October 31, 2002.

By Direction of the Secretary.

Nora E. Egan,

Committee Management Officer.

[FR Doc. 02–28548 Filed 11–7–02; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Prosthetics and Special Disabilities Programs; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 that a meeting of the Advisory Committee on Prosthetics and Special Disabilities Programs will be held December 3–4, 2002, at VA Headquarters, 810 Vermont Avenue, NW., Washington, DC. The meeting will be held in Room 830 on December 3 and in Room 530 on December 4. Meeting sessions will convene at 8:30 a.m. on both days and will adjourn at 4:30 p.m. on December 3 and at 12 noon on December 4. The meeting is open to the public.

The purpose of the Committee is to advise the Department on its prosthetic programs designed to provide state-of-the-art prosthetics and the associated rehabilitation research, development, and evaluation of such technology. The Committee also advises the Department on special disability programs which are defined as any program administered by the Secretary to serve veterans with spinal cord injury, blindness or vision impairment, loss of or loss of use of extremities, deafness or hearing impairment, or other serious incapacities in terms of daily life functions.

On the morning of December 3, the Committee will receive briefings by the Chief Consultant, Rehabilitation Strategic Healthcare Group, and the Director, Capital Asset Realignment for Enhanced Services (CARES) Program. In the afternoon, the Committee will be briefed by the directors of VA's special disability programs—spinal cord injury, blind rehabilitation, prosthetics, audiology and speech pathology. Additional briefings will be provided by the program directors of ophthalmology and optometry. On the morning of December 4, the Committee will be briefed by the Director of the Rehabilitation Research and Development Service and will review the most recent report on maintaining treatment capacity in VA's special disability programs.

No time will be allocated for receiving oral presentations from the public. However, members of the public may direct questions or submit written statements for review by the Committee in advance of the meeting to Ms. Cynthia Wade, Veterans Health Administration, Patient Care Services, Rehabilitation Strategic Healthcare Group (117), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. Any member of the public wishing to attend the meeting should contact Ms. Wade at (202) 273–8485.

Dated: October 31, 2002.

Nora E. Egan,

Committee Management Officer.

[FR Doc. 02–28547 Filed 11–7–02; 8:45 am]

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Federal Register

Friday,
November 8, 2002

Part II

Environmental Protection Agency

40 CFR Parts 89 et al.
Control of Emissions From Nonroad Large Spark-Ignition Engines, and Recreational Engines (Marine and Land-Based); Final Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 89, 90, 91, 94, 1048, 1051, 1065, and 1068

[AMS–FRL–7360–2]

RIN 2060–AI11

Control of Emissions From Nonroad Large Spark-Ignition Engines, and Recreational Engines (Marine and Land-Based)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In this action, we are adopting emission standards for several groups of nonroad engines that have not been subject to EPA emission standards. These engines are large spark-ignition engines such as those used in forklifts and airport ground-service equipment; recreational vehicles using spark-ignition engines such as off-highway motorcycles, all-terrain vehicles, and snowmobiles; and recreational marine diesel engines. Nationwide, these engines and vehicles cause or contribute to ozone, carbon-monoxide, and particulate-matter nonattainment, as well as other types of pollution impacting human health and welfare.

We expect that manufacturers will be able to maintain or even improve the performance of their products when producing engines and equipment meeting the new standards. Many engines will substantially reduce their fuel consumption, partially or completely offsetting any costs associated with the emission standards. Overall, the gasoline-equivalent fuel savings associated with the anticipated changes in technology resulting from this rule are estimated to be about 800 million gallons per year once the program is fully phased in. Health and environmental benefits from the controls included in today's rule are estimated to be approximately $8 billion per year once the controls are fully phased in. There are also several provisions to address the unique limitations of small-volume manufacturers.

DATES: This final rule is effective January 7, 2003.

The incorporation by reference of certain publications listed in this regulation is approved by the Director of the Federal Register as of January 7, 2003.

ADDRESSES: Materials relevant to this rulemaking are contained in Public Docket Numbers A–98–01 and A–2000–01 at the following address: EPA Docket Center (EPA/DC), Public Reading Room, Room B102, EPA West Building, 1301 Constitution Avenue, NW., Washington DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, except on government holidays. You can reach the Reading Room by telephone at (202) 566–1742, and by facsimile at (202) 566–1741. The telephone number for the Air Docket is (202) 566–1742. You may be charged a reasonable fee for photocopying docket materials, as provided in 40 CFR part 2.

For further information on electronic availability of this action, see **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: U.S. EPA, Office of Transportation and Air Quality, Assessment and Standards Division hotline, (734) 214–4636, *asdinfo@epa.gov;* Alan Staut, (734) 214–4805.

SUPPLEMENTARY INFORMATION:

Regulated Entities

This action will affect companies that manufacture or introduce into commerce any of the engines or vehicles subject to emission standards. These include: spark-ignition industrial engines such as those used in forklifts and compressors; recreational vehicles such as off-highway motorcycles, all-terrain vehicles, and snowmobiles; and recreational marine diesel engines. This action will also affect companies buying engines for installation in nonroad equipment. There are also requirements that apply to those who rebuild any of the affected nonroad engines. Regulated categories and entities include:

Category	NAICS Codes[a]	SIC Codes[b]	Examples of potentially regulated entities
Industry	333618	3519	Manufacturers of new nonroad spark-ignition engines, new marine engines.
Industry	333111	3523	Manufacturers of farm equipment.
Industry	333112	3531	Manufacturers of construction equipment, recreational marine vessels.
Industry	333924	3537	Manufacturers of industrial trucks.
Industry	811310	7699	Engine repair and maintenance.
Industry	336991		Motorcycle manufacturers.
Industry	336999		Snowmobiles and all-terrain vehicle manufacturers.
Industry	421110		Independent Commercial Importers of Vehicles and Parts.

[a] North American Industry Classification System (NAICS)
[b] Standard Industrial Classification (SIC) system code.

This list is not intended to be exhaustive, but rather provides a guide regarding entities likely to be regulated by this action. To determine whether this action regulates particular activities, you should carefully examine the regulations. You may direct questions regarding the applicability of this action to the person listed in **FOR FURTHER INFORMATION CONTACT**.

Obtaining Electronic Copies of the Regulatory Documents

The preamble, regulatory language, Final Regulatory Support Document, and other rule documents are also available electronically from the EPA Internet web site. This service is free of charge, except for any cost incurred for internet connectivity. The electronic version of this final rule is made available on the day of publication on the primary web site listed below. The EPA Office of Transportation and Air Quality also publishes **Federal Register** notices and related documents on the secondary web site listed below.

1. *http://www.epa.gov/docs/fedrgstr/EPA-AIR/* (either select desired date or use Search feature)
2. *http://www.epa.gov/otaq/* (look in What's New or under the specific rulemaking topic)

Please note that due to differences between the software used to develop the documents and the software into which the document may be downloaded, format changes may occur.

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I. Introduction

A. Overview

Emissions from the engines regulated in this rule contribute to serious air-pollution problems, and will continue to do so in the future absent regulation. These air pollution problems include exposure to carbon monoxide (CO), ground-level ozone, and particulate matter (PM), which can cause serious health problems, including premature mortality and respiratory problems. Fine PM has also been associated with cardiovascular problems, such as heart rate variability and changes in fibrinogen (a blood clotting factor) levels, and hospital admissions and mortality related to cardiovascular diseases. These emissions also contribute to other serious environmental problems, including visibility impairment and ecosystem damage. In addition, many of the hydrocarbon (HC) pollutants emitted by these engines are air toxics.

This rule addresses these air-pollution concerns by adopting national emission standards for several types of nonroad engines and vehicles that are currently unregulated. These include large spark-ignition engines used in industrial and commercial applications such as those used in forklifts and airport equipment; recreational spark-ignition vehicles such as off-highway motorcycles, all-terrain vehicles, and snowmobiles; and recreational marine diesel engines.[1] These new standards are a continuation of the process of establishing emission standards for nonroad engines and vehicles, under Clean Air Act section 213(a).

We conducted a study of emissions from nonroad engines, vehicles, and equipment in 1991, as directed by the Clean Air Act, section 213(a) (42 U.S.C. 7547(a)). Based on the results of that study, we determined that emissions of oxides of nitrogen (NO_X), volatile organic compounds, and CO from nonroad engines and equipment contribute significantly to ozone and CO concentrations in more than one nonattainment area (59 FR 31306, June 17, 1994). Given this determination, section 213(a)(3) of the Act requires us to establish (and from time to time revise) emission standards for those classes or categories of new nonroad engines, vehicles, and equipment that in our judgment cause or contribute to such air pollution. We have determined that the engines covered by this final rule cause or contribute to such air pollution (see the final finding for recreational vehicles and nonroad spark-ignition engines over 19 kW published on December 7, 2000 (65 FR 76790), the final rule for marine diesel engines published on December 29, 1999 (64 FR 73301)[2], Section II of the preamble to the proposed rule (66 FR 51098, October 5, 2001), this preamble, and the Final Regulatory Support Document).

Where we determine that other emissions from new nonroad engines, vehicles, or equipment significantly contribute to air pollution that may reasonably be anticipated to endanger public health or welfare, section 213(a)(4) of the Act authorizes EPA to establish (and from time to time revise) emission standards from those classes or categories of new nonroad engines, vehicles, and equipment that cause or contribute to such air pollution. Pursuant to section 213(a)(4) of the Act, we are finalizing a finding that emissions from new nonroad engines, including construction equipment, farm tractors, boats, locomotives, marine engines, nonroad spark-ignition engines over 19 kW, recreational vehicles (including off-highway motorcycles, all-terrain-vehicles, and snowmobiles), significantly contribute to regional haze and visibility impairment in federal Class I areas and where people live, work and recreate. These engines, particularly recreational vehicles such as snowmobiles, are significant emitters of pollutants that are known to impair visibility in federal Class I areas (see Section I.E of this preamble and the Final Regulatory Support Document). We have also determined that engines covered by this final rule, particularly recreational vehicles including snowmobiles, contribute to such pollution. Thus, we are finalizing HC standards for snowmobiles to reduce PM-related visibility impairment.

[1] Diesel-cycle engines, referred to simply as "diesel engines" in this document, may also be referred to as compression-ignition (or CI) engines. These engines typically operate on diesel fuel, but other fuels may also be used. Otto-cycle engines (referred to here as spark-ignition or SI engines) typically operate on gasoline, liquefied petroleum gas, or natural gas.

[2] This rule also found that PM emissions from marine diesel engines contribute to PM nonattainment.

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B. How Is This Document Organized?

This final rule covers engines and vehicles that vary in design and use, and many readers may be interested in only one or two of the applications. We have grouped engines by common application (for example, recreational land-based engines, marine diesel recreational engines, large spark-ignition engines used in commercial applications). This document is organized in a way that allows each reader to focus on the applications of particular interest.

Section II describes general provisions that are relevant to all of the nonroad engines covered by this rulemaking. Section III through VI present information specific to each of the affected nonroad applications, including standards, effective dates, testing information, and other specific requirements.

Sections VII and VIII describe a wide range of compliance and testing provisions that apply generally to engines and vehicles from all the nonroad engine and vehicle categories included in this rulemaking. Several of these provisions apply not only to manufacturers, but also to equipment manufacturers installing certified engines, remanufacturing facilities, operators, and others. Therefore, all affected parties should read the information contained in these sections.

Section IX summarizes the projected impacts and a discussion of the benefits of this rule. Finally, Sections X and XI contain information about public participation and various administrative requirements.

The remainder of this section summarizes the new requirements and the air quality need for the rulemaking.

C. What Categories of Vehicles and Engines Are Covered in This Final Rule?

This final rule establishes regulatory programs for new nonroad vehicles and engines not yet subject to EPA emission standards, including the following engines:

- Land-based spark-ignition recreational engines, including those used in snowmobiles, off-highway motorcycles, and all-terrain vehicles. For the purpose of this rule, we are calling this group of engines "recreational vehicles," even though all-terrain vehicles can be used for commercial purposes.
- Land-based spark-ignition engines rated over 19 kW, including engines used in forklifts, generators, airport baggage tow trucks, and various farm, construction, and industrial equipment. This category also includes auxiliary marine engines, but does not include propulsion marine engines or engines used in recreational vehicles. For purposes of this rule, we refer to this category as "Large SI engines."
- Recreational marine diesel engines.

This final rule covers new engines that are used in the United States, whether they are made domestically or imported.[3] A more detailed discussion of the meaning of the terms "new" and "imported" that help define the scope of application of this rule is in Section II of this preamble.

D. What Requirements Are We Adopting?

The fundamental requirement for nonroad engines and vehicles is meeting EPA's emission standards. Section 213(a)(3) of the Act requires that standards to control emissions related to ozone or CO achieve the greatest degree of emission reduction achievable through the application of technology that will be available, giving appropriate consideration to cost, noise, energy, and safety factors. Section 213 (a)(4) of the Act requires that standards for emissions related to other air pollution problems be appropriate and take into account costs, noise, safety, and energy impacts of applying technology that will be available. Other requirements such as applying for certification, labeling engines, and meeting warranty requirements define a process for implementing the program in an effective way.

With regard to Large SI engines, we are adopting a two-phase program. The first phase of the standards go into effect in 2004 and are the same as those adopted in October 1998 by the California Air Resources Board for 2004. These standards will reduce combined HC and NO_X emissions by nearly 75 percent, based on emission measurements during steady-state operation. In 2007, we supplement these standards by setting limits that will require optimizing the same technologies and will base emission measurements on a transient test cycle. New requirements for evaporative emissions and engine diagnostics also start in 2007.

For recreational vehicles, we are adopting separate emission standards for snowmobiles, off-highway motorcycles, and all-terrain vehicles. For snowmobiles, we are adopting a first phase of standards for HC and CO emissions based on a mixture of technologies ranging from clean carburetion and engine modifications to direct fuel injection two-stroke technology and some conversion to four-stroke engines, and second and third phases of emission standards for snowmobiles that will involve significant use of direct fuel injection two-stroke technology and conversion to four-stroke engines. For off highway motorcycles and all-terrain vehicles, we are adopting standards based mainly on moving these engines from two-stroke to four-stroke technology with the use of some secondary air injection. We are also adopting requirements to address permeation emissions from all three types of recreational vehicles.

The emission standards for recreational marine diesel engines are comparable to those already established for commercial marine diesel engines. Manufacturers generally have additional time to meet emission standards for the recreational models and several specific rulemaking provisions are tailored to the unique characteristics of these engines.

We are also adopting more stringent voluntary Blue Sky Series emission standards for recreational marine diesel engines and Large SI engines. Blue Sky Series emission standards are more stringent than the mandatory emission standards and are intended to encourage the introduction and more widespread use of low-emission technologies. Manufacturers may be motivated to exceed emission requirements either to gain early experience with certain technologies or as a response to market demand or local government programs. For recreational vehicles, we are not adopting voluntary standards but rather providing consumers with consumer labeling, which will provide information and opportunity to buy lower-emissions models.

We have also conducted extensive analysis on the costs and benefits of this rulemaking effort, with specific details found in Section IX below and in the Final Regulatory Support Document. In summary, we estimate that annually, the cost to manufacturers is approximately $210 million, the social gain is approximately $550 million, and the quantified benefits are approximately $8 billion. Social gain is defined as the economic cost of the rule minus the estimated fuels savings. Quantified benefits reflect the health benefits primarily associated with particulate matter controls.

E. Why Is EPA Taking This Action?

There are important public health and welfare reasons supporting the new

[3] For this final rule, we consider the United States to include the States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, the U.S. Virgin Islands, and the Trust Territory of the Pacific Islands.

emission standards. As described below and in the Final Regulatory Support Document, these engines contribute to air pollution that causes public health and welfare problems.

Nationwide, these engines and vehicles are a significant source of mobile source air pollution. As described below, of all mobile source emissions in 2000 they accounted for about 9 percent of HC emissions, 4 percent of CO emissions, 3 percent of NO_X emissions, and 2 percent of direct PM emissions. The emissions from Large SI engines contributed 2 to 3 percent of the HC, NO_X, and CO emissions from mobile sources in 2000. Recreational vehicles by themselves account for about 6 percent of national mobile source HC emissions and about 2 percent of national mobile source CO emissions. By reducing these emissions, the standards will aid states facing ozone and CO air quality problems, which can cause a range of adverse health effects, especially in terms of respiratory disease and related illnesses. The engine categories subject to this rule contribute to regional haze and visibility impairment in Class I areas and near where people live, work and recreate. Within national parks, emissions from snowmobiles in particular contribute to ambient concentrations of fine PM, a leading cause of visibility impairment. States are required to develop plans to address visibility impairment in national parks, and the reductions required in this rule would assist states in those efforts.

The standards will also help reduce acute exposure to CO and air toxics for forklift operators, equipment users or riders, national and state park attendants, and other people who may be at particular risk because they operate or work or are otherwise in close proximity to this equipment due to their occupation or as riders. Emissions from these vehicles and equipment can be very high on a per-engine basis. In addition, the equipment using these engines (especially forklifts) is often operated in enclosed areas. Similarly, exposure to CO and air toxics can be intensified for snowmobile riders who follow a group of other riders along a trail, since those riders are exposed to the emissions of all the other snowmobiles riding ahead.

When the emission standards are fully implemented in 2030, we expect a 75-percent reduction in HC emissions, 82-percent reduction in NO_X emissions, and 61-percent reduction in CO emissions, and a 60-percent reduction in direct PM emissions from these engines, equipment, and vehicles (see Section IX below). These emission reductions will reduce ambient concentrations of CO, ozone, and PM fine; fine particles are a public health concern and contributes to visibility impairment. The standards will also reduce exposure for people who operate or who work with or are otherwise in close proximity to these engines and vehicles.

We believe technology can be applied to these engines that will reduce emissions of these harmful pollutants. Manufacturers can reduce two-stroke engine emissions by improving fuel management and calibration. This can be achieved by making improvements to carbureted fuel systems and/or converting to electronic and direct fuel injection. In addition, many of the existing two-stroke engines in these categories can be converted to four-stroke technology. Finally, there are modifications that can be made to four-stroke engines, often short of requiring catalysts, that can reduce emissions even further.

1. Health and Welfare Effects

Exposure to CO, ground-level ozone, and PM can cause serious respiratory problems, including premature mortality and respiratory problems. Fine PM has also been associated with cardiovascular problems, such as heart rate variability and fibrinogen (a blood clotting factor) levels, and hospital admissions and mortality related to cardiovascular diseases. These emissions also contribute to other serious environmental problems, including visibility impairment and ecosystem damage. In addition, some of the HC pollutants emitted by these engines are air toxics. (The health and welfare effects are described in more detail in the Final Regulatory Support Document.)

CO enters the bloodstream through the lungs and reduces the delivery of oxygen to the body's organs and tissues. The health threat from CO is most serious for those who suffer from cardiovascular disease, particularly those with angina or peripheral vascular disease. Healthy individuals also are affected, but only at higher CO levels. Exposure to elevated CO levels is associated with impairment of visual perception, work capacity, manual dexterity, learning ability and performance of complex tasks.

Exposures to ozone has been linked to increased hospital admissions and emergency room visits for respiratory problems.[4] Repeated exposure to ozone can increase susceptibility to respiratory infection and lung inflammation. It can aggravate preexisting respiratory diseases, such as asthma. Prolonged (6 to 8 hours), repeated exposure to ozone can cause inflammation of the lung, impairment of lung defense mechanisms, and possibly irreversible changes in lung structure, which over time could lead to premature aging of the lungs and/or chronic respiratory illnesses such as emphysema and chronic bronchitis. Children, the elderly, asthmatics and outdoor workers are most at risk from ozone exposure. Evidence also exists of a possible relationship between daily increases in ozone levels and increases in daily mortality levels. In addition to human health effects, ozone adversely affects crop yield, vegetation and forest growth, and the durability of materials.

PM, like ozone, has been linked to a range of serious respiratory health problems.[5] The key health effects associated with ambient particulate matter include premature mortality, aggravation of respiratory and cardiovascular disease (as indicated by increased hospital admissions and emergency room visits, school absences, work loss days, and restricted activity days), aggravated asthma, acute respiratory symptoms, including aggravated coughing and difficult or painful breathing, chronic bronchitis, and decreased lung function that can be experienced as shortness of breath. Observable human non-cancer health effects associated with exposure to diesel PM include some of the same health effects reported for ambient PM such as respiratory symptoms (cough, labored breathing, chest tightness, wheezing), and chronic respiratory disease (cough, phlegm, chronic bronchitis and suggestive evidence for decreases in pulmonary function). Symptoms of immunological effects such as wheezing and increased allergenicity are also seen.

PM also causes adverse impacts to the environment. Fine PM is the major cause of reduced visibility in parts of the United States, including many of our national parks and in places where people live and work. Visibility effects are manifest in two principal ways: (1) as local impairment (for example,

[4] U.S. EPA Review of the National Ambient Air Quality Standards for Ozone: Policy Assessment of Scientific and Technical Information OAQPS Staff Paper. EPA–452/R–96–007. June 1996. A copy of this document can be found in Docket A–99–06, Document II–A–22.

[5] U.S. EPA Review of the National Ambient Air Quality Standards for Particulate Matter: Policy Assessment of Scientific and Technical Information OAQPS Staff Paper. EPA–452/R–96–013. 1996. Docket Number A–99–06, Documents Nos. II–A–18, 19, 20, and 23. The particulate matter air quality criteria documents are also available at *http://www.epa.gov/ncea/partmatt.htm*.

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localized hazes and plumes) and (2) as regional haze. The emissions from engines covered by this rule can contribute to both types of visibility impairment.

The engines covered by this rule also emit air toxics that are known or suspected human or animal carcinogens, or have serious non-cancer health effects. These include benzene, 1,3-butadiene, formaldehyde, acetaldehyde, and acrolein.

2. What Is the Inventory Contribution From the Nonroad Engines and Vehicles That Would Be Subject to This Rule?

The contribution of emissions from the nonroad engines and vehicles that will be subject to this final rule to the national inventories of pollutants is considerable. To estimate nonroad engine and vehicle emission contributions, we used the latest version of our NONROAD emissions model, updated with information received during the public comment period. This model computes nationwide, state, and county emission levels for a wide variety of nonroad engines, and uses information on emission rates, operating data, and population to determine annual emission levels of various pollutants. A more detailed description of the model and our estimation methodology can be found in the Chapter 6 of the Final Regulatory Support Document.

Baseline emission inventory estimates for the year 2000 for the categories of engines and vehicles covered by this rule are summarized in Table I.E–1. This table shows the relative contributions of the different mobile source categories to the overall national mobile source inventory. Of the total emissions from mobile sources, the categories of engines and vehicles covered by this rule contribute about 9 percent, 3 percent, 4 percent, and 2 percent of HC, NO_X, CO, and PM emissions, respectively, in the year 2000. The results for Large SI engines indicate they contribute approximately 2 to 3 percent to HC, NO_X, and CO emissions from mobile sources. The results for land-based recreational engines reflect the impact of the significantly different emissions characteristics of two-stroke engines. These engines are estimated to contribute about 6 percent of HC emissions and 2 percent of CO from mobile sources. Recreational marine diesel engines contribute less than 1 percent to NO_X mobile source inventories. When only nonroad emissions are considered, the engines and vehicles that will be subject to the standards account for a larger share.

Our draft emission projections for 2020 and 2030 for the nonroad engines and vehicles subject to this rule show that emissions from these categories are expected to increase over time if left uncontrolled. The projections for 2020 and 2030 are summarized in Tables I.E–2 and I.E–3, respectively. The projections for 2020 and 2030 indicate that the categories of engines and vehicles covered by this rule are expected to contribute approximately 25 percent, 10 percent, 5 percent, and 5 percent of mobile source HC, NO_X, CO, and PM emissions, respectively, if left uncontrolled. Engine population growth and the effects of other regulatory control programs are factored into these projections. The relative importance of uncontrolled nonroad engines in 2020 and 2030 is higher than the projections for 2000 because there are already emission-control programs in place for the other categories of mobile sources which are expected to reduce their emission levels. The effectiveness of all control programs is offset by the anticipated growth in engine populations.

Regarding PM specifically, this information and information in Section I.3(ii) below show that the engines being regulated in this rule, snowmobiles and other recreational vehicles in particular, contribute to PM concentrations that may reasonably be anticipated to endanger public health and welfare both because of the health effects associated with PM and because of the effects on visibility discussed below.

TABLE I.E–1.—MODELED ANNUAL EMISSION LEVELS FOR MOBILE SOURCE CATEGORIES IN 2000

[Thousand short tons]

Category	NO_X		HC		CO		PM	
	1000 tons	Percent of mobile source	1000 tons	Percent of mobile source	1000 tons	Percent of mobile source	1000 tons	Percent of mobile source
Total for engines subject to this final rule*	351	2.6	645	8.8	2,860	3.8	14.6	2.1
Highway Motorcycles	8	0.1	84	1.2	331	0.4	0.4	0.1
Nonroad Industrial SI >19 kW*	308	2.3	226	3.1	1,734	2.3	1.6	0.2
Recreational SI*	5	0.0	418	5.7	1,120	1.5	12.0	1.7
Recreational Marine Diesel*	38	0.3	1	0.0	6	0.0	1	0.1
Marine SI Evap	0	0.0	100	1.4	0	0.0	0	0.0
Marine SI Exhaust	32	0.2	708	9.7	2,144	2.8	38	5.4
Nonroad SI <19 kW	106	0.8	1,460	20.0	18,359	24.3	50	7.1
Nonroad diesel	2,625	19.5	316	4.3	1,217	1.6	253	35.9
Commercial Marine Diesel	963	7.2	30	0.4	127	0.2	41	5.8
Locomotive	1,192	8.9	47	0.6	119	0.2	30	4.3
Total Nonroad	5,269	39	3,305	45	24,826	33	427	60
Total Highway	7,981	59	3,811	52	49,813	66	240	34
Aircraft	178	1	183	3	1,017	1	39	6
Total Mobile Sources	13,428	100	7,300	100	75,656	100	706	100
Total Man-Made Sources	24,532	.....	18,246	.....	97,735	.....	3,102	.....
Mobile Source percent of Total Man-Made Sources	55	.....	40	.....	77	.....	23	

TABLE I.E–2.—MODELED ANNUAL BASELINE EMISSION LEVELS FOR MOBILE SOURCE CATEGORIES IN 2020

[thousand short tons]

Category	NO_X		HC		CO		PM	
	1000 tons	Percent of mobile source	1000 tons	Percent of mobile source	1000 tons	Percent of mobile source	1000 tons	Percent of mobile source
Total for engines subject to this final rule*	547	8.8	1,305	24.1	4,866	5.6	34.1	5.2
Highway Motorcycles	14	0.2	142	2.6	572	0.7	0.8	0.1
Nonroad Industrial SI > 19 kW*	472	7.6	318	5.9	2,336	2.7	2.3	0.4
Recreational SI*	14	0.2	985	18.2	2,521	2.9	30.2	4.6
Recreational Marine Diesel*	61	1.0	2	0.0	9	0.0	1.6	0.2
Marine SI Evap	0	0.0	114	2.1	0	0.0	0	0.0
Marine SI Exhaust	58	0.9	284	5.2	1,985	2.3	28	4.3
Nonroad SI < 19 Kw	106	1.7	986	18.2	27,352	31.7	77	11.8
Nonroad Diesel	1,791	28.8	142	2.6	1,462	1.7	261	40.0
Commercial Marine Diesel	819	13.2	35	0.6	160	0.2	46	7.0
Locomotive	611	9.8	35	0.6	119	0.1	21	3.2
Total Nonroad	3,932	63	2,901	54	35,944	42	467	71
Total Highway	2,050	33	2,276	42	48,906	56	145	22
Aircraft	232	4	238	4	1,387	2	43	7
Total Mobile Sources	6,214	100	5,415	100	86,237	100	655	100
Total Man-Made Sources	16,190	.....	15,475	.....	109,905	.....	3,039	.....
Mobile Source percent of Total Man-Made Sources	38	.....	35	.....	79	.....	22	.....

TABLE I.E–3.—MODELED ANNUAL EMISSION LEVELS FOR MOBILE SOURCE CATEGORIES IN 2030

[Thousand short tons]

Category	NO_X		HC		CO		PM	
	1000 tons	Percent of mobile source	1000 tons	Percent of mobile source	1000 tons	Percent of mobile source	1000 tons	Percent of mobile source
Total for engines subject to this final rule*	640	10.0	1,411	23.5	5,363	5.4	36.5	4.8
Highway Motorcycles	17	0.3	172	2.9	693	0.7	1.0	0.1
Nonroad Industrial SI > 19 kW*	553	8.6	371	6.2	2,703	2.7	2.7	0.4
Recreational SI*	15	0.2	1,038	17.3	2,649	2.7	31.9	4.2
Recreational Marine Diesel*	72	1.1	2	0.0	11	0.0	1.9	0.3
Marine SI Evap	0	0.0	122	2.0	0	0.0	0	0.0
Marine SI Exhaust	64	1.0	269	4.5	2,083	2.1	29	3.8
Nonroad SI < 19 kW	126	2.0	1,200	20.0	32,310	32.4	93	12.3
Nonroad Diesel	1,994	31.0	158	2.6	1,727	1.7	306	40.4
Commercial Marine Diesel	1,166	18.1	52	0.9	198	0.2	74	9.8
Locomotive	531	8.3	30	0.5	119	0.1	18	2.4
Total Nonroad	4,521	70	3,242	54	41,800	42	557	74
Total Highway	1,648	26	2,496	42	56,303	56	158	21
Aircraft	262	4	262	4	1,502	2	43	6
Total Mobile Sources	6,431	100	6,000	100	99,605	100	758	100
Total Man-Made Sources	16,639	—	17,020	—	123,983	—	3,319	—
Mobile Source percent of Total Man-Made Sources	39	—	35	—	80	—	23	—

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3. Why are Controls to Protect against CO Nonattainment and to Protect Visibility Needed From the Nonroad Engines and Vehicles That Would Be Subject to This Rule?

i. Why are We Controlling CO Emissions from Nonroad Engines and Vehicles that Would be Subject to this Rule?

Engines subject to this rule contributed about 3.8 percent of CO from mobile sources in 2000. Over 22.4 million people currently live in the 13 nonattainment areas for the CO National Ambient Air Quality Standard (NAAQS). Industry association comments questioned the need for CO control and snowmobile contribution, in particular. First, the statute envisions that categories should be considered in determining contribution because otherwise, it would be possible to continue to arbitrarily divide subcategories until the contribution from any subcategory becomes minimal while the cumulative effect of the air pollution remains. EPA previously determined that the category of Large SI engines and recreational vehicles cause or contribute to ambient CO and ozone in more than one nonattainment area (65 FR 76790, December 7, 2000). EPA also examined recreational vehicles separately and found that recreational vehicles subject to this rule contribute to CO nonattainment in areas such as Los Angeles, Phoenix, Anchorage, and Las Vegas (see RSD chapter 2). Thus, if considered as a category, recreational vehicles contribute to CO nonattainment.[6] Moreover, when we examined snowmobiles separately, they met the contribution criteria.

The International Snowmobile Manufacturers Association (ISMA) stated in its public comments that snowmobiles in particular are not operated in many of the CO nonattainment areas because of lack of snow (although they may be stored in those areas). The commenters also contended that northern areas have experienced improved CO air quality. Many areas are making progress in improving their air quality. However, an area cannot be redesignated to attainment until it can show EPA that it has had air quality levels within the level required for attainment and that it has a plan in place to maintain such levels. Until areas have been redesignated, they remain nonattainment areas.[7] Snowmobiles contribute to CO nonattainment in more than one of these areas.

Snowmobiles have relatively high per-engine CO emissions, and they can be a significant source of ambient CO levels in CO nonattainment areas. Despite the fact that snowmobiles are largely banned in CO nonattainment areas by the state of Alaska, the state estimated (and a National Research Council study confirmed) that snowmobiles contributed 0.3 tons/day in 2001 to Fairbanks' CO nonattainment area or 1.2 percent of a total inventory of 23.3 tons per day in 2001.[8,9] While Fairbanks has made significant progress in reducing ambient CO concentrations, existing climate conditions make achieving and maintaining attainment challenging. Anchorage, AK, reports a similar contribution of snowmobiles to their emissions inventories (0.34 tons per day in 2000). Furthermore, a recent National Academy of Sciences report concludes that "Fairbanks will be susceptible to violating the CO health standards for many years because of its severe meteorological conditions. That point is underscored by a December 2001 exceedance of the standard in Anchorage which had no violations over the last 3 years."[10]

ISMA commented that it agreed with EPA that there is a snowmobile trail within the Spokane, WA, CO nonattainment area, although they noted that snowmobile operation alone would not result in CO nonattainment. However, emissions from regulated categories need only contribute to, not themselves cause, nonattainment. Concentrations of NAAQS-related pollutants are by definition a result of multiple sources of pollution.

Several states that contain CO nonattainment areas also have large populations of registered snowmobiles and nearby snowmobile trails in adjoining counties, which are an indication of where they are operated (see Table I.E–4). EPA requested comment on the volume and nature of snowmobile use in these and other CO nonattainment areas. ISMA commented on the proximity of trails to northern CO nonattainment areas, assuming that snowmobiles are operated only on trails. A search of the available literature indicates that snowmobiles are ridden in areas other than trails. For example, a 1998 report by the Michigan Department of Natural Resources indicates that from 1993 to 1997, of the 146 snowmobile fatalities studied, 46 percent occurred on a state or county roadway (another 2 percent on roadway shoulders) and 27 percent occurred on private lands. Furthermore, accident reports in CO nonattainment area Fairbanks, AK, demonstrate that snowmobiles driven on streets have collided with motor vehicles. On certain days there may be concentrations of snowmobiles operated in nonattainment areas due to public events such as snowmachine races (such as the Iron Dog Gold Rush Classic, which finishes in Fairbanks, AK), during which snowmobiles will be present and operated.

TABLE I.E–4.—SNOWMOBILE USE IN SELECTED CO NONATTAINMENT AREAS

City and state	CO nonattainment classification	2001 State snowmobile population[a]
Anchorage, AK		
Fairbanks, AK	Serious	[b]35576
Spokane, WA	Serious	31532
Fort Collins, CO	Moderate	32500
Medford, OR	Moderate	16809

[6] Likewise, Large SI equipment and recreational marine diesel engines also contribute to CO in nonattainment areas.

[7] There are important reasons to focus on redesignation status, as compared to just current air quality. Areas with a few years of attainment data can and often do have exceedances following such years of attainment because of several factors including different climatic events during the later years, increases in inventories, etc. Control of emissions from nonroad engines can help to avoid potential future air quality problems.

[8] Draft Anchorage Carbon Monoxide Emission Inventory and Year 2000 Attainment Projections, Air Quality Program, May 2001, Docket Number A–2000–01, Document II–A–40; Draft Fairbanks 1995–2001 Carbon Monoxide Emissions Inventory, June 1, 2001, Docket Number A–2000–01, Document II–A–39.

[9] National Research Council. The Ongoing Challenge of Managing Carbon Monoxide Pollution in Fairbanks, AK. May 2002. Docket A–2000–01, Document No. IV–A–115.

[10] National Research Council. The Ongoing Challenge of Managing Carbon Monoxide Pollution in Fairbanks, AK. May 2002. Docket A–2000–01, Document IV–A–115.

TABLE I.E–4.—SNOWMOBILE USE IN SELECTED CO NONATTAINMENT AREAS—Continued

City and state	CO nonattainment classification	2001 State snowmobile population[a]
Missoula, MT	Moderate	23440

[a] Source: ISMA U.S. Snowmobile Registration History, May 15, 2001; various studies prepared for state snowmobile associations included in Docket A–2000–01.

[b] Point of sale registration was not mandatory in Alaska prior to 1998, so the statewide registered population is likely to underestimate the total population.

Exceedances of the 8-hour CO standard were recorded in three of seven CO nonattainment areas located in the northern portion of the country over the five year period from 1994 to 1999: Fairbanks, AK; Medford, OR; and Spokane, WA.[11] Given the variability in CO ambient concentrations due to weather patterns such as inversions, the absence of recent exceedances for some of these nonattainment areas should not be viewed as eliminating the need for further reductions to consistently attain and maintain the standard. A review of CO monitor data in Fairbanks from 1986 to 1995 shows that while median concentrations have declined steadily, unusual combinations of weather and emissions have resulted in elevated ambient CO concentrations well above the 8-hour standard of 9 ppm. Specifically, a Fairbanks monitor recorded average 8-hour ambient concentrations at 16 ppm in 1988, around 9 ppm from 1990 to 1992, and then a steady increase in CO ambient concentrations at 12, 14 and 16 ppm during some extreme cases in 1993, 1994 and 1995, respectively.[12]

In addition, there are 6 areas that have not been classified as nonattainment where air quality monitoring indicated a need for CO control. For example, CO monitors in northern locations such as Des Moines, IA, and Weirton, WV/Steubenville, OH, registered levels above the level of the CO standards in 1998.

ii. Why are Controls Needed From the Nonroad Engines and Vehicles That Would Be Subject to this Rule to Protect Visibility?

(1) Visibility is Impaired by Fine PM and Precursor Emissions From Nonroad Engines and Vehicles That Would Be Subject to This Rule.

Visibility can be defined as the degree to which the atmosphere is transparent to visible light.[13] Visibility degradation is an easily noticeable effect of fine PM present in the atmosphere, and fine PM is the major cause of reduced visibility in parts of the United States, including many of our national parks and in places across the country where people live, work, and recreate. Fine particles with significant light-extinction efficiencies include organic matter, sulfates, nitrates, elemental carbon (soot), and soil.

Visibility is an important effect because it has direct significance to people's enjoyment of daily activities in all parts of the country. Individuals value good visibility for the well-being it provides them directly, both in where they live and work, and in places where they enjoy recreational opportunities. Visibility is highly valued in significant natural areas such as national parks and wilderness areas, because of the special emphasis given to protecting these lands now and for future generations.

To quantify changes in visibility, we compute a light-extinction coefficient, which shows the total fraction of light that is decreased per unit distance. Visibility can be described in terms of PM concentrations, visual range, light extinction or deciview.[14] In addition to limiting the distance that one can see, the scattering and absorption of light caused by air pollution can also degrade the color, clarity, and contrast of scenes.

Visibility effects are manifest in two main ways: as local impairment (for example, localized hazes and plumes) and as regional haze. In addition, visibility impairment has a time dimension in that it might relate to a short-term excursion or to longer periods (for example, worst 20 percent of days or annual average levels).

Local-scale visibility degradation is commonly seen as a plume resulting from the emissions of a specific source or small group of sources, or it is in the form of a localized haze such as an urban "brown cloud." Plumes are comprised of smoke, dust, or colored gas that obscure the sky or horizon relatively near sources. Impairment caused by a specific source or small group of sources has been generally termed as "reasonably attributable."

The second type of impairment, regional haze, results from pollutant emissions from a multitude of sources located across a broad geographic region. It impairs visibility in every direction over a large area, in some cases over multi-state regions. Regional haze masks objects on the horizon and reduces the contrast of nearby objects. The formation, extent, and intensity of regional haze is a function of meteorological and chemical processes, which sometimes cause fine particulate loadings to remain suspended in the atmosphere for several days and to be transported hundreds of kilometers from their sources.

On an annual average basis, the concentrations of non-anthropogenic fine PM are generally small when compared with concentrations of fine particles from anthropogenic sources. Anthropogenic contributions account for about one-third of the average extinction coefficient in the rural West and more than 80 percent in the rural East. Because of significant differences related to visibility conditions in the eastern and western U.S., we present information about visibility by region. Furthermore, it is important to note that even in those areas with relatively low

[11] Technical Memorandum to Docket A–2000–01 from Drew Kodjak, Attorney-Advisor, Office of Transportation and Air Quality, "Air Quality Information for Selected CO Nonattainment Areas," July 27, 2001, Docket Number A–2000–01, Document Number II–B–18.

[12] Air Quality Criteria for Carbon Monoxide, U.S. EPA, EPA 600/P–99/001F, June 2000, at 3–38, Figure 3–32 (Federal Bldg, AIRS Site 020900002). Air Docket A–2000–01, Document Number II–A–29. This document is also available at *http://www.epa.gov/ncea/coabstract.htm.*

[13] National Research Council, 1993. Protecting Visibility in National Parks and Wilderness Areas. National Academy of Sciences Committee on Haze in National Parks and Wilderness Areas. National Academy Press, Washington, DC. This document is available on the internet at *http://www.nap.edu/books/0309048443/html/.* See also U.S. EPA Air Quality Criteria Document for Particulate Matter (1996) and Review of the National Ambient Air Quality Standards for Particulate Matter: Policy Assessment of Scientific and Technical Information. These documents can be found in Docket A–99–06, Documents No. II–A–23 and IV–A–130–32.

[14] Visual range can be defined as the maximum distance at which one can identify a black object against the horizon sky. It is typically described in miles or kilometers. Light extinction is the sum of light scattering and absorption by particles and gases in the atmosphere. It is typically expressed in terms of inverse megameters (Mm-1), with larger values representing worse visibility. The deciview metric describes perceived visual changes in a linear fashion over its entire range, analogous to the decibel scale for sound. A deciview of 0 represents pristine conditions. Under many scenic conditions, a change of 1 deciview is considered perceptible by the average person.

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concentrations of anthropogenic fine particles, such as the Colorado plateau, small increases in anthropogenic fine particle concentrations can lead to significant decreases in visual range. This is one of the reasons Class I areas have been given special consideration under the Clean Air Act.

Nonroad engines that are subject to this final rule contribute to ambient fine PM levels in two ways. First, they contribute through direct emissions of fine PM. As shown in Table I.E–1, these engines emitted 14,600 tons of PM (over 2 percent of all mobile source PM) in 2000. Second, these engines contribute to indirect formation of PM through their emissions of gaseous precursors which are then transformed in the atmosphere into particles. For example, these engines emitted over 8 percent of the HC tons from mobile sources. Furthermore, recreational vehicles, such as snowmobiles and all-terrain vehicles emit high levels of organic carbon (as HC) on a per-engine basis. Some organic emissions are transformed into particles in the atmosphere and other volatile organics can condense if emitted in cold temperatures, as is the case for emissions from snowmobiles, for example. Organic carbon accounts for between 27 and 36 percent of ambient fine particle mass depending on the area of the country.

(A) Visibility Impairment Where People Live, Work and Recreate

The secondary PM NAAQS is designed to protect against adverse welfare effects such as visibility impairment. In 1997, the secondary PM NAAQS was set as equal to the primary (health-based) PM NAAQS (62 **Federal Register** No. 138, July 18, 1997). EPA concluded that PM can and does produce adverse effects on visibility in various locations, depending on PM concentrations and factors such as chemical composition and average relative humidity. In 1997, EPA demonstrated that visibility impairment is an important effect on public welfare and that visibility impairment is experienced throughout the U.S., in multi-state regions, urban areas, and remote Federal Class I areas.

In many cities having annual mean $PM_{2.5}$ concentrations exceeding 17 μg/m^3, improvements in annual average visibility resulting from the attainment of the annual $PM_{2.5}$ standard are expected to be perceptible to the general population (*e.g.*, to exceed 1 deciview). Based on annual mean monitored $PM_{2.5}$ data, many cities in the Northeast, Midwest, and Southeast as well as Los Angeles would be expected to experience perceptible improvements in visibility if the $PM_{2.5}$ annual standard were attained. For example, in Washington, DC, where the IMPROVE monitoring network shows annual mean $PM_{2.5}$ concentrations at about 19 μg/m^3 during the period of 1992 to 1995, approximate annual average visibility would be expected to improve from 21 km (29 deciview) to 27 km (27 deciview), a change of 2 deciviews. The $PM_{2.5}$ annual average in Washington, DC, was 18.9 μg/m^3 in 2000.

The updated monitored data and air quality modeling presented in the RSD confirm that the visibility situation identified during the NAAQS review in 1997 is still likely to exist. Thus, the determination in the NAAQS rulemaking about broad visibility impairment and related benefits from NAAQS compliance are still relevant. Levels above the fine PM NAAQS cause adverse welfare impacts, such as visibility impairment (both regional and localized impairment).

Furthermore, in setting the PM NAAQS, EPA acknowledged that levels of fine particles below the NAAQS may also contribute to unacceptable visibility impairment and regional haze problems in some areas, and Clean Air Act Section 169 provides additional authorities to remedy existing impairment and prevent future impairment in the 156 national parks, forests and wilderness areas labeled as Class I areas.

In making determinations about the level of protection afforded by the secondary PM NAAQS, EPA considered how the Section 169 regional haze program and the secondary NAAQS would function together. Regional strategies are expected to improve visibility in many urban and non-Class I areas as well. The following recommendation for the National Research Council, Protecting Visibility in National Parks and Wilderness Areas (1993), addresses this point:

Efforts to improve visibility in Class I areas also would benefit visibility outside these areas. Because most visibility impairment is regional in scale, the same haze that degrades visibility within or looking out from a national park also degrade visibility outside it.

The 1999–2000 $PM_{2.5}$ monitored values, which cover about a third of the nation's counties, indicate that at least 82 million people live in areas where long-term ambient fine particulate matter levels are at or above 15 μg/m^3.[15] Thus, these populations (plus those who travel to those areas) could be experiencing visibility impairment that is unacceptable, and emissions of PM and its precursors from engines in these categories contribute to this unacceptable impairment.[16]

Because the chemical composition of the PM affects visibility impairment, we used EPA's Regulatory Model System for Aerosols and Deposition (REMSAD)[17] model to project visibility conditions in 2030 accounting for the chemical composition of the particles and to estimate visibility impairment directly as changes in deciview. Our projections included anticipated emissions from the engines subject to this rule, and although our emission predictions reflected our best estimates of emissions projections at the time the modeling was conducted, we now have new estimates, as discussed in the RSD Chapter 1. Based on public comment for this rule and new information, we have revised our emissions estimates in some categories downwards and other categories upwards; however, on net, we believe the modeling underestimates the PM air quality levels that would have been predicted if new inventories were used.

The most reliable information about the future visibility levels would be in areas for which monitoring data are available to evaluate model performance for a base year (*e.g.*, 1996). Accordingly, we predicted that in 2030, 49 percent of the population will be living in areas where fine PM levels are above 15 μg/m^3 and monitors are available.[18] This can be compared with the 1996 level of 37 percent of the population living in areas where fine PM levels are above 15 μg/m^3 and monitors are available. Thus, a substantial percent of the population would experience unacceptable visibility impairment in areas where they live, work and recreate.

As shown in Table I.E–5, in 2030, we expect visibility in the East to be about 19 deciviews (or visual range of 60 kilometers) on average, with poorer visibility in urban areas, compared to the visibility conditions without man-made pollution of 9.5 deciviews (or visual range of 150 kilometers). Likewise, we expect visibility in the West to be about 9.5 deciviews (or visual range of 150 kilometers) in 2030, compared to the visibility conditions without man-made pollution of 5.3 deciviews (or visual range of 230 kilometers).

Nonroad engines contribute significantly to these effects. As shown in Tables I.E–1 through I.E–3, nonroad engines emissions contribute a large portion of the total PM emissions from mobile sources and anthropogenic sources, in general. These emissions occur in and around areas with PM levels above the annual $PM_{2.5}$ NAAQS. The engines subject to the final rule will contribute to these effects. They are estimated to emit 36,500 tons of direct PM in 2030, which is 1.1 percent of the total anthropogenic PM emissions in 2030. Similarly, for PM precursors, the engines subject to this rule will emit 640,000 tons of NO_X and 1,411,000 tons HC in 2030, which are 3.8 and 8.3 percent of the total anthropogenic NO_X and HC emissions, respectively, in 2030. Recreational vehicles in particular contribute to these levels. In Table I.E–1 through I.E–3, we show that recreational vehicles emitted about 1.7 percent of mobile source PM emissions in 2000. Similarly, recreational vehicles are modeled to emit over 4 percent of mobile source PM in 2020 and 2030. Thus, the emissions from these sources contribute to the visibility impairment modeled for 2030 summarized in the table.

Furthermore, for 20 counties across nine states, snowmobile trails are found within or near counties that registered ambient $PM_{2.5}$ concentrations at or above 15 μg/m^3, the level of the $PM_{2.5}$ NAAQS.[19] Fine particles may remain suspended for days or weeks and travel hundreds to thousands of kilometers, and thus fine particles emitted or created in one county may contribute to ambient concentrations in a neighboring county.[20, 21]

TABLE I.E–5—SUMMARY OF 2030 NATIONAL VISIBILITY CONDITIONS BASED ON REMSAD MODELING

[Deciviews]

Regions[a]	Predicted 2030 visibility[b] (annual average)	Natural background visibility
Eastern		
U.S.	18.98	9.5
Urban	20.48	
Rural ..	18.38	
Western		
U.S.	9.54	5.3
Urban	10.21	
Rural ..	9.39	

[a] Eastern and Western Regions are separated by 100 degrees north longitude. Background visibility conditions differ by region.

[b] The results incorporate earlier emissions estimates from the engines subject to this rule, as discussed in the Final Regulatory Support Document. We have revised our estimates both upwards for some categories and downwards for others based on public comment and updated information; however, we believe that the net results would underestimate future PM emissions.

(B) Visibility Impairment in Class I Areas

The Clean Air Act establishes special goals for improving visibility in many national parks, wilderness areas, and international parks. In the 1977 amendments to the Clean Air Act, Congress set as a national goal for visibility the "prevention of any future, and the remedying of any existing, impairment of visibility in mandatory class I Federal areas which impairment results from manmade air pollution" (CAA section 169A(a)(1)). The Amendments called for EPA to issue regulations requiring States to develop implementation plans that assure "reasonable progress" toward meeting the national goal (CAA Section 169A(a)(4)). EPA issued regulations in 1980 to address visibility problems that are "reasonably attributable" to a single source or small group of sources, but deferred action on regulations related to regional haze, a type of visibility impairment that is caused by the emission of air pollutants by numerous emission sources located across a broad geographic region. At that time, EPA acknowledged that the regulations were only the first phase for addressing visibility impairment. Regulations dealing with regional haze were deferred until improved techniques were developed for monitoring, for air quality modeling, and for understanding the specific pollutants contributing to regional haze.

In the 1990 Clean Air Act amendments, Congress provided additional emphasis on regional haze issues (see CAA section 169B). In 1999 EPA finalized a rule that calls for States to establish goals and emission reduction strategies for improving visibility in all 156 mandatory Class I national parks and wilderness areas. In this rule, EPA established a "natural visibility" goal. In that rule, EPA also encouraged the States to work together in developing and implementing their air quality plans. The regional haze program is focused on long-term emissions decreases from the entire regional emissions inventory comprised of major and minor stationary sources, area sources and mobile sources. The regional haze program is designed to improve visibility and air quality in our most treasured natural areas from these broad sources. At the same time, control strategies designed to improve visibility in the national parks and wilderness areas will improve visibility over broad geographic areas. In the 1997 PM NAAQS rulemaking, EPA also anticipated the need in addition to the NAAQS and Section 169 regional haze program to continue to address localized impairment that may relate to unique circumstances in some Western areas. For mobile sources, there is a need for a Federal role in reduction of those emissions, particularly because mobile source vehicles are regulated primarily at the federal level.

Visibility impairment is caused by pollutants (mostly fine particles and precursor gases) directly emitted to the atmosphere by several activities (such as electric power generation, various industry and manufacturing processes, truck and auto emissions, construction activities, etc.). These gases and particles scatter and absorb light, removing it from the sight path and creating a hazy condition. Visibility impairment is caused by both regional haze and localized impairment. As described above, regional haze is caused

[15] Memorandum to Docket A–99–06 from Eric O. Ginsburg, Senior Program Advisor, "Summary of 1999 Ambient Concentrations of Fine Particulate Matter," November 15, 2000. Air Docket A–2000–01, Document No. II–B–12.

[16] These populations would obviously also be exposed to PM concentrations associated with the adverse health impacts related to $PM_{2.5}$.

[17] Additional information about the Regulatory Model System for Aerosols and Deposition (REMSAD) and our modeling protocols can be found in our Regulatory Impact Analysis: Heavy-Duty Engine and Vehicle Standards and Highway Diesel Fuel Sulfur Control Requirements, document EPA420–R–00–026, December 2000. Docket No. A–2000–01, Document No. A–II–13. This document is also available at *http://www.epa.gov/otaq/disel.htm#documents*.

[18] Technical Memorandum, EPA Air Docket A–99–06, Eric O. Ginsburg, Senior Program Advisor, Emissions Monitoring and Analysis Division, OAQPS, Summary of Absolute Modeled and Model-Adjusted Estimates of Fine Particulate Matter for Selected Years, December 6, 2000, Table P–2. Docket Number 2000–01, Document Number II–B–14.

[19] Memo to file from Terence Fitz-Simons, OAQPS, Scott Mathias, OAQPS, Mike Rizzo, Region 5, "Analyses of 1999 PM Data for the PM NAAQS Review," November 17, 2000, with attachment B, 1999 $PM_{2.5}$ Annual Mean and 98th Percentile 24-Hour Average Concentrations. Docket No. A–2000–01, Document No. II–B–17.

[20] This information also shows that snowmobiles contribute to concentrations of fine PM that are above the primary health-related NAAQS, which indicates that emissions from snowmobiles also contribute to primary and secondary PM pollution that may reasonably be anticipated to endanger public health and welfare.

[21] Review of the National Ambient Air Quality Standards for Particulate Matter: Policy Assessment for Scientific and Technical Information, OAQPS Staff Paper, EPA–452\R–96–013, July, 1996, at IV–7. This document is available from Docket A–99–06, Document II–A–23.

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by the emission from numerous sources located over a wide geographic area.[22]

Because of evidence that fine particles are frequently transported hundreds of miles, all 50 states, including those that do not have Class I areas, participate in planning, analysis, and, in many cases, emission control programs under the regional haze regulations. Even though a given State may not have any Class I areas, pollution that occurs in that State may contribute to impairment in Class I areas elsewhere. The rule encourages states to work together to determine whether or how much emissions from sources in a given state affect visibility in a downwind Class I area.

The regional haze program calls for states to establish goals for improving visibility in national parks and wilderness areas to improve visibility on the haziest 20 percent of days and to ensure that no degradation occurs on the clearest 20 percent of days (64 FR 35722. July 1, 1999). The rule requires states to develop long-term strategies including enforceable measures designed to meet reasonable progress goals toward natural visibility conditions. Under the regional haze program, States can take credit for improvements in air quality achieved as a result of other Clean Air Act programs, including national mobile source programs.[23]

In the PM air quality modeling described above, we also modeled visibility conditions in the Class I areas, and we summarize the results by region in Table I.E–6.

TABLE I.E–6—SUMMARY OF 2030 VISIBILITY CONDITIONS IN CLASS I AREAS BASED ON REMSAD MODELING

[Annual Average Deciview]

Region[a]	Predicted 2030 visibility[b]	Natural background visibility
Eastern	.....	9.5
Southeast	25.02	.....
Northeast/Midwest	21.00	.....
Western	.....	5.3
Southwest	8.69	.....
California	11.61	.....
Rocky Mountain	12.30	.....
Northwest	15.44	.....
National Class I Area Average	14.04	.....

[a] Regions are depicted in Figure VI–5 in the Regulatory Support Document for the highway Heavy Duty Engine/Diesel Fuel RIA (EPA 420–R–00–026, December 2000.) Background visibility conditions differ by region: Eastern natural background is 9.5 deciviews (or visual range of 150 kilometers) and in the West natural background is 5.3 deciviews (or visual range of 230 kilometers).

[b] The results incorporate earlier emissions estimates from the engines subject to this rule, as discussed in the Final Regulatory Support Document. We have revised our estimates both upwards for some categories and downwards for others based on public comment and updated information; however, we believe that the net results underestimate future PM emissions.

Nonroad engines represent a sizeable portion of the total inventory of anthropogenic emissions related to PM2.5, as shown in the tables above. Numerous types of nonroad engines may operate near Class I areas (*e.g.*, mining equipment, recreational vehicles, and agricultural equipment). We have reviewed contributions from snowmobile in particular.

Emissions from nonroad engines, in particular snowmobiles, contribute significantly to visibility impairment in Class I areas.[24] Visibility and PM monitoring data are available for eight Class I areas where snowmobiles are commonly used. These are: Acadia, Boundary Waters, Denali, Mount Rainier, Rocky Mountain, Sequoia and Kings Canyon, Voyageurs, and Yellowstone.[25] Fine particle monitoring data for these parks are set out in Table I.E–7. This table shows the number of monitored days in the winter that fell within the 20-percent worst visibility days for each of these eight parks. Monitors collect data 2 days a week for a total of about 104 days of monitored values. Thus, for a particular site, a maximum of 21 worst possible days of these 104 days with monitored values constitute the set of 20-percent worst visibility days during a year which are tracked as the primary focus of regulatory efforts.[26] With the exception of Denali in Alaska, we defined the snowmobile season as January 1 through March 15 and December 15 through December 31 of the same calendar year, consistent with the methodology used in the Regional Haze Rule, which is calendar-year based. For Denali in Alaska, the snowmobile season is October 1 to April 30.

[22] U.S. EPA Review of the National Ambient Air Quality Standards for Particulate Matter: Policy Assessment of Scientific and Technical Information OAQPS Staff Paper. EPA–452/R–96–013. 1996. Docket Number A–99–06, Documents Nos. II–A–18, 19, 20, and 23. The particulate matter air quality criteria documents are also available at *http://www.epa.gov/ncea/partmatt.htm.*

[23] In a recent case, *American Corn Growers Association* v. *EPA*, 291 F. 3d 1 (D.C. Cir 2002), the court vacated the BART provisions of the Regional Haze rule, but the court denied industry's challenge to EPA's requirement that state's SIPs provide for reasonable progress towards achieving natural visibility conditions in national parks and wilderness areas and the "no degradation" requirement. Industry did not challenge requirements to improve visibility on the haziest 20 percent of days. A copy of this decision can be found in Docket A–2000–01, Document IV–A–113.

[24] The results incorporate earlier emissions estimates from the engines subject to this rule, as discussed in the Final Regulatory Support Document. We have revised our estimates both upwards for some categories and downwards for others based on public comment and updated information; however, we believe that the net results would underestimate future PM emissions.

[25] No data were available at five additional parks where snowmobiles are also commonly used: Black Canyon of the Gunnison, CO, Grand Teton, WY, Northern Cascades, WA, Theodore Roosevelt, ND, and Zion, UT.

[26] Letter from Debra C. Miller, Data Analyst, National Park Service, to Drew Kodjak, August 22, 2001. Docket No. A–2000–01, Document Number II–B–28.

TABLE I.E–7—WINTER DAYS THAT FALL WITHIN THE 20 PERCENT WORST VISIBILITY DAYS AT NATIONAL PARKS USED BY SNOWMOBILES

NPS unit	States	Number of sampled wintertime days within 20 percent worst visibility days (maximum of 21 out of 104 monitored days)			
		1996	1997	1998	1999
Acadia NP	ME	4	4	2	1
Denali NP and Preserve	AK	10	10	12	9
Mount Rainier NP	WA	1	3	1	1
Rocky Mountain NP	CO	2	1	2	1
Sequoia and Kings Canyon NP	CA	4	9	1	8
Voyageurs NP (1989–1992)	MN	1989	1990	1991	1992
		3	4	6	8
—Boundary Waters USFS Wilderness Area (close to Voyaguers with recent data).	MN	2	5	1	5
Yellowstone NP	ID, MT, WY	0	2	0	0

Source: Letter from Debra C. Miller, Data Analyst, National Park Service, to Drew Kodjak, August 22, 2001. Docket No. A–2000–01, Document Number II–B–28.

According to the National Park Service, "[s]ignificant differences in haziness occur at all eight sites between the averages of the clearest and haziest days. Differences in mean standard visual range on the clearest and haziest days fall in the approximate range of 115–170 km."[27] We examined future air quality predictions to whether the emissions from recreational vehicles, such as snowmobiles, contribute to regional visibility impairment in Class I areas. We present results from the future air quality modeling described above for these Class I areas in addition to inventory and air quality measurements. Specifically, in Table I.E–8, we summarize the expected future visibility conditions in these areas without these regulations.

TABLE I.E–8—ESTIMATED 2030 VISIBILITY IN SELECTED CLASS I AREAS[a,b]

Class I area	County	State	Predicted 2030 visibility (annual average deciview)	Natural background visibility (annual average deciview)
Eastern areas	.....	.....	.....	9.5
Acadia	Hancock Co	ME	23.42	.....
Boundary Waters	St. Louis Co	MN	22.07	.....
Voyageurs	St. Louis Co	MN	22.07	.....
Western areas	.....	.....	.....	5.3
Grand Teton NP	Teton Co	WY	11.97	.....
Kings Canyon	Fresno Co	CA	10.39	.....
Mount Rainier	Lewis Co	WA	16.19	.....
Rocky Mountain	Larimer Co	CO	8.11	.....
Sequoia-Kings	Tulare Co	CA	9.36	.....
Yellowstone	Teton Co	WY	11.97	.....

[a] Natural background visibility conditions differ by region because of differences in factors such as relative humidity: Eastern natural background is 9.5 deciviews (or visual range of 150 kilometers) and in the West natural background is 5.3 deciviews (or visual range of 230 kilometers).

[b] The results incorporate earlier emissions estimates from the engines subject to this rule. We have revised our estimates both upwards for some categories and downwards for others based on public comment and updated information; however, on net, we believe that HD07 analyses would underestimate future PM emissions from these categories.

The information presented in Table I.E–7 shows that visibility data support a conclusion that there are at least 8 Class I Areas (7 national parks and one wilderness area) frequented by snowmobiles with one or more wintertime days within the 20-percent worst visibility days of the year, and in many cases several days. For example, Rocky Mountain National Park in Colorado was frequented by about 27,000 snowmobiles during the 1998–1999 winter. Of the monitored days characterized as within the 20-percent worst visibility monitored days, 2 of those days occurred during the wintertime when snowmobile emissions such as hydrocarbons contributed to visibility impairment.

The information in Table I.E–8 shows that these areas also are predicted to have high annual average deciview levels in the future. Emissions from snowmobiles and other recreational vehicles, as well as other nonroad engines contributed to these levels.[28]

[27] Letter from Debra C. Miller, Data Analyst, National Park Service, to Drew Kodjak, August 22, 2001. Docket No. A–2000–01, Document Number II–B–28.

[28] See Chapter 1 in the RSD for a discussion or U.S. EPA Technical Support Document for Heavy-duty Engine and Vehicle Standards and Highway Diesel Fuel Sulfur ControFRequirements—Air Quality Modeling Analyses December 2000. Docket No. A–2000–01, Docket Number IV–A–218. This document is also avaiable at *www.epa.gov/otaq/hdmodels.htm.*

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Ambient concentrations of fine particles are the primary pollutant responsible for visibility impairment. The classes of fine particles principally responsible for visibility impairment are sulfates, nitrates, organic carbon particles, elemental carbon, and crustal material. Hydrocarbon emissions from automobiles, trucks, snowmobiles, and other industrial processes are common sources of organic carbon. The organic carbon fraction of fine particles ranges from 47 percent in Western areas such as Denali National Park, to 28 percent in Rocky Mountain National Park, to 13 percent in Acadia National Park.[29]

In the winter months, HC emissions from snowmobiles can be significant, and these HC emissions can be more than half of the organic carbon fraction of fine particles which are largely responsible for visibility impairment. In Yellowstone, a park with high snowmobile usage during the winter months, snowmobile HC emissions can exceed 500 tons per year, as much as several large stationary sources.[30] Other parks with less snowmobile traffic are also impacted although to a lesser extent by these HC emissions.[31]

Table I.E–9 shows estimated tons of four pollutants during the winter season in five Class I national parks for which we have estimates of snowmobile use. The national park areas outside of Denali in Alaska are open to snowmobile operation in accordance with special regulations (36 CFR part 7). Denali National Park permits snowmobile operation by local rural residents engaged in subsistence uses (36 CFR part 13).

TABLE I.E–9.—WINTER SEASON SNOWMOBILE EMISSIONS

[tons; 1999 Winter Season]

NPS unit	HC	CO	NO_X	PM
Denali NP & Preserve	>9.8	>26.1	>0.08	>0.24
Grand Teton NP	13.7	36.6	0.1	0.3
Rocky Mountain NP	106.7	284.7	0.8	2.6
Voyageurs NP	138.5	369.4	1.1	3.4
Yellowstone NP	492	1311.9	3.8	12

Source: Letter from Aaron J. Worstell, Environmental Engineer, National Park Service, Air Resources Division, to Drew Kodjak, August 21, 2001, particularly Table 1. Docket No. A–2000–01, Document No. II–G–178.

Inventory analysis performed by the National Park Service for Yellowstone National Park suggests that snowmobile emissions are a significant source of total annual mobile source emissions for the park year round. The proportion of snowmobile emissions to emissions from other sources affecting air quality in these parks is likely to be similar to that in Yellowstone.

Furthermore, public comments from an industry-initiated study contained modeling showing a 4 to 8 percent contribution to perceptible impairment from snowmobile exhaust in Yellowstone National Park. Although we believe the modeling technique may not be fully appropriate, the study still indicates a significant contribution from snowmobiles. EPA conducted independent modeling using a more appropriate visibility model, and we confirmed that snowmobiles would be creating perceptible plumes at all park entrances, impairing visibility. This evidence shows that snowmobiles contribute significantly to visibility impairment in several Class I areas.

[29] Letter from Debra C. Miller, Data Analyst, National Park Service, to Drew Kodjak, August 22, 2001. Docket No. A–2000–01. Document Number II–B–28.

[30] Emissions of NO_X from snowmobiles contribute to the total amount of particulate nitrate, although the total NO_X emissions from snowmobiles are considerably less than HC or direct PM emissions from these engines.

[31] Technical Memorandum, Aaron Worstell, Environmental Engineer, National Park Service, Air Resources Division, Denver, Colorado, particularly Table 1. Docket No. A–2000–01, Document Number II–G–178.

(C) Regulation of HC Is a Good Proxy for Regulation of Fine PM Emissions From Current Snowmobile Engines

We believe the best way to regulate the contribution to ambient concentrations of fine PM from current snowmobile engines is to set standards to control HC emissions. The current fleet of snowmobiles consists almost exclusively of two-stroke engines. Two-stroke engines inject lubricating oil into the air intake system where it is combusted with the air and fuel mixture in the combustion chamber. This is done to provide lubrication to the piston and crankshaft, since the crankcase is used as part of the fuel delivery system and cannot be used as a sump for oil storage as in four-stroke engines. As a result, in addition to products of incomplete combustion, two-stroke engines also emit a mixture of uncombusted fuel and lubricant oil. HC-related emissions from snowmobiles increase PM concentrations in two ways. Snowmobile engines emit HC directly as particles (such as droplets of lubricant oil). Snowmobile engines also emit HC gases, as well as raw unburned HC from the fuel which either condenses in cold temperatures to particles or reacts chemically to transform into particles as it moves in the atmosphere. As discussed above, fine particles can cause a variety of adverse health and welfare effects, including visibility impairment.

We believe measurements of HC emissions will serve as a reasonable surrogate for measurement of fine particles for snowmobiles for several reasons. First, emissions of PM and HC from these engines are related. Test data show that over 70 percent of the average volatile organic fraction of PM from a typical two-stroke snowmobile engine is organic hydrocarbons, largely from lubricating oil components.[32] The HC measurements (which use a 191° C heated flame-ionization detector (FID)) would capture the volatile component, which in ambient temperatures would be particles (as droplets).

Second, many of the technologies that will be employed to reduce HC emissions are expected to reduce PM (four-stroke engines, pulse air, and direct fuel injection techniques for example). The organic emissions are a mixture of fuel and oil, and reductions in the organic emissions will likely yield both HC and PM reductions. HC measurements would capture the reduction from both the gas and particle (at ambient temperature) phases. For example, the HC emission factor for a typical two-stroke snowmobile is 111 g/hp-hr. The HC emission factor for a direct fuel injection engine is 21.8, and for a four-stroke is 7.8 g/hp-hr, representing a 80-percent and 99-percent reduction, respectively. Similarly, the PM emission factor for a typical two-stroke snowmobile is 2.7 g/hp-hr. The corresponding PM emission factor for a direct fuel injection engine is 0.57, and for a four-stroke is 0.15 g/hp-hr, representing a 75 percent and 93 percent reduction, respectively.

[32] Memo to Docket, Mike Samulski. "Hydrocarbon Measurements as an Indicator for Particulate Matter Emissions in Snowmobiles," with attachments. September 6, 2002, Docket A–2000–01; Document No. IV–B–42.

Thus, manufacturers will generally reduce PM emissions as a result of reducing HC emissions, making separate PM standards less necessary. Moreover, PM standards would cover only the PM directly emitted at the tailpipe. It would not measure the gaseous or semi-volatile organic emissions which would condense or be converted into PM in the atmosphere. The HC measurements would also include the gaseous HC which would condense or be converted into PM in the atmosphere. Consequently, the HC measurement would be a more comprehensive measurement. Also, HC standards actually will reduce secondary PM emissions that would not necessarily be reduced by PM standards.

Finally, from an implementation point of view, PM is not routinely measured in snowmobiles. There is no currently established protocol for measuring PM and substantial technical issues would need to be overcome to create a new method. Establishing additional PM test procedures would also entail additional costs for manufacturers. HC measurements are more routinely performed on these types of engines, and these measurements currently serve as a more reliable basis for setting a numeric standard. Thus, we believe that regulation of HC is the best way to reduce PM emissions and PM contributions from current snowmobile engines.

We included a NO_X standard for snowmobiles. This standard will essentially cap NO_X emissions from these engines to prevent backsliding. We are not promulgating standards that would require substantial reductions in NO_X because we believe that standards which force substantial NO_X reductions would likely not lead to reductions in PM and may in fact increase PM levels. NO_X emissions from snowmobiles are very small, particularly compared to levels of HC. In fact, technologies that reduce HC and CO are likely to increase levels of NO_X and vice versa, because technologies to reduce HC and CO emissions would result in leaner operation. A lean air and fuel mixture causes NO_X emissions to increase. These increases are minor, however, compared to the reductions of HC (and therefore PM) that result from these techniques.

On the other hand, substantial control of NO_X emissions may have the counter-effect of increasing HC emissions and the greater PM emissions associated with those HC emissions. The only way to reduce NO_X emissions from four-stroke engines (at the same time as reducing HC and CO levels) would be to use a three-way catalytic converter. We do not have enough information at this time on the durability or safety implications of using a three-way catalyst with a four-stroke engine in snowmobile applications. Three-way catalyst technology is well beyond the technology reviewed for this rule and would need substantial additional review before being contemplated for snowmobiles. Thus, given the overwhelming level of HC compared to NO_X, and the secondary PM expected to result from these levels, it would be premature and possibly counterproductive to promulgate NO_X standards that require significant NO_X reductions from snowmobiles at this time. We have therefore decided to structure our long term HC+NO_X standard for 2012 and later model year snowmobiles to require only a cap on NO_X emissions from the advanced technology engines which will be the dominant technology in the new snowmobiles certified at that time.

II. Nonroad: General Provisions

This section describes general provisions concerning the emission standards adopted in this final rule and the ways in which a manufacturer shows compliance with these standards. Clean Air Act section 213(a)(3) requires us to set standards that achieve the greatest degree of emission reduction achievable through the application of technology that will be available, giving appropriate consideration to cost, noise, energy, and safety factors. Section 202(a)(4) provides further authority to adopt standards for pollution beyond that regulated under section 202(a)(3). In addition to emission standards, this document describes a variety of other provisions necessary for implementing the proposed emission-control program in an effective way, such as applying for certification, labeling engines, and meeting warranty requirements.

The discussions in this section are general and are meant to cover all the nonroad engines and vehicles subject to the new standards. In this Section II, the term engine is sometimes used to include both nonroad engines and nonroad vehicles. Refer to the discussions of specific programs, contained in Sections III through VI, to determine whether the regulations are being applied to the entire vehicle or just the engine, as well as for more information about specific requirements for different categories of nonroad engines and vehicles.

This section describes general nonroad provisions related to certification prior to sale or introduction into commerce. Section VII describes several compliance provisions that apply generally to nonroad engines, and Section VIII similarly describes general testing provisions.

A. Scope of Application

This final rule covers recreational marine diesel engines, nonroad spark-ignition engines rated over 19 kW, and recreational spark-ignition vehicles introduced into commerce in the United States. The following sections describe generally when emission standards apply to these products. These provisions are generally consistent with prior nonroad and motor-vehicle rulemakings. Refer to the specific program discussion below for more information about the scope of application and timing of new standards.

1. What Engines and Vehicles Are Subject to the Standards?

The scope of this rule is broadly set by Clean Air Act section 213(a), which instructs us to set emission standards for new nonroad engines and new nonroad vehicles. Generally speaking, this rule is intended to cover all new engines and vehicles in the categories listed above (including any associated equipment or vessels) for their entire useful lives, as defined in the regulations.[33] Once the emission standards apply to a group of engines or vehicles, manufacturers of a new engine must have an approved certificate of conformity from us before selling them in the United States.[34] This also applies to importation by any person and any other means of introducing new engines and vehicles into commerce. We also require equipment manufacturers that install engines from other companies to install only certified engines into new equipment once emission standards

[33] For recreational vehicles, we are adopting vehicle-based standards. For these applications, the term "engine" in this document applies equally to the vehicles.

[34] The term "manufacturer" includes any individual or company that manufactures any new engine for sale or otherwise introduces a new engine into commerce in the United States. It also includes importers for resale.

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apply. The information we require of manufacturers applying for certification (with the corresponding engine labels) provides assurance that manufacturers have met their obligation to make engines that meet emission standards over the useful life we specify in the regulations.

2. How Do I Know if My Engine or Equipment Is New?

We are defining "new" consistent with previous rulemakings. We will consider a nonroad engine (or nonroad equipment) to be new until its title has been transferred to the ultimate purchaser or the engine has been placed into service. This definition applies to both engines and equipment, so the nonroad equipment using these engines, including all-terrain vehicles, snowmobiles, off-highway motorcycles, and other land-based nonroad equipment will be considered new until their title has been transferred to an ultimate buyer. In Section II.B.1 we describe how to determine the model year of individual engines and vehicles.

To further clarify the definition of new nonroad engine, we specify that a nonroad engine, vehicle, or equipment is placed into service when it is used for its intended purpose. An engine subject to emission standards is used for its functional purpose when it is installed in an all-terrain vehicle, snowmobile, off-highway motorcycle, marine vessel, or other piece of nonroad equipment. We need to make this clarification because some engines are made by modifying a highway or land-based nonroad engine that has already been installed on a vehicle or other piece of equipment. For example, someone can install an engine in a recreational marine vessel after it has been used for its functional purpose as a land-based highway or nonroad engine. We believe our approach is reasonable because the practice of adapting used highway or land-based nonroad engines may become more common if these engines are not subject to emission standards.

In summary, an engine may be subject to emission standards if it is:

- Freshly manufactured, whether domestic or imported; this may include engines produced from engine block cores
- Installed for the first time in nonroad equipment after having powered an automobile or a category of nonroad equipment subject to different emission standards
- Installed in new nonroad equipment, regardless of the age of the engine
- Imported (freshly manufactured or used) and was originally manufactured after the effective date of our standards

3. When Do Imported Engines Need To Meet Emission Standards?

The emission standards apply to all new engines sold in the United States. Consistent with Clean Air Act section 216, engines that are imported by any person, whether freshly manufactured or used are considered "new" engines.[35] Thus, we include engines that are imported for use in the United States, whether they are imported as loose engines or if they are already installed on a marine vessel, recreational vehicle, or other piece of nonroad equipment, built elsewhere. All imported engines manufactured after our standards begin to apply need an EPA-issued certificate of conformity to clear customs, with limited exemptions (as described below).

An engine or marine vessel, recreational vehicle, or other piece of nonroad equipment that was built after emission standards take effect cannot be imported without a currently valid certificate of conformity. We would consider it to be a new engine, vehicle, or vessel, which would trigger a requirement to comply with the applicable emission standards. Thus, for example, a marine vessel manufactured in a foreign country in 2007, then imported into the United States in 2010, would be considered "new." The engines on that vessel would have to comply with the requirements for the 2007 model year, assuming no other exemptions apply. This provision is important to prevent manufacturers from avoiding emission standards by building vessels or vehicles abroad, transferring their title, and then importing them as used vessels or vehicles.

Imported engines are generally subject to emission standards. However, we are not adopting a definition of "import" in this regulation. We will defer to the U.S. Customs Service for determinations of when an engine or vehicle is imported into the U.S.

4. Do the Standards Apply to Exported Engines or Vehicles?

Engines or vehicles intended for export are generally not required to meet the emission standards or other requirements adopted in this rule. However, engines that will be exported and subsequently re-imported into the United States must be covered by a certificate of conformity. For example, this would occur when a foreign company purchases engines manufactured in the United States for installation on a marine vessel, recreational vehicle, or other nonroad equipment for export back to the United States. Those engines would be subject to the emission standards that apply on the date the engine was originally manufactured. If the engine is later modified and certified (or recertified), the engine is subject to emission standards that apply on the date the modification is complete. So, for example, foreign boat builders buying U.S.-made engines without recertifying the engines will need to make sure they purchase complying engines for the products they sell in the U.S. We also do not exempt engines exported to countries that share our emission standards.

5. Are Any New Engines or Vehicles in the Applicable Categories Not Subject to Emission Standards of This Rule?

We are extending our basic nonroad exemptions to the engines and vehicles covered by this rulemaking. These include the testing exemption, the manufacturer-owned exemption, the display exemption, and the national-security exemption. These exemptions are described in more detail in Section VII.C.

In addition, the Clean Air Act does not consider stationary engines or engines used solely for competition to be nonroad engines, so the emission standards do not apply to them. Refer to the program discussions below for a description of how these exclusions or exemptions apply for different categories of engines.

B. Emission Standards and Testing

1. Which Pollutants Are Covered by Emission Standards?

Engines subject to the exhaust emission standards must meet standards based on measured levels of specified pollutants, such as NO_x, HC, or CO, though not all engines have standards for each pollutant. Diesel engines generally must also meet a PM emission standard. In addition, there may be standards or other requirements for crankcase, evaporative, or permeation emissions, as described below.

The emission standards are effective on a model-year basis. We define model year much like we do for passenger cars. It generally means either the calendar year or some other annual production period based on the manufacturer's production practices. A model year may include January 1 from only one year.

[35] The definition in Clean Air Act section 216 applies specifically to "new motor vehicles," but we have interpreted "new nonroad engine" consistently with the definition in section 216.

For example, manufacturers could start selling 2006 model year engines as early as January 2, 2005, as long as the production period extends until at least January 1, 2006. All of a manufacturer's engines from a given model year must meet emission standards for that model year. For example, manufacturers producing new engines in the 2006 model year need to comply with the 2006 standards. The model year of a particular engine is determined based on the date that the engine is fully assembled. In the case of recreational vehicles, this generally applies to the final assembly of the whole vehicle, since the emission standards apply to the vehicle. Refer to the individual program discussions below or the regulations for additional information about model year periods, including how to define what model year means in less common scenarios, such as installing used engines in new equipment.

2. What Standards Apply to Crankcase, Evaporative, Permeation, and Other Emissions?

Blow-by of combustion gases and the reciprocating action of the piston can cause exhaust emissions to accumulate in the crankcase of four-stroke engines. Uncontrolled engine designs route these vapors directly to the atmosphere, where they contribute to ambient levels of hydrocarbons. We have long required that automotive engines prevent emissions from their crankcases. Manufacturers typically do this by routing crankcase vapors through a valve into the engine's air intake system. We generally require in this rulemaking that engines control crankcase emissions.

Vehicles with spark-ignition engines use fuel that is volatile and the unburned fuel can be released into the ambient air. We are adopting standards to limit evaporative emissions from the fuel. Evaporative emissions result from heating gasoline or other volatile fuels in a tank that is vented to the atmosphere or from permeation through plastic fuel tanks and rubber hoses. Section IV describes the permeation standards for recreational vehicles. Section V provides additional information on the evaporative emission standards for Large SI engines.

We are also adopting a general requirement that all engines subject to this final rule may not cause or contribute to an unreasonable risk to public health, welfare, or safety, especially with respect to noxious or toxic emissions that may increase as a result of emission-control technologies. The regulatory language has been modified consistent with the alternate language suggested in the proposal. This alternate language implements sections 202(a)(4) and 206(a)(3) of the Act and clarifies that the purpose of this requirement is to prevent control technologies that would cause unreasonable risks, rather than to prevent trace emissions of any noxious compounds. For example, this requirement would prevent the use of emission-control technologies that produce high levels of pollutants for which we have not set emission standards, but nevertheless pose a risk to the public. However, it should be noted that this would generally not apply to exhaust gas recirculation systems on gasoline- or diesel-fueled engines.

3. What Duty Cycles Is EPA Adopting for Emission Testing?

Testing an engine for exhaust emissions typically consists of exercising it over a prescribed duty cycle of speeds and loads, typically using an engine or chassis dynamometer. The duty cycle used to measure emissions for certification, which is generally derived from typical operation from the field, is critical in evaluating the likely emissions performance of engines designed to emission standards. Testing for recreational marine diesel engines and Large SI engines may also include additional operation not included in the specific duty cycles.

Steady-state testing consists of engine operation for an extended period at several speed-load combinations. Associated with these test points are weighting factors that allow calculation of a single weighted-average steady-state emission level in g/kW. Transient testing involves a continuous trace of specified engine or vehicle operation; emissions are collected over the whole testing period for a single mass measurement.

See Section VIII.C for a discussion of how we define maximum test speed and intermediate speed for engine testing. Refer to the program discussions below for more information about the type of duty cycle required for testing the various engines and vehicles. Those sections also include information regarding testing provisions that do not rely on specific operating cycles (*i.e.*, field-testing, not-to exceed testing, and evaporative testing).

4. How Do Adjustable Engine Parameters Affect Emission Testing?

Many engines are designed with components that can be adjusted for optimum performance under changing conditions, such as varying fuel quality, high altitude, or engine wear. Examples of adjustable parameters include spark timing, idle-speed setting, and fuel-injection timing. While we recognize the need for this practice, we are also concerned that engines maintain an appropriate level of emission control for the whole range of adjustability. Manufacturers must therefore show that their engines meet emission standards over the full adjustment range. Manufacturers must also provide a physical stop to prevent adjustment outside the established range. Operators are then prohibited by the anti-tampering provisions from adjusting engines outside this range.

5. What Are Voluntary Low-Emission Engines and Blue Sky Standards?

Several state and environmental groups and manufacturers of emission controls have supported our efforts to develop incentive programs to encourage engine technologies that go beyond federal emission standards. Some companies have already significantly developed these technologies. In the final rule for land-based nonroad diesel engines, we included a program of voluntary standards for low-emitting engines, referring to these as "Blue Sky Series" engines (63 FR 56967, October 23, 1998). We included similar programs for commercial marine diesel engines. The general purposes of such programs are to provide incentives to manufacturers to produce clean products, as well as to create market choices and opportunities for environmental information for consumers regarding such products.

We are adopting voluntary Blue Sky Series standards for some of the engines subject to this final rule. Creating a program of voluntary standards for low-emitting engines, including testing and durability provisions to help ensure adequate in-use performance, will be a step forward in advancing emission-control technologies. While these are voluntary standards, they become binding once a manufacturer chooses to participate. EPA certification will therefore provide protection against false claims of environmentally beneficial products.

C. Demonstrating Compliance

We are adopting a compliance program to accompany the final emission standards. This consists first of a process for demonstrating that new engine models comply with the emission standards. In addition to new-engine testing, several provisions ensure that emission-control systems will continue to function over long-term

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operation in the field. Most of these certification provisions are consistent with previous rulemakings for other nonroad engines. Refer to the discussion of the specific programs below for additional information about these requirements for each engine category.

1. How Do I Certify My Engines?

We are adopting a certification process similar to that already established for other nonroad engines. Manufacturers generally test representative prototype engines and submit the emission data along with other information to EPA in an application for a Certificate of Conformity. If we approve the application, EPA issues a Certificate of Conformity which allows the manufacturer to produce and sell the engines described in the application in the U.S.

Manufacturers certify their engine models by grouping them into engine families that have similar emission characteristics. The engine family definition is fundamental to the certification process and to a large degree determines the amount of testing required for certification. The regulations include specific engine characteristics for grouping engine families for each category of engines. To address a manufacturer's unique product mix, we may approve using broader or narrower engine families.

Engine manufacturers are responsible to build engines that meet the emission standards over each engine's useful life. The useful life we adopt by regulation is intended to reflect the period during which engines are designed to properly function without being remanufactured or the average service life. Useful life values, which are expressed in terms of years or amount of operation (in hours or kilometers), vary by engine category, as described in the following sections. Consistent with other recent EPA programs, we generally consider this useful life value in amount of operation to be a minimum value, requiring manufacturers to comply for a longer period in those cases where their engines operate longer than the minimum useful life.

The emission-data engine is the engine from an engine family that will be used for certification testing. To ensure that all engines in the family meet the standards, manufacturers must select the engine most likely to exceed emission standards in a family for certification testing. In selecting this "worst-case" engine, the manufacturer uses good engineering judgment. Manufacturers consider, for example, all engine configurations and power ratings within the engine family and the range of installed options allowed. Requiring the worst-case engine to be tested helps the manufacturer be sure that all engines within the engine family are complying with emission standards. Manufacturers estimate the rate of deterioration for each engine family over its useful life and show that engines continue to meet standards after incorporating the estimated deterioration. We may also test the engines ourselves.

Manufacturers must include in their application for certification the results of emission tests showing that the engine family meets emission standards. In addition, we may ask the manufacturer to include any additional data from their emission-data engines, including any diagnostic-type measurements (such as ppm testing) and invalidated tests. This complete set of test data ensures that the valid tests forming the basis of the manufacturer's application are a robust indicator of emission-control performance, rather than a spurious or incidental test result.

We are adopting test-fuel specifications intended to represent in-use fuels. Engines must be able to meet the standards on fuels with properties anywhere in the specified ranges. The test fuel is generally to be used for all testing associated with the regulations, including certification, production-line testing, and in-use testing. Refer to the program discussions below related to test fuel specifications.

We require engine manufacturers to give engine buyers instructions for properly maintaining their engines. We are including limitations on the frequency of scheduled maintenance that a manufacturer may specify for emission-related components to help ensure that emission-control systems don't depend on an unreasonable expectation of maintenance in the field. These maintenance limits also apply during any service accumulation that a manufacturer may do to establish deterioration factors. This approach is common to all our engine programs. It is important to note, however, that these provisions don't limit the maintenance an operator may perform; it merely limits the maintenance that operators can be expected to perform on a regularly scheduled basis. Refer to the discussion of the specific programs below for additional information about the allowable maintenance intervals for each category of engines.

Once an engine family is certified, we require every engine a manufacturer produces from the engine family to have a label with basic identifying information. The design and content of engine labels is specified in the regulations.

2. What Warranty Requirements Apply to Certified Engines?

Consistent with our current emission-control programs, manufacturers must provide a design and defect warranty covering emission-related components for a minimum period specified in the regulations. This minimum period is generally half of the useful life period. The regulations also provide that the manufacturer's emission warranty period could be adjusted to a value higher than the minimum period for those cases where the manufacturer provides a longer mechanical warranty for the engine or any of its components; this includes extended warranties that are available for an extra price. Any such adjustment would be dependent on the average service life of the vehicle as well. The manufacturer generally does not need to include scheduled maintenance or other routine maintenance under the emission warranty. See the regulation language for a detailed description of the components that are considered to be emission-related.

If an operator makes a valid warranty claim for an emission-related component during the warranty period, the engine manufacturer is generally obligated to replace the component at no charge to the operator. The engine manufacturer may deny warranty claims, however, if the operator caused the component failure by misusing the engine or failing to do necessary maintenance.

We are also adopting a defect reporting requirement that applies separate from the emission-related warranty (see Section VII.F). In general, defect reporting applies when a manufacturer discovers a pattern of component failures, whether that information comes from warranty claims, voluntary investigation of product quality, or other sources.

3. Can I Use Emission Averaging To Show That I Meet Emission Standards?

Many of our mobile source emission-control programs include voluntary use of emission credits to facilitate implementation of emission controls. An emission-credit program is an important factor we take into consideration in setting emission standards that are appropriate under Clean Air Act section 213. An emission-credit program can improve the technological feasibility and reduce the cost of achieving standards, allowing us to consider a more stringent emission standard than might otherwise be appropriate, including a compliance date for the standards earlier than would otherwise be appropriate. Manufacturers gain flexibility in product planning and introduction of product lines meeting a new standard. Emission-credit programs also create an incentive for the early introduction of new technology, which allows certain engine families to act as trailblazers for new technology. This can help provide valuable information to manufacturers on the technology before they apply the technology throughout their product line. This early introduction of clean technology improves the feasibility of achieving the standards and can provide valuable information for use in other regulatory programs that may benefit from similar technologies.

Emission-credit programs may involve averaging, banking, or trading. Averaging allows a manufacturer to certify one or more engine families at emission levels above the applicable emission standards, as long as the increased emissions from that engine family are offset by one or more engine families certified below the applicable standards. The over-complying engine families generate credits that are used by the under-complying engine families. Compliance is determined taking into account differences in production volume, power and useful life among engine families. The average of all the engine families for a particular manufacturer's production must be at or below the level of the applicable emission standards. This calculation generally factors in sales-weighted average power, production volume, and useful life. Banking allows a manufacturer to generate emission credits and bank them for future use in its own averaging program in later years. Trading allows transfer of credits to another company.

In general, a manufacturer choosing to participate in an emission-credit program certifies each participating engine family to a Family Emission Limit. In its certification application, a manufacturer determines a separate Family Emission Limit for each pollutant included in the emission-credit program. The Family Emission Limit selected by the manufacturer becomes the emission standard for each engine in that engine family. Emission credits are based on the difference between the emission standard that applies to the family and the Family Emission Limit. Manufacturers must meet the Family Emission Limit for all emission testing of any engine in that family. At the end of the model year, manufacturers must show that the net effect of all their engine families participating in the emission-credit program is a zero balance or a net positive balance of credits. A manufacturer may generally choose to include only a single pollutant from an engine family in the emission-credit program or, alternatively, to establish a Family Emission Limit for each of the regulated pollutants. Refer to the program discussions below for more information about emission-credit provisions for individual engine categories.

4. What Are the Production-Line Testing Requirements?

We are adopting production-line testing requirements for recreational marine diesel engines, recreational vehicles, and Large SI engines. Manufacturers must routinely test production-line engines to help ensure that newly assembled engines control emissions at least as well as the emission-data engines tested for certification. Production-line testing serves as a quality-control step, providing information to allow early detection of any problems with the design or assembly of freshly manufactured engines. This is different than selective enforcement auditing, in which we would give a test order for more rigorous testing for a small subset of production-line engines in a particular engine family (see Section VII.E). Production-line testing requirements are already common to several categories of nonroad engines as part of their emission-control program.

If an engine fails to meet an emission standard, the manufacturer must modify it to bring that specific engine into compliance. Manufacturers may adjust the engine family's Family Emission Limit to take into account the results from production-line testing (if applicable). If too many engines exceed emission standards, this indicates it is more of a family-wide problem and the manufacturer must correct the problem for all affected engines. The remedy may involve changes to assembly procedures or engine design, but the manufacturer must, in any case, do sufficient testing to show that the engine family complies with emission standards before producing more engines. The remedy may also need to address engines already produced since the last showing that production-line engines met emission standards.

The production-line testing programs for Large SI engines and for recreational vehicles depend on the Cumulative Sum (CumSum) statistical process for determining the number of engines a manufacturer needs to test (see the regulations for the specific calculation methodology). Each manufacturer generally selects engines randomly at the beginning of each new quarter.[36] If engines must be tested at a facility where final assembly is not yet completed, manufacturers must randomly select engine components and assemble the test engine according to their established assembly instructions. The Cumulative Sum program uses the emission results to calculate the number of tests required for the remainder of the year to reach a pass or fail determination for production-line testing. If tested engines have emissions close to the standard, the statistical sampling method calls for an increased number of tests to show whether to make a pass or fail determination for the engine family. The remaining number of tests is recalculated after the manufacturer tests each engine. Engines selected should cover the broadest range of production configurations possible. Tests should also be distributed evenly throughout the sampling period to the extent possible.

If an engine family fails the production-line testing criteria, we may suspend the Certificate of Conformity. Under the CumSum approach, individual engines can exceed the emission standards without causing the whole engine family to exceed the production-line testing criteria. The production-line testing criteria are designed to determine if there is a problem that applies broadly across the engine family. Whether or not the production-line testing criteria are met, manufacturers must adjust or repair every failing engine and retest it to show that it meets the emission standards. Note also that all production-line emission measurements must be included in the periodic reports to us. This includes any type of screening or surveillance tests (including ppm measurements), all data points for evaluating whether an engine controls emissions "off-cycle," and any engine tests that exceed the minimum required level of testing.

The regulations allow us to reduce testing requirements for engine families that consistently pass the production-line testing criteria. For engine families that pass all of the production-line test requirements for two consecutive years, the manufacturer may request a reduced testing rate. The minimum testing rate is one test per engine family for one year. Our approval for a reduced testing rate may be limited to a single model year,

[36] We consider an engine to be randomly selected if it undergoes normal assembly and manufacturing procedures. An engine is not randomly selected if it has been built with any kind of special components or procedures.

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but manufacturers may continue to request reduced testing rates.

As we have concluded in other engine programs, some manufacturers may have unique circumstances that call for different methods to show that production engines comply with emission standards. A manufacturer may therefore suggest an alternate plan for testing production-line engines, as long as the alternate program is as effective at ensuring that the engines will comply. A manufacturer's petition to use an alternate plan should address the need for the alternative and should justify any changes from the regular testing program. The petition must also describe in detail the equivalent thresholds and failure rates for the alternate plan. If we approve the plan, we will use these criteria to determine when an engine family passes or fails the production-line testing criteria. It is important to note that this allowance is intended only as a flexibility, and is not intended to affect the stringency of the standards or the production-line testing program.

Refer to the specific program discussions below for additional information about production-line testing for different types of engines.

D. Other Concepts

1. What Are Emission-Related Installation Instructions?

Manufacturers selling loose engines to equipment manufacturers must develop a set of emission-related installation instructions. These instructions include anything the installer needs to know to ensure that the engine operates within its certified design configuration. For example, the installation instructions could specify a total capacity needed from the engine cooling system, placement of catalysts after final assembly, or specification of parts needed to control evaporative or permeation emissions. We approve emission-related installation instructions as part of the certification process. If equipment manufacturers fail to follow the established emission-related installation instructions, we will consider this tampering, which may subject them to significant civil penalties. Refer to the program discussions below for more information about specific provisions related to installation instructions.

2. Are There Special Provisions for Small Manufacturers of These Engines and Vehicles?

The scope of this rule includes many engine and vehicle manufacturers that have previously not been subject to our mobile source regulations or certification process. Some of these manufacturers are small businesses, with unique concerns relating to the compliance burden from the general regulating program. The sections describing the emission-control program include discussion of special compliance provisions designed to address this for the different engine categories.

III. Recreational Vehicles and Engines

A. Overview

We are adopting new exhaust emission standards for snowmobiles, off-highway motorcycles, and all-terrain vehicles (ATVs). The engines used in these vehicles are a subset of nonroad SI engines.[37] In our program to set exhaust emission standards for nonroad spark-ignition engines below 19 kW (Small SI), we excluded recreational vehicles because they have different design characteristics and usage patterns than certain other engines in the Small SI category. For example, engines typically found in the Small SI category are used in lawn mowers, chainsaws, trimmers, and other lawn and garden applications. These engines tend to have low power outputs and operate at constant loads and speeds, whereas recreational vehicles can have high power outputs with highly variable engine loads and speeds. This suggests that these engines should be regulated differently than Small SI engines. In the same way, we treat snowmobiles, off-highway motorcycles, and ATVs separately from our Large SI engine program, which is described in Section V. Recreational vehicles that are not snowmobiles, off-highway motorcycles, or ATVs, will be subject to the standards that otherwise apply to small nonroad spark-ignition engines (see Section III.B.2).

We are adopting exhaust emission standards for HC and CO from all recreational vehicles. We are adopting an additional requirement to control NO_X from off-highway motorcycles and ATVs. We believe that vehicle and engine manufacturers will be able to use technology already established for other types of engines, such as highway motorcycles, small spark-ignition engines, and marine engines, to meet these standards. We recognize that some small businesses manufacture recreational vehicles; we are therefore adopting several special compliance provisions to reduce the burden of emission regulations on small businesses.

1. What Are Recreational Vehicles and Who Makes Them?

We are adopting new exhaust emission standards for off-highway motorcycles, ATVs, and snowmobiles. Eight large manufacturers dominate the sales of these recreational vehicles. Of these eight manufacturers, seven of them manufacture two or more of the three main types of recreational vehicles. For example, there are four companies that manufacture both off-highway motorcycles and ATVs. There are three companies that manufacture ATVs and snowmobiles; one company manufactures all three. These eight companies represent approximately 95 percent of all domestic sales of recreational vehicles.

a. Off-highway motorcycles. Motorcycles are two-wheeled, self-powered vehicles that come in a variety of configurations and styles. Off-highway motorcycles are similar in appearance to highway motorcycles, but there are several important distinctions between the two types of machines. Off-highway motorcycles are not street-legal and are primarily operated on public and private lands over trails and open areas. A significant number are used in competition events. Off-highway motorcycles tend to be much smaller, lighter and more maneuverable than their larger highway counterparts. They are equipped with relatively small-displacement single-cylinder two- or four-stroke engines ranging from 48 to 650 cubic centimeters (cc) in size. The exhaust systems for off-highway motorcycles are distinctively routed high on the frame to prevent damage from brush, rocks, and water. Off-highway motorcycles are designed to be operated over varying surfaces, such as dirt, sand, or mud, and are equipped with knobby tires to give better traction in off-road conditions. Unlike highway motorcycles, off-highway motorcycles have fenders mounted far from the wheels and closer to the rider to keep dirt and mud from spraying the rider and clogging between the fender and tire. Off-highway motorcycles are also equipped with more advanced suspension systems than those for highway motorcycles. This allows the operator to ride over obstacles and make jumps safely.

Five companies dominate sales of off-highway motorcycles. They are long-established, large corporations that manufacture several different products including highway and off-highway motorcycles. These five companies account for 90 to 95 percent of all domestic sales of off-highway motorcycles. There are also several relatively small companies that manufacture off-highway motorcycles, many of which specialize in competition machines.

b. All-terrain vehicles. The earliest ATVs were three-wheeled off-highway models with large balloon tires that existed in the early 1970's. Due to safety concerns, the three-wheeled ATVs were phased-out in the mid-1980s and replaced by the current and more popular four-wheeled vehicle known as "quad runners" or simply "quads." Quads resemble the earlier three-wheeled ATVs except that the single front wheel was replaced with two wheels. The ATV steering system uses motorcycle handlebars, rather than a steering wheel. The operator sits on and rides the quad much like a motorcycle. The engines used in quads tend to be very similar to those used in off-highway motorcycles—relatively small, single-cylinder two- or four-stroke engines. Quads are typically divided into utility and sport models. The utility quads are designed for multi-function use and have the ability to perform many utility functions, such as plowing snow, tilling gardens, and mowing lawns in addition to use for recreational riding. They are typically heavier and equipped with relatively large four-stroke engines and automatic transmissions with a reverse gear. Sport quads are smaller and lighter and designed primarily for recreational purposes. They are equipped with two- or four-stroke engines and manual transmissions. Presently utility ATVs comprise about 75 percent of the market and sport models about 25 percent.

Of all of the types of recreational vehicles, ATVs have the largest number of major manufacturers. All but one of the companies noted above for off-highway motorcycles and below for snowmobiles are significant ATV producers. These seven companies represent over 95 percent of total domestic ATV sales. The remaining 5 percent of sales come from importers, which tend to import less expensive, youth-oriented ATVs.

As discussed below, we are requiring utility vehicles capable of speeds above 25 mph to comply the regulations for ATVs.

c. Snowmobiles. Snowmobiles, also referred to as "sleds," are tracked vehicles designed to operate over snow. Snowmobiles have some similarities to off-highway motorcycles and ATVs. A snowmobile rider sits on and rides a snowmobile similar to an ATV. Snowmobiles use high-powered two- and three-cylinder two-stroke engines that look similar to off-highway motorcycle engines. Rather than wheels, snowmobiles are propelled by a track system similar to what is used on a bulldozer. The snowmobile is steered by two skis at the front of the sled. Snowmobiles use handlebars similar to off-highway motorcycles and ATVs. The typical snowmobile seats two riders comfortably. Over the years, snowmobile performance has steadily increased to the point that many snowmobiles currently have engines over 100 horsepower and are capable of exceeding 100 miles per hour. The definition for snowmobiles includes a limit of 1.5-meter width to differentiate conventional snowmobiles from ice-grooming machines and snow coaches, which use very different engines.

There are four major snowmobile manufacturers, accounting for more than 99 percent of all domestic sales. The remaining sales come from very small manufacturers who tend to specialize in high-performance designs.

d. Other recreational vehicles. Currently, our Small SI nonroad engine regulations cover all recreational engines that are under 19 kW (25 hp) and have either an installed speed governor or a maximum engine speed less than 5,000 revolutions per minute (rpm). Recreational vehicles currently covered by the Small SI standards include go-carts, golf carts, and small mini-bikes. Although some off-highway motorcycles, ATVs and snowmobiles have engines with rated horsepower less than 19 kW, they all have maximum engine speeds greater than 5,000 rpm. Thus they have not been included in the Small SI regulations. The only other types of small recreational engines not covered by the Small SI rule are those engines under 19 kW that aren't governed and have maximum engine speed of at least 5,000 rpm. There are relatively few such vehicles with recreational engines not covered by the Small SI regulations. The best example of vehicles that fit in this category are stand-on scooters and skateboards that have been equipped with very small gasoline spark-ignition engines. The engines used on these vehicles are typically the same as those used in string trimmers or other lawn and garden equipment, which are covered under the Small SI regulations. Because these engines are generally already covered by the Small SI regulations and are the same as, or very similar to, engines as those used in lawn and garden applications, we are revising the Small SI rules to cover these engines under the Small SI regulations. To avoid any problems in transitioning to meet emission standards, we are applying these standards beginning in 2006. We did not receive any comments on this approach.

2. What Is the Regulatory History for Recreational Vehicles?

The California Air Resources Board (California ARB) established standards for off-highway motorcycles and ATVs, which took effect in January 1997 (1999 for vehicles with engines of 90 cc or less). California has not adopted standards for snowmobiles. The standards, shown in Table III.A–1, are based on the highway motorcycle chassis test procedures. Manufacturers may certify ATVs to optional standards, also shown in Table III.A–1, which are based on the utility engine test procedure.[38] This is the test procedure over which Small SI engines are tested. The stringency level of the standards was based on the emission performance of small four-stroke engines and advanced two-stroke engines with a catalytic converter. California ARB anticipated that the standards would be met initially by using high-performance four-stroke engines.

III.A–1—California Off-Highway Motorcycle and ATV Standards for Model Year 1997 and Later

[1999 and later for engines at or below 90 cc]

	HC	NO_X	CO	PM
Off-highway motorcycle and ATV standards (g/km)	[a] 1.2		15	

[37] Almost all recreational vehicles are equipped with spark-ignition engines. Any diesel engines used in these applications must meet our emission standards for nonroad diesel engines.

[38] Notice to Off-Highway Recreational Vehicle Manufacturers and All Other Interested Parties Regarding Alternate Emission Standards for All-Terrain Vehicles, Mail Out #95–16, April 28, 1995, California ARB (Docket A–2000–01, document II–D–06).

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	HC + NO_X	CO	PM
Optional standards for ATV engines below 225 cc (g/bhp–hr)	[a]12.0	300	
Optional standards for ATV engines at or above 225 cc (g/bhp–hr)	[a]10.0	300	

[a] Corporate-average standard.

California revisited the program because a lack of certified off-highway motorcycles from manufacturers was reportedly creating economic hardship for dealerships. The number of certified off-highway motorcycle models was particularly inadequate.[39] In 1998, California revised the program, allowing the uncertified products in off-highway vehicle recreation areas with regional/seasonal use restrictions. Currently, noncomplying vehicles may be sold in California and used in attainment areas year-round and in nonattainment areas during months when exceedances of the state ozone standard are not expected. For enforcement purposes, certified and uncertified products are identified with green and red stickers, respectively. Only about one-third of off-highway motorcycles selling in California are certified. All certified products have four-stroke engines.

B. Engines Covered by This Rule

We are adopting new emission standards for new off-highway motorcycles, ATVs, and snowmobiles. (We are also applying existing Small SI emission standards to other recreational equipment, as described above.) The engines used in recreational vehicles tend to be small, air- or liquid-cooled, reciprocating Otto-cycle engines that operate on gasoline.[40] Engines used in vehicle applications experience engine performance that is characterized by highly transient operation, with a wide range of engine speed and load capability. Maximum engine speed are typically well above 5,000 rpm. Also, with the exception of snowmobiles, the vehicles are typically equipped with transmissions rather than torque converters to ensure performance under a variety of operating conditions.[41]

1. Two-Stroke vs. Four-Stroke Engines

The engines used by recreational vehicles can be separated into two distinct designs: two-stroke and four-stroke. The distinction between two-stroke and four-stroke engines is important for emissions because two-stroke engines tend to emit much greater amounts of unburned HC and PM than four-stroke engines of similar size and power. Two-stroke engines have lower NO_X emissions than do four-stroke engines because they experience a significant amount of internal exhaust gas recirculation resulting from exhaust gases being drawn back into the combustion chamber on the piston's downward stroke while the exhaust port is uncovered. Exhaust gas is inert and displaces fresh fuel and air that could otherwise be combusted, which creates lower in-cylinder temperatures and thus less NO_X. Two-stroke engines also have greater fuel consumption than four-stroke engines, but they also tend to have higher power output per-unit displacement, lighter weight, and better cold-starting performance. These, and other characteristics, tend to make two-stroke engines popular as a power unit for recreational vehicles. With the exception of a few youth and touring models, almost all snowmobiles use two-stroke engines. Currently, about 63 percent of all off-highway motorcycles (predominantly in high-performance, youth, and entry-level bikes) and 20 percent of all ATVs sold in the United States use two-stroke engines.

The basis for the differences in engine performance and exhaust emissions between two-stroke and four-stroke engines can be found in the fundamental differences in how two-stroke and four-stroke engines operate. Four-stroke operation takes place in four distinct steps: intake, compression, power, and exhaust. Each step corresponds to one up or down stroke of the piston or 180° of crankshaft rotation. The first step of the cycle is for an intake valve in the combustion chamber to open during the intake stroke, allowing a mixture of air and fuel to be drawn into the cylinder while the piston moves down the cylinder. The intake valve then closes and the momentum of the crankshaft causes the piston to move back up the cylinder, compressing the air and fuel mixture. At the very end of the compression stroke, the air and fuel mixture is ignited by a spark from a spark plug and begins to burn. As the air and fuel mixture burns, increasing temperature and pressure cause the piston to move back down the cylinder. This is referred to as the "power" stroke. At the bottom of the power stroke, an exhaust valve opens in the combustion chamber and as the piston moves back up the cylinder, the burnt gases are pushed out through the exhaust valve to the exhaust manifold, and the cycle is complete.

In a four-stroke engine, combustion and the resulting power stroke occur only once every two revolutions of the crankshaft. In a two-stroke engine, combustion occurs every revolution of the crankshaft. Two-stroke engines eliminate the intake and exhaust strokes, leaving only compression and power strokes. This is due to the fact that two-stroke engines do not use intake and exhaust valves. Instead, they have intake and exhaust ports in the sides of the cylinder walls. With a two-stroke engine, as the piston approaches the bottom of the power stroke, it uncovers exhaust ports in the wall of the cylinder. The high pressure combustion gases blow into the exhaust manifold. As the piston gets closer to the bottom of the power stroke, the intake ports are uncovered, and fresh mixture of air and fuel are forced into the cylinder while the exhaust ports are still open. Exhaust gas is "scavenged" or forced into the exhaust by the pressure of the incoming charge of fresh air and fuel. In the process, however, some mixing between the exhaust gas and the fresh charge of air and fuel takes place, so that some of the fresh charge is also emitted in the exhaust. Losing part of the fuel out of the exhaust during scavenging causes very high hydrocarbon emission characteristics of two-stroke engines. The other major reason for high HC emissions from two-stroke engines is their tendency to misfire under low-load conditions due to greater combustion instability.

2. Applicability of Small SI Regulations

In our regulations for Small SI engines, we established criteria, such as rated engine speed at or above 5,000 rpm and the use of a speed governor, that excluded engines used in certain types of recreational vehicles (see 40 CFR 90.1(b)(5)). Engines used in some other types of recreational vehicles may be covered by the Small SI standards, depending on the characteristics of the engines. For example, lawnmower-type engines used in go carts are typically covered by the Small SI standards because they don't operate above 5000 rpm. Similarly, engines used in golf carts are included in the Small SI program. As discussed above, we are revising the Small SI regulations to include all recreational engines except those in off-highway motorcycles, ATVs, snowmobiles, and hobby engines. Golf cart and go-cart engines will remain in the Small SI program because the vehicles are not designed for operation over rough terrain and do not meet the definition of ATV. We are accordingly removing the 5,000 rpm and speed governor criteria from the applicability provisions of the Small SI regulations.

3. Utility Vehicles

We proposed to define ATV as a "nonroad vehicle with three or more wheels and a seat designed for operation over rough terrain and intended primarily for transportation", and that it would include "both land-based and amphibious vehicles". We requested comment on the proposed definition and based on comments, we are modifying the definition to clearly exclude utility vehicles not capable of reaching 25 mph. Utility vehicles differ from ATVs in several ways. As stated earlier, an ATV is operated and ridden very similar to a motorcycle, with the rider straddling the seat and using handlebars to steer the vehicle. The throttle and brakes are located on the handle bars, similar to a motorcycle and snowmobile. Utility vehicles look and operate very similarly to golf carts. The operator sits on a bench seat with a back support that holds two or more passengers. Rather than handlebars, utility vehicles use a steering wheel and have throttle and brake pedals on the floor, similar to an automobile. Utility vehicles also typically have a cargo box or bed (similar to that found on a pick-up truck) used for hauling cargo. We define an off-highway utility vehicle as a "nonroad vehicle that has four or more wheels, seating for two or more persons, is designed for operation over rough terrain, and has either a rear payload of 350 pounds or more or seating for six or more passengers." We are requiring utility vehicles capable of high speed operation (speeds greater than 25 mph) to meet ATV standards. For utility vehicles that are permanently governed and not capable of reaching 25 mph, manufacturers must either continue to certify them to the Small SI standards (or Large SI standards, if applicable) or optionally certify them to the new ATV standards.

[39] Initial Statement of Reasons, Public Hearing to Consider Amendments to the California Regulations for New 1997 and Later Off-highway Recreational Vehicles and Engines, California ARB, October 23, 1998 (Docket A–2000–01, document II–D–08).

[40] Otto-cycle is another name for a reciprocating, internal-combustion engine that uses a spark to ignite a homogeneous air and fuel mixture, in which air-fuel mixing may occur inside or outside the combustion chamber.

[41] Snowmobiles use continuously variable transmissions, which tend to operate like torque converters.

We received comments from the Outdoor Power Equipment Institute (OPEI) that the definition should be clarified to exclude utility vehicles. Most utility vehicles are equipped with engines that are currently required to meet EPA Small SI standards. OPEI commented that utility vehicles are designed specifically for work related tasks and are equipped with seating for passengers, a bed for cargo, and riding-mower-style controls.

The industry differentiates between utility vehicles based on vehicle speed. The vast majority of utility vehicles are considered "low-speed utility vehicles" (LUVs) and are vehicle speed governed with maximum speed of less than 25 mph. The engines used in such vehicles are generally below 25 hp and are typically used in other lawn and garden or utility applications such as generators or lawn tractors. The engines differ significantly from those used in recreational products which are designed for higher rpm operation with an emphasis on higher performance. OPEI also provided comment on a newer type of utility vehicle, which uses a more powerful (over 19kW) ATV-based engine and is capable of speeds of up to 40 mph.

We are finalizing the approach described. The engines used in low-speed utility vehicles are more similar in design and use to utility engines than ATVs. The engines used to power these vehicles are often used in other utility applications, such as lawn and garden tractors and generators and are typically produced by companies that specialize in utility and lawn equipment rather than power sport vehicles. These products are already certified to the Small SI standards.

However, we have some concerns with continuing to use the Small SI program test cycle for engines used in applications that operate at broad engine speeds. The cycle was developed primarily for push lawnmowers and other equipment that operates in a narrow band of engine speeds. The Small SI test cycle measures emissions only at a single high engine speed. We are concerned that the Small SI test cycle may not achieve the same emission reductions for off-highway utility vehicles in use as it would for lawnmowers, especially as more stringent standards go into effect. The concern also applies to other large ride-on equipment in the Small SI program, such as riding lawn mowers, where engine speed is inherently variable. While the ATV program may not be appropriate for these low-speed utility applications due to operating and design differences, the Small SI program as it is currently designed may not be completely appropriate either. Since we did not propose changes for the Small SI program which currently applies to utility vehicles and need to further study the issues, we are not finalizing such changes to the Small SI program in this Final Rule. We plan to continue to study the issue and, if necessary, address it through a future rulemaking for the Small SI program.

In addition to test cycle, there are other reasons we plan to continue to examine the appropriateness of the Small SI program for large ride-on equipment. With respect to useful life, we are concerned that off-highway utility vehicles may be designed to last significantly longer than the typical lawnmower. 40 CFR 90.105 specifies useful life values that vary by application with the longest useful life being 1000 hours. It is not clear that this maximum value is high enough to address the expected life of in-use off-highway utility vehicles, especially those that are used commercially. Finally, with respect to the level of the standards, we are concerned about the relative stringency of the Small SI standards relative to the long-term standards for ATVs and other nonroad vehicles. Nevertheless, given the low-speed operation of these vehicles, and other differences, we do not believe that they should be treated the same as higher speed ATVs. We did not propose changes for the Small SI program to address the above issues and need to study them further. However, these vehicles are unique in many ways, and should be addressed in a future rulemaking.

Given the utility nature of the low-speed vehicles, we believe that at least for now, it is appropriate to continue to certify them under 40 CFR part 90. For vehicles capable of higher speeds (*e.g.*, greater than 25 mph), the engine designs and vehicle in-use operation is likely to be more like ATVs. The test procedures and standards for ATVs will better fit these high speed vehicles than those in the Small SI program. For regulatory purposes, we are defining an off-highway utility vehicle as a nonroad vehicle that has four or more wheels, seating for two or more persons, is designed for operation over rough terrain, and has either a rear payload capacity of 350 pounds or more or total seating for six or more passengers.

4. Hobby Engines

The Small SI rule categorized spark-ignition engines used in model cars, boats, and airplanes as recreational engines and exempted them from the

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Small SI program.[42] We are continuing to exclude hobby engines from the Small SI program because of significant engine design and use differences. We also believe that hobby engines are substantially different than engines used in recreational vehicles and, as proposed, we are not including spark-ignition hobby engines in this final rule. We received no comment on our proposed treatment of hobby engines or any additional information on their design or use.

There are about 8,000 spark-ignition engines sold per year for use in scale-model aircraft, cars, and boats.[43] This is a very small subsection of the overall model engine market, most of which are glow-plug engines that run on a mix of castor oil, methyl alcohol, and nitro methane.[44] A typical spark-ignition hobby engine is approximately 25 cc with a horsepower rating of about 1–3 hp, though larger engines are available. These spark-ignition engines are specialty products sold in very low volumes, usually not more than a few hundred units per engine line annually. Many of the engines are used in model airplanes, but they are also used in other types of models such as cars and boats. These engines, especially the larger displacement models, are frequently used in competitive events by experienced operators. The racing engines sometimes run on methanol instead of gasoline. In addition, the engines are usually installed and adjusted by the hobbyist who selects an engine that best fits the particular model being constructed.

The average annual hours of operation has been estimated to be about 12.2 hours per year.[45] The usage rate is very low compared to other recreational or utility engine applications due to the nature of their use. Much of the hobby revolves around building the model and preparing the model for operation. The engine and model must be adjusted, maintained, and repaired between uses.

Spark-ignition model engines are highly specialized and differ significantly in design compared to engines used in other recreational or utility engine applications. While some of the basic components such as pistons may be similar, the materials, airflow, cooling, and fuel delivery systems are considerably different.[46] [47] Some spark-ignition model engines are scale replicas of multi-cylinder aircraft or automobile engines and are fundamentally different than spark-ignition engines used in other applications. Model-engine manufacturers often select lighter-weight materials and simplified designs to keep engine weight down, often at the expense of engine longevity. Hobby engines use special ignition systems designed specifically for the application to be lighter than those used in other applications. To save weight, hobby engines typically lack pull starters that are found on other engines. Hobby engines must be started by spinning the propeller. In addition, the models themselves vary significantly in their design, introducing packaging issues for engine manufacturers.

We are not including spark-ignition hobby engines in the recreational vehicles program. The engines differ significantly from other recreational engines in their design and use, as noted above. Emission-control strategies envisioned for other recreational vehicles may not be well suited for hobby engines because of their design, weight constraints, and packaging limitations. Approaches such as using a four-stroke engine, a catalyst, or fuel injection all would involve increases in weight, which would be particularly problematic for model airplanes. The feasibility of these approaches for these engines is questionable. Reducing emissions, even if feasible, would likely involve fundamental engine redesign and substantial R&D efforts. The costs of achieving emission reductions are likely to be much higher per engine than for other recreational applications because the R&D costs would be spread over very low sales volumes. The cost of fundamentally redesigning the engines could double the cost of some engines.

By contrast, because of their very low sales volumes, annual usage rates, and relatively short engine life cycle, spark-ignition hobby engine emission contributions are extremely small compared to recreational vehicles. The emission reductions possible from regulating such engines would be minuscule (we estimate that spark-ignition hobby engines as a whole account for less than 30 tons of HC nationally per year, much less than 0.01 percent of mobile source HC emissions).[48]

In addition, hobby engines differ significantly in their in-use operating characteristics compared to small utility engines and other recreational vehicle engines. It is unclear if the test procedures developed and used for other types of spark-ignition engine applications would be sufficiently representative or even technically practical for hobby engines. We are not aware of any efforts to develop an emission test cycle or conduct any emission testing of these engines. Also, because installing, optimizing, maintaining, and repairing the engines are as much a part of the hobby as operating the engine, emission standards could fundamentally alter the hobby itself. Engines with emission-control systems would be more complex and the operator would need to be careful not to make changes that would cause the engine to exceed emission standards. EPA will continue to review these issues, as necessary, in the future and reconsider adoption of regulations if appropriate.

5. Competition Exemptions

a. Off-Highway motorcycles. Currently, a large portion of off-highway motorcycles are designed as competition/racing motorcycles. These models often represent a manufacturer's high-performance offerings in the off-highway market. Most such motorcycles are of the motocross variety, although some high-performance enduro models are marketed for competition use.[49] [50] These high-performance motorcycles are

[42] 80 FR 24292, April 25, 2000.

[43] Comments submitted by Hobbico on behalf of Great Plains Model Distributors and Radio Control Hobby Trade Association, February 5, 2001, Docket A–2000–01, document II–D–58.

[44] Hobby engines with glow plugs are considered compression-ignition (diesel) engines because they lack a spark-ignition system and a throttle (see the definition of compression-ignition, 40 CFR 89.2). The nonroad diesel engine regulations 40 CFR part 89 generally do not apply to hobby engines, so these engines are unregulated.

[45] Comments submitted by Hobbico on behalf of Great Plains Model Distributors and Radio Control Hobby Trade Association, February 5, 2001, Docket A–2000–01, document II–D–58.

[46] E-mail from Carl Maroney of the Academy of Model Aeronautics to Christopher Lieske, of EPA, June 4, 2001, Docket A–2000–01, document II–G–144.

[47] Comments submitted by Hobbico on Behalf of Great Plains Model Distributors and Radio Control Hobby Trade Association, February 5, 2001, Docket A–2000–01, document II–D–58.

[48] For further information on the feasibility, emission inventories, and costs, see "Analysis of Spark Ignition Hobby Engines", Memorandum from Chris Lieske to Docket A–2000–01, document II–G–144.

[49] A motocross bike is typically a high-performance off-highway motorcycle that is designed to be operated in motocross competition. Motocross competition is defined as a circuit race around an off-highway closed-course. The course contains numerous jumps, hills, flat sections, and bermed or banked turns. The course surface usually consists of dirt, gravel, sand, and mud. Motocross bikes are designed to be very light for quick handling and easy maneuverability. They also come with large knobby tires for traction, high fenders to protect the rider from flying dirt and rocks, aggressive suspension systems that allow the bike to absorb large amounts of shock, and are powered by high-performance engines. They are not equipped with lights.

[50] An enduro bike is very similar in design and appearance to a motocross bike. The primary difference is that enduros are equipped with lights and have slightly different engine performance that is more geared towards a broader variety of operation than a motocross bike. An enduro bike

largely powered by two-stroke engines, though some four-stroke models have been introduced in recent years.

Competition events for motocross motorcycles mostly involve closed-course or track racing. Other types of off-highway motorcycles, such as enduros and trials bikes, are usually marketed for trail or open-area use. When used for competition, these models are likely to be involved in point-to-point competition events over trails or stretches of open land. There are also specialized off-highway motorcycles that are designed for competitions such as ice racing, drag racing, and observed trials competition. A few races involve professional manufacturer-sponsored racing teams. Amateur competition events for off-highway motorcycles are also held frequently in many areas of the U.S.

Clean Air Act subsections 216 (10) and (11) exclude engines and vehicles "used solely for competition" from nonroad engine and nonroad vehicle regulations. In the proposal we stated that in previous nonroad engine emission-control programs, we have generally defined the term as follows:

Used solely for competition means exhibiting features that are not easily removed and that would render its use other than in competition unsafe, impractical, or highly unlikely.

Most motorcycles marketed for competition do not appear to have obvious physical characteristics that constrain their use solely to competition. In fact, they are usually sold by dealers from the showroom floor. Upon closer inspection, however, there are several features and characteristics for many competition motorcycles that make recreational use unlikely. For example, motocross bikes are not equipped with lights or a spark arrester, which prohibits them from legally operating on public lands (such as roads, parks, state land, and federal land).[51] Vehicle performance of modern motocross bikes is so advanced (for example, with extremely high power-to-weight ratios and advanced suspension systems) that it is highly unlikely that these machines will be used for recreational purposes. In addition, motocross and other competition off-highway motorcycles typically do not come with a warranty, which further deters purchasing and using competition bikes for recreational operation.[52] We believe these features are sufficient in distinguishing competition motorcycles from recreational motorcycles. Therefore, we are specifically adopting the following features as indicative of motorcycles used solely for competition: *absence of a headlight or other lights; the absence of a spark arrester; suspension travel greater than 10 inches; an engine displacement greater than 50 cc; absence of a manufacturer warranty; and the absence of a functional seat.*

Manufacturers must specifically request and receive an exemption from EPA to sell off-highway motorcycles without a certificate under the competition exemption. Vehicles not meeting the applicable criteria listed above will be exempted only in cases where the manufacturer has clear and convincing evidence that the vehicles for which the exemption is being sought will be used solely for competition. Examples of this type of evidence may be technical rationale explaining the differences between a competition and non-competition motorcycle, marketing and sales information indicating the intent of the motorcycle for competition purposes, and survey data from users indicating the competitive nature of the motorcycle.

Although there are several features that generally distinguish competition motorcycles from recreational motorcycles, several parties have commented that they believe motorcycles designed for competition use are also used for recreational purposes, rather than solely for competition. This is of particular concern because competition motorcycles represent about 29 percent of total off-highway motorcycle sales or approximately 43,000 units per year. However, a study on the characterization of off-highway motorcycle usage found that there are numerous—and increasingly popular—amateur off-highway motorcycle competitions across the country, especially motocross.[53] The estimated number of off-highway motorcycle competitors is as high as 80,000. Since it is very common for competitive riders to replace their machines every one to two years, the sale of 43,000 off-highway competition motorcycles appears to be a reasonable number, considering the number of competitive participants. We are therefore confident that, although we are excluding a high percentage of off-highway motorcycles as being competition machines, the criteria laid out above are indicative of motorcycles used solely for competition.

However, we do recognize that it is possible that some competition motorcycles will be used for recreational purposes. We are therefore adopting a provision within the regulations that allows the Agency to deny a manufacturer's claim for exemption from the standards for any models, including models that meet the six specified criteria, where other information is available that indicates these off-highway motorcycle models are not used solely for competition. This same provision allows the Agency to deny claims for exemptions in later years even if they had been granted previously. Examples of this type of information can be state registration data that indicate a significant number of competition exempt models being registered to operate on public lands. Off-highway competition motorcycles designed for motocross competition are not typically required to be registered with states, since most motocross competitions occur on closed-circuit courses on private, not public land, and motocross machines lack spark arresters which are required to operate on public land. We believe the possibility of losing an exemption for competition motorcycles will encourage manufacturers to take proper actions in promoting, marketing, and guaranteeing that competition machines are sold to those individuals who will use them solely for competition.

b. Snowmobiles and ATVs. Snowmobiles and ATVs are also used in competition events; however, the percentage of snowmobiles or ATVs used solely for competition is not nearly as large as that for off-highway motorcycles. Since snowmobile and ATV competition have typically not been as popular as off-highway motorcycle competitions, there has not been the demand for competition machines that exists with off-highway motorcycles. As a result, manufacturers have not manufactured and sold directly from their dealers competition snowmobiles and ATVs like they have off-highway motorcycles. Most snowmobiles and ATVs used in competition events are modified recreational vehicles, rather than stock racing machines bought directly from the dealer, as is the case with off-highway motorcycles. As a result, there isn't the same concern over potential misuse of competition snowmobiles and ATVs for recreational purposes.

needs to be able to cruise at high speeds as well as operate through tight woods or deep mud.

[51] A spark arrester is a device located in the end of the tailpipe that catches carbon sparks coming from the engine before they get out of the exhaust system. This is important when a bike is used off-highway, where hot carbon sparks falling in grassy or wooded areas could result in fires.

[52] Most manufacturers of motocross racing motorcycles do not offer a warranty. Some manufacturers do, however, offer very limited (1 to 3 months) warranties under special conditions.

[53] "Characterization of Off-Road Motorcycle Use," ICF Consulting, September 2001, A–2000–1 document II–A–81.

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Competition snowmobiles and ATVs aren't currently sold directly at the dealership. Therefore, manufacturers can receive a competition exemption from EPA for snowmobiles and ATVs meeting all of the following criteria: *the vehicle or engine may not be displayed for sale in any public dealership; sale of the vehicle must be limited to professional racers or other qualified racers; and the vehicle must have performance characteristics that are substantially superior to noncompetitive models.*

As with off-highway motorcycles, snowmobiles and ATVs not meeting the applicable criteria listed above will be exempted only in cases where the manufacturer has clear and convincing evidence that the vehicles for which the exemption is being sought will be used solely for competition. We are also adopting the same provision as for off-highway motorcycles within the regulations that allows the Agency to deny a manufacturer's claim for exemption from the standards for any models where other information is available that indicates these snowmobiles and ATVs models are not used solely for competition. As with off-highway motorcycles, this same provision allows the Agency to deny claims for exemptions in later years even if they had been granted previously.

C. Emission Standards

1. What Are the Emission Standards and Compliance Dates?

a. Off-highway motorcycles. We are adopting HC plus NO_X and CO standards for off-highway motorcycles. We expect the largest benefit to come from reducing HC emissions from two-stroke engines. Two-stroke engines have very high HC emission levels. Baseline NO_X levels are relatively low for engines used in these applications and therefore including NO_X in the standard serves only to cap NO_X emissions for these engines. Comparable CO reductions can be expected from both two-stroke and four-stroke engines, as CO levels are similar for the two engine types. We are also adopting averaging, banking and trading provisions for off-highway motorcycles, as discussed below.

In the current off-highway motorcycle market, consumers can choose between two-stroke and four-stroke models in most sizes. Each engine type offers unique performance characteristics. Some manufacturers specialize in two-stroke or four-stroke models, while others offer a mix of models. The HC standard is likely to be a primary determining factor for what technology manufacturers choose to employ to meet emission standards overall. HC emissions can be reduced substantially by switching from two-stroke to four-stroke engines. Four-stroke engines are very common in off-highway motorcycle applications. Approximately 55 percent of non-competition off-highway motorcycles are four-stroke. Certification results from California ARB's emission-control program for off-highway motorcycles, combined with our own baseline emission testing, provides ample data on the emission-control capability of four-stroke engines in off-highway motorcycles. Off-highway motorcycles certified to California ARB standards for the 2000 model year have HC certification levels ranging from 0.4 to 1.0 g/km. These motorcycles have engines ranging in size from 48 to 650 cc; none of these use catalysts.

The emission standards for off-highway motorcycles take effect beginning in the 2006 model year. We will allow a phase-in of 50-percent implementation in the 2006 model year with full implementation in 2007. These standards apply to testing with the highway motorcycle Federal Test Procedure (FTP) test cycle. For $HC+NO_X$ emissions, the standard is 2.0 g/km (3.2 g/mi). For CO emissions, the standard is 25.0 g/km (40.5 g/mi). Both of these standards are based on averaging with a cap on the Family Emission Limit (FEL) of 20 g/km for $HC+NO_X$ and 50 g/km for CO. Banking and trading provisions are also included in the program, as described in Section III.C.2. These emission standards allow us to set near-term requirements to introduce the low-emission technologies for substantial emission reductions with minimal lead time. We expect manufacturers to meet these standards using four-stroke engines with some low-level modifications to fuel-system calibrations. These systems are similar to those used for many years in highway motorcycle applications, but with less overall sophistication for off-highway applications.

We received comments from several states and environmental groups encouraging us to harmonize our off-highway motorcycle standards with California. The comments focused on the perceived difference in stringency between the two programs. For California, the standard is an HC-only standard of 1.2 g/km. Our standard is a $HC+NO_X$ standard of 2.0 g/km. We believe it is prudent to set a $HC+NO_X$ standard in lieu of a HC-only standard since the main emission-control strategy is expected to be the use of four-stroke engines in lieu of two-stroke engines. Two-stroke engines emit extremely low levels of NO_X. Four-stroke engines, on the other hand, have higher NO_X emission levels, in the range of 0.3 g/km on average. This is part of the reason why we proposed a somewhat higher numeric standard compared to California.

The California standards, which were adopted in 1994, were stringent enough that manufacturers were unable to certify several models of off-highway motorcycles, even some with four-stroke engine technology. The result was a substantial shortage of products for dealers to sell in California. The shortage led California to change their program to allow manufacturers to sell noncompliant off-highway motorcycles under some circumstances. As a result, approximately a third of the off-highway motorcycles sold in California are compliant with the standards. The uncertified models being sold in California include both two-stroke and four-stroke machines.

EPA received comments from dealers and consumers concerned that a similar shortage could arise nationwide if EPA adopted the California standards. EPA shared this concern and proposed standards that were somewhat less stringent than that of California, based on test data from high-performance four-stroke machines. We are finalizing this approach to ensure the four-stroke technology can be implemented broadly across the product line in the 2006 time-frame. Although the approach we are finalizing contains somewhat less stringent standards than the California program, we believe it will achieve reductions beyond that of the California program because more products will be certified (even when the competition exemption is taken into account). The vast majority of the HC reductions achieved by the program come from shifting away from conventional two-stroke engines which have HC emissions levels in the range of 35 g/km. The 2.0 g/km standard represents about a 95-percent reduction in emissions for these vehicles.

If we were to go beyond this level of reduction, manufacturers would need to employ on a widespread basis additional technology that presents significant technical issues concerning their application to off-highway motorcycles given their extreme usage patterns and issues such as safety, packaging, and weight. For example, technologies such as electronic fuel injection and secondary air injection raise concerns about their durability and reliability in the harsh operating environments to which off-highway motorcycles are sometimes exposed.

The use of catalytic converters poses concerns over packaging, durability and safety. Off-highway motorcycles are very light and narrow. These attributes are necessary for operating through tight forest trails and other harsh conditions. This leaves little room for packaging a catalyst so that it won't be damaged from engine vibration, shock resulting from jumps and hopping logs, and falling over and hitting objects, such as trees and rocks. These technologies may become compatible for off-highway motorcycles in the future, but we do not believe that it is appropriate to promulgate emission standards based on these technologies at this time, given the technical problems currently associated with their use. Four-stroke engine technology has advanced considerably since the California regulations went into effect. Manufacturers are now capable of offering four-stroke engines that provide excellent performance. This performance can be achieved only as long as manufacturers are allowed to operate four-stroke engines with a slightly rich air and fuel mixture, which can result in somewhat higher HC and CO emissions. Although the standards we are setting are higher than those in California, we believe they will require four-stroke engines that are well calibrated for emissions control without significantly sacrificing performance. For these reasons, we believe the standards we are establishing are appropriate.

As discussed above in Section III.B.5, the Clean Air Act requires us to exempt from emission standards off-highway motorcycles used for competition. We expect several competition two-stroke off-highway motorcycle models to continue to be available. We are concerned that setting standards as stringent as California's would result in a performance penalty for some four-stroke engines that would be unacceptable to the consumers. This could encourage consumers who want performance-oriented off-highway motorcycles to purchase competition vehicles (and use them recreationally) in lieu of purchasing compliant machines that don't provide the desired performance. We believe that our emission standards will allow the continued advancement of four-stroke technology and properly considers available emission-control technology while taking vehicle performance into consideration and avoiding significant adverse impacts on performance.

As proposed, we are also finalizing an option allowing off-highway motorcycles with an engine displacement of 50 cc or less to be certified using the Small SI emission standards for non-handheld Class I engines. These youth-oriented models may not be able to operate over the FTP due to the higher speeds of the test cycle. We did not receive comment on this provision.

Optional Standards

During the comment period, we received several comments expressing concern that our proposed standard of 2.0 g/km $HC+NO_X$ for off-highway motorcycles would effectively prohibit the use of two-stroke engines in non-competition applications. These engines currently have typical $HC+NO_X$ levels of about 35 g/km. The commenters argued that two-stroke engines possess several unique attributes, such as high power and light weight, that make two-stroke powered off-highway motorcycles more desirable to some operators, especially smaller, lighter riders, than heavier four-stroke powered off-highway motorcycles.

We also received comments from several states and environmental organizations expressing strong concern over the number of competition off-highway motorcycles that would be exempt from our regulations as a result of our competition exemption. They felt that people purchasing exempt competition motorcycles would use them for recreational purposes instead of solely for competition.

One manufacturer indicated that they were planning on building high-performance off-highway motorcycles equipped with direct fuel-injection two-stroke engines that would potentially be capable of meeting a $HC+NO_X$ standard of 4.0 g/km. To enable use of this technology, they suggested that we should adopt a standard of 4.0 g/km instead of the proposed standard of 2.0 g/km. The commenter believes that direct injection could be used to make clean competition machines and also argued that the technology is robust and not as susceptible to user modifications as other technologies such as catalysts. The commenter wanted an opportunity to develop and certify their product because it perceives a benefit to the purchaser not only in performance but also in the ability for the owner to resell the competition vehicle into the secondary market without concerns about potential misuse. In addition, the owner would be able to use the vehicle both for competition and recreation.

It is clear that if manufacturers were able to certify and bring to market clean competition machines as described by the commenter, significant reductions in emissions would be gained over conventional two-stroke technology. Some competition models we tested had baseline HC and CO emissions in excess of 50 g/km and 40 g/km, respectively. We believe it is appropriate to provide an avenue for the development and voluntary certification of clean competition motorcycles. Therefore, we are finalizing an optional set of standards for off-highway motorcycles of 4.0 g/km $HC+NO_X$ and 35.0 g/km CO. For manufacturers to utilize this option, however, they must certify all of their models, including their competition models, to the optional standards. To qualify for this option, a manufacturer must show that ten percent or more of their sales would otherwise meet the competition definition.

The optional standard was derived from the fact that non-competition four-stroke engines can meet a 2.0 g/km level and competition two-stroke machines with advanced direct fuel-injection technology could meet a 8.0 g/km level. Since approximately one-third of the total off-highway motorcycle fleet are competition machines and the other two-thirds would be non-competition four-stroke recreational machines, the weighting of the 2.0 g/km level by two-thirds and the 8.0 g/km level by one-third results in a weighted standard of 4.0 g/km. This presumes that emissions from four-stroke engines will not increase under this option and that non-competition engines will be almost exclusively four-stroke engines. These assumptions are discussed below. The significant reductions in otherwise unregulated competition engines means that this option should produce even greater overall reductions than the base 2.0 g/km standard. We recognize that for some manufacturers this program will increase opportunities to make a limited number of non-competition recreational two-stroke machines; however, we believe that the number of two-stroke non-competition engines developed under this program will be limited by the fact that the required technology (direct fuel-injection) would be too expensive and complex for the recreational motorcycle market. The majority of non-competition recreational off-highway motorcycles that use two-stroke engines are entry-level and youth motorcycles, where cost and simplicity are important factors. There is also the fact that for every two stroke non-competition engine manufactured under this program, a manufacturer must make one less competition engine or must make more four-stroke engines. Further, we believe that any increase in the number of non-competition two-stroke engines is justified given the fact that this program will overall bring levels from off-highway engines down

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considerably and the fact that the technology needed to reduce emissions from competition machines will only be made available and used if, under this optional approach, manufacturers have an incentive to use the technologies.

One major incentive in using this approach is the fact that once these machines are certified, a consumer will be able to use these machines legally for non-competition uses, which increases the value of the competition machines. This approach thus will also reduce the incentive for manufacturers to manufacturer all of their two-stroke machines as competition machines to avoid regulation, and thus reduce the incentive for users to circumvent the regulations. This may mean that any increase in two-stroke non-competition engines under this approach would not lead to an increase in total two-stroke sales, because manufacturers will not have an incentive to increase the number of two-stroke competition vehicles to avoid regulation.

We believe this approach is responsive to all of the above comments. It directly addresses the concerns of the manufacturer developing the new competition motorcycle and also helps address the concerns of users, states, and environmental groups. The successful development and certification of clean competition models increases the choices for consumers in the marketplace. Offered the option of a certified high-performance two-stroke off-highway motorcycle that can be used both for competition and recreation, consumers may not feel the need to purchase exempt competition motorcycles. This option has the potential to significantly decrease the number of conventional two-stroke competition machines sold under the competition exemption and is likely to decrease the potential for misuse of competition machines. Conventional competition two-stroke motorcycles generate extremely high levels of HC emissions, as noted above. For every conventional two-stroke competition machine replaced by a certified competition machine, HC emissions would be reduced by 80 percent, or more.

While the 4.0 g/km standard is higher than the 2.0 g/km standard contained in the base program, we do not expect any loss in emissions reductions from four-stroke models. We continue to believe most off-highway motorcycles will continue to be powered by four-stroke engines. Most non-competition off-highway motorcycles are already four-stroke motorcycles, and the trend towards four-stroke is continuing even in the absence of these regulations. We are convinced that there will be no backsliding of emissions control for motorcycles using four-stroke engines, because the dirtiest of the four-stroke models tend to be competition machines, and our emissions testing indicates that competition four-stroke off-highway motorcycles have HC+NO_X emission levels below 2.0 g/km. Since these motorcycles are optimized for power and racing conditions, there is no incentive for manufacturers to increase HC+NO_X emissions from their current levels. In fact, increasing the emission levels would mean increasing the air-to-fuel mixture, which would tend to reduce the engines performance.

As with the primary program, these optional standards would take effect in 2006 with 50-percent implementation and full implementation in 2007 and manufacturers could switch between the options from model year to model year. The HC+NO_X standard can be met through averaging with some families certified above the standards and some below. If averaging is used, the FEL cap would be 8.0 g/km.

We are retaining the averaging approach for this option because it may be a critical flexibility for manufacturers pursuing clean competition products. The commenter based its recommendation for a 4.0 g/km standard on their projections for a single prototype model equipped with a medium sized engine. This engine is in the early stages of development and there is some uncertainty as to what emissions level the final product can achieve. Also, manufacturers may want to apply their approach to other engines that may not be able to achieve this same level of control. Manufacturers could find that they can produce competition products that are very clean relative to the baseline but with higher emissions than 4.0 g/km. For example, larger engine sizes could have emissions levels somewhat higher than the 4.0 g/km suggested by the commenter. We are not satisfied at this time that two-stroke off-highway motorcycles, particularly those used in competition could meet the 4.0 g/km standard, especially considering the special performance needs of competition motorcycles. Therefore, rather than keeping a 2.0 g/km standard for four-stroke engines and having a standard higher than 4.0 g/km for two-stroke engines (a standard as high as 8.0 g/km might be appropriate), we are using a 4.0 g/km standard that permits averaging. Averaging provides flexibility for manufacturers to bring cleaner two-stroke, particularly cleaner competition two-stroke, engines to market without creating a disincentive to building four-stroke engines. One way of taking advantage of the averaging program in this way would be for a manufacturer to maximize its sales of four-stroke models as part of its sales mix, and average the emissions from these engines against the higher emissions of the two-stroke competition engines which still would need to be much cleaner than if they were unregulated. This approach therefore requires the substantial use of cleaner four-stroke technologies while at the same time encouraging manufacturers to substantially reduce emissions from motorcycles that would otherwise be unregulated competition motorcycles. We have capped the emissions levels at 8.0 g/km HC+NO_X because we want to ensure that products certified under this option provide large emissions reductions compared to baseline levels and that the option provides environmental benefits in all cases. Competition motorcycles certified to the 8.0 g/km level would continue to provide over a 75-percent reduction in HC emissions over baseline levels.

One of the challenges facing manufacturers selecting this option is the potentially high CO emissions from competition machines. We tested competition models and found CO emissions to be in the range 25 to 50 g/km. Although this option contains a somewhat higher CO standard (35 g/km compared to 25 g/km) than the base program, manufacturers are still expected to need to control CO emissions through tight engine calibrations. We are not including averaging for the less stringent CO standard. As noted by the manufacturer supporting the 4.0 g/km option, direct injection technology is likely to reduce CO from two-stroke engines. We believe that through proper calibration, the 35 g/km standard will be achievable and will not significantly impede manufacturers in selecting this option.

b. ATVs. We are adopting HC plus NO_X and CO standards for ATVs. We expect the largest benefit to come from reducing HC emissions from two-stroke engines. Two-stroke engines have very high HC emission levels. Baseline NO_X levels are relatively low for engines used in these applications and therefore including NO_X in these standards serves only to cap NO_X emissions for these engines. Comparable CO reductions can be expected from both two-stroke and four-stroke engines, as CO levels are similar for the two engine types. We are also adopting averaging, banking and trading provisions for ATVs, as discussed below.

In the current ATV market, consumers can choose between two-stroke and four-stroke models, although the majority, approximately eighty-percent of sales, are four-stroke. Each engine type offers unique performance characteristics. Some manufacturers specialize in two-stroke or four-stroke models, but most manufacturers offer a mix of models. The HC standard is likely to be a primary determining factor for which technology manufacturers choose to employ to meet emission standards overall. HC emissions can be reduced substantially by switching from two-stroke to four-stroke engines. Certification results from California ARB's emission-control program for ATVs, combined with our own baseline emission testing, provides ample data on the emission-control capability of four-stroke engines in ATVs.

In the proposal we included two phases of ATV standards. The first phase of standards, 2.0 g/km HC+NO_X and 25 g/km CO, was proposed to be phased in at 50 percent of production in 2006 with the remainder phased-in for 2007. We proposed a second set of standards that included a more stringent 1.0 g/km HC+NO_X standard with no change to the CO standards. It was to be met in 2009/2010 using the same 50-percent and 100-percent phase-in scheme as Phase 1. We proposed that both phases of HC+NO_X standards could be met through averaging.

We received comments from several environmental groups stating that we should harmonize our Phase 1 standards with the California FTP-based standards. Manufacturers did not comment on the level of our proposed Phase 1 HC+NO_X standards. However, in a letter sent to the Agency in August 6, 2001, just before we published the proposal, the Motorcycle Industry Council stated that the most cost-effective approach to setting standards for ATVs would be to adopt the California HC standards of 1.2 g/km. They did comment on the fact that almost all of the CO nonattainment areas identified in the Draft Regulatory Support Document are now in compliance and that ATV activity is typically so far removed from congested urban areas, that we should delete the proposed CO standard.[54] Manufacturers stated generally that CO standards will make it more difficult to meet the HC+NO_X standards but did not provide additional specific comments on the feasibility or costs of the CO level proposed. In subsequent meetings with manufacturers, they suggested that if we were not going to delete the CO standard, it should be set sufficiently high so that it would not be an impediment to meeting the HC+NO_X standard. They suggested a level of 50.0 g/km.

We have decided to finalize only one set of HC+NO_X emission standards for the 2006 model year that are essentially equivalent to the California standard. The emission standards for ATVs take effect beginning in the 2006 model year. We will allow a phase-in of 50-percent implementation in the 2006 model year with full implementation in 2007. These standards apply to testing with the highway motorcycle Class I FTP test cycle. For HC+NO_X emissions, the standard is 1.5 g/km (2.4 g/mi). The California program has a HC-only standard of 1.2 g/km. We have made the standard 1.5 g/km to account for NO_X emissions. For CO emissions, we agree with manufacturers that CO standards can make it more difficult to meet the HC+NO_X standard. Based on our emission test data, we feel that a standard of 35.0 g/km (56.4 g/mi) is more appropriate than the 25.0 g/km standard we proposed or the 50.0 g/km standard suggested by the manufacturers. A standard of 35.0 g/km will still result in an overall reduction in CO emissions from high emitting ATVs, but will also allow manufacturers to balance CO control with the need to meet stringent NO_X levels. The HC+NO_X standard may be met through averaging. Banking and trading provisions for HC+NO_X are also being included in the program, as discussed in C.2., below.

Our decision to finalize a 1.5 g/km value rather than the 2.0 g/km value is consistent with the manufacturers technical capability in the 2006/2007 time-frame. The 1.5 g/km HC+NO_X and 35 g/km CO standards require the use of engine technology changes and add-on devices such as secondary air systems, which are clearly available for ATV application in this time frame. We proposed a 1.0 g/km HC+NO_X standard for a 2009/2010 phase-in which could require use of catalytic converter technology in many models of ATVs. As discussed below, we are not finalizing that proposal now, and thus find it appropriate to finalize more stringent Phase 1 standards which are technologically feasible and otherwise consistent with statutory criteria related to cost, safety, noise, and energy considerations.

Aligning our emission standards with those currently in place in California allows us to set requirements to introduce the low-emission technologies for substantial emission reductions with reasonable lead time and will for the most part allow manufacturers to sell one model in all fifty states. This "harmonization" between federal and California requirements is valued by industry because it allows the development and production of one emission-control technology per model/family. However, in a few cases, we expect emissions reductions under the EPA program that go beyond that of the California program because California allows the sale of uncertified ATVs, including two-stroke models, under their red sticker provisions. With the exception of competition exempt ATVs, all ATV models subject to the EPA program will need to be certified. We expect manufacturers to meet these standards using four-stroke engines with some modifications to fuel-system calibrations and some limited use of secondary air systems. These systems are similar to those used for many years in highway applications, but will likely require lesser sophistication than used in highway motorcycle applications.

In addition to being consistent with the California standards, we feel the 1.5 g/km HC+NO_X standard is more appropriate than the proposed 2.0 g/km standard because our testing has shown that emission levels from four-stroke ATVs can vary considerably. We stated in the proposed rule that a standard of 2.0 g/km HC+NO_X would be a four-stroke enforcing standard, which would most likely result in the elimination of any two-stroke engines, but not necessarily require any additional control from the four-stroke engines. As stated above, a standard of 1.5 g/km HC+NO_X will require the use of engine technology changes and add-on devices such as secondary air systems, which are clearly available for ATV application in this time frame.

At this point, we do not believe it is appropriate to promulgate Phase 2 standards. In the proposal, we projected significant use of secondary air systems and catalysts for meeting the Phase 2 standards. Since that time, we have been conducting testing on ATVs with the type of catalysts and secondary air systems we envisioned for the Phase 2 standards to demonstrate feasibility. However, the testing we have done to date has not been sufficient to reach an affirmative conclusion on the feasibility of the Phase 2 standards. Testing with secondary air systems and catalysts have not shown consistent results and we have had only partial success in demonstrating the feasibility of the proposed Phase 2 standards using these technologies. In testing on a utility-type ATV, these technologies have provided only small emissions reductions.[55] The

[54] We respond to these comments in Section II of the Summary and Analysis of Comments.

[55] Utility-type ATVs, it should be noted, are not the same as utility vehicles. Utility vehicles are not

Continued

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results of our preliminary testing are discussed further in Section III.F and in the Final Regulatory Support Document. It is unclear if the level of technology we projected in the proposal would be sufficient to meet the Phase 2 standards. We have not done enough research or testing on other potential technologies, such as electronic or direct fuel injection, to finalize a decision based on these technologies. We plan to continue to evaluate the technologies that would be needed to meet the Phase 2 levels and determine if those levels can be met with the level of technology we projected in the proposal or with other technology. We also received comments that we underestimated costs for Phase 2 and we will continue to evaluate costs as well.

In addition, we received comments that the emissions inventories we projected for ATVs were too large, and that if we adjusted them appropriately, we would see that Phase 2 was not needed. This is provided in detail in the public docket.[56] We have studied and evaluated in-depth the new and additional information provided by the commenters after we published the proposal. As is shown in our revised analysis, the emissions inventory projections for ATVs have been reduced by more than 75 percent in response to the significant new information we received after publishing the proposal. Our analysis of the appropriate standards for 2006/2007 described above was made using this new information, and future analysis of Phase 2 standards would also use these revised inventory numbers. However, it is important to note that the revised inventories still show that these vehicles contribute to nonattainment.

Engine-based Standards

California allows ATVs to be optionally tested using the California ARB utility engine test cycle (SAE J1088) and procedures. In California, manufacturers using the J1088 engine test cycle option must meet the California Small Off-Road Engine emission standards. Some manufacturers do not have chassis testing facilities and at the time California finalized its program were concerned about the cost of doing FTP testing for California-only requirements. To use this option, manufacturers were required by California to submit some emission data from the various modes of the J1088 test cycles to show that emissions from these modes were comparable to FTP emissions. Although a good correlation was not found between the two test cycles, California allowed this option because the goal of their program was to encourage four-stroke engine technology in ATVs.

As described above, we are finalizing standards based on vehicle testing over the FTP that are essentially harmonized with the California FTP standards. We did not propose a permanent option of engine testing using J1088 due to strong concerns that the test cycle misses substantial portions of ATV operation because it contains test points at only one engine speed. We understand that vehicle testing would be a significant change for manufacturers who currently conduct emissions testing on the engine rather than the vehicle for California. Due to the costs and lead-time requirements associated with switching to vehicle-based testing, we proposed a transitional program to allow the J1088 option for models years 2006 through 2008. To facilitate the phase-in of ATV standards, we proposed to allow manufacturers to optionally certify ATVs using the California utility cycle and standards, shown in Table III.C–1, instead of the FTP standards.

TABLE III.C–1.—CALIFORNIA UTILITY ENGINE EMISSION STANDARDS

Engine displacement	$HC+NO_x$	CO
Less than 225 cc	12.0 g/hp-hr (16.1 g/kW-hr)	300 g/hp-hr (400 g/kW-hr)
Greater than 225 cc	10.0 g/hp-hr (13.4 g/kW-hr)	300 g/hp-hr (400 g/kW-hr)

We are finalizing this approach, but will eliminate the J1088 option (including both the test cycle and the utility engine emission standards) for certification in model year 2009. The last model year to use the J1088 cycle and emission standards is 2008. We received comments that the FTP is also not representative of ATV operation and that the J1088 option should remain available until a new test cycle and accompanying standards can be developed and made available to manufacturers. Although it may not be completely representative of ATV operation, we believe the FTP to be greatly superior to the J1088 test cycle because the cycle is transient, emissions are measured at a variety of speeds and it is more likely to result in robust emission-control designs that reduce emissions in-use. We continue to be very concerned that the vast majority of ATV operation is missed with the J1088 test because the engine is tested at only one engine speed. ATV operation is inherently transient in nature because the user controls the throttle position to vary vehicle speed. We believe the J1088 test is not sufficient to ensure robust emissions control development and use for ATVs. Given the choice of available test procedures for the long-term, we could not justify retaining the J1088 option.

For small displacement ATVs of 70 cc or less, we proposed that they would have the permanent option to certify to the proposed FTP-based ATV standards discussed above or meet the Phase 1 Small SI emission standards for non-handheld Class 1 engines. These standards are 16.1 g/kW-hr $HC+NO_x$ and 610 g/kW-hr CO. Manufacturers argued that ATVs with engine displacements between 70 cc and 99 cc also should be allowed to certify to the Small SI standards, since the differences between a 70 cc and 99 cc engine is very small and the ATVs equipped with 99

considered ATVs due to fundamental differences in the vehicle characteristics. Most utility vehicles are currently regulated by the Small SI program, with a small subset of utility vehicles required by the Final Rule to meet ATV standards. See section III.B.3. above, for a complete discussion of utility vehicles. When we say utility-type ATV, we are referring to ATVs that have features that are work related such as cargo racks. These ATVs are often somewhat larger and bulkier than sport models and may have transmissions geared more for work related tasks rather than for high performance. However, they have ATV features such as four low pressure tires, a seat designed to be straddled by the operator, handlebars for steering controls, and are intended for use by a single operator. These vehicle must meet ATV requirements.

[56] Comments of the Motorcycle Industry Council, Inc., and the Specialty Vehicle Institute of America on the Notice of Proposed Rulemaking to Establish Mandatory Emission Standards for Nonroad Large Spark-Ignition Engines and Recreational Engines (Marine and Land-Based). Air Docket A–2000–01, IV–D–214.

cc engines face the same obstacles with the FTP test cycle as the 70 cc and below ATVs. They also argued that the Phase 1 Small SI standards are too stringent for these engines and recommended that EPA adopt the Phase 2 standards for Class 1B engines of 40 g/kW-hr for $HC+NO_x$ and 610 g/kW-hr for CO.

We recognize that the vast majority of engine families, including 4-stroke engines, below 100 cc are not certified to the California standards, which is an indication to us that the standards proposed may not be feasible for most engines in this size range given the lead time provided. However, manufacturers did not provide supporting data and we do not have data to confirm that the level recommended by the manufacturers would result in an appropriate level of control. We examined the 2002 model year certification data for non-handheld Small SI engines certified to the Phase 2 Class I–A and I–B engine standards (engines below 100 cc). We found that the five engine families certified to these standards had average emissions for $HC+NO_x$ of about 25 g/kW-hr. All of these engine families had CO emissions below 500 g/kW-hr and well below the 610 g/kW-hr level recommended by manufacturers. We believe these levels are more representative of the levels that can be achieved with the lead time provided through the use of 4-stroke engines than the standards recommended by the manufacturers. Therefore, we are finalizing a 25.0 g/kW-hr $HC+NO_x$ standard and a 500 g/kW-hr CO standard for ATVs with engine displacements of 99 cc or less. These standards will be optional to the FTP-based standards and, unlike the J–1088 standards option for larger displacement engines, the option will not expire. We are retaining averaging for the $HC+NO_x$ standard but do not believe averaging would be appropriate for the CO standard. This is consistent with the approach outlined above for J–1088 standards for engines above 100 cc.

The ATV standards are phased in at 50% of a manufacturer's production in 2006 and 100% in 2007. This phase-in applies to a manufacturer's overall ATV production regardless engine size or which option a manufacturer chooses for standards for particular models.

New Test Procedure for ATVs

We are comfortable with retaining the FTP as the basis of the long-term ATV program. However, EPA understands the manufacturers' concerns regarding the additional facility costs associated with FTP testing for ATVs. We also recognize that this approach is a significant deviation from their current practice in the California program. Throughout the development of the final rule, we have met with manufacturers and the State of California and have discussed the possibility of developing a new test cycle for ATVs. We intend to work further with all interested parties to determine whether a new test cycle and accompanying standards is appropriate. The standards, if developed for the new test cycle, would be of equivalent stringency to the FTP standards discussed above. If we do propose a new test cycle and accompanying standards for ATVs, it is likely that we would do so in concert with a decision on whether a second phase of standards is appropriate for ATVs. We are now developing a Memorandum of Understanding with manufacturers which describes in detail the steps that will be taken in furtherance of this task.[57] Other interested parties including the state of California will also be invited to participate in this process.

By finalizing the temporary availability of J1088, we are providing time to develop, and if appropriate, finalize and implement an alternative to the FTP that meets both the needs of the Agency, manufacturers and other parties. This allows for our program to remain harmonized with California during the transition to the new test procedure. However, we do not support allowing the use of J1088 for a period any longer than necessary to make this transition. We expect that developing a new test cycle will be relatively straightforward and that the MOU process cited above will provide a road map of how we will proceed. We expect to initiate this effort next year and conclude the work on the new test cycle in enough time to promulgate it through rulemaking and to provide industry adequate lead time to implement it in an orderly manner (nominally three years lead time). If we encounter unforeseen and unavoidable delays or complications in this process, we will consider extending the J1088 temporarily as part of our process of adopting changes to the ATV test cycle through rulemaking. We would expect such an extension to be at most for one model year.

c. Snowmobiles. We are adopting CO and HC emission standards for snowmobiles, effective in three phases, as discussed below. As discussed below, we are also adopting an emissions averaging banking and trading program for snowmobiles which includes provisions for the early generation of credits prior to the effective date of the standards. We are not adopting PM standards for snowmobiles at this time, because limits on HC emissions will serve to simultaneously reduce PM and because there are significant complications in accurately measuring PM that make requiring PM standards difficult in this time frame. Finally, we are not adopting limits for NO_x for the first two phases of standards, but manufacturers are required to measure NO_x emissions and report them in the application for certification. However, we have included NO_x in the Phase 3 standards to effectively cap NO_x emissions from snowmobiles.

The three phases of standards we are adopting will require progressively broader application of advanced technologies such as direct injection two-stroke technology, and four stroke engines. Only about two percent of current snowmobile production utilizes these advanced technologies. We expect that about seven percent of new snowmobiles will have them by 2005. With the Phase 1 standards we expect that ten percent of snowmobiles will require advanced technologies (in addition to less advanced emissions controls on most other snowmobiles). We project that the Phase 2 and Phase 3 standards will require the application of advanced technology on 50 and 70 percent of new snowmobiles, respectively.

Phase 1 Standards

We are adopting Phase 1 standards largely as proposed for snowmobiles to take effect for all models starting in the 2006 model year. However, given that the manufacturers will effectively have only three years to design and certify snowmobiles prior to the 2006 model year, as well as the fact that snowmobiles are currently unregulated, we believe that requiring 100 percent of models to certify in 2006 is not reasonable. Thus, we are including a phase in of the Phase 1 standards with 50 percent of sales required to comply with the 30 percent reduction standards in 2006 and 100 percent compliance required in 2007. The standards of 275 g/kW-hr (205 g/hp-hr) for CO and 100 g/kW-hr (75 g/hp-hr) for HC are to be met on average by each manufacturer. As described in the proposal, these standards represent a 30-percent reduction from the baseline CO and HC emission rates for uncontrolled snowmobiles. We expect manufacturers to meet these standards using a variety of technologies and strategies across their product lines. For the reasons

[57] See item IV–G–114, docket A–2000–01.

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described below, we believe these are the most stringent standards feasible beginning in the 2006 model year.

Snowmobiles pose some unique challenges for implementing emission-control technologies and strategies. Snowmobiles are very sensitive to weight, power, and packaging constraints. Current snowmobile designs have very high power-to-weight ratios, to address performance considerations. The desire for low weight has been stated to be a concern, since weight (and weight distribution) affects handling and operators occasionally have to drag their sleds out of deep snow. This has especially been mentioned as a concern in the context of four-stroke engines given that they are heavier than their two-stroke counterparts of similar power. However, four-stroke engines have significantly better fuel economy than two-stroke engines, and for identical fuel tank sizes, would have significantly greater range. This of course would be a positive attribute. The size of a fuel tank on a four-stroke powered snowmobile could be reduced to provide similar range to that of a similarly powered two-stroke snowmobile, resulting in offsetting weight savings from both the smaller fuel tank and less fuel on board. However, this could still represent a change in the distribution of weight compared to current sleds.

The approach used to control emissions in compliance with the Phase 1 standards will vary according to a given manufacturers product line, technological capability, long term plans, and other factors. However, we expect all manufacturers to pursue a mix of technologies. Some manufacturers may focus more on clean carburetion and associated engine modifications and apply those widely across their entire product line with more limited implementation of advanced technology such as four-stroke and semi direct injection engines. Others may choose to be more aggressive in applying advanced technologies in their more expensive, high-performance sleds and be less aggressive in pursuing emission reductions from their lower-priced offerings to optimize the fit of different technologies (and their associated costs) to the various product offerings in the near term. As can be seen on their websites[58], all large manufacturers now have limited product offerings of advanced emissions technology snowmobiles. Snowmobiles must, on average and according to the phase in schedule, meet the first phase of emission standards beginning with the 2006 model year. Given the relative inexperience this industry has with designing effective snowmobile engines with advanced emissions controls and in certifying to EPA requirements, it is unlikely that any manufacturer could market enough of these advanced snowmobiles for model year 2006 to enable it to meet significantly more stringent standards. Due to the unique performance requirements for snowmobiles and the relatively short lead time to modify current engines or design new products, we believe our 2006/2007 standards will be technologically challenging for manufacturers and will result in cleaner snowmobiles.

Phase 2 and Phase 3 Standards

We believe the two most viable advanced technologies for use in snowmobiles are two-stroke direct (or semi-direct) injection technology and four-stroke engines. All four major snowmobile manufacturers either currently offer or are planning to offer in the next year or two one or more of these technologies on a limited number of snowmobile models. With sufficient resources and lead time for manufacturers, we believe it would be technologically possible to eventually apply such advanced technology broadly across most or all of the snowmobile fleet.

Manufacturers have indicated that with enough investment and sufficient time to design and implement direct injection technology for snowmobile use, two-stroke engines equipped with direct fuel injection systems can reduce HC emissions by 70 to 75 percent and reduce CO emissions by 50 to 70 percent. These projections are based largely on laboratory prototypes and generally do not account for in-use deterioration or the need for production compliance margins in the ultimate certification levels. Certification results for 2002 model year outboard engines and personal water craft support these projections.[59]

In addition to the direct injection two-stroke, a few four-stroke models are currently available, and more are expected to be introduced in the next few years. Based on testing of prototypes and other low-hour engines it appears that advanced four-stroke snowmobiles are capable of HC reductions ranging from 70 to 95 percent relative to current technology two-stroke snowmobile engines. However, CO reductions from four stroke engines vary quite a bit. For four-stroke engines used in low-power applications, CO reductions of 50 to 80 percent from baseline levels have been reported. However, the majority of the snowmobile market is for higher-powered performance machines, and CO reductions from higher powered four stroke engines are lower than those from low powered four strokes, with expected reductions of 20 to 50 percent from baseline levels. As discussed further in the RSD and Summary and Analysis of Comments document, we expect that many of the four-stroke snowmobile models offered in the future will not be current two-stroke models which have been modified to utilize a four-stroke engine, but rather new models designed specifically to take advantage of the unique characteristics of four-stroke engines. Thus, we expect that the lead time associated with the conversion to four-stroke engines and optimized sleds is even longer than that needed for conversion to direct injection two-stroke technology.

It is not obvious to us that either of these advanced technologies is better than the other or more suited to broad application in the snowmobile market. Each has its strong points regarding emissions performance, power, noise, cost, etc. For example, two-stroke engines equipped with direct fuel injection have the potential to have greater CO emission reductions than a comparably powered four-stroke engine, although they would have less HC reductions. For those applications where a light, powerful, compact engine is desired, a direct injection two-stroke engine may be preferred. However, for applications where pure power and speed is desired, a high-performance four-stroke engine may be preferred. Given the broad range of snowmobile model designs and applications it is apparent that one of these technologies could be preferable to the other in some situations. Further, given the broad range of snowmobile types offered, a mix of advanced technologies would provide the best opportunity for substantial average emission reductions while still maintaining customer satisfaction across the entire range of snowmobile types. Thus, we believe it is most appropriate to set emission standards for snowmobiles that are not based entirely on the use of either direct injection two-stroke technology or four-stroke engines, but rather a mix of the two, along with some other technologies in certain applications.

[58] *http://www.arcticcat.com, http://www.polarisindustries.com, http://www.skidoo.com,* and *http://www.yamaha-motor.com.*

[59] See the snowmobile feasibility discussion in the Final Regulatory Support Document.

It is our belief that with sufficient resources and lead time, manufacturers can successfully implement technologies such as two-stroke direct injection and four-stroke engines in many models in their respective snowmobile fleets. The question at hand is how broadly this technology can be practically applied across the snowmobile fleet in the near term, taking into account factors such as the number of engine and snowmobile models currently available, and the capacity of the industry to perform the research and development efforts required to optimally apply advanced technology to each of these models.

Currently there are only four major snowmobile manufacturers, and each has different technological capabilities. Of these four, only two currently manufacturer all of their own engines, one has limited in-house engine manufacturing operations, the other has none. Beyond this, there are only two advanced technologies (direct injection two-stroke, and four stroke) that at this time appear to be feasible to provide significant reductions in snowmobile emissions. Further, given the small volume of snowmobile sales compared to other vehicles and equipment which use similar sized engines, these manufacturers may have difficulty in working with their engine suppliers to develop and optimize four-stroke or direct injection two-stroke technology quickly. Clearly, the nature of the relationship between these snowmobile manufacturers and their suppliers would result in a less efficient use of available lead time as compared to the manufacturers that have both technology and engine manufacturing available in-house. Thus, there is varying capability within the snowmobile industry to develop and implement advanced technology in the next five to ten years.

The amount of engine redesign or development work is another factor. While one snowmobile manufacturer currently offers four different engine models, the other three, including the two that do not manufacture their own engines, currently offer eight to twelve engine models each. Additionally, each of these engine models typically goes into more than one type of snowmobile. There are a variety of basic snowmobile types specifically designed for a variety of riding styles and terrains including high-performance trail riding, high-performance off-trail riding (including designs specifically for deep snow), mountain riding, touring (two person snowmobiles designed for use on groomed trails), and entry level snowmobiles (lower-powered and lower priced snowmobiles which utilize simpler technology and are specifically designed to appeal to first time buyers). Some snowmobile manufacturers also offer snowmobile models specifically for youth, and utility models for work in cold climates or to facilitate winter sports such as hauling winter camping gear, or hunting and fishing equipment. It is not surprising that some of these snowmobile models are much more popular than others. Thus, there can be quite a difference in the production volumes of the different snowmobile types, with performance models typically having large sales volumes, and more unique models such as utility and youth models selling far fewer units.

Considering the number of snowmobile types, and the fact that each engine model is typically used in several different snowmobile models, each manufacturer has potentially dozens of different engine/snowmobile combinations that it offers. An analysis of the manufacturers current product offerings shows that while one manufacturer has only about twelve unique engine/snowmobile model combinations, the other three offer significantly more—from around 30 to over 50. Each of these different snowmobile models is designed with specific power needs in mind, with the engine and clutching specifically suited for the application style for which the snowmobile was intended. This means that a given engine model may require slightly different calibrations for each different snowmobile model in which it is used. While the advanced technologies are known, they are not "one size fits all" technologies. These technologies need to be optimized not only for the specific engine model, but in some cases for the snowmobile the engine will be used in as well, as just described.

For all of the reasons just discussed, we believe that it is necessary to allow two additional years of lead time for compliance with the proposed Phase 2 standards, and are therefore adopting the ultimate phase of snowmobile standards effective for the 2012 model year rather than the 2010 model year as proposed. However, we expect that between the 2006 and 2012 model years there can and will be substantial development and application of advanced technologies on snowmobiles beyond that required in compliance with the Phase 1 standards. We believe that it is important to capture the emission benefits that these advances present, and are therefore adopting a new set of Phase 2 standards, effective with the 2010 model year, which will require 50 percent HC reductions and 30 percent CO reductions from average baseline levels. The Phase 2 standards are 275 g/kW-hr (205 g/hp-hr) for CO and 75 g/kW-hr (56 g/hp-hr) for HC. These Phase 2 standards will be followed by Phase 3 standards in 2012 which will effectively require the equivalent of 50 percent reductions in both HC and CO as compared to average baseline levels.

We believe that the 2010 and 2012 model years are appropriate for the second and third phases of snowmobile standards because they allow an additional four to six years beyond the Phase 1 standards for the further development and application of advanced emissions control technology. We expect that the manufacturers will utilize some level of advanced technology in compliance with the Phase 1 standards, and this will give the manufacturers some time to evaluate how the advanced technology they have already applied works in the field as well as give them several years to work with the certification and compliance programs before more stringent Phase 2 standards take effect in 2010. We believe that by the 2010/2012 time frame manufacturers could, at least in theory, apply advanced technology across essentially their entire product lines. However, the manufacturers are resource constrained, and they will need to focus their efforts on compliance with the Phase 1 and Phase 2 standards prior to the 2010 model year. There is a need for significant technology development and manufacturing learning to occur, and there is concern that in this time frame such technology could not be performance, emissions, and safety optimized for each application given the number of engine and snowmobile model combinations that would require optimization. This would be especially challenging for those manufacturers who rely on outside suppliers for their engines. Rather, we expect that by the 2012 model year the manufacturers could both apply and optimize advanced technology to their larger volume families while applying clean carburetion and electronic fuel injection technology to the rest of their production. Under this scenario we expect that the manufacturers could apply optimized advanced technology on around 50 percent of their production by the 2010 model year, and an additional 20 percent of their production by the 2012 model year. We do not believe that having only two

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years lead time between the Phase 2 and Phase 3 standards presents any problems because compliance with the Phase 3 standards will be achieved through the broader application of technologies which will already be applied in compliance with the Phase 2 standards, rather than through the introduction of new technologies altogether.

As was previously discussed, four-stroke technology has the potential to significantly reduce HC emissions, even below levels expected from direct injection two-stroke technology. However, higher powered four-stroke engines are not currently capable of CO reductions on the order of those expected from direct injection two-stroke technology. This is significant given that a very large segment of the snowmobile market is in higher powered performance sleds. We are concerned that a straight 50 percent reduction in CO in the Phase 3 standards may deter technology development and constrain the use of four-stroke technology in this key portion of the snowmobile market. As the emissions standards become more stringent we believe that it is important to provide additional flexibility to assure compliance in a manner which minimizes costs and is consistent with the availability of technology and the realities of the snowmobile marketplace. Thus, to allow snowmobile manufacturers the flexibility to base their future product lines on higher percentages of four-stroke models, we are adopting a flexible Phase 3 standards scheme that will allow manufacturers to certify their production to levels which nominally represent 50 percent reductions in HC and CO. This overall reduction could be met by other combinations summing to 100 percent such as 70 percent reductions in HC and 30 percent reductions in CO, or any level between these two points (for example, 60 percent reductions in HC and 40 percent reductions in CO). However, in no case may a manufacturer's corporate average for the individual pollutants for Phase 3 be less than 50 percent on HC and 30 percent on CO (the Phase 2 standards).

Some manufacturers have raised safety concerns regarding the use of advanced technologies on snowmobiles, particularly four-stroke engines used in high-performance and mountain sleds. In particular, they raised issues regarding weight and the ability to start the snowmobile in cold weather. However, we believe these issues can be overcome with sufficient time and technology. For example, as noted above, smaller fuel tanks can significantly reduce the weight of four-stroke snowmobiles. The use of new light-weight materials can also reduce weight for four-stroke designs. Manufacturers have raised concerns over cold starting for four-stroke engines because the typical four-stroke design uses an oil distribution system where the pump and oil are located in the crankcase (referred to as a "wet" sump). During extremely cold temperatures, the oil becomes thick and provides an additional load the engine must overcome when starting. However, by using a "dry" sump, where the oil and pump are located in a separate tank (not in the crankcase), the concern over cold temperature starting loads due to thickened oil in the crankcase are gone. The new Yamaha RX–1 four-stroke snowmobile uses a smaller fuel tank and lighter materials to reduce weight and a dry sump to help cold starting, so clearly these issues can be addressed.

We believe that, given enough resources and lead time, it is ultimately feasible at some point beyond the 2012 model year to apply advanced technology successfully to all snowmobiles and perhaps to even resolve current design and operating issues with regard to the use of aftertreatment devices such as catalytic converters. However, it is difficult to predict at this point when this would be feasible, especially given the number of smaller volume snowmobile models that would need development effort once the larger volume models were optimized in compliance with the Phase 3 standards in 2012. We did consider standards based on the full application of optimized advanced technology to all snowmobiles, for example by setting the Phase 3 standards at a level that would require the full application of advanced technology to all snowmobiles. However, we believe that such standards are not feasible by 2012 and, we are not confident that we could choose the appropriate model year beyond 2012 for such standards given how far in the future such a requirement would be. Such an approach would also serve to eliminate the benefits associated with the Phase 3 standards in 2012. There are diverse capabilities and limiting factors within the industry, and time is needed for an orderly development and prove out of this advanced technology across the various models and applications before standards are set which require its use in all models. Additionally, as these engines have never previously been regulated or used advanced emission control technologies in large numbers, we believe it is appropriate to monitor the development and use of such technologies on snowmobiles before requiring these technologies for the entire fleet. Thus, we chose not to set standards at this time based on the optimized application of advanced technology to all snowmobiles. Nevertheless, we will monitor the development and application of the advanced technology as manufacturers work to comply with the Phase 3 standards in 2012 and will consider a fourth phase of snowmobile standards to take effect sometime after the 2012 model year.

We have not included a NO_X standard for the first two phases of the snowmobile regulations because NO_X emissions from snowmobiles, particularly two-stroke engines, are very small compared to levels of HC, CO and PM and we believe that stringent NO_X standards may require the use of technologies that will lead to increases in HC, PM and CO levels. Technologies that reduce NO_X are likely to increase levels of HC, PM and CO and vice versa, because technologies to reduce HC, PM and CO emissions would result in leaner operation. A lean air and fuel mixture causes NO_X emissions to increase. These increases are minor, however, compared to the reductions of HC, CO and PM that result from these techniques. On the other hand, any attempt to control the NO_X emissions may have the counter-effect of increasing HC, CO, and PM emissions, as well as causing the greater secondary PM concentrations associated with increased HC emissions. This is especially critical for HC and PM, because NO_X would be regulated primarily for its effect on secondary PM levels.

We are promulgating a NO_X standard (actually an HC plus NO_X standard) as part of the third phase of the snowmobile standards. This standard will essentially cap NO_X emissions from these engines. The reason we are including such standards in the final phase of the rule as that the third phase of the rule will result in increases in the use of four-stroke engines. While four-stroke engines greatly reduce HC and direct PM levels, they increase levels of NO_X. While NO_X levels remain substantially lower than HC and CO levels, they are higher than levels for two-stroke engines.

Thus, it is appropriate to place a cap on such levels to ensure that levels do not become so high as to become a substantial concern.

While we are promulgating an effective cap on such emissions, the standard will not mandate substantial reductions in NO_X. This is because the

emissions effect on reducing NO_X from four-stroke engines is the same as for two-stroke engines; that is, technologies that substantially reduce NO_X will increase levels of other pollutants of concern. The only way to reduce NO_X emissions from four-stroke engines (at the same time as reducing HC and CO levels) would be to use a three-way catalytic converter. We don't have enough information at this time on the durability or safety implications of using a three-way catalyst with a four-stroke engine in snowmobile applications. Three-way catalyst technology is well beyond the technology reviewed for this rule and would need substantial additional review before being contemplated for snowmobiles. Thus, given the overwhelming level of HC and CO compared to NO_X, and the secondary PM expected to result from these levels, it would be premature and possibly counterproductive to require substantial NO_X reductions from snowmobiles at this time.

2. Are There Opportunities for Averaging, Emission Credits, or Other Flexibilities?

a. Averaging, banking and trading. Historically, voluntary emission-credit programs have allowed a manufacturer to certify one or more engine families at emission levels above the applicable emission standards, provided that the increased emissions are offset by one or more engine families certified below the applicable standards. With averaging alone, the average of all engine families for a particular manufacturer's production must be at or below that level of the applicable emission standards. We are adopting separate emission-credit programs for snowmobiles, off-highway motorcycles, and ATVs. We are adopting an emission-credit program for the optional ATV engine-based standards as well as the chassis-based standards.

In addition to the averaging program just described, the emission-credit program contains banking and trading provisions, which allow manufacturers to generate emission credits and bank them for future use in their own averaging program or sell them to another entity. We are not adopting a credit life limit or credit discounting for these credits. Unlimited credit life and no discounting increases the incentive to introduce the clean technologies needed to gain credits. To generate credits, the engine family's emissions level must be below the standard, so any credits will result from reducing emissions more than necessary to meet the standards.

ATVs and Off-highway Motorcycles

Emission credits from off-highway motorcycle and ATVs will be averaged separately because there are differing degrees of stringency in the standards for ATVs and off-highway motorcycles long-term and we do not want off-highway motorcycle credits to dilute the effectiveness of the ATV standards. This also avoids providing an advantage in the market to companies that offer both types of products over those that produce only one type. Also, ATVs certified to the chassis-based standards or engine-based standards are considered separate averaging groups with no credit exchanges between the two. We are not allowing credit exchanges between engine and chassis-based testing because there is little, if any, correlation between the two test cycles. Without a strong correlation, it is not possible to establish an exchange rate between the two programs. For the engine-based (J–1088) ATV standards, the standards vary by engine size (less than 100 cc, 100 cc up to 225 cc, and 225 cc and greater). We are allowing averaging, banking, and trading for each of the separate engine-based HC+NO_X standards with no credit exchanges or averaging between the engine size categories.

We did not propose an averaging, banking, and trading program for CO for ATVs and off-highway motorcycles because it was not clear if such provisions would be needed to implement the expected technologies or if the need would warrant the additional complexity of an averaging program. We received comments that the 25 g/km CO standard could be technologically limiting in some instances. Manufacturers recommended that EPA drop CO the standard from the program and provided no comments regarding CO averaging. In addition, our recent testing indicates that the level of the standards may represent a significant technological challenge to the manufacturers in some cases.

We are retaining CO standards in the final program, and are establishing different CO standards for off-highway motorcycles and ATVs, as discussed in Section III.C.1. For ATVs, we are addressing the feasibility issues by finalizing a standard of 35 g/km. We are not including averaging or a credits program at this level. We are also adopting the 35 g/km CO standard for the optional off-highway motorcycle program with no averaging or credits program. At the 35 g/km level, we believe averaging is unnecessary and would greatly reduce the need to control CO, especially for larger manufacturers who have several engine families with which to average. The engine-based (J–1088) standards for CO also do not represent levels of stringency where we believe averaging would be appropriate or necessary. California certification test data shows that the engine-based (J–1088) CO standards can be achieved with reasonable compliance margins.

For the primary off-highway motorcycle program, we are retaining the proposed 25 g/km CO standard. We are providing the option of averaging for the 25 g/km CO standard, to help manufacturers balance the need to control CO while meeting stringent NO_X requirements. We believe that the final program with averaging for CO will enable manufacturers to develop a unified emission-control strategy to control HC, NO_X, and CO, rather than requiring them to develop unique control strategies driven by the need to meet the CO standards.

We are adopting FEL caps where we are allowing averaging standards. For ATVs certified to the 1.5 g/km FTP standard, there will be an FEL cap of 20 g/km HC+NO_X. This cap will also apply to off-highway motorcycles certified to the 2.0 g/km NO_X+HC standard. For off-highway motorcycles certified to the 25 g/km CO standard, the CO cap will be 50 g/km. For off-highway motorcycles, we are also finalizing an option that allows manufacturers to certify to an average HC+NO_X standard of 4.0 g/km, if the manufacturer certifies all off-highway motorcycles including competition machines. Under this option, we are limiting FELs to 8.0 g/km. The goal of the option is to encourage the development and certification of clean competition products. Without a reasonable FEL limit, manufacturers could certify two-stroke machines at, or close to, baseline levels. This is a concern because the majority of manufacturers' product offerings are likely to be certified below the 4.0 g/km level and significant credits could be available. We believe the 8.0 g/km limit ensures significantly cleaner products compared to baseline levels for competition machines, while providing manufacturers with the incentive and flexibility to pursue innovative technologies for their competition products.

As noted above, we have also included engine-based J–1088 standards for ATVs. The HC+NO_X portion of the J–1088 standards can be met through averaging and we have included reasonable emissions caps for these standards as well. For engines certified to the permanent optional J–1088 standards for ATV engines below 100 cc, the emissions cap is 40.0 g/kW-hr.

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The NO_X+HC emissions cap is 32.2 g/kW-hr for engine certified to the temporary J–1088 standards which are available for all engine sizes.

Snowmobiles

For snowmobiles, we are adopting an emissions averaging and credit program for all three phases of standards. Averaging is available for each phase of standards. Once the program begins in 2006, manufacturers will make a demonstration of compliance with the applicable corporate average standards at the end of the model year. If a manufacturer has achieved a corporate average level below the corporate average standards, then the manufacturer may bank credits. Manufacturers may bank credits for use in a current phase of standards based on the difference between their corporate average and the standards. In order to bank credits for future use under a subsequent phase of standards, manufacturers may pull engines from their corporate average for the current phase of standards and certify them early to a future phase of standards. The credits must be generated based on the difference between the FEL for those engines and the phase of standards for which they are intended to be used. The credits may not be carried forward for use to meet a subsequent phase of standards.

For example, manufacturers may bank Phase 2 credits in 2007 by removing engines from their 2007 corporate average for one or both pollutants and certifying the engines to the Phase 2 standards early. These Phase 2 credits may then be saved for Phase 2, but may not be used for Phase 3. Manufacturers may also remove only part of an engine family for purposes of banking credits. Manufacturers may bank credits after the end of the model year when they have completed their demonstration of compliance for that year. The Final Rule includes provisions for banking credits for a single pollutant, with the other pollutant remaining in the averaging program for the current model year. For Phase 3, if a manufacturer chooses to bank credits for only one pollutant, the manufacturer must use an assigned value for the other pollutant in the Phase 3 standards formula. We are specifying a value of 90 g/kW-hr for $HC+NO_X$ and 275 g/kW-hr for CO. These levels ensure no windfall credits using the Phase 3 formula for the credit-generating engines.

Starting with Phase 3, Family Emission Limits may be set up to the current average baseline emission levels of 400 g/kW-hr (300 g/hp-hr) CO and 150 g/kW-hr (110 g/hp-hr) HC. These caps ensure a minimum level of control for each snowmobile certified under the long-term program. We believe this is appropriate due to the potential for personal exposure to very high levels of emissions as well as the potential for high levels of emissions in areas where several snowmobiles are operated in a group. We proposed that these limits would be effective beginning in 2006. We received comments from manufacturers recommending that we drop the FEL limits because they would create a tremendous near term workload burden. They commented that manufacturers would need to modify all product lines for 2006 just to meet the FEL limit. EPA recognizes that this could be a significant issue in the early years of the program and could detract from manufacturers' efforts to develop much cleaner technologies. Thus, we are finalizing the FEL limits only for Phase 3 and later, beginning in 2012. We believe this helps resolve the lead-time and workload issues while maintaining the integrity of the long-term program.

b. Early credits. We believe that allowing manufacturers to generate credits prior to 2006 has some merit in that it encourages them to produce cleaner snowmobiles earlier than they otherwise might and provides early environmental benefits. It would also allow for a smoother transition to new emission standards in a previously unregulated industry. However, in the proposal we expressed concern that an early-credit program could result in the generation of windfall credits, especially if the credits were generated relative to the average baseline emissions rates. A manufacturer could choose those engine families that already emit below the average baseline levels and certify those families for credit generation purposes without doing anything to actually reduce their emissions. Clearly this would undermine any environmental advantages of an early-credit program. However, we believe that it is possible to design an early-credit program which provides incentive for the early introduction of cleaner snowmobiles and also helps ease the transition into the first ever phase of snowmobile standards while preventing the generation of windfall credits. The early-credit program described in the following paragraphs will be available beginning with the 2003 model year. As with the standard snowmobile emissions averaging, banking and trading program, credits generated under the early-credit program will be calculated on a power-weighted basis.

A manufacturer can choose to certify one or more engine families early for purposes of credit generation. An engine family must at least meet the Phase 1 standards for both HC and CO to qualify for early credits, and the credits will be calculated based on the difference between the certification FEL and the Phase 1 standards. Credits generated under this option can be used only in compliance with the Phase 1 standards. Thus, such early credits will expire at the end of the 2009 model year.

The above discussion of early credits primarily addresses those snowmobiles that will meet the Phase 1 standards early. However, we also expect that there will be some engine families introduced prior to the 2006 model year which could meet Phase 2 standards. For such engines, a manufacturer may elect to split credits between Phase 1 and Phase 2. A manufacturer may save credits generated between the certification FELs and the actual Phase 2 standards for use in Phase 2. Credits generated between the Phase 1 and Phase 2 standards could be used for Phase 1 only. Credits generated prior to the start of the program in 2006 may not be used for Phase 3.

EPA did not receive comments on such programs for off-highway motorcycle or ATVs and we are not finalizing any additional provisions. The majority of products currently offered for sale are equipped with four-stroke engines which raises concerns over the potential for windfall credits. Due to this issue and the lack of suggestions or input on the part of commenters, we are not finalizing early credits or other types of flexibilities for these programs.

c. Nonconformance penalties for recreational vehicles. Section 206(g) of the Act, 42 U.S.C. 7525(g), authorizes EPA to establish nonconformance penalties (NCPs) for motorcycles and heavy-duty engines which exceed the applicable emission standard, provided that their emissions do not exceed an appropriate upper limit. NCPs allow manufacturers that are technological laggards to temporarily sell their vehicles by payment of a penalty, rather than being forced out of the marketplace. One manufacturer suggested that we consider establishing NCPs for recreational vehicles. Section 213(d) of the Act makes nonroad standards subject to the provisions of section 206, and directs EPA to enforce nonroad standards in the same manner as highway vehicles. We therefore believe that the Act authorizes us to establish NCPs in appropriate circumstances for nonroad engines and vehicles. Recreational vehicles are similar technologically to highway motorcycles, and NCPs might be appropriate for recreational vehicles under certain circumstances.

We will consider the need for NCPs two or three years before compliance with these standards is required. Manufacturers that determine in that time frame that they are likely to be unable to comply with the standards should notify us. If we determine that NCPs are appropriate for recreational vehicles, we would establish regulations that would specify how to calculate the penalties. While we have not determined the content of such regulations, it is likely that they would be similar to our existing NCP regulations for heavy-duty engines, which are set forth in 40 CFR part 86, subpart L.

3. Are There Voluntary Low-Emission Standards for These Engines?

In the proposal we included a Voluntary Low-Emission Standards program for recreational vehicles. We did this for two reasons: to encourage new emission-control technology and to aid the consumer in choosing clean technologies. We received numerous comments on this proposed program. The environmental community was supportive of voluntary standards and encouraged us to adopt permanent labels which identify the emission performance of the vehicle in a simplistic manner that would be easily understood by the initial purchaser and any purchases of used recreational vehicles. Manufacturers of recreational vehicles ATVs, off-highway motorcycles, and snowmobiles), on the other hand, did not support voluntary standards. They were supportive of providing initial purchasers with emission performance information via temporary consumer labeling, but were opposed to voluntary standards. Their concern was that voluntary standards or permanent labels could be used by federal, state, local or any other jurisdictions to limit the use of recreational vehicles from public lands by allowing access only to recreational vehicles that meet certain emission criteria. Manufacturers further argued that our proposed mandatory emission standards were stringent enough that they would encourage and result in the use of advanced emission-control technology and that the voluntary standards would provide no additional incentives.

As stated above, the general purpose of the Voluntary Low-Emission Standards program is to provide incentives to manufacturers to produce clean products and thus create market choices for consumers to purchase these products.[60] For all three recreational vehicle categories, but especially for snowmobiles, we are expecting a variety of emission-control technologies to be used to meet the standards. In all three categories we expect consumers to have a choice of which technologies to purchase and that they will base that purchase on an understanding of key attributes such as cost, performance, noise levels, safety, and emissions. Thus, an important factor for informing consumer decision is to provide them information on the relative emissions attributes of a given model. We believe this can be achieved through a temporary consumer labeling program without voluntary standards. Therefore, we are not finalizing a voluntary standard program for recreational vehicles at this time. We will consider this issue again in the future, once experience is gained under this program. In addition, given the manufacturer's opposition, it is not clear that voluntary standards by themselves would be an effective incentive for manufacturers.

Instead, we will be adopting a consumer labeling program. A label must be fixed securely to the product prior to arriving at the dealership but does not have to be permanent and may be removed by the consumer when placed into use. The label can be in the form of a removable sticker or decal, or a hang tag affixed to the handlebars or fuel cap. If a hang tag is used, it must be attached by a cable tie that cannot be easily removed, except by the ultimate retail consumer. The label, at a minimum, must include the following information: U.S. EPA; Clean Air Index (appropriate pollutant, *e.g.*, $HC+NO_X$, etc.); manufacturer name; vehicle model with engine description (*e.g.*, 500 cc two-stroke with direct fuel injection); emission performance rating scale; explanation of scale; and notice stating that label must be on vehicle prior to sale and can be removed only by the ultimate retail consumer. In section 1051.135(g) of the regulations, titled "How must I label and identify the vehicles I produce?," we have developed several equations that determine what the emission performance rating scale will be for each category. The scale is based on a rating system of 1.0 through 10.0. A value of 1.0 would be assigned for the cleanest vehicle, while the dirtiest vehicle would get a rating of 10.0.

[60] The snowmobile industry (see docket item II–G–221) and a group of public health and environmental organizations (see docket item II–G–139) have both expressed their general support for labeling programs that can provide information on the environmental performance of various products to consumers.

4. What Durability Provisions Apply?

We are adopting several additional provisions to ensure that emission controls will be effective throughout the life of the vehicle. This section discusses these provisions for recreational vehicles. More general certification and compliance provisions, which apply across different vehicle categories, are discussed in Sections II and VII, respectively.

a. How long do my engines have to comply. Manufacturers must produce off-highway motorcycle and ATV engines that comply over a useful life of 5 years or until the vehicle accumulates 10,000 kilometers, or for ATVs 1,000 hours, whichever occurs first. We consider the 10,000-kilometer and 1,000 hour values to be minimum values for useful life, with the requirement that manufacturers must comply for a longer period if the average life of their vehicles is longer than this minimum value.

The values being finalized will harmonize EPA's useful life intervals with those contained in the California program. We proposed a significantly longer useful life intervals of 30,000 kilometers based on our understanding of usage rates for the vehicles at the time of the proposal. We received comments from manufacturers that we overestimated vehicle usage and commenters recommended that we harmonize the useful life intervals with California's. We have lowered our estimate of usage rates based on available data, including new data provided during the comment period.

Based on our current estimates of usage, we concur with manufacturers that harmonization with California is the best approach for establishing minimum useful life intervals. Generally, this will allow the same emission test data to be used for certification under both programs. However, this remains the minimum useful life and longer useful life intervals could be required in cases where the basic mechanical warranty of the engine or the advertised operating life is longer than the minimum interval. Average service life information will help in making such a determination. The manufacturer can alternatively base the longer useful life on the average service life of the vehicles where necessary data are available.

For snowmobiles, the minimum useful life is 5 years, 8,000 km, or 400 hours of operation, whichever occurs first. We based these values on

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discussions with manufacturers regarding typical snowmobile life, and on emission-modeling data regarding typical snowmobile usage rates.[61] As with ATVs and off-highway motorcycles, longer useful life intervals are required where the basic mechanical warranty of the engine or the advertised operating life is longer than the minimum interval and the manufacturer may alternatively base the longer useful life on the average service life of the vehicles where necessary data are available.

b. What are the minimum warranty periods for emission controls. For off-highway motorcycle, ATVs, and snowmobiles, manufacturers must provide an emission-related warranty for at least half of the minimum useful life period. These periods could be longer if the manufacturer offers a longer mechanical warranty for the engine or any of its components; this includes extended warranties that are available for an extra price. See § 1051.120 for a description of which components are emission-related.

We have included in our final rule an optional set of standards for off-highway motorcycles that would require the certification of competition motorcycles. However, for those individual vehicles actually used in organized competition events, it may be appropriate to exclude competition motorcycles from warranty coverage. Machines used in competition, even part of the time, may be subject to usage that can cause premature degradation of the engine and related components. Competition riders may place a premium on winning at the expense of engine durability or could otherwise damage the vehicle during the competition events. In fact, most manufacturers do not offer any mechanical warranty on vehicles used in competition. In addition, motorcycles used only for competition may be modified by the user in ways that alter the emissions characteristics of the vehicle.[62] We do not believe it is reasonable to hold manufacturers responsible for the emission warranty for such vehicles.

c. How do I demonstrate emission durability during certification. Durability demonstration for off-highway motorcycles, ATVs, and snowmobiles includes a requirement to run the engines long enough to develop and justify the full life deterioration factor. This allows manufacturers to generate a deterioration factor that helps ensure that the engines will continue to control emissions over a lifetime of operation. Snowmobiles also must run out to the end of the useful life for purposes of durability demonstration and generating deterioration factors.

d. What maintenance is allowed during service accumulation. For vehicles certified to the minimum useful life, emission-related maintenance is generally not allowed during service accumulation. The only maintenance that may be done must be (1) regularly scheduled, (2) unrelated to emissions, and (3) technologically necessary. This typically includes changing engine oil, oil filter, fuel filter, and air filter.

5. Do These Standards Apply to Alternative-Fueled Engines?

These standards apply to all spark-ignited recreational vehicles, without regard to the type of fuel used. However, because we are not aware of any alternative-fueled recreational vehicles sold into the U.S. market, we are not adopting extensive special provisions to address them at this time.

6. Is EPA Controlling Crankcase Emissions?

We are requiring that new off-highway motorcycles and ATVs not emit crankcase vapors directly to the atmosphere. This requirement will phase in beginning in 2006 and be fully phased in by 2007. California's regulations for off-highway motorcycles and ATVs, which has been in effect since 1997, also prohibits the venting of crankcase vapors into the atmosphere. The major ATV manufacturers sell many of their California certified ATV models federally as 50-state applications. Thus, many ATVs sold federally already control crankcase emissions. The only exceptions could be some of the small youth ATV models that are imported from Asia.

The typical control strategy used to control crankcase emissions is to route the crankcase vapors back to the engine intake. This is consistent with our previous regulation of crankcase emissions from such diverse sources as highway motorcycles, outboard and personal water craft marine engines, locomotives, and passenger cars. We have data from California ARB showing that a performance-based four-stroke off-highway motorcycle experienced considerably higher tailpipe emission results when crankcase emissions were routed back into the intake of the engine, illustrating the potentially high levels of crankcase emissions that exist.[63]

New snowmobiles must also have closed crankcases, beginning in 2006. This requirement is relevant only for four-stroke snowmobiles, however, since two-stroke engines, by virtue of their operation, have closed crankcases. Information on the costs and benefits of this action can be found in the Final Regulatory Support Document.

D. Testing Requirements

1. What Duty Cycles Are Used To Measure Emissions?

Testing a vehicle or engine for emissions typically consists of exercising it over a prescribed duty cycle of speeds and loads, typically using a chassis or engine dynamometer. The nature of the duty cycle used for determining compliance with emission standards during the certification process is critical in evaluating the likely emission performance of engines designed to those standards. Duty cycles must be relatively comparable to the way equipment is actually used because if they are not, then compliance with emission standards would not assure that emissions from the equipment are actually being reduced in use as intended.

a. Off-highway Motorcycles and ATVs. For testing off-highway motorcycles and ATVs, we specify the current highway motorcycle test procedure be used for measuring emissions. The highway motorcycle test procedure is very similar to the test procedure as used for light-duty vehicles (i.e., passenger cars and trucks) and is referred to as the Federal Test Procedure (FTP). The FTP for a particular class of engine or equipment is actually the aggregate of all of the emission tests that the engine or equipment must meet to be certified. However, the term FTP has also been used traditionally to refer to the exhaust emission test based on the Urban Dynamometer Driving Schedule (UDDS), also referred to as the LA–4 (Los Angeles Driving Cycle #4). The UDDS is a chassis dynamometer driving cycle that consists of numerous "hills" which represent a driving event. Each hill includes accelerations, steady-state operation, and decelerations. There is an idle between each hill. The FTP consists of a cold start UDDS, a 10-minute soak, and a hot start. The emissions from these three separate events are collected into three unique bags. Each bag represents one of the events. Bag 1 represents cold transient operation, Bag 2 represents cold stabilized operation, and Bag 3 represents hot transient operation.

For highway motorcycles, we have three classes based on engine displacement, with Class I (50 to 169 cc) being the smallest and Class III (280 cc and over) being the largest. The highway motorcycle regulations allow Class I motorcycles to be tested on a less severe UDDS cycle than the Class II and III motorcycles. This is accomplished by reducing the acceleration and deceleration rates on some the more aggressive "hills." We proposed to use this same class/cycle distinction for off-highway motorcycles and ATVs. In other words, we proposed that off-highway motorcycles and ATVs with an engine displacement at or below 169 cc would be tested over the FTP test cycle for Class I highway motorcycles. We proposed that off-highway motorcycles and ATVs with engine displacements greater than 169 cc would be tested over the FTP test cycle for Class II and Class III highway motorcycles. We requested comment on the appropriateness of allowing the use of the Class I test cycle for all ATVs.

Manufacturers have expressed concerns over the appropriateness of testing ATVs using the FTP and the ability of some ATVs to be run on the test cycle. Manufacturers recommended for FTP testing, that all ATVs be tested over the Class I cycle. Manufacturers stated that the Class I cycle top speed of 36 mph would be "much more representative" of ATV operation than the 57 mph top speed of the Class III cycle. Manufacturers also noted that California FTP testing is based on the use of the Class I cycle for all ATVs and that the EPA program would need to be changed allow for harmonization. Manufacturers did not raise these same concern for off-highway motorcycles which are tested in accordance with the highway motorcycle classifications for California.

After considering this issue further, we concur with the manufacturer's comments and are finalizing the Class I cycle for all ATVs. One of the objectives of the final program is to allow harmonization with California and this change is fundamental in the manufacturers' ability to use the same FTP test data for both programs. Also, the average speeds of in-use ATVs appear to be significantly lower than we estimated in the analysis for the proposal (8–13 mph compared to 20 mph). The new data on ATV usage alleviates concerns that the lower speeds of the Class I test cycle might miss significant high-speed ATV operation. The change in the test procedure is directionally consistent with this new data. In addition, the change in test procedure will enable ATVs in general to be tested over the FTP with fewer issues concerning the ability of the vehicles to operate over the driving cycle. We are finalizing the test procedure requirements as proposed for off-highway motorcycles. We believe that the manufacturer's concerns regarding the FTP are also addressed by the option to test the smallest ATVs (up to 100 cc) to J–1088 standards permanently. These vehicles are typically governed to top speeds below the 36 mph contained in the Class I FTP cycle. Also, the small displacement ATVs may be most strenuously tested (i.e., more operation at high loads) on the FTP due to their lower horsepower output.

We acknowledge that chassis dynamometers for ATVs could be costly to purchase and difficult to put in place in the near term, especially for smaller manufacturers. As discussed in Section III.C.1.b, we are allowing the use of the J1088 engine test cycle as a transitional option through model year 2008. The J1088 option expires after 2008 and the FTP becomes the required test cycle in 2009. As noted above, EPA is currently in discussions with ATV manufacturers to determine whether a new test cycle is appropriate. The J1088 may be discontinued earlier than 2009 if another test procedure is implemented.

b. Snowmobiles. We are adopting the snowmobile duty cycle developed by Southwest Research Institute (SwRI) in cooperation with the International Snowmobile Manufacturers Association (ISMA) for all snowmobile emission testing.[64] The test procedure consists of two main parts; the duty cycle that the snowmobile engine operates over during testing and other testing protocols surrounding the measurement of emissions (sampling and analytical equipment, specification of test fuel, atmospheric conditions for testing, etc.). While the duty cycle was developed specifically to roughly approximate snowmobile operation, many of the testing protocols are well established in other EPA emission-control programs and have been simply adapted where appropriate for snowmobiles.

The snowmobile duty cycle was developed by instrumenting several snowmobiles and operating them in the field in a variety of typical riding styles, including aggressive (trail), moderate (trail), double (trail with operator and one passenger), freestyle (off-trail), and lake driving. A statistical analysis of the collected data produced the five mode steady-state test cycle is shown in Table III.D–1. This duty cycle is the one that was used to generate the baseline emissions levels for snowmobiles, and we believe it is the most appropriate for demonstrating compliance with the snowmobile emission standards at this time.

TABLE III.D–1.—SNOWMOBILE ENGINE TEST CYCLE

Engine parameter	Mode				
	1	2	3	4	5
Normalized Speed	1.00	0.85	0.75	0.65	Idle
Normalized Torque	1.00	0.51	0.33	0.19	0.00
Relative Weighting (in percent)	12	27	25	31	5

The rest of the testing protocol is largely derived from our regulations for marine outboard and personal water craft engines, as recommended in the SwRI/ISMA test cycle development work (61 FR 52088, October 4, 1996).

[61] EPA memorandum, "Emission Modeling for Recreational Vehicles," from Linc Wehrly to Docket A–2000–01, November 13, 2000 (document II–B–19).

[62] While it is possible that the user could make modifications to their competition off-highway motorcycle that alter the emissions characteristics of the vehicle, we do not expect tampering to be a problem for those competition vehicles certifying to our voluntary standard of 4.0 g/km HC+NO_X because the technologies required to meet this standard, four-stroke engines and direct fuel injection two-stroke engines, are inherent to the engine and will be optimized for maximum engine performance as well as emissions performance. Thus, any modifications would actually reduce rather than improve engine performance.

[63] "Closed Crankcase Exhaust Emissions from Four-Stoke Competition Off-highway Motorcycle," EPA memo from L. Wehrly to Docket A–2000–01, September 10, 2001 (document II-B–25).

[64] "Development and Validation of a Snowmobile Engine Emission Test Procedure," Jeff J. White, Southwest Research Institute and Christopher W. Wright, Arctic Cat, Inc., Society of Automotive Engineers paper 982017, September, 1998, (Docket A–2000–1; document II–D–05).

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The testing equipment and procedures from that regulation are generally appropriate for snowmobiles, including the provisions for raw exhaust gas sampling which are being adopted here for snowmobiles.

Unlike marine engines, however, snowmobiles tend to operate in cold ambient temperatures. Thus, some provision needs to be made in the snowmobile test procedure to account for the colder ambient temperatures typical of snowmobile operation. Since snowmobile carburetors are jetted for specific ambient temperatures and pressures, appropriate accounting for typical operating temperatures is important to assure that anticipated emissions reductions actually occur in use. We proposed that snowmobile engine inlet air temperature be between −15° C and −5° C (5° F and 23° F), but that the ambient temperature in the test cell not be required to be refrigerated. We received comments stating that this approach would be expensive due to the need for refrigeration equipment, pointing out that the snowmobile manufacturers do not currently have the capacity for cold testing. Further, we received comments that accurate emissions results can be obtained using appropriate jetting determined by extrapolating from the manufacturer's jet chart (if necessary).

We agree that emissions can be accurately measured at higher ambient temperatures provided that the proper compensation be made in the fueling system. For carbureted engines this means jetting the engine appropriately for the test temperature. For electronically controlled engines this doesn't tend to be an issue because such technology generally includes temperature compensation in its control algorithms. However, one manufacturer stated that for snowmobiles that have electronically controlled engines, it would be preferable and environmentally appropriate to test with colder inlet temperatures. Thus, we are adopting the option to allow snowmobile testing using either cold engine inlet air temperatures between −15° C and −5° C (5° F and 23° F) or warm engine inlet air temperatures between 20° C and 30° C (68° F and 86° F). However, depending on the location of the air box where inlet air enters the engine intake system, the inlet temperature could be considerably warmer than ambient conditions. For a snowmobile that does not have temperature compensating capabilities, it could be possible to get a moderate emission reduction due to the increase in air density that results at colder temperatures from the artificially induced test inlet air. These emission reductions would not occur in real operation since actual inlet air would be warmer. Therefore, to use the colder inlet temperature option, a manufacturer must demonstrate that for the given engine family, the temperature of the inlet air within the air box is consistent with the inlet-air temperature test conditions.

2. What Fuels Will Be Used During Exhaust Emission Testing?

We are adopting fuel specifications as proposed for all recreational vehicles that we have specified for 2004 and later light-duty vehicles.

3. Are There Production-Line Testing Provisions for These Engines?

Recreational vehicle or engine manufacturers must perform emission tests on a small percentage of their production as it leaves the assembly line to ensure that production vehicles operate at certified emission levels. The broad outline of this program is discussed in Section II.C.4 above. Production-line testing must be performed using the same test procedures as for certification testing.

E. Special Compliance Provisions

As described in Section XI.B, the report of the inter-agency Small Business Advocacy Review Panel addresses the concerns of small-volume manufacturers of recreational vehicles. We proposed to adopt the provisions recommended by the panel and received comments on the proposals. We are finalizing the provisions below as proposed, with the modifications as noted.

Off-Highway Motorcycles and ATVs

To identify representatives of small businesses for this process, we used the definitions provided by the Small Business Administration for motorcycles, ATVs, and snowmobiles (fewer than 500 employees). Eleven small businesses agreed to serve as small-entity representatives. These companies represented a cross-section of off-highway motorcycle, ATV, and snowmobile manufacturers, as well as importers of off-highway motorcycles and ATVs.

As discussed above, our emission standards for off-highway motorcycles and ATVs will likely necessitate the widespread use of four-stroke engines. Most small-volume off-highway motorcycle and ATV importers—and to a lesser degree, small-volume manufacturers—currently use two-stroke engines. While four-stroke engines are common in motorcycles and ATVs in general, their adoption by any manufacturer is still a significant business challenge. Small manufacturers of these engines may face additional challenges in certifying engines to emission standards, because the cost of certification would be spread over the relatively few engines they produce. These higher per-unit costs may place small manufacturers at a competitive disadvantage without specific provisions to address this burden.

We are applying the flexibilities described below to engines produced or imported by small entities with combined off-highway motorcycle and ATV annual sales of fewer than 5,000 units. The inter-agency panel recommended these provisions to address the potentially significant adverse effects on small entities of an emission standard that may require conversion to four-stroke engines. The 5,000-unit threshold is intended to focus these flexibilities on those segments of the market where the need is likely to be greatest and to ensure that the flexibilities do not result in significant adverse environmental effects during the period of additional lead-time recommended below.[65] In addition, we are limiting some or all of these flexibilities to companies that are in existence or have product sales at the time we proposed emission standards to avoid creating arbitrary opportunities in the import sector, and to guard against the possibility of corporate reorganization, entry into the market, or other action for the sole purpose of circumventing emission standards.

Snowmobiles

There are only a few small snowmobile manufacturers and they sell only a few hundred sleds a year, which represents less than 0.5 percent of total annual production. Therefore, the per-unit cost of regulation may be significantly higher for these small entities because they produce very low volumes. Additionally, these companies do not have the design and engineering resources to tackle compliance with emission standard requirements at the same time as large manufacturers and tend to have limited ability to invest the capital necessary to conduct emission testing related to research, development, and certification. Finally, the requirements of the snowmobile program may be infeasible or highly impractical because some small-volume manufacturers may have typically produced engines with unique designs or calibrations to serve niche markets (such as mountain riding). The new snowmobile emission standards may impose significant economic hardship on these few manufacturers whose market presence is small. We therefore believe significant flexibility is necessary and appropriate for this category of small entities, as described below.

[65] For example, importers may have access to large supplies of vehicles from major overseas manufacturers and potentially could substantially increase their market share by selling less expensive noncomplying products.

Flexibilities

1. Additional lead time. We are adopting a delay of two years beyond the date larger businesses must comply to ease the burden for small businesses. This will provide extra time to develop technology and, in the case of importers, extra time to resolve supplier issues that may arise. The two-year delay also applies to the timing of the Phase 2 standards for snowmobiles.

In addition, for small snowmobile manufacturers, the emission standards phase in over an additional two years at a rate of 50 percent, then 100 percent. Phase 1 phases in at 50/50/100 percent in 2008/2009/2010 and Phase 2 phases in at 50/50/100 percent in 2012/2013/2014.

2. Design-based certification. The process of certification is a business cost and lead time issue that may place a disproportionate burden on small entities, particularly importers. Certification is a fixed cost of doing business, which is potentially more burdensome on a unit-cost basis for small entities. It is potentially an even greater challenge, since some small entities will either contract emission testing to other parties or, in the case of importers, perhaps rely on off-shore manufacturers to develop and certify imported engines.

Small-volume manufacturers may use design-based certification, which allows us to issue a certificate to a small business for the emission-performance standard based on a demonstration that engines or vehicles of a similar design criteria meet the standards of the individual engine family. The small vehicle manufacturer must demonstrate that their engine uses a design similar to or superior to one that is being used by other manufacturers that has been shown through prior emission testing to meet the standards. The demonstration must be based in part on emission test data from engines of a similar design. Under a design-based certification program, a manufacturer provides evidence in the application for certification that an engine or vehicle meets the applicable standards for its useful life based on comparing its design (for example, the use a four-stroke engine, advanced fuel injection, or any other particular technology or calibration) to that of a previously tested engine. The design criteria might include specifications for engine type, calibrations (spark timing, air /fuel ratio, etc.), and other emission-critical features, including, if appropriate, catalysts (size, efficiency, precious metal loading). Manufacturers submit adequate engineering and other information about their individual designs showing that they will meet emission standards for the useful life.

3. Broaden engine families. Small businesses may define their engine families more broadly, putting all their models into one engine family (or more) for certification purposes. Manufacturers may then certify their engines using the "worst-case" configuration within the family.

A small manufacturer might need to conduct certification emission testing rather than pursuing design-based certification. Such a manufacturer would likely find broadened engine families useful.

4. Production-line testing waiver. As discussed above, manufacturers must test a small sampling of production engines to ensure that production engines meet emission standards. We are waiving production-line testing requirements for small manufacturers. This will eliminate or substantially reduce production-line testing requirements for small businesses.

5. Use of assigned deterioration factors for certification. Small manufacturers may use deterioration factors assigned by EPA. Rather than performing a durability demonstration for each family for certification, manufacturers may elect to use deterioration factors determined by us to demonstrate emission levels at the end of the useful life, thus reducing the development and testing burden. This might be a very useful and cost-beneficial option for a small manufacturer opting to perform certification emission testing instead of design-based certification.

6. Using emission standards and certification from other EPA programs. A wide array of engines certified to other EPA programs may be used in recreational vehicles. For example, there is a large variety of engines certified to EPA lawn and garden standards (Small SI). Manufacturers of recreational vehicles may use engines certified to any other EPA standards for five years. Under this approach, engines certified to the Small SI standards may be used in recreational vehicles. These engines would then meet the Small SI standards and related provisions rather than those adopted in this document for recreational vehicles. Small businesses using these engines will not have to recertify them, as long as they do not alter the engines in a way that might cause it to exceed the emission standards it was originally certified to meet. Also, the recreational vehicle application may not be the primary intended application for the engine.

Additionally, a certified snowmobile engine produced by a large snowmobile manufacturer may be used by a small snowmobile manufacturer, as long as the small manufacturer did not change the engine in a way that might cause it to exceed the snowmobile emission standards. This provides a reasonable degree of emission control. For example, if a manufacturer changed a certified engine only by replacing the stock exhaust pipes with pipes of similar configuration or the stock muffler and air intake box with a muffler and air box of similar air flow, the engine would still be eligible for this flexibility option, subject to our review. The manufacturer may also change the carburetor to have a leaner air-fuel ratio without losing eligibility. The manufacturer in such cases could establish a reasonable basis for knowing that emissions performance is not negatively affected by the changes. However, if the manufacturer changed the bore or stroke of the engine, it would no longer qualify, as emissions might increase beyond the level of the standard.

7. Averaging, banking, and trading. For the overall program, we are adopting corporate-average emission standards with opportunities for banking and trading of emission credits. We expect the averaging provisions to be most helpful to manufacturers with broad product lines. Small manufacturers and small importers with only a few models might not have as much opportunity to take advantage of these flexibilities. However, we received comment from one small manufacturer supporting these types of provisions as a critical component of the program. Therefore, we are adopting corporate-average emission standards with opportunities for banking and trading of emission credits for small manufacturers.

8. Hardship provisions. We are adopting provisions to address hardship circumstances, as described in Section VII.C.

9. Unique snowmobile engines. Even with the broad flexibilities described above, there may be a situation where a small snowmobile manufacturer cannot comply. Therefore, we are adopting an additional provision to allow a small

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snowmobile manufacturer to petition us for relaxed standards for one or more engine families. The manufacturer must justify that the engine has unique design, calibration, or operating characteristics that make it atypical and infeasible or highly impractical to meet the emission-reduction requirements, considering technology, cost, and other factors. At our discretion, we may then set an alternative standard at a level between the prescribed standard and the baseline level, which would likely apply until the engine family is retired or modified in a way that might alter emissions. These engines will be excluded from averaging calculations. We proposed that this provision be limited to 300 snowmobiles per year. However, we received comment that this limit is too restrictive to be of much assistance to small businesses. Based on this comment we are adopting a limit for this provision of 600 snowmobiles per year.

F. Technological Feasibility of the Standards

1. Off-highway Motorcycles and ATVs

We believe the new emission standards are technologically feasible given the availability of emission-control technologies, as described below.

a. What are the baseline technologies and emission levels? As discussed earlier, off-highway motorcycles and ATVs are equipped with relatively small (48 to 650 cc) high-performance two-or four-stroke single cylinder engines that are either air-or liquid-cooled.[66] Since these vehicles are unregulated outside of the state of California, the main emphasis of engine design is on performance, durability, and cost and thus they generally have no emission controls. The fuel systems used on these engines are almost exclusively carburetted. Two-stroke engines lubricate the piston and crankshaft by mixing oil with the air and fuel mixture. This is accomplished by most contemporary two-stroke engines with a pump that sends two-cycle oil from a separate oil reserve to the carburetor where it is mixed with the air and fuel mixture. Some less expensive two-stroke engines require that the oil be mixed with the gasoline in the fuel tank. Four-stroke engines inject oil via a pump throughout the engine as the means of lubrication. With the exception of those vehicles certified in California, most of these engines are unregulated and thus have no emission controls. For ATVs, approximately 80-percent use four-stroke engines while only 55 percent of off-highway motorcycles use four-stroke engines. The average HC emissions for two-stroke engines are about 35 g/km, while the average for four-stroke engines are 1.5 g/km. CO emissions levels are very similar between the types of engines with two-stroke levels of approximately 34 g/km and four-stroke levels of 30 g/km. For performance and durability reasons, off-highway motorcycle and ATV engines all tend to operate with a "rich" air and fuel mixture. That is, they operate with excess fuel, which enhances performance and allows engine cooling to promote longer engine life. However, rich operation results in high levels of HC, CO, and PM emissions. Also, two-stroke engines tend to have high scavenging losses, where up to a third of the unburned air and fuel mixture goes out of the exhaust resulting in high levels of HC emissions.

b. What technology approaches are available to control emissions? Several approaches are available to control emissions from off-highway motorcycles and ATVs. The simplest approach consists of modifications to the base engine, fuel system, cooling system, and recalibration of the air and fuel mixture. These changes may include adjusting valve timing for four-stroke engines, changing from air-to liquid-cooling, and using advanced carburetion techniques or electronic fuel injection instead of traditional carburetion systems. Other approaches may include secondary air injected into the exhaust, an oxidation or three-way catalyst, or a combination of secondary air and a catalyst. The engine technology that may have the most potential for maximizing emission reductions from two-stroke engines is direct fuel injection. Direct fuel injection is able to reduce or even eliminate scavenging losses by pumping only air through the engine and then injecting fuel into the combustion chamber after the intake and exhaust ports have closed. Using oxidation catalysts with direct injection may reduce emissions even further. Finally, converting from two-stroke to four-stroke engine technology will significantly reduce HC emissions. All of these technologies have the capability to reduce HC and CO emissions.

We expect none of these technologies to negatively affect noise, safety, or energy factors. Fuel injection can improve the combustion process which can result in lower engine noise. The vast majority of four-stroke engines used in off-highway motorcycles and ATVs are considerably quieter than their two-stroke counterparts. Fuel injection has no impact on safety and four-stroke engines often have a more "forgiving" power band which means the typical operator may find the performance of the machine to be more reasonable and safe. Fuel injection, the enleanment of the air and fuel mixture and four-stroke technology all can result in significant reductions in fuel consumption.

c. What technologies are most likely to be used to meet emission standards?

Four-Stroke Engines

Most manufacturers have experience with four-stroke engine technology and currently have several models powered by four-stroke engines. This is especially true in the ATV market where four-stroke engines account for 80 percent of sales. Because four-stroke engines have been so prevalent over the last 10 years in the off-highway motorcycle and ATV industry, manufacturers have developed a high level of confidence in four-stroke technology and its application.

Manufacturers of off-highway motorcycles and ATVs utilizing four-stroke engines will need to make some minor calibration changes and improvements to the carburetor to meet emission standards for the 2006 model year. Some of these modifications may have already been incorporated in response to California requirements. The calibration changes will most likely consist of reducing the amount of fuel in the air-fuel mixture. This is commonly referred to as leaning out the air-fuel ratio. Although four-stroke engines produce considerably lower levels of HC than two-stroke engines, the four-stroke engines used in off-highway motorcycles and ATVs all tend to be calibrated to operate with a rich air-fuel ratio for performance and durability benefits. This rich operation results in high levels of CO, since CO is formed in the engine when there is a lack of oxygen to complete combustion. We believe that many of these engines are calibrated to operate richer than needed, because they have either never had to consider emissions when optimizing air-fuel ratio or those that are certified to the California standards can operate richer because the California ATV CO standards are fairly lenient. Carburetors with tighter tolerances ensure more precise flow of fuel and air, resulting in better fuel atomization (*i.e.*, smaller fuel droplets), better combustion, and lower emissions.

In addition to converting to four-stroke technology and making some minor calibration and carburetion improvements to meet the 2006

[66] The engines are small relative to automotive engines. For example, automotive engines typically range from one liter to well over five liters in displacement, whereas off-highway motorcycles range from 0.05 liters to 0.65 liters.

emission standards, manufacturers may need to use secondary air injection on some models. Secondary air has been used by passenger cars and highway motorcycles for many years as a means to help control HC and CO. The hot exhaust gases coming from the combustion chamber contain significant levels of unburned HC and CO. If sufficient oxygen is present, these gases will continue to react in the exhaust system, reducing the amount of pollution emitted into the atmosphere. To assure that sufficient oxygen is present in the exhaust, air is injected into the exhaust system. For off-highway motorcycles and ATVs, the additional air can be injected into the exhaust manifold using a series of check valves which use the normal pressure pulsations in the exhaust manifold to draw air from outside, commonly referred to as pulse air injection. We have tested several four-stroke ATVs with secondary air injected into the exhaust manifold and found that the HC and CO emission levels were below the standards (further details of our secondary air testing are described in the Final Regulatory Support Document).

A small number of models in California have been equipped with secondary air technology. It is likely that some manufacturers will opt to use secondary air systems to reduce emissions in addition to enleanment strategies to meet EPA standards. We believe this may be especially true for ATVs meeting the 1.5 g/km HC+NO_X standard. Using these systems would also provide manufacturers with more flexibility within the averaging scheme and would allow them to avoid any negative affects on performance that could accompany excessive enleanment. Also, several models are not certified to California standards, including some four-stroke models. Manufacturers may use secondary air on a more widespread basis to bring all models into compliance.

Since the emission standards address HC + NO_X, as well as CO, manufacturers will have to use an emission-control strategy or technology that doesn't cause NO_X emissions to increase disproportionately. However, since all of these vehicles operate with rich air-fuel ratios, as discussed above, NO_X levels from these engines are generally low and strategies designed to focus on HC reduction allow manufacturers to meet emission standards with no significant increase in NO_X levels.

Two-Stroke Engines

Off-highway motorcycles and ATVs using two-stroke engines will present a greater challenge for compliance with emission standards. Since baseline HC and CO emission levels are so high for two-stroke engines, it would be very difficult for any two-stroke engine to meet our standards with current production technologies. Although catalysts have been used for two-stroke powered mopeds, scooters, and small displacement highway motorcycles in Europe and Asia, the standards and test cycles are significantly different from ours and there is no way to make reasonable comparisons. We have not performed any testing, nor are we aware of any emission test data on the use of catalysts on ATV and off-highway motorcycle two-stroke engines. Therefore, we do not believe that catalysts would be available for two-stroke engines that would meet our standards in the time frame necessary to comply with our program. Direct fuel injection has been successfully applied to two-stroke engines used in marine personal water craft, outboard engines, and small mopeds and scooters and is just now being looked at for off-highway motorcycle applications. However, as discussed below, even this advanced technology cannot meet our standards alone.

As described in Section III.C.1.a, we are including an optional standard for off-highway motorcycles of 4.0 g/km HC + NO_X, for manufacturers willing to certify competition motorcycles that would otherwise be exempt from emission standards. We received comment from REV! Motorcycles in support of this level. Rev! plans to manufacture two-stroke off-highway motorcycles equipped with direct injection. Based on an early analysis of the technology, REV! requested that EPA consider establishing a 4.0 g/km standard to allow them to pursue the technology and have a realistic opportunity to meet emission standards. According to their comments, they believe that their engines will be capable of meeting the 4.0 g/km standard without the use of a catalyst. Perhaps most importantly, REV! believes that this is a viable technology approach for competition models, which have very high baseline emissions.

REV! shared their plans and emissions projections for a single prototype model of competition motorcycle. Production units, additional models, or motorcycles produced by other manufacturers using similar technologies may not be able to achieve the 4.0 g/km level. The 4.0 g/km level represents an HC reduction of 90 percent or more from baseline levels for some competition motorcycles, which is likely to be very challenging. This is one reason EPA is also allowing averaging, banking, and trading for this option. Averaging will provide flexibility to manufacturers who have some models that, while very clean relative to baseline levels, are above the 4.0 g/km standard. Manufacturers will be able to use credits, for example, from the sale of four-stroke machines with emissions below 4.0 g/km to achieve the 4.0 g/km standard on average.

2. Snowmobiles

a. What are the baseline technologies and emission levels? As discussed earlier, snowmobiles are equipped with relatively small high-performance two-stroke two and three cylinder engines that are either air-or liquid-cooled. Since these vehicles are currently unregulated, the main emphasis of engine design is on performance, durability, and cost and thus they have no emission controls. The fuel system used on these engines are almost exclusively carburetors, although some have electronic fuel injection. Two-stroke engines lubricate the piston and crankshaft by mixing oil with the air and fuel mixture. This is accomplished by most contemporary two-stroke engines with a pump that sends two-cycle oil from a separate oil reserve to the carburetor where it is mixed with the air and fuel mixture. Some less expensive two-stroke engines require that the oil be mixed with the gasoline in the fuel tank. Snowmobiles currently operate with a "rich" air and fuel mixture. That is, they operate with excess fuel, which enhances performance and allows engine cooling which promotes longer lasting engine life. However, rich operation results in high levels of HC, CO, and PM emissions. Also, two-stroke engines tend to have high scavenging losses, where up to a third of the unburned air and fuel mixture goes out of the exhaust resulting in high levels of raw HC. Current average snowmobile emission rates are 400 g/kW-hr (296 g/hp-hr) CO and 150 g/kW-hr (111 g/hp-hr) HC. There are however, at least two snowmobile models that use four-stroke engines. Two companies currently have a moderate-powered four-stroke touring model that has very low emissions. One sled uses a small advanced automotive engine, while the other uses a modified ATV engine. Both engines are very sophisticated, using electronic fuel injection and computer-based closed-loop control. The other snowmobile manufacturers are planning to release four-stroke models for the 2003 model year, but are focusing on higher performing models that, according to

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the manufacturers, may not have as good of emissions control as the production four-stroke touring models.

b. What technology approaches are available to control emissions? We believe the new emission standards are technologically feasible. A variety of technologies are currently available or in stages of development to be available for use on two-stroke snowmobiles. These include improvements to carburetion (improved fuel control and atomization, as well as improved production tolerances), enleanment strategies for both carbureted and fuel injected engines, and semi-direct and direct fuel injection. In addition to these two-stroke technologies, converting to four-stroke engines is also feasible. Each of these is discussed in the following paragraphs.

There are several ways to improve carburetion in snowmobile engines. First, strategies to improve fuel atomization promote more complete combustion of the fuel/air mixture. Additionally, improved production tolerances enable more consistent fuel metering. Both of these changes allow more accurate control of air-fuel ratios. Snowmobile engines are currently calibrated with rich air-fuel ratios for durability reasons. Leaner calibrations to CO and HC emissions pose a challenge for maintaining engine durability, but many engine improvements are available to prevent problems. These include changes to the cylinder head, pistons, ports and pipes to reduce knock. In addition critical engine components can be made more robust to improve durability.

The same calibration changes to the air-fuel ratio just discussed for carbureted engines can also be employed, possibly with more accuracy, by using fuel injection. At least one major snowmobile manufacturer currently employs electronic fuel injection on several of its snowmobile models.

In addition to rich air-fuel ratios, one of the main reasons that two-stroke engines have such high HC emission levels is that they release a substantial amount of unburned fuel into the atmosphere as a result from scavenging losses, as described above. One way to reduce or eliminate such losses is to inject the fuel into the cylinder after the exhaust port has closed. This can be done by injecting the fuel into the cylinder through the transfer port (semi-direct injection) or directly into the cylinder (direct injection). Both of these approaches are currently being used successfully in two-stroke personal water craft engines. We believe these technologies hold promise for application to snowmobiles. In fact, one company is offering a snowmobile with a semi-direct injection two-stroke engine for the 2003 model year. Manufacturers must address a variety of technical design issues for adapting the technology to snowmobile operation, such as operating in colder ambient temperatures and at variable altitude. The averaging approach and the several years of lead time give manufacturers time to incorporate these development efforts into their overall research plan as they apply these technologies to snowmobiles.

In addition to the two-stroke technologies just discussed, using four-stroke engines in snowmobiles is another feasible approach to reduce emissions. Since they do not scavenge the exhaust gases with the incoming air-fuel mixture, four-stroke engines have inherently lower HC emissions compared to two-stroke engines. Four-stroke engines have a lower power-to-displacement ratio than two-stroke engines and are heavier. Thus, initially they may be more appropriate for snowmobile models where extreme power and acceleration are not the primary selling points. Such models include touring and sport trail sleds. However, one company has developed a four-stroke engine based off one of their sport highway motorcycle engines that produces 150 horsepower and will be used in their high-performance snowmobiles in the 2003 model year.

c. What technologies are most likely to be used to meet emission standards?

2006 Standards

We expect that, in the context of an emissions averaging program, manufacturers might choose to take different paths to meet the 2006 emission standards. We expect manufacturers to use a mix of technologies that will include improved carburetion and enleanment strategies, combined with engine modifications, the use of direct injection, and the use of four-stroke engine technology. For example, depending on their emission rates, one scenario for meeting our standards could be a mixture of 60 percent using improved carburetion, enleanment strategies, and engine modifications, 15 percent using direct injection, and another 15 percent using four-stroke engines. Manufacturers can expect moderate emission reductions from engine modifications and enleanment strategies. Most two-stroke snowmobile engines are designed to operate with a rich air and fuel mixture, which result in high levels of HC, CO, and PM. By reducing the amount of fuel in the air and fuel mixture (*i.e.*, enleanment), these emissions can be reduced. Because manufacturers use the extra fuel in the air and fuel mixture to help cool the engine, some modifications such as the use of more robust materials, may be necessary. Manufacturers have indicated to us that direct injection strategies can result in emission reductions of 70 to 75 percent for HC and 50 to 70 percent for CO. Certification results from 2000 model year outboard engines and personal water craft (PWC) support such reductions. We believe that as manufacturers learn to apply direct injection strategies they may choose to implement those technologies on some of their more expensive sleds and use less aggressive technologies, such as improved carburetion and enleanment on their lower performance models.

It appears that the use of four-stroke engines in snowmobiles will be more prevalent than we initially anticipated. For the 2003 model year, all four of the major snowmobile manufacturers will offer a four-stroke engine. Two manufacturers have already sold limited quantities of their four-stroke snowmobiles in 2002. All of these engines will be appearing in at least two different models and in some cases up to three or four models. The size and design of these engines is quite varied. All of the engines range in size from 650 cc to 1000 cc. There are two cylinder and four cylinder engines, fuel injected and carbureted, moderate horsepower and high horsepower. Manufacturers have indicated that depending on their success, four-stroke engines will play a large role in meeting our standards.

2010 Standards

As with the 2006 standards, we expect that manufacturers will use a mix of technologies to meet our 2010 standards. To meet the 2010 standards, manufacturers will need to employ the use of advanced technologies such as direct fuel-injection and four-stroke engines on a larger portion of their production. As noted above, manufacturers are beginning to introduce these technologies and will be gaining experience with them over the next several years. Because we are offering manufacturers the option to choose between two sets of standards in 2010, the mixture of technologies will be very manufacturer and engine family specific. For example, direct injection typically reduces CO significantly but does not reduce HC to the same extent as four-stroke engines. Engine families that manufacturers believe will be most compatible with direct injection technology would likely meet the 75 g/kW-hr HC and 200 g/kW-hr CO standards. A potential scenario for meeting these standards could be a mixture of 50 percent direct injection, 20 percent four-stroke engines, and 30 percent with engine modifications. Engine families that manufacturers believe will be more compatible with four-stroke technology, which typically has superior HC emissions levels but do not necessarily have exceptionally good CO performance, will likely meet the 45 g/kW-hr HC and 275 g/kw-hr CO standards. Under either option, it is possible that manufacturers will continue to sell two-stroke models with lesser levels of technology. Manufacturers are likely to reduce emissions where possible from at least a portion of the remaining two-stroke engines through the use of engine modifications, calibration optimization, and secondary air systems. In some cases this will be necessary just to meet the FEL cap. A potential scenario for meeting these standards could be a mixture of 70 percent four-stroke engines, 10 percent direct fuel injection, and 20 percent with engine modifications.

IV. Permeation Emission Control

A. Overview

In the proposal we specified only exhaust emission controls for recreational vehicles. However, several commenters raised the issue of control of evaporative emissions related to permeation from fuel tanks and fuel hoses. The commenters stated that work done by California ARB on permeation emissions from plastic fuel tanks and rubber fuel line hoses for various types of nonroad equipment as well as portable plastic fuel containers raised a new emissions concern. Our own investigation into the hydrocarbon emissions related to permeation of fuel tanks and fuel hoses from recreational land-based and marine applications supports the concerns raised by the commenters. Therefore, on May 1, 2002, we reopened the comment period and requested comment on possible approaches to regulating permeation emissions from recreational vehicles. As a result of our investigations and the comments received, we have determined that it is appropriate to promulgate standards regulating permeation emissions from these vehicles.

This section describes the provisions for 40 CFR part 1051, which would apply only to recreational vehicle manufacturers. This section also discusses test equipment and procedures (for anyone who tests fuel tanks and hoses to show they meet emission standards) and general compliance provisions.

We are adopting performance standards intended to reduce permeation emissions from recreational vehicles. The standards, which apply to new vehicles starting in 2008, are nominally based on manufacturers reducing these permeation emissions from new vehicles by about 90 percent overall.[67] We also recognize that there are many small businesses that manufacture recreational vehicles. We are therefore adopting several special compliance provisions to reduce the burden of permeation emission regulations on small businesses. These special provisions are the same as for the exhaust emission standards, as applicable, and are discussed in Section III.E.

B. Vehicles Covered by This Provision

We are adopting new permeation emission standards for new off-highway motorcycles, all-terrain vehicles, and snowmobiles. These provisions apply even if the recreational vehicle manufacturer exercises the option to use an engine certified under another program such as the small spark ignition requirements in 40 CFR part 90. These standards would require these vehicle manufacturers to use low permeability fuel tanks and hoses. We include vehicles and fuel systems that are used in the United States, whether they are made domestically or imported.

Even though snowmobiles do not usually experience year around use, as is the case with ATVs and off-highway motorcycles, we are including snowmobiles in this standard because it is common practice among snowmobile owners to store their snowmobiles in the off-season with fuel in the tank (typically half full to full tank). A fuel stabilizer is typically added to the fuel to prevent gum, varnish, and rust from occurring in the engine as a result of the fuel sitting in the fuel tank and fuel system for an extended period of time; however, this does not reduce permeation. Thus, snowmobiles experience fuel permeation losses just like off-highway motorcycles and ATVs.

We are extending our basic nonroad exemptions to the engines and vehicles covered by this rule. These include the testing exemption, the manufacturer-owned exemption, the display exemption, and the national security exemption. These exemptions are described in more detail under Section VII.C. In addition, vehicles used solely for competition are not considered to be nonroad vehicles, so they are exempt from meeting the emission standards (but see discussion in Section III.C.1.a regarding the voluntary program for certification of all off-highway motorcycles).

C. Permeation Emission Standards

1. What Are the Emission Standards and Compliance Dates?

We are finalizing new standards that will require an 85-percent reduction in plastic fuel tank permeation and a 95-percent reduction in fuel system hose permeation from new recreational vehicles beginning in 2008. These standards and their implementation dates are presented in Table IV.C–1. Section IV.D presents the test procedures associated with these standards. Test temperatures are presented in Table IV.C–1 because they represent an important parameter in defining the emission levels.

We will base the permeation standards on the inside surface areas of the hoses and fuel tanks. We sought comment on whether the potential permeation standards for fuel tanks should be expressed as grams per gallon of fuel tank capacity per day or as grams per square meter of inside surface area per day. Although volume is generally used to characterize fuel tank emission rates, we base the standard on inside surface area because permeation is a function of surface area. In addition, the surface to volume ratio of a fuel tank changes with capacity and geometry of the tank. Two similar shaped tanks of different volumes or two different shaped tanks of the same volume could have different g/gallon/day permeation rates even if they were made of the same material and used the same emission-control technology. Therefore, we believe that using a g/m^2/day form of the standard more accurately represents the emissions characteristics of a fuel tank and minimizes complexity. This approach was supported by the commenters.

[67] Estimated reductions in permeation are 95 percent when not considering competition vehicles, which are exempt from the standard.

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TABLE IV.C–1.—PERMEATION STANDARDS FOR RECREATIONAL VEHICLES

Emission component	Implementation date	Standard	Test temperature
Fuel Tank Permeation	2008	1.5 g/m²/day	28 °C (82 °F)
Hose Permeation	2008	15 g/m²/day	23 °C (73 °F)

These standards are revised compared to the values we sought comment on in the notice. In the reopening of the comment period, we identified the need to accommodate variability and deterioration in setting the fuel tank permeation standard. Since the notice, we have received test information that suggests that a tank permeation standard representing an 85 rather than a 95-percent reduction would fully accommodate these factors. Nonetheless, we continue to believe that manufacturers will target control technologies and strategies focused on achieving reductions of 95 percent in production tanks. With regard to the permeation standard for hoses, we have adjusted the standard slightly to give the manufacturers more freedom in selecting their hose material and to accommodate the fact that we selected a certification test fuel based on a 10-percent ethanol blend, which would be prone to greater permeation than straight gasoline.

Cost-effective technologies exist to significantly reduce permeation emissions. Because essentially all of these vehicles use high density polyethylene (HDPE) fuel tanks, manufacturers would be able to choose from several technologies for providing a permeation barrier in HDPE tanks. The use of metal fuel tanks would also meet the standards, because metal tanks do not experience any permeation losses. The hose permeation standard can be met using barrier hose technology or through using low permeation automotive-type tubing. These technologies are discussed in Section IV.F. The implementation dates give manufacturers three to four years to comply. This will allow manufacturers time to implement controls in their tanks and hoses in an orderly business manner.

2. Will I Be Able to Average, Bank, or Trade Emissions Credits?

Averaging, banking, and trading (ABT) refers to the generation and use of emission credits based on certified emission levels relative to the standard. The general ABT concept is discussed in detail in Section II.C.3. In many cases, an ABT program can improve technological feasibility, provide manufacturers with additional product planning flexibility, and reduce costs which allows us to consider emission standards with the most appropriate level of stringency and lead time, as well as providing an incentive for the early introduction of new technology.

We are finalizing ABT for fuel tanks to facilitate the implementation of the standard across a variety of tank designs which include differences in wall thickness, tank geometry, material quality, and pigment in plastic fuel tanks. To meet the standard on average, manufacturers would be able to divide their fuel tanks into different emission families and certify each of their emission families to a different Family Emissions Level (FEL). The emission families would include fuel tanks with similar characteristics, including wall thickness, material used (including additives such as pigments, plasticizers, and UV inhibitors), and the emission-control strategy applied. The FELs would then be weighted by sales volume and fuel tank inside surface area to determine the average level across a manufacturer's total production. An additional benefit of a corporate-average approach is that it provides an incentive for developing new technology that can be used to achieve even larger emission reductions or perhaps to achieve the same reduction at lower costs or to achieve some reductions early.

Any manufacturer could choose to certify each of its evaporative emission control families at levels which would meet the standard. Some manufacturers may choose this approach as the could see it as less complicated to implement.

We are also finalizing a voluntary program intended to give an opportunity for manufacturers to prove out technologies earlier than 2008. Manufacturers will be able to use permeation control strategies early, and even if they do not meet the standard, they can earn credit through partial emission reduction that will give them more lead time to meet the standard. This program will allow a manufacturer to certify fuel tanks early to a less stringent standard and thereby delay the fuel tank permeation standard. Therefore, a manufacturer can earn more time to meet the 1.5 g/m²/day standard if they have an alternative approach that will reduce permeation by a lesser amount earlier than 2008. Specifically, if a manufacturer certifies fuel tanks early to a standard of 3.0 g/m²/day, they can delay the 1.5 g/m²/day standard for these fuel tanks by 1 tank-year for every tank-year of early certification. As an alternative, this delay could be applied to other fuel tanks provided that these tanks have an equal or smaller inside surface area and meet a level of 3.0 g/m²/day. As an example, suppose a manufacturer were to sell 50 vehicles in 2006 and 75 vehicles in 2007 with fuel tanks that meet a level of 3.0 g/m²/day. This manufacturer would then be able to sell 125 vehicles with fuel tanks that meet a level of 3.0 g/m²/day in 2008 and later years. No uncontrolled tanks could be sold after 2007. In addition to providing implementation flexibility to manufacturers, this option, if used, would result in additional and earlier emission reductions.

For hoses, we do not believe that ABT provisions would result in a significant technological benefit to manufacturers. We believe that all fuel hoses can meet the permeation standards using straight forward technology as discussed in Section IV.F. From EPA's perspective, including an ABT program in the rule creates a long-term administrative burden that is not worth taking on since it does not provide the industry with useful flexibility.

3. How Do I Certify My Products?

We are finalizing a certification process similar to our existing program for other mobile sources. Manufacturers test representative prototype designs and submit the emission data along with other information to EPA in an application for a Certificate of Conformity. As discussed in Section IV.D.3, we will allow manufacturers to certify based on either design (for which there is already data) or by conducting its own emissions testing. If we approve the application, then the manufacturer's Certificate of Conformity allows the manufacturer to produce and sell the vehicles described in the application in the U.S.

Manufacturers certify their fuel systems by grouping them into emission families that have similar emission characteristics. The emission family definition is fundamental to the certification process and to a large degree determines the amount of testing required for certification. The regulations include specific characteristics for grouping emission families for each category of tanks and hoses. For fuel tanks, key parameters include wall thickness, material used (including additives such as pigments, plasticizers, and UV inhibitors), and the emission-control strategy applied. For hoses, key parameters include material, wall thickness, and emission-control strategy applied. To address a manufacturer's unique product mix, we may approve using broader or narrower engine families. The certification process for vehicle permeation is similar as for the process for certifying engines (see Section II.C.1).

4. What Durability Provisions Apply?

We are adopting several additional provisions to ensure that emission controls will be effective throughout the life of the vehicle. This section discusses these provisions for permeation from recreational vehicles. More general certification and compliance provisions, which apply across different vehicle categories, are discussed in Sections II and VII, respectively.

a. How long do my vehicles have to comply? Manufacturers would be required to build fuel systems that meet the emission standards over each vehicle's useful life. For the permeation standards, we use the same useful life as discussed in Section III.C.4.a for exhaust emissions from recreational vehicle engines based on the belief that fuel system components and engines are intended to have the same design life. Further, we are applying the same warranty period for permeation emission related components of the fuel system as for exhaust emission-related components of the vehicle (See Section III.C.4.b).

b. How do I demonstrate emission durability? We are adopting several additional provisions to ensure that emission controls will be effective throughout the life of the vehicle. Vehicle manufacturers must demonstrate that the permeation emission-control strategies will last for the useful life of the vehicle. Any deterioration in performance would have to be included in the family emissions limit. This section discusses durability provisions for fuel tanks and hoses.

For plastic fuel tanks, we are specifying a preconditioning and four durability steps that must be performed in conjunction with the permeation testing for certification to the standard. These steps, which include fuel soaking, slosh, pressure-vacuum cycling, temperature cycling, and ultra-violet light exposure, are described in more detail in Section IV.D.1. The purpose of these preconditioning steps is to help demonstrate the durability of the fuel tank permeation control under conditions that may occur in use. For fuel hoses, the only preconditioning step that we are requiring is a fuel soak to ensure that the permeation rate is stabilized prior to testing. Data from before and after the durability tests would be used to determine deterioration factors for the certified fuel tanks. The durability factors would be applied to permeation test results to determine the certification emission level of the fuel tank at full useful life. The manufacturer would still be responsible for ensuring that the fuel tank and hose meet the permeation standards throughout the useful life of the vehicle.

We recognize that vehicle manufacturers will likely depend on suppliers/vendors for treated tanks and fuel hoses. We believe that, in addition to normal business practices, our testing requirements will help assure that suppliers/vendors consistently meet the performance specifications laid out in the certificate.

D. Testing Requirements

To obtain a certificate allowing sale of products meeting EPA emission standards, manufacturers generally must show compliance with such standards through emission testing. The test procedures for determining permeation emissions from fuel tanks and hoses on recreational vehicles are described below. This section also discusses design-based certification as an alternative to performing specific testing.

1. What Are the Test Procedures for Measuring Permeation Emissions From Fuel Tanks?

Prior to testing the fuel tanks for permeation emissions, the fuel tank must be preconditioned by allowing the tank to sit with fuel in it until the hydrocarbon permeation rate has stabilized. Under this step, the fuel tank must be filled with a 10-percent ethanol blend in gasoline (E10), sealed, and soaked for 20 weeks at a temperature of 28 ± 5°C. Once the soak period has ended, the fuel tank is drained, refilled with fresh fuel, and sealed. The permeation rate from fuel tanks is measured at a temperature of 28 ± 2°C over a period of at least 2 weeks. Consistent with good engineering judgment, a longer period may be necessary for an accurate measurement for fuel tanks with low permeation rates. Permeation loss is determined by measuring the weight of the fuel tank before and after testing and taking the difference. Once the mass change is determined it is divided by the manufacturer provided tank surface area and the number of days of soak to get the emission rate. As an option, permeation may be measured using alternative methods that will provide equivalent or better accuracy. Such methods include enclosure testing as described in 40 CFR part 86. The fuel used for this testing will be a blend of 90-percent gasoline and 10-percent ethanol. This fuel is consistent with the test fuel used for highway evaporative emission testing.

To determine permeation emission deterioration factor, we are specifying three durability tests: slosh testing, pressure-vacuum cycling, and ultra-violet exposure. The purpose of these deterioration tests is to help ensure that the technology is durable and the measured emissions are representative of in-use permeation rates. For slosh testing, the fuel tank is filled to 40-percent capacity with E10 fuel and rocked for 1 million cycles. The pressure-vacuum testing contains 10,000 cycles from −0.5 to 2.0 psi. These two durability tests are based on draft recommended SAE practice.[68] The third durability test is intended to assess potential impacts of UV sunlight (0.2 μm—0.4 μm) on the durability of the surface treatment. In this test, the tank must be exposed to a UV light of at least 0.40 W-hr/m2 /min on the tank surface for 15 hours per day for 30 days. Alternatively, it can be exposed to direct natural sunlight for an equivalent period of time.

We originally sought comment on applying the procedures in 49 CFR part 173, appendix B, but upon further evaluation and receipt of additional information found these inadequate for our purposes. The 49 CFR part 173 test procedure is designed for testing plastic receptacles for transporting hazardous chemicals. This test focus on temperatures and durability procedures that do not represent recreational vehicle use.

2. What Are the Test Procedures for Measuring Permeation Emissions From Fuel System Hoses?

The permeation rate of fuel from hoses would be measured at a temperature of 23 ± 2°C using SAE

[68] Draft SAE Information Report J1769, "Test Protocol for Evaluation of Long Term Permeation Barrier Durability on Non-Metallic Fuel Tanks," (Docket A–2000–01, document IV–A–24).

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method J30[69] with E10. The hose must be preconditioned with a fuel soak to ensure that the permeation rate has stabilized. The fuel to be used for this testing would be a blend of 90-percent gasoline and 10-percent ethanol. This fuel is consistent with the test fuel used for highway evaporative emission testing. Alternatively, for purposes of submission of data at certification, permeation could be measured using alternative equipment and procedures that provide equivalent results. To use these alternative methods, manufacturers would have to apply to us and demonstrate equivalence. Examples of alternative approaches that we anticipate manufacturers may use are the recirculation technique described in SAE J1737,[70] enclosure-type testing such as in 40 CFR part 86, or weight loss testing such as described in SAE J1527.[71]

3. Can I Certify Based on Engineering Design Rather Than Through Testing?

In general, test data would be required to certify fuel tanks and hoses to the permeation standards. Test data could be carried over from year to year for a given emission-control design. We do not believe the cost of testing tanks and hose designs for permeation would be burdensome especially given that the data could be carried over from year to year, and that there is a good possibility that the broad emission family concepts would lead to minimum testing. However, there are some specific cases where we would allow certification based on design. These special cases are discussed below.

We would consider a metal fuel tank to meet the design criteria for a low permeation fuel tank because fuel does not permeate through metal. However, we would not consider this design to be any more effective than any other low permeation fuel tank for the purposes of any sort of credit program. Although metal is impermeable, seals and gaskets used on the fuel tank may not be. The design criteria for the seals and gaskets would be that either they would not have a total exposed surface area exceeding 1000 mm^2, or the seals and gaskets would have to be made of a material with a permeation rate of 10 g/m^2/day or less at 23°C as measured under ASTM D814.[72] A metal fuel tank with seals that meet this design criteria would readily pass the standard.

Fuel hoses can be certified by design as being manufactured in compliance with certain accepted SAE specifications. Specifically, a fuel hose meeting the SAE J30 R11–A or R12 requirements could be design-certified to the standard. In addition, fuel line meeting the SAE J2260[73] Category 1 requirements could be design-certified to the standard. These fuel hoses and fuel line specifications are based on 15-percent methanol fuel and higher temperatures. We believe that fuel hoses and lines that are tested and meet these requirements would also meet our hose permeation standards because both are generally acknowledged as representing more stringent test parameters. In the future, if new SAE specifications are developed which are consistent with our hose permeation standards, we would consider including hoses meeting the new SAE requirements as being able to certify by design.

At certification, manufacturers will have to submit an engineering analysis showing that the tank or hose designs will meet the standards throughout their full useful life. The tanks and hoses will remain subject to the emission standards throughout their useful lives. The design criteria relate only to the issuance of a certificate.

E. Special Compliance Provisions

We believe that the permeation control requirements will be relatively easy for small businesses to meet, given the relatively low cost of the requirements and the availability of materials and treatment support by outside vendors. Low permeation fuel hoses are available from vendors today, and we would expect that surface treatment would be applied through an outside company. However, to minimize any additional burden these requirements may impose on small manufacturers, we are implementing, where they are applicable to permeation, the same options we proposed for the exhaust emission standards. These options for small recreational vehicle manufacturers are described in detail in Section III.E.

F. Technological Feasibility

We believe there are several strategies that manufacturers can use to meet our permeation emission standards. This section gives an overview of this technology. See Chapters 3 and 4 of the Final Regulatory Support Document for more detail on the technology discussed here.

1. Implementation Schedule

The permeation emission standards for fuel tanks become effective in the 2008 model year. Several technologies are available that could be used to meet this standard. Surface treatments to reduce tank permeation are widely used today in other container applications, and the technology and production facilities needed to conduct this process exist. Selar is used by at least one portable fuel tank manufacturer and has also been used in automotive applications. Plastic tanks with coextruded barriers have been used in automotive applications for years. However, fuel tanks used in recreational vehicles are primarily (but not exclusively) high-density polyethylene tanks with no permeation control. We received comments from manufacturers that they would not be able to comply with permeation standards until 2008 or 2009. They stated that, especially for fuel tanks, they would need this extra lead time to ensure that the useful life requirement can be met on their products. At the same time, others commented that the technology is already available and that the permeation standards should apply in 2004. We believe it is appropriate to give manufacturers until the 2008 model year for the fuel tank permeation standards. Manufacturers will need lead time to allow for durability testing and other development work associated with applying this technology to recreational vehicles. This is especially true for manufacturers or vendors who choose to set up their own sulfonation or fluorination facilities in-house.

We believe that the low permeation hose technology can also be applied in the 2008 time frame. A lower permeation fuel hose exists today known as the SAE R9 hose that is as flexible as the SAE R7 hose used in most recreational applications today. These SAE hose specifications are contained in SAE J30 cited above. This hose would meet our permeation standard on gasoline, but probably not on a 10-percent ethanol blend. As noted in Chapter 4 of the Final Regulatory Support Document, barrier materials typically used in R9 hose today may have permeation rates 3 to 5 times higher on a 10-percent ethanol blend than on straight gasoline. However, there are several lower permeability barrier materials that can be used in rubber hose that will comply with the hose permeation requirement on a 10-percent ethanol blend and still be flexible enough for use in recreational vehicles. This hose is available for automotive applications at this time, but some lead time may be required to apply these hoses to recreational vehicles if hose connection fitting changes were required. For these reasons, we are implementing the hose permeation standard on the same schedule as the tank permeation standards.

2. Standard Levels

We have identified several strategies for reducing permeation emissions from fuel tanks and hoses. We recognize that some of these technologies may be more desirable than others for some manufacturers, and we recognize that different strategies for equal emission reductions may be better for different applications. A specific example of technology that could be used to meet the fuel tank permeations would be surface barrier treatments such as sulfonation or fluorination. With these surface treatments, more than a 95-percent reduction in permeation emissions from new fuel tanks is feasible. However, variation in material tolerances and in-use deterioration can reduce this effectiveness. Given the lead time for the standards, manufacturers will be able to provide fuel tanks with consistent material quality, and the surface treatment processes can be optimized for a wide range of material qualities and additives such as pigments, plasticizers, and UV inhibitors. We do not expect a large deterioration in use; however, data on slosh testing suggest that some deterioration may occur. To accommodate variability and deterioration, we are finalizing a standard that represents about an 85-percent reduction in permeation emissions from plastic fuel tanks. It is our expectation that manufacturers will aim for a surface treatment effectiveness rate as near to 100 percent a practical for new tanks. Therefore, even with variability and deterioration in use, control rates are likely to exceed 85 percent. Several materials are available today that could be used as a low permeation barrier in rubber hoses. We present more detail on these and other technological approaches below.

3. Technological Approaches

a. Fuel tanks. Blow molding is widely used for the manufacture of small fuel tanks of recreational vehicles. Typically, blow molding is performed by creating a hollow tube, known as a parison, by pushing high-density polyethylene (HDPE) through an extruder with a screw. The parison is then pinched in a mold and inflated with an inert gas. In highway applications, non-permeable plastic fuel tanks are produced by blow molding a layer of ethylene vinyl alcohol (EVOH) or nylon between two layers of polyethylene. This process is called coextrusion and requires at least five layers: the barrier layer, adhesive layers on either side of the barrier layer, and HDPE as the outside layers which make up most of the thickness of the fuel tank walls. However, multi-layer construction requires two additional extruder screws which significantly increases the cost of the blow molding process. Multi-layer fuel tanks can also be formed using injection molding. In this method, a low viscosity polymer is forced into a thin mold to create each side of the fuel tank. The two sides are then welded together. To add a barrier layer, a thin sheet of the barrier material is placed inside the mold prior to injection of the poleythylene. The polyethylene, which generally has a much lower melting point than the barrier material, bonds with the barrier material to create a shell with an inner liner.

A less expensive alternative to coextrusion is to blend a low permeable resin in with the HDPE and extrude it with a single screw. The trade name typically used for this permeation control strategy is Selar. The low permeability resin, typically EVOH or nylon, creates non-continuous platelets in the HDPE fuel tank which reduce permeation by creating long, tortuous pathways that the hydrocarbon molecules must navigate to pass through the fuel tank walls. Although the barrier is not continuous, this strategy can still achieve greater than a 90-percent reduction in permeation of gasoline. EVOH has much higher permeation resistance to alcohol than nylon; therefore, it would be the preferred material to use for meeting our standard which is based on testing with a 10-percent ethanol fuel.

Another type of low permeation technology for fuel tanks would be to treat the surfaces of a plastic fuel tanks with a barrier layer. Two ways of achieving this are known as fluorination and sulfonation. The fluorination process causes a chemical reaction where exposed hydrogen atoms are replaced by larger fluorine atoms which creates a barrier on the surface of the fuel tank. In this process, a batch of fuel tanks are generally processed post production by stacking them in a steel container. The container is then voided of air and flooded with fluorine gas. By pulling a vacuum in the container, the fluorine gas is forced into every crevice in the fuel tanks. As a result of this process, both the inside and outside surfaces of the fuel tank would be treated. As an alternative, fuel tanks can be fluorinated on-line by exposing the inside surface of the fuel tank to fluorine during the blow molding process. However, this method may not prove as effective as off-line fluorination which treats the inside and outside surfaces.

Sulfonation is another surface treatment technology where sulfur trioxide is used to create the barrier by reacting with the exposed polyethylene to form sulfonic acid groups on the surface. Current practices for sulfonation are to place fuel tanks on a small assembly line and expose the inner surfaces to sulfur trioxide, then rinse with a neutralizing agent. However, sulfonation can also be performed using a batch method. Either of these processes can be used to reduce gasoline permeation by more than 95 percent.

Over the first month or so of use, polyethylene fuel tanks can expand by as much as three percent due to saturation of the plastic with fuel. Manufacturers have raised the concern that this hydrocarbon expansion could affect the effectiveness of surface treatments like fluorination or sulfonation. We believe this will not have a significant effect on the effectiveness of these surface treatments. California ARB has performed extensive permeation testing on portable fuel containers with and without these surface treatments. Prior to the permeation testing, the tanks were prepared by first performing a durability procedure where the fuel container is cycled a minimum of 1000 times between −1 psi and 5 psi. In addition, the fuel containers are soaked with fuel for a minimum of four weeks prior to testing. Their test data, presented in Chapter 4 of the Final Regulatory Support Document show that fluorination and sulfonation are still effective after this durability testing.

Manufacturers have also commented that fuel sloshing in the fuel tank, under normal in-use operation, could wear off the surface treatments. However, we do not believe that this is likely. These surface treatments actually result in an atomic change in the structure of the

[69] SAE Recommended Practice J30, "Fuel and Oil Hoses," June 1998, (Docket A–2000–01, document IV–A–92).

[70] SAE Recommended Practice J1737, "Test Procedure to Determine the Hydrocarbon Losses from Fuel Tubes, Hoses, Fittings, and Fuel Line Assemblies by Recirculation,"1997, (Docket A–2000–01, document, IV–A–34).

[71] SAE Recommended Practice J1527, "Marine Fuel Hoses,"1993, (Docket A–2000–01, document IV–A–19).

[72] ASTM Standard Test Method D 814–95 (Reapproved 2000), "Rubber Property—Vapor Transmission of Volatile Liquids," (Docket A–2000–01, document IV–A–95).

[73] SAE Recommended Practice J2260, "Nonmetallic Fuel System Tubing with One or More Layers,"1996, (Docket A–2000–01, document IV–A–18).

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outside surface of the fuel tank. To wear off the treatment, the plastic would need to be worn away on the outside surface. In addition, testing by California ARB shows that the fuel tank permeation standard can be met by fuel tanks that have been sloshed for 1.2 million cycles. Test data on an sulfonated automotive HDPE fuel tank after five years of use showed no deterioration in the permeation barrier. This data are presented in Chapter 4 of the Final Regulatory Support Document.

Permeation can also be reduced from fuel tanks by constructing them out of a lower permeation material than HDPE. For instance, metal fuel tanks would not permeate. In addition, there are grades of plastics other than HDPE that could be molded into fuel tanks. One commenter suggested nylon; however, although nylon has excellent permeation resistance on gasoline, it has poor chemical resistance to alcohol-blended fuels. Other materials, which have excellent permeation even with alcohol-blended fuels are acetal copolymers and thermoplastic polyesters. At this time, these materials are generally much more expensive than HDPE.

b. Hoses. Fuel hoses produced for use in recreational vehicles are generally extruded nitrile rubber with a cover for abrasion resistance. Lower permeability fuel hoses produced today for other applications are generally constructed in one of two ways: either with a low permeability layer or by using a low permeability rubber blend. By using hose with a low permeation thermoplastic layer, permeation emissions can be reduced by more than 95 percent. Because the thermoplastic layer is very thin, on the order of 0.1 to 0.2 mm, the rubber hose retains its flexibility. Two thermoplastics which have excellent permeation resistance, even with an alcohol-blend fuel, are ETFE and THV.[74]

In automotive applications, multilayer plastic tubing, made of fluoropolymers is generally used. An added benefit of these low permeability lines is that some fluoropolymers can be made to conduct electricity and therefore can prevent the buildup of static charges. Although this technology can achieve more than an order of magnitude lower permeation than barrier hoses, it is relatively inflexible and may need to be molded in specific shapes for each recreational vehicle design. Manufacturers have commented that they would need flexible hose to fit their many designs, resist vibration, and to simplify the hose connections and fittings.

An alternative approach to reducing the permeability of fuel hoses would be to apply a surface treatment such as fluorination or sulfonation. This process would be performed in a manner similar to discussed above for fuel tanks.

4. Conclusions

The standards for permeation emissions from recreational vehicles reasonably reflect what manufacturers can achieve through the application of available technology. Manufacturers will have several years of lead time to select, design, and produce permeation emission-control strategies that will work best for their product lines. We expect that meeting these requirements will pose a challenge, but one that is feasible taking into consideration the availability and cost of technology, lead time, noise, energy, and safety. The role of these factors is presented in detail in Chapters 3 and 4 of the Final Regulatory Support Document.

The permeation standards are based on the effective application of low permeable materials or surface treatments. This is a step change in technology; therefore, we believe that even if we set a less stringent permeation standard, these technology options would likely still be used. In addition, this technology is relatively inexpensive and can achieve meaningful emission reductions. The standards are expected to achieve more than an 85-percent reduction in permeation emissions from fuel tanks and more than 95 percent from hoses. We believe that more stringent standards could result in significantly more expensive materials without corresponding additional emission reduction. In addition, the control technology would generally pay for itself over time by conserving fuel that would otherwise evaporate. The projected costs and fuel savings are discussed in Chapter 5 of the Final Regulatory Support Document.

V. Large Spark-Ignition (SI) Engines

A. Overview

This section applies to most nonroad spark-ignition engines rated over 19 kW ("Large SI engines"). The emission standards will lead to emission reductions of about 90 percent for CO, NO_X, and HC. Since the emission standards are based on engine testing with broadly representative duty cycles, these estimated reductions apply to all types of equipment using these engines. Reducing Large SI engine emissions will help reduce ozone and CO concentrations and will also be valuable to individuals operating these engines in areas with limited fresh air circulation. The cost of applying the anticipated emission-control technology to these engines is offset by much greater cost savings from reduced fuel consumption over the engines' operating lifetime, as described in the Final Regulatory Support Document.

This section describes the requirements that apply to engine manufacturers. See Section II for a description of our general approach to regulating nonroad engines and how manufacturers show that they meet emission standards. See Section VII for additional requirements for engine manufacturers, equipment manufacturers, and others. See Section VIII for general provisions related to testing equipment and procedures.

B. Large SI Engines Covered by This Rule

Large SI engines covered in this section power nonroad equipment such as forklifts, sweepers, pumps, and generators. This includes marine auxiliary engines, but does not include marine propulsion engines or engines used in recreational vehicles (snowmobiles, off-highway motorcycles, and all-terrain vehicles). These other nonroad applications are addressed elsewhere in this document.

This final rule applies only to spark-ignition engines. Our most recent rulemaking for nonroad diesel engines adopted a definition of "compression-ignition" that addressed the status of alternative-fuel engines (63 FR 56968, October 23, 1998). We are adopting updated definitions consistent with those already established in previous rulemakings to clarify that all reciprocating internal combustion engines are either spark-ignition or compression-ignition.[75] These new definitions apply to 40 CFR parts 89 and 1048. Spark-ignitions include gasoline-fueled engines and any others that control power with a throttle and follow the theoretical Otto cycle. Compression-ignition engines are any reciprocating internal-combustion engines that are not spark-ignition engines. Under these definitions, it is possible for a diesel-derived engine to fall under the spark-ignition program. We believe the requirements adopted in this rule are feasible and appropriate for these engines. However, we will allow such engines over 250 kW to instead meet the requirements that apply to nonroad

[74] ethylene-tetrafluoro-ethylene (ETFE), tetra-fluoro-ethylene, hexa-fluoro-propylene, and vinyledene fluoride (THV).

[75] Gas turbines are non-reciprocating internal combustion engines.

diesel engines. We believe this is appropriate for several reasons. First, the technology requirements are comparable between programs. The nonroad diesel emission standards, which apply over the longer useful life characteristic of diesel engines, are slightly more stringent for CO and slightly less stringent for $HC+NO_X$. The calibration changes needed to adjust these emission levels are not fundamental to the overall design of the emission-control system. Second, the diesel engine manufacturers producing these engines are already set up to do testing based on test procedures that apply to diesel engines. To the extent that they would incur costs to be able to run test procedures specified for Large SI engines, these costs would likely not correspond with improving emission-controls. Third, these engines share important technical characteristics with diesel engines and are likely to experience in-use operation that is more like that of nonroad diesel engines. In addition, they are installed in applications that also use diesel engines, not Large SI engines.

Several types of engines are excluded or exempted from these new regulations. The following sections describe the types of special provisions that apply uniquely to nonrecreational spark-ignition engines rated over 19 kW. Section VII.C covers several additional exemptions that apply generally across programs.

1. Stationary Engine Exclusion

Consistent with the Clean Air Act, stationary-source engines are not nonroad engines, so the emission standards don't apply to engines used in stationary applications. In general, an engine that would otherwise be considered a Large SI engine is not considered a nonroad engine if it will be either installed in a fixed position or if it will be a portable (or transportable) engine operating for at least one-year periods without moving throughout its lifetime. We are adopting the same definitions for these engines that have already been established for other programs. These stationary engines (that would otherwise qualify as Large SI engines) must have an engine label identifying their excluded status. This is especially valuable for importing excluded engines without complication from U.S. Customs officials. It also helps us ensure that such engines are legitimately excluded from emission standards.

2. Exclusion for Engines Used Solely for Competition

For Large SI engines we proposed the existing regulatory definition for nonroad engines, with excludes engines used solely for competition. As described in the proposed rule, we are not aware of any manufacturers producing new engines that are intended only for competition. As a result, we are not adopting any specific provisions addressing a competition exclusion for manufacturers. Part 1068 of the regulations includes provisions addressing the practice of modifying certified engines for competition (see Section VII.C).

3. Motor Vehicle Engine Exemption

In some cases an engine manufacturer may want to modify a certified automotive engine for nonroad use to sell the engine without recertifying it as a Large SI engine. We are therefore adopting an exemption from the Large SI standards in 40 CFR part 1048 for engines that are already certified to the emission standards in 40 CFR part 86 for highway applications. To qualify for this exemption from separately certifying to nonroad standards, the manufacturer must makes no changes to the engine that might affect its exhaust or evaporative emissions. Companies using this exemption must report annually to us, including a list of its exempted engine models. For engines included under this provision, manufacturers of the vehicle or engine must generally meet all the requirements from 40 CFR part 86 that would apply if the engine were used in a motor vehicle. Section 1048.605 of the regulations describes the qualifying criteria and responsibilities in greater detail.

We generally prohibit equipment or vehicle manufacturers from producing new nonroad equipment that does not have engines certified to nonroad emission standards. However, in some cases a manufacturer may want to produce vehicles certified to highway emission standards for nonroad use. We are providing an exemption for these manufacturers, as long as there is no change in the vehicle's exhaust or evaporative emission-control systems. For example, a mining company may want to use a pickup truck for dedicated work at a mine site, but special-order the trucks from the manufacturer with modifications that cause the truck to no longer qualify as a motor vehicle. Manufacturers may produce such a modified version of a truck that has been certified to the motor-vehicle standards, as long as the modifications don't affect its emissions.

4. Lawn and Garden Engine Exemption

Most Large SI engines, rated over 19 kW, have a total displacement greater than one liter. The design and application of the few Large SI engines currently being produced with displacement less than one liter are very similar to those of engines rated below 19 kW, which are typically used for lawn and garden applications. As described in the most recent rulemaking for these smaller engines, manufacturers may certify engines between 19 and 30 kW with total displacement of one liter or less to the requirements we have already adopted in 40 CFR part 90 for engines below 19 kW (see 65 FR 24268, April 25, 2000). We are not changing this provision, and engines so certified would not be subject to the requirements that apply to Large SI engines. This approach allows manufacturers of small air-cooled engines to certify their engines rated between 19 and 30 kW with the program adopted for the comparable engines with slightly lower power ratings. This is also consistent with the provisions adopted by California ARB, except for the addition of the 30-kW cap to prevent treating high-power engines under the program that applies to lawn and garden engines.

Technological, economic, and environmental issues associated with the few engine models with rated power over 19 kW, but with displacement at or below 1 liter, were previously analyzed in the rulemaking for nonroad spark-ignition engines below 19 kW. This rule therefore does not specifically address the provisions applying to them or repeat the estimated impacts of adopting emission standards.

Conversely, we are aware that some engines rated below 19 kW may be part of a larger family of engine models that includes engines rated above 19 kW. This may include, for example, three- and four-cylinder engine models that are otherwise identical. To avoid the need to separate these engines into separate engine families (certified under completely different control programs), manufacturers may certify any engine rated under 19 kW to the more stringent Large SI emission standards. Such an engine is then exempt from the requirements of 40 CFR part 90.

C. Emission Standards

In October 1998, California ARB adopted emission standards for Large SI engines. We are extending these requirements to the rest of the U.S. in the near term. We are also revising the

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emission standards and adding various provisions in the long term, as described below. The near-term and the long-term emission standards are based on three-way catalytic converters with electronic fueling systems to control emissions, and differ primarily in terms of how well the controls are optimized. In addition to the anticipated emission reductions, we project that these technologies will provide large savings to operators as a result of reduced fuel consumption and other performance improvements.

An important element of the control program is the attempted harmonization with the requirements adopted by California ARB. We are aware that inconsistent or conflicting requirements may lead to additional costs. Cooperation between agencies has allowed a great degree of harmonization. In addition to the common structure of the programs, the specific provisions that make up the certification requirements and compliance programs are consistent with very few exceptions. In most of the cases where individual provisions differ, the EPA language is more general than that adopted by California, rather than being incompatible. The following sections describe the requirements in greater detail.

1. What Are the Emission Standards and Compliance Dates?

a. Exhaust emissions. We are adopting standards starting in the 2004 model year consistent with those adopted by California ARB. These standards, which apply to testing only with the applicable steady-state duty cycles, are 4.0 g/kW-hr (3.0 g/hp-hr) for $HC+NO_X$ emissions and 50 g/kW-hr (37 g/hp-hr) for CO emissions. See Section V.D for further discussion of the steady-state duty cycles. We expect manufacturers to meet these standards using three-way catalytic converters and electronically controlled fuel systems. These systems are similar to those used for many years in highway applications, but not necessarily with the same degree of sophistication.

Adopting emission standards for these engines starting in 2004 allows a relatively short lead time. However, manufacturers will be able to achieve this by expanding their production of the same engines they will be selling in California at that time. We have designed our 2004 standards to require no additional development, design, or testing beyond what California ARB already requires. Adopting these near-term emission standards allows us to set early requirements to introduce the low-emission technologies for substantial emission reductions with minimal lead time. The final requirements includes two principal adjustments to align with the California ARB standards. First, we specify that manufacturers' deterioration factors for 2004 through 2006 model years should be based on emission measurements over 3500 hours of engine operation, rather than the full useful life of 5000 hours. Second, for those same model years, we are applying an emission standard of 5.4 g/kW-hr (4.0 g/hp-hr) $HC+NO_X$ for any in-use testing to account for the potential for additional deterioration beyond 3500 hours. This allowance for higher in-use emissions is a temporary provision to ensure the feasibility of compliance in the early years of the program. Testing has shown that with additional design time, manufacturers can incorporate emission-control technologies with sufficient durability that the long-term standards do not require a separate in-use standard. This is separate from the field-testing standards described below.

Testing has shown that additional time to optimize designs to better control emissions will allow manufacturers to meet significantly more stringent emission standards that are based on more robust measurement procedures. We are therefore adopting a second tier of standards to require additional emission reductions. These later standards require manufacturers to control emissions under both steady-state and transient engine operation, as described in Section V.D below). Setting the emission standards to require additional control involves separate consideration of the achievable level of control for $HC+NO_X$ and CO emissions. While $HC+NO_X$ emissions contribute to nonattainment of ozone air quality standards, CO emissions contribute to nonattainment of CO air quality standards and potentially harmful exposures of individuals where engines are operating in areas where fresh airflow may be restricted. Emission-control technology is able to simultaneously control these three pollutants, but a tradeoff between NO_X and CO emissions persists for any given system. This relationship is determined by an engine's precise control of air-fuel ratios—shifting to air-fuel ratios slightly lean of stoichiometric increases NO_X emissions but decreases CO emissions and vice versa. Engines using different fuels face this same situation, though gasoline engines operating under heavy load generally need to shift to richer air-fuel ratios to prevent accelerated engines wear from very high combustion temperatures.

Our primary focus in setting the level of the emission standards is reductions in emissions that contribute to ambient air-pollution problems. At the same time, we recognize that these engines are used in many applications where there are concerns about personal exposure to the engine exhaust, including workplace exposure, focusing primarily on CO exposure. It is appropriate to take such concerns into consideration in setting the level of the standards. In this case, where the equipment using these engines can vary substantially and where the emission-control technology means there is a trade-off between $HC+NO_X$ control and CO control, it is difficult to set a single, optimal standard for all three pollutants. In such a situation it is reasonable to have more than one set of standards to allow an engine to use technologies focused on controlling the pollutants of most concern for a specific application.

We are not in a position, however, to readily identity the specific levels of alternative standards that are appropriate for each application or to pick specific applications that should go with different standards. We also want to ensure that engines significantly reduce emissions of all three pollutants.

To address this, we are setting a combination of standards requiring more effective emission controls starting with the 2007 model year. First, we are setting benchmark emission standards of 2.7 g/kW-hr (2.0 g/hp-hr) for $HC+NO_X$ emissions and 4.4 g/kW-hr (3.3 g/hp-hr) for CO emissions. The emission standards apply to measurements during duty-cycle testing under both steady-state and transient operation, including certification, production-line testing, and in-use testing.[76] These emission levels provide for substantial control of $HC+NO_X$ emissions (in fact, these standards are more stringent than those proposed), but also contain substantial control of CO emissions to protect against individual exposure as well as CO nonattainment.

We are also including an option for manufacturers to certify their engines to different emission levels to allow manufacturers to build engines whose emission controls are more weighted toward controlling NO_X emissions to reflect the inherent tradeoff of NO_X and CO emissions. Generally this involves meeting a less stringent CO standard if a manufacturer certifies an engine with lower $HC+NO_X$ emissions. Table V.C–1 shows several examples of possible combinations of $HC+NO_X$ and CO emission standards. The highest allowable CO standard is 20.6 g/kW-hr (15.4 g/hp-hr), which corresponds with $HC+NO_X$ emissions below 0.8 g/kW-hr (0.6 g/hp-hr). Manufacturers certify to any $HC+NO_X$ level between and including 0.8 and 2.7 g/kW-hr, rounding to the nearest 0.1 g/kW-hr. They will certify also to the corresponding CO level, as calculated using the formula below, again rounding to the nearest 0.1 g/kW-hr.

[76] See Section V.D for a discussion of duty cycles.

TABLE V.C–1.—SAMPLES OF POSSIBLE ALTERNATIVE DUTY-CYCLE EMISSION STANDARDS FOR LARGE SI ENGINES(G/KW-HR)*

$HC+NO_X$	CO
2.7	4.4
2.2	5.6
1.7	7.9
1.3	11.1
1.0	15.5
0.8	20.6

* As described in the Final Regulatory Support Document and the regulations, the values in the table are related by the following formula: $(HC+NO_X) \times CO^{0.784} = 8.57$. These values follow directly from the logarithmic relationship presented with the proposal in the Draft Regulatory Support Document.

We believe this flexible approach to setting standards is the most appropriate and efficient way to allocate the different design strategies to achieve effective reductions of $HC+NO_X$ emissions while providing for the best control of CO emissions where it is most needed. Testing has shown that emission controls are more likely to experience degradation with respect to controlling CO emissions than HC or NO_X emissions. Manufacturers therefore have a natural incentive to certify engine families with an $HC+NO_X$ emission level as low as possible to increase the compliance margin for meeting the CO standard. In addition, many of these engines will be used in applications where ozone is of more concern. As a result, we expect manufacturers to design most of their engines to operate substantially below the 2.7 g/kW-hr standard for $HC+NO_X$ emissions. This approach also encourages manufacturers to continually improve their control of $HC+NO_X$ emissions over time. At the same time, to the extent that purchasers want engines with low CO emission levels, particularly for exposure-related concerns, manufacturers will be able to produce compliant engines that will provide appropriate protection. Note that engines operating at the highest allowable CO emission levels under the 2007 standards will still be substantially reducing CO emissions compared with baseline levels. The emission standards in this final rule will achieve substantial reductions, but are not designed to guarantee workplace safety or to set a safety standard. Rather, we intend to facilitate the use of engine-based control technologies so that owners and operators can purchase equipment to help them address these concerns.

We are not adopting any controls or limits to restrict the sale of engines meeting certain requirements into certain applications. We believe that the manufacturers and customers for these products will together make educated choices regarding the appropriate mix of emission controls for each application and that market forces will properly balance emission controls for the different pollutants in specific applications. We believe that customers for these applications, some of whom are subject to occupational air-quality standards for related pollutant concentrations, will be well placed to make informed choices regarding air-pollution control, especially given their ability to make choices based on the specific environmental circumstances of each particular customer.[77]

We are adopting field-testing standards of 3.8 g/kW-hr (2.8 g/hp-hr) for $HC+NO_X$ and 6.5 g/kW-hr (4.9 g/hp-hr) for CO. As described above for duty-cycle testing, field-testing allows for the same pattern of optional emission standards to reflect the tradeoff of CO and NO_X emissions. See Section V.D.5 for more information about field testing.

As described in Chapter 4 of the Final Regulatory Support Document, we believe manufacturers can achieve these emission standards by optimizing currently available three-way catalysts and electronically controlled fuel systems.

Two additional provisions apply to specific situations. First, some engines need to operate with rich air-fuel ratios at high loads to protect the engine from overheating. This is especially true for gasoline-fueled engines, which typically experience higher combustion temperatures. When operating at such air-fuel ratios, the engines may be unable to meet the CO emission standard during steady-state testing because the steady-state duty cycle involves sustained operation under high-load conditions, unlike the transient duty cycle. If a manufacturer shows us that this type of engine operation keeps it from meeting the CO emission standard shown above for specific models, we will approve a separate CO emission standard of 31.0 g/kW-hr that would apply only to steady-state testing. This standard reflects the adjustment needed at high-load operation and would apply to any steady-state tests for certification, production-line testing, or in-use testing. To prevent high in-use emission levels, we are adopting several additional provisions related to this separate CO standard. Manufacturers must show that enrichment is necessary to protect the engine from damage and that enrichment will be limited to operating modes that require additional cooling to protect the engine from damage. In addition, manufacturers must show in their application for certification that enrichment will rarely occur in the equipment in which your engines are installed (for example, an engine that is expected to operate 5 percent of the time in use with enrichment would clearly not qualify). Finally, manufacturers must include in the emission-related installation instructions any steps necessary for someone installing the engines to prevent enrichment during normal operation. This option does not apply to transient or field testing, so these engines would need to meet the same formula for $HC+NO_X$ and CO standards that apply to other engines for transient testing and for field testing. By tying the CO standard for these engines to the highest allowable CO emission level for field testing, we are effectively requiring that manufacturers ensure that in-use engines employ engine-protection strategies no more frequently than is reflected in the steady-state duty cycles for certification.

Second, equipment manufacturers have made it clear that some nonroad applications involve operation in severe environments that require the use of air-cooled engines. These engines rely on air movement instead of an automotive-style water-cooled radiator to maintain acceptable engine temperatures. Since air cooling is less effective, these engines rely substantially on enrichment to provide additional cooling relative to water-cooled engines. At these richer air-fuel ratios, catalysts are able to reduce NO_X emissions but oxidation of CO emissions is much less effective. As a result, we are adopting emission standards for these "severe-duty" engines of 2.7 g/kW-hr for $HC+NO_X$ and 130 g/kW-hr for CO. These standards apply to duty-cycle

[77] While the emission standards in this final rule require substantial emission reductions of CO and other harmful pollutants from nonroad engines, this does not replace the need for ongoing regulation of air quality to protect occupational safety and health. More specifically, in accordance with the limitations provided in Section 310(a) of the Clean Air Act (42 U.S.C. section 7610(a)), nothing in this rule affects the Occupational Safety and Health Administration's authority to enforce standards and other requirements under the Occupational Safety and Health Act of 1970 (29 U.S.C. sections 651 *et seq.*).

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emission testing for both steady-state and transient measurements (for certification, production-line, and in-use testing). The corresponding field-testing standards are 3.8 g/kW-hr for $HC+NO_X$ and 200 g/kW-hr for CO. Severe-duty applications include concrete saws and concrete pumps. These types of equipment are exposed to high levels of concrete dust, which tends to form a thick insulating coat around any heat-exchanger surfaces and exposes engines to highly abrasive dust particles. Manufacturers may request approval in identifying additional severe-duty applications subject to these less stringent standards if they can provide clear evidence that the majority of installations need air-cooled engines as a result of operation in a severe-duty environment. This arrangement generally prevents these higher-emitting engines from gaining a competitive advantage in markets that don't already use air-cooled engines.

We believe three years between phases of emission standards allows manufacturers enough lead time to meet the more stringent emission standards. The projected emission-control technologies for the 2004 emission standards should be capable of meeting the 2007 emission levels with additional optimization and testing. In fact, manufacturers may be able to apply their optimization efforts before 2004, leaving only the additional testing demonstration for complying with the 2007 standards. The biggest part of the optimization effort may be related to gaining assurance that engines will meet field-testing emission standards described in Section V.D.5, since engines will not be following a prescribed duty cycle.

For engines fueled by gasoline and liquefied petroleum gas (LPG), we specify emission standards based on total hydrocarbon measurements, while California ARB standards are based on nonmethane hydrocarbons. We believe that switching to measurement based on total hydrocarbons simplifies testing, especially for field testing of in-use engines with portable devices (See Section V.D.5). To maintain consistency with California ARB standards in the near term, we will allow manufacturers to base their certification through 2006 on either nonmethane or total hydrocarbons (see 40 CFR 1048.145). Methane emissions from controlled engines operating on gasoline or LPG are about 0.1 g/kW-hr.

Operation of natural gas engines is very similar to that of LPG engines, with one noteworthy exception. Since natural gas consists primarily of methane, these engines have a much higher level of methane in the exhaust. Methane generally does not contribute to ozone formation, so it is often excluded from emission measurements. We have therefore specified nonmethane hydrocarbon emissions for comparison with the standard for natural gas engines. However, the emission standards based on measuring emissions in the field depend on total hydrocarbons. We are therefore adopting a NO_X-only field-testing standard for natural gas engines instead of a $HC+NO_X$ standard. Since control of NO_X emissions for natural gas engines poses a significantly greater challenge than controlling nonmethane hydrocarbons, duty-cycle testing provides adequate assurance that these engines have sufficiently low hydrocarbon emission levels. Manufacturers must show that they meet these duty-cycle standards for certification and the engines remain subject to the nonmethane hydrocarbon standard in-use when tested over the same duty-cycles.

b. Evaporative emissions. We are adopting requirements related to evaporative and permeation emissions from gasoline-fueled Large SI engines. For controlling diurnal emissions, we are adopting an emission standard of 0.2 grams of hydrocarbon per gallon of fuel tank capacity during a 24-hour period. In addition, we specify that manufacturers use fuel lines meeting an industry standard for permeation-resistance. Finally, we require that manufacturers take steps to prevent fuel from boiling. We expect certification of manufacturers' equipment to be design-based, as compared with conducting a full emission-measurement program during certification. As such, meeting these evaporative requirements is much more like meeting the requirements related to controlling crankcase emissions and is therefore discussed in detail in Section V.C.4 below.

2. May I Average, Bank, or Trade Emission Credits?

We are not including an averaging, banking, and trading program for certifying engines. As described in Chapter 4 of the Final Regulatory Support Document, we believe that manufacturers will generally be able to rely on a relatively uniform application of emission-control technology to meet emission standards. The standards were selected based on the capabilities of all manufacturers to comply with all their models without an emission-credit program. Moreover, overlaying an emission-credit program on the flexible standards described above would be highly impractical. If such a program could be devised it would need to be very complex and would achieve little, if any, advantage to manufacturers beyond the advantages already embodied in the flexible approach we are adopting.

However, as an alternative to a program of calculating emission credits for averaging, banking, and trading, we are adopting a simpler approach of "family banking" to help manufacturers transition to new emission standards (see 40 CFR 1048.145 of the regulations). Manufacturers may certify an engine family early, which would allow them to delay certification of smaller engine families. This would be based on the actual sales of each engine family; this requires no calculation or accounting of emission credits. The manufacturer would have actual sales figures for the early family at the end of the production year, which would yield a total number of allowable sales for the engine family with delayed compliance. Manufacturers may certify engines to the 2004 standards early, but this would provide benefits only for complying with the 2004 standards. These "credits" would not apply to engines for meeting the 2007 standards.

3. Is EPA Adopting Voluntary Blue Sky Standards for These Engines?

We are adopting voluntary Blue Sky standards for Large SI engines. We are setting a target of 0.8 g/kW-hr (0.6 g/hp-hr) $HC+NO_X$ and 4.4 g/kW-hr (3.3 g/hp-hr) CO as a qualifying level for Blue Sky Series engines. The corresponding field-testing standards for Blue Sky Series engines are 1.1 g/kW-hr (0.8 g/hp-hr) $HC+NO_X$ and 6.6 g/kW-hr (4.9 g/hp-hr) CO. These voluntary standards are based on achieving the maximum control of both $HC+NO_X$ and CO emissions, as described in Section V.C.1. To achieve these emission levels, manufacturers will need to apply significantly additional technology beyond that required for the mandatory standards.

Manufacturers may start producing engines to these voluntary standards immediately after this final rule becomes effective. In addition, we are adopting interim voluntary standards corresponding with the introduction of new emission standards. Since manufacturers will not be complying early to bank emission credits, voluntary emission standards are an appropriate way to encourage manufacturers to meet emission standards before the regulatory deadline. If manufacturers certify engines to these voluntary standards, they are not eligible for participation in the family-banking program described above. In the 2003 model year, manufacturers may certify their engines to the requirements that apply starting in 2004 to qualify for the Blue Sky designation. Since manufacturers are producing engines with emission-control technologies starting in 2001, these engines are available to customers outside of California desiring emission reductions or fuel-economy improvements. Similarly, for 2003 through 2006 model years, manufacturers may certify their engines to the requirements that start to apply in 2007.

4. Are There Other Requirements for Large SI Engines?

a. Crankcase emissions. Due to blowby of combustion gases and the reciprocating action of the piston, exhaust emissions (mostly hydrocarbons) can accumulate in the crankcase. These crankcase emissions are significant, representing about 33 percent of total exhaust hydrocarbon. Uncontrolled engines route these vapors directly to the atmosphere. We have long required that automotive engines prevent crankcase emissions. Manufacturers typically do this by routing crankcase vapors through a valve into the engine's air intake system where they are burned in the combustion process.

Manufacturers may choose one of two methods for controlling crankcase emissions. First, adding positive-crankcase ventilation prevents crankcase emissions. Since automotive engine blocks are already tooled for closed crankcases, the cost of adding a valve for positive-crankcase ventilation for most engines is very small. An alternative method addresses specific concerns related to turbocharged engines or engines operating in severe-duty environments. Where closed crankcases are impractical, manufacturers may therefore measure crankcase emissions during any emission testing to add crankcase emissions to measured exhaust emissions for comparing with the standards.

b. Diagnosing malfunctions. Manufacturers must design their Large SI engines to diagnose malfunctioning emission-control systems starting with the 2007 model year (see § 1048.110). Three-way catalyst systems with closed-loop fueling control work well only when the air-fuel ratios are controlled to stay within a narrow range around stoichiometry.[78] Worn or broken components or drifting calibrations over time can prevent an engine from operating within the specified range. This increases emissions and can significantly increase fuel consumption and engine wear. The operator may or may not notice the change in the way the engine operates. We are not requiring similar diagnostic controls for recreational vehicles or recreational marine diesel engines, because the anticipated emission-control technologies for these other applications are generally less susceptible to drift and gradual deterioration.

This diagnostic requirement focuses solely on maintaining stoichiometric control of air-fuel ratios. This kind of design detects problems such as broken oxygen sensors, leaking exhaust pipes, fuel deposits, and other things that require maintenance to keep the engine at the proper air-fuel ratio.

Some companies are already producing engines with diagnostic systems that check for consistent air-fuel ratios. Their initiative supports the idea that diagnostic monitoring provides a mechanism to help keep engines tuned to operate properly, with benefits for both controlling emissions and maintaining optimal performance. There are currently no inspection and maintenance programs for nonroad engines, so the most important variable in making the emission control and diagnostic systems effective is in getting operators to repair the engine when the diagnostic light comes on. This calls for a relatively simple design to avoid the signaling of false failures as much as possible. The diagnostic requirements in this rule therefore focus on detecting inappropriate air-fuel ratios, which is the most likely failure mode for three-way catalyst systems. The malfunction-indicator light must go on when an engine runs for a full minute under closed-loop operation without reaching a stoichiometric air-fuel ratio.

Some natural gas engines may meet standards with lean-burn designs that never approach stoichiometric combustion. While manufacturers may design these engines to operate at specific air-fuel ratios, catalyst conversion (with two-way catalysts) would not be as sensitive to air-fuel ratio as with stoichiometric designs. For these or other engines that rely on emission-control technologies incompatible with the diagnostic system described above, manufacturers must devise an alternate system that alerts the operator to engine malfunctions that would prevent the emission-control system from functioning properly.

The automotive industry has developed a standardized protocol for diagnostic systems, including hardware specifications, and uniform trouble codes. In the regulations we reference standards adopted by the International Organization for Standardization (ISO) for automotive systems. If manufacturers find that these standards are not applicable to the simpler diagnostic design specified for Large SI engines, we encourage engine manufacturers to cooperate with each other and with other interested companies to develop new standards specific to nonroad engines. Manufacturers may request approval to use systems that don't meet the automotive specifications if those specifications are not practical or appropriate for their engines.

c. Evaporative emissions. Evaporative emissions occur when fuel evaporates and is vented into the atmosphere. They can occur while an engine or vehicle is operating and even while it is not being operated. Among the factors that affect evaporative emissions are:

- Fuel metering (fuel injectors or carburetor)
- The degree to which fuel permeates fuel lines and fuel tanks
- Proximity of the fuel tank to the exhaust system or other heat sources
- Whether the fuel system is sealed and the pressure at which fuel vapors are ventilated.

In addition, some gasoline fuel tanks may be exposed to heat from the engine compartment and high-temperature surfaces such as the exhaust pipe. In extreme cases, fuel can start boiling, producing very large amounts of gasoline vapors vented directly to the atmosphere.

Evaporative emissions from Large SI engines and the associated equipment represent a significant part of their overall hydrocarbon emissions. The magnitude of evaporative emissions varies widely depending on the engine design and application. LPG-fueled equipment generally has very low evaporative emissions because of the tightly sealed fuel system. At the other extreme, carbureted gasoline-fueled equipment can have high rates of evaporation. In 1998, Southwest Research Institute measured emissions from several gasoline-fueled Large SI engines and found them to vary from about 12 g/day up to almost 100 g/day.[79]

[78] Stoichiometry is the proportion of a mixture of air and fuel such that the fuel is fully oxidized with no remaining oxygen. For example, stoichiometric combustion in gasoline engines typically occurs at an air-fuel mass ratio of about 14.7.

[79] "Measurement of Evaporative Emissions from Off-Road Equipment," by James N. Carroll and Jeff J. White, Southwest Research Institute (SwRI 08–

Continued

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This study did not take into account the possibility of unusually high fuel temperatures during engine operation, as described further below.

We are adopting basic measures to reduce evaporative emissions from gasoline-fueled Large SI engines. First, we are adopting an evaporative emission standard of 0.2 grams per gallon of fuel tank capacity for 24-hour day when temperatures cycle between 72° and 96° F. For purposes of certification, manufacturers may choose, however, to rely on a specific design for certification instead of measuring emissions. We have identified a technology that adequately prevents evaporative emissions such that the design itself would be enough to show compliance with the evaporative emission standard for purposes of certification. Specifically, pressurized fuel tanks control evaporative emissions by suppressing vapor generation. In its standards for industrial trucks operating in certain environments, Underwriters Laboratories requires that trucks use self-closing fuel caps with tanks that stay sealed to prevent evaporative losses; venting is allowed for positive pressures above 3.5 psi or for vacuum pressures of at least 1.5 psi.[80] We know that any Large SI engines or vehicles operating with these pressures would meet the standard because test data confirm the basic chemistry principles related to phase-change pressure relationships showing that fuel tanks will remain sealed at all times during the prescribed test procedure. Also, similar to the Underwriters Laboratories' requirement, we specify that manufacturers must use self-closing or tethered fuel caps to ensure that fuel tanks designed to hold pressure are not inadvertently left exposed to the atmosphere.

In some applications, manufacturers may want to avoid high fuel-tank pressures. Manufacturers may be able to meet the standard using an air bladder inside the fuel tank that changes in volume to keep the system in equilibrium at atmospheric pressure.[81] We have data showing that these systems also would remain sealed at all times during the prescribed test procedure. However, the permeation levels related to the air bladder and the long-term durability of this type of system are still unknown. Once these parameters are established with test data, perhaps with some additional product development, this technology may then qualify as an option for design-based certification. Similarly, collapsible bladder tanks, which change in volume to prevent generation of a vapor space or vapor emissions, may eventually be available as a technology for design-based certification once permeation data are available to confirm that systems with these tanks would meet the standard. Finally, an automotive-type system that stores fuel tank vapors for burning in the engine would be another alternative technology, though it is unlikely that such a system can be simply characterized and included as an option for design-based certification.

In addition, engine manufacturers must use (or specify that equipment manufacturers installing their engines use) fuel lines meeting the industry performance standard for permeation-resistant fuel lines developed for motor vehicles.[82] While metal fuel lines do not have problems with permeation, manufacturers should use discretion in selecting materials for grommets and valves connecting metal components to avoid high-permeation materials. Evaporative emission standards for motor vehicles have led to the development of a wide variety of permeation-resistant polymer components. These permeation requirements are based on manufacturers using a more effective emission controls than that specified for recreational vehicles. This is appropriate because Large SI manufacturers are able to use automotive-grade materials across their product line, while recreational vehicle manufacturers have pointed out various limitations in incorporating automotive-grade materials. Conversely, Large SI manufacturers are not subject to permeation requirements related to fuel tanks, since almost all of these tanks are made of metal.

Finally, based on available technologies, manufacturers must take steps to prevent fuel boiling. The Underwriters Laboratories specification for forklifts attempts to address this concern through a specified maximum fuel temperature, but the current limit does not prevent fuel boiling.[83] We are adopting a standard that prohibits fuel boiling during continuous operation at 30° C (86° F). Engine manufacturers must incorporate designs that reduce the heat load to the fuel tank to prevent boiling. For companies that sell loose engines, this may involve instructions to equipment manufacturers to help ensure, for example, that fuel tank surfaces are exposed to ambient air rather than to exhaust pipes or direct engine heat. Engine manufacturers may specify a maximum fuel temperature for the final installation. Such a temperature limit should be well below 53° C (128° F), the temperature at which summer-grade gasoline (9 RVP) typically starts boiling.

An additional source of evaporative emissions is from carburetors. Carburetors often have high hot soak emissions (immediately after engine shutdown). We expect manufacturers to convert carbureted designs to fuel injection as a result of the exhaust emission standards. While we do not mandate this technology, we believe the need to reduce exhaust emissions will cause engine manufacturers to use fuel injection on all gasoline engines. This change alone will eliminate most hot soak emissions.

Engine manufacturers using design-based certification need to describe in the application for certification the selected design measures and specifications to address evaporative losses from gasoline-fueled engines. For loose-engine sales, this includes emission-related installation instructions that the engine manufacturer gives to equipment manufacturers. While equipment manufacturers must follow these installation instruction, the engine manufacturer has the responsibility to certify a system that meets the evaporative-related requirements described in this section. This should work in practice, because engine manufacturers already provide equipment manufacturers a variety of specifications and other instructions to ensure that engines operate properly in-use after installation in the equipment. The alternative approach of requiring equipment manufacturers to certify is impractical because of the very large number of companies involved.

5. What Durability Provisions Apply?

a. Useful life. We are adopting a useful life period of seven years or until the engine accumulates at least 5,000 operating hours, whichever comes first. This figure represents a minimum value and may increase as a result of data showing that an engine model is designed to last longer. This figure, which California ARB has already adopted, represents an operating period that is common for Large SI engines before they undergo rebuild. This also reflects a comparable degree of operation relative to the useful life values of 100,000 to 150,000 miles that apply to automotive engines (assuming an average driving speed of 20 to 30 miles per hour).

Some engines are designed for operation in severe-duty applications with a shorter expected lifetime. Concrete saws in particular undergo accelerated wear as a result of operating in an environment with high concentrations of highly abrasive, airborne concrete dust particles. We are allowing manufacturers to request a shorter useful life for an engine family based on information showing that engines in the family rarely operate beyond the alternative useful-life period. For example, if engines powering concrete saws are typically scrapped after 2000 hours of operation, this would form the basis for establishing a shorter useful-life period for those engines.

Manufacturers relying on design-based certification to meet the evaporative requirements must use good engineering judgment to show that emission controls will work for at least seven years. This may, for example, be based on warranty or product-performance history from component suppliers. This also applies for systems designed to address crankcase emissions.

b. Warranty. Manufacturers must provide an emission-related warranty for at least the first half of an engine's useful life (in operating hours) or three years, whichever comes first. These periods must be longer if the manufacturer offers a longer mechanical warranty for the engine or any of its components; this includes extended warranties that are available for an extra price. The emission-related warranty includes components related to controlling evaporative and crankcase emissions. In addition, we are adopting the warranty provisions adopted by California ARB for high-cost parts. For emission-related components whose replacement cost is more than about $400, we specify a minimum warranty period of at least 70 percent of the engine's useful life (in operating hours) or 5 years, whichever comes first. See § 1048.120 for a description of which components are emission-related.

c. Maintenance instructions. We are specifying minimum maintenance intervals much like those established by California ARB for Large SI engines. The minimum intervals define how much maintenance a manufacturer may specify to ensure that engines are properly maintained for staying within emission standards. Manufacturers may schedule maintenance on catalysts, fuel injectors, electronic control units and turbochargers after 5,000 hours. For oxygen sensors and cleaning of fuel-system components, the minimum maintenance interval is 2,500 hours. This fuel-system cleaning must be limited to steps that can be taken without disassembling components. We have relaxed this from the proposed interval of 4,500 hours to take into account comments emphasizing that these maintenance steps will be necessary more frequently than the proposed interval; this shorter interval also reflects the comparable provisions that apply to automotive systems.

We are also proposing a diagnostic requirement to ensure that prematurely failing oxygen sensors or other components are detected and replaced on an as-needed basis. If operators fail to address faulty components after a fault signal, we would not consider that engine to be properly maintained. This could the engine ineligible for manufacturer in-use testing.

d. Deterioration factors. We are adopting an approach that gives manufacturers wide discretion in how to establish deterioration factors for Large SI engines. The general expectation is that manufacturers will rely on emission measurements from engines that have operated for an extended period, either in field service or in the laboratory. The manufacturer should do testing as needed to be confident that their engines will meet emission standards under the in-use testing program. In deciding to certify an engine family, we can review deterioration factors to ensure that the projected deterioration accurately predicts in-use deterioration. We will use results under the in-use testing program to verify the appropriateness of deterioration factors.

In the first two or three years of certification, manufacturers will not yet have data from the in-use testing program. Moreover, manufacturers may choose to rely on technologies and calibrations for meeting the long-term standards well before 2007 to simplify their product-development efforts. We are therefore allowing manufacturers to rely on an assigned deterioration factor to meet the 2004 standards, while continuing to require manufacturers to meet the applicable emission standards throughout the useful life for these engines. The assigned deterioration factor may be derived from any available data that would help predict the way these systems would perform in the field, using good engineering judgment.

Manufacturers may develop deterioration factors for crankcase and evaporative controls. However, we do not expect these control technologies to experience degradation that would cause a deterioration factor to be appropriate.

e. In-use fuel quality. Gasoline used in industrial applications is generally the same as that used for automotive applications. Improvements that have been made to highway-grade gasoline therefore carry over directly to nonroad markets. This helps manufacturers be sure that fuel quality will not degrade an engine's emission-control performance after several years of sustained operation.

In contrast, there are no enforceable industry or government standards for LPG fuel quality. Testing data indicate that varying fuel quality has a small direct effect on emissions from a closed-loop engine with a catalyst. The greater concern is that fuel impurities and heavy-end hydrocarbons may cause an accumulation of deposits that can prevent an emission-control system from functioning properly. While an engine's feedback controls can compensate for some restriction in air- and fuel-flow, deposits may eventually prevent the engine from accurately controlling air-fuel ratios at stoichiometry. As described in the Final Regulatory Support Document, test data show that emission-control systems can tolerate substantial fuel-related deposits before there is any measurable effect on emissions. Moreover, the engine diagnostic systems described in the next section will notify the operator when fuel-related deposits prevent an engine from operating at stoichiometry. In any case, a routine cleaning step should remove deposits and restore the engine to proper functioning.

Data from in-use testing will provide additional information related to the effects of varying fuel quality on emission levels. This information will be helpful in making sure that the deterioration factors for certifying engines accurately reflect the whole range of in-use operating variables, including varying fuel quality. Our testing shows that fuel properties of conventional commercial LPG fuel allow for durable, long-term control of emissions. However, to the extent that engines operating in specific areas have inferior fuel quality that prevents them from meeting emission standards, we will be pursuing nationwide requirements to set minimum quality standards for in-use LPG fuel.

1076), November 1998, Docket A–2000–01, document II–A–10.

[80] "Industrial Trucks, Internal Combustion Engine-Powered," UL558, ninth edition, June 28, 1996, paragraphs 26.1 through 26.4, Docket A–2000–01, document II–A–28. See Section XI.I for our consideration of incorporating the UL requirements into our regulations by reference.

[81] "New Evaporative Control System for Gasoline Tanks," EPA Memorandum from Charles Moulis to Glenn Passavant, March 1, 2001, Docket A-2000–01, document II–B–16.

[82] SAE J2260 "Nonmetallic Fuel System Tubing with One or More Layers," November 1996 (Docket A–2000–01, document II–A–03).

[83] UL558, paragraph 19.1.1, Docket A–2000–01, document II–A–28.

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D. Testing Requirements and Supplemental Emission Standards

1. What Duty Cycles Are Used To Measure Emissions?

For 2004 through 2006 model years, we specify the same steady-state duty cycles adopted by California ARB. For variable-speed engines, this involves the testing based on the ISO C2 duty cycle, which has five modes at various intermediate speed points, plus one mode at rated speed and one idle mode. The combined intermediate-speed points at 10, 25, and 50 percent account for over 70 percent of the total modal weighting. A separate duty cycle for the large number of Large SI engine providing power for constant-speed applications, such as generators, welders, compressors, pumps, sweepers, and aerial lifts. Constant-speed testing is based on the ISO D2 duty cycle, which specifies engine operation at rated speed with five different load points. This same steady-state duty cycle applies to constant-speed, nonroad diesel engines. Emission values measured on the D2 duty cycle are treated the same as values from the C2 duty cycle; the same numerical standards apply to both cycles.

Manufacturers must generally test engines on both the C2 and D2 duty cycles. Since the C2 cycle includes very little operation at rated speed, it is not effective in ensuring control of emissions for constant-speed engines. The D2 cycle is even less capable of predicting emission performance from variable-speed engines. Manufacturers may, however, choose to certify their engines on only one of these two steady-state duty cycles. In this case, they would need to take steps to make sure C2-certified engines are installed only in variable-speed applications and D2-certified engines are installed only in constant-speed applications. Engine manufacturers would do this by labeling their engines appropriately and providing installation instructions to make sure equipment manufacturers and others are aware of the restricted certification. Equipment manufacturers are required under the regulations to follow the engine manufacturer's emission-related installation instructions.

Starting in 2007, we specify an expanded set of duty cycles, again with separate treatment for variable-speed and constant-speed applications. The test procedure is comprised of three segments: (1) A warm-up segment, (2) a transient segment, and (3) a steady-state segment. Each of these segments, described briefly in this section, include specifications for the speed and load of the engine as a function of time. Measured emissions during the transient and steady-state segments must meet the same emission standards that apply to all duty cycles. In general, the duty cycles are intended to represent operation from the wide variety of in-use applications. This includes highly transient low-speed forklift operation, constant-speed operation of portable equipment, and intermediate-speed vehicle operation.

Ambient temperatures in the laboratory must be between 20° and 30° C (68° and 86° F) during duty-cycle testing. This improves the repeatability of emission measurements when the engine runs through its prescribed operation. We nevertheless expect manufacturers to design for controlling emissions under broader ambient conditions, as described in Section V.D.5.

The warm-up segment begins with a cold-start. This means that the engine should be near room temperature before the test cycle begins. (Starting with an engine that is still warm from previous testing is allowed if good engineering judgment indicates that this will not affect emissions.) Once the engine is started, it operates over the first 3 minutes of the specified transient duty cycle without emission measurement. The engine then idles for 30 seconds before starting the prescribed transient cycle. The purpose of the warm-up segment is to bring the engine up to normal operating temperature in a standardized way. For severe-duty engines, the warm-up period is extended up to 15 minutes to account for the additional time needed to stabilize operating temperatures from air-cooled engines. The warm-up period allows enough time for engine-out emissions to stabilize, for the catalyst to warm up enough to become active, and for the engine to start closed-loop operation. This serves as a defined and achievable target for the design engineer to limit cold-start emissions to a relatively short period. In addition, we require manufacturers to activate emission-control systems as soon as possible after engine starting to make clear that it is not acceptable to design the emission-control system to start working only after the defined warm-up period is complete. In addition, we may measure emissions during the warm-up period to evaluate whether manufacturers are employing defeat devices. In contrast, transient testing of heavy-duty highway engines requires separate cold-start and hot-start measurements, with an 86-percent weighting assigned to the hot-start portion in calculating an engine's composite emission level. We believe this approach for nonroad engines serves to limit cold-start emissions without forcing manufacturers to focus design and testing resources on this portion of operation.

The transient segment of the general duty cycle is a composite of forklift and welder operation. This duty cycle was developed by selecting segments of measured engine operation from two forklifts and a welder as they performed their normal functions. This transient segment captures the wide variety of operation from a large majority of Large SI engines as fork-lifts and constant-speed engines represent about 90 percent of the Large SI market. Emissions measured during this segment are averaged over the entire transient segment to give a single value in g/kW.

Steady-state testing consists of engine operation for an extended period at several discrete speed-load combinations. Associated with these test points are weighting factors that allow a single weighted-average steady-state emission level in g/kW. While any steady-state duty cycle is limited in how much it can represent operation of engines that undergo transient operation, the distribution of the C2 modes and their weighting values aligns significantly with expected and measured engine operation from Large SI engines. In particular, these engines are generally not designed to operate for extended periods at high-load, rated speed conditions. Field measurement of engine operation shows, however, that forklifts operate extensively at lower speeds than those included in the C2 duty cycle. While we believe the test points of the C2 duty cycle are representative of engine operation from many applications of Large SI engines, supplementing the steady-state testing with a transient duty cycle is necessary to adequately include engine operation characteristic of what occurs in the field.

A separate transient duty cycle applies to engines that are certified for constant-speed applications only. These engines maintain a constant speed, but can experience widely varying loads. The transient duty cycle for these engines includes 20 minutes of engine operation based on the way engines work in a welder. Note that manufacturers selling engines for both constant-speed and variable-speed applications may omit the constant-speed transient test, since that type of operation is included in the general transient test.

A subset of constant-speed engines are designed to operate only at high load. To address the operating limitations of these engines, we are adopting a modified steady-state duty cycle if the manufacturer provides clear evidence showing that engines rarely operate below 75 percent of full load at rated speed. Since most Large SI engines are clearly capable of operating for extended periods at light loads, we expect these provisions to apply to very few engines. This modified duty cycle consists of two equally weighted points, 75 percent and 100 percent of full load, at rated speed. Since the transient cycle described above involves extensive light-load operation, engines qualifying for this high-load duty cycle would not need to measure emissions over the transient cycle. Note that the field-testing emission standards still apply to engines that don't certify to transient duty-cycle standards.

Some diesel-derived engines operating on natural gas with power ratings up to 1,500 or 2,000 kW may be covered by these emission standards. Engine dynamometers with transient-control capabilities are generally limited to testing engines up to 500 or 600 kW. At this time emission standards and testing requirements related to transient duty cycles will not apply for engines rated above 560 kW. We will likely review this provision for Large SI engines once we have reached a conclusion on the same issue for nonroad diesel engines. For example, if we propose provisions for nonroad diesel engines that address testing issues for these very large engines, we would likely propose those same provisions for Large SI engines.

Test procedures related to evaporative emissions are described in Section V.C.4 above. In general, this involves measuring evaporative losses during a three-day period of cycling ambient temperatures between 72° and 96° F.

2. What Fuels Are Used During Emission Testing?

For gasoline-fueled Large SI engines, we are adopting the same specifications we have established for testing gasoline-fueled highway vehicles and engines. This includes the revised specification to cap sulfur levels at 80 ppm (65 FR 6698, February 10, 2000). These fuel specifications apply for both exhaust and evaporative emissions.

For LPG, we are adopting the same specifications established by California ARB. We understand that in-use fuel quality for LPG varies significantly in different parts of the country and at different times of the year. Not all in-use fuels outside California meet California ARB specifications for certification fuel, but fuels meeting the California specifications are nevertheless widely available. Test data show that LPG fuels with a much lower propane content have only slightly higher NO_x and CO emissions (see Chapter 4 of the Final Regulatory Support Document for additional information). These data support our belief that engines certified using the specified fuel will achieve the desired emission reduction for a wide range of in-use fuels. At certification manufacturers provide deterioration factors that take into account any effects related to the varying quality of commercially available fuels.

For natural gas, we are adopting specifications similar to those adopted by California ARB. As described in the Summary and Analysis of Comments, we have adjusted some of the detailed specifications from the proposal to reflect new data submitted after the proposal regarding ranges of fuel properties reflecting current commercial fuels.

Unlike California ARB, we apply the fuel specifications to testing only for emission measurements, not to service accumulation. Service accumulation between emission tests may involve certification fuel or any commercially available fuel of the appropriate type. We similarly allow manufacturers to choose between certification fuel and any commercial fuel for in-use measurements to show compliance with field-testing emission standards.

Since publishing the proposal, we learned about issues related to Large SI engines that operate around landfills or oil wells, where engines may burn naturally occurring gases that are otherwise emitted to the atmosphere. These gases generally consist of methane, but a wide range of other constituents may also be mixed in. As a result, engines may require adjustment over a wide range of settings for spark timing and air-fuel ratio to maintain consistent combustion. We generally believe that engine manufacturers should design their engines to operate with automatic feedback controls as much as possible to avoid the need for operators to manually adjust engines. However, in cases involving these noncommercial fuels, there is no way to improve the quality of the fuel to conform to any standardized specifications. Also, it is clearly preferred to capture and burn these gases than to emit them directly to the atmosphere, both to prevent greenhouse-gas emissions and to avoid wasting this source of fuel. To address this concern, we are adopting special provisions for engines burning noncommercial fuels if they are unable to meet emission standards over the full range of adjustability needed to accommodate the varying fuel properties. Manufacturers would show that these engines can meet emission standards using normal certification fuels, but the normal provisions related to adjustable parameters would not apply. To properly constrain this provision, we are including four requirements. First, manufacturers would need to add information on an engine label instructing operators how to make adjustments that would allow for maintained emission control and overall engine performance. Second, manufacturers would include additional label language to warn operators that the engine may be used only in applications involving noncommercial fuels. Third, manufacturers must separate these engines into a distinct engine family. Fourth, manufacturers must keep a record of individual sales of such engines.

3. Are There Production-Line Testing Provisions for Large SI Engines?

The provisions described in Section II.C.4 apply to Large SI engines. These requirements are consistent with those adopted by California ARB. One new issue specific to Large SI engines relates to the duty cycles for measuring emissions from production-line engines.

For routine production-line testing, we require emission measurements only with the steady-state duty cycles used for certification. Due to the cost of sampling equipment for transient engine operation, we do not require routine transient testing of production-line engines. Transient testing of production-line engines would add a substantial burden, since many manufacturers have limited emission-sampling capability at production facilities; also, these production facilities might be located at multiple sites. We believe that steady-state emission measurements will give a good indication of the manufacturers' ability to build engines consistent with the prototypes on which their certification data are based. We reserve the right, however, to direct a manufacturer to measure emissions with a transient duty cycle if we believe it is appropriate. One indication of the need for this transient testing would be if steady-state emission levels from production-line engines are significantly higher than the emission levels reported in the application for certification for that engine family. For manufacturers with the capability of measuring transient emission levels at the production line, we recommend doing transient tests to better ensure that in-use tests will not reveal problems in controlling emissions during transient

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operation. Manufacturers need not make any measurements to show that production-line engines meet field-testing emission standards.

We expect manufacturers generally to certify their engines to the evaporative requirements using a design-based approach. Accordingly, the technologies we expect manufacturers to use for controlling evaporative emissions are not subject to variation as a result of production procedures, so we are not requiring production-line testing related to the evaporative requirements.

4. Are There In-Use Testing Provisions for Large SI Engines?

While the certification and production-line compliance requirements are important to ensure that engines are designed and produced in compliance with established emission limits, there is also a need to confirm that manufacturers build engines with sufficient durability to meet emission limits as they age in service. Consistent with the California ARB program, we are requiring engine manufacturers to conduct emission tests on a small number of field-aged engines to show they meet emission standards.

We may generally select up to 25 percent of a manufacturer's engine families in a given year to be subject to in-use testing. Most companies will need to test at most one engine family per year. Manufacturers may conduct in-use testing on any number of additional engine families at their discretion.

Manufacturers in unusual circumstances may develop an alternate plan to fulfill any in-use testing obligations, consistent with a similar program we have adopted for outboard and personal watercraft marine engines. These circumstances include total sales for an engine family below 200 per year, installation only in applications where testing is not possible without irreparable damage to the vehicle or engine, or any other unique feature that prevents full emission measurements.

While the regulations allow us to select an engine family every year from an engine manufacturer, there are several reasons why small-volume manufacturers may expect a less demanding approach. These manufacturers may have only one or two engine families. If a manufacturer shows that an engine family meets emission standards in an in-use testing exercise, that may provide adequate data to show compliance for that engine family for a number of years, provided that the manufacturer continues to produce those engines without significantly redesigning them in a way that might affect their in-use emissions performance and that we do not have other reason to suspect noncompliance. Also, where we have evidence that a manufacturer's engines are likely in good in-use compliance, we generally take the approach of selecting engine families based on some degree of proportionality. To the extent that manufacturers produce a smaller than average proportion of engines, they may expect us to select their engine families less frequently, especially if other available data pointed toward in-use compliance. In addition, our experience in implementing a comparable testing program for recreational marine engines provides a history of how we implement in-use testing requirements.

Engines can be tested one of two ways. First, manufacturers can remove engines from vehicles or equipment and test the engines on a laboratory dynamometer using certification procedures. For 2004 through 2006 model year engines, this is the same steady-state duty cycle used for certification; manufacturers may optionally test engines on the dynamometer under transient operating conditions. For 2007 and later model year engines, manufacturers must test engines using both steady-state and transient duty cycles, as in certification.

As an alternative, manufacturers may use the specified equipment and procedures for testing engines without removing them from the equipment (referred to in this document as field testing). See Section V.D.5 for a more detailed description of how to measure emissions from engines during normal operation in the field. Since engines operating in the field cannot be controlled to operate on a specific duty cycle, compliance is demonstrated by comparing the measured emission levels to the field-testing emission standards, which have higher numerical value to account for the possible effects of different engine operation. Because the engine operation can be so variable, however, engines tested to show compliance only with the field-testing emission standards are not eligible to participate in the in-use averaging, banking, and trading program (described below).

Clean Air Act section 213 requires engines to comply with emission standards throughout their regulatory useful lives, and section 207 requires a manufacturer to remedy in-use nonconformity when we determine that a substantial number of properly maintained and used engines fail to conform with the applicable emission standards (42 U.S.C. 7541). Along with the in-use testing program, we would allow manufacturers to demonstrate that they have designed their engines to control emissions substantially below the emission standards that apply. If manufacturers are able to show that they have already been reducing emissions more than required by the standards, including appropriate consideration for deterioration and compliance margins, this may allow us to conclude that these accumulated additional emission reductions are sufficient to offset the high emissions from a failing engine family. In concept, this approach serves much like a banking program to recognize manufacturers' efforts to go beyond the minimum required emission reductions.

This approach differs from the specific in-use emission-credit program that we proposed. This more general approach is preferred for two primary reasons. First, while we proposed to limit the in-use emission-credit program to transient testing in the laboratory, manufacturers will now be able to use emission data generated from field testing to characterize an engine family's average emission level. This becomes necessarily more subjective, but allows us to consider a wider range of information in evaluating the degree to which manufacturers are complying with emission standards across their product line. Second, this approach makes clearer the role of the emission credits in our consideration to recall failing engines. As we described in the proposal, we plan to consider average emission levels from multiple engine families in deciding whether to recall engines from a failing engine family. We therefore believe it is not appropriate to have a detailed emission-credit program defining precisely how and when to calculate, generate, and use credits that do not necessarily have value elsewhere.

The regulations do not specify how manufacturers would generate emission credits to offset a nonconforming engine family. This gives us the ability to consider any appropriate test data in deciding what action to take. In generating this kind of information, some general guidelines would apply. For example, we would expect manufacturers to share test data from all engines and all engine families tested under the in-use testing program, including nonstandard tests that might be used to screen engines for later measurement. This allows us to understand the manufacturers' overall level of performance in controlling emissions to meet emission standards. Average emission levels should be calculated over a running three-year period to include a broad range of

testing without skewing the results based on old designs. Emission values from engines certified to different tiers of emission standards or tested using different measurement procedures should not be combined to calculate a single average emission level. Average emission levels should be calculated according to the following equation, rounding the results to 0.1 g/kW-hr:

$$\text{Average EL} = \left[\sum_i (\text{STD} - \text{CL})_i \times (\text{UL})_i \times (\text{Sales})_i \times \text{Power}_i \times \text{LF}_i\right] \div \left[\sum_i (\text{UL})_i \times (\text{Sales})_i \times \text{Power}_i \times \text{LF}_i\right]$$

Where:

Average EL=Average emission level in g/kW-hr.

Sales_i=The number of eligible sales, tracked to the point of first retail sale in the U.S., for the given engine family during the model year.

$_i$(STD-CL)=The difference between the emission standard and the average emission level for an in-use testing family in g/kW-hr.

UL_i=Useful life in hours.

Power_i=The sales-weighted average rated brake power for an engine family in kW.

LF_i=Load factor or fraction of rated engine power utilized in use; use 0.50 for engine families used only in constant-speed applications and 0.32 for all other engine families.

The anticipated crankcase and evaporative emission-control technologies generally are best evaluated simply by checking whether or not they continue to function as designed, rather than implementing a program to measure these emissions from in-use engines. As a result, we may inspect in-use engines to verify that these systems continue to function properly throughout the useful life, but are not requiring manufacturers to include crankcase or evaporative measurements as part of the in-use testing program described in this section.

5. What Are the Field-Testing Emission Standards and Test Procedures?

To address concerns for controlling emissions outside of the certification duty cycles and to enable field-testing of Large SI engines, we are adopting procedures and standards that apply to a wider range of normal engine operation.

a. What is the field-testing concept? Measuring emissions from engines in the field as they undergo normal operation while installed in nonroad equipment addresses two broad concerns. First, testing of in-use engines has shown that emissions can vary dramatically under certain modes of operation.

Second, this provides a low-cost method of testing in-use engines, which facilitates in-use compliance programs. Field-testing addresses this by including emission measurements over the broad range of normal engine operation. This may include varying engine speeds and loads according to real operation and may include a reasonable range of ambient conditions, as described below.

No engine operating in the field can follow a prescribed duty cycle for a consistent measure of emission levels. Similarly, no single test procedure can cover all real-world applications, operations, or conditions. Specifying parameters for testing engines in the field and adopting an associated emission standard provides a framework for requiring that engines control emissions under the whole range of normal operation in the relevant nonroad equipment.

To ensure that emissions are controlled from Large SI engines over the full range of speed and load combinations seen in the field, we are adopting supplemental emission standards that apply more broadly than the duty-cycle standard, as detailed below. These standards apply to all regulated pollutants (NO_x, HC, and CO) under all normal operation (steady-state or transient). We exclude abnormal operation (such as very low average power and extended idling time), but do not restrict operation to any specific combination of speeds and loads. In addition, the field-testing standards apply under a broad range of in-use ambient conditions, both to ensure robust emission controls and to avoid overly restricting the times available for testing. These provisions are described in detail below.

b. How do the field-testing standards apply? Manufacturers have expressed an interest in using field-testing procedures before the 2007 model year to show that they can meet emission standards as part of the in-use testing program. While we are not adopting specific field-testing standards for 2004 through 2006 model year engines, we will allow this as an option. In this case, manufacturers would conduct the field testing as described here to show that their engines meet the 5.4 g/kW-hr HC+NO_x standard and the 50 g/kW-hr CO standard. This may give manufacturers the opportunity to do testing at significantly lower cost compared with laboratory testing. Preliminary certification data from California ARB show that manufacturers are reaching steady-state emission levels well below emission standards, so we expect any additional variability in field-testing measurements not to affect manufacturers' ability to meet the same emission standards.

The 2007 field-testing standards are based on emission data measured on engines with the same emission-control technology used to establish the duty-cycle standards. As described above for the duty-cycle standards, we are adopting a flexible approach to address the tradeoff between HC+NO_x and CO emissions. Table V.D–1 shows the range of values that define the standard for showing compliance for field-testing measurements. The higher numerical values of the Tier 2 standards for field testing (compared with duty-cycle testing) reflect the observed variation in emissions for varying engine operation, and the projected effects of ambient conditions on the projected technology. Conceptually, we believe that field-testing standards should primarily require manufacturers to adjust engine calibrations to effectively manage air-fuel ratios under varying conditions. The estimated cost of complying with emission standards includes an allowance for the time and resources needed for this recalibration effort (see Section IX.B. for total estimated costs per engine).

TABLE V.D–1.—SAMPLES OF POSSIBLE ALTERNATIVE FIELD-TESTING EMISSION STANDARDS FOR LARGE SI ENGINES(G/KW-HR) *

HC+NO_x	CO
3.8	6.5
3.1	8.5
2.4	11.7
1.8	16.8
1.4	23.1

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TABLE V.D–1.—SAMPLES OF POSSIBLE ALTERNATIVE FIELD-TESTING EMISSION STANDARDS FOR LARGE SI ENGINES(G/KW-HR) *—Continued

$HC+NO_X$	CO
1.1	31

*As described in the Final Regulatory Support Document and the regulations, the values in the table are related by the following formula: $(HC+NO_X) \times CO0.791 = 16.78$. These values follow directly from the logarithmic relationship presented with the proposal in the Draft Regulatory Impact Analysis.

We generally require manufacturers to show at certification that they are capable of meeting all standards that apply for the useful life. This adds a measure of assurance to both EPA and manufacturers that the engine design is sufficient for any in-use engines to pass any later testing. For Large SI engines, manufacturers must show in their application for certification that they are able to meet the field-testing standards. Manufacturers must submit a statement that their engines will comply with field-testing emission standards under all conditions that may reasonably be expected to occur in normal vehicle operation and use. Manufacturer will provide a detailed description of any testing, engineering analysis, and other information that forms the basis for the statement. This will likely include a variety of steady-state emission measurements not included in the prescribed duty cycle. It may also include a continuous trace showing how emissions vary during the transient test or it may include emission measurements during other segments of operation manufacturers believe are representative of the way their engines normally operate in the field.

Two additional provisions are necessary to allow emission testing without removing engines from equipment in the field. Manufacturers must design their engines to broadcast instantaneous speed and torque values to the onboard computer and ensure that emission sampling is possible after engine installation.

The test equipment and procedures for showing compliance with field-testing standards also hold promise to reduce the cost of production-line testing. Companies with production facilities that have a dynamometer but no emission measurement capability may use the field-testing equipment and procedures to get a low-cost, valid emission measurement at the production line. Manufacturers may also choose to use the cost advantage of the simpler measurement to sample a greater number of production-line engines. This would provide greater assurance of consistent emissions performance, but would also provide valuable quality-control data for overall engine performance. See the discussion of alternate approaches to production-line testing in Section II.C.4 for more information.

c. What limits are placed on field testing? The field-testing standards apply to all normal operation. This may include steady-state or transient engine operation. Given a set of field-testing standards, the goal for the design engineer is to ensure that engines are properly calibrated for controlling emissions under any reasonably expected mode of engine operation. Engines may not be able to meet the emissions limit under all conditions, however, so we are adopting several parameters to narrow the range of engine operation that is subject to the field-testing standards. For example, emission sampling for field testing does not include engine starting.

Engines can often operate at extreme environmental and geographic conditions (temperature, altitude, etc.). To narrow the range of conditions for the design engineer, we are limiting emission measurements during field testing to ambient temperatures from 13° to 35° C (55° to 95° F), and to ambient pressures from 600 to 775 millimeters of mercury (which should cover almost all normal pressures from sea level to 7,000 feet above sea level). This allows testing under a wider range of conditions in addition to helping ensure that engines are able to control emissions under the whole range of conditions under which they operate.

Some additional limits to define "normal" operation apply to field testing. These restrictions are intended to provide manufacturers with some certainty about what their design targets are and to ensure that compliance with the field-testing standards is feasible. These restrictions apply to both variable-speed and constant-speed engine applications.

First, measurements with more than 2 minutes of continuous idle are excluded. This means that an emission measurement from a forklift while it idled for 5 minutes will not be considered valid. On the other hand, an emission measurement from a forklift that idled for multiple 1-minute periods and otherwise operated at 40-percent power for several minutes would be considered a valid measurement. Measurements with in-use equipment in their normal service show that idle periods for Large SI engines are short, but relatively frequent. We therefore do not automatically exclude an emission sample if it includes an idling portion. At the same time, controlling emissions during extended idling poses a difficult design challenge, especially at low ambient temperatures. Exhaust and catalyst temperatures under these conditions can decrease enough that catalyst conversion is significantly less effective. Since extended idling is not an appropriate focus of extensive development efforts at this stage, we believe the 2-minute threshold for continuous idle appropriately balances the need to include measurement during short idling periods with the technical challenges of controlling emissions under difficult conditions.

Second, measured power during the sampling period must be above 5 percent of maximum power for an emission measurement to be considered valid. Brake-specific emissions (g/kW-hr) can be very high at low power because they are calculated by dividing the g/hr emission rate by a very small power level (kW). By ensuring that brake-specific emissions are not calculated by dividing by power levels less than 5 percent of the maximum, we can avoid this problem. The data presented in Chapter 4 of the Final Regulator Support Document show that engines can meet the emission standards when operating above 5 percent of rated power.

Third, some engines need to run rich of stoichiometric combustion during extended high-load operation to protect against engine failure. This increases HC and CO emissions. We are adopting provisions allowing manufacturers to meet separate standards for these engines for steady-state operation. For engines qualifying for these different steady-state standards, we specify that a valid sample for field testing must include less than 10 percent of operation at 90 percent or more of maximum power. We expect it to be uncommon for engine installations to call for such high power demand due to the shortened engine lifetime at very high-load operation. A larger engine can generally produce the desired power at a lower relative load, without compromising engine lifetime. Alternatively, applications that call for full-load operation typically use diesel engines. Manufacturers may request a different threshold to allow more open-loop operation. Before we approve such a request, the engine manufacturer would need to have a plan for ensuring that the engines in their final installation do not routinely operate at loads above the specified threshold.

An additional parameter to consider is the minimum sampling time for field testing. A longer period allows for greater accuracy, due mainly to the smoothing effect of measuring over several transient events. On the other hand, an overly long sampling period can mask areas of engine operation with poor emission-control characteristics. To balance these concerns, we are applying a minimum sampling period of 2 minutes. In other rules for diesel engines, we have allowed sampling periods as short as 30 seconds. Spark-ignition engines generally don't have turbochargers and they control emissions by maintaining air-fuel ratio with closed-loop controls through changing engine operation. Spark-ignition engines are therefore much less prone to consistent emission spikes from off-cycle or unusual engine operation. We believe the 2-minute sampling time requirement will ensure sufficient measurement accuracy and will allow for more meaningful measurements from engines that may be operated with very frequent but brief times at idle.

We do not specify a maximum sampling time. We expect manufacturers testing in-use engines to select an approximate sampling time before measuring emissions; however, the standards apply for any sampling time that meets the minimum. When selecting an engine family for the in-use testing program, we will develop a plan with direction related to the way manufacturers conduct the emission-sampling effort, such as sampling time or specific types of engine operation, to ensure that testing provides relevant data.

d. How do I test engines in the field? To test engines without removing them from equipment, analyzers are connected to the engine's exhaust to detect emission concentrations during normal operation. Exhaust volumetric flow rate and continuous power output are also needed to convert the analyzer responses to units of g/kW-hr for comparing to emission standards. These values can be calculated from measurements of the engine intake flow rate, the exhaust air-fuel ratio and the engine speed, and from torque information.

Available small analyzers and other equipment may be adapted for measuring emissions from field equipment. A portable flame ionization detector can measure total hydrocarbon concentrations. Methane measurement currently requires more expensive laboratory equipment that is impractical for field measurements. Field-testing standards are therefore be based on total hydrocarbon emissions. A portable analyzer based on zirconia technology measures NO_X emissions. A nondispersive infrared (NDIR) unit can measure CO. Emission samples can best be drawn from the exhaust flow directly downstream of the catalyst material to avoid diluting effects from the end of the tailpipe. Installing a sufficiently long tailpipe extension is also an acceptable way to avoid dilution. Mass flow rates also factor into the torque calculation; this may either be measured in the intake manifold or downstream of the catalyst.

Calculating brake-specific emissions depends on determining instantaneous engine speed and torque levels. Manufacturers must therefore design their engines to continuously monitor engine speed and torque. The tolerance for speed measurements, which is relatively straightforward, is ±5 percent. For torque, the onboard computer needs to convert measured engine parameters into useful units. Manufacturers generally will need to monitor a surrogate value such as intake manifold pressure or throttle position (or both), then rely on a look-up table programmed into the onboard computer to convert these torque indicators into newton-meters. Manufacturers may also want to program the look-up tables for torque conversion into a remote scan tool. Because of the greater uncertainty in these measurements and calculations, manufacturers must produce their systems to report torque values that are within 85 and 105 percent of the true value. This broader range allows appropriately for the uncertainty in the measurement, while providing an incentive for manufacturers to make the torque reading as accurate as possible. Under-reporting torque values would over-predict emissions. These tolerances are taken into account in the selection of the field-testing standards, as described in Chapter 4 of the Final Regulatory Support Document.

E. Special Compliance Provisions

We are adopting hardship provisions to address the particular concerns of small-volume manufacturers, which generally have limited capital and engineering resources. These hardship provisions are generally described in Section VII.C. For Large SI engines, we are adopting a longer available extension of the deadline, up to four years, for meeting emission standards for companies that qualify for special treatment under the hardship provisions. We will, however, not extend the deadline for compliance beyond the four-year period. This approach considers the fact that, unlike most other engine categories, qualifying small businesses are more likely to be manufacturers designing their own products. Other types of engines more often involve importers, which are limited more by available engine suppliers than design or development schedules.

We are not finalizing the proposed interim emission standards proposed for small-volume manufacturers. We believe we can accomplish the same objectives with more flexibility, and potentially with greater net emission reductions, by relying on the hardship provisions.

In addition, we are waiving the requirement for small-volume manufacturers to broadcast engine speed and torque values. These companies may choose to do this to enable field-testing of their products, but may be constrained in developing this capability to the extent that they rely on component suppliers to provide systems that meet EPA requirements.

F. Technological Feasibility of the Standards

We are adopting emission standards that depend on the industrial versions of established automotive technologies. The most recent advances in automotive technology have made possible even more dramatic emission reductions. However, we believe that transferring some of these most advanced technologies is not appropriate for nonroad engines at this time, especially considering the much smaller sales volumes for amortizing fixed costs and the additional costs associated with the first-time regulation of these engines.

To comply with the 2004 model year standards, manufacturers should not need to do any development, testing, or certification work that is not already necessary to meet California ARB standards in 2004. As shown in Chapter 4 of the Final Regulatory Support Document, manufacturers can meet these standards with three-way catalysts and closed-loop fuel systems. These technologies have been available for industrial engine applications for several years. Moreover, several manufacturers have already completed the testing effort to certify with California ARB that their engines meet these standards. Complying with emission standards nationwide in 2004 will therefore generally require manufacturers only to produce greater numbers of the engines complying with the California standards.

Chapter 4 of the Final Regulatory Support Document further describes data and rationale showing why we believe that the 2007 model year emission standards under the steady-state and transient duty-cycles and field-testing procedures are feasible. In

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summary, testing from Southwest Research Institute and other data show that the same catalyst and fuel-system technologies needed to meet the 2004 standards can be optimized to meet more stringent emission standards. Applying further development allows the design engineer to fine-tune control of air-fuel ratios and address any high-emission modes of operation to produce engines that consistently control emissions to very low levels, even considering the wide range of operation experienced by these engines. The numerical emission standards are based on measured emission levels from engines that have operated for at least 5,000 hours with a functioning emission-control system. These engines demonstrate the achievable level of control from catalyst-based systems and provide a significant degree of basic development that should help manufacturers in optimizing their own engines.

We believe it is appropriate to initiate the second stage of standards in 2007, because we believe that applying these emission standards earlier does not allow manufacturers enough stability between introduction of different phases of emission standards to prepare for complying with the full set of requirements in this final rule and to amortize their fixed costs. Three years of stable emission standards, plus the remaining lead time before 2004, allows manufacturers enough time to go through the development and certification effort to comply with the new standards including new test cycle requirements. The provisions to allow "family banking" for early compliance provide an additional tool for companies that choose to spread out their design and certification efforts.

The new emission standards will either have no impact or a positive impact with respect to noise, energy, and safety, as described in Chapter 4 of the Final Regulatory Support Document. In particular, the anticipated fuel savings associated with the expected emission-control technologies will provide a very big energy benefit related to new emission standards. The projected technologies are currently available and are consistent with those anticipated for complying with the emission standards adopted by California ARB. The lead time for the near-term and long-term emission standards allows manufacturers enough time to optimize these designs to most effectively reduce emissions from the wide range of Large SI equipment applications.

VI. Recreational Marine Diesel Engines

This section describes the new provisions for 40 CFR part 94, which apply to engine manufacturers and importers. We are applying the same general compliance provisions from 40 CFR part 94 for engine manufacturers, equipment manufacturers, operators, rebuilders, and others. See Section II for a description of our general approach to regulating nonroad engines and how manufacturers show that they meet emission standards.

A. Overview

We are adopting exhaust and crankcase emission standards for recreational marine diesel engines with power ratings greater than or equal to 37 kW. We are adopting emission standards for HC, NO_X, CO, and PM beginning in 2006. We believe manufacturers will be able to use technology developed for land-based nonroad and commercial marine diesel engines. To encourage the introduction of low-emission technology, we are also adopting voluntary "Blue Sky" standards which are 40 percent lower than the mandatory standards. We also recognize that there are many small businesses that manufacture recreational marine diesel engines. We are therefore including several regulatory options for small businesses that will help minimize any unique burdens caused by emission regulations.

Diesel engines are primarily available in inboard marine configurations, but may also be available in sterndrive and outboard marine configurations. Inboard diesel engines are the primary choice for many larger recreational boats.

B. Engines Covered by This Rule

The standards in this section apply to recreational marine diesel engines. We excluded these engines from the requirements applying to commercial marine diesel engines because at the time we thought their operation in planing mode might impose design requirements on recreational boat builders and to allow us more time for further evaluation prior to setting standards (64 FR 73300, December 29, 1999). Commercial marine vessels tend to be displacement-hull vessels, designed and built for a unique commercial application (such as towing, fishing, or general cargo). Power ratings for engines used on these vessels are analogous to land-based applications, and these engines generally have warranties for 2,000 to 5,000 hours of use. Recreational vessels, on the other hand, tend to be planing vessels. Engines used on these vessels are designed to achieve higher power output with less engine weight. This increase in power reduces the lifetime of the engine, so recreational marine engines have shorter warranties than their commercial counterparts. In our previous rulemaking, recreational engine industry representatives raised concerns about the ability of these engines to meet the commercial standards without substantial changes in the size and weight of the engine. Such changes may have an impact on vessel builders, who might have to redesign vessel hulls to accommodate the new engines. Because most recreational vessel hulls are made with fiberglass molds, this may be a significant burden for recreational vessel builders.

Our further evaluation of these issues leads us to conclude that recreational marine diesel engines can achieve those same emission standards without significant impacts on engine size and weight, and therefore without significant impacts on vessel design. Section VI.G of this document, Chapters 3 and 4 of the Final Regulatory Support Document, and Section II.A of the Summary and Analysis of Comments describe the several technological changes we anticipate manufacturers will use to comply with the new emission standards. None of these technologies has an inherent negative effect on the performance or power density of an engine. As with engines in land-based applications, we expect that manufacturers will be able to use the range of technologies available to maintain or even improve the performance capabilities of their engines. We are establishing a separate regulatory program for recreational marine diesel engines in this rule, with most aspects the same as for commercial marine diesel engines but with certain aspects of the program tailored to these applications, notably the not-to-exceed emissions requirements.

To distinguish between commercial and recreational marine diesel engines for the purpose of emission controls, it is necessary to define "recreational marine diesel engine." The commercial marine diesel engine rule defined recreational marine engine as a propulsion marine engine that is intended by the manufacturer to be installed on a recreational vessel. The engine must be labeled to distinguish it from a commercial marine diesel engine. The label must read: "THIS ENGINE IS CATEGORIZED AS A RECREATIONAL ENGINE UNDER 40 CFR PART 94. INSTALLATION OF THIS ENGINE IN ANY NONRECREATIONAL VESSEL IS A VIOLATION OF FEDERAL LAW SUBJECT TO PENALTY."

We are revising this definition to include a requirement that a recreational marine engine must be a Category 1 marine engine (have a displacement of less than 5 liters per cylinder). Category 2 marine engines are generally designed with characteristics similar to commercial marine engines. Vessels using engines of this size generally require engines that can operate longer at higher power than typical recreational boats; therefore, these engines generally have a lower power density and are not offered in a "recreational" rating.

For the purpose of the recreational marine diesel engine definition included in the proposal, recreational vessel was defined as "a vessel that is intended by the vessel manufacturer to be operated primarily for pleasure or leased, rented, or chartered to another for the latter's pleasure." Because certain vessels that are used for pleasure may have operating characteristics that are more similar to commercial marine vessels (such as excursion vessels and charter craft), we drew on the Coast Guard's definition of a "small passenger vessel" (46 U.S.C. 2101 (35)) to further delineate what would be considered to be a recreational vessel. Specifically, the term "operated primarily for pleasure or leased, rented or chartered to another for the latter's pleasure" does not include the following vessels: (1) Vessels of less than 100 gross tons that carry more than 6 passengers; (2) vessels of 100 gross tons or more that carry one or more passengers; or (3) vessels used solely for competition. For the purposes of this definition, a passenger is defined by 46 U.S.C 2101 (21, 21a) which generally means an individual who pays to be on the vessel.

We received several comments in this rulemaking on these definitions. Engine manufacturers were concerned that the definitions may be unworkable for engine manufacturers, because they cannot know whether a particular recreational vessel might carry more than six passengers at a time. All they can know is whether the engine they manufacture is intended by them for installation on a vessel designed for pleasure and having the corresponding characteristics for planing, power density, and performance requirements.

We are not revising our existing definition of recreational marine vessel. As discussed in the Summary and Analysis of Comments, a vessel will be considered recreational if the boat builder intends that the customer will operate it consistent with the recreational-vessel definition. Relying on the boat builder's intent is necessary because manufacturers need to establish a vessel's classification before it is sold, whereas the Coast Guard definitions apply at the time of use. The definition therefore relies on the intent of the boat builder to establish that the vessel will be used consistent with the above criteria. If a boat builder manufactures a vessel for a customer who intends to use the vessel for recreational purposes, we would always consider that a recreational vessel, regardless of how the owner (or a subsequent owner) actually uses it. The engine manufacturer will not be expected to ensure that their engines are used only in recreational craft; however, they would be required to label their recreational engines as described above. The vessel builders will then be required to install properly certified recreational (or commercial) marine engines in recreational vessels and certified commercial marine engines in commercial vessels.

C. Emission Standards for Recreational Marine Diesel Engines

This section describes the new emission standards and implementation dates, with an outline of the technology that can be used to achieve these levels. The technological feasibility discussion below (Section VI.G) describes our technical rationale in more detail.

1. What Are the Emission Standards and Compliance Dates?

The emission standards for recreational marine diesel engines are the same as the Tier 2 standards for commercial marine diesel engines with two years additional lead time. We are setting the standards at the same level because recreational marine diesel engines can use all the technologies projected for Tier 2 and these technologies are expected to lead to compliance. As with commercial marine engines this technology will be available in the lead time provided to allow compliance with the emission standards. Many of these engines already use this technology. This includes electronic fuel management, turbocharging, and separate-circuit aftercooling. In fact, because recreational engines have much shorter design lives than commercial engines, it is easier to apply raw-water aftercooling to these engines, which allows manufacturers to enhance performance while reducing NO_X emissions.

Engine manufacturers will generally increase the fueling rate in recreational engines, compared to commercial engines, to gain power from a given engine size. This helps bring a planing vessel onto the water surface and increases the maximum vessel speed without increasing the weight of the vessel. This difference in how recreational engines are designed and used affects emissions. However, the technology listed above can be used to meet the emission standards while still meeting the performance requirements of a recreational engine.

We are adopting the commercial marine engine standards for recreational marine diesel engines, allowing two years beyond the dates that standards apply for the commercial engines. This gives engine manufacturers additional lead time in adapting technology to their recreational marine diesel engines. For manufacturers producing only recreational marine engines the implementation dates provide three to six years of lead time beyond this notice. Based on our evaluation of the industry, we believe that manufacturers who produce only recreational marine engines would likely be small businesses and would have the option of additional lead time, and other flexibility, as discussed in Section VI.E. The emission standards and implementation dates for recreational marine diesel engines are presented in Table VI.C–1. The subcategories refer to engine displacement in liters per cylinder.

TABLE VI.C–1.—RECREATIONAL MARINE DIESEL EMISSION STANDARDS AND IMPLEMENTATION DATES

Subcategory	HC+NO_X g/kW-hr	PM g/kW-hr	CO g/kW-hr	Implementation date
power ≥ 37 kW disp < 0.9	7.5	0.40	5.0	2007
0.9 ≤ disp < 1.2	7.2	0.30	5.0	2006
1.2 ≤ disp < 2.5	7.2	0.20	5.0	2006
disp ≥ 2.5	7.2	0.20	5.0	2009

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Manufacturers commented that engines with less than 2.5 liters per cylinder, but more than 560 kW would have no lead time beyond the land-based nonroad diesel engine standards and that some commercial marine engines in this category would actually have to certify two years before nonroad engines. In this case this is caused by the way we define subclasses, but has technology and cost implications for the engines involved. To address this, we are providing an optional implementation date of 2008 for certain commercial and recreational marine engines (see the Summary and Analysis of Comments for more detail). To be eligible for this option, the engine must be derived from a land-based nonroad engine with a rated power greater than 560 kW and have a displacement of 2.0 to 2.5 liters per cylinder. To use this option, we are requiring that engines certified under this option meet an $HC+NO_X$ standard of 6.4 g/kW-hr through model year 2012. We believe this emission level, which matches the Tier 2 level for land-based nonroad engines, should be achievable given the extra lead time for development. Testing would still be performed on the appropriate marine duty cycles. Based on our analysis in the Final Regulatory Impact Analysis for commercial marine engines, $HC+NO_X$ emissions measured over the marine duty cycles should be similar to those measured over the land-based nonroad duty cycle.

We are also adopting not-to-exceed emission standards and related requirements similar to those finalized for commercial marine diesel engines. This is discussed below in Section VI.C.8.

2. Will I Be Able To Average, Bank, or Trade Emissions Credits?

Manufacturers may use emission credits from recreational marine diesel engines to show that they meet emission standards. Section II.C.3 gives an overview of the emission-credit program, which is consistent with what we have adopted for Category 1 commercial marine diesel engines. The emission-credit program covers $HC+NO_X$ and PM emissions, but not CO emissions.

Consistent with our land-based nonroad and commercial marine diesel engine regulations, manufacturers may not simultaneously generate $HC+NO_X$ credits while using PM credits on the same engine family, and vice versa. This is necessary because of the inherent trade-off between NO_X and PM emissions in diesel engines.

We are adopting the same maximum value of the Family Emission Limit (FEL) as for commercial marine diesel engines. For engines with a displacement of less than 1.2 liters/cylinder, the maximum values are 11.5 g/kW-hr $HC+NO_X$ and 1.2 g/kW-hr PM; for larger engines, the maximum values are 10.5 g/kW-hr $HC+NO_X$ and 0.54 g/kW-hr PM. These maximum FEL values were based on the comparable land-based emission-credit program and will ensure that the emissions from any given family certified under this program not be significantly higher than the applicable emission standards. We believe these maximum values will prevent backsliding of emissions above the baseline levels for any given engine model. Also, we are concerned that the higher emitting engines may cause increased emissions in areas such as ports that may have a need for PM or NO_X emission reductions. Nonetheless, it is acknowledged that recreational marine diesel engines constitute a small fraction of PM and $HC + NO_X$ emissions in nonattainment areas.

Emission credits generated under this program have no expiration, with no discounting applied. This is consistent with the commercial marine credit program and gives manufacturers more options in implementing their engine designs. However, if we revisit these standards later, we will have to reevaluate this issue in the context of whether future advances in technology would result in a large amount of accumulated credits that would adversely impact the timely implementation of any new requirements.

Consistent with the land-based nonroad diesel rule, we will also not allow manufacturers to use credits generated on land-based engines for demonstrating compliance with marine diesel engines. In addition, credits may not be exchanged between recreational and commercial marine engines. The emission standards for recreational engines are based on the baseline levels of current recreational marine engines and the capability of technology to reduce emissions from recreational marine engines. The standard is, therefore, premised on the capability and use of recreational marine technology and not on the capability and use of technology on other engines. Emissions from land-based, commercial, and recreational marine engines are measured over different duty cycles and have different useful lives. Correction factors would be difficult to generate and they would add complexity and uncertainty to the value of the credits. Furthermore, we are concerned that allowing cross program trading could create an inequity between manufacturers with diverse product lines and those with more limited offerings, thereby potentially creating a competitive advantage for diverse companies over small companies selling only recreational marine engines. If a manufacturer were to do this, we do not believe it is likely that they would sell emission credits at a price that would be economical for small manufacturers.

We will allow early banking of emission credits relative to the standard. Early banking of emission credits may allow for a smoother implementation of the recreational marine standards. These credits are generated relative to the new emission standards and are undiscounted.

We will also allow manufacturers to generate early credits relative to their pre-control emission levels. If manufacturers choose this option they will have to develop baseline emission levels specific to each participating engine family. Credits will then be calculated relative to the manufacturer-generated baseline emission rates, rather than the standards. To generate the baseline emission rates, a manufacturer must test three engines from the family for which the baseline is being generated. The baseline will be the average emissions of the three engines. Under this option, engines must still certify to the standards to generate credits, but the credits will be calculated relative to the generated baseline rather than the standards. Any credits generated between the level of the standards and the generated baseline will be discounted 10 percent. This is to account for the variability of testing in-use engines to establish the family-specific baseline levels, which may result from differences in hours of use and maintenance practices as well as other sources of potential uncertainty about the representativeness if the baseline. Manufacturers commented that credits should not be generated under the early banking program for the portion of NO_X reductions above the MARPOL Annex VI standard. We believe this approach is reasonable since this should be a common upper limit for all engines. Therefore, if manufacturers use this option, any baseline NO_X levels determined to be above the MARPOL Annex VI standard must be adjusted to that level for determining early credits.

3. Is EPA Proposing Voluntary Standards for These Engines?

a. Blue Sky. We are adopting voluntary emission standards based on a 45-percent reduction beyond the mandatory standards. An engine family meeting the voluntary standards qualifies for designation as Blue Sky Series engines. These voluntary standards are the same as those adopted for commercial marine diesel engines (see Table VI.C–2). While the Blue Sky Series emission standards are voluntary, a manufacturer choosing to certify an engine under this program must comply with all the requirements that apply to this category of engines, including allowable maintenance, warranty, useful life, rebuild, and deterioration factor provisions. This program is effective immediately when we publish this rule. To maximize the potential for other groups to create incentive programs, without double-counting, we do not allow manufacturers to earn marketable credits for their Blue Sky Engines.

TABLE VI.C–2.—BLUE SKY VOLUNTARY EMISSION STANDARDS FOR RECREATIONAL MARINE DIESEL ENGINES

[g/kW-hr]

Rated brake power (kW)	$HC+NO_X$	PM
power ≥ 37 kW		
displ.<0.9	4.0	0.24
0.9≤displ.<1.2	4.0	0.18
1.2≤displ.<2.5	4.0	0.12
2.5≤displ.	5.0	0.12

b. MARPOL Annex VI. The MARPOL Annex VI standards are for NO_X emissions from marine diesel engines rated above 130 kW. We encourage engine manufacturers to make Annex VI-compliant engines available and boat builders to purchase and install them before we apply the EPA Tier 2 standards. If the treaty enters into force, the standards would go into effect retroactively to all boats built January 1, 2000 or later. One advantage of using MARPOL-compliant engines is that if this happens, users will be in compliance with the standard without having to make any changes to their engines.

4. What Durability Provisions Apply?

Several provisions help ensure that engines control emissions throughout a lifetime of operation. Section II.C gives a general overview of durability provisions associated with emissions certification. This section discusses these provisions specifically for recreational marine diesel engines.

a. How long do my engines have to comply? Manufacturers must produce engines that comply over a useful life of ten years or until the engine accumulates 1,000 operating hours, whichever occurs first. The hours requirement is a minimum value for useful life, and manufacturers must comply for a longer period in those cases where they design their engines to be operated longer than 1,000 hours. In making the determination that engines are designed to last longer than the 1,000 hour value, we will consider evidence such as whether the engines continue to reliably deliver the necessary power output without an increase in fuel consumption that the user would find unacceptable and thus might trigger a maintenance or rebuild action by the user.

b. How do I demonstrate emission durability? We are extending the durability demonstration requirements for commercial marine diesel engines to also cover recreational marine diesel engines. This means that recreational marine engine manufacturers, using good engineering judgment, will generally need to test one or more engines for emissions before and after accumulating the number of hours consistent with the engine useful life (usually performed by continuous engine operation in a laboratory). The results of these tests are referred to as "durability data," and are used to determine the rates at which emissions are expected to increase over the useful life of the engine for each engine family The rates are known as deterioration factors. However, in many cases, manufacturers may use durability data from a different engine family, or for the same engine family in a different model year. Because of this allowance to use the same data for multiple engine families, we expect durability testing to be very limited.

We also specify that manufacturers must collect durability data and generate deterioration factors using the same methods established for commercial marine diesel engines. These requirements are in 40 CFR 94.211, 94.218, 94.219, and 94.220. These sections describe when durability data from one engine family can be used for another family, how to select to the engine configuration that is to be tested, how to conduct the service accumulation, and what maintenance can be performed on the engine during this service accumulation. Under 40 CFR 94.220, manufacturers may project deterioration rates from engines with an accumulation of less than 1,000 hours, as long as the amount of service accumulation completed and projection procedures are determined using good engineering judgment.

c. What maintenance may be done during service accumulation? For engines certified to a 1,000-hour useful life, the only maintenance that may be done must be: (1) Regularly scheduled, (2) unrelated to emissions, and (3) technologically necessary. This typically includes changing engine oil, oil filter, fuel filter, and air filter. For recreational marine diesel engines certified to longer lives, these engines will be subject to the same minimum allowable maintenance intervals as commercial marine engines. These intervals and the allowable maintenance are specified in 40 CFR 94.211.

d. Are there production-line testing provisions? We are adopting the production-line testing requirements from commercial marine engines for recreational marine diesel engines, with the additional provisions described in II.C.4. A manufacturer must test one percent of its total projected annual sales of Category 1 engines each year to meet production-line testing requirements. We are not adopting a minimum number of tests, so a manufacturer who produces no more than 100 marine diesel engines is not required to do any production-line testing. Similar to the commercial marine requirements, manufacturers have the option of using alternative production-line testing programs with EPA approval.

Manufacturers commented that we should limit the number of engines tested for a given engine family to five, arguing that five engines would be sufficient to demonstrate compliance with the standards. Although there isn't necessarily an engineering rationale for capping the number of tests for each engine family to five, we believe that statistical certainty can be determined using the Cumulative Sum method described for recreational vehicles in 40 CFR part 1051, subpart D. Therefore, we are providing the option of using the Cumulative Sum method for determining sample sizes under the production-line testing program. For marine engines, PM would need to be included in this methodology. Under the Cumulative Sum method, a statistical analysis is applied to test results to establish the number of tests needed. This may limit the number of engines tested to less than 1 percent of the production volume in cases where there is low variability in the test data.

5. Do These Standards Apply to Alternative-Fueled Engines?

These new standards apply to all recreational marine diesel engines, without regard to the type of fuel used. While we are not aware of any alternative-fueled recreational marine diesel engines currently being sold into the U.S. market, alternate forms of the hydrocarbon standards address the potential for natural gas-fueled and

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alcohol-fueled engines. In our regulation of highway vehicles and engines, we determined that nonmethane standards should be used in place of total hydrocarbon standards for engines fueled with natural gas (which is comprised primarily of methane) (59 FR 48472, September 21, 1994). These alternate forms follow the precedent set in previous rulemakings to make the standards similar in stringency and environmental impact.

Similarly, we are applying HC-equivalent (HCE) standards instead of total hydrocarbon standards to alcohol-fueled highway engines and vehicles (54 FR 14426, April 11, 1989). HC-equivalent emissions are calculated from the oxygenated organic components and non-oxygenated organic components of the exhaust, summed together based on the amount of organic carbon present in the exhaust. Alcohol-fueled recreational marine engines must therefore comply with total hydrocarbon equivalent (THCE) plus NO_X standards instead of THC plus NO_X standards.

6. Is EPA Controlling Crankcase Emissions?

Manufacturers must prevent crankcase emissions from recreational marine diesel engines, with one exception. Turbocharged recreational marine diesel engines may be built with open crankcases, as long as the crankcase ventilation system allows for measurement of crankcase emissions. For these engines with open crankcases, we will require crankcase emissions to be either routed into the exhaust stream to be included in the exhaust measurement, or to be measured separately and added to the measured exhaust mass. These measurement requirements do not add significantly to the cost of testing, especially where the crankcase vent is simply routed into the exhaust stream prior to the point of exhaust sampling. These provisions are consistent with our previous regulation of crankcase emissions from such diverse sources as commercial marine engines, locomotives, and passenger cars.

7. What Are the Smoke Requirements?

We are not adopting smoke requirements for recreational marine diesel engines. Marine diesel engine manufacturers have stated that many of their engines, though currently unregulated, are manufactured with smoke limiting controls at the request of customers. Users seek low smoke emissions both because they dislike the exhaust residue on decks and because they can be subject to penalties in ports with smoke emission requirements. In many cases, marine engine exhaust gases are mixed with water prior to being released. This practice reduces smoke visibility. Moreover, we believe that applying PM standards will have the effect of limiting smoke emissions as well.

8. What Are the Not-To-Exceed Standards and Related Requirements?

a. Concept. Our goal is to achieve control of emissions over the broad range of in-use speed and load combinations that can occur on a recreational marine diesel engine so that real-world emission control is achieved, rather than just controlling emissions under certain laboratory conditions. An important tool for achieving this goal is an in-use program with an objective emission standard and an easily implemented test procedure. Prior to this concept, our approach has been to set a numerical standard on a specified test procedure and rely on the additional prohibition of defeat devices to ensure in-use control over a broad range of operation not included in the test procedure.

We are applying the defeat device provisions established for commercial marine engines to recreational marine diesel engines in addition to the NTE requirements (see 40 CFR 94.2). A design in which an engine met the standard at the steady-state test points but was intentionally designed to approach the NTE limit everywhere else would be considered to be defeating the standard. Electronic controls that recognize and modulate the emission-control system when the engine is not being tested for emissions and increases the emissions from the engine would be an example of a defeat device, regardless of the emissions performance of the engine with regard to the standards.

No single test procedure can cover all real-world applications, operations, or conditions. Yet to ensure that emission standards are providing the intended benefits in use, we must have a reasonable expectation that emissions under real-world conditions reflect those measured on the test procedure. The defeat-device prohibition is designed to ensure that emission controls are employed during real-world operation, not just under laboratory or test-procedure conditions. However, the defeat-device prohibition is not a quantified standard and does not have an associated test rocedure, so it does not have the clear objectivity and ready enforceability of a numerical standard and test procedure. As a result, relying on just a using a standardized test procedure and the defeat device prohibition makes it harder to ensure that engines will operate with the same level of control in the real world as in the test cell.

Because the ISO E5 duty cycle uses only five modes on an average propeller curve intended to characterize typical marine engine operation for this industry, we are concerned that an engine designed to the duty cycle may not necessarily perform the same way over the range of speed and load combinations normally seen on a boat nor will it always follow the average curve. These duty cycles are based on an average propeller curve, but a propulsion marine engine may never be fitted with an "average propeller." In addition, even if fitted with an "average propeller," an engine fit to a specific boat may operate differently based on how heavily the boat is loaded.

To ensure that emissions are controlled from recreational marine engines over the full range of speed and load combinations normally seen on boats, we are establishing a zone under the engine's power curve where the engine may not exceed a specified emission limit. This limit applies to all of the regulated pollutants under steady-state operation. Testing in this "not-to-exceed" (NTE) zone may include the whole range of real ambient conditions. The NTE zone, limit, and ambient conditions are described below.

We believe there are significant advantages to taking this approach. The test procedure is flexible enough to represent the majority of in-use engine operation and ambient conditions. Therefore, the NTE approach takes all of the benefits of a numerical standard and test procedure and expands it to cover a broad range of conditions. Also, a standard that requires laboratory testing makes it harder to perform in-use testing because either the engines must be removed from the vessel or laboratory-type conditions must be achieved on the vessel. With the NTE approach, in-use testing becomes much easier to implement since emissions may be sampled during normal vessel use. Because this approach is objective, it makes enforcement easier and provides more certainty to the industry in terms of what control is expected in-use versus over a fixed laboratory test procedure.

Even with the NTE requirements, we believe it is important to retain standards based on the steady-state duty cycles. This is the standard that we expect the certified marine engines to meet on average in use. The NTE testing is more focused on maximum emissions for segments of operation. We believe basing the emission standards on a distinct cycle and using the NTE zone to better ensure in-use control creates a comprehensive program. In addition, the steady-state duty cycles give a basis for calculating credits for averaging, banking, and trading.

As described in the Summary and Analysis of Comments, the same technology that can be used to meet the standards over the E5 duty cycle can be used to meet the NTE caps in the NTE zone. We therefore do not expect these standards to cause recreational marine diesel engines to need more advanced technology that is used by the nonroad and commercial marine engines from which they are derived. We do not believe the NTE concept results in a large amount of additional testing, because these engines should be designed to perform as well in use as they do over the steady-state five-mode certification test. However, our cost analysis in Chapter 5 of the Final Regulatory Support Document accounts for some additional testing, especially in the early years, to provide manufacturers with assurance that their engines will meet the NTE requirements.

b. Shape of the NTE zone. Figure VI.C–1 illustrates the NTE zone for recreational marine diesel engines. We based this zone on the range of conditions that these engines might typically see in use. Also, we divide the zone into subzones of operation which have different limits as described below. Chapter 4 of the Final Regulatory Support Document describes the development of the boundaries and conditions associated with the NTE zone. The NTE zone for recreational marine diesel engines is the same for commercial marine diesel engines operating on a propeller curve, except that an additional subzone is added at speeds over 95 percent of rated to address the typical recreational design for higher rated power.

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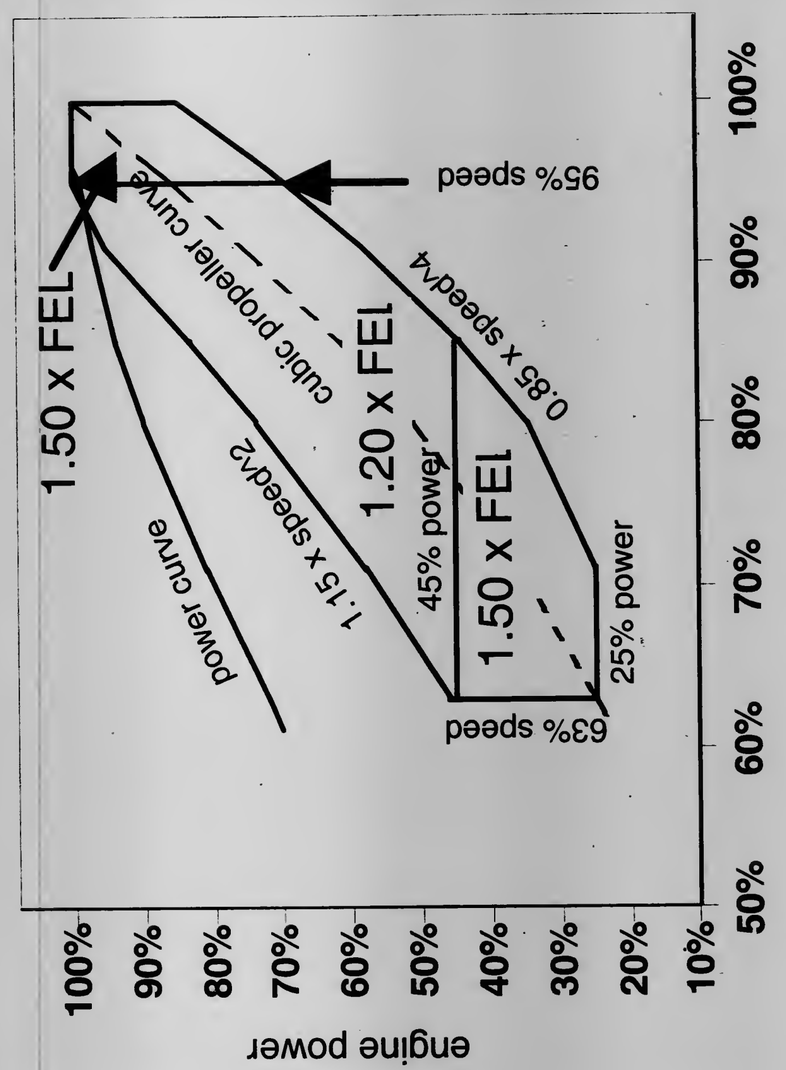

Figure VI.C-1: NTE Zone for Recreational Marine Diesel Engines

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EPA may approve adjustments to the size and shape of the NTE zone for certain engines if the manufacturer demonstrates that the engine will not see operation outside of the revised NTE zone in use. This way, manufacturers can avoid having to test their engines under operation that they will not see in use. However, manufacturers are responsible for ensuring that their specified operation represents real-world operation. In addition, if a manufacturer designs an engine for operation at speeds and loads outside of the NTE zone (*i.e.*, variable-speed engines used with variable-pitch propellers), the manufacturer is responsible for notifying us, so the NTE zone for that engine family can be modified to include this operation.

c. Transient operation. NTE testing includes only steady-state operation with a minimum sampling time of 30 seconds. We specify the ISO E5 steady-state duty cycle for showing compliance with average emission standards. The goal of adopting NTE standards and procedures is to cover the operation away from the five modes that are on the assumed propeller curve. Our understanding is that the majority of marine engine operation is steady-state; however, we recognize that recreational marine use is likely more transient than commercial marine use. At this time we do not have enough data on marine engine operation to accurately determine the amount of transient operation that occurs or to set an NTE standard for transient operation. We are aware that the high-load transient operation seen when a boat comes to plane is not included in the NTE zone as defined, even if we were to require compliance with NTE standards during transient operation. We are also aware that these speed and load points cannot be achieved under steady-state operation for a properly loaded boat in use. If we find that excluding transient operation from the compliance requirements results in a significant increase in emissions, we will revisit this provision in the future. Also, an engine designed, with multiple injection timing maps based on operation, to operate at higher emissions during transient operation than during steady-state testing would be in noncompliance with our defeat device prohibition.

d. Emission standards. We are requiring emissions caps for the NTE zones that represent a multiplier times the weighted test result used for certification for all of the regulated pollutants ($HC+NO_x$, CO, and PM). This is consistent with the concept of a weighted modal emission test such as the steady-state tests included in this rule. The standard itself is intended to represent the average emissions under steady-state conditions. Because it is an average, some points can be higher, some lower, and the manufacturer will design to maximize performance and still meet the engine standard. The NTE limit is on top of this. It is designed to make sure that no part of the engine operation and that no application goes too far from the average level of control.

Consistent with the requirements for commercial marine engines, recreational marine diesel engines must meet a cap of 1.50 times the certified level for $HC+NO_x$, PM, and CO for the speed and power subzone below 45 percent of rated power and a cap of 1.20 times the certified levels at or above 45 percent of rated power. However, we are applying an additional subzone at speeds greater than 95 percent of rated, with a corresponding standard of 1.50 times the certified levels for this subzone. This additional subzone addresses the typical recreational design for higher rated power. We understand that this power is needed to ensure that the engine can bring the boat to plane. Chapter 4 of the Final Regulatory Support Document provides more detail on how we determined the standards.

We are aware that marine diesel engines may not be able to meet the emissions limit under all conditions. Specifically, there are times when emission control must be compromised for startability or safety. Engine starting is not included in NTE testing. In addition, manufacturers have the option of petitioning the Administrator to allow emissions to increase under engine protection strategies, such as when an engine overheats. This is also consistent with the requirements for commercial marine engines.

e. Ambient conditions. Variations in ambient conditions can affect emissions. Such conditions include air temperature, humidity, and (especially for aftercooled engines) water temperature. We are applying the commercial marine engine ranges for these variables. Chapter 4 of the Final Regulatory Support Document provides more detail on how we determined these ranges. Within the ranges, there is no calculation to correct measured emissions to standard conditions. Outside of the ranges, emissions can be corrected back to the nearest end of the range. The ambient variable ranges are 13 to 35°C (55 to 95°F) for intake air temperature, 7.1 to 10.7 g water/kg dry air (50 to 75 grains/pound dry air) for intake air humidity, and 5 to 27°C (41 to 80°F) for ambient water temperature.[84]

f. Certification. At the time of certification, manufacturers must submit a statement that its engines will comply with these requirements under all conditions that may reasonably be expected to occur in normal vessel operation and use. The manufacturer also provides a detailed description of all testing, engineering analysis, and other information that forms the basis for the statement. This statement may be based on testing other research that validly supports such a statement, consistent with good engineering judgment. EPA may review the basis of this statement during the certification process.

D. Testing Equipment and Procedures

The regulations detail specifications for test equipment and procedures that apply generally to commercial marine engines (including NTE testing) in 40 CFR part 94. We have based the recreational marine diesel engine test procedures on this part. Section VIII gives a general discussion of testing requirements; this section describes procedures that are specific to recreational marine such as the duty cycle for operating engines for emission measurements. Chapter 4 of the Draft Regulatory Support Document describes these duty cycles in greater detail. In addition to the information provided above, the following section discusses issues concerning test equipment and procedures.

1. Which Duty Cycles Are Used To Measure Emissions?

For recreational marine diesel engines, we specify the ISO E5 duty cycle. This is a 5-mode steady state cycle, including an idle mode and four modes lying on a cubic propeller curve. ISO intends for this cycle to be used for all engines in boats less than 24 meters in length. We apply it to all recreational marine diesel engines to avoid the complexity of tying emission standards to boat characteristics. A given engine may be used in boats longer and shorter than 24 meters; engine manufacturers generally will not know the size of the boat into which an engine will be installed. Also, we expect that most recreational boats will be under 24 meters in length. Chapter 4 of the Final Regulatory Support Document provides further detail on the ISO E5 duty cycle.

2. What Fuels Will Be Used During Emission Testing?

We are applying the same specifications for recreational marine diesel engines that we established for commercial marine diesel engines. That means that the recreational engines will use the same test fuel that is required for testing Category 1 commercial marine diesel engines, which is a regular nonroad test fuel with moderate sulfur content. We are not aware of any difference in fuel specifications for recreational and commercial marine engines of comparable size.

3. How Does In-Use Testing Work?

In-use testing on marine engines may be used to ensure compliance in use. This testing may include taking in-use marine engines out of the vessel and testing them in a laboratory, as well as field testing of in-use engines on the boat, in a marine environment.

We plan to use field-testing data in two ways. First, we may use it as a screening tool, with follow-up laboratory testing over the ISO E5 duty cycle or NTE zone where appropriate. Second, we may use the data directly as a basis for compliance determinations,

[84] The range of intake air temperature is 13 to 30°C for engines that draw air from outside the engine room.

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as long as field-testing equipment and procedures are capable of providing reliable information from which conclusions can be drawn regarding what emission levels would be with laboratory-based measurements. Because it would likely be difficult to match the E5 test points exactly on an engine in use on a vessel, NTE zone testing will reduce the difficulty of in-use compliance determinations.

For marine engines that expel exhaust gases underwater or mix their exhaust with water, manufacturers must equip engines with an exhaust sample port where a probe can be inserted for in-use exhaust emission testing. It is important that the location of this port allow a well-mixed and representative sample of the exhaust. This provision is intended to simplify in-use testing. In cases where the engine manufacturer does not supply enough of the exhaust system to add a sample port, the engine manufacturer would be required to provide installation instructions for a sample port. Vessel manufacturers would be required to follow this and any other emission-related installation instructions.

One of the advantages of the not-to-exceed requirements will be to facilitate in-use testing. This will allow us to perform compliance testing in the field. As long as the engine is operating under steady-state conditions in the NTE zone, we will be able to measure emissions and compare them to the NTE limits. To assist in this testing, engines with electronic controls will be required to broadcast engine torque (as percent of maximum) and engine speed on their controller area networks.

4. How Is the Maximum Test Speed Determined?

To ensure that a manufacturer's declared maximum speed is representative of actual engine operating characteristics and is not improperly used to influence the parameters under which their engines are certified, we are applying the definition of maximum test speed used for commercial marine engines. This definition of maximum test speed is the single point on an engine's normalized maximum power versus speed curve that lies farthest away from the zero-power, zero-speed point.

In establishing this definition of maximum test speed, it was our intent to specify the highest speed at which the engine is likely to be operated in use. Under normal circumstances this maximum test speed should be close to the speed at which peak power is achieved. However, as some manufacturers indicated in their comments, it is possible under this definition for the maximum test speed to be very different than the speed at which peak power is achieved. This could result in the certification test cycle and the NTE zone (which are both defined in part by the maximum test speed) being unrepresentative of in-use operation. Since we were aware of this potential during the development of the commercial marine regulations, we included two provisions to address issues such as these. First, § 94.102 allows EPA to modify test procedures in situations where the specified test procedures would otherwise be unrepresentative of in-use operation. Thus, in cases in which the definition of maximum test speed resulted in an engine speed that was not expected to occur with in-use engines, we would work with the manufacturers to determine the maximum speed that would be expected to occur in-use.

Second, § 94.106(c)(2) allows EPA to specify during certification a broader NTE zone to include actual in-use operation. In those cases where we could not specify a single maximum test speed under § 94.102 that would sufficiently cover the range of in-use engine speeds, we would specify a broader NTE zone. For example, we would generally expect that the NTE zone would include the peak power point. If the maximum test speed derived under §§ 94.102 and 94.107 resulted in an NTE zone that did not include the peak power point, we would likely specify that the NTE zone be broadened to include that point. Similarly, we would expect that a manufacturer's advertised rated power/speed point should be within the NTE zone, and could broaden the NTE zone to include that point as well.

E. Special Compliance Provisions

The provisions discussed here are designed to minimize regulatory burdens on manufacturers needing added flexibility to comply with emission standards. These manufacturers include engine dressers, small-volume engine marinizers, and small-volume boat builders. Commenters generally supported these provisions as proposed.

1. What Are the Burden Reduction Approaches for Engine Dressers?

Many recreational marine diesel engine manufacturers take a new, land-based engine and modify it for installation on a marine vessel. Some of the companies that modify an engine for installation on a boat make no changes that might affect emissions. Instead, the modifications may consist of adding mounting hardware and a generator or reduction gears for propulsion. It can also involve installing a new marine cooling system that meets original manufacturer specifications and duplicates the cooling characteristics of the land-based engine, but with a different cooling medium (such as sea water). In many ways, these manufacturers are similar to nonroad equipment manufacturers that purchase certified land-based nonroad engines to make auxiliary engines. This simplified approach of producing an engine can more accurately be described as dressing an engine for a particular application. Because the modified land-based engines are subsequently used on a marine vessel, however, these modified engines will be considered marine diesel engines, which then fall under these requirements.

To clarify the responsibilities of engine dressers under this rule, we will not treat them as a manufacturer of a recreational marine diesel engine and therefore they would not be required to obtain a certificate of conformity, as long as they meet the following seven conditions.

(1) The engine being dressed (the "base" engine) must be a highway, land-based nonroad, or locomotive engine, certified pursuant to 40 CFR part 86, 40 CFR part 89, or 40 CFR part 92, respectively, or a marine diesel engine certified pursuant to this part.

(2) The base engine's emissions, for all pollutants, must meet the otherwise applicable recreational marine emission limits. In other words, starting in 2005, a dressed nonroad Tier 1 engine will not qualify for this exemption, because the more stringent standards for recreational marine diesel engines go into effect at that time.

(3) The dressing process must not involve any modifications that can change engine emissions. We do not consider changes to the fuel system to be engine dressing because this equipment is integral to the combustion characteristics of an engine.

(4) All components added to the engine, including cooling systems, must comply with the specifications provided by the engine manufacturer.

(5) The original emissions-related label must remain clearly visible on the engine.

(6) The engine dresser must notify purchasers that the marine engine is a dressed highway, nonroad, or locomotive engine and is exempt from the requirements of 40 CFR part 94.

(7) The engine dresser must report annually to us the models that are exempt pursuant to this provision and such other information as we deem necessary to ensure appropriate use of the exemption.

Any engine dresser not meeting all these conditions will be considered an engine manufacturer and will accordingly need to obtain a certificate of conformity for these new engines, consistent with this rule's provisions, and label the engine showing that it is available for use as a marine engine.

An engine dresser violating the above criteria might be liable under anti-tampering provisions for any change made to the land-based engine that affects emissions. The dresser might also be subject to a compliance action for selling new marine engines that are not certified to the required emission standards. For an engine dresser complying with the above provisions, the original certificate would remain in effect and the certifier of the engine would remain liable for the emissions performance of the engine.

2. What Special Provisions Is EPA Adopting for Small Entities?

In addition to provisions for engine dressers, we are also finalizing special provisions designed to provide flexibility to small entities. Prior to the proposal, we conducted an inter-agency Small Business Advocacy Review Panel as described in Section XI.C. With input from small-entity representatives, the panel drafted a report with findings and recommendations on how to reduce the potential small-business burden resulting from this rule. The inter-agency panel's recommendations were proposed by EPA and are now being finalized as proposed. The following sections describe these provisions.

3. What Are the Burden Reduction Approaches for Small-Volume Engine Marinizers?

We are providing additional options for small-volume engine marinizers. The purpose of these options is to reduce the burden on companies for which fixed costs cannot be distributed over a large number of engines. For this reason, we are defining a small-volume engine manufacturer based on annual U.S. sales of engines and are providing the additional options on this basis rather than on business size in terms of number of employees, revenue, or other such measures. The production count we are using includes all engines (automotive, other nonroad, etc.) and not just recreational marine engines. We consider recreational marine diesel engine manufacturers to be small volume for purposes of this provision if they produce fewer than 1,000 internal combustion engines per year. Based on our characterization of the industry, there is a natural break in production volumes above 500 engine sales where the next smallest manufacturers make tens of thousands of engines. We chose 1,000 engines as a limit because it groups together all the marinizers most needing relief, while still allowing for reasonable sales growth.

The options for small-volume marinizers are discussed below.

a. Broaden engine families. We have established engine criteria for distinguishing between engine families, which is intended to divide a manufacturer's product line into multiple engine families. We are allowing small-volume marinizers to put all of their models into one engine family (or more as necessary) for certification purposes. Marinizers would then certify using the "worst-case" configuration. This approach is consistent with the option offered to post-manufacture marinizers under the commercial marine regulations. The advantage of this approach is that it minimizes certification testing because the marinizer can use a single engine in the first year to certify their whole product line. As for large companies, the small-volume manufacturers could then carry-over data from year to year until changing engine designs in a way that might significantly affect emissions.

We understand that this option alone still requires a certification test and the associated burden for small-volume manufactures. We consider this to be the foremost cost concern for some small-volume manufacturers, because the test costs are spread over low sales volumes. Also, we recognize that it may be difficult to determine the worst-case emitter without additional testing. We are requiring testing because we need a reliable, test-based technical basis to issue a certificate for these engines. Manufacturers will be able to use carry-over to spread costs over multiple years of production.

b. Minimize compliance requirements. Production-line and deterioration testing requirements do not apply to small-volume marinizers. We will assign a deterioration factor for use in calculating end-of-life emission factors for certification. The advantages of this approach would be to minimize compliance testing. Production-line and deterioration testing would be more extensive than a single certification test.

c. Expand engine dresser flexibility. We are expanding the engine dresser definition for small-volume marinizers to include water-cooled turbochargers where the goal is to match the performance of the non water-cooled turbocharger on the original certified configuration. We believe this would provide more opportunities for diesel marinizers to be excluded from certification testing if they operate as dressers.

d. Streamlined certification. We will allow small-volume marinizers to certify to the not-to-exceed (NTE) requirements with a streamlined approach. We believe small-volume marinizers can make a satisfactory showing that they meet NTE standards with limited test data. Similar to the standard NTE program, once these manufacturers test engines over the five-mode certification duty cycle (E5), they can use those or other test points to extrapolate the results to the rest of the NTE zone. For example, an engineering analysis may consider engine timing and fueling rate to determine how much the engine's emissions may change at points not included in the E5 cycle. For this streamlined NTE approach, keeping all four test modes of the E5 cycle within the NTE standards will be enough for small-volume marinizers to certify compliance with NTE requirements, as long as there are no significant changes in timing or fueling rate between modes.

e. Delay standards for five years. Applying a five-year delay, the standards take effect from 2011 to 2014 for small-volume marinizers, depending on engine size. Marinizers may apply this five-year delay to all or just a portion of their production. They may therefore still sell engines that meet the standards when possible on some product lines while delaying introduction of emission-control technology on other product lines. This option provides more time for small marinizers to redesign their products, allowing time to learn from the technology development of the rest of the industry. Boat builders may use these uncertified engines in their vessels.

While we are concerned about the loss of emission control from part of the fleet during this time, we recognize the special needs of small-volume marinizers and believe the added time may be necessary for these companies to comply with emission standards. This additional time will allow small-volume marinizers to obtain and implement proven, cost-effective emission-control technology.

f. Hardship provisions. We are adopting two hardship provisions for small-volume marinizers. Marinizers may apply for this relief on an annual basis. First, small marinizers may petition us for additional time to comply with the standards. The marinizer must show that it has taken all possible steps to comply but the burden of compliance costs will have a

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major impact on the company's solvency. Also, if a certified base engine is available, the marinizer must generally use this engine. We believe this provision will protect small-volume marinizers from undue hardship due to certification burden. Also, some emission reduction can be gained if a certified base engine becomes available.

Second, small-volume marinizers may also apply for hardship relief if circumstances outside their control caused the failure to comply (such as a supply contract broken by parts supplier) and if failure to sell the subject engines will have a major impact on the company's solvency. We consider this relief mechanism to be an option of last resort. We believe this provision will protect small-volume marinizers from circumstances outside their control. We, however, intend to not grant hardship relief if contract problems with a specific company prevent compliance for a second time.

Although the inter-agency panel did not specify a time limit for these hardship provisions, and we are not finalizing any such time limits, we envision these hardship provisions as transitional in nature. We would expect their use to be limited to the early years of the program, in a similar time frame as we are establishing for the recreational vehicle hardship provisions, as discussed in Section VII.C.

4. What Are the Burden Reduction Approaches for Small-Volume Boat Builders Using Recreational Marine Diesel Engines?

The inter-agency panel also recommended burden reduction approaches for small-volume boat builders. The recommendations were based on the concerns that, although boat builders are not subject to the engine-based emission standards, they are required to use certified engines and may need to redesign engine compartments on some boats if engine designs were to change significantly. EPA proposed the flexibilities recommended by the panel and are finalizing them as proposed.

We are adopting four options for small-volume vessel manufacturers using recreational marine diesel engines. These options are intended to reduce the burden on companies for which fixed costs cannot be distributed over a large number of vessels. As proposed, we are therefore defining a small-volume boat builder as one that produces fewer than 100 boats for sale in the U.S. in one year and has fewer than 500 employees. The production count includes all engine-powered recreational boats. These options may be used at the manufacturer's discretion. The options for small-volume boat builders are discussed below.

a. Percent-of-production delay. Manufacturers with a written request from a small-volume boat builder and prior approval from us may produce a limited number of uncertified recreational marine diesel engines. From 2006 through 2010, small-volume boat builders may purchase uncertified engines to sell in boats for an amount equal to 80 percent of engine sales for one year. For example, if the small boat builder sells 100 engines per year, a total of 80 uncertified engines may be sold over the five-year period. This will give small boat builders an option to delay using new engine designs for a portion of business. Engines produced under this flexibility must be labeled accordingly so that customs inspectors know which uncertified engines can be imported. We continue to believe this approach is appropriate and are finalizing it as proposed.

b. Small-volume allowance. This allowance is similar to the percent-of-production allowance, but is designed for boat builders with very small production volumes. The only difference with the above allowance is that the 80-percent allowance described above may be exceeded, as long as sales do not exceed either 10 engines per year or 20 engines over five years (2006 to 2010). This applies only to engines less than or equal to 2.5 liters per cylinder.

c. Existing inventory and replacement engine allowance. Small-volume boat builders may sell their existing inventory after the implementation date of the new standards. However, no purposeful stockpiling of uncertified engines is permitted. This provision is intended to allow small boat builders the ability to turn over engine designs.

d. Hardship relief provision. Small boat builders may apply for hardship relief if circumstances outside their control caused the problem (for example, if a supply contract were broken by the engine supplier) and if failure to sell the subject vessels will have a major impact on the company's solvency. This relief allows the boat builder to use an uncertified engine and is considered a mechanism of last resort. These hardship provisions are consistent with those currently in place for post-manufacture marinizers of commercial marine diesel engines.

F. Technical Amendments

The regulations include a variety of amendments to the programs already adopted for marine spark-ignition and diesel engines, as described in the following paragraphs.

1. 40 CFR Part 91: Outboards and Personal Watercraft

We have identified four principal amendments to the requirements for outboard and personal watercraft engines. First, we are adding a definition of United States which is "the States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, the U.S. Virgin Islands, and the Trust Territory of the Pacific Islands." This definition is consistent with that included in 40 CFR part 94 for marine diesel engines. This is especially helpful in clearing up questions related to U.S. territories in the Carribean Sea and the Pacific Ocean. Second, we have found two typographical errors in the equations needed for calculating emission levels in 40 CFR 91.419. Third, we are adjusting the regulation language to clarify testing rates for the in-use testing program. The regulations currently specify a maximum rate of 25 percent of a manufacturer's engine families subject to in-use testing. The revised language states that for manufacturers with fewer than four engine families subject to in-use testing, the maximum testing rate is one family per year in place of the percentage calculation. Finally, we are revising the regulatory provision prohibiting emission controls that lead to increases of noxious or toxic compounds that would pose an unreasonable risk to the public, as described in Section II.B.2.

2. 40 CFR Part 94: Commercial Marine Diesel Engines

We are adopting several regulatory amendments to the program for commercial marine diesel engines. Many of these are straightforward edits for correct grammar and cross references. We are also changing the definition of United States, as described in the previous section.

We are adding a definition for spark-ignition, consistent with the existing definition for compression-ignition, which will allow us to define compression-ignition as any engine that is not spark-ignition. This will help ensure that marine emission standards for the different types of engines fit together appropriately.

The discussion of production-line testing in Section II.C.4 specifies reduced testing rates after two years of consistent good performance. We are extending this provision to commercial marine diesel engines as well.

The test procedures for Category 2 marine engines give a cross-reference to 40 CFR part 92, which defines the procedures for testing locomotives and locomotive engines. Part 92 specifies a wide range of ambient temperatures for testing, to allow for outdoor measurements. We expect all testing of Category 2 marine engines to occur indoors and are therefore adopting a range of 13° to 30° C (55° to 86° F) for emission testing.

Finally, we are revising the regulatory provision prohibiting emission controls that lead to increases of noxious or toxic compounds that would pose an unreasonable risk to the public, as described in Section II.B.2.

G. Technological Feasibility

We have concluded that the emission-reduction strategies expected for land-based nonroad diesel engines and commercial marine diesel engines can also be applied to recreational marine diesel engines, such that these emission reductions strategies will provide compliance with recreational marine diesel emission standards. Marine diesel engines are generally derivatives of land-based nonroad and highway diesel engines. Marine engine manufacturers and marinizers make modifications to the engine to make it ready for use in a vessel. These modifications can range from basic engine mounting and cooling changes to a restructuring of the power assembly and fuel management system. Chapters 3 and 4 of the Final Regulatory Support Document discuss this process in more detail. Also, we have collected emission data demonstrating the feasibility of the steady state average standard and not-to-exceed requirements. These data are presented in Chapter 4 of the Final Regulatory Support Document.

1. Implementation Schedule

For recreational marine diesel engines, the implementation schedule allows an additional two years of delay beyond the commercial marine diesel standards. This represents up to a five-year lead time relative to the implementation dates of the land-based nonroad standards. This allows time for the carryover of technology from land-based nonroad and commercial marine diesel engines. In addition, these implementation dates represent three to six years of lead time beyond publication of this final rule.

2. Standard Levels

Marine diesel engines are typically derived from or use the same technology as land-based nonroad and commercial marine diesel engines and should therefore be able to effectively use the same emission-control strategies. In fact, recreational marine engines can better use the water they operate in as a cooling medium compared with commercial marine, because they are able to use raw-water aftercooling. This can help them reduce charge-air intake temperatures more easily than the commercial models and much more easily than land-based nonroad diesel engines. Cooling the intake charge reduces the formation of NO_X emissions and thus indirectly enables other HC and PM control strategies. As a result, baseline recreational engines generally have lower NO_X emissions than uncontrolled commercial marine engines. Therefore, we believe that recreational marine engines can meet the same standard levels as are in place for commercial marine engines without sacrificing power or increasing weight of the engine.

3. Technological Approaches

We anticipate that manufacturers will meet the new emission standards for recreational marine diesel engines primarily with technology that will be applied to land-based nonroad and commercial marine diesel engines. Much of this technology has already been established in highway applications and is being used in limited land-based nonroad and marine applications. Our analysis of this technology is described in detail in Chapters 3 and 4 of the Final Regulatory Support Document and is summarized here.

By adopting standards that don't go into place until 2006, we are providing engine manufacturers with substantial lead time for developing, testing, and implementing emission-control technologies. This lead time and the coordination of standards with those for land-based nonroad engines allows time for a comprehensive program to integrate the most effective emission-control approaches into the manufacturers' overall design goals related to durability, reliability, and fuel consumption.

Engine manufacturers have already produced limited numbers of low-NO_X marine diesel engines. More than 80 of these engines have been placed into service in California through demonstration programs. Through the demonstration programs, we were able to gain some insight into what technologies can be used to meet the new emission standards. Chapter 4 presents data on 25 of these engines tested over the E5 duty cycle. Although only one of these engines has been shown to meet the HC+NO_X and PM standards, many of these engines are well below either the HC+NO_X or PM standards or are close to meeting both. With further optimization, we believe these engine designs can be used to meet the exhaust emission standards for recreational marine diesel engines.

Highway engines have been the leaders in developing new emission-control technology for diesel engines. Because of the similar engine designs in land-based nonroad and marine diesel engines, it is clear that much of the technological development that has led to lower-emitting highway engines can be transferred or adapted for use on land-based nonroad and marine engines. Much of the improvement in emissions from these engines comes from "internal" engine changes such as variation in fuel-injection variables (injection timing, injection pressure, spray pattern, rate shaping), modified piston bowl geometry for better air-fuel mixing, and improvements intended to reduce oil consumption. Introduction and ongoing improvement of electronic controls have played a vital role in facilitating many of these improvements.

Turbocharging is widely used now in marine applications, especially in larger engines, because it improves power and efficiency by compressing the intake air. Turbocharging may also be used to decrease particulate emissions in the exhaust. Today, marine engine manufacturers generally have to rematch the turbocharger to the engine characteristics of the marine version of a nonroad engine and often will add water jacketing around the turbocharger housing to keep surface temperatures low. Once the nonroad Tier 2 engines are available to the marine industry, matching the turbochargers for the engines will be an important step in achieving low emissions.

Aftercooling is a well established technology for reducing NO_X by decreasing the temperature of the charge air after it has been heated during compression. Decreasing the charge-air temperature directly reduces the peak cylinder temperature during combustion, which is the primary cause of NO_X formation. Air-to-water and water-to-water aftercoolers are well established for land-based applications. For engines in marine vessels, there are two different types of aftercooling: jacket-water and raw-water aftercooling. With jacket-water aftercooling, the fluid that extracts heat from the aftercooler is itself cooled by ambient water. This cooling circuit may either be the same circuit used to cool the engine or it may be a separate circuit. By incorporating a separate circuit, marine engine

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manufacturers can further reduce charge-air temperatures. This separate circuit can result in even lower temperatures with raw water as the coolant. This means that ambient water is pumped directly to the aftercooler. Raw-water aftercooling is currently widely used in recreational applications. Because of the access that marine engines have to a large ambient water cooling medium, we anticipate that marine diesel engine manufacturers will largely reduce NO_x emissions with aftercooling.

Electronic controls also offer great potential for improved control of engine parameters for better performance and lower emissions. Unit pumps or injectors allow higher-pressure fuel injection with rate shaping to carefully time the delivery of the whole volume of injected fuel into the cylinder. Marine engine manufacturers can take advantage of modifications to the routing of the intake air and the shape of the combustion chamber of nonroad engines for improved mixing of the fuel-air charge. Separate-circuit aftercooling (both jacket-water and raw-water) will likely gain widespread use in turbocharged engines to increase performance and lower NO_x.

Fuel injection changes and other NO_x control strategies typically reduce engine noise, sometimes dramatically. One important source of noise in diesel combustion is the sound associated with the combustion event itself. When a premixed charge of fuel and air ignites, the very rapid combustion leads to a sharp increase in pressure, which is easily heard and recognized as the characteristic sound of a diesel engine. The conditions that lead to high noise levels also cause high levels of NO_x formation.

The impact of the new emission standards on energy is measured by the effect on fuel consumption from complying engines. Many of the marine engine manufacturers are expected to retard engine timing which increases fuel consumption somewhat. Most of the technology changes anticipated in response to the new standards, however, have the potential to reduce fuel consumption as well as emissions. Redesigning combustion chambers, incorporating improved fuel injection systems, and introducing electronic controls provide the engine designer with powerful tools for improving fuel efficiency while simultaneously controlling emission formation. To the extent that manufacturers add aftercooling to non aftercooled engines and shift from jacket-water aftercooling to raw-water aftercooling, there will be a marked improvement in fuel-efficiency. Manufacturers of highway diesel engines have been able to steadily improve fuel efficiency even as new emission standards required significantly reduced emissions.

There are no apparent safety issues associated with the new emission standards. Marine engine manufacturers will likely use only proven technology that is currently used in other engines such as nonroad land-based diesel applications, locomotives, and diesel trucks. The main technological approach will likely be optimization and calibration of their fuel injection and air management systems.

4. Our Conclusions

The new emission standards for recreational marine diesel engines reasonably reflect what manufacturers can achieve through the application of available technology to current recreational marine diesel engines. Recreational marine engine manufacturers will need to use the available lead time to develop the necessary emission-control strategies, including transfer of technology from land-based nonroad and commercial marine diesel engines. This development effort will require not only achieving the targeted emission levels, but also ensuring that each engine will meet all performance and emission requirements over its useful life. As discussed in Section IX, the new standards represent significant reductions compared with baseline emission levels.

Based on information currently available, we conclude it is feasible for recreational marine diesel engine manufacturers to meet the new emission standards using combinations of technological approaches discussed above and in Chapters 3 and 4 of the Final Regulatory Support Document. While the technologies described above are expected to yield the full degree of emission reduction anticipated, it is possible that manufacturers may also rely on a modest degree of fuel-injection timing retard as a strategy for complying with emission standards. This is due to variations in engine designs and baseline injection timing. For instance, an engine with very advanced injection timing in its baseline configuration would likely need to employ some timing retard to meet the standards.

The transfer of technology from land-based nonroad and commercial marine engines is an important factor in our determination that the recreational marine diesel engine standards are feasible. Most marine diesel engine models also serve in land-based applications. Sales of land-based versions of these engines are usually much greater than those of the marine counterpart versions, so manufacturers typically focus their primary technology development efforts on their land-based products. Manufacturers then modify these engines for use in marine applications. These changes can be extensive, but they rarely involve basic R&D for new technologies. We do not anticipate the use of advanced technology such as particulate filters and NO_x adsorbers on trucks until the 2007 time frame. Therefore, we do not believe that it would be appropriate to implement standards, at this time, that would require the use of advanced technology that has yet to be developed for the higher volume land-based diesel engine market. We would, however, consider this technology in the future for setting further tiers of marine engine emission standards.

In addition, we have incorporated various options that will permit marinizers and boat builders to respond to engine changes in an orderly way. We expect that meeting these requirements will pose a challenge, but one that is feasible taking into consideration the availability and cost of technology, time, noise, energy, and safety.

VII. General Nonroad Compliance Provisions

This section describes a wide range of compliance provisions that apply generally to all the spark-ignition engines and vehicles subject to the new emission standards. Several of these provisions apply not only to manufacturers and importers, but also to equipment manufacturers installing certified engines, remanufacturing facilities, operators, and others.

The regulatory text for the compliance requirements for Large SI engines and recreational vehicles are in a new Part 1068 of Title 40, entitled "General Compliance Programs for Nonroad Engines." The compliance provisions for recreational marine diesel engines are generally the same as those already adopted for commercial marine diesel engines (40 CFR part 94).

The following discussion of the general nonroad provisions follows the regulatory text. For ease of reference, the subpart designations for 40 CFR part 1068 are provided. Where different provisions apply to the marine engines, we note those differences in this section.

A. Miscellaneous Provisions (Part 1068, Subpart A)

This subpart contains general provisions to define terms and the scope of application for all of 40 CFR part 1068. Other provisions concern how we handle confidential information, how the EPA Administrator delegates decision-making authority, and when we may inspect a manufacturer's facilities, engines, or records.

The process of testing engines and preparing an application for certification requires the manufacturer to make a variety of judgments. This includes, for example, selecting test engines, operating engines between tests, and developing deterioration factors. The regulations describe the methodology we use to evaluate concerns related to how manufacturers use good engineering judgment in cases where the manufacturer has such discretion (see 40 CFR 1068.5 and 40 CFR 94.221). If we find a problem in these areas, we will take into account the degree to which any error in judgment was deliberate or in bad faith. This subpart is consistent with provisions already adopted for light-duty highway vehicles and commercial marine diesel engines.

B. Prohibited Acts and Related Requirements (Part 1068, Subpart B)

The provisions in this subpart establish a set of prohibitions for engine manufacturers (including importers), equipment manufacturers, operators, engine rebuilders, and owners/operators to ensure that engines meet the emission standards. These provisions are intended to help ensure that each new engine sold or otherwise entered into commerce in the United States is certified to the relevant standards, that it remains in its certified configuration throughout its lifetime, and that only certified engines are used in the appropriate nonroad equipment.

1. General Prohibitions (§ 1068.101)

This regulation contains several prohibitions consistent with the Clean Air Act. No one may sell a new engine subject to the emission standards (or equipment containing such an engine) in the United States without a valid certificate of conformity issued by EPA, deny us access to relevant records, or keep us from entering a facility to test or inspect engines. In addition, no one may remove or disable a device or design element that may affect an engine's emission levels, or manufacture any device that will make emission controls ineffective, which we consider tampering. Other prohibitions reinforce manufacturers' obligations to meet various certification requirements. We also prohibit selling engine parts that prevent emission-control systems from working properly. Finally, for engines that are excluded because they are used in applications not covered by these regulations (for example, stationary or solely for competition), we generally prohibit using these engines in regulated applications.

These prohibitions are the same as those that apply to other engines we have regulated in previous rulemakings. Each prohibited act has a corresponding maximum penalty as specified in Clean Air Act section 205. As provided for in the Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. 10–410, these maximum penalties are periodically adjusted by regulation to account for inflation. The current penalty amount for each violation is $31,500.[85]

2. Equipment Manufacturer Provisions (§ 1068.105)

Equipment manufacturers may not sell new equipment with uncertified engines once the emission standards begin to apply. We allow a grace period for equipment manufacturers to use up their supply of uncertified engines, as long as they follow their normal inventory practices for buying engines.

We require equipment manufacturers to observe the engine manufacturers' emission-related installation specifications to ensure that the engine remains in its certified configuration. This may include such things as radiator specifications, placement of catalytic converters, diagnostic signals and interfaces, and steps to minimize evaporative emissions.

If equipment manufacturers install a certified engine in a way that obscures the engine label, they must add a duplicate label on the equipment.

If equipment manufacturers don't fulfill the responsibilities we describe in this section, we consider them to be violating one or more of the prohibited acts described above.

3. In-Service Engines (§ 1068.110)

The regulations prevent manufacturers from requiring owners to use any certain brand of aftermarket parts and give the manufacturer responsibility for engine servicing related to emissions warranty, leaving the responsibility for all other maintenance with the owner. This regulation also reserves our right to do testing (or require testing) to determine compliance with emission standards and investigate potential defeat devices, as authorized by the Act.

[85] EPA acted to adjust the maximum penalty amount in 1996 (61 FR 69364, December 31, 1996) and 2002 (67 FR 41343, June 18, 2002). See also 40 CFR part 19.

4. Engine Rebuilding (§ 1068.120)

We are establishing rebuild provisions for all the nonroad engines subject to the emission standards in this final rule. This approach is similar to what applies to heavy-duty highway engines, nonroad diesel engines, and commercial marine diesel engines. This is necessary to prevent an engine rebuilder from rebuilding engines in a way that disables the engine's emission controls or compromises the effectiveness of the emission-control system. For businesses involved in commercial engine rebuilding, we are adopting minimal recordkeeping requirements so rebuilders can show that they comply with regulations.

In general, we require anyone rebuilding a certified engine to restore it to its original (or a lower-emitting) configuration. We are adding unique requirements for rebuilders to replace some critical emission-control components such as fuel injectors and oxygen sensors in all rebuilds for engines that use those technologies, unless there is reason to believe that those components are still working properly. We also require that rebuilders replace an existing catalyst if there is evidence that it is not functional; for example, if a catalyst has lost its physical integrity with loose pieces rattling inside, it would need to be replaced.

The rebuilding provisions define good rebuilding practices to avoid violating the prohibition on "removing or disabling" emission-control systems. We are therefore extending these provisions to individuals who rebuild their own engines, but without any recordkeeping requirements.

C. Exemptions (Part 1068, Subpart C)

We are including several exemptions for certain specific situations. Most of these are consistent with previous rulemakings. We highlight the new or different provisions in the following paragraphs. In general, exempted engines must comply with the requirements only in the sections related to the exemption. Note that additional restrictions may apply to importing exempted engines (see Section VII.D). Also, we may require manufacturers (or importers) to add a permanent label describing that the engine is exempt from emission standards for a specific purpose. In addition to helping us enforce emission standards, this helps ensure that imported engines clear Customs without difficulty.

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1. Testing

Anyone may request an exemption for engines used only for research or other investigative purposes.

2. Manufacturer-Owned Engines

Engines that are used by engine manufacturers for development or marketing purposes may be exempted from regulation if they are maintained in the manufacturers' possession and are not used for any revenue-generating service.

3. Display Engines

Anyone may request an exemption for engines intended for only for display.

4. National Security

In general, engines installed in combat-related equipment are exempt from emission standards. In addition, engine manufacturers may request and receive an exemption for other engines if they are needed by an agency of the federal government responsible for national defense. The request for exemptions in these cases must include the endorsement of the procuring government agency.

5. Exported Engines

Engines that will be exported to countries that don't have the same emission standards as those that apply in the United States are exempted without a request. This exemption is not available if the destination country has the same emission standards as those in the United States.

6. Competition Engines

New engines used solely for competition are generally excluded or exempted from regulations that apply to nonroad engines. For purposes of our certification requirements, manufacturers receive an exemption if they can show that they produce an engine model specifically for use solely in competition. In addition, engines that have been modified for use in competition are exempt from the prohibition against tampering described above (without need for request). The literal meaning of the term "used solely for competition" would apply for these modifications. We therefore do not allow anyone to use the engine for anything other than competition once it has been modified. This also applies to someone who later buys the engine, so we require the person modifying the engine to remove or deface the original engine label and inform a subsequent buyer in writing of the conditions of the exemption.

7. Replacement Engines

An exemption is available to engine manufacturers without request if that is the only way to replace an engine from the field that was produced before the current emission standards took effect. If less stringent standards applied to the old engine when it was new, the replacement engine must at a minimum meet those standards.

8. Hardship Related to Economic Burden

There are two types of hardship provisions. The first type of hardship program allows small businesses to petition EPA for up to three years of additional lead time to comply with the standards. A small manufacturer must demonstrate that it has taken all possible business, technical, and economic steps to comply but the burden of compliance costs will have a significant impact on the company's solvency. A manufacturer must provide a compliance plan detailing when and how it will achieve compliance with the standards. Hardship relief may include requirements for reducing emission on an interim basis and/or purchasing and using emission credits. The length of the hardship relief decided during review of the hardship application may be up to one year, with the potential to extend the relief as needed. The second hardship program allows companies to apply for hardship relief if circumstances outside their control cause the failure to comply (such as a supply contract broken by parts supplier) and if the failure to sell the subject engines will have a major impact on the company's solvency. We would, however, not grant hardship relief if contract problems with a specific company prevent compliance for a second time.

9. Hardship for Equipment Manufacturers

Equipment manufacturers in many cases depend on engine manufacturers to supply certified engines in time to produce complying equipment by the date emission standards begin to apply. This is especially true for industrial and marine applications. In other programs, equipment manufacturers have raised concerns of certified engines being available too late for equipment manufacturers to adequately accommodate changing engine size or performance characteristics. To address this concern, in unusual circumstances, equipment manufacturers may request up to one extra year before using certified engines if they are not at fault and will face serious economic hardship without an extension.

In addition, we are aware that some manufacturers of nonroad engines are dependent on another engine manufacturer to supply base engines that are then modified for the final application. Much like equipment manufacturers, these "secondary engine manufacturers" may face difficulty in producing certified engines if the manufacturer selling the base engine makes an engine model unavailable with short notice. These secondary manufacturers generally each buy a relatively small number of engines and would therefore not necessarily be able to influence the marketing or sales practices of the engine selling the base engines. In this rulemaking, this is of particular concern for Large SI engine manufacturers subject to new standards in 2004. As a result, we are allowing secondary engine manufacturers to sell uncertified engines or engines certified at emission levels above the standard for a short period after emission standards begin to apply. However, these companies control the final design of the engines, so we would not approve any exemption unless the manufacturer committed to a plan to make up for any calculated loss in environmental benefit. For example, based on an alternate compliance level for 2004 model year engines, we could calculate the number of 2006 model year engines that would need to be certified early to the 2007 emission standards. Provisions similar to these were adopted for commercial marine diesel engines and will apply equally to recreational marine diesel engines. See the regulatory text in 40 CFR 1068.255 and 40 CFR 94.209 for additional information.

D. Imports (Part 1068, Subpart D)

In general, the same certification requirements apply to engines and equipment whether they are produced in the U.S. or are imported. This regulation also includes some additional provisions that apply if someone wants to import an exempted or excluded engine. For example, the importer needs appropriate documentation before importing nonconforming engines; this is true even if an exemption for the same reason doesn't require approval for engines produced in the U.S. These declaration forms are available on the Internet at *http://www.epa.gov/OMS/imports/* or by phone at 202–564–9660.

All the exemptions described above for new engines also apply to importation, though some of these apply only on a temporary basis. If we approve a temporary exemption, it is available only for a defined period and could require the importer to post bond while the engine is in the U.S. There are several additional exemptions that apply only to imported engines.

—*Identical configuration:* This is a permanent exemption to allow individuals to import engines that were designed and produced to meet applicable emission standards. These engines may not have the emission label only because they were not intended for sale in the United States. This exemption applies to all the engines covered by 40 CFR part 1068.

—*"Antique"* engines: We generally treat used engines as new if they are imported without a certificate of conformity. However, this permanent exemption allows for importation of uncertified engines if they are more than 20 years old and still in their original configuration.

—*Repairs or alterations:* This is a temporary exemption to allow companies to repair or modify engines. This exemption does not allow for operating the engine, except as needed to do the intended work.

—*Diplomatic or military:* This is a temporary exemption to allow diplomatic or military personnel to use uncertified engines during their term of service in the U.S.

—*Engines subject to other programs:* This is a temporary exemption that allows someone to import an uncertified engine that will be converted for use in a different application. For example, someone may want to import a land-based nonroad engine to modify it and eventually sell it as a marine engine. This exemption expires when the engine modifications are complete, since one of the following scenarios will apply (1) the company modifying the engine will modify the engine to meet emission standards that apply to the modified engine, (2) the company will have a valid exemption under the program that applies to the modified engine, or (3) the modified engine will not be subject to emission standards, in which case an exemption is no longer necessary.

E. Selective Enforcement Audit (Part 1068, Subpart E)

Clean Air Act section 206(b) gives us the discretion in any program with vehicle or engine emission standards to do selective enforcement auditing of production engines. In selective enforcement auditing, we choose an engine family and give the manufacturer a test order detailing a testing program to show that production-line engines meet emission standards. The regulation text describes the audit procedures in greater detail.

We intend generally to rely on manufacturers' testing of production-line engines to show that their production process is producing engines in compliance they comply with emission standards. However, we reserve our right to do selective enforcement auditing if, for example, we have reason to question the emission testing conducted and reported by the manufacturer.

F. Defect Reporting and Recall (Part 1068, Subpart F)

In Part 1068, Subpart F, we are adopting defect reporting requirements that obligate manufacturers to tell us when they learn that emission control systems are defective and to conduct investigations under certain circumstances to determine if an emission-related defect is present. We are also requiring that manufacturers use warranty information, parts shipments, and any other information which may be available to trigger these investigations. For the purpose of this subpart, we are considering defective any part or system that does not function as originally designed for the regulatory useful life of the engine or the scheduled replacement interval specified in the manufacturer's maintenance instructions. For recreational vehicles and nonroad spark-ignition engines over 19 kW, this approach to defect reporting takes into account the varying sales volumes of the different products.

We believe the investigation requirement in this rule will allow both EPA and the engine manufacturers to fully understand the significance of any unusually high rates of warranty claims and parts replacement for systems or parts that may have an impact on emissions. We believe that any prudent and responsible engine manufacturer would, and should, conduct a thorough investigation as part of its normal product quality practices when in possession of data indicating an usually high number of recurring parts failures.

In the past, defect reports were submitted based on a very low threshold with the same threshold applicable to all size engine families and with little information about the full extent of the problem. The new approach should result in fewer overall defect reports being submitted by manufacturers than would otherwise be required under the old defect reporting requirements because the number of defects triggering the submission requirement rises with the engine family size.

The defect reporting requirements under other vehicle and engine regulations do not explicitly require investigations or reporting based on information available to the manufacturer about warranty claims or parts shipments. Such information is valuable and readily available to most manufacturers and should be considered when determining whether or not there is a defect of an emission-related part.

We are aware that counting warranty claims and part shipments will likely include many claims that are not emission-related or that do not represent defects, so we are establishing a relatively high threshold for triggering the manufacturer's responsibility to investigate whether there is in fact a real occurrence of an emission-related defect. Manufacturers are not required to count towards the investigation threshold any replacement parts they require to be replaced during the useful life, as specified in the application for certification and maintenance instructions to the owner, because such part shipments clearly do not represent defects.

Subpart F is intended to require manufacturers to use information we would expect them to keep in the normal course of business. We believe in most cases manufacturers will not be required to institute new programs or activities to monitor product quality or performance. A manufacturer that does not keep warranty or replacement part information may ask for our approval to use an alternate defect-reporting methodology that is at least as effective in identifying and tracking potential emissions related defects as the requirements of subpart F. However, until we approve such a request, the thresholds and procedures of subpart F continue to apply.

For engines with rated power below 560 kW, the investigation thresholds in 40 CFR 1068.501 are 4 percent of total production, or 4,000 engines, whichever is less, for any single engine family in one model year. The thresholds are reduced by 50 percent for defects related to aftertreatment devices, because these components typically play such a significant role in controlling engine emissions. For example, for an engine family with a sales volume of 20,000 units in a given model year, the manufacturer must investigate for emission-related defects if there were warranty claims for replacing electronic control units in 800 or more engines or catalytic converters on 400 or more engines. For a family with sales volume of 200,000 units in a given model year, the manufacturer

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must investigate for emission-related defects if there were warranty claims for replacing electronic control units in 4,000 or more engines or catalytic converters on 2,000 or more engines.

For engines rated above 560 kW, each engine emits much greater levels of emissions, both because of the higher power rating and the fact that these engines generally operate at high load and for long periods. In addition, the engine family for such engines are typically of smaller volume compared to the lower power engines. We are therefore adopting a requirement that manufacturers investigate defects for these engines if they learn of 5 or more defects that may be emission-related, or 1 percent of total production, whichever is greater.

The second threshold in 40 CFR 1068.501 specifies when a manufacturer must report that there is an emission-related defect. This threshold involves a smaller number of engines because each possible occurrence has been screened to confirm that it is an emission-related defect. In counting engines to compare with the defect-reporting threshold, the manufacturer must consider a single engine family and model year. However, when a defect report is required, the manufacturer must report all occurrences of the same defect in all engine families and all model years. For engines with rated power below 560 kW, the threshold for reporting a defect is 0.25 percent of total production for any single engine family, or 250 defects, whichever is less. The thresholds are reduced 50 percent for reporting defects related to aftertreatment devices. For engines with rated power greater than 560kW, the threshold for reporting defects is 0.5 percent of total production, or 2 engines, whichever is greater.

If the number of engines with a specific defect is found to be less than the threshold for submitting a defect report, but information, such as warranty or parts shipment data, later indicates that there may be additional defective engines, all the information must be considered in determining whether the threshold for submitting a defect report has been met. If a manufacturer has actual knowledge from any source that the threshold for submitting a defect report has been met, a defect report must be submitted even if the trigger for investigating has not yet been met. For example, if manufacturers receive from their dealers, technical staff or other field personnel information showing conclusively that there is a recurring emission-related defect, they must submit a defect report.

At specified times the manufacturer must also report the open investigations as well as recently closed investigations that did not require a defect report. One manufacturer indicated that investigations of potential defects can sometimes take a long time. We agree and, therefore, are not specifying a time limit for manufacturers to complete their investigations. The periodic reports required by the regulations, however, will allow us to monitor these investigations and determine if it is necessary or appropriate for us to take further action.

In general, we believe this updated approach to defect reporting will decrease the number of defect reports submitted by manufacturers overall while significantly improving their quality and their value to both EPA and the manufacturer.

We are adopting the defect-reporting requirements for recreational marine diesel engines that already apply to Category 1 commercial marine diesel engines (40 CFR 94.403). In general, this requires the manufacturer to report to us if they learn that 25 or more models have a specific defect, without considering what percentage of the total engines that represents. This applies to the occurrence of the same defect and is not constrained by engine family or model year. We believe it would not be appropriate to have different defect-reporting requirements for different types of marine diesel engines, so we are not adopting the defect-reporting provisions described above for recreational marine diesel engines at this time. In the future we may consider whether the defect-reporting methodology described above should apply to recreational and commercial marine diesel engines.

Under Clean Air Act section 207, if we determine that a substantial number of engines within an engine family, though properly used and maintained, do not conform to the appropriate emission standards, the manufacturer will be required to conduct a recall of the noncomplying engine family to remedy the problem. However, we also recognize the practical difficulty in implementing an effective recall program for nonroad engines. It may be difficult to properly identify all the affected owners absent a nationwide registration requirement similar to that for cars and trucks. The response rate for affected owners or operators to an emission-related recall notice is also a critical issue to consider. We recognize that in some cases, recalling noncomplying nonroad engines may not achieve sufficient environmental protection, so our intent in such situations is generally to allow manufacturers to nominate alternative remedial measures to address most potential noncompliance situations. We expect that successful implementation of appropriate alternative remediation would obviate the need for us to make a determination of substantial nonconformity under section 207 of the Act. Alternatives nominated by a manufacturer will be evaluated based on the following criteria. The alternatives should—

(1) Represent a new initiative that the manufacturer was not otherwise planning to perform at that time, with a clear connection to the emission problem demonstrated by the engine family in question;

(2) Cost more than foregone compliance costs and consider the time value of the foregone compliance costs and the foregone environmental benefit of the engine family;

(3) Offset at least 100 percent of the emission exceedance relative to that required to meet emission standards (or Family Emission Limits); and

(4) Be possible to implement effectively and expeditiously and to complete in a reasonable time.

These criteria, and any other appropriate factors, will guide us in evaluating projects to determine whether their nature and burden is appropriate to remedy the environmental impact of the nonconformity.

G. Hearings (Part 1068, subpart G)

Manufacturers have the opportunity to challenge our decisions related to implementing this final rule. We are adopting hearing procedures consistent with those currently in place for highway engines and vehicles.

VIII. General Test Procedures

This rule establishes new engine testing regulations in 40 CFR part 1065. These regulations will apply to anyone who tests *engines* to show that they meet the emission standards for snowmobiles, ATV, motorcycles, or Large SI engines. This includes certification testing, as well as all production-line and in-use testing. See the program descriptions above for testing provisions that are unique to different engine categories. The regulatory text in 40 CFR part 1065 is written recognizing that we may someday apply these procedures more broadly to other EPA engine testing programs. If we decide to apply these provisions to other engines in future rulemaking, we would incorporate necessary additions or changes at that time. Recreational marine diesel engines must be tested using the procedures already adopted in 40 CFR part 94.

A. General Provisions

As we have done in previous programs, we are adopting specific test procedures to define how to measure emissions, but allow alternate procedures if they are shown to be equivalent to our specified procedures. The test procedures in 40 CFR part 1065 are derived from our test procedures in 40 CFR part 86 for highway heavy-duty gasoline engines and light-duty vehicles. The procedures have been simplified (and to some extent generalized) to better fit nonroad engines.

B. Laboratory Testing Equipment

The regulations do not specify the type of engine or chassis dynamometer to use during testing. Rather, they include performance criteria that must be met during each test. These criteria are intended to ensure that deviations from the specified speed and load duty cycle are small.

Measuring emissions during transient operation calls for a greater degree of sophistication than steady-state testing. For chassis testing of recreational vehicles, we are adopting the specifications established in 40 CFR part 86 for highway engines. For Large SI engines, we based the dynamometer specifications around the capabilities of current dynamometers with enhanced control capabilities. While EPA confirmatory testing with transient duty cycles must meet the prescribed specifications, manufacturers may ask for approval to run tests with relaxed requirements for following the trace of the transient duty cycle. Manufacturers would have an incentive to accurately reproduce the test cycle to ensure compliance with emission standards, but would be able to use otherwise invalidated tests if the degree of variance from the test cycle does not call into question the engine's reported emission levels.

In addition, for transient testing with recreational vehicles and any testing with Large SI engines, the regulations specify that emissions must be measured using a full-dilution constant-volume sampler (CVS) like those used to measure emissions from highway engines. This means that during a test, an engine's exhaust is routed into a dilution tunnel where it is mixed with air and then sampled using a bag sampler system. After the test, the concentrations of HC, CO, and NO_X in the bag is measured using conventional laboratory analyzers.

For Large SI engines and snowmobiles, the steady-state test procedures specify measuring emissions with dilute-sampling equipment. Some manufacturers have expressed a preference to continue with their established practice of using raw-sampling equipment and procedures. While we believe dilute-sampling is most appropriate for these engines, the provisions for alternate testing procedures may allow for raw-sampling measurements for steady-state testing. As specified in 40 CFR 1065.10(c)(3) of the regulations, we allow manufacturers to use alternate procedures shown to be equivalent to the specified procedures. We are also including an interim provision for snowmobiles to allow manufacturers to use the raw-sampling procedures in 40 CFR part 91 for a few years before they are required to show equivalence with the dilute-sampling procedures. This option will allow manufacturers to focus their engineering efforts on reducing emissions during the start of the program.

C. Laboratory Testing Procedures

The specific procedures for running emission tests are outlined briefly here, with a more detailed description of the most significant aspects. Before testing the engine, it is necessary to operate it enough to stabilize emission levels or to make it more representative of in-use engines. This is called service accumulation and may take one of two forms. In the first method, a new engine is operated for up to 50 hours as a break-in period. This is done for most or all emission-data engines. The second method is much longer, up to the full useful life, and is done to determine deterioration factors.

Once an engine is ready for testing, it is connected to the dynamometer with its exhaust flowing into the dilution tunnel. The dynamometer is controlled to make the engine follow the specified duty cycle. A continuous sample is collected from the dilution tunnel for each test segment or test mode using sample bags. These bags are then analyzed to determine the concentrations of HC, CO, and NO_X.

1. Test Speeds

The definition of maximum test speed, where speed is the angular velocity of an engine's crankshaft (usually expressed in revolutions per minute, or rpm), is an important aspect of most duty cycles. Until recently, we relied on engine manufacturers to declare reasonable rated speeds for their engines and then used the rated speed as the maximum test speed. However, to have a more objective measure of an engine's maximum test speed, we have established a specific procedure for measuring this engine parameter.[86]

We define the maximum test speed for any engine to be the single point on an engine's maximum-power versus speed curve that lies farthest away from the zero-power, zero-speed point on a normalized maximum-power versus speed plot. In other words, consider straight lines drawn between the origin (speed = 0, load = 0) and each point on an engine's normalized maximum-power versus speed curve. Maximum test speed is defined at that point where the length of this line reaches its maximum value. For constant-speed engines, maximum test speed is the engine's rated speed.

Intermediate speed for steady-state duty cycles is defined as the speed at which the engine generates its maximum torque value. However, in cases where the maximum torque occurs at a speed that is less than 60 percent or greater than 75 percent of the rated speed, the intermediate speed is often specified as either 60 or 75 percent of rated speed, whichever is closer to the speed of maximum torque. The maximum test speed described above is used to calculate these percentage values relative to rated speed.

2. Maintenance

As described in Section II.C.1, we are limiting the amount of scheduled maintenance manufacturers may prescribe for their customers to ensure that engines continue to meet emission standards. If manufacturers specify unreasonably frequent maintenance, there would be little assurance that in-use engines would continue to operate at certified emission levels. We also apply these minimum maintenance intervals to engines the manufacturer operates for service accumulation before testing for emissions. For example, manufacturers may not install a new catalyst on a Large SI engine after 2,000 hours of operation, then select that engine for the in-use testing program. Similarly, manufacturers may not replace fuel-system components on a recreational vehicle during the course of service accumulation for establishing deterioration factors. We do not restrict scheduling of routine maintenance items, such as changing engine oil and replacing oil, fuel, or air filters. We may also allow changing spark plugs, even though we are aware that spark plugs may affect emissions.

[86] See the final rule for commercial marine diesel engines for a broader discussion of maximum test speed (64 FR 73300, December 29, 1999).

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D. Other Testing Procedures

As noted in earlier sections, we are establishing some special test procedures for field testing situations. These special procedures are designed to apply to specific types of engines, and thus do not apply generally to all engines covered by this rulemaking. You should read the specific applicable section to determine if such special test procedures apply to any specific category of engines or vehicles.

IX. Projected Impacts

This section summarizes the projected impacts of the emission standards. The anticipated reduction in emissions is compared with the projected cost of the program for an assessment of the cost per ton of reducing emissions for this rule. The section includes the results of the analysis for the Final Program. We have also analyzed the impacts of different alternatives for each of the program areas. This analysis of alternatives, for the most part, focused on more or less stringent alternative standards. For recreational marine diesels, the alternatives analyzed were applying draft European standards or implementing our primary program two years earlier. For the Large SI category, the alternative focused on adopting a steady-state only 2007 requirement. For off-highway motorcycles, we analyzed a more-stringent 1.0 g/km standard and a less-stringent 4.0 g/km standard for HC + NO_X control. With ATVs, the alternatives presented were a 2.0 g/km and a 1.0 g/km HC + NO_X standard. For snowmobiles, we analyzed four alternatives, ranging from only adopting one phase of standards in 2006 to a standard that would require, on average, reductions of 85% HC and 50% CO from baseline emissions. Additional detailed discussion on these alternatives and the results of the alternatives analysis are presented in Chapter 11 of the RSD.

A. Environmental Impact

To estimate nonroad engine and vehicle emission contributions, we used the latest version of our NONROAD emissions model. This model computes emission levels for a wide variety of nonroad engines, and uses information on emission rates, operating data, and population to determine annual emission levels of various pollutants. A more detailed description of the methodology used for projecting inventories and projections for additional years can be found in the Chapter 6 of the Final Regulatory Support Document.

Tables IX.A–1 and IX.A–2 contain the projected emission inventories for calendar year 2010 from the engines and vehicles subject to this rulemaking under the base case (*i.e.*, without the standards taking effect) and assuming the standards take effect. Tables IX.A–3 and IX.A–4 contain the projected emission inventories for calendar year 2020. The percent reductions based on a comparison of estimated emission inventories with and without the emission standards are also presented in each of the tables.

TABLE IX.A–1.—2010 PROJECTED HC AND NO_X EMISSIONS INVENTORIES

[Thousand short tons]

Category	HC*			NO_X		
	Base case	With standards	Percent reduction	Base case	With standards	Percent reduction
Large SI	268	88	67	389	118	70
Snowmobiles	297	250	16	3	4	(16)
ATVs	308	211	31	7	6	11
Off-highway motorcycles	193	155	20	1.1	1.2	(8)
Recreational marine diesel	1.6	1.5	10	49	46	7
Total	1,066	705	34	450	174	61

*The estimate for Large SI includes both exhaust HC and evaporative HC emissions. The estimates for snowmobiles, ATVs and Off-highway motorcycles includes both exhaust HC and permeation HC emissions. The estimate for recreation marine diesel includes exhaust HC emissions.

TABLE IX.A–2.—2010 PROJECTED CO AND PM EMISSIONS INVENTORIES

[Thousand short tons]

Category	CO			PM		
	Base case	With standards	Percent reduction	Base case	With standards	Percent reduction
Large SI	2,022	945	53	1.9	1.9	0
Snowmobiles	775	670	14	7.0	6.7	4
ATVs	1,042	989	5	10.8	7.4	32
Recreational marine diesel	8	8	0	1.3	1.2	6
Off-highway motorcycles	266	239	10	7.3	5.8	20
Total	4,113	2,851	31	28.3	23.0	19

TABLE IX.A–3.—2020 HC AND NO_X PROJECTED EMISSIONS INVENTORIES

[Thousand short tons]

Category	HC*			NO_X		
	Base case	With standards	Percent reduction	Base case	With standards	Percent reduction
Large SI	318	34	89	472	43	91

TABLE IX.A–3.—2020 HC AND NO_X PROJECTED EMISSIONS INVENTORIES—Continued

[Thousand short tons]

Category	HC*			NO_X		
	Base case	With standards	Percent reduction	Base case	With standards	Percent reduction
Snowmobiles	358	149	58	5	10	(101)
ATVs	374	53	86	8	6	25
Off-highway motorcycles	232	117	50	1.3	1.5	(19)
Recreational marine diesel	2.0	1.5	28	61	48	21
Total	1,284	355	72	547	109	80

*The estimate for Large SI includes both exhaust HC and evaporative HC emissions. The estimates for snowmobiles, ATVs and Off-highway motorcycles includes both exhaust HC and permeation HC emissions. The estimate for recreation marine diesel includes exhaust HC emissions.

TABLE IX.A–4.—2020 PROJECTED CO AND PM EMISSIONS INVENTORIES

[Thousand short tons]

Category	CO			PM		Percent reduction
	Base case	With standards	Percent reduction	Base case	With standards	
Large SI	2,336	277	88	2.3	2.3	0
Snowmobiles	950	508	46	8.4	4.9	42
ATVs	1,250	1,085	13	13.1	1.9	86
Off-highway motorcycles	321	236	26	8.7	4.4	50
Recreational Marine diesel	9	9	0	1.6	1.3	18
Total	4,866	2,115	56	34.2	14.8	57

As described in Section I, we project there will also be environmental benefits associated with reduced haze in many sensitive areas.

Finally, anticipated reductions in hydrocarbon emissions correspond with reduced emissions of the toxic air emissions referenced in Section I.

B. Cost Estimates

In assessing the economic impact of setting emission standards, we have made a best estimate of the necessary technologies and their associated costs. In making our estimates we have relied on our own technology assessment, which includes information supplied by individual manufacturers and our own in-house testing. Estimated costs include variable costs (for hardware and assembly time) and fixed costs (for research and development, retooling, and certification). The analysis also considers total operating costs, including maintenance and fuel consumption. Cost estimates based on the projected technologies represent an expected change in the cost of engines as they begin to comply with new emission standards. All costs are presented in 2001 dollars. Full details of our cost analysis can be found in Chapter 5 of the Final Regulatory Support Document.

Cost estimates based on the current projected costs for our estimated technology packages represent an expected incremental cost of vehicles in the near term. For the longer term, we have identified factors that will cause cost impacts to decrease over time. First, we project that manufacturers will generally recover their fixed costs over a five-year period, so these costs disappear from the analysis after the fifth year of production. Second, the analysis incorporates the expectation that manufacturers and suppliers will apply ongoing research and manufacturing innovation to making emission controls more effective and less costly over time. Research in the costs of manufacturing unrelated to emissions control technologies has consistently shown that as manufacturers gain experience in production and use, they are able to apply innovations to simplify machining and assembly operations, use lower cost materials, and reduce the number or complexity of component parts (see the Final Regulatory Support Document for additional information).[87] The cost analysis assumes this learning effect applies equally well to the adoption of the technologies associated with this rule by decreasing estimated variable costs by 20 percent starting in the third year of production and an additional 20 percent starting in the sixth year of production.

Table IX.B–1 summarizes the projected near-term per unit average costs to meet the new emission standards. These estimates are based on the manufacturing cost rather than predicting price increase; the costs nevertheless take into account anticipated mark-ups to present retail-price equivalent figures. Long-term impacts on engine costs are expected to decrease as manufacturers fully amortize their fixed costs and learn to optimize their designs and production processes to meet the standards more efficiently. The tables also show our projections of reduced operating costs for some engines (calculated on a net present value basis), which generally results from substantial reductions in fuel consumption.

[87] For further information on learning curves, see Chapter 5 of the Economic Impact, from Regulatory Impact Analysis-Control if Air Pollution from New Motor Vehicles: Tier 2 Motor Vehicle Emission Standards and Gasoline Sulfur Control Requirements, EPA420-R–99–023. December 1999. A copy of this document is included in Air Docket A–2000–01, at Document No. II-A–83. The interested reader should also refer to previous final rules for Tier 2 highway vehicles (65 FR 6698, February 10, 2000), marine diesel engines (64 FR 73300, December 29, 1999), nonroad diesel engines (63 FR 56968, October 23, 1998), and highway diesel engines (62 FR 54694, October 21, 1997).

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TABLE IX.B–1.—ESTIMATED AVERAGE COST IMPACTS OF EMISSION STANDARDS

Standards	Dates	Increased production cost per vehicle*	Lifetime operating costs per vehicle (NPV)
Large SI exhaust	2004	$611	$−3,981
Large SI exhaust	2007	55	0
Large SI evaporative	2007	13	−56
Snowmobile exhaust (Phase 1)	2006	73	−57
Snowmobile exhaust (Phase 2)	2010	131	−286
Snowmobile exhaust (Phase 3)	2012	89	−191
Snowmobile permeation	2008	7	−11
ATV exhaust	2006	84	−24
ATV permeation	2008	3	−6
Off-highway motorcycle exhaust	2006	155	−48
Off-highway motorcycle peermeation	2008	3	−5
Recreational	2006	346	0

*These estimates are for near-term costs. The estimated long-term costs decrease by about 35 percent. Costs presented for the Large SI and snowmobile second-phase standards are incremental to the first-phase standards. Costs for Phase 3 are incremental to Phase 2. These costs numbers may not necessarily reflect actual price increases as manufacturer production costs, perceived product enhancements, and other market impacts will affect actual prices to consumers.

We estimate that the anticipated increase in the near-term cost of producing new Large SI engines for the 2004 standards is estimated to range from $550 to $800, depending on fuel type, with a composite estimated cost of $605. This cost is attributed to upgrading engines to operate with closed-loop fuel systems and three-way catalysts. These technologies also improve the overall performance of these engines, including improvements to fuel economy that result in reduced operating costs that fully offset the additional hardware cost. We further estimate additional costs of $50 for the 2007 standards, which primarily involve additional development time to optimize engines using the same closed-loop systems with three-way catalysts. While these costs are a small percentage of the cost of industrial equipment, we are aware that this may not be insignificant in this very competitive market. Given the compelling advantages of improved performance and reduced operating expenses, however, we believe manufacturers will generally be able to recover their costs over time.[88]

Projected average near-term costs for ATVs and off-highway motorcycles are $84 and $155 per unit, respectively. Standards are based on the emission-control capability of engines four-stroke engines.[89] Those models that convert from two-stroke to four-stroke technology will see substantial fuel savings in addition to greatly reduced emissions. With an averaging program that allows manufacturers to apply varying degrees of technology to different models, we believe they will be able to tailor emission controls in a way that reflects the performance needs for their products. Fuel savings associated with replacing two-stroke engines with four-stroke engines partially offsets the additional cost of producing these vehicles.

We expect that the near-term cost of the 2006 snowmobile standards will average $73 per snowmobile. These costs are based on a mix of technologies including a small increase in the use of four-stroke and direct injection technology. For other engines we expect manufacturers to lean out the air-fuel mixture, improve carburetion for better fuel control and less production variation, and modify the engine to withstand higher temperatures and potential misfire episodes attributed to enleanment. We expect that the 2010 and 2012 standards will be met through inceasing the application of direct injection two-stroke technology and four-stroke engines on a significant portion of the fleet. We project that the near-term incremental cost of the Phase 2 standards will average $131 per snowmobile and Phase 3 will be $89, although we believe these costs will be fully offset by fuel savings.

Recreational marine diesel engines are expected to see increased costs averaging under $400 per engine in the near-term. We expect manufacturers to meet emission standards by improving fuel injection systems and making general design changes to the geometries, configurations, and calibrations of their engines. These figures are somewhat lower than we have projected for the comparable commercial marine engines, since the recreational models generally already have some of the emission-control technologies needed to meet the emission standards.

The above analysis presents unit cost estimates for each type of engine or vehicle. These costs represent the total set of costs the engine or vehicle manufacturers will bear to comply with emission standards. For those categories with engine-based standards, we do not anticipate significant new costs for equipment manufacturers installing certified engines. Operating costs are also taken into account, but where there is an effect, we project these impacts to involve only cost savings for operators. With current and projected estimates of engine and equipment sales, we translate these costs into projected direct costs to the nation for the new emission standards in any year. A summary of the annualized costs to manufacturers by equipment type is presented in Table IX.B–2. (The annualized costs are determined over the first twenty years that the standards will be in effect. Because the standards take effect in different years for the various categories of equipment covered by this rule, the aggregate annualized cost is calculated over a slightly longer period of time encompassing the first twenty years of each of the standards. For this reason, the aggregate annualized cost is not the sum of the individual annualized costs.) The annual cost savings due to reduced operating expenses start slowly, then increase as greater numbers of compliant engines enter the fleet. Table IX.B–2 also presents a summary of the annualized reduction in operating costs. Overall, based on currently available information, we project an annualized net savings to the economy of approximately $200 million per year.

[88] Chapter 5 of the Final Regulatory Support Document describes why we believe market forces haven't already led manufacturers to add fuel-saving technologies to their products.

[89] The program contains an optional set of standards for off-highway motorcycles which could result in the use of direct injection two-stroke technology in some high-performance applications. Chapter 11.3 provides a cost analysis for this option. The costs are projected to be somewhat higher for this option due to the application of technology to high-performance competition models.

TABLE IX.B–2—ESTIMATED ANNUAL COST TO MANUFACTURERS AND ANNUAL SAVINGS FROM REDUCED OPERATING COSTS OF EMISSION STANDARDS

Engine type	Annualized cost to manufacturers (millions/year)	Annualized savings from reduced operating costs (millions/year)
Large SI	$84	$324
Snowmobiles	36	47
ATVs	61	31
Off-highway motorcycles	25	14
Marine Diesel	7	0
Aggregate*	192	410

*Because the standards take effect in different years for the various categories of equipment, the aggregate annualized cost is calculated over a slightly longer period of time. For this reason, the aggregate annualized cost is not the sum of the individual annualized costs.

C. Cost Per Ton of Emissions Reduced

We calculated the cost per ton of emission reductions for the emission standards. For snowmobiles, this calculation is on the basis of HC and CO emissions. For all other engines, we attributed the entire cost of the program to the control of ozone precursor emissions (HC or NO_X or both).

Table IX.C–1 presents the near-term discounted cost-per-ton estimates for the various engines covered by the rule. (The aggregate cost-per-ton estimates are over the first 20 years of emission standards.) Reduced operating costs more than offset the increased cost of producing the cleaner engines for Phase 1 Large SI, and Phase 2 and Phase 3 snowmobile engines. The cost to society and the associated cost-per-ton figures for these engines, and the aggregate values for all engines covered by this rule, therefore show a net savings resulting from the emission standards. The table presents these as $0 per ton, rather than calculating a negative value that has no clear meaning.

TABLE IX.C–1.—ESTIMATED COST-PER-TON OF EMISSION STANDARDS

Standards	Dates	Discounted reductions per vehicle (short tons)*	Discounted cost per ton of HC+NO_X		Discounted cost per ton of CO	
			Without fuel savings	With fuel savings	Without fuel savings	With fuel savings
Large SI exhaust (Composite of all fuels)	2004	3.07	$240	$0	—	—
Large SI exhaust (Composite of all fuels)	2007	0.80	80	80	—	
Large SI evaporative	2007	0.13	80	0	—	
Snowmobile exhaust	2006	HC: 0.40 CO: 1.02	90	20	$40	$10
Snowmobile exhaust	2010	HC: 0.10	1,370	0	—	—
Snowmobile exhaust	2012	CO: 0.25	—	—	360	0
Snowmobile permeation	2008	0.03	210	0	—	—
ATV exhaust	2006	0.21	400	290	—	—
ATV permeation	2008	0.02	180	0	—	—
Off-highway motorcycle exhaust	2006	0.38	410	280	—	—
Off-highway motorcycle permeation	2008	0.01	230	0	—	—
Recreational marine diesel	2006	0.44	670	670	—	—
Aggregate	—	—	240	0	80	0

*HC reductions for evaporative and permeation, and HC+NO_X reductions for exhaust (except snowmobiles where CO reductions are also presented).

D. Economic Impact Analysis

We performed an analysis to estimate the economic impacts of this final rule on producers and consumers of recreational marine diesel vessels (specifically, diesel inboard cruisers), forklifts, snowmobiles, ATVs, off-highway motorcycles, and society as a whole. This economic impact analysis focuses on market-level changes in price, quantity, and economic welfare (social gains or costs) associated with the regulation. A description of the methodology used can be found in Chapter 9 of the Final Regulatory Support Document prepared for this rulemaking.

We did not perform an economic impact analysis for categories of Large SI nonroad engines other than forklifts, even though those other Large SI engines are also subject to the standards contained in this final rule. As explained in more detail in Chapter 9 of the Final Regulatory Support Document, this was due to the large number of different types of equipment that use Large SI engines and data availability constraints for those market segments. For the sake of completeness, the following analysis reports separate estimates for Large SI engines other than forklifts. Engineering costs are assumed

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to be equal to economic costs for those engines. This approach slightly overestimates the social costs associated with the relevant standards.

Based on the estimated regulatory costs associated with this rule and the predicted changes in prices and quantity produced in the affected industries, the total estimated annual social gains of the rule in the year 2030 is projected to be $553:5 million (in 2000 and 2001 dollars). The net present value of the social gains for the 2002 to 2030 time frame is equal to $4.9 billion, using a 3% discount rate. This value would be $2.4 billion with a 7% discount rate. The social gains are equal to the fuel savings minus the combined loss in consumer and producer surplus (see Table IX.D–1), taking into account producers' and consumers' changes in behavior resulting from the costs associated with the rule.[90] Social gains do not account for the social benefits (the monetized health and environmental effects of the rule).

TABLE IX.D–1.—SURPLUS LOSSES, FUEL EFFICIENCY GAINS, AND SOCIAL GAINS/COSTS IN 2030 [a]

Vehicle category	Surplus losses in 2030 ($ millions)	Fuel efficiency gains in 2030 ($ millions)	Social gains/ costs in 2030 [b] ($ millions)
Recreational marine diesel vessels	$6.6	$0	($6.6)
Forklifts	47.8	420.1	372.3
Other Large SI	[c] 48.1	138.4	90.3
Snowmobiles	41.9	135.0	93.1
ATVs	47.2	51.4	4.2
Off-highway motorcycles	25.0	25.2	0.2
All vehicles total	216.6	770.1	553.5
NPV of all vehicles total [d]	3,231.4	8,130.3	4,898.9
NPV of all vehicles total [e]	1,889.5	4,282.3	2,392.8

[a] Figures are in 2000 and 2001 dollars.
[b] Figures in this column exclude estimated social benefits. Numbers in parentheses denote social costs.
[c] Figure is engineering costs; see text for explanation.
[d] Net Present Value is calculated over the 2002 to 2030 time frame using a 3 percent discount rate.
[e] Net Present Value is calculated over the 2002 to 2030 time frame using a 7 percent discount rate.

For most of the engine categories contained in this rule, we expect there will be a fuel savings as manufacturers redesign their engines to comply with emission standards. For ATVs and off-highway motorcycles, the fuel savings will be realized as manufacturers switch from two-stroke to four-stroke technologies. For snowmobiles, the fuel savings will be realized as manufacturers switch some of their engines to more fuel efficient two-stroke technologies and some of their engines to four-stroke technologies. For Large SI engines, the fuel savings will be realized as manufacturers adopt more sophisticated and more efficient fuel systems; this is true for all fuels used by Large SI engines. Overall, we project the fuel savings associated with the anticipated changes in technology to be about 800 million gallons per year once the program is fully phased in. These savings are factored into the calculated costs and costs per ton of reduced emissions, as described above.

E. Do the Benefits Outweigh the Costs of the Standards?

While EPA uses relative cost-effectiveness as the primary manner to take costs into consideration, further insight regarding the standards can be provided by benefit-cost analysis. The purpose of this section is to summarize the methods we used and results we obtained in conducting an analysis of the economic benefits of the changes in emissions from engines covered by this rule, and to compare these economic benefits with the estimated economic costs of the rule. In summary, the results of our analysis indicate that the economic benefits of the final standards will exceed the costs of meeting the standards. The annual estimated benefits we were able to quantify were approximately $10 billion in 2030.

1. What Was Our Overall Approach to the Benefit-Cost Analysis?

The basic question we sought to answer in the benefit-cost analysis was, "What are the net yearly economic benefits to society of the reduction in mobile source emissions likely to be achieved by this final rulemaking?" In designing an analysis to address this question, we selected a future year for analysis (2030) that is representative of full-implementation of the program (*i.e.*, when the Large SI and recreational vehicle fleet is composed of virtually only compliant vehicles).

To quantify benefits, we evaluated PM-related health effects (including directly emitted PM and NO_X contribution to particulate nitrate) using a benefits transfer technique. Although we expect economic benefits to exist, we were unable to quantify or to value specific changes in visibility, ozone, CO or air toxics because we did not perform additional air quality modeling.

To evaluate the PM-related health effects, we adopted a benefits transfer technique that relies on the extensive particulate matter air quality and benefits modeling conducted for the highway Heavy Duty Engine/Diesel Fuel final rule.[91] That RIA used an analytical structure and sequence similar to that used in the "section 812 studies" to estimate the total benefits and costs of the full Clean Air Act.[92] In the HD Engine/Diesel Fuel analysis, we used many of the same models and assumptions used in the section 812 studies as well as other Regulatory Impact Analyses (RIAs) prepared by the Office of Air and Radiation. By adopting the major design elements, models, and assumptions developed for the section 812 studies and other RIAs, we have largely relied on methods which have already received extensive review by the independent Science Advisory Board (SAB), by the public, and by other federal agencies. Although the underlying method has experienced significant review, the transfer of values from an existing primary benefits analysis to estimate the benefits of a new program has not had this type of review and the transfer technique introduces additional uncertainties.

2. What Are the Significant Limitations of the Benefit-Cost Analysis?

Every benefit-cost analysis examining the potential effects of a change in environmental protection requirements is limited to some extent by data gaps, limitations in model capabilities (such as geographic coverage), and uncertainties in the underlying scientific and economic studies used to configure the benefit and cost models. Deficiencies in the scientific literature often result in the inability to estimate quantitative changes in health and environmental effects, such as potential increases in premature mortality associated with increased exposure to carbon monoxide. Deficiencies in the economics literature often result in the inability to assign economic values even to those health and environmental outcomes which can be quantified. While these general uncertainties in the underlying scientific and economics literatures, which can cause the valuations to be higher or lower, are discussed in detail in the Final Regulatory Support Document and its supporting documents and references, the key uncertainties which have a bearing on the results of the benefit-cost analysis of this final rule include the following:

- The exclusion of potentially significant benefit categories (such as health and ecological benefits of reduction in hazardous air pollutants emissions and ozone; improvements in visibility);
- Errors in measurement and projection for variables such as population growth;
- Uncertainties in the estimation of future year emissions inventories and air quality;
- Uncertainties associated with the transfer of the results of the HD Engine/Diesel Fuel analysis to this program, especially regarding the assumption of similarity in geographic distribution between emissions and human populations and years of analysis;[93]
- Variability in the estimated relationships of health and welfare effects to changes in pollutant concentrations;
- Uncertainties in exposure estimation;
- Uncertainties in applying willingness to pay estimates from National Park and Forest visitors to U.S. recreational participants and uncertainties in average number of activity days per year; and
- Uncertainties associated with the effect of potential future actions to limit emissions.

Despite these uncertainties, we believe the benefit-cost analysis provides a reasonable indication of the expected economic benefits of the final rulemaking in future years under a set of assumptions.

One key area of uncertainty is the value of a statistical life (VSL) for reductions in mortality risk. The adoption of a value for the projected reduction in the risk of premature mortality is the subject of continuing discussion within the economic and public policy analysis community. In accordance with the independent Science Advisory Board advice,[94] we use the value of a statistical life (VSL) for risk reductions in mortality in our primary estimate. Alternative calculations of adjustment for age and other factors are presented in the RIA for the HD Engine/Diesel Fuel rule and in the RSD for this rule. The presentation of the other alternative calculations for certain endpoints seeks to demonstrate how much the overall benefit estimate might vary based on the value EPA has given to a parameter (which has uncertainty associated with it) underlying the estimates for human health and environmental effect incidence and the economic valuation of those effects. These alternative calculations represent conditions that might occur; however, EPA has selected the best values supported by current scientific literature for use in the primary estimate. The primary estimate is the source for our benefits transfer technique.

Even with our efforts to fully disclose the uncertainty in our estimate, our uncertainty presentation method does not provide a definitive or complete picture of the true range of monetized benefits estimates. The set of alternative calculations is only representative of those benefits that we were able to quantify and monetize.

3. What Are the benefits In the Years Leading Up to 2030?

The final rule has various cost and emission related components, as described earlier in this section. These components would begin at various times and in some cases would phase in over time. This means that during the early years of the program there would not be a consistent match between cost and benefits, especially where the full vehicle cost would be incurred at the time of vehicle purchase, while the fuel savings along with the emission reductions and benefits resulting from all these costs would occur throughout the lifetime of the vehicle. Because of this inconsistency and our desire to more appropriately match the costs and emission reductions of our program, our analysis uses a future year (2030) when the fleet is nearly fully turned over.

In the years before 2030, the benefits from the final rule will be less than those estimated here, because the compliant vehicle fleet will not be fully phased in, and the overall U.S. population would be smaller. Annualized costs, on the other hand, reach nearly their full value within a few years of program initiation (once all phase-ins are completed). Thus, a benefit-cost ratio computed for the earlier years of the program would be expected to be lower than a ratio based on our 2030 analysis when the fleet has fully turned over. The stream of costs and the limited set of quantified benefits over time are presented in the Final

[90] Consumer and producer surplus losses are measures of the economic welfare loss consumers and producers, respectively are likely to experience as a result of the regulations. Combined these losses represent an estimate of the economic or social costs of the rule. Note that for the Large SI and recreational vehicle rules, fuel efficiency gains must be netted from surplus losses to estimate the social costs or social gains (in cases where fuel efficiency gains exceed surplus losses) attributable to the rules.

[91] Regulatory Impact Analysis: Heavy-Duty Engine and Vehicle Standards and Highway Diesel Fuel Sulfur Control Requirements, document EPA420–R–00–026, December 2000. Docket No. A–2000–01, Document No. II–A–13. This document is also available at *http://www.epa.gov/otaq/diesel.htm#documents*. The transfer technique is described in a memorandum, Dr. Bryan Hubbell, Senior Economist, Estimated Nox, Sox, and PM Emissions Health Damages for Heavy Duty Vehicle Emissions, April 22, 2002. A copy of this letter can be found in Docket A–2000–01, Document IV–A–146.

[92] The section 812 studies include: (1) U.S. EPA. Report to Congress: The Benefits and Costs of the Clean Air Act, 1970 to 1990, October 1997 (also known as the "Section 812 Retrospective Report"); and (2) the first in the ongoing series of prospective studies estimating the total costs and benefits of the Clean Air Act (see EPA report number: EPA–410–R–99–001, November 1999). See Docket A–99–06, Document II–A–21.

[93] In the original HD Engine/Diesel Fuel analysis, we modeled air quality and benefits in 2030. There are sufficient non-linearities and interactions among pollutants in the atmospheric chemistry that introduce additional uncertainties in the quantitative estimate of the benefits in years that were not fully modeled in the original analysis.

[94] SAB advised that the EPA "continue to use a wage-risk-based VSL as its primary estimate, including appropriate sensitivity analyses to reflect the uncertainty of these estimates," and that "the only risk characteristic for which adjustments to the VSL can be made is the timing of the risk" (EPA-SAB-EEAC–00–013; a copy of this document can be found in Docket A–99–06, Document No. IV–A–19). In developing our primary estimate of the benefits of premature mortality reductions, we have appropriately discounted over the lag period between exposure and premature mortality. However, an empirical basis that meets the SAB's standards of reliability for adjusting the current $6 million VSL for many of these factors does not yet exist. A discussion of these factors is contained in the RIA and supporting documents. EPA recognizes the need for additional research by the scientific community to develop additional empirical support for adjustments to VSL for the factors mentioned above.

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Regulatory Support Document. On the other hand, since the estimated benefits are more than 40 times the costs (excluding fuel savings) in 2030, the emission reduction and cost trends suggest that it is likely that annual benefits would exceed costs from a time early in the life of the program.

4. What Were the Results of the Benefit-Cost Analysis?

The benefit-cost analysis for the final rule reflects a single year picture of the yearly benefits and costs expected to be realized once the standards have been fully implemented and non-compliant vehicles have all been retired.

Table IX.E–1 presents EPA's primary estimate of the benefits of the rule, both the estimated reductions in incidences and the estimated economic value of those incidence reductions. In interpreting the results, it is important to keep in mind the limited set of effects we are able to monetize. Specifically, the table lists the avoided PM-related incidences of health effects and the estimated economic value of those avoided incidences.[95] We present estimates for the reductions for the Large SI category only. As the table indicates, we estimate that the final rule will reduce premature mortality associated with fine PM by around 1,000 incidences per year, produce about 600 fewer cases of chronic bronchitis, and result in significant reductions in minor restricted activity days (with an estimated 1 million fewer cases).[96]

TABLE IX.E–1.—EPA PRIMARY ESTIMATE OF THE ANNUAL QUANTIFIED AND MONETIZED BENEFITS ASSOCIATED WITH IMPROVED PM AIR QUALITY RESULTING FROM THE LARGE SI/RECREATIONAL VEHICLE RULE IN 2030 [a]

PM-related endpoint	Avoided incidence [a,c] (cases/year)	Monetary benefits [a,d] (millions 2002 $)
Premature mortality [a,b] (adults, ages 30 and over)	1,000	$7,510
Chronic bronchitis	640	$280
Hospital Admissions from Respiratory Causes [g]	300	<$10
Hospital Admissions from Cardiovascular Causes [g]	300	<$10
Emergency Room Visits for Asthma	300	<$1
Acute bronchitis (children, ages 8–12)	2,200	<$1
Upper respiratory symptoms (asthmatic children, ages 9–11)	20,600	<$1
Lower respiratory symptoms (children, ages 7–14)	23,700	<$1
Asthma attacks (asthmatics, all ages) [a]	20,600	<$1
Work loss days (adults, ages 18–65)	181,300	$20
Minor restricted activity days (adults, ages 18–65) (adjusted to exclude asthma attacks) [a]	944,400	$50
Other health effects [e]	$U_1+U_2+U_3+U_4$	$B_1+B_2+B_3+B_4$
Monetized Total [f]		$7,880 + B

[a] Ozone-related benefits are not included, thus underestimating national benefits. Relative to PM related benefits, ozone benefits have typically accounted for only a small portion of total benefits. However, ozone reductions can have a significant impact on asthma attacks in asthma sufferers, as well as contributing to reductions in the overall number of minor restricted activity days.

[b] The value we are transferring assumes that some of the incidences of premature mortality related to PM exposures occur in a distributed fashion over the five years following exposure, and it embeds an annual three percent discount rate to the value of premature mortality occurring in years after our analysis year.

[c] Incidences are rounded to the nearest 100.

[d] Dollar values are rounded to the nearest 10 million. Monetary benefits account for growth in real GDP per capita through 2030.

[e] The Ui are the incidences and the Bi are the values for the unquantified category i. A detailed listing of unquantified PM, ozone, CO, and HC related health and welfare effects is provided in Table IX–E.2. Many of the HC emitted from these vehicles are also hazardous air pollutants listed in the Clean Air Act.

[f] B is equal to the sum of all unmonetized categories, *i.e.*, Ba+B1+B2+ * * * +Bn.

[g] Based upon recent preliminary findings by the Health Effects Institute, the concentration-response functions used to estimate reductions in hospital admissions may over- or under-estimate the true concentration-response relationship.

Total monetized benefits are driven primarily by the reduction in premature fatalities each year, which account for over 80 percent of total benefits.

This table also indicates with a "B" those additional health and environmental benefits which could not be expressed in quantitative incidence and/or economic value terms. A full listing of the benefit categories that could not be quantified or monetized in our estimate are provided in Table IX.E–2. The final rule may also provide some visibility improvements in Class I areas and near where people live, work, and recreate. A full appreciation of the overall economic consequences of the final standards requires consideration of all benefits and costs expected to result from the new standards, not just those benefits and costs which could be expressed here in dollar terms.

TABLE IX.E–2.—ADDITIONAL, NON-MONETIZED BENEFITS OF THE LARGE SI/RECREATIONAL VEHICLE STANDARDS

Pollutant	Unquantified effects
Ozone Health	Premature mortality.[a] Increased airway responsiveness to stimuli. Inflammation in the lung. Chronic respiratory damage. Premature aging of the lungs.

[95] Based upon recent preliminary findings by the Health Effects Institute, the concentration-response functions used to estimate reductions in hospital admissions may over- or underestimate the true concentration-response relationship. See Letter from Dan Greenberg, President, Health Effects Institute, May 30, 2002, attached to letter from Dr. Hopke, dated August 8, 2002. Docket A–2000–01, Document IV–A–145.

[96] Our estimate also incorporates significant reductions in 27,000 fewer cases of lower respiratory symptoms, and 26,600 fewer cases of upper respiratory symptoms in asthmatic children each year. In addition, we estimate that this final rule will reduce 23,400 incidents of asthma attacks each year in asthmatics of all ages from reduced exposure to particles. Additional incidents would be avoided from reduced ozone exposures. Asthma is the most prevalent chronic disease among children and currently affects over seven percent of children under 18 years of age.

TABLE IX.E–2.—ADDITIONAL, NON-MONETIZED BENEFITS OF THE LARGE SI/RECREATIONAL VEHICLE STANDARDS—Continued

Pollutant	Unquantified effects
Ozone Welfare	Acute inflammation and respiratory cell damage. Increased susceptibility to respiratory infection. Non-asthma respiratory emergency room visits. Increased school absence rates Decreased yields for commercial forests (for example, Western US). Decreased yields for fruits and vegetables. Decreased yields for non-commercial crops. Damage to urban ornamental plants. Impacts on recreational demand from damaged forest aesthetics. Damage to ecosystem functions
PM Health	Infant mortality. Low birth weight. Changes in pulmonary function. Chronic respiratory diseases - other than chronic bronchitis. Cardiac endpoints. Morphological changes. Altered host defense mechanisms. Cancer. Non-asthma respiratory emergency room visits
PM Welfare	Visibility in Class I areas. Residential and recreational visibility in non-Class I areas. Soiling and materials damage. Damage to ecosystem functions
Nitrogen and Sulfate Deposition Welfare.	Impacts of acidic sulfate and nitrate deposition on commercial forests Impacts of acidic deposition to commercial freshwater fishing. Impacts of acidic deposition to recreation in terrestrial ecosystems. Reduced existence values for currently healthy ecosystems. Impacts of nitrogen deposition on commercial fishing, agriculture, and forests. Impacts of nitrogen deposition on recreation in estuarine ecosystems. Damage to ecosystem functions
CO Health	Premature mortalitya. Behavioral effects. Hospital admissions—respiratory, cardiovascular, and other. Other cardiovascular effects Developmental effects.
HC Health [b]	Decreased time to onset of angina. Non-asthma respiratory ER visits Cancer (benzene, 1,3-butadiene, formaldehyde, acetaldehyde). Anemia (benzene). Disruption of production of blood components (benzene). Reduction in the number of blood platelets (benzene). Excessive bone marrow formation (benzene). Depression of lymphocyte counts (benzene) Reproductive and developmental effects (1,3-butadiene). Irritation of eyes and mucus membranes (formaldehyde). Respiratory irritation (formaldehyde). Asthma attacks in asthmatics (formaldehyde). Asthma-like symptoms in non-asthmatics (formaldehyde). Irritation of the eyes, skin, and respiratory tract (acetaldehyde). Upper respiratory tract irritation and congestion (acrolein)
HC Welfare	Direct toxic effects to animals. Bioaccumulation in the food chain. Damage to ecosystem function

[a] Premature mortality associated with ozone and carbon monoxide is not separately included in this analysis. In this analysis, we assume that the ACS/Krewski, *et al.* C–R function for premature mortality captures both PM mortality benefits and any mortality benefits associated with other air pollutants. A copy of Krewski, *et al.*, can be found in Docket A–99–06, Document No. IV–G–75.

[b] Many of the key hydrocarbons related to this rule are also hazardous air pollutants listed in the Clean Air Act.

In summary, EPA's primary estimate of the benefits of the final rule is approximately $7.8 billion in 2030. This estimate accounts for growth in real gross domestic product (GDP) per capita between the present and 2030.

The estimated social cost (measured as changes in consumer and producer surplus) in 2030 to implement the final rule from Table IX.D–1 above is $217 million (2001$). The net social gain, considering fuel efficiency, is $554 million. The monetized benefits are approximately $7.8 billion, and EPA believes there is considerable value to the public of the benefits it could not monetize. The net benefit that can be monetized is $8.4 billion. Therefore, implementation of the final rule is expected to provide society with a net gain in social welfare based on economic efficiency criteria. Table IX.E–3 summarizes the costs, benefits, and net benefits.

The net present value of the future benefits have been calculated using a 3% discount rate over the 2002 to 2030 time frame. The net present value of the social gains is $4,899 million and the net present value of the total annual benefits is $77,177 million + B. Consequently, the net present value of the monetized net benefits of this program is $82,076 million. If a discount rate of 7% is used, the values above change to $2,393 million for social gains and $40,070 million + B for total benefits, giving a total of $42,463 million.

TABLE IX.E–3.—2030 ANNUAL MONETIZED COSTS, BENEFITS, AND NET BENEFITS FOR THE FINAL RULE

	Millions of 2001 $ [a]
Social Gains [f]	$550

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TABLE IX.E–3.—2030 ANNUAL MONETIZED COSTS, BENEFITS, AND NET BENEFITS FOR THE FINAL RULE—Continued

	Millions of 2001 $[a]
Monetized PM-related benefits[b,c]	$7,880 + B_{PM}
Monetized Ozone-related benefits[b,d]	Not monetized (B_{Ozone})
HC-related benefits	Not monetized (B_{HC})
CO-related benefits	Not monetized (B_{CO})
Total annual benefits	$7,880 +$B_{PM}$ + B_{Ozone} + B_{HC} + B_{CO}
Monetized net benefits[e]	$8,430 + B

[a] For this section, all costs and benefits are rounded to the nearest 10 million. Thus, figures presented in this chapter may not exactly equal benefit and cost numbers presented in earlier sections of the chapter.

[b] Not all possible benefits or disbenefits are quantified and monetized in this analysis. Potential benefit categories that have not been quantified and monetized are listed in Table IX–E.2. Unmonetized PM- and ozone-related benefits are indicated by B_{PM}, and B_{Ozone}, respectively.

[c] Based upon recent preliminary findings by the Health Effects Institute, the concentration-response functions used to estimate reductions in hospital admissions may over- or under-estimate the true concentration-response relationship.

[d] There are substantial uncertainties associated with the benefit estimates presented here, as compared to other EPA analyses that are supported by specific modeling. This analysis used a benefits transfer technique described in the RSD.

[e] B is equal to the sum of all unmonetized benefits, including those associated with PM, ozone, CO, and HC.

[f] The social gains are equal to the fuel savings minus the combined loss in consumer and producer surplus.

X. Public Participation

A wide variety of interested parties participated in the rulemaking process that culminates with this final rule. This process provided several opportunities for public comment over a period of more than two years. An Advance Notice of Proposed Rulemaking (65 FR 76797, December 7, 2000) announced our intent to address emissions from these engines. Comments received during this period were considered in the development of the proposal and are discussed in that document. These comments included information received from small businesses as a part of the inter-agency Small Business Advocacy Review Panel process which was completed before we published the proposal and is described below under the discussion of the Regulatory Flexibility Act. The formal comment period and public hearing associated with the proposal provided another opportunity for public input. We have also met with a variety of stakeholders at various points in the process, including state and environmental organizations, engine manufacturers, and equipment manufacturers.

We have prepared a detailed Summary and Analysis of Comments document, which describes the comments we received on the proposal and our response to each of these comments. The Summary and Analysis of Comments is available in the docket for this rule and on the Office of Transportation and Air Quality internet home page at *http://www.epa.gov/otaq/*.

XI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of this Executive Order. The Executive Order defines a "significant regulatory action" as any regulatory action that is likely to result in a rule that may:

- Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, Local, or Tribal governments or communities;
- Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or
- Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

A Final Regulatory Support Document has been prepared and is available in the docket for this rulemaking and at the internet address listed under **ADDRESSES** above. This action was submitted to the Office of Management and Budget for review under Executive Order 12866. Annual initial costs of this rulemaking are estimated to be over $100 million per year but this is offset by operating cost savings of over $400 million dollars per year. Even so, this rule is considered economically significant. Written comments from OMB and responses from EPA to OMB comments are in the public docket for this rulemaking.

B. Paperwork Reduction Act

The information collection requirements (ICR) in this rule will be submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

The Agency may not conduct or sponsor an information collection, and a person is not required to respond to a request for information, unless the information collection request displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

The reporting requirements in this final rule do not apply until the Office of Management has approved them. We will publish a document in the **Federal Register** announcing that the information-collection requirements are approved.

C. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. EPA has also determined that this rule will not have a significant economic impact on a substantial number of small entities.

For purposes of assessing the impacts of this final rule on small entities, a small entity is defined as: (1) A small business that meet the definition for business based on SBA size standards; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. This rulemaking will affect only the small businesses.

In accordance with section 609 of the RFA, EPA conducted an outreach to small entities and convened a Small Business Advocacy Review (SBAR) Panel prior to proposing this rule, to obtain advice and recommendations of representatives of the small entities that potentially would be subject to the rule's requirements. Through the Panel process, we gathered advice and recommendations from small-entity representatives who would be affected by the provisions in the rule relating to large SI engines and land-based recreational vehicles, and published the results in a Final Panel Report, dated July 17, 2001. EPA had previously convened a separate Panel for marine engines and vessels. This panel also produced a report, dated August 25, 1999. We also prepared an Initial Regulatory Flexibility Analysis (IRFA) in accordance with section 603 of the Regulatory Flexibility Act. The IRFA is found in chapter 8 of the Draft Regulatory Support Document. Both Panel reports and the IRFA have been placed in the docket for this rulemaking (Public Docket A–2000–01, items II–A–85, II–F–22, and III–B–01).

EPA proposed the majority of the Panel recommendations, and took comments on these and other recommendations. The information we received during this rulemaking process indicated that fewer small entities would be significantly impacted by the rule than we had originally estimated. During the SBAR Panel process, a concern was raised that importers would have limited access to certified models for import. We received no comments regarding this concern and believe that the supply of four-stroke engines for ATVs and off-highway motorcycles will continue to increase. As a result, we believe all these companies should be able to find manufacturers that are able to supply them with compliant engines. These importers incur no development costs, and they are not involved in adding emission-control hardware or other variable costs to provide a finished product to market. We also expect that the vehicles they import would have fuel tanks and hoses that comply with the permeation standards. However, even if this were not the case, the additional two or three dollars that it would cost to make them compliant with the permeation standards is trifling in comparison with the normal selling price for these vehicles. They should therefore expect to buy and sell their products with the normal markup to cover their costs and profit. As noted below, we expect all 21 known small-business importers to face compliance costs of less than one percent of their revenues. Thus, EPA has determined that this final rule will not have a significant economic impact on a substantial number of small entities. We also made some changes as a result of comments received on the proposal that we believe will further reduce the level of impact to small entities directly regulated by the rule. These can be found below in Section 5, "Steps Taken to Minimize the Impact on Small Entities."

Although this final rule will not have a significant impact on a substantial number of small entities, EPA has prepared a Small Business Flexibility Analysis that examines the impact of the rule on small entities, along with regulatory alternatives that could reduce that impact. This analysis would meet the requirements for a Final Regulatory Flexibility Analysis (FRFA), had that analysis been required. The Small Business Flexibility Analysis can be found in Chapter 8 of the Final Regulatory Support Document, which is available for review in the docket and is summarized below. The key elements of our Small Business Flexibility Analysis include:

—The need for, and objectives of, the rule.
—The significant issues raised by public comments, a summary of the Agency's assessment of those issues, and a statement of any changes made to the proposed rule as a result of those comments.
—The types and number of small entities to which the rule will apply.
—The reporting, record keeping and other compliance requirement of the rule.
—The steps taken to minimize the impact of the rule on small entities, consistent with the stated objectives of the applicable statute.

A fuller discussion of each of these elements can be found in the Small Business Flexibility Analysis (Chapter 8 of the Final Regulatory Support Document).

1. The Need for and Objectives of This Rule

EPA began a study of emissions from new and existing nonroad engines, equipment, and vehicles in 1991. In 1994, EPA finalized its finding that nonroad engines as a whole "are significant contributors to ozone or carbon monoxide concentrations" in more than one ozone or carbon monoxide nonattainment area.[97] Clean Air Act section 213 (a)(3) then requires EPA to establish standards for all classes and categories of new nonroad engines that cause or contribute to ozone or CO concentrations in more than one ozone or CO nonattainment area that achieve the greatest degree of emissions reductions achievable taking cost and other factors into account.

Since the finding in 1994, EPA has been engaged in the process of establishing programs to control emissions from nonroad engines used in many different applications. Nonroad categories already regulated include:

- Land-based compression-ignition (CI) engines (such as farm and construction equipment),
- Small land-based spark-ignition (SI) engines (such as lawn and garden equipment and string trimmers),
- Marine engines (outboards, personal watercraft, commercial marine diesel, marine diesel engines under 37 kW),
- Locomotive engines.

EPA issued an Advance Notice of Proposed Rulemaking (ANPRM) on December 7, 2000, and a Notice of Proposed Rulemaking (NPRM) on September 14, 2001, which continued the process of establishing standards for nonroad engines and vehicles, with proposed new emission standards for recreational marine diesel engines, recreational vehicles, and other nonroad spark-ignition engines over 19 kW. This final rule includes emission standards and related requirements for these vehicles and engines that are consistent with the requirements of the Act.

2. Summary of Significant Issues Raised by Public Comments

We received comments from engine and equipment manufacturers and consumers, both during the SBAR Panel process and during the comment period after we issued the proposal. Small-volume engine and equipment manufacturers commented on the financial hardships they would face in complying with the proposed regulations. Most requested that we consider hardship provisions, primarily an exemption from or a delay in the implementation of the proposed standards, or certain flexibilities in the certification process. Due to the wide variety of engines, vehicles, and equipment covered by this rulemaking, we decided that a variety of provisions were needed to address the concerns of the small entities involved. Changes to the proposal as a result of comments from small-entity representatives or others are noted below in Section 5 for each of the sectors affected by this rule.

The NPRM proposed only exhaust emission controls for recreational vehicles. However, several commenters raised the issue of control of evaporative

[97] 59 FR 31306 (July 17, 1994).

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emissions related to permeation from fuel tanks and fuel hoses. They maintained that our obligations under section 213 of the Clean Air Act included control of permeation emissions, and pointed to work done by the California ARB on emissions from plastic fuel tanks and rubber fuel line hoses, as well as from portable plastic fuel containers. Our own investigation into hydrocarbon emissions related to permeation of fuel tanks and fuel hoses from recreational land-based and marine applications also supported the concerns raised by the commenters. Therefore, on May 1, 2002, we published a notice in the **Federal Register** reopening the comment period and requesting comment on possible approaches to regulating permeation emissions from recreational vehicles. The notice also included the expected costs and emission reductions resulting from these approaches. Commenters were given thirty days from May 1, 2002 to provide comments on the notice. We received comments from several affected businesses, including at least one small entity. These comments have been addressed in this final rulemaking, including several changes made to the provisions as a result of the comments.

c. Numbers and Types of Small Entities Affected

The following table provides an overview of the primary SBA small business categories potentially affected by this regulation.

TABLE XI.C–1: PRIMARY SBA SMALL BUSINESS CATEGORIES POTENTIALLY AFFECTED BY THIS REGULATION

Industry	NAICS[a] Codes	Defined by SBA as a small business if:[b]
Motorcycles and motorcycle parts manufacturers	336991	<500 employees.
Snowmobile and ATV manufacturers	336999	<500 employees.
Independent Commercial Importers of Vehicles and parts	421110	<100 employees.
Nonroad SI engines	333618	<1,000 employees.
Internal Combustion Engines	333618	<1,000 employees.
Boat Building and Repairing	336612	< 500 employees.
Fuel Tank Manufacturers	336211	<1,000 employees.

a North American Industry Classification System
b According to SBA's regulations (13 CFR part 121), businesses with no more than the listed number of employees or dollars in annual receipts are considered "small entities" for purposes of a regulatory flexibility analysis.

The small entities directly regulated by this rule are the following:

a. Recreational Vehicles (ATVs, snowmobiles, and off-highway motorcycles). The ATV sector has the broadest assortment of manufacturers. There are seven large companies representing over 95 percent of total domestic ATV sales. The remaining 5 percent come from small manufacturers or importers, who tend to import inexpensive, youth-oriented ATVs from China and other Asian nations. We have identified 21 small companies that offer off-highway motorcycles, ATVs, or both products. Annual unit sales for these companies can range from a few hundred to several thousand units per year.

There are three small businesses manufacturing off-highway motorcycles in the U.S. Two of these make only competition models, so do not need to certify their products under this regulation. The remaining off-highway motorcycle manufacturer already offers engines that should be meeting the new emission standards, especially under our provisions allowing design-based certification. There is one small business manufacturing two separate youth ATV models. This company already uses four-stroke engines. Also, the standards are based on emissions per watt hour, which are less costly to meet for models with small-displacement engines. As a result, we expect both of these manufacturers to face compliance costs less than one percent of their revenues.

We expect all 21 small-business importers to face compliance costs less than one percent of their revenues. These companies incur no development costs and they are not involved in adding emission-control hardware or other variable costs to provide a finished product to market. As a result, they should expect to buy and sell their products with the normal mark-up to cover their costs and profit. During the SBAR Panel process, the concern was raised that importers might have limited access to certified models for import. We received no comments confirming this concern and believe that the supply of four-stroke engines for ATVs and off-highway motorcycles will continue to increase; as a result all these companies should be able to find manufacturers that are able to supply compliant engines into the U.S. market.

We further believe that compliance with the permeation standards will not place a significant burden on either the small manufacturers or on the importers. We have estimated the incremental cost of compliance for ATVs and off-highway motorcycles at roughly three dollars per vehicle. This estimate includes shipping, and is based on buying the necessary low-permeability hoses and surface treatment for the fuel tanks from outside suppliers. Thus, no capital outlays are required, and the increase in vehicle cost is insignificant, so that it can easily be passed along to the ultimate consumer. However, to ensure that these requirements do not adversely affect small manufacturers, we are implementing, where they are applicable to permeation, the same flexibility options we proposed for the exhaust emission standards.

Based on available industry information, four major manufacturers account for over 99 percent of all domestic snowmobile sales. The remaining one percent comes from very small manufacturers who tend to specialize in unique and high-performance designs. One potential manufacturer is not a small business, but hopes to produce snowmobiles within the next year. Most of these manufacturers build less than 50 units per year. We have identified three small manufacturers of snowmobiles who are still in business (of five originally identified). Two of these companies specialize in high-performance versions of standard recreational snowmobile types (*i.e.*, travel and mountain sleds). The other manufacturer produces a unique design, which is a small scooter-like snowmobile designed to be ridden standing up. This manufacturer provided no response to repeated outreach efforts to determine potential economic effects of the final rule, but could be expected to use production engines certified to the Small SI standards.

There are thus three small businesses currently producing snowmobiles for the U.S. market. One of these currently makes a mix of two-stroke and four-stroke models and will likely rely on the provision allowing separate standards for certain manufacturers to produce low-emitting engines with a streamlined development effort. Estimated compliance costs for this company are less than one percent of revenues. Costs for the company producing the standup snowmobile should also be less than one percent. The third manufacturer sells a single snowmobile model in addition to a sizable business of supplying aftermarket parts for snowmobiles from other manufacturers. We don't have revenue information for the whole company, but with such low sales volumes, we estimate that this company's compliance costs could reach 4–10 percent of annual snowmobile revenues.

Control of permeation emissions was not part of the SBAR Panel process. We received comments from one small snowmobile manufacturer who stated that it would experience additional hardship due to the permeation standards, because they do not have the sales volume to install the barrier treatment for fuel tanks in-house. They also commented that if shipping and processing of fuel tanks took 3–4 months, it would be difficult for a small business to tie up funds for so long. However, we believe that the permeation control requirements should be relatively easy for small businesses to meet, given the relatively low costs involved ($5 to $7 per sled, based on outside vendor costs). This is insignificant in comparison to the cost of the high-end sleds that this company produces and should not materially affect the company's cash flow. We also believe it is not necessary, or cost-effective, for a small entity to make the capital investments for in-house treatment facilities. Low permeation fuel hoses are available from vendors today, and we would expect that surface treatment would be applied through an outside company, rather than installing a treatment facility in house. In any event, to make sure that these requirements do not adversely affect small manufacturers, we are implementing, where they are applicable to permeation, the same flexibility options we proposed for the exhaust emission standards.

b. Marine Vessels. Marine vessels include the boat, engine, and fuel system. Exhaust emission controls including NTE requirements, as addressed in the August 29, 1999 and July 17, 2001 SBAR Panel Reports, may affect the engine manufacturers and may affect boat builders.

We have determined that at least 16 companies manufacture marine diesel engines for recreational vessels. Nearly 75 percent of diesel engines sales for recreational vessels in 2000 can be attributed to three large companies. Six of the 16 identified companies are considered small businesses as defined by SBA. Based on sales estimates for 2000, these six companies represent approximately 4 percent of recreational marine diesel engine sales. The remaining companies each comprise between two and seven percent of sales for 2000.

We are thus aware of six small businesses producing marine diesel engines that may be considered recreational. Three of these companies produce both commercial and recreational models without significant differences, so we expect them to meet the standards in this final rule with little more than the administrative expenses associated with including recreational models in their commercial engine families. High-performance recreational marine diesel engines already include technologies that help control NO_X emissions, so our cost estimates include relatively modest development costs to add new technologies. Moreover, the small-business provisions allowing substantial additional lead time provide an opportunity for these companies to spread development and certification costs over several years. As a result, we expect one small business to have compliance costs approaching one percent and one to have compliance costs between 1 and 3 percent. One very small business could have compliance costs of about four percent of annual revenues.

c. Large Spark-ignition Engines. We are aware of two manufacturers of Large SI engines qualifying as small businesses. One of these companies plans to produce engines that meet the standards adopted by California ARB in 2004, with the possible exception of one engine family. The other company is attempting to restart the production of engines from another failed company. This company did not exist during the SBAR Panel process associated with this rule.

The established company will face relatively small compliance costs as a result of this rule, since California-compliant engines will need only a small amount of additional development effort to meet long-term standards. These costs should be less than one percent of revenues.

The start-up company faces significant development costs, though much of this effort is required to improve the engine enough to sustain a market presence as other manufacturers continue to make improvements to competitive engines. Under the hardship provisions, we expect the start-up company to spread compliance costs over several years to reduce the impact of emission standards. We nevertheless estimate that the compliance costs associated with meeting EPA emission standards are about 5 percent of revenues. Since this manufacturer is operating in a niche market, with customers providing public comments citing the need for these engines, we expect that most of the increased cost of production will be recovered by increased revenues.

d. Result for all Small Entities. For this regulation as a whole, we expect 32 small businesses to have total compliance costs less than 1 percent of their annual revenues. We estimate that one company will have compliance costs between 1 and 3 percent of revenues. Three companies will likely have compliance costs exceeding 3 percent of revenues, but at least one will likely be able to benefit from the relief provisions outlined below. These estimates include the costs for compliance with the permeation standards.

4. Reporting, Record Keeping, and Compliance Requirements

For any emission-control program, we need assurance that the regulated engines will meet the standards. Historically, EPA programs have assigned manufacturers the responsibility to provide these assurances. This final rule includes testing, reporting, and record keeping requirements. Testing requirements for some manufacturers include certification (including deterioration testing) and production-line testing. Reporting and record keeping requirements include test data and technical data on the engines, including defect reporting.

5. Steps Taken To Minimize the Impact on Small Entities

The two SBAR Panels considered a variety of provisions to reduce the burden of complying with new emission standards and related requirements. Some of these provisions (such as emission-credit programs) would apply to all companies, while others would be targeted at the unique circumstances faced by small businesses. A complete discussion of the regulatory alternatives recommended by the Panels can be found in the Final Panel Reports. Summaries of the Panels' recommended alternatives for each of the sectors

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subject to this action can also be found in their respective sections of the preamble.

The following Panel recommendations are being finalized by the Agency, except for a few items as noted below:

(A) Related Federal Rules

The Panel recommended that EPA continue to consult with the CPSC in developing the rule to better understand the scope of the Commission's regulations as they may relate to the competition exemption.

(B) Regulatory Flexibility Alternatives

The Panel recommended that EPA consider and seek comments on a wide range of alternatives, including the flexibility options described below. As noted above, we issued a subsequent **Federal Register** notice dated May 1, 2002 (67 FR 21613), seeking comment on applying permeation control standards for fuel tanks and fuel hoses used on recreational vehicles. The flexibilities listed below for recreational vehicles would generally also apply to those controls, which would effectively extend the panel recommendations to the permeation controls as well.

(1) Large SI Engines

The Panel recommended that EPA propose several possible provisions to address concerns that the new EPA standards could potentially place small businesses at a competitive disadvantage to larger entities in the industry. These provisions are described below.

(a) Using Certification and Emission Standards From Other EPA Programs. The Panel made several recommendations for this provision. First, the Panel recommended that EPA temporarily expand this arrangement to allow small numbers of constant-speed engines up to 2.5 liters (up to 30kW) to be certified to the Small SI standards. Second, the Panel further recommended that EPA seek comment on the appropriateness of limiting the sales level of 300. Third, the Panel recommended that EPA request comment on the anticipated cap of 30 kW on the special treatment provisions outlined above, or whether a higher cap on power rating is appropriate. Finally, the Panel recommended that EPA propose to allow small-volume manufacturers producing engines up to 30kW to certify to the Small SI standards during the first 3 model years of the program. Thereafter, the standards and test procedures which could apply to other companies at the start of the program would apply to small businesses. We are not adopting this provision and are instead relying on the hardship provisions in the final rule, which will allow us to accomplish the objective of the proposed provision with more flexibility.

(b) Delay of Emission Standards. The Panel recommended that EPA propose to delay the applicability of the long-term standards to small-volume manufacturers for three years beyond the date at which they would generally apply to accommodate the possibility that small companies need to undertake further design work to adequately optimize their designs and to allow them to recover the costs associated with the near-term emission standards. We are also folding this provision into the scope of the hardship provision, but have decided to increase the delay to up to four years, depending on the nature of the hardship involved.

(c) Production-Line Testing. The Panel made several recommendations for this provision. First, the Panel recommended that EPA adopt provisions allowing more flexibility than is available under the California Large SI program or other EPA programs in general to address the concern that production-line testing is another area where small-volume manufacturers typically face a difficult testing burden. Second, the Panel recommended that EPA allow small-volume manufacturers to have a reduced testing rate if they have consistently good test results from testing production-line engines. Finally, the Panel recommended that EPA allow small-volume manufacturers to use alternative low-cost testing options to show that production-line engines meet emission standards.

(d) Deterioration Factors. The Panel recommended that EPA allow small-volume manufacturers to develop deterioration factors based on available emission measurements and good engineering judgment.

(e) Hardship Provision. The Panel recommended that EPA propose two types of hardship provisions for Large SI engines. First the Panel recommended that EPA allow small businesses to petition EPA for up to three years of additional lead time to comply with the standards. Second, the Panel recommended that EPA allow small businesses to apply for hardship relief if circumstances outside their control cause the failure to comply (such as a supply contract broken by a parts supplier) and if the failure to sell the subject engines would have a major impact on the company's solvency.

(2) Off-Highway Motorcycles and ATVs

The NPRM for this rule discussed several flexibility options for small businesses manufacturing recreational vehicles, based on the SBAR Panel process. When we reopened the comment period on May 1, 2002 to request comment on possible approaches to regulating permeation emissions from recreational vehicles, we did not specifically discuss small business issues. However, it is our intent that these provisions carry over to permeation controls as well.

The Panel made the following recommendations for this subcategory:

(a) General Recommendations. (1) The Panel recommended that EPA propose to apply the flexibilities described below to engines produced or imported by small entities with combined off-highway motorcycle and ATV annual sales of less than 5,000 units per model year.

(2) The Panel recommended that EPA request comment on the appropriateness of the 5,000 unit per model year threshold.

(3) The Panel recommended that EPA request comment on allowing small entities with sales in excess of 5,000 units to certify using the flexible approaches described below for a number of engines equal to their 2000 or 2001 sales level.

(4) The Panel recommended that EPA describe and seek comment on the effect of the standards on these entities, including a request for any data and/or related studies to estimate the extent to which sales of their products are likely to be reduced as a result of changes in product price that are attributable to the emission standards.

(5) The Panel recommended that, in the final rule, EPA assess any information received in response to this request for purposes of informing the final rule decision making process on whether additional flexibility (beyond that considered in this report) is warranted.

(b) Additional Lead-Time To Meet Emission Standards. First, the Panel recommended that EPA propose at least a two-year delay, but seek comment on whether a larger time period is appropriate given the costs of compliance for small businesses and the relationship between importers and their suppliers. Second, the Panel recommended that EPA provide additional time for small-volume manufacturers to revise their manufacturing process, and would allow importers to change their supply chain to acquire complying products. Third, the Panel recommended that EPA request comment on the appropriate length for a delay (lead-time).

(c) Design Certification. The Panel recommended that EPA propose to permit small entities to use design-based certification. The Panel also recommended that EPA work with the small-entity representatives and other members of the industry to develop appropriate criteria for such design-based certification.

(d) Broaden Engine Families. The Panel recommended that EPA request comment on engine family flexibility and conducting design-based certification emissions testing.

(e) Production-Line Testing Waiver. The Panel recommended that EPA propose to provide small manufacturers and small importers a waiver from manufacturer production-line testing. The Panel also recommended that EPA request comment on whether limits or the scope of this waiver are appropriate.

(f) Use of Assigned Deterioration Factors During Certification. The Panel recommended that EPA propose to provide small business with the option to use assigned deterioration factors.

(g) Using Certification and Emission Standards from Other EPA Programs. The Panel recommended that EPA propose to provide small business with this flexibility through the fifth year of the program and request comment on which of the already established standards and programs are believed to be a useful certification option for the small businesses.

(h) Averaging, Banking, and Trading. The Panel recommended that EPA propose to provide small business with the same averaging, banking, and trading program flexibilities that would apply for large manufacturers and request comment on how the provisions could be enhanced for small business to make them more useful.

(i) Hardship Provisions. The Panel recommended that EPA propose two types of hardship program for off-highway motorcycles and ATVs: First, EPA should allow small manufacturers and small importers to petition EPA for limited additional lead-time to comply with the standards. Second, EPA should allow small manufacturers and small importers to apply for hardship relief if circumstances outside their control cause the failure to comply (such as a supply contract broken by a parts supplier) and if failure to sell the subject engines or vehicles would have a major impact on the company's solvency.

The Panel also recommended that EPA propose both aspects of the hardship provisions for small off-highway motorcycle and ATV manufacturers and importers and seek comment on the implementation provisions.

(3) Marine Vessels

(a) Delay Standards for Five Years. The Panel recommended that EPA delay the standards for five years for small businesses.

(b) Design-Based Certification. The Panel recommended that EPA allow manufacturers to certify by design and to be able use this to generate credits under this approach. The Panel also recommended that EPA provide adequately detailed design specifications and associated emission levels for several technology options that could be used to certify. Although we proposed this approach, we were unable to specify any technology options for diesel engines that could be used for design-based certification. We requested comment on such designs and received no comment. Therefore, we are not finalizing a design-based certification option. However, we are finalizing the engine dresser provisions and expanding these provisions to include water-cooled turbocharging. This will allow some engines to be exempt from the standards based on design.

(c) Broadly Defined Product Certification Families. The Panel recommended that EPA take comment on the need for broadly defined emission families and how these families should be defined.

(d) Hardship Provisions. The Panel recommended that EPA propose two types of hardship programs for marine engine manufacturers, boat builders and fuel tank manufacturers: First, that we should allow small businesses to petition us for additional lead time to comply with the standards. Second, EPA should allow small businesses to apply for hardship relief if circumstances outside their control cause the failure to comply (such as a supply contract broken by a parts supplier) and if the failure to sell the subject fuel tanks or boats would have a major impact on the company's solvency. The Panel also recommended that EPA work with small manufacturers to develop these criteria and how they would be used.

(e) Burden Reduction Approaches Designed for Small Marinizers of Marine Engines With Respect to NTE Provisions. The Panel recommended that EPA specifically include NTE in a design-based approach.

(4) Snowmobiles

As noted above, permeation standards were not part of the original NPRM for this rule, which incorporated recommendations from the SBAR Panel process. When we reopened the comment period on May 1, 2002 to request comment on possible approaches to regulating permeation emissions from recreational vehicles, which would apply to snowmobiles as well as to off-highway motorcycles and ATVs, we did not specifically discuss small business issues. However, it is our intent that the proposed flexibilities for exhaust emissions carry over to permeation controls for all three vehicle categories, to the extent that they are applicable.

(a) Delay of Emission Standards. The Panel recommended that EPA propose to delay the standards for small snowmobile manufacturers by two years from the date at which other manufacturers would be required to comply. The Panel also recommended that EPA propose that the emission standards for small snowmobile manufacturers be phased in over an additional two year (four years to fully implement the standard). Thus, the 2006 Phase 1 standards would be phased in at 50/100 percent in 2008/2009, the Phase 2 standards would be phased in at 50/100 percent in 2012/2013, and the Phase 3 standards would be phased in at 50/100 percent in 2014/2015.

(b) Design-Based Certification. The Panel recommended that EPA take comment on how design-based certification could be applied to small snowmobile manufacturers, and that EPA work with the small entities in the design and implementation of this concept.

(c) Broader Engine Families. The Panel recommended that EPA propose a provision for small snowmobile manufactures that would use relaxed criteria for what constitutes an engine or vehicle family.

(d) Elimination of Production-Line Testing Requirements. The Panel recommended that EPA propose that small snowmobile manufacturers not be subject to production-line testing requirements.

(e) Use of Assigned DF During Certification. The Panel recommended that EPA propose to allow small snowmobile manufacturers to elect to use deterioration factors determined by EPA to demonstrate end of useful life emission levels, thus reducing development/testing burdens, rather than performing a durability demonstration for each engine family as part of the certification testing requirement.

(f) Using Certification and Emission Standards From Other EPA Programs. The Panel recommended that EPA

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propose to provide small business with the flexibility to use an engine certified to another EPA program without recertifying it in its new application provided that the manufacturer does not alter the engine in such a way as to cause it to exceed the emission standards it was originally certified to meet.

(g) Averaging, Banking and Trading. The Panel recommended that EPA propose an averaging, banking and trading program for snowmobiles, and seek comment on additional flexibilities related to emission credits that should be considered for small snowmobile manufacturers.

(h) Hardship Provisions. The Panel recommended that EPA propose two types of hardship programs for small snowmobile manufacturers. First, EPA should allow small snowmobile manufacturers to petition EPA for additional lead time to comply with the standards. Second, EPA should allow small snowmobile manufacturers to apply for hardship relief if circumstances outside their control cause the failure to comply (such as a supply contract broken by a parts supplier) and if failure to sell the subject engines or vehicles would have a major impact on the company's solvency.

(i) Unique Snowmobile Engines. The Panel recommended that EPA seek comment on an additional provision, which would allow a small snowmobile manufacturer to petition EPA for relaxed standards for one or more engine families. The Panel also recommended that EPA allow a provision for EPA to set an alternative standard at a level between the prescribed standard and the baseline level until the engine family is retired or modified in such a way as to increase emission and for the provision to be extended for up to 300 engines per year per manufacturer would assure it is sufficiently available for those manufacturers for whom the need is greatest. However, we received comment that the limit of 300 is too restrictive to be of much assistance to small businesses. Based on this comment we are adopting a limit for this provision of 600 snowmobiles per year. Finally, the Panel recommended that EPA seek comment on initial and deadline dates for the submission of such petitions. We received no comments in this area, but for clarity have decided to require at least nine months lead time by the petitioner.

(5) Conclusion

In summary, considering both exhaust emission and permeation regulations, we have found that only three small entities are likely to be impacted by more than 3 percent of their sales, and the degree of impact is likely to be further reduced by the flexibilities that are being finalized in this rulemaking. Therefore, this final rule will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "federal mandates" that may result in expenditures to state, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation of why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

This rule contains no federal mandates for state, local, or tribal governments as defined by the provisions of Title II of the UMRA. The rule imposes no enforceable duties on any of these governmental entities. Nothing in the rule would significantly or uniquely affect small governments.

EPA has determined that this rule contains federal mandates that may result in expenditures of more than $100 million to the private sector in any single year. EPA believes that this rule represents the least costly, most cost-effective approach to achieve the air quality goals of the rule. The costs and benefits associated with the rule are discussed in Section IX and in the Small Business Support Document, as required by the UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" are defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Under Section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the regulation.

Section 4 of the Executive Order contains additional requirements for rules that preempt State or local law, even if those rules do not have federalism implications (*i.e.*, the rules will not have substantial direct effects on the States, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government). Those requirements include providing all affected State and local officials notice and an opportunity for appropriate participation in the development of the regulation. If the preemption is not based on express or implied statutory authority, EPA also must consult, to the extent practicable, with appropriate State and local officials regarding the conflict between State law and Federally protected interests within the agency's area of regulatory responsibility.

This rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132.

Although Section 6 of Executive Order 13132 does not apply to this rule, EPA did consult with representatives of various State and local governments in developing this rule. EPA has also consulted representatives from STAPPA/ALAPCO, which represents state and local air pollution officials.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

This rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. The emission standards and other related requirements for private businesses in this rule have national applicability and therefore do not uniquely affect the communities of Indian Tribal Governments. Further, no circumstances specific to such communities exist that would cause an impact on these communities beyond those discussed in the other sections of this rule. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, Section 5–501 of the Order directs the Agency to evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to the Executive Order because it does not involve decisions on environmental health or safety risks that may disproportionately affect children.

The effects of ozone and PM on children's health were addressed in detail in EPA's rulemaking to establish the NAAQS for these pollutants, and EPA is not revisiting those issues here. EPA believes, however, that the emission reductions from the strategies in this rulemaking will further reduce air toxics and the related adverse impacts on children's health.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not a "significant energy action" as defined in Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution or use of energy. The aim to reduce emissions from certain nonroad engines and have no effect on fuel formulation, distribution, or use. Generally, the final rule leads to reduced fuel usage due to the improvements in engine-based emission-control technologies.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (such as materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This rule involves technical standards. The following paragraphs describe how we specify testing procedures for engines subject to this rule.

The International Organization for Standardization (ISO) has a voluntary consensus standard that can be used to test Large SI engines. However, the current version of that standard (ISO 8178) is applicable only for steady-state testing, not for transient testing. As described in the Final Regulatory Support Document, transient testing is an important part of the emission-control program for these engines. We are therefore not adopting the ISO procedures in this rulemaking.

Underwriters Laboratories (UL) has adopted voluntary consensus standards for forklifts that are relevant to the new requirements for Large SI engines. UL sets a maximum temperature specification for gasoline and, for forklifts used in certain applications, defines requirements to avoid venting from gasoline fuel tanks. We are adopting a different temperature limit, because the maximum temperature specified by UL does not prevent fuel boiling. We are adopting separate measures to address venting of gasoline vapors, because of UL's provisions to allow venting with an orifice up to 1.78 mm (0.070 inches). We believe forklifts with such a vent would have unnecessarily high evaporative emissions. If the UL standard is revised to address these technical concerns, it would be appropriate to reference the UL standard in our regulations. An additional concern relates to the fact that the UL requirements apply only to forklifts (and not all forklifts in the case of the restriction on vapor venting). EPA regulations would therefore need to, at a minimum, extend any published UL standards to other engines and equipment to which the UL standards would otherwise not apply.

The Gas Processors Association has adopted standards with fuel specifications for liquefied petroleum gas. However, there is no existing regulations requiring suppliers to meet these specifications. Comments received on the rule indicate a high level of concern that in-use fuel quality does not meet the published voluntary standards, so we are not relying on these fuel specifications to define fuels for certification testing.

We are adopting requirements to test off-highway motorcycles and all-terrain vehicles with the Federal Test Procedure, a chassis-based transient test. There is no voluntary consensus

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standard that would adequately address engine or vehicle operation for suitable emission measurement. Furthermore, we are interested in pursuing an engine-based test procedure for all-terrain vehicles. We intend to develop a new duty cycle for this, because there is no acceptable engine duty cycle today that would adequately represent the way these engines operate. For snowmobiles, we are adopting test procedures based on work that has been published, but not yet adopted as a voluntary consensus standard.

For recreational marine diesel engines, we are adopting the same test procedures that we have established for commercial marine diesel engines (with a new duty cycle appropriate for recreational applications). We are again adopting these procedures in place of the ISO 8178 standard that would apply to these engines. We believe that ISO 8178 relies too heavily on reference testing conditions. Because our test procedures need to represent in-use operation typical of operation in the field, they must be based on a range of ambient conditions. We determined that the ISO procedures are not broadly usable in their current form, and therefore should not be adopted by reference. We remain hopeful that future ISO test procedures will be developed that are usable and accurate for the broad range of testing needed, and that such procedures could then be adopted. We expect that any such development of revised test procedures will be done in accordance with ISO procedures and in a balanced and transparent manner that includes the involvement of all interested parties, including industry, U.S. EPA, foreign government organizations, state governments, and environmental groups. In so doing, we believe that the resulting procedures would be "global" test procedures that can facilitate the free flow of international commerce for these products.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. This rule is a "major rule" as defined by 5 U.S.C. 804(2).

K. Plain Language

This document follows the guidelines of the June 1, 1998 Executive Memorandum on Plain Language in Government Writing. To read the text of the regulations, it is also important to understand the organization of the Code of Federal Regulations (CFR). The CFR uses the following organizational names and conventions.

Title 40—Protection of the Environment
- Chapter I—Environmental Protection Agency
  - Subchapter C—Air Programs. This contains parts 50 to 99, where the Office of Air and Radiation has usually placed emission standards for motor vehicle and nonroad engines.
  - Subchapter U—Air Programs Supplement. This contains parts 1000 to 1299, where we intend to place regulations for air programs in future rulemakings.
    - Part 1048—Control of Emissions from New, Large, Nonrecreational, Nonroad Spark-ignition Engines. Most of the provisions in this part apply only to engine manufacturers.
    - Part 1051—Control of Emissions from Recreational Engines and Vehicles. Most of the provisions in this part apply only to vehicle manufacturers.
    - Part 1065—General Test Procedures for Engine Testing. Provisions of this part apply to anyone who tests engines to show that they meet emission standards.
    - Part 1068—General Compliance Provisions for Engine Programs. Provisions of this part apply to everyone.

Each part in the CFR has several subparts, sections, and paragraphs. The following illustration shows how these fit together.

Part 1048
Subpart A
Section 1048.1
(a)
(b)
(1)
(2)
(i)
(ii)

A cross reference to § 1048.1(b) in this illustration would refer to the parent paragraph (b) and all its subordinate paragraphs. A reference to § 1048.1(b) introductory text" would refer only to the single, parent paragraph (b).

List of Subjects

40 CFR Part 89

Environmental protection, Administrative practice and procedure, Confidential business information, Imports, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements, Research, Vessels, Warranties.

40 CFR Part 90

Environmental protection, Administrative practice and procedure, Air pollution control, Confidential business information, Imports, Labeling, Reporting and recordkeeping requirements, Research, Warranties.

40 CFR Part 91

Environmental protection, Administrative practice and procedure, Air pollution control, Confidential business information, Imports, Labeling, Penalties, Reporting and recordkeeping requirements, Warranties.

40 CFR Part 94

Environmental protection, Administrative practice and procedure, Air pollution control, Confidential business information, Imports, Penalties, Reporting and recordkeeping requirements, Vessels, Warranties.

40 CFR Part 1048

Environmental protection, Administrative practice and procedure, Air pollution control, Confidential business information, Imports, Incorporation by reference, Labeling, Penalties, Reporting and recordkeeping requirements, Research, Warranties.

40 CFR Part 1051

Environmental protection, Administrative practice and procedure, Air pollution control, Confidential business information, Imports, Incorporation by reference, Labeling, Penalties, Reporting and recordkeeping requirements, Warranties.

40 CFR Part 1065

Environmental protection, Administrative practice and procedure, Incorporation by reference, Reporting and recordkeeping requirements, Research.

40 CFR Part 1068

Environmental protection, Administrative practice and procedure, Confidential business information, Imports, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements, Warranties.

Dated: September 13, 2002.
Christine Todd Whitman,
Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as set forth below.

PART 89—CONTROL OF EMISSIONS FROM NEW AND IN-USE NONROAD COMPRESSION-IGNITION ENGINES

1. The authority for part 89 continues to read as follows:

Authority: 42 U.S.C. 7521, 7522, 7523, 7524, 7525, 7541, 7542, 7543, 7545, 7547, 7549, 7550, and 7601(a).

Subpart A—[Amended]

2. Section 89.2 is amended by adding definitions for "Aircraft", "Spark-ignition", and "United States" in alphabetic order and revising the definition of "Compression-ignition" to read as follows:

§ 89.2 Definitions.

* * * * *

Aircraft means any vehicle capable of sustained air travel above treetop heights.

* * * * *

Compression-ignition means relating to a type of reciprocating, internal-combustion engine that is not a spark-ignition engine.

* * * * *

Spark-ignition means relating to a gasoline-fueled engine or other engines with a spark plug (or other sparking device) and with operating characteristics significantly similar to the theoretical Otto combustion cycle. Spark-ignition engines usually use a throttle to regulate intake air flow to control power during normal operation.

* * * * *

United States means the States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, the U.S. Virgin Islands, and the Trust Territory of the Pacific Islands.

* * * * *

Subpart B—[Amended]

3. Section 89.106 is amended by revising paragraph (b) read as follows:

§ 89.106 Prohibited controls.

* * * * *

(b) You may not design your engines with emission-control devices, systems, or elements of design that cause or contribute to an unreasonable risk to public health, welfare, or safety while operating. For example, this would apply if the engine emits a noxious or toxic substance it would otherwise not emit that contributes to such an unreasonable risk.

PART 90—CONTROL OF EMISSIONS FROM NONROAD SPARK-IGNITION ENGINES AT OR BELOW 19 KILOWATTS

4. The heading to part 90 is revised to read as set forth above.

5. The authority for part 90 continues to read as follows:

Authority: 42 U.S.C. 7521, 7522, 7523, 7524, 7525, 7541, 7542, 7543, 7547, 7549, 7550, and 7601(a).

Subpart A—[Amended]

6. Section 90.1 is revised to read as follows:

§ 90.1 Applicability.

(a) This part applies to new nonroad spark-ignition engines and vehicles with gross power output at or below 19 kilowatts (kW) used for any purpose, unless we exclude them under paragraph (d) of this section.

(b) This part also applies to engines with a gross power output above 19 kW if the manufacturer uses the provisions of 40 CFR 1048.615 or 1051.145(a)(3) to exempt them from the requirements of 40 CFR part 1048 or 1051, respectively. Compliance with the provisions of this part is a required condition of those exemptions.

(c) [Reserved]

(d) The following nonroad engines and vehicles are not subject to the provisions of this part:

(1) Engines certified to meet the requirements of 40 CFR part 1051 (*e.g.*, engines used in snowmobiles). This part nevertheless applies to engines used in recreational vehicles if the manufacturer uses the provisions of 40 CFR 1051.145(a)(3) to exempt them from the requirements of 40 CFR part 1051. Compliance with the provisions of this part is a required condition of that exemption.

(2) Engines used in highway motorcycles. See 40 CFR part 86, subpart E.

(3) Propulsion marine engines. See 40 CFR part 91. This part applies with respect to auxiliary marine engines.

(4) Engines used in aircraft. See 40 CFR part 87.

(5) Engines certified to meet the requirements of 40 CFR part 1048.

(6) Hobby engines.

(7) Engines that are used exclusively in emergency and rescue equipment where no certified engines are available to power the equipment safely and practically, but not including generators, alternators, compressors or pumps used to provide remote power to a rescue tool. The equipment manufacturer bears the responsibility to ascertain on an annual basis and maintain documentation available to the Administrator that no appropriate certified engine is available from any source.

(e) Engines subject to the provisions of this subpart are also subject to the provisions found in subparts B through N of this part, except that Subparts C, H, M and N of this part apply only to Phase 2 engines as defined in this subpart.

(f) Certain text in this part is identified as pertaining to Phase 1 or Phase 2 engines. Such text pertains only to engines of the specified Phase. If no indication of Phase is given, the text pertains to all engines, regardless of Phase.

7. Section 90.2 is amended by adding a new paragraph (c) to read as follows:

§ 90.2 Effective dates.

* * * * *

(c) Notwithstanding paragraphs (a) and (b) of this section, engines used in recreational vehicles with engine rated speed greater than or equal to 5,000 rpm and with no installed speed governor are not subject to the provisions of this part through the 2005 model year. Starting with the 2006 model year, all the requirements of this part apply to engines used in these vehicles if they are not included in the scope of 40 CFR part 1051.

8. Section 90.3 is amended by adding definitions for "Aircraft", "Hobby engines", "Marine engine", "Marine vessel", "Recreational", and "United States" in alphabetical order, to read as follows:

§ 90.3 Definitions.

* * * * *

Aircraft means any vehicle capable of sustained air travel above treetop heights.

* * * * *

Hobby engines means engines used in reduced-scale models of vehicles that are not capable of transporting a person (for example, model airplanes).

Marine engine means an engine that someone installs or intends to install on a marine vessel. There are two kinds of marine engines:

(1) *Propulsion marine engine* means a marine engine that moves a vessel through the water or directs the vessel's movement.

(2) *Auxiliary marine engine* means a marine engine not used for propulsion.

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Marine vessel means a vehicle that is capable of operation in water but is not capable of operation out of water. Amphibious vehicles are not marine vessels.

* * * * *

Recreational means, for purposes of this part, relating to a vehicle intended by the vehicle manufacturer to be operated primarily for pleasure.

* * * * *

United States means the States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, the U.S. Virgin Islands, and the Trust Territory of the Pacific Islands.

* * * * *

Subpart B—[Amended]

9. Section 90.103 is amended by redesignating paragraph (a)(2)(v) as paragraph (a)(2)(vi) and adding a new paragraph (a)(2)(v) to read as follows:

§ 90.103 Exhaust emission standards.

(a)* * *

(2)* * *

(v) The engine must be used in a recreational application, with a combined total vehicle dry weight under 20 kilograms;

* * * * *

10. Section 90.110 is amended by revising paragraph (b) to read as follows:

§ 90.110 Requirement of certification—prohibited controls.

* * * * *

(b) You may not design your engines with emission-control devices, systems, or elements of design that cause or contribute to an unreasonable risk to public health, welfare, or safety while operating. For example, this would apply if the engine emits a noxious or toxic substance it would otherwise not emit that contributes to such an unreasonable risk.

PART 91—CONTROL OF EMISSIONS FROM MARINE SPARK-IGNITION ENGINES

11. The authority for part 91 continues to read as follows:

Authority: 42 U.S.C. 7521, 7522, 7523, 7524, 7525, 7541, 7542, 7543, 7547, 7549, 7550, and 7601(a).

Subpart A—[Amended]

12. Section 91.3 is amended by adding the definition for "United States" in alphabetical order to read as follows:

§ 91.3 Definitions.

* * * * *

United States means the States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, the U.S. Virgin Islands, and the Trust Territory of the Pacific Islands.

* * * * *

Subpart B—[Amended]

13. Section 91.110 is amended by revising paragraph (b) to read as follows:

§ 91.110 Requirement of certification—prohibited controls.

* * * * *

(b) You may not design your engines with emission-control devices, systems, or elements of design that cause or contribute to an unreasonable risk to public health, welfare, or safety while operating. For example, this would apply if the engine emits a noxious or toxic substance it would otherwise not emit that contributes to such an unreasonable risk.

Subpart E—[Amended]

14. Section 91.419 is amended in paragraph (b) by revising the equations for M_{HCexh} and M_{exh} to read as follows:

§ 91.419 Raw emission sampling calculations.

* * * * *

(b) * * *

$$M_{HCexh} = 12.01 + 1.008 \times \alpha$$

* * * * *

$$M_{exh} = \frac{M_{HC_{exh}} \times WHC}{10^6} + \frac{28.01 \times WCO}{10^2} + \frac{44.1 \times WCO_2}{10^2} + \frac{46.01 \times WNO_x}{10^6} + \frac{2.016 \times WH_2}{10^2} + 18.01 \times (1 - K) + 28.01 \times \frac{\left[100 - \frac{WHC}{10^4} - WCO - WCO_2 - \frac{WNO_x}{10^4} - WH_2 - 100 \times (1 - K)\right]}{10^2}$$

* * * * *

Subpart G—[Amended]

15. Appendix A to Subpart G of part 91 is amended by revising Table 1 to read as follows:

Appendix A to Subpart G of Part 91—Sampling Plans for Selective Enforcement Auditing of Marine Engines

TABLE 1.—SAMPLING PLAN CODE LETTER

Annual engine family sales	Code letter
20–50	AA[1]

TABLE 1.—SAMPLING PLAN CODE LETTER—Continued

Annual engine family sales	Code letter
20–99	A[1]
100–299	B
300–499	C
500 or greater	D

[1] A manufacturer may optionally use either the sampling plan for code letter "AA" or sampling plan for code letter "A" for Selective Enforcement Audits of engine families with annual sales between 20 and 50 engines. Additional, the manufacturers may switch between these plans during the audit.

* * * * *

Subpart I—[Amended]

16. Section 91.803 is amended by revising paragraph (a) to read as follows:

§ 91.803 Manufacturer in-use testing program.

(a) EPA shall annually identify engine families and those configurations within families which the manufacturers must then subject to in-use testing. For each model year, EPA may identify the following number of engine families for testing, based on the number of the manufacturer's engine families to which this subpart is applicable produced in that model year:

(1) For manufactures with three or fewer engine families, EPA may identify a single engine family.

(2) For manufacturers with four or more engine families, EPA may identify a number of engine families that is no greater than twenty-five percent of the number of engine families to which this subpart is applicable that are produced by the manufacturer in that model year.

* * * * *

PART 94—CONTROL OF EMISSIONS FROM MARINE COMPRESSION-IGNITION ENGINES

17. The heading to part 94 is revised to read as set forth above.

18. The authority citation for part 94 continues to read as follows:

Authority: 42 U.S.C. 7522, 7523, 7524, 7525, 7541, 7542, 7543, 7545, 7547, 7549, 7550 and 7601(a).

Subpart A—[Amended]

19. Section 94.1 is revised to read as follows:

§ 94.1 Applicability.

(a) Except as noted in paragraphs (b) and (c) of this section, the provisions of this part apply to manufacturers (including post-manufacture marinizers and dressers), rebuilders, owners and operators of:

(1) Marine engines that are compression-ignition engines manufactured (or that otherwise become new) on or after January 1, 2004;

(2) Marine vessels manufactured (or that otherwise become new) on or after January 1, 2004 and which include a compression-ignition marine engine.

(b) Notwithstanding the provision of paragraph (c) of this section, the requirements and prohibitions of this part do not apply to three types of marine engines:

(1) Category 3 marine engines;

(2) Marine engines with rated power below 37 kW; or

(3) Marine engines on foreign vessels.

(c) The provisions of Subpart L of this part apply to everyone with respect to the engines identified in paragraph (a) of this section.

20. Section 94.2 is amended by revising paragraph (b) introductory text, removing the definition for "Commercial marine engine", revising definitions for "Compression-ignition", "Designated officer", "Passenger", "Recreational marine engine", "Recreational vessel", and "United States", and adding new definitions for "Commercial", "Small-volume boat builder", "Small-volume manufacturer", and "Spark-ignition" in alphabetical order to read as follows:

§ 94.2 Definitions.

* * * * *

(b) As used in this part, all terms not defined in this section shall have the meaning given them in the Act:

* * * * *

Commercial means relating to an engine or vessel that is not a recreational marine engine or a recreational vessel.

* * * * *

Compression-ignition means relating to an engine that is not a spark-ignition engine.

* * * * *

Designated Officer means the Manager, Engine Programs Group (6403–J), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., Washington, DC 20460.

* * * * *

Passenger has the meaning given by 46 U.S.C. 2101 (21) and (21a). In the context of commercial vessels, this generally means that a passenger is a person that pays to be on the vessel.

* * * * *

Recreational marine engine means a Category 1 propulsion marine engine that is intended by the manufacturer to be installed on a recreational vessel, and which is permanently labeled as follows: "THIS ENGINE IS CATEGORIZED AS A RECREATIONAL MARINE ENGINE UNDER 40 CFR PART 94. INSTALLATION OF THIS ENGINE IN ANY NONRECREATIONAL VESSEL IS A VIOLATION OF FEDERAL LAW SUBJECT TO CIVIL PENALTY.".

Recreational vessel has the meaning given in 46 U.S.C. 2101 (25), but excludes "passenger vessels" and "small passenger vessels" as defined by 46 U.S.C. 2101 (22) and (35) and excludes vessels used solely for competition. In general, for this part, "recreational vessel" means a vessel that is intended by the vessel manufacturer to be operated primarily for pleasure or leased, rented or chartered to another for the latter's pleasure, excluding the following vessels:

(1) Vessels of less than 100 gross tons that carry more than 6 passengers (as defined in this section).

(2) Vessels of 100 gross tons or more that carry one or more passengers (as defined in this section).

(3) Vessels used solely for competition.

* * * * *

Small-volume boat builder means a boat manufacturer with fewer than 500 employees and with annual U.S.-directed production of fewer than 100 boats. For manufacturers owned by a parent company, these limits apply to the combined production and number of employees of the parent company and all its subsidiaries.

Small-volume manufacturer means a manufacturer with annual U.S.-directed production of fewer than 1,000 internal combustion engines (marine and nonmarine). For manufacturers owned by a parent company, the limit applies to the production of the parent company and all its subsidiaries.

Spark-ignition means relating to a gasoline-fueled engine or other engines with a spark plug (or other sparking device) and with operating characteristics significantly similar to the theoretical Otto combustion cycle. Spark-ignition engines usually use a throttle to regulate intake air flow to control power during normal operation.

* * * * *

United States means the States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, the U.S. Virgin Islands, and the Trust Territory of the Pacific Islands.

* * * * *

21. Section 94.7 is amended by revising paragraphs (c), (d), and (e) to read as follows:

§ 94.7 General standards and requirements.

* * * * *

(c) You may not design your engines with emission-control devices, systems, or elements of design that cause or contribute to an unreasonable risk to public health, welfare, or safety while operating. For example, this would apply if the engine emits a noxious or toxic substance it would otherwise not emit that contributes to such an unreasonable risk.

(d) All engines subject to the emission standards of this part shall be equipped with a connection in the engine exhaust system that is located downstream of the engine and before any point at which the exhaust contacts water (or any other cooling/scrubbing medium) for the temporary attachment of gaseous and/or particulate emission sampling equipment. This connection shall be internally threaded with standard pipe threads of a size not larger than one-half inch, and shall be closed by a pipe-plug when not in use. Equivalent connections are allowed. Engine manufacturers may comply with this requirement by providing vessel manufacturers with clear instructions explaining how to meet this requirement, and noting in the instructions that failure to comply may

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invalidate a certificate and subject the vessel manufacturer to federal penalties.

(e) Electronically controlled engines subject to the emission standards of this part shall broadcast on engine's controller area networks engine torque (as percent of maximum torque at that speed) and engine speed.

22. Section 94.8 is amended by revising paragraphs (a), (e), (f) introductory text, and (f)(1) to read as follows:

§ 94.8 Exhaust emission standards.

(a) Exhaust emissions from marine compression-ignition engines shall not exceed the applicable exhaust emission standards contained in Table A–1 as follows:

TABLE A–1.—PRIMARY TIER 2 EXHAUST EMISSION STANDARDS (G/KW-HR)

Engine size liters/cylinder, rated power	Category	Model year[a]	THC+NO_X g/kW-hr	CO g/kW-hr	PM g/kW-hr
Disp. < 0.9 and power ≥ 37 kW	Category 1, Commercial	2005	7.5	5.0	0.40
	Category 1, Recreational	2007	7.5	5.0	0.40
0.9 ≤ disp. < 1.2	Category 1, Commercial	2004	7.2	5.0	0.30
All power levels					
	Category 1, Recreational	2006	7.2	5.0	0.30
1.2 ≤ disp. < 2.5	Category 1, Commercial	2004	7.2	5.0	0.20
All power levels					
	Category 1, Recreational	2006	7.2	5.0	0.20
2.5 ≤ disp. < 5.0	Category 1, Commercial	2007	7.2	5.0	0.20
All power levels					
	Category 1, Recreational	2009	7.2	5.0	0.20
5.0 ≤ disp. < 15.0	Category 2	2007	7.8	5.0	0.27
All power levels					
15.0 ≤ disp. < 20.0 Power < 3300 kW	Category 2	2007	8.7	5.0	0.50
15.0 ≤ disp. < 20.0 Power < 3300 kW	Category 2	2007	9.8	5.0	0.50
20.0 ≤ disp. < 25.0 All power levels	Category 2	2009	9.8	5.0	0.50
25.0 ≤ disp. < 30.0 All power levels	Category 2	2007	11.0	5.0	0.50

[a] The dates listed indicate the model years for which the specified standards start.

* * * * *

(e) Exhaust emissions from propulsion engines subject to the standards (or FELs) in paragraph (a), (c), or (f) of this section shall not exceed:

(1) *Commercial marine engines.* (i) 1.20 times the applicable standards (or FELs) when tested in accordance with the supplemental test procedures specified in § 94.106 at loads greater than or equal to 45 percent of the maximum power at rated speed or 1.50 times the applicable standards (or FELs) at loads less than 45 percent of the maximum power at rated speed.

(ii) As an option, the manufacturer may choose to comply with limits of 1.25 times the applicable standards (or FELs) when tested over the whole power range in accordance with the supplemental test procedures specified in § 94.106, instead of the limits in paragraph (e)(1)(i) of this section.

(2) *Recreational marine engines.* (i) 1.20 times the applicable standards (or FELs) when tested in accordance with the supplemental test procedures specified in § 94.106 at loads greater than or equal to 45 percent of the maximum power at rated speed and speeds less than 95 percent of maximum test speed, or 1.50 times the applicable standards (or FELs) at loads less than 45 percent of the maximum power at rated speed, or 1.50 times the applicable standards (or FELs) at any loads for speeds greater than or equal to 95 percent of the maximum test speed.

(ii) As an option, the manufacturer may choose to comply with limits of 1.25 times the applicable standards (or FELs) when tested over the whole power range in accordance with the supplemental test procedures specified in § 94.106, instead of the limits in paragraph (e)(2)(i) of this section.

(f) The following defines the requirements for low-emitting Blue Sky Series engines:

(1) *Voluntary standards.* Engines may be designated "Blue Sky Series" engines through the 2012 model year by meeting the voluntary standards listed in Table A–2, which apply to all certification and in-use testing, as follows:

TABLE A–2.—VOLUNTARY EMISSION STANDARDS (G/KW-HR)

Rated brake power (kW)	THC+NO_X	PM
Power ≥37 kW, and displ.<0.9	4.0	0.24
0.9≤displ.<1.2	4.0	0.18
1.2≤displ.<2.5	4.0	0.12
2.5≤displ.<5	5.0	0.12
5≤displ.<15	5.0	0.16
15 ≤disp.< 20, and power < 3300 kW	5.2	0.30
15 ≤disp.< 20, and power ≥ 3300 kW	5.9	0.30
20 ≤disp.< 25	5.9	0.30
25 ≤disp.< 30	6.6	0.30

* * * * *

23. Section 94.9 is amended by revising paragraphs (a) introductory text and (a)(1) to read as follows:

§ 94.9 Compliance with emission standards.

(a) The general standards and requirements in § 94.7 and the emission standards in § 94.8 apply to each new engine throughout its useful life period. The useful life is specified both in years and in hours of operation, and ends when either of the values (hours of operation or years) is exceeded.

(1) The minimum useful life is:

(i) 10 years or 1,000 hours of operation for recreational Category 1 engines;

(i) 10 years or 10,000 hours of operation for commercial Category 1 engines;

(iii) 10 years or 20,000 hours of operation for Category 2 engines.•

* * * * *

24. Section 94.12 is amended by revising the introductory text and paragraphs (a), (b)(1), and (e) and adding new paragraphs (f) and (g) to read as follows:

§ 94.12 Interim provisions.

This section contains provisions that apply for a limited number of calendar years or model years. These provisions apply instead of the other provisions of this part.

(a) *Compliance date of standards.* Certain companies may delay compliance with emission standards. Companies wishing to take advantage of this provision must inform the Designated Officer of their intent to do so in writing before the date that compliance with the standards would otherwise be mandatory.

(1) Post-manufacture marinizers may elect to delay the model year of the Tier 2 standards for commercial engines as specified in § 94.8 by one year for each engine family.

(2) Small-volume manufacturers may elect to delay the model year of the Tier 2 standards for recreational engines as specified in § 94.8 by five years for each engine family.

(b) *Early banking of emission credits.* (1) A manufacturer may optionally certify engines manufactured before the date the Tier 2 standards take effect to earn emission credits under the averaging, banking, and trading program. Such optionally certified engines are subject to all provisions relating to mandatory certification and enforcement described in this part. Manufacturers may begin earning credits for recreational engines on December 9, 2002.

* * * * *

(e) *Compliance date of NTE requirements* (1) Notwithstanding the other provisions of this part, the requirements of § 94.8(e) for commercial marine engines start with 2010 model year engines for postmanufacture marinizers and 2007 model year engines for all other engine manufacturers.

(2) Notwithstanding the other provisions of this part, the requirements of § 94.8(e) for recreational marine engines start with 2012 model year engines for post-manufacture marinizers and 2009 model year engines for all other engine manufacturers.

(f) *Flexibility for small-volume boat builders.* Notwithstanding the other provisions of this part, manufacturers may sell uncertified recreational engines to small-volume boat builders during the first five years for which the emission standards in § 94.8 apply, subject to the following provisions:

(1) The U.S.-directed production volume of boats from any small-volume boat builder using uncertified engines during the total five-year period may not exceed 80 percent of the manufacturer's average annual production for the three years prior to the general applicability of the recreational engine standards in § 94.8, except as allowed in paragraph (f)(2) of this section.

(2) Small-volume boat builders may exceed the production limits in paragraph (f)(1) of this section, provided they do not exceed 20 boats during the five-year period or 10 boats in any single calendar year. This does not apply to boats powered by engines with displacement greater than 2.5 liters per cylinder.

(3) Small-volume boat builders must keep records of all the boats and engines produced under this paragraph (f), including boat and engine model numbers, serial numbers, and dates of manufacture. Records must also include information verifying compliance with the limits in paragraph (f)(1) or (f)(2) of this section. Keep these records until at least two full years after you no longer use the provisions in this paragraph (f).

(4) Manufacturers must add a permanent, legible label, written in block letters in English, to a readily visible part of each engine exempted under this paragraph (f). This label must include at least the following items:

(i) The label heading "EMISSION CONTROL INFORMATION".

(ii) Your corporate name and trademark.

(iii) Engine displacement (in liters), rated power, and model year of the engine or whom to contact for further information.

(iv) The statement "THIS ENGINE IS EXEMPT UNDER 40 CFR 94.12(f) FROM EMISSION STANDARDS AND RELATED REQUIREMENTS.".

(g) *Flexibility for engines over 560kW.* Notwithstanding the other provisions of this part, manufacturers may choose to delay certification of marine engines with less than 2.5 liters per cylinder and rated power above 560 kW, that are derived from a land-based nonroad engine with a rated power greater than 560 kW, if they do all of the following:

(1) Certify all of their applicable marine engines with less than 2.5 liters per cylinder and rated power above 560 kW to a NO_X standard of 6.4 g/kW-hr for model years 2008 through 2012.

(2) Notify EPA in writing before 2004 of their intent to use this provision. This notification must include a signed statement certifying that the manufacturer will comply with all the provisions of this paragraph (g).

(3) Add a permanent, legible label, written in block letters in English, to a readily visible part of each engine exempted under this paragraph (f). This label must include at least the following items:

(i) The label heading "EMISSION CONTROL INFORMATION".

(ii) Your corporate name and trademark.

(iii) Engine displacement (in liters), rated power, and model year of the engine or whom to contact for further information.

(iv) The statement "THIS ENGINE IS EXEMPT UNDER 40 CFR 94.12(g) FROM EMISSION STANDARDS AND RELATED REQUIREMENTS.".

Subpart B—[Amended]

25. Section 94.104 is amended by redesignating paragraph (c) as paragraph (d) and adding a new paragraph (c) to read as follows:

§ 94.104 Test procedures for Category 2 marine engines.

* * * * *

(c) Conduct testing at ambient temperatures from 13° C to 30° C.

* * * * *

26. Section 94.105 is amended by revising paragraph (b) text preceding Table B–1, revising "#" to read "±" in footnotes 1 and 2 in the tables in paragraphs (b), (c)(1), (c)(2), and (d)(1), and adding a new paragraph (e) to read as follows:

§ 94.105 Duty cycles.

* * * * *

(b) *General cycle.* Propulsion engines that are used with (or intended to be

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used with) fixed-pitch propellers, and any other engines for which the other duty cycles of this section do not apply, shall be tested using the duty cycle described in the following Table B–1:

* * * * *

(e) *Recreational.* For the purpose of determining compliance with the emission standards of § 94.8, recreational engines shall be tested using the duty cycle described in Table B–5, which follows:

TABLE B–5.—RECREATIONAL MARINE DUTY CYCLE

Mode No.	Engine speed[1] (percent of maximum test speed)	Percent of maximum test power[2]	Minimum time in mode (minutes)	Weighting factors
1	100	100	5.0	0.08
2	91	75	5.0	0.13
3	80	50	5.0	0.17
4	63	25	5.0	0.32
5	idle	0	5.0	0.30

[1] Engine speed: ±2 percent of point.
[2] Power: ±2 percent of engine maximum value.

27. Section 94.106 is amended by revising paragraphs (b) introductory text, (b)(1) introductory text, (b)(2) introductory text, (b)(3) introductory text, and (b)(4) and adding a new paragraph (b)(5) to read as follows:

§ 94.106 Supplemental test procedures.

* * * * *

(b) The specified Not to Exceed Zones for marine engines are defined as follows. These Not to Exceed Zones apply, unless a modified zone is established under paragraph (c) of this section.

(1) For commercial Category 1 engines certified using the duty cycle specified in § 94.105(b), the Not to Exceed zones are defined as follows:

* * * * *

(2) For Category 2 engines certified using the duty cycle specified in § 94.105(b), the Not to Exceed zones are defined as follows:

* * * * *

(3) For engines certified using the duty cycle specified in § 94.105(c)(2), the Not to Exceed zones are defined as follows:

* * * * *

(4) For engines certified using the duty cycle specified in § 94.105(c)(1), the Not to Exceed zone is defined as any load greater than or equal to 25 percent of maximum power at rated speed, and any speed at which the engine operates in use.

(5) For recreational marine engines certified using the duty cycle specified in § 94.105(e), the Not to Exceed zones are defined as follows:

(i) The Not to Exceed zone is the region between the curves power = 1.15 × SPD^2 and power = 0.85 × SPD^4, excluding all operation below 25% of maximum power at rated speed and excluding all operation below 63% of maximum test speed.

(ii) This zone is divided into three subzones, one below 45% of maximum power at maximum test speed; one above 95% of maximum test speed; and a third area including all of the remaining area of the NTE zone.

(iii) SPD in paragraph (b)(5)(i) of this section refers to percent of maximum test speed.

(iv) See Figure B–4 for an illustration of this Not to Exceed zone as follows:

BILLING CODE 6560–50–P

Figure B-4

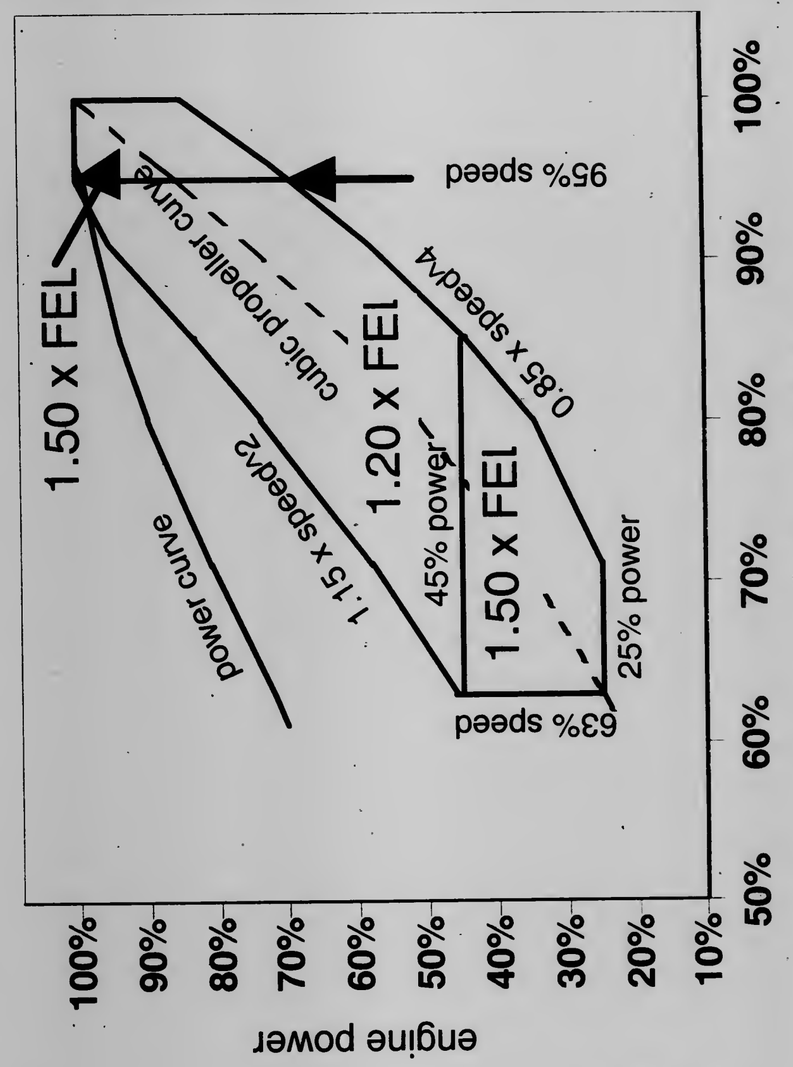

BILLING CODE 6560–50–C

28. Section 94.108 is amended in paragraph (a)(1) by revising footnote 1 in Table B–5 to read as follows:

§ 94.108 Test fuels.

(a) * * * (1) * * *

TABLE B–5.—FEDERAL TEST FUEL SPECIFICATIONS

[1] All ASTM procedures in this table have been incorporated by reference. See § 94.5.

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* * * * *

Subpart C—[Amended]

29. Section 94.203 is amended by revising paragraphs (d)(14) and (d)(16) to read as follows:

§ 94.203 Application for certification.

* * * * *

(d) * * *

(14) A statement that all the engines included in the engine family comply with the Not To Exceed standards specified in § 94.8(e) when operated under all conditions which may reasonably be expected to be encountered in normal operation and use; the manufacturer also must provide a detailed description of all testing, engineering analyses, and other information which provides the basis for this statement.

* * * * *

(16) A statement indicating duty-cycle and application of the engine (e.g., used to propel planing vessels, use to propel vessels with variable-pitch propellers, constant-speed auxiliary, recreational, etc.).

* * * * *

30. Section 94.204 is amended by removing "and" at the end of paragraph (b)(9), adding "; and" at the end of paragraph (b)(10), adding a new paragraph (b)(11), and revising paragraph (e) to read as follows:

§ 94.204 Designation of engine families.

* * * * *

(b) * * *

(11) Class (commercial or recreational).

* * * * *

(e) Upon request by the manufacturer, the Administrator may allow engines that would be required to be grouped into separate engine families based on the criteria in paragraph (b) or (c) of this section to be grouped into a single engine family if the manufacturer demonstrates that the engines will have similar emission characteristics; however, recreational and commercial engines may not be grouped in the same engine family. This request must be accompanied by emission information supporting the appropriateness of such combined engine families.

31. Section 94.209 is revised to read as follows:

§ 94.209 Special provisions for post-manufacture marinizers and small-volume manufacturers.

(a) *Broader engine families.* Instead of the requirements of § 94.204, an engine family may consist of any engines subject to the same emission standards. This does not change any of the requirements of this part for showing that an engine family meets emission standards. To be eligible to use the provisions of this paragraph (a), the manufacturer must demonstrate one of the following:

(1) It is a post-manufacture marinizer and that the base engines used for modification have a valid certificate of conformity issued under 40 CFR part 89 or 40 CFR part 92 or the heavy-duty engine provisions of 40 CFR part 86.

(2) It is a small-volume manufacturer.

(b) *Hardship relief.* Post-manufacture marinizers, small-volume manufacturers, and small-volume boat builders may take any of the otherwise prohibited actions identified in § 94.1103(a)(1) if approved in advance by the Administrator, subject to the following requirements:

(1) Application for relief must be submitted to the Designated Officer in writing prior to the earliest date in which the applying manufacturer would be in violation of § 94.1103. The manufacturer must submit evidence showing that the requirements for approval have been met.

(2) The conditions causing the impending violation must not be substantially the fault of the applying manufacturer.

(3) The conditions causing the impending violation must jeopardize the solvency of the applying manufacturer if relief is not granted.

(4) The applying manufacturer must demonstrate that no other allowances under this part will be available to avoid the impending violation.

(5) Any relief may not exceed one year beyond the date relief is granted.

(6) The Administrator may impose other conditions on the granting of relief including provisions to recover the lost environmental benefit.

(7) The manufacturer must add a permanent, legible label, written in block letters in English, to a readily visible part of each engine exempted under this paragraph (b).

This label must include at least the following items:

(i) The label heading "EMISSION CONTROL INFORMATION".

(ii) Your corporate name and trademark.

(iii) Engine displacement (in liters), rated power, and model year of the engine or whom to contact for further information.

(iv) The statement "THIS ENGINE IS EXEMPT UNDER 40 CFR 94.209(b) FROM EMISSION STANDARDS AND RELATED REQUIREMENTS.".

(c) *Extension of deadlines.* Small-volume manufacturers may use the provisions of 40 CFR 1068.250 to ask for an extension of a deadline to meet emission standards. We may require that you use available base engines that have been certified to emission standards for land-based engines until you are able to produce engines certified to the requirements of this part.

32. Section 94.212 is amended by revising paragraph (b)(10) to read as follows:

§ 94.212 Labeling.

* * * * *

(b) *Engine labels.* * * *

(10) The application for which the engine family is certified. (For example: constant-speed auxiliary, variable-speed propulsion engines used with fixed-pitch propellers, recreational, etc.)

* * * * *

33. Section 94.218 is amended by adding a new paragraph (d)(2)(iv) to read as follows:

§ 94.218 Deterioration factor determination.

* * * * *

(d) * * *

(2) * * *

(iv) *Assigned deterioration factors.* Small-volume manufacturers may use deterioration factors established by EPA.

Subpart D—[Amended]

34. Section 94.304 is amended by revising paragraph (k) to read as follows:

§ 94.304 Compliance requirements.

* * * * *

(k) The following provisions limit credit exchanges between different types of engines:

(1) Credits generated by Category 1 engine families may be used for compliance by Category 1 or Category 2 engine families. Credits generated from Category 1 engine families for use by Category 2 engine families must be discounted by 25 percent.

(2) Credits generated by Category 2 engine families may be used for compliance only by Category 2 engine families.

(3) Credits may not be exchanged between recreational and commercial engines.

* * * * *

Subpart F—[Amended]

35. Section 94.501 is amended by revising paragraph (a) to read as follows:

§ 94.501 Applicability.

(a) The requirements of this subpart are applicable to manufacturers of engines subject to the provisions of Subpart A of this part, excluding small-volume manufacturers.

* * * * *

36. Section 94.503 is amended by adding a new paragraph (d) to read as follows:

§ 94.503 General requirements.

* * * * *

(d) If you certify an engine family with carryover emission data, as described in § 94.206(c), and these equivalent engine families consistently pass the production-line testing requirements over the preceding two-year period, you may ask for a reduced testing rate for further production-line testing for that family. The minimum testing rate is one engine per engine family. If we reduce your testing rate, we may limit our approval to any number of model years. In determining whether to approve your request, we may consider the number of engines that have failed the emission tests.

Subpart J—[Amended]

37. Section 94.907 is amended by revising paragraphs (d) and (g) to read as follows:

§ 94.907 Engine dressing exemption.

* * * * *

(d) New marine engines that meet all the following criteria are exempt under this section:

(1) You must produce it by marinizing an engine covered by a valid certificate of conformity from one of the following programs:

(i) Heavy-duty highway engines (40 CFR part 86).

(ii) Land-based nonroad diesel engines (40 CFR part 89).

(iii) Locomotive engines (40 CFR part 92).

(2) The engine must have the label required under 40 CFR part 86, 89, or 92.

(3) You must not make any changes to the certified engine that could reasonably be expected to increase its emissions. For example, if you make any of the following changes to one of these engines, you do not qualify for the engine dressing exemption:

(i) Changing any fuel system parameters from the certified configuration.

(ii) Replacing an original turbocharger, except that small-volume manufacturers of recreational engines may replace an original turbocharger with one that matches the performance of the original turbocharger.

(iii) Modify or design the marine engine cooling or aftercooling system so that temperatures or heat rejection rates are outside the original engine manufacturer's specified ranges.

(4) You must make sure that fewer than 50 percent of the engine model's total sales, from all companies, are used in marine applications.

* * * * *

(g) If your engines do not meet the criteria listed in paragraphs (d)(2) through (d)(4) of this section, they will be subject to the standards and prohibitions of this part. Marinization without a valid exemption or certificate of conformity would be a violation of § 94.1103(a)(1) and/or the tampering prohibitions of the applicable land-based regulations (40 CFR part 86, 89, or 92).

* * * * *

Subpart L—[Amended]

38. Section 94.1103 is amended by revising paragraph (a)(5) to read as follows:

§ 94.1103 Prohibited acts.

(a) * * *

(5) For a manufacturer of marine vessels to distribute in commerce, sell, offer for sale, or deliver for introduction into commerce a new vessel containing an engine not covered by a certificate of conformity applicable for an engine model year the same as or later than the calendar year in which the manufacture of the new vessel is initiated. This prohibition covers improper installation in a manner such that the installed engine would not be covered by the engine manufacturer's certificate. Improper installation would include, but is not limited to, failure to follow the engine manufacturer's instructions related to engine cooling, exhaust aftertreatment, emission sampling ports, or any other emission-related component, parameter, or setting. In general, you may use up your normal inventory of engines not certified to new emission standards if they were built before the date of the new standards. However, we consider stockpiling of these engines to be a violation of paragraph (a)(1)(i)(A) of this section. (Note: For the purpose of this paragraph (a)(5), the manufacture of a vessel is initiated when the keel is laid, or the vessel is at a similar stage of construction.)

* * * * *

39. A new subchapter U is added to chapter I, consisting of parts 1048, 1051, 1065, and 1068, to read as follows:

SUBCHAPTER U—AIR POLLUTION CONTROLS

PART 1048—CONTROL OF EMISSIONS FROM NEW, LARGE NONROAD SPARK-IGNITION ENGINES

Subpart A—Determining How to Follow This Part

Sec.

1048.1 Does this part apply to me?
1048.5 Which engines are excluded or exempted from this part's requirements?
1048.10 What main steps must I take to comply with this part?
1048.15 Do any other regulation parts affect me?
1048.20 What requirements from this part apply to my excluded engines?

Subpart B—Emission Standards and Related Requirements

1048.101 What exhaust emission standards must my engines meet?
1048.105 What evaporative emissions standards and requirements apply?
1048.110 How must my engines diagnose malfunctions?
1048.115 What other requirements must my engines meet?
1048.120 What warranty requirements apply to me?
1048.125 What maintenance instructions must I give to buyers?
1048.130 What installation instructions must I give to equipment manufacturers?
1048.135 How must I label and identify the engines I produce?
1048.140 What are the provisions for certifying Blue Sky Series engines?
1048.145 What provisions apply only for a limited time?

Subpart C—Certifying Engine Families

1048.201 What are the general requirements for submitting a certification application?
1048.205 What must I include in my application?
1048.210 May I get preliminary approval before I complete my application?
1048.215 What happens after I complete my application?
1048.220 How do I amend the maintenance instructions in my application?
1048.225 How do I amend my application to include new or modified engines?
1048.230 How do I select engine families?
1048.235 What emission testing must I perform for my application for a certificate of conformity?
1048.240 How do I demonstrate that my engine family complies with exhaust emission standards?
1048.245 How do I demonstrate that my engine family complies with evaporative emission standards?
1048.250 What records must I keep and make available to EPA?
1048.255 When may EPA deny, revoke, or void my certificate of conformity?

Subpart D—Testing Production-line Engines

1048.301 When must I test my production-line engines?

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1048.305 How must I prepare and test my production-line engines?
1048.310 How must I select engines for production-line testing?
1048.315 How do I know when my engine family fails the production-line testing requirements?
1048.320 What happens if one of my production-line engines fails to meet emission standards?
1048.325 What happens if an engine family fails the production-line requirements?
1048.330 May I sell engines from an engine family with a suspended certificate of conformity?
1048.335 How do I ask EPA to reinstate my suspended certificate?
1048.340 When may EPA revoke my certificate under this subpart and how may I sell these engines again?
1048.345 What production-line testing records must I send to EPA?
1048.350 What records must I keep?

Subpart E—Testing In-use Engines

1048.401 What testing requirements apply to my engines that have gone into service?
1048.405 How does this program work?
1048.410 How must I select, prepare, and test my in-use engines?
1048.415 What happens if in-use engines do not meet requirements?
1048.420 What in-use testing information must I report to EPA?
1048.425 What records must I keep?

Subpart F—Test Procedures

1048.501 What procedures must I use to test my engines?
1048.505 What steady-state duty cycles apply for laboratory testing?
1048.510 What transient duty cycles apply for laboratory testing?
1048.515 Field-testing procedures.

Subpart G—Compliance Provisions

1048.601 What compliance provisions apply to these engines?
1048.605 What are the provisions for exempting engines from the requirements of this part if they are already certified under the motor-vehicle program?
1048.610 What are the provisions for producing nonroad equipment with engines already certified under the motor-vehicle program?
1048.615 What are the provisions for exempting engines designed for lawn and garden applications?
1048.620 What are the provisions for exempting large engines fueled by natural gas?
1048.625 What special provisions apply to engines using noncommercial fuels?

Subpart H—[Reserved]

Subpart I—Definitions and Other Reference Information

1048.801 What definitions apply to this part?
1048.805 What symbols, acronyms, and abbreviations does this part use?
1048.810 What materials does this part reference?
1048.815 How should I request EPA to keep my information confidential?
1048.820 How do I request a hearing?
Appendix I to Part 1048—Large Spark-ignition (SI) Transient Cycle for Constant-Speed Engines
Appendix II to Part 1048—Large Spark-ignition (SI) Composite Transient Cycle

Authority: 42 U.S.C. 7401–7671(q).

Subpart A—Determining How to Follow This Part

§ 1048.1 Does this part apply to me?

(a) This part applies to you if you manufacture or import new, spark-ignition, nonroad engines (defined in § 1048.801) with maximum brake power above 19 kW, unless we exclude them under § 1048.5. See § 1048.20 for the requirements that apply to excluded engines.

(b) If you manufacture or import engines with maximum brake power at or below 19 kW that would otherwise be covered by 40 CFR part 90, you may choose to meet the requirements of this part instead. In this case, all the provisions of this part apply for those engines.

(c) As noted in subpart G of this part, 40 CFR part 1068 applies to everyone, including anyone who manufactures, installs, owns, operates, or rebuilds any of the engines this part covers or equipment containing these engines.

(d) You need not follow this part for engines you produce before January 1, 2004, unless you certify voluntarily. See §§ 1048.101 through 1048.115 and § 1048.145 and the definition of model year in § 1048.801 for more information about the timing of new requirements.

(e) See §§ 1048.801 and 1048.805 for definitions and acronyms that apply to this part. The definition section contains significant regulatory provisions and it is very important that you read them.

§ 1048.5 Which engines are excluded or exempted from this part's requirements?

(a) This part does not apply to the following nonroad engines:

(1) Engines certified to meet the requirements of 40 CFR part 1051 (for example, engines used in snowmobiles and all-terrain vehicles).

(2) Propulsion marine engines. See 40 CFR part 91. This part applies with respect to auxiliary marine engines.

(b) See subpart G of this part and 40 CFR part 1068, subpart C, for exemptions of specific engines.

(c) Send the Designated Officer a written request if you want us to determine whether this part covers or excludes certain engines. Excluding engines from this part's requirements does not affect other requirements that may apply to them.

Note: See 40 CFR part 87 for engines used in aircraft.)

(d) As defined in § 1048.801, stationary engines are not required to comply with this part (because they are not nonroad engines), except that you must meet the requirements in § 1048.20. In addition, the prohibitions in 40 CFR 1068.101 restrict the use of stationary engines for non-stationary purposes.

§ 1048.10 What main steps must I take to comply with this part?

(a) You must have a certificate of conformity from us for each engine family before you do any of the following with a new nonroad engine covered by this part: sell, offer for sale, introduce into commerce, distribute or deliver for introduction into commerce, or import it into the United States. "New" engines may include some already placed in service (see the definition of "new nonroad engine" and "new nonroad equipment" in § 1048.801). You must get a new certificate of conformity for each new model year.

(b) To get a certificate of conformity and comply with its terms, you must do six things:

(1) Meet the emission standards and other requirements in subpart B of this part.

(2) Perform preproduction emission tests.

(3) Apply for certification (see subpart C of this part).

(4) Do routine emission testing on production engines as required by subpart D of this part.

(5) Do emission testing on in-use engines, as we direct under subpart E of this part.

(6) Follow our instructions throughout this part.

(c) Subpart F of this part describes how to test your engines (including references to other parts).

(d) Subpart G of this part and 40 CFR part 1068 describe requirements and prohibitions that apply to engine manufacturers, equipment manufacturers, owners, operators, rebuilders, and all others.

§ 1048.15 Do any other regulation parts affect me?

(a) Part 1065 of this chapter describes procedures and equipment specifications for testing engines. Subpart F of this part describes how to apply the provisions of part 1065 of this chapter to show you meet the emission standards in this part.

(b) Part 1068 of this chapter describes general provisions, including these seven areas:

(1) Prohibited acts and penalties for engine manufacturers, equipment manufacturers, and others.

(2) Rebuilding and other aftermarket changes.

(3) Exclusions and exemption for certain engines.

(4) Importing engines.

(5) Selective enforcement audits of your production.

(6) Defect reporting and recall.

(7) Procedures for hearings.

(c) Other parts of this chapter affect you if referenced in this part.

§ 1048.20 What requirements from this part apply to my excluded engines?

(a) Engine manufacturers producing an engine excluded under § 1048.5(d) must add a permanent label or tag identifying each engine. This applies equally to importers. To meet labeling requirements, you must do the following things:

(1) Attach the label or tag in one piece so no one can remove it without destroying or defacing it.

(2) Make sure it is durable and readable for the engine's entire life.

(3) Secure it to a part of the engine needed for normal operation and not normally requiring replacement.

(4) Write it in block letters in English.

(5) Instruct equipment manufacturers that they must place a duplicate label as described in 40 CFR 1068.105 if they obscure the engine's label.

(b) Engine labels or tags required under this section must have the following information:

(1) Include the heading "Emission Control Information".

(2) Include your full corporate name and trademark.

(3) State the engine displacement (in liters) and maximum brake power.

(4) State: "THIS ENGINE IS EXCLUDED FROM THE REQUIREMENTS OF 40 CFR PART 1048 AS A "STATIONARY ENGINE." INSTALLING OR USING THIS ENGINE IN ANY OTHER APPLICATION MAY BE A VIOLATION OF FEDERAL LAW SUBJECT TO CIVIL PENALTY.".

Subpart B—Emission Standards and Related Requirements

§ 1048.101 What exhaust emission standards must my engines meet?

Apply the exhaust emission standards in this section by model year. You may choose to certify engines earlier than we require. The Tier 1 standards apply only to steady-state testing, as described in paragraph (b) of this section. The Tier 2 standards apply to steady-state, transient, and field testing, as described in paragraphs (a), (b), and (c) of this section.

(a) *Standards for transient testing.* Starting in the 2007 model year, Tier 2 exhaust emission standards apply for transient measurement of emissions with the duty-cycle test procedures in subpart F of this part:

(1) The Tier 2 $HC+NO_X$ standard is 2.7 g/kW-hr and the Tier 2 CO standard is 4.4 g/kW-hr. For severe-duty engines, the Tier 2 $HC+NO_X$ standard is 2.7 g/kW-hr and the Tier 2 CO standard is 130.0 g/kW-hr. The standards in this paragraph (a) do not apply for transient testing of high-load engines.

(2) You may optionally certify your engines according to the following formula instead of the standards in paragraph (a)(1) of this section: $(HC+NO_X) \times CO^{0.784} \leq 8.57$. The $HC+NO_X$ and CO emission levels you select to satisfy this formula, rounded to the nearest 0.1 g/kW-hr, become the emission standards that apply for those engines. You may not select an $HC+NO_X$ emission standard higher than 2.7 g/kW-hr or a CO emission standard higher than 20.6 g/kW-hr. The following table illustrates a range of possible values under this paragraph (a)(2):

TABLE 1 OF § 1048.101.—EXAMPLES OF POSSIBLE TIER 2 DUTY-CYCLE EMISSION STANDARDS

$HC+NO_X$ (g/kW-hr)	CO (g/kW-hr)
2.7	4.4
2.2	5.6
1.7	7.9
1.3	11.1
1.0	15.5
0.8	20.6

(b) *Standards for steady-state testing.* Except as we allow in paragraph (d) of this section, the following exhaust emission standards apply for steady-state measurement of emissions with the duty-cycle test procedures in subpart F of this part:

(1) The following table shows the Tier 1 exhaust emission standards that apply to engines from 2004 through 2006 model years:

TABLE 2 OF § 1048.101.—TIER 1 EMISSION STANDARDS (G/KW-HR)

Testing	General emission standards		Alternate emission standards for severe-duty engines	
	$HC+NO_X$	CO	$HC+NO_X$	CO
Certification and production-line testing	4.0	50.0	4.0	130.0
In-use testing	5.4	50.0	5.4	130.0

(2) Starting in the 2007 model year, engines must meet the Tier 2 exhaust emission standards in paragraph (a) of this section for both steady-state and transient testing. See paragraph (d) of this section for alternate standards that apply for certain engines.

(c) *Standards for field testing.* Starting in 2007, the following Tier 2 exhaust emission standards apply for emission measurements with the field-testing procedures in subpart F of this part:

(1) The $HC+NO_X$ standard is 3.8 g/kW-hr and the CO standard is 6.5 g/kW-hr. For severe-duty engines, the $HC+NO_X$ standard is 3.8 g/kW-hr and the CO standard is 200.0 g/kW-hr. For natural gas-fueled engines, you are not required to measure nonmethane hydrocarbon emissions or total hydrocarbon emissions for testing to show that the engine meets the emission standards of this paragraph (c); that is, you may assume HC emissions are equal to zero.

(2) You may apply the following formula to determine alternate emission standards that apply to your engines instead of the standards in paragraph (c)(1) of this section: $(HC+NO_X) \times CO^{0.791} \leq 16.78$. $HC+NO_X$ emission levels may not exceed 3.8 g/kW-hr and CO emission levels may not exceed 31.0 g/kW-hr. The following table illustrates a range of possible values under this paragraph (c)(2):

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TABLE 3 OF § 1048.101.—EXAMPLES OF POSSIBLE TIER 2 FIELD-TESTING EMISSION STANDARDS

$HC+NO_x$ (g/kW-hr)	CO (g/kW-hr)
3.8	6.5
3.1	8.5
2.4	11.7
1.8	16.8
1.4	23.1
1.1	31.0

(d) *Engine protection.* For engines that require enrichment at high loads to protect the engine, you may ask to meet alternate Tier 2 standards of 2.7 g/kW-hr for $HC+NO_x$ and 31.0 g/kW-hr for CO instead of the emission standards described in paragraph (b)(2) of this section for steady-state testing. If we approve your request, you must still meet the transient testing standards in paragraph (a) of this section and the field-testing standards in paragraph (c) of this section. To qualify for this allowance, you must do all the following things:

(1) Show that enrichment is necessary to protect the engine from damage.

(2) Show that you limit enrichment to operating modes that require additional cooling to protect the engine from damage.

(3) Show in your application for certification that enrichment will rarely occur in use in the equipment in which your engines are installed. For example, an engine that is expected to operate 5 percent of the time in use with enrichment would clearly not qualify.

(4) Include in your installation instructions any steps necessary for someone installing your engines to prevent enrichment during normal operation (see § 1048.130).

(e) *Fuel types.* Apply the exhaust emission standards in this section for engines using each type of fuel specified in 40 CFR part 1065, subpart C, for which they are designed to operate. You must meet the numerical emission standards for hydrocarbons in this section based on the following types of hydrocarbon emissions for engines powered by the following fuels:

(1) Gasoline- and LPG-fueled engines: THC emissions.

(2) Natural gas-fueled engines: NMHC emissions.

(3) Alcohol-fueled engines: THCE emissions.

(f) *Small engines.* Certain engines with total displacement at or below 1000 cc may comply with the requirements of 40 CFR part 90 instead of complying with the requirements of this part, as described in § 1048.615.

(g) *Useful life.* Your engines must meet the exhaust emission standards in paragraphs (a) through (c) of this section over their full useful life (§ 1048.240 describes how to use deterioration factors to show this). The minimum useful life is 5,000 hours of operation or seven years, whichever comes first.

(1) Specify a longer useful life in hours for an engine family under either of two conditions:

(i) If you design, advertise, or market your engine to operate longer than the minimum useful life (your recommended hours until rebuild may indicate a longer design life).

(ii) If your basic mechanical warranty is longer than the minimum useful life.

(2) You may request a shorter useful life for an engine family if you have documentation from in-use engines showing that these engines will rarely operate longer than the alternate useful life. The useful life value may not be shorter than any of the following:

(i) 1,000 hours of operation.

(ii) Your recommended overhaul interval.

(iii) Your mechanical warranty for the engine.

(h) *Applicability for testing.* The standards in this subpart apply to all testing, including production-line and in-use testing, as described in subparts D and E of this part.

§ 1048.105 What evaporative emissions standards and requirements apply?

(a) Starting in the 2007 model year, engines that run on a volatile liquid fuel (such as gasoline), must meet the following evaporative emissions standards and requirements:

(1) Evaporative hydrocarbon emissions may not exceed 0.2 grams per gallon of fuel tank capacity when measured with the test procedures for evaporative emissions in subpart F of this part.

(2) For nonmetallic fuel lines, you must specify and use products that meet the Category 1 specifications in SAE J2260 (incorporated by reference in § 1048.810).

(3) Liquid fuel in the fuel tank may not reach boiling during continuous engine operation in the final installation at an ambient temperature of 30° C. Note that gasoline with a Reid vapor pressure of 62 kPa (9 psi) begins to boil at about 53° C.

(b) Note that § 1048.245 allows you to use design-based certification instead of generating new emission data.

(c) If other companies install your engines in their equipment, give them any appropriate instructions, as described in § 1048.130.

§ 1048.110 How must my engines diagnose malfunctions?

(a) *Equip your engines with a diagnostic system.* Starting in the 2007 model year, equip each engine with a diagnostic system that will detect significant malfunctions in its emission-control system using one of the following protocols:

(1) If your emission-control strategy depends on maintaining air-fuel ratios at stoichiometry, an acceptable diagnostic design would identify malfunction whenever the air-fuel ratio does not cross stoichiometry for one minute of intended closed-loop operation. You may use other diagnostic strategies if we approve them in advance.

(2) If the protocol described in paragraph (a)(1) of this section does not apply to your engine, you must use an alternative approach that we approve in advance. Your alternative approach must generally detect when the emission-control system is not functioning properly.

(b) *Use a malfunction-indicator light (MIL).* The MIL must be readily visible to the operator; it may be any color except red. When the MIL goes on, it must display "Check Engine," "Service Engine Soon," or a similar message that we approve. You may use sound in addition to the light signal. The MIL must go on under each of these circumstances:

(1) When a malfunction occurs, as described in paragraph (a) of this section.

(2) When the diagnostic system cannot send signals to meet the requirement of paragraph (b)(1) of this section.

(3) When the engine's ignition is in the "key-on" position before starting or cranking. The MIL should go out after engine starting if the system detects no malfunction.

(c) *Control when the MIL can go out.* If the MIL goes on to show a malfunction, it must remain on during all later engine operation until servicing corrects the malfunction. If the engine is not serviced, but the malfunction does not recur for three consecutive engine starts during which the malfunctioning system is evaluated and found to be working properly, the MIL may stay off during later engine operation.

(d) *Store trouble codes in computer memory.* Record and store in computer memory any diagnostic trouble codes showing a malfunction that should illuminate the MIL. The stored codes must identify the malfunctioning system or component as uniquely as possible. Make these codes available through the data link connector as described in paragraph (g) of this section. You may store codes for conditions that do not turn on the MIL. The system must store a separate code to show when the diagnostic system is disabled (from malfunction or tampering).

(e) *Make data, access codes, and devices accessible.* Make all required data accessible to us without any access codes or devices that only you can supply. Ensure that anyone servicing your engine can read and understand the diagnostic trouble codes stored in the onboard computer with generic tools and information.

(f) *Consider exceptions for certain conditions.* Your diagnostic systems may disregard trouble codes for the first three minutes after engine starting. You may ask us to approve diagnostic-system designs that disregard trouble codes under other conditions that would produce an unreliable reading, damage systems or components, or cause other safety risks. This might include operation at altitudes over 8,000 feet.

(g) *Follow standard references for formats, codes, and connections.* Follow conventions defined in the following documents (incorporated by reference in § 1048.810) or ask us to approve using updated versions of (or variations from) these documents:

(1) ISO 9141–2 Road vehicles-Diagnostic systems—Part 2: CARB requirements for interchange of digital information, February 1994.

(2) ISO 14230–4 Road vehicles—Diagnostic systems—Keyword Protocol 2000—Part 4: Requirements for emission-related systems, June 2000.

§ 1048.115 What other requirements must my engines meet?

Your engines must meet the following requirements:

(a) *Closed crankcase.* Your engines may not vent crankcase emissions into the atmosphere throughout their useful life, with the following exception: your engines may vent crankcase emissions if you measure and include these crankcase emissions with all measured exhaust emissions.

(b) *Torque broadcasting.* Electronically controlled engines must broadcast their speed and output shaft torque (in newton-meters) on their controller area networks. Engines may alternatively broadcast a surrogate value for torque that can be read with a remote device. This information is necessary for testing engines in the field (see 40 CFR 1065.515). This requirement applies beginning in the 2007 model year. Small-volume engine manufacturers may omit this requirement.

(c) *EPA access to broadcast information.* If we request it, you must provide us any hardware or tools we would need to readily read, interpret, and record all information broadcast by an engine's on-board computers and electronic control modules. If you broadcast a surrogate parameter for torque values, you must provide us what we need to convert these into torque units. We will not ask for hardware or tools if they are readily available commercially.

(d) *Emission sampling capability.* Produce all your engines to allow sampling of exhaust emissions in the field without damaging the engine or equipment. Show in your application for certification how this can be done in a way that prevents diluting the exhaust sample with ambient air. To do this, you might simply allow for extending the exhaust pipe by 20 cm; you might also install exhaust ports downstream of any aftertreatment devices.

(e) *Adjustable parameters.* Engines that have adjustable parameters must meet all the requirements of this part for any adjustment in the physically adjustable range.

(1) We do not consider an operating parameter adjustable if you permanently seal it or if ordinary tools cannot readily access it.

(2) We may require that you set adjustable parameters to any specification within the adjustable range during certification testing, production-line testing, selective enforcement auditing, or any in-use testing.

(f) *Prohibited controls.* You may not design your engines with emission-control devices, systems, or elements of design that cause or contribute to an unreasonable risk to public health, welfare, or safety while operating. For example, this would apply if the engine emits a noxious or toxic substance it would otherwise not emit that contributes to such an unreasonable risk.

(g) *Defeat devices.* You may not equip your engines with a defeat device. A defeat device is an auxiliary emission-control device that reduces the effectiveness of emission controls under conditions you may reasonably expect the engine to encounter during normal operation and use. This does not apply to auxiliary emission-control devices you identify in your certification application if any of the following is true:

(1) The conditions of concern were substantially included in your prescribed duty cycles.

(2) You show your design is necessary to prevent catastrophic engine (or equipment) damage or accidents.

(3) The reduced effectiveness applies only to starting the engine.

§ 1048.120 What warranty requirements apply to me?

(a) *General requirements.* You must warrant to the ultimate buyer that the new nonroad engine meets two conditions:

(1) It is designed, built, and equipped it to conform at the time of sale with the requirements of this part.

(2) It is free from defects in materials and workmanship that may keep it from meeting these requirements.

(b) *Warranty period.* Your emission-related warranty must be valid for at least 50 percent of the engine's useful life in hours of operation or at least three years, whichever comes first. In the case of a high-cost warranted part, the warranty must be valid for at least 70 percent of the engine's useful life in hours of operation or at least five years, whichever comes first. You may offer an emission-related warranty more generous than we require. This warranty may not be shorter than any published or negotiated warranty you offer for the engine or any of its components. If an engine has no hour meter, we base the warranty periods in this paragraph (b) only on the engine's age (in years).

(c) *Components covered.* The emission-related warranty must cover components whose failure would increase an engine's emissions, including electronic controls, fuel injection (for liquid or gaseous fuels), exhaust-gas recirculation, aftertreatment, or any other system you develop to control emissions. We generally consider replacing or repairing other components to be the owner's responsibility.

(d) *Scheduled maintenance.* You may schedule emission-related maintenance for a component named in paragraph (c) of this section, subject to the restrictions of § 1048.125. You are not required to cover this scheduled maintenance under your warranty if the component meets either of the following criteria:

(1) The component was in general use on similar engines, and was subject to scheduled maintenance, before January 1, 2000.

(2) Failure of the component would clearly degrade the engine's performance enough that the operator would need to repair or replace it.

(e) *Limited applicability.* You may deny warranty claims under this section if the operator caused the problem, as described in 40 CFR 1068.115.

(f) *Aftermarket parts.* As noted 40 CFR 1068.101, it is a violation of the Act to manufacture an engine part if one of its main effects is to reduce the

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effectiveness of the engine's emission controls. If you make an aftermarket part, you may—but do not have to—certify that using the part will still allow engines to meet emission standards, as described in 40 CFR 85.2114.

§ 1048.125 What maintenance instructions must I give to buyers?

Give the ultimate buyer of each new nonroad engine written instructions for properly maintaining and using the engine, including the emission-control system. The maintenance instructions also apply to service accumulation on your test engines, as described in 40 CFR part 1065, subpart E.

(a) *Critical emission-related maintenance.* Critical emission-related maintenance includes any adjustment, cleaning, repair, or replacement of air-induction, fuel-system, or ignition components, aftertreatment devices, exhaust gas recirculation systems, crankcase ventilation valves, sensors, or electronic control units. This may also include any other component whose only purpose is to reduce emissions or whose failure will increase emissions without significantly degrading engine performance. You may schedule critical emission-related maintenance on these components if you meet the following conditions:

(1) You may ask us to approve critical emission-related maintenance only if it meets two criteria:

(i) Operators are reasonably likely to do the maintenance you call for.

(ii) Engines need the maintenance to meet emission standards.

(2) We will accept scheduled maintenance as reasonably likely to occur in use if you satisfy any of four conditions:

(i) You present data showing that, if a lack of maintenance increases emissions, it also unacceptably degrades the engine's performance.

(ii) You present survey data showing that 80 percent of engines in the field get the maintenance you specify at the recommended intervals.

(iii) You provide the maintenance free of charge and clearly say so in maintenance instructions for the customer.

(iv) You otherwise show us that the maintenance is reasonably likely to be done at the recommended intervals.

(3) You may not schedule critical emission-related maintenance more frequently than the following intervals, except as specified in paragraph (a)(4) of this section:

(i) For catalysts, fuel injectors, electronic control units, superchargers, and turbochargers: the useful life of the engine family.

(ii) For gaseous fuel-system components (cleaning without disassembly only) and oxygen sensors: 2,500 hours.

(4) If your engine family has an alternate useful life shorter than the period specified in paragraph (a)(3)(ii) of this section, you may not schedule maintenance on those components more frequently than the alternate useful life (*see* § 1048.101(g)).

(b) *Recommended additional maintenance.* You may recommend any additional amount of maintenance on the components listed in paragraph (a) of this section, as long as you make clear that these maintenance steps are not necessary to keep the emission-related warranty valid. If operators do the maintenance specified in paragraph (a) of this section, but not the recommended additional maintenance, this does not allow you to disqualify them from in-use testing or deny a warranty claim.

(c) *Special maintenance.* You may specify more frequent maintenance to address problems related to special situations such as substandard fuel or atypical engine operation. For example, you may specify more frequent cleaning of fuel system components for engines you have reason to believe will be using fuel that causes substantially more engine performance problems than commercial fuels of the same type that are generally available across the United States.

(d) *Noncritical emission-related maintenance.* For engine parts not listed in paragraph (a) of this section, you may schedule any amount of emission-related inspection or maintenance. But you must state clearly that these steps are not necessary to keep the emission-related warranty valid. Also, do not take these inspection or maintenance steps during service accumulation on your test engines.

(e) *Maintenance that is not emission-related.* For maintenance unrelated to emission controls, you may schedule any amount of inspection or maintenance. You may also take these inspection or maintenance steps during service accumulation on your test vehicles or engines. This might include adding engine oil or changing air, fuel, or oil filters.

(f) *Source of parts and repairs.* Print clearly on the first page of your written maintenance instructions that any repair shop or person may maintain, replace, or repair emission-control devices and systems. Your instructions may not require components or service identified by brand, trade, or corporate name. Also, do not directly or indirectly condition your warranty on a requirement that the vehicle be serviced by your franchised dealers or any other service establishments with which you have a commercial relationship. You may disregard the requirements in this paragraph (f) if you do one of two things:

(1) Provide a component or service without charge under the purchase agreement.

(2) Get us to waive this prohibition in the public's interest by convincing us the engine will work properly only with the identified component or service.

§ 1048.130 What installation instructions must I give to equipment manufacturers?

(a) If you sell an engine for someone else to install in a piece of nonroad equipment, give the buyer of the engine written instructions for installing it consistent with the requirements of this part. Include all information necessary to ensure that engines installed this way will meet emission standards.

(b) Make sure these instructions have the following information:

(1) Include the heading: "Emission-related installation instructions".

(2) State: "Failing to follow these instructions when installing a certified engine in a piece of nonroad equipment violates federal law (40 CFR 1068.105(b)), subject to fines or other penalties as described in the Clean Air Act.".

(3) Describe any other instructions needed to install an exhaust aftertreatment device and to locate exhaust sampling ports consistent with your application for certification.

(4) Describe the steps needed to control evaporative emissions, as described in §§ 1048.105 and 1048.245.

(5) Describe any necessary steps for installing the diagnostic system described in § 1048.110.

(6) Describe any limits on the range of applications needed to ensure that the engine operates consistently with your application for certification. For example, if your engines are certified only for constant-speed operation, tell equipment manufacturers not to install the engines in variable-speed applications. Also, if you need to avoid sustained high-load operation to meet the field-testing emission standards we specify in § 1048.101(c) or to comply with the provisions of § 1048.101(d), describe how the equipment manufacturer must properly size the engines for a given application.

(7) Describe any other instructions to make sure the installed engine will operate according to design specifications in your application for certification.

(8) State: "If you install the engine in a way that makes the engine's emission

control information label hard to read during normal engine maintenance, you must place a duplicate label on the vehicle, as described in 40 CFR 1068.105.".

(c) You do not need installation instructions for engines you install in your own equipment.

§ 1048.135 How must I label and identify the engines I produce?

(a) Assign each production engine a unique identification number and permanently and legibly affix, engrave, or stamp it on the engine.

(b) At the time of manufacture, add a permanent emission control information label identifying each engine. To meet labeling requirements, do four things:

(1) Attach the label in one piece so it is not removable without being destroyed or defaced.

(2) Design and produce it to be durable and readable for the engine's entire life.

(3) Secure it to a part of the engine needed for normal operation and not normally requiring replacement.

(4) Write it in block letters in English.

(c) On your engine's emission control information label, do 13 things:

(1) Include the heading "EMISSION CONTROL INFORMATION".

(2) Include your full corporate name and trademark.

(3) State: "THIS ENGINE IS CERTIFIED TO OPERATE ON [specify operating fuel or fuels].".

(4) Identify the emission-control system; your identifiers must use names and abbreviations consistent with SAE J1930 (incorporated by reference in § 1048.810).

(5) List all requirements for fuel and lubricants.

(6) State the date of manufacture (DAY (optional), MONTH, and YEAR); if you stamp this information on the engine and print it in the owner's manual, you may omit it from the emission control information label.

(7) State: "THIS ENGINE MEETS U.S. ENVIRONMENTAL PROTECTION AGENCY REGULATIONS FOR (MODEL YEAR) LARGE NONROAD SI ENGINES.".

(8) Include EPA's standardized designation for the engine family (and subfamily, where applicable).

(9) State the engine's displacement (in liters) and maximum brake power.

(10) State the engine's useful life (see § 1048.101(g)).

(11) List specifications and adjustments for engine tuneups; show the proper position for the transmission during tuneup and state which accessories should be operating.

(12) Describe other information on proper maintenance and use.

(13) Identify the emission standards to which you have certified the engine.

(d) Some of your engines may need more information on the emission control information label.

(1) If you have an engine family that has been certified only for constant-speed engines, add to the engine label "CONSTANT-SPEED ONLY".

(2) If you have an engine family that has been certified only for variable-speed engines, add to the engine label "VARIABLE-SPEED ONLY".

(3) If you have an engine family that has been certified only for high-load engines, add to the engine label "THIS ENGINE IS NOT INTENDED FOR OPERATION AT LESS THAN 75 PERCENT OF FULL LOAD.".

(4) If you certify an engine to the voluntary standards in § 1048.140, add to the engine label "BLUE SKY SERIES".

(5) If you produce an engine we exempt from the requirements of this part, see subpart G of this part and 40 CFR part 1068, subparts C and D, for more label information.

(6) If you certify an engine family under § 1048.101(d) (and show in your application for certification that in-use engines will experience infrequent high-load operation), add to the engine label "THIS ENGINE IS NOT INTENDED FOR OPERATION AT MORE THAN __ PERCENT OF FULL LOAD.". Specify the appropriate percentage of full load based on the nature of the engine protection. You may add other statements to discourage operation in engine-protection modes.

(e) Some engines may not have enough space for an emission control information label with all the required information. In this case, you may omit the information required in paragraphs (c)(3), (c)(4), (c)(5), and (c)(12) of this section if you print it in the owner's manual instead.

(f) If you are unable to meet these labeling requirements, you may ask us to modify them consistent with the intent of this section.

§ 1048.140 What are the provisions for certifying Blue Sky Series engines?

This section defines voluntary standards for a recognized level of superior emission control for engines designated as "Blue Sky Series" engines. Blue Sky Series engines must meet one of the following standards:

(a) For the 2003 model year, to receive a certificate of conformity, a "Blue Sky Series" engine family must meet all the requirements in this part that apply to 2004 model year engines. This includes all testing and reporting requirements.

(b) For the 2003 through 2006 model years, to receive a certificate of conformity, a "Blue Sky Series" engine family must meet all the requirements in this part that apply to 2007 model year engines. This includes all testing and reporting requirements.

(c) For any model year, to receive a certificate of conformity as a "Blue Sky Series" engine family must meet all the requirements in this part, while certifying to the following exhaust emission standards:

(1) 0.8 g/kW-hr $HC+NO_x$ and 4.4 g/kW-hr CO using steady-state and transient test procedures, as described in subpart F of this part.

(2) 1.1 g/kW-hr $HC+NO_x$ and 6.6 g/kW-hr CO using field-testing procedures, as described in subpart F of this part.

(d) If you certify an engine family under this section, it is subject to all the requirements of this part as if these voluntary standards were mandatory.

§ 1048.145 What provisions apply only for a limited time?

The provisions in this section apply instead of other provisions in this part. This section describes when these interim provisions expire.

(a) *Family banking.* You may certify an engine family to comply with Tier 1 or Tier 2 standards earlier than necessary. For each model year of early compliance for an engine family, you may delay compliance with the same standards for an equal number of engines from another engine family (or families) for one model year. If you certify engines under the voluntary standards of § 1048.140, you may not use them in your calculation under this paragraph (a). Base your calculation on actual power-weighted nationwide sales for each family. You may delay compliance for up to three model years. For example, if you sell 1,000 engines with an average power rating of 60 kW certified a year early, you may delay certification to that tier of standards for up to 60,000 kW-engine-years in any of the following ways:

(1) Delay certification of another engine family with an average power rating of 100 kW of up to 600 engines for one model year.

(2) Delay certification of another engine family with an average power rating of 100 kW of up to 200 engines for three model years.

(3) Delay certification of one engine family with an average power rating of 100 kW of up to 400 engines for one model year and a second engine family with an average power rating of 200 kW of up to 50 engines for two model years.

(b) *Hydrocarbon standards.* For 2004 through 2006 model years, engine manufacturers may use nonmethane

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hydrocarbon measurements to demonstrate compliance with applicable emission standards.

(c) *Transient emission testing.* Engines rated over 560 kW are exempt from the transient emission standards in § 1048.101(a).

(d) *Tier 1 deterioration factors.* For Tier 1 engines, base the deterioration factor from § 1048.240 on 3500 hours of operation. We may assign a deterioration factor for a Tier 1 engine family, but this would not affect your need to meet all emission standards that apply.

(e) [Reserved]

(f) *Optional early field testing.* You may optionally use the field-testing procedures in subpart F of this part for any in-use testing required under subpart E of this part to show that you meet Tier 1 standards. In this case, the same Tier 1 in-use emission standards apply to both steady-state testing in the laboratory and field testing.

(g) *Small-volume provisions.* If you qualify for the hardship provisions in § 1068.250 of this chapter, we may approve extensions of up to four years total.

(h) *2004 certification.* For the 2004 model year, you may choose to have the emission standards and other requirements that apply to these engines in California serve as the emission standards and other requirements applicable under this part, instead of those in subpart A of this part. To ask for a certificate under this paragraph (h), send us the application for certification that you prepare for the California Air Resources Board instead of the information we otherwise require in § 1048.205.

(i) *Recreational vehicles.* Engines or vehicles identified in the scope of 40 CFR part 1051 that are not yet regulated under that part are excluded from the requirements of this part. For example, snowmobiles produced in 2004 are not subject to the emission standards in this part. Once emission standards apply to these engines and vehicles, they are excluded from the requirements of this part under § 1048.5(a)(1).

Subpart C—Certifying Engine Families

§ 1048.201 What are the general requirements for submitting a certification application?

(a) Send us an application for a certificate of conformity for each engine family. Each application is valid for only one model year.

(b) The application must not include false or incomplete statements or information (see § 1048.255).

(c) We may choose to ask you to send us less information than we specify in this subpart, but this would not change your recordkeeping requirements.

(d) Use good engineering judgment for all decisions related to your application (see 40 CFR 1068.5).

(e) An authorized representative of your company must approve and sign the application.

§ 1048.205 What must I include in my application?

In your application, do all the following things unless we ask you to send us less information:

(a) Describe the engine family's specifications and other basic parameters of the engine's design. List the types of fuel you intend to use to certify the engine family (for example, gasoline, liquefied petroleum gas, methanol, or natural gas).

(b) Explain how the emission-control systems operate.

(1) Describe in detail all the system components for controlling exhaust emissions, including auxiliary emission-control devices and all fuel-system components you will install on any production or test engine. Explain why any auxiliary emission-control devices are not defeat devices (see § 1048.115(g)). Do not include detailed calibrations for components unless we ask for them.

(2) Describe the evaporative emission controls.

(c) Explain how the engine diagnostic system works, describing especially the engine conditions (with the corresponding diagnostic trouble codes) that cause the malfunction-indicator light to go on. Propose what you consider to be extreme conditions under which the diagnostic system should disregard trouble codes, as described in § 1048.110.

(d) Describe the engines you selected for testing and the reasons for selecting them.

(e) Describe any special or alternate test procedures you used (see § 1048.501).

(f) Describe how you operated the engine or vehicle prior to testing, including the duty cycle and the number of engine operating hours used to stabilize emission levels. Describe any scheduled maintenance you did.

(g) List the specifications of the test fuel to show that it falls within the required ranges we specify in 40 CFR part 1065, subpart C.

(h) Identify the engine family's useful life.

(i) Propose maintenance and use instructions for the ultimate buyer of each new nonroad engine (see § 1048.125).

(j) Propose emission-related installation instructions if you sell engines for someone else to install in a piece of nonroad equipment (see § 1048.130).

(k) Identify each high-cost warranted part and show us how you calculated its replacement cost, including the estimated retail cost of the part, labor rates, and labor hours to diagnose and replace defective parts.

(l) Propose an emission control information label.

(m) Present emission data to show that you meet emission standards.

(1) Present exhaust emission data for HC, NO_X, and CO on a test engine to show your engines meet the duty-cycle emission standards we specify in § 1048.101(a) and (b). Show these figures before and after applying deterioration factors for each engine. Starting in the 2007 model year, identify the duty-cycle emission standards to which you are certifying engines in the engine family. Include test data for each type of fuel from 40 CFR part 1065, subpart C, on which you intend for engines in the engine family to operate (for example, gasoline, liquefied petroleum gas, methanol, or natural gas). If we specify more than one grade of any fuel type (for example, a summer grade and winter grade of gasoline), you only need to submit test data for one grade, unless the regulations of this part specify otherwise for your engine. Note that § 1048.235 allows you to submit an application in certain cases without new emission data.

(2) If your engine family includes a volatile liquid fuel (and you do not use design-based certification under § 1048.245) present evaporative test data to show your vehicles meet the evaporative emission standards we specify in subpart B of this part. Show these figures before and after applying deterioration factors, where applicable.

(n) Report all test results, including those from invalid tests or from any nonstandard tests (such as measurements based on exhaust concentrations in parts per million).

(o) Identify the engine family's deterioration factors and describe how you developed them. Present any emission test data you used for this.

(p) Describe all adjustable operating parameters (see § 1048.115(e)), including the following:

(1) The nominal or recommended setting.

(2) The intended physically adjustable range, including production tolerances if they affect the range.

(3) The limits or stops used to establish adjustable ranges.

(q) Describe everything we need to read and interpret all the information broadcast by an engine's onboard computers and electronic control modules and state that you will give us any hardware or tools we would need to do this. You may reference any appropriate publicly released standards that define conventions for these messages and parameters. Format your information consistent with publicly released standards.

(r) State whether your engine will operate in variable-speed applications, constant-speed applications, or both. If your certification covers only constant-speed or only variable-speed applications, describe how you will prevent use of these engines in the applications for which they are not certified.

(s) Starting in the 2007 model year, state that all the engines in the engine family comply with the field-testing emission standards we specify in § 1048.101(c) for all normal operation and use (see § 1048.515). Describe in detail any testing, engineering analysis, or other information on which you base this statement.

(t) State that you operated your test engines according to the specified procedures and test parameters using the fuels described in the application to show you meet the requirements of this part.

(u) State unconditionally that all the engines in the engine family comply with the requirements of this part, other referenced parts, and the Clean Air Act.

(v) Include estimates of U.S.-directed production volumes.

(w) Show us how to modify your production engines to measure emissions in the field (see § 1048.115(d)).

(x) Add other information to help us evaluate your application if we ask for it.

§ 1048.210 May I get preliminary approval before I complete my application?

If you send us information before you finish the application, we will review it and make any appropriate determinations listed in § 1048.215(b)(1) through (7). Decisions made under this section are considered to be preliminary approval. We will generally not disapprove applications under § 1048.215(b)(1) through (5) where we have given you preliminary approval, unless we find new and substantial information supporting a different decision.

(a) If you request preliminary approval related to the upcoming model year or the model year after that, we will make a "best-efforts" attempt to make the appropriate determinations as soon as possible. We will generally not provide preliminary approval related to a future model year more than two years ahead of time.

(b) You may consider full compliance with published guidance to be preliminary approval only if the guidance includes a statement that we intend you to consider it as such.

§ 1048.215 What happens after I complete my application?

(a) If any of the information in your application changes after you submit it, amend it as described in § 1048.225.

(b) We may deny your application (that is, determine that we cannot approve it without revision) if the engine family does not meet the requirements of this part or the Act. For example:

(1) If you inappropriately use the provisions of § 1048.230(c) or (d) to define a broader or narrower engine family, we will require you to redefine your engine family.

(2) If we determine you did not appropriately select the useful life under § 1048.101(g), we will require you to lengthen it.

(3) If we determine you did not appropriately select deterioration factors under § 1048.240(c), we will require you to revise them.

(4) If your diagnostic system is inadequate for detecting significant malfunctions in emission-control systems, as described in § 1048.110(b), we will require you to make the system more effective.

(5) If your diagnostic system inappropriately disregards trouble codes under certain conditions, as described in § 1048.110(f), we will require you to change the system to operate under broader conditions.

(6) If your proposed emission control information label is inconsistent with § 1048.135, we will require you to change it (and tell you how, if possible).

(7) If you require or recommend maintenance and use instructions inconsistent with § 1048.125, we will require you to change them.

(8) If we find any other problem with your application, we will tell you what the problem is and what needs to be corrected.

(c) If we determine your application is complete and shows that the engine family meets all the requirements of this part and the Act, we will issue a certificate of conformity for your engine family for that model year. If we deny the application, we will explain why in writing. You may then ask us to hold a hearing to reconsider our decision (see § 1048.820).

§ 1048.220 How do I amend the maintenance instructions in my application?

Send the Designated Officer a request to amend your application for certification for an engine family if you want to change the emission-related maintenance instructions in a way that could affect emissions. In your request, describe the proposed changes to the maintenance instructions.

(a) If you are decreasing the specified level of maintenance, you may distribute the new maintenance instructions to your customers 30 days after we receive your request, unless we disapprove your request. We may approve a shorter time or waive this requirement.

(b) If your requested change would not decrease the specified level of maintenance, you may distribute the new maintenance instructions anytime after you send your request.

(c) If you are correcting or clarifying your maintenance instructions or if you are changing instructions for maintenance unrelated to emission controls, the requirements of this section do not apply.

§ 1048.225 How do I amend my application to include new or modified engines?

(a) You must amend your application for certification before you take either of the following actions:

(1) Add an engine to a certificate of conformity (this includes any changes you make in selecting emission standards under § 1048.205(m)(1)).

(2) Make a design change for a certified engine family that may affect emissions or an emission-related part over the engine's lifetime.

(b) Send the Designated Officer a request to amend the application for certification for an engine family. In your request, do all of the following:

(1) Describe the engine model or configuration you are adding or changing.

(2) Include engineering evaluations or reasons why the original test engine is or is not still appropriate.

(3) If the original test engine for the engine family is not appropriate to show compliance for the new or modified nonroad engine, include new test data showing that the new or modified nonroad engine meets the requirements of this part.

(c) You may start producing the new or modified nonroad engine anytime after you send us your request. If we determine that the affected engines do not meet applicable requirements, we will require you to cease production of the engines and to recall and correct the engines at no expense to the owner. If

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you choose to produce engines under this paragraph (c), we will consider that to be consent to recall all engines that we determine do not meet applicable standards or other requirements and to remedy the nonconformity at no expense to the owner.

(d) You must give us test data within 30 days if we ask for more testing, or stop producing the engine if you cannot do this. You may give us an engineering evaluation instead of test data if we agree that you can address our questions without test data.

(e) If we determine that the certificate of conformity would not cover your new or modified nonroad engine, we will send you a written explanation of our decision. In this case, you may no longer produce these engines, though you may ask for a hearing for us to reconsider our decision (see § 1048.820).

§ 1048.230 How do I select engine families?

(a) Divide your product line into families of engines that you expect to have similar emission characteristics. Your engine family is limited to a single model year.

(b) Group engines in the same engine family if they are the same in all of the following aspects:

(1) The combustion cycle.

(2) The cooling system (water-cooled vs. air-cooled).

(3) Configuration of the fuel system (for example, fuel injection vs. carburetion).

(4) Method of air aspiration.

(5) The number, location, volume, and composition of catalytic converters.

(6) The number, arrangement, and approximate bore diameter of cylinders.

(7) Evaporative emission controls.

(c) In some cases you may subdivide a group of engines that is identical under paragraph (b) of this section into different engine families. To do so, you must show you expect emission characteristics to be different during the useful life or that any of the following engine characteristics are different:

(1) Method of actuating intake and exhaust timing (poppet valve, reed valve, rotary valve, etc.).

(2) Location or size of intake and exhaust valves or ports.

(3) Configuration of the combustion chamber.

(4) Cylinder stroke.

(5) Exhaust system.

(6) Type of fuel.

(d) If your engines are not identical with respect to the things listed in paragraph (b) of this section, but you show that their emission characteristics during the useful life will be similar, we may approve grouping them in the same engine family.

(e) If you cannot appropriately define engine families by the method in this section, we will define them based on features related to emission characteristics.

(f) You may ask us to create separate families for exhaust emissions and evaporative emissions. If we do this, list both families on the emission control information label.

(g) Where necessary, you may divide an engine family into sub-families to meet different emission standards, as specified in § 1048.101(a)(2). For issues related to compliance and prohibited actions, we will generally apply decisions to the whole engine family. For engine labels and other administrative provisions, we may approve your request for separate treatment of sub-families.

§ 1048.235 What emission testing must I perform for my application for a certificate of conformity?

This section describes the emission testing you must perform to show compliance with the emission standards in §§ 1048.101(a) and (b) and 1048.105 during certification. See § 1048.205(s) regarding emission testing related to the field-testing emission standards.

(a) Test your emission-data engines using the procedures and equipment specified in subpart F of this part. For any testing related to evaporative emissions, use good engineering judgment to include a complete fuel system with the engine.

(b) Select engine families according to the following criteria:

(1) For exhaust testing, select from each engine family a test engine for each fuel type with a configuration that is most likely to exceed the exhaust emission standards, using good engineering judgment. Consider the emission levels of all exhaust constituents over the full useful life of the engine when operated in a piece of equipment.

(2) For evaporative testing, select from each engine family a test fuel system for each fuel type with a configuration that is most likely to exceed the evaporative emission standards, using good engineering judgment.

(c) You may use previously generated emission data in either of the following cases:

(1) You may submit emission data for equivalent engine families from previous years instead of doing new tests, but only if the data show that the test engine would meet all the requirements for the latest engine models. We may require you to do new emission testing if we believe the latest engine models could be substantially different from the previously tested engine.

(2) You may submit emission data for equivalent engine families performed to show compliance with other standards (such as California standards) instead of doing new tests, but only if the data show that the test engine would meet all of this part's requirements.

(d) We may choose to measure emissions from any of your test engines (or other engines from the engine family).

(1) If we do this, you must provide the test engine at the location we select. We may decide to do the testing at your plant or any other facility. If we choose to do the testing at your plant, you must schedule it as soon as possible and make available the instruments and equipment we need.

(2) If we measure emissions on one of your test engines, the results of that testing become the official data for the engine. Unless we later invalidate this data, we may decide not to consider your data in determining if your engine family meets the emission standards.

(3) Before we test one of your engines, we may set its adjustable parameters to any point within the physically adjustable ranges (see § 1048.115(e)).

(4) Calibrate the test engine within normal production tolerances for anything we do not consider an adjustable parameter (see § 1048.205(p)).

§ 1048.240 How do I demonstrate that my engine family complies with exhaust emission standards?

(a) For certification, your engine family is considered in compliance with the numerical emission standards in § 1048.101 (a) and (b), if all emission-data engines representing that family have test results showing emission levels at or below these standards.

(b) Your engine family does not comply if any emission-data engine representing that family has test results showing emission levels above the standards from § 1048.101 (a) and (b) for any pollutant.

(c) To compare emission levels from the test engine with the emission standards, apply deterioration factors to the measured emission levels. The deterioration factor is a number that shows the relationship between exhaust emissions at the end of useful life and at the low-hour test point. Specify the deterioration factors based on emission measurements using four significant figures, consistent with good engineering judgment. For example, deterioration factors must be consistent with emission increases observed from in-use testing with similar engines (*see* subpart E of this part). Small-volume engine manufacturers may use assigned deterioration factors that we establish. Apply the deterioration factors as follows:

(1) For engines that use aftertreatment technology, such as catalytic converters, the deterioration factor is the ratio of exhaust emissions at the end of useful life to exhaust emissions at the low-hour test point. Adjust the official emission results for each tested engine at the selected test point by multiplying the measured emissions by the deterioration factor. If the factor is less than one, use one.

(2) For engines that do not use aftertreatment technology, the deterioration factor is the difference between exhaust emissions at the end of useful life and exhaust emissions at the low-hour test point. Adjust the official emission results for each tested engine at the selected test point by adding the factor to the measured emissions. If the factor is less than zero, use zero.

(d) After adjusting the emission levels for deterioration, round them to the same number of decimal places as the emission standard. Compare the rounded emission levels to the emission standard for each test engine.

§ 1048.245 How do I demonstrate that my engine family complies with evaporative emission standards?

(a) For certification, your engine family is considered in compliance with the evaporative emission standards in subpart B of this part if you do either of the following:

(1) You have test results showing that evaporative emissions in the family are at or below the standards throughout the useful life.

(2) Where applicable, you comply with the design specifications in paragraph (e) of this section.

(b) Your engine family does not comply if any fuel system representing that family has test results showing emission levels above the standards.

(c) Use good engineering judgment to develop a test plan to establish deterioration factors to show how much emissions increase at the end of useful life.

(d) If you adjust the emission levels for deterioration, round them to the same number of decimal places as the emission standard. Compare the rounded emission levels to the emission standard for each test fuel system.

(e) You may demonstrate that your engine family complies with the evaporative emission standards by demonstrating that you use the following control technologies:

(1) For certification to the standards specified in § 1048.105(a)(1), with the following technologies:

(i) Use a tethered or self-closing gas cap on a fuel tank that stays sealed up to a positive pressure of 24.5 kPa (3.5 psig) or a vacuum pressure of 10.5 kPa (1.5 psig).

(ii) [Reserved]

(2) For certification to the standards specified in § 1048.105(a)(3), demonstrating that you use design features to prevent fuel boiling under all normal operation. You may do this using fuel temperature data measured during normal operation.

(3) We may establish additional options for design-based certification where we find that new test data demonstrate that a technology will ensure compliance with the emission standards in this section.

§ 1048.250 What records must I keep and make available to EPA?

(a) Organize and maintain the following records to keep them readily available; we may review these records at any time:

(1) A copy of all applications and any summary information you sent us.

(2) Any of the information we specify in § 1048.205 that you did not include in your application.

(3) A detailed history of each emission-data engine. In each history, describe all of the following:

(i) The test engine's construction, including its origin and buildup, steps you took to ensure that it represents production engines, any components you built specially for it, and all emission-related components.

(ii) How you accumulated engine operating hours, including the dates and the number of hours accumulated.

(iii) All maintenance (including modifications, parts changes, and other service) and the dates and reasons for the maintenance.

(iv) All your emission tests, including documentation on routine and standard tests, as specified in part 40 CFR part 1065, and the date and purpose of each test.

(v) All tests to diagnose engine or emission-control performance, giving the date and time of each and the reasons for the test.

(vi) Any other significant events.

(b) Keep data from routine emission tests (such as test cell temperatures and relative humidity readings) for one year after we issue the associated certificate of conformity. Keep all other information specified in paragraph (a) of this section for eight years after we issue your certificate.

(c) Store these records in any format and on any media, as long as you can promptly send us organized, written records in English if we ask for them.

(d) Send us copies of any engine maintenance instructions or explanations if we ask for them.

§ 1048.255 When may EPA deny, revoke, or void my certificate of conformity?

(a) We may deny your application for certification if your engine family fails to comply with emission standards or other requirements of this part or the Act. Our decision may be based on any information available to us showing you do not meet emission standards or other requirements, including any testing that we conduct under paragraph (f) of this section. If we deny your application, we will explain why in writing.

(b) In addition, we may deny your application or revoke your certificate if you do any of the following:

(1) Refuse to comply with any testing or reporting requirements.

(2) Submit false or incomplete information (paragraph (d) of this section applies if this is fraudulent).

(3) Render inaccurate any test data.

(4) Deny us from completing authorized activities despite our presenting a warrant or court order (see 40 CFR 1068.20).

(5) Produce engines for importation into the United States at a location where local law prohibits us from carrying out authorized activities.

(c) We may void your certificate if you do not keep the records we require or do not give us information when we ask for it.

(d) We may void your certificate if we find that you intentionally submitted false or incomplete information.

(e) If we deny your application or revoke or void your certificate, you may ask for a hearing (see § 1048.820). Any such hearing will be limited to substantial and factual issues.

(f) We may conduct confirmatory testing of your engines as part of certification. We may deny your application for certification or revoke your certificate if your engines fail to comply with emission standards or other requirements during confirmatory testing.

Subpart D—Testing Production-line Engines

§ 1048.301 When must I test my production-line engines?

(a) If you produce engines that are subject the requirements of this part, you must test them as described in this subpart.

(b) We may suspend or revoke your certificate of conformity for certain engine families if your production-line engines do not meet the requirements of this part or you do not fulfill your

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obligations under this subpart (see §§ 1048.325 and 1048.340).

(c) Other requirements apply to engines that you produce. Other regulatory provisions authorize us to suspend, revoke, or void your certificate of conformity, or order recalls for engines families without regard to whether they have passed these production-line testing requirements. The requirements of this part do not affect our ability to do selective enforcement audits, as described in part 1068 of this chapter. Individual engines in families that pass these production-line testing requirements must also conform to all applicable regulations of this part and part 1068 of this chapter.

(d) You may ask to use an alternate program for testing production-line engines. In your request, you must show us that the alternate program gives equal assurance that your production-line engines meet the requirements of this part. If we approve your alternate program, we may waive some or all of this subpart's requirements.

(e) If you certify an engine family with carryover emission data, as described in § 1048.235(c), and these equivalent engine families consistently pass the production-line testing requirements over the preceding two-year period, you may ask for a reduced testing rate for further production-line testing for that family. The minimum testing rate is one engine per engine family. If we reduce your testing rate, we may limit our approval to any number of model years. In determining whether to approve your request, we may consider the number of engines that have failed the emission tests.

(f) We may ask you to make a reasonable number of production-line engines available for a reasonable time so we can test or inspect them for compliance with the requirements of this part.

§ 1048.305 How must I prepare and test my production-line engines?

(a) *Test procedures.* Test your production-line engines using either the steady-state or transient testing procedures in subpart F of this part to show you meet the emission standards in § 1048.101(a) or (b), respectively. We may require you to test engines using the transient testing procedures to show you meet the emission standards in § 1048.101(a).

(b) *Modifying a test engine.* Once an engine is selected for testing (see § 1048.310), you may adjust, repair, prepare, or modify it or check its emissions only if one of the following is true:

(1) You document the need for doing so in your procedures for assembling and inspecting all your production engines and make the action routine for all the engines in the engine family.

(2) This subpart otherwise specifically allows your action.

(3) We approve your action in advance.

(c) *Engine malfunction.* If an engine malfunction prevents further emission testing, ask us to approve your decision to either repair the engine or delete it from the test sequence.

(d) *Setting adjustable parameters.* Before any test, we may adjust or require you to adjust any adjustable parameter to any setting within its physically adjustable range.

(1) We may adjust idle speed outside the physically adjustable range as needed only until the engine has stabilized emission levels (see paragraph (e) of this section). We may ask you for information needed to establish an alternate minimum idle speed.

(2) We may make or specify adjustments within the physically adjustable range by considering their effect on emission levels, as well as how likely it is someone will make such an adjustment with in-use engines.

(e) *Stabilizing emission levels.* Before you test production-line engines, you may operate the engine to stabilize the emission levels. Using good engineering judgment, operate your engines in a way that represents the way production engines will be used. You may operate each engine for no more than the greater of two periods:

(1) 50 hours.

(2) The number of hours you operated your emission-data engine for certifying the engine family (see 40 CFR part 1065, subpart E).

(f) *Damage during shipment.* If shipping an engine to a remote facility for production-line testing makes necessary an adjustment or repair, you must wait until after the after the initial emission test to do this work. We may waive this requirement if the test would be impossible or unsafe, or if it would permanently damage the engine. Report to us, in your written report under § 1048.345, all adjustments or repairs you make on test engines before each test.

(g) *Retesting after invalid tests.* You may retest an engine if you determine an emission test is invalid. Explain in your written report reasons for invalidating any test and the emission results from all tests. If you retest an engine and, within ten days after testing, ask to substitute results of the new tests for the original ones, we will answer within ten days after we receive your information.

§ 1048.310 How must I select engines for production-line testing?

(a) Use test results from two engines for each engine family to calculate the required sample size for the model year. Update this calculation with each test.

(b) Early in each calendar quarter, randomly select and test two engines from the end of the assembly line for each engine family.

(c) Calculate the required sample size for each engine family. Separately calculate this figure for $HC+NO_X$ and for CO. The required sample size is the greater of these two calculated values. Use the following equation:

$$N = \left[\frac{(t_{95} \times \sigma)}{(x - STD)}\right]^2 + 1$$

Where:

N = Required sample size for the model year.

t_{95} = 95% confidence coefficient, which depends on the number of tests completed, n, as specified in the table in paragraph (c)(1) of this section. It defines 95% confidence intervals for a one-tail distribution.

x = Mean of emission test results of the sample.

STD = Emission standard.

σ = Test sample standard deviation (see paragraph (c)(2) of this section).

(1) Determine the 95% confidence coefficient, t_{95}, from the following table:

n	t_{95}	n	t_{95}	n	t_{95}
2	6.31	12	1.80	22	1.72
3	2.92	13	1.78	23	1.72
4	2.35	14	1.77	24	1.71
5	2.13	15	1.76	25	1.71
6	2.02	16	1.75	26	1.71
7	1.94	17	1.75	27	1.71
8	1.90	18	1.74	28	1.70
9	1.86	19	1.73	29	1.70
10	1.83	20	1.73	30+	1.70
11	1.81	21	1.72		

(2) Calculate the standard deviation, σ, for the test sample using the following formula:

$$\sigma = \sqrt{\frac{\sum (X_i - x)^2}{n - 1}}$$

Where:

X_i = Emission test result for an individual engine.

n = The number of tests completed in an engine family.

(d) Use final deteriorated test results to calculate the variables in the equations in paragraph (c) of this section (see § 1048.315(a)).

(e) After each new test, recalculate the required sample size using the updated mean values, standard deviations, and the appropriate 95-percent confidence coefficient.

(f) Distribute the remaining engine tests evenly throughout the rest of the year. You may need to adjust your schedule for selecting engines if the required sample size changes. Continue to randomly select engines from each engine family; this may involve testing engines that operate on different fuels.

(g) Continue testing any engine family for which the sample mean, x, is greater than the emission standard. This applies if the sample mean for either $HC+NO_X$ or for CO is greater than the emission standard. Continue testing until one of the following things happens:

(1) The sample size, n, for an engine family is greater than the required sample size, N, and the sample mean, x, is less than or equal to the emission standard. For example, if N = 3.1 after the third test, the sample-size calculation does not allow you to stop testing.

(2) The engine family does not comply according to § 1048.325.

(3) You test 30 engines from the engine family.

(4) You test one percent of your projected annual U.S.-directed production volume for the engine family.

(5) You choose to declare that the engine family does not comply with the requirements of this subpart.

(h) If the sample-size calculation allows you to stop testing for a pollutant, you must continue measuring emission levels of that pollutant for any additional tests required under this section. However, you need not continue making the calculations specified in this section for that pollutant. This paragraph (h) does not affect the requirements in section § 1048.320.

(i) You may elect to test more randomly chosen engines than we require. Include these engines in the sample-size calculations.

§ 1048.315 How do I know when my engine family fails the production-line testing requirements?

This section describes the pass/fail criteria for the production-line testing requirements. We apply this criteria on an engine-family basis. See § 1048.320 for the requirements that apply to individual engines that fail a production-line test.

(a) Calculate your test results. Round them to the number of decimal places in the emission standard expressed to one more decimal place.

(1) *Initial and final test results.* Calculate and round the test results for each engine. If you do several tests on an engine, calculate the initial test results, then add them together and divide by the number of tests and round for the final test results on that engine.

(2) *Final deteriorated test results.* Apply the deterioration factor for the engine family to the final test results (see § 1048.240(c)).

(b) Construct the following CumSum Equation for each engine family (for $HC+NO_X$ and for CO emissions):

$$C_i = C_{i-1} + X_i - (STD + 0.25 \times \sigma)$$

Where:

C_i = The current CumSum statistic.

C_{i-1} = The previous CumSum statistic. For the first test, CumSum statistic is 0 (*i.e.* $C_1 = 0$).

X_i = The current emission test result for an individual engine.

STD = Emission standard.

(c) Use final deteriorated test results to calculate the variables in the equation in paragraph (b) of this section (see § 1048.315(a)).

(d) After each new test, recalculate the CumSum statistic.

(e) If you test more than the required number of engines, include the results from these additional tests in the CumSum Equation.

(f) After each test, compare the current CumSum statistic, C_i, to the recalculated Action Limit, H, defined as $H = 5.0 \times \sigma$.

(g) If the CumSum statistic exceeds the Action Limit in two consecutive tests, the engine family fails the production-line testing requirements of this subpart. Tell us within ten working days if this happens.

(h) If you amend the application for certification for an engine family (see § 1048.225), do not change any previous calculations of sample size or CumSum statistics for the model year.

§ 1048.320 What happens if one of my production-line engines fails to meet emission standards?

If you have a production-line engine with final deteriorated test results exceeding one or more emission standards (see § 1048.315(a)), the certificate of conformity is automatically suspended for that failing engine. You must take the following actions before your certificate of conformity can cover that engine:

(a) Correct the problem and retest the engine to show it complies with all emission standards.

(b) Include in your written report a description of the test results and the remedy for each engine (see § 1048.345).

§ 1048.325 What happens if an engine family fails the production-line requirements?

(a) We may suspend your certificate of conformity for an engine family if it fails under § 1048.315. The suspension may apply to all facilities producing engines from an engine family, even if you find noncompliant engines only at one facility.

(b) We will tell you in writing if we suspend your certificate in whole or in part. We will not suspend a certificate until at least 15 days after the engine family fails. The suspension is effective when you receive our notice.

(c) Up to 15 days after we suspend the certificate for an engine family, you may ask for a hearing (see § 1048.820). If we agree before a hearing that we used erroneous information in deciding to suspend the certificate, we will reinstate the certificate.

(d) Section § 1048.335 specifies steps you must take to remedy the cause of the production-line failure. All the engines you have produced since the end of the last test period are presumed noncompliant and should be addressed in your proposed remedy. We may require you to apply the remedy to engines produced earlier if we determine that the cause of the failure is likely to have affected the earlier engines.

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§ 1048.330 May I sell engines from an engine family with a suspended certificate of conformity?

You may sell engines that you produce after we suspend the engine family's certificate of conformity under § 1048.315 only if one of the following occurs:

(a) You test each engine you produce and show it complies with emission standards that apply.

(b) We conditionally reinstate the certificate for the engine family. We may do so if you agree to recall all the affected engines and remedy any noncompliance at no expense to the owner if later testing shows that the engine family still does not comply.

§ 1048.335 How do I ask EPA to reinstate my suspended certificate?

(a) Send us a written report asking us to reinstate your suspended certificate. In your report, identify the reason for noncompliance, propose a remedy for the engine family, and commit to a date for carrying it out. In your proposed remedy include any quality control measures you propose to keep the problem from happening again.

(b) Give us data from production-line testing that shows the remedied engine family complies with all the emission standards that apply.

§ 1048.340 When may EPA revoke my certificate under this subpart and how may I sell these engines again?

(a) We may revoke your certificate for an engine family in the following cases:

(1) You do not meet the reporting requirements.

(2) Your engine family fails to comply with the requirements of this subpart and your proposed remedy to address a suspended certificate under § 1048.325 is inadequate to solve the problem or requires you to change the engine's design or emission-control system.

(b) To sell engines from an engine family with a revoked certificate of conformity, you must modify the engine family and then show it complies with the requirements of this part.

(1) If we determine your proposed design change may not control emissions for the engine's full useful life, we will tell you within five working days after receiving your report. In this case we will decide whether production-line testing will be enough for us to evaluate the change or whether you need to do more testing.

(2) Unless we require more testing, you may show compliance by testing production-line engines as described in this subpart.

(3) We will issue a new or updated certificate of conformity when you have met these requirements.

§ 1048.345 What production-line testing records must I send to EPA?

Do all the following things unless we ask you to send us less information:

(a) Within 30 calendar days of the end of each calendar quarter, send us a report with the following information:

(1) Describe any facility used to test production-line engines and state its location.

(2) State the total U.S.-directed production volume and number of tests for each engine family.

(3) Describe how you randomly selected engines.

(4) Describe your test engines, including the engine family's identification and the engine's model year, build date, model number, identification number, and number of hours of operation before testing for each test engine.

(5) Identify where you accumulated hours of operation on the engines and describe the procedure and schedule you used.

(6) Provide the test number; the date, time and duration of testing; test procedure; initial test results before and after rounding; final test results; and final deteriorated test results for all tests. Provide the emission results for all measured pollutants. Include information for both valid and invalid tests and the reason for any invalidation.

(7) Describe completely and justify any nonroutine adjustment, modification, repair, preparation, maintenance, or test for the test engine if you did not report it separately under this subpart. Include the results of any emission measurements, regardless of the procedure or type of equipment.

(8) Provide the CumSum analysis required in § 1048.315 for each engine family.

(9) Report on each failed engine as described in § 1048.320.

(10) State the date the calendar quarter ended for each engine family.

(b) We may ask you to add information to your written report, so we can determine whether your new nonroad engines conform with the requirements of this subpart.

(c) An authorized representative of your company must sign the following statement:

We submit this report under Sections 208 and 213 of the Clean Air Act. Our production-line testing conformed completely with the requirements of 40 CFR part 1048. We have not changed production processes or quality-control procedures for the engine family in a way that might affect the emission control from production engines. All the information in this report is true and accurate, to the best of my knowledge. I know of the penalties for violating the Clean Air Act and the regulations. (Authorized Company Representative)

(d) Send electronic reports of production-line testing to the Designated Officer using an approved information format. If you want to use a different format, send us a written request with justification for a waiver.

(e) We will send copies of your reports to anyone from the public who asks for them. See § 1048.815 for information on how we treat information you consider confidential.

§ 1048.350 What records must I keep?

(a) Organize and maintain your records as described in this section. We may review your records at any time, so it is important to keep required information readily available.

(b) Keep paper records of your production-line testing for one full year after you complete all the testing required for an engine family in a model year. You may use any additional storage formats or media if you like.

(c) Keep a copy of the written reports described in § 1048.345.

(d) Keep the following additional records:

(1) A description of all test equipment for each test cell that you can use to test production-line engines.

(2) The names of supervisors involved in each test.

(3) The name of anyone who authorizes adjusting, repairing, preparing, or modifying a test engine and the names of all supervisors who oversee this work.

(4) If you shipped the engine for testing, the date you shipped it, the associated storage or port facility, and the date the engine arrived at the testing facility.

(5) Any records related to your production-line tests that are not in the written report.

(6) A brief description of any significant events during testing not otherwise described in the written report or in this section.

(7) Any information specified in § 1048.345 that you do not include in your written reports.

(e) If we ask, you must give us projected or actual production figures for an engine family. We may ask you to divide your production figures by maximum brake power, displacement, fuel type, or assembly plant (if you produce engines at more than one plant).

(f) Keep a list of engine identification numbers for all the engines you produce under each certificate of conformity. Give us this list within 30 days if we ask for it.

(g) We may ask you to keep or send other information necessary to implement this subpart.

Subpart E—Testing In-use Engines

§ 1048.401 What testing requirements apply to my engines that have gone into service?

(a) If you produce engines that are subject to the requirements of this part, you must test them as described in this subpart. This generally involves testing engines in the field or removing them for measurement in a laboratory.

(b) We may approve an alternate plan for showing that in-use engines comply with the requirements of this part if one of the following is true:

(1) You produce 200 or fewer engines per year in the selected engine family.

(2) Removing the engine from most of the applications for that engine family causes significant, irreparable damage to the equipment.

(3) You identify a unique aspect of your engine applications that keeps you from doing the required in-use testing.

(c) We may void your certificate of conformity for an engine family if you do not meet your obligations under this part.

(d) Independent of your responsibility to test in-use engines, we may choose at any time to do our own testing of your in-use engines.

(e) If in-use testing shows that engines fail to meet emission standards or other requirements of this part, we may pursue a recall or other remedy as allowed by the Act (see § 1048.415).

§ 1048.405 How does this program work?

(a) You must test in-use engines, for exhaust emissions, from the families we select. We may select up to 25 percent of your engine families in any model year—or one engine family if you have three or fewer families. We will select engine families for testing before the end of the model year. When we select an engine family for testing, we may specify that you preferentially test engines based on fuel type or equipment type. In addition, we may identify specific modes of operation or sampling times. You may choose to test additional engine families that we do not select.

(b) Send us an in-use testing plan within 12 calendar months after we direct you to test a particular engine family. Complete the testing within 24 calendar months after we approve your plan.

(c) You may need to test engines from more than one model year at a given time.

§ 1048.410 How must I select, prepare, and test my in-use engines?

(a) You may make arrangements to select representative test engines from your own fleet or from other independent sources.

(b) For the selected engine families, select engines that you or your customers have—

(1) Operated for at least 50 percent of the engine family's useful life (see § 1048.101(d));

(2) Not maintained or used in an abnormal way; and

(3) Documented in terms of total hours of operation, maintenance, operating conditions, and storage.

(c) Use the following methods to determine the number of engines you must test in each engine family:

(1) Test at least two engines if you produce 2,000 or fewer engines in the model year from all engine families, or if you produce 500 or fewer engines from the selected engine family. Otherwise, test at least four engines.

(2) If you successfully complete an in-use test program on an engine family and later certify an equivalent engine family with carryover emission data, as described in § 1048.235(c), then test at least one engine instead of the testing rates in paragraph (c)(1) of this section.

(3) If you test the minimum required number of engines and all comply fully with emission standards, you may stop testing.

(4) For each engine that fails any applicable standard, test two more. Regardless of measured emission levels, you do not have to test more than ten engines in an engine family. You may do more tests than we require.

(5) You may concede that the engine family does not comply before testing a total of ten engines.

(d) You may do minimal maintenance to set components of a test engine to specifications for anything we do not consider an adjustable parameter (see § 1048.205(p)). Limit maintenance to what is in the owner's instructions for engines with that amount of service and age. Document all maintenance and adjustments.

(e) Do at least one valid exhaust emission test for each test engine.

(f) For a test program on an engine family, choose one of the following methods to test your engines:

(1) Remove the selected engines for testing in a laboratory. Use the applicable steady-state and transient procedures in subpart F of this part to show compliance with the duty-cycle standards in § 1048.101(a) and (b). We may direct you to measure emissions on the dynamometer using the supplemental test procedures in § 1048.515 to show compliance with the field-testing standards in § 1048.101(c).

(2) Test the selected engines while they remain installed in the equipment. Use the field testing procedures in subpart F of this part. Measure emissions during normal operation of the equipment to show compliance with the field-testing standards in § 1048.101(c). We may direct you to include specific areas of normal operation.

(g) You may ask us to waive parts of the prescribed test procedures if they are not necessary to determine in-use compliance.

(h) Calculate the average emission levels for an engine family from the results for the set of tested engines. Round them to the number of decimal places in the emission standards expressed to one more decimal place.

§ 1048.415 What happens if in-use engines do not meet requirements?

(a) Determine the reason each in-use engine exceeds the emission standards.

(b) If the average emission levels calculated in § 1048.410(h) exceed any of the emission standards that apply, notify us within fifteen days of completing testing on this family. Otherwise follow the reporting instructions in § 1048.420.

(c) We will consider failure rates, average emission levels, and any defects—among other things—to decide on taking remedial action under this subpart (see 40 CFR 1068.505). We may consider the results from any voluntary additional testing you conduct. We may also consider information related to testing from other engine families showing that you designed them to exceed the minimum requirements for controlling emissions. We may order a recall before or after you complete testing of an engine family if we determine a substantial number of engines do not conform to section 213 of the Act or to this part.

(d) If in-use testing reveals a design or manufacturing defect that prevents engines from meeting the requirements of this part, you must correct the defect as soon as possible for any future production for engines in every family affected by the defect.

(e) You may voluntarily recall an engine family for emission failures, as described in 40 CFR 1068.535, unless we have ordered a recall for that family under 40 CFR 1068.505.

(f) You have the right to a hearing before we order you to recall your engines or implement an alternative remedy (see § 1048.820).

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§ 1048.420 What in-use testing information must I report to EPA?

(a) In a report to us within three months after you finish testing an engine family, do all the following:

(1) Identify the engine family, model, serial number, and date of manufacture.

(2) For each engine inspected or considered for testing, identify whether the diagnostic system was functioning.

(3) Describe the specific reasons for disqualifying any engines for not being properly maintained or used.

(4) For each engine selected for testing, include the following information:

(i) Estimate the hours each engine was used before testing.

(ii) Describe all maintenance, adjustments, modifications, and repairs to each test engine.

(5) State the date and time of each test attempt.

(6) Include the results of all emission testing, including incomplete or invalidated tests, if any.

(b) Send electronic reports of in-use testing to the Designated Officer using an approved information format. If you want to use a different format, send us a written request with justification for a waiver.

(c) We will send copies of your reports to anyone from the public who asks for them. See § 1048.815 for information on how we treat information you consider confidential.

(d) We may ask for more information.

§ 1048.425 What records must I keep?

(a) Organize and maintain your records as described in this section. We may review your records at any time, so it is important to keep required information readily available.

(b) Keep paper records of your in-use testing for one full year after you complete all the testing required for an engine family in a model year. You may use any additional storage formats or media if you like.

(c) Keep a copy of the written reports described in § 1048.420.

(d) Keep any additional records related to the procurement process.

Subpart F—Test Procedures

§ 1048.501 What procedures must I use to test my engines?

(a) Use the equipment and procedures for spark-ignition engines in 40 CFR part 1065 to show your engines meet the duty-cycle emission standards in § 1048.101(a) and (b). Measure HC, NO_X, CO, and CO_2 emissions using the full-flow dilute sampling procedures in 40 CFR part 1065. Use the applicable duty cycles in §§ 1048.505 and 1048.510.

(b) We describe in § 1048.515 the supplemental procedures for showing that your engines meet the field-testing emission standards in § 1048.101(c).

(c) Use the fuels specified in 40 CFR part 1065, subpart C, for all the testing we require in this part, except as noted in § 1048.515. Use these test fuels or any commercially available fuel for service accumulation.

(d) To test engines for evaporative emissions, use the equipment and procedures specified for testing diurnal emissions in 40 CFR 86.107–96 and 86.133–96 with fuel meeting the specifications in 40 CFR part 1065, subpart C. Measure emissions from a test engine with a complete fuel system. Reported emission levels must be based on the highest emissions from three successive 24-hour periods of cycling temperatures. Note that you may not be required to test for evaporative emissions during certification if you certify by design, as specified in § 1048.245.

(e) You may use special or alternate procedures, as described in 40 CFR 1065.10.

(f) We may reject data you generate using alternate procedures if later testing with the procedures in 40 CFR part 1065 shows contradictory emission data.

§ 1048.505 What steady-state duty cycles apply for laboratory testing?

(a) Measure emissions by testing the engine on a dynamometer with one or more of the following sets of steady-state duty cycles to show that the engine meets the steady-state standards in § 1048.101(b):

(1) Use the 7-mode duty cycle described in the following table for engines from an engine family that will be used only in variable-speed applications:

TABLE 1 OF § 1048.505—7-MODE DUTY CYCLE [1]

Mode No.	Engine speed	Observed torque [2]	Minimum time in mode (minutes)	Weighting factors
1	Maximum test speed	25	3.0	0.06
2	Intermediate test speed	100	3.0	0.02
3	Intermediate test speed	75	3.0	0.05
4	Intermediate test speed	50	3.0	0.32
5	Intermediate test speed	25	3.0	0.30
6	Intermediate test speed	10	3.0	0.10
7	Idle	0	3.0	0.15

[1] This duty cycle is analogous to the C2 cycle specified in ISO 8178–4.
[2] The percent torque is relative to the maximum torque at the given engine speed.

(2) Use the 5-mode duty cycle described in the following table if you certify an engine family for operation only at a single, rated speed:

TABLE 2 OF § 1048.505—5-MODE DUTY CYCLE FOR CONSTANT-SPEED ENGINES [1]

Mode No.	Engine speed	Torque [2]	Minimum time in mode (minutes)	Weighting factors
1	Maximum test	100	3.0	0.05
2	Maximum test	75	3.0	0.25
3	Maximum test	50	3.0	0.30

TABLE 2 OF § 1048.505—5-MODE DUTY CYCLE FOR CONSTANT-SPEED ENGINES [1]

Mode No.	Engine speed	Torque [2]	Minimum time in mode (minutes)	Weighting factors
4	Maximum test	25	3.0	0.30
5	Maximum test	10	3.0	0.10

[1] This duty cycle is analogous to the D2 cycle specified in ISO 8178–4.
[2] The percent torque is relative to the maximum torque at maximum test speed.

(3) Use both of the duty cycles described in paragraphs (a)(1) and (a)(2) of this section if you will not restrict an engine family to constant-speed or variable-speed applications.

(4) Use only the duty cycle specified in paragraph (a)(2) of this section for all severe-duty engines.

(5) Use the 2-mode duty cycle described in the following table for high-load engines instead of the other duty cycles in this paragraph (a):

TABLE 3 OF § 1048.505—2-MODE DUTY CYCLE FOR HIGH-LOAD ENGINES [1]

Mode No.	Engine speed	Torque [2]	Minimum time in mode (minutes)	Weighting factors
1	Maximum test	100	3.0	0.50
2	Maximum test	75	3.0	0.50

[1] This duty cycle is derived from the D1 cycle specified in ISO 8178–4.
[2] The percent torque is relative to the maximum torque at maximum test speed.

(b) If we test an engine to confirm that it meets the duty-cycle emission standards, we will use the steady-state duty cycles that apply for that engine family.

(c) During idle mode, operate the engine with the following parameters:

(1) Hold the speed within your specifications.

(2) Keep the throttle at the idle-stop position.

(3) Keep engine torque under 5 percent of the peak torque value at maximum test speed.

(d) For the full-load operating mode, operate the engine at wide-open throttle.

(e) See 40 CFR part 1065 for detailed specifications of tolerances and calculations.

(f) In the normal test sequence described in 40 CFR part 1065, subpart F, steady-state testing generally follows the transient test. For those cases where we do not require transient testing, perform the steady-state test after an appropriate warm-up period, consistent with good engineering judgment.

§ 1048.510 What transient duty cycles apply for laboratory testing?

(a) Starting with the 2007 model year, measure emissions by testing the engine on a dynamometer with one of the following transient duty cycles to show that the engine meets the transient emission standards in § 1048.101(a):

(1) If you certify an engine family for constant-speed operation only, use the transient duty-cycle described in Appendix I of this part.

(2) For all other engines, use the transient duty-cycle described in Appendix II of this part.

(b) If we test an engine to confirm that it meets the duty-cycle emission standards, we will use the transient duty cycle that applies for that engine family.

(c) Warm up the test engine as follows:

(1) Operate the engine for the first 180 seconds of the appropriate duty cycle, then allow it to idle without load for 30 seconds. At the end of the 30-second idling period, start measuring emissions as the engine operates over the prescribed duty cycle. For severe-duty engines, this engine warm-up procedure may include up to 15 minutes of operation over the appropriate duty cycle.

(2) If the engine was already operating before a test, use good engineering judgment to let the engine cool down enough so measured emissions during the next test will accurately represent those from an engine starting at room temperature. For example, if an engine starting at room temperature warms up enough in three minutes to start closed-loop operation and achieve full catalyst activity, then minimal engine cooling is necessary before starting the next test.

(3) You are not required to measure emissions while the engine is warming up. However, you must design your emission-control system to start working as soon as possible after engine starting. In your application for certification, describe how your engine meets this objective (see § 1048.205(b)).

§ 1048.515 Field-testing procedures.

(a) This section describes the procedures to determine whether your engines meet the field-testing emission standards in § 1048.101(c). These procedures may include any normal engine operation and ambient conditions that the engines may experience in use. Paragraph (b) of this section defines the limits of what we will consider normal engine operation and ambient conditions. Use the test procedures we specify in § 1048.501, except for the provisions we specify in this section. Measure emissions with one of the following procedures:

(1) Remove the selected engines for testing in a laboratory. You can use an engine dynamometer to simulate normal operation, as described in this section.

(2) Test the selected engines while they remain installed in the equipment. In 40 CFR part 1065, subpart J, we describe the equipment and sampling methods for testing engines in the field. Use fuel meeting the specifications of 40 CFR 1065.210 or a fuel typical of what you would expect the engine to use in service.

(b) An engine's emissions may not exceed the levels we specify in § 1048.101(c) for any continuous sampling period of at least 120 seconds

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under the following ranges of operation and operating conditions:

(1) Engine operation during the emission sampling period may include any normal operation, subject to the following restrictions:

(i) Average power must be over 5 percent of maximum brake power.

(ii) Continuous time at idle must not be greater than 120 seconds.

(iii) The sampling period may not begin until the engine has reached stable operating temperatures. For example, this would exclude engine operation after starting until the thermostat starts modulating coolant temperature.

(iv) The sampling period may not include engine starting.

(v) For engines that qualify for the alternate Tier 2 emission standards in § 1048.101(d), operation at 90 percent or more of maximum power must be less than 10 percent of the total sampling time. You may request our approval for a different power threshold.

(2) Engine testing may occur under any normal conditions without correcting measured emission levels, subject to the following restrictions:

(i) Barometric pressure must be between 80.0 and 103.3 kPa (600 and 775 mm Hg).

(ii) Ambient air temperature must be between 13° and 35° C.

Subpart G—Compliance Provisions

§ 1048.601 What compliance provisions apply to these engines?

Engine and equipment manufacturers, as well as owners, operators, and rebuilders of these engines, and all other persons, must observe the requirements and prohibitions in 40 CFR part 1068 and the requirements of the Act. The compliance provisions in this subpart apply only to the engines we regulate in this part.

§ 1048.605 What are the provisions for exempting engines from the requirements of this part if they are already certified under the motor-vehicle program?

(a) This section applies to you if you are an engine manufacturer. See § 1048.610 if you are not an engine manufacturer.

(b) The only requirements or prohibitions from this part that apply to an engine that is exempt under this section are in this section.

(c) If you meet all the following criteria and requirements regarding your new nonroad engine, it is exempt under this section:

(1) You must produce it by modifying an engine covered by a valid certificate of conformity under 40 CFR part 86.

(2) Do not make any changes to the certified engine that we could reasonably expect to increase its exhaust or evaporative emissions. For example, if you make any of the following changes to one of these engines, you do not qualify for this exemption:

(i) Change any fuel system or evaporative system parameters from the certified configuration (this does not apply to refueling emission controls).

(ii) Change any other emission-related components.

(iii) Modify or design the engine cooling system so that temperatures or heat rejection rates are outside the original engine manufacturer's specified ranges.

(3) Demonstrate that fewer than 50 percent of the engine model's total sales, from all companies, are used in nonroad applications.

(4) The engine must have the label we require under 40 CFR part 86.

(5) Add a permanent supplemental label to the engine in a position where it will remain clearly visible after installation in the equipment. In your engine's emission control information label, do the following:

(i) Include the heading: "Nonroad Engine Emission Control Information".

(ii) Include your full corporate name and trademark.

(iii) State: "THIS ENGINE WAS ADAPTED FOR NONROAD USE WITHOUT AFFECTING ITS EMISSION CONTROLS.".

(iv) State the date you finished modifying the engine (month and year).

(6) The original and supplemental labels must be readily visible after the engine is installed in the equipment or, if the equipment obscures the engine's emission control information label, the equipment manufacturer must attach duplicate labels, as described in 40 CFR 1068.105.

(7) Send the Designated Officer a signed letter by the end of each calendar year (or less often if we tell you) with all the following information:

(i) Identify your full corporate name, address, and telephone number.

(ii) List the engine models you expect to produce under this exemption in the coming year.

(iii) State: "We produce each listed engine model for nonroad application without making any changes that could increase its certified emission levels, as described in 40 CFR 1048.605.".

(d) If your engines do not meet the criteria listed in paragraph (c) of this section, they will be subject to the standards and prohibitions of this part. Producing these engines without a valid exemption or certificate of conformity would violate the prohibitions in 40 CFR 1068.101.

(e) If you are the original engine manufacturer of both the highway and nonroad versions of an exempted engine, you must send us emission test data on the applicable nonroad duty cycle(s). You may include the data in your application for certification or in your letter requesting the exemption.

(f) If you are the original engine manufacturer of an exempted engine that is modified by another company under this exemption, we may require you to send us emission test data on the applicable nonroad duty cycle(s). If we ask for this data, we will allow a reasonable amount of time to collect it.

(g) The engine exempted under this section must meet all applicable requirements from 40 CFR part 86. This applies to engine manufacturers, equipment manufacturers who use these engines, and all other persons as if these engines were used in a motor vehicle.

§ 1048.610 What are the provisions for producing nonroad equipment with engines already certified under the motor-vehicle program?

If you are not an engine manufacturer, you may produce nonroad equipment from complete or incomplete motor vehicles with the motor vehicle engine if you meet three criteria:

(a) The engine or vehicle is certified to 40 CFR part 86.

(b) The engine is not adjusted outside the engine manufacturer's specifications (see § 1048.605(c)(2)).

(c) The engine or vehicle is not modified in any way that may affect its emission control. This applies to exhaust and evaporative emission controls, but not refueling emission controls.

§ 1048.615 What are the provisions for exempting engines designed for lawn and garden applications?

This section is intended for engines designed for lawn and garden applications, but it applies to any engines meeting the size criteria in paragraph (a) of this section.

(a) If an engine meets all the following criteria, it is exempt from the requirements of this part:

(1) The engine must have a total displacement of 1,000 cc or less.

(2) The engine must have a maximum brake power of 30 kW or less.

(3) The engine must be in an engine family that has a valid certificate of conformity showing that it meets emission standards for Class II engines under 40 CFR part 90.

(b) The only requirements or prohibitions from this part that apply to an engine that meets the criteria in paragraph (a) of this section are in this section.

(c) If your engines do not meet the criteria listed in paragraph (a) of this section, they will be subject to the provisions of this part. Producing these engines without a valid exemption or certificate of conformity would violate the prohibitions in 40 CFR 1068.101.

(d) Engines exempted under this section are subject to all the requirements affecting engines under 40 CFR part 90. The requirements and restrictions of 40 CFR part 90 apply to anyone manufacturing these engines, anyone manufacturing equipment that uses these engines, and all other persons in the same manner as if these engines had a total maximum brake power at or below 19 kW.

§ 1048.620 What are the provisions for exempting large engines fueled by natural gas?

(a) If an engine meets all the following criteria, it is exempt from the requirements of this part:

(1) The engine must operate solely on natural gas.

(2) The engine must have maximum brake power 250 kW or higher.

(3) The engine must be in an engine family that has a valid certificate of conformity showing that it meets emission standards for engines of that power rating under 40 CFR part 89.

(b) The only requirements or prohibitions from this part that apply to an engine that is exempt under this section are in this section.

(c) If your engines do not meet the criteria listed in paragraph (a) of this section, they will be subject to the provisions of this part. Producing these engines without a valid exemption or certificate of conformity would violate the prohibitions in 40 CFR 1068.101.

(d) Engines exempted under this section are subject to all the requirements affecting engines under 40 CFR part 89. The requirements and restrictions of 40 CFR part 89 apply to anyone manufacturing these engines, anyone manufacturing equipment that uses these engines, and all other persons in the same manner as if these were nonroad diesel engines.

(e) You may request an exemption under this section by submitting an application for certification for the engines under 40 CFR part 89.

§ 1048.625 What special provisions apply to engines using noncommercial fuels?

If you are unable to meet this part's requirements with engines using noncommercial fuels (such as unrefined natural gas released by oil wells), the following provisions apply for those engines:

(a) Create a separate engine family.

(b) Disregard the limits on adjustable parameters in § 1048.115(e), but make sure the engines meet emission standards with normal settings when the engine is using fuel meeting the specifications of 40 CFR part 1065, subpart C.

(c) Add the following information to the emission control information label specified in § 1048.135:

(1) Include instructions describing how to adjust the engine to operate in a way that maintains the effectiveness of the emission-control system.

(2) State: "THIS ENGINE IS CERTIFIED TO OPERATE IN APPLICATIONS USING NONCOMMERCIAL FUEL. USING IT IN AN APPLICATION INVOLVING ONLY COMMERCIAL FUELS MAY BE A VIOLATION OF FEDERAL LAW SUBJECT TO CIVIL PENALTY.".

(d) Keep records to document the destinations and quantities of engines produced under this section.

Subpart H—[Reserved]

Subpart I—Definitions and Other Reference Information

§ 1048.801 What definitions apply to this part?

The following definitions apply to this part. The definitions apply to all subparts unless we note otherwise. All undefined terms have the meaning the Act gives to them. The definitions follow:

Act means the Clean Air Act, as amended, 42 U.S.C. 7401 *et seq.*

Adjustable parameter means any device, system, or element of design that someone can adjust (including those which are difficult to access) and that, if adjusted, may affect emissions or engine performance during emission testing or normal in-use operation. You may ask us to exclude a parameter that is difficult to access if it cannot be adjusted to affect emissions without significantly degrading performance, or if you otherwise show us that it will not be adjusted in a way that affects emissions during in-use operation.

Aftertreatment means relating to any system, component, or technology mounted downstream of the exhaust valve or exhaust port whose design function is to reduce exhaust emissions.

Aircraft means any vehicle capable of sustained air travel above treetop heights.

All-terrain vehicle has the meaning we give in 40 CFR 1051.801.

Auxiliary emission-control device means any element of design that senses temperature, engine rpm, motive speed, transmission gear, atmospheric pressure, manifold pressure or vacuum, or any other parameter to activate, modulate, delay, or deactivate the operation of any part of the emission-control system. This also includes any other feature that causes in-use emissions to be higher than those measured under test conditions, except as we allow under this part.

Blue Sky Series engine means an engine meeting the requirements of § 1048.140.

Brake power means the usable power output of the engine, not including power required to operate fuel pumps, oil pumps, or coolant pumps.

Broker means any entity that facilitates a trade of emission credits between a buyer and seller.

Calibration means the set of specifications and tolerances specific to a particular design, version, or application of a component or assembly capable of functionally describing its operation over its working range.

Certification means obtaining a certificate of conformity for an engine family that complies with the emission standards and requirements in this part.

Compression-ignition means relating to a type of reciprocating, internal-combustion engine that is not a spark-ignition engine.

Constant-speed engine means an engine governed to operate at a single speed.

Crankcase emissions means airborne substances emitted to the atmosphere from any part of the engine crankcase's ventilation or lubrication systems. The crankcase is the housing for the crankshaft and other related internal parts.

Designated Officer means the Manager, Engine Programs Group (6405–J), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., Washington, DC 20460.

Emission-control system means any device, system, or element of design that controls or reduces the regulated emissions from an engine.

Emission-data engine means an engine that is tested for certification.

Emission-related maintenance means maintenance that substantially affects emissions or is likely to substantially affect emissions deterioration.

Engine family means a group of engines with similar emission characteristics, as specified in § 1048.230.

Engine manufacturer means the manufacturer of the engine. See the definition of "manufacturer" in this section.

Fuel system means all components involved in transporting, metering, and mixing the fuel from the fuel tank to the

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combustion chamber(s), including the fuel tank, fuel tank cap, fuel pump, fuel filters, fuel lines, carburetor or fuel-injection components, and all fuel-system vents.

Good engineering judgment has the meaning we give in 40 CFR 1068.5.

High-cost warranted part means a component covered by the emission-related warranty with a replacement cost (at the time of certification) exceeding $400 (in 1998 dollars). Adjust this value using the most recent annual average consumer price index. information published by the U.S. Bureau of Labor Statistics. For this definition, replacement cost includes the retail cost of the part plus labor and standard diagnosis.

High-load engine means an engine for which the engine manufacturer can provide clear evidence that operation below 75 percent of maximum load in it's final application will be rare.

Hydrocarbon (HC) means the hydrocarbon group on which the emission standards are based for each fuel type. For gasoline- and LPG-fueled engines, HC means total hydrocarbon (THC). For natural gas-fueled engines, HC means nonmethane hydrocarbon (NMHC). For alcohol-fueled engines, HC means total hydrocarbon equivalent (THCE).

Identification number means a unique specification (for example, model number/serial number combination) that allows someone to distinguish a particular engine from other similar engines.

Intermediate test speed has the meaning we give in 40 CFR 1065.515.

Manufacturer has the meaning given in section 216(1) of the Act. In general, this term includes any person who manufactures an engine, vehicle, or piece of equipment for sale in the United States or otherwise introduces a new nonroad engine into commerce in the United States. This includes importers who import engines, equipment, or vehicles for resale.

Marine engine means an engine that someone installs or intends to install on a marine vessel. There are two kinds of marine engines:

(1) *Propulsion marine engine* means a marine engine that moves a vessel through the water or directs the vessel's movement.

(2) *Auxiliary marine engine* means a marine engine not used for propulsion.

Marine vessel means a vehicle that is capable of operation in water but is not capable of operation out of water. Amphibious vehicles are not marine vessels.

Maximum brake power means the maximum brake power an engine produces at maximum test speed.

Maximum test speed has the meaning we give in 40 CFR 1065.515.

Maximum test torque has the meaning we give in 40 CFR 1065.1001.

Model year means one of the following things:

(1) For freshly manufactured engines (see definition of "new nonroad engine," paragraph (1)), model year means one of the following:

(i) Calendar year.

(ii) Your annual new model production period if it is different than the calendar year. This must include January 1 of the calendar year for which the model year is named. It may not begin before January 2 of the previous calendar year and it must end by December 31 of the named calendar year.

(2) For an engine that is converted to a nonroad engine after being placed into service in a motor vehicle, model year means the calendar year in which the engine was originally produced (see definition of "new nonroad engine," paragraph (2)).

(3) For a nonroad engine excluded under § 1048.5 that is later converted to operate in an application that is not excluded, model year means the calendar year in which the engine was originally produced (see definition of "new nonroad engine," paragraph (3)).

(4) For engines that are not freshly manufactured but are installed in new nonroad equipment, model year means the calendar year in which the engine is installed in the new nonroad equipment. This installation date is based on the time that final assembly of the equipment is complete (see definition of "new nonroad engine," paragraph (4)).

(5) For an engine modified by an importer (not the original engine manufacturer) who has a certificate of conformity for the imported engine (see definition of "new nonroad engine," paragraph (5)), model year means one of the following:

(i) The calendar year in which the importer finishes modifying and labeling the engine.

(ii) Your annual production period for producing engines if it is different than the calendar year; follow the guidelines in paragraph (1)(ii) of this definition.

(6) For an engine you import that does not meet the criteria in paragraphs (1) through (5) of the definition of "new nonroad engine," model year means the calendar year in which the engine manufacturer completed the original assembly of the engine. In general, this applies to used equipment that you import without conversion or major modification.

Motor vehicle has the meaning we give in 40 CFR 85.1703(a). In general, *motor vehicle* means a self-propelled vehicle that can transport one or more people or any material, but doesn't include any of the following:

(1) Vehicles having a maximum ground speed over level, paved surfaces no higher than 40 km per hour (25 miles per hour).

(2) Vehicles that lack features usually needed for safe, practical use on streets or highways—for example, safety features required by law, a reverse gear (except for motorcycles), or a differential.

(3) Vehicles whose operation on streets or highways would be unsafe, impractical, or highly unlikely. Examples are vehicles with tracks instead of wheels, very large size, or features associated with military vehicles, such as armor or weaponry.

New nonroad engine means any of the following things:

(1) A freshly manufactured nonroad engine for which the ultimate buyer has never received the equitable or legal title. This kind of vehicle might commonly be thought of as "brand new." In the case of this paragraph (1), the engine is no longer new when the ultimate buyer receives this title or the product is placed into service, whichever comes first.

(2) An engine originally manufactured as a motor vehicle engine that is later intended to be used in a piece of nonroad equipment. In this case, the engine is no longer a motor vehicle engine and becomes a "new nonroad engine". The engine is no longer new when it is placed into nonroad service.

(3) A nonroad engine that has been previously placed into service in an application we exclude under § 1048.5, where that engine is installed in a piece of equipment for which these exclusions do not apply. The engine is no longer new when it is placed into nonroad service. For example, this would apply to a stationary engine that is no longer used in a stationary application.

(4) An engine not covered by paragraphs (1) through (3) of this definition that is intended to be installed in new nonroad equipment. The engine is no longer new when the ultimate buyer receives a title for the equipment or the product is placed into service, whichever comes first. This generally includes installation of used engines in new equipment.

(5) An imported nonroad engine covered by a certificate of conformity issued under this part, where someone other than the original engine

manufacturer modifies the engine after its initial assembly and holds the certificate. The engine is no longer new when it is placed into nonroad service.

(6) An imported nonroad engine that is not covered by a certificate of conformity issued under this part at the time of importation. This addresses uncertified engines and vehicles that have been placed into service in other countries and that someone seeks to import into the United States. Importation of this kind of new nonroad engine (or vehicle containing such an engine) is generally prohibited by 40 CFR part 1068.

New nonroad equipment means either of the following things:

(1) A nonroad vehicle or other piece of equipment for which the ultimate buyer has never received the equitable or legal title. The product is no longer new when the ultimate buyer receives this title or the product is placed into service, whichever comes first.

(2) An imported nonroad piece of equipment with an engine not covered by a certificate of conformity issued under this part at the time of importation and manufactured after the date for applying the requirements of this part.

Noncommercial fuel means a fuel that is not marketed or sold as a commercial product. For example, this includes methane produced and released from landfills or oil wells.

Noncompliant engine means an engine that was originally covered by a certificate of conformity, but is not in the certified configuration or otherwise does not comply with the conditions of the certificate.

Nonconforming engine means an engine not covered by a certificate of conformity that would otherwise be subject to emission standards.

Nonmethane hydrocarbon means the difference between the emitted mass of total hydrocarbons and the emitted mass of methane.

Nonroad means relating to nonroad engines or equipment that includes nonroad engines.

Nonroad engine has the meaning given in 40 CFR 1068.30. In general this means all internal-combustion engines except motor vehicle engines, stationary engines, or engines used solely for competition. This part does not apply to all nonroad engines (see § 1048.5).

Off-highway motorcycle has the meaning we give in 40 CFR 1051.801. (Note: highway motorcycles are regulated under 40 CFR part 86.)

Oxides of nitrogen has the meaning given it in 40 CFR part 1065

Placed into service means used for its intended purpose.

Point of first retail sale means the location at which the retail sale occurs. This generally means a dealership.

Revoke means to discontinue the certificate for an engine family. If we revoke a certificate, you must apply for a new certificate before continuing to produce the affected vehicles or engines. This does not apply to vehicles or engines you no longer possess.

Round means to round numbers according to ASTM E29–02 (incorporated by reference in § 1048.810), unless otherwise specified.

Scheduled maintenance means adjusting, repairing, removing, disassembling, cleaning, or replacing components or systems that is periodically needed to keep a part from failing or malfunctioning. It also may mean actions you expect are necessary to correct an overt indication of failure or malfunction for which periodic maintenance is not appropriate.

Severe-duty application includes concrete saws, concrete pumps, and any other application where an engine manufacturer can provide clear evidence that the majority of installations need air-cooled engines as a result of operation in a severe-duty environment.

Severe-duty engine means an engine from an engine family in which the majority of engines are installed in severe-duty applications.

Small-volume engine manufacturer means a company with fewer than 200 employees. This includes any employees working for parent or subsidiary companies.

Snowmobile has the meaning we give in 40 CFR 1051.801.

Spark-ignition means relating to a gasoline-fueled engine or any other type of engine with a spark plug (or other sparking device) and with operating characteristics significantly similar to the theoretical Otto combustion cycle. Spark-ignition engines usually use a throttle to regulate intake air flow to control power during normal operation.

Stationary engine means an internal combustion engine that is neither a nonroad engine, nor a motor-vehicle engine, nor an engine used solely for competition (see the definition of nonroad engine in 40 CFR 1068.30). In general this includes fixed engines and all portable or transportable engines that stay in a single site at a building, structure, facility, or installation for at least a full year; this does not include an engine installed in equipment that has the ability to propel itself. For year-round sources, a full year is 12 consecutive months. For seasonal sources, a full year is a full annual operating period of at least three months. A seasonal source is a site with engines operating only part of the year for at least two consecutive years. If you replace an engine with one that does the same or similar work in the same place, you may apply the previous engine's service to your calculation for residence time. If you move a stationary engine anytime in its life after it has been in place for at least a full year, it becomes a nonroad engine subject to emission standards unless it stays at the new location for a full year.

Stoichiometry means the proportion of a mixture of air and fuel such that the fuel is fully oxidized with no remaining oxygen. For example, stoichiometric combustion in gasoline engines typically occurs at an air-fuel mass ratio of about 14.7.

Suspend means to temporarily discontinue the certificate for an engine family. If we suspend a certificate, you may not sell vehicles or engines from that engine family unless we reinstate the certificate or approve a new one.

Test engine means an engine in a test sample.

Test sample means the collection of engines selected from the population of an engine family for emission testing.

Total hydrocarbon means the combined mass organic compounds measured by our total hydrocarbon test procedure, expressed as a hydrocarbon with a hydrogen-to-carbon mass ratio of 1.85:1.

Total hydrocarbon equivalent means the sum of the carbon mass contributions of non-oxygenated hydrocarbons, alcohols and aldehydes, or other organic compounds that are measured separately as contained in a gas sample, expressed as petroleum-fueled engine hydrocarbons. The hydrogen-to-carbon ratio of the equivalent hydrocarbon is 1.85:1.

Tier 1 means relating to the emission standards and other requirements that apply beginning with the 2004 model year.

Tier 2 means relating to the emission standards and other requirements that apply beginning with the 2007 model year.

Ultimate buyer means ultimate purchaser.

Ultimate purchaser means, with respect to any new nonroad equipment or new nonroad engine, the first person who in good faith purchases such new nonroad equipment or new nonroad engine for purposes other than resale.

United States means the States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, the

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U.S. Virgin Islands, and the Trust Territory of the Pacific Islands.

Upcoming model year means for an engine family the model year after the one currently in production.

U.S.-directed production volume means the number of engine units, subject to the requirements of this part, produced by a manufacturer for which the manufacturer has a reasonable assurance that sale was or will be made to ultimate buyers in the United States.

Useful life means the period during which the engine is designed to properly function in terms of reliability and fuel consumption, without being remanufactured, specified as a number of hours of operation or calendar years. It is the period during which a new nonroad engine is required to comply with all applicable emission standards. See § 1048.101(g).

Variable-speed engine means an engine that is not a constant-speed engine.

Void means to invalidate a certificate or an exemption. If we void a certificate, all the vehicles produced under that engine family for that model year are considered noncompliant, and you are liable for each vehicle produced under the certificate and may face civil or criminal penalties or both. If we void an exemption, all the vehicles produced under that exemption are considered uncertified (or nonconforming), and you are liable for each vehicle produced under the exemption and may face civil or criminal penalties or both. You may not produce any additional vehicles using the voided exemption.

Volatile liquid fuel means any fuel other than diesel or biodiesel that is a liquid at atmospheric pressure.

Wide-open throttle means maximum throttle opening. Unless this is specified at a given speed, it refers to maximum throttle opening at maximum speed. For electronically controlled or other engines with multiple possible fueling rates, wide-open throttle also means the maximum fueling rate at maximum throttle opening under test conditions.

§ 1048.805 What symbols, acronyms, and abbreviations does this part use?

The following symbols, acronyms, and abbreviations apply to this part:

°C degrees Celsius.
ASTM American Society for Testing and Materials.
cc cubic centimeters.
CFR Code of Federal Regulations.
cm centimeter.
CO carbon monoxide.
CO_2 carbon dioxide.
EPA Environmental Protection Agency.
g/kW-hr grams per kilowatt-hour.
HC hydrocarbon.
ISO International Organization for Standardization.
kPa kilopascals.
kW kilowatts.
LPG liquefied petroleum gas.
m meters.
MIL malfunction-indicator light.
mm Hg millimeters of mercury.
NMHC nonmethane hydrocarbons.
NO_x oxides of nitrogen (NO and NO_2).
psi pounds per square inch of absolute pressure.
psig pounds per square inch of gauge pressure.
rpm revolutions per minute.
SAE Society of Automotive Engineers.
SI spark-ignition.
THC total hydrocarbon.
THCE total hydrocarbon equivalent.
U.S.C. United States Code.

§ 1048.810 What materials does this part reference?

We have incorporated by reference the documents listed in this section. The Director of the Federal Register approved the incorporation by reference as prescribed in 5 U.S.C. 552(a) and 1 CFR part 51. Anyone may inspect copies at the U.S. EPA, Air and Radiation Docket and Information Center, 1301 Constitution Ave., NW., Room B102, EPA West Building, Washington, DC 20460 or the Office of the Federal Register, 800 N. Capitol St., NW., 7th Floor, Suite 700, Washington, DC.

(a) *ASTM material.* Table 1 of § 1048.810 lists material from the American Society for Testing and Materials that we have incorporated by reference. The first column lists the number and name of the material. The second column lists the sections of this part where we reference it. Anyone may purchase copies of these materials from the American Society for Testing and Materials, 100 Barr Harbor Dr., West Conshohocken, PA 19428. Table 1 follows:

TABLE 1 OF § 1048.810.—ASTM MATERIALS

Document number and name	Part 1048 reference
ASTM E29–02, Standard Practice for Using Significant Digits in Test Data to Determine Conformance with Specifications	1048.801

(b) *SAE material.* Table 2 of § 1048.810 lists material from the Society of Automotive Engineering that we have incorporated by reference. The first column lists the number and name of the material. The second column lists the sections of this part where we reference it. Anyone may purchase copies of these materials from the Society of Automotive Engineers, 400 Commonwealth Drive, Warrendale, PA 15096. Table 2 follows:

TABLE 2 OF § 1048.810.—SAE MATERIALS

Document number and name	Part 1048 reference
SAE J1930, Electrical/Electronic Systems Diagnostic Terms, Definitions, Abbreviations, and Acronyms, May 1998	1048.135
SAE J2260, Nonmetallic Fuel System Tubing with One or More Layers, November 1996	1048.105

(c) *ISO material.* Table 3 of § 1048.810 lists material from the International Organization for Standardization that we have incorporated by reference. The first column lists the number and name of the material. The second column lists the section of this part where we reference it. Anyone may purchase copies of these materials from the International Organization for Standardization, Case Postale 56, CH–1211 Geneva 20, Switzerland. Table 3 follows:

TABLE 3 OF § 1048.810.—ISO MATERIALS

Document number and name	Part 1048 reference
ISO 9141–2 Road vehicles—Diagnostic systems—Part 2: CARB requirements for interchange of digital information, February 1994	1048.110
ISO 14230–4 Road vehicles—Diagnostic systems—Keyword Protocol 2000—Part 4: Requirements for emission-related systems, June 2000	1048.110

§ 1048.815 How should I request EPA to keep my information confidential?

(a) Clearly show what you consider confidential by marking, circling, bracketing, stamping, or some other method. We will store your confidential information as described in 40 CFR part 2. Also, we will disclose it only as specified in 40 CFR part 2.

(b) If you send us a second copy without the confidential information, we will assume it contains nothing confidential whenever we need to release information from it.

(c) If you send us information without claiming it is confidential, we may make it available to the public without further notice to you, as described in 40 CFR 2.204.

§ 1048.820 How do I request a hearing?

See 40 CFR part 1068, subpart G, for information related to hearings.

Appendix I to Part 1048—Large Spark-ignition (SI) Transient Cycle for Constant-Speed Engines

The following table shows the transient duty-cycle for constant-speed engines, as described in § 1048.510:

Time(s)	Normalized speed (percent)	Normalized torque (percent)	Time(s)	Normalized speed (percent)	Normalized torque (percent)
1	58	5	61	93	22
2	58	5	62	93	21
3	58	5	63	93	22
4	58	5	64	93	30
5	58	5	65	93	33
6	58	5	66	93	25
7	58	5	67	93	29
8	58	5	68	93	27
9	58	5	69	93	23
10	58	5	70	93	21
11	58	5	71	93	21
12	65	8	72	93	19
13	72	9	73	93	20
14	79	12	74	93	24
15	86	14	75	93	23
16	93	16	76	93	21
17	93	16	77	93	44
18	93	16	78	93	34
19	93	16	79	93	28
20	93	16	80	93	37
21	93	16	81	93	29
22	93	16	82	93	27
23	93	16	83	93	33
24	93	31	84	93	28
25	93	30	85	93	22
26	93	27	86	96	30
27	93	23	87	95	25
28	93	24	88	95	17
29	93	21	89	95	13
30	93	20	90	95	10
31	93	18	91	95	9
32	93	16	92	95	8
33	93	18	93	95	7
34	93	16	94	95	7
35	93	17	95	95	6
36	93	20	96	95	6
37	93	20	97	93	37
38	93	22	98	93	35
39	93	20	99	93	29
40	93	17	100	93	23
41	93	17	101	93	23
42	93	17	102	93	21
43	93	16	103	93	20
44	93	18	104	93	29
45	93	18	105	93	27
46	93	21	106	93	26
47	93	21	107	93	35
48	93	18	108	93	43
49	94	24	109	95	35
50	93	28	110	95	24
51	93	23	111	95	17
52	93	19	112	95	13
53	93	20	113	95	10
54	93	20	114	95	9
55	93	29	115	95	8
56	93	23	116	95	7
57	93	25	117	95	7
58	93	23	118	95	6
59	93	23	119	93	36
60	93	23	120	93	30

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Time(s)	Normalized speed (percent)	Normalized torque (percent)	Time(s)	Normalized speed (percent)	Normalized torque (percent)	Time(s)	Normalized speed (percent)	Normalized torque (percent)
147	93	29	219	93	21	291	93	27
148	93	23	220	93	23	292	93	23
149	93	24	221	93	23	293	93	23
150	93	22	222	93	23	294	93	20
151	94	20	223	93	23	295	93	20
152	93	17	224	93	23	296	93	23
153	93	16	225	93	22	297	93	23
154	93	16	226	93	22	298	93	24
155	93	15	227	93	24	299	93	25
156	93	17	228	93	23	300	93	20
157	93	18	229	93	23	301	93	25
158	93	20	230	93	21	302	93	23
159	93	21	231	93	20	303	93	23
160	93	18	232	93	20	304	93	24
161	93	17	233	93	20	305	93	28
162	92	54	234	93	22	306	93	23
163	93	38	235	93	26	307	93	24
164	93	29	236	93	22	308	93	34
165	93	24	237	93	20	309	93	31
166	93	24	238	93	18	310	93	35
167	93	24	239	93	22	311	93	31
168	93	23	240	93	20	312	93	32
169	93	20	241	94	27	313	93	31
170	93	20	242	93	22	314	93	30
171	93	18	243	93	23	315	93	23
172	93	19	244	93	21	316	93	23
173	93	19	245	93	22	317	93	36
174	93	16	246	95	22	318	93	32
175	93	16	247	95	16	319	93	25
176	93	16	248	95	12	320	93	31
177	93	18	249	95	10	321	93	33
178	93	21	250	95	9	322	93	31
179	93	20	251	95	8	323	93	27
180	93	20	252	96	7	324	93	24
181	93	17	253	95	7	325	93	19
182	93	19	254	95	6	326	96	21
183	93	17	255	92	42	327	96	16
184	93	18	256	93	36	328	95	12
185	93	16	257	93	33	329	95	10
186	93	16	258	92	60	330	95	8
187	93	16	259	93	48	331	95	8
188	93	17	260	93	36	332	95	7
189	93	16	261	93	30	333	95	7
190	93	17	262	93	28	334	95	6
191	93	18	263	93	24	335	95	6
192	93	17	264	93	24	336	95	6
193	93	16	265	93	23	337	87	6
194	93	17	266	93	23	338	57	6
195	93	17	267	93	25	339	58	6
196	93	22	268	93	27	340	58	6
197	93	19	269	93	29	341	58	6
198	93	19	270	93	26	342	58	6
199	95	21	271	93	26	343	58	6
200	95	16	272	93	21	344	58	6
201	95	12	273	93	23	345	58	6
202	95	10	274	93	23	346	58	6
203	96	8	275	94	23	347	58	6
204	96	7	276	93	40	348	58	6
205	95	7	277	94	67	349	58	6
206	96	7	278	93	46	350	58	6
207	95	6	279	93	38	351	58	6
208	96	6	280	93	29	352	95	73
209	96	6	281	93	28	353	93	65
210	88	6	282	93	27	354	93	52
211	89	48	283	93	29	355	93	38
212	93	34	284	93	28	356	93	30
213	93	27	285	94	34	357	93	31
214	93	26	286	93	31	358	93	26
215	93	25	287	93	30	359	93	21
216	93	22	288	94	42	360	93	22
217	93	23	289	93	31	361	93	26
218	93	21	290	93	29	362	93	23

Time(s)	Normalized speed (percent)	Normalized torque (percent)	Time(s)	Normalized speed (percent)	Normalized torque (percent)	Time(s)	Normalized speed (percent)	Normalized torque (percent)
363	93	19	435	58	6	507	93	18
364	93	27	436	58	6	508	93	21
365	93	42	437	58	6	509	95	18
366	93	29	438	58	6	510	95	20
367	94	25	439	58	6	511	95	15
368	94	26	440	58	6	512	96	11
369	94	29	441	58	6	513	95	10
370	93	28	442	58	6	514	96	8
371	93	23	443	93	66	515	95	7
372	93	21	444	93	48	516	95	7
373	93	26	445	93	40	517	95	7
374	93	23	446	93	34	518	95	6
375	93	20	447	93	28	519	96	6
376	94	23	448	93	23	520	96	6
377	93	18	449	93	28	521	83	6
378	93	19	450	93	27	522	56	6
379	93	23	451	93	23	523	58	6
380	93	19	452	93	19	524	72	54
381	93	16	453	93	25	525	94	51
382	93	25	454	93	24	526	93	42
383	93	22	455	93	22	527	93	42
384	93	20	456	93	31	528	93	31
385	93	25	457	93	36	529	93	25
386	94	28	458	93	28	530	93	21
387	93	23	459	93	25	531	93	17
388	93	23	460	93	35	532	93	15
389	93	25	461	93	34	533	93	15
390	93	23	462	93	29	534	93	16
391	93	20	463	93	37	535	93	15
392	93	19	464	93	36	536	93	14
393	93	24	465	93	38	537	93	15
394	93	20	466	93	31	538	93	16
395	93	18	467	93	29	539	94	15
396	93	21	468	93	34	540	93	45
397	95	22	469	93	36	541	93	45
398	96	16	470	93	34	542	93	41
399	96	12	471	93	31	543	93	33
400	95	10	472	93	26	544	93	26
401	96	9	473	93	21	545	93	21
402	95	8	474	94	16	546	93	20
403	96	7	475	96	19	547	93	17
404	96	7	476	96	15	548	93	16
405	96	6	477	95	11	549	93	17
406	96	6	478	96	10	550	93	16
407	95	6	479	95	8	551	93	14
408	91	6	480	95	7	552	93	16
409	58	6	481	95	7	553	93	15
410	58	6	482	96	7	554	93	14
411	58	6	483	96	6	555	93	16
412	58	6	484	96	6	556	93	15
413	58	6	485	95	6	557	93	14
414	58	6	486	85	6	558	93	13
415	58	6	487	56	74	559	93	14
416	58	6	488	93	52	560	93	14
417	58	6	489	93	42	561	93	15
418	58	6	490	93	36	562	93	17
419	58	6	491	93	35	563	93	17
420	58	6	492	93	33	564	93	22
421	58	6	493	93	38	565	93	22
422	58	6	494	93	40	566	93	19
423	58	6	495	93	29	567	93	19
424	58	6	496	93	23	568	93	20
425	58	6	497	93	23	569	93	18
426	58	6	498	93	24	570	93	20
427	58	6	499	93	24	571	93	20
428	58	6	500	93	20	572	93	42
429	58	6	501	93	19	573	93	32
430	58	6	502	93	16	574	93	25
431	58	6	503	93	21	575	93	26
432	58	6	504	93	23	576	93	23
433	58	6	505	93	24	577	93	21
434	58	6	506	93	22	578	93	23

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Time(s)	Normalized speed (percent)	Normalized torque (percent)	Time(s)	Normalized speed (percent)	Normalized torque (percent)	Time(s)	Normalized speed (percent)	Normalized torque (percent)
579	93	19	651	95	29	723	98	20
580	93	21	652	95	26	724	98	14
581	93	20	653	95	31	725	98	11
582	93	20	654	95	34	726	98	9
583	93	20	655	95	29	727	98	8
584	93	18	656	95	29	728	98	7
585	93	18	657	95	30	729	98	6
586	93	21	658	95	24	730	98	6
587	93	19	659	95	19	731	98	6
588	93	21	660	95	23	732	98	5
589	93	19	661	95	21	733	98	5
590	93	19	662	95	22	734	73	6
591	93	18	663	95	19	735	49	5
592	93	18	664	95	18	736	50	77
593	93	17	665	95	20	737	95	39
594	93	16	666	94	60	738	95	30
595	93	16	667	95	48	739	95	28
596	93	15	668	95	39	740	94	31
597	93	16	669	95	36	741	95	36
598	93	19	670	95	27	742	95	36
599	93	52	671	95	22	743	95	30
600	93	45	672	95	19	744	95	26
601	95	39	673	95	22	745	95	27
602	95	39	674	95	19	746	95	22
603	95	39	675	94	17	747	95	18
604	95	39	676	95	27	748	95	19
605	94	30	677	95	24	749	95	25
606	95	30	678	98	19	750	94	25
607	95	29	679	98	19	751	95	21
608	95	24	680	98	14	752	95	22
609	94	30	681	98	11	753	95	27
610	95	28	682	98	9	754	95	27
611	94	25	683	98	8	755	95	27
612	94	29	684	98	7	756	95	24
613	95	32	685	98	6	757	94	20
614	95	33	686	98	6	758	94	23
615	95	44	687	98	6	759	94	26
616	99	37	688	98	6	760	95	25
617	98	27	689	98	5	761	95	25
618	98	19	690	81	5	762	95	21
619	98	13	691	49	5	763	95	28
620	98	11	692	78	48	764	94	39
621	98	9	693	95	37	765	95	32
622	98	7	694	95	31	766	95	24
623	98	7	695	94	32	767	95	19
624	98	6	696	94	34	768	98	20
625	98	6	697	95	29	769	98	17
626	98	6	698	95	25	770	98	12
627	98	5	699	94	26	771	98	10
628	69	6	700	95	28	772	98	8
629	49	5	701	95	27	773	98	7
630	51	5	702	94	28	774	98	6
631	51	5	703	95	30	775	98	6
632	51	5	704	95	27	776	95	61
633	51	6	705	95	26	777	94	51
634	51	6	706	95	27	778	95	40
635	51	6	707	95	25	779	94	35
636	51	6	708	95	26	780	94	36
637	51	5	709	95	25	781	94	32
638	51	5	710	95	23	782	95	24
639	51	5	711	95	20	783	94	19
640	51	5	712	95	23	784	94	19
641	51	6	713	95	20	785	95	19
642	51	6	714	95	18	786	95	19
643	51	6	715	94	22	787	94	18
644	51	6	716	95	19	788	94	20
645	51	5	717	95	23	789	94	23
646	51	6	718	95	27	790	94	22
647	51	5	719	95	26	791	95	23
648	51	6	720	95	23	792	94	20
649	51	5	721	95	20	793	94	18
650	96	35	722	99	23	794	95	16

Time(s)	Normalized speed (percent)	Normalized torque (percent)	Time(s)	Normalized speed (percent)	Normalized torque (percent)	Time(s)	Normalized speed (percent)	Normalized torque (percent)
795	95	17	867	51	6	939	94	34
796	94	16	868	51	6	940	95	26
797	94	16	869	51	6	941	94	36
798	94	17	870	51	5	942	95	27
799	94	18	871	51	6	943	95	25
800	94	21	872	51	7	944	95	26
801	95	21	873	96	45	945	94	21
802	94	19	874	94	44	946	94	19
803	95	18	875	94	34	947	98	21
804	94	19	876	94	41	948	93	53
805	95	22	877	95	44	949	94	45
806	95	21	878	94	32	950	94	35
807	95	19	879	95	26	951	95	28
808	94	20	880	94	20	952	95	23
809	94	22	881	95	29	953	95	20
810	94	22	882	95	27	954	95	17
811	94	22	883	95	21	955	94	19
812	95	23	884	95	34	956	94	18
813	94	22	885	95	31	957	94	18
814	95	22	886	94	26	958	94	18
815	95	19	887	95	22	959	94	19
816	95	16	888	95	23	960	97	17
817	95	14	889	95	19	961	98	19
818	95	18	890	94	18	962	98	14
819	95	18	891	94	20	963	98	11
820	94	20	892	94	26	964	98	9
821	94	22	893	95	29	965	98	7
822	94	19	894	94	32	966	98	7
823	95	18	895	95	26	967	98	6
824	95	17	896	95	34	968	98	6
825	95	19	897	95	30	969	98	6
826	95	19	898	95	24	970	98	5
827	95	19	899	95	19	971	98	5
828	94	19	900	94	17	972	82	5
829	94	21	901	94	16	973	49	5
830	94	19	902	98	19	974	51	6
831	94	17	903	98	17	975	51	6
832	94	18	904	98	12	976	51	6
833	94	21	905	98	10	977	51	5
834	94	19	906	98	8	978	51	6
835	95	18	907	98	7	979	72	58
836	95	19	908	98	6	980	94	36
837	95	17	909	98	6	981	95	28
838	94	15	910	98	6	982	95	24
839	94	17	911	98	5	983	95	25
840	95	19	912	98	5	984	95	26
841	94	22	913	98	5	985	94	30
842	94	21	914	69	5	986	94	26
843	94	18	915	49	5	987	95	34
844	94	16	916	51	5	988	95	57
845	95	14	917	51	6	989	95	45
846	95	14	918	51	6	990	94	37
847	94	19	919	69	75	991	95	34
848	95	20	920	95	70	992	95	27
849	95	23	921	95	57	993	95	27
850	98	23	922	94	49	994	95	29
851	98	22	923	94	38	995	98	22
852	98	16	924	95	43	996	94	84
853	98	12	925	94	51	997	94	74
854	98	9	926	94	41	998	95	62
855	98	8	927	98	42	999	94	51
856	98	7	928	95	89	1000	95	50
857	98	6	929	95	66	1001	95	81
858	98	6	930	94	52	1002	94	65
859	98	6	931	95	41	1003	95	49
860	98	5	932	95	34	1004	94	56
861	98	5	933	95	34	1005	95	65
862	80	5	934	94	30	1006	94	59
863	49	5	935	94	30	1007	99	58
864	51	5	936	95	29	1008	98	41
865	51	5	937	94	28	1009	98	27
866	51	6	938	95	24	1010	98	19

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Time(s)	Normalized speed (percent)	Normalized torque (percent)
1011	98	13
1012	98	11
1013	98	9
1014	98	8
1015	98	7
1016	98	6
1017	98	6
1018	98	6
1019	71	6
1020	49	5
1021	51	6
1022	51	6
1023	51	6
1024	51	6
1025	51	6
1026	51	6
1027	51	6
1028	51	6
1029	51	6
1030	51	6
1031	51	5
1032	51	6
1033	51	5
1034	51	6
1035	51	6
1036	51	6
1037	51	5
1038	51	5
1039	51	6
1040	51	6
1041	69	59
1042	94	48
1043	95	34
1044	95	29
1045	95	26
1046	94	27
1047	95	31
1048	95	26
1049	95	34
1050	95	29
1051	95	31
1052	95	29
1053	95	35
1054	95	38
1055	94	41
1056	95	28
1057	95	36
1058	94	30
1059	94	26
1060	94	33
1061	95	34
1062	95	27
1063	98	26
1064	98	19
1065	98	13
1066	98	11
1067	98	9
1068	98	7
1069	98	7
1070	98	6
1071	98	6
1072	98	6
1073	98	5
1074	89	6
1075	49	5
1076	51	6
1077	51	6
1078	51	6
1079	51	6
1080	51	6
1081	51	6
1082	51	6
1083	50	6
1084	51	6
1085	51	6
1086	51	6
1087	51	6
1088	51	6
1089	51	6
1090	51	6
1091	56	74
1092	95	56
1093	94	49
1094	95	47
1095	94	43
1096	94	33
1097	95	50
1098	94	40
1099	95	33
1100	95	24
1101	94	22
1102	94	22
1103	94	25
1104	95	27
1105	95	32
1106	94	29
1107	94	26
1108	94	26
1109	94	24
1110	98	52
1111	94	41
1112	99	35
1113	95	58
1114	95	58
1115	98	57
1116	98	38
1117	98	26
1118	93	63
1119	94	59
1120	98	100
1121	94	73
1122	98	53
1123	94	76
1124	95	61
1125	94	49
1126	94	37
1127	97	50
1128	98	36
1129	98	25
1130	98	18
1131	98	12
1132	98	10
1133	98	8
1134	98	7
1135	98	7
1136	98	6
1137	98	6
1138	98	6
1139	80	6
1140	49	6
1141	78	61
1142	95	50
1143	94	43
1144	94	42
1145	94	31
1146	95	30
1147	95	34
1148	95	28
1149	95	27
1150	94	27
1151	95	31
1152	95	42
1153	94	41
1154	95	37
1155	95	43
1156	95	34
1157	95	31
1158	95	27
1159	95	23
1160	95	27
1161	96	38
1162	95	40
1163	95	39
1164	95	26
1165	95	33
1166	94	28
1167	94	34
1168	98	73
1169	95	49
1170	95	51
1171	94	55
1172	95	48
1173	95	35
1174	95	39
1175	95	39
1176	94	41
1177	95	30
1178	95	23
1179	94	19
1180	95	25
1181	94	29
1182	98	27
1183	95	89
1184	95	74
1185	94	60
1186	94	48
1187	94	41
1188	94	29
1189	94	24
1190	95	19
1191	94	21
1192	95	29
1193	95	28
1194	95	27
1195	94	23
1196	95	25
1197	95	26
1198	94	22
1199	95	19
1200	94	17

Appendix II to Part 1048—Large Spark-ignition (SI) Composite Transient Cycle

The following table shows the transient duty-cycle for engines that are not constant-speed engines, as described in § 1048.510:

Time(s)	Normalized speed (percent)	Normalized torque (percent)
0	0	0
1	0	0
2	0	0
3	0	0
4	0	0
5	0	0
6	0	0
7	0	0
8	0	0
9	1	8
10	6	54
11	8	61
12	34	59

Time(s)	Normalized speed (percent)	Normalized torque (percent)
13	22	46
14	5	51
15	18	51
16	31	50
17	30	56
18	31	49
19	25	66
20	58	55
21	43	31
22	16	45
23	24	38
24	24	27
25	30	33
26	45	65
27	50	49
28	23	42
29	13	42
30	9	45
31	23	30
32	37	45
33	44	50
34	49	52
35	55	49
36	61	46
37	66	38
38	42	33
39	17	41
40	17	37
41	7	50
42	20	32
43	5	55
44	30	42
45	44	53
46	45	56
47	41	52
48	24	41
49	15	40
50	11	44
51	32	31
52	38	54
53	38	47
54	9	55
55	10	50
56	33	55
57	48	56
58	49	47
59	33	44
60	52	43
61	55	43
62	59	38
63	44	28
64	24	37
65	12	44
66	9	47
67	12	52
68	34	21
69	29	44
70	44	54
71	54	62
72	62	57
73	72	56
74	88	71
75	100	69
76	100	34
77	100	42
78	100	54
79	100	58
80	100	38
81	83	17
82	61	15
83	43	22
84	24	35
85	16	39
86	15	45
87	32	34
88	14	42
89	8	48
90	5	51
91	10	41
92	12	37
93	4	47
94	3	49
95	3	50
96	4	49
97	4	48
98	8	43
99	2	51
100	5	46
101	8	41
102	4	47
103	3	49
104	6	45
105	3	48
106	10	42
107	18	27
108	3	50
109	11	41
110	34	29
111	51	57
112	67	63
113	61	32
114	44	31
115	48	54
116	69	65
117	85	65
118	81	29
119	74	21
120	62	23
121	76	58
122	96	75
123	100	77
124	100	27
125	100	79
126	100	79
127	100	81
128	100	57
129	99	52
130	81	35
131	69	29
132	47	22
133	34	28
134	27	37
135	83	60
136	100	74
137	100	7
138	100	2
139	70	18
140	23	39
141	5	54
142	11	40
143	11	34
144	11	41
145	19	25
146	16	32
147	20	31
148	21	38
149	21	42
150	9	51
151	4	49
152	2	51
153	1	58
154	21	57
155	29	47
156	33	45
157	16	49
158	38	45
159	37	43
160	35	42
161	39	43
162	51	49
163	59	55
164	65	54
165	76	62
166	84	59
167	83	29
168	67	35
169	84	54
170	90	58
171	93	43
172	90	29
173	66	19
174	52	16
175	49	17
176	56	38
177	73	71
178	86	80
179	96	75
180	89	27
181	66	17
182	50	18
183	36	25
184	36	24
185	38	40
186	40	50
187	27	48
188	19	48
189	23	50
190	19	45
191	6	51
192	24	48
193	49	67
194	47	49
195	22	44
196	25	40
197	38	54
198	43	55
199	40	52
200	14	49
201	11	45
202	7	48
203	26	41
204	41	59
205	53	60
206	44	54
207	22	40
208	24	41
209	32	53
210	44	74
211	57	25
212	22	49
213	29	45
214	19	37
215	14	43
216	36	40
217	43	63
218	42	49
219	15	50
220	19	44
221	47	59
222	67	80
223	76	74
224	87	66
225	98	61
226	100	38
227	97	27
228	100	53

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Time(s)	Normalized speed (percent)	Normalized torque (percent)
229	100	72
230	100	49
231	100	4
232	100	13
233	87	15
234	53	26
235	33	27
236	39	19
237	51	33
238	67	54
239	83	60
240	95	52
241	100	50
242	100	36
243	100	25
244	85	16
245	62	16
246	40	26
247	56	39
248	81	75
249	98	86
250	100	76
251	100	51
252	100	78
253	100	83
254	100	100
255	100	66
256	100	85
257	100	72
258	100	45
259	98	58
260	60	30
261	43	32
262	71	36
263	44	32
264	24	38
265	42	17
266	22	51
267	13	53
268	23	45
269	29	50
270	28	42
271	21	55
272	34	57
273	44	47
274	19	46
275	13	44
276	25	36
277	43	51
278	55	73
279	68	72
280	76	63
281	80	45
282	83	40
283	78	26
284	60	20
285	47	19
286	52	25
287	36	30
288	40	26
289	45	34
290	47	35
291	42	28
292	46	38
293	48	44
294	68	61
295	70	47
296	48	28
297	42	22
298	31	29
299	22	35
300	28	28
301	46	46
302	62	69
303	76	81
304	88	85
305	98	81
306	100	74
307	100	13
308	100	11
309	100	17
310	99	3
311	80	7
312	62	11
313	63	11
314	64	16
315	69	43
316	81	67
317	93	74
318	100	72
319	94	27
320	73	15
321	40	33
322	40	52
323	50	50
324	11	53
325	12	45
326	5	50
327	1	55
328	7	55
329	62	60
330	80	28
331	23	37
332	39	58
333	47	24
334	59	51
335	58	68
336	36	52
337	18	42
338	36	52
339	59	73
340	72	85
341	85	92
342	99	90
343	100	72
344	100	18
345	100	76
346	100	64
347	100	87
348	100	97
349	100	84
350	100	100
351	100	91
352	100	83
353	100	93
354	100	100
355	94	43
356	72	10
357	77	3
358	48	2
359	29	5
360	59	19
361	63	5
362	35	2
363	24	3
364	28	2
365	36	16
366	54	23
367	60	10
368	33	1
369	23	0
370	16	0
371	11	0
372	20	0
373	25	2
374	40	3
375	33	4
376	34	5
377	46	7
378	57	10
379	66	11
380	75	14
381	79	11
382	80	16
383	92	21
384	99	16
385	83	2
386	71	2
387	69	4
388	67	4
389	74	16
390	86	25
391	97	28
392	100	15
393	83	2
394	62	4
395	40	6
396	49	10
397	36	5
398	27	4
399	29	3
400	22	2
401	13	3
402	37	36
403	90	26
404	41	2
405	25	2
406	29	2
407	38	7
408	50	13
409	55	10
410	29	3
411	24	7
412	51	16
413	62	15
414	72	35
415	91	74
416	100	73
417	100	8
418	98	11
419	100	59
420	100	98
421	100	99
422	100	75
423	100	95
424	100	100
425	100	97
426	100	90
427	100	86
428	100	82
429	97	43
430	70	16
431	50	20
432	42	33
433	89	64
434	89	77
435	99	95
436	100	41
437	77	12
438	29	37
439	16	41
440	16	38
441	15	36
442	18	44
443	4	55
444	24	26

Time(s)	Normalized speed (percent)	Normalized torque (percent)
445	26	35
446	15	45
447	21	39
448	29	52
449	26	46
450	27	50
451	13	43
452	25	36
453	37	57
454	29	46
455	17	39
456	13	41
457	19	38
458	28	35
459	8	51
460	14	36
461	17	47
462	34	39
463	34	57
464	11	70
465	13	51
466	13	68
467	38	44
468	53	67
469	29	69
470	19	65
471	52	45
472	61	79
473	29	70
474	15	53
475	15	60
476	52	40
477	50	61
478	13	74
479	46	51
480	60	73
481	33	84
482	31	63
483	41	42
484	26	69
485	23	65
486	48	49
487	28	57
488	16	67
489	39	48
490	47	73
491	35	87
492	26	73
493	30	61
494	34	49
495	35	66
496	56	47
497	49	64
498	59	64
499	42	69
500	6	77
501	5	59
502	17	59
503	45	53
504	21	62
505	31	60
506	53	68
507	48	79
508	45	61
509	51	47
510	41	48
511	26	58
512	21	62
513	50	52
514	39	65
515	23	65
516	42	62
517	57	80
518	66	81
519	64	62
520	45	42
521	33	42
522	27	57
523	31	59
524	41	53
525	45	72
526	48	73
527	46	90
528	56	76
529	64	76
530	69	64
531	72	59
532	73	58
533	71	56
534	66	48
535	61	50
536	55	56
537	52	52
538	54	49
539	61	50
540	64	54
541	67	54
542	68	52
543	60	53
544	52	50
545	45	49
546	38	45
547	32	45
548	26	53
549	23	56
550	30	49
551	33	55
552	35	59
553	33	65
554	30	67
555	28	59
556	25	58
557	23	56
558	22	57
559	19	63
560	14	63
561	31	61
562	35	62
563	21	80
564	28	65
565	7	74
566	23	54
567	38	54
568	14	78
569	38	58
570	52	75
571	59	81
572	66	69
573	54	44
574	48	34
575	44	33
576	40	40
577	28	58
578	27	63
579	35	45
580	20	66
581	15	60
582	10	52
583	22	56
584	30	62
585	21	67
586	29	53
587	41	56
588	15	67
589	24	56
590	42	69
591	39	83
592	40	73
593	35	67
594	32	61
595	30	65
596	30	72
597	48	51
598	66	58
599	62	71
600	36	63
601	17	59
602	16	50
603	16	62
604	34	48
605	51	66
606	35	74
607	15	56
608	19	54
609	43	65
610	52	80
611	52	83
612	49	57
613	48	46
614	37	36
615	25	44
616	14	53
617	13	64
618	23	56
619	21	63
620	18	67
621	20	54
622	16	67
623	26	56
624	41	65
625	28	62
626	19	60
627	33	56
628	37	70
629	24	79
630	28	57
631	40	57
632	40	58
633	28	44
634	25	41
635	29	53
636	31	55
637	26	64
638	20	50
639	16	53
640	11	54
641	13	53
642	23	50
643	32	59
644	36	63
645	33	59
646	24	52
647	20	52
648	22	55
649	30	53
650	37	59
651	41	58
652	36	54
653	29	49
654	24	53
655	14	57
656	10	54
657	9	55
658	10	57
659	13	55
660	15	64

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Time(s)	Normalized speed (percent)	Normalized torque (percent)	Time(s)	Normalized speed (percent)	Normalized torque (percent)	Time(s)	Normalized speed (percent)	Normalized torque (percent)
661	31	57	733	31	59	805	13	65
662	19	69	734	29	58	806	9	64
663	14	59	735	31	53	807	27	56
664	33	57	736	33	51	808	26	78
665	41	65	737	33	48	809	40	61
666	39	64	738	27	44	810	35	76
667	39	59	739	21	52	811	28	66
668	89	51	740	13	57	812	23	57
669	28	41	741	12	56	813	16	50
670	19	49	742	10	64	814	11	53
671	27	54	743	22	47	815	9	57
672	37	63	744	15	74	816	9	62
673	32	74	745	8	66	817	27	57
674	16	70	746	34	47	818	42	69
675	12	67	747	18	71	819	47	75
676	13	60	748	9	57	820	53	67
677	17	56	749	11	55	821	61	62
678	15	62	750	12	57	822	63	53
679	25	47	751	10	61	823	60	54
680	27	64	752	16	53	824	56	44
681	14	71	753	12	75	825	49	39
682	5	65	754	6	70	826	39	35
683	6	57	755	12	55	827	30	34
684	6	57	756	24	50	828	33	46
685	15	52	757	28	60	829	44	56
686	22	61	758	28	64	830	50	56
687	14	77	759	23	60	831	44	52
688	12	67	760	20	56	832	38	46
689	12	62	761	26	50	833	33	44
690	14	59	762	28	55	834	29	45
691	15	58	763	18	56	835	24	46
692	18	55	764	15	52	836	18	52
693	22	53	765	11	59	837	9	55
694	19	69	766	16	59	838	10	54
695	14	67	767	34	54	839	20	53
696	9	63	768	16	82	840	27	58
697	8	56	769	15	64	841	29	59
698	17	49	770	36	53	842	30	62
699	25	55	771	45	64	843	30	65
700	14	70	772	41	59	844	27	66
701	12	60	773	34	50	845	32	58
702	22	57	774	27	45	846	40	56
703	27	67	775	22	52	847	41	57
704	29	68	776	18	55	848	18	73
705	34	62	777	26	54	849	15	55
706	35	61	778	39	62	850	18	50
707	28	78	779	37	71	851	17	52
708	11	71	780	32	58	852	20	49
709	4	58	781	24	48	853	16	62
710	5	58	782	14	59	854	4	67
711	10	56	783	7	59	855	2	64
712	20	63	784	7	55	856	7	54
713	13	76	785	18	49	857	10	50
714	11	65	786	40	62	858	9	57
715	9	60	787	44	73	859	5	62
716	7	55	788	41	68	860	12	51
717	8	53	789	35	48	861	14	65
718	10	60	790	29	54	862	9	64
719	28	53	791	22	69	863	31	50
720	12	73	792	46	53	864	30	78
721	4	64	793	59	71	865	21	65
722	4	61	794	69	68	866	14	51
723	4	61	795	75	47	867	10	55
724	10	56	796	62	32	868	6	59
725	8	61	797	48	35	869	7	59
726	20	56	798	27	59	870	19	54
727	32	62	799	13	58	871	23	61
728	33	66	800	14	54	872	24	62
729	34	73	801	21	53	873	34	61
730	31	61	802	23	56	874	51	67
731	33	55	803	23	57	875	60	66
732	33	60	804	23	65	876	58	55

Time(s)	Normalized speed (percent)	Normalized torque (percent)	Time(s)	Normalized speed (percent)	Normalized torque (percent)	Time(s)	Normalized speed (percent)	Normalized torque (percent)
877	60	52	949	93	22	1021	93	32
878	64	55	950	93	19	1022	93	37
879	68	51	951	93	17	1023	93	28
880	63	54	952	93	19	1024	93	26
881	64	50	953	93	22	1025	93	24
882	68	58	954	93	24	1026	93	22
883	73	47	955	93	23	1027	93	22
884	63	40	956	93	20	1028	93	21
885	50	38	957	93	20	1029	93	20
886	29	61	958	94	19	1030	93	20
887	14	61	959	95	19	1031	93	20
888	14	53	960	95	17	1032	93	20
889	42	6	961	96	13	1033	93	19
890	58	6	962	95	10	1034	93	18
891	58	6	963	96	9	1035	93	20
892	77	39	964	95	7	1036	93	20
893	93	56	965	95	7	1037	93	20
894	93	44	966	95	7	1038	93	20
895	93	37	967	95	6	1039	93	19
896	93	31	968	96	6	1040	93	18
897	93	25	969	96	6	1041	93	18
898	93	26	970	89	6	1042	93	17
899	93	27	971	68	6	1043	93	16
900	93	25	972	57	6	1044	93	16
901	93	21	973	66	32	1045	93	15
902	93	22	974	84	52	1046	93	16
903	93	24	975	93	46	1047	93	18
904	93	23	976	93	42	1048	93	37
905	93	27	977	93	36	1049	93	48
906	93	34	978	93	28	1050	93	38
907	93	32	979	93	23	1051	93	31
908	93	26	980	93	19	1052	93	26
909	93	31	981	93	16	1053	93	21
910	93	34	982	93	15	1054	93	18
911	93	31	983	93	16	1055	93	16
912	93	33	984	93	15	1056	93	17
913	93	36	985	93	14	1057	93	18
914	93	37	986	93	15	1058	93	19
915	93	34	987	93	16	1059	93	21
916	93	30	988	94	15	1060	93	20
917	93	32	989	93	32	1061	93	18
918	93	35	990	93	45	1062	93	17
919	93	35	991	93	43	1063	93	17
920	93	32	992	93	37	1064	93	18
921	93	28	993	93	29	1065	93	18
922	93	23	994	93	23	1066	93	18
923	94	18	995	93	20	1067	93	19
924	95	18	996	93	18	1068	93	18
925	96	17	997	93	16	1069	93	18
926	95	13	998	93	17	1070	93	20
927	96	10	999	93	16	1071	93	23
928	95	9	1000	93	15	1072	93	25
929	95	7	1001	93	15	1073	93	25
930	95	7	1002	93	15	1074	93	24
931	96	7	1003	93	14	1075	93	24
932	96	6	1004	93	15	1076	93	22
933	96	6	1005	93	15	1077	93	22
934	95	6	1006	93	14	1078	93	22
935	90	6	1007	93	13	1079	93	19
936	69	43	1008	93	14	1080	93	16
937	76	62	1009	93	14	1081	95	17
938	93	47	1010	93	15	1082	95	37
939	93	39	1011	93	16	1083	93	43
940	93	35	1012	93	17	1084	93	32
941	93	34	1013	93	20	1085	93	27
942	93	36	1014	93	22	1086	93	26
943	93	39	1015	93	20	1087	93	24
944	93	34	1016	93	19	1088	93	22
945	93	26	1017	93	20	1089	93	22
946	93	23	1018	93	19	1090	93	22
947	93	24	1019	93	19	1091	93	23
948	93	24	1020	93	20	1092	93	22

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Time(s)	Normalized speed (percent)	Normalized torque (percent)
1093	93	22
1094	93	23
1095	93	23
1096	93	23
1097	93	22
1098	93	23
1099	93	23
1100	93	23
1101	93	25
1102	93	27
1103	93	26
1104	93	25
1105	93	27
1106	93	27
1107	93	27
1108	93	24
1109	93	20
1110	93	18
1111	93	17
1112	93	17
1113	93	18
1114	93	18
1115	93	18
1116	93	19
1117	93	22
1118	93	22
1119	93	19
1120	93	17
1121	93	17
1122	93	18
1123	93	18
1124	93	19
1125	93	19
1126	93	20
1127	93	19
1128	93	20
1129	93	25
1130	93	30
1131	93	31
1132	93	26
1133	93	21
1134	93	18
1135	93	20
1136	93	25
1137	93	24
1138	93	21
1139	93	21
1140	93	22
1141	93	22
1142	93	28
1143	93	29
1144	93	23
1145	93	21
1146	93	18
1147	93	16
1148	93	16
1149	93	16
1150	93	17
1151	93	17
1152	93	17
1153	93	17
1154	93	23
1155	93	26
1156	93	22
1157	93	18
1158	93	16
1159	93	16
1160	93	17
1161	93	19
1162	93	18
1163	93	16
1164	93	19
1165	93	22
1166	93	25
1167	93	29
1168	93	27
1169	93	22
1170	93	18
1171	93	16
1172	93	19
1173	93	19
1174	93	17
1175	93	17
1176	93	17
1177	93	16
1178	93	16
1179	93	15
1180	93	16
1181	93	15
1182	93	17
1183	93	21
1184	93	30
1185	93	53
1186	93	54
1187	93	38
1188	93	30
1189	93	24
1190	93	20
1191	95	20
1192	96	18
1193	96	15
1194	96	11
1195	95	9
1196	95	8
1197	96	7
1198	94	33
1199	93	46
1200	93	37
1201	16	8
1202	0	0
1203	0	0
1204	0	0
1205	0	0
1206	0	0
1207	0	0
1208	0	0
1209	0	0

PART 1051—CONTROL OF EMISSIONS FROM RECREATIONAL ENGINES AND VEHICLES

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Sec.

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Authority: 42 U.S.C. 7401–7671(q).

Subpart A—Determining How to Follow This Part

§ 1051.1 Does this part apply to me?

(a) This part applies to you if you manufacture or import any of the following recreational vehicles or engines used in them, unless we exclude them under § 1051.5:

(1) Snowmobiles.

(2) Off-highway motorcycles.

(3) All-terrain vehicles (ATVs).

(4) Offroad utility vehicles with engines with displacement less than or equal to 1000 cc, maximum brake power less than or equal to 30 kW, and maximum vehicle speed of 25 miles per hour or higher. Offroad utility vehicles that are subject to this part are subject to the same requirements as ATVs. This means that any requirement that applies to ATVs also applies to these offroad utility vehicles, without regard to whether the regulatory language mentions offroad utility vehicles.

(b) [Reserved]

(c) As noted in subpart G of this part, 40 CFR part 1068 applies to everyone, including anyone who manufactures, installs, owns, operates, or rebuilds any of the vehicles or engines this part covers.

(d) You need not follow this part for vehicles you produce before the 2006 model year, unless you certify voluntarily. See §§ 1051.103 through 1051.110, § 1051.145, and the definition of "model year" in § 1051.801 for more information about the timing of the requirements.

(e) The requirements of this part begin to apply when a vehicle is new. See the definition of "new" in § 1051.801 for more information. In some cases, vehicles or engines that have been previously used may be considered "new" for the purposes of this part.

(f) See §§ 1051.801 and 1051.805 for definitions and acronyms that apply to this part. The definition section contains significant regulatory provisions and it is very important that you read them.

§ 1051.5 Which engines are excluded or exempted from this part's requirements?

(a) You may exclude vehicles with compression-ignition engines. See 40 CFR part 89 for regulations that cover these engines.

(b) See subpart G of this part and 40 CFR part 1068, subpart C, for exemptions of specific engines.

(c) We may require you to label an engine or vehicle (or both) if this section excludes it and other requirements in this chapter do not apply.

(d) Send the Designated Officer a written request with supporting documentation if you want us to determine whether this part covers or excludes certain vehicles. Excluding engines from this part's requirements does not affect other requirements that may apply to them.

§ 1051.10 What main steps must I take to comply with this part?

(a) You must get a certificate of conformity from us for each engine family before you do any of the following things with a new vehicle or new engine covered by this part: sell, offer for sale, introduce into commerce, distribute or deliver for introduction into commerce, or import it into the United States. "New" vehicles or engines may include some already placed in service (see the definition of "new" in § 1051.801). You must get a new certificate of conformity for each new model year.

(b) To get a certificate of conformity and comply with its terms, you must do five things:

(1) Meet the emission standards and other requirements in subpart B of this part.

(2) Perform preproduction emission tests.

(3) Apply for certification (see subpart C of this part).

(4) Do routine emission testing on production vehicles or engines as required by subpart D of this part.

(5) Follow our instructions throughout this part.

(c) Subpart F of this part describes how to test your engines or vehicles (including references to other parts) and when you may test the engine alone instead of the entire vehicle.

(d) Subpart G of this part and 40 CFR part 1068 describe requirements and prohibitions that apply to manufacturers, owners, operators, rebuilders, and all others. They also describe exemptions available for special circumstances.

§ 1051.15 Do any other regulation parts affect me?

(a) Parts 86 and 1065 of this chapter describe procedures and equipment specifications for testing vehicles and engines. Subpart F of this part describes how to apply part 86 or 1065 of this chapter to show you meet the emission standards in this part.

(b) Part 1068 of this chapter describes general provisions, including these seven areas:

(1) Prohibited actions and penalties for manufacturers and others.

(2) Rebuilding and other aftermarket changes.

(3) Exemptions and exclusions for certain vehicles and engines.

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(4) Importing vehicles and engines.
(5) Selective enforcement audits of your production.
(6) Defect reporting and recall.
(7) Procedures for hearings.
(c) Other parts of this chapter affect you if referenced in this part.

§ 1051.20 May I certify a recreational engine instead of the vehicle?

(a) You may certify engines sold separately from vehicles in either of two cases:
(1) If you manufacture recreational engines but not recreational vehicles, you may ask to certify the engine alone. In your request, explain why you cannot certify the entire vehicle.
(2) If you manufacture complete recreational vehicles containing engines you also sell separately, you may ask to certify all these engines in a single engine family or in separate engine families.
(b) If you certify an engine under this section, you must use the test procedures in subpart F of this part. If the test procedures require vehicle testing, use good engineering judgment to install the engine in an appropriate vehicle for measuring emissions.
(c) If we allow you to certify recreational engines, the vehicles must meet the applicable emission standards (including evaporative emission standards) with the engines installed in the appropriate vehicles. You must prepare installation instructions as described in § 1051.130 and use good engineering judgment so that the engines will meet emission standards after proper installation in the vehicle.
(d) Identify and label engines you produce under this section consistent with the requirements of § 1051.135. On the emission control information label, identify the manufacturing date of the engine rather than the vehicle.
(e) You may not use the provisions of this section to circumvent or reduce the stringency of this part's standards or other requirements.
(f) If you certify under paragraph (a)(1) of this section, you may ask us to allow you to perform production-line testing on the engine. If you certify under paragraph (a)(2) of this section, use good engineering judgment to ensure that these engines are produced in the same manner as the engines you produce for your vehicles, so that your production-line testing results under subpart D of this part would apply to them.

§ 1051.25 What requirements apply when installing certified engines in recreational vehicles?

(a) If you manufacture recreational vehicles with engines certified under § 1051.20, you need not also certify the vehicle under this part. The vehicle must nevertheless meet emission standards with the engine installed.
(b) You must follow the engine manufacturer's emission-related installation instructions, as described in § 1051.135 and 40 CFR 1068.105. For example, you must use a fuel system that meets the permeation requirements of this part, consistent with the engine manufacturer's instructions.
(c) If you install the engine in a way that makes the engine's emission control information label hard to read during normal engine maintenance, you must place a duplicate label on the vehicle, as described in 40 CFR 1068.105.

Subpart B—Emission Standards and Related Requirements

§ 1051.101 What emission standards and other requirements must my vehicles meet?

(a) You must show that your vehicles meet the following:
(1) The applicable exhaust emission standards in § 1051.103, § 1051.105, or § 1051.107.
(i) For snowmobiles, see § 1051.103.
(ii) For off-highway motorcycles, see § 1051.105.
(iii) For all-terrain vehicles and offroad utility vehicles subject to this part, see § 1051.107.
(2) The evaporative emission standards in § 1051.110.
(3) All the requirements in § 1051.115.
(b) The certification regulations in subpart C of this part describe how you make this showing.
(c) These standards and requirements apply to all testing, including production-line and in-use testing, as described in subparts D and E of this part.
(d) Other sections in this subpart describe other requirements for manufacturers such as labeling or warranty requirements.
(e) It is important that you read § 1051.145 to determine if there are other interim requirements or interim compliance options that apply for a limited time.
(f) As is described in § 1051.1(a)(4), offroad utility vehicles that are subject to this part are subject to the same requirements as ATVs.

§ 1051.103 What are the exhaust emission standards for snowmobiles?

(a) Apply the exhaust emission standards in this section by model year. Measure emissions with the snowmobile test procedures in subpart F of this part.
(1) Follow Table 1 of this section for exhaust emission standards. You may use the averaging, banking, and trading provisions of subpart H of this part to show compliance with these standards (an engine family meets emission standards even if its family emission limit is higher than the standard, as long as you show that the whole averaging set of applicable engine families meet the applicable emission standards using emission credits, and the vehicles within the family meet the family emission limit). Table 1 also shows the maximum value you may specify for a family emission limit, as follows:

TABLE 1 OF § 1051.103.—EXHAUST EMISSION STANDARDS FOR SNOWMOBILES (G/KW–HR)

Phase	Model year	Phase-in (percent)	Emission standards			Maximum allowable family emission limits		
			HC	$HC+NO_X$	CO	HC	$HC+NO_X$	CO
Phase 1	2006	50	100		275			
Phase 1	2007–2009	100	100		275			
Phase 2	2010 and 2011	100	75		275			
Phase 3	2012 and later	100	75	(1)	(1)	150	165	400

[1] See § 1051.103(a)(2).

(2) For Phase 3, the $HC+NO_X$ and CO standards are defined by a functional relationship. Choose your corporate average $HC+NO_X$ and CO standards for each model year according to the following criteria:
(i) Prior to production, select the $HC+NO_X$ standard and CO standard (specified as g/kW-hr) so that the combined percent reduction from baseline emission levels is greater than or equal to 100 percent; that is, that the standards comply with the following equation:

$$\left(1-\frac{(HC+NO_x)_{STD}-15}{150}\right)\times 100+\left(1-\frac{CO_{STD}}{400}\right)\times 100 \geq 100$$

(ii) Your corporate average $HC+NO_X$ standard may not be higher than 90 g/kW-hr.
(iii) Your corporate average CO standard may not be higher than 275 g/kW-hr.
(iv) You may use the averaging and banking provisions of subpart H of this part to show compliance with these $HC+NO_X$ and CO standards in this paragraph (a)(2). You may modify your selection of the $HC+NO_X$ and CO standards at the end of the model year under paragraph (a)(2)(i) of this section. You must comply with these final corporate average emission standards.
(b) Apply the exhaust emission standards in this section for snowmobiles using each type of fuel specified in 40 CFR part 1065, subpart C, for which they are designed to operate. You must meet the numerical emission standards for hydrocarbons in this section based on the following types of hydrocarbon emissions for snowmobiles powered by the following fuels:
(1) Gasoline- and LPG-fueled snowmobiles: THC emissions.
(2) Natural gas-fueled snowmobiles: NMHC emissions.
(3) Alcohol-fueled snowmobiles: THCE emissions.
(c) Your snowmobiles must meet emission standards over their full useful life (§ 1051.240 describes how to use deterioration factors to show this). The minimum useful life is 8,000 kilometers, 400 hours of engine operation, or five calendar years, whichever comes first. You must specify a longer useful life in terms of kilometers and hours for the engine family if the average service life of your vehicles is longer than the minimum value, as follows:
(1) Except as allowed by paragraph (c)(2) of this section, your useful life (in kilometers and hours) may not be less than either of the following:
(i) Your projected operating life from advertisements or other marketing materials for any vehicles in the engine family.
(ii) Your basic mechanical warranty for any engines in the engine family.
(2) Your useful life may be based on the average service life of vehicles in the engine family if you show that the average service life is less than the useful life required by paragraph (c)(1) of this section, but more than the minimum useful life (8,000 kilometers or 400 hours of engine operation). In determining the actual average service life of vehicles in an engine family, we will consider all available information and analyses. Survey data is allowed but not required to make this showing.

§ 1051.105 What are the exhaust emission standards for off-highway motorcycles?

(a) Apply the exhaust emission standards in this section by model year. Measure emissions with the off-highway motorcycle test procedures in subpart F of this part.
(1) Follow Table 1 of this section for exhaust emission standards. You may use the averaging, banking, and trading provisions of subpart H of this part to show compliance with the $HC+NO_X$ and/or CO standards (an engine family meets emission standards even if its family emission limit is higher than the standard, as long as you show that the whole averaging set of applicable engine families meet the applicable emission standards using emission credits, and the vehicles within the family meet the family emission limit). The phase-in values specify the percentage of your U.S.-directed production that must comply with the emission standards for those model years. Calculate this compliance percentage based on a simple count of production units within the engine family. Table 1 follows:

TABLE 1 OF § 1051.105.—EXHAUST EMISSION STANDARDS FOR OFF-HIGHWAY MOTORCYCLES (G/KM)

Phase	Model year	Phase-in (percent)	Emission standards		Maximum allowable family emission limits	
			$HC+NO_X$	CO	$HC+NO_X$	CO
Phase 1	2006	50	2.0	25	20.0	50
	2007 and later	100	2.0	25	20.0	50

(2) For model years 2007 and later you may choose to certify all of your off-highway motorcycles to an $HC+NO_X$ standard of 4.0 g/km and a CO standard of 35 g/km, instead of the standards listed in paragraph (a)(1) of this section. To certify to the standards in this paragraph (a)(2), you must comply with the following provisions:
(i) You may not request an exemption for any off-highway motorcycles under § 1051.620
(ii) At least ten percent of your off-highway motorcycles for the model year must have four of the following features:
(A) The absence of a headlight or other lights.
(B) The absence of a spark arrestor.
(C) The absence of manufacturer warranty.
(D) Suspension travel greater than 10 inches.
(E) Engine displacement greater than 50 cc.
(F) The absence of a functional seat.
(iii) You may use the averaging and banking provisions of subpart H of this part to show compliance with this $HC+NO_X$ standard, but not this CO standard. If you use the averaging or banking provisions to show compliance, your FEL for $HC+NO_X$ may not exceed 8.0 g/km for any engine family. You may not use the trading provisions of subpart H of this part.
(3) You may certify off-highway motorcycles with engines that have total

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displacement of 70 cc or less to the exhaust emission exhaust standards in § 1051.615 instead of certifying them to the exhaust emission standards of this section.

(b) Apply the exhaust emission standards in this section for off-highway motorcycles using each type of fuel specified in 40 CFR part 1068, subpart C, for which they are designed to operate. You must meet the numerical emission standards for hydrocarbons in this section based on the following types of hydrocarbon emissions for off-highway motorcycles powered by the following fuels:

(1) Gasoline- and LPG-fueled off-highway motorcycles: THC emissions.

(2) Natural gas-fueled off-highway motorcycles: NMHC emissions.

(3) Alcohol-fueled off-highway motorcycles: THCE emissions.

(c) Your off-highway motorcycles must meet emission standards over their full useful life (§ 1051.240 describes how to use deterioration factors to show this). The minimum useful life is 10,000 kilometers or five years, whichever comes first. You must specify a longer useful life for the engine family in terms of kilometers if the average service life of your vehicles is longer than the minimum value, as follows:

(1) Except as allowed by paragraph (c)(2) of this section, your useful life (in kilometers) may not be less than either of the following:

(i) Your projected operating life from advertisements or other marketing materials for any vehicles in the engine family.

(ii) Your basic mechanical warranty for any engines in the engine family.

(2) Your useful life may be based on the average service life of vehicles in the engine family if you show that the average service life is less than the useful life required by paragraph (c)(1) of this section, but more than the minimum useful life (10,000 kilometers). In determining the actual average service life of vehicles in an engine family, we will consider all available information and analyses. Survey data is allowed but not required to make this showing.

§ 1051.107 What are the exhaust emission standards for all-terrain vehicles (ATVs) and offroad utility vehicles?

This section specifies the exhaust emission standards that apply to ATVs. As is described in § 1051.1(a)(4), offroad utility vehicles that are subject to this part are subject to these same standards.

(a) Apply the exhaust emission standards in this section by model year. Measure emissions with the ATV test procedures in subpart F of this part.

(1) Follow Table 1 of this section for exhaust emission standards. You may use the averaging, banking, and trading provisions of subpart H of this part to show compliance with these $HC+NO_x$ standards (an engine family meets emission standards even if its family emission limit is higher than the standard, as long as you show that the whole averaging set of applicable engine families meet the applicable emission standards using emission credits, and the vehicles within the family meet the family emission limit). Table 1 also shows the maximum value you may specify for a family emission limit. The phase-in values in the table specify the percentage of your total U.S.-directed production that must comply with the emission standards for those model years. Calculate this compliance percentage based on a simple count of production units within the engine family. This applies to your total production of ATVs and offroad utility vehicles that are subject to the standards of this part; including both ATVs and offroad utility vehicles subject to the standards of this section and ATVs and offroad utility vehicles certified to the standards of other sections in this part 1051 (such as § 1051.615, but not including vehicles certified under other parts in this chapter (such as 40 CFR part 90). Table 1 follows:

TABLE 1 OF § 1051.107.—EXHAUST EMISSION STANDARDS FOR ATVS (G/KM)

Phase	Model year	Phase-in (percent)	Emission standards		Maximum allowable family emission limits	
			$HC+NO_x$	CO	$HC+NO_x$	CO
Phase 1	2006	50	1.5	35	20.0	50
	2007 and later	100	1.5	35	20.0	50

(2) You may certify ATVs with engines that have total displacement of less than 100 cc to the exhaust emission exhaust standards in § 1051.615 instead of certifying them to the exhaust emission standards of this section.

(b) Apply the exhaust emission standards in this section for ATVs using each type of fuel specified in 40 CFR 1065, subpart C for which they are designed to operate. You must meet the numerical emission standards for hydrocarbons in this section based on the following types of hydrocarbon emissions for ATVs powered by the following fuels:

(1) Gasoline- and LPG-fueled ATVs: THC emissions.

(2) Natural gas-fueled ATVs: NMHC emissions.

(3) Alcohol-fueled ATVs: THCE emissions.

(c) Your ATVs must meet emission standards over their full useful life (§ 1051.240 describes how to use deterioration factors to show this). The minimum useful life is 10,000 kilometers, 1000 hours of engine operation, or five years, whichever comes first. You must specify a longer useful life for the engine family in terms of kilometers and hours if the average service life of your vehicles is longer than the minimum value, as follows:

(1) Except as allowed by paragraph (c)(2) of this section, your useful life (in kilometers) may not be less than either of the following:

(i) Your projected operating life from advertisements or other marketing materials for any vehicles in the engine family.

(ii) Your basic mechanical warranty for any engines in the engine family.

(2) Your useful life may be based on the average service life of vehicles in the engine family if you show that the average service life is less than the useful life required by paragraph (c)(1) of this section, but more than the minimum useful life (10,000 kilometers or 1,000 hours of engine operation). In determining the actual average service life of vehicles in an engine family, we will consider all available information and analyses. Survey data is allowed but not required to make this showing.

§ 1051.110 What evaporative emission standards must my vehicles meet?

All of your new vehicles must meet the emission standards of this section over their full useful life, as specified in this section. Note that § 1051.245 allows you to use design-based certification instead of generating new emission data.

(a) Beginning with the 2008 model year, permeation emissions from your vehicle's fuel tank(s) may not exceed 1.5 grams per square-meter per day when measured with the test procedures for tank permeation in subpart F of this part. You may use the averaging, banking, and trading provisions of subpart H of this part to show compliance.

(b) Beginning with the 2008 model year, permeation emissions from your vehicle's fuel lines may not exceed 15 grams per square-meter per day when measured with the test procedures for fuel-line permeation in subpart F of this part. Use the inside diameter of the hose to determine the surface area of the hose.

§ 1051.115 What other requirements must my vehicles meet?

Your vehicles must meet the following requirements:

(a) *Closed crankcase.* Design and produce your vehicles so they release no crankcase emissions into the atmosphere throughout their useful life.

(b) *Emission sampling capability.* Produce all your vehicles to allow sampling of exhaust emissions in the field without damaging the vehicle. Show in your application for certification how this can be done in a way that prevents diluting the exhaust sample with ambient air. To do this, you might simply allow for extending the exhaust pipe by 20 cm; you might also install sample ports in the exhaust (downstream of any aftertreatment devices).

(c) *Adjustable parameters.* If your vehicles have adjustable parameters, they must meet all the requirements of this part for any adjustment in the physically adjustable range. Note that parameters that control the air-fuel ratio may be treated separately under paragraph (d) of this section.

(1) We do not consider an operating parameter adjustable if you permanently seal it or if ordinary tools cannot readily access it.

(2) We may require you to adjust the engine to any specification within the adjustable range during certification testing, production-line testing, selective enforcement auditing, or in-use testing.

(d) *Other adjustments.* This provision applies if an experienced mechanic can change your engine's air-fuel ratio in less than one hour with a few parts whose total cost is under $50 (in 2001 dollars). Examples include carburetor jets and needles. In the case of carburetor jets and needles, your vehicle must meet all the requirements of this part for any air-fuel ratio within the adjustable range described in paragraph (d)(1) of this section.

(1) In your application for certification, specify the adjustable range of air-fuel ratios you expect to occur in use. You may specify it in terms of engine parts (such as the carburetor jet size and needle configuration as a function of atmospheric conditions).

(2) This adjustable range (specified in paragraph (d)(1) of this section) must include all air-fuel ratios between the lean limit and the rich limit, unless you can show that some air-fuel ratios will not occur in use.

(i) The lean limit is the air-fuel ratio that produces the highest engine power output (averaged over the test cycle).

(ii) The rich limit is the richest of the following air-fuel ratios:

(A) The air-fuel ratio that would result from operating the vehicle as you produce it at the specified test conditions. This paragraph (d)(2)(ii)(A) does not apply if you produce the vehicle with an unjetted carburetor so that the vehicle must be jetted by the dealer or operator.

(B) The air-fuel ratio of the engine when you do durability testing.

(C) The richest air-fuel ratio that you recommend to your customers for the applicable ambient conditions.

(3) If the air-fuel ratio of your vehicle is adjusted primarily by changing the carburetor jet size and/or needle configuration, you may submit your recommended jetting chart instead of the range of air-fuel ratios required by paragraph (d)(1) of this section if the following criteria are met:

(i) Good engineering judgment indicates that vehicle operators would not have an incentive to operate the vehicle with richer air-fuel ratios than recommended.

(ii) The chart is based on use of a fuel that is equivalent to the specified test fuel(s). As an alternative you may submit a chart based on a representative in-use fuel if you also provide instructions for converting the chart to be applicable to the test fuel(s).

(iii) The chart is specified in units that are adequate to make it practical for an operator to keep the vehicle properly jetted during typical use. For example, charts that specify jet sizes based on increments of temperature smaller than 20°F (11.1°C) or increments of altitude less than 2000 feet would not meet this criteria. Temperature ranges must overlap by at least 5°F (2.8°C).

(iv) You follow the jetting chart for durability testing.

(v) You do not produce your vehicles with jetting richer than the jetting chart recommendation for the intended vehicle use.

(4) We may require you to adjust the engine to any specification within the adjustable range during certification testing, production-line testing, selective enforcement auditing, or in-use testing. If we allow you to submit your recommended jetting chart instead of the range of air-fuel ratios required by paragraph (d)(1) of this section, adjust the engine to the richest specification within the jetting chart for the test conditions, unless we specify a leaner setting. We may not specify a setting leaner than that described in paragraph (d)(2)(i) of this section.

(e) *Prohibited controls.* You may not design your engines with emission-control devices, systems, or elements of design that cause or contribute to an unreasonable risk to public health, welfare, or safety while operating. For example, this would apply if the engine emits a noxious or toxic substance it would otherwise not emit that contributes to such an unreasonable risk.

(f) *Defeat devices.* You may not equip your vehicles with a defeat device. A defeat device is an auxiliary emission-control device or other control feature that reduces the effectiveness of emission controls under conditions you may reasonably expect the vehicle to encounter during normal operation and use. This does not apply to auxiliary emission-control devices you identify in your certification application if any of the following is true:

(1) The conditions of concern were substantially included in your prescribed duty cycles.

(2) You show your design is necessary to prevent catastrophic vehicle damage or accidents.

(3) The reduced effectiveness applies only to starting the engine.

(g) *Noise standards.* There are no noise standards specified in this part 1051. See 40 CFR Chapter I, Subchapter G, to determine if your vehicle must meet noise emission standards under another part our regulations.

§ 1051.120 What warranty requirements apply to me?

(a) *General requirements.* You must warrant to the ultimate buyer that the new engine meets two conditions:

(1) It is designed, built, and equipped to conform at the time of sale with the requirements of this part.

(2) It is free from defects in materials and workmanship that may keep it from meeting these requirements.

(b) *Warranty period.* Your emission-related warranty must be valid for at least 50 percent of the vehicle's

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minimum useful life in kilometers or at least 30 months, whichever comes first. You may offer an emission-related warranty more generous than we require. This warranty may not be shorter than any published or negotiated warranty you offer for the engine or any of its components. If a vehicle has no odometer, base warranty periods in this paragraph (b) only on the vehicle's age (in years).

(c) *Components covered.* The emission-related warranty must cover components whose failure would increase an engine's emissions, including electronic controls, fuel injection (for liquid or gaseous fuels), exhaust-gas recirculation, aftertreatment, or any other system you develop to control emissions. We generally consider replacing or repairing other components to be the owner's responsibility.

(d) *Scheduled maintenance.* You may schedule emission-related maintenance for a component named in paragraph (c) of this section, subject to the restrictions of § 1051.125. You are not required to cover this scheduled maintenance under your warranty if the component meets either of the following criteria:

(1) The component was in general use on similar engines, and was subject to scheduled maintenance, before January 1, 2000.

(2) Failure of the component would clearly degrade the engine's performance enough that the operator would need to repair or replace it.

(e) *Limited applicability.* You may deny warranty claims under this section if the operator caused the problem, as described in 1068.115 of this chapter. You may ask us to allow you to exclude from your emission-related warranty certified vehicles that have been used significantly for competition, especially certified motorcycles that meet at least four of the criteria in § 1051.620(b)(1).

(f) *Aftermarket parts.* As noted in § 1068.101 of this chapter, it is a violation of the Act to manufacture a vehicle part if one of its main effects is to reduce the effectiveness of the vehicle's emission controls. If you make an aftermarket part, you may—but do not have to—certify that using the part will still allow engines to meet emission standards, as described in § 85.2114 of this chapter.

§ 1051.125 What maintenance instructions must I give to buyers?

Give the ultimate buyer of each new vehicle written instructions for properly maintaining and using the vehicle, including the emission-control system. The maintenance instructions also apply to service accumulation on your test vehicles or engines, as described in 40 CFR part 1065, subpart E.

(a) *Critical emission-related maintenance.* Critical emission-related maintenance includes any adjustment, cleaning, repair, or replacement of air-induction, fuel-system, or ignition components, aftertreatment devices, pulse-air valves, exhaust gas recirculation systems, crankcase ventilation valves, sensors, or electronic control units. This may also include any other component whose only purpose is to reduce emissions or whose failure will increase emissions without significantly degrading engine performance. You may schedule critical emission-related maintenance on these components if you meet the following conditions:

(1) You may ask us to approve critical emission-related maintenance only if it meets two criteria:

(i) Operators are reasonably likely to do the maintenance you call for.

(ii) Vehicles need the maintenance to meet emission standards.

(2) We will accept scheduled maintenance as reasonably likely to occur in use if you satisfy any of four conditions:

(i) You present data showing that, if a lack of maintenance increases emissions, it also unacceptably degrades the vehicle's performance.

(ii) You present survey data showing that 80 percent of vehicles in the field get the maintenance you specify at the recommended intervals.

(iii) You provide the maintenance free of charge and clearly say so in maintenance instructions for the customer.

(iv) You otherwise show us that the maintenance is reasonably likely to be done at the recommended intervals.

(3) You may not schedule critical emission-related maintenance within the minimum useful life period for aftertreatment devices, pulse-air valves, fuel injectors, oxygen sensors, electronic control units, superchargers, or turbochargers.

(b) *Recommended additional maintenance.* You may recommend, but not require, any additional amount of maintenance on the components listed in paragraph (a) of this section. However, you must make it clear that these maintenance steps are not necessary to keep the emission-related warranty valid. If operators do the maintenance specified in paragraph (a) of this section, but not the recommended additional maintenance, this does not allow you to disqualify them from in-use testing or deny a warranty claim.

(c) *Special maintenance.* You may specify more frequent maintenance to address problems related to special situations such as substandard fuel or atypical engine operation. You may not perform this special maintenance during service accumulation or durability testing.

(d) *Noncritical emission-related maintenance.* For engine parts not listed in paragraph (a) of this section, you may schedule any amount of emission-related inspection or maintenance. But you must state clearly that these steps are not necessary to keep the emission-related warranty valid. Also, do not take these inspection or maintenance steps during service accumulation on your test vehicles or engines.

(e) *Maintenance that is not emission-related.* For maintenance unrelated to emission controls, you may schedule any amount of inspection or maintenance. You may also take these inspection or maintenance steps during service accumulation on your test vehicles or engines. This might include adding engine oil or adjusting chain tension, clutch position, or tire pressure.

(f) *Source of parts and repairs.* Print clearly on the first page of your written maintenance instructions that any repair shop or person may maintain, replace, or repair emission-control devices and systems. Your instructions may not require any component or service identified by brand, trade, or corporate name. Also, do not directly or indirectly condition your warranty on a requirement that the vehicle be serviced by your franchised dealers or any other service establishments with which you have a commercial relationship. You may disregard the requirements in this paragraph (f) if you do one of two things:

(1) Provide a component or service without charge under the purchase agreement.

(2) Get us to waive this prohibition in the public's interest by convincing us the vehicle will work properly only with the identified component or service.

§ 1051.130 What installation instructions must I give to vehicle manufacturers?

(a) If you sell an engine for someone else to install in a recreational vehicle, give the engine buyer written instructions for installing it consistent with the requirements of this part. Include all information necessary to ensure that engines installed this way will meet emission standards.

(b) These instructions must have the following information:

(1) Include the heading: "Emission-related installation instructions".

(2) State: "Failing to follow these instructions when installing a certified engine in a recreational vehicle may violate federal law (40 CFR 1068.105(b)), and subject you to fines or other penalties as described in the Clean Air Act.".

(3) Describe any other instructions needed to install an exhaust aftertreatment device consistent with your application for certification.

(4) Describe the steps needed to comply with the evaporative emission standards in § 1051.110.

(5) Describe any limits on the range of applications needed to ensure that the engine operates consistently with your application for certification. For example, if your engines are certified only to the snowmobile standards, tell vehicle manufacturers not to install the engines in other vehicles.

(6) Describe any other instructions to make sure the installed engine will operate according to any design specifications you describe in your application for certification.

(7) State: "If you install the engine in a way that makes the engine's emission control information label hard to read during normal engine maintenance, you must place a duplicate label on the vehicle, as described in 40 CFR 1068.105.".

(c) You do not need installation instructions for engines you install in your own vehicles.

§ 1051.135 How must I label and identify the vehicles I produce?

Each of your vehicles must have three labels: a vehicle identification number as described in paragraph (a) of this section, an emission control information label as described in paragraphs (b) through (e) of this section, and a consumer information label as described in paragraph (g) of this section.

(a) Assign each production vehicle a unique identification number and permanently and legibly affix, stamp, or engrave it on the vehicle.

(b) At the time of manufacture, add a permanent label identifying the emission controls for each vehicle. This is the vehicle's "emission control information label." To meet labeling requirements, do the following things:

(1) Attach the label in one piece so it is not removable without being destroyed or defaced.

(2) Design and produce it to be durable and readable for the vehicle's entire life.

(3) Secure it to a part of the vehicle (or engine) needed for normal operation and not normally requiring replacement.

(4) Write it in block letters in English.

(5) Attach the label in a location where it can be easily read.

(c) On your label, do these things:

(1) Include the heading "EMISSION CONTROL INFORMATION".

(2) Include your full corporate name and trademark.

(3) State: "THIS VEHICLE IS CERTIFIED TO OPERATE ON [specify operating fuel or fuels].".

(4) Identify the emission-control system; your identifiers must use names and abbreviations consistent with SAE J1930 (incorporated by reference in § 1051.810).

(5) List all requirements for fuel and lubricants.

(6) State the date of manufacture [DAY (optional), MONTH, and YEAR]; if you stamp it on the engine and print it in the owner's manual, you may omit this information from the emission control information label.

(7) State: "THIS VEHICLE MEETS U.S. ENVIRONMENTAL PROTECTION AGENCY REGULATIONS FOR [MODEL YEAR] [SNOWMOBILES or OFF-ROAD MOTORCYCLES or ATVs].".

(8) Include EPA's standardized designation for the engine family.

(9) State the engine's displacement (in liters) and maximum brake power. You do not need to include the engine's displacement and power on the emission control information label if the vehicle is permanently labeled with a unique model name that corresponds to a specific displacement/power configuration.

(10) State the engine's useful life if it is different than the minimum value.

(11) List specifications and adjustments for engine tuneups; show the proper position for the transmission during tuneup and state which accessories should be operating.

(12) Identify the emission standards or family emission limits to which you have certified the engine.

(d) Some of your engines may need more information on the emission control information label. If you produce an engine or vehicle that we exempt from the requirements of this part, see subpart G of this part and 40 CFR part 1068, subparts C and D, for more label information.

(e) Some engines may not have enough space for an emission control information label with all the required information. In this case, you may omit the information required in paragraphs (c)(3), (c)(4), and (c)(5) of this section if you print it in the owner's manual instead.

(f) If you are unable to meet these labeling requirements, you may ask us to modify them consistent with the intent of this section.

(g) Label every vehicle certified under this part with a removable hang-tag showing its emission characteristics relative to other models. The label should be attached securely to the vehicle before it is offered for sale in such a manner that it would not be accidentally removed prior to sale. Use the applicable equations of this paragraph (g) to determine the normalized emission rate (NER) from the FEL for your vehicle. If the vehicle is certified without using the averaging provisions of subpart H, use the final deteriorated emission level. Round the resulting normalized emission rate for your vehicle to the nearest whole number. We may specify a standardized format for labels. At a minimum, the tag should include: The manufacturer's name, vehicle model name, engine description (500 cc two-stroke with DFI), the NER, and a brief explanation of the scale (for example, note that 0 is the cleanest and 10 is the least clean).

(1) For snowmobiles, use the following equation:

$$NER = 16.61 \times \log(2.667 \times HC + CO) - 38.22$$

Where:
HC and CO are the cycle-weighted FELs (or emission rates) for hydrocarbons and carbon monoxide in g/kW–hr.

(2)(i) For off-highway motorcycles with $HC+NO_X$ emissions less than or equal to 2.0 g/km, use the following equation:

$$(NER = 2.500 \times (HC + NO_X)$$

Where:
$HC + NO_X$ is the FEL (or the sum of the cycle-weighted emission rates) for hydrocarbons and oxides of nitrogen in g/km.

(ii) For off-highway motorcycles with $HC+NO_X$ emissions greater than 2.0 g/km, use the following equation:

$$NER = 5.000 \times \log(HC + NO_X) + 3.495$$

Where:
$HC + NO_X$ is the FEL (or the sum of the cycle-weighted emission rates) for hydrocarbons and oxides of nitrogen in g/km.

(3)(i) For ATVs with $HC+NO_X$ emissions less than or equal to 1.5 g/km, use the following equation:

$$NER = 3.333 \times (HC + NO_X)$$

Where:
$HC + NO_X$ is the FEL (or the sum of the cycle-weighted emission rates) for hydrocarbons and oxides of nitrogen in g/km.

(ii) For ATVs with $HC+NO_X$ emissions greater than 1.5 g/km, use the following equation:

$$NER = 4.444 \times \log(HC + NO_X) + 4.217$$

Where:
$HC + NO_X$ is the FEL (or the sum of the cycle-weighted emission rates) for hydrocarbons and oxides of nitrogen in g/km.

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§ 1051.145 What provisions apply only for a limited time?

Apply the following provisions instead of others in this part for the periods and circumstances specified in this section.

(a) *Provisions for small-volume manufacturers.* Special provisions apply to you if you are a small-volume manufacturer subject to the requirements of this part. Contact us before 2006 if you intend to use these provisions.

(1) You may delay complying with otherwise applicable emission standards (and other requirements) for two model years.

(2) If you are a small-volume manufacturer of snowmobiles, only 50 percent of the models you produce (instead of all of the models you produce) must meet emission standards in the first two years they apply to you as a small-volume manufacturer, as described in paragraph (a)(1) of this section. For example, this alternate phase-in allowance would allow small-volume snowmobile manufacturers to comply with the Phase 1 exhaust standards by certifying 50 percent of their snowmobiles in 2008, 50 percent of their snowmobiles in 2009, and 100 percent in 2010.

(3) Your vehicles for model years before 2011 may be exempt from the exhaust standards of this part if you meet the following criteria:

(i) Produce your vehicles by installing engines covered by a valid certificate of conformity under 40 CFR part 90 that shows the engines meet standards for Class II engines for each engine's model year.

(ii) Do not change the engine in a way that we could reasonably expect to increase its exhaust emissions.

(iii) The engine meets all applicable requirements from 40 CFR part 90. This applies to engine manufacturers, vehicle manufacturers who use these engines, and all other persons as if these engines were not used in recreational vehicles.

(iv) Demonstrate that fewer than 50 percent of the engine model's total sales, from all companies, are used in recreational vehicles regulated under this part.

(4) All vehicles certified or exempted under this paragraph (a) must be labeled according to our specifications. The label must include the following:

(i) The heading "EMISSION CONTROL INFORMATION".

(ii) Your full corporate name and trademark.

(iii) A description of the provisions under which the vehicle is either exempted or certified.

(iv) Other information that we specify to you in writing.

(b) *Optional emission standards for ATVs.* To meet ATV standards for model years before 2009, you may apply the exhaust emission standards by model year in paragraph (b)(1) of this section while measuring emissions using the engine-based test procedures in 40 CFR part 1065 instead of the chassis-based test procedures in 40 CFR part 86.

(1) Follow Table 1 of this section for exhaust emission standards, while meeting all the other requirements of § 1051.107. You may use emission credits to show compliance with these standards (see subpart H of this part). You may not exchange emission credits with engine families meeting the standards in § 1051.107(a). You may also not exchange credits between engine families certified to the standards for engines above 225 cc and engine families certified to the standards for engines below 225 cc. The phase-in percentages in the table specify the percentage of your U.S.-directed production that must comply with the emission standards for those model years. Table 1 follows:

TABLE 1 OF § 1051.145.—OPTIONAL EXHAUST EMISSION STANDARDS FOR ATVS (G/KW–HR)

Engine displacement	Model year	Phase-in (percent)	Emission standards		Maximum allowable family emission limits
			$HC+NO_x$	CO	$HC+NO_x$
<225 cc	2006	50	16.1	400	32.2
	2007 and 2008	100	16.1	400	32.2
≥225 cc	2006	50	13.4	400	26.8
	2007 and 2008	100	13.4	400	26.8

(2) Measure emissions by testing the engine on a dynamometer with the steady-state duty cycle described in Table 2 of this section.

(i) During idle mode, hold the speed within your specifications, keep the throttle fully closed, and keep engine torque under 5 percent of the peak torque value at maximum test speed.

(ii) For the full-load operating mode, operate the engine at its maximum fueling rate.

(iii) See part 1065 of this chapter for detailed specifications of tolerances and calculations.

(iv) Table 2 follows:

TABLE 2 OF § 1051.145.—6-MODE DUTY CYCLE FOR RECREATIONAL ENGINES

Mode No.	Engine speed (percent of maximum test speed)	Torque (percent of maximum test torque at test speed)	Minimum time in mode (minutes)	Weighting factors
1	85	100	5.0	0.09
2	85	75	5.0	0.20

TABLE 2 OF § 1051.145.—6-MODE DUTY CYCLE FOR RECREATIONAL ENGINES—Continued

Mode No.	Engine speed (percent of maximum test speed)	Torque (percent of maximum test torque at test speed)	Minimum time in mode (minutes)	Weighting factors
3	85	50	5.0	0.29
4	85	25	5.0	0.30
5	85	10	5.0	0.07
6	Idle	0	5.0	0.05

(3) For ATVs certified to the standards in this paragraph (b) use the following equation to determine the normalized emission rate required by § 1051.135(g):

$NER = 9.898 \times \log(HC + NO_x - 4.898$

Where:

$HC+NO_x$ is the sum of the cycle-weighted emission rates for hydrocarbons and oxides of nitrogen in g/kW–hr.

(c) *Production-line testing.* Vehicles certified to the Phase 1 or Phase 2 standards in § 1051.103, or the Phase 1 standards in §§ 1051.105 or 1051.107 are exempt from the production-line testing requirements of subpart D of this part if they are certified without participating in the emission averaging, banking and trading program described in Subpart H of this part.

(d) *Phase-in flexibility.* For model years before 2014, if you make a good faith effort to comply, but fail to meet the sales requirements of this part during a phase-in period for new standards, or fail to meet the average emission standards, we may approve an alternative remedy to offset the emission reduction deficit using future emission credits under this part. To apply for this, you must:

(1) Submit a plan during the certification process for the first model year of the phase-in showing how you project to meet the sales requirement of the phase-in.

(2) Notify us less than 30 days after you determine that you are likely to fail to comply with the sales requirement of the phase-in.

(3) Propose a remedy that will achieve equivalent or greater emission reductions compared to the specified phase-in requirements, and that will offset the deficit within one model year.

(e) *Snowmobile testing.* You may use the raw sampling procedures described in 40 CFR part 91, subparts D and E, for emission testing of snowmobiles for model years prior to 2010. For later model years, you may use these procedures if you show that they produce emission measurements equivalent to the otherwise specified test procedures.

(f) *Early credits.* Snowmobile manufacturers may generate early emission credits in one of the following ways, by certifying some or all of their snowmobiles prior to 2006. Credit generating snowmobiles must meet all other applicable requirements of this part. No early credits may be generated by off-highway motorcycles or ATVs.

(1) You may certify one or more snowmobile engine families to FELs (HC and CO) below the numerical level of the Phase 2 standards prior to the date when compliance with the Phase 1 standard is otherwise required. Credits are calculated relative to the Phase 2 standards. Credits generated under this paragraph (f)(1) may be used at any time before 2012.

(2) You may certify a snowmobile engine family to FELs (HC and CO) below the numerical level of the Phase 1 standards prior to the date when compliance with the Phase 1 standard is otherwise required. Credits are calculated relative to the Phase 1 standards. Credits generated under this paragraph (f)(2) may only be used for compliance with the Phase 1 standards. You may generate credits under this paragraph (f)(2) without regard to whether the FELs are above or below the numerical level of the Phase 2 standards.

(g) *Pull-ahead option for permeation emissions.* Manufacturers choosing to comply with an early tank permeation standard of 3.0 g/m^2/day prior to model year 2008 may be allowed to delay compliance with the 1.5 g/m^2/day standard, for an equivalent number of tanks, subject to the following provisions:

(1) Pull-ahead tanks meeting the 3.0 g/m^2/day standard must be certified and must meet all applicable requirements other than those limited to compliance with the exhaust standards.

(2) Tanks for which compliance with the 1.5 g/m^2/day standard is delayed must meet the 3.0 g/m^2/day standard.

(3) You may delay compliance with the 1.5 g/m^2/day standard for one tank for one year for each tank-year of credit generated early.

(4) You may not use credits for a tank that is larger than the tank from which you generated the credits.

Subpart C—Certifying Engine Families

§ 1051.201 What are the general requirements for submitting a certification application?

(a) Send us an application for a certificate of conformity for each engine family. Each application is valid for only one model year.

(b) The application must not include false or incomplete statements or information (see § 1051.255).

(c) We may choose to ask you to send us less information than we specify in this subpart, but this would not change your recordkeeping requirements.

(d) Use good engineering judgment for all decisions related to your application (see § 1068.5 of this chapter).

(e) An authorized representative of your company must approve and sign the application.

§ 1051.205 What must I include in my application?

In your application, do all the following things unless we ask you to send us less information:

(a) Describe the engine family's specifications and other basic parameters of the vehicle design. List the types of fuel you intend to use to certify the engine family (for example, gasoline, liquefied petroleum gas, methanol, or natural gas). List vehicle configurations and model names that are included in the engine family.

(b) Explain how the emission-control systems operate.

(1) Describe in detail all the system components for controlling exhaust emissions, including auxiliary emission-control devices and all fuel-system components you will install on any production or test vehicle or engine. Explain why any auxiliary emission-control devices are not defeat devices (see § 1051.115(f)). Do not include

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detailed calibrations for components unless we ask for them.

(2) Describe the evaporative emission controls.

(c) Describe the vehicles or engines you selected for testing and the reasons for selecting them.

(d) Describe any special or alternate test procedures you used (see § 1051.501).

(e) Describe how you operated the engine or vehicle prior to testing, including the duty cycle and the number of engine operating hours used to stabilize emission levels, and any scheduled maintenance you performed.

(f) List the specifications of the test fuels to show that they fall within the required ranges.

(g) Identify the engine family's useful life.

(h) Propose maintenance and use instructions for the ultimate buyer of each new vehicle (see § 1051.125).

(i) Propose emission-related installation instructions if you sell engines for someone else to install in a vehicle (see § 1051.130).

(j) Propose an emission control information label.

(k) Present emission data to show that you meet emission standards.

(1) Present exhaust emission data for HC, NO_x (as applicable), and CO on a test vehicle or engine to show your vehicles meet the emission standards we specify in subpart B of this part. Show these figures before and after applying deterioration factors for each vehicle or engine. Include test data for each type of fuel from part 1065, subpart C, of this chapter on which you intend for vehicles in the engine family to operate (for example, gasoline, liquefied petroleum gas, methanol, or natural gas). If we specify more than one grade of any fuel type (for example, a summer grade and winter grade of gasoline), you only need to submit test data for one grade, unless the regulations of this part explicitly specify otherwise for your vehicle.

(2) Present evaporative test data for HC to show your vehicles meet the evaporative emission standards we specify in subpart B of this part. Show these figures before and after applying deterioration factors for each vehicle or engine, where applicable. If you did not perform the testing, identify the source of the test data.

(3) Note that § 1051.235 and 1051.245 allows you to submit an application in certain cases without new emission data.

(l) Report all test results, including those from invalid tests or from any nonstandard tests (such as measurements based on exhaust concentrations in parts per million).

(m) Identify the engine family's deterioration factors and describe how you developed them. Present any emission test data you used for this.

(n) Describe all adjustable operating parameters and other adjustments (see § 1051.115 (c) and (d)), including the following:

(1) The nominal or recommended setting.

(2) The intended physically adjustable range, including production tolerances if they affect the range.

(3) The limits or stops used to establish adjustable ranges.

(4) The air-fuel ratios or jet chart specified in § 1051.115(d).

(o) State that you operated your test vehicles or engines according to the specified procedures and test parameters using the fuels described in the application to show you meet the requirements of this part.

(p) State unconditionally that all the vehicles (and/or engines) in the engine family comply with the requirements of this part, other referenced parts, and the Clean Air Act.

(q) Include estimates of U.S.-directed production volumes.

(r) Show us how to modify your production vehicles to measure emissions in the field (see § 1051.115).

(s) Add other information to help us evaluate your application if we ask for it.

§ 1051.210 May I get preliminary approval before I complete my application?

If you send us information before you finish the application, we will review it and make any appropriate determinations listed in § 1051.215(b)(1) through (5). Decisions made under this section are considered to be preliminary approval. We will generally not disapprove applications under § 1051.215(b)(1) through (5) where we have given you preliminary approval, unless we find new and substantial information supporting a different decision.

(a) If you request preliminary approval related to the upcoming model year or the model year after that, we will make a "best-efforts" attempt to make the appropriate determinations as soon as possible. We will generally not provide preliminary approval related to a future model year more than two years ahead of time.

(b) If we have published general guidance that serves as our determination for your situation, you may consider that to be preliminary approval.

§ 1051.215 What happens after I complete my application?

(a) If any of the information in your application changes after you submit it, amend it as described in § 1051.225.

(b) We may deny your application (that is, determine that we cannot approve it without revision) if the engine family does not meet the requirements of this part or the Act. For example:

(1) If you inappropriately use the provisions of § 1051.230(c) or (d) to define a broader or narrower engine family, we will require you to redefine your engine family.

(2) If we determine you did not appropriately select the useful life as specified in § 1051.103(c), § 1051.105(c), or § 1051.107(c), we will require you to lengthen it.

(3) If we determine you did not appropriately select deterioration factors under § 1051.240(c), we will require you to revise them.

(4) If your proposed emission control information label is inconsistent with § 1051.135, we will require you to change it (and tell you how, if possible).

(5) If you require or recommend maintenance and use instructions inconsistent with § 1051.125, we will require you to change them.

(6) If we find any other problem with your application, we will tell you what the problem is, and what needs to be corrected.

(c) If we determine your application is complete and shows that the engine family meets all the requirements of this part and the Act, we will issue a certificate of conformity for your engine family for that model year. If we deny the application, we will explain why in writing. You may then ask us to hold a hearing to reconsider our decision (see § 1051.820).

§ 1051.220 How do I amend the maintenance instructions in my application?

Send the Designated Officer a request to amend your application for certification for an engine family if you want to change the emission-related maintenance instructions in a way that could affect emissions. In your request, describe the proposed changes to the maintenance instructions.

(a) If you are decreasing the specified level of maintenance, you may distribute the new maintenance instructions to your customers 30 days after we receive your request, unless we disapprove your request. We may approve a shorter time or waive this requirement.

(b) If your requested change would not decrease the specified level of maintenance, you may distribute the new maintenance instructions anytime after you send your request.

(c) If you are correcting or clarifying your maintenance instructions or if you are changing instructions for maintenance unrelated to emission controls, the requirements of this section do not apply.

§ 1051.225 How do I amend my application to include new or modified vehicles or to change an FEL?

(a) You must amend your application for certification before you take either of the following actions:

(1) Add a vehicle to a certificate of conformity.

(2) Make a design change for a certified engine family that may affect emissions or an emission-related part over the vehicle's lifetime.

(3) Modify an FEL for an engine family, as described in paragraph (f) of this section.

(b) Send the Designated Officer a request to amend the application for certification for an engine family. In your request, do all of the following:

(1) Describe the vehicle model or configuration you are adding or changing.

(2) Include engineering evaluations or reasons why the original test vehicle or engine is or is not still appropriate.

(3) If the original test vehicle or engine for the engine family is not appropriate to show compliance for the new or modified vehicle, include new test data showing that the new or modified vehicle meets the requirements of this part.

(c) You may start producing the new or modified vehicle anytime after the time at which you send us your request (for example, the day you mail your request). If we determine that the affected vehicles do not meet applicable requirements, we will require you to cease production of the vehicles and to recall and correct the vehicles at no expense to the owner. If you choose to produce vehicles under this paragraph, we will consider that to be consent to recall all vehicles that we determine do not meet applicable standards and other requirements and to remedy the nonconformity at no expense to the owner.

(d) You must give us test data within 30 days if we ask for more testing, or stop producing the vehicle if you are not able to do this. You may give us an engineering evaluation instead of test data if we agree that you can address our questions without test data.

(e) If we determine that the certificate of conformity would not cover your new or modified vehicle, we will send you a written explanation of our decision. In this case, you may no longer produce these vehicles, though you may ask for a hearing for us to reconsider our decision (see § 1051.820).

(f) You may ask to change your FEL in the following cases:

(1) You may ask to raise your FEL for your engine family after the start of production. You must use the higher FEL for the entire family to calculate your average emission level under subpart H of this part. In your request, you must demonstrate that you will still be able to comply with the applicable average emission standards as specified in subparts B and H of this part.

(2) You may ask to lower the FEL for your engine family after the start of production only when you have test data from production vehicles indicating that your vehicles comply with the lower FEL. You may create a separate subfamily with the lower FEL. Otherwise, you must use the higher FEL for the family to calculate your average emission level under subpart H of this part.

(3) If you change the FEL during production, you must include the new FEL on the emission control information label for all vehicles produced after the change.

§ 1051.230 How do I select engine families?

(a) Divide your product line into families of vehicles that you expect to have similar emission characteristics. Your engine family is limited to a single model year.

(b) Group vehicles in the same engine family if they are the same in all of the following aspects:

(1) The combustion cycle.

(2) The cooling system (water-cooled vs. air-cooled).

(3) Configuration of the fuel system (for example, port fuel injection vs. carburetion).

(4) Method of air aspiration.

(5) The number, location, volume, and composition of catalytic converters.

(6) Type of fuel.

(7) The number, arrangement, and approximate bore diameter of cylinders.

(8) Evaporative emission controls.

(c) In some cases you may subdivide a group of vehicles that is identical under paragraph (b) of this section into different engine families. To do this under normal circumstances, you must show you expect emission characteristics to be different during the useful life or that any of the following engine characteristics are different:

(1) Method of actuating intake and exhaust timing (poppet valve, reed valve, rotary valve, etc.).

(2) Location or size of intake and exhaust valves or ports.

(3) Configuration of the combustion chamber.

(4) Cylinder stroke or actual bore diameter.

(5) Exhaust system.

(d) In some cases, you may include different engines in the same engine family, even though they are not identical with respect to the things listed in paragraph (b) of this section.

(1) If different engines have similar emission characteristics during the useful life, we may approve grouping them in the same engine family.

(2) If you are a small-volume manufacturer, you may group engines from any vehicles subject to the same emission standards into a single engine family. This does not change any of the requirements of this part for showing that an engine family meets emission standards.

(e) If you cannot appropriately define engine families by the method in this section, we will define them based on features related to emission characteristics.

(f) You may ask us to create separate families for exhaust emissions and evaporative emissions. If we do this, list both families on the emission control information label.

§ 1051.235 What emission testing must I perform for my application for a certificate of conformity?

This section describes the emission testing you must perform to show compliance with the emission standards in subpart B of this part during certification.

(a) Test your emission-data vehicles using the procedures and equipment specified in subpart F of this part. Where specifically required or allowed, test the engine instead of the vehicle. For evaporative emissions, test the fuel system components separate from the vehicle.

(b) Select from each engine family a test vehicle or engine, and a fuel system for each fuel type with a configuration that is most likely to exceed the emission standards, using good engineering judgment, consider the emission levels of all exhaust constituents over the full useful life of the vehicle.

(c) You may use previously generated emission data in the following cases:

(1) You may submit emission data for equivalent engine families from previous years instead of doing new tests, but only if the data show that the test vehicle or engine would meet all the requirements for the latest vehicle or engine models. We may require you to

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do new emission testing if we believe the latest vehicle or engine models could be substantially different from the previously tested vehicle or engine.

(2) You may submit emission data for equivalent engine families performed to show compliance with other standards (such as California standards) instead of doing new tests, but only if the data show that the test vehicle or engine would meet all of this part's requirements.

(3) You may submit evaporative emission data measured by a fuel system supplier. We may require you to verify that the testing was conducted in accordance with the applicable regulations.

(d) We may choose to measure emissions from any of your test vehicles or engines (or other vehicles or engines in the engine family).

(1) If we do this, you must provide the test vehicle or engine at the location we select. We may decide to do the testing at your plant or any other facility. If we choose to do the testing at your plant, you must schedule it as soon as possible and make available the instruments and equipment we need.

(2) If we measure emissions on one of your test vehicles or engines, the results of that testing become the official data for the vehicle or engine. Unless we later invalidate this data, we may decide not to consider your data in determining if your engine family meets the emission standards.

(3) Before we test one of your vehicles or engines, we may set its adjustable parameters to any point within the physically adjustable ranges (see § 1051.115(c)). We may also adjust the air-fuel ratio within the adjustable range specified in § 1051.115(d).

(4) Calibrate the test vehicle or engine within normal production tolerances for anything not covered by § 1051.115(c) and (d) of this section.

(e) If you are a small-volume manufacturer, you may certify by design on the basis of preexisting exhaust emission data for similar technologies and other relevant information, and in accordance with good engineering judgment. In those cases, you are not required to test your vehicles.

This is called "design-certification" or "certifying by design." To certify by design, you must show that the technology used on your engines is sufficiently similar to the previously tested technology that a person reasonably familiar with emission-control technology would believe that your engines will comply with the emission standards.

(f) For fuel tanks that are certified based on permeability treatments for plastic fuel tanks, you do not need to test each engine family. However, you must use good engineering judgment to determine permeation rates for the tanks. This requires that more than one fuel tank be tested for each set of treatment conditions. You may not use test data from a given tank for any other tanks that have thinner walls. You may, however, use test data from a given tank for other tanks that have thicker walls. This applies to both low-hour (*i.e.*, baseline testing) and durability testing. Note that § 1051.245 allows you to use design-based certification instead of generating new emission data.

§ 1051.240 How do I demonstrate that my engine family complies with exhaust emission standards?

(a) For certification, your engine family is considered to be in compliance with the numerical exhaust emission standards in subpart B of this part if all emission-data vehicles representing that family have test results showing emission levels at or below the standards.

(b) Your engine family does not comply if any emission-data vehicle representing that family has test results showing emission levels above the standards for any pollutant.

(c) To compare emission levels from the emission-data vehicle with the emission standards, apply deterioration factors (to three significant figures) to the measured emission levels. The deterioration factor is a number that shows the relationship between exhaust emissions at the end of useful life and at the low-hour test point. Section 1051.520 specifies how to test your vehicle to develop deterioration factors that estimate the change in emissions over your vehicle's full useful life. Small-volume manufacturers may use assigned deterioration factors that we establish. Apply the deterioration factors as follows:

(1) For vehicles that use aftertreatment technology, such as catalytic converters, the exhaust deterioration factor is the ratio of exhaust emissions at the end of useful life to exhaust emissions at the low-hour test point. Adjust the official emission results for each tested vehicle at the selected test point by multiplying the measured emissions by the deterioration factor. If the factor is less than one, use one.

(2) For vehicles that do not use aftertreatment technology, the exhaust deterioration factor is the difference between exhaust emissions at the end of useful life and exhaust emissions at the low-hour test point. Adjust the official emission results for each tested vehicle at the selected test point by adding the factor to the measured emissions. If the factor is less than zero, use zero.

(d) After adjusting the emission levels for deterioration, round them to the same number of decimal places as the emission standard. Compare the rounded emission levels to the emission standard for each test vehicle.

§ 1051.245 How do I demonstrate that my engine family complies with evaporative emission standards?

(a) For certification, your engine family is considered in compliance with the evaporative emission standards in subpart B of this part if you do either of the following:

(1) You have test results showing permeation emission levels from the fuel tanks and fuel lines in the family are at or below the standards in § 1051.110 throughout the useful life.

(2) You comply with the design specifications in paragraph (e) of this section.

(b) Your engine family does not comply if any fuel tank or fuel line representing that family has test results showing emission levels above the standards.

(c) To compare emission levels with the emission standards, apply deterioration factors (to three significant figures) to the measured emission levels. The deterioration factor is a number that shows the relationship between emissions at the end of useful life and at the low-hour test point. For permeation emissions, the deterioration factor is the difference between evaporative emissions at the end of useful life and evaporative emissions at the low-hour test point. Adjust the official emission results for each tested vehicle at the selected test point by adding the factor to the measured emissions. If the factor is less than zero, use zero.

(1) Section 1051.515 specifies how to test your fuel tanks to develop deterioration factors that estimate the change in emissions over your vehicle's full useful life. Small-volume manufacturers may use assigned deterioration factors that we establish. Apply the deterioration factors as follows:

(i) Calculate the deterioration factor from emission tests performed before and after the durability tests described in § 1051.515(c) and using good engineering judgment. The durability tests described in § 1051.515(c) represent the minimum requirements for determining a deterioration factor. You may not use a deterioration factor that is less than the difference between evaporative emissions before and after the durability tests described in § 1051.515(c).

(ii) Do not apply the deterioration factor to test results for tanks that have already undergone these durability tests.

(2) Determine the deterioration factor for fuel lines using good engineering judgment.

(d) After adjusting the emission levels for deterioration, round them to the same number of decimal places as the emission standard. Compare the rounded emission levels to the emission standard for each test vehicle.

(e) You may demonstrate for certification that your engine family complies with the evaporative emission standards by demonstrating that you use the following control technologies:

(1) For certification to the standards specified in § 1051.110(a) with the control technologies shown in the following table:

TABLE 1 OF § 1051.245.—DESIGN-CERTIFICATION TECHNOLOGIES FOR CONTROLLING TANK PERMEATION

If the tank permeability control technology is . . .	Then you may design-certify with a tank emission level of . . .
(i) A metal fuel tank with no non-metal gaskets or with gaskets made from a low-permeability material [1].	1.5 g/m²/day.
(ii) A metal fuel tank with non-metal gaskets with an exposed surface area of 1000 mm² or less.	1.5 g/m²/day.

[1] Permeability of 10 g/m²/day or less according to ASTM D 814–95 (incorporated by reference in § 1051.810).

(2) For certification to the standards specified in § 1051.110(b) with the control technologies shown in the following table:

TABLE 2 OF § 1051.245.—DESIGN-CERTIFICATION TECHNOLOGIES FOR CONTROLLING FUEL-LINE PERMEATION

If the fuel-line permeability control technology is . . . jennifer	Then you may design-certify with a fuel line permeation emission level of . . .
(i) Hose meeting Category 1 permeation specifications in SAE J2260 (incorporated by reference in § 1051.810).	15 g/m²/day.
(ii) Hose meeting the R11–A or R12 permeation specifications in SAE J30 (incorporated by reference in § 1051.810).	15 g/m²/day.

(3) We may establish additional design certification options where we find that new test data demonstrate that the use of other technology designs will ensure compliance with the applicable emission standards.

§ 1051.250 What records must I keep and make available to EPA?

(a) Organize and maintain the following records to keep them readily available; we may review these records at any time:

(1) A copy of all applications and any summary information you sent us.

(2) Any of the information we specify in § 1051.205 that you did not include in your application.

(3) A detailed history of each emission-data vehicle. In each history, describe all of the following:

(i) The emission-data vehicle's construction, including its origin and buildup, steps you took to ensure that it represents production vehicles, any components you built specially for it, and all emission-related components.

(ii) How you accumulated vehicle or engine operating hours, including the dates and the number of hours accumulated.

(iii) All maintenance (including modifications, parts changes, and other service) and the dates and reasons for the maintenance.

(iv) All your emission tests, including documentation on routine and standard tests, as specified in part 1065 of this chapter or other applicable test procedures regulations, and the date and purpose of each test.

(v) All tests to diagnose engine or emission-control performance, giving the date and time of each and the reasons for the test.

(vi) Any other significant events.

(b) Keep routine data from emission tests (such as test cell temperatures and relative humidity readings) for one year after we issue the associated certificate of conformity. Keep all other information specified in paragraph (a) of this section for eight years after we issue your certificate.

(c) Store these records in any format and on any media, as long as you can promptly send us organized, written records in English if we ask for them.

(d) Send us copies of any maintenance instructions or explanations if we ask for them.

§ 1051.255 When may EPA deny, revoke, or void my certificate of conformity?

(a) We may deny your application for certification if your engine family fails to comply with emission standards or other requirements of the regulation or the Act. Our decision may be based on any information available to us showing you do not meet emission standards or other requirements, including any testing that we conduct under paragraph (g) of this section. If we deny your application, we will explain why in writing.

(b) In addition, we may deny your application or revoke your certificate if you do any of the following:

(1) Refuse to comply with any testing or reporting requirements.

(2) Submit false or incomplete information (paragraph (d) of this section applies if this is fraudulent).

(3) Render inaccurate any test data.

(4) Deny us from completing authorized activities despite our presenting a warrant or court order (see § 1068.20 of this chapter).

(5) Produce vehicle or engines for importation into the United States at a location where local law prohibits us from carrying out authorized activities.

(c) We may void your certificate if you do not keep the records we require or do not give us information when we ask for it.

(d) We may void your certificate if we find that you intentionally submitted false or incomplete information.

(e) We may void your certificate for any family certified to an FEL above the allowable average if you fail to show in your end-of-year report that your average emission levels are below the

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applicable standards in subpart B of this part, or that you have sufficient credits to offset a credit deficit for the model year.

(f) If we deny your application or revoke or void your certificate, you may ask for a hearing (see § 1051.820). Any such hearing will be limited to substantial and factual issues.

(g) We may conduct confirmatory testing of your vehicles as part of certification. We may deny your application for certification or revoke your certificate if your vehicles fail to comply with emission standards or other requirements during confirmatory testing.

Subpart D—Testing Production-line Engines

§ 1051.301 When must I test my production-line vehicles or engines?

(a) If you certify vehicles to the standards of this part, you must test them as described in this subpart. If your vehicle is certified to g/kW-hr standards, then test the engine; otherwise, test the vehicle. The provisions of this subpart do not apply to small-volume manufacturers.

(b) We may suspend or revoke your certificate of conformity for certain engine families if your production-line vehicles or engines do not meet the requirements of this part or you do not fulfill your obligations under this subpart (see §§ 1051.325 and 1051.340).

(c) Other requirements apply to vehicles and engines that you produce. Other regulatory provisions authorize us to suspend, revoke, or void your certificate of conformity, or order recalls for engines families without regard to whether they have passed these production-line testing requirements. The requirements of this subpart do not affect our ability to do selective enforcement audits, as described in part 1068 of this chapter. Individual vehicles and engines in families that pass these production-line testing requirements must also conform to all applicable regulations of this part and part 1068 of this chapter.

(d) You may ask to use an alternate program for testing production-line vehicles or engines. In your request, you must show us that the alternate program gives equal assurance that your products meet the requirements of this part. If we approve your alternate program, we may waive some or all of this subpart's requirements.

(e) If you certify an engine family with carryover emission data, as described in § 1051.235(c), and these equivalent engine families consistently pass the production-line testing requirements over the preceding two-year period, you may ask for a reduced testing rate for further production-line testing for that family. The minimum testing rate is one vehicle or engine per engine family. If we reduce your testing rate, we may limit our approval to a any number of model years. In determining whether to approve your request, we may consider the number of vehicles or engines that have failed the emission tests.

(f) We may ask you to make a reasonable number of production-line vehicles or engines available for a reasonable time so we can test or inspect them for compliance with the requirements of this part.

(g) The requirements of this subpart do not apply to engine families certified under the provisions of § 1051.630.

§ 1051.305 How must I prepare and test my production-line vehicles or engines?

(a) *Test procedures.* Test your production-line vehicles or engines using the applicable testing procedures in subpart F of this part to show you meet the emission standards in subpart B of this part.

(b) *Modifying a test vehicle or engine.* Once a vehicle or engine is selected for testing (see § 1051.310), you may adjust, repair, prepare, or modify it or check its emissions only if one of the following is true:

(1) You document the need for doing so in your procedures for assembling and inspecting all your production vehicles or engines and make the action routine for all the vehicles or engines in the engine family.

(2) This subpart otherwise specifically allows your action.

(3) We approve your action in advance.

(c) *Malfunction.* If a vehicle or engine malfunction prevents further emission testing, ask us to approve your decision to either repair it or delete it from the test sequence.

(d) *Setting adjustable parameters.* Before any test, we may adjust or require you to adjust any adjustable parameter to any setting within its physically adjustable range.

(1) We may adjust idle speed outside the physically adjustable range as needed only until the vehicle or engine has stabilized emission levels (see paragraph (e) of this section). We may ask you for information needed to establish an alternate minimum idle speed.

(2) We may make or specify adjustments within the physically adjustable range by considering their effect on emission levels, as well as how likely it is someone will make such an adjustment with in-use vehicles.

(3) We may adjust the air-fuel ratio within the adjustable range specified in § 1051.115(d).

(e) *Stabilizing emission levels.* Before you test production-line vehicles or engines, you may operate the vehicle or engine to stabilize the emission levels. Using good engineering judgment, operate your vehicles or engines in a way that represents the way they will be used. You may operate each vehicle or engine for no more than the greater of two periods:

(1) 50 hours.

(2) The number of hours you operated the emission-data vehicle used for certifying the engine family (see 40 CFR part 1065, subpart E, or the applicable regulations governing how you should prepare your test vehicle or engine).

(f) *Damage during shipment.* If shipping a vehicle or engine to a remote facility for production-line testing makes necessary an adjustment or repair, you must wait until after the after the initial emission test to do this work. We may waive this requirement if the test would be impossible or unsafe, or if it would permanently damage the vehicle or engine. Report to us, in your written report under § 1051.345, all adjustments or repairs you make on test vehicles or engines before each test.

(g) *Retesting after invalid tests.* You may retest a vehicle or engine if you determine an emission test is invalid. Explain in your written report reasons for invalidating any test and the emission results from all tests. If you retest a vehicle or engine, you may ask us to substitute results of the new tests for the original ones. You must ask us within ten days of testing. We will generally answer within ten days after we receive your information.

§ 1051.310 How must I select vehicles or engines for production-line testing?

(a) Use test results from two vehicles or engines for each engine family to calculate the required sample size for the test period. Update this calculation with each test.

(1) For engine families with projected annual sales of at least 1600, the test periods are consecutive quarters (3 months). If your annual production period is less than 12 months long, define your test periods by dividing your annual production period into approximately equal segments of 70 to 125 calendar days.

(2) For engine families with projected annual sales below 1600, the test period is the whole model year.

(b) Early in each test period, randomly select and test an engine from the end of the assembly line for each engine family.

(1) In the first test period for newly certified engines, randomly select and test one more engine. Then, calculate the required sample size for the test period as described in paragraph (c) of this section.

(2) In later test periods or for engine families relying on previously submitted test data, combine the new test result with the last test result from the previous test period. Then, calculate the required sample size for the new test period as described in paragraph (c) of this section.

(c) Calculate the required sample size for each engine family. Separately calculate this figure for HC, NO_X (or HC+NO_X), and CO (and other regulated pollutants). The required sample size is the greater of these calculated values. Use the following equation:

$$N = \left[\frac{(t_{95} \times \sigma}{(x - STD)}\right]^2 + 1$$

Where:

N = Required sample size for the model year.

t_{95} = 95% confidence coefficient, which depends on the number of tests completed, n, as specified in the table in paragraph (c)(1) of this section. It defines 95% confidence intervals for a one-tail distribution.

x = Mean of emission test results of the sample.

STD = Emission standard (or family emission limit, if applicable).

σ = Test sample standard deviation (see paragraph (c)(2) of this section).

(1) Determine the 95% confidence coefficient, t_{95}, from the following table:

n	t_{95}	n	t_{95}	n	t_{95}
2	6.31	12	1.80	22	1.72
3	2.92	13	1.78	23	1.72
4	2.35	14	1.77	24	1.71
5	2.13	15	1.76	25	1.71
6	2.02	16	1.75	26	1.71
7	1.94	17	1.75	27	1.71
8	1.90	18	1.74	28	1.70
9	1.86	19	1.73	29	1.70
10	1.83	20	1.73	30+	1.70
11	1.81	21	1.72	.....	.....

(2) Calculate the standard deviation, σ, for the test sample using the following formula:

$$\sigma = \sqrt{\frac{\sum (X_i - x)^2}{n - 1}}$$

Where:

X_i = Emission test result for an individual vehicle or engine.

n = The number of tests completed in an engine family.

(d) Use final deteriorated test results to calculate the variables in the equations in paragraph (c) of this section (see § 1051.315(a)).

(e) After each new test, recalculate the required sample size using the updated mean values, standard deviations, and the appropriate 95-percent confidence coefficient.

(f) Distribute the remaining vehicle or engine tests evenly throughout the rest of the year. You may need to adjust your schedule for selecting vehicles or engines if the required sample size changes. Continue to randomly select vehicles or engines from each engine family; this may involve testing vehicles or engines that operate on different fuels.

(g) Continue testing any engine family for which the sample mean, x, is greater than the emission standard. This applies if the sample mean for either HC, NO_X (or HC+NO_X), or CO (or other regulated pollutants) is greater than the emission standard. Continue testing until one of the following things happens:

(1) The sample size, n, for an engine family is greater than the required sample size, N, and the sample mean, x, is less than or equal to the emission standard. For example, if N = 3.1 after the third test, the sample-size calculation does not allow you to stop testing.

(2) The engine family does not comply according to § 1051.325.

(3) You test 30 vehicles or engines from the engine family.

(4) You test one percent of your projected annual U.S.-directed production volume for the engine family.

(5) You choose to declare that the engine family fails the requirements of this subpart. (h) If the sample-size calculation allows you to stop testing for a pollutant, you must continue measuring emission levels of that pollutant for any additional tests required under this section. However, you need not continue making the calculations specified in this section for that pollutant. This paragraph does not affect the requirements in section § 1051.320.

(i) You may elect to test more randomly chosen vehicles or engines than we require. Include these vehicles or engines in the sample-size calculations.

§ 1051.315 How do I know when my engine family fails the production-line testing requirements?

This section describes the pass-fail criteria for the production-line testing requirements. We apply this criteria on an engine family basis. See § 1051.320 for the requirements that apply to individual vehicles or engines that fail a production-line test. (a) Calculate your test results. Round them to the number of decimal places in the emission standard expressed to one more decimal place.

(1) *Initial and final test results.* Calculate and round the test results for each vehicle or engine. If you do several tests on a vehicle or engine, calculate the initial test results, then add them together and divide by the number of tests and round for the final test results on that vehicle or engine.

(2) *Final deteriorated test results.* Apply the deterioration factor for the engine family to the final test results (see § 1051.240(c)).

(b) Construct the following CumSum Equation for each engine family for HC, NO_X (or HC+NO_X), and CO emissions (and other regulated pollutants):

$$C_i = C_{i-1} + X_i - (STD + 0.25 \times \sigma)$$

Where:

C_i = The current CumSum statistic.

C_{i-1} = The previous CumSum statistic. For the first test, the CumSum statistic is 0 (*i.e.* $C_i = 0$).

X_i = The current emission test result for an individual vehicle or engine.

STD = Emission standard.

(c) Use final deteriorated test results to calculate the variables in the equation in paragraph (b) of this section (see § 1051.315(a)).

(d) After each new test, recalculate the CumSum statistic.

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(e) If you test more than the required number of vehicles or engines, include the results from these additional tests in the CumSum Equation.

(f) After each test, compare the current CumSum statistic, C_i, to the recalculated Action Limit, H, defined as $H = 5.0 \times \sigma$.

(g) If the CumSum statistic exceeds the Action Limit in two consecutive tests, the engine family fails the production-line testing requirements of this subpart. Tell us within ten working days if this happens. You may request to amend the application for certification to raise the FEL of the engine family at this point if you meet the requirements of § 1051.225(f).

(h) If you amend the application for certification for an engine family under § 1051.225, do not change any previous calculations of sample size or CumSum statistics for the model year.

§ 1051.320 What happens if one of my production-line vehicles or engines fails to meet emission standards?

(a) If you have a production-line vehicle or engine with final deteriorated test results exceeding one or more emission standards (see § 1051.315(a)), the certificate of conformity is automatically suspended for that failing vehicle or engine. You must take the following actions before your certificate of conformity can cover that vehicle or engine:

(1) Correct the problem and retest the vehicle or engine to show it complies with all emission standards.

(2) Include in your written report a description of the test results and the remedy for each vehicle or engine (see § 1051.345).

(b) You may request to amend the application for certification to raise the FEL of the entire engine family at this point (see § 1051.225).

§ 1051.325 What happens if an engine family fails the production-line requirements?

(a) We may suspend your certificate of conformity for an engine family if it fails under § 1051.315. The suspension may apply to all facilities producing vehicles or engines from an engine family, even if you find noncompliant vehicles or engines only at one facility.

(b) We will tell you in writing if we suspend your certificate in whole or in part. We will not suspend a certificate until at least 15 days after the engine family fails. The suspension is effective when you receive our notice.

(c) Up to 15 days after we suspend the certificate for an engine family, you may ask for a hearing (see § 1051.820). If we agree before a hearing that we used erroneous information in deciding to suspend the certificate, we will reinstate the certificate.

(d) Section 1051.335 specifies steps you must take to remedy the cause of the production-line failure. All the vehicles you have produced since the end of the last test period are presumed noncompliant and should be addressed in your proposed remedy. We may require you to apply the remedy to engines produced earlier if we determine that the cause of the failure is likely to have affected the earlier engines.

(e) You may request to amend the application for certification to raise the FEL of the engine family before or after we suspend your certificate if you meet the requirements of § 1051.225(f).

§ 1051.330 May I sell vehicles from an engine family with a suspended certificate of conformity?

You may sell vehicles that you produce after we suspend the engine family's certificate of conformity under § 1051.315 only if one of the following occurs:

(a) You test each vehicle or engine you produce and show it complies with emission standards that apply.

(b) We conditionally reinstate the certificate for the engine family. We may do so if you agree to recall all the affected vehicles and remedy any noncompliance at no expense to the owner if later testing shows that the engine family still does not comply.

§ 1051.335 How do I ask EPA to reinstate my suspended certificate?

(a) Send us a written report asking us to reinstate your suspended certificate. In your report, identify the reason for noncompliance, propose a remedy for the engine family, and commit to a date for carrying it out. In your proposed remedy include any quality control measures you propose to keep the problem from happening again.

(b) Give us data from production-line testing that shows the remedied engine family complies with all the emission standards that apply.

§ 1051.340 When may EPA revoke my certificate under this subpart and how may I sell these vehicles again?

(a) We may revoke your certificate for an engine family in the following cases:

(1) You do not meet the reporting requirements.

(2) Your engine family fails to comply with the requirements of this subpart and your proposed remedy to address a suspended certificate under § 1051.325 is inadequate to solve the problem or requires you to change the vehicle's design or emission-control system.

(b) To sell vehicles from an engine family with a revoked certificate of conformity, you must modify the engine family and then show it complies with the requirements of this part.

(1) If we determine your proposed design change may not control emissions for the vehicle's full useful life, we will tell you within five working days after receiving your report. In this case we will decide whether production-line testing will be enough for us to evaluate the change or whether you need to do more testing.

(2) Unless we require more testing, you may show compliance by testing production-line vehicles or engines as described in this subpart.

(3) We will issue a new or updated certificate of conformity when you have met these requirements.

§ 1051.345 What production-line testing records must I send to EPA?

Do all the following things unless we ask you to send us less information:

(a) Within 30 calendar days of the end of each calendar quarter, send us a report with the following information:

(1) Describe any facility used to test production-line vehicles or engines and state its location.

(2) State the total U.S.-directed production volume and number of tests for each engine family.

(3) Describe how you randomly selected vehicles or engines.

(4) Describe your test vehicles or engines, including the engine family's identification and the vehicle's model year, build date, model number, identification number, and number of hours of operation before testing for each test vehicle or engine.

(5) Identify where you accumulated hours of operation on the vehicles or engines and describe the procedure and schedule you used.

(6) Provide the test number; the date, time and duration of testing; test procedure; initial test results before and after rounding; final test results; and final deteriorated test results for all tests. Provide the emission results for all measured pollutants. Include information for both valid and invalid tests and the reason for any invalidation.

(7) Describe completely and justify any nonroutine adjustment, modification, repair, preparation, maintenance, or test for the test vehicle or engine if you did not report it separately under this subpart. Include the results of any emission measurements, regardless of the procedure or type of vehicle.

(8) Provide the CumSum analysis required in § 1051.315 for each engine family.

(9) Report on each failed vehicle or engine as described in § 1051.320.

(10) State the date the calendar quarter ended for each engine family.

(b) We may ask you to add information to your written report, so we can determine whether your new vehicles conform with the requirements of this subpart.

(c) An authorized representative of your company must sign the following statement:

We submit this report under Sections 208 and 213 of the Clean Air Act. Our production-line testing conformed completely with the requirements of 40 CFR part 1051. We have not changed production processes or quality-control procedures for the engine family in a way that might affect the emission control from production vehicles (or engines). All the information in this report is true and accurate, to the best of my knowledge. I know of the penalties for violating the Clean Air Act and the regulations. (Authorized Company Representative)

(d) Send electronic reports of production-line testing to the Designated Officer using an approved information format. If you want to use a different format, send us a written request with justification for a waiver.

(e) We will send copies of your reports to anyone from the public who asks for them. See § 1051.815 for information on how we treat information you consider confidential.

§ 1051.350 What records must I keep?

(a) Organize and maintain your records as described in this section. We may review your records at any time, so it is important to keep required information readily available.

(b) Keep paper records of your production-line testing for one full year after you complete all the testing required for an engine family in a model year. You may use any additional storage formats or media if you like.

(c) Keep a copy of the written reports described in § 1051.345.

(d) Keep the following additional records:

(1) A description of all test equipment for each test cell that you can use to test production-line vehicles or engines.

(2) The names of supervisors involved in each test.

(3) The name of anyone who authorizes adjusting, repairing, preparing, or modifying a test vehicle or engine and the names of all supervisors who oversee this work.

(4) If you shipped the vehicle or engine for testing, the date you shipped it, the associated storage or port facility, and the date the vehicle or engine arrived at the testing facility.

(5) Any records related to your production-line tests that are not in the written report.

(6) A brief description of any significant events during testing not otherwise described in the written report or in this section.

(7) Any information specified in § 1051.345 that you do not include in your written reports.

(e) If we ask, you must give us projected or actual production figures for an engine family. We may ask you to divide your production figures by rated brake power, displacement, fuel type, or assembly plant (if you produce vehicles or engines at more than one plant).

(f) Keep a list of vehicle or engine identification numbers for all the vehicles or engines you produce under each certificate of conformity. Give us this list within 30 days if we ask for it.

(g) We may ask you to keep or send other information necessary to implement this subpart.

Subpart E—Testing In-use Engines [Reserved]

Subpart F—Test Procedures

§ 1051.501 What procedures must I use to test my vehicles or engines?

This section describes test procedures that you use to show compliance with the requirements of this part. See § 1051.235 to determine when testing is required for certification. See subpart D of this part for the production-line testing requirements.

(a) *Snowmobiles.* For snowmobiles, use the equipment and procedures for spark-ignition engines in part 1065 of this chapter to show your snowmobiles meet the duty-cycle emission standards in § 1051.103. Measure HC, NO_X (as applicable), CO, and CO_2 emissions using the dilute sampling procedures in part 1065 of this chapter. For steady-state testing, you may use raw-gas sampling methods (such as those described in 40 CFR part 91), provided they have been shown to produce measurements equivalent to the dilute sampling methods specified in part 1065 of this chapter. Use the duty cycle in § 1051.505.

(b) *Motorcycles and ATVs.* For motorcycles and ATVs, use the equipment, procedures, and duty cycle in 40 CFR part 86, subpart F, to show your vehicles meet the exhaust emission standards in § 1051.105 or § 1051.107. Measure HC, NO_X, CO, and CO_2. If we allow you to certify ATVs based on engine testing, use the equipment, procedures, and duty cycle described or referenced in that section that allows engine testing. For motorcycles with engine displacement at or below 169 cc and all ATVs, use the driving schedule in paragraph (c) of Appendix I to 40 CFR part 86. For all other motorcycles use the driving schedule in paragraph (b) of Appendix I to part 86. With respect to vehicle-speed governors, test motorcycles and ATVs in their ungoverned configuration, unless we approve in advance testing in a governed configuration. We will only approve testing in a governed configuration if you can show that the governor is permanently installed on all production vehicles and is unlikely to be removed in-use. With respect to engine-speed governors, test motorcycles and ATVs in their governed configuration.

(c) *Permeation testing.* (1) Use the equipment and procedures specified in § 1051.515 to measure fuel tank permeation emissions.

(2) Prior to permeation testing of fuel hose, the hose must be preconditioned by filling the hose with the fuel specified in (d)(3) of this section, sealing the openings, and soaking the hose for 4 weeks at 23 °C±5° C. To measure fuel-line permeation emissions, use the equipment and procedures specified in SAE J30 (incorporated by reference in § 1051.810). The measurements must be performed at 23 ° C using the fuel specified in paragraph (d)(3) of this section.

(d) *Fuels.* Use the fuels meeting the following specifications:

(1) *Exhaust.* Use the fuels and lubricants specified in 40 CFR part 1065, subpart C, for all the testing and service accumulation we require in this part.

(2) *Fuel Tank Permeation.* (i) For the preconditioning soak described in § 1051.515(a)(1) and fuel slosh durability test described in § 1051.515(c)(4), use the fuel specified in Table 1 of § 1065.210 of this chapter blended with 10 percent ethanol by volume. As an alternative, you may use Fuel CE10, which is Fuel C as specified in ASTM D 471–98 (incorporated by reference in § 1051.810) blended with 10 percent ethanol by volume.

(ii) For the permeation measurement test in § 1051.515(b), use the fuel specified in Table 1 of § 1065.210 of this chapter. As an alternative, you may use the fuel specified in paragraph (d)(2)(i) of this section.

(3) *Fuel Hose Permeation.* Use the fuel specified in Table 1 of § 1065.210 of this chapter blended with 10 percent ethanol by volume for permeation testing of fuel lines and tanks. As an alternative, you may use Fuel CE10, which is Fuel C as specified in ASTM D 471–98

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(incorporated by reference in § 1051.810) blended with 10 percent ethanol by volume.

(e) *Special procedures for engine testing.* (1) You may use special or alternate procedures, as described in § 1065.10 of this chapter.

(2) We may reject data you generate using alternate procedures if later testing with the procedures in part 1065 of this chapter shows contradictory emission data.

(f) *Special procedures for vehicle testing.* (1) You may use special or alternate procedures, as described in paragraph (f)(3) of this section.

(2) We may reject data you generate using alternate procedures if later testing with the otherwise specified procedures shows contradictory emission data.

(3)(i) The test procedures specified for vehicle testing are intended to produce emission measurements equivalent to those that would result from measuring emissions during in-use operation using the same vehicle configuration. If good engineering judgment indicates that use of the procedures in this part for a vehicle would result in measurements that are not representative of in-use operation of that vehicle, you must notify us. If we determine that using these procedures would result in measurements that are significantly unrepresentative and that changes to the procedures will result in more representative measurements that do not decrease the stringency of emission standards or other requirements, we will specify changes to the procedures. In your notification to us, you should recommend specific changes you think are necessary.

(ii) You may ask to use emission data collected using other test procedures, such as those of the California Air Resources Board or the International Organization for Standardization. We will allow this only if you show us that these data are equivalent to data collected using our test procedures.

(iii) You may ask to use alternate procedures that produce measurements equivalent to those obtained using the specified procedures. In this case, send us a written request showing that your alternate procedures are equivalent to the test procedures of this part. If you prove to us that the procedures are equivalent, we will allow you to use them. You may not use alternate procedures until we approve them.

(iv) You may ask to use special test procedures if your vehicle cannot be tested using the specified test procedures (for example, it is incapable of operating on the specified transient cycle). In this case, send us a written request showing that you cannot satisfactorily test your engines using the test procedures of this part. We will allow you to use special test procedures if we determine that they would produce emission measurements that are representative of those that would result from measuring emissions during in-use operation. You may not use special procedures until we approve them.

§ 1051.505 What special provisions apply for testing snowmobiles?

Use the following special provisions for testing snowmobiles:

(a) Measure emissions by testing the engine on a dynamometer with the steady-state duty cycle described in the following Table:

TABLE 1 OF § 1051.505.—5–MODE DUTY CYCLE FOR SNOWMOBILES

	Engine speed (percent of maximum test speed)	Torque (percent of maximum test torque at maximum test speed)	Minimum time in mode (minutes)	Weighting factors
Mode number:				
1	100	100	3.0	0.12
2	85	51	3.0	0.27
3	75	33	3.0	0.25
4	65	19	3.0	0.31
5	Idle	0	3.0	0.05

(b) During idle mode, operate the engine with the following parameters:

(1) Hold the speed within your specifications.

(2) Keep the throttle at the idle-stop position.

(3) Keep engine torque under 5 percent of the peak torque value at maximum test speed.

(c) For the full-load operating mode, operate the engine at wide-open throttle.

(d) Ambient temperatures during testing must be between 20 °C and 30 °C (68 °F and 86 °F), or other representative test temperatures, as specified in paragraph (g) of this section.

(e) See part 1065 of this chapter for detailed specifications of tolerances and calculations.

(f) You may test snowmobiles at ambient temperatures below 20 °C or using intake air temperatures below 20 °C if you show that such testing complies with § 1065.10(c)(1) of this chapter. You must get our approval before you begin the emission testing. For example, the following approach would be appropriate to show that such testing complies with § 1065.10(c)(1) of this chapter:

(1) Using good engineering judgment, instrument a representative snowmobile built with a representative engine from the family being tested with an appropriate temperature measuring device located in the intake air plenum where fuel spitback is not likely to occur.

(2) Choose a time and location with the following weather conditions: windspeed less than 10 knots, no falling precipitation, air temperature between −20 °C and 0 °C (−4 °F and 32 °F).

(3) Operate the snowmobile until its engine reaches a steady operating temperature.

(4) Operate the snowmobile on a level surface free of other vehicle traffic. Operate the snowmobile at each specified engine speed corresponding to each mode in the emissions test specific to the engine being tested. When readings are stable, record the temperature in the intake air plenum and the ambient temperature. Calculate the temperature difference between the air in the plenum and the ambient air for each mode.

(5) Calculate the nominal intake air test temperature for each test mode as −10 °C (14 °F) plus the temperature difference for the corresponding mode determined in (g)(4) of this section.

(6) Before the emissions test, select the appropriate carburetor jetting for −10 °C (14 °F) conditions according to the jet chart. For each mode, maintain the inlet air temperature within 5 °C of the corresponding modal temperature calculated in (g)(5) of this section.

(7) Adjust other operating parameters to be consistent with operation at −10 °C (14 °F). For example, this may require that you modify the engine cooling system used in the laboratory to make its performance representative of cold-temperature operation.

§ 1051.510 What special provisions apply for testing ATV engines? [Reserved]

§ 1051.515 How do I test my fuel tank for permeation emissions?

Measure permeation emissions by weighing a sealed fuel tank before and after a temperature-controlled soak.

(a) *Preconditioning.* To precondition your fuel tank, follow these five steps:

(1) Fill the tank with the fuel specified in § 1051.501(d)(2)(i), seal it, and allow it to soak at 28 ±5 °C for 20 weeks. Alternatively, the tank may be soaked for a shorter period of time at a higher temperature if you can show that the hydrocarbon permeation rate has stabilized.

(2) Determine the fuel tank's internal surface area in square-meters accurate to at least three significant figures. You may use less accurate estimates of the surface area if you make sure not to overestimate the surface area.

(3) Fill the fuel tank with the test fuel specified in § 1051.501(d)(2)(ii) to its nominal capacity. If you fill the tank inside the temperature-controlled room or enclosure, do not spill any fuel.

(4) Allow the tank and its contents to equilibrate to 28±2 °C.

(5) Seal the fuel tank using nonpermeable fittings, such as metal or Teflon™.

(b) *Test run.* To run the test, follow these nine steps for a tank that was preconditioned as specified in paragraph (a) of this section:

(1) Weigh the sealed fuel tank and record the weight to the nearest 0.1 grams. (You may use less precise weights as long as the difference in mass from the start of the test to the end of the test has at least three significant figures.)

(2) Carefully place the tank within a ventilated temperature-controlled room or enclosure. Do not spill any fuel.

(3) Close the room or enclosure and record the time.

(4) Ensure that the measured temperature in the room or enclosure is 28±2 °C.

(5) Leave the tank in the room or enclosure for 2 to 4 weeks, consistent with good engineering judgment (based on the permeation rate). Do not stop soaking before 4 weeks unless you know that you can measure the weight loss during the test to at least three significant figures earlier.

(6) Hold the temperature of the room or enclosure to 28±2 °C; measure and record the temperature at least daily.

(7) At the end of the soak period, weigh the sealed fuel tank and record the weight to the nearest 0.1 grams. (You may use less precise weights as long as the difference in mass from the start of the test to the end of the test has at least three significant figures.)

(8) Subtract the weight of the tank at the end of the test from the weight of the tank at the beginning of the test; divide the difference by the internal surface area of the fuel tank. Divide this g/m² value by the number of test days (using at least three significant figures) to calculate the g/m²/day emission rate. Example: If a tank with an internal surface area of 1.51 m² weighed 31882.3 grams at the beginning of the test and weighed 31760.2 grams after soaking for 25.03 days, then the g/m²/day emission rate would be: (31882.3 g − 31760.2 g)/1.51 m²/25.03 days = 3.23 g/m²/day.

(9) Round your result to the same number of decimal places as the emission standard.

(c) *Durability testing.* You normally need to perform a separate durability demonstration for each substantially different combination of treatment approaches and tank materials. Perform these demonstrations before an emission test by taking the following steps, unless you can use good engineering judgment to apply the results of previous durability testing with a different fuel system. You can determine a deterioration factor by measuring emissions on a tank after these durability tests if you previously tested the same tank before the durability tests (but after the preconditioning step described in paragraph (a) of this section). For the purposes of deterioration factor determination, the permeation tests before and after the durability testing must be performed on the fuel specified in § 1051.501 (d)(2)(i). You may ask to exclude any of the following durability tests if you can clearly demonstrate that it does not affect the emissions from your fuel tank.

(1) Perform a pressure test by sealing the tank and cycling it between +2.0 psig and −0.5 psig and back to +2.0 psig for 10,000 cycles at a rate 60 seconds per cycle.

(2) Perform a sunlight-exposure test by exposing the tank to an ultraviolet light of at least 0.40 W-hr/m²/min on the tank surface for 15 hours per day for 4 weeks. Alternatively, the fuel tank may be exposed to direct natural sunlight for an equivalent period of time, as long as you ensure that the tank is exposed to at least 450 daylight hours.

(3) Perform a slosh test by filling the tank to 40 percent of its capacity with the fuel specified in § 1051.501(d)(2)(i) and rocking it at a rate of 15 cycles per minute until you reach one million total cycles.

Use an angle deviation of +15° to −15° from level. This test must be performed at a temperature of 28°C ±5° C.

(4) Following the durability testing, the fuel tank must be soaked (as described in paragraph (a) of this section) to ensure that the permeation rate is stable. The period of slosh testing and the period of ultraviolet testing (if performed with fuel in the tank consistent with paragraph (a)(1) of this section) may be considered to be part of this soak, provided that the soak begins immediately after the slosh testing. To determine the final permeation rate, drain and refill the tank with fresh fuel, and repeat the test run (as described in paragraph (b) of this section) immediately after this soak period.

(d) *Flow chart.* The following figure presents a flow chart for the permeation testing described in this section, showing full test procedure with durability testing, as well as the simplified test procedure with an applied deterioration factor:

BILLING CODE 6560–50–P

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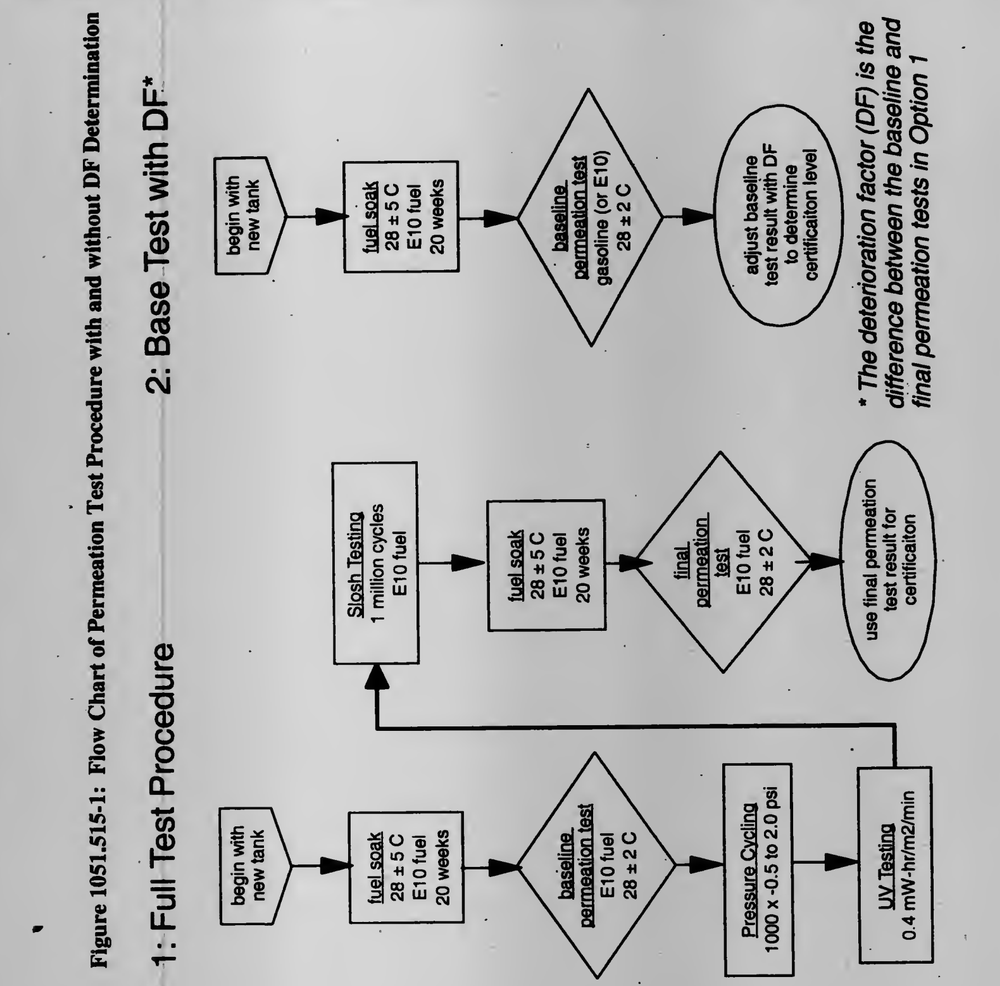

BILLING CODE 6560–50–C

§ 1051.520 How do I perform exhaust durability testing?

This section applies for durability testing to determine deterioration factors for exhaust emissions. Small-volume manufacturers may omit durability testing if they use our assigned deterioration factors that we establish based on our projection of the likely deterioration in the performance of specific emission controls.

(a) Calculate your deterioration factor by testing a vehicle or engine that is representative of your engine family at a low-hour test point and the end of its useful life. You may also test at intermediate points.

(b) Operate the vehicle or engine over a representative duty cycle for a period at least as long as the useful life (in hours or kilometers). You may operate the vehicle or engine continuously.

(c) You may perform critical emission-related maintenance during durability testing, consistent with § 1051.125(a). You may not perform any other emission-related maintenance during durability testing.

(d) Use a linear least-squares fit of your test data for each pollutant to calculate your deterioration factor.

(e) You may ask us to allow you to use other testing methods to determine deterioration factors, consistent with good engineering judgment.

Subpart G—Compliance Provisions

§ 1051.601 What compliance provisions apply to vehicles and engines subject to this part?

Engine and vehicle manufacturers, as well as owners, operators, and rebuilders of these vehicles, and all other persons, must observe the requirements and prohibitions in part 1068 of this chapter and the requirements of the Act. The compliance provisions in this subpart apply only to the vehicles and engines we regulate in this part.

§ 1051.605 What are the provisions for exempting vehicles from the requirements of this part if they use engines you have certified under the motor-vehicle program or the Large Spark-ignition program?

(a) You may ask for an exemption under this section if you are the manufacturer of an engine certified under the motor-vehicle program or the Large Spark-ignition program. See § 1051.610 if you are not the engine manufacturer.

(b)(1) The only requirements or prohibitions from this part that apply to a vehicle that is exempt under this section are in this section and § 1051.610.

(2) If the vehicles do not meet the criteria listed in paragraph (c) of this section, they will be subject to the standards and prohibitions of this part. Producing these vehicles without a valid exemption or certificate of conformity would violate the prohibitions in § 1068.101 of this chapter.

(3) Vehicles exempted under this section are subject to all the requirements affecting engines and vehicles under 40 CFR part 86 or part 1048, as applicable. The requirements and restrictions of 40 CFR part 86 or 1048 apply to anyone manufacturing these engines, anyone manufacturing vehicles that use these engines, and all other persons in the same manner as if these engines were used in a motor vehicle or other nonrecreational application.

(c) If you meet all the following criteria regarding your engine, the vehicle using the engine is exempt under this section:

(1) The vehicle is produced using an engine or incomplete vehicle covered by a valid certificate of conformity under 40 CFR part 86 or part 1048.

(2) No changes are made to the certified engine or vehicle that we could reasonably expect to increase any of its regulated emissions. For example, if any of the following changes are made to the engine, it does not qualify for this exemption:

(i) Any fuel system or evaporative system parameters are changed from the certified configuration (this does not apply to refueling emission controls).

(ii) Any other emission-related components are changed.

(iii) The engine cooling system is modified or assembled so that temperatures or heat rejection rates are outside the original engine's specified ranges.

(3) The engine must have the emission control information label we require under 40 CFR part 86 or part 1048.

(4) You must demonstrate that fewer than 50 percent of the engine model's total sales, from all companies, are used in recreational vehicles.

(d) If you manufacture both the engine and vehicle under this exemption, you must do all of the following to keep the exemption valid:

(1) Make sure the original emission control information label is intact.

(2) Add a permanent supplemental label to the engine in a position where it will remain clearly visible after installation in the vehicle. In your engine's emission control information label, do the following:

(i) Include the heading: "Recreational Vehicle Emission Control Information".

(ii) Include your full corporate name and trademark.

(iii) State: "THIS ENGINE WAS ADAPTED FOR RECREATIONAL USE WITHOUT AFFECTING ITS EMISSION CONTROLS.".

(iv) State the date you finished installation (month and year).

(3) Make sure the original and supplemental labels are readily visible after the engine is installed in the vehicle or, if the vehicle obscures the engine's emission control information label, make sure the vehicle manufacturer attaches duplicate labels, as described in § 1068.105 of this chapter.

(4) Send the Designated Officer a signed letter by the end of each calendar year (or less often if we tell you) with all the following information:

(i) Identify your full corporate name, address, and telephone number.

(ii) List the models you expect to produce under this exemption in the coming year.

(iii) State: "We produce each listed model for recreational application without making any changes that could increase its certified emission levels, as described in 40 CFR 1051.605.".

(e) If we request it, you must send us emission test data on the applicable recreational duty cycle(s). You may include the data in your application for certification under 40 CFR part 86 or part 1048, or in your letter requesting the exemption. We will generally not ask you for these data under normal circumstances, especially when they are more readily available from another source.

§ 1051.610 What are the provisions for producing recreational vehicles with engines already certified under the motor-vehicle program or the Large SI program?

(a) You may produce a recreational vehicle without certifying it under this part by using a certified motor vehicle engine, or Large SI engine. This section does not apply if you manufacture the engine yourself; see § 1051.605. In order to produce recreational vehicles under this section, you must meet all of the following criteria:

(1) The engine or vehicle is certified to 40 CFR part 86 or part 1048.

(2) The engine is not adjusted outside the certifying manufacturer's specifications (see § 1051.605(c)(2)).

(3) The engine or vehicle is not modified in any way that may affect its emission control. This does not apply to refueling emission controls.

(4) The vehicle is labeled consistent with paragraph (c) of this section.

(b)(1) The only requirements or prohibitions from this part that apply to a vehicle that is exempt under this section are in this section and § 1051.605.

(2) If the vehicles do not meet the criteria listed in § 1051.605(c) and paragraph (c) of this section, they will be subject to the standards and prohibitions of this part. Producing these vehicles without a valid exemption or certificate of conformity would violate the prohibitions in § 1068.101 of this chapter.

(3) Vehicles exempted under this section are subject to all the requirements affecting engines and vehicles under 40 CFR part 86 or part 1048, as applicable. The requirements and restrictions of 40 CFR part 86 or 1048 apply to anyone manufacturing these engines, anyone manufacturing vehicles that use these engines, and all other persons in the same manner as if these engines were used in a motor vehicle or other nonrecreational application.

(c)(1) Make sure the original emission control information label is intact after assembly in the vehicle.

(2) Add a permanent supplemental label to the vehicle in a position where it will be clearly visible. In this emission control information label, do the following:

(i) Include the heading: "Recreational Vehicle Emission Control Information".

(ii) Include your full corporate name and trademark.

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(iii) State: "THIS ENGINE WAS ADAPTED FOR RECREATIONAL USE WITHOUT AFFECTING ITS EMISSION CONTROLS.".

(iv) State the date you finished installation (month and year).

(3) Send the Designated Officer a signed letter by the end of each calendar year (or less often if we tell you) with all the following information:

(i) Identify your full corporate name, address, and telephone number.

(ii) List the models you expect to produce under this exemption in the coming year.

(iii) State: "We produce each listed model for recreational application without making any changes that could increase its certified emission levels, as described in 40 CFR 1051.605.".

(d) If you build recreational vehicles under this section, we may require (as a condition of the exemption) that you comply with the emission-related warranty and recall responsibilities of this part.

(e) If you build a recreational vehicle using a motor vehicle engine that was certified as part of a vehicle-based engine family, we may require you to certify under this part instead of granting you an exemption under this part. If we do this, we may allow you to submit an abbreviated application for certification to show that you comply with the requirements of this part. You may reference the information in the original motor vehicle application.

§ 1051.615 What are the special provisions for certifying small recreational engines?

(a) You may certify ATVs with engines that have total displacement of less than 100 cc to the following emission exhaust standards instead of certifying them to the exhaust emission standards of subpart B of this part:

(1) 25.0 g/kW-hr $HC+NO_X$, with an FEL cap of 40.0 g/kW-hr $HC+NO_X$.

(2) 500 g/kW-hr CO.

(b) You may certify off-highway motorcycles with engines that have total displacement of 70 cc or less to the following emission exhaust standards instead of certifying them to the exhaust emission standards of subpart B of this part:

(1) 16.1 g/kW-hr $HC+NO_X$, with an FEL cap of 32.2 g/kW-hr $HC+NO_X$.

(2) 519 g/kW-hr CO.

(c) You may use the averaging, banking, and trading provisions of subpart H of this part to show compliance with this $HC+NO_X$ standards (an engine family meets emission standards even if its family emission limit is higher than the standard, as long as you show that the whole averaging set of applicable engine families meet the applicable emission standards using emission credits, and the vehicles within the family meet the family emission limit). You may not use averaging to meet the CO standards of this section.

(d) Measure emissions by testing the engine on a dynamometer with the steady-state duty cycle described in Table 1 of this section.

(1) During idle mode, hold the speed within your specifications, keep the throttle fully closed, and keep engine torque under 5 percent of the peak torque value at maximum test speed.

(2) For the full-load operating mode, operate the engine at wide-open throttle.

(3) See part 1065 of this chapter for detailed specifications of tolerances and calculations.

(4) Table 1 follows:

TABLE 1 OF § 1051.615.—6-MODE DUTY CYCLE FOR RECREATIONAL ENGINES

	Engine speed (percent of maximum test speed)	Torque (percent of maximum test torque at test speed)	Minimum time in mode (minutes)	Weighting factors
Mode number:				
1	85	100	5.0	0.09
2	85	75	5.0	0.20
3	85	50	5.0	0.29
4	85	25	5.0	0.30
5	85	10	5.0	0.07
6	Idle	0	5.0	0.05

(e) All other requirements and prohibitions of this part apply to these engines and vehicles.

§ 1051.620 When may a manufacturer obtain an exemption for competition recreational vehicles?

(a) We may grant you an exemption from the standards and requirements of this part for a new recreational vehicle on the grounds that it is to be used solely for competition. The provisions of this part other than those in this section do not apply to recreational vehicles that we exempt for use solely for competition.

(b) We will exempt vehicles that we determine will be used solely for competition. The basis of our determinations are described in paragraphs (b)(1), (b)(2), and (c) of this section. Exemptions granted under this section are good for only one model year and you must request renewal for each subsequent model year. We will not approve your renewal request if we determine the vehicles will not be used solely for competition.

(1) *Off-highway motorcycles.* Motorcycles that are marketed and labeled as only for competitive use and that meet at least four of the criteria listed in paragraphs (b)(1)(i) through (vi) of this section are considered to be used solely for competition, except in cases where other information is available that indicates that they are not used solely for competition. The following features are indicative of motorcycles used solely for competition:

(i) The absence of a headlight or other lights.

(ii) The absence of a spark arrestor.

(iii) The absence of manufacturer warranty.

(iv) Suspension travel greater than 10 inches.

(v) Engine displacement greater than 50 cc.

(vi) The absence of a functional seat. (For example, a seat less with than 30 square inches of seating surface would generally not be considered a functional seat).

(2) *Snowmobiles and ATVs.* Snowmobiles and ATVs meeting all of the following criteria are considered to be used solely for competition, except in cases where other information is available that indicates that they are not used solely for competition:

(i) The vehicle or engine may not be displayed for sale in any public dealership.

(ii) Sale of the vehicle must be limited to professional racers or other qualified racers.

(iii) The vehicle must have performance characteristics that are substantially superior to noncompetitive models.

(c) Vehicles not meeting the applicable criteria listed in paragraph (b) of this section will be exempted only in cases where the manufacturer has clear and convincing evidence that the vehicles will be used solely for competition.

(d) You must permanently label vehicles exempted under this section to clearly indicate that they are to be used only for competition. Failure to properly label a vehicle will void the exemption for that vehicle.

(e) If we request it, you must provide us any information we need to determine whether the vehicles are used solely for competition.

§ 1051.625 What special provisions apply to unique snowmobile designs for small-volume manufacturers?

(a) If you are a small-volume manufacturer, we may permit you to produce up to 600 snowmobiles per year that are certified to less stringent emission standards than those in § 1051.103, as long as you meet all the conditions and requirements in this section.

(b) To apply for alternate standards under this section, send the Designated Officer a written request. In your request, do two things:

(1) Show that the snowmobile has unique design, calibration, or operating characteristics that make it atypical and infeasible or highly impractical to meet the emission standards in § 1051.103, considering technology, cost, and other factors.

(2) Identify the level of compliance you can achieve, including a description of available emission-control technologies and any constraints that may prevent more effective use of these technologies.

(c) You must give us other relevant information if we ask for it.

(d) An authorized representative of your company must sign the request and include the statement: "All the information in this request is true and accurate, to the best of my knowledge.".

(e) Send your request for this extension at least nine months before the relevant deadline. If different deadlines apply to companies that are not small-volume manufacturers, do not send your request before the regulations in question apply to the other manufacturers.

(f) If we approve your request, we will set alternate standards for your qualifying snowmobiles. These standards will not be above 400 g/kW-hr for CO or 150 g/kW-hr for HC.

(g) You may produce these snowmobiles to meet the alternate standards we establish under this section as long as you continue to produce them at the same or lower emission levels.

(h) You may not include snowmobiles you produce under this section in any averaging, banking, or trading calculations under Subpart H of this part.

(i) You must meet all the requirements of this part, except as noted in this section.

§ 1051.630 What special provisions apply to unique snowmobile designs for all manufacturers?

(a) We may permit you to produce up to 600 snowmobiles per year that are certified to the FELs listed in this section without new test data, as long as you meet all the conditions and requirements in this section.

(b) You may certify these snowmobiles with FELs of 560 g/kW-hr for CO and 270 g/kW-hr for HC (using the normal certification procedures).

(c) The emission levels described in this section are intended to represent worst-case emission levels. You may not certify snowmobiles under this section if good engineering judgment indicates that they have emission rates higher than these levels.

(d) Include snowmobiles you produce under this section in your averaging calculations under Subpart H of this part.

(e) You must meet all the requirements of this part, unless the regulations of this part specify otherwise.

§ 1051.635 What provisions apply to new manufacturers that are small businesses?

(a) If you are a small business (as defined by the Small Business Administration) that manufactures recreational vehicles, but does not otherwise qualify for the small-volume manufacturer provisions of this part, you may ask us to designate you to be a small-volume manufacturer. You may do this whether you began manufacturing recreational vehicles before, during, or after 2002.

(b) We may set other reasonable conditions that are consistent with the intent of this section and the Act. For example, we may place sales limits on companies that we designate to be small-volume manufacturers under this section.

Subpart H—Averaging, Banking, and Trading for Certification

§ 1051.701 General provisions.

(a) You may average, bank, and trade emission credits for purposes of certification as described in this subpart to show compliance with the standards of this part. To do this you must show that your average emission levels are below the applicable standards in subpart B of this part, or that you have sufficient credits to offset a credit deficit for the model year (as calculated in § 1051.720). If you cannot show in your end-of-year report that your average emission levels are below the applicable standards in subpart B of this part, or that you have sufficient credits to offset a credit deficit for the model year, we may void the certificates for all families certified to FELs above the allowable average. (b) The following averaging set restrictions apply:

(1) You may not average together engine families that are certified to different standards. You may, however, use banked credits that were generated relative to different standards, except as prohibited by paragraphs (b)(2) and (3) of this section, paragraph (e) of this section, or by other provisions in this part. For example, you may not average together within a model year off-highway motorcycles that are certified to the standards in § 1051.105(a)(1) and § 1051.105(a)(2); but you may use banked credits generated by off-highway motorcycles that are certified to the standards in § 1051.105(a)(1) to show compliance with the standards in § 1051.105(a)(2) in a later model year, and vice versa.

(2) There are separate averaging, banking, and trading programs for snowmobiles, ATVs, and off-highway motorcycles. You may not average or exchange banked or traded credits from engine families of one type of vehicle with those from engine families of another type of vehicle.

(3) You may not average or exchange banked or traded credits with other engine families if you use fundamentally different measurement procedures for the different engine families (for example, ATVs certified to

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chassis-based vs. engine-based standards). This paragraph (b)(3) does not restrict you from averaging together engine families that use test procedures that we determine provide equivalent emission results.

(4) You may not average or exchange banked or traded exhaust credits with evaporative credits, or vice versa.

(c) The definitions of Subpart I of this part apply to this subpart. The following definitions also apply:

(1) *Average standard* means a standard that allows you comply by averaging all your vehicles under this part. See subpart B of this part to determine which standards are average standards.

(2) *Broker* means any entity that facilitates a trade between a buyer and seller.

(3) *Buyer* means the entity that receives credits as a result of trade.

(4) *Family emission limit (FEL)* has the meaning given in it in § 1051.801.

(5) *Reserved credits* means credits you have generated that we have not yet verified in reviewing the end-of-year report.

(6) *Seller* means the entity that provides credits during a trade.

(d) Do not include any exported vehicles in the certification averaging, banking, and trading program. Include only vehicles certified under this part.

§ 1051.705 How do I average emission levels?

(a) As specified in subpart B of this part, certify each vehicle to a family emission limit (FEL).

(b) Calculate a preliminary average emission level according to § 1051.720 using projected U.S.-directed production volumes for your application for certification.

(c) After the end of your model year, calculate a final average emission level according to § 1051.720 for each type of recreational vehicle or engine you manufacture or import. Use actual U.S.-directed production volumes.

(d) If your preliminary average emission level is below the allowable average standard, see § 1051.710 for information about generating and banking emission credits. These credits will be considered reserved until we verify them in reviewing the end-of-year report.

§ 1051.710 How do I generate and bank emission credits?

(a) If your average emission level is below the average standard, you may calculate credits according to § 1051.720.

(b) You may generate credits if you are a certifying manufacturer.

(c) You may bank unused emission credits, but only after the end of the calendar year and after we have reviewed your end-of-year reports. Credits you generate do not expire.

(d) During the calendar year and before you send in your end-of-year report, you may consider reserved any credits you originally designate for banking during certification. You may redesignate these credits for trading in your end-of-year report, but they are not valid to demonstrate compliance until verified.

(e) You may use for averaging or trading any credits you declared for banking from the previous calendar year that we have not reviewed. But, we may revoke these credits later—following our review of your end-of-year report or audit actions. For example, this could occur if we find that credits are based on erroneous calculations; or that emission levels are misrepresented, unsubstantiated, or derived incorrectly in the certification process.

§ 1051.715 How do I trade emission credits?

(a) You may trade only banked emission credits, not reserved credits.

(b) You may trade banked credits to any certifying manufacturer.

(c) If a negative credit balance results from a credit trade, both buyers and sellers are liable, except in cases involving fraud. We may void the certificates of all emission families participating in a negative trade.

(1) If you buy credits but have not caused the negative credit balance, you must only supply more credits equivalent to the amount of invalid credits you used.

(2) If you caused the credit shortfall, you may be subject to the requirement sof § 1051.730(b)(6).

§ 1051.720 How do I calculate my average emission level or emission credits?

(a) Calculate your average emission level for each type of recreational vehicle or engine for each model year according to the following equation and round it to the nearest tenth of a g/km or g/kW-hr. Use consistent units throughout the calculation.

(1) For exhaust emissions:

(i) Calculate the average emission level as:

$$\text{Emission level} = \left[\sum_i (\text{FEL})_i \times (\text{UL})_i \times (\text{Production})_i\right] \Big/ \left[\sum_i (\text{Production})_i \times (\text{UL})_i\right]$$

Where:

FEL_i = The FEL to which the engine family is certified.

UL_i = The useful life of the engine family.

Production_i = The number of vehicles in the engine family.

(ii) Use U.S.-directed production projections for initial certification, and actual U.S.-directed production volumes to determine compliance at the end of the model year.

(2) For vehicles that have standards expressed as g/kW-hr and a useful life in km, convert the useful life to kW-hr based on the maximum power output observed over the emission test and an assumed vehicle speed of 30 km/hr as follows: UL (kW-hr) = UL (km) × Maximum Test Power (kW)+30 km/hr. (Note: It is not necessary to include a load factor, since credit exchange is not allowed between vehicles certified to g/kW-hr standards and vehicles certified to g/km standards.)

(3) For evaporative permeation standards expressed as g/m²/day, use the useful life value in years multiplied by 365.24, and calculate the average emission level as:

$$\text{Emission level} = \left[\sum_i (\text{FEL})_i \times (\text{UL})_i \times (\text{Production})_i\right] \Big/ \left[\sum_i (\text{Production})_i \times (\text{UL})_i\right]$$

Where:

Production_i = The number of vehicles in the engine family times the average internal surface area of the vehicles' fuel tanks.

(b) If your average emission level is below the average standard, calculate credits available for banking according to the following equation and round them to the nearest tenth of a gram:

$$\text{Credit} = \left[(\text{Average standard} - \text{Emission level})\right] \times \left[\sum_i (\text{Production})_i \times (\text{UL})_i\right]$$

(c) If your average emission level is above the average standard, calculate your preliminary credit deficit according to the following equation, rounding to the nearest tenth of a gram:

$$\text{Deficit} = \left[(\text{Emission level} - \text{Average standard})\right] \times \left[\sum_i (\text{Production})_i \times (\text{UL})_i\right]$$

§ 1051.725 What information must I keep?

(a) Maintain and keep five types of properly organized and indexed records for each engine family:

(1) Model year and EPA engine family.

(2) FEL.

(3) Useful life.

(4) Projected U.S.-directed production volume for the model year.

(5) Actual U.S.-directed production volume for the model year.

(b) Keep paper records of this information for three years from the due date for the end-of-year report. You may use any additional storage formats or media if you like.

(c) Keep a copy of all of the information you send us under § 1051.730.

(d) We may ask you to keep or send other information necessary to implement this subpart.

§ 1051.730 What information must I report?

(a) Include the following information in each of your applications for certification:

(1) A statement that, to the best of your belief, you will not have a negative credit balance for any type of recreational vehicle or engine when all credits are calculated. This means that if you believe that your average emission level will be above the standard (i.e., that you will have a deficit for the model year), you must have banked credits (or project to have received traded credits) to offset the deficit.

(2) Detailed calculations of projected emission credits (zero, positive, or negative) based on U.S.-directed production projections. If you project a credit deficit, state the source of credits needed to offset the credit deficit.

(b) At the end of each model year, send an end-of-year report.

(1) Your report must include three things:

(i) Calculate in detail your average emission level and any emission credits (positive, or negative) based on actual U.S.-directed production volumes.

(ii) If your average emission level is above the allowable average standard, demonstrate that you have the credits needed to offset the credit deficit. If you cannot demonstrate that you have the credits at the time you submit your end-of-year report, we may void the certificates for all families certified to FELs above the allowable average.

(iii) If your average emission level is below the allowable average standard, state whether you will reserve the credits for banking.

(2) Base your U.S.-directed production volumes on the point of first retail sale. You may consider distributors to be the point of first retail sale if all their engines are sold to ultimate buyers in the United States.

(3) Send end-of-year reports to the Designated Officer within 120 days of the end of the model year. If you send reports later, you are violating the Act.

(4) If you generate credits for banking and you do not send your end-of-year reports within 120 days after the end of the model year, you may not use or trade the credits until we receive and review your reports. You may not use projected credits pending our review.

(5) You may correct errors discovered in your end-of-year report, including errors in calculating credits according to the following table:

If—	And if—	Then we—
(i) Our review discovers an error in your end-of-year report that increases your credit balance.	the discovery occurs within 180 days of receipt	restore the credits for your use.
(ii) You discover an error in your report that increases your credit balance.	the discovery occurs within 180 days of receipt	restore the credits for your use.
(iii) We or you discover and error in your report that increases your credit balance.	the discovery occurs more than 180 days after receipt	do not restore the credits for your use.
(iv) We discover an error in your report that reduces your credit balance.	at any time after receipt	reduce your credit balance

(6) If our review of a your end-of-year-report shows a negative balance, you may buy credits to bring your credit balance to zero. But you must buy 1.1 credits for each 1.0 credit needed. If enough credits are not available to bring

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your credit balance to zero within 90 days of when we notify you, we may void the certificates for all families certified to FELs above the allowable average.

(c) Within 90 days of any credit trade, you must send the Designated Officer a report of the trade that includes three types of information:

(1) The corporate names of the buyer, seller, and any brokers.

(2) Copies of contracts related to credit trading from the buyer, seller, and broker, as applicable.

(d) Include in each report a statement certifying the accuracy and authenticity of its contents.

(e) We may void a certificate of conformity for any emission family if you do not keep the records this section requires or give us the information when we ask for it.

§ 1051.735 Are there special averaging provisions for snowmobiles?

For snowmobiles, you may only use credits for the same phase or set of standards against which they were generated, except as allowed by this section.

(a) *Restrictions.* (1) You may not use any Phase 1 or Phase 2 credits for Phase 3 compliance.

(2) You may not use Phase 1 HC credits for Phase 2 HC compliance. However, because the Phase 1 and Phase 2 CO standards are the same, you may use Phase 1 CO credits for compliance with the Phase 2 CO standards.

(b) *Special credits for next phase of standards.* You may choose to generate credits early for banking for purposes of compliance with later phases of standards as follows:

(1) If your corporate average emission level at the end of the model year exceeds the applicable (current) phase of standards (without the use of traded or previously banked credits), you may choose to redesignate some of your snowmobile production to a calculation to generate credits for a future phase of standards. To generate credits the snowmobiles designated must have an FEL below the emission level of that set of standards. This can be done on a pollutant specific basis.

(2) Do not include the snowmobiles that you redesignate in the final compliance calculation of your average emission level for the otherwise applicable (current) phase of standards. Your average emission level for the remaining (non-redesignated) snowmobiles must comply with the otherwise applicable (current) phase of standards.

(3) Include the snowmobiles that you redesignate in a separate calculation of your average emission level for redesignated engines. Calculate credits using this average emission level relative to the specific pollutant in the future phase of standards. These credits may be used for compliance with the future standards.

(4) For generating early Phase 3 credits, you may generate credits for $HC+NO_x$ or CO separately as described:

(i) To determine if you qualify to generate credits in accordance with paragraphs (b)(1) through (3) of this section, you must meet the credit trigger level. For $HC+NO_x$ this value is 62 g/kW-hr (which would be the $HC+NO_x$ standard that would result from inputting the highest allowable CO standard (275 g/kW-hr) into the Phase 3 equation). For CO the value is 200 g/kW-hr (which would be the CO standard that would result from inputting the highest allowable $HC+NO_x$ standard (90 g/kW-hr) into the Phase 3 equation).

(ii) $HC+NO_x$ and CO credits for Phase 3 are calculated relative to the 62 g/kW-hr and 200 g/kW-hr values, respectively.

(5) Credits can also be calculated for Phase 3 using both sets of standards. Without regard to the trigger level values, if your net emission reduction for the redesignated averaging set exceeds the requirements of Phase 3 in § 1051.103 (using both $HC+NO_x$ and CO in the Phase 3 equation in § 1051.103), then your credits are the difference between the Phase 3 reduction requirement of that section and your calculated value.

Subpart I—Definitions and Other Reference Information

§ 1051.801 What definitions apply to this part?

The following definitions apply to this part. The definitions apply to all subparts unless we note otherwise. All undefined terms have the meaning the Act gives to them. The definitions follow:

Act means the Clean Air Act, as amended, 42 U.S.C. 7401 et seq.

Adjustable parameter means any device, system, or element of design that someone can adjust (including those which are difficult to access) and that, if adjusted, may affect emissions or engine performance during emission testing or normal in-use operation. You may ask us to exclude a parameter that is difficult to access if it cannot be adjusted to affect emissions without significantly degrading performance, or if you otherwise show us that it will not be adjusted in use in a way that affect emissions

Aftertreatment means relating to any system, component, or technology mounted downstream of the exhaust valve or exhaust port whose design function is to reduce exhaust emissions.

All-terrain vehicle means a land-based or amphibious nonroad vehicle that meets the criteria listed in paragraph (1) of this definition; or, alternatively, the criteria of paragraph (2) of this definition but not the criteria of paragraph (3) of this definition.

(1) Vehicles designed to travel on four low pressure tires, having a seat designed to be straddled by the operator and handlebars for steering controls, and intended for use by a single operator and no other passengers are all-terrain vehicles.

(2) Other all-terrain vehicles have three or more wheels and one or more seats, are designed for operation over rough terrain, and are intended primarily for transportation. Golf carts generally do not meet these criteria since they are generally not designed for operation over rough terrain.

(3) Vehicles that meet the definition of "offroad utility vehicle" in this section are not all-terrain vehicles. However, § 1051.1(a) specifies that some offroad utility vehicles are required to meet the same requirements as all-terrain vehicles.

Auxiliary emission-control device means any element of design that senses temperature, engine rpm, motive speed, transmission gear, atmospheric pressure, manifold pressure or vacuum, or any other parameter to activate, modulate, delay, or deactivate the operation of any part of the emission-control system. This also includes any other feature that causes in-use emissions to be higher than those measured under test conditions, except as we allow under this part. For example, an accelerator pump would be considered an auxiliary emission-control device.

Brake power means the usable power output of the engine not including power required to operate fuel pumps, oil pumps, or coolant pumps.

Broker means any entity that facilitates a trade of emission credits between a buyer and seller.

Calibration means the set of specifications and tolerances specific to a particular design, version, or application of a component or assembly capable of functionally describing its operation over its working range.

Certification means obtaining a certificate of conformity for an engine family that complies with the emission standards and requirements in this part.

Compression-ignition means relating to a type of reciprocating, internal-combustion engine that is not a spark-ignition engine.

Crankcase emissions means airborne substances emitted to the atmosphere from any part of the engine crankcase's ventilation or lubrication systems. The crankcase is the housing for the crankshaft and other related internal parts.

Designated Officer means the Manager, Engine Programs Group (6405–J), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., Washington, DC 20460.

Emission-control system means any device, system, or element of design that controls or reduces the regulated emissions from a vehicle.

Emission-data vehicle means a vehicle or engine that is tested for certification.

Emission-related maintenance means maintenance that substantially affects emissions or is likely to substantially affect emissions deterioration.

Engine family means a group of vehicles with similar emission characteristics, as specified in § 1051.230.

Evaporative means relating to fuel emissions that result from permeation of fuel through the fuel system materials and from ventilation of the fuel system.

Family emission limit (FEL) means an emission level declared by the manufacturer to serve in place of an emission standard for certification under the emission-credit program in subpart H of this part. The family emission limit must be expressed to the same number of decimal places as the emission standard it replaces.

Fuel system means all components involved in transporting, metering, and mixing the fuel from the fuel tank to the combustion chamber(s), including the fuel tank, fuel tank cap, fuel pump, fuel filters, fuel lines, carburetor or fuel-injection components, and all fuel-system vents.

Good engineering judgment has the meaning we give it in § 1068.5 of this chapter.

Hydrocarbon (HC) means the hydrocarbon group on which the emission standards are based for each fuel type. For gasoline- and LPG-fueled engines, HC means total hydrocarbon (THC). For natural gas-fueled engines, HC means nonmethane hydrocarbon (NMHC). For alcohol-fueled engines, HC means total hydrocarbon equivalent (THCE).

Identification number means a unique specification (for example, model number/serial number combination) that allows someone to distinguish a particular vehicle or engine from other similar vehicle or engines.

Manufacturer has the meaning given in section 216(1) of the Act. In general, this term includes any person who manufactures a vehicle or engine for sale in the United States or otherwise introduces a new vehicle or engine into commerce in the United States. This includes importers that import for resale.

Maximum brake power means the maximum brake power of an engine at test conditions.

Maximum test power means the maximum brake power of an engine at maximum test speed.

Maximum test speed has the meaning we give in § 1065.515 of this chapter

Maximum test torque means the torque output observed at wide-open throttle at a given speed.

Model year means one of the following things:

(1) For freshly manufactured vehicles or engines (see definition of "new," paragraph (1)), model year means one of the following:

(i) Calendar year.

(ii) Your annual new model production period if it is different than the calendar year. This must include January 1 of the calendar year for which the model year is named. It may not begin before January 2 of the previous calendar year and it must end by December 31 of the named calendar year.

(2) For a vehicle or engine that is converted to a nonroad vehicle or engine after being placed into service in a motor vehicle, model year means the calendar year in which the vehicle or engine was originally produced (see definition of "new," paragraph (2)).

(3) For a nonroad vehicle excluded under § 1051.5 that is later converted to operate in an application that is not excluded, model year means the calendar year in which the vehicle was originally produced (see definition of "new," paragraph (3)).

(4) For engines that are not freshly manufactured but are installed in new nonroad vehicles, model year means the calendar year in which the engine is installed in the new nonroad vehicle. This installation date is based on the time that final assembly of the vehicle is complete (see definition of "new," paragraph (4)).

(5) For a vehicle or engine modified by an importer (not the original manufacturer) who has a certificate of conformity for the imported vehicle or engine (see definition of "new," paragraph (5)), model year means one of the following:

(i) The calendar year in which the importer finishes modifying and labeling the vehicle or engine.

(ii) Your annual production period for producing vehicles or engines if it is different than the calendar year; follow the guidelines in paragraph (1)(ii) of this definition.

(6) For a vehicle or engine you import that does not meet the criteria in paragraphs (1) through (5) of the definition of "new" model year means the calendar year in which the manufacturer completed the original assembly of the vehicle or engine. In general, this applies to used equipment that you import without conversion or major modification.

Motor vehicle has the meaning we give in § 85.1703(a) of this chapter. In general, motor vehicle means a self-propelled vehicle that can transport one or more people or any material, but does not include any of the following:

(1) Vehicles having a maximum ground speed over level, paved surfaces no higher than 40 km per hour (25 miles per hour).

(2) Vehicles that lack features usually needed for safe, practical use on streets or highways-for example, safety features required by law, a reverse gear (except for motorcycles), or a differential.

(3) Vehicles whose operation on streets or highways would be unsafe, impractical, or highly unlikely. Examples are vehicles with tracks instead of wheels, very large size, or features associated with military vehicles, such as armor or weaponry.

New means relating to any of the following vehicles or engines:

(1) A freshly manufactured engine or vehicle for which the ultimate buyer has never received the equitable or legal title. This kind of vehicle might commonly be thought of as "brand new." In the case of this paragraph (1), the vehicle or engine is no longer new when the ultimate buyer receives this title or the product is placed into service, whichever comes first.

(2) An engine originally manufactured as a motor vehicle engine that is later intended to be used in a piece of nonroad equipment. In this case, the engine ceases being a motor vehicle engine and becomes a "new nonroad engine". The engine is no longer new when it is placed into nonroad service.

(3) A nonroad engine that has been previously placed into service in an application we exclude under § 1051.5 or exempt under 1051.620, where that engine is installed in a piece of equipment for which these exclusions or exemptions do not apply. The engine is no longer new when it is placed into nonroad service. For example, this would apply to a competition vehicle that is no longer used solely for competition.

(4) An engine not covered by paragraphs (1) through (3) of this

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definition that is intended to be installed in new nonroad equipment. The engine is no longer new when the ultimate buyer receives a title for the equipment or the product is placed into service, whichever comes first. This generally includes installation of used engines in new vehicles.

(5) An imported nonroad vehicle or engine covered by a certificate of conformity issued under this part, where someone other than the original manufacturer modifies the vehicle or engine after its initial assembly and holds the certificate. The vehicle or engine is no longer new when it is placed into nonroad service.

(6) An imported nonroad vehicle or engine that is not covered by a certificate of conformity issued under this part at the time of importation. This addresses uncertified engines and vehicles that have been placed into service in other countries and that someone seeks to import into the United States. Importation of this kind of new nonroad engine or vehicle is generally prohibited by part 1068 of this chapter.

Noncompliant vehicle or engine means a vehicle or engine that was originally covered by a certificate of conformity, but is not in the certified configuration or otherwise does not comply with the conditions of the certificate.

Nonconforming vehicle or engine means a vehicle or engine not covered by a certificate of conformity that would otherwise be subject to emission standards.

Nonmethane hydrocarbon means the difference between the emitted mass of total hydrocarbons and the emitted mass of methane.

Nonroad means relating to nonroad engines, or to vehicles or equipment that include nonroad engines.

Nonroad engine has the meaning given in § 1068.30 of this chapter. In general this means all internal-combustion engines except motor vehicle engines, stationary engines, or engines used solely for competition. This part only applies to nonroad engines that are used in snowmobiles, off-highway motorcycles, and ATVs (see § 1051.5).

Off-highway motorcycle means a two-wheeled vehicle with a nonroad engine and a seat (excluding marine vessels and aircraft). (Note: highway motorcycles are regulated under 40 CFR part 86.)

Offroad utility vehicle means a nonroad vehicle that has four or more wheels, seating for two or more persons, is designed for operation over rough terrain, and has either a rear payload 350 pounds or more or seating for six or more passengers. Vehicles intended primarily for recreational purposes that are not capable of transporting six passengers (such as dune buggies) are not offroad utility vehicles. (Note: § 1051.1(a) specifies that some offroad utility vehicles are required to meet the requirements that apply for all-terrain vehicles.)

Oxides of nitrogen has the meaning given it in 40 CFR part 1065.

Phase 1 means relating to Phase 1 standards of §§ 1051.103, 1051.105, or 1051.107, or other Phase 1 standards specified in subpart B of this part.

Phase 2 means relating to Phase 2 standards of § 1051.103, or other Phase 2 standards specified in subpart B of this part.

Phase 3 means relating to Phase 3 standards of § 1051.103, or other Phase 3 standards specified in subpart B of this part.

Physically adjustable range means the entire range over which an engine parameter can be adjusted, except as modified by § 1051.115(c). For parts described in § 1051.115(d), "physically adjustable range" means the adjustable range defined in that paragraph.

Placed into service means used for its intended purpose.

Point of first retail sale means the location at which the retail sale occurs. This generally means a dealership.

Recreational means, for purposes of this part, relating to snowmobiles, all-terrain vehicles, off-highway motorcycles, and other vehicles that we regulate under this part. Note that 40 CFR part 90 applies to other recreational vehicles.

Revoke means to discontinue the certificate for an engine family. If we revoke a certificate, you must apply for a new certificate before continuing to produce the affected vehicles or engines. This does not apply to vehicles or engines you no longer possess.

Round means to round numbers according to ASTM E29–02 (incorporated by reference in § 1051.810), unless otherwise specified.

Scheduled maintenance means adjusting, repairing, removing, disassembling, cleaning, or replacing components or systems that is periodically needed to keep a part from failing or malfunctioning. It also may mean actions you expect are necessary to correct an overt indication of failure or malfunction for which periodic maintenance is not appropriate.

Small-volume manufacturer means:

(1) For motorcycles and ATVs, a manufacturer that sold motorcycles or ATVs before 2003 and had annual U.S.-directed production of no more than 5,000 off-road motorcycles and ATVs (combined number) in 2002 and all earlier calendar years. For manufacturers owned by a parent company, the limit applies to the production of the parent company and all of its subsidiaries.

(2) For snowmobiles, a manufacturer that sold snowmobiles before 2003 and had annual U.S.-directed production of no more than 300 snowmobiles in 2002 and all earlier model years. For manufacturers owned by a parent company, the limit applies to the production of the parent company and all of its subsidiaries.

(3) A manufacturer that we designate to be a small-volume manufacturer under § 1051.635.

Snowmobile means a vehicle designed to operate outdoors only over snow-covered ground, with a maximum width of 1.5 meters or less.

Spark-ignition means relating to a gasoline-fueled engine, or any other engine with a spark plug (or other sparking device) and with operating characteristics significantly similar to the theoretical Otto combustion cycle. Spark-ignition engines usually use a throttle to regulate intake air flow to control power during normal operation.

Suspend means to temporarily discontinue the certificate for an engine family. If we suspend a certificate, you may not sell vehicles or engines from that engine family unless we reinstate the certificate or approve a new one.

Test sample means the collection of vehicles or engines selected from the population of an engine family for emission testing.

Test vehicle or engine means a vehicle or engine in a test sample.

Total hydrocarbon means the combined mass organic compounds measured by our total hydrocarbon test procedure, expressed as a hydrocarbon with a hydrogen-to-carbon mass ratio of 1.85:1.

Total hydrocarbon equivalent means the sum of the carbon mass contributions of non-oxygenated hydrocarbons, alcohols and aldehydes, or other organic compounds that are measured separately as contained in a gas sample, expressed as petroleum-fueled engine hydrocarbons. The hydrogen-to-carbon ratio of the equivalent hydrocarbon is 1.85:1.

Ultimate buyer means ultimate purchaser.

Ultimate purchaser means, with respect to any new vehicle or engine, the first person who in good faith purchases such vehicle or engine for purposes other than resale.

United States means the States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, the U.S. Virgin Islands, and the Trust Territory of the Pacific Islands.

Upcoming model year means for an engine family the model year after the one currently in production.

U.S.-directed production means the number of vehicle units, subject to the requirements of this part, produced by a manufacturer (and/or imported) for which the manufacturer has a reasonable assurance that sale was or will be made to ultimate buyers in the United States.

Useful life means the period during which a vehicle is required to comply with all applicable emission standards, specified as a number of kilometers, hours, and/or calendar years. It must be at least as long as both of the following:

(1) The expected average service life before the vehicle is remanufactured or retired from service.

(2) The minimum useful life value.

Void means to invalidate a certificate or an exemption. If we void a certificate, all the vehicles produced under that engine family for that model year are considered noncompliant, and you are liable for each vehicle produced under the certificate and may face civil or criminal penalties or both. If we void an exemption, all the vehicles produced under that exemption are considered uncertified (or nonconforming), and you are liable for each vehicle produced under the exemption and may face civil or criminal penalties or both. You may not produce any additional vehicles using the voided exemption.

Wide-open throttle means maximum throttle opening. Unless this is specified at a given speed, it refers to maximum throttle opening at maximum speed. For electronically controlled or other engines with multiple possible fueling rates, wide-open throttle also means the maximum fueling rate at maximum throttle opening under test conditions.

§ 1051.805 What symbols, acronyms, and abbreviations does this part use?

The following symbols, acronyms, and abbreviations apply to this part:

°—degrees.
ASTM—American Society for Testing and Materials.
ATV—all-terrain vehicle.
cc—cubic centimeters.
cm—centimeter.
C—Celsius.
CO—carbon monoxide.
CO_2—carbon dioxide.
EPA—Environmental Protection Agency.
F—Fahrenheit.
g—grams.
g/gal/day—grams per gallon per test day.
g/m^2/day—grams per meter-square per test day.
Hg—mercury.
hr—hours.
km—kilometer.
kW—kilowatt.
LPG—liquefied petroleum gas.
m—meters.
mm—millimeters.
mW—milliwatts.
NMHC—nonmethane hydrocarbons.
NO_x—oxides of nitrogen (NO and NO_2).
psig—pounds per square inches of gauge pressure.
rpm—revolutions per minute.
SAE—Society of Automotive Engineers.
SI—spark-ignition.
THC—total hydrocarbon.
THCE—total hydrocarbon equivalent.
U.S.C.—United States Code.

§ 1051.810 What materials does this part reference?

We have incorporated by reference the documents listed in this section. The Director of the **Federal Register** approved the incorporation by reference as prescribed in 5 U.S.C. 552(a) and 1 CFR part 51. Anyone may inspect copies at the U.S. EPA, Air and Radiation Docket and Information Center, 1301 Constitution Ave., NW., Room B102, EPA West Building, Washington, DC 20460 or the Office of the Federal Register, 800 N. Capitol St., NW., 7th Floor, Suite 700, Washington, DC.

(a) *ASTM material.* Table 1 of § 1051.810 lists material from the American Society for Testing and Materials that we have incorporated by reference. The first column lists the number and name of the material. The second column lists the sections of this part where we reference it. Anyone may purchase copies of these materials from the American Society for Testing and Materials, 100 Barr Harbor Dr., West Conshohocken, PA 19428. Table 1 follows:

TABLE 1 OF § 1051.810.—ASTM MATERIALS

Document number and name	Part 1051 reference
ASTM D471–98, Standard Test Method for Rubber Property-Effect of Liquids.	1051.501
ASTM D814–95 (reapproved 2000), Standard Test Method for Rubber Property-Vapor Transmission of Volatile Liquids.	1051.245
ASTM E29–02, Standard Practice for Using Significant Digits in Test Data to Determine Conformance with Specifications.	1051.801

(b) *SAE material.* Table 2 of § 1051.810 lists material from the Society of Automotive Engineering that we have incorporated by reference. The first column lists the number and name of the material. The second column lists the sections of this part where we reference it. Anyone may purchase copies of these materials from the Society of Automotive Engineers, 400 Commonwealth Drive, Warrendale, PA 15096. Table 2 follows:

TABLE 2 OF § 1051.810.—SAE MATERIALS

Document number and name	Part 1051 reference
SAE J30, Fuel and Oil Hoses, June 1998.	1051.245, 1051.501
SAE J1930, Electrical/Electronic Systems Diagnostic Terms, Definitions, Abbreviations, and Acronyms, May 1998.	1051.135
SAE J2260, Nonmetallic Fuel System Tubing with One or More Layers, November 1996.	1051.245

§ 1051.815 How should I request EPA to keep my information confidential?

(a) Clearly show what you consider confidential by marking, circling, bracketing, stamping, or some other method. We will store your confidential information as described in 40 CFR part 2. Also, we will disclose it only as specified in 40 CFR part 2.

(b) If you send us a second copy without the confidential information, we will assume it contains nothing confidential whenever we need to release information from it.

(c) If you send us information without claiming it is confidential, we may make it available to the public without further notice to you, as described in § 2.204 of this chapter.

§ 1051.820 How do I request a hearing?

See 40 CFR part 1068, subpart G, for information related to hearings.

PART 1065—TEST PROCEDURES AND EQUIPMENT

Subpart A—Applicability and General Provisions

Sec.
1065.1 Applicability.
1065.5 Overview of test procedures.
1065.10 Other test procedures.
1065.15 Engine testing.
1065.20 Limits for test conditions.

Subpart B—Equipment and Analyzers

1065.101 Overview.
1065.105 Dynamometer and engine equipment specifications.
1065.110 Exhaust gas sampling system; spark-ignition (SI) engines.

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1065.115 Exhaust gas sampling system; compression-ignition engines. [Reserved]
1065.120 Raw sampling. [Reserved]
1065.125 Analyzers (overview/general response characteristics).
1065.130 Hydrocarbon analyzers.
1065.135 NO_X analyzers.
1065.140 CO and CO_2 analyzers.
1065.145 Smoke meters. [Reserved]
1065.150 Flow meters.
1065.155 Temperature and pressure sensors.

Subpart C—Test Fuels and Analytical Gases

1065.201 General requirements for test fuels.
1065.205 Test fuel specifications for distillate diesel fuel. [Reserved]
1065.210 Test fuel specifications for gasoline.
1065.215 Test fuel specifications for natural gas.
1065.220 Test fuel specifications for liquefied petroleum gas.
1065.240 Lubricating oils.
1065.250 Analytical gases.

Subpart D—Analyzer and Equipment Calibrations

1065.301 Overview.
1065.305 International calibration standards.
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Subpart E—Engine Selection, Preparation, and Service Accumulation

1065.401 Selecting a test engine.
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1065.605 Required records.
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Subpart H—Particulate Measurements [Reserved]

Subpart I—Testing With Oxygenated Fuels

1065.801 Applicability.
1065.805 Sampling system.
1065.810 Calculations.

Subpart J—Field Testing

1065.901 Applicability.
1065.905 General provisions.
1065.910 Measurement accuracy and precision.
1065.915 Equipment specifications for SI engines.
1065.920 Equipment setup and test run for SI engines.
1065.925 Calculations.
1065.930 Specifications for mass air flow sensors.
1065.935 Specifications for THC analyzers.
1065.940 Specifications for NO_X and air/fuel sensors.
1065.945 Specifications for CO analyzers.
1065.950 Specifications for speed and torque measurement.

Subpart K—Definitions and Other Reference Information

1065.1001 Definitions.
1065.1005 Symbols, acronyms, and abbreviations.
1065.1010 Reference materials.
1065.1015 Confidential information.

Authority: 42 U.S.C. 7401–7671(q).

Subpart A—Applicability and General Provisions

§ 1065.1 Applicability.

(a) This part describes the procedures that apply to testing that we require for the following engines or for equipment using the following engines:

(1) Large nonroad spark-ignition engines we regulate under 40 CFR part 1048.

(2) Vehicles that we regulate under 40 CFR part 1051 (*i.e.*, recreational SI vehicles) that are regulated based on engine testing. See 40 CFR part 1051 to determine which vehicles may be certified based on engine test data.

(b) This part does not apply to any of the following engine or vehicle categories:

(1) Light-duty highway vehicles (see 40 CFR part 86).

(2) Heavy-duty highway Otto-cycle engines (see 40 CFR part 86).

(3) Heavy-duty highway diesel engines (see 40 CFR part 86).

(4) Aircraft engines (see 40 CFR part 87).

(5) Locomotive engines (see 40 CFR part 92).

(6) Land-based nonroad diesel engines (see 40 CFR part 89).

(7) General marine engines (see 40 CFR parts 89 and 94).

(8) Marine outboard and personal watercraft engines (see 40 CFR part 91).

(9) Small nonroad spark-ignition engines (see 40 CFR part 90).

(c) This part is addressed to you as a manufacturer, but it applies equally to anyone who does testing for you, and to us when we conduct testing to determine if you meet emission standards.

(d) Paragraph (a) of this section identifies the parts of the CFR that define emission standards and other requirements for particular types of engines. In this part 1065, we refer to each of these other parts generically as the "standard-setting part." For example, 40 CFR part 1051 is always the standard-setting part for snowmobiles. Follow the standard-setting part if it differs from this part.

(e) For equipment subject to this part and regulated under equipment-based or vehicle-based standards, interpret the term "engine" in this part to include equipment and vehicles(see 40 CFR 1068.30).

§ 1065.5 Overview of test procedures.

(a) Some of the provisions of this part do not apply to all types of engines. For example, measurement of particulate matter is generally not required for spark-ignition engines. See the standard-setting part to determine which provisions in this part may not apply. Before using this part's procedures, read the standard-setting part to answer at least the following questions:

(1) How should I warm up the test engine before measuring emissions? Do I need to measure cold-start emissions during this warm-up segment of the duty cycle?

(2) Do I measure emissions while the warmed-up engine operates over a steady-state schedule, a transient schedule, or both?

(3) What are the speed and load points of the test cycle(s)?

(4) Which exhaust constituents do I need to measure?

(5) Does testing require full-flow dilute sampling? Is raw sampling acceptable? Is partial-flow dilute sampling acceptable?

(6) Do any unique specifications apply for test fuels?

(7) What maintenance steps may I do before or between tests on an emission-data engine?

(8) Do any unique requirements apply to stabilizing emission levels on a new engine?

(9) Do any unique requirements apply to testing conditions, such as ambient temperatures or pressures?

(10) Are there special emission standards that affect engine operation and ambient conditions?

(11) Are there different emission standards that apply to field testing under normal operation?

(b) The following table shows how this part divides testing specifications into subparts:

This subpart...	Describes these specifications or procedures...
Subpart A	General provisions for test procedures.
Subpart B	Equipment for testing.
Subpart C	Fuels and analytical gases for testing.
Subpart D	How to calibrate test equipment.
Subpart E	How to prepare engines for testing, including service accumulation.
Subpart F	How to test for emissions.
Subpart G	How to calculate emission levels from measured data.
Subpart H	[Reserved].
Subpart I	How to measure emissions from engines fueled with an oxygenated fuel such as methanol or ethanol.
Subpart J	How to do field testing of in-use vehicles and equipment.
Subpart K	Definitions, abbreviations, and other reference information that apply to emission testing.

§ 1065.10 Other test procedures.

(a) *Your testing.* These test procedures apply for all testing that you do to show compliance with emission standards, with a few exceptions listed in this section.

(b) *Our testing.* These test procedures generally apply for testing that we do to determine if your engines comply with applicable emission standards. We may conduct other testing as allowed by the Act.

(c) *Exceptions.* You may be allowed or required to use test procedures other than those specified in this part in the following cases:

(1) The test procedures in this part are intended to produce emission measurements equivalent to those that would result from measuring emissions during in-use operation using the same engine configuration installed in a piece of equipment. If good engineering judgment indicates that use of the procedures in this part for an engine would result in measurements that are not representative of in-use operation of that engine, you must notify us. If we determine that using these procedures would result in measurements that are significantly unrepresentative and that changing the procedures will result in more representative measurements and not decrease the stringency of emission standards, we will specify changes to the procedures. In your notification to us, you should recommend specific changes you think are necessary.

(2) You may ask to use emission data collected using other test procedures, such as those of the California Air Resources Board or the International Organization for Standardization. We will allow this only if you show us that these data are equivalent to data collected using our test procedures.

(3) You may ask to use alternate procedures that produce measurements equivalent to those from the specified procedures. If you send us a written request showing your procedures are equivalent, and we agree that they are equivalent, we will allow you to use them. You may not use an alternate procedure until we approve them, either by: telling you directly that you may use this procedure; or issuing guidance to all manufacturers, which allows you to use the alternate procedure without additional approval.

(4) You may ask to use special test procedures if your engine cannot be tested under the specified procedures (for example, your engine cannot operate on the specified transient cycle). In this case, tell us in writing why you cannot satisfactorily test your engines using this part's procedures and ask to use a different approach. We will approve your special test procedures if we determine they would produce emission measurements that are representative of those that would result from measuring emissions during in-use operation. You may not use special procedures until we approve them.

(5) The standard-setting part may contain other specifications for test procedures that apply for your engines. In cases where it is not possible to comply with both the test procedures in those parts and the test procedures in this part, you must comply with the test procedures specified in the standard-setting part. Those other parts may also allow you to deviate from the test procedures of this part for other reasons.

§ 1065.15 Engine testing.

(a) This part describes the procedures for performing exhaust emission tests on engines that must meet emission standards.

(b) Generally, you must test an engine while operating it on a laboratory dynamometer over a prescribed sequence. (Subpart J of this part describes in-use testing of engines installed in vehicles or equipment.) You need to sample and analyze the exhaust gases generated during engine operation to determine the concentration of the regulated pollutants.

(c) Concentrations are converted into units of grams of pollutant per kilowatt-hour (g/kW-hr) or similar units for comparison to emission standards. If the applicable emission standards are expressed as g/bhp-hr, references in this part to kW should generally be interpreted to mean horsepower.

§ 1065.20 Limits for test conditions.

(a) Unless specified elsewhere in this chapter, you may conduct tests to determine compliance with duty-cycle emission standards at ambient temperatures of 20–30° C (68–86° F), ambient pressures of 600–775 mm Hg, and any ambient humidity level.

(b) Follow the standard-setting part for ambient conditions when testing to determine compliance with not-to-exceed or other off-cycle emission standards.

(c) For engine testing in a laboratory, you may heat, cool, and/or dehumidify the dilution air before it enters the CVS.

(d) For engine testing in a laboratory, if the barometric pressure observed while generating the maximum-torque curve changes by more than 25 mm Hg from the value measured when you started mapping, you must remap the engine. Also, to have a valid test, the average barometric pressure observed during the exhaust emission test must be within 25 mm Hg of the average observed during the maximum torque curve generation (see § 1065.510).

Subpart B—Equipment and Analyzers

§ 1065.101 Overview.

This subpart describes equipment and analyzers for measuring emissions. Subpart D of this part describes how to calibrate these devices and subpart C of this part defines the accuracy and purity specifications of analytical gases.

§ 1065.105 Dynamometer and engine equipment specifications.

(a) The engine dynamometer system must be able to control engine torque and speed simultaneously over the applicable test cycles within the accuracies specified in § 1065.530. If your dynamometer cannot meet the accuracy requirements in § 1065.530, you must get our approval before using it. For transient testing, issue command set points for engine torque and speed at 5 Hz or greater (10 Hz recommended). Record feedback engine torque and speed at least once every second during the test. In addition to these general requirements, make sure your engine or dynamometer's readout signals for speed and torque meet the following accuracies for all testing:

(1) Engine speed readout must be accurate to within ±2 percent of the absolute standard value. A 60-tooth (or greater) wheel in combination with a common mode rejection frequency counter is considered an absolute standard for engine or dynamometer speed.

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(2) Engine flywheel torque readout must meet one of the two following standards for accuracy:

(i) Within ±3 percent of the NIST true value torque (as defined in § 1065.315).

(ii) The following accuracies:

If the full-scale torque value is...	Engine flywheel torque readout must be within...
T ≤ 550 ft-lbs.	±2.5 ft-lbs. of NIST true value.
550 < T ≤ 1050 ft-lbs.	±5.0 ft-lbs. of NIST true value.
T > 1050 ft-lbs.	±10.0 ft-lbs. of NIST true value.

(3) Option: You may use internal dynamometer signals (such as armature current) to measure torque if you can show that the engine flywheel torque during the test cycle conforms to paragraph (b)(2) of this section. Your measurements must compensate for increased or decreased flywheel torque because of the armature's inertia during accelerations and decelerations in the test cycle.

(b) To verify that the test engine has followed the test cycle correctly, collect the dynamometer or engine readout signals for speed and torque so you can statistically correlate the engine's actual performance with the test cycle (see § 1065.530). Normally, to do this, you would convert analog signals from the dynamometer or engine into digital values for computer storage, but all conversions must meet two criteria:

(1) Speed values used to evaluate cycles must be accurate to within 2 percent of the readout value for dynamometer or engine speed.

(2) Engine flywheel torque values used to evaluate cycles must be accurate to within 2 percent of the readout value for dynamometer or engine flywheel torque.

(c) You may combine the tolerances in paragraphs (a) and (b) of this section if you use the root mean square (RMS) method and refer accuracies of the RMS values to absolute-standard or NIST true values.

(1) Speed values used to evaluate cycles must be accurate to within ±2.8 percent of the absolute standard values, as defined in paragraph (a)(1) of this section.

(2) Engine flywheel torque values used to evaluate cycles must be accurate to within ±3.6 percent of NIST true values, as determined in § 1065.315.

§ 1065.110 Exhaust gas sampling system; spark-ignition (SI) engines.

(a) *General.* The exhaust gas sampling system described in this section is designed to measure the true mass of gaseous emissions in the exhaust of SI engines. (If the standard-setting part requires determination of THCE or NMHCE for your engine, then see subpart I of this part for additional requirements.) Under the constant-volume sampler (CVS) concept, you must measure the total volume of the mixture of exhaust and dilution air and collect a continuously proportioned volume of sample for analysis. You must control flow rates so that the ratio of sample flow to CVS flow remains constant. You then determine the mass emissions from the sample concentration and total flow over the test period.

(1) Do not let the CVS or dilution air inlet system artificially lower exhaust system backpressure. To verify proper backpressures, measure pressure in the raw exhaust immediately upstream of the inlet to the CVS. Continuously measure and compare the static pressure of the raw exhaust observed during a transient cycle—with and without the CVS operating. Static pressure measured with the CVS system operating must remain within ±5 inches of water (1.2 kPa) of the static pressure measured when disconnected from the CVS, at identical moments in the test cycle. (Note: We will use sampling systems that can maintain the static pressure to within ±1 inch of water (0.25 kPa) if your written request shows that this closer tolerance is necessary.) This requirement serves as a design specification for the CVS/dilution air inlet system, and should be performed as often as good engineering practice dictates (for example, after installing an uncharacterized CVS, adding an unknown inlet restriction on the dilution air, or otherwise altering the system).

(2) The system for measuring temperature (sensors and readout) must have an accuracy and precision of ±3.4° F (±1.9° C). The temperature measuring system for a CVS without a heat exchanger must respond within 1.50 seconds to 62.5 percent of a temperature change (as measured in hot silicone oil). For a CVS with a heat exchanger, there is no specific requirement for response time.

(3) The system for measuring pressure (sensors and readout) must have an accuracy and precision of ±3 mm Hg (0.4 kPa).

(4) The flow capacity of the CVS must be large enough to keep water from condensing in the system. You may dehumidify the dilution air before it enters the CVS. You also may heat or cool the air if three conditions exist:

(i) The air (or air plus exhaust gas) temperature does not exceed 250° F (121° C).

(ii) You calculate the CVS flow rate necessary to prevent water condensation based on the lowest temperature in the CVS before sampling. (We recommend insulating the CVS system when you use heated dilution air.)

(iii) The dilution ratio is high enough to prevent condensation in bag samples as they cool to room temperature.

(5) Bags for collecting dilution air and exhaust samples must be big enough for samples to flow freely.

(6) The general CVS sample system consists of a dilution air filter (optional) and mixing assembly, cyclone particulate separator (optional), a sample line for the bag sample or other sample lines a dilution tunnel, and associated valves and sensors for pressure and temperature. Except for the system to sample hydrocarbons from two-stroke engines, the temperature of the sample lines must be more than 3° C above the mixture's maximum dew point and less than 121° C. We recommend maintaining them at 113 ± 8° C. For the hydrocarbon sampling system with two-stroke engines, the temperature of the sample lines should be maintained at 191 ± 11° C. A general schematic of the SI sampling system is shown in Figure 1065.110–1, which follows:

BILLING CODE 6560–50–P

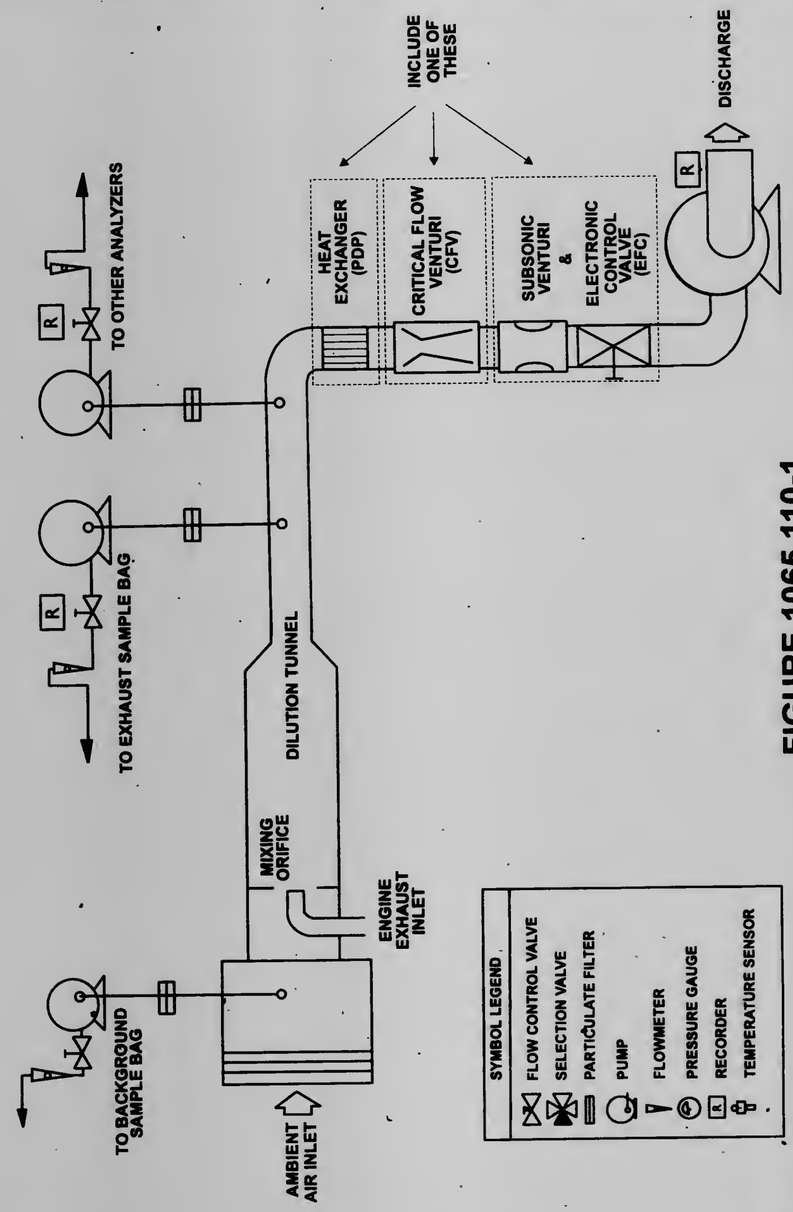

FIGURE 1065.110-1 GENERIC GASEOUS EMISSIONS SAMPLING SYSTEM

BILLING CODE 6560–50–C

(b) *Steady-state testing.* Constant proportional sampling is required throughout transient testing, but is not required throughout steady-state testing.

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Steady-state testing requires that you draw a proportional sample for each test mode, but you may sample in different proportions for different test modes, as long as you know the ratio of the sample flow to total flow during each test mode. This allowance means that you may use simpler flow control systems for steady-state testing than are shown in Figure 1065.110–1 of this section.

(c) *Configuration variations.* Since various configurations can produce equivalent results, you need not conform exactly to the drawings in this subpart. You may use other components—such as instruments, valves, solenoids, pumps and switches—to provide more information and coordinate the components' functions. Based on good engineering judgment, you may exclude other components that are not needed to maintain accuracy on some systems.

(d) *CFV–CVS component description.* The flow characteristics of a Critical-Flow Venturi, Constant-Volume Sampler (CFV–CVS) are governed by the principles of fluid dynamics associated with critical flow. The CFV system is commonly called a constant-volume system (CVS) even though the mass flow varies. More properly, they are constant-proportion sampling systems, because small CFVs in each of the sample lines maintains proportional sampling while temperatures vary. This CFV maintains the mixture's flow rate at choked flow, which is inversely proportional to the square root of the gas temperature, and the system computes the actual flow rate continuously. Because pressures and temperatures are the same at all venturi inlets, the sample volume is proportional to the total volume. The CFV–CVS sample system uses critical flow venturis for the bag sample or other sample lines (these are shown in the figure as flow control valves) and a critical flow venturi for the dilution tunnel. All venturis must be maintained at the same temperature.

(e) *EFC–CVS component description.* The electronic flow control-CVS (EFC–CVS) system for sampling is identical to the CFV system described in paragraph (b) of this section, except that it adds electronic flow controllers (instead of sampling venturis), a subsonic venturi and an electronic flow controller for the CVS (instead of the critical flow venturi), metering valves, and separate flow meters (optional) to totalize sample flow volumes. The EFC sample system must conform to the following requirements:

(1) The system must meet all the requirements in paragraph (b) of this section.

(2) The ratio of sample flow to CVS flow must not vary by more than ±5 percent from the test's setpoint.

(3) Sample flow totalizers must meet the accuracy specifications in § 1065.150. You may obtain total volumes from the flow controllers, with our advance approval, if you can show they meet these accuracies.

(f) *Component description, PDP–CVS.* The positive-displacement pump-CVS (PDP–CVS) system for sampling is identical to the CFV system described in paragraph (b) of this section, except for the following changes:

(1) Include a heat exchanger.

(2) Use positive-displacement pumps for the CVS flow and sampling-system flow. You do not need sampling venturis or a venturi for the dilution tunnel. All pumps must operate at a constant flow rate.

(3) All pumps must operate at a nominally constant temperature. Maintain the gas mixture's temperature—measured at a point just ahead of the positive-displacement pump (and after the heat exchanger for the main CVS pump)—within ±10° F (±5.6° C) of the average operating temperature observed during the test. (You may estimate the average operating temperature from the temperatures observed during similar tests.) The system for measuring temperature (sensors and readout) must have an accuracy and precision of ±3.4° F (1.9° C), and response time consistent with good engineering judgment.

(g) *Mixed systems.* You may combine elements of paragraphs (d), (e), and (f) consistent with good engineering judgment. For example, you may control the CVS flow rate using a CFV, and control sample flow rates using electronic flow controllers.

§ 1065.115 Exhaust gas sampling system; compression-ignition engines. [Reserved]

§ 1065.120 Raw sampling. [Reserved]

§ 1065.125 Analyzers (overview/general response characteristics).

(a) *General.* The following sections and subparts describe the specifications for analyzers and analytical equipment:

(1) The analyzers for measuring hydrocarbon, NO_x, CO, and CO_2 emission concentrations are specified in § 1065.130 through § 1065.140.

(2) The analytical equipment for measuring particulate emissions is specified in Subpart H of this part.

(3) The analytical equipment for measuring emissions of oxygenated compounds (for example, methanol) is specified in Subpart I of this part.

(4) The analytical equipment for measuring in-use emissions is specified in Subpart J of this part.

(b) *Response time.* Analyzers must have the following response characteristics:

(1) For steady-state testing and transient testing with bag sample analysis, the analyzer must reach at least 90 percent of its final response within 5.0 seconds after any step change to the input concentration at or above 80 percent of full scale.

(2) For transient testing with continuous measurement, the analyzer must reach at least 90 percent of its final response within 1.0 second after any step change to the input concentration at or above 80 percent of full scale.

(c) *Precision and noise.* Analyzers must meet the following characteristics for precision and noise:

(1) Precision must be no worse than ±1 percent of full-scale concentration for each range used above 155 ppm (or ppmC), or ±2 percent for each range used below 155 ppm (or ppmC). For this paragraph (c)(1), we define precision as 2.5 times the standard deviation of 10 repetitive responses to a given calibration or span gas.

(2) Peak-to-peak response to zero and calibration or span gases over any 10-second period must be no more than 2 percent of full-scale chart deflection on all ranges used.

(d) *Drift.* Analyzers must meet specifications for zero-response and span drift.

(1) The zero-response drift during one hour must be less than 2 percent of full-scale chart deflection on the lowest range used. Zero-response is the mean response, including noise, to a zero-gas during a 30-second interval.

(2) The span drift during one hour must be less than 2 percent of full-scale chart deflection on the lowest range used. Span is the difference between the span-response and the zero-response. Span-response is the mean response, including noise, to a span gas during a 30-second interval.

(e) *Calibration.* See subpart D of this part for specifications to calibrate analyzers.

§ 1065.130 Hydrocarbon analyzers.

This section describes the requirements for flame ionization detectors (FIDs) used to measure hydrocarbons.

(a) Fuel the FID with a mixture of hydrogen in helium and calibrate it using propane.

(b) If you use a heated FID (required only for diesels and two-stroke, spark-ignition engines), keep the temperature 191 ±11° C).

(c) Use an overflow sampling system for heated continuous FIDs. (In an overflow system excess zero gas or span gas spills out of the probe when you are doing zero or span checks.)

(d) Do not premix the FID fuel and burner air.

(e) Make sure the FID meets accuracy and precision specifications in ISO 8178–1 (incorporated by reference in § 1065.1010).

§ 1065.135 NO_x analyzers.

This section describes the requirements for chemiluminescent detectors (CLD) used to measure NO_x. Good engineering practice may require the use of other detectors.

(a) A CLD must meet the following requirements:

(1) Make sure your CLD meets the accuracy and precision specifications in ISO 8178–1 (incorporated by reference in § 1065.1010).

(2) The NO to NO_2 converter must have an efficiency of at least 90 percent.

(3) Use an overflow sampling system for continuous CLDs. (In an overflow system excess zero gas or span gas spills out of the probe when you are doing zero or span checks.)

(4) You do not need a heated CLD to test spark-ignition engines.

(b) Using CLDs is generally acceptable even though they measure only NO and NO_2, since conventional engines do not emit significant amounts of other NO_x species.

§ 1065.140 CO and CO_2 analyzers.

This section describes the requirements for non-dispersive infrared absorption detectors (NDIR) to measure CO and CO_2.

(a) The NDIR must meet the applicable accuracy and precision specifications of ISO 8178–1 (incorporated by reference in § 1065.1010).

(b) The NDIR must meet the applicable quench and interference requirements of ISO 8178–1 (incorporated by reference in § 1065.1010).

§ 1065.145 Smoke meters. [Reserved]

§ 1065.150 Flow meters.

(a) Flow meters must have accuracy and precision of ±2 percent of point or better and be traceable to NIST standards.

(b) You may correct flow measurements for temperature or pressure, if your temperature and pressure measurements have accuracy and precision of ±2 percent of point or better (absolute).

§ 1065.155 Temperature and pressure sensors.

(a) Except where we specify otherwise in this part, must meet the applicable accuracy and precision specifications of ISO 8178–1 (incorporated by reference in § 1065.1010).

(b) Use good engineering judgment to design and operate your temperature and pressure measuring systems to minimize delays in response time and avoid hysteresis.

Subpart C—Test Fuels and Analytical Gases

§ 1065.201 General requirements for test fuels.

(a) For all emission tests, use test fuels meeting the specifications in this subpart, unless the standard-setting part directs otherwise. For any service accumulation on a test engine, if we do not specify a fuel, use the specified test fuel or a fuel typical of what you would expect the engine to use in service.

(b) We may require you to test the engine with each type of fuel it can use (for example, gasoline and natural gas).

(c) If you will produce engines that can run on a type of fuel (or mixture of fuels) that we do not specify in this subpart, we will allow you to test with fuel representing commercially available fuels of that type. However, we must approve your fuel's specifications before you may use it for emission testing.

(d) You may use a test fuel other than those we specify in this subpart if you do all of the following:

(1) Show that it is commercially available.

(2) Show that your engines will use only the designated fuel in service.

(3) Show that operating the engines on the fuel we specify would increase emissions or decrease durability.

(4) Get our written approval before you start testing.

(e) We may allow you to use other test fuels (for example, California Phase 2 gasoline) if they do not affect the demonstration of compliance.

§ 1065.205 Test fuel specifications for distillate diesel fuel. [Reserved]

§ 1065.210 Test fuel specifications for gasoline.

Gasoline used as a test fuel must meet the following specifications:

(a) Unless the standard-setting part requires testing with fuel appropriate for low temperatures, use gasoline test fuels meeting the specifications in the following table:

TABLE 1 OF § 1065.210.—GENERAL TEST-FUEL SPECIFICATIONS FOR GASOLINE

Item	Procedure [1]	Value [1]
Distillation Range:		
1. Initial boiling point, °C	ASTM D 86–01	23.9–35.0[2]
2. 10% point, °C	ASTM D 86–01	48.9–57.2
3.50% point, °C	ASTM D 86–01	93.3–110.0
4. 90% point, °C	ASTM D 86–01	148.9–162.8
5. End point, °C (maximum)	ASTM D 86–01	212.8.
Hydrocarbon composition:		
1. Olefins, volume %	ASTM D 1319–02	10 maximum
2. Aromatics, volume %	ASTM D 1319–02	35 maximum
3. Saturates	ASTM D 1319–02	Remainder
Lead (organic), g/liter	ASTM D 3237–97	0.013 maximum
Phosphorous, g/liter	ASTM D 3231–02	0.0013 maximum

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TABLE 1 OF § 1065.210.—GENERAL TEST-FUEL SPECIFICATIONS FOR GASOLINE—Continued

Item	Procedure [1]	Value [1]
Sulfur, weight %	ASTM D 1266–98	0.008 maximum
Volatility (Reid Vapor Pressure), kPa	ASTM D 323–99a	60.0 to 63.4.[2,3]

[1] All ASTM standards are incorporated by reference in § 1065.1010.
[2] For testing at altitudes above 1 219 m, the specified volatility range is 52 to 55 kPa (7.5 to 8.0) and the specified initial boiling point range is 23.9° to 40.6° C.
[3] For testing unrelated to evaporative emissions, the specified range is 55 to 63 kPa (8.0 to 9.1 psi).

(b) If the standard-setting part requires testing with fuel appropriate for low temperatures, use gasoline test fuels meeting the specifications in the following table:

TABLE 2 OF § 1065.210.—LOW-TEMPERATURE TEST-FUEL SPECIFICATIONS FOR GASOLINE

Item	Procedure [1]	Value [1]
Distillation Range:		
1. Initial boiling point, °C	ASTM D 86–01	24.4–35.6.
2. 10% point, °C	ASTM D 86–01	36.7–47.8.
3. 50% point, °C	ASTM D 86–01	81.7–101.1.
4. 90% point, °C	ASTM D 86–01	157.8–174.4.
5. End point, °C (maximum)	ASTM D 86–01	211.7.
Hydrocarbon composition:		
1. Olefins, volume %	ASTM D 1319–02	17.5 maximum.
2. Aromatics, volume %	ASTM D 1319–02	30.4 maximum.
3. Saturates	ASTM D 1319–02	Remainder.
Lead (organic), g/liter	ASTM D 3237–97	0.013 maximum.
Phosphorous, g/liter	ASTM D 3231–02	0.005 maximum.
Sulfur, weight %	ASTM D 1266–98	0.08 maximum.
Volatility (Reid Vapor Pressure), kPa	ASTM D 323–99a	11.2—11.8 psi.

[1] All ASTM standards are incorporated by reference in § 1065.1010.

(c) Use gasoline test fuel with octane values that represent commercially available fuels for the appropriate application.

§ 1065.215 Test fuel specifications for natural gas.

(a) Natural gas used as a test fuel must meet the specifications in the following table:

TABLE 1 OF § 1065.215.—TEST-FUEL SPECIFICATIONS FOR NATURAL GAS

Item	Procedure [1]	Value (mole percent)
1. Methane	ASTM D 1945–96	87.0 minimum.
2. Ethane	ASTM D 1945–96	5.5 maximum.
3. Propane	ASTM D 1945–96	1.2 maximum.
4. Butane	ASTM D 1945–96	0.35 maximum.
5. Pentane	ASTM D 1945–96	0.13 maximum.
6. C6 and higher	ASTM D 1945–96	0.1 maximum.
7. Oxygen	ASTM D 1945–96	1.0 maximum.
8. Inert gases (sum of CO_2 and N_2)	ASTM D 1945–96	5.1 maximum.

[1] All ASTM standards are incorporated by reference in § 1065.1010.

(b) At ambient conditions, the fuel must have a distinctive odor detectable down to a concentration in air of not more than one-fifth of the lower flammability limit.

§ 1065.220 Test fuel specifications for liquefied petroleum gas.

(a) Liquefied petroleum gas used as a test fuel must meet the specifications in the following table:

TABLE 1 OF § 1065.220.—TEST-FUEL SPECIFICATIONS FOR LIQUEFIED PETROLEUM GAS

Item	Procedure [1]	Value
1. Propane	ASTM D 2163–91	85.0 vol. percent minimum.
2. Vapor pressure at 38° C	ASTM D 1267–02 or 2598–02 [2]	14 bar maximum.
3. Volatility residue (evaporated temp., 35° C)	ASTM D 1837–02	–38° C maximum.
4. Butanes	ASTM D 2163–91	5.0 vol. percent maximum.
5. Butenes	ASTM D 2163–91	2.0 vol. percent maximum.
6. Pentenes and heavier	ASTM D 2163–91	0.5 vol. percent maximum.
7. Propene	ASTM D 2163–91	10.0-vol. percent maximum.
8. Residual matter (residue on evap. of 100 ml oil stain observ.)	ASTM D 2158–02	0.05 ml maximum pass.[3]
9. Corrosion, copper strip	ASTM D 1838–91	No. 1 maximum.
10. Sulfur	ASTM D 2784–98	80 ppm maximum.
11. Moisture content	ASTM D 2713–91	pass.

[1] All ASTM standards are incorporated by reference in § 1065.1010.
[2] If these two test methods yield different results, use the results from ASTM D 1267–02.
[3] The test fuel must not yield a persistent oil ring when you add 0.3 ml of solvent residue mixture to a filter paper in 0.1 ml increments and examine it in daylight after two minutes (see ASTM D 2158–02).

(b) At ambient conditions, the fuel must have a distinctive odor detectable down to a concentration in air of not over one-fifth of the lower flammability limit.

§ 1065.240 Lubricating oils.

Lubricating oils you use to comply with this part must be commercially available and represent the oil that will be used with your in-use engines.

§ 1065.250 Analytical gases.

Analytical gases that you use to comply with this part must meet the accuracy and purity specifications of this section. You must record the expiration date specified by the gas supplier and may not use any gas after the expiration date.

(a) *Pure gases.* Use the "pure gases" shown in the following table:

TABLE 1 OF § 1065.250.—CONCENTRATION LIMITS FOR PURE GASES

Gas type	Maximum contaminant concentrations				Oxygen content
	Organic carbon	Carbon monoxide	Carbon dioxide	Nitric oxide (NO)	
Purified Nitrogen	1 ppmC	1 ppm	400 ppm	0.1 ppm	NA.
Purified Oxygen	NA	NA	NA	NA	99.5–100.0%.
Purified Synthetic Air, or Zero-Grade Air.	1 ppmC	1 ppm	400 ppm	0.1 ppm	18–21%.

(b) *Fuel for flame ionization detectors.* Use a hydrogen-helium mixture as the fuel. Make sure the mixture contains 40 ± 2 percent hydrogen and no more than 1 ppmC of organic carbon or 400 ppm of CO_2.

(c) *Calibration and span gases.* Apply the following provisions to calibration and span gases:

(1) Use the following gas mixtures, as applicable, for calibrating and spanning your analytical instruments:

(i) Propane in purified synthetic air. You may ask us to allow you to use propane in purified nitrogen for high concentrations of propane.

(ii) CO in purified nitrogen.

(iii) NO and NO_2 in purified nitrogen (the amount of NO_2 in this calibration gas must not exceed 5 percent of the NO content).

(iv) Oxygen in purified nitrogen.

(v) CO_2 in purified nitrogen.

(vi) Methane in purified synthetic air.

(2) The calibration gases in paragraph (c)(1) of this section must be traceable to within one percent of NIST gas standards or other gas standards we have approved. Span gases in paragraph (c)(1) of this section must be accurate to

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within two percent of true concentration, where true concentration refers to NIST gas standards, or other gas standards we have approved. Record concentrations of calibration gas as volume percent or volume ppm.

(3) You may use gases for species other than those in paragraph (c)(1) of this section (such as methanol in air gases used to determine response factors), as long as they meet the following criteria:

(i) They are traceable to within ±2 percent of NIST gas standards or other standards we have approved.

(ii) They remain within ±2 percent of the labeled concentration. Show this by measuring quarterly with a precision of ±2 percent (two standard deviations) or by using another method we approve. You may take multiple measurements. If the true concentration of the gas changes by more than two percent, but less than ten percent, you may relabel the gas with the new concentration.

(4) You may generate calibration and span gases using precision blending devices (gas dividers) to dilute gases with purified nitrogen or with purified synthetic air. Make sure the mixing device produces a concentration of blended calibration gases that is accurate to within ± 1.5 percent. To do so, you must know the concentration of primary gases used for blending to an accuracy of at least ± 1 percent, traceable to NIST gas standards or other gas standards we have approved. For each calibration incorporating a blending device, verify the blending accuracy between 15 and 50 percent of full scale. You may optionally check the blending device with an instrument that is linear by nature (for example, using NO gas with a CLD). Adjust the instrument's span value with the span gas connected directly to it. Check the blending device at the used settings to ensure that the difference between nominal values and measured concentrations at each point stays within ± 0.5 percent of the nominal value.

(d) *Oxygen interference gases.* Gases to check oxygen interference are mixtures of oxygen, nitrogen, and propane. The oxygen concentration must be 20–22 percent and the propane concentration must be 50–90 percent of the maximum value in the most typically used FID range. Independently measure the concentration of total hydrocarbons plus impurities by chromatographic analysis or by dynamic blending.

Subpart D—Analyzer and Equipment Calibrations

§ 1065.301 Overview.

Calibrate all analyzers and equipment at least annually, but make the actual frequency consistent with good engineering judgment. We may establish other guidelines as appropriate. Calibrate following specifications in one of three sources:

(a) Recommendations from the manufacturer of the analyzers or equipment.

(b) 40 CFR part 86, subpart F or subpart N.

(c) 40 CFR part 90, subparts D and E, as applicable.

§ 1065.305 International calibration standards.

(a) You may ask to use international standards for calibration.

(b) You need not ask for approval to use standards that have been shown to be traceable to NIST standards.

§ 1065.310 CVS calibration. [Reserved]

§ 1065.315 Torque calibration.

You must use one of two techniques to calibrate torque: the lever-arm dead-weight or the transfer technique. You may use other techniques if you show they are equally accurate. The NIST "true value" torque is defined as the torque calculated by taking the product of an NIST traceable weight or force and a sufficiently accurate horizontal distance along a lever arm, corrected for the lever arm's hanging torque.

(a) The lever-arm dead-weight technique involves placing known weights at a known horizontal distance from the torque-measuring device's center of rotation. You need two types of equipment:

(1) *Calibration weights.* This technique requires at least six calibration weights for each range of torque-measuring device used. Equally space the weights and make sure each one is traceable to NIST weights. You also may use weights certified by a U.S. state government's bureau of weights and measures. If your laboratory is outside the U.S., see § 1065.305 for information about using non-NIST standards. You may account for effects of changes in gravitational constant at the test site.

(2) *Lever arm.* This technique also requires a lever arm at least 20 inches long. Make sure the horizontal distance from the torque-measurement device's centerline to the point where you apply the weight is accurate to within ±0.10 inches. You must balance the arm or know its hanging torque to within ±0.1 ft-lbs.

(b) The transfer technique involves calibrating a master load cell (dynamometer case load cell). You may calibrate the master load cell with known calibration weights at known horizontal distances. Or you may use a hydraulically actuated, precalibrated, master load cell and then transfer this calibration to the device that measures the flywheel torque. The transfer technique involves three main steps:

(1) Precalibrate a master load cell or calibrate it following paragraph (a)(1) of this section. Use known weights traceable to NIST with the lever arms specified in paragraph (b)(2) of this section. Run or vibrate the dynamometer during this calibration to reduce static hysteresis.

(2) Use lever arms at least 20 inches long. The horizontal distances from the master load cell's centerline to the dynamometer's centerline and to the point where you apply weight or force must be accurate to within ±0.10 inches. Balance the arms or know their net hanging torque to within ±0.1 ft-lbs.

(3) Transfer calibration from the case or master load cell to the torque-measuring device with the dynamometer operating at a constant speed. Calibrate the torque-measurement device's readout to the master load cell's torque readout at a minimum of six loads spaced about equally across the full useful ranges of both measurement devices. (Good engineering practice requires that both devices have about the same useful ranges of torque measurement.) Transfer the calibration so it meets the accuracy requirements in § 1065.105(a)(2) for readouts from the torque-measurement device.

Subpart E—Engine Selection, Preparation, and Service Accumulation

§ 1065.401 Selecting a test engine.

While all engine configurations within a certified engine family must comply with the applicable standards in the standard-setting part, you are not required to test each configuration for certification.

(a) Select for testing according to the following guidance the engine configuration within the engine family that is most likely to exceed an emission standard:

(1) Test the engine that we specify, whether we do this through general guidance or give you specific instructions.

(2) If we do not tell you which engine to test, follow any instructions in the standard-setting part.

(3) If we do not tell you which engine to test and the standard-setting part does not include specifications for selecting test engines, use good engineering judgment to select the engine configuration within the engine family that is most likely to exceed an emission standard.

(b) In the absence of other information, the following characteristics are appropriate to consider when selecting the engine to test:

(1) Maximum fueling rates.

(2) Maximum in-use engine speed (governed or ungoverned, as applicable).

(3) Highest sales volume.

(c) We may select any engine configuration within the engine family for our testing.

§ 1065.405 Preparing and servicing a test engine.

(a) If you are testing an emission-data engine for certification, make sure you have built it to represent production engines.

(b) Run the test engine, with all emission-control systems operating, long enough to stabilize emission levels. If you accumulate 50 hours of operation, you may consider emission levels stable without measurement.

(c) Do not service the test engine before you stabilize emission levels, unless we approve other maintenance in advance. This prohibition does not apply to your recommended oil and filter changes for newly produced engines, or to idle-speed adjustments.

(d) Select engine operation for accumulating operating hours on your test engines to represent normal in-use operation for the engine family.

(e) If you need more than 50 hours to stabilize emission levels, record your reasons and the method you use to do this. Give us these records if we ask for them.

§ 1065.410 Service limits for stabilized test engines.

(a) After you stabilize the test engine's emission levels, you may do scheduled maintenance, other than during emission testing, as the standard-setting part specifies.

(b) You may not do any unscheduled maintenance to the test engine or its emission-control system or fuel system without our advance approval. Unscheduled maintenance includes adjusting, repairing, removing, disassembling, cleaning, or replacing the test engine. We may approve routine maintenance that is not scheduled such as maintaining the proper oil level.

(1) We may approve other unscheduled maintenance if all of the following occur:

(i) You determine that a part failure or system malfunction (or the associated repair) does not make the engine unrepresentative of production engines in the field and does not require anyone to access the combustion chamber.

(ii) Something clearly malfunctions (such as persistent misfire, engine stall, overheating, fluid leakage, or loss of oil pressure) and needs maintenance or repair.

(iii) You give us a chance to verify the extent of the malfunction before you do the maintenance.

(2) If we determine that a part's failure or a system's malfunction (or the associated repair) has made the engine unrepresentative of production engines, you may no longer use it as a test engine.

(3) You may not do unscheduled maintenance based on emission measurements from the test engine.

(4) Unless we approve otherwise in advance, you may not use equipment, instruments, or tools to identify bad engine components unless you specify they should be used for scheduled maintenance on production engines. In this case, if they are not generally available, you must also make them available at dealerships and other service outlets.

(c) If you do maintenance that might affect emissions, you must completely test the engine for emissions before and after the maintenance, unless we waive this requirement.

(d) If your test engine has a major mechanical failure that requires you to take it apart, you may no longer use it as a test engine.

§ 1065.415 Durability demonstration.

If the standard-setting part requires durability testing, you must accumulate service in a way that represents how you expect the engine to operate in use. You may accumulate service hours using an accelerated schedule, such as through continuous operation.

(a) *Maintenance.* The following limits apply to the maintenance that we allow you to do on test engine:

(1) You may perform scheduled maintenance that you recommend to operators, but only if it is consistent with the standard-setting part's restrictions.

(2) You may perform additional maintenance only if we approve it in advance, as specified in § 1065.410(b).

(3) If your test engine has a major mechanical failure that requires you to take it apart, you may no longer use it as a test engine.

(b) *Emission measurements.* You must measure emissions following two main requirements:

(1) Perform emission tests to determine deterioration factors consistent with good engineering judgment. Evenly space any tests between the first and last test points throughout the durability period.

(2) Perform emission tests following the provisions of this part and the standard-setting part.

Subpart F—Running an Emission Test

§ 1065.501 Overview of the engine dynamometer test procedures.

(a) The engine dynamometer test procedure measures brake-specific emissions of hydrocarbons (total and nonmethane, as applicable), carbon monoxide, and oxides of nitrogen. To perform this test procedure, you first dilute exhaust emissions with ambient air and collect a continuous proportional sample for analysis, then analyze the composite samples (either in bags after the test or continuously during the test). The general test procedure consists of a test cycle made of one or more segments (check the standard-setting part for specific cycles):

(1) Either a cold-start cycle (where you measure emissions) or a warm-up cycle (where you do not measure emissions).

(2) A hot-start transient test (some test cycles may omit engine starting from the "hot-start" cycle).

(3) A steady-state test.

(b) Measure power using the dynamometer's feedback signals for torque and speed. The power measurement produces a brake kilowatt-hour value that allows you to calculate brake-specific emissions (see Subpart G of this part).

(c) Prepare engines for testing consistent with § 1065.10(c)(1) and according to the following provisions:

(1) When you test an engine or operate it for service accumulation, use the complete engine with all emission-control devices installed and functioning.

(2) Install the fan for any air-cooled engine (if applicable).

(3) You may install accessories such as an oil cooler, alternators, and air compressors or simulate their loading if they are typical of in-use operation. Apply this loading during all testing operations, including mapping.

(4) You may install a production-type starter on the engine.

(5) Cool the engine in a way that will maintain its operating temperatures including the intake air, oil, water temperatures about the same as they would be during normal operation. You may use auxiliary fans if necessary. You may use rust inhibitors and lubrication additives, up to the levels that the additive manufacturer recommends.

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You may also use antifreeze mixtures and other coolants typical of those approved for use by the manufacturer.

(6) Use representative exhaust and air-intake systems. Make sure the exhaust restriction is 80 to 100 percent of the recommended maximum specified exhaust restriction and the air inlet restriction is between that of a clean filter and the maximum restriction specification. As the manufacturer, you are liable for emission compliance from the minimum in-use restrictions to the maximum restrictions you specify for that particular engine.

§ 1065.510 Engine mapping procedures.

(a) *Torque map.* Map your engine's torque while it is mounted on the dynamometer. Use the torque curve resulting from the mapping to convert the normalized torque values in the engine cycle to actual torque values for the test cycle. Make sure the speed ranges at least from the warm no-load idle speed to 105 percent of the maximum test speed. Because you determine the maximum test speed from the torque map, you may have to perform a preliminary torque map to determine the full mapping range. You may perform this preliminary torque map while the engine warms up. To map the engine, do the following things in sequence:

(1) Warm up the engine so oil and water temperatures (on an absolute scale such as the Kelvin scale) vary by less than two percent for two minutes; or until the thermostat opens if the engine-coolant system includes a thermostat.

(2) Operate the engine at the warm no-load idle speed.

(3) Fully open the throttle.

(4) While maintaining wide-open throttle and full-load, keep the engine at minimum speed for at least 15 seconds. Record the average torque during the last 5 seconds.

(5) In increments of 100±20 rpm, determine the maximum torque curve for the full speed range. Hold each test point for 15 seconds and record the average torque over the last 5 seconds. You may use larger increments for engines with maximum test speed over 4000 rpm, as long as you include at least 40 points and space them evenly.

(6) Fit all data points recorded with a cubic spline, Akima, or other technique we approve in advance. The resultant curve must be accurate to within ±1.0 ft-lbs. of all recorded engine torques.

(b) *Torque map with continual engine speed sweep.* In place of paragraphs (a)(1) through (a)(4) of this section, you may do a continual sweep of engine speed. While operating at wide-open throttle, increase the engine speed at an average rate of 8±1 rpm/sec over the full speed range. You may use higher sweeping rates for naturally-aspirated engines, in accordance with good engineering judgment. Record speed and torque points at a rate of at least one point per second. Connect all points generated under this approach by linear interpolation.

(c) *Alternate mapping.* You may use other mapping techniques if you believe those in paragraphs (a) and (b) of this section are unsafe or unrepresentative for any engine or engine family. These alternate techniques must satisfy the intent of the specified mapping procedures—to determine the maximum available torque at all engine speeds that occur during the test cycles. Report deviations from this section's mapping techniques for reasons of safety or representativeness. In no case, however, may you use descending continual sweeps of engine speed for governed or turbocharged engines.

(d) *Replicate tests.* You need not map an engine before every test, but you do need to remap the engine in any of the following situations:

(1) Good engineering judgment determines that an unreasonable amount of time has passed since the last map.

(2) The barometric pressure before the test begins has changed more than 25 mm Hg from the average barometric pressure observed during the map.

(3) The engine has undergone physical changes or recalibration that might affect its performance.

(e) *Power map.* Where applicable, generate a power map using the procedures this section specifies for torque maps. You may generate the power map directly or convert the torque map to a power map using engine speeds. The power map is also called a lug curve.

(f) *Cycles based only on torque/power at maximum test speed.* If the applicable test cycle for your engine does not require map information for engine speeds other than the maximum test speed, you may make the following simplifications:

(1) You need not perform the entire torque or power map, as long as you map the engines for speeds between 75 and 105 percent of the maximum test speed.

(2) You need not remap an engine according to paragraph (d) of this section. You need only verify the maximum torque or power at maximum test speed.

§ 1065.515 Test cycle generation.

(a) *Denormalizing test cycles.* The standard-setting parts establish the applicable test cycles consisting of second-by-second specifications for normalized torque and speed for transient cycles, or modal specifications for normalized torque and speed (or power and speed) for steady-state cycles. You must denormalize these values to get actual torque and speed for your engine.

(1) Torque is normalized to a maximum-torque value. Check the standard-setting part to see if it is normalized based on the maximum torque at the given speed or based on the maximum torque for all speeds. To denormalize the torque values in the cycle, use the engine's maximum-torque point or its torque map (§ 1065.510 describes how to generate the torque map).

(2) Power is normalized to a maximum-power value. Check the standard-setting part to see if it is normalized based on the maximum power at the given speed or based on the maximum power for all speeds. To denormalize the power values in the cycle, use the engine's maximum-power point or its power map (§ 1065.510 describes how to generate the power map).

(3) To denormalize speed, use the following equation:

Actual engine speed = (0.01) × (%engine speed) × (Maximum test speed—warm idle speed) + warm idle speed

(4) Paragraph (d) of this section describes how to calculate maximum test speed.

(b) *Example of denormalizing a test points.* For an engine with maximum test speed of 3800 rpm and warm idle speed of 600 rpm, denormalize the following test point: percent engine speed = 43, percent torque = 82.

(1) *Calculate actual engine speed.* The following equation applies for this example:

Actual engine speed = (0.01) × (43) × (3800 − 600) + 600 = 1976 rpm.

(2) *Determine actual torque.* Determine the maximum observed torque at 1976 rpm from the maximum torque curve. Then multiply this value (for example, 358 ft-lbs.) by 0.82. The resulting actual torque is 294 ft-lbs.

(c) *Cold-start enhancement devices.* If an engine has a properly operating automatic enhancement device for cold starts, let it override the zero-percent speed specified in the test cycles.

(d) *Maximum test speed.* For constant-speed engines, maximum test speed is the same as the engine's maximum operating speed in use. Maximum test speed for variable-speed engines occurs on the lug curve at the point farthest from the origin on a plot of power vs. speed. To find this speed, follow three main steps:

(1) *Generate the lug curve.* Before testing an engine for emissions, generate data points for maximum measured brake power with varying engine speed (see § 1065.510). These data points form the lug curve.

(2) *Normalize the lug curve.* To normalize the lug curve, do three things:

(i) Identify the point (power and speed) on the lug curve where maximum power occurs.

(ii) Normalize the power values of the lug curve—divide them by the maximum power and multiply the resulting values by 100.

(iii) Normalize the engine speed values of the lug curve—divide them by the speed at which maximum power occurs and multiply the resulting values by 100.

(3) *Determine maximum test speed.* Calculate the maximum test speed from the following speed-factor analysis:

(i) For a given power-speed point, the speed factor is the normalized distance to the power-speed point from the zero-power, zero-speed point. Compute the speed factor's value:

$$\text{Speed factor} = \sqrt{(\text{power})^2 + (\text{speed})^2}$$

(ii) Determine the maximum value of speed factors for all the power-speed data points on the lug curve. Maximum test speed is the speed at which the speed factor's maximum value occurs. Note that this maximum test speed is the 100-percent speed point for normalized transient duty cycles.

(e) *Intermediate test speed.* Determine intermediate test speed with the following provisions:

(1) If peak torque speed is 60 to 75 percent of the maximum test speed, the intermediate speed point is at that same speed.

(2) If peak torque speed is less than 60 percent of the maximum test speed, the intermediate speed point is at 60 percent of maximum test speed.

(3) If peak torque speed is greater than 75 percent of the maximum test speed, the intermediate speed point is at 75 percent of maximum test speed.

§ 1065.520 Engine starting, restarting, and shutdown.

Unless the standard-setting part specifies otherwise, follow the steps in this section to start and shut down the test engine:

(a) *Engine starting.* Start the engine according to the manufacturer's recommended starting procedure in the owner's manual, using either a production starter motor or the dynamometer. Use the dynamometer to crank (or motor) the engine at the typical in-use cranking speed with a fully charged battery (nominal speed ±10 percent), accelerating the engine to cranking speed in the same time it would take with a starter motor (nominal ±0.5 seconds). Stop motoring by the dynamometer within one second of starting the engine. The cycle's free-idle period begins when you determine that the engine has started.

(1) If the engine does not start after 15 seconds of cranking, stop cranking and determine the reason it failed to start. While diagnosing the problem, turn off the device that measures gas flow (or revolution counter) on the constant-volume sampler (and all integrators when measuring emissions continuously). Also, turn off the constant-volume sampler or disconnect the exhaust tube from the tailpipe. If failure to start is an operational error, reschedule the engine for testing (this may require soaking the engine if the test requires a cold-start).

(2) If longer cranking times are necessary, you may use them instead of the 15-second limit, as long as the owner's manual and the service-repair manual describe the longer cranking times as normal.

(3) If an engine malfunction causes a failure to start, you may correct it in less than 30 minutes and continue the test. Reactivate the sampling system at the same time cranking begins. When the engine starts, begin the timing sequence. If an engine malfunction causes a failure to start, and you cannot restart the engine, the test is void.

(b) *Engine stalling.* Respond to engine stalling as follows:

(1) If the engine stalls during the warm-up period, the initial idle period of test, or the steady-state segment, you may restart the engine immediately using the appropriate starting procedure and continue the test.

(2) If the engine stalls at any other time, the test is void.

(c) *Engine shutdown.* Shut the engine down according to the manufacturer's specifications.

§ 1065.525 Engine dynamometer test run.

Take the following steps for each test:

(a) Prepare the engine, dynamometer, and sampling system. Change filters or other replaceable items and check for leaks as necessary.

(b) If you are using bag samples, connect evacuated sample-collection bags to the collection system for the dilute exhaust and dilution air sample.

(c) Attach the CVS to the engine's exhaust system any time before starting the CVS.

(d) Start the CVS (if not already started), the sample pumps, the engine cooling fans, and the data-collection system. Before the test begins, preheat the CVS's heat exchanger (if used) and the heated components of any continuous sampling systems to designated operating temperatures.

(e) Adjust the sample flow rates to the desired levels and set to zero the devices in the CVS that measure gas flow. The venturi design fixes the sample flow rate in a CFV–CVS.

(f) Start the engine if engine starting is not part of the test cycle, as specified in the standard-setting part.

(g) Run the test cycle specified in the standard-setting part and collect the test data.

(h) As soon as practical after the test cycle is complete, analyze the bag samples.

§ 1065.530 Test cycle validation criteria.

(a) *Steady-state emission testing.* Make sure your engine's speeds and loads stay within ±2 percent of the set point during the sampling period.

(b) *Transient emission testing performed by EPA.* Emission tests must meet the specifications of this paragraph (b). Otherwise, they do not comply with the test cycle requirements of the standard-setting part, unless we determine the cause of the failure to meet these specifications is related to the engine rather than the test equipment.

(1) *Shifting feedback signals.* The time lag between the feedback and reference-cycle values may bias results. To reduce this effect, you may advance or delay the entire sequence of engine-speed and torque-feedback signals with respect to the reference sequence for speed and torque. If you shift the feedback signals, you must shift speed and torque the same amount in the same direction.

(2) *Calculating brake kilowatt-hour emissions.* Calculate brake kilowatt-hour emissions for each pair of feedback values recorded for engine speed and torque. Also calculate the reference brake kilowatt-hour for each pair of reference values for engine speed and torque. Calculate to five significant figures.

(3) *Performing regression-line analysis.* Perform regression analysis to calculate validation statistics as follows:

(i) Perform linear regressions of feedback value on reference value for speed, torque, and brake power on 1 Hz data after the feedback shift has occurred (see paragraph (b)(1) of this section). Use the method of least squares, with the best-fit equation having the form:

$y = mx + b$

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Where:
y = The feedback (actual) value of speed (rpm), torque (ft-lbs.), or brake power.
m = Slope of the regression line.
x = The reference value (speed, torque, or brake power).
b = The y-intercept of the regression line.

(ii) Calculate the standard error of estimate (SE) of y on x and the coefficient of determination (r^2) for each regression line.

(iii) For a valid test, make sure the feedback cycle's integrated brake kilowatt-hour is within 5 percent of the reference cycle's integrated brake kilowatt-hour. Also, ensure that the slope, intercept, standard error, and coefficient of determination meet the criteria in the following table (you may delete individual points from the regression analyses, consistent with good engineering judgment):

TABLE 1 OF § 1065.530.—STATISTICAL CRITERIA FOR VALIDATING TEST CYCLES

	Speed	Torque	Power
1. Slope of the regression line (m)	0.980 to 1.020	0.880 to 1.030	0.880 to 1.030.
2. Y intercept of the regression line (b).	$\|b\| \leq 40$ rpm	$\|b\| \leq 5.0$ percent of maximum torque from power map.	$\|b\| \leq 3.0$ percent of maximum torque from power map.
3. Standard error of the estimate of Y on X (SE).	100 rpm	15 percent of maximum torque from power map.	10 percent of maximum power from power map.
4. Coefficient of determination (r^2)	$r^2 \geq 0.970$	$r^2 \geq 0.900$	$r^2 \geq 0.900$.

(c) *Transient testing performed by manufacturers.* Emission tests that meet the specifications of paragraph (b) of this section satisfy the standard-setting part's requirements for test cycles. You may ask to use a dynamometer that cannot meet those specifications, consistent with good engineering practice. We will approve your request as long as using the alternate dynamometer does not affect your ability to show that you comply with all applicable emission standards.

Subpart G—Data Analysis and Calculations

§ 1065.601 Overview.

This subpart describes how to use the responses on the analyzers and other meters to calculate final gram per kilowatt-hour emission rates.

Note: Volume and density values used in these calculations are generally corrected to standard conditions of 20°C and 101.3 kPa.)

§ 1065.605 Required records.

Retain the following information for each test:
(a) Test number.
(b) System or device tested (brief description).
(c) Date and time of day for each part of the test schedule.
(d) Test results.
(e) Operator's name.
(f) Engine: ID number, manufacturer, model year, emission standards, engine family, basic engine description, fuel system, engine code, and idle speed, as applicable.
(g) Dynamometer: Dynamometer identification, records to verify compliance with the duty cycle requirements of the test.
(h) Gas analyzers: Analyzer bench identification, analyzer ranges, recordings of analyzer output during zero, span, and sample readings.
(i) Recorder charts: Test number, date, identification, operator's name, and identification of the measurements recorded.
(j) Test cell barometric pressure, ambient temperature, and humidity as required. (Some test systems may require continuous measurements; others may require a single measurement, or measurements before and after the test.)
(k) Temperatures: Records to verify compliance with the ambient temperature requirements throughout the test procedure.
(l) CFV–CVS: Total dilute exhaust volume (Vmix) for each phase of the exhaust test.
(m) PDP–CVS: Test measurements for calculating the total dilute exhaust volume (Vmix), and the Vmix for each phase of the exhaust test.
(n) The humidity of the dilution air.

Note: If you do not use conditioning columns, this measurement is not necessary. If you use conditioning columns and take the dilution air from the test cell, you may use the ambient humidity for this measurement.

§ 1065.610 Bag sample analysis.

(a) Zero the analyzers and obtain a stable zero reading. Recheck after tests.
(b) Introduce span gases and set instrument gains. To avoid errors, span and calibrate at the same flow rates used to analyze the test sample. Span gases should have concentrations equal to 75 to 100 percent of full scale. If gain has shifted significantly on the analyzers, check the calibrations. Show actual concentrations on the chart.
(c) Check zeroes; if necessary, repeat the procedure in paragraphs (a) and (b) of this section.
(d) Check flow rates and pressures.
(e) Measure HC, CO, CO_2, and NO_x concentrations of samples.
(f) Check zero and span points. If the difference is greater than 2 percent of full scale, repeat the procedure in paragraphs (a) through (e) of this section.

§ 1065.615 Bag sample calculations.

(a) Calculate the dilution factor. The dilution factor is the ratio of the total volume of the raw exhaust to the total volume of the diluted exhaust. It is calculated as 134,000 divided by the sum of the diluted ppmC concentrations of carbon-containing compounds in the exhaust, as follows:

$DF = 134{,}000/(CO_{2sample}+THC_{sample}+CO_{sample})$,

Where:
$CO_{2sample}$ and CO_{sample} are expressed as ppm, and THC_{sample} is expressed as ppmC.

(b) Calculate mass emission rates (g/test) for the transient segment using the general equation in paragraph (b)(1) of this section:
(1) The general equation is:

Emission rate = (total dilute exhaust flow volume)(ppm)(density factor)/10^6

$M_x = (V_{mix})(C_i)(\xi_{di})/10^6$

Where:
M_x = Mass emission rate in g/test segment.
V_{mix} = Total dilute exhaust flow volume flow in m^3 per test segment corrected to 20°C and 101.3 kPa.
C_i = The concentration of species i, in ppm or ppmC, corrected for background contribution according to the equation in paragraph (b)(2) of this section.
f_{di} = The density factor for species i. The density factors are 576.8 g/m^3 for THC, 1913 g/m^3 for NO_x, and 1164 g/m^3 for CO.

(2) The equation to calculate C_i is:

$C_i = C_{sample} - C_{background}\,[1-(1/DF)]$

Where:
C_{sample} = Concentration of species i in the diluted exhaust sample, in ppm or ppmC.
$C_{background}$ = Concentration of species i in the dilution air background sample, in ppm or ppmC.
DF = Dilution factor, as calculated in paragraph (a) of this section.

(c) Calculate total brake work (kW–hr) done during the emissions sampling period of each segment or mode.
(d) Calculate emissions in g/kW–hr by dividing the mass emission rate (g/test segment) by the total brake work for the test segment.
(e) Apply deterioration factors or other adjustment factors to the brake-specific emission rate in paragraph (e) as specified in the standard-setting part.

Subpart H—Particulate Measurements [Reserved]

Subpart I—Testing With Oxygenated Fuels

§ 1065.801 Applicability.

(a) This subpart applies for testing with oxygenated fuels. Except where specified otherwise in the standard-setting part, compliance with this subpart is not required for fuels that contain less than 25 percent oxygenated compounds by volume. For example, you generally would not need to follow the requirements of this subpart for tests performed using a fuel that was 10 percent ethanol and 90 percent gasoline, but you would need to follow these requirements for tests performed using a fuel that was 85 percent ethanol and 15 percent gasoline.
(b) This subpart specifies sampling procedures and calculations that are different than those used for non-oxygenated fuels. The other test procedures of this part apply for testing with oxygenated fuels.

§ 1065.805 Sampling system.

(a) Use the sampling procedures specified in 40 CFR part 86 for methanol and formaldehyde to measure alcohols and aldehydes in the exhaust. This requires the following:
(1) Bubbling a sample of the exhaust through water to collect the alcohols.
(2) Passing a sample of the exhaust through cartridges impregnated with 2,4-dinitrophenylhydrazine to measure aldehydes.
(b) Use good engineering judgment to measure other oxygenated compounds in the exhaust.

§ 1065.810 Calculations.

(a) *THCE emissions.* (1) Calculate THCE emissions as the sum of the mass of the nonoxygenated hydrocarbons in the exhaust and the carbon-equivalent mass of each measured oxygenated species in the exhaust.
(2) Calculate carbon-equivalent mass of each measured oxygenated species from the following equation:

Carbon equivalent = 13.8756 × MOC/MWPC

Where:
MOC is the mass of the oxygenated compound in the exhaust, and MWPC is the molecular weight of compound per carbon atom of compound.

(b) *NMHCE emissions.* Calculate NMHCE emissions as either:
(1) The sum of the mass of the nonoxygenated nonmethane hydrocarbons in the exhaust and the carbon-equivalent mass of each measured oxygenated species in the exhaust.
(2) THCE minus the mass of methane in the exhaust.
(c) *Sample calculation.* (1) Assume the following emissions for a test: 40.00 grams of nonoxygenated hydrocarbons, 100.00 grams of ethanol, and 10.00 grams of acetaldehyde, and 1.00 gram of formaldehyde.
(2) The carbon-equivalent of the masses of oxygenated compounds are:
(i) 13.8756 × 100.00/(46.068/2) = 60.24 grams of ethanol.
(ii) 13.8756 × 10.00/(44.052/2) = 6.30 grams of acetaldehyde.
(iii) 13.8756 × 1.00/(30.026) = 0.46 grams of formaldehyde.
(3) THCE = 40.00 + 60.24 + 6.30 + 0.46 = 107.00 grams per test.

Subpart J—Field Testing

§ 1065.901 Applicability.

(a) The test procedures in this subpart measure brake-specific emissions from engines while they remain installed in vehicles or equipment in the field.
(b) These test procedures apply to your engines as specified in the standard-setting part. For example, part 1048 of this chapter specifies emission standard to be used for in-use tests conducted in accordance with the provisions of this part. Unless this subpart is specifically mentioned in the standard-setting part, compliance with the provisions of this subpart is not required.

§ 1065.905 General provisions.

(a) Unless the standard-setting part specifies deviations from the provisions of this subpart, testing conducted under this subpart must conform to all of the provisions of this subpart.
(b) Testing conducted under this subpart may include any normal in-use operation of the engine.

§ 1065.910 Measurement accuracy and precision.

(a) Measurement systems used for in-use testing must be accurate to within ±5 percent compared to engine dynamometer testing conducted according to the test procedures of this part that are applicable for your engine. These systems must also have a precision of ±5 percent or better. Determine accuracy and precision of an in-use system by simultaneously measuring emissions using the engine-dynamometer test procedures of this part and the in-use system. To have a statistically valid sample, measure emissions during at least 3 tests each for at least 3 different engines. You must conduct these verification tests using the test cycle specified in the standard-setting part, unless we approve a different test cycle.
(1) A system must meet the following conditions to be considered sufficiently accurate:
(i) The correlation coefficient (r) for a least-squares linear fit that includes the origin must be 0.95 or higher.
(ii) The average ratio (for all tests) of the emission rate from the in-use system divided by the emission rate from the dynamometer procedure must be 0.97 to 1.05.
(2) For a system to be considered sufficiently precise, the average coefficient of variance for all engines must be 5 percent or less for each pollutant.

Note: Increasing the length of the sampling period may be an effective way to improve precision.

(b) Measurement systems that conform to the provisions of §§ 1065.915 through 1065.950 are considered to be in compliance with the accuracy and precision requirements of paragraph (a) of this section.

§ 1065.915 Equipment specifications for SI engines.

This section describes equipment you may use to measure in-use emissions. You may use other equipment and measurement systems that conform to the requirements of §§ 1065.905 and 1065.910.
(a) The primary components of the in-use measurement system are a mass air flow sensor, a portable FID, a zirconia-

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based NO_X sensor, a zirconia-based air/fuel ratio sensor, and a portable NDIR analyzer.

(1) The mass air flow sensor must meet the requirements of § 1065.930.

(2) The portable FID must meet the requirements of § 1065.935.

(3) The NO_X and air/fuel sensors must meet the requirements of § 1065.940

(4) The NDIR analyzer must meet the requirements of § 1065.945.

(b) You must measure the following parameters continuously at a rate of 3 Hz or higher and store the data electronically:

(1) THC, NO_X, CO concentrations.

(2) Mass air-fuel ratio.

(3) Intake air flow rate.

(4) Engine speed.

(5) Parameters used to calculate torque.

(c) You must minimize sample line length for any analyzers that require a physical sample be drawn from the exhaust to the analyzer (*i.e.*, THC and CO analyzers). You must draw these samples at a constant flow rate. In no case may you use any combination of sample line length and sample flow rate that would require more than 10 seconds for the analyzer to reach 90 percent of its final response after a step change to the input concentration at the opening of the sample probe. For residence time delays between 1 and 10 seconds, you must correct the measurements to be consistent with the data for engine speed, torque, and air intake. You may also correct other measurements with less than delays less than 1 second.

(d) You may insert the sample probes and sensors into the exhaust pipe, or mount them in an exhaust extension that is connected to the exhaust pipe with negligible leaking. Place the sample probes and sensors close enough to the center line of the exhaust pipe to minimize boundary layer effects from the wall.

§ 1065.920 Equipment setup and test run for SI engines.

This section describes how to set up the equipment specified in § 1065.915, and how to use it to measure in-use emissions from SI engines.

(a) Inspect the vehicle or equipment to determine whether it meets any applicable requirements of the standard-setting part. This may include requirements related to model year, accumulated hours of operation, fuel specifications, maintenance history, engine temperatures, etc.

(b) Perform calibrations as specified in this subpart. In the field, this generally will require only zeroing and spanning the instruments. However, each instrument must have been fully calibrated according to the instrument manufacturer's specifications. Nonlinear calibrations generated previously from the full calibration may be used after zeroing and spanning the instruments. Spanning can be performed using a single gas bottle, consistent with good engineering practice, and provided that stability of the span mixture has been demonstrated.

(c) Connect the data recorder (with any necessary signal interpreters or converters) to the engine's electronic control module.

(d) Disconnect the air intake system, as necessary, to attach the mass air flow sensor. Reconnect the system after attaching the mass air flow sensor.

(e) Attach the sample extension to the exhaust outlet.

(f) Turn on instruments and allow them to warm up as necessary.

(g) Begin sampling. You do not need to begin recording the data at this point.

(h) Begin operating the vehicle or equipment in a normal manner.

Note: We may require you to operate the vehicle or equipment in a specific manner.

(i) Begin recording engine speed, engine torque (or surrogate), intake air flow, emissions data (THC, NO_X, CO, air/fuel ratio), and time. This time marks the beginning of the sampling period.

(j) Continue recording data and operating the vehicle or equipment in a normal manner until the end of the sampling period. The length of the sampling period is based on good engineering practice, the precision requirements of § 1065.910, and applicable limits in the standard-setting part.

(k) You may measure background concentrations and correct measured emission values accordingly. However, if any background corrections are equivalent to 5 percent or more of the maximum emissions allowed by the applicable standard, the test shall be voided and repeated in an environment with lower background concentrations.

§ 1065.925 Calculations.

(a) [Reserved]

(b) Convert emission analyzer data to instantaneous concentrations in ppm (ppmC for the FID).

(c) Calculate instantaneous exhaust volumetric flow rates in standard m^3/hr (volume and density values used in these calculations are corrected to standard conditions of 20 °C and 101.3 kPa.). Calculate exhaust volumetric flow rate from the following equation:

Exhaust volumetric flow rate = (intake air mass flow rate)(1+mass fuel/air ratio)/(density of exhaust)

(1) If you do not know the instantaneous density of the exhaust, use the minimum density of the exhaust that occurs over the course of the test, corrected to standard conditions.

(2) For gasoline-fueled engines designed to be operated at stoichiometric fuel/air ratios, you may assume that the density of the exhaust is 1202 g/m^3 at standard conditions of 20 °C and 101.3 kPa.

(3) For LPG-fueled engines designed to be operated at stoichiometric fuel/air ratios, you may assume that the density of the exhaust is 1175 g/m^3 at standard conditions of 20 °C and 101.3 kPa.

(4) For CNG-fueled engines designed to be operated at stoichiometric fuel/air ratios, you may assume that the density of the exhaust is 1149 g/m^3 at standard conditions of 20 °C and 101.3 kPa.

(d) Calculate instantaneous emission rates (g/hr) using the following general equation:

Emission rate = (exhaust volumetric flow rate)(ppm)(density factor)/10^6

Where:

Density factors are 576.8 g/m^3 for THC, 1913 g/m^3 for NO_X, 1164 g/m^3 for CO.

(e) Integrate instantaneous emission rates for the entire specified sample period.

(f) Determine instantaneous brake torque and speed.

(g) Calculate instantaneous brake power.

(h) Integrate instantaneous brake power for the entire specified sample period.

(i) Divide the integrated emission rates by the integrated brake power. These are your final brake-specific emission rates.

§ 1065.930 Specifications for mass air flow sensors.

(a) Measure the intake air flow using the engine's mass air flow sensor. If the engine is not equipped with a mass air flow sensor, you need to install one.

(b) The sensor design must have an accuracy and precision of ±5 percent under steady-state laboratory conditions.

(c) The sensor must reach at least 90 percent of its final response within 0.3 seconds after any step change to the flow rate greater than or equal 80 percent of full scale.

(d) Calibrate the sensor according to good engineering practice. Verify for each engine before testing that the sensor accurately reads the idle intake air flow rate based on measured manifold temperature (T_M) and pressure P_M). Use the following equation:

Intake air flow = (displacement)(rpm)(volumetric efficiency)(P_M/101.3 kPa)(293.15 K/T_M)

§ 1065.935 Specifications for THC analyzers.

(a) Use a flame ionization detector (FID).

(b) The analyzer must have an accuracy and precision of ±2 percent of point or better under steady-state laboratory conditions.

(c) The analyzer must reach at least 90 percent of its final response within 1.0 second after any step change to the input concentration greater than or equal 80 percent of full scale.

(d) Zero and span the analyzer daily during testing. Calibrate it according to the analyzer manufacturer's specifications.

§ 1065.940 Specifications for NO_X and air/fuel sensors.

(a) Use stabilized zirconia-based sensors.

(b) The sensors must have an accuracy and precision of ±2 percent of point or better under steady-state laboratory conditions.

(c) The sensors must reach at least 90 percent of its final response within 1.0 second after any step change to the input concentration greater than or equal 80 percent of full scale.

(d) The sensors must be zeroed and spanned daily during testing, and must be calibrated according to the sensor manufacturer's specifications.

§ 1065.945 Specifications for CO analyzers.

(a) Use a non-dispersive infrared (NDIR) detector that is compensated for CO_2 and water interference.

(b) The analyzer must have an accuracy and precision of ±2 percent of point or better under steady-state laboratory conditions.

(c) The analyzer must reach at least 90 percent of its final response within 5.0 second after any step change to the input concentration greater than or equal 80 percent of full scale.

(d) The analyzer must be zeroed and spanned daily during testing, and must be calibrated according to the analyzer manufacturer's specifications.

§ 1065.950 Specifications for speed and torque measurement.

(a) Determine torque from a previously determined relationship of torque and engine speed, throttle position, and/or manifold absolute pressure. Torque estimates must be between 85 percent and 105 percent of the true value. You can demonstrate compliance with this accuracy requirement using steady-state laboratory data.

(b) Measure speed from the engine's electronic control module. Speed estimates must be within ±5 rpm of the true value.

Subpart K—Definitions and Other Reference Information

§ 1065.1001 Definitions.

The following definitions apply to this part. The definitions apply to all subparts unless we note otherwise. All undefined terms have the meaning the Act gives to them. The definitions follow:

Accuracy means the maximum difference between a measured or calculated value and the true value, where the true value is determined by NIST.

Act means the Clean Air Act, as amended, 42 U.S.C. 7401 *et seq.*

Adjustable parameter means any device, system, or element of design that someone can adjust (including those which are difficult to access) and that, if adjusted, may affect emissions or engine performance during emission testing or normal in-use operation.

Aftertreatment means relating to any system, component, or technology mounted downstream of the exhaust valve or exhaust port whose design function is to reduce exhaust emissions.

Auxiliary emission-control device means any element of design that senses temperature, engine speed, motive speed, transmission gear, atmospheric pressure, manifold pressure or vacuum, or any other parameter to activate, modulate, delay, or deactivate the operation of any part of the emission-control system. This also includes any other feature that causes in-use emissions to be higher than those measured under test conditions, except as we allow under this part.

Brake power has the meaning given in the standard-setting part. If it is not defined in the standard-setting part, brake power means the usable power output of the engine not including power required to operate fuel pumps, oil pumps, or coolant pumps.

Calibration means the set of specifications and tolerances specific to a particular design, version, or application of a component or assembly capable of functionally describing its operation over its working range.

Certification means obtaining a certificate of conformity for an engine family that complies with the emission standards and requirements in this part.

Compression-ignition means relating to a type of reciprocating, internal-combustion engine that is not a spark-ignition engine.

Constant-speed engine means an engine governed to operate only at its rated speed.

Designated Officer means the Manager, Engine Programs Group (6405–J), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., Washington, DC 20460.

Emission-control system means any device, system, or element of design that controls or reduces the regulated emissions from an engine.

Emission-data engine means an engine that is tested for certification.

Emission-related maintenance means maintenance that substantially affects emissions or is likely to substantially affect emissions deterioration.

Engine means an engine to which this part applies.

Engine-based means having emission standards related to measurements using an engine dynamometer, in units of grams of pollutant per kilowatt-hour.

Engine family means a group of engines with similar emission characteristics, as specified in the standard-setting part.

Equipment-based or vehicle-based means relating to programs that require that a piece of equipment of vehicle be certified, rather than only the engine.

Fuel system means all components involved in transporting, metering, and mixing the fuel from the fuel tank to the combustion chamber(s), including the fuel tank, fuel tank cap, fuel pump, fuel filters, fuel lines, carburetor or fuel-injection components, and all fuel-system vents.

Fuel type means a general category of fuels such as gasoline or LPG. There can be multiple grades within a single type of fuel, such as summer-grade gasoline and winter-grade gasoline.

Good engineering judgment has the meaning we give it in § 1068.5 of this chapter.

Identification number means a unique specification (for example, model number/serial number combination) that allows someone to distinguish a particular engine from other similar engines.

Idle speed means the lowest engine speed with zero load.

Note: Warm idle speed is the idle speed of a warmed-up engine.

Manufacturer has the meaning given in section 216(1) of the Act. In general, this term includes any person who manufactures an engine for sale in the United States or otherwise introduces a new engine into commerce in the United States. This includes importers that import engines for resale.

Maximum test torque means:

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(1) For throttled engines, the torque output observed at wide-open throttle at a given speed.

(2) For non-throttled engines, the torque output observed with the maximum fueling rate possible at a given speed.

Nonmethane hydrocarbons means the sum of all hydrocarbon species measured by a FID except methane, expressed with an assumed mass 13.876 grams per mole of carbon atoms.

Nonroad means relating to nonroad engines.

Nonroad engine has the meaning given in § 89.2 of this chapter. In general this means all internal combustion engines except motor vehicle engines, stationary engines, or engines used solely for competition.

Oxides of nitrogen means compounds containing only nitrogen and oxygen. Oxides of nitrogen are expressed quantitatively as if the NO is in the form of NO_2 (assume a molecular weight for all oxides of nitrogen equivalent to that of NO_2). This correction is included in the equations specified for calculating NO_X emissions.

Oxygenated fuel means a fuel that is comprised of oxygen-containing compound, such as ethanol or methanol. Generally, testing engines that use oxygenated fuels requires the use of the sampling methods in subpart I of this part. However, you should read the standard-setting part and subpart I of this part to determine which sampling methods to use.

Precision means two times the coefficient of variance of multiple measurements, except where specified otherwise.

Revoking a certificate of conformity means discontinuing the certificate for an engine family. If we revoke a certificate, you must apply for a new certificate before continuing to introduce into commerce the affected engines. This does not apply to engines you no longer possess.

Scheduled maintenance means maintenance (*i.e.*, adjusting, repairing, removing, disassembling, cleaning, or replacing components or systems) that is periodically needed to keep a part from failing or malfunctioning. It also may mean actions you expect are necessary to correct an overt indication of failure or malfunction for which periodic maintenance is not appropriate.

Span means to adjust an instrument so that it gives a proper response to a calibration standard that represents between 75 and 100 percent of the maximum value in the instrument range (*e.g.* a span gas).

Spark-ignition means relating to a gasoline-fueled engine or other engines with a spark plug (or other sparking device) and with operating characteristics significantly similar to the theoretical Otto combustion cycle. Spark-ignition engines usually use a throttle to regulate intake air flow to control power during normal operation.

Standard-setting part means the part in the Code of Federal Regulations that defines emission standards for a particular engine (see § 1065.1(a)).

Stoichiometry means the proportion of a mixture of air and fuel such that the fuel is fully oxidized with no remaining oxygen. For example, stoichiometric combustion in gasoline engines typically occurs at an air-fuel mass ratio of about 14.7.

Suspending a certificate of conformity means temporarily discontinuing the certificate for an engine family. If we suspend a certificate, you may not sell engines from that engine family unless we reinstate the certificate or approve a new one.

Test engine means an engine in a test sample.

Test sample means the collection of engines selected from the population of an engine family for emission testing.

Total Hydrocarbon (THC) means the sum of all hydrocarbon species measured by an FID, expressed with an assumed mass 13.876 grams per mole of carbon atoms.

Total Hydrocarbon Equivalent means the sum of the carbon mass contributions of non-oxygenated hydrocarbons, alcohols and aldehydes, or other organic compounds that are measured separately as contained in a gas sample, expressed as petroleum-fueled engine hydrocarbons. The hydrogen-to-carbon ratio of the equivalent hydrocarbon is 1.85:1.

United States means the States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, the U.S. Virgin Islands, and the Trust Territory of the Pacific Islands.

Wide-open throttle means maximum throttle opening for throttled engines. Unless this is specified at a given speed, it refers to maximum throttle opening at maximum speed. For electronically controlled or other engines with multiple possible fueling rates, wide-open throttle also means the maximum fueling rate at maximum throttle opening under test conditions.

Zero means to adjust an instrument so that it gives a proper response to a blank calibration standard (*e.g.* zero-grade air).

§ 1065.1005 Symbols, acronyms, and abbreviations.

The following symbols, acronyms, and abbreviations apply to this part:

° degrees.
″ inches.
ASTM American Society for Testing and Materials.
C Celsius.
cc cubic centimeters.
CFR Code of Federal Regulations.
CFV critical-flow venturi.
CI compression-ignition.
CLD chemiluminescent detector.
CO carbon monoxide.
CO_2 carbon dioxide.
CVS constant-volume sampler.
DF deterioration factor.
F Fahrenheit.
EFC electronic flow control.
EPA Environmental Protection Agency.
ft feet.
FID flame ionization detector.
g/kW-hr grams per kilowatt-hour.
g/liter grams per liter.
g/m^3 grams per cubic meter.
Hz hertz.
IBP initial boiling point.
ISO International Organization for Standardization.
kPa kilopascal.
lbs. pounds.
LPG liquefied petroleum gas.
m meters.
ml milliliters.
mm Hg millimeters of mercury.
NDIR nondispersive infrared.
NIST National Institute for Standards and Testing.
NMHC nonmethane hydrocarbons.
NMHCE nonmethane hydrocarbon equivalent.
NO nitric oxide.
NO_2 nitrogen dioxide.
NO_X oxides of nitrogen (NO and NO_2).
O_2 oxygen.
PDP positive-displacement pump.
ppm parts per million.
ppmC parts per million carbon.
RMS root-mean square.
rpm revolutions per minute.
sec seconds.
SI spark-ignition.
THC total hydrocarbon.
THCE total hydrocarbon equivalent.
U.S.C. United States Code.

§ 1065.1010 Reference materials.

We have incorporated by reference the documents listed in this section. The Director of the Federal Register approved the incorporation by reference as prescribed in 5 U.S.C. 552(a) and 1 CFR part 51. Anyone may inspect copies at the U.S. EPA, Air and Radiation Docket and Information Center, 1301 Constitution Ave., NW., Room B102, EPA West Building, Washington, DC 20460 or the Office of the Federal Register, 800 N. Capitol St., NW., 7th Floor, Suite 700, Washington, DC.

(a) *ASTM material.* Table 1 of § 1065.1010 lists material from the American Society for Testing and Materials that we have incorporated by reference. The first column lists the number and name of the material. The second column lists the sections of this part where we reference it. Anyone may purchase copies of these materials from the American Society for Testing and Materials, 100 Barr Harbor Dr., West Conshohocken, PA 19428. Table 1 follows:

TABLE 1 OF § 1065.1010.—ASTM MATERIALS

Document number and name	Part 1065 reference
ASTM D 86–01, Standard Test Method for Distillation of Petroleum Products at Atmospheric Pressure	1065.210
ASTM D 323–99a, Standard Test Method for Vapor Pressure of Petroleum Products (Reid Method)	1065.210
ASTM D 1266–98, Standard Test Method for Sulfur in Petroleum Products (Lamp Method)	1065.210
ASTM D 1319–02, Standard Test Method for Hydrocarbon Types in Liquid Petroleum Products by Fluorescent Indicator Adsorption	1065.210
ASTM D 1267–02, Standard Test Method for Gage Vapor Pressure of Liquefied Petroleum (LP) Gases (LP-Gas Method)	1065.220
ASTM D 1837–02, Standard Test Method for Volatility of Liquefied Petroleum (LP) Gases	1065.220
ASTM D 1838–91 (Reapproved 2001), Standard Test Method for Copper Strip Corrosion by Liquefied Petroleum (LP) Gases	1065.220
ASTM D 1945–96 (Reapproved 2001), Standard Test Method for Analysis of Natural Gas by Gas Chromatography	1065.215
ASTM D 2158–02, Standard Test Method for Residues in Liquefied Petroleum (LP) Gases	1065.220
ASTM D 2163–91 (Reapproved 1996), Standard Test Method for Analysis of Liquefied Petroleum (LP) Gases and Propene Concentrates by Gas Chromatography	1065.220
ASTM D 2598–02, Standard Practice for Calculation of Certain Physical Properties of Liquefied Petroleum (LP) Gases from Compositional Analysis	1065.220
ASTM D 2713–91 (Reapproved 2001), Standard Test Method for Dryness of Propane (Valve Freeze Method)	1065.220
ASTM D 2784–98, Standard Test Method for Sulfur in Liquefied Petroleum Gases (Oxy-Hydrogen Burner or Lamp)	1065.220
ASTM D 3231–02, Standard Test Method for Phosphorus in Gasoline	1065.210
ASTM D 3237–97, Standard Test Method for Lead in Gasoline By Atomic Absorption Spectroscopy	1065.210

(b) *ISO material.* Table 2 of § 1065.1010 lists material from the International Organization for Standardization that we have incorporated by reference. The first column lists the number and name of the material. The second column lists the section of this part where we reference it. Anyone may purchase copies of these materials from the International Organization for Standardization, Case Postale 56, CH–1211 Geneva 20, Switzerland. Table 2 follows:

TABLE 2 OF § 1065.1010.—ISO MATERIALS

Document number and name	Part 1065 reference
ISO 8178–1, Reciprocating internal combustion engines—Exhaust emission measurement—Part 1: Test-bed measurement of gaseous and particulate exhaust emissions, 1996.	1065.130, 1065.135, 1065.140, 1065.155.

§ 1065.1015 Confidential information.

(a) Clearly show what you consider confidential by marking, circling, bracketing, stamping, or some other method. We will store your confidential information as described in 40 CFR part 2. Also, we will disclose it only as specified in 40 CFR part 2.

(b) If you send us a second copy without the confidential information, we will assume it contains nothing confidential whenever we need to release information from it.

(c) If you send us information without claiming it is confidential, we may make it available to the public without further notice to you, as described in § 2.204 of this chapter.

PART 1068—GENERAL COMPLIANCE PROVISIONS FOR NONROAD PROGRAMS

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Authority: 42 U.S.C. 7401–7671(q).

Subpart A—Applicability and Miscellaneous Provisions

§ 1068.1 Does this part apply to me?

(a) The provisions of this part apply to everyone with respect to the following engines or to equipment using the following engines (including owners, operators, parts manufacturers, and persons performing maintenance):

(1) Large nonroad spark-ignition engines we regulate under 40 CFR part 1048.

(2) Recreational SI engines and vehicles that we regulate under 40 CFR part 1051 (such as snowmobiles and off-highway motorcycles).

(b) This part does not apply to any of the following engine or vehicle categories:

(1) Light-duty motor vehicles (see 40 CFR part 86).

(2) Heavy-duty motor vehicles and motor vehicle engines (see 40 CFR part 86).

(3) Aircraft engines (see 40 CFR part 87).

(4) Locomotive engines (see 40 CFR part 92).

(5) Land-based nonroad diesel engines (see 40 CFR part 89).

(6) Marine diesel engines (see 40 CFR parts 89 and 94)

(7) Marine outboard and personal watercraft engines (see 40 CFR part 91).

(8) Small nonroad spark-ignition engines (see 40 CFR part 90).

(c) For equipment subject to this part and regulated under equipment-based standards, interpret the term "engine" in this part to include equipment (see § 1068.30).

(d) Paragraph (a)(1) of this section identifies the parts of the CFR that define emission standards and other requirements for particular types of engines and vehicles. This part 1068 refers to each these other parts generically as the "standard-setting part." For example, 40 CFR part 1051 is always the standard-setting part for snowmobiles. Follow the provisions of the standard-setting part if they are different than any of the provisions in this part.

§ 1068.5 How must manufacturers apply good engineering judgment?

(a) You must use good engineering judgment for decisions related to any requirements under this chapter. This includes your applications for certification, any testing you do to show that your production-line or in-use engines comply with requirements that apply to them, and how you select, categorize, determine, and apply these requirements.

(b) If we send you a written request, you must give us a written description of the engineering judgment in question. Respond within 15 working days of receiving our request unless we allow more time.

(c) We may reject your decision if it is not based on good engineering judgment or is otherwise inconsistent with the requirements that apply, based on the following provisions:

(1) We may suspend, revoke, or void a certificate of conformity if we determine you deliberately used incorrect information or overlooked important information, that you did not decide in good faith, or that your decision was not rational.

(2) If we believe a different decision would better reflect good engineering judgment, but none of the provisions of paragraph (c)(1) of this section apply, we will tell you of our concern (and its basis). You will have 30 days to respond to our concerns, or more time if we agree that you need it to generate more information. After considering your information, we will give you a final ruling. If we conclude that you did not use good engineering judgment, we may reject your decision and apply the new ruling to similar situations as soon as possible.

(d) We will tell you in writing of the conclusions we reach under paragraph (c) of this section and explain our reasons for them.

(e) If you disagree with our conclusions, you may file a request for a hearing with the Designated Officer as described in subpart F of this part. In your request, specify your objections, include data or supporting analysis, and get your authorized representative's signature. If we agree that your request raises a substantial factual issue, we will hold the hearing according to subpart F of this part.

§ 1068.10 How do I request EPA to keep my information confidential

(a) Clearly identify any information you consider confidential by marking, circling, bracketing, stamping, or some other method. We will store your confidential information as described in 40 CFR part 2. Also, we will disclose it only as specified in 40 CFR part 2. This procedure applies equally to the Environmental Appeals Board.

(b) If you send us a second copy without the confidential information, we will assume it contains nothing confidential whenever we need to release information from it.

(c) If you send us information without claiming it is confidential, we may make it available to the public without further notice to you, as described in § 2.204 of this chapter.

§ 1068.15 Who is authorized to represent the Agency?

(a) The Administrator of the Environmental Protection Agency or any official to whom the Administrator has delegated specific authority may represent the Agency. For more information, ask for a copy of the relevant sections of the EPA Delegation Manual from the Designated Officer.

(b) The regulations in this part and in the standard-setting part have specific requirements describing how to get EPA approval before you take specific actions. These regulations also allow us to waive some specific requirements. For provisions or flexibilities that we address frequently, we may choose to provide detailed guidance in supplemental compliance instructions for manufacturers. Such instructions will generally state how they relate to the need for pre-approval. Unless we explicitly state so, you should not consider full compliance with the instructions to be equivalent to EPA approval.

§ 1068.20 May EPA enter my facilities for inspections?

(a) We may inspect your engines, testing, manufacturing processes, engine storage facilities (including port facilities for imported engines or other relevant facilities), or records, as authorized by the Act, to enforce the provisions of this chapter. Inspectors will have authorizing credentials and will limit inspections to reasonable times—usually, normal operating hours.

(b) If we come to inspect, we may or may not have a warrant or court order.

(1) If we do not have a warrant or court order, you may deny us entry.

(2) If we have a warrant or court order, you must allow us to enter the facility and carry out the activities it describes.

(c) We may seek a warrant or court order authorizing an inspection described in this section, whether or not we first tried to get your permission to inspect.

(d) We may select any facility to do any of the following:

(1) Inspect and monitor any aspect of engine manufacturing, assembly, storage, or other procedures, and any facilities where you do them.

(2) Inspect and monitor any aspect of engine test procedures or test-related activities, including test engine selection, preparation, service accumulation, emission duty cycles, and maintenance and verification of your test equipment's calibration.

(3) Inspect and copy records or documents related to assembling, storing, selecting, and testing an engine.

(4) Inspect and photograph any part or aspect of engines and components you use for assembly.

(e) You must give us reasonable help without charge during an inspection authorized by the Act. For example, you may need to help us arrange an inspection with the facility's managers, including clerical support, copying, and translation. You may also need to show us how the facility operates and answer other questions. If we ask in writing to see a particular employee at the inspection, you must ensure that he or she is present (legal counsel may accompany the employee).

(f) If you have facilities in other countries, we expect you to locate them in places where local law does not keep us from inspecting as described in this section. We will not try to inspect if we learn that local law prohibits it, but we may suspend your certificate if we are not allowed to inspect.

§ 1068.25 What information must I give to EPA?

If you are subject to the requirements of this part, we may require you to give us information to evaluate your compliance with any regulations that apply, as authorized by the Act. This includes the following things:

(a) You must provide the information we require in this chapter.

(b) You must establish and maintain records, perform tests, make reports and provide additional information that we may reasonably require under section 208 of the Act. This also applies to engines we exempt from emission standards.

§ 1068.30 What definitions apply to this part?

The following definitions apply to this part. The definitions apply to all subparts unless we note otherwise. All undefined terms have the meaning the Act gives to them. The definitions follow:

Act means the Clean Air Act, as amended, 42 U.S.C. 7401 *et seq.*

Aircraft means any vehicle capable of sustained air travel above treetop heights.

Certificate holder means a manufacturer (including importers) with a valid certificate of conformity for at least one engine family in a given calendar year.

Designated Officer means the Manager of the Engine Programs Group (6405–J), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., Washington, DC 20460.

Emission-related defect means a defect in design, materials or workmanship (in an emission control device or vehicle component or system) that affects an emission-related component, parameter, or specification that is identified in Appendix I or Appendix II of this part.

Engine means an engine to which this part applies. For equipment subject to this part and regulated under equipment-based standards, the term engine in this part shall be interpreted to include equipment.

Engine-based means having emission standards related to measurements using an engine dynamometer, in units of grams of pollutant per kilowatt-hour.

Engine manufacturer means the manufacturer that is subject to the certification requirements of the standard-setting part. For vehicles/equipment subject to this part and regulated under vehicle/equipment-based standards, the term engine manufacturer in this part includes vehicles/equipment manufacturers.

Equipment-based means having emission standards related to measurements from an engine installed in a vehicle using a chassis dynamometer, in units of grams of pollutant per kilometer.

Equipment manufacturer means any company producing a piece of equipment (such as a vehicle) for sale or use in the United States.

Manufacturer has the meaning given in section 216(1) of the Act. In general,

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this term includes any person who manufactures an engine or vehicle for sale in the United States or otherwise introduces a new engine or vehicle into commerce in the United States. This includes importers that import new engines or new equipment into the United States for resale. It also includes secondary engine manufacturers.

New has the meaning we give it in the standard-setting part.

Nonroad engine means:

(1) Except as discussed in paragraph (2) of this definition, a nonroad engine is any internal combustion engine:

(i) In or on a piece of equipment that is self-propelled or serves a dual purpose by both propelling itself and performing another function (such as garden tractors, off-highway mobile cranes and bulldozers); or

(ii) In or on a piece of equipment that is intended to be propelled while performing its function (such as lawnmowers and string trimmers); or

(iii) That, by itself or in or on a piece of equipment, is portable or transportable, meaning designed to be and capable of being carried or moved from one location to another. Indicia of transportability include, but are not limited to, wheels, skids, carrying handles, dolly, trailer, or platform.

(2) An internal combustion engine is not a nonroad engine if:

(i) The engine is used to propel a motor vehicle or a vehicle used solely for competition, or is subject to standards promulgated under section 202 of the Act; or

(ii) The engine is regulated by a federal New Source Performance Standard promulgated under section 111 of the Act; or

(iii) The engine otherwise included in paragraph (1)(iii) of this definition remains or will remain at a location for more than 12 consecutive months or a shorter period of time for an engine located at a seasonal source. A location is any single site at a building, structure, facility, or installation. Any engine (or engines) that replaces an engine at a location and that is intended to perform the same or similar function as the engine replaced will be included in calculating the consecutive time period. An engine located at a seasonal source is an engine that remains at a seasonal source during the full annual operating period of the seasonal source. A seasonal source is a stationary source that remains in a single location on a permanent basis (*i.e.*, at least two years) and that operates at that single location approximately three months (or more) each year. This paragraph (2)(iii) does not apply to an engine after the engine is removed from the location.

Operating hours means:

(1) For engine storage areas or facilities, times during which people other than custodians and security personnel are at work near, and can access, a storage area or facility.

(2) For other areas or facilities, times during which an assembly line operates or any of the following activities occurs:

(i) Testing, maintenance, or service accumulation.

(ii) Production or compilation of records.

(iii) Certification testing.

(iv) Translation of designs from the test stage to the production stage.

(v) Engine manufacture or assembly.

Piece of equipment means any vehicle, vessel, locomotive, aircraft, or other type of equipment using engines to which this part applies.

Placed into service means used for its intended purpose.

Reasonable technical basis means information that would lead a person familiar with engine design and function to reasonably believe a conclusion, related to compliance with the requirements of this part. For example, it would be reasonable to believe that parts performing the same function as the original parts (and to the same degree) would control emissions to the same degree as the original parts.

Standard-setting part means the part in the Code of Federal Regulations that defines emission standards for a particular engine (see § 1068.1(a)). For example, the standard-setting part for non-recreational spark-ignition engines over 19 kW is part 1048 of this chapter.

Ultimate purchaser means the first person who in good faith buys a new engine for purposes other than resale.

United States means the States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, the U.S. Virgin Islands, and the Trust Territory of the Pacific Islands.

We (us, our) means the Administrator of the Environmental Protection Agency and any authorized representatives.

§ 1068.35 What symbols, acronyms, and abbreviations does this part use?

The following symbols, acronyms, and abbreviations apply to this part:

$	U.S. dollars.
CFR	Code of Federal Regulations.
EPA	Environmental Protection Agency.
U.S.	United States.
U.S.C.	United States Code.

Subpart B—Prohibited Actions and Related Requirements

§ 1068.101 What general actions does this regulation prohibit?

This section specifies actions that are prohibited and the maximum civil penalties that we can assess for each violation. The maximum penalty values listed in paragraphs (a) and (b) of this section are shown for calendar year 2002. As described in paragraph (e) of this section, maximum penalty limits for later years are set forth in 40 CFR part 19.

(a) The following prohibitions and requirements apply to manufacturers of new engines and manufacturers of equipment containing these engines, except as described in subparts C and D of this part:

(1) You may not sell, offer for sale, or introduce or deliver into commerce in the United States or import into the United States any new engine or equipment after emission standards take effect for that engine or equipment, unless it has a valid certificate of conformity for its model year and the required label or tag. You also may not take any of the actions listed in the previous sentence with respect to any equipment containing an engine subject to this part's provisions, unless the engine has a valid certificate of conformity for its model year and the required engine label or tag. This requirement also covers new engines you produce to replace an older engine in a piece of equipment, unless the engine qualifies for the replacement-engine exemption in § 1068.240. We may assess a civil penalty up to $31,500 for each engine in violation.

(2) This chapter requires you to record certain types of information to show that you meet our standards. You must comply with these requirements to make and maintain required records (including those described in § 1068.501). You may not deny us access to or copying of your records if we have the authority to see or copy them. Also, you must give us the required reports or information without delay. Failure to comply with the requirements of this paragraph is prohibited. We may assess a civil penalty up to $31,500 for each day in violation.

(3) You may not keep us from entering your facility to test engines or inspect if we are authorized to do so. Also, you must perform the tests we require (or have the tests done for you). Failure to perform this testing is prohibited. We may assess a civil penalty up to $31,500 for each day in violation.

(b) The following prohibitions apply to everyone with respect to the engines to which this part applies:

(1) You may not remove or disable a device or element of design that may affect an engine's emission levels. This restriction applies before and after the engine is placed in service. Section 1068.120 describes how this applies to rebuilding engines. For a manufacturer or dealer, we may assess a civil penalty up to $31,500 for each engine in violation. For anyone else, we may assess a civil penalty up to $3,150 for each engine in violation. This does not apply in any of the following situations:

(i) You need to repair an engine and you restore it to proper functioning when the repair is complete.

(ii) You need to modify an engine to respond to a temporary emergency and you restore it to proper functioning as soon as possible.

(iii) You modify a new engine that another manufacturer has already certified to meet emission standards, intending to recertify it under your own engine family. In this case you must tell the original manufacturer not to include the modified engines in the original engine family.

(2) You may not knowingly manufacture, sell, offer to sell, or install, an engine part if one of its main effects is to bypass, impair, defeat, or disable the engine's control of emissions. We may assess a civil penalty up to $3,150 for each part in violation.

(3) For an engine that is excluded from any requirements of this chapter because it is a stationary engine, you may not move it or install it in any mobile equipment, except as allowed by the provisions of this chapter. You may not circumvent or attempt to circumvent the residence-time requirements of paragraph (2)(iii) of the nonroad engine definition in § 1068.30. We may assess a civil penalty up to $31,500 for each day in violation.

(4) For an uncertified engine or piece of equipment that is excluded or exempted from any requirements of this chapter because it is to be used solely for competition, you may not use it in a manner that is inconsistent with use solely for competition. We may assess a civil penalty up to $31,500 for each day in violation.

(5) You may not import an uncertified engine or piece of equipment if it is defined to be new in the standard-setting part, and it would have been subject to standards had it been built in the United States. We may assess a civil penalty up to $31,500 for each day in violation. Note the following:

(i) The definition of new is broad for imported engines; uncertified engines and equipment (including used engines and equipment) are generally considered to be new when imported.

(ii) Engines that were originally manufactured before applicable EPA standards were in effect are generally not subject to emission standards.

(c) Exemptions from these prohibitions are described in subparts C and D of this part.

(d) The standard-setting parts describe more requirements and prohibitions that apply to manufacturers (including importers) and others under this chapter.

(e) The maximum penalty values listed in paragraphs (a) and (b) of this section are shown for calendar year 2002. Maximum penalty limits for later years may be adjusted based on the Consumer Price Index. The specific regulatory provisions for changing the maximum penalties, published in 40 CFR part 19, reference the applicable U.S. Code citation on which the prohibited action is based. The following table is shown here for informational purposes:

TABLE 1 OF § 1068.101.—LEGAL CITATION FOR SPECIFIC PROHIBITIONS FOR DETERMINING MAXIMUM PENALTY AMOUNTS

Part 1068 regulatory citation of prohibited action	General description of prohibition	U.S. Code citation for Clean Air Act authority
§ 1068.101(a)(1)	Introduction into commerce of an uncertified product	42 U.S.C. 7522(a)(1)
§ 1068.101(a)(1)	Failure to provide information	42 U.S.C. 7522(a)(2)
§ 1068.101(a)(3)	Denying access to facilities	42 U.S.C. 7522(a)(2)
§ 1068.101(b)(1)	Tampering with emission controls by a manufacturer or dealer. Tampering with emission controls by someone other than a manufacturer or dealer.	42 U.S.C. 7522(a)(3)
§ 1068.101(b)(2)	Sale or use of a defeat device	42 U.S.C. 7522(a)(3)
§ 1068.101(b)(3)	Mobile use of a stationary engine	42 U.S.C. 7522(a)(1)
§ 1068.101(b)(4)	Noncompetitive use of an uncertified engine that is exempted for competition.	42 U.S.C. 7522(a)(1)
§ 1068.101(b)(5)	Importation of an uncertified product	42 U.S.C. 7522(a)(1)

§ 1068.105 What other provisions apply to me specifically if I manufacture equipment needing certified engines?

(a) *Transitioning to new standards.* You may use up your normal inventory of engines not certified to new emission standards if they were built before the date of the new standards. However, stockpiling these engines violates § 1068.101(a)(1).

(b) *Installing engines.* You must follow the engine manufacturer's emission-related installation instructions. For example, you may need to constrain where you place an exhaust aftertreatment device or integrate into your equipment models a device for sending visual or audible signals to the operator. Not meeting the manufacturer's emission-related installation instructions is a violation of § 1068.101(b)(1).

(c) *Attaching a duplicate label.* If you obscure the engine's label, you must do three things to avoid violating § 1068.101(a)(1):

(1) Permanently attach to your equipment a duplicate label. Secure it to a part needed for normal operation and not normally requiring replacement.

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(2) Make sure your label is identical to the engine label. You may make the label yourself or get it from the engine manufacturer.

(3) Make sure an average person can easily read it.

(d) *Producing nonroad equipment certified to highway emission standards.* You may produce nonroad equipment from complete or incomplete motor vehicles with the motor vehicle engine if you meet three criteria:

(1) The engine or vehicle is certified to 40 CFR part 86.

(2) The engine is not adjusted outside the manufacturer's specifications.

(3) The engine or vehicle is not modified in any way that may affect its emission control. This applies to evaporative emission controls, but not refueling emission controls.

§ 1068.110 What other provisions apply to engines in service?

(a) *Aftermarket parts and service.* As the engine manufacturer, you may not require anyone to use your parts or service to maintain or repair an engine, unless we approve this in your application for certification. It is a violation of the Act for anyone to manufacture an engine or vehicle part if one of its main effects is to reduce the effectiveness of the emission controls. See § 1068.101(b)(2).

(b) *Certifying aftermarket parts.* As the manufacturer or rebuilder of an aftermarket engine part, you may—but are not required to—certify according to § 85.2114 of this chapter that using the part will not cause engines to fail to meet emission standards. Whether you certify or not, however, you must keep any information showing how your parts or service affect emissions.

(c) *Compliance with standards.* We may test engines or equipment to investigate compliance with emission standards. We may also require the manufacturer to do this testing.

(d) *Defeat devices.* We may test engines or equipment to investigate potential defeat devices. We may also require the manufacturer to do this testing. If we choose to investigate one of your designs, we may require you to show us that it does not have a defeat device. To do this, you may have to share with us information regarding test programs, engineering evaluations, design specifications, calibrations, on-board computer algorithms, and design strategies. It is a violation of the Act for anyone to make, install or use defeat devices. See § 1068.101(b)(2) and the standard-setting part.

(e) *Warranty and maintenance.* Owners may make warranty claims against the manufacturer for emission-related parts, as described in § 1068.115. This generally includes any emission-related engine parts that were not in common use before we have adopted emission standards. In general, we consider replacement or repair of any other components to be the owner's responsibility. The warranty period begins when the engine is first placed into service. See the standard-setting part for specific requirements. It is a violation of the Act for anyone to disable emission controls. See § 1068.101(b)(1) and the standard-setting part.

§ 1068.115 When must manufacturers honor emission-related warranty claims?

Section 207(a) of the Clean Air Act (42 U.S.C. 7541(a)) requires certifying manufacturers to warrant to purchasers that their engines are designed, built, and equipped to conform at the time of sale to the applicable regulations for their full useful life, including a warranty that the engines are free from defects in materials and workmanship that would cause an engine to fail to conform to the applicable regulations during the specified warranty period. This section codifies the warranty requirements of section 207(a) without intending to limit these requirements.

(a) As a certifying manufacturer, you may deny warranty claims for failures that have been caused by the owner's or operator's improper maintenance or use. For example, you would not need to honor warranty claims for failures that have been directly caused by the operator's abuse of an engine or the operator's use of the engine in a manner for which it was not designed, and are not attributable to you in any way.

(b) As a certifying manufacturer, you may not deny emission-related warranty claims based on any of the following:

(1) Maintenance or other service you or your authorized facilities performed.

(2) Engine repair work that an operator performed to correct an unsafe, emergency condition attributable to you, as long as the operator tries to restore the engine to its proper configuration as soon as possible.

(3) Any action or inaction by the operator unrelated to the warranty claim.

(4) Maintenance that was performed more frequently than you specify.

(5) Anything that is your fault or responsibility.

(6) The use of any fuel that is commonly available where the engine operates, unless your written maintenance instructions state that this fuel would harm the engine's emission control system and operators can readily find the proper fuel.

§ 1068.120 What requirements must I follow to rebuild engines?

(a) This section describes the steps to take when rebuilding engines to avoid violating the tampering prohibition in § 1068.101(b)(1). These requirements apply to anyone rebuilding an engine subject to this part, but the recordkeeping requirements in paragraphs (j) and (k) of this section apply only to businesses.

(b) The term "rebuilding" refers to a rebuild of an engine or engine system, including a major overhaul in which you replace the engine's pistons or power assemblies or make other changes that significantly increase the service life of the engine. It also includes replacing or rebuilding an engine's turbocharger or aftercooler or the engine's systems for fuel metering or electronic control so that it significantly increases the service life of the engine. For these provisions, rebuilding may or may not involve removing the engine from the equipment. Rebuilding does not normally include the following:

(1) Scheduled emission-related maintenance that the standard-setting part allows during the useful life period (such as replacing fuel injectors).

(2) Unscheduled maintenance that occurs commonly within the useful life period. For example, replacing a water pump is not rebuilding.

(c) For maintenance or service that is not rebuilding, you may not make changes that might increase emissions, but you do not need to keep any records.

(d) If you rebuild an engine or engine system, you must have a reasonable technical basis for knowing that the rebuilt engine has the same emissions performance as the engine in its certified configuration. Identify the model year of the resulting engine configuration. You have a reasonable basis if you meet two main conditions:

(1) Install parts—new, used, or rebuilt—so a person familiar with engine design and function would reasonably believe that the engine with those parts will control emissions to the same degree as with the original parts. For example, it would be reasonable to believe that parts performing the same function as the original parts (and to the same degree) would control emissions to the same degree as the original parts.

(2) Adjust parameters or change design elements only according to the original engine manufacturer's instructions. Or, if you differ from these instructions, you must have data or some other technical basis to show you should not expect in-use emissions to increase.

(e) If the rebuilt engine remains installed or is reinstalled in the same piece of equipment, you must rebuild it to the original configuration or another certified configuration of the same or later model year.

(f) If the rebuilt engine replaces another engine in a piece of equipment, you must rebuild it to a certified configuration that equals the emissions performance of the engine you are replacing.

(g) Do not erase or reset emission-related codes or signals from onboard monitoring systems without diagnosing and responding appropriately to any diagnostic codes. This requirement applies regardless of the manufacturer's reason for installing the monitoring system and regardless of its form or interface. Clear any codes from diagnostic systems when you return the rebuilt engine to service. Do not disable a diagnostic signal without addressing its cause.

(h) When you rebuild an engine, check, clean, adjust, repair, or replace all emission-related components (listed in Appendix I of this part) as needed according to the original manufacturer's recommended practice. In particular, replace oxygen sensors, replace the catalyst if there is evidence of malfunction, clean gaseous fuel system components, and replace fuel injectors (if applicable), unless you have a reasonable technical basis for believing they do not need replacement.

(i) If you are installing an engine that someone else has rebuilt, check all emission-related components listed in Appendix I of this part as needed according to the original manufacturer's recommended practice.

(j) Keep at least the following records:

(1) Identify the hours of operation (or mileage, as appropriate) at time of rebuild.

(2) Identify the work done on the engine or any emission-related control components, including a listing of parts and components you used.

(3) Describe any engine parameter adjustments.

(4) Identify any emission-related codes or signals you responded to and reset.

(k) You must show us or send us your records if we ask for them. Keep records for at least two years after rebuilding an engine. Keep them in any format that allows us to readily review them.

(1) You do not need to keep information that is not reasonably available through normal business practices. We do not expect you to have information that you cannot reasonably access.

(2) You do not need to keep records of what other companies do.

(3) You may keep records based on engine families rather than individual engines if that is the way you normally do business.

§ 1068.125 What happens if I violate the regulations?

(a) *Civil penalties and injunctions.* We may bring a civil action to assess and recover civil penalties and/or enjoin and restrain violations in the United States District Court for the district where you allegedly violated a requirement, or the district where you live or have your main place of business. Actions to assess civil penalties or restrain violations of § 1068.101 must be brought by and in the name of the United States. The selected court has jurisdiction to restrain violations and assess civil penalties.

(1) To determine the amount of a civil penalty and reach a just conclusion, the court considers these main factors:

(i) The seriousness of your violation.

(ii) How much you benefitted or saved because of the violation.

(iii) The size of your business.

(iv) Your history of compliance with Title II of the Act.

(v) What you did to remedy the violation.

(vi) How the penalty will affect your ability to continue in business.

(vii) Such other matters as justice may require.

(2) Subpoenas for witnesses who must attend a district court in any district may apply to any other district.

(b) *Administrative penalties.* Instead of bringing a civil action, we may assess administrative penalties if the total is less than $250,000 against you individually. This maximum penalty may be greater if the Administrator and the Attorney General jointly determine that is appropriate for administrative penalty assessment, or if the limit is adjusted under 40 CFR part 19. No court may review such a determination. Before we assess an administrative penalty, you may ask for a hearing (subject to 40 CFR part 22). The Administrator may compromise or remit, with or without conditions, any administrative penalty that may be imposed under this section.

(1) To determine the amount of an administrative penalty, we will consider the factors described in paragraph (a)(1) of this section.

(2) An administrative order we issue under this paragraph (b) becomes final 30 days after we issue it, unless you ask for judicial review by that time (see paragraph (c) of this section). You may ask for review by any of the district courts listed in paragraph (a) of this section. Send the Administrator a copy of the filing by certified mail.

(3) We will not pursue an administrative action for a violation if either of the following two conditions is true:

(i) We are separately prosecuting the violation under this part.

(ii) We have issued a final order for a violation, no longer subject to judicial review, for which you have already paid a penalty.

(c) *Judicial review.* If you ask a court to review a civil or administrative penalty, we will file in the appropriate court within 30 days of your request a certified copy or certified index of the record on which the court or the Administrator issued the order.

(1) The judge may set aside or remand any order issued under this section only if one of the following is true:

(i) Substantial evidence does not exist in the record, taken as a whole, to support finding a violation.

(ii) The Administrator's assessment of the penalty is an abuse of discretion.

(2) The judge may not add civil penalties unless our penalty is an abuse of discretion that favors you.

(d) *Effect of enforcement actions on other requirements.* Our pursuit of civil or administrative penalties does not affect or limit our authority to enforce any provisions of this chapter.

(e) *Penalties.* In any proceedings, the United States government may seek to collect civil penalties assessed under this section.

(1) Once a penalty assessment is final, if you do not pay it, the Administrator will ask the Attorney General to bring a civil action in an appropriate district court to recover the money. We may collect interest from the date of the final order or final judgment at rates established by the Internal Revenue Code of 1986 (26 U.S.C. 6621(a)(2)). In this action to collect overdue penalties, the court will not review the validity, amount, and appropriateness of the penalty. (2) In addition, if you do not pay the full amount of a penalty on time, you must then pay more to cover interest, enforcement expenses (including attorney's fees and costs for collection), and a quarterly nonpayment penalty for each quarter you do not pay. The nonpayment penalty is 10 percent of your total penalties plus any unpaid nonpayment penalties from previous quarters.

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Subpart C—Exemptions and Exclusions

§ 1068.201 Does EPA exempt or exclude any engines from the prohibited acts?

We may exempt new engines from the prohibited acts in subpart B of this part under requirements described in this subpart. We may exempt an engine already placed in service in the United States from the prohibition in § 1068.101(b)(1) if the exemption for engines used solely for competition applies (see § 1068.235). In addition, see § 1068.1 and the standard-setting parts to determine if other engines are excluded from some or all of the regulations in this chapter.

(a) This subpart identifies which engines qualify for exemptions and what information we need. We may ask for more information.

(b) If you violate any of the terms, conditions, instructions, or requirements to qualify for an exemption, we may void the exemption.

(c) If you use an exemption under this subpart, we may require you to add a permanent label to your exempted engines. You may ask us to approve wording on the emission label different than we specify in this subpart if it is more appropriate for your engine.

(d) If you produce engines we exempt under this subpart, we may require you to make and keep records, perform tests, make reports and provide information as needed to reasonably evaluate the validity of the exemption.

(e) If you own or operate engines we exempt under this subpart, we may require you to provide information as needed to reasonably evaluate the validity of the exemption.

(f) Subpart D of this part describes how we apply these exemptions to engines you import (or intend to import).

(g) If you want to ask for an exemption or need more information, write to the Designated Officer.

(h) You may ask us to modify the administrative requirements for the exemptions described in this subpart. We may approve your request if we determine that such approval is consistent with the intent of this part. For example, waivable administrative requirements might include some reporting requirements, but would not include any eligibility requirements or use restrictions.

(i) If you want to take an action with respect to an exempted or excluded engine that is prohibited by the exemption or exclusion, such as selling it, you need to certify the engine. We will issue a certificate of conformity if you send us an application for certification showing that you meet all the applicable requirements from the standard-setting part. Also, in some cases, it may be sufficient to modify the engine as needed to make it identical to engines already covered by a certificate. Make sure these engines have emission control information labels that accurately describe their status.

§ 1068.210 What are the provisions for exempting test engines?

(a) We may exempt engines that are not exempted under other sections of this part that you will use for research, investigations, studies, demonstrations, or training.

(b) Anyone may ask for a testing exemption.

(c) If you are a certificate holder; you may request an exemption for engines you intend to include in test programs over a two-year period.

(1) In your request, tell us the maximum number of engines involved and describe how you will make sure exempted engines are used only for this testing.

(2) Give us the information described in paragraph (d) of this section if we ask for it.

(d) If you are not a certificate holder do all of the following:

(1) Show that the proposed test program has a valid purpose under paragraph (a) of this section.

(2) Show you need an exemption to achieve the purpose of the test program (time constraints may be a basis for needing an exemption, but the cost of certification alone is not).

(3) Estimate the duration of the proposed test program and the number of engines involved.

(4) Allow us to monitor the testing.

(5) Describe how you will ensure that you stay within this exemption's purposes. Address at least the following things:

(i) The technical nature of the test.

(ii) The test site.

(iii) The duration and accumulated engine operation associated with the test.

(iv) Ownership of the engines involved in the test.

(v) The intended final disposition of the engines.

(vi) How you will identify, record, and make available the engine identification numbers.

(vii) The means or procedure for recording test results.

(e) If we approve your request for a testing exemption, we will send you a letter or a memorandum for your signature describing the basis and scope of the exemption. The exemption does not take effect until we receive the signed letter or memorandum from you. It will also include any necessary terms and conditions, which normally require you to do the following:

(1) Stay within the scope of the exemption.

(2) Create and maintain adequate records that we may inspect.

(3) Add a permanent, legible label, written in block letters in English, to a readily visible part of each exempted engine. This label must include at least the following items:

(i) The label heading "EMISSION CONTROL INFORMATION".

(ii) Your corporate name and trademark.

(iii) Engine displacement, engine family identification (as applicable), and model year of the engine; or whom to contact for further information.

(iv) The statement "THIS ENGINE IS EXEMPT UNDER 40 CFR 1068.210 FROM EMISSION STANDARDS AND RELATED REQUIREMENTS.".

(4) Tell us when the test program is finished.

(5) Tell us the final disposition of the engines.

(6) Send us a written confirmation that you meet the terms and conditions of this exemption.

§ 1068.215 What are the provisions for exempting manufacturer-owned engines?

(a) You are eligible for the exemption for manufacturer-owned engines only if you are a certificate holder.

(b) An engine may be exempt without a request if it is a nonconforming engine under your ownership and control and you operate it to develop products, assess production methods, or promote your engines in the marketplace. You may not lease, sell, or use the engine to generate revenue, either by itself or in a piece of equipment.

(c) To use this exemption, you must do three things:

(1) Establish, maintain, and keep adequately organized and indexed information on each exempted engine, including the engine identification number, the use of the engine on exempt status, and the final disposition of any engine removed from exempt status.

(2) Let us access these records, as described in § 1068.20.

(3) Add a permanent, legible label, written in block letters in English, to a readily visible part of each exempted engine. This label must include at least the following items:

(i) The label heading "EMISSION CONTROL INFORMATION".

(ii) Your corporate name and trademark.

(iii) Engine displacement, engine family identification, and model year of the engine or whom to contact for further information.

(iv) The statement "THIS ENGINE IS EXEMPT UNDER 40 CFR 1068.215 FROM EMISSION STANDARDS AND RELATED REQUIREMENTS.".

§ 1068.220 What are the provisions for exempting display engines?

(a) Anyone may request an exemption for display engines.

(b) A nonconforming display engine will be exempted if it is used only for displays in the interest of a business or the general public. This exemption does not apply to engines displayed for private use or any other purpose we determine is inappropriate for a display exemption.

(c) You may operate the exempted engine, but only if we approve specific operation that is part of the display.

(d) You may sell or lease the exempted engine only with our advance approval; you may not use it to generate revenue.

(e) To use this exemption, you must add a permanent, legible label, written in block letters in English, to a readily visible part of each exempted engine. This label must include at least the following items:

(1) The label heading "EMISSION CONTROL INFORMATION".

(2) Your corporate name and trademark.

(3) Engine displacement, engine family identification, and model year of the engine or whom to contact for further information.

(4) The statement "THIS ENGINE IS EXEMPT UNDER 40 CFR 1068.220 FROM EMISSION STANDARDS AND RELATED REQUIREMENTS.".

(f) We may set other conditions for approval of this exemption.

§ 1068.225 What are the provisions for exempting engines for national security?

(a) You are eligible for the exemption for national security only if you are a manufacturer.

(b) Your engine is exempt without a request if you produce it for a piece of equipment owned or used by an agency of the federal government responsible for national defense, where the equipment has armor, permanently attached weaponry, or other substantial features typical of military combat.

(c) You may request a national security exemption for engines not meeting the conditions of paragraph (b) of this section, as long as your request is endorsed by an agency of the federal government responsible for national defense. In your request, explain why you need the exemption.

§ 1068.230 What are the provisions for exempting engines for export?

(a) If you export a new engine to a country with emission standards identical to ours, we will not exempt it. These engines must comply with our certification requirements.

(b) If you export an engine to a country with different emission standards or no emission standards, it is exempt from the prohibited acts in this part without a request. If you produce an exempt engine for export and it is sold or offered for sale to someone in the United States (except for export), we will void the exemption.

(c) Label each exempted engine and shipping container with a label or tag showing the engine is not certified for sale or use in the United States. The label must include at least the statement "THIS ENGINE IS SOLELY FOR EXPORT AND IS THEREFORE IS EXEMPT UNDER 40 CFR 1068.230 FROM U.S. EMISSION STANDARDS AND RELATED REQUIREMENTS.".

§ 1068.235 What are the provisions for exempting engines used solely for competition?

(a) New engines you produce that are used solely for competition are generally excluded from emission standards. See the standard-setting parts for specific provisions where applicable.

(b) If you modify an engine after it has been placed into service in the United States so it will be used solely for competition, it is exempt without request. This exemption applies only to the prohibition in § 1068.101(b)(1) and is valid only as long as the engine is used solely for competition.

(c) If you modify an engine under this exemption, you must destroy the original emission label. If you sell or give one of these engines to someone else, you must tell the new owner in writing that it may be used only for competition.

§ 1068.240 What are the provisions for exempting new replacement engines?

(a) You are eligible for the exemption for new replacement engines only if you are a certificate holder.

(b) The prohibitions in § 1068.101(a)(1) do not apply to an engine if all the following conditions apply:

(1) You produce a new engine to replace an engine already placed in service in a piece of equipment.

(2) The engine being replaced was manufactured before the emission standards that would otherwise apply to the new engine took effect.

(3) No engine certified to current emission requirements is available with the appropriate physical or performance characteristics for the piece of equipment.

(4) You or your agent takes possession of the old engine.

(5) You make the replacement engine in a configuration identical in all material respects to the engine being replaced (or that of another certified engine of the same or later model year). This requirement applies only if the old engine was certified to emission standards less stringent than those in effect when you produce the replacement engine.

(c) If the old engine was not certified to any emission standards under this chapter, clearly label the replacement engine with the following language:

THIS ENGINE DOES NOT COMPLY WITH FEDERAL NONROAD OR HIGHWAY EMISSION REQUIREMENTS. SELLING OR INSTALLING THIS ENGINE FOR ANY PURPOSE OTHER THAN AS A REPLACEMENT ENGINE IN A VEHICLE OR PIECE OF EQUIPMENT BUILT BEFORE JANUARY 1, [Insert appropriate year reflecting when standards began to apply to engines of that size and type] IS A VIOLATION OF FEDERAL LAW SUBJECT TO CIVIL PENALTY.

(d) If the old engine was certified to emission standards less stringent than those in effect when you produce the replacement engine, clearly label the replacement engine with the following language:

THIS ENGINE DOES NOT COMPLY WITH CURRENT FEDERAL NONROAD OR HIGHWAY EMISSION REQUIREMENTS. SELLING OR INSTALLING THIS ENGINE FOR ANY PURPOSE OTHER THAN AS A REPLACEMENT ENGINE IN A VEHICLE OR PIECE OF EQUIPMENT BUILT BEFORE JANUARY 1, [Insert appropriate year reflecting when the earlier tier of emission standards began to apply to the old engine] IS A VIOLATION OF FEDERAL LAW SUBJECT TO CIVIL PENALTY.

§ 1068.245 What temporary provisions address hardship due to unusual circumstances?

(a) After considering the circumstances, we may permit you to introduce into commerce engines or equipment that do not comply with emission standards if all the following conditions apply:

(1) Unusual circumstances that are clearly outside your control and that could not have been avoided with reasonable discretion prevent you from meeting requirements from this chapter.

(2) You exercised prudent planning and were not able to avoid the violation; you have taken all reasonable steps to minimize the extent of the nonconformity.

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(3) Not having the exemption will jeopardize the solvency of your company.

(4) No other allowances are available under the regulations in this chapter to avoid the impending violation.

(b) To apply for an exemption, you must send the Designated Officer a written request as soon as possible before you are in violation. In your request, show that you meet all the conditions and requirements in paragraph (a) of this section.

(c) Include in your request a plan showing how you will meet all the applicable requirements as quickly as possible.

(d) You must give us other relevant information if we ask for it.

(e) We may include reasonable additional conditions on an approval granted under this section, including provisions to recover or otherwise address the lost environmental benefit or paying fees to offset any economic gain resulting from the exemption. For example, in the case of multiple tiers of emission standards, we may require that you meet the less stringent standards.

(f) Add a permanent, legible label, written in block letters in English, to a readily visible part of each engine exempted under this section. This label must include at least the following items:

(1) The label heading "EMISSION CONTROL INFORMATION".

(2) Your corporate name and trademark.

(3) Engine displacement (in liters), rated power, and model year of the engine or whom to contact for further information.

(4) The statement "THIS ENGINE IS EXEMPT UNDER 40 CFR 1068.245 FROM EMISSION STANDARDS AND RELATED REQUIREMENTS.".

§ 1068.250 What are the provisions for extending compliance deadlines for small-volume manufacturers under hardship?

(a) After considering the circumstances, we may extend the compliance deadline for you to meet new or revised emission standards, as long as you meet all the conditions and requirements in this section.

(b) To be eligible for this exemption, you must qualify under the standard-setting part for special provisions for small businesses or small-volume manufacturers.

(c) To apply for an extension, you must send the Designated Officer a written request. In your request, show that all the following conditions and requirements apply:

(1) You have taken all possible business, technical, and economic steps to comply.

(i) In the case of importers of engines produced by other companies, show that you attempted to find a manufacturer capable of supplying complying products as soon as you became aware of the applicable requirements, but were unable to do so.

(ii) For all other manufacturers, show that the burden of compliance costs prevents you from meeting the requirements of this chapter.

(2) Not having the exemption will jeopardize the solvency of your company.

(3) No other allowances are available under the regulations in this chapter to avoid the impending violation.

(d) In describing the steps you have taken to comply under paragraph (c)(1) of this section, include at least the following information:

(1) Describe your business plan, showing the range of projects active or under consideration.

(2) Describe your current and projected financial standing, with and without the burden of complying fully with the applicable regulations in this chapter.

(3) Describe your efforts to raise capital to comply with regulations in this chapter (this may not apply for importers).

(4) Identify the engineering and technical steps you have taken or plan to take to comply with regulations in this chapter.

(5) Identify the level of compliance you can achieve. For example, you may be able to produce engines that meet a somewhat less stringent emission standard than the regulations in this chapter require.

(e) Include in your request a plan showing how you will meet all the applicable requirements as quickly as possible.

(f) You must give us other relevant information if we ask for it.

(g) An authorized representative of your company must sign the request and include the statement: "All the information in this request is true and accurate, to the best of my knowledge.".

(h) Send your request for this extension at least nine months before the relevant deadline. If different deadlines apply to companies that are not small-volume manufacturers, do not send your request before the regulations in question apply to the other manufacturers. Otherwise, do not send your request more than three years before the relevant deadline.

(i) We may include reasonable requirements on an approval granted under this section, including provisions to recover or otherwise address the lost environmental benefit. For example, we may require that you meet a less stringent emission standard or buy and use available emission credits.

(j) We will approve extensions of up to one year. We may review and revise an extension as reasonable under the circumstances.

(k) Add a permanent, legible label, written in block letters in English, to a readily visible part of each engine exempted under this section. This label must include at least the following items:

(1) The label heading "EMISSION CONTROL INFORMATION".

(2) Your corporate name and trademark.

(3) Engine displacement (in liters), rated power, and model year of the engine or whom to contact for further information.

(4) The statement "THIS ENGINE IS EXEMPT UNDER 40 CFR 1068.250 FROM EMISSION STANDARDS AND RELATED REQUIREMENTS.".

§ 1068.255 What are the provisions for exempting engines for hardship for equipment manufacturers and secondary engine manufacturers?

This section describes how, in unusual circumstances, we may exempt certain engines to prevent a hardship to an equipment manufacturer or a secondary engine manufacturer. This section does not apply to products that are subject to vehicle-based emission standards.

(a) *Equipment exemption.* As an equipment manufacturer, you may ask for approval to produce exempted equipment for up to 12 months. We will generally limit this to the first year that new or revised emission standards apply. Send the Designated Officer a written request for an exemption before you are in violation. In your request, you must show you are not at fault for the impending violation and that you would face serious economic hardship if we do not grant the exemption. This exemption is not available under this paragraph (a) if you manufacture the engine you need for your own equipment or if complying engines are available from other engine manufacturers that could be used in your equipment, unless we allow it elsewhere in this chapter. We may impose other conditions, including provisions to recover the lost environmental benefit. In determining whether to grant the exemptions, we will consider all relevant factors, including the following:

(1) The number of engines to be exempted.

(2) The size of your company and your ability to endure the hardship.

(3) The amount of time you had to redesign your equipment to accommodate a complying engine.

(4) Whether there was any breach of contract by an engine supplier.

(5) The potential for market disruption.

(b) *Engine exemption.* As an engine manufacturer, you may produce nonconforming engines for the equipment we exempt in paragraph (a) of this section. You do not have to request this exemption for your engines, but you must have written assurance from equipment manufacturers that they need a certain number of exempted engines under this section. Add a permanent, legible label, written in block letters in English, to a readily visible part of each exempted engine. This label must include at least the following items:

(1) The label heading "EMISSION CONTROL INFORMATION".

(2) Your corporate name and trademark.

(3) Engine displacement (in liters), rated power, and model year of the engine or whom to contact for further information.

(4) The statement "THIS ENGINE IS EXEMPT UNDER 40 CFR 1068.255 FROM EMISSION STANDARDS AND RELATED REQUIREMENTS.".

(c) *Secondary engine manufacturers.* As a secondary engine manufacturer, you may ask for approval to produce exempted engines under this section for up to one year. We may require you to certify your engines to compliance levels above the emission standards that apply. For example, if you need an exemption from a second tier of standards, we may require you to meet the standards that applied to earlier model years.

(1) For the purpose of this section, a secondary engine manufacturer is a manufacturer that produces an engine by modifying an engine that is made by a different manufacturer for a different type of application. This includes, for example, automotive engines converted for use in industrial applications, or land-based engines converted for use in marine applications. This applies whether the secondary engine manufacturer is modifying a complete or partially complete engine and whether the engine was previously certified to emission standards or not. To be a secondary engine manufacturer, you must not be controlled by the manufacturer of the base engine (or by an entity that also controls the manufacturer of the base engine). In addition, equipment manufacturers that substantially modify engines become secondary engine manufacturers. For the purpose of this definition, "substantially modify" means changing an engine in a way that could change its emission characteristics.

(2) The provisions in paragraph (a) of this section that apply to equipment manufacturers requesting an exemption apply equally to you, except that you may manufacture the engines. Before we can approve the exemption under this section, you must commit to a plan to make up the lost environmental benefit.

(i) If you produce uncertified engines under this exemption, we will calculate the lost environmental benefit based on our best estimate of uncontrolled emission rates for your engines.

(ii) If you produce engines under this exemption that are certified to a compliance level less stringent than the emission standards that would otherwise apply, we will calculate the lost environmental benefit based on the compliance level you select for your engines.

(3) The labeling requirements in paragraph (b) of this section apply to your exempted engines; however, if you certify engines to specific compliance levels, state on the label the compliance levels that apply to each engine.

Subpart D—Imports

§ 1068.301 Does this subpart apply to me?

(a) This subpart applies to you if you import into the United States engines or equipment subject to our emission standards or equipment containing engines subject to our emission standards.

(b) In general, engines that you import must be covered by a certificate of conformity unless they were built before emission standards started to apply. This subpart describes the limited cases where we allow importation of exempt or excluded engines.

(c) The U.S. Customs Service may prevent you from importing an engine if you do not meet the requirements of this subpart. In addition, U.S. Customs Service regulations may contain other requirements for engines imported into the United States (see 19 CFR Chapter I).

§ 1068.305 How do I get an exemption or exclusion for imported engines?

(a) Complete the appropriate EPA declaration form before importing any nonconforming engine. These forms are available on the Internet at http://www.epa.gov/OMS/imports/ or by phone at 202–564–9660.

(b) If we ask for it, prepare a written request in which you do the following:

(1) Give your name, address, telephone number, and taxpayer identification number.

(2) Give the engine owner's name, address, telephone number, and taxpayer identification number.

(3) Identify the make, model, identification number, and original production year of each engine.

(4) Identify which exemption or exclusion in this subpart allows you to import a nonconforming engine and describe how your engine qualifies.

(5) Tell us where you will keep your engines if you might need to store them until we approve your request.

(6) Authorize us to inspect or test your engines as the Act allows.

(c) We may ask for more information.

(d) You may import the nonconforming engines you identify in your request if you get prior written approval from us. The U.S. Customs Service may require you to show them the approval letter. We may temporarily or permanently approve the exemptions or exclusions, as described in this subpart.

(e) Make sure the engine meets any labeling requirements that apply.

§ 1068.310 What are the exclusions for imported engines?

Emission standards do not apply to excluded engines that you import. If you show us that your engines qualify under one of the paragraphs of this section, we will approve your request to import excluded engines. You must have our approval to import an engine under paragraph (a) of this section. You may, but are not required to request our approval for the other exclusions in this section. The following engines are excluded:

(a) *Engines used solely for competition.* Engines you use solely for competition are excluded. The standard-setting part may set special provisions for the manufacture, sale, or import of engines used solely for competition. Section 1068.101(b)(4) prohibits using these excluded engines for other purposes.

(b) *Stationary engines.* This includes engines that will be used in a permanently fixed location and engines meeting the criteria for the exclusion in paragraph (2)(iii) of the nonroad engine definition in § 1068.30. Section 1068.101(b)(3) prohibits using these engines for other purposes.

(c) *Other engines.* The standard-setting parts may exclude engines used in certain applications. For example, engines used in aircraft, underground mining, and hobby vehicles are generally excluded.

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§ 1068.315 What are the permanent exemptions for imported engines?

We may approve a permanent exemption for an imported engine under the following conditions:

(a) *National security exemption.* You may import engine under the national security exemption in § 1068.225.

(b) *Manufacturer-owned engine exemption.* You may import a manufacturer-owned engine, as described in § 1068.215.

(c) *Replacement engine exemption.* You may import a nonconforming replacement engine as described in § 1068.240. To use this exemption, you must be a certificate holder for an engine family we regulate under the same part as the replacement engine.

(d) *Extraordinary circumstances exemption.* You may import a nonconforming engine if we grant hardship relief as described in § 1068.245.

(e) *Hardship exemption.* You may import a nonconforming engine if we grant an exemption for the transition to new or revised emission standards, as described in § 1068.255.

(f) *Identical configuration exemption.* You may import a nonconforming engine if it is identical to certified engines produced by the same manufacturer, subject to the following provisions:

(1) You may import only the following engines under this exemption:

(i) Large nonroad spark-ignition engines (see part 1048 of this chapter).

(ii) Recreational nonroad spark-ignition engines and equipment (see part 1051 of this chapter).

(2) You must meet all the following criteria:

(i) You have owned the engine for at least one year.

(ii) You agree not to sell, lease, donate, trade, or otherwise transfer ownership of the engine for at least five years, or until the engine is eligible for the exemption in paragraph (g) of this section. During this period, the only acceptable way to dispose of the engine is to destroy or export it.

(iii) You use data or evidence sufficient to show that the engine is in a configuration that is the same as an engine the original manufacturer has certified to meet emission standards that apply at the time the manufacturer finished assembling or modifying the engine in question. If you modify the engine to make it identical, you must follow the original manufacturer's complete written instructions.

(3) We will tell you in writing if we find the information insufficient to show that the engine is eligible for this exemption. In this case, we will not consider your request further until you address our concerns.

(g) *Ancient engine exemption.* If you are not the original engine manufacturer, you may import a nonconforming engine that is subject to a standard-setting part and was first manufactured at least 21 years earlier, as long as it is still in its original configuration.

§ 1068.320 How must I label an imported engine with a permanent exemption?

(a) For engines imported under § 1068.315 (a), (b), (c), (d), or (e), you must place a permanent label or tag on each engine. If no specific label requirements from subpart C of this part apply, you must meet the following requirements:

(1) Attach the label or tag in one piece so no one can remove it without destroying or defacing it.

(2) Make sure it is durable and readable for the engine's entire life.

(3) Secure it to a part of the engine needed for normal operation and not normally requiring replacement.

(4) Write it in block letters in English.

(5) Make it readily visible to the average person after the engine is installed in the equipment.

(b) On the engine label or tag, do the following:

(1) Include the heading "Emission Control Information."

(2) Include your full corporate name and trademark.

(3) State the engine displacement (in liters) and rated power. If the engine's rated power is not established, state the approximate power rating accurately enough to allow a detemination of which stanadards would otherwise apply.

(4) State: "THIS ENGINE IS EXEMPT FROM THE REQUIREMENTS OF [identify the part referenced in 40 CFR 1068.1(a) that would otherwise apply], AS PROVIDED IN [identify the paragraph authorizing the exemption (for example, "40 CFR 1068.315(a)")]. INSTALLING THIS ENGINE IN ANY DIFFERENT APPLICATION IS A VIOLATION OF FEDERAL LAW SUBJECT TO CIVIL PENALTY.".

(c) Get us to approve alternate label language if it is more accurate for your engine.

§ 1068.325 What are the temporary exemptions for imported engines?

If we approve a temporary exemption for an engine, you may import it under the conditions in this section. We may ask the U.S. Customs Service to require a specific bond amount to make sure you comply with the requirements of this subpart. You may not sell or lease one of these engines while it is in the United States. You must eventually export the engine as we describe in this section unless you get a certificate of conformity for it or it qualifies for one of the permanent exemptions in § 1068.315. Section 1068.330 specifies an additional temporary exemption allowing you to import certain engines you intend to sell or lease.

(a) *Exemption for repairs or alterations.* You may temporarily import a nonconforming engine under bond solely to repair or alter it. You may operate the engine in the United States only to repair or alter it or to ship it to or from the service location. Export the engine directly after the engine servicing is complete.

(b) *Testing exemption.* You may temporarily import a nonconforming engine under bond for testing if you follow the requirements of § 1068.210. You may operate the engine in the United States only to allow testing. This exemption expires one year after you import the engine, unless we approve a one-time request for an extension of up to one more year. The engine must be exported before the exemption expires.

(c) *Display exemption.* You may temporarily import a nonconforming engine under bond for display, as described in § 1068.220. This exemption expires one year after you import the engine, unless we approve your request for an extension. We may approve an extension of up to one more year for each request, but no more than three years in total. The engine must be exported by the time the exemption expires or directly after the display concludes, whichever comes first.

(d) *Export exemption.* You may temporarily import a nonconforming engine to export it, as described in § 1068.230. You may operate the engine in the United States only as needed to prepare it for export. Label the engine as described in § 1068.230.

(e) *Diplomatic or military exemption.* You may temporarily import nonconforming engines without bond if you represent a foreign government in a diplomatic or military capacity. In your request to the Designated Officer (see § 1068.305), include either written confirmation from the U.S. State Department that you qualify for this exemption or a copy of your orders for military duty in the United States. We will rely on the State Department or your military orders to determine when your diplomatic or military status expires, at which time you must export your exempt engines.

§ 1068.330 How do I import engines to modify for other applications?

This section allows you to import engines in configurations different than their final configuration. This exemption is temporary, as described in paragraph (d) of this section.

(a) This section applies in the following cases:

(1) You import a partially complete engine with the intent to manufacture complete engines for which you have either a certificate of conformity or an exemption that allows you to sell completed engines.

(2) You import an uncertified complete engine with the intent to modify it for installation in an application different than its otherwise intended application (for example, you import a land-based engine to modify it for a marine application). In this case, to qualify for an exemption under this section, you need either a certificate of conformity or an exemption that allows you to sell completed engines.

(3) You import a complete or partially complete engine to modify for an application for which emission standards do not apply.

(b) You may request this exemption in an application for certification. Otherwise, send your request to the Designated Officer. Your request must include:

(1) The name of the supplier of the partially complete engine, or the original manufacturer of the complete engine.

(2) A description of the certificate or exemption that will apply to the engines in the final configuration, or an explanation why a certificate or exemption is not needed.

(3) A brief description of how and where final assembly will be completed.

(4) An unconditional statement that the engines will comply with all applicable regulations in their final configuration.

(c) If we approve a temporary exemption for an engine, you may import it under the conditions in this section. We may ask the U.S. Customs Service to require a specific bond amount to make sure you comply with the requirements of this subpart.

(d) These provisions are intended only to allow you to import engines in the specific circumstances identified in this section, so any exemption under this section expires when you complete the assembly of the engine in its final configuration. If the engine in its final configuration is subject to emission standards, then it must be covered by a certificate or a different exemption before you introduce it into commerce.

§ 1068.335 What are the penalties for violations?

(a) *All imported engines.* Unless you comply with the provisions of this subpart, importation of nonconforming engines is violation of sections 203 and 213(d) of the Act. You may then have to export the engines, or pay civil penalties, or both. The U.S. Customs Service may seize unlawfully imported engines.

(b) *Temporarily imported engines.* If you do not comply with the provisions of this subpart for a temporary exemption, you may forfeit the total amount of the bond in addition to the sanctions we identify in paragraph (a) of this section. We will consider an engine to be exported if it has been destroyed or delivered to the U.S. Customs Service for export or other disposition under applicable Customs laws and regulations. EPA or the U.S. Customs Service may offer you a grace period to allow you to export a temporarily exempted engine without penalty after the exemption expires.

Subpart E—Selective Enforcement Auditing

§ 1068.401 What is a selective enforcement audit?

(a) We may conduct or require you to conduct emission tests on your production engines in a selective enforcement audit. This requirement is independent of any requirement for you to routinely test production-line engines.

(b) If we send you a signed test order, you must follow its directions and the provisions of this subpart. We will tell you where to test the engines. This may be where you produce the engines or any other emission testing facility.

(c) If we select one or more of your engine families for a selective enforcement audit, we will send the test order to the person who signed the application for certification or we will deliver it in person.

(d) Within one working day of receiving the test order, notify the Designated Officer which test facility you have selected for emission testing.

(e) You must do everything we require in the audit without delay.

§ 1068.405 What is in a test order?

(a) In the test order, we will specify the following things:

(1) The engine family and configuration (if any) we have identified for testing.

(2) The engine assembly plant, storage facility, or (if you import the engines) port facility from which you must select engines.

(3) The procedure for selecting engines for testing, including a selection rate.

(4) The test procedures, duty cycles, and test points, as appropriate, for testing the engines to show that they meet emission standards.

(b) We may state that we will select the test engines.

(c) We may identify alternate engine families or configurations for testing in case we determine the intended engines are not available for testing or if you do not produce enough engines to meet the minimum rate for selecting test engines.

(d) We may include other directions or information in the test order.

(e) We may ask you to show us that you meet any additional requirements that apply to your engines (closed crankcases, for example).

(f) In anticipation of a potential audit, you may give us a list of your preferred engine families and the corresponding assembly plants, storage facilities, or (if you import the engines) port facilities from which we should select engines for testing. The information would apply only for a single model year, so it would be best to include this information in your application for certification. If you give us this list before we issue a test order, we will consider your recommendations, but we may select engines differently.

(g) If you also do routine production-line testing with the selected engine family in the same time period, the test order will tell you what changes you might need to make in your production-line testing schedule.

§ 1068.410 How must I select and prepare my engines?

(a) *Selecting engines.* Select engines as described in the test order. If you are unable to select test engines this way, you may ask us to approve an alternate plan, as long as you make the request before you start selecting engines.

(b) *Assembling engines.* Produce and assemble test engines using your normal production and assembly process for that engine family.

(1) Notify us directly if you make any change in your production, assembly, or quality control processes that might affect emissions between the time you receive the test order and the time you finish selecting test engines.

(2) If you do not fully assemble engines at the specified location, we will describe in the test order how to select components to finish assembling the engines. Assemble these components onto the test engines using your documented assembly and quality control procedures.

(c) *Modifying engines.* Once an engine is selected for testing, you may adjust,

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repair, prepare, or modify it or check its emissions only if one of the following is true:

(1) You document the need for doing so in your procedures for assembling and inspecting all your production engines and make the action routine for all the engines in the engine family.

(2) This subpart otherwise allows your action.

(3) We approve your action in advance.

(d) *Engine malfunction.* If an engine malfunction prevents further emission testing, ask us to approve your decision to either repair the engine or delete it from the test sequence.

(e) *Setting adjustable parameters.* Before any test, we may adjust or require you to adjust any adjustable parameter to any setting within its physically adjustable range.

(1) We may adjust idle speed outside the physically adjustable range as needed until the engine has stabilized emission levels (see paragraph (e) of this section). We may ask you for information needed to establish an alternate minimum idle speed.

(2) We may make or specify adjustments within the physically adjustable range by considering their effect on emission levels, as well as how likely it is someone will make such an adjustment with in-use engines.

(f) *Stabilizing emission levels.* Before you test production-line engines, you may operate the engine to stabilize the emission levels. Using good engineering judgment, operate your engines in a way that represents the way production engines will be used. You may operate each engine for no more than the greater of two periods:

(1) 50 hours.

(2) The number of hours you operated your emission-data engine for certifying the engine family (see 40 CFR part 1065, subpart E).

(g) *Damage during shipment.* If shipping an engine to a remote facility for production-line testing makes necessary an adjustment or repair, you must wait until after the initial emission test to do this work. We may waive this requirement if the test would be impossible or unsafe, or if it would permanently damage the engine. Report to us, in your written report under § 1068.450, all adjustments or repairs you make on test engines before each test.

(h) *Shipping engines.* If you need to ship engines to another facility for testing, make sure the test engines arrive at the test facility within 24 hours after being selected. You may ask that we allow more time if you are unable to do this.

(i) *Retesting after invalid tests.* You may retest an engine if you determine an emission test is invalid. Explain in your written report reasons for invalidating any test and the emission results from all tests. If you retest an engine and, within ten days after testing, ask to substitute results of the new tests for the original ones, we will answer within ten days after we receive your information.

§ 1068.415 How do I test my engines?

(a) Use the test procedures specified in the standard-setting part for showing that your engines meet emission standards. The test order will give further testing instructions.

(b) If no test cells are available at a given facility, you may make alternate testing arrangements with our approval.

(c) Test at least two engines in each 24-hour period (including void tests). However, if your projected U.S. nonroad engine sales within the engine family are less than 7,500 for the year, you may test a minimum of one engine per 24-hour period. If you request and justify it, we may approve a lower testing rate.

(d) Accumulate service on test engines at a minimum rate of 6 hours per engine during each 24-hour period. The first 24-hour period for service accumulation begins when you finish preparing an engine for testing. The minimum service accumulation rate does not apply on weekends or holidays. You may ask us to approve a lower service accumulation rate. Plan your service accumulation to allow testing at the rate specified in § 1068.415. Select engine operation for accumulating operating hours on your test engines to represent normal in-use engine operation for the engine family.

(e) Test engines is the same order you select them.

§ 1068.420 How do I know when my engine family fails an SEA?

(a) A failed engine is one whose final deteriorated test results exceed an applicable emission standard for any regulated pollutant.

(b) Continue testing engines until you reach a pass decision for all pollutants or a fail decision for one pollutant.

(c) You reach a pass decision for the SEA requirements when the number of failed engines is less than or equal to the pass decision number in Appendix A to this subpart for the total number of engines tested. You reach a fail decision for the SEA requirements when the number of failed engines is greater than or equal to the fail decision number in Appendix A to this subpart for the total number of engines you test. An acceptable quality level of 40 percent is the basis for the pass or fail decision.

(d) Consider test results in the same order as the engine testing sequence.

(e) If you reach a pass decision for one pollutant, but need to continue testing for another pollutant, we will disregard these later test results for the pollutant with the pass decision.

(f) Appendix A to this subpart lists multiple sampling plans. Use the sampling plan for the projected sales volume you reported in your application for the audited engine family.

(g) We may choose to stop testing after any number of tests.

(h) If we test some of your engines in addition to your own testing, we may decide not to include your test results as official data for those engines if there is substantial disagreement between your testing and our testing. We will reinstate your data as valid if you show us that we made an error and your data are correct.

(i) If we rely on our test data instead of yours, we will notify you in writing of our decision and the reasons we believe your facility is not appropriate for doing the tests we require under this subpart. You may request in writing that we consider your test results from the same facility for future testing if you show us that you have made changes to resolve the problem.

§ 1068.425 What happens if one of my production-line engines exceeds the emission standards?

(a) If one of your production-line engines fails to meet one or more emission standards (see § 1068.420), the certificate of conformity is automatically suspended for that engine. You must take the following actions before your certificate of conformity can cover that engine:

(1) Correct the problem and retest the engine to show it complies with all emission standards.

(2) Include in your written report a description of the test results and the remedy for each engine (see § 1068.450).

(b) You may at any time ask for a hearing to determine whether the tests and sampling methods were proper (see subpart G of this part).

§ 1068.430 What happens if an engine family fails an SEA?

(a) We may suspend your certificate of conformity for an engine family if it fails the SEA under § 1068.420. The suspension may apply to all facilities producing engines from an engine family, even if you find noncompliant engines only at one facility.

(b) We will tell you in writing if we suspend your certificate in whole or in part. We will not suspend a certificate until at least 15 days after the engine family fails the SEA. The suspension is effective when you receive our notice.

(c) Up to 15 days after we suspend the certificate for an engine family, you may ask for a hearing to determine whether the tests and sampling methods were proper (see subpart G of this part). If we agree before a hearing that we used erroneous information in deciding to suspend the certificate, we will reinstate the certificate.

§ 1068.435 May I sell engines from an engine family with a suspended certificate of conformity?

You may sell engines that you produce after we suspend the engine family's certificate of conformity only if one of the following occurs:

(a) You test each engine you produce and show it complies with emission standards that apply.

(b) We conditionally reinstate the certificate for the engine family. We may do so if you agree to recall all the affected engines and remedy any noncompliance at no expense to the owner if later testing shows that engines in the engine family still do not comply.

§ 1068.440 How do I ask EPA to reinstate my suspended certificate?

(a) Send us a written report asking us to reinstate your suspended certificate. In your report, identify the reason for the SEA failure, propose a remedy, and commit to a date for carrying it out. In your proposed remedy include any quality control measures you propose to keep the problem from happening again.

(b) Give us data from production-line testing showing that engines in the remedied engine family comply with all the emission standards that apply.

§ 1068.445 When may EPA revoke my certificate under this subpart and how may I sell these engines again?

(a) We may revoke your certificate for an engine family in the following cases:

(1) You do not meet the reporting requirements.

(2) Your engine family fails an SEA and your proposed remedy to address a suspended certificate is inadequate to solve the problem or requires you to change the engine's design or emission-control system.

(b) To sell engines from an engine family with a revoked certificate of conformity, you must modify the engine family and then show it complies with the applicable requirements.

(1) If we determine your proposed design change may not control emissions for the engine's full useful life, we will tell you within five working days after receiving your report. In this case we will decide whether production-line testing will be enough for us to evaluate the change or whether you need to do more testing.

(2) Unless we require more testing, you may show compliance by testing production-line engines as described in this subpart.

(3) We will issue a new or updated certificate of conformity when you have met these requirements.

§ 1068.450 What records must I send to EPA?

(a) Within 30 calendar days of the end of each audit, send us a report with the following information:

(1) Describe any facility used to test production-line engines and state its location.

(2) State the total U.S.-directed production volume and number of tests for each engine family.

(3) Describe your test engines, including the engine family's identification and the engine's model year, build date, model number, identification number, and number of hours of operation before testing for each test engine.

(4) Identify where you accumulated hours of operation on the engines and describe the procedure and schedule you used.

(5) Provide the test number; the date, time and duration of testing; test procedure; initial test results before and after rounding; final test results; and final deteriorated test results for all tests. Provide the emission figures for all measured pollutants. Include information for both valid and invalid tests and the reason for any invalidation.

(6) Describe completely and justify any nonroutine adjustment, modification, repair, preparation, maintenance, or test for the test engine if you did not report it separately under this subpart. Include the results of any emission measurements, regardless of the procedure or type of equipment.

(7) Report on each failed engine as described in § 1068.425. (b) We may ask you to add information to your written report, so we can determine whether your new engines conform with the requirements of this subpart.

(c) An authorized representative of your company must sign the following statement:

> We submit this report under Sections 208 and 213 of the Clean Air Act. Ourtesting conformed completely with the requirements of 40 CFR part 1068. We have not changed production processes or quality-control procedures for the engine family in a way that might affect the emission control from production engines. All the information in this report is true and accurate, to the best of my knowledge. I know of the penalties for violating the Clean Air Act and the regulations. (Authorized Company Representative)

(d) Send reports of your testing to the Designated Officer using an approved information format. If you want to use a different format, send us a written request with justification for a waiver.

(e) We will send copies of your reports to anyone from the public who asks for them. We will release information about your sales or production volumes, which is all we will consider confidential.

§ 1068.455 What records must I keep?

(a) We may review your records at any time, so it is important to keep required information readily available. Organize and maintain your records as described in this section.

(b) Keep paper records for testing under this subpart for one full year after you complete all the testing required for the selective enforcement audit. For additional storage, you may use any format or media.

(c) Keep a copy of the written reports described in § 1068.450.

(d) Keep the following additional records:

(1) The names of supervisors involved in each test.

(2) The name of anyone who authorizes adjusting, repairing, preparing, or modifying a test engine and the names of all supervisors who oversee this work.

(3) If you shipped the engine for testing, the date you shipped it, the associated storage or port facility, and the date the engine arrived at the testing facility.

(4) Any records related to your audit that are not in the written report.

(5) A brief description of any significant events during testing not otherwise described in the written report or in this section.

(e) If we ask, you must give us projected or actual production for an engine family. Include each assembly plant if you produce engines at more than one plant.

(f) We may ask you to keep or send other information necessary to implement this subpart.

Appendix A to Subpart E of Part 1068—Plans for Selective Enforcement Auditing

The following tables describe sampling plans for selective enforcement audits, as described in § 1068.420:

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TABLE A–1.—SAMPLING PLAN CODE LETTER

Projected engine family sales	Code letter [1]	Minimum number of tests		Maximum number of tests
		To pass	To fail	
20 – 50	AA	3	5	20
20 – 99	A	4	6	30
100 – 299	B	5	6	40
300 – 499	C	5	6	50
500 +	D	5	6	60

[1] A manufacturer may optionally use either the sampling plan for code letter "AA" or sampling plan for code letter "A" for Selective enforcement Audits of engine families with annual sales between 20 and 50 engines. Additionally, the manufacturer may switch between these plans during the audit.

TABLE A–2.—SAMPLING PLANS FOR DIFFERENT ENGINE FAMILY SALES VOLUMES

Stage [a]	AA		A		B		C		D	
	Pass #	Fail #	Pass #	Fail #	Pass #	Fail #	Pass #	Fail #	Pass #	Fail #
1.										
2.										
3	0									
4			0							
5	1	5	0		0		0		0	
6	1	6	1	6	1	6	0	6	0	6
7	2	6	1	7	1	7	1	7	1	7
8	2	7	2	7	2	7	2	7	2	8
9	3	7	2	8	2	8	2	8	2	8
10	3	8	3	8	3	8	3	9	3	9
11	4	8	3	8	3	9	3	9	3	9
12	4	9	4	9	4	9	4	10	4	10
13	5	9	5	10	4	10	4	10	4	10
14	5	10	5	10	5	10	5	11	5	11
15	6	10	6	11	5	11	5	11	5	11
16	6	10	6	11	6	12	6	12	6	12
17	7	10	7	12	6	12	6	12	6	12
18	8	10	7	12	7	13	7	13	7	13
19	8	10	8	13	8	13	7	13	7	13
20	9	10	8	13	8	14	8	14	8	14
21			9	14	9	14	8	14	8	14
22			10	14	9	15	9	15	9	15
23			10	15	10	15	10	15	9	15
24			11	15	10	16	10	16	10	16
25			11	16	11	16	11	16	11	16
26			12	16	11	17	11	17	11	17
27			12	17	12	17	12	17	12	17
28			13	17	12	18	12	18	12	18
29			14	17	13	18	13	18	13	19
30			16	17	13	19	13	19	13	19
31					14	19	14	19	14	20
32					14	20	14	20	14	20

TABLE A–2.—SAMPLING PLANS FOR DIFFERENT ENGINE FAMILY SALES VOLUMES—Continued

Stage [a]	AA		A		B		C		D	
	Pass #	Fail #	Pass #	Fail #	Pass #	Fail #	Pass #	Fail #	Pass #	Fail #
33					15	20	15	20	15	21
34					16	21	15	21	15	21
35					16	21	16	21	16	22
36					17	22	16	22	16	22
37					17	22	17	22	17	23
38					18	22	18	23	17	23
39					18	22	18	23	18	24
40					21	22	19	24	18	24
41							19	24	19	25
42							20	25	19	26
43							20	25	20	26
44							21	26	21	27
45							21	27	21	27
46							22	27	22	28
47							22	27	22	28
48							23	27	23	29
49							23	27	23	29
50							26	27	24	30
51									24	30
52									25	31
53									25	31
54									26	32
55									26	32
56									27	33
57									27	33
58									28	33
59									28	33
60									32	33

[a] Stage refers to the cumulative number of engines tested.

Subpart F—Reporting Defects and Recalling Engines

§ 1068.501 How do I report engine defects?

(a) *General provisions.* As an engine manufacturer, you must investigate in certain circumstances whether emission-related components are defective and send us reports as specified by this section.

(1) The term emission-related component includes those components listed in Appendix I of this part. For the purposes of this section, complete engines shall also be considered an emissions-related component. It also includes factory settings of emission-related parameters and specifications listed in Appendix II of this part.

(2) For the purposes of this section, defects do not include damage to emission-related components (or maladjustment of parameters) caused by owners improperly maintaining or abusing their engine.

(3) You must track the information specified in paragraph (b)(1) of this section. You are not required to collect additional information other than that specified in paragraph (b)(1) of this section before reaching the threshold for an investigation specified in paragraph (e) of this section.

(4) You may ask us to allow you to use alternate methods for tracking, investigating, reporting, and correcting emission-related defects. In your request, explain and demonstrate why you believe your alternate system will be at least as effective in tracking, identifying, investigating, evaluating, reporting, and correcting potential and actual emissions-related defects as the requirements in this section.

(5) If we determine that emission-related defects result in a substantial number of properly maintained and used engines not conforming to the regulations of this chapter during their

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useful life, we may order you to conduct a recall of your engines (see § 1068.505).

(6) Send the defect reports and status reports required by this section to the Designated Officer.

(b) *Investigation of possible defects.* If the number of engines that possibly have a defect, as defined by paragraph (b)(1) of this section, exceed the thresholds specified in paragraph (e) of this section, you must conduct an investigation to determine if an emission-related component is actually defective.

(1) You must track warranty claims, parts shipments, and the other information specified in paragraph (b)(1)(iii) of this section. You must classify an engine as possibly having a defective component if any of the following is true:

(i) A warranty claim is submitted for the component, whether this is under your emission-related warranty or any other warranty.

(ii) You ship a replacement component other than for normally scheduled maintenance during the useful life of the engine.

(iii) You receive any other information indicating the component may be defective, such as information from dealers or hot line complaints.

(2) Your investigation must be prompt, thorough, consider all relevant information, follow scientific and engineering principles, and be designed to obtain all the information specified in paragraph (d) of this section.

(3) Your investigation only needs to consider defects that occur within the useful life period, or within five years after the end of the model year, whichever is longer.

(4) You must continue your investigation until you are able to obtain all the information specified for a defect report in paragraph (d) of this section. Send us an updated defect report anytime you have significant additional information.

(5) If a component believed to be defective is used in additional engine families or model years, you must investigate whether the component or part is defective when used in these additional engine families or model years, and include these results as part of your defect report.

(6) If your initial investigation concludes that the number of engines with a defect is fewer than the thresholds specified in paragraph (f) of this section, but other information becomes available that may show that the number of engines with a defect exceeds these thresholds, then you must resume your investigation. If you resume an investigation, you must include the information from the earlier investigation to determine whether to send a defect report.

(c) *Reporting defects.* You must send us a defect report in either of the following cases:

(1) Your investigation shows that the number of engines with a defect exceeds the thresholds specified in paragraph (f) of this section. Send the defect report within 15 days after the date you identify this number of defective engines.

(2) You know a defective emission-related component exists in a number of engines that exceeds the thresholds specified in paragraph (f) of this section, regardless of how you obtain this information. Send the defect report within 15 days after you learn that the number of defects exceeds one of these thresholds.

(d) *Contents of a defect report.* Include the following information in a defect report:

(1) Your corporate name and a person to contact regarding this defect.

(2) A description of the defect, including a summary of any engineering analyses and associated data, if available.

(3) A description of the engines that may have the defect, including engine families, models, and range of production dates. Note that you must address all model years for the engines, not just the model year for which you triggered the reporting requirement.

(4) An estimate of the number and percentage of each class or category of affected engines that have or may have the defect, and an explanation of how you determined this number.

(5) An estimate of the defect's impact on emissions, with an explanation of how you calculated this estimate and a summary of any emission data demonstrating the impact of the defect, if available.

(6) A description of your plan for addressing the defect or an explanation of your reasons for not believing the defects must be remedied.

(e) *Thresholds for conducting a defect investigation.* Unless the standard-setting part specifies otherwise, you must begin a defect investigation based on the following threshold values:

(1) For engine with rated power under 560 kW:

(i) When the component is a catalytic converter (or other aftertreatment device), if the number of engines in an engine family that may have the defect exceeds 2 percent of the total number of engines in the engine family or 2,000 engines, whichever is less.

(ii) When the emission-related component is anything but a catalytic converter (or other aftertreatment device), if the number of engines in an engine family that may have the defect exceeds 4 percent of the total number of engines in the engine family or 4,000 engines, whichever is less.

(2) For engine with rated power greater than or equal to 560 kW, if the number of engines in an engine family that may have the defect exceeds 1 percent of the total number of engines in the engine family or 5 engines, whichever is greater.

(f) *Thresholds for filing a defect report.* You must send a defect report based on the following threshold values:

(1) For engine with rated power under 560 kW:

(i) When the component is a catalytic converter (or other aftertreatment device), if the number of engines in an engine family that has the defect exceeds 0.125 percent of the total number of engines in the engine family or 125 engines, whichever is less.

(ii) When the emission-related component is anything but a catalytic converter (or other aftertreatment device), if the number of engines in an engine family that has the defect exceeds 0.250 percent of the total number of engines in the engine family or 250 engines, whichever is less.

(2) For engine with rated power greater than or equal to 560 kW, if the number of engines in an engine family that has the defect exceeds 0.5 percent of the total number of engines in the engine family or 2 engines, whichever is greater.

(g) *How to count defects.* In most cases, you may track defects separately for each model year and engine family. For families with annual U.S.-directed production volumes under 5,000 engines, you may apply the percentage thresholds in paragraphs (e) and (f) of this section on the basis of multiple model years, for engines using the same emission-related components. To determine whether you exceed the investigation threshold in paragraph (e) of this section, count defects that you correct before they reach the ultimate purchaser. Do not count these corrected defects to determine whether you exceed the reporting threshold in paragraph (f) of this section.

(h) *Status reports.* You must send us a mid-year or end-of-year status report if you concluded an investigation during the previous six months without filing a defect report or if you have an unresolved investigation at the end of the six-month period. Include the information specified in paragraph (c) of this section, or explain why the information is not relevant. Send these status reports no later than June 30 and December 31 of each year.

(i) *Future production.* If you identify a design or manufacturing defect that prevents engines from meeting the requirements of this part, you must correct the defect as soon as possible for any future production for engines in every family affected by the defect. This applies without regard to whether you are required to conduct a defect investigation or submit a defect report under this section.

§ 1068.505 How does the recall program work?

(a) If we make a determination that a substantial number of properly maintained and used engines do not conform to the regulations of this chapter during their useful life, you must submit a plan to remedy the nonconformity of your engines. We will notify you of our determination in writing. Our notice will identify the class or category of engines affected and describe how we reached our conclusion. If this happens, you must meet the requirements and follow the instructions in this subpart. You must remedy at your expense noncompliant engines that have been properly maintained and used. You may not transfer this expense to a dealer or equipment manufacturer through a franchise or other agreement.

(b) You may ask for a hearing if you disagree with our determination (see subpart G of this part).

(c) Unless we withdraw the determination of noncompliance, you must respond to it by sending a remedial plan to the Designated Officer by the later of these two deadlines:

(1) Within 60 days after we notify you.

(2) Within 60 days after a hearing.

(d) Once you have sold an engine to the ultimate purchaser, we may inspect or test the engine only if he or she permits it, or if state or local inspection programs separately provide for it.

(e) You may ask us to allow you to conduct your recall differently than specified in this subpart, consistent with section 207(c) of the Act.

§ 1068.510 How do I prepare and apply my remedial plan?

(a) In your remedial plan, describe all of the following:

(1) The class or category of engines to be recalled, including the number of engines involved and the model year or other information needed to identify the engines.

(2) The modifications, alterations, repairs, corrections, adjustments, or other changes you will make to correct the affected engines.

(3) A brief description of the studies, tests, and data that support the effectiveness of the remedy you propose to use.

(4) The instructions you will send to those who will repair the engines under the remedial plan.

(5) How you will determine the owners' names and addresses.

(6) How you will notify owners; include copies of any notification letters.

(7) The proper maintenance or use you will specify, if any, as a condition to be eligible for repair under the remedial plan. Describe how owners should show they meet your conditions.

(8) The steps owners must take for you to do the repair. You may set a date or a range of dates, specify the amount of time you need, and designate certain facilities to do the repairs.

(9) Which company (or group) you will assign to do or manage the repairs.

(10) If your employees or authorized warranty agents will not be doing the work, state who will and say they can do it.

(11) How you will ensure an adequate and timely supply of parts.

(12) The effect of proposed changes on fuel consumption, driveability, and safety of the engines you will recall; include a brief summary of the information supporting these conclusions.

(13) How you intend to label the engines you repair and where you will place the label on the engine (see § 1068.515).

(b) We may require you to add information to your remedial plan.

(c) We may require you to test the proposed repair to show it will remedy the noncompliance.

(d) Use all reasonable means to locate owners. We may require you to use government or commercial registration lists to get owners' names and addresses, so your notice will be effective.

(e) The maintenance or use that you specify as a condition for eligibility under the remedial plan may include only things you can show would cause noncompliance. Do not require use of a component or service identified by brand, trade, or corporate name, unless we approved this approach with your original certificate of conformity. Also, do not place conditions on who maintained the engine.

(f) We may require you to adjust your repair plan if we determine owners would be without their engines or equipment for an unreasonably long time.

(g) We will tell you in writing within 15 days of receiving your remedial plan whether we have approved or disapproved it. We will explain our reasons for any disapproval.

(h) Begin notifying owners within 15 days after we approve your remedial plan. If we hold a hearing, but do not change our position about the noncompliance, you must begin notifying owners within 60 days after we complete the hearing, unless we specify otherwise.

§ 1068.515 How do I mark or label repaired engines?

(a) Attach a label to each engine you repair under the remedial plan. At your discretion, you may label or mark engines you inspect but do not repair.

(b) Make the label from a durable material suitable for its planned location. Make sure no one can remove the label without destroying or defacing it.

(c) On the label, designate the specific recall campaign and state where you repaired or inspected the engine.

(d) We may waive or modify the labeling requirements if we determine they are overly burdensome.

§ 1068.520 How do I notify affected owners?

(a) Notify owners by first class mail, unless we say otherwise. We may require you to use certified mail. Include the following in your notice:

(1) State: "The U.S. Environmental Protection Agency has determined that your engine may be emitting pollutants in excess of the Federal emission standards, as defined in Title 40 of the Code of Federal Regulations. These emission standards were established to protect the public health or welfare from air pollution".

(2) State that you (or someone you designate) will repair these engines at your expense.

(3) If we approved maintenance and use conditions in your remedial plan, state that you will make these repairs only if owners show their engines meet the conditions for proper maintenance and use. Describe these conditions and how owners should prove their engines are eligible for repair.

(4) Describe the components your repair will affect and say generally how you will repair the engines.

(5) State that the engine, if not repaired, may fail an emission inspection test if state or local law requires one.

(6) Describe any adverse effects on its performance or driveability that would be caused by not repairing the engine.

(7) Describe any adverse effects on the functions of other engine components that would be caused by not repairing the engine.

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(8) Specify the date you will start the repairs, the amount of time you will need to do them, and where you will do them. Include any other information owners may need to know.

(9) Include a self-addressed card that owners can mail back if they have sold the engine (or equipment in which the engine is installed); include a space for owners to write the name and address of a buyer.

(10) State that owners should call you at a phone number you give to report any difficulty in obtaining repairs.

(11) State: "To ensure your full protection under the emission warranty on your engine by federal law, and your right to participate in future recalls, we recommend you have your engine serviced as soon as possible. We may consider your not servicing it to be improper maintenance".

(b) We may require you to add information to your notice or to send more notices.

(c) You may not in any communication with owners or dealers say or imply that your noncompliance does not exist or that it will not degrade air quality.

§ 1068.525 What records must I send to EPA?

(a) Send us a copy of all communications related to the remedial plan you sent to dealers and others doing the repairs. Mail or e-mail us the information at the same time you send it to others.

(b) From the time you begin to notify owners, send us a report within 25 days of the end of each calendar quarter. Send reports for six consecutive quarters or until all the engines are inspected, whichever comes first. In these reports, identify the following:

(1) The range of dates you needed to notify owners.

(2) The total number of notices sent.

(3) The number of engines you estimate fall under the remedial plan (explain how you determined this number).

(4) The cumulative number of engines you inspected under the remedial plan.

(5) The cumulative number of these engines you found needed the specified repair.

(6) The cumulative number of these engines you have repaired.

(7) The cumulative number of engines you determined to be unavailable due to exportation, theft, retirement, or other reasons (specify).

(8) The cumulative number of engines you disqualified for not being properly maintained or used.

(c) If your estimated number of engines falling under the remedial plan changes, change the estimate in your next report and add an explanation for the change.

(d) We may ask for more information.

(e) We may waive reporting requirements or adjust the reporting schedule.

(f) If anyone asks to see the information in your reports, we will follow the provisions of § 1068.10 for handling confidential information.

§ 1068.530 What records must I keep?

We may review your records at any time, so it is important that you keep required information readily available. Keep records associated with your recall campaign for three years after you complete your remedial plan. Organize and maintain your records as described in this section.

(a) Keep a paper copy of the written reports described in § 1068.525.

(b) Keep a record of the names and addresses of owners you notified. For each engine, state whether you did any of the following:

(1) Inspected the engine.

(2) Disqualified the engine for not being properly maintained or used.

(3) Completed the prescribed repairs.

(c) You may keep the records in paragraph (b) of this section in any form we can inspect, including computer databases.

§ 1068.535 How can I do a voluntary recall for emission-related problems?

If we have made a determination that a substantial number of properly maintained and used engines do not conform to the regulations of this chapter during their useful life, you may not use a voluntary recall or other alternate means to meet your obligation to remedy the noncompliance. Thus, this section only applies where you learn that your engine family does not meet the requirements of this chapter and we have not made such a determination.

(a) To do a voluntary recall under this section, first send the Designated Officer a plan, following the guidelines in § 1068.510. Within 15 days, we will send you our comments on your plan.

(b) Once we approve your plan, start notifying owners and carrying out the specified repairs.

(c) From the time you start the recall campaign, send us a report within 25 days of the end of each calendar quarter, following the guidelines in § 1068.525(b). Send reports for six consecutive quarters or until all the engines are inspected, whichever comes first.

(d) Keep your reports and the supporting information as described in § 1068.530.

§ 1068.540 What terms do I need to know for this subpart?

The following terms apply to this subpart:

Days means calendar days.

Owner means someone who owns an engine affected by a remedial plan or someone who owns a piece of equipment that has one of these engines.

Subpart G—Hearings

§ 1068.601 What are the procedures for hearings?

If we agree to hold a hearing related to our decision to order a recall under § 1068.505, we will hold the hearing according to the provisions of 40 CFR 85.1807. For any other issues, you may request an informal hearing, as described in 40 CFR 86.1853–01.

Appendix I to Part 1068—Emission-Related Components

This appendix specifies emission-related components that we refer to for describing such things as emission-related defects or requirements related to rebuilding engines.

I. Emission-related components include any engine parts related to the following systems:
  1. Air-induction system.
  2. Fuel system.
  3. Ignition system.
  4. Exhaust gas recirculation systems.

II. The following parts are also considered emission-related components:
  1. Aftertreatment devices.
  2. Crankcase ventilation valves.
  3. Sensors.
  4. Electronic control units.

III. Emission-related components also include any other part whose only purpose is to reduce emissions or whose failure will increase emissions without significantly degrading engine performance.

IV. We also consider the emission-control information label to be an emission-related component.

Appendix II to Part 1068—Emission-Related Parameters and Specifications

This appendix specifies emission-related parameters and specifications that we refer to for describing such things as emission-related defects or requirements related to rebuilding engines.

I. Basic Engine Parameters—Reciprocating Engines.
  1. Compression ratio.
  2. Type of air aspiration (natural, Roots-blown, supercharged, turbocharged).
  3. Valves (intake and exhaust).
  a. Head diameter dimension.
  b. Valve lifter or actuator type and valve lash dimension.
  4. Camshaft timing.
  a. Valve opening—intake exhaust (degrees from top-dead center or bottom-dead center).
  b. Valve closing—intake exhaust (degrees from top-dead center or bottom-dead center).
  c. Valve overlap (degrees).
  5. Ports—two stroke engines (intake and/or exhaust).
  a. Flow area.
  b. Opening timing (degrees from top-dead center or bottom-dead center).
  c. Closing timing (degrees from top-dead center or bottom-dead center).

II. Intake Air System.
  1. Roots blower/supercharger/turbocharger calibration.
  2. Charge air cooling.
  a. Type (air-to-air; air-to-liquid).
  b. Type of liquid cooling (engine coolant, dedicated cooling system).
  c. Performance.
  3. Temperature control system calibration.
  4. Maximum allowable inlet air restriction.

III. Fuel System.
  1. General.
  a. Engine idle speed.
  b. Engine idle mixture.
  2. Carburetion.
  a. Air-fuel flow calibration.
  b. Idle mixture.
  c. Transient enrichment system calibration.
  d. Starting enrichment system calibration.
  e. Altitude compensation system calibration.
  f. Hot idle compensation system calibration.
  3. Fuel injection for spark-ignition engines.
  a. Control parameters and calibrations.
  b. Idle mixture.
  c. Fuel shutoff system calibration.
  d. Starting enrichment system calibration.
  e. Transient enrichment system calibration.
  f. Air-fuel flow calibration.
  g. Altitude compensation system calibration.
  h. Operating pressure(s).
  i. Injector timing calibration.
  4. Fuel injection for compression-ignition engines.
  a. Control parameters and calibrations.
  b. Transient enrichment system calibration.
  c. Air-fuel flow calibration.
  d. Altitude compensation system calibration.
  e. Operating pressure(s).
  f. Injector timing calibration.

IV. Ignition System for Spark-ignition Engines.
  1. Control parameters and calibration.
  2. Initial timing setting.
  3. Dwell setting.
  4. Altitude compensation system calibration.
  5. Spark plug voltage.

V. Engine Cooling System—thermostat calibration.

VI. Exhaust System—maximum allowable back pressure.

VII. System for Controlling Exhaust Emissions.
  1. Air injection system.
  a. Control parameters and calibrations.
  b. Pump flow rate.
  2. EGR system.
  a. Control parameters and calibrations.
  b. EGR valve flow calibration.
  3. Catalytic converter system.
  a. Active surface area.
  b. Volume of catalyst.
  c. Conversion efficiency.
  4. Backpressure.

VIII. System for Controlling Crankcase Emissions.
  1. Control parameters and calibrations.
  2. Valve calibrations.

IX. Auxiliary Emission Control Devices (AECD).
  1. Control parameters and calibrations.
  2. Component calibration(s).

X. System for Controlling Evaporative Emissions.
  1. Control parameters and calibrations.
  2. Fuel tank.
  a. Volume.
  b. Pressure and vacuum relief settings.

XI. Warning Systems Related to Emission Controls.
  1. Control parameters and calibrations.
  2. Component calibrations.

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Federal Register

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Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17
Endangered and Threatened Wildlife and Plants; Final Rule To Establish Thirteen Additional Manatee Protection Areas in Florida; Final Rule and Proposed Rule

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AH80

Endangered and Threatened Wildlife and Plants; Final Rule To Establish Thirteen Additional Manatee Protection Areas in Florida

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the Fish and Wildlife Service (Service), take action to establish 13 additional manatee protection areas in Florida. This action is authorized under the Endangered Species Act of 1973, as amended (ESA), and the Marine Mammal Protection Act of 1972, as amended (MMPA), to further recovery of the Florida manatee (*Trichechus manatus latirostris*) by reducing the number of takings. In evaluating the need for additional manatee protection areas, we considered the needs of the manatee at an ecosystem level with the goal of ensuring that adequate, protected areas are available throughout peninsular Florida to satisfy the biological requirements of the species, with a view toward the manatee's recovery. We are designating manatee protection areas in Brevard, Charlotte, Citrus, De Soto, Hillsborough, Lee, Pinellas, and Sarasota Counties. Four of the sites are manatee sanctuaries, where all waterborne activities are prohibited throughout all or part of the year, with exceptions for adjoining property owners. The remaining nine sites are manatee refuges, in which certain waterborne activities are prohibited or regulated for all or some portion of the year. The previously proposed and emergency-designated South Gandy Navigation Channel Manatee Refuge in Pinellas County has been withdrawn. We also announce the availability of an environmental assessment for this action.

DATES: This rule is effective November 8, 2002.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Jacksonville Field Office, U.S. Fish and Wildlife Service, 6620 Southpoint Drive, South, Suite 310, Jacksonville, Florida 32216.

FOR FURTHER INFORMATION CONTACT: David Hankla, Peter Benjamin, or Jim Valade (see **ADDRESSES** section), telephone (904) 232–2580; or visit our Web site at *http://northflorida.fws.gov.*

SUPPLEMENTARY INFORMATION:

Background

The West Indian manatee is federally listed as an endangered species under the ESA (16 U.S.C. 1531 *et seq.*) (32 FR 4001) and the species is further protected as a depleted stock under the MMPA (16 U.S.C. 1361–1407). Florida manatees, a subspecies of the West Indian manatee (Domning and Hayek, 1986), live in freshwater, brackish, and marine habitats in coastal and inland waterways of the southeastern United States. The majority of the population can be found in Florida waters throughout the year, and nearly all manatees winter in peninsular Florida during the winter months. The manatee is a cold-intolerant species and requires warm water temperatures generally above 20° Celsius (68° Fahrenheit) to survive during periods of cold weather. During the winter months, most manatees rely on warm water from industrial discharges and natural springs for warmth. In warmer months, they expand their range and occasionally are seen as far north as Rhode Island on the Atlantic Coast and as far west as Texas on the Gulf Coast.

Status of the Florida Manatee

Long-term studies, as described below, suggest four relatively distinct regional populations of manatees in Florida—(a) The Northwest Region, consisting of the counties along the Gulf of Mexico from Escambia County east and south to Hernando County, Lafayette and Gilchrist Counties, and Marion County adjacent to the Withlacoochee River; (b) the Upper St. Johns River Region, consisting of Putnam County from Palatka south; Volusia, Flagler, and Marion Counties adjacent to the St. Johns River or its tributaries; and Lake and Seminole Counties; (c) the Atlantic Region, consisting of counties along the Atlantic coast from Nassau County south to Miami-Dade County; the portion of Monroe County adjacent to the Florida Bay and the Florida Keys; Okeechobee County; and counties along the lower portion of the St. Johns River north of Palatka, which includes Putnam, St. Johns, Clay and Duval Counties; and (d) the Southwest Region, consisting of the counties along the Gulf of Mexico from Pasco County south to Whitewater Bay in Monroe County and DeSoto, Glades, and Hendry Counties.

Despite considerable effort in the early 1980s, scientists have been unable to develop a useful means of estimating or monitoring trends in the size of the overall manatee population in the southeastern United States (O'Shea 1988, O'Shea *et al.* 1992, Lefebvre *et al.* 1995). Even though many manatees aggregate at warm-water refuges in winter and most if not all such refuges are known, direct counting methods (*i.e.*, by aerial and ground surveys) have been unable to account for uncertainty in the number of animals that may be away from these refuges at any given time, the number of animals which are not seen because of turbid water, and other factors. The use of mark-resighting techniques to estimate manatee population size based on known animals in the manatee photo-identification database also has been impractical, as the proportion of unmarked manatees cannot be estimated.

The only data on population size have been uncalibrated indices based on maximum counts of animals at winter refuges made within one or two days of each other. Based on such information in the late 1980s, the total number of manatees throughout Florida was known to be at least 1,200 animals (Service 2001). Because aerial and ground counts at winter refuges are highly variable depending on the weather, water clarity, manatee behavior, and other factors (Packard *et al.* 1985, Lefebvre *et al.* 1995), interpretation of analyses for short-term trends is difficult (Packard and Mulholland 1983, Garrott *et al.* 1994). Strip-transect aerial surveys are used routinely to estimate dugong (*Dugong dugon*) population size and trends (Service 2001); however, they are difficult to adapt to manatees because of the species' much more linear (*i.e.*, coastal and riverine) distribution. This survey method was tested in the Banana River, Brevard County, and recommended for use in that area to monitor manatee population trends (Miller *et al.* 1998). This approach may also have utility in the Ten Thousand Islands-Everglades area, where manatee population size and distribution is poorly understood.

Beginning in 1991, the former Florida Department of Natural Resources initiated a statewide aerial survey program to count manatees in potential winter habitat during periods of severe cold weather (Ackerman 1995). These surveys are much more comprehensive than those used to estimate a minimum population during the 1980s. The highest two-day minimum count of manatees from these winter synoptic aerial surveys and ground counts is 3,276 manatees in January 2001; the highest count on the east coast of Florida is 1,756 and the highest on the west coast is 1,520, both in 2001. However, the manatee counts of March 2002, when weather conditions were less favorable, resulted in a total count of 1,796. The Florida Fish and Wildlife Conservation Commission (FWCC) stated in their March 6, 2002, press release that the "low count merely reflects the poor visibility during the count, not a dramatic change in the manatee population." Due to the nearly ideal conditions for the 2001 synoptic survey, the results of that survey are considered the best available estimate of the current minimum population size (*i.e.*, 3,276).

It remains unknown what proportions of the total manatee population were counted in these surveys. No statewide surveys were done during the winters of 1992–93 or 1993–94 because of the lack of strong mid-winter cold fronts. These uncorrected counts do not provide a basis for assessing population trends. However, trend analyses of temperature-adjusted aerial survey counts show promise for providing insight to general patterns of population growth in some regions (Garrott *et al.* 1994, 1995; Craig *et al.* 1997; Eberhardt *et al.* 1999).

It has been possible to monitor the number of manatees using the Blue Spring (Volusia County) and Crystal River (Citrus County) warm-water refuges. At Blue Spring, with its unique combination of clear water and a confined spring area, it has been possible to count the number of resident animals by identifying individual manatees from scar patterns. The data indicate that this group of animals has increased steadily since the early 1970s when it was first studied. During the 1970s the number of manatees using the spring increased from 11 to 25 (Bengtson 1981). In the mid-1980s about 50 manatees used the spring (Service 2001), and by the winter of 1999–2000, the number had increased to 147 (Hartley 2001).

On the northwest coast of Florida, the clear, shallow waters of Kings Bay (Citrus County) have made it possible to monitor the number of manatees using the warm-water refuge in Kings Bay at the head of the Crystal River. Large aggregations of manatees apparently did not exist there until recent times (Service 2001). The first careful counts were made in the late 1960s. Since then manatee numbers have increased significantly. In 1967 to 1968, Hartman (1979) counted 38 animals in Kings Bay. By 1981 to 1982, the maximum winter count had increased to 114 manatees (Powell and Rathbun 1984), and in December 1997, the maximum count was 284 (Buckingham *et al.* 1999). Both births and immigration of animals from other areas have contributed to the increases in manatee numbers at Crystal River and Blue Spring. Three manatee sanctuaries (areas in which waterborne activities are restricted) in Kings Bay were established in 1980; an additional three were added in 1994, and a seventh in 1998. The increases in counts at Blue Spring and Crystal River are accompanied by estimates of adult survival and population growth that are higher than those determined for the Atlantic coast (Eberhardt and O'Shea 1995, Langtimm *et al.* 1998, Eberhardt *et al.* 1999).

While aircraft synoptic surveys provide a "best estimate" of the minimum manatee population size, there are no estimates or confidence intervals for the size of the Florida manatee population that have been derived by reliable, statistically based, population-estimation techniques. A *census* is a complete count of individuals within a specified area and time period. A *survey*, in contrast, is an incomplete count. With the exception of a few places where manatees may aggregate in clear, shallow water, not all manatees can be seen from aircraft because of water turbidity, depth, surface conditions, variable times spent submerged, and other considerations. Thus, results obtained during typical manatee synoptic surveys yield unadjusted partial counts. While these results are of value in providing information on where manatees occur, likely relative abundance in various areas, and seasonal shifts in manatee abundance, they do not provide good population estimates, nor can they reliably measure trends in the manatee population. Consequently, the Florida Manatee Recovery Plan (Third Version) concludes that "Despite considerable effort in the early 1980s, scientists have been unable to develop a useful means of estimating or monitoring trends in size of the overall manatee populations in the southeastern United States" (Service 2001).

Population models employ mathematical relationships based on survival and reproduction rates to estimate population growth and trends in growth. A deterministic model (a model in which there are no random events) using classical mathematical approaches and various computational procedures with data on reproduction and survival of living, identifiable manatees suggests a maximum population growth rate of about 7 percent per year, excluding emigration or immigration (Eberhardt and O'Shea 1995). This maximum was based on studies conducted between the late 1970s and early 1990s in the well protected winter aggregation area at Crystal River and did not require estimates of population size. The analysis showed that the chief factor affecting the potential for population growth is survival of adults.

Estimated adult survival in the Atlantic Region (a larger region with less protection) has suggested a slower rate or no population growth over a similar period. This modeling shows the value of using survival and reproduction data obtained from photo-identification studies of living manatees to compute population growth rates with confidence intervals, providing information which can be used to infer long-term trends in the absence of reliable population size estimates. However, collection of similar data has been initiated only recently for other areas of Florida (notably from Tampa Bay to the Caloosahatchee River beginning in the mid-1990s), and none is available over much of the remaining areas used by manatees in southwestern Florida.

A population viability analysis (PVA) (a model in which random events, such as red tide and extremely cold winters, are incorporated) was carried out for manatees based on age-specific mortality rates estimated from the age distribution of manatees found dead throughout Florida from 1979 through 1992 (Marmontel *et al.* 1997). This method of estimating survival relies on certain assumptions that were not fully testable; yet, results again point out the importance of adult survival to population persistence.

Given population sizes that may reflect current abundance, the PVA showed that if adult mortality as estimated for the study period were reduced by a modest amount (for example, from 11 percent down to 9 percent), the Florida manatee population would likely remain viable for many years. However, the PVA also showed that slight increases in adult mortality would result in extinction of manatees over the long term.

The above review demonstrates that the basis for statewide population size "estimates" of any kind is scientifically weak for estimating population trends in manatees. The weight of scientific evidence suggests that the potential for population increases over the last 2 decades is strong for two protected aggregation areas. New population analyses, based on more recent (since 1992) information, are not yet available in the peer-reviewed literature. These analyses will be fundamental to management decisions that are more relevant to the contemporary situation.

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In 2001, the Manatee Population Status Working Group (MPSWG) provided a statement summarizing what they believed to be the status of the Florida manatee at that time (Wildlife Trust 2001). The MPSWG stated that for the Northwest and Upper St. Johns River regions, available evidence indicated that there had been a steady increase in animals over the last 25 years. Such growth was consistent with the conditions of these regions—low numbers of human-related deaths, high estimates of adult survival, and good habitat. The statement was less optimistic for the Atlantic Region due to an adult survival rate that was lower than the rate necessary to sustain population growth. The MPSWG believed that this region had likely been growing slowly in the 1980s but may then have leveled off or even possibly declined. They considered the status of the Atlantic Region to be "too close to call." Such finding was consistent with high levels of human-related and, in some years, cold-related deaths in this region. Regarding the Southwest Region, the MPSWG acknowledged that further data collection and analysis would be necessary to provide an assessment of the manatee's status in this region. Preliminary estimates of adult survival available to the MPSWG at that time indicated that the Southwest Region was similar to the Atlantic Region and "substantially lower than [the adult survival estimates] for the Northwest and Upper St. Johns Regions." The Southwest Region was cited as having had high levels of watercraft-related deaths and injuries and natural mortality events (*i.e.*, red tide and severe cold).

Recent information suggests that the overall manatee population has grown since the species was listed in 1967 (50 CFR 17.11). Based on data provided at the April 2002 Manatee Population Ecology and Management Workshop, we believe that the Northwest and Upper St. Johns River regions are doing well and are approaching demographic benchmarks (also referred to as population benchmarks) established in the Florida Manatee Recovery Plan for reclassification to threatened. We also believe that the Atlantic Region is close to meeting the downlisting benchmark for adult survival, at a minimum, and is close to meeting or exceeding other demographic criteria. We are less optimistic, however, regarding the Southwest Region. Although data are still insufficient or lacking to compare the Southwest Region's status to the downlisting/delisting criteria, preliminary data for adult survival indicate that this Region is below the benchmarks established in the recovery plan.

Although we are optimistic about the potential for recovery in three out of the four regions, it is important to clarify that in order to downlist or delist the manatee pursuant to the ESA, all four regions must simultaneously meet the appropriate criteria as described in the Florida Manatee Recovery Plan (Service 2001). Additionally, either action would be based on a status assessment for the species throughout its range (United States and Carribean) that will consider the factors, as described in section 4(a)(1) of the ESA, that determine whether any species is categorized as endangered or threatened.

In order for us to determine that an endangered species has recovered to a point that it warrants removal from the List of Endangered and Threatened Wildlife and Plants, the species must have improved in status to the point at which listing is no longer appropriate under the criteria set out in section 4(a)(1) of the ESA. That is, threats to the species must be reduced or eliminated such that the species no longer fits the definitions of threatened or endangered. While suggestions of increasing population size are very encouraging, there has been no confirmation that significant threats to the species, including human-related mortality, injury, and harassment, and habitat alteration, have been reduced or eliminated to the extent that the Florida manatee may be reclassified from endangered to threatened status. Pursuant to our mission, we continue to assess this information with the goal of meeting our manatee recovery objectives.

Threats to the Species

Human activities, and particularly waterborne activities, are resulting in the take of manatees. Take, as defined by the ESA, means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or to attempt to engage in any such conduct. Harm means an act which kills or injures wildlife (50 CFR 17.3). Such an act may include significant habitat modification or degradation that kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering. Harass includes intentional or negligent acts or omissions that create the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns, which include, but are not limited to, breeding, feeding, or sheltering (50 CFR 17.3).

The MMPA sets a general moratorium, with certain exceptions, on the take and importation of marine mammals and marine mammal products [section 101(a)] and makes it unlawful for any person to take, possess, transport, purchase, sell, export, or offer to purchase, sell, or export, any marine mammal or marine mammal product unless authorized. Take, as defined by section 3(13) of the MMPA means to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal. Harassment is defined under the MMPA as any act of pursuit, torment, or annoyance which—(i) has the potential to injure a marine mammal or marine mammal stock in the wild; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering.

Human use of the waters of the southeastern United States has increased dramatically as a function of residential growth and increased visitation. This phenomenon is particularly evident in the State of Florida. The human population of Florida has grown by 124 percent since 1970, from 6.8 million to 15.2 million residents (U.S. Census Bureau), and is expected to exceed 18 million by 2010, and 20 million by the year 2020. According to a report by the Florida Office of Economic and Demographic Research (2000), it is expected that, by the year 2010, 13.7 million people will reside in the 35 coastal counties of Florida. In a parallel fashion to residential growth, visitation to Florida has increased dramatically. It is expected that Florida will have 83 million visitors annually by the year 2020, up from 48.7 million visitors in 1998. In concert with this increase of human population growth and visitation is the increase in the number of watercraft that travel Florida waterways. In 2001, 943,611 vessels were registered in the State of Florida (FWCC 2002). This represents an increase of 42 percent since 1993. The Florida Department of Community Affairs estimates that, in addition to boats belonging to Florida residents, between 300,000 and 400,000 boats registered in other States use Florida waters each year.

Increases in the human population and the concomitant increase in human activities in manatee habitat compound the effect of such activities on manatees. Human activities in manatee habitat include direct and indirect effects. Direct impacts include injuries and deaths from watercraft collisions, deaths

from water control structure operations, lethal and sublethal entanglements with commercial and recreational fishing gear, and alterations of behavior due to harassment. Indirect effects include habitat alteration and destruction, and include such activities as the creation of artificial warm water refuges, decreases in the quantity and quality of warm water in natural spring areas, changes in water quality in various parts of the State, the introduction of marine debris, and other, more general disturbances.

Manatee mortality has continued to climb steadily. Average annual total mortality in the 1990s (227.9) was nearly twice that of the 1980s (118.2). In 2001, a total of 336 manatee deaths were documented. Total deaths over the past 5 years are about two and a half times greater than they were in the first half of the 1980s. Although a large part of this increase may be due to an increase in manatee abundance, rapid growth in human activities and development may also be significant factors. Over the past 5 years, human-related mortality has accounted for 33 percent of all manatee deaths, with watercraft-related deaths accounting for nearly 27 percent. These rates are about 5 to 6 percent higher than the early 1980s, when about 28 percent of all deaths were human-related and 21 percent were due to watercraft (Marine Mammal Commission Annual Report to Congress 2002).

The continuing increase in the number of recovered dead manatees throughout Florida has been interpreted as evidence of increasing mortality rates (Ackerman *et al.* 1995). Between 1976 and 1999, the number of carcasses collected in Florida increased at a rate of 5.8 percent per year, and deaths caused by watercraft strikes increased by 7.2 percent per year (Service 2002). Because the manatee has a low reproductive rate, a decrease in adult survivorship due to watercraft collisions could contribute to a long-term population decline (O'Shea *et al.* 1985). It is believed that a 1 percent change in adult survival likely results in a corresponding change in the rate of population growth or decline (Marmontel *et al.* 1997).

Collisions with watercraft are the largest source of human-related manatee deaths. Data collected during manatee carcass salvage operations in Florida indicate that a total of 1,050 manatees (from a total carcass count of 4,240) are confirmed victims of collisions with watercraft (1978 to 2001). This number may underestimate the actual number of watercraft-related mortalities since many of the mortalities listed as "undetermined causes" show evidence of collisions with vessels. Collisions with watercraft comprise approximately 25 percent of all manatee mortalities since 1978. Approximately 75 percent of all watercraft-related manatee mortality has taken place in 11 Florida counties (Brevard, Lee, Collier, Duval, Volusia, Broward, Palm Beach, Charlotte, Hillsborough, Citrus, and Sarasota) (Florida Marine Research Institute Manatee Mortality Database 2002). The last 5 years have been record years for the number of watercraft-related mortalities (Marine Mammal Commission Annual Report to Congress 2002).

The second largest cause of human-related manatee mortality is entrapment in water control structures and navigation locks (Florida Marine Research Institute Manatee Mortality Database 2002). Manatees may be crushed in gates and locks or may be trapped in openings where flows prevent them from surfacing to breathe. Locks and gates were responsible for 159 manatee deaths between 1978 and 2001, or approximately 4 percent. While there are no well-defined patterns characterizing these mortalities, it is believed that periods of low rainfall increase the likelihood of manatees being killed in these structures. These periods require more frequent, large-scale movements of water, which require more frequent gate openings and closings in areas that attract manatees searching for fresh water. We have been working, through an interagency task force, with various Federal and State agencies to retrofit these structures with reversing mechanisms that prevent manatee crushings.

Manatees are also affected by other human-related activities. Impacts resulting from these activities include death caused by entrapment in pipes and culverts; entanglement in ropes, lines, and nets; ingestion of fishing gear or debris; vandalism; and poaching. These activities have accounted for 115 manatee deaths since 1978, an average of more than 4 deaths per year. As with watercraft-related mortalities, these deaths also appear to be increasing, with 40 of these deaths occurring between 1997 and 2001. This is an average of 8 deaths per year over the last 5 years attributable to this cause.

Activities affecting manatees at warm water sites include boat operations, recreational fishing, directed interactions between humans and manatees (including pursuit by swimmers and boats), and other disturbances. Specifically, boats operating within manatee aggregations, anglers casting fishing lines into aggregations, boaters and/or swimmers pursuing manatees, and other disruptions cause animals to disperse and become displaced from warm water refuges. Displaced animals may be exposed to cold water temperatures below known physiological thresholds. Exposure to cold may cause hypothermia or cold stress, conditions known to kill manatees (Worthy 1999). In addition, prolonged, nonlethal exposure to cold may affect calving success and fecundity (Rommel 2002).

Tyson (1998) documented boating and fishing activity in warm water discharges. Observations included anglers maneuvering boats within manatee aggregations, boat operators looking for and petting manatees, boaters attempting to swim with manatees, anglers wading and casting into manatee aggregations, manatees being hooked and maneuvered while entangled, a manatee struck with an anchor, manatees being provided with water, etc. These activities resulted in the displacement of animals, manatees hooked or entangled in fishing line, possible boat strikes, and other adverse interactions. Swimmer interactions were further documented by Wooding (1997) at Three Sisters Springs, Citrus County, Florida. Some manatees left the, then unprotected, spring area when boats with swimmers approached at the start of the day. Other manatees left when the first swimmers entered the water. Those that remained either ignored swimmers or turned away and swam out of reach; a small number sought out physical contact with swimmers. Gorzelany observed manatees being "crowded out" (displaced) by large numbers of swimmers searching out encounters with wintering manatees (Mote Marine Laboratory, pers. comm. 2001).

Anglers have been observed casting into manatee aggregations at warm water sites, hooking and entangling manatees (Tyson 1998). Discarded fishing line, at times caught on water bottoms, plants, and structures, is also known to entangle manatees and is occasionally ingested by manatees. Entangled monofilament fishing line may cut into the manatees' skin; manatees are frequently scarred by these cuts and flippers are occasionally amputated through the cutting effect of the line (USFWS unpublished data). There are records of manatees having died from entanglements due to infection and septicemia associated with these injuries. Manatees ingesting fishing line and hooks are known to die from intestinal obstructions, tears in the gut, and other complications (Florida Marine Research Institute Manatee Mortality Database 2002).

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In 2001, fifteen manatees were rescued from fishing gear, including seven from monofilament line. The number of such incidents has been increasing over time; in the early phases of our manatee rescue, rehabilitation, and release program, no more than one or two incidents were documented per year. Recent annual totals have ranged between ten and fifteen reported incidents. Since 1973, a total of 124 gear-associated manatees have been rescued, including 50 from monofilament entanglement and ingestion (Service, unpubl. data). In addition to these rescues, at least 14 deaths have been attributed to monofilament fishing line and others are suspected (Florida Marine Research Institute Manatee Mortality Database 2002).

Boats operating within and adjacent to warm water aggregations of manatees pose a particularly serious threat to wintering manatees, since manatees are often killed or injured as a result of collisions with watercraft. The likelihood of adverse manatee encounters with watercraft increases in the vicinity of and within unprotected wintering sites because of the greater concentration of manatees and manatee activity in these areas. In 2001, at least 25 percent (82 of 325) of known manatee deaths were caused by watercraft, as was discussed above. This was the second highest year on record (out of more than 27 years of monitoring) for total number of watercraft-related manatee deaths. Nonlethal injuries are also documented by researchers who monitor the accumulation of scars from boat strikes on individual manatees on an annual basis. As documented in the U.S. Geological Survey's (USGS) database, most animals that are known to have been struck are struck multiple times. Such nonlethal injuries may reduce calf production and survival in wounded females (O'Shea *et al.* 2002).

The FWCC's manatee carcass salvage program has documented the presence of watercraft-killed manatees within the vicinity of warm water discharges. While the presence of a carcass does not necessarily indicate that a collision occurred at that site, there are a few cases where collisions have been documented at warm water sites. In one instance, a tug/barge maneuvering within the approach to a warm-water aggregation site ran over a manatee, crushing and killing the animal between the hull and the water bottom (Florida Marine Research Institute Manatee Mortality Database 2002). In Lee County, two manatees using a secondary warm-water site located at the foot of a navigation lock were struck and killed by watercraft operating nearby (Florida Marine Research Institute Manatee Mortality Database 2002). Researchers monitoring winter manatee aggregations have noted the frequent and regular occurrence of nonlethal, fresh cuts on animals using these sites, particularly at the outset of the winter season (Hartley, Florida Division of Parks and Recreation, pers. comm. 2001; Curtin, USGS Contractor, pers. comm. 2001).

Manatee Protection Areas

To minimize disturbance to wintering manatees at both industrial and natural warm water sites during this critical time of year, we and the State of Florida have implemented a series of Federal sanctuaries and State protection areas at and near these sites. To date, the majority of known warm water sites used by manatees in Florida have been protected. Manatee protection areas have also been established at other sites throughout coastal Florida where conflicts between boats and manatees have been well documented and where manatees are known to frequently occur. We are providing additional protection or enhancing existing protection areas by establishing additional manatee sanctuaries and/or manatee refuges at thirteen locations in Florida.

Federal authority to establish protection areas for the Florida manatee is provided by the ESA and the MMPA, and is codified in 50 CFR, part 17, subpart J. We have discretion, by regulation, to establish manatee protection areas whenever there is substantial evidence showing such establishment is necessary to prevent the taking of one or more manatees. In accordance with 50 CFR 17.106, areas may be established on an emergency basis when such takings are imminent.

We may establish two types of manatee protection areas—manatee refuges and manatee sanctuaries. A manatee refuge, as defined in 50 CFR 17.102, is an area in which we have determined that certain waterborne activities would result in the taking of one or more manatees, or that certain waterborne activities must be restricted to prevent the taking of one or more manatees, including but not limited to, a taking by harassment. A manatee sanctuary is an area in which we have determined that any waterborne activity would result in the taking of one or more manatees, including but not limited to, a taking by harassment. A waterborne activity is defined as including, but not limited to, swimming, diving (including skin and scuba diving), snorkeling, water skiing, surfing, fishing, the use of water vehicles, and dredge and fill activities.

Synopsis of Manatee Lawsuit Settlement

In *Save the Manatee Club, et al.* v. *Ballard, et al.*, Civil No. 00–00076 EGS (D.D.C.), several organizations and individuals filed suit against the Fish and Wildlife Service and the U.S. Army Corps of Engineers (Corps) alleging violations of the ESA, MMPA, National Environmental Policy Act (NEPA), and the Administrative Procedure Act. Four groups representing development and boating interests intervened. Following extensive negotiations, a Settlement Agreement was approved by the court on January 5, 2001. Under the terms of the settlement, we agreed to the following:

• Submit a proposed rule for new refuges and sanctuaries to the **Federal Register** by April 2, 2001, and submit a final rule by September 28, 2001. Subsequent to the Federal settlement, the FWCC also voted to settle *Save the Manatee* v. *Egbert*, Case No. 90–00–400CIV17–WS (N.D.Fla) (the State case). That settlement, which was entered by the court on November 7, 2001, calls for very similar protective measures in many of the locations included in our proposed rule. As a result of these simultaneous processes, the parties in the Federal lawsuit agreed to extend the April 2 deadline in an attempt to negotiate a means to avoid duplication of effort and better serve the public. Subsequent negotiations resulted in additional extensions, which resulted in the proposed rule being submitted to the **Federal Register** on August 3, 2001. We also agreed to evaluate the propriety of invocation of our emergency sanctuary/refuge designation authority. We published an advance notice of proposed rulemaking in the **Federal Register** on September 1, 2000, and held a series of six public workshops in December 2000. We received 1,752 comments in response to the advance notice, and 396 people attended the public workshops. The proposed rule was published in the **Federal Register** on August 10, 2001 (66 FR 42318). A 60-day comment period followed this publication. In addition, we held four public hearings in September 2001, to provide the public an opportunity to comment. We held these hearings in Crystal River, Clearwater, Venice, and Melbourne, Florida. As a result of both the public hearings and written submissions, we received approximately 3,500 comments. These comments are summarized and responded to in the "Summary of Comments and Recommendations" section of this rule.

On January 7, 2002, we published a final rule designating two sites in Brevard County, the Barge Canal and Sykes Creek, as Federal manatee refuges (67 FR 680).

• Revise the Manatee Recovery Plan. We were required, by December 1, 2000, to make a draft revised Recovery Plan available for public review and comment, and to circulate our final revised Recovery Plan for signature no later than February 28, 2001. We published a draft revised Recovery Plan on November 30, 2000, and received over 500 comments. The Plaintiffs and Interveners agreed to new dates for development of a second draft and finalization of the Recovery Plan. As a result of the comments, we made substantial revisions to the Recovery Plan and subsequently issued a second draft for public review and comment on July 10, 2001. The Recovery Plan was finalized on October 30, 2001.

• Pursue a rulemaking proceeding to adopt incidental take regulations under the MMPA. By March 6, 2001, we were required to submit to the **Federal Register** an advance notice of proposed rulemaking; invite by letter the Corps and other entities that conduct activities which may influence factors relating to effects of watercraft on manatees to participate in the MMPA rulemaking process; and promptly provide copies of the **Federal Register** notice and invitation letters to the Plaintiffs and Interveners. The advance notice was published in the **Federal Register** on March 12, 2001, and copies of the advance notice and invitation letters were mailed to the Plaintiffs and Interveners on March 6, 2001. We will determine if any anticipated take by entities participating in the rulemaking process meets the requirements set forth in section 101(a)(5) of the MMPA, 16 U.S.C. 1371(a)(5). The process should result in—(1) If the requirements set forth in section 101(a)(5) of the MMPA are deemed satisfied, a proposed and final MMPA incidental take regulation; (2) preparation of appropriate NEPA documentation which will identify and assess the direct, indirect, and cumulative effects of the overall MMPA regulation (either an Environmental Assessment or an Environmental Impact Statement (EIS)); (3) detailed assessments of agency programs, including cumulative effects on manatees and their habitat, for any activities covered under the regulation; and (4) consultation pursuant to section 7 of the ESA. We have determined that we will prepare an EIS in association with this action. Draft and final products are due on November 5, 2002, and May 5, 2003, respectively. If the requirements of the MMPA cannot be met, we must notify the Plaintiffs and Interveners as soon as practicable, and publish a negative finding in the **Federal Register** with the basis for denying the request. We must publish our negative finding by May 5, 2003. We will conduct public hearings on proposed rules as appropriate.

• By March 6, 2001, furnish Plaintiffs and Interveners with a letter describing how we will spend increased enforcement resources in FY 2001. This letter was sent on March 6, 2001.

• Revise, and make available for public review, our "interim guidance" for addressing potential manatee impacts associated with development and permitting of new watercraft access facilities. We were required to submit this document by March 6, 2001. The revised document appeared in the **Federal Register** on March 14, 2001 (66 FR 14924–32). We agreed to provide at least thirty (30) days of public comment and actually provided sixty (60) days comment on the revised draft guidance. The final decision on the guidance was released to the public on August 13, 2001, and published in the **Federal Register** on August 21, 2001 (66 FR 43885).

• Provide written progress reports on the status of tasks agreed upon in the Settlement Agreement every 6 months. The first report was provided to the parties on July 5, 2001 and subsequent reports have been provided accordingly.

• Provide copies of concurrence and non-concurrence letters to Plaintiffs and Interveners. Whenever we send a letter to the Corps in response to the Corps' determination that a project "may affect" the manatee or "may affect but is not likely to adversely affect" the manatee, we are required to concurrently make a copy of the correspondence available to the Plaintiffs and Interveners. This obligation may be satisfied by establishing a web-based system or by transmitting a copy of the letter by U.S. mail or electronically. Until such time as we establish a web-based system, we will forward copies by U.S. mail. These letters have been provided accordingly.

• Provide copies of Biological Opinions (BO). Whenever we issue a final BO regarding the effect of a particular project on manatees or manatee critical habitat, we are required to concurrently make a copy of that opinion available to the Plaintiffs and Interveners. This obligation may be satisfied by establishing a web-based system or by transmitting a copy of the opinion by U.S. mail or electronically. Until such time as we establish a web-based system, we will forward copies by U.S. mail. These biological opinions have been provided accordingly.

• On July 9, 2002, the United States District Court for the District of Columbia ruled that the Federal Government violated the Settlement Agreement by failing to designate a sufficient number of refuges and sanctuaries throughout peninsular Florida. The Court ruled that we must complete the rulemaking with respect to the 16 proposed areas contained in the August 10, 2001, proposal. On July 31, 2002, the Court subsequently determined that this must be completed by November 1, 2002. The Court also determined that the sites in this final rule, in conjunction with the two sites established previously, "would satisfy the general distribution requirement" of the Settlement Agreement. On September 20, 2002, we published an emergency rule designating seven sites as manatee refuges and sanctuaries on Florida's west coast for a period of 120 days (67 FR 59408).

Coordination With State Actions

An extensive network of manatee speed zones and sanctuaries has been established throughout peninsular Florida by Federal, State, and local governments. This existing structure works toward our goal of providing adequate protected areas throughout peninsular Florida to satisfy the biological requirements of the species. The purpose of our recent evaluation was to identify gaps in the existing network and to establish appropriate measures for filling those gaps. We have focused the current action on those sites in which we have determined that Federal action can effectively address the needs in the particular area.

We recognize that the existing system of speed zones and sanctuaries has been established primarily by State and local governments. We also recognize the important role of our State and local partners, and we continue to support and encourage State and local measures to improve manatee protection.

The sites contained in this rule were selected based on the criteria described below (see "Site Selection Process and Criteria" section), prior to the disclosure of terms of the proposed settlement in the State case, *Save the Manatee* v. *Egbert*, Case No. 90–00–400CIV17–WS (N.D.Fla), entered on November 7, 2001. That settlement contains a list of sites that the FWCC has and will be evaluating for potential State designation of speed zones and sanctuaries. There is considerable overlap in terms of sites identified in that settlement and the sites discussed in our proposed rule. The fact that the

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State's list of sites is more expansive than the list in our rule does not indicate a determination on our part that sites on the State's list, and not considered by us, do not warrant protection, but is rather a reflection of our focusing on sites for which we believe we can provide the most effective protection for manatees, given our staffing and funding limitations.

We have been coordinating closely with the FWCC, since the terms of their proposed settlement were disclosed, to determine which sites are most appropriate for State designation and which are better suited for Federal designation. At the time our proposed rule was prepared, final agreement had not been reached on the terms of the proposed State settlement. Pursuant to the terms of our previously described Settlement Agreement, we were required to submit our proposed rule to the **Federal Register** by April 2, 2001, which was prior to the time in which the FWCC made a final decision regarding sites they intend to evaluate. The deadline was extended on several occasions by agreement of the parties in an attempt to negotiate a means to avoid duplication of effort and better serve the public. However, eventually, we were required to proceed with publication in advance of finalization of the State's settlement agreement. Therefore, there are overlaps between our rule and State actions.

We strongly believe that the State should have leadership in establishing additional manatee protection areas. The State has taken a leading role in this initiative. Pursuant to a meeting of the Florida Fish and Wildlife Conservation Commissioners on September 12, 2002, the State established a manatee protection area at Blue Waters and described other sites to be designated as protection areas. Local governments have also enacted protective measures at some of these sites. We, however, must also meet our settlement obligations. In the future, if the State or counties implement measures at these sites that, in our view, provide comparable protection for manatees, we will consider withdrawing or modifying established designations through the rulemaking process. In addition to acknowledging State and county roles in this process and our legal obligations, we recognize the importance of their actions and the role that they play in manatee recovery. These actions are a priority for us and we will continue to promote these and other actions to fulfill our recovery responsibilities. In furtherance of this, we are publishing a **Federal Register** notice seeking public input on additional manatee protection measures. The public's input will be used to help determine the extent of additional protections necessary for manatee recovery.

Site Selection Process and Criteria

In preparation for making a decision on sites to propose as manatee protection areas, we met with representatives from local, State, and Federal agencies and organizations involved in manatee research, management, and law enforcement. These meetings helped us to develop a list of sites throughout Florida and southeast Georgia that manatee experts believed should be considered for possible designation as manatee protection areas.

We published an advance notice of proposed rulemaking in the **Federal Register** on September 1, 2000 (65 FR 53222). The purpose of the advance notice was to inform the public that we were initiating the process of investigating areas for possible designation as manatee protection areas and to solicit initial public input. We received 1,752 responses to the advance notice. Of these, 1,737 supported our efforts to establish additional manatee protection areas, and 13 opposed them. The remaining two comments did not state a specific opinion.

We also conducted six public workshops throughout peninsular Florida to present the list of potential sites and to solicit public input. A total of 396 people attended the workshops, and 166 provided either oral or written comments. Of these, 79 were general in nature, either supporting our efforts to establish additional manatee protection areas (40) or opposing them (39); 28 participants specifically opposed and 8 specifically supported the areas. An additional 36 comments were not specific to the topic or discussed other items. Fifteen commenters provided specific information or comments, including recommendations to increase enforcement, increase education, use new technology including satellite tracking of manatees, and other rule-related topics.

We selected sites for inclusion in this rule from the list of sites developed through the preliminary meetings and the information gathered at the public workshops and in response to the advance notice. We based site selection on four factors—(1) Evidence that the site is used by manatees; (2) historic evidence of take (harm or harassment) of manatees at the site or similar sites due to waterborne activities; (3) the potential for additional take based on manatee and human use of the site; and (4) a determination that we could implement effective measures at the site to address the identified problem.

In documenting manatee use and historic manatee harm and harassment, we relied on the best available information, including aerial survey and mortality data and additional information from the Florida Marine Research Institute and the USGS Sirenia Project. These data were supplemented with information from manatee experts, the public, and our best professional judgment. In determining the potential effectiveness of our actions, we considered the costs of managing and enforcing manatee protection areas and the benefits (or lack thereof) to manatee conservation. Costs associated with site management include installation and maintenance of appropriate signage, public education, and enforcement. In addition, designation of manatee sanctuaries in the waters bordered by private property entail additional administrative burdens in terms of identifying and providing access to affected residents. Finally, we evaluated the effectiveness of our actions against the likely effectiveness of anticipated similar actions by State and/or local governments. It was our goal to avoid sites that could be most effectively addressed by State or local government, and, where we felt we must act in addition, we have made every effort to make our designations consistent with the existing State or local designations.

Previous Federal Action

On August 10, 2001, we published in the **Federal Register** a proposed rule to establish 16 additional manatee protection areas (66 FR 42318), including the areas designated in this rule. In the proposed rule, we requested all interested parties to submit factual reports or information that might contribute to the development of a final rule. We sent direct notification of the proposal and public hearings to 3,258 institutions and individuals, including Federal and State agencies, county governments, scientific organizations, and interested parties. We published legal notices announcing the proposal, inviting public comment, and announcing the schedule for public hearings, on August 30, 2001, in the *Fort Myers News-Press, Citrus County Chronicle, Daytona Beach News-Journal, and Naples Daily News,* on August 31, 2001, in the *St. Petersburg Times, Miami Herald, Orlando Sentinel, Charlotte Sun-Herald, and Tallahassee Democrat,* and on September 4, 2001, in *Florida Today.* The comment period closed on October 9, 2001. We held the public hearings at the Plantation Inn and Conference Center in Crystal River, Florida, on September 10, 2001; Harborview Convention Center in Clearwater, Florida, on September 11, 2001; Holiday Inn in Venice, Florida, on September 12, 2001; and the Radisson Hotel & Conference Center in Melbourne, Florida, on September 13, 2001. Approximately 315 people were in attendance at the public hearings. We received oral comments from 121 of these individuals.

During the comment period, we received approximately 3,500 written and oral comments concerning the proposal. Most expressed opposition to, or concern about, the proposed designation; however, a number of individuals supported the proposed action. Opposition to the proposed designation primarily centered on concerns regarding potential economic effects and inconvenience to boaters resulting from the action, and the adequacy of current State conservation actions to protect the manatee. We received comments from the State of Florida. The remaining comments were from individuals or representatives of organizations or groups. The State supported the proposed action. On January 7, 2002, we published a final rule that established two of the 16 proposed areas as manatee protection areas located within the water bodies commonly known as the Barge Canal and Sykes Creek, in Brevard County (67 FR 680). On September 20, 2002, we published an emergency rule designating four of the remaining areas proposed in August, 2001, as manatee sanctuaries and three as manatee refuges in Citrus, Pinellas, and Hillsborough Counties for a period of 120 days (67 FR 59408).

The September 20, 2002, emergency rule stated that the emergency rule would remain in effect through January 20, 2003. However, this final rule replaces the emergency rule. Therefore, the manatee protection areas set forth in the September 20, 2002, rule are no longer in effect. From the emergency rule to this final rule, we have implemented changes, both in the sizes of many of the protection areas and in the timeframes for restrictions. Details of these changes are described later in this document in a section called "Summary of Changes From the Proposed Rule."

Effective Date

We are making this rule effective upon publication. In accordance with the Administrative Procedure Act, we find good cause as required by 5 U.S.C. 553(d)(3) to make this rule effective immediately upon publication in the **Federal Register**. As discussed in "Areas Designated as Manatee Sanctuaries and Refuges," we need to establish the manatee protection areas in and adjacent to the warm water sites prior to the time when manatees will be seeking warmer waters for the winter and need to ensure that manatees will be protected from waterborne activities at non-winter sites. A 30-day delay in making these sites effective would result in further risks of manatee mortality, injury, and harassment during the period of delay. In view of the finding of substantial evidence that taking of manatees at these 13 sites is imminent, we believe good cause exists to make this rule effective upon publication. In a proposed rule of August 10, 2001 (66 FR 42318), we solicited public comment on the 13 manatee protection areas established by this rule as required by 5 U.S.C. 553(c). The 30-day delay would be contrary to the public interest because of the imminent threat to manatees and the need to provide immediate protection.

Definitions

Idle speed means the minimum speed needed to maintain watercraft steerage.

Planing means riding on or near the water's surface as a result of the hydrodynamic forces on a watercraft's hull, sponsons (projections from the side of a ship), foils, or other surfaces. A watercraft is considered on plane when it is being operated at or above the speed necessary to keep the vessel planing.

Slow speed means the speed at which a watercraft proceeds when it is fully off plane and completely settled in the water. Watercraft must not be operated at a speed that creates an excessive wake. Due to the different speeds at which watercraft of different sizes and configurations may travel while in compliance with this definition, no specific speed is assigned to slow speed. A watercraft is *not* proceeding at slow speed if it is: (1) On a plane, (2) in the process of coming up on or coming off of plane, or (3) creating an excessive wake. A watercraft *is* proceeding at slow speed if it is fully off plane and completely settled in the water, not creating an excessive wake.

Slow speed (channel exempt) designates a larger area where slow speed is required, through which a maintained, marked channel is exempt from the slow speed requirement.

Slow speed (channel included) means that the slow-speed designation applies to the entire marked area, including within the designated channel.

Wake means all changes in the vertical height of the water's surface caused by the passage of a watercraft, including a vessel's bow wave, stern wave, and propeller wash, or a combination of these.

Exceptions

Existing regulations provide regulatory relief for watercraft access to private residences, boat houses, and boat docks located in manatee sanctuaries (50 CFR 17.108). Sanctuaries described in this final rule are located in areas adjoining property owned by public and other private property owners. Public and private property owners will be permitted to access and maintain property within respective manatee sanctuaries. During the restricted period (either seasonal or year-round) watercraft operations (conducted by appropriately identified vessels) will be restricted to idle speed. Maintenance activities necessary for maintaining property and waterways during this period of time are also allowed, subject to any applicable Federal, State, and/or local government permitting requirements. We believe that these exceptions will ensure that this rule has a minor impact on activities conducted by public and private property owners.

Summary of Comments and Recommendations

Written comments and oral statements presented at the public hearings and received during the comment period are addressed in the following summary. Comments of a similar nature or point are grouped into a number of general issues. Comments and our response to each are discussed below.

Comment 1: The FWCC noted our intention to consider withdrawing Federal designations should State or local governments enact comparable protective measures, and recommended that we define the means by which we will determine if actions by State or local governments provide a comparable level of protection.

Response: The 13 manatee refuges and sanctuaries covered in this rulemaking were originally proposed in our August 10, 2001, proposed rule. While these sites are important for manatee conservation and meet the criteria for Federal protection, when we established the Barge Canal and Sykes Creek manatee refuges on January 7, 2002 (67 FR 680), we believed the remaining sites were of lesser urgency. We were also not convinced at the time of final rule publication that these protection measures were necessary for recovery of the species. Therefore, in our January 7, 2002, final rule, we postponed decision-making on these

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sites until December 2002 and stated that we would consider withdrawing our proposals should State or local government implement suitable protection.

However, on July 9, 2002, the Court ruled that this approach did not comply with our Settlement Agreement requiring that we designate additional refuges and sanctuaries throughout peninsular Florida within a certain time frame. On July 31, 2002, the Court further ordered us to complete our rulemaking process on these sites by November 1, 2002.

Subsequent to our August 2001 proposal, State and local governments have adopted and, in some cases, implemented manatee protection measures at several of the manatee refuges and sanctuaries established in this rule. In some cases the State or local measures are more restrictive than our original proposals, while in others they are less restrictive. Based upon new information resulting from these activities and comments received, we have made several modifications to our original proposals in order to ensure, when possible, that Federal, State, and local measures are consistent and clear to the public and can be consistently enforced by all entities (see "Summary of Changes from the Proposed Rule" section). We do not believe that any of these changes will result in reduced manatee protection from our original proposal. In cases where we have increased our restrictions beyond those originally proposed, we have concluded that this action will have negligible effects on the regulated public beyond the actions already promulgated by State or local governments.

In the future, we may withdraw or revise our designations if, in our view, State and local government(s) provide a comparable level of protection. Since it is not currently possible to measure the precise level of effectiveness of any particular manatee protection program, we must rely upon the best professional judgment of our biologists to determine whether alternative State or local measures are comparable to ours. We acknowledge that there may be more than one way to provide adequate manatee protection at any given location. In making our determination, we will consider factors such as areal extent of the measures, duration of measures, and types of restrictions (e.g., no entry, motorboat prohibited, idle speed, slow speed, etc.). Our final determination will be based on our judgment of whether a State or local management plan provides comparable protection by reducing or eliminating take to the same or greater extent as our actions.

Comment 2: The FWCC noted that appropriate posting of designated manatee protection areas is a critical element in the success of manatee protection zones, and recommended that we schedule meetings with the FWCC, Navigation Districts, local governments, and others to develop a clear delineation of responsibilities for posting signs for federally designated areas.

Response: We agree that appropriate signage is critical to the safe and effective implementation of manatee protection areas. We will continue to involve the FWCC, Inland Navigation Districts, local governments, and the U.S. Coast Guard, as appropriate, in the development of sign plans for these Federal manatee protection areas. By coordinating with these agencies, we will minimize any discrepancies and/or disparities between signs, sign placement, and legal authorities. These actions will minimize inconsistencies and confusion amongst the boating public.

Comment 3: The FWCC expressed concern regarding enforcement of the new manatee protection areas and recommended that we clarify that we are responsible for enforcement of these areas. They also expressed concern that establishment of Federal manatee protection areas in and adjacent to State speed zones, which carry different penalties for violation, may generate confusion among the boating public.

Response: Manatee protection areas are only effective to the extent that boaters comply with posted regulations. As such, enforcement is an essential component of our effort to establish additional manatee protection areas. FWCC officers are authorized to enforce Federal manatee protection area regulations, just as our law enforcement officers can and do enforce State manatee protection regulations. We welcome any assistance that the FWCC and other enforcement entities can provide in the enforcement of these manatee protection areas, but we have made a commitment to ensure that adequate enforcement is provided for these areas. The ability to adequately post and enforce designated sites was a factor in our site selection process.

Comment 4: The FWCC noted that we delayed action on 14 sites identified in the proposed rule until December 2002 to give State and local governments the opportunity to enact comparable protective measures. The FWCC stated that they have no plans to consider rules in two of the sites in the proposed rule (Little Sarasota Bay and Shell Island) and that no final State action would be taken on sites in Tampa Bay by December 2002.

Response: While we had originally delayed action on these sites until December 2002, to give other agencies an opportunity to enact comparable measures, we are promulgating a rule at this time to ensure compliance with the Court's orders of July 9, 2002, and July 31, 2002, and to ensure compliance with the terms of the Settlement Agreement. Included in our rule are measures to protect Little Sarasota Bay and Shell Island and to designate protection at sites in Tampa Bay.

Comment 5: Several commenters recommended establishing manatee protection areas at several sites in addition to, or in lieu of, the 16 sites identified in the proposed rule. Other sites recommended for consideration included—the downtown Jacksonville portion of the St. John's River, Duval County; Goodby's Creek, Duval County; the Tomoka River, Volusia County; the Canaveral sewer outfall, Brevard County; the Indian River southeast of the railroad bridge causeway, Brevard County; the Haulover Canal observation area, Brevard County; the Riviera Beach power plant outfall, Palm Beach County; the Weeki Wachee River, Hernando County; the Little Manatee River, Hillsborough County; the Manatee and Braden Rivers, Manatee County; Charlotte Harbor, Charlotte County; Bokeelia Point, Lee County; San Carlos Bay, Lee County; the Caloosahatchee River, Lee County; Mullock Creek/Ten Mile Canal, Lee County; Estero Bay, Lee County; Everglades National Park, Collier and Monroe Counties; Faka Union Canal/Port of the Islands, Collier County; and Ten Thousand Islands/Chokoloskee Bay, Collier County.

Response: In designating manatee protection areas throughout peninsular Florida, we considered the needs of the species on an ecosystem level in order to address life requirements of the manatee and to progress toward recovery of the species. All of the above-mentioned sites, and many others, were considered at some point in the evaluation process. Some, such as the Weeki Wachee River, Goodby's Creek, and the Canaveral sewer outfall, did not meet our criteria for further consideration because adequate protective measures are currently in place at these sites and the likelihood of future take at these sites is limited, provided the existing regulations are appropriately enforced. Others, such as Caloosahatchee River, Everglades National Park, and Ten Thousand Islands/Chokoloskee Bay, did not meet our criteria for designation at this time because it is as yet unclear, based on current information, what additional protective measures could be implemented to effectively reduce on-going watercraft-related manatee mortality in these areas. We note that even the commenter who recommended we take immediate action in the Ten Thousand Islands/Chokoloskee Bay area could offer no specific recommendation as to what to do in this area. We agree that the remaining sites mentioned above (the St. John's River in downtown Jacksonville, the Tomoka River, the Haulover Canal observation area, the Indian River southeast of the railroad bridge causeway, the Riviera Beach power plant outfall, the Little Manatee River, the Manatee and Braden Rivers, Charlotte Harbor, Bokeelia Point, Estero Bay, San Carlos Bay, Mullock Creek/Ten Mile Canal, and Faka Union Canal/Port of the Islands) may warrant further consideration, particularly if manatees do not make satisfactory progress toward recovery. However, we do not agree with the commenters that action at any of these sites is any more appropriate and/or feasible than the actions identified in our August 10, 2001, proposed rule.

We are committed to continuing the protection of the manatee through a cooperative effort with our management partners at the Federal, State, and local levels, as well as efforts involving private entities and members of the public. We encourage State and local measures to improve manatee protection. Additionally, we are publishing a **Federal Register** notice seeking public input on additional manatee protection needs. This information will be used to help determine the extent of additional protection needed for recovery.

Comment 6: In recommending action at the sites identified in Comment 5, some commenters noted that several of the sites identified in our proposed rule were under consideration for designation by the FWCC and/or local governments, and questioned our decision to include such sites in our proposed rule, given the likelihood that these sites would be appropriately regulated without Federal designation.

Response: Several of the sites in our proposed rule overlapped with recent State or local actions (see our response to "Comment 1"). We first became aware of this overlap when the Plaintiffs in the State lawsuit made the terms of their draft Settlement Agreement public. Due to our inability to discuss pending legal actions with the FWCC, and our need to meet our settlement obligations, we published the proposed rule. We are publishing this final rule at this time because these actions will reduce the take of manatees and are necessary to fulfill our settlement obligations.

Comment 7: One commenter noted that the sites identified in our proposed rule differed in some respects from the "areas with inadequate protection" identified in our "Final Interim Strategy on Section 7 Consultations for Watercraft Access Projects That May Indirectly Affect the Florida Manatee" (Final Interim Strategy) (66 FR 14924).

Response: The areas we proposed for designation as Federal manatee protection areas were in some cases different from the waterbodies we identified as "areas with inadequate protection" for the purposes of the Final Interim Strategy.

The standard for manatee protection areas is that such establishment is "necessary to prevent the taking of one or more manatees" (50 CFR Part 17.103). Because "take" is very broadly defined, action of some form could be justified for many coastal waters in the State of Florida. In order to focus our efforts in the current rulemaking, we defined four criteria for selecting sites as follows—(1) Evidence that the site is used by manatees; (2) historic evidence of take (harm or harassment) of manatees at the site or similar sites due to waterborne human activities; (3) the potential for additional take based on manatee and human use of the site; and (4) a determination that we could implement effective measures at the site to address the identified problem. Again, many sites throughout Florida could be argued to satisfy the first three criteria to some extent; however, the vast majority of sites do not satisfy criterion four because of limitations we face because many areas present manatee protection problems due to circumstances that are difficult or impossible to correct within our manatee protection area authority and in terms of personnel and budget.

On the other hand, "areas with inadequate protection" were identified in the context of conducting ESA section 7 consultations regarding U.S. Army Corps of Engineers authorization of boat access facilities. In this context, watercraft-related "take" of manatees is an indirect effect of the authorization of a boat access facility. In order to be considered an "area with inadequate protection" in this context, the existing protection measures on a given waterbody must be such that the likely result of adding additional boat access to the area is a foreseeable increase in watercraft-related take. This could be because current protection measures are either totally lacking or are inadequate in areas with chronic watercraft-related take, because of a lack of adequate law enforcement, or because of issues peculiar to the waterbody such that incidental take of manatees is inevitable regardless of protective measures implemented.

As such, the standard for identifying a waterbody as an "area with inadequate protection" is different than that for establishing a manatee protection area. This is why several areas proposed as manatee protection areas are not also "areas with inadequate protection."

Comment 8: Some commenters expressed concern that human safety could be compromised by forcing all boaters into narrow channels, bottlenecks, and other confined circumstances.

Response: We were very cognizant of human safety issues when we designed these manatee protection areas. While human safety is the responsibility of all vessel operators, we made sure that zone designations were consistent with accepted safe-designation practices and will ensure that all sign plans and signs meet Federal and State signage requirements to eliminate human safety concerns. Furthermore, most manatee refuge measures described in this final rule require vessels to proceed at slow speed and, as such, should enhance boater safety in these areas.

Comment 9: Some commenters expressed concern that human safety will be compromised by requiring vessel operators to proceed at slow speeds in the face of emergency situations, like rapidly approaching thunderstorms or medical emergencies.

Response: Federal regulations allow for an exemption to manatee protection area regulations in the event of emergency. Specifically, our regulations (50 CFR part 17.105(c)) state that "any person may engage in any activity otherwise prohibited by this subsection if such activity is reasonably necessary to prevent the loss of life or property due to weather conditions or other reasonably unforeseen circumstances, or to render necessary assistance to persons or property."

Comment 10: Several commenters noted that the size of the manatee population appears to have increased over time, and questioned the need for additional protective measures.

Response: A discussion of the current status of the manatee population is provided in the "Background" section. Two of the criteria for determining whether species are endangered or threatened under section 4(a) of the ESA are "(D) the inadequacy of existing regulatory mechanisms; and (E) other natural or manmade factors affecting its continued existence." (16 U.S.C. 1533(a)) There has been no confirmation

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that significant threats to the species, including human-related mortality, injury, and harassment, and habitat alteration, have been reduced or eliminated. Furthermore, the MMPA sets a general moratorium for the taking of marine mammals. Regardless of the size or status of the manatee population, all takings are prohibited unless authorized under the MMPA.

Minimizing, to the extent practical, the taking of manatees as a result of watercraft collisions is a high priority in manatee recovery and management programs. Currently, the areas addressed in this rule have a significant potential for "take" and/or are characterized by limited current protective regulations.

Comment 11: Several commenters stated that we should focus on better enforcement of existing regulations before imposing additional restrictions on boaters.

Response: This issue was identified as one of the alternatives addressed within the Manatee Protection Area Environmental Assessment. While improvements in both the enforcement and education arenas are important to enhancing manatee protection, such improvements may be of little effect when applied to areas without regulations or with inadequate protection to minimize the take of manatees. The State has placed an increased emphasis on enforcement, and we have made a substantial commitment to enforcing manatee protection areas over the past few years. We anticipate that these efforts will continue.

Comment 12: Some commenters recommended that we abstain from designation of Federal manatee protection areas and allow the State and local authorities to provide for manatee protection.

Response: We are the Federal agency responsible for manatee management and protection activities under both the ESA and the MMPA. As such, we must take an active role in regulatory activities involving the manatee, including designating manatee refuges and sanctuaries. Furthermore, we must complete this rulemaking process, pursuant to our settlement agreement. This in no way diminishes the important role that State, local, and other Federal agencies play, or the role of the private sector. Recognition is given to both State and local efforts to establish manatee protection, and we are committed to supporting these efforts. We have stated that the State should have leadership in establishing additional manatee protection areas. With this final rule, we have focused on sites where we determined that Federal action can effectively address the needs in the particular area.

Comment 13: Some commenters stated that the definition of "slow speed" is arbitrary and unenforceable, and recommended that we consider using some other standard, such as a "miles per hour" limit to regulate vessel speed.

Response: The definition of "slow speed" used in this rule is very similar to that used by the State in the Florida Manatee Sanctuary Act (F.A.C. 68C–22). This definition is generally understood by mariners and has proven to be enforceable. It is important to use a definition of "slow speed" that complements that used by the State. Ten of the sites included in this final rule are located in direct proximity to areas regulated by the State. The use of a similar definition will ensure consistency and lessen confusion among the boating public.

The establishment of another definition of "slow speed" or the use of a "miles per hour" speed zone poses many problems. Establishment of a "miles per hour" standard would necessitate all boats operating in these zones to be equipped with accurate speedometers. This standard would also require enforcement officers to procure equipment and attend periodic training to enforce these conditions. Of more importance is that boats operating at speeds in excess of what is allowed under the current definition of "slow speed" pose increased threats to manatees. Boats proceeding while "plowing the water" with elevated bows, such as occurs when a vessel is operating at greater than "slow speed," both obscure the forward vision of the operator and place the propulsion systems of the watercraft lower in the water. Both of these conditions increase the likelihood of a vessel collision with a manatee. With a subsequent increase of speed, the configuration of the vessel changes to one of planing. While this condition places the hull and outdrives of vessels higher in the water, it also decreases the reaction time available for both the operator and the manatee to detect one another and take action to avoid collision.

Comment 14: Many commenters stated that we have not adequately evaluated the economic impact of these designations.

Response: The economic analysis conducted as part of this rulemaking determined that these actions would not have a significant economic impact. Through the regulation promulgation process, including public hearings and comment periods, we sought comments and information on activities known to occur at these sites. Based on these comments and sources of information, it is apparent that some users may be inconvenienced by the need to proceed at slower speeds or the need to use alternative sites. To address the concerns of adjoining property owners, we have provided exceptions to ensure that they are not adversely affected by these designations. As such, we believe that this rule will not result in a significant economic dislocation.

Comment 15: One commenter suggested that our proposed rule was contrary to the spirit and intent of Executive Order 12866, because we did not contact the commenter directly regarding the impact the proposed rule may have upon the individual's operations.

Response: As part of the rulemaking process, we published an advance notice of proposed rulemaking in which we solicited information from the public regarding issues that should be addressed through the rulemaking. We also held six public workshops that provided additional opportunities for the public to provide input and voice concerns. With publication of the proposed rule, we afforded a 60-day period for submitting written comments, and held four public hearings. Through the commenter's participation in this process, we are aware of the commenter's concerns. We have responded to those concerns to the best of our ability with this final rule and our intent to pursue amendments to our regulations. We have also updated the information regarding the economic effects of the rule, as appropriate, to reflect information submitted by the commenter. These actions meet the requirements-of Executive Order 12866.

Comment 16: Many commenters suggested that technological advances may now make it possible for boaters and manatees to better detect the presence of one another and, thereby, avoid collisions, and recommended that these technologies be employed instead of restricting boat speeds.

Response: Ongoing research is evaluating the sensory abilities of the manatee and the environmental factors that may affect these abilities. Potential technologies may enable boaters to better detect the presence of manatees. However, no technology is currently available that is proven to be effective in avoiding collisions between manatees and boats. For the foreseeable future, detection and avoidance technology will likely be used to supplement, rather than replace, traditional management strategies.

Comment 17: Some commenters recommended that we selectively regulate watercraft and provide exemptions for those not responsible for take of manatees. These commenters stated that most watercraft-related manatee mortality is caused by large vessels and/or barges, and that boats without propellers do not harm manatees.

Response: The manatee mortality database contains information on the necropsy results of over 4,000 manatees. From this large information source, several interesting aspects of watercraft-related manatee mortality may be surmised. It is impossible to determine, in most cases, the size of the boat which struck a manatee. The exception to this is the very few cases where a responsible boater has reported a collision and researchers are able to compare the actual vessel to the observed injuries. In a few documented cases, manatees were obviously killed by a large vessel, the symptoms of which include massive crushing and or bifurcation (slicing into pieces) of the animal. The vast majority of cases involving watercraft-related mortality involve less dramatic injuries. Investigations comparing blade diameter and pitch indicate that the majority of manatees killed from watercraft-related collision are struck by smaller, fast-moving vessels.

Injuries to manatees from vessel impacts can be characterized as either lacerations or blunt trauma. Percentages generated by the mortality data-base indicate that 55 percent of the watercraft-related mortalities are the result of blunt trauma. Such trauma can result from impacts from vessel hulls, lower units, or other vessel components. Vessels without propellers (*e.g.*, personal watercraft) still have the potential to "take" manatees.

Comment 18: Some commenters recommended that we consider factors such as water depth and the presence of aquatic vegetation when deciding the boundaries of manatee protection areas rather than base boundaries on unnatural features such as navigation channels or bank-to-bank designation of waterbodies.

Response: We considered such environmental features in evaluating potential manatee protection sites, because these factors influence manatee use of areas. There have been instances where habitat features (such as water depth) have been used to delineate boundaries of protection areas. The disadvantage of the use of such features for the purpose of this rule is the complexity and costs associated with such designs, and the potential for causing confusion among the regulated public resulting in poor compliance. Protection areas designed around environmental factors tend to be irregular and complex. This, in turn, results in significant increases in costs of implementation in terms of posting and the subsequent costs of maintenance. The limited resources available for this program required a less complex strategy for providing adequate protection for manatees and reasonable use of these areas by the public.

Comment 19: Commenters pointed out that a year-round, slow speed manatee refuge in the area of Pansy Bayou would preclude a local water ski program that practices and performs in the area and urged that we consider measures that would allow them to continue their activities.

Response: We are unable to adopt measures that would allow program participants to continue their activities in the context of this rule. We will address this request in a subsequent rulemaking that will re-describe the restricted activities or propose other means of resolving this issue while providing sufficient protection for manatees.

Summary of Changes From the Proposed Rule

Pursuant to comments from the FWCC, various counties, and the public at large, we have made changes to the individual proposed manatee sanctuary and refuge designations to better coordinate with site-specific seasonal and areal limits, to improve consistency with local regulations, and to improve boater safety. In our proposed and emergency rules, we described the winter season to include that period from October 1 through March 31. Upon re-evaluation, it has become apparent that the modified November 15 through March 31 period better captures the time when manatees first appear and are most abundant at these sites; this period of time is also consistent with State and local regulations. As such, we have adopted this season for consistency, to reduce confusion potentially caused by the different timeframes, and at the same time, provide for adequate protection for manatees. Site-specific changes are described below, and summarized in Table 1. As can be seen in that table, the total of the areas designated as manatee protection areas by this rule is 2,562.84 hectares (6,333.10 acres).

We have also made some editorial changes to the regulations that set forth the Barge Canal and Sykes Creek Manatee Refuges. These two refuges were established by the final rule of January 7, 2002 (67 FR 680). We are making nonsubstantive changes to the text that sets forth these refuges simply to make subparagraphs (c)(1) and (c)(2) of 50 CFR 17.108 consistent with the new subparagraphs being added through this final rule—(c)(3) through (c)(11).

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Table 1. Summary of changes from the August 10, 2001, proposed rule and the final rule.

Site	County	Changes	Final Sanctuary Designation	Final Refuge Designation	Final Season	As Proposed Hectares (Acres)	Final Hectares (Acres)	Change in Hectares (Acres)
Blue Waters Manatee Sanctuary	Citrus	Changed from "No Entry, October 1 to March 31" to "No Entry, November 15 to March 31" for consistency with existing measures. (Reduced area, moved boundaries for consistency with existing State measures.)	No Entry	N/A	November 15 to March 31	1.70 (4.10)	0.67 (1.66)	-1.03 (-2.44)
Bartow Electric Generating Plant Manatee Sanctuary	Pinellas	Changed from "October 1 to March 31" to "November 15 to March 31" for consistency with existing measures. Reduced area; moved boundaries for consistency with existing County ordinance, to ensure ability to post on privately owned water bottoms, and to comply with permitting requirements.)	No Entry	N/A	November 15 through March 31	73.50 (181.50)	12.07 (29.82)	-61.43 (-151.68)
Tampa Electric Company's Big Bend Manatee Sanctuary	Hillsborough	Changed from "October 1 to March 31" to "November 15 to March 31" for consistency with existing measures. (Reduced area; moved boundaries for consistency with existing State and County measures, to ensure ability to post on privately owned water bottoms, and to comply with permitting requirements.)	No Entry	N/A	November 15 through March 31	30.80 (76.20)	12.08 (29.85)	-18.72 (-46.35)
Tampa Electric Company's Port Sutton Manatee Sanctuary	Hillsborough	Changed from "October 1 to March 31" to "November 15 to March 31" for consistency with existing measures.	No Entry	N/A	November 15 through March 31	1.10 (2.70)	1.10 (2.70)	No Change
South Gandy Navigation Channel Manatee Refuge	Pinellas	Withdrawn due to more protective existing County ordinance in area. (Includes year-round coverage, expanded area, good existing signage, and active enforcement. County exemptions parallel FWS exemption process.)				30.30 (74.80)	None	-30.30 (-74.80)
Tampa Electric Company's Big Bend Manatee Refuge	Hillsborough	Changed from "October 1 to March 31" to "November 15 to March 31" for consistency with existing measures. (Modified area; moved boundaries for consistency with existing State and County measures, to ensure ability to post on privately owned water bottoms, and to comply with permitting requirements. Boundary movement included moving a portion of the aforementioned "Tampa Electric Company's Big Bend Manatee Sanctuary" occasionally used by foraging manatees into the refuge to ensure consistency with State regulations. Changing hectares/acreages also reflect a mapping error from the proposed rule which included uplands in the areal assessment.)	N/A	Idle Speed	November 15 through March 31	93.50 [1] (230.90)	89.35 (220.79)	-4.15 (-10.11)
Tampa Electric Company's Port Sutton Manatee Refuge	Hillsborough	Changed from "October 1 to March 31" to "November 15 to March 31" for consistency with existing measures.	N/A	Idle Speed	November 15 through March 31	39.20 (96.90)	39.20 (96.90)	No Change
Pansy Bayou Manatee Refuge	Sarasota	None.	N/A	Slow Speed	Year-round	47.00 (116.10)	47.00 (116.10)	No Change

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Little Sarasota Bay Manatee Refuge	Sarasota	Changed from "Channel Exempt' to "25 MPH in Channel" for consistency with existing measures.	N/A	Slow Speed, 25 MPH in Channel	Year-round	214.20 (529.40)	214.20 (529.40)	No Change
Lemon Bay Manatee Refuge	Charlotte	Changed from "Channel Exempt' to "25 MPH in Channel" for consistency with existing measures.	N/A	Slow Speed, 25 MPH in Channel	Year-round	383.61 (948.06)	383.61 (948.06)	No Change
Peace River Manatee Refuge	Charlotte/ De Soto	Reduced shoreline buffers to 1000' from shore between US 41 and I-75 bridges; changed from "Channel Exempt' to "25 MPH in Channel" in open area between US 41 and I-75 bridges; changed from "Channel Exempt' to "25 MPH in Channel" in area from I-75 to Channel Marker "14"; changed from "slow speed" to "25 MPH" in area upstream of Channel Marker "14"; included provision to allow for exemption in channel. These changes were made to promote consistency with State measures where appropriate. (Changes did not result in areal modifications. Area modifications were made though, to account for a mapping error which included uplands within the Peace River flood plains.)	N/A	See "Changes"	Year-round	4,892.00 [2] (12,088.10)	1,698.11 (4,196.11)	-3,193.89 (-7,891.99)
Shell Island Manatee Refuge	Lee	None.	N/A	Slow Speed	Year-round	32.60 (80.50)	32.60 (80.50)	No Change
Haulover Canal Manatee Refuge	Brevard	Eliminated protection areas from the approaches in deference to more extensive State measures. (As a result, proposed refuge is reduced in area.)	N/A	Slow Speed	Year-round	276.30 (682.70)	8.95 (22.11)	-267.35 (-660.59)
Cocoa Beach Manatee Refuge	Brevard	None.	N/A	Slow Speed	Year-round	23.90 (59.10)	23.90 (59.10)	No Change
TOTAL:						6,139.71 (15,171.06)	2,562.84 (6,333.10)	-3,576.87 (-8,837.71)

[1] Includes 17.45 hectares (43.11 acres) of uplands.
[2] Includes 3,193.89 hectares (7,891.99 acres) of uplands

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Blue Waters Manatee Sanctuary

In order to minimize confusion with a recently adopted FWCC protection area in Blue Waters and to promote boater safety, we have revised the area of our originally designated sanctuary to conform with the FWCC's designation. This reduction, from 1.7 hectares (ha) (4.1 acres), as originally proposed, to 0.67 ha (1.66 acres), entails removing protection from the spring boil to the northern limit of the newly described protection area and adding a shoreline buffer to the south of the re-configured northern sanctuary. These changes will not compromise manatee protection inasmuch as the public will be precluded in the areas upstream of the site through the site's "no entry" designation. We have also changed the period of protection from October 1 through March 31 to November 15 through March 31. This conforms with the period of highest manatee use, known manatee use areas on-site, is consistent with local seasonal measures, and minimizes confusion, thereby improving compliance with this measure.

Bartow Electric Generating Plant Manatee Sanctuary

Our manatee sanctuary has been reduced in size from 73.5 ha (181.5 acres), as originally proposed, to 12.07 ha (29.82 acres), and the boundaries and seasonal limits have been changed to provide consistency with local county measures. That portion of the sanctuary within the gated area of the Bartow outfall, where there is no access for manatees or the boating public, has been removed. Other areas included in our proposed rule were also dropped, in view of broader, existing Pinellas County protections in these areas, specifically, the county "combustion motor exclusion zone," in effect from November 15 through March 31. The manatee sanctuary was further focused to address harassment within the immediate area of the discharge. The boundary lines were re-drawn to promote consistency with the local ordinance and to minimize confusion to the public. Furthermore, the water bottoms are privately owned and we were advised by the property owner that they would have problems allowing us to place signs in the area if the signs did not support local ordinances, ordinances that they have strongly supported. The period of protection was changed from October 1 through March 31 to November 15 through March 31. This conforms to that period when manatees first appear in the area, periods of highest manatee use, is consistent with local seasonal measures, and minimizes confusion, thereby improving compliance with this measure.

South Gandy Navigation Channel Manatee Refuge

Pinellas County adopted a regulatory zone within the South Gandy Navigation Channel that is more restrictive than ours. The county has designated the entire length of the channel as a "slow speed" area from its upper most reaches out into Tampa Bay. The measure protects manatees throughout the year from watercraft collisions in this high boat traffic area. The only exemptions to these regulations are for law enforcement officers and county officials who may exceed posted measures when conducting official business or for human safety and property concerns. There are no exemptions to these restrictions for the general public. The county has posted this area and is actively enforcing the zone. We have been advised by the county that their law enforcement officers have issued 43 citations and 82 warnings to violators since posting in March 2002. The county is also conducting a study, in conjunction with the State, to ensure the effectiveness of these conservation measures.

Our manatee refuge designation in this area, as described in the proposed and emergency rules, includes only a portion of the county's protection area and conflicts with the county's year-round designation. We have been advised by the FWCC Division of Law Enforcement that the adoption of a Federal sign plan that is inconsistent with local measures would preclude us from posting a Federal zone in this area and that they will not issue a permit that contradicts or confuses existing measures. Furthermore, the water bottoms are privately owned and we were advised by the property owner that they would have problems allowing us to place signs in the area if they did not support local ordinances, ordinances that they have strongly supported. Because of these issues and because the local ordinance is larger in area, is of longer duration (year-round instead of seasonal), provides the same type of protection (*i.e.*, slow speed), does not allow exceptions, and because we believe that the area will be adequately enforced, we are withdrawing our proposal and emergency designation at this site. We will, however, continue to monitor manatee take in this area. In the event that additional conservation measures are determined to be needed in Pinellas County, we will work with the county to address these needs. If the existing conservation measures or any additional necessary conservation measures are not implemented, the Service will reconsider Federal designation again in the future.

Tampa Electric Company Big Bend Manatee Sanctuary

On Sept. 20th, 2002, we emergency-designated a manatee sanctuary in the Tampa Electric Company's Big Bend power plant discharge, in the approaches to the west, and in an area to the southeast of the discharge. We also emergency-designated a manatee refuge to the south of the discharge simultaneously. These measures were designed to enhance and improve consistency with new and existing protection measures in the area. Specifically, the FWCC designated the eastern end of the discharge canal as a no entry area, the approaches as a slow speed area, and the area to the south as a caution area. The county further designated year-round idle speed zones in the canals adjacent to our manatee refuge, a year-round idle speed zone at the point where the manatee refuge enters Tampa Bay, and year-round slow speed zones to the north and south of the manatee refuge entrance.

To accommodate these measures, we have modified our seasonal no entry zone (manatee sanctuary) to include that area inside the discharge canal. We have modified the manatee sanctuary at its western end because of the conflicting State and local regulations, which designate idle speed and slow speed measures in this area (such designations already minimize the likelihood of boat collisions with manatees using the approaches to these sites) during different times of the year. The manatee sanctuary is further modified at the southeast corner to ensure consistency with the State's actions; this site is occasionally used by foraging manatees and is now included in our manatee refuge designation. We have further been advised by the FWCC Division of Law Enforcement that the adoption of a Federal sign plan that is inconsistent with local measures would preclude us from posting a Federal zone in this area and that they will not issue a permit that contradicts or confuses existing measures.

These modifications have changed the area of this manatee sanctuary as originally proposed. The area of the original site included 30.8 ha (76.2 acres). Subsequent to the changes, the site now includes 12.08 ha (29.85 acres).

Tampa Electric Company Big Bend Manatee Refuge

Our manatee refuge has been modified to include the aforementioned portion of the proposed Tampa Electric Company Big Bend Manatee Sanctuary. While the addition of this portion of the manatee sanctuary will increase the effective area of our manatee refuge, the total area of the refuge appears to be decreasing. The original acreage inadvertently included portions of uplands in the southwest corner of the refuge. The original acreage should have been 76.05 ha (187.89 acres), a decrease of 17.45 ha (or 43.11 acres) from the originally proposed and emergency designated 93.5 ha (230.9 acres). We have added the acreage from the sanctuary and subtracted the upland acreage. As such, the area of this manatee refuge is now 89.35 ha (220.79 acres). We believe this modification provides equal, if not greater, protection for manatees.

Additionally, we have been advised by the FWCC Division of Law Enforcement that the adoption of a Federal sign plan that is inconsistent with local measures would preclude us from posting a Federal zone in this area and that they will not issue a permit that contradicts or confuses existing measures. As such, we have modified this area to conform to State and local measures to promote consistency with signage and regulations and to minimize confusion to the boating public.

Little Sarasota Bay Manatee Refuge

We have modified our original proposal, which designated this area as "slow speed, channel exempt," to require that watercraft not exceed 40 kilometers (km) per hour (25 miles per hour) in the channel so that we are consistent with more restrictive FWCC regulations in adjacent waters, to avoid confusion among boaters, and to promote boater safety. The FWCC designated sites to the north and south as "slow speed, 25 miles per hour in the channel" areas. Because this measure is more restrictive than our original "channel exempt" designation, we believe this modification will increase manatee protection at this site over our original proposal.

Lemon Bay Refuge

The FWCC has adopted a "slow speed, 25 miles per hour in the channel" manatee protection measure at this site. As such, we have modified our original proposal which designated this area as "slow speed, channel exempt" to require that watercraft not exceed 40 km per hour (25 miles per hour) in the channel in order to be consistent with the more restrictive FWCC regulations, to avoid confusion among boaters, and to promote boater safety. We believe that this modification, which is more restrictive than our original proposal, will increase manatee protection at this site over our original proposal.

Peace River Manatee Refuge

The FWCC has adopted manatee protection measures that overlap and conflict with our original proposal. We have modified our designation to conform to the FWCC's manatee protection measures where we believe these changes do not reduce manatee protection. However, differences between our regulations and FWCC regulations remain.

The changes from our original proposal are as follows. We have reduced the extent of our slow speed zone between the U.S. Highway 41 and I–75 bridges to conform with the FWCC's 300-meters (1,000-feet) shoreline buffer zones. The area between the buffer zones has been designated to require boat operators to operate watercraft at speeds not to exceed 40 km per hour (25 miles per hour). We are changing the designation upstream of red channel marker 14, in Charlotte County just south of the DeSoto County line, from slow speed channel exempt to 40 km per hour (25 miles per hour) bank to bank; and, should the U.S. Coast Guard or the State mark a navigation channel or approve a marked navigation channel in an area approximately 1.6 km (1 mile) downstream of the railroad trestles in Shell Creek, we will allow watercraft to travel up to 40 km per hour (25 miles per hour) in the channel in this area as well.

We believe our final designation, modified from our original proposal, will provide adequate protection for manatees in the Peace River. This conclusion is based on a combination of manatee carcass recovery sites and sighting locations. This designation is very similar to the plan which was originally proposed for public review by the FWCC in May 2002, and is more protective than the plan which was ultimately approved. For example, the final FWCC action provides for an additional boat travel corridor in the lower portions of the river and reduced manatee protection in portions of Hunter Creek where there is significant manatee use. At this time, we are unable to accommodate all aspects of the FWCC's plan without reducing overall levels of manatee protection or making significant changes from our original proposal, changes that would require additional public reviews. However, we will coordinate signage and posting plans with FWCC personnel to minimize confusion to the regulated public.

We have reduced the size of the original area from 4,892.00 ha (12,088.10 acres) to 1,698.11 ha (4,196.11 acres) because of a mapping error. This error included calculating the area of uplands within the Peace River flood plain and including this area in the size calculation for total area of the manatee refuge.

Haulover Canal Manatee Refuge

In our original proposal, we designated the canal and approaches (out to 0.8 km or 0.5 mile) as a slow speed manatee refuge. Subsequent to the proposal, the FWCC adopted manatee protection measures that overlap the approaches immediately east and west of the canal. We believe that the State measures in the approaches provide adequate protection for manatees. However, the FWCC did not include the canal proper in their rule. The canal proper, located on the Merritt Island National Wildlife Refuge, is currently designated as a slow speed area, pursuant to an existing national wildlife refuge designation, authorized under the National Wildlife Refuge Administration Act. This Act consolidated the authorities for areas administered by us, established the National Fish and Wildlife Refuge System, and provided that all property in the system shall be administered by us for the conservation, management, and, where appropriate, restoration of the fish, wildlife, and plant resources and their habitats within the United States for the benefit of present and future generations of Americans. We believe that our decision to protect this site through our ESA and MMPA authority increases manatee protection beyond that provided by the State and the National Wildlife Refuge designation, and improves the enforcement of the existing slow speed zones by making the legal restrictions consistent with those in other manatee protection areas (*i.e.*, protected under the ESA and MMPA). We believe the changes will not reduce protection of manatees from the measures originally proposed.

Areas Designated as Manatee Sanctuaries and Refuges

Blue Waters Manatee Sanctuary

We are establishing a seasonal manatee sanctuary, containing approximately 0.67 ha (1.66 acres), at the headwaters of the Homosassa River,

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adjacent to the Homosassa Springs State Wildlife Park, commonly referred to as the Blue Waters, in Citrus County. All waterborne activities will be prohibited in this area from November 15 through March 31. Homosassa Springs State Wildlife Park, located directly upstream from the site, is not accessible to the manatees wintering at Blue Waters because the spring head is used to confine and treat distressed manatees.

The headwaters of the Homosassa River are an important wintering site for manatees (Service, unpublished data). The site is in close proximity to the Homosassa Spring, a Class 1 magnitude spring, which provides warm water from the Florida aquifer. This warm water is essential to the survival and well-being of a significant number of manatees during cold weather periods.

Manatee presence has been documented in this area through aerial surveys, photo-identification studies, telemetry studies, and a carcass salvage program. These studies, begun in the late 1960s, have documented historical manatee use of the area (Hartman 1979). Initially, use was primarily associated with the springs during the winter. In recent years, however, manatees have become more common during the summer months, as documented through surveys and field observations (Joyce Kleen, Chassahowitzka National Wildlife Refuge, pers. comm. 2002). During the course of aerial surveys, a peak count of 123 manatees were sighted here on a single winter day (Joyce Kleen, pers. comm. 2002). Manatee deaths have been recorded in the area since 1974. Eight carcasses were recovered within 0.8 km (0.5 mile) of the site, including one from within the manatee sanctuary. Four of these were attributed to watercraft collision, including three watercraft-related deaths in the past five years. These deaths occurred between the months of November and March, that period when manatees are most abundant (Florida Marine Research Institute Manatee Mortality Database).

The presence of manatees, coupled with the shallow clear nature of the water, has attracted an increasingly large number of swimmers and divers to the site. These visitors come to the site to swim with manatees. The waters of the Homosassa River are currently regulated as a State-designated idle speed zone, and the State Park maintains a no-entry zone from a line approximately 61 meters (200 feet) upstream of the confluence of the spring run and the northeast fork of the river. These measures were recently enhanced by the FWCC, which adopted a rule designating this area as a seasonal no entry area. The State will post this area prior to November 15, 2002 (Kipp Frohlich, pers comm. 2002). The number of visitors has grown to the point where manatees are observed leaving the site and swimming downstream into colder waters (Gorzelany, Mote Marine Laboratory, pers. comm. 2001). The establishment of a manatee sanctuary at this location will provide wintering manatees with an undisturbed area free from harassment and will continue to provide the public with opportunities to interact with manatees outside of the protected area.

Bartow Electric Generating Plant Manatee Sanctuary

We are establishing a seasonal manatee sanctuary, containing approximately 12.07 ha (29.82 acres), at the warm water discharge of the Bartow Electric Generating Plant in Tampa Bay, Pinellas County. This seasonal closure will prohibit all waterborne activity at this site from November 15 through March 31, inclusive. We have designated this sanctuary based on observed manatee use patterns documented during cold weather periods (Hartman 1979, Wright *et al.* 2002, Weigle *et al.* 2001) and on observations of takings known to occur at warm water sites (Tyson 1998, Wooding 1997).

Warm water effluent from this plant attracts manatees during cold weather periods. The maximum manatee count at this site was 102 manatees on February 25, 1999 (FWCC, unpublished data). Similar to other warm water discharges, large numbers of fish are also attracted to the heated effluent at this site. As a result, both anglers and manatee enthusiasts are attracted to the site, leading to increased potential for cases of harm and harassment to manatees.

Researchers have documented boat operators, anglers, and swimmers disrupting wintering manatees in outfall areas. Boat operators maneuvering within manatee aggregations, anglers hooking manatees, and people pursuing manatees disturb and disperse these resting animals, at times forcing them into colder, life-threatening waters (Tyson 1998). Lethal takes are also known to occur—manatees have died from entanglement with fishing line and are vulnerable to boat collisions, especially in high speed unregulated areas (Florida Marine Research Institute Manatee Mortality Database 2002).

Tampa Electric Company's Big Bend Manatee Sanctuary

We are establishing a manatee sanctuary, containing approximately 12.08 ha (29.85 acres), at the Tampa Electric Company's Big Bend Electric Generating Station's discharge canal in Tampa Bay, Hillsborough County. This closure will prohibit all waterborne activity at this site from November 15 through March 31. We are also establishing a manatee refuge in the area south of this sanctuary (*see* "Tampa Electric Company's Big Bend Manatee Refuge" below).

Manatee presence has been documented in this area through aerial surveys, photo-identification studies, telemetry studies, and a carcass salvage program. Two types of surveys have been used to document manatee use of this site. Synoptic surveys, conducted during the winter to provide minimum counts, have been conducted here since 1989. Per these surveys, the most manatees counted at this site was 316 on January 6, 2001 (FWCC, unpublished data). Distribution and abundance surveys, conducted in the area between November 1987 and June 1997, have documented 2,470 manatees using the site and its immediate surroundings throughout the year. Per these survey parameters, there were 510 sightings (a sighting may include multiple manatees) observed during the survey period. Observed activities primarily included resting manatees, followed by observations of traveling animals (Florida Marine Research Institute Aerial Survey Database). Fifteen carcasses were recovered from this area, including three carcasses recovered within the manatee sanctuary and 12 recovered within 0.8 km (0.5 mile) of the manatee sanctuary. These deaths, recorded since 1974, included five watercraft-related deaths, including two that occurred within the past five years. Deaths occurred between November and April (Florida Marine Research Institute Manatee Mortality Database).

We decided to establish this sanctuary based on observed manatee use patterns documented at this site (Wright *et al.* 2002, Weigle *et al.* 2001, Hartman 1979) and on observations of takings known to occur at this (FWCC, unpubl. data.) and other similar sites (Tyson 1998, Wooding 1997). Similar to other discharges, large numbers of fish and manatees are attracted to this heated effluent. As a result, both anglers and manatee enthusiasts are attracted to the site, leading to increased potential for cases of harm and harassment of manatees.

Researchers have documented boat operators, anglers, and swimmers disrupting manatees in outfall areas. Boat operators maneuvering within manatee aggregations, anglers hooking manatees, and people pursuing manatees, disturb and disperse these resting animals, at times forcing them into colder, life-threatening waters (Tyson 1998). Lethal takes are also known to occur—manatees have died from entanglement with fishing line and are vulnerable to boat collisions, especially in high speed unregulated areas (Florida Marine Research Institute Manatee Mortality Database 2002).

There is currently a State-designated, seasonal, no-entry zone in the immediate vicinity of the Big Bend discharge. We believe that the zone is too small, however, to prevent harassment of manatees by fishermen, who cast into the aggregation area; therefore, we have designated a larger area. A larger manatee sanctuary at this site will improve the protection area and should adequately protect manatees from harassment from fishing and waterborne activities.

Tampa Electric Company's Big Bend Manatee Refuge

We are establishing a manatee refuge, encompassing approximately 89.35 ha (220.79 areas), in the waters adjacent to and south of the manatee sanctuary at the Tampa Electric Company's Big Bend Electric Generating Station on Tampa Bay in Hillsborough County to provide watercraft ingress and egress to the lagoon and canals in North Apollo Beach. Watercraft activity within this refuge will be regulated to idle speed from November 15 through March 31.

Manatee presence has been documented in this area through aerial surveys, photo-identification studies, telemetry studies, and a carcass salvage program. Distribution and abundance surveys, conducted in the area between November 1987 and June 1997, have documented 2,516 manatees using the site and its immediate surroundings throughout the year. Per these survey parameters, there were 538 sightings (a sighting may include multiple manatees) observed during the survey period. Observed activities primarily included resting manatees, followed by observations of traveling animals (Florida Marine Research Institute Aerial Survey Database). Eighteen manatee carcasses were recovered from this area, including five from within the manatee refuge and 13 within a 0.8 km (0.5 mile) radius of the site. These deaths, recorded since 1974, include six watercraft-related deaths, including two that occurred within the past five years. Deaths occurred throughout the year (Florida Marine Research Institute Manatee Mortality Database).

The likelihood of adverse manatee encounters with watercraft is increased in the vicinity of aggregation sites, such as the warm water discharge of the Tampa Electric Company's Big Bend Electric Generating Station, because of the greater concentration of animals within these confined areas. Regulating this area as an idle-speed zone rather than as a sanctuary will afford watercraft ingress and egress through the area with a minimum anticipated adverse impact to manatees.

Port Sutton Manatee Sanctuary

We are establishing a seasonal manatee sanctuary, encompassing approximately 1.1 ha (2.7 acres), at the warm water discharge of the Tampa Electric Company's Gannon Electric Generating Station in Tampa Bay, Hillsborough County. This seasonal closure will prohibit all waterborne activity at this site from November 15 through March 31, inclusive. In addition, we are designating a manatee refuge in the area surrounding the sanctuary (see "Port Sutton Manatee Refuge" below). We have decided to establish this sanctuary based on observed manatee use patterns documented during cold weather periods when the plant was discharging warm water (Wright *et al.* 2002, Weigle *et al.* 2001, Hartman 1979) and on observations of takings known to occur at other warm water sites (Tyson 1998, Wooding 1997).

Warm water effluent from this plant has previously attracted manatees during cold weather periods. Similar to other warm water discharges, large numbers of fish are attracted to this heated effluent. As such, both anglers and manatee enthusiasts could be attracted to the site, leading to an increased potential for cases of harm and harassment to manatees. The area is presently closed to public access because of security concerns. However, the sanctuary designation will ensure adequate manatee protection should the area reopen in the future.

Manatee presence has been documented in this area through aerial surveys, photo-identification studies, telemetry studies, and a carcass salvage program. Two types of surveys have been used to document manatee use of this site. Synoptic surveys, conducted during the winter to provide minimum counts, have been conducted here since 1989. Per these surveys, between 25 and 50 manatees have been counted in this area (FWCC, unpublished data). Distribution and abundance surveys, conducted in the area between November 1987 and June 1997, have documented 106 manatees using the site and its immediate surroundings on a sporadic basis throughout the year. Per these survey parameters, there were 44 sightings (a sighting may include multiple manatees) observed during the survey period. Observed activities primarily included resting manatees, followed by observations of traveling animals (Florida Marine Research Institute Aerial Survey Database). Four manatee carcasses were recovered within a 0.8 km (0.5 mile) radius of the site. These deaths, recorded since 1974, included a single watercraft-related death and a death associated with cold. Deaths occurred in December, January, and May (Florida Marine Research Institute Manatee Mortality Database).

Researchers have documented boat operators, anglers, and swimmers disrupting wintering manatees in outfall areas. Boat operators maneuvering within manatee aggregations, anglers hooking manatees, and people pursuing manatees, disturb and disperse these resting animals, at times forcing them into colder, life-threatening waters (Tyson 1998). Lethal takes are also known to occur—manatees have died from entanglement with fishing line and are vulnerable to boat collisions, especially in high speed unregulated areas (FWCC, unpubl. data).

Hillsborough County has adopted a local ordinance designating this site as a seasonal slow speed manatee protection area from November 15 through March 31. The site has yet to be posted (Chuck Coleman, Hillsborough County, pers. comm. 2002).

Port Sutton Manatee Refuge

We are designating the Port Sutton area surrounding the manatee sanctuary at the Tampa Electric Company's Port Sutton (Gannon) Electric Generating Station, on Tampa Bay in Hillsborough County, as a manatee refuge. The refuge area includes approximately 39.2 ha (96.9 acres). Watercraft will be required to proceed at idle speed within this refuge from November 15 through March 31, inclusive.

Manatee presence has been documented in this area through aerial surveys, photo-identification studies, telemetry studies, and a carcass salvage program. Distribution and abundance surveys, conducted in the area between November 1987 and June 1997, have documented 148 manatees using the site and its immediate surroundings on a sporadic basis throughout the year. Per these survey parameters, there were 55 sightings (a sighting may include multiple manatees) observed during the survey period. Observed activities primarily included resting manatees, followed by observations of traveling animals (Florida Marine Research Institute Aerial Survey Database). Five manatee carcasses were recovered in

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this area, including one within the manatee refuge. These deaths, recorded since 1974, included two watercraft-related deaths and a death associated with cold. Deaths occurred in December, January, March, and May (Florida Marine Research Institute Manatee Mortality Database).

The likelihood of adverse manatee encounters with watercraft is increased in the vicinity of wintering sites, such as the warm water outfall of the Tampa Electric Company's Port Sutton (Gannon) Electric Generating Station, because of the greater concentration of animals within these confined areas. Regulating this area as an idle-speed zone rather than as a sanctuary will afford watercraft ingress and egress through the area with a minimum anticipated adverse impact to manatees. The area is presently closed to public access because of security concerns related to potential terrorist activities. However, the sanctuary designation will ensure adequate manatee protection should the area reopen in the future.

Hillsborough County has adopted a local ordinance designating a small portion of this site as a seasonal slow speed manatee protection area (November 15 through March 31). The site has yet to be posted (Chuck Coleman, Hillsborough County, pers. comm. 2002).

Pansy Bayou Manatee Refuge

We are establishing a manatee refuge, containing approximately 47 ha (116.1 acres) in the northern Pansy Bayou area between City Island and the John Ringling Parkway Bridge on Sarasota Bay in Sarasota County, to regulate vessel traffic to slow speed year-round.

Manatee presence has been documented in this area through aerial surveys, photo-identification studies, telemetry studies, and a carcass salvage program. Distribution and abundance surveys, conducted in the area between 1985 and 1999, have documented 1,211 manatees using the site and its immediate surroundings throughout the year. Per these survey parameters, there were 533 sightings (a sighting may include multiple manatees) observed during the survey period. Observed activities primarily included traveling and resting manatees, followed by observations of feeding animals (Florida Marine Research Institute Aerial Survey Database). Shallow inshore waters in this area are typified by stands of sea grass. Seven manatee carcasses were recovered within a 0.8 km (0.5 mile) radius of the site; no carcasses were recovered on-site. These deaths, recorded since 1974, included a single watercraft-related death. Deaths occurred in January, April, May, June, July, and August (Florida Marine Research Institute Manatee Mortality Database).

Pansy Bayou proper is currently closed under State law to all vessel traffic except residents, and serves as a manatee sanctuary. The site is currently used as a water-ski area, although recent action has been taken by the FWCC to designate the site as a slow speed area. This action has not yet been implemented. The remaining waters around the manatee refuge are currently designated by the State as slow speed (channel included) zones (F.A.C. 62N–22.026(2)(a)(4)). High-speed watercraft operation in this area poses a continuing threat to a substantial number of manatees. Establishment of a slow-speed zone will minimize the risk of manatee take due to disturbance and/or watercraft collisions.

Little Sarasota Bay Manatee Refuge

We are designating a manatee refuge, containing approximately 214.20 ha (529.40 acres), to control vessel speeds in the little Sarasota Bay area between the Blackburn Point Bridge and Intracoastal Waterway Channel Marker "40" in Sarasota County. The speed designation for this area will be slow speed, 40 km per hour (25 miles per hour) in the channel, year-round.

Manatee presence has been documented in this area through aerial surveys, photo-identification studies, telemetry studies, and a carcass salvage program. Distribution and abundance surveys, conducted in the area between November 1985 and June 1999, have documented 243 manatees using the site and its immediate surroundings on a sporadic basis throughout the year. Per these survey parameters, there were 122 sightings (a sighting may include multiple manatees) observed during the survey period. Observed activities primarily included traveling manatees, followed by observations of resting animals (Florida Marine Research Institute Aerial Survey Database). Two manatee carcasses were recovered within 0.8 km (0.5 mile) of the site boundaries. These deaths, recorded since 1974, include a watercraft-related death and a death involving a perinatal-class animal. Deaths occurred in July and November (Florida Marine Research Institute Manatee Mortality Database).

There are currently no speed zones in this portion of Sarasota County, although the State regulates the areas to the north and south of the site. The State designations include marked channels that allow for a maximum travel speed of 40 km per hour (25 miles per hour) within the channels. The current unregulated nature of vessel operation at this site has high potential for resulting in manatee take. Establishing a slow-speed zone outside of the main navigation channel will reduce the potential for take by limiting vessel speeds in those waters where manatees are most likely to occur.

Lemon Bay Manatee Refuge

We are establishing a manatee refuge, containing approximately 383.61 ha (948.06 acres), in Lemon Bay, Charlotte County, from the Charlotte County/Sarasota County boundary to a line approximately 1.6 km (1 mile) south of the Bay Road Bridge, for the purpose of regulating vessel speeds. Speeds will be restricted to slow speed, 40 km per hour (25 miles per hour) in the channel, year-round.

Manatee presence has been documented in this area through aerial surveys, photo-identification studies, telemetry studies, and a carcass salvage program. Distribution and abundance surveys, conducted in the area between 1987 and 1999, have documented 626 manatees using the site and its immediate surroundings throughout the year. Per these survey parameters, there were 356 sightings (a sighting may include multiple manatees) observed during the survey period. A high count of 13 animals was documented on November 4, 1994. Observed activities primarily included resting and feeding manatees, followed by observations of traveling animals (Florida Marine Research Institute Aerial Survey Database). Eleven carcasses were recovered from this area; six were recovered within the refuge and the remaining five were recovered within 0.8 km (0.5 mile) of the refuge boundaries. These deaths, recorded since 1974, include five watercraft-related deaths (two of these deaths occurred during the last five years). Deaths occurred between March and October (Florida Marine Research Institute Manatee Mortality Database).

There are currently no speed zones for manatee protection in this portion of Charlotte County, although the FWCC has recently adopted regulations to provide similar protection in this area. The State agency does not believe that the site will be posted until 2003 (Kipp Frohlich, pers. comm. 2002). The unregulated nature of this water body makes the taking of manatees very likely, due to the high speed at which watercraft currently travel through areas frequented by manatees. Establishing a slow-speed zone outside of the main navigation channel will reduce the likelihood of manatee take occurring.

Peace River Manatee Refuge

We are establishing a manatee refuge, containing 1,698.11 ha (4,196.11 acres) more or less, in the Peace River (located on the northeast corner of Charlotte Harbor) in Charlotte and De Soto Counties. This refuge will include the river and specific associated waters northeast of U.S. Highway 41. Waters within described areas will be regulated to allow watercraft to travel at a maximum speed of 40 km per hour (25 miles per hour), while other waters will be regulated to provide for slow-speed vessel operation. These regulations will be in effect year-round.

Described Areas Include

(a) Slow speed 300 meter (1,000 feet) shoreline buffers between the U.S. Highway 41 and I–75 bridges;

(b) slow speed outside of the marked navigation channel, 40 km per hour (25 miles per hour) in the marked channel, between the I–75 bridge and red channel marker "14";

(c) 40 km per hour (25 miles per hour), upstream of red channel marker "14";

(d) slow speed in Jim Long Lake, Hunter Creek, and Deep Creek; and

(e) slow speed in Shell Creek (if the U.S. Coast Guard or the State of Florida approve and designate a marked channel in this area, the channel may be designated as 40 km per hour (25 miles per hour) within the channel.

Manatee presence has been documented in this area through aerial surveys, photo-identification studies, telemetry studies, and a carcass salvage program. Distribution and abundance surveys, conducted in the area between 1987 and 1999, have documented 1,020 manatees using the site and its immediate surroundings throughout the year. Per these survey parameters, there were 504 sightings (a sighting may include multiple manatees) observed during the survey period. A high count of 15 animals was documented on July 2, 1998. Observed activities primarily included traveling and resting manatees, followed by observations of feeding animals. Animals were observed every month of the year (Florida Marine Research Institute Aerial Survey Database). Forty-nine manatee carcasses have been recovered in this area and 47 of these were recovered from within the refuge area. These deaths, recorded since 1974, include eleven watercraft-related deaths; three of these deaths occurred during the last five years. Deaths occurred in all months (Florida Marine Research Institute Manatee Mortality Database).

Manatee protection areas have recently been adopted by the FWCC throughout much of this area. There are also local ordinances in effect in a small portion of this area. The State protection areas have yet to be posted and enforced. As a result, watercraft continue to travel at high speeds throughout many areas of the Peace River frequented by manatees. This refuge will slow vessel traffic in those portions of the Peace River where watercraft are most likely to encounter manatees, thereby reducing the likelihood of take.

Shell Island Manatee Refuge

We are establishing a manatee refuge, containing approximately 32.60 ha (80.50 acres), for the purpose of regulating vessel speeds at slow speed within the navigation channel that is located just north of Shell Island at the mouth of the Caloosahatchee River, Lee County. This regulation will be in effect year-round.

Manatee presence has been documented in this area through aerial surveys, photo-identification studies, telemetry studies, and a carcass salvage program. Distribution and abundance surveys, conducted in the area between 1984 and 1999, have documented 65 manatees using the site and its immediate surroundings. Per these survey parameters, there were 31 sightings (a sighting may include multiple manatees) observed during the survey period. A high count of 9 animals was documented on June 25, 1997. Observed activities primarily included traveling and resting manatees. Animals were observed sporadically throughout the year (Florida Marine Research Institute Aerial Survey Database). Sixteen manatee carcasses have been recovered in this area; three were recovered in the refuge and remaining 13 were recovered within 0.8 km (0.5 mile) of the refuge. These deaths, recorded since 1974, include five watercraft-related deaths. Two of these deaths occurred during the last five years. Deaths occurred in January, February, March, April, July, September, and November (Florida Marine Research Institute Manatee Mortality Database).

The site is located at the mouth of the Caloosahatchee River, which supports a large number of manatees. The Florida Power and Light electrical generating station, located on this river, is a major wintering refuge for manatees. On January 6, 2001, 434 manatees were observed there (Florida Marine Research Institute Aerial Survey Database). Most manatees using the Caloosahatchee River must pass through the Intracoastal Waterway navigation channel north of Shell Island when entering or exiting the river. Similarly, the Shell Island channel is a significant travel corridor for vessels entering and leaving the Gulf and nearshore waters. This funneling of both watercraft traveling at high speed and manatees through a narrow channel has a high probability for take of manatees. A slow-speed zone will minimize the likelihood of manatee take occurring at this site.

The FWCC is currently promulgating a boating safety rule for this site. This rule would require boat operators to operate a slow speeds during the day time on week ends for boating safety purposes. Dates for completion of rule promulgation and sign posting are unknown at this time (Kipp Frohlich, pers. comm. 2002).

Haulover Canal Manatee Refuge

We are establishing a manatee refuge, containing approximately 8.95 ha (22.11 acres), within the confines of Haulover Canal, located at the north end of Merritt Island between the Indian River and Mosquito Lagoon, in Brevard County. Waters will be designated as slow speed, channel included, year-round.

Manatees moving between Mosquito Lagoon and the Indian River travel through Haulover Canal. These animals include a portion of the Atlantic coast sub population that uses northeast Florida and coastal Georgia, a sub population estimated to include as many as 300 individuals (Valade, Service, unpubl. data). Manatee presence has been documented in this area through aerial surveys, photo-identification studies, telemetry studies, and a carcass salvage program. Distribution and abundance surveys, conducted in the area between 1986 and 1999, have documented 209 manatees using the site and its immediate surroundings. Per these survey parameters, there were 73 sightings (a sighting may include multiple manatees) during the survey period. A high count of 13 animals was documented on October 16, 1997. Observed activities primarily included traveling and resting manatees, followed by observations of animals cavorting. Animals were observed throughout the year (Florida Marine Research Institute Aerial Survey Database). Nine carcasses were recovered in this area, including three from within the manatee refuge. The remaining six carcasses were collected within 0.8 km (0.5 mile) of the site. These deaths, recorded since 1974, include six watercraft-related deaths, including one that occurred this year. Deaths occurred in January, February, March, May, September, and December

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(Florida Marine Research Institute Manatee Mortality Database).

The canal proper, located on the Merritt Island National Wildlife Refuge, is currently designated as a slow speed area, pursuant to an existing national wildlife refuge designation, authorized under the National Wildlife Refuge Administration Act. This Act consolidated the authorities for areas administered by us, established the National Fish and Wildlife Refuge System, and provided that all property in the System shall be administered by us for the conservation, management, and, where appropriate, restoration of the fish, wildlife, and plant resources and their habitats within the United States for the benefit of present and future generations of Americans. The canal approaches were recently designated as slow speed areas by the FWCC. The approaches have yet to be posted. Our adoption of the canal zone as a manatee refuge, pursuant to the ESA and MMPA, will improve enforcement capabilities and enhance the Merritt Island National Wildlife Refuge's efforts to protect manatees in this area. This final rule eliminates the protection areas from the approaches in deference to more extensive State measures. As a result, the proposed refuge has been reduced in size from 276.30 ha (682.70 acres) to 8.95 ha (22.11 acres).

Cocoa Beach Manatee Refuge

We are establishing a manatee refuge, containing approximately 23.9 ha (59.1 acres), to regulate vessel operation at slow speed year-round in the area adjacent to Municipal Park, just west of Cocoa Beach in the Banana River, in Brevard County.

Manatee presence has been documented in this area through aerial surveys, photo-identification studies, telemetry studies, and a carcass salvage program. Distribution and abundance surveys, conducted in the area between 1986 and 1999, have documented 99 manatees using the site and its immediate surroundings. Per these survey parameters, there were 47 sightings (a sighting may include multiple manatees) during the survey period. A high count of nine animals was documented on May 22, 1998. Observed activities primarily included traveling and feeding manatees, followed by observations of animals resting. The area contains significant sea grass beds and is consistently used as a foraging area by manatees. Animals were observed throughout the year (Florida Marine Research Institute Aerial Survey Database). Three carcasses were recovered from this area, including one from the refuge proper. These deaths, recorded since 1974, include one watercraft-related death. Deaths occurred in April, July, and November (Florida Marine Research Institute Manatee Mortality Database).

The site was recently designated as a slow speed zone by the State; however, the site has yet to be posted. Given the use of the area by manatees, current high-speed vessel operation at this location has a high probability of resulting in the take of manatees. Requiring vessels to proceed at slow speed will minimize potential manatee takings.

Required Determinations

Regulatory Planning and Review

In accordance with the criteria in Executive Order 12866, this rule is not a significant regulatory action. OMB makes the final determination under Executive Order 12866.

a. This rule will not have an annual economic impact of $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. A cost-benefit analysis is not required. It is not expected that any significant economic impacts would result from the establishment of four manatee sanctuaries (64.03 acres) and nine manatee refuges (6,269.07 acres) in eight counties in the State of Florida.

The purpose of this rule is to establish 13 additional manatee protection areas in Florida. We are proposing to reduce the level of take of manatees by controlling human activity in four areas designated as manatee sanctuaries and nine areas designated as manatee refuges. Affected waterborne activities include swimming, diving, snorkeling, water skiing, surfing, fishing, the use of water vehicles, and dredge and fill activities. For the four areas designated as manatee sanctuaries, all waterborne activities will be prohibited from November 15 to March 31. For the nine areas designated as manatee refuges, the areas will be slow or idle speed zones with certain site-specific exceptions, including 40 km per hour (25 miles per hour) in some channels. The economic effect of these designations will be measured by the number of recreationists who use alternative sites for their activity or have a reduced quality of the waterborne activity experience at the designated sites. The State of Florida has 12,000 miles of rivers and 3 million acres of lakes so the designation of less than seven thousand acres, most of which is for lower speed zones, is unlikely to curtail any waterborne activity.

For boating recreationists, the inconvenience and extra time required to cross a slow speed zone will reduce the quality of the waterborne activity for some participants. The extra time required for commercial charter boats to reach fishing grounds could reduce on-site fishing time and could result in lower consumer surplus for the trip. The number of recreationists and charter boats using the designated sites is not known. The State of Florida has 943,611 registered boats but only those boats and recreationists using the designated sites will potentially be affected. However, since Florida has 12 thousand miles of rivers and streams and 3 million acres of lakes and ponds it is likely that only a small percentage of boat users will be affected by this rule. The current designation will cause some inconvenience in travel time over these areas but alternative sites within the proximity of the sanctuaries and refuges are available for all waterborne activities. Furthermore, none of the areas designated is the entire surface area of a water body. The un-designated parts of the water bodies are available for waterborne activities. Recreationists and commercial boaters may be inconvenienced by having to travel to an un-designated area but they are not prohibited from participating in any of the waterborne activities. Currently, there are no data sources identified that estimate the amount of recreational activity in and around the areas to be designated as either manatee sanctuaries or refuges. However, the majority (6,269.07 acres) of the areas being designated are for manatee refuges, which only require reduced speed. The 64.03 acres designated as manatee sanctuaries are part of larger water bodies where unrestricted waterborne recreational activity can take place. For these reasons, we believe that, although some inconvenience to the public may occur because of reduced travel speeds, the economic impact will not be significant.

b. This rule will not create inconsistencies with other agencies' actions. The precedent to establish manatee protection areas has been established primarily by State and local governments in Florida. We recognize the important role of State and local partners and continue to support and encourage State and local measures to improve manatee protection. We are designating areas where State and local governments have been unable to implement what we consider to be adequate measures. We have also focused the designation on those sites in which we have determined that Federal action can effectively address the needs in the particular area, recognizing that we face certain resource limitations. We are eager to work with State and local agencies to develop and implement their own measures in the areas described in this final rule that would be equally protective of manatees and equally consistent with other measures, and thus would allow us to remove Federal designations and protections.

c. This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. There are minimal restrictions to existing human uses of the proposed sites as a result of this rule, but the restriction is believed to enhance manatee viewing opportunities. No entitlements, grants, user fees, loan programs or the rights and obligations of their recipients are expected to occur.

d. This rule will not raise novel legal or policy issues. We have previously established other manatee protection areas.

Regulatory Flexibility Act

We certify that this rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). An initial/final Regulatory Flexibility Analysis is not required. Accordingly, a Small Entity Compliance Guide is not required.

Selected economic characteristics of the affected counties are shown in Table 2. As can be seen in the table, the growth rate in per capita income is slower than the State average in Citrus, Brevard, Charlotte, and Lee Counties but the rate of growth in total personal income exceeds the State average except in Brevard, De Soto, and Pinellas Counties where it is lower. Larger households account for the lower per capita income estimates in these counties. The proportion of total industry earnings coming from the amusements and recreation sector ranges from 0.5 percent in Brevard County to 2.7 percent in Sarasota County. All of these counties had the service sector as the largest economic contributor followed by retail trade and the real estate sectors, with the exception of De Soto County where retail trade is the largest economic contributor. Overall, the affected counties had only a small proportion of earnings coming from the amusement and recreation sector. As a result, a small impact to the recreation sector would not result in a significant effect on county-level income.

TABLE 2.—ECONOMIC CHARACTERISTICS OF THE EIGHT AFFECTED COUNTIES IN FLORIDA—1997

Affected Florida counties	Employment	Per capita personal income (dollars)	10 year rate of growth (dollars)	Personal income ($000)	10 year rate of growth (dollars)	Total industry earnings ($000)	Services industry earnings for amusements and recreation ($000)	Percent of total
Sanctuaries:								
Citrus	35,663	$18,493	3.9	$2,060,167	6.9	$793,347	$6,650	0.8
Hillsborough	644,694	23,719	5.2	1,558,783	6.6	18,847,236	67,676	1.4
Pinellas	506,946	28,367	4.9	24,770,929	5.5	13,876,518	114,826	0.8
Refuges:								
Brevard	223,815	$22,205	3.7	$10,342,080	6.3	$6,225,354	$34,237	0.5
Charlotte	47,091	21,861	3.7	2,894,781	7.6	995,159	10,336	1.0
De Soto	11,977	18,968	5.2	469,998	6.3	251,421	1,644	0.7
Lee	196,448	25,568	4.4	9,862,900	7.3	4,848,936	61,103	1.3
Sarasota	169,984	35,654	5.2	10,706,931	6.8	4,239,034	114,742	2.7
State of Florida	8,032,538	$24,799	4.5	$363,979,647	6.6	220,985,959	4,255,304	1.9

Source: http://govinfo.library.orst.edu/cgi-bin/reis-list.

The employment characteristics of the eight affected counties are shown on Table 3. The latest available published data for the total number of establishments in SIC (Standard Industrial Classification) codes 09, 44, 59, 79, services, and not classified is 1997. These SIC codes represent establishments providing products associated with fishing, hunting, trapping, water transportation, miscellaneous retail, services, amusement and recreation services and nonclassifiable establishments. These are the establishments most likely to be directly associated with recreationists pursuing waterborne activities where manatees may be involved. As can be seen on Table 3, of the total number of establishments in these SIC codes, a large proportion employ less than nine employees with the largest number of establishments employing less than four employees. If there are any economic impacts associated with this rule, they will affect some proportion of these small entities. Since the bulk of the acreage designated (6,269.07 acres) by this rule is for manatee refuges, which only require a reduction in speed, we do not believe the minor inconvenience caused by going slower in designated areas will cause more than an insignificant economic effect. The inconvenience may cause some recreationists to go to alternative sites which may cause some loss of income to some small businesses. However, the inconvenience is small so we believe that this will not be a significant economic dislocation. For the four areas designated as manatee sanctuaries (64.03 acres), the restriction on human activity from November 15 to March 31 may cause some recreationists to go to alternative sites. The designated areas are relatively small and are part of large water bodies where there are large areas which do not restrict human activity. Recreationists can pursue waterborne activities in close proximity to the manatee sanctuaries without entering the sanctuaries. For this reason, we believe that there will be an insignificant economic effect from the designation of the areas as manatee sanctuaries. Without a significant change in recreationist use patterns there should be an equally insignificant change in business activity.

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TABLE 3.—EMPLOYMENT CHARACTERISTICS OF THE EIGHT AFFECTED COUNTIES IN FLORIDA—1997 (INCLUDES SIC CODES 09, 44,59,79, SERVICES, AND NCE) [1]

Affected Florida counties	Mid-March employment	Total establishments	Number of establishments (1–4 employees)	Number of establishments (5–9 employees)	Number of establishments (10–19 employees)	Number of establishments (20 and over employees)
Sanctuaries:						
Citrus	8,926	1,281	807	244	120	110
Pinellas	197,842	12,852	7,954	2,344	1,226	1,328
Hillsborough	232,128	12,363	7,316	2,261	1,308	1,478
Refuges:						
Brevard	65,049	5,292	3,145	1,075	581	491
Charlotte	13,759	1,044	655	214	95	80
De Soto	4,648	186	121	38	18	10
Lee	63,411	4,977	3,061	930	494	492
Sarasota	73,819	5,125	3,231	936	473	485

Source: http://govinfo.library.orst.edu/cgi-bin/reis-list.
[1] SIC 09—Fishing, hunting, and trapping.
SIC 44—Water transportation.
SIC 59—Miscellaneous retail service divisions.
SIC 79—Amusement and recreation services.
NCE=non-classifiable establishments division.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2). This rule:

a. Does not have an annual effect on the economy of $100 million or more. As shown above, this rule may cause some inconvenience to recreationists because of speed restrictions in manatee refuge areas and seasonal or year-round closures in manatee sanctuaries, but this should not translate into any significant business reductions for the many small businesses in the eight affected counties. An unknown portion of the establishments shown on Table 3 could be affected by this rule. Because the restrictions on recreational activity are believed to be no more than an inconvenience for recreationists, we believe that any economic effect on small entities resulting from changes in recreational use patterns will be insignificant also.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. It is unlikely that there are unforeseen changes in costs or prices for consumers stemming from this rule. The charter boat industry may be affected with lower speed limits for some areas when traveling to and from fishing grounds. Based on an analysis of public comment, further refinement of the impact on this industry may be possible. We believe that it is unlikely that reduced speed limits and seasonal closures will result in a significant economic effect.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. As stated above, this rule may generate some level of inconvenience to recreationists because of speed limits and seasonal closures, but it is believed to be minor and will not interfere with the normal operation of businesses in the affected counties. Added travel time to traverse some areas is not expected to be a major factor that will impact business activity.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.):

a. This rule will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required. The designation of manatee refuges and sanctuaries imposes no new obligations on State or local governments.

b. This rule will not produce a Federal mandate of $100 million or greater in any year, *i.e.*, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act.

Takings

In accordance with Executive Order 12630, the rule does not have significant takings implications. A takings implication assessment is not required. The manatee protection areas are located over State- or privately-owned submerged bottoms. Any property owners in the vicinity will have navigational access to and the wherewithal to maintain their property.

Federalism

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. This rule will not have substantial direct effects on the State, in the relationship between the Federal Government and the State, or on the distribution of power and responsibilities among the various levels of government. As discussed earlier, we coordinated with the State of Florida to the extent possible on the development of this rule.

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

This regulation does not contain collections of information that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* The regulation will not impose new recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations.

National Environmental Policy Act

We have analyzed this rule in accordance with the criteria of the National Environmental Policy Act. This rule does not constitute a major Federal action significantly affecting the quality of the human environment. An environmental assessment has been prepared and is available for review upon request by writing to the Field Supervisor (see **ADDRESSES** section).

Government-to-Government Relationship with Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), Executive Order 13175 and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with federally recognized Tribes on a Government-to-Government basis. We have evaluated possible effects of this rule on Federally recognized Indian tribes and have determined that there are no effects.

Energy Supply, Distribution or Use (Executive Order 13211)

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Because this rule is not a significant regulatory action under Executive Order 12866 and it only requires vessels to either seasonally or completely avoid four areas (64.03 acres) or proceed at slow or idle speeds in 6,269.07 acres of waterways in Florida, it is not expected to significantly affect energy supplies, distribution, and use. Therefore, this action is a not a significant energy action and no Statement of Energy Effects is required.

References Cited

A complete list of all references cited in this rule is available upon request from the Jacksonville Field Office (see **ADDRESSES** section).

Author

The primary author of this document is Jim Valade (see **ADDRESSES** section).

Authority

The authority to establish manatee protection areas is provided by the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), as amended.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as follows:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.108 as follows:

a. Revise the introductory text of paragraph (a);

b. Permanently designate the Kings Bay map at its current location following paragraph (a)(7) and revise the note to precede the map;

c. Revise paragraphs (a)(8) through (a)(11);

d. Revise paragraphs (b) and (c)(1) through (c)(5);

e. Add paragraphs (c)(6) through (c)(11).

The revised and added text reads as follows:

§ 17.108 List of designated manatee protection areas.

(a) *Manatee sanctuaries.* The following areas are designated as manatee sanctuaries. All waterborne activities are prohibited in these areas during the period November 15–March 31 of each year. The areas which will be posted are described as follows:

* * * * *

(7) * * *

Note: Map for paragraphs (a)(1) through (a)(7) follows:

* * * * *

(8) That part of the Homosassa River, Homosassa, Citrus County, Florida, within Section 28, Township 19 South, Range 17 East, described as the headwaters of the Homosassa River (adjacent to the Homosassa Springs State Wildlife Park), including the spring run at the point where the run enters the northeast fork of the river along the southeastern shore and an area opposite this site along the southern shoreline; containing approximately 0.67 ha (1.66 acres). Map follows (see Blue Waters Manatee Sanctuary):

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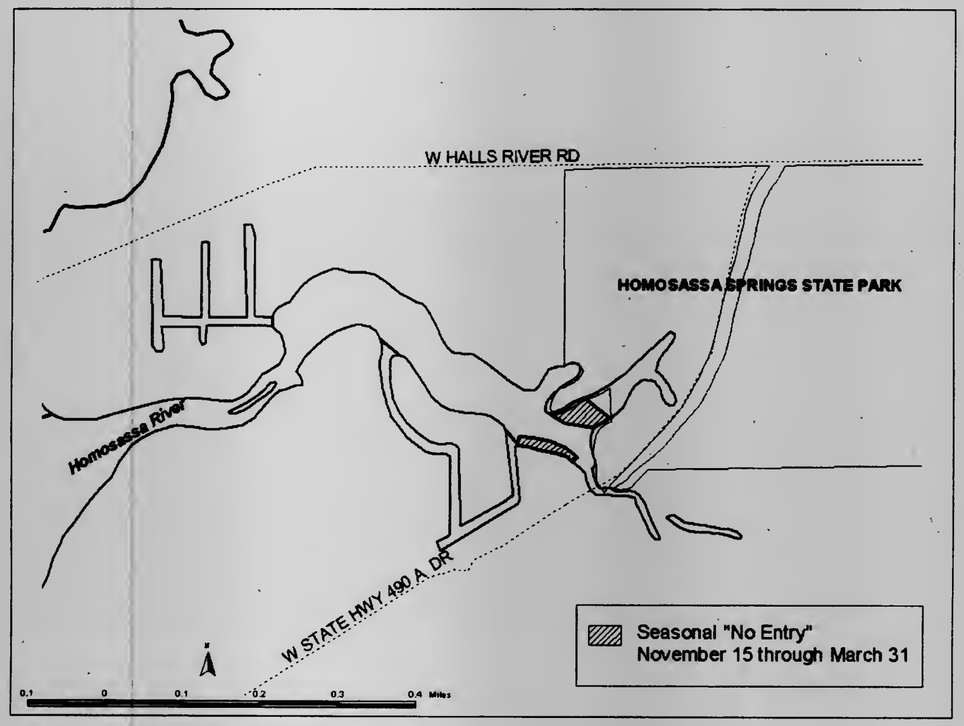

Blue Waters Manatee Sanctuary

(9) That part of Tampa Bay, St. Petersburg, Pinellas County, Florida, within Sections 16 and 21, Township 30 South, Range 17 East, described as the warm-water outflow of the Bartow Electric Generating Plant located on the northern shore of Weedon Island, encircling that point where the discharge enters receiving waters along the western shore of Old Tampa Bay; to be known as the Bartow Electric Generating Plant Manatee Sanctuary, containing approximately 12.07 ha (29.82 acres). Map follows (see Bartow Electric Generating Plant Manatee Sanctuary):

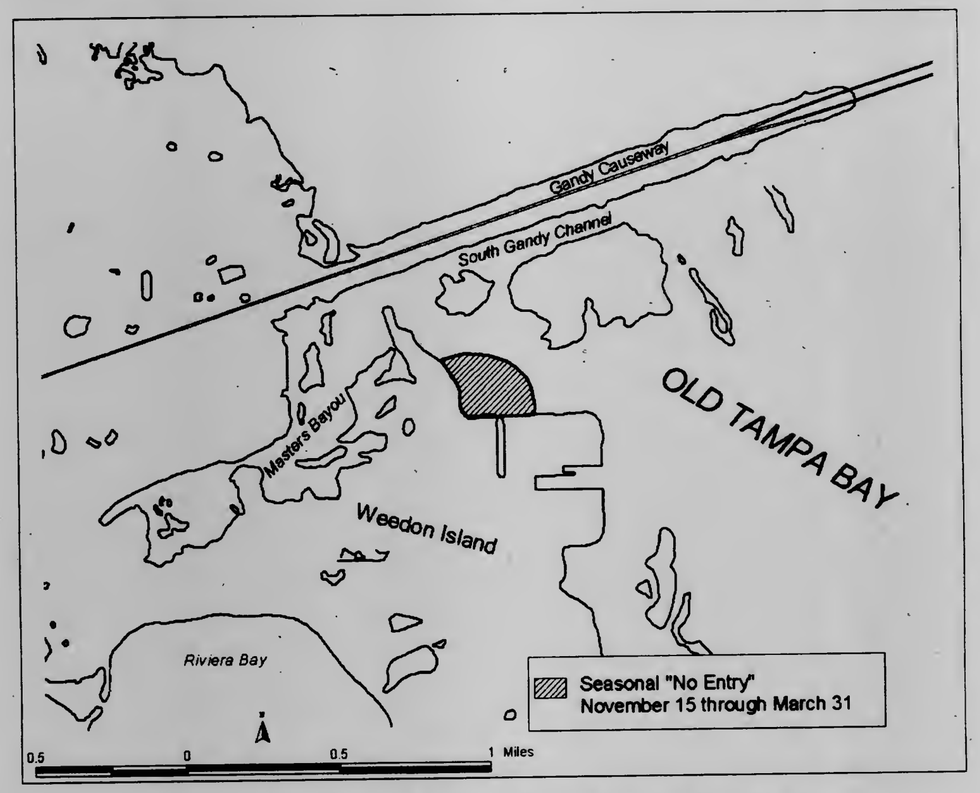

Bartow Electric Generating Plant Manatee Sanctuary

(10) That part of Tampa Bay, Tampa, Hillsborough County, Florida, within Sections 10 and 15, Township 31 South, Range 19 East, described as the waters in and around the warm-water outflow of the Tampa Electric Company Big Bend Electric Generating Station located west of Jackson Branch and including the Big Bend area of eastern Tampa Bay, to be known as the Tampa Electric Company Big Bend Manatee Sanctuary, containing approximately 12.08 ha (29.85 acres). Map follows (See TECO Big Bend Manatee Sanctuary):

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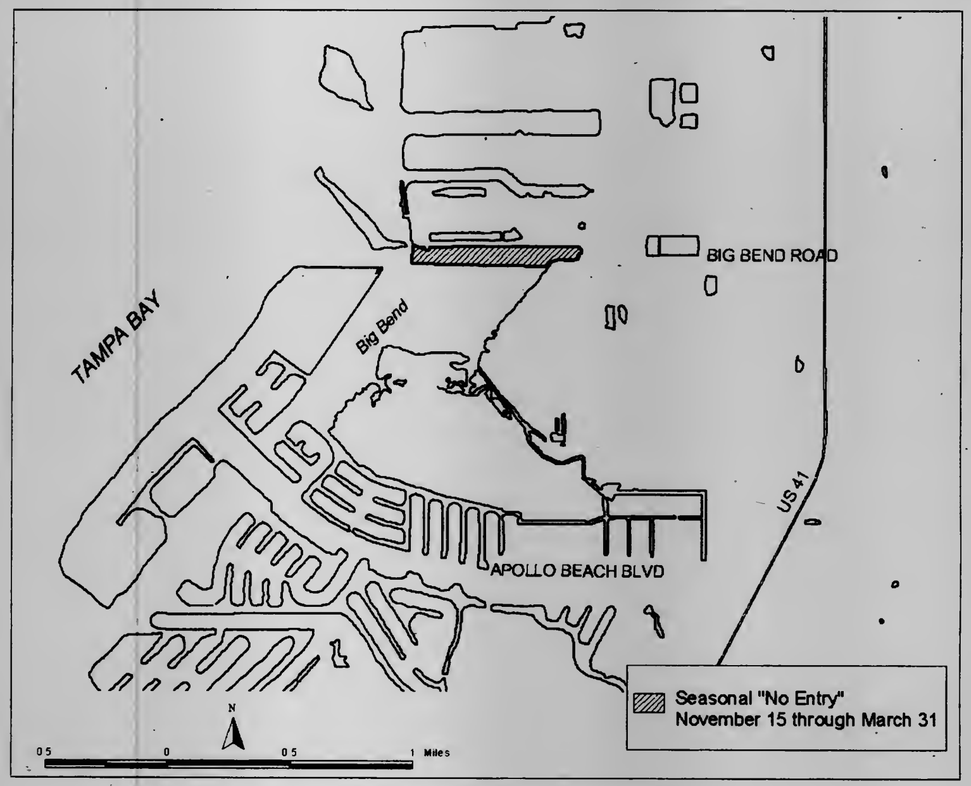

TECO Big Bend Manatee Sanctuary

(11) That part of Tampa Bay, Tampa, Hillsborough County, Florida, lying within Section 4, Township 30 South, Range 19 East, described as the warm-water outflow of the Tampa Electric Company Gannon Electric Generating Station, to be known as the Port Sutton Manatee Sanctuary, containing approximately 1.1 ha (2.7 acres). Map follows (see Port Sutton Manatee Sanctuary):

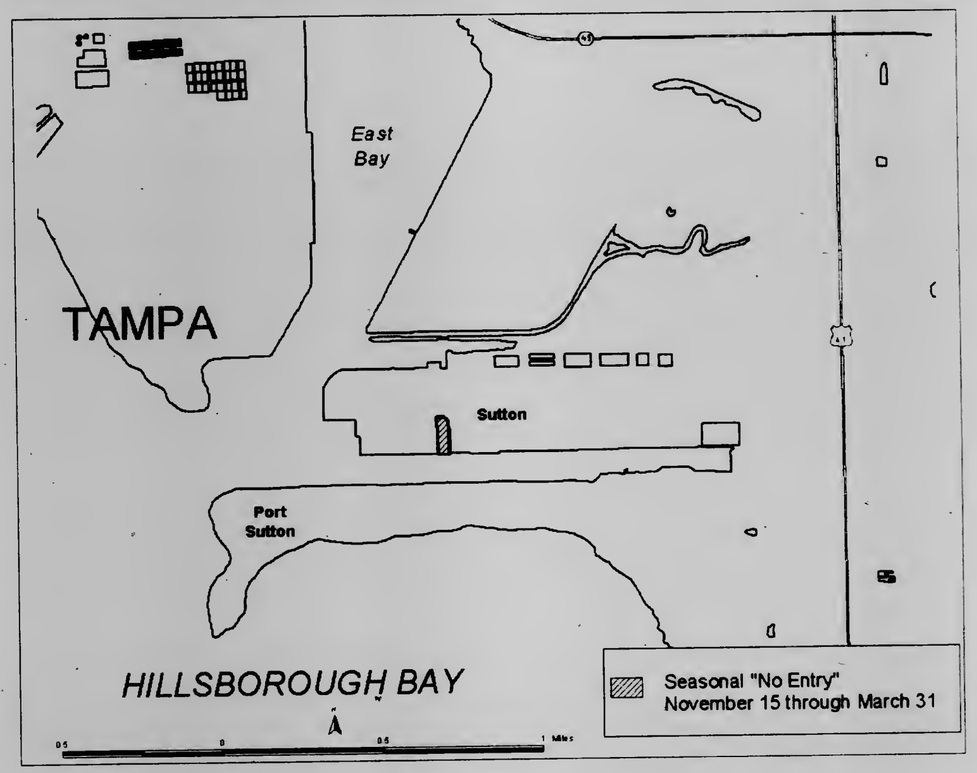

Port Sutton Manatee Sanctuary

(b) *Exceptions—(1) Exception for residents adjoining the areas described in paragraphs (a)(1) through (a)(7) of this section.* Watercraft access to private residences, boat houses, and boat docks through these sanctuaries by the residents and their authorized guests is permitted. Any such authorized boating activity must be conducted by operating watercraft at idle speed/no wake. Residents' watercraft will be identified by the placement of a sticker provided by the Fish and Wildlife Service in a conspicuous location on each vessel. Use of the waters within the sanctuaries by watercraft will be only for the purpose of access to residences and the storage of such watercraft in waters adjacent to residences.

(2) *Exception for publicly and privately owned property adjoining the areas described in paragraphs (a)(8) through (a)(11) of this section.* Watercraft access and property maintenance activities within sanctuaries by property owners, their employees, and designees are permitted. Any such authorized boating activity must be conducted by operating watercraft at idle speed. Watercraft will be identified by the placement of a sticker provided by the Fish and Wildlife Service in a conspicuous location on each boat or by other means. Maintenance activities include those actions necessary to maintain property and waterways, subject to any Federal, State, and local government permitting requirements.

(c) * * *

(1) *The Barge Canal Manatee Refuge.* (i) The Barge Canal Manatee Refuge is described as all waters lying within the banks of the Barge Canal, Brevard County, Florida, including all waters lying within the marked channel in the Banana River that lie between the east entrance of the Barge Canal and the Canaveral Locks; containing approximately 276.3 ha (682.7 acres).

(ii) Watercraft are required to proceed at slow speed (channel included) all year. The use of watercraft at speeds greater than slow speed is prohibited throughout the Barge Canal Manatee Refuge.

(iii) Map of the Barge Canal Manatee Refuge follows:

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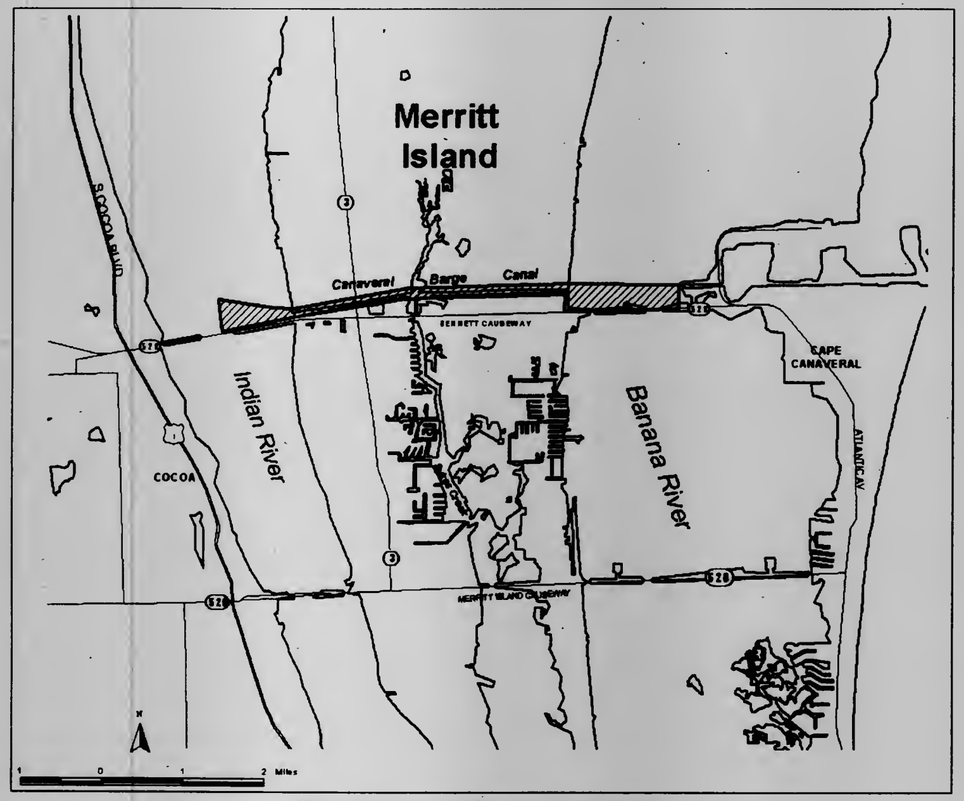

Barge Canal Manatee Refuge

(2) *The Sykes Creek Manatee Refuge.* (i) The Sykes Creek Manatee Refuge is described as all waters, including the marked channel in Sykes Creek, Brevard County, Florida. In particular, the portion of Sykes Creek southerly of the southern boundary of that portion of the creek commonly known as the "S" curve (said boundary being a line bearing east from a point on the western shoreline of Sykes Creek at approximate latitude 28 degrees 23′24″ N, approximate longitude 80 degrees 41′27″ W) and northerly of the Sykes Creek Parkway; containing approximately 342.3 ha (845.8 acres).

(ii) Watercraft are required to proceed at slow speed (channel included) all year. The use of watercraft at speeds greater than slow speed is prohibited throughout the Sykes Creek Manatee Refuge.

(iii) Map of the Sykes Creek Manatee Refuge follows:

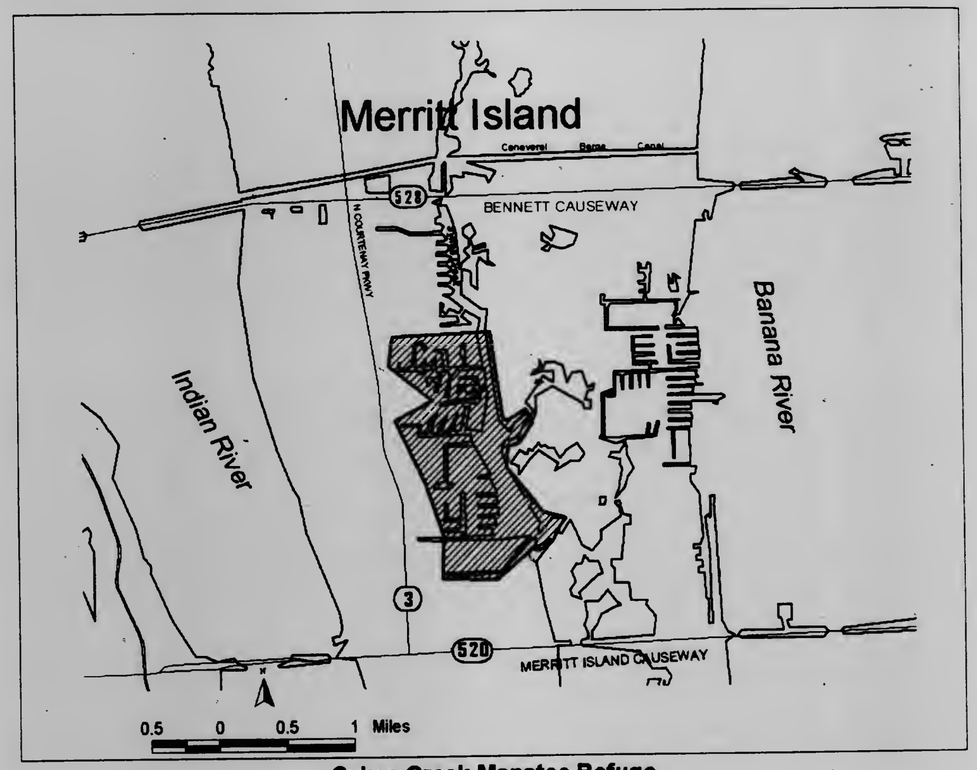

Sykes Creek Manatee Refuge

(3) *The Tampa Electric Company's Big Bend Manatee Refuge.* (i) The Tampa Electric Company's Big Bend Manatee Refuge is described as the entrance channel and those waters south of the manatee sanctuary at the Tampa Electric Company's Big Bend Electric Generating Station within Hillsborough County, Florida; containing approximately 89.35 ha (220.79 acres).

(ii) Watercraft are required to operate at idle speed from November 15 through March 31. Watercraft are prohibited from operating at speeds greater than idle speed from November 15 through March 31, inclusive.

(iii) Map of the Tampa Electric Company's Big Bend Manatee Refuge follows (see TECO Big Bend Manatee Refuge):

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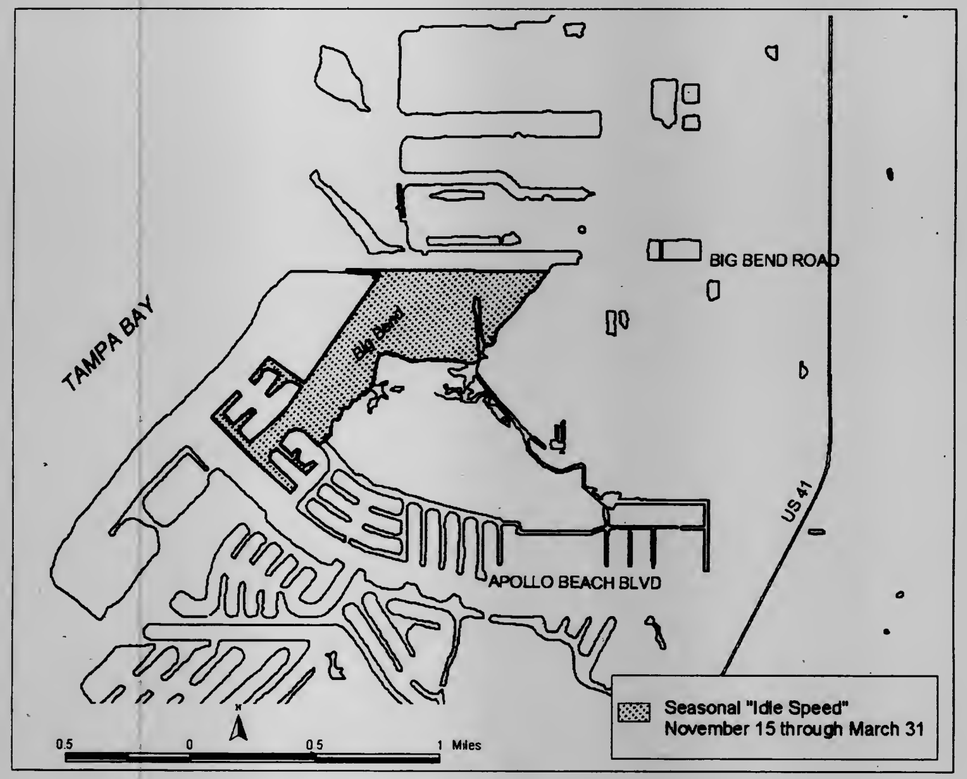

TECO Big Bend Manatee Refuge

(4) *The Port Sutton Manatee Refuge.* (i) The Port Sutton Manatee Refuge is described as those waters surrounding the Port Sutton Manatee Sanctuary, including all waters within Port Sutton, Hillsborough County, Florida; containing approximately 39.2 ha (96.9 acres).

(ii) Watercraft are required to operate at idle speed from November 15 through March 31, inclusive. Watercraft are prohibited from operating at speeds greater than idle speed from November 15 through March 31, inclusive.

(iii) Map of Port Sutton Manatee Refuge follows (see Port Sutton Manatee Refuge):

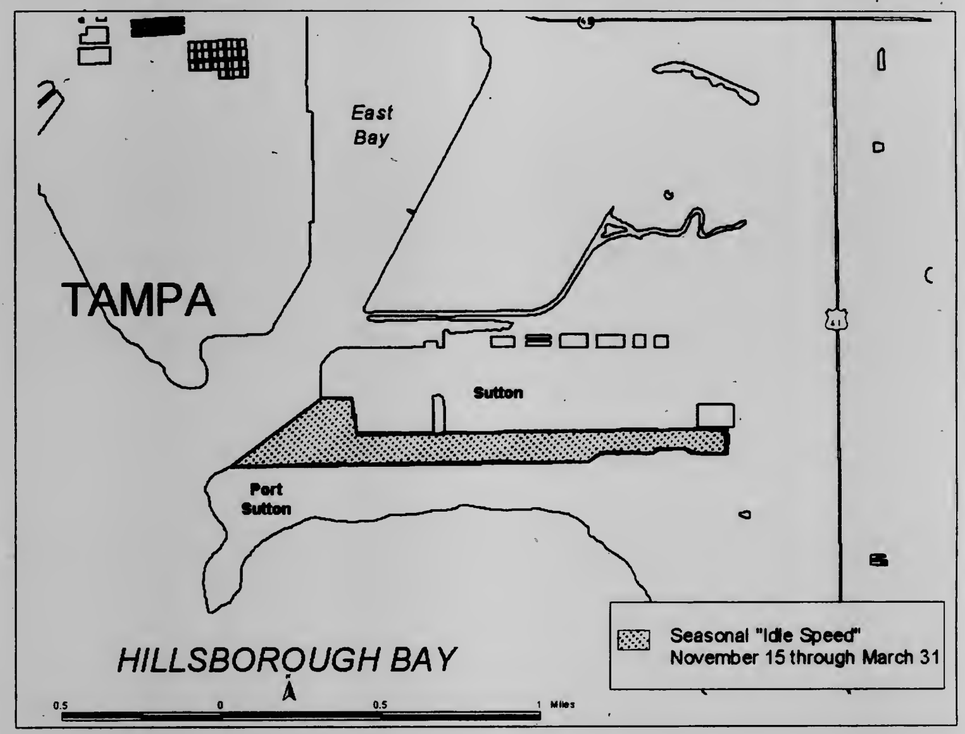

Port Sutton Manatee Refuge

(iv) Map showing the relative locations of the Bartow, TECO Big Bend, and Port Sutton areas of Tampa Bay follows (see Tampa Bay Manatee Sanctuaries and Refuges):

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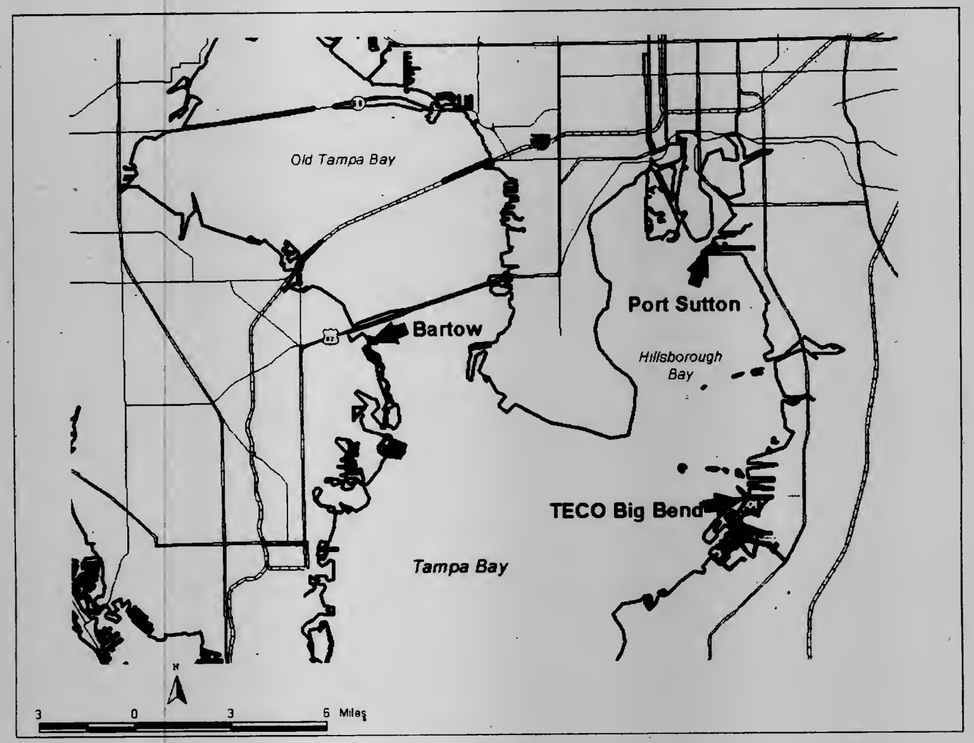

Tampa Bay Manatee Sanctuaries and Refuges

(5) The Pansy Bayou Manatee Refuge. (i) The Pansy Bayou Manatee Refuge is described as that portion of Sarasota Bay, Sarasota County, Florida, lying northwesterly of a line 45.7 meters (150 feet) northwesterly of and parallel with a line perpendicular to the John Ringling Parkway Bridge connecting St. Armands Key to City Island from the northwesterly end of said bridge, southwesterly of a line 228.6 meters (750 feet) northeasterly of and parallel with the centerline of the John Ringling Parkway (running northwesterly from St. Armands Key), northwesterly of a line 320 meters (1,050 feet) northwesterly of and parallel with a line perpendicular to the aforementioned John Ringling Parkway Bridge connecting St. Armands Key to City Island from the northwesterly end of said bridge, and southwesterly of a line 990.6 meters (3,250 feet) northeasterly of and parallel with the centerline of the aforementioned John Ringling Parkway (running Northwesterly from St. Armands Key); containing approximately 47 ha (116.1 acres).

(ii) Watercraft are required to proceed at slow speed year-round. Watercraft are prohibited from operating in excess of slow speed throughout the year in this area.

(iii) Map of the Pansy Bayou Manatee Refuge follows (See Pansy Bayou Manatee Refuge):

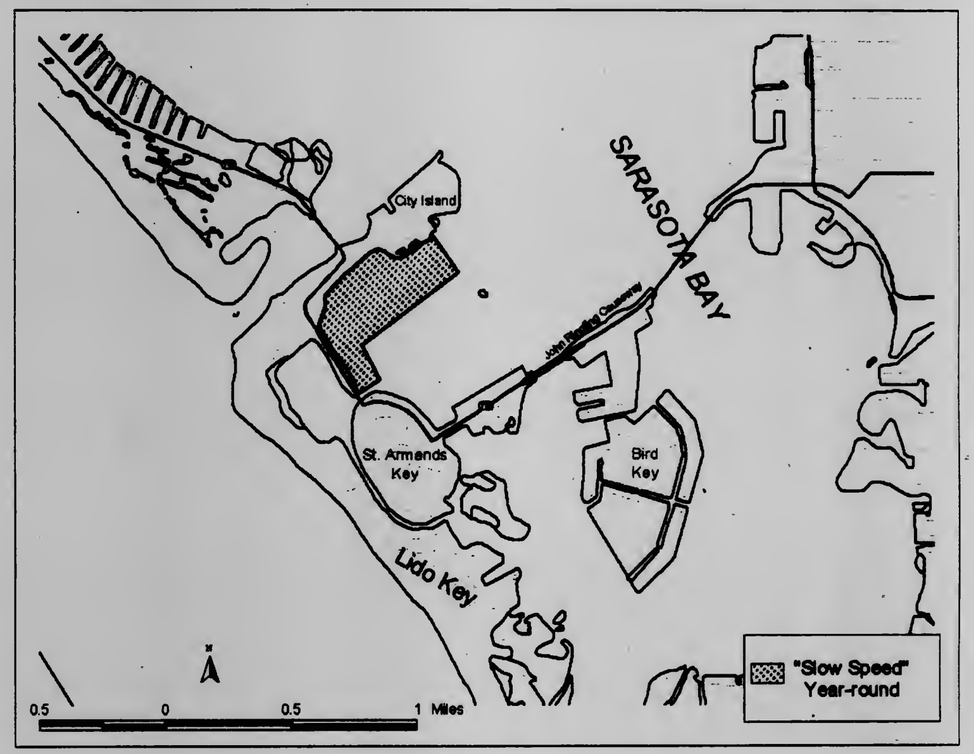

Pansy Bayou Manatee Refuge

(6) *The Little Sarasota Bay Manatee Refuge.* (i) The Little Sarasota Bay Manatee Refuge is described as those waters lying southerly of a line that bears north 90 degrees 00′00″ E (true) and runs through the southerly tip of the first unnamed island south of Red Intracoastal Waterway Channel Marker "40" (latitude 27 degrees 10′ 07″ N, longitude 82 degrees 30′ 05″ W) and those waters lying northerly of the Blackburn Point Bridge, Sarasota County, Florida; containing approximately 214.2 ha (529.40 acres).

(ii) Watercraft are required to proceed at slow speed, 40 kilometers per hour (25 miles per hour) within the channel, year-round. Watercraft are prohibited from operating in excess of slow speed outside of the channel and operating at speeds in excess of 40 kilometers per hour (25 miles per hour) within the channel, year-round.

(iii) Map of the Little Sarasota Bay Manatee Refuge follows (see Little Sarasota Bay Manatee Refuge):

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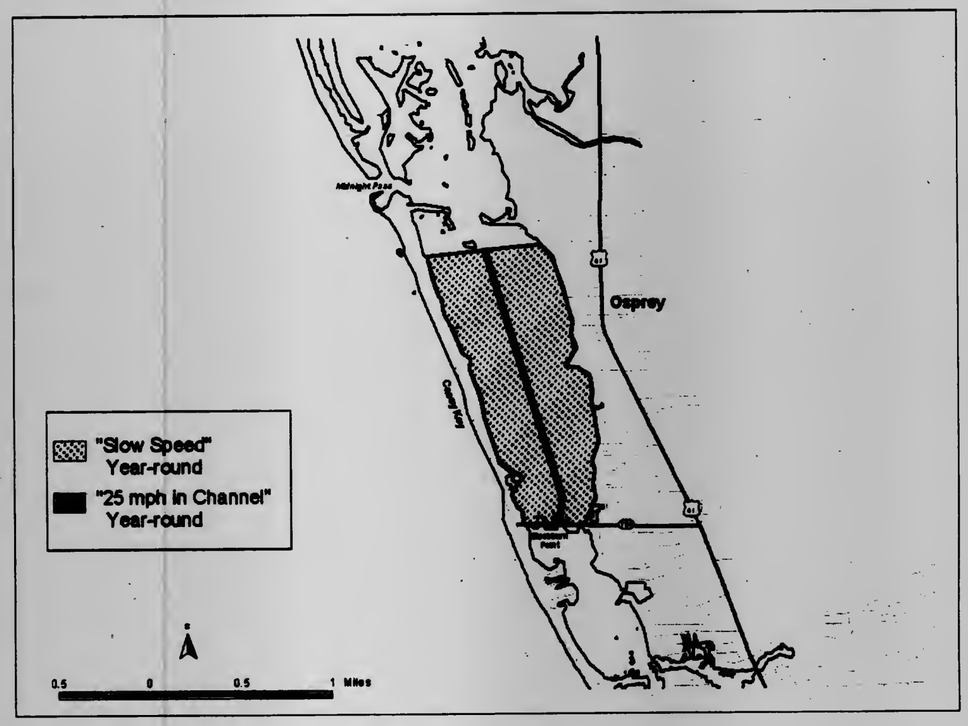

Little Sarasota Bay Manatee Refuge

(7) *The Lemon Bay Manatee Refuge.* (i) The Lemon Bay Manatee Refuge is described as those waters of Lemon Bay lying south of the Sarasota/Charlotte County, Florida, boundary and north of a line north 60 degrees 14′00″ E (true) parallel with a series of small islands approximately 1.6 kilometer (1 mile) south of the Bay Road Bridge; containing approximately 383.61 ha (948.06 acres).

(ii) Watercraft are required to proceed at slow speed, 40 kilometers per hour (25 miles per hour) within the channel, year-round. Watercraft are prohibited from operating in excess of slow speed outside of the channel and operating at speeds in excess of 40 kilometers per hour (25 miles per hour) within the channel, year-round.

(iii) Map of the Lemon Bay Manatee Refuge follows (see Lemon Bay Manatee Refuge):

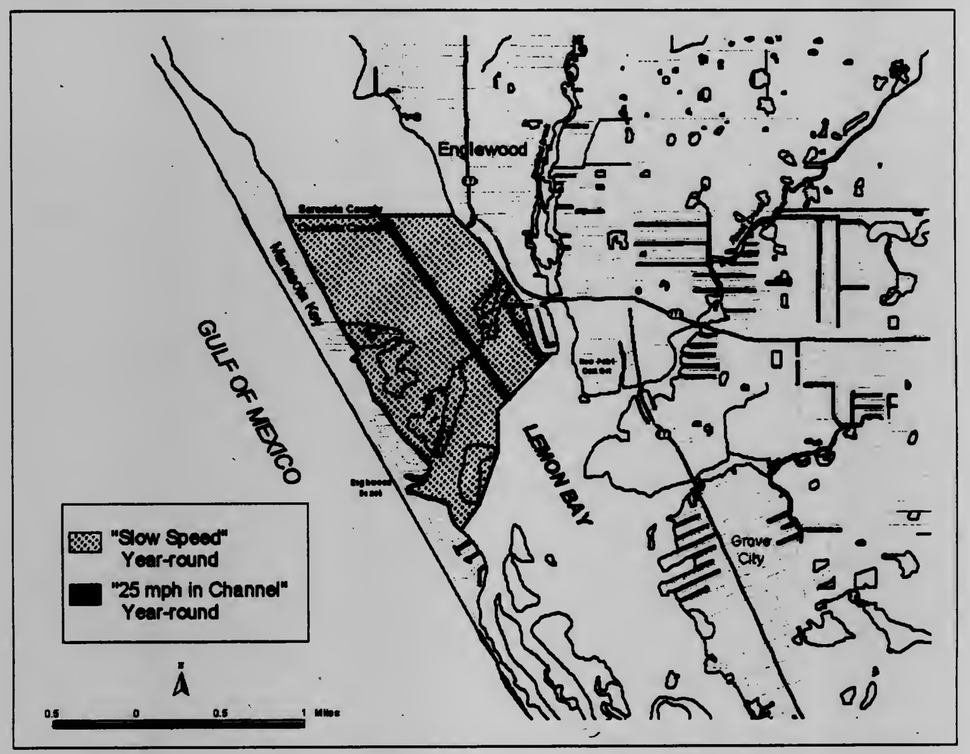

Lemon Bay Manatee Refuge

(8) *The Peace River Manatee Refuge.* (i) The Peace River Manatee Refuge is described as all waters of the Peace River and certain associated water bodies north and east of the U.S. Highway 41, Charlotte and De Soto Counties, Florida; containing approximately 1,698.11 ha (4,196.11 acres).

(ii) In the Peace River in Charlotte County, watercraft are required to travel at slow speed within a posted shoreline buffer between the US Highway 41 and I–75 bridges. The buffer is approximately 300 meters (1,000 feet) from shore except in a slightly larger area north and west of I–75 to be consistent with recently adopted Florida Fish and Wildlife Conservation Commission's regulations. Watercraft are allowed to travel at a maximum speed of 40 kilometers per hour (25 miles per hour) year-round outside the buffer. Watercraft are prohibited from traveling in excess of slow speed within the posted shoreline buffer between the U.S. Highway 41 and I–75 bridges and are further prohibited from operating in excess of 40 kilometers per hour (25 miles per hour) outside the buffer throughout the year.

(iii) In the Peace River within Charlotte County and upstream of I–75 to red channel marker "14," watercraft are required to travel at slow speed outside of the marked navigation channel. Watercraft are allowed to travel at a maximum speed of 40 kilometers per hour (25 miles per hour) year-round inside the marked navigation channel. Watercraft are prohibited from traveling in excess of slow speed in areas outside of the navigation channel and are further prohibited from traveling in excess of 40 kilometers per hour (25 miles per hour) inside the marked navigation channel, year-round.

(iv) In the waters of the Peace River in Charlotte and De Soto Counties upstream of red channel marker "14," watercraft are allowed to travel at a maximum speed of 40 kilometers per hour (25 miles per hour) year-round. Watercraft are prohibited from traveling in excess of 40 kilometers per hour (25 miles per hour), year-round, in this area.

(v) Within the waters of Jim Long Lake and Hunter Creek in Charlotte and De Soto Counties, watercraft are required to travel at slow speed year-round. Watercraft are prohibited from traveling in excess of slow speed in this area, year-round.

(vi) Within the waters of Deep Creek in Charlotte and De Soto Counties, watercraft are required to travel at slow speed year-round. Watercraft are prohibited from traveling in excess of slow speed in this area, year-round.

(vii) Within the waters of Shell Creek in Charlotte County, watercraft are

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required to travel at slow speed year-round with the following exception. Should a U.S. Coast Guard or State of Florida approved marked navigation channel be established in that portion of Shell Creek approximately 1.6 kilometers (1 mile) downstream of the Seaboard Railroad trestles, watercraft will be allowed to travel at a maximum speed of 40 kilometers per hour (25 miles per hour) in this section of Shell Creek upon posting by the Fish and Wildlife Service or the Florida Fish and Wildlife Conservation Commission. Watercraft are prohibited from traveling in excess of slow speed in this area, year-round.

(viii) Map of the Peace River Manatee Refuge follows (see Peace River Manatee Refuge):

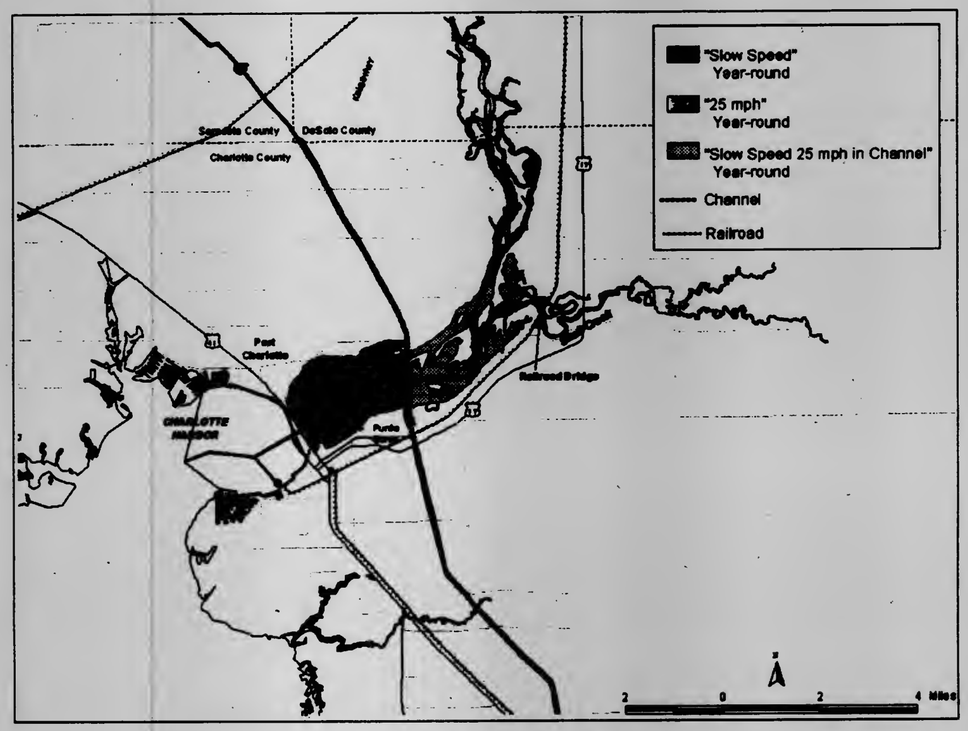

Peace River Manatee Refuge

(9) The Shell Island Manatee Refuge. (i) The Shell Island Manatee Refuge is described as all waters within the marked Intracoastal Waterway channel between Green Marker "99" (approximate latitude 26 degrees 31′00″ N, approximate longitude 82 degrees 00′52″ W) and Green Marker "93" (approximate latitude 26 degrees 31′37″ N, approximate longitude 81 degrees 59′46″ W), Lee County, Florida; containing approximately 32.6 ha (80.5 acres).

(ii) Watercraft are required to proceed at slow speed (channel included) year-round. Watercraft are prohibited from traveling in excess of slow speed in this area, year-round.

(iii) Map of the Shell Island Manatee Refuge follows (see Shell Island Manatee Refuge):

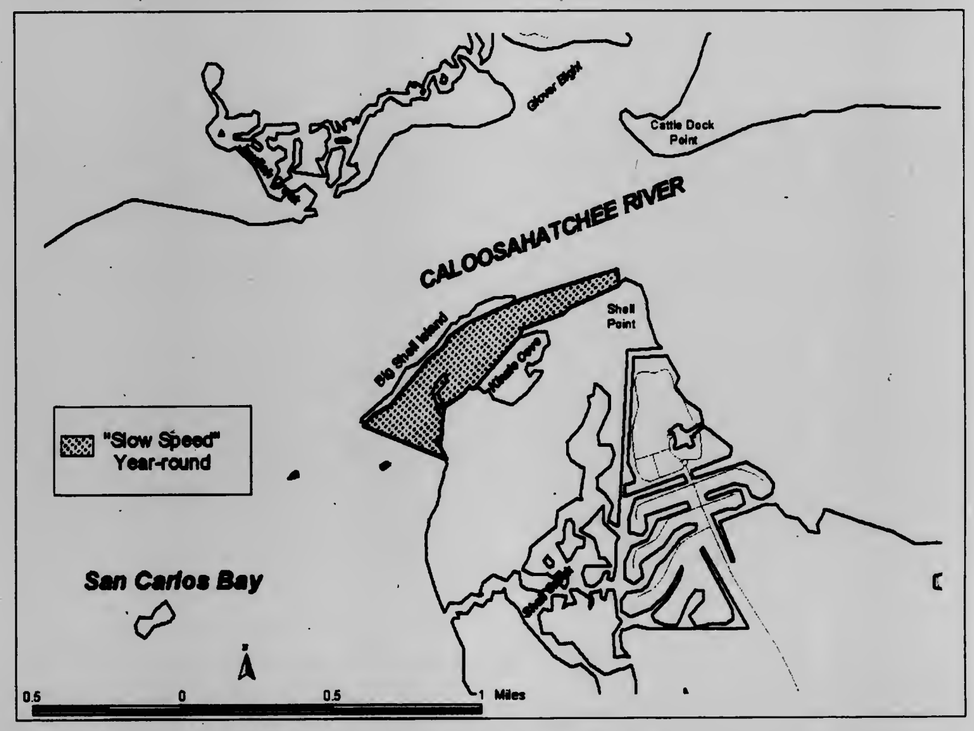

Shell Island Manatee Refuge

(10) *The Haulover Canal Manatee Refuge.* (i) The Haulover Canal Manatee Refuge is described as all waters lying within Haulover Canal in Brevard County, Florida; containing approximately 8.95 ha (22.11 acres).

(ii) Watercraft are required to proceed at slow speed (channel included) year-round. Watercraft are prohibited from traveling in excess of slow speed in this area, year-round.

(iii) Map of the Haulover Canal Manatee Refuge follows (see Haulover Canal Manatee Refuge):

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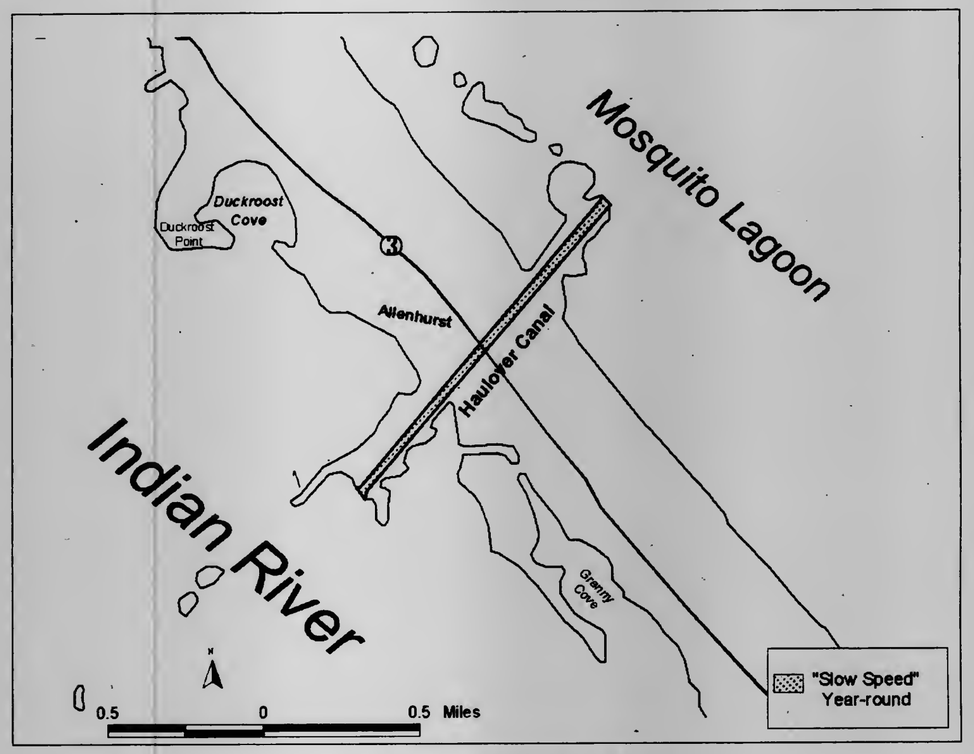

Haulover Canal Manatee Refuge

(11) *The Cocoa Beach Manatee Refuge.* (i) The Cocoa Beach Manatee Refuge is described as the waterbody west of Municipal Park within the City of Cocoa Beach, Florida, commencing at a point 45.7 meters (150 feet) west of the southwest corner of the canal running between Willow Green and Country Club Roads, thence southerly (and parallel to the golf course shoreline) to a point 45.7 meters (150 feet) west of the southwest corner of the Municipal Golf Course shoreline, thence south to marker "502," thence westerly (inclusive of the area known as the "400 Channel") to Red marker "500," thence northerly to Red marker "309," inclusive of the "400 Channel," thence southeasterly to the southwest corner of the canal referenced as the point of origin, all these waters being within the eastern half of Sections 8 and 17, Township 25 South, Range 37 East; containing approximately 23.9 ha (59.1 acres).

(ii) Watercraft are required to proceed at slow speed (channel included) year-round. Watercraft are prohibited from traveling in excess of slow speed in this area, year-round.

(iii) Map of the Cocoa Beach Manatee Refuge follows (see Cocoa Beach Manatee Refuge):

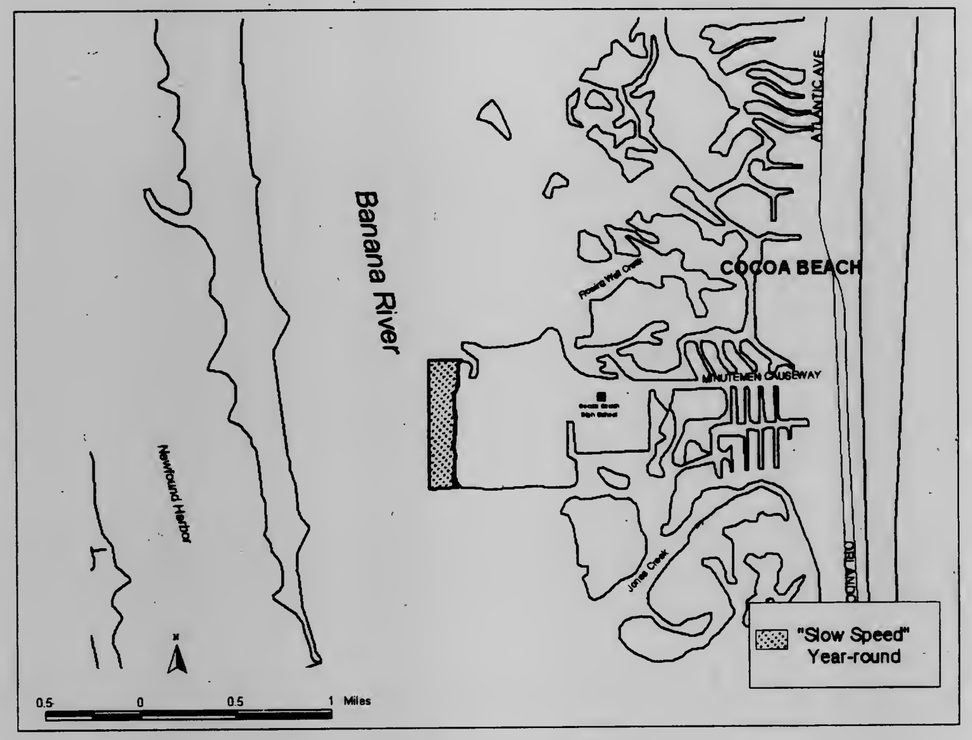

Cocoa Beach Manatee Refuge

Dated: October 31, 2002.

Paul Hoffman,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 02–28278 Filed 11–5–02; 9:57 am]

BILLING CODE 4310–55–C

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Input on Additional Manatee Protection Measures

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of request for input on additional measures to protect manatees and further recovery of the species.

SUMMARY: We, the Fish and Wildlife Service, are seeking input and soliciting comments on additional measures to protect the endangered West Indian manatee *(Trichechus manatus)* in Florida and further recovery of the species. Specifically, as part of this request, we are seeking information or suggestions that would help us identify additional protection areas; locations that would be appropriate for increased law enforcement efforts; locations where the existing speed zone signage can be improved; how we can effectively increase boater education and outreach; where and when this education and outreach should be directed; factors that should or should not be considered to improve our boating facility site reviews; and other activities that we should undertake or modify or cease to protect the manatee in Florida.

DATES: We must receive your comments regarding this request for information on or before February 6, 2003.

ADDRESSES: Submit written comments to the Field Supervisor, Jacksonville Field Office, U.S. Fish and Wildlife Service, 6620 Southpoint Drive, South, Suite 310, Jacksonville, Florida 32216 or via electronic mail to *manatee@fws.gov*.

Comments and materials received in response to this request will be available for public inspection at this address during normal working hours from 8 a.m. to 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Peter Benjamin (see **ADDRESSES** section) at telephone 904/232–2580, extension 106; facsimile 904/232–2404; or electronic mail *manatee@fws.gov*.

SUPPLEMENTARY INFORMATION: We are soliciting comments for additional measures to protect manatees. The designation of manatee protection areas is just one of the tools available to us to protect manatees and further manatee recovery to meet our responsibilities under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the Marine Mammal Protection Act of 1972, as amended (MMPA) (16 U.S.C. 1361–1407). With respect to waterborne activities, the tools we currently use include: designation of manatee protection areas; increased law enforcement efforts; improvement of current speed zone signage; boater education and outreach; and boating facility site reviews. We are also working with our Manatee Recovery Team (Recovery Team) and our Habitat Working Group (HWG) to identify and implement manatee conservation activities that will protect manatees and enhance their recovery. We hope that information and suggestions received in response to this request, together with the work generated by the Recovery Team and the HWG, will allow us to more effectively focus our limited resources to protect manatees and further recovery of the species.

During this comment period, we may also conduct public meetings, if requested, to ensure full public participation to develop additional measures to protect manatees. Once the comment period is closed, we will host a meeting of the Recovery Team so it can review the information submitted pursuant to this notice, and to discuss, evaluate and recommend to the Service additional protection measures and habitat protection needs to help ensure the recovery of the manatee.

We propose to hold additional Recovery Team meetings to assist us in identifying additional manatee protection measures, and developing an implementation plan and schedule to carry out these measures. The Recovery Team will be asked to consider the public comments and suggestions obtained through this notice, as well as the recovery needs of the species identified in the final recovery plan, the assessment of the habitat recovery criteria developed by the HWG, the final determinations by the Florida Fish and Wildlife Conservation Commission (FWCC) and us in establishing additional protection areas, the FWCC's Caloosahatchee River study, the species status reviews conducted by both the FWCC and us, and the most up-to-date manatee population model outputs. The benefits of the Recovery Team's assessment of these data and the Team's recommendation will aid us in formulating additional protection measures for possible implementation by State, Federal, county and private conservation entities. It will also ensure that the best science is being utilized to determine manatee protection needs.

In addition, the Service is also publishing in the **Federal Register** proposed incidental take regulations pursuant to the Marine Mammal Protection Act for public comment in November 2002. As a part of the MMPA regulatory process, we will request comments on the proposed mitigating measures we have identified that would be required in order for the Service to make a finding pursuant to the MMPA that the incidental take of manatees will have a negligible impact on the population. Many of the current measures being implemented to protect and recover manatees under the Endangered Species Act (*e.g.*, increased law enforcement efforts, improvement of current speed zone signage, and boater education and outreach), may be the same or comparable to those that may be proposed under the MMPA incidental take regulations, and may be similar to comments or suggestions received from the public through this notice.

The public is encouraged to provide individual comments to both Service actions (this notice requesting input on additional protective measures that the Service could consider and the proposed MMPA incidental take regulations).

Public Comments Solicited

Persons wishing to provide relevant information and comments regarding this request for input on additional measures to protect manatees, should submit such comments in writing to the Jacksonville Field Office (*see* **ADDRESSES** section).

Our practice is to make comments we receive on this process, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the process, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from the process, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comments. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Author

The primary author of this document is Peter Benjamin (*see* **ADDRESSES** section).

Authority

The authority to establish manatee protection areas is provided by the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), as amended.

Dated: October 31, 2002.

Paul Hoffman,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 02–28279 Filed 11–5–02; 9:57 am]

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Notice of November 6, 2002

Continuation of Emergency Regarding Weapons of Mass Destruction

On November 14, 1994, by Executive Order 12938, President Clinton declared a national emergency with respect to the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States posed by the proliferation of nuclear, biological, and chemical weapons (weapons of mass destruction) and the means of delivering such weapons. On July 28, 1998, the President issued Executive Order 13094 to amend Executive Order 12938 to more effectively respond to the worldwide threat of weapons of mass destruction proliferation activities. Because the proliferation of weapons of mass destruction and the means of delivering them continues to pose an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States, the national emergency first declared on November 14, 1994, and extended on November 14, 1995, November 12, 1996, November 13, 1997, November 12, 1998, November 10, 1999, November 12, 2000, and November 9, 2001, must continue in effect beyond November 14, 2002. In accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency declared in Executive Order 12938, as amended.

This notice shall be published in the **Federal Register** and transmitted to the Congress.

THE WHITE HOUSE,
November 6, 2002.

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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

7 CFR Part 610

RIN 0578–AA29

Conservation of Private Grazing Land

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Final rule.

SUMMARY: Section 386 of the Federal Agriculture Improvement and Reform Act (FAIRA) of 1996 authorizes the Secretary to provide a coordinated technical, educational, and related assistance program to conserve and enhance private grazing land resources. This rule sets forth a policy to implement the conservation technical assistance regulations as they relate to private grazing land conservation assistance.

EFFECTIVE DATE: November 12, 2002.

FOR FURTHER INFORMATION CONTACT: Mark W. Berkland, Director, Conservation Operations Division, NRCS, P.O. Box 2890, Washington, DC 20013–2890; telephone: (202) 720–1845; fax: (202) 720–4265; submit e-mail to *mark.berkland@usda.gov*, Attention: Conservation of Private Grazing Land.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be significant, and was reviewed by the Office of Management and Budget (OMB) under Executive Order 12866. Pursuant to Sec. 6(a)(3) of Executive Order 12866, the Natural Resources Conservation Service (NRCS) conducted an economic analysis of the potential impacts associated with this final rule. Copies of this economic analysis may be obtained from Mitch Flanagan, Conservation Operations Division, NRCS; telephone: (202) 690–5988; fax: (202) 720–4265; e-mail: *mitch.flanagan@usda.gov*, Attention: Conservation of Private Grazing Land.

Regulatory Flexibility Act

The Regulatory Flexibility Act is not applicable to this final rule. The Department of Agriculture (USDA) is not required by 5 U.S.C. 553, or any other provisions of law, to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

National Environmental Policy Act

The Conservation of Private Grazing Land (CPGL) Program does not consist of financial assistance, nor does it provide NRCS with the authority or opportunity to control the actions of private landowners and managers. The CPGL Program provides NRCS with the authority to provide management alternatives to landowners and managers about techniques to improve the quality of their grazing lands. The landowners and managers are responsible for determining which actions to take in which there would be positive environmental effects. There is no specific Federal action that would affect the human environment; therefore, there is no basis on which to conduct a meaningful analysis of environmental effects. In addition, the CPGL Program, and this regulation do not result in any irretrievable commitment of resources.

Paperwork Reduction Act

No substantive changes have been made to this rule that would affect the record-keeping requirements and estimated burdens previously reviewed and approved under OMB control number 0578–0013. Requesting technical assistance through the CPGL program may result in applying and receiving financial assistance through existing long-term contracting conservation programs. (0578–0013 Long-Term Contracting Paperwork Package). CPGL is not a financial assistance program.

Unfunded Mandates Reform Act of 1995

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995, Public Law 104–4, NRCS assessed the effects of this rulemaking action on State, local, tribal governments, and the public. The action does not comply with the expenditure of $100 million, or more, by any State, local, or tribal governments, or anyone in the private sector, and therefore, a statement under section 202 of the Unfunded Mandates Reform Act of 1995 is not required.

Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994

USDA classified this final rule as "not major" under Section 304 of the Department of Agriculture Reorganization Act of 1994, Public Law 103–354, therefore, a risk assessment is not required.

Purpose and Scope

Section 386 of the FAIRA of 1996, 16 U.S.C. 2005b, sets forth policy and authority for the conservation of private grazing land program. This rule sets forth policy for NRCS to implement the new authority when funded, as authorized by FAIRA.

NRCS' CPGL Program will expand the agency's capability to provide technical assistance. It is stated in 7 CFR Part 610 that the NRCS mission promotes the quality of all agricultural lands, including cropland, forestland, and grazing land. This also includes pastureland, rangeland, and grazed forestland so that the long-term sustainability of the resource base is achieved.

Private grazing land constitutes nearly one-half of the non-Federal land of the United States. This land is basic to the environmental, social, and economic stability of rural areas. Private grazing land includes private, State-owned, tribally owned, and any other non-Federally owned land managed to produce forage or browse. Grazing land is found in every State, and constitutes the single largest watershed cover type in the United States. Healthy grazing land is the foundation for economic sustainability of many communities, and is the cornerstone of a healthy environment.

Grazing land is the single largest private land use in the Nation. This land is voluntarily managed by over 1.2 million individuals. Less than 4 percent currently receive voluntary technical assistance through NRCS for the management of these natural resources.

The use of technical assistance is voluntary. The assistance will allow grazing land owners and managers to implement their conservation planning

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decisions on private grazing land in order to maintain and improve grazing land resources.

NRCS' technical assistance program provides assistance to private grazing land owners and managers to address soil and water conservation issues. However, the conservation agenda continues to expand as a result of greater scientific understanding of ecosystems. This agenda increases the number of policy actions, as well as Federal, State, and local laws on environmental quality. These policy actions place new requirements on landowners and land users, thus increasing the need for voluntary conservation technical assistance to address emerging resource issues and regulations. Many of today's owners of grazing land have difficulty staying abreast of environmental regulations. Every landowner or manager's actions are important because they have a significant impact on a particular piece of land. These decisions affect neighboring lands, as well as the larger ecosystem and watershed in which they occur.

Since 1935, NRCS has provided technical assistance to landowners and managers to address soil erosion and water quality problems. Section 386 of FAIRA expands current technical assistance authorities to include:

- Using and improving energy-efficient ways to produce food and fiber;
- Improving the dependability and consistency in water supplies;
- Improving and conserving fish habitat and aquatic systems;
- Protecting and improving water quality;
- Conserving and improving habitat for wildlife;
- Sustaining forage and grazing plants;
- Using plants to sequester greenhouse gases;
- Enhancing recreational activities;
- Maintaining or reducing weed, noxious weed, and brush encroachment;
- Enhancing long-term economic opportunities;
- Providing opportunities for improved nutrient management from the land application of animal manure and other by-product nutrient sources;
- Improving the quality of animals produced on these lands; and
- Producing food and fiber from lands that will not support cultivated crop production.

Technical assistance in the past has provided assistance for these authorities when the primary purpose was addressing soil and water conservation issues. With this rule, technical assistance will be provided to individuals when soil and water conservation issues may not be the primary resource concern, but are of secondary importance. However, in applying this authority, conservation technical assistance is available for wildlife habitat improvement, animal health improvement, forage quality improvement, air quality improvement, and addressing other natural resource issues beyond soil and water conservation. Congress authorized assistance for these additional purposes, realizing there are competing demands on private land grazing resources. These lands can be enhanced by offering technical assistance to individuals, which will provide benefits to all citizens of the United States.

There are approximately 280 million acres of rangeland and 75 million acres of pastureland in need of conservation treatment. An estimated 17 percent of all of these acres have soil-related and water-related resource concerns that could be addressed by NRCS' existing technical assistance program. This leaves 83 percent or 295 million acres in need of conservation treatment not directly related to soil and water conservation.

What happens on the land remains critical to the U.S. economic and environmental well-being, even for those who never set foot on grazing land. Grazing land produces much of our food and water supplies, and provides wildlife habitat that allows many recreational opportunities. There are many types of products derived from animals that are raised on grazing lands: Household products including furniture, clothes, soap, insulation, deodorants, and paints; pharmaceutical products including blood plasma and medical sutures; and manufacturing products including hydraulic fluid, airplane lubricants, machine oils, car polish, and textiles.

Current Technical Assistance Furnished

NRCS provides technical assistance to land users and others who are responsible for making decisions related to land use, conservation treatment, and resource management. Technical assistance, furnished by NRCS, consists of conservation program delivery through resource planning, and the evaluation and application of conservation practices, including assistance in the technical phases of administering USDA cost-share programs.

NRCS works with the local conservation district to prioritize a request to ensure that technical assistance is provided in a fair and equitable manner.

Planning assistance includes the evaluation and inventory of soil, water, animal, plant, air, and other resource information needed to make land use, environmental, and conservation treatment decisions. NRCS assists land users in developing conservation plans for farms, ranches, and other land units. The land user's decisions are recorded in the plan, and based on their conservation objectives. These plans document an orderly installation of conservation practices that ultimately make up a conservation system.

Application assistance is provided to help land users apply and maintain planned conservation practices. NRCS assistance for applying the conservation practices and systems may include:

- Design, layout, and evaluation of conservation practices;
- Development of management alternatives and cultural practices needed to establish and maintain vegetation; and
- Planning, construction, and maintenance of other conservation practices needed to protect and enhance natural resources.

NRCS may provide additional assistance to:

- Maintain and improve private grazing land resources that provide multiple benefits. For example, a grazing management plan not only benefits domestic livestock, but it may also benefit wildlife. A grazing management plan prevents overgrazing, maintains the vigor and diversity of the plant community, discourages invasion of weeds, prevents erosion, and protects streambanks and water quality;
- Ensure the long-term sustainability of private grazing land resources. The cyclical economic patterns in the grazing industry affect how intensively grazing land resources are used. The Nutrition Balance Analyzer is a model used to help managers make effective decisions about nutrition management of their livestock. A manager saves an estimated $10-$32 per animal per year by improving the production efficiency from use of this technology;
- Implement new grazing land management technologies. Technologies impacting grazing land, as in other industries, are always changing. Technical assistance provided to an individual helps with identifying and implementing new technologies to improve the environmental, economic, and/or social challenges of the private landowners or managers. These new and improved technologies may include new fencing materials, livestock watering facilities, chemicals to control invasive weeds, livestock health products, grazing management practices, fertilizer technologies, geographic information systems, and other computerized decision support systems;
- Manage resources on private grazing land through conservation planning, including, but not limited to; grazing management, nutrient management, soil quality, and weed and invasive species control. Technical assistance helps the producer adjust management decisions, as new information becomes available;
- Maintain and improve water quality and quantity, aquatic and wildlife habitat, recreational opportunities, and aesthetics on private grazing land;
- Harvest, process, and market private grazing land resources. Technical assistance may be provided to help an individual identify opportunities to develop specialty meats, leather, feathers, wool, and mohair products, or other products that are nontraditional; and
- Identify opportunities to diversify private grazing land enterprises. Many operations have an opportunity to diversify their operation with technical assistance by establishing recreational opportunities that include hunting, fishing, kayaking, canoeing, hiking, biking, picnicking, camping, bird watching, nature photography, or farm and ranch vacations as additional enterprises.

The resources, goals, and objectives vary with each individual. Technical assistance helps landowners understand the land and the tools available to manage their land. Conservation solutions that are developed and implemented are based upon the specific resources and needs of an individual as a result of technical assistance.

Private grazing land owners and managers use technical assistance for planning and implementing resource conservation plans on grazing land. The objectives of planning grazing lands are to assist landowners and managers to understand the basic ecological principles of plant/herbivore interaction, management implications to their land (soil, water, air, plants, and animals) and develop a plan that meets the needs of the resources and owners/managers management objectives.

Conservation plans for grazing land include decisions for managing the plant community to conserve or enhance the soil, water, air, plant, and animal resources. The major objective for grazing land is to design and establish a grazing management plan. When combining the appropriate conservation practices, the plan sustains the resources to meet landowners' or managers' objectives. Landowners and managers make decisions to implement the necessary conservation practices.

The economic benefits vary between every individual operation. The net financial benefits of increased forage production will vary among producers, depending upon the cost and benefits of implementing grazing land practices. Costs vary from a few dollars to several hundred dollars per acre, depending on the individual situation. If minor adjustments are needed, the cost for the adjustments may be inexpensive. However, if major changes are needed (such as brush control, fence installation, fertilizer, and watering facilities), the costs may be significantly higher. Furthermore, the results will vary due to the climatic differences and other resource differences between grazing land operations. Gaining benefits from proper management may take a few months to several years.

The agency believes that providing voluntary technical assistance to private grazing landowners and operators will also result in public benefits. These benefits include an overall improved quality of life from reduced soil erosion and sedimentation, improved water quality, increased wildlife habitat, and other resource improvements. The benefits provide economic stability to many communities, and keep the Nation's grazing land productive.

Discussion of Public Comments

In general, many of the respondents expressed appreciation for the opportunity to comment on the proposed rule. There were a total of 10 respondents to the proposed rule (individuals from Federal agencies, universities, and other organizations). The comments centered on four issues: (1) Educational role of NRCS; (2) partnership between NRCS, Cooperative State Research, Education, and Extension Service (CSREES), and others; (3) funding; and (4) other agency programs and activities.

Comment: Five comments expressed concern that NRCS is duplicating the educational activities provided by CSREES.

Response: NRCS provides technical assistance on a one-on-one basis to landowners and managers to address natural resource issues. It is this process of transferring technology to the producer that we provide assistance, and is not the same type of "education" provided by the Cooperative Extension System.

Comment: Eight comments suggested that a partnership between NRCS, CSREES, and others needs to be initiated or improved to meet the training and educational requirements necessary to address many of the natural resource issues facing grazing land.

Response: NRCS values relationships with other Federal, State, local resource agencies, and others with which common objectives are shared, although their missions may differ. NRCS partners with many agencies and organizations to enhance and strengthen conservation efforts throughout the country.

There were a few comments received regarding program funding and other agency programs and activities. Although these comments were reviewed and considered, they were not germane to this rule.

Some minor editorial and other changes in the text were suggested; these comments are not included in an analysis, but most were considered.

List of Subjects in 7 CFR Part 610

Soil conservation, Technical assistance, Water resources.

For the reasons stated in the preamble, the Natural Resources Conservation Service amends 7 CFR Part 610 as set forth below:

PART 610—TECHNICAL ASSISTANCE

1. The authority citation for Part 610 continues to read as follows:

Authority: 16 U.S.C. 590a-f, 590–1, 2005b, 3861, 3862.

2. Accordingly, Title 7 of the Code of Federal Regulations is amended by adding a new Subpart D to Part 610 to read as follows:

Subpart D—Conservation of Private Grazing Land

Sec.
610.31 Purpose and scope.
610.32 Technical assistance furnished.

Subpart D—Conservation of Private Grazing Land

§ 610.31 Purpose and scope.

(a) This subpart sets forth the policies for the Conservation of Private Grazing Land (CPGL) Program, as authorized by Section 386 of the Federal Agriculture Improvement and Reform Act of 1996, (Pub. L. 104–127, April 4, 1996) 16 U.S.C. 2005b. Under the CPGL Program, NRCS will provide technical assistance to landowners and managers who request assistance based on locally-established priorities and resource concerns. The purpose of the CPGL Program is to provide technical assistance to private grazing land

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owners and managers to voluntarily conserve or enhance grazing land resources to meet ecological, economic, and social demands.

(b) The term "private grazing land" means private, State-owned, tribally owned, and any other non-federally owned rangeland, pastureland, grazed forestland, hayland, and other lands used for grazing.

(c) The NRCS Chief may implement the CPGL Program in any of the 50 States, the District of Columbia, Commonwealth of Puerto Rico, Guam, the U.S. Virgin Islands, and American Samoa. NRCS will provide assistance in cooperation with conservation districts, or directly to a landowner or operator.

§ 610.32 Technical assistance furnished.

(a) Provide technical assistance to grazing-land owners and managers to plan and implement resource conservation on grazing land. The objective of planning on grazing land is to assist landowners and managers in understanding the basic ecological principles associated with managing their land. This objective can be met by implementing a plan that meets the needs of the resources (soil, water, air, plants, and animals) and management objectives of the owner or manager. NRCS may provide assistance, at the request of the private grazing-land owner or manager to:

(1) Maintain and improve private grazing land resources that provide multiple benefits;

(2) Ensure the long-term sustainability of private grazing land resources;

(3) Implement new grazing land management technologies;

(4) Manage resources on private grazing land through conservation planning, including, but not limited to; grazing management, nutrient management, and weed and invasive species control;

(5) Maintain and improve water quality and quantity, aquatic and wildlife habitat, recreational opportunities, and aesthetics on private grazing land;

(6) Harvest, process, and market private grazing land resources; and

(7) Identify opportunities to diversify private grazing land enterprises.

(b) Refer to 7 CFR 610.4 on other items relating to technical assistance.

(c) To receive technical assistance, a landowner or manager may contact NRCS or the local conservation district to seek assistance to solve identified natural resource problems or opportunities. Participation in this program is voluntary.

Signed in Washington, DC, on October 31, 2002.

Bruce I. Knight,

Chief, Natural Resources Conservation Service.

[FR Doc. 02–28691 Filed 11–8–02; 8:45 am]

BILLING CODE 3410–16–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 108

RIN 3245–AE91

New Markets Venture Capital Program

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: The U.S. Small Business Administration ("SBA") makes several amendments to the regulations for the New Markets Venture Capital ("NMVC") program. The majority of the amendments make technical changes to the regulations, to correct typographical errors or to clarify language. SBA also makes five substantive amendments to the regulations, which SBA believes will result in more efficient and effective delivery of NMVC program benefits to the targeted geographic areas. Generally, the five changes will:

Allow a New Markets Venture Capital company ("NMVC company") to include in its regulatory capital SBA-approved organizational and management expenses paid on behalf of the NMVC company before the company is finally approved;

Allow SBA, in selecting recipients for NMVC program assistance, to compare grant applications from specialized small business investment companies ("SSBICs") with NMVC company applications from the same or proximate low-income geographic areas ("LI areas");

Create rules governing fees an NMVC company or its associates may charge for management services provided to small businesses in which the NMVC company invests;

Revise the grant application process for SSBICs so as to make it more parallel with the application process for NMVC companies; and

Add a requirement that NMVC companies must use at least 80 percent of their grant funds (both funds from SBA and grant matching resources) to provide operational assistance to smaller enterprises located in an LI area at the time the operational assistance commenced.

DATES: This rule is effective on December 12, 2002.

FOR FURTHER INFORMATION CONTACT: Austin J. Belton, Director of New Markets Venture Capital, (202) 205–7027.

SUPPLEMENTARY INFORMATION:

I. Background

The New Markets Venture Capital Program Act of 2000 ("the Act") was created by the Consolidated Appropriations Act of 2001, Public Law 106–554, enacted December 21, 2000. SBA published in the **Federal Register** a final rule implementing the Act on May 23, 2001 (66 FR 28602) and a technical correction on June 19, 2001 (66 FR 32894).

On May 20, 2002, SBA published in the **Federal Register** a proposed rule making amendments to the regulations implementing the Act (67 FR 35449). SBA received one comment on the proposed rule, which SBA discusses in the following section-by-section analysis. With the exception of a minor clarifying change to the lead-in phrase in section 108.2005(d), SBA has made no changes to the text of the amendments to the regulations as published in the proposed rule.

SBA has conducted a first application round for the NMVC program, and has selected seven companies as conditionally approved NMVC companies. The amendments in this rule would apply to those seven companies as well as to applicants for the NMVC program in future application round(s) and to entities SBA selects for participation in the NMVC program as a result of any future application round(s).

II. Section-by-Section Analysis

SBA amends three of the definitions in § 108.50. The definitions of "New Markets Venture Capital Company" and "Participation Agreement" are amended to correct typographical errors.

The definition of "Regulatory Capital" is amended to simplify it by consolidating into § 108.230, which addresses private capital, all the current restrictions on what may be included in regulatory capital. The definition states that regulatory capital is private capital, excluding any portion of private capital that the NMVC company designates as grant matching resources.

SBA amends paragraphs (b), (c), and (d) of § 108.230. In paragraph (b), SBA makes a technical change. The word "contributed" is changed to read "paid-in," to indicate more clearly that only capital contributions actually made are considered "contributed capital" for purposes of § 108.230.

SBA amends paragraph (c) by adding a new subparagraph (5) to move to this section language concerning questionable commitments that currently is in the definition of regulatory capital in § 108.50. This is a non-substantive change.

SBA revises paragraph (d) to allow NMVC companies to include in private capital SBA-approved organizational and management expenses paid on behalf of an NMVC company prior to SBA's final approval of the NMVC company. SBA intends to provide guidance on the limitations by percentage and/or dollar amounts on such expenses that SBA will approve for inclusion in private capital. Other non-cash assets, such as "pre-licensing investments," would continue to not be allowed for inclusion in private capital. SBA previously determined that such other non-cash assets would not be acceptable for inclusion in regulatory capital. (See discussion on this subject in the preamble to the proposed rule implementing the Act, 66 FR 20536, April 23, 2001, and the preamble to the final rule implementing the Act, 66 FR 28603, May 23, 2001.)

SBA makes technical changes to § 108.310 to more clearly articulate what an NMVC company applicant must state in its application regarding the amounts of regulatory capital and grant matching resources it proposes to raise. The amendment requires an applicant to state specific amounts of regulatory capital and grant matching resources, both of which must comply with the statutory minimums established by the Act. SBA also makes a minor technical change to § 108.320.

SBA amends § 108.360(k) to allow SBA, when making selections as to which applicants will receive conditional approval, to compare the applications submitted by NMVC company applicants to the applications submitted by SSBICs that intend to invest in the same or proximate LI areas. This change will allow SBA to more effectively utilize limited NMVC program appropriations. This change also will increase the potential for achieving the nationwide distribution of the NMVC program's benefits that the Act directs.

SBA makes three technical changes to § 108.380. As amended, subsections (a)(1)(i)(A) and (a)(1)(i)(B) more clearly state that the amounts of regulatory capital and grant match that applicants must raise before they can be finally approved are the exact same amounts that they said they would raise in their applications. SBA amends subsection (b)(3) to correct a typographical error.

SBA adds new § 108.900, based in part on § 107.900 for the small business investment company (SBIC) program, governing fees for management services and similar services (for example, negotiating bank debt, sale of the company, or a lease, or structuring an employee stock ownership plan) charged by an NMVC company or its associates to small businesses that the NMVC company finances. The regulation requires SBA's prior written approval of all such fees charged. The regulation states that it does not apply to operational assistance that an NMVC company or its associate provides to a business that the NMVC company has financed or in which it expects to make a financing, and that the NMVC company may not charge the business a fee for such operational assistance. SBA expects an NMVC company to use its grant funds (both SBA funds and grant matching resources) to cover the costs of providing such operational assistance.

This regulation also requires that at least 50 percent of all such fees paid to an associate (as defined in 13 CFR 108.50) of an NMVC company by a small business must be allocated back to the NMVC company for its benefit. SBA understands that an NMVC company or its associate (for example, its management company) may want to provide management and other services to the NMVC company's portfolio companies and charge a fee for such services. It may be in the best interests of the small business that the NMVC company or its associate provide such services rather than an outside third party. However, SBA believes that the NMVC company's manager should share equally with the NMVC company the financial benefit (*i.e.*, fees) of providing those services, since that relationship (of the manager to the NMVC company) is what brought about the opportunity for the manager to obtain that financial benefit. In addition, SBA believes that neither the NMVC company itself nor the NMVC program in general is well served if the focus of the NMVC company's manager is on fee generation rather than managing the NMVC company. SBA believes that a 50–50 allocation of such fees between the NMVC company manager and the NMVC company itself strikes an appropriate balance between these objectives and reflects what knowledgeable private investors often require in commercial equity venture capital funds.

The commenter disagreed with the approach SBA takes in this section 108.900. The commenter stated that a prior approval requirement would place an excessive burden on the NMVC company's management of small businesses in which it invests and that the 50–50 allocation of the fees would not appreciably change the economics or incentives of the NMVC program. The commenter suggests that NMVC companies are likely to want to charge their portfolio companies two types of management services fees, (1) regular fees of up to $2,000 per quarter per portfolio company, to be paid to the managers of the NMVC company for managing the portfolio company, and (2) more substantial fees that will arise "in the ordinary course of business." SBA notes that while the commenter characterizes the amount of the first type of fee as "modest," an NMVC company could earn up to $80,000 per year from such fees, if one assumes the company has 10 portfolio companies paying $2,000 per quarter. This would allow the NMVC company to receive more than a third again as much as the typical annual management fee earned by an NMVC company (assuming it is a $5 million regulatory capital fund).

The first type of fee presumes that the manager of an NMVC company also will be managing the day-to-day operations of the companies in which an NMVC company invests. SBA does not believe that this would be an appropriate role for an NMVC company's managers to play in most cases. First of all, the fact that such managers have the expertise to manage a venture capital fund does not mean that such managers have the necessary skills and ability to manage an operating business concern. In any event, the appropriate role of an NMVC company's managers is to actively oversee the affairs of the portfolio concerns, which implies a degree of counseling and advising as a board member or otherwise, usually delivered in the form of a close, informal working relationship. Those activities usually are compensated by an NMVC company's annual management fee and any profit participation received from its investment in the business. In addition, an NMVC company has the opportunity to provide management expertise, at no cost to the business or to the NMVC company's investors, through the expenditure of operational assistance grant resources. For these reasons, SBA believes that the first type of fees will require scrutiny and, therefore, it is critical that SBA have the opportunity to review in advance any such fees that an NMVC company proposes to charge.

The commenter characterizes the second type of fee as for management services that are occasional and opportunistic, and states that requiring SBA's advance approval might result in an NMVC company losing significant opportunities to provide such services and earn such fees. SBA intends to require NMVC companies to complete one form (SBA Form 2217) requesting

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prior approval of such fees, which SBA does not believe constitutes "extensive reporting." SBA believes that it will be sensitive to any time constraints on a potential deal or on an NMVC company, and be able to provide a timely response to such requests.

SBA removes § 108.2000 and replaces it with several smaller, more easily readable sections, §§ 108.2000–108.2007. Section 108.2000 (currently § 108.2000(a)) provides a more comprehensive list of the regulations applicable to operational assistance grants to NMVC companies and to SSBICs. Section 108.2001 (currently § 108.2000(b)(1) and (b)(3)(i)) is unchanged in content.

Section 108.2002 (currently § 108.2000(b)(2)) includes several technical corrections. First, the term "Developmental Venture Capital Investments" is replaced with "Low-Income Investments" in new subsections (a) and (c). The term "Low-Income Investments" already is defined in § 108.50, and more accurately reflects the statutory requirement that an SSBIC must use all of its new capital raised for the NMVC program, to make equity capital investments in smaller enterprises located in LI areas. Second, the phrase "after December 21, 2000" is added to the end of new subsection (c), to incorporate the NMVC program statutory effective date and make more clear that an SSBIC may use operational assistance grant funds only in connection with investments it makes after such date.

Section 108.2003 (currently § 108.2000(b)(3)(ii)) is unchanged in content. Section 108.2004 (currently § 108.2000(b)(4)(i) and (ii)) makes technical changes to more clearly articulate what an SSBIC must state in its application regarding the amounts of regulatory capital and grant matching resources it proposes to raise. The regulation requires that an SSBIC state specific amounts of regulatory capital and grant matching resources, and that the amount of grant matching resources comply with the statutory minimum established by the Act.

Section 108.2005 (currently § 108.2000(b)(4)(ii)(A) through (G)) replaces the term "Developmental Venture Capital Investments" with "Low-Income Investments" in new subsections (a), (c), (d) and (f), for the reasons described above. Subsections (a) and (d) adds new requirements that an SSBIC identify specific LI areas in which it intends to make investments and provide operational assistance, and specify how much of its investments it will make in each of the specified LI areas. These requirements parallel the information required from NMVC company applicants, and will allow SBA to better determine the potential impact on specific LI areas, when making selections as to recipients of NMVC program benefits.

Section 108.2006 (currently § 108.2000(b)(5)) would replace the term "Developmental Venture Capital Investments" with "Low-Income Investments" in new subsection (d), for the reasons described above. The regulation also allows SBA to add an interview component to its selection process, paralleling SBA's current authority to require an interview with NMVC company applicants (see 13 CFR 108.340). SBA is considering interviewing applicants in future application rounds. New subsection (h), as amended, allows SBA, when making selections as to which SSBICs conditionally will receive an operational assistance grant, to compare the applications submitted by SSBICs to the applications submitted by NMVC company applicants that intend to invest in the same or proximate LI areas. This change allows SBA to more effectively utilize limited NMVC program appropriations. This change also increases the potential for achieving the nationwide distribution of the NMVC program's benefits contemplated by the Act.

Section 108.2007 (currently § 108.2000(b)(6)) is unchanged in content.

Section 108.2010 adds a new paragraph (b) (and redesignates paragraph (b) as paragraph (c)) requiring that an NMVC company must use at least 80 percent of its grant funds (both funds from SBA and grant matching resources) to provide operational assistance to smaller enterprises whose principal office is located in an LI area at the time the operational assistance commences.

The Act explicitly requires that all operational assistance funded by the NMVC program go only to smaller enterprises. The regulation imposes an additional requirement that a specific percentage, 80 percent, of such operational assistance provided by NMVC companies go to businesses located in LI areas. This requirement serves to maximize the impact of the operational assistance funded by SBA on the LI areas targeted for assistance through the NMVC program. This 80 percent requirement also parallels the existing regulatory requirement (see 13 CFR 108.710(a)) that NMVC companies must use at least 80 percent of its capital (both funds from SBA and private capital) to make equity capital investments in smaller enterprises located in an LI area at the time the investment is made.

The commenter recommended that SBA determine whether the operational assistance provided by an NMVC company falls within the 80 percent basket of assistance to smaller enterprises located in LI areas or the 20 percent basket of assistance to businesses outside those areas, based on the ultimate location of the business, not its location when the assistance commenced. In other words, consider OA provided by a NMVC company to a business not located in an LI area to fall within the 80 percent basket as long as the business moved into the LI area "within a reasonable period of time" after the start of the assistance.

SBA declines to implement this suggestion. As in the context of 13 CFR 108.710(a) concerning the required percentage of capital that must be invested in businesses located in LI areas, SBA intends that NMVC companies will determine the status of the business's location at the time the operational assistance commences, not at some later date. SBA intends that NMVC companies make an assessment of the business at the time operational assistance commences (or at the time of its initial financing to the business, in the case of financial assistance) and determine whether its principal office is located in an LI area at that moment in time. The assessment of the business is set at that point in time, and becomes the basis to determine whether the NMVC company may count the assistance given to that business toward the 80 percent requirement. SBA considered and rejected alternative approaches when it developed the requirements in 13 CFR 108.710. SBA believes that this "snapshot" approach is the most efficient and workable means of tracking both investments and operational assistance, as well as achieving the statutory mission of directing the majority of the program's resources to smaller enterprises located in LI areas. SBA believes that an NMVC company will have some flexibility in the way it structures its financial and operational assistance. For example, an NMVC company might provide a small amount of operational assistance to a business located outside an LI area (which would fall within the 20 percent basket of assistance) and advise the business that more assistance will be forthcoming once the business relocates into an LI area.

SBA revises redesignated paragraph (c) to correct the title of the part of the Federal Acquisition Regulations containing the definition of G&A expense.

Technical amendments are made to §§ 108.2020(b), 108.2030(c)(2)(iii), 108.2030(c)(2)(iv), 108.2030(d)(2), and 108.2040(a) to correct cross-references to other sections in this part and to clarify requirements. The changes to § 108.2030(c) allow grant matching resources to be payable over a multiyear period not to exceed the term of the grant from SBA, and in no event more than 10 years. This change provides support for SBA to allow an applicant to request a specific grant term within a range acceptable to SBA and as long as it did not exceed the 10 year limit set forth in the Act, rather than having SBA establish one allowable grant term for all applicants. This gives each NMVC company and selected SSBIC greater flexibility to determine how best to use operational assistance funds from SBA to accomplish its mission. This change is made possible by a change in the law governing SBA's appropriation for the NMVC program. On July 24, 2001, Congress passed a supplemental appropriations bill (Pub. L. 107–20) that extended the availability of the funds appropriated to SBA for the NMVC program.

III. Regulatory Compliance Section—Compliance With Executive Orders 12866, 12988, and 13132; With the Paperwork Reduction Act (44 U.S.C. Ch. 35); and With the Regulatory Flexibility Act (5 U.S.C. 601–612)

Compliance With Executive Order 12866

The Office of Management and Budget (OMB) has determined that this rule is a "significant regulatory action" under Executive Order 12866. A regulatory assessment of the potential costs and benefits of the regulatory action follows. Because this is a new program and only one NMVC Company is operational as yet, SBA does not have relevant data to estimate actual dollar values for these amendments.

The NMVC program is an equity venture capital program designed to promote the economic development of, and address the unmet equity capital needs of smaller enterprises located in, LI areas. The program has a one-time no-year appropriation of $52 million to fund newly formed NMVC companies. To date, SBA has selected seven applicants as conditionally approved NMVC companies, and has finally approved one of those conditionally approved NMVC companies as an NMVC company. SBA anticipates a second application round, and the amendments concerning the application process will affect applicants in the second round. The amendments that concern participation in the program apply to all NMVC companies selected through both application rounds and SSBICs applying under the second application round.

This rule makes several amendments to the existing regulations implementing the program. Most of the amendments are technical changes that have no impact on the costs associated with the program to the Government or to the program beneficiaries. After SBA's first year of experience in creating and administering this new program, SBA also makes a few substantive changes which SBA believes will result in more efficient and effective delivery of NMVC program benefits to the targeted LI areas and businesses. SBA believes that these changes will result in reduced operational costs for the program to both the government, the NMVC companies, and to the beneficiary small businesses financed by the NMVC companies with SBA leverage.

The most significant change SBA makes is to add a requirement that NMVC companies must use at least 80 percent of the SBA grant funds (and the required match funding from non-SBA sources) to assist smaller enterprises whose principal office is in an LI area. This is consistent with the existing requirement on the use of an NMVC company's capital. This change ensures that the primary impact of the grant will be on the LI areas targeted by the NMVC program. It also will have the effect of enabling smaller enterprises in LI areas to qualify for equity investment, or otherwise assisting such enterprises to grow at no cost to such businesses.

SBA's experience over the past year indicates that some NMVC companies may charge management services fees to smaller enterprises in connection with investments made by the NMVC company, but SBA's existing regulations are silent in this area. SBA believes that adding a regulation governing such fees will give SBA the necessary tools to ensure that smaller enterprises are not being charged too much for such services and that an NMVC company's management is not motivated solely by fee generation. SBA adds section 108.900 which places limits on such fees, requires SBA's advance approval, and requires that at least 50 percent of any fees charged by the fund manager be for the benefit of the NMVC company.

SBA also makes several changes to clarify the application requirements for SSBICs to participate in the NMVC program and to do so on a parallel basis as NMVC companies. For example, one change requires SSBICs to identify specific LI areas they intend to target, thereby allowing comparison with any NMVC applicant for the same LI area and avoiding duplicative coverage of a LI area. The overall results of these changes are to ensure even-handed treatment of SSBICs and NMVC companies, maximize the nationwide impact of the NMVC program, and achieve greater administrative efficiency in program administration.

SBA also clarifies that SBA will permit SBA-approved organizational and management expenses incurred prior to SBA's final approval of the NMVC company to be credited in whole or part against the regulatory capital the NMVC company is required to raise. This credit is in lieu of an NMVC company being required to pay out cash at its outset for the same pre-approved costs. This change will improve the efficiency of an NMVC company's operations and prevent unnecessary paperwork on the part of the NMVC company, which will streamline the program. This change also will bring the NMVC program in line with the SBIC program and with best practices of the private venture fund industry in this area.

In sum, the changes will result in more NMVC program funds going to smaller enterprises in LI areas, in line with the legislative intent, and greater cost-effectiveness and efficiency in SBA's administration of the NMVC program to execute the congressional mandate.

Compliance with Executive Order 12988

For purposes of Executive Order 12988, SBA has determined that this rule is drafted, to the extent practicable, in accordance with the standards set forth in section 3 of that order.

Compliance With Executive Order 13132

For purposes of Executive Order 13132, SBA has determined that this rule has no federalism implications because the legislation authorizing it addresses private, for-profit concerns (NMVC companies) working directly with entrepreneurs. The regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, under Executive Order 13132, SBA determines that this rule does not have sufficient federalism implications warranting the preparation of a Federalism Assessment.

Compliance With Paperwork Reduction Act, 44 U.S.C. Ch. 35

SBA has determined that this rule imposes new information collection

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requirements that require approval by OMB under the Paperwork Reduction Act, 44 U.S.C. 3501–3520. The rule includes two new collections of information: (1) A request for prior SBA approval of management services fees and other fees and (2) concerning the application process for SSBICs, an additional component to the plan for use of the operational assistance grant, and an interview component. These information collections were described in more detail in the preamble to the proposed rule SBA published in the **Federal Register** on May 20, 2002 (67 FR 35449).

SBA already has provided the public with a 60-day comment period on this collection (67 FR 35449). SBA received no comments on the collection. On July 29, 2002, OMB approved, without change, the collection under OMB number 3245–0338.

You may request a copy of the collections by calling Louis Cupp at (202) 619–0511 or writing to him at Office of New Markets Venture Capital, Investment Division, U.S. Small Business Administration, 409 Third Street, SW., 6th Floor, Washington, DC 20416.

Compliance With the Regulatory Flexibility Act, 5 U.S.C. 601–602

Under the Regulatory Flexibility Act (RFA), SBA has determined that this rule does not have a significant economic impact on a substantial number of small entities, within the meaning of the RFA, for the following reasons.

The NMVC program is expected to result in the creation of fewer than 20 NMVC companies. The program's impact will be felt to a greater extent on the small businesses that the NMVC companies invest in and assist through this program. The Act authorizes $150 million to guarantee debentures to NMVC companies, which will result in a discounted amount of approximately $100 million with which NMVC companies can make investments, and $30 million for operational assistance grants to NMVC companies and SSBICs. In addition, NMVC companies must raise capital totaling $100 million, and NMVC companies and SSBICs must raise grant matching resources totaling $30 million. Thus, the total net funding for the NMVC program, including matching funds raised by NMVC companies and SSBICs, is $260 million. Based upon industry practices, it is likely that the funds will be disbursed over a five to seven year period. A NMVC company's minimum life is 10 years and NMVC companies' investments are typically made during their first five to seven years of existence. Generally, a NMVC company will fund three or at most four businesses in one year out of the 20 to 30 businesses it will fund over its life. Therefore, NMVC program funds will flow out to businesses at a rate of approximately $50 million per year.

The average size of an investment by a community development company is approximately $300,000. Based upon total funding of $260 million and an average investment in a small business of $300,000, approximately 867 small businesses will be affected by this program during the lives of the NMVC companies authorized by the Act. SBA estimates that there are approximately 22.4 million small businesses in the United States and 867 constitutes less than 1/10 percent of those businesses.

Further, NMVC companies must invest in "smaller enterprises" which are defined as businesses with a net worth not greater than $6 million and average net income of not greater than $2 million. Based upon an average investment of $300,000, an investment in a business with a net worth of $6 million would equate to 5 percent of the business's net worth. Additionally, industry practices indicate that while the average investment in a particular business is $300,000, this amount may not be disbursed all at once. The average investment per round in the industry is approximately $185,000, which is only 3 percent of the business's net worth.

List of Subjects in 13 CFR Part 108

Community development, Government securities, Grant programs—business, Securities, Small businesses.

For the reasons stated in the preamble, the Small Business Administration amends 13 CFR part 108 as follows.

PART 108—NEW MARKETS VENTURE CAPITAL PROGRAM

1. The authority citation for part 108 continues to read as follows:

Authority: 15 U.S.C. 689—689q.

2. Amend § 108.50 by:

a. Revising the citation in paragraph (1) of the definition of *New Markets Venture Capital Company* or *NMVC Company* from "§ 108.390" to "§ 108.380";

b. Revising the citation in the first sentence of the definition of *Participation Agreement* from "§ 108.390" to "§ 108.380"; and

c. Revising the definition of *Regulatory Capital;* to read as follows:

§ 108.50 Definition of terms.

* * * * *

Regulatory Capital means Private Capital, excluding any portion of Private Capital that is designated as matching resources in accordance with § 108.2030(b)(3).

* * * * *

3. Amend § 108.230 by:

a. Revising paragraph (b);

b. Adding paragraph (c)(5); and

c. Revising paragraph (d); to read as follows:

§ 108.230 Private Capital for NMVC Companies.

* * * * *

(b) *Contributed capital.* For purposes of this section, contributed capital means the paid-in capital and paid-in surplus of a Corporate NMVC Company, the members' paid-in capital of a LLC NMVC Company, or the partners' paid-in capital of a Partnership NMVC Company, in each case subject to the limitations in paragraph (c) of this section.

(c) * * *

(5) A commitment from an investor if SBA determines that the collectability of the commitment is questionable.

(d) *Limitations on including non-cash capital contributions in Private Capital.* Private Capital does not include capital contributions in a form other than cash, except as provided in this paragraph (d). Subject to SBA's prior approval, Private Capital may include payments made on behalf of an Applicant or Conditionally Approved NMVC Company before the Applicant or Conditionally Approved NMVC Company becomes a NMVC Company for organizational expenses and Management Expenses incurred by the Applicant or the Conditionally Approved NMVC Company prior to its becoming a NMVC Company.

* * * * *

4. Revise § 108.310(a) to read as follows:

§ 108.310 Contents of application.

* * * * *

(a) *Amounts.* The Applicant must indicate—

(1) The specific amount of Regulatory Capital it proposes to raise (which amount must be at least $5,000,000); and

(2) The specific amount of binding commitments for contributions in cash or in-kind it proposes to raise, and/or an annuity it proposes to purchase, in accordance with the requirements of § 108.2030, as its matching resources for its Operational Assistance grant award (the aggregate of which must be not less than $1,500,000 or 30 percent of the Regulatory Capital it proposes to raise under paragraph (a)(1) of this section, whichever is greater).

* * * * *

5. Revise the second sentence of § 108.320(g) to read as follows:

§ 108.320 Contents of comprehensive business plan.

* * * * *

(g) * * * If it proposes to obtain commitments for cash and in-kind contributions, it also must estimate the ratio of cash to in-kind contributions (in no event may in-kind contributions exceed 50 percent of the total contributions). * * *

* * * * *

6. Revise § 108.360(k) to read as follows:

§ 108.360 Evaluation criteria.

* * * * *

(k) The strength of the Applicant's application compared to applications submitted by other Applicants and by SSBICs intending to invest in the same or proximate LI Areas.

7. Revise § 108.380(a)(1)(i)(A), (a)(1)(i)(B), and the second sentence in (b)(3) to read as follows:

§ 108.380 Final approval as a NMVC Company.

(a) * * *

(1) * * *

(i) * * *

(A) The amount of Regulatory Capital set forth in its application, pursuant to § 108.310(a)(1); and

(B) The amount of matching resources for its Operational Assistance grant award set forth in its application, pursuant to § 108.310(a)(2); and

* * * * *

(b) * * *

(3) * * * Under no circumstances will SBA designate a Conditionally Approved NMVC Company as a NMVC Company if such Conditionally Approved NMVC Company does not raise the required amount of Regulatory Capital within the time period SBA gave it to do so.

8. Add an undesignated centerhead and a new § 108.900 to read as follows:

Management Services and Fees

§ 108.900 Fees for management services provided to a Small Business by a NMVC Company or its Associate.

(a) *General.* This section applies to management services that you or your Associate provide to a Small Business during the term of a Financing or prior to a Financing. It does not apply to management services that your Associate provides to a Small Business that you do not finance. It also does not apply to Operational Assistance that you or your Associate provide to a Smaller Enterprise that you have Financed or in which you expect to make a Financing, for which neither you nor your Associate may charge the Smaller Enterprise.

(b) *SBA approval.* You must obtain SBA's prior written approval of any management services fees and other fees described in this section that you or your Associate charge.

(c) *Permitted management services fees.* You or your Associate may provide management services to a Small Business financed by you if:

(1) You or your Associate have entered into a written contract with the Small Business;

(2) The fees charged are for services actually performed;

(3) Services are provided on an hourly fee, project fee, or other reasonable basis;

(4) You can demonstrate to SBA, upon request, that the rate does not exceed the prevailing rate charged for comparable services by other organizations in the geographic area of the Small Business; and

(5) At least 50 percent of any management services fees paid to your Associate by a Small Business for management services provided by the Associate is allocated back to you for your benefit.

(d) *Fees for service as a board member.* You or your Associate may charge a Small Business Financed by you for services provided as members of the Small Business' board of directors. The fees must not exceed those paid to other outside board members. In the absence of such board members, fees must be reasonable when compared with amounts paid to outside directors of similar companies. Fees may be in the form of cash, warrants, or other payments. At least 50 percent of any such fees paid to your Associate by a Small Business for service by the Associate as a board member must be allocated back to you for your benefit.

(e) *Transaction fees.* (1) You or your Associate may charge reasonable transaction fees for work performed such as preparing a Small Business for a public offering, private offering, or sale of all or part of the business, and for assisting with the transaction. Fees may be in the form of cash, notes, stock, and/or options. At least 50 percent of any such fees paid to your Associate by a Small Business for transactions work done by the Associate must be allocated back to you for your benefit.

(2) Your Associate may charge market rate investment banking fees to a Small Business on that portion of a Financing that you do not provide.

(f) *Recordkeeping requirements.* You must keep a record of hours spent and amounts charged to the Small Business, including expenses charged.

9.–10. Revise § 108.2000 and add §§108.2001 through 108.2007 as follows:

§ 108.2000 Operational Assistance Grants to NMVC Companies and SSBICs.

(a) *NMVC Companies.* Regulations governing Operational Assistance grants to NMVC Companies may be found in subparts D and E of this part 108, and in §§ 108.2010 through 108.2040.

(b) *SSBICs.* Regulations governing Operational Assistance grants to SSBICs may be found in §§ 108.2001 through 108.2040.

§ 108.2001 When and how SSBICs may apply for Operational Assistance grants.

(a) *Notice of Funds Availability ("NOFA").* SBA will publish a NOFA in the **Federal Register**, advising SSBICs of the availability of funds for Operational Assistance grants to SSBICs. This NOFA will be the same NOFA described in § 108.300(a), or will be published simultaneously with that NOFA. An SSBIC may submit an application for an Operational Assistance grant only during the time period specified for such purpose in the NOFA.

(b) *Application form.* An SSBIC must apply for an Operational Assistance grant using the application packet provided by SBA. Upon receipt of an application, SBA may request clarifying or technical information on the materials submitted as part of the application.

§ 108.2002 Eligibility of SSBICs to apply for Operational Assistance grants.

An SSBIC is eligible to apply for an Operational Assistance grant if:

(a) It intends to increase its Regulatory Capital, as in effect on December 21, 2000, and to make Low-Income Investments in the amount of such increase;

(b) It intends to raise binding commitments for contributions in cash or in-kind, and/or to purchase an annuity, in an amount not less than 30 percent of the intended increase in its Regulatory Capital described in paragraph (a) of this section; and

(c) It has a plan describing how it intends to use the requested grant funds to provide Operational Assistance to Smaller Enterprises in which it has made or expects to make Low-Income Investments after December 21, 2000.

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§ 108.2003 Grant issuance fee for SSBICs.

An SSBIC must pay to SBA a grant issuance fee of $5,000. An SSBIC must submit this fee in advance, at the time of application submission. If SBA does not award a grant to the SSBIC, SBA will refund this fee to the SSBIC.

§ 108.2004 Contents of application submitted by SSBICs.

Each application submitted by an SSBIC for an Operational Assistance grant must contain the information specified in the application packet provided by SBA, including the following information:

(a) *Amounts.* An SSBIC must specify the amount of Regulatory Capital it intends to raise after December 21, 2000, and the amount of Operational Assistance grant funds it seeks from SBA, which must be at least 30 percent of its intended increase in its Regulatory Capital since December 21, 2000.

(b) *Plan.* An SSBIC must submit a plan addressing the specific items described in § 108.2005.

§ 108.2005 Contents of plan submitted by SSBICs.

(a) *Plan for providing Operational Assistance.* The SSBIC must describe how it plans to use its grant funds to provide Operational Assistance to Smaller Enterprises in which it will make Low-Income Investments. Its plan must address the types of Operational Assistance it proposes to provide, and how it plans to provide the Operational Assistance through the use of licensed professionals, when necessary, either from its own staff or from outside entities.

(b) *Matching resources for Operational Assistance grant.* The SSBIC must include a detailed description of how it plans to obtain binding commitments for contributions in cash or in-kind, and/or to purchase an annuity, to match the funds requested from SBA for the SSBIC's Operational Assistance grant. If it proposes to obtain commitments for cash and in-kind contributions, it also must estimate the ratio of cash to in-kind contributions (in no event may in-kind contributions exceed 50 percent of the total contributions). The SSBIC must discuss its potential sources of matching resources, the estimated timing on raising such match, and the extent of the expressions of interest to commit such match to the SSBIC.

(c) *Identification of LI Areas.* The SSBIC must identify the specific LI Areas in which it intends to make Low-Income Investments and provide Operational Assistance under the NMVC program.

(d) *Projected allocation of investments among identified LI Areas.* The SSBIC must describe the amount of Low-Income Investments it intends to make in each of the identified LI Areas.

(e) *Track record of management team in obtaining public policy results through investments.* The SSBIC must provide information concerning the past track record of the SSBIC in making investments that have had a demonstrable impact on the socially or economically disadvantaged businesses targeted by the SSBIC program (for example, new businesses created, jobs created, or wealth created). Such information might include case studies or examples of the SSBIC's successful Financings.

(f) *Market analysis.* The SSBIC must provide an analysis of the LI Areas in which it intends to makes its Low-Income Investments and provide its Operational Assistance to Smaller Enterprises, demonstrating that the SSBIC understands the market and the unmet capital needs in such areas and how its activities will meet these unmet capital needs through Low-Income Investments and have a positive economic impact on those areas. The analysis must include a description of the extent of the economic distress in the identified LI Areas. The SSBIC also must analyze the extent of the demand in such areas for Low-Income Investments and any factors or trends that may affect the SSBIC's ability to make effective Low-Income Investments.

(g) *Regulatory Capital.* The SSBIC must include a detailed description of how it plans to raise its Regulatory Capital. The SSBIC must discuss its potential sources of Regulatory Capital, the estimated timing on raising such funds, and the extent of the expressions of interest to commit such funds to the SSBIC.

(h) *Projected impact.* The SSBIC must describe the criteria and economic measurements to be used to evaluate whether and to what extent it has met the objectives of the NMVC program. It must include:

(1) An estimate of the social, economic, and community development benefits to be created within identified LI Areas over the next five years or more as a result of its activities;

(2) A description of the criteria to be used to measure the benefits created as a result of its activities; and

(3) A discussion about the amount of such benefits created that it will consider to constitute successfully meeting the objectives of the NMVC program.

§ 108.2006 Evaluation and selection of SSBICs.

SBA will evaluate and select an SSBIC for an Operational Assistance grant award under the NMVC program solely at SBA's discretion, based on SBA's review of the SSBIC's application materials, interviews or site visits with the SSBIC (if any), and information in SBA's records relating to the SSBIC's regulatory compliance status and track record as an SSBIC. SBA's evaluation and selection process is intended to ensure that SSBIC requests are evaluated on a competitive basis and in a fair and consistent manner. SBA will evaluate and select SSBICs for an Operational Assistance grant award by considering the following criteria:

(a) The strength of the SSBIC's application, including the strength of its proposal to provide Operational Assistance to Smaller Enterprises in which it intends to invest;

(b) The SSBIC's regulatory compliance status and past track record in being able to accomplish program goals through its investment activity;

(c) The likelihood that and the time frame within which the SSBIC will be able to raise the Regulatory Capital it intends to raise and obtain the matching resources described in § 108.2005(b) and (g);

(d) The need for Low-Income Investments in the LI Areas in which the SSBIC intends to invest;

(e) The SSBIC's demonstrated understanding of the markets in the LI Areas in which it intends to invest;

(f) The extent to which the activities proposed by the SSBIC will promote economic development and the creation of wealth and job opportunities in the LI Areas in which it intends to invest and among individuals living in LI Areas;

(g) The likelihood that the SSBIC will fulfill the goals described in its application and meet the objectives of the NMVC program; and

(h) The strength of the SSBIC's application compared to applications submitted by other SSBICs and by Applicants intending to invest in the same or proximate LI Areas.

§ 108.2007 Grant award to SSBICs.

An SSBIC selected for an Operational Assistance grant award will receive a grant award only if, by a date established by SBA, it increases its Regulatory Capital in the specific amount set forth in its application, pursuant to § 108.2004(a), and raises matching resources for the grant in the amount required by § 108.2030(d)(2).

11. Amend § 108.2010 by redesignating paragraph (b) as paragraph (c), adding a new paragraph (b), and revising redesignated paragraph (c), to read as follows:

§ 108.2010 Restrictions of use of Operational Assistance grant funds.

* * * * *

(b) *Restrictions applicable only to NMVC Companies.* A NMVC Company must use at least 80 percent of both grant funds awarded by SBA and its matching resources to provide Operational Assistance to Smaller Enterprises whose Principal Office at the time the Operational Assistance commences is located in an LI Area.

(c) *Restrictions applicable to NMVC Companies and SSBICs.* A NMVC Company or a SSBIC that receives an Operational Assistance grant must not use either grant funds awarded by SBA or its matching resources for "general and administrative expense," as defined in the Federal Acquisition Regulations, "Definitions of Words and Terms," 48 CFR 2.101.

12. Revise the citation in § 108.2020(b) from "§§ 108.2000 and 108.2030" to "§§ 108.2007 and 108.2030".

13. Revise § 108.2030(c)(2)(iii), (c)(2)(iv), and (d)(2) to read as follows:

§ 108.2030 Matching requirements.

* * * * *

(c) * * *

(2) * * *

(iii) Binding commitments for cash or in-kind contributions that may be payable over a multiyear period acceptable to SBA (but not to exceed the term of the Operational Assistance grant from SBA and in no event more than 10 years); and/or

(iv) An annuity, purchased with funds other than Regulatory Capital, from an insurance company acceptable to SBA and that may be payable over a multiyear period acceptable to SBA (but not to exceed the term of the Operational Assistance grant from SBA and in no event more than 10 years).

(d) * * *

(2) *SSBICs.* The amount of matching resources required of an SSBIC is equal to the amount of Operational Assistance grant funds requested by the SSBIC, as set forth in its application pursuant to § 108.2004(a).

14. Revise § 108.2040(a) to read as follows:

§ 108.2040 Reporting and recordkeeping requirements.

(a) *NMVC Companies.* Policies governing reporting, record retention, and recordkeeping requirements applicable to NMVC Companies may be found in subpart H of this part. NMVC Companies also must comply with all reporting, record retention, and recordkeeping requirements set forth in Circular A–110 of the Office of Management and Budget (for availability, see 5 CFR 1310.3) and any grant award document executed between SBA and the NMVC Company.

* * * * *

Dated: September 3, 2002.

Hector V. Barreto,

Administrator.

[FR Doc. 02–28204 Filed 11–8–02; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–SW–26–AD; Amendment 39–12942; AD 2002–22–15]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model EC 155B Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) for the specified Eurocopter France (ECF) model helicopters that requires inspecting and adjusting, if necessary, the position of the locking pins on each pilot, co-pilot, and passenger-hinged and sliding door (door) initially and each time a door is replaced. This amendment is prompted by two reports of inadvertent opening of the passenger-hinged doors in flight due to improper adjustment of the door-locking mechanism. The actions specified by this AD are intended to prevent loss of a door in flight, contact with the main rotor or tail rotor, and subsequent loss of helicopter control.

DATES: Effective December 17, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 17, 2002.

ADDRESSES: The service information referenced in this AD may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the *Office of the Federal Register,* 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Richard Monschke, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, Fort Worth, Texas 76193–0110, telephone (817) 222–5116, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: A proposal to amend 14 CFR part 39 to include an AD for ECF Model EC 155B helicopters was published in the **Federal Register** on August 14, 2002 (67 FR 52898). That action proposed to require inspecting and adjusting, if necessary, the position of the locking pins on each pilot, co-pilot, and passenger-hinged and sliding door (door) initially and each time a door is replaced.

The Direction Generale De L'Aviation Civile (DGAC), the airworthiness authority for France, notified the FAA that an unsafe condition may exist on ECF Model EC 155B helicopters. The DGAC advises of two reports of the passenger-hinged doors opening in flight. The investigation revealed noncompliant installation and adjustment of the door-locking mechanism, which can result in the door unlocking and a risk of losing the door in flight.

ECF has issued Alert Telex 52-A008, dated March 11, 2002, which specifies checking and adjusting the position of each door's locking pins to prevent the door opening in flight. The DGAC classified this service bulletin as mandatory and issued AD No. 2002–186–005(A), dated April 3, 2002, to ensure the continued airworthiness of these helicopters in France.

This helicopter model is manufactured in France and is type certificated for operation in the United States under the provisions of 14 CFR 21.29 and the applicable bilateral agreement. Pursuant to the applicable bilateral agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

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The FAA estimates that 2 helicopters of U.S. registry will be affected by this AD, that it will take approximately 4 work hours per helicopter to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $480.

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2002–22–15 Eurocopter France: Amendment 39–12942. Docket No. 2002–SW–26–AD.

Applicability: Model EC 155B helicopters, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within 25 hours time-in-service, unless accomplished previously, and each time a pilot, co-pilot, or passenger-hinged or sliding (door) is replaced.

To prevent loss of a door in flight, contact with the main rotor or tail rotor, and subsequent loss of helicopter control, accomplish the following:

(a) Inspect and adjust, if necessary, the position of each door's locking pins in accordance with the Accomplishment Instructions, paragraph 2, of Eurocopter France Alert Telex No. 52–A008, dated March 11, 2002 (Telex), except you are not required to comply with the caution and with the reporting requirements of the Telex, and you may consider shimming by washers a permanent repair.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

(c) Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the helicopter to a location where the requirements of this AD can be accomplished.

(d) Inspecting and adjusting the position of the door's locking mechanism shall be done in accordance with the Accomplishment Instructions of Eurocopter France Alert Telex No. 52-A008, dated March 11, 2002. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on December 17, 2002.

Note 3: The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD 2002–186–005(A), dated April 3, 2002.

Issued in Fort Worth, Texas, on October 28, 2002.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 02–28410 Filed 11–8–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–SW–32–AD; Amendment 39–12943; AD 2002–22–16]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model AS355N Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD) for the specified Eurocopter France (ECF) helicopters. The existing AD requires visually inspecting the four engine exhaust pipe ejector (ejector) attachment lugs (lugs), the starter-generator (S–G) attachment flange (flange) and attachment half-clamps (half-clamps) for cracks, and the S–G shaft for radial play. This amendment will retain the current requirements except will not require measuring the radial play. This amendment will also require measuring each S–G engine clamp torque and vibration level and recording the S–G vibration level on a component history card or equivalent record. If the S–G vibration level is equal to or higher than 0.5 inches per second (IPS), this superseding AD requires repairing or replacing the S–G, as necessary. This amendment is prompted by additional cases of S–G damage and the need for additional corrective actions. The actions specified by this AD are intended to prevent excessive S–G vibration, which could lead to separation of an ejector, impact with the main or tail rotor, and subsequent loss of control of the helicopter.

DATES: Effective December 17, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 17, 2002.

ADDRESSES: The service information referenced in this AD may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ed Cuevas, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations Group, Fort Worth, Texas 76193–0110, telephone (817) 222–5355, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: A proposal to amend 14 CFR part 39 by superseding AD 2000–05–15, Amendment 39–11625 (65 FR 14209) for ECF Model AS355N helicopters was published in the **Federal Register** on July 15, 2002 (67 FR 46423). That action proposed determining the S–G clamp torque and the vibration level on both engines at specified intervals. That action also proposed recording each vibration level on the component history card or equivalent record. If the S–G vibration level is equal to or higher than 0.5 IPS (12.7 mm/s), that action proposed repairing or replacing the S–G, as necessary. Also, that action proposed retaining the requirement to visually inspect the four ejectors, the lugs, the two half clamps, and the S–G flange for a crack and replacing any cracked part with an airworthy part before further flight.

The Direction Generale De L'Aviation Civile (DGAC), the airworthiness authority for France, notified the FAA that an unsafe condition may exist on Eurocopter France Model AS355N helicopters. The DGAC advises of further cases of S–G deterioration, which may lead to failure of the engine exhaust pipe lugs and loss of the ejector.

ECF has issued Eurocopter Alert Telex (Telex) No. 01.00.45 Revision 3, dated November 22, 2001 that supersedes Alert Telex No. 01.00.45 Revision 2, dated August 24, 2000, and No. 01.00.15 Revision 2, dated April 3, 2000, that superseded Alert Telex No. 01.00.45, dated October 27, 1999. Alert Telex No. 01.00.45 Revision 3 specifies checking the S–G clamp torque and vibration levels and recording vibration levels. If the vibration level is equal to or above 0.5 IPS (12.7 mm/s), Telex 01.00.45 Revision 3 specifies repairing the S–G as well as conducting additional inspections and repairs. The Telex states that ECF is developing modifications to return to an acceptable maintenance program.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that this AD will:

- Affect 13 helicopters of U.S. registry;
- Require 5.5 work hours for the inspections and 5 work hours to replace the parts at an average labor rate of $60 per work hour;
- Cost approximately $6,346 for each S–G, $12,148 for each exhaust pipe, $500 for each flange, and $175 for each clamp or $38,338 per helicopter; and
- Result in a total cost impact of $506,584, assuming one inspection and replacement of all parts per helicopter.

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–11625 (65 FR 14209, March 16, 2000), and by adding a new airworthiness directive (AD), Amendment 39–12943, to read as follows:

2002–22–16 Eurocopter France: Amendment 39–12943. Docket No. 2002–SW–32–AD. Supersedes AD 2000–05–15, Amendment 39–11625, Docket No. 99–SW–87–AD.

Applicability: Model AS355N helicopters, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent excessive starter-generator (S–G) vibration, which may lead to separation of an engine exhaust pipe ejector (ejector), impact with the main or tail rotor, and subsequent loss of control of the helicopter, accomplish the following:

(a) Before further flight and at or between 10 and 15 hours time-in-service (TIS), inspect the torque on each S–G attachment clamp (clamp). If the torque is not within tolerances provided in the maintenance manual, adjust the torque accordingly.

(b) Measure and record on a component history card or equivalent record the vibration level for each S–G in accordance with the Accomplishment Instructions, paragraph 2.A.2., of Eurocopter France (ECF) Telex No. 01.00.45 Revision 3, dated November 22, 2001 (Telex), as follows:

(1) For each S–G with less than 10 hours TIS since initial installation, before further flight, and at or between the hours TIS as shown in Table 1 of this AD:

TABLE 1.—S–G VIBRATION LEVEL MEASUREMENT INTERVALS

Hours TIS
A. 10 and 15
B. 24 and 35
C. 45 and 55
D. 70 and 80
E. 100 and 110

(2) For each S–G with 10 hours or more TIS but less than 110 hours TIS since initial installation, begin and continue the vibration level measurements at or between the applicable hours TIS shown in Table 1 of this AD.

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(3) For each S–G with more than 110 hours TIS since initial installation, measure the vibration level before further flight.

(c) After doing paragraph (b) of this AD, thereafter, at intervals not to exceed 110 hours TIS, measure the vibration level in accordance with paragraph 2.A.2. of the Telex.

(d) If the vibration level of an S–G is equal to or greater than 0.5 inches per second (IPS) (12.7 mm/s):

(1) Remove the S–G and repair or replace it with an airworthy S–G.

(2) Visually inspect the four ejector attachment lugs (lugs) and the two clamps for a crack in accordance with the Accomplishment Instructions, paragraph 2.B.3.b.1B), of the Telex.

(3) Inspect the two half-clamps for a crack.

(4) Remove the S–G to engine attachment flange (flange). Clean and inspect the flange for a crack in accordance with the Accomplishment Instructions, paragraph 2.B.3.b.1D) of the Telex.

(5) If a crack is found, before further flight, repair or replace the cracked part with an airworthy part in accordance with the Accomplishment Instructions, paragraph 2.B.3.b.3 of the Telex, except you are not required to report your findings to the manufacturer.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

(f) Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the helicopter to a location where the requirements of this AD can be accomplished.

(g) Measuring the vibration level, inspecting the lugs or clamps, and replacing the parts shall be done in accordance with the Accomplishment Instructions, Eurocopter France Telex No. 01.00.45 Revision 3, dated November 22, 2001. This incorporation by reference was approved by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the *Office of the Federal Register*, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on December 17, 2002.

Note 3: The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD Nos. 1999–469–058(A) Revision 1, dated August 9, 2000, and 1999–469–058(A) Revision 2, dated January 9, 2002.

Issued in Fort Worth, Texas, on October 29, 2002.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 02–28412 Filed 11–8–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–CE–23–AD; Amendment 39–12944; AD 2002–22–17]

RIN 2120–AA64

Airworthiness Directives; Cessna Aircraft Company Models 208 and 208B Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to all Cessna Aircraft Company (Cessna) Models 208 and 208B airplanes. This AD requires you to repetitively inspect the inboard forward flap bellcranks for cracks or replace bellcranks depending on the amount of usage. This AD is the result of Cessna re-evaluating the bellcrank life limit analysis and determining that the original estimate is too high. The actions specified by this AD are intended to detect, correct, and prevent future cracks in the bellcrank, which could result in failure of this part. Such failure could lead to damage to the flap system and surrounding structure and result in reduced or loss of control of the airplane.

DATES: This AD becomes effective on December 31, 2002.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of December 31, 2002.

ADDRESSES: You may get the service information referenced in this AD from Cessna Aircraft Company, Product Support, P.O. Box 7706, Wichita, Kansas 67277; telephone: (316) 517–5800; facsimile: (316) 942–9006. You may view this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–CE–23-AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Paul Nguyen, Aerospace Engineer, FAA, Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: 316–946–4125; facsimile: 816–946–4407.

SUPPLEMENTARY INFORMATION:

Discussion

What Events Have Caused This AD?

A search by the FAA of the service difficulty database has revealed 10 cracked bellcrank incidents on Cessna Models 208 and 208B airplanes. As a result, Cessna has re-evaluated the bellcrank life limit analysis and determined 7,000 landings is more accurate than the original estimate of 9,000 landings. Cessna has revised the Models 208 and 208B Maintenance Manual and developed a service bulletin to notify the public that the inboard forward flap bellcrank life limit has been reduced to 7,000 landings. Since some Model 208 airplanes have exceeded 7,000 landings, we have determined that an AD is necessary to require replacement of the bellcrank in those airplanes.

What Is the Potential Impact if FAA Took No Action?

If not detected and corrected, a cracked bellcrank could fail. Such failure could lead to damage to the flap system and surrounding structure and result in reduced or loss of control of the airplane.

Has FAA Taken Any Action to This Point?

We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all Cessna Models 208 and 208B airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on June 26, 2002 (67 FR 43056). The NPRM proposed to repetitively inspect the inboard forward flap bellcranks for cracks or replace bellcranks depending on the amount of usage and reduce the life limits of the bellcranks from 9,000 landings to 7,000 landings.

Was the Public Invited to Comment?

The FAA encouraged interested persons to participate in the making of this amendment. The following presents the comments received on the proposal and FAA's response to each comment:

Comment Issue 1: Which Flap Bellcrank(s) Does the Proposed AD Affect?

What Is the Commenter's Concern?

A commenter asks if the proposed AD only affects the right inboard flap bellcrank or the right and the left flap inboard bellcranks?

What Is FAA's Response to the Concern?

The Cessna Model 208 airplane has only one inboard flap bellcrank assembly and it is located on the right hand side of the aircraft. This flap bellcrank assembly controls both the right and left flaps. Therefore, inspection of the only flap bellcrank assembly in accordance with the Cessna Service Bulletin CAB02–1 will comply with the proposed AD.

We have not changed the final rule as a result of this comment.

Comment Issue 2: The Limits in the Service Information Are Sufficient and the Proposed AD Is Not Warranted.

What is the Commenter's Concern?

A commenter states that Cessna has revised their airworthiness limitations to reflect what the NPRM proposes. The limitations now include a 7,000 landings limit, with repetitive inspections every 500 landings until 7,000 landings are accumulated. For this reason, the commenter recommends that we withdraw the NPRM.

What is FAA's Response to the Concern?

We disagree. Airworthiness Directives that apply more restrictive limits to products are issued when the current limits contribute to an unsafe condition. The AD establishes a deadline to come into compliance with the new life limits.

We have not changed the final rule as a result of this comment.

FAA's Determination

What Is FAA's Final Determination on This Issue?

We carefully reviewed all available information related to the subject presented above and determined that air safety and the public interest require the adoption of the rule as proposed except for the changes discussed above and minor editorial questions. We have determined that these changes and minor corrections:

—Provide the intent that was proposed in the NPRM for correcting the unsafe condition; and

—Do not add any additional burden upon the public than was already proposed in the NPRM.

Cost Impact

How Many Airplanes Does This AD Impact?

We estimate that this AD affects 1,300 airplanes in the U.S. registry.

What Is the Cost Impact of This AD on Owners/Operators of the Affected Airplanes?

We estimate the following costs to accomplish the inspection:

Labor Cost	Parts Cost	Total Cost Per Airplane	Total Cost on U.S. Operators
1 workhour × $60 per hour = $60 ...	No cost for parts	$60	$60 × 1,300 = $78,000

We estimate the following costs to accomplish any necessary replacements that would be required based on the reduced life limits:

Labor Cost	Parts Cost	Total Cost Per Airplane	Total Cost on U.S. Operators
3 workhours × $60 per hour = $180	$1,793	$180 + $1,793 = $1,973	$1,973 × $1,300 = $2,564,900

Regulatory Impact

Does This AD Impact Various Entities?

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

Does This AD Involve a Significant Rule or Regulatory Action?

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new AD to read as follows:

2002–22–17 Cessna Aircraft Company: Amendment 39–12944; Docket No. 2002–CE–23–AD.

(a) *What airplanes are affected by this AD?* This AD affects Models 208 and 208B airplanes, all serial numbers, that are certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to detect, correct, and prevent cracks in the bellcrank, which could result in failure of this part. Such failure could lead to damage to the flap system and surrounding structure and result in reduced or loss of control of the airplane.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

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Actions	Compliance	Procedures
(1) Inspect, using eddy current inspection, the inboard forward flap bellcrank for cracks.	Initially inspect upon the accumulation of 4,000 landings on the bellcrank or within the next 250 landings after December 31, 2002 (the effective date of this AD), whichever occurs later. Repetitively inspect thereafter at every 500 landings until 7,000 landings are accumulated.	In accordance with the Inspection Instructions of Cessna Service Bulletin No. CAB02–1, dated February 11, 2002, and the applicable maintenance manual.
(2) Replace the inboard forward flap bellcrank.	Prior to further flight when cracks are found; and upon the accumulation of 7,000 landings or within the next 75 landings after December 31, 2002 (the effective date of this AD), whichever occurs later.	In accordance with the Inspection Instructions of Cessna Service Bulletin No. CAB02–1, dated February 11, 2002, and the applicable maintenance manual.

Note 1: Inboard forward flap bellcranks with 7,000 landings or more do not have to be replaced until 75 landings after the effective date of this AD.

Note 2: The compliance times of this AD are presented in landings instead of hours. If the number of landings is unknown, hours time-in-service (TIS) may be used by multiplying the number of hours TIS by 1.25.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Wichita Aircraft Certification Office (ACO), approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note 3: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Paul Nguyen, Aerospace Engineer, FAA, Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: 316–946–4125; facsimile: 816–946–4407.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with Cessna Service Bulletin No. CAB02–1, dated February 11, 2002. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You may get copies from Cessna Aircraft Company, Product Support, PO Box 7706, Wichita, Kansas 67277; telephone: (316) 517–5800; facsimile: (316) 942–9006. You may view copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(i) *When does this amendment become effective?* This amendment becomes effective on December 31, 2002.

Issued in Kansas City, Missouri, on October 31, 2002.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–28408 Filed 11–8–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 872

[Docket No. 02N–0010]

Dental Devices; Classification for Intraoral Devices for Snoring and/or Obstructive Sleep Apnea

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is classifying the intraoral devices for snoring and/or obstructive sleep apnea into class II (special controls). These devices are used to control or treat simple snoring and/or obstructive sleep apnea. This classification is based on the recommendations of the Dental Devices Panel (the Panel), and is being taken to establish sufficient regulatory controls that will provide reasonable assurance of the safety and effectiveness of these devices. This action is being taken under the Federal Food, Drug, and Cosmetic Act (the act), as amended by the Medical Device Amendments of 1976 (the 1976 amendments), the Safe Medical Devices Act of 1990 (the SMDA), and the Food and Drug Administration Modernization Act of 1997 (FDAMA). Elsewhere in this issue of the **Federal Register**, FDA is publishing a notice of availability of the guidance document that will serve as the special control for this final rule.

DATES: This rule is effective December 12, 2002.

FOR FURTHER INFORMATION CONTACT: Susan Runner, Center for Devices and Radiological Health (HFZ–480), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–827–5283.

SUPPLEMENTARY INFORMATION:

I. Background

The act (21 U.S.C. 301 *et seq.*), as amended by the 1976 amendments (Public Law 94–295), the SMDA (Public Law 101–629), and the FDAMA (Public Law 105–115), established a comprehensive system for the regulation of medical devices intended for human use. Section 513 of the act (21 U.S.C. 360c) established three categories (classes) of devices, depending on the regulatory controls needed to provide reasonable assurance of their safety and effectiveness. The three categories of devices are class I (general controls), class II (special controls), and class III (premarket approval).

Under section 513 of the act, devices that were in commercial distribution before May 28, 1976 (the date of enactment of the 1976 amendments), are generally referred to as preamendments devices, and are classified after FDA has: (1) Received a recommendation from a device classification panel (an FDA advisory committee); (2) published the panel's recommendation for comment, along with a proposed regulation classifying the device; and (3) published a final regulation classifying the device. FDA has classified most preamendments devices under these procedures.

Devices that were not in commercial distribution prior to May 28, 1976, are generally referred to as postamendments devices, and are classified automatically by statute (section 513(f) of the act) into class III without any FDA rulemaking process. Those devices remain in class III and require premarket approval, unless and until: (1) The device is reclassified into class I or II; (2) FDA issues an order classifying the device into class I or II in accordance with new section 513(f)(2) of the act), as amended by the FDAMA; or (3) FDA issues an order finding the device to be substantially equivalent, under section 513(i) of the act, to a predicate device that does not require premarket approval.

The agency determines whether new devices are substantially equivalent to previously offered devices by means of premarket notification procedures in section 510(k) of the act (21 U.S.C. 360(k)) and 21 CFR part 807 of the regulations.

A preamendments device that has been classified into class III may be marketed, by means of premarket notification procedures, without submission of a premarket approval application (PMA) until FDA issues a final regulation under section 515(b) of the act (21 U.S.C. 360e(b)) requiring premarket approval.

Consistent with the act and the regulations, FDA consulted with the Panel, an FDA advisory committee, regarding the classification of these devices.

II. Regulatory History of the Device

In the **Federal Register** of April 5, 2002 (67 FR 16338), FDA issued a proposed rule to classify the intraoral devices for snoring and/or obstructive sleep apnea, used to control or treat simple snoring and/or obstructive sleep apnea into class II. The agency also issued a guidance document as the special control. Interested persons were given until July 5, 2002, to comment on the proposed regulation and guidance document.

FDA received one comment from the National Association of Dental Laboratories.

III. Summary of Final Rule

As required by 21 CFR 860.84(g)(2) of the regulations, FDA is classifying intraoral devices for snoring and/or obstructive sleep apnea into class II with the guidance document "Class II Special Controls Guidance Document: Intraoral Devices for Snoring and/or Obstructive Sleep Apnea" (Ref. 1), as the special control.

IV. Analysis of Comment and FDA's Response

The one comment FDA received expressed concerns about the effect the guidance document would have on dental laboratories. FDA has concluded that the guidance document does not change the regulatory requirements for dental laboratories.

Therefore, under section 513 of the act, FDA is adopting the summary of reasons for the Panel's recommendation and the summary of data upon which the Panel's recommendation is based, in their entirety. FDA also agrees with the Panel's assessment of the risks to public health stated in the proposed rule published on April 5, 2002. FDA is issuing this final rule, which classifies these generic type of intraoral devices for snoring and obstructive sleep apnea into class II.

V. Environmental Impact

The agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environment assessment nor an environmental impact statement is required.

VI. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive order. In addition, the final rule is not a significant regulatory action as defined by the Executive order and so is not subject to review under the Executive order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. The classification of these devices into class II is not adding any additional burden to manufacturers, because most manufacturers, including small manufacturers, are already substantially in compliance with the recommendations of the guidance document that is the special control for the devices. The agency, therefore, certifies that this final rule will not have a significant economic impact on a substantial number of small entities. In addition, this final rule will not impose costs of $100 million or more on either the private sector or State, local, and tribal governments in the aggregate, and, therefore, a summary statement of analysis under section 202(a) of the Unfunded Mandates Reform Act of 1995 is not required.

VII. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the agency has concluded that the rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

VIII. Paperwork Reduction Act of 1995

FDA concludes that this final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) is not required.

IX. Reference

The following reference has been placed on display in the Dockets Management Branch (HFA–305), 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. FDA, Center for Devices and Radiological Health, Office of Device Evaluation, "Class II Special Controls Guidance Document: Intraoral Devices for Snoring and/or Obstructive Sleep Apnea; Guidance for Industry and FDA," April 5, 2002.

List of Subjects in 21 CFR Part 872

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 872 in subpart F is amended as follows:

PART 872—DENTAL DEVICES

1. The authority citation for 21 CFR part 872 continues to read as follows:

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Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

2. Section 872.5570 is added to subpart F to read as follows:

§ 872.5570 Intraoral devices for snoring and intraoral devices for snoring and obstructive sleep apnea.

(a) *Identification.* Intraoral devices for snoring and intraoral devices for snoring and obstructive sleep apnea are devices that are worn during sleep to reduce the incidence of snoring and to treat obstructive sleep apnea. The devices are designed to increase the patency of the airway and to decrease air turbulence and airway obstruction. The classification includes palatal lifting devices, tongue retaining devices, and mandibular repositioning devices.

(b) *Classification.* Class II (special controls). The special control for these devices is the FDA guidance document entitled "Class II Special Controls Guidance Document: Intraoral Devices for Snoring and/or Obstructive Sleep Apnea; Guidance for Industry and FDA."

Dated: October 28, 2002.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 02–28549 Filed 11–8–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 450

[FHWA Docket No. FHWA–2001–10836]

FHWA RIN 2125–AE92

Metropolitan Transportation Planning and Programming

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Correction to final rule.

SUMMARY: This document corrects a typographical error in the FHWA final rule, published jointly with the Federal Transit Administration (FTA), on October 7, 2002, at 67 FR 62370. The final rule amends the regulation on Planning and Assistance Standards that govern the development of transportation plans and programs for urbanized (metropolitan) areas. The FTA has codified the FHWA regulations for Metropolitan Transportation Planning and Programming into its regulations at 49 CFR 613 and joins the FHWA in making this change. The final rule provides the New York City metropolitan area additional time to review and update its transportation plan by waiving the regulatory requirement for a triennial plan update for the New York City metropolitan area for up to three years, until September 30, 2005. The docket number that appeared at the heading of the final rule was incorrect. This notice provides the current docket number regarding the Metropolitan Transportation Planning and Programming final rule as FHWA–2001–10836.

EFFECTIVE DATE: October 7, 2002.

FOR FURTHER INFORMATION CONTACT: Mr. John Humeston, Metropolitan Planning and Policies Team (HEPM), (404) 562–3667 (metropolitan planning), 60 Forsyth Street, Suite 8M5; Atlanta, Georgia 30303–3104; or Mr. Reid Alsop, Office of the Chief Counsel (HCC–31), (202) 366–1371; 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded using a computer, modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at: *http://www.archives.gov* and the Government Printing Office's Web page at: *http://www.access.gpo.gov/nara.*

Background

On October 7, 2002, at 67 FR 62370, the FHWA, jointly with the FTA, issued a final rule to provide the New York City metropolitan area additional time to review and update its transportation plan by waiving the regulatory requirement for a triennial plan update for the New York City metropolitan area for up to three years, until September 30, 2005. This action was necessary because the New York City Metropolitan Transportation Council's (NYMTC) offices were destroyed by the terrorist attacks that occurred on September 11, 2001, and without this waiver, Federal highway and transit funding could be disrupted after September 30, 2002. The purpose of this notice is to correct the docket number to the final rule. The correct docket number for the final rule is FHWA–2001–10836.

Authority: 23 U.S.C. 134, 135, 217(g), 315; 42 U.S.C. 7410 *et seq.*; 49 U.S.C. 5303–5306; 49 CFR 1.48(b) and 1.51.

Issued on: November 5, 2002.

James A. Rowland,

Chief Counsel, Federal Highway Administration.

[FR Doc. 02–28643 Filed 11–8–02; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9020]

RIN 1545–BB19

Substantiation of Incidental Expenses

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains amendments to regulations relating to the requirement to substantiate business expenses for traveling expenses while away from home. The regulations affect taxpayers who deduct expenses for incidental expenses while traveling away from home. The text of the temporary regulations also serves as text for the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section in this issue of the **Federal Register**.

DATES: *Effective Date:* These regulations are effective November 12, 2002.

Applicability Date: For dates of applicability, see § 1.274–5T(m).

FOR FURTHER INFORMATION CONTACT: John Moriarty (202) 622–4930 (not a toll free call).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

Section 274(d) provides that a taxpayer is not allowed a deduction or credit for certain expenses unless the expense is substantiated. These substantiation requirements apply to deductions under section 162 or 212 for any traveling expense (including meals and lodging) while away from home. Under section 274(d), the Secretary may issue regulations that provide that some or all of the substantiation requirements will not apply to expenses that do not exceed a prescribed amount. Section 1.274–5(j)(1) of the regulations permits the Commissioner to establish a method under which a taxpayer may substantiate the amount of meal expenses paid or incurred while traveling away from home by means of an allowance in lieu of substantiating the actual cost of meals.

Under this authority, the Commissioner has provided a method for taxpayers to substantiate deductible costs of business meal and incidental expenses while away from home by means of an allowance. *See* Rev. Proc. 2001–47 (2001–42 I.R.B. 332). These temporary regulations amend § 1.274–5T to authorize the Commissioner to establish a method under which a taxpayer may substantiate the amount of incidental expenses paid or incurred while traveling away from home by means of an allowance in lieu of substantiating the actual cost. The taxpayer will not be relieved of the requirement to substantiate the actual cost of other travel expenses as well as the time, place and business purpose of the travel.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that these regulations do not require a collection of information and do not impose any new or different requirements on small entities. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact.

Drafting Information

The principal author of these regulations is John Moriarty, Office of Associate Chief Counsel (Income Tax & Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

1. The authority citation for part 1 is amended by adding an entry in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.274–5 also issued under 26 U.S.C. 274(d). * * *

2. Section 1.274–5 is amended by adding paragraph (j)(3) to read as follows:

§ 1.274–5 Substantiation requirements.

* * * * *

(j) * * *

(3) [Reserved]. For further guidance, see § 1.274–5T(j)(3).

* * * * *

3. Section 1.274–5T is amended by revising paragraph (j) and the last sentence of paragraph (m) to read as follows:

§ 1.274–5T Substantiation requirements (temporary).

* * * * *

(j)(1) and (2) [Reserved]. For further guidance, *see* § 1.274–5(j)(1) and (2).

(3) *Incidental expenses while traveling away from home.* The Commissioner may establish a method under which a taxpayer may use a specified amount or amounts for incidental expenses paid or incurred while traveling away from home in lieu of substantiating the actual cost of incidental expenses. The taxpayer will not be relieved of the requirement to substantiate the actual cost of other travel expenses as well as the time, place, and business purpose of the travel.

* * * * *

(m) * * * Paragraph (j)(3) of this section applies to expenses paid or incurred after September 30, 2002.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Approved: October 31, 2002.

Pamela F. Olson,

Assistant Secretary of the Treasury.

[FR Doc. 02–28543 Filed 11–8–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 356

[Department of the Treasury Circular, Public Debt Series No. 1–93]

Sale and Issue of Marketable Book-Entry Treasury Bills, Notes, and Bonds; Reporting of Net Long Position and Application of the 35 Percent Limit

AGENCY: Bureau of the Public Debt, Fiscal Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury ("Treasury," "We," or "Us") is issuing in final form an amendment to the regulation "Uniform Offering Circular for the Sale and Issue of Marketable Book-Entry Treasury Bills, Notes, and Bonds." This amendment modifies the net long position ("NLP") reporting threshold for all Treasury marketable securities auctions. The threshold, currently $1 billion for Treasury bill auctions and $2 billion for Treasury note auctions, is being changed to 35 percent of the offering amount in each auction. This modification will reduce the number of auction bidders that are required to report their NLPs, while ensuring that we can still effectively administer the 35 percent award limit.

The amendment also incorporates certain changes in Treasury's marketable securities auction program that have already been implemented. First, the amendment modifies the competitive bid format for auctions of Treasury cash management bills to conform to a policy change that was made in April 2002. The current two-decimal bid format is being changed to three decimals in .005 percent increments, which is the format in all other Treasury bill auctions.

Second, the amendment makes several changes to reflect the current treatment in all Treasury marketable securities auctions of bids from Federal Reserve Banks for their own accounts and for the accounts of foreign and international monetary authorities. Specifically, the amendment deletes the defined term "public offering," adds "offering amount" as a new defined term, revises the definition of "bid-to-cover ratio," and makes conforming changes within the text of the Uniform Offering Circular. These changes make the terminology consistent between the Uniform Offering Circular and auction offering announcements.

EFFECTIVE DATE: December 12, 2002.

ADDRESSES: You may download this final rule from the Bureau of the Public Debt's Web site at *www.publicdebt.treas.gov.* It is also available for public inspection and copying at the Treasury Department Library, Room 1428, Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. To visit the library, call (202) 622–0990 for an appointment.

FOR FURTHER INFORMATION CONTACT: Lori Santamorena (Executive Director), Chuck Andreatta (Senior Financial Advisor), or Lee Grandy (Associate Director), Bureau of the Public Debt,

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Government Securities Regulations Staff, (202) 691–3632.

SUPPLEMENTARY INFORMATION: The Uniform Offering Circular, in conjunction with the offering announcement for each auction, provides the terms and conditions for the sale and issuance to the public of marketable Treasury bills, notes, and bonds.[1] In this document, we provide some background on the NLP and its reporting requirements. Next we discuss the public comments we received in response to an Advance Notice of Proposed Rulemaking ("ANPR") regarding NLP reporting, published on April 29, 2002.[2] We then describe the final amendment.

I. Background on Net Long Position Reporting

One of the requirements of the Treasury auction process is the reporting of NLPs, which we use to limit the amount that we will award to any one bidder in an auction ("the 35 percent rule"). This rule ensures that awards in our auctions are distributed to a number of auction participants. This goal of broad distribution is intended to encourage participation by a significant number of competitive bidders in each auction. Broad participation keeps our borrowing costs to a minimum, helps ensure that Treasury auctions are fair and competitive, and makes it less likely that ownership of Treasury securities will become overly concentrated.

A bidder in an auction must report its NLP if, in the security being auctioned, the bidder's NLP plus its bids in the auction meet or exceed a certain dollar-amount threshold as stated in the security's offering announcement. The NLP reporting threshold currently is $1 billion for Treasury bills and $2 billion for Treasury notes. In addition, if the sum of a bidder's bids equals or exceeds the NLP reporting threshold, but the bidder has no position or has a net short position, it must report an NLP of zero. A bidder must determine its NLP as of one-half hour prior to the deadline for receipt of competitive bids. If a bidder meets or exceeds the reporting threshold as of the NLP determination time in the auction offering announcement, the bidder must report its NLP prior to the competitive bidding deadline.

The NLP is generally the amount of the security being auctioned that a bidder has obtained, or has arranged to obtain, outside of the auction in the secondary market. The components of the NLP are intended to capture the various ways that a bidder can acquire a Treasury security.[3] The term "net long" refers to the extent to which an investor has bought (or has agreed to buy) more of a security than it has sold (or has agreed to sell). For example, if an investor has bought $900 million of a security in the when-issued market, and it has sold $300 million of the same security in the when-issued market, it has a net long position of $600 million in that security, assuming it has no other positions.

We published an ANPR for public comment on April 29, 2002,[4] to solicit comments on four alternatives for addressing the half-hour time lag between the time as of which the NLP is calculated (the "NLP as-of time") and the competitive bidding deadline. It was pointed out in the ANPR that, because a bidder's NLP can change significantly during this time period, the reported NLP may not provide an accurate, or even approximate, measure of a bidder's position at the time that a bidder actually submits its bids. As a result, a bidder's award may be cut back to the 35 percent award limit based on NLP information that no longer reflects the bidder's actual NLP. Conversely, a bidder's award may not be cut back if it builds a large position in the security being auctioned between the NLP as-of time and the competitive bidding deadline. We also stated in the ANPR that we were more fundamentally reconsidering the rule. In addition, we invited comments on potential changes to the NLP reporting threshold amount, and indicated that we were considering changes in this area regardless of whether or not we implement any modifications to the NLP as-of reporting timeframes.

The four alternatives were as follows:

Alternative 1: Reduce the half-hour interval between the NLP as-of time and the competitive bidding deadline.

Alternative 2: Make the NLP as-of time the same as the competitive bidding deadline, with the NLP reporting time to follow (for example, one-half hour later). Bidders would be responsible for ensuring that their bids plus their positions, if they are net long, do not exceed the 35 percent award limit.

Alternative 3: Eliminate the NLP reporting requirement, and either maintain or reduce the 35 percent limit. Treasury would rely on its Large Position Reporting rules[5] and other mechanisms to monitor the market and address concentrations of ownership.

Alternative 4: Retain both the 35 percent limit and the NLP as-of and reporting timeframes as they exist now.

Potential change to NLP reporting threshold amount. Regarding this potential change, we stated in the ANPR that we are considering changing the NLP reporting threshold from $1 billion for Treasury bills and $2 billion for Treasury notes to the actual 35 percent award limit for each auction. This rule change would apply to all marketable Treasury securities auctions. We also stated that we would provide the 35 percent award limit on the auction offering announcement in each auction. Bidders whose bids plus NLPs equal or exceed the limit would be required to report their positions. For example, if the 35 percent award limit for a particular auction is $3 billion, and the total of a bidder's bids is $2.5 billion and its NLP is $1 billion, the bidder would have to report its $1 billion NLP. Bidders whose bids plus NLPs do not equal or exceed the limit would not be required to report any positions. Bidders whose total bids equal or exceed the limit but either have no position or a net short position would not have to report a zero as their NLP.

II. Comments Received in Response to the Advance Notice of Proposed Rulemaking

We received one comment in response to the ANPR, which was from The Bond Market Association (TBMA).[6] The commenter recommended that we make three changes to the NLP rules.

First, TBMA supported Alternative 1 by advocating reducing the half-hour interval between the NLP as-of time and the competitive bidding deadline. Specifically, the commenter suggested requiring bidders to calculate their NLPs as of 12:40 p.m. rather than 12:30 p.m. TBMA stated that this modification would take advantage of technological advances by dealers while still ensuring the accuracy of submitted bids and NLPs. The commenter pointed out a disadvantage of this alternative, which is, "Because auction support staff will have less time to work with, there is certainly the possibility that Treasury may initially see a small spike in the number of NLP submission errors." The commenter opposed providing bidders with less than 20 minutes to determine, verify and report their NLPs, primarily because "moving the time up further would put substantial strain on existing personnel," particularly for those securities dealers with numerous domestic and foreign affiliates.

Second, TBMA strongly supported modifying the NLP reporting thresholds for bill and note auctions to 35 percent of the issuance amount, because it would "better capture only those bidders that are most likely to exceed the 35 percent limit." The commenter maintained that the current reporting thresholds are "unnecessarily low" and that, "Any benefit Treasury derives from maintaining a low reporting threshold is outweighed by the additional bidder submission errors that result."

Third, TBMA recommended that we discontinue requiring bidders to report a zero NLP when their bids equal or exceed the applicable reporting threshold but they have either no net long position or a net short position. The commenter advocated that such bidders be given the choice of either reporting a zero NLP or leaving the field blank. TBMA acknowledged that, "requiring bidders to report their negative NLP as zero does theoretically act as a check that a bidder realized that it was over the threshold." However, TBMA asserted that inadvertent failures by bidders to report a zero have resulted in "serious violation letters" from Treasury, where in fact such instances are "a technical violation of the auction rules that in no way could have impacted the results of the auction."

In addition to the modifications it favored, TBMA also advised against adopting either Alternative 2 or 3. In particular, TBMA argued against post-auction reporting of NLPs (Alternative 2), primarily because it would discourage aggressive bidding since "large bidders would have to allow themselves a substantial 'margin for error' with respect to the 35 percent rule."

III. Amendment to the Rule

Net Long Position Reporting Threshold

After considering the comment letter we received, we are modifying the NLP reporting threshold to 35 percent of the offering amount in each auction. We agree with the commenter that this change will more precisely apply only to those bidders whose bids are most likely to equal or exceed the 35 percent award limit in an auction. Accordingly, § 356.13(a) is revised to reflect that the net long position reporting threshold amount will be 35 percent of the offering amount. The NLP reporting threshold will be provided on the offering announcement for each auction.

We are not considering any other changes to the NLP reporting requirement at this time. The NLP as-of reporting time will continue to be one half-hour prior to the deadline for receiving competitive bids. We agree with TBMA that shortening this time interval could result in an increase in NLP reporting errors. Since shortening the time interval to 20 minutes would still leave a significant time period in which bidders' positions in the securities being auctioned could change significantly prior to the deadline for receiving competitive bids, we believe that the disadvantages of a likely increase in NLP reporting errors outweigh the benefits of a shorter time period for calculating and reporting NLPs.

We also have decided to maintain the requirement for bidders to report an NLP of zero when their bids equal or exceed the applicable reporting threshold but they have either no net long position or a net short position. We believe that this requirement acts as an important check to ensure that bidders with very large bids in an auction calculated their NLPs for possible reporting in the auction.

Conforming Technical Changes

We are also making a conforming technical change to § 356.12(c)(1)(i) of the auction rules to reflect that competitive bids in all cash management bill auctions must now be expressed as a discount rate with three decimals in increments of .005 percent, for example, 3.100%, 3.105%.[7] This change will make the competitive bid format for cash management bills the same as for all other types of Treasury bills. This change will enable competitive bidders to better fine-tune their bids in cash management bill auctions.

We are deleting from § 356.12 the defined term "public offering" and adding the defined term "offering amount." In the past, "public offering" had a different meaning from "offering amount" as used on the offering announcement because of the treatment of amounts bid by the Federal Reserve's System Open Market Account (SOMA) and by foreign and international monetary authorities (FIMA). In March 1997, Treasury announced that awards to SOMA in Treasury bill auctions would be treated as additions to the announced offering amount, the same treatment as for note and bond auctions.[8] Since February 2001, when specific noncompetitive bidding and award limitations were placed on FIMA accounts,[9] awards to FIMA accounts are made within the offering amount, as are those to the public in general. Since these changes, the treatment of FIMA and SOMA is consistent for all Treasury securities auctions. Awards to SOMA are made in addition to the offering amount; FIMA awards are within the offering amount.

The definition of "public offering" in § 356.2 is no longer accurate to the extent that the definition continues to exclude FIMA bids up to the amount of maturing securities in those accounts. Since there is no longer any difference in the meaning of "public offering" and "offering amount," and the offering announcements use the term "offering amount," we are deleting the term "public offering" and adding the term "offering amount" to the Uniform Offering Circular, and making conforming changes within the text. One of these conforming changes is to the definition of "bid-to-cover ratio," which previously excluded both SOMA and FIMA bids and awards, and now only excludes SOMA bids and awards.

Finally, this amendment incorporates technical changes in §§ 356.20 and 356.21 to conform to our policy for prorating competitive bids at the highest accepted yield or discount rate. In the weekly bill auctions of April 30, 2001, we changed the rounding convention for the allocation percentage from rounding up to the next whole percentage point to rounding up to the next hundredth of a whole percentage point.

IV. Procedural Requirements

This final rule is not a significant regulatory action for purposes of Executive Order 12866. Although we issued an Advance Notice of Proposed Rulemaking on April 29, 2002, to benefit from public comment, the notice and public procedures requirements of the Administrative Procedure Act do not apply, under 5 U.S.C. 553(a)(2).

Since no notice of proposed rulemaking is required, the provisions

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[1] The Uniform Offering Circular was published as a final rule on January 5, 1993 (58 FR 412). The Uniform Offering Circular, as amended, is codified at 31 CFR Part 356.

[2] 67 FR 20934 (April 29, 2002).

[3] *See* 31 CFR 356.13(b) for details on the components of the NLP. *See also* the amendment to the Uniform Offering Circular published on November 13, 2001 (66 FR 56759), which provided an optional exclusion amount in the NLP calculation for reopenings.

[4] See supra, note 2.

[5] 17 CFR 420.

[6] The ANPR and comment letter, dated June 27, 2002, are available for downloading on the Internet, and for inspection and copying at the Treasury Department Library at the addresses provided earlier in this final rule.

[7] Treasury announced this policy change in a Press Release dated April 2, 2002, that announced several offerings of cash management bills. Subsequent cash management bill offering announcements also stated this bidding requirement. The offering announcement governs in cases where it is inconsistent with the Uniform Offering Circular. (See § 356.10)

[8] Treasury Press Release dated March 18, 1997.

[9] The policy change was announced in a Treasury Press Release dated November 14, 2000, and became effective on February 1, 2001.

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of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

The collections of information in this final rule amendment have been previously approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995. This final rule is technical in nature and imposes no additional burdens on auction bidders.

List of Subjects in 31 CFR Part 356

Bonds, Federal Reserve System, Government securities, Securities.

For the reasons stated in the preamble, 31 CFR Part 356 is amended as follows:

PART 356—SALE AND ISSUE OF MARKETABLE BOOK-ENTRY TREASURY BILLS, NOTES, AND BONDS (DEPARTMENT OF THE TREASURY CIRCULAR, PUBLIC DEBT SERIES NO. 1–93)

1. The authority citation for Part 356 continues to read as follows:

Authority: 5 U.S.C. 301; 31 U.S.C. 3102 *et seq.*; 12 U.S.C. 391.

2. Section 356.2 is amended by removing the definition of "Public offering," revising the definition of "Bid-to-cover ratio," and adding the defined term "Offering amount" between the defined terms "Noncompetitive bid" and "Par" to read as follows:

§ 356.2 Definitions.

* * * * *

Bid-to-cover ratio means the total par amount of securities bid for by the public divided by the total par amount of securities awarded to the public. The bid-to-cover ratio excludes any bids or awards for the account of the Federal Reserve Banks.

* * * * *

Offering amount means the par amount of securities offered to the public for purchase in an auction, as specified in the offering announcement.

* * * * *

3. Section 356.12 is amended by revising paragraphs (c)(1)(i) and (c)(2) to read as follows:

§ 356.12 Noncompetitive and competitive bidding.

* * * * *

(c) Competitive. * * *

(1) Bid format—(i) Treasury bills. A competitive bid must show the discount rate bid, expressed with three decimals in .005 percent increments. The third decimal must be either a zero or a five, *e.g.*, 5.320 or 5.325. Fractions may not be used.

* * * * *

(2) Maximum recognized bid. There is no limitation on the maximum dollar amount that a bidder may bid for competitively, either at one yield or discount rate, or at different yields or discount rates. However, a competitive bid at a single yield or discount rate that exceeds 35 percent of the offering amount will be reduced to that amount. For example, if the offering amount is $10 billion, the maximum bid amount that will be recognized at any one yield or discount rate from any bidder is $3.5 billion. (*See* § 356.22 for award limitations.)

4. Section 356.13 is amended by revising paragraph (a) to read as follows:

§ 356.13 Net long position.

(a) *Reporting net long positions.* When bidding competitively, a bidder must report the amount of its net long position when the total of all of its bids in an auction plus the bidder's net long position in the security being auctioned equals or exceeds the net long position reporting threshold amount. The net long position reporting threshold amount for any particular security will be stated in the offering announcement for that security. (*See* § 356.10.) That amount will be 35 percent of the offering amount, unless otherwise stated in the offering announcement. If the bidder either has no position or has a net short position and the total of all of its bids equals or exceeds the net long position reporting threshold amount, a net long position of zero must be reported. In cases where a bidder that is required to report the amount of its net long position has more than one bid, the bidder's total net long position should be reported in connection with only one bid. A bidder that is a customer must report its reportable net long position through only one depository institution or dealer. (*See* § 356.14(c).)

* * * * *

5. Section 356.20 is amended by revising paragraph (a) to read as follows:

§ 356.20 Determination of auction awards.

(a) *Determining the range and amount of accepted competitive bids*—(1) *Accepting bids.* Determinations of awards in auctions are made after the closing time for receipt of bids. In determining auction awards, all noncompetitive bids received by the closing time specified in the offering announcement are accepted in full. Then competitive bids are accepted, starting with those at the lowest yields or discount rates through successively higher yields or discount rates, up to the amount required to meet the offering amount. Bids at the highest accepted yield or discount rate will be prorated (as described in paragraph (a)(2) of this section), if necessary. If the amount of noncompetitive bids would absorb most or all of the offering amount, competitive bids will be accepted in an amount determined by Treasury to be sufficient to provide a fair determination of the yield or discount rate for the securities being auctioned.

(2) *Accepting bids at the high yield or discount rate.* When the total amount of bids at the highest accepted yield or discount rate exceeds the amount of the offering amount remaining after acceptance of noncompetitive bids and competitive bids at the lower yields or discount rates, a percentage of the bids received at the highest accepted yield or discount rate will be awarded. This proration is performed for the purpose of awarding a par amount of securities close to the offering amount. The percentage is derived by dividing the remaining par amount needed to fill the offering amount by the par amount of the bids recognized at the high yield or rate and rounding up to the next hundredth of a whole percentage point, for example, 17.13%.

* * * * *

6. Section 356.21 is amended by revising paragraph (a) and the second sentence of paragraph (b) to read as follows:

§ 356.21 Proration of awards.

(a) *Awards to submitters.* In auctions where bids at the highest accepted yield or discount rate are prorated under § 356.20(a)(2) of this part, the Federal Reserve Banks are responsible for prorating awards for submitters at the percentage announced by the Department. For example, if 80.15% is the announced percentage at the highest yield or discount rate, then each bid at that rate or yield shall be awarded 80.15% of the amount bid. Hence, a bid for $100,000,000 at the highest accepted yield or discount rate would be awarded $80,150,000. In all cases, awards will be for at least the minimum to hold, and awards must be in an appropriate multiple to hold. Awards at the highest accepted yield or rate are adjusted upwards, if necessary, to an appropriate multiple to hold. For example, Treasury bills may be issued with a minimum to hold of $1,000 and multiples of $1,000. Where an $18,000 bid is accepted at the high discount rate, and the percent awarded at the high discount rate is 88.27%, the award to that bidder will be $16,000, representing an upward adjustment from $15,888.60 ($18,000×.8827) to an appropriate multiple to hold. If tenders at the highest accepted discount rate are prorated at, for example, a rate of 4.65%, the award for a $10,000 bid will be $1,000, instead of $465, in order to meet the minimum to hold for a bill issue.

(b) *Awards to customers.* * * * For example, if 80.15% is the announced percentage at the highest yield or discount rate, then each customer bid at that rate or yield shall be awarded 80.15%.* * *

7. Section 356.22 is amended by revising paragraph (b) to read as follows:

§ 356.22 Limitation on auction awards.

* * * * *

(b) *Awards to competitive bidders.* The maximum award that will be made to any bidder is 35 percent of the offering amount less the bidder's net long position as reportable under § 356.13. For example, in a note auction with a $10 billion offering amount, a bidder with a reported net long position of $1 billion could receive a maximum auction award of $2.5 billion. When the bids and net long positions of more than one person or entity must be combined as required by § 356.15(c), such combined amount will be used for the purpose of this award limitation.

Dated: November 5, 2002.

Donald V. Hammond,

Fiscal Assistant Secretary.

[FR Doc. 02–28662 Filed 11–8–02; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 110

[CGD 01–02–027]

RIN 2115–AA98

Anchorage Grounds; Frenchman Bay, Bar Harbor, ME

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard hereby establishes two anchorage areas in Frenchman Bay near Bar Harbor, Maine. This action is necessary to provide designated anchorage grounds on Frenchman Bay allowing safe and secure anchorage for an increasing number of large passenger vessels calling on the Port of Bar Harbor. This action is intended to increase safety for vessels through enhanced voyage planning and also by clearly indicating the location of anchorage grounds for ships proceeding along the Frenchman Bay Recommended Route for Deep Draft vessels.

DATES: This rule is effective December 12, 2002.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD01–02–027 and are available for inspection or copying at First Coast Guard District, 408 Atlantic Ave., Boston, Massachusetts 02110 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. J.J. Mauro, Commander (oan), First Coast Guard District, 408 Atlantic Ave., Boston, MA 02110, Telephone (617) 223–8355, email: *jmauro@d1.uscg.mil.*

SUPPLEMENTARY INFORMATION:

Regulatory Information

On July 8, 2002, we published a notice of proposed rulemaking (NPRM) entitled Anchorage Grounds; Frenchman Bay, Bar Harbor, ME in the **Federal Register** (67 FR 45071). We received one letter commenting on the proposed rule. No public hearing was requested, and none was held.

Background and Purpose

In November 1999, the Maine Department of Transportation contracted with a local firm to produce a cruise ship traffic demand management study for the Town of Bar Harbor, Maine. One of the purposes was to develop a scheduling and reservation system for arriving cruise ships so that Town facilities would not be overburdened. The study included basic research into the history and outcomes of past cruise ship visits, observation of present cruise ship operations and anchorages. Based on the findings and recommendations of this study, the Penobscot Bay and River Pilots Association requested that the Coast Guard establish two federal anchorage grounds in Frenchman Bay near Bar Harbor, Maine.

Presently, there are no designated anchorage grounds in this area. However, large vessels calling on Bar Harbor have traditionally anchored both north and south of Bar Island. These new anchorage areas coincide with the traditional areas used for large ship anchorage. The size and shape of the anchorage areas are minimal and the purpose is to conform to the changing use of the harbor and to make best use of available water.

The Coast Guard has defined the anchorage areas contained herein with the advice and consent of the Army Corps of Engineers, New England District, located at 696 Virginia Rd., Concord, MA 01742.

This regulation does not intend to exclude fishing activity or the transit of vessels in the anchorage areas. The Coast Guard anticipates minimal transit interference through the proposed anchorages by way of increased vessel anchorage.

Discussion of Comments and Changes

We received one letter from the Army Corps of Engineers commenting on the proposed rule. They recommended that no seasonal mooring buoys be established in these anchorages. Their concerns were addressed in the NPRM. The final rule has not been changed from the NPRM language except to correct two typographical errors to the latitude and longitude as follows:

For Anchorage "A", 68°–11′–00″W is changed to read 68°–12′–00″W.

For Anchorage "B", 44°–23′–02″N is changed to read 44°–24′–02″N.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT)(44 FR 11040, February 26, 1979). We expect the economic impact of this proposed rule to be so minimal that a full regulatory evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary.

This conclusion is based upon the fact that there are no fees, permits, or specialized requirements for the maritime industry to utilize these anchorage areas. The regulation is solely for the purpose of advancing safety of maritime commerce.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have

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a significant economic impact on a substantial number of small entities.

This rule will have minimal economic impact on vessels operated by small entities. This conclusion is based upon the fact that there are no restrictions for entry or use of the anchorage targeting small entities. This regulation creates only two new anchorage areas; it does not govern its usage.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact John J. Mauro at the address listed in **ADDRESSES** above.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble. This rule will not impose an unfunded mandate.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (34)(f), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES.**

This rule creates two new anchorage areas to the east of Bar Harbor. These designated anchorages will enhance the safety in the waters of Frenchman Bay, Maine by relieving vessel congestion within the bay. Thus, these two designated anchorages will provide a safer approach for deep draft vessels.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

For the reasons set forth in the preamble, the Coast Guard amends 33 CFR part 110 as follows:

PART 110—ANCHORAGE REGULATIONS

1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 1221 through 1236, 2030, 2035, 2071; 49 CFR 1.46 and 33 CFR 1.05–1(g).

§§ 110.130 through 110.134 [Redesignated]

2. Redesignate § 110.130 through § 110.134 as follows:

Old section	New section
§ 110.130	110.132
§ 110.131	110.133
§ 110.132	110.134
§ 110.133	110.136
§ 110.134	110.138

3. Add § 110.130 to part 110, subpart B, to read as follows:

§ 110.130 Bar Harbor, Maine.

(a) *Anchorage grounds.* (1) Anchorage "A" is that portion of Frenchman Bay, Bar Harbor, ME enclosed by a rhumb line connecting the following points:

Latitude	Longitude
44°23″43′ N	068°12″00′ W; thence to
44°23″52′ N	068°11″22′ W; thence to
44°23″23′ N	068°10″59′ W; thence to
44°23″05′ N	068°11″32′ W; returning to start.

(2) Anchorage "B" is that portion of Frenchman Bay, Bar Harbor, ME enclosed by a rhumb line connecting the following points:

Latitude	Longitude
44°24″33′ N	068°13″09′ W; thence to
44°24″42′ N	068°11″47′ W; thence to copied
44°24″11′ N	068°11″41′ W; thence to
44°24″02′ N	068°13″03′ W; returning to start.

(b) *Regulations.* (1) Anchorage A is a general anchorage ground reserved for passenger vessels, small commercial vessels and pleasure craft. Anchorage B is a general anchorage ground reserved primarily for passenger vessels 200 feet and greater.

(2) These anchorage grounds are authorized for use year round.

(3) Temporary floats or buoys for marking anchors will be allowed in all anchorage areas.

(4) Fixed moorings, piles or stakes are prohibited.

(5) Any vessels anchored in this area shall be capable of moving and when ordered to move by the Captain of the Port shall do so with reasonable promptness.

(6) The anchoring of vessels is under the coordination of the local Harbormaster.

Dated: October 29, 2002.

J.L. Grenier,

Captain, USCG, Acting District Commander, First Coast Guard District.

[FR Doc. 02–28681 Filed 11–8–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD08–02–036]

Drawbridge Operation Regulations; San Bernard River, Brazoria, Brazoria County, TX

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Union Pacific Railroad Swing Span Bridge across the San Bernard River, mile 20.7, at Brazoria, Brazoria County, TX. This deviation allows the bridge to remain closed to navigation from November 11, 2002, through November 14, 2002. The deviation is necessary to replace rail and signal components that affect the operation of the swing span.

DATES: This deviation is effective from 8 a.m. on November 11, 2002, until 8 p.m. on November 14, 2002.

ADDRESSES: Materials referred to in this document are available for inspection or copying at the office of the Eighth Coast Guard District, Bridge Administration Branch, Hale Boggs Federal Building, room 1313, 501 Magazine Street, New Orleans, Louisiana 70130–3396 between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The Bridge Administration Branch of the Eighth Coast Guard District maintains the public docket for this temporary deviation.

FOR FURTHER INFORMATION CONTACT: Phil Johnson, Bridge Administration Branch, telephone (504) 589–2965.

SUPPLEMENTARY INFORMATION: The Union Pacific Railroad has requested a temporary deviation in order to replace the hydraulic rail locking mechanism and signal components that affect the opening and closing of the swing span bridge across the San Bernard River at mile 20.7 near Brazoria, Brazoria County, Texas. This maintenance is essential for the continued operation of the bridge. This temporary deviation will allow the bridge to remain in the closed-to-navigation position from 8 a.m. on Monday, November 11, 2002, until 8 p.m. on Thursday, November 14, 2002.

The swing span bridge has a vertical clearance of 2 feet above high water in the closed-to-navigation position. Navigation on the waterway consists primarily of small recreational vessels and tugs with tows transporting petroleum products. The bridge normally opens to pass navigation on an average of 3 times per day. In accordance with 33 CFR 117.984, the draw of the bridge opens on signal; except that, from 10 a.m. to 2 p.m. and 10 p.m. to 2 a.m. the draw shall open on signal if at least three hours notice is given. Through the month of November, the San Bernard River, at the site of the bridge, is expected to remain at a stage at which as much as 17 feet of vertical clearance will be available while the swing span is in the closed-to-navigation position. Thus, average recreational vessels, as well as petroleum barges, can pass under the bridge during the closure period. The Union Pacific Railroad contacted Phillips Petroleum Company, principal user of the waterway, and advised them of the closure. Phillips Petroleum Company has made plans to shuttle barges under the bridge while it remains in the closed-to-navigation position. The bridge will not be able to open for emergencies during the closure period. No alternate routes are available.

In accordance with 33 CFR 117.35(c), this work will be performed with all due speed in order to return the bridge to normal operation as soon as possible. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: November 1, 2002.

Roy J. Casto,

Rear Admiral, Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 02–28679 Filed 11–8–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD08–02–029]

RIN 2115–AE47

Drawbridge Operation Regulation; Milhomme Bayou, Stephensville, LA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is removing the existing drawbridge operation regulation for the draw of the St. Martin Parish Road pontoon bridge across Milhomme Bayou, mile 12.0 (Landside Route), at Stephensville, Louisiana. A replacement bridge has been constructed and the existing bridge is being removed. Since the bridge is being removed, the regulation controlling the opening and closing of the bridge is no longer necessary.

DATES: This rule is effective November 12, 2002.

ADDRESSES: Documents referred to in this rule are available for inspection or copying at Eighth Coast Guard District, Bridge Administration Branch, 501 Magazine Street, New Orleans, Louisiana 70130–3396, between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (504) 589–2965. The Commander, Eighth Coast Guard District, Bridge Administration Branch maintains the public docket for this rulemaking.

FOR FURTHER INFORMATION CONTACT: Mr. David Frank, Bridge Administration Branch, at (504) 589–2965.

SUPPLEMENTARY INFORMATION:

Good Cause for Not Publishing an NPRM

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds good cause exists for not publishing an NPRM. Public comment is not necessary since the purpose of the affected regulation is to control the opening and closing of a bridge that is no longer in service and is in the process of being completely removed.

Good Cause for Making Rule Effective in Less Than 30 Days

Under 5 U.S.C. 553(d)(3), the Coast Guard finds good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The bridge for which the

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special operation regulation was created is no longer in service and the need for the regulation is no longer necessary.

Background and Purpose

A new bobtailed swing bridge across the Milhomme Bayou, mile 12.0 (Landside Route), at Stephensville, Louisiana was opened to traffic in August of 2002. The existing pontoon bridge which had previously serviced the area is in the process of being removed and no longer affects navigation. The regulation governing the operation of the pontoon bridge is found in 33 CFR 117.481. The purpose of this rule is to remove 33 CFR 117.481 from the Code of Federal Regulations since it governs a bridge that is no longer in service and is being removed.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

This rule removes a regulation that is being made obsolete by the removal of the bridge that it governs. Therefore, a cost/benefit analysis is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will have no impact on any small entities because the regulation being removed applies to a bridge that is being removed.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (32)(e), of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. This final rule only involves removal of the drawbridge operation regulation for a drawbridge that has been removed from service. It will not have any impact on the environment. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons set out in the preamble, the Coast Guard is amending Part 117 of Title 33, Code of Federal Regulations as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of P. L. 102–587, 106 Stat. 5039.

§ 117.481 [Removed]

2. Section 117.481 is removed.

Dated: October 30, 2002.

J.R. Whitehead,

Captain, Coast Guard, Acting Commander, 8th Coast Guard District.

[FR Doc. 02–28678 Filed 11–8–02; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[PA181–4181a; FRL–7399–4

Approval and Promulgation of Air Quality Implementation Plans; Designation of Areas for Air Quality Planning Purposes; Pennsylvania; Redesignation of the Allegheny County Carbon Monoxide Nonattainment Area and Approval of Miscellaneous Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve a request for Pennsylvania for redesignation of the carbon monoxide (CO) nonattainment area in Allegheny County, to attainment of the CO national ambient air quality standard (NAAQS). EPA is also approving the plan for maintaining the CO standard in Allegheny County, as well as the 1990 base year CO emissions inventory for Allegheny County. Pennsylvania's Redesignation Request and Maintenance Plan was submitted to EPA on August 17, 2001. The 1990 base year inventory was submitted to EPA on November 12, 1992, and revised by the August 17, 2001, submittal. EPA is approving the redesignation request, the maintenance plan and the emissions inventory in accordance with the requirements of the Clean Air Act.

DATES: This rule is effective on January 13, 2003, without further notice, unless EPA receives adverse written comment by December 12, 2002. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be mailed to David L. Arnold, Chief, Air Quality Planning and Information Services Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, 1301 Constitution Avenue, NW., Room B108, Washington, DC 20460; and Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Catherine L. Magliocchetti, (215) 814–2174, or by e-mail at *magliocchetti.catherine@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document wherever "we," "us," or "our" is used we mean EPA.

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Introduction

Under the Clean Air Act (Act), EPA may redesignate areas to attainment if sufficient data are available to warrant such changes and the area meets the criteria contained in section 107(d)(3) of the Act. This includes full approval of a maintenance plan which meets the requirements of section 175A. On August 17, 2001, the Commonwealth of Pennsylvania submitted a redesignation request and section 175A maintenance plan for the Allegheny County CO nonattainment area. When approved, the section 175A maintenance plan will become a Federally enforceable part of the SIP for these areas.

On November 12, 1992, the Commonwealth of Pennsylvania submitted a 1990 Base Year Emissions Inventory for Allegheny County, including CO data. The August 17, 2001, submittal revised some of the figures in the 1990 Base Year Inventory.

The following is a detailed analysis of the Redesignation Request and section 175A Maintenance Plan SIP submittal.

I. When Was This Area Originally Designated Nonattainment for Carbon Monoxide?

EPA originally designated part of Allegheny County as a CO nonattainment area under section 107 of the Act on September 12, 1978 (43 FR 40513). The area defined as CO nonattainment included high traffic density areas within the Central Business District (CBD) and certain other high traffic density areas. In 1990, Congress amended the act (1990 Act) and added a provision which authorizes EPA to classify nonattainment areas according to the degree of severity of the nonattainment problem. In 1991, EPA designated and classified all areas. The CBD of the city of Pittsburgh in Allegheny County was designated as nonattainment and not classified for CO (40 CFR 81.339). The area was not classified because at the time of the designation and classification in 1991, air quality monitoring data recorded in the area did not show violations of the CO NAAQS. However, the Commonwealth had not completed a redesignation request showing that it had complied with all of the requirements of section 107 of the Act. As a result, EPA designated the area as nonattainment, but did not establish a nonattainment classification. The preamble to the **Federal Register** document for the 1991 designation contains more details on this action (56 FR 56694). Since the EPA's 1991 designation, monitors in the area have not recorded a violation of the CO NAAQS. As a result, the area is eligible for redesignation to attainment consistent with the 1990 Act. On August 17, 2001, Pennsylvania submitted a SIP revision to the EPA, containing a redesignation request, maintenance plan, and updates to the CO emissions inventory. The Commonwealth held public hearings on the SIP revision on March 16, 2001. Public comments were

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not received on this proposed redesignation at the state level.

II. What Are the Geographic Boundaries of the CO Nonattainment Areas?

The CO nonattainment area in the Allegheny County was defined under 43 FR 40517 as "the high traffic density areas within the Central Business District and certain other high traffic density areas." (In its SIP revision, the Commonwealth notes that "the CBD is generally the downtown triangle bounded by the Allegheny River, the Monongahela River and I–579." Adding that the phrase "other high traffic density areas," "describes what is considered the Oakland neighborhood of Pittsburgh.").

III. What Are the Criteria for Redesignation?

The 1990 Act revised section 107(d)(3)(E), which specifies five requirements that an area must meet to be redesignated from nonattainment to attainment.

These requirements are:

1. The area has attained the applicable NAAQS;
2. The area has a fully approved SIP under section 110(k) of the Act;
3. The air quality improvement is permanent and enforceable;
4. The area has a fully approved maintenance plan pursuant to section 175A of the Act; and
5. The area has met all relevant requirements under sect9ion 110 and part D of the Act.

IV. Has the State Met the Criteria for Redesignation?

The EPA has reviewed the Pennsylvania redesignation request for the Allegheny County area and finds that the requests meets the five requirements of section 107(d)(3)(E).

A. What Data Shows Attainment of the CO NAAQS in Allegheny County?

Pennsylvania has quality-assured CO ambient air monitoring data showing that Allegheny County has met the CO NAAQS. The request is based upon an analysis of quality-assured CO air monitoring data that is relevant to the maintenance plan and the redesignation request. To attain the CO NAAQS, an area must have complete quality-assured CO air monitoring data showing no more than one exceedance of the standard per year over at least three consecutive years.

Between 1988 and 1999, the Allegheny County Health Department continuously operated two monitors in the county, and one additional monitor from 1997. The design value for the latest two years of quality assured data (1998 and 1999) is 3.9 ppm, measured at the Forbes Avenue and Grant Street monitoring site in 1999. Air quality data for the three CO monitoring sites shows that from 1988 through 1999, there were no violations of the 8-hour CO NAAQS in the nonattainment area, the last violation have occurred in 1987. The 1-hour CO standard is also being met at these monitoring sites, the last violation having occurred in 1980. Additional historic data are included in the Commonwealth's request. Pennsylvania's request is based on an analysis of quality-assured CO air quality data. This data was compiled in an EPA-approved, quality assured, National Air Monitoring System monitoring network. As a result, the area meets the first statutory criterion for redesignation to attainment of the CO NAAQS.

The Commonwealth has committed to continue monitoring in these areas in accordance with 40 CFR part 58. As discussed further below, the design value for Allegheny County, 3.9 ppm, meets the test for the limited maintenance plan option since the design values are well below the 7.8 ppm level.

Since the area's 1990 design value for CO was 8.0 ppm, supplemental air quality modeling is not needed to support this request.[1]

B. Fully Approved SIP Under Section 110(k) of the Act?

i. Section 110 Requirements

Pennsylvania CO SIP was fully approved by EPA as meeting all the requirements of section 110(a)(2)(I) of the Act, including the requirements of part D (relating to nonattainment), which were due prior to the date of Pennsylvania's redesignation request. The 1982 CO SIP, except for the Inspection and Maintenance (I/M) portion was fully approved by EPA on February 26, 1985, 40 CFR 52.2020(c)(63), (50 FR 772). The I/M portion of the SIP was approved by EPA on April 8, 1987, at 40 CFR 52.2020(c)(66), (52 FR 11259), and revised to an enhanced program by EPA's approval on June 17, 1999, at 40 CFR 52.2020(c)(139), (64 FR 32411). The Clean Air Act Amendments of 1990 and part D also added emission reduction requirements for CO areas which were classified as moderate and serious nonattainment. Areas such as the portion of Allegheny County classified as nonattainment, not classified, did not have additional emission reduction requirements.

ii. Part D Requirements

Part D contains general provisions that apply to all nonattainment plans and certain sections that apply to specific pollutants. Before EPA may redesignate the Allegheny County CO nonattainment areas to attainment, the SIP must have fulfilled the applicable requirements of part D. Under part D, an area's classification indicates the requirements to which it is subject. Subpart 1 to part D sets forth the basic nonattainment requirements applicable to all nonattainment areas, classified as well as not classified. EPA designated the Allegheny County areas as a "not classified" CO nonattainment area on November 15, 1990, codified at 40 CFR 81.339. Therefore, to be redesignated to attainment, the Commonwealth must meet the applicable requirements of subpart 1 of part D—specifically sections 172(c) and 176. The subpart 3 requirements of part D do not apply to unclassified areas.

a. Subpart 1 of Part D—Section 172(c) Provisions

Subpart 1 of part D addresses nonattainment areas in general. Section 172(c) describes the nonattainment plan provisions specifically. The requirements of section 172(c)(1) are met by the CO SIP, approval dates as given above. The Federal requirements for new source review (NSR) in nonattainment area are contained in section 172(c)(5). EPA guidance indicates the requirements of part D NSR program will be replaced by the prevention of significant deterioration (PSD) program when an area has reached attainment and been redesignated, provided there are assurances that PSD will become fully effective immediately upon redesignation. To that end, Allegheny County has been delegated the Federal PSD program and has adopted the PSD requirements promulgated in 40 CFR 52.21, incorporating them by reference in its regulations as provided in article XXI, section 2102.07.

The remaining requirements under section 172(c), except for Conformity provisions discussed below, are not applicable, since attainment has already been measured, or will be satisfied as part of the maintenance plan included as part of the redesignation request.

[1] CO nonattainment areas with design value of 12.7 ppm or lower when the 1990 Act was passed, are not required to model attainment of the area on order to redesignate. (September 4, 1992, memorandum from John Calcagni, "Procedures for Processing Requests to Redesignate Areas to Attainment.")

b. Subpart 1 of Part D—Section 176 Conformity Provisions

Part D, section 176(c)(4)(C) requires each state to have submitted to EPA by November 15, 1992, a SIP revision establishing a conformity process. This date was extended to November 25, 1994, as EPA did not promulgate its conformity rule until November 15, 1993. The Commonwealth submitted its SIP revision on November 21, 1994, and EPA found it administratively and technically complete. However, due to continuing amendments to EPA rulemaking on state-specific revisions was deferred. In 1998, the Commonwealth submitted a updated Conformity SIP revision, however, EPA has placed rulemaking for this plan on hold, pending the results of legal action related to the new ozone and particulate matter standards. Since the Commonwealth has fulfilled its requirement to submit a Conformity SIP revision, and the delay on rulemaking is a result of EPA policy, EPA will not hold up approval of the CO redesignation due to lack of an approved Conformity SIP revision.

c. Subpart 3 Requirements

Section 1871 of the Act, "Plan Submission and Requirements," which is a part of subpart 3, Additional Provisions for CO Nonattainment Areas, does not need to be satisfied for this redesignation request. Section 187 requirements do not apply to areas "not classified" for CO.

C. Improvement in Air Quality Due to Permanent and Enforceable Measures?

In order to redesignate an area, EPA must determine that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable implementation plan and applicable Federal air pollutant control regulations and other permanent and enforceable reductions.

The Commonwealth's 1982 CO SIP for Southwestern PA, approved by EPA in 1985, identified Federal, state and local measures to bring the area into attainment. These measures are: the Federal Motor Vehicle Control Program, the Commonwealth's I/M program (since revised to an enhanced program), and other transportation control measures.

As discussed above, Allegheny County has measured attainment of the CO NAAQS since 1988, indicative of improvements due to permanent and enforceable measures contained in the 1982 CO SIP.

The Commonwealth has demonstrated that actual enforceable emission reductions are responsible for the air quality improvement and that the CO emissions in the base year are not artificially low due to local economic downturn. EPA finds that the combination of certain existing EPA-approved SIP and Federal measures contribute to the permanence and enforceability or reduction in ambient CO levels that have allowed the area to attain the NAAQS.

D. Fully Approved Maintenance Plan Under Section 175A?

Section 175A of the Act sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. The plan must demonstrate continued attainment of the applicable NAAQS for at least 10 years after the EPA approves a redesignation to attainment. Eight years after the redesignation, that State must submit a revised maintenance plan which demonstrates attainment for the 10 years following the initial 10-year period. To address potential future NAAQS violations, the maintenance plan must contain contingency measures, with a schedule for implementation adequate to assure prompt correction of any air quality problems.

Under section 175A(d) contingency provisions must include a requirement that the State will implement all control measures that were in the SIP prior to redesignation as an attainment area. In this section, EPA is approving the Allegheny County maintenance plan because EPA finds that submittal meets the requirements of section 175A. The details of the maintenance plan requirements and how the submittal meets these requirements are detailed below.

i. What Is the Limited Maintenance Plan Option?

The EPA issued guidance on October 6, 1995, titled "Limited Maintenance Plan Option for Nonclassifiable CO Nonattainment Areas." This option is only available to CO nonattainment areas with design values at or below 7.65 ppm (85 percent of exceedance levels of the CO ambient air quality standard). The limited maintenance plan option allows areas that are well below the NAAQS ambient air quality standard to submit a less rigorous maintenance plan than was formerly required. The design value for CO in Allegheny County for the years 1998 and 1999 was 3.9 ppm, qualifying the area for use of a limited maintenance plan option.

The limited maintenance plan must meet certain core requirements. These requirements are:

a. The State must submit an attainment emissions inventory based on actual "typical winter day" emissions of CO in the monitored attainment years.

b. The maintenance demonstration does not need to project emissions over the maintenance period. The design value criteria are expected to provided adequate assurance of maintenance over the initial 10-year period.

c. The State must continue operating an approved air quality monitoring network.

d. The State must have a contingency plan and specific indicators or triggers for implementation of the contingency plan.

e. The conformity determination under a limited maintenance plan can consider the emissions budget as essentially not constraining for the length of the initial maintenance plan.

ii. How Has the State Met the Limited Maintenance Plan Requirements?

a. Emissions Inventory

EPA is approving the 1990 Base Year CO Emissions Inventory for CO, submitted to EPA in November 1992, and approving the "typical winter day" emissions for highway on-road sources in Allegheny County submitted to EPA on August 17, 2001, along with the redesignation request. The 1990 Base Year Inventory submittal contains the detailed inventory data and summaries by source category, prepared in accordance with EPA guidance. Table 1 summarizes the 1990 Base Year Inventory for the seven county Pittsburgh area Metropolitan Statistical Area.

TABLE 1.—CO 1990 BASE YEAR EMISSIONS IN TONS PER DAY

County	Point	Area	Off-road	Highway	Total
Allegheny	438	7	201	542	1188
Armstrong	6	4	10	24	44
Beaver	20	3	24	71	118

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TABLE 1.—CO 1990 BASE YEAR EMISSIONS IN TONS PER DAY—Continued

County	Point	Area	Off-road	Highway	Total
Butler	230	9	26	69	334
Fayette	0	8	17	46	71
Washington	5	9	30	108	152
Westmoreland	26	2	68	170	266
MSA—Total	725	42	376	1030	2173

For purposes of demonstrating compliance with an attainment inventory, typical of a winter day (when CO concentrations are of concern), the Commonwealth prepared and submitted an updated CO emissions inventory for the highway source category in Allegheny County. The 1990 CO emissions inventory for highway, or on-road sources, was updated by Allegheny County and the Commonwealth for the CO redesignation request, using winter-time inputs in MOBILE 5b. This inventory identifies the level of emissions in the area sufficient to attain the NAAQS, since the 1990 design value was 8.1 ppm. The 1999 emissions inventory reflects the impact of the Federal Motor Vehicle Control Program Tier 1 standards, and Pennsylvania's Enhanced Inspection and Maintenance program. The Commonwealth and Allegheny County point out in their submittal that while CO emissions are also a result of point, area, and off-road sources, their submittal's attainment inventory only includes emissions from highway, on-road sources, since motor vehicles are the primary source of CO emissions in the nonattainment area, the Pittsburgh Central Business District. EPA concurs with this assessment of the inventory needs and is approving the typical winter day CO emissions inventory for highway sources as detailed in Table 2.

TABLE 2.—TYPICAL WINTER DAY CO EMISSIONS IN TONS PER DAY

Allegheny County inventory year	Highway
1990	1219
1999	625

As previously stated, Allegheny County has adequately demonstrated continued attainment of the CO NAAQS.

b. Projection of Emissions Over the Maintenance Period

In accordance with the limited maintenance plan option, Allegheny County is not required to project emissions over the maintenance period.

c. Verification of Continued Attainment

In the submittal the Commonwealth commits to continue to operate and maintain the network of ambient CO monitoring stations in accordance with provisions of 40 CFR parts 53 and 58 to demonstrate ongoing compliance with the CO NAAQS. The submittal presents the tracking plan for the maintenance period which consists of continued CO monitoring. The Commonwealth will continue to monitor CO levels in the Allegheny County Central Business District to demonstrate ongoing compliance with the CO NAAQS.

d. Contingency Plan

As required by section 175A of the Act, Pennsylvania has provided contingency measures with a schedule for implementation if a future CO air quality problem occurs. Contingency measures in the plan include restrictions on vehicle idling in the central business district during winter months (November through February), to be implemented within 12–15 months after a recorded violation of the CO standard.

e. Conformity Determinations

The limited maintenance plan option allows the Commonwealth to consider the emissions budget as essentially not constraining for the length of the initial maintenance plan.

iii. Commitment To Submit Subsequent Maintenance Plan Revisions

A new maintenance plan must be submitted to EPA within eight years of the redesignation of the nonattainment area, as required by section 175(A)(b). This subsequent maintenance plan must constitute a SIP revision and provide for the maintenance of the CO NAAQS for a period of 10 years after the expiration of the initial 10 year maintenance period.

E. How Does the State Meet the Applicable Requirements of Section 110 and Part D?

As noted above, because the area is a "not classified" nonattainment area, the 1990 Act did not establish additional requirements under subpart 3. Prior to the 1990 Amendments, EPA had fully approved the State's CO SIP. Since the area is not subject to the subpart 3 requirements, no additional requirements exist under section 110(k) which the State must address prior to redesignation.

V. Final Action

EPA is approving, the Allegheny County redesignation request for CO because the County and the Commonwealth have complied with the requirements of section 107(d)(3)(E) of the Act. In addition, EPA is approving the Allegheny County CO maintenance plans as a SIP revision meeting the requirements of section 175A.

EPA is publishing this action without prior proposal because EPA views this as a noncontroversial revision and anticipates no adverse comments. However, in the "Proposed Rules" section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on January 13, 2003, without further notice unless EPA receives adverse comment. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

VI. Administrative Requirements

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCSs. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 13, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action, the redesignation of the Allegheny County CO nonattainment area to attainment and approval of the area's maintenance plan and the 1990 base year CO emissions inventory may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Reporting and Recordkeeping requirements.

40 CFR Part 81

Air Pollution control, National parks, Wilderness areas.

Dated: October 17, 2002.

Thomas C. Voltaggio,

Regional Administrator, Region III.

40 CFR parts 52 and 81 are amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart NN—Pennsylvania

2. Section 52.2020 is amended by adding paragraph (c)(183) to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(183) The CO redesignation and maintenance plan for Southwestern Pennsylvania submitted by the Pennsylvania Department of Environmental Protection on August 17, 2001, as part of the Pennsylvania SIP. The 1990 base year CO emissions inventory was submitted by the Pennsylvania Department of Environmental Protection on November 12, 1992.

(i) Incorporation by reference.

(A) Letter of August 17, 2001, from the Pennsylvania Department of Environmental Protection transmitting a redesignation request and maintenance plan for the CO monoxide nonattainment area in Southwestern Pennsylvania.

(B) Maintenance Plan for the Southwestern Pennsylvania Carbon Monoxide nonattainment area, effective July 12, 2001.

(ii) Additional Material.—Remainder of the August 17, 2001 submittal pertaining to the revisions listed in paragraph (c)(183)(i) of this section.

* * * * *

3. Section 52.2036 is amended by adding paragraph (n) to read as follows:

§ 52.2036 1990 base year emissions inventory.

* * * * *

(n) EPA approves as a revision to the Pennsylvania SIP the 1990 base year CO emissions inventory for Southwestern Pennsylvania, including Allegheny, Armstrong, Beaver, Butler, Fayette, Washington and Westmoreland counties, submitted by the Secretary of the Pennsylvania Department of Environmental Protection on November 12, 1992, and as revised on August 17, 2001. This submittal consists of the 1990 base year inventory for point, area, off-road, and highway emissions for these counties, for the pollutant CO.

PART 81—[AMENDED]

Subpart C—Section 107 Attainment Status Designations

1. The authority citation for part 81 continues to read as follows:

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Authority: 42 U.S.C. 7401 *et seq.*

2. In § 81.339, the table for "Pennsylvania—Carbon Monoxide" is amended by revising the entry for the Pittsburgh Area to read as follows:

§ 81.339 Pennsylvania.

* * * * *

PENNSYLVANIA—CARBON MONOXIDE

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
Pittsburgh Area:				
Allegheny County (part) high traffic density areas within the Central Business District and certain other high traffic density areas.	1/13/02	Attainment.		

[1] This date is November 15, 1990, unless otherwise noted.

* * * * *

[FR Doc. 02–28495 Filed 11–8–02; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 61

[FRL–7405–6]

RIN 2060–AJ87

National Emission Standard Benzene Waste Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule; amendments.

SUMMARY: This action amends the national emission standards for hazardous air pollutants (NESHAP) for benzene waste operations. The amendments add an exemption for organic vapors routed to the fuel gas system and a new compliance option for tanks, and clarify the standards for containers.

We are publishing the direct final rule without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comment. However, in the Proposed Rules section of this **Federal Register**, we are publishing a separate document that will serve as the proposal in the event that adverse comments are filed.

DATES: The amendments are effective on February 10, 2003 without further notice, unless significant, adverse comments are received by December 12, 2002, or by February 18, 2003 if a public hearing is requested. See the proposed rule in this issue of the **Federal Register** for information on the hearing. If EPA receives adverse comments, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: *Comments.* By U.S. Postal Service, send comments (in duplicate, if possible) to: Air and Radiation Docket and Information Center (6102T), Attention Docket No. A–2001–23, U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. In person or by courier, deliver comments (in duplicate, if possible) to: Air and Radiation Docket and Information Center (6102T), Attention Docket No. A–2001–23, Room B–108, U.S. EPA, 1301 Constitution Avenue, NW., Washington, DC 20460. We request that a separate copy of each public comment be sent to the EPA contact person listed below (see **FOR FURTHER INFORMATION CONTACT**). *Docket.* Docket No. A–2001–23 contains supporting information used in developing the amendments. The docket is located at the U.S. EPA, 1301 Constitution Avenue, NW., Washington, DC 20460 in room B–108, and may be inspected from 8:30 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Robert B. Lucas, Waste and Chemical Process Group (C439–03), Emission Standards Division, Office of Air Quality Planning and Standards, U.S. EPA, Research Triangle Park, North Caroline 27711, telephone number (919) 541–0884, electronic mail address, lucas.bob@epa.gov.

SUPPLEMENTARY INFORMATION: For information concerning applicability and rule determinations, contact the appropriate regional representative:

U.S. EPA New England, Director, Air Compliance Programs, 1 Congress Street, Suite 1100 (SEA), Boston, MA 02114–2023. *Phone:* (617) 918–1656, *Fax:* (617) 918–1112.

U.S. EPA—Region II, Air Compliance Branch, 290 Broadway, New York, NY 10007–1866, *Phone:* (212) 637–3000, *Fax:* (212) 637–3526.

U.S. EPA—Region III, Chief, Air Enforcement Branch (3AP12), 1650 Arch Street, Philadelphia, PA 19103–2029, *Phone:* (215) 814–3438, *Fax:* (215) 814–2134, Region III Office Web site: *www.epa.gov/reg3artd/hazpollut/hazairpol.htm.*

U.S. EPA—Region IV, Air and Radiation Technology Branch, Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, GA 30303–3104, *Phone:* (404) 562–9105, *Fax:* (404) 562–9095.

U.S. EPA—Region V, Air Enforcement and Compliance Assurance Branch (AE17J), 77 West Jackson Boulevard, Chicago, IL 60604–3590, *Phone:* (312) 353–2088, *Fax:* (312) 353–8289.

U.S. EPA—Region VI, Chief, Toxics Enforcement Section (ΛEN–AT), 1445 Ross Avenue, Dallas, TX 75202–2733, *Phone:* (214) 665–7224, *Fax:* (214) 665–2146, Region VI Office Web site: www.epa.gov/region6.

U.S. EPA Region VII, Bill Peterson, 726 Minnesota Avenue, Kansas City, KS 66101, *Phone:* (913) 551–7881, *Fax:* (913) 551–7467.

U.S. EPA—Region VIII, MACT Enforcement, 999 18th Street, Suite 500, Denver, Colorado 80202, *Phone:* (303) 312–6312, Fax: (303) 312–6409.

U.S. EPA—Region IX, Air Division, 75 Hawthorne Street, San Francisco, CA 94105, *Phone:* (415) 744–1219, *Fax:* (415) 744–1076.

U.S. EPA—Region X, Office of Air Quality (OAQ–107), 1200 Sixth Avenue, Seattle, Washington 98101, *Phone:* (206) 553–4273, *Fax:* (206) 553–0110.

Comments. All public comments will be addressed in a subsequent final rule based on the proposed amendments. If we receive any significant adverse comments, we will publish a timely withdrawal in the **Federal Register** before the effective date of the amendments. If an adverse comment

applies to a specific amendment, and that provision can be addressed separately from the remainder of the direct final rule, we will withdraw only that provision on which we received adverse comments. In the Proposed Rules section of today's **Federal Register**, we are publishing a separate action that will serve as the proposal for any provisions in the direct final rule if we receive adverse comments. If all or part of the direct final rule is withdrawn, all public comments received will be addressed in a subsequent final rule based on the proposal. We will not institute a second comment period on the subsequent final rule. If you are interested in commenting, you must do so at this time.

Comments and data may be submitted by electronic mail (e-mail) to "*a-and-r-docket@epa.gov*". Electronic comments must be submitted as an ASCII file to avoid the use of special characters and encryption problems. Comments will also be accepted on disks in WordPerfect® file format. All comments and data submitted in electronic form must note the docket number: A–2001–23. No confidential business information (CBI) should be submitted by e-mail. Electronic comments may be filed online at many Federal Depository libraries.

Commenters wishing to submit proprietary information for consideration must clearly distinguish such information from other comments and label it as CBI. Send submissions containing such proprietary information directly to the following address, and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket: *Attention:* Mr. Robert Lucas, c/o OAQPS Document Control Officer (C404–02), U.S. EPA, Research Triangle Park, NC 27711.

The EPA will disclose information identified as CBI only to the extent allowed by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies a submission when it is received by EPA, the information may be made available, without further notice, to the public.

Docket. The docket is an organized and complete file of all the information considered by EPA in the development of the amendments. The docket is a dynamic file because information is added throughout the rulemaking process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so they can effectively participate in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the contents of the docket will serve as the record in the case of judicial review. (See section 307(d)(7)(A) of the Clean Air Act (CAA).) The regulatory text and other materials related to the direct final rule are available for review in the docket or copies may be mailed on request from the Air Docket by calling (202) 260–7548. A reasonable fee may be charged for copying docket materials.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of today's direct final rule will also be available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of the direct final rule will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at *http://www.epa.gov/ttn/oarpg.* The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

Regulated Entities. Categories and entities potentially regulated by this action include:

Category	SIC code	NAIC	Examples of regulated entities
Industry	2800's 2911 3312 4925 4953 9511	32512–325182 32411 331111 22121 562211 324110	Chemical manufacturing plants, petroleum refineries, coke by-product recovery plants, and commercial hazardous waste treatment, storage, and disposal facilities that manage waste generated by these industries.
Federal government			Not affected.
State/local/tribal government			Not affected.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by the direct final rule. To determine whether your facility is regulated by the direct final rule, you should examine the applicability criteria in 40 CFR 61.340 of the NESHAP for benzene waste operations. If you have any questions regarding the applicability of this action to a particular entity, consult the appropriate person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Judicial Review. Under section 307(b)(1) of the CAA, judicial review of the direct final rule is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia by January 13, 2002. Under section 307(d)(7)(B) of the CAA, only an objection to the direct final rule raised with reasonable specificity during the period for public comment can be raised during judicial review. Moreover, section 307(b)(2) of the CAA, the requirements that are the subject of the direct final rule may not be challenged later in civil or criminal proceedings brought by the EPA to enforce the requirements.

Outline. The information in this preamble is organized as follows:

I. Background
II. Why Are We Publishing the Amendments as a Direct Final Rule?
III. How Are We Changing the Applicability of the Final Rule?
IV. What Is the New Compliance Option for Tanks?
V. How Are We Clarifying the Standards for Containers?
VI. How Do I Demonstrate Initial and Continuous Compliance?
VII. What Are the Administrative Requirements?
A. Executive Order 12866, Regulatory Planning and Review
B. Executive Order 13132, Federalism
C. Executive Order 13175, Consultation and Coordination with Indian Tribal Governments
D. Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks
E. Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use
F. Unfunded Mandates Reform Act of 1995
G. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*
H. Paperwork Reduction Act
I. National Technology Transfer and Advancement Act of 1995
J. Congressional Review Act

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I. Background

The NESHAP for benzene waste operations (40 CFR part 61, subpart FF) applies to equipment and processes at certain chemical manufacturing plants, coke by-product recovery plants, petroleum refineries, and facilities that treat, store, or dispose of waste generated by those industries. In today's direct final rule, we are adding a new compliance option for tanks adopted from similar standards established under the Resource Conservation and Recovery Act (RCRA) for hazardous waste treatment, storage, and disposal facilities (40 CFR parts 264 and 265, subpart CC). The change was first suggested by a company subject to both the benzene waste NESHAP and the RCRA subpart CC final rules.

The new compliance option allows tanks to be located inside a permanent total enclosure that routes organic vapors through a closed-vent system to an enclosed combustion control device. The requirements for the permanent total enclosure are the same as the Tank Level 2 control requirements in 40 CFR 264.1084(i) and 40 CFR 265.1085(i) of the RCRA final rules. The closed-vent system and control device must meet the design and operational standards in the existing NESHAP. Adding that option reduces regulatory burden by allowing companies to use one set of equipment to comply with both waste final rules.

We are also amending the benzene waste NESHAP requirements for containers to clarify when covers are or are not required. That change is being made to improve understanding of the existing requirements within the regulated community. The amendment specifies requirements for use of a permanent total enclosure with a closed-vent system that routes organic vapors to a control device; the requirements for a permanent total enclosure are the same as for tanks.

In the third change, we are amending the benzene waste NESHAP in response to a request from a petroleum refinery subject to the benzene waste NESHAP. That facility has requested that the benzene waste NESHAP exempt organic vapors from a waste management unit, treatment process, or wastewater treatment system that are routed to a fuel gas system. That exemption is already included in the air standards for petroleum refineries in 40 CFR part 63, subpart CC. With that change, any facility subject to the benzene waste NESHAP can save energy and costs by routing gases to the fuel gas system to recover the heating value of the waste stream. The same definition of "fuel gas system" in the petroleum refinery final rule is added to the benzene waste NESHAP for consistency.

II. Why Are We Publishing the Amendments as a Direct Final Rule?

We are publishing the amendments without prior proposal because we view the changes as noncontroversial and anticipate no adverse comment. The amendments to the benzene waste NESHAP increase flexibility by adding new compliance options and clarifying existing requirements. The amendments do not alter the stringency of the benzene waste NESHAP, have no adverse health or environmental impacts, and will reduce costs. For those reasons, we view the amendments as noncontroversial, anticipate no adverse comments, and are publishing the amendments as a direct final rule.

The nature of the changes contained in the direct final rule are such that it will benefit both industry and the States for the changes to become effective sooner, rather than later.

III. How Are We Changing the Applicability of the Final Rule?

The existing NESHAP for benzene waste operations require that organic vapors be routed to a control device that meets the applicable design and operation requirements in 40 CFR 61.349. Provisions are included for enclosed combustion devices (*e.g.*, vapor incinerator, boiler, or process heater) and vapor recovery systems (carbon canister, condenser).

We are adding an exemption to 40 CFR 61.340 of the NESHAP for gaseous waste streams from a waste management unit, treatment process, or wastewater treatment system that are routed to a fuel gas system. With the exemption, a facility can route the waste gas stream to the fuel gas system to reuse the gases as fuel for heaters, furnaces, boilers, incinerators, gas turbines, or other combustion devices. Because the gas stream goes into the general fuel gas system where it mixes with other fuel gases, it is not possible to specify which particular combustion device ultimately receives the waste stream gases. For that reason, the exemption allows the use of any control device (enclosed combustion unit) connected to the fuel gas system, and does not require the owner or operator to specify a specific control device. A similar exemption is included in the existing NESHAP for petroleum refineries (40 CFR part 63, subpart CC).

Including the exemption eliminates conflicting regulatory requirements, reduces energy needs, and saves costs. The exemption already contained in the petroleum refinery NESHAP implements the current technology-based requirements of section 112 of the CAA. We have determined that the exemption also satisfies the risk-based requirements of the benzene waste NESHAP since no increase in air emissions (or associated health risk) will result. Air emissions are not increased because the gases are ultimately burned in enclosed combustion devices within the facility that typically have high combustion efficiencies for organic HAP. Additional information is available in Docket A–2001–23.

IV. What Is The New Compliance Option for Tanks?

Currently, 40 CFR 63.343 of the benzene waste NESHAP requires a fixed-roof and closed-vent system that routes all organic vapors from the tank to a control device. In certain cases, only a fixed-roof is required for tanks with low-volatility waste.

The new control option allows tanks to be located inside a permanent total enclosure with a closed-vent system that routes organic vapors to an enclosed combustion control device. The requirements for that option are the same as Tank Level 2 control requirements in 40 CFR 264.1084(i) and 40 CFR 265.1085(i) of the subpart CC rules and include:

- Locating the tank inside an enclosure designed and operated to meet the criteria for a permanent total enclosure in "Procedure T—Criteria for and Verification of a Permanent or Temporary Total Enclosure" in 40 CFR 52.741, appendix B. Provisions are included for permanent or temporary openings in the enclosure to allow for access and other needs.
- Routing emissions from the total enclosure through a closed-vent system to an enclosed combustion control device. The combustion control device must be designed and operated to meet the standards for a vapor incinerator, boiler, or process heater in 40 CFR 63.349(a)(2)(i) of subpart FF.

The Tank Level 2 requirements implement RCRA provisions (42 U.S.C. 6924(n)) which require health-based rules sufficient to protect human health and the environment from air emissions from hazardous waste. We have determined that those provisions also satisfy the statutory risk-based requirements of the benzene waste NESHAP.

The Tank Level 2 requirements result in an overall HAP control efficiency equivalent to the existing control requirements in the benzene waste NESHAP. That is because the overall control efficiency for a fixed roof tank is determined by the efficiency of the control device. The overall control efficiency for a control system with a permanent total enclosure is the product of the enclosure capture efficiency times the efficiency of the control device. The capture efficiency of a permanent total enclosure that meets the Procedure T criteria in 40 CFR 52.741, appendix B is considered to be 100 percent. The enclosed combustion control devices required by the new option are the same combustion control devices required by the existing benzene waste NESHAP (vapor incinerator, boiler, or process heater). The option also requires that the control devices be designed and operated according to the benzene waste NESHAP requirements. Thus, the overall control efficiency achieved under the new option is equivalent to the control efficiency achieved under the existing benzene waste NESHAP. Additional information on our determination is available in Docket A–2001–23.

The subpart CC rules allow for safety devices to be added to enclosures and for venting emissions through the safety devices in the event of an emergency. Today's amendments contain the same, needed provisions, along with a definition of "safety device." Briefly, a safety device is a pressure relief valve, frangible disc, fusible plug, or other type of device that opens only to prevent damage during an unplanned, accidental, or emergency event by venting gases to the atmosphere. Safety devices may be put on any enclosure or control device as needed.

V. How Are We Clarifying the Standards for Containers?

We are revising the language in 40 CFR 61.345 of the benzene waste NESHAP to clarify when a total enclosure is and is not required and what requirements must be met for total enclosures. There are two ways to control emissions from containers: (1) Vent emissions from a covered or closed container directly to a control device, or (2) vent the container inside a permanent total enclosure with a closed-vent system that routes organic vapors to a control device. To further clarify the requirements, we have added the same provisions for permanent total enclosures as described for tanks. Those requirements are also the same as the Container Level 3 controls in 40 CFR 264.1086(e) and 40 CFR 265.1087(e) of the RCRA air rules. Like tanks, we have determined that the HAP control efficiency is equivalent to that achieved by a closed container vented to a control device and that the provisions satisfy the statutory risk-based requirements for that final rule. (See Docket A–2001–23.)

VI. How Do I Demonstrate Initial and Continuous Compliance?

The requirements for demonstrating initial and continuous compliance with the requirements for tanks or containers in a total enclosure are the same as those required in the RCRA rules for hazardous waste treatment, storage, and disposal facilities (40 CFR parts 264 and 265, subpart CC). When the enclosure is first installed, you must verify that the enclosure meets the criteria for a permanent total enclosure according to the requirements in section 5 of "Procedure T—Criteria for and Verification of a Permanent or Temporary Total Enclosure" in 40 CFR 52.741, appendix B. To demonstrate continuous compliance, you must repeat the verification procedure annually and keep records of the most recent set of calculations and measurements performed to verify that the enclosure meets the criteria in Procedure T, in addition to records required for a closed-vent system and control device. A new paragraph is added to 40 CFR 61.356 of the benzene waste NESHAP to differentiate the recordkeeping requirements for total enclosures from those associated with the inspection requirements for covers, closed-vent systems, and control devices.

To eliminate regulatory overlap, we have added a provision stating that demonstration of compliance with the RCRA subpart CC rules also demonstrates compliance with the requirements of the benzene waste NESHAP. That means that no demonstration of initial compliance is required by the NESHAP for a tank located inside a total enclosure if the facility has demonstrated initial compliance with the Tank Level 2 control requirements in 40 CFR 264.1084(i) or 40 CFR 265.1085(i). That provision also applies to a container located inside a total enclosure if the facility has demonstrated initial compliance with the Container Level 3 control requirements in 40 CFR 264.1086(e) or 40 CFR 265.1087(e). The same is true for demonstrating continuous compliance by conducting annual verifications and keeping records of the information required by 40 CFR 264.1089(d) or 40 CFR 264.1090(d). The NESHAP require that records used for RCRA compliance purposes be made available for inspection upon request.

VII. What Are the Administrative Requirements?

A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993) the EPA must determine whether the regulatory action is "significant" and, therefore, subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Executive Order defines a "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, we have determined that today's amendments do not constitute a "significant regulatory action" because they do not meet any of the above criteria. The revisions are primarily technical actions with no significant policy issues, are based on established criteria included in other EPA rules, and employ accepted scientific methods. Amending the benzene waste NESHAP increases flexibility, improves understanding of the existing requirements, makes the benzene waste NESHAP consistent with the RCRA air rules for waste management, reduce costs, and have no environmental impacts. Consequently, the action was not submitted to OMB for review under Executive Order 12866.

B. Executive Order 13132, Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and

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the States, or on the distribution of power and responsibilities among the various levels of government."

The direct final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. None of the affected facilities are owned or operated by State governments. Thus, the requirements of section 6 of the Executive Order do not apply to the direct final rule.

C. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

The rule amendments do not have tribal implications. They will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. No tribal governments own facilities subject to the benzene waste NESHAP. Thus, Executive Order 13175 does not apply to the direct final rule amendments.

D. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant," as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the EPA must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the EPA.

The direct final rule is not subject to Executive Order 13045 because it is not an economically significant regulatory action as defined by Executive Order 12866. The EPA interprets Executive Order 13045 as applying only to regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. The NESHAP for benzene waste operations is based on protection of the public health with an ample margin of safety. However, the amendments to the benzene waste NESHAP have no effect on the level of emissions from benzene waste operations or associated risk and are not subject to Executive Order 13045.

E. Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use

The direct final rule is not subject to Executive Order 13211, (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

F. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires the EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least-burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows the EPA to adopt an alternative other than the least-costly, most cost-effective, or least-burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before the EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that the amendments do not contain a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector in any 1 year. No costs are attributable to the amendments. In addition, the direct final rule does not significantly or uniquely impact small governments because it contains no requirements that apply to such governments or impose obligations upon them. Thus, the requirements of the UMRA do not apply to the direct final rule.

G. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the Agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's final rule on small entities, small entity is defined as: (1) A small business according to the Small Business Administration (SBA) size standards by NAICS code; (2) a small governmental jurisdiction that is a government of a city, county, town; school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

The EPA determined that it is not necessary to prepare a regulatory flexibility analysis in connection with these final amendments. The EPA also determined that the amendments will not impose a significant economic impact on a substantial number of small entities. The amendments impose no additional requirements on new or existing regulated facilities. In addition, by allowing the use of existing equipment under new alternative compliance options, these amendments decrease the compliance costs and reduce capital and operating costs for a few facilities. Therefore, pursuant to the provisions of 5 U.S.C. 605(b), I certify that this action will not have a significant economic impact on a substantial number of small entities.

H. Paperwork Reduction Act

The OMB approved the information collection requirements in the 1990 NESHAP for benzene waste operations under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and assigned OMB control number No. 2060–0183. A copy of the information collection request (ICR) document for the 1990 NESHAP for benzene waste operations (ICR No. 1541.06) may be obtained from Susan Auby by mail at U.S EPA, Office of Environmental Information, Collection Strategies Division (2822T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460, by e-mail at *auby.susan@epa.gov*, or by calling (202) 566–1672.

The amendments require facilities using total enclosures for tanks or containers to verify the integrity of the enclosure initially, when first installed, and annually thereafter. The amendments also require facilities to keep records of the most recent set of calculations and measurements performed to verify that the total enclosure meets the specified criteria. The requirements are identical to other EPA air rules for waste management in 40 CFR parts 264 and 265, subpart CC. A facility that is already meeting the subpart CC requirements is not required to make duplicate verifications or keep duplicate records, but must make the subpart CC records available for inspection upon request. The recordkeeping requirements, which are needed to determine compliance, are specifically authorized under section 114 of the CAA (42 U.S.C. 7414). The information collection requirements in the direct final rule will have no net impact on the information collection burden estimates included in the ICR for the 1990 benzene waste NESHAP, because the only facility with a total enclosure is already conducting annual verifications and keeping the prescribed records. Consequently, the ICR has not been revised.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to respond to a collection of information; search existing data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

I. National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113 (March 7, 1996)(15 U.S.C. 272 note), directs EPA to use voluntary consensus standards (VCS) in their regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impracticable. Voluntary consensus standards are technical standards (*e.g.*, material specifications, test methods, sampling and analytical procedures, business practices, etc.) developed or adopted by one or more voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through annual reports to OMB, with explanations when EPA does not use available and applicable VCS.

The direct final rule requires the use of "Procedure T-Criteria for and Verification of a Permanent or Temporary Total Enclosure" in 40 CFR 52.741, appendix B. That procedure uses established and commonly-accepted techniques and calculations to confirm the efficiency of the enclosure. The procedure is required for all State implementation plans and in other EPA rules. We have not been able to identify any applicable VCS. Accordingly, the NTTAA requirement does not apply to the direct final rule. Nevertheless, as provided by the NESHAP General Provisions in 40 CFR part 61, subpart A, any State or facility may apply to EPA for permission to use an alternative method.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing the direct final rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the direct final rule in the **Federal Register**. The direct final rule is not a "major rule" as defined by 5 U.S.C. 804(2). The direct final rule will be effective on February 10, 2002.

List of Subjects in 40 CFR Part 61

Environmental protection, Administrative practice and procedures, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: November 1, 2002.

Christine Todd Whitman,

Administrator.

For the reasons stated in the preamble, title 40, chapter I, part 61 of the Code of Federal Regulations is amended as follows:

PART 61—[AMENDED]

1. The authority citation for part 61 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

Subpart FF—[AMENDED]

2. Section 61.340 is amended by adding paragraph (d) to read as follows:

§ 61.340 Applicability.

* * * * *

(d) At each facility identified in paragraph (a) or (b) of this section, any gaseous stream from a waste management unit, treatment process, or wastewater treatment system routed to a fuel gas system, as defined in § 61.341, is exempt from this subpart. No testing, monitoring, recordkeeping, or reporting is required under this subpart for any gaseous stream from a waste management unit, treatment process, or wastewater treatment unit routed to a fuel gas system.

3. Section 61.341 is amended by adding new definitions in alphabetical order for the terms "Fuel gas system" and "Safety device" to read as follows:

§ 61.341 Definitions.

* * * * *

Fuel gas system means the offsite and onsite piping and control system that gathers gaseous streams generated by facility operations, may blend them with sources of gas, if available, and

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transports the blended gaseous fuel at suitable pressures for use as fuel in heaters, furnaces, boilers, incinerators, gas turbines, and other combustion devices located within or outside the facility. The fuel is piped directly to each individual combustion device, and the system typically operates at pressures over atmospheric.

* * * * *

Safety device means a closure device such as a pressure relief valve, frangible disc, fusible plug, or any other type of device which functions exclusively to prevent physical damage or permanent deformation to a unit or its air emission control equipment by venting gases or vapors directly to the atmosphere during unsafe conditions resulting from an unplanned, accidental, or emergency event. For the purpose of this subpart, a safety device is not used for routine venting of gases or vapors from the vapor headspace underneath a cover such as during filling of the unit or to adjust the pressure in this vapor headspace in response to normal daily diurnal ambient temperature fluctuations. A safety device is designed to remain in a closed position during normal operations and open only when the internal pressure, or another relevant parameter, exceeds the device threshold setting applicable to the air emission control equipment as determined by the owner or operator based on manufacturer recommendations, applicable regulations, fire protection and prevention codes, standard engineering codes and practices, or other requirements for the safe handling of flammable, ignitable, explosive, reactive, or hazardous materials.

* * * * *

4. Section 61.343 is amended by:

a. Revising paragraph (a) introductory text;

b. Adding paragraph (a)(2); and

c. Adding paragraph (e).

The revision and additions read as follows:

§ 61.343 Standards: Tanks.

(a) Except as provided in paragraph (b) of this section and in § 61.351, the owner or operator must meet the standards in paragraph (a)(1) or (2) of this section for each tank in which the waste stream is placed in accordance with § 61.342 (c)(1)(ii). The standards in this section apply to the treatment and storage of the waste stream in a tank, including dewatering.

(1) * * *

(2) The owner or operator must install, operate, and maintain an enclosure and closed-vent system that routes all organic vapors vented from the tank, located inside the enclosure, to an enclosed combustion control device in accordance with the requirements specified in paragraph (e) of this section.

* * * * *

(e) Each owner or operator who controls air pollutant emissions by using an enclosure vented through a closed-vent system to an enclosed combustion control device must meet the requirements specified in paragraphs (e)(1) through (4) of this section.

(1) The tank must be located inside a total enclosure. The enclosure must be designed and operated in accordance with the criteria for a permanent total enclosure as specified in "Procedure T—Criteria for and Verification of a Permanent or Temporary Total Enclosure" in 40 CFR 52.741, appendix B. The enclosure may have permanent or temporary openings to allow worker access; passage of material into or out of the enclosure by conveyor, vehicles, or other mechanical means; entry of permanent mechanical or electrical equipment; or direct airflow into the enclosure. The owner or operator must perform the verification procedure for the enclosure as specified in section 5.0 of Procedure T initially when the enclosure is first installed and, thereafter, annually. A facility that has conducted an initial compliance demonstration and that performs annual compliance demonstrations in accordance with the requirements for Tank Level 2 control requirements 40 CFR 264.1084(i) or 40 CFR 265(i) is not required to make repeat demonstrations of initial and continuous compliance for the purposes of this subpart.

(2) The enclosure must be vented through a closed-vent system to an enclosed combustion control device that is designed and operated in accordance with the standards for either a vapor incinerator, boiler, or process heater specified in § 61.349.

(3) Safety devices, as defined in this subpart, may be installed and operated as necessary on any enclosure, closed-vent system, or control device used to comply with the requirements of paragraphs (e)(1) and (2) of this section.

(4) The closed-vent system must be designed and operated in accordance with the requirements of § 61.349.

5. Section 61.345 is amended by revising paragraph (a)(3) to read as follows:

§ 61.345 Standards: containers.

(a) * * *

(3) Treatment of a waste in a container, including aeration, thermal or other treatment, must be performed by the owner or operator in a manner such that while the waste is being treated the container meets the standards specified in paragraphs (a)(3)(i) through (iii) of this section, except for covers and closed-vent systems that meet the requirements in paragraph (a)(4) of this section.

(i) The owner or operator must either:

(A) Vent the container inside a total enclosure which is exhausted through a closed-vent system to a control device in accordance with the requirements of paragraphs (a)(3)(ii)(A) and (B) of this section; or

(B) Vent the covered or closed container directly through a closed-vent system to a control device in accordance with the requirements of paragraphs (a)(3)(ii)(B) and (C) of this section.

(ii) The owner or operator must meet the following requirements, as applicable to the type of air emission control equipment selected by the owner or operator:

(A) The total enclosure must be designed and operated in accordance with the criteria for a permanent total enclosure as specified in section 5 of the "Procedure T—Criteria for and Verification of a Permanent or Temporary Total Enclosure" in 40 CFR 52.741, appendix B. The enclosure may have permanent or temporary openings to allow worker access; passage of containers through the enclosure by conveyor or other mechanical means; entry of permanent mechanical or electrical equipment; or direct airflow into the enclosure. The owner or operator must perform the verification procedure for the enclosure as specified in section 5.0 of "Procedure T—Criteria for and Verification of a Permanent or Temporary Total Enclosure" initially when the enclosure is first installed and, thereafter, annually. A facility that has conducted an initial compliance demonstration and that performs annual compliance demonstrations in accordance with the Container Level 3 control requirements in 40 CFR 264.1086(e)(2)(i) or 40 CFR 265.1086(e)(2)(i) is not required to make repeat demonstrations of initial and continuous compliance for the purposes of this subpart.

(B) The closed-vent system and control device must be designed and operated in accordance with the requirements of § 61.349.

(C) For a container cover, the cover and all openings (e.g., doors, hatches) must be designed to operate with no detectable emissions as indicated by an instrument reading of less than 500 ppmv above background, initially and thereafter at least once per year by the methods specified in § 61.355(h).

(iii) Safety devices, as defined in this subpart, may be installed and operated as necessary on any container, enclosure, closed-vent system, or control device used to comply with the requirements of paragraph (e)(1) of this section.

* * * * *

6. Section 61.356 is amended by adding paragraph (n) to read as follows:

§ 61.356 Recordkeeping requirements.

* * * * *

(n) Each owner or operator using a total enclosure to comply with control requirements for tanks in § 61.343 or the control requirements for containers in § 61.345 must keep the records required in paragraphs (n)(1) and (2) of this section. Owners or operators may use records as required in 40 CFR 264.1089(b)(2)(iv) or 40 CFR 265.1090(b)(2)(iv) for a tank or as required in 40 CFR 264.1089(d)(1) or 40 CFR 265.1090(d)(1) for a container to meet the recordkeeping requirement in paragraph (n)(1) of this section. The owner or operator must make the records of each verification of a total enclosure available for inspection upon request.

(1) Records of the most recent set of calculations and measurements performed to verify that the enclosure meets the criteria of a permanent total enclosure as specified in "Procedure T—Criteria for and Verification of a Permanent or Temporary Total Enclosure" in 40 CFR 52.741, appendix B;

(2) Records required for a closed-vent system and control device according to the requirements in paragraphs (d) (f), and (j) of this section.

* * * * *

[FR Doc. 02–28499 Filed 11–8–02; 8:45 am]

BILLING CODE 6560–50–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1808 and 1851

RIN 2700–AC33

Authorization of Contractor Use of Interagency Fleet Management System (IFMS) Vehicles

AGENCY: National Aeronautics and Space Administration.

ACTION: Final rule.

SUMMARY: This final rule revises the NASA FAR Supplement (NFS) by requiring an internal Agency clearance before authorizing contractors' use of interagency fleet management system (IFMS) vehicles. This final rule also makes editorial changes to conform section numbering as a result of Federal Acquisition Circular (FAC) 01–09.

EFFECTIVE DATE: November 12, 2002.

FOR FURTHER INFORMATION CONTACT: Patrick Flynn, NASA, Office of Procurement, Contract Management Division (Code HK); (202) 358-0460; e-mail: *patrick.flynn@hq.nasa.gov*.

SUPPLEMENTARY INFORMATION:

A. Background

Executive Order 13149, "Greening the Government through Federal Fleet and Transportation Efficiency" requires, *inter alia*, that each agency operating 20 or more motor vehicles within the United States reduce its entire vehicle fleet's annual petroleum consumption by at least 20 percent by the end of FY 2005, compared with FY 1999 petroleum consumption levels. In order to achieve this goal, more centralized management and reporting is required. This change requires concurrence by installation transportation officers prior to contracting officer authorization of contractor requests to obtain IFMS vehicles. This change will assure transportation management participation in the contract authorization process. Additionally, this final rule revises section designations within part 1808 as a result of changes made by FAC 01–09.

This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This final rule in not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

This final rule does not constitute a significant revision within the meaning of FAR 1.501 and Pub. L. 98–577, and publication for public comment is not required. However, NASA will consider comments from small entities concerning the affected NFS parts 1808 and 1851 in accordance with 5 U.S.C. 610.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes do not impose recordkeeping or information collection requirements which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 1808 and 1851

Government procurement.

Tom Luedtke,

Assistant Administrator for Procurement.

Accordingly, 48 CFR Parts 1808 and 1851 are amended as follows:

1. The authority citation for 48 CFR parts 1808 and 1851 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1)

PART 1808—REQUIRED SOURCES OF SUPPLIES AND SERVICES

2. Section 1808.002 is redesignated as section 1808.003.

3. Section 1808.002–70 is redesignated as section 1808.003–70.

4. Section 1808.002–71 is redesignated as section 1808.003–71.

5. Section 1808.002–72 is redesingated as section 1808.003–72.

6. Section 1808.002–75 is redesignated as section 1808.003–73.

PART 1851—USE OF GOVERNMENT SOURCES BY CONTRACTORS

7. Add subpart 1851.2 to read as follows:

Subpart 1851.2—Contractor Use of Interagency Fleet Management System (IFMS) Vehicles

1851.202 Authorization.

(a) The contracting officer shall obtain concurrence from the Transportation Officer before authorizing a cost-reimbursement contractor to obtain interagency fleet management system (IFMS) vehicles or related services.

[FR Doc. 02–28541 Filed 11–8–02; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 1845

RIN 2700–AC33

Government Property—Instructions for Preparing NASA Form 1018

AGENCY: National Aeronautics and Space Administration.

ACTION: Interim rule.

SUMMARY: This interim rule amends the NASA Federal Acquisition Regulation Supplement (NFS) to provide policies and procedures for proper reporting of heritage assets as part of contractor annual reports of NASA property in its custody, and to clarify other property

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classifications. NASA uses the data contained in contractor reports for annual financial statements and property management. This change will provide for consistent reporting of NASA property by contractors.

DATES: *Effective Date:* This interim rule is effective November 12, 2002.

Comment Date: Comments should be submitted to NASA at the address below on or before January 13, 2003.

FOR FURTHER INFORMATION CONTACT: Lou Becker, NASA Headquarters, Office of Procurement, Contract Management Division (Code HK), Washington, DC 20546, telephone: (202) 358–4593, e-mail to: *lbecker@hq.nasa.gov*.

SUPPLEMENTARY INFORMATION:

A. Background

NASA must account for and report assets in accordance with 31 U.S.C. 3515, Federal Accounting Standards, and Office of Management and Budget (OMB) Bulletin No. 01–09, Form and Content of Agency Financial Statements. Since contractors maintain NASA's official records for NASA-owned assets in contractors' possession, NASA must obtain annual data from those records in order to facilitate proper accounting and control over the assets. This interim rule provide policies and procedures for proper reporting of heritage assets by providing a definition and directing that these assets be reported within appropriate property classifications. This interim rule also clarifies other property classifications and provides cross references to the FAR to insure proper reporting of these assets.

B. Regulatory Flexibility Act

NASA certifies that this interim rule will not have a significant economic impact on a substantial number of small businesses within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because it clarifies existing property reporting policies and procedures contractors must follow when accounting for and reporting assets.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the NFS do not impose new recordkeeping or information collection requirements which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

D. Determination To Issue an Interim Rule

In accordance with 41 U.S.C. 418(d), NASA has determined that urgent and compelling reasons exist to promulgate this interim rule. The basis for this determination is that the clarifications contained in this interim rule are needed to ensure consistent reporting of NASA assets in contractor annual reports to be submitted by October 31, 2002. Public comments received in response to this interim rule will be considered in the formation of the final rule.

List of Subjects in 48 CFR Part 1845

Government procurement.

Tom Luedtke,

Assistant Administrator for Procurement.

Accordingly, 48 CFR part 1845 is amended to as follows:

1. The authority citation for 48 CFR part 1845 continues to read as follows:

Authority: 42 U.S.C. 247(c)(1).

PART 1845—GOVERNMENT PROPERTY

2. Amend section 1845.7101–1 by—

a. Revising paragraph (a);

b. Revising the introductory text of paragraph (g);

c. Adding "(see FAR 45.101)" at the end of the first sentence in paragraph (h) introductory text;

d. Adding "(see FAR 45.101)" at the end of the first sentence in the introductory text of paragraph (i);

e. In paragraph (j), adding "regardless of whether or not it is unique to NASA programs," immediately after "inventory" in the first sentence, and adding "spares," immediately after "material" in the second sentence;

f. Revising the first sentence in the introductory text of paragraph (k). The revised text reads as follows:

1845.7101–1 Property classification.

(a) *General.* (1) Contractors shall report costs in the classifications on NF 1018, as described in this section. The cost of heritage assets will be reported on the NF 1018 under the appropriate classification. Supplemental reporting may also be required. Heritage assets are property, plant and equipment that possess one or more of the following characteristics:

(i) Historical or natural significance;

(ii) Cultural, educational or aesthetic value; or

(iii) Significant architectural characteristics.

(2) Examples of NASA heritage assets include buildings and structures designated as National Historic Landmarks as well as aircraft, spacecraft and related components on display to enhance public understanding of NASA programs. Heritage assets which serve both a heritage and government operation function are considered multi-use when the predominant use is in general government operations. Multi-use heritage assets will not be considered heritage assets for NF 1018 supplemental reporting purposes.

* * * * *

(g) *Equipment.* Includes costs of commercially available personal property capable of stand-alone use in manufacturing supplies, performing services, or any general or administrative purpose (for example, machine tools, furniture, vehicles, computers, software, test equipment, including their accessory or auxiliary items). Software integrated into and necessary to operate another item of Government property is considered to be an auxiliary item (see FAR 45.501) and should be considered part of the item of which it is an integral part. Other software shall be classified as an individual item of equipment for reporting purposes if $100,000 or over. Software licenses are excluded. Contractors shall separately report:

* * *

* * * * * *

(k) *Agency-Peculiar Property.* Includes costs of completed items, unique to NASA aeronautical and space programs which are capable of stand alone operation. * * *

* * * * * *

3. Amend section 1845.7101–2 by deleting the last two sentences in paragraph (a) and adding the following sentence at the end of paragraph (a) to read as follows:

1845.7101–2 Transfers of property.

* * * * * *

(a) * * * Shipping and receiving contractors shall promptly submit copies of shipping and receiving documents to the Center Deputy Chief Financial Officer, Finance, responsible for their respective contracts when accountability for NASA property is transferred to, or received from, other contracts, contractors, NASA Centers, or Government agencies.

* * * * * *

1845.7101–3 [Amended]

4. Amend section 1845.7101–3, in the first sentence of paragraph (b) by removing "Special Test Equipment, Special Tooling, Agency Peculiar Property and Contract Work in Process" and adding "property" in its place.

1845.7101–4 [Amended]

5. Amend section 1845.7101–4, in paragraph (g) by adding ", or trade-ins" at the end of the sentence.

[FR Doc. 02–28084 Filed 11–8–02; 8:45 am]

BILLING CODE 7510–13–P

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Proposed Rules

Federal Register
Vol. 67, No. 218
Tuesday, November 12, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–CE–64–AD]

RIN 2120–AA64

Airworthiness Directives; Robert E. Rust Models DeHavilland DH.C1 Chipmunk 21, 22, and 22A Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Robert E. Rust (R.E. Rust) Models DeHavilland DH.C1 Chipmunk 21, 22, and 22A airplanes. This proposed AD would require you to repetitively inspect the tailplane attachment brackets and replace each bracket. This proposed AD would also require you to repetitively inspect each joint of the port and starboard engine mount frame and the rear upper mount frame tubes for cracks and/or damage and repair any cracks and/or damage found. This proposed AD is the result of reports of stress corrosion cracking found on the tailplane attachment brackets and fatigue cracking and chaffing of the engine mount frame. The actions specified by this proposed AD are intended to prevent failure of the tailplane attachment brackets and failure of the engine mount, which could result in loss of the tail section and separation of the engine from the airplane respectively. Such failures could lead to loss of control of the airplane.

DATES: The Federal Aviation Administration (FAA) must receive any comments on this proposed rule on or before January 17, 2003.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–CE–64–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. You may also send comments electronically to the following address: *9-ACE-7-Docket@faa.gov*. Comments sent electronically must contain "Docket No. 2000–CE–64–AD" in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII text.

You may get service information that applies to this proposed AD from DeHavilland Support Limited, Duxford Airfield, Bldg. 213, Cambridgeshire, CB2 4QR, United Kingdom, telephone: +44 1223 830090, facsimile: +44 1223 830085, e-mail: *info@dhsupport.com*. You may also view this information at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Cindy Lorenzen, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia; telephone: (770) 703–6078; facsimile: (770) 703–6097.

SUPPLEMENTARY INFORMATION:

Comments Invited

How Do I Comment on This Proposed AD?

The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments to the address specified under the caption **ADDRESSES**. We will consider all comments received on or before the closing date. We may amend this proposed rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of this proposed AD action and determining whether we need to take additional rulemaking action.

Are There Any Specific Portions of This Proposed AD I Should Pay Attention To?

The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this proposed rule that might suggest a need to modify the rule. You may view all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each contact we have with the public that concerns the substantive parts of this proposed AD.

How Can I Be Sure FAA Receives My Comment?

If you want FAA to acknowledge the receipt of your mailed comments, you must include a self-addressed, stamped postcard. On the postcard, write "Comments to Docket No. 2000–CE–64–AD." We will date stamp and mail the postcard back to you.

Discussion

What Events Have Caused This Proposed AD?

The FAA has received reports that an unsafe condition may exist on certain R.E. Rust Models DeHavilland DH.C1 Chipmunk 21, 22, and 22A airplanes. After a review of several of these airplanes, stress corrosion cracking was found on the tailplane attachment brackets and fatigue cracks and chaffing were found on the engine mount frame.

We have determined that tailplane attachment brackets, pre-modification H357, are made from material susceptible to stress corrosion cracking. Modification No. H357 introduces a new tailplane attachment fitting, part number (P/N) C1.TP.313, that is made from a different type of material than that of the original tailplane attachment fitting, P/N C1.TP.167.

Cracks in the engine mount frame were found in the area of the junction of the front and rear top tube and engine mounting foot support brackets and in the front of the frame. We have determined that fatigue is the cause of the cracks. The upper aft mount frame tubes were also found to have damage caused by chaffing by the cowling support rod.

What Are the Consequences if the Condition Is Not Corrected?

These conditions, if not corrected, could result in failure of the tailplane attachment brackets and failure of the engine mount. Such failures could lead to loss of control of the airplane.

Is There Service Information That Applies to This Subject?

British Aerospace (now DeHavilland Support Limited) has issued BAe Aircraft Mandatory Technical News Sheet CT (C1) No. 176, Issue 2, dated November 1, 1997; and BAe Aircraft Mandatory Technical News Sheet CT (C1) No. 190, Issue 2, dated April 1, 1995.

What Are the Provisions of This Service Information?

BAe Aircraft Mandatory Technical News Sheet CT (C1) No. 176, Issue 2, dated November 1, 1997, includes procedures for:

—Repetitively inspecting the tailplane attachment brackets for cracks; and
—Replacing any cracked bracket found upon inspection or as a terminating action for the repetitive inspections.

BAe Aircraft Mandatory Technical News Sheet CT (C1) No. 190, Issue 2, dated April 1, 1995, includes procedures for:

—Repetitively inspecting each joint of the engine mount frame and the rear upper mount frame tubes for cracks and/or damage; and
—Repairing any cracks and/or damage found.

The FAA's Determination and an Explanation of the Provisions of this Proposed AD

What Has FAA Decided?

After examining the circumstances and reviewing all available information related to the incidents described above, we have determined that:

—The unsafe condition referenced in this document exists or could develop on other R.E. Rust Models DeHavilland DH.C1 Chipmunk 21, 22, and 22A airplanes of the same type design;
—The actions specified in the previously-referenced service information should be accomplished on the affected airplanes; and
—AD action should be taken in order to correct this unsafe condition.

What Would This Proposed AD Require?

This proposed AD would require you to incorporate the actions in the previously-referenced service information.

Cost Impact

How Many Airplanes Would This Proposed AD Impact?

We estimate that this proposed AD affects 54 airplanes in the U.S. registry.

What Would Be the Cost Impact of This Proposed AD on Owners/Operators of the Affected Airplanes?

We estimate the following costs to accomplish the proposed inspections of the tailplane attachment brackets:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
32 workhours × $60 per hour = $1,920.	No parts required	$1,920	$1,920 × 54 = $103,680.

We estimate the following costs to accomplish any necessary replacements that would be required based on the results of the proposed inspection. We have no way of determining the number of airplanes that may need such replacement:

Labor cost	Parts cost	Total cost per bracket
3 workhours × $60 per hour = $180 per bracket	$600 per bracket (2 brackets per airplane)	$180 + $600 = $780.

We estimate the following costs to accomplish the proposed inspections of the engine mount frame:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
16 workhours × $60 per hour = $960.	No parts required	$960	$960 × 54 = $51,840.

The FAA has no method of determining the number of repairs or replacements each owner/operator would incur over the life of each of the affected airplanes based on the results of the proposed inspections. We have no way of determining the number of airplanes that may need such repair. The extent of damage may vary on each airplane.

Compliance Time of This Proposed AD

What Would Be the Compliance Time of This Proposed AD?

The compliance time of this proposed AD is "within the next 90 calendar days after the effective date of this AD."

Why Is the Proposed Compliance Time Presented in Calendar Time Instead of Hours Time-In-Service (TIS)?

An unsafe condition specified by this proposed AD is caused by corrosion. Corrosion can occur regardless of whether the aircraft is in operation or is in storage. Therefore, to assure that the unsafe condition specified in the proposed AD does not go undetected for a long period of time, the compliance is presented in calendar time instead of hours time-in-service (TIS).

Regulatory Impact

Would This Proposed AD Impact Various Entities?

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposed rule would not have federalism implications under Executive Order 13132.

Would This Proposed AD Involve a Significant Rule or Regulatory Action?

For the reasons discussed above, I certify that this proposed action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration

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proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new airworthiness directive (AD) to read as follows:

Robert E. Rust: Docket No. 2000–CE–64–AD

(a) *What airplanes are affected by this AD?* This AD affects the following R.E. Rust Models DeHavilland DH.C1 Chipmunk 21, 22, and 22A airplanes, serial numbers C1–001 through C1–1014, that are type certificated in any category.

Note 1: We recommend all owners/operators of DeHavilland DH.C1 Chipmunk 21, 22, and 22A airplanes, serial numbers C1–001 through C1–1014, with experimental airworthiness certificates comply with the actions required in this AD.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to prevent failure of the tailplane attachment brackets caused by stress corrosion cracking and failure of the engine mount, which could result in loss of the tail section and separation of the engine from the airplane respectively. Such failures could lead to loss of control of the airplane.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Compliance	Actions	Procedures
(1) Tailplane Attachment Brackets		
(i) Initially inspect within the next 90 days after the effective date of this AD: (A) Inspect thereafter at intervals not to exceed 6 months until the modification required by paragraph (d)(1)(ii) of the AD is incorporated (B) When the modification required by paragraph (d)(1)(ii) is incorporated, you may terminate the repetitive inspections of the tailplane attachment bracket	Inspect, using dye penetrant, the tailplane attachment brackets, part-number (P/N) C1.TP.167 (or FAA-approved equivalent part) for cracks.	In accordance with British Aerospace Military Aircraft and Aerostructures (BAe Aircraft) Mandatory Technical News Sheet CT (C1) No. 176, Issued 2, dated November 1, 1997; and Civil Modification Mandatory Modification No. Chipmunk H357, dated March 12, 1984.
(ii) At whichever of the following that occurs first: (A) Prior to further flight after the inspection where any crack is found; or (B) Upon accumulating 9,984 hours time-in-service (the safe life limit for P/N C1.TP.167) on the tailplane attachments brackets or within the next 90 calendar days after the effective date of this AD, whichever occurs later	Replace the tailplane attachment bracket by incorporating Modification H357 (P/N C1.TP.313) or FAA-approved equivalent part number. Installing P/N C1.TP.313 (or FAA-approved equivalent part number)terminates the repetitive inspection requirement of the tailplane attachment brackets.	In accordance with British Aerospace Military Aircraft and Aerostructures (BAe Aircraft) Mandatory Technical News Sheet CT (C1) No. 176, Issue 2, dated November 1, 1997; and Civil Modification Mandatory Modification No. Chipmunk H357, dated March 12, 1984.
(iii) As of the effective date of this AD	Only install a tailplane attachment bracket that is P/N C1.TP.313, or FAA-approved equivalent part number.	Not applicable.
(2) Engine Mount Frames		
(i) Inspect each joint of the port and starboard engine mount frame and the rear upper mount frame tubes for cracks and/or damage.	Initially inspect within the next 90 days after the effective date of this AD. Repetitively inspect thereafter at intervals not to exceed 600 hours TIS.	In accordance with British Aerospace Aerostructures Limited (BAe Aircraft) Mandatory Technical News Sheet CT (C1) No. 190, Issue 2, dated April 1, 1995.
(ii) If cracks and/or damage is found during any inspection required in paragraph (d)(2)(i) of this AD: (A) Obtain a repair scheme from the manufacturer through the FAA at the address specified in paragraph (f) of this AD and incorporate this repair scheme, or repair in accordance with FAA Advisory Circular (AC) 43.13–1B, Change 1, dated September 27, 2001, Chapter 4, Paragraph 4–99; or (B) Replace with a new or serviceable part.	Prior to further flight after the inspection in which any crack and/or damage is found. Repetitively inspect as required in paragraph (d)(2)(i) of this AD.	Repair in accordance with AC 43.13–1B, Change 1, dated September 27, 2001, Chapter 4, Paragraph 4–99 or in accordance with the repair scheme obtained from DeHavilland Support Limited, Duxford Airfield, Bldg. 213, Cambridgeshire, CB2 4QR, United Kingdom. Obtain this repair scheme through the FAA at the address specified in paragraph (f) of this AD. Replace in accordance with British Aerospace Aerostructures Limited (BAe Aircraft) Mandatory Technical News Sheet CT (C1) No. 190, Issue 2, dated April 1, 1995, or AC 43.13–1B, Change 1, dated September 27, 2001, Chapter 4, Paragraph 4–99.
(3) Bind the rear upper mount frame tubes with a high density polythene tape at the location where the cowling support rod clip is secured.	Prior to further flight after the initial inspection required in paragraph (d)(1) of this AD.	In accordance with British Aerospace Aerostructures Limited (BAe Aircraft) Mandatory Technical News Sheet CT (C1) No. 190, Issue 2, dated April 1, 1995.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Atlanta Aircraft Certification Office (ACO), approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note 2: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Cindy Lorenzen, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia; telephone: (770) 703–6078; facsimile: (770) 703–6097.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *How do I get copies of the documents referenced in this AD?* You may get copies of the documents referenced in this AD from DeHavilland Support Limited, Duxford Airfield, Bldg. 213, Cambridgeshire, CB2 4QR, United Kingdom, telephone: +44 1223 830090, facsimile: +44 1223 830085, e-mail: info@dhsupport.com. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on November 4, 2002.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–28617 Filed 11–8–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–141832–02]

RIN 1545–BB20

Substantiation of Incidental Expenses

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: This document contains proposed amendments to regulations relating to the requirement to substantiate business expenses for traveling expenses while away from home. In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations relating to the requirement to substantiate business expenses for traveling expenses while away from home under section 274 of the Internal Revenue Code. The text of those regulations also serves as text for these proposed regulations. This document also contains proposed regulations amending the regulations under section 62 to conform the cross-reference to the regulations under section 274.

DATES: Written or electronic comments and requests for a public hearing must be received by February 10, 2003.

ADDRESSES: Send submissions to: CC:ITA:RU (REG–141832–02), Room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:ITA:RU (REG–141832–02), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. Alternatively, taxpayers may submit electronic comments directly to the IRS Internet site at *www.irs.gov/regs.*

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, John Moriarty, (202) 622–4930; concerning submissions of comments and/or requests for a public hearing, LaNita Van Dyke, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

Final and temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR part 1) relating to section 274. The temporary regulations authorize the Commissioner to establish a method under which a taxpayer may use a specified amount or amounts for incidental expenses paid or incurred while traveling away from home in lieu of substantiating the actual cost of incidental expenses. The text of the temporary regulations also serves, in part, as text for these proposed regulations. The preamble to the temporary regulations explains the amendment.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that these regulations do not require a collection of information and do not impose any new or different requirements on small entities. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is John Moriarty, Office of Associate Chief Counsel (Income Tax & Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.274–5 also issued under 26 U.S.C. 274(d). * * *

2. Section 1.62–2 is amended by removing the last three sentences of paragraph (e)(2) and adding two

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sentences in their place to read as follows:

§ 1.62–2 Reimbursements and other expense allowance arrangements.

* * * * *

(e) * * *

(2) * * * *See* § 1.274–5(g) and (j), which grant the Commissioner the authority to establish optional methods of substantiating certain expenses. Substantiation of the amount of a business expense in accordance with rules prescribed pursuant to the authority granted by § 1.274–5(g) or (j) will be treated as substantiation of the amount of such expense for purposes of this section.

* * * * *

3. Section 1.274–5 is amended by:

1. Adding paragraph (j)(3).

2. Adding a new sentence at the end of paragraph (m).

The additions read as follows:

§ 1.274–5 Substantiation requirements.

[The text of proposed § 1.274–5(j)(3) and the proposed new sentence at the end of § 1.274–5(m) are the same as the text of § 1.274–5T(j)(3) and the last sentence of § 1.274–5T(m) published elsewhere in this issue of the **Federal Register**].

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 02–28544 Filed 11–8–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

31 CFR Part 103

RIN 1506–AA28

Financial Crimes Enforcement Network; Anti-Money Laundering Programs for Insurance Companies; Correction

AGENCY: Financial Crimes Enforcement Network (FinCEN), Treasury.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects the preamble to a proposed rule published in the **Federal Register** of September 26, 2002, regarding anti-money laundering programs for insurance companies. This correction clarifies that comments on the collection of information contained in the proposed rule should be received by November 25, 2002, rather than by November 12, 2002.

FOR FURTHER INFORMATION CONTACT: Office of Chief Counsel, FinCEN, (703) 905–3590.

Correction

In proposed rule FR Doc. 02–24144, beginning on page 60625 in the issue of September 26, 2002, make the following correction, in the **SUPPLEMENTARY INFORMATION** section. On page 60629 in the 3d column, remove the third sentence of the first paragraph under "VI. Paperwork Reduction Act," and add in its place the following: "Comments on the collection of information should be received by November 25, 2002."

Dated: November 5, 2002.

Cynthia L. Clark,

Deputy Chief Counsel, Financial Crimes Enforcement Network.

[FR Doc. 02–28664 Filed 11–8–02; 8:45 am]

BILLING CODE 4810–02–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 110

[CGD08–02–017]

RIN 2115–AA98

Anchorage Regulation; Boothville Anchorage, Venice, LA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to amend its regulation on Boothville Anchorage, located near mile 12.9, Lower Mississippi River, Venice, Louisiana. This amendment is necessary to accommodate the construction of Sea Point, a container transshipment facility. The anchorage would be reduced in size approximately 0.8 miles.

DATES: Comments and related material must reach the Coast Guard on or before January 13, 2003.

ADDRESSES: You may mail comments and related material to Commander, Eighth Coast Guard District (m), Hale Boggs Federal Bldg., 501 Magazine Street, New Orleans LA 70130, or comments and related material may be delivered to Room 1341 at the same address between 8 a.m. and 3:30 p.m., Monday through Friday, except federal holidays. Commander, Eighth Coast Guard District (m) maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Commander, Eighth Coast Guard District (m) between 8 a.m. and 3:30 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant (LT) Karrie Trebbe, Project Manager for Eighth Coast Guard District Commander, telephone (504) 589–6271.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CCGD08–02–017), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Commander, Eighth Coast Guard District (m) at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The Coast Guard received a request from Sea Point LLC to reduce the size of the Boothville Anchorage by approximately 0.8 miles in order to accommodate the construction of Sea Point, a container transshipment facility in Venice, Louisiana. Sea Point is designed to provide the immediate transfer of containers from deep draft vessels to barges destined for ports on the Mississippi River and along the Gulf of Mexico.

Sea Point LLC has advised two local pilot organizations of its intended construction. The Crescent River Pilot's Association and the Associated Federal Pilots and Docking Masters of Louisiana, pilot organizations that pilot vessels through this area and anchor vessels in the anchorage, voiced no objections to the proposed reduction in the size of the anchorage.

Discussion of Proposed Rule

The proposed amendment would reduce the size the southern end of the Boothville Anchorage by 0.8 miles to accommodate the construction of a container transshipment facility. The new anchorage would be 5.5 miles in length along the right descending bank of the river extending from mile 13.0 to 18.5 above Head of Passes. The width of the anchorage would remain unchanged.

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. This anchorage is primarily used for deep draft vessels waiting for mooring facilities further up river, vessels waiting for fog to dissipate, and for vessels waiting for heavy weather in the Gulf of Mexico to diminish. The proposed amendment would not obstruct the regular flow of traffic nor would it adversely affect vessels requiring anchorage as the anchorage has been more than ample to accommodate all vessels desiring to use it.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities because this anchorage is primarily used for deep draft vessels waiting for mooring facilities further up river, vessels waiting for fog to dissipate, and vessels waiting for heavy weather in the Gulf of Mexico to diminish. The proposed shortening of this anchorage would not obstruct the regular flow of traffic nor have an adverse impact to anchoring vessels.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact, LT Karrie Trebbe, Project Manager for Eighth Coast Guard District Commander, telephone (504) 589–6271.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a "tribal implication" under the Order.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that Order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph (34)(f), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation because this rule is an amendment to a regulation already in effect. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES**.

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List of Subjects in 33 CFR Part 110

Anchorage grounds.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 110 as follows:

PART 110—ANCHORAGE REGULATIONS

1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 1221 through 1236, 2030, 2035, 2071; 49 CFR 1.46 and 33 CFR 1.05–1(g).

2. Amend § 110.195 by revising paragraph (a)(4) to read as follows:

§ 110.195 Mississippi River below Baton Rouge, LA, including South and Southwest Passes.

(a) * * *

(4) *Boothville Anchorage.* An area 5.5 miles in length along the right descending bank of the river extending from mile 13.0 to mile 18.5 above Head of Passes. The width of the anchorage is 750 feet. The inner boundary of the anchorage is a line parallel to the nearest bank 250 feet from the water's edge into the river as measured from the Low Water Reference Plane (LWRP). The outer boundary of the anchorage is a line parallel to the nearest bank 1,000 feet from the water's edge into the river as measured from the LWRP.

* * * * *

Dated: November 1, 2002.

Roy J. Casto,

Rear Admiral, Coast Guard, Commander, Eighth District Coast Guard.

[FR Doc. 02–28680 Filed 11–8–02; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[VA127–5059; FRL–7406–5]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Nitrogen Oxides Budget Trading Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve the NO_X Budget Trading Program submitted as a revision to the Virginia State Implementation Plan (SIP), with the exception of its NO_X allowance banking provisions, which EPA proposes to conditionally approve. The revision was submitted in response to EPA's regulation entitled, "Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone," otherwise known as the "NO_X SIP Call." The revision establishes and requires a nitrogen oxides (NO_X) allowance trading program for large electric generating and industrial units, beginning in 2004. The intended effect of this action is to propose approval of Virginia's NO_X Budget Trading Program because it substantively addresses the requirements of the NO_X SIP Call, with the following exception: Its NO_X allowance banking provision is proposed to be conditionally approved because it must be revised to require that flow control begin in 2005, in accordance with the revised model rule. EPA is proposing approval of this revision, with the exception noted, in accordance with the requirements of the Clean Air Act.

DATES: Written comments must be received on or before December 12, 2002.

ADDRESSES: Written comments should be mailed to Walter Wilkie, Acting Chief, Air Quality Planning and Information Services Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103 and Virginia Department of Environmental Quality (VADEQ), 629 East Main Street, Richmond, Virginia, 23219.

FOR FURTHER INFORMATION CONTACT: Marilyn Powers, (215) 814–2308, or by e-mail at *powers.marilyn@epa.gov.* Please note that any comments on this rule must be submitted in writing, as provided in the **ADDRESSES** section of this document.

SUPPLEMENTARY INFORMATION: On June 25, 2002, VADEQ submitted a revision to its SIP to address the requirements of the NO_X SIP Call. The revision consists of the adoption of Regulation for Emissions Trading, 9 VAC Chapter 140, part I—NO_X Budget Trading Program. The information in this section of this document is organized as follow:

I. EPA's Action
A. What Action Is EPA Taking in This Proposed Rulemaking?
B. What Are the General NO_X SIP Call Requirements?
C. What Is EPA's NO_X Budget Trading Program?
D. What standards did EPA use to evaluate Virginia's submittal?
II. Virginia's NO_X Budget Trading Program
A. When Did Virginia Submit the SIP Revision to EPA in Response to the NO_X SIP Call?
B. What Is Virginia's NO_X Budget Trading Program?
C. What Is the Result of EPA's Evaluation of Virginia's Program?
III. Proposed Action
IV. Administrative Requirements

I. EPA's Action

A. What Action Is EPA Taking in This Proposed Rulemaking?

EPA is proposing to approve the Virginia NO_X Budget Trading Program submitted as a SIP revision on June 25, 2002, with the exception of its NO_X allowance banking provisions, which EPA proposes to conditionally approve.

B. What Are the General NO_X SIP Call Requirements?

On October 27, 1998 (63 FR 57356), EPA published a final rule entitled, "Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone," otherwise known as the "NO_X SIP Call." The NO_X SIP Call requires the District of Columbia and 22 States, including Virginia, to meet statewide NO_X emission budgets during the May 1 through September 30 ozone season. By meeting these budgets the States will reduce the amount of ground level ozone that is transported across the eastern United States. EPA has previously determined statewide NO_X emission budgets for each affected jurisdiction to be met by the year 2007. EPA identified NO_X emission reductions, by source category, that could be achieved by using cost-effective measures. The source categories included were electric generating units (EGUs), non-electric generating units (non-EGUs), area sources, nonroad mobile sources and highway sources. However, the NO_X SIP Call allowed States the flexibility to decide which source categories to regulate in order to meet the statewide budgets. In the NO_X SIP Call rule's preamble, EPA suggested that imposing statewide NO_X emission caps on large fossil-fuel fired industrial boilers and EGUs would provide a highly cost effective means for States to meet their NO_X budgets. In fact, the State-specific budgets were set assuming an emission rate of 0.15 pounds NO_X per million British thermal units (lbs. NO_X/MMBtu) at EGUs, multiplied by the projected heat input (MMBtu) from burning the quantity of fuel needed to meet the 2007 forecast for electricity demand. See 63 FR 57407, October 27, 1998. The calculation of the 2007 EGU emissions assumed that an emissions trading program would be part of an EGU control program. The NO_X SIP Call State budgets also assumed, on average, a 30 percent NO_X reduction from cement kilns, a 60 percent reduction from industrial boilers and combustion turbines, and a 90 percent reduction from internal combustion engines. The non-EGU control assumptions were applied at units where the heat input capacities were greater than 250 MMBtu per hour, or in cases where heat input data were not available or appropriate, at units with actual emissions greater than one ton per day.

To assist the States in their efforts to meet the SIP Call, the NO_X SIP Call final rule included a model NO_X allowance trading regulation, called "NO_X Budget Trading Program for State Implementation Plans" (40 CFR part 96), that could be used by States to develop their regulations. The NO_X SIP Call rulemaking explained that if States developed an allowance trading regulation consistent with the EPA model rule, they could participate in a regional allowance trading program that would be administered by EPA. See 63 FR 57458—57459, October 27, 1998.

EPA conducted several comment periods on various aspects of the NO_X SIP Call emissions inventories. On March 2, 2000 (65 FR 11222), EPA published additional technical amendments to the NO_X SIP Call. The March 2, 2000 final rulemaking established the inventories upon which Virginia's final budget is based.

A number of parties, including certain States as well as industry and labor groups, challenged the October 27, 1998 (63 FR 57356) NO_X SIP Call Rule. On March 3, 2000, the D.C. Circuit issued its decision on the NO_X SIP Call ruling in favor of EPA on all of the major issues. *Michigan* v. *EPA*, 213 F.3d 663 (D.C. Cir. 2000). However, the Court remanded certain matters for further rulemaking by EPA. EPA recently published a final notice that addresses one of the remanded issues and expects to publish this year another final notice that addresses the remaining remanded issues. Any additional emissions reductions required as a result of the final rulemaking will be reflected in the second phase portion (Phase II) of the NO_X SIP Call rule. Virginia will be required to submit SIP revisions to address Phase II of the NO_X SIP Call Rule.

C. What Is EPA's NO_X Budget Trading Program?

EPA's model NO_X budget and allowance trading rule, 40 CFR part 96, sets forth a NO_X emissions trading program for large EGUs and non-EGUs. A State can voluntarily choose to adopt EPA's model rule in order to allow sources within its borders to participate in regional allowance trading. The October 27, 1998 final rulemaking contains a full description of the EPA's model NO_X budget trading program. See 63 FR 57514–57538 and 40 CFR part 96. In general, air emissions trading uses market forces to reduce the overall cost of compliance for pollution sources, such as power plants, while maintaining emission reductions and environmental benefits. One type of market-based program is an emissions budget and allowance trading program, commonly referred to as a "cap and trade" program.

In a cap and trade program, the State or EPA sets a regulatory limit, or emissions budget, of mass emissions from a specific group of sources. The budget limits the total number of allocated allowances during a particular control period. When the budget is set at a level lower than the current emissions, the effect is to reduce the total amount of emissions during the control period. After setting the budget, the State or EPA then assigns, or allocates, allowances to the participating entities up to the level of the budget. Each allowance authorizes the emission of a quantity of pollutant, *e.g.*, one ton of airborne NO_X. At the end of the control period, each source must demonstrate that its actual emissions during the control period were less than or equal to the number of available allowances it holds. Sources that reduce their emissions below their allocated allowance level may sell their extra allowances. Sources that emit more than the amount of their allocated allowance level may buy allowances from the sources with extra reductions. In this way, the budget is met in the most cost-effective manner.

D. What Standards Did EPA Use To Evaluate Virginia's Submittal?

The final NO_X SIP Call rule included a model NO_X budget trading program regulation at 40 CFR part 96. EPA used the model rule and 40 CFR 51.121 and 51.122 to evaluate Virginia's NO_X Budget Trading Program.

II. Virginia's NO_X Budget Trading Program

A. When Did Virginia Submit the SIP Revision to EPA in Response to the NO_X SIP Call?

On June 25, 2002, the VADEQ submitted a revision to its SIP to address the requirements of the NO_X SIP Call.

B. What Is Virginia's NO_X Budget Trading Program?

Virginia's SIP revision to address the requirements of the NO_X SIP Call consists of the adoption and submittal of Regulation for Emissions Trading, 9 VAC Chapter 140, part I—NO_X Budget Trading Program.

Regulation for Emissions Trading, 9 VAC Chapter 140, part I—NO_X Budget Trading Program establishes and requires a NO_X allowance trading program for large EGUs and large non-EGUs.

The Virginia NO_X Budget Trading Program regulation which comprises Virginia's SIP revision is as follows:

ARTICLE 1.—NO_X Budget Trading Program General Provisions consists of sections 9 VAC 5–140–10 through 9 VAC 5–140–70;

ARTICLE 2.—Authorized Account Representative for NO_X Budget Sources consists of sections 9 VAC 5–140–100 through 9 VAC 5–140–140;

ARTICLE 3.—Permits consist of sections 9 VAC 5–140–200 through 9 VAC 5–140–250;

ARTICLE 4.—Compliance Certification consists of sections 9 VAC 5–140–300 through 9 VAC 5–140–310;

ARTICLE 5.—NO_X Allowance Allocations consists of sections 9 VAC 5–140–400 through 9 VAC 5–140–430;

ARTICLE 6.—NO_X Allowance Tracking System consists of sections 9 VAC 5–140–500 through 9 VAC 5–140–570;

ARTICLE 7.—NO_X Allowance Transfers consists of sections 9 VAC 5–140–600 through 9 VAC 5–140–620;

ARTICLE 8.—Monitoring and Reporting consists of sections 9 VAC 5–140–700 through 9 VAC 5–140–760;

ARTICLE 9.—Individual Unit Opt-ins consists of sections 9 VAC 5–140–800 through 9 VAC 5–140–880; and

ARTICLE 10.—State Trading Budget and Compliance Supplement Pool consists of sections 9 VAC 5–140–900 through 9 VAC 5–140–930.

Regulation for Emissions Trading, 9 VAC Chapter 140, part I—NO_X Budget Trading Program establishes a NO_X cap and allowance trading program with a budget of 21,195 tons of NO_X for the ozone seasons of 2004 and beyond. The NO_X budgets for large EGUs and large

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non-EGUs are 17,091 and 4,104 tons of NO_X per ozone season, respectively. Virginia voluntarily chose to follow EPA's model NO_X budget and allowance trading rule, 40 CFR part 96, that sets forth a NO_X emissions trading program for large EGUs and non-EGUs. Because Virginia's NO_X Budget Trading Program is based upon EPA's model rule, Virginia sources are allowed to participate in the interstate NO_X allowance trading program that EPA will administer for the participating States. Virginia has adopted regulations that are substantively identical to 40 CFR part 96, with one exception: Virginia's regulation at 9 VAC 5–140–550 for banking of NO_X allowances must be revised to require flow control to begin in 2005 in lieu of 2006 as currently required. Thus, EPA proposes approval of Virginia's regulations for its NO_X Budget Trading Program, with the exception of 9 VAC 5–140–550, which EPA proposes to conditionally approve.

Under the NO_X Budget Trading Program, Virginia allocates NO_X allowances to the EGUs and non-EGUs that are affected by these requirements. The NO_X trading program generally applies to fossil-fuel-fired EGUs with a nameplate capacity greater than 25 MW that sell any amount of electricity as well as to non-EGUs that have a heat input capacity greater than 250 MMBtu per hour. Each NO_X allowance permits a unit to emit one ton of NO_X during the seasonal control period. NO_X allowances may be bought or sold. Unused NO_X allowances may also be banked for future use, with certain limitations. Owners will monitor their unit's NO_X emissions by using systems that meet the requirements of 40 CFR part 75, subpart H and will report resulting data to EPA electronically. Each budget unit complies with the program by demonstrating at the end of each control period that actual emissions do not exceed the amount of allowances held for that period. However, regardless of the number of allowances a unit holds, it cannot emit at levels that would violate other Federal or State limits, for example, reasonably available control technology (RACT), new source performance standards, or title IV (the Federal Acid Rain program).

C. What Is the Result of EPA's Evaluation of Virginia's Program?

EPA has evaluated Virginia's June 25, 2002 SIP submittal and has found that the Virginia NO_X Budget Trading Program is consistent with EPA's guidance and addresses the requirements of the NO_X SIP Call, with one exception: Virginia's regulation at 9 VAC 5–140–550 for banking of NO_X allowances requires flow control to begin in 2006. The 2006 date is inconsistent with the model rule in part 96 (which required flow control in the NO_X SIP Call to start in 2004) and the subsequent timing change effected by the ruling of the U.S. Court of Appeals for the D.C. related to its decision in Michigan v. EPA, 213 F.3d 663 (D.C. Cir. 2000). Although the court's action affected only the compliance deadline, other dates in the rule for related requirements (such as flow control) were also extended because they were established relative to the original compliance deadline. The compliance deadline was extended by 1 year (from 2003 to 2004), thereby necessitating an extension of the date for flow control to begin by 1 year (from 2004 to 2005). Virginia must revise its regulation at 9 VAC 5–140–550 to establish the start of flow control to be 2005. Thus, EPA proposes approval of Virginia's regulations for its NO_X Budget Trading Program, with the exception of 9 VAC 5–140–550, which EPA proposes to conditionally approve. The June 25, 2002 submittal will strengthen Virginia's SIP for reducing ground level ozone by providing NO_X reductions beginning in 2004.

Virginia's SIP revision does not establish requirements for cement manufacturing kilns and stationary internal combustion engines. Virginia will be required to submit SIP revisions to address any additional emission reductions required to meet the State's overall emissions budget. In addition, Virginia's submittal does not rely on any additional reductions beyond the anticipated Federal measures in the mobile and area source categories.

On December 26, 2000 (65 FR 81366), EPA made a finding that Virginia had failed to submit a SIP response to the NO_X SIP Call, thus starting 18 and 24 month clocks for the mandatory imposition of sanctions and the obligation for EPA to promulgate a Federal Implementation Plan (FIP) within 24 months. The effective date of that finding was January 25, 2001. On June 25, 2002, Virginia submitted a SIP revision to satisfy the NO_X SIP Call. On July 16, 2002, EPA found Virginia's SIP submission to be complete. On July 23, 2002, EPA published a notice halting the sanctions clocks for the Commonwealth of Virginia. Upon approval of this SIP revision, with the exception noted, the EPA's FIP obligation is terminated.

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) "privilege" for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1–1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information: (1) That are generated or developed before the commencement of a voluntary environmental assessment; (2) that are prepared independently of the assessment process; (3) that demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) that are required by law.

On January 12, 1997, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege Law, Va. Code Sec. 10.1–1198, precludes granting a privilege to documents and information "required by law," including documents and information "required by Federal law to maintain program delegation, authorization or approval," since Virginia must "enforce Federally authorized environmental programs in a manner that is no less stringent than their Federal counterparts * * *." The opinion concludes that "[r]egarding § 10.1–1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by Federal law to maintain program delegation, authorization or approval."

Virginia's Immunity Law, Va. Code Sec. 10.1–1199, provides that "[t]o the extent consistent with requirements imposed by Federal law," any person making a voluntary disclosure of information to a State agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1997 opinion states that the quoted language renders this statute inapplicable to enforcement of any Federally authorized programs, since "no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with Federal law, which is one of the criteria for immunity."

Therefore, EPA has determined that Virginia's Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its program consistent with the Federal requirements. In any event, because EPA has also determined that a State audit privilege and immunity law can affect only State enforcement and cannot have any impact on Federal enforcement authorities, EPA may at any time invoke its authority under the Clean Air Act, including, for example, section 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the State plan, independently of any State enforcement effort. In addition, citizen enforcement under section 304 of the Clean Air Act is likewise unaffected by this, or any, State audit privilege or immunity law.

III. Proposed Action

EPA is proposing to approve Virginia's Regulation for Emissions Trading, 9 VAC Chapter 140, part I—NO_X Budget Trading Program submitted as a SIP revision on June 25, 2002, with the following exception: Virginia's NO_X allowance banking requirement for flow control is proposed to be conditionally approved. EPA proposes approval for Virginia's NO_X Budget Trading Program because it substantively satisfies the requirements of the NO_X SIP Call. For Virginia's NO_X banking requirements to become fully approvable, Virginia must correct the deficiency identified in this action and submit the change as a SIP revision, by a date within one year from the final conditional approval, after which EPA will conduct rulemaking to fully approve the revision. If the condition is not met within the specified timeframe, EPA is proposing that the rulemaking will convert to a final disapproval.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)). This action merely proposes to approve State law as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This proposed rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely proposes to approve a State rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order.

This proposed rule that pertains to Virginia's NO_X Budget Trading Program does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: October 31, 2002.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. 02–28695 Filed 11–8–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[PA181–4181b; FRL–7399–3]

Approval and Promulgation of Air Quality Implementation Plans; Designation of Areas for Air Quality Planning Purposes; Pennsylvania; Redesignation of the Allegheny County Carbon Monoxide Nonattainment Area and Approval of Miscellaneous Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania for the purpose of redesignating the Pittsburgh area carbon monoxide (CO) nonattainment area to attainment, establish a maintenance plan for the area, and approve the 1990 base year inventory for CO for the area. In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final

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rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by December 12, 2002.

ADDRESSES: Written comments should be mailed to David L. Arnold, Chief, Air Quality Planning and Information Services Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, 1301 Constitution Avenue, NW., Room B108, Washington, DC 20460; and Pennsylvania Department of Environmental Protection, Bureau of Air Quality, PO Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Catherine L. Magliocchetti, (215) 814–2174, or by e-mail at *magliocchetti.catherine@epa.gov.*

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, that is located in the "Rules and Regulations" section of this **Federal Register** publication.

Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this redesignation request, maintenance plan and emissions inventory for the CO nonattainment area in southwestern Pennsylvania, and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

Dated: October 17, 2002.

Thomas C. Voltaggio,

Acting Regional Administrator, Region III.

[FR Doc. 02–28496 Filed 11–8–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 61

[FRL–7405–5]

RIN 2060–AJ87

National Emission Standard for Benzene Waste Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; amendments.

SUMMARY: We are proposing to amend the national emission standards for hazardous air pollutants (NESHAP) for benzene waste operations, promulgated on March 7, 1990 (55 FR 8346), under the authority of section 112 of the Clean Air Act (CAA). The amendments add an exemption for organic vapors routed to the fuel gas system and a new compliance option for tanks, and clarify the standards for containers.

In the Rules and Regulations section of this **Federal Register**, we are taking direct final action on the proposed amendments because we view this action as noncontroversial, and anticipate no adverse comment. We have explained our reasons for the amendments in the preamble to the direct final rule.

If we receive no adverse comment, we will take no further action on the proposed amendments. If we receive adverse comment, we will withdraw the direct final amendments and they will not take effect.

DATES: *Comments.* We must receive comments by December 12, 2002, unless a hearing is requested by November 22, 2002.

Public Hearing. If anyone contacts us requesting to speak at a public hearing by November 22, 2002, a public hearing will be held on November 27, 2002.

ADDRESSES: *Comments.* By U.S. Postal Service, send comments (in duplicate, if possible) to: Air and Radiation Docket and Information Center (6102T), Attention Docket No. A–2001–23, U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. In person or by courier, deliver comments (in duplicate, if possible) to: Air and Radiation Docket and Information Center (6102T), Attention Docket No. A–2001–23, Room B–108, U.S. EPA, 1301 Constitution Avenue, NW., Washington, DC 20460. We request a separate copy of each public comment be sent to the contact person listed below (see **FOR FURTHER INFORMATION CONTACT**).

Public Hearing. If a public hearing is held, it will begin at 10 a.m. and will be held at the U.S. EPA new facility complex in Research Triangle Park, North Carolina, or an alternative site nearby. You should contact Ms. JoLynn Collins, U.S. EPA, Research Triangle Park, NC 27711, telephone (919) 541–5671 to request a public hearing, to request to speak at a public hearing, or to find out if a hearing will be held.

Docket. Docket No. A–2001–23 contains supporting information used in developing the proposed amendments. The docket is located at the U.S. EPA, 1301 Constitution Avenue, NW., Washington, DC 20460 in room B–108, and may be inspected from 8:30 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Robert B. Lucas, Waste and Chemical Process Group, Emission Standards Division (C439–03), Office of Air Quality Planning and Standards, U.S. EPA, Research Triangle Park, North Caroline 27711, telephone number (919) 541–0884, electronic mail (e-mail), *lucas.bob@epa.gov.*

SUPPLEMENTARY INFORMATION: For information concerning applicability and rule determinations, contact the appropriate regional representative:

U.S. EPA New England, Director, Air Compliance Programs, 1 Congress Street, Suite 1100 (SEA), Boston, MA 02114–2023. Phone contact: (617) 918–1656. FAX: (617) 918–1112.

U.S. EPA—Region II, Air Compliance Branch, 290 Broadway, New York, NY 10007–1866. Phone (212) 637–3000. FAX: (212) 637–3526.

U.S. EPA—Region III, Chief, Air Enforcement Branch (3AP12), 1650 Arch Street, Philadelphia, PA 19103–2029. Phone: (215) 814–3438. FAX: (215) 814–2134. Region III Office Website: *www.epa.gov/reg3artd/hazpollut/hazairpol.htm.*

U.S. EPA—Region IV, Air and Radiation Technology Branch, Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, GA 30303–3104. Phone: (404) 562–9105. FAX: (404) 562–9095.

U.S. EPA—Region V, Air Enforcement and Compliance Assurance Branch (AE17J), 77 West Jackson Boulevard, Chicago, IL 60604–3590. Phone: (312) 353–2088. FAX: (312) 353–8289.

U.S. EPA—Region VI, Chief, Toxics Enforcement Section (∧EN–AT), 1445 Ross Avenue, Dallas, TX 75202–2733. Phone: (214) 665–7224. FAX: (214) 665–2146. Region VI Office Website: *www.epa.gov/region6.*

Region VII, Bill Peterson, U.S. EPA, 726 Minnesota Avenue, Kansas City, KS 66101. Phone: (913) 551–7881. FAX: (913) 551–7467.

U.S. EPA—Region VIII, MACT Enforcement, 999 18th Street, Suite 500, Denver, Colorado 80202. Phone: (303) 312–6312. FAX: 303–312–6409.

U.S. EPA—Region IX, Air Division, 75 Hawthorne Street, San Francisco, CA 94105. Phone: (415) 744–1219. FAX: (415) 744–1076.

U.S. EPA—Region X, Office of Air Quality (OAQ–107), 1200 Sixth Avenue, Seattle, Washington 98101. Phone: (206) 553–4273. FAX: (206) 553–0110.

If no relevant adverse comments are received on the proposed amendments, no further action will be taken on the proposed amendments, and the direct final rule in the Rules and Regulations section of today's **Federal Register** will automatically become effective on the date specified in the direct final rule. If relevant adverse comments are received on the proposed amendments, we will publish a withdrawal action before the effective date of the direct final amendments indicating which provisions are being withdrawn. If all or part of the direct final amendments are withdrawn, all public comments received will be addressed in a subsequent final action based on the proposed amendments. We will not institute a second comment period on the subsequent final action. Any parties interested in commenting must do so during this comment period.

For further supplemental information, the rationale, and the specific amendments being proposed, see the information provided in the direct final rule in the Rules and Regulations section of this **Federal Register**.

Comments. Comments and data may be submitted by e-mail to *a-and-r-docket@epa.gov.* Electronic comments must be submitted as an ASCII file to avoid the use of special characters and encryption problems and will also be accepted on disks in WordPerfect® format. All comments and data submitted in electronic form must note the docket number: A–2001–23. No confidential business information (CBI) should be submitted by e-mail. Electronic comments may be filed online at many Federal Depository Libraries.

Commenters wishing to submit proprietary information for consideration must clearly distinguish such information from other comments and label it as CBI. Send submissions containing such proprietary information directly to the following address, and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket: Attention Mr. Robert Lucas, c/o OAQPS Document Control Officer (C404–02), U.S. EPA, 109 TW Alexander Drive, Research Triangle Park, NC 27711. The EPA will disclose information identified as CBI only to the extent allowed by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies a submission when it is received by EPA, the information may be made available without further notice to the commenter.

Docket. The docket is an organized and complete file of all the information considered by EPA in the development of the proposed amendments. The docket is a dynamic file because information is added throughout the rulemaking process. The docketing system is intended to allow you to readily identify and locate documents so you can effectively participate in the rulemaking process. Along with the proposed and promulgated rules and their preambles, the contents of the docket will serve as the record in the case of judicial review. (See section 307(d)(7)(A) of the CAA.) The regulatory text and other materials related to the proposed amendments are available for review in the docket or copies may be mailed on request from the Air Docket by calling (202) 566–1742. We may charge a reasonable fee for copying docket materials.

You may also obtain docket indexes by facsimile as described on the Office of Air and Radiation, Docket and Information Center Website at *http://www.epa.gov/airprogram/oar/docket/faxlist.html. Worldwide Web (WWW).* In addition to being available in the docket, an electronic copy of the proposed amendments will also be available on the WWW. Following signature, a copy of the proposed amendments will be posted on the Technology Transfer Network (TTN) policy and guidance page for newly proposed or promulgated rules at *http://www.epa.gov/ttn/oarpg.* The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

Regulated Entities. Categories and entities potentially regulated by this action include:

Category	SIC code	NAIC	Examples of regulated code entities
Industry	2800's 2911 3312 4925 4953 9511	32512–325182 32411 331111 22121 562211 324110	Chemical manufacturing plants, petroleum refineries, coke by-product recovery plants, and commercial hazardous waste treatment, storage, and disposal facilities that manage waste generated by these industries.
Federal government			Not affected.
State/local/tribal government.			Not affected.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility is regulated by this action, you should examine the applicability criteria in 40 CFR 61.340 of the NESHAP for benzene waste operations. If you have any questions regarding the applicability of this action to a particular entity, consult the appropriate person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Administrative Requirements

For a complete discussion of all of the administrative requirements applicable to this action, see the direct final rule in the Rules and Regulations section of the **Federal Register**.

Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a

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substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

The EPA determined that it is not necessary to prepare a regulatory flexibility analysis for the proposed amendments. The EPA has also determined that the proposed amendments will not impose a significant impact on a substantial number of small entities. There are few small entities in the industries required to meet the NESHAP for benzene waste operations, and it is unlikely that the regulated facilities are owned by small entities (55 FR 8340, March 7, 1990). In addition, the standard contains a cutoff for applicability of control requirements for sources generating small quantities of benzene waste. Therefore, a substantial number of small entities are not regulated by the proposed amendments. In addition, none of the facilities (large or small) are expected to experience any increase in compliance costs as a result of the proposed amendments. Therefore, pursuant to the provisions of 5 U.S.C. 605(b), it has been determined that the proposed amendments will not have a significant economic impact on a substantial number of small entities.

List of Subject in 40 CFR Part 61

Environmental protection, Air pollution control, Recordkeeping and reporting requirements.

Dated: November 1, 2002.

Christine Todd Whitman,

Administrator.

[FR Doc. 02–28500 Filed 11–8–02; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 52a

RIN 0925–AA24

National Institutes of Health Center Grants

AGENCY: National Institutes of Health, Department of Health and Human Services.

ACTION: Notice of proposed rulemaking.

SUMMARY: The National Institutes of Health (NIH) is proposing to amend its regulations governing center grants to reflect their applicability to several new grant programs including, research on autism, Alzheimer's disease research, fragile X disease research, and minority health disparities research and other health disparities research.

DATES: Comments must be received on or before January 13, 2003, in order to ensure that NIH will be able to consider the comments in preparing the final rule.

ADDRESSES: Comments should be sent to Jerry Moore, NIH Regulations Officer, Office of Management Assessment, NIH, 6011 Executive Boulevard, Room 601, MSC 7669, Rockville, MD 20892, Comments may also be sent electronically by FAX (301–402–0169) or email *jm40z@nih.gov*.

FOR FURTHER INFORMATION CONTACT: Jerry Moore at the address above or telephone (301–496–4607, not a toll-free number).

SUPPLEMENTARY INFORMATION: On October 17, 2000, the United States Congress enacted the Children's Health Act of 2000 (Pub. L. 106–310). Section 101 of Public Law 106–310 amended the PHS Act by adding a new section 409C (42 U.S.C. 284g) concerning research on autism. Section 409C authorizes the Director of the National Institutes of Health, through the Director of the National Institute of Mental Health, to make awards of grants and contracts to public or nonprofit private entities to pay all or part of the costs of planning, establishing, improving, and providing basic operating support for centers of excellence regarding research on autism.

On November 13, 2002, the United States Congress enacted the Public Health Improvement Act (Pub. L. 106–505). Section 801 of Public Law 106–505 amended the PHS Act by adding a new section 445I (42 U.S.C. 285e–10a) concerning Alzheimer's clinical research and training awards. More specifically, section 445I authorizes the Director of the National Institute on Aging to establish and maintain a program to enhance and promote the translation of new scientific knowledge into clinical practice related to the diagnosis, care and treatment of individuals with Alzheimer's disease. Amounts made available under the program must be directed to the support of promising clinicians through awards for research, study, and practice at centers of excellence in Alzheimer's disease research and treatment in environments of demonstrated excellence in neuroscience, neurobiology, geriatric medicine, and psychiatry.

Additionally, section 201 of Public Law 106–310 amended the PHS Act by adding a new section 452E (42 U.S.C. 285g–9) concerning research on the disease known as fragile X. Section 201 authorizes the Director of the National Institute of Child Health and Human Development to make grants or enter into contracts for the development and operation of centers to conduct research for the purposes of improving the diagnosis and treatment of, and finding the cure for, fragile X.

On November 22, 2000, the United States Congress enacted the Minority Health and Health Disparities Research and Education Act of 2000 (Pub. L. 106–525). Section 102 of Public Law 106–525 amended the PHS Act by adding a new section 485F (42 U.S.C. 287c–32) concerning centers for minority health and health disparities related-research, education and training. Section 485F authorizes the Director of the National Center on Minority Health and Health Disparities to make awards of grants or contracts to designated biomedical and behavioral research institutions or consortia for the purpose of assisting the institutions in supporting programs of excellence in biomedical and behavioral research training for individuals who are members of minority health disparity populations or other health disparity populations. The grants must be expended to train members of minority health disparity populations or other health disparity populations as professionals in the area of biomedical or behavioral research or both; or to expand, remodel, renovate, or alter existing research facilities or construct new research facilities for the purpose of conducting minority health disparities research and other health disparities research.

We propose to amend § 52a.1, § 52a.2, and § 52a.3 of the regulations governing NIH center grants to reflect these new authorities. Additionally, we are proposing to amend § 52a.8 to update the organizational reference for the Public Health Service Policy on Humane Care and Use of Laboratory Animals. We provide the following information for the public.

Executive Order 12866

Executive Order 12866, Regulatory Planning and Review, requires that all regulatory actions reflect consideration of the costs and benefits they generate, and that they meet certain standards, such as avoiding the imposition of unnecessary burdens on the affected public. If a regulatory action is deemed to fall within the scope of the definition of the term "significant regulatory action" contained in section 3(f) of the Order, review by the Office of Management and Budget's (OMB) Office of Information and Regulatory Affairs (OIRA) prior to publication is necessary. The OIRA reviewed this proposed rule under Executive Order 12866 and deemed it not significant.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. chapter 6) requires that regulatory proposals be analyzed to determine whether they create a significant impact on a substantial number of small entities. The Secretary certifies that any final rule resulting from this proposal will not have any such impact.

Executive Order 13132

Executive Order 13132, Federalism, requires that Federal agencies consult with State and local government officials in the development of regulatory policies with federalism implications. The NIH Director reviewed the proposed rule as required under the Order and determined that it does not have any federalism implications. The Secretary certifies that the proposed rule will not have an effect on the States or on the distribution of power and responsibilities among various levels of government.

Paperwork Reduction Act

This proposed rule does not contain any information collection requirements that are subject to OMB approval under the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

Catalogue of Federal Domestic Assistance

The Catalogue of Federal Domestic Assistance (CFDA) numbered programs affected by this proposed rule are:

93.173 Multipurpose Deafness and Other Communication Disorders Centers
93.242 Mental Health Research Grants
93.279 Drug Abuse Research Programs
93.397 Cancer Centers Support
93.837 Heart and Vascular Diseases Research
93.838 Lung Diseases Research
93.839 Blood Diseases and Resources Research
93.846 Arthritis, Musculoskeletal, and Skin Diseases Research
93.847 Diabetes, Endocrinology, and Metabolism Research
93.848 Digestive Diseases and Nutrition Research
93.849 Kidney Diseases, Urology and Hematology Research
93.855 Allergy, Immunology and Transplantation Research
93.856 Microbiology and Infectious Diseases Research
93.864 Population Research
93.865 Research for Mothers and Children
93.866 Aging Research
93.981 Alcohol Research Center Grants

List of Subjects in 42 CFR Part 52a

Grant programs—health; Medical research.

Dated: August 12, 2002.

Elias A. Zerhouni,

Director, National Institutes of Health.

Approved: October 30, 2002.

Tommy G. Thompson,

Secretary.

For the reasons set forth in the preamble, subchapter D, chapter I of title 42 of the Code of Federal Regulations is amended as set forth below.

PART 52a—National Institutes of Health Center Grants

1. The authority citation of part 52a would be revised to read as follows:

Authority: 42 U.S.C. 216, 284g, 285a–6(c)(1)(E), 285a–7(c)(1)(G), 285b–4, 285c–5, 285c–8, 285d–6, 285e–2, 285e–3, 285e–10a, 285f–1, 285g–5, 285g–7, 285g–9, 285m–3, 285o–2, 286a–7(c)(1)(G), 287c–32(c), 300cc–16.

2. Section 52a.1 would be amended by revising paragraph (a) to read as follows:

§ 52a.1 To which programs do these regulations apply?

(a) The regulations of this part apply to grants by the National Institutes of Health and its organizational components to support the planning, establishment, expansion, and operation of research and demonstration an/or multipurpose centers in health fields described in this paragraph. Specifically, these regulations apply to:

(1) National Institute of Mental Health centers of excellence with respect to research on autism, as authorized by section 409C of the Act (42 U.S.C. 284g);

(2) National cancer research and demonstration centers (including payments for construction, as authorized by section 414 of the Act (42 U.S.C. 285a–3);

(3) National cancer research and demonstration centers with respect to breast cancer, as authorized by section 417 of the Act (42 U.S.C. 285a–6);

(4) National cancer and demonstration centers with respect to prostate cancer, as authorized by section 417A of the Act (42 U.S.C. 285a–7);

(5) National research and demonstration centers for heart, blood vessel, lung, and blood diseases, sickle cell anemia, blood resources, and pediatric cardiovascular diseases (including payments for construction), as authorized by 422 of the Act (42 U.S.C. 485b–4);

(6) Research and training centers (including diabetes mellitus, and digestive, endocrine, metabolic, kidney and urologic diseases), as authorized by section 431 of the Act (42 U.S.C. 285c–5);

(7) Research and training centers regarding nutritional disorders, as authorized by section 434 of the Act (42 U.S.C. 285c–8);

(8) Multipurpose arthritis and musculoskeletal diseases centers (including payments for alteration, but not construction), as authorized by section 441 of the Act (42 U.S.C. 285d–6);

(9) Alzheimer's disease centers, as authorized by section 445 of the Act (42 U.S.C. 285e–2);

(10) Claude D. Peppers Older Americans Independence Centers, as authorized by section 445A of the Act (42 U.S.C. 285e–3);

(11) Centers of excellence in Alzheimer's disease research and treatment, as authorized by section 445I of the Act (42 U.S.C. 285e–10a);

(12) Research centers regarding chronic fatigue syndrome, as authorized by section 447 of the Act (42 U.S.C. 285f–1);

(13) Research centers with respect to contraception and infertility, as authorized by section 452A of the Act (42 U.S.C. 285g–5);

(14) Child health research centers, as authorized by section 452C of the Act (42 U.S.C. 285g–7);

(15) Fragile X research centers, as authorized by 452E of the Act (42 U.S.C. 285g–9);

(16) Multipurpose deafness and other communication disorders centers, as authorized by section 464C of the Act (42 U.S.C. 285m–3);

(17) National drug abuse research centers, as authorized by section 464N of the Act (42 U.S.C. 285o–2);

(18) Centers of excellence in biomedical and behavioral research training for individuals who are members of minority health disparity populations or other health disparity populations, as authorized by section 485F of the Act (42 U.S.C. 287c–32); and

(19) Centers for acquired immunodeficiency syndrome research, as authorized by section 2316 of the Act (42 U.S.C. 300cc–16).

* * * * *

3. Section 52a.2 would be amended by revising the definition of *Center* to read as follows:

§ 52a.2 Definitions.

As used in this part:

* * * * *

Center means:

(a) For purposes of grants authorized by section 409C of the Act, a public or nonprofit private entity which provides for planning and conducting basic and clinical research into the cause, diagnosis, early detection, prevention,

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control, and treatment of autism, including the fields of developmental neurobiology, genetics, and psychopharmacology;

(b) For purposes of grants authorized by section 414 of the Act, an agency or institution which provides for planning and conducting basic and clinical research into, training in, and demonstration of advanced diagnostic, control, prevention and treatment methods for cancer;

(c) For purposes of grants authorized by section 417 of the Act, an agency or institution which provides for planning and conducting basic, clinical, epidemiological, psychological, prevention and treatment research and related activities on breast cancer;

(d) For purposes of grants authorized by section 417A of the Act, an agency or institution which provides for planning and conducting basic, clinical, and epidemiological, psychosocial, prevention and control, treatment, research, and related activities on prostate cancer;

(e) For purposes of grants authorized by section 422 of the Act, an agency or institution which provides for planning and basic and clinical research into, training in, and demonstration of, management of blood resources and advanced diagnostic, prevention, and treatment methods (including emergency services) for heart, blood vessel, lung, or blood diseases including sickle cell anemia;

(f) For purposes of grants authorized by section 431 of the Act, a single institution or a consortium of cooperating institutions, which conducts research, training, information programs, epidemiological studies, data collection activities and development of model programs in diabetes mellitus and related endocrine and metabolic diseases;

(g) For purposes of grants authorized by section 434 of the Act, a single institution or a consortium of cooperating institutions, which conducts basic and clinical research, training, and information programs in nutritional disorders, including obesity;

(h) For purposes of grants authorized by section 441 of the Act, a facility which conducts basic and clinical research as well as research into arthritis and musculosketal diseases; orthopedic procedures, training, and information programs for the health community and the general public;

(i) For purposes of grants authorized by section 445 of the Act, a public or private nonprofit entity (including university medical centers) which conduct basic and clinical research (including multidisciplinary research) into, training in, and demonstration of advanced diagnostic, prevention, and treatment methods for Alzheimer's disease;

(j) For purposes of grants authorized by section 445A of the Act, a single public or private nonprofit institution or entity or a consortium of cooperating institutions or entities which conduct research into the aging processes and into the diagnosis and treatment of diseases, disorders, and complications related to aging, including menopause, which research includes research on such treatments, and on medical devices and other medical interventions regarding such diseases, disorders, and complications, that can assist individuals in avoiding institutionalization and prolonged hospitalization and in otherwise increasing the independence of the individuals.

(k) For the purposes of section 445I of the Act, a single institution or consortium of cooperating institutions which conducts basic and clinical research on Alzheimer's disease.

(l) For purposes of grants authorized by section 447 of the Act, a single institution or consortium of cooperating institutions which conducts basic and clinical research on chronic fatigue syndrome;

(m) For purposes of grants authorized by section 452A of the Act, a single institution or consortium of cooperating institutions which conducts clinical and other applied research, training programs, continuing education programs, and information programs with respect to methods of contraception and infertility;

(n) For purposes of grants authorized by section 452C of the Act, an agency or institution which conducts research with respect to child health, and gives priority to the expeditious transfer of advances from basic science to clinical applications and improving the care of infants and children;

(o) For purposes of grants authorized by section 452E of the Act, a single institution or a consortium of cooperating institutions which conducts research for the purposes of improving the diagnosis and treatment of, and finding the cure for, fragile X;

(p) For purposes of grants authorized by section 464C of the Act, a single institution or a consortium of cooperating institutions which conducts basic and clinical research into, training in, information and continuing education programs for the health community and the general public about, and demonstration of, advanced diagnostic, prevention, and treatment methods for disorders of hearing and other communication processes and complications resulting from these disorders;

(q) For purposes of grants authorized by section 464N of the Act, institutions designated as National Drug Abuse Research Centers for interdisciplinary research relating to drug abuse and other biomedical, behavioral, and social issues related to drug abuse;

(r) For purposes of grants authorized by section 485F of the Act, a biomedical or behavioral research institution or consortia that:

(1) has a significant number of members of minority health disparity populations or other health disparity populations enrolled as students in the institution (including individuals accepted for enrollment in the institution);

(2) has been effective in assisting such students of the institution to complete the program of education or training and receive the degree involved;

(3) has made significant efforts to recruit minority students to enroll in and graduate from the institution, which may include providing means-tested scholarships and other financial assistance as appropriate; and

(4) has made significant recruitment efforts to increase the number of minority or other members of health disparity populations serving in faculty or administrative positions at the institution; or

(s) For the purposes of grants authorized in section 2316 of the Act, an entity for basic and clinical research into, and training in, advanced diagnostic, prevention, and treatment methods for acquired immunodeficiency syndrome.

4. Section 52a.3 would be amended by revising paragraphs (a) and (b) to read as follows:

§ 52a.3 Who is eligible to apply?

(a) Any public or private nonprofit agency, institution, or consortium of agencies is eligible to apply for a grant under sections 409C, 414, 417, 417A, 422, 445, 445A, 445I, 447, 452A, and 2316 of the Act.

(b) Any public or private nonprofit or for-profit agency, institution, or consortium of agencies is eligible to apply for a grant under sections 428, 431, 434, 441, 452C, 452E, 464C, 464J, 464N, and 485F of the Act.

(c) * * *

5. Section 52a.8 would be amended by revising the last entry and the Note to read as follows:

§ 52a.8 Other HHS regulations and policies that apply.

* * * * *

Public Health Service Policy on Humane Care and Use of Laboratory Animals, Office of Laboratory Animal Welfare, Office for Extramural Research, NIH (revised September 1986).

Note: This policy is subject to change, and interested persons should contact the Office of Laboratory Animal Welfare, Office for Extramural Research, NIH, Rockledge 1, 6705 Rockledge Drive, Bethesda, Maryland 20817, telephone 301–594–2382 (not a toll-free number) to obtain references to the current version and any amendments.)

[FR Doc. 02–28292 Filed 11–8–02; 8:45 am]

BILLING CODE 4140–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 1825

RIN 2700–AC33

Trade Agreements Act—Exception for U.S.-Made End Products

AGENCY: National Aeronautics and Space Administration.

ACTION: Proposed rule.

SUMMARY: NASA is proposing to amend the NASA FAR Supplement (NFS) to implement the determination of the Assistant Administrator for Procurement that, for procurements subject to the Trade Agreements Act, it would be inconsistent with the public interest to apply the Buy American Act for U.S.-made end products that are substantially transformed in the United States.

DATES: Comments should be submitted on or before January 13, 2003.

ADDRESSES: Interested parties should submit written comments to Patrick Flynn, NASA Headquarters, Office of Procurement, Contract Management Division (Code HK), Washington, DC 20546. Comments may also be submitted by e-mail to *pflynn@hq.nasa.gov*.

FOR FURTHER INFORMATION CONTACT: Patrick Flynn, (202) 358–0460; e-mail: *pflynn@hq.nasa.gov*.

SUPPLEMENTARY INFORMATION:

A. Background

On September 13, 2002, the Assistant Administrator for Procurement determined that, for procurements subject to the Trade Agreements Act, it would be inconsistent with the public interest to apply the Buy American Act to U.S.-made end products that are substantially transformed in the United Sates. The September 13, 2002, determination is consistent with Federal Acquisition Regulation policy and the Department of Defense policy with regard to the treatment of U.S.-made end products.

This proposed rule implements the September 13, 2002, determination. This proposed rule will simplify evaluation of offers in acquisitions subject to the Trade Agreements Act, because it will no longer be necessary to determine if a U.S.-made end product is also a domestic end product, *i.e.*, the cost of domestic components exceeds the cost of all components by more than 50 percent.

This proposed rule is not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

This proposed rule is not expected to have a significant economic impact on a substantial number of small entities with the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because NASA has few acquisitions subject to the Trade Agreements Act in which small businesses proposing domestic end products have received a percent price evaluation preference over offers of U.S.-made end products for which the cost of foreign components exceeds the cost of domestic components by 50 percent or more.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes do not impose any new recordkeeping or information collection requirements which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.* This proposed rule would eliminate the requirement for offerors to track and document the origin of components of U.S.-made end products in acquisitions subject to the Trade Agreements Act in order to comply with the FAR.

List of Subjects in 48 CFR Part 1825

Government procurement.

Tom Luedtke,

Assistant Administrator for Procurement.

Accordingly, 48 CFR part 1825 is amended as follows:

1. The authority citation for 48 CFR Part 1825 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1)

PART 1825—FOREIGN ACQUISITION

1825.103 [Amended]

2. Amend section 1825.103 by adding paragraph (a)(iii) to read as follows:

1825.103 Exceptions.

(a) * * *

(iii) The Assistant Administrator for Procurement has determined that for procurements subject to the Trade Agreements Act, it would be inconsistent with the public interest to apply the Buy American Act to U.S.-made end products that are substantially transformed in the United States.

1825.1101 [Amended] (NASA supplements paragraph (c)(1))

3. Amend section 1825.1101 by adding paragraph (c)(1) to read as follows:

1825.1101 Acquisition of supplies.

(c)(1) NASA has determined that the restrictions of the Buy American Act are not applicable to U.S.-made end products.

* * * * *

[FR Doc. 02–28542 Filed 11–8–02; 8:45 am]

BILLING CODE 7510–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

Denial of Petition for Rulemaking; Federal Motor Vehicle Safety Standards

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Denial of petition for rulemaking.

SUMMARY: This document denies the petition submitted by Valeo, an automotive lighting company in Bobigny, France, to amend Federal Motor Vehicle Safety Standard (FMVSS) No. 108, "Lamps, Reflective Devices, and Associated Equipment," to allow headlamps with upper beam contributors to have horizontal and vertical aiming capabilities that are separate from the lower beam contributors.

FOR FURTHER INFORMATION CONTACT: Mr. Chris Flanigan, Office of Rulemaking, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. Mr. Flanigan's telephone number is: (202) 366–4918. His facsimile number is (202) 366–4329.

SUPPLEMENTARY INFORMATION: By a letter dated March 2, 2000, Valeo petitioned the agency to allow visually/optically aimable (VOA) headlamps that have upper beam contributors optically combined with lower beam

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contributor(s) to have their own horizontal and vertical aiming mechanisms. None of these upper beam contributor(s) would be a lower beam contributor. Additionally Valeo stated that the light-emitting surface of each of these upper beam contributors would be marked "VO."

Currently, paragraphs S7.8.5.3(5)(c) and (d) of FMVSS No. 108 require that, if the upper beam is combined in a headlamp with a lower beam, the vertical and horizontal aim shall not be changed from the aim set using the procedures set forth for aiming of the lower beam. The effect of this requirement is that, as with previous headlamps that have both a lower and upper beam, aiming the lower beam simultaneously aims the upper beam. As such, the complex headlamp is as easy to aim as a simple one. This promotes correct aim to improve seeing, while minimizing glare.

Background

Proper aim is required to ensure that headlamps installed on motor vehicles fulfill the safety functions required by Federal law. There are three principal methods of aiming headlamps. The first is visual and is done by projecting the beam onto a vertical surface and then adjusting the headlamp to an appropriate position. An observer determines this position. The second is optical and is done by projecting the beam into an optical device that is placed in front of the headlamp and then adjusting the headlamp until the beam conforms to the appropriate parameters. Lamps utilizing these two methods are termed visual/optical aim (VOA) headlamps.

The third method of aim is mechanical and is done without activation of the headlamp. In this case, the proper aim is determined through the use of mechanical equipment, either external to the headlamp housing or provided as part of the headlamp. External mechanical aim was introduced in 1955 by the automotive industry in response to aiming concerns expressed by the States. These concerns were related to the inability of the first two methods to provide accurate and repeatably correct aim at that time.

The ability of motor vehicle headlamps to be mechanically aimed has been a requirement of FMVSS No. 108 from its effective date of January 1, 1968. Mechanical aiming was necessary because accurate and reliable visual or optical aim of the lower beam pattern in use in the United States at that time was difficult to achieve. Sealed beam headlamps, the only type permitted until 1983, are required to have one of four aiming pad patterns on the lens for mechanical aiming. These patterns consist of three raised aiming pads arranged as a triangle at specified points on the lens that create a precise interface between the headlamp and a mechanical aiming device attached to the headlamp during the aiming verification process. The mechanical aiming device provides information so that the aiming planes of the headlamps on each side of the vehicle can be adjusted to be parallel with each other and perpendicular to the road surface. Because a headlamp's beam pattern is designed to be correctly aimed when the aiming plane is oriented as stated, the beam pattern can be accurately and repeatably aimed without the need for illuminating the headlamp.

With the advent of replaceable bulb headlamps in 1983, restrictions on the size and shape of headlamps were no longer required. While two additional configurations of mechanical aiming pads were permitted, not all headlamp designs could accommodate them. In response to this problem, the agency has allowed vehicle headlamp aiming devices (VHAD) since June 8, 1989. VHAD is an alternative method of mechanical aim that is not dependent upon an externally applied mechanical device. It is accomplished by mechanical aiming equipment on the vehicle itself.

As a consequence, the vehicle industry requested that the agency allow VOA headlamps, provided that significant visual cues in the beam pattern were added to assure accuracy. Subsequently, VOA headlamps became part of FMVSS No. 108, and headlamps meeting new beam pattern photometric requirements were developed. These headlamps have a beam pattern that is relatively insensitive to modest horizontal misaim. VOA headlamps were allowed based on comments to the agency that vehicles could be built with such close tolerances that no horizontal aim adjustment was necessary. Additionally, no useful visual cue for horizontal aiming exists. Consequently, because no visual cue was available for the purpose of horizontal aiming, the agency did not permit any horizontal movement of VOA headlamps. The lamp is essentially correctly aimed, horizontally, as installed. As an alternative, horizontal-aiming VHADs were permitted on VOA headlamps to meet European specifications that require both a horizontal and vertical aim adjustment. Thus, to be sold in both the European and U.S. markets, a headlamp needs both a horizontal and vertical aiming screw. A VOA headlamp intended for use only in the U.S. market need only have the vertical one.

Petitioner's Rationale

Valeo asserted that the rationale for the current requirements was derived in the 1980s when headlamps with replaceable light sources were first introduced into Federal regulations. At that time, headlamps were not as large as today. Because the majority of these lamps had a flat, rectangular appearance, there were few aspect-related issues. However, today's headlamps have many cavities and are more contoured to the shape of the vehicle body. They also can have somewhat vertical shapes. Because of these characteristics, the orientation of the upper and lower beam contributors becomes more critical to the appearance of the vehicle. On the VOA lamps Valeo is contemplating, the cavities producing the lower beam have vertical aiming capability. However, they would have no horizontal aiming capability unless it is of the VHAD type. When the vertical aim on the lower beam is adjusted, unsightly gaps can be generated in the area between the headlamp housing and the vehicle body. By adding a separate aiming mechanism for the upper beam, these gaps could be eliminated.

Valeo stated that these additional aiming mechanisms on the upper beam would not modify the accuracy of the aim of the lower beam function. Further, it would not modify the accuracy of the aim of the upper beam if lower and upper beam contributors can be illuminated separately. Separate illumination allows the "hot spot" of both the upper and lower beam contributors to be placed at the HV point.

Valeo stated that another merit of its petition is that of international harmonization. European regulations do not preclude separate upper and lower beam aiming mechanisms. If the petition was granted and FMVSS No. 108 amended, it would then be possible for manufacturers to produce only one category of headlamp for the whole world market resulting in substantial savings for manufacturers in both tooling costs and manufacturing organization.

Agency Analysis

As part of the justification for amendments allowing VOA headlamps in 1996, vehicle manufacturers indicated that they needed no horizontal aim adjustment because of the present accuracy of vehicle assembly and headlamp positioning on the assembly line. Because of this, and the fact that no reliable scientific method of achieving horizontal VOA has been determined, two major changes were made to FMVSS No. 108 relating to VOA headlamps: (1) The beam was made to be much wider and much less sensitive to horizontal misaim and, (2) no horizontal aiming screws or mechanisms other than a horizontal VHAD were permitted. Valeo needs separate aim adjustments to be incorporated for the upper beam contributors to maintain a uniform gap around the headlamp housing. As a consequence, it has petitioned to amend the standard to allow the upper beams to have their own horizontal and vertical aiming capabilities. In addition, to make the consumer aware of these additional aiming systems, Valeo recommended that the light emitting surface of each upper beam contributor be marked "VO."

In 1996, a Regulatory Negotiation Committee that included representatives of foreign manufacturers worked with the agency over many months to achieve a consensus on all issues and the specific text of the amendment to FMVSS No. 108 to allow VOA headlamps. Because the present aiming requirements, as applied to VOA, were part of that consensus agreement, the agency is reluctant to change these requirements, absent a compelling safety reason to do so.

During the negotiated rulemaking, all of the vehicle manufacturers represented on the committee stated that they were capable of building vehicles as accurately as needed to install VOA headlamps. However, this degree of precision in assembly adds cost.

Valeo's petition is based on two rationales. The first is a desire to have an aesthetically pleasing headlamp by overcoming inaccuracies in the design and assembly of motor vehicles such that the headlamp housing may be purposefully misaimed, within a certain range, to help assure the desired visually symmetric size of the gap between the vehicle body and the headlamp or between the headlamp reflector and the surrounding headlamp housing. The second is to achieve harmonization with European standards.

Given Valeo's, as well as other manufacturers', desire for alternative aiming systems, the agency believes it is incumbent on Valeo and the industry to develop a single, objective method for vertical and horizontal aiming all VOA headlamps which could be incorporated into FMVSS No. 108. The agency does not intend to assess individual manufacturer's petitions for alternatives to the current requirements. The agency recently used a similar rationale to deny a petition from Federal-Mogul Lighting Products (Federal-Mogul) (66 FR 42985). Federal-Mogul petitioned to amend FMVSS No. 108 to allow headlamps that are aimed visually or optically to have a horizontal adjuster system that does not have the required ±2.5 degree horizontal adjustment range or the VHAD indicator required by the standard. In addition, the agency does not expect to give up the value that simultaneous beam aim provides. The agency believes that having simply aimed headlamps generally promotes more correctly aimed headlamps in the field. This is especially important, given the low incidence of periodic headlamp aim inspection in the United States and the likely lower level of experience of the service and inspection technicians and the public.

In accordance with 49 CFR part 552, the agency has reviewed the petition and concluded that it should not be granted. Accordingly, it denies Valeo's petition.

(49 U.S.C. 30118(d) and 30120(h); delegations of authority at 49 CFR 1.50 and 501.8)

Issued on October 31, 2002.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 02–28558 Filed 11–8–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 021017237–2237–01; I.D. 090302F]

RIN 0648–AQ51

Protocol for Access to Tissue Specimen Samples from the National Marine Mammal Tissue Bank

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule.

SUMMARY: The NMFS proposes to make available tissue specimen samples to the scientific community for research that is consistent with the goals of the National Marine Mammal Tissue Bank (NMMTB) and the Marine Mammal Health and Stranding Response Program (MMHSRP). The intent of this proposed rule is to allow the scientific community the opportunity to comment on the protocol for requests for tissue specimen samples from the NMMTB.

DATES: Comments must be received by 5 p.m. EST on December 12, 2002. Comments transmitted via e-mail will not be accepted.

ADDRESSES: Submit your comment(s) to Marine Mammal Health and Stranding Response Program (MMHSRP), Program Manager, NOAA, NMFS, Office of Protected Resources, 1315 East-West Highway, Silver Spring, MD 20910–3282. Comments may also be sent via facsimile (fax) to 301–713–0376. To submit e-Comments (see **SUPPLEMENTARY INFORMATION**.)

FOR FURTHER INFORMATION CONTACT: Dr. Teri Rowles, Marine Mammal Health and Stranding Response Program, 301–713–2322 ext 178.

SUPPLEMENTARY INFORMATION:

E-Comments Pilot Program

NMFS encourages the public to participate in this proposed rulemaking by submitting comments. To this end, NMFS is accepting comments by submitted mail, fax, and the Internet as part of its e-Comments pilot project (see **ADDRESSES**). The e-Comments pilot project is designed to introduce electronic rulemaking to NMFS an its constituents. The public is encouraged to use the new web site to compose and submit comments on this proposed rule and the associated supporting documents to help NMFS fully evaluate this new technology. In submitting comments, please include your name and address, indicate if you are commenting on the proposed rule or other rulemaking documents, and give the reason for each comment. If you are commenting on the proposed rule, indicate to which specific section each comment applies. NMFS also invites public comments on the e-Comments program that allows you to submit your comments on line. NMFS will consider all comments received during the comment period, regardless of how they were submitted, and NMFS may make changes in the final rule in consideration of them. Please submit your comments by only one means. Comments received from the public will become part of the public record and will be posted on the e-Comments web site http://ocio.nmfs.noaa.gov/ibrm-ssi/index.shtml after the comment period closes.

Electronic Access

Several of the background documents for the MMHSRP and the NMMTB Specimen Access Policy can be downloaded from the Health and Stranding Response Program web site at

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http://www.nmfs.noaa.gov/prot_res/.PR2.

Background

The NMMTB was established in 1992 and provides protocols, techniques, and physical facilities for the long-term storage of tissues from marine mammals. Scientists can request tissues from this repository for retrospective analyses to determine environmental trends of contaminants and other analytes of interest. The NMMTB is currently managed in collaboration with the National Institute of Standards and Technology (NIST) and is housed at the Hollins Marine Laboratory in Charleston, SC and the NIST campus in Gaithersburg, MD as part of the National Biomonitoring Specimen Bank. The NMMTB collects, processes, and stores tissues from specific indicator species (e.g., Atlantic bottlenose dolphins, Atlantic white sided dolphins, pilot whales, harbor porpoise), animals from mass strandings, animals that have been obtained incidental to commercial fisheries, animals taken for subsistence purposes, biopsies, and animals from unusual mortality events.

Each tissue specimen consists of duplicate samples (denoted A and B) of approximately 150 g. each. These duplicate samples are banked in the NMMTB in separate liquid nitrogen vaporphase freezers and are maintained at -150oC. When a portion of a tissue specimen is requested for analysis, the "B" sample of that specimen can be cryogenically homogenized and aliquoted into approximately 20 subsamples of 6 to 8 g. each. The "A" sample of each specimen remains as a bulk sample and will only be homogenized after all portions from the corresponding "B" sample have been depleted and there is sufficient justification to homogenize the remaining material. Thus, 50 percent of each specimen is available to the scientific community for research and scientific evaluations consistent with the goals of the NMMTB and 50 percent is intended for long-term storage as a more permanent archive for decades. The goal of the NMMTB is to maintain quality controlled marine mammal tissues that will permit retrospective analyses to determine environmental trends of contaminants and other analytes of interest and that will provide the highest quality samples for analyses using new and innovative techniques.

Under 16 U.S.C. 1421*f*, section 407(d)(1) of the Marine Mammal Protection Act, the NMFS must establish criteria for access to marine mammal tissues in the NMMTB and make those criteria available for public review and comment. In addition, NMFS must establish criteria for access to tissue analyses conducted pursuant to 16 U.S.C. 1421f, section 407(b) and data in the central marine mammal data base maintained under 16 U.S.C. 1421*f*, section 407(c). NMFS will establish these additional criteria in subsequent rulemaking.

There is only a very limited amount of samples available and the applicants for tissue specimen samples from the NMMTB will need to demonstrate that their research will fulfill the goals of the NMMTB and MMHSRP and that comparable tissue samples to accomplish the goals of the proposed research could not be readily obtained from other sources. The goal of the MMHSRP is to facilitate the collection and dissemination of reference data on marine mammals and health trends of marine mammal populations in the wild; to correlate the health of marine mammals and marine mammal populations in the wild with available data on physical, chemical, and biological environmental parameters; and to coordinate effective responses to unusual mortality events.

How To Apply

1. Applicants must submit a written request with attached study plan to the MMHSRP Program Manager, NMFS/Office of Protected Resources (see **ADDRESSES**).

2. The following specific information must be included in the request:

a. A clear and concise statement of the proposed use of the banked tissue specimen. The applicant must demonstrate that the proposed use is consistent with the goals of the NMMTB and the MMHSRP.

b. A copy of the applicant's scientific research permit. The applicant must demonstrate that the proposed use of the banked tissue is authorized by the permit.

c. Name of principal investigator, official title, and affiliated research or academic organization;

d. Specific tissue sample and quantity desired;

e. Justification for use of banked tissue;

f. Research facility where analyses will be conducted. The applicant must demonstrate that the research facility will follow the Analytical Quality Assurance program, which was designed to ensure the accuracy, precision, level of detection, and intercompatibility of data resulting from chemical analyses of marine mammal tissues. Standard Reference Materials for use in the analysis of marine mammal tissues can be purchased from the NIST;

g. Estimated date for completion of research, and schedule/date of subsequent reports;

h. Agreement that all research/findings based on use of the banked tissue will be reported to the NMMTB and the MMHSRP Program Manager; and

i. Agreement that credit and acknowledgment will be given to NMFS, U.S. Geologic Service (USGS), NIST, U.S. Fish and Wildlife Service (USFWS), the NMMTB, and the collector for use of banked tissues. The applicant shall insert the following acknowledgment in all publications, abstracts or presentations based on research using the banked tissue:

The specimens used in this study were provided by the National Marine Mammal Tissue Bank, which is maintained in the National Biomonitoring Specimen Bank at NIST and which is operated under the direction of NMFS with the collaboration of USGS, USFWS, and NIST through the Marine Mammal Health and Stranding Response Program [and the Alaska Marine Mammal Tissue Archival Project if the samples are from Alaska].

3. Upon submission of a complete application, the MMHSRP Program Manager will send the request and attached study plan to the following entities which will function as the review committee:

a. Appropriate Federal agency (NMFS or USFWS) marine mammal management office for that particular species, and

b. Representatives of the NMMTB Collaborating Agencies (NMFS, USFWS, USGS Biological Resources Division, and NIST).

If no member of the review committee is an expert in the field that is related to the proposed research activity, any member may request an outside review of the proposal, which maybe outside of NMFS or USFWS but within the federal government.

4. Review committees for requests involving species managed by Department of the Interior will be chaired by the USFWS Representative of the NMMTB Collaborating Agencies. All other review committees will be chaired by the MMHSRP Program Manager.

5. Recommendations on the request and an evaluation of the study plan will be provided by each committee chair to the Director, Office of Protected Resources, NMFS.

6. The Director, Office of Protected Resources, NMFS, will make the final decision on release of the samples based on the advice provided by the review committee and determination that the proposed use of the banked tissue specimen sample is consistent with the goals of the MMHSRP and the NMMTB. The Director will send a written decision to the applicant and send copies to all review committee members. If the samples are released, the response will indicate whether the samples have been homogenized and, if not, the homogenization schedule.

7. Shipping and homogenization costs related to the use of any specimens from the NMMTB will be borne by the applicant.

8. The applicant can keep or dispose of the tissue specimen sample after the research is completed.

Classification

This proposed rule contains collection-of-information requirements and, therefore, is subject to the provisions of the Paperwork Reduction Act (PRA). This requirement has been submitted to OMB for approval. Public reporting burden for this collection of information is estimated to average 2 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Applicants will be submitting a written request with attached study plan to the MMHSRP to apply for a tissue specimen sample from the NMMTB. Applicants will also report all research/findings based on use of the banked tissue to the NMMTB and the MMHSRP Program Manager.

Public comment is sought regarding: whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the usti technology. Send comments on these or any other aspects of the collection of information to the Office Of Protected Resources at the ADDRESSES above, and to OMB at the Office of Information and Regulatory Affairs, Office of Management land Budget, Washington, DC. 20503 (Attention: NOAA Desk Officer).

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

This action will not have an adverse effect on marine mammals under the Marine Mammal Protection Act.

This proposed rule does not contain policies with federalism implications as that term is defined in Executive Order 13132.

This proposed rule has been determined not to be significant for the purposes of Executive Order 12866.

The Chief Counsel for Regulation at the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The facts and purpose of this rule appears in the background section of the preamble and are not repeated here. There are approximately 10,000 that will be eligible to apply for tissue samples under this rule. These entities include both large and small entities such as universities, non-profits, small businesses, and individuals. However, we anticipate that only approximately 10 applicants total will actually request tissues specimen samples. There is no fee for the sample, but there is a cost to the applicant of approximately $3.57 (Postage, $.37 plus copying (20 pages x .16) = $3.57). The copying costs would be the applicant's study plan which they will be submitting. The total for the ten anticipated applicants is $35.70 ($3.57 x 10 applicants = $35.70). Because the costs to applicants are minimal, it is concluded that this rule would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 50 CFR Part 216

Administrative practice and procedure, Confidential business information, Fisheries and Marine mammals, Reporting and record keeping requirements.

Dated: November 4, 2002.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory programs, notional Marine Fisheries Service.

For the reasons set out in the preamble, the National Marine Fisheries Service (NMFS) proposes to amend 50 CFR part 216 as follows:

PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

1. The authority citation for part 216 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*, unless otherwise noted.

2. Section 216.47 is added to read as follows:

§ 216.47 Access to marine mammal tissue, analyses, and data.

(a) *Applications for the National Marine Mammal Tissue Bank samples (NMMTB).* (1) A principal investigator or holder of a scientific research permit issued in accordance with the provisions of this subpart may apply for access to a tissue specimen sample in the NMMTB. Applicants for tissue specimen samples from the NMMTB must submit a signed written request with attached study plan to the Marine Mammal Health and Stranding Response Program (MMHSRP) Program Manager, NMFS/Office of Protected Resources. The written request must include:

(i) A clear and concise statement of the proposed use of the banked tissue specimen. The applicant must demonstrate that the proposed use is consistent with the goals of the NMMTB and the NMHSRP.

(A) The goals of the NMHSRP are to facilitate the collection and dissemination of reference data on marine mammals and health trends of marine mammal populations in the wild; to correlate the health of marine mammals and marine mammal populations in the wild with available data on physical, chemical, and biological environmental parameters; and to coordinate effective responses to unusual mortality events.

(B) The goal of the NMMTB is to maintain quality controlled marine mammal tissues that will permit retrospective analyses to determine environmental trends of contaminants and other analytes of interest and that will provide the highest quality samples for analyses using new and innovative techniques.

(ii) A copy of the applicant's scientific research permit. The applicant must demonstrate that the proposed use of the banked tissue is authorized by the permit;

(iii) Name of principal investigator, official title, and affiliated research or academic organization;

(iv) Specific tissue sample and quantity desired;

(v) Justification for use of banked tissue;

(vi) Research facility where analyses will be conducted. The applicant must demonstrate that the research facility will follow the Analytical Quality Assurance program, which was designed to ensure the accuracy, precision, level of detection, and intercompatibility of data resulting from chemical analyses of marine mammal tissues;

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(vii) Estimated date for completion of research, and schedule/date of subsequent reports;

(viii) Agreement that all research findings based on use of the banked tissue will be reported to the NMMTB and the MMHSRP Program Manager; and

(ix) Agreement that credit and acknowledgment will be given to NMFS, US Geologic Service (USGS), National Institute of Standards and Technology (NIST), U.S. Fish and Wildlife Service (USFWS), the NMMTB, and the collector for use of banked tissues.

(2) The applicant shall report to the MMHSRP Program Manager all research findings based on use of the banked tissue in accordance with the schedule submitted with the application.

(3) The applicant shall insert the following acknowledgment in all publications, abstracts, or presentations based on research using the banked tissue:

The specimens used in this study were provided by the National Marine Mammal Tissue Bank, which is maintained in the National Biomonitoring Specimen Bank at NIST and which is operated under the direction of NMFS with the collaboration of USGS, USFWS, and NIST through the Marine Mammal Health and Stranding Response Program [and the Alaska Marine Mammal Tissue Archival Project if the samples are from Alaska].

(4) Upon submission of a complete application, the MMHSRP Program Manager will send the request and attached study plan to the following entities which will function as the review committee:

(i) Appropriate Federal agency (NMFS or USFWS) marine mammal management office for that particular species; and

(ii) Representatives of the NMMTB Collaborating Agencies (NMFS, USFS, USGS Biological Resources Division, and NIST). If no member of the review committee is an expert in the field that is related to the proposed research activity, any member may request an outside review of the proposal, which maybe outside of NMFS or USFWS but within the Federal Government.

(5) The Director, Office of Protected Resources, NMFS, will make the final decision on release of the samples based on the advice provided by the review committee and determination that the proposed use of the banked tissue specimen is consistent with the goals of the MMHSRP and the NMMTB. The Director will send a written decision to the applicant and send copies to all review committee members.

(6) The applicant will bear all shipping and homogenization costs related to use of any specimens from the NMMTB.

(7) The applicant can keep or dispose of the tissue specimen sample consistent with the provisions of the applicant's scientific research permit after the research is completed.

(b) [Reserved]

[FR Doc. 02–28512 Filed 11–8–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 600 and 697

[I.D. 110402A]

Atlantic Coastal Fisheries Cooperative Management Act Provisions; Application for Exempted Fishing Permits (EFPs)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notification of a request for EFPs to harvest American lobster; request for comments.

SUMMARY: The Administrator, Northeast Region, NMFS (Regional Administrator) has made a preliminary determination that the subject EFP application contains all the required information and warrants further consideration. The Regional Administrator has also made a preliminary determination that the activities authorized under the EFP would be consistent with the goals and objectives of Federal management of the American lobster resource. However, further review and consultation may be necessary before a final determination is made to issue the EFP. Therefore, NMFS announces that the Regional Administrator proposes to issue EFPs that would allow a maximum of six vessels to conduct fishing operations that are otherwise restricted by the regulations governing the American lobster fisheries of the Northeastern United States.

The EFP involves the catching, retaining and dissecting of 200 sub-legal lobsters as part of an ongoing research project to both monitor the offshore lobster fishery and to determine the size at which offshore lobster reach reproductive maturity. The experiment would involve only one experimental trap per vessel, and a total of six vessels, for a 1–month time period in the fall of 2002 and a 1–month time period in the spring of 2003. It would not involve the authorization of any additional trap gear in the area. The six participating commercial fishing vessels will collect detailed abundance and size frequency data on the composition of lobsters in three general offshore study areas in a collaborative effort with the University of New Hampshire (UNH) and the Atlantic Offshore Lobstermen's Association (AOLA) project on an American lobster monitoring and data collection program. Part of this research includes a size at maturity study using lobsters from each of the three study areas. One of the most reliable methods to determine size at maturity involves dissection of the female ovaries and examination of the eggs. This EFP requests that each of the six participating commercial fishing vessels utilize one modified juvenile lobster collector trap each to collect a project total of 200 sub-legal lobsters that would be collected and dissected from the three study areas to accurately determine size at maturity. Therefore, this document invites comments on the issuance of EFPs to allow six commercial fishing vessels utilize a maximum of six modified lobster traps and to collect, and retain a project total of 200 sub-legal American lobsters.

DATES: Comments on this action and application for an EFP for offshore lobster monitoring and data collection must be received on or before November 27, 2002.

ADDRESSES: Written comments should be sent to Patricia A. Kurkul, Regional Administrator, NOAA Fisheries, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope "Comments on Lobster EFP Proposal". Comments may also be sent via facsimile (fax) to (978) 281–9117.

FOR FURTHER INFORMATION CONTACT: Bob Ross, Fishery Management Specialist, (978) 281–9234.

SUPPLEMENTARY INFORMATION:

Background

The regulations that govern exempted fishing, at 50 CFR 600.745(b) and 697.22 allow the Regional Administrator to authorize for limited testing, public display, data collection, exploration, health and safety, environmental clean-up, and/or hazardous removal purposes, and the targeting or incidental harvest of managed species that would otherwise be prohibited. An EFP to authorize such activity may be issued, provided there is adequate opportunity for the public to comment on the EFP application, the conservation goals and objectives of Federal management of the American lobster resource are not compromised, and issuance of the EFP is beneficial to the management of the species.

The American lobster fishery is the most valuable fishery in the northeastern United States. In 2001, approximately 74 million pounds (33,439 metric tons (mt)) of American lobster were landed with an ex-vessel value of approximately $255 million dollars. American lobster experience very high fishing mortality rates and are overfished throughout their range, from Canada to Cape Hatteras. Although harvest and population abundance are near record levels due to high recent recruitment and favorable environmental conditions, there is significant risk of a sharp drop in abundance, and such a decline would have serious implications. Operating under the Atlantic States Marine Fisheries Commission's interstate management process, American lobster are managed in state waters under Amendment 3 to the American Lobster Interstate Fishery Management Plan (Amendment 3). In Federal waters of the Exclusive Economic Zone (EEZ), lobster is managed under Federal regulations at 50 CFR part 697. Amendment 3, and compatible Federal regulations established a framework for area management, which includes industry participation in the development of a management program which suits the needs of each lobster management area while meeting targets established in the Interstate Fisheries Management Program. The industry, through area management teams, with the support of state agencies, have played a vital role in advancing the area management program.

To facilitate the development of effective management tools, extensive monitoring and detailed abundance and size frequency data on the composition of lobsters throughout the range of the resource are necessary. One of the main tools of regulation implemented throughout the lobster fishery has been the imposition of a minimum lobster carapace size limit. The purpose of implementing a minimum carapace size is to allow females to reach sexual maturity before they can be legally landed. This minimum carapace size limit attempts to approximate the size at which 50 percent of female lobsters are mature, thereby ensuring that 50 percent of the female lobsters in the population will reproduce at least once before they are caught. Currently the minimum size is fixed at 3 1/4 inches (83 mm) carapace length for the entire offshore lobster fishery.

Proposed EFP

The proposed EFP, submitted by UNH in a collaborative effort with the AOLA and six commercial lobster fishing vessels that are also members of the AOLA, proposes to collect statistical and scientific information as part of a project designed to monitor the offshore American lobster fishery to collect data that will assist the development of management practices appropriate to the fishery. Participants in this project are funded by, and under the direction of the Northeast Consortium, a group of four research institutions (University of New Hampshire, University of Maine, Massachusetts Institute of Technology, and Woods Hole Oceanographic Institution) which are working together to foster this initiative.

Each of six commercial fishing vessels involved in this monitoring and data collection program would collect detailed abundance and size frequency data on the composition of all lobsters collected from one research string of approximately 40 lobster traps, including data on sub-legal, and egg bearing females in addition to legal lobsters. This EFP would not involve the authorization of any additional lobster trap gear in the area. Two vessels would collect data from each of three general study areas: The Southern - Hudson Canyon Area; the Middle - Veatch Canyon Area; and the Northern - Georges Bank and Gulf of Maine Area. The participating vessels may retain on deck sub-legal lobsters, and egg bearing female lobsters, in addition to legal lobsters, for the purpose of collecting the required abundance and size frequency data specified by this project. Data collected would include size, sex, shell disease index, and the total number of legals, sub-legals, berried females, and v-notched females. All berried females would be returned to the sea as quickly as possible after data collection. In addition, all sub-legals captured from the experimental 40–trap string, except the modified trap, would be returned to the sea as quickly as possible after data collection. Pursuant to 50 CFR 600.745(3)(v), the Regional Administrator may attach terms and conditions to the EFP consistent with the purpose of the exempted fishing.

Part of this research includes a size at maturity study using lobsters from each of the three study areas. Previous research on size at maturity for the offshore area was generalized and did not look at regional differences. Since research has shown large variations in size at maturity between inshore sites, one objective of the program would seek to determine if similar regional variations exist within the offshore fishery. Previous data collected on legal sized lobsters, 3 1/4 inches (83 mm) or larger, has shown that lobsters from the Southern and Middle Study Areas were mature at the minimum size of 83 mm. One of the most reliable methods to determine size at maturity involves dissection of the female ovaries and examination of the eggs. Therefore, to determine size at maturity for the three study areas, sub-legal lobsters would be dissected, and the eggs examined to determine the stage of sexual maturity.

To complete the size at maturity component of this study, this EFP requests the inclusion of a maximum of one modified lobster trap per vessel, designated as a juvenile lobster collector trap, in the string of approximately 40 traps. This modified lobster trap would have a smaller entrance head, no escape vents and would be made of a smaller mesh than the traditional offshore trap to catch and retain a high percentage of juvenile lobsters in the 30–65 mm carapace length range. The smaller entrance head would exclude large lobsters from this trap and decrease the probability of cannibalism within the trap. The modifications to the trap are to the escape vents, and trap entrance head, not to the trap's size or configuration, therefore this modified trap would impact its environment no differently than the regular lobster trap it replaces. This EFP will add no additional traps to the areas. This EFP requests that the six participating commercial lobster fishing vessels each be allowed to use one modified juvenile lobster collector trap to collect for dissection a total of 20 lobsters (ranging in size from 65–83 mm) in each sub-legal 5–mm carapace length (CL) group from the Southern Study Area and Middle Study Area, for a total of 160 sub-legal lobsters, and 40 sub-legal lobsters (ranging in size from 75–83 mm) in the Northern Study Area. Thus, in total, 200 sub-legal lobsters would be collected and dissected as part of the size at maturity study. With the exception of the one modified juvenile lobster collector trap, all traps fished by the six participating vessels would comply with all applicable lobster regulations specified at 50 CFR 697.

All sample collections would be conducted by six federally permitted commercial fishing vessels, during the course of regular commercial fishing operations. There would not be observers or researchers onboard every participating vessel. Upon landing, UNH personnel would retrieve the samples and take them to the UNH laboratory for analysis. All lobsters would be disposed of immediately upon

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completion of the size at maturity analysis.

This project, including the lobster handling protocols, was developed in consultation with NOAA Fisheries and University of New Hampshire scientists. To the greatest extent practicable, these handling protocols are designed to avoid unnecessary adverse environmental impact on lobsters involved in this project, while achieving the data collection objectives of this project.

Authority: 16 U.S.C. 1801 *et seq.*

Date: November 5, 2002.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–28701 Filed 11–8–02; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 67, No. 218

Tuesday, November 12, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Notice of Public Information Collections Being Reviewed by the U.S. Agency for International Development; Comments Requested

SUMMARY: U.S. Agency for International Development (USAID) is making efforts to reduce the paperwork burden. USAID invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act for 1995. Comments are requested concerning: (a) Whether the proposed or continuing collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Send comments on or before January 13, 2003.

FOR FURTHER INFORMATION CONTACT: Beverly Johnson, Bureau for Management, Office of Administrative Services, Information and Records Division, U.S. Agency for International Development, Room 2.07–106, RRB, Washington, DC 20523, (202) 712–1365 or via e-mail *bjohnson@usaid.gov*.

SUPPLEMENTARY INFORMATION:

OMB No: OMB 0412–0014.

Form No.: AID 1550–6.

Title: Voluntary Agency Quarterly Report of Shipping Activity.

Type of Review: Renewal of Information Collection.

Purpose: The U.S. Agency for International Development's Ocean Freight program reimburses approved Private and Voluntary Organizations (PVOs) registered with the Agency for their transportation costs incurred when transporting donated goods overseas. To effectively monitor the program, USAID has developed a proposal solicitation package and a monitoring document to collect necessary information from qualified and interested PVOs..aves\notices.xml

Annual Reporting Burden:

Respondents: 50.

Total annual responses: 200.

Total annual hours requested: 3,200 hours.

Dated: October 30, 2002.

Joanne Paskar,

Chief, Information and Records Division, Office of Administrative Services, Bureau for Management.

[FR Doc. 02–28655 Filed 11–8–02; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Privacy Act of 1974; Revision of System of Records

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of revision of Privacy Act system of records.

SUMMARY: Notice is hereby given that the United States Department of Agriculture (USDA) proposes to amend the Privacy Act system of records FCIC–2, entitled Compliance Review Cases. The system of records is maintained by the Federal Crop Insurance Corporation (FCIC), a wholly-owned Government Corporation administered by the Risk Management Agency (RMA), an agency of USDA. The compliance review cases system of records is being revised to reflect changes in the administration and management of the Federal crop insurance program.

DATES: This notice will be effective without further notice on December 12, 2002 unless modified by a subsequent notice to incorporate comments received from the public. Although the Privacy Act requires only that the portion of the system which describes the "routine uses" of the system be published for comment, USDA invites comment on all portions of this notice. Comments must be received by the contact person listed below on or before December 12, 2002.

FOR FURTHER INFORMATION CONTACT: Deputy Administrator for Compliance, Risk Management Agency, Federal Crop Insurance Corporation, 1400 Independence Avenue, SW., Stop 0806, Washington, DC 20250–0806, telephone number (202) 720–0642.

SUPPLEMENTARY INFORMATION: The changes to the system of records modify the: system location; categories of individuals covered by the system; categories of records in the system; routine uses of records maintained in the system; policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system; and, the system manager. These revisions are being made to reflect changes in the crop insurance program and RMA operations and organization. The major revisions to this system of records are the result of mandates included in the Agricultural Risk Protection Act of 2000. These include, establishment of a Farm Service Agency monitoring program, and utilization of the information technologies known as data mining and data warehousing and other available information technologies. The "categories of records in the system" is revised to include the results of the research and analyses that may be conducted on the data by RMA or its contractors. The "routine uses of records" are revised to: Update routine use number (1) to include agencies that regulate; add routine use number (5) to permit research and analysis on data for the purposes of detecting fraud, waste, or abuse; add routine use number (6) permitting investigations and referrals to determine whether information has been correctly reported and compliance with program requirements; and, add routine use number (7) to allow records to be used as necessary to administer, analyze, and evaluate the Federal crop insurance program.

In conformance with 5 U.S.C. 552a(r), as implemented by OMB Circular A–130 the Department of Agriculture sent a report reflecting these proposed changes to the Chairman, Committee on Governmental Affairs, United States Senate; the Chairman, Committee on Government Reform, United States House of Representatives; and the Administrator, Office of Information and Regulatory Affairs, Office of

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Management and Budget on November 5, 2002.

Signed at Washington, DC on November 5, 2002.

Ann M. Veneman,

Secretary of Agriculture.

USDA/FCIC–2

SYSTEM NAME:

Compliance Review Cases.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Federal Crop Insurance Corporation, Risk Management Agency, 6501 Beacon Drive, Stop 0814, Kansas City, Missouri 64133–4676, headquarters and regional compliance offices for the Federal Crop Insurance Corporation, and the Center for Agribusiness Excellence, Tarleton State University, 1333 W. Washington St., Stephenville, Texas, 76402. Addresses for headquarters and each regional compliance office may be obtained from the Deputy Administrator for Compliance, Risk Management Agency, United States Department of Agriculture, 1400 Independence Avenue, SW., Stop 0806, room 6094–S, Washington, DC 20250–0806.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The system consists of: (1) Individuals or other legal entities that presently have or have had insurance with the Federal Crop Insurance Corporation (FCIC) or a private insurance company reinsured by FCIC; (2) individuals who are under contract with or employed by a private insurance company to solicit and service crop insurance contracts, who meet the licensing requirements set by the individual States and requirements established by FCIC for such activities; (3) persons authorized by FCIC or the State to perform loss adjustment and related activities; and (4) private insurance companies and other individuals or entities alleged to have committed acts that could subject them to disqualification, suspension, disbarment or any other administrative action, who are the subject of a compliance review or investigation.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system consists of: (1) Compliance review files containing evidence gathered in the course of a compliance review; (2) the results of any research and analyses conducted on the information contained in any of the systems of records maintained by FCIC that are anomalous or indicate the existence of fraud, waste or abuse; (3) the identification of policyholders identified through other means where there are indications of potential fraud, waste or abuse; and (4) reports and inter/intra-Agency recommendations from the Office of Inspector General, the Farm Service Agency, other USDA agencies, private insurance companies, and any other sources regarding individuals or entities who may have failed to comply with the Federal Crop Insurance Act, any regulations promulgated thereunder, the terms of the policy, or any procedure or directive established by FCIC.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

7 U.S.C. 1501 *et seq.* and 7 CFR part 1, subpart G, Appendix A.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

RECORDS CONTAINED IN THIS SYSTEM MAY BE USED AS FOLLOWS:

(1) Referral to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting a violation of law, responsible for enforcing or implementing a statute, rule, regulation or order issued pursuant thereto, when information available indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature arising by general statute, program statute, rule, regulation or order pursuant thereto.

(2) Referral to the Department of Justice when (a) the agency, or any component thereof; or (b) any employee of the agency in his or her official capacity; or any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee; or (c) the United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the agency to be relevant and necessary to the litigation, provided, however, in each case, the agency determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

(3) Disclosure in a proceeding before a court or adjudicative body before which the agency is authorized to appear, when (a) the agency, or any component thereof; or (b) any employee of the agency in his or her official capacity; or (c) any employee of the agency in his or her individual capacity where the agency has agreed to represent the employee; or (d) the United States, where the agency determines litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the agency determines that use of such records is relevant and necessary to the litigation, provided, however, that in each case, the agency determines that disclosure of the records to the court is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

(4) Disclosure in response to a request for discovery or for the appearance of a witness, to the extent that the agency determines that the information sought is relevant to the subject matter involved in a pending judicial or administrative proceeding.

(5) Referral to contractors/cooperators for purposes of conducting research and analyses to identify trends, patterns, anomalies, instances and relationships of private insurance companies, agents, loss adjusters and policyholders that may be indicative of fraud, waste, or abuse.

(6) Referral to the Farm Service Agency or to the responsible private insurance company to verify the accuracy of information reported by an individual or entity to FCIC or a private insurance company with respect to a policy or plan of insurance authorized under the Federal Crop Insurance Act.

(7) Disclosure to private insurance companies, contractors, cooperators, partners of FCIC, and other Federal agencies for any purpose relating to the sale, service, administration, analysis or evaluation of the Federal crop insurance program.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained electronically, on computer printouts and in the file folders at the addresses listed under "System Location."

RETRIEVABILITY:

Records may be indexed and retrieved by the individual or entity name, tax identification number (including social security number), the private insurance company name, subject of the compliance review or the case number. Data research and analyses records may be indexed and retrieved by State and County, individual or entity name, tax identification number (including social security number), or contract number.

SAFEGUARDS:

Records are accessible only to authorized personnel and are maintained in offices that are locked during non-duty hours. The computer database is controlled by password protection and the computer network is protected by means of a firewall. File folders are stored in locked file cabinets.

RETENTION AND DISPOSAL:

Record retention and disposal are handled in accordance with instructions outlined in the Farm and Foreign Agricultural Service Handbook, "Records Management, 2–AS (Revision 10), Amendment 1."

SYSTEM MANAGER/S/ AND ADDRESS:

Deputy Administrator for Compliance, Risk Management Agency, Federal Crop Insurance Corporation, 1400 Independence Avenue, SW. Stop 0806, Washington, DC 20250–0806, telephone number (202) 720–0642.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Pursuant to the provisions of 5 U.S.C. 552a(k)(2), material in this system of records is exempt from the requirements of 5 U.S.C. 552(a)(c)(3), (d), (e)(1), (e)(4)(G), (H) and (I), and (f) because it contains investigatory material compiled for law enforcement purposes. *See* 7 CFR 1.123.

5 U.S.C. 552a(c)(3) requires that an accounting of disclosures be made available to an individual. This would impair compliance reviews by alerting the subject of the review to the existence of those compliance reviews. The release of information from these files could result in the destruction or alteration of documentary evidence necessary to prosecution, improper influence or witnesses and other activities which could impede or compromise the review.

5 U.S.C. 552a(d) requires that an individual is given access to and the right to amend files pertaining to him or her. Such individual access to these files could hamper reviews in progress by alerting subjects involved in compliance reviews that their actions are under scrutiny, and allow them time to take measures to prevent detection of any illegal activities or escape prosecution. Release of these records also would disclose investigatory techniques and review procedures employed by the RMA Office of Risk Compliance, Federal Crop Insurance Corporation and other agencies, which may impair law enforcement activities.

5 U.S.C. 552a(e)(1) permits the maintenance of only such information as is relevant and necessary to accomplish a purpose of the Agency required by statute or Executive Order. Exemption from this provision is required because determination of relevance and necessity can be made only after information is evaluated. Evaluation at the time of collection is too time consuming for the effective conduct of a compliance review. Further, the determination of relevance or necessity of specific information at the early stages of the compliance review is not possible.

5 U.S.C. 552a(e)(4)(G), (H) and (f) provide for notification and access procedures. If these requirements were followed it would necessarily alert subjects of the compliance review to the existence of the review and could impair the outcome of the review. Similarly, access to the records could interfere with compliance review and ultimate law enforcement proceedings; disclose confidential informants and information; constitute an unwarranted invasion of personal privacy of others; and reveal confidential investigative techniques and procedures.

5 U.S.C. 552a(e)(4)(I) requires that categories of records in each system be published. Application of this provision could disclose investigative techniques and procedures employed by compliance reviewers, which may impair law enforcement activities.

[FR Doc. 02–28667 Filed 11–8–02; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF AGRICULTURE

Forest Service

Siskiyou County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Siskiyou County Resource Advisory Committee will meet in Yreka, California, November 18, 2002. The purpose of the meeting is to receive a presentation by the Backcountry Horsemen concerning project activities, discuss the review and agreement process used the Klamath National Forest, and identify a field trip site at which to observe project progress.

DATES: The meeting will be held November 18, 2002 from 4 p.m. until 6 PM.

ADDRESSES: The meeting will be held at the Yreka High School Library, Preece Way, Yreka, California.

FOR FURTHER INFORMATION CONTACT: Don Hall, RAC Coordinator, Klamath National Forest, (530) 841–4468 or electronically at *donaldhall@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Public comment opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: November 4, 2002.

Margaret J. Boland,

Designated Federal Official.

[FR Doc. 02–28615 Filed 11–8–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Resource Advisory Committee Meeting

AGENCY: Lassen Resource Advisory Committee, Susanville, California, Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committees Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) the Lassen National Forest's Lassen County Resource Advisory Committee will meet Thursday, November 14, 2002 in Susanville, California for a business meeting. The meetings are open to the public.

SUPPLEMENTARY INFORMATION: The business meeting November 14th begins at 9 a.m., at the Lassen Forest Headquarters Office, Caribou Conference Room, 2550 Riverside Drive, Susanville, CA 96130. Agenda topics will include: Review of Review minutes and finish presentation of certificates RAC member/sub-committee reports. Workshop Date Discussion, review Media Fax list for Grant Notification, and Example Proposals for review. Subcommittee Reports, Overhead Costs, meeting munchies costs, etc. Proxy votes and absent voting members. Meeting date discussion possible change to 2nd Thursday each month. Develop Lassen County RAC project submittal process. Time will also be set aside for public comments at the end of the meeting.

FOR FURTHER INFORMATION CONTACT: Robert Andrews, Eagle Lake District Ranger and Designated Federal Officer, at (530) 257–4188; or RAC Coordinator, Heidi Perry, at (530) 252–6604.

Edward C. Cole,

Forest Supervisor.

[FR Doc. 02–28616 Filed 11–8–02; 8:45 am]

BILLING CODE 3410–11–M

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DEPARTMENT OF AGRICULTURE

Forest Service

Fresno County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Fresno County Resource Advisory Committee will meet in Prather, California. The purpose of the meeting is to discuss and to receive project proposals regarding the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) for expenditure of Payments to States Fresno County Title II funds.

DATES: The meeting will be held December 17, 2002, 6:30 p.m. to 9:30 p.m.

ADDRESSES: 29688 Auberry Road, Prather, California. The meeting will be held at the Sierra National Forest, High Sierra District Ranger office, 29688 Auberry Road, Prather, California 93651. Send written comments to Nancy Fleenor, Fresno County Resource Advisory Committee Coordinator, c/o Sierra National Forest, High Sierra Ranger District, 29688 Auberry Road, Prather, CA 93651 or electronically to *nfleenor@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Nancy Fleenor, Fresno County Resource Advisory Committee Coordinator, (559) 855–5355 ext. 3350.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, persons who wish to bring Payments to States Fresno County Title II project matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. Public sessions will be provided and individuals who made written requests by December 17, 2002, will have the opportunity to address the Committee at those sessions. Agenda items to be covered include: (1) Review and approve the November 19, 2002 meeting notes; (2) Discuss new business of the RAC if applicable; (3) Discuss the progress of the 2001 funded projects; (4) Consideration of Title II Project proposals from the public and/or the RAC members; (5) Confirm the date, location and agenda of the next meeting; (6) Public comment.

Dated: November 4, 2002.

Ray Porter,

District Ranger.

[FR Doc. 02–28618 Filed 11–8–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Interim Direction on Forest Service Challenge Cost Share Agreements

AGENCY: Forest Service, USDA.

ACTION: Notice of availability of agency directive.

SUMMARY: The Forest Service is issuing an interim directive to provide internal guidance to its employees in implementing the cost share portion of the challenge cost share program, authorized by Public Law 102–154. This interim directive clarifies that there is no fixed match requirement, pursuant to the law, and that the Forest Service intends each cooperative agreement under the challenge cost share program should require each party to achieve benefits commensurate with the resources expended. This interim directive is issued to the Forest Service Manual Title 1500, External Relations, Chapter 1580, Grants, Cooperative Agreements, and Other Agreements, as ID number 1580–2002–2.

DATES: The interim directive is effective November 12, 2002.

ADDRESSES: The interim directive is available electronically from the Forest Service via the World Wide Web/Internet at *http://www.fs.fed.us/im/directives.* Single paper copies of the interim directive also are available by contacting the Forest Service, USDA, Acquisition Management Staff, 1323 Club Drive—Mare Island, Vallejo, CA 94592 (telephone 707–562–8902).

FOR FURTHER INFORMATION CONTACT: Dave Allasia, Acquisition Management Staff (707–562–8902).

Dated: November 1, 2002.

Dale N. Bosworth,

Chief.

[FR Doc. 02–28612 Filed 11–8–02; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent To Revise an Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Intent to revise an information collection.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13) and Office of Management and Budget regulations at 5 CFR part 1320 (60 FR 44978, August 29, 1995), this notice announces the intent of the National Agricultural Statistics Service (NASS) to discontinue the Milkfat Prices Survey as part of the Milk and Milk Products Surveys information collection.

DATES: Comments on this notice must be received by December 20, 2002 to be assured of consideration. The final milkfat price report will be released on December 20, 2002.

ADDRESSES: Comments may be mailed to Ginny McBride, NASS OMB Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue SW, Washington, DC 20250 or sent electronically to *gmcbride@nass.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Rich Allen, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, (202) 720–4333.

SUPPLEMENTARY INFORMATION:

Title: Milk and Milk Products Surveys.

OMB Control Number: 0535–0020.

Expiration Date of Approval: 09/30/04.

Type of Request: Intent to Revise an Information Collection.

Abstract: The primary objective of the National Agricultural Statistics Service is to prepare and issue state and national estimates of crop and livestock production, prices, and disposition. The Milk and Milk Products Surveys obtain basic agricultural statistics on milk production and manufactured dairy products from farmers and processing plants throughout the nation. Data are gathered for milk production, dairy products, evaporated and condensed milk, manufactured dry milk, and manufactured whey products. Dairy statistics are used by the U. S. Department of Agriculture to help administer programs and by the dairy industry in planning, pricing, and projecting supplies of milk and milk products. In addition, the Agricultural Marketing Service uses the weekly dairy product prices to establish minimum prices for milk under the Federal Milk Marketing Order. The Agricultural Appropriation Act for fiscal year 2001 authorized funding to develop and implement a biweekly milkfat price survey to benefit all segments of the dairy industry. The survey was requested by dairy industry leaders to meet the industry's need for a better measure of the true value of milkfat. A pilot survey was conducted to determine if accurate and unbiased prices could be collected from buyers of cream. The data were analyzed and the first milkfat price release was published on May 11, 2001. The survey was continued but, due to the nature of milkfat pricing, it was often difficult for respondents to report in a timely manner and revisions to previous week's figures were common. Contacts with representatives from the dairy industry and other government agencies indicated that the milkfat price data were not useful to the dairy industry and were not used in making marketing or regulatory decisions. Therefore NASS will discontinue the collection of milkfat price data and the biweekly release after December 20, 2002.

Copies of this information collection and related instructions can be obtained without charge from Ginny McBride, the Agency OBM Clearance Officer, at (202) 720–5778.

Signed at Washington, DC, October 30, 2002.

Fred Vogel,

Deputy Administrator for Programs and Products.

[FR Doc. 02–28666 Filed 11–8–02; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–507–501; C–507–601]

Correction to Certain In-Shell Pistachios (C–507–501) and Certain Roasted In-Shell Pistachios (C–507–601) From the Islamic Republic of Iran: Extension of Time Limit for Final Results of Countervailing Duty New Shipper Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: November 12, 2002.

FOR FURTHER INFORMATION CONTACT: Eric B. Greynolds or Darla Brown, AD/CVD Enforcement, Office VI, Group II, Import Administration, U.S. Department of Commerce, Room 4012, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–2786.

Corrections to Extension of Time Limit for Final Results of Countervailing Duty New Shipper Reviews

On October 23, 2002, the Department published its notice of *Certain In-Shell Pistachios (C–507–501) and Certain Roasted In-Shell Pistachios (C–507–601) From the Islamic Republic of Iran: Extension of Time Limit for Final Results of Countervailing Duty New Shipper Reviews (Extension Notice). See* 67 FR 65090. In the "Extension of Final Results of Reviews" section of the *Extension Notice*, we inadvertently stated that the Department is extending the time limits for completion of the final results until no later than January 24, 2002. We should have stated that the Department is extending the time limits for completion of the final results until no later than January 24, 2003. This extension is in accordance with section 751(a)(2)(B)(iv) of the Act.

Dated: October 31, 2002.

Bernard T. Carreau,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 02–28700 Filed 11–8–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

National Construction Safety Team Advisory Committee

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Request for nominations of members to serve on the National Construction Safety Team Advisory Committee.

SUMMARY: NIST invites and requests nomination of individuals for appointment to the National Construction Safety Team Advisory Committee (Committee). This a new Federal Advisory Committee established pursuant to the National Construction Safety Team Act. NIST will consider nominations received in response to this notice for appointment to the Committee, in addition to nominations already received.

DATES: Please submit nominations on or before November 27, 2002.

ADDRESSES: Please submit nominations to Stephen Cauffman, National Construction Safety Team Advisory Committee, National Institute of Standards and Technology, 100 Bureau Drive, Mail Stop 8610, Gaithersburg, MD 20899–8610. Nominations may also be submitted via fax to (301) 975–6122.

FOR FURTHER INFORMATION CONTACT: Stephen Cauffman, National Construction Safety Team Advisory Committee, National Institute of Standards and Technology, 100 Bureau Drive, Mail Stop 8610, Gaithersburg, MD 20899–8610, telephone 301–975–6051, fax 301–975–6122; or via email at *stephen.cauffman@nist.gov.*

SUPPLEMENTARY INFORMATION:

Committee Information

The Committee was established in accordance with the National Construction Safety Team Act, Public Law 107–231 and the Federal Advisory Committee Act (5 U.S.C. app. 2).

Objectives and Duties

1. The Committee shall advise the Director of the National Institute of Standards and Technology (NIST) on carrying out the National Construction Safety Team Act (Act), review and provide advice on the procedures developed under section 2(c)(1) of the Act, and review and provide advice on the reports issued under section 8 of the Act.

2. The Committee functions solely as an advisory body, in accordance with the provisions of the Federal Advisory Committee Act.

3. The Committee shall report to the Director of NIST.

4. The Committee shall provide a written annual report, through the Director of the NIST Building and Fire Research Laboratory (BFRL) and the Director of NIST, to the Secretary of Commerce for submission to the Congress, to be due at a date to be agreed upon by the Committee and the Director of NIST. Such report will provide an evaluation of National Construction Safety Team activities, along with recommendations to improve the operation and effectiveness of National Construction Safety Teams, and an assessment of the implementation of the recommendations of the National Construction Safety Teams and of the Committee. In addition, the Committee may provide reports at strategic stages of an investigation, at its discretion or at the request of the Director of NIST, through the Director of the BFRL and the Director of NIST, to the Secretary of Commerce.

Membership

1. The Committee will be composed of not fewer than five nor more than ten members that reflect a wide balance of the diversity of technical disciplines and competencies involved in the National Construction Safety Teams investigations. Members shall be selected on the basis of established records of distinguished service in their professional community and their knowledge of issues affecting the National Construction Safety Teams.

1. The Director of the NIST shall appoint the members of the Committee, and they will be selected on a clear, standardized basis, in accordance with applicable Department of Commerce guidance.

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Miscellaneous

1. Members of the Committee will not be paid for their services, but will, upon request, be allowed travel and per diem expenses in accordance with 5 U.S.C. 5701 *et seq.*, while attending meetings of the Committee or of its subcommittees, or while otherwise performing duties at the request of the chairperson, while away from their homes or a regular place of business.

2. The Committee will meet at least once per year at the call of the Chair. Additional meetings may be called whenever one-third or more of the members so request it in writing or whenever the Chair or the Director of NIST requests a meeting.

3. Committee meetings will be open to the public except when a closed session is held in accordance with 5 U.S.C. 552b(c)(6), because divulging information discussed in those portions of the meetings is likely to reveal information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy. All other portions of the meetings are open to the public.

Nomination Information

1. Nominations are sought from all fields involved in issues affecting National Construction Safety Teams.

2. Nominees should have established records of distinguished service. The field of expertise that the candidate represents he/she is qualified should be specified in the nomination letter. Nominations for a particular field should come from organizations or individuals within that field. A summary of the candidate's qualifications should be included with the nomination, including (where applicable) current or former service on federal advisory boards and federal employment. In addition, each nomination letter should state that the person agrees to the nomination, acknowledges the responsibilities of serving on the Committee, and will actively participate in good faith in the tasks of the Committee.

3. The Department of Commerce is committed to equal opportunity in the workplace and seeks a broad-based and diverse Committee membership.

Dated: November 5, 2002.

Arden L. Bement, Jr.,

Director.

[FR Doc. 02–28579 Filed 11–8–02; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 000616180–2245–06]

RIN 0648–ZA91

NOAA Climate and Global Change Program, Program Announcement

AGENCY: Office of Global Programs, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice.

SUMMARY: This document amends a notice published in the **Federal Register** on April 8, 2002, regarding the NOAA Climate and Global Change program. This amendment is intended to show NOAA's interest in supporting new 2003 funding for the Regional Integrated Sciences and Assessments (RISA) program area and to incorporate further details of program emphasis and topic areas. Full program details can also be found in the RISA program information sheet at *http://www.ogp.noaa.gov/mpe/csi.risa/html*. Potential applicants should look at the specific wording of the initial **Federal Register** notice.

DATES: Letters of intent must be received at the Office of Global Program (OGP) no later than November 25, 2002. Applicants who have not received a response to their letter of intent within four weeks should contact the Program Manager. Full proposals must be received at OGP no later than January 24, 2003. We anticipate that review of full proposals will occur during January and February 2003, and funding should begin during late spring of 2003 for most approved projects. Applicants should be notified of their status within three months. June 1, 2003, should be used as the proposed start date on proposals, unless otherwise directed by the Program Manager. All proposals must be submitted in accordance with the guidelines below. Failure to heed these guidelines will result in proposals being returned without review.

ADDRESSES: Letter of Intent and Proposals should be submitted to: Office of Global Programs; National Oceanic and Atmospheric Administration; 1100 Wayne Avenue, Suite 1210; Silver Spring, MD 20910–5603.

FOR FURTHER INFORMATION CONTACT: Irma duPree at the above address, or at (301) 427–2089 ext. 107, fax: (301) 427–2222, Internet: *irma.duPree@noaa.gov*.

SUPPLEMENTARY DATA: This notice incorporates the OGP Program Announcement published at 67 FR 16733 (April 8, 2002) which sets forth OGP program requirements binding upon this solicitation including the evaluation and selection process. The program description, background and requirements, as well as guidelines for applications are included in that notice and are not repeated here.

The Regional Integrated Sciences and Assessments (RISA) Program will accept applications towards the goal to support regionally focused integrated research and assessments. The program integrates climatic predictions and information within the institutional and social constraints decision makers work within. A successful research team must have as leaders scientists who have proven to be successful in their own field of research. They must be sufficiently flexible and creative enough to combine their expertise with researchers of other disciplines and decision makers to produce genuinely integrated research applicable to end users' needs. It is important that the proposal illustrates that the research: (1) Will achieve the strategic goals of the nationwide program; (2) can be completed successfully; (3) will not substantially duplicate other projects currently funded by NOAA or other federal agencies, and (4) demonstrates the proposed team has the capacity to integrate the physical and social science research around two or three tractable issues of importance to decision makers in the specified region.

For further technical information contact: Harvey Hill at the above address, phone: (301) 427–2089 ext. 197, e-mail: *harvey.hill@noaa.gov*.

Other Requirements: The Department of Commerce pre-award notification requirements for grants and cooperative agreement contained in the **Federal Register** notice of October 1, 2001 (66 FR 49917), are applicable to this solicitation.

Classification: It has been determined that this notice does not contain policies with Federalism implications as that term is defined in E.O. 13132.

This notice contains collection-of-information requirements subject to the Paperwork Reduction Act. The use of standard forms 424, 424A, and SF–LLL have been approved by OMB under the respective control numbers 0348–0043, 0348–0044, and 0348–0046.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a current valid OMB control number. This notice has been determined to be not significant for purposes of Executive Order 12866.

Notice and comment are not required under the Administrative Procedure Act, 5 U.S.C. 553, or any other law, for notices relating to public property, loans, grants, benefits or contracts (5 U.S.C. 553(a)). Because of notice and comment is not required, a regulatory flexibility analysis is not required and has not been prepared for this notice, 5 U.S.C. 601 *et seq.*

Authority: 49 U.S.C. 44720(b); 33 U.S.C. 883d; 15 U.S.C. 2904; 15 U.S.C. 2931 *et seq.*; (CFDA No. 11.431)—Climate and Atmospheric Research.

Dated: November 5, 2002.

Louisa Koch,

Acting Assistant Administrator, National Oceanic and Atmospheric Administration.

[FR Doc. 02–28663 Filed 11–8–02; 8:45 am]

BILLING CODE 3510–KA–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits and Guaranteed Access Levels for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Guatemala

November 1, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing import limits and guaranteed access levels.

EFFECTIVE DATE: January 1, 2003.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs Web site at *http://www.customs.gov*. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel Web site at *http://otexa.ita.doc.gov*.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits and Guaranteed Access Levels (GALS) for textile products, produced or manufactured in Guatemala and exported during the period January 1, 2003 through December 31, 2003 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish limits and guaranteed access levels for 2003.

These specific limits and guaranteed access levels do not apply to goods that qualify for quota-free entry under the Trade and Development Act of 2000.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 66 FR 65178, published on December 18, 2001). Information regarding the availability of the 2003 CORRELATION will be published in the **Federal Register** at a later date.

Requirements for participation in the Special Access Program are available in **Federal Register** notice 63 FR 16474, published on April 3, 1998.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 1, 2002.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2003, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Guatemala and exported during the period beginning on January 1, 2003 and extending through December 31, 2003, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
340/640	2,257,523 dozen.
347/348	2,703,123 dozen.
351/651	476,212 dozen.
443	77,658 numbers.
448	48,658 dozen.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 2002 shall be charged to the applicable category limits for that year (see directive dated October 25, 2001) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

Also pursuant to the ATC, and under the terms of the Special Access Program, as set forth in 63 FR 16474 (April 3, 1998), effective on January 1, 2003, you are directed to establish guaranteed access levels for properly certified textile products in the following categories which are assembled in Guatemala from fabric formed and cut in the United States and re-exported to the United States from Guatemala during the period January 1, 2003 through December 31, 2003:

Category	Guaranteed access level
340/640	520,000 dozen.
347/348	1,000,000 dozen.
351/651	200,000 dozen.
443	25,000 numbers.
448	42,000 dozen.

Any shipment for entry under the Special Access Program which is not accompanied by a valid and correct certification in accordance with the provisions of the certification requirements established in the directive of January 24, 1990 (55 FR 3079), as amended, shall be denied entry unless the Government of Guatemala authorizes the entry and any charges to the appropriate specific limit. Any shipment which is declared for entry under the Special Access Program but found not to qualify shall be denied entry into the United States.

These specific limits and guaranteed access levels do not apply to goods that qualify for quota-free entry under the Trade and Development Act of 2000.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 02–28627 Filed 11–8–02; 8:45 am]

BILLING CODE 3510–DR–S

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COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Hong Kong

November 1, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 2003.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs Web site at *http://www.customs.gov.* For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel Web site at *http://otexa.ita.doc.gov.*

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Hong Kong and exported during the period January 1, 2003 through December 31, 2003 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 2003 limits. These limits have been increased, variously, for adjustments permitted under the flexibility provisions of the ATC.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 66 FR 65178, published on December 18, 2001). Information regarding the 2003 CORRELATION will be published in the Federal Register

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 1, 2002:

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2003, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in Hong Kong and exported during the twelve-month period beginning on January 1, 2003 and extending through December 31, 2003, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
Group I	
200–220, 224–227, 300–326, 360–363, 369(1)[1], 369pt.[2], 400–414, 469pt.[3], 603, 604, 611–620, 624–629 and 666pt.[4], as a group.	178,690,196 square meters equivalent.
Sublevels in Group I	
219	51,433,276 square meters.
218/225/317/326	83,245,323 square meters of which not more than 4,584,827 square meters shall be in Category 218(1)[5] (yarn dyed fabric other than denim and jacquard).
611	8,109,150 square meters.
617	5,116,304 square meters.
Group I subgroup	
200, 226/313, 314, 315, 369(1) and 604, as a group	138,862,672 square meters equivalent.
Within Group I subgroup	
200	443,437 kilograms.
226/313	92,260,253 square meters.
314	24,881,483 square meters
315	12,301,489 square meters.
369(1) (shoptowels)	1,010,932 kilograms.
604	304,390 kilograms.
Group II	
237, 239pt.[6], 331pt.[7] 332–348, 351, 352, 359(1)[8], 359(2)[9], 359pt.[10], 433–438, 440–448, 459pt.[11], 631pt.[12] 633–648, 651, 652, 659(1)[13], 659(2)[14], 659pt.[15], and 443/444/643/644(1), as a group.	924,191,267 square meters equivalent.
Sublevels in Group II	
237	1,487,311 dozen.
331pt.	1,626,292 dozen pairs.
333/334	344,393 dozen.
335	358,846 dozen.
338/339[18] (shirts and blouses other than tank tops and tops, knit)	3,050,082 dozen.
338/339(1)[17] (tank tops and knit tops)	2,291,542 dozen.
340	2,920,774 dozen.
345	523,875 dozen.
347/348	7,071,512 dozen of which not more than 6,981,512 dozen shall be in Categories 347–W/348–W[18]; and not more than 5,290,853 dozen shall be in Category 348–W.
352	8,748,166 dozen.
359(1) (coveralls, overalls and jumpsuits)	739,225 kilograms.
359(2) (vests)	1,540,699 kilograms.
433	11,382 dozen.

Category	Twelve-month restraint limit
434	12,218 dozen.
435	80,296 dozen.
436	104,582 dozen.
438	858,904 dozen.
442	100,952 dozen.
443	65,983 numbers.
444	45,713 numbers.
445/446	1,419,653 dozen.
447/448	71,394 dozen.
631pt.	152,225 dozen pairs.
633/634/635	1,544,776 dozen of which not more than 577,781 dozen shall be in Categories 633/634; and not more than 1,186,214 dozen shall be in Category 635.
638/639	5,120,455 dozen.
641	884,792 dozen.
644	55,989 numbers.
645/646	1,403,421 dozen.
647	686,688 dozen.
648	1,272,594 dozen of which not more than 1,257,804 dozen shall be in Category 648–W[19]
652	5,948,825 dozen.
659(1) (coveralls, overalls and jumpsuits)	817,038 kilograms.
659(2) (swimsuits)	349,125 kilograms.
443/444/643/644(1) (made-to-measure suits)	63,253 numbers.
Group II subgroup	
336, 341, 342, 351, 636, 640, 642 and 651, as a group	169,590,921 square meters equivalent.
Within Group II subgroup	
336	287,260 dozen.
341	2,956,496 dozen.
342	640,371 dozen.
351	1,248,690 dozen.
636	386,602 dozen.
640	1,151,190 dozen.
642	307,440 dozen.
651	418,680 dozen.
Group III–only 852	11,010,779 square meters equivalent.
Limits not in a group	
845(1)[20] (sweaters made in Hong Kong)	1,138,569 dozen.
845(2)[21] (sweaters assembled in Hong Kong from knit-to-shape components, knit elsewhere).	2,725,300 dozen.
846(1)[22] (sweaters made in Hong Kong)	184,117 dozen.
846(2)[23] (sweaters assembled in Hong Kong from knit-to-shape components, knit elsewhere).	443,653 dozen.

[1] Category 369(1): only HTS number 6307.10.2005.

[2] Category 369pt.: all HTS numbers except 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.22.4020, 4202.22.4500, 4202.22.8030, 4202.32.4000, 4202.32.9530, 4202.92.0505, 4202.92.1500, 4202.92.3016, 4202.92.6091, 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020, 5805.00.3000, 5807.10.0510, 5807.90.0510, 6301.30.0010, 6301.30.0020, 6302.51.1000, 6302.51.2000, 6302.51.3000, 6302.51.4000, 6302.60.0010, 6302.60.0030, 6302.91.0005, 6302.91.0025, 6302.91.0045, 6302.91.0050, 6302.91.0060, 6303.11.0000, 6303.91.0010, 6303.91.0020, 6304.91.0020, 6304.92.0000, 6305.20.0000, 6306.11.0000, 6307.10.1020, 6307.10.1090, 6307.90.3010, 6307.90.4010, 6307.90.5010, 6307.90.8910, 6307.90.8945, 6307.90.9882, 6406.10.7700, 9404.90.1000, 9404.90.8040, 9404.90.9505 and HTS number in 369(1).

[3] Category 469pt.: all HTS numbers except 5601.29.0020, 5603.94.1010, 6304.19.3040, 6304.91.0050, 6304.99.1500, 6304.99.6010, 6308.00.0010 and 6406.10.9020.

[4] Category 666pt.: all HTS numbers except 5805.00.4010, 6301.10.0000, 6301.40.0010, 6301.40.0020, 6301.90.0010, 6302.53.0010, 6302.53.0020, 6302.53.0030, 6302.93.1000, 6302.93.2000, 6303.12.0000, 6303.19.0010, 6303.92.1000, 6303.92.2010, 6303.92.2020, 6303.99.0010, 6304.11.2000, 6304.19.1500, 6304.19.2000, 6304.91.0040, 6304.93.0000, 6304.99.6020, 6307.90.9884, 9404.90.8522 and 9404.90.9522.

[5] Category 218(1): all HTS numbers except 5209.42.0060, 5209.42.0080, 5211.42.0060, 5211.42.0080, 5514.32.0015 and 5516.43.0015.

[6] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[7] Category 331pt.: all HTS numbers except 6116.10.1720, 6116.10.4810, 6116.10.5510, 6116.10.7510, 6116.92.6410, 6116.92.6420, 6116.92.6430, 6116.92.6440, 6116.92.7450, 6116.92.7460, 6116.92.7470, 6116.92.8800, 6116.92.9400 and 6116.99.9510.

[8] Category 359(1): only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010.

[9] Category 359(2): only HTS numbers 6103.19.2030, 6103.19.9030, 6104.12.0040, 6104.19.8040, 6110.20.1022, 6110.20.1024, 6110.20.2030, 6110.20.2035, 6110.90.9044, 6110.90.9046, 6201.92.2010, 6202.92.2020, 6203.19.1030, 6203.19.9030, 6204.12.0040, 6204.19.8040, 6211.32.0070 and 6211.42.0070.

[10] Category 359pt.: all HTS numbers except 6115.19.8010, 6117.10.6010, 6117.20.9010, 6203.22.1000, 6204.22.1000, 6212.90.0010, 6214.90.0010, 6406.99.1550, 6505.90.1525, 6505.90.1540, 6505.90.2060, 6505.90.2545 and HTS numbers in 359(1) and 359(2).

[11] Category 459pt.: all HTS numbers except 6115.19.8020, 6117.10.1000, 6117.10.2010, 6117.20.9020, 6212.90.0020, 6214.20.0000, 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505, 6406.99.1560.

[12] Category 631pt.: all HTS numbers except 6116.10.1730, 6116.10.4820, 6116.10.5520, 6116.10.7520, 6116.93.8800, 6116.93.9400, 6116.99.4800, 6116.99.5400 and 6116.99.9530.

[13] Category 659(1): only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

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[14] Category 659(2): only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[15] Category 659pt.: all HTS numbers except 6115.11.0010, 6115.12.2000, 8117.10.2030, 6117.20.9030, 6212.90.0030, 6214.30.0000, 6214.40.0000, 6406.99.1510, 6406.99.1540 and HTS numbers in 659(1) and 659(2).

[16] Categories 338/339: all HTS numbers except 6109.10.0018, 6109.10.0023, 6109.10.0060, 6109.10.0065, 6114.20.0005 and 6114.20.0010.

[17] Category 338/339(1): only HTS numbers 6109.10.0018, 6109.10.0023, 6109.10.0060, 6109.10.0065, 6114.20.0005 and 6114.20.0010.

[18] Category 347–W: only HTS numbers 6203.19.1020, 6203.19.9020, 6203.22.3020, 6203.22.3030, 6203.42.4005, 6203.42.4010, 6203.42.4015, 6203.42.4025, 6203.42.4035, 6203.42.4045, 6203.42.4050, 6203.42.4060, 6203.49.8020, 6210.40.9033, 6211.20.1520, 6211.20.3810 and 6211.32.0040; Category 348–W: only HTS numbers 6204.12.0030, 6204.19.8030, 6204.22.3040, 6204.22.3050, 6204.29.4034, 6204.62.3000, 6204.62.4005, 6204.62.4010, 6204.62.4020, 6204.62.4030, 6204.62.4040, 6204.62.4050, 6204.62.4055, 6204.62.4065, 6204.69.6010, 6204.69.9010, 6210.50.9060, 6211.20.1550, 6211.20.6810, 6211.42.0030 and 6217.90.9050.

[19] Category 648–W: only HTS numbers 6204.23.0040, 6204.23.0045, 6204.29.2020, 6204.29.2025, 6204.29.4038, 6204.63.2000, 6204.63.3000, 6204.63.3510, 6204.63.3530, 6204.63.3532, 6204.63.3540, 6204.69.2510, 6204.69.2530, 6204.69.2540, 6204.69.2560, 6204.69.6030, 6204.69.9030, 6210.50.5035, 6211.20.1555, 6211.20.6820, 6211.43.0040 and 6217.90.9060.

[20] Category 845(1): only HTS numbers 6103.29.2074, 6104.29.2079, 6110.90.9024, 6110.90.9042 and 6117.90.9015.

[21] Category 845(2): only HTS numbers 6103.29.2070, 6104.29.2077, 6110.90.9022 and 6110.90.9040.

[22] Category 846(1): only HTS numbers 6103.29.2068, 6104.29.2075, 6110.90.9020 and 6110.90.9038.

[23] Category 846(2): only HTS numbers 6103.29.2066, 6104.29.2073, 6110.90.9018 and 6110.90.9036.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 2002 shall be charged to the applicable category limits for that year (see directive dated November 29, 2001) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

The conversion factors for merged Categories 333/334, 633/634/635 and 638/639 are 33, 33.90 and 13, respectively. The conversion factor for Category 239pt. is 8.79.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 02–28628 Filed 11–8–02; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Hungary

November 1, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 2003.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs Web site at *http://www.customs.gov*. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel Web site at *http://otexa.ita.doc.gov*.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Hungary and exported during the period January 1, 2003 through December 31, 2003 are based on the limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the limits for the 2003 period.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 66 FR 65178, published on December 18, 2001). Information regarding the availability of the 2003 CORRELATION will be published in the **Federal Register** at a later date.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 1, 2002.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2003, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Hungary and exported during the twelve-month period beginning on January 1, 2003 and extending through December 31, 2003, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
351/651	438,026 dozen.
410	1,021,140 square meters.
433	19,365 dozen.
434	16,431 dozen.
435	28,400 dozen.
443	181,910 numbers.
444	58,682 numbers.
448	25,099 dozen.
604	2,167,986 kilograms.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 2002 shall be charged to the applicable category limits for that year (see directive dated November 16, 2001) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 02–28629 Filed 11–8–02; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in India

November 1, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 2003.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs Web site at *http://www.customs.gov*. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel Web site at *http://otexa.ita.doc.gov*.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in India and exported during the period January 1, 2003 through December 31, 2003 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 2003 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 66 FR 65178, published on December 18, 2001). Information regarding the 2003 CORRELATION will be published in the **Federal Register** at a later date.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 1, 2002.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2003, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in India and exported during the twelve-month period beginning on January 1, 2003 and extending through December 31, 2003, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
Levels in Group I	
218	24,368,564 square meters.
219	104,946,651 square meters.
313	65,201,255 square meters.
314	12,493,649 square meters.
315	20,984,324 square meters.
317	54,611,405 square meters.
326	12,411,685 square meters.
334/634	223,315 dozen.
335/635	994,196 dozen.
336/636	1,445,279 dozen.
338/339	5,378,396 dozen.
340/640	2,935,925 dozen.
341	5,772,811 dozen of which not more than 3,463,684 dozen shall be in Category 341–Y[1].
342/642	2,013,251 dozen.
345	325,776 dozen.
347/348	1,048,127 dozen.
351/651	425,562 dozen.
363	76,153,055 numbers.
369–S[2]	1,136,224 kilograms.
641	2,343,938 dozen.
647/648	1,361,103 dozen.
Group II	
200, 201, 220, 224–227, 237, 239pt.[3], 300, 301, 331pt.[4], 332, 333, 352, 359pt.[5], 360–362, 603, 604, 611–620, 624–629, 631pt.[6], 633, 638, 639, 643–646, 652, 659pt.[7], 666pt.[8], 845, 846 and 852, as a group	161,513,644 square meters equivalent.

[1] Category 341–Y: only HTS numbers 6204.22.3060, 6206.30.3010, 6206.30.3030 and 6211.42.0054.

[2] Category 369–S: only HTS number 6307.10.2005.

[3] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[4] Category 331pt.: all HTS numbers except 6116.10.1720, 6116.10.4810, 6116.10.5510, 6116.10.7510, 6116.92.6410, 6116.92.6420, 6116.92.6430, 6116.92.6440, 6116.92.7450, 6116.92.7460, 6116.92.7470, 6116.92.8800, 6116.92.9400 and 6116.99.9510.

[5] Category 359pt.: all HTS numbers except 6115.19.8010, 6117.10.6010, 6117.20.9010, 6203.22.1000, 6204.22.1000, 6212.90.0010, 6214.90.0010, 6406.99.1550, 6505.90.1525, 6505.90.1540, 6505.90.2060 and 6505.90.2545.

[6] Category 631pt.: all HTS numbers except 6116.10.1730, 6116.10.4820, 6116.10.5520, 6116.10.7520, 6116.93.8800, 6116.93.9400, 6116.99.4800, 6116.99.5400 and 6116.99.9530.

[7] Category 659pt.: all HTS numbers except 6115.11.0010, 6115.12.2000, 6117.10.2030, 6117.20.9030, 6212.90.0030, 6214.30.0000, 6214.40.0000, 6406.99.1510 and 6406.99.1540.

[8] Category 666pt.: all HTS numbers except 5805.00.4010, 6301.10.0000, 6301.40.0010, 6301.40.0020, 6301.90.0010, 6302.53.0010, 6302.53.0020, 6302.53.0030, 6302.93.1000, 6302.93.2000, 6303.12.0000, 6303.19.0010, 6303.92.1000, 6303.92.2010, 6303.92.2020, 6303.99.0010, 6304.11.2000, 6304.19.1500, 6304.19.2000, 6304.91.0040, 6304.93.0000, 6304.99.6020, 6307.90.9884, 9404.90.8522 and 9404.90.9522.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 2002 shall be charged to the applicable category limits for that year (see directive dated November 23, 2001) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 02–28630 Filed 11–8–02; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Kuwait

November 1, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

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ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 2003.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs Web site at *http://www.customs.gov*. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel Web site at *http://otexa.ita.doc.gov*.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Kuwait and exported during the period January 1, 2003 through December 31, 2003 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the limits for the 2003 period. The 2003 level for Category 361 is zero.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 66 FR 65178, published on December 18, 2001). Information regarding the 2003 CORRELATION will be published in the **Federal Register** at a later date.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 1, 2002.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2003, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in the following categories, produced or manufactured in Kuwait and exported during the twelve-month period beginning on January 1, 2003 and extending through December 31, 2003, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
340/640	449,257 dozen.
341/641	247,092 dozen.
361	–0–

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 2002 shall be charged to the applicable category limits for that year (see directive dated November 14, 2001) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
James C. Leonard III,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 02–28631 Filed 11–8–02; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of an Import Restraint Limit for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Laos

November 1, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit.

EFFECTIVE DATE: January 1, 2003.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs Web site at *http://www.customs.gov*. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel Web site at *http://otexa.ita.doc.gov*.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The Bilateral Textile Agreement of June 23, 2000 between the Governments of the United States and the Lao People's Democratic Republic, establishes a limit for Categories 340/640 for the period January 1, 2003 through December 31, 2003.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 2003 limit for Categories 340/640.

This limit may be revised if Laos becomes a member of the World Trade Organization (WTO) and the United States applies the WTO agreement to Laos.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 66 FR 65178, published on December 18, 2001). Information regarding the 2003 CORRELATION will be published in the **Federal Register** at a later date.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 1, 2002.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Bilateral Textile Agreement of June 23, 2000 between the Governments of the United States and the Lao People's Democratic Republic, you are directed to prohibit, effective on January 1, 2003, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in Categories 340/640, produced or manufactured in Laos and exported during the twelve-month period beginning on January 1, 2003 and extending through December 31, 2003, in excess of 203,613 dozen.

The limit set forth above is subject to adjustment pursuant to the current bilateral agreement between the Governments of the United States and the Lao People's Democratic Republic.

Products in the above categories exported during 2002 shall be charged to the applicable category limit for that year (see directive dated November 14, 2001) to the extent of any unfilled balance. In the event the limit established for that period has been exhausted by previous entries, such products shall be charged to the limit set forth in this directive.

This limit may be revised if Laos becomes a member of the World Trade Organization (WTO) and the United States applies the WTO agreement to Laos.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
James C. Leonard III,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 02–28633 Filed 11–8–02; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textiles and Textile Products Produced or Manufactured in Macau

November 1, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 2003.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs Web site at *http://www.customs.gov*. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel Web site at *http://otexa.ita.doc.gov*.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Macau and exported during the period January 1, 2003 through December 31, 2003 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 2003 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 66 FR 65178, published on December 18, 2001). Information regarding the 2003 CORRELATION will be published in the **Federal Register** at a later date.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 1, 2002.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2003, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in Macau and exported during the twelve-month period beginning on January 1, 2003 and extending through December 31, 2003, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
Levels in Group I	
219	4,150,451 square meters.
225	14,526,576 square meters.
313	10,376,125 square meters.
314	1,729,354 square meters.
315	5,188,063 square meters.
317	10,376,125 square meters.
326	4,150,451 square meters.
333/334/335	476,671 dozen of which not more than 252,810 dozen shall be in Categories 333/335.
336	107,921 dozen.
338	629,945 dozen.
339	2,638,608 dozen.
340	596,241 dozen.
341	384,563 dozen.
342	173,973 dozen.
345	106,382 dozen.
347/348	1,482,180 dozen.
351	139,101 dozen.
359–C/659–C [1]	695,902 kilograms.
359–V [2]	231,969 kilograms.
611	4,150,451 square meters.
625/626/627/628/629	10,376,125 square meters.
633/634/635	1,036,211 dozen.
638/639	3,202,734 dozen.
640	229,427 dozen.
641	275,673 dozen.
642	224,878 dozen.
645/646	537,802 dozen.
647/648	1,084,906 dozen.
659–S [3]	231,969 kilograms.
Group II 400–414, 433–438, 440–448, 459pt. [4] and 469pt. [5], as a group	1,664,826 square meters equivalent.
Sublevel in Group II 445/446	89,813 dozen.

[1] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[2] Category 359–V: only HTS numbers 6103.19.2030, 6103.19.9030, 6104.12.0040, 6104.19.8040, 6110.20.1022, 6110.20.1024, 6110.20.2030, 6110.20.2035, 6110.90.9044, 6110.90.9046, 6201.92.2010, 6202.92.2020, 6203.19.1030, 6203.19.9030, 6204.12.0040, 6204.19.8040, 6211.32.0070 and 6211.42.0070.

[3] Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010, and 6211.12.1020.

[4] Category 459pt.: all HTS numbers except 6115.19.8020, 6117.10.1000, 6117.10.2010, 6117.20.9020, 6212.90.0020, 6214.20.0000, 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505 and 6406.99.1560.

[5] Category 469pt.: all HTS numbers except 5601.29.0020, 5603.94.1010, 6304.19.3040, 6304.91.0050, 6304.99.1500, 6304.99.6010, 6308.00.0010 and 6406.10.9020.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 2002 shall be charged to the applicable category limits for that year (see directive dated November 27, 2001) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

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In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements,

[FR Doc. 02–28632 Filed 11–8–02; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATIONS OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Oman

November 1, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 2003.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs Web site at *http://www.customs.gov*. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel Web site at *http://otexa.ita.doc.gov*.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Oman and exported during the period January 1, 2003 through December 31, 2003 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish limits for the 2003 period.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 66 FR 65178, published on December 18, 2001). Information regarding the 2003 CORRELATION will be published in the **Federal Register** at a later date.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 1, 2002.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2003, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in the following categories, produced or manufactured in Oman and exported during the twelve-month period beginning on January 1, 2003 and extending through December 31, 2003, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
334/634	181,571 dozen.
335/635	367,276 dozen.
338/339	762,099 dozen.
340/640	367,276 dozen.
341/641	275,456 dozen.
347/348	1,313,011 dozen.
647/648	519,245 dozen.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 2001 shall be charged to the applicable category limits for that year (see directive dated November 23, 2001) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 02–28634 Filed 11–8–02; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Pakistan

November 1, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 2003.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs Web site at *http://www.ustreas.gov*. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel Web site at *http://otexa.ita.doc.gov*.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Pakistan and exported during the period January 1, 2003 through December 31, 2003 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 2003 limits.

Carryforward that has been applied to the 2002 limits is being deducted from the 2003 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 66 FR 65178, published on December 18, 2001). Information regarding the availability of the 2003 CORRELATION will be published in the **Federal Register** at a later date.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 1, 2002.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2003, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in the following categories, produced or manufactured in Pakistan and exported during the twelve-month period beginning on January 1, 2003 and extending through December 31, 2003, in excess of the following limits:

Category	Twelve-month restraint limit
Specific limits	
219	13,954,600 square meters.
226/313	188,607,522 square meters.
237	678,700 dozen.
239pt.[1]	2,931,125 kilograms.
314	10,148,798 square meters.
315	120,194,128 square meters.
317/617	54,537,940 square meters.
331pt./631pt.[2]	1,022,761 dozen pairs.
334/634	461,009 dozen.
335/635	711,937 dozen.
336/636	814,442 dozen.
338	6,812,771 dozen.
339	2,307,030 dozen.
340/640	1,085,922 dozen of which not more than 407,220 dozen shall be in Categories 340–D/640–D[3].
341/641	1,404,911 dozen.
342/642	604,660 dozen.
347/348	1,278,241 dozen.
351/651	591,218 dozen.
352/652	1,285,258 dozen.
359–C/659–C[4]	2,443,324 kilograms.
360	8,258,650 numbers.
361	9,603,080 numbers.
363	63,368,762 numbers.
369–S[5]	1,177,195 kilograms.
613/614	37,346,020 square meters.
615	39,729,801 square meters.
625/626/627/628/629	122,191,123 square meters of which not more than 61,095,563 square meters shall be in Category 625; not more than 61,095,563 square meters shall be in Category 626; not more than 61,095,563 square meters shall be in Category 627; not more than 12,640,462 square meters shall be in Category 628; and not more than 61,095,563 square meters shall be in Category 629.
638/639	816,663 dozen.
647/648	1,548,362 dozen.
666–P[6]	1,130,546 kilograms.
666–S[7]	5,985,245 kilograms.

[1] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[2] Category 331pt.: all HTS numbers except 6116.10.1720, 6116.10.4810, 6116.10.5510, 6116.10.7510, 6116.92.6410, 6116.92.6420, 6116.92.6430, 6116.92.6440, 6116.92.7450, 6116.92.7460, 6116.92.7470, 6116.92.8800, 6116.92.9400 and 6116.99.9510; Category 631pt.: all HTS numbers except 6116.10.1730, 6116.10.4820, 6116.10.5520, 6116.10.7520, 6116.93.8800, 6116.93.9400, 6116.99.4800, 6116.99.5400 and 6116.99.9530.

[3] Category 340–D: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2025 and 6205.20.2030; Category 640–D: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2030, 6205.30.2040, 6205.90.3030 and 6205.90.4030.

[4] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[5] Category 369–S: only HTS number 6307.10.2005.

[6] Category 666–P: only HTS numbers 6302.22.1010, 6302.22.1020, 6302.22.2010, 6302.32.1010, 6302.32.1020, 6302.32.2010 and 6302.32.2020.

[7] Category 666–S: only HTS numbers 6302.22.1030, 6302.22.1040, 6302.22.2020, 6302.32.1030, 6302.32.1040, 6302.32.2030 and 6302.32.2040.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 2002 shall be charged to the applicable category limits for that year (see directive dated December 4, 2001) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.02–28636 Filed 11–8–02; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Poland

November 1, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 2003.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs Web site at *http://www.customs.gov*. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel Web site at *http://otexa.ita.doc.gov*.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Poland and exported during the period January 1, 2003 through December 31, 2003 are based on the limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the

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Commissioner of Customs to establish the limits for the 2003 period.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 66 FR 65178, published on December 18, 2001). Information regarding the 2003 CORRELATION will be published in the **Federal Register** at a later date.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 1, 2002.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2003, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Poland and exported during the twelve-month period beginning on January 1, 2003 and extending through December 31, 2003, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
335	328,108 dozen.
338/339	3,533,491 dozen.
410	2,934,044 square meters.
433	20,719 dozen.
434	11,301 dozen.
435	14,788 dozen.
443	246,460 numbers.
611	10,099,479 square meters.
645/646	517,405 dozen.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 2002 shall be charged to the applicable category limits for that year (see directive dated November 29, 2001) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
James C. Leonard III,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 02–28635 Filed 11–8–02; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Qatar

November 1, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 2003.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs Web site at *http://www.customs.gov*. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel Web site at *http://otexa.ita.doc.gov*.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Qatar and exported during the period January 1, 2003 through December 31, 2003 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the limits for the 2003 period.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 66 FR 65178, published on December 18, 2001). Information regarding the 2003 CORRELATION will be published in the **Federal Register** at a later date.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 1, 2002.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2003, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in the following categories, produced or manufactured in Qatar and exported during the twelve-month period beginning on January 1, 2003 and extending through December 31, 2003, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
340/640	719,855 dozen.
341/641	332,241 dozen.
347/348	819,527 dozen.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 2002 shall be charged to the applicable category limits for that year (see directive dated November 23, 2001) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
James C. Leonard III,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 02–28637 Filed 11–8–02; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of an Import Limit for Certain Wool Textile Products Produced or Manufactured in Russia

November 1, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit.

EFFECTIVE DATE: January 1, 2003.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs Web site at *http://www.customs.gov*. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel Web site at *http://otexa.ita.doc.gov*.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The Bilateral Textile Agreement, effected by exchange of notes dated August 13, 1996 and September 9, 1996, as amended on February 26, 2001, and April 30, 2001, between the Governments of the United States and the Russian Federation establishes a limit for wool textile products in Category 435 for the period January 1, 2003 through December 31, 2003.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the limit for the period January 1, 2003 through December 31, 2003.

This limit may be revised if Russia becomes a member of the World Trade Organization (WTO) and the United States applies the WTO agreement to Russia.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 66 FR 65178, published on December 18, 2001). Information regarding the availability of the 2003 CORRELATION will be published in the **Federal Register** at a later date.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 1, 2002.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Bilateral Textile Agreement, effected by exchange of notes dated August 13, 1996 and September 9, 1996, as amended on February 26, 2001, and April 30, 2001, between the Governments of the United States and the Russian Federation, you are directed to prohibit, effective on January 1, 2003, entry into the United States for consumption and withdrawal from warehouse for consumption of wool textile products in Category 435, produced or manufactured in Russia and exported during the period beginning on January 1, 2003 and extending through December 31, 2003, in excess of 57,435 dozen. [1]

Products in the above category exported during 2002 shall be charged to the applicable category limit for that year (see directive dated November 23, 2001) to the extent of any unfilled balance. In the event the limit established for that period has been exhausted by previous entries, such products shall be charged to the limit set forth in this directive.

This limit may be revised if Russia becomes a member of the World Trade Organization (WTO) and the United States applies the WTO agreement to Russia.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C.553(a)(1).

Sincerely,
James C. Leonard III,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.02–28641 Filed 11–8–02; 8:45 am]

BILLING CODE 3510–DR–S

[1] The limit set forth above is subject to adjustment pursuant to the current bilateral agreement between the Governments of the United States and the Russian Federation.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Wool Textile Products Produced or Manufactured in the Slovak Republic

November 1, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 2003.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs Web site at *http://www.customs.gov*. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel Web site at *http://otexa.ita.doc.gov*.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in the Slovak Republic and exported during the period January 1, 2003 through December 31, 2003 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 2003 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 66 FR 65178, published on December 18, 2001). Information regarding the availability of the 2003 CORRELATION will be

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published in the **Federal Register** at a later date.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 1, 2002.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2003, entry into the United States for consumption and withdrawal from warehouse for consumption of wool textile products in the following categories, produced or manufactured in the Slovak Republic and exported during the twelve-month period beginning on January 1, 2003 and extending through December 31, 2003 in excess of the following limits:

Category	Twelve-month restraint limit
410	453,296 square meters.
433	12,660 dozen.
435	19,123 dozen.
443	105,769 numbers.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 2002 shall be charged to the applicable category limits for that year (see directive dated November 29, 2001) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James C. Leonard III,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 02–28638 Filed 11–8–02; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Sri Lanka

November 1, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 2003.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs Web site at *http://www.customs.gov.* For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel Web site at *http://otexa.ita.doc.gov.*

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Sri Lanka and exported during the period January 1, 2003, through December 31, 2003, are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 2003 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 66 FR 65178, published on December 18, 2001). Information regarding the availability of the 2003 CORRELATION will be published in the **Federal Register** at a later date.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 1, 2002.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2003, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in Sri Lanka and exported during the twelve-month period beginning on January 1, 2003 and extending through December 31, 2003, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
237	508,038 dozen.
314	7,584,276 square meters.
331pt./631pt.[1]	1,118,582 dozen pairs.
333/633	95,632 dozen.
334/634	1,120,671 dozen.
335	488,683 dozen.
336/636	655,453 dozen.
338/339	2,241,345 dozen.
340/640	1,877,483 dozen.
341/641	3,090,447 dozen of which not more than 2,060,298 dozen shall be in Category 341 and not more than 2,060,298 dozen shall be in Category 641.
342/642	1,149,404 dozen.
345/845	301,839 dozen.
347/348	1,607,209 dozen.
351/651	579,413 dozen.
352/652	2,390,764 dozen.
359–C/659–C[2]	2,301,864 kilograms.
360	2,528,093 numbers.
363	21,666,305 numbers.
369–S[3]	1,355,537 kilograms.
434	7,961 dozen.
435	17,059 dozen.
440	11,373 dozen.
611	9,901,696 square meters.
635	657,463 dozen.
638/639	1,596,885 dozen.
644	896,536 numbers.
645/646	358,614 dozen.
647/648	1,922,762 dozen.

[1] Category 331pt.: all HTS numbers except 6116.10.1720, 6116.10.4810, 6116.10.5510, 6116.10.7510, 6116.92.6410, 6116.92.6420, 6116.92.6430, 6116.92.6440, 6116.92.7450, 6116.92.7460, 6116.92.7470, 6116.92.8800, 6116.92.9400 and 6116.99.9510; Category 631pt.: all HTS numbers except 6116.10.1730, 6116.10.4820, 6116.10.5520, 6116.10.7520, 6116.93.8800, 6116.93.9400, 6116.99.4800, 6116.99.5400 and 6116.99.9530.

[2] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[3] Category 369–S: only HTS number 6307.10.2005.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 2002 shall be charged to the applicable category limits for that year (see directive dated November 27, 2001) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James C. Leonard III,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 02–28639 Filed 11–8–02; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Taiwan

November 1, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 2003.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs Web site at *http://www.customs.gov.* For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel Web site at *http://otexa.ita.doc.gov.*

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Taiwan and exported during the period January 1, 2003, through December 31, 2003, are based on limits notified to the Textiles Monitoring Body pursuant to the World Trade Organization (WTO) Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 2003 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 66 FR 65178, published on December 18, 2001). Information regarding the 2003 CORRELATION will be published in the **Federal Register** at a later date.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 1, 2002.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2003, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in Taiwan and exported during the twelve-month period which begins on January 1, 2003 and extending through December 31, 2003, in excess of the following levels of restraint:

Category	Twelve-month limit
Group I	
200–221, 224, 225/317/326, 226, 227, 300/301, 313–315, 360–363, 369–S[1], 369–O[2], 400–414, 469pt[3], 603, 604, 611, 613/614/615/617, 618, 619/620, 623, 624, 625/626/627/628/629 and 666pt[4], as a group.	208,779,904 square meters equivalent.
Sublevels in Group I	
218	24,225,320 square meters.
225/317/326	42,999,877 square meters.
226	7,803,105 square meters.
300/301	1,822,223 kilograms of which not more than 1,529,071 kilograms shall be in Category 300; not more than 1,529,071 kilograms shall be in Category 301.
363	12,424,193 numbers.
611	3,491,818 square meters.
613/614/615/617	21,655,906 square meters.
619/620	15,917,426 square meters.
625/626/627/628/629	20,712,332 square meters.
Group I subgroup	
200, 219, 313, 314, 315, 361, 369–S and 604, as a group	157,787,444 square meters equivalent.

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Category	Twelve-month limit
Within Group I subgroup	
200	782,766 kilograms.
219	17,814,979 square meters.
313	69,729,169 square meters.
314	31,733,200 square meters.
315	24,315,719 square meters.
361	1,572,406 numbers.
369–S	496,280 kilograms.
604	244,857 kilograms.
Group II	
237, 239pt[5], 331pt.[6], 332, 333/334/335, 336, 338/339, 340–345, 347/348, 351, 352/652, 359–C/659–C[7], 659–H[8], 359pt.[9], 433–438, 445/446, 447/448, 459pt.[10], 631pt.[11], 633/634/635, 636, 638/639, 640, 641–644, 645/646, 647/648, 651, 659–S[12], 659pt.[13], 846 and 852, as a group.	622,375,380 square meters equivalent.
Sublevels in Group II	
237	764,772 dozen.
239pt.	1,377,982 kilograms.
331pt.	145,092 dozen pairs.
336	130,296 dozen.
338/339	850,500 dozen.
340	1,125,123 dozen.
345	136,144 dozen.
347/348	1,064,931 dozen of which not more than 1,064,931 dozen shall be in Categories 347–W/348–W[14].
352/652	3,456,874 dozen.
359–C/659–C	1,447,633 kilograms.
433	15,943 dozen.
434	11,072 dozen.
435	26,289 dozen.
436	5,235 dozen.
438	29,543 dozen.
440	5,723 dozen.
442	43,939 dozen.
443	44,639 numbers.
444	63,575 numbers.
445/446	139,213 dozen.
633/634/635	1,634,440 dozen of which not more than 959,317 dozen shall be in Categories 633/634 and not more than 850,077 dozen shall be in Category 635.
638/639	6,565,058 dozen.
640	1,058,909 dozen of which not more than 281,710 dozen shall be in Category 640–Y[15].
642	777,133 dozen.
643	531,226 numbers.
644	829,661 numbers.
645/646	4,107,691 dozen.
647/648	5,248,544 dozen of which not more than 5,248,544 dozen shall be in Categories 647–W/648–W[16].
659–H	2,369,431 kilograms.
659–S	1,601,702 kilograms.
Group II Subgroup	
333/334/335, 341, 342, 351, 447/448, 636, 641 and 651, as a group	73,586,613 square meters equivalent.
Within Group II Subgroup	
333/334/335	335,212 dozen of which not more than 181,575 dozen shall be in Category 335.
341	347,702 dozen.
342	217,211 dozen.
351	361,367 dozen.
447/448	21,785 dozen.
636	401,225 dozen.
641	734,405 dozen of which not more than 257,042 dozen shall be in Category 641–Y[17].
651	453,179 dozen.
Group III	
Sublevel in Group III	
845	855,939 dozen.

[1] Category 369–S: only HTS number 6307.10.2005.

[2] Category 369–O: all HTS numbers except 6307.10.2005 (Category 369–S); and 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.22.4020, 4202.22.4500, 4202.22.8030, 4202.32.4000, 4202.32.9530, 4202.92.0505, 4202.92.1500, 4202.92.3016, 4202.92.6091, 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020, 5805.00.3000, 5807.10.0510, 5807.90.0510, 6301.30.0010, 6301.30.0020, 6302.51.1000, 6302.51.2000, 6302.51.3000, 6302.51.4000, 6302.60.0010, 6302.60.0030, 6302.91.0005, 6302.91.0025, 6302.91.0045, 6302.91.0050, 6302.91.0060, 6303.11.0000, 6303.91.0010, 6303.91.0020, 6304.91.0020, 6304.92.0000, 6305.20.0000, 6306.11.0000, 6307.10.1020, 6307.10.1090, 6307.90.3010, 6307.90.4010, 6307.90.5010, 6307.90.8910, 6307.90.8945, 6307.90.9882, 6406.10.7700, 9404.90.1000, 9404.90.8040 and 9404.90.9505 (Category 369pt.).

[3] Category 469pt.: all HTS numbers except 5601.29.0020, 5603.94.1010, 6304.19.3040, 6304.91.0050, 6304.99.1500, 6304.99.6010, 6308.00.0010 and 6406.10.9020.

[4] Category 666pt.: all HTS numbers except 5805.00.4010, 6301.10.0000, 6301.40.0010, 6301.40.0020, 6301.90.0010, 6302.53.0010, 6302.53.0020, 6302.53.0030, 6302.93.1000, 6302.93.2000, 6303.12.0000, 6303.19.0010, 6303.92.1000, 6303.92.2010, 6303.92.2020, 6303.99.0010, 6304.11.2000, 6304.19.1500, 6304.19.2000, 6304.91.0040, 6304.93.0000, 6304.99.6020, 6307.90.9884, 9404.90.8522 and 9404.90.9522.

[5] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[6] Category 331pt.: all HTS numbers except 6116.10.1720, 6116.10.4810, 6116.10.5510, 6116.10.7510, 6116.92.6410, 6116.92.6420, 6116.92.6430, 6116.92.6440, 6116.92.7450, 6116.92.7460, 6116.92.7470, 6116.92.8800, 6116.92.9400 and 6116.99.9510.

[7] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[8] Category 659–H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

[9] Category 359pt.: all HTS numbers except 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010 (Category 359–C); 6115.19.8010, 6117.10.6010, 6117.20.9010, 6203.22.1000, 6204.22.1000, 6212.90.0010, 6214.90.0010, 6406.99.1550, 6505.90.1525, 6505.90.1540, 6505.90.2060 and 6505.90.2545.

[10] Category 459pt.: all HTS numbers except 6115.19.8020, 6117.10.1000, 6117.10.2010, 6117.20.9020, 6212.90.0020, 6214.20.0000, 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505 and 6406.99.1560.

[11] Category 631pt.: all HTS numbers except 6116.10.1730, 6116.10.4820, 6116.10.5520, 6116.10.7520, 6116.93.8800, 6116.93.9400, 6116.99.4800, 6116.99.5400 and 6116.99.9530.

[12] Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[13] Category 659pt.: all HTS numbers except 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017, 6211.43.0010 (Category 659–C); 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020 (Category 659–S); 6115.11.0010, 6115.12.2000, 6117.10.2030, 6117.20.9030, 6212.90.0030, 6214.30.0000, 6214.40.0000, 6406.99.1510 and 6406.99.1540.

[14] Category 347–W: only HTS numbers 6203.19.1020, 6203.19.9020, 6203.22.3020, 6203.22.3030, 6203.42.4005, 6203.42.4010, 6203.42.4015, 6203.42.4025, 6203.42.4035, 6203.42.4045, 6203.42.4050, 6203.42.4060, 6203.49.8020, 6210.40.9033, 6211.20.1520, 6211.20.3810 and 6211.32.0040; Category 348–W: only HTS numbers 6204.12.0030, 6204.19.8030, 6204.22.3040, 6204.22.3050, 6204.29.4034, 6204.62.3000, 6204.62.4005, 6204.62.4010, 6204.62.4020, 6204.62.4030, 6204.62.4040, 6204.62.4050, 6204.62.4055, 6204.62.4065, 6204.69.6010, 6204.69.9010, 6210.50.9060, 6211.20.1550, 6211.20.6810, 6211.42.0030 and 6217.90.9050.

[15] Category 640–Y: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2050 and 6205.30.2060.

[16] Category 647–W: only HTS numbers 6203.23.0060, 6203.23.0070, 6203.29.2030, 6203.29.2035, 6203.43.2500, 6203.43.3500, 6203.43.4010, 6203.43.4020, 6203.43.4030, 6203.43.4040, 6203.49.1500, 6203.49.2015, 6203.49.2030, 6203.49.2045, 6203.49.2060, 6203.49.8030, 6210.40.5030, 6211.20.1525, 6211.20.3820 and 6211.33.0030; Category 648–W: only HTS numbers 6204.23.0040, 6204.23.0045, 6204.29.2020, 6204.29.2025, 6204.29.4038, 6204.63.2000, 6204.63.3000, 6204.63.3510, 6204.63.3530, 6204.63.3532, 6204.63.3540, 6204.69.2510, 6204.69.2530, 6204.69.2540, 6204.69.2560, 6204.69.6030, 6204.69.9030, 6210.50.5035, 6211.20.1555, 6211.20.6820, 6211.43.0040 and 6217.90.9060.

[17] Category 641–Y: only HTS numbers 6204.23.0050, 6204.29.2030, 6206.40.3010 and 6206.40.3025.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 2002 shall be charged to the applicable category limits for that year (see directive dated December 20, 2001) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

The conversion factors are as follows:

Category	Conversion factors (square meters equivalent/category unit)
333/334/335	33.75
352/652	11.3
359–C/659–C	10.1
633/634/635	34.1
638/639	12.5

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 02–28640 Filed 11–8–02; 8:45 am]

BILLING CODE 3510–DR–S

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities Under OMB Review

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected costs and burden; it includes the actual data collection instruments [if any].

DATES: Comments must be submitted on or before December 12, 2002.

FOR FURTHER INFORMATION CONTACT: Nancy Yanofsky, Division of Market Oversight, U.S. Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581, (202) 418–5292; fax: (202) 418–5527; e-mail: *nyanofsky@cftc.gov* and refer to OMB Control No. 3038–0048.

SUPPLEMENTARY INFORMATION:

Title: Off-Exchange Agricultural Trade Options (OMB Control No. 3038–0048).

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This is a request for extension of a currently approved information collection.

Abstract: Off-Exchange Agricultural Trade Options, OMB Control No. 3038–0048—Extension.

In April 1998, the Commodity Futures Trading Commission (Commission or CFTC) removed the prohibition on off-exchange trade options on the enumerated agricultural commodities subject to a number of regulatory conditions. 63 FR 18821 (April 16, 1998). Thereafter, the Commission streamlined the regulatory or paperwork burdens in order to increase the utility of agricultural trade options while maintaining basic customer protections. 64 FR 68011 (Dec. 6, 1999).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the CFTC's regulations were published on December 30, 1981. *See* 46 FR 63035 (Dec. 30, 1981). The **Federal Register** notice with a 60–day comment period soliciting comments on this collection of information was published on September 26, 2002 (67 FR 60641).

Burden statement: The respondent burden for this collection is estimated to average 5.59 hours per response.

Respondents/Affected Entities: 360.

Estimate number of responses: 411.

Estimated total annual burden on respondents: 2,301 hours.

Frequency of collection: On occasion.

Send comments regarding the burden estimated or any other aspect of the information collection, including suggestions for reducing the burden, to the addresses listed below. Please refer to OMB Control No. 3038–0048 in any correspondence.

Nancy Yanofsky, Division of Market Oversight, U.S. Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581 and Office of Information and Regulatory Affairs, Office of Management and Budget, *Attention:* Desk Officer for CFTC, 725 17th Street, Washington, DC 20503.

Dated: November 5, 2002.

Catherine D. Dixon,

Assistant Secretary of the Commission.

[FR Doc. 02–28580 Filed 11–8–02; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Notice of Availability of a Financial Assistance Solicitation for Cooperative Agreement Proposals

AGENCY: Chicago Operations Office, DOE.

ACTION: Notice of solicitation availability.

SUMMARY: The Department of Energy (DOE) announces its interest in receiving applications for research and development and demonstration in the area of the Advanced Communications and Controls Program (ACCP). The objective of the solicitation is to demonstrate sensing, communication, information and control technologies to achieve a seamless integration of multi-vendor distributed energy resources (DER) units at aggregation levels that meet individual user requirements for facility operations (residential, commercial, industrial, manufacturing, etc.) and further serve as resource options for electric and natural gas utilities.

DATES: Solicitation Number DE–SC02–03CH11139 and any amendments will be available on DOE's "Industry Interactive Procurement System" (IIPS) Web page located at *http://e-center.doe.gov* on or about November 22, 2002. All applications must have an IIPS transmission time stamp of not later than 11:59 A.M. Eastern Time on the date specified in the solicitation, which is expected to be on or about January 31, 2003.

ADDRESSES: Prospective applicants are advised to check the above Internet address on a daily basis. All applications must be submitted through IIPS in accordance with the instructions provided in the solicitation and the IIPS User Guide, which can be obtained by going to the IIPS Secured Services site at *http://e-center.doe.gov* under the "HELP" section of the Web site. Applicants must register in IIPS prior to submitting an application. Only registered users will have the capability to transmit their applications in a responsive manner. Applicants are strongly encouraged to register with IIPS as soon as possible prior to the application deadline. If you need technical assistance in registering or for any other IIPS function, call the IIPS Help Desk at (800) 683–0751 or E-mail the Help Desk personnel at IIPS HelpDesk@e-center.doe.gov. The solicitation will only be made available in IIPS, no hard (paper) copies of the solicitation and related documents will be made available. All applications must have an IIPS transmission time stamp of not later than 11:59 A.M. Eastern Time on the date specified in the solicitation, which is expected to be on or about January 31, 2003. Applicants are advised to begin transmission 24 hours in advance of the deadline in order to prevent any transmission difficulties. The solicitation and any subsequent amendments will be published on the above mentioned Internet address.

FOR FURTHER INFORMATION CONTACT: Kristin E. Palmer, (630) 252–2708.

SUPPLEMENTARY INFORMATION: The scope of work for this cooperative research and development and demonstration solicitation will be in two phases. This solicitation will be for Phase I applications only, but will describe some aspects of possible Phase II awards as reference information. It is DOE's intent to evaluate submitted designs and business plans in Phase I, and support the further testing of only the most promising approaches in Phase II. Phase I activities involve the design and the proof-of-design stage and Phase II involves the demonstration of the Phase I design architecture to a large scale in real-world settings while integrating with the operations of one or more feeder lines. The duration of the Phase I project is estimated to be six months, with the entire project's scope of work—for Phase I and Phase II combined—to be completed within 2.5 years. DOE expects to award about four to six cooperative agreements under this solicitation for Phase I. It is anticipated that two or three of the Phase I applicants will proceed to Phase II. Only Phase I awardees will be eligible for consideration for Phase II. Estimated total DOE funding for Phase I is $1.2M. Subject to the availability of funds, the estimated total of any future DOE funding for Phase II is $1.8M. A minimum non-federal cost sharing commitment of 20% of the total proposed costs for Phase I is required. A minimum non-federal cost sharing commitment of 50% of the total proposed costs for Phase II is required.

The purpose of this solicitation is to invite interested parties to submit an application for cost-shared cooperative agreements with the Department of Energy (DOE) for research and development and demonstration for integrated communication and control solutions that would enable interoperable and integrated operation of large numbers of distributed energy resources from varying suppliers to achieve optimization in power quality, power reliability and economic performance. The fully demonstrated DER aggregation system with embodiment of communication and control technologies will lead to real-time, interactive customer-managed service networks to achieve greater customer value. Any for-profit or non-profit organization or other institution of higher education, or non-federal agency or entity is eligible to apply, unless otherwise restricted by the Simpson-Craig Amendment. Integrated project teams that include electric utilities (investor-owned, municipal, cooperative), energy service companies, DER suppliers, information technology providers and customers who will use the aggregated DER system are highly encouraged. Collaborations with state energy agencies, national laboratories and universities are also encouraged. DOE National Laboratory participation as a subcontractor to an awardee under this solicitation is limited to no more than 20% of the total cost of all tasks to be performed. The solicitation when issued will include a narrative scope of work, program requirements, qualification criteria, evaluation criteria, and other information. Specific response instructions and deadlines will be included in the solicitation package.

Issued in Argonne, Illinois on October 24, 2002.

John D. Greenwood,

Assistant Manager for Acquisition and Assistance.

[FR Doc. 02–28653 Filed 11–8–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Policy Statement; Energy Information Administration Policy for Revisions to the Weekly Natural Gas Storage Report

AGENCY: Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Policy statement. Energy Information Administration policy for revisions to the Weekly Natural Gas Storage Report.

SUMMARY: The EIA has established a policy for revisions to weekly estimates of working gas volumes held in underground storage facilities at the national and regional levels disseminated in EIA's Weekly Natural Gas Storage Report (WNGSR). Under this policy, revisions shall be disseminated in the WNGSR according to the established schedule and shall occur when the effect of reported changes is at least 7 billion cubic feet (Bcf) at either a regional or national level. Revisions shall not be disseminated outside the established schedule. EIA is deferring temporarily further updates in estimation parameters, and is exploring ways to minimize revisions, including analysis of the sensitivity of the estimates to parameter changes. EIA will continue with the current estimation parameters and will report revisions as a result of respondent changes only, until further change is announced in the Weekly Natural Gas Storage Report.

DATES: This policy becomes effective on November 12, 2002.

ADDRESSES: Requests for additional information or questions about this policy should be directed to William Trapmann. Mr. Trapmann may be contacted by telephone ((202) 586–6408), fax ((202) 586–4220), or e-mail (*William.Trapmann@eia.doe.gov*). These methods are recommended to expedite contact. His mailing address is Energy Information Administration, EI–44, Forrestal Building, U.S. Department of Energy, Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: The WNGSR is available on EIA's Internet site at *http://tonto.eia.doe.gov/oog/info/ngs/ngs.html*. The survey Form EIA–912 and instructions used to collect information for the WNGSR are available at *http://www.eia.doe.gov/oil_gas/natural_gas/survey_forms/nat_survey_forms.html*.

SUPPLEMENTARY INFORMATION:

I. Background
II. Discussion of Comments
III. Current Actions

I. Background

The Federal Energy Administration Act of 1974 (Pub. L. 93–275, 15 U.S.C. 761 *et seq.*) and the DOE Organization Act (Pub. L. No. 95–91, 42 U.S.C. 7101 *et seq.*) require the EIA to carry out a centralized, comprehensive, and unified energy information program. This program collects, evaluates, assembles, analyzes, and disseminates information on energy resource reserves, production, demand, technology, and related economic and statistical information. This information is used to assess the adequacy of energy resources to meet near and longer term domestic demands.

EIA's Weekly Natural Gas Storage Report (WNGSR) provides weekly estimates of working gas volumes held in underground storage facilities at the national and regional levels. The WNGSR became a new EIA information product in 2002 replacing an American Gas Association (AGA) report begun in 1994 and discontinued in 2002. WNGSR users include policymakers, commodity and financial market analysts, and industry experts. EIA uses the data to prepare analytical products assessing storage operations and the impact on supplies available, and to analyze relationships between demand, heating-degree-days, and inventory levels.

The WNGSR is based on information collected on Form EIA–912, "Weekly Underground Gas Storage Report." Form EIA–912 respondents provide estimates for working gas in storage as of 9 a.m. Friday each week. The deadline for submitting reports to the EIA is 5 p.m. Eastern Time the following Monday, except when Monday is a Federal holiday. In that case, forms should be submitted by 5 p.m. on Tuesday. The WNGSR is released on Thursday between 10:30 and 10:40 a.m. Eastern Time on EIA's Web site (*http://tonto.eia.doe.gov/oog/info/ngs/ngs.html*), except when Thursday is a Federal holiday. Notification of changes in this general schedule is maintained on the EIA Web site at *http://tonto.eia.doe.gov/oog/info/ngs/schedule.html*.

The EIA provides the public and other Federal agencies with opportunities to comment on collections of energy information conducted by EIA. As appropriate, EIA also requests comments on important issues relevant to EIA dissemination of energy information. Comments received help the EIA when preparing information collections and information products necessary to EIA's mission.

On July 11, 2002, EIA issued a **Federal Register** notice (67 FR 45963) requesting public comments on a proposed policy for revisions to information disseminated in the WNGSR. In that notice, EIA discussed the reasons for WNGSR revisions as well as a proposed policy for both scheduled (*i.e.*, the revised information is disseminated in the next scheduled WNGSR) and unscheduled revisions (*i.e.*, the revisions are of such magnitude and interest that revised WNGSR information would be disseminated prior to the next scheduled WNGSR).

II. Discussion of Comments

In response to the **Federal Register** notice requesting comments on the proposed WNGSR revision policy, EIA received 28 sets of comments. Most of the comments were from energy firms and trade groups.

The comments tended to focus on the following general issues for which EIA specifically requested a response:

- Whether EIA should release revised estimates in the Weekly Natural Gas

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Storage Report outside the established schedule.

• The timing and prenotification of unscheduled revisions.

• The appropriateness of the suggested thresholds for revisions—a lower threshold to trigger any revision and a larger one to trigger an unscheduled release of revised estimates.

As to whether EIA should release revisions to the Weekly Natural Gas Storage Report outside the established schedule, 13 respondents indicated that EIA should issue revisions only on the official schedule, while 7 indicated that unscheduled releases were appropriate and the remaining respondents (8) did not express a preference. Most of the respondents who preferred no unscheduled releases expressed concerns that unscheduled releases of revisions would increase market volatility, increase resource costs in managing their analytical efforts, and that not having unscheduled releases would promote fairness and consistency in the marketplace. Most of the respondents who were in favor of unscheduled releases argued that providing the market with the better data more promptly would ensure the accuracy of the storage data and enhance the efficacy of the pricing mechanism by reducing uncertainty in gas markets.

On the timing and prenotification of unscheduled releases, 4 respondents indicated that EIA should not provide early notification, 2 indicated that prenotification was appropriate, and the remaining 22 respondents did not state a preference. As with the question of whether to have unscheduled releases, respondents opposed to pre-notification 24 hours ahead of the release of a revision cited increased price volatility as their major concern. Respondents in favor of prenotification asserted that the early notice would give market participants time to prepare for the new information and help ensure that they would receive the information simultaneously.

With regard to the appropriateness of the suggested thresholds for revisions, most respondents did not explicitly state a preference. The lower threshold of 7 billion cubic feet (Bcf) for revisions that are released according to the established schedule was considered appropriate by seven respondents, and one respondent recommended a threshold of 1 Bcf. No other opinions regarding the lower threshold were expressed.

For revisions released outside the regular schedule, the large threshold of 35 Bcf was considered appropriate by three respondents, and three respondents recommended thresholds in the 20-to-25 Bcf range. Those who recommended larger thresholds for unscheduled revisions sought to minimize the number of revisions that EIA would have to make, while those who suggested smaller thresholds generally sought to enhance the accuracy of the data.

EIA's Response to Comments Received

Comments regarding the revision policy. EIA finds that the comments on the issue of unscheduled releases of revisions are thoughtful and reflect the nature of the tradeoff in developing a revision policy: the benefit of having the most accurate data immediately available versus the costs of this immediacy. While the costs to market participants to monitor for and react to unscheduled releases of revisions on an ongoing basis seem clear and may be substantial, the benefits of providing out-of-cycle revisions are not as clear or measurable. Market participants would have to undertake the costs of monitoring for the possibility of an unscheduled release each week, regardless of whether there actually is a revision. However, benefits of an out-of-cycle release would accrue only when there is an out-of-cycle release. Furthermore, while the likelihood of a revision of 35 Bcf or more cannot be known, it may be highly unlikely given that such a large revision only occurred once in the more than 8-year history of the AGA weekly storage survey. Thus, the benefits of unscheduled releases are likely outweighed by the ongoing costs and other costs associated with an unexpected release.

Other costs of instituting an unscheduled release policy likely include ensuring that all market participants receive the information simultaneously and increased market volatility. By its very nature, unscheduled releases make ensuring fairness to all market participants problematic, because market participants will likely not learn of a revision at the same time. It was suggested to institute a set day and time for out-of-cycle revisions, however this does not eliminate the burden for the market participants who will have to monitor EIA for a possible revision. Additionally, a prenotification to inform market participants of an upcoming revision would give an advantage to the individuals who hear about the upcoming revision first, as they may be able to infer the direction of the revision and anticipate its effect on prices. Markets react to news, and volatility appears to be a function of the news. Price volatility is the dynamic process of price adjustment as markets react to news and digest the ramifications of the news on prices. Each new announcement that EIA makes about the market-moving storage number will likely be accompanied by attendant price volatility. As an independent, policy neutral, statistical agency, it seems prudent for EIA to adopt an unobtrusive stance, and to minimize the number of announcements that it makes regarding new weekly storage data.

Additional comments on other issues. Some respondents submitted comments on issues related to the Weekly Natural Gas Storage Report for which EIA did not specifically request a response. In general, these comments fell into two broad categories: concerns about enforcement and penalties for bad data, and suggested methodological changes to the survey and estimation.

With regard to enforcement and penalties for bad data, EIA would like to reassure those respondents that the EIA–912, "Weekly Underground Natural Gas Storage Report," is mandatory under Pub. L. 93–275. Failure to comply may result in criminal fines, civil penalties, and other sanctions as provided by law. Title 18 U.S.C 1001 makes it a criminal offense for any person knowingly and willingly to make to any Agency or Department of the United States any false, fictitious, or fraudulent statements as to any matter within its jurisdiction.

EIA conducts due diligence in confirming that the data submitted are accurate and of high quality. In fact, these data quality efforts resulted in a number of revisions in the early weeks of the survey. The resolution of difficulties typical of any new survey often required resubmission of an entire series of data reports from respondents, which resulted in revised estimates. It is important to note that these resubmissions of respondent information occurred at the request of EIA to improve data quality. Except for the requested resubmissions, respondents have rarely submitted adjustments to previous data.

EIA believes that the initial start-up problems have been resolved. In the first 10 weeks that EIA issued weekly storage reports, five revisions were issued, but only one revision was necessary in the following 15 weeks through October 24, 2002. Reasons for revisions in monthly and weekly data include resolution of:

• Companies' reporting responsibilities for their field operations; *e.g.*, fields included in company submissions did not coincide with EIA's specifications.

• Questions about how joint operations of a field should be reported; *e.g.*, companies did not always report on all gas contained in a field, instead only on the volumes they owned.

• Questions about whether gas should be identified as base or working; *e.g.*, some respondents inadvertently reported total gas volumes rather than working gas volumes.

Methodological comments included a recommendation that the EIA–912 should be a census rather than a sample survey, suggestions on smoothing the estimation parameters when shifting reference months, and increasing the level of significant digits that respondents should include when reporting their data. A sample survey was chosen instead of a census, because a census would have increased respondent burden substantially without providing significantly more accuracy than a sample survey. EIA's objective in selection of the sample was to attain a coefficient of variation less than or equal to 5 percent in the estimates for each region. This was attained without imposing the additional cost and burden of a census on respondents. EIA currently is reviewing its methodology and investigating the possibility of using different smoothing and estimation methods. EIA is deferring temporarily further updates in estimation parameters, and is exploring ways to minimize revisions, including analysis of the sensitivity of the estimates to parameter changes. EIA will continue with the current estimation parameters and will report revisions as a result of respondent changes only, until further notice. The methodology may change when the analysis effort has been completed. Any changes to the current methodology will be announced in the WNGSR and suitable documentation will be posted on the EIA Internet Website.

III. Current Actions

EIA is establishing a policy for revisions to information disseminated in the WNGSR. With respect to the treatment of revisions to WNGSR data, EIA had proposed a policy that covered the release of information under two different scenarios : (1) Releasing any revisions only with the release of the regularly scheduled WNGSR, and (2) including relatively small volume revisions (*i.e.*, between 7 Bcf and 35 Bcf) with the regularly scheduled release and conducting unscheduled releases of major revisions of 35 Bcf or greater.

The comments received in response to the **Federal Register** notice did not produce a clear consensus on issues raised. However EIA used the comments to reach certain conclusions regarding a proper revision policy. A plurality of respondents indicated that 7 Bcf is an appropriate threshold to trigger revisions to previously published estimates. EIA has begun statistical analyses to explore further the issue of the size for the threshold that would trigger a revision, and to evaluate the current estimation methodology. However, in the interim, 7 Bcf will be retained as the active threshold.

EIA proposed a 35 Bcf threshold to trigger unscheduled releases of revisions because it is roughly equivalent to one standard deviation of the working gas in storage estimate that prevailed in the early weeks of the WNGSR when stock estimates and the associated standard deviations are expected to be around their lowest level. The suggestions from respondents on specific thresholds seemed to be drawn from judgment based on industry experience and did not seem to have an empirical basis.

Nonetheless, a plurality of respondents opposed the notion of unscheduled releases of revised estimates. In light of these comments and without an empirical basis on which to institute an unscheduled release policy, EIA decided that it would not be prudent to do so at this time. EIA also considered the possibility of maintaining the discretion to disseminate an unscheduled revision if the organization decides that events may warrant it. However, as a policy neutral organization, EIA recognizes that a plan to exercise this discretion with the market-moving storage series could be more disruptive than beneficial.

EIA WNGSR revisions policy. Scheduled revisions shall be disseminated in the WNGSR according to the established schedule and shall occur when the effect of reported changes is at least 7 billion cubic feet (Bcf) at either a regional or national level. If a revision is made, changes to all regions shall be recorded. Consequently, although all respondents' changes shall be entered into EIA's database for editing, imputation, and other analytic purposes, the changes shall only lead to a published revision when it exceeds the 7 Bcf threshold. Revisions shall not be disseminated on an unscheduled basis.

EIA reserves the right to revisit or amend this policy. However, EIA shall not issue unscheduled revisions or establish a new revision policy without prior notification in the Weekly Natural Gas Storage Report or the **Federal Register.**

Statutory Authority: Section 52 of the Federal Energy Administration Act (Pub. L. No. 93–275, 15 U.S.C. 790a).

Issued in Washington, DC, November 4, 2002.

Nancy J. Kirkendall,

Director, Statistics and Methods Group, Energy Information Administration.

[FR Doc. 02–28652 Filed 11–8–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC02–520–001, FERC–520]

Commission Information Collection Activities, Proposed Collection; Comment Request; Submitted for OMB Review

November 4, 2002.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice.

SUMMARY: In compliance with the requirements of Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507, the Federal Energy Regulatory Commission (Commission) has submitted the information collection described below to the Office of Management and Budget (OMB) for review and extension of the current expiration date. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission received no comments in response to an earlier **Federal Register** notice of August 16, 2002 (67 FR 54410-54412) and has noted this fact in its submission to OMB.

DATES: Comments on the collection of information are due by December 3, 2002.

ADDRESSES: Address comments on the collection of information to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Federal Energy Regulatory Commission Desk Officer, 725 17th Street, NW., Washington, DC 20503. The Desk Officer may be reached by telephone at 202–395–7856. A copy of the comments should also be sent to the Federal Energy Regulatory Commission, Office of the Chief Information Officer, CI–1, Attention: Michael Miller, 888 First Street NE., Washington, DC 20426. Comments may be filed either in paper format or electronically. Those persons filing electronically do not need to make a paper filing. For paper filings, such

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comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE. Washington, DC 20426 and refer to Docket No. IC02–520–001.

Documents filed electronically via the Internet must be prepared in WordPerfect, MS Word, Portable Document Format, or ASCII format. To file the document, access the Commission's Web site at *http://www.ferc.gov* and click on "Make an E-filing," and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgment to the sender's E-mail address upon receipt of comments. User assistance for electronic filings is available at 202–208–0258 or by e-mail to *efiling@ferc.fed.us*. Comments should not be submitted to the e-mail address.

All comments may be viewed, printed or downloaded remotely via the Internet through FERC's homepage using the FERRIS link. User assistance for FERRIS is available at 202–502–8222, or by e-mail to *contentmaster@ferc.fed.us*.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202) 502–8415, by fax at (202)208–2425, and by e-mail at *michael.miller@ferc.gov*.

SUPPLEMENTARY INFORMATION:

Description

The information collected and submitted for OMB review contains:

1. *Collection of Information*: FERC–520 "Application for Authority to Hold Interlocking Directorate Positions".

2. *Sponsor*: Federal Energy Regulatory Commission.

3. *Control No.* 1902–0083.

The Commission is now requesting that OMB approve a three-year extension of the current expiration date, with no changes to the existing collection. This is a mandatory information collection requirement and the Commission does not consider the information to be confidential.

4. *Necessity of the Collection of Information*: Submission of the information is necessary to enable the Commission to carry out its responsibilities in implementing the statutory provisions of the Federal Power Act (FPA.), Section 305(b), 16 U.S.C. 825(d), and 825(j). Section 305(b) makes the holding of certain defined interlocking corporate positions unlawful, unless the Commission has authorized the interlocks to be held. The information submitted by the applicant to show in a form and manner as prescribed by the Commission, that neither public nor private interests will be adversely affected by the holding of the position. The Commission implements these filing requirements in the Code of Federal Regulations (CFR) under 18 CFR part 45.

Under part 45 each person that desires to hold an interlocking position (Interlocking Directorates are defined as a number of separately organized and functioning corporations managed by the same or nearly the same group of directors) must submit an application to the Commission for authorization, or if qualified, comply with the requirements for automatic authorization. The information required under Part 45 generally identifies the applicant, describes the various interlocking positions the applicant seeks authorization to hold, provides information on the applicant's financial interests, other officers and directors of the firms involves, and the nature of the business relationships among the firms.

The Commission uses the information as part of its interlocking directorate oversight and enforcement responsibilities in accordance with the FPA and with FERC's regulations as referenced above. Without this information, the FERC would be unable to examine and approve or deny interlocking directorates of public utility officers and directors. The FERC may employ enforcement proceedings when violations occur.

5. *Respondent Description*: The respondent universe currently comprises (on average) 28 entities subject to the Commission's jurisdiction.

6. *Estimated Burden*: 1,450 total hours, 28. respondents(average), 1 response per respondent annually, 51.8 hours per response (average).

7. *Estimated Cost Burden to respondents*: $81,591 (28 respondents x $117,041 2080). The cost per respondent = $2,914 (rounded off).

Statutory Authority: Sections 305 of the Federal Power Act, 16 U.S.C. 825(d).

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–28583 Filed 11–8–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC02–598–001, FERC–598]

Commission Information Collection Activities, Proposed Collection; Comment Request; Submitted for OMB Review

November 5, 2002.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice.

SUMMARY: In compliance with the requirements of Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507, the Federal Energy Regulatory Commission (Commission) has submitted the information collection described below to the Office of Management and Budget (OMB) for review and extension of the current expiration date. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission received no comments in response to an earlier **Federal Register** notice of August 22, 2002 (67 FR 54412) and has noted this fact in its submission to OMB.

DATES: Comments on the collection of information are due by December 4, 2002.

ADDRESSES: Address comments on the collection of information to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Federal Energy Regulatory Commission Desk Officer, 725 17th Street, NW., Washington, DC 20503. The Desk Officer may be reached by telephone at 202–395–7856. A copy of the comments should also be sent to the Federal Energy Regulatory Commission, Office of the Chief Information Officer, CI–1, Attention: Michael Miller, 888 First Street NE., Washington, DC 20426. Comments may be filed either in paper format or electronically. Those persons filing electronically do not need to make a paper filing. For paper filings, such comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE. Washington, DC 20426 and refer to Docket No. IC02–598–001.

Documents filed electronically via the Internet must be prepared in WordPerfect, MS Word, Portable Document Format, or ASCII format. To file the document, access the Commission's Web site at *http://www.ferc.gov* and click on "Make an E-filing," and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgment to the sender's E-mail address upon receipt of comments. User assistance for electronic filings is available at 202–208–0258 or by e-mail to *efiling@ferc.fed.us*. Comments should not be submitted to the e-mail address.

All comments may be viewed, printed or downloaded remotely via the Internet through FERC's homepage using the FERRIS link. User assistance for FERRIS is available at 202–502–8222, or by e-mail to *contentmaster@ferc.fed.us*.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202)502–8415, by fax at (202)208–2425, and by e-mail at *michael.miller@ferc.gov*.

SUPPLEMENTARY INFORMATION:

Description

The information collected and submitted for OMB review contains:

1. *Collection of Information:* FERC–598 "Determination for Entities Seeking Exempt Wholesale Generator Status".

2. *Sponsor:* Federal Energy Regulatory Commission..

3. Control No. 1902–0166.

The Commission is now requesting that OMB approve a three-year extension of the current expiration date, with no changes to the existing collection. This is a mandatory information collection requirement and the Commission does not consider the information to be confidential.

4. *Necessity of the Collection of Information:* Submission of the information is necessary to enable the Commission to carry out its responsibilities in implementing the statutory provisions of Section 32 of the Public Utility Holding Company Act of 1935 (PUHCA), as amended by Section 711 of the Energy Policy Act of 1992, Pub.L. 102–486. Section 32(a) of PUHCA defines an Exempt Wholesale Generator (EWG) as an individual determined by the Commission to be engaged directly or indirectly through one or more affiliates, and exclusively in the business of owning and/or operating all or part of eligible facilities and selling electric energy at wholesale. An eligible facility may include interconnecting transmission facilities necessary to effect wholesale power sales.

Persons granted EWG status will be exempt from regulation under PUHCA. The Commission implements these filing requirements in the Code of Federal Regulations (CFR) under 18 CFR part 365.

The information is collected by the Commission in the form of a written application for determination of status as an EWG. These applications are reviewed by the Commission in order to assess as to whether the applicant meets the statutory requirements for EWG status. Without this information, the FERC would be unable to meet it statutory obligations and make the appropriate determinations.

5. *Respondent Description:* The respondent universe currently comprises (on average) 112 entities subject to the Commission's jurisdiction

6. *Estimated Burden:* 672 total hours, 112 respondents(average), 1 response per respondent annually, 6 hours per response (average).

7. *Estimated Cost Burden to respondents:* $37,813 (112 respondents × $117,041 2080). The cost per respondent = $338 (rounded off).

Statutory Authority: Section 32 of the Public Utility Holding Company Act, 15 U.S.C. 79 *et seq.*

Magalie R. Salas,

Secretary.

[FR Doc. 02–28731 Filed 11–8–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–52–000]

Algonquin Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

November 4, 2002.

Take notice that on October 31, 2002, Algonquin Gas Transmission Company (Algonquin) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, Thirteenth Revised Sheet No. 40, to become effective on December 1, 2002.

Algonquin is filing to revise its Fuel Reimbursement Percentages (FRPs) for the calendar period beginning December 1, 2002, pursuant to Section 32 of the General Terms and Conditions of its FERC Gas Tariff. Algonquin states that, based on the latest actual annual data for Company Use Gas and throughput quantities for the twelve month period ending July 31, 2002, the FRP for the Winter period has increased by 0.8%, and by 0.06% for the non-Winter period.

Algonquin further states that it is submitting the calculation of the deferral allocation pursuant to Section 32.5(c) which provides that Algonquin will calculate surcharges or refunds designed to amortize the net monetary value of the balance in the FRQ Deferred Account at the end of the previous accumulation period.

Algonquin states that, for the period August 1, 2001 through July 31, 2002, the FRQ Deferred Account resulted in a net debit balance that will be recovered as a surcharge to Algonquin's customers, based on the allocation of the account balance over the actual throughput quantities during the accumulation period, exclusive of backhauls.

Algonquin states that copies of this filing were mailed to all affected customers of Algonquin and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–28599 Filed 11–8–02; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–51–000]

CenterPoint Energy—Mississippi River Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

November 4, 2002.

Take notice that on October 31, 2002, CenterPoint Energy—Mississippi River Transmission Corporation (MRT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, to be effective December 1, 2002.

MRT states that the purpose of this filing is to revise its tariff to make certain changes primarily of a "housekeeping" nature and also to change references to its name to reflect its new name, CenterPoint Energy—Mississippi River Transmission Corporation.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–28598 Filed 11–8–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–465–001]

CMS Trunkline Gas Company, LLC; Notice of Compliance Filing

November 4, 2002.

Take notice that on October 30, 2002, CMS Trunkline Gas Company, LLC (Trunkline) tendered for filing as part of its FERC Gas Tariff, Second revised volume no. 1, Sub second revised sheet no. 314, to become effective October 1, 2002.

Trunkline states that this filing is being made to comply with the Commission's letter order dated September 30, 2002, in Docket No. RP02–465–000 which requires Trunkline to remove standard 2.3.30 from section 28.6 of the general terms and conditions of its tariff.

Trunkline states that copies of this filing are being served on all jurisdictional customers, interested state regulatory agencies and parties to this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–28592 Filed 11–8–02; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–49–000]

CMS Trunkline Gas Company, LLC.; Notice of Credit Report

November 4, 2002.

Take notice that on October 31, 2002, CMS Trunkline Gas Company, LLC. (Trunkline) tendered for filing its Annual Interruptible Storage Revenue Credit Surcharge Adjustment in accordance with Section 24 of the General Terms and Conditions of its FERC Gas Tariff, Second Revised Volume No. 1.

Trunkline states that the purpose of this filing is to comply with Section 24 of the General Terms and Conditions of its FERC Gas Tariff, Second Revised Volume No. 1 which requires that at least 30 days prior to the effective date of adjustment, Trunkline shall make a filing with the Commission to reflect the adjustment, if any, required to Trunkline's Base Transportation Rates to reflect the result of the Interruptible Storage Revenue Credit Surcharge Adjustment. Trunkline further states that due to no interruptible storage activity, no adjustment is required to Base Transportation Rates.

Trunkline states that copies of this filing are being served on all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed on or before November 12, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–28596 Filed 11–8–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–446–001]

CMS Trunkline LNG Company, LLC; Notice of Compliance Filing

November 4, 2002.

Take notice that on October 30, 2002, CMS Trunkline LNG Company, LLC (TLNG) tendered for filing as part of its FERC Gas Tariff, First revised volume no. 1–A, Sub 1st rev first revised sheet no. 125, to become effective October 1, 2002.

TLNG states that this filing is being made to comply with the Commission's letter order dated September 30, 2002, in Docket No. RP02–446–000 which requires TLNG to remove standard 2.3.30 from section 21.6 of the general terms and conditions of its tariff.

TLNG states that copies of this filing are being served on all jurisdictional customers, interested state regulatory agencies and parties to this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–28591 Filed 11–8–02; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP00–326–003, RP00–605–003, and RP02–39–004]

Columbia Gulf Transmission Company; Notice of Compliance Filing

November 1, 2002.

Take notice that on October 28, 2002, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, revised tariff sheets, listed in Appendix A, to the filing.

Columbia Gulf states that this filing is made to revise various tariff sheets filed in Docket No. RP00–326–000 on July 31, 2001 pursuant to Order No. 637 and Order No. 637–A in compliance with the Commission's September 26, 2002 Order (100 FERC ¶ 61,344).

Columbia Gulf states that copies of its filing have been mailed to all parties on the official service list of this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–28582 Filed 11–8–02; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–54–000]

Distrigas of Massachusetts LLC; Notice of Proposed Changes in FERC Gas Tariff

November 4, 2002.

Take notice that on October 31, 2002, Distrigas of Massachusetts LLC (DOMAC) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Fourteenth Revised Sheet No. 94, to become effective December 1, 2002.

DOMAC states that the purpose of this filing is to record semiannual changes in DOMAC's index of customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions

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on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–28601 Filed 11–8–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–50–000]

Enbridge Pipelines (KPC); Notice of Proposed Changes in FERC Gas Tariff

November 4, 2002.

Take notice that on October 31, 2002, Enbridge Pipelines (KPC) (KPC) tendered for filing to as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, to be made effective December 1, 2002.

KPC states that the purpose of the filing is to reflect the annual increase of $329,200 effective November 1, 2002 pursuant to Exhibit D of the Transok Lease as provided for in Section 15 of the General Terms and Conditions of its FERC Gas Tariff.

KPC states that copies of its transmittal letter and appendices have been mailed to all affected customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–28597 Filed 11–8–02; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–47–000]

Gulf South Pipeline Company, LP; Notice of Proposed Changes in FERC Gas Tariff

November 4, 2002.

Take notice that on October 31, 2002, Gulf South Pipeline Company, LP (Gulf South tendered for filing as part of its FERC Gas Tariff, Sixth revised volume no. 1, First revised sheet no. 902; Original sheet no. 903; Reserved sheet nos. 904–999; Third revised sheet no. 1709; and Second revised sheet no. 1710, to become effective December 1, 2002.

Gulf South states that this filing establishes a minimum volume threshold for new receipt and delivery points. This filing also requires that receipt points with volumes below a certain volume threshold to install certain equipment to ensure that pipeline quality gas is delivered to Gulf South.

Gulf South states that copies of this filing have been served upon Gulf South's customers, state commissions and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–28594 Filed 11–8–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–48–000]

Gulf South Pipeline Company, LP; Notice of Proposed Changes to FERC Gas Tariff

November 4, 2002.

Take notice that on October 31, 2002, Gulf South Pipeline Company, LP (Gulf South) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1 the following tariff sheets, to become effective December 1, 2002:

First Revised Sheet No. 101
Second Revised Sheet No. 301
Second Revised Sheet No. 1411
Second Revised Sheet No. 1412
First Revised Sheet No. 1413
First Revised Sheet No. 1414
Third Revised Sheet No. 1415
Second Revised Sheet No. 3702
First Revised Sheet No. 3704
First Revised Sheet No. 3710

Gulf South is proposing to remove prepayment requirements from its tariff related to requests for new transportation service.

Gulf South states that copies of this filing have been served upon Gulf South's customers, state commissions and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be

taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–28595 Filed 11–8–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–466–001]

Panhandle Eastern Pipe Line Company; Notice of Compliance Filing

November 4, 2002.

Take notice that on October 30, 2002, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing as part of its FERC Gas Tariff, First revised volume no. 1, Sub eleventh revised sheet no. 339, to become effective October 1, 2002.

Panhandle states that this filing is being made to comply with the Commission's letter order dated September 30, 2002, in Docket No. RP02–466–000 which requires Panhandle to remove NAESB standard 2.3.30 from section 27.6 of the general terms and conditions of its tariff.

Panhandle states that copies of this filing are being served on all jurisdictional customers, interested state regulatory agencies and parties to this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–28593 Filed 11–8–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–445–001]

Sea Robin Pipeline Company; Notice of Compliance Filing

November 4, 2002.

Take notice that on October 30, 2002, Sea Robin Pipeline Company (Sea Robin) tendered for filing as part of its FERC Gas Tariff, First revised volume no. 1, the following revised tariff sheets to become effective October 1, 2002:

Sub eighth revised sheet no. 30a
First revised sheet no. 30b
Sub tenth revised sheet no. 95

Sea Robin states that this filing is being made to comply with the Commission's letter order dated September 30, 2002, in Docket No. RP02–445–000 which requires Sea Robin to fully incorporate standard 1.3.2 on Sheet no. 30a and to remove standard 2.3.30 from section 28.1 of the general terms and conditions of its tariff.

Sea Robin states that copies of this filing are being served on all jurisdictional customers, interested state regulatory agencies and parties to this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–28590 Filed 11–8–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–53–000]

Southern LNG Inc.; Notice of Proposed Changes to FERC Gas Tariff

November 4, 2002.

Take notice that on October 31, 2002, Southern LNG Inc. (SLNG) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Fifth Revised Sheet No. 5, and Fifth Revised Sheet No. 6, with an effective date of December 1, 2002.

SLNG states that the revised sheets are being filed in accordance with Section 24.2 of SLNG's Tariff to reflect changes in the electric power cost adjustment (EPCA) in SLNG's rates. SLNG proposes an EPCA rate of $0.0352/Dth.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings.

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Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–28600 Filed 11–8–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–426–009]

Texas Gas Transmission Corporation; Notice of Compliance Filing

November 4, 2002.

Take notice that on October 30, 2002, Texas Gas Transmission Corporation (Texas Gas) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Fifth Revised Sheet No. 40, to become effective October 1, 2002.

Texas Gas states that the purpose of this filing is to reflect a non-conforming amendment to a service agreement in its tariff as required by Section 154.112(b) of the Commission's regulations.

Texas Gas states that copies of the revised tariff sheet are being mailed to the parties on the official service list for this docket number, Texas Gas's jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–28589 Filed 11–8–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–288–028]

Transwestern Pipeline Company; Notice of Negotiated Rate

November 4, 2002.

Take notice that on October 31, 2002, Transwestern Pipeline Company (Transwestern) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets to become effective November 1, 2002:

Nineteenth Revised Sheet No. 5B.05
Original Sheet No. 5B.13

Transwestern states that the above sheets are being filed to implement a specific negotiated rate agreement with Dynegy Marketing and Trade accordance with the Commission's Policy Statement on Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines. Transwestern states that the above referenced tariff sheets have been revised to reflect the new negotiated rate contract information.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–28588 Filed 11–8–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–55–000]

Wyoming Interstate Company, Ltd.; Notice of Tariff Filing

November 4, 2002.

Take notice that on October 31, 2002, Wyoming Interstate Company, Ltd. (WIC), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 2, Tenth Revised Sheet No. 4B, to become effective December 1, 2002.

WIC states that the tendered tariff sheet revises the fuel charges applicable to transportation service on WIC's system.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–28602 Filed 11–8–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–2317–001, et al.]

Delano Energy Company, Inc., et al.; Electric Rate and Corporate Regulation Filings

November 4, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Delano Energy Company, Inc.

[Docket No. ER02–2317–001]

Take notice that on October 30, 2002, Delano Energy Company, Inc. Tendered for filing with the Federal Energy Regulatory Commission (Commission) a refund report in compliance with a letter order dated August 30, 2002 issued in the above-proceeding.

Comment Date: November 20, 2002.

2. Southwest Power Pool, Inc.

[Docket Nos. ER02–2367–001]

Take notice that on October 28 2002, Southwest Power Pool, Inc. (SPP) submitted for filing a compliance filing required by the Federal Energy Regulatory Commission's (Commission) September 27, 2002 Order issued in the proceeding listed above. Southwest Power Pool, Inc., 100 FERC ¶61,358 (2002).

Comment Date: November 18, 2002.

3. CenterPoint Energy Houston Electric,

[LLC Docket No. ER02–2555–001]

Take notice that on October 30, 2002, CenterPoint Energy Houston Electric, LLC (CenterPoint Houston) tendered for filing with the Federal Energy Regulatory Commission (Commission) an errata to its September 16, 2002, filing of a revised Transmission Service Tariff for Transmission Service To, From and Over Certain Interconnection (TFO Tariff) in the captioned proceeding, adding the word "Energy" in the name of CenterPoint Energy Houston Electric, LLC, to Section 1.3 on Original Sheet No. 7 of the revised TFO Tariff (CenterPoint Houston's FERC Electric Tariff, Fifth Revised Volume No. 1).

Comment Date: November 20, 2002.

4. Pacific Gas and Electric Company

[Docket No. ER03–94–000]

Take notice that on October 30, 2002, Pacific Gas and Electric Company (PG&E) submitted an information package and annual rate update filing, including rate schedule sheet revisions, to become effective January 1, 2003, for its Reliability Must-Run Service Agreements (RMR Agreements) with the California Independent System Operator Corporation (ISO) for Helms Power Plant, Humboldt Bay Power Plant, Hunters Point Power Plant and San Joaquin Power Plant. The filing revises portions of these rate schedules and adjusts the applicable rates as required under the RMR Agreements.

Copies of PG&E's filing have been served upon the ISO, the California Electricity Oversight Board, and the California Public Utilities Commission.

Comment Date: November 20, 2002.

5. American Electric Power Service Corporation

[Docket No. ER03–95–000]

Take notice that on October 30, 2002, the American Electric Power Service Corporation (AEPSC), tendered for filing with the Federal Energy Regulatory Commission (Commission) Specifications for Long-Term Firm PTP Transmission Service for Duke Energy Trading and Marketing, L.L.C. These agreements are pursuant to the AEP Companies' Open Access Transmission Tariff (OATT) that has been designated as the Operating Companies of the American Electric Power System FERC Electric Tariff Third Revised Volume No. 6.

AEPSC requests waiver of notice to permit the Specifications for Long-Term Firm PTP Transmission Service to be effective on and after June 1, 2002.

A copy of the filing was served upon the Parties and the state utility regulatory commissions of Arkansas, Indiana, Kentucky, Louisiana, Michigan, Ohio, Oklahoma, Tennessee, Texas, Virginia and West Virginia.

Comment Date: November 20, 2002.

6. Ameren Services Company

[Docket No. ER03–96–000]

Take notice that on October 30, 2002, Ameren Services Company (ASC) tendered for filing with the Federal Energy Regulatory Commission (Commission) an executed Firm Point-to-Point Transmission Services between ASC and Ameren Energy, Inc. ASC asserts that the purpose of the Agreement is to permit ASC to provide transmission service to Ameren Energy, Inc. pursuant to Ameren's Open Access Transmission Tariff.

Comment Date: November 20, 2002.

7. Ameren Services Company

[Docket No. ER03–97–000]

Take notice that on October 30, 2002, Ameren Services Company (ASC) tendered for filing with the Federal Energy Regulatory Commission (Commission) an unexecuted Firm Point-to-Point Transmission Services between ASC and Cinergy Services Inc. acting as agent for Southwestern Electric Cooperative, Inc. ASC asserts that the purpose of the Agreement is to permit ASC to provide transmission service to Cinergy Services Inc. acting as agent for Southwestern Electric Cooperative, Inc. pursuant to Ameren's Open Access Transmission Tariff.

Comment Date: November 20, 2002.

8. West Penn Power Company (dba Allegheny Power)

[Docket No. ER03–98–000]

Take notice that on October 30, 2002, West Penn Power Company, dba Allegheny Power, filed Addenda to its Electric Service Agreement with PPL Electric Utilities Corporation, formerly Pennsylvania Power & Light Company, to add three delivery points. An effective date for the new delivery points of October 31, 2002 is requested.

Copies of the filing have been provided to the customer, the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, and the West Virginia Public Service Commission.

Comment Date: November 20, 2002.

9. Just Energy New York Texas, LLC

[Docket No. ER03–99–000]

Take notice that on October 30, 2002, Just Energy New York, LLC (Just Energy

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New York) tendered for filing with the Federal Energy Regulatory Commission (Commission) a petition for acceptance of Just Energy New York Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations.

Just Energy New York intends to engage in wholesale electric power and energy purchases and sales as a marketer. Just Energy New York is not in the business of generating or transmitting electric power. Just Energy New York sells electricity to customers in various deregulated states.

Comment Date: November 20, 2002.

10. Just Energy Texas, LLC

[Docket No. ER03–100–000]

Take notice that on October 30, 2002, Just Energy Texas, LLC (Just Energy Texas) petitioned the Commission for acceptance of Just Energy Texas Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations.

Just Energy Texas intends to engage in wholesale electric power and energy purchases and sales as a marketer. Just Energy Texas is not In the business of generating or transmitting electric power. Just Energy Texas sells electricity to customers in various deregulated states.

Comment Date: November 20, 2002.

11. Premier Energy Marketing L.L.C.

[Docket No. ER03–101–000]

Take notice that on October 30, 2002, Premier Energy Marketing L.L.C. (PEM) tendered for filing with the Federal Energy Regulatory Commission (Commission) a petition for acceptance of PEM Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations.

PEM intends to engage in wholesale electric power and energy purchases and sales as a marketer. PEM is not in the business of generating or transmitting electric power. PEM is owned by its officers and Everest Energy Management LLC which is engaged in oil and gas production and independent power production.

Comment Date: November 20, 2002.

12. Idaho Power Company

[Docket No. ER03–102–000]

Take notice that on October 30, 2002, Idaho Power Company (Idaho Power) tendered for filing an Agreement for Load Following Services (Agreement) between North Western Energy, L.L.C. (NWE) and Idaho Power, dated October 15, 2002. Idaho Power seeks an effective date of January 1, 2003 for the Agreement. Included in the filing was a Certificate of Concurrence executed by NWE assenting to the filing of the Agreement.

Comment Date: November 20, 2002.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–28729 Filed 11–8–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER02–2338–000 and ER02–2338–001]

Energy Investments Management, Inc.; Notice of Issuance of Order

November 5, 2002.

Energy Investments Management, Inc. (EIM) submitted for filing a petition requesting that the Commission grant EIM the authority to sell electricity at market-based rates and to engage in wholesale electric power and energy transactions as a marketer. EIM also requested waiver of various Commission regulations. In particular, EIM requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by EIM.

On October 18, 2002, pursuant to delegated authority, the Director, Office of Markets, Tariffs and Rates-East, granted requests for blanket approval under Part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by EIM should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request to be heard in opposition within this period, EIM is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of EIM, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of EIM's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is November 18, 2002.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. This order is available for review at the Commission or may be viewed on the Commission's web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 02–28730 Filed 11–8–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–59–000]

Horizon Pipeline Company, L.L.C.; Notice of Proposed Changes in FERC Tariff

November 5, 2002.

Take notice that on November 1, 2002, Horizon Pipeline Company, L.L.C. (Horizon) tendered for filing to become part of its FERC Gas Tariff, Original Volume No. 1, Original Sheet No. 195A, to be effective December 2, 2002.

Horizon states that the purpose of this filing is to revise the provisions of the General Terms and Conditions in its Tariff relating to capacity releases where the releasing Shipper is not creditworthy.

Horizon states that copies of the filing are being mailed to Horizon's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 02–28734 Filed 11–8–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11797–000]

Grande Pointe Power Corporation; Notice of Availability of Environmental Assessment

November 4, 2002.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission (Commission or FERC) regulations contained in the Code of Federal Regulations (CFR) (18 CFR part 380 [FERC Order No. 486, 52 FR 47897]), the Office of Energy Projects staff (staff) reviewed the application for an original minor license for the Three Rivers Project, located on the St. Joseph River in the city of Three Rivers, St. Joseph County, Michigan, and has prepared an environmental assessment (EA) for the project. In this EA, the staff has analyzed the potential environmental effects of the existing project and concluded that licensing the project, with staff's recommended measures, would not constitute a major federal action significantly affecting the quality of the human environment.

A copy of the EA is available for review at the Commission in the Public Reference Room, or it may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number, excluding the last three digits in the docket number field, to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659.

Any comments should be filed within 45 days from the date of this notice and should be addressed to Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please affix "Three Rivers Project No. 11797-000," to all comments. For further information, please contact Sean Murphy at (202) 502–6145 or at *sean.murphy@ferc.gov*.

Comments may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the "e-Filing" link. The Commission strongly encourages electronic filings.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–28586 Filed 11–8–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1494–244]

Notice of Application to Amend License and Soliciting Comments, Motions to Intervene, and Protests

November 4, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type*: Non-project use of project lands and waters.

b. *Project No.*: 1494–244.

c. *Date Filed*: September 30, 2002.

d. *Applicant*: Grand River Dam Authority (GRDA).

e. *Name of Project*: Pensacola Dam.

f. *Location*: The project is located on the Grand (Neosho) River in Craig, Delaware, Mayes, and Ottawa Counties, Oklahoma. The project does not occupy any Federal or tribal lands. The proposed non-project use would be located in Ketchum Cove on Grand Lake O' The Cherokees in Section 2, Township 23 North, Range 21 East, in Mayes County.

g. *Filed Pursuant to*: Federal Power Act 16 U.S.C. 791(a)-825(r)

h. *Applicant Contact*: Mary Von Drehle or Teresa Hicks, Grand River Dam Authority, P.O. Box 409, Vinita, OK 74301. Phone: (918) 256–5545.

i. *FERC Contact*: Steve Naugle, steven.naugle@ferc.gov, 202–502–6061.

j. *Deadline for filing comments and or motions*: December 6, 2002.

All documents (original and eight copies) should be filed with Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. Please reference "Pensacola Project, FERC Project No.1494–244" on any comments or motions filed.

k. *Description of the Application*: GRDA requests Commission approval to

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permit Terry Frost d/b/a Water Front Development Company (WFDC) to construct 6 docks with 67 boat slips to be used by patrons of a new condominium development known as Colony Cove. GRDA has waived the dock-placement provisions of Artice IV(7) of the Rules and Regulations Governing the Use of Shorelands and Waters of GRDA for WFDC's proposal.

l. *Locations of the Application*: This filing is available for review at the Commission in the Public Reference Room or may viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", sbull I11"RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Mail Stop PJ–12.1, Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–28584 Filed 11–8–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Tendered for Filing With the Commission, Soliciting Additional Study Requests, and Establishing Procedural Schedule for Relicensing and a Deadline for Submission of Final Amendments

November 5, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application*: New Minor License.

b. *Project No.*: 1413–032.

c. *Date Filed*: October 30, 2002.

d. *Applicant*: Fall River Rural Electric Cooperative, Inc.

e. *Name of Project*: Buffalo River (previously Pond's Lodge) Hydroelectric Project.

f. *Location*: On the Buffalo River near it's confluence with the Henry's Fork River, in Fremont, Idaho. The project occupies 9.8 acres of land within the Targhee National Forest.

g. *Filed Pursuant to*: Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact*: Fall River Rural Electric Cooperative, Inc., 1150 North 3400 East, Ashton, Idaho 83420, Tel. # (208) 652–7431, and/or Brent L. Smith, President, Northwest Power Services, Inc, P.O. Box 535, Rigby, Idaho 83442, Tel. # (208) 745–0834.

i. *FERC Contact*: Gaylord Hoisington, (202) 502–8163, *gaylord.hoisington@FERC.gov*.

j. *Cooperating agencies*: We are asking Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing comments described in item k below.

k. Pursuant to Section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

l. *Deadline for filing additional study requests and requests for cooperating agency status*: December 30, 2002.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Additional study requests and requests for cooperating agency status may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site (*http://www.ferc.gov*) under the "e-Filing" link.

m. This application is not ready for environmental analysis at this time.

n. The existing Buffalo River Project consists of: (1) a 142-foot-long by 12-foot-high timber-faced rock-filled diversion dam; (2) a 40-foot-long by 3-foot-high concrete slab spillway with stop logs; (3) a fish passage structure; (4) a concrete intake structure with a 5-foot steel slide gate; (5) a trash rack; (6) a 52-foot-long by 5-foot-diameter concrete encased steel penstock; (7) a 34-foot-long by 22-foot-high masonry block powerhouse containing a 250-kilowatt Bouvier Kaplan inclined shaft turbine; and (8) other appurtenant facilities. The applicant estimates that the total average annual generation would be 1,679 megawatthours.

o. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOlineSuport@ferc.gov*. or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

p. With this notice, we are initiating consultation with the IDAHO STATE HISTORIC PRESERVATION OFFICER (SHPO), as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

q. Procedural schedule and final amendments: The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate.

Issue Acceptance letter, January 2003
Issue Scoping Document 1 for comments, February 2003
Request Additional Information, April 2003
Issue Scoping Document 2, June 2003
Notice of application is ready for environmental analysis, June 2003
Notice of the availability of the draft EA, September 2003
Notice of the availability of the final EA, November 2003
Ready for Commission's decision on the application, March 2004

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Note —The schedule is going to vary depending upon the circumstances of the project (deficiencies, additional information, etc.) *See* Guidance for Publishing Hydro Licensing Schedules.

Magalie R. Salas,

Secretary.

[FR Doc. 02–28732 Filed 11–8–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2454–052]

Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

November 5, 2002.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type*: Amendment of License to Change Project Boundary and Approve Revised Exhibits.

b. *Project No*: 2454–052.

c. *Date Filed*: May 30, 2002, and supplemented on September 10, 2002.

d. *Applicant*: Minnesota Power (MP).

e. *Name of Project*: Sylvan Hydroelectric Project.

f. *Location*: The project is located on the Crow Wing River, in Cass, Crow Wing, and Morrison Counties, Minnesota. The area proposed to be deleted from the project boundary lies entirely within Morrison County.

g. *Filed Pursuant to*:Federal Power Act, 16 U.S.C. 791 (a) 825(r) and 799 and 801.

h. *Applicant Contact*: Bob Bohm, Minnesota Power, P.O. Box 60, Little Falls, MN 56345, (320) 632–2318.

i. *FERC Contact*: Any questions on this notice should be addressed to Mr. Eric Gross at (202) 502–6213, or e-mail address: *eric.gross@ferc.gov*.

j. *Deadline for filing comments and or motions*: December 6, 2002.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. Please include the project number (P–2454–052) on any comments or motions filed.

k. *Description of Request*: MP is proposing to delete from the license 276.50 acres of land within the project boundary and transfer ownership to The Nature Conservancy (TNC). TNC would then trade the land, which borders Camp Ripley, a military base operated by the Minnesota Department of Military Affairs (MDMA), for lands of equal value owned by MDMA and located outside of Camp Ripley. The land will be removed from the project boundary however; MDMA has stated that the former, current, and future uses will not change and that the lands will continue to be open to the public for recreational activities. The campsite near Sylvan Dam will be unaffected by this revision, as it will remain within the revised project boundary, under the ownership of MP.

l. *Locations of the Application*: A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call 1–866–208–3676 or e-mail *FERCONLINESUPPORT@FERC.GOV*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.gov* under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–28733 Filed 11–8–02; 8:45 am]

BILLING CODE 6717–01–P

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Regulations Governing Off-the-Record Communications; Public Notice

November 4, 2002.

This constitutes notice, in accordance with 18 CFR 385.2201(h), of the receipt of exempt and prohibited off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive an exempt or a prohibited off-the-record communication relevant to the merits of a contested on-the-record proceeding, to deliver a copy of the communication, if written, or a summary of the substance of any oral communication, to the Secretary.

Prohibited communications will be included in a public, non-decisional file associated with, but not part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should beccme part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such requests only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication should serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications will be included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of exempt and prohibited off-the-record communications recently received in the Office of the Secretary. These filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659.

EXEMPT

Docket No.	Date filed	Presenter or requester
1. CP01–415–000	10–28–02	Ron Meadows.
2. Project No. 184–065	10–29–02	Dr. Scott Shewbridge.
3. CP02–396–000	11–04–02	Richard Greer.
4. CP02–396–000	11–04–02	Richard Greer.
5. CP02–396–000	11–04–02	Richard Greer.
6. CP02–396–000	11–04–02	Richard Greer.
7. CP02–396–000	11–04–02	Richard Greer/Joanne Wachholder.
8. CP02–396–000	11–04–02	Richard Greer/Joanne Wachholder.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–28587 Filed 11–8–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7406–9]

National Management Measures to Control Nonpoint Source Pollution from Urban Areas—Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; extension of comment period.

SUMMARY: On September 9, 2002 (67 FR 57228), EPA noticed the availability of draft National Management Measures to Control Nonpoint Source Pollution From Urban Areas and requested comments on the draft by December 9, 2002. The purpose of this notice is to extend this comment period to January 15, 2003.

DATES: Written comments on the draft guidance should be submitted to the person listed below by January 15, 2003.

ADDRESSES: Comments should be sent to Rod Frederick, Assessment and Watershed Protection Division (4503–T), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Non-U.S. Postal Service comments should be sent to Rod Frederick, Assessment and Watershed Protection Division, U.S. Environmental Protection Agency, EPA West, Room 7417A, 1301 Constitution Ave., NW., Washington, DC 20004. Faxed comments should be sent to Rod Frederick at (202) 566–1331. Comments can also be emailed to *frederick.rod@epa.gov.*

The complete text of the draft guidance is available on EPA's Internet site on the Nonpoint Source Control Branch homepage at *http://www.epa.gov/owow/nps/urbanmm/index.html.* Copies of the complete draft can also be obtained in electronic or hard copy format by request from Rod Frederick at the above address, by e-mail at *Frederick.Rod@epa.gov,* or by calling (202) 566–1197.

FOR FURTHER INFORMATION CONTACT: Rod Frederick at (202) 566–1197 or e-mail: *frederick.rod@epa.gov.*

Dated: November 4, 2002.

G. Tracy Mehan, III,

Assistant Administrator for Water.

[FR Doc. 02–28694 Filed 11–8–02; 8:45 am]

BILLING CODE 6560–50–M

EXPORT-IMPORT BANK OF THE UNITED STATES

Economic Impact Policy

This notice is to inform the public that the Export-Import Bank of the United States has received an application to guarantee $66 million of mining equipment and other goods and services on behalf of U.S. exporters to a buyer in Uzbekistan. The U.S. exports will enable the Uzbek company to mine 20 tons of gold annually. Virtually all of this new production will be exported from Uzbekistan and sold on the world market. Interested parties may submit comments on this transaction by email to *economic.impact@exim.gov* or by mail to 811 Vermont Avenue, NW., Room 1238, Washington, DC 20571, within 14 days of the date this notice appears in the **Federal Register.**

Helene S. Walsh,

Director, Policy Oversight and Review.

[FR Doc. 02–28569 Filed 11–8–02; 8:45 am]

BILLING CODE 6690–01–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

November 1, 2002.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before December 12, 2002. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judith Boley Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., DC 20554 or via the Internet to *jboley@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith Boley Herman at 202–418–0214 or via the Internet at *jboley@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0207.

Title: Part 11—Emergency Alert System.

Form Nos.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions, state, local or tribal government.

Number of Respondents: 22,000 respondents; 1,144,000 responses.

Estimated Time Per Response: .017 hours—40 hours.

Frequency of Response: On occasion reporting requirement, and recordkeeping requirement.

Total Annual Burden: 38,585 hours.

Total Annual Cost: $8,250,000.

Needs and Uses: Part 11 contains the rules and regulations providing for an Emergency Alert System (EAS). The EAS provides the President with the capability to provide immediate communications and information to the general public at the national, state and local area level during periods of national emergency. The EAS also provides state and local government and the National Weather Service with the capability to provide immediate communications and information to the general public concerning emergency situations posing a threat to life and property. On February 22, 2002, the Commission adopted a Report and Order in EB Docket No. 01–66 (67 FR 18502). This Report and Order amended Part 11 rules to revise the technical and operational requirements for the EAS. Many of these amendments were intended to enhance the capabilities and performance of the EAS during state and local emergencies, which will promote public safety. The Report and Order amended the EAS to make compliance with the EAS requirements less burdensome for broadcast stations, cable systems and wireless cable systems. The Report and Order also eliminated rules which were obsolete or no longer needed. The information is used by FCC staff as part of routine inspections of broadcast stations. Accurate recordkeeping of this data is vital in determining the location and nature of possible equipment failure on the part of the transmitting or receiving entity. Furthermore, since the national level EAS is solely for the President's use, its proper operation must be assured.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–28708 Filed 11–8–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

October 29, 2002.

SUMMARY: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before December 12, 2002. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *lesmith@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at *lesmith@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0688.

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Title: FCC Form 1235, Abbreviated Cost-of-Service Filing for Cable Network Upgrades.

Form Number: FCC 1235.

Type of Review: Extension of a currently approved collection.

Respondents: Business and other for-profit entities; and State, Local or Tribal Governments.

Number of Respondents: 50.

Estimated Time per Response: 10 to 20 hours.

Frequency of Response: On occasion reporting requirements; third party disclosure.

Total Annual Burden: 750 hours.

Total Annual Costs: None.

Needs and Uses: FCC Form 1235 is an abbreviated cost of service filing for significant network upgrades that allows cable operators to justify rate increases related to capital expenditures used to improve rate-related cable services. The FCC Form 1235 is reviewed by the cable operator's respective local franchise authority.

OMB Control Number: 3060–0009.

Title: Application for Consent to Assignment of Broadcast Station Construction Permit or License or Transfer of Control of Corporation Holding Broadcast Station Construction Permit or License.

Form Number: FCC 316.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; not-for-profit institutions; and State, Local, or Tribal Governments.

Number of Respondents: 700.

Estimated Time per Response: 1 hour.

Frequency of Response: On occasion reporting requirements.

Total Annual Burden: 700 hours.

Total Annual Costs: $416,000.

Needs and Uses: FCC Form 316 is required when applying for authority for assignment of a broadcast station construction permit or license, or for consent to transfer control of a corporation holding a broadcast station construction permit or license where there is little change in the relative interest or disposition of its interests; where transfer of interest is not a controlling one; where there is no substantial change in the beneficial ownership of the corporation; where the assignment is less than a controlling interest in a partnership; and where there is an appointment of an entity qualified to succeed to the interest of a deceased or legally incapacitated individual permitee, licensee, or controlling stockholder. In addition, the applicant must notify the FCC when approved transfer of control of a broadcast station construction permit or license has been consummated.

OMB Control Number: 3060–0315.

Title: Sponsorship Identification, Sections 76.1615 and 76.1715.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 450.

Estimated Time per Response: 0.5 hours.

Frequency of Response: Recordkeeping; third party disclosure.

Total Annual Burden: 225 hours.

Total Annual Costs: None.

Needs and Uses: 47 CFR Section 76.1615 states that when cable operators originate cablecasting, they must announce at the time of the telecast who is sponsoring the program, unless the money, service, property, etc., is being furnished in connection with or related to the use of the service or property on the cablecast. In the case of political programming advertising candidates for public office, the sponsor shall be identified with letters equal to or greater than four (4) percent of the vertical picture height that air for not less than four (4) seconds. 47 CFR section 76.1715 states that whenever sponsorship announcements are omitted pursuant to Section 76.1615(f), *i.e.*, "want ads" or classified advertisements sponsored by an individual, the cable operator must maintain a list showing the name, address, and (when available) the telephone number of each advertiser and must make this list publicly available.

OMB Control Number: 3060–0311.

Title: Section 76.54, Significantly Viewed Signals; Method to be Followed for Special Showings.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 12.

Estimated Time per Response: 15 hours.

Frequency of Response: On occasion reporting requirements; third party disclosure.

Total Annual Burden: 180 hours.

Total Annual Costs: None.

Needs and Uses: 47 CFR Section 76.54 requires that notice of an audience survey that is conducted by an organization for significantly viewed signal purposes is to be served on all licensees or permittees of television broadcast stations within whose predicted Grade B contour the cable community or communities are located, and all other system community units, franchisees, franchise applicants in the cable community or communities, and the franchise authority. This notification shall be made at least 30 days prior to the initial survey period and include the name of the survey organization and describe the survey's procedures. The notifications provide an opportunity for interested parties to file objections to the survey's methodology.

OMB Control Number: 3060–0061.

Title: Form 325, Annual Report of Cable Television Systems.

Form Number: FCC 325.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 1,150.

Estimated Time per Response: 2 hours.

Frequency of Response: Annual reporting requirement.

Total Annual Burden: 2,300 hours.

Total Annual Costs: None.

Needs and Uses: FCC Form 325 is used to solicit basic operational information from all cable systems nationwide, including: the operator's name and address; system-wide capacity and frequency information; channel usage; and the number of subscribers. Operators of every operational cable television system are currently required to complete Form 325 to verify, correct, and/or furnish the FCC with the most current information on their respective cable systems.

OMB Control Number: 3060–0423.

Title: Section 73.3588, Dismissal of Petitions to Deny or Withdrawal of Informal Objections.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 50.

Estimated Time per Response: 20 mins. (0.33 hrs.)

Frequency of Response: On occasion reporting requirement; Third party disclosure.

Total Annual Burden: 17 hours.

Total Annual Costs: $42,500.

Needs and Uses: 47 CFR Section 73.3588 requires a petitioner to obtain approval from the FCC to dismiss or withdraw its petition to deny when it is filed against a renewal application and applications for new construction permits, modifications, transfers, and assignments. This request for approval must contain a copy of any written agreement, an affidavit stating that the petitioner has not received any consideration in excess of legitimate and prudent expenses in exchange for dismissing/withdrawing its petition,

and an itemization of the expenses for which it is seeking reimbursement. Each remaining party to any written or oral agreement must submit an affidavit within 5 days of the petitioner's request for approval stating that it has paid no consideration to the petitioner in excess of the petitioner's legitimate and prudent expenses.

OMB Control Number: 3060–0214.

Title: Section 73.3526, Local Public Inspection File of Commercial Stations.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 12,289.

Estimated Time per Response: 1 to 2.5 hours.

Frequency of Response: Recordkeeping; third party disclosure.

Total Annual Burden: 1,379,212 hours.

Total Annual Costs: None.

Needs and Uses: 47 CFR Section 73.3526 requires each licensee/permittee of a commercial AM, FM, or TV broadcast station to maintain a file for public inspection. The contents of the file vary according to type of service and status. The data are used by the public and the FCC staff in field investigations to evaluate information about the station's performance.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–28709 Filed 11–8–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CS Docket No. 01–348; FCC 02–284]

Application of EchoStar Communications Corp. (a Nevada Corp.), General Motors Corp., and Hughes Electronics Corp. (Delaware Corps.)

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the FCC designates for hearing the application of EchoStar, General Motors and Hughes (collectively, the "Applicants") to transfer control of Commission authorizations, including direct broadcast satellite and fixed satellite space station authorizations, earth station authorizations, and other related authorizations to EchoStar Communications Corp. ("New EchoStar"). The Commission concludes that the Applicants have failed to demonstrate that the proposed transaction would not cause anticompetitive and other harms, and have failed to demonstrate that the potential public interest benefits resulting from the transaction would outweigh those harms. Accordingly, pursuant to 47 U.S.C. 309(e) and 409(a), the Commission designates the application for hearing to determine whether the public interest, convenience, and necessity will be served by its grant.

DATES: See **SUPPLEMENTARY INFORMATION** section for document filing dates.

ADDRESSES: Please file documents with the Investigations and Hearing Division, Enforcement Bureau, Federal Communications Commission, Room 3–B431, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Charles W. Kelley, Chief, Investigations and Hearing Division, Enforcement Bureau, at (202) 418–1420.

SUPPLEMENTARY INFORMATION: This is a summary of the Federal Communications Commission's Hearing Designation Order, CS Docket No. 01–348, adopted on October 9, 2002, and released on October 18, 2002. The full text is available for inspection and copying during normal business hours in the FCC Reference Information Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554. It may also be purchased from the Commission's copy contractor, Qualex International, Room CY–B402, 445 12th Street, SW., Washington, DC 20554, telephone (202) 863–2983, facsimile (202) 863-2898, or via e-mail at *qualexint@aol.com*, or may be viewed via the internet at: *http://www.fcc.gov/ Document_Indexes/ Media/2002_index_MB_Order.html*. Alternative formats are available to persons with disabilities by contacting Martha Contee at (202) 418–0260 or TTY (202) 418–2555.

Synopsis of the Order

1. In the Hearing Designation Order ("Order"), the Commission considers the application (the "Application") of EchoStar Communications Corporation ("EchoStar"), General Motors Corporation ("GM"), and Hughes Electronics Corporation ("Hughes") for consent to transfer control of various Commission authorizations, including direct broadcast satellite ("DBS") and fixed satellite space station authorizations, earth station authorizations, and other related authorizations held by their wholly- or majority-owned subsidiaries to EchoStar Communications Corporation ("New EchoStar"). The proposed transaction involves the split-off of Hughes from GM, followed by the merger of the Hughes and EchoStar companies. The proposed merged entity, New EchoStar, would have a new ownership structure and would continue to provide DBS subscription television service under the DirecTV brand name.

2. The merger proposes to combine the two major DBS providers in the United States-EchoStar (marketed as the Dish Network) and DirecTV Holdings, LLC ("DirecTV"), a wholly-owned subsidiary of Hughes, into one single entity. The proposed merged entity, New EchoStar, would have a new ownership structure and would continue to provide DBS subscription television service under the DirecTV brand name. New EchoStar would also acquire Hughes Network Services, Inc. ("HNS") and PanAmSat Corp. EchoStar and Hughes also filed a joint application requesting authority to launch and operate NEW ECHOSTAR 1, a direct broadcast satellite that would be located at the 110° W.L. orbital location (the "Satellite Application"). The Applicants claim that grant of the Satellite Application would allow New EchoStar to offer local broadcast channels in all 210 U.S. Designated Market Areas ("DMAs"). Based on the record, the Commission is unable to find that the public interest, convenience and necessity would be served by the grant of the Merger Application and Satellite Application.

3. The Applicants claim that one of the most important benefits of the proposed merger is the increased ability of DBS operators to compete with cable systems in the multichannel video programming distribution ("MVPD") market by eliminating current duplicative programming. They contend the merger would benefit consumers by increasing available DBS capacity to offer significantly more local-into-local programming, and to expand its offerings of high-definition television ("HDTV") programming, pay-per-view ("PPV"), video-on-demand ("VOD"), interactive television ("ITV"), and broadband satellite Internet services. They claim the merger would ultimately result in improved products, prices and overall quality to consumers. The Applicants also claim that their commitment to price DBS service on a uniform nationwide basis will provide benefits to customers in both urban and rural areas since competition in the most densely populated and heavily contested areas will require that New EchoStar set the national price low enough to compete for new subscribers in these urban areas, consequently

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providing competitive prices to customers in rural areas.

4. The Applicants claim that the proposed merger would allow New EchoStar to provide broadband Internet access service to the country and, thus, more effectively compete with cable's bundled offering of high-speed Internet access and MVPD products and telephone companies' DSL offerings. The Applicants contend that the merger would allow for the timely introduction of nationwide competition in the broadband markets, including rural and underserved areas.

5. Sections 214(a) and 310(d) of the Communications Act of 1934, as amended (the "Communications Act"), 47 U.S.C. 214(a) and 310(d), require the Commission to find that the public interest, convenience and necessity would be served by grant of the Merger Application. We first assess whether the proposed transaction complies with the specific provisions of the Act, other applicable statutes, and the Commission's rules. The public interest standards of 47 U.S.C. 214(a) and 310(d) involve a balancing process that weighs the potential public interest harms against the potential public interest benefits. Our public interest evaluation encompasses the "broad aims of the Communications Act," which includes, among other things, preserving and enhancing competition in relevant markets, ensuring that a diversity of voices is made available to the public, and accelerating private sector deployment of advanced services. In determining the competitive effects of the merger, our analysis is not limited by traditional antitrust principles. The Commission also focuses on whether the merger will accelerate the decline of market power by dominant firms in the relevant communications markets.

6. We find that elimination of one nationwide DBS competitor, without any cognizable evidence of offsetting enhancement of viewpoint diversity, would disserve the Commission's policy goal of viewpoint diversity. In reviewing spectrum policy concerns, we find that allowing one satellite company to control all current U.S. allotted full-CONUS DBS orbital locations is inconsistent with the public interest. The record demonstrates that significant nationwide benefits in the MVPD market have been brought about by the competition between EchoStar and DirecTV. The record shows that consolidating all full-CONUS DBS spectrum with one provider would likely eliminate these benefits to the detriment of consumers, without providing adequate off-setting public interest benefits.

7. The Commission analyzed the potential harms of the proposed merger on competition in the relevant product markets. We first performed a structural analysis considering the relevant product and geographic markets, identifying the market participants, and then examining structural factors that affect the likelihood of competitive harms. The structural analysis suggests that the merger, which reduces the number of competitors from three to two in some markets, and two to one in other markets, would likely result in substantial anticompetitive harms. Under traditional structural antitrust analysis, there appears to be a substantial likelihood that the proposed merger will significantly increase concentration in an already concentrated MVPD market.

8. We find that the merger is likely to lessen competition through unilateral actions by New EchoStar and/or through coordinated interaction among market participants which could result in substantial consumer welfare losses, even assuming realization of all of the cost savings alleged by the Applicants. The record suggests that the services provided by DirecTV and EchoStar are close substitutes, and that in the absence of significant savings in marginal cost, such a loss of facilities-based intramodal competition is likely to harm consumers by eliminating a viable service provider in every market, creating the potential for higher prices and lower service quality, and negatively impacting future innovation.

9. Our analysis indicates that the Applicants' proposed national pricing plan will unlikely remedy the likely competitive harms. National pricing does not mean low pricing and the proposed plan would leave the Applicants free to price discriminate on a targeted basis, particularly with respect to promotions, installation and equipment offers and to discriminate with respect to service quality. In addition, the plan proposes that we approve the replacement of viable facilities-based competition with regulation inconsistent with the Communications Act and our policies and goals. The Act and our policies and goals aim to replace, wherever possible, the regulatory safeguards needed to ensure consumer welfare in communications markets served by a single provider, with free market competition, and particularly with facilities-based competition.

10. We considered the evidence of efficiencies and other public interest benefits that the Applicants claim will result from the merger. We cannot find that the benefits are merger specific, verifiable, or will be able to mitigate anticompetitive effects of the merger. We find that the bulk of the Applicants' promised benefits with respect to MVPD services appear to be either inadequately supported by the data supplied; not merger-specific; achievable through means other than monopoly control over all available full-CONUS DBS spectrum; or are otherwise not cognizable under our public interest standard. Moreover, the Applicants have failed to show that the proposed merger is necessary to achieve many, if not all, of their claimed public interest benefits—they merely allege that it will provide them the means with which to provide these benefits. Our central concern is that with the resulting high degree of concentration in all MVPD markets, the Applicants' incentives to carry through on their promises of enhanced competition will be decreased, rather than increased. Thus, although the Commission fully recognizes the value of having free over-the-air broadcasting service in all 210 DMAs, we do not believe that the merger is more likely to bring satellite delivery of such service than the status quo. Therefore, we cannot give very much weight to the Applicants' proposed benefits.

11. The Applicants' promises of a future Ka-Band broadband satellite product that is competitive on both service quality and price with cable and DSL products would be a significant advance, if these promises were to be realized. However, the proposed merger of the two companies with the strongest incentive and ability to compete for satellite broadband services contradicts the Communications Act's preference for competition. The Applicants' reliance on an economies of scale argument fails to support its claimed benefits arguments.

12. On balance, we cannot find in the record that the Applicants have made a sufficient showing either that the harms from the proposed transaction will be insubstantial or the alleged benefits will outweigh them. Serious questions remain as to whether the proposed transaction would do significant and irreversible damage to competition in several markets without sufficient offsetting and cognizable public interest benefits.

13. We direct the Administrative Law Judge ("ALJ") to prepare an Initial Decision on the following issues:

- *Issue 1:* Whether the proposed transaction is likely to cause anticompetitive harm. In reaching a determination on this issue, the following should be considered: (a) The product market (*e.g.*, whether the relevant product market is MVPD service, DBS service, or some other subset of MVPD service); (b) the geographic market (*e.g.*, whether the proper geographic market is local, and whether, for purposes of analysis, the relevant geographic markets should be aggregated into three categories—markets not served by any cable system; markets served by low-capacity cable systems; markets served by high-capacity cable systems; and the relative number of households in each of these categories) and the number of subscribers per market; (c) the market participants, market shares and concentration; (d) the timeliness, likelihood, and sufficiency of entry to offset any potential adverse competitive effects that may result from the proposed transaction; (e) the effects of the proposed transaction on price, quality and innovation (considering the likelihood of coordinated behavior among competing firms and the ability of the Applicants to unilaterally take anticompetitive actions); (f) the efficacy, potential harms, and potential benefits of Applicants' proposed national pricing plan; (g) the proposed transaction's effect on the ability of multichannel video programmers to reach certain niche audiences; and (h) any conditions proposed by the Applicants.
- *Issue 2:* Whether the proposed transaction is likely to cause other public interest harms. In reaching a determination on this issue, the following should be considered: (a) the proposed transaction's effect on viewpoint diversity; and (b) the proposed transaction's effect on the Commission's spectrum policies.
- *Issue 3:* Whether the proposed transaction is likely to yield any public interest benefits. In reaching a determination on this issue, the following should be considered: (a) whether the cost savings and other benefits claimed by Applicants are non-speculative, credible and transaction-specific and are likely to flow through to the public; and (b) whether the proposed transaction's impact on the provision of Internet access service via satellite is likely to be beneficial or harmful.
- *Issue 4:* On balance, whether the public interest, convenience and necessity would be served by the grant of the Merger Application and the Satellite Application.

14. Pursuant to 47 U.S.C. 309(e), the application for consent to transfer control of various Commission authorizations, including DBS and fixed satellite space station authorizations, earth station authorizations, and other related authorizations held by wholly-or majority-owned subsidiaries of EchoStar Communications Corporation (a Nevada corporation), General Motors Corporation, and Hughes Electronics Corporation to EchoStar Communications Corporation (a Delaware corporation); and the joint application submitted by EchoStar and Hughes requesting authority to launch and operate New Echostar 1, a direct broadcast satellite that would be located at the 110° W.L. orbital location (FCC File No. SAT–LOA–20020225–00023) are designated for hearing. The Hearing shall be at a time and place and in front of an ALJ to be specified in a subsequent Order.

15. Pursuant to 47 U.S.C. 309(e), the burden of proof with respect to the introduction of evidence and the burden of proof with respect to the issues specified in this Order shall be upon GM, Hughes, and EchoStar, the applicant parties in this proceeding.

16. The Commission's Consumer and Government Affairs Bureau, Reference Information Center, shall send copies of this Order to all parties by certified mail, return receipt requested.

17. The Chief, Enforcement Bureau, shall be a party to the designated hearing.

18. A copy of each document filed in this proceeding subsequent to the date of adoption of this Order shall be served on the counsel of record appearing on behalf of the Chief, Enforcement Bureau. Parties may inquire as to the identity of such counsel by calling the Investigations and Hearings Division of the Enforcement Bureau at (202) 418–1420. Such service shall be addressed to the named counsel of record, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 3–B431, Washington, D.C. 20554.

19. Within 30 days of the mailing of this Order pursuant to paragraph 16 above, the parties may file an amended application with the Commission to ameliorate the competition concerns identified in this Order and may also file a petition to suspend the hearing pending review of the amended application.

20. To avail themselves of the opportunity to be heard, GM, Hughes, and EchoStar, pursuant to 47 CFR 1.221(c) and 1.221(e), in person or by their respective attorneys, shall file in triplicate, a written appearance, stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order. Such written appearance shall be filed within 20 days of the mailing of this Order pursuant to paragraph 16 above. Pursuant to 47 CFR 1.221(c), if the parties fail to file an appearance within the specified time period, the applications will be dismissed with prejudice for failure to prosecute.

21. The National Rural Telecommunications Cooperative; American Cable Association; Northpoint Technology, Ltd.; National Association of Broadcasters; Pegasus Communications Corp.; The Word Network; Johnson Broadcasting, Inc. and Johnson Broadcasting of Dallas, Inc.; Family Stations, Inc. and North Pacific International Television, Inc.; Communication Workers of America; Paxson Communications Corp.; Carolina Christian Television, Inc. and LeSea Broadcasting Corporation; Univision Communications, Inc.; Eagle III Broadcasting, LLC; and Brunson Communications, Inc., are made parties to the proceeding pursuant to 47 CFR 1.221(d). To avail themselves of the opportunity to be heard, pursuant to 47 CFR 1.221(e), each of these parties, in person or by its attorneys, shall file in triplicate, a written appearance, stating its intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order. Such written appearance shall be filed within 20 days of this Order becoming effective pursuant to paragraph 16 above. Such written appearance must also be accompanied by the fee specified in 47 CFR 1.1107 or be accompanied by a deferral request pursuant to 47 CFR 1.1117. If any of these parties fails to file an appearance within the time specified, it shall, unless good cause for such failure is shown, forfeit its hearing rights.

22. Pursuant to 47 CFR 1.223, any person seeking to participate as a party in the hearing may file a petition to intervene. Such petition shall be filed within 30 days of the full text or a summary of this Order being published in the **Federal Register**. Such petition to intervene must either establish, under oath, that a person is a party in interest, in which case the petition shall be granted; or such petition must set forth the interest of petitioner in the proceedings, show how such petitioner's participation will assist the Commission in the determination of the issues in question, set forth any proposed issues in addition to those already designated for hearing, and be accompanied by the affidavit of a person with knowledge as to the facts set forth in the petition, in which case the ALJ may grant or deny the petition to intervene, and may limit intervention to a particular stage or stages of the proceeding, in his or her discretion. Pursuant to 47 CFR 1.225, no person shall be precluded from providing any relevant, material and competent testimony at the hearing because he or she lacks sufficient interest to justify intervention as a party.

23. The application for transfer of control of the licenses and authorizations at issue in this proceeding will be held in abeyance pending the outcome of this proceeding.

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Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–28581 Filed 11–8–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. AUC–02–32–H (Auction No. 32); DA 02–2757]

Additional Information Required for Completion of FCC Form 175 and Exhibits for Auction No. 32; Auction of Construction Permits for New AM Broadcast Stations Scheduled for December 10, 2002

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document supplements a public notice released November 19, 1999, which announced a five-day period for the filing of applications for new AM stations and major modifications to authorized AM stations. The document informs applicants of additional information for incorporation as part of their short-form application (FCC form 175) for Auction No. 32.

DATES: Auction No. 32 applicants must file the additional information identified in this document by 6 p.m. e.t. on Monday, October 28, 2002. Auction No. 32 is scheduled to begin on December 10, 2002.

FOR FURTHER INFORMATION CONTACT: Kenneth Burnley at the Auctions and Industry Analysis Division, Wireless Telecommunications Bureau at (202) 418–0660.

SUPPLEMENTARY INFORMATION: This is a summary of a public notice released by the Wireless Telecommunications Bureau on October 21, 2002. The complete text of the public notice, including the attachment, is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The October 21, 2002, public notice may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2898, or via e-mail *qualexint@aol.com*.

1. The Media Bureau ("MB") and the Wireless Telecommunications Bureau ("WTB") (collectively, "Bureaus") supplement the "*Auction No. 32 Filing Window Public Notice*" released November 19, 1999, which announced a five-day period for the filing of applications for new AM stations and major modifications to authorized AM stations. This document informs applicants that they must submit additional information for incorporation as part of their short-form application (FCC form 175) for Auction No. 32. The applicants, listed in attachment A of the October 21, 2002, public notice, must file the additional information identified below by 6 p.m. eastern time on Monday, October 28, 2002. The following instructions are provided for filing this additional information.

I. Provisions Regarding Defaulters and Former Defaulters (Form 175 Exhibit F)

2. Part 1 of the Commission's rules requires each applicant to certify on its FCC form 175 application that neither it nor its controlling interest holders or affiliates is in default on any Commission license and that they are not delinquent on any non-tax debt owed to any Federal agency. In addition, the Commission's rules, as amended by the "*Part 1 Fifth Report and Order*," 65 FR 52323 (August 29, 2000), require each applicant to attach to its FCC form 175 application a statement made under penalty of perjury indicating whether or not the applicant, or any of the applicant's controlling interests or their affiliates, as defined by § 1.2110 of the Commission's rules, have ever been in default on any Commission license or have ever been delinquent on any non-tax debt owed to any federal agency. See 47 CFR 1.2105(a)(2)(xi).

3. The applicants identified in attachment A of the October 21, 2002, public notice must include this statement as exhibit F of their FCC form 175 for Auction No. 32 and MUST submit this exhibit by electronic mail no later than 6 p.m. eastern time on Monday, October 28, 2002, at the following address: auction32@fcc.gov. The exhibit F must be in the form of an attachment to the electronic mail and formatted as an Adobe® Acrobat® (pdf) or Microsoft® Word document.

4. If any of an applicant's controlling interest holders or affiliates, as defined by § 1.2110 of the Commission's rules, have ever been in default on any Commission license or have ever been delinquent on any non-tax debt owed to any Federal agency, the applicant must include such information as part of the same attached statement. Applicants are reminded that the statement must be made under penalty of perjury and, further, submission of a false certification to the Commission is a serious matter that may result in severe penalties, including monetary forfeitures, license revocations, exclusion from participation in future auctions, and/or criminal prosecution.

5. "Former defaulters"—i.e., applicants, including their attributable interest holders, that in the past have defaulted on any Commission licenses or been delinquent on any non-tax debt owed to any Federal agency, but that have since remedied all such defaults and cured all of their outstanding non-tax delinquencies—will be eligible to bid in Auction No. 32, provided that they are otherwise qualified. However, former defaulters are required to pay upfront payments that are fifty percent more than the normal upfront payment amounts. See 47 CFR 1.2106(a).

II. FCC Registration Number Required To Log On to the FCC Auction 175 Application & Search System

6. Bidders are reminded that they are required to send their FCC Registration Number (FRN) to the FCC Operations Group by 5 p.m. eastern time on Friday, October 25, 2002. To do this, applicants must include the entity name, Taxpayer Identification Number (TIN), and FRN in an e-mail to auction32@fcc.gov or fax to Kathryn Garland at (717) 338–2850. This information must be received by 5 p.m. eastern time on Friday, October 25, 2002.

7. Use of an FRN is mandatory for all filers logging on to the FCC Auctions 175 Application & Search system. To obtain an FRN, an applicant must register its TIN using the Commission Registration System (CORES). To access CORES, point a web browser to the FCC Auctions page at *http://wireless.fcc.gov/auctions/* and click the CORES link under Related Sites. Next, follow the directions provided to register and receive your FRN. Applicants need to be sure to retain this number and password and keep such information strictly confidential.

Federal Communications Commission.

Margaret Wiener,

Chief, Auctions and Industry Analysis Division, WTB.

[FR Doc. 02–28706 Filed 11–8–02; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

[WC Docket No. 02–60; DA 02–2954]

Announcement of Opening of Year 2003 Funding Year Window for E-Rate Applications and the Release of FCC Forms 470 and 471 With Instructions for Funding Year 2003

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces the release of FCC Forms 470 and 471 and the accompanying instructions. These forms are to be used by applicants seeking discounts under the schools and libraries universal service support mechanism. FCC Form 471 has been updated to allow for computerized scanning. In addition, minor technical corrections and clarifications have been made. Copies of the forms and instructions are included in the attachments.

FCC Forms 470 and 471 with accompanying instructions for Funding Year 2003 may also be obtained at the Schools and Libraries Division (SLD) Web site, *<http://www.sl.universalservice.org/form/>*. Parties with questions about the forms and instructions or are otherwise in need of assistance with the filing of their applications should contact SLD's Customer Service Support Center at 1–888–203–8100.

FOR FURTHER INFORMATION CONTACT: Narda Jones, Attorney, Telecommunications Access Policy Division, Wireline Competition Bureau, (202) 418–7400, TTY: (202) 418–0484.

SUPPLEMENTARY INFORMATION: The Wireline Competition Bureau of the Federal Communications Commission announces the release of FCC Forms 470 and 471 and the accompanying instructions. These forms are to be used by applicants seeking discounts under the schools and libraries universal service support mechanism.

Federal Communications Commission.

Mark G. Seifert,

Deputy Division Chief, Telecommunicotions Access Policy Division.

BILLING CODE 6712–01–P

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FCC Form 470 | Do not write in this area. | Approval by OMB 3060-0806

Schools and Libraries Universal Service
Description of Services Requested and Certification Form 470

Estimated Average Burden Hours Per Response: 4 hours

This form is designed to help you describe the eligible telecommunications-related services you seek so that this data can be posted on the Fund Administrator Web Site and interested service providers can identify you as a potential customer and compete to serve you.

Please read instructions before beginning this application. (You can also file online at www.sl.universalservice.org)

Applicant's Form Identifier: _____ (Create your own code to identify THIS Form 470)

Form 470 Application #: _____ (To be inserted by Fund Administrator)

Block 1: Applicant Address and Identifications

1 Name of Applicant (30 characters max.)

2 Funding Year: July 1, _____ through June 30, _____ | 3 Your Entity Number (up to 10 digits)

4a Street Address, P.O. Box, or Route Number

City | State | Zip Code _____-____

b Telephone Number (10 digits + ext.) (___) ___-____ ext. _____

c Fax Number (10 digits) (___) ___-____

d E-mail Address (50 characters max.)

5 Type of Applicant
- ☐ Library (including library system, library branch, or library consortium applying as a library)
- ☐ Individual School (individual public or non-public school)
- ☐ School District (LEA; public or non-public [e.g., diocesan] local district representing multiple schools)
- ☐ Consortium (intermediate service agencies, states, state networks, special consortia)

6a Contact Person's Name

*First, fill in **every** item of the Contact Person's information below **that is different from Item 4, above.***
***Then** check the box next to the preferred mode of contact. (At least one box **MUST** be checked.)*

b ☐ Street Address, P.O. Box, or Route Number

City | State | Zip Code _____-____

c ☐ Telephone Number (10 digits + ext.) (___) ___-____ ext. _____

d ☐ Fax Number (10 digits) (___) ___-____

e ☐ E-mail Address (50 characters max.)

Block 2: Summary Description of Needs or Services Requested

7 **This Form 470 describes (check all that apply):**

a ☐ Tariffed services – telecommunications services, purchased at regulated prices, for which the applicant has no signed, written contract. A new Form 470 must be filed for tariffed services for each funding year.

b ☐ Month-to-month services for which the applicant has no signed, written contract. A new Form 470 must be filed for these services for each funding year.

c ☐ Services for which a new written contract is sought for the funding year in Item 2.

d ☐ A multi-year contract signed on or before 7/10/97 but for which no Form 470 has been filed in a previous program year.

NOTE: Services that are covered by a signed, written contract executed pursuant to posting of a Form 470 in a previous program year OR a contract signed on/before 7/10/97 and reported on a Form 470 in a previous year as an existing contract do NOT require filing of a Form 470.

Entity Number _____ Applicant's Form Identifier _____
Contact Person _____ Phone Number _____

What kinds of service are you seeking: Telecommunications Services, Internet Access, or Internal Connections? Refer to the Eligible Services List at www.sl.universalservice.org for examples. Check the relevant category or categories (8, 9, and/or 10 below), and answer the questions in each category you select.

8 ☐ Telecommunications Services

Do you have a Request for Proposal (RFP) that specifies the services you are seeking?

a ☐ **YES,** I have an RFP. It is available on the Web at _____
or via (check one) ____ the Contact Person in Item 6 or ___ the contact listed in Item 11.

b ☐ **NO,** I do not have an RFP for these services.

If you answered NO, you must list below the Telecommunications Services you seek. Specify each ***service or function*** (e.g., local voice service) and quantity and/or capacity (e.g., 20 existing lines plus 10 new ones). See the Eligible Services List at www.sl.universalservice.org for examples of eligible Telecommunications Services, and remember that only common carrier telecommunications companies can provide these services under the universal service support mechanism. Add additional pages if needed.

Service or Function	Quantity and/or Capacity

9 ☐ Internet Access

Do you have a Request for Proposal (RFP) that specifies the services you are seeking?

a ☐ **YES,** I have an RFP. It is available on the Web at _____
or via (check one) ____ the Contact Person in Item 6 or ___ the contact listed in Item 11, below.

b ☐ **NO,** I do not have an RFP for these services.

If you answered NO, you must list below the Internet Access services you seek. Specify each service or function (e.g., monthly Internet service) and quantity and/or capacity (e.g., for 500 users). See the Eligible Services List at www.sl.universalservice.org for examples of eligible Internet Access services. Add additional pages if needed.

Service or Function	Quantity and/or Capacity

10 ☐ Internal Connections

Do you have a Request for Proposal (RFP) that specifies the services you are seeking?

a ☐ **YES,** I have an RFP. It is available on the Web at _____
or via (check one) ____ the Contact Person in Item 6 or ___ the contact listed in Item 11, below.

b ☐ **NO,** I do not have an RFP for these services.

If you answered NO, you must list below the Internal Connections services you seek. Specify each service or function (e.g., local area network) and ***quantity and/or capacity (e.g., connecting 10 rooms and 300 computers at 56kps or better).*** See the Eligible Services List at www.sl.universalservice.org for examples of eligible Internal Connections services. Add additional pages if needed.

Service or Function	Quantity and/or Capacity

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Entity Number _____ Applicant's Form Identifier _____
Contact Person _____ Phone Number _____

11 *(Optional)* Please name the person on your staff or project who can provide additional technical details or answer specific questions from service providers about the services you are seeking. This need not be the contact person listed in Item 6 nor the signer of this form.

Name | Title

Telephone Number (10 digits + ext.) (___)___-____ ext _____

Fax Number (10 digits) (___)___-____

E-mail Address (50 characters max.)

12 ☐ Check here if there are any restrictions imposed by state or local laws or regulations on how or when providers may contact you or on other bidding procedures. Please describe below any such restrictions or procedures, and/or provide a Web address where they are posted and provide a contact name and telephone number for service providers without Internet access.

13 *(Optional)* Purchases in future years: If you have plans to purchase additional services in future years, or expect to seek new contracts for existing services, summarize below (including the likely time-frames).

Block 3: Technology Assessment

14 ☐ **Basic telephone service only:** If your application is for basic local and/or long distance telephone service (wireline or wireless) only, check this box and skip to Item 16.

15 Although the following services and facilities are ineligible for support, they are usually necessary to make effective use of the eligible services requested in this application. Unless you indicated in Item 14 that your application is ONLY for basic telephone service, you must check at least one box in (a) through (e). You may provide details for purchases being sought.

- **a** Desktop software: Software required ☐ has been purchased; and/or ☐ is being sought.
- **b** Electrical systems: ☐ adequate electrical capacity is in place or has already been arranged; and/or ☐ upgrading for electrical capacity is being sought.
- **c** Computers: a sufficient quantity of computers ☐ has been purchased; and/or ☐ is being sought.
- **d** Computer hardware maintenance: adequate arrangements ☐ have been made; and/or ☐ are being sought.
- **e** Staff development: ☐ all staff have had an appropriate level of training/additional training has already been scheduled; and/or ☐ training is being sought.
- **f** Additional details: Use this space to provide additional details to help providers to identify the services you desire.

Entity Number _____ Applicant's Form Identifier _____
Contact Person _____ Phone Number _____

Block 4: Recipients of Service

16 Eligible Entities That Will Receive Services:
Check the ONE choice that best describes this application and the eligible entities that will receive the services described in this application. You will then list in item 17 the entity/entities that will pay the bills for these services.

- **a** ○ **Individual school or single-site library.**
- **b** ○ **Statewide application for (enter 2-letter state code)** ☐ **representing (check all that apply):**
  - ☐ All public schools/districts in the state.
  - ☐ All non-public schools in the state.
  - ☐ All libraries in the state

  Does your statewide application include INELIGIBLE entities? ☐ No ☐ Yes. If yes, complete Item 18.
- **c** ○ **School district, library system, or consortium application to serve multiple eligible entities:**

Number of eligible entities	
For these eligible entities, please provide the following:	
Area Codes (list each unique area code)	**Prefixes associated with each area code (first 3 digits of phone number)**
Does your application include any INELIGIBLE entities? ☐ **No** ☐ **Yes. If yes, complete Item 18.**	

17 Billed Entities
List the entity/entities that will be paying the bills directly to the provider for the services requested in this application. These are known as Billed Entities. At least one line of this item must be completed. Attach additional sheets if necessary.

Entity	Entity Number

18 Ineligible Participating Entities: Does your application also seek bids on services to entities that are not eligible for the Universal Service Program? If so, list those entities here (attach pages if needed):

Ineligible Participating Entity	Area Code and Prefix

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Entity Number _____ Applicant's Form Identifier _____
Contact Person _____ Phone Number _____

Block 5: Certification and Signature

19 The applicant includes: (Check one or both.)

a ☐ schools under the statutory definitions of elementary and secondary schools found in the Elementary and Secondary Education Act of 1965, 20 U.S.C. Secs. 8801(14) and (25), that do not operate as for-profit businesses, and do not have endowments exceeding $50 million; and/or

b ☐ libraries or library consortia eligible for assistance from a State library administrative agency under the Library Services and Technology Act of 1996 that do not operate as for-profit businesses and whose budgets are completely separate from any school (including, but not limited to elementary and secondary schools, colleges, and universities).

20 All of the individual schools, libraries, and library consortia receiving services under this application are covered by:

a ☐ individual technology plans for using the services requested in the application; and/or
b ☐ higher-level technology plans for using the services requested in the application; or
c ☐ no technology plan needed; application requests basic local and/or long distance telephone service only.

21 Status of technology plans (if representing multiple entities with mixed technology plan status, check both a and b):

a ☐ technology plan(s) has/have been approved by a state or other authorized body.
b ☐ technology plan(s) will be approved by a state or other authorized body.
c ☐ no technology plan needed; application requests basic local and/or long distance telephone service only.

22 I certify that the services the applicant purchases at discounts provided by 47 U.S.C. Sec. 254 will be used solely for educational purposes and will not be sold, resold, or transferred in consideration for money or any other thing of value.

23 I recognize that support under this support mechanism is conditional upon the school(s) or library(ies) I represent securing access to all of the resources, including computers, training, software, maintenance, and electrical connections necessary to use the services purchased effectively.

24 I certify that I am authorized to submit this request on behalf of the above-named entities, that I have examined this request, and to the best of my knowledge, information, and belief, all statements of fact contained herein are true.

25 Signature	26 Date
27 Printed name of authorized person	
28 Title or position of authorized person	
29 Telephone number of authorized person: (___) ___-____, ext. _____	

Persons willfully making false statements on this form can be punished by fine or forfeiture, under the Communications Act, 47 U.S.C. Secs. 502, 503(b), or fine or imprisonment under Title 18 of the United States Code, 18 U.S.C. Sec. 1001.

Service provider involvement with preparation or certification of a Form 470 can taint the competitive bidding process and result in the denial of funding requests. For more information, refer to the "Service Provider Role in Assisting Customers" at www.sl.universalservice.org/vendor/manual/chapter5.doc or call the Client Service Bureau at 1-888-203-8100.

Entity Number _____ Applicant's Form Identifier _____
Contact Person _____ Phone Number _____

NOTICE: Section 54.504 of the Federal Communications Commission's rules requires all schools and libraries ordering services that are eligible for and seeking universal service discounts to file this Description of Services Requested and Certification Form (FCC Form 470) with the Universal Service Administrator. 47 C.F.R. § 54.504. The collection of information stems from the Commission's authority under Section 254 of the Communications Act of 1934, as amended. 47 U.S.C. § 254. The data in the report will be used to ensure that schools and libraries comply with the competitive bidding requirement contained in 47 C.F.R. § 54.504. All schools and libraries planning to order services eligible for universal service discounts must file this form themselves or as part of a consortium.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The FCC is authorized under the Communications Act of 1934, as amended, to collect the information we request in this form. We will use the information you provide to determine whether approving this application is in the public interest. If we believe there may be a violation or a potential violation of a FCC statute, regulation, rule or order, your application may be referred to the Federal, state, or local agency responsible for investigating, prosecuting, enforcing, or implementing the statute, rule, regulation or order. In certain cases, the information in your application may be disclosed to the Department of Justice or a court or adjudicative body when (a) the FCC; or (b) any employee of the FCC; or (c) the United States Government is a party of a proceeding before the body or has an interest in the proceeding.

If you owe a past due debt to the federal government, the information you provide may also be disclosed to the Department of the Treasury Financial Management Service, other Federal agencies and/or your employer to offset your salary, IRS tax refund or other payments to collect that debt. The FCC may also provide the information to these agencies through the matching of computer records when authorized.

If you do not provide the information we request on the form, the FCC may delay processing of your application or may return your application without action.

The foregoing Notice is required by the Paperwork Reduction Act of 1995, Pub. L. No. 104-13, 44 U.S.C. § 3501, et seq.

Public reporting burden for this collection of information is estimated to average 4 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, completing, and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the reporting burden to the Federal Communications Commission, Performance Evaluation and Records Management, Washington, DC 20554.

Please submit this form to:

SLD-Form 470
P.O. Box 7026
Lawrence, Kansas 66044-7026
1-888-203-8100

For express delivery services or U.S. Postal Service, Return Receipt Requested, mail this form to:

SLD-Form 470
c/o Ms. Smith
3833 Greenway Drive
Lawrence Kansas 66046
1-888-203-8100

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FCC Form 470

Approval by OMB
3060-0806

Schools and Libraries Universal Service
Description of Services Requested and Certification Form

Estimated Average Burden Hours Per Response: 4 hours

Instructions for Completing the
Schools and Libraries Universal Service
Description of Services Requested and Certification Form (FCC Form 470)

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NOTICE

Section 54.504 of the Federal Communications Commission's rules requires all schools and libraries requesting universal service discounts to file—individually, or as a district or system, or as a consortium—this Description of Services Requested and Certification Form (FCC Form 470) with the Universal Service Administrator, which is the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC). 47 C.F.R. § 54.504. For purposes of this form, the universal service administrator will be referred to as the "SLD" or "Fund Administrator." The collection of information stems from the Commission's authority under Section 254 of the Communications Act of 1934, as amended, 47 U.S.C. § 254. The data collected in Form 470 will be used to ensure that schools and libraries and any consortia they comprise comply with the competitive bidding requirement contained in 47 C.F.R. § 54.504.

The FCC is authorized under the Communications Act of 1934, as amended, to collect the information we request in this form. We will use the information you provide to determine whether approving this application is in the public interest. If we believe there may be a violation or potential violation of any statute, regulation, rule or order, your application may be referred to the Federal, state, or local agency responsible for investigating, prosecuting, enforcing or implementing the statute, rule, regulation or order. In certain cases, the information in your application may be disclosed to the Department of Justice or a court or adjudicative body when (a) the FCC; or (b) any employee of the FCC; or (c) the United States Government is a party of a proceeding before the body or has an interest in the proceeding.

If you owe a past due debt to the Federal government, the information you provide may also be disclosed to the Department of the Treasury Financial Management Service, other Federal agencies and/or your employer to offset your salary, IRS tax refund or other payments to collect that debt. The FCC may also provide this information to these agencies through the matching of computer records when authorized.

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I. INTRODUCTION

- The purpose of the FCC Form 470 is to open a competitive bidding process for the services desired.
- An applicant cannot seek discounts for services in a category of service on the Form 471 if those services in those categories were not indicated on a Form 470.
- The Form 470 MUST be completed by the entity that will negotiate with potential service providers.
- The Form 470 cannot be completed by a service provider who will participate in the competitive process as a bidder. If a service provider is involved in preparing the Form 470 and that service provider appears on the associated Form 471, this will taint the competitive process and lead to denial of funding requests that rely on that Form 470.
- The Form 470 applicant is responsible for ensuring an open, fair competitive process and selecting the most cost-effective provider of the desired services.
- Applicants should save all competing bids for services to be able to demonstrate that the bid they chose is the most cost-effective, with price being the primary consideration.

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On May 7, 1997, the Commission adopted rules providing discounts on eligible telecommunications services, Internet access, and internal connections, for eligible schools and libraries. To initiate the required competitive bidding process, begin by filing this form with the Schools and Libraries Division (SLD). The SLD will post this information on the SLD's web site for at least 28 days to fulfill the competitive bidding requirement. Contracts for newly contracted services or the selection of service providers for tariffed or month-to-month services cannot occur earlier than 28 days after the descriptions set forth in the relevant Form 470 posted on the SLD web site < www.sl.universalservice.org>. The SLD will notify the applicant of the date that the applicant's request is posted and the date on which the 28-day waiting period ends. Those with questions about this form may call the SLD's Client Service Bureau toll-free at 1-888-203-8100.

II. FILING REQUIREMENTS AND GENERAL INSTRUCTIONS

A. Who Must File

Schools and libraries requesting universal service discounts must seek competitive bids using Form 470. The entity that will negotiate with potential service providers should complete Form 470. The Form 470 cannot be completed by a service provider who will participate in the competitive process as a bidder.

For purposes of the universal service support mechanism, schools must meet the statutory definition of elementary and secondary schools found in the Elementary and Secondary Education Act of 1965, as amended, 20 U.S.C. § 8801(14) and (26). An elementary school is a non-profit institutional day or residential school, including a public elementary charter school, that provides elementary education, as determined under state law. 47 C.F.R. § 54.500(b) and 20 U.S.C. § 8801(14). A secondary school is a non-profit institutional day or residential school, including a public secondary charter school, that provides secondary education, as determined under state law, except that such term does not include any education beyond grade 12. 47 C.F.R. § 54.500(j) and 20 U.S.C. § 8801(26). Schools operating as for-profit businesses or who have endowments exceeding $50 million are not eligible. 47 C.F.R. § 54.501(b)(2) and (b)(3).

Libraries must meet the statutory definition of library or library consortium found in the Library Services and Technology Act, Pub. L. No. 104-208, sec. 211 *et seq.*, 110 Stat. 3009 (1996) (LSTA) and must be eligible for assistance from a state library administrative agency under that Act. A library includes: "(1) a public library; (2) a public elementary school or secondary school library; (3) an academic library; (4) a research library, which for the purposes of this definition means a library that: (i) makes publicly available library services and material suitable for scholarly research and not otherwise available to the public; and (ii) is not an integral part of an institution of higher education; and (5) a private library, but only if the state in which such private library is located determines that the library should be considered a library for purposes of this definition." 47 C.F.R. § 54.500(c). A library's eligibility for universal service funding also depends on its funding as an independent entity. **Only libraries whose budgets are completely separate from any schools (including, but not limited to, elementary and secondary schools, colleges and universities) shall be eligible to receive discounted services** under the universal

service support mechanism. 47 C.F.R. § 54.501(c)(2). For example, an elementary school library would only be eligible to receive discounted services if its budget were completely separate from the elementary school. If its budget were not completely separate from the elementary school, the elementary school library would not be eligible for support independent from the school with which it is associated.

A library consortium is "any local, statewide, regional, or interstate cooperative association of libraries that provides for the systematic and effective coordination of the resources of school, public, academic, and special libraries and information centers, for improving services to the clientele of such libraries." 47 C.F.R. § 54.500(d).

Libraries operating as for-profit business shall not be eligible for discounts. 47 C.F.R. § 54.501(c)(3).

B. When, Where, and How Many Forms 470 to File

Beginning with the application process for Funding Year 2000 (July 1, 2000 through June 30, 2001), you are required to file Form 470 in the current application period only if you are applying for discounts for one of the following types of services:

- tariffed services (telecommunications services purchased at regulated rates) for which you do not have a signed, written contract (a Form 470 must be filed for these services each year);
- month-to-month Internet access, cellular services, or paging services for which you do not have a written contract but for which your standard monthly bills are proof of a binding, legal arrangement (a Form 470 must be filed for these services each year);
- any services for which you seek a new contract; or
- any multi-year contract signed on or before July 10, 1997, but for which you have not before filed a Form 470 in any previous program year.

Notice will be posted each year on the SLD web site <www.sl.universalservice.org> when we will begin accepting Forms 470 for posting. This notice will be posted at least 12 months before the start of the appropriate funding year. The precise timeframe for filing Form 470 depends on the kind of service you are seeking:

- For tariffed telecommunications services or month-to-month services, Form 470 must be filed at least 28 days before you file Form 471.
- For contract services for which you are seeking a new contract for the coming funding year, you may file Form 470 after the SLD posts the above notice whenever you wish to begin your procurement process, as long as it is at least 28 days before you file Form 471.
- For a contract signed on or before July 10, 1997, for which no Form 470 has ever been filed, you must file a Form 470 at least 28 days before you file Form 471.
- For multi-year contracts signed pursuant to the posting of a Form 470 in a previous funding year, you will not need to file a new Form 470 for the upcoming funding year. Your 28 days began with the date of your original Form 470 posting.

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Services that are covered by a **qualified existing contract** for all or part of the funding year do not require filing of Form 470, since you are not seeking bids for these services. A qualified existing contract is:

- a signed, written contract executed pursuant to the posting of a Form 470 in a previous funding year, OR
- a contract signed on or before July 10, 1997 and reported on a Form 470 in a previous year as an existing contract.

If you are seeking support for eligible services not covered by a qualified, existing contract, you must file Form 470 **either electronically at the SLD web site, <www.sl.universalservice.org>, or at the address listed at the bottom of the form (SLD-Form 470, P.O. Box 7026, Lawrence, Kansas 66046-7026).** For express delivery or U.S. Postal Service Return Receipt Requested, send to: **SLD-Form 470, c/o Ms. Smith, 3833 Greenway Drive, Lawrence, Kansas 66046**, phone (888) 203-8100. DO NOT FILE THIS OR ANY OTHER UNIVERSAL SERVICE FORM WITH THE FEDERAL COMMUNICATIONS COMMISSION.

You may file one Form 470 for all of the services for which you are required to file Form 470, or you may file separate Forms 470 for each type of service. Also, an individual school or library may be covered by more than one Form 470 filed by different consortia for different services.

Once you file your Form 470, it is posted to the SLD web site for competitive bidding. Your form must be posted for at least 28 days on the SLD web site before you can sign a contract or enter into an agreement for services. After you sign a contract or enter into an agreement, you (or the billed entities you represent) can initiate the next step in the application process, the filing of FCC Form 471. Upon processing or posting of the Form 470, the SLD will notify you of the date upon which you may sign a contract or enter into an agreement for new services or file Form 471. 47 C.F.R. §54.504(b)(4). This date will be referred to as the "Allowable Vendor Selection/Contract Date."

C. Assistance in Completing This Form

There are several sources of assistance to guide you in completing this form. If you complete this form electronically on the SLD web site **<www.sl.universalservice.org>,** prompts may occur to assist you as you enter information. Whether you file electronically or on paper, you are also urged to consult the Reference Area of the SLD web site, **<www.sl.universalservice.org>,** for additional program guidance that may be useful in completing this form. . Further information is also available from the SLD Client Service Bureau via toll-free telephone at **1-888-203-8100;** via e-mail at **question@universalservice.org;** or via fax at **1-888-276-8736.**

D. Compliance

Schools and libraries filing false information are subject to penalties for false statements under Title 18 of the United States Code, 18 U.S.C. § 1001. Applicants should retain the worksheets and other records they use to compile these forms for five years. Thus, if applicants represent multiple entities, collect data from those entities, and add up that data, they should retain those data sheets for five years. If an applicant is audited, it should be prepared to make the worksheets and other records used to compile these forms available to the auditor and/or the Administrator, and it should be able to demonstrate to the auditor and/or Administrator how the entries in its application were provided.

III. MINIMUM PROCESSING STANDARDS AND FILING REQUIREMENT

Form 470 Minimum Processing Standards

When a Form 470 is received by the SLD, the form is first reviewed to make sure it complies with the following requirements before data entry begins. These minimum processing requirements are necessary in order to ensure the timely and efficient processing of properly completed applications. If a Form 470 fails to meet these requirements, the Form 470 will be rejected. The SLD may be prevented from returning the rejected Form 470 to the sender if the form lacks essential identifying information. If an applicant receives a returned Form 470, it is important that it resubmit the corrected form quickly. Once the corrected form is successfully data entered, the form will be posted to the SLD web site. The posting of the form to the SLD web site marks the beginning of the required 28-day waiting period.

Manual Filers

1. Correct Form: Each Form 470 must be:

- the correct, OMB-approved FCC Form 470, with a date of September 1999 or later in the lower right hand corner;
- submitted by regular mail, express delivery, or U.S. Postal Service Return Receipt Requested, or hand delivery. Forms may not be submitted by fax or e-mail. You are advised to keep proof of the date of mailing.

2. Applicant Address and Identifications: In Block 1, each of the following items must be properly completed:

- Item (1) or (3) Either the Name of the Applicant or the Entity Number;
- Item (2) Funding Year
- Item (6a) Contact Person Name

If any of these items is blank, and the information cannot be obtained from the page headers, the Form 470 will be rejected.

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3. Complete Submission of Form 470: All 5 blocks of the Form 470 must be submitted. If any Block (1-5) is missing, the form will be rejected.

4. Valid Certification: Block 5, Item (25) Signature of authorized person must be completed. If Item (25) is left blank, the Form 470 will be rejected.

Online Filers:

When Blocks 1-4 of a Form 470 are submitted electronically, the applicant must also (1) submit the completed Block 5 certification online with a User ID and a PIN or (2) submit the completed and signed Block 5 certification manually by mail, express delivery or U.S. Postal Service Return Receipt Requested. If the Block 5 certification is submitted manually, you are advised to keep proof of the date of mailing. The Block 5 certification is reviewed to make sure it complies with the requirements listed in #4 above. Reviewers also look for the Form 470 Application Number before the Certification and Signature Page is accepted and the Form 470 reaches "certified" status. If the Block 5 certification document lacks the information necessary to match your manually submitted certification with the electronically filed Blocks 1-4 of the form, then your application will not meet the application filing requirements.

Filing Requirement for Forms 470 Submitted Manually and Online

It is vital to assure that a completed Form 470 Certification is filed in a timely fashion. A completed Form 470 Certification is a Block 5 certification submitted online using a User ID and a PIN or a Block 5 certification with the signature of the authorized person. Forms 470 with completed certifications submitted in a previous year meet this requirement, as do those filed for the current funding year either online by the close of the Form 471 application filing window or with a postmark date no later than the close of the Form 471 application filing window. Any Form 471 Block 5 funding request based on a Form 470 whose certification has not been received or postmarked by 11:59 p.m. EST on the close of the Form 471 application filing window will be rejected.

IV. SPECIFIC INSTRUCTIONS

You are encouraged to complete, submit, and certify this Form electronically at <www.sl.universalservice.org>. If you file manually, the Form 470 can be downloaded from the SLD web site. If you file paper copies of the application, please type or clearly print in the spaces provided and attach additional pages if necessary and when required. Instructions for completing each Block and Item of the Form 470 can also be downloaded from the SLD web site. No Forms 470 will be accepted if sent via e-mail or fax.

A. Top of Form

The data at the top of Form 470 will help both you and the SLD identify each particular Form 470 you file.

"Do Not Write In This Area"—The SLD uses this space to apply a barcode to your form upon receipt, so that we can properly track and archive your form.

Applicant's Form Identifier—If you are filing more than one Form 470, please use this space to assign a unique number or letter of your own devising to facilitate communication with us about THIS particular Form 470. This Applicant's Form Identifier can be very simple; for example, if you are filing three Forms 470, you might label them "A," "B," and "C." The Applicant's Form Identifier can also be descriptive, such as "School Internet." Choose identifiers that suit your own record-keeping needs.

Form 470 Application Number—The SLD will assign and insert your Form 470 Application Number. Leave this item blank.

Top of each page after page 1: If you are filing this application manually, to help alleviate problems caused if the pages of an application become separated, please provide the Entity Number (from Item 3, below), your Applicant's Form Identifier, and name and phone number of the contact person (from Item 6, below) at the top of each page of the application in the space provided. If you are filing electronically, this information will automatically appear at the top of each page.

B. Block 1: Applicant Address and Identifications

Block 1 of Form 470 asks you for your address and basic identifications. Throughout this form, "you" refers to "the applicant" – a school or library, or an entity filing on behalf of schools and libraries. The Form 470 cannot be completed by a service provider who will participate in the competitive process as a bidder.

Item (1) – Provide the name of the Applicant. You may be an individual school, a school district, a library (outlet/branch, system) or a consortium of those entities. You may also be a city, a state, or an entity created solely to participate in this universal service discount mechanism.

Item (2) – Funding years begin on July 1 and end on June 30 each year. For example, Funding Year 2003 runs from July 1, 2003 to June 30, 2004. Provide the funding year for which you are applying for funds by filling in the appropriate year in the blanks provided (e.g., July 1, 2003 through June 30, 2004).

Item (3) – Your Entity Number is a unique number assigned to your organization or institution by the SLD as a means of identifying you every time you file an application or otherwise communicate with us. If you have applied for universal service funds in previous years, or have

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been identified in an application filed on your behalf, you have already been assigned an Entity Number. If you do not have a record of your Entity Number, or if you have never been assigned such a number, please call the SLD Client Service Bureau at 1-888-203-8100.

Item (4)(a)-(4)(d) – Provide your full mailing address, whether a street address, Post Office Box number, or route number. You are strongly encouraged to provide a street address rather than a Post Office Box if possible, as the Fund Administrator may need to contact you via overnight or express delivery. In addition, please provide your telephone number (with area code and extension), fax number (including area code), and e-mail address (if you have one).

Item (5) – Check the one box that best describes the type of application you are filing. If you are filing as a library (outlet/branch, system, or library consortium applying as a library), you should check the first box. If you are filing as an individual school, you should check the second box. If you are filing as a school district, you should check the third box. If you are filing as a consortium, you should check the fourth box. (You may be a consortium of schools, libraries, or some combination of the above which may or may not include ineligible entities.)

Item (6)(a) – Provide the name of the person who should be contacted with questions about this application. This person should be able to answer questions regarding the information included on this form and the services you request, including how to obtain a copy of your request for proposal (RFP), if you have prepared one.

Item (6)(b)-(6)(e) – If the contact person's address, phone number, fax number, or e-mail address is different from those specified for the applicant (completed in Item (4)), please provide that information here. You MUST then check the preferred mode of contact. Wherever possible, the SLD will use this mode to contact you.

C. Block 2: Summary Description of Needs or Services Requested

Block 2 of Form 470 asks you to describe the services you desire.

Item (7) – Specify here the kind(s) of services requested in this Form 470. You may check one or more of these choices, depending on the range of services you will be including on one Form 470.

Item (7)(a) – Check this box if this Form 470 requests services which are tariffed (telecommunications services for which you do not have a signed, written contract). These services require posting of a Form 470 for each funding year.

Item (7)(b) – Check this box if this Form 470 requests Internet access, cellular service, or paging services provided on a month-to-month basis without a written contract. These services require posting of a Form 470 for each funding year.

Item (7)(c) – Check this box if this Form 470 seeks new services for which you wish to sign a new contract. You may file a Form 470 for a new contract after notice is posted on the SLD web site that the SLD will begin accepting Forms 470 for the appropriate funding year for posting.

Item (7)(d) – Check this box if this Form 470 describes services provided under a multi-year contract that was signed on or before July 10, 1997 but that was never featured on a Form 470 in previous program years. For example, if you are applying for the E-rate for the very first time for Funding Year 2003 (07/01/2003–06/30/2004), and some or all of your services are provided under a written 10-year contract which was signed on July 1, 1997, you will need to file a Form 470 for this contract. In future years, for as long as that contract remains in force, you will not need to file a Form 470 for those services. There is no required timeframe for filing a Form 470 for this purpose, but your form must be posted for at least 28 days on the SLD web site before you can file a Form 471 online.

Items (8)-(10) – One or more of Items (8)-(10) must be completed to provide potential bidders with particular information about the services you are seeking. For more information on eligible services, please refer to the Eligible Services List on the SLD web site <www.sl.universalservice.org> or call the SLD Client Service Bureau toll-free at 1-888-203-8100. Once you check the relevant category of service box(es) in Items (8), (9), and/or (10), you must check either box (a) or (b) under the selected item and complete the item. You cannot seek discounts on services in a category of service on the Form 471 if you have not competitively bid those services in the same category of service on the Form 470.

The specific data requested in Items (8)-(10) are sought to provide potential service providers with information so that they may contact you if necessary for detailed information on your specific requirements. **This requirement is not intended to restrict your ability to contract for newly contracted services or enter into agreements for tariffed or month-to-month services for whatever technologies best meet your educational purposes as authorized by FCC rules and the Telecommunications Act of 1996.** It is important that you complete all categories that are relevant to your requested services, so that the Fund Administrator can confirm that you have met the competitive bidding requirement before signing any contracts for newly contracted services or entering into agreements for tariffed or month-to-month services for which discounts are requested in FCC Form 471.

Item (8) – Check this box if you are seeking telecommunications services to be provided by one or more telecommunications services providers. **Important note: Only telecommunications services requested from telecommunications companies who provide their telecommunications services on a common carriage basis (meaning they provide their services for a fee to the general public) will be eligible for discount(s) under the universal service support mechanism. If you request telecommunications services from a telecommunications provider that does not provide telecommunications services on a common carriage basis, your Form 471 Funding Request for such services will be denied.** Telecommunications is "the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received." 47 U.S.C. § 153(43) and 47 C.F.R. § 54.5. All commercially available

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telecommunications services, including charges such as state and federal taxes, are eligible for support under the universal service discount mechanism. For example, local and long distance telephone services are generally considered telecommunications services. As another example, high-speed transmission lines over the public switched telecommunications network leased from an eligible telecommunications provider would be listed here as a telecommunications service. See the Eligible Services List on the SLD web site <www.sl.universalservice.org> for more information.

Item (8)(a) – Check this box if you have a Request for Proposal (RFP) that will provide potential bidders with specific information about the particular telecommunications services or functions you are seeking, and what quantity and/or capacity you seek. For example, you might have an RFP for voice services that specifies "local and long distance voice services sought for 20 existing phone lines, plus 10 new additional lines." If you check (8)(a), you must indicate where this RFP is available, such as on your web site (list the web address); via the Contact Person listed in Item (6); and/or via the alternative contact person listed in Item (11). If the RFP is not posted on a web site, your designated contact person must be able to provide it to service providers on request as of the date that your Form 470 is posted.

Item (8)(b) – Check this box if you do NOT have a Request for Proposal (RFP) for the telecommunications services you seek. If you check (8)(b), you must fill in details in the space provided about the specific telecommunications services or functions and quantity and/or capacity of service. For example, you might list "videoconferencing services" under Service or Function, and "for three school buildings" under Quantity and/or Capacity.

Item (9) – Check this box if you are seeking Internet access services. Basic conduit non-content access to the Internet is eligible for support under the universal service discount program. See the Eligible Services List on the SLD web site <www.sl.universalservice.org> for more information.

Please note that while schools and libraries may obtain universal service discounts on access to the Internet, discounts are not available on the separate charges for particular proprietary content or other information services or on a bundled package of access and content, unless the bundled package includes minimal content and provides a more cost-effective means of securing access to the Internet than other non-content alternatives.

Item (9)(a) – Check this box if you have a Request for Proposal (RFP) that will provide potential bidders with specific information about the particular Internet access services or functions you are seeking, and what quantity and/or capacity you seek. For example, you might have an RFP for Internet access that specifies "high-speed direct access to the Internet sought for 10 public Internet stations in one library facility." If you check (9)(a), you must indicate where this RFP is available, such as on your web site (list the web address); via the contact person listed in Item (6); and/or via the alternative contact person listed in Item (11). If the RFP is not posted on a web site, your designated contact person must be able to provide it to service providers on request as of the date that your Form 470 is posted.

Item (9)(b) – Check this box if you do NOT have a Request for Proposal (RFP) for the Internet access services you seek. If you check (9)(b), you must fill in details in the space provided about the specific Internet access services or functions and quantity and/or capacity of service. For example, you might list "monthly Internet service" under Service or Function, and "for 500 student users" under Quantity and/or Capacity.

Item (10) – Check this box if you are seeking internal connections services. A given service is generally eligible for support under the universal service discount mechanism as a component of internal connections if it "is necessary to transport information within one or more instructional buildings of a single school campus or within one or more non-administrative buildings that comprise a single library branch." 47 C.F.R. § 54.506. See the Eligible Services List on the SLD web site <www.sl.universalservice.org> for more information.

Item (10)(a) – Check this box if you have a Request for Proposal (RFP) that will provide potential bidders with specific information about the particular internal connections services or functions you are seeking, and what quantity and/or capacity you seek. For example, you might have an RFP for internal connections that specifies "local area network to connect 30 classrooms." If you check (10)(a), you must indicate where the RFP is available, such as on your web site (list the web address); via the contact person listed in Item (6); and/or via the alternative contact person listed in Item (11). If the RFP is not posted on a web site, your designated contact person must be able to provide it to service providers on request as of the date that your Form 470 is posted.

Item (10)(b) – Check this box if you do NOT have a Request for Proposal (RFP) for the internal connections services you seek. If you check (10)(b), you must fill in details in the space provided about the specific internal connections services or functions and quantity and/or capacity of service. For example, you might list "Private Branch Exchange equipment" under Service or Function, and "for each of 10 outlets in library system" under Quantity and/or Capacity.

Item (11) – (Optional) Provide the name and contact information of the person on your staff or project who can provide additional technical details or answer specific questions from service providers about the services you are seeking. This need not be the contact person listed in Item (6) nor the authorized person identified in Item (27).

Item (12) – Indicate whether you are subject to any state or local restrictions regarding how and when you may be contacted by potential providers and what bidding procedures they must follow. For example, state bidding requirements might prohibit contacts between bidders and buyers between the time an official RFP is issued and when bids are due, or they may allow only written contacts. Applicants must also comply with any applicable state or local requirements when participating in the competitive bidding process used in the universal service discount mechanism. If you are subject to any state or local restrictions, you must check the box in Item (12) and provide a description of the restrictions or procedures. Alternatively, you may list a web site address where state or local restrictions can be found and the name and telephone number for a contact person who can provide the state or local restrictions and the applicable bidding procedures to service providers without Internet access.

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Item (13) – You may provide information on your plans to purchase additional services in future years if you wish to encourage service providers to contact you even when you may not represent a financially attractive customer in the near term, but you may represent a financially attractive customer over a longer period of time. Providing this information is optional.

D. Block 3: Technology Assessment

Block 3 of Form 470 asks you to provide an assessment of the resources that you will need to use the services you request by checking off the appropriate boxes, unless you are seeking support for basic local and/or long distance telephone service (wireline or wireless) only.

Item (14) – Check this item if you are seeking support for basic local and/or long distance telephone service (wireline or wireless) only. If you check Item (14), you should skip Item (15) and go to Item (16).

Items (15)(a)-(15)(e) – All of the services and facilities listed in Items (15)(a)-(15)(e) are ineligible for support under the universal service discount mechanism. Each of the services and facilities listed, however, is necessary to make effective use of the telecommunications services, Internet access, and internal connections that are eligible for discounts. You do not need to certify that you have already secured all of the resources needed to use your discounted services effectively until you file FCC Form 471, but Items (15)(a)-(15)(e) require you to assess the technologies that you have or will need. You must check off at least one box for each of the Items (15)(a)-(15)(e). You may check off both boxes in each case if both apply. When you file Form 471, which is required to receive discounts, you will need to certify that you have secured or budgeted to secure adequate amounts of those resources to utilize effectively the services requested.

If you are seeking to purchase any of the ineligible services or facilities indicated in Items (15)(a)-(15)(e), you may also provide additional details in Item (15)(f) if you wish to have providers of these desired technologies or services contact you with bids. **If you are purchasing such ineligible services and facilities, however, you should try to do so through contracts separate and apart from those used to purchase services eligible for universal service discounts, to avoid confusion when completing and submitting your Form 471 application for services ordered.**

Item (15)(a) – Indicate whether you have secured or are in the process of securing access to the necessary software for the desktop computers that will use eligible services. For example, computers that will be connected to the Internet will probably need Web browsers. You should note that, although the software for the computers used in classrooms and other endpoints is not eligible for support, the software necessary to operate the networks used to transport information to the classroom is an eligible service.

Item (15)(b) – Confirm that you have or are in the process of securing access to sufficient electrical capacity to handle the computers and other telecommunications-related facilities you will be using to access the discounted services.

Item (15)(c) – Confirm that you have purchased or are arranging to purchase sufficient numbers of computers to use the discounted services effectively. Applicants should note that, as with computer software, while the computers used in classrooms are not eligible for discounts, those used as network file servers would, generally, be eligible for support.

Item (15)(d) – Confirm that you have secured or are in the process of securing appropriate maintenance for your computer hardware that will use eligible services.

Item (15)(e) – Confirm that you have arranged for or are arranging to secure the staff development necessary to use the discounted services effectively.

Item (15)(f) – Use this space to provide additional details to help providers identify the services you desire. Providing this information is optional.

E. Block 4: Recipients of Service

Block 4 requires you to provide information about the entities that will receive the services described in Block 2. This information is required to help service providers understand the scope and location(s) of the services you seek, so that they may respond efficiently and effectively.

Item (16) – Check the one choice – (a), (b), or (c) – that most accurately describes your application and the eligible entities that will receive the services you are seeking in this Form 470, then provide additional information only for the choice you have selected. An entity is an eligible entity if it meets the eligibility criteria for obtaining discounts described in Section II.A. above.

Item (16)(a) – Check this Item if you are an individual school or a single-site library located at the address in Item (1). Checking this box will confirm for potential bidders that all the services you seek will be delivered to this address.

Item (16)(b) –Check this Item if yours is a statewide application representing ALL entities of a particular type in your state. If you check Item (16)(b), you must also check one or more of the three choices provided in this item: all public schools/districts in the state, all non-public schools in the state, and/or all libraries in the state. This will indicate to potential service providers the complete breadth of your service needs. Please note that if your application represents SOME but not ALL of any of these three types of entities, you should NOT check Item (16)(b), but must check and complete Item (16)(c) instead. Indicate by checking "yes" or "no" whether your application includes requests for services for any ineligible entities.

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Item (16)(c) – Check this Item if you are a school district, library system, or consortium serving multiple entities. If you check Item (16)(c), you must specify the number of eligible entities that your application represents. You must then list each unique area code represented in the telephone numbers of the entities you represent, plus the three-digit prefixes (the first three digits of the phone number) associated with each area code among the entities you represent. For example, if your school district is in a state which has one statewide area code, you would list that area code once. You would then list each unique three-digit prefix represented among the telephone numbers of the schools and administrative buildings in your district which will receive the service(s) requested in this Form 470. This information helps service providers pinpoint the location of each facility that will be receiving service. Indicate by checking "yes" or "no" whether your application includes requests for services for any ineligible entities.

Item (17) – List here the entity or entities that will be paying bills directly to the service provider for the services requested in this application. Such entities are known as "billed entities," and are the entities who file Form 471. List these billed entities, whether or not they themselves are eligible for universal service discounts, and provide their Entity Numbers. For example, if you are a consortium of school districts joining together to aggregate demand and thus secure a better price on telecommunications services that each district will then contract for and pay for individually, you will list your member districts and their Entity Numbers in Item (17). As another example, if you are a library whose bills are paid by the municipal government, you should list the municipal government office and its Entity Number. List each entity's name in the left column, and its Entity Number in the right column. If, however, your application is statewide as indicated in Item (16)(b), then enter only one billed entity from your state. If you need help identifying Entity Numbers for each of these "billed entities," call the SLD Client Service Bureau at 1-888-203-8100.

Item (18) – List the names of any entities for whom services are requested that are not eligible to receive universal service discounts under the schools and libraries universal service support mechanism. Only eligible schools and libraries may receive discounted services, so if this application includes services for entities such as health care providers, governmental entities, or private sector entities, you must list these entities in Item (18). Skip this item if your application requests services only for eligible entities. For each ineligible entity, provide the area code and three-digit prefix to help service providers pinpoint the entity's location. If your application is statewide, as indicated in Item (16)(b), only one area code and prefix for each named ineligible entity is required.

F. Block 5: Certifications and Signature

Block 5 requires you to certify certain information to ensure that only eligible entities receive support under the universal service discount mechanism.

Item (19) – Certify that the entities in Item (16) are eligible schools and/or libraries.

Item (19)(a) – If your application includes schools and all of the information in Item (19)(a) is true of those schools seeking to receive discounted services, you should check the box in Item (19)(a). If your application includes schools and any of the information in Item (19)(a) is not true for certain schools seeking to receive discounted services, those ineligible schools are not eligible to receive support under the universal service discount mechanism, and they must be identified in Item 18.

Item (19)(b) – If your application includes libraries or library consortia and all of the information in Item (19)(b) is true of the libraries seeking to receive discounted services, you should check the box in Item (19)(b). If your application includes libraries or library consortia and any of the information is not true for certain libraries or library consortia seeking to receive discounted services, those ineligible libraries or library consortia are not eligible to receive support under the universal service discount mechanism, and they must be identified in Item 18.

Items (20) and (21) concern the technology plans that must be prepared before schools and libraries may receive discounted services under the universal service support mechanism. The only schools and libraries that do not have to comply with the technology plan requirement are those requesting support for basic local and/or long distance telephone service (wireline or wireless) only. Note also that consortia and some other billed entities do not have to be covered by technology plans as long as all of the schools and libraries that they represent are covered by technology plans.

Item (20) – Check the box that best describes the level of technology plan(s) that covers the schools, libraries, and library consortia represented by your application.

- **Item (20)(a)** – Check here if the entities are covered by individual technology plans for the services requested in your application.
- **Item (20)(b)** – Check here if the entities are covered by a higher-level, multi-entity technology plan, such as a school district or library system plan. Statewide technology plans are not acceptable.
- **Item (20)(c)** – Check here if your application is for basic local and/or long distance telephone service (wireline or wireless) only, in which case no technology plan is required.

Item (21) – Check the box that best describes the status of the technology plan(s):

- **Item (21)(a)** – Check here if your plans have been approved. NOTE: Technology plans that have been approved for other purposes, e.g., for participation in Federal or state programs such as the "Enhancing Education through Technology" program, will be accepted without need for further independent approval.
- **Item (21)(b)** – Check here if you are currently seeking approval of your technology plan(s). Please note that the SLD does not review technology plans itself, but does certify authorized reviewers of technology plans. If you need assistance identifying a certified approver for your technology plan, please call the SLD Client Service Bureau at 1-888-203-8100.
- **Item (21)(c)** – Check here if your application is for basic local and/or long distance telephone service (wireline or wireless) only, in which case no technology plan is required.

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Item (22) – Certify that services you order pursuant to the universal service discount mechanism will be used solely for educational purposes and that those services will not be sold, resold, or transferred in consideration for money or any other thing of value.

Item (23) – Certify that you recognize that any support received under this support mechanism is conditional upon the ability of your school(s) or library(ies) to secure access to all of the resources, including computers, training, software, maintenance, and electrical connections, necessary to use effectively the services that will be purchased under this mechanism. On FCC Form 471, you will need to certify that you have access to such funding.

Item (24) – Certify that you are the person authorized to submit and certify to the accuracy of this form.

Item (25) requires the signature of the authorized person.

Item (26) requires that the date of the signature of the Form 470 be provided.

Item (27) – Print the name of the authorized person whose signature is provided in Item 25.

Item (28) – Provide the title or position of the authorized person whose signature is provided in Item (25).

Item (29) – Provide the telephone number, including area code, of the authorized person whose signature is provided in Item (25).

For Applicants Filing this Form Electronically:

- When you have completed the electronic filing of Blocks 1-4, please print your application to retain a copy for your records.
- You must also submit the Block 5 certification.
  - If you have a User ID and PIN and wish to electronically submit your Block 5 certification, follow the directions online. When you submit your certification online, you will receive a confirmation so that you can be assured that your submission has met any filing deadlines. If you file online and use electronic certification, do not mail any part of your Form 470 to the SLD. Check the SLD web site for information about obtaining a User ID and a PIN.
  - If you wish to submit the completed and signed Block 5 certification manually, print Block 5 using your browser. When you print Block 5 using the browser, the form will automatically include your Form 470 Application Number, Applicant Name, and Applicant Address. Item (25) requires the signature of the authorized person who will certify to the accuracy of the information on the form. Also, you must complete Items (19)-(24). Mail the signed Block 5 to: **SLD-Form 470, P. O. Box 7026, Lawrence, Kansas 66044-7026.** For express delivery services or U.S. Postal Service Return Receipt Requested, send to **SLD-Form 470, c/o Ms. Smith, 3833 Greenway Drive, Lawrence, Kansas 66046**. Note: Do not mail the complete Form 470. Mail only the signed Block 5 certification page. If the Block 5 certification is submitted manually, you are advised to keep proof of the date of mailing.

For Applicants Filing this Form Manually:

After the authorized person signs Item (25), check to be certain that all other items—including Items (26)-(29)—are properly completed. Make a copy of your entire form to keep for your records. Then submit your original form by mail to: **SLD-Form 470, P.O. Box 7026, Lawrence, Kansas 66044-7026.** For express delivery or U.S. Postal Service Return Receipt, send to: **SLD-Form 470, c/o Ms. Smith, 3833 Greenway Drive, Lawrence, Kansas 66046**, phone 1-888-203-8100. **No Forms 470 will be accepted via e-mail or fax.**

V. REMINDERS

- All schools and libraries seeking universal service support for ANY service not covered by a qualified existing contract (i.e., a contract executed pursuant to Form 470 posting in prior program years OR a contract signed on or before July 10, 1997 and identified as pre-existing in a Form 470 filed in prior years) must file Form 470 individually or be included in a consortium that files Form 470. Services that must be represented in an individual or consortium Form 470 in order to qualify for universal service support include: eligible tariffed telecommunications services; month-to-month services provided without a signed, written contract; new services for which a contract is sought; or services provided under a multi-year contract signed on or before July 10, 1997, but not previously identified as an existing contract in a Form 470 filed in a prior program year.
- A Form 470 is NOT required for services covered by a qualified existing contract (i.e., a contract executed pursuant to Form 470 posting in a prior program year OR a contract signed on or before July 10, 1997 and identified as pre-existing in a Form 470 filed in prior years).
- Fill out all applicable items completely. Attach additional pages if necessary. Any attachments to Form 470 should be clearly labeled with your Entity Number, Applicant's Form Identifier, Contact Person Name, and Phone Number.
- If you have a Request for Proposal (RFP) for the services requested in this Form 470—and therefore have checked (a) under Items (8), (9), and/or (10)—your RFP must be available to service providers via a web site or your designated contact person in Item (6) or the contact listed in Item (11) as of the date that this Form 470 is posted on the SLD web site.
- The individual authorized to order telecommunications and other supported services for the school, school district, library, or consortium must sign and date Form 470.
- If you are filing Form 470 electronically, you must also complete and submit the Block 5 certification (whether electronic or paper).

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FCC Form 471

Do not write in this area

Approval by OMB
3060-0806

Schools and Libraries Universal Service Services Ordered and Certification Form 471

Estimated Average Burden Hours Per Response: 4 hours

This form asks schools and libraries to list the eligible telecommunications-related services they have ordered and estimate the annual charges for them so that the Fund Administrator can set aside sufficient support to reimburse providers for services.
Please read instructions before beginning this application. (You can also file online at www.sl.universalservice.org.)
The instructions include information on the deadlines for filing this application.

Applicant's Form Identifier:
(Create your own code to identify THIS Form 471)

Form 471 Application # _____
(To be inserted by Fund Administrator)

Block 1: Billed Entity Information (The "Billed Entity" is the entity paying the bills for the services listed on this form.)

1 Name of Billed Entity

2 Funding Year: July 1, through June 30,

3 Entity Number

4 a Street Address, P.O. Box, or Route Number

City

State | Zip Code

b Telephone Number | Ext | c Fax Number

d E-mail Address

5 Type of Application

School (public or non-public school)
School District (LEA; public or non-public (e.g., diocesan) local district representing multiple schools)
Library (library (i.e. outlet/branch, system))
Consortium Check here if any members of this consortium are ineligible non-governmental entities.

6 a Contact Person's Name

*First, fill in **every** item of the Contact Person's information below **that is different from Item 4, above.** **Then** check the box next to the preferred mode of contact. (At least one box **MUST** be checked.)*

b Street Address, P.O. Box, or Route Number

City

State | Zip Code

c Telephone Number | Ext | d Fax

e E-mail Address

f Holiday/vacation/summer contact information:

0 4 7 1 0 1 0 1 0 2

Entity Number _____ Applicant's Form Identifier _____

Contact Person _____ Phone Number _____

Block 2: Minor Modification to Existing Contract?

7 Check if this Form 471 represents a minor modification, such as a modification of services, to a Form 471 for which you already have a Receipt Acknowledgment Letter. Provide the data requested below, attach a Description of Services highlighting the modified service, and sign Block 6.

Form 471 Application #: | Funding Request Number

Minor modification requests can be filed MANUALLY only. Please see www.sl.universalservice.org for filing instructions.

Block 3: Impact of Services Ordered in THIS Application

8 **Please provide your best estimate of the number of people who will be served by all of the services ordered in THIS Form 471. Schools/school districts complete 8a. Libraries complete 8b. Consortia complete 8a and/or 8b.**

a Number of students to be served

b Number of library patrons to be served

9 **The following questions seek summary outcome information based on the services ordered in this Form 471 application. Please complete only those rows that are relevant to THIS application.**

	IF THIS APPLICATION INCLUDES...	BEFORE ORDER	AFTER ORDER
a	*(Schools/districts/consortia only)* Telephone service: How many classrooms had phone service before and after your order?		
b	High-bandwidth voice/data/video service: How many buildings served before and after your order?		
c	High-bandwidth voice/data/video service: Highest speed to a building before and after your order?		
d	Dial-up Internet connections: How many before and after your order?		
e	Dial-up Internet connections: Highest speed before and after your order?		
f	Direct connections to the Internet: How many before and after your order?		
g	Direct connections to the Internet: Highest speed before and after your order?		
h	Internet access (for schools): How many rooms have Internet access before and after your order?		
i	Internet access (for libraries): How many buildings have Internet access before and after your order?		
j	Internet access: How many computers (or other devices) with Internet access before and after your order?		
k	Other technology outcomes: (please specify):		

Block 4: Discount Calculation Worksheets *(pages 3a, 3b, and 3c)*

The following 3 pages (3a, 3b, and 3c) are Block 4 worksheets for use in calculating your discount for services. You will complete one or more depending on the type of application you are filing. Each worksheet has instructions.

- If you are filing as a school or a school district, use Worksheet A (page 3a).
- If you are filing as a library (i.e. outlet/branch, system), use Worksheet B (page 3b).
- If you are filing as a consortium, use Worksheet C (page 3c), and include as many Worksheets A and B as you need for back-up documentation.

0 4 7 1 0 1 0 2 0 2

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Entity Number _____ Applicant's Form Identifier _____
Contact Person _____ Phone Number _____

Block 4: Discount Calculation Worksheet A for Schools/School Districts

Worksheet #A-_____
Page _____ of _____
(For Administrator's Use)

Instructions: If you are filing a School/School District application, use this worksheet to calculate the discount rate for site-specific services and/or to determine the weighted average discount calculations for shared services.

10a If you are:
- **Applying for discounts ONLY for an individual school, or ONLY site-specific services:** Complete columns 1-7 only for each school. Add and number pages as needed. Then use each school's Entity Number and its discount from Column 7 to complete Block 5 site-specific service to that school.
- **Applying for discounts on services shared by ALL schools in the district (with or without site-specific services as well):** Complete all columns 1-8 for all schools in the district. Then use the Weighted Average Discount in 10c (below) to complete Block 5 for shared services.
- **Applying for discounts on different shared services shared by different groups of schools (with or without site-specific services as well):** Complete one worksheet, columns 1-8 PLUS 10c, for EACH different group of schools sharing a service. Designate this worksheet A-1, A-2, A-3, etc.

10b List entities and calculate discount(s).

School District Name: _____ School District Entity Number: _____

1 Name of Eligible School	2 Entity Number	3 Urban or Rural U or R	4 Total # of Students	5 # of Students Eligible for NSLP	6 % Students Eligible for NSLP (Col. 5 ÷ Col. 4)	7 Discount % from Discount Matrix	8 Weighted Product for Calculating Shared Discount (Col. 4 x Col. 7)
Totals for calculating Weighted Average Discount							

10c Weighted Average Discount % for Shared Services (Col. 8 total divided by Col. 4 total. Round to nearest %) →

Entity Number _____ Applicant's Form Identifier _____
Contact Person _____ Phone Number _____

Block 4: Discount Calculation Worksheet B For Libraries

Worksheet #B-_____
Page _____ of _____
(For Administrator's Use)

Instructions: If you are filing a library application, use this worksheet to calculate the discount rate(s) for outlets/branches and systems.

10a If you are:
- **Applying for discounts ONLY for one outlet/branch or ONLY for site-specific services:** Complete columns 1-4 only for each outlet/branch. Add and number pages as needed.
- **Applying for discounts on services shared by ALL outlets/branches in the library system (with or without site-specific services as well):** Complete columns 1-4 PLUS 10c below.
- **Applying for discounts on different shared services that are shared by different groups of outlets/branches:** Complete one worksheet, columns 1-4 PLUS 10c, for EACH different group of outlets/branches sharing a service. Designate this worksheet B-1, B-2, B-3, etc.

10b List entities and calculate discount(s).

Library System Name: _____ Library System Entity Number: _____

1 Name of Eligible Library (outlet/branch)	2 Entity Number	3 Name of School District in which outlet/branch in Column 1 is located	4 Discount % from Discount Matrix
Totals for calculating Shared Discount			

10c Shared Discount % (Col. 4 total divided by # of outlets/branches in Col. 1. Round to nearest %) →

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Entity Number _____ Applicant's Form Identifier _____
Contact Person _____ Phone Number _____

Block 4: Discount Calculation Worksheet C for Consortia

Worksheet #C- _____ Page _____ of _____ (For Administrator's Use)

Instructions: If you are filing a Consortium application, use this worksheet to calculate the consortium discount rate based on eligible members' discounts. Provide Worksheets A and/or B for back-up documentation.

10a If you are:
- **Applying for discounts ONLY on site-specific services:** Complete columns 1-3 only. Add and number pages as needed.
- **Applying for discounts on services shared by ALL members (with or without site-specific services as well):** Complete columns 1-3 PLUS 10c, below.
- **Applying for discounts on different shared services shared by different groups of consortium members:** Complete one worksheet, columns 1-3 PLUS 10c, for EACH different group of entities sharing a service. Designate this worksheet C-1, C-2, C-3, etc. _____

10b List entities and calculate discount(s).

1 ELIGIBLE MEMBER ENTITIES Name of each school, school district and/or library (i.e. outlet/branch, system) in consortium	2 ENTITY NUMBER For each entity listed in Column 1	3 ENTITY DISCOUNT School: Discount from Worksheet A, Column 7 School District: Weighted Average Discount from Worksheet A, Item 10c Library (outlet/branch): Discount from Worksheet B, Column 4 Library System: Discount from Worksheet B, Item 10c
Totals for calculating Shared Discount		

10c Shared Discount % (Col. 3 total divided by # of entities in Col. 1. Round to nearest %)

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Entity Number _____ Applicant's Form Identifier _____
Contact Person _____ Phone Number _____

Block 5: Discount Funding Request(s)

Instructions: Use one Block 5 page for EACH service (Funding Request Number) for which you are requesting discounts. Make as many copies of this page as necessary, and number the completed pages to assure that they are all processed correctly.

Block 5, page _____ of _____

FRN # _____ (to be assigned by administrator)

11 Category of Service (only ONE category should be checked)
Telecommunications Service | Internet Access | Internal Connections

12 Form 470 Application Number (15 digits)

13 SPIN - Service Provider Identification Number (9 digits)

14 Service Provider Name

15 Contract Number (if available; use "T" if tariffed services, "MTM" if month-to-month services as described in Instructions)

16 Billing Account Number (e.g., billed telephone number)

17 Allowable Vendor Selection/Contract Date (mm/dd/yyyy) (based on Form 470 filing)

18 Contract Award Date (mm/dd/yyyy)

19a Service Start Date (mm/dd/yyyy)

19b Service End Date (mm/dd/yyyy) (use only for "T" or "MTM" services)

20 Contract Expiration Date (mm/dd/yyyy)

23 Calculations

Recurring Charges

- **A.** Monthly $ charges (total amount per month for service)
- **B.** How much of the $ amount in (A) is ineligible?
- **C.** Eligible monthly pre-discount amount (A minus B)
- **D.** # of months service provided in program year
- **E.** Annual pre-discount $ amount for eligible recurring charges (C x D)

Non-Recurring Charges

- **F.** Annual non-recurring (one-time) $ charges
- **G.** How much of the $ amount in (F) is ineligible?
- **H.** Annual eligible pre-discount $ amount for one-time charges (F minus G)

Total Charges

- **I.** Total program year pre-discount $ amount (E + H)
- **J.** % discount (from Block 4 Worksheet)
- **K.** Funding Commitment $ Request (I x J)

21 Description of This Service: You MUST attach a description of the service, including a breakdown of components and costs, plus any relevant brand names. Label this description with an Attachment #, and note number in space provided. Attachment # _____

22 Entity/Entities Receiving This Service:
a. If the service is site-specific (provided to one site and not shared by others), list the Entity Number of the entity from Block 4 receiving this service :
b. If the service is shared by all entities on a Block 4 worksheet, list the worksheet number (e.g., A-1):

0 4 7 1 0 1 0 4 0 2

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Do not write in this area

Entity Number _____ Applicant's Form Identifier _____

Contact Person _____ Phone Number _____

Block 6: Certifications and Signature

24 The entities listed in Block 4 of this application are eligible for support because they are: (Check one or both.)

a schools under the statutory definitions of elementary and secondary schools found in the **No Child Left Behind Act of 2001, 20 U.S.C. Secs. 7801(18) and (38)**, that do not operate as for-profit businesses and do not have endowments exceeding $50 million; and/or

b libraries or library consortia eligible for assistance from a State library administrative agency under the Library Services and Technology Act of 1996 that do not operate as for-profit businesses and whose budgets are completely separate from any schools, including, but not limited to, elementary and secondary schools, colleges, or universities.

25 The eligible schools and libraries listed in Block 4 of this application have secured access to all of the resources, including computers, training, software, maintenance, and electrical connections necessary to make effective use of the services purchased as well as to pay the discounted charges for eligible services.

26 All of the schools and libraries or library consortia listed in Block 4 of this application are covered by:

a an individual technology plan for using the services requested in this application; and/or

b higher-level technology plan(s) for using the services requested in this application; or

c no technology plan needed; applying for basic local and long distance telephone service only.

27 Status of technology plans (if representing multiple entities with mixed technology plan status, check both a and b):

a technology plan(s) has/have been approved; and/or

b technology plan(s) will be approved by a state or other authorized body; or

c no technology plan needed; applying for basic local and long distance telephone service only.

28 I certify that the entities eligible for support that I am representing have complied with all applicable state and local laws regarding procurement of services for which support is being sought.

29 I certify that the services the applicant purchases at discounts provided by 47 U.S.C. Sec. 254 will be used solely for educational purposes and will not be sold, resold, or transferred in consideration for money or any other thing of value.

30 I certify that the entity(ies) I represent has complied with all program rules and I acknowledge that failure to do so may result in denial of discount funding and/or cancellation of funding commitments.

31 I understand that the discount level used for shared services is conditional, for future years, upon ensuring that the most disadvantaged schools and libraries that are treated as sharing in the service, receive an appropriate share of benefits from those services.

32 I recognize that I may be audited pursuant to this application. I will retain for five years any and all worksheets and other records that I rely upon to fill out this application, and, if audited, will make available to the Administrator such records.

33 I certify that I am authorized to submit this request on behalf of the above-named entities, that I have examined this request, and to the best of my knowledge, information, and belief, all statements of fact contained herein are true.

34 Signature of authorized person	35 Date
36 Printed name of authorized person	
37 Title or position of authorized person	
38 Telephone number of authorized person	Extension

Persons willfully making false statements on this form can be punished by fine or forfeiture, under the Communications Act, 47 U.S.C. Secs. 502, 503(b), or fine or imprisonment under Title 18 of the United States Code, 18 U.S.C. Sec. 1001.
The Americans with Disabilities Act, the Individuals with Disabilities Education Act and the Rehabilitation Act may impose obligations on entities to make the services purchased with these discounts accessible to and usable by people with disabilities.

0 4 7 1 0 1 0 5 0 2

Entity Number _____ Applicant's Form Identifier _____

Contact Person _____ Phone Number _____

NOTICE: Section 54.504 of the Federal Communications Commission's rules requires all schools and libraries ordering services that are eligible for and seeking universal service discounts to file this Description of Services Requested and Certification Form (FCC Form 470) with the Universal Service Administrator. 47 C.F.R. § 54.504. The collection of information stems from the Commission's authority under Section 254 of the Communications Act of 1934, as amended. 47 U.S.C. § 254. The data in the report will be used to ensure that schools and libraries comply with the competitive bidding requirement contained in 47 C.F.R. § 54.504. All schools and libraries planning to order services eligible for universal service discounts must file this form themselves or as part of a consortium.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The FCC is authorized under the Communications Act of 1934, as amended, to collect the information we request in this form. We will use the information you provide to determine whether approving this application is in the public interest. If we believe there may be a violation or a potential violation of a FCC statute, regulation, rule or order, your application may be referred to the Federal, state, or local agency responsible for investigating, prosecuting, enforcing, or implementing the statute, rule, regulation or order. In certain cases, the information in your application may be disclosed to the Department of Justice or a court or adjudicative body when (a) the FCC; or (b) any employee of the FCC; or (c) the United States Government is a party of a proceeding before the body or has an interest in the proceeding. In addition, consistent with the Communications Act of 1934, FCC regulations and orders, the Freedom of Information Act, 5 U.S.C. § 552, or other applicable law, information provided in or submitted with this form or in response to subsequent inquiries may be disclosed to the public.

If you owe a past due debt to the federal government, the information you provide may also be disclosed to the Department of the Treasury Financial Management Service, other Federal agencies and/or your employer to offset your salary, IRS tax refund or other payments to collect that debt. The FCC may also provide the information to these agencies through the matching of computer records when authorized.

If you do not provide the information we request on the form, the FCC may delay processing of your application or may return your application without action.

The foregoing Notice is required by the Paperwork Reduction Act of 1995, Pub. L. No. 104-13, 44 U.S.C. § 3501, et seq.

Public reporting burden for this collection of information is estimated to average 46 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, completing, and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the reporting burden to the Federal Communications Commission, Performance Evaluation and Records Management, Washington, DC 20554.

Please submit this form to:

SLD-Form 471
P.O. Box 7026
Lawrence, Kansas 66044-7026

For express delivery services or U.S. Postal Service, Return Receipt Requested, mail this form to:

SLD-Form 471
c/o Ms. Smith
3833 Greenway Drive
Lawrence, Kansas 66046
(888) 203-8100

0 4 7 1 0 1 0 6 0 2

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FCC Form 471

Approval by OMB
3060-0806

Schools and Libraries Universal Service
Services Ordered and Certification Form

Estimated Average Burden Hours Per Response: 4 hours

Instructions for Completing the
Schools and Libraries Universal Service
Services Ordered and Certification Form (FCC Form 471)

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KEY INFORMATION

- File your Form 471 online. This speeds the processing of your form and reduces errors.
- See if you qualify for E-certification. (See the **"Special Block 6 Instructions for Applications Filed Online."**) If you do, obtain a User ID and a PIN and certify your Form 471 online as well.
- File requests for Priority 1 and Priority 2 services on separate Forms 471. (See **"When, Where, and How Many Forms 471 to File."**)
- If you are filing on paper, review the **"MINIMUM PROCESSING STANDARDS AND FILING REQUIREMENTS"** for Manual Filers.
- Note the new methodology for libraries to calculate their discount percentages. (See the instructions for Block 4, Worksheet B.)
- Note the detailed information provided in the specific instructions for Item 25.
- Remember that the Form 471 application filing window for Funding Year 2003 closes at 11:59 PM EST on January 16, 2003. See the **"Filing Requirements for Forms 471 Submitted on Paper and Online."**

NOTICE

Section 54.504 of the Federal Communications Commission's (FCC) rules requires all schools and libraries ordering services that are eligible for universal service discounts to file this Services Ordered and Certification Form (FCC Form 471) with the Universal Service Administrator, which is the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC). 47 C.F.R. § 54.504. For purposes of this form, the Universal Service Administrator will be referred to as the "SLD" or "Fund Administrator." The collection of information stems from the Commission's authority under Section 254 of the Communications Act of 1934, as amended, 47 U.S.C. § 254. The data collected in Form 471 will be used to ensure that schools and libraries are receiving the appropriate discounts, complying with the eligibility requirements in 47 C.F.R. § 54.501, and taking steps required by 47 C.F.R. § 54.504 that are necessary to use the discounted services effectively. All schools and libraries ordering services eligible for universal service discounts must file this form, individually or as part of a consortium.

The FCC is authorized under the Communications Act of 1934, as amended, to collect the information we request in this form. We will use the information you provide to determine whether approving this application is in the public interest. If we believe there may be a violation or potential violation of any statute, regulation, rule or order, your application may be referred to the Federal, state, or local agency responsible for investigating, prosecuting, enforcing, or implementing the statute, rule, regulation, or order. In certain cases, the information in your application may be disclosed to the Department of Justice or a court or adjudicative body when (a) the FCC; or (b) any employee of the FCC; or (c) the United States Government, is a party of a proceeding before the body or has an interest in the proceeding.

If you owe a past due debt to the Federal government, the taxpayer identification number and other information you provide may also be disclosed to the Department of the Treasury Financial Management Service, other Federal agencies and/or your employer to offset your salary, IRS tax refund, or other payments to collect that debt. The FCC may also provide this information to these agencies through the matching of computer records when authorized. In addition, consistent with the Communications Act of 1934, FCC regulations and orders, the Freedom of Information Act, 5 U.S.C. § 552, or other applicable law, information provided in or submitted with this form or in response to subsequent inquiries may be disclosed to the public.

If you do not provide the information requested on this form, the processing of your application may be delayed or your application may be returned to you without action.

The foregoing Notice is required by the Paperwork Reduction Act of 1995, Pub. L. No. 104-13, 44 U.S.C. § 3501, *et seq.* An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Public reporting burden for this collection of information is estimated to average four hours per response, including the time for reviewing instructions, searching existing data sources, gathering

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and maintaining the data needed, completing, and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the reporting burden, to the Federal Communications Commission, Performance Evaluation and Records Management Branch, Washington, D.C. 20554.

I. INTRODUCTION

On May 7, 1997, the FCC adopted rules providing discounts on all telecommunications services, Internet access, and internal connections for all eligible schools and libraries. Section 54.504 of the FCC's rules require all eligible schools and libraries ordering services under this discount mechanism to certify their eligibility to receive discounts. 47 C.F.R. § 54.504. Section 54.504 of the FCC's rules directs schools and libraries to submit this information on a Services Ordered and Certification Form. 47 C.F.R. § 54.504.

II. FILING REQUIREMENTS AND GENERAL INSTRUCTIONS

A. Who Must File

Form 471 must be filed to request discounts on eligible services for eligible schools, libraries, and consortia of those entities. Form 471 must be filed AFTER an FCC Form 470, which must be posted on the SLD web site for at least 28 days before the Form 471 is filed. This 28-day waiting period must occur before you may execute any contracts for contracted services; before you select your service provider for tariffed or month-to-month services; and before you sign and submit your Form 471. It is possible that a Form 470 posted in a prior funding year may be used where such a form resulted in a multi-year contract. (See Form 470 Instructions.)

EACH BILLED ENTITY MUST FILE A FORM 471 APPLICATION. Thus, even if several billed entities together filed a single Form 470, each billed entity must file a separate Form 471.

IMPORTANT NOTE: An entity is considered a "billed entity" if it is responsible for making payments directly to a service provider. An entity that receives a bill, but does not make payments to the service provider on that bill, is not a billed entity. **A billed entity may or may not itself qualify for discounts under the universal service support mechanism for schools and libraries.**

For purposes of the schools and libraries universal service support mechanism, schools must meet the statutory definition of elementary and secondary schools found in the **No Child Left Behind Act of 2001, 20 U.S.C. § 7801(18) and (38).** An elementary school is a non-profit institutional day or residential school, including a public elementary charter school, that provides elementary education, as determined under state law. 47 C.F.R. § 54.500(b) and 20 U.S.C. §

7801(18). A secondary school is a non-profit institutional day or residential school, including a public secondary charter school, that provides secondary education, as determined under state law, except that such term does not include any education beyond grade 12. 47 C.F.R. § 54.500(j) and 20 U.S.C. § 7801(38). In addition, eligible elementary and secondary schools may not have endowments exceeding $50 million. 47 C.F.R. § 54.501(b)(3).

Libraries must meet the statutory definition of library or library consortium found in the Library Services and Technology Act, Pub. L. No. 104-208, sec. 211 *et seq.*, 110 Stat. 3009 (1996) (LSTA), and must be eligible for assistance from a state library administrative agency under that Act. A library includes: "(1) a public library; (2) a public elementary school or secondary school library; (3) an academic library; (4) a research library, which for the purposes of this definition means a library that: (i) makes publicly available library services and materials suitable for scholarly research and not otherwise available to the public; and (ii) is not an integral part of an institution of higher education; and (5) a private library, but only if the state in which such private library is located determines that the library should be considered a library for purposes of this definition." 47 C.F.R. § 54.500(c). A library's eligibility for universal service funding also depends on its funding as an independent entity. **Only libraries whose budgets are completely separate from any schools' (including, but not limited to, elementary and secondary schools, colleges, and universities) shall be eligible to receive discounted services under the universal service support mechanism.** 47 C.F.R. § 54.501(c)(2). For example, an elementary school library would only be eligible to receive discounted services if its budget were completely separate from the elementary school. If its budget were not completely separate from the elementary school, the elementary school library would not be eligible for support independent from the school with which it is associated.

A library consortium is "any local, statewide, regional, or interstate cooperative association of libraries that provides for the systematic and effective coordination of the resources of schools, public, academic, and special libraries and information centers, for improving services to the clientele of such libraries." 47 C.F.R. § 54.500(d).

B. When, Where, and How Many Forms 471 to File

Form 471 must be preceded by the filing and posting of a Form 470 **for at least 28 days.**

For newly contracted, tariffed, or month-to-month services, please note that the EARLIEST date on which you may choose vendors or execute contracts or service agreements for those services (the Allowable Vendor Selection/Contract Date) will be expressly identified in a letter sent to each current-year Form 470 applicant to acknowledge the Fund Administrator's receipt of the Form 470 application. The Allowable Vendor Selection/Contract Date will also be indicated on the Form 470 posted on the SLD web site.

The earliest date that a Form 471 can be filed will be the date established by the Fund Administrator as the opening of the Form 471 application filing "window." The Form 471 application filing window is the period during which applications will be considered as having

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arrived simultaneously. All Forms 471, including certifications, received or postmarked by the close of the application filing window are considered as if they had arrived on the same day, and have priority over those postmarked after the closing date of the "window." For Funding Year 2003, the application filing window will open at noon EST on Monday, November 4, 2002 and close at 11:59 p.m. EST on January 16, 2003.

The Form 471 may be filed either manually (on paper) or electronically (online). No Forms 471 will be accepted if sent to the SLD via e-mail or fax.

- ***If You Are Filing on Paper:*** You may complete and submit the Form 471 by filing a paper copy of the completed form, including the completed and signed Block 6 Certifications and any attachment(s), with the Fund Administrator. The signed Form 471 must be filed with the Fund Administrator **at the address listed at the bottom of the form: SLD-Form 471, P.O. Box 7026, Lawrence, Kansas 66044-7026**. For express delivery or U.S. Postal Service Return Receipt, send to: **SLD-Form 471, c/o Ms. Smith, 3833 Greenway Drive, Lawrence, Kansas 66046**, phone 1-888-203-8100. DO NOT FILE THIS OR ANY OTHER UNIVERSAL SERVICE FORM WITH THE FEDERAL COMMUNICATIONS COMMISSION.

- ***If You Are Filing Online:*** You may complete and submit the Form 471 by filing the Form online at the SLD web site www.sl.universalservice.org. If filing your Form 471 online, you must also complete and submit to the SLD the following documents in order to successfully complete the submission of your Form 471 application:

  - the Item 21 description(s) of services, and
  - the Block 6 Certification with the signature of the authorized person (whether online or on paper)
    - You may qualify to submit your Form 471 certifications online. When you submit your certifications online, you will receive a confirmation so that you can be assured that your submission has met any filing deadlines. Check the SLD web site for information about obtaining a User ID and a PIN.

You may file more than one Form 471. For example, you may file one Form 471 for Internal Connections, one for Internet Access, and one for Telecommunications Services. As the billed entity for services requested on one or more Forms 470, you may combine services requested on multiple Forms 470 into one Form 471, or you may file a corresponding Form 471 for each Form 470 filed. Please refer to the detailed instructions for more information about these procedures.

NOTE: Applicants who are applying for both Priority 1 (Telecommunications Services or Internet Access) and Priority 2 (Internal Connections) services are strongly encouraged to file these requests on separate Forms 471 — that is, to file one or more Forms 471 for their Priority 1 requests and one or more Forms 471 for their Priority 2 requests. This separation will allow the SLD to process Priority 1 requests and communicate decisions on funding commitments for those requests more quickly. Because there is often uncertainty

about the funding threshold for Internal Connections, applicants who combine funding requests for Priority 1 and Priority 2 services on a single Form 471 risk delaying the notification process for Priority 1 funding decisions.

C. Assistance in Completing This Form

There are several sources of assistance to guide you in completing this form. If you complete this Form online at the SLD web site at www.sl.universalservice.org, you will be assisted in the process by special step-by-step online instructions. Whether you file online or on paper, you are urged to consult the Reference Area of the SLD web site, www.sl.universalservice.org, for guidance in completing this form. Those without web access may obtain similar guidance material by calling the SLD Client Service Bureau via toll-free telephone at **1-888-203-8100.** Further information is also available from the SLD Client Service Bureau at **1-888-203-8100**, via e-mail at **question@universalservice.org**, or via fax at **1-888-276-8736**.

D. Compliance

Schools and libraries, or consortia acting on behalf of schools and libraries. failing to file the Services Ordered and Certification Form (Form 471) will not be eligible to receive universal service discounts. Schools and libraries filing false information are subject to fines under Section 502 of the Communications Act, 47 U.S.C. § 502, forfeiture penalties under Section 503(b) of the Communications Act, 47 U.S.C. § 503(b), or penalties for false statements under Title 18 of the United States Code, 18 U.S.C. § 1001. Applicants should retain the worksheets and other records they use to compile these forms for five years. This includes all documentation showing that you have complied with all applicable competitive bidding requirements, including copies of competing bids and documentation of the bid evaluation process and bid criteria used. Thus, if applicants represent multiple billed entities, collect data from those entities, and add up that data, they should retain those data sheets for five years. If an applicant is audited, it should be prepared to make the worksheets and other records used to compile these forms available to the auditor and/or the Administrator, and it should be able to demonstrate to the auditor and/or the Administrator how the entries in its application were provided.

III. MINIMUM PROCESSING STANDARDS AND FILING REQUIREMENTS

Form 471 Minimum Processing Standards

When a Form 471 is submitted on paper and received by the SLD, the form is first reviewed to make sure it complies with the following requirements before data entry begins. These minimum processing requirements are necessary in order to ensure the timely and efficient processing of properly completed applications. If a Form 471 fails to meet these requirements, the Form 471 will be rejected. The SLD may be prevented from returning the rejected Form 471 to the sender if the form lacks essential identifying information. If an applicant receives a returned Form 471, it is important that it resubmit the corrected form quickly. Once the corrected form is

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successfully processed, the postmark date of that corrected form will be the postmark date for the purpose of the application filing window deadline.

Manual Filers

1. Correct Form: Each Form 471 must be:

a. the correct, OMB-approved FCC Form 471, with a date of October 2002 or October 2000 in the lower right-hand corner;
b. submitted by regular mail, express delivery, or U.S. Postal Service Return Receipt Requested, or hand delivery. Forms may not be submitted by fax or e-mail. You are advised to keep proof of the date of mailing.

2. Billed Entity Information: In Block 1, each of the following items must be properly completed. The "Billed Entity" is the entity actually paying the bills for the services listed on the Form 471.

a. Item 1 or Item 3 – Either the Name of the Billed Entity or the Entity Number;
b. Item 2 – Funding Year;
c. Item 6a – Contact Person Name

If any of these items is blank, and the information cannot be obtained from the page headers, the Form 471 will be rejected.

3. Complete Submission of Form 471: All 6 blocks of the Form 471 must be submitted. If any Block (1-6) of the paper form is missing, the form will be rejected. Please note that Block 2, which indicates that this Form 471 is being filed to make a minor modification to a previously filed Form 471, will usually be left blank.

4. Block 4 Worksheet: At least one completed Block 4 Worksheet relevant to your application type (see Block 1, Item 5) must be submitted. If a relevant Block 4 Worksheet is not submitted, or the Worksheet is missing information, the form will be rejected.

- If the application type is school or school district, a completed Block 4 Worksheet A must be submitted.
- If the application type is library, a completed Block 4 Worksheet B must be submitted.
- If the application type is consortium, a completed Block 4 Worksheet C must be submitted.

5. Complete Submission of Each Block 5 Funding Request: Each Block 5 Funding Request must meet the following requirements in order to be data entered as part of the Form 471. If any of the requirements is missing, the Funding Request will be automatically deleted from the form. If all of the Block 5 Funding Requests fail to meet these requirements, the form will be rejected.

Each Block 5 Funding Request must, at a minimum, include:

a. Item 11 – Category of Service;
b. Item 13 or Item 14 – Either the Service Provider Identification Number or the Service Provider Name;
c. Item 23 – At least one entry with a positive dollar value in Column E, H, I, or K must be completed. Please note that you may not increase your request after filing your Form 471, unless you submit a new Form 471. Therefore, you should take care to complete **ALL** applicable columns of Item 23.

In addition to the requirements listed above for Block 5, if certain components reflect a violation of program rules, they will invalidate the Funding Request featured for that service item. Discounts on services reflected in such Funding Requests will not even be entered into the SLD system; such a Funding Request will be automatically rejected, even while other Block 5 Funding Requests may be honored.

6. Valid Certification: Block 6, Item 34 – Signature of authorized person must be completed. If Item 34 is left blank, the Form 471 will be rejected.

Online Filers:

When Blocks 1-5 of a Form 471 are submitted online, the applicant must also (1) submit the completed Block 6 certification online with a User ID and a PIN or (2) submit the completed and signed paper Block 6 certification by mail, express delivery or U.S. Postal Service Return Receipt Requested. Online submission of Blocks 1-5 is complete after you click on the "SUBMIT" button. If the Block 6 certification is submitted on paper, you are advised to keep proof of the date of mailing. The Block 6 certification is reviewed to make sure it complies with the requirement in #6 above. Reviewers also look for the Form 471 Application Number before the Certification and Signature Page is accepted and the Form 471 reaches "certified" status. If the paper Block 6 certification document lacks the information necessary to match it with the Blocks 1-5 of the form you filed online, then your application will not meet the application window filing requirements.

Filing Requirements for Forms 471 Submitted on Paper and Online:

1. Application Materials: The following materials associated with Funding Year 2003 Form 471 must be received by 11:59 p.m. EST on January 16, 2003 or postmarked on or before January 16, 2003 in order for the request to receive consideration as inside the window. These materials are:

- The Form 471 itself (whether online or on paper)
- The Block 6 certification of the Form 471 with the signature of the authorized person (whether online or on paper)

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- The Block 5 certification of any Form 470 cited in a Funding Year 2003 Form 471 with the signature of the authorized person (whether online or on paper). Forms 470 with completed certifications submitted in a previous year meet this requirement. Any Funding Year 2003 Form 471 Block 5 funding request based on a Form 470 whose certification has not been received by 11:59 p.m. EST on January 16, 2003 or postmarked on or before January 16, 2003 will be rejected.

2. Item 21 Attachment Labeling: Label your attachment as "Item 21 Attachment," and include the application number of the Form 471 it supports, or use the Applicant Form Identifier if you file on paper. Be sure to label the attachment to correspond with each Block 5, Item 21 of your application.

January 16, 2003 Deadline: Failure to make the January 16, 2003 deadline for Form 471 application materials will place the entire application outside the window, and the applicant's funding will be jeopardized.

IV. SPECIFIC INSTRUCTIONS

You are encouraged to complete and submit this form online. It will be available on the SLD web site at www.sl.universalservice.org when the Form 471 application filing window opens along with instructions for filing online using the web site. Alternatively, for paper submissions, you may download a paper version of the form from the SLD web site at www.sl.universalservice.org. If you file paper copies of the application, please type or clearly print in the spaces provided and attach additional pages if necessary and when required.

A. Top of Form

The data at the top of Form 471 will help both you and the SLD identify each particular Form 471 you file.

"Do Not Write In This Area" - The SLD uses this space to apply a bar code to your form upon receipt, so that we can properly track and archive your form.

Applicant's Form Identifier (11 characters maximum) - If you are filing more than one Form 471, please use this space to assign a unique number or letter of your own devising to facilitate communication with us about THIS particular Form 471. This Applicant's Form Identifier can be very simple; for example, if you are filing three Forms 471, you might label them "A," "B," and "C." The Applicant's Form Identifier can also be descriptive, such as "Internet." Choose identifiers that suit your own record keeping needs.

Form 471 Application Number - The SLD will assign and insert your Form 471 Application Number. Leave this item blank.

Top of each page after page 1: If you are filing this application on paper, please provide the Entity Number (from Item 3, below), your Applicant's Form Identifier, and name and phone number of the contact person (from Item 6, below) at the top of each page of the application in the space provided. This will help alleviate problems caused if the pages of an application become separated.

B. Block 1: Billed Entity Information

Block 1 of Form 471 asks you for your address and basic identifications. "You" refers throughout this form to the billed entity – the party actually paying bills for the eligible schools and libraries listed in this application form.

Item 1 (30 characters maximum) - Provide the name of the billed entity. As the billed entity, you may be an individual school, a school district that is the billed entity for its schools, a library (outlet/branch, system), or a consortium of those entities. You may also be a city, a state, or an entity created solely to participate in this universal service discount mechanism, but only if you are the billed entity, in that you actually pay the bills for the service to the service provider. **The billed entity itself may or may not be eligible for discounts.**

Item 2 - Funding years begin on July 1 and end on June 30 each year. For example, Funding Year 2003 runs from July 1, 2003 to June 30, 2004. Provide the funding year for which you are applying for funds by filling in the appropriate year in the blanks provided (e.g., July 1, 2003 through June 30, 2004).

Item 3 - Your Entity Number is a unique number assigned to your organization or institution by the SLD as a means of identifying you every time you file an application or otherwise communicate with us. If you have applied for universal service funds in previous years, or have been identified in an application filed on your behalf, you have already been assigned an Entity Number. If you do not have a record of your Entity Number, or if you have never been assigned such a number, please call the SLD Client Service Bureau at 1-888-203-8100.

Items 4a-4d - Provide your full mailing address, whether a street address, Post Office Box number, or route number. You are strongly encouraged to provide a street address rather than a Post Office Box if possible, as the Fund Administrator may need to contact you via overnight or express delivery. In addition, please provide your telephone number with area code and extension, fax number, and e-mail address if you have one (33 characters maximum).

Item 5 - Check the one box that best describes the type of application you are filing. If you are filing as a school, you should check the first box. If you are filing as a school district, you should check the second box. If you are filing as a library (outlet/branch, system), you should check the third box. If you are filing as a consortium, you should check the fourth box. (You may be a consortium of schools, libraries, or some combination of the above which may or may not include ineligible entities. If you are filing as a library consortium, you should check the fourth box.)

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In addition, if you are a consortium that includes non-governmental entities ineligible for universal service support, please check the box provided to indicate this. Non-profit 501(c)(3) organizations are NOT governmental entities. (Note: Consortium members eligible for universal service support such as "rural health care providers" should be treated as "governmental entities" for the purpose of these categories.) If your consortium includes ineligible non-governmental entities, you should note that you cannot negotiate pre-discount prices below tariff rates for interstate services from incumbent local telephone companies.

Item 6a (30 characters maximum) - Provide the name of the person who should be contacted with questions about this application. This person should be able to answer questions regarding the information included on this form and the services you request.

Items 6b-6f - If the contact person's address, phone number, fax number, or e-mail address is different from those specified for the applicant in Item 4, please provide that information here. You MUST then check your preferred mode of contact. Wherever possible, the SLD will use this mode to contact you. In addition, in Item 6f, you may choose to provide an alternate telephone number, address, contact name, or special operating hours that we may use to reach you during holiday/vacation/summer periods (50 characters maximum).

C. Block 2: Minor Modification to Existing Contract or Service Agreement

Item 7 - Before completing this item, please check for guidelines at the SLD web site at www.sl.universalservice.org or by calling the SLD Client Service Bureau at 1-888-203-8100. The occasions for required use of this item will be identified each funding year. This item may be filed ONLY on paper. No online filings will be accepted for this item. **In general, you will leave this item blank.**

D. Block 3: Impact of Services Ordered in This Application

Block 3 asks for data to help the Fund Administrator document the potential impact of the universal service program for schools and libraries across the country, and compare that impact from year to year. Block 3 requests data pertinent to THIS application only. If you file multiple applications, you may provide different data in this section in each application. You need complete only those items that are relevant to your application. Please use precise data wherever possible, and your best estimates wherever necessary.

Items 8a-8b - Quantify the number of people affected by the services ordered in this application. Schools/school districts should complete Item 8a, libraries should complete Item 8b, and consortia should complete either or both as appropriate.

Item 8a - If your application includes eligible K-12 schools, provide the total number of students that will potentially be affected by the services ordered in this application.

Item 8b - If your application includes eligible libraries, provide the approximate number of patrons potentially affected by the services ordered in this application, as defined by the number of cardholders you serve or other estimates of regular library users.

Items 9a-9k - These questions ask you to quantify the expected outcomes of the services you are ordering with this application. The questions focus on typical benchmarks of technology development for schools and libraries, and request data about these benchmarks before and after your order as reflected in this Form 471. Some are more relevant to certain types of applicants than others. **Please answer ALL the questions that are relevant to your situation and THIS application.** If the quantity or capacity of a service you order remains the same before and after your order, please complete that question by entering the same data in both columns.

Item 9a - If you are ordering telephone service to reach classrooms, please indicate how many classrooms had telephone service before and after your order.

Items 9b and 9c - If your order includes high-bandwidth voice/data/video service provided by a telecommunications provider, please indicate in Item 9b how many buildings had such service before your order and how many will have such service after your order. In Item 9c, indicate the highest speed of such service to a building before and after your order. If this service also provides your buildings with Internet access, please be sure to quantify that access by completing Item 9h and/or Item 9i.

Items 9d and 9e - If your order includes dial-up Internet access, please identify in Item 9d the number of dial-up connections before and after your order. In Item 9e, indicate the highest speed of such connections before and after your order. If you complete this item, please also complete Item 9h-9j as appropriate.

Items 9f and 9g - If your order includes direct access to the Internet via lines identified in this application for Internet access only, please indicate in Item 9f the number of such connections before and after your order. In Item 9g, indicate the highest speed of such connections before and after your order. If you complete this item, please also complete Items 9h-9j as appropriate.

Item 9h - If your application includes schools and provides for Internet access either directly or indirectly, please provide your best estimate of the number of rooms with Internet access before and after your order. Please also complete Item 9j.

Item 9i - If your application includes libraries and provides for Internet access either directly or indirectly, please provide your best estimate of the number of buildings (including bookmobiles) with Internet access before and after your order. Please also complete Item 9j.

Item 9j - Provide your best estimate of the number of computers or other devices (such as television sets, hand-held units, network terminals, and other non-PC Internet appliances) that had Internet access before your order, and how many will have Internet access after your order. These devices may access the Internet directly or via a local area network. If you complete this

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item, be sure to also reflect the quality and capacity of that access by completing Items 9b and 9c, and/or Items 9d and 9e, and/or Items 9f and 9g.

Item 9k - Use this item to describe any other relevant outcome of your order not captured in the items above. We are particularly interested in new and emerging technology solutions made possible by eligible services ordered in this application.

E. Block 4: Discount Calculation Worksheets

This block consists of three separate worksheets designed to meet the needs of those filing as:

- Schools/school districts – Worksheet A (see step-by-step instructions).
- Libraries (outlet/branch, system) – Worksheet B (see step-by-step instructions).
- Consortia – Worksheet C (see step-by-step instructions).

Each worksheet includes its own instructions and its own step-by-step discount calculation chart. NOTE: If you are filing as a consortium, you may also need to include one or more Worksheets A and/or one or more Worksheets B (see step-by-step instructions for Worksheet C).

Instructions for Each Worksheet

Worksheet A: Discount Calculation for those entities filing as Schools/School Districts

If you checked the first or second box in Block 1, Item 5, you should use this worksheet.

Item 10a - If you are filing this application as:

- a school, you need only complete one line of Item 10b, Columns 1-7. All of the services for which you are applying will be subject to the same site-specific discount you calculate here.
- a school district serving more than one school, and you are requesting services that will go ONLY to individual schools and will not be shared, complete Columns 1-7 of Item 10b for each school.
- a school district, and ALL of the schools in your district will share one or more services (whether or not those schools will also receive site-specific services), complete Columns 1-8 for each of your schools PLUS Item 10c.
- a school district and if some services you are requesting will be shared by some schools and not others (whether or not those schools will also receive site-specific services), complete a separate worksheet, Columns 1-8 PLUS Item 10c, for each different group of schools sharing a service. You will then label the worksheets A-1, A-2, A-3, etc.

Item 10b - Use this worksheet as instructed in Item 10a to calculate the appropriate discount(s).

Item 10b, Column 1: For each school included in your application, list the school by name on a separate row. For a new school under construction, label this item "New School Construction"

followed by the name of the school, in parentheses, if it is known at the time the Form 471 is submitted. If your district office or other administrative building(s) in your district is eligible for services, label this item "Administrative Entity" followed by the name, in parentheses, of the district office or other administrative building.

Item 10b, Column 2: List each school's Entity Number. If you do not know the Entity Number for a particular school or administrative building, call the Client Service Bureau at 1-888-203-8100.

Item 10b, Column 3: Indicate whether each school is located in an urban or a rural area. You should base your assessment on the table posted in the "Rural/Urban Classification" information on the SLD web site at www.sl.universalservice.org. Instructions accompanying the table will help you determine whether the school is located in an urban or a rural area for purposes of the universal service support mechanism.

Calculating Each School's Site-Specific Discount (Columns 4-7)

Item 10b, Column 4: List the total number of K-12 students in each school. For "New School Construction" or for an "Administrative Entity," enter "0" in this item.

Item 10b, Column 5: Provide the number of students eligible for the National School Lunch Program (NSLP) as of the October 1st prior to the filing of this form, or use the most current figure available. For "New School Construction" or for an "Administrative Entity," enter "0" in this item. You may choose to use an actual count of students eligible for the National School Lunch Program or use federally approved alternative mechanisms to determine the level of poverty for purposes of the universal service discount program. Schools using a federally approved alternative mechanism may use participation in other income-assistance programs, such as Medicaid, food stamps, Supplementary Security Income (SSI), federal public housing assistance (Section 8), or Low Income Home Energy Assistance Program (LIHEAP) to determine the number of students that would be eligible for the NSLP. See 34 C.F.R. § 200.28(a)(2)(i)(B). For more information, please refer to the "Alternative Discount Mechanisms Fact Sheet" posted on the SLD web site at www.sl.universalservice.org.

Item 10b, Column 6: For each school, divide Column 5 by Column 4 to arrive at the percentage of students eligible for the National School Lunch Program. Discount calculations may be rounded up only when fully half a discount point is reached. For example, an urban school with a discount eligibility of 34.499% will round down to 34%, and an urban school with a discount eligibility of 34.500% will round up to 35%. For eligibility discounts of less than 1%, however, there is no rounding. For "New School Construction" or for an "Administrative Entity," leave this item blank.

Item 10b, Column 7: Using the percentage in Column 6 and the Discount Matrix (see below), you should determine the percentage discount to which the school is entitled. If you file online, the system will calculate this figure for you. If you have any questions about determining this

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figure, you can call the SLD Client Service Bureau for assistance at **1-888-203-8100**. For "New School Construction" or for an "Administrative Entity" ONLY, enter the Weighted Average Discount for the School District. (A preparatory Worksheet A must be submitted documenting the Weighted Average Discount for the School District or, if a Worksheet A already includes all schools in the School District, label that worksheet "All Schools in the School District.")

DISCOUNT MATRIX

INCOME Measured by % of students eligible for the National School Lunch Program	URBAN LOCATION Discount	RURAL LOCATION Discount
If the percentage of students in your school that qualifies for the National School Lunch Program is…	…and you are in an URBAN area, your discount will be…	…and you are in a RURAL area, your discount will be…
Less than 1%	20%	25%
1% to 19%	40%	50%
20% to 34%	50%	60%
35% to 49%	60%	70%
50% to 74%	80%	80%
75% to 100%	90%	90%

Calculating a Shared Discount for the School District (Column 8 and Item 10c)

Item 10b, Column 8: For each school receiving an appropriate share of shared services, multiply the discount rate for the school (Column 7) by the number of students in the school (Column 4). If you file online, the system will calculate this figure for you. The product is the school's weighted discount. For "New School Construction" or for an "Administrative Entity," leave this item blank.

Item 10b, Column 4, last cell: Add all of the students in all of the schools listed, and enter the total into the last cell at the bottom of Column 4. If you file online, the system will calculate this figure for you.

Item 10b, Column 8, last cell: Add together all of the products in Column 8, and enter the total into the last cell at the bottom of Column 8. If you file online, the system will calculate this figure for you.

Item 10c - Divide the total at the bottom of Column 8 by the total at the bottom of Column 4. Round the result to the nearest whole number percentage, and enter it into Item 10c. If you file online, the system will calculate this figure for you.

Worksheet B: Discount Calculation for those entities filing as Libraries

If you checked the third box in Block 1, Item 5, you should use this worksheet.

Item 10a - If you are filing this application as:

- a library consisting only of one outlet/branch, you need only complete one line of Item 10b, Columns 1-4. All of the services for which you are applying will be subject to the same site-specific discount you calculate here.
- a library and you are a library system with more than one outlet/branch, and you are requesting services that will go ONLY to individual outlets and will not be shared, complete Columns 1-4 of Item 10b for each outlet.
- a library and you are a library system with multiple outlets/branches, and ALL of the outlets/branches will share one or more services (whether or not those outlets/branches will also receive site-specific services), complete Columns 1-4 PLUS Item 10c.
- a library and you are a library system with some of the services you are requesting shared by some outlets/branches and not others (whether or not those outlets/branches will also receive site-specific services), complete a separate worksheet, Columns 1-4 PLUS Item 10c, for each different group of outlets/branches sharing a service. You will then label the worksheets B-1, B-2, B-3, etc.

Item 10b - You will use this worksheet as instructed in Item 10a to calculate the appropriate discount(s).

Item 10b, Column 1: For each library outlet/branch included in your application, list the outlet/branch by name on a separate row. For a new library under construction, label this item "New Library Construction" followed by the name of the library, in parentheses, if it is known at the time the Form 471 is submitted. If your library system office or other administrative building(s) is eligible for services, label this item "Administrative Entity" followed by the name, in parentheses, of the library system or other administrative building.

Item 10b, Column 2: List the Entity Number for each library outlet/branch. If you do not know the Entity Number for a particular library outlet/branch or administrative building, call the SLD Client Service Bureau at 1-888-203-8100.

Identifying the Site-Specific Discount for Each Library Outlet

Item 10b, Column 3: List the name of the public school district in which each library outlet/branch is located.

Item 10b, Column 4: The level of poverty for a library outlet/branch is based on the percentage of student enrollment that is eligible for a free or reduced price lunch under the National School Lunch Program or a federally approved alternative mechanism in the public school district in which the library is located. If you are using the percentage of students eligible for the National

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School Lunch Program, you may generally obtain the necessary information by contacting your local school district.

To determine the discount to which the library is entitled under E-rate, you must perform a two-step procedure. First, calculate the percentage of the students eligible for the National School Lunch Program in the school district in which the library is located. Second, use the Discount Matrix (see above) to determine the discount to which the library is entitled under E-rate. This discount must be entered in Item 10b, Column 4.

FIRST STEP: To calculate the percentage of students eligible for the National School Lunch Program, take the **number of students eligible** for the National School Lunch Program (NSLP) **in the school district in which the library outlet/branch is located (listed in Column 3) and divide by the total number of students in that school district**. Use the number of students eligible for the National School Lunch Program (NSLP) as of the October 1st prior to the filing of this form or use the most current figure available. Discount calculations may be rounded up only when fully half a discount point is reached. For example, a library outlet/branch with a calculated NSLP percentage of 34.499% will round down to 34%, and a library outlet/branch with a calculated NSLP percentage of 34.500% will round up to 35%. For calculated NSLP percentages of less than 1%, there is no rounding.

You may choose to use a federally approved alternative mechanism for the public school district in which the library is located to determine the level of poverty for purposes of the universal service discount program. Those using a federally approved alternative mechanism may use participation in other income-assistance programs, such as Medicaid, food stamps, Supplementary Security Income (SSI), federal public housing assistance (Section 8), or Low Income Home Energy Assistance Program (LIHEAP) to determine the number of students that would be eligible for the NSLP. See 34 C.F.R. § 200.28(a)(2)(i)(B). For more information, please refer to the "Alternative Discount Mechanisms Fact Sheet" posted on the SLD web site at www.sl.universalservice.org.

SECOND STEP: **Using the percentage calculated for the school district and the Discount Matrix (see above), determine the discount to which the library is entitled under E-rate.** (NOTE: You must determine if the library outlet/branch is located in an urban or rural area based on the table posted in the "Rural/Urban Classification" information on the SLD web site at www.sl.universalservice.org. Instructions accompanying the table will help you determine whether the library outlet/branch is located in an urban or a rural area for purposes of the universal service support mechanism.) For example, a library outlet/branch which is located in an urban area with a calculated NSLP eligibility of 34% is eligible for a 50% E-rate discount from the Discount Matrix, and a library outlet/branch which is located in an urban area with a calculated NSLP percentage of 35% is eligible for a 60% E-rate discount from the Discount Matrix. For calculated NSLP percentages of less than 1%, there is no rounding, and the E-rate discount from the Discount Matrix is 20% for urban and 25% for rural.

For "New Library Construction," enter the discount from the Discount Matrix calculated as described above for the school district in which the library under construction is located. For an "Administrative Entity," enter the Library System's Average Discount from Item 10c after it is calculated.

Calculating the Shared Discount for the Library System

Item 10b, Column 4, last cell: Add up all of the discounts in this column and enter the total in the cell at the bottom of Column 4. If you file online, the system will calculate this figure for you.

Item 10c - Divide the total at the bottom of Column 4 by the total number of library outlets/branches listed in Column 1. Round the result to the nearest whole number percentage, and list this number in Item 10c. This is the library system's shared discount. If you file online, the system will calculate this figure for you.

Worksheet C: Discount Calculation for Consortia

If you checked the fourth box in Block 1, Item 5, you should use this worksheet. This worksheet should be used for a consortium of schools, school districts, libraries (outlets/branches, systems) or any combination of the above.

Item 10a - If you are filing this application as:

- a consortium and you are requesting services that will go ONLY to an individual consortium member and will not be shared, complete Columns 1-3 of Item 10b for each member.
- a consortium and if ALL consortium members will share one or more services (whether or not those consortium members will also receive site-specific services), complete Columns 1-3 for each member of your consortium PLUS Item 10c.
- a consortium, and some requested services will be shared by some consortium members and not others (whether or not those consortium members will also receive site-specific services), you must complete a separate worksheet, Columns 1-3 PLUS Item 10c, for each different group of consortium members sharing a service. You will then label the worksheets C-1, C-2, C-3, etc.

Item 10b - You will use this worksheet as instructed in Item 10a to calculate the appropriate discount(s).

Item 10b, Column 1: For each eligible consortium member included in your application, list the member by name on a separate row. Do not list ineligible consortium members, as they will not receive discounted services.

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Item 10b, Column 2: List each eligible consortium member's Entity Number. If you do not know the Entity Number for a particular eligible consortium member, call the SLD Client Service Bureau at 1-888-203-8100.

Identifying the Site-Specific Discount for Each Member

Item 10b, Column 3: Provide the correct discount for each eligible member depending on the type of entity it is.

- If the member is an individual school, use the discount from Worksheet A, Column 7. Attach a completed Worksheet A showing the calculations for each school that is a member of your consortium.
- If the member is a school district, use the discount from Worksheet A, Item 10c (the weighted average discount). Attach a completed Worksheet A showing the calculations for each school district that is a member of your consortium.
- If the member is a library outlet/branch, use the discount calculated as explained above for Worksheet B, Column 4.
- If the member is a library system, use Worksheet B, Columns 1-4 PLUS Item 10c, to calculate the discount. Attach a complete Worksheet B showing these calculations for each library system that is a member of your consortium.

Calculating the Shared Discount for the Consortium

Item 10b, Column 3, last cell: Add up all of the discounts in this column and enter the total in the cell at the bottom of this column. If you file online, the system will calculate this figure for you.

Item 10c - Divide the total at the bottom of Column 3 by the total number of consortium members listed in Column 1. Round the result to the nearest whole number percentage, and list this number in Item 10c. This is the shared discount for the entire consortium. If you file online, the system will calculate this figure for you.

F. Block 5: Services Ordered

Block 5 asks you to provide information about the eligible services that you have ordered, their cost, and the discount you are requesting based on the entities to receive service. The following information will highlight the features of Block 5:

You will complete one Block 5 worksheet for **each** Funding Request. In general, you should complete a separate Funding Request page for:

- Each service provider that will be providing you with service.
- Each separate contract or service agreement (but not necessarily the individual service within that contract or agreement, as long as they are in the same category of service, e.g. telecommunications services).
- Each different category of service provided by the same provider. For example, a PBX system that the applicant will purchase and own and local voice service from the same telephone company should go on separate Block 5 worksheets, since the PBX would be Internal Connections and the phone service is Telecommunications Services. Check the "Eligible Services List" and any updates at www.sl.universalservice.org to identify which category each service belongs in.
- Local phone service.
- Long distance phone service.
- Site-specific service (service not shared by other sites).
- If you are ordering services based on different Forms 470, services corresponding to each Form 470 must be reported on separate Block 5 worksheets with the relevant Form 470 Application Numbers.

- **Priority 1 and Priority 2 services.** Applicants who are applying for both Priority 1 (Telecommunications Services or Internet Access) and Priority 2 (Internal Connections) services are strongly encouraged to file these requests on separate Forms 471 — that is, to file one or more Forms 471 for their Priority 1 requests and one or more Forms 471 for their Priority 2 requests.

- **Ineligible costs:** You may not seek support for ineligible services, entities, and uses. The Block 5 worksheet will guide you through deducting any ineligible costs from your total cost of services before calculating your discount request. If you have any questions about whether a service is eligible for support, please check the "Eligible Services List" on the SLD web site at www.sl.universalservice.org or contact the SLD Client Service Bureau at 1-888-203-8100.

- **Signed contracts:** You MUST have a signed contract (or a legally binding agreement between you and your service provider preparatory to a formal signed contract) for all services you order on your Form 471 except:
  - *Tariffed services:* Telecommunications services that you purchase at prices regulated by your state regulatory commission and/or the FCC, which do not require a signed, written contract.
  - *Month-to-Month Services:* Month-to-Month services which do not require a signed, written contract. Your billing arrangement signifies that you are receiving your services on a month-to-month basis.

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Note: You must file a Form 470 and seek competitive bids for tariffed or month-to-month services each funding year.

- **Eligible service providers:** To provide you with telecommunications services, Internet access and internal connections under this program, a service provider must secure a Service Provider Identification Number (SPIN) from the Universal Service Administrative Company and certify that they will comply with program rules. ***However, telecommunications services may be obtained only from telecommunications companies who provide those telecommunication services on a common carriage basis (meaning they provide their services for a fee to the general public).*** You may check the "BEAR/SPIN Search" on the SLD web site at www.sl.universalservice.org to confirm whether your service provider is eligible to provide telecommunications services. If you receive telecommunications services from a provider that does not provide telecommunications services on a common carriage basis, your Funding Request for such services will be denied.

- **Discounted and undiscounted amounts:** Form 471 requires you to certify in Block 6, Item 25 that you have adequate budgetary resources for the undiscounted portion of any service you seek, as well as for related, ineligible services such as computers, training, software, maintenance, and electrical connections that you will need to make effective use of the services you order.

Item-by-Item Instructions

FRN # - The Fund Administrator will assign a unique number to each Funding Request represented on a Block 5 worksheet.

Item 11 - Check the correct category for the service listed on this Block 5 Funding Request. You may check only ONE. Please consult the "Eligible Services List" and any updates on the SLD web site at www.sl.universalservice.org or contact the SLD Client Service Bureau at 1-888-203-8100.

Item 12 - Provide the 15-digit FCC Form 470 Application Number of the FCC Form 470 in which the services ordered here were sought. FCC Form 470 applicants will receive this number when they receive confirmation that their FCC Form 470 has been received and posted.

Item 13 - Enter the 9-digit Service Provider Identification Number (SPIN) for this service provider. You must provide a valid SPIN for the service provider indicated in Item 14 below. Each service provider should give you its SPIN on request. You may refer to the "BEAR/SPIN Search" area of the SLD web site for a list of service provider contacts. A service provider who does not have a SPIN should file the FCC Form 498 to obtain one. The Form 498 and Instructions can be downloaded from the Forms Area of the SLD web site.

Item 14 (30 characters maximum) - Provide the full legal name of the service provider for this Funding Request. You may list only ONE service provider per Block 5 worksheet. The name of your Service Provider whose SPIN is indicated in Item 13 above must be provided.

Item 15 (18 characters maximum) - Provide the contract number for this service.

- If this is a contracted service, and the contract does not have a contract number but has some other reference number, you should note that number. If there is no reference number, please enter N/A.
- If you are buying off of a master contract signed by a state, regional or local procurement agency on behalf of eligible schools and libraries, you may use either the master contract number or the number of your own purchase agreement executed pursuant to that master contract. Whichever number you use, be certain that you use the corresponding dates in Item 18 and Item 20.
- If this is a tariffed service— a telecommunications service that you purchase at prices (rates) regulated by your state regulatory commission and/or the FCC which does not require a signed, written contract—place a T in Item 15.
- Certain services are commonly offered on the basis of a month-to-month arrangement where there may be no written agreement between the customer and the service provider. These include services such as Internet access, cellular services and paging services. In these instances, standard monthly bills will be accepted as proof of a binding, legal arrangement between the service provider and the customer. (These arrangements are different from tariffed services, which may also be offered month-to-month but at regulated prices.) If the service for which you are completing Block 5 is purchased under such a month-to-month arrangement, please enter MTM (for "month-to-month") in Item 15.

Item 16 (18 characters maximum) - Provide the account number that your service provider has established with you for billing purposes. This information will help your service provider provide you with discounted bills for service. In the case of telephone services, this is most often the billed telephone number associated with the service. **If there are multiple billed telephone numbers, provide one main number**. If this service is already established (for example, a service provided under a qualified existing contract, or tariffed services for which you have selected the same service provider who already provides you with service), you should be able to find your account number on past bills, or you can request your account number from the service provider. If you have not yet established an account number, your service provider may have a "pre-account" identifier for you to use. If your service provider has no account number to identify your service, enter N/A.

Item 17 - List the Allowable Vendor Selection/Contract Date for this service. The Allowable Vendor Selection/Contract Date is the earliest date you are permitted to sign a contract for newly contracted services or to select your service provider for tariffed or month-to-month services after posting a Form 470. This Allowable Vendor Selection/Contract Date is identified in your Receipt Notification Letter for the Form 470 cited in Item 12 above, as well as on that posted Form 470 on the SLD web site.

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Item 18 - For contracted services, enter the date that your contract for this service was signed, using mm/dd/yyyy format. For tariffed services and month-to-month services that you have identified as such in Item 15, leave this item blank.

Item 19a - For contracted, tariffed, and month-to-month services, provide the date **when services will start in the funding year** for which you are applying, using mm/dd/yyyy format. Note that discounts will NOT be provided for services delivered before the beginning of the funding year, which starts on July 1. Thus, if this service has already started by the time you file this Form 471, you will use July 1 of the funding year as your Service Start Date.

Item 19b - For tariffed and month-to-month services, enter the date that services will end in the funding year for which you are applying, using mm/dd/yyyy format. For contracted services, see Item 20 below.

Item 20 - For contracted services, enter the date the contract expires, in mm/dd/yyyy format. For tariffed services and month-to-month services that you have identified as such in Item 15, leave this item blank.

Item 21 (8 characters maximum) - Each Block 5 Discount Funding Request must include a description of the products and services for which discounts are being sought. This description is known as an "Item 21 Attachment." Each description must be labeled with a unique "Attachment Number" that you create. For Item 21, please enter the Attachment Number you have created.

You may cite the same description of services in multiple Block 5 Discount Funding Requests. For example, if you are ordering Internal Connections products and services under a single contract for multiple sites and the products and services are the same for each site, each Block 5 Discount Funding Request may refer to a single Item 21 Attachment.

In general, the Item 21 Attachment is a narrative description of the funding request and a line-item listing of the products and/or services requested with their associated costs. Service providers can assist applicants in the preparation of the Item 21 Attachment, which also must include:

- The applicant's name
- The Attachment Number (see above)
- The applicant's Billed Entity Number, and
- The Form 471 application number, if one has been assigned through online filing.

The line-item listing of products and services may be submitted in a table format as follows:

Quantity	Description of Product or Service	Unit Cost	-----Extended Cost-----	
			Recurring	Non-Recurring

In some circumstances, additional information may be required. For example:

- Ensure that any included ineligible products and/or services are identified and the cost of such products and/or services is deducted.
- For maintenance services, include the specific list of components to be covered and break out the pricing for maintenance of these components.
- For telephone services, indicate the number of phone lines and/or cell phones receiving service, and provide information about their use if any will be used for other than educational purposes.
- A price quotation from the service provider, a representative bill for continuing services, or the criteria used to estimate new or increased costs, may be submitted if sufficient detail is provided in that documentation to determine the eligibility of the funding request.
- If products or services are being purchased under a state master contract, include the contract number (if available) and the expiration date of the state master contract.
- Include an explanation of the purpose, location, breakdown of up-front costs, or other information to provide a clear explanation of the funding request.

If questions arise during review of an application, the SLD may reach out to the applicant to request additional information. For this reason, applicants can significantly speed up the application review process by including complete information in the Item 21 Attachment.

Item 22 - Entities receiving this service. For site-specific services that will be provided to one individual entity and not shared by others (for example, a local area network to be installed in one school building), provide the Entity Number of the individual entity receiving that service in **Item 22a**. For shared services used jointly by multiple entities (such as telecommunications services provided to all of the outlets/branches in a library system), list the Block 4 Worksheet Number that shows the sharing entities and calculates the shared discount for this service in **Item 22b**.

Item 23 - Use the step-by-step calculation grid to arrive at the total amount of your funding request. You may round dollar amounts to the nearest dollar, but please use numerals and include all digits. **DO NOT use words such as 1 million**, in place of 1,000,000. Note that if you are seeking support on multi-year contracts, **you may request funding only for that portion of the contract that is delivered in the relevant funding year.**

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Use Columns A-E for ***recurring*** charges (monthly charges) for this service, and Columns F-H for ***non-recurring*** charges (one-time charges) for this service.

You may request discounts only for products and services delivered in the relevant funding year. Recurring services must be delivered between July 1 and June 30 of the funding year. Non-recurring services must generally be delivered between July 1 and the September 30 following the close of the funding year. For more information, please refer to "Service Delivery Deadlines and Extension Requests" on the SLD web site at www.sl.universalservice.org.

Item 23, Column A: Estimate your total monthly cost for this service. If the cost of service fluctuates from month to month, you may use the average of past bills to estimate the monthly cost.

If you expect to pay a non-recurring charge in multiple installments over the funding year, you should either amortize this charge in Columns A-E or include the full amount of this charge in Columns F-H. **DO NOT** include this amount under both recurring and non-recurring charges. If you amortize this charge in Columns A-E, you will not be eligible for discounts on the non-recurring services provided after June 30 of the funding year.

Item 23, Column B: Enter the total cost associated with ANY ineligible services, entities, or uses included in your monthly charges. The following represent some common ways in which eligible and ineligible costs are bundled together, and how you can go about deducting the ineligible costs.

- **Eligible services bundled with ineligible services:** While you may contract with the same service provider for both eligible and ineligible services, your contract or purchase agreement must clearly break out costs for eligible services from those for ineligible services. If the eligible and ineligible services were purchased together at a special "bundled" price, a proportionate cost allocation is required between the eligible and ineligible components. The applicant will use this reduced price when requesting universal service discounts on the eligible service. For example, if a provider offers to sell a school an eligible service for $10.00 and an ineligible service for $20.00, but also offers them as a bundle for $24.00, this would indicate that the provider is offering a $6.00, or 20%, price reduction. Therefore, the school could treat $10.00 - 20% = $8.00 as eligible for universal service support.

- **Services shared by eligible and ineligible entities:** When you share a service with an ineligible entity, the provider may receive reimbursement only for that portion of the service that eligible entities are receiving. To help auditors confirm that this rule is being observed, you must keep and retain careful records of how you have allocated the costs of shared services and facilities among eligible and ineligible entities. You should maintain these records consistent with any measures that may be established by the FCC, the SLD, or state commissions.

- **Bundled services from an Internet service provider:** You may receive discounts on access to the Internet but not on separate charges for particular proprietary content, other information services, or a package including content and conduit. The only exception is when the bundled package includes minimal content and provides a more cost-effective means of securing access to the Internet than other non-content alternatives. Thus, if a service provider bundles Internet access with a package of content that is available to all customers free of charge, the entire price of that bundle will be eligible for support. However, if the service provider a) does not offer an access-only service, and b) offers Internet users access to its proprietary content for a price, then you may treat the difference between the content-only price and the price it charges for its bundled access as the price of non-content Internet access.

Item 23, Column C: Subtract the amount in Column B from the amount in Column A to arrive at your eligible monthly pre-discount cost.

Item 23, Column D: Provide the number of months you will be receiving this service in the funding year.

Item 23, Column E: Multiply Column D by Column C to arrive at your annual pre-discount cost for eligible recurring services.

Item 23, Column F: Estimate your total annual amount of non-recurring (one time) pre-discount charges for this service.

Item 23, Column G: Provide the total cost here associated with any ineligible service, entities, or uses included in your total annual cost of service. See notes on Column B, above, for more information.

Item 23, Column H: Subtract the amount in Column G from the amount in Column F to arrive at your total eligible pre-discount cost for non-recurring services.

Item 23, Column I: Add together columns E and H to arrive at your total eligible pre-discount costs (recurring and non-recurring) for the year.

Item 23, Column J: Enter the correct discount for this service, which is the discount you calculated for the entity or entities cited in Item 22. Refer back to the appropriate Block 4 worksheet to assure that you enter the correct discount.

Item 23, Column K: Multiply the amount in Column I by the discount in Column J to arrive at your total funding commitment requested for this service.

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G. Block 6: Certification and Signature

Block 6 requires schools and libraries to certify certain information. This information is required to ensure that only eligible entities receive support under the universal service discount mechanism.

"Do Not Write In This Area" - The SLD uses this space to apply a bar code to your form upon receipt, so that we can properly track and archive your form.

Special Block 6 Instructions for Applications Filed Online

- When you have completed the online filing of Blocks 1-5, please print your application to retain a copy for your records.
- You must also submit the Block 6 certification.
  - If you have a User ID and PIN and wish to submit your Block 6 certification online, follow the directions online. When you submit your certification online, you will receive a confirmation so that you can be assured that your submission has met any filing deadlines. If you file online and use online certification, do not mail any part of your Form 471 to the SLD, but do mail the Item 21 attachments to the SLD as soon as possible after completing your Form 471. Make a copy of the online certification confirmation page and attach that to the top of the Item 21 attachment so that the SLD will be able to match the Item 21 attachment with the correct Form 471. Check the "PIN Request Area" of the SLD web site for information about obtaining a User ID and a PIN.
  - If you wish to submit the completed and signed Block 6 certification on paper, print Block 6 using your browser. When you print Block 6 using the browser, the form will automatically include your Form 471 Application Number, Applicant Name, and Applicant Address. Item 34 requires the signature of the authorized person who will certify to the accuracy of the information on the form. Also, you must complete Items 24-33. Mail the signed Block 6 to: **SLD-Form 471, P. O. Box 7026, Lawrence, Kansas 66044-7026.** For express delivery services or U.S. Postal Service Return Receipt Requested, send to **SLD-Form 471, c/o Ms. Smith, 3833 Greenway Drive, Lawrence, Kansas 66046**. Note: Do not mail the complete Form 471. Mail only the signed Block 6 certification page along with your Item 21 Description of services and any other attachments. If the Block 6 certification is submitted on paper, you are advised to keep proof of the date of mailing.

For all applicants, filing on paper or online:

Item 24 - Certify that the entities listed in Block 4 of your application are eligible schools and/or libraries. If your application includes schools and all of the information in **Item 24a** is true of those schools seeking to receive discounted services, you should check the box in Item 24a. If

your application includes schools and any of the information in Item 24a is not true for the schools seeking to receive discounted services, those schools are not eligible to receive support under the universal service discount mechanism, and you should not check this box.

If your application includes libraries or library consortia and all of the information in **Item 24b** is true of the libraries seeking to receive discounted services, you should check the box in Item 24b. If your application includes libraries or library consortia and any of the information is not true for the libraries or library consortia seeking to receive discounted services, those libraries or library consortia are not eligible to receive support under the universal service discount mechanism, and you should not check this box.

Item 25 - Certify that the current budget and any other budgets applicable to the current funding year for the eligible schools and libraries listed in Block 4 of this application will provide sufficient funding in this funding year to purchase all of the resources—including computers, training, software, maintenance, and electrical connections—that are necessary for you to make effective use of the eligible services you have requested in Block 5, as well as to pay the non-discounted portion of the charges for eligible services.

As part of our review of your Item 25 certification, the SLD may request additional documentation to support your certification. The certification in Item 32 below states that you will retain for five years any and all worksheets and other records that you rely upon to fill out your Form 471. For Item 25, these worksheets and records include:

- **Paying your share of E-rate eligible costs.** You may be asked to provide documentation of your ability to pay the non-discounted portion of the products and services for which you have applied for discounts. You should already have the funds identified in your budget to pay for these costs. If your budget is not yet final, we may request additional documentation to substantiate your certification.
- **Paying for ineligible costs.** You may be asked to provide estimates of hardware, software, professional development, retrofitting (construction and electrical work necessary to prepare a building for technology), maintenance investments and other resources that are necessary to make effective use of the E-rate discounts you have requested. These resources may or may not be eligible for E-rate discounts. Again, if these resources will be purchased under your budget, you should already have the funds identified in your budget to pay for them. However, these resources may also be ones that you already have or own, such as computers purchased or donated in a prior year.
- **Technology Plan.** If you applied for more than basic local and long distance telephone services, you may be asked to provide a copy of your Technology Plan. Your Technology Plan should include a description of the products and services necessary to accomplish your technology service goals, whether they are eligible or ineligible for E-rate discounts.
- **Status of technology before and after E-rate discounts.** You may be asked to provide an estimate of the level of technology for all recipients of discounted services included in your application. This estimate would describe the level of technology for each recipient

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both at the beginning of the funding year and after the planned products and services in your Technology Plan are delivered and installed.

Items 26 and 27 concern the technology plans that must be prepared and approved before schools and libraries may receive discounted services under the universal service support mechanism. The only schools and libraries that do not have to comply with the technology plan requirement are those entities requesting support ONLY for basic local and long distance telephone service.

Item 26 - Check the box that best describes the level of technology plan.

- **Item 26a** - Check here if the eligible entities are covered by individual technology plans for the services requested in your application.
- **Item 26b** - Check here if the eligible entities are covered by a higher-level, multi-entity technology plan, such as a school district or library system plan. Statewide technology plans are not acceptable.
- **Item 26c** - Check here if your application is ONLY for basic local and long distance telephone service, in which case no technology plan is required.

Item 27 - Check the box that best describes the status of the technology plan.

- **Item 27a** - Check here if your technology plan has been approved.
- **Item 27b** - Check here if you are currently seeking approval of your technology plan(s) from a state or other authorized body.
- **Item 27c** - Check here if your application is ONLY for basic local and long distance telephone service, since no technology plan is required.

Item 28 - Certify that you have complied with all applicable state and local laws or rules regarding procurement. The FCC's rules are not intended to preempt state or local procurement rules.

Item 29 - Certify that services ordered pursuant to the universal service discount mechanism will be used for educational purposes only and that the services will not be sold, resold, or transferred in consideration for money or any other thing of value.

Item 30 - Certify that you have complied with all program rules and that you acknowledge failure to do so may result in denial of discount funding and/or cancellation of funding commitments.

Item 31 - Certify that you understand that the discount level used for shared services is conditional, for future years, upon ensuring that the most disadvantaged schools and libraries that are treated as sharing in the shared services receive an appropriate share of benefits from those services, as defined by the FCC.

Item 32 - Certify that you are aware that you may be audited to ensure that the information that you are providing in this form is accurate and that you are abiding by all of the relevant regulations. You must also commit to retain any and all worksheets and other records that you have relied upon to fill out Form 471 for five years so that an auditor can verify the accuracy of the information you provide. This includes all documentation showing that you have complied with all applicable competitive bidding requirements, including copies of competing bids and documentation of the bid evaluation process and bid criteria used. Thus, if applicants represent multiple billed entities, collect data from those entities, and add up that data, they should retain those data sheets for five years. If an applicant is audited, it should be prepared to make the worksheets and other records used to compile these forms available to the auditor and/or the administrator, and it should be able to demonstrate to the auditor and/or the Administrator how the entries in its application were provided.

Item 33 - Certify that you are the person authorized to submit and certify to the accuracy of this form. This person must be authorized to represent any and all of the entities for which discounts are sought in this application. Documentation to confirm this person's authorization to represent all entities in this application may be sought by the Fund Administrator during review of this application. For example, for consortium applications, the consortium lead member must either collect Letters of Agency from each consortium member or be able to provide some other proof that each consortium member knew it was represented on the application. Consortia that have a statutory or regulatory basis and for which participation is mandatory must be able to provide documentation supporting this certification. For consultants or other signers who are not employees of the Billed Entity, those individuals must also have a Letter of Agency from the applicant affirming that they are authorized to represent the applicant. For more information, please refer to "Letters of Agency" on the SLD web site at www.sl.universalservice.org.

Item 34 requires the signature of the authorized person.

Item 35 requires that the date of signature of the Form 471 be provided. Please note that for applications requesting new services, this date CANNOT be earlier than any Allowable Vendor Selection/Contract Date you cited in Item 17 of any Block 5 submitted with this application.

Item 36 (30 characters maximum) - Print the name of the authorized person whose signature is provided in Item 34.

Item 37 (30 characters maximum) - Provide the title or position of the authorized person whose signature is provided in Item 34.

Item 38 - Provide the telephone number, including area code, of the authorized person whose signature is provided in Item 34.

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V. REMINDERS

- All schools and libraries ordering services eligible for universal service discounts must file Form 471 each time they order telecommunications services, Internet access, and internal connections for which they are requesting discounts.
- Form 470 must be posted to the SLD web site for at least 28 days before filing Form 471.
- If you are applying for both Priority 1 (Telecommunications Services or Internet Access) and Priority 2 (Internal Connections) services, you are strongly encouraged to file these requests on separate Forms 471 — that is, to file one or more Forms 471 for your Priority 1 requests and one or more Forms 471 for your Priority 2 requests.
- For Funding Year 2003, the application window will open at noon EST on Monday, November 4, 2002 and close at 11:59 p.m. EST on January 16, 2003.
- The authorized individual representing the entity that pays the bills for ordered telecommunications and other supported services for the school, school district, or libraries, or consortium must sign the Form 471 or certify it online.
- Provide data for all items that apply. For items that do not apply, fill in "N/A."
- Attach additional sheets if necessary. Any attachments to Form 471 should be clearly labeled. In addition, your attachments for Item 21 description of services must be clearly labeled with Attachment Numbers assigned by you.
- If you are filing Blocks 1-5 of Form 471 online, you must also complete and submit your Block 6 Certification (whether online or on paper), your Item 21 description of services and any other attachments. If you have not already done so, you must also submit the Block 5 certification of any Form 470 cited in a Funding Year 2003 Form 471 with the signature of the authorized person.
- The Fund Administrator will notify the Form 471 applicant after our review of your application has been completed.
- The Fund Administrator will not provide funds to service providers for any service until FCC Form 486 is filed for that service, indicating that the service recipient's technology plan(s) (if necessary) has/have been approved (unless the recipient seeks only basic local and long distance telephone service) and that service has begun to be provided or that the recipient has confirmed with the service provider that services are schedule to begin in July of the funding year (early filing).
- You may be audited to ensure that the information that you are providing in this form is accurate and that you are abiding by all of the relevant regulations.

[FR Doc. 02–28326 Filed 11–8–02; 8:45 am]
BILLING CODE 6712–01–C

FEDERAL ELECTION COMMISSION

Sunshine Act Notices

AGENCY: Federal Election Commission.

DATE AND TIME: Thursday, November 14, 2002, at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

The following item has been withdrawn from the Agenda: Final Audit Report—Campbell for Senate.

PERSON TO CONTACT FOR INFORMATION: Ron Harris, Press Officer, telephone (202) 694-1220.

Mary W. Dove,
Secretary of the Commission.

[FR Doc. 02–28762 Filed 11–7–02; 12:12 pm]
BILLING CODE 6715–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Submission for OMB Review; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency has submitted the following proposed information collection to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

Title: Exemption of State-Owned Properties Under Self-Insurance Plan.

Type of Information Collection: Extension of a currently approved collection.

OMB Number: 3067–0127.

Abstract: Section 102(C) of the Flood Disaster Protection Act of 1973 enables The Federal Insurance Administration (FIA) to grant a State having an adequate plan of self-insurance for its State-owned buildings an exemption from the insurance purchase requirements of the 1973 Act. 44 CFR Part 75 establishes standards with respect to the Administrator's determinations that a State's plan of self-insurance is adequate and satisfactory for the purpose of the Act, from the requirement of purchasing flood insurance coverage, for State-owned structures and their contents in areas identified by the Administrator as A, AO, AH, A1–A30, AE, A99, M, V, VO, V1–V30, VE and E zones, in which the sale of insurance has been made available, and to establish the procedures by which a State may request exemption under Section 102 (C).

Affected Public: States, Local, or Tribal Government.

Number of Respondents: 20.

Estimated Time per Respondent: 5 hours.

Estimated Total Annual Burden Hours: 100 hours.

Comments: Interested persons are invited to submit written comments on the proposed information collection to the Desk Officer for the Federal Emergency Management Agency, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 within 30 days of the date of this notice.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Muriel B. Anderson, Chief, Records Management Branch, Information Resources Management Division, Information Technology Services Directorate, Federal Emergency Management Agency, 500 C Street, SW., Room 316, Washington, DC 20472, telephone number (202) 646–2625, facsimile number (202) 646–3347, or e-mail address: *informationcollection@fema.gov.*

Dated: October 30, 2002.

Edward W. Kernan,
Division Director, Information Resources Management Division, Information Technology Services Directorate.

[FR Doc. 02–28619 Filed 11–8–02; 8:45 am]
BILLING CODE 6718–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Submission for OMB Review; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency has submitted the following proposed information collection to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

Title: Write Your Own Program (WYO) Company Participation Criteria; New Applicants.

Type of Information Collection: Extension of a currently approved collection.

OMB Number: 3067–0259.

Abstract: Under the Write Your Own Program, private sector insurance companies may offer flood insurance to eligible property owners. The Federal Government is a guarantor of flood insurance coverage for WYO Companies, issued under the WYO arrangement. To determine eligibility for participation in the WYO, the National Flood Insurance Program is requiring a one-time submission demonstrating their qualification for participation from each new company seeking entry into the Program.

Affected Public: Business or other for profit.

Number of Respondents: 5.

Estimated Time per Respondent: 7 hrs.

Estimated Total Annual Burden Hours: 35 hrs.

Frequency of Response: Once.

Comments: Interested persons are invited to submit written comments on the proposed information collection to the Desk Officer for the Federal Emergency Management Agency, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 within 30 days of the date of this notice.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Muriel B. Anderson, Chief, Records Management Branch, Information Resources Management Division, Information Technology Services Directorate, Federal Emergency Management Agency, 500 C Street, SW., Room 316, Washington, DC 20472, telephone number (202) 646–2625, facsimile number (202) 646–3347, or e-mail address: *informationcollections@fema.gov.*

Dated: October 30, 2002.

Edward W. Kernan,
Division Director, Information Resources Management Division, Information Technology Services Directorate.

[FR Doc. 02–28620 Filed 11–8–02; 8:45 am]
BILLING CODE 6718–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Submission for OMB Review; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency has submitted the following proposed information collection to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

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Title: Federal Assistance for Offsite Radiological Emergency Planning.

Type of Information Collection: Extension of a currently approved collection.

OMB Number: 3067–0201.

Abstract: FEMA requires information from a commercial nuclear power plant licensee who seeks certification under Federal assistance, when a "decline or fail" situation exists at a commercial nuclear power plant site. The certification request is in the form of a letter from the licensee chief executive officer. When the licensee request federal facilities or resources, FEMA will notify the Nuclear Regulatory Commission (NRC) to request advice or assistance as to whether or not a the licensee made maximum use of its resources and is in compliance with federal regulations.

Affected Public: Business or other for-profit.

Number of Respondents: One.

Estimated Time per Respondent: 160 hours.

Estimated Total Annual Burden Hours: 160 hours.

Frequency of Response: As needed.

Comments: Interested persons are invited to submit written comments on the proposed information collection to the Desk Officer for the Federal Emergency Management Agency, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 within 30 days of the date of this notice.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Muriel B. Anderson, Chief, Records Management Branch, Information Resources Management Division, Information Technology Services Directorate, Federal Emergency Management Agency, 500 C Street, SW., Room 316, Washington, DC 20472. Facsimile number (202) 646–3347, or e-mail *InformationCollections@fema.gov.*

Dated: October 31, 2002.

Edward W. Kernan,

Division Director, Information Resources Management Division, Information Technology Services Directorate.

[FR Doc. 02–28621 Filed 11–8–02; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Submission for OMB Review; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency is submitting a request for review and approval of a new collection of information under the emergency processing procedures in the Office of Management and Budget (OMB) regulation 5 CFR 1320.13. FEMA is requesting the collection of information be approved by November 15, 2002, for use through May 15, 2002.

FEMA plans to follow this emergency request with a request for a 3-year approval. The request will be processed under OMB's normal clearance procedures in accordance with the provisions of OMB regulation 5 CFR 1320.10. To help us with the timely processing of the emergency and normal clearance submissions to OMB, FEMA invites the general public to comment on the proposed collection of information. This notice and request for comments is in accordance with the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)).

SUPPLEMENTARY INFORMATION: Announced by President George W. Bush in January 2002, Citizen Corps is currently composed of five national programs: Neighborhood Watch, Volunteers in Police Service, Operation TIPS, Community Emergency Response Teams, and Medical Reserve Corps. There are, however, many ongoing, credible programs that support the Citizen Corps' mission. Providing formal recognition to these programs and similar organizations by affiliating them with Citizen Corps will enable the program to reach its goal of having every American participate in making their communities and families safer. In order to ensure that interested parties appropriately further the Citizen Corps mission, Citizen Corps will request supporting information from those programs and organizations seeking to become affiliates.

Collection of Information

Title: Citizen Corps Affiliate Programs and Organizations Application.

Type of Information Collection: New collection.

OMB Number: 3067–New.

Abstract: Citizen Corps requests information from not-for-profit and governmental groups that would like to support the Citizen Corps program through becoming affiliates. The requested information will ensure that Citizen Corps affiliates only with those programs and organizations capable of supporting its mission.

Affected Public: Not-For-Profit Institutions, and State, Local, and Tribal Governments.

Estimated Total Annual Burden Hours: 80 hours.

Estimated Cost: Estimated cost to the Federal Government: $315.00.

Comments: Written comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.* permitting electronic submission of responses. Submit comments to the OMB within 30 days of the date of this notice. To ensure that FEMA is fully aware of any comments or concerns that you share with OMB, please provide us with a copy of your comments. FEMA will continue to accept comments for 60 days from the date of this notice.

ADDRESSES: Interested persons should submit written comments to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Desk Officer for the Federal Emergency Management Agency, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Muriel B. Anderson, Chief, Records Management Branch, Information Resources Management Division, Information Technology Services Directorate, Federal Emergency Management Agency, 500 C Street, SW., Room 316, Washington, DC 20472. FAX number (202) 646–3524 or by e-mail address: *informationcollections@fema.gov.*

Dated: October 31, 2002.

Edward W. Kernan,

Division Director, Information Resources Management Division, Information Technology Services Directorate.

[FR Doc. 02–28622 Filed 11–8–02; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Submission for OMB Review; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency has submitted the following proposed information collection to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

Title: Inspection of Insured Structures by Communities.

Type of Information Collection: Revision of a currently approved collection.

OMB Number: 3067–0275.

Abstract: The purpose of the inspection procedure and need for the community inspection report is to:

(1) To help the communities of Monroe County, City of Marathon, the Village of Islamorada, Florida, and any other community in Monroe County that incorporates after January 1, 1999, verify and document that post-FIRM structures in their communities comply with the community's floodplain management ordinance; and

(2) To ensure that property owners pay flood insurance premiums commensurate with their flood risk due to the increased exposure to flood damages.

The final rule (published in the **Federal Register** on June 27, 2000, 65 FR 39726) and the interim final rule (published in the **Federal Register** on March 8, 2002, 67 FR 10631) established an inspection procedure in Monroe County, City of Marathon, the Village of Islamorada, Florida and any other community in Monroe County that incorporates after January 1, 1999, that would be built around the flood insurance policy renewal process. The requirement that a building be inspected by the community, as a condition of renewing the flood insurance policy on the building, would only apply to NFIP insured buildings in Special Flood Hazard Areas that are identified as possible violations by the community in which the property is located. The Special Flood Hazard Areas (SFHA) is an area that is based on a flood that would have a 1-pecent chance of being equaled or exceeded in any given year, referred to as the 100-year flood.

Policyholders that have a flood insurance policy with a renewal effective date on and after the implementation date of the pilot inspection procedure would receive, along with their policy renewal notice, an endorsement established in appendices (A)(4), (A)(5), and (A)(6) of 44 CFR part 61. The endorsement would provide that an inspection by the community may be required before a subsequent renewal of the flood insurance policy. Policies issued as new policies after the effective date for implementing the pilot inspection procedure would also contain the endorsement established in appendices (A)(4), (A)(5), and (A)(6). The endorsement amended all flood insurance policies (pre-FIRM and post-FIRM) on buildings in Monroe County, City of Marathon, and the Village of Islamorada, Florida (there are approximately 28,771 flood insurance policies in these communities at the time of this submission). Pre-FIRM insured buildings are included for the endorsement since there may be some policies within this category that should be rated post-FIRM because they were misrated or substantially improved after the effective date of the community's FIRM. A notice describing the purpose of the inspection procedure would accompany the new endorsement to the Standard Flood Insurance Policy regarding the inspection procedure.

Monroe County, City of Marathon, and the Village of Islamorada would identify possible violations and forward the list to FEMA. There are an estimated 2,000–4,000 number of insured buildings within the three communities that may be subject to an inspection based on the identification as possible violations. This estimate was reported to FEMA from the communities. Based on FEMA's review of floodplain development in these communities, FEMA is comfortable with this estimate. Monroe County, City of Marathon, and the Village of Islamorada would identify possible violations through a review of the pre-FIRM and post-FIRM flood insurance policies provided by FEMA and from a visual street inspection of the building, from tax records, and through a review of other documents on file in the community pertaining to the property and through other community procedures. For buildings identified by Monroe County, City of Marathon, and the Village of Islamorada as possible violations, the insurer of the flood insurance policy would send a notice to policyholders approximately six months before the policy expiration date. This notice would state that the policyholder must obtain an inspection from the community and submit the results of the property inspection as part of the renewal of the flood insurance policy by the end of the renewal grade period (30 days after date of the policy expiration). The insurer would send a reminder notice to the policyholder with the renewal notice about 45 to 60 days before the policy expires.

The policyholder would be responsible for contacting the community to arrange for an inspection. The community would inspect the building to determine whether it complies with the community's floodplain management ordinance and document its findings in an inspection report. The community would provide two copies of the inspection report to the policyholder.

If the policyholder obtained a timely inspection and sent the community's inspection report and the renewal premium payment to the insurer by the end of the renewal grace period, the insurer would renew the flood insurance policy whether or not the building has been identified as a violation by the community. The insurer would review the insurance policy for rerating upon review of the community inspection report. If the building was not properly rated to reflect the building's risk of flooding, the policy would be rerated to reflect that risk. If the community's inspection found a violation, the community would undertake an enforcement action in accordance with its floodplain management ordinance.

If the policyholder did not obtain an inspection and submit an inspection report with the renewal premium payment by the end of the renewal grace period (30 days after date of expiration), the flood insurance policy would not be renewed. The insurer would send a notice to the insured that the flood insurance policy expired and cannot be re-issued without the community inspection report.

The communities will not be using a FEMA designed form in documenting the inspection of an insured structure. FEMA consulted with local officials from the communities participating in the inspection procedure on the type of existing building inspection reports they use to implement their floodplain management ordinance and we determined that the current community inspection documents could be used for purposes of implementing the inspection procedure and for purposes of determining whether the building's flood insurance policy needs to be rerated by insurer.

The community inspection report is critical to the effective implementation of the inspection procedure. Without the inspection procedure, the Village of Islamorada, City of Marathon, and Monroe County would continue to have limited ability to inspect properties for illegal enclosures that violate their floodplain management ordinance and as a result, both communities would be unable to undertake appropriate actions to remedy the violations. There are several potential serious consequences if these structures continue to be in

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violation of the community's floodplain management ordinance.

Allowing uses other than parking of vehicles, building access, or storage in the enclosed area below the Base Flood Elevation (elevation of the 100-year flood) significantly increases the flood damage potential to the area below the lowest floor of the elevated building. Improperly constructed enclosure walls and utilities can tear away and damage the upper portions of the elevated building exposing the building to greater damage. Improperly constructed enclosures can also result in flood forces being transferred to the elevated portion of the building with the potential for catastrophic damage. If a flood disaster occurs, the impact will go beyond the building itself. If the ground level enclosure is finished with living spaces, there is an increased risk to lives. Residents who live in these ground level enclosures may not be fully aware of the flood risk.

Furthermore, there is limited coverage in this area for elevated post-FIRM buildings, as provided for in the Standard Flood Insurance Policy (SFIP) under article 6—Property Not Covered. This provision of the SFIP, effective since October 1, 1983, limits coverage for enclosures, including personal property contained therein. FEMA does not cover such items as finished enclosure walls, floors, ceilings, and personal property such as rugs, carpets, and furniture. In 1983, FEMA limited the coverage for enclosed areas below elevated buildings due to the financial losses experienced in the NFIP when FEMA provided full coverage in these areas. Consequently, property owners and residents that may live in these lower enclosed areas may have significant uninsured losses in the event of a flood for finished items and contents below the lowest floor.

However, in spite of the limited coverage afforded for these enclosed areas, they do affect the rating of the policy. Because of the increase in flood damage potential to the building resulting from flood forces being transferred to the elevated portion of the building, the damage potential must be recognized in the rates by adding rate loadings based on the size of the enclosure. In addition, the rates must also reflect whether the enclosure contains essential building elements which are covered, namely, sump pumps, well water tanks and pumps, electrical junction and circuit breaker boxes, elevators, natural gas tanks, pumps or tanks related to solar energy, cisterns, stairways and staircases attached to the building, and foundation elements that support the building. The collection of information from the policyholder in the inspection procedure will ensure that the policyholders of buildings with enclosures are paying premiums commensurate with their flood risk.

Along with significant flood damages to the building and the potential for loss of life, the community, the State, and the Federal Government will be faced with costly outlays for flood fighting and rescue operations, response, and recovery as well as taxpayer funded disaster assistance.

Under the inspection procedure, the policyholder will be required to obtain an inspection in order to renew the policy. This will be a one-time collection of information during the period of time for which the inspection procedure is to be implemented. Since the primary purpose of the inspection is to provide communities with a mechanism to ensure compliance with the floodplain management ordinance and for FEMA to verify flood insurance rates, less frequent collection of the information through the inspection report is not possible.

Affected Public: Individuals or households and business or other for-profit.

Number of Respondents: 1,500.

Estimated Time per Respondent:

No. of respondents/type of response	Frequency of response	Burden hours	Total burden hours
4,000 policyholders to receive & read a notice that an inspection is required in order for the flood insurance policy to be renewed. These 4,000 policyholders will also receive a reminder notice about 45–60 days before the policy expires.	1	15 minutes (total for both notices).	1000 hours.
4,000 policyholders contact respective community to arrange for an inspection of the property. Local official inspects the property with the policyholder or his/her designee. (**Note:** in any given year we expect several hundred policyholders to receive the notice and contact their community.) Compliant buildings should take less time to inspect compared to an insured building that is non-compliant.	1	1–2.5 hours*	10,000 hours.
*FEMA has estimated that the amount of time to contact the community to arrange for the inspection and for the policyholder or his/her designee to be available to let the community official into the building to conduct the inspection will range from 1 hour to 2.5 hours.			
4,000 policyholders submit a copy of the inspection report with the renewal premium payment.	1	8 minutes	533 hours.
800 estimated no. of respondents that did not obtain an inspection These respondents will be sent a notice at time of policy expiration that their flood insurance policy expired. (FEMA estimates that less than 20% of the 4,000 respondents will not obtain an inspection and as a result their flood insurance policy will not be renewed.).	1	8 minutes	107 hours.

*Total number of Burden Hours to implement the inspection procedure over a multi-year period: 11,640.

Annual (one-time) total burden hours for each policyholder is approximately: 3 hours.

Total annual burden for approximately 500–700 inspections per year in Monroe County: 2,100 hours.

Total annual burden for approximately 200–400 inspections per year in the Village of Islamorada: 1,200 hours.

Total annual burden for approximately 200–400 inspections per year in City of Marathon: 1,200 hours.

Estimated Total Annual Burden Hours: 4,500 hours.

Frequency of Response: One time.

Comments: Interested persons are invited to submit written comments on the proposed information collection to the Desk Officer for the Federal Emergency Management Agency, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 within 30 days of the date of this notice.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Muriel B. Anderson, Chief, Records Management Branch, Information Resources Management Division, Information Technology Services Directorate, Federal Emergency Management Agency, 500 C Street, SW., Room 316, Washington, DC 20472. Facsimile number (202) 646–3347, or email address: *informationcollections@fema.gov.*

Dated: October 21, 2002.

Edward W. Kernan,

Division Director, Information Resources Management Division, Information Technology Services Directorate.

[FR Doc. 02–28623 Filed 11–8–02; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Submission for OMB Review; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency has submitted the following proposed information collection to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

Title: Application for Participation in the National Flood Insurance Program.

Type of Information Collection: Extension of a currently approved collection.

OMB Number: 3067–0020.

Abstract: The NFIP provides flood insurance to communities that apply for participation and make a commitment to adopt and enforce land use control measures that are designed to protect development from future flood damages. The application form will enable FEMA to continue to rapidly process new community applications to join the NFIP and to thereby more quickly provide flood insurance protection to the residents of the communities. Participation in the NFIP is mandatory in order for flood related Presidentially-declared communities to receive Federal disaster assistance.

Affected Public: State, Local or Tribal Governments.

Number of Respondents: 100.

Estimated Time per Respondent: 4 hours.

Estimated Total Annual Burden Hours: 400 hours.

Frequency of Response: Once per respondent.

Comments: Interested persons are invited to submit written comments on the proposed information collection to the Desk Officer for the Federal Emergency Management Agency, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 within 30 days of the date of this notice.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Muriel B. Anderson, Chief, Records Management Branch, Information Resources Management Division, Information Technology Services Directorate, Federal Emergency Management Agency, 500 C Street, SW., Room 316, Washington, DC 20472, facsimile number (202) 646–3347, or email address: *InformationCollections@fema.gov.*

Dated: October 31, 2002.

Edward W. Kernan,

Division Director, Information Resources Management Division, Information Technology Services Directorate.

[FR Doc. 02–28624 Filed 11–8–02; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Submission for OMB Review; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency has submitted the following proposed information collection to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

Title: Post Construction Elevation Certificate/Flood Proofing Certificate.

Type of Information Collection: Revision of a currently approved collection.

OMB Number: 3067–0077.

Abstract: The Elevation Certificate and Flood Proofing Certificate are adjuncts to the application for flood insurance. The certificates are required for proper rating of post Flood Insurance Rate Map (FIRM) structures, which are buildings constructed after publication of the FIRM, for flood insurance in Special Flood Hazard Areas. In addition, the Elevation Certificate is needed for pre-FIRM structures being rated under post-FIRM flood insurance rules. The certificates provide community officials and others standardized documents to readily record needed information.

The certificates are supplied to insurance agents, community officials, surveyors, engineers, architects, and NFIP policyholders/applicants. The community officials or other professionals provided the elevation data required to document conformance with floodplain management regulations and for the applicants so that actuarial insurance rates can be charged for insuring property against the flood hazard.

Affected Public: Individuals or households, business or other for-profit, not-for-profit institutions, farms, and state, local or tribal government.

Number of Respondents: 54,695.

Estimated Time per Respondent: FEMA Form 81–31, Elevation Certificate 3 hours and FEMA Form 81–65, Flood Proofing Certification, 3.25 hours, CD Training Module, .25 hour.

Estimated Total Annual Burden Hours: 177,756.

Frequency of Response: One certificate is required per structure.

Comments: Interested persons are invited to submit written comments on the proposed information collection to the Desk Officer for the Federal Emergency Management Agency, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 within 30 days of the date of this notice.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Muriel B. Anderson, Branch Chief, Records Management, Information Resources Management Division, Information Technology Services Directorate, Federal Emergency Management Agency, 500 C Street, SW., Room 316, Washington, DC 20472. Facsimile number (202) 646–3347, or email *InformationCollections@fema.gov.*

Dated: October 31, 2002.

Edward W. Kernan,

Division Director, Information Resources Management Division, Information Technology Services Directorate.

[FR Doc. 02–28625 Filed 11–8–02; 8:45 am]

BILLING CODE 6718–01–P

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FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center Web site at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 6, 2002.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. Bridge Street Financial, Inc., Oswego, New York; to become a bank holding company by acquiring 100 percent of the voting shares of Oswego County National Bank, Oswego, New York.

Board of Governors of the Federal Reserve System, November 5, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–28570 Filed 11–8–02; 8:45 am]

BILLING CODE 6210-01-S

FEDERAL TRADE COMMISSION

Public Hearings: Health Care and Competition Law and Policy

AGENCY: Federal Trade Commission.

ACTION: Notice of public hearings and opportunity for comment.

SUMMARY: The Federal Trade Commission ("FTC" or "Commission") announces it will hold approximately twenty-five days of hearings, beginning in February 2003, on the subject of "Health Care and Competition Law and Policy." The Commission held a two-day workshop on health care and competition law and policy on September 9–10, 2002. That workshop demonstrated the range and complexity of issues arising from the intersection of health care and competition law and policy (including consumer protection law and policy), and revealed a diversity of views on the appropriate role and priorities for the Commission and other law enforcement agencies in this important area of the economy.

The Commission has determined that further inquiry will help inform the framing and implementation of competition law and policy as applied to health care. The hearings will focus in greater depth on some of the issues raised during the September 2002 workshop, and will also review and analyze the application of competition law and policy to health care more broadly. The hearings may consider a range of subjects, including, but not limited to, hospital mergers, geographic and product markets (including issues unique to rural health care markets), the significance of non-profit provider status, the issues raised by competition from allied health professions, vertical arrangements, and the *Noerr-Pennington* and state action doctrines. The hearings also will explore competitive effects of explicit and implicit contracts for quality, complexities of measuring and disseminating information about health care quality, the impact of existing and anticipated institutional arrangements for the purchase, financing, and delivery of health care services on the cost, quality and availability of such care, and incentives for innovation in health care markets. Finally, the hearings will examine the implications of the Commission's consumer protection mandate with regard to the performance of health care markets, including, but not limited to, the disclosure of costs, risks, and benefits by manufacturers of medical devices and pharmaceuticals (both prescription and over-the-counter), and by providers of professional services in connection with advertising and other forms of information dissemination.

As was noted in the **Federal Register** notice for the September 2002 workshop, the Commission has considerable experience in the application of competition law and policy to health care.[1] The 2003 hearings will assist the Commission by providing timely information from varying perspectives on how competition law and policy affects health care markets and consumer/patient welfare. The goal is to promote dialogue, learning, and consensus building among all interested parties (including, but not limited to, the business, consumer, government, legal, provider, insurer, and health policy/health services/health economics communities). In addition to officials from the FTC, representatives of the Departments of Justice and Health and Human Services, state attorneys general, providers, academics, consumer representatives, employers, insurers, managed care organizations, and a wide array of other groups will be invited to participate.

The hearings will be held at and administered by the FTC and co-hosted with the Antitrust Division of the Department of Justice. A report will be prepared based on the information obtained at the hearings.

DATES: Specific dates for the hearings will be announced shortly, along with a preliminary agenda. It is anticipated that a full week of hearings will be held during February 2003, with additional dates scheduled during March through October 2003, totaling approximately twenty-five days of hearings. Any interested person may submit written comments responsive to any of the topics addressed during the hearings. Comments directed at a particular subject considered during a particular session of hearings must be submitted no later than 45 days after the date of that specific hearing session. Comments on broader subjects within the general scope of the hearings may be submitted at any time after the publication of this notice, but no later than November 28, 2003.

ADDRESSES: When in session, the majority of the hearings will be held in Room 432 at the FTC headquarters, 600 Pennsylvania Avenue, NW., Washington, DC If it is determined that a hearing needs to take place outside of Washington, DC, a notice of the change of location will be published. All parties are welcome to attend.

Written comments should be submitted in both hard copy and electronic form. Six hard copies of each submission should be addressed to Donald S. Clark, Office of the Secretary, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Submissions should be captioned "Comments Regarding Health Care and Competition Law and Policy." Electronic submissions may be sent by electronic mail to *healthcare@ftc.gov*. Alternatively, electronic submissions may be filed on a 3½ inch computer disk with a label on the disk stating the name of the submitter and the name and version of the word processing program used to create the document.

FOR FURTHER INFORMATION CONTACT: David Hyman, Special Counsel, Office of General Counsel, 600 Pennsylvania Avenue, NW., Room 407, Washington, DC 20580; telephone 202–326–2622; e-mail: *dhyman@ftc.gov*. Detailed agendas for the hearings will be available on the hearing web page (accessible through the FTC home page) and through Angela Wilson, Staff Assistant, at 202–326–3190 shortly before each hearing is held.

SUPPLEMENTARY INFORMATION: As the **Federal Register** notice issued for the September 2002 workshop explained, the relationship between health care and competition law and policy has tremendous significance for the United States economy and consumer/patient welfare. The economic significance of health care is enormous and will become even more so in the coming years. Consumer/patient welfare is maximized by a health care system that efficiently delivers to Americans the services they desire.

The Commission, with its dual competition and consumer protection oversight authority, has an important role to play in maintaining an efficient health care system that satisfies consumer/patient needs. Antitrust analysis traditionally has focused on restrictions to price competition. Competition routinely takes place, however, on both price and non-price parameters. Some have suggested that antitrust enforcement has given insufficient weight to non-price competition. Others have questioned whether antitrust enforcers have the right tools with which to assess non-price competition. Some have asserted that the introduction of more competition into health care markets would improve consumer welfare. Others have responded that competition policy must co-exist with other complicated laws and policies, some of which are regulatory by necessity.

The breadth, complexity, and multi-variable nature of issues such as these has led the Commission to expand upon the September 2002 workshop, and hold these multi-day, multi-topic hearings.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 02–28648 Filed 11–8–02; 8:45 am]

BILLING CODE 6750-01-P

[1] Federal Trade Commission, "Notice of Public Workshop and Opportunity For Comment," 67 FR 47365 (July 18, 2002), available at *http://www.ftc.gov/os/2002/07/healthcarefrn.htm*.

FEDERAL TRADE COMMISSION

[File No. 002 3211]

Robert M. Currier; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before November 21, 2002.

ADDRESSES: Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159-H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments filed in electronic form should be directed to: *consentagreement@ftc.gov*, as prescribed below.

FOR FURTHER INFORMATION CONTACT: James Dolan or Lemuel Dowdy, FTC, Bureau of Consumer Protection, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–3292 or 326–2981.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and section 2.34 of the Commission's Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for November 5, 2002), on the World Wide Web, at *http://www.ftc.gov/os/2002/11/index.htm*. A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW., Washington, D.C. 20580. If a comment contains nonpublic information, it must be filed in paper form, and the first page of the document must be clearly labeled "confidential." Comments that do not contain any nonpublic information may instead be filed in electronic form (in ASCII format, WordPerfect, or Microsoft Word) as part of or as an attachment to email messages directed to the following email box: *consentagreement@ftc.gov*. Such comments will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with section 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement, subject to final approval, to a proposed consent order from Dr. Robert M. Currier (the "proposed respondent"). This matter concerns claims Dr. Currier made infomercials for a purported anti-snoring product called SNORenz.

The proposed consent order has been placed on the public record for thirty (30) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement's proposed order.

SNORenz is a dietary supplement consisting of oils and vitamins that is sprayed on the back of the throat of persons who snore. The Commission's complaint charges that Dr. Currier failed to have a reasonable basis for claims, which he made in infomercials for SNORenz, about the product's efficacy in (1) reducing or elimnating snoring or the sounds of snoring, (2) reducing or eliminating snoring or the sounds of snoring for six to eight hours, and (3)

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treating the symptoms of sleep apnea. Dr. Currier is also charged with making false claims that clinical proof establishes the efficacy of SNORenz. Further, the complaint alleges that the proposed respondent failed to disclose that the product is not intended to treat sleep apnea; that sleep apnea is a potentially life-threatening disorder characterized by loud snoring, frequent interruptions of sleep, and daytime tiredness; and that persons experiencing those symptoms should seek medical attention. In addition, the complaint alleges that, when Dr. Currier made claims about SNORenz' efficacy, he failed to have a reasonable basis for such claims consisting of an actual exercise of his represented expertise in the causes and treatment for snoring. Finally, the complaint alleges that the proposed respondent failed to disclose adequately that a material connection existed between himself and the product's manufacturer and marketer, Med Gen, Inc.

Part I of the consent order requires that Dr. Currier possess competent and reliable scientific evidence to substantiate representations that SNORenz or any other food, drug, or dietary supplement reduces or eliminates snoring or the sound of snoring; reduces or eliminates snoring or the sound of snoring for any specified period of time through a single application; or eliminates, reduces or mitigates the symptoms of sleep apnea. It also requires that Dr. Currier, when acting as an expert endorser, actually exercise his represented expertise in the form of an examination or testing at least as extensive as an expert in the field would normally conduct.

Part II of the order requires that, for any product Dr. Currier advertises that has not been shown to be effective in the treatment of sleep apnea, he must affirmatively disclose, whenever the advertisement represents that the product is effective in reducing or eliminating snoring or the sounds of snoring, a warning statement about sleep apnea and the need for physician consultation.

Part III of the order requires proposed respondent to substantiate any representation about the benefits, performance, efficacy, or safety of SNORenz or any other product, service or program. If Dr. Currier makes such representations as an expert endorser, he must possess substantiation in the form of an examination or testing at least as extensive as an expert in the field would normally conduct. Part IV prohibits false claims about scientific support for any product, service, or program. Part V requires that Dr. Currier disclose any material connection between himself and any product, program or service he endorses. Parts VI and VII of the proposed order permit proposed respondent to make certain claims for drugs or dietary supplements, respectively, that are permitted in labeling under laws and/or regulations administered by the U.S. Food and Drug Administration.

The remainder of the proposed order contains standard requirements that respondent maintain advertising and any materials relied upon as substantiation for any representation covered by substantiation requirements under the order, notify the Commission of any change in his employment, and file one or more reports detailing its compliance with the order. Part XI of the proposed order is a provision whereby the order, absent certain circumstances, terminates twenty years from the date of issuance.

The purpose of this analysis is to facilitate public comment on the proposed order, and is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

This proposed order, if issued in final form, will resolve the claims alleged in the complaint against the named respondent. It is not the Commission's intent that acceptance of this consent agreement and issuance of a final decision and order will release any claims against any unnamed persons or entities associated with the conduct described in the complaint.

By direction of the Commission.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 02–28649 Filed 11–8–02; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00D–1540]

Draft Guidance for Industry on Electronic Records; Electronic Signatures, Electronic Copies of Electronic Records; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled "Guidance for Industry, 21 CFR Part 11; Electronic Records; Electronic Signatures, Electronic Copies of Electronic Records." This draft guidance describes the agency's current thinking on issues pertaining to furnishing FDA with electronic copies of electronic records that are subject to part 11. Part 11 requires persons to employ procedures and controls for records subject to part 11 that include the ability to generate electronic copies of electronic records that are accurate, complete, and suitable for FDA inspection, review, and copying. This requirement helps ensure that electronic records and electronic signatures are trustworthy, reliable, and compatible with FDA's public health responsibilities.

DATES: Submit written or electronic comments on the draft guidance by February 10, 2003. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Compliance Information and Quality Assurance (HFC–240), Office of Enforcement, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive labels to assist that office in processing your requests.

Submit written comments on the draft guidance document to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, room 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments. See* the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Paul J. Motise, Office of Enforcement (HFC–240), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–0383, e-mail: *pmotise@ora.fda.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance entitled "Guidance for Industry, 21 CFR part 11; Electronic Records; Electronic Signatures, Electronic Copies of Electronic Records." In the **Federal Register** of March 20, 1997 (62 FR 13430), FDA published a regulation providing criteria under which the agency considers electronic records and electronic signatures to be trustworthy, reliable, and generally equivalent to paper records and handwritten signatures executed on paper ("part 11"). The preamble to part 11 (21 CFR part 11) stated that the agency anticipated issuing supplemental guidance documents and would afford all interested parties the opportunity to comment on draft guidance documents. Therefore, FDA is making this draft guidance available for public comment.

The draft guidance addresses issues pertaining to providing FDA with electronic copies of electronic records subject to part 11 that are accurate, complete, and suitable for FDA inspection, review, and copying. Part 11 requires persons to be able to furnish FDA with electronic copies of electronic records that are subject to part 11. This draft guidance is intended to assist people who must meet this requirement; it may also assist FDA staff who apply part 11 to persons subject to the regulation. However, this draft guidance is not intended to address issues related to electronic records that are submitted to FDA but that are not required to be maintained.

The draft guidance provides specific information on key principles and practices on electronic copies of electronic records, and it addresses some frequently asked questions. However, it is not intended to cover every aspect of generating electronic copies of electronic records that are accurate, complete, and suitable for FDA inspection, review and copying.

This level 1 draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). This draft guidance, when finalized, will represent the agency's current thinking on providing FDA with electronic copies of electronic records. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments on the draft guidance. Two copies of any nonelectronic comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. A copy of the draft guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at *http://www.fda.gov/ohrms/dockets/dockets/dockets.htm.*

Dated: October 28, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–28551 Filed 11–8–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02D–0011]

Medical Devices; Class II Special Controls Guidance Document: Intraoral Devices for Snoring and/or Obstructive Sleep Apnea; Guidance for Industry and FDA; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the guidance entitled "Class II Special Controls Guidance Document: Intraoral Devices for Snoring and/or Obstructive Sleep Apnea; Guidance for Industry and FDA." This document provides recommendations for complying with the premarket notification requirements for these devices. Elsewhere in this issue of the **Federal Register**, FDA is publishing a final rule to classify these devices.

DATES: Submit written or electronic comments on the guidance at any time. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies on a 3.5" diskette of the guidance entitled "Class II Special Controls Guidance Document: Intraoral Devices for Snoring and/or Obstructive Sleep Apnea; Guidance for Industry and FDA" to the Division of Small Manufacturers, International, and Consumer Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your request, or fax you request to 301–443–8818. See the **SUPPLEMENTARY INFORMATION** section for information on electric access to the guidance.

Submit written comments concerning this guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Comments should be identified with the docket number found in the brackets in the heading of this document. Submit electronic comments to *http://www.fda.gov/dockets/ecomments.*

FOR FURTHER INFORMATION CONTACT: Susan Runner, Center for Devices and Radiological Health (HFZ–480), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–827–5283.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of April 5, 2002 (67 FR 16406), FDA announced the availability of this draft guidance document and invited interested persons to comment on it by July 5, 2002. Also in the **Federal Register** of April 5, 2002 (67 FR 16338), FDA proposed to classify intraoral devices used to control or treat simple snoring and/or obstructive sleep apnea into class II with this guidance document as the special control. This guidance supersedes the draft guidance entitled "Class II Special Controls Guidance Document: Intraoral Devices for Snoring and Obstructive Sleep Apnea; Guidance for Industry and FDA."

FDA received one comment on the draft guidance from the National Association of Dental Laboratories. We considered this comment and agree that the guidance does not change the regulatory requirements for dental laboratories. We also revised the guidance to clarify how a manufacturer may submit an abbreviated 510(k) when relying on a class II special controls guidance document.

II. Significance of Guidance

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). This guidance represents the agency's current thinking on 510(k) submissions for intraoral devices for snoring and/or obstructive sleep apnea. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Electronic Access

In order to receive "Class II Special Controls Guidance Document: Intraoral Devices for Snoring and/or Obstructive Sleep Apnea; Guidance for Industry and FDA" via your fax machine, call the CDRH Facts-On-Demand system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. Press 1 to enter the system. At the second voice prompt press 1 to order a document. Enter the document number (1378) followed by the pound sign (#). Follow the remaining voice prompts to complete your request.

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Persons interested in obtaining a copy of the guidance may also do so using the Internet. CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with Internet access. Updated on a regular basis, the CDRH home page includes device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturers' assistance, information on video conferencing and electronic submissions, Mammography Matters, and other device-oriented information. The CDRH home page may be accessed at *http://www.fda.gov/cdrh*. A search capability for all CDRH guidance documents is available at *http://www.fda.gov/cdrh/guidance.html*. Guidance documents are also available on the Dockets Management Branch Internet site at *http://www.fda.gov/ohrms/dockets*.

IV. Comments

Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments regarding this guidance at any time. Two copies of any comments are to be submitted, except that individuals may submit one copy. Identify comments with the docket number found in brackets in the heading of this document. The guidance document and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: October 28, 2002.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 02–28550 Filed 11–8–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Fiscal Year 2003 Funding Opportunities

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice of Funding Availability for Knowledge Dissemination Conference Grants (Short Title: SAMHSA Conference Grants—PA 03–002).

SUMMARY: The Substance Abuse and Mental Health Services Administration (SAMHSA) Center for Mental Health Services (CMHS), Center for Substance Abuse Prevention (CSAP) and Center for Substance Abuse Treatment (CSAT) announce the availability of Fiscal Year (FY) 2003 funds for grants for the following activity. This notice is not a complete description of the activity; potential applicants must obtain a copy of the Program Announcement (PA), including Part I, Knowledge Dissemination Conference Grants (Short Title: SAMHSA Conference Grants—PA 03–002), and Part II, General Policies and Procedures Applicable to All SAMHSA Applications for Discretionary Grants and Cooperative Agreements, before preparing and submitting an application.

Activity	Application deadline	Est. Funds FY 2003	Est. No. of awards	Project period
Knowledge Dissemination Conference Grants	Jan. 10, 2003 and Sept. 10, 2003 and each Jan. 10 and Sept. 10 thereafter.	$825,000	20–30	3 years

The actual amount available for the award may vary, depending on unanticipated program requirements and the number and quality of applications received. This program is being announced prior to the annual appropriation for FY 2003 for SAMHSA's programs. Applications are invited based on the assumption that sufficient funds will be appropriated for FY 2003 to permit funding of a reasonable number of applications being hereby solicited. This program is being announced in order to allow applicants sufficient time to plan and prepare applications. Solicitation of applications in advance of a final appropriation will also enable the award of appropriated grant funds in an expeditious manner and thus allow prompt implementation and evaluation of promising practices. All applicants are reminded, however, that we cannot guarantee sufficient funds will be appropriated to permit SAMHSA to fund any applications. This program is authorized under sections 509, 520A and 516 of the Public Health Service Act. SAMHSA's policies and procedures for peer review and Advisory Council review of grant and cooperative agreement applications were published in the **Federal Register** (Vol. 58, No. 126, page 35962) on July 2, 1993.

GENERAL INSTRUCTIONS: Applicants must use application form PHS 5161–1 (Rev. 7/00). The application kit contains the two-part application materials (complete programmatic guidance and instructions for preparing and submitting applications), the PHS 5161–1 which includes Standard Form 424 (Face Page), and other documentation and forms. Application kits may be obtained from: National Clearinghouse for Alcohol and Drug Information (NCADI), PO Box 2345, Rockville, MD 20847–2345, Telephone: 1–800–729–6686.

The PHS 5161–1 application form and the full text of the activity are also available electronically via SAMHSA's World Wide Web Home Page: *http://www.samhsa.gov*.

When requesting an application kit, the applicant must specify the particular activity for which detailed information is desired. All information necessary to apply, including where to submit applications and application deadline instructions, are included in the application kit.

Purpose: The Substance Abuse and Mental Health Services Administration (SAMHSA), Center for Mental Health Services (CMHS), Center for Substance Abuse Prevention (CSAP) and Center for Substance Abuse Treatment (CSAT) announce the availability of funds for grants to disseminate knowledge about practices within the mental health services and substance abuse prevention and treatment fields and to integrate that knowledge into real-world practice as effectively and efficiently as possible.

Eligibility: Public and domestic private nonprofit organizations, including State and local governments, professional associations, voluntary organizations, self-help groups, consumer and provider services-oriented constituency groups, community based organizations, and faith-based organizations, may apply

under this PA. Individuals are not eligible to receive grant support for a conference.

Potential applicants who are unsure of eligibility should contact the person responsible for program issues listed below.

Availability of Funds: SAMHSA anticipates that approximately $825,000 ($500,000 from CSAT, $250,000 from CMHS and $75,000 from CSAP) will be available for approximately 20–30 awards in FY 2003. The total funds available and the actual funding levels will depend on the receipt of an appropriation. In this and future years, each Center will contribute a minimum of $75,000, assuming funding is available.

SAMHSA Centers will provide support for up to 75 percent of the total direct costs of planned meetings and conferences. Grant awards are expected to range from $25,000 to $50,000. Indirect costs are not allowed under this program.

Period of Support: Support for only one conference from one Center (CMHS, CSAP or CSAT) may be requested in any application. Only one application per receipt date may be submitted. Support may be requested for up to one year from the date of the award.

Criteria for Review and Funding:

General Review Criteria: Competing applications requesting funding under this activity will be reviewed for technical merit in accordance with established PHS/SAMHSA peer review procedures. Review criteria that will be used by the peer review groups are specified in the application guidance material.

Award Criteria for Scored Applications: Applications will be considered for funding on the basis of their overall technical merit as determined through the peer review group and the appropriate National Advisory Council review process. Availability of funds will also be an award criteria. Additional award criteria specific to the programmatic activity may be included in the application guidance materials.

Catalog of Federal Domestic Assistance Number: 93.243.

Program Contact: For questions concerning mental health topics, contact: David Morrissette, DSW, Center for Mental Health Services/SAMHSA, 5600 Fishers Lane, Room 11C–22, Rockville, MD 20857, (301) 443–3653, E-Mail: *dmorriss@samhsa.gov*.

For questions regarding substance abuse treatment topics, contact: Kim Plavsic, Center for Substance Abuse Treatment/SAMHSA, 5515 Security Lane, Suite 840, Rockville, MD 20852, (301) 443–7916, E-Mail: *kplavsic@samhsa.gov*.

For questions concerning substance abuse prevention topics, contact: Boris R. Aponte, Ph.D, CHES, Center for Substance Abuse Prevention/SAMHSA, 5515 Security Lane, Suite 800, Rockville, MD 20852, (301) 443–2290, E-Mail: *baponte@samhsa.gov*.

For questions regarding grants management issues, contact: Steve Hudak, Division of Grants Management, OPS/SAMHSA, Rockwall II, 6th floor, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–9666, E-Mail: *shudak@samhsa.gov*.

Public Health System Reporting Requirements: The Public Health System Impact Statement (PHSIS) is intended to keep State and local health officials apprised of proposed health services grant and cooperative agreement applications submitted by community-based nongovernmental organizations within their jurisdictions. Community-based nongovernmental service providers who are not transmitting their applications through the State must submit a PHSIS to the head(s) of the appropriate State and local health agencies in the area(s) to be affected not later than the pertinent receipt date for applications. This PHSIS consists of the following information:

a. A copy of the face page of the application (Standard form 424).

b. A summary of the project (PHSIS), not to exceed one page, which provides:

(1) A description of the population to be served.

(2) A summary of the services to be provided.

(3) A description of the coordination planned with the appropriate State or local health agencies.

State and local governments and Indian Tribal Authority applicants are not subject to the Public Health System Reporting Requirements. Application guidance materials will specify if a particular FY 2003 activity is subject to the Public Health System Reporting Requirements.

PHS Non-use of Tobacco Policy Statement: The PHS strongly encourages all grant and contract recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of a facility) in which regular or routine education, library, day care, health care, or early childhood development services are provided to children. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

Executive Order 12372: Applications submitted in response to the FY 2003 activity listed above are subject to the intergovernmental review requirements of Executive Order 12372, as implemented through DHHS regulations at 45 CFR Part 100. E.O. 12372 sets up a system for State and local government review of applications for Federal financial assistance. Applicants (other than Federally recognized Indian tribal governments) should contact the State's Single Point of Contact (SPOC) as early as possible to alert them to the prospective application(s) and to receive any necessary instructions on the State's review process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. A current listing of SPOCs is included in the application guidance materials. The SPOC should send any State review process recommendations directly to: Division of Extramural Activities, Policy, and Review, Substance Abuse and Mental Health Services Administration, Parklawn Building, Room 17–89, 5600 Fishers Lane, Rockville, Maryland 20857.

The due date for State review process recommendations is no later than 60 days after the specified deadline date for the receipt of applications. SAMHSA does not guarantee to accommodate or explain SPOC comments that are received after the 60-day cut-off.

Dated: November 5, 2002.

Richard Kopanda,

Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 02–28809 Filed 11–7–02; 12:56 pm]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4456–N–23]

Privacy Act of 1974; Notice of Amended Systems of Records

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice; Proposed amendment to eight existing Privacy Act systems of records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a), the Department is amending eight Privacy Act systems of records. The major revisions to these systems are the addition of new routine use disclosures. Additionally, the revisions expand the description of the

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categories of records and individuals in the systems and reflect changes in the systems' name, location and new system managers resulting from organizational changes and restructuring. The eight amended systems are: HUD/Dept-46, HUD/H–7, HUD/H–5, HUD/Dept-10, HUD/H–6, HUD/Dept-20, HUD/Dept-43 and HUD/Dept-4. The specific revisions made in each system of records follow. HUD/H–7 was revised to amend the name of the system, change the storage and retrievability policies and to indicate a new system manager. HUD/Dept-46 was amended to revise the system name and location, expand the categories of individuals and records in the system, and to add four new routine use disclosures. HUD/H–5 was revised to expand the categories of individuals and records covered by the system, change the location of the system, change the retention and disposal, reflect a new system manager and to add four new routine use disclosures. HUD/H–6 has been amended to change the system's name and location, to add ten new routine use disclosures and to reflect the name of the new system manager. The following changes were made to HUD/Dept-20: seven new routine use disclosures were added, the system name and location was changed, revised the categories of records, a new system manager was added, and changes were made to the retention and disposal. HUD/Dept-10 reflects changes in the system's name and location, a new system manager, and the addition of five new routine use disclosures. HUD/Dept-43 has been amended to include a new routine use disclosure, changes were made to the system's name, storage and retention practices, and the name of the system manager was revised. Finally, HUD/Dept-4 was revised to change the name and location of the system, to add a new routine use disclosure, and to add the name of the new system manager. All of the systems of records are published in their entirety below.

EFFECTIVE DATE: This action shall be effective without further notice on December 12, 2002 unless comments are received during or before this period that would result in a contrary determination.

Comment Due Date: December 12, 2002.

ADDRESSEES: Interested persons are invited to submit comments regarding these amended systems of records to the Rules Docket Clerk, Office of General Counsel, and room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500. Communications should refer to the above docket number and title. An original and four copies of comments should be submitted. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Jeanette Smith, Departmental Privacy Act Officer, Telephone Number (202) 708–2374. (This is not a toll-free number). A telecommunications device for hearing- and speech-impaired persons (TTY) is available at 1–800–877–8339 (Federal Information Relay Services). (This is a toll-free number).

SUPPLEMENTARY INFORMATION: Pursuant to the Privacy Act of 1974 (5 U.S.C. 5552a), as amended notice is given that HUD proposes to amend eight systems of records.

Title 5 U.S.C. 552a(e)(4) and (11) provide that the public be afforded a 30-day period in which to comment on the changes to the systems of records.

The amended system report was submitted to the Office of Management and Budget (OMB), the Senate Committee on Governmental Affairs, and the House Committee on Government Operations pursuant to paragraph 4c of Appendix 1 to OMB Circular A–130, "Federal Responsibilities for Maintaining Records About Individuals," July 25, 1994; 59 FR 37914.

Accordingly, the eight amended systems of records are published in their entirety below.

Authority: 5 U.S.C. 552a 88 Stat. 1896; 342 U.S.C. 3535(d).

Dated: October 31, 2002.

Gloria R. Parker,

Chief Technology Officer.

HUD/H–7

SYSTEM NAME:

Previous Participation Review System (PPRS F19), and Active Partners Performance System (APPS F24P) Previous Participation Files.

SYSTEM LOCATION:

HUD Headquarters and field offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Principals (owners, general contractors, management agents, consultants and packagers) in HUD multifamily housing programs.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information concerning the Department's consideration/approval/disapproval of HUD multifamily housing program principals, including names and Social Security Numbers of principals; lists of prior HUD projects; summaries of financial, management, or operational difficulties with prior HUD projects (if any); indication of whether principals are or have been the subject of a government investigation; other information relevant to the standards for previous participation approval; minutes of deliberative meetings. Both F19 and F24P contain flags and the reason for the flag on an external individual or company participant.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 7(d), Department of HUD Act, 79 Stat. 670, (42 U.S.C. 3535(d)).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, other routine uses are as follows: To state and local governments participating in HUD housing programs as co-insurers or finance agencies—to assist in project application reviews.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper support files are stored in file folders in locked filing cabinets in a secure room. F19 runs on the UNISYS system and F24P runs on a LAN SERVER. It is an Internet/Intranet application.

RETRIEVABILITY:

Name of principal and HUD project case number. F19 is retrievable by Name and Project Number. F24P is retrievable by Name, SSN, Tax ID, Property Name, and Project Number.

SAFEGUARDS:

Files are kept in locked filing cabinets in a secure room. Access is limited to authorized personnel. F19 is accessible by Authorized personnel in the Field Offices and Headquarters. F24P is accessible by authorized Business Partners (for each individual's information only), Field Office Staff and Headquarters Staff.

RETENTION AND DISPOSAL:

Records are primarily active; disposal is in accordance with HUD Handbook 2225.6 REV–1 on disposition of records.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Business Performance Review Division, HRDP, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410.

NOTIFICATION PROCEDURE:

For information, assistance, or inquiry about existence of records, contact the Privacy Act Officer at the Headquarters location, in accordance with 24 CFR part 16. This location is given in Appendix A.

RECORD ACCESS PROCEDURES:

The Department's rules for providing access to records to the individual concerned appear in 24 CFR part 16. If additional information or assistance is required, contact the Privacy Act Officer at the Headquarters location. A list of all locations is given in Appendix A.

CONTESTING RECORD PROCEDURES:

The Department's rules for contesting the contents of records and appealing initial denials, by the individual concerned, appear in 24 CFR part 16. If additional information or assistance is needed in relation to contesting the contents of records, it may be obtained by contacting the Privacy Act Officer at the appropriate location. A list of all locations is given in Appendix A. If additional information or assistance is needed in relation to appeals of initial denials, it may be obtained by contacting the HUD Departmental Appeals Officer, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410.

RECORD SOURCE CATEGORIES:

Subject individuals; HUD Field Offices; other governmental agencies.

EXEMPTIONS FROM CERTAIN PROVISIONS OF THE ACT:

None.

HUD/DEPT–46

SYSTEM NAME:

Single Family Insured Case Files.

SYSTEM LOCATION:

HUD Headquarters and Single Family Homeownership Centers in Atlanta, Denver, Philadelphia, and Santa Ana.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have obtained a mortgage under HUD/FHA's single family mortgage insurance programs. Also, individuals who unsuccessfully applied for an insured mortgage requiring processing by HUD underwriters.

CATEGORIES OF RECORDS IN THE SYSTEM:

Files contain identifying information about applicants, such as name, Social Security Number, and current address; and records commonly used to determine the credit-worthiness of a potential borrower, such as income and employment information, and credit bureau reports. In addition, the files may contain appraisal and inspection reports, sales agreement, conditional and firm commitments, underwriting worksheets, HUD–1, mortgage note and deed of trust, insurance documents, and correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Housing Act as amended (12 U.S.C. 1702 et seq.)

The information collection enables HUD/FHA to process applications for HUD mortgage insurance and respond to inquiries regarding applications and insured mortgages.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act other routine uses include:

(a) To the Department of Veteran Affairs for information on veterans' participation.

(b) To complainants and attorneys representing them to review complainant files for status and information.

(c) To the person or firm complained about—for resolution of the complaint.

(d) To Congressional delegations to provide information concerning status of complaints.

(e) To the FBI to investigate possible fraud revealed in underwriting, insuring or monitoring.

(f) To Department of Justice for prosecution of fraud revealed in underwriting, insuring or monitoring.

(g) To General Accounting Office (GAO) for audit purposes.

(h) To financial institutions and computer software companies for automated underwriting, credit scoring and other risk management evaluation studies.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are stored in file folders (automated systems containing data from these files are described in separate system of records notices).

RETRIEVABILITY:

Records are retrieved by case file number.

SAFEGUARDS:

Insured case files are shipped to a Federal Records Center within days of receipt at HUD for insurance endorsement processing; retrieval is limited to authorized personnel. Rejected case files and cases in processing are maintained in secure office space with access limited to authorized personnel.

RETENTION AND DISPOSAL:

Insured case files are retained for 12 years and rejected cases are retained for one year. Obsolete records are destroyed in accordance with HUD Handbook 2225.6, Records Disposition Management; HUD Records Schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Insured Single Family Housing, HUA, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410.

NOTIFICATION PROCEDURE:

For information, assistance, or inquiry about the existence of records, contact the Privacy Act Officer at the appropriate location, in accordance with 24 CFR part 16. A list of all locations is given in Appendix A.

RECORD ACCESS PROCEDURES:

The Department's rules for providing access to records to the individual concerned appear in 24 CFR part 16. If additional information or assistance is required, contact the Privacy Act Officer at the appropriate location. A list of all locations is given in Appendix A.

CONTESTING RECORD PROCEDURES:

The Department's rules for contesting the contents of records and appealing initial denials, by the individual concerned, appear in 24 CFR part 16. If additional information or assistance is needed in relation to contesting the contents of records, it may be obtained by contacting the Privacy Act Officer at the appropriate location. A list of all locations is given in Appendix A. If additional information or assistance is needed in relation to appeals of initial denials, it may be obtained by contacting the HUD Departmental Privacy Appeals Officer, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410.

RECORD SOURCE CATEGORIES:

Subject individuals, current and previous employers, credit bureaus and financial institutions, corporations and firms and federal and non-federal government agencies.

EXEMPTIONS FOR CERTAIN PROVISIONS OF THE ACT:

None.

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HUD/H–5

SYSTEM NAME:

Single Family Computerized Homes Underwriting Management System (CHUMS).

SYSTEM LOCATION:

HUD Headquarters and Single Family Homeownership Centers in Atlanta, Denver, Philadelphia, and Santa Ana.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have obtained a mortgage insured under HUD/FHA's single family mortgage insurance programs and individuals who unsuccessfully applied for an insured mortgage.

Also, individuals involved in the HUD/FHA single-family underwriting process (builders, fee appraisers, fee inspectors, mortgagee staff appraisers, mortgagee staff underwriters) and HUD employees involved in the single family underwriting process (*e.g.*, staff appraisers, staff mortgage credit examiners, architectural employees, receiving clerks, assignment clerks, commitment clerks, records clerks, and closing clerks).

CATEGORIES OF RECORDS IN THE SYSTEM:

Automated files contain name, address, Social Security Number or other identification number; racial/ethnic background, if disclosed, of the mortgagor and information about the mortgage loan. These records also contain the name, address, Social Security Number or other identification number, territory, workload, and minority data (including racial/ethnic background, Minority Business Enterprise (MBE) Code, and sex, for statistical tracking purposes) of builders, fee appraisers, and fee inspectors. These records will further contain the name and identifying number of each mortgagee staff appraiser and each mortgagee staff underwriter and the territory and workload of those individuals. Additionally, the automated files contain identification (name and social security or other identifying number) of HUD employees involved in the single family underwriting process (Homeownership Center managers, staff appraisers, architectural employees, receiving clerks, assignment clerks, commitment clerks, records clerks, and closing clerks).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 203, National Housing Act, Pub. L.L 73–479.

The information collection enables HUD/FHA to process applications for HUD mortgage insurance and respond to inquiries regarding applications and insured mortgages.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act other routine uses include:

(a) To other agencies; such as, Departments of Agriculture, Education and Veterans Affairs, and the Small Business Administration—for use of HUD's Credit Alert Interactive Voice Response System (CAIVRS) to prescreen applicants for loans or loans guaranteed by the Federal Government to ascertain if the applicant is delinquent in paying a debt owed to or insured by the Government.

(b) To the FBI to investigate possible fraud revealed in underwriting, insuring or monitoring.

(c) To Department of Justice for prosecution of fraud revealed in underwriting, insuring or monitoring.

(d) To General Accounting Office (GAO) for audit purposes.

(e) To financial institutions and computer software companies for automated underwriting, credit scoring and other risk management evaluation studies.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored on magnetic tape/disc/drum.

RETRIEVABILITY:

Records are retrieved by name, Social Security Number or other identification number.

SAFEGUARDS:

Automated records are maintained in secured areas. Access is limited to authorized personnel.

RETENTION AND DISPOSAL:

Computerized records of insured cases are retained for 10 years and those on rejected cases are retained for 3 years.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Home Mortgage Insurance Division, HUAH, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410.

NOTIFICATION PROCEDURE:

For information, assistance, or inquiry about existence of records, contact the Privacy Act Officer at the appropriate location in accordance with 24 CFR part 16. A list of all locations is given in appendix A.

RECORD ACCESS PROCEDURES:

The Department's rules for providing access to records to the individual concerned appear in 24 CFR part 16. If additional information or assistance is required, contact the Privacy Act Officer at the appropriate location. A list of all locations is given in appendix A.

CONTESTING RECORD PROCEDURES:

The Department's rules for contesting the contents of records and appealing initial denials, by the individual concerned, appear in 24 CFR part 16. If additional information or assistance is needed, it may be obtained by contacting: (i) In relation to contesting contents of records, the Privacy Act Officer at the appropriate location. A list of all locations is given in appendix A; (ii) in relation to appeals of initial denials, the HUD Departmental Privacy Appeals Officer, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410.

RECORD SOURCE CATEGORIES:

Mortgagors, appraisers, inspectors, builders, mortgagee staff appraisers, mortgagee staff underwriters, and HUD employees.

EXEMPTIONS FOR CERTAIN PROVISIONS OF THE ACT:

None.

HUD/DEPT–10

SYSTEM NAME:

Single Family Construction Complaints Files.

SYSTEM LOCATION:

HUD Headquarters and Single Family Homeownership Centers in Atlanta, Denver, Philadelphia, and Santa Ana.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Mortgagors of insured single family homes that have filed construction complaints with HUD.

CATEGORIES OF RECORDS IN THE SYSTEM:

Complaints regarding construction and defects; inspection reports; records of complaint status and disposition; compliance reports; related correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Housing Act, as amended, 12 U.S.C. 1702 *et seq.*

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, other routine uses are as follows:

(a) To complainants and attorneys representing them to review complainant files for status and information.

(b) To the person or firm complained about for resolution of the complaint.

(c) To the Department of Veterans Affairs or the Rural Housing Service for coordination with HUD in processing construction complaints.

(d) To Congressional delegations to provide information concerning status of complaints.

(e) To originating and servicing mortgagees to provide information concerning status of complaint.

(f) To state agencies for investigation.

(g) To the FBI to investigate possible fraud revealed in the course of the complaint review.

(h) To Department of Justice for prosecution of fraud revealed in the course of complaint review.

(i) To IRS for investigation.

(j) To General Accounting Office (GAO) for audit purposes.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file folders.

RETRIEVABILITY:

Records are retrieved by name of subject individual; case file number, property location.

SAFEGUARDS:

Records are maintained in lockable file cabinets with access limited to authorized personnel.

RETENTION AND DISPOSAL:

Records are partly current and partly historical; disposal is in accordance with HUD Handbook 2225.6, Records Disposition Management; HUD Records Schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Home Mortgage Insurance Division, HUAH, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410.

NOTIFICATION PROCEDURE:

For information, assistance, or inquiry about existence of records, contact the Privacy Act Officer at the appropriate location, in accordance with 24 CFR part 16. A list of all locations is given in Appendix A.

RECORD ACCESS PROCEDURES:

The Department's rules for providing access to records to the individual concerned appear in 24 CFR part 16. If additional information or assistance is required, contact the Privacy Act Officer at the appropriate location. A list of all locations is given in Appendix A.

CONTESTING RECORD PROCEDURES:

The Department's rules for contesting the contents of records and appealing initial denials, by the individual concerned, appear in 24 CFR part 16. If additional information or assistance is needed, it may be obtained by contacting: (i) In relation to contesting contents of records, the Privacy Act Officer at the appropriate location. A list of all locations is given in Appendix A; (ii) in relation to appeals of initial denials, the HUD Departmental Privacy Appeals Officer, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410.

RECORD SOURCE CATEGORIES:

Subjects and other individuals, builders and contractors and their current and previous employees, credit bureaus and financial institutions; Federal and non-Federal agencies.

EXEMPTIONS FROM CERTAIN PROVISIONS OF THE ACT:

None.

HUD/H–6

SYSTEM NAME:

Single Family Section 518 Files (Construction Complaints).

SYSTEM LOCATION:

Headquarters and Single Family Homeownership Centers in Atlanta, Denver, Philadelphia, and Santa Ana.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

HUD insured owners of one-to-four family dwellings who filed claims because of structural or other major defects found in their homes.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, address, home phone number, property inspection report, disposition of claim information and other information pertinent to the claim.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sec. 104, Housing and Urban Development Act of 1970 (Pub. L. 91–609), 12 U.S.C. 1735b.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, other routine uses are as follows:

(a) To complainants and attorneys representing them to review complainant files for status and information.

(b) To the person or firm complained about for resolution of the complaint.

(c) To the Department of Veterans Affairs or the Rural Housing Service for coordination with HUD in processing construction complaints.

(d) To Congressional delegations to provide information concerning status of complaints.

(e) To originating and servicing mortgagees to provide information concerning status of complaint.

(f) To state agencies for investigation.

(g) To the FBI to investigate possible fraud revealed in the course of the complaint review.

(h) To Department of Justice for prosecution of fraud revealed in the course of complaint review.

(i) To IRS for investigation.

(j) To General Accounting Office (GAO) for audit purposes.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file folders.

RETRIEVABILITY:

Records are retrieved by name, case number, and claim number.

SAFEGUARDS:

Records are kept in lockable file cabinets with access limited to authorized personnel.

RETENTION AND DISPOSAL:

Records are retained for six years and then disposed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Home Mortgage Insurance Division, HUAH, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410.

NOTIFICATION PROCEDURE:

For information, assistance, or inquiry about existence of records, contact the Privacy Act Officer at the appropriate location, in accordance with 24 CFR part 16. A list of all locations is given in Appendix A.

RECORD ACCESS PROCEDURES:

The Department's rules for providing access to records to the individual concerned appear in 24 CFR part 16. If additional information or assistance is required, contact the Privacy Act Officer at the appropriate location. A list of all locations is given in Appendix A.

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CONTESTING RECORD PROCEDURES:

The Department's rules for contesting the contents of records and appealing initial denials, by the individual concerned, appear in 24 CFR part 16. If additional information or assistance is needed, it may be obtained by contacting: (i) In relation to contesting contents of records, the Privacy Act Officer at the appropriate location. A list of all locations is given in Appendix A; (ii) in relation to appeals of initial denials, the HUD Departmental Privacy Appeals Officer, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410.

RECORD SOURCE CATEGORIES:

Subject individuals and Departmental records.

EXEMPTIONS FROM CERTAIN PROVISIONS OF THE ACT:

None.

HUD/DEPT–20

SYSTEM NAME:

Single Family Homeownership Assistance Application and Recertification.

SYSTEM LOCATION:

HUD Headquarters.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Participants in Section 235 Homeownership Assistance Program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Files contain identifying information about mortgagors, such as name, social security number, and address as well as information on income, assets, and family composition required to determine subsidy payment.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Housing Act of 1934, Sec. 235(a)(f) (as amended by sec. 101 of the Housing and Urban Development Act of 1968), 12 U.S.C. 1715z.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, other routine uses are as follows:

(a) To the servicing mortgagee to give notice of miscalculations or other errors in subsidy computation.

(b) To IRS to report subsidy amounts as income.

(c) To title insurance companies or financial institutions for payoff figures.

(d) To the FBI to investigate possible fraud revealed in the course of servicing efforts.

(e) To Department of Justice for prosecution of fraud revealed in the course of servicing efforts and for the institution of suit or other proceedings to effect collections.

(f) To General Accounting Office for audit purposes.

(g) To welfare agencies for fraud investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in case files and on magnetic tape/disc/drum.

RETRIEVABILITY:

Manual records are retrieved by case file number; automated records are retrieved by case file number, mortgagor name and social security number.

SAFEGUARDS:

Computer facilities are secured and accessible only by authorized personnel, and all files are stored in a secured area. Technical restraints are employed with regard to accessing the computer and data files.

RETENTION AND DISPOSAL:

Records system is active and kept up-to-date.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Program Accounting Division, FBBP, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410.

NOTIFICATION PROCEDURE:

For information, assistance, or inquiry about existence of records, contact the Privacy Act Officer at the Headquarters location, in accordance with 24 CFR part 16. This location is given in Appendix A.

RECORD ACCESS PROCEDURES:

The Department's rules for providing access to records to the individual concerned, appear in 24 CFR part 16. If additional information or assistance is required, contact the Privacy Act Officer at Headquarters. This location is given in Appendix A.

CONTESTING RECORD PROCEDURES:

The Department's rules for contesting the contents of records and appealing initial denials, by the individual concerned, appear in 24 CFR part 16. If additional information or assistance is needed it may be obtained by contacting: (i) In relation to contesting contents of records, the Privacy Act Officer at the Headquarters location. This location is given in Appendix A; (ii) in relation to appeals of initial denials, the HUD Departmental Privacy Appeals Officer, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410.

RECORD SOURCE CATEGORIES:

Mortgagors' applications and recertifications of income.

EXEMPTIONS FROM CERTAIN PROVISIONS OF THE ACT:

None.

HUD/DEPT–43

SYSTEM NAME:

Property Disposition Files (A43; A43C; A80S).

SYSTEM LOCATION:

HUD Headquarters, HUD's Philadelphia, Atlanta, Denver and Santa Ana Homeownership Centers [HOCs] and multiple contractor sites. For a complete listing of these offices, with addresses, see Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Mortgagors with HUD/FHA insured single family homes who have had their mortgages foreclosed and properties acquired by HUD; individuals who have had their properties acquired by the Department of Defense and transferred to HUD; single family mortgagors who defaulted on Section 312 loans and had their properties acquired by HUD; and potential buyers of HUD-held single-family properties.

CATEGORIES OF RECORDS IN THE SYSTEM:

Documents pertaining to acquisition of foreclosed HUD/FHA insured single family homes and single family homes transferred from the Department of Defense. The documents include names, addresses, loan amounts and payments, and reasons for default; leases and rental information if properties are rented; purchasers' family characteristics, income and employment histories, credit reports, sales contracts, and settlement costs; and related correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Housing Act of 1937 as amended (Pub. L. 75–412).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, other routine uses are as follows:

(a) To IRS for auditing individual income tax returns;

(b) To insurance companies to file claims for amounts due;

(c) To mortgagees to review the credit of prospective purchasers;

(d) To local public authorities to check on acquisition, reuse and sales of real estate;

(e) To real estate management and marketing contractors who are performing HUD's property disposition activities in specific geographic areas.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

In file folders, disks, tapes, electronic records in multiple computer record systems. Secure records maintenance requirements are incorporated into the real estate marketing and management contracts.

RETRIEVABILITY:

FHA Case number, property address, and by former mortgagor's name. Data on a current/recent purchaser of a HUD owned property.

SAFEGUARDS:

Lockable file cabinet; secured computer facilities at HUD and at the contractor's offices. There are background checks of all Contractor staff. Computer access to multiple HUD record systems is restricted by passwords, defined individual access profiles, restricted access to specified data fields. Data Transmission over secure T–1 and Shiva lines. Information about the properties is available to the public via the Internet for marketing purposes. However, information covered by the Privacy Act of 1974 and the Right to Financial Privacy Act (12 U.S.C. 3401) is not incorporated in any Internet site.

RETENTION AND DISPOSAL:

Obsolete records are destroyed or sent to storage facility in accordance with HUD Handbook.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Single Family Asset Management Division, HUAM, Office of Single Family Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

NOTIFICATION PROCEDURE:

For information, assistance, or inquiry about existence of records, contact the Privacy Act Officer at the appropriate location, in accordance with 24 CFR part 16. A list of all locations is given in Appendix A.

RECORD ACCESS PROCEDURES:

The Department's rules for providing access to records to the individual concerned appear in 24 CFR part 16. If additional information or assistance is required, contact the Privacy Act Officer at the appropriate location. A list of all locations is given in Appendix A.

CONTESTING RECORD PROCEDURES:

The Department's rules for contesting the contents of records and appealing initial denials, by the individual concerned, appear in 24 CFR part 16. If additional information or assistance is needed, it may be obtained by contacting: (i) In relation to contesting contents of records, the Privacy Act Officer at the appropriate location. A list of all locations is given in Appendix A; (ii) in relation to appeals of initial denials, the HUD Departmental Privacy Appeals Officer, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

RECORD SOURCE CATEGORIES:

HUD/FHA Claims for Insurance Benefits, subject individuals; other individuals; current or previous employers; credit bureaus; financial institutions; other corporations or firms; federal government agencies; non-federal (including foreign, state and local) government agencies; real estate brokers and agents.

EXEMPTIONS FROM CERTAIN PROVISIONS OF THE ACT:

None.

HUD/DEPT–4

SYSTEM NAME:

Fee Inspectors and Appraisers.

SYSTEM LOCATION:

Home Ownership Centers in Atlanta, Denver, Philadelphia and Santa Ana.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have applied to HUD for appointment as roster appraisers, and fee inspectors.

CATEGORIES OF RECORDS IN THE SYSTEM:

Applications and résumés containing personal data and qualifications for position sought; assignment logs, fees paid and appraisals made; and evaluation of qualifications and of appraisals made.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 203 and 226 of the National Housing Act, Pub. L. 73–479.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, other routine uses are as follows:

(a) To roster appraisers for appraisal preparation;

(b) To VA, mortgagors, mortgagees notice of FHA action, billing;

(c) To local government officials for code enforcement, health and wetlands clearance;

(d) To Environmental Protection Agency for environmental clearance;

(e) To Social Security Administration for research.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

CHUMS.

RETRIEVABILITY:

Name; case file number (in some cases).

SAFEGUARDS:

Lockable file cabinets and desks.

RETENTION AND DISPOSAL:

Primarily active information; also mixed historical and active. Social Security appraisals are historical data. Disposal in accordance with HUD Handbook 2225.6, Records Disposition Management HUD Records Schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Single Family Home Mortgage Insurance Division, HUAHM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

NOTIFICATION PROCEDURE:

For inquiry about existence of records, contact the Privacy Officer at the appropriate location, in accordance with procedures in 24 CFR part 16. If additional information or assistance is required, contact the Privacy Officer at the appropriate location. A list of all locations is given in Appendix A.

RECORD ACCESS PROCEDURES:

The Department's rules for providing access to records to the individual concerned appear in 24 CFR part 16. If additional information or assistance is required, contact the Privacy Act Officer at the appropriate location. A list of all locations is given in Appendix A.

CONTESTING RECORD PROCEDURES:

The Department's rules for contesting the contents of records and appealing initial denials, by the individual concerned, appear in 24 CFR part 16. If additional information or assistance is needed, it may be obtained by contacting: (i) In relation to contesting contents of records, the Privacy Act

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Officer at the appropriate locations. A list of all locations is given in Appendix A; (ii) in relation to appeals of initial denials, the HUD Departmental Privacy Appeals Officer, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

RECORD SOURCE CATEGORIES:

Subject individuals; references; and HUD staff.

EXEMPTIONS FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 02–28481 Filed 11–8–02; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–960–1430–ET; MIES–50199]

Public Land Order No. 7545; Revocation of Executive Order Dated May 24, 1847; Michigan

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes in its entirety, an Executive Order which reserved 87.1 acres of public land for use by the United States Coast Guard for lighthouse purposes. The land is no longer needed for lighthouse purposes. This action will open 0.47 acres to surface entry. The remaining land has been conveyed out of Federal ownership.

EFFECTIVE DATE: December 12, 2002.

FOR FURTHER INFORMATION CONTACT: Ed Ruda, BLM Eastern States Office, 7450 Boston Boulevard, Springfield, Virginia 22153, 703–440–1663.

SUPPLEMENTARY INFORMATION: This is a record clearing action only for the land that is no longer in Federal ownership.

Order

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. The Executive Order dated May 24, 1847, which reserved public land for lighthouse purposes, is hereby revoked in its entirety:

Michigan Meridian

T. 18 N., R. 14 E.,
Sec. 2, lots 1 and 2.
The area described contains 87.1 acres in Huron County.

2. At 10 a.m. on December 12, 2002, the land described below will be opened to the operation of the public land laws generally, subject to valid existing rights, the provision of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 10 a.m. on December 12, 2002, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

Michigan Meridian

T. 18 N., R. 14 E.,
Pointe Aux Barques Lighthouse Reservation, located in lot 2, sec. 2, being more particularly described as:
Beginning at the ¼ section corner of secs. 2 and 11, T. 18 N., R. 14 E.,
Thence,
N. 34°11′ E., 29.39 chs., to Angle Point No. 1, the place of beginning,
N. 50°10′ E., 0.50 chs., to a point on line,
N. 50°10′ E., 4.21 chs., to Angle Point No. 2,
S. 89°31′ E., 1.14 chs., to a point on line,
S. 89°31′ E., 0.46 chs., to Angle Point No. 3 on the present shoreline of Lake Huron,
Thence, with the meanders of Lake Huron,
N. 35°48′ W., 0.62 chs.,
N. 3°51′ E., 1.24 chs.,
N. 54°52′ W., 1.59 chs., to Angle Point No. 4,
S. 0°29′ W., 0.52 chs., to a point on line,
S. 0°29′ W., 1.63 chs., to Angle point No. 5,
S. 50°11′ W., 4.54 chs., to a point on line,
S. 50°11′ W., 0.50 chs., to Angle Point No. 6,
S. 39°50′ E., 0.38 chs., to Angle Point No. 1, the place of beginning.
The area described contains 0.47 acres in Huron County.

Dated: October 24, 2002.

Rebecca W. Watson,

Assistant Secretary—Land and Minerals Management.

[FR Doc. 02–28703 Filed 11–8–02; 8:45 am]

BILLING CODE 4310–GJ–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf, Gulf of Mexico Region, Proposed Central and Western Planning Area Multisale Environmental Impact Statement

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of availability of the Final Environmental Impact Statement on Proposed Central Planning Area Oil and Gas Lease Sales 185, 190, 194, 198, and 201, and Proposed Western Planning Area Sales 187, 192, 196, and 200.

SUMMARY: In accordance with the National Environmental Policy Act (NEPA), the Minerals Management Service (MMS) has prepared an environmental impact statement (EIS) for nine proposed areawide oil and gas lease sales in the Central Planning Area (CPA) and Western Planning Area (WPA) of the Gulf of Mexico (GOM) Outer Continental Shelf (OCS).

FOR FURTHER INFORMATION CONTACT: Minerals Management Service, Gulf of Mexico OCS Region, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, Mr. Joseph Christopher, telephone (504) 736–2774.

SUPPLEMENTARY INFORMATION: This EIS addresses nine proposed Federal actions that offer for lease areas on the GOM OCS that may contain economically recoverable oil and gas resources. Federal regulations allow for several related or similar proposals to be analyzed in one EIS (40 CFR 1502.4). Since each lease sale proposal and projected activities are very similar each year for each planning area, a single EIS is being prepared for nine Central and Western Gulf sales scheduled in the proposed Outer Continental Shelf Oil and Gas Leasing Program: 2002–2007 (the proposed 5-Year Program). Under the proposed 5-Year Program, five annual areawide lease sales are scheduled for the CPA and five annual areawide lease sales are scheduled for the WPA. The first proposed lease sale—Western Gulf Sale 184—was not addressed in this multisale EIS; a separate environmental analysis was prepared for that proposal. The Central Gulf sales addressed in this EIS are Sale 185 in 2003, Sale 190 in 2004, Sale 194 in 2005, Sale 198 in 2006, and Sale 201 in 2007. The Western Gulf sales are Sale 187 in 2003, Sale 192 in 2004, Sale 196 in 2005, and Sale 200 in 2006. Although this EIS addresses nine proposed lease sales, at the completion of this EIS process, decisions will be made only for proposed Sale 185 in the CPA and proposed Sale 187 in the WPA. Additional NEPA reviews will be conducted for each of the subsequent lease sales to ensure that the most current information is used in each decision process.

EIS Availability: You may find out which local libraries along the Gulf Coast have copies of the Final EIS for review, or you may obtain single copies of the Final EIS by contacting the Minerals Management Service, Gulf of Mexico OCS Region, Attention: Public Information Office (Mail Stop 5034), 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana 70123–394, or by calling 1–800–200–GULF.

You may request a Final EIS or check the list of libraries and their locations on the MMS Web site at *http://www.gomr.mms.gov.*

Dated: October 8, 2002.

Thomas A. Readinger,

Associate Director for Offshore Minerals Management.

Dated: October 10, 2002.

Willie R. Taylor,

Director, Office of Environmental Policy and Compliance.

[FR Doc. 02–28557 Filed 11–8–02; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Notice of Workshop

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of meeting/workshop.

SUMMARY: This notice announces that MMS will hold a workshop with industry, State representatives, and the public to provide guidance on preparing Exploration Plans (EPs) and Development Operations Coordination Documents (DOCDs) that are required by current 30 CFR 250, Subpart B, regulations in the Gulf of Mexico (GOM) OCS Region.

DATES: MMS will hold the workshop on November 25, 2002, from 9:00 a.m. to approximately 12 noon at the location listed in the **ADDRESSES** section. The workshop may adjourn earlier than 12 noon if presentations are complete and there are no further questions.

ADDRESSES: MMS GOM Regional office (Room 111), 1201 Elmwood Park Blvd., New Orleans, LA 70123

FOR FURTHER INFORMATION CONTACT: Robert Sebastian, GOM OCS Region, (504) 736–2761.

SUPPLEMENTARY INFORMATION: The purpose of the workshop is to explain the change from the old environmental report to the new environmental impact analysis, as covered by Appendix H of Notice to Lessees and Operators (NTL) 2002–G08, for EPs and DOCDs. MMS issued NTL 2002–G08 with an effective date of August 29, 2002, and provided a transition period to November 29, 2002.

On May 17, 2002 we published a proposed rule on Oil and Gas and Sulphur Operations in the Outer Continental Shelf-Plans and Information (67 FR 35372). We posted a companion draft NTL for the GOM OCS Region on our Web site at *http://www.mms.gov.* While you may express verbal comments on aspects of the Subpart B proposed rule MMS staff will not respond to those comments at the workshop. In other words, no dialog. You must follow-up all comments expressed verbally with written comments to the rulemaking, and they must be submitted before the comment period ends in order for MMS to consider them.

Dated: November 1, 2002.

John V. Mirabella,

Acting Chief, Engineering and Operations Division.

[FR Doc. 02–28611 Filed 11–8–02; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

California Bay-Delta Public Advisory Committee Public Meeting

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, the California Bay-Delta Public Advisory Committee will meet jointly with the CALFED Bay-Delta Program Policy Group on December 4 and 5, 2002. The agenda for the Committee meeting will include a summary of CALFED Bay-Delta Program progress and balance, the lead scientist's report, discussion of annual work plans and subcommittee recommendations, Committee priorities for 2003, and implementation of the CALFED Bay-Delta Program with State and Federal officials.

DATES: The meeting will be held Wednesday, December 4, 2002 from 9 a.m. to 6 p.m., and if needed, the meeting will resume on Thursday, December 5, 2002 from 9 a.m. to 12 p.m. If reasonable accommodation is needed due to a disability, please contact Pauline Nevins at (916) 657–2666 or TDD (800) 735–2929 at least 1 week prior to the meeting.

ADDRESSES: The meeting will be held at the Sheraton Grand Hotel located at 1230 J Street, Grand Ballroom, Sacramento, California, on December 4, 2002. If a second day is necessary to resume the meeting, the location will change to the Sacramento Convention Center located at 1400 J Street, Room 203, Sacramento, California, on December 5, 2002.

FOR FURTHER INFORMATION CONTACT: Eugenia Laychak, CALFED Bay-Delta Program, at (916) 654–4214, or Diane Buzzard, U.S. Bureau of Reclamation, at (916) 978–5022.

SUPPLEMENTARY INFORMATION: The Committee was established to provide assistance and recommendations to Secretary of the Interior Gale Norton and California Governor Gray Davis on implementation of the CALFED Bay-Delta Program. The Committee will advise on annual priorities, integration of the eleven Program elements, and overall balancing of the four Program objectives of ecosystem restoration, water quality, levee system integrity, and water supply reliability. The Program is a consortium of 23 State and Federal agencies with the mission to develop and implement a long-term comprehensive plan that will restore ecological health and improve water management for beneficial uses of the San Francisco/Sacramento and San Joaquin Bay Delta.

Committee and meeting materials will be available on the CALFED Bay-Delta Web site: *http://calfed.ca.gov* and at the meeting. This meeting is open to the public. Oral comments will be accepted from members of the public at the meeting and will be limited to 3–5 minutes.

(**Authority:** The Committee was established pursuant to the Department of the Interior's authority to implement the Fish and Wildlife Coordination Act, 16 U.S.C. 661 *et. seq.*, the Endangered Species Act, 16 U.S.C. 1531 *et. seq.*, and the Reclamation Act of 1902, 43 U.S.C. 371 *et. seq.*, and the acts amendatory thereof or supplementary thereto, all collectively referred to as the Federal Reclamation laws, and in particular, the Central Valley Project Improvement Act, Title 34 of Public Law 102–575.)

Dated: October 28, 2002.

Nan M. Yoder,

Acting Special Projects Officer, Mid-Pacific Region.

[FR Doc. 02–28614 Filed 11–8–02; 8:45 am]

BILLING CODE 4310–MN–M

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–423–425 (Final) and 731–TA–964, 966–970, 973–978, 980, and 982–983 (Final)]

Certain Cold-Rolled Steel Products From Argentina, Belgium, Brazil, China, France, Germany, Korea, the Netherlands, New Zealand, Russia, South Africa, Spain, Taiwan, Turkey, and Venezuela

Determinations

On the basis of the record [1] developed in the subject investigations, the United

[1] The record is defined in § 207.2(f) of the Commission's rules of practice and procedure (19 CFR 207.2(f)).

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States International Trade Commission (Commission) determines,[2] pursuant to section 705(b) of the Tariff Act of 1930 (the Act),[3] that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports from Brazil, France, and Korea of certain cold-rolled steel products, provided for in headings 7209, 7210, 7211, 7212, 7225, and 7226 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be subsidized by the Governments of Brazil, France, and Korea. The Commission also determines,[4] pursuant to section 735(b) of the Act,[5] that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports from Argentina, Belgium, Brazil, China, France, Germany, Korea, the Netherlands, New Zealand, Russia, South Africa, Spain, Taiwan, Turkey, and Venezuela of certain cold-rolled steel products, provided for in headings 7209, 7210, 7211, 7212, 7225, and 7226 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted these investigations effective September 28, 2001, following receipt of petitions filed with the Commission and Commerce by Bethlehem Steel Corporation, Bethlehem, PA; LTV Steel Co., Inc., Cleveland, OH; National Steel Corporation, Mishawaka, IN; Nucor Corporation, Charlotte, NC; Steel Dynamics Inc., Butler, IN; United States Steel LLC, Pittsburgh, PA; WCI Steel, Inc., Warren, OH; and Weirton Steel Corporation, Weirton, WV.[6] The final phase of the investigations was scheduled by the Commission following notification of preliminary determinations by Commerce that imports of certain cold-rolled steel products from Argentina, Belgium, Brazil, China, France, Germany, Korea, the Netherlands, New Zealand, Russia, South Africa, Spain, Taiwan, Turkey, and Venezuela were being sold at LTFV within the meaning of section 733(b) of the Act,[7] and preliminary determinations by Commerce that imports of certain cold-rolled steel products from Brazil, France, and Korea were being subsidized within the meaning of section 703(b) of the Act.[8] Notice of the scheduling of the final phase of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of June 3, 2002 (67 FR 38291). The hearing was held in Washington, DC, on July 18, 2002, and all persons who requested the opportunity were permitted to appear in person or by counsel. The Commission transmitted its determinations in these investigations to the Secretary of Commerce on October 28, 2002. The views of the Commission are contained in USITC Publication 3551 (November 2002), entitled Certain Cold-Rolled Steel Products from Argentina, Belgium, Brazil, China, France, Germany, Korea, the Netherlands, New Zealand, Russia, South Africa, Spain, Taiwan.

By order of the Commission
Issued: November 5, 2002.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 02–28609 Filed 11–8–02; 8:45 am]

BILLING CODE 7020–02–P

[2] Commissioner Lynn M. Bragg dissenting.
[3] 19 U.S.C. 1671d(b).
[4] Commissioner Lynn M. Bragg dissenting.
[5] 19 U.S.C. 1673d(b).
[6] Weirton Steel Corporation is not a petitioner with respect to the Netherlands.
[7] 19 U.S.C. 1673b(b).
[8] 19 U.S.C. 1671b(b).

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated September 25, 2001, and published in the **Federal Register** on October 3, 2001 (66 FR 50453), Cambridge Isotope Lab, 50 Frontage Road, Andover, Massachusetts 01810, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Methaqualone (2565)	I
Dimethyltryptamine (7435)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Pentobarbital (2270)	II
Secobarbital (2315)	II
Phencyclidine (7471)	II
Cocaine (9041)	II
Codeine (9050)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Benzoylecgonine (9180)	II
Methadone (9250)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273)	II
Morphine (9300)	II
Fentanyl (9801)	II

The firm plans to manufacture small quantities of the listed controlled substances to produce isotope labeled standards for drug analysis.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, section 823(a) and determined that the registration of Cambridge Isotope Lab to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated Cambridge Isotope Lab on a regular basis to ensure that its continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: October 21, 2002.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 02–28657 Filed 11–8–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Lazaro Guerra, M.D.; Revocation of Registration

On February 25, 2002, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Lazaro Guerra, M.D. (Dr. Guerra) of Hialeah, Florida, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration, AG8202765 under 21 U.S.C. 824(a), and deny any pending applications for renewal or modification of that registration. As a basis for revocation, the Order to Show Cause alleged that Dr. Guerra is not currently authorized to handle controlled substances in Florida, the state in which he practices, and that he was permanently excluded from the Medicare program. The order also notified Dr. Guerra that should no request for a hearing be filed within 30 days, his hearing right would be deemed waived.

The Order to Show Cause was sent by certified mail to Dr. Guerra at both his registered location in Hialeah, Florida and to the Federal Detention Center in Miami, Florida, where Dr. Guerra was incarcerated. DEA received signed receipts indicating that the Order to Show Cause was received on Dr. Guerra's behalf on March 5, 2002 at the Federal Detention Center and on March 4, 2002 at his registered address. DEA has not received a request for hearing or any other reply from Dr. Guerra or anyone purporting to represent him in this matter. Therefore, the Deputy Administrator, finding that (1) 30 days have passed since the receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes that Dr. Guerra is deemed to have waived his hearing right. After considering material from the investigative file in this matter, the Deputy Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) and 1301.46.

The Deputy Administrator finds that Dr. Guerra possessed DEA Certificate of Registration AG8202765. On August 16, 1978, he obtained DEA Certificate of Registration Number AG8202765 as a practitioner in Schedules II through V. On September 30, 2001, that registration expired and was not renewed. On March 11, 2001, he submitted an application for DEA Certificate of Registration as a researcher, seeking authorization to handle controlled substances in Schedule I at a hospital facility in Hialeah, Florida.

On February 10, 2000, Dr. Guerra, along with two other individuals, were charged through a criminal information in the United States District Court, Southern District of Florida with conspiracy to commit mail fraud. Specifically, Dr. Guerra and others were charged with using fraudulent means to obtain approximately $2.7 million from Medicare in the form of reimbursements from 1990 to January 1997. On April 10, 2001, Dr. Guerra entered a guilty plea to one felony count of mail fraud. As part of his plea, he agreed to pay $2.7 million in restitution to the United States Department of Health and Human Services. He was sentenced to forty-eight (48) months imprisonment, and ordered to pay additional fines and assessments. He further agreed to a permanent mandatory exclusion from participation in the Medicare program pursuant to 42 U.S.C. 1320a–7(a). 21 U.S.C. 824(a)(5).

On July 18, 2001, the Florida Department of Health issued an Order of Emergency Suspension of License with respect to Dr. Guerra's medical license. The suspension of his medical license has not been lifted. Therefore, Dr. Guerra is not currently authorized to handle controlled substances in the State of Florida. 21 U.S.C. 824(a)(3).

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration AG8202765 issued to Lazaro Guerra, M.D. be, and hereby is, revoked. The Deputy Administrator further orders that any pending applications for renewal of such registration be, and they hereby are, denied. This order is effective December 12, 2002.

Dated: October 28, 2002.

John B. Brown, III,

Deputy Administrator.

[FR Doc. 02–28661 Filed 11–8–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Ramona K. Morris, M.D.; Revocation of Registration

On April 19, 2002, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Ramona K. Morris, M.D. (Dr. Morris) of Kingman, Kansas, notifying her of an opportunity to show cause as to why DEA should not revoke her DEA Certificate of Registration, BM6789056 under 21 U.S.C. 824(a)(3), and deny any pending applications for renewal or modification of that registration. As a basis for revocation, the Order to Show Cause alleged that Dr. Morris is not currently authorized to practice medicine or handle controlled substances in Kansas, the state in which she practices. The order also notified Dr. Morris that should no request for a hearing be filed within 30 days, her hearing right would be deemed waived.

The Order to Show Cause was sent by certified mail to Dr. Morris at her registered location in Kingman, Kansas. DEA received a signed receipt indicating that the Order to Show Cause was received on Dr. Morris's behalf on April 29, 2002. DEA has not received a request for hearing or any other reply from Dr. Morris or anyone purporting to represent her in this matter. Therefore, the Deputy Administrator, finding that (1) 30 days have passed since the receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes that Dr. Morris is deemed to have waived her hearing right. After considering material from the investigative file in this matter, the Deputy Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) and 1301.46.

The Deputy Administrator finds that Dr. Morris possessed DEA Certificate of Registration BM6789056. The Deputy Administrator further finds that effective July 9, 2002, the Board of Healing Arts of the State of Kansas revoked Dr. Morris's state license to practice medicine. Therefore, the Deputy Administrator finds that Dr. Morris is not currently authorized to practice medicine in the State of Kansas. As a result, it is reasonable to infer that she is also without authorization to handle controlled substances in that state.

DEA does not have statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which she conducts business. See 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. See Muttaiya Darmarajeh, M.D., 66 FR 52936 (2001); Dominick A. Ricci, M.D., 58 FR 51104 (1993); Bobby Watts, M.D., 53 FR 11919 (1988).

Here, it is clear that Dr. Morris's medical license has been suspended and she is not licensed to handle controlled substances in the State of Kansas, where she is registered with DEA. Therefore, she is not entitled to a DEA registration in that state.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration BM6789056, issued to Ramona K. Morris, M.D., and it hereby is, revoked. The Deputy Administrator further orders that any pending applications for renewal or modification of such registration be, and they hereby are, denied. This order is effective December 12, 2002.

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Dated: October 28, 2002.

John B. Brown, III,

Deputy Administrator.

[FR Doc. 02–28658 Filed 11–8–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated April 11, 2002, and published in the **Federal Register** on April 26, 2002 (67 FR 20828), Noramco of Delaware, Inc., Division of McNeilab, Inc., which has changed its name to Noramco of Delaware, Inc., Division of Ortho-McNeil, Inc., 500 Old Swedes Landing Road, Wilmington, Delaware 19801, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Codeine (9050)	II
Oxycodone (9143)	II
Hydrocodone (9193)	II
Morphine (9300)	II
Thebaine (9333)	II

The firm plans to manufacture the listed controlled substances for distribution to its customers as bulk product.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, section 823(a) and determined that the registration of Noramco of Delaware, Inc. to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated Noramco of Delaware, Inc. on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: October 21, 2002.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 02–28656 Filed 11–8–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Alfred S. Santucci, D.M.D.; Revocation of Registration

On May 13, 2002, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Alfred S. Santucci, D.M.D. of Niles, Ohio, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration, BS1782665 under 21 U.S.C. 824(a), and deny any pending applications for renewal or modification of that registration. As a basis for revocation, the Order to Show Cause alleged that Dr. Santucci not currently authorized to handle controlled substances in Ohio, the state in which he practices, and had been convicted of a felony involving controlled substances. The order also notified Dr. Santucci that should no request for a hearing be filed within 30 days, his hearing right would be deemed waived.

By letter of June 10, 2002, Dr. Santucci requested an administrative hearing. On July 9, 2002, DEA filed the Government's Motion for Summary Disposition and Request for Stay of the Filing of Prehearing Statement. The Motion was based upon the argument that no facts were at issue: DEA cannot register or maintain the registration of a practitioner who is not duly authorized to handle controlled substances in the state in which he conducts business. Dr. Santucci did not respond to the Motion. On September 18, 2002, Administrative Law Judge Mary Ellen Bittner certified and transmitted the record in the matter to the Deputy Administrator along with her Opinion and Recommended Decision. In her Decision, the Administrative Law Judge granted DEA's Motion for Summary Disposition and recommended that Dr. Santucci's DEA registration be revoked.

The Deputy Administrator has carefully reviewed the entire record in this matter, as defined above, and hereby issues this final order as prescribed by 1301.46, based upon the following findings and conclusions. The Deputy Administrator adopts the Opinion and Recommended Decision of the Administrative Law Judge, and his adoption is in no manner diminished by any recitative of facts, issues and conclusions herein, or of any failure to mention a matter of fact or law. The Deputy Administrator now enters his final order without a hearing pursuant to 21 C.F.R. 1301.43(d) and (e) and 1301.46.

The Deputy Administrator finds that Dr. Santucci possesses DEA Certificate of Registration B1782665. On February 14, 2001, Dr. Santucci entered into a consent agreement with Ohio State Dental Board which imposed an indefinite suspension of Dr. Santucci's license to practice dentistry. Loss of state authority to engage in the practice of medicine is an independent ground to revoke a practitioner's registration under 21 U.S.C. 824(a)(3). This agency has consistently held that a person may not maintain a DEA registration if he is without appropriate authority under the laws of the State in which he does business. See Anne Lazar Thorn, M.D., 62 FR 12,847 (DEA1997); Bobby Watts, M.D., 53 FR 11,919 (DEA 1988); Robert F. Witek, D.D.S., 52 FR 47,770 (DEA 1987).

Dr. Santucci has not denied that he is currently not licensed to practice medicine in Ohio, the jurisdiction in which he is registered. Accordingly, he is not entitled to a DEA registration. As the Administrative Law Judge stated, it is well-settled that when no question of fact is involved, or when the material facts are agreed upon, a plenary, adversial administrative proceedings is not required. See Jesus R. Jaurez, M.D., 62 FR 14,945 (DEA 1997); Dominick A. Ricci, M.D., 58 FR 51,104 (DEA 1993).

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, grants the agency's Motion for Summary Disposition and hereby orders that DEA Certificate of Registration BSS1782665 issued to Alfred S. Santucci, D.M.D. be, and hereby is, revoked. The Deputy Administrator further orders that any pending applications for renewal of such registration be, and they hereby are, denied. This order is effective December 12, 2002.

Dated: October 28, 2002.

John B. Brown, III,

Deputy Administrator.

[FR Doc. 02–28659 Filed 11–8–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Fredesminda Yabut-Baluyut, M.D. Revocation of Registration

On February 25, 2002, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Fredesminda Yabut-Baluyut, M.D. (Dr. Yabut-Baluyut) of Lake Forest, California, notifying her of an opportunity to show cause as to why DEA should not revoke her DEA Certificate of Registration, AY2422640 under 21 U.S.C. 824(a), and deny any pending applications for renewal or modification of that registration. As a basis for revocation, the Order to Show Cause alleged that Dr. Yabut-Baluyut is not currently authorized to handle controlled substances in California, the state in which she practices. The order also notified Dr. Yabut-Baluyut that should no request for a hearing be filed within 30 days, her hearing right would be deemed waived.

The Order to Show Cause was sent by certified mail to Dr. Yabut-Baluyut at her registered location in Lake Forest, California. DEA received a signed receipt indicating that the Order to Show Cause was received on Dr. Yabut-Baluyut's behalf on March 5, 2002. DEA has not received a request for hearing or any other reply from Dr. Yabut-Baluyut or anyone purporting to represent her in this matter. Therefore, the Deputy Administrator, finding that (1) 30 days have passed since the receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes that Dr. Yabut-Baluyut is deemed to have waived her hearing right. After considering material from the investigative file in this matter, the Deputy Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) and 1301.46.

The Deputy Administrator finds that Dr. Yabut-Baluyut possessed DEA Certificate of Registration AY2422640 and that registration expired on May 31, 2001. The registration remains valid, however, based upon renewal applications submitted on April 9, 2001, and August 20, 2001.

The Deputy Administrator further finds that an investigation by DEA revealed that from March 1997 through May 1998, Dr. Yabut-Baluyut made 59 separate purchases totaling 12 million tablets of 60mg. pseudoephedrine from Hadro Drugs (formerly Darby Drugs) of Westbury, New York. Four of these purchases were in excess of $10,000 in which Dr. Yabut-Baluyut used multiple cashier's checks purchased from her bank. Dr. Yabut-Baluyut then sold these products to an individual who picked up pseudoephedrine products from Dr. Yabut-Baluyut's home and/or residence.

On September 4, 1998, Dr. Yabut-Baluyut was questioned by DEA investigators regarding the sale of the above products. Dr. Yabut-Baluyut informed investigators that she sold pseudoephedrine tablets to an individual by the name of "John." Dr. Yabut-Baluyut stated falsely to DEA investigators that she did not know how to contact the individual. During a subsequent interview with a DEA Special Agent, Dr. Yabut-Baluyut reiterated that she did not know the identity of the person to whom she sold pseudoephedrine. After further questioning, however, Dr. Yabut-Baluyut informed DEA that the individual's name was "John Smith." Dr. Yabut-Baluyut later admitted that she sold pseudoephedrine to "John Smith" because she needed the money. DEA subsequently learned that Dr. Yabut-Baluyut sold the above referenced pseudoephedrine products to an individual by the name of Joseph Hasrouty. DEA also learned that Dr. Yabut-Baluyut never provided medical treatment to Mr. Hasrouty, nor was he Dr. Yabut-Baluyut's patient.

Pseudoephedrine (DEA chemical code 8112) is a legitimately imported and distributed product used in the production of nasal decongestants. Pseudoephedrine is also a precursor chemical used in the illicit manufacture of methamphetamine or amphetamine, both Schedule II controlled substances. Dr. Yabut-Baluyut knew, or should have known that the person to whom she sold pseudoephedrine purchased the product for purposes of manufacturing methamphetamine. 21 U.S.C. 843(a)(7). In addition, Dr. Yabut-Baluyut failed to maintain a record of these regulated transactions as required by 21 U.S.C. 830(a).

On January 19, 1999, Dr. Yabut-Baluyut was arrested pursuant to a federal arrest warrant issued from the United States District Court, Central District of California on a charge of knowingly possessing and distributing approximately 12 million tablets of pseudoephedrine, and having reasonable cause to believe that such chemical would be used to manufacture a controlled substance in violation of 21 U.S.C. 841. On June 15, 2000, Dr. Yabut-Baluyut was indicted on nine felony counts related to conspiracy, and unlawful possession of a listed chemical in violation of 21 U.S.C. 841 and 846. On June 27, 2001, a superseding indictment was issued charging Dr. Yabut-Baluyut with thirteen felony counts related to conspiracy, unlawful possession of a listed chemical, wrongful distribution of a listed chemical and failure to maintain required records, in violation of 21 U.S.C. 841 and 846. On October 16, 2001, Dr. Yabut-Baluyut was found guilty on nine counts of the superseding indictment. Therefore, Dr. Yabut-Baluyut has been convicted of a felony related to controlled substances. 21 U.S.C. 824(a)(2).

On December 9, 1999, the California Medical Board (Board) issued an order restricting Dr. Yabut-Baluyut's physician's and surgeon's certificate (medical license) pending a hearing before the Board, and further ordered that Dr. Yabut-Baluyut be restricted from prescribing, administering, dispensing or ordering any controlled substances. On December 22, 1999, the Board brought an Accusation against Dr. Yabut-Baluyut's medical license in the State of California based in part upon Dr. Yabut-Baluyut's purchase and sale of pseudoephedrine for no legitimate medical reason. The Board further alleged that Dr. Yabut-Baluyut excessively prescribed dangerous drugs and controlled substances, and that Dr. Yabut-Baluyut prescribed dangerous drugs and/or controlled substances, without a good faith prior examination or medical indication. On June 2, 2000, the Board issued a Default Decision, in which it ordered the revocation of Dr. Yabut-Baluyut's medical license. The decision was to take effect on July 3, 2000. However, on June 22, 2000, the Board issued an Order Vacating and Setting Aside Disciplinary Decision with respect to the revocation of Dr. Yabut-Baluyut's medical license. However, the Board maintained the suspension of Dr. Yabut-Baluyut's license with respect to her handling of controlled substances, and there is nothing in the investigative file that shows that her privileges have been reinstated. Therefore, Dr. Yabut-Baluyut currently is not authorized to handle controlled substances in the State of California. 21 U.S.C. 824(a)(3).

DEA does not have statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts business. See 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. See Muttaiya Darmarajeh, M.D., 66 FR 52936 (2001); Dominick A. Ricci, M.D., 58 FR 51104 (1993); Bobby Watts, M.D. 53 FR 11919 (1988).

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Here, it is clear that Dr. Yabut-Baluyut is not licensed to handle controlled substances in the State of California, where she is registered with DEA. Therefore, she is not entitled to a DEA registration in that state. Moreover, Dr. Yabut-Baluyut has been convicted of a felony relating to listed chemicals and has committed such acts as would render her registration inconsistent with the public interest.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration AY2422640, issued to Fredesminda Yabut-Baluyut, M.D. be, and it hereby is, revoked. The Deputy Administrator further orders that any pending applications for renewal or modification of such registration be, and they hereby are, denied. This order is effective December 12, 2002.

Dated: October 28, 2002.

John B. Brown, III,

Deputy Administrator.

[FR Doc. 02–28660 Filed 11–8–02; 8:45 am]

BILLING CODE 4410–04–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP(OJP)–1365]

Meeting of the Public Safety Officer Medal of Valor Review Board

AGENCY: Office of Justice Programs (OJP), Justice.

ACTION: Notice of meeting.

SUMMARY: This is an announcement of a meeting of the Public Safety Officer Medal of Valor Review Board to discuss and review applications received for the Public Safety Officer Medal of Valor.

DATES: The meeting will take place on Friday, November 22, 2002, from 11 a.m. to 5 p.m. C.S.T.

ADDRESSES: The meeting will take place at the offices of the Kansas City Fire Department, 2400 Troost Avenue, Third Floor, Kansas City, MO; *Phone:* (816) 784–9206.

FOR FURTHER INFORMATION, CONTACT: Tracy A. Henke, Principal Deputy Assistant Attorney General, Office of Justice Programs, 810 7th Street NW., Sixth Floor, Washington, DC 20531; *Phone:* (202) 307–5933 (**note:** this not a toll free number).

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to review and discuss applications for the Public Safety Officer Medal of Valor from among those applications received by the National Medal of Valor Office.

This meeting is open to the public and registrations will be accepted on a space available basis. Members of the public who wish to attend the meeting must register at least (7) days in advance of the meeting by contacting Ms. Henke at the above address. Access to the meeting will not be allowed without registration. All attendees will be required to sign in at the meeting registration desk. Please bring photo identification and allow extra time prior to the meeting.

Anyone requiring special accommodations should contact Ms. Henke at least seven (7) days in advance of the meeting.

Authority

The Public Safety Officer Medal of Valor Review Board is authorized to carry out its advisory function under 42 U.S.C. 15202. 42 U.S.C. section 15201 authorizes the President to award the Public Safety Officer Medal of Valor, the highest national award for valor by a public safety officer.

Tracy A. Henke,

Principal Deputy Assistant Attorney General, Office of Justice Programs.

[FR Doc. 02–28610 Filed 11–8–02; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Employment and Training Administration

Federal-State Unemployment Compensation Program: Certifications for 2001 Under the Federal Unemployment Tax Act

On October 31, 2002, the Secretary of Labor signed the annual certifications under the Federal Unemployment Tax Act, 26 U.S.C. 3301 *et seq.*, thereby enabling employers who make contributions to state unemployment funds to obtain certain credits against their liability for the federal unemployment tax. By letter of the same date the certifications were transmitted to the Secretary of the Treasury. The letter and certifications are printed below.

Dated: November 1, 2002.

Emily Stover DeRocco,

Assistant Secretary.

SECRETARY OF LABOR

WASHINGTON

October 31, 2002.

The Honorable Paul H. O'Neill,
Secretary of the Treasury, Washington, DC 20220

Dear Secretary O'Neill: Transmitted herewith are an original and one copy of the certifications of the states and their unemployment compensation laws for the 12-month period ending on October 31, 2002. One is required with respect to the normal federal unemployment tax credit by Section 3304 of the Internal Revenue Code of 1986 (IRC), and the other is required with respect to the additional tax credit by Section 3303 of the IRC. Both certifications list all 53 jurisdictions.

Sincerely,
Elaine L. Chao,
Enclosures.

United States Department of Labor, Office of the Secretary, Washington, DC

Certification of States of the Secretary of the Treasury Pursuant to Section 3304(c) of the Internal Revenue Code of 1986

In accordance with the provisions of Section 3304(c) of the Internal Revenue Code of 1986 (26 U.S.C. 3304(c)), I hereby certify the following named states to the Secretary of the Treasury for the 12-month period ending on October 31, 2002, in regard to the unemployment compensation laws of those states which heretofore have been approved under the Federal Unemployment Tax Act:

Alabama
Alaska
Arizona
Arkansas
California
Colorado
Connecticut
Delaware
District of Columbia
Florida
Maryland
Massachusetts
Georgia
Hawaii
Idaho
Illinois
Indiana
Iowa
Kansas
Kentucky
Louisiana
Maine
Oregon
Pennsylvania
Michigan
Minnesota
Mississippi
Missouri
Montana
Nebraska
Nevada
New Hampshire
New Jersey
New Mexico
New York
North Carolina
North Dakota
Ohio
Oklahoma
Puerto Rico
Rhode Island
South Carolina
South Dakota
Tennessee
Texas
Utah
Vermont
Virginia
Virgin Islands
Washington
West Virginia
Wisconsin
Wyoming

This certification is for the maximum normal credit allowable under Section 3302(a) of the Code.

Signed at Washington, DC, on October 31, 2002.

Elaine L. Chao,

Secretary of Labor.

United States Department of Labor, Office of the Secretary, Washington, DC

Certification of State Unemployment Compensation Laws to the Secretary of the Treasury Pursuant to Section 3303(b)(1) of the Internal Revenue Code of 1986

In accordance with the provisions of paragraph (1) of Section 3303(b) of the Internal Revenue code of 1986 (26 U.S.C. 3303(b)(1)), I hereby certify the unemployment compensation laws of the following named states, which heretofore have been certified pursuant to paragraph (3) of Section 3303(b) of the Code, to the Secretary of the Treasury for the 12-month period ending on October 31, 2002:

Alabama
Alaska
Arizona
Arkansas
California
Colorado
Connecticut
Delaware
District of Columbia
Florida
Maryland
Massachusetts
Georgia
Hawaii
Idaho
Illinois
Indiana
Iowa
Kansas
Kentucky
Louisiana
Maine
Oregon
Pennsylvania
Michigan
Minnesota
Mississippi
Missouri
Montana
Nebraska
Nevada
New Hampshire
New Jersey
New Mexico
New York
North Carolina
North Dakota
Ohio
Oklahoma
Puerto Rico
Rhode Island
South Carolina
South Dakota
Tennessee
Texas
Utah
Vermont
Virginia
Virgin Islands
Washington
West Virginia
Wisconsin
Wyoming

This certification is for the maximum additional credit allowable under Section 3302(b) of the Code.

Signed at Washington, DC, on October 31, 2002.

Elaine L. Chao,

Secretary of Labor.

[FR Doc. 02–28646 Filed 11–8–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Veterans' Employment and Training Service; Proposed Information Collection Request Submitted for Public Comment and Recommendations; Federal Contractor Veterans' Employment Report VETS–100

AGENCY: Veterans' Employment and Training Service (VETS), Labor.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with The Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506 C(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently the Veterans' Employment and Training Service (VETS) is soliciting comments concerning the proposed information collection request for the VETS–100 Form.

DATES: Comments are to be submitted by January 13, 2003.

ADDRESSES: Comments are to be submitted to the Veterans' Employment and Training Service, U.S. Department of Labor, Room S–1316, 200 Constitution Ave., NW., Washington, DC 20210, telephone (202) 693–4711. Written comments limited to 10 pages or fewer may also be transmitted be facsimile to (202) 693–4755. Receipt of submissions, whether by U.S. mail, e-mail or FAX transmittal, will not be acknowledged; however, the sender may request confirmation that a submission has been received, by telephoning VETS at (202) 693–4711.

FOR FURTHER INFORMATION CONTACT: Contact Norman G. Lance, Division of Investigation and Compliance, Veterans' Employment and Training Service, U.S. Department of Labor, Room S–1316, 200 Constitution Ave., NW., Washington, DC 20210, telephone: (202) 693–4731 (Voice) or (800) 670–7008 (TTY/TDD). Copies of the referenced information collection request are available for inspection and copying through VETS and will be mailed to persons who request copies by telephoning Ms. Lynne McGrail at (202) 693–4726.

SUPPLEMENTARY INFORMATION:

I. Background

The Federal Contractor Veterans employment Report VETS–100 is administered by the U.S. Department of Labor, is used to facilitate Federal contractor and subcontractor reporting of their employment and new hiring activity. Title 38 U.S.C. 4212(d) requires the collection of information from entities holding contracts of $25,000 or more with Federal Departments or agencies to report annually on (a) the number of current employees in each

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job category and at each hiring location who are special disabled veterans, the number who are veterans of the Vietnam era, and the number who are other protected veterans who served on active duty during a war or a campaign or expedition for which a campaign badge has been authorized, and newly separated veterans; (b) the total number of employees hired during the report period and of those, the number of special disabled, the number who are veterans of the Vietnam era, and the number who are other veterans; and the maximum and minimum number of employees employed by the contractor at each hiring location.

VETS is requesting this extension to ensure that an OMB cleared and approved form is available for the collection of the VETS–100 Reports for September 2003. Although there is legislation which, upon implementation, will change a number of requirements for the submission of the VETS–100 report, the legislation does not take effect until 12 months following enactment of the legislation, will therefore, not effect the submission of the VETS–100 report for the 2003 collection. This extension will bring the VETS–100 Form into compliance with legislative mandates.

II. Desired Focus of Comments

Currently VETS is soliciting comments concerning the proposed information collection request for the Federal Contractor Veterans' Employment Report VETS–100. The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information.
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

This notice requests an extension of the current Office of Management and Budget approval of the paperwork requirements for VETS–100 Form.

Type of Review: Extension.

Atency: Veterans' Employment and Training Service.

Title: VETS–100 Form.

OMB Number: 1293–0005.

Affected Public: Business or other for-profit institutions and not-for-profit institutions.

Total Respondents: 194,580.

Average Time per Response: 45 minutes.

Total Burden Hours: 97,290 hours.

Total Annualized Capital/Startup costs: $0.

Total Initial Annual Costs: $0.

Comments submitted in response to this notice will be summarized and included in the request for the Office of Management and Budget approval of the information collection request. Comments will become a matter of public record.

Dated: November 5, 2002.

Frederico Juarbe Jr.,

Assistant Secretary, Veterans' Employment and Training Service.

BILLING CODE 4510–79–P

FEDERAL CONTRACTOR VETERANS' EMPLOYMENT REPORT VETS-100

OMB NO:1293-0005
Expires 12-31-xxxx

Persons are not required to respond to this collection of information unless it displays a valid OMB number

RETURN COMPLETED REPORT TO:
U.S. DEPARTMENT OF LABOR
VETERANS' EMPLOYMENT AND TRAINING SERVICE
VETS-100 REPORTING OFFICE
6101 STEVENSON AVENUE
ALEXANDRIA, VA 22304

TYPE OF REPORTING ORGANIZATION (Check one or both, as applicable)	TYPE OF FORM (Check only one)
☐ Prime Contractor ☐ Subcontractor	☐ Single Establishment ☐ Multiple Establishment-Headquarters ☐ Multiple Establishment-Hiring Location ☐ Multiple Establishment-State Consolidated (specify number of locations) _____. (MSC)

x

COMPANY IDENTIFICATION INFORMATION (Omit if items preprinted above)

COMPANY No:	TWELVE MONTH PERIOD ENDING (M M D D Y Y Y Y)	
NAME OF PARENT COMPANY:	ADDRESS (NUMBER AND STREET):	
CITY:	COUNTY:	STATE: ZIP CODE:
NAME OF HIRING LOCATION:	ADDRESS (NUMBER AND STREET):	
CITY:	COUNTY:	STATE: ZIP CODE:

NAICS: DUNS: EMPLOYER ID (IRS TAX No.)

INFORMATION ON VETERANS

REPORT ALL PERMANENT FULL-TIME OR PART-TIME EMPLOYEES AND NEW HIRES WHO ARE VETERANS, AS DEFINED ON REVERSE. DATA ON NUMBER OF EMPLOYEES ARE TO BE ENTERED IN COLUMN L, M, AND N, LINES 1-9. DATA ON NEW HIRES ARE TO BE ENTERED IN COLUMNS O, P, Q, R, AND S. ENTRIES IN COLUMNS O, P, Q, R, AND S, LINES 1 THROUGH 9, AND COLUMNS L, M, AND N, LINE 10 (GRAY SHADED AREAS) ARE OPTIONAL. **ENTRIES IN COLUMN Q, LINE 10 (AREA SHADED LIGHT GRAY) ARE OPTIONAL FOR 2002 AND EXPECTED TO BE REQUIRED FOR THE 2003 REPORTING CYCLE.** DETAILED INSTRUCTIONS ARE FOUND ON THE REVERSE OF THIS FORM.

JOB CATEGORIES	NUMBER OF EMPLOYEES: SPECIAL DISABLED VETERANS (L)	VIETNAM ERA VETERANS (M)	OTHER PROTECTED VETERANS (N)	NEW HIRES (PREVIOUS 12 MONTHS): SPECIAL DISABLED VETERANS (O)	VIETNAM ERA VETERANS (P)	NEWLY SEPARATED VETERANS (Q)	OTHER PROTECTED VETERANS (R)	TOTAL NEW HIRES, BOTH VETERANS AND NON-VETERANS (S)
OFFICIALS AND MANAGERS 1								
PROFESSIONALS 2								
TECHNICIANS 3								
SALES WORKERS 4								
OFFICE AND CLERICAL 5								
CRAFT WORKERS (SKILLED) 6								
OPERATIVE (SEMI-SKILLED) 7								
LABORERS (UNSKILLED) 8								
SERVICE WORKERS 9								
TOTAL 10								

Report the total maximum and minimum number of permanent employees on board during the period covered by this report.

Maximum Number	Minimum Number

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FEDERAL CONTRACTOR VETERANS' EMPLOYMENT REPORT (VETS-100)

WHO MUST FILE

The Vets-100 report is to be completed by all nonexempt federal contractors and subcontractors with contracts or subcontracts for the furnishing of supplies and services or the use of real or personal property for $25,000 or more. Services include but are not limited to the following services: Utility, construction, transportation, research, insurance, and fund depository, irrespective of whether the government is the purchaser or seller. The existence of $25,000 or more in federal contracts or subcontracts during a given calendar year establishes the requirement to file a VETS-100 Report during the following calendar year.

WHEN TO FILE

This annual report must be filed no later than September 30. Mail to the address pre-printed on the front of the form.

LEGAL BASIS FOR REPORTING REQUIREMENTS

Title 38, United States Code, Section 4212(d) and PL 105-339, require that federal contractors report at least annually the numbers of existing employees who are: 1) special disabled veterans, 2) veterans of the Vietnam era, and 3) other protected veterans (that is, who served on active duty during a war or in a campaign or expedition for which a campaign badge has been authorized). For the existing employees, the numbers of veterans within these three groups are to be broken out by job category. New hires are to be reported over a twelve month reporting period. The total number of veteran new hires in each of the three groups above is to be reported, along with the total number of newly separated veterans (i.e. hired within twelve months of separation). In addition, over the same twelve month period, the total number of new hires, both veterans and non-veterans, is required to be reported, along with the minimum and maximum total employment. This reporting is required by hiring location.

HOW TO SUBMIT THE VETS-100 REPORTS

Single-establishment employers must file one completed form. All multi-establishment employers, i.e., those doing business at more than one hiring location, must file (A) one form covering the principal or headquarters office; (B) a separate form for each hiring location employing 50 or more persons; and (C) EITHER, (I) a separate form for each hiring location employing fewer than 50 persons, OR (ii) consolidated reports that cover hiring locations within one State that have fewer than 50 employees. Each state consolidated report must also list the name and address of the hiring locations covered by the report. Company consolidated reports such as those required by EEO-1 reporting procedures are NOT required for the VETS-100 report. Completed reports for the headquarters location and all other hiring locations for each company should be mailed in one package to the address indicated on the front of the form.

RECORD KEEPING

Employers must keep copies of the completed annual VETS-100 report submitted to DOL for a period of two years.

HOW TO PREPARE THE FORMS

Shaded areas designate optional information. Answers to questions in all other areas of the form are mandatory.

Multi-establishment employers submitting hard copy reports should produce facsimile copies of the headquarters form for reporting data on each location.

Type of Reporting Organization Indicate the type of contractual relationship (prime contractor or subcontractor) that the organization has with the Federal Government. If the organization serves as both a prime contractor and a subcontractor on various federal contracts, check both boxes.

Type of Form If a reporting organization submits only one VETS-100 Report form for a single location, check the Single Establishment box. If the reporting organization submits more than one form, only one form should be checked as Multiple Establishment-Headquarters. The remaining forms should be checked as either Multiple Establishment-Hiring Location or Multiple Establishment-State Consolidated. For state consolidated forms, the number of hiring locations included in that report should be entered in the space provided. For each form, only one box should be checked within this block.

COMPANY IDENTIFICATION INFORMATION

Company Number Do not change the Company Number that is printed on the form. If there are any questions regarding your Company Number, please call the VETS-100 staff at (703) 461-2460 or e-mail HELPDESK@VETS100.COM.

Twelve Month Period Ending Enter the end date for the twelve month reporting period used as the basis for filing the VETS-100 Report. To determine this period, select a date in the current year between July 1 and August 31 that represents the end of a payroll period. That payroll period will be the basis for reporting Number of Employees, as described below. Then the twelve month period preceding the end date of that payroll period will be your twelve month period covered. This period is the basis for reporting New Hires, as described below. Any federal contractor or subcontractor who has written approval from the Equal Employment Opportunity Commission to use December 31 as the ending date for the EEO-1 Report may also use that date as the ending date for the payroll period selected for the VETS-100 Report.

Name and Address for Single Establishment Employers COMPLETE the identifying information under the Parent Company name and address section. LEAVE BLANK all of the identifying information for the Hiring Location.

Name and Address for Multi Establishment Employers For parent company headquarters location, COMPLETE the name and address for the parent company headquarters, LEAVE BLANK the name and address of the Hiring Location. For hiring locations of a parent company, COMPLETE the name and address for the Parent Company location, COMPLETE the name and address for the Hiring Location.

NAICS Code, DUNS Number, and Employer ID Number Single Establishment and Multi Establishment Employers must COMPLETE the NAICS Code, DUNS Number, and Employer ID Number, if available, as described below.

NAICS Code Enter the six (6) digit NAICS Code applicable to the hiring location for which the report is filed. If there is not a separate NAICS Code for the hiring location, enter the NAICS Code for the parent company.

Dun and Bradstreet I.D. Number (DUNS) If the company or any of its establishments has a Dun and Bradstreet Identification Number, please enter the nine (9) digit number in the space provided. If there is a specific DUNS Number applicable to the hiring location for which the report is filed, enter that DUNS Number. Otherwise, enter the DUNS number for the parent company.

Employer I.D. Number (EIN) Enter the nine (9) digit numbers assigned by the I.R.S. to the contractor. If there is a specific EIN applicable to the hiring location for which the report is filed, enter that EIN. Otherwise, enter the EIN for the parent company.

INFORMATION ON EMPLOYEES

Counting Veterans Some veterans will fall into more than one of the protected veteran categories. For example, a veteran may be both a special disabled veteran and a Vietnam era veteran. In such cases the veteran must be counted in each category. Newly separated veterans will be counted in the New Hires section of the VETS-100 Report only. In subsequent years, these veterans will no longer be considered newly separated veterans.

Number of Employees Select any payroll period ending between July 1 and August 31 of the current year. Provide all data for permanent full-time and part-time employees who were special disabled veterans, Vietnam-era veterans, or other protected veterans employed as of the ending date of the selected payroll period. Do not include employees specifically excluded as indicated in 41 CFR 61-250.2(b)(2). Employees must be counted by veteran status for each of the nine occupational categories (Lines 1-9) in columns L, M, and N. The description of job categories can be found in 41 CFR 61-250.2(b)(3). Blank spaces will be considered zeros.

New Hires Report the number of permanent full-time and part-time employees by veteran status who were hired (both veterans and non-veterans) and who were included in the payroll for the first time during the 12-month period ending between July 1 through August 31 of the current year. The totals in columns O, P, R, and S (Line 10) are required. The total in column Q is optional for 2002 reporting cycle. Enter all applicable numbers, including zeros.

Maximum/Minimum Employees Report the maximum and minimum number of permanent employees on board during the period covered as indicated by 41 CFR 61-250.10(a)(3). Contractors may use any reasonable method for calculating and determining the maximum and minimum number of employees during the reporting period.

DEFINITIONS:

'Hiring location' means an establishment as defined at 41 CFR 61 250.2(b).

'Special Disabled Veteran' means (i) a veteran of the U.S. military, ground, naval or air service who is entitled to compensation (or who but for the receipt of military retired pay would be entitled to compensation) under laws administered by the Department of Veterans' Affairs for a disability (A) rated at 30 percent or more, or (B) rated at 10 or 20 percent in the case of a veteran who has been determined under Section 38 U.S.C. 3106 to have a serious employment handicap or (ii) a person who was discharged or released from active duty because of a service-connected disability.

'Veteran of the Vietnam-era' means a person who: (i) served on active duty in the U.S. military, ground, naval or air service for a period of more than 180 days, and who was discharged or released therefrom with other than a dishonorable discharge, if any part of such active duty was performed: (A) in the Republic of Vietnam between February 28, 1961, and May 7, 1975; or (B) between August 5, 1964, and May 7, 1975, in all other cases; or (ii) was discharged or released from active duty in the U.S. military, ground, naval or air service for a service-connected disability if any part of such active duty was performed (A) in the Republic of Vietnam between February 28, 1961, and May 7, 1975; or (B) between August 5, 1964, and May 7, 1975, in any other location.

'Newly Separated Veterans' means any veteran who served on active duty in the U.S. military, ground, naval or air service during the one-year period beginning on the date of such veteran's discharge or release from active duty.

'Other Protected Veterans' means veterans who served on active duty in the U.S. military, ground, naval or air service during a war or in a campaign or expedition for which a campaign badge has been authorized. For those with internet access, the information required to make this determination is available at http://www.dcm.gov/veterans/html/vqmedal2.htm. A replica of that list is enclosed with the annual VETS-100 mailing. A copy of the list also may be obtained by sending an e-mail to OtherVets@vets100.com or by calling (703) 461-2460 and requesting that a copy of the list be mailed to you.

(These instructions correspond to the Form with OMB No. 1293-0005 that expires 12/31/xxxx)

Public reporting burden for this collection is estimated to average 45 minutes per response, including the time for reviewing instructions, searching existing data source, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden to the Department of Labor, Office of Information Management, Room N-1301, 200 Constitution Avenue, NW, Washington D.C. 20210. All completed VETS-100 Reports should be sent to the address indicated on the front of the form.

[FR Doc. 02–28647 Filed 11–8–02; 8:45 am]

BILLING CODE 4510–79–C

LEGAL SERVICES CORPORATION

Notice of Intent To Award—Grant Awards for the Provision of Civil Legal Services to Eligible Low-Income Clients, for Service Area NJ–18 in New Jersey, Beginning January 1, 2003

AGENCY: Legal Services Corporation.

ACTION: Announcement of intention to make FY 2003 Competitive Grant Awards.

SUMMARY: The Legal Services Corporation (LSC) hereby announces its intention to award grants and contracts to provide economical and effective delivery of high quality civil legal services to eligible low-income clients, for service area NJ–18 in New Jersey, beginning January 1, 2003.

DATES: All comments and recommendations must be received on or before the close of business on December 12, 2002.

ADDRESSES: Legal Services Corporation—Competitive Grants, Legal Services Corporation, 750 First Street NE., 10th Floor, Washington, DC 20002–4250.

FOR FURTHER INFORMATION CONTACT: Reginald Haley, Office of Program Performance, (202) 336–8827.

SUPPLEMENTARY INFORMATION: Pursuant to LSC's announcement of funding availability on June 24, 2002 (67 FR 42588), LSC proposes to award funds to Hudson County Legal Services Corporation to provide civil legal services in service area NJ–18, which comprises Bergen, Hudson, and Passaic counties. The funding amount is $1,601,604. The amount is based on the 2000 census data as discussed in LSC Program Letter 02–8. This amount is subject to change.

Grants and contracts are under the authority conferred on LSC by the Legal Services Corporation Act, as amended (42 U.S.C. 2996e(a)(1)). Awards will be made to assure that the service area is served, however, Hudson County Legal Services Corporation is not guaranteed an award or contract.

This public notice is issued pursuant to the LSC Act (42 U.S.C. 2996f(f)), with a request for comments and recommendations concerning the potential grantee within a period of thirty (30) days from the date of publication of this notice. Grants will become effective and grant funds will be distributed on or about January 1, 2003.

Dated: November 6, 2002.

Michael A. Genz,

Director, Office of Program Performance, Legal Services Corporation.

[FR Doc. 02–28665 Filed 11–8–02; 8:45 am]

BILLING CODE 7050–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 02–132]

Government-Owned Inventions, Available for Licensing

AGENCY: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below are assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

DATES: November 12, 2002.

FOR FURTHER INFORMATION CONTACT: Rob Padilla, Patent Counsel, Ames Research Center, Mail Code 202A–4, Moffett Field, CA 94035–1000; telephone (650) 604–5104, fax (650) 604–2767.

NASA Case No. ARC–14662–1: Extensible Database Framework For Management Of Unstructured And Semi-Structured Documents;

NASA Case No. ARC–14940–1: Bucky Paper As A Support Membrane In Retinal Cell Transplantation.

Dated: November 4, 2002.

Robert M. Stephens,

Deputy General Counsel.

[FR Doc. 02–28560 Filed 11–8–02; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (02–133)]

Government-Owned Inventions, Available for Licensing

AGENCY: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below are assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

DATE(S): November 12, 2002.

FOR FURTHER INFORMATION CONTACT: Kent N. Stone, Patent Counsel, Glenn Research Center at Lewis Field, Mail Code 500–118, Cleveland, OH 44135; telephone (216) 433–8855, fax (216) 433–6790.

NASA Case No. LEW–16056–5: Design And Manufacturing Processes Of Long-Life Hollow Cathode Assemblies;

NASA Case No. LEW–16056–6: Design And Manufacturing Processes Of Long-Life Hollow Cathode Assemblies;

NASA Case No. LEW–16056–7: Design And Manufacturing Processes Of Long-Life Hollow Cathode Assemblies;

NASA Case No. LEW–17110–2: Method For Forming MEMS-based Spinning Nozzle;

NASA Case No. LEW–17157–1: Method For Production Of Atomic Scale Step Height Reference Specimens With Atomically Flat Surfaces;

NASA Case No. LEW–17167–1: Radio Frequency (RF) Telemetry System For Sensors And Actuators;

NASA Case No. LEW–17222–1: A Method Of Packaging A Silicon Carbide High Temperature Anemometer;

NASA Case No. LEW–17230–1: Compact Plasma Accelerator For Micro-propulsion And Low Energy Materials Processing;

NASA Case No. LEW–17241–1: Stereo Imaging Velocimetry System And Method NASA Case No. LEW–17274–1: Multilayer Article Having Stabilized Zirconia Outer Layer And Chemical Barrier Layer;

NASA Case No. LEW–17291–1: Improved Processing For Polyimdes Via Concentrated Solid Monomer Reactants Approach

Dated: November 4, 2002.

Robert M. Stephens,

Deputy General Counsel.

[FR Doc. 02–28561 Filed 11–8–02; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 02–134]

Government-Owned Inventions, Available for Licensing

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The invention listed below is assigned to the National Aeronautics and Space Administration, has been filed in the United States Patent and Trademark Office, and is available for licensing.

DATES: November 12, 2002.

FOR FURTHER INFORMATION CONTACT: Bryan Geurts, Goddard Space Flight Center, Mail Code 503, Greenbelt, MD 20771; telephone (301) 286–7351; fax (301) 286–9502.

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NASA Case No. GSC–14525–1: Passive Gas-Gap Heat Switches For Use With Adiabatic Demagnetization Refrigerators.

Dated: November 4, 2002.

Robert M. Stephens,

Deputy General Counsel.

[FR Doc. 02–28562 Filed 11–8–02; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 02–135]

Government-Owned Inventions, Available for Licensing

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The invention listed below is assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

DATES: November 12, 2002.

FOR FURTHER INFORMATION CONTACT: John Kusmiss, Patent Counsel, NASA Management Office—JPL, 4800 Oak Grove Drive, Mail Stop 180–801, Pasadena, CA 91109; telephone (818) 354–7770.

NASA Case No. NPO–21136–1: An Improved Disc Player, Read Head Unit And Method Of Reading Data From An Optical Disc;

NASA Case No. NPO–30323–1: Very High Efficiency, Miniaturized, Long Life Alpha Particle Power Source, Using Diamond Devices, For Extreme Space Environments.

Dated: November 4, 2002.

Robert M. Stephens,

Deputy General Counsel.

[FR Doc. 02–28563 Filed 11–8–02; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 02–136]

Government-Owned Inventions, Available for Licensing

ACTION: Notice of Availability of Inventions for Licensing.

SUMMARY: The inventions listed below are assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

DATES: November 12, 2002.

FOR FURTHER INFORMATION CONTACT: Edward Fein, Patent Counsel, Johnson Space Center, Mail Code HA, Houston, TX 77058–3696, telephone (281) 483–4871; fax (281) 244–8452.

NASA Case No. MSC–22330–1: Means to Provide Enhanced Protection from High-Density Orbital Debris Particles;

NASA Case No. MSC–22863–1: Centrifugal Adsorption Cartridge System (CACS);

NASA Case No. MSC–22996–1: Fluid Bubble Eliminator (FBE);

NASA Case No. MSC–23196–1: Design Concept For Load Selectable Constant Load Device For The Subject Load Device (SLD) And Resistive Exercise Device (RED) For The International Space Station;

NASA Case No. MSC–23424–1: Method for Identifying Sedimentary Bodies From Images and its Application to Mineral Exploration;

NASA Case No. MSC–23443–1: Method And Apparatus For Deploying A Hypervelocity Shield

Dated: November 4, 2002.

Robert M. Stephens,

Deputy General Counsel.

[FR Doc. 02–28564 Filed 11–8–02; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 02–137]

Government-Owned Inventions, Available for Licensing

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The invention listed below is assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

DATES: November 12, 2002.

FOR FURTHER INFORMATION CONTACT: Linda Blackburn, Patent Counsel, NASA Langley Research Center, Mail Code 212, Hampton, VA 23681–2199; telephone (757) 864–9260, fax (757) 864–9190.

NASA Case No. LAR–15602–2: Method For Simultaneously Making A Plurality Of Acoustic Signal Sensor Elements;

NASA Case No. LAR–15927–1: Improved Non-Destructive Evaluation Method Employing Dielectric Electrostatic Ultrasonic Transducers;

NASA Case No. LAR–16237–1: Reusable Module For The Storage, Transportation, And Supply Of Multiple Propellants In A Space Environment;

NASA Case No. LAR–16262–1: Non-Destructive Evaluation Of Wire Insulation And Coatings;

NASA Case No. LAR–16440–1: Non-Invasive Method Of Determining Diastolic Intracranial Pressure;

NASA Case No. LAR–16510–1: Non-Invasive Method Of Determining Absolute Intracranial Pressure.

Dated: November 4, 2002.

Robert M. Stephens,

Deputy General Counsel.

[FR Doc. 02–28565 Filed 11–8–02; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 02–138]

Government-Owned Inventions, Available for Licensing

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The invention listed below is assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

DATES: November 12, 2002.

FOR FURTHER INFORMATION CONTACT: James McGroary, Patent Counsel, Marshall Space Flight Center, Code LS01, Huntsville, AL 35812; telephone (256) 544–0013; fax (256) 544–0258.

NASA Case No. MFS–31294–2–CIP2: Aluminum Alloy And Article Cast Therefrom;

NASA Case No. MFS–31557–1: Sensor Instrumented Pin-Tools For Friction Stir Welding;

NASA Case No. MFS–31593–1: Thermal Insulating Coating;

NASA Case No. MFS–31646–1: Liquid Propellant Tracing Impingement Injector

NASA Case No. MFS–31727–1: Pressure Vessel With Impact And Fire Resistant Coating And Method Of Making Same;

NASA Case No. MFS–31761–1: Electro-Mechanical Coaxial Valve;

NASA Case No. MFS–31768–1: Magnetic Symbology Reader;

NASA Case No. MFS–31783–1: Enhanced Airport Luggage Screening System.

Dated: November 4, 2002.

Robert M. Stephens,

Deputy General Counsel.

[FR Doc. 02–28566 Filed 11–8–02; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 02–139]

Government-Owned Inventions, Available for Licensing

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The invention listed below is assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

DATES: November 12, 2002.

FOR FURTHER INFORMATION CONTACT: Randy Heald, Patent Counsel, Kennedy Space Center, Mail Code CC–A, Kennedy Space Flight Center, FL 32899; telephone (321) 867–7214, fax (321) 867–1817.

NASA Case No. KSC–12220: Current Signature Sensor;

NASA Case No. KSC–12296: Signal-Conditioning Amplifier Recorder.

Dated: November 4, 2002.

Robert M. Stephens,

Deputy General Counsel.

[FR Doc. 02–28567 Filed 11–8–02; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 02–140]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that Ooltewah Manufacturing, Inc., of Ooltewah, TN, has applied for a partially exclusive patent license for the Communications Interface for Wireless Communications Headset, U.S. Serial No. 09/631,155, which is assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Randall M. Heald, Assistant Chief Counsel/Patent Counsel, and John F. Kennedy Space Center.

DATES: Responses to this Notice must be received within 15 days from date of publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Randall M. Heald, Assistant Chief Counsel/Patent Counsel, John F. Kennedy Space Center, Mail Code: CC–A, Kennedy Space Center, FL 32899, telephone (321) 867–7214.

Dated: November 4, 2002.

Robert M. Stephens,

Deputy General Counsel.

[FR Doc. 02–28568 Filed 11–8–02; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before December 27, 2002. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: To request a copy of any records schedule identified in this notice, write to the Life Cycle Management Division (NWML), National Archives and Records Administration (NARA), 8601 Adelphi Road, College Park, MD 20740–6001. Requests also may be transmitted by FAX to 301–837–3698 or by e-mail to *records.mgt@nara.gov*. Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Larry Baume, Acting Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: 301–837–1505. E-mail: *records.mgt@nara.gov.*

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If

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NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of the Air Force, Air Force Clemency and Parole Board (N1–AFU–02–19, 2 items, 2 temporary items). Case files relating to the Board's consideration of clemency or parole for inmates in correctional institutions. Included are such records as summary sheets of the inmate's history, correspondence from third parties supporting or opposing clemency or parole, and copies of letters conveying the Board's decision to the inmate. Also included are electronic copies of records created using electronic mail and word processing.

2. Department of Commerce, National Oceanic and Atmospheric Administration (N1–370–02–2, 4 items, 4 temporary items). Records documenting the issuance of permits for the harvesting of halibut and sablefish. Included are such records as individual fishing permits and registered buyer certificate files. Also included are electronic copies of records created using electronic mail and word processing.

3. Department of Defense, Defense Commissary Agency, (N1–506–02–8), 92 items, 90 temporary items). Records relating to public affairs and historical program activities. Included are such records as staff biographies, speakers bureau files, community relations guidance, news releases, corporate communications guidance, customer surveys, special events plans, historical resource material, and still photographs. Also included are electronic copies of documents created using electronic mail and word processing. Recordkeeping copies of agency history files are proposed for permanent retention. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

4. Department of Health and Human Services, Centers for Disease Control and Prevention (N1–442–02–1, 4 items, 3 temporary items). Records of the Office of Health and Safety that relate to the activities of committees dealing with routine administrative functions, such as office relocations and parking facilities. Also included are electronic copies of documents associated with committees that are created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of agendas, minutes, reports, and other records created by committees that deal with substantive agency functions.

5. Department of Health and Human Services, Centers for Medicare and Medicaid Services (N1–440–02–2, 12 items, 11 temporary items). Records of the Office of Hearings, including such files as background papers relating to manuals and other issuances, electronic case tracking records and related outputs, hearing decision case files, denial of provider enrollment applications, and electronic copies of records created using electronic mail and word processing. Recordkeeping copies of manuals, directives, and other issuances are proposed for permanent retention.

6. Department of Housing and Urban Development, Office of the Chief Information Officer (N1–207–02–7, 3 items, 3 temporary items). Records relating to the development of an automated system for managing departmental grants that was not implemented. Included are such records as training materials, meeting minutes, feasibility studies, and project plans. Also included are electronic copies of records created using electronic mail and word processing.

7. Department of Veterans Affairs, Veterans Health Administration (N1–15–02–2, 3 items, 3 temporary items). Files relating to actions taken by agency security and law enforcement personnel. Included are such records as statements of witnesses, reports, and other investigative materials. Electronic copies of records created using electronic mail and word processing are also included.

8. Department of the Navy, Agency-wide, (N1–NU–02–05, 18 items, 16 temporary items). Records relating to foreign disclosure policy. Included are authorizations, recommendations, and delegations of authority. Also included are electronic copies of records created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of policy decision memoranda and formal updates to Navy information security instructions.

9. Department of Transportation, Research and Special Programs Administration (N1–467–02–1, 3 items, 3 temporary items). Exemption case file drawings that cannot be scanned into the agency's optical disk system. Electronic copies of these records created using electronic mail and word processing are also included.

10. Federal Emergency Management Agency, Federal Insurance and Mitigation Administration (N1–311–02–1, 4 items, 3 temporary). Records relating to the national flood insurance program, including floodplain management implementation files, biennial reports, and electronic copies of documents created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of floodplain management policy files.

11. National Archives and Records Administration, Office of the Archivist (N1–64–03–1, 7 items, 7 temporary items). Inputs, outputs, and master files relating to the Performance Measurement and Reporting System, which is used for collecting and publishing statistical data concerning agency performance goals established in accordance with the Government Performance and Results Act. Also included are electronic copies of records created using electronic mail and word processing.

12. Nuclear Regulatory Commission, Office of the Secretary of the Commission (N1–431–02–1, 4 items, 4 temporary items). Electronic copies of documents created using electronic mail and word processing that are associated with such records as recommendations submitted to the Commission for decision, action memoranda, and general program correspondence files. Recordkeeping copies of these files were previously scheduled.

13. Nuclear Regulatory Commission, Office of the Commission (N1–431–02–2, 4 items, 3 temporary items). Electronic copies of documents created using electronic mail and word processing that are associated with records maintained in commissioners' chronological files, office files of the chairman and commissioners, and schedules of daily activities. Recordkeeping copies of schedules of daily activities are proposed for permanent retention. Recordkeeping copies of the other series included in this disposition request were previously scheduled for permanent retention.

Dated: November 5, 2002.

Michael J. Kurtz,

Assistant Archivist for Record Services—Washington, DC.

[FR Doc. 02–28626 Filed 11–8–02; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–528–OLA; ASLBP No. 03–804–01–OLA]

Arizona Public Service Company, Palo Verde Nuclear Generating Station, Unit 1; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28,710 (1972), and sections 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717, 2.721, and 2.772(j) of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established to preside over the following proceeding:

Arizona Public Service Company, Palo Verde Nuclear Generating Station, Unit 1.

This Board is being established pursuant to a notice of consideration of issuance of operating license amendment, proposed no significant hazards consideration determination, and opportunity for a hearing published in the **Federal Register** (67 FR 62,079 (Oct. 3, 2002)). The proceeding involves a petition for intervention submitted October 14, 2002, by the National Environmental Protection Center challenging a request by the Arizona Public Service Company to amend the operating license for the Palo Verde Nuclear Generating Station, Unit 1. The amendment would change a facility technical specification to revise the scope of the required inspection of the tube in the steam generator tubesheet region.

The Board is comprised of the following administrative judges:

Ann M. Young, Chair, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Richard F. Cole, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Thomas D. Murphy, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

All correspondence, documents, and other materials shall be filed with the administrative judges in accordance with 10 C.F.R. 2.701.

Issued at Rockville, Maryland, this 5th day of November, 2002.

G. Paul Bollwerk, III,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 02–28671 Filed 11–8–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 70–143]

Nuclear Fuel Services, Inc.

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of issuance; correction.

SUMMARY: This notice corrects a previous notice appearing in the **Federal Register** on October 30, 2002 (67 FR 66172), that considers issuance of an amendment of Materials License SNM–124. This notice is necessary to correct an erroneous Agencywide Documents Access and Management System (ADAMS) accession number, and to add the address of the attorney for the licensee.

FOR FURTHER INFORMATION CONTACT: Mary Adams, Office of Nuclear Material Safety and Safeguards, Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–7249, e-mail: *mta@nrc.gov*.

SUPPLEMENTARY INFORMATION: On page 66172, in the third column, in the second complete paragraph, the ADAMS accession number is changed from "ML02730343," to read "ML020730343". Also, on page 66173, second column, fifth paragraph should be changed from "(1) The applicant, Nuclear Fuel Services, 1205 Banner Hill Road, Erwin, Tennessee, 37650–9718. A copy of the request for hearing should also be sent to the attorney for the licensee;" to "(1) The applicant, Nuclear Fuel Services, 1205 Banner Hill Road, Erwin, Tennessee, 37650–9718. A copy of the request for hearing should also be sent to the attorney for the licensee, Daryl Shapiro, c/o Shaw Pittman, L.L.P., 2300 N. Street, NW., Washington, DC 20037;".

Dated in Rockville, Maryland, this 5th day of November, 2002.

For the U.S. Nuclear Regulatory Commission.

Daniel Gillen, Chief,

Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Materials Safety and Safeguards.

[FR Doc. 02–28670 Filed 11–8–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 70–7001 and 70–7002]

Paducah Gaseous Diffusion Plant; Portsmouth Gaseous Diffusion Plant; United States Enrichment Corporation; Notice of Approval of Request for Exemption

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of approval of request for exemption.

SUMMARY: The Nuclear Regulatory Commission (Commission) is approving, upon publication of this notice, a request for an exemption from the requirement to submit written event follow-up reports within 30 days for the Paducah Gaseous Diffusion Plant and the Portsmouth Gaseous Diffusion Plant operated by the United States Enrichment Corporation (USEC). The exemption will allow up to 60 days for submitting written event follow-up reports, instead of the 30 days specified in 10 CFR 76.120(d)(2). The NRC has prepared an environmental assessment with a finding of no significant impact on the request.

FOR FURTHER INFORMATION CONTACT: Dan E. Martin, Project Manager, Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone: (301) 415–7254, e-mail *dem1@nrc.gov*.

SUPPLEMENTARY INFORMATION: The Commission is approving the issuance of an exemption from the requirement to submit written event follow-up reports in 30 days, pursuant to 10 CFR part 76, for the Paducah Gaseous Diffusion Plant (PGDP) and the Portsmouth Gaseous Diffusion Plant (PORTS), both operated by USEC. Both facilities are authorized to use Special Nuclear Material (SNM) in the enrichment of natural uranium to prepare low-enriched uranium to be used by others in the fabrication of nuclear fuel pellets and fuel assemblies, although enrichment operations have ceased at PORTS. The PGDP facility is located near Paducah, Kentucky, and the PORTS facility is located near Piketon, Ohio.

Pursuant to 10 CFR part 76.120(a), (b), and (c), certain events are required to be reported to the NRC within 1, 4, or 24 hours, respectively. For example, an inadvertent criticality event must be reported to NRC within 1 hour. In such cases, Section 76.120(d)(2) requires that a written event follow-up report be submitted within 30 days of the initial

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report. Written event follow-up reports must include: (1) A description of the event, including the probable cause and the manufacturer and model number of any equipment that failed; (2) the exact location of the event; (3) a description of the isotopes, quantities, and chemical and physical form of the material involved; (4) the date and time of the event; (5) the causes, including the direct cause, the contributing cause, and the root cause; (6) corrective actions taken or planned and the results of any evaluations or assessments; (7) the extent of exposure of individuals to radiation or to radioactive materials; and (8) lessons learned from the event.

Because of the comprehensive nature of event follow-up reports, the initial 30-day report is often incomplete because event analysis and root cause determinations are not completed within 30 days. In these cases, a supplemental report must be submitted when information is complete. In recognition of this, the NRC revised 10 CFR part 50, for nuclear power reactors, to allow 60 days for submitting event follow-up reports (**Federal Register**, October 25, 2000, Volume 65, No. 207, pp. 63769–63789). Considerations mentioned in connection with revising Part 50 included that the increased time would allow for completion of required engineering evaluations after event discovery, provide for more complete and accurate event reports, and result in fewer event report revisions and supplemental reports. Similar considerations apply to the Paducah and Portsmouth GDPs and the NRC staff has determined that the exemption should be granted. The NRC staff has prepared an environmental assessment of the proposed action and made a finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action would allow written event follow-up reports required pursuant to 10 CFR 76.120(d)(2) to be submitted within 60 days instead of the 30 days specified in the regulation, for the Paducah and Portsmouth GDPs operated by USEC. The proposed action is in accordance with USEC's request for exemption dated September 5, 2001.

Need for the Proposed Action

The proposed action is needed to reduce the number of revised and supplemental written event reports made necessary because complete information is not available within the 30 days allowed by the regulation. USEC has provided data for the Paducah GDP indicating that, since NRC began regulating the facility in March 1997, 21 of a total of 84 written event follow-up reports would have been unnecessary if the requirement for submittal of written event follow-up reports had been 60 days instead of the current 30-day requirement. USEC stated that these 21 reports were submitted only to meet the 30-day requirement, and, in each case, the root cause analysis was ongoing at the time the 30-day report was submitted and a subsequent report was required when the root cause analysis was completed. Similar data for the Portsmouth facility has not been requested or provided since it would not be useful in view of the recent termination of virtually all NRC-regulated operations at the Portsmouth facility. However, the same general considerations apply for Portsmouth, but at a reduced scale since the number of reportable events is expected to be decreased but not eliminated altogether.

Environmental Impacts of the Proposed Action

The proposed action would not materially affect the responsiveness of USEC or the NRC to events that do occur and are reported. Changing the time limit from 30 days to 60 days for events reported under Part 76 does not imply that USEC should take longer to develop and implement corrective actions, which should continue to be taken on a time scale commensurate with the safety significance of the issue. It has no impact on initial notifications to the NRC as the change only applies to written event follow-up reports. Also, the NRC will continue to have resident inspectors at the Paducah facility to provide monitoring and evaluation of USEC's responses to events as they are implemented. One reason the NRC scrutinizes written event reports is to evaluate the potential for generic safety concerns that might exist at other, similar facilities. Since the Paducah facility has no comparable counterpart other than the Portsmouth facility, which has terminated all enrichment and most other operations, the potential for identifying generic safety concerns is severely limited. On balance, the NRC believes the reduction in burden on USEC and NRC achieved by reducing the number of revised and supplemental event reports will be the primary impact of granting the requested exemption.

The proposed exemption should have no impact on the effectiveness of USEC's response to reportable events. The proposed action should not increase the probability or consequences of accidents as there is no change in the time period for taking corrective action. No changes are being made in the amounts or types of any effluents that could be released offsite, and there is no increase in individual or cumulative radiation exposure. Accordingly, the Commission concludes that there are no significant radiological impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological impacts associated with the proposed action.

Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the proposed action would result in no change in environmental impacts and would result in hardship to USEC. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

The proposed action does not involve the use of any resources beyond those already necessary to prepare and submit event follow-up reports, and would likely reduce the expenditure of such resources by reducing the number of revised and supplemental event reports required to be submitted.

Agencies and Persons Consulted

In accordance with its stated policy, the NRC staff consulted with: (1) State of Illinois official Thomas Ortciger, Director, Illinois Department of Nuclear Safety; (2) State of Kentucky official Janice H. Jasper, Radiation Health and Toxic Agents Branch, Cabinet for Health Services; (3) State of Ohio official, Carol O'Claire, Supervisor, Radiological Branch, Ohio Emergency Management Agency; and (4) U.S. Department of Energy official Randall M. DeVault, Group Leader, Transition and Technology Group, Office of Nuclear Fuel Security and Uranium Technology, regarding the environmental impact of the proposed action. No objections were received.

Consultations with the U.S. Fish and Wildlife Service and the State Historic Preservation Officer were not performed because of the lack of any conceivable impact to fish and wildlife or historic assets.

Finding of No Significant Impact

Based on the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

List of Preparers

This document was prepared by Dan E. Martin, Project Manager, Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards. Mr. Martin is the Project Manager for the Paducah Gaseous Diffusion Plant.

For further details with respect to the proposed action, see the USEC letter request dated September 5, 2001, and USEC's response to a request for additional information, dated October 2, 2002, available for public inspection at the Commission's Public Document Room at One White Flint North, 11555 Rockville Pike (first floor), Rockville, MD, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (*http://www.nrc.gov/reading-rm/adams.html*).

Dated at Rockville, Maryland this 24th day of October, 2002.

For the Nuclear Regulatory Commission.

Daniel M. Gillen,

Chief, Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 02–28669 Filed 11–8–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste; Notice of Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 138th meeting on November 19–21, 2002, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The schedule for this meeting is as follows:

Tuesday, November 19, 2002, NRC Auditorium, 11545 Rockville Pike, Rockville, MD

A. *8:30–8:40 a.m.: Introductory Comments, Statement of Objectives and Overview* (Open)—The Chairman will open the meeting and then turn it over to the Working Group Chairman who will state the objectives of the Workshop and provide an overview of the sessions.

Transportation Working Group Workshop

B. *8:40–5:45 p.m.: Transportation Working Group Workshop* (Open)—The Committee will hear presentations from and hold discussions with staff, industry, and government representatives regarding testing and analysis performed to assess the safety of spent fuel transportation packages.

Wednesday, November 20, 2002, Conference Room 2B3, Two White Flint North, Rockville, Maryland

C. *10–10:05 a.m.: Opening Statement* (Open)—The Chairman will make opening remarks regarding the conduct of today's sessions.

D. *10:05–11:30 a.m.: Igneous Activity Update* (Open)—The Committee will hear a presentation by a representative of the NRC staff updating the Committee on recent activities on the igneous activity issue at Yucca Mountain.

E. *12:30–12:35 p.m.: Opening Remarks* (Open)—The Working Group Chairman will provide opening remarks for this session.

F. *12:35—6:30 p.m.: Transporation Working Group Workshop (Continued)* (Open)–The Committee will hear presentations from and hold discussions with staff, industry, and government representatives regarding spent fuel transportation safety in the U.S.

Thursday, November 21, 2002, Conference Room 2B3, Two White Flint North, Rockville, Maryland

G. *8:30–8:35 a.m.: Opening Statement* (Open)—The Chairman will make opening remarks regarding the conduct of today's sessions.

H. *8:35–10:30 a.m.: Commission Presentation* (Open)—The Committee will discuss its presentation for the December 18, 2002 public meeting with the Commission. Topics proposed:

- HLW Program Risk Insights Initiative
- Spent Fuel Transportation
- Waste Package Performance
- Igneous Activity at Yucca Mountain
- Yucca Mountain Review Plan

I. *10:45–3 p.m.: Preparation of ACNW Reports* (Open)—The Committee will discuss proposed reports on the following topics:

- Principal Observations from September Trip to Yucca Mountain and Environs
- Observations from October Trip to Swedish Waste
- Management Facilities and Berlin Quadripartite Meeting
- Comparison of TSPA and TPA Results
- Conclusions Regarding the Safety of Spent Nuclear Fuel Transporation

J. *3–3:15 p.m.: Miscellaneous* (Open)—The Committee will discuss matters related to the conduct of Committee activities and matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACNW meetings were published in the **Federal Register** on October 11, 2002 (67 FR 63459). In accordance with these procedures, oral or written statements may be presented by members of the public, electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify Mr. Howard J. Larson, ACNW (Telephone 301/415–6805), between 7:30 a.m. and 4 p.m. EST, as far in advance as practicable so that appropriate arrangements can be made to schedule the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting will be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for taking pictures may be obtained by contacting the ACNW office, prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should notify Mr. Howard J. Larson as to their particular needs.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by contacting Mr. Howard J. Larson.

ACNW meeting notices, meeting transcripts, and letter reports are now available for downloading or viewing on the Internet at *http://www.nrc.gov/ACRSACNW*.

Videoteleconferencing service is available for observing open sessions of ACNW meetings. Those wishing to use this service for observing ACNW meetings should contact Mr. Theron Brown, ACNW Audiovisual Technician (301/415–8066), between 7:30 a.m. and 3:45 p.m. EST, at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the videoteleconferencing link. The availability of videoteleconferencing services is not guaranteed.

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Dated: November 5, 2002.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 02–28672 Filed 11–8–02; 8:45 am]

BILLING CODE 7590–01–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

Sunshine Act Meeting; Public Hearing

November 7, 2002.

OPIC's Sunshine Act notice of its public hearing was published in the **Federal Register** (Volume 67, Number 206, Page 65379 and 65380) on October 24, 2002. No requests were received to provide testimony or submit written statements for the record; therefore, OPIC's public hearing in conjunction with OPIC's November 14, 2002 Board of Directors meeting scheduled for 2 PM on November 7, 2002 has been cancelled.

CONTACT PERSON FOR INFORMATION: Information on the hearing cancellation may be obtained from Connie M. Downs at (202) 336–8438, via facsimile at (202) 218–0136, or via email at cdown@opic.gov.

Dated: November 7, 2002.

Connie M. Downs,

OPIC Corporate Secretary.

[FR Doc. 02–28763 Filed 11–7–02; 12:12 pm]

BILLING CODE 3210–01–M

PENSION BENEFIT GUARANTY CORPORATION

Proposed Submission of Information Collection for OMB Review; Comment Request; Reportable Events

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of intention to request extension of OMB approval.

SUMMARY: The Pension Benefit Guaranty Corporation ("PBGC") intends to request that the Office of Management and Budget ("OMB") extend approval, under the Paperwork Reduction Act, of the collection of information under part 4043 of its regulations relating to Reportable Events (OMB control number 1212–0013; expires February 28, 2003). This notice informs the public of the PBGC's intent and solicits public comment on the collection of information.

DATES: Comments should be submitted by January 13, 2003.

ADDRESSES: Comments may be mailed to the Office of the General Counsel, Suite 340, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, or delivered to that address during normal business hours.

Copies of the collection of information may be obtained without charge by writing to the PBGC's Communications and Public Affairs Department at the above address or by visiting that office or calling 202–326–4040 during normal business hours. (TTY and TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4040.) The reportable events regulations, forms, and instructions may be accessed on the PBGC's Web site at *www.pbgc.gov*.

FOR FURTHER INFORMATION CONTACT: James L. Beller, Attorney, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, 202–326–4024. (For TTY and TDD users, call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: Section 4043 of the Employee Retirement Income Security Act of 1974 (ERISA) requires plan administrators and plan sponsors to report certain plan and corporate events to the PBGC. The reporting requirements give the PBGC timely notice of events that indicate plan or employer financial problems. The PBGC uses the information provided in determining what, if any, action it needs to take. For example, the PBGC might need to institute proceedings to terminate the plan (placing it in trusteeship) under section 4042 of ERISA to ensure the continued payment of benefits to plan participants and their beneficiaries or to prevent unreasonable increases in its losses.

The collection of information under the regulation has been approved through February 28, 2003, by OMB under control number 1212–0013. The PBGC intends to request that OMB extend approval for another three years. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The PBGC estimates that it will receive 537 reportable events per year under this collection of information. The PBGC further estimates that the average annual burden of this collection of information is 2,260 hours and $452,000.

The PBGC is soliciting public comments to—

- Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Issued in Washington, DC, this 5th day of November, 2002.

Stuart Sirkin,

Director, Corporate Policy and Research Department, Pension Benefit Guaranty Corporation.

[FR Doc. 02–28650 Filed 11–8–02; 8:45 am]

BILLING CODE 7708–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of November 11, 2002:

An Open Meeting will be held on Wednesday, November 13, 2002, at 10 a.m., in Room 1C30, the William O. Douglas Room, and a Closed Meeting will be held on Thursday, November 14, 2002, at 10 a.m.

Commissioner Atkins, as duty officer, determined that no earlier notice thereof was possible.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), (9)(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), (9)(ii) and (10), permit consideration of the scheduled matters at the closed meeting.

The subject matter of the open meeting scheduled for Wednesday, November 13, 2002 will be:

1. The Commission will consider whether to adopt proposed amendments to Form N–4, the registration form for insurance company separate accounts that are registered as unit investment trusts and that offer variable annuity contracts. The amendments would revise the format of the fee table of Form N–4 to require disclosure of the range of total expenses for all of the mutual funds offered through the separate account, rather than disclosure of the expenses of each fund. The Commission will also consider whether to adopt an amendment to the fee table of Form N–6, the registration form for variable life insurance policies that would require disclosure of the range of total expenses for all of the mutual funds offered, consistent with the amendments to the fee table of Form N–4.

2. The Commission will consider whether to propose for comment an amendment to Securities Exchange Act of 1934 ("Exchange Act") Rule 17a–5(c) that would codify relief the Commission granted in a pilot program that exempted broker-dealers from the requirement of Exchange Act Section 17(e)(1)(B) and Rule 17a–5(c) thereunder to send their full balance sheet and certain net capital information to their customers twice a year. To take advantage of the exemption, a broker-dealer must send its customers the net capital information and must provide its customers instructions for obtaining its full balance sheet on its Web site and by request to a toll-free telephone number. The Commission will also consider whether to extend interim relief for three months, to March 31, 2003. The Commission granted the relief as a two-year pilot program ending December 31, 2001 (Exchange Act Release No. 42222, December 10, 1999) and then extended the program for one year, to December 31, 2002 (Exchange Act Release No. 45179, December 20, 2001).

The subject matter of the Closed Meeting scheduled for Thursday, November 14, 2002 will be:

Formal order of investigation;

Institution and settlement of administrative proceedings of an enforcement nature; and

Institution and settlement of injunctive actions.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: November 7, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–28806 Filed 11–7–02; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27596]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

November 5, 2002.

Notice is hereby given that the following filing has been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application/declaration for a complete statement of the proposed transaction summarized below. The application/declaration is available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application/declaration should submit their views in writing by November 27, 2002, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant/declarant at the address specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After November 27, 2002, the application/declaration, as filed or as amended, may be granted and/or permitted to become effective.

Allegheny Energy, Inc., et al. (70–10100)

Allegheny Energy, Inc. ("Allegheny"), a registered public utility holding company, and its registered public utility holding company subsidiary, Allegheny Energy Supply Company, L.L.C. ("AE Supply," and with Allegheny, "Applicants"), both located at 10435 Downsville Pike, Hagerstown, Maryland, have filed an application-declaration under sections 6(a), 7, 12, 32 and 33 of the Act, and rules 46, 53 and 54 under the Act.

I. Background

Allegheny is a diversified energy company headquartered in Hagerstown, Maryland. The Allegheny system consists of three regulated electric public utility companies, West Penn Power Company ("West Penn"), Monongahela Power Company ("Monongahela Power") (Monongahela Power also has a regulated natural gas utility division as a result of its purchase of West Virginia Power), and The Potomac Edison Company ("Potomac Edison"), and a regulated public utility natural gas company, Mountaineer Gas Company ("Mountaineer Gas"), which is a wholly owned subsidiary of Monongahela Power (collectively West Penn, Monongahela Power, Potomac Edison and Mountaineer Gas are referred to as the "Operating Companies").

II. Requested Authority

A. Summary of Requests

By order dated December 31, 2001 (HCAR No. 27486), as supplemented by HCAR No. 27521 (April 17, 2002) and HCAR No. 27579 (Oct. 17, 2002) (collectively, the "Financing Order"), the Commission authorized, through July 31, 2005 certain financing transactions. Applicants now request authorization (1) to modify the financing conditions set forth in the Financing Order, (2) for AE Supply to pay dividends out of capital surplus in an amount not to exceed $500 million; and (3) for Allegheny, AE Supply and their respective subsidiaries (other than the Operating Companies) to sell, or otherwise dispose of, utility assets and/or the securities of public utility companies (other than the Operating Companies).

B. Modification of Financing Conditions

Applicants request that the conditions to the financing authorizations in the Financing Order be modified for the period through December 31, 2003 ("Modified Authorization Period"), by replacing the conditions with the following:

1. the common stock equity ratio of Allegheny, on a consolidated basis, will not fall below 28% of its total capitalization; and the common stock equity ratio [1] of AE Supply, on a consolidated basis, will not fall below 20% of its total capitalization;

2. the effective cost of capital on any security will not exceed competitive market rates available at the time of issuance for securities having the same or reasonably similar terms and conditions issued by similar companies of reasonably comparable credit quality,

[1] Since AE Supply is a limited liability company, "common stock equity" means, for this purpose, the membership interests of AE Supply.

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provided that in no event will the interest rate on any debt securities exceed an interest rate per annum equal to the sum of 12% plus the prime rate as announced by a nationally recognized money center bank;

3. the underwriting fees, commissions and other similar remuneration paid in connection with the non-competitive issuance of any security will not exceed the greater of (a) 5% of the principal or total amount of the securities being issued or (b) issuances expenses that are paid at the time in respect of the issuance of securities having the same or reasonably similar terms and conditions issued by similar companies of reasonably comparable credit quality;

4. the maturity of long-term debt will be not less than one year and will not exceed thirty years; and

5. short-term debt will have a maturity of not less than one day and not more than 364 days.

Applicants request that the financing authorizations granted in the Financing Order not be subject to the requirement that Allegheny and/or AE Supply maintain a common stock equity ratio above 30%, or above the levels stated in B.1. above. Rather, Applicants request that the financing authorizations granted in the Financing Order remain effective without regard to the common stock equity levels of Allegheny and/or AE Supply. Applicants request that the Commission reserve jurisdiction over the common stock equity ratio level to be maintained as a condition to the financing authorization for Allegheny and AE Supply below 28% in the case of Allegheny and 20% in the case of AE Supply.

Applicants request authorization to issue debt securities at an interest rate in excess of an interest rate per annum equal to the sum of 12% plus the prime rate as announced by a nationally recognized money center bank. Applicants request that the Commission reserve jurisdiction over any higher interest rate to be applicable to any debt securities to be issued under the Financing Order.

Applicants request that the financing authorizations granted in the Financing Order not be subject to the requirement that Allegheny maintain its senior unsecured long-term debt ratings, and the rating of any commercial paper that may be issued, at investment grade level, as established by a nationally recognized statistical rating organization. Applicants further request that Allegheny and AE Supply be authorized to issue short-term debt and/or long-term debt under those circumstances when the debt, upon issuance, is unrated or is rated below investment grade.

Applicants commit to file in a timely manner an application with the Commission if, or to the extent that, Applicants will seek relief from the requirement that they maintain a common stock equity ratio of at least 30% after December 31, 2003.

C. Payment of Dividends Out of Capital Surplus

Applicants also request authorization for AE Supply to pay dividends out of capital surplus of up to $500 million during the period ending December 31, 2003. Specifically, AE Supply proposes to declare and pay dividends to Allegheny only to the extent required by Allegheny to repay outstanding indebtedness in an aggregate principal amount of up to $365 million and to pay AE Supply's approximate proportionate share of interest on the outstanding notes of Allegheny in the amount of $11.625 million. To the extent that Allegheny does not require proceeds of dividends from AE Supply to repay these obligations, Applicants request that the Commission reserve jurisdiction over the declaration and payment of dividends by AE Supply out of capital surplus up to an aggregate amount of $500 million.

Applicants anticipate that, to meet the liquidity needs of Allegheny, AE Supply will be required to pay dividends in excess of its current and retained earnings. Allegheny and AE Supply represent that AE Supply will not declare or pay any dividend out of capital surplus in contravention of any law restricting the payment of dividends. In addition, AE Supply will comply with the terms of any credit agreements and indentures that restrict the amount and timing of distributions by AE Supply to its members.

D. Sale of Utility Assets

Applicants request authorization to sell securities of the public utility subsidiaries, other than the Operating Companies, held directly or indirectly by Applicants and to sell utility assets of Applicants and/or their subsidiaries, other than the Operating Companies. At this time Applicants cannot identify the specific assets to be sold. The identity of the assets to be sold will depend upon, among other things, market conditions.[2] As a result of the extraordinary circumstances existing in the merchant power market at this time, Allegheny and AE Supply need flexibility as they proceed with the asset sale program. Thus, Applicants request that the Commission reserve jurisdiction over the authorization to sell the securities of public utility companies, other than the Operating Companies, held directly or indirectly by Applicants, and to sell utility assets of Applicants and their subsidiaries, other than the Operating Companies. Applicants commit to submit an amendment to the Application in this matter seeking authorization of the Commission for any asset disposition subject to Commission jurisdiction.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–28710 Filed 11–8–02; 8:45 am]

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[2] Applicants have included as an exhibit to SEC File No. 70–10100 a list of all of AE Supply's utility assets and securities of public utility companies.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46764; File No. SR–Amex–2002–81]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC Relating to Member Transaction Charges for Exchange-Traded Funds

November 1, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4[2] thereunder, notice is hereby given that on October 3, 2002, the American Stock Exchange LLC ("Exchange" or "Amex") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Amex. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to amend the Exchange Equity Fee Schedule relating to transaction charges imposed on Exchange specialists and Registered Traders for transactions in Exchange-Traded Funds ("ETFs") for which the Exchange pays non-reimbursed fees to third parties.

The text of the proposed rule change is available at the Amex and at the Commission.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In connection with the formation and listing of ETFs, the Exchange has entered into a number of agreements with third parties (*e.g.*, issuers and owners of indexes underlying certain ETFs). ETFs include Portfolio Depositary Receipts (*e.g.*, Nasdaq 100® Index Tracking Stock or "QQQ," and Standard and Poor's Depositary Receipts™ or "SPDRs(TM)") and Index Fund Shares (*e.g.*. iShares™, VIPERs™). For those ETFs for which an Amex subsidiary (PDR Services LLC) is Sponsor—SPDRs (based on the S&P 500® Index), MidCap SPDRs™ (based on the S&P MidCap 400™ Index), and DIAMONDS® (based on the Dow Jones Industrial Average)—the licensing and certain other expenses are permitted to be passed on to the respective trusts for those securities pursuant to the terms of Commission orders for the respective trusts issued pursuant to the Investment Company Act of 1940.[3] For other ETFs, however, the Exchange represents that it is required to pay significant licensing or other fees to third parties, including issuers or index owners, which are not reimbursed.[4]

The Exchange proposes to recoup a portion of these fees by imposing an additional fee on all Amex specialists and Registered Traders for transactions in specified ETFs. An additional fee of $.07 per 100 shares for specialists and $.03 per 100 shares for Registered Traders would be applied only for transactions in ETFs for which the Exchange pays a non-reimbursed fee. The ETFs subject to the additional fee will be included in proposed Note 4 to the Exchange Equity Fee Schedule.

The ETF transaction charge for specialists is currently $.63 per 100 shares, subject to a per trade maximum of $300. For transactions in ETFs listed in proposed Note 4 to the Equity Fee Schedule, the transaction charge would be $.70 per 100 shares, with a per trade maximum of $300. ETF transaction charges for Registered Traders currently are $.73 per 100 shares, subject to a per trade maximum of $350. For ETFs listed in proposed Note 4, the transaction charge would be $.76 per 100 shares, with a $350 per trade maximum.

The Exchange would discontinue charging the additional $.07 or $.03 per 100 shares transaction charge for any ETF series for which the Exchange no longer pays a non-reimbursed fee. Such deletions would be filed with the Commission pursuant to Rule 19b-4 under the Act.[5] Any additional ETFs for which the Exchange pays non-reimbursed fees in the future will be added to the list in proposed Note 4 and filed with the Commission pursuant to Rule 19b-4 under the Act.[6]

2. Basis

The Exchange believes the proposed rule change is consistent with section 6 of the Act,[7] in general, and with section 6(b)(4) of the Act,[8] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Amex does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange received a letter relating to the proposed increase in transaction charges for specialists and Registered Traders for transactions in certain ETFs.[9] Susquehanna states that the proposal does not make competitive sense when other markets assess no fees and/or provide rebates to their members for trading certain ETFs, including the QQQ. Susquehanna states that the type of markets made by Susquehanna and other liquidity providers cannot, in the long run, be as competitive as those on markets where there are no charges or where there are subsidies. Susquehanna believes that the fees on specialists and Registered Traders should be reduced to zero and, instead, Amex should impose a fee on each membership. Susquehanna's letter also refers to other suggestions made to Amex officials relating to maintaining and enhancing Amex's market share.

The Exchange has determined to impose a modest fee increase on those Exchange members that have responsibility for trading specified ETFs in accordance with Amex rules, and that have the potential to achieve greatest financial benefit from trading these securities. The Exchange, of course, recognizes that increases in any fees can have an adverse impact on the Exchange's competitive position compared to other markets. Those markets may provide member subsidies and payment for order flow, or waive all member ETF transaction charges, thereby subsidizing costs incurred by those markets in overseeing their members' ETF trading through other charges levied by those markets on their members. The Exchange has concluded that it is most prudent and equitable at this time to partially recoup non-reimbursed fees paid to third parties through increased transaction charges imposed on all specialists and Registered Traders actually trading these securities.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act[10] and subparagraph (f)(2) of Rule 19b–4[11] thereunder, because it establishes or changes a due, fee, or other charge. At any time within 60 days of October 3, 2002, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[12]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing,

[3] 15 U.S.C. 80a.

[4] The Exchange represents that it will not impose the proposed fee on any portion of a non-reimbursed licensing or other third-party fee that it recoups via another Exchange fee or assessment. Telephone conversation between Michael Cavalier, Associate General Counsel, Amex, and Frank N. Genco, Attorney, Division of Market Regulation, Commission, on October 30, 2002.

[5] 17 CFR 240.19b-4.

[6] Id.

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(4).

[9] *See* Letter from Jeffrey Yass, Managing Director, Susquehanna International Group, LLP ("Susquehanna"), to Anthony J. Boglioli, Amex, dated September 23, 2002.

[10] 15 U.S.C. 78s(b)(3)(A)(ii).

[11] 17 CFR 240.19b–4(f)(2).

[12] *See* 15 U.S.C. 78s(b)(3)(C).

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including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change, as amended, that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–2002–81 and should be submitted by December 3, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–28604 Filed 11–8–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46769; File No. SR–Amex–2002–80]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the American Stock Exchange LLC Relating to the Listing and Trading of Principal Protected Sector Selector Notes

November 4, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on September 30, 2002, the American Stock Exchange LLC (the "Exchange" or "Amex"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. For the reasons described below, the Commission is granting accelerated approval to the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to approve for listing and trading principal protected notes the return on which is based upon the performance of a basket of ten (10) specified U.S. sector exchange-traded funds[4] pursuant to the methodology set forth below.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Under Section 107A of the Amex Company Guide ("Company Guide"), the Exchange may approve for listing and trading securities which cannot be readily categorized under the listing criteria for common and preferred stocks, bonds, debentures, or warrants.[5]

The Amex proposes to list for trading under Section 107A of the Company Guide principal protected sector selector notes (the "Notes"), the return on which is based upon the performance of the ETF Basket.

The Notes will conform to the initial listing guidelines under section 107A[6] and continued listing guidelines under sections 1001–1003[7] of the Company Guide. The Notes are senior non-convertible debt securities of The Bear Stearns Companies Inc. ("the "Issuer"). The Notes will have a term of five (5) years. The Notes, at maturity, will provide for a minimum principal amount that will be repaid plus a variable return amount (the "Variable Return") based on the performance of the ETF Basket. The Notes will not be subject to redemption prior to maturity and are not callable by the issuer.

The Notes are cash-settled in U.S. dollars and do not give the holder any right to receive a portfolio security or any other ownership right or interest in the portfolio of securities comprising the ETF Basket. The Notes are designed for investors who want to participate or gain exposure to a variety of U.S. market sectors and who are willing to forego market interest payments on the Notes during such term. The calculation agent for the Notes will be Bear Stearns & Co., Inc., an affiliate of the Issuer ("Bear Stearns").

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] The Commission corrected a typographical error in the description of the proposed rule change, with the consent of the Exchange, to reflect the proper term of the Notes. Telephone conversation between Jeffrey P. Burns, Assistant General Counsel, Amex, and Andrew Shipe, Special Counsel, Division of Market Regulation, Commission (October 22, 2002).

[4] The U.S. sector exchange-traded funds ("Sector ETFs") that will be included in the basket (the "ETF Basket") are as follows: (1) iShares Dow Jones U.S. Basic Materials Index Fund; (2) iShares Dow Jones U.S. Consumer Cyclical Sector Index Fund; (3) iShares Dow Jones U.S. Consumer Non-Cyclical Sector Index Fund; (4) iShares Dow Jones U.S. Energy Sector Index Fund; (5) iShares Dow Jones U.S. Financial Sector Index Fund; (6) iShares Dow Jones U.S. Healthcare Sector Index Fund; (7) iShares Dow Jones U.S. Industrial Sector Index Fund; (8) iShares Dow Jones U.S. Technology Sector Index Fund; (9) iShares Dow Jones U.S. Telecommunications Sector Index Fund; and (10) iShares Dow Jones U.S. Utilities Sector Index Fund. The ETFs are trademarks of Dow Jones & Company and have been licensed for use by The Bear Stearns Companies Inc.

[5] *See* Securities Exchange Act Release No. 27753 (March 1, 1990), 55 FR 8626 (March 8, 1990) (order approving File No. SR–Amex–89–29) ("Hybrid Approval Order"). *See also* Securities Exchange Act Release No. 42582 (March 27, 2000), 65 FR 17685 (April 4, 2000) (approving the listing and trading of notes linked to a basket of no more than twenty equity securities).

[6] The initial listing standards for the Notes require: (1) A market value of at least $4 million; and (2) a term of at least one year. Because the Notes will be issued in $1,000 denominations, the minimum public distribution requirement of one million units and the minimum holder requirement of 400 holders do not apply. In addition, the listing guidelines provide that the issuer has assets in excess of $100 million, stockholder's equity of at least $10 million, and pre-tax income of at least $750,000 in the last fiscal year or in two of the three prior fiscal years. In the case of an issuer which is unable to satisfy the earning criteria stated in Section 101 of the Company Guide, the Exchange will require the issuer to have the following: (1) assets in excess of $200 million and stockholders' equity of at least $10 million; or (2) assets in excess of $100 million and stockholders' equity of at least $20 million.

[7] The Exchange's continued listing guidelines are set forth in Sections 1001 through 1003 of Part 10 to the Exchange's Company Guide. Section 1002(b) of the Company Guide states that the Exchange will consider removing from listing any security where, in the opinion of the Exchange, it appears that the extent of public distribution or aggregate market value has become so reduced to make further dealings on the Exchange inadvisable. With respect to continued listing guidelines for distribution of the Notes, the Exchange will rely, in part, on the guidelines for bonds in Section 1003(b)(iv). Section 1003(b)(iv)(A) provides that the Exchange will normally consider suspending dealings in, or removing from the list, a security if the aggregate market value or the principal amount of bonds publicly held is less than $400,000.

The Sector ETFs that comprise the ETF Basket are issued by iShares Trust, a registered investment company. The Sector ETFs are investment portfolios that seek investment results that correspond generally to the price and yield performance, before fees and expenses, of a particular U.S. sector equity market index compiled by Dow Jones & Company ("Dow Jones"). Each of the Sector ETFs is listed and traded on the Amex.

The Variable Return of the Notes is linked to the performance of the ETF Basket. This amount is designed to reflect the selection of the best performing ETF Sector remaining in the ETF Basket every six (6) months during the term of the Notes. Individual Sector ETFs will be removed from the ETF Basket once their performance has been used on an observation date. The Variable Return will be calculated as follows:

- The individual Sector ETF in the ETF Basket which has the most positive or least negative percentage change since the issue date will be selected and used to establish the performance rate for that particular observation date. Once the performance of an individual Sector ETF has been used on an observation date, such Sector ETF will then be removed from the ETF Basket and will not be utilized in the calculation of performance rates for any subsequent observation date.
- At maturity, the Variable Return will equal the average of the performance rates of the ten (10) selected Sector ETFs multiplied by the principal amount of such Note.
- The average performance is calculated at maturity by summing the selected performance rates of each Sector ETF and then dividing by the number of Sector ETFs that comprised the basket (ten).

If the Variable Return for the term of the Notes is less than or equal to zero, the Variable Return will be zero. If the Variable Return is zero, investors will receive only the principal amount of the Notes. The Variable Return cannot be less than zero.

As of September 26, 2002, the market capitalization of the Sector ETFs that would comprise the ETF Basket ranged from a high of $302.84 million shares (iShares Dow Jones U.S. Healthcare Sector Index Fund (IYH)) to a low of $45 million (iShares Dow Jones U.S. Telecommunications Sector Index Fund (IYZ)). The average monthly trading volume of these Sector ETFs comprising the ETF Basket for the last six months, as of the same date, ranged from a high of 1.68 million shares (iShares Dow Jones U.S. Consumer Cyclical Sector Index Fund (IYC)) to a low of 389,183 shares (iShares Dow Jones U.S. Financial Sector Index Fund (IYF)). Moreover, as of September 26, 2002, all of the Sector ETFs that would comprise the ETF Basket were eligible for standardized options trading pursuant to Commentary .06 to Amex Rule 915. The Amex currently lists and trades option contracts on iShares Dow Jones U.S. Financial Sector Index Fund (IYF), iShares Dow Jones U.S. Technology Sector Index Fund (IYW) and iShares Dow Jones U.S. Telecommunications Sector Index Fund (IYZ).

During the term of the Notes, the performance rate for each of the Sector ETFs will be calculated every six (6) months as follows: (reference value—initial value)/initial value. The individual Sector ETF in the ETF Basket which has the most positive or least negative percentage change since the issue date will be selected and used to set the performance rate for that observation date. The "reference value" is the closing value of each of the Sector ETFs that comprise the ETF Basket on each observation date or, if that day is not a business day, on the next business day. An "observation date" occurs semi-annually throughout the terms of the Notes. For the first observation date, the "initial value" will equal the closing value of each of the Sector ETFs on the issue date of the Notes.

If any of the Sector ETFs is de-listed from the Amex or ceases to be issued by the iShares Trust prior to removal from the ETF Basket, Bear Stearns will substitute a corresponding Dow Jones U.S. Sector Index compiled by Dow Jones for the discontinued Sector ETF. If the corresponding Dow Jones U.S. Sector Index ceases to be compiled by Dow Jones and Dow Jones or another entity compiles a successor or substitute sector index that Bear Stearns determines, to be comparable to the discontinued Dow Jones U.S. Sector Index, then such successor or substitute sector index will be used to calculate the Variable Return. Upon selection by Bear Stearns of a corresponding, successor or substitute sector index, notice of such fact will be provided to the holders of the Notes.

If Bear Stearns determines that any successor or substitute sector index is discontinued and there is not a successor or substitute sector index available, Bear Stearns will determine the Variable Return based on a methodology that attempts to replicate closely the Sector ETF. Bear Stearns may similarly determine the performance rate to be used if the level of any successor or a substitute sector index is not available on an observation date.

Bear Stearns as the calculation agent will be permitted (but not required) to make adjustments in any successor or substitute sector index or concerning the method of such index calculation as it deems appropriate to ensure that the performance rates used to determine the Variable Return are equitable.

Discontinuance of any of the Sector ETFs may adversely affect the value of the Notes. All determinations made by Bear Stearns as calculation agent will be at its discretion and will be conclusive for all purposes, absent manifest error.

If there is a market disruption event[8] on any observation date, the observation date will be the first succeeding business day on which there is no market disruption event, unless there is a market disruption event on each of the five business days following the original date that, but for the market disruption event, would have been the observation date. In that case, the fifth business day will be deemed to be the observation date and Bear Stearns will determine the performance rate of the Sector ETFs as of the valuation time on that fifth business day.

Because the Notes are issued in $1,000 denominations, the Amex's existing floor trading rules will apply to the issuing and trading of the Notes. First, pursuant to Amex Rule 411, the Exchange will impose a duty of due diligence on its members and member firms to learn the essential facts relating to every customer prior to trading the Notes.[9] Second, even though the Exchange's debt trading rules apply, the Notes will be subject to the equity margin rules of the Exchange.[10] Third, in conjunction with the Hybrid Approval Order, the Exchange will, prior to trading the Notes, distribute a circular to the membership providing guidance with regard to member firm compliance responsibilities (including

[8] A market disruption event means the occurrence or existence on any business day during the one-half hour prior to the valuation time of any suspension of, or limitation imposed on, trading (by reason of movements in price exceeding limits permitted by any relevant exchange or market or otherwise) of (i) the Sector ETFs on the Amex or of the securities that comprise 20% or more of any Dow Jones U.S. Sector Index or any successor or substitute index on any relevant exchange; or (ii) in options or futures contracts on the Sector ETFs, any corresponding Dow Jones U.S. Sector Index or any successor or substitute index on any relevant exchange if, any such suspension or limitation is material.

[9] Amex Rule 411 requires that every member, member firm or member corporation use due diligence to learn the essential facts, relative to every customer and to every order or account accepted.

[10] *See* Amex Rule 462 and Section 107B of the Company Guide.

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suitability recommendations) when handling transactions in the Notes and highlighting the special risks and characteristics of the Notes. With respect to suitability recommendations and risks, the Exchange will require members, member organizations and employees thereof recommending a transaction in the Notes: (1) To determine that such transaction is suitable for the customer, and (2) to have a reasonable basis for believing that the customer can evaluate the special characteristics of, and is able to bear the financial risks of such transaction. In addition, the Issuer will deliver a prospectus in connection with the initial purchase of the Notes.

The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the Notes. Specifically, the Amex will rely on its existing surveillance procedures governing equities, which have been deemed adequate under the Act. In addition, the Exchange also has a general policy which prohibits the distribution of material, non-public information by its employees.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act [11] in general and furthers the objectives of section 6(b)(5) [12] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange did not receive any written comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR-Amex-2002–80 and should be submitted by December 3, 2002.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful review, the Commission finds that implementation of the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, with the requirements of Section 6(b)(5).[13] Pursuant to Section 19(b)(2) of the Act,[14] the Commission further finds good cause to approve the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**.

The Commission believes that the availability of the Notes will provide an additional choice for investors to achieve desired investment objectives through the purchase of an exchange-traded debt product linked to the performance of the basket of ETFs described above. These objectives include participating in or gaining exposure to the ETF basket's components, while limiting downside risk. The Notes are principal protected—they provide for a minimum principal amount that will be repaid. They also provide for a variable return based upon the performance of the components of the ETF basket. For the reasons discussed below, the Commission has concluded that the Amex listing standards applicable to the Notes are consistent with the Act.

The Notes are senior, non-convertible debt securities and will conform to the initial listing guidelines under Section 107A, and the continued listing guidelines under Sections 1001–1003 of the Amex Company Guide. The notes will have a term of five years. The Notes will entitle the owner at maturity to receive a minimum principal amount, plus a variable return amount based upon the performance of the ETFs in the ETF basket. Each of the Sector ETFs that comprise the ETF basket is listed and traded on Amex; thus, the Commission notes that each of the components would satisfy the Exchange's listing standards for Index Fund Shares (or alternatively for Portfolio Depositary Receipts). The Notes are cash-settled in U.S. dollars and may not be called by the issuer.

The Commission notes that the Exchange's rules and procedures that address the special concerns attendant to the trading of hybrid securities will be applicable to the Notes. In particular, by imposing the hybrid listing standards, suitability, disclosure, and compliance requirements noted above, the Commission believes the Exchange has addressed adequately any potential problems that could arise from the hybrid nature of the Notes. The Exchange will require members, member organizations and employees thereof recommending a transaction in the Notes to: (1) Determine that such transaction is suitable for the customer, and (2) have a reasonable basis for believing that the customer can evaluate the special characteristics, and bear the financial risks, of such transaction.

In addition, the Amex equity margin rules and debt trading rules will apply to the Notes. The Exchange's debt trading rules are applicable because the notes are issued in $1,000 denominations. The Commission believes that the application of these rules should strengthen the integrity of the Notes. The Commission also believes that the Amex has appropriate surveillance procedures in place to detect and deter potential manipulation for similar index-linked products. By applying these procedures to the Notes, the Commission believes that the potential for manipulation of the Notes is minimal, thereby protecting investors and the public interest. The Commission further notes that the underlying indices on which the ETFs are based are compiled by Dow Jones, an entity independent of both the Exchange and the Issuer, and thus, a factor which the Commission believes should act to minimize the possibility of manipulation.

The Commission also notes that the Amex will issue a circular on the Notes. The circular would include, among other things, a discussion of the risks that may be associated with the Notes in addition to details on the composition of the Index and how the rates of return will be computed. Further, pursuant to Exchange Rule 411, the Exchange will impose a duty of due diligence on its members and member firms to learn the essential facts relating to every customer prior to trading the Notes. Based on these factors, the Commission finds that the proposal to trade the Notes is consistent with section 6(b)(5) of the Act.[15]

Amex has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Amex has requested accelerated approval because this product is similar to several other instruments currently traded on the Amex. In determining to grant the accelerated approval for good cause, the Commission notes that the ETFs comprising the ETF basket are based on indices composed of a portfolio of highly capitalized and actively traded securities similar to component securities in hybrid securities products that have been approved by the Commission for U.S. exchange trading. Additionally, the Notes will be listed pursuant to the existing hybrid security listing standards as described above. Based on the above, the Commission finds good cause to accelerate approval of the proposed rule change, as amended.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[16] that the proposed rule change (SR-Amex-2002–80) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–28605 Filed 11–8–02; 8:45 am]

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[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78f(b)(5).

[14] 15 U.S.C. 78s(b)(2).

[15] 15 U.S.C. 78f(b)(5).

[16] 15 U.S.C. 78s(b)(2).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46772; File No. SR–DTC–2002–15]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of Proposed Rule Change To Eliminate the FAST Certificates-on-Demand Service

November 5, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on September 4, 2002, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by the DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to eliminate the FAST Certificate-on-Demand ("FAST COD") service.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Currently DTC's FAST COD service allows participants to request for same day availability a physical certificate in the participants' or its nominee's name for issues which are held in DTC's nominee name, Cede & Co., at the transfer agent under DTC's FAST program. After consultation with the largest users of the service, DTC is proposing to eliminate the FAST COD service due to decreasing demand for the service. Currently there is an average of approximately five FAST COD requests per day. In the place of FAST COD, participants may continue to use the Rush Withdrawals-by-Transfer ("RWT") service [3] or the Deposit/Withdrawal at Custodian ("DWAC") service.[4] RWT allows participants to quickly obtain physical certificates, which can be registered in either the participant's name or its customer's name. Using DWAC, participants can request certificates in client name directly from the transfer agents.

DTC believes that the proposed rule filing is consistent with section 17A of the Act because it will eliminate a little-used service but will retain functionally similar services thereby promoting the prompt and accurate clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will have an impact on or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

DTC consulted orally with the largest users of the FAST COD service and circulated an Important Notice to Participants, which invited public comment on this proposal.[5] DTC has received no written comment on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by the DTC.

[3] For more information about the RWT service, see Securities Exchange Act Release Nos. 30505 (March 20, 1992) [SR–DTC–91–23](order approviog implementation of the RWT service on permanent basis); 27518 (December 7, 1989)(order granting temporary extension of the RWT service); 26960 (June 23, 1989) [SR–DTC–89–11] (order granting approval of the RWT service procedures); 27052 (July 21, 1989) [SR–DTC–89–1] (order granting temporary approval of the RWT service).

[4] For more information about the DWAC service, see Securities Exchange Release No. 30283 (January 23, 1992) [SR–DTC–91–16] (order granting approval of the DWAC service).

[5] Important Notice to Participants #3624 is available through the Commission's Public Reference Room or through DTC.

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(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the DTC. All submissions should refer to File No. SR–DTC–2002–15 and should be submitted by December 3, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–28654 Filed 11–8–02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46771; File No. SR–NQLX–2002–01]

Self-Regulatory Organizations; Order Approving and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 to the Proposed Rule Change, by Nasdaq Liffe Markets, LLC Relating to Margin Rules for Security Futures

November 5, 2002.

On September 24, 2002, the Nasdaq Liffe Markets, LLC ("NQLX") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change relating to margin rules for security futures products other than options on security futures. The proposed rule change was published for comment in the **Federal Register** on September 30, 2002.[3] The Commission received three comment letters on the proposed rule change.[4] In addition, NQLX submitted a letter in response to the commenters.[5] On November 4, 2002, NQLX filed an amendment to the proposed rule change.[6] This order approves the proposed rule change, accelerates approval of Amendment No. 1, and solicits comments from interested persons on Amendment No. 1.

I. Description of the Proposed Rule Change

Introduction

On August 1, 2002, the Commodity Futures Trading Commission ("CFTC") and SEC (collectively, the "Commissions") jointly adopted customer margin requirements for security futures.[7] Under the Commissions' "account specific" approach, the Commissions' margin rules apply certain core requirements to all security futures, and direct that the more specific requirements depend on the type of account in which the security futures are held (*i.e.*, a futures account or securities account).

Proposal

The proposed rule change sets forth margin requirements for security futures traded on NQLX that are held in futures accounts. Specifically, the proposed rule change sets the minimum initial and maintenance customer margin rates for such security futures contracts and provides for lower margin levels for permitted strategy-based offset positions. The proposed rules exclude certain financial relations to which the Commissions' margin rules do not apply. In addition, the proposed rules do not apply to security futures held in a securities account. The proposed rule change also establishes standards under which members may qualify as Security Futures Dealers and therefore be excluded from NQLX's margin rules.

Margin Levels

The Commissions' margin rules require that customers deposit in their accounts minimum margin of 20 percent of the current market value of security futures.[8] In addition, the Commissions' rules permit national securities exchanges to set margin levels below 20 percent of the current market value of security futures for certain offsetting positions in security futures and other securities or futures.

The proposed rule change establishes a minimum margin rate of 20 percent for both long and short positions in security futures, except with respect to specified, permitted offsetting positions. Under the proposed rule change, NQLX permits reduced margin levels for specific offsetting positions held in futures accounts. Specifically, NQLX permits reduced margin levels for the following offsets:

(1) For a long security future and a corresponding short security futures on the same underlying individual stock or narrow-based index, but with a different expiration month, both the initial margin and the maintenance margin are the greater of 5% of the current market value of the long security futures or 5% of the current market value of the short security futures.

(2) For a long (short) basket of security futures (each of which is based on a narrow-based security index that together tracks a broad-based index) held in combination with a short (long) position of the applicable broad-based index future, both the initial and the maintenance margin are 5% of the current market value of the long (short) basket of security futures.

(3) For a long (short) basket of security futures that together tracks a narrow-based index future held in combination with a short (long) narrow-based index future, both the initial and the maintenance margin are the greater of (a) 5% of the current market value of the long security futures or (b) 5% of the current market value of the short security futures.

(4) For a long (short) security future on either an individual stock or a narrow-based index held in combination with an identical short (long) security future listed by a different exchange, both the initial and maintenance margin level are the greater of (a) 3% of the current market value of the long security futures position or (b) 3% of the current market value of the short security futures position.

Security Futures Dealers

As noted above, the proposed rule change provides an exclusion from NQLX's margin rules for Security Futures Dealers. Under the proposed rule change, NQLX defines a "Security Futures Dealer" as a market maker[9] designated by NQLX as a Security Futures Dealer that meets the requirements of NQLX Rules 403(d) and Rule 403(e). Rule 403(d) requires a Security Futures Dealer: (1) To be a member of NQLX; (2) to be registered as a floor trader or floor broker with the CFTC under section 4f(a)(1) of the CEA or as a dealer with the SEC under section 15(b) of the Act; (3) to hold itself out as being willing to buy and sell security futures for its own account on a regular or continuous basis and enters into a written agreement with NQLX that must meet, at a minimum, the requirements of NQLX Rule 403(e); (4) to maintain records sufficient to prove compliance with the requirements of NQLX Rule 403(d) and NQLX Rule 403(e), including, but not limited to, documents concerning personnel effecting relevant Orders, relevant trade and cash blotters, relevant stock records, and documents concerning applicable internal system capacity and performance; and (5) to be subject to disciplinary action under Chapter 5 of NQLX's Rules for failing to comply with CFTC Rules 41.42–41.48 and Rules 400–406 under the Act, with sanctions up to and including removal of the member's designation as a Security Futures Dealer.

NQLX Rule 403(e) requires a Security Futures Dealer to meet one of two minimum affirmative trading obligations. Under the first alternative, an NQLX member is a Security Futures Dealer under Rule 403(e)(1) if it satisfies the following requirements. First, the Security Futures Dealer must provide continuous two-sided quotations throughout the trading day, subject to relaxation during unusual market conditions as determined by NQLX,[10] for the first two delivery months of Security Futures Contracts that in total account for at least 20% of the total volume in all Security Futures Contracts traded on NQLX. Second, the Security Futures Dealer must quote for the first two delivery months with (a) a maximum bid/ask spread of no more than the greater of $.10 or 150 percent of the bid/ask spread in the primary market for the security underlying the security future and (b) a minimum number of contracts no less than the lesser of 10 contracts or the corresponding contractual size equivalent of the best bid and best offer for the security underlying the security future. Finally, the Security Futures Dealer must respond to requests for quotation in the specified security future within 5 seconds for all delivery months other than the first two delivery months with a two-sided quotation that has (a) a maximum bid/ask spread of no more than the greater of $0.20 or 150 percent of the bid/ask spread in the primary market for the security underlying the Security Futures Contract and (b) a minimum number of contracts no less than the lesser of 5 contracts or the corresponding contractual size equivalent of the best bid and best offer for the security underlying the security future.

In the alternative, an NQLX member is a Security Futures Dealer under Rule 403(e)(2) if it satisfies the following requirements. First, the Security Futures Dealer must respond to all requests for quotation in a specified Security Futures Contract in specified delivery months other than the first two delivery months with two-sided quotations throughout the trading day. Second, the Security Futures Dealer must quote, when responding to requests for quotation, within 5 seconds (a) with a maximum bid/ask spread of no more than the greater of $0.20 or 150 percent of the bid/ask spread in the primary market for the security underlying the Security Futures Contract and (b) a minimum number of contracts no less than the lesser of 5 contracts or the corresponding contractual size equivalent of the best bid and best offer for the security underlying the Security Futures. Finally, 75% of the Security Futures Dealer's total trading in the preceding calendar quarter must be in Security Futures Contracts in which it fulfilled its obligations under this rule.

While NQLX Rule 403(e)(1) and NQLX Rule 403(e)(2) both provide the minimum requirements imposed on market makers designated as Security Futures Dealers, NQLX and the particular Security Futures Dealer may enter into written agreements with more rigorous affirmative obligations (*e.g.*, more narrow maximum bid/ask spreads as well as larger minimum contract sizes).

II. Summary of Comments

As noted above, the Commission received three comment letters on the proposal,[11] and NQLX submitted a letter in response to the commenters.[12] Two commenters expressed the view that NQLX's proposed market maker exclusion would encourage imprudent risk taking, speculation, and leverage because there would be no net capital requirements imposed either on a floor broker that qualifies for the market maker exclusion or on its carrying broker-dealer or FCM.[13] In addition, those commenters maintained that the proposed rule change is not consistent with the margin requirements for comparable options contracts and, therefore, would create competitive disparities between security futures and exchange-traded options.

The other commenter expressed concern with NQLX's second alternative for satisfying the definition of a security futures dealer.[14] Specifically, the commenter maintained that the lack of a two-sided continuous quote commitment for all expiration or delivery months of a security futures contract, along with the ability to only quote farther term expiration or delivery month contracts, rendered the test in proposed NQLX Rule 403(e)(2) inconsistent with the obligations of a bona fide market maker. In addition, the commenter argued that the market

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 46548 (September 25, 2002), 67 FR 61361 (SR–NQLX–2002–01).

[4] *See* letters to Jonathan Katz, Secretary, Commission, from: John P. Davidson, Managing Director, Morgan Stanley & Co. Inc., and Mitchell J. Lieberman, Managing Director, Goldman, Sachs & Co., dated October 23, 2002 ("Morgan/Goldman Letter"); Michael J. Ryan, Jr., Executive Vice President and General Counsel, American Stock Exchange LLC, dated October 23, 2002 ("Amex Letter"); and Michael R. Schaefer, Managing Director, Salomon Smith Barney, dated October 25, 2002 ("SSB Letter").

[5] Letter from Kathleen M. Hamm, Senior Vice President, Regulation and Compliance, NQLX, to Jonathan G. Katz, Secretary, Commission, dated October 30, 2002 ("NQLX Letter").

[6] *See* letter from Kathleen M. Hamm, Senior Vice President of Regulation and Compliance, NQLX, to Theodore R. Lazo, Senior Special Counsel, Division of Market Regulation, Commission, dated November 1, 2002 ("Amendment No. 1"). Amendment No. 1 amends proposed Rule 403(e)(1) to provide that a security futures dealer must fulfill its market maker obligation in security futures contacts representing at least 20 percent of the total volume in all security futures contracts traded on NQLX for the preceding calendar quarter. In addition, Amendment No. 1 amends proposed Rule 403(e)(2) to provide that a security futures dealer must fulfill its market maker obligation in security futures contacts representing at least 75 percent of the total trading in security futures contracts on NQLX for the preceding calendar quarter.

[7] Securities Exchange Act Release No. 46292, 67 FR 53146 (August 14, 2002).

[8] Rule 403(b)(1) under the Act and Rule 41.45(b)(1) under the Commodity Exchange Act ("CEA") 17 CFR 240.403(b)(1) and 17 CFR 41.45(b)(1).

[9] NQLX's rules define a "Market Maker" as "any Member or other Person that enters into a written agreement with NQLX to facilitate liquidity and orderliness for a specified Exchange Contract or Groups of Exchange Contracts pursuant Rule 403." *See* NQLX Rule 101(a)(48).

[10] NQLX has represented that it would only relax the affirmative obligations of a Security Futures Dealer during unusual market conditions such as a fast market in either the security futures or their underlying securities. *See* NQLX Letter, *supra* note 5.

[11] Morgan/Goldman Letter, Amex Letter, and SSB Letter, *supra* note 4. The SSB Letter stated that it agreed generally with the comments expressed in the Morgan/Goldman Letter.

[12] NQLX Letter, *supra* note 5.

[13] Morgan/Goldman Letter and SSB Letter, *supra* note 4.

[14] Amex Letter, *supra* note 4.

[8] 17 CFR 200.30–3(a)(12).

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maker test under proposed NQLX Rule 403(e)(2) is not consistent with the current standard for receiving market maker margin treatment for exchange-traded options because it does not oblige market makers to make continuous markets in security futures.

In response to the Morgan/Goldman letter, NQLX stated that it has minimum capital requirements for all of its members, including all market makers designated as security futures dealers. NQLX noted that its rules require its members that are registered with the SEC as broker-dealers or with CFTC as futures commission merchants or introducing brokers to meet and maintain the minimum capital requirements of their respective regulators. Further, NQLX stated that for all other members, its rules require minimum net worth of not less than $250,000 and immediate notification to NQLX when one of those member's net worth declines below $300,000. NQLX maintained that its minimum net worth requirements as well as its "early warning" capital levels adequately address the concerns of potential systemic credit risk raised by the Morgan/Goldman letter.

In response to the Amex Letter, NQLX stated that Rule 403(e)(2) places affirmative obligations on security futures dealers to respond "virtually instantaneously" to all requests for quotation throughout the trading day in specified back-month contracts. NQLX maintained that this standard requires regular responses to quotations by the Security Futures Dealer. In addition, NQLX expressed the view that by complying with Rule 403(e)(2), Security Futures Dealers expose their capital in order to provide liquidity and depth for the benefit of all market participants.

III. Discussion

Under Section 19(b)(2) of the Act, the Commission is directed to approve the proposed rule change if it finds that it is consistent with the requirements of the Act and the rules and the rules and regulations thereunder applicable to a national securities exchange.[15] Section 6(b)(5) of the Act[16] requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade and, in general, to protect investors and the public interest.[17] In addition, section 7(c)(2)(B) of the Act[18] provides, among other things, that the margin rules for security futures must preserve the financial integrity of markets trading security futures, prevent systemic risk, and be consistent with the margin requirements for comparable exchange-traded options. Section 7(c)(2)(B) also provides that the margin levels for security futures may be no lower than the lowest level of margin, exclusive of premium, required for any comparable exchange-traded option. For the reasons discussed below, after careful review and consideration of the commenters' views the Commission finds that the rule change is consistent with NQLX's obligations under the Act and the rules and regulations thereunder.

The Commission believes that the rule change is generally consistent with the customer margin rules for security futures adopted by the Commission and the CFTC. In particular, the Commission notes that, consistent with Rule 403 under the Act, NQLX's proposed rule provides for a minimum margin level of 20% of current market value for all positions in security futures. The Commission believes that 20% is the minimum margin level necessary to satisfy the requirements of section 7(c)(2)(B) of the Act. Rule 403 under the Act[19] also provides that a national securities exchange may set margin levels lower than 20% of the current market value of the security future for an offsetting position involving security futures and related positions, provided that an exchange's margin levels for offsetting positions meet the criteria set forth in section 7(c)(2)(B) of the Act. The offsets proposed by NQLX are consistent with the strategy-based offsets permitted for comparable offset positions involving exchange-traded options and therefore consistent with section 7(c)(2)(B) of the Act.

Finally, the Commission believes that the standards proposed by NQLX for Security Futures Dealers are consistent with the Act, and Rule 400(c)(2)(v) thereunder.[20] Specifically, the Commissions' margin rules do not apply to a member of a national securities exchange that is registered with such exchange as a "security futures dealer" pursuant to exchange rules that must meet several criteria, including a requirement that a security futures dealer be required "to hold itself out as being willing to buy and sell security futures for its own account on a regular or continuous basis." The Commission believes that the affirmative obligations required by NQLX Rule 403(e) satisfy this requirement.

IV. Accelerated Approval of Amendment No. 1

The Commission finds good cause to approve Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice in the **Federal Register**. In response to the commenters concerns, Amendment No. 1 adds two subsections to require Security Futures Dealers to satisfy their market making obligations in a meaningful number of contracts. Specifically, new paragraph (e)(1)(iv) of Rule 403 requires a Security Futures Dealer to fulfill its market making activities in one or more security futures contacts representing at least 20 percent of the total volume in all security futures contracts traded on NQLX for the preceding calendar quarter. Similarly, new paragraph (e)(2)(iii) of Rule 403 requires 75% of a Security Futures Dealer's total trading to be in security futures contacts in which it fulfills its market making obligations.

Because the amendments are responsive to commenters concerns and further clarify the minimum requirements imposed on market makers designated as Security Futures Dealers, the Commission believes that there is good cause, consistent with Section 19(b) of the Act, to approve Amendment No. 1 to the proposed rule change, on an accelerated basis.

V. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether Amendment No. 1 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–NQLX–2002–01 and should be submitted by December 3, 2002.

[15] 15 U.S.C. 78s(b)(2).

[16] 15 U.S.C. 78f(b)(5), 78o–3(b)(6), and 78o–4(b)(2)(C).

[17] In approving this rule change, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78o–3(b)(9).

[18] 15 U.S.C. 78g(c)(2)(B).

[19] 17 CFR 240.403(b)(2).

[20] 17 CFR 200.400(c)(2)(v).

VI. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[21] that the proposed rule change (SR–NQLX–2002–01), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[22]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–28606 Filed 11–8–02; 8:45 am]

BILLING CODE 8010–01–P

[21] 15 U.S.C. 78s(b)(2).

[22] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new, and/or currently approved information collection.

DATES: Submit comments on or before January 13, 2003.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Jihoon Kim, Financial Analyst, Office of Financial Assistance, Small Business Administration, 409 3rd Street, SW., Suite 8300, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Jihoon Kim, Financial Analyst, (202) 205–6024 or Curtis B. Rich, Management Analyst, (202) 205–7030.

SUPPLEMENTARY INFORMATION:

Title: Secondary Market Assignment and Disclosure Form.

Form No: 1088.

Description of Respondents: Secondary Market Participants.

Annual Responses: 5,000.

Annual Burden: 7,500.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Robert Max, Procurement Analyst, Office of Government Contracting, Small Business Administration, 409 3rd Street, SW., Suite 8800, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Robert Max, Procurement Analyst, (202) 205–7321 or Curtis B. Rich, Management Analyst, (202) 205–7030.

Title: Application for Small Business Size Determination.

Form No: 355.

Description of Respondents: Small Businesses.

Annual Responses: 10,500.

Annual Burden: 42,000.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Cindy Pitts, Program Analyst, Office of Disaster Assistance, Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Cindy Pitts, Program Analyst, (202) 205–7570 or Curtis B. Rich, Management Analyst, (202) 205–7030.

Title: Borrower's Progress Certification.

Form No: 1366.

Description of Respondents: Recipients of disaster loans.

Annual Responses: 30,020.

Annual Burden: 15,010.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 02–28684 Filed 11–8–02; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of reporting requirements submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Submit comments on or before December 12, 2002. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

Copies: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: Agency Clearance Officer, Jacqueline White, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416; and OMB Reviewer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Agency Clearance Officer, (202) 205–7044.

SUPPLEMENTARY INFORMATION:

Title: Small Business Administration, Application for Certificate of Competency.

No: 1531.

Frequency: On Occasion.

Description of Respondents: Small Business Owners.

Responses: 300.

Annual Burden: 2,400.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 02–28683 Filed 11–8–02; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of reporting requirements submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Submit comments on or before December 12, 2002. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

Copies: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: Agency Clearance Officer, Jacqueline White, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416; and OMB Reviewer, Office of Information and Regulatory Affairs,

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Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Agency Clearance Officer, (202) 205–7044.

SUPPLEMENTARY INFORMATION:

Title: Semiannual Report on Representatives and Compensation Paid for Services in Connection with Obtained Federal Contracts.

No: 1790.

Frequency: On occasion.

Description of Respondents: 8(a) program participant.

Responses: 13,884.

Annual Burden: 13,884.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 02–28686 Filed 11–8–02; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of reporting requirements submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Submit comments on or before December 12, 2002. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

Copies: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: Agency Clearance Officer, Jacqueline White, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416; and OMB Reviewer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Agency Clearance Officer, (202) 205–7044.

SUPPLEMENTARY INFORMATION:

Title: Nomination for the Small Business Prime Contractor & Nomination of the Small Business Subcontractor of the Year Award.

No's: 883 & 1375.

Frequency: On occasion.

Description of Respondents: Prime contractor, subcontractor.

Responses: 469.

Annual Burden: 1,876.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 02–28687 Filed 11–8–02; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3452]

State of Louisiana; Amendment # 3

In accordance with a notice received from the Federal Emergency Management Agency, dated October 31, 2002, the above numbered declaration is hereby amended to include Grant, LaSalle and Ouachita Parishes in the State of Louisiana as disaster areas due to damages caused by Hurricane Lili beginning on October 1, 2002, and continuing through October 16, 2002.

In addition, applications for economic injury loans from small businesses located in Caldwell, Jackson, Lincoln, Morehouse, Richland, Union and Winn Parishes in Louisiana may be filed until the specified date at the previously designated location. All other counties contiguous to the above named primary county have been previously declared.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is December 2, 2002, and for economic injury the deadline is July 3, 2003.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: November 4, 2002.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 02–28571 Filed 11–8–02; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3457]

State of Mississippi

Pearl River County and the contiguous counties of Forrest, Hancock, Harrison, Lamar, Marion and Stone in the State of Mississippi; and St. Tammany and Washington Parishes in the State of Louisiana constitute a disaster area due to damages caused by severe storms and straight line winds that occurred on October 29, 2002. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on January 3, 2003 and for economic injury until the close of business on August 4, 2003 at the address listed below or other locally announced locations:

U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	5.875
Homeowners without credit available elsewhere	2.937
Businesses with credit available elsewhere	6.648
Businesses and non-profit organizations without credit available elsewhere	3.324
Others (including non-profit organizations) with credit available elsewhere	5.500
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	3.324

The number assigned to this disaster for physical damage is 345711 for Mississippi and 345811 for Louisiana. The number assigned for economic injury is 9S4600 for Mississippi and 9S4700 for Louisiana.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: November 4, 2002.

Hector V. Barreto,

Administrator.

[FR Doc. 02–28685 Filed 11–8–02; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 4204]

Request for Nominations for the General Advisory Committee and the Scientific Advisory Subcommittee to the United States Section to the Inter-American Tropical Tuna Commission

SUMMARY: The Department of State is seeking applications and nominations for the renewal of the General Advisory Committee to the Inter-American Tropical Tuna Commission (IATTC) as well as to a Scientific Advisory Subcommittee of the General Advisory Committee. The purpose of the General Advisory Committee and the Scientific Advisory Subcommittee is to provide public input and advice to the United States Section to the IATTC in the formulation of U.S. policy and positions at meetings of the IATTC and its subsidiary bodies. The Scientific Advisory Subcommittee shall also function as the National Scientific Advisory Committee (NATSAC) provided for in the Agreement on the International Dolphin Conservation Program (AIDCP). The United States Section to the IATTC is composed of the Commissioners to the IATTC, appointed by the President, and the Deputy Assistant Secretary of State for Ocean and Fisheries or his or her designated representative. Authority to establish the General Advisory Committee and Scientific Advisory Subcommittee is provided under the Tuna Conventions Act of 1950, as amended by the International Dolphin Conservation Program Act (IDCPA) of 1997.

DATES: Nominations must be submitted on or before January 13, 2003.

ADDRESSES: Nominations should be submitted to Mary Beth West, Deputy Assistant Secretary for Oceans and Fisheries, Bureau of Oceans and International Environmental and Scientific Affairs, Room 7831, Department of State, Washington, DC, 20520–7818; or by fax to 202–736–7350.

FOR FURTHER INFORMATION CONTACT: David Hogan, Office of Marine Conservation, Department of State: 202–647–2335.

SUPPLEMENTARY INFORMATION:

General Advisory Committee

The Tuna Conventions Act (16 U.S.C. 951, *et seq.*), as amended by the IDCPA (Pub. L. 105–42) provides that the Secretary of State, in consultation with the U.S. Commissioners to the IATTC, shall appoint a General Advisory Committee (the Committee) to the U.S. Section to the IATTC (U.S. Section). The Committee shall be composed of not less than 5 nor more than 15 persons, with balanced representation from the various groups participating in the fisheries included under the IATTC Convention, and from non-governmental conservation organizations. The Committee shall be invited to have representatives attend all non-executive meetings of the U.S. Section, and shall be given full opportunity to examine and to be heard on all proposed programs of investigations, reports, recommendations, and regulations adopted by the Commission. Representatives of the Committee may attend meetings of the IATTC and the AIDCP as members of the U.S. delegation or otherwise in accordance with the rules of those bodies governing such participation. Participation as a member of the U.S. delegation shall be subject to such limits as may be placed on the size of the delegation.

Scientific Advisory Committee

The Act, as amended, also provides that the Secretary of State, in consultation with the U.S. Commissioners to the IATTC, shall appoint a Scientific Advisory Subcommittee (the Subcommittee) of the General Advisory Committee. The Subcommittee shall be composed of not less than 5 and not more than 15 qualified scientists with balanced representation from the public and private sectors, including non-governmental conservation organizations. The Subcommittee shall advise the Committee and the U.S. Section on matters including: the conservation of ecosystems; the sustainable uses of living marine resources related to the tuna fishery in the eastern Pacific Ocean; and the long-term conservation and management of stocks of living marine resources in the eastern tropical Pacific Ocean.

In addition, at the request of the Committee, the U.S. Commissioners or the Secretary of State, the Subcommittee shall perform such functions and provide such assistance as may be required by formal agreements entered into by the United States for the eastern Pacific tuna fishery, including the AIDCP. The functions may include: the review of data from the International Dolphin Conservation Program (IDCP), including data received from the IATTC staff; recommendations on research needs and the coordination and facilitation of such research; recommendations on scientific reviews and assessments required under the IDCP; recommendations with respect to measures to assure the regular and timely full exchange of data among the Parties to the AIDCP and each nation's NATSAC (or its equivalent); and consulting with other experts as needed.

The Subcommittee shall be invited to have representatives attend all non-executive meetings of the U.S. Section and the General Advisory Committee and shall be given full opportunity to examine and to be heard on all proposed programs of scientific investigation, scientific reports, and scientific recommendations of the Commission. Representatives of the Subcommittee may attend meetings of the IATTC and the AIDCP as members of the U.S. delegation or otherwise in accordance with the rules of those bodies governing such participation. Participation as a member of the U.S. delegation shall be subject to such limits as may be placed on the size of the delegation.

National Scientific Advisory Committee

The Scientific Advisory Subcommittee shall also function as the NATSAC established pursuant to Article IX of the AIDCP. In this regard, the Subcommittee shall perform the functions of the NATSAC as specified in Annex VI of the AIDCP including, but not limited to: receiving and reviewing relevant data, including data provided to the National Marine Fisheries Service (NMFS) by the IATTC Staff; advising and recommending to the U.S. Government measures and actions that should be undertaken to conserve and manage stocks of living marine resources in the AIDCP Area; making recommendations to the U.S. Government regarding research needs related to the eastern Pacific Ocean tuna purse seine fishery; promoting the regular and timely full exchange of data among the Parties on a variety Of matters related to the implementation of the AIDCP; and consulting with other experts as necessary in order to achieve the objectives of the Agreement.

General Provisions

Each appointed member of the Committee and the Subcommittee/NATSAC shall be appointed for a term of 3 years and may be reappointed.

Logistical and administrative support for the operation of the Committee and the Subcommittee will be provided by the Department of State, Bureau of Oceans and International Environmental and Scientific Affairs, and by the Department of Commerce, National Marine Fisheries Service. Members shall receive no compensation for their service on either the Committee or the Subcommittee/NATSAC, nor will members be compensated for travel or other expenses associated with their participation.

Procedures for Submitting Applications/Nominations

Applications/nominations for the General Advisory Committee and the Scientific Advisory Subcommittee/NATSAC should be submitted to the Department of State (See **ADDRESSES**). Such applications/nominations should include the following information:

(1) Full name/address/phone/fax and e-mail of applicant/nominee;

(2) Whether applying/nominating for the General Advisory Committee or the Scientific Advisory Committee/NATSAC (applicants may specify both);

(3) Applicant/nominee's organization or professional affiliation serving as the basis for the application/nomination;

(4) Background statement describing the applicant/nominee's qualifications

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and experience, especially as related to the tuna purse seine fishery in the eastern Pacific Ocean or other factors relevant to the implementation of the Convention Establishing the IATTC or the Agreement on the International Dolphin Conservation Program;

(5) A written statement from the applicant/nominee of intent to participate actively and in good faith in the meetings and activities of the General Advisory Committee and/or the Scientific Advisory Subcommittee/NATSAC.

Applicants/nominees who submitted material in response to the **Federal Register** Notice published by the National Marine Fisheries Service on November 12, 1999, should resubmit their applications pursuant to this notice.

Mary Beth West,

Deputy Assistant Secretary for Oceans and Fisheries, Department of State.

[FR Doc. 02–28675 Filed 11–8–02; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF STATE

[Public Notice 4154]

Defense Trade Advisory Group; Notice of Open Meeting

The Defense Trade Advisory Group (DTAG) will meet in open session from 9 a.m. to 12 noon on Tuesday, November 26, 2002, in Room 1912 at the U.S. Department of State, Harry S. Truman Building, 2201 C Street NW., Washington, DC. Entry and registration will begin at 8:15. The membership of this advisory committee consists of private sector defense trade specialists, appointed by the Assistant Secretary of State for Political-Military Affairs, who advise the Department on policies, regulations, and technical issues affecting defense trade. The purpose of the meeting will be to review progress of the working groups and to discuss current defense trade issues and topics for further study.

A separate afternoon session of DTAG's Regulatory/Technical Working Group will be held in the same room from 2 p.m. to 4 p.m. The session will focus on current controls on International Traffic in Arms Regulations (ITAR) Categories XI (Military Electronics) and XII (Fire Control, Range Finder, Optical and Guidance and Control Equipment) and certain possible changes to the controls in these categories. Attendance at this session must be registered separately with the Office of Defense Trade Controls as described below.

Although public seating will be limited due to the size of the conference room, members of the public may attend these open sessions as seating capacity allows, and will be permitted to participate in the discussion in accordance with the Chairman's instructions. Members of the public may, if they wish, submit a brief statement to the committee in writing.

As access to the Department of State facilities is controlled, persons wishing to attend the meeting must notify the DTAG Executive Secretariat by COB Thursday, November 21, 2002. If notified after this date, the DTAG Secretariat cannot guarantee that State's Bureau of Diplomatic Security can complete the necessary processing required to attend the November 26 plenary.

Each non-member observer wishing to attend the morning plenary session should provide his/her name, company or organizational affiliation, date of birth, and social security number to the DTAG Secretariat by fax to (202) 647–9779 (Attention: Mike Slack). Those members of the public wishing to attend the afternoon session of the Regulatory/Technical Working Group should fax the entry information listed above to the Office of Defense Trade Controls at (202) 261–8199 (Attention: Steve Tomchik). A list will be made up for Diplomatic Security and the Reception Desk at the C Street Entrance. Attendees must present a driver's license with photo, a passport, a U.S. Government ID, or other valid photo ID for entry.

FOR FURTHER INFORMATION CONTACT: Mike Slack, DTAG Secretariat, U.S. Department of State, Office of Regional Security and Arms Transfers (PM/RSAT), Room 5827 Main State, Washington, DC 20520–2422. Phone (202) 647–2882. Fax: (202) 647–9779.

Dated: November 1, 2002.

Timothy J. Dunn,

Executive Secretary, Defense Trade Advisory Group, Department of State.

[FR Doc. 02–28676 Filed 11–8–02; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF STATE

[Public Notice 4155]

Advisory Committee on Historical Diplomatic Documentation; Notice of Meeting

The Advisory Committee on Historical Diplomatic Documentation will meet in the Department of State, 2201 "C" Street NW., Washington, DC, December 2, 2002 in Room 1205 and December 3, 2002, in Conference Room 1105. Prior notification and a valid photo are mandatory for entrance into the building. One week before the meeting, members of the public planning to attend must notify Gloria Walker, Office of the Historian (202–663–1124) to provide relevant dates of birth, Social Security numbers, and telephone numbers.

The Committee will meet in open session from 1:30 p.m. through 3 p.m. on Monday, December 2, 2002, to discuss declassification and transfer of Department of State electronic records to the National Archives and Records Administration and the status of the Foreign Relations series. The remainder of the Committee's sessions from 3:15 p.m. until 4:30 p.m. on Monday, December 2, 2002, and 9 a.m. until 1 p.m. on Tuesday, December 3, 2002, will be closed in accordance with section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463). The agenda calls for discussions of agency declassification decisions concerning the Foreign Relations series. These are matters not subject to public disclosure under 5 U.S.C. 552b(c)(1) and the public interest requires that such activities be withheld from disclosure.

Questions concerning the meeting should be directed to Marc J. Susser, Executive Secretary, Advisory Committee on Historical Diplomatic Documentation, Department of State, Office of the Historian, Washington, DC, 20520, telephone (202) 663–1123, (e-mail *history@state.gov).*

Dated: October 29, 2002.

Marc J. Susser,

Executive Secretary, Advisory Committee on Historicol Diplomatic Documentation, Department of State.

[FR Doc. 02–28674 Filed 11–8–02; 8:45 am]

BILLING CODE 4710–11–P

DEPARTMENT OF STATE

[Public Notice 4190]

Advisory Committee on International Economic Policy; Notice of Open Meeting

The Advisory Committee on International Economic Policy (ACIEP) will meet from 9:15 a.m. to 11:45 a.m. on Tuesday, November 19, 2002 at the DACOR Bacon House, 1801 F Street NW., Washington, DC 20006. The meeting will be hosted by Committee Chairman R. Michael Gadbaw and Assistant Secretary of State for Economic and Business Affairs E. Anthony Wayne.

The ACIEP serves the U.S. Government in a solely advisory capacity concerning issues and problems in international economic policy. The objective of the ACIEP is to provide expertise and insight on these issues that are not available within the U.S. Government.

Topics for the November 19 meeting will be:

- Corporate Responsibility
- Business Visas
- Outcome of the Asia-Pacific Economic Cooperation Leaders Meeting

The public may attend these meetings as seating capacity allows. The media is welcome but discussions are off the record.

For further information about the meeting, please contact Eliza Koch, ACIEP Secretariat, Office of Economic Policy and Public Diplomacy, Economic Bureau, U.S. Department of State, Room 3526, 2201 C Street NW, Washington, DC 20520, Tel (202) 647–1310.

Dated: November 6, 2002.

Eliza Koch,

Executive Secretary, Advisory Committee on International Economic Policy.

[FR Doc. 02–28819 Filed 11–8–02; 8:45 am]

BILLING CODE 4710–07–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Meeting of the Industry Sector Advisory Committee on Small and Minority Business (ISAC–14)

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of a partially opened meeting.

SUMMARY: The Industry Sector Advisory Committee on Small and Minority Business (ISAC–14) will hold a meeting on December 2, 2002, from 9 a.m. to 3 p.m. The meeting will be opened to the public from 2 p.m. to 3 p.m. The meeting will be closed to the public from 9 a.m. to 2 p.m.

DATES: The meeting is scheduled for December 2, 2002, unless otherwise notified.

ADDRESSES: The meeting will be held at the International Trade Center, Ronald Reagan Building, Training Room C, located at 14th and Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tamara Underwood, DFO at (202) 482–4792, Department of Commerce, 14th Street and Constitution Avenue, SW., Washington, DC 20230 or Christina Sevilla, Director for Intergovernmental Affairs, on (202) 395–6120.

SUPPLEMENTARY INFORMATION: During the opened portion of the meeting the following agenda item will be discussed.

- Report by Department of Commerce's Office of Trade and Economic Analysis on Recently Published SME

Christopher A. Padilla,

Assistant, U.S. Trade Representative for Intergovernmental Affairs and Public Liaison.

[FR Doc. 02–28555 Filed 11–8–02; 8:45 am]

BILLING CODE 3190–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

North American Free Trade Agreement; Invitation for Applications for Inclusion on the Chapter 19 Roster

AGENCY: Office of the United States Trade Representative.

ACTION: Invitation for applications.

SUMMARY: Chapter 19 of the North American Free Trade Agreement ("NAFTA") provides for the establishment of a roster of individuals to serve on binational panels convened to review final determinations in antidumping or countervailing duty ("AD/CVD") proceedings and amendments to AD/CVD statutes of a NAFTA Party. The United States annually renews its selections for the Chapter 19 roster. Applications are invited from eligible individuals wishing to be included on the roster for the period April 1, 2003 through March 31, 2004.

DATES: Applications should be received no later than December 3, 2002.

ADDRESSES: Comments should be submitted (i) electronically, to *FR0050@ustr.gov*, Attn: "Chapter 19 Roster Applications" in the subject line, or (ii) by mail, first class, postage prepaid, to Sandy McKinzy, Monitoring and Enforcement Unit, Office of the General Counsel, Room 122, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508, Attn: Chapter 19 Roster Applications, with a confirmation copy sent electronically to the email address above or by fax to 202–395–3640.

FOR FURTHER INFORMATION CONTACT: Amber L. Cottle, Assistant General Counsel, Office of the United States Trade Representative, (202) 395–3581.

SUPPLEMENTARY INFORMATION:

Binational Panel Reviews Under NAFTA Chapter 19

Article 1904 of the NAFTA provides that a party involved in an AD/CVD proceeding may obtain review by a binational panel of a final AD/CVD determination of one NAFTA Party with respect to the products of another NAFTA Party. Binational panels decide whether such AD/CVD determinations are in accordance with the domestic laws of the importing NAFTA Party, and must use the standard of review that would have been applied by a domestic court of the importing NAFTA Party. A panel may uphold the AD/CVD determination, or may remand it to the national administering authority for action not inconsistent with the panel's decision. Panel decisions may be reviewed in specific circumstances by a three-member extraordinary challenge committee, selected from a separate roster composed of fifteen current or former judges.

Article 1903 of the NAFTA provides that a NAFTA Party may refer an amendment to the AD/CVD statutes of another NAFTA Party to a binational panel for a declaratory opinion as to whether the amendment is inconsistent with the General Agreement on Tariffs and Trade ("GATT"), the GATT Antidumping or Subsidies Codes, successor agreements, or the object and purpose of the NAFTA with regard to the establishment of fair and predictable conditions for the liberalization of trade. If the panel finds that the amendment is inconsistent, the two NAFTA Parties shall consult and seek to achieve a mutually satisfactory solution.

Chapter 19 Roster and Composition of Binational Panels

Annex 1901.2 of the NAFTA provides for the maintenance of a roster of at least 75 individuals for service on Chapter 19 binational panels, with each NAFTA Party selecting at least 25 individuals. A separate five-person panel is formed for each review of a final AD/CVD determination or statutory amendment. To form a panel, the two NAFTA Parties involved each appoint two panelists, normally by drawing upon individuals from the roster. If the Parties cannot agree upon the fifth panelist, one of the Parties, decided by lot, selects the fifth panelist from the roster. The majority of individuals on each panel must consist of lawyers in good standing, and the chair of the panel must be a lawyer.

Upon each request for establishment of a panel, roster members from the two involved NAFTA Parties will be requested to complete a disclosure form, which will be used to identify possible conflicts of interest or appearances thereof. The disclosure form requests information regarding financial interests and affiliations, including information regarding the identity of clients of the roster member and, if applicable, clients of the roster member's firm.

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Criteria for Eligibility for Inclusion on Chapter 19 Roster

Section 402 of the NAFTA Implementation Act (Pub. L. 103–182, as amended (19 U.S.C. 3432)) ("Section 402") provides that selections by the United States of individuals for inclusion on the Chapter 19 roster are to be based on the eligibility criteria set out in Annex 1901.2 of the NAFTA, and without regard to political affiliation. Annex 1901.2 provides that Chapter 19 roster members must be citizens of a NAFTA Party, must be of good character and of high standing and repute, and are to be chosen strictly on the basis of their objectivity, reliability, sound judgment, and general familiarity with international trade law. Aside from judges, roster members may not be affiliated with any of the three NAFTA Parties. Section 402 also provides that, to the fullest extent practicable, judges and former judges who meet the eligibility requirements should be selected.

Procedures for Selection of Chapter 19 Roster Members

Section 402 establishes procedures for the selection by the Office of the United States Trade Representative ("USTR") of the individuals chosen by the United States for inclusion on the Chapter 19 roster. The roster is renewed annually, and applies during the one-year period beginning April 1 of each calendar year.

Under Section 402, an interagency committee chaired by USTR prepares a preliminary list of candidates eligible for inclusion on the Chapter 19 Roster. After consultation with the Senate Committee on Finance and the House Committee on Ways and Means, USTR selects the final list of individuals chosen by the United States for inclusion on the Chapter 19 roster.

Remuneration

Roster members selected for service on a Chapter 19 binational panel will be remunerated at the rate of 800 Canadian dollars per day.

Applications

Eligible individuals who wish to be included on the Chapter 19 roster for the period April 1, 2003 through March 31, 2004 are invited to submit applications. Persons submitting applications may either send one copy by U.S. mail, first class, postage prepaid, to Sandy McKinzy at the address listed above or transmit a copy electronically to *FR0050@ustr.gov*, with "Chapter 19 Roster Applications" in the subject line. For documents sent by U.S. mail, USTR requests that the submitter provide a confirmation copy, either electronically or by fax to 202–395–3640. USTR encourages the submission of documents in Adobe PDF format, as attachments to an electronic mail. Interested persons who make submissions by electronic mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. Similarly, to the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

Applications must be typewritten, and should be headed "Application for Inclusion on NAFTA Chapter 19 Roster." Applications should include the following information, and each section of the application should be numbered as indicated:

1. Name of the applicant.
2. Business address, telephone number, fax number, and email address.
3. Citizenship(s).
4. Current employment, including title, description of responsibility, and name and address of employer.
5. Relevant education and professional training.
6. Spanish language fluency, written and spoken.
7. Post-education employment history, including the dates and addresses of each prior position and a summary of responsibilities.
8. Relevant professional affiliations and certifications, including, if any, current bar memberships in good standing.
9. A list and copies of publications, testimony, and speeches, if any, concerning AD/CVD law. Judges or former judges should list relevant judicial decisions. Only one copy of publications, testimony, speeches, and decisions need be submitted.
10. Summary of any current and past employment by, or consulting or other work for, the United States, Canadian, or Mexican Governments.
11. The names and nationalities of all foreign principals for whom the applicant is currently or has previously been registered pursuant to the Foreign Agents Registration Act, 22 U.S.C. 611 *et seq.*, and the dates of all registration periods.
12. List of proceedings brought under U.S., Canadian, or Mexican AD/CVD law regarding imports of U.S., Canadian, or Mexican products in which the applicant advised or represented (for example, as consultant or attorney) any U.S., Canadian, or Mexican party to such proceeding and, for each such proceeding listed, the name and country of incorporation of such party.
13. A short statement of qualifications and availability for service on Chapter 19 panels, including information relevant to the applicant's familiarity with international trade law and willingness and ability to make time commitments necessary for service on panels.
14. On a separate page, the names, addresses, telephone, and fax number of three individuals willing to provide information concerning the applicant's qualifications for service, including the applicant's character, reputation, reliability, judgment, and familiarity with international trade law.

Current Roster Members and Prior Applicants

Current members of the Chapter 19 roster who remain interested in inclusion on the Chapter 19 roster must submit updated applications. Individuals who have previously applied but have not been selected may reapply. If an applicant, including a current or former roster member, has previously submitted materials referred to in item 9, such materials need not be resubmitted.

Public Disclosure

Applications normally will be subject to public disclosure. An applicant who wishes to exempt information from public disclosure should follow the procedures set forth in 15 CFR 2003.6.

False Statements

Pursuant to section 402(c)(5) of the NAFTA Implementation Act, false statements by applicants regarding their personal or professional qualifications, or financial or other relevant interests that bear on the applicants' suitability for placement on the Chapter 19 roster or for appointment to binational panels, are subject to criminal sanctions under 18 U.S.C. 1001.

Paperwork Reduction Act

This notice contains a collection of information provision subject to the Paperwork Reduction Act ("PRA") that has been approved by the Office of Management and Budget ("OMB"). Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB number. This notice's collection of information burden is only for those persons who wish voluntarily to apply for nomination to the NAFTA Chapter 19 roster. It is expected that the collection of information burden will be under 3 hours. This collection of information contains no annual reporting or record keeping burden. This collection of information was approved by OMB under OMB Control Number 0350–0009. Please send comments regarding the collection of information burden or any other aspect of the information collection to USTR at the address above.

Privacy Act

The following statements are made in accordance with the Privacy Act of 1974, as amended (5 U.S.C. 552a). The authority for requesting information to be furnished is section 402 of the NAFTA Implementation Act. Provision of the information requested above is voluntary; however, failure to provide the information will preclude your consideration as a candidate for the NAFTA Chapter 19 roster. This information is maintained in a system of records entitled "Dispute Settlement Panelists Roster." Notice regarding this system of records was published in the **Federal Register** on November 30, 2001. The information provided is needed, and will be used by USTR, other federal government trade policy officials concerned with NAFTA dispute settlement, and officials of the other NAFTA Parties to select well-qualified individuals for inclusion on the Chapter 19 roster and for service on Chapter 19 binational panels.

Daniel E. Brinza,

Assistant United States Trade Representative for Monitoring and Enforcement.

[FR Doc. 02–28556 Filed 11–8–02; 8:45 am]

BILLING CODE 3190–01–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2002–12844]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of applications for exemption from the vision standard; request for comments.

SUMMARY: This notice publishes the FMCSA's receipt of applications from 35 individuals for an exemption from the vision requirement in the Federal Motor Carrier Safety Regulations. If granted, the exemptions will enable these individuals to qualify as drivers of commercial motor vehicles (CMVs) in interstate commerce without meeting the vision standard prescribed in 49 CFR 391.41(b)(10).

DATES: Comments must be received on or before December 12, 2002.

ADDRESSES: You can mail or deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. You can also submit comments at *http://dms.dot.gov*. Please include the docket number that appears in the heading of this document. You can examine and copy this document and all comments received at the same Internet address or at the Dockets Management Facility from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments online.

FOR FURTHER INFORMATION CONTACT: Ms. Sandra Zywokarte, Office of Bus and Truck Standards and Operations, (202) 366–2987, FMCSA, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

You may see all the comments online through the Document Management System (DMS) at: *http://dmses.dot.gov/submit*.

Background

Under 49 U.S.C. 31315 and 31136(e), the FMCSA may grant an exemption for a 2-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." The statute also allows the agency to renew exemptions at the end of the 2-year period. The 35 individuals listed in this notice have recently requested an exemption from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce. Accordingly, the agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety.

Qualifications of Applicants

1. Doris V. Adams

Mr. Adams, age 65, has had glaucomatous optic nerve atrophy in his right eye since 1988. His visual acuity is count fingers in the right eye and 20/20 in the left. Following an examination in 2002, his ophthalmologist affirmed, "It is therefore my medical opinion that due to the stability of his overall visual function and his eye examination, that he has sufficient vision to continue to perform driving tasks related to operating a commercial vehicle." In his application, Mr. Adams reported that he has driven tractor-trailer combinations for 30 years, accumulating 4.5 million miles. He holds a Class A commercial driver's license (CDL) from the State of Washington, and his driving record for the last 3 years shows no accidents or convictions for moving violations in a CMV.

2. Thomas E. Adams

Mr. Adams, 45, has counting fingers vision in his left eye due to an injury he sustained during infancy. His vision is 20/20 in the right eye. Following an examination in 2001, his ophthalmologist certified, "In my opinion Mr. Adams has sufficient vision and full visual field in his right eye to perform the driving tasks required to operate a commercial vehicle." Mr. Adams reported that he has driven straight trucks for 25 years, accumulating 25,000 miles, and tractor-trailer combinations for 20 years, accumulating 1.5 million miles. He holds a Class A CDL from Indiana, and his driving record shows that he has had no accidents or convictions for traffic violations in a CMV during the last 3 years.

3. Rodger B. Anders

Mr. Anders, 45, has a history of alternating exotropia with nystagmus since birth. His best-corrected vision in the right eye is 20/60 and in the left, 20/40. An optometrist examined him in 2002 and certified, "Mr. Anders' visual deficiency is stable, and I feel he may operate a commercial vehicle safely." Mr. Anders submitted that he has driven straight trucks for 16 years, accumulating 640,000 miles. He holds a Class A CDL from Maryland, and there are no accidents or convictions for moving violations in a CMV on his driving record for the last 3 years.

4. Thomas J. Boss

Mr. Boss, 33, has amblyopia in his right eye. His best-corrected visual acuity is 20/400 in the right eye and 20/20 in the left. Following an examination in 2002, his optometrist commented, "It is my opinion that Mr. Boss has sufficient vision to perform driving tasks that are required to operate a commercial vehicle." Mr. Boss submitted that he has driven straight

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trucks for 14 years, accumulating 742,000 miles. He holds a Class B CDL from Illinois, and his driving record shows he has had no accidents or convictions for moving violations in a CMV during the last 3 years.

5. Jack W. Boulware

Mr. Boulware, 75, has a history of macular degeneration in his left eye for the last 6 years. His best-corrected visual acuity is 20/15 in the right eye and 20/40 in the left. Following an examination in 2002, his ophthalmologist certified, "I believe that this patient has sufficient vision to perform driving tasks required to operate a commercial vehicle." In his application, Mr. Boulware indicated he has driven buses for 4 years, accumulating 114,000 miles. He holds a Class C CDL from Missouri, and his driving record for the last 3 years shows no accidents or convictions for moving violations in a CMV.

6. Mark L. Braun

Mr. Braun, 41, has amblyopia in his right eye. His best-corrected visual acuity is 20/100 in the right eye and 20/20 in the left. Following an examination in 2002, his ophthalmologist certified, "I believe he does have sufficient vision to perform the driving tasks to operate a commercial vehicle." Mr. Braun submitted that he has driven straight trucks and tractor-trailer combinations for 17 years, accumulating 85,000 miles in the former and 850,000 miles in the latter. He holds a Class A CDL from the State of Washington, and his driving record shows he has had no accidents or convictions for moving violations in a CMV in the last 3 years.

7. Howard F. Breitkreutz

Mr. Breitkreutz, 53, lost his right eye in 1969 due to trauma. He has visual acuity of 20/20 in the left eye. An optometrist who examined him in 2002 certified, "Based on our examination findings, my medical opinion is that he does have sufficient vision to safely operate a commercial vehicle and can perform the necessary driving tasks required." Mr. Breitkreutz submitted that he has operated straight trucks and tractor-trailer combinations for 4 years, accumulating 20,000 miles in each. He holds a Class A CDL from Minnesota, and his driving record shows he has had no accidents or convictions for traffic violations in a CMV for the last 3 years.

8. Ryan J. Christensen

Mr. Christensen, 29, has amblyopia in his left eye. His visual acuity is 20/15 corrected in the right eye and light perception in the left. An optometrist examined him in 2002 and certified, "Ryan appears to have sufficient visual fields to operate a commercial vehicle. His right eye provides good central vision and the combination of fields allows at least reasonable total field coverage." Mr. Christensen reported that he has driven straight trucks for 1 year, accumulating 7,000 miles, and tractor-trailer combinations for 2 years, accumulating 108,000 miles. He holds a Class A CDL from Utah, and his driving record for the last 3 years shows no accidents or convictions for moving violations in a CMV.

9. Kenneth E. Coplan

Mr. Coplan, 74, lost his left eye due to an injury 60 years ago. His best-corrected visual acuity in the right eye is 20/20–1. An optometrist examined him in 2002, and certified, "He sees adequately well to operate a commercial vehicle." In his application, Mr. Coplan indicated he has 10 years and 750,000 miles of experience in driving straight trucks and 30 years and 3.0 million miles of experience in driving tractor-trailer combinations. He holds a Class A CDL from Arizona, and his driving record shows no accidents or moving violations in a CMV during the last 3 years.

10. William T. Cummins

Mr. Cummins, 55, has only light perception in his right eye due to an injury in 1979. Following an examination in 2002, his optometrist noted that he has 20/20 vision and 120 degrees of visual field in the left eye and certified, "I see no reason why William Cummins would have any problems operating a commercial vehicle." Mr. Cummins reported that he has driven straight trucks and tractor-trailer combinations for 20 years, accumulating 400,000 miles in the former and 300,000 miles in the latter. He holds a Class DMA CDL from Kentucky, and there are no accidents or convictions for moving violations in a CMV on his driving record for the last 3 years.

11. John E. Evenson

Mr. Evenson, 44, has amblyopia in his left eye. His best-corrected visual acuity is 20/20 in the right eye and 20/200 in the left. His ophthalmologist examined him in 2002 and certified, "In my opinion he has sufficient vision to operate a commercial vehicle while on intrastate and/or inter-state roadways." In his application, Mr. Evenson reported that he has driven tractor-trailer combinations for 11 years, accumulating 913,000 miles. He holds a Wisconsin Class ABCD CDL. His driving record for the last 3 years shows that he has had one accident and no convictions for moving violations in a CMV. According to the police report, another driver pulled into his lane on his right side as he was preparing to make a wide right turn in a tractor-trailer combination. The police report indicated that as Mr. Evenson started the turn, he struck the other vehicle, which was also attempting to turn right. The other driver was cited for "Failure to Yield Right of Way." Mr. Evenson was not cited.

12. Leon Frieri

Mr. Frieri, 45, has had a macular scar in his left eye for 6 years. His visual acuity is 20/20 in the right eye and 20/200 in the left. His ophthalmologist examined him in 2002 and certified, "Mr. Frieri in my opinion has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Frieri submitted that he has driven straight trucks for 8 years, accumulating 280,000 miles. He holds a Class D driver's license from Massachusetts, and there are no CMV accidents or convictions for moving violations on his driving record for the last 3 years.

13. Wayne H. Holt

Mr. Holt, 28, has amblyopia of the left eye. His visual acuity is 20/20 in the right eye and 20/200 in the left. Following an examination in 2002, his optometrist certified, "Wayne does have sufficient vision to perform the driving ability to operate a commercial vehicle." Mr. Holt submitted that he has operated straight trucks and tractor-trailer combinations for 3 years, accumulating 15,000 miles in each. He holds a Class A CDL from Utah, and he has had no accidents or convictions for traffic violations in a CMV for the last 3 years, according to his driving record.

14. Steven C. Humke

Mr. Humke, 49, lost his left eye due to an accident approximately 22 years ago. His best-corrected visual acuity is 20/15 in the right eye. An optometrist who examined him in 2001 stated, "I certify that in my own medical opinion, Steve Humke has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Humke submitted that he has driven tractor-trailer combinations for 25 years, accumulating 2.3 million miles. He holds a Class A CDL from Iowa, and his driving record for the past 3 years shows no accidents or convictions for moving violations in a CMV.

15. Leon E. Jackson

Mr. Jackson, 54, has had a blind right eye due to trauma since the age of 8. His best-corrected vision is 20/15 in the left eye. An optometrist who examined him in 2002 certified, "I believe he has adapted to his deficiency and would be able visually to operate a commercial vehicle." Mr. Jackson reported that he has operated tractor-trailer combinations for 30 years, accumulating 3.7 million miles. He holds a Class AM CDL from Georgia, and his driving record for the last 3 years shows he has had no accidents or convictions for moving violations in a CMV.

16. Neil W. Jennings

Mr. Jennings, 33, lost his left eye in 1985 due to an injury. His best-corrected visual acuity is 20/20 in the right eye. An ophthalmologist examined him in 2001 and certified, "It is my medical opinion that Mr. Neil Wade Jennings has sufficient vision, both by acuity and visual field, to perform the driving tasks required to operate a commercial vehicle." According to Mr. Jennings' application, he has driven straight trucks for 16 years, accumulating 32,000 miles, and tractor-trailer combinations for 6 years, accumulating 330,000 miles. He holds a Class A CDL from Missouri. His driving record shows he has had no accidents or convictions for traffic violations in a CMV for the last 3 years.

17. Jimmy C. Killian

Mr. Killian, 42, has amblyopia in his right eye. His best-corrected visual acuity is 20/100 in the right eye and 20/20 in the left. An optometrist examined him in 2002 and certified, "It is my opinion that Mr. Killian has sufficient vision to perform the driving tasks required for a commercial vehicle." Mr. Killian stated that he has driven straight trucks for 13 years, accumulating 515,000 miles. He holds a North Carolina Class C driver's license, and his driving record for the last 3 years shows no accidents or convictions for moving violations in a CMV.

18. Craig M. Landry

Mr. Landry, 33, has amblyopia in his right eye. His best-corrected visual acuity is 20/100 in the right eye and 20/20 in the left. An ophthalmologist who examined him in 2002 certified, "Mr. Landry's vision and visual fields are more than sufficient to perform the driving tasks required to operate a commercial vehicle." Mr. Landry reported that he has driven straight trucks for 6 years, accumulating 162,000 miles. He holds a Class D chauffeur's license from Louisiana, and his driving record for the last 3 years shows no accidents or convictions for moving violations in a CMV.

19. Earl E. Louk

Mr. Louk, 46, has amblyopia in his right eye. His best-corrected vision is 20/100 in the right eye and 20/20 in the left. His ophthalmologist examined him in 2002 and certified, "In my opinion, he has more than sufficient vision to perform his tasks of driving a commercial vehicle." In his application, Mr. Louk indicated he has driven straight trucks for 25 years, accumulating 1.8 million miles. He holds a Class C driver's license from Pennsylvania, and his driving record for the past 3 years shows no accidents or convictions for traffic violations in a CMV.

20. William R. Mayfield

Mr. Mayfield, 47, has amblyopia in his left eye. His visual acuity in the right eye is 20/20 and in the left 20/200. An ophthalmologist examined him in 2002 and certified, "It is my medical opinion that he has sufficient vision to safely perform the driving tasks required to operate a commercial vehicle." In his application, Mr. Mayfield stated he has 13 years and 1.3 million miles of experience in operating straight trucks, and 15 years and 1.5 million miles of experience in operating tractor-trailer combinations. He holds a Utah Class A CDL, and there are no accidents or convictions for moving violations in a CMV on his record for the last 3 years.

21. Thomas E. Mobley

Mr. Mobley, 55, lost his left eye due to an injury in 1952. His uncorrected visual acuity in the right eye is 20/20. Following an examination in 2002, his ophthalmologist stated, "In my opinion, with his monocular vision as good as it is in the right eye, he would have sufficient vision to perform his driving tasks of operating a commercial vehicle." Mr. Mobley submitted that he has driven straight trucks for 17 years, accumulating 850,000 miles, and tractor-trailer combinations for 16 years, accumulating 1.9 million miles. He holds a Class AM CDL from Illinois. His driving record shows he has had no accidents or convictions for traffic violations in a CMV for the last 3 years.

22. Richard E. Nordhausen

Mr. Nordhausen, 42, has corneal and retinal scarring in his left eye due to an injury 30 years ago. His best-corrected visual acuity is 20/20 in the right eye and 20/400 in the left. Following an examination in 2002, his optometrist stated, "In my medical opinion, Rick has more than adequate vision to perform the driving tasks required to operate a commercial vehicle." Mr. Nordhausen submitted that he has driven straight trucks for 2 years, accumulating 40,000 miles, and tractor-trailer combinations for 16 years, accumulating 400,000 miles. He holds a Class A CDL from the State of Washington. His driving record shows he had no accidents and one conviction for a traffic violation—Speeding—in a CMV for the last 3 years. He exceeded the speed limit by 15 mph.

23. James P. Oliver

Mr. Oliver, 47, has amblyopia in his right eye. His corrected visual acuity is 20/40–3 in the right eye and 20/20 in the left. Following an examination in 2001, his optometrist commented, "In my opinion he has more than sufficient vision to operate a commercial vehicle." According to Mr. Oliver's application, he has driven straight trucks for 28 years, accumulating 448,000 miles, and tractor-trailer combinations for 5 years, accumulating 70,000 miles. He holds a Class A CDL from New York, and, according to his driving record, he has had no accidents or convictions for moving violations in a CMV during the last 3 years.

24. Jesse R. Parker

Mr. Parker, 30, has amblyopia in his right eye. His best-corrected visual acuity is 20/60 in the right eye and 20/20 in the left. His optometrist examined him in 2002 and stated, "It is my medical opinion that Jesse R. Parker has sufficient vision to perform driving tasks required to operate a commercial vehicle." Mr. Parker reported that he has driven straight trucks for 5 years, accumulating 82,000 miles. He holds a Class A CDL from Mississippi, and his driving record for the last 3 years contains no accidents or convictions for moving violations in a CMV.

25. Tony E. Parks

Mr. Parks, 52, lost his right eye as a result of an accident in 1998. His visual acuity in the left eye is 20/20 with correction. Following an examination in 2002, his ophthalmologist stated, "I see no change in his ocular status and he appears to have sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Parks reported that he has driven straight trucks for 10 years, accumulating 360,000 miles, and tractor-trailer combinations for 25 years, accumulating 1.8 million miles. He holds a Class A CDL from North Carolina, and his driving record shows that he has had no accidents or convictions for moving violations in a CMV for the last 3 years.

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26. Andrew H. Rusk

Mr. Rusk, 43, lost his right eye in 1973 due to trauma. His best-corrected vision in the left eye is 20/20. Following an examination in 2002, his optometrist stated, "In reviewing this information, I feel that Mr. Rusk has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Rusk submitted that he has driven straight trucks for 6 years, accumulating 60,000 miles, and tractor-trailer combinations for 11 years, accumulating 550,000 miles. He holds an Illinois Class A CDL, and his driving record shows that during the last 3 years he has had no accidents or convictions for moving violations in a CMV.

27. Henry A. Shelton

Mr. Shelton, 48, has amblyopia in his right eye. His best-corrected vision is 20/100 in the right eye and 20/20 in the left. An ophthalmologist examined him in 2002 and stated, "In my opinion, this patient has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Shelton reported that he has driven straight trucks for 20 years, accumulating 442,000 miles. He holds an Alabama Class DV driver's license, and his driving record shows that he has had no accidents or convictions for moving violations in a CMV for the past 3 years.

28. Richard L. Sheppard

Mr. Sheppard, 50, has amblyopia in his left eye. His best-corrected visual acuity is 20/20 in the right eye and 20/400 in the left. An optometrist examined him in 2002, and commented, "In my opinion, Mr. Sheppard has sufficient vision in order to perform the driving task which is required as a part of his commercial license." Mr. Sheppard submitted that he has operated straight trucks and tractor-trailer combinations for 25 years, accumulating 50,000 miles in the former and 62,000 miles in the latter. He holds a Class A CDL from Maryland, and his driving record shows he has had no accidents or convictions for moving violations in a CMV for the last 3 years.

29. Jayland R. Siebers

Mr. Siebers' right eye was removed in 2001 due to an anterior optic nerve meningioma that had progressed very slowly since 1993. His visual acuity is 20/20 in the left eye. Following an examination in 2002, his optometrist certified, "I see no specific contraindication to his continued driving record as it pertains to his ocular status. There is no specific contraindication against monocular drivers and he should be able to continue driving a commercial vehicle in the same manner as he has to this juncture." According to his application, Mr. Siebers, age 46, has operated tractor-trailer combinations for 25 years, accumulating 3.0 million miles. He holds a Kansas Class A CDL, and his driving record for the last 3 years shows he has had no accidents or convictions for moving violations in a CMV.

30. Deborah A. Sigle

Ms. Sigle, 49, has amblyopia in her left eye. Her visual acuity is 20/20 in the right eye and hand motions in the left. Following an examination in 2001, her ophthalmologist certified, "The standards for operating a commercial vehicle vary from state to state. However, assuming that full binocular vision is not required, Ms. Sigle has normal vision in the right eye, and a normal binocular visual field, so this should be adequate to operate a commercial vehicle." Ms. Sigle reported that she has driven straight trucks for 12 years, accumulating 480,000 miles. She holds a Class A CDL from New Jersey. Her driving record shows no accidents or convictions for moving violations in a CMV for the last 3 years.

31. David A. Stafford

Mr. Stafford, 58, is blind in the left eye due to trauma approximately 20 years ago. He has best-corrected visual acuity of 20/20 in the right eye. An optometrist examined him in 2002 and certified, "Mr. Stafford's left eye is stable and requires no treatment at this time. His right eye is completely healthy and allows him to safely and efficiently drive a commercial vehicle." Mr. Stafford reported that he has driven straight trucks for 10 years, accumulating 250,000 miles, and tractor-trailer combination vehicles for 7 years, accumulating 175,000 miles. He holds a Class A CDL from Illinois. His driving record for the last 3 years shows no accidents or convictions for moving violations in a CMV.

32. Ronald A. Stevens

Mr. Stevens, 58, has amblyopia in his right eye. His best-corrected visual acuity is 20/400 in the right eye and 20/20+ in the left. Following an examination in 2002, his optometrist stated, "In my opinion, Ronald Stevens has sufficient vision to continue to perform the driving tasks required to operate a commercial vehicle." Mr. Stevens reported that he has driven straight trucks and tractor-trailer combinations for 40 years, accumulating 480,000 miles in the former and 200,000 miles in the latter. He holds a Class A CDL from Ohio, and his driving record shows he has had no accidents or convictions for moving violations in a CMV over the last 3 years.

33. Kenneth E. Vigue, Jr.

Mr. Vigue, 39, has had a cataract in his right eye since he underwent surgery for a detached retina in 1987. His visual acuity is 20/400 in the right eye and 20/20 in the left. An optometrist examined him in 2002 and stated, "Due to the longstanding nature and stability of Mr. Vigue's ocular and visual conditions, he continues to have sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Vigue, who holds a Class A CDL from the State of Washington, reported that he has been driving straight trucks and tractor-trailer combination vehicles for 18 years, accumulating 990,000 miles in the former and 180,000 in the latter. His driving record shows he has had no accidents and one conviction for a moving violation " "Failure to Secure Load" " in a CMV during the last 3 years.

34. David G. Williams

Mr. Williams, 49, is blind in the left eye due to an injury 40 years ago. His best-corrected visual acuity is 20/20 in the right eye. Following an examination in 2001, his optometrist certified, "In my opinion Mr. Williams has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Williams reported that he has operated straight trucks for 15 years, accumulating 225,000 miles. He holds an operator's license from the State of Washington, and his driving record for the last 3 years shows no accidents or convictions for moving violations in a CMV.

35. Richard A. Winslow

Mr. Winslow, 49, has amblyopia in his right eye. His best-corrected vision is 20/200 in the right eye and 20/20 in the left. Following an examination in 2002, his optometrist certified, "I believe he sees well enough to safely operate a commercial vehicle." Mr. Winslow submitted that he has driven tractor-trailer combinations for 24 years, accumulating 3.1 million miles. He holds a Class A CDL from Minnesota, and his driving record for the last 3 years shows no accidents or convictions for traffic violations in a CMV.

Request for Comments

In accordance with 49 U.S.C. 31315 and 31136(e), the FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the closing date indicated earlier in the notice.

Issued on: November 5, 2002.

Brian M. McLaughlin,

Associate Administrator, Policy and Program Development.

[FR Doc. 02–28559 Filed 11–8–02; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2001–8622]

Notice of Public Hearing; Wheeling and Lake Erie Railway Company

The Wheeling & Lake Erie Railway Company has petitioned the Federal Railroad Administration (FRA), seeking approval of the proposed discontinuance and removal of the traffic control system, on the single main track and sidings, between Spencer, Ohio, milepost 92.0 and Bellevue, Ohio, milepost 54.5, on the Hartland Subdivision, a distance of approximately 37.5 miles, and govern train movements by Track Warrant Control. This Block Signal Application proceeding is identified as Docket No. FRA–2001–8622.

The Wheeling & Lake Erie Railway Company has requested that FRA review its October 11, 2001 decision of denial. In a effort to clarify any previous misunderstandings, the FRA has conducted its own additional investigation and the FRA Railroad Safety Board made an on-site visit and high-rail trip over the application area on July 18, 2002. Notes of the visit, observations made during the trip, and additional information submitted by the railroad are contained in the public docket.

After reviewing the original and most recent proposals, the various field investigations, the previous related dockets, and letters of protest, FRA has determined that a public hearing is necessary before a final decision is made on this application.

The purpose of this public hearing is to gather additional information from all interested parties and to explore all available options and concerns before a final decision is made. Parties should be aware that available options may include reaffirmation of the denial, approval, conditional approval, or approval in part and denial in part.

FRA is specifically interested in public comment regarding the following questions: Are there differences in risk exposure at different locations on the railroad? If so, what are they? Are any of the following options in the public interest and consistent with railroad safety?

- Retention or partial retention of the existing traffic control system;
- Conversion or partial conversion of the traffic control system to an automatic block signal system; or
- Use of alternate technologies known to provide some degree of broken rail protection.

Accordingly, a public hearing is hereby set for 9 a.m. on Thursday, December 12, 2002, in the Job and Family Services Building, located at 185 Shady Lane Drive, in Norwalk Ohio. Interested parties are invited to present oral statements at the hearing.

The hearing will be an informal one and will be conducted in accordance with Rule 25 of the FRA Rules of Practice (49 CFR Part 211.25), by a representative designated by the FRA.

The hearing will be a nonadversary proceeding and, therefore, there will be no cross-examination of persons presenting statements. The FRA representative will make an opening statement outlining the scope of the hearing. After all initial statements have been completed, those persons wishing to make brief rebuttal statements will be given the opportunity to do so in the same order in which they made their initial statements. Additional procedures, if necessary for the conduct of the hearing, will be announced at the hearing.

Issued in Washington, DC on November 6, 2002.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety, Standards and Program Development.

[FR Doc. 02–28677 Filed 11–8–02; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

November 1, 2002.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before December 12, 2002, to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1466.
Form Number: None.
Type of Review: Revision.
Title: Third-Party Disclosure Requirements in IRS Regulations.
Description: This submission contains third-party disclosure regulations subject to the Paperwork Reduction Act of 1995.
Respondents: Business or other for-profit, Individuals or households, not-for-profit institutions.
Estimated Number of Respondents/Recordkeepers: 245,073,905.
Estimated Burden Hours Per Respondent/Recordkeeper: Various.
Frequency of Response: Annually.
Estimated Total Reporting/Recordkeeping Burden: 68,885,183 hours.
Clearance Officer: Glenn Kirkland, Internal Revenue Service, Room 6411–03, 1111 Constitution Avenue, NW., Washington, DC 20224, (202) 622–3428.
OMB Reviewer: Joseph F. Lackey, Jr., Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, (202) 395–7316.

Lois K. Holland,

Departmental PRA Clearance Officer.

[FR Doc. 02–28651 Filed 11–8–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 02–66]

Customs Accreditation of Intertek Testing Services as a Commercial Laboratory

AGENCY: Customs Service, Department of the Treasury.

ACTION: Notice of accreditation of Intertek Testing Services of Sulfur, Louisiana, as a commercial laboratory.

SUMMARY: Intertek Testing Services of Sulfur, Louisiana has applied to U.S. Customs under Part 151.12 of the Customs Regulations for an extension of accreditation as a commercial laboratory to analyze petroleum products under Chapter 27 and Chapter 29 of the Harmonized Tariff Schedule of the United States (HTSUS). Customs has determined that this company meets all of the requirements for accreditation as a commercial laboratory. Specifically, Intertek Testing Services has been

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granted accreditation to perform the following test methods at their Sulfur, Louisiana site: (1) API Gravity by Hydrometer, ASTM D287; (2) Water and Sediment in Crude Oils by Centrifuge, ASTM D4007; (3) Water in Crude Oil by Distillation, ASTM D4006; (4) Distillation of Petroleum Products, ASTM D86; (5) Salts in Crude Oil (Electrometric Method), ASTM D3230; (6) Sediment in Crude Oils and Fuel Oils by Extraction, ASTM D473; and (7) Percent by Weight of Sulfur by Energy-Dispersive X-Ray Fluorescence, ASTM D4294. Therefore, in accordance with Part 151.12 of the Customs Regulations, Intertek Testing Services of Sulfur, Louisiana is hereby accredited to analyze the products named above.

Location: Intertek Testing Services accredited site is located at: 2717 Maplewood Drive, Sulfur, Louisiana 70663.

EFFECTIVE DATE: November 4, 2002.

FOR FURTHER INFORMATION CONTACT: Arlene Faustermann, Science Officer, Laboratories and Scientific Services, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., Suite 1500 North, Washington, DC 20229, (202) 927–1060.

Dated: November 4, 2002.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. 02–28689 Filed 11–8–02; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Notice of Cancellation of Customs Broker License

AGENCY: Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: Pursuant to section 641 of the Tariff Act of 1930, as amended, (19 U.S.C. 1641) and the Customs Regulations (19 CFR 111.51), the following Customs broker license is canceled with prejudice.

Name	License No.	Issuing port
Ronald D. Stribling	03746	Portland, Oregon

Dated: November 4, 2002.

Jayson P. Ahern,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 02–28690 Filed 11–8–02; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Annual User Fee for Customs Broker Permit and National Permit: General Notice

AGENCY: Customs Service, Department of the Treasury.

ACTION: Notice of due date for Customs broker user fee.

SUMMARY: This is to advise Customs brokers that the annual fee of $125 that is assessed for each permit held by a broker whether it may be an individual, partnership, association or corporation, is due by January 21, 2003. This announcement is being published to comply with the Tax Reform Act of 1986.

DATES: Due date for payment of fee: January 21, 2003.

FOR FURTHER INFORMATION CONTACT: Scott J. Nielsen, Broker Management, (202) 927–0380.

SUPPLEMENTARY INFORMATION: Section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. 99–272) established that an annual user fee of $125 is to be assessed for each Customs broker permit and National permit held by an individual, partnership, association or corporation. This fee is set forth in the Customs Regulations in section 111.96 (19 CFR 111.96).

Customs Regulations provide that this fee is payable for each calendar year in each broker district where the broker was issued a permit to do business by the due date which will be published in the **Federal Register** annually. Broker districts are defined in the General Notice published in the **Federal Register**, Volume 60, No, 187, September 27, 1995.

Section 1893 of the Tax Reform Act of 1986 (Pub. L. 99–514) provides that notices of the date on which the payment is due for each broker permit shall be published by the Secretary of the Treasury in the **Federal Register** by no later than 60 days before such due date.

This document notifies brokers that for 2003, the due date of the user fee is January 21, 2003. It is expected that the annual user fees for brokers for subsequent years will be due on or about the twentieth of January of each year.

Dated: November 1, 2002.

Jayson P. Ahern,

Assistont Commissioner, Office of Field Operations.

[FR Doc. 02–28688 Filed 11–8–02; 8:45 am]

BILLING CODE 4820–02–P

Corrections

Federal Register

Vol. 67, No. 218

Tuesday, November 12, 2002

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 223

[Docket No. 010521133–1307–02; I.D. No. 050101B]

Endangered and Threatened Species; Final Rule Governing Take of Four Threatened Evolutionarily Significant Units (ESUs) of West Coast Salmonids

Correction

In rule document 02–440 beginning on page 1116 in the issue of Wednesday, January 9, 2002 make the following correction:

Appendix A to §227.203 [Corrected]

On page 1133, in the third column, in appendix A, after the fourth paragraph, paragraph 3. was duplicated, the fifth paragraph should read "4. Viable Salmonid Populations and the Recovery of Evolutionarily Significant Units. (June 2000).".

[FR Doc. C2–440 Filed 11–8–02; 8:45 am]

BILLING CODE 1505–01–D

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7403–8]

Preliminary Administrative Determination Document on the Question of Whether Ferric Ferrocyanide is One of the "Cyanides" Within the Meaning of the List of Toxic Pollutants Under the Clean Water Act

Correction

In notice document 02–28006 appearing on page 67183 in the issue of Monday, November 4, 2002 make the following correction:

On page 67183, in the third column, under the heading **DATES**, in the second line, "December 4, 2002" should read "January 3, 2003".

[FR Doc. C2–28006 Filed 11–8–02; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–CE–71–AD; Amendment 39–12925; AD 2002–22–01]

RIN 2120–AA64

Airworthiness Directives; MORAVAN a.s. Models Z–143L and Z–242L Airplanes

Correction

In rule document 02–27201 beginning on page 66540 in the issue of Friday, November 1, 2002 make the following correction:

§39.13 [Corrected]

On page 66541, in the third column, in §39.13, in the first line, "2002–22 01" should read "2002–22–01".

[FR Doc. C2–27201 Filed 11–8–02; 8:45 am]

BILLING CODE 1505–01–D

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Federal Register

Tuesday,
November 12, 2002

Part II

Nuclear Regulatory Commission

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations; Notice

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NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from October 18, 2002, through October 31, 2002. The last biweekly notice was published on October 29, 2002 (67 FR 66005).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By December 12, 2002, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714,[1] which is available at the Commission's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff, or may be delivered to the Commission's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. Because of continuing disruptions in delivery of mail to United States Government offices, it is requested that petitions for leave to intervene and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov*. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and because of continuing disruptions in delivery of mail to United States Government offices, it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. A copy of the request for hearing and petition for leave to intervene should also be sent to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC web site, *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, 304–415–4737 or by e-mail to *pdr@nrc.gov*.

AmerGen Energy Company, LLC, Docket No. 50–289, Three Mile Island Nuclear Station, Unit 1, Dauphin County, Pennsylvania

Date of amendment request: September 30, 2002.

Description of amendment request: The proposed amendment would revise the technical specification (TS) definition of containment integrity to ensure that all power-operated valves, relief valves, and check valves are included. The proposed changes would provide operability requirements to include the Type III containment isolation valves (CIVs), those valves that are in line with a containment isolation barrier consisting of a closed system within containment (*e.g.*, main steam isolation valves (MSIVs)). The proposed amendment would revise the applicability of CIV operability requirements for those plant conditions when containment integrity applies and the reactor is not critical. The proposed amendment would clarify that the exceptions to containment integrity provided in TS 3.6.1 apply equally to TS 3.6.2, whenever containment integrity is required. The proposed amendment would incorporate provisions for intermittent manual operation of the CIVs under administrative controls. The proposed amendment would also delete TS 4.8, "Main Steam Isolation Valves," along with the reference to TS 4.8 in Table 4.1–2, Item No. 6. This change would delete a monthly requirement for a partial stroke test, but would not affect testing performed in accordance with the American Society for Mechanical Engineers Boiler and Pressure Vessel Code (ASME Code), which the licensee states would continue to ensure operability of the MSIVs. The proposed changes would also revise Figure 5–1, "Extended Plot Plan," to correct inaccurate information, and Figure 5–3, "Gaseous Effluent Release Points and Liquid Effluent Outfall Locations," and its accompanying table to reflect the modification which permanently isolated the liquid outfall associated with emergency discharge from Three Mile Island Nuclear Station, Unit 2.

Additional administrative and clerical changes are also included in the proposed TSs to delete obsolete references to TS sections that have been deleted, improve the consistency and clarity of the TSs, and revise the Bases of TS 3.1.6 to delete the setpoint range for emergency core cooling system cubicle leak detection and replace it with a single value.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation of the facility in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

Changes to the definition of containment integrity and the additional operability requirements for Containment Isolation Valves (CIVs) provide additional requirements and add clarity to the Technical Specifications. The addition of a provision for permitting intermittent opening of normally closed CIVs or manual control of power-operated CIVs under administrative control is consistent with the Standard Technical Specifications or a similar provision in the current TMI Unit 1 Technical Specifications. This assures that the containment will be isolated if necessary in the event of an accident previously evaluated and offsite dose from an accident will not be significantly increased. The additional operability requirements provide additional conservatism to the technical specifications.

None of the changes included with this License Amendment Request will result in any change to the configuration of plant components, affect any accident initiators associated with any accident previously evaluated or result in a significant increase

[1] The most recent version of Title 10 of the Code of Federal Regulations, published January 1, 2002, inadvertently omitted the last sentence of 10 CFR 2.714(d) and paragraphs (d)(1) and (d)(2) regarding petitions to intervene and contentions. For the complete, corrected text of 10 CFR 2.714(d), please see 67 FR 20884; April 29, 2002.

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in the offsite dose consequences of accidents previously evaluated. The administrative changes are needed to correct errors and the editorial changes will improve the clarity, consistency and readability of the Technical Specifications and do not affect the intent or interpretation.

Therefore, operation of the facility in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Operation of the facility in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The changes associated with this proposed amendment do not result in any additional hardware or design changes to structures, systems, or components (SCCs) of the plant; nor will any of these changes affect the ability of an SSC to perform its design function. No new failure mechanisms, malfunctions, or accident initiators will be introduced that were not considered in the design and licensing basis.

Therefore, operation of the facility in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Operation of the facility in accordance with the proposed amendment will not involve a significant reduction in a margin of safety.

Additional operability requirements provide conservative improvements to the Technical Specifications. The addition of a provision for permitting intermittent opening of normally closed CIVs or manual control of power-operated CIVs under administrative control is consistent with the Standard Technical Specifications or with similar provisions in the current TMI Unit 1 Technical Specifications. This condition assures that the containment will be isolated if necessary in the event of an accident. Changes to the MSIV [main steam isolation valve] test requirements do not alter the Inservice Test requirements in accord[ance with] the American Society of Mechanical Engineers (ASME) [Boiler and Pressure Vessel] Code, which will continue to assure operability. The administrative changes are needed to correct errors and the editorial changes will improve the clarity, consistency, and readability of the Technical Specifications and do not affect the intent or interpretation.

None of the changes included with this request have the potential to significantly reduce a margin of safety. These changes do not affect the design of a plant component or instrument setpoint so as to [a]ffect its design basis or affect the controlling numerical value for any parameter established in the updated final safety analysis report or the license.

Therefore, operation of the facility in accordance with the proposed amendment will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Edward J. Cullen, Jr., Esquire, Vice President, General Counsel and Secretary, Exelon Generation Company, LLC, 300 Exelon Way, Kennett Square, PA 19348.

NRC Section Chief: Richard J. Laufer.

AmerGen Energy Company, LLC, Docket No. 50–289, Three Mile Island Nuclear Station, Unit 1, Dauphin County, Pennsylvania

Date of amendment request: September 30, 2002.

Description of amendment request: The proposed amendment would revise Technical Specification (TS) Section 6.8.5, "Reactor Building Leakage Rate Testing Program," to allow a one-time deferral of the next Type A, Containment Integrated Leak Rate Test (ILRT) from October 2003 to no later than September 2008.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed Technical Specification change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed revision to Technical Specification Section 6.8.5 ("Reactor Building Leakage Rate Testing Program") involves a one-time extension to the current interval for Type A containment testing. The current test interval of ten (10) years would be extended on a one-time basis to no longer than fifteen (15) years from the last Type A test (1993). The proposed Technical Specification change does not involve a physical change to the plant or a change in the manner in which the plant is operated or controlled. The reactor containment is designed to provide an essentially leak tight barrier against the uncontrolled release of radioactivity to the environment for postulated accidents. As such, the reactor containment itself and the testing guidelines invoked to periodically demonstrate the integrity of the reactor containment exist to ensure the plant's ability to mitigate the consequences of an accident, and do not involve the prevention or identification of any precursors of an accident. Therefore, the proposed Technical Specification change does not involve a significant increase in the probability of an accident previously evaluated.

The proposed change involves only the extension of the interval between Type A containment leakage tests. Type B and C containment leakage tests will continue to be performed at the frequency currently required by plant Technical Specifications and NEI [Nuclear Energy Institute] 94–01. Industry experience has shown, as documented in NUREG–1493, that Type B and C containment leakage tests have identified a very large percentage of containment leakage paths and that the percentage of containment leakage paths that are detected only by Type A testing is very small. TMI, Unit 1 ILRT test history supports this conclusion. NUREG–1493 concluded, in part, that reducing the frequency of Type A containment leak tests to once per twenty (20) years leads to an imperceptible increase in risk. Therefore, the proposed Technical Specification change does not involve a significant increase in the consequences of an accident previously evaluated.

2. The proposed Technical Specification change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed revision to [the] Technical Specifications involves a one-time extension to the current interval for Type A containment testing. The reactor containment and the testing guidelines invoked to periodically demonstrate the integrity of the reactor containment exist to ensure the plant's ability to mitigate the consequences of an accident and do not involve the prevention or identification of any precursors of an accident. The proposed Technical Specification change does not involve a physical change to the plant or the manner in which the plant is operated or controlled. Therefore, the proposed Technical Specification change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed Technical Specification change does not involve a significant reduction in a margin of safety.

The proposed revision to [the] Technical Specifications involves a one-time extension to the current interval for Type A containment testing. The proposed Technical Specification change does not involve a physical change to the plant or a change in the manner in which the plant is operated or controlled. The specific guidelines and conditions of the Reactor Building Leakage Rate Testing Program, as defined in [the] Technical Specifications, exist to ensure that the degree of reactor building containment structural integrity and leak-tightness that is considered in the plant safety analysis is maintained. The overall containment leakage rate limit specified by [the] Technical Specifications is maintained. The proposed change involves only the extension of the interval between Type A containment leakage tests. Type B and C containment leakage tests will continue to be performed at the frequency currently required by plant Technical Specifications and NEI–94–01.

NUREG–1493 concludes that reducing the Type A Integrated Leak Rate Test (ILRT) testing frequency to one per twenty (20) years was found to lead to imperceptible increase in risk. Additionally, while Type B and C tests identify the vast majority (greater than 85%) of all potential leak paths, performance-based alternatives are feasible without significant risk impacts. Since leakage contributes less than 0.1 percent of overall risk under existing guidelines, the overall effect is very small. The TMI, Unit 1 plant specific risk analysis supports this conclusion. Therefore, the proposed Technical Specification change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Edward J. Cullen, Jr., Esquire, Vice President, General Counsel and Secretary, Exelon Generation Company, LLC, 300 Exelon Way, Kennett Square, PA 19348.

NRC Section Chief: Richard J. Laufer.

Carolina Power & Light Company, Docket No. 50–324, Brunswick Steam Electric Plant, Unit 2, Brunswick County, North Carolina

Date of amendment request: September 16, 2002.

Description of amendment request: The proposed change revises a license condition, contained in Appendix B of the Technical Specifications, to reflect a modification to support the implementation of an alternative source term (AST) on Unit 2 that would ensure seismic ruggedness of the alternate leakage treatment (ALT) piping and appendages. As a result of further modification development, it has been determined that only one check valve will be installed (*i.e.*, MVD–V5009) by the Unit 2 ALT piping modification. The proposed license amendment revises the affected license condition to require that only MVD–V5009 must be added to the facility check valve program.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change revises a license condition, added to Appendix B, "Additional Conditions," of the Unit 2 Technical Specifications (TSs) in Amendment 246, which approved the implementation of Alternative Source Term. This license condition currently requires that alternate leakage treatment (ALT) path check valves MVD–V5008 and MDV–V5009 be included in the facility check valve program. Differences between the Unit 1 and Unit 2 main steam line isolation valve drain piping, which will be within the ALT pathway pressure boundary after a loss-of-coolant-accident (LOCA), obviate the need to install check valve MVD–V5008. This is because the Unit 2 steam bypass system was designed for full bypass capability and thus has two steam bypass chests; whereas Unit 1 has only one steam bypass chest. The Unit 2 design includes a drain line from the steam bypass chest, which ties into the same line that on Unit 1 was isolated post-LOCA by use of the 1–MVD–V5008 valve. Since, for Unit 2, the entire line is required to be seismically verified, up to and including the steam bypass chest, there was no benefit in installing the new check valve MVD–V5008 on Unit 2.

CP&L has performed an evaluation of the Unit 2 ALT path modification, in accordance with the provisions of 10 CFR 50.59, and determined that the modification can be implemented without prior NRC approval. As such, the requested amendment merely aligns the wording of the current license condition with the design of the Unit 2 ALT path modification. The original intent of the license condition was to ensure that check valves being installed as a result of the modification would be included in the facility check valve program. This intent is maintained by the proposed license condition. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

As stated above, CP&L has performed an evaluation of the Unit 2 ALT path modification, in accordance with the provisions of 10 CFR 50.59, and determined that the modification can be implemented without prior NRC approval. The requested amendment merely aligns the wording of the current license condition with the design of the Unit 2 ALT path modification. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change revises a license condition, added to Appendix B, Unit 2 TSs in Amendment 246. Therefore, the proposed change does not involve a significant reduction in a margin of safety. This license condition currently requires that ALT path check valves MVD–V5008 and MDV–V5009 be include in the facility check valve program. The proposed revision to affected Unit 2 license condition eliminates reference to a CP&L September 27, 2001, submittal and the requirement to include MVD–V5008 in the facility check valve program. The requested amendment merely aligns the wording of the current license condition with the design of the Unit 2 ALT path modification which has been evaluated, in accordance with the provisions of 10 CFR 50.59, and it has been determined that the modification can be implemented without prior NRC approval. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

Based on the above, CP&L concludes that the proposed amendment presents no significant hazards consideration under the standards set forth in 10 CFR 50.92(c), and, accordingly, a finding of "no significant hazards consideration" is justified.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: William D. Johnson, Vice President and Corporate Secretary, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Section Chief: Allen G. Howe.

Dominion Nuclear Connecticut, Inc., Docket No. 50–336, Millstone Power Station, Unit No. 2, New London County, Connecticut

Date of amendment request: September 26, 2002.

Description of amendment request: The proposed amendment would change Technical Specification (TS) 3.3.3.1, "Monitoring Instrumentation, Radiation Monitoring," TS 3.3.4, "Instrumentation, Containment Purge Valve Isolation Signal," TS 3.7.6.1, "Plant Systems, Control Room Emergency Ventilation System," TS 3.9.4, "Refueling Operations, Containment Penetrations," TS 3.9.8.1, "Refueling Operations, Shutdown Cooling and Coolant Circulation—High Water Level," TS 3.9.8.2, "Refueling Operations, Shutdown Cooling and Coolant Circulation—Low Water Level," and TS 3.9.15, "Refueling Operations, Storage Pool Area Ventilation System." In addition, the TS Bases would be revised to address the proposed changes. The basis for the proposed changes is a re-analysis of the limiting design basis Fuel Handling Accident using an Alternative Source Term in accordance with Title 10 of the Code of Federal Regulations (10 CFR) section 50.67 and Regulatory Guide 1.183.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes involve the reanslysis of a Fuel Handling Accident (FHA)

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in the Containment, FHA in the Spent Fuel Pool Area, and the Cask Drop Accident in the Spent Fuel Pool Area. The new analyses, based on the Alternative Source Term (AST) in accordance with 10 CFR 50.67, will replace the existing analyses which are based on methodologies and assumptions derived from Regulatory Guide 1.25, Standard Review Plan (SRP) 15.7.4, SRP 15.7.5, and TID–14844. Because different methodologies are used, the new calculated doses are not directly comparable to the current calculated doses. If a consistent basis is used, it is expected that the new analyses assumptions in some cases result in a decrease in dose at the site boundary or to control room personnel and in some cases result in an increase in dose at the site boundary or to control room personnel. However, in all cases the analyses results are within the 10 CFR 50.67 and Regulatory Guide 1.183 acceptance criteria.

As a result of the new analyses, changes to the Technical Specifications are proposed which take credit for the new analyses. The proposed changes to the Technical Specifications modify requirements regarding Containment closure and Spent Fuel Pool area ventilation during movement of irradiated fuel assemblies in Containment and in the Spent Fuel Pool area. The proposed changes will allow Containment penetrations, including the equipment door and personnel airlock door, to be maintained open under administrative control. The proposed changes will eliminate the requirements for automatic closure of Containment purge during Mode 6 fuel movement. The technical specifications associated with storage pool area ventilation will be deleted. These proposed changes do not involve physical modifications to plant equipment and do not change the operational methods or procedures used for the physical movement of irradiated fuel assemblies in Containment or in the Spent Fuel Pool area. As such, the proposed changes have no effect on the probability of the occurrence of any accident previously evaluated.

The revised requirements apply only when irradiated fuel assemblies are being moved in Containment or the Spent Fuel Pool area. Previously evaluated accidents with the plant in other conditions including Modes 1 through Mode 5 are not impacted. The AST methodology is used to evaluate a FHA that is postulated to occur during fuel movement activities in Containment and in the Spent Fuel Pool area. The AST analyses follow the guidance of NRC Regulatory Guide 1.183 and the acceptance criteria of 10 CFR 50.67. The analyses demonstrate that the dose consequences meet the regulatory acceptance criteria.

The FHA Analyses conservatively assume that the Containment building and the fuel storage building, including ventilation filtration systems for those buildings do not diminish or delay the assumed fission product release. The analysis does take credit for, and technical specifications enforce, the presence of 23 feet of water over the irradiated fuel while fuel movement activities are being performed. The analysis also takes credit for, and the technical specification bases enforce a fuel decay time of at least 72 hours. In addition, administrative controls are put in place to provide for closure of Containment atmosphere boundary openings in the event of a FHA. Use of an alternative analysis method does not affect fuel parameters or the equipment used to handle the fuel. The above proposed changes to the Technical Specifications reflect assumptions made in the FHA Analyses. The other changes to the Technical Specifications are also consistent with the revised FHA Analyses. Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendment involves the use of an alternative analysis methodology for the evaluation of the dose consequences from a FHA that is postulated to occur in either the Containment or the Spent Fuel Pool area. The analysis demonstrates that Containment closure conditions and automatic closure of the Containment purge are not required to maintain dose consequence within regulatory limits following a postulated FHA inside Containment. Therefore, the new analysis supports proposed changes to requirements for Containment closure during movement of irradiated fuel assemblies in Containment. The analysis results also demonstrate that operation of the Spent Fuel Pool area ventilation system is not required to maintain dose consequences within regulatory limits following a postulated FHA in the Spent Fuel Pool area. The Containment closure components (e.g., equipment door, personnel airlock doors, and various Containment penetrations) and filtration systems are not accident initiators. The proposed changes do not involve the addition of new systems or components nor do they involve the modification of existing plant systems. The proposed changes do not affect the way in which a FHA is postulated to occur. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Involve a significant reduction in a margin of safety.

The existing dose analysis methodology and assumptions demonstrate that the dose consequences of a FHA are within regulatory limits for whole body and thyroid doses as established in 10 CFR 100. The alternative dose analysis methodology and assumptions also demonstrate that the dose consequences of a FHA are within regulatory limits. The limits applicable to the alternative analysis are established in 10 CFR 50.67 in conjunction with the TEDE (total effective dose equivalent) acceptance criteria directed in Regulatory Guide 1.183. The acceptance criteria for both dose analysis methods have been developed for the purpose of evaluating design basis accidents to demonstrate adequate protection of public health and safety. An acceptable margin of safety is inherent in both types of acceptance criteria. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Senior Nuclear Counsel, Dominion Nuclear Connecticut, Inc., Rope Ferry Road, Waterford, CT 06385.

NRC Section Chief: James W. Andersen (Acting).

Duke Energy Corporation, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Located in Mecklenburg County, North Carolina

Date of amendment request: September 30, 2002.

Description of amendment request: The proposed amendments would revise the Technical Specifications for the plant's reactor building integrity. The proposed amendment would (1) modify the surveillance requirement to be consistent with the design of the reactor building access openings, (2) modify the frequency of the surveillance requirement for visual inspections for the exposed interior and exterior surface of the reactor building, and (3) modify the administrative controls for the containment leakage rate testing program.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

As required by 10 CFR 50.91(a)(1), this analysis is provided to demonstrate that the proposed license amendment does not involve a significant hazard.

Conformance of the proposed amendment to the standards for a determination of no significant hazards, as defined in 10CFR50.92, is shown in the following:

(1) Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed amendment to the Technical Specifications does not result in the alteration of the design, material, or construction standards that were applicable prior to the change. The proposed change will not result in the modification of any system interface that would increase the likelihood of an accident since these events are independent of the proposed change. The proposed amendment will not change, degrade, or prevent actions, or alter any assumptions previously made in evaluating the radiological consequences of an accident described in the [Updated Final Safety Analysis Report] UFSAR. Therefore, the proposed amendment does not result in the increase in the probability or consequences of an accident previously evaluated.

(2) Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

No. This change does not create the possibility of a new or different kind of accident from any accident previously evaluated. No new accident causal mechanisms are created as a result of NRC approval of this amendment request. No changes are being made to the facility which should introduce any new accident causal mechanisms. This amendment request does not impact any plant systems that are accident initiators, since the containment and reactor building function primarily as accident mitigators.

(3) Does the proposed change involve a significant reduction in margin of safety?

No. Implementation of this amendment would not involve a significant reduction in the margin of safety. Margin of safety is related to the confidence in the ability of the fission product barriers to perform their design functions during and following an accident situation, including the performance of the containment and reactor building. The ability of the containment and reactor building to perform their design function will not be impaired by the implementation of this amendment at McGuire Nuclear Station. Consequently, no safety margins will be impacted.

Conclusion

Based on the preceding analysis, it is concluded that the proposed license amendment does not involve a Significant Hazards Consideration Finding as defined in 10 CFR 50.92.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ms. Lisa F. Vaughn, Legal Department (PB05E), Duke Energy Corporation, 422 South Church Street, Charlotte, North Carolina 28201–1006.

NRC Section Chief: John A. Nakoski.

Duke Energy Corporation, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, and Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, Located in Mecklenburg County, North Carolina and York County, South Carolina

Date of amendment request: August 29, 2002.

Description of amendment request: The proposed amendments would revise the Technical Specifications (TS) for the plants direct-current (DC) system batteries. The Surveillance Requirements for the current TS for DC sources require a battery service test to be performed each 18 months. A note provides that, on a once per 60 month frequency, the service test requirement may be met by performing a modified performance test. The TS change would remove the once per 60 month restriction, thus allowing the requirement for a service test to be met by a modified performance test that bounds the conditions of the service test. The licensee states that the proposed change will allow the use of a consistent battery testing technique in order to provide consistent data for trending battery performance.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The following discussion is a summary of the evaluation of the change contained in this proposed amendment against the 10 CFR 50.92(c) requirements to demonstrate that all three standards are satisfied. A no significant hazards consideration is indicated if operation of the facility in accordance with the proposed amendment would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated, or

2. Create the possibility of a new or different kind of accident from any accident previously evaluated, or

3. Involve a significant reduction in a margin of safety.

First Standard

Operation of the facilities in accordance with this amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated. The Class 1E DC [direct-current] power system is not an initiator to any accident sequence analyzed in the Updated Final Safety Analysis Report. The safety features of the batteries will continue to function as designed and in accordance with all applicable TS. The design and operation of the system is not being modified by this proposed amendment. This amendment only revise(s) the requirements for testing the batteries. Therefore, there will be no impact on any accident probabilities or consequences.

Second Standard

Operation of the facilities in accordance with this amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated. No new accident causal mechanisms are created as a result of this proposed amendment. No changes are being made to any structure, system, or component which will introduce any new accident causal mechanisms. This amendment request does not impact any plant systems that are accident initiators and does not impact any safety analysis.

Third Standard

Operation of the facilities in accordance with this amendment would not involve a significant reduction in a margin of safety. The change to the battery surveillance will ensure each station's batteries are maintained in a highly reliable manner. The batteries will continue to be tested every 18 months with the modified performance test enveloping the service test. The equipment powered by the batteries will continue to provide adequate power to safety related loads in accordance with analysis assumptions.

Based on the preceding discussion, Duke Energy has concluded that the proposed amendment does not involve a significant hazard consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ms. Lisa F. Vaughn, Legal Department (PB05E), Duke Energy Corporation, 422 South Church Street, Charlotte, North Carolina 28201–1006.

NRC Section Chief: John A. Nakoski.

Entergy Operations, Inc., Docket No. 50–368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of amendment request: September 19, 2002.

Description of amendment request: The proposed amendment would extend the allowable outage time (AOT) for the emergency diesel generators (EDGs) from 72 hours to a maximum of 14 days.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed TS [technical specification] change does not affect the design, operational characteristics, function or reliability of the EDGs. The EDGs are not the initiators of previously evaluated accidents. The EDGs are designed to mitigate the consequences of previously evaluated accidents including a loss of offsite power. Extending the AOT for a single EDG would not affect the previously evaluated accidents since the remaining EDG supporting the redundant Engineered Safety Features (ESF) systems and the AACDG [alternate alternating current diesel generator], which has the capability to support either train of ESF systems, would continue to be available to perform the accident mitigating functions.

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The duration of a TS AOT is determined considering that there is a minimal possibility that an accident will occur while a component is removed from service. A risk-informed assessment was performed which concluded that the increase in plant risk is small and consistent with the guidance contained in Regulatory Guide 1.177.

The current TS requirements ensure that redundant systems relying on the remaining EDG are operable. In addition to these requirements, administrative controls will be established to provide assurance that the AOT extension is not applied during adverse weather conditions that could potentially affect offsite power availability. Administrative controls are also implemented to avoid or minimize risk significant plant configurations during the time when an EDG is removed from service.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not involved a change in the design, configuration, or method of operation of the plant that could create the possibility of a new or different kind of accident. The proposed change extends the AOT currently allowed by the TS to 14 days. It also provides for a reduction to 72 hours, not to exceed 14 days, should the AACDG become inoperable during the extended AOT.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The ESF systems required to mitigate the consequences of postulated accidents consist of two independent trains. The ESF systems on either of the two trains provide for the minimum safety functions necessary to shut down the unit and maintain it in a safe shutdown condition. Each of the two trains can be powered from one of the offsite power sources of its associated EDG. In addition, the AACDG is available to provide power to either or both of the two trains. This design provides adequate defense in depth to ensure that diverse power sources are available to accomplish the required safety functions. Thus, with one EDG out of service, there are sufficient means to accomplish the safety functions and prevent the release of radioactive material in the event of an accident.

The proposed change does not affect any of the assumptions or inputs to the Final Safety Analyses Report and does not erode the decrease in severe accident risk achieved with the issuance of the Station Blackout (SBO) Rule, 10 CFR 50.63, "Loss of All Alternating Current Power."

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Robert A. Gramm.

Entergy Operations, Inc., Docket No. 50–368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of amendment request: September 19, 2002.

Description of amendment request: The proposed amendment would extend the allowed outage time (AOT) for a single inoperable low pressure safety injection (LPSI) train from 72 hours to 7 days. In addition, an AOT of 72 hours would be included for other conditions where the equivalent of a single emergency core cooling system (ECCS) subsystem flow is still available to both the LPSI and high pressure safety injection (HPSI) trains. Also, if 100% of ECCS flow is unavailable due to two inoperable HPSI or LPSI trains, an action statement would been added to restore at least one of each HPSI and LPSI train to operable status within one hour.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

The HPSI and LPSI trains are part of the ECCS subsystem. Inoperable HPSI or LPSI components are not accident initiators in any accident previously evaluated. Therefore, this change does not involve an increase in the probability of an accident previously evaluated. Both the HPSI and LPSI systems are primarily designed to mitigate the consequences of a Loss of Coolant Accident (LOCA). These proposed changes do not affect any of the assumptions used in the deterministic LOCA analysis. Hence the consequences of accidents previously evaluated do not change.

In order to fully evaluate the LPSI AOT extension, probabilistic safety analysis (PSA) methods were utilized. The results of the analyses show no significant increase in the core damage frequency. As a result, there would be no significant increase in the consequences of an accident previously evaluated. The analyses are detailed in CE NPSD–995, Combustion Engineering Owners Group *Joint Applications Report for Low Pressure Safety Injection System AOT Extension.*

The proposed change allows a combination of equipment from redundant trains to be inoperable provided that at least the equivalent flow of a single HPSI and LPSI train of ECCS remains operable. Analyzed events are assumed to be initiated by the failure of plant structures, systems or components. Allowing equipment from redundant trains to constitute a single operable train does not increase the probability that a failure leading to an analyzed event will occur. The ECCS components are passive until an actuation signal is generated. This change does not increase the failure probability of the ECCS components. As such, the probability of occurrence for a previously analyzed accident is not significantly increased.

Therefore, the proposed change will not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not change the design or configuration of the plant. No new equipment is being introduced, and installed equipment is not being operated in a new or different manner. There is no change being made to the parameters within which the plant is operated, and the setpoints at which protective or mitigative actions are initiated are unaffected by this change. No alteration in the procedures, which ensure the plant remains within analyzed limits, is being proposed and no change is being made to the procedures relied upon to respond to an off-normal event. As such, no new failure modes are being introduced. The proposed change will only provide the plant some flexibility in maintaining the minimum equipment required to be Operable to perform the ECCS function while in this Condition. The change does not alter assumptions made in the safety analysis and licensing basis.

Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

The CE NPSD–995 and ANO–2 [Arkansas Nuclear One, Unit 2] PSA evaluations demonstrate that the changes are essentially risk neutral or risk beneficial. The margin of safety is established through equipment design, operating parameters, and the setpoints at which automatic actions are initiated. None of these are adversely impacted by the proposed change. Sufficient equipment remains available to actuate upon demand for the purpose of mitigating a transient event. The proposed change, which allows operation to continue for up to 72 hours with components inoperable in both ECCS subsystems, is acceptable based on the remaining ECCS components providing 100% of the required ECCS flow.

Therefore, the proposed change will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Robert A. Gramm.

Entergy Nuclear Generation Company, Docket No. 50–293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of amendment request: December 12, 2001, as supplemented on October 10, 2002.

Description of amendment request: The proposed amendment would change the Technical Specification Tables 3.2.A, 3.2.B, 4.2.A, and 4.2.B. The proposed changes affect various instrument trip level settings and decreases the calibration frequencies for a variety of instruments. The proposed changes also involve clarifications to the Reactor Water Cleanup system trip configuration and the titles of certain trip systems. In addition, the proposed changes would make certain editorial and administrative corrections. The proposed setpoint changes and calibration frequencies are based on the licensee's evaluation.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The methodology used to determine the proposed trip level settings and surveillance intervals ensure adequate performance of the affected instrumentation. In addition, the affected instruments are not initiators of any accident previously evaluated. Therefore, the proposed trip level setting and surveillance intervals will not involve a significant increase in the probability of an accident previously evaluated.

The proposed changes to trip level settings and surveillance intervals were establish using methodologies subject to 10 CFR Appendix B Quality Assurance program and ensure existing radiological limits are met. Therefore, the proposed trip level settings and surveillance intervals will not involve a significant increase in the consequences of an accident previously evaluated.

Other changes are editorial or administrative in nature and can not significantly increase the probability or consequences of an accident previously evaluated.

2. Will not create the possibility of a new or different kind of accident from any accident previously evaluated.

No new or different [kind] of accidents or malfunctions than those previously analyzed in Pilgrim's UFSAR [Updated Final Safety Analysis Report] are introduced by this proposed change because there are no new failure modes introduced. Therefore, the proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Will not involve a significant reduction in the margin of safety.

The proposed changes to trip level settings and surveillance intervals were established using approved methodologies subject to a 10 CFR, Appendix B, Quality Assurance program and existing radiological limits are met. These changes do not impact Pilgrim's configuration or operation.

Editorial and administrative type changes do not impact the operation or configuration of Pilgrim. For the above reasons the proposed change does not result in a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: J. M. Fulton, Esquire, Assistant General Counsel, Pilgrim Nuclear Power Station, 600 Rocky Hill Road, Plymouth, Massachusetts, 02360–5599.

NRC Section Chief: James W. Andersen, Acting.

Entergy Nuclear Operations, Inc., Docket No. 50–293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of amendment request: July 5, 2002.

Description of amendment request: The proposed amendment would relocate the "Primary System Boundary—Shock Suppressors (Snubbers)," Technical Specifications (TS) 3/4.6.I, from the TS to the Updated Final Safety Analysis Report (UFSAR).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below.

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No. The proposed change is administrative in nature and does not involve the modification of any plant equipment or affect basic plant operation. Snubbers are not assumed to be an initiator of any analyzed event, nor are they assumed in the mitigation of consequences of accidents. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated[.]

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No. The proposed change does not involve any physical alteration of plant equipment and does not change the method by which any safety-related system performs its function. As such, no new or different types of equipment will be installed, and the basic operation of installed equipment is unchanged. The methods governing plant operation and testing remain consistent with current safety analysis assumptions. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No. The proposed change is administrative in nature, does not negate any existing requirement, and does not adversely affect existing plant safety margins or the reliability of the equipment assumed to operate in the safety analysis. As such, there are no changes being made to safety analysis assumptions, safety limits or safety system settings that would adversely affect plant safety as a result of the proposed change. Margins of safety are unaffected by requirements that are retained, but relocated from the Technical Specifications to the UFSAR. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: J. M. Fulton, Esquire, Assistant General Counsel, Pilgrim Nuclear Power Station, 600 Rocky Hill Road, Plymouth, Massachusetts 02360–5599.

NRC Section Chief: James W. Andersen, Acting.

Entergy Nuclear Operations, Inc., Docket No. 50–293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of amendment request: August 16, 2002.

Description of amendment request: The proposed amendment would relocate certain Control Rod Block functions from Technical Specifications 3/4.2.C, "Instrumentation that Initiates Rod Blocks," to the Updated Final Safety Analysis Report.

Basis for proposed no significant hazards consideration determination:

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As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below.

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change is administrative in nature and does not involve the modification of any plant equipment or affect basic plant operation. These control rod blocks are not assumed to be an initiator of any analyzed event, nor are they assumed in the mitigation of consequences of accidents. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not involve any physical alteration of plant equipment and does not change the method by which any safety-related system performs its function. As such, no new or different types of equipment will be installed, and the basic operation of installed equipment is unchanged. The methods governing plant operation and testing remain consistent with current safety analysis assumptions. Therefore, the proposed change does not create the possibility of a new or different kind of accident form any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change is administrative in nature, does not negate any existing requirement, and does not adversely affect existing plant safety margins or the reliability of the equipment assumed to operate in the safety analysis. As such, there are no changes being made to safety analysis assumptions, safety limits or safety system settings that would adversely affect plant safety as a result of the proposed change. Margins of safety are unaffected by requirements that are retained, but relocated from the Technical Specifications to the FSAR [Final Safety Analysis Report]. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: J. M. Fulton, Esquire, Assistant General Counsel, Pilgrim Nuclear Power Station, 600 Rocky Hill Road, Plymouth, Massachusetts 02360–5599.

NRC Section Chief: James W. Andersen, Acting.

Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc., Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of amendment request: October 4, 2002.

Description of amendment request: Change the Technical Specifications by extending the primary containment integrated leak rate testing (ILRT) interval on a one-time basis from 10 years to no longer than approximately 10.6 years.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. The operation of Vermont Yankee Nuclear Power Station in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed revision to Technical Specifications 6.7.C "Primary Containment Leak Rate Testing Program" involves a one-time extension to the current interval for Type A containment testing. The current test interval of 10 years would be extended on a one-time basis to no longer than approximately 10.6 years from the last Type A test. The proposed Technical Specification change does not involve a physical change to the plant or a change in the manner in which the plant is operated or controlled. The reactor containment is designed to provide an essentially leak tight barrier against the uncontrolled release of radioactivity to the environment for postulated accidents. As such, the reactor containment itself and the testing requirements invoked to periodically demonstrate the integrity of the reactor containment exist to ensure the plant's ability to mitigate the consequences of an accident, and do not involve the prevention or identification of any precursors of anaccident. Therefore, the proposed Technical Specification change does not involve a significant increase in the probability of an accident previously evaluated.

The proposed change involves only the extension of the interval between Type A containment leak rate tests. Type B and C containment leak rate tests will continue to be performed at the frequency currently required by plant Technical Specifications. Industry experience has shown, as documented in NUREG[–]1493, that Type B and C containment leakage tests have identified a very large percentage of containment leakage paths and that the percentage of containment leakage paths that are detected only by Type A testing is very small. VY's [Vermont Yankee] ILRT test history supports this conclusion. NUREG–1493 concluded, in part, that reducing the frequency of Type A containment leak tests to once per twenty (20) years leads to an imperceptible increase in risk. The integrity of the reactor containment is subject to two types of failure mechanisms which can be categorized as (1) activity based and (2) time based. Activity based failure mechanisms are defined as degradation due to system and/or component modifications or maintenance. Local leak rate test requirements and administrative controls such as design change control and procedural requirements for system restoration ensure that containment integrity is not degraded by plant modifications or maintenance activities. The design and construction requirements of the reactor containment itself combined with the containment inspections performed in accordance with ASME [American Society of Mechanical Engineers] Section XI, the Maintenance Rule and Licensing commitments related to containment coatings serve to provide a high degree of assurance that the containment will not degrade in a manner that is detectable only by Type A testing. Therefore, the proposed Technical Specification change does not involve a significant increase in the consequences of an accident previously evaluated.

2. The operation of Vermont Yankee Nuclear Power Station in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed revision to the Technical Specifications involves a one-time extension to the current interval for Type A containment testing. The reactor containment and the testing requirements invoked to periodically demonstrate the integrity of the reactor containment exist to ensure the plant's ability to mitigate the consequences of an accident and do not involve the prevention or identification of any precursors of an accident. The proposed Technical Specification change does not involve a physical change to the plant or the manner in which the plant is operated or controlled. Therefore, the proposed Technical Specification change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The operation of Vermont Yankee Nuclear Power Station in accordance with the proposed amendment will not involve a significant reduction in a margin of safety.

The proposed revision to Technical Specifications involves a one-time extension to the current interval for Type A containment testing. The proposed Technical Specification change does not involve a physical change to the plant or a change in the manner in which the plant is operated or controlled. The specific requirements and conditions of the Primary Containment Leak Rate Testing Program, as defined in Technical Specifications, exist to ensure that the degree of reactor containment structural integrity and leak-tightness that is considered in the plant safety analysis is maintained. The overall containment leak rate limit specified by Technical Specifications is maintained. The proposed change involves only the extension of the interval between Type A containment leak rate tests. The proposed surveillance interval extension is bounded by the 15 month extension currently authorized within NEI [Nuclear Energy Institute] 94–01. Type B and C containment leak rate tests will continue to be performed at the frequency currently required by plant Technical Specifications. VY's, as well as the industries experience, strongly supports the conclusion that Type B and C testing detects a large percentage of containment leakage paths and that the percentage of containment leakage paths that are detected only by Type A testing is small. The containment inspections performed in accordance with ASME Section XI, the Maintenance Rule and the Coatings Program serve to provide a high degree of assurance that the containment will not degrade in a manner that is detectable only by Type A testing. Additionally, the on-line containment monitoring capability that is inherent to inerted BWR [Boiling Water Reactor] containments allows for the detection of gross containment leakage that may develop during power operation. The combination of these factors ensures that the margin of safety that is inherent in plant safety analysis is maintained. Therefore, the proposed Technical Specification change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. David R. Lewis, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037–1128.

NRC Section Chief: James W. Andersen, Acting.

Exelon Generation Company, LLC, Docket Nos. 50–237 and 50–249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois

Date of amendment request: August 16, 2002.

Description of amendment request: The proposed amendments would modify the Unit 3 allowable value, and the Units 2 and 3 surveillance requirements for the reactor protection system scram discharge volume water level-high function.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed TS changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

Dresden Nuclear Power Station (DNPS), Unit 3 plans to implement a design change that upgrades the Scram Discharge Volume Water Level—High instrumentation from existing float-type level switches to electronic analog trip units. Analog trip units are a proven technology that is more reliable than existing equipment. The proposed design is consistent with a generic design that has been previously reviewed and approved by the NRC. Analog trip units are used in various applications at DNPS, including the Reactor Protection System (RPS) Low Water Level Trip Function.

The proposed Technical Specifications (TS) changes add new Unit 3 Channel Check and trip unit calibration Surveillance Requirements (SRs) for the new analog trip units associated with the Scram Discharge Volume Water Level—High RPS Trip Function. These new Unit 3 SRs are not applicable to the existing instrumentation because the existing float-type level switches are non-indicating and do not employ trip units. In addition, the proposed TS changes add a new trip unit calibration SR for existing Unit 2 and 3 instrumentation that is composed of differential pressure type level transmitter switches.

TS requirements that govern operability or routine testing of plant instruments are not assumed to be initiators of any analyzed event because these instruments are intended to prevent, detect, or mitigate accidents. Therefore, these proposed changes will not involve an increase in the probability of an accident previously evaluated. Additionally, these proposed changes will not increase the consequences of an accident previously evaluated because the proposed changes do not adversely impact structures, systems, or components. The planned Unit 3 instrument upgrade is a more reliable design than existing equipment. The proposed changes establish requirements that ensure components are operable when necessary for the prevention or mitigation of accidents or transients. Furthermore, there will be no change in the types or significant increase in the amounts of any effluents released offsite.

In summary, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed TS changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes support a planned instrument upgrade on Unit 3 by incorporating SRs required to ensure operability. There is no change being made to the parameters within which DNPS is operated. The proposed changes do not adversely impact the manner in which the Scram Discharge Volume Water Level—High RPS instrumentation will operate under normal and abnormal operating conditions. The proposed changes will not alter the function demands on credited equipment. No alteration in the procedures, which ensure DNPS remains within analyzed limits, is proposed, and no change is being made to procedures relied upon to respond to an off-normal event. Therefore, these proposed changes provide an equivalent level of safety and will not create the possibility of a new or different kind of accident from any accident previously evaluated. The changes in methods governing normal plant operation are consistent with the current safety analysis assumptions. Therefore, these proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed TS changes do not involve a significant reduction in a margin of safety.

Margins of safety are established in the design of components, the configuration of components to meet certain performance parameters, and in the establishment of setpoints to initiate alarms and actions. The proposed changes support a planned instrumentation upgrade to enhance the reliability of RPS instrumentation. The proposed changes do not affect the probability of failure or availability of the affected instrumentation. The revised Allowable Value, addition of a Channel Check and trip unit calibration, and revision of other SRs for RPS Instrumentation Channel Check and trip unit calibration, and revision of other SRs for RPS Instrumentation Function 7 (Scram Discharge Volume Water Level—High) are conservative changes that align the SRs for proper determination of operability with that of similar instrumentation. Therefore, it is concluded that the proposed changes do not result in a reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Attorney for licensee: Mr. Edward J. Cullen, Deputy General Counsel, Exelon BSC—Legal, 2301 Market Street, Philadelphia, PA 19101.

NRC Section Chief: Anthony J. Mendiola.

Florida Power and Light Company, Docket No. 50–389, St. Lucie Plant, Unit No. 2, St. Lucie County, Florida

Date of amendment request: October 15, 2002.

Description of amendment request: The proposed amendment modifies the reactor coolant system flow rate from 363,000 gallons per minute (gpm) to 355,000 gpm in Saint Lucie Unit 2 Technical Specifications (TS) Table 3.3–2 and a footnote for Table 2.2–1.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment would decrease the value of design reactor coolant system flow rate. This reduction in the reactor

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coolant system (RCS) flow requirement will support operation of the plant with an increased steam generator (SG) tube plugging. The changes to the Technical Specification (TS) bases either support the proposed flow reduction or are administrative in nature, consistent with the current design basis. The parameters affected by the proposed changes are not accident initiators and do not affect the frequency of occurrence of previously analyzed transients. Additionally, there are no changes to any active plant component.

This evaluation has demonstrated acceptable results for all the accidents previously analyzed. It is concluded that the radiological consequences would remain within their established acceptance criteria when including effects of the proposed reduction in the RCS flow, which would support an increased steam generator tube plugging level.

Therefore, operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any previously evaluated.

This proposed amendment revises the RCS design flow requirement to cover plant operation with increased steam generator tube plugging. There are no physical changes to the plant systems or system interactions due to the proposed changes. The modes of operation of the plant and the design functions of all the safety systems remain unchanged.

Therefore, operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

The impact of the proposed changes on the design basis accident analysis was evaluated and it is concluded that the setpoint and safety analyses of all design basis accidents meet the applicable acceptance criteria with respect to the radiological consequences, specified acceptable fuel design limits (SAFDL), primary and secondary overpressurization, peak containment pressure and temperature, and 10 CFR 50.46 requirements.

Therefore, operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: M.S. Ross, Attorney, Florida Power & Light, P.O. Box 14000, Juno Beach, Florida 33408–0420.

NRC Section Chief: Allen G. Howe.

Florida Power and Light Company, Docket Nos. 50–250 and 50–251, Turkey Point Plant, Units 3 and 4, Miami-Dade County, Florida

Date of amendment request: October 21, 2002.

Description of amendment request: **The proposed amendment deletes the requirements defined in Technical Specification (TS) 3/4.9.3, "Refueling Operations, Decay Time," and places them in the TS Bases. Additionally this amendment proposes to modify the TS Bases definition of "recently irradiated fuel" will be re-defined as fuel that has occupied part of a critical reactor core within the previous 72 hours.**

Basis for proposed no significant hazards consideration determination: **As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:**

1. Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The accident of concern related to the proposed change is the fuel handling accident (FHA). This accident assumes a dropped fuel assembly. One of the assumptions made in the analysis is that fuel movement is delayed for some time period after shutdown to accommodate cooldown of the reactor coolant system and disassembly of the reactor pressure vessel. This delay period allows for radioactive decay of the in-reactor vessel fission product inventory. Reducing the analyzed decay time from 100 hours to 72 hours does not increase the probability of a FHA because the timing of fuel movement in the reactor pressure vessel does not alter the manner in which fuel assemblies are handled.

Reducing the analyzed decay time from 100 hours to 72 hours does increase the offsite dose and control room dose projections of a FHA above those previously reviewed and approved by the NRC for Turkey Point Units 3 and 4 per Amendments 216 and 210. However, it has been shown by reanalysis of such an accident involving irradiated fuel with at least 72 hours of decay that the projected doses remain well within applicable regulatory limits. Hence, the proposed change in timing of fuel movement in the reactor pressure vessel does not involve a significant increase in the consequences of a FHA.

Additionally, the manner in which the minimum in-reactor vessel decay time is controlled will not impact the probability of occurrence, or the consequences of a FHA. Relocating the decay time requirement from the TS to the TS Bases document and other administrative controls will continue to ensure that this key accident analysis assumption is upheld. The inherent delay associated with completing the required preparatory steps for moving fuel in the reactor vessel further ensures that the proposed 72-hour decay time will be met for a refueling outage.

Therefore, operation of the facility in accordance with this proposed amendments would not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Will operation of the facility in accordance with this proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The impact of the proposed change is limited to fuel handling operations and spent fuel pool cooling. No physical plant changes are proposed to accommodate the timing change for fuel movement. Hence, no new failure modes are created that would cause a new or different kind of accident from any accident previously evaluated. The supporting analysis for the timing change demonstrates that the associated increase in decay heat load will not cause any spent fuel pool (SFP) component or structure to operate outside design limits. Adequate margins to safety are maintained with respect to SFP water temperature and structural loading.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Additionally, the manner which the minimum in-reactor vessel decay time is controlled will not impact the operation of any structure, system, or component.

Therefore, operation of the facility in accordance with the proposed amendments would not create the possibility of a new or different kind of accident from any previously evaluated.

3. Will operation of the facility in accordance with this proposed change involve a significant reduction in a margin of safety?

No. The proposed change in plant operation does not significantly reduce the margin of safety. It has been shown by reanalysis of a FHA involving irradiated fuel with at least 72 hours of decay that the projected doses will be well within applicable regulatory limits. Additionally, it has been shown by thermal hydraulic analysis that operation of the SFP cooling system in accordance with the restrictions and limitations identified in the amendments application will maintain adequate margins to pool boiling. Analysis of transient SFP concrete temperatures similarly demonstrates that the integrity of the pool structure will not be compromised if the amount of in-reactor vessel fuel assembly decay time is reduced from 100 hours to 72 hours.

The proposed change in the manner in which the minimum in-reactor vessel decay time will be controlled will not impact plant safety. Relocating the decay time requirement from the TS to the TS Bases document and other administrative controls will continue to ensure that this key accident analysis assumption is upheld. The inherent delay associated with completing the required preparatory steps for moving fuel in the reactor vessel further ensures that the proposed 72-hour decay time will be met for a refueling outage.

Therefore, operation of the facility in accordance with the proposed amendments does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: M.S. Ross, Attorney, Florida Power & Light, P.O. Box 14000, Juno Beach, Florida 33408–0420.

NRC Section Chief: Allen G. Howe.

Indiana Michigan Power Company, Docket No. 50–316, Donald C. Cook Nuclear Plant, Unit 2, Berrien County, Michigan

Date of amendment request: October 16, 2002.

Description of amendment request: **The proposed amendment would revise Technical Specification Table 3.3–4, "Engineered Safety Feature Actuation System Instrumentation Trip Setpoints." The proposed changes are part of a planned design change to replace the existing 4160 volt (4kV) offsite power transformers, loss-of-voltage relays, and degraded voltage relays with components of an improved design to increase the reliability of offsite power for safety-related equipment.**

Basis for proposed no significant hazards consideration determination: **As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:**

1. Does the proposed change involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated?

Response: No.

Probability of Occurrence of an Accident Previously Evaluated

The proposed changes to the degraded voltage and loss-of-voltage setpoints and time delay affect when an emergency bus that is experiencing low or degraded voltage will trip from offsite power and shift to an emergency diesel generator. While the setpoints that initiate this action will be modified, the function remains the same. The setpoints have been analyzed to ensure spurious trips will be avoided. The proposed changes will not significantly affect any accident initiators or precursors. The format changes are intended to improve readability, consistency with NUREG–1431, Revision 2, and appearance. In addition, they do not alter any requirements. The bases change provides explanatory information only. Thus, the probability of occurrence of an accident previously evaluated is not significantly increased.

Consequences of an Accident Previously Evaluated

The proposed changes to the degraded voltage and loss-of-voltage setpoints and time delay affect when an emergency bus that is experiencing low or degraded voltage will trip from offsite power and shift to an emergency diesel generator. While the setpoints that initiate this action will be modified, they are bounded by the current safety analysis. The function of the plant equipment remains the same. The proposed changes improve the reliability of safety-related equipment to operate as designed. The format changes are intended to improve readability, consistency with NUREG–1431, Revision 2, and appearance. In addition, they do not alter any requirements. The bases change provides explanatory information only. Thus, the consequences of an accident previously analyzed are not significantly increased.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes to the degraded voltage and loss-of-voltage setpoints and time delay do not affect existing or introduce any new accident precursors or modes of operation. The relays will continue to detect undervoltage conditions and transfer safety loads to the emergency diesel generators at a voltage level adequate to ensure proper safety equipment performance and to prevent equipment damage. The function of the relays remains the same. The format changes are intended to improve readability, consistency with NUREG–1431, Revision 2, and appearance. In addition, they do not alter any requirements. The bases change provides explanatory information only. Thus, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed changes will allow all safety-related loads to have sufficient voltage to perform their intended safety function while ensuring spurious trips are avoided. Thus, the results of the accident analyses will not be affected as the input assumptions are protected. The format changes are intended to improve readability, consistency with NUREG–1431, Revision 2, and appearance. In addition, they do not alter any requirements. The bases change provides explanatory information only. Thus, the proposed changes do not involve a significant reduction in a margin of safety.

In summary, based upon the above evaluation, [Indiana Michigan Power Company] I&M has concluded that the proposed changes involve no significant hazards consideration under the standards set forth in 10 CFR 50.92(c), and accordingly, a finding of "no significant hazards consideration" is justified.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: David W. Jenkins, Esq., 500 Circle Drive, Buchanan, MI 49107.

NRC Section Chief: L. Raghavan.

Nine Mile Point Nuclear Station, LLC, Docket No. 50–220, Nine Mile Point Nuclear Station, Unit 1, Oswego County, New York

Date of amendment request: October 7, 2002.

Description of amendment request: **The proposed amendment would add Specification 4.0.3 to address missed surveillances. This new specification specifies an initial 24-hour delay period for performing a missed surveillance prescribed by Specification 3.0.3. Specification 4.0.3 will also require: "A risk evaluation shall be performed for any surveillance delayed greater than 24 hours and the risk impact shall be managed." In addition, the licensee proposed to add wording to each of the following existing specifications such that the new Specification 4.0.3 would apply to them: Specification 6.16, 6.17, 6.18, and 6.19.**

The NRC staff issued a notice of opportunity for comment in the **Federal Register** on June 14, 2001 (66 FR 32400), on possible amendments concerning missed surveillances, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on September 28, 2001 (66 FR 49714).

The licensee affirmed the applicability of the following NSHC determination in its application dated October 7, 2002. The NSHC determination is restated below.

Basis for proposed no significant hazards consideration determination: **As required by 10 CFR 50.91(a), an analysis of the issue of NSHC is presented below:**

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Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed change relaxes the time allowed to perform a missed surveillance. The time between surveillances is not an initiator of any accident previously evaluated. Consequently, the probability of an accident previously evaluated is not significantly increased. The equipment being tested is still required to be operable and capable of performing the accident mitigation functions assumed in the accident analysis. As a result, the consequences of any accident previously evaluated are not significantly affected. Any reduction in confidence that a standby system might fail to perform its safety function due to a missed surveillance is small and would not, in the absence of other unrelated failures, lead to an increase in consequences beyond those estimated by existing analyses. The addition of a requirement to assess and manage the risk introduced by the missed surveillance will further minimize possible concerns. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. A missed surveillance will not, in and of itself, introduce new failure modes or effects and any increased chance that a standby system might fail to perform its safety function due to a missed surveillance would not, in the absence of other unrelated failures, lead to an accident beyond those previously evaluated. The addition of a requirement to assess and manage the risk introduced by the missed surveillance will further minimize possible concerns. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in [a] Margin of Safety

The extended time allowed to perform a missed surveillance does not result in a significant reduction in [a] margin of safety. As supported by the historical data, the likely outcome of any surveillance is verification that the LCO [Limiting Condition for Operation] is met. Failure to perform a surveillance within the prescribed frequency does not cause equipment to become inoperable. The only effect of the additional time allowed to perform a missed surveillance on [a] margin of safety is the extension of the time until inoperable equipment is discovered to be inoperable by the missed surveillance. However, given the rare occurrence of inoperable equipment, and the rare occurrence of a missed surveillance, a missed surveillance on inoperable equipment would be very unlikely. This must be balanced against the real risk of manipulating the plant equipment or condition to perform the missed surveillance. In addition, parallel trains and alternate equipment are typically available to perform the safety function of the equipment not tested. Thus, there is confidence that the equipment can perform its assumed safety function.

Therefore, this change does not involve a significant reduction in a margin of safety.

Based upon the reasoning presented above and the previous discussion of the amendment request, the requested change does not involve a significant hazards consideration.

The NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Richard J. Laufer.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: October 8, 2002.

Description of amendment request: **The proposed amendment will change the Limiting Condition for Operation (LCO) 2.3(2).a, "Emergency Core Cooling Systems," for the allowed outage time (AOT) for a single train of the low pressure safety injection system. The proposed change is based on the Combustion Engineering Owners Group Topical Report CE NPSD–995, "Joint Applications Report for Low Pressure Safety Injection System AOT Extension." This amendment will permit the licensee to extend the AOT for a single low pressure safety injection (LPSI) train from the existing 24 hours to 7 days.**

Basis for proposed no significant hazards consideration determination: **As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:**

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The allowed outage time is not an initiator of any previously evaluated accident. The proposed change to the allowed outage time for a single LPSI train will not prevent the safety systems from performing their accident mitigation function as assumed in the safety analysis.

Therefore, this change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change only affects the technical specifications and does not involve a physical change to the plant. Modifications will not be made to existing components nor will any new or different types of equipment be installed. The proposed change modifies the allowed outage time for a single LPSI train from 24 hours to 7 days for the purpose of performing preventive or corrective maintenance, or surveillance testing. Actions will be taken to ensure the increase in LPSI allowed outage time is incorporated appropriately into plant procedures.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed change modifies the allowed outage time for a single LPSI train to permit necessary ECCS [emergency core cooling system] maintenance or testing to be performed in a measured, deliberate fashion. Results of an integrated assessment of the overall plant risk associated with the adoption of the proposed AOT extension show a negligible increase in plant risk. The increase in allowed outage time will also permit more efficient and more safely managed plant operations and can help reduce the risk associated with changing plant operating modes.

An evaluation of the impact of extending the AOT for a single LPSI train on plant risk was performed for the conditions of the plant being at power. While at power, the incremental conditional core damage frequency (ICCDF) was determined to be 1.396E–05 per year, with a 5.80E–07 per year incremental increase in the core damage frequency attributed to extending the allowed outage time from 24 hours to seven days.

A sensitivity analysis was performed to identify the impact on core damage probability over a seven day interval that results from performing maintenance on one LPSI train while in a shutdown mode. Results of this study show that even small improvements in LPSI train reliability will produce a decrease in core damage probability, thus the net impact of performing LPSI train preventive maintenance while at power is risk-beneficial.

The unavailability of one LPSI train resulted in a large early release frequency of 2.636E–06 per year, with a 2.40E–08 per year incremental conditional large early release frequency (ICLERF) attributed to extending the allowed outage time from 24 hours to seven days.

Therefore, this technical specification change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: James R. Curtiss, Esq., Winston & Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Stephen Dembek.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: October 8, 2002.

Description of amendment request: **The proposed amendment would relocate the requirements of Technical Specification (TS) 2.13, "Nuclear Detector Cooling System," to the Fort Calhoun Station Updated Safety Analysis Report (USAR). The accident analyses do not assume operation of the nuclear detector cooling system; therefore, this system does not meet the criteria set forth in 10 CFR 50.36(c)(2)(ii) for inclusion in the TS. The requirements will be relocated to the USAR.**

Basis for proposed no significant hazards consideration determination: **As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:**

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change relocates requirements for Nuclear Detector Cooling that do not meet the criteria for inclusion in the TS set forth in 10 CFR 50.36(c)(2)(ii). The requirements for Nuclear Detector Cooling are being relocated from TS to the USAR, which will be maintained pursuant to 10 CFR 50.59, thereby reducing the level of regulatory control. The level of regulatory control has no impact on the probability or consequences of an accident previously evaluated. Therefore, the change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change relocates requirements for Nuclear Detector Cooling that do not meet the criteria for inclusion in TS set forth in 10 CFR 50.36(c)(2)(ii). The change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or make changes in the methods governing normal plant operation. The change will not impose different requirements, and adequate control of information will be maintained. This change will not alter assumptions made in the safety analysis and licensing basis. Therefore, the change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed change relocates requirements for Nuclear Detector Cooling that do not meet the criteria for inclusion in TS set forth in 10 CFR 50.36(c)(2)(ii). The change will not reduce a margin of safety since the location of a requirement has no impact on any safety analysis assumptions. In addition, the relocated requirements for Nuclear Detector Cooling remain the same as the existing TS. Since any future changes to these requirements or the surveillance procedures will be evaluated per the requirements of 10 CFR 50.59, there will be no reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: James R. Curtiss, Esq., Winston & Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Stephen Dembek.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: October 8, 2002.

Description of amendment request: **The proposed amendment would increase the amount of diesel fuel oil required by Technical Specification (TS) 2.7, "Electrical Systems," to be kept in the auxiliary boiler fuel oil storage tank. A recent calculation determined that the amount of diesel fuel oil required by TS 2.7 is slightly insufficient (35 gallon shortfall) for 7 days of emergency diesel generator (EDG) operation.**

Basis for proposed no significant hazards consideration determination: **As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:**

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

No changes to the EDG diesel fuel oil storage and distribution system configuration or usage is required to achieve the inventory increase. This change only increases the current minimum inventory requirements listed in TS 2.7 and assures that the inventory will meet the capacity requirements of IEEE–308, which requires sufficient fuel for 7 days of EDG operation following the most severe accident. Increasing the minimum inventory requirement of FO–10, the auxiliary boiler fuel oil tank by 2000 gallons enables the site to meet this criterion and provides an extra margin of inventory to prevent any future concerns.

Therefore, this change does not involve an increase in the probability or consequences of any accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

No changes to the Emergency Diesel Generator fuel oil storage and distribution system configuration or usage are required to achieve the inventory increase. FO–10 has a capacity of 18,000 gallons. Therefore, FO–10 can readily accommodate the additional 2000 gallons of inventory. Therefore, the proposed changes will not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed change will increase the margin of safety by requiring that additional diesel fuel oil inventory be kept on-site to ensure that the 7 day on-site fuel supply criteria is met.

Therefore, this technical specification change does not involve a reduction in the margins of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: James R. Curtiss, Esq., Winston & Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Stephen Dembek.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: October 8, 2002.

Description of amendment request: **The proposed amendment will relocate the requirements of Technical Specification (TS) 3.5(5), "Surveillance for Prestressing System," for testing prestressed concrete containment tendons to the Fort Calhoun Station (FCS) Updated Safety Analysis Report (USAR). This proposed amendment will also add a TS requirement (TS 5.21) for a containment tendon testing program consistent with that presented in Section 5.5 of NUREG–1432, "Improved Standard Technical Specification (ITS) for Combustion Engineering Plants."**

Basis for proposed no significant hazards consideration determination: **As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:**

1. The proposed change does not involve a significant increase in the probability or

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consequences of an accident previously evaluated.

The proposed change relocates requirements for testing Prestressed Concrete Containment Tendons that do not meet the criteria for inclusion in the TS set forth in 10 CFR 50.36(c)(2)(ii). The requirements for testing Prestressed Concrete Containment Tendons are being relocated from TS to the USAR, which will be maintained pursuant to 10 CFR 50.59, thereby reducing the level of regulatory control. The level of regulatory control has no impact on the probability or consequences of an accident previously evaluated. Therefore, the change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change relocates requirements for testing Prestressed Concrete Containment Tendons that do not meet the criteria for inclusion in TS set forth in 10 CFR 50.36(c)(2)(ii). The change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or make changes in the methods governing normal plant operation. The change will not impose different requirements, and adequate control of information will be maintained. This change will not alter assumptions made in the safety analysis and licensing basis. Therefore, the change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed change relocates requirements for testing Prestressed Concrete Containment Tendons that do not meet the criteria for inclusion in TS set forth in 10 CFR 50.36(c)(2)(ii). The change will not reduce a margin of safety since the location of a requirement has no impact on any safety analysis assumptions. In addition, the relocated requirements for testing Prestressed Concrete Containment Tendons remain the same as the existing TS. Since any future changes to these requirements or the surveillance procedures will be evaluated per the requirements of 10 CFR 50.59, there will be no reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: James R. Curtiss, Esq., Winston & Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Stephen Dembek.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: October 8, 2002.

Description of amendment request: **The proposed amendment will change Technical Specification 5.19, "Containment Leakage Rate Testing Program," to extend the integrated leak rate test (ILRT) surveillance interval from 10 to 15 years. The proposed changes are justified based on a combination of risk-informed analysis and assessment of the containment structural condition utilizing ILRT historical results and containment inspection programs.**

Basis for proposed no significant hazards consideration determination: **As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:**

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed change adds a one-time extension to the current surveillance interval for Type A testing (ILRT). The current test interval of 10 years, based on performance history, would be extended on a one-time basis to 15 years from the last Type A test. The proposed extension to Type A testing cannot increase the probability of an accident previously evaluated since the containment Type A test is not a modification, nor a change in the way that plant systems, structures, or components are operated, and is not an activity that could lead to equipment failure or accident initiation. The proposed change does not involve a significant increase in the consequences of an accident since research in Reference 10.3 [NUREG–1493, Performance Based Containment Leak-Test Program] has found that generically very few potential leaks are not identified in Type B and C tests. Reference 10.3 concluded that an increase in the test interval to 20 years resulted in an imperceptible increase in risk. FCS provides a high degree of assurance through testing and inspection that the containment will not degrade in a manner only detectable by Type A testing. Inspections required by ASME code and the Maintenance Rule are performed in order to identify indications of containment degradation that could affect leak tightness. Type B and C testing required by 10 CFR 50, Appendix J are not affected by this proposed extension to the Type A test interval and will continue to identify containment penetration leakage paths that would otherwise require a Type A test.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change adds a one-time extension to the current surveillance interval [* * *] for Type A testing (ILRT). The change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or make changes in the methods governing normal plant operation. This change will not alter assumptions made in the safety analysis and licensing basis. Therefore, the change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed change will not result in operation of the facility involving a significant reduction in a margin of safety. The proposed change adds a one-time extension to the current interval for Type A testing. The current test interval of 10 years, based on performance history, would be extended on a one-time basis to 15 years from the last Type A test. Reference 10.3 has found that generically very few potential leaks are not identified in Type B and C tests. Reference 10.3 concluded that an increase in the test interval to 20 years resulted in an imperceptible increase in risk. Furthermore, the extended test interval would have a minimal effect on such risk since Type B and C testing detect over 95 percent of potential leakage paths. A plant specific risk calculation, as part of Reference 10.2, [WCAP–15691, Joint Applications Report for Containment Integrated Leak Rate Test Interval Extension, Revision 3, August 2002] on this topic obtained results consistent with the generic conclusions of Reference 10.3. The overall increase in risk contribution was determined as 0.31%.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: James R. Curtiss, Esq., Winston & Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Stephen Dembek.

South Carolina Electric & Gas Company (SCE&G), South Carolina Public Service Authority, Docket No. 50–395, Virgil C. Summer Nuclear Station (VCSNS), Unit No. 1, Fairfield, County, South Carolina

Date of amendment request: September 24, 2002.

Description of amendment request: **This proposed license amendment request would revise Technical Specification (TS) 4.8.1.1, "AC Sources" and the associated Bases section related to the Emergency Diesel Generators (EDG). This change would clarify the requirement for the start time test performed on a 184 day and an 18-month frequency. The proposed change will revise Surveillance Requirement (SR) 4.8.1.1.2.f.1 and 4.8.1.1.2.g.5 to more accurately reflect the plant conditions during EDG start testing.**

Basis for proposed no significant hazards consideration determination: **As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:**

1. The change does not involve a significant increase in probability or consequences of an accident previously evaluated?

This proposed amendment modifies an EDG Surveillance Requirement and does not impact the offsite AC distribution system; therefore the probability of any LOOP [loss of off-site power], including one concurrent with a LOCA [loss-of-coolant accident] is not significantly increased.

The proposed change revises the SR to better match the plant conditions during the test. SR 4.8.1.1.2.f.1 and 4.8.1.1.2.g.5 are performed with the EDG unloaded and as a result, overshoots its target nominal voltage and frequency during the test. In an actual event, the EDG would be almost immediately loaded once minimum voltage and frequency requirements are satisfied, thereby minimizing the overshoot.

To ensure the EDGs are capable of fulfilling their safety function, the proposed SR requires EDG voltage and frequency to achieve the specified minimum acceptable valued within 10 seconds, and to settle to a steady state voltage and frequency within the minimum and maximum values. That is, the upper limits are only applicable for steady state operation and do not apply during the transient portion of the EDG start. This change revises the acceptance criteria of 4.8.1.1.2.f.1 and 4.8.1.1.2.g.5 to clarify which voltage and frequency limits are applicable during the transient and steady state portions of the EDG start test.

This change does not affect the EDGs ability to supply the minimum voltage and frequency within 10 seconds or the steady state voltage and frequency required by the FSAR [Final Safety Analysis Report]. The EDGs will continue to perform their intended safety function, in accordance with the safety analysis. Thus, the consequences of any previously analyzed event are not significantly increased by this change.

The proposed change to 3.8.1.1, Action b.2 will not increase the probability or consequences of an accident previously evaluated. The change to this requirement to allow determination of no common cause failure mechanism has no impact on any accident. This change allows for not testing the redundant EDG if it can be demonstrated the failure mechanism of the affected EDG is not common cause. The normal TS surveillance testing schedule assures that operable EDG(s) are capable of performing their intended safety functions. The revision to the footnote on page 3/4.8–1 assures the action will be completed even if the EDG is restored to operable status within the action completion time.

The proposed revision to the fuel oil surveillance program will not preclude the EDGs from fulfilling their design functions. These changes provide flexibility to the testing program and continue to provide assurances that the fuel oil is acceptable for sustained engine operation. Eliminating or revising methodologies for testing of the fuel oil will not increase any probabilities or consequences to any accident previously evaluated.

2. The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The change revises SR 4.8.1.1.2.f.1 requirements to clarify which voltage and frequency limits are applicable during the transient and steady state portions of the EDG start testing. No changes are being made in equipment hardware or software, operational philosophy, testing frequency, how the system actually operates, or how the system is physically tested. Therefore, the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The elimination of unnecessary surveillance testing does not affect the design bases of the EDGs. The EDGs are designed to provide electrical power to the equipment important for safety during all modes and plant conditions following a loss of offsite power. The proposed changes to the Action requirements are consistent with NUREG–1431, NUREG–1366, Generic Letter 93–05, industry operating experience, and VCS operating experience. These changes are intended to improve plant safety, decrease equipment degradation, and remove unnecessary burden on personnel resources by reducing the amount of testing that the TS requires during power operation.

The revision to the fuel oil testing methodology does not impact the capabilities or functions of the EDGs. This testing methodology change will continue to assure the EDG is not degraded due to the fuel oil used. Existing test methodologies and guidance will continue to be followed, unless an evaluation demonstrates another methodology is as effective. Since the changes do not adversely impact important to safety equipment that is used in mitigating an accident, they will not create the possibility of an accident different from any previously evaluated.

3. The proposed amendment will not involve a significant reduction in a margin of safety.

The EDGs will still perform their intended safety function, in accordance with the VCSNS accident analysis. The revised test acceptance criteria are a much better match for the tested condition (unloaded). The performance of other TS SRs (in particular 4.8.1.1.2 g.4.b, 4.8.1.1.2g.6 and 4.8.1.1.2g.14) demonstrate EDG operability in conditions that are more representative of postulated accident conditions (loaded in the actual time sequence assumed in the accident analysis). The proposed amendment does not alter any acceptance criteria or equipment testing scope, which could impact the accident analysis.

The proposed change to exempt specific surveillance testing, as long as potential common cause can be ruled out, and eliminate unnecessary mechanical stress and wear on the diesel generator is an effort to improve plant reliability and safety. These changes are consistent with NUREG–1431, NUREG–1366, industry operating experience, and VCS operating experience and do not adversely affect the design bases, accident analysis, reliability or capability of the EDGs to perform their intended safety function. The revised footnote will assure that once the action is initiated, it will be completed regardless of when the EDG is restored to operability.

The proposed change to the fuel oil testing methodology has no impact on any safety margin. Accident analysis requires that the EDGs provide electric power to selected components during an accident scenario. The fuel oil quality will continue to meet established acceptance criteria and support the design function of the EDGs.

Since the design and licensing basis of the plant is unaffected, the proposed amendment will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Thomas G. Eppink, South Carolina Electric & Gas Company, Post Office Box 764, Columbia, South Carolina 29218.

NRC Section Chief: John A. Nakoski.

Southern Nuclear Operating Company, Inc, Docket Nos. 50–348 and 50–364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama

Date of amendment request: April 4, 2002.

Description of amendment request: **The proposed amendments would revise Technical Specifications 5.5.17, "Containment Leakage rate Testing Program," to reflect a one-time deferral of the Type-A Containment Integrated Leak Rate Test (ILRT). The 10-year interval between ILRTs is to be extended to 15 years from the previous ILRTs that were completed in March 1994 for Unit 1 and March 1995 for Unit 2.**

Basis for proposed no significant hazards consideration determination: **As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:**

1. The proposed Technical Specifications change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed revision to Technical Specifications 5.5.17, "Containment Leakage Rate Testing Program," involves a one time extension to the current interval for Type A containment leak testing. The current test interval of ten (10) years would be extended

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on a one time basis to no longer than fifteen (15) years from the last Type A test. The proposed Technical Specifications change does not involve a physical change to the plant or a change in the manner in which the plant is operated or controlled. The reactor containment is designed to provide an essentially leak tight barrier against the uncontrolled release of radioactivity to the environment for postulated accidents. As such, the reactor containment itself and the testing requirements invoked to periodically demonstrate the integrity of the reactor containment exist to ensure the plant's ability to mitigate the consequences of an accident, and do not involve the prevention or identification of any precursors of an accident. Therefore, the proposed Technical Specification change does not involve a significant increase in the probability of an accident previously evaluated.

The proposed change involves only the extension of the interval between Type A containment leakage tests. Type B and C containment leakage tests will continue to be performed at the frequency currently required by plant Technical Specifications. Industry experience has shown, as documented in NUREG–1493, that Type B and C containment leakage tests have identified a very large percentage of containment leakage paths and that the percentage of containment leakage paths that are detected only by Type A testing is very small. FNP [Joseph M. Farley Nuclear Plant] test history supports this conclusion. NUREG–1493 concluded, in part, that reducing the frequency of Type A containment leak tests to once per twenty (20) years leads to an imperceptible increase in risk. The integrity of the reactor containment is subject to two types of failure mechanism which can be categorized as (1) activity based and (2) time based. Activity based failure mechanisms are defined as degradation due to system and/or component modifications or maintenance. Local leak rate test requirements and administrative controls such as design change control and procedural requirements for system restoration ensure that containment integrity is not degraded by plant modifications or maintenance activities. The design and construction requirements of the reactor containment itself combined with the containment inspections performed in accordance with ASME [American Society of Mechanical Engineers] Section XI, the Maintenance Rule and the containment coatings program serve to provide a high degree of assurance that the containment will not degrade in a manner that is detectable only by Type A testing. Therefore, the proposed Technical Specifications change does not involve a significant increase in the consequences of an accident previously evaluated.

2. The proposed Technical Specifications change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed revision to Technical Specifications involves a one time extension to the current interval for Type A containment leak testing. The reactor containment and the testing requirements invoked to periodically demonstrate the integrity of the reactor containment exist to ensure the plant's ability to mitigate the consequences of an accident and do not involve the prevention or identification of any precursors of an accident. The proposed Technical Specifications change does not involve a physical change to the plant or the manner in which the plant is operated or controlled. Therefore, the proposed Technical Specifications change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed Technical Specifications change does not involve a significant reduction in a margin of safety.

The proposed revision to Technical Specifications involves a one time extension to the current interval for Type A containment leak testing. The proposed Technical Specifications change does not involve a physical change to the plant or a change in the manner in which the plant is operated or controlled. The specific requirements and conditions of the Containment Leakage Rate Testing Program, as defined in Technical Specifications, exist to ensure that the degree of reactor containment structural integrity and leak tightness that is considered in the plant safety analysis is maintained. The overall containment leakage rates limits specified by Technical Specifications is maintained. The proposed change involves only the extension of the interval between Type A containment leakage tests. Type B and C containment leakage tests will continue to be performed at the frequency currently required by plant Technical Specifications.

FNP and industry experience strongly support the conclusion that Type B and C testing detects a large percentage of containment leakage paths and that the percentage of containment leakage paths that are detected only by Type A testing is small. The containment inspections performed in accordance with ASME Section XI, the Maintenance Rule and the Coatings Program serve to provide a high degree of assurance that the containment will not degrade in a manner that is detectable only by Type A testing. Therefore, the proposed Technical Specifications change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: M. Stanford Blanton, Esq., Balch and Bingham, Post Office Box 306, 1710 Sixth Avenue North, Birmingham, Alabama 35201.

NRC Section Chief: John A. Nakoski.

Southern Nuclear Operating Company, Inc, Docket Nos. 50–348 and 50–364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama

Date of amendment request: September 24, 2002.

Description of amendment request: **The proposed amendments would revise Technical Specifications (TS) Limiting Conditions for Operation 3.7.10, Control Room Emergency Filtration/Pressurization System; and associated Bases. These changes will allow maintenance on ventilation area pressure boundaries (*i.e.*, doors) that cannot be conducted within the requirements of existing TS. The changes are based on U.S. Nuclear Regulatory Commission (NRC) approved Technical Specification Task Force—287, Rev. 5. In addition, the proposed amendments would revise TS 3.7.12 to eliminate a requirement to cease power operation if the fuel handling accident function of the penetration room filtration system is inoperable.**

Basis for proposed no significant hazards consideration determination: **As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:**

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

The control room emergency filtration/pressurization system (CREFS) and the penetration room filtration (PRF) system are not initiators of any accident. The proposed changes do not alter the physical plant nor do they alter modes of plant operation. Therefore, the proposed changes do not affect the probability of any accident previously evaluated. Compensatory actions such as the availability of self-contained breathing apparatus or iodine filters provide additional assurance that the requirements of GDC [General Design Criteria] 19 are met. Prohibiting movement of irradiated fuel, or loads over irradiated fuel or core alterations when the control room boundary is inoperable and limiting movement of irradiated fuel or loads over the fuel in the spent fuel pool room when its boundary is inoperable will eliminate the potential for exceeding GDC 19 due to a fuel handling accident. These actions will also prevent an off site dose release in excess of analyzed values. Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any previously evaluated?

The CREFS and the PRF systems are not initiators of any analyzed accident. The proposed changes do not alter the operation of the plant or any of its equipment, introduce any permanent new equipment, adversely impact maintenance practices or result in any new failure mechanisms or single failures. Any temporary equipment utilized for compensatory measures will be subject to existing administrative controls that address issues such as fire prevention and seismic concerns. Therefore, there is no potential for a new accident and no potential for changing the progression of an analyzed accident. The proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Do the proposed changes result in a significant reduction in a margin of safety?

The proposed changes do not adversely affect the ability of the fission product barriers to perform their functions. Adequate compensatory measures are available to mitigate a breach in the control room, spent fuel pool room and penetration room pressure boundaries. The probability of a loss of coolant accident that would place demands on these systems during a period that the ventilation system pressure boundaries would be allowed to be inoperable has been shown to be very small. In addition, proposed administrative controls eliminate the potential for a fuel handling accident, with potential to exceed dose limits, while the spent fuel pool room boundary room is breached. Therefore, the proposed changes do not result in a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: M. Stanford Blanton, Esq., Balch and Bingham, Post Office Box 306, 1710 Sixth Avenue North, Birmingham, Alabama 35201.

NRC Section Chief: John A. Nakoski.

Tennessee Valley Authority, Docket No. 50–327, Sequoyah Nuclear Plant, Unit 1, Hamilton County, Tennessee

Date of amendment request: September 3, 2002.

Description of amendment request: **The proposed amendment would revise the Technical Specifications (TS) by: (1) Modifying the wording of the current Surveillance Requirement (SR) 4.0.1 and SR 4.0.3 to be consistent with NUREG–1431, Revision 2, Improved Standard Technical Specifications (ISTS) wording for SR 3.0.1 and SR 3.0.3; (2) modifying the current TS 6.8 by adding a new subsection 6.8.j, which will include the NUREG–1431, Revision 2, ISTS wording for TS 5.5.14 that discusses the TS Bases Control Program; and (3) modifying the ISTS wording, adopted in item 1 above, to allow a delay period of 24 hours or up to the surveillance frequency interval, whichever is greater, and to require a risk analysis to be performed for any surveillance greater than 24 hours.**

The NRC staff issued a notice of opportunity for comment in the Federal Register on June 14, 2001 (66 FR 32400), on possible amendments concerning missed surveillances, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the Consolidated Line Item Improvement Process (CLIIP). The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the Federal Register on September 28, 2001 (66 FR 49714). Tennessee Valley Authority reviewed the following proposed NSHC determination published in the Federal Register as part of the CLIIP for Technical Specification Task Force (TSTF)–358, and concluded in its application of September 3, 2002, that the proposed NSHC determination applied to Sequoyah.

Basis for proposed no significant hazards consideration determination: **As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:**

Adoption of TSTF–358, Revision 6—Missed Surveillances

A. The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed change relaxes the time allowed to perform a missed surveillance. The time between surveillances is not an initiator of any accident previously evaluated. Consequently, the probability of an accident previously evaluated is not significantly increased. The equipment being tested is still required to be operable and capable of performing the accident mitigation functions assumed in the accident analysis. As a result, the consequences of any accident previously evaluated are not significantly affected. Any reduction in confidence that a standby system might fail to perform its safety function due to a missed surveillance is small and would not, in the absence of other unrelated failures, lead to an increase in consequences beyond those estimated by existing analyses. The addition of a requirement to assess and manage the risk introduced by the missed surveillance will further minimize possible concerns. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

B. The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. A missed surveillance will not, in and of itself, introduce new failure modes or effects and any increased chance that a standby system might fail to perform its safety function due to a missed surveillance would not, in the absence of other unrelated failures, lead to an accident beyond those previously evaluated. The addition of a requirement to assess and manage the risk introduced by the missed surveillance will further minimize possible concerns. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

C. The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The extended time allowed to perform a missed surveillance does not result in a significant reduction in the margin of safety. As supported by the historical data, the likely outcome of any surveillance is verification that the LCO [Limiting Condition for Operation] is met. Failure to perform a surveillance within the prescribed frequency does not cause equipment to become inoperable. The only effect of the additional time allowed to perform a missed surveillance on the margin of safety is the extension of the time until inoperable equipment is discovered to be inoperable by the missed surveillance. However, given the rare occurrence of inoperable equipment, and the rare occurrence of a missed surveillance, a missed surveillance on inoperable equipment would be very unlikely. This must be balanced against the real risk of manipulating the plant equipment or condition to perform the missed surveillance. In addition, parallel trains and alternate equipment are typically available to perform the safety function of the equipment not tested. Thus, there is confidence that the equipment can perform its assumed safety function. Therefore, this change does not involve a significant reduction in a margin of safety.

In addition to the above determination of NSHC, the licensee has provided its analysis for the following proposed NSHC determination:

Basis for proposed no significant hazards consideration determination: **As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration for the adoption of NUREG–1431, Revision 2, for Surveillance Requirements 3.0.1 and 3.0.3 wording and for the adoption of NUREG–1431, Revision 2, Technical Specification Bases Control Program, both of which are presented below:**

Adoption of NUREG–1431, Revision 2, for Surveillance Requirements 3.0.1 and 3.0.3 Wording

A. The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed change involves rewording of existing Specification 4.0.1 and 4.0.3 to be consistent with NUREG–1431, Revision 2. These modifications involve no technical changes to the existing TS [Technical Specifications]. This change is administrative in nature and does not affect initiators of analyzed events or assumed mitigation of accident or transient events. Therefore, this

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change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

B. The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated

The proposed change involves the rewording of the existing Specification 4.0.1 and 4.0.3 to be consistent with NUREG–1431, Revision 2. The change does not involve a physical alteration of the plant (no new or different type of equipment installed) or changes in the methods governing normal plant operation. The change will not impose any new or different requirements or eliminate any existing requirements. Therefore, the proposed change does not create the probability of a new or different kind of accident from any accident previously evaluated.

C. The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The proposed change involves rewording of the existing Specification 4.0.1 and 4.0.3 to be consistent with NUREG–1431, Revision 2. The change is administrative in nature and will not involve any technical changes. The change will not reduce a margin of safety because it has no impact on any safety analysis assumptions. Since this change is administrative in nature, no question of safety is involved. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

Adoption of NUREG–1431, Revision 2, Technical Specification Bases Control Program

A. The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed change involves incorporation of the NUREG–1431, Revision 2, Bases Control Program requirements into the SQN [Sequoyah Nuclear Plant] Units 1 and 2 TS. This change involves no technical change to existing TS, it simply adds wording on how the bases section of the TS will be maintained and controlled. This change is administrative in nature and does not affect initiators or analyzed events or assumed mitigation of accident or transient events. Therefore, this change does not involve a significant increase in the probability or consequences or an accident previously evaluated.

B. The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated

The proposed change involves incorporation of the NUREG–1431, Revision 2, Bases Control Program requirements into the SQN Units 1 and 2 TS. The change does not involve a physical alteration of the plant (no new or different type of equipment installed) or changes in the methods governing normal plant operation. The change will not impose any new or different requirements or eliminate any existing requirements. Therefore, the proposed change does not create the probability of a new or different kind of accident from any accident previously evaluated.

C. The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The proposed change involves incorporation of the NUREG–1431, Revision 2, Bases Control Program requirements into SQN Units 1 and 2 TS. The change is administrative in nature and will not involve any technical changes. The change will not reduce a margin of safety because they have not impact on any safety analysis assumptions. Since this change is administrative in nature, no question of safety is involved. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

Based upon the reasoning presented above and the previous discussion of the amendment request, the requested change does not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 10H, Knoxville, Tennessee 37902.

NRC Section Chief: Allen G. Howe.

Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: October 1, 2002.

Description of amendment request: The amendment would add a phrase to Limiting Condition for Operation (LCO) 3.1.8, "Physics Tests Exceptions—Mode 2," of the technical specifications (TSs). The phrase to be added is that the number of required channels for certain functions in Table 3.3.1–1 of LCO 3.3.1, "RTS Instrumentation," may be reduced from four to three required channels. LCO 3.1.8 applies to reactor Mode 2 during physics tests.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Overall protection system performance [for the proposed change] will remain within the bounds of the previously performed accident analyses since there are no permanent hardware changes. The design of the RTS [reactor trip system] instrumentation will be unaffected; only the manner in which the system is connected for short duration physics testing is being changed to allow the temporary bypass of one power range channel. The reactor protection system will continue to function in a manner consistent with the plant design basis since a sufficient number of power range channels will remain OPERABLE to assure the capability of protective functions, even with a postulated single failure. [The number of required channels for certain functions in Table 3.3.1–1 is only being reduced from 4 to 3 channels.] All design, material, and construction standards that were applicable prior to the request are maintained.

The proposed change will allow the temporary bypass of one power range neutron flux channel during the performance of low power physics testing in MODE 2. This results in a temporary change to the coincidence logic from one-out-of-three under the current TS (with a trip imposed on the channel used for physics testing) to two-out-of-three under the proposed TS (the channel used for physics testing would be in a bypassed state). However, this two-out-of-three coincidence logic still supports [the] required protection and control system applications, while reducing plant susceptibility to a spurious reactor trip.

The proposed change will not affect the probability of any event initiators. There will be no change to normal plant operating parameters or accident mitigation performance.

The proposed change will not alter any assumptions or change any mitigation actions in the radiological consequence evaluations in the USAR [Wolf Creek Updated Safety Analysis Report].

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

There are no permanent hardware changes nor are there any changes in the method by which any safety-related plant system performs its safety function. This change will not affect the normal method of power operation or change any operating parameters. No performance requirements will be affected.

No new accident scenarios, transient precursors, failure mechanisms, or limiting single failures are introduced as a result of this amendment. There will be no adverse effect or challenges imposed on any safety-related system as a result of this amendment.

The proposed amendment does not alter the design or performance of the 7300 Process Protection System, Nuclear Instrumentation System (other than as discussed above), or Solid State Protection System used in the plant protection systems. [The number of the required channels is not an initiator of an accident.]

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

There will be no effect on the manner in which safety limits or limiting safety system settings are determined nor will there be any effect on those plant systems necessary to assure the accomplishment of protective functions. There will be no impact on the overpower limit, departure from nucleate boiling ratio (DNBR) limits, heat flux hot channel factor (FQ), nuclear enthalpy rise hot channel factor (F'H), loss of coolant accident peak cladding temperature (LOCA PCT), peak local power density, or any other margin of safety. The radiological dose consequence acceptance criteria listed in the Standard Review Plan will continue to be met.

The proposed change does not eliminate any RTS surveillance or alter the Frequency of surveillances required by the Technical Specifications. The nominal RTS and Engineered Safety Features Actuation System (ESFAS) trip setpoints (TS Bases Tables B 3.3.1–1 and B 3.3.2–1), RTS and ESFAS allowable values (TS Tables 3.3.1–1 and 3.3.2–1), and the safety analysis limits assumed in the transient and accident analyses [(USAR Table 15.0–4)] are unchanged. None of the acceptance criteria for any accident analysis is changed. The potential reduction in the frequency of spurious reactor trips would effectively increase the margin of safety or, at a minimum, be risk-neutral.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: Stephen Dembek.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov*.

AmerGen Energy Company, LLC, et al., Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of application for amendment: April 26, 2002, as supplemented on July 11 and September 12, 2002.

Brief description of amendment: The amendment revised Sections 2.3, "Limiting Safety System Settings," 3.1, "Protective Instrumentation," and 3.10, "Core Limits," of the Technical Specifications, and approved the use of flow control reference cards to support implementation of the Boiling Water Reactor Owners Group Option II solution for the long-term reactor stability problem.

Date of Issuance: October 18, 2002.

Effective date: October 18, 2002, and shall be implemented within 30 days of issuance.

Amendment No.: 235.

Facility Operating License No. DPR–16: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** May 28, 2002 (67 FR 36926).

The July 11 and September 12, 2002, letters provided clarifying information within the scope of the original application and did not change the staff's initial proposed no significant hazards consideration determination. The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated October 18, 2002.

No significant hazards consideration comments received: No.

Dominion Nuclear Connecticut, Inc., Docket No. 50–336, Millstone Power Station, Unit No. 2, New London County, Connecticut

Date of application for amendment: July 19, 2002, as supplemented September 6, 2002.

Brief description of amendment: The amendment revises Technical Specification (TS) Surveillance Requirement (SR) 4.0.3 to extend the delay period, before entering a Limiting Condition for Operation, following a missed surveillance. The delay period is extended from the current limit of "* * * up to 24 hours" to "* * * up to 24 hours or up to the limit of the specified surveillance interval, whichever is greater." In addition, the following requirement is added to SR 4.0.3: "A risk evaluation shall be performed for any surveillance delayed greater than 24 hours and the risk impact shall be managed." The amendment also makes administrative changes to SRs 4.0.1 and 4.0.3 to be consistent with NUREG–1432, Revision 2, "Standard Technical Specifications, Combustion Engineering Plants."

Date of issuance: October 15, 2002.

Effective date: As of the date of issuance and shall be implemented within 90 days from the date of issuance.

Amendment No.: 271.

Facility Operating License No. DPR–65: This amendment revised the TSs.

Date of initial notice in ***Federal Register:*** August 22, 2002 (67 FR 54497).

The September 6, 2002, letter provided clarifying information that did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 15, 2002.

No significant hazards consideration comments received: No.

Duke Energy Corporation, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of application of amendments: July 29, 2002.

Brief description of amendments: The amendments revised Technical

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Specification Surveillance Requirement 3.7.2.2 to decrease the allowable closure time for the turbine stop valves from 15 seconds to 1 second.

Date of Issuance: October 24, 2002.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: 329, 329, 330.

Renewed Facility Operating License Nos. DPR–38, DPR–47, and DPR–55: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** September 3, 2002 (67 FR 56320).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 24, 2002.

No significant hazards consideration comments received: No.

Energy Northwest, Docket No. 50–397, Columbia Generating Station, Benton County, Washington

Date of application for amendment: July 18, 2002.

Brief description of amendment: The amendment revises Surveillance Requirement (SR) 3.0.3 to extend the delay period before entering a Limiting Condition for Operation following a missed surveillance. The delay period is extended from the current limit of "* * * up to 24 hours or up to the limit of the specified Frequency, whichever is less" to "* * * up to 24 hours or up to the limit of the specified Frequency, whichever is greater." In addition, the following requirement is added to SR 3.0.3: "A risk evaluation shall be performed for any Surveillance delayed greater than 24 hours and the risk impact shall be managed."

Date of issuance: October 8, 2002.

Effective date: October 8, 2002, to be implemented within 60 days from the date of issuance.

Amendment No.: 180.

Facility Operating License No. NPF–21: The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** September 3, 2002 (67 FR 56321).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 8, 2002.

No significant hazards consideration comments received: No.

Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of application for amendments: October 17, 2001, as supplemented by letters dated February 26, August 14 and September 13, 2002.

Brief description of amendments: The amendments revise (1) Technical Specification (TS) Section 1.1, "Definitions," for Dose Equivalent I–131, to allow the use of the thyroid dose conversion factors, listed in the International Commission on Radiological Protection Publication 30, "Limits for Intakes of Radionuclides by Workers," and (2) Section 3.9.4, "Containment Penetrations," to allow the equipment hatch, personnel air lock doors, and emergency air lock doors to remain open during core alterations and movement of irradiated fuel assemblies.

Date of issuance: October 21, 2002.

Effective date: October 21, 2002, to be implemented within 30 days from the date of issuance, including the completion of the administrative procedures that ensure that closure of the open containment penetrations, with direct access to the outside atmosphere during refueling operations with core alterations or irradiated fuel movement inside containment, will be initiated immediately in the event of a fuel handling accident inside containment, or if severe weather warnings are in effect.

Amendment Nos.: Unit 1—155; Unit 2—155.

Facility Operating License Nos. DPR–80 and DPR–82: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** January 8, 2002 (67 FR 929).

The supplemental letters dated February 26, August 14 and September 13, 2002, provided additional clarifying information, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 21, 2002.

No significant hazards consideration comments received: No.

Portland General Electric Company, et al., Docket No. 50–344, Trojan Nuclear Plant, Columbia County, Oregon

Date of application for amendment: November 15, 2001 as supplemented by letters dated January 31, July 31, and October 3, 2002.

Brief description of amendment: The amendment revises License Condition 2.C(10), "Loading of Fuel into Casks in the Fuel Building," to license number NPF–1 for the Trojan Nuclear Plant (TNP). Specifically, these design changes are the result of the licensee's selection of Holtec International's design components (*e.g.*, the Multi-Purpose Cannister versus the Pressurized Water Reactor Basket. The new design basis limits impact the cask loading operations and contingency unloading in the Fuel Building.

Date of issuance: October 21, 2002.

Effective date: As of the date of issuance to be implemented and shall be implemented prior to placing Holtec International MPC's in the TNP ISFSI.

Facility Operating License No. NPF–1: The amendment changes the cask loading and contingency unloading operations in the Fuel Building.

Date of initial notice in ***Federal Register:*** April 2, 2002 (67 FR 15626).

The January 31, July 31, and October 3, 2002, supplemental letters provided clarifying information that did not change the scope of the original **Federal Register** (67 FR 15626) notice or the original no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 21, 2002.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 4th day of November 2002.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–28483 Filed 11–8–02; 8:45 am]

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Part III

The President

Proclamation 7623—Veterans Day, 2002

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Presidential Documents

Title 3—

The President

Proclamation 7623 of November 6, 2002

Veterans Day, 2002

By the President of the United States of America

A Proclamation

America was founded on the principles of liberty, opportunity, and justice for all, and on Veterans Day we recognize the men and women of our Armed Forces who have valiantly defended these values throughout our Nation's history. These remarkable individuals have helped to make our Nation secure and to advance the cause of freedom worldwide. By answering the call of duty and risking their lives to protect their fellow countrymen, these patriots have inspired our Nation with their courage, compassion, and dedication.

There are currently more than 25 million living American veterans, many of whom put their lives on the line to preserve our freedoms. Our veterans served on the land, at sea, and in the air, from the shores of Omaha Beach and the jungles of Vietnam, to the sands of the Persian Gulf, the mountains of Afghanistan, and many other battlefields around the globe. Through each of these challenges, the members of the Army, Navy, Air Force, Marines, and Coast Guard have protected our country and liberated millions of people around the world from the threats of tyranny and terror.

Our proud veterans have also helped to shape the American character. They have given us an extraordinary legacy of patriotism and honor, and their service represents the highest form of citizenship. So that young Americans can better understand the commitment and sacrifice of these heroes in securing the blessings of liberty, I ask all schools to observe November 10 through November 16, 2002, as National Veterans Awareness Week. I encourage educators to invite veterans to teach our young people about their experiences. By sharing their knowledge on some of the most proud and dramatic moments in our history, they can help educate and inspire a new generation of Americans.

On the observance of Veterans Day in 1954, President Dwight D. Eisenhower called on all citizens to not only remember "the sacrifices of all those who fought so valiantly..." but also to rededicate themselves "to the task of promoting an enduring peace...." Today, almost 50 years later, we remember the dedication of our veterans, and resolve ourselves to upholding their legacy of justice, liberty, and opportunity for all.

In recognition of the contributions our service men and women have made to the cause of peace and freedom around the world, the Congress has provided (5 U.S.C. 6103(a)) that November 11 of each year shall be set aside as a legal public holiday to honor veterans.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim November 11, 2002, as Veterans Day and urge all Americans to observe November 10 through November 16, 2002, as National Veterans Awareness Week. I urge all Americans to recognize the valor and sacrifice of our veterans through appropriate public ceremonies and private prayers. I call upon Federal, State, and local officials to display the flag of the United States and to encourage and participate in patriotic activities in their communities. I invite civic and fraternal organizations, places of worship, schools, businesses, unions, and the media to support

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this national observance with suitable commemorative expressions and programs.

IN WITNESS WHEREOF, I have hereunto set my hand this sixth day of November, in the year of our Lord two thousand two, and of the Independence of the United States of America the two hundred and twenty-seventh.

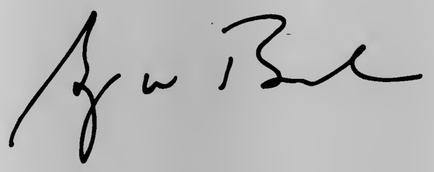

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.access.gpo.gov/nara/nara005.html*. Some laws may not yet be available.

H.R. 4013/P.L. 107–280
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H.R. 4014/P.L. 107–281
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H.R. 5200/P.L. 107–282
Clark County Conservation of Public Land and Natural Resources Act of 2002 (Nov. 6, 2002; 116 Stat. 1994)

H.R. 5308/P.L. 107–283
To designate the facility of the United States Postal Service located at 301 South Howes Street in Fort Collins, Colorado, as the "Barney Apodaca Post Office". (Nov. 6, 2002; 116 Stat. 2020)

H.R. 5333/P.L. 107–284
To designate the facility of the United States Postal Service located at 4 East Central Street in Worcester, Massachusetts, as the "Joseph D. Early Post Office Building". (Nov. 6, 2002; 116 Stat. 2021)

H.R. 5336/P.L. 107–285
To designate the facility of the United States Postal Service located at 380 Main Street in Farmingdale, New York, as the "Peter J. Ganci, Jr. Post Office Building". (Nov. 6, 2002; 116 Stat. 2022)

H.R. 5340/P.L. 107–286
To designate the facility of the United States Postal Service located at 5805 White Oak Avenue in Encino, California, as the "Francis Dayle 'Chick' Hearn Post Office". (Nov. 6, 2002; 116 Stat. 2023)

H.R. 3253/P.L. 107–287
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H.R. 4015/P.L. 107–288
Jobs for Veterans Act (Nov. 7, 2002; 116 Stat. 2033)

H.R. 4685/P.L. 107–289
Accountability of Tax Dollars Act of 2002 (Nov. 7, 2002; 116 Stat. 2049)

H.R. 5205/P.L. 107–290
To amend the District of Columbia Retirement Protection Act of 1997 to permit the Secretary of the Treasury to use estimated amounts in determining the service longevity component of the Federal benefit payment required to be paid under such Act to certain retirees of the Metropolitan Police Department of the District of Columbia. (Nov. 7, 2002; 116 Stat. 2051)

H.R. 5574/P.L. 107–291
To designate the facility of the United States Postal Service located at 206 South Main Street in Glennville, Georgia, as the "Michael Lee Woodcock Post Office". (Nov. 7, 2002; 116 Stat. 2052)

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CFR CHECKLIST

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An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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Rules and Regulations

Federal Register
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Wednesday, November 13, 2002

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM239; Special Conditions No. 25–223–SC

Special Conditions: Embraer Model 170–100 and 170–200 Airplanes; High-Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Embraer Model 170–100 and 170–200 airplanes. These airplanes will have novel or unusual design features when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. The airplane design includes an electronic flight control system as well as advanced avionics for the display and control of critical airplane functions. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of high-intensity radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards. Additional special conditions will be issued for other novel or unusual design features of Embraer Model 170–100 and 170–200 airplanes.

DATES: The effective date of these special conditions is November 1, 2002. Comments must be received on or before December 13, 2002.

ADDRESSES: Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attention: Rules Docket (ANM–113), Docket No. NM239, 1601 Lind Avenue SW., Renton, Washington 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. All comments must be marked: Docket No. NM239. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Tom Groves, FAA, International Branch, ANM–116, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–1503; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA has determined that notice and opportunity for prior public comment hereon is unnecessary as the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance; however, the FAA invites interested persons to participate in this rulemaking by submitting such written comments, data, or views, as they may desire. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning these special conditions. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions in light of the comments we receive.

If you want the FAA to acknowledge receipt of your comments on these special conditions, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

Background

On May 20, 1999, Embraer applied for a type certificate for its new Model 170 airplane. Two basic versions of the Model 170 are included in the application. The Model 170–100 airplane is a 69–78 passenger twin-engine regional jet with a maximum takeoff weight of 81,240 pounds. The Model 170–200 is a lengthened fuselage derivative of the 170–100. Passenger capacity for the Model 170–200 is increased to 86, and maximum takeoff weight is increased to 85,960 pounds. Embraer Model 170–100 and 170–200 airplanes will include an electronic flight control system as well as advanced avionics for the display and control of critical airplane functions. These systems may be vulnerable to high-intensity radiated fields (HIRF) external to the airplane.

Type Certification Basis

Under the provisions of 14 CFR 21.17, Embraer must show that Model 170–100 and 170–200 airplanes meet the applicable provisions of 14 CFR part 25, as amended by Amendments 25–1 through 25–98.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, part 25, as amended) do not contain adequate or appropriate safety standards for Embraer Model 170–100 and 170–200 airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, Embraer Model 170–100 and 170–200 airplanes must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36, and the FAA must issue a finding of regulatory adequacy pursuant to § 611 of Pub. L. 93–574, the "Noise Control Act of 1972."

Special conditions, as defined in 14 CFR 11.19, are issued in accordance with § 11.38, and become part of the airplane's type certification basis in accordance with § 21.101(b)(2), Amendment 21–69, effective September 16, 1991.

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Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1), Amendment 21–69, effective September 16, 1991.

Novel or Unusual Design Features

As noted earlier, Embraer Model 170–100 and 170–200 airplanes will include an electronic flight control system as well as advanced avionics for the display and control of critical airplane functions. These systems may be vulnerable to high-intensity radiated fields (HIRF) external to the airplane. The current airworthiness standards of part 25 do not contain adequate or appropriate safety standards that address the protection of this equipment from the adverse effects of HIRF. Accordingly, these systems are considered to be novel or unusual design features.

Discussion

There is no specific regulation that addresses protection requirements for electrical and electronic systems from HIRF. Increased power levels from ground-based radio transmitters and the growing use of sensitive avionics/electronics and electrical systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved that is equivalent to that intended by the regulations incorporated by reference, special conditions are needed for the Embraer Model 170–100 and 170–200 airplanes. These special conditions require that avionics/electronics and electrical systems that perform critical functions be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of HIRF.

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground-based transmitters and the advent of space and satellite communications coupled with electronic command and control of the airplane, the immunity of critical avionics/electronics and electrical systems to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling of electromagnetic energy to cockpit-installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown in accordance with either paragraph 1 OR 2 below:

1. A minimum threat of 100 volts rms (root-mean-square) per meter electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the field strengths indicated in the table below for the frequency ranges indicated. Both peak and average field strength components from the table are to be demonstrated.

Frequency	Field strength (volts per meter)	
	Peak	Average
10 kHz–100kHz	50	50
100 kHz–500 kHz	50	50
500 kHz–2 MHz	50	50
2 MHz 2–30 MHz	100	100
30 MHz–70 MHz	50	50
70 MHz–100 MHz	50	50
100 MHz–200 MHz	100	100
200 MHz–400 MHz	100	100
400 MHz–700 MHz	700	50
700 MHz–1 GHz	700	100
1 GHz–2 GHz	2000	200
2 GHz–4 GHz	3000	200
4 GHz–6 GHz	3000	200
6 GHz–8 GHz	1000	200
8 GHz–12 GHz	3000	300
12 GHz–18 GHz	2000	200
18 GHz–40 GHz	600	200

The field strengths are expressed in terms of peak of the root-mean-square (rms) over the complete modulation period.

The threat levels identified above are the result of an FAA review of existing studies on the subject of HIRF, in light of the ongoing work of the Electromagnetic Effects Harmonization Working Group of the Aviation Rulemaking Advisory Committee.

Applicability

As discussed above, these special conditions are applicable to the Embraer Model 170–100 and 170–200 airplanes. Should Embraer apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, these special conditions would apply to that model as well, under the provisions of § 21.101(a)(2), Amendment 21–69, effective September 16, 1991.

Conclusion

This action affects only certain novel or unusual design features of the Embraer Model 170–100 and 170–200 airplanes. It is not a rule of general applicability, and it affects only the applicant which applied to the FAA for approval of these features on the airplane.

The substance of these special conditions has been subjected to the notice and comment procedure in several prior instances and has been derived without substantive change from those previously issued. The FAA has determined that prior public notice and comment are unnecessary, and that good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Embraer Model 170–100 and 170–200 airplanes.

1. *Protection from Unwanted Effects of High-Intensity Radiated Fields (HIRF).* Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high-intensity radiated fields.

2. For the purpose of these special conditions, the following definition applies:

Critical Functions: Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington, on November 1, 2002.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–28824 Filed 11–12–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–265–AD; Amendment 39–12945; AD 2002–23–01]

RIN 2120–AA64

Airworthiness Directives; Gulfstream Aerospace LP Model Galaxy and Gulfstream 200 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Gulfstream Aerospace LP Model Galaxy and Gulfstream 200 airplanes. This action requires a one-time inspection for evidence of damage to the forward engine cross spar assembly; and repair if necessary. This action is necessary to detect and correct damage to the forward engine cross spar assembly, which could result in reduced structural integrity of the forward engine cross spar assembly. This action is intended to address the identified unsafe condition.

DATES: Effective November 29, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 29, 2002.

Comments for inclusion in the Rules Docket must be received on or before December 13, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–265–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-iarcomment@faa.gov.* Comments sent via fax or the Internet must contain "Docket No. 2002–NM–265–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in this AD may be obtained from Gulfstream Aerospace Corporation, P.O. Box 2206, Mail Station D25, Savannah, Georgia 31402. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: The Civil Aviation Administration of Israel (CAAI), which is the airworthiness authority for Israel, recently notified the FAA that an unsafe condition may exist on certain Gulfstream Model Galaxy and Gulfstream 200 airplanes. The CAAI advises that, during the installation of the mounting brackets for the baggage compartment liner, damage occurred to the upper beam cap of the forward engine cross spar assembly, located at fuselage station 582.00. The damage may have been a result of drill runs, and, if not corrected, could result in reduced structural integrity of the forward engine cross spar assembly.

Explanation of Relevant Service Information

Gulfstream has issued Gulfstream 200 Service Bulletin 200–53–128, dated September 18, 2002, including a Service Reply Card, which describes procedures for performing a one-time detailed inspection for evidence of damage (*i.e.*, drill marks) to the forward engine cross spar assembly at fuselage station 582.00; and contacting the airplane manufacturer for repair instructions, if necessary. The service bulletin recommends that operators submit a report verifying completion of the actions. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The CAAI classified this service bulletin as mandatory and issued Israeli airworthiness directive 53–02–08–08, dated September 10, 2002, in order to assure the continued airworthiness of these airplanes in Israel.

FAA's Conclusions

These airplane models are manufactured in Israel and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAAI has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAAI, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD requires accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Differences Between This AD and Service Bulletin/Foreign Airworthiness Directive

This AD differs from the parallel Israeli airworthiness directive and Gulfstream 200 service bulletin in that, if damage is found to the forward engine cross spar assembly, and repair is necessary, the repair must be accomplished prior to further flight. The service bulletin and the Israeli airworthiness directive allow the repair to be accomplished after an additional 2 flight cycles, not to exceed 10 flight hours. The FAA has determined that, because of the safety implications and consequences associated with this type of damage, any damage on the affected airplanes must be repaired prior to further flight. This difference has been coordinated with the CAAI.

Clarification of Repair Information in Service Bulletin

Operators should note that, although the service bulletin specifies that the manufacturer may be contacted for disposition of repair methods, this AD requires that the repair be accomplished in accordance with a method approved by the FAA or the CAAI (or its delegated agent).

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good

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cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–265–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2002–23–01 Gulfstream Aerospace LP (Formerly Israel Aircraft Industries, Ltd.): Amendment 39–12945. Docket 2002–NM–265–AD.

Applicability: Model Galaxy airplanes, having serial numbers 004 through 056 inclusive; and Gulfstream 200 airplanes, having serial numbers 057 through 073 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct damage to the forward engine cross spar assembly, which could result in the reduced structural integrity of the forward engine cross spar assembly, accomplish the following:

Inspection and Corrective Action, If Necessary

(a) Within 20 flight cycles after the effective date of this AD, perform a one-time detailed inspection to detect evidence of damage (*i.e.*, drill marks) to the forward engine cross spar assembly at fuselage station 582.000, per the Accomplishment Instructions of Gulfstream 200 Service Bulletin 200–53–128, dated September 18, 2002.

Note 2: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(1) If no evidence of damage is found, no further action is required by this paragraph.

(2) If any damage is found, prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the Civil Aviation Administration of Israel (or its delegated agent).

Reporting Requirement

(b) Submit a report of inspection findings (both positive and negative) to Gulfstream Aerospace Corporation, P.O. Box 2206, Mail Station D25, Savannah, Georgia 31402; fax (912) 965–3598; at the applicable time specified in paragraph (b)(1) or (b)(2) of this AD. The report must include the inspection results, a description of any discrepancy found, the airplane serial number, and the number of landings and flight hours on the airplane. Information collection requirements contained in this AD have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(1) For airplanes on which the inspection is accomplished after the effective date of this AD: Submit the report within 60 days after performing the inspection required by paragraph (a) of this AD.

(2) For airplanes on which the inspection has been accomplished prior to the effective date of this AD: Submit the report within 60 days after the effective date of this AD.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) Unless otherwise specified in this AD, the actions shall be done in accordance with Gulfstream 200 Service Bulletin 200–53–128, dated September 18, 2002, including a Service Reply Card. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Gulfstream Aerospace Corporation, P.O. Box 2206, Mail Station D25, Savannah, Georgia 31402. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in Israeli airworthiness directive 53–02–08–08, dated September 10, 2002.

Effective Date

(f) This amendment becomes effective on November 29, 2002.

Issued in Renton, Washington, on November 5, 2002.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–28613 Filed 11–12–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 02–ACE–11]

Amendment to Class E Airspace; Ulysses, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends Title 14 Code of Federal Regulations, part 71 (14 CFR part 71) by revising Class E airspace at Ulysses, KS in order to provide a safer Instrument Flight Rules (IFR) environment at Ulysses Airport, Ulysses, KS. The FAA has developed Area Navigation (RNAV) Global Positioning System (GPS) Runway (RWY) 12, ORIGINAL Standard Instrument Approach Procedure (SIAP); RNAV (GPS) RWY 17, ORIGINAL SIAP; RNAV (GPS) RWY 30, ORIGINAL SIAP; RNAV (GPS) RWY 35, ORIGINAL SIAP; and Nondirectional Radio Beacon (NDB) RWY 12, Amendment 3 SIAP to serve Ulysses Airport, Ulysses, KS. Additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate the SIAPs.

The intended effect of this rule is to provide controlled Class E airspace for aircraft executing an SIAP and to segregate aircraft using instrument approach procedures in instrument conditions from aircraft operating in visual conditions.

EFFECTIVE DATE: This direct final rule is effective on 0901 UTC, February 20, 2003.

Comments for inclusion in the Rules Docket must be received on or before December 19, 2002.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, DOT Regional Headquarters Building, Federal Aviation Administration, Docket Number 02–ACE–11, 901 Locust, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: The FAA has developed RNAV (GPS) RWY 12, 17, 30 and 35, ORIGINAL SIAPs and NDB RWY 12, Amendments 3 SIAP to serve Ulysses Airport, Ulysses, KS. The amendment to Class E airspace at Ulysses, KS will provide additional controlled airspace and at and above 700 feet AGL in order to contain the new SIAPs within controlled airspace, and thereby facilitate separation of aircraft operating under IFR. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objectives. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES** All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and

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determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 02–ACE–11." The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

ACE KS E5 Ulysses, KS [Revised]

Ulysses Airport, KS
(Lat. 37°36′14″N., long. 101°22′24″W.)
Ulysses NDB
(Lat. 37°35′50″N., long. 101°22′05″W.)

That airspace extending upward toward from 700 feet above the surface within a 6.8-mile radius of Ulysses Airport and within 1.0 mile each side of the 306° bearing from the Ulysses NDB extending from the 6.8-mile radius to 10.5 miles northwest of the airport.

* * * * *

Issued in Kansas City, MO, on October 28, 2002.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 02–28831 Filed 11–12–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 01–AWP–15]

Modification of Class E Airspace; Needles Airport, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies the Class E airspace area at Needles Airport, CA. The establishment of an Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) RNAV (GPS) Runway (RWY) 29 SIAP to Needles Airport, Needles, CA has made action necessary. Additional controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing the RNAV (GPS) RWY 29 SIAP to Needles Airport. The intended effect of this action is to provide adequate controlled airspace for Instrument Flight Rules operations at Needles Airport, Needles, CA.

EFFECTIVE DATE: 0901 UTC January 23, 2003.

FOR FURTHER INFORMATION CONTACT: Jeri Carson, Airspace Specialist, Airspace Branch, AWP–520, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725–6611.

SUPPLEMENTARY INFORMATION:

History

On August 27, 2002, the FAA proposed to amend 14 CFR part 71 by modifying the Class E airspace area at Needles Airport, CA (67 FR 54977). Additional controlled airspace extending upward from 700 feet or more above the surface is needed to contain aircraft executing the RNAV (GPS) RWY 29 SIAP to Needles Airport. This action will provide adequate controlled airspace for aircraft executing the RNAV (GPS) RWY 29 SIAP to Needles Airport, Needles, CA.

Interested parties were invited to participate in this rulemaking, proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. Class E airspace designations for airspace extending from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9K, dated August 31, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 modifies the Class E airspace area at Needles Airport, CA. The establishment of a RNAV (GPS) RWY 29 SIAP to Needles Airport has made this action necessary. The effect of this action will provide adequate airspace for aircraft executing the RNAV (GPS) RWY 29 SIAP to Needles Airport, Needles, CA.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; ROUTES; AND REPORTING POINTS.

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR 1959–1963 Comp., p. 389; 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 31, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AWP CA E5 Needles Airport, CA [Revised]

Needles Airport, CA
(Lat.34°45′58″ N, long. 114°37′24″ W)
Needles VORTAC
(Lat. 34°45′58″ N, long. 114°28′27″ W)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of the Needles Airport; and that airspace extending upward from 1200 feet above the surface within 7.8 miles south and 11.3 miles north of the Needles VORTAC 092° and 272° radials, extending from 9.6 miles west to 20.9 miles east of the Needles VORTAC.

* * * * *

Issued in Los Angeles, California, on October 24, 2002.

John Clancy,

Manager, All Traffic Division, Western-Pacific Region.

[FR Doc. 02–28829 Filed 11–12–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs; Gonadorelin Diacetate Tetrahydrate

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Phoenix Scientific, Inc. The ANADA provides for use of gonadorelin diacetate tetrahydrate solution by injection in dairy cattle for the treatment of ovarian cysts.

DATES: This rule is effective November 13, 2002.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center for Veterinary Medicine (HFV–104), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 301–827–8549, e-mail: lluther@cvm.fda.gov.

SUPPLEMENTARY INFORMATION: Phoenix Scientific, Inc., 3915 South 48th St. Terrace, P.O. Box 6457, St. Joseph, MO 64506–0457, filed ANADA 200–069 that provides for veterinary prescription use of FERTELIN (gonadorelin diacetate tetrahydrate) Injection by intramuscular or intravenous injection in dairy cattle for the treatment of ovarian cysts. Phoenix's FERTELIN Injection is approved as a generic copy of Merial, Ltd.'s CYSTORELIN, approved under NADA 98–379. ANADA 200–069 is approved as of August 26, 2002, and the regulations are amended in § 522.1078 (21 CFR 522.1078) to reflect the approval. Section 522.1078 is also being revised to reflect a current format. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subject in 21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: 21 U.S.C. 360b.

2. Section 522.1078 is revised to read as follows:

§522.1078 Gonadorelin diacetate tetrahydrate.

(a) *Specifications.* Each milliliter of solution contains 50 micrograms (µg) of gonadorelin diacetate tetrahydrate.

(b) *Sponsors.* See Nos. 050604, 057926, and 059130 in § 510.600(c) of this chapter.

(c) *Conditions of use in cattle.* It is used as follows:

(1) *Amount.* 100 µg per cow as a single intramuscular or intravenous injection.

(2) *Indications for use.* For the treatment of ovarian cysts in dairy cattle.

(3) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Dated: October 28, 2002.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 02–28716 Filed 11–12–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs; Deracoxib

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

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SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Novartis Animal Health US, Inc. The NADA provides for the veterinary prescription use of deracoxib tablets for the control of postoperative pain and inflammation associated with orthopedic surgery in dogs.

DATES: This rule is effective November 13, 2002.

FOR FURTHER INFORMATION CONTACT: Melanie R. Berson, Center for Veterinary Medicine (HFV–110), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7543, e-mail: mberson@cvm.fda.gov.

SUPPLEMENTARY INFORMATION: Novartis Animal Health US, Inc., 3200 Northline Ave., suite 300, Greensboro, NC 27408, filed NADA 141–203 that provides for the veterinary prescription use of DERAMAXX (deracoxib) Chewable Tablets for the control of postoperative pain and inflammation associated with orthopedic surgery in dogs weighing four or more pounds (1.8 kilograms). The NADA is approved as of August 21, 2002 , and the regulations are amended in 21 CFR part 520 by adding new § 520.538 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(i) of the Federal Food, Drug, and Cosmetics Act (21 U.S:C. 360b(c)(2)(F)(i)), this approval qualifies for 5 years of marketing exclusivity beginning August 21, 2002.

The agency has determined under 21 CFR 25.33(d)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

2. Section 520.538 is added to read as follows:

§ 520.538 Deracoxib.

(a) *Specifications.* Each chewable tablet contains 25 or 100 milligrams (mg) deracoxib.

(b) *Sponsor.* See No. 058198 in § 510.600(c) of this chapter.

(c) [Reserved]

(d) *Conditions of use in dogs*—(1) *Amount.* 3 to 4 mg per kilogram (kg) (1.4 to 1.8 mg per pound) of body weight once daily for 7 days, given orally.

(2) *Indications for use.* For the control of postoperative pain and inflammation associated with orthopedic surgery in dogs weighing 4 or more pounds (1.8 kg).

(3) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Dated: October 25, 2002.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 02–28714 Filed 11–12–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP San Juan 02–133]

RIN 2115–AA97

Security Zones; St. Thomas, United States Virgin Islands

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule; request for comments.

SUMMARY: The Coast Guard is establishing temporary security zones 50 yards around all cruise ships in the Port of Charlotte Amalie, St. Thomas, United States Virgin Islands. These security zones are needed to protect the public and the Port of Charlotte Amalie from potential subversive acts.

DATES: This regulation becomes effective at 6 p.m. on November 4, 2002 and will terminate at 11:59 p.m. on June 15, 2003.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of [COTP San Juan 02–133] and are available for inspection or copying at Marine Safety Office San Juan, RODVAL Bldg., San Martin St. #90 Ste 400, Guaynabo, PR 00968, between 7 a.m. and 3:30 p.m. Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LCDR Michael Roldan, Marine Safety Office San Juan, Puerto Rico at (787) 706–2440.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a NPRM. Publishing a NPRM and delaying the rule's effective date would be contrary to the public interest since immediate action is needed to protect the public, ports and waterways of the United States. The Coast Guard will issue a broadcast notice to mariners and a Marine Safety Information Bulletin via facsimile and electronic mail to advise mariners of the restriction.

For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

Request for Comments

Although the Coast Guard has good cause to implement this regulation without a notice of proposed rulemaking, we want to afford the public the opportunity to participate in this rulemaking by submitting comments and related material regarding the size and boundaries of these security zones in order to minimize unnecessary burdens. If you do so, please include your name and address, identify the docket number for this rulemaking [COTP San Juan 02–133] indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during

the comment period. We may change this temporary final rule in view of them.

Background and Purpose

Based on the September 11, 2001, terrorist attacks on the World Trade Center buildings in New York and the Pentagon in Arlington, Virginia, there is an increased risk that subversive activity could be launched by vessels or persons in close proximity to the Port of Charlotte Amalie, USVI against cruise ships in the Port. The President has continued the national emergencies he declared following the September 11, 2001 terrorist attacks (67 FR 58317 (Sept. 13, 2002) (continuing national emergency with respect to terrorist attacks), 67 FR 59447 (Sept. 20, 2002) (continuing national emergency with respect to persons who commit, threaten to commit or support terrorism)). The President also has found pursuant to law, including the Magnuson Act (50 U.S.C. 191 *et seq.*), that the security of the United States is and continues to be endangered following the attacks (E.O. 13,273, 67 FR 56215 (Sept. 3, 2002) (security endangered by disturbances in international relations of U.S and such disturbances continue to endanger such relations).

On February 1, 2002 the Coast Guard published a temporary final rule in the **Federal Register** (CGD07–01–136) that established temporary moving and fixed security zones 50 yards around all cruise ships entering, departing or moored in the Port of Charlotte Amalie (67 FR 4909). That rule expired on June 15, 2002. The Captain of the Port has determined that this rule is necessary to protect the Port of Charlotte Amalie from subversive activity. The Captain of the Port intends to issue a notice of proposed rulemaking in a separate document to be published in the **Federal Register** proposing to create permanent security zones around cruise ships in the Port of Charlotte Amalie.

Due to the number of passengers onboard cruise ships moored in the Port of Charlotte Amalie, USVI, there is a risk that they are a target for subversive activity or a terrorist attack. The Captain of the Port San Juan is reducing this risk by prohibiting all vessels from coming within 50 yards of cruise ships while entering, departing, moored at any pier, or anchored in any anchorage in the Port of Charlotte Amalie, St. Thomas, USVI unless prior authorization is given by the Captain of the Port of San Juan.

These temporary security zones are activated when cruise ships pass: St. Thomas Harbor green lighted buoy #3 in approximate position 18°19′19″ North, 64°55′40″ West when entering the port using St. Thomas Channel; red buoy #2 in approximate position 18°19′15″ North, 64°55′59″ West when entering the port using East Gregorie Channel; and red lighted buoy #4 in approximate position 18°18′16″ North, 64°57′30″ West when entering the port using West Gregorie Channel. These zones are deactivated when the vessel passes any of these buoys on its departure from port. United States Coast Guard and territorial law enforcement personnel will be on-scene to notify the public of these security zones.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979) because the zones are narrow in scope and are only in effect for limited periods of time when a cruise ship is in Port.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard considered whether this rule would have a significant economic effect upon a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities because the zones are narrow in scope and are only in effect for limited periods of time when a cruise ship is in Port. Moreover, vessels may be allowed to enter the zones on a case-by-case basis with the permission of the Captain of the Port of San Juan.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. If the rule will affect your small business, organization, or government jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding this rule.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

Federalism

A rule has implication for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Although this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Environmental

The Coast Guard has considered the environmental impact of this rule and concluded that under figure 2–1, paragraph 34(g), of Commandant Instruction M14475.1D that this rule is categorically excluded from further

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environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES**.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationships between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or use. We have determined that it is not a "significant energy action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165, as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. A new temporary section 165.T07–133 is added to read as follows:

§ 165.T–07–133 Security Zones; Charlotte Amalie Harbor, St. Thomas, USVI.

(a) *Regulated area.* Temporary moving security zones are established 50 yards around all cruise ships while they enter, depart, are moored at any pier or anchored in any anchorage in Charlotte Amalie Harbor. These temporary security zones are activated when cruise ships pass: St. Thomas Harbor green lighted buoy #3 in approximate position 18°19′19″ North, 64°55′40″ West when entering the port using St. Thomas Channel; red buoy #2 in approximate position 18°19′15″ North, 64°55′59″ West when entering the port using East Gregorie Channel; and red lighted buoy #4 in approximate position 18°18′16″ North, 64°57′30″ West when entering the port using West Gregorie Channel. These zones are deactivated when the cruise ship passes any of these buoys on its departure from port.

(b) *Regulations.* In accordance with the general regulations in § 165.33 of this part, no person or vessel shall enter or remain in this security zone unless specifically authorized by the Captain of the Port San Juan, or a Coast Guard commissioned, warrant, or petty officer designated by the Captain of the Port. The Captain of the Port will notify the public when a zone is activated and any changes in the status of the zones by Marine Safety Radio Broadcast on VHF Marine Band Radio, Channel 16 (157.1 Mhz) and by a Marine Safety Information Bulletin (MSIB) sent by facsimile and electronic mail.

(c) *Dates.* This section becomes effective at 6 p.m. on November 4, 2002 and will terminate at 11:59 p.m. on June 15, 2003.

Dated: November 4, 2002.

W.J. Uberti,

Captain, U.S. Coast Guard, Captain of the Port.

[FR Doc. 02–28837 Filed 11–12–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD 07–02–132]

RIN 2115–AA97

Security Zone; San Juan, Puerto Rico

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule; request for comments.

SUMMARY: The Coast Guard is extending the effective period for the temporary final rule creating temporary moving security zones 50 yards around all cruise ships entering or departing the Port of San Juan. Temporary fixed security zones are also established 50 yards around all cruise ships that are moored in the Port of San Juan. These security zones are needed for national security reasons to protect the public, ports, and waterways from potential subversive acts. Entry into these zones is prohibited, unless specifically authorized by the Captain of the Port, San Juan, Puerto Rico or his designated representative.

DATES: This rule is effective from 11:59 p.m. on October 31, 2002 until 11:59 p.m. on April 30, 2003.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of [CGD 07–02–132] and are available for inspection or copying at Marine Safety Office San Juan, Rodval Bldg. San Martin St. #90 Ste 400, Guaynabo, PR 00969 between 7 a.m. and 3:30 p.m. Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Chip Lopez, Marine Safety Office San Juan, Puerto Rico at (787) 706–2444.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a NPRM. Publishing a NPRM, which would incorporate a comment period before a final rule could be issued, would be contrary to the public interest since the Captain of the Port of San Juan has determined that immediate action is needed to protect the public, ports and waterways of the United States near San Juan.

For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The Coast Guard will issue a broadcast notice to mariners and written information via facsimile and electronic mail to inform mariners of this regulation.

Request for Comments

Although the Coast Guard has good cause to implement this regulation without a notice of proposed rulemaking, we want to afford the public the opportunity to participate in this rulemaking by submitting comments and related material regarding the size and boundaries of these security zones in order to minimize unnecessary burdens. If you do so, please include your name and address, identify the docket number for this rulemaking [CGD07–02–132] indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this temporary final rule in view of them.

Background and Purpose

Based on the September 11, 2001, terrorist attacks on the World Trade Center buildings in New York and the Pentagon in Arlington, Virginia, there is an increased risk that subversive activity could be launched by vessels or persons in close proximity to the Port of San Juan, Puerto Rico, against cruise ships entering, departing and moored within this port. Following these attacks by well-trained and clandestine terrorists, national security and intelligence officials have warned that future terrorists attacks are likely. The President has continued the national emergencies he declared following the September 11, 2001 terrorist attacks (67 FR 58317 (Sept. 13, 2002) (continuing national emergency with respect to terrorist attacks), 67 FR 59447 (Sept. 20, 2002) (continuing national emergency with respect to persons who commit, threaten to commit or support terrorism)). The President also has found pursuant to law, including the Magnuson Act (50 U.S.C. 191 *et seq.*), that the security of the United States is and continues to be endangered following the attacks (E.O. 13,273, 67 FR 56215 (Sept. 3, 2002) (security endangered by disturbances in international relations of U.S and such disturbances continue to endanger such relations).

There may be Coast Guard, local police department or other patrol vessels on scene to monitor traffic and advise mariners of the restrictions in these areas. Entry into these security zones is prohibited, unless specifically authorized by the Captain of the Port, San Juan, Puerto Rico.

On January 17, 2002 the Coast Guard published a similar temporary final rule in the **Federal Register** that established temporary moving and fixed security zones 50 yards around all cruise ships entering, departing or moored in the Port of San Juan (67 FR 2330). That rule expired on February 28, 2002. The Captain of the Port issued another temporary final rule extending the security zones around cruise ships until June 15, 2002 (CGD07–02–015) which also expired. There is a current temporary final rule that was published on June 13, 2002 (67 FR 40608) which will expire on October 31, 2002. On June 5, 2002, the Captain of the Port published a notice of proposed rulemaking that proposed to make these security zones permanent zones (67 FR 42741). This temporary rule is necessary to ensure the security on the navigable waters while the Captain of the Port drafts a final rule.

The Captain of the Port has determined that this rule is necessary to protect the Port of San Juan from subversive activity. The Captain of the Port intends to issue a notice of proposed rulemaking in a separate document to be published in the **Federal Register** proposing to create permanent security zones around cruise ships in the Port of San Juan.

The security zone for a vessel entering the Port of San Juan is activated when the vessel is one mile north of the #3 buoy, at approximate position 18°28′17.19″ N, 066° – 07′45.7″ W. The zone for a vessel is deactivated when the vessel passes this buoy on its departure from the port. The Captain of the Port will notify the public of these security zones via Marine Safety Radio Broadcast on VHF Marine Band Radio, Channel 22 (157.1 MHz) and Marine Safety Information Bulletins via facsimile and the Marine Safety Office San Juan Web site at *http://www.msocaribbean.com.*

Regulatory Evaluation

This temporary rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. The Office of Management and Budget has not reviewed it under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979) because vessels may be allowed to transit around these zones or enter the zones on a case by case basis with the authorization of the Captain of the Port.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard considered whether this rule would have a significant economic effect upon a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities because small entities may be allowed to transit around these zones or enter the zones on a case by case basis with the authorization of the Captain of the Port. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule will have a significant economic impact on it, please submit a comment to the Docket Management Facility at the address under **ADDRESSES**. In your comment, explain why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. If the rule will affect your small business, organization, or government jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding this rule. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

Federalism

A rule has implication for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have

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determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Although this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b) (2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Environmental

The Coast Guard considered the environmental impact of this rule and concluded under Figure 2–1, paragraph 34(g) of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES.**

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationships between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 165, as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. A new temporary § 165.T07–132 is added to read as follows:

§ 165.T07–132 Security Zones; Port of San Juan, Puerto Rico.

(a) *Regulated area.* Temporary moving security zones are established 50 yards around all cruise ships entering or departing the Port of San Juan. These moving security zones are activated when the subject vessel is one mile north of the #3 buoy at approximate position 18°28′17.19″ N, 066°-07′45.7″ W when entering the Port of San Juan and deactivated when the vessel passes this buoy on its departure from the Port of San Juan. Temporary fixed security zones are also established 50 yards around all cruise ships when they are moored in the Port of San Juan.

(b) *Regulations.* In accordance with the general regulations in § 165.33 of this part, entry into this zone is prohibited except as authorized by the Captain of the Port, or a Coast Guard commissioned, warrant, or petty officer designated by him. The Captain of the Port will notify the public of any changes in the status of this zone by Marine Safety Radio Broadcast on VHF Marine Band Radio, Channel 22 (157.1 MHz).

(c) *Dates.* This rule is effective at 11:59 p.m. on October 31, 2002 until 11:59 p.m. on April 30, 2003.

Dated: October 31, 2002.

D.A. Greene,

Lieutenant Commander, U.S. Coast Guard, Acting Captain of the Port, San Juan.

[FR Doc. 02–28836 Filed 11–12–02; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AZ 080–0060; FRL–7261–6]

Revisions to the Arizona State Implementation Plan, Pinal County Air Quality Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing a full disapproval of revisions to the Pinal County Air Quality Control District's (PCAQCDs) portion of the Arizona State Implementation Plan (SIP). These revisions concern the incorporation by reference of external documents into the SIP. We are also finalizing a full approval of a revision to the PCAQCD portion of the Arizona SIP concerning definitions and a removal of rules previously approved in error. We are finalizing action on local rules under the Clean Air Act as amended in 1990 (CAA or the Act).

EFFECTIVE DATE: This rule is effective on December 13, 2002.

ADDRESSES: You can inspect copies of the administrative record for this action at EPA's Region IX office during normal business hours. You can inspect copies of the submitted rule revisions at the following locations:

Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Environmental Protection Agency, Air Docket (6102), Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington DC 20460.

Arizona Department of Environmental Quality, 1110 West Washington Street, Phoenix, AZ 85007.

Pinal County Air Quality Control District, Building F, 31 North Pinal Street (P.O. Box 987), Florence, AZ 85232.

FOR FURTHER INFORMATION CONTACT: Al Petersen, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105; (415) 947–4118.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

I. Proposed Action

On November 19, 2001 (66 FR 57914), EPA proposed a full disapproval of the rules in Table 1 that were submitted for incorporation into the Arizona SIP.

TABLE 1.—SUBMITTED RULES

Local agency	Rule No.	Rule title	Amended	Submitted
PCAQCD	1–2–110	Adopted Documents	07/29/98	10/07/98
PCAQCD	1–3–130	Adopted Documents	05/14/97	10/07/98
PCAQCD	3–1–020	Adopted Documents	05/14/97	10/07/98
PCAQCD	4–1–010	Adopted Documents	05/14/97	10/07/98

We proposed a full disapproval because we determined that these rules have limited enforceability due to relying on references to rules not contained in the SIP. Our proposed action contains more information on the rules and our evaluation.

On November 19, 2001 (66 FR 57914), EPA proposed a full approval of the rule in Table 2 that was submitted for incorporation into the Arizona SIP, because we believe it fulfills all relevant CAA requirements.

TABLE 2.—SUBMITTED RULE

Local agency	Rule No.	Rule Title	Amended	Submitted
PCAQCD	1–3–140	Definitions	07/29/98	10/07/98

On November 19, 2001 (66 FR 57914), EPA proposed the removal from the Arizona SIP of rules in Table 3 that were originally approved in error.

TABLE 3.—RULES FOR REMOVAL FROM THE SIP

[Previously Approved on April 9, 1996 (61 FR 15717), as Clarified on December 20, 2000 (65 FR 79742]

Local agency	Rule No.	Rule title	Amended	Submitted
PCAQCD	1–3–130	Adopted Documents	10/12/95	11/27/95
PCAQCD	3–1–020	Adopted Documents	06/29/93	11/27/95

We proposed removing these rules from the SIP because we determined that these rules have limited enforceability due to relying on references to rules not contained in the SIP. Our proposed action contains more information on the rules and our evaluation.

II. Public Comments and EPA Responses

EPA's proposed action provided a 30-day public comment period. During this period, we did not receive any comments.

III. EPA Action

No comments were submitted that change our assessment of the rules as described in our proposed action. Therefore, as authorized in sections 110(k)(3) and 301(a), EPA is finalizing a full disapproval of Rules 1–2–110, 1–3–130, 3–1–020, and 4–1–010. As a result, these rules will not be in the Arizona SIP and sanctions will not be imposed under section 179 of the CAA as described in 59 FR 39832 (August 4, 1994).

As authorized in sections 110(k)(3) and 301(a) of the CAA, EPA is finalizing a full approval of Rule 1–3–140. This action incorporates the submitted rule into the Arizona SIP.

As authorized in section 110(k)(6), EPA is finalizing the removal from the Arizona SIP of Rules 1–3–130 and 3–1–020.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

B. Executive Order 13211

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

C. Executive Order 13045

Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13132

Executive Order 13132, entitled Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612, Federalism and 12875, Enhancing the Intergovernmental Partnership. Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the

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various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely acts on a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

E. Executive Order 13175

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

This final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

F. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

EPA's disapproval of the state request under section 110 and subchapter I, part D of the Clean Air Act does not affect any existing requirements applicable to small entities. Any pre-existing federal requirements remain in place after this disapproval. Federal disapproval of the state submittal does not affect state enforceability. Moreover, EPA's disapproval of the submittal does not impose any new Federal requirements. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

G. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action acts on pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

H. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

EPA believes that VCS are inapplicable to today's action because it does not require the public to perform activities conducive to the use of VCS.

I. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

J. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 13, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. See Section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations,

Reporting and recordkeeping requirements.

Dated: August 2, 2002.

Laura Yoshii,

Deputy Regional Administrator, Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart D—Arizona

2. Section 52.120 is amended by adding paragraph (c)(84)(i)(G), (c)(84)(i)(H), and (c)(107) to read as follows:

§ 52.120 Identification of plan.

* * * * *

(c) * * *

(84) * * *

(i) * * *

(G) Previously approved on April 9, 1996 in paragraph (c)(84)(i)(A) of this section and now deleted without replacement, Rule 3–1–020.

(H) Previously approved on April 9, 1996 in paragraph (c)(84)(i)(D) of this section and now deleted without replacement, Rule 1–3–130.

* * * * *

(107) Amended rules for the following agency were submitted on October 7, 1998 by the Governor's designee.

(i) Incorporation by reference.

(A) Pinal County Air Quality Control District.

(*1*) Rule 1–3–140, adopted on June 29, 1993 and amended on July 29, 1998.

* * * * *

3. Section 52.133 is amended by adding paragraphs (f) and (g) to read as follows:

§ 52.133 Rules and regulations.

* * * * *

(f) Rules 1–3–130 and 3–1–020 submitted on November 27, 1995 of the Pinal County Air Quality Control District regulations have limited enforceability because they reference rules not contained in the Arizona State Implementation Plan. Therefore, these rules are removed from the Arizona State Implementation Plan.

(g) Rules 1–2–110, 1–3–130, 3–1–020, and 4–1–010 submitted on October 7, 1998 of the Pinal County Air Quality Control District regulations have limited enforceability because they reference rules not contained in the Arizona State Implementation Plan. Therefore, these rules are disapproved.

[FR Doc. 02–28351 Filed 11–12–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52

[SC–041, 046–200211(a); FRL–7406–7]

Approval and Promulgation of Implementation Plans; South Carolina; Adoption of Revision Governing Credible Evidence and Removal of Standard 3

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving a revision to the State Implementation Plan (SIP) submitted on October 1, 2002, by the State of South Carolina, Department of Health and Environmental Control (Department). This revision consisted of an addition to Regulation 61–62.1, Definitions and General Requirements, entitled "Section V—Credible Evidence." The submission of Section V—Credible Evidence by South Carolina is to meet the requirements for credible evidence set forth in EPA's May 23, 1994, SIP call letter. EPA is also approving a correction to the SIP regarding removal of Standard 3 "Emissions from Incinerators" from the SIP as requested by the State of South Carolina.

DATES: This direct final rule is effective January 13, 2003 without further notice, unless EPA receives adverse comment by December 13, 2002. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be addressed to: Sean Lakeman, EPA Region 4, Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960. Copies of the State submittal is available at the following addresses for inspection during normal business hours: Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960. Sean Lakeman, 404/562–9043. South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, South Carolina 29201–1708.

FOR FURTHER INFORMATION CONTACT: Sean Lakeman at 404/562–9043, or by electronic mail at *lakeman.sean@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background On Credible Evidence
II. South Carolina's Response to Credible Evidence
III. Removal of Standard 3
IV. Final Action
V. Administrative Requirements

I. Background On Credible Evidence

On October 22, 1993, the EPA published a **Federal Register** document proposing an Enhanced Monitoring Program Rule. In that document, the EPA proposed both new regulations and amendments to several existing air pollution program regulations. To address the revisions to the Clean Air Act (CAA) regarding the use of any credible evidence the EPA issued a SIP call to all states in a letter dated May 23, 1994. The purpose of this letter was to require the states to revise their SIP to allow for the use of enhanced monitoring as a means of establishing compliance and "any credible evidence" to prove violations. A Federal Implementation Plan (FIP) was to be promulgated if the states failed to correct the deficiencies in the SIP by June 30, 1995. However, during the time between which the Enhanced Monitoring Program Rule was proposed and the FIP was to be in place, EPA separated the enhanced monitoring rule into two new parts: "any credible evidence" and "compliance assured monitoring" (CAM); and promulgated them in separate **Federal Register** documents. The final rule for "any credible evidence" was promulgated on February 24, 1997.

II. South Carolina's Response to Credible Evidence

In response to the May 23, 1994, SIP call, the Department submitted a revision to South Carolina's SIP on October 1, 2002. This revision consisted of the addition of Section V—Credible Evidence to Regulation 61–62.1 Definitions and General Requirements. The purpose of Section V regarding the demonstration of compliance or noncompliance, or the certification of compliance is:

- to clarify that any credible evidence can be used,
- to eliminate any potential ambiguity in language regarding exclusive reliance on reference test methods, and
- to curtail language that limits the types of testing or monitoring data that may be used. Section V specifically allows for the use of any credible evidence "in the determination of non-

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compliance by the Department or for compliance certification by the owners or operators of stationary sources." In addition, Section V allows for "credible evidence" to be used to determine whether or not a violation has or is occurring with respect to any standard within the plan.

III. Removal of Standard 3

In a letter dated May 5, 2000, South Carolina requested the removal of Standard 3 "Emissions from Incinerators" from the SIP. EPA has determined that South Carolina's Standard 3 "Emissions from Incinerators" was erroneously incorporated into the SIP. EPA is removing this rule from the approve South Carolina SIP because the rule does not have a reasonable connection to the National Ambient Air Quality Standard (NAAQS) and related air quality goals of Section 110 of the Clean Air Act (CAA). The intended effect of this correction to the SIP is to make the SIP consistent with the requirements of the CAA, as amended in 1990, regarding EPA action on SIP submittals and SIPs for national primary and secondary ambient air quality standards.

IV. Final Action

After a thorough review of the submittal, the EPA has found that the October 1, 2002, submittal is adequate to meet the credible evidence requirements set forth in the May 1994, SIP call. EPA is also approving a correction to the SIP regarding removal of Standard 3 "Emissions from Incinerators" from the SIP as requested by the State of South Carolina.

The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective January 13, 2003 without further notice unless the Agency receives adverse comments by December 13, 2002.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on January 13, 2003 and no further action will be taken on the proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

V. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 13, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping

requirements, Sulfur oxides, Volatile organic compounds.

Dated: November 1, 2002.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

Chapter I, title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart PP—South Carolina

2. In § 52.2120 the table in paragraph (c) is amended by adding a new entry under Regulation No. 62.1 after Section III for "Section V Credible Evidence" and removing the entry for "Standard No. 3 Emissions from Incinerators" to read as follows:

§ 52.2120 Identification of plan.

* * * * *

(c) * * *

AIR POLLUTION CONTROL REGULATIONS FOR SOUTH CAROLINA

State citation	Title/subject	State effective date	EPA approval date	Federal register notice
Regulation No. 62.1	Definitions, Permits Requirements and Emissions Inventory			
Section V	Credible Evidence	07/27/01	01/13/03	67 FR 68767

* * * * *

[FR Doc. 02–28698 Filed 11–12–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[FRL–7408–2]

Designation of Areas for Air Quality Planning Purposes; Redesignation of Particulate Matter Unclassifiable Areas; Redesignation of Hydrographic Area 61 for Particulate Matter, Sulfur Dioxide, and Nitrogen Dioxide; State of Nevada

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In this document, EPA is approving a request from the State of Nevada, pursuant to section 107(d) of the Clean Air Act (Act), to redesignate the current single unclassifiable area for particulate matter with an aerodynamic diameter less than or equal to 10 micrometers (PM–10) into numerous individual areas to be consistent with the area definitions for other pollutants. EPA is also approving a State-requested subdivision of one of those individual areas, referred to as hydrographic area 61 (Boulder Flat), into two areas. EPA's approval of these requests establishes hydrographic areas as the section 107(d) unclassifiable areas for PM–10 and replaces hydrographic area 61 with two new section 107(d) areas for PM–10, sulfur dioxide (SO_2), and nitrogen dioxide (NO_2): upper area 61 and lower area 61. In this action, EPA is also deleting certain total suspended particulate (TSP) area designations that are no longer necessary. EPA proposed these actions in the **Federal Register** on April 30, 2002 (67 FR 21194). EPA received comments from several commenters on our proposed actions. After carefully reviewing and considering the issues raised by the commenters, EPA is finalizing our actions as proposed.

EFFECTIVE DATE: This action will become effective on December 13, 2002.

ADDRESSES: Copies of the State's submittal, and other supporting documentation relevant to this action, are available for inspection during normal business hours at Air Division, EPA Region 9, 75 Hawthorne Street, San Francisco, California, 94105.

FOR FURTHER INFORMATION CONTACT: Gerardo Rios, EPA Region 9, Air Division, Permits Office (AIR–3), at (415) 972–3974 or *rios.gerardo@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

Table of Contents.

I. Background.
II. Comments received by EPA on our proposed rulemaking and EPA's responses.
III. EPA's final action.
IV. Administrative requirements.

I. Background

Pursuant to the redesignation procedures of section 107(d)(3) of the Clean Air Act (Act), States may request EPA's approval of air quality planning area redesignations, including boundary changes to existing areas. The State of Nevada submitted two such section 107(d) redesignation requests to EPA. One request (dated April 16, 2002) was for EPA to redesignate the existing PM–10 section 107 unclassifiable area by establishing hydrographic areas within the State as the PM–10 unclassifiable areas. The State's other request (dated November 6, 2001) was to split an existing PSD baseline area, hydrographic area 61, into two parts: upper area 61 and lower area 61.

On April 30, 2002, EPA proposed to approve the requests made by the State of Nevada, pursuant to section 107(d) of the Act. *See* 67 FR 21194. Today's rule finalizes our approval of these two requests from the State of Nevada. EPA's approval of these requests establishes hydrographic areas as the section 107(d) unclassifiable areas for PM–10 and replaces hydrographic area 61 with two new section 107(d) areas for PM–10, sulfur dioxide (SO_2), and nitrogen dioxide (NO_2): upper area 61 and lower area 61. In this action, EPA is also deleting certain total suspended particulate (TSP) section 107(d) area designations because they are no longer necessary.

II. Comments Received by EPA on Our Proposed Rulemaking and EPA's Responses.

EPA received seven sets of comments on our proposal to approve the State of Nevada's 107(d) redesignation requests. Provided below is a summary of the significant comments, and EPA's responses thereto. Complete copies of the submitted comments are available for inspection during normal business hours at Air Division, EPA Region 9, 75 Hawthorne Street, San Francisco, California 94105.

Comment 1: One commenter claims that EPA's rule will result in significant

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deterioration of air quality in designated attainment/unclassifiable areas for PM–10 in violation of the PSD program requirements. The commenter alleges that PSD increments will be violated by EPA's proposed action. Their allegation is based on a belief that the State is a single, triggered, PSD baseline area for PM–10 and that EPA's action would untrigger most of the State.

Response: EPA is promulgating this rule because we do not believe that the rule will result in significant deterioration of air quality nor that PSD increments will be violated. As such, we disagree with the commenter's claims. The comment, which relates to EPA's proposal to approve the State's request to redesignate the existing PM–10 section 107 unclassifiable area by establishing hydrographic areas within the State as the PM–10 unclassifiable areas, is based on the incorrect belief of the commenter that prior to EPA's present action, the State consisted of a single PSD baseline area for PM–10. Prior to EPA's action, as the Agency clarified in our March 19, 2002 final rule (see 67 FR 12474), the State's 253 hydrographic areas had already been established as the PSD baseline areas for particulate matter (originally for the indicator pollutant TSP, then for PM–10, even though there was a single PM–10 section 107 unclassifiable area). Today's rule aligns the section 107 area definitions for PM–10 with the established hydrographic area approach the State has used for almost twenty years in implementing the PSD program for particulate matter. Today's rule has no effect on PSD baseline areas for PM–10 in the State, other than in hydrographic area 61, where the rule proposes to split a single area into two.

Comment 2: One commenter notes that the PM–10 redesignation request and the request to subdivide hydrographic area 61 were submitted by Allen Biaggi, Administrator of the Nevada Division of Environmental Protection, rather than from the Governor of Nevada. The commenter concludes that since EPA's regulations require that the submittals be made by the Governor, the requests are unlawful and cannot be acted upon by EPA.

Response: The commenter is correct that the redesignation requests were submitted by Allen Biaggi, Administrator of the Nevada Division of Environmental Protection ("NDEP"), rather than by the Governor of Nevada. NDEP is one of the divisions within the State Department of Conservation and Natural Resources ("Department"). Nevada law authorizes the Department to take all action necessary or appropriate to secure to Nevada the benefits of the Federal Clean Air Act. *See* Title 40 of the Nevada Revised Statutes, Chapter 445B, sections 445B.125, 445B.205, and 445B.135. The Department is a State administrative Agency overseen by the Governor. Therefore, EPA can reasonably assume that the redesignation request has been made with the full knowledge and endorsement of the Governor of Nevada. Thus, Allen Biaggi acted lawfully in submitting the State's redesignation requests to EPA on behalf of the Governor of Nevada.

Comment 3: One commenter argues that neither Nevada nor EPA provide the required documentation that the 253 unclassifiable areas would not intersect the area of impact of any major stationary source or modification that has established the minor source baseline date.

EPA Response: EPA's definition of "baseline area" at 40 CFR 52.21(b)(15) notes that redesignated areas "cannot intersect or be smaller than the area of impact of any major stationary source or major modification which" establishes a minor source baseline date. Thus, if a State's redesignation was establishing new or different baseline areas, then documentation would be needed to demonstrate that the newly created baseline areas meet the federal regulatory definition for such areas by not intersecting or being smaller than the area of impact of any major stationary source or major modification which established a minor source baseline date. However, Nevada's request to create 253 PM–10 section 107 unclassifiable areas does not establish new or different baseline areas for PM–10. As EPA explained in our March 19, 2002 final rule, the PM–10 PSD baseline areas in the State are the hydrographic areas and have been for many years.[1] The State's implementation of the federal PSD program has been based on the hydrographic area approach since EPA delegated the program in 1983. Thus, contrary to the commenter's assertion, our action is not establishing a new or revised state-wide map of PSD baseline areas for PM–10, and it is not necessary for the State or EPA to provide the documentation requested by the commenter. As an example, Sierra Pacific Power's submittal of a complete PSD permit application on March 11, 1994 for Tracy Generating Station established the PM–10 minor source baseline date in hydrographic area 83. EPA's action today has no effect on the status of this basin, *i.e.*, the basin remains triggered with the same minor source baseline date.

Comment 4: One commenter alleges that EPA's action would untrigger the minor source baseline date for PM–10 in the proposed lower basin 61 (which should have been triggered by Barrick gold mine), and in many key areas of the State, such as Jarbidge Wilderness, the State's only mandatory Class I area, and on many Indian reservations and colonies. The commenter also states that EPA failed to conduct the required consultation with the Tribes who would be affected because minor source baseline dates on tribal reservations will be eliminated.

EPA Response: In accordance with EPA's PSD program regulations at 40 CFR 52.21, the PSD minor source baseline date in a given baseline area is established by submittal of the first complete PSD permit application in that area. Once the minor source baseline date has been established in an area, all sources consume increment in that area. However, in some cases, a larger area where the minor source baseline date has been established (or "triggered") can be broken up into two or more smaller areas and such action could potentially result in the elimination of the minor source baseline date in one or more of the smaller areas ("untrigger" the areas) which subsequently do not contain the PSD source.

EPA disagrees that today's rule would untrigger the minor source baseline date for PM–10 (or any other pollutant) in lower basin 61, the Class I-designated Jarbidge Wilderness, or on any Indian reservations or colonies in the State. EPA's action will not untrigger any minor source baseline dates in the State of Nevada. As with Comment 1, this comment is based on the incorrect belief of the commenter that prior to EPA's present action, the State consisted of a single PSD baseline area for PM–10 and that the effect of our action would be to create new baseline areas for PM–10, thereby untriggering numerous areas of the State where the minor source baseline date has already been established. As previously explained, EPA's current rule has no effect at all on PSD baseline areas for PM–10 in the State, other than in hydrographic area 61. In hydrographic area 61, our action will split a single PSD baseline area into two PSD baseline areas. However, the minor source baseline date has not been established in hydrographic area 61, so our action does not untrigger any established minor source baseline date.

[1] In 1993, EPA revised its PSD regulations to address the transition from TSP to PM–10. Among other changes in our 1993 rule related to PSD, EPA retained the existing TSP baseline areas (*i.e.*, the hydrographic areas in the State of Nevada) as part of the program for implementing the newly-promulgated PM–10 increments. *See* 58 FR 31622; June 3, 1993.

EPA disagrees with the commenter's claim that Barrick gold mine has triggered the minor source baseline date in hydrographic area 61. Although Barrick gold mine is a "major source" located in hydrographic area 61, it has not been subject to PSD permitting requirements.[2] As previously noted, the minor source baseline date in a given baseline area is established by submittal of the first PSD permit application in that area. Neither Barrick gold mine nor any other source in hydrographic area 61 has submitted a PSD permit application, so the minor source baseline date has not been established in that area.

Finally, EPA disagrees that the Agency was required to consult with Indian tribes regarding the effect of this rulemaking. EPA concluded that the rule will not have a substantial direct effect on one or more Indian tribes, in part because the rule will not untrigger the minor source baseline date within any tribal boundary, thus we did not initiate a formal consultation process.

Comment 5: One commenter claims that EPA did not consider the impact of the proposed PM–10 redesignation on the State's ability to attain and maintain the new PM–2.5 NAAQS. The commenter states that such consideration is required in light of EPA's December 1997 guidance on implementation of the new standards, because the proposed action would relax the State's PSD program and allow increased degradation of air quality.

EPA Response: EPA did not consider the impact of the proposed PM–10 redesignation on the State's ability to attain and maintain the new PM–2.5 NAAQS because the rule will not have any effect on the State's implementation of the new standard. Our action does not relax the State's PSD program and we do not believe it will result in significant degradation of air quality in the State. Other than in hydrographic area 61, EPA's action will have *no* effect on the State's implementation of the PSD program. In hydrographic area 61, the only effect will be that a single untriggered PM–10 PSD baseline area will become two separate unclassifiable/attainment areas (constituting two untriggered PSD baseline areas for PM–10). Subdividing one untriggered PSD baseline area into two untriggered PSD baseline areas conforms with EPA's existing regulatory criteria for such actions and is consistent with relevant statutory requirements under the Clean Air Act.

Comment 6: One commenter argues that EPA cannot rely upon the March 19, 2002 final rule as the sole basis for approving the State's PM–10 redesignation request because EPA never approved the use of hydrographic areas for PM–10. The commenter also argues that the claim that Nevada has relied upon the hydrographic area approach for managing particulate emissions in Nevada is unsupported by fact.

EPA Response: EPA is not relying upon the March 19, 2002 final rule as the basis for approving Nevada's PM–10 redesignation request. While EPA does substantially base its proposed approval of the State's PM–10 redesignation request on the existing hydrographic area approach used by the State to manage particulate matter emissions, this approach was not effectuated by EPA's March 19, 2002 rule. EPA's March 2002 rule, rather than establishing hydrographic areas as the PSD baseline areas for particulate matter, merely clarified that several previous Agency rulemakings had already established hydrographic areas as the PSD areas. Moreover, despite the commenter's claim to the contrary, Nevada has an almost 20-year history of using hydrographic areas as the geographic basis for PSD program implementation. All of the PSD permits issued by the State (and the increment analyses conducted in support of these permits) have relied upon the hydrographic area approach for determining whether sources were locating in areas where the minor source baseline date had already been established or whether the new source was initially triggering the area. Some examples of permit-related documents which demonstrate the State's reliance on the hydrographic area scheme have been added to the administrative record for this rulemaking.

Lastly, since publication of the March 19, 2002 rule discussed above, EPA has discovered two additional documents which lend further support to the action EPA took: (1) EPA's final rule reaffirming the area boundaries established in our original March 3, 1978 designation of nonattainment, attainment, and unclassifiable areas in Nevada under section 107(d) of the 1977 CAA Amendments; and (2) a letter from Allyn Davis, Director, Air & Hazardous Materials Division, EPA—Region 9, to Dick Serdoz, Air Quality Officer, Nevada Department of Conservation and Natural Resources, dated May 8, 1979, concerning the EPA final rule affirming the area designations. *See* 43 FR 8962 (March 3, 1978) for the original area designations and *see* 44 FR 16388, at 16391 (March 19, 1979) for the rule re-affirming the boundaries for areas in Nevada. These documents have also been added to the administrative record for this rulemaking.

Comment 7: One commenter argues that since the March 19, 2002 rule is being challenged in the 9th Circuit Court of Appeals, EPA should not rely on the rule as the basis for approving Nevada's PM–10 redesignation request. Instead, EPA must assume that the terms "rest of state" and "entire state" constitute single attainment/unclassifiable areas for which the minor source baseline date has been triggered until such time as the issue is resolved by the Court.

Response: On May 17, 2002, Reno-Sparks Indian Colony and Great Basin Mine Watch ("petitioners") filed a petition for review in the U.S. Court of Appeals for the Ninth Circuit (Docket # 02–71503) challenging those portions of EPA's final rule (parts I and II) clarifying the tables in 40 CFR 81.329 that identify the attainment and unclassifiable areas within the State of Nevada for TSP, SO_2, and NO_2 and clarifying the PSD baseline areas for PM–10. The petitioners reject EPA's characterization of the action taken on March 19, 2002 as a clarification of the existing regulatory framework and contend that EPA's action represents an unlawful redesignation of a single area referred to as "rest of state" into numerous subareas under section 107(d) of the Clean Air Act. The petition for review notwithstanding, the Agency continues to believe that its decision to clarify the meaning of the term "rest of state" in 40 CFR 81.329 as Nevada's hydrographic areas is amply supported by the record and that the decision to publish the March 19th rule as a technical correction (*i.e.*, without notice and comment) is consistent with the Administrative Procedure Act.

EPA does not agree that the Agency must interpret the terms "rest of state" and "entire state" as constituting single attainment/unclassifiable areas for which the minor source baseline date has been triggered until such time as the issue is resolved by the Ninth Circuit Court of Appeals. As we have previously explained, and as clarified in the March 19, 2002 rulemaking, the effect of EPA's prior regulatory actions (finalized long ago) was to establish hydrographic areas as the PSD baseline areas in the State of Nevada. The current legal challenge to EPA's March 19, 2002 rule has no effect on the status of the

[2] While it is accurate that only major sources are subject to PSD permitting requirements, a source is not required to obtain a PSD permit merely because it is a major source. PSD permits are only required for construction of new major sources and for existing major sources making a modification that increases emissions above designated "significance" thresholds. *See* 40 CFR 52.21(i).

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rule, nor, more importantly, on the already established use of hydrographic areas as air quality planning areas for purposes of implementing the PSD permitting program in Nevada. EPA will continue to interpret the terms "rest of state" and "entire state" as referring to the hydrographic areas in the State that are not designated as nonattainment. If this issue is ultimately resolved by the Courts in a manner that is inconsistent with EPA's current approach, then we will take all necessary steps at that time to remedy the situation, including, if necessary, reassessing the appropriateness of this rulemaking.

Comment 8: One commenter claims that because Nevada does not have an approved State Implementation Plan (SIP) that meets the requirements of CAA sections 160 through 165, then in order for EPA to redesignate Nevada's PM–10 unclassifiable area into hydrographic areas, and to redesignate hydrographic area 61, the Agency must revise Nevada's Federal Implementation Plan (FIP).

Response: Neither EPA's action to redesignate Nevada's PM–10 unclassifiable area into hydrographic areas nor EPA's action to subdivide hydrographic area 61 from a single unclassifiable area into two unclassifiable areas represents, nor requires, a revision to Nevada's SIP or FIP. Rather these are EPA actions to promulgate the boundaries of designated attainment/unclassifiable areas in the State of Nevada.

As noted by the commenter, and reflected at 40 CFR 52.1485(a), Nevada does not have an approved State Implementation Plan (SIP) that meets the requirements of CAA sections 160 through 165. However, as further clarified at 40 CFR 52.1485(b), "the provisions of § 52.21(b) through (w) are incorporated and made a part of the applicable State plan for the State of Nevada except for that portion applicable to the Clark County Health District." *See* 45 FR 52676, at 52741 (August 7, 1980) and 47 FR 26620 (June 21, 1982). (Sections 52.21(b) through (w) in part 52 of title 40 of the Code of Federal Regulations consist of the Federal PSD regulations.) Thus, the Federal PSD regulations, codified at 40 CFR 52.21, represent EPA's FIP for Nevada (for purposes of implementing the PSD program).

However, while the part 52 Federal PSD regulations refer to section 107 attainment and unclassifiable areas, they do not incorporate the section 107 area designations by reference. Thus, the regulatory changes effected by today's rule are located at 40 CFR 81.329, which describes the "Section 107 Attainment Status Designations" for Nevada; no changes are being made to 40 CFR 52.21 or to 40 CFR part 52, subpart DD—Nevada (Nevada's SIP). Since EPA is making no changes to these regulatory sections, today's action does not require a revision to the Nevada SIP or FIP.

Comment 9: One commenter asserts that EPA's action to delete certain TSP attainment and unclassifiable areas from 40 CFR 81.329 is unlawful because the Agency's regulations state that "[a]ny baseline area established originally for the TSP increments shall remain in effect and shall apply for purposes of determining the amount of available PM–10 increments. * * *" The commenter also questions why EPA is taking action to delete TSP area designations given that the State of Nevada did not make a formal request for such action.

Response: The Agency is not acting unlawfully in deleting the listing of certain TSP attainment and unclassifiable area designations from 40 CFR 81.329. Deletion of the listing of certain TSP attainment and unclassifiable areas does not eliminate any baseline area established originally for the TSP increments. Rather, the baseline areas originally established for the TSP increments (*i.e.*, the hydrographic areas) "remain in effect and * * * apply for purposes of determining the amount of available PM–10 increments.* * *" (40 CFR 52.21(b)(15)(iii)) As we explained in the proposed rule:

> In our 1993 PSD rule, we indicated that the replacement of the TSP increments with PM_{10} increments (which operate independently from the section 107 area designations for TSP) negates the need for the TSP attainment or unclassifiable area designations to be retained. We also indicated that we would delete such TSP designations in 40 CFR part 81 upon the occurrence of one of the following events: EPA's approval of a State's revised PSD program containing the PM_{10} increments; EPA's promulgation of the PM_{10} increments into a State's SIP where the State chooses not to adopt the increments on their own; or EPA's approval of a State's request for delegation of PSD responsibility under 40 CFR 52.21(u). *See* 58 FR 31622, 31635 (June 3, 1993). [Emphases added]

Thus, the listing of designated TSP attainment and unclassifiable areas in Nevada became unnecessary upon the effective date of the Agency's 1993 rule in areas where EPA had delegated the PSD program (*i.e.*, the entire State of Nevada except for Clark County.[3]

Finally, although the commenter is correct that the State of Nevada did not make a formal request to EPA to eliminate their unnecessary TSP area designations, such a request was not needed for EPA to act. EPA had already noted, in our 1993 rulemaking, that the Agency's intention was to delete the TSP area designations in 40 CFR part 81 once they were no longer necessary. Moreover, section 107 of the Act authorizes EPA to eliminate a section 107 designation for particulate matter (measured as TSP), when "the Administrator determines that such designation is no longer necessary." *See* CAA section 107(d)(4)(B). In today's action, the Agency is merely following through on a prior commitment to eliminate TSP designations based on a determination that they are no longer necessary. EPA's action in this regard is consistent with prior rulemakings by EPA to delete TSP area designations in other States. *See, e.g.*, 59 FR 28480 (June 2, 1994) (EPA action to delete TSP area designations in response to a State's request to redesignate TSP nonattainment areas to attainment).

Comment 10: Two commenters question whether the Agency's redesignation of hydrographic area 61 is in the public's interest because, they contend, the action merely splits an area into two pieces so that the air pollution in the region can be doubled and EPA's PSD requirements can be avoided. They further assert that continued subdivision of hydrographic areas to allow sources to avoid the PSD program will pollute the entire State.

Response: EPA does not agree that the effect of splitting hydrographic area 61 into upper and lower basins will be to allow air pollution in the region to be doubled. Area 61 is currently designated attainment or unclassifiable for all criteria pollutants and the minor source baseline date has not been triggered for any pollutant. Thus, the "allowable" amount of air pollution, and consequent level of air quality degradation, is presently constrained only by the NAAQS. After area 61 is split into upper and lower basins, the "allowable" amount of air pollution and level of air quality degradation in each of the two basins will also be constrained only by the NAAQS (*i.e.*, the overall level of air quality protection will be exactly the same) unless and until a PSD permit application triggers one or both areas. The commenter does not provide any justification for their contention that the effect of EPA's action in area 61 will be a doubling of the allowable air pollution in the region. However, it is true that if one area is triggered before the other, then there could be additional minor growth in the baseline of the untriggered area relative to the newly triggered area, because the triggered area would then be constrained by the PSD increments.

In addition, the commenter's concern that EPA's approval of the subdivision of area 61 portends a larger state-wide effort to split hydrographic areas is unwarranted. The Agency has not received any other request for such action by Nevada. Moreover, EPA's actions on requests for area redesignations under section 107(d) that affect PSD baseline areas are handled on a case-by-case basis in light of relevant statutory and regulatory requirements. The Agency's approval of the State's request to subdivide hydrographic area 61 does not assure EPA approval of any potential future requests the State might make to redesignate other existing section 107(d) attainment or unclassifiable areas, if the circumstances of the request, including any impact on the State's ability to effectively manage air quality, warrants denial.

Comment 11: Two commenters question the rationale provided by EPA for splitting area 61. They claim that the upper and lower basins are not self-contained, that the split will not promote the State's ability to effectively manage their air quality, and that Nevada has only limited and supervised authority to manage EPA's PSD program, so it is extremely unlikely that the redesignation would reduce the complexity of Nevada's PSD program. They further allege that the objective of the hydrographic area 61 redesignation, based on articles in the Nevada Press, appears to be to ensure that a new source in lower basin 61 (*i.e.*, a proposed power plant) will not trigger the PSD minor source baseline date in upper basin 61 where there are mining operations. Thus, they claim, EPA's approval of the redesignation would help the mines circumvent PSD requirements and is inconsistent with the goals and intent of the PSD provisions of the Act.

Response: As stated in our proposed rule, EPA is approving Nevada's request to subdivide hydrographic area 61 into upper and lower basins because the request complies with the existing federal standards for approval of section 107(d) redesignations and we do not believe the redesignation will interfere with the State's ability to manage air quality. As we further explained in our proposal, EPA's policy is to provide States with a fair degree of autonomy to balance air quality management with economic planning considerations. It is not necessary for EPA to make a finding that Nevada's redesignation request will improve air quality management by the State; rather, the Agency has to ensure that the request complies with the regulatory standards for section 107(d) redesignations and that the redesignation will not interfere with the State's management of air quality. Our proposed rule clearly describes how the State's request to split hydrographic area 61 complies with the Federal standards for section 107(d) and PSD baseline area redesignations, and provides the Agency's basis for concluding that the redesignation will not interfere with the State's management of air quality. *See* 67 FR 21194, at 21196–21197 (April 30, 2002).

Comment 12: One commenter claims that EPA has not shown that hydrographic areas are PSD baseline areas. They assert that EPA's notice aims to "replace the single unclassifiable area designated for Nevada for PM–10 with 253 unclassifiable areas" which, they contend, disagrees with a footnote in the proposal saying that these areas are "already established as the PSD baseline areas."

Response: The Federal PSD regulations define "baseline area" in terms of 107(d) attainment or unclassifiable areas. *See* 40 CFR 52.21(b)(15) and 40 CFR 51.166(b)(15). However, as EPA explained in our proposal, the transition from TSP to PM–10 resulted in a difference between the section 107(d) and PSD baseline areas for PM–10 in Nevada. Specifically, the TSP baseline areas (based upon the State's hydrographic areas) became PM–10 baseline areas pursuant to our 1993 rulemaking; however, the State of Nevada has a single section 107(d) unclassifiable area for PM–10. Thus, our current action represents another step in the transition from TSP to PM–10. This step re-aligns the section 107(d) areas with the PSD baseline areas by approving a request for establishing hydrographic areas, which had been the basis for TSP attainment and unclassifiable areas pursuant to our 1978 rulemaking, as the attainment and unclassifiable areas under section 107(d) of the Act for PM–10.

Comment 13: One commenter argues that even if EPA had the intention of establishing 253 hydrographic areas as section 107(d) areas in 1978, that is not what the Agency actually did, nor is it what the Agency codified in the CFR. The commenter asserts that the public has been misled by what is in the CFR as opposed to what EPA is now saying it meant, and that all of this was done under the guise of a "technical correction" with no opportunity for public comment.

Response: Our March 19, 2002 clarifying rule indicates that, in our 1978 rulemaking establishing the first nonattainment, attainment and unclassifiable areas, we stated that some States provided long lists of individual attainment and unclassifiable areas and that we were not listing each such area for those States. *See* 67 FR 12474, at 12475. Through our 1978 rulemaking, we did in fact designate those areas as individual attainment and unclassifiable areas for the purposes of section 107(d), but used the short-hand term "rest of state" or "entire state" to denote them rather than listing each separate area. The commenter did not provide any evidence to the contrary. Moreover, at the time of our 1978 rulemaking, there was no compelling reason for EPA to list each and every attainment and unclassifiable area. The need for specificity arose in 1980 with our promulgation of changes to the PSD regulations that established the link between PSD baseline areas and section 107(d) areas. Since 1978, hydrographic areas have represented the 107(d) attainment and unclassifiable areas, and the tables in 40 CFR 81.329 have continued to describe the areas for Nevada using the short-hand terms, "rest of state" and "entire state." Our March 2002 rule added footnotes clarifying the connection between "rest of state"/"entire state" and hydrographic areas.

Comment 14: One commenter notes that Nevada's request for the PM–10 107(d) redesignation was made on April 16, 2002 and that EPA has 18 months to act on the request (until October 2003). The commenter questions why EPA is taking action so quickly, especially when the Agency is currently evaluating the existing regulatory and policy framework for PSD baseline area redesignations.

Response: EPA's action approving the State's April 16, 2002 request to redesignate the single PM–10 unclassifiable area in Nevada into multiple unclassifiable areas (based on hydrographic areas) under section 107(d), is simply another step in the regulatory transition from TSP to PM–10. This particular type of section 107(d) action does not create new PSD baseline areas because the PM–10 baseline areas were established by operation of law through our 1993 PSD rulemaking as the PSD baseline areas originally established for TSP. (*See* our March 19, 2002 Technical Correction at

[3] The PSD program delegation does not apply in Clark County, Nevada. Clark County administers an EPA-approved PSD program (rather than administering a delegated federal PSD program) for PSD sources in Clark County. Therefore, as noted in our proposal, EPA is not deleting the TSP attainment and unclassifiable area designations in Clark County at this time.

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67 FR 12474 for further explanation.) Further, because this type of section 107(d) action does not create new PSD baseline areas, it is not the type that could theoretically be affected by a change in the regulatory criteria for evaluating PSD baseline area redesignations.

In contrast, EPA's action approving the State's November 6, 2001 request to redesignate hydrographic area 61 does create new PSD baseline areas and is the type that could potentially be affected by a change in the regulatory criteria. EPA's approval of this request is occurring roughly one year after the State of Nevada submitted its redesignation request related to area 61. EPA has 18 months under the Act to take final action on State redesignation requests, and the re-evaluation of the regulatory criteria is not likely to be completed by May 6, 2003 (18 months from the November 2001 request); thus, EPA can not wait and must finalize action based on the current statutory and regulatory criteria.

Comment 15: Several commenters urged EPA to expeditiously finalize our approval of Nevada's area 61 redesignation request.

Response: Section 107(d)(3)(D) allows EPA 18 months from receipt of a complete State redesignation submittal to approve or deny such redesignation. In today's notice, EPA is finalizing its proposal to approve Nevada's November 6, 2001 request to redesignate area 61 into two areas. In so doing, EPA is acting well within the 18-month review period allowed by the Act.

Comment 16: One commenter argues that redesignation of area 61 is necessary because of the way in which EPA's PSD program forces areas with air quality better than the National Ambient Air Quality Standards (NAAQS) to further limit source emissions of PM–10, NO_2 and SO_x to levels at only 20–35% of the NAAQS. The commenter asserts that these more stringent limits, the PSD increments, were set by EPA as a simple percentage of the NAAQS and are not health or welfare-based.

Response: Since 1967, Congress has declared that one of the purposes of the Clean Air Act is "to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population." *See* section 101(b)(1) of the Act. Originally, EPA did not interpret the 1967 Act as granting authority to the Agency to promulgate regulations designed to prevent "significant deterioration" of air quality in those areas which have air that already is cleaner than the NAAQS. However, EPA's narrow interpretation of its own authority was overruled by the Court in *Sierra Club* v. *Ruckelshaus*, 344 F. Supp. 253 (D.D.C. 1972), aff'd per curiam, 4 E.R.C. 1815 (D.C. Cir. 1972), aff'd by an equally divided Court, sub nom. *Fri* v. *Sierra Club*, 412 U.S. 541, 37 L. Ed. 2d 140, 93 S. Ct. 2770 (1973). Pursuant to Court order, EPA promulgated the initial PSD regulations in 1974 and these early PSD regulations identified increments for total suspended particulate and sulfur dioxide.

In 1977, Congress clarified its purposes in this regard and explicitly endorsed the increment approach for preventing significant deterioration by enacting increments for total suspended particulate and sulfur dioxide (*see* section 163 of the Act). For nitrogen dioxide and PM–10, EPA promulgated increments that are of equivalent stringency as those established by Congress in section 163, as required under sections 166(d) and 166(f) of the Act. *See* 53 FR 40656 (October 17, 1988) with respect to nitrogen dioxide PSD increments and 58 FR 31622 (June 3, 1993) with respect to PM–10 PSD increments. The EPA does not agree that the redesignation of area 61 is necessary because of the statutory and regulatory limits on increases in concentrations of these pollutants. Congress's clearly expressed objective in Part C of the Clean Air Act is to prevent significant deterioration of air quality in clean air areas within the United States.

Comment 17: One commenter claims that EPA must review and consider comments submitted on the proposed rule in light of what its PSD regulations currently provide—State discretion in redesignating PSD baseline areas—and not what some commenters want the rules to provide. The commenter argues that to delay final approval of the proposed rule for consideration of comments that could only be described as a request for change to EPA's current rules and policies would be to deny the State of Nevada the discretion accorded it under the Clean Air Act, Alabama Power and established by EPA in its PSD regulations.

Response: As described in the proposed rule and above, EPA reviewed the request by the State of Nevada to subdivide hydrographic area 61 on the basis of general statutory language from section 107(d)(3) of the Act, which addresses redesignations, and EPA's PSD regulations, specifically 40 CFR 52.21(b)(15). *See* 67 FR 21194, at 21196. In the proposed rule, EPA acknowledges concerns about the existing regulatory criteria for redesignations, but indicates that, unless and until those criteria are revised, the Agency will continue to evaluate State-initiated section 107(d) redesignation requests based on the language of the statute itself and the regulatory criteria in 40 CFR part 52. In so doing, EPA has not delayed final action on this particular redesignation request but is acting well within the 18-month period allowed for such actions under section 107(d)(3)(D) of the Act.

Comment 18: One commenter argues that the court in *Alabama Power Co.* v *Costle*, 636 F. 2d 323 (D.C. Cir. 1979) held that the Clean Air Act delegated decisions on increment consumption and allocation thereof by baseline area designations to the States. They further claim that based on the decision in Alabama Power and EPA's 1980 PSD regulations, EPA's discretion to review redesignation requests by States involving boundaries of areas designated attainment or unclassifiable is limited to consideration of two criteria: (1) The boundaries of any area redesignated by a State cannot intersect the area of impact of any major stationary source or major modification that established or would have established a baseline date for the areas proposed for redesignation; and (2) the area redesignation can be no smaller than the area of impact of such sources. In this proposed rule, they assert that EPA has attempted to change its redesignation policy by adding a statutorily-derived standard of "appropriate air quality-related considerations," including review to ensure that the PSD baseline area redesignation "does not interfere with the State's management of air quality" and, in doing so, has identified the types of redesignations that may not be approvable even though the examples that EPA lists in the proposed rule are precisely the type of redesignations that have been approved by EPA in the past. The commenter states that EPA cannot change its redesignation policy except through notice and comment rulemaking.

Response: Among many PSD issues, the court in *Alabama Power* addressed the issue of how the increments were to be protected, but did not address the specific issue of whether section 107(d) redesignations are an appropriate means by States to manage the increments. In the section of the opinion entitled "Protection of the Increments," the court held: "We rule that EPA has authority under the statute to prevent or to correct a violation of the increments, but the agency is without authority to dictate to the States their policy for management of the consumption of allowable increments." *See* 636 F.2d 323, at 361. The court also recognized that: "The fundamentals of the statutory approach include differentiation within the clean air areas of Class I, II, and III areas, and specification for each class of areas of maximum allowable increases ("increments") in pollution concentrations for particulate matter and sulfur dioxide, with provision for the Administrator to promulgate allowable increments or similar limitations for other pollutants governed by NAAQS." *Id.* at 361, 362. In *Alabama Power*, environmental groups had petitioned the court to require EPA to promulgate guidelines detailing the manner in which States may permit consumption of the available increments and also to have EPA set aside some portion of the available increments to ensure that current development does not inadvertently cause a violation of the maximum thresholds. The court declined to do so, and it was in this context that the court held that the Agency may not prescribe the manner in which States will manage their allowed internal growth. *Id.* At 363, 364.

The commenter cites the *Alabama Power* decision as endorsing a State's use of section 107(d) redesignations to create new PSD baseline areas and untrigger minor source baseline dates, but the court in *Alabama Power* did not address this specific issue. The court emphasized the State's authority to manage the increment, the size of which is based on an area's designation as Class I, II, or III, but did not rule on States' use of section 107(d) redesignations as a means to create new PSD baseline areas (*e.g.*, additional Class II areas), or to untrigger minor source baseline dates and thereby "baseline" the portion of the increment consumed prior to the redesignation. This practice has been allowed under EPA regulations but was not one of the issues before the court in the *Alabama Power* case. Thus, while EPA acknowledges that States have the right to make increment management decisions, States also have the responsibility to do so in such as way as to prevent significant deterioration of their clean air resources and thereby achieve the fundamental statutory purposes of the PSD program as set forth in section 160 of the Act:

> "(1) To protect public health and welfare from any actual or potential adverse effect which in the Administrator's judgment may reasonably be anticipated to occur from air pollution or from exposures to pollutants in other media, which pollutants originate as emissions to the ambient air, notwithstanding attainment and maintenance of all national ambient air quality standards; (2) to preserve, protect, and enhance the air quality in national parks, national wilderness areas, national monuments, national seashores, and other areas of special national or regional natural, recreational, scenic or historic value; (3) to insure that economic growth will occur in a manner consistent with the preservation of existing clean air resources; (4) to assure that emissions from any source in any State will not interfere with any portion of the applicable implementation plan to prevent significant deterioration of air quality for any other State; and (5) to assure that any decision to permit increased air pollution in any area to which this section applies is made only after careful evaluation of all the consequences of such a decision and after adequate procedural opportunities for informed public participation in the decisionmaking process.

EPA's role is to ensure that States fulfill these responsibilities under the Act. *See Alaska* v. *EPA*, 298 F.3d 814 (9th Cir. 2002).

In reviewing a redesignation request under section 107(d)(3) of the Act, EPA looks to the statute and to relevant regulations and policies. As noted in the proposed rule, section 107(d)(3) does not provide specific criteria for EPA to use in evaluating a State redesignation request that involves changing the boundaries of existing attainment or unclassifiable areas, as opposed to redesignations that involve changes in status (*e.g.*, "nonattainment" to "attainment" or "nonattainment" to "unclassifiable"). *See* 67 FR 21194, at 21196. As explained in the proposed rule, EPA concluded that the considerations set forth in section 107(d)(3)(A) provide EPA with a statutory basis with which to evaluate State-initiated redesignation requests in addition to the existing regulatory criteria, and in this context (*i.e.*, a request to change the boundaries of attainment or unclassifiable areas), EPA concluded that one appropriate "air-quality related consideration" is whether the redesignation would interfere with a State's management of air quality.

The Act provides support for application of this consideration in a context where boundaries or PSD class designations of existing attainment or unclassifiable areas would be affected (rather than changes in attainment status). *See* section 107(e) (State is authorized with EPA approval to redesignate air quality control regions "for purposes of efficient and effective air quality management") and section 164(e) (resolution of disputes between State and Indian tribes arising from area redesignations from one PSD increment class to another: "In resolving such disputes relating to area redesignation, the Administrator shall consider the extent to which the lands involved are of sufficient size to allow effective air quality management or have air quality related values of such an area").

The proposed rule indicates that EPA did not intend through this rulemaking to revise PSD regulations (40 CFR 52.21) or redesignation policies. *See* 67 FR 21194, at 21196. If and when EPA decides to revise the redesignation criteria in the PSD regulations or to change its practice with regard to its evaluation of redesignation requests, the Agency will take the appropriate steps. Furthermore, even if one were to interpret the application of the statutorily-derived consideration discussed above to State redesignation requests as a change in policy, EPA clearly indicated in the proposed rule the criteria the Agency used to evaluate this State's request, including the statutorily-derived consideration, and is acting through notice-and-comment rulemaking.

Comment 19: Several commenters express support for our proposed action and imply a connection between the State's redesignation request for area 61 and the construction of a natural gas pipeline, construction of a power plant in the area, the State's electric power needs, electric rates, and economic viability of the affected area.

Response: We acknowledge the commenters' support for our action, but note that we do not share the opinion that the subdivision of area 61 under section 107(d) of the CAA is necessary for the subsequent construction of a natural gas pipeline, the development of a power plant, or the energy and economic benefits that flow from those projects. We also note that a power plant proposal for area 61 could proceed, in full accordance with all applicable statutory and regulatory requirements, regardless of EPA's action to redesignate hydrographic area 61. The PSD permit process and regulatory requirements for any future power plant development will be essentially the same with or without the redesignation of area 61 into two areas.

III. EPA's Final Action

After considering all of the factors described in the above sections, EPA is taking action to approve the State of Nevada's two section 107(d) redesignation requests. Specifically, we are approving the State's request to establish the statewide hydrographic areas (previously established for TSP) as the PM–10 unclassifiable areas under section 107(d) of the Act.[4] This action

[4] It is important to once again note that hydrographic areas are already established as the PSD baseline areas for PM–10 (and other

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replaces the single unclassifiable area designated for Nevada for PM–10 with 253 unclassifiable areas. These 253 areas are defined as the hydrographic areas delineated by the Nevada Division of Water Resources in 1971, as adjusted in 1980 to recognize an additional hydrographic area (101A) referred to as Packard Valley. Together with the two PM–10 nonattainment areas in Nevada (Las Vegas and Reno planning areas), the total number of PM–10 section 107 areas in the State is now 255; these are the same 255 section 107 areas that have previously been designated for TSP. Thus, the effect of today's final rule approving the State's request to establish the hydrographic areas as the section 107 unclassifiable areas for PM–10 is to synchronize the classification of designated PM–10 section 107 areas with the current and longstanding approach the State has used to manage its air quality.

In approving the State's other section 107(d) request, we are redesignating hydrographic area 61 (Boulder Flat) by dividing the basin into two new section 107(d) areas for PM–10, sulfur dioxide (SO_2), and nitrogen dioxide (NO_2): upper area 61 and lower area 61.

Finally, we are updating the TSP table in 40 CFR 81 for Nevada to delete those designations that are no longer necessary. In particular, we are deleting the TSP attainment and unclassifiable area designations statewide, except for those in Clark County. We will delete the appropriate TSP designations for Clark County at such time as we approve revisions to their PSD program that include the PM–10 increments.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action redesignates areas for air quality planning purposes and does not impose additional requirements. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule does not impose any enforceable duty, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This rule also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This rule does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 13, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2)).

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: November 6, 2002.

Wayne Nastri,

Regional Administrator, Region 9.

Part 81, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 81—[AMENDED]

1. The authority citation for Part 81 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

Subpart C—Section 107 Attainment Status Designations

2. In § 81.329, the tables for Nevada—TSP, Nevada—SO_2, Nevada—PM–10, and Nevada—NO_2 are revised to read as follows:

§ 81.329 Nevada.

pollutants), so today's action regarding the statewide designation for PM–10 does not effect any change in how the State manages their federally-delegated PSD program. For example, pursuant to 40 CFR 52.21(b)(14)(iv), minor source baseline dates originally established for the TSP increments are not rescinded by today's rule; they remain in effect and continue to apply for purposes of determining the amount of available PM–10 increment.

NEVADA—TSP

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
(Township Range):				
Clark County:				
Las Vegas Valley (212)(15–24S, 56–64E)	X			
Colorado River Valley (213) (22–33S, 63–66E)			X[1]	
Rest of County[2]				X
Carson Desert (101)(15–24.5N, 25–35E)	X			
Winnemucca Segment (70)(34–38N, 34–41E)	X			
Lower Reese Valley (59)(27–32N, 42–48E)		X		
Fernley Area (76)(19–21N, 23–26E)	X			
Truckee Meadows (87)(17–20N, 18–21E)	X			
Mason Valley (108)(9–16N, 24–26E)	X			
Clovers Area (64)(32–39N, 42–46E)		X		

[1] EPA designation replaces State designation.
[2] Rest of County refers to 27 hydrographic areas either entirely or partially located within Clark County as shown on the State of Nevada Division of Water Resources' map titled Water Resources and Inter-basin Flows (September 1971), excluding the two designated areas in Clark County specifically listed in the table.

NEVADA—SO_2

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
(Township Range):				
Steptoe Valley (179) (10–29N, 61–67E):				
Central				X
Northern (area which is north of Township 21 North and within the drainage basin of the Steptoe Valley)			X	
Southern (area which is south of Township 15 North and within the drainage basin of the Steptoe Valley)			X	
Boulder Flat (61) (31–37N, 45–51E):				
Upper Unit 61				X
Lower Unit 61				X
Rest of State[1]				X

[1] Rest of State refers to hydrographic areas as shown on the State of Nevada Division of Water Resources' map titled Water Resources and Inter-basin Flows (September 1971), excluding the designated areas specifically listed in the table.

* * * * *

NEVADA—PM–10

Designated area	Designation		Classification	
	Date	Type	Date	Type
Washoe County:				
Reno planning area	11/15/90	Nonattainment	02/07/01	Serious.
Hydrographic area 87				
Clark County:				
Las Vegas planning area	11/15/90	Nonattainment	02/08/93	Serious.
Hydrographic area 212				
Boulder Flat (61) (31–37N, 45–51E):				
Upper Unit 61	11/15/90	Unclassifiable		
Lower Unit 61	11/15/90	Unclassifiable		
Rest of State[1]	11/15/90	Unclassifiable		

[1] Rest of State refers to hydrographic areas as shown on the State of Nevada Division of Water Resources' map titled Water Resources and Inter-basin Flows (September 1971), as revised to include a division of Carson Desert (area 101) into two areas, a smaller area 101 and area 101A, and excluding the designated areas specifically listed in the table.

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NEVADA–NO_2

Designated area	Does not meet primary standards	Cannot be classified or better than national standards
Boulder Flat (61)(31–37N, 45–51E):		
Upper Unit 61		X
Lower Unit 61		X
Rest of State [1]		X

[1] Rest of State refers to hydrographic areas as shown on the State of Nevada Division of Water Resources' map titled Water Resources and Inter-basin Flows (September 1971), excluding the designated areas specifically listed in the table.

[FR Doc. 02–28851 Filed 11–12–02; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 3600, 8200, and 8360

[WO–320–1430–PB–24 1A]

RIN 1004–AD29

Mineral Materials Disposal; Natural History Resource Management: Procedures; Visitor Services

AGENCY: Bureau of Land Management, Interior.

ACTION: Correcting amendments.

SUMMARY: This document corrects the Bureau of Land Management (BLM) final rule on mineral materials disposal that was published November 23, 2001 (66 FR 58892), by adding changes in several cross references to the regulations on mineral materials disposal that appear elsewhere in BLM regulations. These cross-reference amendments should have appeared in the original final rule. This document also corrects typographical and editorial errors in the 2001 final rule.

EFFECTIVE DATE: January 22, 2002.

FOR FURTHER INFORMATION CONTACT: Dr. Durga N. Rimal, Solid Minerals Group, at (202) 452–0350. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION: The final rule published on November 23, 2001 (66 FR 58892–58910), removed part 3610 and subpart 3621 as part of its reorganization of the regulations on mineral materials disposal in 43 CFR part 3600, and made a conforming amendment in 43 CFR subpart 3809. The final rule should have amended the cross-references to part 3610 that appear in 43 CFR sections 8224.1 and 8365.1–5, and a cross-reference to subpart 3621 that appears in section 8365.1–5. Because the substance of the removed CFR units appears in other sections of revised part 3600, the cross-references should have been amended and not removed. These erroneous cross-references in the Code of Federal Regulations may prove to be misleading and need to be corrected. This document corrects this oversight.

We are also correcting editorial and typing errors in part 3600. In section 3601.51, which describes when BLM may inspect your mineral materials operation, we are correcting a conjunction from "and" to "or" in order to forestall a possible interpretation of the provision to require a BLM inspector planning to inspect, for example, mine conditions also to conduct unnecessary surveys and examine weight tickets, which was not our intent in preparing the final rule. Also, in section 3602.12(c), we are correcting the term "public lands laws" to read "public land laws", the term as used in all other BLM regulations.

Finally, we are correcting a printing error in a CFR authority citation. The citation for the Land and Water Conservation Fund Act is 16 U.S.C. 460*l*–6a, which contains the italic letter "ell" in the section number. This appears in the authority citation for part 8360 as the numeral "one", an error that this document corrects.

Dated: October 29, 2002.

Michael H. Schwartz,

Group Manager, Regulatory Affairs.

For these reasons, make the following correcting amendments in 43 CFR parts 3600, 8200, and 8360:

PART 3600—MINERALS MATERIALS DISPOSAL

1. The authority citation for part 3600 continues to read as follows:

Authority: 30 U.S.C. 601 *et seq.*; 43 U.S.C. 1201, 1732, 1733, 1740; Sec. 2, Act of September 28, 1962 (Pub. L. 87–713, 76 Stat. 652).

§ 3601.51 [Corrected]

2. In § 3601.51, amend paragraph (d) by removing the word "and" following the semicolon at the end of the paragraph, and adding in its place the word "or".

§ 3602.12 [Corrected]

3. In § 3602.12, amend paragraph (c) by removing the phrase "public lands laws" from where it appears in the first sentence, and adding in its place the phrase "public land laws".

Group 8200—Natural History Resource Management

PART 8200—PROCEDURES

4. The authority citation for part 8200 continues to read as follows:

Authority: 43 U.S.C. 1181 (a) and (e), 43 U.S.C. 1201, 43 U.S.C. 1701 *et seq.*

Subpart 8224—Fossil Forest Research Natural Area

§ 8224.1 [Corrected]

5. Correct § 8224.1 by removing at the end of paragraph (b) the term "§ 3610.1" and adding in its place the term "subpart 3602".

PART 8360—VISITOR SERVICES

6. The authority citation for part 8360 is corrected to read as follows:

Authority: 43 U.S.C. 1701 *et seq.*, 43 U.S.C. 315a, 16 U.S.C. 1281c, 16 U.S.C. 670 *et seq.*, 16 U.S.C. 460*l*–6a, 16 U.S.C. 1241 *et seq.*

Subpart 8365—Rules of Conduct

§ 8365.1 [Corrected]

7. Correct § 8365.1–5 in paragraph (b)(4) by revising the reference to "subpart 3621 of this title" to read "subpart 3604", and in paragraph (c) by revising the phrase "part 3610 or 5400 of this title" to read "part 3600 or 5400 of this chapter".

[FR Doc. 02–28704 Filed 11–12–02; 8:45 am]
BILLING CODE 4310–84–P

Proposed Rules

Federal Register
Vol. 67, No. 219
Wednesday, November 13, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket 2000–CE–17–AD]

RIN 2120–AA64

Airworthiness Directives; Short Brothers and Harland Ltd. Models SC–7 Series 2 and SC–7 Series 3 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to all Short Brothers and Harland Ltd. (Shorts) Models SC–7 Series 2 and SC–7 Series 3 airplanes. This proposed AD would establish a technical service life for these airplanes and allow you to incorporate modifications, inspections, and replacements of certain life limited items to extend the life limits of these airplanes. This proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for the United Kingdom. The actions specified by this proposed AD are intended to prevent fatigue failure of critical structure of the aircraft. Such failure could result in reduced structural integrity of the aircraft with consequent failure of the primary structural components and possibly result in structural failure during flight.

DATES: The Federal Aviation Administration (FAA) must receive any comments on this proposed rule on or before December 23, 2002.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–CE–17–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. You may also send comments electronically to the following address: *9-ACE-7-Docket@faa.gov*. Comments sent electronically must contain "Docket No. 2000–CE–17–AD" in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII text.

You may get service information that applies to this proposed AD from Short Brothers PLC, P.O. Box 241, Airport Road, Belfast BT3 9DZ Northern Ireland; telephone: +44 (0) 28 9045 8444; facsimile: +44 (0) 28 9073 3396. You may also view this information at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

How Do I Comment on This Proposed AD?

The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments to the address specified under the caption **ADDRESSES**. We will consider all comments received on or before the closing date. We may amend this proposed rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of this proposed AD action and determining whether we need to take additional rulemaking action.

Are There Any Specific Portions of This Proposed AD I Should Pay Attention to?

The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this proposed rule that might suggest a need to modify the rule. You may view all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each contact we have with the public that concerns the substantive parts of this proposed AD.

How Can I Be Sure FAA Receives My Comment?

If you want FAA to acknowledge the receipt of your mailed comments, you must include a self-addressed, stamped postcard. On the postcard, write "Comments to Docket No. 2000–CE–17–AD." We will date stamp and mail the postcard back to you.

Discussion

What Events Have Caused This Proposed AD?

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified FAA that an unsafe condition may exist on all Shorts Models SC–7 Series 2 and SC–7 Series 3 airplanes. The CAA reports that the Model SC–7 airframe has undergone structural evaluations that have resulted in the establishment of an airplane service life limit.

Modifications, inspections, and replacements of certain life limited items have been identified to further extend the life of the aircraft.

What Are the Consequences if the Condition Is Not Corrected?

The life limits, if not complied with, could result in failure of the primary structural components and possibly result in structural failure during flight.

Is There Service Information That Applies to This Subject?

Shorts has issued the following service information:

—Shorts Service Bulletin No. 51–51, Original Issue: June 6, 1978 (latest version at Revision No.: 6, dated: March 14, 1983);
—Shorts Service Bulletin No. 51–52, Original Issue: September 1, 1981 (latest version at Revision No.: 4, dated: July 16, 2002); and
—Shorts Skyvan Maintenance Program 1, not dated.

What Are the Provisions of This Service Information?

Service information specifies procedures to be followed to allow life limits to be extended. They include:

—Reinforcing the webs of the stub wing front spar box;
—Replacing the side load fittings and doubler joint plates at the nose undercarriage lower attachment;
—Changing the shear angle attachments of the lift strut fitting to wing rib 212:

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—Replacing the inner flap and outer flap components;
—Carrying out the life extension programs for the landing gear nose undercarriage and landing gear main undercarriage; and
—Carrying out the Skyvan Maintenance Program life extension inspection program.

What Action Did the CAA Take?

The CAA classified this service bulletin as mandatory and issued British AD Number 019–09–81, not dated, in order to ensure the continued airworthiness of these airplanes in the United Kingdom.

Was This in Accordance With the Bilateral Airworthiness Agreement?

These airplane models are manufactured in the United Kingdom and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept FAA informed of the situation described above.

The FAA's Determination and an Explanation of the Provisions of this Proposed AD

What Hos FAA Decided?

The FAA has examined the findings of the CAA; reviewed all available information, including the service information referenced above; and determined that:
—The unsafe condition referenced in this document exists or could develop on other Shorts Models SC–7 Series 2 and SC–7 Series 3 of the same type design that are on the U.S. registry;
—The actions specified in the previously-referenced service information should be accomplished on the affected airplanes; and
—AD action should be taken in order to correct this unsafe condition.

What Would This Proposed AD Require?

This proposed AD would require you to incorporate the actions in the previously-referenced service bulletins.

Cost Impact

How Many Airplanes Would This Proposed AD Impact?

We estimate that this proposed AD affects 22 airplanes in the U.S. registry.

What Would Be the Cost Impact of This Proposed AD on Owners/Operators of the Affected Airplanes?

The impact of this proposed AD would be not being able to operate the airplane past the established service life limit. The following paragraphs present cost if you choose to extend the life limit.

We estimate the following costs to accomplish the proposed aircraft life extension prescribed in Shorts Service Bulletin No. 51–51 on 19 aircraft:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
350 workhours × $60 per hour = $21,000	$90,000	$111,000	$2,109,000

We estimate the following to accomplish the proposed aircraft life extension prescribed in Shorts Service Bulletin No. 51–52 for the 6 aircraft serial numbers 1845, 1847, 1883, 1889, 1943, and 1960:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
120 workhours × $60 per hour = $7,200	$22,000	$29,200	$175,200

Three of these 6 airplanes will also incorporate Shorts Service Bulletin No. 51–51 and are part of the 19 airplanes subset of the total set of 22 airplanes in the U.S. registry.

Compliance Time of This Proposed AD

What Would Be the Compliance Time of This Proposed AD?

The compliance time of this proposed AD is upon accumulating the applicable life limit or within the next 90 days after the effective date of this AD, whichever occurs later.

Why Is the Compliance Time of This Proposed AD Presented in Flights, Hours TIS and Calendar Time?

The unsafe condition on these airplanes is a result of the combination of the number of times the airplane is operated and how the airplane is operated (for example, weight carried). Airplane operation varies among operators. For example, one operator may operate the airplane 100 flights or 50 hours TIS in 3 months and carrying low weights while it may take another operator 12 months or more to accumulate 100 flights or 50 hours TIS while carrying heavy weights. For this reason, we have determined that the compliance time of this proposed AD should be specified in flights, hours time-in-service (TIS), and calendar time in order to assure this condition is not allowed to go uncorrected over time.

Regulatory Impact

Would This Proposed AD Impact Various Entities?

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposed rule would not have federalism implications under Executive Order 13132.

Would This Proposed AD Involve a Significant Rule or Regulatory Action?

For the reasons discussed above, I certify that this proposed action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new airworthiness directive (AD) to read as follows:

Short Brothers and Harland Ltd.: Docket No. 2000–CE–17–AD.

(a) *What airplanes are affected by this AD?* This AD affects Models SC–7 Series 2 and SC–7 Series 3 airplanes, all serial numbers, that are certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to prevent fatigue failure of critical structure of the aircraft. Such failure could result in reduced structural integrity of the aircraft with consequent failure of the primary structural components and possibly result in structural failure during flight.

(d) *What must I do to comply with this AD?* Do not operate the airplane upon accumulating the applicable life limit or within the next 90 days after the effective date of this AD, whichever occurs later. The following table presents the life limits:

Serial No.	Life limit
(1) SH1845 and SH1883	10,000 hours time-in-service (TIS).
(2) SH1847	15,200 hours TIS.
(3) SH1889	13,805 flights.
(4) SH1943	11,306 flights.
(5) SH1960	4,142 flights.
(6) All airplanes that do not encompass either serial number SH1845, SH1883, SH1847, SH1889, SH1943, or SH1960.	20,000 flights.

Note 1: For owners/operators that do not have a record of the number of flights on the aircraft, assume the number of flights on the basis of two per operating hour.

(e) *What must I do to extend the life limits for airplanes encompassing either serial number SH1845, SH1847, SH1883, SH1889, SH1943, or SH1960?* To extend the life limit on one of these airplanes, you must accomplish the actions of Shorts Service Bulletin No. 51–52, Original Issue: September 1, 1981 (latest version at Revision No.: 4, dated: July 16, 2002), and Shorts Skyvan Maintenance Program 1, not dated. The following table presents the extended life limit:

Serial No.	Extended life limit
(1) SH1845	13,456 hours.
(2) SH1847	20,200 hours.
(3) SH1883	15,000 hours.
(4) SH1889	20,094 flights.
(5) SH1943	17,325 flights.
(6) SH1960	8,449 flights.

(f) *What must I do to extend the life limit for my airplanes that do not encompass either serial number SH1845, SH1883, SH1847, SH1889, SH1943, or SH1960?* You can extend the life limit to 27,000 flights by accomplishing the actions of Shorts Service Bulletin No. 51–51, Original Issue: June 6, 1978 (latest version at Revision No.: 6, dated: March 14, 1983), and Shorts Skyvan Maintenance Program 1, not dated.

Note 2: These life limits described in paragraph (e) are the final life limits of each aircraft unless the owner/operator works with Shorts Brothers PLC to develop a life extension program. Submit a plan to the FAA (address specified in paragraph (g) of this AD) for the proposed life extension program. Accomplishment of Shorts Service Bulletin No. 51–51, Original Issue: June 6, 1978 (latest version at Revision No.: 6, dated: March 14, 1983), does not extend the service life beyond the life limits described in paragraph (e).

(g) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Standards Office Manager, Small Airplane Directorate, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Standards Office Manager.

Note 3: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (g) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(h) *Where can I get information about any already-approved alternative methods of compliance?* Contact Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

(i) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(j) *How do I get copies of the documents referenced in this AD?* You may get copies of the documents referenced in this AD from Short Brothers PLC, P.O. Box 241, Airport Road, Belfast BT3 9DZ Northern Ireland; telephone: +44 (0) 28 9045 8444; facsimile: +44 (0) 28 9073 3396. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Note 4: The subject of this AD is addressed in British AD Number 019–09–81, not dated.

Issued in Kansas City, Missouri, on November 5, 2002.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–28751 Filed 11–12–02; 8:45 am]

BILLING CODE 4910–13–P

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–CE–46–AD]

RIN 2120–AA64

Airworthiness Directives; Piaggio Aero Industries S.p.A. Model P–180 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to all Piaggio Aero Industries S.p.A. (PIAGGIO) Model P–180 airplanes. This proposed AD would require you to inspect and determine whether any firewall shutoff or crossfeed valve with a serial number in a certain range are installed and would require you to replace any valve that has a serial number within this range. The proposed AD would allow the pilot to check the logbook and would not require additional action if the check showed that one of these valves was definitely not installed. This proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Italy. The actions specified by this proposed AD are intended to prevent a faulty firewall shutoff or crossfeed valve from developing cracks and leaking fuel. This could result in an engine fire.

DATES: The Federal Aviation Administration (FAA) must receive any comments on this proposed rule on or before December 16, 2002.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–CE–46–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

You may get service information that applies to this proposed AD from Piaggio Aero Industries S.p.A, Via Cibrario 4, 16154 Genoa, Italy; telephone: +39 010 6481 856; facsimile: +39 010 6481 374. You may also view this information at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

How Do I Comment on This Proposed AD?

The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments to the address specified under the caption **ADDRESSES**. We will consider all comments received on or before the closing date. We may amend this proposed rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of this proposed AD action and determining whether we need to take additional rulemaking action.

Are There Any Specific Portions of This Proposed AD I Should Pay Attention to?

The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this proposed rule that might suggest a need to modify the rule. You may view all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each contact we have with the public that concerns the substantive parts of this proposed AD.

How Can I Be Sure FAA Receives My Comment?

If you want FAA to acknowledge the receipt of your comments, you must include a self-addressed, stamped postcard. On the postcard, write "Comments to Docket No. 2002–CE–46–AD." We will date stamp and mail the postcard back to you.

Discussion

What Events Have Caused This Proposed AD?

The Ente Nazionale per l' Aviazione Civile (ENAC), which is the airworthiness authority for Italy, recently notified FAA that an unsafe condition may exist on all PIAGGIO Model P–180 airplanes. The ENAC reports an incident of a ground fire on the left-hand engine nacelle of one of the affected airplanes. Investigation revealed that the fire was caused by a cracked crossfeed valve that had leaked fuel.

Further analysis led the ENAC to determine that the part number (P/N) EM484–3 valve was part of a manufacturing batch of nonconforming valves. This batch incorporates serial numbers 148 through 302 of these P/N EM484–3 valves. These valves can be utilized as either firewall shutoff or crossfeed valves.

What Are the Consequences if the Condition Is Not Corrected?

If these valves are not removed from service, they could develop cracks and leak fuel. This could result in an engine fire.

Is There Service Information That Applies to This Subject?

PIAGGIO Aero Industries has issued:

—Alert Service Bulletin: 80–0173, Original Issue: February 8, 2002, which includes procedures for inspecting the three Electo Mech P/N EM484–3 firewall shutoff and crossfeed valves to determine whether they incorporate a serial number in the range of 148 through 302; and

—Service Bulletin: 80–0174, Original Issue: February 20, 2002, which includes procedures for modifying any valve incorporating a serial number in the range of 148 through 302 (the valve will be re-identified with a "A" at the end of the serial number).

What Action Did the ENAC Take?

The ENAC classified these service bulletins as mandatory and issued Italian RAI–AD 2002–442, dated February 21, 2002, in order to ensure the continued airworthiness of these airplanes in Italy.

Was This in Accordance With the Bilateral Airworthiness Agreement?

This airplane model is manufactured in Italy and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

Pursuant to this bilateral airworthiness agreement, the ENAC has kept FAA informed of the situation described above.

The FAA's Determination and an Explanation of the Provisions of This Proposed AD

What Has FAA Decided?

The FAA has examined the findings of the ENAC; reviewed all available information, including the service information referenced above; and determined that:

—The unsafe condition referenced in this document exists or could develop on other PIAGGIO Model P–180 airplanes of the same type design that are on the U.S. registry;

—The actions specified in the previously-referenced service information should be accomplished on the affected airplanes; and

—AD action should be taken in order to correct this unsafe condition.

What Would This Proposed AD Require?

This proposed AD would require you inspect and determine whether any firewall shutoff or crossfeed valve with a serial number in a certain range is installed and would require you to replace any valve that has a serial number within this range. The proposed AD would allow the pilot to check the logbook and would not require additional action if the check showed that one of these valves was definitely not installed.

Compliance Time of this AD

What Will Be the Compliance Time of This AD?

The inspection compliance time of this AD is "within the next 30 days after the effective date of the AD."

Why Is the Compliance Time Presented in Calendar Time Instead of Hours Time-in-Service (TIS)?

The compliance of this AD is presented in calendar time instead of hours TIS because the affected shutoff and crossfeed valves are unsafe as a result of a quality control problem. The problem has the same chance of existing on an airplane with 50 hours TIS as it would for an airplane with 1,000 hours TIS. Therefore, we believe that a compliance time of 30 days will:

—Ensure that the unsafe condition does not go undetected for a long period of time on the affected airplanes; and

—Not inadvertently ground any of the affected airplanes.

Cost Impact

How Many Airplanes Would This Proposed AD Impact?

We estimate that this proposed AD affects 22 airplanes in the U.S. registry.

What Would Be the Cost Impact of This Proposed AD on Owners/Operators of the Affected Airplanes?

We estimate the following costs to accomplish the proposed inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
2 workhours × $60 per hour = $120	Not applicable	$120	$2,640

We estimate the following costs to accomplish the proposed replacement/modification:

Labor cost	Parts cost	Total cost per airplane
8 workhours × $60 per hour = $480	Manufacturer will provide free of charge	$480

Regulatory Impact

Would This Proposed AD Impact Various Entities?

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposed rule would not have federalism implications under Executive Order 13132.

Would This Proposed AD Involve a Significant Rule or Regulatory Action?

For the reasons discussed above, I certify that this proposed action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new airworthiness directive (AD) to read as follows:

Piaggio Aero Industries S.p.A.: Docket No. 2002–CE–46–AD.

(a) *What airplanes are affected by this AD?* This AD affects Model P–180 airplanes, all serial numbers, that are certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to prevent a faulty firewall shutoff or crossfeed valve from developing cracks and leaking fuel. This could result in an engine fire.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

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Actions	Compliance	Procedures
(1) Maintenance Records Check: (i) Check the maintenance records to determine whether an Electo Mech part number (P/N) EM484–3 firewall shutoff or crossfeed valve with a serial number in the range of 148 through 302 is installed. The owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7) may perform this check. (ii) If, by checking the maintenance records, the owner/operator can definitely show that no Electo Mech P/N EM484–3 firewall shutoff or crossfeed valves with a serial number in the range of 148 through 302 are installed, then the inspection requirement of paragraph (d)(2) and the replacement requirement of paragraph (d)(3) of this AD do not apply. You must make an entry into the aircraft records that shows compliance with these portions of the AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).	Within the next 30 days after the effective date of this AD, the unless already accomplished.	No special procedures required to check logbook.
(2) Inspection: Inspect the three Electo Mech P/N EM484–3 firewall shutoff and crossfeed valves to determine whether they incorporate a serial number in the range of 148 through 302.	Within the next 30 days after the effective date of this AD, unless already accomplished.	In accordance with the Accomplishment Instructions in PIAGGIO Aero Industries S.p.A. Alert Service Bulletin: 80–0173, Original Issue: February 8, 2002.
(3) Replacement: If any Electro Mech P/N EM484–3 firewall shutoff or crossfeed valve is found that incorporates a serial number in the range of 148 through 302, accomplish one of the following:. (i) Install valve(s) that does not (do not) incorporate a serial number in the range of 148 through 302; or (ii) Modify any valve(s) that incorporates (incorporate) a serial number in the range of 148 through 302. The valve will be re-identified with an "A" at the end of the serial number	Accomplish any necessary replacements or modifications prior to further flight after the inspection required by paragraph (d)(2) of this AD, unless already accomplished.	Replace in accordance with applicable maintenance manual. Modify in accordance with the Accomplishment Instructions in PIAGGIO Aero Industries S.p.A. Service Bulletin: 80–0174, Original Issue: February 20, 2002.
(4) Spares: Do not install, on any airplane, any Electro Mech P/N EM484–3 firewall shutoff or crossfeed valve that incorporates a serial number in the range of 148 through 302, unless it has been modified as specified in paragraph (d)(3)(ii) of this AD.	As of the effective date of this AD	Not applicable.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Standards Office, Small Airplane Directorate, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standards Office, Small Airplane Directorate.

Note 1: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *How do I get copies of the documents referenced in this AD?* You may get copies of the documents referenced in this AD from PIAGGIO AERO INDUSTRIES S.p.A, Via Cibrario 4, 16154 Genoa, Italy; telephone: +39 010 6481 856; facsimile: +39 010 6481 374. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Note 2: The subject of this AD is addressed in Italian RAI–AD 2002–442, dated February 21, 2002.

Issued in Kansas City, Missouri, on November 5, 2002.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–28750 Filed 11–12–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 02–ACE–8]

Proposed Establishment of Class E2 and Class E4 Airspace and Modification of Existing Class E5 Airspace; Ainsworth, NE; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking; correction.

SUMMARY: This action corrects an error in the airspace classification of a notice of proposed rulemaking that was published in the **Federal Register** on Friday, August 23, 2002 (67 FR 54599). The proposal was to establish Class E2 and Class E4 airspace and to modify Class E5 airspace at Ainsworth, NE.

DATES: Comments for inclusion in the Rules Docket must be received on or before December 5, 2002.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION:

History

Federal Register document 02–21576 published on Friday, August 23, 2002 (67 FR 54599) proposed to establish Class E2 and Class E4 airspace and to modify Class E5 airspace at Ainsworth, NE. It has been determined that Class E4 airspace is only applicable when in conjunction with Class D airspace. There is no Class D airspace at Ainsworth, NE. The proposed Class E2 airspace must be redefined to include the proposed Class E4 airspace. The only change from the original Notice of Proposed Rulemaking is the title of the airspace involved.

Accordingly, pursuant to the authority delegated to me, the proposed Class E4 airspace is rescinded and the Class E2 airspace at Ainsworth, NE, as published in the **Federal Register** Friday, August 23, 2002 (67 FR 54599), (FR Doc. 02–21576), is corrected as follows:

§71.1 [Corrected]

On page 54599, Column 3, DEPARTMENT OF TRANSPORTATION section, correct the heading of Airspace Docket No. 02–ACE–8 as follows:

Change "Proposed Establishment of Class E2 and Class E4 Airspace and Modification of Existing Class E5 Airspace; Ainsworth, NE" to read "Proposed Establishment of Class E2 Airspace and Modification of Existing Class E5 Airspace; Ainsworth, NE."

On page 54600, Column 3, last sentence of last paragraph, correct the definition of Class E2 airspace as follows:

Change "Within a 4.3-mile radius of Ainsworth Municipal Airport" to read "Within a 4.3-mile radius of Ainsworth Municipal Airport; within a 2.4 miles each side of the Ainsworth VOR/DME 197° radial extending from the 4.3-mile radius of Ainsworth Municipal Airport to 7 miles south of the airport; and within 2.4 miles each side of the Ainsworth VOR/DME 348° radial extending from the 4.3-mile radius of Ainsworth Municipal Airport to 7 miles north of the airport."

On page 45601, Column 1, delete the first paragraph and the entire section under the heading "ACE NE E4 Ainsworth, NE."

Issued in Kansas City, MO, on October 22, 2002.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 02–28832 Filed 11–12–02; 8:45 am]

BILLING CODE 4910–13–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 4

Commodity Pool Operators and Commodity Trading Advisors; Exemption From Requirement To Register for CPOs of Certain Pools and CTAs Advising Such Pools

AGENCY: Commodity Futures Trading Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Commodity Futures Trading Commission (Commission or CFTC) has received two specific proposals that would provide additional exemption from registration as a commodity pool operator (CPO). It also has received a proposal that would provide additional exemption from registration as a commodity trading advisor (CTA). The this **Federal Register** release the Commission is publishing and seeking comment on these proposals (Proposals) and is providing temporary CPO and CTA registration relief (No-Action Relief). To be eligible for the No-Action Relief, a CPO or CTA must meet the criteria specified in the **SUPPLEMENTARY INFORMATION** section.

DATES: Comments must be received by January 13, 2002.

ADDRESSES: Comments on this advance notice of proposed rulemaking should be sent to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Comments may be sent by facsimile transmission to (202) 418–5528, or by e-mail to *secretary@cftc.gov*. Reference should be made to "Advance Notice of Proposed Rulemaking on CPO and CTA Registration Exemptions."

FOR FURTHER INFORMATION CONTACT: Barbara S. Gold, Associate Director, or Christopher W. Cummings, Special Counsel, Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581, telephone number: (202) 418–5450 or (202) 418–5445, respectively; facsimile number: (202) 418–5536, or (202) 418–5547, respectively; and electronic mail: *bgold@cftc.gov* or *ccummings@cftc.gov*, respectively.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1a(5) of the Commodity Exchange Act (Act) defines the term "commodity pool operator" to mean—

[A]ny person engaged in a business that is of the nature of an investment trust, syndicate, or similar form of enterprise, and who, in connection therewith, solicits, accepts, or receives from others, funds, securities, or property, either directly or through capital contributions, the sale of stock or other forms of securities, or otherwise, for the purpose of trading in any commodity for future delivery on or subject to the rules of any contract market or derivatives transaction execution facility.

* * * [1]

[1] 7 U.S.C. 1a(5) (2000). Section 1a(5) also provides the Commission with authority to exclude persons from the CPO definition.

Commission Rule 4.10(d)(1) correspondingly defines the term "pool" to mean "any investment trust, syndicate or similar form of enterprise operated for the purpose of trading commodity interests." Commission rules cited to herein are found at 17 CFR Ch. I (2002).

Both the Act and the Commission's rules issued thereunder can be accessed through the Commission's Web site: *http://www.cftc.gov/cftc/cftclawreg.htm*.

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Section 4m(1) of the Act[2] provides in relevant part that it is unlawful for any CPO, "unless registered under [the] Act, to make use of the mails or any means or instrumentality of interstate commerce" in connection with its business as a CPO. Thus, except for several narrow exceptions described below, the operator of a collect investment vehicle that trades commodity interest contracts, whether for *bona fide* hedging purposes or otherwise, must be registered with the CFTC as a CPO.

The Commission has provided certain exceptions to the CPO registration requirement. In 1979, the Commission adopted Rule 4.13, which provides an exemption from CPO registration for the operators of essentially " family, club or small pools," as those pools are defined in the rule.[3] In addition, the Commission adopted in Rule 4.5 an exclusion from the CPO definition for certain otherwise regulated "eligible persons" with respect to their operation of "certain qualifying entities," as those terms are defined in the rule, so long as they restrict the extent of their non-*bona fide* hedge activity in commodity interests as prescribed by the rule.[4]

When the Commission adopted Rule 4.13, there were fewer than a dozen designated commodity interest contracts based on stock indices, interest rates or other financial instruments. Since 1979, however, the Commission has designated, and trading has commenced in, more than 180 commodity interest contracts based on various financial instruments. These contracts frequently have attracted the interest of operators of collective investment vehicles, some of whom have registered with the Commission as CPOs so that they can use commodity interest contracts in their investment and risk management strategies. Others, however, have avoided participation in the commodity interest markets. While Rules 4.5 and 4.13 do provide CPO registration relief, their criteria are too restrictive for many operators of collective investment vehicles to meet.

Section 1a(6)(A) of the Act[5] defines the term "commodity trading advisor" to mean any person who—

(i) For compensation or profit, engages in the business of advising others, either directly or through publications, writings or electronic media, as to the value or the advisability of trading in—

(I) Any contract of sale of a commodity for future delivery made or to be made on or subject to the rules of a contract market or derivatives transaction execution facility;

(II) Any commodity option authorized under section 4c; or

(III) Any leverage transaction authorized under section 19; or

(ii) For compensation or profit, and as part of a regular business, issues or promulgates analyses or reports concerning any of the activities referred to in clause (i).[6]

Section 4m(1) also requires CTAs to register as such with the Commission, and each of that section, Section 4m(3) and Rule 4.14 provides exemption from CTA registration.

Over time, persons who traditionally gave advice to collective investment vehicles solely on securities trading have become interested in providing trading advice to collective investment vehicles on commodity interest contracts based on various financial instruments as well. Absent the availability of an exemption, these persons have had to either register with the Commission as CTAs or refrain from providing any such commodity interest advice.

In light of these market developments and changed circumstances, the Commission is seeking comment on the Proposals. By this **Federal Register** release, the Commission also is asking for input generally on the subject of which CPOs and CTAs the Commission additionally should exempt from registration and what criteria the Commission should use to determine eligibility for exemption.

II. The Proposals

A. The National Futures Association (NFA) Proposal[7]

I. Introduction

The NFA Proposal would add a CPO registration exemption as well as a corresponding CTA registration exemption to the exemptions currently set forth in Rules 4.13 and 4.14, respectively. The CPO exemption would be available to pool operators that commit a limited amount of pool assets (*i.e.*, 5 percent of liquidation value) to establish commodity interest trading positions, and that restrict participation in the pool to "accredited investors" as defined in Rule 501(a)[8] under the Securities Act of 1933 (Securities Act).[9] The exemption would be set forth in a new paragraph (a)(3) of Rule 4.13, and would require a conforming amendment to paragraph (d) of the rule. The CTA exemption would apply to those persons that advise only pools operated by persons that are eligible for, and have claimed exemption under, the CPO provision described above. It would be set forth in a new paragraph (a)(10) of Rule 4.14.

2. The text of the NFA Proposal.

a. The NFA CPO Registration Exemption Proposal reads as follows:

§ 4.13 Exemption from registration as a commodity pool operator.

(a) A person is not required to register under the Act as a commodity pool operator if:

* * *

(3)(i) It operates only commodity pools that use commodity futures or commodity options contracts solely for bona fide hedging purposes within the meaning and intent of § 1.3(z)(1): *Provided, however.* That in addition, with respect to positions in commodity futures and commodity option contracts which do not come within the meaning and intent of 1.3(z)(1), the aggregate initial margin and premiums required to establish such positions for any pool does not exceed five percent of the liquidation value of that pool's portfolio, after taking into account unrealized profits and unrealized losses on any such contracts it has entered into and such trading is solely incidental to its other trading activity; And *Provided further,* That in the case of an option that is in-the-money at the time of purchase, the in-the-money amount as defined in § 190.01(x) may be excluded in computing such five percent;

(ii) It has not and does not market participations to the public as or in a commodity pool or otherwise as or in a vehicle for trading in the commodity futures or commodity options markets;

(iii) It limits the participants in its pools to accredited investors as defined in Securities Exchange Commission Rule 501;

(iv) It discloses in writing to each prospective participant the purpose of and the limitations on the scope of the commodity futures and commodity options trading in which it will engage;

(v) It submits to such special calls as the Commission may make to require it to demonstrate compliance with the provisions of this § 4.13(a)(3) including but not limited to information on its pools' financial status and position holdings; and

(vi) It maintains all books and records prepared in connection with its activities as a commodity pool operator for a period of five years from the date of preparation and keeps such books and records readily accessible during the first two years of the five year period. All such books and records shall be open to inspection by any representative of the Commission or the United States Department of Justice.

(b)(1) No person who is exempt from registration as a commodity pool operator under paragraph (a)(1), (a)(2), or (a)(3) of this section and who is not registered as such pursuant to that exemption may, directly or indirectly, solicit, accept or receive funds, securities or other property from any prospective participant in a pool that it operates or that it intends to operate unless, on or before the date it engages in that activity, the person delivers or causes to be delivered to the prospective participant a written statement that must disclose this fact as follows: "The commodity pool operator of this pool is not required to register, and has not registered, with the Commodity Futures Trading Commission. Therefore, unlike a registered commodity pool operator, this commodity pool operator is not required by the Commission to furnish a Disclosure Document, periodic Account Statements, and an Annual Report to participants in the pool." The person must:

(i) Describe in the statement the exemption pursuant to which it is not registered as a commodity pool operator;

(ii) Provide its name, main business address and main business telephone number on the statement;

(iii) Manually sign the statement as follows: if such person is a corporation, by the chief executive officer, chief financial officer or counterpart thereto; if a partnership, by a general partner; and if a sole proprietorship, by the sole proprietor; and

(iv) By the earlier of seven business days after the date the statement is first delivered to a prospective participant and the date upon which the pool commences trading in commodity interests:

(A) File two copies of the statement with the Commission at the address specified in § 4.2; and

(B) File one copy of the statement with the National Futures Association at its headquarters office (Attn: Director of Compliance, Compliance Department).

* * * * *

(d) If a person exempt from registration under the Act as a commodity pool operator under paragraph (a)(1), (a)(2), or (a)(3) of this section registers as a commodity pool operator, that person must comply with this Part 4 as if such person were not exempt from registration as a commodity pool operator.

2. The NFA CTA Registration Exemption Proposal reads as follows:

§ 4.14 Exemption from registration as a commodity trading advisor.

(a) A person is not required to register under the Act as a commodity trading advisor if:

* * * * *

(10)(i) The person's commodity interest trading advice:

(A) Is directed solely to and for the use of commodity pools that meet the requirements of and are operated by a person exempt from registration under § 4.13(a)(3) or are operated by a person excluded from the definition of commodity pool operator under § 4.5;

(B) Is solely incidental to its business of providing investment advice to such pools in instruments that are either exempt from regulation pursuant to the Commission's regulations or excluded from Commission regulation under the Act; and

(C) Employs only such strategies as are consistent with eligibility status under § 4.13(a)(3).

(ii) The person is not otherwise holding itself out as a commodity trading advisor;

(iii) The person submits to such special calls as the Commission may make to provide information on its position holdings; and

(iv) Prior to the date upon which such person intends to engage in business as a commodity trading advisor, the person files a notice of exemption with the Commission.

(A) The notice must provide the name, main business address and main business telephone number of the person filing the notice.

(B) The notice must represent that the person qualifies for exemption under this § 4.14(a)(10) and that it will comply with the criteria of this section.

(C) The notice shall be effective upon filing, *Provided, however,* That an exemption claimed hereunder shall cease to be effective upon any change which would render the representations made pursuant to paragraph (a)(10)(iii)(B) of this section inaccurate or the continuation of such representations false or misleading.

(v) In the event a person who has filed a notice of exemption under this § 4.14(a)(10) subsequently becomes registered as a commodity trading advisor, the person must file a supplemental notice of that fact.

(vi) Any notice required to be filed hereunder must be:

(A) In writing;

(B) Signed by a duly authorized representative; and

(C) Filed, along with a copy, with the Commission at the address specified in § 4.2.

(D) A copy also must be filed with the National Futures Association at its headquarters office (ATTN: Director of Compliance, Compliance Department).

B. The Managed Funds Association (MFA) Proposal[10]

1. Introduction

The MFA Proposal would provide an additional CPO registration exemption pursuant to a new Rule 4.9. The exemption would be available to pool operators that restrict participation in their pools to "qualified eligible persons" (QEPs) as defined in Rule 4.7 and certain "accredited investors" as defined in Rule 501(a) under the Securities Act. As is set forth below, the MFA Proposal would distinguish between the qualifications that natural persons would be required to meet and the qualifications that non-natural persons would be required to meet.

2. The text of the MFA Proposal

The MFA Proposal reads as follows:

§ 4.9. Exemption From Commodity Pool Operator Registration For Certain Persons Operating Privately Offered Pools.

(a) Subject to compliance with all of the provisions of this section, a person is exempt from registration as a commodity pool operator but remains otherwise subject to the jurisdiction of the Commission under the Act, provided that:

(i) interests in all pools that it operates are exempt from registration under the Securities Act of 1933, and such interests are offered and sold without marketing to the public in the United States;

(ii) it reasonably believes that at the time of investment (or, in the case of an existing pool, conversion to an eligible pool as defined herein), all individual investors (and any self-directed employee-benefit plans for such individuals) in all pools that it operates are qualified eligible persons as defined in § 4.7;

(iii) it reasonably believes that at the time of investment (or, in the case of an existing pool, conversion to an eligible pool as defined herein), all entity investors in all pools that it operates are (x) "accredited investors" as defined in 17 CFR 230.501(a)(1)–(3), (7) and (8) or (y) qualified eligible persons as defined in § 4.7; and

(iv) neither the commodity pool operator nor any of its principals is subject to any statutory disqualifications set forth in section 8a(2) or 8a(3) of the Act unless such disqualification arises from a matter which was previously disclosed in connection with an application for registration if such registration was granted or was disclosed more than 30 days prior to the filing of this notice; provided, however, that the commodity pool operator may request that the Commission waive this provision, which waiver may be granted upon a showing of good cause.

(b) Notwithstanding the exemption in (a) above:

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[2] 7 U.S.C. 6m(1) (2000).

[3] *See* 44 FR 1918, 1919 (Jan. 8, 1979).

[4] *See 50 FR 15868 (April 23, 1985).* Rule 4.5 specifies operating criteria that must be complied with to claim the relief available under the rule. Commodity futures and option contracts may be used without limitation for "*bona fide* hedging transactions and positions," as that term is defined in Rule 1.3(z)(1). Rule 4.5 also permits up to 5 percent of the liquidation value of a qualifying entity's portfolio to be committed to establish positions that are non- *bona fide* hedging transactions and positions. On October 28, 2002 the Commission published for comment a proposed amendment to Rule 4.5 that would provide an alternative criterion for such transactions and positions—*i.e.*, where the notional value of the transactions and positions does not exceed the liquidation value of the entity's portfolio. 67 FR 65743.

[5] 7 U.S.C. 1a(6)(A)(2002).

[6] Section 1a(6) also excludes certain persons not at issue here from the CTA definition, and provides the Commission with authority to exclude other persons from that definition.

[7] NFA is a futures association registered as such with the Commission under section 17 of the Act.

[8] 17 CFR 230.501(a) (2002).

[9] 15 U.S.C. 77a *et seq* (2000).

[10] MFA is a non-profit membership organization for investment professionals in the hedge fund, futures and alternative investments industries.

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(i) the commodity pool operator shall remain subject to the anti-fraud and anti-manipulation provisions of the Act; and

(ii) the commodity pool operator shall, within 180 days of the end of its fiscal year, deliver to the pool participants for each pool it operates under this exemption year-end financial statements certified by an independent public accountant and prepared in accordance with generally accepted accounting principles. In addition, the commodity pool operator shall file two (2) copies of the year-end financial statements with the Commission.

(c) Any person who desires to claim the exemption provided by this section shall file with the Commission a notice of eligibility:

(i) The notice of eligibility must contain the name, main business address and main telephone number of the person claiming the exemption and the name of the pool or pools for which exemption is claimed (an "eligible pool").

(ii) The notice of eligibility must contain representations that the pool or pools, in order to be eligible pools, will be operated in accordance with the requirements set forth in (a) and (b) of the section.

(iii) The notice of eligibility must contain a representation that the commodity pool operator will submit to such special calls as the Commission may make to require the commodity pool operator to demonstrate compliance with the provisions of § 4.9(a)(i)-(iv) and (b)(ii) with respect to the eligible pool. Failure to comply with a special call as described in this paragraph will render the claimed exemption void.

(iv) The notice of eligibility must be filed with the Commission prior to the date upon which the commodity pool operator intends to operate the eligible pool. In the case of a commodity pool operator operating one or more pools that would qualify as eligible pools but with respect to which no notice has been filed, a notice of eligibility may be filed with the Commission prior to the date upon which the commodity pool operator intends to commence operating the pool as an eligible pool, provided that the commodity pool operator has provided prior notice to pool participants that it intends to convert the pool to an eligible pool under this § 4.9 by filing a notice of eligibility with respect to the pool and has given such participants the right to redeem from the pool prior to such filing.

(v) The notice of eligibility shall be effective upon filing, provided that the filing is materially complete.

(d)(i) A commodity pool operator who has claimed exemption hereunder must, in the event that any of the information contained or representations made in the notice of eligibility becomes inaccurate or incomplete, file a supplemental notice with the Commission to that effect which, if applicable, includes such amendments as may be necessary to render the notice of eligibility accurate and complete.

(ii) The supplemental notice required by paragraph (d)(i) of this section shall be filed within fifteen business days after the commodity pool operator becomes aware of the occurrence of such event.

(iii) An exemption claimed hereunder shall cease to be effective 60 days after the commodity pool operator becomes aware of any change which would render inaccurate any of the representations required by subparagraph (c)(ii) or (iii) of this section. During such 60 day period, the commodity pool operator may cure the defects or prepare and file an application to register as a commodity pool operator with the Commission. The filing of an application by the commodity pool operator with the Commission will toll the running of the 60 day period.

(e) A commodity pool operator that operates one or more pools that are not eligible pools under this § 4.9 in addition to one or more pools that are eligible pools under § 4.9 is, with respect to the eligible pools, exempt from all of the other requirements imposed on a commodity pool operator under the Act, provided that the commodity pool operator complies with this § 4.9.

III. The No-Action Relief

A. The Relief

During the rulemaking process commenced by the publication of this advance notice of proposed rulemaking, the Commission has determined to provide relief through the issuance of No-Action Relief, set forth below. As with other registration relief available to CPOs and CTAs under CFTC rules, the No-Action Relief must be claimed through the filing of a notice with the NFA and the CFTC, and one-way disclosure of the claim must be made.[11]

1. CPO Registration No-Action Relief

The Commission will not commence any enforcement action against a CPO based upon the failure of the CPO to register as such under Section 4m(1) of the Act, where each pool for which the CPO claims relief under the No-Action Relief meets and remains in compliance with the following criteria:

a. Participation in the pool is restricted to: "accredited investors" as defined in Rule 501(a) under the Securities Act; "knowledgeable employees" as defined in Rule 3c-5 under the Investment Company Act of 1940,[12] Non-United States persons as defined in CFTC Rule 4.7(a)(1)(iv); and the persons described in CFTC Rule 4.7(a)(2)(viii)(A); and

b. The aggregate national value[13] of each such pool's commodity interest positions, whether entered into for *bona fide* hedging purposes or otherwise,[14] does not exceed fifty percent of the liquidation value of the pool's portfolio, after taking into account unrealized profits and unrealized losses on any such positions it has entered into.[15]

2. CTA Registration No-Action Relief.

The Commission will not commence enforcement action against a CTA based upon the failure of the CTA to register as such under Section 4m(1) of the Act, where the CTA meets and remains in compliance with the following criteria:

a. It claims relief from CPO registration under the No-Action Relief and its commodity interest trading advice is directed solely to, and for the sole use of, the pool or pools that it operates; [16] or

[11] *See, e.g.*, Rules 4.5 and 4.13.

[12] 17 CFR 270.3c-5 (2002).

[13] For this purpose, a CPO should calculate "notional value" for each such futures position by multiplying the size of the futures contract, in contract units, by the current market price per unit, and for each such option position by multiplying the size of the option contract, in contact units, by the strike price. This criterion is patterned on the Commission's proposed alternative non-hedge operating criterion for Rule 4.5, as discussed above.

The following two examples show the effect of this notional value criterion using two different futures contracts. In each example, the CPO desires to establish the maximum number of contracts permissible under the No-Action Relief. In both examples it is assumed that one-half of the pool's liquidation value is $5 million and that the settlement level of the contract is as of September 25, 2002.

With respect to the S&P 500 Stock Price Index futures contract traded on the Chicago Mercantile Exchange, the settlement level was 819.29 and the contract value was $204,822.50 (819.29 × $250). This means that the pool could establish 24 S&P 500 Stock Price Index futures contracts ($5,000,000 / 204,822.50 = 24.4).

With respect to the 10-Year U.S. Treasury Note futures contract traded on the Chicago Board of Trade, the settlement level was 114,160 points and the contract value was $114,160 (114,160 × 100%). This means that the pool could establish 43 10-Year Treasury Note futures contracts ($5,000,000 / $114,160 = 43.8).

[14] *See* Rule 1.3(z)(1).

[15] The operator of a "fund of funds" (an Investor Fund) that indirectly trade commodity interests through participation in one or more funds that directly trades commodity interests (each an Investee Fund) could claim exemption from registration under the No-Action Relief where that Investor Fund trades commodity interests solely through participation in one or more Investee Funds, and the CPO of each such Investee Fund has itself claimed the No-Action Relief. The operator of an Investor Fund that additionally directly trades commodity interests could also claim the No-Action Relief, so long as the portion of the Investor Fund that directly trades commodity interests does not exceed the limit referred to above.

For example, assume that the Investor Fund has a liquidation value of $1 million, four-fifths of which is invested in four Investee Funds whose operators have claimed the No-Action Relief. With the remaining one-fifth of liquidation value, or $200,000, the operator of the Investor Fund may have the Fund directly trade commodity interests, provided that the notional value of the Fund's commodity interest positions does not exceed fifty percent of the Fund's liquidation value, adjusted for unrealized profits and unrealized losses on positions directly entered into by the Fund.

If, however, the notional value of those positions exceeded fifty percent of the liquidation value of $200,000, the operator would only be able to claim the No-Action Relief if the operator knew that the notional value of all of the Investor Fund's commodity interest positions (*i.e.*, those held outright and those held through investment in the four Investee Funds) was fifty percent of the Investor Fund's liquidation value. To be in possession of such information, the operator would need to have direct knowledge of, and immediate access to, the notional value of the commodity interest positions of each Investee Fund. The operator of the Investor Fund could have this knowledge and access where, for example, it was the same person as, or an affiliate of, the CPOs of the Investee Funds.

[16] This provision is patterned after Rule 4.14(a)(5).

b. It is registered as an investment adviser under the Investment Advisers Act of 1940 [17] or with the applicable securities regulatory agency of any State, or it is exempt from such registration, or it is excluded from the definition of the term "investment adviser" pursuant to section 202(a)(2) or 202(a)(11) of the Investment Advisers Act of 1940, provided that:

(i) The person's commodity interest trading advice:

(A) Is directed solely to, and for the sole use of, pools operated by CPOs who claim relief from CPO registration under the No-Action Relief;

(B) Is solely incidental to its business of providing securities advice to each such pool;

(C) Employs only such strategies as are consistent with the "notional test" under the No-Action Relief; and

(ii) The person otherwise holding itself out as a CTA.

B. Claim of No-Action Relief

As stated above, the No-Action Relief is not self-executing. Rather, a CPO or CTA eligible for the No-Action Relief must file a Claim to perfect the relief and msut make a one-way disclosure to its participants and clients, respectively, whether prospective or existing. A Claim of No-Action Relief will be effective upon filing, so long as the Claim is materially complete.

Specifically, the Claim of No-Action Relief must:

1. State the name, main business address, and main business telephone number of the CPO or CTA claiming the relief;

2. State the capacity (*i.e.*, CPO, CTA or both) and, where applicable, the name of the pool(s), for which the Claim is being filed;

3. Represent that the CPO and CTA qualified for the No-Action Relief, that it will comply with the criteria of the No-Action Relief, and that it will provide the CFTC-specified disclosure, set forth below;

4. Be signed by the CPO or CTA; and

5. Be filed with the NFA at its headquarters office in Chicago, Illinois (ATTN: Director of Compliance), with a copy to the Commission at its headquarters office in Washington, D.C. (ATTN: Division of Clearing and Intermediary Oversight, Audit and Financial Review (Section), prior to the date upon which the CPO or CTA first engages in business that otherwise would require registration as such.

C. One-Way Disclosure

1. For CPOs.

To comply with the terms of a Claim of No-Action Relief that it has filed, a CPO must provide the following disclosure to prospective and existing participants in each pool it operates or intends to operate prior to engaging in activities that otherwise would require it to register as a CPO:

"Pursuant to No-Action Relief issued by the Commodity Future Trading Commission, [Name of CPO] is not required to register, and is not registered, with the Commission as a CPO. Among other things, the No-Action Relief requires this CPO to file a Claim of No-Action Relief with the National Futures Association and the Commission. It also requires that the aggregate notional value of this pool's commodity interest positions does not exceed fifty percent of the liquidation value of the Pool's Portfolio.

You should also know that this registration No-Action Relief is temporary. In the event the Commission ultimately adopts a Registration exemption rule that differs from the No-Action Relief, [Name of CPO] must comply with that rule to be exempt from CPO registratin. If [Name of CPO] determines not to comply with that rule, it must either register with the Commission or cease having this Pool Trade Commodity Interests."

2. For CTAs

To comply with the terms of a Claim of No-Action Relief that it has filed, a CTA must provide the following disclosure to each pool it advises or intends to advise prior to engaging in activities that otherwise would require it to register as a CTA:

"Pursuant to No-Action Relief issued by the Commodity Futures Trading Commission, [Name of CTA] is not required to register, and is not registered, with the Commission as a CTA. Among other things, the No-Action Relief requires this CTA to file a claim of No-Action Relief with the National Futures Association and the Commission. It also requires that this CTA provide advice solely to pools whose CPOs have filed a corresponding claim of No-Action Relief.

You should also know that this registration No-Action Relief is temporary. In the event the Commission ultimately adopts a registration exemption rule that differs from the No-Action Relief, [Name of CTA] must comply with that rule to be exempt from CTA registration. If [Name of CTA] determines not to comply with that rule, it must either register with the Commission or cease providing commodity interest trading advice to this pool."

D. Other Matters

1. Effect of Filing a Claim of No-Action Relief

Persons that have filed a Claim of No-Action Relief will be exempt from Commission registration requirements under section 4m(1) of the Act. Such persons will remain subject, however, to prohibitions in the Act and the Commission's rules against fraud which apply to all CPOs and CTAs regardless of registration status. They also will remain subject to all other relevant provisions of the Act and the Commission's rules which apply to all commodity interest market participants, such as the prohibitions on manipulation and the trade reporting requirements.

2. Effect of Final Rulemaking on a Claim of No-Action Relief

Any final action taken by the Commission as a result of this advance notice of proposed rulemaking will supersede the No-Action Relief. In the event the final action differs from the requirements of the No-Action Relief, the Commission will provide CPOs and CTAs with sufficient time within which to comply with such requirements, or, in the event a CPO or CTA is unable or unwilling to so comply, with sufficient time to register with the Commission or to withdraw a previously filed Claim of No-Action Relief and to cease engaging in business as a CPO or CTA.

3. Continued Availability of Registration No-Action Relief From Commission Staff

The Commission is aware that there may be existing or subsequently organized CPOs and CTAs that do not meet the criteria of the No-Action Relief, but that nonetheless, under their particular facts or circumstances, merit relief from registration. The Commission also is aware that, in the past, its staff has provided CPO and CTA registration no-action relief on a case-by-case basis. Consistent with that practice, the Commission directs its staff to continue to issue such relief where appropriate facts or circumstances are present.

IV. Request for Comment

The Commission requests public comment on the exemption criteria of the NFA Proposal, the MFA Proposal, the No-Action Relief, and the following issues:

1. What are the appropriate investor qualifications for participation in collective investment vehicles operated or advised by persons eligible for any new CPO or CTA registration exemption? Should these qualifications vary with the extent of non-hedge commodity interest trading activity? Should these qualifications be the same as those employed in the federal securities laws and the rules of the Securities and Exchange Commission to define financially sophisticated or knowledgeable persons—*e.g.*, "accredited investors," "qualified purchasers," and "knowledgeable employees"? Are there any situations where *either* investor qualifications *or* the level or type of trading activity

[17] 15 U.S.C. 80b–1 *et seq.* (2000).

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should be the sole criterion for exemption?

2. Should persons that qualify for any new CPO or CTA registration exemption be subject to a limit on non-hedge commodity interest trading activity that is higher or lower than the limit in the NFA Proposal? Should there be any limit at all on non-hedge activity by such persons?

3. Should persons that quality for any new CPO or CTA registration exemption be subject to compliance with the special call, recordkeeping, and NFA notice requirements in the NFA Proposal and/or the special call, financial reporting, and CFTC notice and supplemental notice requirements of the MFA Proposal? Should these persons be subject to compliance with any other requirements and, if so, what should they be?

4. Is there any other form of registration relief that the Commission should propose for CPOs or CTAs and, if so, what is it?

5. How should the Commission's proposal address relief for the operator and/or the advisor of an Investor Fund [18]?

Issued in Washington, DC on November 6th, 2002, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 02–28820 Filed 11–12–02; 8:45 am]

BILLING CODE 6351–01–M

[18] Staff has received numerous informal inquiries regarding the fund of funds issue. The Commission intends to address this issue in a separate context as it applies more broadly to the managed funds industry. However, it is important to recognize the implications for funds of funds in this release, as discussed above.

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 228, 229, 244 and 249

[Release No. 33–8145; 34–46788; File No. S7–43–02]

RIN 3235–A169

Conditions for Use of Non-GAAP Financial Measures

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: As directed by the Sarbanes-Oxley Act of 2002, we are proposing new rules and amendments to address public companies' disclosure or release of certain financial information that is derived on the basis of methodologies other than in accordance with Generally Accepted Accounting Principles (GAAP). We are proposing a new disclosure regulation, Regulation G, which would require public companies that disclose or release these non-GAAP financial measures to include, in that disclosure or release, a presentation of the most comparable GAAP financial measure and a reconciliation of the disclosed non-GAAP financial measure to the most comparable GAAP financial measure. We also are proposing to amend Item 10 of Regulation S–K and Item 10 of Regulation S–B to provide additional guidance to those registrants that include non-GAAP financial measures in Commission filings. Additionally, we are proposing to amend Form 20–F to incorporate the proposed amendments to Item 10 of Regulation S–K. Finally, we are proposing to require registrants to file on Form 8–K earnings releases or similar announcements, with those filings subject to the guidance in amended Item 10 of Regulation S–K and Item 10 of Regulation S–B.

DATES: Comments should be received on or before December 13, 2002.

ADDRESSES: To help us process and review your comments more efficiently, please send comments by one method only. Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments also may be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. S7–43–02. This number should be included in the subject line if sent via electronic mail. Electronically submitted comment letters will be posted on the Commission's Internet Web Site (*http://www.sec.gov*). We do not edit personal information, such as names or electronic mail addresses, from electronic submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Joseph P. Babits, Craig Olinger, or Jennifer Minke-Girard at (202) 942–2910, Division of Corporation Finance, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0402.

SUPPLEMENTARY INFORMATION: We are proposing new Regulation G.[1]

We also are proposing amendments to Item 10 of Regulation S–K,[2] Item 10 of Regulation S–B,[3] and Securities Exchange Act of 1934[4] Forms 8–K[5] and 20–F.[6]

[1] 17 CFR 244.100 through 244.102.

[2] 17 CFR 229.10.

[3] 17 CFR 228.10.

[4] 15 U.S.C. §§ 78a *et seq.*

[5] 17 CFR 249.308.

[6] 17 CFR 249.220.

I. Background

On July 30, 2002, President Bush signed into law the Sarbanes-Oxley Act of 2002 ("Sarbanes-Oxley Act").[7] Among its many goals, the Sarbanes-Oxley Act seeks to enhance the financial disclosures of public companies. As part of this effort to enhance disclosure to investors, Congress and the President recognized the immediate need to address issues relating to public companies' use of so-called "*pro forma* financial information."

Like Congress, the Commission also has been concerned with the use of "pro forma financial information." In 1973, the Commission issued Accounting Series Release No. 142, warning of possible investor confusion from the use of financial measures outside of GAAP:

> [T]he unilateral development and presentation on an unaudited basis of various measures of performance by different companies which constitute departures from the generally understood accounting model has led to conflicting results and confusion for investors. Additionally, it is not clear that simple omission of depreciation and other non-cash charges deducted in the computation of net income provides an appropriate alternative measure of performance for any industry either in theory or in practice. * * * If accounting net income computed in conformity with generally accepted accounting principles is not an accurate reflection of economic performance for a company or an industry, it is not an appropriate solution to have each company independently decide what the best measure of its performance should be and present that figure to its shareholders as Truth.[8]

More recently, in December 2001, we issued cautionary advice regarding the use of "pro forma financial information" in earnings releases:

> [W]e are concerned that "pro forma" financial information, under certain circumstances, can mislead investors if it obscures GAAP results. Because this "pro forma" financial information by its very nature departs from traditional accounting conventions, its use can make it hard for investors to compare an issuer's financial information with other reporting periods and with other companies.[9]

Additionally, earlier this year, we brought an enforcement action against Trump Hotels & Casino Resorts, Inc., where we found the use of pro forma

[7] Pub. L. No. 107–204, 116 Stat. 745 (2002).

[8] See Release No. 33–5337 (Mar. 15, 1973).

[9] See Release No. 33–8039 (Dec. 4, 2001) [66 FR 63731].

financial information to be materially misleading.[10]

Like the Commission, Congress also was specifically concerned with pro forma results that are prepared or derived on a basis other than GAAP when it included Section 401(b) in the Sarbanes-Oxley Act. Because the Commission's rules and regulations address the use of "pro forma financial information" in other contexts, particularly in Regulation S–X,[11] and use that term differently from its use in the Sarbanes-Oxley Act,[12] we are adopting the term "non-GAAP financial measures" to identify the types of information targeted by Section 401(b) of the Sarbanes-Oxley Act. The Sarbanes-Oxley Act sought to eliminate the manipulative or misleading use of non-GAAP financial measures and, at the same time, enhance the comparability associated with the use of that information. As the Senate Committee on Banking, Housing, and Urban Affairs noted in their Committee Report:

> The Committee seeks to address problems attendant to pro forma financial disclosures by requiring the SEC to promulgate rules requiring that issuers publish pro forma data with a reconciliation to comparable financial data calculated according to GAAP and in a way that is not misleading and does not contain untrue statements. The reconciliation presumes, and would require, the issuer to publish financial data calculated according to GAAP at the same time as it publishes pro forma data. This should enable investors to, at the least, simultaneously compare the pro forma financial data with the same types of financial disclosures (e.g., earnings) calculated according to GAAP for the comparable reporting period.[13]

Accordingly, Section 401(b) of the Sarbanes-Oxley Act directs the Commission to adopt rules requiring that any public disclosure or release of non-GAAP financial measures by a company filing reports under Section 13(a) [14] or 15(d) [15] of the Exchange Act be presented in a manner that:

- Does not contain an untrue statement of a material fact or omit to state a material fact necessary in order to make the non-GAAP financial measure, in light of the circumstances under which it is presented, not misleading; and
- Reconciles the non-GAAP financial measure presented with the financial condition and results of operations of the registrant under GAAP.

These rules would address the use of non-GAAP financial measures, regardless of whether that use would violate current Commission disclosure or antifraud rules.

As used in this release, a "non-GAAP financial measure" is a numerical measure of an issuer's historical or future financial performance, financial position or cash flows that:

- Excludes amounts, or is subject to adjustments that have the effect of excluding amounts, that are included in the comparable measure calculated and presented in accordance with GAAP in the statement of income, balance sheet or statement of cash flows (or equivalent statements) of the issuer; or
- Includes amounts, or is subject to adjustments that have the effect of including amounts, that are excluded from the comparable measure so calculated and presented.

In their efforts to enhance financial disclosure, Congress and the President recognized the importance of timely information to investors and our markets. Section 409 of the Sarbanes-Oxley Act added to the Exchange Act new Section 13(l), which obligates public companies to "disclose to the public on a rapid and current basis such additional information concerning material changes in the financial condition or operations of the issuer, in plain English, which may include trend and qualitative information and graphic presentations, as the Commission determines, by rule, is necessary or useful for the protection of investors and in the public interest."[16] Before the adoption of the Sarbanes-Oxley Act, we had taken important steps in this regard by proposing accelerated deadlines by which companies would be required to disclose significantly expanded categories of material information.[17] Comments regarding our proposed accelerated deadlines for periodic reports of registrants, while not fully supporting that proposal, recognized the need for more current information.[18] In fact, the comments of the American Bar Association's Subcommittee on Disclosure and Continuous Reporting of the Committee on Federal Regulation of Securities, Section of Business Law, proposed alternatively that we require companies to file their earnings reports on Form 8–K. The ABA Subcommittee expressed the view that such a requirement:

- Would enhance the attention and level of care companies bring to those disclosures because companies would be aware that the disclosures will become part of the formal reporting system; and
- Would bring those disclosures into the formal disclosure system where they would be available electronically on a widespread basis.[19]

Today, to implement the Sarbanes-Oxley Act's directives regarding the use of non-GAAP financial measures and further the statutory objective of increased real-time issuer disclosures, we are proposing new Regulation G, amendments to Item 10 of Regulation S–K, amendments to Item 10 of Regulation S–B and amendments to Exchange Act Forms 8–K and 20–F.

II. Discussion of Proposals

We intend the proposed rules and amendments to implement the requirements of the Sarbanes-Oxley Act, improve the transparency and quality of disclosure of non-GAAP financial measures and related information and enhance the current reporting of earnings information. We are taking a two-part approach to the disclosure of non-GAAP financial measures. First, we are proposing new Regulation G, which would apply whenever a company publicly discloses or releases material information that includes a non-GAAP financial measure. While Section 401(b) of the Sarbanes-Oxley Act refers to any communication of "*pro forma* financial information," we believe that proposing to make Regulation G applicable to public disclosures of material information containing or accompanied by non-GAAP financial measures delineates appropriately the scope of the rules required by Section 401(b). This regulation would impose specific requirements in connection with the

[10] See *In the Motter of Trump Hotels & Casino Resorts, Inc.*, Release No. 34–45287 (Jan. 16, 2002).

[11] 17 CFR 210.1–01 through 210.12–29.

[12] In limited circumstances, such as in a merger, pro forma financial information is required to be disclosed in Commission filings. See Article 11 of Regulation S–X 17 CFR 210.11–01—210.11–03] for the conditions that require the presentation of pro forma information, as well as the preparation requirements. Such pro forma information is intended to depict the continuing impact of an actual or proposed transaction on the historical GAAP financial statements. Article 11 requires tabular presentation of the balance sheet and income statements, starting with the historical GAAP financial statements, showing the specific adjustments that would have been required by GAAP had the transaction occurred at an earlier time, and ending with the pro forma statements, and also requires disclosure of the assumptions which underlie its preparation. Pro forma information presented pursuant to Article 11 would not be subject to the rules and amendments we propose in this release.

[13] Sen. Rep. No. 107–205, 107 Cong. 2d Sess. at 29 (2002).

[14] 15 U.S.C. § 78m(a).

[15] 15 U.S.C. § 78o(d).

[16] 15 U.S.C. § 78m(*l*).

[17] *See* Release No. 33–8106 (June 17, 2002) [67 FR 42913] and Release No. 33–8128 (Sept. 5, 2002) [67 FR 58479].

[18] *See* National Investor Relations Institute letter to Mr. Jonathan G. Katz dated May 20, 2002, and American Bar Association letter to Mr. Jonathan G. Katz dated June 4, 2002.

[19] American Bar Association letter to Mr. Jonathan G. Katz dated June 4, 2002, at page 4.

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public communication of non-GAAP financial measures and, without affecting the existing antifraud regime, would prohibit material misstatements or omissions that would make the presentation of the material non-GAAP financial measure, under the circumstances in which it is made, misleading. Regulation G provides a limited exception for foreign private issuers based on what we believe to be an appropriate territorial approach. This limited exception applies the principles of territoriality based on where the disclosure is initially made and is similar to that provided by Rule 135e[20] under the Securities Act of 1933[21] for offshore press and related activities.

Second, pursuant to the Sarbanes-Oxley Act and our existing authority under the Securities Act and Exchange Act, we are proposing to amend Item 10 of Regulation S–K and Item 10 of Regulation S–B to address specifically the use of non-GAAP financial measures in filings with the Commission.[22] These proposed amendments would apply to the same categories of non-GAAP financial measures as are covered by proposed Regulation G, but contain somewhat more detailed requirements than proposed Regulation G.[23]

In addition to these proposals, in order to bring earnings information within our current reporting system, we are proposing an amendment to Form 8–K that would require the filing with the Commission of releases or announcements disclosing material non-public financial information about completed annual or quarterly fiscal periods. Our proposal would not require the issuance of earnings releases or similar announcements. However, such releases and announcements would trigger the new proposed filing requirement. The proposed filing requirement would apply regardless of whether the release or announcement included disclosure of a non-GAAP financial measure. Public disclosure of financial information for a completed fiscal period in a presentation that is made orally, telephonically, by webcast, broadcast or similar means would not be required to be filed, if the presentation:

- Occurs within 48 hours of a related release or announcement that is filed under proposed Item 1.04 of Form 8–K; and
- Is accessible to the public.

A. Proposed Regulation G

Proposed Regulation G would apply to any entity that is required to file reports pursuant to Sections 13(a) or 15(d) of the Exchange Act, other than a registered investment company.[24] Regulation G would apply whenever such a registrant, or a person acting on its behalf, discloses or releases publicly any material information that includes a non-GAAP financial measure. Regulation G would require the registrant to provide the following information as part of the disclosure or release of the non-GAAP financial measure:

- A presentation of the most comparable financial measure calculated and presented in accordance with GAAP; [25] and
- A reconciliation (by schedule or other clearly understandable method), which shall be quantitative for historic measures and quantitative, to the extent available without unreasonable efforts, for prospective measures, of the differences between the non-GAAP financial measure presented and the comparable financial measure or measures calculated and presented in accordance with GAAP.

If a non-GAAP financial measure is released orally, telephonically, in a webcast or broadcast or by similar means, proposed Regulation G would permit a registrant to provide the required accompanying information by posting it on the registrant's website. The registrant would be required to disclose the location and availability of the required accompanying information during its presentation.

With regard to the quantitative reconciliation of non-GAAP financial measures that are forward-looking, a schedule or other presentation detailing the differences between the forward-looking non-GAAP financial measure and the appropriate forward-looking GAAP financial measure would be required. If the GAAP financial measure is not accessible on a forward-looking basis, the registrant must disclose that fact, explain why it is not accessible on a forward-looking basis and provide any reconciling information that is available without an unreasonable effort. Furthermore, the registrant must identify any information that is unavailable and disclose its probable significance.

Proposed Regulation G also provides that a non-GAAP financial measure, taken together with the accompanying information, may not misstate a material fact or omit to state a material fact necessary to make the presentation of the non-GAAP financial measure not misleading, in light of the circumstances under which it is presented.[26]

For purposes of Regulation G, a non-GAAP financial measure would be a numerical measure of a registrant's historical or future financial performance, financial position or cash flows that:

- Excludes amounts, or is subject to adjustments that have the effect of excluding amounts, that are included in the comparable measure calculated and presented in accordance with GAAP in the statement of income, balance sheet or statement of cash flows (or equivalent statements) of the issuer; or
- Includes amounts, or is subject to adjustments that have the effect of including amounts, that are excluded from the comparable measure so calculated and presented.

In this regard, "GAAP" refers to generally accepted accounting principles in the United States, except that in the case of foreign private issuers whose primary financial statements are prepared in accordance with other generally accepted accounting principles, references to GAAP also include the principles under which those primary financial statements are prepared. We do not intend today's proposals to capture measures of operating performance or financial measures that fall outside the scope of the definition set forth above.

Non-GAAP financial measures would not include:

- Operating and other statistical measures (such as unit sales, numbers of employees, numbers of subscribers, or numbers of advertisers); and
- Ratios or measures that are calculated using only:
- Financial measures calculated in accordance with GAAP; and
- Operating measures or other measures that are not non-GAAP financial measures.

Non-GAAP financial measures would not include financial information that does not have the effect of providing

[20] 17 CFR 230.135e.

[21] 15 U.S.C. §§ 77a *et seq.*

[22] We also are proposing amendments to Exchange Act Form 20–F that would reference Item 10 of Regulation S–K.

[23] These proposed amendments would apply only to non-GAAP financial measures in filings with the Commission. Regulation G would apply to any public disclosure of material non-public information that included a non-GAAP financial measure, regardless of whether it is in a filing with the Commission.

[24] See proposed Section 244.101(c) of Regulation G. Registered investment companies are excluded from the definition of "registrant" for purposes of Regulation G, as Section 405 of the Sarbanes-Oxley Act exempts investment companies registered under Section 8 of the Investment Company Act of 1940 (15 U.S.C. § 80a–8) from Section 401 of the Sarbanes-Oxley Act and any rules adopted by the Commission under Section 401.

[25] Examples of financial measures calculated and presented in accordance with GAAP would include, but not be limited to, earnings or cash flows as reported in the GAAP financial statements.

[26] 17 CFR 244.100(b).

numerical measures that are different from the comparable GAAP measure. Examples of measures to which Regulation G would not apply would include the following:

- Disclosure of amounts of expected indebtedness, including contracted and anticipated amounts;
- Disclosures or amounts of repayments that have been planned or decided upon but not yet made;
- Disclosures of estimated revenues or expenses of a new product line, so long as such amounts were estimated as GAAP figures; and
- Measures of profit or loss and total assets for each segment required to be disclosed in accordance with GAAP.[27]

We do intend that the definition of non-GAAP financial measure capture all measures that have the effect of depicting either:

- A measure of performance that is different from that presented in the financial statements, such as income or loss before taxes, or net income or loss as calculated in accordance with GAAP; or
- A measure of liquidity that is different from cash flow or cash flow from operations computed in accordance with GAAP.

An example of a non-GAAP financial measure would be a measure of operating income that excludes one or more expense or revenue items that are identified as "non-recurring." Another example would be EBITDA (earnings before interest, taxes, depreciation and amortization), which could be calculated using elements derived from GAAP financial presentations but, in any event, is not presented in accordance with GAAP. Examples of ratios and measures that would not be non-GAAP financial measures would include sales per square foot (assuming that the sales figure was calculated in accordance with GAAP) or same store sales (again assuming the sales figures for the stores were calculated in accordance with GAAP). An example of a ratio that would be a non-GAAP financial measure would be a measure of operating margin where either the revenue component or the operating income component of the calculation, or both, were not calculated in accordance with GAAP.

The proposed regulation would apply to registrants that are foreign private issuers,[28] subject to a limited exception. Specifically, Regulation G would not apply to public disclosure of a non-GAAP financial measure by or on behalf of a registrant that is a foreign private issuer if the following conditions were satisfied:

- The securities of the issuer are listed or quoted on a securities exchange or inter-dealer quotation system outside the United States;
- The non-GAAP financial measure and the most comparable GAAP financial measure are not calculated and presented in accordance with generally accepted accounting principles in the United States; and
- The disclosure is made by or on behalf of the registrant outside the United States, or is included in a written communication that is released by or on behalf of the registrant only outside the United States.

We believe that these conditions, by focusing on whether the financial measure relates to U.S. GAAP and on the territorial principle of where the disclosure is made by or on behalf of the foreign private issuer, appropriately balance the interests of U.S. investors, including those interests as provided by the Sarbanes-Oxley Act, with the interests of foreign private issuers in communicating in their home markets. The Commission has not historically applied specific disclosure requirements to communications by foreign private issuers other than in their annual reports on Form 20–F. We believe that it is appropriate to take the Sarbanes-Oxley Act as a direction to apply Regulation G to foreign private issuers, subject to the exception we have proposed.

In addition, we believe that the worldwide availability of information properly disclosed outside the United States and the interests of U.S. investors in information communicated by or on behalf of the issuer outside the United States dictate that the exception for foreign private issuers should continue to apply where:

- Foreign or U.S. journalists or other third parties have access to the information, so long as the information is disclosed or released by or on behalf of the registrant only outside the United States;
- Following its release or disclosure, the information appears on one or more web sites maintained by the registrant, so long as the web sites, taken together, are not available exclusively to, or targeted at, persons located in the United States; and/or
- Following the disclosure or release of the information outside the United States, the information is included in a submission to the Commission made under cover of a Form 6–K.[29]

Indeed, regulators worldwide have been addressing this issue within their own jurisdictions. In May 2002, the Technical Committee of the International Organization of Securities Commissions (IOSCO) published a Cautionary Statement Regarding Non-GAAP Results Measures that urged issuers, investors and other users of financial information to use care when presenting and interpreting such information.[30] This IOSCO Cautionary Statement notes the universal concerns that regulators have about the potential misuse of non-GAAP earnings measures and provides examples of statements of cautionary advice regarding the appropriate use of non-GAAP information that have been issued in various countries.

Proposed Regulation G would be a disclosure provision applicable to entities that are required to file reports under Section 13(a) or Section 15(d) of the Exchange Act, other than registered investment companies.[31] Proposed Rule 102 of Regulation G [32] expressly provides that nothing in Regulation G shall affect any person's liability under Exchange Act Section 10(b)[33] or Rule 10b–5 thereunder.[34] Proposed Rule 102 also states that a person's compliance or non-compliance with the requirements of Regulation G would not affect that person's liability under Section 10(b) or Rule 10b–5. The facts and circumstances surrounding a violation of Regulation G, however, may give rise to a Rule 10b–5 violation if all the elements for such a violation are present. In this regard, we reminded companies in December 2001 that, under certain circumstances, non-GAAP financial measures could mislead investors if they obscure the company's

[27] FASB Statement 131, Disclosures about Segments of and Enterprise and Related Information, requires that companies report a measure of profit or loss and total assets for each reportable segment. This tabular information is presented in a note to the audited financial statements and is required to be reconciled to the GAAP measures, with all significant reconciling items separately identified and described. A registrant is required to provide a Management's Discussion & Analysis of segment information if such a discussion is necessary to an understanding of the business. Such discussion would generally include the measures reported under FASB Statement 131.

[28] "Foreign private issuer" is defined in Rule 405 under the Securities Act [17 CFR 230.405].

[29] 17 CFR 249.306.

[30] This document is available at *www.iosco.org/press/presscomm020530.html.*

[31] A registrant's failure to include all of the information required to be included in a public announcement by Regulation G would not affect that registrant's form eligibility under the Securities Act or whether there is adequate current public information regarding the registrant for purposes of Securities Act Rule 144(c) [17 CFR 230.144(c)].

[32] 17 CFR 244.102

[33] 15 U.S.C. 78j.

[34] 17 CFR 240.10b–5.

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GAAP results.[35] We continue to be of the view that some disclosures of non-GAAP financial measures could give rise to actions under Rule 10b–5.[36]

Section 3(b) of the Sarbanes-Oxley Act provides that a violation of that Act or the Commission's rules thereunder shall be treated for all purposes as a violation of the Exchange Act. Therefore, if an issuer, or any person acting on its behalf, fails to comply with Regulation G, the issuer and/or the person acting on its behalf could be subject to a Commission enforcement action alleging violations of Regulation G. Additionally, if the facts and circumstances warrant, we could bring an action under both Regulation G and Rule 10b–5.

Questions Regarding Proposed Regulation G

- As proposed, Regulation G would apply only to companies that are required to file reports pursuant to Section 13(a) or 15(d) of the Exchange Act. Should we expand the scope of the regulation to apply to all companies that publicly disclose non-GAAP financial measures, excluding registered investment companies?
- As an alternative to requiring reconciliation to the most directly comparable financial measure calculated and presented in accordance with GAAP, should we require reconciliation to specific GAAP financial measures in all cases, such as net income and cash flow from operating activities? If yes, to which GAAP financial measures should we require reconciliation?
- Should the presentation of certain non-GAAP financial measures require the presentation of a reconciled (full or summary) consolidated balance sheet, income statement and cash flow statement? If so, which non-GAAP financial measure(s) should trigger this requirement?
- Should the requirement of a quantitative reconciliation include an exception for prospective measures where the necessary information cannot be obtained without unreasonable effort?
- Should we limit the definition of non-GAAP financial measures to historical financial measures?
- Does the proposed definition of "non-GAAP financial measure" capture non-GAAP information where enhanced disclosure is appropriate? Does the proposed definition capture the pro forma financial information that the Sarbanes-Oxley Act targets? Should Regulation G apply to disclosures of material information including *any* financial measure calculated and presented otherwise than in accordance with GAAP? Is the proposed definition otherwise too narrow or too broad? If so, how should it be changed?
- Should we exclude non-GAAP financial measures communicated orally from the proposed regulation? Would such an exclusion be consistent with the terms of the Sarbanes-Oxley Act?
- Is there a danger that investors would consider the reconciliation to have been audited or reviewed by the issuer's independent auditors? Should Regulation G require companies to disclose whether the reconciliation has been reviewed or audited by their independent accountants in order to avoid investor confusion?
- In this release, we propose to require companies that include non-GAAP financial measures in filings to also include a discussion of the purposes for which the company's management uses the non-GAAP financial measure and why management believes the presentation of the non-GAAP financial measure provides useful information to investors.[37] Should we require that information in all communications that are subject to Regulation G? If so, why? If not, why not?
- Should we allow registrants greater latitude to satisfy the requirements of proposed Regulation G by posting the non-GAAP financial measure's components and the comparative GAAP financial measure on their website or in their Commission filings?
- As proposed below, and consistent with staff practice, the Commission generally has more detailed disclosure requirements where non-GAAP financial measures are included in Commission filings. Should we require these additional disclosure requirements in all cases, even in documents not filed with the Commission?
- Should we prohibit the presentation, whether or not included in filings with the Commission, of certain non-GAAP financial measures (for example, certain per-share measures or liquidity measures that exclude cash items)? If so, which measures?
- Will proposed Regulation G limit the use of non-GAAP financial measures? Please explain.
- Is the limited exception from Regulation G for foreign private issuers appropriate in furtherance of the purposes of the Sarbanes-Oxley Act? Should the exception be broader or more limited? If so, how?
- Does the limited exception from Regulation G for foreign private issuers deprive U.S. investors of material information? Alternatively, would eliminating the limited exception for foreign private issuers deprive U.S. investors of non-GAAP financial measures? Furthermore, would eliminating the limited exception from Regulation G for foreign private issuers result in foreign private issuers de-registering and exiting the U.S. capital markets?
- Proposed Regulation G would apply to disclosures of non-GAAP financial measures that represent projections or forecasts of results of business combination transactions ("post-transaction measures") and that are filed with the Commission as information pursuant to the communications rules applicable to business combination transactions,[38] as well as non-GAAP financial measures of each registrant that are used to calculate post-transaction measures. Should there be an exception from certain requirements of Regulation G for post-transaction measures or other measures filed as information under the business combination rules? Should such measures be treated differently under Regulation G? If so, how? Business combination communications often include brief statements regarding the potential benefits to be achieved by the business combination (e.g., synergies, valuations, dividend amounts, etc.). Either instead of or in addition to the requirements of proposed Regulation G, should the rules specifically require the disclosure of any assumptions or bases underlying these measures?
- Should Regulation G be enforceable by the Commission only or also by private plaintiffs? Should language be included in Regulation G that makes explicit the manner in which it is to be enforced?
- Will proposed Regulation G meet the goals of Section 401(b) of the Sarbanes-Oxley Act? Does proposed Regulation G meet those goals in the most appropriate manner? Is there a way to achieve those goals that is less burdensome than that in proposed Regulation G? If so, what is it?

[35] *See* Release No. 33–8039 (Dec. 4, 2001) [59 FR 63731].

[36] *See* Release No. 33–8039 (Dec. 4, 2001) [59 FR 63731] and *In the Matter of Trump Hotels & Casino, Inc.*, Release No. 34–45287 (Jan. 16, 2002).

[37] *See* the discussion of the proposed amendments to Item 10 of Regulation S–K and Item 10 of Regulation S–B in Section II.B. of this release.

[38] *See* Exchange Act Rules 14a–12 [17 CFR 240.14a–12] and 14d–2 [17 CFR 240.14d–2] and Securities Act Rules 165 [17 CFR 230.165] and 425 [17 CFR 230.425].

B. Proposed Amendments to Item 10 of Regulation S–K, Item 10 of Regulation S–B and Form 20–F

We are proposing to amend Item 10 of Regulation S–K and Item 10 of Regulation S–B to add a statement concerning the use of non-GAAP financial measures in filings made with the Commission.[39] In addition, we are proposing to amend Exchange Act Form 20–F to incorporate Item 10 of Regulation S–K (as proposed to be amended). The proposed amendments to Item 10 of Regulation S–K and Item 10 of Regulation S–B would make clear that registrants using non-GAAP financial measures in filings with the Commission would have to provide:

- A presentation, with equal or greater prominence, of the most directly comparable financial measure calculated and presented in accordance with GAAP;
- A quantitative reconciliation (by schedule or other clearly understandable method) of the differences between the non-GAAP financial measure disclosed with the most directly comparable measure or measures calculated and presented in accordance with GAAP;
- A statement disclosing the purposes for which the registrant's management uses the non-GAAP financial measure presented; and
- A statement describing the reasons why the registrant's management believes such non-GAAP financial measures provide useful information to investors.

In addition to these mandated disclosure requirements, we propose to amend Item 10 of Regulation S–K and Item 10 of Regulation S–B to prohibit the following:

- Presenting a non-GAAP financial measure in a manner that would give it greater authority or prominence than the comparable GAAP financial measure or measures;
- Excluding charges or liabilities that required, or will require, cash settlement, or would have required cash settlement absent an ability to settle in another manner, from non-GAAP liquidity measures;
- Adjusting a non-GAAP performance measure to eliminate or smooth items identified as non-recurring, infrequent or unusual, when the nature of the charge or gain is such that it is reasonably likely to recur;
- Presenting non-GAAP financial measures on the face of the registrant's financial statements prepared in accordance with GAAP or in the accompanying notes;
- Presenting non-GAAP financial measures on the face of any pro forma financial information required to be disclosed by Article 11 of Regulation S–X;
- Using titles or descriptions of non-GAAP financial measures that are the same as, or confusingly similar to, titles or descriptions used for GAAP financial measures; and
- Presenting a non-GAAP per-share measure.

The requirement of Regulation G that the presentation of a non-GAAP financial measure, taken together with the information accompanying the measure and any other accompanying discussion, not contain a material misstatement or material omission necessary in order to make the presentation not misleading, in light of the circumstances in which the presentation is made, would also apply to disclosures in documents filed with the Commission.

The requirements for filed information are proposed to be more extensive and detailed than those of proposed Regulation G. The additional requirements would be generally consistent with the staff's historical practice in situations where it has reviewed filings containing non-GAAP financial measures. In addition, the requirements for a GAAP presentation and for a reconciliation would be slightly more stringent than those set forth under Regulation G. In particular, in filings with the Commission, the presentation of the comparable GAAP financial measure must have equal or greater prominence, and there would not be an "unreasonable effort" exception for forward-looking information to the requirement for a quantitative reconciliation between the non-GAAP financial measure and the comparable GAAP financial measure. Additionally, any non-GAAP financial measure presented must be accompanied by statements disclosing the purposes for which the registrant's management uses the non-GAAP financial measure and why the registrant believes the non-GAAP financial measure would be useful to investors. This requirement is designed to ensure that companies are using non-GAAP financial measures that provide information that is important in analyzing and understanding the registrant. We believe that these more stringent requirements are appropriate for filings with the Commission.

The requirements that a statement regarding the purposes for which management uses the non-GAAP financial measure and the utility of the non-GAAP financial measure to investors could be satisfied by including the statements in the most recent annual report filed with the Commission (or a more recent filing) and by updating those statements, as necessary, no later than the time of the filing.[40]

The definition of "non-GAAP financial measure" would be the same for purposes of these proposals as for Regulation G. Unlike under Regulation G, however, there is no limited exception for foreign private issuers and, therefore, the proposed requirements would apply to filings on Form 20–F. However, a non-GAAP financial measure that would otherwise be prohibited would be permitted in a Form 20–F filing of a foreign private issuer if the measure was expressly permitted under the generally accepted accounting principles used in the issuer's primary financial statements and was included in the issuer's annual report or financial statements used in its home country jurisdiction or market.

We are not proposing to subject filers on Form 40–F under the Multi-Jurisdictional Disclosure System (MJDS) to the proposed requirements because, under the philosophy of MJDS, which is currently applicable to certain Canadian issuers, the Canadian disclosure form requirements dictate required disclosure in filings with the Commission. Public disclosures in the United States by these issuers, including filings with the Commission on Form 40–F, would be subject to proposed Regulation G.

Questions Regarding Amendments to Item 10 of Regulation S–K, Item 10 of Regulation S–B and Form 20–F

- Are the proposed additional disclosures required in filings necessary in light of proposed Regulation G?
- Consistent with current staff policy, our proposal would prohibit the use of non-GAAP per-share measures. Is such a prohibition necessary, or would it suffice to reconcile both the numerator and denominator of the non-GAAP per-share measure with comparable GAAP measures, respectively?
- Should the non-GAAP financial measures be presented in a separate section of a Commission filing?
- Should the requirements for filings and those required in Regulation G be

[39] The proposed amendments to Item 10 of Regulation S–K would not apply to registered investment companies [17 CFR 229.10(e)(5)].

[40] With regard to the issuer's statement as to why investors may find the non-GAAP financial measure useful, the sole fact that the non-GAAP financial measure is used by or useful to analysts cannot be the sole support for presenting the non-GAAP financial measure. Rather, the justification for the use of the measure must be substantive; it can, of course, be a justification that causes a measure to be used by or useful to analysts.

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different? For example, should the requirement that the GAAP measure in a filing be presented with equal or greater prominence be included in Regulation G or not included in Item 10 of Regulation S–K and Item 10 of Regulation S–B?

• Should the requirement that a quantitative reconciliation of prospective measures be included in the filing have an exception similar to that proposed in Regulation G where the necessary information cannot be obtained without unreasonable effort?

• Are there additional disclosures that should be required in filings? If so, what disclosure items would be beneficial to investors?

• Consistent with current staff policy, our proposals would prohibit specified types of disclosures. Is such a prohibition necessary and appropriate?

• Should the proposed requirements apply to foreign private issuers' reports on Form 20–F?

• Should the proposed requirements apply to filings by Canadian issuers under the MJDS on Form 40–F?

• As with Regulation G, in the case of business combinations, the proposed requirements would apply to "post-transaction measures" filed as information under the communication rules applicable to business combination transactions.[41] Is an exception from certain of the requirements for post-transaction measures or other measures filed as information under the business combination rules appropriate? Should such measures be treated differently? If so, how? Either instead of or in addition to the requirements of proposed Regulation G, should the rules specifically require the disclosure of assumptions or bases underlying announcements of potential benefits to be achieved by the business combination (*e.g.*, synergies, valuations, dividend amounts, etc.)?

• If a company presents a non-GAAP measurement for a previous completed fiscal period, should it be required to present that same non-GAAP measurement in future filings where the previous period is compared to a recent completed fiscal period? For example, if a company presents a non-GAAP financial measurement that for the first fiscal quarter of 2002, should it be required to present the same non-GAAP measurement for the first fiscal quarter of 2003?

[41] See footnote 38.

C. Proposed New Item 1.04 of Form 8–K

We propose to amend Form 8–K to add new Item 1.04 "Disclosure of Results of Operations and Financial Condition."[42] New Item 1.04 would require registrants to file a Form 8–K within two business days of any public announcement or release disclosing material non-public information regarding a registrant's results of operations or financial condition for an annual or quarterly fiscal period that has ended.

Today, these types of announcements and releases are subject to Regulation FD.[43] Unlike disclosure made to satisfy Regulation FD, however, historical information filed under proposed Item 1.04 of Form 8–K always would be considered filed with the Commission for liability purposes.[44] Further, a Form 8–K filed pursuant to Item 1.04 would satisfy an issuer's obligation under Regulation FD only if the Form 8–K were filed within the time frame required by Regulation FD. Regulation FD could, of course, be satisfied by public disclosure other than through the filing of a Form 8–K meeting Regulation FD's requirements; in that case, a Form 8–K filed pursuant to Item 1.04 would be required to be filed within the two-business day timeframe.

Proposed Item 1.04 would require the registrant to identify briefly the announcement or release and file the announcement or release as an exhibit to the Form 8–K. Further, the requirements of proposed Item 10(e) of Regulation S–K or Item 10(h) of Regulation S–B would apply to a Form 8–K filed under proposed Item 1.04.

If non-public information is disclosed orally, telephonically, by webcast, broadcast, or similar means, Item 1.04 would not require the registrant to file a Form 8–K if:

• The disclosure initially occurs within 48 hours of a written release or announcement filed on Form 8–K pursuant to Item 1.04;

• The presentation is accessible to the public by dial-in conference call, webcast or similar technology;

• The financial and statistical information contained in the presentation is provided on the registrant's Web site, together with any information that would be required under proposed Regulation G; and

• The presentation was announced by a widely disseminated press release that included instructions as to when and how to access the presentation and the location on the registrant's Web site where the information would be available.

As noted above, our proposal would not require any registrant to issue an earnings release or similar announcement. However, if a registrant issues such a release or announcement containing material non-public information regarding the registrant's results of operations or financial condition for an annual or quarterly fiscal period that has ended, it would trigger the new proposed filing requirement.

The filing requirement under proposed Item 1.04 of Form 8–K would be triggered by the disclosure of material non-public information regarding a completed fiscal year or quarter. Repetition of previously publicly disclosed information or release of the same information in a different form, for example in an interim or annual report to shareholders, would not trigger the proposed Item 1.04 requirement. This result would not change if the repeated information were accompanied by information that was not material, whether or not already public. However, release of additional or updated material non-public information regarding the registrant's results of operation or financial condition for a completed fiscal year or quarter would trigger an additional Item 1.04 filing requirement. Issuers that make earnings announcements or other disclosures of material non-public information regarding a completed fiscal year or quarter in an interim or annual report to shareholders would be permitted to specify which portion of the report contains the information required to be filed under Item 1.04. In addition, the requirement to file under Item 1.04 of Form 8–K would not apply to issuers that make these announcements and disclosures only in their quarterly reports filed with the Commission on Form 10–Q[45] (or 10–QSB[46]) or their annual reports filed with the Commission on Form 10–K[47] (or 10–KSB[48]).

Proposed Item 1.04 of Form 8–K would apply only to publicly disclosed or released material non-public information concerning an annual or quarterly fiscal period that has ended. While such disclosure may also include forward-looking information, it is the material information about the completed fiscal period that triggers proposed Item 1.04. Accordingly, proposed Item 1.04 would not apply to public disclosure of earnings estimates for future or ongoing fiscal periods, unless those estimates are included in the public announcement or release of material non-public information regarding an annual or quarterly fiscal period that has ended.[49] In such a case, specifically identified forward-looking information could be furnished under Item 6.01[50] rather than filed under proposed Item 1.04. Information furnished under Item 6.01 should be included in the same Form 8–K that contains the historical material information filed pursuant to Item 1.04.

Information furnished under Item 6.01 would not be subject to Section 18[51] of the Exchange Act, nor would it be incorporated by reference into a registration statement, proxy statement or other report. The registrant would be required to identify the specific forward-looking statements it did not want to be considered filed.[52]

Questions Regarding Proposed Item 1.04 of Form 8–K

• Is proposed Item 1.04 necessary given Regulation FD and proposed Regulation G?

• Should the Commission define "public disclosure" for purposes of proposed Item 1.04?

• Proposed Item 1.04 would apply only to disclosures regarding completed annual or quarterly fiscal periods. Should we expand the scope of proposed Item 1.04 to require the filing of all material updates to estimates for current or future fiscal periods?

• Will proposed Item 1.04 have the effect of decreasing the extent to which public companies make public announcements or releases of material non-public information regarding completed fiscal periods? If so, what are the specific factors that would result in that decrease? Why would those factors result in that decrease?

• Is the posting of the complementary information on a Web site sufficient disclosure or should a filing be required for this information as well?

• Regulation G requires that any information provided on a Web site be available at the time the original public communication is made. Is it necessary for Item 1.04 to contain the same timing requirement?

• Should we require forward-looking information to be considered filed for purposes of Section 18 of the Exchange Act? Should forward-looking information, where appropriate, be incorporated by reference into a registration statement, proxy statement or other report?

• Should the disclosure requirements of Item 10 of Regulation S–K and Item 10 of Regulation S–B apply to complementary information not filed with the Commission?

• Would the application of Item 1.04 only to disclosures regarding completed annual or quarterly periods cause public companies to increase their disclosure of intra-period information, rather than disclosure regarding completed periods, in an effort to avoid the requirements of Item 1.04?

D. General Request for Comment

We request and encourage any interested person to submit comments regarding:

• The proposed rule and amendments that are the subject of this release;

• Additional or different changes; or

• Other matters that may have an effect on the proposals contained in this release.

We request comment from the point of view of registrants, investors and other market participants. With regard to any comments, we note that such comments are of great assistance to our rulemaking initiative if accompanied by supporting data and analysis of the issues addressed in those comments.

III. Paperwork Reduction Act

Proposed Regulation G and related amendments to Regulations S–K, Form 8–K and Form 20–F contain "collections of information" requirements within the meaning of the Paperwork Reduction Act of 1995 ("PRA"),[53] and the Commission has submitted the proposals to the Office of Management and Budget ("OMB") for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The titles for the information collections are: Regulation G, Regulation S–K, Regulation S–B, Form 8–K and Form 20–F.

The Commission is proposing Regulation G pursuant to Section 401 of the Sarbanes-Oxley Act. Proposed Regulation G would require registrants when publicly disclosing material information that include non-GAAP financial measures to provide a reconciliation to comparable GAAP figures. Regulation G is intended to implement the requirements of the Sarbanes-Oxley Act. Specifically, Regulation G is intended to provide investors with balanced financial disclosure when non-GAAP financial measures are presented. Regulation G defines a non-GAAP financial measure as a numerical measure of an issuer's historical or future financial performance, financial position or cash flow that:

• Excludes amounts, or is subject to adjustments that have the effect of excluding amounts, that are included in the comparable measure calculated and presented in accordance with GAAP in the statement of income, balance sheet or statement of cash flows (or equivalent statements) of the issuer; or

• Includes amounts, or is subject to adjustments that have the effect of including amounts, that are excluded from the comparable measure calculated and presented in accordance with GAAP.

Accordingly, by definition, a non-GAAP financial measure that triggers the application of Regulation G would have been derived from a GAAP measure. For example, generally, EBITDA is net income before interest, taxes, depreciation and amortization. In order for a company to present EBITDA it must already know the amount of net income. We expect the cost of obtaining the additional disclosure required by Regulation G to be minimal. Moreover, much of the disclosure mandated by Regulation G, such as the most directly comparable GAAP measure, is already required to be provided pursuant to other forms and regulations, such as Form 10–K, Form 10–Q and Regulation S–X. Therefore, most of the costs associated with collecting such information are already included in the burden hours associated with those forms and regulations. Thus, we have estimated for purposes of the PRA that

[42] In Release No. 33–8106, we proposed significant amendments to Form 8–K. This release should be read as a companion proposing release to Release No. 33–8106. Accordingly, Item numbers used in this release refer to those proposed in Release No. 33–8106.

[43] 17 CFR 243.100—243.103.

[44] The requirements of proposed Item 1.04 would be in addition to the requirements of Regulation FD. Accordingly, information furnished under existing Item 9 (proposed to be Item. 6.01) of Form 8-K for the purpose of Regulation FD would not satisfy proposed Item 1.04 as it would not be considered filed with the Commission. Of course, information filed pursuant to Item 1.04, if filed in accordance with the time frame established by Regulation FD, would satisfy an issuer's Regulation FD obligation.

[45] 17 CFR 249.308a.

[46] 17 CFR 249.308b.

[47] 17 CFR 249.310.

[48] 17 CFR 249.310b.

[49] Of course, Regulation FD would continue to apply to disclosure of such forward-looking information if it were material.

[50] In Release No. 33–8106 we proposed to revise and move Item 9 of Form 8–K to Item 6.01. *See* footnote 42. We include in this release proposed amendments to Item 6.01 of Form 8–K to reflect proposed Item 1.04.

[51] 15 U.S.C. § 78r.

[52] If information that was not forward-looking in nature or did not meet the definition in Section 21E of the Exchange Act [15 U.S.C. § 78u–5] was identified as forward-looking information, that information would, nonetheless, be considered filed for purposes of Section 18 of the Exchange Act and would, where appropriate, be incorporated by reference into a registration statement, proxy statement or other report.

[53] 44 U.S.C. § 3501 *et seq.*

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it will take .5 burden hour for compliance with Regulation G. We anticipate that on average a company will have to comply with Regulation G roughly six times a year. Since there are approximately 14,000 public companies that would be subject to Regulation G we have estimated that there will be 84,000 disclosures made in accordance with Regulation G for a total of 42,000 burden hours. We would expect that an in house junior accountant would prepare the actual reconciliation.

Regulations S–K (OMB Control No. 3235–0071) and S–B (OMB Control No. 3235–0417) prescribe disclosure requirements that registrants must follow when filing registration statements, reports and schedule with the Commission. Our amendments to Item 10 of Regulation S–K and S–B incorporate the requirements of Regulation G and codify existing staff interpretations. Because the collection of information regarding the reconciliation is already being accounted for in Regulation G, we do not believe adding the same requirement to Item 10 of Regulation S–K and Item 10 of Regulation S–B incurs an additional collection of information within the meaning of the PRA. To account for the proposed reconciliation in both Regulation G and Item 10 or Regulation S–K and Item 10 of Regulation S–B would result in double counting. Additionally, companies already, usually and customarily, disclose the purposes for which the registrant's management uses the non-GAAP financial measure and why it believes that its presentation of the non-GAAP financial measure provides useful information to investors. Accordingly, we do not believe that our amendments to Item 10 of Regulation S–K and Item 10 of Regulation S–B contain a new "collection of information" or alter the existing burden of these collections of information within the meaning of the PRA.

Form 8–K (OMB Control No. 3235–0060) prescribes information, such as material events or corporate changes that a registrant must disclose. Proposed Item 1.04 of Form 8–K would require a company that publlcly discloses material information regarding its actual or expected quarterly or annual results of operations or financial condition for a completed fiscal period to file the text of the public disclosure and any accompanying analysis. Proposed Item 1.04 of Form 8–K would not require companies to actually issue an earnings announcement or release but only require that it be filed if they choose to issue an earnings announcement or release. Proposed Item 1.04 would bring earnings announcements and releases into the formal disclosure system where they would be available to investors on a widespread basis.

Proposed Item 1.04 of Form 8–K would impose the obligation to file a public company's earnings release. We estimate for purposes of the PRA that the burden associated with actually filing the Form 8–K to be minimal. We believe that proposed Item 1.04 of Form 8–K would require approximately .5 of a burden hour. We estimate that approximately 14,000 public companies would make an average of four filings per year. We believe the total burden hours associated with proposed Item 1.04 would be 28,000 hours. We would expect that companies would use in house personal to file the Form 8–K.

We have amended Form 20–F (OMB Control Number 3235–0288) to incorporate our amendment to Item 10 of Regulation S–K. While proposed Regulation G provides a limited exception for foreign private issuers, this exception would not apply to their Form 20–F filing or any disclosure of non-GAAP financial measures made in the United States. Accordingly, we do not believe our amendment to Form 20–F would result in an additional collection of information as any burden is already accounted for in Regulation G.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Compliance with the disclosure requirements is mandatory. There is no mandatory retention period for the information disclosed, and responses to the disclosure requirements will not be kept confidential.

Request for Comment

We request comment in order to: (a) Evaluate whether the proposed collection of information and amendments to existing collections of information are necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (b) evaluate the accuracy of our estimate of the burden of the proposed collection of information and amendments to existing collection of information; (c) determine whether there are ways to enhance the quality, utility and clarity of the information to be collected; and (d) evaluate whether there are ways to minimize the burden of the proposed collection of information and amendments of existing collections of information on those who respond, including through the use of automated collection techniques or other forms of information technology.[54]

Persons who desire to submit comments on the proposed collections of information requirements should direct their comments to the OMB, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and send a copy of the comments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0609, with reference to File No. S7–XX–02. Requests for materials submitted to the OMB by us with regard to this collection of information should be in writing, refer to File No. S7–XX–02 and be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services, 450 Fifth Street NW., Washington, DC 20549. Because the OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication, your comments are best assured of having their full effect if the OMB receives them within 30 days of publication.

IV. Cost and Benefits

The Sarbanes-Oxley Act seeks to enhance the financial disclosure of public companies. In furtherance of this goal, the Sarbanes-Oxley Act has required the Commission, among other things, to adopt rules requiring that if a company publicly discloses non-GAAP financial measures or includes them in a Commission filing, the company must reconcile those non-GAAP financial measurements to a company's financial condition and results of operations under GAAP. Moreover, Sarbanes-Oxley requires that any public disclosure of non-GAAP financial measures not contain an untrue statement of a material fact or omit to state a material fact necessary in order to make the non-GAAP financial measure, in light of circumstances under which it is presented not misleading. Additionally, the Sarbanes-Oxley Act seeks to have companies that report under Sections 13(a) and 15(d) of the Exchange Act disclose to the public on a rapid and current basis such additional information concerning material changes in its financial condition or operations.

Proposed Regulation G, amendments to Item 10 of Regulation S–K, Item 10 of Regulation S–B and Form 20–F, upon

[54] Comments are requested pursuant to 44 U.S.C. § 3506(c)(2)(B).

adoption, would fulfill the statutory directive under Section 401(b) of the Sarbanes-Oxley Act. We recognize that any implementation of the Sarbanes-Oxley Act would likely result in costs as well as benefits and have an effect on the economy. We are sensitive to the costs and benefits of our proposals. We discuss these costs and benefits below as well as the costs and benefits associated with our amendments to Form 8–K.

A. Benefits

The proposed rules and amendments are intended to ensure that investors and others are not misled by the use of non-GAAP financial measures. Additionally, the proposed amendments to Form 8–K are intended to create a central depository where investors and other market participants can look to find the latest earning announcements and releases by public companies and provide enhanced attention to those announcements and releases. Furthermore, as the ABA noted in their comment letter regarding the Commission's recent proposal on accelerated reporting periods, the filing of the earnings reports would enhance the attention and level of care companies bring to those disclosures because they will become part of the formal reporting system and provide widespread access to investors. Therefore, we would expect the accuracy and reliability of a company's earnings report to be enhanced.

Regulation G and amendments to Item 10 of Regulations S–K and S–B require that any non-GAAP financial measure presented be reconciled with its most comparable financial measure prepared in accordance with GAAP. We anticipate that this reconciliation will help investors and market professionals to better evaluate the non-GAAP financial measures presented. It is possible that the reconciliation will provide the securities markets with additional information to more accurately evaluate companies' securities and in turn result in a more accurate pricing of securities. We, however, do not currently have sufficient information to quantify these or other benefits that Regulation G and our amendments to Item 10 of Regulation S–K, Regulation S–B, and Form 8–K and Form 20–F would provide. We therefore request your comments, including supporting data, on the benefits of these proposals.

B. Costs

As discussed in the PRA section, we believe that the costs associated with the proposed Regulation G and amendments will be minimal. With regard to Regulation G, the costs associated with the requirement to reconcile the non-GAAP financial measure, should be minimal since by definition the non-GAAP financial measure would have been derived from a GAAP financial measure. Accordingly, in most cases, the registrant already will have available the comparable GAAP financial measure. Moreover, in cases where the GAAP financial measure is not available, any costs associated with obtaining the GAAP financial measure would reduce future costs associated with filing other forms, such as the Form 10–Q and Form 10–K where the GAAP measure must be presented.

We have estimated that public companies would have to comply with Regulation G six times a year. There are roughly 14,000 public companies. Using our estimates from the PRA section, we would expect that it would take a junior accountant roughly .5 hours to complete the required reconciliation and ensure there are no material misstatements. Accordingly, we have estimated that the total burden hours needed to comply with Regulation G would be 42,000 hours. Using cost data from the Securities Industry Association's Report on Management & Professional Earnings in the Securities Industry 2001 (SIA Report) [55] and adding an additional 35% for costs associated with overhead, we find that, on average, a junior accountant would earn $26 an hour. We believe the salary of a junior accountant is appropriate for our estimates since in most cases we would expect the most directly comparable GAAP measure to be available. Therefore, we have estimated the total costs associated with complying with Regulation G to be $1,092,000.

Our amendments to Item 10 of Regulation S–K and Item 10 of Regulation S–B incorporate the requirements of Regulation G. Because the costs associated with providing a reconciliation are already being accounted for in Regulation G, we do not believe adding the same requirement to Item 10 of Regulation S–K and Item 10 of Regulation S–B incurs any additional cost to the registrant. To account for the required reconciliation in both Regulation G and Item 10 or Regulation S–K and Item 10 of Regulation S–B would result in double counting. Additionally, because companies currently disclose the purposes for which the registrant's management uses the non-GAAP financial measure and why it believes that presentation of the non-GAAP financial measure provides useful information to investors, this aspect of the proposed rule would not increase costs already being borne by registrants. Accordingly, we do not believe our amendments to Item 10 of Regulation S–K and Item 10 of Regulation S–B would result in any additional costs not already included in Regulation G or current filing requirements.

Our amendment to Form 8–K, would result in the additional cost of actually filing the earnings release or earnings announcement. There is no requirement to actually make an earnings announcement or release. The only requirement is to file such announcement or release if it is publicly disclosed. We have not included in our estimates any additional legal review costs associated with the filing of earnings releases or announcements, since we do not anticipate any additional significant review would be needed. In this regard, we note that many issuers already file their earnings releases and those releases whether filed or not are subject to Rule 10b–5.

We believe that personnel in finance, investor relations or corporate communications departments would most likely file the earnings announcements or releases since most earnings announcements are disseminated via press release. We have estimated that the actual time required to file an earnings announcement or release on Form 8–K to be .5 hour. In estimating this time burden we note that most press releases are fairly short in length, making the actual process of filing easier. We also note that the software necessary to file a Form 8–K is available free of charge from the Commission. We have estimated that public companies would be required to comply with Item 1.04 of Form 8–K roughly four times a year. Assuming 14,000 public companies and a total burden of .5 hour for the filing, we estimate that companies will spend 28,000 hours complying with our proposed Form 8–K amendment. Again using the SIA Report, and adding an additional 35% for costs associated with overhead, we find that a Corporate Communications Manager, on average, earns $56.00 an hour. Accordingly, we have estimated the total salary cost associated with our amendments to Form 8–K to be $1,568,000.

Finally, our proposed amendments to Form 20–F would incorporate Item 10 of Regulation S–K. While proposed Regulation G provides a limited exception for foreign private issuers, this exception would not apply to their

[55] The cost estimates are based on the SIA Report for employees based outside the New York City metropoliten eree.

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Form 20–F filing or any disclosure of non-GAAP financial measures made in the United States. Accordingly, the costs associated with our amendment to Form 20–F are already accounted for in our cost estimates for Regulation G.

We request your comments, including any supporting data, on our estimates of the costs of the proposals and any alternative options that may reduce the costs or enhance the benefits of our proposal.

C. Questions

• • We have assumed that non-GAAP measures are derived and calculated from the GAAP measures. Accordingly, we do not believe there would be significant costs associated with the proposed reconciliation. Is our assumption that the comparable GAAP measure would be available at the time the non-GAAP measure is presented correct? If not, please discuss the nature and type of costs that may be incurred as a result of the reconciliation requirement.

• We believe the costs associated with the proposed filing requirement of Item 1.04 Form 8–K to be mainly administrative in nature. Are there other additional costs that may be incurred as a result of the proposed filing requirement of Form 8–K? If yes, please discuss the types and expected dollar amounts of such costs.

V. Effect on Efficiency, Competition, and Capital Formation

Section 23(a)(2) [56] of the Exchange Act requires us when adopting rules under the Exchange Act, to consider the impact that any new rule would have on competition. In addition, Section 23(a)(2) prohibits us from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purpose of the Exchange Act. Proposed Regulation G and our proposed amendments to Item 10 of Regulation S–K, Item 10 of Regulation S–B, Form 20–F and Form 8–K would apply only to companies subject to the reporting requirements of Sections 13(a) and 15(d) of the Exchange Act, other than registered investment companies. Given that the estimated costs associated with our proposals are small we do not expect that competitors not subject to our proposals would gain any competitive advantage over those subject to the proposals. We, however, request comment on whether our proposals, if adopted, would impose a burden on competition. Commenters are requested to provide empirical data and other factual support for their views if possible.

In addition, Section 2(b) [57] of the Securities Act and Section 3(f) [58] of the Exchange Act require us, when engaging in rulemaking where we are required to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition and capital formation. Proposed Regulation G and our proposed amendments to Item 10 of Regulation S–K, Item 10 of Regulation S–B and Form 20–F are proposed pursuant to the Sarbanes-Oxley Act. As noted above the costs associated with these proposals and our proposed amendment to Form 8–K are expected to be minimal. Accordingly we do not believe that there will be any significant effects on competition or capital formation. We do believe, however, that there may be some benefits with regard to investor protection and efficiency of the market. The additional information provided has the potential to limit any misunderstanding with regard to the value of certain non-GAAP measures. Accordingly, this may allow the market to more rapidly and accurately price securities. If this occurs there would be a benefit to capital formation.

We request comment on whether proposed Regulation G and our proposed amendments, if adopted would promote efficiency, competition, and capital formation. Commenters are requested to provide empirical data and other factual support for their views if possible.

VI. Regulatory Flexibility Analysis

The Commission hereby certifies pursuant to 5 U.S.C. § 605(b), that proposed Regulation G, amendments to Item 10 of Regulation S–K, Item 10 of Regulation S–B, Form 20–F and Form 8–K, contained in this release, if adopted, would not have a significant economic impact on a substantial number of small entities. The certification is based on the following analysis.

The proposals would affect companies that are small entities. Rule 0–10(a) [59] defines a company, other than an investment company, to be a "small business" or "small organization" for purposes of the Regulatory Flexibility Act if it had total assets of $10 million or less on the last day of its most recent fiscal year. We estimate that there were approximately 2,500 public companies, other than investment companies, that may be considered small entities.

Proposed Regulation G would require registrants when publicly disclosing material information that includes a non-GAAP financial measure to provide a quantified reconciliation to the most directly comparable GAAP financial measure. Regulation G is intended to implement the requirements of the Sarbanes-Oxley Act. Specifically, Regulation G is intended to provide investors with balanced financial disclosure when non-GAAP financial measures are presented. Regulation G defines a non-GAAP financial measure as a numerical measure of an issuer's historical or future financial performance, financial position or cash flow that:

• Excludes amounts, or is subject to adjustments that have the effect of excluding amounts, that are included in the comparable measure calculated and presented in accordance with GAAP in the statement of income, balance sheet or statement of cash flows (or equivalent statements) of the issuer; or

• Includes amounts, or is subject to adjustments that have the effect of including amounts, that are excluded from the comparable measure calculated and presented in accordance with GAAP.

Accordingly, by definition, a non-GAAP financial measure that triggers the application of Regulation G would have been derived from a GAAP financial measure. Therefore, we expect the cost of obtaining the additional disclosure required by Regulation G to be minimal. Moreover, much of the disclosure mandated by Regulation G, such as the most directly comparable GAAP measure, is already required to be provided pursuant to other forms and regulations, such as Form 10–KSB, Form 10–QSB and Regulation S–X. We have estimated for purpose of the PRA that it will take .5 hour for small businesses to comply with Regulation G. We anticipate that on average a company will have to comply with Regulation G six times year. We would expect that an in house junior accountant would prepare the actual reconciliation.

Using cost data from the Securities Industry Association's Report on Management & Professional Earnings in the Securities Industry 2001 ("SIA") and adding an additional 35% for costs associated with overhead, we find that, on average, a junior accountant would earn $26 an hour. We believe the salary of a junior accountant is appropriate for our estimates since in most cases we would expect the most directly comparable GAAP financial measure to be available. Therefore, we have estimated the total salary costs associated with complying with Regulation G to be $78 per small business [60].

Our amendments to Item 10 of Regulation S–K and Item 10 of Regulation S–B incorporate the requirements of Regulation G and codify certain staff interpretations. Because the costs associated with providing a reconciliation are already being accounted for in Regulation G, we do not believe adding the same requirement to Item 10 of Regulation S–K and Item 10 of Regulation S–B incurs any additional costs to small businesses. To account for the required reconciliation in both Regulation G and Item 10 or Regulation S–K and Item 10 of Regulation S–B would result in double counting. Additionally, because the staff companies currently disclose the purposes for which the registrant's management uses the non-GAAP financial measure and why it believes that presentation of the non-GAAP financial measure provides useful information to investors, this disclosure would not impose new costs on small businesses. Accordingly, we do not believe our amendments to Item 10 Regulation S–K and Regulation S–B result in any additional costs not already included in Regulation G or current filing requirements.

Our amendment to Form 8–K, would require the filing of earnings releases or earnings announcement. There is no requirement to actually make an earnings announcement or release. We have not included in our estimates any additional legal review costs associated with the filing of earnings releases or announcements, since we do not anticipate any additional significant review would be needed. In this regard, we note that many issuers already file their earnings releases and those releases whether filed or not are subject to Rule 10b–5.

We believe that personnel in finance, investor relations or corporate communications departments would most likely file the earnings announcement or release since most earnings announcements and releases are disseminated via press release. We have estimated that the actual time required to file an earnings announcement or release on Form 8–K to be .5 hours. In estimating this time burden we note that most press releases are fairly short in length, making the actual process of filing easier. We also note that the software necessary to file a Form 8–K is available free of charge from the Commission.

We have estimated that small businesses would be required to comply with Item 1.04 of Form 8–K roughly four times a year. Again using the SIA Report and adding an additional 35% for costs associated with overhead, a Corporate Communications Manager, on average, earns $56.00 an hour. Accordingly, we have estimated the total costs to a small business associated with our amendments to Form 8–K to be $112. [61]

Additionally, our proposed amendments to Form 20–F would incorporate Item 10 of Regulation S–K. Because only foreign private issuers file Form 20–F we do not include the impact on them in our analysis.

Finally, to further examine the possible impact of the proposals on small businesses, we sampled publicly available information about 75 small businesses. We searched the Dow Jones *Press Release* Wire, for the period January 1, 2001 to July 1, 2002 to review any earnings announcements or earnings releases by the 75 small businesses. We found that 30 small businesses had no earnings announcements or releases available over the period and the other 45 companies reported only GAAP earnings. Accordingly, the cost impact would be significantly less if the small business does not use non-GAAP financial measures since there would be no reconciliation required. Additionally, if the small business does not issue earnings releases or announcements there would be no filing requirement on Form 8–K.

In sum, the proposals are expected to result in minimal additional costs to all subject companies, large or small. Accordingly, we believe the proposals should not have a significant economic impact on a substantial number of small entities.

We encourage written comments regarding this certification. We solicit comment as to whether the proposed changes could have an effect that we have not considered. We request that commenters describe the nature of any impact on small entities and provide empirical data to support the extent of the impact.

VII. Small Business Regulatory Enforcement Fairness Act

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, a rule is "major" if it has resulted, or is likely to result in:

• An annual effect on the economy of $100 million or more;

• A major increase in costs or prices for consumers or individual industries; or

• Significant adverse effects on competition, investment or innovation.

We request comment with regard to our analysis. Commenters should provide empirical data on (a) the annual effect on the economy; (b) any increase in costs or prices for consumers or individual industries; and (c) any effect on competition, investment or innovation.

VIII. Statutory Basis

The proposed new Regulation G, new Item 1.04 to Form 8–K and the amendments to Item 6.01 of Form 8–K, Item 10 of Regulation S–K, Item 10 of Regulation S–B and Form 20–F are being proposed pursuant to Sections 2(b), 6, 7, 8, 19(a), and 28 of the Securities Act of 1933 as amended, Sections 3, 4, 10, 12, 13, 15, 23 and 36 of the Securities Exchange Act of 1934, as amended and Sections 3(a), 401 and 409 of the Sarbanes-Oxley Act.

List of Subjects

17 CFR Part 228

Reporting and recordkeeping requirements, Securities, Small businesses.

17 CFR Parts 229, 244 and 249

Reporting and recordkeeping requirements, Securities.

Text of the Proposed Amendments

In accordance with the foregoing, the Securities and Exchange Commission proposes to amend Title 17, chapter II of the Code of Federal Regulations as follows:

PART 228—INTEGRATED DISCLOSURE SYSTEM FOR SMALL BUSINESS ISSUERS

1. The general authority citation for Part 228 is revised to read as follows:

Authority: 15 U.S.C. 7261, 77e, 77f, 77g, 77h, 77j 77k, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77nnn, 77sss, 78*l*; 78m, 78n, 78o, 78u–5, 78w, 78*ll*, 78mm, 80a–8, 80a–29, 80a–30, and 80b–11.

* * * * *

2. Amend § 228.10 by adding paragraph (h) to read as follows:

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[56] 15 U.S.C. § 78w(a)(2).

[57] 15 U.S.C. § 77b(b).

[58] 15 U.S.C. § 78c(f).

[59] 17 CFR 240.0–10(a).

[60] Our $78 estimate is calculated by multiplying six (the estimated number of Regulation G occurrences in a year) by .5 (the estimated hourly burden for each occurrence) and then multiplying that total by $26 (the estimated cost per hour).

[61] Our $112 estimate is calculated by multiplying four (the estimated number of Item 1.04 Forms 8–K expected to be filed) by .5 (the estimated hourly burden for each filing) and then multiplying that total by $56 (the estimate cost per hour).

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§ 228.10 (Item 10) General.

* * * * *

(h) *Use of non-GAAP financial measures in Commission filings.* (1) Whenever one or more non-GAAP financial measures are included in a filing with the Commission:

(i) The registrant must include the following in the filing:

(A) A presentation with equal or greater prominence of the most directly comparable financial measure or measures calculated and presented in accordance with Generally Accepted Accounting Principles (GAAP);

(B) A quantitative reconciliation (by schedule or other clearly understandable method) of the differences between the non-GAAP financial measure disclosed or released with the financial measure or measures calculated and presented in accordance with GAAP identified in paragraph (h)(1)(i)(A) of this section;

(C) A statement disclosing the purposes for which the registrant's management uses the non-GAAP financial measure; and

(D) A statement disclosing the reasons why the registrant's management believes that presentation of the non-GAAP financial measure provides useful information to investors regarding the registrant's financial condition and results of operations; and

(ii) A registrant must not:

(A) Present the non-GAAP financial measure in a manner that would give it greater authority or prominence than the comparable GAAP financial measure or measures;

(B) Exclude charges or liabilities that required, or will require, cash settlement, or would have required cash settlement absent an ability to settle in another manner, from non-GAAP liquidity measures;

(C) Adjust a non-GAAP performance measure to eliminate or smooth items identified as non-recurring, infrequent or unusual, when the nature of the charge or gain is such that it is reasonably likely to recur;

(D) Present non-GAAP financial measures on the face of the registrant's financial statements prepared in accordance with GAAP or in the accompanying notes;

(E) Present non-GAAP financial measures on the face of any pro forma financial information required to be disclosed by Article 11 of Regulation S–X (17 CFR 210.11–01 through 210.11–03);

(F) Use titles or descriptions of non-GAAP financial measures that are the same as, or confusingly similar, to titles or descriptions used for GAAP measures; or

(G) Present a non-GAAP per-share measure; and

(iii) If the filing is not an annual report on Form 10–KSB (17 CFR 249.310b), a registrant need not include the information required by paragraphs (h)(1)(i)(C) and (h)(1)(i)(D) of this section if that information was included in its most recent annual report on Form 10–KSB or a more recent filing, provided that the required information is updated to the extent necessary to meet the requirements of paragraphs (h)(1)(i)(C) and (h)(1)(i)(D) of this section at the time of the registrant's current filing.

(2) For purposes of this paragraph (h), a non-GAAP financial measure is a numerical measure of a registrant's historical or future financial performance, financial position or cash flow that:

(i) Excludes amounts, or is subject to adjustments that have the effect of excluding amounts, that are included in the comparable measure calculated and presented in accordance with GAAP in the statement of income, balance sheet or statement of cash flows (or equivalent statements) of the issuer; or

(ii) Includes amounts, or is subject to adjustments that have the effect of including amounts, that are excluded from the comparable measure so calculated and presented.

(3) For purposes of this paragraph (h), "GAAP" refers to generally accepted accounting principles in the United States.

(4) For purposes of this paragraph (h), non-GAAP financial measures exclude operating and other financial measures and ratios or measures calculated using only:

(i) Financial measures calculated in accordance with GAAP and;

(ii) Operating measures or other measures that are not non-GAAP financial measures.

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

3. The general authority citation for Part 229 is revised to read as follows:

Authority: 15 U.S.C. 7261, 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78*l*, 78m, 78n, 78o, 78u–5, 78w, 78*ll*(d), 78mm, 79e, 79n, 79t, 80a–8, 80a–29, 80a–30, 80a–31(c), 80a–37, 80a–38(a) and 80b–11, unless otherwise noted.

* * * * *

4. Amend § 229.10 by revising the section heading and adding paragraph (e) to read as follows:

§ 229.10 (Item 10) General.

* * * * *

(e) *Use of non-GAAP financial measures in Commission filings.* (1) Whenever one or more non-GAAP financial measures are included in a filing with the Commission:

(i) The registrant must include the following in the filing:

(A) A presentation of the most directly comparable financial measure or measures calculated and presented in accordance with Generally Accepted Accounting Principles (GAAP);

(B) A quantitative reconciliation (by schedule or other clearly understandable method) of the differences between the non-GAAP financial measure disclosed with the financial measure or measures calculated and presented in accordance with GAAP identified in paragraph (e)(1)(i)(A) of this section;

(C) A statement disclosing the purposes for which the registrant's management uses the non-GAAP financial measure; and

(D) A statement disclosing the reasons why the registrant's management believes that presentation of the non-GAAP financial measure provides useful information to investors regarding the registrant's financial condition and results of operations; and

(ii) A registrant must not:

(A) Present the non-GAAP financial measure in a manner that would give it greater authority or prominence than the comparable GAAP financial measure or measures;

(B) Exclude charges or liabilities that required, or will require, cash settlement, or would have required cash settlement absent an ability to settle in another manner, from non-GAAP liquidity measures;

(C) Adjust a non-GAAP performance measure to eliminate or smooth items identified as non-recurring, infrequent or unusual, when the nature of the charge or gain is such that it is reasonably likely to recur;

(D) Present non-GAAP financial measures on the face of the registrant's financial statements prepared in accordance with GAAP or in the accompanying notes;

(E) Present non-GAAP financial measures on the face of any pro forma financial information required to be disclosed by Article 11 of Regulation S–X (17 CFR 210.11–01 through 210.11–03);

(F) Use titles or descriptions of non-GAAP financial measures that are the same as, or confusingly similar to, titles or descriptions used for GAAP financial measures; or

(G) Present a non-GAAP per share measure; and

(iii) If the filing is not an annual report on Form 10–K or Form 20–F (17 CFR 249.220f), a registrant need not include the information required by paragraphs (e)(1)(i)(C) and (e)(1)(i)(D) of this section if that information was included in its most recent annual report on Form 10–K or Form 20–F or a more recent filing, provided that the required information is updated to the extent necessary to meet the requirements of paragraphs (e)(1)(i)(C) and (e)(1)(i)(D) of this section at the time of the registrant's current filing.

(2) For purposes of this paragraph (e), a non-GAAP financial measure is a numerical measure of a registrant's historical or future financial performance, financial position or cash flows that:

(i) Excludes amounts, or is subject to adjustments that have the effect of excluding amounts, that are included in the comparable measure calculated and presented in accordance with GAAP in the statement of income, balance sheet or statement of cash flows (or equivalent statements) of the issuer; or

(ii) Includes amounts, or is subject to adjustments that have the effect of including amounts, that are excluded from the comparable measure so calculated and presented.

(3) For purposes of this paragraph (e), "GAAP" refers to generally accepted accounting principles in the United States, except that in the case of foreign private issuers whose primary financial statements are prepared in accordance with other generally accepted accounting principles, references to GAAP also include the principles under which those primary financial statements are prepared.

(4) For purposes of this paragraph (e), non-GAAP financial measures exclude operating and other financial measures and ratios or measures calculated using only:

(i) Financial measures calculated in accordance with GAAP; and

(ii) Operating measures or other measures that are not non-GAAP financial measures.

(5) This paragraph (e) is not applicable to investment companies registered under Section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a–8).

Note to paragraph (e). A non-GAAP financial measure that would otherwise be prohibited by paragraph (e)(1)(ii) of this section is permitted in a filing of a foreign private issuer if:

1. The non-GAAP financial measure is expressly permitted under the GAAP used in the registrant's primary financial statements included in the filing with the Commission; and

2. The non-GAAP financial measure is included in the annual report prepared by the registrant for use in the jurisdiction in which it is domiciled, incorporated or organized or for distribution to its security holders.

5. Part 244 is added to read as follows:

PART 244—Regulation G

Sec.

244.100 General rules regarding disclosure of non-GAAP financial measures.
244.101 Definitions.
244.102 No effect on antifraud liability.

Authority: 15 U.S.C. 7261, 78c, 78i, 78j, 78m, 78o, 78w, 78mm, and 80a–29.

§ 244.100 General rules regarding disclosure of non-GAAP financial measures.

(a) Whenever a registrant, or person acting on its behalf, publicly discloses material information that includes a non-GAAP financial measure, the registrant must accompany that non-GAAP financial measure with:

(1) A presentation of the most directly comparable financial measure calculated and presented in accordance with Generally Accepted Accounting Principles (GAAP); and

(2) A reconciliation (by schedule or other clearly understandable method), which shall be quantitative for historical non-GAAP measures presented, and quantitative, to the extent available without unreasonable efforts, for forward-looking information, of the differences between the non-GAAP financial measure disclosed or released with the most comparable financial measure or measures calculated and presented in accordance with GAAP identified in paragraph (a)(1)(i) of this section; and

(b) A registrant, or a person acting on its behalf, shall not make public a non-GAAP financial measure that, taken together with the information accompanying that measure and any other accompanying discussion of that measure, contains an untrue statement of a material fact or omits to state a material fact necessary in order to make the presentation of the non-GAAP financial measure, in light of the circumstances under which it is presented, not misleading.

(c) This section shall not apply to a disclosure of a non-GAAP financial measure that is made by or on behalf of a registrant that is a foreign private issuer if the following conditions are satisfied:

(1) The securities of the registrant are listed or quoted on a securities exchange or inter-dealer quotation system outside the United States;

(2) The non-GAAP financial measure and the most comparable GAAP financial measure are not calculated and presented in accordance with generally accepted accounting principles in the United States; and

(3) The disclosure is made by or on behalf of the registrant outside the United States, or is included in a written communication that is released by or on behalf of the registrant only outside the United States.

Notes to § 244.100:

1. If a non-GAAP financial measure is made public orally, telephonically, by webcast or broadcast or by similar means, the requirements of paragraphs (a)(1)(i) and (a)(1)(ii) of this section will be satisfied if:

(i) The required information in those paragraphs is provided on the registrant's Web site at the time the non-GAAP financial measure is made public; and

(ii) The location of the Web site is made public in the same presentation in which the non-GAAP financial measure is made public.

2. The provisions of paragraph (c) of this section shall apply notwithstanding the existence of one or all of the following circumstances:

(i) Foreign or U.S. journalists or other third parties have access to the information, so long as the information is disclosed or released by or on behalf of the registrant only outside the United States;

(ii) Following its release or disclosure, the information appears on one or more web sites maintained by the registrant, so long as the web sites, taken together, are not available exclusively to, or targeted at, persons located in the United States; and/or

(iii) Following the disclosure or release of the information outside the United States, the information is included in a submission by the registrant to the Commission made under cover of a Form 6–K.

§ 244.101 Definitions.

This section defines certain terms as used in Regulation G (§§ 244.100 through 244.102).

(a)(1) *Non-GAAP financial measure.* A non-GAAP financial measure is a numerical measure of a registrant's historical or future financial performance, financial position or cash flows that:

(i) Excludes amounts, or is subject to adjustments that have the effect of excluding amounts, that are included in the comparable measure calculated and presented in accordance with GAAP in the statement of income, balance sheet or statement of cash flows (or equivalent statements) of the issuer; or

(ii) Includes amounts, or is subject to adjustments that have the effect of including amounts, that are excluded

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from the comparable measure so calculated and presented.

(2) A non-GAAP financial measure would not include operating and other financial measures and ratios or measures calculated using only:

(i) Financial measures calculated in accordance with GAAP; and

(ii) Operating measures or other measures that are not non-GAAP financial measures.

(b) *GAAP.* GAAP refers to generally accepted accounting principles in the United States, except that in the case of foreign private issuers whose primary financial statements are prepared in accordance with other generally accepted accounting principles, references to GAAP also include the principles under which those primary financial statements are prepared.

(c) *Registrant.* A registrant subject to this regulation is one that has a class of securities registered under Section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78*l*), or is required to file reports under Section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(d)), excluding any investment company registered under Section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a–8).

(d) *United States.* United States means the United States of America, its territories and possessions, any State of the United States, and the District of Columbia.

§ 244.102 No effect on antifraud liability.

Nothing in this Regulation G (§§244.100 through 244.102) shall affect any person's liability, and a person's compliance or non-compliance with this Regulation G shall not affect any person's liability, under Section 10(b) (15 U.S.C. 78j(b)) of the Securities Exchange Act of 1934 or § 240.10b–5 of this chapter.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

7. The authority citation for part 249 continues to read in part as follows:

Authority: 15 U.S.C. 78a, *et seq.*, unless otherwise noted.

* * * * *

8. Amend Form 8–K (referenced in § 249.308 as proposed in Release No. 33–8106, 67 FR 42913) by adding Item 1.04 and revising Item 6.01 of Section 1.

Note.— The text of Form 8–K does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 8–K—Current Report

Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

* * * * *

Section 1—Registrant's Business Operations

* * * * *

Item 1.04. Results of Operations and Financial Condition

(a) If a registrant, or any person acting on its behalf, makes any public announcement or release (including any update of an earlier announcement or release) disclosing material non-public information regarding the registrant's results of operations or financial condition for a completed quarterly or annual fiscal period, the registrant shall briefly identify the announcement or release and file the text of that announcement or release as an exhibit;

(b) A filing under this Item shall not be required in the case of disclosure of material non-public information that is disclosed orally, telephonically, webcast, or by similar means if:

(1) The information is provided as part of a presentation that initially occurs within 48 hours of a related, written announcement or release that is filed on Form 8–K pursuant to this Item 1.04;

(2) The presentation is accessible to the public by dial-in conference call, webcast or similar technology;

(3) The financial and other statistical information contained in the presentation is provided on the registrant's Web site, together with any information that would be required under § 244.100 of Regulation G; and

(4) The presentation was announced by a widely disseminated press release, that included instructions as to when and how to access the presentation and the location on the registrant's Web site where the information would be available.

(c) Forward-looking information, as defined by Section 21E of the Securities Exchange Act of 1934, included in an announcement or release that would otherwise be required to be filed pursuant to paragraph (a) of this Item, may instead be identified specifically and furnished under Item 6.01 in the same Form 8–K that contains the historical information filed pursuant to Item 1.04.

Instructions

1. The filing requirement under this Item 1.04 is triggered by the disclosure of material non-public information regarding a completed fiscal year or quarter. Release of additional or updated material non-public information regarding a completed fiscal year or quarter would trigger an additional Item 1.04 filing requirement.

2. Issuers that make earnings announcements or other disclosures of material non-public information regarding a completed fiscal year or quarter in an interim or annual report to shareholders, are permitted to specify which portion of the report contains the information required to be filed under Item 1.04.

3. This Item 1.04 does not apply in the case of a disclosure of material non-public information that is made in a quarterly report filed with the Commission on Form 10–Q (or 10–QSB) or an annual report filed with the Commission on Form 10–K (or 10–KSB).

* * * * *

Item 6.01. Regulation FD Disclosure and Forward Looking Information.

Unless filed under Item 7.01 or Item 1.04, report under this item only information that the registrant elects to disclose through Form 8–K pursuant to Regulation FD (§§ 243.100—243.103 of this chapter) or forward-looking information that is required to be filed under Item 1.04 of this form.

* * * * *

9. By amending Form 20–F (referenced in § 249.220) by removing in General Instruction C.(e) the words "performance and the Commission's policy on securities ratings" and adding, in their place, the words "performance, the Commission's policy on securities ratings and the Commission's policy on use of non-GAAP financial measures in Commission filings".

Dated: November 4, 2002.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 02–28603 Filed 11–12–02; 8:45 am]

BILLING CODE 8010–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52

[SC–041, 046–200211(b); FRL–7406–8]

Approval and Promulgation of Implementation Plans; South Carolina; Adoption of Revision Governing Credible Evidence and Removal of Standard 3

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve a revision to the State Implementation Plan (SIP) submitted on October 7, 2002, by the State of South Carolina, Department of Health and Environmental Control (Department). This revision consisted of an addition to Regulation 61–62.1, Definitions and General Requirements, entitled "Section V—Credible Evidence." The submission of Section V—Credible Evidence by South Carolina is to meet the requirements for credible evidence set forth in EPA's May 23, 1994, SIP call letter. EPA is also proposes to approve a correction to the SIP regarding removal of Standard 3 "Emissions from Incinerators" from the SIP as requested by the State of South Carolina. In the Final Rules Section of this **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no significant, material, and adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Written comments must be received on or before December 13, 2002.

ADDRESSES: Written comments should be addressed to: Sean Lakeman, EPA Region 4, Air Planning Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.

Copies of the State submittal is available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Sean Lakeman, 404/562–9043.

South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, South Carolina 29201–1708.

FOR FURTHER INFORMATION CONTACT: Sean Lakeman at 404/562–9043, or by electronic mail at *lakeman.sean@epa.gov.*

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the Rules Section of this **Federal Register.**

Dated: November 1, 2002.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 02–28699 Filed 11–12–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[DC039–2028; MD073–3091; VA090–5060; FRL–7407–6]

Designation of Areas for Air Quality Purposes; District of Columbia, Maryland, Virginia; Metropolitan Washington, DC Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to issue a finding that the Metropolitan Washington, DC serious ozone nonattainment area (hereinafter referred to as the Washington area) has failed to attain the one-hour ozone National Ambient Air Quality Standard (NAAQS) by November 15, 1999, the date set forth in the Clean Air Act (CAA or Act) for serious nonattainment areas. If EPA takes final action to issue this proposed finding of nonattainment, the area would be reclassified as a severe ozone nonattainment area. EPA is proposing to set the dates by which the District of Columbia, the State of Maryland and the Commonwealth of Virginia each must submit revisions to its State Implementation Plan (SIP) that adopt the severe area requirements. Finally, EPA is proposing to adjust the dates by which the area must achieve a nine (9) percent reduction in ozone precursor emissions to meet the 2002 rate-of-progress requirement and adjust contingency measure requirements as this relates to the 2002 rate-of-progress requirement.

DATES: Written comments must be received on or before December 13, 2002.

ADDRESSES: Written comments may be mailed to Walter K. Wilkie, Deputy Branch Chief, Air Quality Planning and Information Services Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

FOR FURTHER INFORMATION CONTACT: Christopher Cripps, (215) 814–2179, or by e-mail at *Cripps.Christopher@epa.gov.* Please note that while questions may be posed via telephone and e-mail, formal comments must be submitted in writing, as indicated in the **ADDRESSES** section of this document.

SUPPLEMENTARY INFORMATION: The use of "we," "us," or "our" in this document refers to EPA.

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I. What Action Are We Proposing?

We are proposing to find that the Washington area has failed to attain the one-hour ozone NAAQS by the November 15, 1999, attainment deadline prescribed under the CAA for serious ozone nonattainment areas. EPA's authority to make this finding is discussed under section 181(b)(2) of the CAA. Section 181(b)(2) explains the process for determining whether an area has attained the one-hour ozone standard and reclassification of the area if necessary. If we issue a final finding of failure to attain, the Washington area will be reclassified by operation of law from serious nonattainment to severe nonattainment.

II. What Are the National Ambient Air Quality Standards?

Since the CAA's inception in 1970, EPA has set NAAQS for six common pollutants: carbon monoxide, lead, nitrogen dioxide, ozone, particulate matter, and sulfur dioxide. For most of

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these common air pollutants, there are two types of pollution limits referred to as the primary and secondary standards.[1] The primary standard is based on health effects; the secondary standard is based on environmental effects such as damage to property, plants, and visibility. The CAA requires these standards to be set at levels that protect public health and welfare with an adequate margin of safety. These standards present state and local governments with the air quality levels they must meet to achieve clean air. Also, these standards allow the American people to assess whether the air quality in their communities is healthful.

III. What Is the NAAQS for Ozone?

The NAAQS for ozone is currently expressed in two forms which are referred to as the one-hour and eight-hour standards. Table 1 summarizes the ozone standards.

TABLE 1.—SUMMARY OF OZONE STANDARDS

Standard and type	Value (parts per million)	Method of compliance
1-hour—Primary and secondary	0.12	Must not be exceeded, on average, more than one day per year over any 3-year period.
8-hour—Primary and secondary	0.08	The 3-year average of the annual fourth-highest maxima 8-hour average ozone concentrations measured at each monitor within an area.

The 1-hour ozone standard of 0.12 parts per million (ppm) has existed since 1979. On July 18, 1997, EPA adopted the 8-hour ozone standard, which was intended to replace the one-hour standard in areas that were attaining the one-hour standard, (62 FR 38856).[2] The one-hour ozone standard continues to apply to all areas, notwithstanding promulgation of the 8-hour standard (40 CFR 50.9(b)). Both standards are codified at 40 CFR part 50. This document addresses the classification of the Washington area relative to only the one-hour ozone standard.

IV. What Is the Washington Ozone Nonattainment Area?

The Washington area consists of the District of Columbia (the District), a Northern Virginia portion (Arlington, Fairfax, Loudoun, Prince William and Stafford Counties and the cities of Alexandria, Falls Church, Fairfax, Manassas, and Manassas Park), and Calvert, Charles, Frederick, Montgomery, and Prince George's Counties in Maryland.

V. Why Is the Washington Area Currently Classified as a Serious Nonattainment Area?

Under section 107(d)(1)(C) of the CAA, each ozone area designated nonattainment for the one-hour standard prior to enactment of the 1990 CAA amendments, such as the Washington area, was designated nonattainment by operation of law upon enactment of the amendments. Under section 181(a) of the Act, each ozone area designated nonattainment under section 107(d) was also classified by operation of law as "marginal," "moderate," "serious," "severe," or "extreme," depending on the severity of the area's air quality problem. The design value for an area, which characterizes the severity of the air quality problem, is represented by the highest design value at any individual ozone monitoring site (*i.e.*, the highest of the fourth highest one-hour daily maximum monitored ozone levels in a given three-year period with complete monitoring data). Table 2 provides the design value ranges for each nonattainment classification. Ozone nonattainment areas with design values between 0.160 and 0.180 ppm, such as the Washington area (which had a design value of 0.165 ppm in 1989), were classified as serious. These nonattainment designations and classifications were codified in 40 CFR part 81 (see 56 FR 56694, November 6, 1991).

TABLE 2.—OZONE NONATTAINMENT CLASSIFICATIONS

Area classification	Design value (ppm)	Attainment date
Marginal	0.121 up to 0.138	November 15, 1993.
Moderate	0.138 up to 0.160	November 15, 1996.
Serious	0.160 up to 0.180	November 15, 1999.
Severe	0.180 up to 0.280	November 15, 2005.
Extreme	0.280 and above	November 15, 2010.

In addition, states containing areas that were classified as serious nonattainment were required to submit SIP revisions to provide for certain controls, to show progress toward attainment, and to provide for attainment as expeditiously as practicable, but not later than November 15, 1999. Serious area SIP requirements are found primarily in section 182(c) of the CAA.

VI. Why Are We Proposing To Reclassify the Washington Area?

A. What Are the Clean Air Act Requirements for Attainment Findings?

Regarding reclassification for failure to attain, section 181(b)(2)(A) of the Act provides that: Within six months following the applicable attainment date (including any extension thereof) for an ozone nonattainment area, the Administrator shall determine, based on the area's design value (as of the attainment date) whether the area attained the standard by that date. Except for any Severe or Extreme area, any area that the Administrator finds have not attained the standard by that date shall be reclassified by operation of law in accordance with table 1 of subsection (a) to the higher of—

(i) The next higher classification for the area, or

(ii) The classification applicable to the area's design value as determined at the time of the notice required under subparagraph (B).

No area shall be reclassified as Extreme under clause (ii).

Furthermore, section 181(b)(2)(B) of the Act provides that:

> The Administrator shall publish a notice in the **Federal Register** no later than six months following the attainment date, identifying each area that the Administrator has determined under subparagraph (A) as having failed to attain and identifying the reclassification, if any, described under subparagraph (A).

Therefore, under CAA section 181(b)(2)(A), we must determine within six months of the applicable attainment date whether an ozone nonattainment area has attained the 1-hour ozone standard. If we find that a serious area has not attained the standard and does not qualify for an extension, it is reclassified by operation of law to severe.[3] CAA section 181(b)(2)(A) requires us to base our determination of attainment or finding of failure to attain on the area's design value as of its applicable attainment date, which for the Washington nonattainment area is November 15, 1999.

The 1-hour ozone NAAQS is 0.12 ppm not to be exceeded on average more than one day per year over any three year period. 40 CFR 50.9 and Appendix H. Under our policies, we determine if an area has attained the one-hour standard by calculating, at each monitor, the average number of days over the standard per year during the preceding three year period.[4] *See* 40 CFR part 50, Appendix H.

If an area has *at least* one monitor recording four or more exceedances during a 3-year period, then the average number of exceedance days per year exceeds one, and the area has not attained the standard.

Conversely, if an area has all monitors with an average number of exceedance days per year less than or equal to one, only then has the area attained the standard.

For this proposal, we have based our determination of whether the Washington nonattainment area attained the 1-hour ozone standard by November 15, 1999, on both the area's design value and the average number of exceedance days per year during the 1997 to 1999 period.

The effect of a reclassification to severe on the Washington nonattainment area is to set a new attainment deadline for the area of November 15, 2005, and to require the State to submit a SIP revision that meets the CAA's requirements for severe ozone nonattainment areas. See CAA sections 181(a) and 182(i). Under section 182(i), we may set the submittal deadlines for these new planning requirements.

B. What Is the Applicable Ozone Season Air Quality Data for the Washington Area?

Table 3 lists the average number of days when ambient ozone concentrations exceeded the one-hour ozone standard at each monitoring site in the Washington area for the period 1997–1999. The ozone design value for each monitor is also listed for the same period. A complete listing of the ozone exceedances for each monitoring site, as well as EPA's calculations of the design values, can be found in the docket file for this action. The data in Table 3 show that, for 1997–1999, many monitoring sites in the Washington area averaged more than one exceedance day per year. Therefore, pursuant to section 181(b)(2)(B) of the CAA, we propose to find that the Washington area did not attain the one-hour standard by the November 15, 1999, deadline.

TABLE 3.—AIR QUALITY DATA FOR THE WASHINGTON AREA (1997–1999)

Site	Monitor ID	Number of days over standard	Number of expected days over standard	Average number of expected exceedances (Note 1)	Site design value (ppm)
Tacoma School, Washington, DC	110010025–1	1	1.0	0.3	0.117
River Terrace, Washington, DC	110010041–1	3	3.0	1.0	0.120
McMillan Reservoir, Washington, DC	110010043–1	4	4.0	1.3	0.128
Calvert Co, MD	240090010–1	0	0.0	0.0	0.115
Southern Maryland, Charles Co, MD	240170010–1	4	4.1	1.4	0.125
Frederick Co, MD (Note b)	240210037–1	2	3.0	1.5	0.114
Rockville, Montgomery Co, MD	240313001–1	2	2.0	0.7	0.118
Greenbelt, Prince Georges Co, MD (Note c)	240330002–1	12	12.7	4.2	0.132
Suitland-Silver Hill, Prince Georges Co, MD	240338001–1	6	6.2	2.1	0.126
Arlington Co, VA	510130020–1	4	4.3	1.4	0.126
Chantilly, Fairfax Co, VA	510590005–1	2	2.1	0.7	0.118
Mount Vernon, Fairfax Co, VA	510590018–1	3	3.2	1.1	0.124
Franconia, Fairfax Co, VA (Note b)	510590030–1	1	1.0	0.5	0.118
Seven Corners, Fairfax Co, VA	510591004–1	3	3.0	1.0	0.124
McLean, Fairfax Co, VA	510595001–1	1	1.0	0.3	0.114
Ashburn, Loudoun Co, VA (Note b)	511071005–1	0	0.0	0.0	0.116
Long Park, Prince William Co, VA	511530009–1	1	1.2	0.4	0.115

[1] EPA has established only a primary standard for carbon monoxide.

[2] EPA revoked the one-hour standard in areas that were attaining the standard on June 5, 1998 (63 FR 31051). However, on May 14, 1999, the U.S. Court of Appeals for the District of Columbia Circuit ruled that the 8-hour ozone standard could not be enforced by EPA. Although the Court of Appeals determined that the 8-hour standard could not be enforced, it did not vacate the standard. hence, the 8-hour standard remained in effect. While appealing this decision to the United States Supreme Court, EPA reinstated the one-hour standard in areas where it had been revoked. (*See* 65 FR 45181, dated July 20, 2000). On February 27, 2001, the Supreme Court upheld the 8-hour standard and instructed EPA to develop an implementation plan for the 8-hour standard that is consistent with the Supreme Court's opinion. *Whitman* v. *American Trucking Assoc. Inc.*, 531 U.S. 457 (2001).

[3] If an area does not have the clean data necessary to show attainment of the 1-hour standard but does have clean air in the year immediately preceding the attainment date and the states comprising the area have fully implemented its applicable SIP, the States may apply to us, under CAA section 181(a)(5), for a one-year extension of the attainment date. We do not discuss this provision further in this proposal because the Washington area did not have the requisite clean air data.

[4] See generally 57 FR 13506, April 16, 1992, and Memorandum from D. Kent Berry, Acting Director, Air Quality Management Division, EPA, to Regional Air Office Directors; "Procedures for Processing Bump Ups and Extensions for Marginal Ozone Nonattainment Areas," dated February 3, 1994. While explicitly applicable only to marginal areas, the general procedures for evaluating attainment in this memorandum apply regardless of the initial classification of an area because all findings of attainment are made pursuant to the same Clean Air Act requirements in section 181(b)(2).

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TABLE 3.—AIR QUALITY DATA FOR THE WASHINGTON AREA (1997–1999)—Continued

Site	Monitor ID	Number of days over standard	Number of expected days over standard	Average number of expected exceedances (Note 1)	Site design value (ppm)
Widewater, Stafford Co, VA	511790001–1	3	3.0	1.0	0.124
Alexandria City, VA	515100009–1	2	2.1	0.7	0.123

a. A violation occurs when the number of expected exceedances is greater than 3.1 over a 3-year (rolling) period (or a 3-year (rolling) average greater than 1.04). The statistical term "expected exceedances" is an arithmetic average explained at 40 CFR part 50, Appendix H.
b. New monitoring site with only two years (1998 and 1999) of data for the 1997 to 1999 period.
c. Monitor represents the 1997–1999 design value for the Washington area.
Raw data source: U.S. EPA Aerometric Information Retrieval System (AIRS) database.

Several monitors recorded more than two or more exceedances in 1999. These included the McMillan Reservoir monitor in the District, the Southern Maryland, and Greenbelt monitors in Maryland and the Arlington County monitor in Virginia.

VII. Why Did EPA Defer Making a Finding of Nonattainment Regarding the Washington Area's Attainment Status Beyond the Time Frame Prescribed by the CAA?

For some time, EPA has recognized that pollutant transport can impair an area's ability to meet air quality standards by the date prescribed in the Act. In March 1995 a collaborative, Federal-state process to assess the ozone transport problem began. Through a two-year effort known as the Ozone Transport Assessment Group (OTAG), EPA worked in partnership with the 37 easternmost states and the District of Columbia, industry representatives, academia, and environmental groups to develop recommended strategies to address transport of ozone and ozone-forming pollutants across state boundaries.

On November 7, 1997, EPA acted on OTAG's recommendations and issued a proposal (the proposed oxides of nitrogen (NO_X) SIP call, 62 FR 60318) requiring 22 states and the District of Columbia to submit state plans addressing the regional transport of ozone. These SIP revisions will decrease the transport of ozone across state boundaries in the eastern half of the United States by reducing emissions of NO_X (a precursor to ozone formation). EPA took final action on the NO_X SIP call on October 27, 1998 (63 FR 57356). EPA expects the final NO_X SIP call will assist many areas in attaining the 1-hour ozone standard.

On July 16, 1998, in consideration of these factors and the realization that many areas were unable to meet the CAA-mandated attainment dates due to transport, EPA's then Acting Assistant Administrator, Richard Wilson, EPA issued an attainment date extension policy.[5] Under this policy, the attainment date for an area may be extended provided that the following criteria are met: (1) The area is identified as a downwind area affected by transport from either an upwind area in the same state with a later attainment date, or an upwind area in another state that significantly contributes to downwind nonattainment (by "affected by transport," EPA means an area whose air quality is affected by transport from an upwind area to a degree that affects the area's ability to attain); (2) an approvable attainment demonstration is submitted along with any necessary, adopted local measures and with an attainment date that shows that the area will attain the 1-hour standard no later than the date that the reductions are expected from upwind areas under the final NO_X SIP call and/or the statutory attainment date for upwind nonattainment areas, *i.e.*, assuming the boundary conditions reflect those upwind reductions; (3) the area has adopted all applicable local measures required under the area's current classification and any additional measures necessary to demonstrate attainment, assuming the reductions occur as required in the upwind areas; and (4) the area provides it will implement all adopted measures as expeditiously as practicable but no later than the date by which the upwind reductions needed for attainment will be achieved (64 FR 14441, March 25, 1999).

EPA contemplated that when it acted to approve such an area's attainment demonstration and attainment date extension, it would, as necessary, extend that area's attainment date to a date appropriate for that area in light of the schedule for achieving the necessary upwind reductions. As a result, the area would no longer be subject to reclassification or "bump-up" for failure to attain by its original attainment date under section 181(b)(2).

The State of Maryland, the Commonwealth of Virginia and the District of Columbia each submitted a request for such an extension of the attainment date for the Washington nonattainment area. In a January 3, 2001 (66 FR 586), final rule, EPA approved these requests along with attainment demonstration SIP revisions. The Sierra Club and its local chapters filed a petition for review in the United States Courts of Appeals for the appropriate circuits.[6] The petitions were consolidated in the United States Courts of Appeals for the District of Columbia Circuit.

On July 2, 2002, the United States Courts of Appeals for the District of Columbia Circuit (the Court) issued its ruling that vacated our January 3, 2001, final rule. With respect to the attainment date extension, the Court found that the plain language of Clean Air Act "sets a deadline without an exception for setbacks owing to ozone transport." The Court said that the EPA was without authority to extend the Washington, DC area's attainment deadline unless it also ordered the area to be reclassified as a "severe" area.

Because we can no longer grant the Washington area an attainment date extension using the July 16, 1998, policy, we must determine whether the Washington area will be reclassified by operation of law to severe if we issue a final action finding that the area failed to attain.

VIII. Has Air Quality Improved in the Washington Area in Recent Years?

The air quality in the Washington area has improved significantly since the area was designated nonattainment following enactment of the 1990 CAA amendments, when the area's (1987–1989) ozone design value was 0.165 ppm. The most recent (*i.e.*, 1999–2001) area-wide ozone data shows a continuing downward trend in the numbers of violations and ozone design values. The area now has only three monitors violating the standard, and of these, the maximum number of violations is 2.0 at the Greenbelt monitor in Maryland. The current design value is 0.130 ppm. The 1987–1989, 1997–1999 and 1999–2001 data are summarized in Table 4.

[5] Memorandum, "Extension of Attainment Dates for Downwind Transport Areas," issued July 16, 1998.

[6] The District of Columbia lies within the jurisdiction of the District of Columbia Circuit and Maryland and Virginia lie within the Fourth Circuit.

TABLE 4—AIR QUALITY DATA SUMMARY FOR 1987 TO 1989, 1997 TO 1999 AND 1999 TO 2001

Site	Monitor ID	1987 to 1989		1997 to 1999		1999 to 2001	Average number of expected exceedances
		Average number of expected exceedances	Design value	Average number of expected exceedances	Design value		Design value
West End, Washington, DC (Note a)	110010017–1	1.8	0.120	N.D.	N.D.	N.D.	N.D.
Tacoma School, Washington, DC	110010025–1	5.0	0.165	0.3	0.117	1.0	0.117
River Terrace, Washington, DC	110010041–1	N.D.	N.D.	1.0	0.120	0.3	0.120
McMillan Reservoir, Washington, DC	110010043–1	N.D.	N.D.	1.3	0.128	1.6	0.125
Calvert Co, MD	240090010–1	N.D.	N.D.	0.0	0.115	0.0	0.112
Southern Maryland, Charles Co, MD	240170010–1	5.0	0.145	1.4	0.125	0.7	0.121
Frederick Co, MD (Note b)	240210037–1	N.D.	N.D.	1.5	0.114	0.4	0.114
Rockville, Montgomery Co, MD	240313001–1	5.3	0.140	0.7	0.118	0.3	0.113
Greenbelt, Prince Georges Co, MD	240330002–1	6.8	0.157	4.2	0.132	2.1	0.130
Suitland-Silver Hill, Prince Georges Co, MD	240338001–1	7.6	0.163	2.1	0.126	1.4	0.126
Arlington Co, VA	510130020–1	5.4	0.145	1.4	0.126	0.7	0.122
Chantilly, Fairfax Co, VA (Note c)	510590005–1	N.D.	N.D.	0.7	0.118	0.0	0.113
Mount Vernon, Fairfax Co, VA	510590018–1	8.1	0.162	1.1	0.124	0.8	0.121
Franconia, Fairfax Co, VA (Note b)	510590030–1	N.D.	N.D.	0.5	0.118	0.3	0.117
Seven Corners, Fairfax Co, VA (Note d)	510591004–1	8.0	0.155	1.0	0.124	0.5	0.111
McLean, Fairfax Co, VA	510595001–1	7.1	0.144	0.3	0.114	0.7	0.115
Ashburn, Loudoun Co, VA (Note b)	511071005–1	N.D.	N.D.	0.0	0.116	0.0	0.106
Long Park, Prince William Co, VA (Note c)	511530009–1	N.D.	N.D.	0.4	0.115	0.0	0.108
Widewater, Stafford Co, VA (Note c)	511790001–1	N.D.	N.D.	1.0	0.124	0.3	0.106
Alexandria City, VA	515100009–1	1.7	0.130	0.7	0.123	0.3	0.117
Fairfax City, VA (Note a)	516000005–1	6.1	0.146	N.D.	N.D.	N.D.	N.D.

Notes:
N.D. denotes no data.
a. Discontinued Monitoring site.
b. New Monitoring site with only two years (1998 and 1999) of data for the 1997 to 1999 period and three years of data for 1999 to 2001.
c. New Monitoring Site with three years of data for 1997 to 1999 and all later periods.
d. Also known as the "Lewinsville" site.

IX. What Actions Has the District, Maryland and Virginia Taken To Improve Air Quality in the Washington Area?

EPA has approved, and the District, Maryland and Virginia have implemented, VOC emission reductions as part of the State's 15 Percent Rate-of-Progress Plan, and VOC and NO_X emission reductions as part of the Post-1996 Rate-of-Progress Plan. The area has already opted into the Federal reformulated gasoline program. For an extensive summary of these plans and the measures currently in place or scheduled for future implementation refer to the preambles of our December 16, 1999 (64 FR at 70471–70474), and January 3, 2001 (66 FR at 589–590), **Federal Register** publications. In addition, since the January 3, 2001, final rule, the District and Virginia have adopted rules to implement the NO_X SIP call with implementation in 2003 and 2004, respectively. Virginia submitted its rule on June 25, 2002.[7] *See* 67 FR 48032, July 23, 2002. We approved the District's rule on November 1, 2001, (66 FR 55099).

X. If We Finalize Our Proposed Rulemaking Reclassifying the Washington Area, What Would Be the Area's New Classification?

As stated previously, section 181(b)(2)(A) of the Act requires that, when an area is reclassified for failure to attain, its reclassification must be the higher of the next higher classification or the classification applicable to the area's ozone design value at the time the notice of reclassification is published in the **Federal Register**. However, no area can be reclassified as extreme based upon its design value. The official design value of the Washington area based on quality-assured ozone monitoring data from 1997–1999 is 0.132 ppm. The classification corresponding to this value is "marginal" nonattainment. By contrast, the next higher classification for the Washington area is "severe" nonattainment. Because "severe" is a higher nonattainment classification than "marginal," under the statutory scheme, the area would be reclassified to severe nonattainment. Refer to Table 3 above.

[7] This June 25, 2002, submittal was to set statewide requirements on electric generating utilities. Virginia has already adopted two SIP revisions that effectively impose a 0.15 pounds of NO_X per million BTU heat input on emissions units at two electric generating facilities in the Washington area. On December 14, 2000 (65 FR 78100), EPA approved these two SIP revisions.

XI. What Progress Has the Washington, DC Area Made Towards Planning To Attain the Ozone NAAQS by 2005?

In April 1998, the District, Maryland and Virginia each submitted modeling and a weight of evidence demonstration setting local overall emissions budgets when combined with boundary conditions consistent with the NO_X SIP

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call to demonstrate attainment of the 1-hour ozone NAAQS. While the air quality modeling analysis considered projected local emissions levels that were expected to occur by 1999, the calendar year itself is not an input to the air quality model. The air quality model responds only to the meteorology (temperature, wind patterns, etc.) of the selected episode, the ozone and precursor levels at the boundaries of the grid of the area being modeled and the overall change in local emissions levels in the local area. During February 2000, the States submitted SIP revisions that demonstrated that the local overall emissions budgets set by the air quality modeling demonstration could be achieved in 2005 with a combination of Federally promulgated national measures and local measures in the approved SIPs. (For a discussion of these measures and their status as of January 3, 2001, *see* 66 FR at 589–590, January 3, 2001.)

XII. What Would a Reclassification Mean for the Washington Area?

If reclassified, the Washington area would need to attain the one-hour ozone NAAQS as expeditiously as practicable, but no later than November 15, 2005. The District, Maryland and Virginia would also need to submit SIP revisions addressing all the severe area requirements for the one-hour standard specified in sections 182(a) through 182(d) of the Act. The SIP requirements for severe ozone nonattainment areas include, but are not limited to, the following:

(1) Attainment demonstration for 2005 and rate-of-progress demonstrations for 2002 and 2005 including adequate on-road mobile emissions budgets for transportation conformity purposes.

(2) A 25 ton-per-year major stationary source threshold for volatile organic compounds and nitrogen oxides.

(3) More stringent new source review requirements.

(4) Enforceable transportation control strategies and measures to offset projected growth in vehicle miles traveled or number of vehicle trips as necessary to demonstrate attainment and to achieve periodic emissions reduction requirements.

(5) Contingency measures.

XIII. What Are the Transportation Conformity Implications of Reclassification?

The ozone reclassification in and of itself would not immediately affect the applicable motor vehicle emissions budgets in the Washington area. Currently the only applicable motor vehicle emission budgets for the District, Maryland and Virginia are those for VOC and NO_X in the approved rate-of-progress plan for 1999 and two sets of outyear budgets established for 2015 and for 2020.[8] Until such time as rate-of-progress and/or 2005 attainment year ozone budgets have been determined to be adequate or are approved, these 1999 budgets apply until 2015, at which point the outyear budgets apply for 2015 and all future years. See 65 FR 40167, July 3, 2000.

Our January 3, 2001, final rule approved motor vehicle emissions budgets for 2005 which were contained within the February 2000 submittals, but the Court's July 2, 2002, decision has vacated our approval action. We had found these budgets to be adequate on June 8, 2000, (65 FR 36439), but have always interpreted the transportation conformity rule such that a final rulemaking action approving a control strategy or maintenance plan SIP renders any prior adequacy determination made for budgets related to that particular control strategy or maintenance plan SIP of no further force or effect. Instead, the final rulemaking governs which budgets apply for conformity purposes. We also interpret our transportation conformity rule to mean that once an approval is vacated the prior adequacy determination is not resurrected. We made the prior adequacy determination based upon the record before us at that time. At the very least, we are now confronted with the fact of the Court's *vacatur* of the January 3, 2001, final rule and thus must consider whether or not the Court's ruling precludes a determination of adequacy of the calendar year 2005 motor vehicle emissions budgets in the February 2000 SIP submissions.

We initiated a new adequacy process with respect to the budgets for 2005 that were contained in the February 2000 plan. On September 9, 2002, we completed the public notice and comment portion of the process to determine the adequacy process. EPA received adverse comments on the adequacy of these budgets, and is currently considering appropriate action in response to those comments. Further information on any findings of adequacy can be found at *http://www.epa.gov/otaq/transp/conform/adequacy.htm*.

Once new severe area budgets are submitted and have been determined adequate, these post-1999 rate-of-progress budgets would set emission caps for any post-1999 milestone years (2002 and 2005), and the new attainment year budgets would apply to the 2005 attainment year and all years beyond the attainment year up to the point when an outyear budget has been established.

XIV. How Does the Recent Release of MOBILE6 Interact With Reclassification?

A. What Is the Relationship Between MOBILE6 and the Attainment Year Motor Vehicle Emissions Budgets

The 2005 motor vehicle emissions budgets contained in the February 2000 submittal are not based upon the most recent mobile source emission factors model, MOBILE6. The February 2000 attainment plan SIP submissions relied upon reductions from EPA's Tier 2 Federal motor vehicle control program standards and Sulfur in gasoline rule (the Tier 2/Sulfur program) to in effect demonstrate that the reduction in local emissions between 1990 and 2005 would be greater than or equal to the reduction in local overall emissions assumed in the air quality modeling demonstration. We have always stated that the benefits of the Tier 2 program cannot be accurately estimated until MOBILE6 is released. Before the official release of the MOBILE6 emission factor model, we required States that adopted benefits of the Tier 2/Sulfur program into their attainment demonstrations (and certain other SIP revisions) to submit an enforceable commitment to revise the motor vehicles emissions budgets within either one or two years of the release of the MOBILE6 model. For further detail on our rationale regarding this commitment see 64 FR 70460, December 16, 1999, and 65 FR 46383, July 28, 2000. The District, Maryland and Virginia submitted an enforceable commitment to revise the motor vehicles emissions budgets within one-year of the release of the MOBILE6 model. Because the MOBILE6 model was released on January 29, 2002, (67 FR 4254) the commitment required submittal of revised budgets by January 29, 2003. We believe that approval of this commitment only has context within the framework of an approval of the attainment demonstration under the conditions we laid out in our January 3, 2001, final rule and in the proposed actions leading up to that final action. We have interpreted the Court of Appeals's July 2, 2002, ruling as vacating the approval of this commitment.

We expect that any subsequent motor vehicle emissions budgets submitted to fulfill the severe area requirements including that of the attainment demonstration will be prepared using the MOBILE6 emissions factor model and pursuant to applicable guidance and policy such as that found in the January 18, 2002, joint memorandum from John S. Seitz and Margo Tsirigotis Oge entitled "Policy Guidance for the Use of MOBILE6 in SIP Development and Transportation Conformity" (January 18 MOBILE6 policy). Thus, although the obligation to submit MOBILE6 budgets by January 29, 2003, has been vacated, the severe area SIP when submitted must contain budgets based on MOBILE6 modeling.

B. What Is the Relationship Between MOBILE6 and the Post-1999 Rate-of-Progress Requirement

In our guidance documents, the EPA has interpreted the section 182(c)(2) reasonable further progress requirement as mandating volatile organic compounds (VOC) or nitrogen oxides (NO_X) reductions of 3 percent per year, averaged over a 3-year period, for serious and above ozone nonattainment areas that were designated and classified under the 1-hour ozone NAAQS. The EPA refers to these reductions as the rate-of-progress requirement.

The January 18, 2002, MOBILE6 policy guidance indicates that among other things, the motor vehicle emissions budgets in the post-1999 rate-of-progress plans will have to developed using MOBILE6. In this policy we said:

> In general, EPA believes that MOBILE6 should be used in SIP development as expeditiously as possible. The Clean Air Act requires that SIP inventories and control measures be based on the most current information and applicable models that are available when a SIP is developed.[9]

Since the area is only now beginning work on the post-1999 rate-of-progress plans as a result of reclassification to severe, these plans will need to be based upon MOBILE6.

The post-1999 rate-of-progress requirement flows from section 182(c)(2)(B) which requires serious and above areas to achieve a 3 percent per year reduction in baseline VOC emissions (or some combination of VOC and NO_X reduction from baseline emissions pursuant to section 182(c)(2)(C)) averaged over each consecutive three-year period after November 15, 1996, until the attainment date.[10] Baseline emissions are the total amount of actual VOC or NO_X emissions from all anthropogenic sources in the area during the calendar year 1990, excluding emissions that would be eliminated under certain Federal programs and Clean Air Act mandates: phase 2 of the Federal gasoline Reid vapor pressure regulations (Phase 2 RVP) promulgated on June 5, 1990 (see 55 FR 23666); the Federal motor vehicle control program in place as of January 1, 1990 (1990 FMVCP); and certain changes and corrections to motor vehicle inspection and maintenance (I/M) programs and corrections and reasonably available control technology (RACT) that were required under section 182(a)(2).[11] We have issued guidance that provides detailed information on for implementing the rate-of-progress provisions of section 182.[12] Basically our guidance requires the calculation of a target level of emissions for each rate-of-progress milestone year. The target level for any rate-of-progress milestone year is the 1990 baseline emissions decreased by the amount of baseline emissions that would be reduced by the 1990 FMVCP and the Phase 2 RVP program by that year *and* reduced by the amount of the mandated minimum reductions (15 percent VOC by 1996, and an additional nine (9) percent VOC, or VOC and NO_X by 1999, * * *). Under our guidance the first rate-of-progress milestone year target levels, for example, the 15 percent VOC reduction by 1996 requirement, starts with the 1990 base year emissions and then subtracts the effects of the 1990 FMVCP and Phase 2 RVP through 1996 and also subtracts the required 15 percent VOC reduction. The 1999 VOC target level starts with the 1996 target level and subtracts the effects between 1996 and 1999 of the 1990 FMVCP and Phase 2 RVP and subtracts the required 9 percent post-1996 reduction. For each target level, our guidance requires the preparation of a 1990 base year inventory "adjusted" to the milestone year (the "1990 adjusted base year inventory") to account for the effects of the 1990 FMVCP and Phase 2 RVP by the milestone year. The adjusted inventory uses 1990 motor vehicle activity levels but emission factors computed by MOBILE6 for the applicable milestone year. For example, preparation of a rate-of-progress plan for 1999 with NO_X substitution requires a 1990 base year inventory for both VOC and NO_X, a 1990 base year VOC inventory adjusted to 1996 and 1990 base year VOC and NO_X inventories inventory adjusted to 1999. Preparation of a rate-of-progress plan for 1999 with NO_X substitution requires a 1990 base year inventory for both VOC and NO_X plus the following seven "adjusted" inventories: 1996 VOC; 1999 VOC and NO_X; 2002 VOC and NO_X and 2005 VOC and NO_X.

One consequence of the need to use MOBILE6 emission factors in the post-1999 rate-of-progress plan is that the area must recompute the 1990 baseline emissions using the MOBILE6 emissions factor model to update the 1990 on-road mobile sources portion of the 1990 base year emission inventory. The area must also calculate post-1999 rate-of-progress target levels by re-iterating the target levels for rate-of-progress requirements for the 1996 and 1999 milestone years.

In addition to vehicle emissions budgets for any applicable milestone year, the post-1999 rate-of-progress requirement will also require the development of a revision to the 1990 base year emissions inventories and development of up to seven 1990 adjusted inventories (VOC for 1996, VOC and NO_X for 1999, VOC and NO_X for 2002, plus VOC and NO_X for 2005).

XV. If the Washington Area Is Reclassified to Severe, What Would Its New Schedule Be?

A. What Would the Attainment Date Be?

If the Washington area is reclassified to severe, the new attainment deadline under section 181(b)(2) would be as expeditious as practicable, but no later than the date applicable to the new classification, *i.e.*, November 15, 2005.

B. When Are the Required SIP Revisions Due?

The District, Maryland and Virginia would be required to submit a SIP that adopts all the severe area requirements. Under section 181(a)(1) of the Act, the new attainment deadline for serious areas reclassified to severe under section 181(b)(2) would be as expeditious as practicable, but no later than the date applicable to the new classification, *i.e.*, November 15, 2005. When we issue any final finding of failure to attain that reclassifies the Washington area, we must also address the schedule by which the District, Maryland and Virginia will be required to submit a SIP revision meeting the severe area requirements. Pursuant to section 182(i), EPA can adjust any

[8] There are also approved VOC budgets in the 15 percent rate-of-progress plan, but these are effectively superceded by the approved 1999 VOC budgets which are both for a later year and are more stringent. See 40 CFR 93.118.

[9] See Clean Air Act section 172(c)(3) and 40 CFR 51.112(a)(1).

[10] As a serious area the Washington area was required to submit a rate-of-progress plan for a nine (9) percent reduction for the 3-year period November 15, 1996, through November 15, 1999.

[11] These requirements under section 182(a)(2) are known I/M and RACT corrections or I/M and RACT "fix-ups." For further explanation of these see 57 FR at 13503–13504, April 16, 1992.

[12] This includes among others: Guidance on the Post -1996 Rate-of-Progress Plan (RPP) and Attainment Demonstration, EPA–452/R–93–015 (Corrected version of February 18, 1994). An electronic copy may be found on EPA's Web site at *http://www.epa.gov/ttn/oarpg/t1pgm.html* (file name: "post96_2.zip").

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applicable deadline (other than the attainment date) as appropriate for any area reclassified under section 181(b) of the CAA. We propose to have the District, Maryland and Virginia submit this SIP by the earlier of the following dates: within one year of the effective date of a final action on the proposed finding of failure to attain and any consequent reclassification or March 1, 2004. If any of the Washington area States fail to submit a complete severe area SIP that addresses the new severe area requirements by the deadline set in a final rule reclassifying this area, we will start a sanctions clock pursuant to CAA section 179(a)(1) for failure to submit a required SIP revision.

EPA believes that this proposed rule provides ample advance notice to the affected jurisdictions that the severe area requirements may become applicable to the Washington area. However, the issuance of the MOBILE6 emission factor model will require the area to recompute the 1990 base year emissions and restate pre-1999 rate-of-progress targets using MOBILE6. This will require significantly more inventory preparation than would have occurred had the MOBILE5 model remained in force and the area could have used the MOBILE5-based 1990 base year emissions inventories and target levels through 1999. A March 1, 2004, submittal deadline will require the jurisdictions to have adopted additional emission control regulations that can allow sources a minimally reasonable time to comply before the start of the 2005 ozone season and, for measures needed solely to meet rate-of-progress requirements, slightly longer to comply before the rate-of-progress deadline of November 15, 2005. This schedule is for all the severe area SIP requirements. We solicit comments on this proposed schedule.

C. What Will Be the Rate-of-Progress and Contingency Measure Schedules?

(1) 2002 Rate-of-Progress Milestone

Section 182(c)(2)(B) requires serious and above areas achieve a 3 percent per year reduction in baseline VOC emissions (or some combination of VOC and NO_X reductions from baseline emissions pursuant to section 182(c)(2)(C)) averaged over each consecutive three-year period after November 15, 1996, until the attainment date. Therefore, a serious area must achieve a 9 percent reduction between November 15, 1996, and November 15, 1999; a severe area with an attainment date of November 15, 2005, additionally has to achieve an additional 9 percent reduction by November 15, 2002, and a further 9 percent reduction by November 15, 2005.

Under the schedule for submittal of all severe area requirements that is proposed in the preceding section of this document under the heading "B. When are the Required SIP Revisions Due," the rate-of-progress plan for the 2002 milestone year will be due well after the November 15, 2002, milestone date for the first of the post-1999 9 percent reduction requirements.

If sufficient actual reductions occurring by the November 15, 2002, milestone date do not now exist, then Maryland, Virginia or the District can only get reductions after the milestone deadline because, at this point, the States do not have the ability to require additional reductions for a period that has already passed. We believe the passing of the deadline does not relieve Maryland, Virginia or the District from the requirement to achieve the 9 percent reduction in emissions, but rather the 9 percent reduction needs to be achieved as expeditiously as practicable after November 15, 2002.

The approved SIPs for the area contain measures that either were not used in the demonstration of rate-of-progress by 1999 or that generate additional benefits after November 15, 1999, over and above what was credited to the rate-of-progress plan for 1999. Such measures include the National Low Emission Vehicle program in the entire area and, in the District and Maryland portions of the Washington area, beyond RACT reduction requirements on large sources of NO_X. The area also opted-into the Federal reformulated gasoline (RFG) program. The second phase of the RFG program, which went into effect on January 1, 2000, also produces reductions creditable towards the 2002 rate-of-progress requirement.

As discussed elsewhere in this document in the section titled "What is the Relationship Between MOBILE6 and the Post-1999 Rate-of-Progress," the CAA specifies the emissions "baseline" from which each emission reduction milestone is calculated. Section 182(c)(2)(B) states that the reductions must be achieved "from the baseline emissions described in subsection (b)(1)(B)." This baseline value is termed the 1990 adjusted base year inventory. Section 182(b)(1)(B) defines baseline emissions (for purposes of calculating each milestone VOC/NO_X emission reduction) as "the total amount of actual VOC or NO_X emissions from all anthropogenic sources in the area during the calendar year of enactment" (emphasis added) and excludes from the baseline the emissions that would be eliminated by certain specified Federal programs and ceratin changes to state I/M and RACT rules.[13] The 1990 adjusted base year inventory must be recalculated relative to each milestone and attainment date because the emission reductions associated with the FMVCP increase each year due to fleet turnover.[14]

Therefore, EPA concludes that the area has already implemented measures creditable towards the 2002 rate-of-progress milestone. However, we are not able to conclude that the area has sufficient measures to achieve the required 9 percent reduction by November 15, 2002, in the absence of a full blown rate-of-progress plan for the 2002 milestone year that documents the calculations of the 2002 target levels of emissions, documents how the SIP accounts for expected growth in emissions related activities and contains the requisite demonstration that sufficient creditable reductions have or were projected to occur by November 15, 2002. We have insufficient data concerning what the levels of reductions will be in the area by 2002, what the proper 1990 adjusted base year inventory for 2002 will be or how much emissions growth will occur in the period November 15, 1999, through November 15, 2002. Nor do we have sufficient information to allow us to determine what date will be as expeditiously as practicable after November 15, 2002, for this first post-1999 9 percent rate-of-progress requirement.

EPA proposes that the 2002 rate-of-progress requirement be that the District, Maryland and Virginia submit a rate-of-progress plan that demonstrates that the SIP has sufficient measures to make the required percent reduction by November 15, 2002, or by a date as expeditiously as practicable thereafter.[15] Such SIP revisions will have to demonstrate that any date after November 15, 2002, by which the first post-1999 9 percent rate-of-progress reduction is achieved is that which is as expeditiously as practicable.

(2) 2005 Rate-of-Progress

EPA is not proposing any change to the date by which the second 9 percent increment of post-1999 rate-of-progress must be achieved. If the currently adopted and approved SIP measures and the current suite of Federal measures will not achieve the required rate-of-progress reductions, we believe the area has sufficient time to adopt and implement measures to achieve the required reductions by November 15, 2005.

[12] These are the 1990 FMVCP, Phase 2 RVP, and the I/M and RACT fix-ups.

[14] See U.S. EPA, (1994), Guidance on the Post-1996 Rate-of-Progress Plan (RPP) and Attainment Demonstration, EPA–452/R–93–015 (Corrected version of February 18, 1994). An electronic copy may be found on EPA's Web site at *http://www.epa.gov/ttn/oarpg/t1pgm.html* (file name: "post96_2.zip").

[15] EPA believes that such date cannot be any later than November 15, 2005.

(3) Contingency for Failure To Achieve Rate-of-Progress by November 15, 2002

The contingency measures plan must identify specific measures to be undertaken if the area fails to meet any applicable milestone, failure to make rate-of-progress or failure to attain the NAAQS. With respect to the November 15, 2002, milestone, EPA believes that the contingency plan will need to account for any adjustment to the milestone date.

XVI. What Is the Impact of Reclassification on Title V Operating Permit Programs?

Upon reclassification the major stationary source threshold will be lowered from 50 tons per year (TPY) to 25 TPY. Consequently, the District's, Maryland's and Virginia's Title V operating permits program regulations need to cover sources that will become subject to the lower major stationary source threshold. EPA has reviewed the relevant permit program regulations for the Washington area states. This review indicates that the three program regulations will apply the requisite 25 TPY major stationary source threshold to the Washington area if this area is reclassified to severe. No changes to the State's' Title V permit program regulations will be required as a result of a reclassification of the Washington area to severe nonattainment.

After any reclassification to severe, additional sources will become subject to the Title V permitting requirements due to the change in the major stationary source threshold from 50 TPY to 25 TPY. Any newly major stationary sources must submit a timely Title V permit application. "A timely application for a source applying for a part 70 permit for the first time is one that is submitted within 12 months after the source becomes subject to the permit program or on or before such earlier date as the permitting authority may establish." *See* 40 CFR 70.5(a)(1). The 12 month (or earlier date set by the applicable permitting authority) time period to submit a timely application will commence on the effective date of any reclassification action.

XVII. What Are the Relevant Policy and Guidance Documents?

Commencing with "State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990" (57 FR 13498, April 16, 1992), EPA has issued numerous policy and guidance memoranda and guidance documents related to the attainment demonstration, rate-of-progress and other requirements related to the severe area classification. These documents are too numerous to list here.

Several have already been cited elsewhere in this document.

Several of the documents identified in prior **Federal Register** publications related to the Washington area, for example, those listed at 64 FR at 70469, December 16, 1999, no longer are applicable in this instance because they have dealt with quantifying the benefits of our Tier 2 regulations prior to the release of MOBILE6 and have become unnecessary since the release of the MOBILE6 model and the January 18 MOBILE6 policy.[16] The final mid-course review guidance has been released whereas prior **Federal Register** publications referenced a draft.[17] And the Memorandum, "Extension of Attainment Dates for Downwind Transport Areas," issued July 16, 1998, was declared unlawful by the United States Courts of Appeals for the District of Columbia.

EPA is soliciting public comments on the issues discussed in this document or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the **ADDRESSES** section of this document.

Proposed Action

EPA is proposing to find that the Metropolitan Washington, D.C. serious ozone nonattainment area has failed to attain the one-hour ozone NAAQS by November 15, 1999, the date set forth in the Clean Air Act (CAA or Act) for serious nonattainment areas. If EPA takes final action to issue this proposed finding of failure to attain, the area would be reclassified as a severe ozone nonattainment area by operation of law. EPA is proposing to require the District of Columbia, the State of Maryland and the Commonwealth of Virginia to submit revisions to its State Implementation Plan (SIP) that adopt the severe area requirements within one year of the effective date of a final action on the attainment determination and any consequent reclassification but not later than March 1, 2004, whichever is sooner. Finally, EPA is proposing to adjust the dates by which the area must achieve a nine (9) percent reduction in ozone precursor emissions to meet the 2002 rate-of-progress requirement and contingency measure requirement as this relates to the 2002 rate-of-progress requirement.

XVIII. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA is required to determine whether regulatory actions are significant and therefore should be subject to Office of Management and Budget (OMB) review, economic analysis, and the requirements of the Executive Order. The Executive Order defines a "significant regulatory action" as one that is likely to result in a rule that may meet at least one of the four criteria identified in section 3(f), including, under paragraph (1), that the rule may "have an annual effect on the economy of $100 million or more or adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local or tribal governments or communities."

The Agency has determined that the proposed finding of nonattainment would result in none of the effects identified in section 3(f) of the Executive Order. Under section 181(b)(2) of the CAA, determinations of nonattainment are based upon air quality considerations and the resulting reclassifications must occur by operation of law. They do not, in and of themselves, impose any new requirements on any sectors of the economy. In addition, because the statutory requirements are clearly defined with respect to the differently classified areas, and because those requirements are automatically triggered by classifications that, in turn, are triggered by air quality values, determinations of nonattainment and reclassification cannot be said to impose a materially adverse impact on state, local, or tribal governments or communities.

For this reason, the proposed finding of nonattainment and reclassification is

[16] These are the two following memoranda: "Guidance on Motor Vehicle Emissions Budgets in One-Hour Attainment Demonstrations," of November 3, 1999, and "1-Hour Ozone Attainment Demonstrations and Tier 2/Sulfur Rulemaking," of November 8, 1999.

[17] Memorandum "Mid-Course Review Guidance for the 1-Hour Ozone Nonattainment Areas that Rely on Weight-of-Evidence for Attainment Demonstration" from Lydia N. Wegman and J. David Mobley to the Air Division Directors, Regions I–X of March 28, 2002.

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also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001).

Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be economically significant as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This proposed action is not subject to Executive Order 13045 because this is not an economically significant regulatory action as defined by Executive Order 12866.

Executive Order 13132, entitled Federalism (64 FR 43255, August 10, 1999) requires EPA to develop an accountable process to ensure "meaningful and timely input by state and local officials in the development of regulatory policies that have Federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has Federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by state and local governments, or EPA consults with state and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has Federalism implications and that preempts state law unless the Agency consults with state and local officials early in the process of developing the proposed regulation. This determination of nonattainment and the resulting reclassification of a nonattainment area by operation of law will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because this action does not, in and of itself, impose any new requirements on any sectors of the economy, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. Thus, the requirements of section 6 of the Executive Order do not apply to these actions.

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

Determinations of nonattainment and the resulting reclassification of nonattainment areas by operation of law under section 181(b)(2) of the CAA do not in and of themselves create any new requirements. Instead, this rulemaking only makes a factual determination, and does not directly regulate any entities. *See* 62 FR 60001, 60007–60008, and 60010 (November 6, 1997) for additional analysis of the RFA implications of attainment determinations. Therefore, pursuant to 5 U.S.C. 605(b), I certify that this proposed action does not have a significant impact on a substantial number of small entities within the meaning of those terms for RFA purposes.

Under section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to state, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA believes, as discussed previously in this document, that the finding of nonattainment is a factual determination based upon air quality considerations and that the resulting reclassification of the area must occur by operation of law. Thus, EPA believes that the proposed finding does not constitute a Federal mandate, as defined in section 101 of the UMRA, because it does not impose an enforceable duty on any entity.

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

This proposed action to reclassify the Washington, DC area as a severe ozone nonattainment area and to adjust applicable deadlines does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: November 4, 2002.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. 02–28845 Filed 11–12–02; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 192

[Docket No. RSPA–02–13208; Notice 1]

RIN 2137–AD01

Pipeline Safety: Further Regulatory Review; Gas Pipeline Safety Standards

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: RSPA is proposing to change some of the safety standards for gas pipelines. The changes are based on recommendations by the National Association of Pipeline Safety Representatives (NAPSR) and a review of the recommendations by the State Industry Regulatory Review Committee (SIRRC). We believe the changes will improve the clarity and effectiveness of the present standards.

DATES: Persons interested in submitting written comments on the rules proposed in this notice must do so by January 13, 2003. Late filed comments will be considered so far as practicable.

ADDRESSES: You may submit written comments by mailing or delivering an original and two copies to the Dockets Facility, U.S. Department of Transportation, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. The Dockets Facility is open from 10 a.m. to 5 p.m., Monday through Friday, except on Federal holidays when the facility is closed. Or you may submit written comments to the docket electronically at the following Web address: *http://dms.dot.gov.* See the **SUPPLEMENTARY INFORMATION** section for additional filing information.

FOR FURTHER INFORMATION CONTACT: L.M. Furrow by phone at 202–366–4559, by fax at 202–366–4566, by mail at U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, or by e-mail at *buck.furrow@rspa.dot.gov.*

SUPPLEMENTARY INFORMATION:

Filing Information, Electronic Access, and General Program Information

All written comments should identify the docket and notice numbers stated in the heading of this notice. Anyone who wants confirmation of mailed comments must include a self-addressed stamped postcard. To file written comments electronically, after logging on to *http://dms.dot.gov,* click on "ES Submit." You can also read comments and other material in the docket at *http://dms.dot.gov.* General information about our pipeline safety program is available at *http://ops.dot.gov.*

Background

NAPSR is a non-profit association of officials from State agencies that participate with RSPA in the Federal pipeline safety regulatory program. Each year NAPSR holds regional meetings to discuss safety and administrative issues, culminating in resolutions for program improvement.

In 1990 we asked NAPSR to review the gas pipeline safety standards in 49 CFR part 192. The purpose of the review was to identify standards that NAPSR considered insufficient for safety or not clear enough to enforce. NAPSR compiled the results of its review in a report titled "Report on Recommendations For Revision of 49 CFR part 192," dated November 20, 1992. The report, a copy of which is in the docket of the present proceeding, recommends changes to 40 sections in part 192.

By the time NAPSR completed its report, we had published a notice of proposed rulemaking to change many part 192 standards that we considered unclear or overly burdensome (Docket PS–124; 57 FR 39572; Aug. 31, 1992). Because a few of NAPSR's recommendations related to standards we had proposed to change, we published the report for comment in the PS–124 proceeding (58 FR 59431; Nov. 9, 1993). The PS–124 Final Rule (61 FR 28770; June 6, 1996) included four of NAPSR's recommended rule changes, and we scheduled the remaining recommendations for future consideration. Later, at a meeting on corrosion problems held in San Antonio, Texas on April 28, 1999, we opened NAPSR's recommendations on corrosion control to further public discussion (Docket RSPA–97–2762; 64 FR 16885; April 7, 1999).

In PS–124 we received 79 comments on NAPSR's recommendations, primarily from pipeline trade associations, pipeline operators, and State pipeline safety agencies. Industry commenters generally opposed most of NAPSR's recommendations on grounds that standards would be changed not for safety reasons or clarity but to make compliance auditing easier. In contrast, the State agencies generally supported NAPSR's recommendations. NAPSR denied it was merely trying to simplify the auditing process, and said its experience provided a unique perspective on which standards are ineffective or inappropriate.

Because industry and State views were so divergent, in October 1997, the American Gas Association (AGA), the American Public Gas Association (APGA), and NAPSR formed SIRRC to iron out their differences over the recommendations. SIRRC agreed on all but eight of the recommendations scheduled for future consideration. A copy of SIRRC's report titled "Summary Report," dated April 26, 1999, is in the docket of the present proceeding.

We have completed our review of NAPSR's 1992 recommendations as updated by SIRRC's 1999 Summary Report. The review also covered a NAPSR resolution on the definition of "service line." Although this resolution was not in NAPSR's 1992 report, SIRRC dealt with the resolution in it's Summary Report.

The purpose of the review was to decide which, if any, of NAPSR's recommendations warrant inclusion in a notice of proposed rulemaking. If SIRRC agreed to modify a recommendation, our review focused on that modification. If SIRRC did not reach agreement, we focused on NAPSR's recommendation in light of SIRRC's discussion. Our responses to the recommendations are discussed in the next section of the preamble.

Disposition of NAPSR's Recommendations

This section summarizes NAPSR's recommendations and SIRRC's consideration of those recommendations. It also states our responses to the recommendations. For ease of reference, we have numbered the recommendations according to their sequence in SIRRC's Summary Report. The following table categorizes the recommendations according to the rulemaking status indicated by our responses:

Recommendation No.	Rulemaking status
7, 15, 17, 20, and 26	Included in previous final rule actions.
8, 9, 30	Proposed in "Periodic Updates to Pipeline Safety Regulations (1999)" (Docket RSPA–99–6106; 56 FR 15290; Mar. 22, 2000).

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Recommendation No.	Rulemaking status
2, 5, 6, 11, 12, 13, 14, 29 (in part), 31, 32, 35 18, 24, 25, 28, 33 (in part) and 34 (in part).	Proposed in present action. Alternative proposed in present action.
1, 3, 4, 10, 16, 19, 21, 22, 23, 27, 29 (in part), 33 (in part), and 34 (in part).	No rulemaking action.

1. Section 192.3, Definitions of Main and Transmission Line. (SIRRC Summary Report, p. 3)

Recommendation. To help distinguish mains from transmission lines, revise the definition of "main" and the first paragraph of the definition of "transmission line" to read:

- "Main" means a pipeline installed in a community to convey gas to individual service lines or to other mains.
- "Transmission line" means a pipeline, or a series of pipelines, other than a gathering line, that: (a) Transports gas from a gathering line, storage field or another transmission line to a storage field or to one or more distribution systems or other load centers.

SIRRC. The committee reached consensus to modify the recommendation as follows:

- "Main" means a segment of pipeline in a distribution system installed to transport gas to individual service lines or other mains.
- In the present definition of "transmission line," change "distribution center" to "distribution system" to eliminate the only use of this undefined term in Part 192.

Response: Part 192 defines "distribution line" but not "distribution system." So substituting "distribution system" for "distribution line" in the present "main" definition and for "distribution center" in the present "transmission line" definition would not necessarily add clarity to either definition. Also, by referring to "mains," SIRRC's definition of "main" loops back on itself. Therefore, we are not proposing to adopt the SIRRC's suggestion.

2. Section 192.3, Definitions of Service Line and Service Regulator. (SIRRC Summary Report, p. 6)

Recommendation. Adopt the following new and amended definitions to bring Part 192 in line with acceptable arrangements of service lines:

- "Customer meter" means the meter that measures the transfer of gas from an operator to a consumer.
- "Service line" means a distribution line that transports gas from a common source of supply to an individual customer, two adjacent or adjoining residential or small commercial customers, or to an aboveground meter header supplying up to ten residential or small commercial customer meters. A service line terminates at the outlet of the customer meter or at the connection to a customer's piping, whichever is further downstream, or at the connection to customer piping if there is no meter.
- "Service regulator" means the device on a service line which controls the pressure of gas delivered from a high pressure distribution system to the level at which it is provided to the customer. A service regulator may serve one customer meter, or up to ten customer meters grouped on an aboveground meter header.

SIRRC. The committee suggested modification of the definitions as follows:

- "Customer meter" means the meter that measures the transfer of gas from an operator to a consumer.
- "Service line" means a distribution line that transports gas from a common source of supply to an individual customer, to two adjacent or adjoining residential or small commercial customers, or to multiple residential or small commercial customers served through a meter header or manifold. A service line terminates at the outlet of the customer meter or at the connection to a customer's piping, whichever is further downstream, or at the connection to customer piping if there is no meter.
- "Service regulator" means the device on a service line which controls the pressure of gas delivered from a higher pressure to the pressure provided to the customer. A service regulator may serve one customer, or multiple customers through a meter header or manifold.

Response. Although § 192.3 already defines the term "customer meter," the definition of this term is included in the definition of "service line." SIRRC's suggestion would merely move the "customer meter" definition to an alphabetical position in § 192.3. Since "customer meter" is used in part 192 in places other than the "service line" definition, we agree that an alphabetical position is preferable. So we are proposing to amend § 192.3 as SIRRC suggested.

Under the part 192 definitions of "service line" and "main," if an operator runs a single line from main to supply gas to two customers, the single line is itself a main because it is a common source of supply for more than one service line.[1] Typically such single-line installations serve two or more adjacent single-family residences through branch lines connected to the single line. They also serve apartment buildings and shopping centers through meter manifolds, or meter headers.

Because these single lines are more like service lines than mains—their size is small, their pressure is low, and they are located on private property rather than under a public street or alley—many State pipeline safety agencies have granted waivers for the lines, permitting operators to treat them as service lines. Consequently, under most State waivers, the single lines may be designed, installed, operated, and maintained as service lines. They do not have to meet any part 192 standard that applies strictly to mains. For example, § 192.327(b) requires a minimum burial depth for mains (24 in) that is greater than the depth § 192.361 requires for service lines (12 or 18 in). Single-line installations serving adjacent customers may also increase safety by minimizing connections to mains. These connections are susceptible to leaks and damage accidentally caused by street excavation activities.

Since SIRRC's suggested definition of "service line" is consistent with State waivers we considered appropriate, we are proposing to amend § 192.3 by revising the definition of "service line" as SIRRC suggested. Note, however, that the proposed definition uses the general term "meter manifold" instead of "meter header or manifold." If adopted as final, the proposed definition would eliminate the need for similar waivers in the future.

We are also proposing to adopt SIRRC's suggested definition of "service regulator." SIRRC's definition is consistent with state waivers that distinguish regulators connected to customer meter manifolds from regulating stations that must be inspected under § 192.739.

We are particularly interested in receiving comments on how the term "small commercial customers" might be stated differently or defined to minimize potential confusion in identifying the customers involved. Would it be appropriate to consider a "small commercial customer" as a business that receives volumes of gas similar to the volumes that a residential customer receives?

[1] Section 192.3 defines "service line" as "a distribution line that transports gas from a common source of supply to (1) a customer meter or the connection to a customer's piping, whichever is farther downstream, or (2) the connection to a customer's piping if there is no customer meter." In addition, "main" is defined as "a distribution line that serves as a common source of supply for more than one service line."

3. Section 192.55(a)(2), Steel Pipe. (SIRRC Summary Report, p. 8)

Recommendation. Delete § 192.55(a)(2)(ii), which provides requirements for the use of new steel pipe manufactured before November 12, 1970.

SIRRC. The committee suggested that § 192.55(a)(2)(ii) should not be deleted.

Response. Although NAPSR initially thought § 192.55(a)(2)(ii) was obsolete, several PS–124 commenters said the section should remain because operators have stockpiles of steel pipe manufactured before 1970. The SIRRC Summary Report indicates operators continue to stock such pipe. We concur with SIRRC that § 192.55(a)(2)(ii) should not be removed.

4. Section 192.65, Transportation of Pipe. (SIRRC Summary Report, p. 9)

Recommendation. Delete § 192.65(b), which provides requirements for the use of certain steel pipe transported by railroad before November 12, 1970.

SIRRC. The committee agreed that § 192.65(b) should not be deleted.

Response. Although NAPSR initially thought § 192.55(b) was obsolete, several PS–124 commenters said they had stockpiled pipe manufactured before 1970. In addition, the SIRRC Summary Report indicates that operators still have this pipe and that it may have been transported by railroad. We concur with the SIRRC's suggestion.

5. Section 192.123, Design Limitations for Plastic Pipe. (SIRRC Summary Report p. 10)

Recommendation. Delete the second sentence of § 192.123(b)(2)(i), which allows plastic pipe manufactured before May 18, 1978, and strength rated at 73 °F to be used at temperatures up to 100 °F.

SIRRC. The committee agreed that the second sentence of § 192.123(b)(2)(i) should be deleted.

Response. NAPSR thought the second sentence of § 192.123(b)(2)(i) was obsolete. However, the PS–124 comments indicated that several utilities had inventories of plastic pipe manufactured before May 18, 1978, that they intended to use as replacement pipe. In contrast, the SIRRC Summary Report states that the committee members were unaware of any pre-1978 plastic pipe in operators' stocks. Moreover, the committee members had reservations about using plastic pipe of that vintage.

Assuming the SIRRC Summary Report generally reflects the present status of operators' stocks of plastic pipe, we are proposing to delete the second sentence of § 192.123(b)(2)(i) as obsolete. If this proposal were adopted as final, any stockpiled pre-1978 thermoplastic pipe whose long-term hydrostatic strength was determined at 73 °F could not be used above that temperature. We are particularly interested in hearing from industry commenters whether they still have any stockpiles of this pipe that they plan to use at temperatures above 73 °F.

6. Section 192.197(a), Control of the Pressure of Gas Delivered From High-pressure Distribution Systems. (SIRRC Summary Report, p. 11)

Recommendation. In § 192.197(a), change "under 60 psig" to "60 psig or less."

SIRRC. The committee agreed that § 192.197(a) should be changed as NAPSR recommended.

Response. Section 192.197(a) provides that in distribution systems operated "under 60 psig (414 kPa) gage," if service regulators meet certain criteria, no other pressure limiting devices are required. However, § 192.197(b) states that if those criteria are not met in systems operating at "60 psig (414 kPa) gage, or less," additional pressure control is required. Thus there is a 1 psi discrepancy between these two sections. We agree with SIRRC that § 192.197(a) should be in sync with § 192.197(b), particularly since § 192.197(c) applies to systems in which the operating pressure "exceeds 60 psig (414 kPa) gage." Therefore, we are proposing to change § 192.197(a) as NAPSR recommended.

7. Section 192.203(b)(2), Instrument, Control, and Sampling Pipe and Components. (SIRRC Summary Report, p. 12)

Recommendation. In § 192.203(b)(2), change "takeoff line" to "instrument, control, and sampling line" to clarify the lines on which a shutoff valve must be installed.

SIRRC. The committee agreed the recommended change to § 192.203(b)(2) is not needed.

Response. In Docket PS–124, we modified § 192.203(b)(2) by excepting takeoff lines that can be isolated from sources of pressure by other valving. The SIRRC Summary Report indicates this exception resolved NAPSR's concern about § 192.203(b)(2). Therefore, we are adopting the SIRRC consensus that the recommended rulemaking action is not needed.

8. Section 192.225(a), Welding: General. (SIRRC Summary Report, p. 13)

Recommendation. Change § 192.225(a) to require qualification of welding procedures according to "American Petroleum Institute (API), American Society of Mechanical Engineers (ASME), or other standards."

SIRRC. The committee agreed the recommended change is needed. However, it suggested the term "other standards" should be changed to "other accepted pipeline welding standards."

Response. We proposed to adopt the core of NAPSR's recommendation in the proceeding called "Periodic Updates to Pipeline Safety Regulations (1999)" (56 FR 15290; Mar. 22, 2000). We proposed to amend § 192.225(a)to require operators to qualify welding procedures under either Section 5 of API 1104, "Welding of Pipelines and Related Facilities," or Section IX of the ASME Boiler and Pressure Vessel Code. However, our proposal did not include allowing the use of "other accepted pipeline welding standards," as SIRRC suggested, because we are not aware of any other generally accepted pipeline welding standards.

9. Section 192.241(a), Inspection and Test of Welds. (SIRRC Summary Report, p. 14)

Recommendation. Change § 192.241(a) to require that visual inspection of welding be conducted "by an inspector qualified by appropriate training and experience."

SIRRC. The committee agreed the recommended change is needed. However, it suggested the term "inspector" should be changed to "person."

Response. In the proceeding called "Periodic Updates to Pipeline Safety Regulations (1999)" (56 FR 15290; Mar. 22, 2000), we proposed to amend § 192.241(a) as NAPSR recommended. Although we overlooked SIRRC's suggestion to use "person" instead of "inspector," we will consider the suggestion in developing the final rule.

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10. Section 192.285(c) and (d), Plastic Pipe: Qualifying Persons to Make Joints. (SIRRC Summary Report, p. 15)

Recommendation. In § 192.285, revise paragraph(c) to require that persons who join plastic pipe requalify annually to make joints. Also, revise paragraph (d) to require that operators maintain certain records for use in monitoring personnel qualifications.

SIRRC. The committee did not agree that NAPSR's recommended rule changes were needed. However, the committee did agree that in § 192.285(d) the term "his" should be replaced by a term that is not gender-specific.

Response. NAPSR was concerned that while most newly installed distribution lines are made of plastic pipe, the qualification requirements for persons who join plastic pipe are less stringent than the qualification requirements for persons who weld steel pipe. NAPSR felt the plastic pipe joining and welder qualification requirements should be comparable because the consequences of failure of a plastic pipe joint may be just as severe as the consequences of failure of a welded joint.

We do not believe NAPSR's reasoning is sufficient to justify stronger plastic pipe joining requirements. The skill needed for joining plastic pipe is so much simpler than the skill needed for welding steel pipe that the welding requirements cannot reasonably serve as a basis for establishing more stringent plastic pipe joining requirements. Therefore, we are not proposing to adopt NAPSR's recommended rule changes.

It is worth noting, though, that after SIRRC completed it's report, we published new qualification of personnel rules in Subpart N of Part 192. The competency evaluations required by these rules should enhance the qualifications of persons who make plastic pipe joints.

Section 192.285(d) now uses the term "his." As SIRRC suggested, we are proposing to change this term to "the operator's."

11. Section 192.311, Repair of Plastic Pipe. (SIRRC Summary Report, p. 18)

Recommendation. Remove the requirement from § 192.311 that a "patching saddle" must be used to repair harmful damage to new plastic pipelines if the damaged pipe is not removed.

SIRRC. The committee agreed the recommended change is needed.

Response. We concur with NAPSR that the meaning of "patching saddle" is unclear, although we have stated the term implies a plastic saddle adhered to pipe. Still, there are various means available to effect safe repairs, and we do not think it's necessary to limit the method of repair. Section 192.703(b) would forbid the use of any method that would result in an unsafe condition. So we are proposing to amend § 192.311 as NAPSR recommended.

12. Section 192.321(e), Installation of Plastic Pipe; § 192.361(g), Service Lines: Installation. (SIRRC Summary Report, p. 19)

Recommendation. To prevent underground plastic pipe from being damaged by electrically charged tracer wire and to maintain wire integrity, require separation between pipe and wire, where practical, and require that tracer wire be protected against corrosion.

SIRRC. The committee agreed to accept NAPSR's recommendation. It also agreed that § 192.321, which applies to mains and transmission lines, and § 192.361, which applies to service lines, should be changed as follows:

- Revise § 192.321(e) to read as follows:

(e) Plastic pipe that is not encased must have an electrically conducting wire or other means of locating the pipe while it is underground. Tracer wire shall not be wrapped around the pipe and contact with the pipe shall be minimized. Tracer wire or other metallic elements installed for pipe locating purposes shall be resistant to corrosion damage, either by use of coated copper wire or by other means.

- Establish § 192.361(g) to match proposed § 192.321(e).

Response. Although there have been only a few instances where highly charged tracer wire damaged buried plastic pipe, we believe separating wire from pipe wherever practical is a reasonable safeguard. It is also reasonable that tracer wire or other metallic means of pipe locating be resistant to corrosion. Therefore, we are proposing to adopt SIRRC's consensus by revising § 192.321(e) and adding § 192.361(g) as set forth below in the proposed amendments section of this notice.

We recognize that continuous separation may not be ensured when wire and pipe are installed together in the same hole made by trenchless technology. In fact, in such cases the wire is often randomly taped to the pipe to control separation during installation. The proposed requirement to minimize contact with the pipe should not deter this common installation practice.

Note that part 192 does not now require that underground plastic service lines have a means for locating the lines. However, operators commonly use tracer wire for this purpose as they do under existing § 192.321(e) for locating underground plastic mains and transmission lines.

13. Section 192.353(a), Customer Meters and Regulators: Location. (SIRRC Summary Report, p. 21)

Recommendation. Amend § 192.353(a) to emphasize that vehicular damage is a type of damage from which meters and service regulators must be protected.

SIRRC. Although the committee members agreed that the existing rule implicitly requires protection from vehicular damage, they did not agree on the need to emphasize this type of damage. Industry members thought emphasizing vehicular damage would cause more disputes with government inspectors over what level of protection is needed.

Response. In enforcing § 192.353(a), our position has been that the provision that meters and service regulators must be protected from "corrosion and other damage" requires reasonable protection from vehicular damage where warranted. SIRRC's Summary Report supports this position. Furthermore, AGA's "Guide for Gas Transmission and Distribution Piping Systems," which advises operators on compliance with Part 192, recognizes this requirement. It states with regard to § 192.353(a) that if the potential for vehicular damage is evident, the meter or service regulator should be protected or an alternate location selected.

NAPSR reported that its members had found meter sets that were damaged by vehicles or were at serious risk of such damage. When this information is considered in light of the industry's apparent understanding of the present rule, it indicates some operators may have been lax in providing needed protection. Emphasizing vehicular damage in the present rule should at least cause operators to pay more attention to the problem and perhaps reduce the risk of damage. So we are proposing to adopt NAPSR's recommendation by amending § 192.353(a) to emphasize vehicular damage.

Although § 192.353(a) affects design and does not apply to pipelines constructed before it went into effect, protection from vehicular damage is also a safety concern on earlier constructed pipelines. These pipelines, however, are subject to the general maintenance standard of § 192.703(b), which requires operators to correct any pipeline that becomes unsafe. If the safety of a meter set is jeopardized by vehicular traffic, the operator would have to take action under § 192.703(b) to correct the problem.

14. Section 192.457(b)(3), External Corrosion Control: Buried or Submerged Pipelines Installed Before August 1, 1971; 192.465(e), External Corrosion Control: Monitoring. (SIRRC Summary Report, p. 23)

Recommendation. Amend §§ 192.457(b) and § 192.465(e) to clarify the meaning of "electrical survey" and what circumstances make an electrical survey "impractical." Also, require operators to consider all relevant information when using an alternative to an electrical survey.

SIRRC. The committee concluded that electrical surveys are seldom used on distribution systems, so there is no advantage to requiring electrical surveys as a preferred corrosion inspection method on distribution systems. SIRRC further concluded that if electrical surveys are not used, all available information should be used to determine if active corrosion exists. The committee agreed that the second sentence of § 192.457(b), as it relates to distribution lines, and § 192.465(e) should be changed to read as follows:

- § 192.457(b):

The operator shall determine the areas of active corrosion by electrical survey or by analysis and review of the pipeline condition. Analysis and review shall include, but is not limited to, leak repair history, exposed pipe condition reports, and the pipeline environment. For the purpose of this section, an electrical survey is a series of closely spaced pipe-to-soil readings over a pipeline which are subsequently analyzed to identify any locations where a corrosive current is leaving the pipe.

- § 192.465(e):

(i) For transmission pipelines, after the initial evaluation required by paragraphs (b) and (c) of § 192.455 and paragraph (b) of § 192.457, each operator shall, not less than every 3 years at intervals not exceeding 39 months, reevaluate its unprotected pipelines and cathodically protect them in accordance with this subpart in areas in which active corrosion is found. The operator shall determine the areas of active corrosion by electrical survey, or where an electrical survey is impractical, by analysis and review of the pipeline condition. Analysis and review shall include, but is not limited to, leak repair history, exposed pipe condition reports, and the pipeline environment.

(ii) For distribution pipelines, after the initial evaluation required by paragraphs (b) and (c) of § 192.455 and paragraph (b) of § 192.457, each operator shall, not less than every 3 years at intervals not exceeding 39 months, reevaluate its unprotected pipelines and cathodically protect them in accordance with this subpart in areas in which active corrosion is found. The operator shall determine the areas of active corrosion by electrical survey or by analysis and review of the pipeline condition. Analysis and review shall include, but is not limited to, leak repair history, exposed pipe condition reports, and the pipeline environment.

(iii) For the purpose of this section, an electrical survey is a series of closely spaced pipe-to-soil readings over a pipeline which are subsequently analyzed to identify any locations where a corrosive current is leaving the pipe.

SIRRC also agreed that "pipeline environment" refers to whether soil resistivity is high or low, wet or dry, contains contaminants that may promote corrosion, or has any other known condition that might influence the probability of active corrosion.

Response. We recently revised the corrosion control regulations for hazardous liquid and carbon dioxide pipelines in 49 CFR part 195 (Docket RSPA–97–2762; 66 FR 66994; Dec. 27, 2001). In doing so, we relied on SIRRC's suggestion on monitoring unprotected gas transmission lines as a basis for revising the requirement to monitor unprotected pipe (see 49 CFR 195.573(b)). Because we believe SIRRC's approach is reasonable for both transmission and distribution lines, we are proposing to adopt the SIRRC suggestion on monitoring these lines by revising § 192.465(e) as set forth below in the proposed amendments section of this notice.

However, rather than change the second sentence of § 192.457(b) as SIRRC suggested, we are proposing to delete the second sentence because we think it's unnecessary. This sentence, which is repeated in § 192.465(e), is no longer needed in § 192.457(b) because the time for completing the initial evaluation of the need for corrosion control required by § 192.457(b) has expired. All subsequent evaluations are required by § 192.465(e). Also, we are proposing to move the definition of "active corrosion," now in § 192.457(c), to § 192.465(e).

15. Section 192.459, External Corrosion Control: Examination of Buried Pipeline When Exposed. (SIRRC Summary Report, p. 27)

Recommendation. Amend § 192.459 to clarify that when an operator examines the exposed portion of a buried pipeline, the operator must determine the condition of the coating and keep a record of the condition under § 192.491.

SIRRC. The committee agreed that records of coating condition are important in evaluating the overall condition of a pipeline, and that this information helps meet the continuing surveillance and active corrosion rules. The committee suggested that § 192.459 be revised to read as follows:

Whenever an operator has knowledge that any portion of a buried pipeline is exposed, the exposed portion must be examined to determine the condition of the coating, or if the pipeline is bare or the coating is deteriorated, the exterior condition of the pipe. A record of the examination results shall be made in accordance with § 192.491(c). If external corrosion is found, remedial action must be taken to the extent required by § 192.483 and the applicable paragraphs of §§ 192.485, 192.487, or 192.489.

Response. In light of NAPSR's recommendation and an earlier recommendation by the National Transportation Safety Board on inspecting exposed pipe, we revised § 192.459 to require that operators determine the extent of any corrosion that is found on the exposed portion of a pipeline (64 FR 56981, Oct. 22, 1999). At a minimum, the present rule requires that operators inspect exposed pipelines to see if the coating on coated pipe has deteriorated. In addition, § 192.491(c) requires a record of each inspection "in sufficient detail to demonstrate the adequacy of corrosion control measures or that a corrosive condition does not exist." Thus we have essentially adopted the SIRRC consensus, because the combination of § 192.459 and § 192.491(c) adequately addresses the need to examine and record the condition of coating on exposed coated pipe.

16. Section 192.467(d), External Corrosion Control: Electrical Isolation (SIRRC Summary Report, p. 28)

Recommendation. Amend § 192.467(d) to require annual electrical tests on casings to determine if there is contact with the encased pipe. Also, require remedial action according to Recommendation No. 19 if contact is found.

SIRRC. The committee did not reach agreement on the need to conduct annual tests for shorted casings, although consensus was reached on remedial action as discussed below regarding Recommendation No. 19. Industry's position on annual testing was that separate tests on casings are unnecessary as long as the pipe potential is above −850Mv. NAPSR's position was that because a shorted

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casing shields encased pipe from protective current, the encased pipe can corrode regardless of the potential of pipe outside the casing.

Response. A large majority of PS–124 commenters opposed NAPSR's recommendation on the ground that no correlation had been found between shorted casings and corrosion of the encased pipe. One commenter alleged that the purpose of § 192.467(c), which requires isolation of gas pipe from casings, is to maintain protective current levels.

Also, several commenters addressed the shorted casing issue in response to our San Antonio meeting notice. Five persons said shorts should be cleared because using more protective current to offset the short could have adverse effects. Two other commenters said that clearing shorts can be costly if the line must be taken out of service or replaced, and that there is no consensus on the adequacy of other remedial measures. Another San Antonio commenter suggested the present electrical isolation requirement of § 192.467(c) is not needed since cathodic protection has to meet the part 192 criteria for adequacy. In this regard, AGA's Gas Piping Technology Committee (GPTC) has submitted a rulemaking petition to rescind the requirement to isolate gas pipe from metallic casings, arguing there are no safety benefit from clearing shorted casings.

Considering the conflicting opinions on the need to clear shorted casings to prevent pipe corrosion, we have decided not to propose to adopt NAPSR's recommendation for annual testing. Instead we will consider the recommendation in a separate rulemaking proceeding called "Pipeline Safety: Controlling Corrosion on Gas Pipelines" (RIN 2137–AD63). In that proceeding, we will examine the need to change part 192 to improve the industry's corrosion control practices in light of new technology and the new requirements for hazardous liquid and carbon dioxide pipelines in 49 CFR part 195.

Deferring the recommendation also will give us time to gather more information on the shorted casing issue. We are particularly interested in receiving comments from anyone who has empirical data on the relation of shorted casings to pipe corrosion.

17. Section 192.475(c), Internal Corrosion Control: General. (SIRRC Summary Report, p. 29)

Recommendation. Amend § 192.475(c) to express the permissible level of hydrogen sulfide in parts-per-million as well as grains.

SIRRC. The committee agreed no further rulemaking action is needed.

Response. The PS–124 Final Rule included NAPSR's recommended change to § 192.475(c).

18. Section 192.479, Atmospheric Corrosion Control: General. (SIRRC Summary Report, p. 30)

Recommendation. Require all aboveground pipelines exposed to the atmosphere to meet the same atmospheric corrosion control and remedial requirements, no matter when the pipeline was installed.

SIRRC. The resolution of the committee was that all exposed aboveground pipe should be subject to the same atmospheric protection standards. The committee agreed that § 192.479 should be revised to read as follows, and explained that "active corrosion" does not include non-damaging corrosive films:

(a) Each aboveground pipeline or portion of a pipeline that is exposed to the atmosphere must be cleaned and either coated or jacketed with a material suitable for the prevention of atmospheric corrosion. An operator need not comply with this paragraph, if the operator can demonstrate by test, investigation, or experience in the area of application that active corrosion does not exist.

(b) If active corrosion is found on an aboveground pipeline or portion of pipeline, the operator shall—

(1) take prompt remedial action consistent with the severity of the corrosion to the extent required by the applicable paragraphs of §§ 192.485, 192.487, or 192.489; and

(2) clean and either coat or jacket the areas of atmospheric corrosion with a material suitable for the prevention of atmospheric corrosion.

Response. Section 192.479 prescribes atmospheric protection requirements according to the date of pipeline installation. Pipelines installed after July 31, 1971, must be entirely protected from atmospheric corrosion, except where the operator can demonstrate that a corrosive atmosphere does not exist. In contrast, pipelines installed before August 1, 1971, need only be protected where atmospheric corrosion has progressed to the point that remedial action is required under § 192.485, § 192.487, or § 192.489. Periodic monitoring to determine the need for remedial action is required by § 192.481.

As previously stated, we recently revised the corrosion control regulations in 49 CFR part 195 governing hazardous liquid and carbon dioxide pipelines. The old rule on protection from atmospheric corrosion (§ 195.416(i)) required full protection of all pipelines exposed to the atmosphere, regardless of the date of installation. Based on San Antonio comments that the old rule was overly burdensome, we revised the rule to allow operators to avoid coating pipelines they demonstrate will have either a light surface oxide (a non-damaging corrosion film) or atmospheric corrosion that will not affect safe operation before the next scheduled inspection (§ 195.581).

We believe § 195.581 is consistent with SIRRC's suggested change of § 192.479. Section 195.581 requires the same level of protection for old and new pipelines. Also the exceptions for a light surface oxide and corrosion that will not need remedial action before the next scheduled inspection are equivalent to SIRRC's exception of non-active corrosion. One of our goals in revising the Part 195 corrosion control regulations was to establish similar corrosion control requirements for gas and liquid pipelines wherever appropriate. Therefore, in keeping with this goal, we are proposing to use § 195.581 instead of SIRRC's suggestion as the basis for changing § 192.479. The existing standards for remedial action, §§ 192.485, 192.487, and 192.489, will provide a benchmark for any demonstrations that protection is not required before the next inspection.

NAPSR did not recommend any change to the periodic monitoring requirements of § 192.481. These requirements are comparable to the monitoring requirements for hazardous liquid and carbon dioxide pipelines under § 195.583. Both sections require monitoring for atmospheric corrosion at least every 3 years for onshore pipelines and every year for offshore pipelines. And both sections require remedial action if harmful atmospheric corrosion is found. However, § 195.583 specifies particular pipeline features, such as soil-to-air interfaces, that must be inspected, and specifies what remedial action to take. Although these differences are minor, we think the monitoring requirements for gas and hazardous liquid pipelines should be in accord. Therefore, we are proposing to amend § 192.481 to comport with § 195.583.

PS–124 commenters representing industry largely objected to NAPSR's recommendation to treat old and new pipelines alike. They feared they would have to fully protect all pre-August 1971 pipelines regardless of whether harmful corrosion was present. However, there is no basis for this concern under proposed § 192.479. Operators would not have to protect any pre-1971 pipeline or portion of pipeline for which the operator demonstrates by test, investigation, or experience appropriate to the environment of the pipeline that corrosion will only be a light surface oxide or not affect safe operation before the next scheduled inspection. We believe this approach is consistent with the present rule.

19. Section 192.483(d), Remedial Measures: General. (SIRRC Summary Report, p. 32)

Recommendation. Specify what operators must do to protect carrier pipe when a shorted casing cannot be cleared.

SIRRC. The committee agreed that § 192.483(d) should be established to read as follows:

(d) If it is determined that a casing is electrically shorted to a pipeline, the operator shall:

(1) Clear the short, if practical;

(2) Fill the casing with a corrosion inhibiting material;

(3) Monitor for leakage with leak detection equipment at least once each calendar year with intervals not exceeding 15 months; or

(4) Conduct an initial inspection with an internal inspection device capable of detecting external corrosion in a cased pipeline, and repeat at least every 5 years at intervals not exceeding 63 months.

Response. As stated above in response to Recommendation No. 16, there is conflicting information on the need to clear shorted casings. Therefore, we are not now proposing to adopt SIRRC's suggested options for dealing with shorted casings. Instead, as with Recommendation No. 16, we will consider this recommendation in a separate rulemaking proceeding called "Pipeline Safety: Controlling Corrosion on Gas Pipelines" (RIN 2137–AD63).

20. Section 192.483(e), Remedial Measures: General. (SIRRC Summary Report, p. 34)

Recommendation. Amend § 192.483 to refer to appropriate consensus standards that are to be used in determining the remaining strength of corroded pipe.

SIRRC. The committee agreed that further rulemaking action is not needed.

Response. The Final Rule in Docket PS–124 covered NAPSR's recommendation in an amendment to § 192.485(c). Thus, we agree with SIRRC that further action is not needed.

21. Section 192.489(b), Remedial Measures: Cast Iron and Ductile Iron Pipe. (SIRRC Summary Report, p. 35)

Recommendation. Clarify that internal sealing of graphitized pipe is not a method of strengthening the pipe.

SIRRC. The committee agreed that the problem of graphitization should be addressed case-by-case rather than by changing § 192.489 as NAPSR recommended.

Response. New technology may result in liners that strengthen as well as seal pipe. Therefore, we agree with SIRRC that § 192.489(b) should not be changed as NAPSR recommended.

22. Sections 192.505(a) and 192.507, Test Requirements. (SIRRC Summary Report, p. 36)

Recommendation. Amend §§ 192.505 and 192.507 to clarify that the test pressure must be high enough to substantiate the maximum allowable operating pressure (MAOP) under § 192.619(a)(2)(ii).

SIRRC. The committee did not reach an agreement on this recommendation. NAPSR members contended some operators have not substantiated MAOP because §§ 192.505 and 192.507 do not specify a minimum test pressure. On the other hand, industry members thought that because § 192.503(a)(1) already requires that pressure tests substantiate MAOP under § 192.619, there is no need to repeat the requirement in §§ 192.505 and 192.507.

Response. We addressed this issue once before. In 1988 we amended § 192.503(a)(1) specifically to indicate that § 192.619 prescribes the minimum test pressure needed to substantiate MAOP (53 FR 1635). We think this earlier action adequately clarified the minimum test pressures, and no further action is needed.

23. Sections 192.509(b) and 192.511(b) and (c), Test Requirements. (SIRRC Summary Report, p. 37)

Recommendation. To establish consistent leak test pressures for mains and service lines, require that non-plastic service lines operated at less than 1 psig be tested to at least 10 psig. Also, require that each main and service line operated at 1 psig or more be tested to 90 psig or 1.5 times the intended operating pressure, whichever is higher.

SIRRC. The committee did not reach a consensus on this recommendation. Industry members were concerned that additional equipment would be needed to test above 90 psig, and that testing existing service lines at higher pressures (as when service is reinstated or connected to a new main) could cause failures. NAPSR countered that operators could use plastic pipe test equipment, and that a test failure indicates the line is unsafe.

Response. NAPSR felt the minimum leak test pressures prescribed by §§ 192.509(b) and 192.511(b) and (c) for mains and service lines should be the same because mains and service lines are operated together. NAPSR also felt the resulting safety factors should not diminish as operating pressures increase, as they do under the present rules. Many PS–124 commenters, including some operators, agreed with NAPSR. However, AGA and other operators said there is no need to leak test steel mains and service lines operating at less than 100 psig at 1.5 times operating pressure. These commenters argued that the purpose of leak tests is not to assure the pipeline is unlikely to fail at operating pressure, but to verify that the pipeline does not leak.

The regulatory history does not explain why minimum leak test pressures under §§ 192.509(b) and 192.511(b) and (c) are not consistent. Nevertheless, lack of consistency, by itself, does not justify additional or more stringent test requirements. A link between inconsistency and safety would be needed, and NAPSR did not establish such a link. Also, because only tests for leaks rather than pipeline integrity are at issue, we do not think safety factors are relevant to determining if the present leak test pressures are appropriate. Therefore, we are not proposing to adopt NAPSR's recommendation.

24. Section 192.517, Records. (SIRRC Summary Report, p. 39)

Recommendation. To aid compliance investigations, amend § 192.517 to require that operators keep records of leak tests done under § 192.509 for pipelines to operate below 100 psig, of leak tests done under § 192.511 for service lines, and of leak tests done under § 192.513 for plastic pipelines.

SIRRC. The committee disagreed about what information is needed in leak test records. Also, industry members were concerned that distribution operators would have to keep a very large volume of individual records of limited use.

Response. Section 192.517 requires operators to record certain information about pressure tests done under §§ 192.505 and 192.507 to qualify steel pipelines to operate at 100 psig or more. NAPSR recommended that we extend this requirement to other pipelines that are pressure tested for leaks. While a few PS–124 commenters supported the recommendation, most did not. Those who opposed the recommendation generally argued that since leak tests are not as significant as tests done under §§ 192.505 and 192.507, it is unnecessary to maintain the same information about both types of tests.

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Without appropriate records, government inspection personnel have a difficult job of determining if required leak tests were indeed done. They may have to interview witnesses or draw inferences from related information. On the other hand, government's need for records must be weighed against the burden on operators to produce and maintain the records. By and large, PS–124 commenters and SIRRC industry members did not object to keeping records of leak tests. In fact, the SIRRC Summary Report states that keeping some type of leak test record is a common industry practice. It was the extent and volume of the records that SIRRC's industry members found objectionable.

In our view, NAPSR's recommended leak test records would be too burdensome, because the safety significance of leak tests is less than that of pressure tests done to establish the MAOP of pipelines operating above 100 psig. At the same time, it seems that industry's voluntary practices may satisfy the need for records to demonstrate compliance with leak test requirements. Therefore, while we are not proposing to adopt NAPSR's recommendation, we are proposing to amend § 192.517 to require that operators maintain a record of each test required by §§ 192.509, 192.511, and 192.513 for at least 5 years. This proposal should accommodate the industry's various voluntary recordkeeping practices, and allow time for government inspectors to view the records. The proposed rule would apply to leak tests done after the rule takes effect.

25. Section 192.553, Uprating: General Requirements; § 192.557 Uprating: Steel Pipelines to a Pressure That Will Produce a Hoop Stress Less Than 30% of SMYS: Plastic, Cast Iron, and Ductile Iron Pipelines. (SIRRC Summary Report, P. 41)

Recommendation. Clarify that § 192.557 does not allow MAOP to be increased without substantiation by pressure testing.

SIRRC. The committee did not reach a resolution on this recommendation. Industry members were concerned that NAPSR's recommended changes to § 192.557 would unintentionally prohibit the uprating of some pipelines that could be uprated under the present rule. However, the committee did agree that in § 192.553(d) the reference to "this part" should be changed to "§§ 192.619 and 192.621" to specify the sections that limit MAOP.

Response. We decided not to propose to adopt NAPSR's recommendation because we feel the requirement to base any increase in MAOP on a test pressure is clear under § 192.553(d). This section limits any increase in MAOP to the maximum allowed for new pipelines, which, under § 192.619(a)(2)(ii), must be based on a pressure test. However, we are proposing to adopt SIRRC's suggested change to clarify § 192.553(d).

26. Section 192.607, Determination of Class Location and Confirmation of Maximum Allowable Operating Pressure. (SIRRC Summary Report, p. 43)

Recommendation. Remove expired compliance deadlines from § 192.607.

SIRRC. The committee agreed the recommendation was no longer needed.

Response. The Final Rule in PS–124 repealed § 192.607.

27. Section 192.614(b)(2), Damage Prevention Program. (SIRRC Summary Report, p. 44)

Recommendation. Require that operators notify the public and known excavators about excavation damage prevention programs at least once a year.

SIRRC. The committee agreed to defer the recommendation to RSPA's damage prevention improvement team. (The work of that team has been assumed by the Dig Safely division of the Common Ground Alliance, a nonprofit organization that promotes best practices in damage prevention.)

Response. The present rule requires operators to notify the public and known excavators "as often as needed" to make them aware of the operator's program. This open-ended frequency permits operators to vary the timing and number of notices to recipients according to the results of their programs. Presumably fewer notices would be needed in an area where the incidence of excavation damage is low or dropping. Conversely, more would be needed if the incidence is high or increasing. Although NAPSR felt the rule should prescribe a minimum rate of notification, it did not explain why annual notification is appropriate in all situations. And we do not have data to support such an across-the-board rule change. Nevertheless, we think NAPSR's concern is mitigated by the authority of RSPA and state agencies under § 192.603(c) to require operators to modify their damage prevention procedures on a case-by-case basis as needed for safety. Meanwhile, we are working with the Common Ground Alliance to help operators improve their public education programs. If the need for rulemaking on notification frequency becomes apparent as a result of that effort, we will propose the necessary rule changes.

28. Section 192.615(a)(3)(i), Emergency Plans. (SIRRC Summary Report, p. 45)

Recommendation. Amend § 192.615(a)(3)(i) to require that operators' procedures for handling emergencies provide for prompt and effective response to reports of gas odor inside or near buildings.

SIRRC. The committee did not reach consensus on the recommended change to § 192.615(a)(3)(i), because many operators consider gas-odor reports to be potential, but not actual, emergencies. Instead, the committee agreed that operating and maintenance manuals under § 192.605(b) are a better place for procedures on responding to gas-odor reports.

Response. We agree that not all reports of gas odor indicate that gas has actually been detected. Some reports may merely indicate that someone smells what is thought to be gas but which upon investigation cannot be confirmed as gas. If operators had to treat all reports of gas odor as emergencies, their ability to respond to true emergencies might decline. Thus we are not proposing to adopt NAPSR's recommendation.

Regardless of whether a gas odor report is an emergency, both PS–124 commenters and SIRRC recognized the need for prompt investigation of gas odor reports to determine if a hazardous situation exists. We believe that by and large operators respond promptly to gas odor reports and have procedures for doing so. Nevertheless, to insure that operators have adequate procedures for responding promptly to gas odor reports, we are proposing to adopt SIRRC's suggested alternative by establishing § 192.605(b)(11). Because some operators may prefer to apply their emergency procedures to all reports of gas odor, the proposed rule allows them to do so.

29. Section 192.625 (f), Odorization of Gas. (SIRRC Summary Report, p. 47)

Recommendation. Require that operators sample gas to assure proper odorant concentration at least six times a year with an instrument capable of determining the percentage of gas in air.

SIRRC. The committee did not agree on the frequency of sampling. Industry members wanted to maintain the flexibility of the current rule, which allows operators to determine frequency based on need. NAPSR members wanted to add certainty to the rule by requiring a sampling frequency that is in keeping with common practice.

Nevertheless, the members did agree the rule should require use of an instrument, although they recognized that sampling for odorant concentration could not be done without an instrument. They also agreed the master meter exception should be relocated to minimize the potential for confusion over the acceptability of using "sniff" tests.

Response. The present rule requires operators to conduct periodic sampling to assure the proper concentration of odorant. However, operators of master meter systems (which exist mainly in mobile home parks and multifamily housing) do not have to conduct sampling if the operator verifies the system receives properly odorized gas and performs "sniff" tests to confirm the presence of odorant at the ends of the system.

NAPSR intended its recommendation to address two concerns. The first was that some operators, other than master meter operators, used "sniff" tests rather than instruments to determine odorant concentration. The second was that the required sampling frequency is vague. Regarding the first concern, both PS–124 commenters and SIRRC recognized that the present sampling requirement cannot be satisfied without using an appropriate test instrument. Indeed we believe use of an instrument is common industry practice, because a sniff test cannot accurately determine the concentration of odorant. Therefore, we are proposing to amend § 192.625(f) to state specifically that an instrument must be used to determine odorant concentration. In addition, we are not proposing to relocate the master meter exception, because we do not think its present location confuses the acceptable use of "sniff" tests.

As to NAPSR's second concern, we are certainly mindful of the importance of clarity in regulations. Yet we are uneasy about proposing a minimum sampling frequency that is not backed by consensus or a safety justification that supports the frequency. At the same time, we are persuaded by PS–124 commenters and SIRRC's industry members' view that sampling frequency is more appropriately determined on the basis of system conditions. A system might need sampling more often than six times a year in problem locations but less often at locations where odorant concentration consistently meets requirements. Also, under § 192.605(b)(1), each operator's operating and maintenance procedures must provide odorant sampling frequencies, and operators must be able to justify the frequencies. Finally, under § 192.603(c), government regulators are authorized to challenge any sampling frequencies they consider deficient on the basis of safety data. They may also require operators to amend their procedures after considering any relevant information the operator provides. We believe this review and amendment process serves as a check on any possible misuse of sampling flexibility. Therefore, we are not proposing to establish a minimum sampling frequency.

30. Section 192.723(b)(2), Distribution Systems: Leak Surveys. (SIRRC Summary Report, p. 49)

Recommendation. Amend § 192.723(b)(2) to allow leeway in meeting the leakage survey intervals.

SIRRC. The committee members agreed that NAPSR's recommendation was appropriate.

Response. In the proceeding called "Periodic Updates to Pipeline Safety Regulations (1999)" (56 FR 15290; Mar. 22, 2000), we proposed to amend § 192.723(b)(2) as NAPSR recommended.

31. Section 192.739(c), Pressure Limiting and Regulating Stations: Inspection and Testing; § 192.743(c), Pressure Limiting and Regulating Stations: Testing of Relief Devices. (SIRRC Summary Report, p. 50)

Recommendation. Clarify the meaning of "correct pressure" in § 192.739(c) and "insufficient capacity" in § 192.743(c) by cross-referencing § 192.201, which limits the overpressure of pipelines protected by pressure relieving and limiting stations.

SIRRC. The committee agreed that both sections should cross-reference § 192.201. However, the committee revised NAPSR's recommended wording to clarify that the set point of overpressure protective devices may be above the downstream MAOP.

Response. We are proposing to change §§ 192.739(c) and 192.743(c) consistent with SIRRC's suggestions. The proposed changes would require that relief devices at existing pressure limiting and regulating stations meet the same standards for operation and relieving capacity as newly installed relief devices. The PS–124 comments and SIRRC's perspective indicate that industry practices are generally in accord with this approach to compliance with §§ 192.739(c) and 192.743(c). So we believe the proposed changes would clarify these regulations and not add significantly to the costs of compliance.

32. Section 192.743(a) and (b), Pressure Limiting and Regulating Stations: Testing of Relief Devices. (SIRRC Summary Report, p. 52)

Recommendation. In view of the disadvantages of testing relief devices in place (cost, noise, and potential safety hazards from escaping gas), change § 192.743 to allow operators to use calculations to determine if relief devices are of sufficient capacity without first having to determine that testing the devices in place is not feasible.

SIRRC. The committee members agreed to accept NAPSR's recommendation.

Response. Under the present rule, operators may not use calculations to determine necessary relief capacity until they determine that testing existing relief devices in place is not feasible. In addition to SIRRC, most PS–124 commenters supported NAPSR's recommendation. For the reasons NAPSR advanced, we also believe the recommended change is appropriate. Therefore, we are proposing to change §§ 192.743(a) and (b) to remove the present preference for testing relief devices in place.

33. Section 192.745, Valve Maintenance: Transmission Lines. (SIRRC Summary Report, p. 53)

Recommendation. For each transmission line valve inspected under § 192.745, require that operators take immediate remedial action on any valve found to be inoperable, inaccessible, improperly supported, subject to external loads or unusual stresses, or inadequately protected from unauthorized operation, tampering, or damage.

SIRRC. The committee did not reach a resolution on this recommendation. Industry members questioned the need for the recommended changes.

Response. Section 192.745 requires annual inspection of transmission line valves that might be needed during an emergency. Because § 192.745 requires each inspection to include partial operation of the valve, there is no question operators must maintain these valves in an operable condition.

Section 192.745 does not regulate how soon a valve must be corrected if it is found inoperable. NAPSR recommended immediate remedial action. Most PS–124 industry commenters preferred to act "as soon as practical," so they would not have to disrupt other essential services. But NAPSR did not think this phrase reflected the urgency of the situation.

In the absence of a specified time limit for remedial action, operators may

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take a reasonable time. Although a reasonable time may be satisfactory for some maintenance duties, we agree with NAPSR that emergency valves found inoperable need priority attention. Therefore, we are proposing to amend § 192.745 to require operators to take prompt remedial action if any valve is found inoperable. Requiring prompt action rather than immediate action should allow operators the latitude they sought in scheduling maintenance activities, yet assure a timely response.

Part 192 design and construction regulations already address most of NAPSR's other objectives. For instance, § 192.179(b), a design rule, requires that onshore transmission line block valves be readily accessible, protected from tampering and damage, and adequately supported. In addition, § 192.317, a construction rule, requires protection of transmission lines from external loads and unusual stresses. Moreover, if for any reason an emergency valve becomes unsafe, such as by damage or loss of support, § 192.703(b) would require remedial action. While § 192.703 does not establish a time limit for remedial action, we think a reasonable time is sufficient for any deficiency that does not make the valve inoperable. Therefore, we are not proposing to adopt NAPSR's recommendation to shorten the allowable response time to deficiencies that do not make an emergency valve inoperable.

Part 192 does not regulate the protection of transmission line valves from unauthorized operation. However, operators commonly provide valve security. And unauthorized operation of valves has not been a significant problem on transmission lines. Also, operators of large systems can detect unauthorized operation of valves through monitoring of system pressures. Following the events of September 11, 2001, we began working with operators and other federal agencies to consider the need to improve the security of critical pipeline facilities. Given these circumstances, we are not now proposing to regulate the unauthorized operation of transmission line valves.

34. Section 192.747 Valve Maintenance: Distribution Systems. (SIRRC Summary Report, p. 54)

Recommendation. Change § 192.747, which requires annual inspection and servicing of each valve that may be needed for safe operation of a distribution system, to apply only to valves that operators designate for use in an emergency. Also, require partial operation of each emergency valve, and immediate remedial action if the valve is found to be inoperable, inaccessible, improperly supported, subject to external loads or unusual stresses, or inadequately protected from unauthorized operation, tampering, or damage.

SIRRC. Although the committee did not reach consensus on this recommendation, it agreed that remediation could include designation of an alternate emergency valve. Industry members were particularly concerned that partial operation could cause some valves to close inadvertently, with potentially dangerous consequences, and could damage valves not designed for frequent operation.

Response. NAPSR's rationale for limiting the present rule to designated emergency valves was to make clear which valves are to be inspected. However, we think § 192.605(b)(1), which requires operators to have procedures for complying with § 192.747, adequately addresses NAPSR's concern. Operators' procedures should not only explain how to inspect and service valves, but also identify which valves are to be inspected and serviced. In addition, valves intended for safe operation of a distribution system may not be the same valves operators might designate for use in an emergency. So limiting the present rule to emergency valves for the sake of clarity could inadvertently narrow the rule.

Still we think that any valve that may be needed for safe operation of a distribution system should receive priority attention if it is found inoperable. Therefore, we are proposing to amend § 192.747 to require prompt remedial action if any such valve is found inoperable, unless the operator designates an alternate valve. For the reasons stated above in response to Recommendation No. 33, we are not proposing to adopt NAPSR's recommendation to require immediate remedial action on deficient valves that remain operable. Further, because of the possibility of adverse consequences to the valve or others, we are not proposing to require partial operation of valves.

The accessibility of distribution system valves has been a safety problem in some situations. For instance, if a valve essential to stop the flow of gas in an emergency is found to be paved over, the resulting delay in operating the valve can worsen the emergency. We think § 192.605(b)(1) addresses this problem. This rule requires distribution operators to have and follow procedures to carry out the safety valve maintenance requirements of § 192.747. And these procedures should identify which distribution system valves are subject to § 192.747. If an identified safety valve is paved over without notice between annual inspections, the operator should discover the problem no later than the next annual inspection. At that time the operator would have to either correct the problem in order to carry out the inspection or revise its procedures to designate an alternative safety valve.

35. Section 192.753, Caulked Bell and Spigot Joints. (SIRRC Summary Report, p. 57)

Recommendation. Correct the conflict between § 192.621(a)(3), which allows a pressure as high as 25 psig in cast iron pipe with unreinforced bell and spigot joints, and § 192.753(a), which requires cast-iron bell and spigot joints subject to pressures of 25 psig or more to be sealed.

SIRRC. The committee members agreed the conflict should be corrected.

Response. We are proposing to change § 192.753 to remove the conflict.

Regulatory Analyses and Notices

Executive Order 12866 and DOT Policies and Procedures

RSPA does not consider this proposed rulemaking to be a significant regulatory action under Section 3(f) of Executive Order 12866 (58 FR 51735; Oct. 4, 1993). Therefore, the Office of Management and Budget (OMB) has not received a copy of this rulemaking to review. RSPA also does not consider this proposed rulemaking to be significant under DOT regulatory policies and procedures (44 FR 11034: February 26, 1979).

We prepared a Draft Regulatory Evaluation of the proposed rules, and a copy is in the docket. This regulatory evaluation concludes that the proposed changes to existing rules may actually reduce operators' costs to comply with those rules because some proposals have compliance options. If you disagree with this conclusion, please provide information to the public docket described above.

Regulatory Flexibility Act

The proposed rules are consistent with customary practices in the gas pipeline industry. Therefore, based on the facts available about the anticipated impacts of this proposed rulemaking, I certify, pursuant to Section 605 of the Regulatory Flexibility Act (5 U.S.C. 605), that this proposed rulemaking would not have a significant impact on a substantial number of small entities. If you have any information that this conclusion about the impact on small entities is not correct, please provide that information to the public docket described above.

Executive Order 13084

The proposed rules have been analyzed in accordance with the principles and criteria contained in Executive Order 13084, "Consultation and Coordination with Indian Tribal Governments." Because the proposed rules would not significantly or uniquely affect the communities of the Indian tribal governments and would not impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13084 do not apply.

Paperwork Reduction Act

Proposed §§ 192.517(b) and 192.605(b)(11) contain minor additional information collection requirements. Operators would be required under § 192.517(b) to maintain for 5 years records of certain leak tests, and under § 192.605(b)(11) to have procedures for responding promptly to a report of gas odor inside or near a building. However, we believe most operators already maintain records of leak tests and have procedures for responding to reports of gas odor inside or near buildings. Also, we believe the burden of retaining these records is minimal. These records are largely computerized. Maintaining these records on a floppy disk or computer file represents very minimal costs. So, because the additional paperwork burdens of this proposed rule are likely to be minimal, we believe that submitting an analysis of the burdens to OMB under the Paperwork Reduction Act is unnecessary. If you disagree with this conclusion, please submit your comments to the public docket.

Unfunded Mandates Reform Act of 1995

This proposed rulemaking would not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It would not result in costs of $100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector, and would be the least burdensome alternative that achieves the objective of the rule.

National Environmental Policy Act

We have analyzed the proposed rules for purposes of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*). Because the proposed rules parallel present requirements or practices, we have preliminarily determined that the proposed rules would not significantly affect the quality of the human environment. An environmental assessment document is available for review in the docket. A final determination on environmental impact will be made after the end of the comment period. If you disagree with our preliminary conclusion, please submit your comments to the docket as described above.

Impact on Business Processes and Computer Systems

We do not want to impose new requirements that would mandate business process changes when the resources necessary to implement those requirements would otherwise be applied to "Y2K" or related computer problems. The proposed rules would not mandate business process changes or require modifications to computer systems. Because the proposed rules would not affect the ability of organizations to respond to those problems, we are not proposing to delay the effectiveness of the requirements.

Executive Order 13132

The proposed rules have been analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"). The proposed rules do not propose any regulation that: (1) Has substantial direct effects on the States, the relationship between the National government and the States, or the distribution of power and responsibilities among the various levels of government; (2) imposes substantial direct compliance costs on State and local governments; or (3) preempts state law. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

List of Subjects in 49 CFR Part 192

Natural gas, Pipeline safety, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, RSPA proposes to amend 49 CFR part 192 as follows:

PART 192—TRANSPORTATION OF NATURAL AND OTHER GAS BY PIPELINE: MINIMUM FEDERAL SAFETY STANDARDS

1. The authority citation for part 192 continues to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60110, 60113, and 60118; and 49 CFR 1.53.

2. Amend § 192.3 by adding definitions of "customer meter" and "service regulator" and by revising the definition of "service line" as follows:

§ 192.3 Definitions.

* * * * *

"Customer meter" means the meter that measures the transfer of gas from an operator to a consumer.

* * * * *

"Service line" means a distribution line that transports gas from a common source of supply to an individual customer, to two adjacent or adjoining residential or small commercial customers, or to multiple residential or small commercial customers served through a meter manifold. A service line terminates at the outlet of the customer meter or at the connection to a customer's piping, whichever is further downstream, or at the connection to customer piping if there is no meter.

"Service regulator" means the device on a service line which controls the pressure of gas delivered from a higher pressure to the pressure provided to the customer. A service regulator may serve one customer or multiple customers through a meter header or manifold.

* * * * *

§ 192.123 [Amended]

3. Remove the second sentence in § 192.123(b)(2)(i).

§ 192.197 [Amended]

4. In § 192.197(a), remove the term "under 60 p.s.i. (414 kPa) gage" and add the term "60 psi (414 kPa) gage, or less," in its place.

§ 192.285 [Amended]

5. In § 192.285(d), remove the term "his" and add the term "the operator's" in its place.

6. Revise § 192.311 to read as follows:

§ 192.311 Repair of plastic pipe.

Each imperfection or damage that would impair the serviceability of plastic pipe must be repaired or removed.

7. Revise § 192.321(e) to read as follows:

§ 192.321 Installation of plastic pipe.

* * * * *

(e) Plastic pipe that is not encased must have an electrically conducting wire or other means of locating the pipe while it is underground. Tracer wire may not be wrapped around the pipe and contact with the pipe must be minimized. Tracer wire or other metallic elements installed for pipe locating purposes must be resistant to corrosion damage, either by use of coated copper wire or by other means.

* * * * *

8. Revise the first sentence of § 192.353(a) to read as follows:

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§ 192.353 Customer meters and regulators: Location.

(a) Each meter and service regulator, whether inside or outside of a building, must be installed in a readily accessible location and be protected from corrosion, vehicular, and other damage.

* * *

* * * * *

9. Add § 192.361(g) to read as follows:

§ 192.361 Service lines: Installation.

* * * * *

(g) *Locating underground service lines.* Each underground service line that is not encased must have a means of locating the pipe that complies with § 192.321(e).

§ 192.457 [Amended]

10. Amend § 192.457 as follows:

a. Remove the second sentence in paragraph (b)(3); and

b. Remove paragraph (c).

11. Revise § 192.465(e) to read as follows:

§ 192.465 External corrosion control: Monitoring.

* * * * *

(e) After the initial evaluation required by §§ 192.455(b) and (c) and 192.457(b), each operator must, not less than every 3 years at intervals not exceeding 39 months, reevaluate its unprotected pipelines and cathodically protect them in accordance with this subpart in areas in which active corrosion is found. The operator must determine the areas of active corrosion by electrical survey. However, on distribution lines and where an electrical survey is impractical on transmission lines, areas of active corrosion may be determined by other means that include review and analysis of leak repair and inspection records, corrosion monitoring records, exposed pipe inspection records, and the pipeline environment. In this section:

(1) *Active corrosion* means continuing corrosion which, unless controlled, could result in a condition that is detrimental to public safety or the environment.

(2) *Electrical survey* means a series of closely spaced pipe-to-soil readings over a pipeline that are subsequently analyzed to identify locations where a corrosive current is leaving the pipeline.

(3) *Pipeline environment* includes soil resistivity (high or low), soil moisture (wet or dry), soil contaminants that may promote corrosive activity, and other known conditions that could affect the probability of active corrosion.

12. Revise § 192.479 to read as follows:

§ 192.479 Atmospheric corrosion control: General.

(a) Each operator must clean and coat each pipeline or portion of pipeline that is exposed to the atmosphere, except pipelines under paragraph (c) of this section.

(b) Coating material must be suitable for the prevention of atmospheric corrosion.

(c) Except portions of pipelines in offshore splash zones or soil-to-air interfaces, the operator need not protect against atmospheric corrosion any pipeline for which the operator demonstrates by test, investigation, or experience appropriate to the environment of the pipeline that corrosion will—

(1) Only be a light surface oxide; or

(2) Not affect the safe operation of the pipeline before the next scheduled inspection.

13. Revise § 192.481 to read as follows:

§ 192.481 Atmospheric corrosion control: Monitoring.

(a) Each operator must inspect each pipeline or portion of pipeline that is exposed to the atmosphere for evidence of atmospheric corrosion, as follows:

(1) If the pipeline is located:	Then the frequency of inspection is:
(2) Onshore	At least once every 3 calendar years, but with intervals not exceeding 39 months
(3) Offshore	At least once each calendar year, but with intervals not exceeding 15 months.

(b) During inspections the operator must give particular attention to pipe at soil-to-air interfaces, under thermal insulation, under disbonded coatings, at pipe supports, in splash zones, at deck penetrations, and in spans over water.

(c) If atmospheric corrosion is found during an inspection, the operator must provide protection against the corrosion as required by § 192.479.

14. Amend § 192.517 as follows:

a. Designate the introductory text as paragraph (a);

b. In newly designated paragraph (a), redesignate paragraphs (a), (b), (c), (d), (e), (f), and (g) as (a)(1), (2), (3), (4), (5), (6), and (7), respectively; and

c. Add paragraph (b) to read as follows:

§ 192.517 Records.

* * * * *

(b) Each operator must maintain a record of each test required by §§ 192.509, 192.511, and 192.513 for at least 5 years.

15. In the first sentence in § 192.553(d), remove the term "this part" and add the term "§§ 192.619 and 192.621" in its place.

16. Add § 192.605(b)(11) to read as follows:

§ 192.605 Procedural manual for operations, maintenance, and emergencies.

* * * * *

(b) * * *

(11) Responding promptly to a report of gas odor inside or near a building, unless the operator's emergency procedures under § 192.615(a)(3) specifically apply to these reports.

* * * * *

17. Revise the first sentence of § 192.625(f) introductory text to read as follows:

§ 192.625 Odorization of gas.

* * * * *

(f) To assure the proper concentration of odorant in accordance with this section, each operator must conduct periodic sampling of combustible gases using an instrument capable of determining the percentage of gas in air at which the odor becomes readily detectable. * * *

* * * * *

18. Revise § 192.739(c) to read as follows:

§ 192.739 Pressure limiting and regulating stations: Inspection and testing.

* * * * *

(c) Set to control or relieve at the correct pressures consistent with the pressure limits of § 192.201(a); and

* * * * *

19. Revise § 192.743 to read as follows:

§ 192.743 Pressure limiting and regulating stations: Capacity of relief devices.

(a) Pressure relief devices at pressure limiting stations and pressure regulating stations must have sufficient capacity to protect the facilities to which they are connected consistent with the pressure limits of § 192.201(a). This capacity must be determined at intervals not exceeding 15 months, but at least once each calendar year, by testing the devices in place or by review and calculations.

(b) If review and calculations are used to determine if a device has sufficient capacity, the calculated capacity must be compared with the rated or experimentally determined relieving capacity of the device for the conditions under which it operates. After the initial calculations, subsequent calculations need not be made if the annual review documents that parameters have not changed so as to cause the rated or

experimentally determined relieving capacity to be insufficient.

(c) If a relief device is of insufficient capacity, a new or additional device must be installed to provide the capacity required by paragraph (a) of this section.

20. Amend § 192.745 as follows:

a. Designate the existing text as paragraph (a); and

b. Add paragraph (b) to read as follows:

§ 192.745 Valve maintenance: Transmission lines.

* * * * *

(b) Each operator must take prompt remedial action to correct any valve found inoperable.

21. Amend § 192.747 as follows:

a. Designate the existing text as paragraph (a); and

b. Add paragraph (b) to read as follows:

§ 192.747 Valve maintenance: Distribution systems.

* * * * *

(b) Each operator must take prompt remedial action to correct any valve found inoperable, unless the operator designates an alternate valve.

22. In § 192.753, revise the introductory text of paragraph (a) and revise paragraph (b) to read as follows:

§ 192.753 Caulked bell and spigot joints.

(a) Each cast iron caulked bell and spigot joint that is subject to pressures of more than 25 psi (172kPa) gage must be sealed with:

* * * * *

(b) Each cast iron caulked bell and spigot joint that is subject to pressures of 25 psi (172kPa) gage or less and is exposed for any reason must be sealed by a means other than caulking.

Issued in Washington, DC, on October 31, 2002.

Stacey L. Gerard,

Associate Administrator for Pipeline Safety.

[FR Doc. 02–28240 Filed 11–12–02; 8:45 am]

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Notices

Federal Register
Vol. 67, No. 219
Wednesday, November 13, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Office of the Secretary, USDA.

ACTION: Proposed collection; Comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Office of Community Development's intention to request an extension for a currently approved information collection in support of the program for 7 CFR part 25 Rural Empowerment Zones and Enterprise Communities (EZ/EC).

DATES: Comments on this notice must be received by January 13, 2003 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Norman P. Brown, Management Analyst, Office of Community Development, U.S. Department of Agriculture, STOP 3203, 1400 Independence Avenue, SW., Washington, DC 20250–3203, or by email: *nbrown@ocdx.usda.gov".*

SUPPLEMENTARY INFORMATION:

Title: Rural Empowerment Zones and Enterprise Communities (EZ/EC).

OMB Number: 0570–0027.

Expiration Date of Approval: March 31, 2003.

Type of Request: Extension for a currently approved information collection.

Abstract: USDA Rural Development's Office of Community Development administers the rural Empowerment Zones and Enterprise Communities (EZ/EC) program, an initiative designed to provide economically depressed rural areas and communities with real opportunities for growth and revitalization. Its mission: to create self-sustaining, long-term economic development in areas of pervasive poverty, unemployment, and general distress, and to demonstrate how distressed communities can achieve self-sufficiency through innovative and comprehensive strategic plans developed and implemented by alliances among private, public, and nonprofit entities.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 21 hours per response.

Respondents: Rural Empowerment Zones, rural Enterprise Communities and Champion Communities.

Estimated Number of Respondents: 178.

Estimated Number of Responses Per Respondent: 2.

Estimated Number of Responses: 356.

Estimated Total Annual Burden on Respondents: 3,762.

Copies of this information collection can be obtained from Cheryl Thompson, Regulations and Paperwork Management Branch, Support Services Division at (202) 692–0043.

Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Office of the Secretary, including whether the information will have practical utility; (b) the accuracy of the Office of the Secretary's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Cheryl Thompson, Regulations and Paperwork Management Branch, Support Services Division, U.S. Department of Agriculture, Rural Development, STOP 0742, 1400 Independence Ave. SW, Washington, DC 20250–0742. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: October 28, 2002.

Michael E. Neruda,

Deputy Under Secretary, Rural Development.

[FR Doc. 02–28718 Filed 11–12–02; 8:45 am]

BILLING CODE 3410–01–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

November 6, 2002.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Animal Plant and Health Inspection Service

Title: Brucellosis Program Cooperative Agreements—Title 9, CFR Parts 50, 51, 53, 54, 71, 76, and 78.

OMB Control Number: 0579–0047.

Summary of Collection: Brucellosis is a contagious animal disease that causes loss of young through spontaneous abortion or birth of weak offspring, reduced milk production, and infertility. It is mainly a disease of cattle, bison and swine. There is no economically feasible treatment for brucellosis in livestock. Veterinary Services, a division with USDA's Animal and Plant Health Inspection Service (APHIS), is responsible for administering regulations intended to prevent the dissemination of animal diseases, such as brucellosis, within the United States. These regulations are found in part 78 of title 9, Code of Federal Regulations. The continued presence of brucellosis in a herd seriously threatens the health of other animals. APHIS will collect information using various forms.

Need and Use of the Information: APHIS will use the information collected from the forms to continue to search for other infected herds, maintain identification of livestock, monitor deficiencies in identification of animals for movement, and monitor program deficiencies in suspicious and infected herds. This information will be used to determine brucellosis area status and aids herd owners by speeding up the detection and elimination of serious disease conditions in their herds. Without the date, APHIS' Brucellosis Eradication Program would be severely crippled.

Description of Respondents: Farms; State, Local or Tribal Government.

Number of Respondents: 7,382.

Frequency of Responses: Recordkeeping; reporting: On occasion.

Total Burden Hours: 17,681.

Animal and Plant Health Inspection Service

Title: Importation of Clementines from Spain.

OMB Control Number: 0579–NEW.

Summary of Collection: The United States Department of Agriculture Animal and Plant Health Inspection Service (APHIS) is responsible for preventing plant diseases or insect pests from entering the United States, preventing the spread of pests not widely distributed within the United States, eradicating plant pests when eradication is feasible. The Plant Protection Act authorizes the Department to carry this mission. Until recently, clementines from Spain have been imported under permit, and provided that they were cold treated for the Mediterranean fruit fly in accordance with the treatment listed in the Plant Protection and Quarantine Treatment Manual. Clementines imported from Spain were not required to meet any additional requirements in order to be imported into the United States, but were subject to inspection at the port of entry. In November 2001, importation of clementines from Spain was suspended due to live Medfly larvae being intercepted. APHIS' final rule will amend the fruits and vegetables regulations to allow the importation of clementines from Spain to resume if the clementines are cold treated en route to the United States under certain conditions, and provided that certain other pretreatment and post-treatment requirements are met.

Need and Use of the Information: APHIS will collect information to ensure that the cold treatment was successfully completed and also to ensure that no Mediterranean fruit fly are found in any of the shipment of clementines from Spain. Failure to collect this information would cripple APHIS' abilities to ensure that clementines from Spain are not carrying fruit flys.

Description of Respondents: Business or other for-profit; State, local or tribal government.

Number of Respondents: 37.

Frequency of Responses: Recordkeeping; reporting: On occasion.

Total Burden Hours: 113,200.

Animal and Plant Health Inspection Service

Title: Safeguarding System Definition Project.

OMB Control Number: 0579–NEW.

Summary of Collection: "Protecting American Agriculture" is the basic charge of the Animal and Plant Health Inspection Service (APHIS). APHIS provides leadership in ensuring the health and care of animals and plants. The Plant Protection Quarantine (PPQ) is a program within APHIS, charged with creating and maintaining a system of safeguards against accidental introduction of foreign plant and animal pests and diseases. Title IV, Agriculture Risk Protection Act (PPA) of 2000, states that APHIS needs to educate its various audiences about different kinds of invasive pests and diseases and the role APHIS plays in dealing with them. The cooperation and good will of the American people is a key element in the fight to safeguard the United States against exotic plant and animal pests and diseases while providing for a healthy and abundant food supply in the global marketplace. The Safeguarding Definition Project is intended to help APHIS better understand what the public knows about their activities, what they would like to know, and how to best communicate that information. APHIS will collect information using telephone or in-person interviews, surveys, and external focus groups.

Need and Use of the Information: APHIS will collect information to guide contractors in developing slogans and messages for the program as well as obtaining ideas for implementing the market plan. The information will also help determine key words and phrases that will resonate with the audiences and what benefits APHIS/PPQ can communicate to key audiences the ultimate objective of protecting American agriculture in the United States from unwanted pests and diseases.

Description of Respondents: Business or other for-profit; Individuals or households.

Number of Respondents: 168.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 198.

Agricultural Marketing Service

Title: National Research and Promotion Board, Council, and Committee Membership Background Information.

OMB Control Number: 0581–NEW.

Summary of Collection: The Agricultural Marketing Service (AMS) has the responsibility for implementing and overseeing research and promotion programs for a variety of commodities. Each commodity is established under specific freestanding legislation. These programs carry out projects relating to research, consumer information, advertising, sales promotion, producer information, market development and product research to assist, improve or promote the marketing distribution, and utilization of their respective commodities.

Need and Use of the Information: AMS will use form AMS–755, Research and Promotion Background Information, to determine qualifications, suitability, and availability for service on national research and promotion boards, councils, and committees. Also, the form will be used to perform background checks on the nominees, to confirm that the nominees are not delinquent with any loans and to verify that they do not have a negative history with USDA.

Description of Respondents: Individuals or households.

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Number or Respondents: 672.
Frequency of Responses: Reporting: Annually.
Total Burden Hours: 336.

Food and Nutrition Service

Title: Operating Guidelines, Forms and Waivers.
OMB Control Number: 0584–0083.
Summary of Collection: Section 11(d) of the Food Stamp Act of 1977, as amended, provides that the State agency of each participating State shall submit to the Secretary for approval a plan of operation specifying the manner in which the Food Stamp Program will be conducted within the State in every political subdivision. Section 11(e) of the Act provides that the State plan of operation shall provide for State agency verification of household eligibility prior to certification, completion of certification within 30 days of filing of the application, fair hearing, and submission of reports as required by the Secretary. The basic components of the State Plan of Operation are the Federal/State Agreement, the Budget Projection Statement, and the Program Activity Statement (272.2(a)(2)). Under part 272.2(c), the State agency shall submit to the Food and Nutrition Service (FNS) for approval a Budget Projection Statement (which projects total Federal administrative costs for the upcoming fiscal year) and a Program Activity Statement (which provides program activity data for the preceding fiscal year). FNS will collect information using Forms FNS 366A and FNS 366B.
Need and Use of the Information: FNS will collect information to estimate funding needs and also provide data on the number of applications processed, number of fair hearings, and fraud control activity. FNS uses the data to monitor State agency activity levels and performance. If the information is not collected it would disrupt budget planning and delay appropriation distributions.
Description of Respondents: State, Local or Tribal Government.
Number of Respondents: 53.
Frequency of Responses: Recordkeeping; reporting: On occasion; quarterly.
Total Burden Hours: 2,932.

Food and Nutrition Service

Title: Interactive Healthy Eating Index Questionnaire
OMB Control Number: 0584–NEW.
Summary of Collection: The Center for Nutrition Policy and Promotion (CNPP) of the U.S. Department of Agriculture (USDA) wants to improve the quality, clarity and usability of the Interactive Healthy Eating Index (IHEI). The IHEI is an Internet based diet self-assessment tool. The IHEI translates scientifically based guidance into practical information and promotes nutrition education by increasing awareness of the quality of a person's diet. Since the release of the IHEI in April 2000, CNPP has not collected official user feedback on the IHEI program and its usability. To ensure appropriate user feedback, CNPP has designed the IHEI questionnaire to collect information related to the key components and functions of the IHEI that are important to its overall quality, clarity, and usability.
Need and Use of the Information: The proposed questionnaire will collect information on the usability, clarity, and quality of the IHEI website. The questionnaire will also obtain feedback on user interest and need for addition of a personalized meal plan or suggested list of foods designed to improve a person's diet quality.
Description of Respondents: Individuals or households.
Number of Respondents: 30,000.
Frequency of Responses: Reporting: Other (one-time).
Total Burden Hours: 5,000.

Office of the Secretary, White House Liaison

Title: Advisory Committee and Research and Promotion Board Membership Background Information.
OMB Control Number: 0505–0001.
Summary of Collection: Section 1804 of the Food and Agriculture Act of 1977 (7 U.S.C. 2281, *et seq.*) requires the Department to provide information concerning advisory committee members' principal place of residence, persons or companies by whom employed, and other major sources of income. Similar information will be required of research and promotion boards/committees in addition the supplemental commodity specific questions. The Secretary appoints board members under each program. Some of the information contained on Form AD–755 is used by the Department to conduct background clearances of prospective board members required by departmental regulations. All committee members who are appointed by the Secretary require this clearance. The Office of the Secretary, White House Liaison will collect information using form AD–755, Advisory Committee and Research and Promotion Board Membership Background Information.
Need and Use of the Information: The Office of the Secretary, White House Liaison will collect information on the background of the nominees to make sure there are no delinquent loans to the United States Department of Agriculture (USDA) as well as making sure they have no previous record that could be a negative reflection to USDA. The information obtained from the form is also used in the compilation of an annual report to Congress. Failure of the Department to provide this information would require the Secretary to terminate the pertinent committee or board.
Description of Respondents: Individuals or households.
Number of Respondents: 1644.
Frequency of Responses: Reporting: Monthly.
Total Burden Hours: 823.

Rural Housing Service

Title: 7 CFR 1822–G, Rural Housing Loans, Policies, Procedures and Authorizations.
OMB Control Number: 0575–0071.
Summary of Collection: Section 523 and 524 of the Housing Act of 1949 authorizes loans for acquiring and developing housing sites for low and moderate-income housing. Information is necessary to protect the public from projects being built in areas of low need by applicants that are unable to administer the program properly.
Need and Use of the Information: Rural Housing Service (RHS) will collect the information from participating organizations to verify and ensure program eligibility requirements and the appropriate use of loans. If the information is not collected, RHS would be unable to determine if the organization qualifies for loan assistance.
Description of Respondents: Not-for-profit institutions; State, Local and Tribal Government.
Number of Respondents: 6.
Frequency of Responses: Recordkeeping; Reporting: On occasion.
Total Burden Hours: 36.

Agricultural Research Service

Title: Web Order Forms for Research Data, Materials, Models, and Publications, Speaker Bureau and Conference, Event, and Study Registration Services.
OMB Control Number: 0518–NEW.
Summary of Collection: OMB Circular 130 Management of Federal Information Resources, establishes that "agencies will use electronic media and formats* * *in order to make government information more easily accessible and useful to the public"* * * The Government Paperwork Elimination Act (GPEA), 44 USC 3504, Title XVII, requires agencies, by October 2003, to provide the option of electronic submission of information to the public. In order to provide

information and services related to its program responsibilities defined at 7 CFR 2.65, the Agricultural Research Service (ARS) needs to obtain certain basic information from the public, for example, research item or event participation requested, and name and contact information for requestor or participant. To comply with the requirements of GPEA, ARS needs to provide web forms so that customers may contact them electronically to request services such as speakers for eligible organizations; research data, materials, and models; publication; speakers; or conference, event, and study registrations.
Need and Use of the Information: ARS will use the information to respond to requests for specific services. The information will be collected electronically, by telephone, or by mail. If this collection is not conducted, ARS will be hindered from advancing its compliance with GPEA.
Description of Respondents: Individuals or households.
Number of Respondents: 11,450.
Frequency of Responses: Reporting: On occasion.
Total Burden Hours: 572.

National Agricultural Statistics Service

Title: Stock Report.
OMB Control Number: 0535–0007.
Summary of Collection: The primary function of the National Agricultural Statistics Service (NASS) is to prepare and issue current official State and national estimates of crop and livestock production. As part of this function, estimates are made for stocks of grain and oilseeds, potatoes, peanuts, hops, and rice. Grain and oilseed stocks in all positions are estimated quarterly. Grain stocks estimates are one of the most important NASS estimates, which are watched closely by growers and industry groups. General authority for data collection is granted under U.S. Code title 7, section 2204. The Hop Growers of America provides the data collection for much of the production information because of sensitivity issues an impartial third party, NASS, collects stocks and price information.
Need and Use of the Information: NASS collects information to administer farm program legislation and make decisions relative to the export-import programs. Estimates of stocks provide essential statistics on supplies and contribute to orderly marketing. Farmers and agribusiness firms use these estimates in their production and marketing decisions. Collecting this information less frequently would eliminate data needed by government, industry and farmers to keep abreast of changes at the State and national level.
Description of Respondents: Business or other for profit; Farms.
Number of Respondents: 12,876.
Frequency of Responses: Reporting: Monthly; quarterly; Semi-annually; Annually.
Total Burden Hours: 14,580.

Rural Utilities Service

Title: Advance of Loan Funds and Budgetary Control and Other Related Burdens.
OMB Control Number: 0572–0015.
Summary of Collection: The Rural Utilities Service (RUS) is authorized by the Rural Electrification Act (RE Act) of 1936, as amended, to make loans in several States and territories of the United States for rural electrification and for the purpose of furnishing and improving electric and telephone service in rural areas and to assist electric borrowers to implement demand-side management, energy conservation programs, and on-grid and off-grid renewable energy systems." Borrowers will provide the agency with information that supports the use of the funds as well as identify the type of projects for which they will use the funds.
Need and Use of the Information: RUS electric borrowers will submit RUS form 595, Financial Requirement & Expenditure Statement, to request an advance of loan funds. The information collected will ensure that loans funds are expended and advanced for RUS approved budget process and amounts. Failure to collect proper information could result in improper determinations of eligibility or improper use of funds.
Description of Respondents: Not-for-profit institutions; Business or other for-profit.
Number of Respondents: 700.
Frequency of Responses: Reporting: On occasion.
Total Burden Hours: 14,820.

Agricultural Marketing Service

Title: AMS Research and Promotion Customer Service Survey.
OMB Control Number: 0581–NEW.
Summary of Collection: The Agricultural Marketing Service (AMS) has the responsibility for the national commodity research and promotion boards. These boards are responsible for carrying out coordinated programs of research, producer and consumer education, and promotion to improve, maintain, and develop markets for various commodities. AMS has developed a survey to determine how well they have met their responsibilities and accomplished its mission.
Need and Use of the Information: AMS will use the information gathered to improve customer service with the boards and to provide them with an accurate evaluation of the boards.
Description of Respondents: Not-for-profit institutions; Farms.
Number of Respondents: 672.
Frequency of Responses: Reporting: On occasion.
Total Burden Hours: 336.

Sondra A. Blakey,
Departmental Information Collection Clearance Officer.

[FR Doc. 02–28740 Filed 11–12–02; 8:45 am]
BILLING CODE 3410–01–M

DEPARTMENT OF AGRICULTURE

Forest Service

Establishment of Stumpy Point Purchase Unit, Phillips and Lee Counties, AK

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: On September 24, 2002, the Under Secretary for Natural Resources and Environment, Department of Agriculture, created the 1,510-acre Stumpy Point Purchase Unit in Phillips and Lee Counties, Arkansas. A copy of the establishment document, which includes the legal description of the lands within the purchase unit, appears at the end of this notice.

DATES: Establishment of this purchase unit was effective September 24, 2002.

ADDRESSES: A copy of the map depicting the lands within the boundary extension is on file and available for public inspection in the Office of the Director, Lands Staff, 4th Floor—Sidney R. Yates Federal Building, Forest Service, USDA, 201 14th Street, SW., Washington, DC 20250, between the hours of 8:30 a.m. and 4:30 p.m. on business days. Those wishing to inspect the maps are encouraged to call ahead to (202) 205–1248 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Jack Craven, Lands Staff, Forest Service, (202) 205–1248.

SUPPLEMENTARY INFORMATION: Pursuant to the Secretary of Agriculture's authority under section 17, Public Law 94–588 (90 Stat. 2949), the Stumpy Point Purchase Unit was created in Phillips and Lee Counties, Arkansas.

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Dated: October 24, 2002.

Gloria Manning,

Associate Deputy Chief, National Forest System.

Establishment of the Stumpy Point Purchase Unit

Phillips and Lee County, Arkansas

The following described lands lying adjacent to the Ozark-St. Francis National Forest are determined to be suitable for the protection of the watersheds of navigable streams and for other purposes in accordance with Section 6 of the Weeks Act of 1911 (16 U.S.C. 515). Therefore, in furtherance of the authority of the Secretary of Agriculture pursuant to the Weeks Act of 1911, as amended, including Section 17 of the National Forest Management Act of 1976 (Pub. L. 94–588; 90 Stat. 2961), these lands are hereby designated and established as the Stumpy Point Purchase Unit:

Property Description

Phillips County, Arkansas

All of the Northeast Quarter (NE ¼) of Section 1 lying North and East of the St. Francis River, less the levee right-of-way, and accretions thereto, in Township 1 South, Range 4 East.

All of Section 6 lying North and East of the St. Francis River, less the levee right-of-way, and accretions thereto; all of Section 4 and accretions thereto; and all of Section 5 and accretions thereto, all in Township 1 South, Range 5 East.

All of Section 7 lying North of the St. Francis River and accretions thereto; and all of Section 8 lying North of the St. Francis River and accretions thereto, all in Township 1 South, Range 5 East.

Lee County, Arkansas

The South half (S ½) of the Southeast Quarter (SE ¼) in Section 32, Township 1 North, Range 5 East; and the South half (S ½) of the Southwest Quarter (SW ¼) and all accretions thereto in Section 33, Township 1 North, Range 5 East.

Containing 1,510 acres, more or less.

Executed in Washington, DC, this 24th day of September, 2002.

David P. Tenney for:
Mark Rey,
Under Secretary, Natural Resources and Environment.

[FR Doc. 02–28757 Filed 11–12–02; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1253]

Approval of Request for Manufacturing Authority Within Foreign-Trade Zone 126; Reno, NV (Personal Computers)

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Economic Development Authority of Western Nevada, grantee of FTZ 126, has requested authority under 15 CFR 400.32(b)(1) of the Board's regulations on behalf of Dell Computer to manufacture personal computers under zone procedures within Site 5 of FTZ 126 (filed 3–14–2002, FTZ Docket 17–2002);

Whereas, notice inviting public comment was given in **Federal Register** (67 FR 13125, 3/21/2002) and the application has been processed pursuant to the FTZ Act and the Board's regulations;

Whereas, pursuant to 15 CFR 400.32(b)(1), the Commerce Department's Assistant Secretary for Import Administration has the authority to act for the Board in making such decisions on new manufacturing/processing activity under certain circumstances, including situations where the activity is the same, in terms of products involved, as activity recently approved by the Board and similar in circumstances (15 CFR 400.32(b)(1)(i)); and,

Whereas, the FTZ Staff has reviewed the proposal, taking into account the criteria of 15 CFR 400.31, and the Executive Secretary has recommended approval;

Now, therefore, the Assistant Secretary for Import Administration, acting for the Board pursuant to 15 CFR 400.32(b)(1), concurs in the recommendation and hereby approves the request subject to the Act and the Board's regulations, including 15 CFR 400.28.

Signed at Washington, DC, this 4th day of November 2002.

Faryar Shirzad,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 02–28815 Filed 11–12–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 39–2002, 40–2002, 41–2002, 42–2002, 43–2002, 44–2002, 45–2002, 46–2002, 47–2002, and 48–2002]

Flint Ink North America Corporation—Applications For Foreign-Trade Subzone Status; Extension of Comment Period

The comment periods for the cases referenced above (67 FR 64088–64096, 10/17/2002) are being extended to February 14, 2003, to allow interested parties additional time in which to comment on the proposals. These ten related cases involve pending subzone applications from the following Foreign-Trade Zones:

Foreign-Trade Zone 143—Sacramento, California
Foreign-Trade Zone 170—Indianapolis, Indiana
Foreign-Trade Zone 182—Fort Wayne, Indiana
Foreign-Trade Zone 29—Louisville, Kentucky
Foreign-Trade Zone 47—Boone County, Kentucky
Foreign-Trade Zone 189—Kent-Ottawa-Muskegon Counties, Michigan
Foreign-Trade Zone 46—Cincinnati, Ohio
Foreign-Trade Zone 105—Providence, Rhode Island
Foreign-Trade Zone 21—Charleston, South Carolina
Foreign-Trade Zone 185—Culpeper, Virginia

Comments in writing are invited during this period. Submissions should include 3 copies. Material submitted will be available at: Foreign-Trade-Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099 14th St. NW., Washington, DC 20005.

Dated: November 5, 2002.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 02–28816 Filed 11–12–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–816]

Notice of Rescission of Antidumping Duty Administrative Review: Certain Corrosion-Resistant Carbon Steel Flat Products from Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of rescission of the antidumping duty administrative review of certain corrosion-resistant carbon steel flat products from Korea.

SUMMARY: On September 25, 2002, the Department of Commerce ("Department") published a notice of initiation of an antidumping duty administrative review on certain corrosion-resistant carbon steel flat products from Korea (67 FR 60210). This review covers three manufacturers/exporters of the subject merchandise. The period of review ("POR") is August 1, 2001 through July 31, 2002. This review has now been rescinded as a result of a timely withdrawal of the request for administrative review by the interested parties.

EFFECTIVE DATE: November 13, 2002.

FOR FURTHER INFORMATION CONTACT: Marlene Hewitt or James Doyle, Enforcement Group III, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230, telephone 202–482–1385 (Hewitt) or 202–482–0159 (Doyle), fax 202–482–1388.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930 ("Act") are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 CFR part 351 (2002).

Background

On August 6, 2002, the Department published a notice of opportunity to request an administrative review of this order for the period August 1, 2001 through July 31, 2002. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 67 FR 50856 (August 6, 2002). Bethlehem Steel Corporation, National Steel Corporation, and United States Steel Corporation, petitioners in the original investigation, producers of the domestic like product, and therefore interested parties, timely requested that the Department conduct an administrative review of sales of Pohang Iron & Steel Co., Ltd. ("POSCO"), Dongbu Steel Co., Ltd. ("Dongbu") and Union Steel Manufacturing Co., Ltd. ("Union") of subject merchandise to the United States. On September 25, 2002, in accordance with section 751(a) of the Act, the Department published in the Federal Register a notice of initiation of this antidumping duty administrative review. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 67 FR 60210 (September 25, 2002).

Rescission of Review

Petitioners withdrew their request for review on September 30, 2002. The Department's regulations provide that the Secretary will rescind an administrative review "if a party that requested a review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review." *See* 19 CFR 351.213(d)(1). Petitioners withdrew their review request within the 90–day time limit. There were no other requests for administrative review from respondents or other interested parties. Therefore, in accordance with section 351.213(d)(1) of the Department's regulations, we are rescinding this administrative review. *See* Memorandum to the File from Marlene Hewitt, Enforcement Group III: Recission of Ninth Review (October 17, 2002). The Department will issue appropriate assessment instructions to the U.S. Customs Service.

This notice serves as a reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This notice is published in accordance with section 751(a)(1) of the Act, and section 351.213(d) of the Department's regulations.

Dated: November 1, 2002.

Joseph A. Spetrini,

Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 02–28814 Filed 11–12–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–809]

Cut-to-length Carbon Steel Plate from Mexico; Notice of Extension of Time Limit for Final Results in Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: November 13, 2002.

SUMMARY: The Department of Commerce is extending the time limit for completion of the final results of the administrative review of the antidumping duty order on cut-to-length carbon steel plate from Mexico. The period of review is August 1, 2000, through July 31, 2001.

FOR FURTHER INFORMATION CONTACT: Thomas Killiam or Michael Heaney at (202)482–5222 or (202) 482–4475, respectively, AD/CVD Enforcement Group III, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Tariff Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR part 351 (2001).

On September 13, 2002, the Department published preliminary results of the administrative review of the antidumping duty order on cut-to-length carbon steel plate from Mexico (67 FR 58015). The period of review is August 1, 2000, through July 31, 2001. The review covers one producer/exporter of the subject merchandise to the United States, Altos Hornos de Mexico, S.A. de C.V.

Pursuant to section 751(a)(3)(A) of the Tariff Act, the Department shall make a final determination within 120 days after the date on which the preliminary determination is published.

The Tariff Act further provides, however, that the Department may extend the 120–day period to 180 days if it determines it is not practicable to complete the review within the foregoing time period. This review involves a number of complicated sales and cost issues. As a result, we need additional time for our analysis. Because it is not practicable to complete this administrative review within the time limit mandated by section 751(a)(3)(A) of the Tariff Act, the Department is extending the time limit for completion of the final results. Consequently, we have extended the deadline until March 12, 2002.

This extension is in accordance with section 751(a)(3)(A) of the Tariff Act (19 USC 1675(a)(3)(A)(2000)) and 19 CFR 351.213(h)(2).

Dated: November 1, 2002.

Joseph A. Spetrini,

Deputy Assistant Secretary for Import Administration Group III.

[FR Doc. 02–28813 Filed 11–12–02; 8:45 am]

BILLING CODE 3510–DS–S

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–806]

Stainless Steel Wire Rod from India: Extension of Time Limit of Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Extension of Time Limit of the Preliminary Results of Antidumping Duty Administrative Review.

SUMMARY: The Department of Commerce ("the Department") is extending the time limits of the preliminary results of the antidumping duty administrative review of stainless steel wire rod ("SSWR") from India. This review covers the period December 1, 2000 through November 30, 2001.

EFFECTIVE DATE: November 13, 2002.

FOR FURTHER INFORMATION CONTACT: Stephen Bailey, AD/CVD Enforcement Group III, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–1102.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 C.F.R. Part 351 (2001).

Background

On January 29, 2002, we published a notice of initiation of a review of SSWR from India covering the period December 1, 2000 through November 30, 2001. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, January 22, 2002 (67 FR 4236). On July 9, 2002, we published a notice of extension of the preliminary results of administrative review from September 2, 2002, to November 1, 2002. *See Stainless Steel Wire Rod from India: Extension of Time Limit of Preliminary Results of Antidumping Duty Administrative Review*, July 9, 2002 (67 FR 45481) ("*Preliminary Extension Notice*"). Additionally, on September 17, 2002, we published a notice of extension of the preliminary results of administrative review from November 1, 2002, to December 1, 2002. *See Stainless Steel Wire Rod from India: Extension of Time Limit of Preliminary Results of Antidumping Duty Administrative Review*, September 17, 2002 (67 FR 58585).

Extension Of Time Limit Of Preliminary Results

Section 751(a)(3)(A) of the Act states that if it is not practicable to complete the review within the time specified, the administering authority may extend the 245–day period to issue its preliminary results by 120 days. Because the Department has already extended these preliminary results only 90 days, we are allowed to further extend the preliminary results an additional 30 days. Completion of the preliminary results of this review within the 305–day period is not practicable for the following reasons, which were also cited in the *Preliminary Extension Notice*:

- The review involves four companies, a large number of transactions and complex adjustments.
- All companies include sales and cost investigations which require the Department to gather and analyze a significant amount of information pertaining to each company's sales practices, manufacturing costs and corporate relationships.
- Additionally, responses from three of the four companies required the Department to issue multiple supplemental questionnaires which further delayed the planned verification schedules.
- The planned verification for one of the companies was delayed due to the Department having to issue additional supplemental questionnaires.

Therefore, in accordance with section 751(a)(3)(A) of the Act, we are extending the time period for issuing the preliminary results of review by 30 days until December 31, 2002. The final results continue to be due 120 days after the publication of the preliminary results.

Dated: November 11, 2002.

Joseph A. Spetrini,

Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 02–28818 Filed 11–12–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

University of Vermont; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 AM and 5 PM in Suite 4100W, U.S. Department of Commerce, Franklin Court Building, 1099 14th Street, NW, Washington, DC.

Docket Number: 02–033. *Applicant:* University of Vermont, Burlington, VT 05405. *Instrument:* High Speed CCD Camera, Model CPL MS1000. *Manufacturer:* Canadian Photonic Labs, Canada. *Intended Use:* See notice at 67 FR 52944, August 14, 2002.

Comments: None received. *Decision:* Application denied. Instruments or apparatus of equivalent scientific value to the foreign instrument, for such purposes as this instrument is intended to be used, are being manufactured in the United States. *Reasons:* Pursuant to 15 CFR 301.5(d)(1)(iii) duty-free entry is predicated upon a finding by the Director with respect to "* * * whether an instrument or apparatus of equivalent scientific value to such article, for the purposes for which the article is intended to be used, is being manufactured in the United States." Furthermore, 15 CFR 301.5(d)(1)(i) stipulates that "The determination of scientific equivalency shall be based on a comparison of the pertinent specifications of the foreign instrument with similar pertinent specifications of comparable domestic instruments." As defined by 15 CFR 301.2(s):

Pertinent specifications are those specifications necessary for the accomplishment of the specific scientific research or science-related educational purposes described by the applicant. Specifications of features (even if guaranteed) which afford greater convenience, satisfy personal preferences, accommodate institutional commitments or limitations, or assure lower costs of acquisition, installation, operation, servicing or maintenance are not pertinent.

The applicant states that it conducted a thorough search for potential vendors of high-speed CCD imaging systems and contacted relevant manufacturers. The applicant claims that "It was during this phase that it was realized that many of the products on the market—domestic or otherwise—were (1) unnecessarily advanced and (2) prohibitively expensive for our needs." The applicant then claims, with respect to the foreign article, that "* * * the other products were unacceptable for the reasons (1) and/or (2)." The applicant also states that "The domestic products encountered during the searching were unnecessarily advanced; they were "overkill" for the intended types of applications planned."

The applicant cites only one pertinent specification respecting its requirements; namely a "high speed" CCD camera, pointing out that "Cost rises dramatically with the speed, and the domestic instruments encountered during product searching were designed for frame speeds that were unnecessarily high for the applications being planned. Consequently their costs were prohibitive." Notwithstanding design considerations, it is common industry practice to make frame and shutter speeds adjustable, as the foreign manufacturer does, so that most domestic cameras should be operable at slower rates if required. The applicant fails to specify any rate or advance any argument to the contrary.

The regulations explicitly disallow matters of cost, convenience or institutional limitations as pertinent considerations in determining eligibility for duty exemption. Furthermore, a domestic instrument whose performance specifications are superior to those of the foreign instrument is considered "scientifically equivalent." Pursuant to CFR 15 301.5 (d)(1)(i) the necessary condition for duty exemption is that "* * * the Director finds that the foreign instrument possesses one or more pertinent specifications not possessed by the domestic instrument * * *". The application has failed to cite any such specification.

Furthermore, 15 CFR 301.5(e)(7) provides, in part, as follows:

Information provided in a resubmission that * * * contradicts or conflicts with information provided in a prior submission, or is not a reasonable extension of the information contained in the prior submission, shall not be considered in making the decision on an application that has been resubmitted. Accordingly, an applicant may elect to reinforce an original submission by elaborating in the resubmission on the description of the purposes contained in a prior submission and may supply additional examples, documentation and/or other clarifying detail, *but the applicant shall not introduce new purposes or other material changes in the nature of the original application.* (Emphasis supplied.)

Consequently, in view of the applicant's own determination, cited above, that equivalent domestic instruments were "prohibitively expensive" and by its failure to specify a pertinent feature possessed by the foreign and not by domestic instruments, we conclude that a resubmission cannot establish, without introducing conflicting information or impermissible new purposes, that a scientifically equivalent domestic instrument is not available. Therefore, the application is denied.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 02–28817 Filed 11–12–02; 8:45 am]

BILLING CODE 3510–DS–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Bangladesh

November 6, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: November 14, 2002.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for swing and special shift.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 66 FR 65178, published on December 18, 2001). Also see 66 FR 59409, published on November 28, 2001.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 6, 2002.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 21, 2001, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Bangladesh and exported during the twelve-month period which began on January 1, 2002 and extends through December 31, 2002.

Effective on November 14, 2002, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
334	257,322 dozen.
335	353,041 dozen.
336/636	740,510 dozen.
363	45,979,859 numbers.
369–S [2]	2,883,230 kilograms.
645/646	651,142 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2001.

[2] Category 369–S: only HTS number 6307.10.2005.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.02–28767 Filed 11–12–02; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the Philippines

November 6, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

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EFFECTIVE DATE: November 14, 2002.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for special shift.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 66 FR 65178, published on December 18, 2001). Also see 66 FR 63031, published on December 4, 2001.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 6, 2002.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 27, 2001, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man–made fiber textiles and textile products and silk blend and other vegetable fiber apparel, produced or manufactured in the Philippines and exported during the twelve-month period which began on January 1, 2002 and extends through December 31, 2002.

Effective on November 14, 2002, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Levels in Group I	
335	245,356 dozen.
635	486,117 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2001.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
James C. Leonard III,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.02–28766 Filed 11–12–02; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Wool Textile Products Produced or Manufactured in Ukraine

November 5, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of customs adjusting limits.

EFFECTIVE DATE: November 15, 2002.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limit for Category 435 is being increased for swing, reducing the limit for Category 448 to account for the swing being applied to Category 435.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 66 FR 65178, published on December 18, 2001). Also see 66 FR 63225, published on December 5, 2001.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 5, 2002.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 29, 2001, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain wool textile products, produced or manufactured in Ukraine and exported during the twelve-month period which began on January 1, 2002 and extends through December 31, 2002.

Effective on November 15, 2002, you are directed to adjust the limits for the following categories, as provided for under the terms of the current bilateral textile agreement between the Governments of the United States and Ukraine:

Category	Adjusted twelve-month limit [1]
435	113,131 dozen.
448	62,734 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2001.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
James C. Leonard III,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 02–28768 Filed 11–12–02; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Extension of the Temporary Amendment to the Requirements for Participating in the Special Access Program and the Outward Processing Program

November 5, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs extending amendments of requirements for participation in the Special Access Program for a temporary period.

EFFECTIVE DATE: January 1, 2003.

FOR FURTHER INFORMATION CONTACT: Richard Stetson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

To qualify for treatment under the Special Access Program and Outward Processing Program, an apparel product must be assembled in an appropriate country from fabric formed and cut in the United States, including linings and pocketing, except that findings and trimmings of non-U.S. origin may be incorporated into the assembled product provided they do not exceed 25 percent of the cost of the components of the assembled product.

CITA currently allows certain linings to be considered findings and trimmings provided they are cut in the United States, exempting them from the requirement that such fabrics be formed in the United States. (63 FR 70112, as amended by 64 FR 149). A notice published in the Federal Register on September 11, 2002 requested public comments on CITA's intention to extend the current exemption period through December 31, 2004 (see 67 FR 57580).

After a review of the comments received, CITA has determined that it will extend the exemption period through December 31, 2004, effective January 1, 2003. This exemption applies to women's and girls' and men's and boys' chest type plate, "hymo" piece or "sleeve header" of woven or weft-inserted warp knit construction of coarse animal hair or man-made filaments used in the manufacture of tailored suit jackets and suit-type jackets in Categories 433, 435, 443, 444, 633, 635, 643 and 644, which are entered under the Special Access Program and Outward Processing Program.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 66 FR 65178, published on December 18, 2001).

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 5, 2002.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directives issued to you on December 14, 1998, December 24, 1998, December 9, 1999, and December 21, 2000, by the Chairman, Committee for the Implementation of Textile Agreements. Those directives concern the foreign origin exception for findings and trimmings in Categories 433, 435, 443, 444, 633, 635, 643 and 644 under the Special Access Program which was amended and extended through December 31, 2002 for women's and girls' "hymo" type interlinings and for men's and boys' "hymo" type interlinings.

Effective on January 1, 2003, by date of export, you are directed to extend through December 31, 2004, the amendment to treat non-U.S. formed, U.S.-cut interlinings for chest type plate, "hymo" piece or "sleeve header" of woven or weft-inserted warp knit construction of coarse animal hair or man-made filaments used in the manufacture of tailored suit jackets and suit-type jackets in Categories 433, 443, 633 and 643 as qualifying for findings and trimmings, including elastic strips less than one inch in width, created under the Special Access Program effective September 1, 1986 (see 51 FR 21208). In the aggregate, such interlinings, findings and trimmings must not exceed 25 percent of the cost of the components of the assembled article. Non-U.S. formed, U.S.-cut interlinings may be used in imports of women's and girls' and men's and boys' suit jackets and suit-type jackets entered under the Special Access Program (9802.00.8015) provided they are cut in the United States of a type of construction described above.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
James C. Leonard III,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.02–28765 Filed 11–12–02; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Limitations of Duty and Quota Free Imports of Apparel Articles Assembled in Beneficiary ATPDEA Countries from Regional Country Fabric

November 6, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Publishing the First 12-Month Cap on Duty and Quota Free Benefits

EFFECTIVE DATE: October 1, 2002.

FOR FURTHER INFORMATION CONTACT: Richard Stetson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 3103 of the Trade Act of 2002; Presidential Proclamation 7616 of October 31, 2002 (67 FR 67283).

Section 3103 of the Trade Act of 2002 amended the Andean Trade Preference Act (ATPA) to provide for duty-and quota-free treatment for certain textile and apparel articles imported from designated Andean Trade Promotion and Drug Eradication Act (ATPDEA) beneficiary countries. Section 204(b)(3)(B)(iii) of the amended ATPA provides duty and quota-free treatment for certain apparel articles assembled in ATPDEA beneficiary countries from regional fabric and components. More specifically, this provision applies to apparel articles sewn or otherwise assembled in one or more ATPDEA beneficiary countries from fabrics or from fabric components formed or from components knit-to-shape, in one or more ATPDEA beneficiary countries, from yarns wholly formed in the United States or one or more ATPDEA beneficiary countries (including fabrics not formed from yarns, if such fabrics are classifiable under heading 5602 and 5603 of the Harmonized Tariff Schedule (HTS) and are formed in one or more ATPDEA beneficiary countries). Such apparel articles may also contain certain other eligible fabrics, fabric components, or components knit-to-shape.

For the one-year period, beginning on October 1, 2002, and extending through September 30, 2003, preferential tariff treatment is limited under the regional fabric provision to imports of qualifying apparel articles in an amount not to exceed 2.0 percent of the aggregate square meter equivalents of all apparel articles imported into the United States in the preceding 12-month period for which data are available. For the purpose of this notice, the 12-month period for which data are available is the 12-month period that ended July 31, 2002. In Presidential Proclamation 7616 (published in the Federal Register on November 5, 2002, 67 FR 67283), the President directs CITA to publish in the Federal Register the aggregate quantity of imports allowed during each 12-month period.

For the one-year period, beginning on October 1, 2002, and extending through September 30, 2003, the aggregate quantity of imports eligible for preferential treatment under the regional fabric provision is 347,010,859 square meter equivalents. This quantity will be recalculated for each subsequent year, under Section 204(b)(3)(B)(iii). Apparel articles entered in excess of this quantity will be subject to the otherwise applicable tariffs.

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This quantity is calculated using the aggregate square meter equivalents of all apparel articles imported into the United States, derived from the set of Harmonized System lines listed in the Annex to the World Trade Organization Agreement on Textiles and Clothing (ATC), and the conversion factors for units of measure into square meter equivalents used by the United States in implementing the ATC.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.02–28764 Filed 11–12–02; 8:45 am]

BILLING CODE 3510–DR–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense (Personnel and Readiness).

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Under Secretary of Defense (Personnel and Readiness) announces the following proposed reinstatement of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by January 13, 2002.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to the Office of the Under Secretary of Defense (Personnel and Readiness) (Force Management Policy/Military Personnel Policy/Accession Policy), Attn: MAJ Tony Kanellis, Room 2B271, 4000 Defense Pentagon, Washington, DC 20301–4000.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address or call (703) 697–9269.

Title, Applicable, and OMB Control Number: DoD Loan Repayment Program (LRP); DD Form 2475; OMB Control Number 0704–0152.

Needs and Uses: Military Services are authorized to repay student loans for individuals who meet certain criteria and who enlist for active military service or enter Reserve service for a specified obligation period. Applicants who qualify for the program forward the DD Form 2475, "DoD Educational Loan Repayment Program (LRP) Annual Application," to their Military Service Personnel Office for processing. The Military Service Personnel Office verifies the information and fills in the loan repayment date, address and phone number. For the Reserve Components, the Military Service Personnel Office forwards the DD Form 2475 to the lending institution. For the active-duty Service, the Service member mails the form to the lending institution. The lending institution confirms the loan status and certification and mails the form back to the Military Service Personnel Office.

Affected Public: Business or other for-profit.

Annual Burden Hours (Including Recordkeeping): 6,750 hours.

Number of Respondents: 27,000.

Responses per Respondent: 1.

Average Burden per Response: 15 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Public Laws 99–145 and 100–180 authorize the Military Services to repay student loans for individuals who agree to enter the military in specific occupational areas for a specified service obligation period. The legislation requires the Services to verify the status of the individual's loan prior to repayment. The DD Form 2475, "DoD Educational Loan Repayment Program (LRP) Annual Application," is used to collect the necessary verification data from the lending institution.

Dated: November 4, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–28722 Filed 11–12–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Manual for Courts-Martial; Proposed Amendments

AGENCY: Joint Service Committee on Military Justice (JSC).

ACTION: Notice of summary of public comment received regarding proposed amendments to the Manual for Courts-Martial, United States (2000 ed.).

SUMMARY: The JSC is forwarding final proposed amendments to the Manual for Courts-Martial, United States (2000 ed.) (MCM) to the Department of Defense. The proposed changes, resulting from the JSC's 2002 annual review of the MCM, concern the rules of procedure applicable in trials by courts-martial. The proposed changes have not been coordinated within the Department of Defense under DoD Directive 5500.1, "Preparation and Processing of Legislation, Executive Orders, Proclamations, and Reports and Comments Thereon," May 21, 1964, and do not constitute the official position of the Department of Defense, the Military Departments, or any other government agency.

ADDRESSES: Comments and materials received from the public are available for inspection or copying at the Headquarters, U.S. Marine Corps, Military Law Branch, 2 Navy Annex, Washington, DC 20380–1775, between 8 a.m. and 3:30 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Major C. G. Carlson, USMC, Executive Secretary, Joint Service Committee on Military Justice, Headquarters, U.S. Marine Corps (JAM), 2 Navy Annex, Washington, DC 20380–1775, (703) 614–4250, (703) 695–0335 fax.

SUPPLEMENTARY INFORMATION:

Background

On 20 May 2002, the JSC published a Notice of Proposed Amendments to the Manual for Courts-Martial and a Notice of Public Meeting to receive comment on its 2002 draft annual review of the Manual for Courts-Martial. On 27 June 2002, the public meeting was held. Three individuals and two members of the press attended the public meeting. Only one individual on behalf of an organization provided oral comment. The JSC received one letter commenting on the proposed amendments.

Purpose

The proposed changes concern the rules of procedure applicable in trials by courts-martial. More specifically, the proposed changes: require the convening authority to take affirmative action in referring an eligible offense for trial as a capital case; clarify rules prohibiting unreasonable multiplication of charges; provide for trial by twelve members in capital cases, where reasonably available; make a technical change substituting "hardship duty pay" for "foreign duty pay"; amends the rules and procedures applicable to sealed exhibits; explain that the military judge must determine as a matter of law whether an order is lawful; broadens the threat or hoax offense to include weapons of mass destruction, biological and chemical agents, and hazardous materials; and increases the maximum punishment for violation of the threat or hoax article.

Discussion of Comments and Changes

In response to the request for public comment the JSC received oral and written comments on behalf of one organization. The JSC considered the public comments and is satisfied that the proposed amendments are appropriate to implement without additional modification. The JSC will forward the public comments and the proposed amendments, as modified, to the Department of Defense.

The oral and written comments provided by the organization regarding the proposed substantive changes follow:

a. Noted that in the capital courts-martial provisions no effective date was listed for the application of the twelve-member panel procedures in the rule even though the statute applied the change to offenses occurring after December 31, 2002.

b. Stated that the JSC's expansion of Paragraph 109 may be improper given that the amendment appears to create a new offense. The organization objected to this new paragraph on the grounds that the creation of new offenses is a legislative prerogative and not a rulemaking task of the President.

c. Opposed changing Article 90 to make determination of lawfulness of an order a question of law where the JSC has premised such a change on *U.S.* v. *New*, 55 M.J. 95 (CAAF). The organization contended that *New* involved Article 92 instead of Article 90. The organization stated that an explanation is necessary and change to Article 90 should be held in abeyance.

d. Observed that the Analyses as presented are inadequate and do not provide a sufficient explanation for the Committee's recommendations.

The JSC has considered these comments and has determined that the rulemaking process is adequate, satisfies statutory requirements, and provides sufficient opportunity for public participation. The JSC has determined that its proposed amendment to Paragraph 109 does not improperly infringe on the legislative prerogative of the Congress. Additionally, the proposed amendment to Article 90 is appropriate because the definition of lawfulness in Article 92 is identical to the definition in Article 90 and extending CAAF's holding to Article 90 is a proper exercise of the President's rulemaking authority.

Proposed Amendments After Consideration of Public Comment Received

The proposed amendments to the Manual for Courts-Martial are as follows:

Amend R.C.M. 103(2) by deleting "without" and replacing with "with" and by deleting "noncapital" and replacing with "capital."

Amend the Analysis accompanying R.C.M. 103(2) by inserting the following prior to the discussion of subsection (3):

"*200__ Amendment:* This definition is based on *United States* v. *Mathews*, 16 M.J. 354 (C.M.A. 1983), and R.C.M. 1004, and is consistent with the numerous affirmative steps required of a convening authority in order to refer a court-martial case as capital. *See* R.C.M. 1004 and accompanying analysis at Appendix 21, R.C.M. 1004."

Amend R.C.M. 201(f)(1)(A)(iii)(b) by substituting the following therefor:

"(b) The case has not been referred with a special instruction that the case is to be tried as capital."

Amend the Analysis accompanying R.C.M. 201(f) by inserting the following prior to the discussion of subsection (f)(2):

"*200__ Amendment:* Subsection (1)(A)(iii)(b) was changed to reflect that a convening authority must affirmatively act to refer a capital punishment eligible offense for trial as a capital case."

Amend R.C.M. 307(c)(4) by inserting the following at the end thereof:

"What is substantially one transaction should not be made the basis for an unreasonable multiplication of charges against one person."

Amend the Discussion accompanying R.C.M. 307(c)(4) by striking the first sentence.

Amend the Analysis accompanying R.C.M. 307(c)(4) by inserting the following prior to the discussion of subsection (c)(5):

"*200__ Amendment:* The first sentence of the non-binding discussion was moved, *en toto*, to subsection (4) to reflect the decision of *United States* v. *Quiroz*, which identifies the prohibition against the unreasonable multiplication of charges as a 'a long-standing principle' of military law. See *United States* v. *Quiroz*, 55 M.J. 334 (CAAF 2001)."

Amend R.C.M. 501(a)(1)(A) to read as follows:

"(A) A military judge and, except in capital cases, not less than five members."

Amend R.C.M. 501(a)(1) by inserting the following subparagraph (C) to read as follows:

"(C) In all capital cases, a military judge and no fewer than twelve members, unless twelve members are not reasonably available because of physical conditions or military exigencies. If fewer than twelve members are reasonably available, the convening authority shall detail the next lesser number of reasonably available members under twelve, but in no event fewer than five. In such a case, the convening authority shall state in the convening order the reasons why twelve members are not reasonably available."

Amend R.C.M. 805(b) by replacing the current second sentence with the following:

"No general court-martial proceeding requiring the presence of members may be conducted unless at least 5 members are present, or in capital cases, at least twelve members are present except as provided in R.C.M. 501(a)(1)(C), where twelve members are not reasonably available because of physical conditions or military exigencies. No special court-martial proceeding requiring the presence of members may be conducted unless at least 3 members are present except as provided in R.C.M. 912(h)."

Amend R.C.M. 1003(b)(2) by deleting "foreign" and substituting "hardship" therefor.

Amend the Analysis accompanying R.C.M. 1003(b)(2) by inserting the following paragraph:

"*200__ Amendment:* Hardship Duty Pay (HDP) superceded Foreign Duty Pay (FDP) on 3 February 1999. HDP is payable to members entitled to basic pay. The Secretary of Defense has established that HDP will be paid to members (a) for performing specific missions, or (b) when assigned to designated areas."

Amend R.C.M. 1004(b) by inserting the following after "(1) Notice." and before "Before":

"(A) Referral. The convening authority shall indicate that the case is to be tried as a capital case by including a special instruction in the referral block of the charge sheet. Failure to include this special instruction at the time of the referral shall not bar the convening authority from later adding the required special instruction, provided:

(i) that the convening authority has otherwise complied with the notice requirement of subsection (B); and

(ii) that if the accused demonstrates specific prejudice from such failure to include the special instruction, a continuance or a recess is an adequate remedy.

"(B) Arraignment."

Amend the analysis accompanying R.C.M. 1004(b) by substituting the following paragraph for the current first paragraph:

"*200__ Amendment:* Subsection (1)(A) is intended to provide early and definitive notice that the case has been referred for trial as a capital case. Subsection (1)(B) is intended to provide the defense written notice of the aggravating factors it intends to prove, yet afford some latitude to the prosecution to provide later notice, recognizing that the exigencies of proof may prevent early notice in some cases."

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Insert the following new R.C.M. 1103A to read os follows:

"Sealed exhibits and proceedings. If the record of trial contains exhibits, proceedings, or other matter ordered sealed by the military judge, the trial counsel shall cause such materials to be sealed so as to prevent indiscriminate viewing or disclosure. Trial counsel shall ensure that such materials are properly marked, including an annotation that the material was sealed by order of the military judge, and inserted at the appropriate place in the original record of trial. Copies of the record shall contain appropriate annotations that matters were sealed by order of the military judge and have been inserted in the original record of trial. Except as provided in the following subsections to this rule, sealed exhibits may not be opened by any party.

(1) *Examination of sealed matters.* For the purpose of this rule, "examination" includes unsealing the sealed documents, reading, viewing, or manipulating them in any way. "Examination" under this rule does not include photocopying, photographing, duplicating, or disclosing in any manner in the absence of an order from appropriate authority.

(A) *Prior to authentication.* Prior to authentication of the record by the military judge, sealed materials may not be examined in the absence of an order from the military judge based on good cause shown.

(B) *Authentication through action.* After authentication and prior to disposition of the record of trial pursuant to Rule for Courts-Martial 1111, sealed materials may not be examined in the absence of an order. Such order may be issued from the military judge upon a showing of good cause at a post-trial Article 39a session directed by the Convening Authority.

(C) *Reviewing and appellate authorities.*

(i) Reviewing and appellate authorities may examine sealed matters when those authorities determine that such action is reasonably necessary to a proper fulfillment of their responsibilities under the Uniform Code of Military Justice, the Manual for Courts-Martial, governing directives, instructions, regulations, applicable rules for practice and procedure or rules of professional responsibility.

(ii) Reviewing and appellate authorities shall not, however, disclose sealed matter or information in the absence of:

(a) Prior authorization of the Judge Advocate General in the case of review under Rule for Courts-Martial 1201(b); or

(b) Prior authorization of the appellate court before which a case is pending in the case of review under Rules for Courts-Martial 1203 and 1204.

(iii) In those cases in which review is sought or pending before the United States Supreme Court, authorization to disclose sealed materials or information shall be obtained under that Court's rules of practice and procedure.

(iv) The authorizing officials in paragraph (ii) above may place conditions on authorized disclosures in order to minimize the disclosure.

(v) Reviewing and appellate authorities include:

(a) Judge advocates reviewing records pursuant to Rule for Courts-Martial 1112;

(b) Officers and attorneys in the office of the Judge Advocate General reviewing records pursuant to Rule for Courts-Martial 1201(b);

(c) Appellate government counsel;

(d) Appellate defense counsel;

(e) Appellate judges of the Courts of Criminal Appeals and their professional staffs;

(f) The judges of the United States Court of Appeals for the Armed Forces and their professional staffs;

(g) The Justices of the United States Supreme Court and their professional staff; and

(h) Any other court of competent jurisdiction."

Insert the following Analysis to accompany new R.C.M. 1103A:

"200__ Amendment: The 1998 amendments to the Manual for Courts-Martial introduced the requirement to seal M.R.E. 412 (rape shield) motions, related papers, and the records of the hearings, to "fully protect an alleged victim of [sexual assault] against invasion of privacy and potential embarrassment." MCM Appendix 22, p. 36. As current rule 412(c)(2) reads, it is unclear whether appellate courts are bound by orders sealing 412 information issued by the military judge. See, *e.g.*, United States v. Stirewalt, 53 M.J. 582 (C.G.C.C.A. 2000).

On a larger scale, the effect and scope of a military judge's order to seal exhibits, proceedings, or materials is similarly unclear. Certain aspects of the military justice system, particularly during appellate review, seemingly mandate access to sealed materials. For example, appellate defense counsel have a need to examine an entire record of trial to advocate thoroughly and knowingly on behalf of a client. Yet there is some uncertainty about appellate defense counsel's authority to examine sealed materials in the absence of a court order.

The rule is designed to respect the privacy and other interests that justified sealing the material in the first place, while at the same time recognizing the need for certain military justice functionaries to review that same information. The rule favors an approach relying on the integrity and professional responsibility of those functionaries, and assumes that they can review sealed materials and at the same time protect the interests that justified sealing the material in the first place. Should disclosure become necessary, then the party seeking disclosure is directed to an appropriate judicial or quasi-judicial official or tribunal to obtain a disclosure order."

Amend Manual for Courts-Martial, Part IV, Paragraph 14c(2)(a), by inserting the following new subparagraph (ii) and renumbering existing subparagraphs (a)(ii) through (iv) as (a)(iii) through (v):

"(ii) Determination of lawfulness. The lawfulness of an order is a question of law to be determined by the military judge."

Amend Manual for Courts-Martial, Part IV, Paragraph 109, by deleting the current text and replacing with the following:

"109. ARTICLE 134—Threat or hoax designed or intended to cause panic or public fear.

a. Text. See paragraph 60.

b. Elements.

(1) Threat.

(a) That the accused communicated certain language;

(b) That the information communicated amounted to a threat;

(c) That the harm threatened was to be done by means of an explosive, weapon of mass destruction, biological, or chemical agent, substance, or weapon, or hazardous material;

(d) That the communication was wrongful; and

(e) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

(2) Hoax.

(a) That the accused communicated or conveyed certain information;

(b) That the information communicated or conveyed concerned an attempt being made or to be made by means of an explosive, weapon of mass destruction, biological, or chemical agent, substance or weapon, or hazardous material to unlawfully kill, injure, or intimidate a person or to unlawfully damage or destroy certain property;

(c) That the information communicated or conveyed by the accused was false and that the accused then knew it to be false;

(d) That the communication of the information by the accused was malicious; and

(e) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

c. *Explanation:*

(1) *Threat.* A "threat" means an expressed present determination or intent to kill, injure, or intimidate a person or to damage or destroy certain property presently or in the future. Proof that the accused actually intended to kill, injure, intimidate, damage, or destroy is not required.

(2) *Explosive.* "Explosive" means gunpowder, powders used for blasting, all forms of high explosives, blasting materials, fuses (other than electrical circuit breakers), detonators, and other detonating agents, smokeless powders, any explosive bomb, grenade, missile, or similar device, and any incendiary bomb or grenade, fire bomb, or similar device, and any other explosive compound, mixture, or similar material.

(3) *Weapon of mass destruction.* A weapon of mass destruction is a device designed or intended to cause death or serious bodily injury through the release, dissemination, or impact of toxic or poisonous chemicals, or their precursors; or any weapon involving a disease organism; or any weapon that is designed to release radiation or radioactivity at a level dangerous to human life.

(4) *Biological agent.* The term "biological agent" means any micro-organism (including bacteria, viruses, fungi, rickettsiac, or protozoa), pathogen, or infectious substance, and any naturally occurring, bioengineered, or synthesized component of any such micro-organism, pathogen, or infectious substance, whatever its origin or method of production, that is capable of causing—

(i) death, disease, or other biological malfunction in a human, an animal, a plant, or another living organism;

(ii) deterioration of food, water, equipment, supplies, or materials of any kind; or

(iii) deleterious alteration of the environment.

(5) *Chemical agent, substance, or weapon.* A chemical agent, substance or weapon refers to a toxic chemical and its precursors and or a munition or device, specifically designed to cause death or other harm through toxic properties of those chemicals which would be released as a result of the employment of such munition or device, and any equipment specifically designed for use directly in connection with the employment of such munitions or devices.

(6) *Hazardous material.* A substance or material (including explosive, radioactive material, etiologic agent, flammable or combustible liquid or solid, poison, oxidizing or corrosive material, and compressed gas, or mixture thereof) or a group or class of material designated as hazardous by the Secretary of Transportation.

(7) *Malicious.* A communication is "malicious" if the accused believed that the information would probably interfere with the peaceful use of the building, vehicle, aircraft, or other property concerned, or would cause fear or concern to one or more persons.

d. *Lesser included offenses.*

(1) Threat.

(a) Article 134—communicating a threat

(b) Article 80—attempts

(c) Article 128—assault

(2) Hoax. Article 80—attempts.

e. *Maximum punishment.* Dishonorable discharge, forfeitures of all pay and allowances and confinement for 10 years.

f. *Sample specifications.*

(1) Threat.

In that _____ (personal jurisdiction data) did, (at/on board—location) on or about _____20___, wrongfully communicate certain information, to wit: _____, which language constituted a threat to harm a person or property by means of a(n) [explosive, weapon of mass destruction, biological agent or substance, chemical agent or substance and/or (a) hazardous material[s]]].

(2) Hoax.

In that _____ (personal jurisdiction data) did, (at/on board—location), on or about _____ 20___, maliciously (communicate) (convey) certain information concerning an attempt being made or to be made to unlawfully [(kill) (injure) (intimidate) _____] [(damage) (destroy) _____] by means of a(n) [explosion, weapon of mass destruction, biological agent or substance, chemical agent or substance, and/or (a) hazardous material(s)], to wit: _____, which information was false and which the accused then knew to be false."

Amend the Analysis accompanying Punitive Article 134, Paragraph 109, subparagraph c, by inserting the following at the end thereof:

"200__ Amendment: This paragraph has been expanded to annunciate the various means by which a threat or hoax is based. Whereas explosives were the instruments most commonly used in the past, new types of weapons have developed. These devices include weapons of mass destruction, chemical agents, biological agents, and hazardous materials."

Amend the Analysis accompanying Punitive Article 134, Paragraph 109, subparagraph e, by inserting the following at the end thereof:

"200__ Amendment: This amendment increases the maximum punishment currently permitted under paragraph 109 from 5 years to 10 years. Ten years is the maximum period of confinement permitted under 18 U.S.C. 844(e), the U.S. Code section upon which the original paragraph 109 is based.

Amend the Analysis accompanying Punitive Article 90 by inserting the following new subparagraph c(2)(a)(ii) and renumbering existing subparagraphs (a)(ii) through (iv) as (a)(iii) through (v):

"200__ Amendment: The Court of Appeals for the Armed Forces held that the lawfulness of an order is a question of law to be determined by the military judge, not the trier of fact. See United States v. New, 55 M.J. 95 (C.A.A.F.)."

Dated: November 4, 2002.

Patricia L. Toppings,

Alternate OSD Federol Register Liaison Officer, Department of Defense.

[FR Doc. 02–28725 Filed 11–12–02; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Class Tuition Waivers

AGENCY: Department of Defense Education Activity (DoDEA), Defense (DoD).

ACTION: Notice.

SUMMARY: The Secretary of Defense is authorized by Section 1404(c) of Public Law 95–561, "Defense Dependents' Education Act of 1978," as amended, 20 U.S.C. 923(c) to identify classes of dependents who may enroll in DoD Dependent Schools (DoDDS) if there is space available and to waive tuition for any such classes. Through DoD Directive 1342.13, "Eligibility Requirements for Education of Minor Dependents in Overseas Areas," dated July 8, 1982, as amended, paragraph 5.3.4, the Secretary has delegated to the Office of the Assistant Secretary of Defense for Force Management Policy (ASD) (FMP) the authority to identify those classes of dependents for whom tuition may be waived.

This notice announces that the ASD (FMP) designated certain classes of dependents for whom tuition may be waived on a space-available, tuition-free basis on the dates listed below:

August 16, 2002—Dependents, whose second language is English, of personnel assigned to the Argentinean Liaison Office, International Coordination Center (ICC) Headquarters, Supreme Headquarters Allied Powers, Europe (SHAPE) in Belgium. This waiver applies to dependents attending SHAPE Elementary School and SHAPE High School. This class tuition waiver is in effect only for School Year 2002–2003.

Dated: November 4, 2002.

Patricia L. Toppings,

Alternate OSD Federol Register Liaison Officer, Department of Defense.

[FR Doc. 02–28721 Filed 11–12–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Business Practice Implementation Board; Notice of Advisory Committee Meeting

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The Defense Business Practice Implementation Board (DBB) will meet in open session on Thursday, November 21, 2002, at the Pentagon, Washington, DC from 0900 until 1030. The mission of the DBB is to advise the Senior Executive Council (SEC) and the Secretary of Defense on effective strategies for implementation of best business practices of interest to the Department of Defense. At this meeting, the Board's Management Information Task Group will deliberate on its findings and proposed recommendations related to tasks assigned earlier this year.

DATES: Thursday, November 21, 2002, 0900 to 1030 hrs.

ADDRESSES: Pentagon, Washington, DC.

FOR FURTHER INFORMATION CONTACT: The DBB may be contacted at: Defense Business Practice Implementation Board, 1100 Defense Pentagon, Washington, DC 20301–1100, via E-mail at *DBB@osd.pentagon.mil*, or via phone at (703) 695–0505.

SUPPLEMENTARY INFORMATION: Members of the public who wish to attend the meeting must contact the Defense Business Practices Implementation Board no later than Thursday, November 14 for further information about admission as seating is limited. Additionally, those who wish to make oral comments or deliver written comments should also request to be

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scheduled, and submit a written text of the comments by Wednesday, November 13 to allow time for distribution to the Board members prior to the meeting. Individual oral comments will be limited to five minutes, with the total oral comment period not exceeding thirty-minutes.

Dated: November 4, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–28723 Filed 11–12–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Advisory Committee on Military Personnel Testing

AGENCY: Assistant Secretary of Defense for Force Management Policy, DoD.

ACTION: Notice.

SUMMARY: Pursuant to Pub. L. 92–463, notice is hereby given that a meeting of the Defense Advisory Committee on Military Personnel Testing is scheduled to be held. The purpose of the meeting is to review planned changes and progress in developing computerized and paper-and-pencil enlistment tests and renorming of the tests.

DATES: December 5, 2002, from 8 a.m. to 5 p.m., and December 6, 2002, from 8 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at the Mulberry Inn, Savannah, Georgia.

FOR FURTHER INFORMATION CONTACT: Dr. Jane M. Arabian, Assistant Director, Accession Policy, Office of the Assistant Secretary of Defense (Force Management Policy), Room 2B271, The Pentagon, Washington, DC 20301–4000, telephone (703) 697–9271.

SUPPLEMENTARY INFORMATION: Persons desiring to make oral presentations or submit written statements for consideration at the Committee meeting must contact Dr. Jane M. Arabian at the address or telephone number above no later than November 20, 2002.

Dated: November 4, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–28724 Filed 11–12–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 13, 2002.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.*, new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: November 6, 2002.

John D. Tressler,

Leader, Regulatory Management Group, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: Extension.

Title: Annual Protection and Advocacy of Individual Rights (PAIR) Program Performance Report.

Frequency: Annually.

Affected Public:

Not-for-profit institutions; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 57. *Burden Hours:* 342.

Abstract: Form RSA–509 will be used to analyze and evaluate the Protection and Advocacy of Individual Rights (PAIR) Program administered by eligible systems in states. These systems provide services to eligible individuals with disabilities to protect their legal and human rights.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2182. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivian_reese@ed.gov*. Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to (202) 708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at her e-mail address *Sheila.Carey@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–28741 Filed 11–12–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before December 13, 2002.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, *Attention:* Karon Lee, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address *Karen_F._Lee@omb.eop.gov*.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public.comment.

Dated: November 6, 2002.

John D. Tressler,

Leader, Regulatory Management Group, Office of the Chief Information Officer.

Office of the Under Secretary

Type of Review: New.

Title: Longitudinal Assessment of CSR Implementation and Outcomes (LACIO).

Frequency: Annually.

Affected Public: State, local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 4,380.

Burden Hours: 2,567.

Abstract: This evaluation assesses the accomplishments of the CSR program in implementing school reform and thereby improving student achievement. The evaluation also makes a preliminary assessment of the conditions influencing the sustainability of reforms once federal support ends. The evaluation uses a variety of data sources to understand the complex interplay of state policies, school district, educational support, and CSR school conditions affecting CSR implementation and outcomes. The major evaluation questions are: (1) To what extent have CSR-supported schools made gains on state assessments in comparison to gains for schools in the same state with similar characteristics; (2) How effective is CSR support for reform; and (3) How have district policies and state policies affected CSR implementation and comprehensive school reform. A mixed method approach will be used to collect appropriate data for addressing each evaluation question. The methods include mail surveys of 400 CSR-program and 40 non-CSR program schools, telephone surveys of 50 districts and 20 states, and a case study inquiry of 30 "sites" to provide data on vertical slices of the CSR program (each "site" comprises a CSR school and comparison school, as well as the district, state, and support infrastructure in which the schools operate). Evaluators will be able to link information from these various sources in order to provide policymakers and other stakeholders with coherent findings.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2091. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivan.reese@ed.gov*. Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to (202) 708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to James Jones at *James.Jones@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–28742 Filed 11–12–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–57–000]

Alliance Pipeline L.P.; Notice of Proposed Change in FERC Gas Tariff

November 6, 2002.

Take notice that on October 31, 2002, Alliance Pipeline L.P. (Alliance) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Second Revised Sheet No. 279, to become effective December 1, 2002.

Alliance states that Sheet No. 279 sets forth the available delivery points on its pipeline system. Alliance further states that it recently added a new delivery point located at Richland County, North Dakota, for the purpose of delivering volumes of natural gas to Tri-State Ethanol Company, L.L.C. Alliance is submitting Second Revised Sheet No. 279 to reflect the addition of the new delivery point to the list of delivery points available under its FERC Gas Tariff.

Alliance states that copies of its filing have been mailed to all customers, state commissions, and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions

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on the Commission's web site under the "e-Filing" link.

Magalie R. Salas,
Secretary.
[FR Doc. 02–28780 Filed 11–12–02; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–301–058]

ANR Pipeline Company; Notice of Negotiated Rate

November 6, 2002.

Take notice that on October 31, 2002, ANR Pipeline Company, (ANR) tendered for filing three negotiated rate agreements between ANR and ExxonMobil Gas Marketing Company, a division of Exxon Mobil Corporation pursuant to ANR's Rate Schedules PTS–2, ITS and ITS (Liquefiables). ANR tenders these agreements pursuant to its authority to enter into negotiated rate agreements. ANR also requests confidential treatment of a Lease Dedication Agreement. ANR requests that the Commission accept and approve the agreements to be effective November 1, 2002.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,
Secretary.
[FR Doc. 02–28795 Filed 11–12–02; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–301–059]

ANR Pipeline Company; Notice of Negotiated Rate

November 6, 2002.

Take notice that on November 1, 2002, ANR Pipeline Company, (ANR) tendered for filing two negotiated rate agreements between ANR and Ocean Energy, Inc. pursuant to ANR's Rate Schedules ITS and ITS (Liquefiables). ANR tenders these agreements pursuant to its authority to enter into negotiated rate agreements. ANR also requests confidential treatment of a Lease Dedication Agreement. ANR requests that the Commission accept and approve the agreements to be effective December 1, 2002.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,
Secretary.
[FR Doc. 02–28796 Filed 11–12–02; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–301–060]

ANR Storage Company; Notice of Material Deviation Filing

November 6, 2002.

Take notice that on November 1, 2002, ANR Pipeline Company (ANR), tendered for filing a Lease Dedication Agreement entered into with Minerals Management Service (MMS). ANR seeks confidential treatment of the Lease Dedication Agreement.

To the extent Commission approval of the Lease Dedication Agreement is required under the circumstances, ANR respectfully requests that the Commission accept and approve the MMS Lease Dedication Agreement to be effective November 1, 2002.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before November 13, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,
Secretary.
[FR Doc. 02–28797 Filed 11–12–02; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–60–000]

CenterPoint Energy Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

November 6, 2002.

Take notice that on November 1, 2002, CenterPoint Energy Gas Transmission Company (CEGT) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, to be effective December 1, 2002.

CEGT states that the purpose of this filing is to revise its Tariff to make certain changes primarily of a "housekeeping" nature.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Magalie R. Salas,
Secretary.
[FR Doc. 02–28782 Filed 11–12–02; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–200–089]

CenterPoint Energy Gas Transmission Company; Notice of Negotiated Rate

November 6, 2002.

Take notice that on November 1, 2002, CenterPoint Energy Gas Transmission Company (CEGT) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets to be effective November 1, 2002:

Original Sheet No. 659
Original Sheet No. 660
Original Sheet No. 661
Original Sheet No. 662
Original Sheet No. 663
Sheet Nos. 664–699

CEGT states that the purpose of this filing is to reflect the implementation of two new negotiated rate transactions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Magalie R. Salas,
Secretary.
[FR Doc. 02–28787 Filed 11–12–02; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–190–021]

Colorado Interstate Gas Company; Notice of Negotiated Rates

November 6, 2002.

Take notice that on October 31, 2002, Colorado Interstate Gas Company (CIG) tendered for filing a Firm Transportation Service Agreement (FTSA) and the following tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1,Eighth Revised Sheet No. 1; Original Sheet No. 11O; Original Sheet No. 11P; Original Sheet No. 11Q; Original Sheet No. 11R and Original Sheet No. 11S, to be effective December 1, 2002.

CIG states that the tendered tariff sheets, which are proposed to become effective December 1, 2002, implement three negotiated rate transactions representing partial contractual subscription of the Valley Line 2002 Expansion Project at Docket No. CP01–45–000, *et al.* In addition, the FTSA, which also constitutes an additional level of capacity subscription for the Valley Line 2002 Expansion Project, is being submitted for acceptance under the Commission's negotiated rate and material deviation policies, if applicable, and is also proposed to become effective December 1, 2002.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically

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via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–28786 Filed 11–12–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–389–070]

Columbia Gulf Transmission Company; Notice of Compliance Filing

November 6, 2002.

Take notice that on November 1, 2002, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Seventh Revised Sheet No. 316, to become effective October 22, 2002.

Columbia Gulf states on September 27, 2002, it made a filing with the Commission seeking approval of a Rate Schedule PAL negotiated rate agreement Occidental Energy Marketing, Inc. (Occidental) in Docket No. RP96–389–068. On October 22, 2002, the Commission issued an order approving the service agreement effective October 1, 2002. The order directed Columbia Gulf to file a tariff sheet identifying the agreement as a non-conforming agreement in compliance with Section 154.112(b) of the Commission's regulations. The instant filing is being made to comply with Section 154.112(b) and reference the non-conforming service agreement in its Volume No. 1 tariff.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings.*See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–28790 Filed 11–12–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP00–319–002 and RP00–598–002]

Discovery Gas Transmission LLC; Notice of Compliance Filing

November 6, 2002.

Take notice that on October 31, 2002, Discovery Gas Transmission LLC (Discovery) tendered for filing in its FERC Gas Tariff, Original Volume No. 1, the following pro forma tariff sheet in compliance with the Commission's Order on Compliance with Order Nos. 637, 587–G and 587–L, issued May 1, 2002:

Substitute Original Sheet No. 197

Discovery further states that copies of the filing have been mailed to each of its customers, interested State Commissions and other interested persons.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–28773 Filed 11–12–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–21–000]

Eastern Shore Natural Gas Company; Notice of Tariff Filing

October 31, 2002.

Take notice that on October 15, 2002, Eastern Shore Natural Gas Company (Eastern Shore) tendered for filing as part of its FERC Gas Tariff, second revised volume no. 1, first revised sheet no. 10, with an effective date of November 1, 2002.

Eastern Shore states that section 38(b), "Gas Supply Realignment Costs" authorizes it to seek recovery of all gas supply realignment costs prudently incurred as a result of implementing, in connection with implementing, or attributable to the requirements of FERC Order No. 636.

Eastern Shore states that such prudently incurred costs are now known and measurable in the amount of $196,379.71 and therefore seeks the necessary authorization to recover such costs in accordance with the General Terms and Conditions of its tariff.

Eastern Shore states that, consistent with the Commission's policy and the general terms and conditions of its FERC Gas Tariff, 90 % of such costs, or $176,741.74, is recoverable from eligible firm customers while the remaining 10 %, or $19,637.97, is recoverable through a volumetric surcharge of $0.0185 per dekatherm applied to deliveries made pursuant to Eastern Shore's rate schedule IT.

Eastern Shore states that copies of its filing has been mailed to its customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. all such motions or protests must be filed on or before November 7, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–28801 Filed 11–13–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–62–000]

El Paso Natural Gas Company; Notice of Service Agreement

November 6, 2002.

Take notice that on November 1, 2002, El Paso Natural Gas Company (EPNG) tendered for filing a contract provision for review by the Commission under its material deviation policies. EPNG states that copies of the filing have been served upon all shippers on EPNG's system and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed on or before November 13, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–28784 Filed 11–12–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–287–059]

El Paso Natural Gas Company; Notice of Negotiated Rate

November 6, 2002.

Take notice that on November1, 2002, El Paso Natural Gas Company (EPNG) tendered for filing to its FERC Gas Tariff, Second Revised Volume No. 1–A, the following tariff sheets, to become effective November 1, 2002:

Thirty-Sixth Revised Sheet No. 30
Thirtieth Revised Sheet No. 31

EPNG states that the tariff sheets are being filed to implement new negotiated rate contracts pursuant to the Commission's Statement of Policy on Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines and Regulation of Negotiated Transportation Services of Natural Gas Pipelines issued January 31, 1996 at Docket Nos. RM95–6–000 and RM96–7–000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–28792 Filed 11–12–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–56–000]

Guardian Pipeline, L.L.C.; Notice of Proposed Changes in FERC Gas Tariff

November 6, 2002.

Take notice that on October 31, 2002, Guardian Pipeline, L.L.C. (Guardian), tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, revised tariff sheets listed in Appendix A attached to the filing, to be effective December 1, 2002.

Guardian states that the purpose of this filing is to establish two new rate schedules: (1) An enhanced aggregation and wheeling service under Rate Schedule EAW, and (2) a parking and lending service under Rate Schedule PAL. Guardian explains that these new services, developed by Guardian in conjunction with its shippers, will enable Guardian's current and future shippers to maximize the flexibility of the transportation services offered by Guardian as well as maximize opportunities to move gas between the pipelines with which Guardian interconnects upstream of its Joliet Compressor Station. Guardian also states that these services will be useful imbalance management tools for shippers consistent with the Commission's direction in Order No. 637. Guardian's Rate Schedule EAW and Rate Schedule PAL are described in detail in Guardian's filing in this docket.

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Guardian states that copies of this tariff filing are being served on its shippers and the Wisconsin and Illinois public service commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings.*See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–28779 Filed 11–12–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–61–000]

Gulf States Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

November 6, 2002.

Take notice that on November 1, 2002, Gulf States Transmission Corporation (Gulf States) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, certain tariff sheets listed on Appendix A to the filing with an effective date of October 1, 2002.

Gulf States states that the filing is being made to reflect sequential pagination of tariff sheets that were accepted by the Commission on September 25, 2002 in Gulf States Order No. 637 compliance filing and accepted on September 27, 2002 in Gulf States Order No. 587–O compliance filing.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–28783 Filed 11–12–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–118–005]

High Island Offshore System, L.L.C.; Notice of Negotiated Rate Filing

November 6, 2002.

Take notice that on October 31, 2002, High Island Offshore System, L.L.C. (HIOS) tendered for filing a Negotiated Rate Arrangement with ExxonMobil Gas Marketing Company (ExxonMobil). HIOS requests that the Commission approve the Negotiated Rate Arrangement effective November 1, 2002.

HIOS states that the filed Negotiated Rate Arrangement reflects negotiated rates between HIOS and ExxonMobil for transportation under Rate Schedule FT–2 beginning November 1, 2002.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings.*See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–28777 Filed 11–12–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–18–006]

Iroquois Gas Transmission System, L.P.; Notice of Negotiated Rate

November 6, 2002.

Take notice that on November 1, 2002, Iroquois Gas Transmission System, L.P. tendered for filing Fourth Revised Sheet No. 6. Iroquois requests that the Commission approve the tariff sheet effective November 1, 2002.

Iroquois states that the revised tariff sheets reflect a negotiated rate between Iroquois and Sempra Energy Trading Corp. for transportation under Rate Schedule RTS beginning on November 1, 2002 through November 1, 2004.

Iroquois states that copies of its filing were served on all jurisdictional customers and interested state regulatory agencies and all parties to the proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–28793 Filed 11–12–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–412–001]

KO Transmission Company; Notice of Compliance Filing

November 6, 2002.

Take notice that on November 1, 2002, KO Transmission Company (KOT) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheet with a proposed effective date of October 1, 2002:

Substitute Fourth Revised Sheet No. 147

KOT tendered this tariff filing as required by the Commission's Letter Order issued September 30, 2002, wherein the Commission accepted KOT's filing in compliance with Order No. 587–0, but directed that tariff sheets be revised and refiled to reflect only Version 1.5 as the current version for all applicable NAESB standards.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings.*See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–28778 Filed 11–12–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–176–071]

Natural Gas Pipeline Company of America; Notice of Negotiate Rate

November 6, 2002.

Take notice that on November 1, 2002, Natural Gas Pipeline Company of America (Natural) tendered for filing to become part of its FERC Gas Tariff, Sixth Revised Volume No. 1, certain revised tariff sheets, to be effective December 1, 2002.

Natural states that the purpose of this filing is to implement an extension to an existing negotiated rate transaction under Natural's Rate Schedule FTS pursuant to Section 49 of the General Terms and Conditions of Natural's Tariff. Natural states that the revised negotiated rate agreement does not deviate in any material respect from the applicable form of service agreement in Natural's Tariff.

Natural states that copies of the filing are being mailed to all parties set out on the Commission's official service list in Docket No. RP99–176.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–28794 Filed 11–12–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER02–2435–000 and ER02–2435–001]

Orion Power New York GP II, Inc.; Notice of Issuance of Order

November 5, 2002.

Orion Power New York GP II, Inc. (Orion New York) submitted for filing a proposed tariff under which Orion New York will engage in the sales of energy

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and capacity at market-based rates, and for the reassignment of transmission capacity. Orion New York also requested waiver of various Commission regulations. In particular, Orion New York requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Orion New York.

On October 18, 2002, pursuant to delegated authority, the Director, Office of Markets, Tariffs and Rates-East, granted requests for blanket approval under part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Orion New York should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214).

Absent a request to be heard in opposition within this period, Orion New York is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Orion New York, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Orion New York's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is November 18, 2002.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. This order is available for review at the Commission or may be viewed on the Commission's web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 02–28771 Filed 11–12–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–513–021]

Questar Pipeline Company; Notice of Negotiated Rate

November 6, 2002.

Take notice that on November 1, 2002, Questar Pipeline Company's (Questar) tendered for filing a tariff filing to implement a negotiated-rate contract for BP Energy Company and the deletion of the expired contract with Dominion Exploration & Production, Inc. as authorized by Commission orders issued October 27, 1999, and December 14, 1999, in Docket Nos. RP99–513, *et al.* The Commission approved Questar's request to implement a negotiated-rate option for Rate Schedules T–1, NNT, T–2, PKS, FSS and ISS shippers.

Questar states that copies of this filing have been served upon all parties to this proceeding, Questar's customers, the Public Service Commission of Utah and the Public Service Commission of Wyoming.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–28798 Filed 11–12–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–312–115]

Tennessee Gas Pipeline Company; Notice of Negotiated Rate Filing

November 6, 2002.

Take notice that on October 31, 2002, Tennessee Gas Pipeline Company (Tennessee), tendered for filing its Negotiated Rate Tariff Filing.

Tennessee's filing requests that the Commission approve a negotiated rate arrangement between Tennessee and Project Orange Associates, LLC. Tennessee requests that the Commission grant such approval effective December 1, 2002.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–28788 Filed 11–12–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–58–000]

Texas Eastern Transmission, LP; Notice of Proposed Changes In FERC Gas Tariff

November 6, 2002.

Take notice that on October 31, 2002, Texas Eastern Transmission, LP (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1 and First Revised Volume No. 2, the tariff sheets listed on Appendix A to the filing, to become effective December 1, 2002.

Texas Eastern asserts that the purpose of this filing is to comply with the Stipulation and Agreement filed by Texas Eastern on December 17, 1991 in Docket Nos. RP88–67, *et al.* (Phase II/PCBs) and approved by the Commission on March 18, 1992 (Settlement), and with Section 26 of Texas Eastern's FERC Gas Tariff, Seventh Revised Volume No. 1.

Texas Eastern states that such tariff sheets reflect a decrease in the PCB-Related Cost component of Texas Eastern's currently effective rates. For example, the decrease in the 100% load factor average cost of long-haul service under Rate ScheduleFT–1 from Access Area Zone ELA to Market Zone 3 is $0.0001 per dekatherm

Texas Eastern states that copies of the filing were mailed to all affected customers of Texas Eastern and interested state commissions. Copies of this filing have also been mailed to all parties on the service list in Docket Nos. RP88–67, *et al.* (Phase II/PCBs).

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http:// www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–28781 Filed 11–12–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP88–67–078]

Texas Eastern Transmission, LP; Notice of Refund Report

November 6, 2002.

Take notice that on October 31, 2002, Texas Eastern Transmission, LP (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, and First Revised Volume No. 2, revised tariff sheets as listed on Appendix A to the filing, to become effective December 1, 2002. In addition, Texas Eastern submitted its Annual Interruptible Revenue Reconciliation Report pursuant to its Amended Global Settlement.

Texas Eastern states that the revised tariff sheets and the Annual Interruptible Revenue Reconciliation Report contained in the filing are being filed (i) pursuant to Section 15.6, Applicable Shrinkage Adjustment (ASA), and Section 15.8, Periodic Reports, of the General Terms and Conditions of Texas Eastern's FERC Gas Tariff, Seventh Revised Volume No. 1, (ii) in compliance with the Stipulation and Agreement (Global Settlement) approved by the Commission in its order issued May 12, 1994 [67 FERC ¶ 61,170, reh'g denied, 68 FERC ¶ 61,062 (1994)], and (iii) in compliance with the Joint Stipulation and Agreement Amending Global Settlement (Amended Global Settlement) approved by the Commission in its order issued August 28, 1998 [84 FERC ¶ 61,200 (1998)].

Texas Eastern states that by this filing, it is reducing by approximately 25% the level of its ASA Usage Surcharge included in its rates, and reflecting minor changes in its ASA Percentages, which are designed to retain in-kind the projected quantities of gas required for the operation of Texas Eastern's system in providing service to its customers. These adjustments are effective for the twelve month period beginning December 1, 2002.

Texas Eastern also states that the combined impact on Texas Eastern's rates of this filing, in conjunction with the Annual PCB-Related Costs filing being submitted concurrently, is a net decrease of 0.79 cents in the 100% load factor price for typical long-haul service under Rate Schedule FT–1 from Access Area Zone East Louisiana to Market Zone 3 (ELA–M3).

Texas Eastern states that copies of its filing have been mailed to all affected customers of Texas Eastern and interested state commissions, as well as to all parties to the Settlement in Docket No. RP85–177–119, *et al.*

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's rules and regulations. All such protests must be filed on or before November 13, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–28785 Filed 11–12–02; 8:45 am]

BILLING CODE 6717–01–P

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–426–010]

Texas Gas Transmission Corporation; Notice of Negotiated Rate

November 6, 2002.

Take notice that on October 31, 2002, Texas Gas Transmission Corporation (Texas Gas) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Sixth Revised Sheet No. 40, to become effective November 1, 2002.

Texas Gas states that the purpose of this filing is to reflect a negotiated rate agreement with Noble Gas Marketing, Inc.

Texas Gas states that copies of the revised tariff sheets are being mailed to all parties on the service list, Texas Gas's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–28775 Filed 11–12–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–255–053]

TransColorado Gas Transmission Company; Notice of Compliance Filing

November 6, 2002.

Take notice that on November 1, 2002, TransColorado Gas Transmission Company (TransColorado) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Fifty-Second Revised Sheet No. 21, Thirtieth Revised Sheet No. 22 and Twenty-Fifth Revised Sheet No.22A , to be effective November 1, 2002.

TransColorado states that the filing is being made in compliance with the Commission's letter order issued March 20, 1997, in Docket No. RP97–255–000.

TransColorado states that the tendered tariff sheets propose to revise TransColorado's Tariff to reflect two amended negotiated-rate contracts with Retex, Inc. and National Fuel Marketing Company and the deletion of two expired contracts with Sempra Energy Trading and Dynegy Marketing & Trade. TransColorado requested waiver of 18 CFR 154.207 so that the tendered tariff sheets may become effective November 1, 2002.

TransColorado stated that a copy of this filing has been served upon all parties to this proceeding, TransColorado's customers, the Colorado Public Utilities Commission and the New Mexico Public Utilities Commission.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–28791 Filed 11–12–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–260–015]

Transcontinental Gas Pipe Line Corporation; Notice of Refund Report

November 6, 2002.

Take notice that on October 31, 2002 Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing its refund report showing that on October 30, 2002, Transco submitted a report reflecting the flow through of a refund received from Texas Gas Transmission Corporation.

Transco states that it refunded to its FTNT customer, New York Power Authority, $716,239.06 resulting from the settlement under the related provision of Texas Gas Transmission's FERC Gas Tariff in Docket No. RP00–260. The refund covers the time period from November 1, 2000 to July 31, 2002.

Transco states that copies of this filing have been served on affected shippers and state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed on or before November 13, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–28774 Filed 11–12–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–245–013]

Transcontinental Gas Pipe Line Corporation; Notice of Compliance Filing

November 6, 2002.

Take notice that on October 30, 2002 Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing FERC Gas Tariff, Third Revised Volume No. 1, Sixteenth Revised Sheet No. 27A, with an effective date of December 1, 2002.

Transco states that the purpose of the instant filing is to implement the uncontested settlement of the issue of the design of the rate for service under Transco's Rate Schedule ISS in Transco's Docket No. RP01–245 *et al.*

Transco states that copies of the filing are being mailed to each of its affected customers, interested State Commissions, and other interested parties.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–28776 Filed 11–12–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–359–012]

Transcontinental Gas Pipe Line Corporation; Notice of Negotiated Rates

November 6, 2002.

Take notice that on October 31, 2002, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing a copy of an executed service agreement between Transco and PSEG Energy Resources and Trade, LLC, that contains a negotiated rate under Rate Schedule FT applicable to the Leidy East Expansion Project.

Transco states that this service agreement is the result of the permanent release of a previously filed Leidy East Expansion Project service agreement containing a negotiated rate. Williams Energy Marketing & Trading Company (WEM&T), a Leidy East Expansion Project Customer, agreed to permanently release 50,000 dekatherms of gas per day of its firm Leidy East transportation service to PSEG Energy Resources and Trade, LLC, effective November 1, 2002, at the same negotiated rate and primary term contained in the WEM&T service agreement included in Transco's October 10, 2002 and October 24, 2002 filings in Docket No. RP96–359–010 and Docket No. RP96–359–011, respectively. This permanent release of Leidy East capacity was effectuated pursuant to Section 42.14 of the General Terms and Conditions of Transco's FERC Gas Tariff. The effective date of the permanent release is November 1, 2002, which is the in-service date of the Leidy East Expansion Project.

Transco states that copies of the filing are being mailed to its affected customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–28789 Filed 11–12–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–416–000]

Williams Gas Pipelines Central Incorporated; Notice of Site Visit

November 6, 2002.

On November 12, 2002, Office of Energy Projects staff will participate in a site visit to the area proposed for construction of a natural gas pipeline by Williams Gas Pipelines Central Incorporated for its Southwest Missouri Expansion Project, in Kansas and Missouri, in the above-referenced docket. The site visit will begin at 12:30 p.m. from the Pizza Hut on Highway 69/7 in Columbus, Kansas. All interested parties may attend the site visit. Those planning to attend must provide their own transportation. Anyone interested in additional information on the site visit may contact the Commission's Office of External Affairs at 1–866–208–FERC.

Magalie R. Salas,

Secretary.

[FR Doc. 02–28769 Filed 11–12–02; 8:45 am]

BILLING CODE 6717–01–P

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC03–9–000, et al.]

Great Bay Power Corporation, et al.; Electric Rate and Corporate Regulation Filings

November 5, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Great Bay Power Corporation and Great Bay Power Marketing, Inc.

[Docket No. EC03–9–000]

Take notice that on October 31, 2002, Great Bay Power Corporation (GBPC) and Great Bay Power Marketing, Inc.(GBPM), filed with the Federal Energy Regulatory Commission (Commission) an application pursuant to section 203 of the Federal Power Act and 18 CFR part 33 for authority to transfer a purchased power agreement entered into between GBPC and Unitil Power Corp. from GBPC to GBPM. The Applicants request that the Commission act on the application so that the transfer may be consummated before December 31, 2002.

Comment Date: November 21, 2002.

2. Hermiston Generating Company, L.P.

[Docket No. EC03–10–000]

Take notice that on October 31, 2002, Hermiston Generating Company, L.P. (Hermiston) tendered for filing with the Federal Energy Regulatory Commission (Commission), pursuant to section 203 of the Federal Power Act, 16 U.S.C. section 824b (1994), and part 33 of the Commission's regulations, 18 CFR part 33, an application for authorization to dispose of jurisdictional facilities. More specifically, Buckeye Power Corporation and Larkspur Power Corporation propose to sell up to 50% of their ownership interest in Hermiston to an indirect, wholly-owned subsidiary of Sumitomo Corporation.

Comment Date: November 21, 2002.

3. Arizona Public Service Company

[Docket No. ER99–3288–008]

Take notice that on October 31, 2002, Arizona Public Service Company (APS) tendered for filing Quarterly Refund payments to eligible wholesale customers under the Company's Fuel Cost Adjustment Clause (FAC).

A copy of this filing has been served upon the affected parties, the California Public Utilities Commission, and the Arizona Corporation Commission.

Customer Name	APS-FPC/FERC Rate Schedule
Electrical District No. 3	12
Tohono O'odham Utility Authority	52
Arizona Electric Power Cooperative	57
Wellton-Mohawk Irrigation and Drainage District	58
Arizona Power Authority	59
Colorado River Indian Irrigation Project	65
Electrical District No. 1	68
Arizona Power Pooling	70
Town of Wickenburg	74
Southern California Edison Company	120
Electrical District No. 6	126
Electrical District No. 7	128
City of Page	134
Electrical District No. 8	140
Aguila Irrigation District	141
McMullen Valley Water Conservation and Drainage District	142
Tonopah Irrigation District	143
Citizens Utilities Company	207
Harquahala Valley Power District	153
Buckeye Water Conservation and Drainage District	155
Roosevelt Irrigation District	158
Maricopa County Municipal Water Conservation District	168
City of Williams	192
San Carlos Indian Irrigation Project	201
Maricopa County Municipal Water Conservation District at Lake Pleasant	209

Comment Date: November 21, 2002.

4. Carolina Power & Light Company

[Docket No. ER00–3435–005]

Take notice that on October 31, 2002, Progress Energy, Inc. (Progress Energy) on behalf of Carolina Power & Light Company (CP&L) and Florida Power Corporation (FPC) tendered for filing a revision to CP&L's generator interconnection procedures (Interconnection Procedures) in compliance with the Commission's Order issued in this docket on August 2, 2002.

Progress Energy respectfully requests that the revision to CP&L's Interconnection Procedures become effective November 1, 2002, the day after filing.

Comment Date: November 21, 2002.

5. Otter Tail Power Company

[Docket Nos. ER02–912–005; ER02–1728–001; ER02–1729–001; ER02–1730–002; ER02–1732–001]

Take notice that on October 31, 2002, Otter Tail Power Company submitted the compliance filing required by the Commission's July 5, 2002, order in consolidated Docket Nos. ER02–912–000; ER02–912–001; ER02–1728–000; ER02–1729–000; ER02–1730–000; and ER02–1732–000. Copies of this filing were served on all parties included on the Commission's official service list established in this proceeding.

Comment Date: November 21, 2002.

6. Duke Energy Corporation

[Docket No.ER02–994–003]

Take notice that on October 31, 2002, Duke Energy Corporation (Duke), on behalf of Duke Electric Transmission (Duke ET), tendered for filing (I) a Generation Interconnection and Operating Agreement between Duke ET and South Carolina Public Service Authority (SCPSA), and (ii) an Amendment to the Restated Interchange Agreement between Duke Power Company and SCPSA dated February 10, 1992. Duke requests an effective date of January 1, 2003.

Comment Date: November 21, 2002.

7. The GridAmerica Participants

[Docket No. ER02–2233–001]

Take notice that on November 1, 2002, the GridAmerica Participants (Ameren Services Company, acting as agent for its electric utility affiliates Union Electric Company d/b/a AmerenUE and Central Illinois Public Service Company d/b/a/ AmerenCIPS, FirstEnergy Corp., on behalf of its subsidiary American Transmission Systems, Inc., Northern Indiana Public Service Company, and National Grid USA) and the Midwest Independent Transportation System Operator, Inc. (Midwest ISO) (collectively, the parties) submitted for filing in compliance with the Commission's July 31, 2002, order in the above-captioned proceeding, 100 FERC ¶61,135, an executed appendix I ITC Agreement between the GridAmerica LLC and the Midwest ISO.

In addition, the GridAmerica Parties submitted the definitive agreements necessary for the formation and operation of GridAmerica as an independent transmission company within the Midwest ISO. These agreements are the LLC Agreement, the Operation Agreement, and the Master Agreement. The LLC Agreement sets forth the governance and financing of GridAmerica, including the rights and obligations of its managing member, an affiliate of National Grid. The Master Agreement sets forth the steps that must be completed to reach the transmission service date as well as the rights and obligations of the parties concerning divestiture of transmission facilities to the ITC. The Operation Agreement contains the terms and conditions on which the Company will manage GridAmerica transmission facilities.

In order for GridAmerica to become operational during April 2003, the parties request that, by December 31, 2002, the Commission issue an order approving the filing and granting all necessary authorizations for the formation and operation of GridAmerica, including the transfer of functional control as provided in the agreements, and that the Commission set November 22, 2002, as the date for comments on the filings. The parties state that they are serving copies of the filing on the parties to the above-referenced proceeding in accordance with the requirements of section 385.2010 of the Commission's regulations, 18 CFR 285.2010 and serving the filing by email on the parties on the Midwest ISO's extensive email service list.

Comment Date: November 20, 2002.

8. Nevada Power Company

[Docket No. ER03–89–000]

Take notice that on October 31, 2002, Nevada Power Company, tendered for filing pursuant to section 205 of the Federal Power Act, an executed Service Agreement for Network Integration Transmission Service (Service Agreement) between Nevada Power Company and the City of Needles, California. The Service Agreement is being filed as Service Agreement No. 136 under Sierra Pacific Resources Operating Companies' FERC Electric Tariff, First Revised Volume No. 1.

Nevada Power Company has requested that the Commission accept the Service Agreement and permit service in accordance therewith effective October 1, 2002.

Comment Date: November 21, 2002.

9. Southern California Edison Company

[Docket No. ER03–103–000]

Take notice that on October 31, 2002, Southern California Edison Company stated that effective the first day of January 2003, rate schedule FERC nos. 368, 369 and 370 effective August 1, 1990, January 1, 1995, and April 1, 1998, respectively, and filed with the Federal Energy Regulatory Commission by Southern California Edison Company, are to be canceled.

Notice of the proposed cancellation has been served upon the Public Utilities Commission of the State of California and the City of Anaheim, California.

Comment Date: November 21, 2002.

10. Southern California Edison Company

[Docket No. ER03–104–000]

Take notice that on October 31, 2002, Southern California Edison Company, stated that effective the first day of January 2003, rate schedule FERC Nos. 395, 396, 397, 398, 399 and 400 effective December 29, 1992, May 1, 1995, April 30, 1996, June 1, 1996, June 1, 1996 and July 16, 1996, respectively, and filed with the Federal Energy Regulatory Commission by Southern California Edison Company, are to be canceled.

Notice of the proposed cancellation has been served upon the Public Utilities Commission of the State of California and the City of Riverside, California.

Comment Date: November 21, 2002.

11. Public Service Electric and Gas Company

[Docket No. ER03–105–000]

Take notice that on October 31, 2002, Public Service Electric and Gas Company (PSE&G) submitted for filing a revised Interconnection Agreement, reflecting revisions to an existing Interconnection Agreement dated August 2000 between PSE&G and the Joint Owners of the Hope Creek Generating Station and Switchyard. Copies of this filing were served on the Joint Owners and on PJM Interconnection, L.L.C.

Comment Date: November 21, 2002.

12. Virginia Electric and Power Company

[Docket No. ER03–106–000].

Take notice that on October 31, 2002, Virginia Electric and Power Company (the Dominion Virginia Power or Company) respectfully tendered for filing an amendment to its Wholesale Cost-Based Rate Tariff. Dominion seeks an effective date of January 1, 2003, which is sixty 60 days after the date of this filing.

Copies of the filing were served upon the Virginia State Corporation Commission, the North Carolina Utilities Commission, and all customers under the wholesale cost based tariff.

Comment Date: November 21, 2002.

13. CP Power Sales Five, L.L.C.

[Docket No. ER03–107–000]

Take notice that on October 31, 2002, CP Power Sales Five, L.L.C., tendered for filing a Notice of Cancellation of its authorization to engage in wholesale electric energy transactions at market-based rates, filed on April 10, 1995.

Comment Date: November 21, 2002.

14. CP Power Sales Thirteen, L.L.C.

[Docket No. ER03–108–000]

Take notice that on October 31, 2002, CP Power Sales Thirteen, L.L.C., tendered for filing a Notice of Cancellation of its authorization to engage in wholesale electric energy transactions at market-based rates, filed on December 11, 1998.

Comment Date: November 21, 2002.

15. CP Power Sales Fourteen, L.L.C.

[Docket No. ER03–109–000]

Take notice that on October 31, 2002, CP Power Sales Fourteen, L.L.C., tendered for filing a Notice of Cancellation of its authorization to engage in wholesale electric energy transactions at market-based rates, filed on December 11, 1998.

Comment Date: November 21, 2002.

16. CP Power Sales Fifteen, L.L.C.

[Docket No. ER03–110–000]

Take notice that on October 31, 2002, CP Power Sales Fifteen, L.L.C., tendered for filing a Notice of Cancellation of its authorization to engage in wholesale electric energy transactions at market-based rates, filed on December 11, 1998.

Comment Date: November 21, 2002.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–28889 Filed 11–12–02; 8:45 am]

BILLING CODE 6717–01–P

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL03–23–000, et al.]

Pacer Power LLC, et al.; Electric Rate and Corporate Filings

November 6, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Pacer Power LLC

[Docket No. EL03–23–000]

Take notice that on October 31, 2002, Pacer Power LLC (Pacer) filed with the Federal Energy Regulatory Commission (Commission) a petition for a declaratory order requesting the Commission disclaim jurisdiction over Pacer based on Pacer's status as a power broker. Pacer requests that the Commission act on the petition by the Commission's first January meeting date.

Comment Date: December 5, 2002.

2. ISO New England Inc.

[Docket No. ER01–316–007]

Take notice that on October 31, 2002, ISO New England, Inc., filed its Index of Customers for the third quarter of 2002 for its Tariff for Transmission Dispatch and Power Administration Services in compliance with Order No. 614.

Comment Date: November 21, 2002.

3. California Independent System Operator Corporation

[Docket No. ER03–111–000]

Take notice that on October 31, 2002, the California Independent System Operator Corporation (ISO) submitted for Commission filing and acceptance the Utility Distribution Company Operating Agreement (UDC Operating Agreement) between the ISO and the City of Azusa, California. The ISO requests that the UDC Operating Agreement be made effective as of January 1, 2003. The ISO requests privileged treatment, pursuant to 18 CFR 388.112, with regard to portions of the filing.

The ISO has served copies of this filing upon the City of Azusa, California and the Public Utilities Commission of the State of California.

Comment Date: November 21, 2002.

4. New York Independent System Operator, Inc.

[Docket No. ER03–112–000]

Take notice that on October 31, 2002, the New York System Operator, Inc. (NYISO) tendered for filing proposed revisions to its Market Administration and Control Area Services Tariff (Services Tariff) designed to extend the current methodology and rate used to calculate payments for Voltage Support Service through the end of calendar year 2003. The NYISO has requested that the Commission make the filing effective on January 1, 2003.

The NYISO has served a copy of this filing on all persons that have executed Service Agreements under the NYISO Services Tariff or the NYISO Open Access Transmission Tariff, on the New York Public Service Commission, and on the electric utility regulatory agencies in New Jersey and Pennsylvania.

Comment Date: November 21, 2002.

5. Idaho Power Company

[Docket No. ER03–113–000]

Take notice that on October 31, 2002, Idaho Power Company filed a Service Agreement for Firm Point-to-Point Transmission Service between Idaho Power Company and Pinnacle West Capital Corporation under its open access transmission tariff in the above-captioned proceeding.

Comment Date: November 21, 2002.

6. Great Bay Power Marketing, Inc.

[Docket No. ER03–114–000]

Take notice that on October 31, 2002, Great Bay Power Marketing, Inc. (GBPM) tendered for filing with the Federal Energy Regulatory Commission (Commission), an application for authority to sell electric energy, capacity and certain ancillary services at market-based rates under section 205(a) of the Federal Power Act, 16 U.S.C. 824d(a), and accompanying requests for certain blanket approvals and for the waiver of certain Commission regulations. GBPM requests that the Commission accept its Original Rate Schedule FERC No. 1 for filing.

Comment Date: November 21, 2002.

7. PJM Interconnection, LLC

[Docket No. ER03–115–000]

Take notice that on October 31, 2002, PJM Interconnection, LLC (PJM), submitted for filing an executed interconnection service agreement between PJM and Ocean Peaking Power, LP n/k/a Surfside Funding, Limited Partnership (Ocean Peaking/Surfside Funding).

PJM requests a waiver of the Commission's 60-day notice requirement to permit the effective date agreed to by Surfside and PJM. Copies of this filing were served upon Ocean Peaking/Surfside Funding c/o Consolidated Edison Development, Inc. and the state regulatory commissions within the PJM region.

Comment Date: November 21, 2002.

8. Duke Energy Oakland, LLC

[Docket No. ER03–116–000]

Take notice that on October 31, 2002, pursuant to 16 U.S.C. 824d, and 18 CFR 35.13, Duke Energy Oakland, LLC (DEO) tendered for filing certain revisions to rate schedules A, B, and D of its RMR agreement with the California Independent System Operator (CAISO). DEO also tendered in the same submission an informational filing detailing and supporting the proposed changes to its Annual Fixed Revenue Requirement (AFRR) and Variable O&M Rate (VO&M), pursuant to schedule F of its RMR agreement.

DEO requests an effective date of January 1, 2003, for these revisions. Copies of the filing have been served upon the CAISO, Pacific Gas and Electric Company, the Public Utilities Commission of the State of California, and the Electricity Oversight Board of the State of California.

Comment Date: November 21, 2002.

9. Duke Energy South Bay, LLC

[Docket No. ER03–117–000]

Take notice that on October 31, 2002, pursuant to 16 U.S.C. 824d, and 18 CFR 35.13, Duke Energy South Bay, LLC (DESB) tendered for filing certain revisions to rate schedules A, B, and D of its RMR agreement with the California Independent System Operator (CAISO). DESB also tendered in the same submission an informational filing detailing and supporting the proposed changes to its Annual Fixed Revenue Requirement (AFRR) and Variable O&M Rate (VO&M), pursuant to schedule F of its RMR agreement.

DESB requests an effective date of January 1, 2003, for these revisions. Copies of the filing have been served upon the CAISO, San Diego Gas & Electric Company, the Public Utilities Commission of the State of California, and the Electricity Oversight Board of the State of California.

Comment Date: November 21, 2002

10. PJM Interconnection, LLC

[Docket No. ER03–118–000]

Take notice that on October 31, 2002, PJM Interconnection, LLC (PJM), filed amendments to schedule 9 of the PJM Open Access Transmission Tariff (PJM Tariff), the Reliability Assurance Agreement Among Load-Serving Entitites in the PJM West Region (West RAA) to: (1) Eliminate the two schedules involving the smallest portion of PJM's costs, shifting those costs to other schedules; and (2) transfer PJM's costs for the Commission's part 382 annual charges from one of the existing schedules to a new schedule devoted solely to such annual charges.

Copies of this filing were served upon all PJM members and each state electric utility regulatory commission in the PJM region. PJM proposes an effective date of January 1, 2003, for the amendments.

Comment Date: November 21, 2002.

11. MDU Resources Group, Inc.

[Docket No. ES03–10–000]

Take notice that on October 30, 2002, MDU Resources Group, Inc. submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to incur short-term indebtedness in an amount not to exceed $125 million.

Comment Date: November 27, 2002.

12. Oklahoma Gas and Electric Company

[Docket No. ES03–12–000]

Take notice that on October 31, 2002, Oklahoma Gas and Electric Company submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to issue not more than $400,000,000 of short-term debt securities on or before December 31, 2004, with a final maturity date of December 31, 2005.

Comment Date: November 22, 2002.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502–8222 or TTY, (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 02–28770 Filed 11–12–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 3516–008]

City of Hart, Michigan; Notice of Availability of Draft Environmental Assessment

November 6, 2002.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the application for minor license for the existing Hart Hydroelectric Project located on the South Branch of the Pentwater River in Oceana County, Michigan, and has prepared a Draft Environmental Assessment (DEA) for the project.

The DEA contains the staff's analysis of the potential environmental effects of the project and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major Federal action that would significantly affect the quality of the human environment

A copy of the DEA is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Any comments should be filed within 30 days from the date of this notice and should be addressed to Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please affix Project No. 3516–008 to all comments. Comments may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site (*http://www.ferc.gov*) under the "e-Filing" link.

For further information, contact Steve Kartalia at (202) 502–6131 or by E-mail at *stephen.kartalia@ferc.gov.*

Magalie R. Salas,

Secretary.

[FR Doc. 02–28772 Filed 11–12–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

November 4, 2002.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment of License to Change Project Boundary.

b. *Project No.:* 2232–421.

c. *Date Filed:* March 9, 2001, and September 11, 2002.

d. *Applicant:* Duke Power Company.

e. *Name of Project:* Catawba-Wateree Project.

f. *Location:* The Rocky Creek/Cedar Creek Development of the Catawba-Wateree project is located in Chester, Fairfield, and Lancaster Counties, South Carolina.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a) 825(TM)) and 799 and 801.

h. *Applicant Contact:* Jeff G. Lineberger, P.E. Manager, Hydro Licensing, Duke Power Company, 526 South Church Street, P. O. Box 1006, Charlotte, NC 28201–1006, (704) 382–5942.

i. *FERC Contact:* Any questions on this notice should be addressed to Mr. Robert Shaffer at (202) 502–8944, or e-mail address: *robert.shaffer@ferc.gov.*

j. *Deadline for filing comments and or motions:* December 6, 2002.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. Please include the project number (P–2232–421) on any comments or motions filed.

k. *Description of Request:* The licensee proposes to revise the project boundary to more accurately represent the authorized elevation of 284.4 feet for

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the Rocky Creek/Cedar Creek reservoir level. The licensee states the existing boundary inaccurately shows the 284.4 foot full pond contour extending to the toe of the diversion dam for the upstream Great Falls/Dearborn Development.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the

• FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.gov* under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–28585 Filed 11–12–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

October 31, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12299–000.

c. *Date filed:* July 5, 2002.

d. *Applicant:* Clarence Cannon Hydro, LLC.

e. *Name of Project:* Clarence Cannon Dam Project.

f. *Location:* On the Salt River, in Ralls County, Missouri utilizing the Clarence Cannon Dam administered by the U.S. Army Corps of Engineers.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. '791(a)—825(r).

h. *Applicant Contact:* Mr. Brent L. Smith, President, Northwest Power Services, Inc., PO Box 535, Rigby, ID 83442, (208)745–0834.

i. *FERC Contact:* Robert Bell, (202) 502–6062.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link. The Commission strongly encourages electronic filings. Please include the project number (P–12299–000) on any comments or motions filed.

The Commission's rules of practice and procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would utilize the existing U.S. Army Corps of Engineers' Clarence Cannon Dam and would consist of: (1) A proposed intake structure, (2) a proposed 200-foot-long, 144-inch-diameter steel penstock, (3) a proposed powerhouse containing two generating units having a total installed capacity of 25.5 MW, (4) a proposed 5-mile-long, 50 kV transmission line, and (5) appurtenant facilities.

Applicant estimates that the average annual generation would be 63 GWh and would be sold to a local utility.

l. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at Clarence Cannon Hydro, LLC, 975 South State Highway, Logan, UT 84321, (435) 752–2580.

m. *Competing Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. *Competing Development Application*— Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. *Notice of Intent*— A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. *Proposed Scope of Studies under Permit*— A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. *Comments, Protests, or Motions to Intervene*— Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of rules of practice and procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. *Filing and Service of Responsive Documents*— Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the applicant specified in the particular application.

s. *Agency Comments*— Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the applicant's representatives.

Linwood A. Watson, Jr.,

Deputy Secretary.M

[FR Doc. 02–28800 Filed 11–12–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2002–0004; FRL–7407–2]

Agency Information Collection Activities; Submission of EPA ICR No. 1188.07 (OMB No. 2070–0038) to OMB for Review and Approval; Comment Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: *Significant New Use Rules for Existing Chemicals—TSCA Section 5(a) (EPA ICR No. 1188.07; OMB Control No. 2070–0038).* The ICR, which is abstracted below, describes the nature of the information collection and its estimated cost and burden. On April 16, 2002 (67 FR 18606), with a correction on May 15, 2002 (67 FR 34704), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA has addressed the single comment it received.

DATES: Additional comments may be submitted on or before December 13, 2002.

ADDRESSES: Follow the detailed instructions in the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Barbara Cunningham, Acting Director, Environmental Assistance Division, Office of Pollution Prevention and Toxics, Environmental Protection Agency, Mailcode: 7408, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–554–1404; e-mail address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. EPA has established a public docket for this ICR under docket ID No. OPPT–2002–0004, which is available for public viewing at the OPPT Docket in the EPA Docket Center, EPA West Building Basement Room B102, 1301 Constitution Ave., NW., Washington, DC. The Center is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice, and according to the following detailed instructions:

(1) Submit your comments to EPA online using EDOCKET (our preferred method), by e-mail to *oppt.ncic@epa.gov*, or by mail to: Document Control Office (DCO), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, Mailcode: 7407M, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. OPPT–2002–0004, and (2) Mail a copy of your comments to OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the

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version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET.

Title: Significant New Use Rules for Existing Chemicals—TSCA Section 5(a) (EPA ICR No. 1188.07; OMB Control No. 2070–0038). This is a request to renew an existing approved collection that is scheduled to expire on November 30, 2002. Under 5 CFR 1320.10(e)(2), the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB.

Abstract: Section 5 of the Toxic Substances Control Act (TSCA) provides EPA with a regulatory mechanism to monitor and, if necessary, control significant new uses of chemical substances. Section 5 authorizes EPA to determine by rule (a significant new use rule or SNUR), after considering all relevant factors, that a use of a chemical substance represents a significant new use. If EPA determines that a use of a chemical substance is a significant new use, section 5 requires persons to submit a notice to EPA at least 90 days before they manufacture, import, or process the substance for that use.

EPA uses the information obtained through this collection to evaluate the health and environmental effects of the significant new use. EPA may take regulatory actions under TSCA sections 5, 6 or 7 to control the activities for which it has received a SNUR notice. These actions include orders to limit or prohibit the manufacture, importation, processing, distribution in commerce, use or disposal of chemical substances. If EPA does not take action, section 5 also requires EPA to publish a **Federal Register** notice explaining the reasons for not taking action.

Responses to the collection of information are mandatory (*see* 40 CFR part 721). Respondents may claim all or part of a notice confidential. EPA will disclose information that is covered by a claim of confidentiality only to the extent permitted by, and in accordance with, the procedures in TSCA section 14 and 40 CFR part 2.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting burden for this collection of information is estimated to be about 119 hours per response. Burden means the total time, effort or financial resources expended by persons to generate, maintain, retain or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install and utilize technology and systems for the purposes of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Manufacturers, processors, importers, or distributors in commerce of chemical substances or mixtures.

Frequency of Collection: On occasion.

Estimated No. of Respondents: 8.

Estimated Total Annual Burden on Respondents: 1,020 hours.

Estimated Total Annual Costs: $84,306.

Changes in Burden Estimates: There is a decrease of 12 hours (from 1,032 hours to 1,020 hours) in the total estimated respondent burden compared with that identified in the information collection request most recently approved by OMB. This change results from updating estimates based upon historical information on SNURs promulgated by the EPA (adjustment). Based upon revised estimates, the number of SNUNs estimated to be received annually has increased from 3 to 5. Additionally, the estimated number of chemicals per SNUR has increased from 34 to 65.5. However, the estimated annual number of SNURs has decreased from 10 to 3 based upon historical information. A final change was the inclusion of burden hours to cover the time companies may use to verify that their chemicals are on the SNUR (adjustment). The changes result in an overall decrease in notification burden. The overall result of these adjustments is a decrease in estimated burden.

Dated: November 4, 2002.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 02–28846 Filed 11–12–02; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7407–5]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Tribal Lands Hazardous Waste Sites Census

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Tribal Lands Hazardous Waste Sites Census, EPA ICR Number 2059.01. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before December 13, 2002.

ADDRESSES: Send comments, referencing EPA ICR No. 2059.01 to the following addresses: Susan Auby, U.S. Environmental Protection Agency, Collection Strategies Division (Mail Code 2822T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0001; and to Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR contact Susan Auby at EPA by phone at (202) 566–1672, by e-mail at *Auby.Susan@epa.gov*, or download off the Internet at *http://www.epa.gov/icr* and refer to EPA ICR No. 2059.01. For technical questions about the ICR contact Kirby Biggs, Office of Emergency and Remedial Response, U.S. EPA, Mail Code 5204G, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, telephone (703) 308–8506, e-mail: *biggs.kirby@epa.gov.*

SUPPLEMENTARY INFORMATION:

Title: Tribal Lands Hazardous Waste Sites Census (EPA ICR No. 2059.01). This is a new collection.

Abstract: EPA is conducting a study of potential hazards to Tribal communities from contaminated sites in or near Indian lands. EPA will conduct a voluntary census of all federally recognized tribes to identify known and potential Superfund sites (sites that fall under the Comprehensive Environmental Response, Compensation and Liability Act, or CERCLA, as amended), abandoned or active industrial and municipal sites (sites regulated under the Resource Conservation and Recovery Act or RCRA), and federal sites (such as those operated by the Department of Defense or the Department of Energy) that may be impacting human health and the environment on Indian lands.

EPA has developed a draft list of sites that are believed to be in or near Indian lands. The study will be used to update and refine this draft list into a usable tool to assist EPA and tribal governments in responding to the needs of Tribes and in protecting human health and the environment. The survey will serve to inform EPA of the extent and location of sites potentially affecting Tribes and those sites that are of concern to the Tribes. The inventory of potential risks to Indian lands will provide EPA with vital information regarding program needs and potential risk to Indian tribes from these sites.

No confidentiality is provided and no sensitive information is expected to be collected under this ICR. However, any information submitted to the Agency for which a claim of confidentiality is made will be safeguarded according to the Agency policies set forth in Title 40, chapter 1, part 2, subpart B—Confidentiality of Business Information (*see* 40 CFR part 2; 41 FR 36902, September 1, 1976; amended by 43 FR 40000, September 8, 1978; 43 FR 42251, September 20, 1978; 44 FR 17674, March 23, 1979).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on February 1, 2002 (67 FR 4957). One comment was received that questioned the burden hours cited for the information collection as too low and requested a copy of the survey instrument. When a copy of the survey instrument was forwarded to the author of the comment, no further response was received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 2.5 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: State, Local, and Tribal Government.

Estimated Number of Respondents: 550.

Frequency of Response: One time.

Estimated Total Annual Hour Burden: 1375 hours.

Estimated Total Annualized Capital and Operating & Maintenance Cost Burden: $0.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the addresses listed above. Please refer to EPA ICR No. 2059.01 in any correspondence.

Dated: October 31, 2002.

Sara Hisel-McCoy,

Acting Director, Collection Strategies Division.

[FR Doc. 02–28847 Filed 11–12–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7407–3]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Notification of Regulated Waste Activity

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Notification of Regulated Waste Activity, EPA ICR No. 0261.14, OMB No. 2050–0028, expires on December 31, 2002. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before December 13, 2002.

ADDRESSES: Send comments, referencing EPA ICR No. 0261.14 and OMB Control No. 2050–0028, to the following addresses: Susan Auby, U.S. Environmental Protection Agency, Collection Strategies Division (Mail Code 2822T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0001; and to Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR contact Susan Auby at EPA by phone at (202) 566–1672, by e-mail at *auby.susan@epamail.epa.gov* or download off the Internet at *http://www.epa.gov/icr* and refer to EPA ICR No. 0261.14. For technical questions about the ICR contact David Eberly at (703) 308–8645.

SUPPLEMENTARY INFORMATION:

Title: Notification of Regulated Waste Activity, EPA ICR No. 0261.14, OMB No. 2050–0028, expires on December 31, 2002. This is a request for extension of a currently approved collection.

Abstract: Section 3010 of Subtitle C of RCRA, as amended, requires any person who generates or transports regulated waste or who owns or operates a facility for the treatment, storage, or disposal (TSD) of regulated waste to notify EPA of their activities, including the location and general description of activities and the regulated wastes handled. The facility is then issued an EPA Identification number. The facilities are required to use the Notification Form (EPA Form 8700–12) to notify EPA of their hazardous waste activities. EPA needs this information to determine the universe of persons who generate, handle, and manage these regulated wastes; assign EPA Identification Numbers; and ensure that these regulated wastes are managed in a way that protects human health and the environment, as required by RCRA, as amended. EPA enters notification information submitted by respondents into the EPA National data base and assigns EPA Identification Numbers. EPA uses the information primarily for tracking purposes, and secondarily for a variety of enforcement and inspection purposes. In addition, EPA uses this information to identify the universe of regulated waste generators, handlers, and managers and their specific

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regulated waste activities. Finally, EPA uses this information to ensure that regulated waste is managed properly, that statutory provisions are upheld, and that regulations are adhered to by facility owners or operators.

Section 3007(b) of RCRA and 40 CFR part 2, subpart B, which defines EPA's general policy on public disclosure of information, both contain provisions for confidentiality. However, the Agency does not anticipate that businesses will assert a claim of confidentiality covering all or part of the Notification of Regulated Waste Activity. If such a claim were asserted, EPA must and will treat the information in accordance with the regulations cited above. EPA also will assure that this information collection complies with the Privacy Act of 1974 and OMB Circular 108. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on July 1, 2002 (67 FR 44196). No comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average about 4 hours per respondent for initial notifications and about 2 hours per respondent for subsequent notifications. The estimates for the notification ICR include all aspects of the information collection including time for reviewing instructions, searching existing data sources, gathering data, and completing and reviewing the form. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Business or other for profit.

Estimated Number of Respondents: 31,125.

Frequency of Response: On occasion.

Estimated Total Annual Hour Burden: 96,250 hours.

Estimated Total Annualized Capital, Operating/ Maintenance Cost Burden: $130,725.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the addresses above. Please refer to EPA ICR No. 0261.14 and OMB Control No. 2050–0028 in any correspondence.

Dated: November 1, 2002.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 02–28848 Filed 11–12–02; 8:45 am]

BILLING CODE 6560–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7407–4]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; NSPS for Metal Coil Surface Coating

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Title: NSPS for Metal Coil Surface Coating (subpart TT), OMB Control Number 2060–0107, expiration date January 31, 2003. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before December 13, 2002.

ADDRESSES: Send comments, referencing EPA IRC Number 0660.08 and OMB Control Number 2060–0107, to the following addresses: Susan Auby, United State Environmental Protection Agency, Collection Strategies Division (Mail Code 2822T), 1200 Pennsylvania Avenue, NW, Washington, DC 20460–0001; and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR, contact Susan Auby at EPA by phone at: (202) 566–1672, by e-Mail to: *auby.susan@epa.gov*, or download from the Internet at: *http://www.epa.gov/icr*, and refer to EPA ICR Number 0660.08. For technical questions about the ICR, contact Steven Hoover at (202) 564–7007, or by e-Mail to: *hoover.steven@epa.gov*.

SUPPLEMENTARY INFORMATION:

Title: NSPS for Metal Coil Surface Coating (subpart TT), OMB Control Number 2060–0107, EPA ICR Number 0660.08, expiration date January 31, 2003. This is a request for extension of a currently approved collection.

Abstract: The New Source Performance Standard (NSPS) for Surface Coating of Metal Coils were proposed on January 5, 1981, and promulgated on November 1, 1982. These standards apply to each metal coil surface coating operation in which organic coatings are applied that commenced construction, modification or reconstruction after January 5, 1981. Approximately 161 sources are currently subject to the standard, and it is estimated that 4 sources per year will become subject to the standard. Volatile Organic Compounds (VOCs) are the pollutants regulated under this subpart, and this information is being collected to assure compliance with 40 CFR part 60, subpart TT.

Owners or operators of the affected facilities described must make initial reports when a source becomes subject, conduct and report on a performance test, demonstrate and report on continuous monitor performance, and maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility. Semiannual reports of excess emissions are required. These notifications, reports, and records are essential in determining compliance; and are required, in general, of all sources subject to NSPS.

Any owner or operator subject to the provisions of this part shall maintain a file of these measurements, and retain the file for at least 2 years following the date of such measurements, maintenance reports, and records. All reports are sent to the delegated State or Local authority. In the event that their is no such delegated authority, the reports are sent directly to the EPA Regional Office.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed

in 40 CFR part 9 and 48 CFR chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on June 20, 2002. No comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 36 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Owners/Operators of Metal Coil Surface Coating Plants.

Estimated Number of Respondents: 165.

Frequency of Response: semiannual for all, every other year for excess emission report.

Estimated Total Annual Hour Burden: 14,531.

Estimated Total Annualized Capital, O&M Cost Burden: $318,000.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the addresses listed above. Please refer to EPA ICR Number 0660.08 and OMB Control Number 2060–0107 in any correspondence.

Dated: November 4, 2002.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 02–28849 Filed 11–2–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7407–9]

Proposed Settlement Agreement

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement agreement; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended, 42 U.S.C. 7413(g), notice is hereby given of a proposed settlement agreement in Utility Air Regulatory Group (UARG) v. Environmental Protection Agency (EPA), No. 02–1023 and consolidated cases (Nos. 02–1026, 02–1027, 02–1028, 02–1088)(D.C. Circuit). These consolidated cases concern a November 15, 2001 **Federal Register** notice entitled Recent Posting of Agency Regulatory Interpretations Pertaining to Applicability and Monitoring for Standards of Performance for New Stationary Sources and National Emission Standards for Hazardous Air Pollutants to the Applicability Index (ADI) Database System, (66 FR 57453) and a January 10, 2002 **Federal Register** notice entitled Recent Posting to the Applicability Determination Index (ADI) Database System of Agency Applicability Determinations, Alternative Monitoring Decisions, and Regulatory Interpretations Pertaining to Standards of Performance for New Stationary Sources and National Emission Standards for Hazardous Air Pollutants, (67 FR 1295).

DATES: Written comments on the proposed settlement agreement must be received by December 13, 2002.

ADDRESSES: Written comments should be sent to Diane E. McConkey, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20004. A copy of the proposed settlement agreement is available from Phyllis J. Cochran, (202) 564–7606.

SUPPLEMENTARY INFORMATION: From time to time EPA publishes in the **Federal Register** notices of recent postings to the Applicability Determination Index Database System (ADI Posting Notices), similar to the two notices at issue in these petitions for review. The following entities filed petitions for review of one or both of the ADI Posting Notices described above: Utility Air Regulatory Group (UARG), January 11, 2002 (November 15, 2001 notice) and March 11, 2002 (January 10, 2002 notice); Clean Air Implementation Project (CAIP), January 14, 2002 (November 15, 2001 notice); American Chemistry Council (ACC), January 14, 2002 (November 15, 2001 notice); National Environmental Development Association's Clean Air Regulatory Project (NEDA/CARP), January 14, 2002 (November 15, 2001 and January 10, 2002 notices).

UARG, CAIP, ACC, NEDA/CARP, and EPA have now reached initial agreement on a settlement of the consolidated cases which could lead to the voluntary dismissal of the petitions for review. The settlement requires the EPA Administrator to include specific language in the first ADI Posting Notice signed after the settlement agreement is final and effective.

For a period of thirty (30) days following the date of publication of this notice, EPA will receive written comments relating to the proposed settlement agreement.

EPA or the Department of Justice may withdraw or withhold consent to the proposed settlement agreement if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determines, based on any comment which may be submitted, that consent to the settlement agreement should be withdrawn, the terms of the agreement will be affirmed.

Dated: November 4, 2002.

Lisa K. Friedman,

Associate General Counsel, Air and Radiation Law Office.

[FR Doc. 02–28843 Filed 11–12–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0265; FRL–7280–8]

FIFRA Scientific Advisory Panel; Notice of Cancellation of Public Meetings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In the **Federal Register** of October 10, 2002 (67 FR 63084) (FRL–7276–4), EPA announced a November 21, 2002, pre-meeting teleconference and a December 3–5, 2002, face-to-face meeting of the Federal Insecticide, Fungicide, and Rodenticide Act Scientific Advisory Panel (FIFRA SAP) to consider and review studies on water disinfection and softening as related to the Food Quality Protection Act (FQPA) drinking water exposure assessments. The meetings have been cancelled because of logistical problems. A new set of meetings will be announced in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Paul Lewis, Designated Federal Official (DFO), Office of Science Coordination

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and Policy (7201M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8450; fax number: (202) 564–8382; e-mail address: lewis.paul@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

This action is directed to the public in general. This action may be of interest to persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA), FIFRA, and FQPA. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the DFO listed under **FOR FURTHER INFORMATION CONTACT**.

II. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2002–0265. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2. 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket ID number.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: November 5, 2002.

Joseph J. Merenda, Jr.,

Director, Office of Science Coordination and Policy.

[FR Doc. 02–28841 Filed 11–12–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0279; FRL–7277–2]

Pesticide Products; Registration Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing new active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments, identified by the docket ID number OPP–2002–0279, must be received on or before December 13, 2002.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Joanne I. Miller, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6224; e-mail address: *miller.joanne@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are a pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111)
- Animal production (NAICS code 112)
- Food manufacturing (NAICS code 311)
- Pesticide manufacturing (NAICS code 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in unit II of this notice. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2002–0279. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing

in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at http://www.epa.gov/edocket, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2002–0279 The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to opp-docket@epa.gov, Attention: Docket ID Number OPP–2002–0279. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency (7502C), 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2002–0279.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA., Attention: Docket ID Number OPP–2002–0279. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI To the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

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3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the registration activity.

7. Make sure to submit your comments by the deadline in this notice.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Registration Applications

EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

Products Containing Active Ingredients not Included in any Previously Registered Products

1. *File symbol*: 71771–T. *Applicant*: Nichino America, Inc., 4550 New Linden Hill Road, Wilmington, DE 19808. *Product name*: ET-751 2.5% EC Herbicide. *Product type*: Herbicide. *Active ingredient*: Pyraflufen-ethyl (ethyl 2-chloro-5-(4-chloro-5-difluoromethoxy-1-methylpyrazol-3-yl)-4-fluorophenoxyacetate) at 2.5%. *Proposed classification/Use*: None. For use on terrestrial non-cropland to control broadleaf weeds.

2. *File symbol*: 71711–A. *Applicant*: Nichino America, Inc. *Product name*: ET-751 Technical. *Product type*: Herbicide. *Active ingredient*: Pyraflufen-ethyl at 97.9%. *Proposed classification/Use*: None. For manufacturing use of end-use products to be used to control certain broadleaf weeds on terrestrial non-cropland.

3. *File symbol*: 59639–RNO. *Applicant*: Valent U.S.A. Corporation, 1333 North Carolina Blvd., Suite 600, P.O. Box 8025, Walnut Creek, CA 94596–8025. *Product name*: S-3153 Flufenpyr-ethyl Technical. *Product type*: Herbicide. *Active ingredient*: Flufenpyr-ethyl, ethyl [2-chloro-4-fluoro-5-(5-methyl-6-oxo-4-trifluoromethyl-1,6-dihydropyridazin-1-yl)phenoxy]acetate at 98.0%. *Proposed classification/Use*: None. For formulation into herbicide products to control postemergence broadleaf weed species in field corn, forage; field corn, grain; field corn, stover; soybean, seed; sugarcane.

4. *File symbol*: 59639–RRN. *Applicant*: Valent U.S.A. Corporation. *Product name*: S-3153 WDG Herbicide. *Product type*: Herbicide. *Active ingredient*: Flufenpyr-ethyl at 57.6%. *Proposed classification/Use*: None. For manufacturing use of end-use products to be used to control postemergence broadleaf weed species in field corn, soybeans and sugarcane.

5. *File symbol*: 59639–RRR. *Applicant*: Valent U.S.A. Corporation. *Product name*: S-3153 Atrazine WDG. *Product type*: Herbicide. *Active ingredient*: Flufenpyr-ethyl 75.0%. *Proposed classification/Use*: None. For manufacturing use of end-use products to be used to control postemergence broadleaf weed species in field corn and sugarcane.

List of Subjects

Environmental protection, Pesticides and pest.

Dated: October 27, 2002.

Debra Edwards,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 02–28504 Filed 11–12–02; 8:45am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0285; FRL–7278–1]

Draft Guidance on How to Comply with Data Citation Regulations; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of draft guidance on how to comply with the Agency's data citation requirements for registration of new pesticide products under the Federal Insecticide, Fungicide, and Rodenticide Act. When applicants do not fully comply with the data citation regulations, the result can be significant delays in the processing of registration applications, the potential for an increase in adversarial petitions being submitted to the Agency by data submitters, and increased expenditures of resources for all involved, the Agency, applicants, and data submitters. EPA believes that the guidance provided through the notice will assist applicants comply with the data citation requirements and ultimately result in fewer delays in the registration process.

DATES: Comments, identified by docket ID number OPP–2002–0285, must be received on or before December 13, 2002.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Peter Caulkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5447; fax number: (703) 305–6920; e-mail address: *caulkins.peter@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you submit applications for registration of pesticides pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), or if you submit data to the Agency in support of registration or reregistration under FIFRA. Potentially affected entities may include, but are not limited to:

Pesticide Manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2002–0285. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although, a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that

is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute; which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket, but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or on paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at http://www.epa.gov/edocket, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2002–0285. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to opp-docket@epa.gov, Attention: Docket ID Number OPP–2002–0285. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency (7502C), 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2002–0285.

3. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA., Attention: Docket ID Number OPP–2002–0285. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.A.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then

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identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition, one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at your estimate.
5. Provide specific examples to illustrate your concerns.
6. Offer alternatives.
7. Make sure to submit your comments by the comment period deadline identified.
8. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

II. What Action is the Agency Taking?

Applicants who choose to rely on data citation, rather than submitting their own data to meet EPA data requirements, must assure that the offer-to-pay letters they provide to data submitters satisfy EPA's regulatory requirements as provided in 40 CFR part 152, subpart E. When applicants do not follow these procedures, delays in the processing of registration applications result. In addition, improper offer-to-pay letters can increase the potential for adversarial petition actions brought under 40 CFR 152.99. When applicants do not comply with data citation requirements, EPA, data submitters, and applicants expend, unnecessarily, significant resources during the application process. In an effort to avoid needless disputes and save the resources of all concerned, the Agency believes it would be helpful to clarify the obligations of data citers.

By providing this guidance, the Agency hopes to streamline the registration process, provide assistance to applicants for pesticide registration, and to help data submitters preserve their data protection rights.

The draft Pesticide Registration Notice does not address the issue of when offers-to-pay must be made or when documentation demonstrating that offers-to-pay have been made must be submitted to the Agency. EPA expects to issue guidance on this related matter through a separate means.

In addition, the Agency will soon make available to the public several letters that have been issued recently regarding data compensation matters. These letters provide useful guidance to the regulated community and the general public, including persons who prepare applications for registration and those who submit data in support of registration actions. The Agency intends to announce the availability of these letters through a separate notice in the **Federal Register.**

List of Subjects

Environmental protection, Administrative practice and procedures, Pesticides and pests.

Dated: November 1, 2002.

Marcia E. Mulkey,

Director, Office of Pesticide Programs.

[FR Doc. 02–28693 Filed 11–12–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7407–8]

Proposed Administrative Settlement Under the Comprehensive Environmental Response, Compensation and Liability Act; Nazcon Concrete Superfund Site

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i)(1) of CERCLA, 42 U.S.C. 9622(i)(1), notice is hereby given of a proposed administrative settlement concerning the Nazcon Concrete Superfund Site, Beltsville, Prince George's County, Maryland. The administrative settlement was signed by the Acting Regional Administrator of the United States Environmental Protection Agency (EPA), Region III, on October 31, 2002, and is subject to review by the public pursuant to this document.

The Environmental Protection Agency is proposing to enter into a settlement pursuant to section 122(h) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. 9622(h). The proposed settlement resolves EPA's claim for past response costs under section 107 of CERCLA, 42 U.S.C. 9607 against NAZCON, Inc. for response costs incurred at the Nazcon Concrete Superfund Site, Beltsville, Prince George's County, Maryland. The proposed settlement requires NAZCON, Inc. to pay $15,000 to the EPA Hazardous Substance Fund.

NAZCON, Inc., as the Settling Party, has executed binding certifications of its consent to participate in this settlement. NAZCON, Inc. has agreed to pay $15,000 subject to the contingency that EPA may elect not to complete the settlement based on matters brought to its attention during the public comment period established by this notice.

For thirty (30) days following the date of publication of this notice, EPA will receive written comments relating to the proposed settlement. EPA will consider all comments received and may withdraw or withhold consent to the proposed settlement if such comments disclose facts or considerations which indicate that the proposed settlement is inappropriate, improper, or inadequate.

DATES: Comments must be submitted on or before December 12, 2002.

ADDRESSES: Comments should be addressed to the Docket Clerk, United States Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania, 19103, and should reference the Nazcon Concrete Superfund Site, Beltsville, Maryland, U.S. EPA Docket No. CERCLA 03–2002–0255–DC. The proposed settlement agreement is available for public inspection at the United States Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania, 19103. A copy of the proposed settlement agreement can be obtained from Suzanne Canning, Regional Docket Clerk (3RC00), United States Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania, 19103, telephone number (215) 814–2476.

EPA's response to any written comments received will be available for public inspection at the United States Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103.

FOR FURTHER INFORMATION CONTACT: Suzanne M. Parent, Senior Assistant Regional Counsel, United States Environmental Protection Agency, Office of Regional Counsel (3RC44), 1650 Arch Street, Philadelphia, Pennsylvania, 19103, telephone number (215) 814–2630.

Dated: October 31, 2002.

James W. Newsom,

Acting Regional Administrator, U.S. EPA, Region III.

[FR Doc. 02–28842 Filed 11–12–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7407–7]

Supplemental Information and Extension of Public Comment Period on the General National Pollutant Discharge Elimination System Permits for Log Transfer Facilities in Alaska: AK–G70–0000 and AK–G70–1000

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of extension of public comment and request for additional public comments on general NPDES permits for log transfer facilities in Alaska.

SUMMARY: The Director, Office of Water, EPA Region 10, is extending the comment period on proposed modifications of the two general National Pollutant Discharge Elimination System (NPDES) permits for Alaskan log transfer facilities (LTFs), inconclusive of log storage areas: NPDES permit numbers AK–G70–0000 and AK–G70–1000. In addition, EPA Region 10 is providing clarification on an element in the proposed modifications dealing with bark deposition and application of a Zone of Deposit. Notice of a public comment period on the project area zone of deposit for bark and woody debris, and proposed modifications of the NPDES permits was published in the **Federal Register** on October 22, 2002, 67 FR 64885. Region 10 is extending the public comment period to January 13, 2002.

DATES: Interested persons may submit written comments on the proposed modifications to general NPDES permits AK–G70–0000 and AK–G70–1000 and on the project area zone of deposit on or before January 13, 2002.

ADDRESSES: Comments must be sent to the attention of Alaskan LTF Public Comments, EPA Region 10 (OW–130), 1200 Sixth Avenue, Seattle, WA 98101. All comments should include the name of the commenter, a concise statement of the comment, and the relevant facts upon which the comment is based.

FOR FURTHER INFORMATION CONTACT: The NPDES Permits Unit, EPA Region 10 Office of Water, Seattle, Washington, at (206) 553–0775.

SUPPLEMENTARY INFORMATION: The EPA published the public notice of its request for comment on the "project area zone of deposit" for LTFs and its proposed modification of two general permits for Alaskan log transfer facilities on October 22, 2002 (67 FR 64885). The October 22, 2002 **Federal Register** Notice announced a 60-day public comment period ending on December 23, 2002. The EPA did not, however, post the administrative record on the internet, provide copies of the record at its listed offices, nor distribute copies of the public notice and draft modified general permits to permittees and other interested parties in a timely fashion. Therefore, the EPA has determined to extend the public comment period to provide for sixty (60) days of comment following this present re-notice of public comment and proposed permit modification.

In addition to extending the comment period, the EPA seeks to clarify the October 22 **Federal Register** Notice (67 FR 64885) in regard to issues associated with the regulation of continuous coverage of bark and woody debris inside of the project area zone of deposit authorized by the State of Alaska Department of Environmental Conservation (ADEC). The EPA asks that commenters provide comment on the practical, technical, economic, environmental and legal considerations regarding one of two alternative permit conditions to address the physical and environmental impacts associated with continuous coverage of the seafloor by bark and woody debris that is discharged from LTFs. The two alternatives being considered by EPA are: (1) A 1 acre threshold on continuous bark coverage that, once exceeded, would require the development and implementation of a remediation plan overseen by ADEC; or (2) a 1 acre *limit* on continuous bark coverage in the two general NPDES permits, which if exceeded, would be a violation of the permit.

The first alternative is to provide a *threshold* of 1 acre of continuous bark coverage that would serve as an area of initiation for the development and implementation of a *remediation* plan to control and reduce the deposition of additional bark and woody debris that might contribute to the continuous coverage of additional area of seafloor in excess of 1 acre. The 1 acre *threshold for remediation* was provided by the ADEC in its certification of reasonable assurance that the general NPDES permits would meet the Alaska Water Quality Standards pursuant to Section 401 of the Clean Water Act. The ADEC has indicated that the 1 acre threshold was established in the Timber Task Force Guidelines and was meant to be a threshold for regulatory discretion to determine if cleanup was required, but was not intended to be a legal limit in a NPDES permit. Specifically, from Alaska Timber Task Force's (1985), Log transfer facility siting, construction, operations and monitoring/reporting guidelines (p. 11, section C6): "*Bark accumulation*: The regulatory agency(ies) will impose an interim intertidal and submarine threshold bark accumulation level. When accumulations exceed the threshold level, cleanup—if any—will occur at the discretion of the permitting agency(ies). The interim threshold bark accumulation level is described as 100% coverage exceeding both 1 acre in size and a thickness greater than 10 cm (3.9 inches) at any point."

The second alternative is to provide a limit of 1 acre of continuous bark coverage no deeper than 10 centimeters at any point that would serve as a maximum area of coverage under the NPDES permit. The 1 acre *limit of maximum continuous coverage* was provided by the EPA in its proposed modification of the two general permits on October 22, 2002, based on information developed by the Timber Task Force Guidelines on the impacts of discharges of bark and woody debris and previous ADEC Section 401 Certifications. Please refer to the October 22, 2002 **Federal Register** Notice (67 FR 64885) for a more detailed discussion of the alternatives for controlling continuous coverage of the seafloor by bark and woody debris from LTFs.

The EPA also draws attention to an issue of the appropriate precision used in the term "1 acre." The EPA's present October 22, 2002 **Federal Register** Notice uses the value "1.0 acre," a more precise definition of the exact extent of bark coverage. The EPA asks for additional comment on which of these approaches to measurement precision is best.

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Administrative Record: The two draft general NPDES permit nos. AK–G70–0000 and AK–G70–1000, the October 22, 2002, **Federal Register** Notice, and this **Federal Register** Notice are available for inspection and copying at six locations: (a) EPA-Juneau, 709 West 9th Street, Room 223A; (b) ADEC-Juneau, 410 Willoughby Avenue, Suite 200; (c) EPA-Anchorage, 222 West 7th Avenue, Room 19; (d) ADEC-Anchorage, 555 Cordova Street; (e) ADEC-Ketchikan, 540 Water Street; and (f) EPA-Seattle, 1200 Sixth Avenue, 10th Floor Library. These documents are also available on EPA Region 10's internet site at *http://www.epa.gov/r10earth/*. The administrative record for the proposed modifications reflected in the draft general NPDES permits AK–G70–0000 and AK–G70–1000 and the project area zone of deposit can be reviewed in the EPA's Seattle Office, 1200 Sixth Avenue, 13th Floor.

Dated: November 1, 2002.

Randall F. Smith,

Director, Office of Water, Region 10.

[FR Doc. 02–28850 Filed 11–12–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

November 5, 2002.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before January 13, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judith Boley Herman, Federal Communications Commission, Room 1–C804 or Room 1–A804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *jboley@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith Boley Herman at 202–418–0214 or via the Internet at *jboley@fcc.gov*.

SUPPLEMENTARY INFORMATION: *OMB Control No.:* 3060–0106.

Title: Section 43.61, Reports of Overseas Telecommunications Traffic.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 704.

Estimated Time Per Response: 2–240 hours.

Frequency of Response: Annual and quarterly reporting requirements.

Total Annual Burden: 18,520 hours.

Total Annual Cost: $518,000.

Needs and Uses: The telecommunications traffic data report is an annual reporting requirement imposed on common carriers engaged in the provision of overseas telecommunications services. The reported data is useful for international planning, facility authorization, monitoring emerging developments in communications services, analyzing market structures, tracking the balance of payments in international communications services, and market analysis purposes. The reported data enables the Commission to fulfill its regulatory responsibilities.

OMB Control No.: 3060–0806.

Title: Universal Service—Schools and Libraries Universal Service.

Form Nos.: FCC Forms 470 and 471.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions, state, local or tribal government.

Number of Respondents: 60,000.

Estimated Time Per Response: 4.5 hours.

Frequency of Response: On occasion reporting requirement, recordkeeping requirements, and third party disclosure requirement.

Total Annual Burden: 440,000 hours.

Total Annual Cost: N/A.

Needs and Uses: Schools and libraries ordering telecommunications services, Internet access, and internal connections under the universal service discount program must submit a description of the services desired to the Administrator. Schools and libraries may use the same description they use to meet the requirement that they generally face to solicit competitive bids. The FCC Form 470 is used to order those services. The FCC Form 471 requires schools and libraries to list all services that have been ordered and the funding needs for the current funding year. The Commission has modified FCC Form 471 to clarify instructions and specify requirements to participate in the schools and libraries universal service program.

OMB Control No.: 3060–0848.

Title: Deployment of Wireline Services Offering Advanced Telecommunications Capability.

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 1,750.

Estimated Time Per Response: .50–44 hours.

Frequency of Response: On occasion and annual reporting requirements, recordkeeping requirement, third party disclosure requirement.

Total Annual Burden: 165,600 hours.

Total Annual Cost: $61,200.

Needs and Uses: In the Collection Remand Order, CC Docket No. 98–147, the Commission requires that incumbent local exchange carriers providing cross-connects, pursuant to section 201 of the Communications Act of 1934, as amended, must include this offering as part of their federal tariffs as required by section 203(a) of the Act.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–28810 Filed 11–12–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1437–DR]

Louisiana; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Louisiana, (FEMA–1437–DR), dated October 3, 2002, and related determinations.

EFFECTIVE DATE: October 31, 2002.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Magda.Ruiz@fema.gov*.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Louisiana is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of October 3, 2002:

Grant Parish for Individual Assistance.
La Salle and Ouachita Parishes for Individual Assistance (already designated for Public Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program—Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02–28754 Filed 11–12–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1436–DR]

Mississippi; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Mississippi, (FEMA–1436–DR), dated October 1, 2002, and related determinations.

EFFECTIVE DATE: October 30, 2002.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Magda.Ruiz@fema.gov*.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Mississippi is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of October 1, 2002: Copiah, George, and Greene Counties for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02–28753 Filed 11–12–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL MARITIME COMMISSION

[Docket No. 02–16]

Golden Bridge International Inc.; Possible Violations of Sections 10(a)(1), 10(b)(2) and 19(a) of the Shipping Act of 1984; Notice of Investigation and Hearing

Notice is given that the Federal Maritime Commission ("Commission") served an Order of Investigation and Hearing on Golden Bridge International Inc. ("Golden Bridge") on November 6, 2002.

Golden Bridge is licensed by the Commission as an ocean transportation intermediary ("OTI"), and currently holds itself out as a non-vessel-operating common carrier ("NVOCC"). It appears that Golden Bridge may have obtained transportation for certain NVOCC cargoes which it misdescribed as to the commodity actually being shipped, resulting in it obtaining lower rates for its shipments than those rates and charges set forth in the applicable service contracts. It also appears that, on many shipments, Golden Bridge issued its own NVOCC bill of lading for shipments in which it acted as a common carrier in relation to its NVOCC customers, and charged and collected payment on the basis of the inaccurate or unpublished rates shown on its invoice issued at destination. It also appears that a large number of import shipments by Golden Bridge were transported prior to the time it had an effective OTI license or tariff rates for its NVOCC services.

This proceeding seeks to determine whether Golden Bridge violated sections 10(a)(1), 10(b)(2) or 19(a) of the Shipping Act of 1984 and, in the event violations are found, whether penalties should be assessed and, if so, in what amount; whether Golden Bridge's tariff(s) should be suspended; whether Golden Bridge's OTI license should be suspended or revoked; and whether a cease and desist order should be issued.

Any person having an interest in participating in this proceeding may a file petition for leave to intervene in accordance with Rule 72 of the Commission's rules of practice and procedure, 46 CFR 502.72.

Bryant L. VanBrakle,

Secretory.

[FR Doc. 02–28756 Filed 11–12–02; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 27, 2002.

A. Federal Reserve Bank of Cleveland (Stephen J. Ong, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. Terry E. Forcht, Corbin, Kentucky; Marion C. Forcht, Corbin, Kentucky; Theodore B. Forcht, Corbin, Kentucky; Rodney S. Shockley, Marietta, Georgia; and Laurie S. Forcht-Shockley, Marietta, Georgia, also known as the Forcht Family Control Group; to acquire voting shares of Laurel Bancorp, Inc., Corbin, Kentucky, and thereby indirectly acquire voting shares of Laurel National Bank, London, Kentucky.

2. Terry E. Forcht, Corbin, Kentucky; Marion C. Forcht, Corbin, Kentucky;

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Theodore B. Forcht, Corbin, Kentucky; Rodney S. Shockley, Marietta, Georgia; and Laurie S. Forcht-Shockley, Marietta, Georgia, also known as the Forcht Family Control Group; to acquire voting shares of Williamsburg Bancorp, Inc., Corbin, Kentucky, and thereby indirectly acquire voting shares of Williamsburg National Bank, Williamsburg, Kentucky.

3. Terry E. Forcht, Corbin, Kentucky; Marion C. Forcht, Corbin, Kentucky; Theodore B. Forcht, Corbin, Kentucky; Rodney S. Shockley, Marietta, Georgia; and Laurie S. Forcht-Shockley, Marietta, Georgia, also known as the Forcht Family Control Group; to acquire voting shares of Tri-County Bancorp, Inc., Corbin, Kentucky, and thereby indirectly acquire voting shares of Tri-County National Bank, Corbin, Kentucky.

4. Terry E. Forcht, Corbin, Kentucky; Marion C. Forcht, Corbin, Kentucky; Theodore B. Forcht, Corbin, Kentucky; Rodney S. Shockley, Marietta, Georgia; and Laurie S. Forcht-Shockley, Marietta, Georgia, also known as the Forcht Family Control Group; to acquire voting shares of Somerset Bancorp, Inc., Corbin, Kentucky, and thereby indirectly acquire voting shares of Somerset National Bank, Somerset, Kentucky.

Board of Governors of the Federal Reserve System, November 7, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–28839 Filed 11–12–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 6, 2002.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. Munchener Ruckversicherungs-Gesellschaft Aktiengesellschaft, Munich, Germany; to retain 10.4 percent of the voting shares of Commerzbank AG, and thereby indirectly retain 10.4 percent of the voting shares of Pacific Union Bank, Los Angeles, California.

B. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. Ambanc Financial Services, Inc., Beaver Dam, Wisconsin; to acquire 100 percent of the voting shares of Central Lakes Bancorporation, Inc., Necedah, Wisconsin, and thereby indirectly acquire voting shares of Necedah Bank, Necedah, Wisconsin.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. Marshfield Investment Company Employee Stock Ownership Plan Trust, Springfield, Missouri; to become a bank holding company by acquiring 30 percent of the voting shares of Marshfield Investment Company, Springfield, Missouri; Metropolitan National Bank, Springfield, Missouri; First National Bank, Lamar, Missouri; and Bank of Kimberling City, Kimberling City, Missouri.

D. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Maedgen & White, Ltd., Dallas, Texas, and Plains Capital Corporation, Dallas, Texas; to merge with Independent Financial, Inc., Lubbock, Texas, and thereby indirectly acquire Whisperwood National Bank, Lubbock, Texas.

Board of Governors of the Federal Reserve System, November 7, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–28840 Filed 11–12–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11 a.m., Monday, November 18, 2002.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposals regarding a Federal Reserve Bank's building program.

2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

3. Any items carried forward from a previously announced meeting.

FOR FURTHER INFORMATION CONTACT: Michelle A. Smith, Assistant to the Board; 202–452–2955.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: November 8, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–28944 Filed 11–8–02; 3:00 pm]

BILLING CODE 6210–01–P

GENERAL SERVICES ADMINISTRATION

Notice of Intent To Prepare an Environmental Impact Statement

AGENCY: General Services Administration; National Capital Region.

ACTION: Notice

SUMMARY: The General Services Administration (GSA), National Capital Region, intends to prepare an Environmental Impact Statement (EIS) for the Development of the Southeast Federal Center, Washington, DC.

The purpose of the proposed action is to enhance the value of the SEFC to the United States by realizing the Southeast Federal Center's potential and putting the site into productive reuse. Development is anticipated to be by transfer to the private sector in accordance with the SEFC Act. GSA envisions the development of a vibrant, urban, mixed-used waterfront destination, offering a combination of uses—commercial, residential, retail, and cultural—that will attract office workers, residents, and visitors from across the District and beyond.

FOR FURTHER INFORMATION CONTACT: Patricia Daniels, Project Executive, General Services Administration, National Capital Region at (202) 205–5857. Please also call this number if special assistance is needed to attend and participate in the scoping meeting.

SUPPLEMENTARY INFORMATION: The notice of intent is as follows:

Notice of Intent To Prepare an Environmental Impact Statement for the Development of the Southeast Federal Center, Washington, DC

Pursuant to the requirements of the *National Environmental Policy Act of 1969* (NEPA), the Council on Environmental Quality's Regulations (40 CFR part 1500–1508), and GSA Order PBS P1095.1F (Environmental Considerations in Decision Making, dated October 19, 1999), GSA proposes to prepare an EIS for the development of the Southeast Federal Center (SEFC)—a 44-acre underdeveloped, urban waterfront site in Washington, DC—in response to the *Southeast Federal Center Public-Private Development Act of 2000* (Public Law 106–407, hereafter "the SEFC Act"). Not included in the 44 acres and not a part of this proposed action are 11 acres being developed separately as the site of the new U.S. Department of Transportation (DOT) Headquarters. The need for the proposed action arises because the SEFC—once an industrial area within the Washington Navy Yard—is underutilized. Its size and location in the heart of a neighborhood currently undergoing social and economic revitalization clearly indicate that it has great potential to become a unique waterfront destination with natural beauty, historic character (the site is eligible for historic district status), and quality architecture and urban design.

The purpose of the proposed action is to enhance the value of the SEFC to the United States by realizing the SEFC's potential and putting the site into productive reuse. Development is anticipated to be by transfer to the private sector in accordance with the SEFC Act. GSA envisions the development of a vibrant, urban, mixed-used waterfront destination, offering a combination of uses—commercial, residential, retail, and cultural—that will attract office workers, residents, and visitors from across the District and beyond.

In accordance with the SEFC Act, GSA intends to work with the private sector to develop a visionary, yet achievable, long-term development strategy for the site. To this end, GSA developed a Draft Illustrative Plan to provide a framework for the creation of a land use strategy for the SEFC. GSA issued a Request for Qualifications (RFQ) from developers interested in developing the site using the Draft Illustrative Plan as a guide. GSA did not seek specific development proposals in response to the RFQ. The agency's primary objective at that stage was to assess the quality and capabilities of potential developers. The FRQ will be followed by the issuance of a Request for Proposals (RFP) that will seek detailed proposals by qualified developers.

GSA will integrate NEPA compliance with the development and procurement processes during the preparation of the EIS. The draft EIS will be prepared using the combination of the Draft Illustrative Plan, developers' responses to the RFQ, and the NEPA public scoping process to determine the reasonable range of alternatives.

Alternatives Under Consideration

A preliminary group of development alternatives for the SEFC site that would be evaluated in the EIS has been developed by GSA, pending comment received during scoping and responses to the RFQ from potential developers. The alternatives generally follow a logical location preference of commercial/retail development on M Street and the west side of the site and residential/cultural development along the Anacostia River and the east side of the site:

Alternative 1. Maximum commercial and retail with minimum residential and cultural land uses. The potential buildout would be 1.8 million square feet (SF) commercial, 1,700 residential units (1.8 million SF), 350,000 SF retail, and 20,000 SF cultural.

Alternative 2. Maximum residential and cultural with minimum commercial and retail land uses. The potential build out would be 1.2 million SF commercial, 2,700 residential units (2.9 million SF), 160,000 SF retail, and 100,000 SF cultural

Alternative 3. Maximum commercial and retail uses with minimum residential and cultural land uses, but arrayed differently on the site than under Alternative 1. The potential build out would be 1.8 million SF commercial, 1,700 residential units (1.8 million SF), 350,000 SF retail, and 20,000 SF cultural.

Alternative 4. Maximum residential and cultural with minimum commercial and retail land uses, but arrayed differently on the site than under Alternative 2. The potential build out would be 1.2 million SF commercial, 2,700 residential units (2.9 million SF), 160,000 SF retail, and 100,000 SF cultural.

Alternative 5. Maximum square footage of all four land uses: 1.8 million SF commercial, 2,700 residential units (2.9 million SF), 350,000 SF retail, and 100,000 SF cultural.

No Build Alternative. No development under this proposed action with new commercial, retail, residential, or cultural land uses would occur on the 44-acre portion of the SEFC.

GSA anticipates that the following categories of impacts will be addressed in the EIS: Land use, economic, community, environmental justice, transportation system, air quality, noise, hazardous waste, cultural resources, and natural systems. The EIS will also address methods to mitigate any significant impacts. GSA will comply with its obligations under section 106 of the National Historic Preservation Act to identify potential impacts to cultural resources on the SEFC site. Comments received during scoping may result in consideration of additional issues.

Scoping Process

In accordance with NEPA, a scoping process will be conducted to aid in determining the scope of issues to be addressed and for identifying the significant issues related to development of the SEFC. Scoping will be accomplished through a public scoping meeting, direct mail correspondence to potentially interested persons, agencies, and organizations, and meetings with agencies with an interest in the development of the SEFC. It is important that federal, regional, state, and local agencies, and interested individuals and groups take this opportunity to identify environmental concerns that should be addressed during the preparation of the Draft EIS.

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Public Scoping Meeting

The public scoping meeting will be held at Van Ness Elementary School, 1150 5th St., SE., Washington, DC on December 3, 2002, from 6 to 8:30 pm. The meeting will be an informal open house, where visitors may come, receive information, discuss the proposal with study team members, give their comments, and leave anytime during the meeting period. GSA will publish notices announcing this meeting approximately two weeks prior to the meeting in the *Washington Post*, the *Washington Times*, and appropriate neighborhood newspapers, and through direct mailing to local and community organizations. GSA will prepare a scoping report, available to the public, that will summarize the comments received and facilitate their incorporation into the EIS process.

Throughout the EIS process, information on the project and its progress may be found on the GSA website: *http://www.gsa.gov/southeastfederalcenter*

Written Comments: Agencies and the public are encouraged to provide written comments on the scoping issues in addition to or in lieu of giving their comments at the public scoping meeting. Written comments regarding the environmental analysis for the development of the SEFC must be postmarked no later than December 17, 2002 and sent to the following address: General Services Administration, Attention: Patricia Daniels, Project Executive, 7th & D Streets, SW., Suite 2002, Washington, DC 20407.

Scoping Meeting Place

The meeting will be held at the following address: Van Ness Elementary School, 1150 5th St., SE., Washington, DC.

Date: December 3, 2002.

Time: 6 pm to 8:30 pm.

FOR FURTHER INFORMATION CONTACT: Patricia Daniels, Project Executive, General Services Administration, National Capital Region, (202) 205–5857. Please also call this number if special assistance is needed to participate in the scoping meeting.

Dated: November 5, 2002.

Donald C. Williams,

Regional Administrator, National Capital Region, General Services Administration.

[FR Doc. 02–28838 Filed 11–12–02; 8:45 am]

BILLING CODE 6820–23–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

White House Initiative on Asian Americans and Pacific Islanders President's Advisory Commission; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory body scheduled to conduct a public meeting during the month of October 2002.

Name: President's Advisory Commission on Asian Americans and Pacific Islanders (Commission).

Date and Time: Friday, November 22, 2002; 10 a.m.–5 p.m. EST.

Location: Key Bridge Marriott, 1401 Lee Highway, Arlington, VA 22209.

The meeting is open to the public.

The President's Advisory Commission on AAPIs will conduct a public meeting on November 22, 2002, from 10 a.m. to 5 p.m. EST inclusive.

Agenda items will include, but may not be limited to: Presentations of preliminary reports by subcommittees of the President's Advisory Commission in the subject areas of health, economic and community development, education and immigration; Commission deliberations of subcommittee reports; administrative tasks; deadlines; upcoming events; and comments from the public.

The purpose of the Commission is to advise and make recommendations to the President on ways to increase opportunities for and improve the quality of life of approximately thirteen million Asian Americans and Pacific Islanders living in the United States and the U.S. associated Pacific Island jurisdictions, especially those who are most underserved.

Requests to address the Commission must be made in writing and should include the name, address, telephone number and business or professional affiliation of the interested party. Individuals or groups addressing similar issues are encouraged to combine comments and make their request to address the Commission through a single representative. The allocation of time for remarks will be adjusted to accommodate the level of expressed interest. Written requests must be faxed to (301) 443–0259.

Anyone who has interest in joining any portion of the meeting or who requires additional information about the Commission should contact: Ms. Betty Lam or Mr. Erik F. Wang, Office of the White House Initiative on AAPIs, Parklawn Building, Room 10–42, 5600 Fishers Lane, Rockville, MD, 20857, Telephone (301) 443–2492. Anyone who requires special assistance, such as sign language interpretation or other reasonable accommodations, should contact Mr. Wang no later than November 18, 2002.

Dated: November 8, 2002.

Willis Morris,

Senior Advisor to the Deputy Secretary.

[FR Doc. 02–28880 Filed 11–8–02; 11:16 am]

BILLING CODE 4165–15–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0452]

Agency Information Collection Activities; Proposed Collection; Comment Request; New Drug and Biological Drug Products; Evidence Needed to Demonstrate Effectiveness of New Drugs When Human Efficacy Studies Are Not Ethical or Feasible

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed reinstatement of an existing collection of information and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection provisions of FDA's regulations regarding approval of certain new drug and biological products based on efficacy studies conducted in non-human animals.

DATES: Submit written or electronic comments on the collection of information by January 13, 2003.

ADDRESSES: Submit electronic comments on the collection of information to http://www.accessdata.fda.gov/scripts/oc/dockets/edockethome.cfm. Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Karen L. Nelson, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

New Drug and Biological Drug Products; Evidence Needed to Demonstrate Effectiveness of New Drugs When Human Efficacy Studies Are Not Ethical or Feasible

FDA has amended its new drug and biological product regulations to allow appropriate studies in animals in certain cases to provide substantial evidence of effectiveness of new drug and biological products used to reduce or prevent the toxicity of chemical, biological, radiological, or nuclear substances when adequate and well-controlled efficacy studies in humans cannot be ethically conducted because the studies would involve administering a potentially lethal or permanently disabling toxic substance or organism to healthy human volunteers, and field trials are not feasible before approval. In these circumstances, when it may be impossible to demonstrate effectiveness through adequate and well-controlled studies in humans, FDA is providing that certain new drug and biological products intended to treat or prevent serious or life-threatening conditions could be approved for marketing based on studies in animals, without the traditional efficacy studies in humans. FDA is taking this action because it recognizes the importance of improving medical response capabilities to the use of lethal or permanently disabling chemical, biological, radiological, and nuclear substances in order to protect individuals exposed to these substances.

Respondents to this information collection are business and other for-profit organizations and nonprofit institutions.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
314.610(b)(2), 314.630, 601.91(b)(2), and 601.93	1	1	1	5	5
314.610(b), 314.640, 601.91(b), and 601.94	1	1	1	240	240
Total					245

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency of Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
314.610(b)(2), 314.630, 601.91(b)(2), and 601.93	1	1	1	1	1
314.610(b), and 601.91(b)	1	1	1	1	1
Total					2

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA estimates that only one application of this nature may be submitted every 3 years; however for calculation purposes, FDA is estimating the submission of one application annually. FDA estimates 240 hours for a manufacturer of a new drug or biological product to develop patient labeling and to submit the appropriate information and promotional labeling to FDA. At this time, FDA cannot estimate the number of postmarketing reports for information collection. These reports are required under 21 CFR parts 310, 600, and 314. Any requirements will be reported under the adverse experience reporting (AER) information collection requirements. The estimated hours for postmarketing reports range from 1 to 5 hours based on previous estimates for AER; however, FDA is estimating 5 hours for the purpose of this information collection.

The majority of the burden for developing the patient labeling is included under the reporting requirements; therefore, minimal

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burden is calculated for providing the guide to patients. As discussed previously, no burden can be calculated at this time for the number of AER reports that may be submitted after approval of a new drug or biologic. Therefore, the number of records that may be maintained also cannot be determined. Any burdens associated with these requirements will be reported under the AER information collection requirements. The estimated recordkeeping burden of 1 hour is based on previous estimates for the recordkeeping requirements associated with the AER system.

Dated: November 1, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–28854 Filed 11–12–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0355]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Medical Device Recall Authority

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments on the collection of information by December 13, 2002.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Stuart Shapiro, Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Medical Device Recall Authority—21 CFR Part 810 (OMB Control Number 0910–0432)—Extension

This collection implements medical device recall authority provisions under section 518(e) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360h) and part 810 (21 CFR part 810). Section 518(e) of the act gives FDA the authority to issue an order requiring the appropriate person, including manufacturers, importers, distributors, and retailers of a device to immediately cease distribution of such device, to immediately notify health professionals and device-user facilities of the order, and to instruct such professionals and facilities to cease use of such device, if FDA finds that there is reasonable probability that the device intended for human use would cause serious adverse health consequences or death.

Section 518(e) of the act sets out a three-step procedure for issuance of a mandatory device recall order. First, if there is a reasonable probability that a device intended for human use would cause serious, adverse health consequences or death, FDA may issue a cease distribution and notification order requiring the appropriate person to immediately: (a) Cease distribution of the device, (b) notify health professionals and device user facilities of the order, and (c) instruct those professionals and facilities to cease use of the device. Second, FDA will provide the person named in the cease distribution and notification order with the opportunity for an informal hearing on whether the order should be modified, vacated, or amended to require a mandatory recall of the device. Third, after providing the opportunity for an informal hearing, FDA may issue a mandatory recall order if the agency determines that such an order is necessary.

The information collected under the recall authority will be used by FDA to ensure that all devices entering the market are safe and effective, to accurately and immediately detect serious problems with medical devices, and to remove dangerous and defective devices from the market.

The respondents to this proposed collection of information are manufacturers, importers, distributors, and retailers of medical devices.

FDA estimates the burden of this collection of information as follows:

ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
810.10(d)	2	1	2	8	16
810.11(a)	1	1	1	8	8
810.12(a) through (b)	1	1	1	8	8
810.14	2	1	2	16	32
810.15(a) through (d)	2	1	2	16	32
810.15(e)	10	1	10	1	10
810.16	2	12	24	40	960
810.17	2	1	2	8	16
Total					1,082

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Explanation of Report Burden Estimate:

The following estimates are based on FDA's experience with voluntary recalls under 21 CFR part 7. FDA expects no more than two mandatory recalls per year, as most recalls are done voluntarily.

Section 810.10(d)—FDA estimates that it will take approximately 8 hours for the person named in a cease distribution and notification order to gather and submit the information required by this section. The total annual burden is 16 hours.

Section 810.11(a)—Based on its experience in similar situations, FDA expects that there will be only one request for a regulatory hearing per year and that it will take approximately one staff day (8 hours) to prepare this request.

Section 810.12(a) through (b)—Based on its experience in similar situations, FDA expects that there will be only one written request for a review of cease distribution and notification order per year and that it will take approximately one staff day (8 hours) to prepare this request.

Section 810.14—Based on its experience with voluntary recalls, FDA estimates that it will take approximately two staff days (16 hours) to develop a strategy for complying with this order.

Section 810.15(a) through (d)—Based on its experience with voluntary recalls, FDA estimates that it will take approximately two staff days (16 hours) to notify each health professional, user facility, or individual of the order.

Section 810.15(e)—Based on its experience with voluntary recalls, FDA estimates that there will be approximately five consignees per recall (10 per year) who will be required to notify their consignees of the order. FDA estimates it will take them about 1 hour to do so.

Section 810.16—FDA estimates that it would take no more than one staff week (40 hours) to assemble and prepare a written status report required by a recall (§ 810.16). The status reports are prepared by manufacturers 6 to 12 times each year. Therefore, each manufacturer would spend no more than 480 hours each year preparing status reports (40 x 12). If there were two FDA invoked recalls each year, the total burden hours would be estimated at 960 hours each year (480 x 2).

Section 810.17—Based on its experience with similar procedures, FDA estimates it would take one staff day (8 hours) to draft a written request for termination of a cease distribution and notification or mandatory recall order.

Dated: November 5, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–28713 Filed 11–12–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00N–1529]

Elaine Yee-Ling Lai; Debarment Order

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is issuing an order under the Federal Food, Drug, and Cosmetic Act (the act) debarring Ms. Elaine Yee-Ling Lai for 5 years from providing services in any capacity to a person that has an approved or pending drug product application. FDA bases this order on a finding that Ms. Lai was convicted of a felony under Federal law for aiding and abetting the making of a false document containing a materially fictitious statement in a matter within the jurisdiction of a government agency, and that Ms. Lai's conduct undermined the process for the regulation of drugs. Ms. Lai failed to request a hearing and, therefore, has waived her opportunity for a hearing concerning this action.

DATES: This order is effective November 13, 2002.

ADDRESSES: Submit applications for termination of debarment to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Mary Catchings, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION:

I. Background

On June 9, 1998, the U.S. District Court for the Central District of California accepted Ms. Lai's plea of guilty to one count of aiding and abetting the making of a false document containing a materially fictitious statement in a matter within the jurisdiction of a government agency, the FDA, in violation of 18 U.S.C. 1001(a)(3) and 2. The basis of this conviction was Ms. Lai's act in assisting the principal investigator of a clinical study in creating a fraudulent document for use by FDA to determine whether a new drug should be approved.

As a result of this conviction, FDA served Ms. Lai by certified mail on May 13, 2002, a notice proposing to debar her for 5 years from providing services in any capacity to a person that has an approved or pending drug product application. The proposal also offered Ms. Lai an opportunity for a hearing on the proposal. The debarment proposal was based on a finding, under section 306(b)(2)(B)(i)(II) and (a)(2) of the act (21 U.S.C. 335a(b)(2)(B)(i)(II) and (a)(2)) that Ms. Lai was convicted of a felony under Federal law for aiding and abetting the making of a false document containing a materially fictitious statement in a matter within the jurisdiction of a government agency and that Ms. Lai's conduct undermined the process for the regulation of drugs. Ms. Lai was provided 30 days to file objections and to request a hearing. Ms. Lai did not request a hearing. Her failure to request a hearing constitutes a waiver of her opportunity for a hearing and a waiver of any contentions concerning her debarment.

II. Findings and Order

Therefore, the Director of the Center for Drug Evaluation and Research, under section 306(b)(2) of the act, and under authority delegated to her (21 CFR 5.99), finds that Ms. Elaine Yee-Ling Lai has been convicted of a felony under Federal law for aiding and abetting the making of a false document containing a materially fictitious statement in a matter within the jurisdiction of a government agency and that Ms. Lai's conduct undermined the process for the regulation of drugs.

As a result of the foregoing finding, Ms. Elaine Yee-Ling Lai is debarred for 5 years from providing services in any capacity to a person that has an approved or pending drug product application under sections 505, 512, or 802 of the act (21 U.S.C. 355, 360b, or 382) or under section 351 of the Public Health Service Act (42 U.S.C. 262) (see sections 306(c)(1)(B) and (c)(2)(A)(iii) and 201(dd) of the act (21 U.S.C. 321(dd))). Any person with an approved or pending drug product application who knowingly uses the services of Ms. Lai, in any capacity during her period of debarment, will be subject to civil money penalties. If Ms. Lai, during her period of debarment, provides services in any capacity to a person with an approved or pending drug product application, she will be subject to civil money penalties. In addition, FDA will not accept or review any abbreviated new drug applications submitted by or with the assistance of Ms. Lai during her period of debarment.

Any application by Ms. Lai for termination of debarment under section 306(d)(4) of the act should be identified with Docket No. 00N–1529 and sent to the Dockets Management Branch (see **ADDRESSES**). All such submissions are to be filed in four copies. The public availability of information in these submissions is governed by 21 CFR 10.20(j). Publicly available submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: October 15, 2002.

Janet Woodcock,

Director, Center for Drug Evaluation and Research.

[FR Doc. 02–28715 Filed 11–12–02; 8:45 am]

BILLING CODE 4160–01–S

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Orthopaedic and Rehabilitation Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Orthopaedic and Rehabilitation Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on November 20 and 21, 2002, from 9:30 a.m. to 5 p.m.

Location: Holiday Inn, Walker/Whetstone Rooms, Two Montgomery Village Ave., Gaithersburg, MD.

Contact Person: Hany W. Demian, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2036, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12521. Please call the Information Line for up-to-date information on this meeting.

Agenda: On November 20, 2002, the committee will discuss, make recommendations, and vote on a premarket approval application (PMA) for a stair-climbing wheelchair. On November 21, 2002, the committee will discuss, make recommendations, and vote on a PMA for growth factors soaked in a collagen sponge used to treat tibial fractures. In addition, on November 21, 2002, the committee will have a general discussion on preclinical and clinical data for spinal devices. Background information for each day's topic, including the agenda and questions for the committee, will be available to the public 1 business day before the meeting on the Internet at http://www.fda.gov/cdrh/panelmtg.html. Material for the November 20, 2002, session will be posted on November 19, 2002; material for the November 21, 2002, session will be posted on November 20, 2002.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by November 15, 2002. On each day, oral presentations from the public will be scheduled for approximately 30 minutes at the beginning of each PMA topic and for approximately 30 minutes near the end of the committee deliberations. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before November 15, 2002, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact AnnMarie Williams, Conference Management Staff, at 301–594–1283, ext. 113, at least 7 days in advance of the meeting.

FDA regrets that it was unable to publish this notice 15 days prior to the November 20 and 21, 2002, Orthopaedic and Rehabilitation Devices Panel of the Medical Devices Advisory Committee meeting. Because the agency believes there is some urgency to bring these issues to public discussion and qualified members of the Orthopaedic and Rehabilitation Devices Panel of the Medical Devices Advisory Committee were available at this time, the Commissioner of Food and Drugs concluded that it was in the public interest to hold this meeting even if there was not sufficient time for the customary 15-day public notice.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: November 5, 2002.

Linda Arey Skladany,

Senior Associate Commissioner for External Relations.

[FR Doc. 02–28853 Filed 11–12–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Pulmonary-Allergy Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Pulmonary-Allergy Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on December 20, 2002, from 7:30 a.m. to 5 p.m.

Location: Holiday Inn, The Ballrooms, Two Montgomery Village Ave., Gaithersburg, MD.

Contact Person: Kimberly Littleton Topper, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–7001, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12545. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will discuss new drug application (NDA) 20–959, Ebastine by Almirall Prodesfarma, for the proposed indication of relief of nasal and nonnasal symptoms associated with seasonal and perennial allergic rhinitis in adults and children 12 years of age and older.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by December 13, 2002. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before December 13, 2002, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Kimberly Topper at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: November 4, 2002.

Linda Arey Skladany,

Senior Associate Commissioner for External Relations.

[FR Doc. 02–28852 Filed 11–12–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301) 443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: The Health Professions Student Loan (HPSL) and Nursing Student Loan (NSL) Programs: Forms—(OMB No. 0915–0044)—Revision

The HPSL Program Provides long-term, low-interest loans to students attending schools of medicine, osteopathic medicine, dentistry, veterinary medicine, optometry, podiatric medicine, and pharmacy. The NSL Program provides long-term, low-interest loans to students who attend eligible schools of nursing in programs leading to a diploma in nursing, and an associate degree, a baccalaureate degree, or a graduate degree in nursing. Participating HPSL and NSL schools are responsible for determining eligibility of applicants, making loan, and collecting monies owed by borrowers on their outstanding loans. The deferment form (HRSA form 519) provides the schools with documentation of a borrower's eligibility for deferment. The Annual Operating Report (AOR–HRSA form 501) provides the Federal Government with information from participating and non-participating schools (schools that are no longer granting loans but are required to report and maintain program records, student records, and repayment records until all student loans are repaid in full and all monies due the Federal Government are returned) relating to HPSL and NSL program operations and financial activities.

The estimate of burden for the forms are as follows:

Form and number	Number of respondents	Responses per respondent	Total responses	Hours per responses	Total burden hours
Defer-HRSA-519	6,000	1	6,000	10 min	1,000
AOR-HRSA-501	1,048	1	1,048	4 hrs.	4,192
Total Burden	7,048		7,048		5,192

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: John Morrall, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: November 6, 2002.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 02–28855 Filed 11–12–02; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Children's Hospitals Graduate Medical Education (CHGME) Payment Program

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of children's hospitals graduate medical education (CHGME) Payment Program conference calls.

SUMMARY: This document announces scheduled CHGME Payment Program conference calls for calendar year 2003. The purpose of these conference calls is to provide technical assistance related to the CHGME Payment Program.

DATES: The conference calls will be held on Wednesday, January 22, 2003, from 1:30 p.m. to 3:30 p.m. e.s.t., Wednesday, April 23, 2003, from 1:30 p.m. to 3:30 p.m. e.s.t., and Wednesday, October 22, 2003, from 1:30 p.m. to 3:30 p.m. e.s.t.

FOR FURTHER INFORMATION CONTACT: Ayah E. Johnson, Ph.D., telephone: (301) 443–1058; Division of Medicine and Dentistry, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, 5600 Fishers Lane, Room 9A–27, Rockville, Maryland 20857; or by e-mail at: *ajohnson@hrsa.gov*.

SUPPLEMENTARY INFORMATION: The CHGME Payment Program, as authorized by section 340E of the Public Health Service (PHS) Act (the Act) (42 U.S.C. 256e), provides funds to children's hospitals to address disparity in the level of Federal funding for children's hospitals that result from Medicare funding for graduate medical education (GME). Pub. L. 106–310 amended the CHGME statute to extend the program through fiscal year (FY) 2005.

The statute authorized $280 million for both direct and indirect medical education payments in FY 2000, $285 million in FY 2001, and for each of the

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FY 2002 through FY 2005 such sums as necessary. Congress appropriated $40 million in FY2000, $235 million in FY2001, and $285 million in FY2002 for the Program. These funds have supported over 4,000 residents receiving training in children's teaching hospitals in 31 states.

The agenda for the conference calls will include but not be limited to: (1) Welcome and opening comments; (2) news releases/updates; (3) reminders; and (4) "on the horizon" topics of interest. Time will also be available for a question and answer period. Agenda items will be determined as priorities dictate.

Interested parties must register, in advance, but not later than 5 days prior to the scheduled conference call(s). Conference call registration forms and information about the Program can be found on the CHGME Payment Program web site. The web site address is *http://bhpr.hrsa.gov/childrenshospitalgme.*

Dated: November 4, 2002.

Elizabeth M. Duke,

Administrator.

[FR Doc. 02–28758 Filed 11–12–02; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a list of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Projects for Assistance in Transition from Homelessness (PATH) Annual Report—(0930–0205, revision)—The Center for Mental Health Services awards grants each fiscal year to each of the States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands from allotments authorized under the PATH program established by Public Law 101–645, 42 U.S.C. 290cc–21 *et seq.*, the Stewart B. McKinney Homeless Assistance Amendments Act of 1990 (section 521 *et seq.* of the Public Health Service (PHS) Act). Section 522 of the PHS Act requires that the grantee States and Territories must expend their payments under the Act solely for making grants to political subdivisions of the State, and to non-profit private entities (including community-based veterans organizations and other community organizations) for the purpose of providing services specified in the Act. Available funding is allotted in accordance with the formula provision of section 524 of the PHS Act.

This submission is for extension and revision of the current approval of the annual grantee reporting requirements; only minor changes are being made to response choices within a few items. Section 528 of the PHS Act specifies that not later than January 31 of each fiscal year, a funded entity will prepare and submit a report in such form and containing such information as is determined necessary for securing a record and description of the purposes for which amounts received under section 521 were expended during the preceding fiscal year and of the recipients of such amounts and determining whether such amounts were expended in accordance with statutory provisions.

The estimated annual burden for these reporting requirements is summarized in the table that follows.

Respondent	Number of respondents	Responses/ respondent	Avg. burden/ response (hrs.)	Total burden hrs.
States	56	1	26	1,456
Local provider agencies	398	1	31	12,338
Total	455			13,794

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Allison Herron Eydt, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: November 5, 2002.

Richard Kopanda,

Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 02–28749 Filed 11–12–02; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4734–N–67]

Notice of Submission of Proposed Information Collection to OMB; Emergency Comment Request; Notice of Funding Availability for Research on Socioeconomic Change in Cities; Notice of Proposed Information Collection for Public Comment

AGENCY: Office of the Chief Information Officer.

ACTION: Notice of proposed information collection.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for emergency review and approval, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* November 27, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within seven (7) days from the date of this Notice. Comments should refer to the proposal by name/or OMB approval number and should be sent to: Lauren Wittenberg, HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; e-mail: *Lauren Wittenberg@omb.eop.gov*; fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov*; telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: This Notice informs the public that the U.S. Department of Housing and Urban Development (HUD) has submitted to OMB, for emergency processing, an information collection package with respect to identifying the social, economic, demographic, and fiscal change occurring in American cities which is an important part of HUD's mission. Empirical research on urban dynamics would provide an understanding of what factors are driving change and the impact of public policy on change.

This Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Notice of Funding Availability for Research on Socioeconomic Change in Cities.

Description of Information Collection: Identifying the social, economic, demographic, and fiscal change occurring in American cities is an important part of HUD's mission. Empirical research on urban dynamics will provide an understanding of what factors are driving change and the impact of public policy on change.

OMB Control Number: Pending.

Agency Form Numbers: None.

Members of Affected Public: Not-for-profit institutions, State, Local or Tribal Government.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of responses, and hours of response: An estimation of the total number of hours needed to prepare the information collection is 40, number of respondents is 1,700, frequency response is annually, and the hours of response is 21.25.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: November 5, 2002.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Informotion Officer.

[FR Doc. 02–28736 Filed 11–12–02; 8:45 am]

BILLING CODE 4210–72–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Hanford Reach National Monument Federal Advisory Committee Meetings Notice

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Federal Advisory Committee meetings.

SUMMARY: The U.S. Fish and Wildlife Service is announcing two meetings of the Hanford Reach National Monument Federal Planning Advisory Committee (Committee). The meetings will take place at the Consolidated Information Center, Washington State University Tri-Cities Campus, 2770 University Drive, Richland, Washington, in Rooms 120 and 120A. Verbal comments will be considered during the course of the meeting and written comments will be accepted at the close of the meeting or via mail to the Monument office (*see* addresses).

DATES: The Committee has scheduled the following meetings:

1. Tuesday, December 3, 2002, from 9 a.m. to 4 p.m.
2. Tuesday, January 7, 2003, from 9 a.m. to 4 p.m.

ADDRESSES: Any member of the public wishing to submit written comments should send those to Mr. Greg Hughes, Designated Federal Official for the Hanford Reach National Monument (HRNM) Federal Planning Advisory Committee, Hanford Reach National Monument/Saddle Mountain National Wildlife Refuge, 3250 Port of Benton Blvd., Richland, WA 99352; fax (509) 375–0196. Copies of the draft meeting agenda can be obtained from the Designated Federal Official.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information concerning the meeting should contact Mr. Greg Hughes, Designated Federal Official for the Hanford Reach National Monument (HRNM) Federal Planning Advisory Committee (Committee); phone (509) 371–1801, fax (509) 375–0196.

SUPPLEMENTARY INFORMATION: Over the next several months, the Committee will receive information regarding resource reviews that took place on the Monument during the summer of 2002. Additionally, the Committee will be reviewing objectives and goals for the Monument. While public scoping ended on October 12, 2002, the Committee continues to receive public comments via mail and at Committee meetings.

Dated: October 28, 2002.

Rowan W. Gould,

Acting Regional Director, Region 1, Portland, Oregon.

[FR Doc. 02–28752 Filed 11–12–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–921–02–1320–EL–P; MTM 92145]

Invitation—Coal Exploration License Application, Big Horn Co., Montana

AGENCY: Bureau of Land Management, Montana State Office, Interior.

ACTION: Notice of invitation—coal exploration license application MTM 92145.

SUMMARY: Members of the public are hereby invited to participate with Spring Creek Coal Company in a program for the exploration of coal deposits owned by the United States of America in the following-described lands located in Big Horn County, Montana, encompassing 200.00 acres:

T. 8 S., R. 39 E., P. M. M.,
Sec. 14: NE¼NE¼, SW¼NE¼.
Sec. 21: N½SW¼, SE¼SW¼.

SUPPLEMENTARY INFORMATION: Any party electing to participate in this exploration program shall notify, *in writing*, both the State Director, Bureau of Land Management, PO Box 36800, Billings, Montana 59107–6800, and Spring Creek Coal Company, PO Box 67, Decker, Montana 59025. Such written notice must refer to serial number MTM 92145 and be received no later than 30 calendar days after publication of this Notice in the **Federal Register** or 10 calendar days after the last publication of this Notice in the *Sheridan Press* newspaper, whichever is later. This Notice will be published once a week for two (2) consecutive weeks in the *Sheridan Press*, Sheridan, Wyoming.

The proposed exploration program is fully described, and will be conducted pursuant to an exploration plan to be approved by the Bureau of Land

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Management. The exploration plan, as submitted by Spring Creek Coal Company, is available for public inspection at the Bureau of Land Management, 5001 Southgate Drive, Billings, Montana, during regular business hours (9 a.m. to 4 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Robert Giovanini, Mining Engineer, at (406) 896–5084 or Connie Schaff, Land Law Examiner, at (406) 896–5060, Branch of Solid Minerals, Bureau of Land Management, Montana State Office, PO Box 36800, Billings, Montana 59107–6800.

Dated: September 23, 2002.

Randy D. Heuscher,

Chief, Branch of Solid Minerals.

[FR Doc. 02–28759 Filed 11–12–02; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–930–08–1310–00–241A; MSES 50961]

Mississippi: Proposed Reinstatement of Terminated Oil and Gas Lease

Under the provisions of Public Law 97–451, a petition for reinstatement of oil and gas lease MSES 50961, Scott County, Mississippi, was timely filed and accompanied by all required rentals and royalties from the date of termination.

No valid lease has been issued affecting the lands. The lessee has agreed to new lease terms for rentals and royalties at rates of $10 per acre and 16⅔ percent. Payment of $500 in administrative fees and a $155 publication fee has been made.

The Bureau of Land Management is proposing to reinstate the lease effective April 1, 2002, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above. This is in accordance with section 31 (d) and (e) of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 188 (d) and (e)).

FOR FURTHER INFORMATION CONTACT: Gina Goodwin at (703) 440–1534.

Dated: October 9, 2002.

Walter Rewinski,

Acting State Director.

[FR Doc. 02–28760 Filed 11–12–02; 8:45 am]

BILLING CODE 4310–AG–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Information Quality Guidelines Pursuant to Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2002

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of availability of guidelines.

SUMMARY: These final guidelines implement guidelines published by the Office of Management and Budget (OMB) in the **Federal Register** which directed Federal agencies to issue and implement guidelines to ensure and maximize the quality, objectivity, utility, and integrity of government information disseminated to the public. We, the Office of Surface Mining Reclamation and Enforcement (OSM), are issuing these final Information Quality Guidelines in order to comply with the OMB requirement.

FOR FURTHER INFORMATION CONTACT: Division of Administration, Office of Surface Mining, 1951 Constitution Ave., NW., Washington, DC 20240. Telephone (202) 208–2961 or by e-mail to *infoquality@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

A notice published by Office of Management and Budget (OMB) in the **Federal Register**, dated February 22, 2002 (67 FR 8452), directed Federal agencies to issue and implement guidelines to ensure and maximize the quality, objectivity, utility, and integrity of Government information disseminated to the public. We are issuing these final Information Quality Guidelines in order to comply with OMB and Department of the Interior direction. Draft Information Quality Guidelines were published in the **Federal Register**, on July 22, 2002 (67 FR 47829). One comment was received from a public regulatory review group during the public comment period and was considered, and where applicable or appropriate, was incorporated into our final guidelines.

OSM, which includes Headquarters, three regional offices, and ten field offices, disseminates a wide variety of information to the public regarding the nation's surface coal mining and reclamation activities on Federal, tribal or other lands within states which may include state or privately-owned lands. The disseminated information includes organizational and management information, program and service products, research and statistical reports, policy and regulatory information, and general reference material. We will evaluate and identify, prior to dissemination, the types of information subject to these guidelines.

II. Information Quality Standards

OSM will make use of OMB's Paperwork Reduction Act (PRA) (44 U.S.C. chapter 35) clearance process to help improve the quality of information that OSM collects and disseminates to the public. All such collections of information will demonstrate in their PRA clearance submissions to OMB that the information will be collected, maintained, and used in a way consistent with the DOI and OMB Quality Information Guidelines. As a matter of good and effective agency information resource management, we will develop a process for reviewing the quality (including utility and integrity) of collected information before it is disseminated to the public.

Information we disseminate to the public is normally subject to one or more levels of internal staff, or supervisory review for quality before actual dissemination.

The number of levels of internal quality review applied in a particular case depends on the nature, scope, and purpose of the information to be disseminated. For example, routine reports that may be prepared by staff about the agency's activities or operations may be subject to one or two levels of staff or supervisory review for basic accuracy and completeness before such reports are released to the general public. Additional levels of internal review, supplementation, clarification, or approval by our management may be appropriate, however, to the extent that a report may be intended as the basis for more complicated budgeting decisions or legislative reporting (*e.g.* to satisfy a need for greater statistical detail or explanation).

We have adopted the information quality definitions published by OMB and the Department of Interior. they are set forth in IV. below.

III. Information Quality Procedures

While we may vary in our implementation approaches, the basic guidance published by OMB on February 22, 2002, (67 FR 8452) and adopted by the Department of the Interior in the **Federal Register**, dated May 24, 2002 (67 FR 36642) is included in our policy and will apply to our dissemination of information/

The OMB guidelines require that after October 1, 2002, an affected person may seek and obtain, where appropriate, correction of disseminated information that does not comply with the OMB or Department of the Interior guidelines. An affected person is an individual or an entity that may use, benefit from, or be harmed by the dissemination of information at issue. We have established a process for tracking and responding to complaints in accordance with this direction. As part of this process, our website (*http://www.osmre.gov*) is being provided as a means for an affected person to challenge the quality of disseminated information. Written comments may be addressed to the Division of Administration, 1951 Constitution Ave., NW., Washington DC 20240 or by email to *infoquality@osmre.gov.*

A. How To Challenge Information Quality

If you want to challenge the quality of our disseminated information, please provide the following information: The name and address of the person filing the compliant; specific reference to the information being challenged; a statement of why you believe the information fails to satisfy the standards in the OSM, DOI or OMB guidelines; and how you are affected by the challenged information. You may include suggestions for correcting the challenged information, but it is not mandatory.

B. How We Will Process Complaints

Once we receive a complaint, we will have 10 business days to notify you of receipt. We will also notify the program area that disseminated the challenged information of the receipt of the compliant. We will have 60 calendar days from receipt to evaluate whether the compliant is accurate based on an analysis of all information available to the appropriate program or office. If, within the 60-calendar-day period, we determine that the compliant is without merit, we will notify you. If, within the 60-calendar-day period, we determine that the compliant has merit, we will notify you and the appropriate program or office. We will take reasonable steps to withdraw the information from the public domain and from any decision-making process in which it is being used. If we decide to correct the challenged information, we will notify you of our intent and make the correction. We will determine the schedule and procedure for correcting challenged information, but will not disseminate the challenged information in any form until we make the appropriate corrections. We will provide you with a copy of the corrected information once completed.

C. How To Appeal an Initial Decision or Lack of Action

If you do not receive the notices within the timeframe described above, or if you wish to appeal a determination of merit, or wish to appeal the proposed correction of information, you may appeal to the Director of OSM or a delegated official. The Director may intervene on behalf of the complainant to maintain the compliant-resolution process. If the Director determines that an appeal of a determination has merit or the proposed correction of information has merit, our appropriate program office will be notified. We will withdraw the challenged information from the public domain, to the extent practical, and will not use the information in any of our decision-making process until we correct it.

D. How We Handle Multiple Complaints

If we receive a second complaint before we issue the 60-calendar-day notice for an overlapping complaint under review, we will consider it at the same time. We will notify the second complainant within 10 business days that an analysis is in progress and provide its status. We will combine the earlier and later complaints and issue a combined 60-calendar-day notice.

If we receive the second complaint on the same subject after we have issued a 60-calendar-day notice, we will conduct a new and separate review.

E. Commenting on Draft and Final Documents

We conduct many activities by soliciting public review and comment on proposed documents before their issuance in final form. These activities include rulemakings and analyses conducted under the Surface Mining Control and Reclamation Act of 1977 (SMCRA), the National Environmental Policy Act (NEPA) and other authorities. For the purposes of the Information Quality Guidelines covered by this notice, we will generally treat requests we receive for corrections of information in draft documents as comments on the draft document. We will respond to these comments in the final document.

In the case of rulemakings and other public comment procedures, where we disseminate a study, analysis, or other information before the final agency action of information product, we will consider a request for correction before the final action or information product if we have determined that an earlier response would not unduly delay issuing the final action or information, and you have shown a reasonable likelihood of suffering actual harm if we do not resolve the complaint before the final action or information product dissemination.

When we receive requests for corrections of information in a final document, we will first determine whether the request pertains to an issue discussed in the draft document where the requester could have commented. If we determine that the requester had the opportunity to comment on the issue at the draft stage and failed to do so, we may consider the request to have no merit.

If information that did not appear in the draft document is the subject of a request for correction, we will consider that request. If we determine that the information does not comply with OMB or our guidelines and that the non-compliance presents significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts, OSM will use existing mechanisms to remedy the situation, such as re-proposed a rule or supplementing public analysis.

F. Annual Report on Complaints

We will submit a report for each fiscal year to the Department of the Interior's Office of the Chief Information Officer (OCIO) not later than November 30 of each year. The report will identify the number, nature, and resolution of complaints received. The OCIO staff will consolidate all bureau reports into a Departmental annual report and submit to the Director of OMB no later than January 1, annually.

IV. Definitions

1. "Quality" is an encompassing term that includes utility, objectivity, and integrity. Therefore, the guidelines sometimes refer to these four statutory terms collectively as "quality."

2. "Utility" refers to the usefulness of the information to its intended users, including the public. In assessing the usefulness of information that we disseminate to the public, we need to reconsider the uses of the information not only from our perspective, but also from the perspective of the public. As a result, when transparency of information is relevant for assessing the information's usefulness from the public's perspective, we will take care to address that transparency in our review of the information.

3. "Objectivity" involves two distinct elements: presentations and substance.

4. "Objectivity" includes whether we disseminate information in an accurate,

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clear, complete, and unbiased manner. This involves whether the information is presented within a proper context. Sometimes in disseminating certain types of information to the public, other information must also be disseminated in order to ensure an accurate, clear, complete, and unbiased presentation. Also, we will identify the sources of the disseminated information (to the extent possible, consistent with confidentiality protections) and include it in a specific financial or statistical context so that the pubic can assess whether there may be some reason to question the objectively of the sources. Where appropriate, we will identify transparent documentation and error sources affecting date quality.

(b) In addition, "objectively" involves a focus on ensuring accurate, reliable, and unbiased information. In a scientific, financial, or statistical context, we will analyze the original and supporting data and develop our results using sound statistical and research methods.

(1) If data and analytical results have been subjected to formal, independent, external peer review, we will generally presume that the information is of acceptable objectively. however, a complainant may rebut this presumption based on a persuasive showing in a particular instance. If we use peer review to help satisfy the objectively standard, the review process employed shall meet the general criteria for competent and credible peer review recommended by OMB's Office of Information and Regulatory Affairs (IORA) to the President's Management Council (9/20/01) (*http://www.whitehouse.gov/omb/inforeg/infopoltech.html#dq*). OIRA recommends that: (i) Peer reviewers be selected primarily on the basis of necessary technical expertise, (ii) peer reviewers be expected to disclose to agencies prior technical/policy positions they may have taken on the issues at hand, (iii) peer reviewers be expected to disclose to agencies their sources of personal and institutional funding (private or public sector), and (iv) peer reviews be conducted in an open and rigorous manner.

(2) Because we are responsible for disseminating influential scientific, financial, and statistical information, we will include a high degree of transparency about data and methods to facilitate the reproducibility (the ability to reproduce the results) of the information by qualified third parties. To be considered "influential," as that term is defined in item 9 below, information must constitute a principal basis for substantive policy positions adopted by OSM. It should also be noted that the "influential" definition applies to "information" itself, not to decisions that the information may support. Even if a decision or action by OSM is itself very important, a particular piece of information supporting it may or may not be "influential" as defined by these guidelines.

Original and supporting data will be subject to commonly accepted scientific, financial, or statistical standards. We will not require that all disseminated data be subjected to a reproducibility requirement. We may identify, in consultation with the relevant scientific and technical communities, those particular types of data that can practically be subjected to a reproducibility requirement, given ethical, feasibility, or confidentiality constraints. It is understood that reproducibility of data is an indication of transparency about research design and methods and thus a replication exercise (*i.e.*, a new experiment, test of sample) that will not be required before each release of information.

With regard to analytical results, we will generally require sufficient transparency about data and research methods that a qualified member of the public could undertake an independent re-analysis. These transparency standards apply to our analysis of data from a single study as well as the analyses that combine information from multiple studies.

Making the data and methods publicly available will assist us in determining whether analytical results are reproducible. However, the objectivity standard does not override other compelling interests such as privacy, trade secrets, intellectual property, and other confidentiality protections.

In situations where public access to data and methods will not occur due to other compelling interests, we will apply especially rigorous checks to analytical results and document what checks were undertaken. We will, however, disclose the specific data sources used and the specific quantitative methods and assumptions we employed. We will define the type of checks, and the level of detail for documentation given the nature and complexity of the issues. We will use or adapt the quality principles applied by Congress to risk information used and disseminated under the Safe Drinking Water Amendments of 1996 (42 U.S.C. 300g–1(b)(3)(A) and (B)).

Since we are responsible for dissemination of some types of health and public safety information, we will interpret the reproducibility and peer-review standards in a manner appropriate to assuring the timely flow of vital information from us to appropriate government agencies and the public. We may temporarily waive information from appropriate government agencies and the public. We may also temporarily waive information quality standards under urgent situations (*e.g.*, imminent threats to public health, the environment, the national economy, or homeland security) in accordance with the latitude specified in the Department guidelines.

4. "Integrity" refers to the security of information—protection of the information from unauthorized access or revision, to ensure that the information is not compromised through corruption or falsification.

5. "Information" means any communication or representation of knowledge such as facts or data, in any medium or form, including textual, numerical, graphic, cartographic, narrative, or audiovisual forms. This definition includes information that an agency disseminates from a web page, but does not include the provision of hyperlinks to information that others disseminate. This definition does not include opinions, where our presentation makes it clear that what is being offered is someone's opinion rather than fact or our views.

6. "Government information" means information created, collected, processed, disseminated, or disposed of by or for the Federal Government.

7. "Information dissemination product" means any books, paper, map, machine-readable material, audiovisual production, or other documentary material, regardless of physical form or characteristic, an agency disseminates to the public. This definition includes any electronic document, CD–ROM, or Web Page.

8. "Dissemination" means agency initiated or sponsored distribution of information to the public (see 5 CFR 1320.3(d) for definition of "conduct or sponsor"). Dissemination does not include distribution limited to: Government employees or agency contractors or grantees; intra or inter-agency use or sharing of government information; and response to requests for agency records under the Freedom of Information Act, the Privacy Act, the Federal Advisory Committee Act or other similar law. This definition also does not include distribution limited to: Correspondence with individuals or persons, press releases, archival records, public filings, subpoenas or adjudicative processes.

9. "Influential," when used in the phrase "influential scientific, financial, or statistical information," means that we can reasonably determine that dissemination of the information will have or does have a clear and substantial impact on important private sector decisions. We are authorized to define "influential" in ways appropriate for us, given the nature and multiplicity of issues for which we are responsible.

10. "Reproducible" means that the information is capable of being substantially reproduced, subject to an acceptable degree of imprecision.

(a) For information judged to have more important impacts, the degree of imprecision that is tolerated is reduced.

(b) For information judged to have less important impacts, the degree of imprecision that is tolerated is increased.

(c) If we apply the reproducibility test to specific types of original supporting data as published by the DOI and OMB for Quality Information Guidelines, those guidelines will provide the relevant definitions of reproducibility (*e.g.*, standards for replication of laboratory data).

(d) With respect to analytical results, "capable of being substantially reproduced" means that independent analysis of the original or supporting data using identical methods would demonstrate whether similar analytical results, subject to an acceptable degree of imprecision or error, could be generated.

V. Legal Effect

These guidelines are intended only to improve the internal management of the Office of Surface Mining Reclamation and Enforcement relating to information quality. Nothing in these guidelines is intended to create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its offices, or any other person. These guidelines do not provide any right to judicial review.

Dated: October 4, 2002.

Jeffrey D. Jarrett,

Director.

[FR Doc. 02–28802 Filed 11–8–02; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services

Agency Information Collection Activities: Proposed Collection; Comment requested

ACTION: 60-day notice of information collection under review; reinstatement, without change, of a previously approved collection for which approval has expired; COPS Universal Hiring Program (UHP) and COPS in Schools (CIS) Grant Applications.

The Department of Justice Office of Community Oriented Policing Services (COPS) has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until January 13, 2002. This process is conducted in accordance with 5 CFR 1320.10.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Gretchen DePasquale, 202–305–7780, Office of Community Oriented Policing Services, U.S. Department of Justice, 1100 Vermont Ave., NW., Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information:

(1) *Type of information collection:* Reinstatement, without change, of a previously approved collection for which approval has expired.

(2) *The title of the form/collection:* Universal Hiring Program and COPS in Schools Grant Applications.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* *Form number:* None. *Sponsoring component:* Office of Community Oriented Policing Services, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* State, local and tribal governments. *Other:* none. The COPS Office requests OMB approval of a reinstatement, without change, of a previously approved collection for which approval has expired. It will continue to be used by state, local and tribal jurisdictions to apply for federal funding which will be used to increase the number of sworn law enforcement positions in their law enforcement agencies. These grants are meant to enhance law enforcement infrastructures and community policing efforts in both local communities (Universal Hiring Program) and local schools (COPS in Schools).

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There are an estimated 3,500 respondents (or grantees): 2,000 respondents for the UHP, and 1,500 respondents for the CIS. The estimated amount of time required for the average respondent is 8 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are 31,500 estimated burden hours associated with this collection: 18,000 annual burden hours for UHP, and 13,500 burden hours for CIS.

If additional information is required contact: Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: November 5, 2002.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 02–28739 Filed 11–12–02; 8:45 am]

BILLING CODE 4410–AT–M

DEPARTMENT OF JUSTICE

Office of Community Policing Services; Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day Notice of Information Collection Under Review: New Collection; Public Safety/Crime Prevention Proposal Kit.

The Department of Justice (DOJ), Office of Community Oriented Policing Services (COPS) has submitted the

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following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance in with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 67, Number 153, page 51599 on August 8, 2002, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until December 13, 2002. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202)–395–7285.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* New Collection.

(2) *Title of the Form/Collection:* Public Safety/Crime Prevention Proposal Kit.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: None. U.S. Department of Justice, Office of Community Oriented Policing Services (COPS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* State and local law enforcement entitles. Other: None. Abstract: The information collected by the Public Safety/Crime Prevention Proposal Kit is requested to obtain a comprehensive understanding of project objectives in accordance with the Federally appropriated mandate and grant program policies of the COPS Office.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There will be an estimated 160 responses. The estimated amount of time required for the average respondent to respond is 15 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 2,560 annual burden hours associated with this collection.

If additional information is required contact: Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street NW., Washington, DC 20530.

Dated: November 6, 2002.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 02–28755 Filed 11–12–02; 8:45 am]

BILLING CODE 4410–AT–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: 30-day Notice of Information Collection Under Review: New Collection; Prescription Monitoring Program Questionnaire.

The Department of Justice (DOJ), Drug Enforcement Administration (DEA) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** volume 67, Number 167, pages 55274–55275 on August 2, 2002 allowing for a 60-day comment period. The purpose of this notice is to allow for an additional 30 days for public comment until December 13, 2002. This process is conducted in accordance with 5 CFR 1320.10. Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285.

Written comments and suggestions are requested from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of information collection:* New collection.

(2) *The title of the form/collection:* Prescription Monitoring Program Questionnaire.

(3) The agency form number, if any, and the applicable component of the Department sponsoring the collection:

Form No.: None.

Applicable component of the Department sponsoring the collection: Office of Diversion Control, Drug Enforcement Administration, U.S. Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract:

Primary: State agencies.

Other: None.

Abstract: This questionnaire permits the Drug Enforcement Administration to compile and evaluate information regarding the design, implementation and operation of state prescription monitoring programs. Such information allows DEA to assist states in the development of new programs designed to enhance the ability of both DEA and state authorities to prevent, detect, and investigate the diversion and abuse of controlled substances.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply: 25 respondents. 1 response per year × 5 hours per response = 125 annual burden hours.

(6) An estimate of the total public burden (in hours) associated with the collection: 125 annual burden hours. 25 respondents × 5 hours per respondent per year.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, 601 D Street, NW., Washington, DC 20004.

Dated: November 6, 2002.

Robert B. Briggs,

Clearance Officer, U.S. Department of Justice.

[FR Doc. 02–28737 Filed 11–12–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-day notice of information collection under review: revision of a currently approved collection. Deaths in Custody—series of collections from local jails, State prisons, juvenile and law enforcement detention centers.

The Department of Justice (DOJ), Office of Justice Programs, has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for 60 days until January 13, 2002. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact, Lawrence A. Greenfeld, Director, Bureau of Justice Statistics, 810 Seventh St. NW., Washington, DC 20531.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Revision of a currently approved collection

(2) *Title of the Form/Collection:* Deaths In Custody—Series of Collections from Local Jails, State Prisons, Juvenile and Law Enforcement Detention Centers. The series includes the forms: Quarterly Summary of Inmate Deaths in State Prison; State Prison Inmate Death Report; Quarterly Summary of Deaths in State Juvenile Residential Facilities; State Juvenile Residential Death Report; Quarterly Report on Inmates Under Jail Jurisdiction; Annual Summary on Inmates Under Jail Jurisdiction; Quarterly Report on Inmates ir Private and Multi-Jurisdiction Jails; Annual Summary on Inmates in Private and Multi-Jurisdictional Jails; Quarterly Summary of Deaths in Law Enforcement Custody; and Law Enforcement Custodial Death Report.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: *Form Number(s):* NPS–4, NPS–4A, NPS–5, NPS–5A, CJ–9, CJ–9A, CJ–10, CJ–10A, CJ–11 and CJ–11A. Corrections Statistics Unit, Bureau of Justice Statistics, Office of Justice Programs, United States Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: *Primary:* Local jail administrators, (one reporter from each of the 3,083 local jail jurisdictions in the United States), State prison administrators (one reporter from each of the 50 States and the District of Columbia), and State juvenile correctional administrators (one reporter from each of the 50 States and the District of Columbia) responsible for keeping records on inmates will be asked to provide information for the following categories: (a) During each reporting quarter, the number of deaths of persons in their custody; and (b) As of January 1 and December 31 of each reporting year, the number of mail and female inmates in their custody (local jails only); and (c) Between January 1 and December 31 of each reporting year, the number of male and female inmates admitted to their custody (local jails only); and (d) The name, date of birth, gender, race/ethnic origin, and date of death for each inmate who died in their custody during each reporting quarter; and (e) The admission date, legal status, and current offenses for each inmate who died in their custody during the reporting quarter; and (f) Whether or not an autopsy was conducted by a medical examiner or coroner to determine the cause of each inmate death that took place in their custody during the reporting quarter; and (g) The location and cause of each inmate death that took place in their custody during the reporting quarter; and (h) In cases where the cause of death was illness/natural causes (including AIDS), whether or not the cause of each inmate death was the result of a pre-existing medical condition, and whether or not the inmate had been receiving treatment for that medical condition; and (i) In cases where the cause of death was accidental injury, suicide, or homicide, when and where the incident causing the inmate's death took place.

As part of the conference agreement for FY2000 appropriations, the Bureau of Justice Statistics was directed by the U.S. Congress "to implement a voluntary annual reporting system of all deaths occurring in law enforcement custody." BJS received OMB approval to conduct such an annual collection

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(OMB No. 1121–0249). In the time since submitting that collection for OMB approval, the President signed The Deaths in Custody Act of 2000 into law (Pub. L. 106–297). To comply with Pub. L. 106–297's new requirement for a quarterly collection of inmate death data from local jails, State prisons, and juvenile facilities, OMB granted BJS an expanded clearance under the existing number (OMB No. 1121–0249) for the following series of forms: NPS–4, NPS–4A, NPS–5, NPS–5A, CJ–9, CJ–9A, CJ–10, and CJ–10A.

When this expanded OMB Clearance No. 1121–0249 was granted in September 2001, BJS had not yet developed a data collection strategy for measuring deaths in law enforcement custody "in the process of arrest", as required by Pub. L. 106–297. At this time, BJS proposes a data collection program to measure these law enforcement deaths which utilizes State-level central reporters (one reporter from each of the 50 States and the District of Columbia) from each State's criminal justice Statistical Analysis Center (SAC) to provide information for the following categories: (a) During each reporting quarter, the number of deaths of persons in the custody of State and local law enforcement during the process of arrest; (b) The deceased's name, date of birth, gender, race/Hispanic origin, and legal status at time of death; (c) The date and location of death, the manner and medical cause of death, and whether an autopsy was performed; (d) The law enforcement agency involved, and the offenses for which the inmate was being charged; (e) In cases of death prior to booking, whether death was the result of a pre-existing medical condition or injuries sustained at the crime or arrest scene, and whether the officer(s) involved used any weapons to cause the death; (f) In cases of death prior to booking, whether the deceased was under restraint in the time leading up to the death, and whether their behavior at the arrest scene included threats or the use of any force against the arresting officers; (g) In cases of death after booking, the time and date of the deceased's entry into the law enforcement booking facility where the death occurred, and the medical and mental condition of the deceased at the time of entry; and (h) In cases of accidental, homicide or suicide deaths after booking) who and what were the means of death (e.g., suicide by means of hanging).

In States where the SAC cannot perform this function, a statewide central reporter will be selected from among the following: the State Attorney General's office, the State police, the State Medical Examiner's Office, and the State respondent to the Federal Bureau of Investigation's Uniform Crime Reporting program. This collection will supplement the existing quarterly data collections on State prison, local jail and juvenile correctional facility inmate deaths which the Bureau of Justice Statistics has already begun in order to implement Pub. L. 106–297. The Bureau of Justice Statistics will use this new information to publish an annual report on deaths in custody. The report will be made available to the U.S. Congress, Executive Officer of the President, practitioners, researchers, students, the media, and others interested in criminal justice statistics and data.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: There are an estimated 3,236 respondents associated with this collection. The estimated average time to respond per form is listed below.

Quarterly Summary of Inmate Deaths in State Prisons (NPS–4)/quarterly—51 respondents (average response time = 5 minutes)

State Prison Inmate Death Report (NPS–4A)/quarterly—51 respondents (average response time = 30 minutes per reported death)

Quarterly Summary of Deaths in State Juvenile Residential Facilities (NPS–5)/quarterly—51 respondents (average response time = 5 minutes)

State Juvenile Residential Death Report (NPS–5A)/quarterly—51 respondents (average response time = 30 minutes per reported death)

Quarterly Report on Inmate Deaths Under Jail Jurisdiction (CJ–9)/quarterly—2,989 respondents (average response time = 5 minutes + 30 minutes per reported death)

Annual Summary on Inmates Under Jail Jurisdiction (CJ–9A)/annual—2,989 respondents (average response time = 15 minutes)

Quarterly Report on Inmate Deaths in Private and Multi-Jurisdiction Jails (CJ–10)/quarterly—94 respondents (average response time = 5 minutes + 30 minutes per reported death)

Annual Summary on Inmates in Private and Multi-Jurisdiction Jails (CJ–10A)/annual—94 respondents (average response time = 15 minutes)

Quarterly Summary of Deaths in Law Enforcement Custody (CJ–11)/quarterly—51 respondents (average response time = 5 minutes)

Law Enforcement Custodial Death Report (CJ–11A)/quarterly—51 respondents (average response time = 60 minutes per reported death).

(6) An estimate of the total public burden (in hours) associated with the collection: There are an estimated 4,319 burden hours annually associated with this information collection.

If additional information is required contact: Brenda E. Dyer, Department Deputy Clearance Officer, Information Management and Security Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: November 5, 2002.

Brenda E. Dyer,

Department Deputy Clearance Officer, Department of Justice.

[FR Doc. 02–28738 Filed 11–12–02; 8:45 am]

BILLING CODE 4410–18–M

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting

TIME AND PLACE: 9:30 a.m., Tuesday, November 19, 2002.

PLACE: NTSB Conference Center, 429 L'Enfant Plaza SW., Washington, DC 20594.

STATUS: The One Item is Open to the Public.

MATTER TO BE CONSIDERED:

7508 Railroad Accident Report—Collision of Two Canadian National/Illinois Central Railway Trains near Clarkston, Michigan, November 15, 2001.

News Media Contact: Telephone: (202) 314–6100.

Individuals requesting specific accommodations should contact Ms. Carolyn Dargan at (202) 314–6305 by Friday, November 15, 2002.

FOR FURTHER INFORMATION CONTACT: Vicky D'Onofrio, (202) 314–6410.

Dated: November 8, 2002.

Vicky D'Onofrio,

Federal Register Liaison Officer.

[FR Doc. 02–28947 Filed 11–8–02; 3 pm]

BILLING CODE 7533–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–272, 50–311, 50–354, and 50–219; License Nos. DPR–70, DPR–75, NPF–57, and DPR–16]

PSEG Nuclear, LLC and Amergen Energy Company, LLC; Notice of Issuance of Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, has issued a Director's Decision with regard to a letter dated September 17, 2001, filed by the UNPLUG Salem Campaign, hereinafter referred to as the "petitioner." The petition was supplemented on January 9 and 10, 2002. The petition concerns the operation of the Salem Nuclear Generating Station, Unit Nos. 1 and 2 (Salem), Hope Creek Generating Station (Hope Creek), and Oyster Creek Nuclear Generating Station (Oyster Creek).

The petitioner requested that the U.S. Nuclear Regulatory Commission (Commission or NRC) take the following actions:

(1) Order either the closure of, or an immediate security upgrade at, the Salem, Hope Creek, and Oyster Creek.

(2) Order the plants' defenses to be upgraded to withstand a jet crash similar to that which occurred at the World Trade Center (WTC) on September 11, 2001.

(3) Require all spent fuel pools to be brought into the containment buildings, or a new containment building, able to withstand a jet crash, should be built for them.

(4) Cancel all plans for a dry cask storage at any of New Jersey's plants until a jet-bomber-proofed containment is built for them.

(5) Triple the number of Operational Safeguards Response Evaluation (OSRE) security inspections.

(6) Cancel proposals to allow nuclear plants to conduct their own security inspections.

As a basis for the request described above, the Petitioner cited the terrorist attacks on September 11, 2001, stating that New Jersey's four nuclear power plants are vulnerable to terrorist threats, including a suicide airplane attack similar to the attack on the WTC. The UNPLUG Salem Campaign considers such operation to be potentially unsafe and to be in violation of Federal regulations.

On December 7, 2001, the NRC staff informed the Petitioner in a telephone call that the Commission had decided to treat the letter dated September 17, 2001, as a petition pursuant to § 2.206 of title 10 of the Code of Federal Regulations (10 CFR 2.206). In addition, the NRC staff informed the Petitioner that because the September 17, 2001, letter raised sensitive security issues, the Commission was deferring application of certain public aspects of the process described in Management Directive (MD) 8.11, "Review Process for 10 CFR 2.206 Petitions," pending further developments related to the NRC's security review. Accordingly, the NRC staff did not offer the Petitioner the opportunity to provide, in a public forum, additional information to support the September 17, 2001, letter before the NRC's Office of Nuclear Reactor Regulation (NRR) Petition Review Board (PRB). Rather, the NRC staff requested that the Petitioner forward any additional information related to the petition to the assigned petition manager.

By an acknowledgment letter dated December 20, 2001, the NRC staff formally notified the Petitioner that the letter dated September 17, 2001, met the criteria for review under 10 CFR 2.206, and that the NRC staff would act on the request within a reasonable time. The acknowledgment letter further stated that the Commission had, in effect, partially granted the Petitioner's request for immediate actions in that the NRC took action immediately after September 11, 2001, to enhance security at all nuclear facilities, including the four nuclear power plants located in New Jersey. The NRC staff also informed the Petitioner in the acknowledgment letter that the issues raised in the petition were being referred to NRR for appropriate action.

The Petitioner responded to the acknowledgment letter by electronic mail on January 9 and 10, 2002, and provided additional information that the staff considered in its evaluation of the petition. When the NRC received the Petitioner's original letter and additional information, it was determining the criteria for releasing security-related information in light of the events of September 11, 2001. As such, certain correspondence was initially withheld from the public document room due to the potential for sensitive, security-related information to be contained in these documents. With the exception of one report, the Petitioner's incoming letter and subsequent correspondence are now publicly-available.

The NRC sent a copy of the proposed Director's Decision to the Petitioner and to licensees for comment on May 16, 2002. The Petitioner responded with comments on August 4 and 7, 2002, and PSEG Nuclear LLC (PSEG) responded on June 21, 2002. The comments and the NRC staff's response to them are included with the Director's Decision.

The Petitioner raised a number of issues associated with protecting our nation's nuclear power plants from terrorism. However, long before the tragic events of September 11, 2001, the Commission had recognized the need for strict safeguards and security measures at these facilities. NRC regulations have ensured that nuclear power plants are among the most hardened and secure industrial facilities in our nation. Since September 11, 2001, the NRC has directed a number of security enhancements at nuclear power plants to address the continuing threat environment. The Congress, as well as other Federal, State, and Local governmental authorities involved in protecting public health and safety, have also responded to protect all industrial facilities, both nuclear and non-nuclear, against terrorism. The Director of the Office of Nuclear Reactor Regulation has determined that the Commission has, in effect, partially granted certain elements of the Petitioner's request for increased security at Salem, Hope Creek, and Oyster Creek to the extent that many of the Petitioner's requests were included within the scope of Orders issued to all nuclear power plants on February 25, 2002, and are a part of the NRC staff's comprehensive review to evaluate the agency's security and safeguards programs. The reasons for this decision are explained in the Director's Decision pursuant to 10 CFR 2.206 DD–02–03, the complete text of which is available for inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, or from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov/reading-rm.html* (the Public Electronic Reading Room). Documents associated with this Director's Decision may be found in ADAMS by referencing Package Accession No. ML022470404, or individually as follows: (1) Director's Decision, ML022470314; (2) UNPLUG Salem response dated August 4, 2002, ML022480149; (3) Union of Concerned Scientists letter dated August 7, 2002, ML022480163; (4) PSEG letter dated June 21, 2002, ML022480173; and (5) Memorandum to Ledyard Marsh, "Staff Response to Comments on Proposed Director's Decision," ML022470402.

A copy of the Director's Decision will be filed with the Secretary of the Commission for the Commission's review in accordance with 10 CFR 2.206 of the Commission's regulations. As provided for by this regulation, the Director's Decision will constitute the final action of the Commission 25 days after the date of the decision, unless the Commission, on its own motion, institutes a review of the Director's Decision in that time.

Dated in Rockville, Maryland, this 1st day of November, 2002.

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For the Nuclear Regulatory Commission.
Jon R. Johnson,
Deputy Director, Office of Nuclear Reactor Regulation.
[FR Doc. 02–28761 Filed 11–12–02; 8:45 am]
BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request for Reclearance of a Revised Information Collection: RI 25–49

AGENCY: Office of Personnel Management.
ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995 and 5 CFR part 1320), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget a request for reclearance of a revised information collection. RI 25–49, Verification of Full-Time School Attendance, is used to verify that adult student annuitants are entitled to payments. OPM must confirm that a full-time enrollment has been maintained.

Approximately 10,000 RI 25–49 forms are completed annually. Each form takes approximately 60 minutes to complete. The annual estimated burden is 10,000 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, FAX (202) 418–3251 or e-mail to *mbtoomey@opm.gov*. Please include your mailing address with your request.

DATES: Comments on this proposal should be received within 30 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to—

Ronald W. Melton, Chief, Operations Support Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3349, Washington, DC 20415–3540.
and
Stuart Shapiro, OPM Desk Officer, Office of Information & Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., Room 10235, Washington, DC 20503.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Cyrus S. Benson, Team Leader, Desktop Publishing and Printing Team, Budget & Administrative Services Division, (202) 606–0623.

Office of Personnel Management.
Kay Coles James,
Director.
[FR Doc. 02–28808 Filed 11–12–02; 8:45 am]
BILLING CODE 6325–50–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request for a Revised Information Collection: Generic Survey Plan

AGENCY: Office of Personnel Management.
ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) will submit to the Office of Management and Budget a request for review of a revised information collection. The Generic Survey Plan was revised to be an umbrella clearance for all OPM customer satisfaction surveys used with OPM programs and services. This Plan satisfies the requirements of Executive Order 12862 and the guidelines set forth in OMB's Resources Manual for Customer Surveys.

The surveys completed will include web-based (electronic), paper-based, telephone and focus groups. We estimate approximately 3,997,780 surveys will be completed in FY 2003, 4,747,790 surveys in FY 2004 and 6,129,100 surveys in FY 2005. The time estimate varies from 1 minute to 2 hours with the average being 15 minutes. The annual estimated burden is 614,802 hours for FY 2003, 704,812 hours for FY 2004, and 794,769 hours for FY 2005.

For copies of this proposal, contact Mary Beth Smith-Toomey on FAX (202) 418–3251 or E-mail to *mbtoomey@opm.gov*. Please include a mailing address with your request.

DATES: Comments on this proposal should be received on or before December 13, 2002.

ADDRESSES: Send or deliver comments to:

Mary Beth Smith-Toomey, OPM PRA Officer, U.S. Office of Personnel Management, 1900 E St., NW., Room 5415, Washington, DC 20415.
and
Stuart Shapiro, Agency Desk Officer, Office of Management and Budget, 725 17th St., NW., Room 10235, Washington, DC 20503.

Office of Personnel Management.
Kay Coles James,
Director.
[FR Doc. 02–28811 Filed 11–12–02; 8:45 am]
BILLING CODE 6325–47–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request for Revised Information Collection: OPM Form 1300, Presidential Management Intern Program Application

AGENCY: Office of Personnel Management.
ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) submitted a request to the Office of Management and Budget (OMB) for review of a revised information collection for OPM Form 1300, Presidential Management Intern Program Application. Approval of the Presidential Management Intern Program (PMI) application is necessary to facilitate the timely nomination, selection and placement of Presidential Management Intern finalists in Federal agencies.

The 60-day **Federal Register** Notice was published on June 24, 2002 (FR Doc. 02–15805) to request comments. No comments were received. The following changes have been made to the application: (1) A cover page was added to provide application instructions, updated Privacy Act Statement and updated Public Burden Statement; (2) removed the unique control number that was pre-printed within the footer of the form that is scanned in along with the applicant's information, this has been replaced with the applicant's Social Security Number on each page; (3) added an additional occupational preference (area of work interest) to include "Transportation"; and (4) minor edits and spacing.

We estimate 2000 applications will be received and processed in the 2002/2003 open season for PMI applications. Each application takes approximately 2 hours to complete (one hour for applicants (nominees) and one hour for nominating school official(s)). The annual estimated burden is 4,000 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey at (202) 606–8358, fax (202) 418–3251 or e-mail to *mbtoomey@opm.gov*. Please include your complete mailing address with your request.

DATES: Comments on this proposal should be received within thirty (30) calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to: Rob Timmins, U.S. Office of Personnel Management, Employment Service, 1900 E Street, NW., Room 1425, Washington, DC 20415–9820, e-mail: *ratimmin@opm.gov* and Stuart Shapiro, OPM Desk Officer, Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building, NW., Room 10235, Washington, DC 20503.

Office of Personnel Management.
Kay Coles James,
Director.
[FR Doc. 02–28812 Filed 11–12–02; 8:45 am]
BILLING CODE 6325–38–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension

Rule 202(a)(11)–1, SEC File No. 270–471, OMB Control No. 3235–0532

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

The title for the collection of information is "Certain Broker-Dealers Deemed Not To Be Investment Advisers." Proposed rule 202(a)(11)–1 under the Investment Advisers Act of 1940 ("Advisers Act") would allow broker-dealers registered with the Commission to manage non-discretionary brokerage accounts without being subject to the Advisers Act regardless of the form of compensation charged those accounts provided that certain conditions are met. The rule would require that all advertisements for brokerage accounts charging an asset-based fee and all agreements and contracts governing the operation of those accounts contain a prominent statement that the accounts are brokerage accounts. This collection of information is necessary so that customers are not confused with respect to the services that they are receiving, *i.e.*, to prevent customers and prospective customers from mistakenly believing that the account is an advisory account subject to the Advisers Act. The collection will assist customers in making informed decisions regarding whether to establish accounts.

The respondents to this collection of information are all broker-dealers that are registered with the Commission. The Commission has estimated that the average annual burden for ensuring compliance with the disclosure element of the rule is 5 minutes per broker-dealer taking advantage of the rule. If all of the approximately 8,100 broker-dealers registered with the Commission took advantage of the rule, the total estimated annual burden would be 673 hours (.083 hours × 8,100 brokers).

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: November 5, 2002.
Margaret H. McFarland,
Deputy Secretary.
[FR Doc. 02–28745 Filed 11–12–02; 8:45 am]
BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25794 ; 812–12554]

Federated Index Trust, *et al.*; Notice of Application

November 6, 2002.
AGENCY: Securities and Exchange Commission ("Commission").
ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from section 15(a) of the Act and rule 18f–2 under the Act.

SUMMARY OF THE APPLICATION: The order would permit applicants to enter into and materially amend subadvisory agreements without shareholder approval.

APPLICANTS: Federated Index Trust (the "Trust") and Federated Investment Management Company ("the Adviser").

FILING DATES: The application was filed on June 21, 2001. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving the applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on December 2, 2002, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 5th Street, NW., Washington, DC 20549–0609. Applicants, c/o Matthew G. Maloney, Esq., Dickstein Shapiro Morin & Oshinsky LLP, 2101 L Street, NW, Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT: John Yoder, Attorney-Adviser, at (202) 942–0544, or Nadya Roytblat, Assistant Director, at (202) 942–0564, (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 5th Street, NW, Washington, DC 20549–0102 (tel. 202–942–8090).

Applicants' Representations

1. The Trust, a Massachusetts business trust, is registered under the Act as an open-end management investment company. The Trust currently offers four series ("Funds"), each of which has its own investment objectives, policies and restrictions. The Adviser is registered under the Investment Advisers Act of 1940 (the

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"Advisers Act"), and serves as the investment adviser to the Funds.[1]

2. The Trust is the only existing investment company that currently intends to rely on the order. Applicants represent that if the name of any Fund should contain the name of a Subadviser, it will also contain the name of the Adviser, which will appear before the name of the Subadviser.

3. The Adviser serves as the investment adviser to each Fund pursuant to an investment advisory agreement with the Trust ("Advisory Agreement") that was approved by the board of trustees of the Trust (the "Board"), including a majority of the Trustees who are not "interested persons," as defined in section 2(a)(19) of the Act ("Independent Trustees"), and the shareholders of each Fund. Under the terms of the Management Agreement, the Adviser provides supervision of the investments of the Funds and may, as permitted by the Board, hire one or more subadvisers ("Subadvisers") to effect purchases and sales of portfolio securities pursuant to separate investment advisory agreements ("Subadvisory Agreements"). Each Subadviser is or will be an investment adviser registered under the Advisers Act. Subadvisers are recommended to the Board by the Adviser and selected and approved by the Board. Each Subadviser's fees are paid by the Adviser out of the management fees received by the Adviser from the respective Fund.

4. The Adviser monitors the Funds and the Subadvisers and makes recommendations to the Board regarding allocation of assets between Subadvisers and is responsible for recommending the hiring, termination and replacement of Subadvisers. The Adviser recommends Subadvisers based on a number of factors used to evaluate their skills in managing assets pursuant to particular investment objectives.

5. Applicants request relief to permit the Adviser, subject to the Board's approval, to enter into and materially amend Subadvisory Agreements without shareholder approval. The requested relief would not extend to any Subadviser that is an affiliated person, as defined in section 2(a)(3) of the Act, of the Trust or the Adviser, other than by reason of serving as a Subadviser to one or more of the Funds (an "Affiliated Subadviser").

[1] Applicants request that the relief also apply to any registered open-end investment company or series thereof that (a) is advised by the Adviser or any entity controlling, controlled by or under common control with the Adviser; (b) uses the management structure described in the application; and (c) complies with the terms and conditions of the requested order (included in the term "Funds").

Applicants Legal Analysis

1. Section 15(a) of the Act provides, in relevant part, that it is unlawful for any person to act as an investment adviser to a registered investment company except pursuant to a written contract that has been approved by the vote of the company's outstanding voting securities. Rule 18f–2 under the act provides that each series or class of stock in a series company affected by a matter must approve such matter if the Act requires shareholder approval.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provision of the Act, or from any rule thereunder, to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act. Applicants state that the requested relief meets this standard for the reasons discussed below.

3. Applicants assert that the Funds' shareholders rely on the Adviser to select the Subadvisers best suited to achieve a Fund's investment objectives. Applicants assert that, from the perspective of the investor, the role of the Subadvisers is comparable to that of individual portfolio managers employed by other investment advisory firms. Applicants submit that the requested relief will reduce the Funds' expenses associated with shareholder meetings and proxy solicitations, and enable the Funds to operate more efficiently. Applicants also note that the Advisory Agreement will remain subject to section 15(a) of the Act and rule 18f–2 under the Act.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Before a Fund may rely on the requested order, the operation of the Fund, as described in this application, will be approved by the vote of a majority of the Fund's outstanding voting securities, as defined in the Act, or in the case of a Fund whose public shareholders purchased shares on the basis of a prospectus containing the disclosure contemplated by condition 2 below, by the initial shareholders before offering shares of that Fund to the public.

2. Each Fund relying on the requested relief will disclose in its prospectus the existence, substance, and effect of any order granted pursuant to the application. In addition, each Fund will hold itself out to the public as employing the management structure described in the Application. The prospectus will prominently disclose that the Adviser has ultimate responsibility, subject to review of the Board, to monitor and evaluate Subadvisers and recommend their hiring, termination and replacement.

3. At all times, a majority of the Board will be Independent Trustees, and the nomination of new or additional Independent Trustees will be at the discretion of the then-existing Independent Trustees.

4. The Adviser will not enter into a Subadvisory Agreement with an Affiliated Subadviser without that agreement, including the compensation to be paid under it, being approved by the shareholders of the applicable Fund.

5. When a Subadviser change is proposed for a Fund with an Affiliated Subadviser, the Board, including a majority of the Independent Trustees, will make a separate finding, reflected in the Trust's Board minutes, that the change is in the best interests of the Fund and its shareholders, and does not involve a conflict of interest from which the Adviser or the Affiliated Subadviser derives an inappropriate advantage.

6. Within 90 days of the hiring of any new Subadviser, the Adviser will furnish shareholders of the affected Fund with all information about the Subadviser that would be included in a proxy statement. The Adviser will meet this condition by providing shareholders of the applicable Fund with an information statement meeting the requirements of Regulation 14C, Schedule 14C, and Item 22 of Schedule 14A under the Securities Exchange Act of 1934.

7. The Adviser will provide general management services to the Funds including overall supervisory responsibility for the general management and investment of each Fund's securities portfolio and, subject to review and approval by the Board, will (a) set each Fund's overall investment strategies; (b) evaluate, select, and recommend Subadvisers to manage all or a part of a Fund's assets; (c) when appropriate, allocate and reallocate the Fund's assets among multiple Subadvisers; (d) monitor and evaluate the performance of the Subadvisers; and (e) implement procedures reasonably designed to ensure that the Subadvisers comply with the Fund's investment objectives, restrictions and policies.

8. No trustee or officer of the Trust or director or officer of the Adviser will own, directly or indirectly (other than through a pooled investment vehicle that is not controlled by any such director, trustee, or officer), any interest in a Subadviser except for: (a) ownership of interests in the Adviser or any entity that controls, is controlled by, or under common control with the Adviser, or (b) ownership of less than 1% of the outstanding securities of any class of equity or debt securities of any publicly traded company that is either a Subadviser or an entity that controls, is controlled by, or is under common control with a Subadviser.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–28807 Filed 11–12–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46765; File No. SR–Amex–2002–91]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC Relating to Suspension of Transaction Charges for Certain Exchange-Traded Funds

November 1, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 1, 2002, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Amex proposes to suspend until November 30, 2002 Exchange transaction charges for specialist, Registered Trader and broker-dealer orders for the iShares Lehman 1–3 year Treasury Bond Fund; iShares Lehman 7–10 year Treasury Bond Fund; Treasury 10 FITR ETF; Treasury 5 FITR ETF; Treasury 2 FITR ETF; and Treasury 1 FITR ETF; and to suspend customer transaction charges for an indefinite period for Treasury 10 FITR ETF; Treasury 5 FITR ETF; Treasury 2 FITR ETF; and Treasury 1 FITR ETF.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange has suspended transaction charges for transactions in the iShares Lehman 1–3 year Treasury Bond Fund (Symbol: SHY); iShares Lehman 7–10 year Treasury Bond Fund (Symbol: IEF); iShares Lehman 20+ year Treasury Bond Fund (Symbol: TLT); and iShares GS $ InvesTop ™ Corporate Bond Fund (Symbol: LQD) ("Funds") for specialist, Registered Trader and broker-dealer orders until October 31, 2002.[3] The Exchange proposes to extend until November 30, 2002 the suspension of transaction charges in SHY and IEF for specialist, Registered Trader and broker-dealer orders. The Exchange will not suspend transaction charges for TLT and LQD beyond October 31, 2002 for specialist, Registered Trader and broker-dealer orders.

In addition, the Exchange proposes to waive transaction charges for transactions in Treasury 10 FITR ETF (Symbol: TTE); Treasury 5 FITR ETF (TFI); Treasury 2 FITR ETF (TOU); and Treasury 1 FITR ETF (TFT) until November 30, 2002 for specialist, Registered Trader and broker-dealer orders; and proposes to waive customer transaction charges in these securities for an indefinite time period.

The Exchange believes a suspension of fees for these securities is appropriate to enhance the competitiveness of executions in these securities on the Amex. The Exchange will reassess the fee suspension as appropriate, and will file any modification to the fee suspension with the Commission pursuant to Section 19(b)(3)(A) of the Act.[4]

2. Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(4) of the Act in particular because it is intended to assure the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will not impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[5] and subparagraph (f)(6) of Rule 19b–4 thereunder.[6] The proposed rule change effects a change that (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.[7]

The Exchange requests that the Commission waive the provision in Rule 19b–4(f)(6)[8] that the proposed rule

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 46618 (October 8, 2002), 67 FR 63714 (October 15, 2002).

[4] 15 U.S.C. 78s(b)(3)(A).

[5] *Id.*

[6] 17 CFR 240.19b–4(f)(6).

[7] As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date or such shorter time as designated by the Commission.

[8] 17 CFR 240.19b–4(f)(6).

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change does not become operative for 30 days after the date of the filing. Trading in the iShares Funds that are the subject of this filing began trading on the Exchange on July 26, 2002, and as noted above, fee suspensions have been previously filed with the Commission pursuant to Rule 19b–4.[9] Extension of the fee suspension for specialist, Registered Trader and broker-dealer orders will result in beneficial cost savings for members and other market participants. In addition, trading in the FITRs ETFs will begin on November 1, 2002 and implementation of the fee suspensions by that date will result in the same beneficial cost savings. The Exchange will reassess the waiver for specialist, Registered Trader and broker-dealer orders beyond November 30, 2002, and will make any required filing pursuant to Rule 19b–4 prior to that date.

The Commission has determined to designate that the proposed rule change become operative on November 1, 2002. The Commission believes that this operative date is consistent with the protection of investors and the public interest because it will permit the fee suspensions to continue for the iShares products on an uninterrupted basis and will provide all market participants with the fee suspension for the new FITR ETFs immediately upon the launch of trading.[10]

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in the furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–2002–91 and should be submitted by December 4, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–28743 Filed 11–12–02; 8:45 am]

BILLING CODE 8010–01–P

[9] *See* note *supra*.

[10] For purposes only of accelerating the operative date of this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46776; File No. SR–CBOE–2002–50]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Relating to the Retail Automatic Execution System Log-On Requirements for Market-Makers

November 6, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 28, 2002, the Chicago Board Options Exchange ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the CBOE. On October 25, 2002, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to approve the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Exchange Rule 8.16 to eliminate the current Retail Automatic Execution System ("RAES") log on requirements for market-makers. Below is the text of the proposed rule change. Proposed new text is italicized and proposed deleted text is [bracketed].

* * * * *

RAES Eligibility in Option Classes Other Than DJX, OEX and SPX

RULE 8.16 (a). No Change

[(b) In option classes designated by the appropriate Market Performance Committee, any Market-Maker who has logged on RAES at any time during an expiration month must log on the RAES system in that option class whenever he is present in that trading crowd until the next expiration.]

[(c)]*(b)* Notwithstanding the limitations in Paragraphs (a)(iii) and (a)(iv) above, if there is inadequate RAES participation in a particular options class, Floor Officials of the appropriate Market Performance Committee may require Market-Makers who are members of the trading crowd, as defined in Rule 8.50 to log on RAES absent reasonable justification or excuse for non-participation or may allow Market-Makers in other classes of options to log on RAES in such classes.

[(d)] *(c)* Members who fail to abide by the foregoing requirements may be subject to disciplinary action under, among others, Rule 6.20 and Chapter XVII of the Exchange Rules. Such failure may also be the subject of remedial action by the appropriate Market Performance Committee, including but not limited to suspending a member's eligibility for participation on RAES and such other remedies as may be appropriate and allowed under Chapter VIII of the Exchange Rules.

* * * Interpretations and Policies:

.01 No Change.

.02 No Change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange submitted a new Form 19b–4, which replaces and supersedes the original filing in its entirety.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Current CBOE Rule 8.16 outlines the requirements with which a market-maker must comply in order to participate on RAES. Among the requirements, any market-maker who has logged on to RAES at any time during an expiration month must log on to the RAES system in that option class whenever he is present in that trading crowd until the next expiration. After assessing the impact of the RAES log on requirement, the Exchange believes that it no longer serves the purpose for which it was created, *i.e.*, encouraging greater market-maker participation on RAES. Current CBOE Rule 8.16 limits participation in an all-or-none fashion. As a result, the Exchange seeks to remove the log on requirement in its entirety in order to encourage market-makers to log onto RAES to the extent that their business models permit. The Exchange believes this rule change is consistent with the recent changes to Rule 6.87 of the log on requirements of the Pacific Exchange, Inc.[4]

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.[5] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[6] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE believes that the proposed rule change, as amended, does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

[4] Securities Exchange Act Release No. 45894 (May 8, 2002), 67 FR 34745 (May 15, 2002).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[7] and Rule 19b–4(f)(6) thereunder.[8] At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Exchange Act.

The CBOE has requested that the Commission waive the 30-day operative delay.[9] The Commission believes waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Waiver of the notice requirement and acceleration of the operative date will permit the CBOE to implement the proposed rule change without undue delay. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.[10]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–2002–50 and should be submitted by December 4, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–28744 Filed 11–12–02; 8:45 am]

BILLING CODE 8010–01–P

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6).

[9] The CBOE did not specifically request the Commission to waive the 5-day pre-filing requirement. However, because the original filing was filed more than 5 days before Amendment No. 1, which converted the filing to a non-controversial filing pursuant to Section 19b(3)(A) of the Act and Rule 19b–4(f)(6) thereunder, the Commission finds that the 5-day pre-filing requirement has been satisfied.

[10] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46774; File No. SR–NQLX–2002–2]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by Nasdaq Liffe Markets, LLC Relating to Listing Standards for Security Futures Products

November 5, 2002.

Pursuant to section 19(b)(7) of the Securities Exchange Act of 1934 ("Act"),[1] and rule 19b–7 under the Act,[2] notice is hereby given that on October 30, 2002, Nasdaq Liffe Markets, LLC ("NQLX") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change described in items I and II below, which items have been prepared by NQLX. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons. NQLX also has filed the proposed rule change with the Commodity Futures Trading Commission ("CFTC"), together with a written certification under section 5c(c) of the Commodity Exchange Act[3] ("CEA") on October 30, 2002.

I. Self-Regulatory Organization's Description of the Proposed Rules

NQLX is proposing to adopt rules on listing standards for security futures contracts to comply with the requirements under section 6(h)(3) of

[1] 15 U.S.C. 78s(b)(7).

[2] 17 CFR 240.19b–7.

[3] 7 U.S.C. 7a–2(c).

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the Act[4] and the criteria under section 2(a)(1)(D)(i) of the CEA,[5] as modified by joint orders of the Commission and the CFTC.[6]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rules

NQLX has prepared statements concerning the purpose of, and statutory basis for, the proposed rules, burdens on competition, and comments received from members, participants, and others. The text of these statements may be examined at the places specified in item IV below. These statements are set forth in sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rules

1. Purpose

The Commodity Futures Modernization Act of 2000[7] ("CFMA") lifted the ban on trading futures on single stocks as well as narrow-based stock indices ("security futures"). As part of this new regulatory framework, the CFMA amended the Act and the CEA by establishing the criteria and requirements for listing standards regarding the category of securities on which security futures can be based. NQLX has adopted these proposed rules on listing standards to comply with the requirements under section 6(h)(3) of the Act and the criteria under section 2(a)(1)(D)(i) of the CEA,[8] as modified by joint orders of the Commission and the CFTC.

NQLX is a board of trade, as that term is defined by the CEA,[9] and has been designated as a contract market by the CFTC and its designation has not been suspended by order of the CFTC.[10] On August 26, 2002, NQLX registered with the SEC as a national securities exchange solely for the purposes of trading security futures.[11] NQLX meets each of the requirements for listing standards and conditions for trading security futures.[12] Specifically:

(1) Except as otherwise provided in a rule, regulation, or order issued jointly by the SEC and CFTC, NQLX's proposed rules 902(b)(2) and 902(d)(2), which are part of this filing, require that any security underlying an NQLX security future (including each component security for a narrow-based security index) must be registered pursuant to section 12 of the Act.[13]

(2) For any security futures listed by NQLX that are not cash-settled, NQLX has arranged with the Options Clearing Corporation (which is a clearing agency registered pursuant to section 17A[14] of the Act) for the payment and delivery of the security or securities underlying the security futures listed on NQLX.[15]

(3) NQLX believes that its proposed rules 902 and 903, which are listing standards for physically-settled security futures and are part of this filing, are no less restrictive than comparable listing standards for options traded on a national securities exchange or national securities association.[16]

(4) Except as otherwise provided in a rule, regulation, or order issued jointly by the SEC and CFTC, NQLX's proposed rule 902(b)(1), which is a part of this filing, requires that the security future be based upon a common stock or other equity securities as the SEC and CFTC jointly determine appropriate, which currently include American Depositary Receipts, shares of exchange-traded funds, trust-issued receipts, and shares of closed-end funds.[17]

(5) NQLX, through its clearing and settlement relationship with the Options Clearing Corporation, will have in place—within 165 days after the SEC and CFTC jointly publish in the **Federal Register** a compliance date—provisions for linked and coordinated clearing with other clearing agencies that clear security futures, which will permit security futures to be purchased on one market and offset on another market that trades the same product.[18]

(6) NQLX's proposed rule 328, which is part of this filing, only allows a broker-dealer subject to suitability rules comparable to those of a national securities association registered pursuant to section 15A(a)[19] of the Act to effect transactions in NQLX security futures.[20]

(7) Section 4j of the CEA,[21] and CFTC rule 41.27[22] promulgated thereunder, do not apply to NQLX because NQLX operates an electronic trading system that does not provide market participants with a time or place advantage or the ability to override a predetermined algorithm.[23]

(8) NQLX believes that its proposed rules 902 and 903 meet the requirement that trading in the security futures are not readily susceptible to manipulation of their price, nor to causing or being used to cause the manipulation of the price of the underlying security, options on such security, or options on a group or index including such securities.[24] In addition, NQLX proposed rule 304(c)(1), which is part of this filing, prohibits various manipulative and improper practices, including effecting a transaction in, or inducing the purchase or sale of, any NQLX contract through any manipulative, deceptive, or fraudulent device or contrivance. Proposed rule 304(c)(2) through (9), which are part of this filing, also specifically prohibits price manipulation or cornering the market, wash transactions, accommodation transactions, front-running, trading ahead, cherry picking, withdrawing, withholding, or disclosing a customer's order for the benefit of another person, taking advantage of a customer's order for the benefit of another person, and compensation trades.[25]

(9) As to coordinated surveillance, NQLX's proposed rule 207, which is part of this filing, gives NQLX the authority to enter into information-sharing agreements or other arrangements or procedures to coordinate surveillance with other markets on which security futures trade, any market on which any security that underlies the security futures trade, and any other markets on which any related securities trade. Proposed rule 207 also allows NQLX to enter into any arrangement with, and provide information to, any person or body (including, without limitation, the CFTC, SEC, National Futures Association, National Association of Securities Dealers, Inc. ("NASD"), any self-regulatory organization, any exchange, market, clearing organization, the Intermarket Surveillance Group, or foreign regulatory authority) that NQLX believes exercises a legal or regulatory function or a function comprising or associated with the enforcement of a legal or regulatory function. In addition to proposed rule 207, NQLX is an affiliate member of the Intermarket Surveillance Group and is a signatory of an information-sharing agreement and its related addendum for security futures (dated October 18, 2002), which sets forth the agreement entered into between and among markets on which security futures are traded, any market on which any security underlying the security futures are traded, and other markets on which any related security is traded for coordinated surveillance to detect manipulation and insider trading.[26]

(10) NQLX relies on its automated trading system ("ATS") combined with specified proposed rules requiring the recording of trade information as well as books and records and record retention requirements to facilitate its obligation to conduct and coordinate market surveillance. As part of its ATS, NQLX will use a modified version of the LIFFE CONNECT™ trading platform, which is the same trading platform currently used by the London International Financial Futures and Options Exchange ("LIFFE") to trade financial derivatives. The ATS is a fully-transparent, open architecture trading system that users access through non-NQLX front-end trading applications. The ATS performs price reporting and dissemination, displaying the prices of trades executed in the matching engine together with the aggregate size of all orders to buy and sell above and below the market, updated on a real-time basis. In addition, the ATS creates audit trails for trades executed within the central order book, as well as three discrete types of trades allowed to be executed outside the central order book (*i.e.*, certain cross transactions for market makers, block trades, and exchange for physical trades).

As to market surveillance, NQLX's capabilities are two-fold: First, under the oversight and supervision of NQLX, designated LIFFE staff at NQLX's ATS will conduct real-time, front-line market surveillance. This includes monitoring real-time trading activity for compliance with NQLX's rules. Second, under the oversight and supervision of NQLX, NASD will conduct post-trade market surveillance for NQLX. Post-trade, NASD will monitor all trading activity to detect actual and potential abusive trading activities, unusual trading patterns, and violations of NQLX's rules and federal law using proven systems currently used by NASD for market surveillance of The NASDAQ Stock Market, Inc.

As to the audit trail itself, it begins with NQLX assigning one or more unique individual trading mnemonics ("ITMs") to specified responsible persons at each member. Orders will not be accepted into the ATS without an ITM identifier attached to the order. And, pursuant to NQLX's rules, the responsible persons must have the ability to identify immediately for NQLX the source of all orders submitted under any ITM assigned to the responsible persons.[27] In turn, NQLX's proposed rule 408, which is part of this filing, specifies the types of information that each order entered into the ATS must contain, including customer type indicator (or "CTI" code) as prescribed by CFTC regulation; customer account number or identifier; clearing account indicator; the exchange contract; delivery or expiration month; quantity; buy or sell; price or price limit or range; put or call and exercise price (if applicable); open or close position indicator (if applicable); order instructions (*e.g.*, good "til cancelled, minimum volume, etc.) (if applicable); strategy type indicator (if applicable); and code indicator for a cross transaction, block trade, or exchange for physical trade (if applicable).

The three discrete types of transactions that are allowed under NQLX's rules to be executed outside of the central order book (*i.e.*, certain cross transactions for market makers, block trades, and exchange for physical trades) are still submitted to the ATS and, in turn, captured by the audit trail. NQLX proposed rules 418(d), 419(g) and 420(b), which are part of this filing, indicate the types of information that must be submitted to the ATS for certain cross transactions for market makers, block trades, and exchange for physical trades, respectively.

In addition to the audit trial created by the ATS, NQLX has several other proposed rules that will enhance market surveillance by (1) requiring members to make and maintain adequate books and records (proposed rules 320 and 321), (2) giving NQLX the authority to require the recording of conversations (proposed rule 322), (3) giving NQLX the authority to require the filing of daily trading information (proposed rule 324), and (4) requiring the reporting of reportable positions (proposed rule 325).[28]

(11) NQLX proposed rule 425, which is part of this filing, requires NQLX to halt trading of a security futures contract based on a single security during any regulatory halt (as defined in CFTC regulation 41.1(l)[29] and SEC rule 240.6h–1(a)(3)[30]) imposed on the underlying security. Proposed rule 425 also requires NQLX to halt trading of a security futures contract based on a narrow-based security index (as defined by section 1a(25)[31] of the CEA and section 3(a)(55)[32] of the Act) during any regulatory halt of one or more underlying securities that constitute 50 percent or more of the market capitalization of the narrow-based security index. NQLX also will have procedures in place to halt trading of security futures that are based on single securities during regulatory halts imposed on the underlying security. Before commencing trading in any narrow-based security indices, NQLX will have procedures in place to halt trading in the narrow-based security indices during any regulatory halt of one or more underlying securities that constitute 50 percent or more of the market capitalization of the narrow-based security index.

(12) NQLX has submitted proposed customer margin rules for publication and approval by the SEC,[33] which it believes complies with the provisions jointly established by the SEC and CFTC pursuant to section 7(c)(2)(B)[34] of the Act and set forth in SEC rules 400 through 406[35] and CFTC rules 41.43 through 41.49.[36] The SEC has approved NQLX's customer margin rules.[37]

2. Statutory Basis

NQLX files these proposed rules pursuant to section 19(b)(7) of the Act.[38] NQLX believes that these rules are necessary to implement the requirements of the CFMA, including the requirement that trading in a listed security futures is not readily susceptible to manipulation of its price

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[4] 15 U.S.C. 78f(h)(3).

[5] 7 U.S.C. 2(a)(1)(D)(i).

[6] *See* Joint Order Granting the Modification of Listing Standards Requirements (American Depository Receipts), Securities Exchange Act release no. 44725 (August 20, 2001) *and* Joint Order Granting the Modification of Listing Standards Requirements (Exchange Traded Funds, Trust Issued Receipts and shares of Closed-End Funds), Securities Exchange Act release no. 46090 (June 19, 2002), 67 FR 42760 (June 25, 2002).

[7] Pub. L. 106–554, 114 stat. 2763 (2000).

[8] 15 U.S.C. 78f(h)(3); 7 U.S.C. 2(a)(1)(D)(i).

[9] 7 U.S.C. 1a(2).

[10] *See* In the Matter of the Application of Nasdaq Liffe Markets, LLC for Designation as a Contract Market, CFTC Final Order of Designation (May 24, 2002); *see also* In the Matter of the Application of Nasdaq Liffe, LLC Futures Exchange for Designation as a Contract Market, CFTC Order of Conditional Designation (August 21, 2001).

[11] 15 U.S.C. 78f(g)(1).

[12] 15 U.S.C. 78f(h)(2) and (3).

[13] 15 U.S.C. 78f(h)(3)(A); *see also* 15 U.S.C. 78l.

[14] 15 U.S.C. 78qA.

[15] 15 U.S.C. 78f(h)(3)(B).

[16] 15 U.S.C. 78f(h)(3)(C).

[17] 15 U.S.C. 78f(h)(3)(D); *see* Joint Order Granting the Modification of Listing Standards Requirements (American Depository Receipts), Securities Exchange Act release no. 44725 (August 20, 2001) *and* Joint Order Granting the Modification of Listing Standards Requirements (Exchange Traded Funds, Trust Issued Receipts and Closed-End Funds), Securities Exchange Act release no. 46090 (June 19, 2002), 67 FR 42760 (June 25, 2002).

[18] 15 U.S.C. 78f(h)(3)(E).

[19] 15 U.S.C. 78o-A(a).

[20] 15 U.S.C. 78f(h)(G).

[21] 7 U.S.C. 4j.

[22] 17 CFR 41.45(b)(2).

[23] 17 CFR 41.27(b)(2); *see also* Regulation to Restrict Dual Trading in Security Futures Products, (March 1, 2002), 67 FR 11223, 11225–11226 (March 13, 2002).

[24] 15 U.S.C. 78f(h)(3)(H).

[25] NQLX proposed rule 304(c)(2) through (9).

[26] 15 U.S.C. 78f(h)(I).

[27] *See* NQLX rule 309(a) and (b).

[28] NQLX proposed rules 320, 321, 322, 324 and 325 are part of this filing.

[29] 17 CFR 41.41.1(l).

[30] 17 CFR 240.6h–1(a)(3).

[31] 7 U.S.C. 1a(25).

[32] 15 U.S.C. 78c(a)(55).

[33] Securities Exchange Act release no. 46548 (September 25, 2002), 67 FR 61361 (September 30, 2002).

[34] 15 U.S.C. 78g(c)(2)(b).

[35] 17 CFR 240.400 through 406.

[36] 17 CFR 41.42 through 41.49.

[37] Securities Exchange Act release no. 46771 (November 5, 2002).

[38] 15 U.S.C. 78s(b)(7).

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nor to causing or being used to manipulate the price of the underlying security, options on the security, or options on a group or index including the security.[39] NQLX also believes that these proposed rules are necessary to establish listing standards that: (1) Will foster the development of fair and orderly markets in security futures, (2) are necessary or appropriate in the public interest, and (3) are consistent with the protection of investors.

NQLX believes that its proposed rules comply with the requirements under section 6(h)(3) of the Act and the criteria under section 2(a)(1)(D)(i) of the CEA,[40] as modified by joint orders of the Commission and the CFTC. In addition, NQLX believes that its proposed rules are consistent with the provisions of section 6 of the Act,[41] in general, and section 6(b)(5) of the Act,[42] in particular, which requires, among other things, that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

NQLX does not believe that the proposed rules will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on Proposed Rules Received From Members, Participants, or Others

NQLX neither solicited nor received written comment on the proposed rules.

III. Date of Effectiveness of the Proposed Rules and Timing for Commission Action

Concurrent with the filing of the proposed rule change with the SEC, NQLX has filed a written certification with the CFTC under section 5c(c)[43] of the CEA and CFTC regulation part 38.4[44] in which NQLX certifies that its filed listing standards in proposed rules 902 and 903 comply with the CEA. While proposed rule 902 and 903 are effective the day after their filing with the CFTC, NQLX intends to implement these rules immediately before its market launch.

Within 60 days of the date of effectiveness of the proposed rules, the Commission, after consultation with the CFTC, may summarily abrogate the proposed rules and require that the proposed rules be refiled in accordance with the provisions of section 19(b)(1) of the Act.[45]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rules conflict with the Act. Persons making written submissions should file nine copies of the submission with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments also may be submitted electronically to the following e-mail address: *rule-comments@sec.gov*. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rules that are filed with the Commission, and all written communications relating to the proposed rules between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of these filings will also be available for inspection and copying at the principal office of NQLX. Electronically submitted comments will be posted on the Commission's internet website (*http://www.sec.gov*). All submissions should refer to file no. SR–NQLX–2002–02 and should be submitted by December 4, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[46]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–28746 Filed 11–12–02; 8:45 am]

BILLING CODE 8010–01–P

[39] *See* Section 6(h)(3)(H) of the Exchange Act, 5 U.S.C. 78f(h)(3)(H).

[40] 15 U.S.C. 78f(h)(3); 7 U.S.C. 2(a)(1)(D)(i).

[41] 15 U.S.C. 78f.

[42] 15 U.S.C. 78f(b)(5).

[43] 7 U.S.C. 7a–2(c).

[44] 17 CFR 38.4.

[45] 15 U.S.C. 78s(b)(1).

[46] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46763; File No. SR–Phlx–2002–04]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change and Amendments No. 1 Through 7 Thereto and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 8 Relating to Electronic Interface With AUTOM for Specialists and Registered Options Traders

November 1, 2002.

I. Introduction

On January 15, 2002, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and rule 19b–4 thereunder[2] a proposed rule change relating to an electronic interface with the Exchange's Automated Options Market ("AUTOM")[3] for specialists and Registered Options Traders ("ROTs").[4] On March 6, 2002, the Exchange filed Amendment No. 1 to the proposed rule change.[5] On March 14, 2002, the Exchange filed Amendment No. 2 to the proposed rule change.[6] On March 26, 2002, the Exchange filed Amendment No. 3 to the proposed rule change.[7] On April 2, 2002, the Exchange filed Amendment No. 4 to the proposed rule change.[8] On May 16, 2002, the Exchange filed Amendment No. 5 to the proposed rule change.[9] On June 12, 2002, the Exchange filed Amendment No. 6 to the proposed rule change.[10] On June 19, 2002, the Exchange filed Amendment No. 7 to the proposed rule change.[11]

The proposed rule change and Amendments No. 1–7 were published for comment in the **Federal Register** on June 27, 2002.[12] No comments were received on the proposed rule change or Amendments No. 1–7. The Exchange filed Amendment No. 8 to the proposed rule change on November 1, 2002.[13]

II. Description of the Proposal

The Exchange proposes to amend Phlx rule 1080 to enable a ROT or specialist to improve the Phlx bid or offer by enabling ROTs and specialists to place limit orders on the electronic limit order book[14] through an electronic interface with AUTOM ("Price Improving ROT/Specialist").

Currently, Phlx rule 1080 provides that, generally, only agency orders[15] may be entered into AUTOM and only Exchange options specialists may access the limit order book electronically. A Phlx ROT (or a floor broker on the ROT's behalf) may only place an order for an ROT's account on the limit order book maintained by the specialist by requesting the specialist to do so. In addition, Phlx ROTs cannot improve the Phlx's displayed bid or offer, except by asking the specialist to do so. Specifically, under existing Phlx rules, Phlx ROTs are able to improve the Phlx market with respect to a given option series only by verbally announcing their trading interest in a loud and audible fashion. The specialist is then required by Phlx rules to reflect this trading interest in the displayed quote.

The proposal would limit the need for specialist involvement by providing that on-floor orders for the proprietary account(s) of ROTs, up to 1,000 contracts, are eligible for delivery via AUTOM, through the use of Exchange approved proprietary systems. To be displayed, on-floor orders for the proprietary accounts of ROTs delivered via AUTOM would be required to be for a minimum size of, at least, the lesser of: (i) The AUTO–X guarantee for the option that is the subject of such an order, or (ii) 20 contracts.[16]

Proposed paragraph (g) of Phlx rule 1014 provides that a Price-Improving ROT/Specialist that enters an order through an electronic interface with AUTOM that results in an improvement in the then-prevailing market disseminated by the Exchange (*i.e.*, raises the bid or lowers the offer) must announce, loudly and audibly in the crowd, that he has improved the displayed market. The proposal also requires that an ROT or specialist that posts a bid or offer through electronic interface with AUTOM, and subsequently elects to cancel such a bid or offer, cancel such bid or offer through the electronic interface.

In addition, the proposal would allow specialists to improve the prevailing market by placing price-improving orders via a similar electronic interface with AUTOM as that used by ROTs. The use of a specific electronic interface is intended to distinguish the specialists' price improving orders under the instant proposed rule from their general two-sided quoting obligations, including quotes generated by Auto-Quote or specialized quote feed.[17]

Inbound orders eligible for execution against ROT or specialist orders entered into AUTOM via electronic interface would be executed by the specialist and allocated, initially, by the individual responsible for allocating trades under existing Exchange rules.[18] No later than January 2004, the Exchange will modify the AUTO–X system[19] and will automatically execute incoming orders against ROT and specialist orders that improve the disseminated price, as well as orders that match such price-improving orders.

Price-Improving, "Matching," and Special Parity Rule

The other crowd participants (including the specialist) may match a price-improving order through an electronic interface with AUTOM, but must loudly and audibly announce their intention to do so, as well as their size. If Auto-Quote or Specialized Quote Feed matches a price-improving order, the specialist and crowd participants on that quote would be deemed to be matching the price-improving order. In such a situation, the "Special Allocation" would entitle the Price Improving ROT/Specialist to receive the largest number of contracts among all crowd participants that have matched a price-improving order, subject to size.[20]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] AUTOM is the Exchange's electronic order delivery and reporting system, which provides for the automatic entry and routing of equity option and index option orders to the Exchange trading floor. Orders delivered through AUTOM may be executed manually, or certain orders are eligible for AUTOM's automatic execution feature ("AUTO–X"). Equity option and index option specialists are required by the Exchange to participate in AUTOM and its features and enhancements. Option orders entered by Exchange members into AUTOM are routed to the appropriate specialist unit on the Exchange trading floor.

[4] A ROT is a regular member or a foreign currency options participant of the Exchange located on the trading floor who has received permission from the Exchange to trade in options for his own account. *See* Phlx rule 1014(b).

[5] *See* letter from Richard S. Rudolph, Director and Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated March 5, 2002 ("Amendment No. 1").

[6] *See* letter from Richard S. Rudolph, Director and Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division, Commission, dated March 13, 2002 ("Amendment No. 2").

[7] *See* letter from Richard S. Rudolph, Director and Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division, Commission, dated March 25, 2002 ("Amendment No. 3").

[8] *See* letter from Richard S. Rudolph, Director and Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division, Commission, dated April 1, 2002 ("Amendment No. 4").

[9] *See* letter from Richard S. Rudolph, Director and Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division, Commission, dated May 15, 2002 ("Amendment No. 5").

[10] *See* letter from Richard S. Rudolph, Director and Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division, Commission, dated June 11, 2002 ("Amendment No. 6").

[11] *See* letter from Richard S. Rudolph, Director and Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division, Commission, dated June 18, 2002 ("Amendment No. 7").

[12] *See* Securities Exchange Act release No. 46095 (June 20, 2002), 67 FR 43372.

[13] *See* letter from Richard S. Rudolph, Director and Counsel, Phlx, to Deborah Lassman Flynn, Assistant Director, Divlsion, Commission, dated October 31, 2002 ("Amendment No. 8"). In Amendment No. 8, the Phlx proposes to eliminate the language contained in proposed Phlx rule 1014(g)(i)(B)(5) regarding the use of "best efforts" in the allocation of orders. The Phlx has determined that the proposed language is unnecessary because the price-improving ROT's identification information will be input into the system at the time the ROT's order is placed on the limit order book and, therefore, will be available to the person responsible for the allocation of orders at the time that an execution occurs at that price.

[14] The electronic "limit order book" is the Exchange's automated specialist limit order book, to which all unexecuted limit orders routed to the Exchange through AUTOM are displayed on the basis of price-time priority. Orders not delivered through AUTOM also may be entered onto the limit order book. *See* Phlx rule 1080, commentary.02.

[15] The Exchange has defined an agency order as any order entered on behalf of a public customer, and does not include any order entered for the account of a broker-dealer, or any account in which a broker-dealer or an associated person of a broker-dealer has any direct or indirect interest. *See, e.g.*, Phlx rule 229.02. *See also*, Securities Exchange Act release No. 40970 (January 25, 1999), 64 FR 4922 (February 1, 1999) (File No. SR–Phlx–98–44).

[16] This requirement applies only to Phlx ROT and specialist orders entered via electronic interface.

[17] A specialist may establish a specialized connection with AUTOM, known as a specialized quote feed, which enables the specialist to provide quotations based on a proprietary pricing model, by-passing the Exchange's Auto-Quote System. *See* Phlx rule 1080, Commentary. 01(c).

[18] Currently, under the Exchange's Option Floor Procedure Advice ("OFPA") F–2, the largest participant in a trade is responsible for allocating contracts to crowd participants. In a separate rule proposal, the Exchange has proposed amendments to OFPA F–2 and rule 1014(g) regarding who is responsible for allocating a trade. Under that proposal, if a trade involved a floor broker, the floor broker would be responsible for allocating contracts among crowd participants but could delegate the responsibility to the specialist or an assistant to the specialist under the specialist's direct supervision ("Assistant"), provided that the specialist (or Assistant) agrees to be responsible for allocating the trades. In all other cases where the specialist is a participant, the specialist or Assistant would allocate the trade. If neither the specialist nor floor broker is involved, but there is more than one buyer or seller, the largest participant would be responsible for allocating trades. If neither the specialist nor floor broker is involved, and there is only one buyer and seller, the seller would be responsible for allocating trades. *See* File no. SR–Phlx–2001–28.

[19] The Exchange will deploy the modified system over a 15-month period. Proposed commentary .04 to Phlx rule 1080.

[20] Proposed Phlx rule 1014(g)(i)(B)(1) would entitle a Price Improving ROT/Specialist to participate in at least 60% of the contracts in the transaction if matched by one single crowd participant. If the Price Improving ROT/Specialist's order is matched by two or more crowd participants (including the specialist), the Price Improving ROT/Specialist would be entitled to participate in at least 40% of the contracts in the transaction; a matching specialist would be entitled to participate in 30%, and other crowd participants on parity with the Price Improving ROT/Specialist would be entitled

Continued

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Any partial contracts would be rounded up in favor of the Price Improving ROT/Specialist. In no event would a Price Improving ROT/Specialist or crowd participant that matches a price-improving order be required to participate in a trade above that Price Improving ROT/Specialist's size.

The Special Allocation would remain in effect until: (1) The lesser of 20 contracts or the AUTO–X guarantee for the option that is the subject of the price-improving quote have been executed against the price-improving quotes eligible to receive an allocation; (2) the ROT or specialist who improved the price cancels the price-improving order; or (3) the original price-improving order is superseded by a new price-improving order, unless the new price-improving order is cancelled before at least one contract executes at the price of the new price-improving order.[21] If any of those conditions are satisfied, the Special Allocation would no longer be in effect, and crowd members with orders that have not been filled would be considered to be on parity. If the specialist were one of the crowd members, the specialist would, consistent with applicable exchange rules, be entitled to receive the specialist guarantee.[22]

Finally, the Exchange represents that it has determined to develop a proposal for an alternative model for ROT access, which would involve giving ROTs the ability to electronically post their own quotations in competition with the specialist and to have their own quotation generation models, as opposed to having their electronic access be limited to sending limit orders on a strike-by-strike basis.[23]

to participate in 30% of the contracts in the transaction, in the aggregate. If matched by two or more crowd participants (but not the specialist), the Price Improving ROT/Specialist would be entitled to participate in 40% of the contracts in the transaction, and the other crowd participants would be entitled to participate in 60% of the transaction, in the aggregate.

[21] *See* proposed Phlx rule 1014(g)(i)(B)(2). The Exchange represents that the purpose of this third condition is to eliminate the possibility that a crowd participant could, by placing and then immediately canceling a price-improving order, cause a Price Improving ROT/Specialist to lose its entitlement under the Special Allocation.

[22] Pursuant to Phlx rule 1014(g)(ii), the specialist is entitled to receive an allocation of up to 40% of an incoming order, when the specialist is on parity with the best quote.

[23] Under this approach, the Exchange would adopt a new trade allocation rule similar to that of the International Securities Exchange rule 713. Subject to approval under the governance requirements set forth in the Exchange's rules and in the Act, the Exchange would submit the proposal for Commission approval as the permanent solution to compliance with section IV.B.h.(i)(aa) of the Settlement Order.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 8, including whether Amendment No. 8 to the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–2002–04 and should be submitted by December 4, 2002.

IV. Discussion

After careful review, the Commission finds that the proposed rule change, as amended by Amendments No. 1 through 8, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[24] The Commission finds that the proposed rule change, which provides a mechanism for members of the trading crowd who improve the disseminated market, or match a price-improved market, to be directly allocated Auto-X order flow, is designed to remove impediments to and perfect the mechanism of a free and open market, promote just and equitable principles of trade, and in general, to protect investors and the public interest, is consistent with section 6(b)(5) of the Act.[25]

The Commission believes that the proposed rule change, once fully implemented,[26] should substantially enhance incentives to quote competitively by automating the process by which trading crowd participants can improve the disseminated quote and by ensuring that the price-improving ROT is rewarded with incoming order flow.[27] Specifically, the Phlx's proposal will allow ROTs to improve the disseminated quote by placing limit orders directly on the limit order book through an electronic interface with Exchange systems. Moreover, the Phlx has represented that it has determined to develop the capability to allow ROTs to electronically post their own quotations in competition with the specialist.

In addition, the Phlx proposal will ensure that price-improving ROTs are rewarded with incoming order flow. The Phlx proposal provides an incentive to improving the disseminated quote by providing the price-improving ROT with an execution of at least 40%, up to 20 contracts, of an incoming order, regardless of whether other market participants, including the specialist, match the price-improving order. For these reasons, the Commission believes that the Phlx's proposal, once fully implemented, will satisfy section IV.B.h.(i)(aa) of the Settlement Order.

Finally, the Commission finds good cause for approving Amendment No. 8 to the proposed rule change prior to the thirtieth day after the date of publication in the **Federal Register**. Amendment No. 8 eliminates language requiring a person responsible for the allocation of efforts to use best efforts to allocate orders to price-improving ROTs. The Exchange represents that this language is unnecessary because Phlx's system would identify the source of a price-improving order placed on the limit order book. If, for some reason, a specialist experienced any difficulty allocating an order to a price-improving ROT, the identity of the price-improving ROT could readily be determined by the system. Accordingly, there are no novel issues of regulatory concern and the Commission finds good cause for approving Amendment No. 8 to the proposed rule change on an accelerated basis.

[24] In approving the proposed rule change, the Commission notes that it has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[25] 15 U.S.C. 78f(b)(5).

[26] The Phlx plans to file for Commission approval a plan to fully implement the proposed rule change. *See* letter from Lanny A. Schwartz, Executive Vice President and General Counsel, Phlx, to Elizabeth King, Associate Director, Commission, dated October 31, 2002.

[27] The Exchange filed this proposed rule change pursuant to the requirements of section IV.B.h.(i)(aa) of the Commission's September 11, 2000, Order Instituting Administrative Proceedings Pursuant to section 19(h)(1) of the Act, which required the Phlx (as well as other floor-based options exchanges) to adopt new, or amend existing rules to substantially enhance incentives to quote competitively and substantially reduce disincentives to act competitively ("Settlement Order"). See Securities Exchange Act release no. 43268 (September 11, 2000), Administrative Proceeding file no. 3–10282.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act[28] that the proposed rule (SR–Phlx–2002–04), as amended by Amendments No. 1 through 7, is approved and Amendment No. 8 is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[29]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–28747 Filed 11–12–02; 8:45 am]

BILLING CODE 8010–01X–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities Under OMB Review

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Requests (ICR) abstracted below have been forwarded to the Office of Management and Budget (OMB) for extension of the currently approved collections. The ICR describes the nature of the information collection and the expected burden. The Federal Register Notice with a 60-day comment period soliciting comments on the following collections of information was published on July 24, 2002, page 48501.

DATES: Comments must be submitted on or before December 13, 2002. A comment to OMB is most effective if OMB receives it within 30 days of publication.

FOR FURTHER INFORMATION CONTACT: Judy Street on (202) 267–9895.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

1. Title: Flight Engineers and Flight Navigators—FAR Part 63.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2120–0007.

Forms(s): FAA Form 8400–3, Application for an Airman Certificate and/or Rating.

Affected Public: A total of 2,760 airmen.

Abstract: 49 U.S.C. 44902(a), 44702(a)(2), and 44707(1) authorize issuance of airman certificates and provide for examination and rating of flying schools. FAR 63 prescribes requirements for flight navigator certification and training course requirements for these airmen. Information collected is used to determine certification eligibility.

Estimated Annual Burden Hours: An estimated 1,416 hours annually.

2. Title: ACSEP Evaluation Customer Feedback Report.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2120–0605.

Forms(s): FAA Form 8100.7.

Affected Public: A total of 450 certified aircraft suppliers.

Abstract: The information will be collected from holders of FAA production approvals and selected suppliers to obtain their input on how well the agency is performing the administration and conduct of the Aircraft Certification Systems Evaluation Program (ACSEP). The agency will use the information as a customer service standard and to continually improve ACSEP.

Estimated Annual Burden Hours: An estimated 450 hours annually.

3. Title: Additional Flight Data Recorder Requirements for Certain Boeing 737 Airplanes.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2120–0651.

Forms(s): NA.

Affected Public: A total of 1,200 owners/operators of Boeing 737 airplanes.

Abstract: This rule requires the recording of additional operating parameters for certain Boeing 737 airplanes. These additional parameters allow the NTSB and FAA to investigate and establish causes for accidents so that the aviation industry can make appropriate modifications to prevent future incidents.

Estimated Annual Burden Hours: An estimated 1 hours annually.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention FAA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC on November 4, 2002.

Judith D. Street,

FAA Information Collection Clearance Officer, Standards and Information Division, APF–100.

[FR Doc. 02–28827 Filed 11–12–02; 8:45 am]

BILLING CODE 4910–13–M

[28] 15 U.S.C. 78s(b)(2).

[29] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Request to Release Airport Land at Hilo and Kahului Airports, Hawaii

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of request to release airport land.

SUMMARY: The FAA proposes to rule and invites public comment on the release of airport land needed to comply with the Hawaii Department of Transportation's (HDOT) obligations under the Tri-Party Agreement of 1984. The purpose of the Tri-Party Agreement was to extinguish lawsuits pending in state court that contested HDOT's use of certain lands for non-airport purposes. The Agreement called for HDOT to exchange land and money to compensate for subject land. The FAA objected to the transfer of land needed for airport or wildlife mitigation purposes. To resolve this matter, HDOT has proposed that other non-aeronautical use land be substituted for those parcels identified in the Tri-Party Agreement.

DATES: Comments must be received on or before December 13, 2002.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Mr. Ronnie V. Simpson, Manager, FAA Honolulu Airports District Office, 300 Ala Moana Blvd., Room 7–128, Honolulu, HI 96813.

FOR FURTHER INFORMATION CONTACT: Mr. Ronnie V. Simpson, Manager, Honolulu Airports District Office, 300 Ala Moana Blvd., Room 7–128, Honolulu, HI 96813, Telephone: (808) 541–1232. The request to release airport property may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: On April 5, 2000, new authorizing legislation became effective. That bill, the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR

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21), Pub. L. 10–181 (Apr. 5, 2000; 114 Stat. 61), requires that a 30-day public notice must be provided before the Secretary may waive any condition imposed on an interest in surplus property.

The following is a brief overview of the request:

The state agencies have agreed to substitute new airport parcels for those identified in the Tri-Party Agreement. The following is a description of the parcels proposed for release:

(a) HDOT will convey 22.419 acres at Kahului, subject to an avigation easement, to Department of Land and Natural Resources (DLNR). The land is presently occupied by state agencies that are using it for non-aeronautical purposes.

(b) At Hilo, HDOT and DLNR will each swap 1.082 acres. Presently, HDOT airport land is occupied by a state agency and the DLNR land is occupied by the FAA/National Weather Service Station. By swapping land of equal size and value, HDOT will acquire 1.082 acres of aviation-use land and DLNR will acquire 1.082 acres, subject to an avigation easement, of non-aeronautical use land.

(c) HDOT will convey 41.067 acres, subject to avigation easement, at Hilo to DLNR. The land consists of a quarry and the former Hawaii National Guard site, that cannot be used for aeronautical purposes since it is isolated from the airport by a major roadway. It has never been used and will not be used for future aeronautical purposes.

(d) HDOT will convey another 16.941 acres, subject to avigation easement, of the quarry site at Hilo to DLNR. The state will pay HDOT fair market value of $2,140,000, none of which is airport revenue, for the additional land. The additional 16.941 acres, along with the 41.067 acres above, represent the entire quarry and Hawaii National Guard site that has never been used for aeronautical purposes and which HDOT does not need for airport purposes.

Issued in Hawthorne, California, on October 30, 2002.

Herman C. Bliss,

Manager, Airports Division, Western-Pacific Region.

[FR Doc. 02–28828 Filed 11–12–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Artisan Liens on Aircraft; Recordability

AGENCY: Federal Aviation Administration

ACTION: Notice.

SUMMARY: This notice of legal opinion is issued by the Aeronautical Center Counsel to provide legal advice to the Aircraft Registration Branch, Mike Monroney Aeronautical Center, Oklahoma City, Oklahoma, also identified as the FAA Aircraft Registry. Since December 17, 1981, the Aeronautical Center Counsel has issued opinions in the **Federal Register** of those states from which artisan liens will be accepted for recordation by the FAA Aircraft Registry. This opinion is to advise interested parties of the addition of the States of Louisiana, Massachusetts, and Rhode Island to that list.

ADDRESSES: Copies of prior opinions on the recordability of artisan liens from states which have statutes authorizing their recording may be obtained from: Aeronautical Center Counsel, AMC–7, P.O. Box 25082, Oklahoma City, OK 73125–4904.

FOR FURTHER INFORMATION CONTACT: Joseph R. Standell, Aeronautical Center Counsel, address above, or call (405) 954–3296.

SUPPLEMENTARY INFORMATION: In 46 FR 61528, December 17, 1981, the Federal Aviation Administration, Mike Monroney Aeronautical Center, published its legal opinion on the recordability of artisan liens, with the identification of those states from which artisan liens would be accepted. In 49 FR 17112, April 23, 1984, we advised that Florida, Nevada, and New Jersey had passed legislation that, in our opinion, allows the Aircraft Registry to accept artisan liens from those states. In 51 FR 21046, June 10, 1986, we advised that Minnesota and New Mexico had passed legislation that, in our opinion, allows the Aircraft Registry to accept artisan liens from those states. In 54 FR 23716, June 23, 1988, we advised that Missouri had passed legislation that, in our opinion, allows the Aircraft Registry to accept artisan liens from that state. In 54 FR 38584, September 19, 1989, we advised that Texas was identified as a state from which artisan liens will be accepted. In 54 FR 51965, October 17, 1989, we advised that North Dakota was identified as a state from which artisan liens will be accepted. In 55 FR 31938, August 6, 1990, we advised that Michigan and Tennessee was identified as states from which artisan liens will be accepted. In 56 FR 27989, June 18, 1991, we advised that Arizona was identified as a state which artisan liens will be accepted. In 56 FR 36189–36190, July 31, 1991, we advised that Iowa was identified as a state from which artisan liens will be accepted. In 58 FR 50387, September 27, 1993, we advised that the states of California (General Aviation only), Connecticut, Ohio, and Virginia were identified as states from which artisan liens will be accepted.

The purpose of this opinion is to advise interested parties that in addition to those states previously identified, the states of Louisiana, Massachusetts and Rhode Island are identified as states from which artisan liens will be accepted. Massachusetts was inadvertently omitted from the previous Notice published in 58 FR 50387, September 27, 1993, however, despite that omission FAA's Aircraft Registry has accepted and recorded artisan liens filed pursuant to Massachusetts law.

The complete list of states from which artisan liens on aircraft will be accepted as of this date are: Alaska, Arizona, Arkansas, California (General Aviation Only), Connecticut, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, Nevada, New Jersey, New Mexico, North Dakota, Ohio, Oklahoma, Oregon, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Virgin Islands, Virginia, Washington, Wyoming.

Issued in Oklahoma City on October 21, 2002.

Joseph R. Standell,

Aeronautical Center Counsel.

[FR Doc. 02–28830 Filed 11–12–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Availability of Draft Supplemental Part 150 Study and Draft Environmental Assessment, Notice of Public Comment Period, and Notice of Public Hearing/Workshop for Proposed Noise Abatement Air Traffic measures for the Toledo Express Airport Located in Toledo, OH

AGENCY: Federal Aviation Administration, Department of Transportation.

ACTION: Notice of availability, notice of comment period, notice of public hearing/workshop.

SUMMARY: The Federal Aviation Administration (FAA) is issuing this notice to advise the public that the 2002 Draft Supplemental Part 150 Study and Draft Environmental Assessment (EA) have been prepared and are available for public review and comment. The 2002 Draft Supplemental Part 150 Study is a supplement to the 1999 Part 150 Study Update. The Draft EA assesses and discloses the environmental impacts of the proposed noise abatement air traffic measures recommended for implementation in the 2002 Draft Supplemental Part 150 Study and 1999 Part 150 Study Update. Written requests for the Draft Supplement and/or Draft EA may be directed to Mr. Paul Toth, Airport Director, Toledo Express Airport, 11013 Airport Highway, Swanton, OH 43558.

PUBLIC COMMENT PERIOD AND HEARING/WORKSHOP: The public comment period for the 2002 Draft Supplemental Part 150 Study and the Draft EA will begin on November 12, 2002 and will close on December 20, 2002. A Public Hearing/Workshop will be held on December 12, 2002 for both documents. The Hearing/Workshop will begin at 5:30 p.m. and last until 7:30 p.m. or until all interested people have spoken. The location for the Hearing/Workshop is the VFW Hall at 1950 S. Eber Road, Holland, Ohio. Interested Parties may address the 2002 Draft Supplemental Part 150 Study and/or the Draft EA in their comments at the Hearing/Workshop.

Copies of the Draft Supplement and Draft EA may be viewed during regular business hours at the following locations:

1. Toledo Express Airport, 11013 Airport Highway, Swanton, OH 43558.
2. Toledo-Lucas County Port Authority, One Maritime Plaza, Toledo, OH, 43604–1866.
3. Toledo-Lucas County Public Library, 1032 South McCord Road, Holland, OH 43528.
4. Swanton Public Library, 305 Chestnut Street, Swanton, OH 43558.
5. FAA, Great Lakes Region, 2300 E. Devon Ave., Des Plaines, IL 60018.
6. FAA, Detroit Airports District Office, Willow Run Airport, 8820 Beck Road, Belleville, MI 48111.

FOR FURTHER INFORMATION ON THE DRAFT SUPPLEMENTAL PART 150 STUDY CONTACT: Ms. Katherine Jones, FAA, Detroit Airports District Office, Willow Run Airport, 8820 Beck Road, Belleville, MI 48111. Ms. Jones may be contacted at (734) 487–7298.

FOR FURTHER INFORMATION ON THE DRAFT ENVIRONMENTAL ASSESSMENT CONTACT: Ms. Annette Davis, FAA, Great Lakes Region, Air Traffic Division, 2300 East Devon Avenue, Des Plaines, Illinois, 60018. Ms. Davis may be contacted at (847) 294–8091.

SUPPLEMENTARY INFORMATION: In 1991, the Toledo-Lucas County Port Authority (TLCPA) initiated a series of noise contour updates that were reflective of Burlington Air Express Global operations. The reanalysis of the noise contours continued in 1994, 1995/1996 and 1999. None of these resulted in an approved contour from the FAA. A Part 150 Study Update was completed in 1999, but not approved. In 2002, a Supplemental Part 150 Study was prepared for the 1999 Part 150 Study Update to update existing and future noise exposure and determine if the recommended noise abatement air traffic measures and land use mitigation measures were still reasonable and feasible.

The Draft EA assesses the potential environmental impacts of the recommended noise abatement air traffic measures from the 2002 Supplemental Part 150 Study, which is a supplemental report to the 1999 Part 150 Study Update. The goal of the 1999 Noise Compatibility Plan (NCP) was to reduce noise impacts in the 65 DNL noise contour, as well as impacts in the 60–65 DNL noise contour. The noise abatement air traffic measures recommended in the 1999 NCP would have met that goal if they had been approved and implemented, because the measures would have directed aircraft over areas with the fewest number of people. The goal of the TLCPA to reduce noise impacts in the 65 DNL noise contour, as well as impacts in the 60–65 DNL noise contour, has not changed. The noise abatement air traffic measures would still meet this goal because the measures would continue to direct aircraft traffic over the most noise compatible areas. Therefore, the noise abatement air traffic measures are still feasible and reasonable.

Comments from interested parties on the 2002 Supplemental Part 150 Study or Draft EA are encouraged and may be presented at the Public Hearing/Workshop or may be submitted in writing to the TLCPA's consultant, Mr. Rob Adams, Landrum & Brown, Inc., 11279 Cornell Park Drive, Cincinnati, OH 45242. The comment period will close on December 20, 2002.

Issued in Des Plaines, Illinois on November 1, 2002.

Richard K. Peterson,

Acting Manager, Air Traffic Division, FAA, Great Lakes Region.

[FR Doc. 02–28826 Filed 11–12–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Meeting on Air Carrier Operations

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration Aviation Rulemaking Advisory Committee on Air Carrier Operations Issues to receive and discuss the final report from the Extended Operations for Multi-engine Airplanes Working Group.

DATE: The meeting will be held on December 16, 2002, at 10:00 a.m.

ADDRESSES: The meeting will be held in Conference Room 833, Federal Office Building 10A (the "FAA Building"), 800 Independence Ave., SW., Washington, DC, 20591.

FOR FURTHER INFORMATION CONTACT: Linda Williams, Office of Rulemaking, 800 Independence Avenue, SW, Washington, DC 20591, telephone (202) 267–9685; e-mail *linda.l.williams@faa.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App II), notice is hereby given of a meeting of the Aviation Rulemaking Advisory Committee on Air Carrier Operations to be held on December 16, 2002.

The agenda will include a final report from the Extended Operations (ETOPS) for Multi-engine Airplanes Working Group. The final report of the working group was forwarded to the members of the Air Carrier Operations Issues Group on October 30, 2002, for review. The meeting on December 16, 2002, will constitute the final action of the ETOPS working group.

Attendance is open to the interested public but may be limited by the space available. Members of the public must make arrangements in advance to present oral statements at the meeting or may present written statements to the committee at any time. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting.

If you are in need of assistance or require a reasonable accommodation for

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this event, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

Issued in Washington, DC, on November 6, 2002.

Matthew Schack,

Assistant Executive Director for Air Carrier Operations, Aviation Rulemaking Advisory Committee.

[FR Doc. 02–28835 Filed 11–12–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice To Intend To Rule on Application 03–02–C–00–ACY To Impose Only, Impose and Use and Use the Revenue From a Passenger Facility Charge (PFC) at Atlantic City International Airport, Egg Harbor Township, NJ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice to intend to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose only, impose and use and use a PFC at Atlantic City International Airport under the provisions of the Aviation Safety and Capacity Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (public Law 101–508) and part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before December 13, 2002.

ADDRESSES: Comments on this Application may be mailed or delivered in triplicate to the FAA at the following address: Mr. Dan Vornea, Project Manager, New York District Office, 600 Old Country Road, Suite 446, Garden City, NY 11530.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Thomas Rafter, Airport Director, of the South Jersey Transportation Authority at the following address: Atlantic City International Airport, Civil Terminal #106, Egg Harbor Township, NJ 08234–9590.

Air carriers and foreign air carriers may submit copies of their written comments previously provided to South Jersey Transportation Authority under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Dan Vornea, Project Manager, New York Airports District Office, 600 Old Country Road, Suite 446, Garden City, NY 11530, Telephone No. (516) 227–3812. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose only, impose and use and use a PFC at Atlantic City International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

On October 29, 2002 the FAA determined that the application to impose only, impose and use and use a PFC submitted by South New Jersey Transportation Authority was substantially completed within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than February 26, 2003.

The following is a brief overview of the application:

Application Number: 03–02–C–00–ACY.

Level of Proposed PFC: $3.00.

Proposed Charge Effective Date: September 1, 2005.

Proposed Charge Expiration Date: June 1, 2006.

Total Estimated PFC Revenue: $1,573,274.

Brief Description of Proposed Projects

- Rehabilitation of taxiway "B" Page 1 (Impose and Use).
- Construct Snow Equipment Building (Use).
- Acquire Snow Equipment (Impose and Use).
- Improve Terminal Building (Impose and Use).
- Improvements to Airport Security Systems Page 30 (Impose and Use).
- Construct Deicing Containment Facility (Impose).
- ASR–9 Radar Relocation (Use).
- Terminal Area Study (Impose and Use).
- Environmental Mitigation—Design Only (Impose).

Class or classes of air carriers which the public agency has requested not to be required to collect PFS's are: Non-Scheduled/On Demand Air Carriers with less that 1200 annual enplaned passengers filing FAA Form 1800–31.

Any person may inspect the Application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Office: 1 Aviation Plaza, Jamaica, NY 11434–4809.

In addition, any person may, upon request, inspect the application notice and other documents germane to the application in person at the South New Jersey Transportation Authority, Atlantic City International Airport.

Issued in Garden City, New York on October 29, 2002.

Philip Brito,

Manager, NYADO, Eastern Region.

[FR Doc. 02–28833 Filed 11–12–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 03–06–C–00–MLB To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Melbourne International Airport, Melbourne, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Melbourne International Airport under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before December 13, 2002.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration; Orlando Airports District Office; 5950 Hazeltine National Drive; Suite 400; Orlando, Florida 32822.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. James C. Johnson, Executive Director of the Melbourne Airport Authority at the following address: Melbourne International Airport; One Air Terminal Parkway, Suite 220; Melbourne, Florida 32901.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Melbourne Airport Authority under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Armando L. Rovira; Orlando Airports District Office; 5950 Hazeltine National Drive; Suite 400; Orlando, Florida 32822, (407) 812–6331 x-31. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Melbourne International Airport under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On November 5, 2002, the FAA determined that the application to impose, use the revenue from, impose and use the revenue from PFC submitted by Melbourne Airport Authority was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than February 26, 2003.

The following is a brief overview of the application.

Proposed charge effective date: October 1, 2003.

Proposed charge expiration date: June 1, 2018.

Level of the proposed PFC: $3.00.

Total estimated PFC revenue: $8,563,500.

Brief description of proposed project(s): Payment for Debt Service Incurred to Finance Terminal Development.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: ATCO (Air Taxi/Commercial Operators) which account for less than 1% of the total passenger enplanements at Melbourne International Airport.

Any person may inspect the application in person at the FAA office listed above under **ADDRESSES** and at the FAA regional Airports office located at: Southern Region Headquarters; 1701 Columbia Avenue; College Park, Georgia 30337.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Melbourne Airport Authority.

Issued in Orlando, Florida on November 5, 2002.

W. Dean Stringer,

Manager, Orlando Airports District Office.

[FR Doc. 02–28823 Filed 11–12–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly Notice of PFC Approvals and Disapprovals. In September 2002, there were six applications approved. This notice also includes information on one application, approved in May 2002, inadvertently left off the May 2002 notice and three applications, approved in August 2002, inadvertently left off the August 2002 notice. Additionally, 10 approved amendments to previously approved applications are listed.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158). This notice is published pursuant to paragraph (d) of § 158.29.

PFC Applications Approved

Public Agency: City of Syracuse Department of Aviation, Syracuse, New York.

Application Number: 02–05–C–00–SYR.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $10,509,851.

Earliest Charge Effective Date: October 1, 2002.

Estimated Charge Expiration Date: May 1, 2005.

Class of Air Carriers Not Required To Collect PFC's: Non-scheduled/on demand air carriers filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Syracuse-Hancock International Airport.

Brief Description of Project Approved for Use: Taxiway A rehabilitation.

Brief Description of Projects Approved for Collection and Use:

Rehabilitate terminal apron.

Aircraft rescue and firefighting (ARFF) station.

Decision Date: May 5, 2002.

FOR FURTHER INFORMATION CONTACT: Philip Brito, New York Airports District Office, (516) 227–3800.

Public Agency: City of Redding, California.

Application Number: 02–02–C–00–RDD.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $1,251,567.

Earliest Charge Effective Date: November 1, 2002.

Estimated Charge Expiration Date: April 1, 2007.

Class of Air Carriers Not Required To Collect PFC's: None.

Brief Description of Projects Approved for Collection and Use:

Terminal chairs replacement.

Purchase used pavement sweeper.

Emergency generator—ARFF living quarters.

Crack and slurry seal—airport access road.

Crack and slurry seal—taxiways.

Security fencing.

Land acquisition.

Rescue and fire equipment.

Americans with Disabilities Act lift device.

Terminal building rehabilitation—phase II.

Land acquisition (8.0 acres)—approach protection.

Master plan update.

Taxiways C, D, and E rehabilitation and repair.

General aviation apron reconstruction.

Reconstruct runway 12/30.

Land acquisition—approach protection.

Construct high speed taxiway G.

Preliminary design—ARFF station.

Emergency communication system upgrade.

Runway 16/34 reconstruction—preliminary design and pavement maintenance program.

Runway 16/34 reconstruction—phase I.

Runway 16/34 reconstruction—phase II.

Runway 34 safety area culvert.

Decision Date: August 29, 2002.

FOR FURTHER INFORMATION CONTACT: Marlys Vandervelde, San Francisco Airports District Office, (650) 876–2806.

Public Agency: Gainesville—Alachua County Regional Airport Authority, Gainesville, Florida.

Application Number: 02–02–C–00–GNV.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $4,637,954.

Earliest Charge Effective Date: January 1, 2003.

Estimated Charge Expiration Date: February 1, 2011.

Classes of Air Carriers Not Required To Collect PFC's: None.

Brief Description of Projects Approved for Collection and Use: Runway and taxiway rehabilitation (phase II).

Land acquisition.

Rehabilitation/strengthening of aircraft aprons.

Perimeter fence.

Reconstruct medium intensity runway lights on runway 10/28, taxiways E and C lighting and visual guidance.

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Planning studies.
Drainage improvements.
Terminal renovation.
PFC administration costs.
Decision Date: August 29, 2002.
FOR FURTHER INFORMATION CONTACT: Richard Owen, Orlando Airports District Office, (407) 812–6331, extension 19.

Public Agency: County of San Luis Obispo, San Luis Obispo, California.
Application Number: 02–07–C–00–SBP.
Application Type: Impose and use a PFC.
PFC Level: $4.50.
Total PFC Revenue Approved in This Decision: $1,652,880.
Earliest Charge Effective Date: July 1, 2015.
Estimated Charge Expiration Date: July 1, 2019.
Classes of Air Carriers Not Required To Collect PFC's: Non-scheduled/on demand air carriers filing FAA Form 1800–31.
Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at San Luis Obispo County Regional Airport.
Brief Description of Projects Approved for Collection and Use:
Construction of hangar taxiways.
Construction of runway 11/29 blast pads.
Construction of airport service road.
Construction of northeast access road.
Construction of Environmental Protection Agency/National Pollution Discharge Elimination System pollution control facility.
Runway 11/29 and taxiway A extension (phase I).
Runway 11/29 and taxiway A extension (phase II).
Safety area grading and drainage.
Construction of southwest apron.
Rehabilitation/reconstruction of taxiway A.
Construction of taxiway D.
Construction of taxiway H.
Construction of taxiway M.
Acquisition of runway sweeping equipment.
Airfield lighting improvements.
Update airport master plan.
Relocate threshold, runway 25.
Construction of ARFF facility.
Construction of taxiway L.
Construction of taxiway N.
Brief Description of Disapproved Project: Install omnidirectional approach lighting system, runway 29.
Determination: Disapproved. This project is not Airport Improvement Program (AIP) eligible in accordance with paragraph 550b of FAA Order 5100.38B, AIP Handbook (May 31, 2002). Therefore, this project does not meet the requirements of § 158.15(b).
Decision Date: August 30, 2002.
FOR FURTHER INFORMATION CONTACT: Marlys Vandervelde, San Francisco Airports District Office, (650) 876–2806.

Public Agency: State of Connecticut Department of Transportation Bureau of Aviation and Ports, Windsor Locks, Connecticut.
Application Number: 10–14–C–00–BDL.
Application Type: Impose and use a PFC.
PFC Level: $3.00.
Total PFC Revenue Approved in This Decision: $1,102.000.
Earliest Charge Effective Date: March 1, 2015.
Estimated Charge Expiration Date: May 1, 2015.
Class of Air Carriers Not Required To Collect PFC's: On demand air taxi/commercial operators.
Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Bradley International Airport.
Brief Description of Project Approved for Collection and Use: Acquire 3,000-gallon ARFF truck with elevated waterway and driver enhanced vision system.
Decision Date: September 12, 2002.
FOR FURTHER INFORMATION CONTACT: Priscilla Scott, New England Region Airports Division, (781) 238–7614.

Public Agency: State of Connecticut Department of Transportation Bureau of Aviation and Ports, Windsor Locks, Connecticut.
Application Number: 02–15–C–00–BDL.
Application Type: Impose and use a PFC.
PFC Level: $3.00.
Total PFC Revenue Approved in This Decision: $3,050,000.
Earliest Charge Effective Date: May 1, 2015.
Estimated Charge Expiration Date: September 1, 2015.
Class of Air Carriers Not Required To Collect PFC's: On demand air taxi/commercial operators.
Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Bradley International Airport.
Brief Description of Project Approved for Collection and Use: Security improvements and training system.
Decision Date: September 12, 2002.
FOR FURTHER INFORMATION CONTACT: Priscilla Scott, New England Region Airports Division, (781) 238–7614.

Public Agency: Metropolitan Washington Airports Authority, Alexandria, Virginia.
Application Number: 02–04–C–00–IAD.
Application Type: Impose and use a PFC.
PFC Level: $4.50.
Total PFC Revenue Approved in This Decision: $88,526,169.
Earliest Charge Effective Date: May 1, 2005.
Estimated Charge Expiration Date: July 1, 2008.
Class of Air Carriers Not Required To Collect PFC's: Non-scheduled, on demand air carriers filing FAA Form 1800–31.
Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Washington Dulles International Airport.
Brief Description of Projects Approved for Collection and Use at a $4.50 PFC Level:
Concourse B expansion—phase I.
Wetland mitigation.
Brief Description of Projects Approved for Collection and Use at a $3.00 PFC Level: Pedestrian connector to north flank garage.
Decision Date: September 16, 2002.
FOR FURTHER INFORMATION CONTACT: Eleanor Schifflin, Eastern Region Airports Division, (718) 553–3354.

Public Agency: Maryland Aviation Administration, Baltimore, Maryland.
Application Number: 02–04–C–00–BWI.
Application Type: Impose and use a PFC.
PFC Level: $4.50.
Total PFC Revenue Approved in This Decision: $371,417,115.
Earliest Charge Effective Date: June 1, 2004.
Estimated Charge Expiration Date: June 1, 2011.
Classes of Air Carriers Not Required To Collect PFC's: Part 135 on-demand air taxi/commercial operators.
Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Baltimore Washington International Airport.

Brief Description of Projects Approved for Collection and Use at a $4.50 PFC Level:
Terminal roadway expansion and improvement.
Terminal pedestrian access expansion and improvement.
15R parallel taxiway and airfield ramp construction.
Common use terminal equipment for International terminal fit out.
Surface movement guidance control system.
Decision Date: September 17, 2002.
FOR FURTHER INFORMATION CONTACT: Eleanor Schifflin, Eastern Region Airports Division, (718) 553–3354.

Public Agency: County of Routt, Hayden, Colorado.
Application Number: 02–05–C–00–HDN.
Application Type: Impose and use a PFC.
PFC Level: $4.50.
Total PFC Revenue Approved in This Decision: $1,052,470.
Earliest Charge Effective Date: December 1, 2002.
Estimated Charge Expiration Date: August 1, 2005.
Classes of Air Carriers Not Required To Collect PFC's. None.
Brief Description of Projects Approved for Collection and Use:
Construction of taxiway B.
Runway 10/28 rehabilitation.
Americans with Disabilities Act improvements.
Security upgrades.
Land acquisition.
Snow removal equipment.
Decision Date: September 20, 2002.
FOR FURTHER INFORMATION CONTACT: Christopher Schaffer, Denver Airports District Office, (303) 342–1258.

Public Agency: City of Pensacola, Florida.
Application Number: 02–05–C–00–PNS.
Application Type: Impose and use a PFC.
PFC Level: $4.50.
Total PFC Revenue Approved in This Decision: $350,000.
Earliest Charge Effective Date: September 1, 2007.
Estimated Charge Expiration Date: December 1, 2007.
Classes of Air Carriers Not Required To Collect PFC's: Part 135 air taxi/commercial operators filing FAA Form 1800–31.
Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Pensacola Regional Airport.
Brief Description of Projects Approved for Collection and Use: Heightened security costs.
Decision Date: September 25, 2002.
FOR FURTHER INFORMATION CONTACT: Bill Farris, Orlando Airports District Office, (407) 812–6331, extension 25.

AMENDMENTS TO PFC APPROVALS

Amendment No., city, state	Amendment approved date	Original approved net PFC revenue	Amended approved net PFC revenue	Original estimated charge exp. date	Amended estimated charge exp. date
01–04–C–01–RNO, Reno, NV.	08/14/02	$16,136,446	$6,764,830	02/01/03	06/01/02
01–12–C–03–ORD, Chicago, IL.	08/16/02	1,315,327,790	1,340,327,790	10/01/16	12/01/16
00–02–C–01–GRI, Grand Island, NE.	08/23/02	578,060	545,219	04/01/08	11/01/13
98–02–C–03–FLL, Fort Lauderdale, FL.	09/24/02	183,627,920	181,471,378	01/01/07	09/01/05
01–03–C–01–FLL, Fort Lauderdale, FL.	09/24/02	27,841,586	26,202,553	05/01/08	08/01/06
01–04–C–01–FLL, Fort Lauderdale, FL.	09/24/02	30,702,199	44,333,391	08/01/09	03/01/08
00–03–C–01–MDT, Harrisburg, PA.	09/26/02	3,715,249	4,206,613	12/01/02	01/01/03
*98–04–C–03–SEA, Seattle, WA.	09/27/02	803,385,000	803,385,000	01/01/23	06/01/14
01–05–U–01–SEA, Seattle, WA.	09/27/02	NA	NA	01/01/23	06/01/14
01–06–U–01–SEA, Seattle, WA.	09/27/02	NA	NA	01/01/23	06/01/14

NOTE: The amendment denoted by an asterisk (*) include a change to the PFC level charged from $3.00 per enplaned passenger to $4.50 per enplaned passenger. For Seattle, WA, this change is effective on January 1, 2003.

Issued in Washington, DC on November 5, 2002.

Barry Molar,

Manager, Airports Financial Assistance Division.

[FR Doc. 02–28825 Filed 11–12–02; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.
ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden. The **Federal Register** Notice with a 60-day comment period was published on August 9, 2002 [67 FR 51924–51925].

DATES: Comments must be submitted on or before December 13, 2002.
FOR FURTHER INFORMATION CONTACT: Mrs. Marcia Tarbet at NHTSA, Evaluation Division (NPO–321) of the Office of Planning, Evaluation, and Budget, 202–366–2570, 400 Seventh Street, SW., Room 5208, Washington, DC 20590.
SUPPLEMENTARY INFORMATION:

National Highway Traffic Safety Administration

Title: Heavy Vehicle Antilock Brake System (ABS) and Underride Guard Fleet Maintenance Study.
OMB Number: 2127—NEW.
Type of Request: New information collection.
Abstract: As required by the Government Performance and Results Act of 1993 and Executive Order 12866 (58 FR 51735), NHTSA reviews existing regulations to determine if they are achieving policy goals. Safety Standard 105 (49 CFR 571.105) requires Antilock Brake Systems (ABS) on hydraulic-braked vehicles with a Gross Vehicle Weight Rating (GVWR) greater than 10,000 pounds built on or after March 1, 1999. Safety Standard 121 (49 CFR 571.121) requires ABS on air-braked truck-tractors built on or after March 1, 1997 and on air-braked trailers and single-unit trucks manufactured on or after March 1, 1998. Safety Standard 223 (49 CFR 571.223) requires all trailers and semi-trailers built on or after January 24, 1998 with a Gross Vehicle Weight Rating of 10,000 pounds to have an underride guard. NHTSA's Office of

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Evaluation and Regulatory Analysis is planning a data collection effort that will provide adequate information to perform an evaluation on the effect of ABS and underride guards on the maintenance of heavy vehicles in trucking fleets. This study will determine fleet maintenance policies and procedures related to ABS and underride guards, examine factors that motivate fleets to maintain antilock brakes and underride guards, and document fleet experience in maintaining ABS and underride guards since the implementation of the new safety standards.

Affected Public: Private trucking fleets nationwide.

Estimated Total Annual Burden: 420 hours.

ADDRESSES: Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, D.C. 20503, Attention NHTSA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A Comment to OMB is most effective if OMB receives it within 30 days of publication.

Issued in Washington, DC, on October 11, 2002.

James F. Simons,

Acting Associate Administrator for Planning, Evaluation, and Budget.

[FR Doc. 02–28834 Filed 11–12–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2002–11846; Notice 2]

Decision That Nonconforming 2001–2002 Mercedes Benz SL (R230 Body) Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of decision by NHTSA that nonconforming 2001–2002 Mercedes Benz SL (R230 Body) passenger cars are eligible for importation.

SUMMARY: This notice announces the decision by NHTSA that 2001–2002 Mercedes Benz SL (R230 Body) passenger cars not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they have safety features that comply with, or are capable of being altered to comply with, all applicable Federal motor vehicle safety standards.

DATE: This decision is effective as of the date of its publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Luke Loy, Office of Vehicle Safety Compliance, NHTSA (202–366–5308).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards ("FMVSS") shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable FMVSS.

Where there is no substantially similar U.S.-certified motor vehicle, 49 U.S.C. 30141(a)(1)(B) permits a nonconforming motor vehicle to be admitted into the United States if its safety features comply with, or are capable of being altered to comply with, all applicable FMVSS based on destructive test data or such other evidence as NHTSA decides to be adequate.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

J.K. Technologies, LLC, of Baltimore, MD, ("J.K.") (Registered Importer 90–006) petitioned NHTSA to decide whether 2001–2002 Mercedes Benz SL (R230 Body) passenger cars are eligible for importation into the United States. NHTSA published notice of the petition on May 1, 2002 (67 FR 21797), to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition.

One comment was received in response to the notice of the petition, from U.S. Conformance of Jupiter, Florida, another registered importer (Registered Importer 00–214). This comment addressed issues that U.S. Conformance believed J.K. overlooked in describing alterations necessary to conform non-U.S. certified 2001–2002 Mercedes Benz SL (R230 Body) passenger cars to Federal Motor Vehicle Safety Standard Nos. 108 *Lamps, Reflective Devices, and Associated Equipment* and 301 *Fuel System Integrity*, and with the Federal Bumper Standard found in 49 CFR part 581. The agency accorded J.K. an opportunity to respond to the issues raised in this comment. The statements in the petition regarding these standards, U.S. Conformance's comments, and J.K."s responses are set forth below.

Standard No. 108

The petition stated that the vehicles are capable of being readily altered to meet this standard by: (a) Installation of U.S.-model headlamps and front sidemarker lamps, and (b) installation of U.S.-model taillamp assemblies that incorporate rear sidemarker lamps.

U.S. Conformance stated that it determined, upon physical inspection of one of the vehicles in question, that the rear taillamp assemblies are capable of being modified to meet the standard. The comment noted that the required reflective materials for red side marker lamps are in all taillamp assemblies manufactured for these vehicles. The comment further noted that one additional light source can be added to the appropriate spot in each taillamp assembly to bring the assembly into compliance with the standard, eliminating the need for replacement of the assembly.

In its response, J.K. stood by the statement in its petition. J.K. stated that it had no idea whether the modifications proposed by U.S. Conformance would in fact conform the vehicles to the standard. J.K. noted, however, that those modifications would activate several warning systems if the wiring is not correct.

Standard No. 301

The petition stated that that non-U.S. certified 2001–2002 Mercedes Benz SL (Body 230) passenger cars are identical to their U.S. certified counterparts with respect to compliance with this standard.

U.S. Conformance expressed disagreement with this claim. The comment noted that after careful inspection, U.S. Conformance has determined that the fuel tank and related evaporative emission devices are not OBD2 compliant. The comment asserted that both systems must be able to trigger a "check engine" light in the event that a leak develops in either system, and do not have the capacity to do so. The comment expressed the belief that the fuel tank and evaporative emissions canister must be replaced with U.S.-model components.

J.K. responded that the modification identified by U.S. Conformance concern matters of E.P.A. compliance, but have no bearing on the conformity of the vehicles with applicable FMVSS.

Part 581 Bumper Standard

The petition stated that the vehicles, as originally manufactured, comply with the Bumper Standard.

U.S. Conformance stated that its physical inspection revealed that the front and rear bumper reinforcements do not extend to the corners of the chassis on either the driver's or the passenger's side. U.S. Conformance further stated that in its experience, some manner of reinforcement is required past the bumper corner and must continue longitudinally for a minimum of three inches. As a consequence, the comment asserted that without those reinforcements, the Mercedes Benz SL (R230 Body) is incapable of meeting the corner impact test requirements of the standard.

J.K. responded that the bumper systems of the European-model Mercedes Benz SL (R230 Body) are identical to those of the U.S.-certified model. J.K. submitted photographs of both components to verify this statement.

NHTSA believes that J.K. has adequately addressed each of the issues that U.S. Conformance has raised. The agency has been advised by representatives of DaimlerChrysler, the vehicle's manufacturer, that the Mercedes Benz SL (R230 Body) was first offered for sale in the United States in March 2002 as a model year 2003 vehicle. Since there were no substantially similar U.S.-certified versions of the vehicle in model years 2001 and 2002, J.K. should have petitioned the agency to determine the vehicle's eligibility for importation pursuant to 49 U.S.C. 30141(a)(1)(B). As previously noted, that section permits a nonconforming motor vehicle to be admitted into the United States if its safety features comply with, or are capable of being altered to comply with, all applicable FMVSS based on destructive test or such other evidence as NHTSA decides to be adequate. In this instance, the fact that there is a U.S.-certified counterpart for the 2003 model Mercedes Benz SL (R230 Body) has led the agency to conclude that non-U.S. certified models built in 2001 and 2002 have safety features that comply with, or are capable of being altered to comply with, all applicable FMVSS. In light of this circumstance, the agency has decided to grant the petition under 49 U.S.C. 30141(a)(1)(B).

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final decision must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VCP–19 is the vehicle eligibility number assigned to vehicles admissible under this notice of final decision.

Final Decision

Accordingly, on the basis of the foregoing, NHTSA hereby decides that 2001–2002 Mercedes Benz SL (R230 Body) passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they have safety features that comply with, or are capable of being altered to comply with, all applicable Federal motor vehicle safety standards.

Authority: 49 U.S.C. 30141(a)(1)(B) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: November 7, 2002.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 02–28822 Filed 11–12–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: Liquidation—Delta Casualty Company

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: Liquidation of an insurance company formerly certified by this Department as an acceptable surety/reinsurer on Federal bonds.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6850.

SUPPLEMENTARY INFORMATION: Delta Casualty Company, an Illinois company, formerly held a Certificate of Authority as an acceptable surety on Federal bonds and was last listed as such at 60 FR 34440, June 30, 1995. The Company's authority was terminated by the Department of the Treasury effective April 8, 1996. Notice of the termination was published in the **Federal Register** of April 24, 1996, on page 18192.

On December 4, 2001, upon a petition by the Director of Insurance of the State of Illinois, the Circuit Court of Cook County, Illinois, issued an Order of Liquidation with respect to Delta Casualty Company. Nathaniel S. Shapo, Director of Insurance of the State of Illinois, and his successors in office, were appointed as the Liquidator. All persons having claims against Delta Casualty Company must file their claims by December 4, 2002, or be barred from sharing in the distribution of assets.

All claims must be filed in writing and shall set forth the amount of the claim, the facts upon which the claim is based, any priorities asserted, and any other pertinent facts to substantiate the claim. Federal Agencies should assert claim priority status under 31 U.S.C. 3713, and send a copy of their claim, in writing, to: Department of Justice, Civil Division, Commercial Litigation Branch, P.O. Box 875, Ben Franklin Station, Washington, DC 20044–0875. Attn: Mr. Randy Harwell, Attorney.

The above office will consolidate and file any and all claims against Delta Casualty Company, on behalf of the United States Government. Any questions concerning filing of claims may be directed to Mr. Harwell at (202) 307–0180.

The Circular may be viewed and downloaded through the Internet (*http://www.fms.treas.gov/c570*). A hard copy may be purchased from the Government Printing Office (GPO), Subscription Service, Washington, DC, (202) 512–1800. When ordering the Circular from GPO, use the following stock number 769–004–04067–1.

Questions concerning this notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6F07, Hyattsville, MD 20782.

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Dated: November 4, 2002.

Wanda Rogers,

Director, Financial Accounting and Services Division, Financial Management Service.

[FR Doc. 02–28821 Filed 11–12–02; 8:45 am]

BILLING CODE 4810–35–M

Corrections

Federal Register

Vol. 67, No. 219

Wednesday, November 13, 2002

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 141

[FRL 7398–4]

RIN 2040–AD81

Unregulated Contaminant Monitoring Regulation; Approval of Analytical Method for *Aeromonas*; National Primary and Secondary Drinking Water Regulations: Approval of Analytical Methods for Chemical and Microbiological Contaminants

Correction

In rule document 02–27133 beginning on page 65888 in the issue of Tuesday, October 29, 2002, make the following corrections:

§141.23 [Corrected]

1. On page 65897, in §141.23(a)(4)(i), in the table, under the heading "Methodology", in the sixth entry " Distillation" was misspelled.

2. On page 65898, in the same section, preceding footnote 3 insert "* * * * *".

[FR Doc. C2–27133 Filed 11–12–02; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Fiscal Service

Fee Schedule for the Transfer of U.S. Treasury Book-Entry Securities Held on the National Book-Entry System

Correction

In notice document 02–28117 beginning on page 67895 in the issue of Thursday, November 7, 2002, make the following corrections:

1. On page 67895, in the table, in the column titled "Off-line Surcharge", in the last entry, "25.05" should read, "25.00".

2. On the same page, in the same table, in the column titled "Funds Movement Fee", in the sixth entry, ".25" should read, ".05".

3. On the same page, in the same table, in the same column, in the last entry, "25" should read, ".05".

[FR Doc. C2–28117 Filed 11–12–02; 8:45 am]

BILLING CODE 1505–01–D

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Federal Register

Wednesday,
November 13, 2002

Part II

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 6, 8, and 52
Federal Aquisition Regulation; Procurement of Printing and Duplicating Through the Government Printing Office; Proposed Rule

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 6, 8, and 52

[FAR Case 2002–011]

RIN 9000–AJ51

Federal Acquisition Regulation; Procurement of Printing and Duplicating Through the Government Printing Office

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The FAR Council is proposing amendments to the Federal Acquisition Regulation (FAR) to implement the policy set forth in Office of Management and Budget (OMB) Memorandum No. M–02–07, Procurement of Printing and Duplicating Through the Government Printing Office (GPO) (May 3, 2002). In order to induce competition, save taxpayer money and promote small business opportunities, the memorandum eliminates restrictions that mandated use of GPO as the single source and frees agencies to select printing from a wide array of sources that can demonstrate their ability to meet the Government's needs most effectively. Moreover, specific new actions are proposed to improve dramatically the depository library system by ensuring that all Government publications are in fact made available to the nation's depository libraries.

DATES: Interested parties should submit comments to the FAR Secretariat at the address shown below on or before December 13, 2002.

ADDRESSES: Submit written comments to—General Services Administration, FAR Secretariat (MVA), 1800 F Street, NW., Room 4035, ATTN: Laurie Duarte, Washington, DC 20405.

Submit electronic comments via the Internet to—*farcase.2002–011@gsa.gov*.

Please submit comments only and cite FAR case 2002–011 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mrs. Linda Nelson, Procurement Analyst, at (202) 501–1900. Please cite FAR Case 2002–011. Contact the FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, at (202) 501–4755 for information pertaining to status or publication schedules. The TTY Federal Relay Number for further information is 1–800–877–8973.

SUPPLEMENTARY INFORMATION:

A. Background

1. Overview

In order to induce competition, save taxpayer money and promote small business opportunities, this proposed rule implements OMB Memorandum No. M–02–07, Procurement of Printing and Duplicating Through the Government Printing Office (GPO). The proposed rule amends the FAR by—

- Removing restrictions in FAR 8.8 that mandated exclusive use of GPO for printing and related supplies;
- Providing agencies express authorization to address printing needs by either contracting with a private source or by using the GPO when GPO offers the best value;
- Substantially limiting the circumstances where agencies may rely on in-house or other Executive Branch printing operations;
- Requiring agencies that acquire printing services in excess of $2,500 directly from private sector sources to use competitive practices that facilitate broad marketplace participation, including a much broader range of opportunities for small businesses;
- Ensuring that agencies can and will purchase printing services that are the "best value" for their specific needs; and
- Improving the depository library system by taking concrete steps to ensure that all Government publications are in fact provided to the GPO's Superintendent of Documents for distribution to the Federal Depository Library Program (FDLP).

2. Procurement of Printing and Related Supplies

a. Freedom To Choose Among Different Printing Sources

The GPO is a legislative branch agency that was created by Congress and is controlled by the Joint Committee on Printing. While GPO was originally created to fulfill the printing needs of Congress, Congress has since expanded the role of GPO by purporting to require that essentially all Executive Branch printing be done by or through GPO.

In 1996, the Department of Justice's Office of Legal Counsel issued an opinion concluding that the statutes compelling the Executive Branch to utilize GPO constitute are unconstitutional and therefore inoperative. See Memorandum from Walter Dellinger, Assistant Attorney General, to Emily C. Hewitt, General Counsel, General Services Administration, May 31, 1996 at 1, 8. The Justice Department's opinion stated explicitly that the Executive Branch was not bound to follow those statutes. *See id.* at 8. The Justice Department recently reaffirmed its 1996 opinion. *See* Memorandum for Adam F. Greenstone, General Counsel, Office of Administration, Executive Office of the President, October 22, 2002. Nonetheless, FAR Subpart 8.8 has perpetuated the use of GPO as a mandatory source. Accordingly, absent the FAR change proposed herein, agencies subject to the FAR currently must issue a FAR deviation pursuant to Subpart 1.4 of the FAR in order to contract with a private printer rather than GPO.

The type of pro-competition reforms to public printing identified herein have a long and broad history of bipartisan support:

- In 1994 President Clinton stated that comprehensive reform of Federal printing could "improve the efficiency and cost-effectiveness of Government printing by maximizing the use of private sector printing capability through open competitive procedures and by limiting Government-owned printing resources to only those necessary to maintain a minimum core capacity." Statement on Signing the Legislative Branch Appropriations Act of 1995, 30 Weekly Comp. Pres. Doc. 1541 (July 22, 1994).
- Alice Rivlin, while serving as Deputy Director of OMB, explained in 1994 that "significant efficiencies, much improved service, and cost savings will be realized by injecting more competition and direct accountability into the area of printing procurement." See Statement of Alice Rivlin, Deputy Director, Office of Management and Budget, Committee on Rules and Administration, United States Senate (February 3, 1994).
- David M. Walker, Comptroller General of the United States, testified that "GPO's monopoly-like role in providing printing services perpetuates inefficiency because it permits GPO to be insulated from market forces and does not provide incentives to improve operations that will ensure quality services at competitive prices. Federal agencies could be given the authority to make their own printing policies, requiring GPO to compete with private sector printing service providers." Statement of David M. Walker, U.S. Senate Committee on the Budget, February 1, 2000 at 6–7
- Congressman Tom Davis, Chairman of the Subcommittee on Technology and Procurement Policy of the House Committee on Government Reform wrote, on March 12, 2002, that "a permanent Government-wide solution to the GPO monopoly can be achieved by OMB, under its own authority, taking immediate steps to give agencies the greater "flexibility" that Deputy O'Keefe called for in his testimony. This authority is evident under a May 31, 1996 Legal Opinion of the Department of Justice Office of Legal Counsel. . . ."

On May 3, 2002, the Director of OMB issued a policy memorandum (No. M–02–07) governing Executive Branch use of GPO for departmental and agency printing needs. The memorandum points out that while the GPO relied on contractors to handle 84 percent of the printing work it performed in fiscal year 2001, it charged the Executive Branch premiums (above and beyond the private contractors' bids) of between 7 percent and 14 percent, plus various processing fees.

OMB's memorandum concludes that "[t]he time has come for the Executive Branch to liberate its agencies from a monopoly that unfairly penalizes both taxpayers and efficient would-be competitors." It directs agencies to take full advantage of the marketplace, recognizing that "[t]axpayers tend to benefit most from open competition, rather than government monopolies." Rather than having the GPO interact exclusively with private contractors and make decisions for agencies, OMB's new policy gives agencies the freedom to conduct their own competitions and work with private contractors to produce the best possible printed product. In particular, the OMB memorandum allows Executive Branch agencies to choose between GPO and the private sector based upon the "best quality, cost, and time of delivery," *i.e.*, by using "best value" cost-technical tradeoff procurements where appropriate. This freedom will enable agencies to control the cost and quality of the printing services for which they are accountable. Of course, where GPO provides the best value, it should continue to receive Government orders.

Many commercial printers have expressed their support to OMB for the opportunities its new policy will provide by allowing them to contract directly with Executive Branch agencies. One company in particular wrote to OMB to welcome the passing of an era marked by the use of outdated specifications, the failure to take advantage of cost saving technology, and reliance on costly distribution channels. It is looking forward to a new day of cost-effective quality contracting for printing.

Agencies are also anticipating the benefits of an open environment. During a July 10, 2002 hearing before the Joint Committee on Printing, the Director of OMB offered a few examples of agency frustrations that bear out the inefficiencies perpetuated by forced reliance on a single provider. These inefficiencies include insufficient consideration of quality, inadequate attention to customer satisfaction, and misunderstandings about agency needs that have arisen over the years because GPO's policies generally prevent agencies from communicating directly with its contractors. OMB's new policy is designed to help agencies overcome these shortcomings by giving them the power of choice—*i.e.*, the ultimate tool to drive printers, including the GPO, to offer their best products and services and make customer satisfaction job one.

Nonetheless, a handful of legislators who oversee GPO continue to oppose pro-competition reform. For example, Section 4 of the Continuing Resolution for FY 2003, Public Law 107–240 (H.J. Res. 122), included a provision essentially requiring that funds be used in accordance with section 501 of title 44. In an October 22, 2002 opinion, however, the Department of Justice concluded that this language, like other statutory provisions compelling the Executive Branch to use the GPO, is an unconstitutional infringement upon Executive Branch powers and therefore is not binding. *See* Memorandum for Adam F. Greenstone, General Counsel, Office of Administration, Executive Office of the President, October 22, 2002.

In order to implement the pro-competition reforms that have long received broad, bipartisan support, this rule removes restrictions in FAR 8.8 that have mandated exclusive use of GPO for printing. In its place, the rule provides agencies express authorization to address printing needs by contracting with a private source, using the GPO, or, in very limited circumstances, relying on in-house or other Executive Branch printing operations.

b. Limited Use of In-House or Other Executive Branch Printing Operations

OMB's memorandum recognizes the need to narrow use of often inefficient in-house printing operations. It allows agencies to consider use of in-house or other Executive Branch printing operations only under limited circumstances when in-house printing is the only reasonably available option. The memorandum makes clear that agencies must make decisions based upon a "full account of all costs" and must provide a "full accounting of all costs" in regular reports to OMB. In short, OMB will not permit agencies to use this new policy to make or continue costly investments in printing equipment when more cost-effective solutions are available.

The rule reflects this limitation. It permits an agency to rely on in-house or other Executive Branch printing operations only where such Executive Branch operations demonstrate, based upon a full account of all costs and through public-private competition (unless an exception to competition applies), that they offer the best combination of quality, cost, and delivery or, alternatively, the lowest overall cost in a competition based on cost or price and cost or price related factors.

c. Use of Competition To Open Opportunities

When GPO decides to pass some of its work to the private sector for printing services on behalf of Executive Branch agencies, GPO's rules call for it to notify private printers of proposed contract actions through the Internet. With respect to contracts entered into under the FAR, FAR 5.101(a)(1) requires Executive Branch agencies to disseminate proposed contract actions above $25,000 through the Government-wide point of entry, *http://www.fedbizopps.gov*. (FedBizOpps). Now, to ensure maximum opportunities, especially for small businesses, FedBizOpps will serve as a one-stop Internet gateway to Executive Branch procurement opportunities for every printing contract in excess of $2,500. This gateway will make the Federal Government more efficient, accessible, and citizen-centric.

Hence, the proposed rule extends the synopsizing requirements and response times currently applicable to acquisitions between $25,000 and the simplified acquisition threshold to acquisitions for printing over $2,500. As a result, all responsible sources will have an opportunity to submit offers for open market actions over $2,500. To ensure necessary flexibility, agencies would continue to be able to exercise exceptions to competition as may be necessary, such as for unusual and compelling urgency.

GSA is thinking about creating a multiple award schedule (MAS) to help facilitate the acquisition of printing. This new schedule for printing would be designed to maximize participation by all types of printers, including small businesses. The proposed rule would impose certain special procedures for the use of this schedule. Specifically, it would require that all MAS printing

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contractors be given an opportunity to compete to fill agency orders in excess of $2,500. Ordering offices would be required to use the electronic "e-Buy" system (*www.gsaAdvantage.gov*) to announce agency printing needs. A copy of all e-Buy notices for printing would be duplicated in FedBizOpps for informational purposes.

To increase further contracting opportunities for the printing community, the rule limits the length of indefinite quantity contracts for printing to one year. Indefinite quantity contracts allow work to be placed through the issuance of orders under the contract. Because consideration for work under an indefinite quantity contract is limited to contract holders for the duration of the contract, non-contract holders must wait for contract renewal before they can compete. Hence, limiting the duration of the underlying contract should enable increased marketplace participation. For similar reasons, the proposed rule would require that blanket purchase agreements (BPAs) for printing that have been established under the MAS also be limited to not more than one year in length. BPAs are used for carrying out repetitive MAS purchases with one or a small number of MAS contractors.

Finally, the proposed rule allows a short transition period during which agencies may opt to use the services of GPO without requiring competition to select GPO. This period is intended to give agencies and printing contractors an opportunity to adjust to the new environment created by OMB's memorandum, where acquisitions will be made both by GPO (which, as noted above, contracts out a significant amount of work required by agencies) and directly by agencies.

d. New Opportunities for Small Businesses

On March 19, 2002, the President announced his Small Business Agenda, a plan to help create an environment where small businesses can flourish. A critical component of this plan involves efforts to improve access to government contracting opportunities for small businesses, including by limiting the current practice of indefinite-quantity contracts. This proposed rule will help further this important Presidential objective.

Information on contracting opportunities will be provided on what is arguably the most robust one-stop gateway of its kind in the world—enabling vendors to easily acclimate themselves to the activities of departments and agencies across the Executive Branch.

- FedBizOpps, which serves as the single point of entry on the Internet for business opportunities, hosts a wide variety of business documents, including notices, solicitations, and other related acquisition information.
- When sellers "click" to a notice, they are also immediately obtaining direct access to all solicitation and related information electronically available at that time on the acquisition.
- E-mail notifications allow interested vendors to automatically receive information about contracting opportunities—both notices and solicitation information initially available and all subsequent information relating to that procurement. This feature eliminates the need for repeated searches to gain access to up-to-date information.

As noted above, the functionality of FedBizOpps, which is typically focused on actions over $25,000, will be expanded for printing acquisitions to also cover actions over $2,500. In addition, the length of indefinite-quantity contracts, which are often used to conduct competitions restricted to pre-qualified contractors, will be limited to give marketplace participants more opportunities to compete. In all, the ability to work directly with agencies on printing jobs of all types and sizes will give small business printers many new opportunities to demonstrate their abilities for future work.

3. Information Distribution

Effective dissemination of Government information is a cornerstone of citizen-centric Government. For this reason, OMB's memorandum recognizes the need to improve distribution to the Federal Depository Library Program (FDLP). The 1,300 depository libraries operating throughout the country that make up the FDLP help to ensure that the public has equal, efficient, permanent, and ready access to government publications. Unfortunately, many Government publications (as many as 50 percent by some estimates) become so-called "fugitives," never making their way to the Superintendent of Documents, who is responsible for indexing, cataloging and distributing documents to the public through the FDLP. Searching for a publication that cannot be easily located (e.g., because it has not been indexed and catalogued) is a time-consuming, if not fruitless, exercise. Until sufficient attention is given to this issue, the public's access to government publications will be unnecessarily impaired. The proposed rule is designed to improve this unacceptable record.

The proposed rule addresses the "fugitive documents" problem by specifying mandatory steps for meeting the requirement that Executive Branch agencies provide publications to the Superintendent of Documents for distribution to the depository libraries. Each publication would be transmitted using electronic means unless such means are unavailable. Agencies' obligation to provide Government publications to the Superintendent applies regardless of the source that prints the publications.

The FAR Council is considering whether the FAR should include a clause that contracting officers would be required to insert in contracts for the printing of Government publications where a contractor will assist the Government in ensuring the Superintendent receives a copy of the publication. A clause might read as follows:

Information Distribution (Date)

To assist the Government in ensuring effective distribution of Government publications printed under this contract, the contractor shall submit one copy of each Government publication, as identified by the Government in the contract, to the Superintendent of Documents from the Government Printing Office. Transmission shall be made using electronic means unless such means are unavailable.

The public is invited to comment on the need for an information distribution clause.

The proposed rule also recognizes that when agencies contract directly with private sector printers, the GPO may wish to purchase copies of Government publications from such printers for depository libraries or for the public sales program or, if economical, may wish to print additional copies in house at GPO. Accordingly, the rule provides that, whenever feasible, agencies should consult with the GPO before issuing a solicitation to determine the number of copies the GPO may wish to obtain. When GPO elects to order from an agency's selected contractor, a proposed FAR clause will require that the contractor submit invoices directly to the GPO for payment.

In addition to the new FAR coverage, OMB will take steps to address the fugitive document problem. Among other things, agencies will be required, as part of their reporting on printing, to report to OMB on compliance with their obligation to make information available to the public, including through the FDLP. This requirement will be set forth in OMB guidance. OMB, in consultation with interested stakeholders, will also determine whether current policies or practices related to the publication of Government information need to be changed to ensure maximum possible reliance on distribution in cost-effective electronic formats.

4. Executive Order 12866.

This is a significant regulatory action and, therefore, was subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Council does not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* Today, private sector printers, including small businesses, who wish to perform printing for the Federal Government must contract with the GPO. This proposed change to the FAR should create new opportunities for private printers of all sizes by giving them the opportunity to contract directly with Executive Branch agencies.

With respect to purchases handled directly by the Executive Branch pursuant to the FAR, agencies would be required to provide notice using FedBizOpps for purchases over $2,500. In addition, the FAR imposes a mandatory set-aside for small businesses for actions between $2,500 and $100,000 (reflecting statutory requirements in the Small Business Act).

The rule would only authorize agencies to use in-house or other Executive Branch printing operations in lieu of either a small or large private sector printer in limited circumstances. OMB has made clear that its policy is not to be used to shift work to in-house performance. OMB will require agencies to provide a full accounting of all costs appropriately attributed to work performed in house, to be compared with the costs of work contracted directly to the private sector or performed at GPO.

The Council recognizes that agencies may seek to acquire printing services through the use of indefinite quantity contracts, including through GSA's MAS, where opportunities to receive agency orders for work are limited to pre-qualified contract holders (as opposed to the printing marketplace at large). To increase opportunities for marketplace participation (including by small businesses), the rule would limit the length of indefinite quantity contracts for printing to one year. This limitation would not apply to MAS contracts, which already permit new participants through continuous open seasons. However, the FAR would require that all MAS printing contractors be given an opportunity to compete to fill agency orders over $2,500. In addition, blanket purchase agreements (used for repetitive MAS purchases) would be limited to not more than one year in length.

An Initial Regulatory Flexibility Analysis has, therefore, not been performed. We invite comments on the impact of the proposed FAR revision on small entities. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAR Case 2002–011) in correspondence. In addition, the Council will consider comments from small entities concerning the affected FAR parts in accordance with 5 U.S.C. 610.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 104–13) does not apply because the proposed rule does not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 6, 8, and 52

Government procurement.

Dated: November 5, 2002.

David A. Drabkin,

Deputy Associate Administrator for Acquisition Policy.

Therefore, DoD, GSA, and NASA propose amending 48 CFR parts 6, 8, and 52 as set forth below:

1. The authority citation for 48 CFR parts 6, 8, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 6—COMPETITION REQUIREMENTS

6.302–5 [Amended]

2. Amend section 6.302–5 by removing paragraph (b)(3) and redesignating paragraphs (b)(4), (b)(5), and (b)(6) as paragraphs (b)(3), (b)(4), and (b)(5), respectively.

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

8.003 [Amended]

3. Amend section 8.003 by removing paragraph (b) and redesignating paragraphs (c), (d), and (e) as paragraphs (b), (c), and (d), respectively.

4. Revise subpart 8.8 to read as follows:

Subpart 8.8—Acquisition of Printing and Related Supplies

8.800 Scope of subpart.

This subpart provides policy for the acquisition of Government printing and related supplies.

8.801 Policy.

(a) Agencies are not required to satisfy requirements for Government printing and related supplies from or through an exclusive source. Agencies may address needs for Government printing and related supplies by—

(1) Contracting with a private source;

(2) Using the Government Printing Office (GPO), in accordance with the requirements of paragraph (c) of this section; or

(3) Relying on in-house or other executive branch printing operations, but only where such executive branch operations demonstrate, based upon a full account of all costs and through public-private competition (unless an exception to competition applies), that they offer the best combination of quality, cost, and delivery or, alternatively, the lowest overall cost in a competition based on cost or price and cost or price related factors.

(b)(1) Except as provided in paragraph (b)(2) of this section, agencies shall make awards for Government printing in accordance with applicable parts of the FAR, including Parts 5, 6, 10, 12, 13, 14, 15, 17 and 19 and Subpart 8.4.

(2)(i) *Synopsis and response time.* Synopsizing requirements and response times currently applicable to acquisitions over $25,000 but less than the simplified acquisition threshold (see 5.101(a)(1) and subpart 5.2) shall also apply to acquisitions for printing over $2,500.

(ii) *Use of Federal Supply Schedules.* (A) Notwithstanding 8.404(b)(2) and (3), all schedule contractors participating on the schedule for printing shall be given notice using the General Services Administration's electronic quote system, "e-Buy" (*www.gsaAdvantage.gov*) and an opportunity to compete for any order over $2,500. Ordering offices shall ensure that—

(*1*) e-Buy notices are forwarded to the GPE for publication; and

(*2*) The forwarded notice is identified on the GPE as being provided for informational purposes only.

(B) Any blanket purchase agreement entered into pursuant to FAR 8.404(b)(4) shall not exceed one year in length.

(iii) *Use of indefinite-quantity contracts (other than the Federal Supply Schedules) and requirements contracts.* (A) Contracting officers shall ensure that—

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(*1*) A notice is forwarded to the GPE for publication before an order for printing is placed under either an indefinite-quantity contract or a requirements contract; and

(*2*) The forwarded notice is identified on the GPE as being provided for informational purposes only.

(B) Notwithstanding any other FAR provision, indefinite-quantity and requirements contracts (*see* 16.5) for printing shall not exceed 1 year in length.

(c) Until January 1, 2004, agencies may use the services of the GPO without conducting a competition. However, agencies shall not obtain printing services from GPO after January 1, 2004 unless GPO demonstrates through public-private competition (unless an exception to competition applies) that it offers the best combination of quality, cost, and delivery or, alternatively, the lowest overall cost in a competition based on cost or price and cost or price related factors.

(d) For each Government publication to be printed, the agency shall ensure a copy of the publication is provided to the GPO's Superintendent of Documents for distribution to the Federal Depository Libraries and any other official use as may be necessary for the GPO to carry out its responsibilities. When transmitting the publication, the agency shall state that the copy is being provided so that GPO may produce however many copies the Superintendent of Documents has determined are necessary for distribution to the Federal Depository Libraries. Transmission to the Superintendent shall be made using electronic means unless such means are unavailable.

(e) Whenever feasible, the agency should consult with the GPO's Public Printer before issuing a solicitation for a printing acquisition to determine the number of copies of a Government publication the GPO may wish to obtain and the agency shall take reasonable and appropriate steps to assist GPO if GPO wishes to purchase copies from a private contractor employed by the agency.

8.802 Solicitation provision and contract clause.

The contracting officer shall insert the clause at 52.208–XX, Purchases by GPO, in all solicitations and contracts for Government printing of a Government publication where the GPO timely advises the agency before issuance of the solicitation that it will seek to make purchases under the contract.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

5. Add section 52.208–XX to read as follows:

52.208–XX Purchases by GPO.

As prescribed in 8.802, insert the following clause:

Purchases by GPO (Date)

As specified in the contract, the contractor, on written request from the Public Printer of the Government Printing Office (GPO), shall furnish up to [INSERT number] of the following publications [INSERT DESCRIPTION] to the GPO. Invoices for such purchases shall be submitted to the GPO's Public Printer. Payment will be made directly by the Public Printer.

(End of clause)

[FR Doc. 02–28668 Filed 11–12–02; 8:45 am]

BILLING CODE 6820–EP–P

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Part III

The President

Proclamation 7624—National Employer Support of the Guard and Reserve Week, 2002

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Title 3—

The President

Proclamation 7624 of November 8, 2002

National Employer Support of the Guard and Reserve Week, 2002

By the President of the United States of America

A Proclamation

Our National Guard and Reserve units comprise 38 percent of America's military forces, and we are grateful for the commitment of these brave men and women. During National Employer Support of the Guard and Reserve Week, we pay tribute to those serving our Nation in the National Guard and Reserve, and to the civilian employers whose continued support enables our Reserve component soldiers, sailors, airmen, marines, and coast guardsmen to defend our country with honor and distinction.

Through their service, National Guard and Reserve personnel play an important role in our efforts to advance democracy, peace, and freedom across our Nation and around the world. These dedicated men and women train vigorously and work closely with our active-duty forces, serving as equal partners in our integrated Armed Forces. As our need for their efforts expands, these citizen-soldiers will spend more time away from their families, homes, and workplaces protecting our Nation and the ideals that make us strong.

As we face new challenges and welcome new opportunities, the continued support of patriotic employers remains vital to the success of our National Guard and Reserve. Our volunteer National Guardsmen and Reservists rely on their employers for essential support and encouragement that often come at the employer's expense. These employers reflect the spirit of our Nation, and during this week I join with members of our Armed Forces and all our citizens in recognizing those who serve in our National Guard and Reserve and all who support them, and all Americans whose contributions and sacrifices help our military remain the finest fighting force in the world.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim November 10 through November 16, 2002, as National Employer Support of the Guard and Reserve Week. I encourage all Americans to join me in expressing our heartfelt thanks to the civilian employers of the members of our National Guard and Reserve for their extraordinary sacrifices on behalf of our Nation. I also call upon State and local officials, private organizations, businesses, and all military commanders to observe this week with appropriate ceremonies and activities.

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IN WITNESS WHEREOF, I have hereunto set my hand this eighth day of November, in the year of our Lord two thousand two, and of the Independence of the United States of America the two hundred and twenty-seventh.

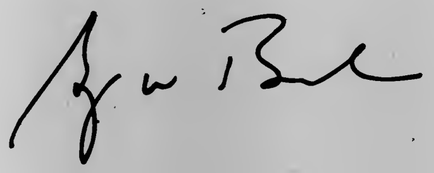

[FR Doc. 02–28995
Filed 11–12–02; 8:49 am]
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Federal Register

Wednesday,
November 13, 2002

Part IV

Department of Justice

Immigration and Naturalization Service

Notice Designating Aliens Subject to Expedited Removal Under Section 235(b)(1)(A)(iii) of the Immigration and Nationality Act; Notice

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DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS Order No. 2243–02]

Notice Designating Aliens Subject to Expedited Removal Under Section 235(b)(1)(A)(iii) of the Immigration and Nationality Act

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: This Notice authorizes the Immigration and Naturalization Service ("the Service") to place in expedited removal proceedings certain aliens who arrive in the United States by sea, either by boat or other means, who are not admitted or paroled, and who have not been physically present in the United States continuously for the two-year period prior to the determination of inadmissibility under this Notice. Aliens falling within this newly designated class who are placed in expedited removal proceedings will be detained, subject to humanitarian parole exceptions, during the course of immigration proceedings, including, but not limited to, any hearings before an immigration judge. The Service believes that implementing the expedited removal provisions, and exercising its authority to detain this class of aliens under 8 CFR part 235, will assist in deterring surges in illegal migration by sea, including potential mass migration, and preventing loss of life. A surge in illegal migration by sea threatens national security by diverting valuable United States Coast Guard and other resources from counter-terrorism and homeland security responsibilities. Placing these individuals in expedited removal proceedings and maintaining detention for the duration of all immigration proceedings, with limited exceptions, will ensure prompt immigration determinations and ensure removal from the country of those not granted relief in those cases, while at the same time protecting the rights of the individuals affected.

EFFECTIVE DATES: This Notice is effective on November 13, 2002.

Written comments must be submitted on or before December 13, 2002.

ADDRESSES: Written comments must be submitted to the Regulations and Forms Services Division, Immigration and Naturalization Service, 425 I Street NW., Room 4034, Washington, DC 20536. To ensure proper handling, please reference INS No. 2243–02 on your correspondence. You may also submit comments electronically to the Service at *insregs@usdoj.gov* when submitting comments electronically you must include INS 2243–02 in the subject box. Comments are available for public inspection at the above address by calling (202) 514–3291 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: Linda M. Loveless, Assistant Chief Inspector, Inspections Division, Immigration and Naturalization Service, 425 I Street, NW., Room 4064, Washington, DC 20536, telephone (202) 616–7489.

SUPPLEMENTARY INFORMATION: Section 302 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. 104–208, Div. C, 110 Stat. 3009–546 (IIRIRA), amended section 235(b) of the Immigration and Nationality Act ("Act"), 8 U.S.C. 1225(b), to authorize the Attorney General to remove without a hearing before an immigration judge aliens arriving in the United States who are inadmissible under sections 212(a)(6)(C) or 212(a)(7) of the Act, 8 U.S.C. 1182(a)(6)(C) and 1182(a)(7). Under these "expedited removal" proceedings, an alien who indicates an intention to apply for asylum or who asserts a fear of persecution or torture is referred to an asylum officer to conduct an interview as to whether such alien has a "credible fear." Sections 235(b)(1)(A)(ii) and (B) of the Act, 8 U.S.C. 1225(b)(1)(A)(ii) and (B); 8 CFR 235.3(b)(4). Those who meet that standard are referred to an immigration judge for a hearing on the merits of their claim or claims. 8 CFR 208.30(f).

The Service previously published a proposed rule and two interim rules to implement this expedited removal authority. 63 FR 19302–01 (April 20, 1998); 62 FR 10330 (March 6, 1997); and 62 FR 444–01 (Jan. 3, 1997). These rules established the current expedited removal. 8 CFR 235.3(b).

Under section 235(b)(1) of the Act, 8 U.S.C. 1225(b)(1), expedited removal proceedings may be applied to two categories of aliens. First, section 235(b)(1)(A)(i) of the Act, 8 U.S.C. 1225(b)(1)(A)(i), permits expedited removal proceedings for aliens who are "arriving in the United States," except for Cuban citizens who arrive at United States ports-of-entry by aircraft, who are exempted from expedited removal under section 235(b)(1)(F) of the Act, 8 U.S.C. 1225(b)(1)(F). Federal regulations define an "arriving alien." 8 CFR 1.1(q). Second, section 235(b)(1)(A)(iii) of the Act, 8 U.S.C. 1225(b)(1)(A)(iii), permits the Attorney General, in his sole and unreviewable discretion, to designate certain other aliens to whom the expedited removal provisions may be applied, even though they are not arriving in the United States. Specifically, the Attorney General may apply the expedited removal provisions to any or all aliens who have not been admitted or paroled into the United States and who have not been physically present in the United States continuously for the two-year period prior to a determination of inadmissibility by an immigration officer. The Attorney General delegated his authority to designate classes of aliens to the Commissioner of the Service:

> As specifically designated by the Commissioner, aliens who arrive in, attempt to enter, or have entered the United States without having been admitted or paroled following inspection by an immigration officer at a designated port-of-entry, and who have not established to the satisfaction of the immigration officer that they have been physically present in the United States continuously for the 2-year period immediately prior to the date of determination of inadmissibility * * *. When these provisions are in effect for aliens who enter without inspection, the burden of proof rests with the alien to affirmatively show that he or she has the required continuous physical presence in the United States. Any absence from the United States shall serve to break the period of continuous physical presence.

8 CFR 235.3(b)(1)(ii).

The designation may become effective upon publication in the **Federal Register**, or, if the "delay caused by the publication would adversely affect the interests of the United States or the effective enforcement of the immigration laws," the designation may become effective upon issuance and be published as soon as practicable. 8 CFR 235.3(b)(1)(ii). Since the expedited removal authority was added to the Act in 1996, neither the Attorney General nor the Commissioner of the Service has not utilized this "specific designation" authority.

This Notice constitutes the first designation of an additional class of aliens who may be placed in expedited removal proceedings: aliens who arrive in the United States by sea, either by boat or other means, who are not admitted or paroled, and who have not been physically present in the United States continuously for the two-year period prior to a determination of inadmissibility by a Service officer. The alien has the burden affirmatively to show to the satisfaction of an immigration officer that the alien has not been present in the United States continuously for the relevant two-year period. Section 235(b)(1)(A)(iii)(II) of the Act, 8 U.S.C. 1225(b)(1)(A)(iii)(II); 8 CFR 235.3(b)(1)(ii). This Notice does not apply to aliens who arrive at United States ports-of-entry.

It is important to note that certain aliens who arrive in the United States by sea are already subject to expedited removal if they fall within the definition of "arriving alien" in 8 CFR 1.1(q): "an alien interdicted in international or United States waters and brought into the United States by any means, whether or not to a designated port-of-entry, and regardless of the means of transport." This Notice will ensure that all aliens, with one exception noted below, who arrive illegally by sea, whether interdicted or not, will be subject to expedited removal.

This designation is necessary to remove quickly from the United States aliens who arrive illegally by sea and who do not establish a credible fear. The ability to detain aliens while admissibility is determined and protection claims are adjudicated, as well as to remove quickly aliens without protection claims, will deter additional aliens from taking to the sea and traveling illegally to the United States. Illegal migration by sea is perilous and the Department of Justice has repeatedly cautioned aliens considering similar attempts to reject such a hazardous voyage.

Any alien who falls within this designation, who is placed in expedited removal proceedings, and who indicates an intention to apply for asylum or who asserts a fear of persecution or torture will be interviewed by an asylum officer who will determine whether the alien has a credible fear. If that standard is met, the alien will be referred to an immigration judge for a hearing on the merits of the protection claim or claims. Sections 235(b)(1)(A)(ii) and (B) of the Act, 8 U.S.C. 1225(b)(1)(A)(ii) and (B); 8 CFR 235.3(b)(4). The Forms I–867A and I–867B currently used by the officers who process aliens under the expedited removal program, in accordance with the statutory requirement at section 235(b)(1)(B)(iv) of the Act, 8 U.S.C. 1225(b)(1)(B)(iv), carefully explains to all aliens in expedited removal proceedings an alien's right to a "credible fear" interview. The forms also require that the officer determine whether the alien has any reason to fear harm if returned to his or her country. These forms will also be used for aliens placed in expedited removal under this designation. Officers who administer the program are trained to be alert for any verbal or non-verbal indications that the alien may be afraid to return to his or her homeland.

The Service, with limited exceptions, plans to detain aliens designated by this Notice. Section 235(b)(1)(B)(iii)(IV) of the Act, 8 U.S.C. 1225(b)(1)(B)(iii)(IV) and 8 CFR 235.3(b)(iii) directs that any alien who is placed in expedited removal proceedings shall be detained pending a final determination of credible fear and if found not to have such a fear, such alien shall be detained until removed. Parole of such alien may be permitted only when the Attorney General determines, in the exercise of discretion, that parole is required to meet a medical emergency or is necessary for a legitimate law enforcement objective.

Section 235(b)(1)(B)(ii) of the Act, 8 U.S.C. 1225(b)(1)(B)(ii), directs that if a credible fear has been established, the alien shall be detained for further consideration of the protection claim or claims. Immigration judge review of custody determinations under 8 CFR 3.19(a) are permitted only for bond and custody determinations pursuant to section 236 of the Act, 8 U.S.C. 1226, and 8 CFR part 236. Aliens designated under this notice would not be detained under section 236 of the Act, but rather under section 235. Aliens subject to expedited removal procedures under section 235 of the Act are not eligible for bond, and therefore may not seek a bond redetermination before an immigration judge. Parole of such aliens based on humanitarian concerns may be considered in accordance with section 212(d)(5) of the Act, 8 U.S.C. 1182(d)(5) and 8 CFR 212.5.

This Notice applies to certain aliens who arrive in the U.S. by sea on or after November 13, 2002. Furthermore, expedited removal proceedings, however, will not be initiated against Cuban citizens who arrive by sea because it is longstanding U.S. policy to treat Cubans differently from other aliens. *See, e.g.*, Cuban Adjustment Act, Pub. L. 89–732 (1966) (allowing any native or citizen of Cuba who is inspected and admitted or paroled into the United States to apply for lawful permanent resident status after one year). Finally, crewmen and stowaways will not be subject to this Notice because the Act already mandates specific removal proceedings for such aliens.

This Notice does not require "notice and comment" under the Administrative Procedures Act because Congress explicitly authorized the Attorney General to designate categories of aliens to whom expedited removal proceedings may be applied, and that "[s]uch designation shall be in the sole and unreviewable discretion of the Attorney General and may be modified at any time (emphasis added)." Section 235(b)(1)(A)(iii)(I), 8 U.S.C. 1225(b)(1)(A)(iii)(I). Current regulations of the Service provide public notice that the designation of new categories of aliens to be subjected to expedited removal will be made via publication of a Notice in the **Federal Register:**

The Commissioner shall have the sole discretion to apply the provisions of section 235(b)(1) of the Act, at any time, to any class of aliens described in this section. The Commissioner's designation shall become effective upon publication of a notice in the **Federal Register**. However, if the Commissioner determines, in the exercise of discretion, that the delay caused by publication would adversely affect the interests of the United States or the effective enforcement of the immigration laws, the Commissioner's designation shall become effective immediately upon issuance, and shall be published in the **Federal Register** as soon as practicable thereafter.

8 CFR 235.3(b)(ii).

In the alternative, the Service's immediate implementation of this Notice, with provisions for post-promulgation public comments, is based on the "good cause" exceptions found at 5 U.S.C. 553(b)(B) and (d)(3). The reason and necessity for the immediate promulgation of this rule is the need to deter foreign nationals from undertaking dangerous sea voyages to the United States and to detain those that are apprehended doing so. As explained in the **SUPPLEMENTARY INFORMATION**, a surge in illegal migration by sea, including the potential for a mass migration, would jeopardize or compromise the national security and, therefore, requires the immediate implementation of this Notice.

Notice of Designation of Aliens Subject to Expedited Removal Proceedings

Pursuant to section 235(b)(1)(A)(iii) of the Immigration and Nationality Act ("Act") and 8 CFR 235.3(b)(1)(ii), I order as follows:

(1) Except as provided in paragraph (5), all aliens who arrive in the United States by sea, either by boat or other means, who are not admitted or paroled, and who have not been physically present in the United States continuously for the two-year period prior to a determination of inadmissibility by a Service officer shall be placed in expedited removal proceedings. The alien has the burden affirmatively to show to the satisfaction of an immigration officer that the alien has been present in the United States continuously for the relevant two-year period. This Notice does not apply to aliens who arrive at United States ports-of-entry. This Notice does not apply to

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alien crewmen or stowaways as described in the Act.

(2) Any alien who falls within this designation who indicates an intention to apply for asylum or who asserts a fear of persecution or torture will be interviewed by an asylum officer to determine whether the alien has a credible fear as defined in section 235(b)(1)(B)(v), 8 U.S.C. 1225(b)(1)(B)(v). If that standard is met, the alien will be referred to an immigration judge for a hearing on the merits of the protection claim or claims.

(3) An alien found to have a credible fear and subsequently placed into removal proceedings before an immigration judge will be detained, with certain humanitarian exceptions, throughout those proceedings and will not be eligible to request a bond redetermination hearing before an immigration judge.

(4) This Notice applies to aliens described in paragraph (1) who arrive in the United States by sea on or after November 13, 2002.

(5) Expedited removal proceedings will not be initiated against Cuban citizens or nationals who arrive by sea.

Dated: November 12, 2002.

James W. Ziglar,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 02–29038 Filed 11–12–02; 12:33 pm]

BILLING CODE 4410–10–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION 1985

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Part V

The President

Notice of November 12, 2002—
Continuation of the National Emergency With Respect to Iran

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Presidential Documents

Title 3—

The President

Notice of November 12, 2002

Continuation of the National Emergency With Respect to Iran

On November 14, 1979, by Executive Order 12170, the President declared a national emergency with respect to Iran pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) to deal with the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States constituted by the situation in Iran. Because our relations with Iran have not yet returned to normal, and the process of implementing the January 19, 1981, agreements with Iran is still underway, the national emergency declared on November 14, 1979, must continue in effect beyond November 14, 2002. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year this national emergency with respect to Iran.

This notice shall be published in the **Federal Register** and transmitted to the Congress.

THE WHITE HOUSE,
November 12, 2002.

[FR Doc. 02–29078
Filed 11–12–02; 1:58 pm]
Billing code 3195–01–P

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H.R. 5308/P.L. 107–283
To designate the facility of the United States Postal Service located at 301 South Howes Street in Fort Collins, Colorado, as the "Barney Apodaca Post Office". (Nov. 6, 2002; 116 Stat. 2020)

H.R. 5333/P.L. 107–284
To designate the facility of the United States Postal Service located at 4 East Central Street in Worcester, Massachusetts, as the "Joseph D. Early Post Office Building". (Nov. 6, 2002; 116 Stat. 2021)

H.R. 5336/P.L. 107–285
To designate the facility of the United States Postal Service located at 380 Main Street in Farmingdale, New York, as the "Peter J. Ganci, Jr. Post Office Building". (Nov. 6, 2002; 116 Stat. 2022)

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To amend the District of Columbia Retirement Protection Act of 1997 to permit the Secretary of the Treasury to use estimated amounts in determining the service longevity component of the Federal benefit payment required to be paid under such Act to certain retirees of the Metropolitan Police Department of the District of Columbia. (Nov. 7, 2002; 116 Stat. 2051)

H.R. 5574/P.L. 107–291
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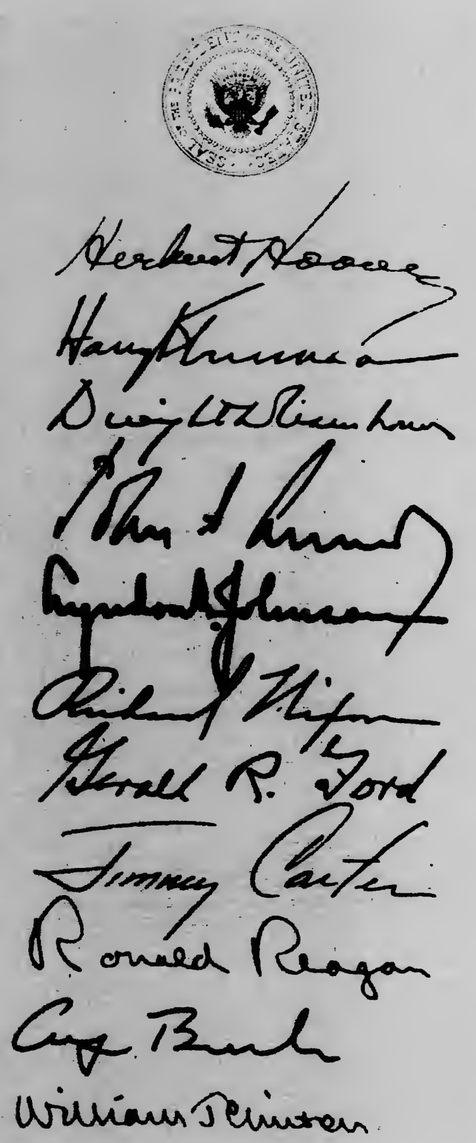

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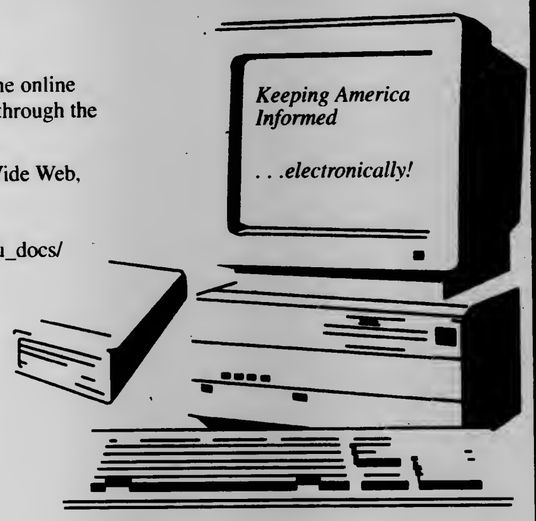

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Rules and Regulations

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FARM CREDIT ADMINISTRATION

12 CFR Part 622

RIN 3052–AC12

Rules of Practice and Procedure; Adjusting Civil Money Penalties for Inflation

AGENCY: Farm Credit Administration (FCA).

ACTION: Final rule.

SUMMARY: This regulation revises cost-of-living adjustments for all civil money penalties (CMPs) under the Farm Credit Administration's (FCA) jurisdiction. The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended (FCPIA Act) requires us to adjust our CMPs at least once every 4 years for inflation. Our last adjustments, effective in October 2000, incorporated a rounding method based on the amount of the penalty increase. We have recently been advised by the General Accounting Office (GAO) that the adjustment should have been based on the amount of the penalty. Therefore, we have recalculated the penalties and have revised the penalty amounts.

EFFECTIVE DATE: The regulation will become effective on November 15, 2002.

FOR FURTHER INFORMATION CONTACT:
Mark L. Johansen, Policy Analyst, Office of Policy and Analysis, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498, TTY (703) 883–4434,

or

Rebecca S. Orlich, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TTY (703) 883–2020.

SUPPLEMENTARY INFORMATION:

I. Objective

The objective of this regulation is to recalculate the CMP inflation adjustments consistent with the FCPIA Act.

II. Cost-of-Living Adjustment

The FCPIA Act,[1] as amended by the Debt Collection Improvement Act of 1996 (DCIA),[2] requires each agency to adjust each CMP within its jurisdiction by a prescribed cost-of-living adjustment at least once every 4 years. This cost-of-living adjustment is based on the formula described in section 5(b) of the FCPIA Act. We made our last adjustment in July 2000, effective in October of that year, when we increased the penalties from $1,100 to $1,170 per day for violation of an order that has become final, and from $550 to $580 per day for violation of the Farm Credit Act of 1971, as amended, or FCA regulations. *See* 65 FR 46087 (July 27, 2000) for a full explanation of the types of violations subject to CMPs.

Earlier this year, the GAO began a government-wide review of agencies' application of the FCPIA Act. The GAO found that several agencies, including the FCA, took actions that did not conform to the strict language of the FCPIA Act and requested that each agency adjust its penalties accordingly. In a letter to the FCA, the GAO stated that they "recognize some advantages to rounding on the basis of the size of the increase rather than the size of the penalty," but requested FCA "to adjust the agency's civil penalties in a manner consistent with the requirements of the [FCPIA Act]." *See* GAO–02–1084R FCA Penalty Adjustments.

The FCPIA Act contains a formula for rounding CMP increases, setting out penalty ranges on amounts from less than or equal to $100, to amounts greater than $200,000, and provides different dollar multiples for rounding the increase in each penalty range. Section 5(a) of the FCPIA Act provides that increases determined under that subsection must be rounded to:

- The nearest "multiple of $10 *in the case of penalties* less than or equal to $100";
- The nearest "multiple of $100 *in the case of penalties* greater than $100 but less than or equal to $1,000"; and
- The nearest "multiple of $1,000 *in the case of penalties* greater than $1,000 but less than or equal to $10,000."

Emphasis added. In our 2000 regulation, we applied the rounding method to the amount of the *increase* in the penalty, rather than to the amount of the penalty itself.

We based our 2000 CMP adjustments on the difference between the Consumer Price Index (CPI) for June of the preceding year of the adjustment (June 1999) and the CPI for June of the year the CMP was last set (June 1996).[3] For the 2000 adjustment, the CPI value was 156.7 for June 1996 and was 166.2 for June 1999, resulting in an inflation factor of 1.06 (*i.e.*, a 6-percent increase). The prerounding adjustments were a $66.69 increase for the $1,100 penalty and a $33.34 increase for the $550 penalty.

Using the FCPIA Act's correct rounding formula, the $66.69 increase should have been rounded to the nearest $1,000, which is zero, because the penalty in question is in the $1,000–9,999 category. That rounding results in no adjustment to the $1,100 penalty. The $33.34 increase should have been rounded to the nearest $100, which is also zero, because the penalty in question is in the $100–999 category. That rounding results in no adjustment to the $550 penalty.

We now amend § 622.61 to provide for CMPs of $1,100 and $550. We note that the agency has not imposed any CMPs in the last 2 years; consequently, no person has been required to pay the higher penalty amounts we adopted in 2000.

III. Notice and Comment Not Required by Administrative Procedure Act

The FCPIA Act gives Federal agencies no discretion in the adjustment of CMPs for the rate of inflation. Moreover, this regulation is ministerial, technical, and noncontroversial. For these reasons, the FCA finds good cause to determine that public notice and an opportunity to comment are impracticable, unnecessary, and contrary to the public interest pursuant to the Administrative Procedure Act, 5 U.S.C. 553(b)(B), and adopts this rule in final form. In addition, because this rule will relieve a burden by reducing the CMPs to the

[1] 28 U.S.C. 2461 note.

[2] Pub. L. 104–134, sec. 31001(s), 110 Stat. 1321–373 (April 26, 1996).

[3] We used the Department of Labor, Bureau of Labor Statistics—All Urban Consumers tables, in which the period 1982–84 was equal to 100, to get the CPI numbers. We note that the 1996 adjustment was based on the June 1995 CPI. In calculating the new adjustments, the FCPIA Act requires us to use the 3-year period from June 1996 to June 1999.

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correct amounts, the FCA has determined that it should become effective immediately.

IV. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the FCA hereby certifies that the final rule will not have a significant economic impact on a substantial number of small entities. Each of the banks in the Farm Credit System, considered together with its affiliated associations, has assets and annual income in excess of the amounts that would qualify them as small entities. Therefore, Farm Credit System institutions are not "small entities" as defined in the Regulatory Flexibility Act.

List of Subjects in 12 CFR Part 622

Administrative practice and procedures, Crime, Investigations, Penalties.

For the reasons stated in the preamble, part 622 of chapter VI, title 12 of the Code of Federal Regulations is amended to read as follows:

PART 622—RULES OF PRACTICE AND PROCEDURE

1. The authority citation for part 622 continues to read as follows:

Authority: Secs. 5.9, 5.10, 5.17, 5.25–5.37 of the Farm Credit Act (12 U.S.C. 2243, 2244, 2252, 2261–2273); 28 U.S.C. 2461 note.

Subpart B—Rules and Procedures for Assessment and Collection of Civil Money Penalties

2. Revise § 622.61 to read as follows:

§ 622.61 Adjustment of civil money penalties by the rate of inflation under the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended.

The maximum amount of each civil money penalty within FCA's jurisdiction is adjusted in accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended (28 U.S.C. 2461 note), as follows:

(a) Amount of civil money penalty imposed under section 5.32 of the Act for violation of a final order issued under section 5.25 or 5.26 of the Act: the maximum daily amount is $1,100.

(b) Amount of civil money penalty for violation of the Act or regulations:

If the violation occurred—	The maximum daily amount is—
Before October 23, 1996	$500
On or after October 23, 1996 ..	$550

Dated: November 7, 2002.

Jeanette C. Brinkley,

Acting Secretary, Farm Credit Administration Board.

[FR Doc. 02–28881 Filed 11–13–02; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NE–31–AD; Amendment 39–12950; AD 2002–23–06]

RIN 2120–AA64

Airworthiness Directives; Textron Lycoming AEIO–540, IO–540, LTIO–540, O–540, and TIO–540 Series Reciprocating Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule, request for comments.

SUMMARY: This amendment supersedes an emergency airworthiness directive (AD) that was sent previously to all known U.S. owners and operators of Textron Lycoming (T/L) AEIO–540, IO–540, LTIO–540, O–540, and TIO–540 series reciprocating engines. That action requires replacing certain zinc-plated crankshaft gear retaining bolts. This action still requires replacing certain zinc-plated crankshaft gear retaining bolts, but expands the population of affected engines. This amendment is prompted by two recent failures of zinc-plated crankshaft gear retaining bolts, and a reassessment of the extent to which the suspect bolts may still be present in the field. The actions specified by this AD are intended to prevent loss of all engine power and possible forced landing.

DATES: Effective November 19, 2002. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 19, 2002.

Comments for inclusion in the Rules Docket must be received on or before January 13, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–NE–31–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location, by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Comments may also be sent via the Internet using the following address: "*9-ane-adcomment@faa.gov*". Comments sent via the Internet must contain the docket number in the subject line.

The applicable service information may be obtained from Lycoming, a Textron Company, 652 Oliver Street, Williamsport, PA 10071; telephone (570) 323–6181. This information may also be obtained electronically on *"http://www.lycoming.textron.com"*. This information may be examined, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norm Perenson, Aerospace Engineer, New York Aircraft Certification Office, FAA, Engine and Propeller Directorate, 10 Fifth Street, 3rd floor, Valley Stream, NY 11581–1200; telephone (516) 256–7537; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION: On October 1, 2002, the Federal Aviation Administration (FAA) issued emergency airworthiness directive (AD) 2002–20–51 that applies to Textron Lycoming AEIO–540, IO–540, LTIO–540, O–540, and TIO–540 series reciprocating engines. AD 2002–20–51 requires replacing zinc-plated cranshaft gear retaining bolts, part number (P/N) STD–2209, with new cadmium-plated bolts P/N STD–2209. That action was prompted by two recent failures of zinc-plated crankshaft gear retaining bolts with one failure resulting in two fatalities. Since 1999, when the FAA issued AD 99–03–05 that requires the removal of zinc-plated bolts from O–540–F series engines installed on Robinson R44 helicopters, five failures have occurred on fixed-wing airplanes. That condition, if not corrected, could result in loss of all engine power and possible forced landing.

Since that AD was issued, the manufacturer has introduced gear bolt replacement kit, 05K19987, for use in replacing suspect bolts, and has determined that some of the bolts that were recalled on November 10, 1998, were not returned to T/L and may have been installed into engines after November 10, 1998. Based on that determination, the manufacturer has issued Lycoming Service Bulletin (SB) No. 554, Supplement 3, to increase the time period during which these bolts might have been installed in affected engines and to have maintenance facilities return to T/L, all crankshaft gear retaining bolts, part number STD–2209, except those that are included as part of a gear bolt replacement kit, 05K19987.

Manufacturer's Service Information

The FAA has reviewed and approved the technical contents of Lycoming SB No. 554, dated September 30, 2002, that describes procedures for replacing the existing crankshaft gear retaining bolt.

FAA's Determination of an Unsafe Condition and Required Actions

Since the unsafe condition described is likely to exist or develop on other Textron Lycoming AEIO–540, IO–540, O–540, LTIO–540, and TIO–540 series reciprocating engines of the same type design, the FAA issued emergency AD 2002–20–51 to prevent loss of all engine power and possible forced landing. This AD supersedes AD 2002–20–51, and requires replacing the crankshaft gear retaining bolt:

- Before further flight on engines that have been overhauled or have had the gear retaining bolt replaced between November 27, 1996 and November 10, 1998, and that have not complied with emergency AD 2002–20–51 by using a bolt from the gear bolt replacement kit, 05K19987, and
- Within 10 hours time-in-service (TIS) or 7 days after the effective date of this AD, on engines that have complied with AD 2002–20–51, but did not install a bolt from gear bolt replacement kit, 05K19987, and
- Within 10 hours time-in-service (TIS) or 7 days after the efective date of this AD, on engines that have been overhauled in the field, that have had the gear retaining bolt replaced in the field between November 10, 1998, and the effective date of this AD, or have been repaired by Lycoming between November 27, 1996 and November 10, 1998.

Immediate Adoption of This AD

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately on October 1, 2002, to all known U.S. owners and operators of Textron Lycoming AEIO–540, IO–540, O–540, LTIO–540, and TIO–540 series reciprocating engines. These conditions still exist. Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 2002–NE–31–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Analysis

This final rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this final rule.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

- *2002–23–06 Textron Lycoming:* Amendment 39–12950. Docket 2002–NE–31–AD. Supersedes emergency AD 2002–20–51.

Applicability: This airworthiness directive (AD) is applicable to all Textron Lycoming AEIO–540, IO–540, LTIO–540, O–540, and TIO–540 series reciprocating engines with crankshaft gear retaining bolts, part number (P/N) STD–2209 installed, except O–540–F series engines to which AD 99–03–05 applies and on which the bolt has not been subsequently replaced with a bolt other than one included in gear bolt replacement kit 05K19987, and engines with single-drive dual magnetos. These engines are installed on, but not limited to the following aircraft:

Aero Commander. (500), (500–B), (500–E), (500–U)
Aero Mercantil. Gavilan.
Aerofab. Renegade 250.
Bellanca Aircraft. Aries T–250
Britten-Norman. (BN–2).
Cessna Aircraft. Skylane C–182, Stationair C–206, Turbo Skylane T182T, Turbo Stationair T–206
Christen. Pitts (S–2S), (S–2B).
Commander Aircraft. 114TC, 114B

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DeHavilland. (DH–114–2X)
Dornier. (DO–28–B1)
Evangel-Air.
Extra-Flugzeugbau. Extra 300.
Found Bros. (FBA–2C), Centennial (100)
Gippsland. GA–200.
Helio. Military (H–250).
King Engineering. Angel.
Maule. MT–7–260, M–7–260, MX–7–235, MT–7–235, M7–235, Star
Rocket (MX–7–235), Super Rocket (M–6–235), Super Std. Rocket (M–7–235).
Mooney Aircraft. "TLS" M20M.
Moravan. Zlin-50L
Pilatus Britten-Norman. Islander (BN–2A–26), Islander (BN–2A–27), Islander II (BN–2B–26), Islander (BN–2A–21), Trislander (BN–2A–Mark III–2), Islander (BN–2B).
Piper Aircraft. 700P Aerostar, Aerostar 600A, Aerostar 601B, Aerostar 601P, Apache (PA–23 "235"), Aztec (PA–23 "250"), Aztec (PA–23 "250"), Comanche (PA–24 "250"), Comanche (PA–24 "260"), Aztec F, Aztec C (PA–23 "250"), Cherokee (PA–24 "250"), Cherokee (PA–28 "235"), Cherokee Six (PA–32 "260"), Cherokee Six (PA–32–300). "LANCE", Comanche (PA–24 "150"), Comanche (PA–24 "250"), Comanche (PA–24), Comanche (PA–24 "260"), Comanche 260, Mirage (PA–46–350P), Navajo (PA–31), Navajo (PA–31–300), Navy Aztec (PA–23 "250"), Pawnee (PA–24 "235"), Pawnee (PA–25 "260"), Saratoga (PA–32–300), Brave 300, Sequoia 602P, T–1020, T35, Turbo Aztec (PA–23–250), Turbo Saratoga TC (PA–32–301T)
S.O.C.A.T.A. Rallye 235CA., Rallye 235GT, Rallye 235C, TB–20

Note 1: This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (h) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Compliance with this AD is required as indicated, unless already done.

To prevent loss of all engine power and possible forced landing, do the following:

Engines That Have Complied With Emergency AD 2002–20–51

(a) For AEIO–540, LTIO–540, IO–540, O–540, and TIO–540 series engines that have complied with emergency AD 2002–20–51 by installing a bolt included in bolt replacement kit 05K19987, no further action is required.

(b) For AEIO–540, LTIO–540, IO–540, O–540, and TIO–540 series engines that have complied with emergency AD 2002–20–51 but did not install a bolt included in bolt replacement kit 05K19987, within 10 hours time-in-service or 10 days after the effective date of this AD, whichever is earlier, replace the crankshaft gear retaining bolt with a new bolt included in gear bolt replacement kit, 05K19987, supplied by Textron Lycoming. Information on replacing the retaining bolt may be found in Lycoming SB No. 554, dated September 30, 2002.

Engines Listed by Serial Number (SN)

(c) For AEIO–540, LTIO–540, IO–540, O–540, and TIO–540 engines with a single-drive dual magneto, and all O–540–F engines to which AD 99–03–05 applies and on which the bolt has not been subsequently replaced with a bolt other than one included in gear bolt replacement kit 05K19987, including any O–540–F engines that are listed by SN in Table 1 of Lycoming SB No. 554, dated September 30, 2002, no further action is required.

(d) Before further flight, for all other engines, replace the crankshaft gear retaining bolt with a new bolt included in gear bolt replacement kit, 05K19987, supplied by Textron Lycoming if your engine SN is listed in Table 1 of Lycoming SB No. 554, dated September 30, 2002. Information on replacing the retaining bolt may be found in Lycoming SB No. 554, dated September 30, 2002.

Bolts That Have Been Replaced During Field Maintenance or Field Overhaul

(e) Replace the crankshaft gear retaining bolt with a new bolt supplied as part of gear bolt replacement kit 05K19987, supplied by Textron Lycoming, within 10 hours time-in-service or 7 days after the effective date of this AD, whichever is earlier, if:

(1) The bolt on your O–540–F series was replaced after compliance with AD 99–03–05 with a bolt that was not included in bolt replacement kit 05K19987. Information on replacing the retaining bolt may be found in Lycoming SB No. 554, dated September 30, 2002.

(2) The bolt on your AEIO, LTIO, IO, O, or TIO–540 series engine was replaced during field maintenance or field overhaul between November 27, 1996 and the effective date of this AD, or if your engine was repaired between November 27, 1996 and November 10, 1998, at Lycoming. Information on replacing the retaining bolt may be found in Lycoming SB No. 554, dated September 30, 2002.

Recording Gear Bolt Replacement Kit Number

(f) After the effective date of this AD, record the number of the gear bolt replacement kit, 05K19987, in the engine records when recording compliance with this AD.

Prohibition Against Installing Gear Retaining Bolts P/N STD–2209

(g) After the effective date of this AD, do not install any crankshaft gear retaining bolt, P/N STD–2209, except one that is included in a Lycoming gear bolt replacement kit, 05K19987, onto any engine listed in this AD.

Alternative Methods of Compliance

(h) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (NYACO). Operators must submit their requests through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, NYACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the NYACO.

Special Flight Permits

(i) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be done.

Documents That Have Been Incorporated by Reference

(j) Engine serial numbers are listed in Table 1 of Lycoming Service Bulletin No. 554, dated September 30, 2002. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Lycoming, a Textron Company, 652 Oliver Street, Williamsport, PA 17701; telephone (570) 323–6181. This information may also be obtained electronically on "*http://www.lycoming.textron.com*". Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the *Office of the Federal Register*, 800 North Capitol Street NW., suite 700, Washington, DC.

Effective Date

(k) This amendment becomes effective November 19, 2002.

Issued in Burlington, Massachusetts, on November 8, 2002.

Francis A Favara,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 02–29003 Filed 11–13–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

31 CFR Part 103

RIN 1506–AA28

Financial Crimes Enforcement Network; Anti-Money Laundering Programs for Financial Institutions; Correction

AGENCY: Financial Crimes Enforcement Network (FinCEN), Treasury.

ACTION: Interim final rule; correction.

SUMMARY: FinCEN published in the **Federal Register** of November 6, 2002, a document (67 FR 67547) extending the provision in its regulations that temporarily defers, for certain financial institutions, the application of the anti-money laundering program requirements in section 352 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001. The document inadvertently omitted a minor change to a cross-reference and a minor change that would avoid listing the affected financial institutions twice in the same section. This correction adds both changes.

DATES: This correction is effective November 6, 2002.

FOR FURTHER INFORMATION CONTACT: Office of the Chief Counsel (FinCEN), (703) 905–3590 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The interim rule that is the subject of these corrections provides guidance under 31 U.S.C. 5318(h)(1).

Need for Correction

As published, the interim rule contains errors that may prove to be misleading and are in need of clarification.

Correction of Publication

In interim rule FR Doc. 02–27770, published on November 6, 2002 (67 FR 67547), make the following corrections.

§ 103.170 [Corrected]

On page 68549, in column 2, correct amendatory instruction 2 to read as follows:

2. Section 103.170 is amended by:

a. Revising the section heading;

b. Amending the introductory text of paragraph (a) by removing the words "paragraph (b)" and adding in their place the words "paragraphs (c) and (d)";

c. Removing and reserving paragraph (a)(2);

d. Revising paragraphs (b) and (c); and

e. Adding paragraph (d).

Dated: November 7, 2002.

Cynthia L. Clark,

Deputy Chief Counsel, Financial Crimes Enforcement Network, Federal Register Liaison.

[FR Doc. 02–28898 Filed 11–13–02; 8:45 am]

BILLING CODE 4810–02–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA134–138–4193a; FRL–7391–6]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Revisions to Allegheny County Articles XX and XXI

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Allegheny County portion of the Pennsylvania State Implementation Plan (SIP). EPA is approving a recodification of Allegheny County's air pollution control regulations, from Article XX to Article XXI. EPA is also approving revisions of Allegheny County's Article XXI regulations pertaining to general administrative provisions, emissions standards, emergency episode plans, test methods, and the permitting provisions for new and modified sources. At the same time, EPA is approving definitions associated with the Article XXI provisions. In addition, EPA is removing from the SIP outdated and outmoded Article XX provisions which are no longer codified in Article XXI. EPA is approving these revisions in accordance with the requirements of the Clean Air Act.

DATES: This rule is effective on January 13, 2003 without further notice, unless EPA receives adverse written comment by December 16, 2002. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be mailed to Harold A. Frankford, Office of Air Programs, Mailcode 3AP20, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 1301 Constitution Avenue, NW., Room B108, Washington, DC 20460; Allegheny County Health Department, Bureau of Environmental Quality, Division of Air Quality, 301 39th Street, Pittsburgh, Pennsylvania 15201; and the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Harold A. Frankford, (215) 814–2108, or by e-mail at *frankford.harold@epa.gov*. Please note that while questions may be posed via telephone and e-mail, formal comments must be submitted in writing, as indicated in the **ADDRESSES** section of this document.

SUPPLEMENTARY INFORMATION:

I. Background

On October 30, 1998, the Commonwealth of Pennsylvania submitted a formal revision to its State Implementation Plan (SIP). The SIP revision consists of the following:

1. A recodification of the air pollution control regulations for the Allegheny County Health Department (ACHD) from Article XX to Article XXI. These regulations pertain to general administrative provisions, emissions standards, emergency episode plans, test methods, and the permitting provisions for new and modified sources.

2. New and revised general or administrative Provisions.

3. Revised provisions governing reporting, testing, and monitoring.

4. New and revised Permit provisions for new and modified sources.

5. Revised provisions governing control of particulate matter (PM).

6. Revised provisions governing control of sulfur dioxides (SO_2).

7. New and revised provisions governing control of Volatile Organic Compounds (VOC).

8. New and revised provisions governing enforcement of the Article XXI requirements.

The recodification consists of moving the SIP-approved air pollution control regulations from Article XX to Article XXI. Article XXI rules initially became effective on January 1, 1994. On June 12, 1996 (61 FR 29664), EPA initially approved the structure of Article XXI as well as some definitions and regulations as part of the Allegheny County portion of the Pennsylvania SIP, and incorporated this article by the reference into the SIP at § 52.2020(c)(92).

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The comprehensive restructuring of ACHD's air pollution control regulations from Article XX to Article XXI became effective October 20, 1995. Pennsylvania provided documentation showing that ACHD held public hearings on all of the above-described revisions on September 6, 1995, in accordance with 40 CFR 51.102.

II. Summary of SIP Revision

The Article XXI provisions which Pennsylvania submitted on behalf of Allegheny County in this action are summarized below. Many of these revisions consist of renumbering changes, or administrative changes, associated with the reorganization of Allegheny County's air pollution control regulations from Article XX to Article XXI. This Article also contains air pollution control regulations which historically have not been included in the Allegheny County SIP because they pertain to provisions not related to the control of the criteria pollutants regulated under the SIP. The Article XXI provisions being reviewed in this SIP revision action and the current SIP citations found in Article XX are summarized as follows:

Article XXI Citation	Title/Subject	Article XX or Article XXI SIP Citation
PART A	**General**	**Chapter I**
2101.01	Short Titles	2101.1
2101.02a; c.1. through c.4; c.6 through c.9.	Declaration of Policy and Purpose	102
2101.02.c.5		802
2101.03	Effective Date and Repealer	2101.3
2101.04	Existing Orders	110
2101.06	Construction and Interpretation	103
2101.07	Administration and Organization	104
2101.07.b.	Administration and Organization—Amendments	104.B.
2101.07.c	Administration and Organization—Air Pollution Control Advisory Committee	104.C
2101.07.d.	Administration and Organization—Right to Information	104.D.
2101.10	Ambient Air Quality Standards	109
2101.11	Prohibition of Air Pollution	105, 201.D.
2101.12	Interstate Air Pollution	106
2101.13	Nuisances	107
2101.14	Circumvention	108
2101.20	Definitions	101, 202.C, 701,801
PART B	**Permits Generally**	**Chapter VIII**
2102.01	Certification	None
2102.02	Applicability	803
2102.03	Permits Generally	804
2102.04	Installation Permits	805
2102.05	Installation Permits for New and Modified Sources	806
2102.06	Major Sources Locating In or Impacting a Nonattainment Area	807
2102.08	Emissions Offset Registration	808
2102.10	Installation Permit Application and Administration Fees	812
PART C	**Operating Permits**	**None**
Subpart 1	Operating Permits (All major and Minor Permits)	None
2103.10.a., b.	Applicability, Prohibitions, Records	None
Subpart 2	**Additional Requirements for Major Permits**	**None**
2103.20.b.4	Applicability, Prohibitions, Records	None
PART D	**Pollutant Emission Standards**	**Chapter IV**
2104.01	Visible Emissions	401
2104.02	Particulate Mass Emissions	2401.6
2104.03	Sulfur Oxide Emissions	403
2104.05	Materials Handling	405
2104.06	Violations	406
2104.07	Stack Heights	407
PART E	**Source Emission and Operating Standards**	**Chapter V**
2105.01	Equivalent Compliance Techniques	501
2105.02	Other Requirements Not Affected	502
2105.03	Operation and Maintenance	503
2105.04	Temporary Shutdown of Incineration Equipment	504
Subpart 1	**VOC Sources**	**None**
2105.10	Surface Coating Processes	505
2105.11	Graphic Arts Systems	531

Article XXI Citation	Title/Subject	Article XX or Article XXI SIP Citation
2105.12	VOC Storage Tanks	507
2105.13	Gasoline Loading Facilities	508
2105.14	Gasoline Dispensing Facilities	None
2105.15	Degreasing Operations	509
2105.16	Cutback Asphalt Paving	510
2105.17	Ethylene Production Processes	511
2105.19a.–c., e.	Synthetic Organic Chemicals'& Polymer Manufacturing-Fugitive Sources	534.A.–C., E
2105.19d.		None
Subpart 2	**Slag, Coke, and Miscellaneous Sulfur Sources**	**None**
2105.20	Slag Quenching	519
2105.21	Coke Ovens and Coke Oven Gas	2105.21
2105.22	Miscellaneous Sulfur Emitting Processes	529
Subpart 3	**Incinerators**	**None**
2105.30.a.–e., g.	Incinerators	517
Subpart 4	**Miscellaneous Fugitive Sources**	**None**
2105.40	Permit Source Premises	521
2105.41	Non-Permit Premises	521.1
2105.42	Parking Lots & Roadways	522
2105.43	Permit Source Transport	523
2105.44	Non-permit Transport	523.1
2105.45	Construction and Land Clearing	524
2105.46	Mining	525
2105.47	Demolition	526
2105.48	Areas Subject to Sections 2105.40 Through 2105.47	527
2105.49.a&b	Fugitive Emissions	2105.49.a–e.
Subpart 5	**Open Burning and Abrasive Blasting Sources**	**None**
2105.50	Open Burning	516 (as amended 9/6/83)
Subpart 7	**Miscellaneous VOC Sources**	**None**
2105.70	Petroleum Refineries	None
2105.71	Pharmaceutical Products	None
2105.72	Manufacturer of Pneumatic Rubber Tires	None
PART F	**Air Pollution Episodes**	**Chapter VII**
2106.01	Air Pollution Episode System	702
2106.02	Air Pollution Source Curtailment Plans	703
2106.03	Episode Criteria	704
2106.04	Episode Actions	705
PART G	**Methods**	**Chapter VI**
2107.01	General	2107.1
2107.02	Particulate Matter	2701.2
2107.03	Sulfur Oxides	603
2107.04	Volatile Organic Compounds	605
2107.05	Nitrogen Oxides	611
2107.06	Incinerator Temperatures	604
2107.07	Coke Oven Emissions	607
2107.08	Coke Oven Gas	608
2107.10	Sulfur Content of Coke	612
2107.11	Visible Emissions	606
2107.20	Ambient Measurements	613
PART H	**Reporting, Testing & Monitoring**	**Chapter II**
2108.01	Reports Required	202
2108.01.a.	Termination of Operations	202.A
2108.01.b	Shutdown of Control Equipment	202.B
2108.01.c	Breakdowns	202.C
2108.01.d.	Cold Start	202.D
2108.01.e	Emissions Inventory Statements	202.E
2108.01.f	Orders	202.F
2108.01.g.	Violations	202.G
2108.02	Emissions Testing	203

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Article XXI Citation	Title/Subject	Article XX or Article XXI SIP Citation
2108.03	Continuous Emissions Monitoring	204
2108.04	Ambient Monitoring	205
PART I	**Enforcement**	**Chapter II Chapter III**
2109.01	Inspections	201
2109.02	Remedies	305
2109.03	Enforcement Orders	301
2109.04	Orders Establishing an Additional or more Restrictive Standard	302
2109.05	Emergency Orders	303
2109.06	Civil Penalty Proceedings	306
2109.10	Appeals	None
2109.20	General Conformity	None

In addition, Pennsylvania has requested EPA to remove from the Allegheny County SIP certain Article XX provisions which are not being incorporated into Article XXI. Allegheny County has removed these provisions because they are outdated, outmoded, and remove references to sources which are permanently shut down. These provisions are:

Article XX Regulation	Title or Description	Reason for Removal
101	Definitions of: Commissioners, Committee, Equivalent Opacity, Facility, Rendering, Ringelmann Scale, and Soiling Index.	Definitions are no longer found in Article XXI provisions being incorporated into the SIP.
109	Ambient standard for hydrocarbons	Hydrocarbons are no longer a national ambient air quality standard (NAAQS)
304	Delayed Compliance Orders	ACHD declares this provision to be moot (see section 512 below)
306.E.	Air Pollution Hearing Board	All references to the Hearing Board been removed, as the Board no longer exists.
512	Compliance Schedules	ACHD declares this provision to be moot, as all compliance dates have passed.
902	Shenango Incorporated—Blast Furnace	ACHD has informed EPA that this source is permanently shut down, and is not carried by the current emissions inventory.
903	USX Corp.—Carrie Furnaces & Boilers #3&4; various other SO-x sources.	ACHD has informed EPA that this source no longer exists, and is not carried by the current emissions inventory

III. Evaluation of SIP Revision

In addition to the recodification of Allegheny County's air pollution control regulations from Article XX to Article XXI, and the removal of outdated and outmoded Article XX regualtions, Pennsylvania's October 30, 1998 SIP revision also contains several substantive changes to the new Article XXI regulations:

1. They adopt regulations governing source categories of VOC emissions which are consistent with the emission limits and the scope of sources subject to the requirements of the SIP-approved Pennsylvania Department of Environmental Protection (PADEP) rules (Air Resources, Chapter 129).
2. They update the applicable new source review and permitting provisions.
3. They add new provisions governing general Federal conformity procedures.
4. They update the applicable test methods and air pollution episode provisions.
5. They update the applicable general enforcement provisions, and remove compliance schedules whose final compliance dates have passed.

EPA has evaluated the revisions to Article XXI submitted by Pennsylvania on behalf of ACHD, and has concluded that they are consistent with the current Pennsylvania SIP requirements. EPA has also determined that the Article XXI provisions conform with the applicable Federal statutory and regulatory requirements, strengthen Allegheny County's enforcement procedures, and will not adversely impact ambient air quality levels. Furthermore, EPA has determined that the removal of the Article XX provisions described in this action will not adversely impact ambient air quality levels or Federal enforceability. EPA's evaluation is summarized as follows:

Ozone

Allegheny County has added several Article XXI regulations governing source categories which are currently controlled under the comparable SIP-approved VOC regulations found in Chapter 129 of the PADEP air pollution control regulations. These categories are wood cabinet and furniture coating, gasoline dispensing facilities (Stage II vapor recovery), petroleum refineries, pharmaceutical products, and manufacture of pneumatic rubber tires. EPA has reviewed the Article XXI VOC regulations, and has concluded that they are consistent with the requirements in terms of emissions limits and scope of sources subject to the comparable Chapter 129 rules. Allegheny County has also amended the regulation applicable to synthetic organic chemical and polymer manufacturing—fugitive sources which provides that any alternative control plan must first be approved by EPA before it becomes County-enforceable. Allegheny County has also removed the ambient air quality standard for hydrocarbons, which EPA determines to be consistent with the removal of the national ambient air quality standard (NAAQS) for hydrocarbons from 40 CFR part 50.

Particulate Matter

The PM control measures included in this action update the emergency episode plans, and make negligible changes to the overall control strategy by adding open land to the list of premises subject to 2105.40. These revisions also remove references to Shenango, Incorporated—Neville Island's Blast Furnaces A and B. Allegheny County states in this SIP revision submittal that these sources no longer exist, and are not carried by the current emissions inventory.

Sulfur Dioxide

The SO_2 control measures included in this action update the emergency episode plans. The revisions also remove references to sources which have permanently shut down, such as the open hearth furnaces and Carrie Furnace Boilers #3 and #4 at the United States Steel Corporation's Homestead Works. This revision also removes the coke oven gas requirement which had applied to the Shenango, Incorporated—Neville Island's Coke Oven Battery #4 Facility. Allegheny County states in this SIP revision submittal that these sources no longer exist, and are not carried by the current emissions inventory.

Lead

EPA is approving the addition of Allegheny County's ambient air quality standard for lead (1.5 micrograms per cubic meter, averaged over a 3-month period) to the chart found in Section 2101.09. EPA has determined that this standard is consistent with the NAAQS for lead found in 40 CFR 50.12.

General Administration and Enforcement

With regard to Allegheny County's general administration and enforcement provisions, this SIP revision consists of removing outdated and outmoded provisions, recodifying the existing SIP-approved provisions from Article XX to Article XXI, reorganizing these provisions within the structure of Article XXI, and updating the test methods and compliance determination provisions. In addition, Allegheny County's Article XXI rules strengthen the provisions related to confidentiality of emissions data, notification of breakdowns, and permit appeals.

New Source Review and Permitting

Allegheny County has recodified its permitting requirements from Article XX, Chapter VIII to the following Parts in Article XXI: Part B (Permits Generally), Part C (Operating Permits), and Part A, Section 2101.20 (Definitions). In addition, Allegheny County has submitted many new and revised permitting and new source review provisions to the aforementioned Article XXI provisions when compared to the SIP-approved Article XX, Chapter VIII provisions. EPA has determined that Allegheny County has adopted these revisions in order to both conform with the revised new source review and permitting requirements of the 1990 Clean Air Act, as amended and conform with similar revised requirements adopted by the PADEP and approved by EPA as revisions to the Pennsylvania SIP.

General Conformity

Allegheny County has added Regulation 2109.20 (General Federal Conformity) to Article XXI. This new regulation, which applies to departments, agencies or instrumentalities of the Federal government, as well as related activities supported, financially assisted, licensed, permitted, or approved by the Federal government, incorporates by reference both the regulations promulgated by EPA in 40 CFR part 51, subpart W and the Commonwealth of Pennsylvania's regulations set forth at 25 Pa. Code Chapter 127.

IV. Final Action

Based on EPA's evaluation, EPA is approving the October 30, 1998 revisions to Allegheny County Articles XX and XXI described in this action as a revision to the Pennsylvania SIP. The incorporation of Article XXI into the SIP allow the citations of Federally enforceable SIP regulations to be consistent with the current Allegheny County regulations. At the same time, EPA is approving the removal from the Allegheny County SIP of Article XX, Regulations 304, 306.B., 512, 902, 903, and the definitions of Regulation 101 listed earlier in this document.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the "Proposed Rules" section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on January 13, 2003 without further notice unless EPA receives adverse comment by December 16, 2002. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

V. Administrative Requirements

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997),

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because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 13, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action regarding revisions to Allegheny County Articles XX and XXI may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: September 27, 2002.

Donald S. Welsh,

Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart NN—Pennsylvania

2. Section 52.2020 is amended by adding paragraph (c)(192) to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(192) Revisions to the Allegheny County Health Department Regulations, Articles XX and XXI, submitted on October 30, 1998 by the Pennsylvania Department Environmental Resources:

(i) Incorporation by reference.

(A) Letter of October 30, 1998 from the Pennsylvania Department of Environmental Protection transmitting a recodification from Article XX to Article XXI of the Rules and Regulations for Air Pollution Control in Allegheny County, as well as substantive revisions to the Article XXI regulations.

(B) The following revisions to Article XXI (formerly Article XX) of the Rules and Regulations for Air Pollution Control in Allegheny County, effective October 20, 1995:

(*1*) Part A (General), Sections 2101.01, 2101.02 (except paragraph .02.b.), 2101.03, 2101.04, 2101.06, 2101.07 (except paragraphs .07.c.2 and .07.c.8), 2101.10 (1-year and 24-hour standards for PM_{10} and sulfur oxides, 1-year standard for nitrogen dioxide, 1-hour and 8-hour standards for carbon monoxide, and 1-hour standard for ozone only) and 2101.11 through 2101.14 inclusive.

(*2*) Part A, Section 2101.20 (Definitions) (Formerly Article XX, Sections 101, 202.C, 701 and 801).

(i) Citation change only: Air curtain destructor, Air dried coating, Air pollution, Air Pollution Control Act, Air pollution control equipment, Alert Stage, Ambient air, Article XI, Automobile, Board of Health, Bottom filling, Bulk gasoline plant, Bulk gasoline terminal, Can coating, Clean Air Act, Clear coat, Clearing and grubbing wastes, Coating, Coil coating, Cold cleaning degreaser, Commonwealth, Conveyorized degreaser, County, Cutback asphalt, Domestic heating plant, Domestic refuse-burning equipment, Drum, Dry cleaning facility, Dust, Emission tests, Emissions, Extreme environmental conditions, Extreme performance coatings, Fabric coating, Flexographic printing, Freeboard ratio, Fuel, Fuel-burning or combustion equipment, Gasoline, Gasoline tank truck, Hard slag ladle pit, Hopper car, Incinerator, Increments of Progress, Install, Large appliances, Lease custody transfer, Light duty trucks, Magnet wire coating, Materials handling, Metal furniture coating, Miscellaneous metal parts and products, National Ambient Air Quality Standard, Net load rating, Nontraditional source, Opacity, Open air, Open burning, Open top vapor degreaser, Pail, Paper coating, Part per million, Particulate matter, Paving operation, Person, PM–10, Potential uncontrolled emission rate, Prime coat, Process, Process equipment, Process fugitive emissions, Publication rotogravure printing, Rated capacity, Refuse, Roll printing, Rotogravure printing, SIP, Single coat, Small gasoline storage tank, Solvent, Standard conditions, State Implementation Plan, Steel production, Surface coating process, Tank car, Topcoat, Trade waste, Transfer efficiency, Type "O" waste, Vapor balance system, Vapor disposal system, Vinyl coating, Visible emissions, Wastewater separator, and Waxy heavy-pour crude oil.

(ii) Revised definitions resulting from the format change: Advisory Committee, Air Pollution Episode, Ambient air quality standards, Article, Attainment area, Best Available Control Technology, Breakdown, Board of Commissioners, County-Wide Air Pollution Watch, Flue, Forecast, Localized air pollution watch, Localized incident level, Lowest Achievable Emission Rate, Net air quality benefit, Nonattainment area, Reasonably Available Control Technology, Unclassifiable area, and Volatile organic compound.

(iii) Revised definitions with substantive wording changes: Air contaminant, Allowable Emissions, Authorized representative, Bureau, Capture efficiency, DEP (Formerly DER), Department, Deputy Director, Director, Emission limitation, EPA, Fugitive emissions, Modification, Major modification, Major Source (paragraphs a., b., c., f. and g. only), New Source, Reasonable further progress, Replacement Source, Secondary Emissions, Significant Air Quality Impact, and Source.

(*3*) Part B (Permits Generally), Sections 2102.02, 2102.03.a through h. 2102.04.a through g., 2102.05, 2102.06.a through .e, 2102.08., and 2102.10.

(*4*) Part D (Pollutant Emission Standards), Sections 2104.01, 2401.02.a.1 through .02.a.3, 2104.02.b. through .02.d., 2104.02.f., 2104.02.i, 2104.03, and 2104.05 through 2401.07.

(*5*) Part E (Source Emission and Operating Standards), Sections 2105.01 through 2105.04, 2105.10.a through c., 2105.10.e.1 through 10.e.10, 2105.11 through 2105.13, 2105.15 through 2105.17, 2105.19.a. through c. and .19.e., 2105.20, 2105.22, 2105.30 (except paragraph .30.f), 2105.40 through 2105.48, 2105.49.a, 2105.49.b (formerly 2105.49.e). and 2105.50 (except paragraph .50.d).

(*6*) Part F (Air Pollution Episodes), Sections 2106.01 through 2106.04.

(*7*) Part G (Methods), Sections 2107.01 through 2107.03, 2107.04 (except paragraph .04.h), 2107.05 through 2107.08, 2107.10, 2107.11, and 2107.20.c.. g. through j., m., and n.

(*8*) Part H (Reporting, Testing and Monitoring), Sections 2108.01 (except paragraphs .01.e.1.A and B.), 2108.02.a. through f., 2108.03.a. and c. through e., and 2108.04.

(*9*) Part I (Enforcement), Sections 2109.01, 2109.02, (except paragraph .02.a.7), 2109.03.a. (introductory paragraph only), 2109.03.b. through f., 2109.04, 2109.05 and 2109.06.a.1, .06.b, and .06.c.

(C) Addition of the following Article XXI regulations, effective October 20, 1995:

(*1*) Part A, Section 2101.10 (3-month ambient standard for lead).

(*2*) Part A, Section 2101.20, definitions of Administrator, Adverse environmental effect, Affected source, Affected states, Affected unit, Applicable requirement, At the source, BACT (abbreviation only), Cartridge filter, CFR, CO, Common control, Containers and conveyors of solvent, CTG, Designated representative, Draft permit, Emergency, Emissions allowable under the permit, Emissions unit, Existing source, Federal action, Final permit, Fugitive dust emissions, LAER (abbreviation only), Large equipment, Major source applicable requirement (except paragraphs c., d., e., f., g., and j.), Minor operating permit modification, Minor source, NAAQS (abbreviation only), NO_X, Operator, Owner or operator, Part C subpart 2 permit, Part C subpart 2 source, Perceptible leaks, Permit modification, Permit revision, Permitting authority, Person subject to the Clean Air Act, Petroleum solvents, Pharmaceutical tablet coating, Potential to emit, PPM (abbreviation only), Proposed permit, RACT (abbreviation only), Regulated air pollutant (paragraphs a. and b. only), Renewal, Represent the public interest, Responsible official, Significant permit modification, Significant portion of income, Small source, Small equipment, and Solvent recovery dryer.

(*3*) Part B, Sections 2102.01, 2102.03.i through .03.k, 2102.04.h through .04.j, and 2102.06.f.

(*4*) Part C (Operating Permits), 2103.10.a and .10.b, and 2103.20.b.4.

(*5*) Part E, Sections 2105.10.d and 10.e.11, 2105.14, 2105.19.d, 2105.70, 2105.71, and 2105.72.

(*6*) Part H, Sections 2108.02.g. and 2108.03.b.

(*7*) Part I, Sections 2109.06.a.5, 2109.10 and 2109.20.

(D) Removal of the following Article XX regulations, effective October 20, 1995:

(*1*) Sections 109 (ambient standard for hydrocarbons), 304, 306.E, 512, 902, and 903.

(*2*) Section 101, Definitions of Air Pollution Hearing Board, Commissioners, Committee, Equivalent Opacity, Facility, Rendering, Ringelmann Scale, and Soiling Index.

(E) Removal of Article XXI, Sections 2105.21.h.3.B., 2105.49.c, and 2105.49.d.

(ii) Additional Material.—Remainder of the State submittal pertaining to the revisions listed in paragraph (c)(192)(i) of this section.

§ 52.2023 [Removed and Reserved]

3. In § 52.2023, paragraph (c) is removed and reserved.

[FR Doc. 02–28696 Filed 11–13–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX–144–1–7581; FRL–7407–1]

Approval and Promulgation of Implementation Plans; Texas; Environmental Speed Limit Revision; and Voluntary Mobile Emission Reduction Program Commitment for the Houston/Galveston (HG) Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is approving, through parallel processing, revisions to the Texas Ozone attainment demonstration State Implementation Plan. This approval covers two separate actions. First, we are approving a revision to the SIP that would suspend the 55 miles per hour (mph) environmental speed limit for all vehicles until May 1, 2005. In the interim, the speed limits would be increased from the current 55 mph speed limit to a level 5 mph below the speed limit that was in place prior to May 2002. The new speed limits would apply in Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller counties. Second, we are approving a clarification of the State enforceable commitment to remedy any shortfalls in emission reductions attributed to the Voluntary Emission Reduction Program (VMEP) in the Houston/Galveston (HG) nonattainment area.

EFFECTIVE DATE: This rule is effective on December 16, 2002.

ADDRESSES: Copies of documents relevant to this action are available for public inspection during normal business hours at the following locations. Anyone wanting to examine these documents should make an appointment with the appropriate office at least two working days in advance.

Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Dallas, Texas 75202–2733.

Texas Commission on Environmental Quality, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Peggy Wade of the EPA Region 6 Air Planning Section at (214) 665–7247, e-mail address: *Wade.Peggy@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document wherever "we," "us," or "our" is used, we mean the EPA.

What Action Are We Taking Today?

We are approving two proposed changes to the Texas SIP. First, we are approving a change to the Environmental Speed Limits in the Houston/Galveston nonattainment area to suspend the 55 mph speed limit until May 1, 2005. In the interim period prior to 2005, speed limits would be increased from the current 55 mph speed limit to a level 5 mph below the speed limit that was in place prior to May 2002. Second, we are approving a clarification of the State's enforceable commitment to remedy any shortfalls in the emissions reductions attributed to the VMEP so as to achieve all necessary reductions by the 2007 attainment date.

As is explained in the proposal (67 FR 60633, September 26, 2002) and below in response to comments, we have concluded that these revisions meet all

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applicable requirements and will not interfere with attainment or rate of progress.

What Is the Background of These Revisions to the SIP?

On July 16, 2002, the Chairman of the Texas Commission on Environmental Quality (TCEQ) submitted to EPA for parallel processing, described further below, two proposed rule revisions to the SIP. These rule revisions concern the delayed implementation of the 55 mph speed limit for vehicles weighing less than 10,000 pounds; and, clarification of a rule to commit the state to remedy any shortfalls in the emission reductions attributed to the VMEP so as to achieve all necessary reductions by the attainment date.

On September 16, 2002, the Executive Director of the TCEQ submitted to EPA a second option to the environmental speed limit which was under consideration by the TCEQ, in response to comments received on the Dual Speed Limit option. This proposed option would suspend the 55 mph speed limit for all vehicles until May 1, 2005, and, in the interim, would increase, for all vehicles, the current environmental speed limit of 55 mph to 5 mph below the original posted speed limit.

On September 25, 2002, the TCEQ adopted as a SIP revision the second option so that the 55 mph speed limit would be suspended for all vehicles. In the interim period before 2005, the current 55 mph limit would be raised to 5 mph below the limit that was in place prior to May 1, 2002.

In accordance with the request for parallel processing, on September 26, 2002, we proposed approval of the State's revisions to the environmental speed limit and to the clarification of the enforceable commitment pertaining to the VMEP program. We took comment on our proposed approval of both speed limit options that were being considered by the State. We also took comment on approval of the proposed clarifications to the State's enforceable commitment regarding the VMEP program.

What Changes Have Been Made in Response to Comment on the EPA and TNRCC Parallel Proposals?

As explained above, Texas requested that we parallel process these changes to the Texas SIP. Parallel processing means that EPA proposes action on a state rule before it becomes final under state law based on a State's proposed revision. Under parallel processing, EPA takes final action on its proposal if the final, adopted state submission is substantially unchanged from the submission on which the proposed rulemaking was based, or if significant changes in the final submission are anticipated and are adequately described in EPA's proposed rulemaking or result from needed corrections determined by the State to be necessary through review of issues described in EPA's proposed rulemaking.

In this case, as described above, TCEQ changed their approach to environmental speed limits that would be effective prior to May 1, 2005, from a dual speed limit approach to an approach of a single speed limit for all vehicles set 5 mph lower than their original levels. Because TCEQ provided notice in their September 16, 2002, letter that this approach was being considered, EPA was able to propose and take comment on approval of such an option.

With regard to the VMEP proposal, EPA provided minor language clarifications to the State's proposed language during the State's comment period. We proposed approval of the State's clarification of the VMEP commitment provided that the State further incorporated our comments. In their adopted revision, TCEQ agreed to the appropriate language changes.

Who Provided Comments?

We received three comment letters.

(1) An October 28, 2002, letter from Michael W. Behrens, P.E., Executive Director of the Texas Department of Transportation (TxDOT).

(2) An October 24, 2002, letter from Aren Cambre, a private citizen.

(3) An October 28, 2002, E-mail from Ramon Alvarez of Environmental Defense.

How Did EPA Respond to the Comments It Received?

Comments on Speed Limits

Comment: TxDOT provided comments in support of the action delaying implementation of the 55 mph speed limit until May 1, 2005, and increasing the speed limit to a level 5 mph below previously posted speed limits of 65 mph and above.

Response: EPA appreciates the comments and is approving the TCEQ's change to the environmental speed limit strategy.

Comment: One comment urged rejection of the currently proposed rule and future proposed rule that modifies the environmental speed limits in any SIP unless the change is a full cessation of the ESL program. This commenter raised three concerns about the effectiveness of speed limits as a control measure. First, for a variety of reasons the commenter did not believe that reduced speed limits would result in lowering the actual speeds being driven based on experience with the 1974 speed limit. Second, he felt that the emission reductions from a 5 mph reduction in speed limits are not sufficient to be worthwhile. Third, he felt that ESLs are not enforceable under State law.

Response: We do not believe that it is appropriate to disapprove the revision to the State's speed limit strategy based on these comments. Disapproval of the State's proposed revision would only leave in place the previously approved SIP with its requirement for a 55 mph speed limit starting in May 2002. This result would not address the commenter's concerns. EPA's decision to approve the revision is based on whether the proposed changes were consistent with the approved attainment plan. As explained more fully in the proposal (67 FR 60633, September 26, 2002), we were able to make this determination, because the revision is only a delay in full implementation until 2005 and not a relaxation of the measure. Therefore, the emission reductions by the 2007 attainment date are expected to be equivalent to those that would have been achieved by the previous plan. Thus, the revision will not interfere with timely attainment. Also, as noted below, no reductions from this measure were relied on to meet interim rate of progress (ROP) requirements.

EPA will consider the commenter's concerns about the measure's effectiveness as we oversee the implementation of the State Implementation Plan. If we determine that the measures in the plan are not being effectively implemented as the commenter anticipates we will consider making a finding of failure to implement. It the State fails to correct the problem either through more effective implementation or substitute measures, sanctions will have to implemented. We do not anticipate a finding of nonimplementation will be necessary because Texas will weigh the effectiveness of all of the measures in the plan and correct any shortfalls at the mid-course review scheduled for May 2004. Finally, the fact that the reduction from a 5 mph decrease in speeds may be small does not provide grounds for EPA to disapprove the revision. So long as the revision provides any reductions contributing to attainment of the National Ambient Air Quality Standard, EPA must approve it if it meets all applicable requirements.

Comment: Environmental Defense commented that delay in implementation will result in a 10 ton/day hole in the SIP. Specifically, Environmental Defense contends the Clean Air Act requires implementation of measures as expeditiously as practicable and the achievement of minimum rate of progress requirements. They further believe that under the logic of this proposal every control measure could be delayed until 2005, rendering meaningless the "expeditious as practical" language of the Act. According to Environmental Defense, if EPA finalizes this proposal as proposed, it must do so in a way that prevents Texas (or any other State) from pointing to this action in support of delays in implementation.

Response: We do not agree that the proposed change will result in a 10 ton/day hole in the SIP. It is true the preliminary analysis using EPA's new MOBILE6 mobile source emissions model, which has not been finalized by the State, indicates that much less emission reduction may be achieved by environmental speed limits than was estimated using MOBILE5a in the approved SIP. The delay in implementation, however, does not result in reduced emission reductions based on the MOBILE5a model. The projected decrease in emission reductions results from improved emission estimation techniques.

To the extent that the analysis using the new Mobile emissions model, once finalized, indicates that this control measure will not achieve as much emission reduction as calculated by the previous version of the model, EPA agrees that Texas should address this concern. Texas has, in fact, committed to a full review of all of the inputs to the attainment plan at the mid-course review which TCEQ has committed to perform by May 1, 2004. At that time, Texas will reevaluate all of the mobile source control measures in the plan using MOBILE6 and has committed to make up any short fall in needed emission reductions. Until this full analysis with MOBILE6 can be completed, EPA believes that it is appropriate to approve this revision to delay full implementation of the measure. Based on the approved attainment demonstration with MOBILE5 emissions modeling, this delay will not interfere with timely attainment as full implementation will occur prior to the attainment date. Furthermore, Texas' plan does not rely on the speed limit controls to meet minimum rate of progress requirements of section 182 of the Act. That is, Texas demonstrates all required rate of progress without any reductions from environmental speed limits.

We do not believe this logic could be interpreted to allow delay of implementation of all control measures. Instead, on a case by case basis, EPA believes it is acceptable for States to consider new information about the effectiveness of control measures and adjust implementation schedules, if warranted, to allow for additional evaluation if significant uncertainty about the effectiveness of the control measure exists, provided that reductions are fully implemented on a schedule to meet all ROP and timely attainment requirements. Finally, EPA notes that the Clean Air Act requires implementation of all reasonably available control measures as expeditiously as practicable. However, if implementation of a measure will not either advance attainment or contribute to required ROP the Act does not require implementation be as expeditious as practicable.

Comments on the Voluntary Measures Commitment

Comment: EPA only received one comment on the VMEP clarification. The comment from Environmental Defense suggested that the State commit to language no less explicit than the following:

Texas commits to achieve, by the attainment date of November 15, 2007, 23 tpd of NO_x emission reductions through the implementation of measures in appendix K.

Response: On September 26, 2002, the TCEQ adopted the following language to clarify its commitment to remedy any shortfall in emissions reductions from the VMEP program:

> The State commits to monitor, assess, and remedy any shortfall in emissions reductions attributed to the VMEP by adopting additional control measures, equivalent to any shortfall, to provide for attainment by 2007. The State retains discretion to determine the specific control measures to remedy the shortfall.

EPA does not believe the language provided by the commenter is necessary for EPA approval. In fact, we believe the State's language referring to providing attainment by 2007 is more appropriate because it necessarily means that the emission reductions must be in place in time to prevent ozone exceedences during the 2007 ozone season and therefore, cannot be delayed until November 15, 2007. In addition, the point of the State's clarification to the VMEP commitment is to confirm that if the VMEP measures in appendix K do not achieve the needed reductions, the State will find new measures to insure the emission reduction goal is met by the attainment date. It, therefore, is not appropriate to restrict the State to the use of the measures in appendix K to meet this commitment.

III. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices,

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provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 13, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Volatile organic compounds.

Dated: November 4, 2002.

Gregg A. Cooke,

Regional Administrator, Region 6.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart SS—Texas

2. In the table in § 52.2270(e) entitled "EPA Approved Nonregulatory Provisions and Quasi-Regulatory Measures in the Texas SIP" the entries for "Speed Limit Reduction" and "voluntary mobile emissions program" in the Houston/Galveston area are revised to read as follows:

§ 52.2270 Identification of plan.

* * * * *

(e) EPA approved nonregulatory provisions and quasi-regulatory measures.

* * * * *

EPA APPROVED NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES IN THE TEXAS SIP

Name of SIP provision	Applicable geographic or nonattainment area	State submittal/effective date	EPA approval date	Comments
Speed Limit Reduction	Houston/Galveston, TX	9/26/02	11/14/02 and FR cite.	Section 6.3.12.
Voluntary Mobile Emissions Program	Houston/Galveston, TX	9/26/02	11/14/02 and FR cite.	

[FR Doc. 02–28844 Filed 11–13–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[CS Docket No. 00–2; FCC 02–287]

Implementation of the Satellite Home Viewer Improvement Act of 1999: Application of Network Nonduplication, Syndicated Exclusivity, and Sports Blackout Rules to Satellite Retransmissions of Broadcast Signals.

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document revises regulations which the Commission adopted to implement certain aspects of the Satellite Home Viewer Improvement Act of 1999. This document addresses petitions for reconsideration filed by the Office of the Commissioner of Baseball, the National Basketball Association, the National Football League, the National Hockey League, and the Division 1–A Athletic Director's Association ("Sports Leagues") as well as by EchoStar Satellite Corporation ("EchoStar") and DirecTV, Inc. ("DirecTV"). The modifications to the regulations are largely technical and pertain to notifications of sporting events and programming to be blacked out, as well as to the criteria for eligibility to request sports blackout protection.

DATES: Effective December 16, 2002, except for §§ 76.122(c)(2) and 76.127(c), which contain information collection requirements that have not been approved by OMB. The Federal Communications Commission will publish a document in the **Federal Register** announcing the effective date for the amendments to §§ 76.122(c)(2) and 76.127(c).

FOR FURTHER INFORMATION CONTACT: Peter Corea at (202) 418–7200 or via Internet at *pcorea@fcc.gov*. For additional information concerning the information collection(s) contained in this document, contact Les Smith at 202–418–0217, or via the Internet at *lesmith@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order on Reconsideration ("Order"), FCC 02–287, adopted October 10, 2002; released October 17, 2002. The full text of this decision is

available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY–A257, Washington, DC 20554, and may be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY–B402, Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2898, or via e-mail *qualexint@aol.com* or may be viewed via Internet at *http://www.fcc.gov/mb/*.

Paperwork Reduction Act: This Order contains new or modified information collection(s). The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to comment on the information collection(s) contained in this Order as required by the Paperwork Reduction Act of 1995, Public Law 104–13. A Notice of Public Information Collection(s) being Reviewed by the Federal Communications Commission is published elsewhere in this **Federal Register**.

Synopsis of the Order

Introduction

1. In this Order on Reconsideration, we consider three petitions for reconsideration of the Commission's Report and Order in Implementation of the Satellite Home Viewer Improvement Act of 1999: Application of Network Non-Duplication, Syndicated Exclusivity, and Sports Blackout Rules To Satellite Retransmissions of Broadcast Signals, (65 FR 68082, November 14, 2000) (hereinafter "Report and Order") which implemented section 339 of the Communications Act of 1934 ("Act"), as amended by the section 1008 of the Satellite Home Viewer Improvement Act of 1999 ("SHVIA"). Section 339(d)(4) defines "satellite carrier" by reference to the definition in the Copyright Act of 1947, as amended, 17 U.S.C. 119(d). The Report and Order adopted rules to apply the network non-duplication, syndicated exclusivity, and sports blackout rules, previously applicable only to cable television systems, to satellite carriers' retransmission of nationally distributed superstations, and to apply the sports blackout rule to satellite carriers' retransmission of network stations. The network non-duplication, syndicated exclusivity, and sports blackout rules (collectively referred to herein as "the exclusivity rules"), protect exclusive contractual rights that have been negotiated between program providers and broadcasters or other rights holders. The satellite network non-duplication and syndicated exclusivity rules provide that specific programs must be deleted from "nationally distributed superstations" delivered to subscribers within a specified area if the programs are subject to exclusive rights pursuant to contracts with local stations. A "nationally distributed superstation" is a television broadcast station, licensed by the Commission, that meets the following three criteria: (A) It is not owned or operated by or affiliated with a television network that, as of January 1, 1995, offered interconnected program service on a regular basis for 15 or more hours per week to at least 25 affiliated television licensees in 10 or more States; (B) on May 1, 1991, it was retransmitted by a satellite carrier and was not a network station at that time; and (C) it was, as of July 1, 1998, retransmitted by a satellite carrier under the statutory license of section 119 of title 17, United States Code. The only television broadcast stations that meet this definition are KTLA–TV (Los Angeles), WPIX–TV (New York), KWGN–TV (Denver), WSBK–TV (Boston), WWOR–TV (New York) and WGN–TV (Chicago).

No new station can meet the date-specific criteria set forth in the definition. The sports blackout rule provides that sporting events carried on distant stations retransmitted to a specified area must be deleted when carriage would violate sporting teams' or leagues' exclusive rights in the local market.

2. The issues raised on reconsideration are largely technical issues pertaining to the operation of the rules. The Office of the Commissioner of Baseball, the National Basketball Association, the National Football League, the National Hockey League, and the Division 1–A Athletic Director's, Association ("Sports Leagues") jointly filed a petition for reconsideration concerning the timing for submitting deletion notifications to satellite carriers and the method of determining when the blackout rule is triggered. EchoStar Satellite Corporation ("EchoStar") filed a petition for reconsideration concerning the duration of the phase-in period and the timing and application of the notification requirements, with which DirecTV, Inc. ("DirecTV") joined in part. The Association of Local Television Stations ("ALTV") and the Motion Picture Association of America ("MPAA"), as well as the Petitioners, filed oppositions or comments in response to the petitions.

3. Our response to the petitions is governed by the Communications Act and our own rules. Reconsideration of a Commission decision is warranted only if the petitioner cites a material error of fact or law, or presents additional facts and circumstances that raise substantial or material questions of fact that were not considered and that otherwise warrant Commission review of its prior action. The Commission will not reconsider arguments that have already been considered. For the reasons stated herein, we deny EchoStar's and DirecTV's petitions and deny in part and grant in part the Sports Leagues' petition. We also take this opportunity to clarify and, where necessary, amend some of the requirements in the Report and Order and the rules.

Background and Summary of Petitions

4. In implementing sections of the SHVIA in the Report and Order, the Commission was guided by the directive to place satellite carriers on equal footing with cable operators, while also taking into consideration that the operational structures of cable operators and satellite carriers are different. To allow satellite carriers a reasonable period of time to adjust to the new non-duplication and syndicated exclusivity rules, the Commission gave carriers 120 days from the time they received blackout request notices to implement the necessary deletions for the first six months the rules were effective. The rules took effect on November 29, 2000. Therefore, the six month period ended May 29, 2001.

5. With respect to the sports blackout rule, the Commission applied the rule to satellite retransmission of nationally distributed superstations as well as to satellite retransmission of network stations. Although the satellite sports blackout rules are very similar to the cable rules, the notification periods in the satellite context differ to ensure that satellite carriers are notified of blackouts as soon as the rights holder has the information in hand. In addition, in order to afford satellite carriers an opportunity to adjust to the new requirements, the Commission provided a phase-in period for implementing the sports blackout rules, albeit somewhat shorter than the phase-in for the non-duplication and syndicated exclusivity rules.

6. EchoStar's petition for reconsideration requests a one-year phase-in period, rather than the 120-day transition provided in the Report and Order. EchoStar also requests a longer notification period for sports blackout requests, and it objects to the application of the sports blackout rule to all network stations. DirecTV's petition for reconsideration joins EchoStar's petition with respect to application of the sports blackout rule to all network stations and the length of the

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notification period. The Sports Leagues object to the requirement that notice of sports blackouts be given within 48 hours of the telecast schedule being set. The Sports Leagues also contend that § 76.128 does not precisely track the defunct rule section it was intended to replace.

Order on Reconsideration

Transition Phase-In Period

7. *Background.* In the Report and Order the Commission gave satellite carriers time to phase-in compliance with the new network non-duplication and syndicated exclusivity rules to ensure that they would have adequate equipment and personnel to implement the deletions, and to arrange for programming to substitute for deleted programming. To afford both satellite carriers and broadcasters a reasonable period of time to adjust to the new requirements and review the contract language, the Commission provided that broadcasters would have up to six months from the effective date of the Report and Order to renegotiate contracts, and required that they notify satellite carriers of deletion requests within sixty days of signing a renegotiated contract. For notices provided before June 1, 2001, satellite carriers were given 120 days before they were required to implement the necessary deletions. For notices provided to satellite carriers after June 1, 2001, the normal time requirements—within sixty days of notification—apply. The six month period for renegotiations expired in May, 2001.

8. With respect to the sports blackout rule, the Commission required that rights holders provide sixty days advance notice for any sports blackout that would occur on or before March 31, 2001. As of April 1, 2001, the regular notice requirements, including twenty-four hour notice for changes in previously scheduled blackouts, became applicable. Because satellite carriers were complying with contractually required sports blackouts prior to the implementation of the SHVIA requirements, it was unnecessary to provide the same length of time to phase-in the sports blackout rules as provided for the network non-duplication and syndicated exclusivity rules.

9. In its petition for reconsideration, EchoStar reiterated its request for a one-year phase-in period to assess the ability of its subscriber qualification system to differentiate protection zones for superstation and network programming. Three of the superstations informed EchoStar that the exclusivity rule requirements could require deletion of all programming from 8:30 a.m. to 9 p.m., which would prompt EchoStar to decide not to offer these superstations to their subscribers. EchoStar also stated that if the number and complexity of deletion requests make it necessary to replace its entire conditional access system, the replacement process would take nine to twelve months to complete from the time it receives such requests. EchoStar disagreed with the Commission's conclusions concerning the need for new equipment and suggested the Commission require rights holders to submit deletion requests for a year before they would be implemented. The Sports Leagues, ALTV, and MPAA opposed EchoStar's petition. Further, MPAA asserts that the 120-day notice phase-in period stretches beyond the one-year effective date Congress required in the SHVIA.

10. *Discussion.* The transition period provided in the Report and Order ended in 2001, as did the one-year period EchoStar requested in the original proceeding and again on reconsideration. Nonetheless, we rule on the merits and decline to extend the phase-in period for the implementation of syndicated exclusivity, network non-duplication and sports blackout rules beyond the phase-in periods provided by the Report and Order and rules. The Report and Order rejected EchoStar's proposal for a transition period of one year as unnecessary, impractical and unlikely to assist EchoStar in planning for deletions given that rights holders would not submit deletion requests knowing that they would not be acted upon for a year. Satellite carriers did not demonstrate that they needed additional time to develop new equipment in addition to their existing blackout and conditional access equipment. EchoStar has not provided sufficient justification for its request and has not presented new arguments that would warrant reconsideration of this issue. EchoStar asserts that its system is near capacity, but has not provided evidence of how the capacity was used or how additional burdens affect the capacity. Although we understand that EchoStar did not have specific deletion requests when it submitted comments in the rulemaking proceeding, the potential scope of the deletions required by the statutory mandate were largely apparent when the statute took effect at the end of 1999. We therefore deny EchoStar's petition for reconsideration with respect to lengthening the phase-in periods.

Sports Blackout Rule

The Sports Blackout Rule Applied to Retransmission of Network Stations

11. *Background.* In the Report and Order the Commission applied the sports blackout rule to retransmission of nationally distributed superstations and network stations. The Commission's sports broadcasts rule ("sports blackout rule") is designed to allow the holder of the exclusive distribution rights of sporting events, to control, through contractual agreements, the display of that event on local cable and, pursuant to the SHVIA, on satellite systems. The sports blackout rule is triggered when a subject sporting event will not be aired live by any local television station carried on a community unit cable system. Under the sports blackout rule, the holder of the rights to the event (*e.g.*, a sports team or league, rather than a broadcaster) has the power to demand that the local cable system or satellite carrier blackout the distant importation of the subject sporting event. The zone of protection afforded by the sports blackout rule generally is 35 miles surrounding the reference point of the broadcast station's community of license in which the live sporting event is taking place. Unlike the network non-duplication and syndicated exclusivity rules, the sports blackout rule applies to retransmission of distant network stations as well as to nationally distributed superstations. In the case of retransmission of network stations, the SHVIA instructed the Commission to apply the cable sports blackout rule to satellite carriers only "to the extent technically feasible and not economically prohibitive." In the Report and Order the Commission considered DirecTV's request that the Commission invoke the "technical/economic hardship exception of section 339(b)(1)(B)" and decline to apply any sports blackout requirement on satellite retransmission of network stations. The Commission determined, however, that DirecTV and EchoStar had not provided sufficient information regarding the costs and burdens imposed by the requirement to satisfy the statutory exception. The burden requires a showing that conforming to rules similar to those applicable to cable operators "would entail a very serious economic threat to the health of the carrier."

12. EchoStar's petition seeks reconsideration of that decision. EchoStar maintains that "there was simply no historical evidence available to satellite carriers to illustrate the burdens from future compliance" and that the benefit to sports rights holders

is small compared to the "formidable burden" on satellite carriers. EchoStar notes that the distant network signals in question may only be retransmitted to unserved households of which there are few within any protection zone. The statutory copyright license only permits retransmission of distant signals to "unserved households." Under copyright law "unserved households" are those that are unable to receive an over-the-air network signal of Grade B intensity or better. In addition, "grandfathered" households, as well as recreational vehicles and commercial trucks, are included in the definition of unserved households. EchoStar follows that "the limited practical significance of the rules does not necessarily lessen the difficulty that the satellite carrier would still confront in blacking out the sports programming for those few households." DirecTV agrees and asserts that blacking out a small area or small number of subscribers in the satellite context is more complex than in the cable context because of the several steps an operator must go through, including encoding information; data entry; scheduling and processing; and triggering each blackout manually by individually watching each event. DirecTV further asserts that these steps "raise a question of whether the Commission was justified in concluding that the application of sports blackout rules to satellite carrier retransmission of network stations is "technically feasible and not economically prohibitive.'"

13. EchoStar argues that it is in a better position to make a preliminary estimate of the possible burden of complying with the blackout rules as applied to network programming during the reconsideration process because it has evidence of actual deletion requests, which it could not have had during the initial rulemaking proceeding. EchoStar states that the primary issue determining the impact of network blackout rules is the "number of different regions that must be defined as possible blackout zones, even more so than the number of programs and events to be blacked out." EchoStar describes its anticipated problem in implementing sports blackouts to be a result of the complexity of, and lack of coordination for, blackout zones among the various sports leagues. EchoStar states that its current sports blackout system for ESPN and Fox uses 128 different blackout zones coordinated with individual consumer's receivers, each associated with a single blackout region for twelve categories of sports. EchoStar explains that because several sports teams that are in close proximity will have overlapping blackout zones, it will need to implement "a mosaic of smaller zone "pieces'" to make up a complete blackout zone, which will rapidly consume its blackout resources. EchoStar asserts that if it receives blackout requests for zones that differ from its current contractual blackout zones, and if it gets a significant increase in the number of requests, as it expects with the addition of blackout requirements for network stations along with syndicated exclusivity and network non-duplication requests, that it will likely have to replace its existing conditional access system for one with expanded capabilities. EchoStar estimates the costs of system upgrade in the $75 to $100 million range, and also provides an estimated figure of $123.5 million dollars for total system replacement.

14. The Sports Leagues assert that EchoStar does not present any new evidence to substantiate its claimed injury, but instead presents arguments lacking foundation in fact and failing to satisfy the burden imposed by Congress. The Sports Leagues also contend that the 35-mile zone of protection applied to nationally distributed superstations should be the same protection zone used to blackout network stations and, therefore, "no new codes [in addition to codes for the sports blackout rule as applied to nationally distributed superstations] should be necessary in implementing the [sports blackout rule] for network signals." Further the Sports Leagues point out that EchoStar does not attempt to differentiate nationally distributed superstations from network stations. The Sports Leagues argue that EchoStar has failed to support assertions that its coding is "near capacity" and cannot therefore accommodate blackouts of sporting events carried on network stations.

15. *Discussion.* EchoStar has presented evidence regarding the potential burden imposed by the sports blackout rule, and suggested that additional capacity demands on its system in connection with providing sports blackout for network stations could require an overhaul of its entire conditional access system, but has not presented evidence of the burdens specifically associated with the application of the sports blackout rule to the retransmission of the signals of network stations. EchoStar asserts that the complexity of and lack of coordination for blackout zones among the various sports leagues creates difficulties in implementing sports blackouts. In connection with this reconsideration proceeding, the four major sports leagues have agreed to use a single, standardized zip code list for purposes of the Sports Blackout Rule and have provided such a list to the satellite carriers. In order to receive blackout protection, § 76.127(b) obligates rights holders to provide detailed information in the blackout notices, including accurate zip code information. Therefore, to ensure accurate application of sports blackout protection, the Sports Leagues will be responsible for keeping the standardized zip code list current. Although satellite carriers' other contractual arrangements may still create the need for multiple codes in each market, the standard zip code list will reduce the overall burdens on satellite carriers in meeting sports blackout requirements. Nevertheless, as the Commission found in the Report and Order, EchoStar's evidence offered for reconsideration does not identify separately the burdens imposed by blacking out network stations and the burdens imposed by blacking out nationally distributed superstations, nor does it provide information on the costs—incremental or total—of deleting network stations. We are, therefore, unable to make a meaningful evaluation of EchoStar's claim that it may not have capacity to implement the required number of sports blackout zones based on the record. Accordingly, we deny EchoStar's petition for reconsideration.

Forty-Eight Hour Notification Period

16. *Background.* In order to activate the protections of the sports blackout rule, specific notification procedures regarding the sporting events to be deleted must be followed. The notification requirement for sports blackout, as historically applied to cable systems, requires several days advance notice, but in certain circumstances can be given as little as twenty-four hours in advance. With respect to cable systems, notifications for regularly scheduled events subject to the sports blackout rule must be received no later than the Monday preceding the calendar week during which the deletion is to be made. Notifications for events not regularly scheduled, or when the schedule is revised, must be received within 24 hours after the time of the deleted telecast is known, but in no event less than 24 hours before the event will take place. Nothing we adopt herein regarding modifications to notice requirements for the satellite sports blackout rule is intended to modify the cable sports blackout rule.

17. In the original rulemaking proceeding, DirecTV described a satellite blackout system that is more complex than cable. The Commission

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acknowledged in the Report and Order that although "the process described by DirecTV did not appear to present such a serious technical or economic burden as to excuse compliance with the sports blackout rules altogether, it does suggest that the challenge of implementing multiple, simultaneous blackouts and identifying and arranging substitute programming is greater for satellite carriers than for cable operators." DirecTV proposed a notification period of 60 days prior to the start of a season for sports with a specific season, 60 days prior to the event for non-seasonal but regularly scheduled events, 30 days for events not regularly scheduled, and ten working days for revisions to previously submitted notices. The Commission found that satellite carriers made "reasonable arguments in support of revising the notification periods in the satellite sports blackout rules to the extent possible without depriving the teams and leagues of their contractual rights by establishing time frames that afford practical protection."

18. In the Report and Order the Commission found that satellite carriers were complying with contractually mandated sports blackouts, which require that they delete sporting events and provide subscribers with replacement programming. However, recognizing differences in the structure and operation of the satellite and cable industries, the Commission ruled that some adjustment in the application of the sports blackout rules was justified. The Commission found that the lack of specific information in the record limited our ability to finely tailor the notice requirements with respect to satellite sports blackout. The Commission therefore declined to adopt DirecTV's notification proposals, and instead ruled that the sports blackout rules for satellite carriers would retain the same advance notice requirements used in the cable context for regularly scheduled events (notice must be received the Monday before the calendar week in which the deletion is to be made), but would also require that rights holders notify satellite carriers within 48 hours of the time the telecast to be deleted is known.

19. In its petition for reconsideration, EchoStar asserts that the complexity of carrying local sports broadcasts over a nationwide satellite system requires more time to black out programming than for cable operators. EchoStar argues that the rule requiring notice within 48 hours of the time a telecast is scheduled, without establishing a limit on how close in time the scheduling of the event can be to the event itself, does not give satellite carriers enough time to comply because the notice might be delayed until as late as twenty-four hours before the event to be broadcast. EchoStar requests that the Commission reconsider its decision regarding notification periods for sports blackout, and align the notification period with the network non-duplication and syndicated exclusivity rules requiring a minimum of sixty days notice. In addition, EchoStar requests that the Commission not allow deletion requests for unscheduled events.

20. The Sports Leagues state that the requirement that rights holders notify satellite carriers within 48 hours of the time the telecast is known creates a significant and unwarranted burden on the Sports Leagues while also causing confusion on the part of the satellite carries. The rule, according to the Sports Leagues, results in a piecemeal notice scheme where numerous, often unnecessary, notices must be sent. The Sports Leagues explain that the various sports teams make decisions to televise their away games at different times in the pre-season months. The Sports Leagues contend that the rule requires that each time a visiting team sets its away game telecast schedule, and communicates it to the home team or the league, the home team broadcast rights holder must send a notice to the satellite carrier to blackout the games. If, subsequent to the visiting team's decision to telecast, the home team decides to telecast the game in its home market, within 48 hours of that decision, notices countermanding the blackout request must be sent. The Sports Leagues surmise that this rule would require "hundreds, if not thousands, of notices, an unbelievable burden on the Leagues and an administrative nightmare for the carriers as they attempted to monitor the constant flow of notices coming in."

21. The Sports Leagues urge the Commission to adopt the same standard of notice for satellite carriers as it has for cable operators. The Sports Leagues state that the cable rule, by allowing notice on the Monday of the week preceding the calendar week of the game, has enabled the Sports Leagues "to compile national and local telecasting schedules and distribute all notices at one time, it also allows cable operators (even those with systems in dozens of major markets) to receive all notices at one time." The Sports Leagues indicate that this procedure has been used in the cable context for over twenty-five years. The Sports Leagues also state that in some circumstances, such as for the NFL, the league may know before the season begins that a team's scheduled games have been sold out and that, therefore, no blackouts will be necessary. The Sports Leagues explain that if the satellite rule followed the cable rule procedures for notification, in the "vast number of circumstances" the Leagues would be able to provide notices "no less than six days before a blackout at the beginning of the season and, in most cases, six months before blackouts at the end of the regular season." The Sports Leagues also assert that satellite carriers need only a "couple of days notice" to perform blackouts necessitated by regular season and playoff schedule changes. The Sports Leagues also oppose EchoStar's request that the Commission eliminate the twenty-four hour notice provision for revisions to existing notifications and notifications of unscheduled events because that would preclude protection for post-season or rescheduled games.

22. In its opposition, EchoStar argues that the Sports Leagues have not offered any new evidence, study, or specific facts to support changing the rule. Rather, EchoStar suggests the burden of providing notices could be alleviated by better coordination between teams within the Sports Leagues.

23. In response, the Sports Leagues propose a compromise resolution. The Sports Leagues agree to provide, along with a master list of zip codes, a master blackout notice covering every team in a league for all regular season games to be received by carriers no less than fifteen days before the start of a sports season. The Sports Leagues suggest that the use of a fifteen-day period in advance of the season would allow satellite carriers sufficient time to enter the necessary game and zip code information to accomplish the blackout requests.

24. *Discussion.* On reconsideration, we agree that the requirement that rights holders notify carriers 48 hours from the time the telecast to be deleted is known (the "48-hour rule") will potentially create significantly more burdensome notice requirements for both rights holders and satellite carriers than intended. We therefore grant the Sports Leagues petition, in part, insofar as the Sports Leagues request modification of the rule. For the same reasons discussed in the Report and Order, we deny EchoStar's and DirecTV's petitions repeating their requests for sixty-day notice periods for scheduled events and elimination of blackout requirements for unscheduled events. As the Commission indicated in the Report and Order, the purpose of the 48-hour rule was to give carriers sufficient time to enter blackout requests and line up substitute programming by ensuring that rights

holders notify satellite carriers as soon as the telecasts are scheduled. However, given that many teams set their telecast schedules at different times over the months leading to the start of a season, our rules can be interpreted to require each team to send out multiple notices to satellite carriers as they sporadically receive the telecast schedules of their opposing teams. Moreover, many of the notices must be subsequently rescinded when the complete telecast schedules of the home teams and visiting teams are reconciled. For example, if, subsequent to sending out blackout notices to satellite carriers of away team telecasts to be deleted, the home team determines that it will also telecast one or more of the same games, then blackout protection would be removed under § 76.127(a), and notifications would need to be sent out under § 76.127(c). This application of the 48-hour rule could indeed result in numerous notices being received by satellite carriers in a confusing and unnecessarily complex manner.

25. We continue to recognize the unique technical challenges that satellite carriers face in implementing sports blackouts and arranging for substitute programming. However, in light of the potential volume of notices created by the rule as applied to the professional sports leagues, we reconsider and amend it to require that rights holders choose between providing notice within 48 hours of the time the telecast to be deleted is known, or fifteen days prior to the commencement of the season, as described below.

26. As EchoStar suggested, some coordination among the teams in the league is necessary in connection with the notice requirement. This is what the Sports Leagues are requesting to do, and have done in connection with the cable rule for years. Therefore, we will permit rights holders for sports with a discernable season to submit blackout notifications for an entire season, but we establish a date certain by when those notifications must be received by satellite carriers. The Sports Leagues have proposed that they can coordinate their teams' telecast schedules and submit notices of blackout requirements for those schedules by fifteen days before the beginning of each league's season. This proposal is reasonable. In connection with the standardized zip code list the Sports Leagues will provide to the satellite carriers, we think that carriers will have enough time to schedule the blackouts and to arrange for substitute programming where needed. This approach is very similar to the implementation of the cable sports blackout rule, while also reflecting the satellite carriers' demonstrated need for additional advance notice. We also recognize that in some circumstances pre-season sporting events will use sports blackout protection similar to regular season games.

27. We will maintain the 48-hour rule for situations where the fifteen-day pre-season notice is impracticable or unnecessary. If the participants in a sports league are able to organize the entire league's telecast schedule before the start of the season, or a pre-season period, blackout notices for that season, or pre-season, may be submitted to satellite carriers all at once fifteen days prior to the start of the season or pre-season. However, should a team or league not be able to provide its entire telecast schedule in advance of a season, or pre-season, the rights holder may send the notices game by game, but must do so within 48 hours of the time the telecast to be deleted is known. For broadcasts of individual sporting events or for sports without a complex league structure or a defined season it will likely be more practical to send blackout notices of regularly scheduled sporting events within 48 hours of the time the telecast to be deleted is known.

Definition of "Local" for Purposes of the Application of the Sports Blackout Rules

28. Background. Prior to amending the sports blackout rules in the Report and Order, the sports blackout provisions could be applied "if the event is not available live on a television broadcast signal carried by the community unit meeting the criteria specified in §§ 76.5(gg)(1) through 76.5(gg)(3) of this part." The Commission deleted § 76.5(gg) in its 1993 Order rescinding rate regulation. In the Report and Order the Commission adopted language to replace the deleted provision. In adopting a new standard based on former § 76.5(gg), the Commission shortened and consolidated the provisions of that section and included them in a new rule provision, § 76.128, which was not intended to change the operation of the cable sports blackout rule.

29. In their petition for reconsideration, the Sports Leagues assert that the application of the rule would likely have an unintended effect. The Sports Leagues point out that § 76.128 now defines a "local" station as, "among other things, a station either within 35 miles of the cable or sports event community or one placing a Grade B contour over the cable or sports event community." The Sports Leagues assert that under the 1972 must carry rules, Grade B contour stations had no must-carry rights and were subject to deletion under the cable sports blackout rule. The Sports Leagues explain that with respect to cable television systems, a broadcast station transmitting a Grade B signal of a particular game into the 35-mile sports blackout zone of a rights holder could prevent that rights holder from requiring the cable operator to black out a non-televised home game. The Sports Leagues ask us to re-establish the protections for sports blackouts that have existed for over twenty-five years, and to create the same type of protection for satellite importation. The Sports Leagues state that this can be achieved by "specifically recognizing that coverage by a Grade B contour does not vitiate blackout protection." ALTV recognized the problem raised in Sports Leagues' petition, but states that there is insufficient evidence in the record to assess the impact of the request.

30. EchoStar asserts that the Commission revised the definition of "local" for purposes of the sports blackout rule in order to simplify the definition and reflect changes in the must carry rules. EchoStar states that the rule now says that the sports blackout will not be triggered when the sports event is available live on a station whose grade B contour covers the community in which the event occurs. EchoStar argues that the revision in the rule is consistent with the purpose of the sports blackout rule, which is to protect gate receipts when a game is not locally available over the air.

31. Discussion. We agree that the revisions to the sports blackout rules may have an unintended effect in rare situations such as those described by the Sports Leagues. Contrary to EchoStar's assertions, it was not the Commission's intention to alter the operation or effect of this part of the rules for cable operators or satellite carriers. To address the points raised by the Sports Leagues, we amend § 76.128 so that it will more closely track the terms and effect of the former § 76.5(gg) by reestablishing that the Grade B contour provision applies only in non-major markets.

Clarification of Non-Duplication Protection Notices

32. Background. Emmis Television Broadcasting, L.P. d/b/a WCKF–TV, Orlando, Florida ("Emmis") in an *ex parte* submission requested reconsideration and revision of § 76.122 of our rules. Emmis asserts that § 76.122(c)(2) is dissimilar to the notification requirements in the cable context insofar as § 76.122(c)(2) requires the inclusion of specific program

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information regardless of an affiliate's ability to furnish that information based on the content of its affiliation contract.

33. Discussion. In the Report and Order, the Commission concluded that stations should notify satellite carriers of exclusivity rights in the same manner required under the cable rules. The Commission intended that the satellite rules would require that the notice asserting exclusivity rights contain the same identifying information about the programming to be deleted and the extent of the exclusivity as required in the cable rules.

34. We take this opportunity to revise § 76.122(c) so that the rule conforms to the cable rules in § 76.94(a) and (b). We take this action partly sua sponte and partly in response to the informal request for clarification of our rules. Broadcasters requesting non-duplication protection from satellite carriers are required to include the name of the program, series or specific episodes for which protection is sought if such information is identified in the station's network agreement.

Procedural Matters

35. *Paperwork Reduction Act of 1995 Analysis.* This Order on Reconsideration contains new or modified information collections subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. A Notice of Public Information Collection(s) being Reviewed by the Federal Communications Commission is published elsewhere in this **Federal Register**.

36. *Supplemental Final Regulatory Flexibility Certification.* The Regulatory Flexibility Act of 1980, as amended (RFA), see 5 U.S.C. 605(b), requires that a regulatory flexibility analysis be prepared for rulemaking proceedings, unless the agency certifies that "the rule will not have a significant economic impact on a substantial number of small entities." The RFA, see 5 U.S.C. 601 et. seq., has been amended by the Contract With America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). The RFA, see 5 U.S.C. 601(6), generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

37. In the Report and Order adopting the rules, the Commission issued a Final Regulatory Flexibility Analysis. In this Order on Reconsideration, the Commission amends § 76.122 of our rules so that it conforms to the cable rules in § 76.94(a) and (b). The Commission intended that the satellite rules would require that the notice asserting exclusivity rights would contain the same information about the programming to be deleted and the extent of the exclusivity as is required in the cable rules. The correction to this rule requires notices to satellite carriers to contain specific information only when the information is readily available to the rights holder, as similarly required by the cable rules. Therefore, the rule change eases the notification process, and the economic impact on rights holders and satellite carriers will not be significant.

38. The Commission also amends a notification requirement in § 76.127 enabling sports rights holders to submit blackout notices to satellite carriers on an individual basis, or to cover an entire sports season at the rights holder's election. This elective notification scheme potentially reduces the burdens on sports rights holders and satellite carriers in conforming to the satellite sports blackout rule. The modification to this requirement aligns the satellite rule more closely with the application of the cable rule, as intended by the Report and Order. The changes we make to the requirements should not increase or decrease the number of event broadcasts to be blacked out, but should allow for more efficient scheduling and implementation of blackouts, and hence the economic impact on rights holders and satellite carriers will not be significant.

39. Finally, the Commission amends § 76.128 of our rules so that it more closely tracks the former § 76.5(gg) it was intended to replace. In particular, the revision clarifies the definition of local station for purposes of the application of the sport blackout rules. The Commission never intended to alter the operation or effect of this rule, and this aspect of the definition would have had effect only in very rare instances.

40. For the above reasons, we certify that the requirements of this Order on Reconsideration will not have a significant economic impact on a substantial number of small entities. The Commission will send a copy of the Order on Reconsideration including a copy of this final certification, in a report to Congress pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A). In addition, the Order on Reconsideration (or a summary thereof) and this certification will be published in the **Federal Register**, see 5 U.S.C. 605(b), and will be sent to the Chief Counsel for Advocacy of the SBA.

Ordering Clauses

41. *It is ordered*, pursuant to section 405(a) of the Communications Act of 1934, 47 U.S.C. 405(a), and § 1.429 of the Commission's rules, 47 CFR 1.429, that EchoStar's and DirecTV's Petition for Reconsideration *are denied.*

42. *It is further ordered*, pursuant to section 405(a) of the Communications Act of 1934, 47 U.S.C. 405(a), and § 1.429 of the Commission's rules, 47 CFR 1.429, that the Sports Leagues' Petition for Reconsideration *is denied in part and granted in part.*

43. *It is further ordered*, that, pursuant to authority found in Sections 4(i) 4(j), 303(r), and 339 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 303(r), and 339, the amendments to part 76 of the Commission's rules, 47 CFR part 76, as discussed in this Order on Reconsideration and set forth in Appendix B, and the clarifications of those rules discussed in this Order on Reconsideration, *are adopted*, and shall become effective December 16, 2002 except that rules § 76.122(c)(2) and § 76.127(c) that contain information collection requirements under the PRA are not effective until approved by OMB. The FCC will publish a document in the **Federal Register** announcing the effective date for those sections.

44. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Order on Reconsideration, including the Supplemental Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

45. *It is further ordered* that this proceeding *is terminated.*

List of Subjects in 47 CFR Part 76

Cable television, Satellite carriers, Television broadcast stations.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 76 as follows:

PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

1. The authority citation for part 76 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 153, 154, 301, 302, 303, 303a, 307, 308, 309, 312, 317, 325, 338, 339, 503, 521, 522, 531, 532, 533, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, 573.

2. Section 76.122 is amended by revising paragraph (c)(2) to read as follows:

§ 76.122 Satellite network non-duplication.

* * * * *

(c) * * *

(2) Where the agreement between network and affiliate so identifies, the name of the program or series (including specific episodes where necessary) for which protection is sought;

* * * * *

3. Section 76.127 is amended by revising paragraph (c) to read as follows:

§ 76.127 Satellite sports blackout.

* * * * *

(c)(1) With respect to regularly scheduled events, within forty-eight (48) hours after the time of the telecast to be deleted is known; or, for events that comprise a season or pre-season period, fifteen (15) days prior to the first event of the season or pre-season, respectively; and no later than the Monday preceding the calendar week (Sunday-Saturday) during which the program deletion is to be made. (2) Notifications as to events not regularly scheduled and revisions of notices previously submitted, must be received within twenty-four (24) hours after the time of the telecast to be deleted is known, but in any event no later than twenty-four (24) hours from the time the subject telecast is to take place.

* * * * *

4. Section 76.128 is amended by revising paragraph (b) to read as follows:

§ 76.128 Application of sports blackout rules.

* * * * *

(b) For communities in television markets other than major markets as defined in § 76.51, television broadcast stations within whose Grade B contours the community of the community unit or the community within which the sporting event is taking place is located, in whole or in part;

* * * * *

[FR Doc. 02–28894 Filed 11–13–02; 8:45 am]

BILLING CODE 6712–01–P

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Proposed Rules

Federal Register
Vol. 67, No. 220
Thursday, November 14, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–SW–53–AD]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron, A Division of Textron Canada Model 407 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD) for Bell Helicopter Textron, A Division of Textron Canada (Bell), Model 407 helicopters, that would have required preflight checking and repetitively inspecting for a crack in certain tailbooms that have not been redesigned and replacing the tailboom if a crack is found. That proposal was prompted by cracking discovered in other areas of certain tailbooms and introduction of a redesigned tailboom with a chemically milled skin, which does not require the current inspections. This action revises the proposed rule by correcting the model applicability, increasing the area of inspection for certain tailbooms, requiring modification of certain tailbooms, and establishing life limits for certain tailbooms. The actions specified by this proposed AD are intended to prevent separation of the tailboom and subsequent loss of control of the helicopter.

DATES: Comments must be received on or before December 16, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2001–SW–53–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: *9-asw-adcomments@faa.gov*. Comments may be inspected at the Office of the Regional Counsel between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Bell Helicopter Textron Canada, 12,800 Rue de l'Avenir, Mirabel, Quebec J7J1R4, telephone (450) 437–2862 or (800) 363–8023, fax (450) 433–0272. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Sharon Miles, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations Group, Fort Worth, Texas 76193–0111, telephone (817) 222–5122, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this document may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this proposal must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 2001–SW–53–AD." The postcard will be date stamped and returned to the commenter.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an AD for Bell Model 407 helicopters was published in the **Federal Register** on January 31, 2002 (67 FR 4685). That NPRM would have required preflight checking and repetitively inspecting for a crack in certain tailbooms that have not been redesigned and replacing the tailboom if a crack is found. It further proposed that installing tailboom, P/N 407–030–801–201, would constitute terminating action for the requirements of that AD. That NPRM was prompted by cracking discovered in other areas of certain tailbooms and introduction of a redesigned tailboom with a chemically milled skin, which does not require the current inspections. That condition, if not corrected, could result in separation of the tailboom and subsequent loss of control of the helicopter.

Since the issuance of that NPRM, the manufacturer has issued Bell Helicopter Textron Alert Service Bulletin (ASB) No. 407–99–26, Revision C, dated February 28, 2002, that addresses inspection procedures for certain tailbooms. The manufacturer also issued Bell Helicopter Textron ASB No. 407–01–48, Revision B, dated April 25, 2002, that details the modification and re-identification of those certain tailbooms, assigns a life limit, and details new inspection procedures for those re-identified tailbooms. Additionally, ASB 407–01–48 assigns a life limit and details new inspection procedures for another part-numbered tailboom that was modified by the manufacturer. Further, in addition to the redesigned tailboom, P/N 407–030–801–201, referenced in the NPRM, Bell has at least one additional redesigned tailboom, P/N 407–030–801–203, for these helicopters. Transport Canada, which is the airworthiness authority for Canada, has issued a revised AD No. CF–1999–17R2, dated April 5, 2002, to address these changed requirements.

Further, the FAA received three comments to that NPRM proposing changes. Two commenters state that the AD should be changed to state specific tailboom part numbers for specific inspections. They suggest mandating 50 hour time-in-service (TIS) inspections for tailbooms, part number (P/N) 407–030–801–101 and –105, until mandated modification and re-identification occurs and life limits are imposed. They also suggest mandating 150 hour TIS inspections for modified and re-identified tailbooms and also tailboom, P/N 407–030–801–107, which was modified by the manufacturer before delivery. These changes are requested because the tailbooms are modified to address the cracking problems, and based on engineering evaluation of these modified tailbooms, the inspection intervals can be expanded. The third commenter, the manufacturer, suggests modifying the proposal to incorporate their later revisions to their service bulletins.

The FAA agrees with the proposed changes and the updated manufacturer service information. We continue to propose mandating daily pre-flight checks and initial 25-hour TIS inspections with recurring 50 hour TIS inspections for the tailbooms, P/N 407–030–801–101 and –105, until they are modified and re-identified. Once modified and re-identified as P/N 407–530–014–101 and –103, respectively, the FAA proposes to mandate the 150 hour TIS inspection and assign a 5,000 hour TIS life limit. The 150 hour TIS inspection and 5,000 hour life limit would also apply to the tailboom, P/N 407–030–801–107. Additionally, the cite to tailboom, P/N 407–030–801–101, as a terminating action has been removed since the installation of other redesigned tailbooms may also effectively remove a helicopter from the applicability of this proposal, thereby constituting a terminating action for the requirements of this AD.

Since these changes expand the scope of the originally proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

The FAA estimates that 284 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately 3.5 work hours per helicopter to accomplish the initial inspections, 1.5 work hours per helicopter to accomplish the recurring inspections, and 18 work hours per helicopter to accomplish the modification. The average labor rate is $60 per work hour. Required parts would cost approximately $1,244 per helicopter. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $3,254 per helicopter, or $924,136, assuming all U.S. registered helicopters are required to be modified and initially inspected, and have 8 repetitive inspections per year. In its service information, under certain conditions, the manufacturer offers a "special" warranty for parts needed for modifying tailbooms, P/N 407–030–801–101 and –105, and a labor allowance of $480.

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

Bell Helicopter Textron, a Division of Textron Canada: Docket No. 2001–SW–53–AD.

Applicability: Model 407 helicopters, serial numbers 53000 through 53475, with tailboom, part number (P/N) 407–030–801–101, –105 or –107, or P/N 407–530–014–101 or –103, (re-identified in accordance with Bell Helicopter Textron (Bell) Alert Service Bulletin (ASB) 407–01–48, Revision B, dated April 25, 2002), installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (h) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated.

To prevent separation of the tailboom and subsequent loss of control of the helicopter, accomplish the following:

Applicable tailboom	Compliance time	Actions	In accordance with
(a) Tailboom, P/N 407–030–801–101 and –105, that have not been modified in accordance with Bell ASB 407–01–048, Revision B, dated April 25, 2002.	Before the first flight of each day	Visually check the tailboom for cracks. An owner/operator (pilot) holding at least a private pilot certificate may perform the visual check required by this paragraph, but must enter compliance with this paragraph into the helicopter records in accordance with 14 CFR 43.11 and 91.417(a)(2)(v).	Figure 1 of this AD.

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Applicable tailboom	Compliance time	Actions	In accordance with
(b) Tailboom, P/N 407–030–801–101 and –105, that have 600 or more hours TIS and have not been modified in accordance with Bell ASB 407–01–48, Revision B, dated April 25, 2002.	Within 25 hours time-in-service (TIS), and thereafter at intervals not to exceed 50 hours TIS.	Visually inspect the tailboom for cracks using a 10x or higher magnifying glass.	Part II of the Accomplishment Instructions of Bell ASB 407–99–26, Revision C, dated February 28, 2002, except contacting Bell is not required.
(c) Tailboom, P/N 407–030–801–101 and –105.	Within 600 hours TIS, but not later than January 31, 2003, unless previously accomplished.	Modify and re-identify tailbooms as P/N 407–530–014–101 and –103, respectively, and install improved horizontal stabilizer assembly, P/N 407–023–800–ALL.	Parts I and III of the Accomplishment Instructions in Bell ASB 407–01–48, Revision B, dated April 25, 2002, and Bell Technical Bulletin No. 407–01–33, dated August 29, 2001, except contacting Bell is not required.
(d) Tailboom, P/N 407–530–014–101 and –103; and P/N 407–030–801–107.	Before further flight after the tailboom is modified and re-identified, unless previously accomplished.	Create a historical service record sheet and assign a life limit of 5,000 hours TIS since initial installation on any helicopter.	Part IV of Accomplishment Instructions in Bell ASB 407–01–48, Revision B, dated April 25, 2002.
(e) Tailboom, P/N 407–530–014–101 and –103; and P/N 407–030–801–107.	Within 150 hours TIS after modification, or within 150 hours TIS since new, and thereafter at intervals not to exceed 150 hours TIS.	Inspect the tailboom for a crack ..	Part IV and V of the Accomplishment Instructions in Bell ASB 407–01–48 Revision B, dated April 25, 2002
(f) All applicable part-numbered tailbooms.	Before further flight	If a crack is found, replace the tailboom.	The applicable maintenance manual.

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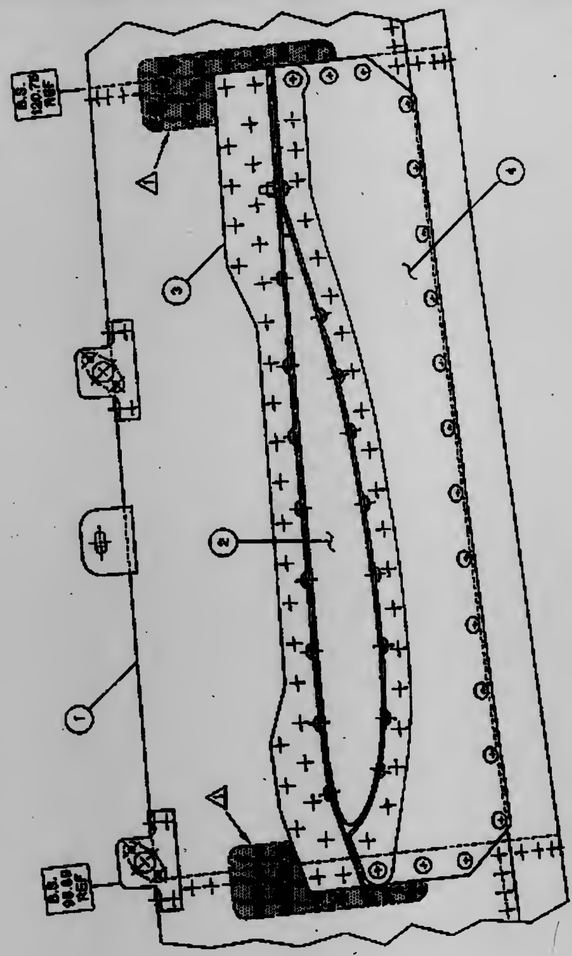

LEGEND
1. Tailboom assembly (Ref.)
2. Horizontal stabilizer (Ref.)
3. Upper support (Ref.)
4. lower support (407-023-800-121)

⚠ Examine these areas for cracks on left side of tailboom only.

2. Horizontal stabilizer not shown for clarity.

Figure 1. Preflight Check of the tailboom

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(g) This AD revises the helicopter Airworthiness Limitations section of the maintenance manual by establishing a new retirement life for the tailboom, P/N 407–530–014–101 and —103, and P/N 407–030–801–107 of 5,000 hours TIS.

(h) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

(i) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in Transport Canada (Canada) AD No. CF–1999–17R2, dated April 5, 2002.

Issued in Fort Worth, Texas, on November 4, 2002.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 02–28859 Filed 11–13–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 281

RIN 0790–AG47

Settling Personnel and General Claims and Processing Advance Decision Requests

AGENCY: Defense Office of Hearings and Appeals, Office of the General Counsel of the Department of Defense.

ACTION: Proposed rule.

SUMMARY: This rule proposes policy and assigns responsibilities for settling personnel and general claims and for processing requests for an advance decision. The Legislative Branch Appropriations Act of 1996 transferred to the Director of the Office of Management and Budget (OMB) the Comptroller General's Authority to settle claims. The OMB Director subsequently delegated some of these authorities to the Department of Defense. Later, the General Accounting Office Act of 1996 codified many of these delegations to the Secretary of Defense and others and transferred to the OMB Director the authority of the Comptroller General to waive uniformed service member and employee debts arising out of the erroneous payment of pay or allowances exceeding $1,500. The OMB Director subsequently delegated the authority to waive such debts of uniformed service members and DoD employees to the Secretary of Defense. The Secretary of Defense further delegated his claims settlement and waiver authorities to the General Counsel. This rule implements the reassignment of the Comptroller General's former duties within the Department of Defense with little impact on the public.

DATES: Consideration will be given to all comments received on or before January 13, 2003.

ADDRESSES: Send comments to the Defense Office of Hearings and Appeals, ATTN: Claims Division, P.O. Box 3656, Arlington, VA 22203–1995.

FOR FURTHER INFORMATION CONTACT: Michael Hipple, 703–696–8510.

SUPPLEMENTARY INFORMATION:

Executive Order 12866, "Regulatory Planning and Review"

The Director of the Defense Office of Hearings and Appeals has determined that this rule is not a significant rule because it does not (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy; a sector of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency; (3) Materially alter the budgetary impact on entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive order.

Public Law 96–354, "Regulatory Flexibility Act"

The Director of the Defense Office of Hearings and Appeals has certified that this rule does not have a significant economic impact on a substantial number of small entities because this rule affects members of the Uniformed Services, Federal employees and transportation carriers and provides procedures by which their claims against the United States will be adjudicated. The same minimal requirements for submitting a claim are applicable to members and transportation carriers.

Public Law 96–511, "Paperwork Reducation Act"

The Director of the Defense Office of Hearings and Appeals has certified that this rule does not impose information collection requirements.

Section 202, Public Law 104–4, "Unfunded Mandates Reform Act"

The Director of the Defense Office of Hearings and Appeals has certified that this rule does not involve a Federal Mandate that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more and that such rulemaking will not significantly or uniquely affect small governments.

Executive Order 13132, "Federalism"

The Director of the Defense Office of Hearings and Appeals has certified that this rule does not have federalism implications. This rule does not have substantial direct affects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

List of Subjects in 32 CFR Part 281

Administrative practice and procedure, Armed Forces, Claims.

Accordingly, 32 CFR part 281 is proposed to be added to subchapter M to read as follows:

PART 281—SETTLING PERSONNEL AND GENERAL CLAIMS AND PROCESSING ADVANCE DECISION REQUESTS

Sec.

281.1 Purpose.
281.2 Applicability.
281.3 Definitions.
281.4 Policy.
281.5 Responsibilities and functions.

Appendix A to Part 281—Claims Description.

Authority: 10 U.S.C. 2575, 2771, 4712, 9712; 24 U.S.C. 420; 31 U.S.C. 3529, 3702; 32 U.S.C. 714; 37 U.S.C. 554.

§ 281.1 Purpose.

This part implements policy and assigns responsibilities for settling personnel and general claims (under 31 U.S.C. 3702, 10 U.S.C. 2575, 10 U.S.C. 2771, 24 U.S.C. 420, 10 U.S.C. 4712, 10 U.S.C. 9712, 37 U.S.C. 554, and 32 U.S.C. 714) and for processing requests for an advance decision under 31 U.S.C. 3529.

§ 281.2 Applicability.

This part applies to:

(a) The Office of the Secretary of Defense, the Military Departments, the Chairman of the Joint Chiefs of Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities within the Department of Defense (hereafter referred to collectively as "the DoD Components").

(b) The Coast Guard, when it is not operating as a Service in the Navy, and the Commissioned Corps of the Public Health Service and the National Oceanic and Atmospheric Administration, to the extent of the authority provided by law or delegated by the Director, Office of Management and Budget (hereafter referred to collectively as "the non-DoD Components").

§ 281.3 Definitions.

(a) *Armed Forces.* The Army, the Navy, the Air Force, the Marine Corps, and the Coast Guard.

(b) *Claim.* A demand for money or property under one of the following statutes: 31 U.S.C. 3702, 10 U.S.C. 2575, 10 U.S.C. 2771, 24 U.S.C. 420, 10 U.S.C. 4712, 10 U.S.C. 9712, 37 U.S.C. 554, or 32 U.S.C. 714.

(c) *Secretary concerned.* The Secretary of the Army, with respect to matters concerning the Army. The Secretary of the Navy, with respect to matters concerning the Navy, the Marine Corps, and the Coast Guard when it is operating as a Service in the Navy. The Secretary of the Air Force, with respect to matters concerning the Air Force. The Secretary of Transportation, with respect to matters concerning the Coast Guard when it is not operating as a Service in the Navy. The Secretary of Commerce, with respect to matters concerning the NOAA. The Secretary of Health and Human Services, with respect to matters concerning the PHS.

(d) *Settlement.* A claim and the amount due that is administratively determined to be valid.

(e) *Uniformed Services.* The Army, the Navy, the Air Force, the Marine Corps, the Coast Guard, and the Commissioned Corps of the PHS and the NOAA.

§ 281.4. Policy.

It is DoD policy that:

(a) The claim settlement and advance decision authorities that, by statute or delegation, are vested in the Department of Defense or the Secretary of Defense shall be exercised by the officials designated in this part. Appendix A to this part describes the claims included under these functional authorities.

(b) Claims shall be settled and advance decisions shall be rendered in accordance with pertinent statutes and regulations, and after consideration of other relevant authorities.

§ 281.5 Responsibilities and functions.

(a) The *General Counsel of the Department of Defense* shall:

(1) Settle claims that the Secretary of Defense is authorized to settle under 31 U.S.C. 3702 (including claims under 10 U.S.C. 2575, 10 U.S.C. 2771, 24 U.S.C. 420, 10 U.S.C. 4712, 10 U.S.C. 9712, 37 U.S.C. 554, and 32 U.S.C. 714).

(2) Consider, and grant or deny, a request by the Secretary concerned under 31 U.S.C. 3702 to waive the time limit for submitting certain claims.

(3) Render advance decisions under 31 U.S.C. 3529 that the Secretary of Defense is authorized to render, and oversee the submission of requests for an advance decision arising from the activity of a DoD Component that are addressed to officials outside the Department of Defense.

(4) Develop overall claim settlement and advance decision policies; and promulgate procedures for settling claims, processing requests for an advance decision (including overseeing the submission of requests for an advance decision arising from the activity of a DoD Component that are addressed to officials outside the Department of Defense), and rendering advance decisions. Procedures for settling claims shall include an initial determination process and a process to appeal an initial determination.

(b) The *Heads of the DoD Components* shall:

(1) Establish procedures within the Component for processing claims and for submitting requests for an advance decision arising from the Component's activity in accordance with this part and procedures promulgated under paragraph (a)(4) of this section.

(2) Pay claims under 10 U.S.C. 2771 and 32 U.S.C. 714, if applicable.

(3) Ensure compliance with this part and policies and procedures promulgated under paragraph (a)(4) of this section.

(c) The *Heads of the Non-DoD Components*, with respect to claims arising from that Component's activity under 31 U.S.C. 3702, 10 U.S.C. 2575, 10 U.S.C. 2771, or 37 U.S.C. 554, shall:

(1) Establish procedures within the Component for processing claims and for submitting requests for an advance decision in accordance with this part and procedures promulgated under paragraph (a)(4) of this section.

(2) Pay claims under 10 U.S.C. 2771, if applicable.

Appendix A to Part 281—Claims Description

The Secretary of Defense is authorized to perform the claim settlement and advance decision functions for claims under the following statutes:

(a) 31 U.S.C. 3702, concerning claims in general when there is no other settlement authority specifically provided for by law.[1]

(b) 10 U.S.C. 2575, concerning the disposition of unclaimed personal property on a military installation.

(c) 10 U.S.C. 2771, concerning the final settlement of accounts of deceased members of the armed forces (but not the National Guard).[2]

(d) 24 U.S.C. 420, 10 U.S.C. 4712, and 10 U.S.C. 9712 concerning the disposition of the effects of deceased residents of the Armed Forces Retirement Home.

(e) 37 U.S.C. 554, concerning the sale of personal property of members of the Uniformed Services who are in a missing status.

(f) 32 U.S.C. 714, concerning the final settlement of accounts of deceased members of the National Guard.[3]

Dated: November 4, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–28726 Filed 11–13–02; 8:45 am]

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DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 282

RIN 0790–AG89

Procedures for Settling Personnel and General Claims and Processing Advance Decision Requests

AGENCY: Defense Office of Hearings and Appeals, Office of the General Counsel of the Department of Defense.

ACTION: Proposed rule.

[1] This includes claims involving Uniformed Services members' pay, allowances, travel, transportation, payment for unused accrued leave, retired pay, and survivor benefits, and claims for refunds by carriers for amounts collected from them for loss or damage to property they transported at Government expense; also included are other claims arising from the activity of a DoD Component. However, the Director of the Office of Personnel Management performs these functions for claims involving civilian employees' compensation and leave; and the Administrator of General Services performs these functions for claims involving civilian employees' travel, transportation, and relocation expenses.

[2] Claims under this statute are actually settled under the authority in 31 U.S.C. 3702, because there is no specific settlement authority in the statute.

[3] Claims under this statute are actually settled under the authority in 31 U.S.C. 3702, because there is no specific settlement authority in the statute.

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SUMMARY: This rule proposes policy and prescribes procedures for processing and settling personnel and general claims and for processing requests for an advance decision. The Legislative Branch Appropriations Act of 1996 transferred to the Director of the Office of Management and Budget (OMB) the Comptroller General's authority to settle claims. The OMB Director subsequently delegated some of these authorities to the Department of Defense. Later, the General Accounting Office Act of 1996 codified many of these delegations to the Secretary of Defense and others and transferred to the OMB Director the authority of the Comptroller General to waive uniformed service member and employee debts arising out of the erroneous payment of pay or allowances exceeding $1,500. The OMB Director subsequently delegated the authority to waive such debts of uniformed service members and DoD employees to the Secretary of Defense. The Secretary of Defense further delegated his claims settlement and waiver authorities to the General Counsel. This rule implements the reassignments of the Comptroller General's former duties within the Department of Defense with little impact on the public.

DATES: Consideration will be given to all comments received on or before January 13, 2003.

ADDRESSES: Send comments to the Defense Office of Hearings and Appeals, ATTN: Claims Division, P.O. Box 3656, Arlington, VA 22203–1995.

FOR FURTHER INFORMATION CONTACT: Michael Hipple, 703–696–8510.

SUPPLEMENTARY INFORMATION:

Executive Order 12866, "Regulatory Planning and Review"

The Director of the Defense Office of Hearings and Appeals has determined that this rule is not a significant rule because it does not (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy; a sector of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency; (3) Materially alter the budgetary impact on entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive order.

Public Law 96–354, "Regulatory Flexibility Act"

The Director of the Defense Office of Hearings and Appeals has certified that this rule does not have a significant economic impact on a substantial number of small entities because this rule affects members of the Uniformed Services, Federal employees and transportation carriers and provides procedures by which their claims against the United States will be adjudicated. The same minimal requirements for submitting a claim are applicable to members and transportation carriers.

Public Law 96–511, "Paperwork Reduction Act"

The Director of the Defense Office of Hearings and Appeals has certified that this rule does not impose information collection requirements.

Section 202, Public Law 104–4, "Unfunded Mandates Reform Act".

The Director of the Defense Office of Hearings and Appeals has certified that this rule does not involve a Federal Mandate that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more and that such rulemaking will not significantly or uniquely affect small governments.

Executive Order 13132, "Federalism"

The Director of the Defense Office of Hearings and Appeals has certified that this rules does not have federalism implications. This rule does not have substantial direct affects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

List of Subjects in 32 CFR Part 282

Administrative practice and procedure, Armed forces, Claims.

Accordingly, 32 CFR part 282 is proposed to be added to subchapter M to read as follows:

PART 282—PROCEDURES FOR SETTLING PERSONNEL AND GENERAL CLAIMS AND PROCESSING ADVANCE DECISION REQUESTS

Sec.

282.1 Purpose.
282.2 Applicability.
282.3 Definitions.
282.4 Policy.
282.5 Responsibilities and functions.
282.5 Submitting a claim.
282.7 Processing a claim.
282.8 Appeals.
282.9 Disposition of claims upon settlement in general.
282.10 Requests for an advance decision.
282.11 Publication.
Appendix A to Part 282—Claims Description
Appendix B to Part 282—Submitting a Claim
Appendix C to Part 282—Processing a Claim
Appendix D to Part 282—Appeals
Appendix E to Part 282—Requests for an Advance Decision Affecting a Claim

Authority: 5 U.S.C. 552a; 10 U.S.C. 2575, 2771, 4712, 9712; 24 U.S.C. 420; 31 U.S.C. 3529, 3702; 32 U.S.C. 714; 37 U.S.C. 554.

§ 282.1 Purpose.

This part implements policy under 32 CFR part 281 and prescribes procedures for processing and settling personnel and general claims under 31 U.S.C. 3702, 10 U.S.C. 2575, 10 U.S.C. 2771, 24 U.S.C. 420, 10 U.S.C. 4712, 10 U.S.C. 9712, 37 U.S.C. 554, 32 U.S.C. 714 and for processing requests for an advance decision under 31 U.S.C. 3529 related to those personnel and general claims.

§ 282.2 Applicability.

This part applies to:

(a) The Office of the Secretary of Defense, the Military Departments, the Chairman of the Joint Chiefs of Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities within the Department of Defense (hereafter referred to collectively as "the DoD Components").

(b) The Coast Guard, when it is not operating as a Service in the Navy, and the Commissioned Corps of the Public Health Service and the National Oceanic and Atmospheric Administration, to the extent of the authority provided by law or delegated by the Director, Office of Management and Budget (hereafter referred to collectively as "the non-DoD Components").

(c) Certain claim settlement and advance decision functions that, by statute or delegation, are vested in the Department of Defense or the Secretary of Defense. Appendix A to this part describes the claims included under these functional authorities.

§ 282.3 Definitions.

(a) *Armed Forces.* The Army, the Navy, the Air Force, the Marine Corps, and the Coast Guard.

(b) *Claim.* A demand for money or property under one of the following statutes: 31 U.S.C. 3702, 10 U.S.C. 2575, 10 U.S.C. 2771, 24 U.S.C. 420, 10 U.S.C. 4712, 10 U.S.C. 9712, 37 U.S.C. 554, or 32 U.S.C. 714.

(c) *Committee.* The person or persons invested, by order of a proper court, with the guardianship of a minor or incompetent person and/or the estate of a minor or incompetent person.

(d) *Component concerned.* The Component from whose activity a claim arose.

(e) *Final action.* A finding by the appropriate official under this part concerning a claim from which there is not right to appeal or request reconsideration, or concerning which the time limit prescribed in this part for submitting an appeal or request for reconsideration has expired without such a submission.

(f) *Member.* A member or former member of the Uniformed Services.

(g) *Secretary concerned.* The Secretary of the Army, with respect to matters concerning the Army. The Secretary of the Navy, with respect to matters concerning the Navy, the Marine Corps, and the Coast Guard when it is operating as a Service in the Navy. The Secretary of the Air Force, with respect to matters concerning the Air Force. The Secretary of Transportation, with respect to matters concerning the Coast Guard when it is not operating as a Service in the Navy. The Secretary of Commerce, with respect to matters concerning the NOAA. The Secretary of Health and Human Services, with respect to matters concerning the PHS.

(h) *Settlement.* A claim and the amount due that is administratively determined to be valid.

(i) *Uniformed Services.* The Army, the Navy, the Air Force, the Marine Corps, the Coast Guard, and the Commissioned Corps of the PHS and the NOAA.

§ 282.4 Policy.

It is DoD policy that claims shall be processed and settled and advanced decisions rendered in accordance with all pertinent statutes and regulations, and after consideration of other relevant authorities.

§ 282.5 Responsibilities and functions.

(a) The *General Counsel of the Department of Defense*, or designee, shall:

(1) Upon the request of the Director, DOHA, consult on, or render legal opinions concerning, questions of law that arise in the course of the performance of the Director's responsibilities under paragraph (b) of this section.

(2) Render advance decisions under 31 U.S.C. 3529 and oversee the submission of requests for an advance decision arising from the activity of a DoD Component that are addressed to officials outside DoD in accordance with this part.

(b) The *Director, Defense Office of Hearings and Appeals (DOHA)*, or designee, under the General Counsel of the Department of Defense (as the Director, Defense Legal Services Agency), shall:

(1) Consider, and grant or deny, a request by the Secretary concerned under 31 U.S.C. 3702(e) to waive the time limit for submitting certain claims in accordance with 32 CFR part 281 and this part.

(2) Consider appeals from an initial determination, and affirm, modify, reverse, or remand the initial determination in accordance with 32 CFR part 281, this part, and relevant DoD Office of General Counsel opinions.

(c) The *House of the DoD Components*, or designees, shall:

(1) Process claims under 31 U.S.C. 3702, 10 U.S.C. 2575, 10 U.S.C. 2771, 24 U.S.C. 420, 10 U.S.C. 4712, 10 U.S.C. 9712, 37 U.S.C. 554, and 32 U.S.C. 714 in accordance with this part.

(2) Ensure that requests for an advance decision that originate in the Component are prepared and submitted in accordance with this part.

(3) Pay claims as provided in a final action in accordance with this part.

(d) The *Heads of the Non-DoD Components*, or designees, with respect to claims arising from the Component's activity under references 31 U.S.C. 3702, 10 U.S.C. 2575, 10 U.S.C. 2771, or 37 U.S.C. 554, shall:

(1) Process claims in accordance with this part.

(2) Ensure that requests for an advance decision that originate in the Component are prepared and submitted in accordance with this part.

(3) Pay claims as provided in a final action in accordance with this part.

§ 282.6 Submitting a claim.

The procedures a claimant must follow to submit a claim are at Appendix B to this part

§ 282.7 Processing a claim.

The procedures a Component must follow in processing a claim are at Appendix C to this part.

§ 282.8 Appeals.

The procedures for appealing findings in initial determinations are at Appendix D to this part.

§ 282.9 Disposition of claims upon settlement in general.

(a) The appropriate official for the Component concerned shall pay a claim in accordance with the final action concerning the claim.

(b) Where state law requires, a committee must be appointed for a minor or incompetent person in accordance with state law before payment may be made.

§ 282.10 Requests for an advance decision.

Procedures for requesting an advance decision under 31 U.S.C. 3529 concerning the propriety of a payment or voucher certification related to claims addressed in this part are at Appendix E to this part.

§ 282.11 Publication.

In accordance with 5 U.S.C. 552a, the Director, DOHA, or designee, shall make redacted copies of responses to request for reconsideration and advance decisions by the General Counsel of the Department of Defense, or designee, available for public inspection and copying at DOHA's public reading room and on the worldwide web.

Appendix A to Part 282—Claims Description

The Secretary of Defense is authorized to perform the claims settlement and advance decision functions for claims under the following statutes:

(a) 31 U.S.C. 3702, concerning claims in general when there is no other settlement authority specifically provided for by law.[1]

(b) 10 U.S.C. 2575, concerning the disposition of unclaimed personal property on a military installation.

(c) 10 U.S.C. 2771, concerning the final settlement of accounts of deceased members of the armed forces (but not the National Guard).[2]

(d) 24 U.S.C. 420, 10 U.S.C. 4712, 10 U.S.C. 9712, concerning the disposition of the effects of deceased residents of the Armed Forces Retirement Home.

(e) 37 U.S.C. 554, concerning the sale of personal property of members of the Uniformed Services who are in a missing status.

(f) 32 U.S.C. 714, concerning the final settlement of accounts of deceased members of the National Guard.[3]

Appendix B to Part 282—Submitting a Claim

(a) *Who Moy Submit a Claim.* Any person ("claimant") may submit a claim who has a demand for money or property against the government under 31 U.S.C. 3702, 10 U.S.C.

[1] This includes claims involving Uniformed Services members' pay, allowances, travel, transportation, payment for unused accrued leave, retired pay, and survivor benefits, and claims for refund by carriers for amounts collected from them for loss or damage to property they transported at Government expense; also included are other claims arising from the activity of a DoD Component. However, the Director of the Office of Personnel Management performs these functions for claims involving civilian employees' compensation and leave; and the Administrator of General Services performs these functions for claims involving civilian employees' travel, transportation, and relocation expenses.

[2] Claims under this statute are actually settled under the authority in 31 U.S.C. 3702, because there is no specific settlement authority in the statute.

[3] Claims under this statute are actually settled under the authority in 31 U.S.C. 3702, because there is no specific settlement authority in the statute.

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2575, 10 U.S.C. 2771, 24 U.S.C. 420, 10 U.S.C. 4712, 10 U.S.C. 9712, 37 U.S.C. 554, or 32 U.S.C. 714.

(b) *Where to Submit a Claim.* A claimant must submit a claim to the Component concerned [4] (that is, to the Component from whose activity the claim arose) in accordance with guidance provided by that Component. A claim that is submitted somewhere other than to the Component concerned does not stop the running of the time limit in paragraph (f) of this Appendix. It is the claimant's responsibility to submit a claim properly.

(c) *Format of a Claim.* A claimant must submit a claim in the format prescribed by the Component concerned. It must be written and be signed by the claimant (in the case of a claim on behalf of a minor or incompetent person, there are additional requirements explained at paragraph (e) of this Appendix) or by the claimant's authorized agent or attorney (there are additional requirements explained at paragraph (d) of this Appendix). In addition, it should:

(1) Provided the claimant's social security number or Employee Identification number.

(2) Provide the claimant's mailing address.

(3) Provide the claimant's telephone number.

(4) State the amount claimed.

(5) State the reasons why the government owes the claimant that amount.

(6) Have attached copies of documents referred to in the claim.

(7) Include or have attached statements (that are attested to be true and correct to the best of the individual's knowledge and belief) of the claimant or other persons in support of the claim.

(d) *Claim Submitted by Agent or Attorney.* In addition to the requirements in paragraph (c) of this Appendix, a claim submitted by the claimant's agent or attorney must include or have attached a duly executed power of attorney or other documentary evidence of the agent's or attorney's right to act for the claimant.

(e) *Claim Submitted on Behalf of a Minor or Incompetent Person.* In addition to the requirements in paragraph (c) of this Appendix:

(1) If a guardian or committee has not been appointed, a claim submitted on behalf of a minor or incompetent person must:

(i) State the claimant's relationship to the minor or incompetent person.

(ii) Provide the name and address of the person having care and custody of the minor or incompetent person.

(iii) Include an affirmation that any moneys received will be applied to the use and benefit of the minor or incompetent person, and that the appointment of a guardian or committee is not contemplated.

(2) If a guardian or committee has been appointed, a claim on behalf of a minor or incompetent person must include or have attached a certificate of the court showing the appointment and qualification of the guardian or committee.

(f) *When to Submit a Claim.* A claimant must submit a claim so that it is received by the Component concerned within the time limit allowed by statute.

(1) Claimants must submit claims within these statutory time limits.[2]

(i) Claims on account of Treasury checks under 31 U.S.C. 3702(c) must be received within 1 year after the date of issuance.

(ii) Claims under 31 U.S.C. 3702(b) (most other claims, including claims under 10 U.S.C. 2771 and 32 U.S.C. 714) must be received within 6 years of the date the claim accrued. (A claim accrues on the date when everything necessary to give rise to the claim has occurred.) The time limit for claims of members of the Armed Forces that accrue during war or within 5 years before war begins, is 6 years from the date the claim accrued or 5 years after peace is established, whichever is later.

(iii) Claims under 10 U.S.C. 2575(d)(3) must be received within 5 years after the date of the disposal of the property to which the claim relates.

(iv) Claims under 24 U.S.C. 420(d)(1), 10 U.S.C. 4712, and 10 U.S.C. 9712 must be received within 6 years after the death of the deceased resident.

(v) Claims under 37 U.S.C. 554(h) must be received before the end of the 5-year period from the date the net proceeds from the sale of the missing person's personal property are covered into the Treasury.

(2) The time limits set by statute may not be extended or waived.[3] Although the issue of timeliness normally will be raised upon initial submission (as explained at Appendix C to this part, paragraph (b)), the issue may be raised at any point during the claim settlement process.

(g) *Claimant Must Prove the Claim.* The Claimant must prove, by clear and convincing evidence, on the written record that the United States is liable to the claimant for the amount claimed.

Appendix C to Part 282—Processing a Claim

(a) *Initial Component Processing.* Upon receipt of a claim, the Component concerned[1] must:

(1) Date stamp the claim on the date received.

(2) Determine whether the claim was received within the required time limit (time limits are summarized at Appendix B to this part, paragraph (f)), and follow the procedures in paragraph (b) of this Appendix if the claim was not timely.

(3) Investigate the claim.

(4) Decide whether the claimant provided clear and convincing evidence that proves all or part of the claim.

(5) Issue an initial determination that grants the claim to the extent proved or denies the claim, as appropriate. The initial determination must state how much of the claim is granted and how much is denied, and must explain the reasons for the findings.

(6) Notify the claimant of the initial determination. The Component must send the claimant a copy of the initial determination and a notice that explains:

(i) The action the Component will take on the claim, if the initial determination is or becomes a final action (the finality of an initial determination is explained at paragraph (c) of this Appendix); and

(ii) The procedures the claimant must follow to appeal an initial determination that denies all or part of the claim (those appeal procedures are explained at Appendix D to this part), if applicable.

(b) *Untimely Claims.* When the Component concerned determines that a claim was not received within the statutory time limit, the component must make an initial determination of untimely receipt.

(1) The initial determination must cite the applicable statute and explain the reasons for the finding of untimely receipt. The Component must send the inititial determination to the claimant with a notice that:

(i) States the claim was not received within the statutory time limit and, therefore, may not be considered, unless that finding is reversed on appeal, and explains how the claimant may appeal the finding (those appeal procedures are explained at Appendix D to this part); and either

(ii) If the claim does not qualify under 31 U.S.C. 3702(e), states that the statutory time limit may not be extended or waived; or

(iii) If the claim does qualify under 31 U.S.C. 3702(e), states that the claim may be further considered only if the time limit is waived, and explains how the claimant may apply for a Secretarial request for waiver (paragraph (d) of this Appendix explains which claims qualify and the procedures for Secretarial requests).

(2) Except in cases where a claimant has applied under paragraph (d) of this Appendix to have the Secretary concerned request a waiver of the time limit, the Component must return the claim to the claimant when the initial determination becomes a final action with a notice that the finding in the initial determination is final and, therefore, the claim may not be considered. If the claim qualifies under 31 U.S.C. 3702, the notice must also state that the claimant may resubmit the claim with an application under paragraph (d) of this Appendix.

(c) *Finality of an Initial Determination.* An initial determination that grants all of a claim is a final action when it is issued. Otherwise, an initial determination (including one of untimely receipt) is a final action of the Component concerned does not receive an appeal within 30 days of the date of the initial determination (plus any extension of up to 30 additional days granted by the Component concerned for good cause shown).

(d) *Secretarial Requests for Waiver of Certain Time Limits.* When the Component concerned determines that a claim was not received within the statutory time limit is 31 U.S.C. 3702(b) or (c), the claimant may apply to have the Secretary concerned request a waiver of the time limit. Waiver is permitted only for those claims that satisfy the requirements of 31 U.S.C. 3702(e).[2] This provision confers no right or entitlement on a claimant. It is solely within the discretion of the Secretary concerned whether to request such a waiver in a particular case.

(1) The claim must contain the information and documents that are generally required for claims (those requirements are explained at Appendix B to this part).

(2) The Component concerned must investigate the claim and make an initial determination concerning the merits of the claim (these are the actions required in paragraphs (b), (c), and (d) of this Appendix.

(3) If the initial determination grants all or part of the claim, and if the Secretary concerned agrees with the determination, the Secretary may request that the time limit be waived. Requests must be in writing and signed by the Secretary concerned. (This authority may not be delegated below the level of Under Secretary.)

(i) The Secretary concerned shall forward the request to: Defense Office of Hearings and Appeals, Claims Division, P.O. Box 3656, Arlington, VA 22203–1995.

(ii) The entire record concerning the claim, including the initial determination, must be attached to the request.

(4) The Director, DOHA, must review the request and the written record and must:

(i) Grant the request and waive the statutory time limit, if the Director finds that all or part of the claim has been proven. The Director may also modify the finding concerning the amount of the claim that has been proven.

(ii) Deny the request, if the Director finds that no part of the claim has been proven.

(iii) Notify the Secretary concerned and the claimant of the decision and the reasons for the findings.

(5) In the event the Director, DOHA, denies the request, or grants the request but modifies the finding concerning the amount of the claim proven, the Secretary concerned or the claimant may request reconsideration (the procedures are explained at Appendix D to this part). The Director's decision is a final action if the Director does not receive a request for reconsideration within 30 days of the date of the Director's decision (plus any extension of up to 30 additional days granted by the Director for good cause shown).

Appendix D to Part 282—Appeals

(a) *Who May Appeal.* A claimant may appeal if an initial determination denies all or part of a claim or finds that the claim was not received by the Component concerned within the time limit required by statute; however, the decision of the Secretary concerned not to request waiver of the time limit is not appealable except to the Secretary concerned, if the Secretary as a matter of discretion provides for such appeals.

(b) *When and Where to Submit an Appeal.* A claimant's appeal must be received by the Component concerned [1] within 30 days of the date of the initial determination. The Component may extend this period for up to an additional 30 days for good cause shown. No appeal may be accepted after this time has expired. An appeal sent directly to the Defense Office of Hearings and Appeals (DOHA) [2] is not properly submitted.

(c) *Content of an Appeal.* No specific format is required; however, the appeal must be written and be signed by the claimant, the claimant's authorized agent, or the claimant's attorney. It also should:

(1) Provide the claimant's mailing address;

(2) Provide the claimant's telephone number;

(3) Provide the claimant's social security number or Employer Identification Number, if the claimant is a business firm;

(4) State the amount claimed on appeal, or that the appeal is from a finding of untimely receipt, whichever applies;

(5) Identify specific:

(i) Errors or omissions of material and relevant fact,

(ii) Legal considerations that were overlooked or misapplied, and

(iii) Findings that were arbitrary, capricious, or an abuse of discretion;

(6) Present evidence of the correct or additional facts alleged;

(7) Explain the reasons the findings should be reversed or modified;

(8) Have attached copies of documents referred to in the appeal; and

(9) Include or have attached statements (that are attested to be true and correct to the best of the individual's knowledge and belief) by the claimant or other persons in support of the appeal.

(d) *Component's Review.* The Component concerned must review a claimant's appeal, and affirm, modify, or reverse the initial determination.

(1) If the appeal concerns the denial of all or part of the claim and the Component grants the entire claim, or grants the claim to the extent requested in the appeal, the Component must notify the claimant in writing and explain the action the Component will take on the claim. This is a final action.

(2) If the appeal concerns the untimely receipt of the claim and the Component determines that the claim was received within the time limit required by statute, the Component must notify the claimant in writing and process the claim on the merits.

(3) In all other cases, the Component must forward the appeal to DOHA in accordance with paragraph (e) of this Appendix. If the appeal concerns an initial determination of untimely receipt, the Component should not investigate, or issue an initial determination concerning, the merits of the claim before forwarding the appeal. The Component must prepare a recommendation and administrative report (as explained in paragraph (f) of this Appendix). The Component must send a copy of the administrative report to the claimant, with a notice that the claimant may submit a rebuttal to the Component (as explained in paragraph (g) of this Appendix).

(e) *Submission of Appeal to DOHA.* No earlier than 31 days after the date of the administrative report, or the day after the claimant's rebuttal period, as extended, expires, the Component must send the entire record along with the recommendation and the administrative report required by paragraph (f) of this Appendix to: Defense Office of Hearings and Appeals, Claims Division, P.O. Box 3656, Arlington, Virginia 22203–1995. The record sent to DOHA shall include specific identification of any major policy issue(s) and a statement as to whether the amount in controversy exceeds $100,000 either in the instant claim or in the aggregate for directly related claims. If the amount in controversy exceeds $100,000, a full description of the financial impact shall be provided.

(f) *Recommendation and Administrative Report.* The recommendation and administrative report required by paragraph (d) of this Appendix must include:

(1) The name of any Uniformed Service member or employee involved;

(2) The Component's file reference number;

(3) The claimant's social security number or Employer Identification Number, if the claimant is a business firm;

(4) The Component's recommendation (and the reasons for it) for the disposition of the claim;

(5) Relevant and material documents (such as correspondence, business records, and witness statements), as attachments; and

(6) Complete copies of regulations, instructions, memorandums of understanding, tariffs and/or tenders, solicitations, contracts, or rules cited by the claimant or the Component, if a copy has not been previously provided, or is not available readily via electronic means.

(g) *Claimant's Rebuttal.* A claimant may submit a written rebuttal, signed by the claimant or the claimant's agent or attorney, in response to the recommendation and administrative report. The rebuttal must be submitted to the Component within 30 days of the date of the recommendation and administrative report. The Component may grant an extension of up to an additional 30 days for good cause shown. The rebuttal should include:

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[4] Depending on the context, the term "Component concerned" or "Component," as used in this enclosure, means the official designated by the head of the Component concerned or by Component regulations to perform the function or take the action indicated.

[2] Under the Soldiers' and Sailors' Civil Relief Act of 1940, periods of active military service are not included in calculating whether a claim has been received within these statutory time limits.

[3] There is an exception for certain claims described in 31 U.S.C. 3702(e). In those cases, the Secretary of Defense may, upon the request of the Secretary concerned, waive the time limits in paragraphs (f)(1)(i) and (f)(1)(ii) of this Appendix. Appendix C of this part, paragraph (d), explains which claims qualify and the procedures that apply.

[1] Depending on the context, the term "Component concerned" or "Component," as used in this Appendix, means the official designated by the head of the Component concerned or by Component regulations to perform the function or take the action indicated.

[2] When this Instruction was issued, 31 U.S.C. 3702(e) allowed time limit waivers only for claims up to $25,000 for either pay, allowances, and payment for unused accrued leave under title 37, U.S.C., or retired pay under title 10, U.S.C. Since 31 U.S.C. 3702(e) could be amended at any time to modify these restrictions, always consult the current provisions of that Section to determine which claims are included.

[1] Depending on the context, the term "Component concerned" or "Component," as used in this Appendix, means the official designated by the head of the Component concerned or by Component regulations to perform the function or take the action indicated.

[2] Depending on the context, "DOHA" as used in this Enclosure, means the Director, Defense Office of Hearings and Appeals, or the DOHA Claims Appeals Board or other designee designated by the Director to perform the function or take the action indicated.

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(1) An explanation of the points and reasons for disagreeing with the report;
(2) The Component's file reference number;
(3) Any documents referred to in the rebuttal; and
(4) Statements (that are attested to be true and correct to the best of the individual's knowledge and belief) by the claimant or other persons in support of the rebuttal.

(h) *Action by the Component.* The Component must:
(1) Date stamp the claimant's rebuttal on the date it is received;
(2) Send the entire record to DOHA, but no earlier than 31 days after the date of the report, or the day after the claimant's rebuttal period, as extended, expires (as explained in paragraph (e) of this Appendix).

(i) *DOHA Appeal Decision.* Except as provided in paragraph (p) of this Appendix, DOHA must base its decision on the written record, including the recommendation and administrative report and any rebuttal by the claimant. DOHA shall coordinate its decision in advance with the Office of the General Counsel of the Department of Defense when the appeal decision affects:
(1) Major policy issues;
(2) A claim that is quasi-contractual in nature and arises from the activity of a DoD Component, but the claim was not settled under usual acquisition procedures; or
(3) When the amounts in controversy exceed $100,000, either for the instant claim or in the aggregate for directly related claims. The written decision must:
(i) Affirm, modify, reverse, or remand the Component's determination (and, if the issue is untimely receipt and there is a finding that the claim was timely received, may either consider and decide the claim on the merits or return the claim to the Component concerned for investigation and initial determination on the merits);
(ii) State the amount of the claim that is granted and the amount that is denied and/or state that the claim was or was not received within the statutory time limit, as appropriate; and
(iii) Explain the reasons for the decision.

(j) *Processing After the Appeal Decision.* After issuing an appeal decision, DOHA must:
(1) Send the claimant the decision and notify the claimant of:
(i) The appropriate Component action on the claim as a consequence of the decision, if it is or becomes a final action (as explained in paragraph (k) of this Appendix); and
(ii) The procedures under this enclosure to request reconsideration (as explained in paragraphs (l) through (n) of this Appendix), if the decision does not grant the claim to the extent requested, or does not contain a finding of timely receipt, as the case may be.
(2) Notify the Component concerned of the decision, and of the appropriate Component on the claim as a consequence of the decision.

(k) *Finality of a DOHA Appeal Decision.* An appeal decision that finds that the claim was timely received is a final action when issued. Otherwise, an appeal decision is a final action if DOHA does not receive a request for reconsideration within 30 days of the date of the appeal decision (plus any extension of up to 30 additional days granted by DOHA for good cause shown). NOTE: In the case of a DOHA appeal decision issued before [the effective date of this part] that denied all or part of the claim, a request for reconsideration by the General Counsel of the Department of Defense, or designee, may be submitted within 60 days of [the effective date of this part]. The General Counsel of the Department of Defense, or designee, shall consider such requests and affirm, modify, reverse, or remand the DOHA appeal decision. Requests for reconsideration by the General Counsel of the Department of Defense, or designee, received more than 60 days after [the effective date of this part] will not be accepted. Requests must be submitted to the address in paragraph (e) of this Appendix. The provisions of paragraph (n) of this Appendix apply.

(l) *Who May Request Reconsideration.* A claimant or the Component concerned, or both, may request reconsideration of a DOHA appeal decision.

(m) *When and Where to Submit a Request for Reconsideration.* DOHA must receive a request for reconsideration within 30 days of the date of the appeal decision.[3] DOHA may extend this period for up to an additional 30 days for good cause shown. No request for reconsideration may be accepted after this time has expired. A request for reconsideration must be sent to DOHA at the address in paragraph (e) of this Appendix.

(n) *Content of a Request for Reconsideration.* The requirements of paragraph (c) of this Appendix, concerning the contents of an appeal, apply to requests for reconsideration.

(o) *DOHA's Review of a Request for Reconsideration.*
(1) No earlier than 31 days after the date of the appeal decision, or the day after the last period for submitting a request, as extended, expires, DOHA must:
(i) Consider a request or requests for reconsideration;
(ii) Affirm, modify, reverse, or remand the appeal decision (and, if the issue is untimely receipt and there is a finding that the claim was timely received, may either consider and decide the claim on the merits or return the claim to the Component concerned for investigation and initial determination on the merits);
(iii) Prepare a response that explains the reasons for the finding.
(iv) Send the response to the claimant and the Component concerned and notify both of the appropriate action on the claim.
(2) The response is a final action. It is precedent in the consideration of all claims covered by this part unless otherwise stated in the document.

(p) *Consideration of Appeals and Requests for Reconsideration.* When considering an appeal or request for reconsideration, DOHA may:
(1) Consider additional evidence not included in the record as presented. The claimant and the Component concerned must be provided a copy of the additional evidence and must be given a reasonable time to comment.
(2) Take administrative notice of matters that are generally known or are capable of confirmation by resort to sources whose accuracy cannot reasonably be questioned.
(3) Remand a matter to the Component with instructions to provide additional information.

[3] With respect to appeal decisions issued before [the effective date of this part], the request for reconsideration by DOHA must be received within 30 days of [the effective date of this part].

Appendix E to Part 282—Requests for an Advance Decision Affecting a Claim

(a) *Who May Request an Advance Decision.* A disbursing or certifying official or the head of a Component may request an advance decision on a question involving:
(1) A payment the disbursing official or head of the Component will make; or
(2) A voucher presented to a certifying official for certification.

(b) *Who May Render an Advance Decision.* The following officials are authorized to render advance decision concerning the matters indicated:
(1) The Secretary of Defense for requests involving claims under:
(i) 31 U.S.C. 3702 for Uniformed Services members' pay, allowances, travel, transportation, retired pay, and survivor benefits, and by carriers for amounts collected from them for loss or damage to property they transported at Government expense.
(ii) 31 U.S.C. 3702 that are not described in paragraph (b)(1)(i) of this Appendix and that arise from the activity of a DoD Component, when there is not other settlement authority specifically provided by law.
(iii) 10 U.S.C. 2575, 10 U.S.C. 2771, 24 U.S.C. 420, 10 U.S.C. 4712, 10 U.S.C. 9712, 37 U.S.C. 554, and 32 U.S.C. 714. (Appendix A to this part describes these claims.)
(2) The Director of the Office of Personnel Management for requests involving claims for civilian employees' compensation and leave.
(3) The Administrator of General Services for requests involving claims for civilian employees' travel, transportation, and relocation expenses.

(c) *Where to Submit a Request.* All requests described in paragraph (b)(1) of this Appendix and all other requests arising from the activity of a DoD Component (even if addressed to an official outside the Department of Defense) must be sent through the General Counsel of the Component concerned to: General Counsel, Department of Defense, 1600 Defense Pentagon, Washington, DC 20301–1600.

(d) *Content of a Request.* Requests for an advance decision must:
(1) Specifically request an advance decision pursuant to 31 U.S.C. 3529.
(2) Describe all the relevant facts.
(3) Explain the reasons (both factual and legal) the requester considers the proposed payment to be questionable.
(4) Have attached vouchers, if any, and copies of all other relevant documents relating to the proposed payment.
(5) Have attached a legal memorandum from the General Counsel of the Component concerned that discusses the legality of the proposed payment under the circumstances presented in the request.

(6) Comply with any other requirements established by an advance decision authority outside DoD.

(e) *Advance Decisions.* The General Counsel of the Department of Defense, or designee, must take action under paragraphs (e)(1), (e)(2), or (e)(3) of this Appendix, whichever applies.
(1) If the request is described in paragraph (b)(1) of this Appendix, the General Counsel of the Department of Defense, or designee, must review the request and issue an advance decision, unless the General Counsel of the Department of Defense, or designee, elects to proceed under paragraph (e)(3) of this Appendix.
(i) The General Counsel of the Department of Defense, or designee, must send the decision, through the General counsel of the Component concerned, to the requester, and must send a copy of the decision to the Director, Defense Office of Hearings and Appeals.
(ii) The decision is controlling in the case; the reliance of certifying and disbursing officials on it in their disposition of the case is evidence that those officials have exercised due diligence in the performance of their duties.
(iii) An advance decision is precedent in similar claims under this Instruction unless otherwise stated in the decision.
(2) If the request is not described in paragraph (b)(1) of this Appendix, the General Counsel of the Department of Defense, or designee, must review the request and either:
(i) forward the request to the appropriate advance decision authority and notify the requester of that action; or
(ii) Return the request, through the General Counsel of the Component concerned, to the requester, with a memorandum explaining that under existing legal authorities a request for an advance decision is not necessary. After considering the memorandum, the requester may resubmit the request, through the General Counsel of the component concerned, to the General Counsel of the Department of Defense, or designee. The General Counsel of the Department of Defense, or designee, must forward the request to the appropriate advance decision authority, and notify the requester of that action.
(3) If the request is described in paragraph (b)(1) of this Appendix, and the claim is for not more than $250, the General Counsel of the Department of Defense, or designee, may refer the request to the General Counsel of the Department of Defense, or designee, may refer the request to the General Counsel, Defense Finance and Accounting Service (DFAS). The General Counsel, DFAS, shall review the request and issue an advance decision.
(i) The General counsel, DFAS, must send the decision, through the General Counsel of the Component concerned, to the requester, and must send a copy of the decision to the General Counsel of the Department of Defense, or designee.
(ii) The decision is controlling in the case; the reliance of certifying and disbursing officials on it in their disposition of the case is evidence that those officials have exercised due diligence in the performance of their duties.
(iii) An advance decision issued by the General Counsel, DFAS, under this paragraph is not precedent in similar claims under this part.

Dated: November 4, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–28727 Filed 11–13–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 283

RIN 0790–AG90

Waiver of Debts Resulting From Erroneous Payments of Pay and Allowances

AGENCY: Defense Office of Hearings and Appeals, Office of the General Counsel of the Department of Defense.

ACTION: Proposed rule.

SUMMARY: This rule proposes policy and assigns responsibilities for considering applications for the waiver of debts resulting from erroneous payments of pay and allowances (including travel and transportation allowances) to or on behalf of members of the Uniformed Services and civilian Department of Defense (DoD) employees. The Legislative Branch Appropriations Act of 1996 transferred to the Director of the Office of Management and Budget (OMB) the Comptroller General's authority to settle claims. The OMB Director subsequently delegated some of these authorities to the Department of Defense. Later, the General Accounting Office Act of 1996 codified many of these delegations to the Secretary of Defense and others and transferred to the OMB Director the authority of the Comptroller General to waive uniformed service member and employee debts arising out of the erroneous payment of pay or allowances exceeding $1,500. The OMB Director subsequently delegated the authority to waive such debts of uniformed service members and DoD employees to the Secretary of Defense. The Secretary of Defense further delegated his claims settlement and waiver authorities to the General Counsel. This rule implements the reassignment of the Comptroller General's former duties within the Department of Defense with little impact on the public.

DATES: Consideration will be given to all comments received on or before January 13, 2003.

ADDRESSES: Send comments to the Defense Office of Hearings and Appeals, ATTN: Claims Division, P.O. Box 3656, Arlington, VA 22203–1995.

FOR FURTHER INFORMATION CONTACT: Michael Hipple, 703–696–8510.

SUPPLEMENTARY INFORMATION:

Executive Order 12866, "Regulatory Planning and Review"

The Director of the Defense Office of Hearings and Appeals has determined that this rule is not a significant rule because it does not: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy; a sector of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency; (3) materially alter the budgetary impact on entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Public Law 96–354, "Regulatory Flexibility Act"

The Director of the Defense Office of Hearings and Appeals has certified that this rule does not have a significant economic impact on a substantial number of small entities because this rule affects members of the Uniformed Services and Federal employees and provides procedures by which their claims against the United States will be adjudicated.

Public Law 96–511, "Paperwork Reduction Act"

The Director of the Defense Office of Hearings and Appeals has certified that this rule does not impose information collection requirements.

Section 202, Public Law 104–4, "Unfunded Mandates Reform Act"

The Director of the Defense Office of Hearings and Appeals has certified that this rule does not involve a Federal Mandate that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more and that such rulemaking will not significantly or uniquely affect small governments.

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Executive Order 13132, "Federalism"

The Director of the Defense Office of Hearings and Appeals has certified that this rule does not have federalism implications. This rule does not have substantial direct affects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

List of Subjects in 32 CFR part 283

Administrative practice and procedure, Armed forces, Wages.

Accordingly, 32 CFR part 283 is proposed to be added to subchapter M to read as follows:

PART 283—WAIVER OF DEBTS RESULTING FROM ERRONEOUS PAYMENTS OF PAY AND ALLOWANCES

Sec.
283.1 Purpose.
283.2 Applicability.
283.3 Definitions.
283.4 Policy.
283.5 Responsibilities and functions.

Authority: 5 U.S.C. 5584; 10 U.S.C. 2774; 32 U.S.C. 716.

§ 283.1 Purpose.

This part establishes policy and assigns responsibilities for considering applications for the waiver of debts resulting from erroneous payments of pay and allowances (including travel and transportation allowances) to or on behalf of members of the Uniformed Services and civilian Department of Defense (DoD) employees under 10 U.S.C. 2774, 32 U.S.C. 716, and 5 U.S.C. 5584.

§ 283.2 Applicability.

This part applies to:

(a) The Office of the Secretary of Defense, the Military Departments, the Chairman of the Joint Chiefs of Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all organizational entities within the Department of Defense (hereafter referred to collectively as "the DoD Components").

(b) The Coast Guard, when it is not operating as a Service in the Navy, and the Commissioned Corps of the Public Health Service (PHS) and the National Oceanic and Atmospheric Administration (NOAA), to the extent of the authority provided by law or delegated by the Director, Office of Management and Budget (hereafter referred to collectively as "the non-DoD Components").

§ 283.3 Definitions.

(a) *Debt.* An amount an individual owes the government as the result of erroneous payments of pay and allowances (including travel and transportation allowances) to or on behalf of members of the Uniformed Services or civilian DoD employees.

(b) *Erroneous Payment.* A payment that is not in strict conformity with applicable laws or regulations.

(c) *Uniformed Services.* The Army, the Navy, the Air Force, the Marine Corps, the Coast Guard, and the Commissioned Corps of the PHS and the NOAA.

(d) *Waiver Application.* A request that the United States relinquish its claim against an individual for a debt resulting from erroneous payments of pay or allowances (including travel and transportation allowances) under 10 U.S.C. 2774, 32 U.S.C. 716, or 5 U.S.C. 5584.

§ 283.4 Policy.

It is Department of Defense policy that:

(a) The officials designated in this Directive exercise waiver authority that, by statute or delegation, is vested in the Department of Defense.

(b) Waiver applications shall be processed in accordance with all pertinent statutes and regulations, and after consideration of other relevant authorities.

§ 283.5 Responsibilities and functions.

(a) The *Head of a Non-DoD Component,* concerning debts resulting from the Component's activity:

(1) Pursuant to 10 U.S.C. 2774, has the authority to deny or grant all or part of a waiver application, if the aggregate amount of the debt is $1,500 or less.

(2) If the aggregate amount of the debt is more than $1,500, may:

(i) Deny a waiver application in its entirety, or

(ii) Refer a waiver application for consideration with a recommendation that all or part of the application be granted, in accordance with procedures promulgated under paragraph (e)(3) of this section.

(b) The *Under Secretary of Defense (Comptroller),* concerning debts (except those described in paragraphs (c) and (d) of this section) resulting from DoD Component activity:

(1) Pursuant to enclosure 2 of DoD Directive 5118.3 [1], has the authority to deny or grant all or part of a waiver application, if the aggregate amount of the debt is $1,500 or less.

(2) If the aggregate amount of the debt is more than $1,500, may:

(i) Deny a waiver application in its entirety, or

(ii) Refer a waiver application for consideration with a recommendation that all or part of the application be granted, in accordance with procedures promulgated under paragraph (e)(3) of this section.

(c) The *Director, Department of Defense Dependents Schools,* concerning debts of civilian employees resulting from that Component's activity:

(1) Pursuant to enclosure 2 of DoD Directive 1342.6 [2], has the authority to deny or grant all or part of a waiver application, if the aggregate amount of the debt is $1,500 or less.

(2) If the aggregate amount of the debt is more than $1,500, may:

(i) Deny a waiver application in its entirety, or

(ii) Refer a waiver application for consideration with a recommendation that all or part of the application be granted, in accordance with procedures promulgated under paragraph (e)(3) of this section.

(d) The *Director, National Security Agency,* concerning debts resulting from that Component's activity:

(1) May deny or grant all or part of a waiver application, if the aggregate amount of the debt is $1,500 or less.

(2) If the aggregate amount of the debt is more than $1,500, may:

(i) Deny a waiver application in its entirety, or

(ii) Refer a waiver application for consideration with a recommendation that all or part of the application be granted, in accordance with procedures promulgated under paragraph (e)(3) of this section.

(e) The *General Counsel of the Department of Defense:*

(1) May deny or grant all or part of a waiver application, if the aggregate amount of a debt is more than $1,500.

(2) May decide appeals in accordance with procedures promulgated under paragraph (e)(3) of this section.

(3) Shall develop overall waiver policies; and promulgate procedures for considering waiver applications, including an initial determination process and a process to appeal an initial determination.

(f) The *Head of a DoD Component* shall:

(1) Consistent with procedures promulgated under paragraph (e)(3) of this section, establish procedures within the Component for the submission of waiver applications relating to debts resulting from the component's activity, which shall be referred to the appropriate official for consideration as set forth in paragraphs (b), (c), (d), or (e) of this section.

(2) Ensure compliance with this part and policies and procedures promulgated under paragraph (e)(3) of this section.

[1] Availability at http://www.dtic.mil/whs/directives.

[2] See footnote to § 283.5(b)(1).

Dated: November 4, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–28728 Filed 11–13–02; 8:45 am]

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DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 284

RIN 0790–AG91

Waiver Procedures for Debts Resulting From Erroneous Payments of Pay and Allowances

AGENCY: Defense Office of Hearings and Appeals, Office of the General Counsel of the Department of Defense.

ACTION: Proposed rule.

SUMMARY: This rule proposes policy and prescribes procedures for considering waiver applications. The Legislative Branch Appropriations Act of 1996 transferred to the Director of the Office of Management and Budget (OMB) the Comptroller General's authority to settle claims. The OMB Director subsequently delegated some of these authorities to the Department of Defense. Later, the General Accounting Office Act of 1996 codified many of these delegations to the Secretary of Defense and others and transferred to the OMB Director the authority of the Comptroller General to waive uniformed service member and employee debts arising out of the erroneous payment of pay or allowances exceeding $1,500. The OMB Director subsequently delegated the authority to waive such debts of uniformed service members and DoD employees to the Secretary of Defense. The Secretary of Defense further delegated his claims settlement and waiver authorities to the General Counsel. This rule implements the reassignment of the Comptroller General's former duties within the Department of Defense with little impact on the public.

DATES: Consideration will be given to all comments received on or before January 13, 2003.

ADDRESSES: Send comments to the Defense Office of Hearings and Appeals, ATTN: Claims Division, P.O. Box 3656, Arlington, VA 22203–1995.

FOR FURTHER INFORMATION CONTACT: Michael Hipple, 703–696–8510.

SUPPLEMENTARY INFORMATION:

Executive Order 12866, "Regulatory Planning and Review"

The Director of the Defense Office of Hearings and Appeals has determined that this rule is not a significant rule because it does not: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy; a sector of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency; (3) materially alter the budgetary impact on entitlement, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Public Law 96–354, "Regulatory Flexibility Act"

The Director of the Defense Office of Hearings and Appeals has certified that this rule does not have a significant economic impact on a substantial number of small entities because this rule affects members of the Uniformed Services and Federal employees and provides procedures by which their claims against the United States will be adjudicated.

Public Law 96–511, "Paperwork Reduction Act"

The Director of the Defense Office of Hearings and Appeals has certified that this rule does not impose information collection requirements.

Section 202, Public Law 104–4, "Unfunded Mandates Reform Act"

The Director of the Defense Office of Hearings and Appeals has certified that this rule does not involve a Federal Mandate that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more and that such rulemaking will not significantly or uniquely affect small governments.

Executive Order 13132, "Federalism"

The Director of the Defense Office of Hearings and Appeals has certified that this rule does not have federalism implications. This rule does not have substantial direct affects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

List of Subjects in 32 CFR Part 284

Administrative practice and procedure, Armed Forces, Wages.

Accordingly, 32 CFR part 284 is proposed to be added to subchapter M to read as follows:

PART 284—WAIVER PROCEDURES FOR DEBTS RESULTING FROM ERRONEOUS PAYMENTS OF PAY AND ALLOWANCES

Sec.
284.1 Purpose.
284.2 Applicability and scope.
284.3 Definitions.
284.4 Policy.
284.5 Responsibilities and functions.
284.6 Standards for waiver determinations.
284.7 Submitting a waiver application.
284.8 Processing a waiver application when the debt is $1500 or less.
284.9 Processing a waiver application when the debt is more than $1500.
284.10 Appeals.
284.11 Refund of repaid debts that are subsequently waived.
284.12 Publication.
Appendix A to Part 284—Standards for Waiver Determinations.
Appendix B to Part 284—Submitting a Waiver Application.
Appendix C to Part 284—Processing a Waiver Application When the Debt is $1500 or less.
Appendix D to Part 284—Processing a Waiver Application When the Debt is More Than $1500.
Appendix E to Part 284—Appeals.

Authority: 5 U.S.C. 552a; 2104, 2105, 5584; 10 U.S.C. 2774; 32 U.S.C. 716

§ 284.1 Purpose.

This part implements policy under 32 CFR part 283 and prescribes procedures for considering waiver applications under 10 U.S.C. 2774, 32 U.S.C. 716, and 5 U.S.C. 5584.

§ 284.2 Applicability and scope.

This part applies to:

(a) The Office of the Secretary of Defense, the Military Departments, the Chairman of the Joint Chiefs of Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the Department of Defense Field Activities, and all other organizational entities within the Department of Defense (hereafter referred to collectively as "the DoD Components").

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(b) The Coast Guard, when it is not operating as a Service in the Navy, and the Commissioned Corps of the Public Health Service (PHS) and the National Oceanic and Atmospheric Administration (NOAA), to the extent of the authority provided by law or delegated by the Director, Office of Management and Budget (hereafter referred to collectively as "the non-DoD Components").

(c) This part applies to waiver applications relating to debts resulting from erroneous payments of pay and allowances (including travel and transportation allowances) to or on behalf of members of the Uniformed Services and civilian DoD employees under 10 U.S.C. 2774, 32 U.S.C. 716, and 5 U.S.C. 5584.

§ 284.3 Definitions.

(a) *Committee.* The person or persons invested, by order of a proper court, with the guardianship of a minor or incompetent person and/or the estate of a minor or incompetent person.

(b) *Component concerned.* The Component that notifies the individual of the debt that is the subject of a waiver application.

(c) *Debt.* An amount an individual owes the Government as the result of erroneous payments of pay and allowances (including travel and transportation allowances) to or on behalf of members of the Uniformed Service or civilian DoD employees.

(d) *Employee.* A person who is or was an officer or employee as defined in 5 U.S.C. 2104 and 2105.

(e) *Erroneous payment.* A payment that is not in strict conformity with applicable laws or regulations.

(f) *Final action.* A finding by the appropriate official under this Instruction concerning a waiver application from which there is no right to appeal or request reconsideration, or concerning which the time limit prescribed in this Instruction for submitting an appeal or request for reconsideration has expired without such a submission.

(g) *Member.* A member or former member of a Uniformed Service.

(h) *Uniformed Services.* The Army, the Navy, the Air Force, the Marine Corps, the Coast Guard, and the Commissioned Corps of the PHS and the NOAA.

(i) *Waiver application.* A request that the United States relinquish its claim against an individual for a debt resulting from erroneous payments of pay or allowances (including travel and transportation allowances) under 10 U.S.C. 2774, 32 U.S.C. 716, or 5 U.S.C. 5584.

§ 284.4 Policy.

It is Department of Defense policy that waiver applications shall be processed in accordance with all pertinent statutes and regulations, and after consideration of other relevant authorities.

§ 284.5 Responsibilities and functions.

(a) The *Head of a Non-DoD Component,* or designee, concerning debts resulting from the Component's activity:

(1) May deny or grant all or part of a waiver application, if the aggregate amount of the debt is $1,500 or less.

(2) If the aggregate amount of the debt is more than $1,500, may:

(i) Deny a waiver application in its entirety, or

(ii) Refer a waiver application for consideration with a recommendation that part or all of the application be granted, in accordance with this part.

(3) Shall process waiver applications, when the aggregate amount of the debt is more than $1,500, and appeals in accordance with this part.

(4) Shall resolve a debt in accordance with the final action that results from the waiver application process provided for in this part.

(b) The *Director, Department of Defense Dependents Schools,* or designee, concerning debts of civilian employees resulting from that Component's activity; the *Director, National Security Agency,* or designee, concerning debts resulting from that Component's activity; and the *Under Secretary of Defense (Comptroller),* through the Defense Finance and Accounting Service, or other designee, concerning debts resulting from all other DoD Components' activities:

(1) May deny or grant all or part of a waiver application, if the aggregate amount of the debt is $1,500 or less.

(2) If the aggregate amount of the debt is more than $1,500, may:

(i) Deny a waiver application in its entirety, or

(ii) Refer a waiver application for consideration with a recommendation that part or all of the application be granted, in accordance with this part.

(3) Shall process waiver applications and appeals in accordance with this part.

(4) Shall resolve debts in accordance with the final action that results from the waiver application process provided for in this part.

(c) The *Director, Defense Office of Hearings and Appeals (DOHA),* or designee, under the General Counsel of the Department of Defense (as the Director, Defense Legal Services Agency):

(1) May deny or grant all or part of a waiver application, if the aggregate amount of the debt is more than $1,500.

(2) Shall consider an appeal of an initial determination and affirm, modify, reverse, or remand the initial determination, in accordance with this part and relevant DoD Office of General Counsel opinions.

(3) Shall process waiver applications and appeals in accordance with this part.

(d) The *General Counsel of the Department of Defense,* or designee, upon the request of the Director, DOHA, shall consult on, or render opinions concerning, questions of law or equity that arise in the course of the performance of the Director's responsibilities under paragraph (c) of this section.

(e) The *Head of a DoD Component,* or designee, shall process waiver applications in accordance with this part.

§ 284.6 Standards for waiver determinations.

The standards that must be applied in determining whether all or part of a waiver application should be granted or denied are at Appendix A to this part.

§ 284.7 Submitting a waiver application.

The procedures an applicant must follow to submit a waiver application are at Appendix B to this part.

§ 284.8 Processing a waiver application when the debt is $1500 or less.

The procedures a Component must follow in processing a waiver application when the debt is $1500 or less are at Appendix C to this part.

§ 284.9 Processing a waiver application when the debt is more than $1500.

The procedures a Component must follow in processing a waiver application when the debt is $1500 or more are at Appendix D to this part.

§ 284.10 Appeals.

The procedures for appealing initial determinations are at Appendix E to this part.

§ 284.11 Refund of repaid debts that are subsequently waived.

When a final action waives all or part of a debt that has been repaid, the waiver application shall be construed as an application for a refund and the Component concerned shall, to the extent of the waiver, refund the amount repaid.

§ 284.12 Publication.

In accordance with 5 U.S.C. 552a, the Director, DOHA, or designee, shall make redacted copies of responses to requests for reconsideration available for public inspection and copying at DOHA's public reading room and on the worldwide web.

Appendix A to Part 284—Standards for Waiver Determinations

(a) Generally, persons who receive a payment erroneously from the government acquire no right to the money. They are bound in equity and good conscience to make restitution. In other words, if a benefit is bestowed by mistake, no matter how careless the act of the government may have been, the recipient must make restitution. In theory, restitution results in no loss to the recipient because the recipient had merely received something for nothing. However, 10 U.S.C. 2774, 32 U.S.C. 716, and 5 U.S.C. 5584 provide authority to waive, under certain conditions, debts individuals owe the Government that are the result of erroneous payments of pay and allowances (including travel and transportation allowances). Waiver is not a matter of right, but is available to provide relief as a matter of equity, if the circumstances warrant.

(b) Debts may be waived only when collection would be against equity and good conscience and would not be in the best interests of the United States. There must be no indication that the erroneous payment was solely or partially the result of the fraud, misrepresentation, fault, or lack of good faith of the applicant.

(c) Administrative error or mistake on the part of the Government in making an erroneous payment is a factor for consideration in determining whether waiver is appropriate. However, the fact that an erroneous payment is solely the result of administrative error or mistake on the part of the Government is not, in and of itself, sufficient basis for granting a waiver.

(d) Waiver usually is not appropriate when a recipient knows, or reasonably should know, that a payment is erroneous. The recipient has a duty to notify an appropriate official and to set aside the funds for eventual repayment to the Government, even if the Government fails to act after such notification.

(e) Waiver generally is not appropriate when a recipient of a significant unexplained increase in pay or allowances, or of any other unexplained payment of pay or allowances, does not attempt to obtain a reasonable explanation from an appropriate official. The recipient has a duty to ascertain the reason for the payment and to set aside the funds in the event that repayment should be necessary.

(f) Waiver may be inappropriate in cases where a recipient questions a payment (which ultimately is determined to be erroneous) and is mistakenly advised by an appropriate official that the payment is proper, if under the circumstances the recipient knew or reasonably should have known that the advice was erroneous.

(g) The fact that collection of an erroneous payment from a recipient might result in financial hardship is not a factor for consideration in determining whether waiver is appropriate.

(h) Waiver determinations under these standards necessarily depend upon the facts in each case.

Appendix B to Part 284—Submitting a Waiver Application

(a) *Who May Apply For Waiver.* Any person ("applicant") from whom collection is sought for a debt resulting from erroneous payments of pay or allowances (including travel and transportation allowances) may submit a waiver application. Additionally, an authorized official of the component concerned, or the Director, DOHA, or designee, may initiate a waiver application during the processing of a claim under 32 CFR part 281.

(b) *Where to Submit a Waiver Application.* An applicant must submit a waiver application to the Component concerned (that is, to the Component that notified the applicant of the indebtedness) in accordance with the guidance provided by that Component. A waiver application that is submitted somewhere other than to the Component concerned does not stop the running of the time limit in paragraph (f) of this Appendix. It is the applicant's responsibility to submit the waiver application properly.

(c) *Format of a Waiver Application.* A waiver application must be written and signed by the applicant (in the case of an application on behalf of a minor or incompetent person, there are additional requirements explained at paragraph (e) of this Appendix) or by the applicant's authorized agent or attorney (there are additional requirements explained at paragraph (d) of this Appendix) and should:

(1) Provide the applicant's mailing address;

(2) Provide the applicant's telephone number;

(3) Provide the applicant's social security number;

(4) State the amount for which waiver is requested;

(5) Explain why under the facts and circumstances waiver should be granted under the standards explained at Appendix A to this part;

(6) Have attached copies of documents referred to in the application; and

(7) Include or have attached statements (that are attested to be true and correct to the best of the individual's knowledge and belief) of the applicant or other persons in support of the application.

(d) *Waiver Application Submitted by Agent or Attorney.* In addition to the requirements in paragraph (c) of this Appendix, a waiver application submitted by the applicant's agent or attorney must include or have attached a duly executed power of attorney or other documentary evidence of the agent's or attorney's right to act for the applicant.

(e) *Waiver Application Submitted on Behalf of a Minor or Incompetent Person.* In addition to the requirements in paragraph (c) of this Appendix, if a guardian or committee has been appointed, a waiver application on behalf of a minor or incompetent person must include or have attached a certificate of the court showing the appointment and qualification of the guardian or committee. If a guardian or committee has not been appointed, a waiver application submitted on behalf of a minor or incompetent person must:

(1) State the applicant's relationship to the minor or incompetent person,

(2) Provide the name and address of the person having care and custody of the minor or incompetent person, and

(3) Include an affirmation that any moneys received will be applied to the use and benefit of the minor or incompetent person, and that the appointment of a guardian or committee is not contemplated.

(f) *When to Submit a Waiver Application.* An applicant must submit a waiver application so that it is received by the Component concerned within 3 years after the erroneous payment is discovered. The time limit is set by 10 U.S.C. 2774, 32 U.S.C. 716, or 5 U.S.C. 5584, whichever applies. The time limit may not be extended or waived. Although the issue of timeliness normally will be raised upon initial submission (as explained at Appendix C to this part, paragraph (b)), the issue may be raised at any point during the waiver application consideration process.

Appendix C to Part 294—Processing a Waiver Application When the Debt is $1500 or Less

(a) *Initial Component Processing.* Upon receipt of a waiver application, the Component concerned [1] must:

(1) Date stamp the application on the date received.

(2) Determine whether the application was received within 3 years after the discovery of the erroneous payment, and if the application was not timely, follow the procedures in paragraph (b) of this Appendix.

(3) Investigate the circumstances relating to the erroneous payment.

(4) Refer the application to the appropriate determining official (see paragraph (c) of this Appendix) for consideration and an initial determination.

(b) *Untimely Waiver Applications.* When the Component concerned finds that a waiver application was not received within 3 years after the erroneous payment was discovered, the Component must send the applicant a notice of untimely receipt.

(1) The notice must:

(i) Cite the applicable statute and explain the reasons for the finding of untimely receipt;

(ii) State that the application was not received within the statutory time limit and, therefore, may not be considered, unless that finding is reversed;

(iii) Explain that the applicant may submit a rebuttal to the finding of untimely receipt (as explained in paragraph (b)(2) of this Appendix); and

(iv) State that the statutory time limit may not be extended or waived.

(2) An applicant may submit a written rebuttal, signed by the applicant or the

[1] Depending on the context, the term "Component concerned" or "Component," as used in this Appendix, means the official designated by the Head of the Component concerned or by Component regulations to perform the function or take the action indicated.

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applicant's agent or attorney, to a notice of untimely receipt. The Component concerned must receive the rebuttal within 30 days of the date of the notice. The Component may grant an extension of up to an additional 30 days for good cause shown. The rebuttal should:

(i) Explain the points of, and reasons for, disagreement with the notice;

(ii) Have attached any documents referred to in the rebuttal; and

(iii) Include or have attached statements (that are attested to be true and correct to the best of the individuals's knowledge and belief) by the applicant or other persons in support of the rebuttal.

(3) If the applicant does not submit a rebuttal within the time permitted, the notice of untimely receipt is a final action and the Component must return the application to the applicant with a notice that the finding is final and, therefore, the application may not be considered. If the applicant submits a timely rebuttal, the Component must consider the rebuttal and:

(i) If the Component finds that the application was received within the required time limit, the Component must reverse its finding of untimely receipt, notify the applicant in writing, and process the application on the merits; or

(ii) If the Component does not reverse the finding of untimely receipt, the Component must forward the record, including the application, notice of untimely receipt, and rebuttal, to the appropriate determining official (see paragraph (c)(1) of this Appendix) for an initial determination on the issue of untimely receipt. The Component need not investigate the merits of the application before forwarding the record.

(4) After making an initial determination on the issue of untimely receipt, the determining official must follow the procedures in paragraph (d) of this Appendix. In addition, if the determining official finds that the application was timely, the official may either:

(i) Return the application to the Component concerned for processing on the merits in accordance with this appendix, or

(ii) Consider the application and make an initial determination on the merits, in accordance with paragraph (c)(2) of this Appendix.

(c) *Initial Determinations.* The standards in Appendix A to this part must be applied when considering the merits of a waiver application. After making an initial determination, the determining official must follow the procedures at paragraph (d) of this Appendix.

(1) The officials listed in this paragraph, and referred to in this Appendix as determining officials, shall consider waiver applications and take the appropriate action described in paragraph (c)(2) of this Appendix with respect to the following debts:

(i) The head of a non-DoD Component, or designee, for debts resulting from that Component's activity.

(ii) The Director, Department of Defense Dependents Schools, or designee, for debts of civilian employees resulting from that Component's activity.

(iii) The Director, National Security Agency, or designee, for debts resulting from that Component's activity.

(iv) The Under Secretary of Defense (Comptroller), through the Defense Finance and Accounting Service, or other designee, for debts resulting from DoD Component activity not included in paragraphs (c)(1)(ii) and (c)(1)(iii) of this Appendix.

(2) The officials listed in paragraph (c)(1) of this Appendix may take the following actions with respect to waiver applications:

(i) Make an initial determination concerning whether or not a waiver application was received within 3 years after the discovery of the erroneous payment.

(ii) Make an initial determination denying a waiver application in its entirety.

(iii) Make an initial determination granting all or part of a waiver application.

(d) *Processing After an Initial Determination.* After making an initial determination, the determining official must:

(1) Notify the applicant. The notification must explain:

(i) The determination and the reasons for it;

(ii) The appropriate Component action to resolve the debt as a consequence of the determination, if it is or becomes a final action (the finality of an initial determination is explained at paragraph (e) of this Appendix); and

(iii) The appeal process (as explained in Appendix E to this part), if the determination does not grant the entire application or does not contain a finding of timely receipt, as the case may be.

(2) Notify the Component concerned, if the determining official is not an official of the Component concerned, when and if the determination is a final action. The notice must include an explanation of:

(i) The determination and the reasons for it, and

(ii) The appropriate Component action to resolve the debt as a consequence of the determination, if it is or becomes a final action (the finality of an initial determination is explained at paragraph (e) of this Appendix).

(e) *Finality of an Initial Determination.* An initial determination that grants the entire waiver application, or that finds that the application was timely received, as the case may be, is a final action when it is issued. Otherwise, an initial determination (including one of untimely receipt) is a final action if the determining official does not receive an appeal within 30 days of the date of the initial determination (plus any extension of up to 30 additional days granted by the determining official for good cause shown).

Appendix D to Part 284—Processing a Waiver Application When the Debt is More Than $1500

(a) *Initial Component Processing.* Upon receipt of a waiver application, the Component concerned [1] must:

(1) Date stamp the application on the date received.

(2) Determine whether the application was received within 3 years after the discovery of the erroneous payment, and if the application was not timely, follow the procedures in paragraph (b) of this Appendix.

(3) Investigate the circumstances relating to the erroneous payment.

(4) Refer the waiver application to the appropriate determining official (see Appendix C to this part, paragraph (c)), who after applying the standards in Appendix A to this part may either:

(i) Deny the waiver application in its entirety, if appropriate, and follow the procedures in Appendix C to this part, paragraph (d), or

(ii) Refer the application, with a recommendation that part or all of the application be granted, to DOHA [2] for consideration and an initial determination under paragraph (c) of this Appendix. The determining official must send the entire record and must prepare and submit a recommendation and administrative report (as explained in paragraphs (d) and (e) of this Appendix) with the application.

(b) *Untimely Waiver Applications.* When the Component concerned finds that a waiver application was not received with 3 years after the erroneous payment was discovered, the Component must send the application a notice of untimely receipt.

(1) The notice must:

(i) Cite the applicable statute and explain the reasons for the finding of untimely receipt;

(ii) State that the application was not received within the statutory time limit and, therefore, may not be considered, unless that finding is reversed;

(iii) Explain that the applicant may submit a rebuttal to the finding of untimely receipt (as explained in paragraph (b)(2) of this Appendix.); and

(iv) State that the statutory time limit may not be extended or waived.

(2) An applicant may submit a written rebuttal, signed by the applicant or the applicant's agent or attorney, to a notice of untimely receipt. The Component concerned must receive the rebuttal within 30 days of the date of the notice. The Component may grant an extension of up to an additional 30 days for good cause shown. The rebuttal should:

(i) Explain the points of, and reasons for, disagreement with the notice;

(ii) Have attached any documents referred to in the rebuttal; and

(iii) Include or have attached statements (that are attested to be true and correct to the best of the individual's knowledge and belief) by the applicant or other persons in support of the rebuttal.

(3) If the applicant does not submit a rebuttal within the time permitted, the notice of untimely receipt is a final action and the Component must return the application to the applicant with a notice that the finding is final and, therefore, the application may not be considered. If the applicant submits a timely rebuttal, the Component must consider the rebuttal and:

(i) If the Component finds that the application was received within the required time limit, the Component must reverse its finding of untimely receipt, notify the applicant in writing, and process the application on the merits; or

(ii) If the Component does not reverse the finding of untimely receipt, the Component must forward the record, including the application, notice of untimely receipt, and rebuttal, to the appropriate official (see Appendix C to this part, paragraph (c)(1)) for an initial determination on the issue of untimely receipt. The Component need not investigate the merits of the application before forwarding the record.

(4) After making an initial determination on the issue of untimely receipt, the determining official must follow the procedures in Appendix C to this part, paragraph (d). In addition, if the determining official finds that the application was timely, the official may either:

(i) Return the application to the Component concerned from processing on the merits in accordance with this part, or

(ii) Make a recommendation to DOHA to grant all or part of the application as described in paragraphs (d) and (e) of this Appendix.

(c) *Initial Determinations.* The standards in Appendix A to this part must be applied when considering the merits of a waiver application. After making an initial determination, DOHA must follow the procedures at paragraph (f) of this Appendix. DOHA may take the following actions with respect to waiver applications referred under paragraph (a)(4)(ii) or (b)(4)(ii) of this Appendix:

(1) Make an initial determination denying a waiver application in its entirety.

(2) Make an initial determination granting all or part of a waiver application.

(d) *Recommendation to DOHA to Grant All or Part of an Application.* Referrals to DOHA must include the entire record along with the recommendation and administration report described in paragraph (e) of this Appendix. The record and the report must be sent to: Defense Office of Hearings and Appeals, Claims Division, P.O. Box 3656, Arlington, VA 22203–1995.

(e) *Recommendation and Administrative Report.* The recommendation and administrative report required by paragraph (d) of this Appendix must describe the recommended action (and the reasons for it), and the following:

(1) The names and mailing addresses of each employee, member, or other person from whom collection is sought, or a statement that the person cannot reasonably be located;

(2) The aggregate amount of the debt, including an itemization showing the elements of the aggregate amount;

(3) The date the erroneous payment was discovered;

(4) The date the recipient was notified of the error, and a statement of the erroneous amounts paid before and after receipt of such notice;

(5) A summary of the facts and circumstances describing: how the erroneous payment occurred; the recipient's knowledge of the erroneous nature of the payment; and the steps the recipient took, if any, to bring the matter to the attention of the appropriate official; and the Component's response; if any;

(6) A finding of whether there is any indication of fraud, misrepresentation, fault, or lack of good faith on the part of the applicant and the reasons for such a finding;

(7) Legible copies or the originals of supporting documents, such as leave and earnings statements, notifications of personnel actions, travel authorizations and vouchers, and military orders; and

(8) Statements (that are attested to be true and correct to the best of the individual's knowledge and belief) of the applicant or other persons in support of the application.

(f) *Processing After an Initial Determination.* After making an initial determination, DOHA must:

(1) Notify the applicant. The notice must include an explanation of:

(i) The determination and the reasons for it;

(ii) The appropriate Component action to resolve the debt as a consequence of the determination, if it is or becomes a final action (the finality of an initial determination is explained at paragraph (g) of this Appendix); and

(iii) The appeal process (as explained in Appendix E to this part), if the determination does not grant the entire application or does not contain a finding of timely receipt, as the case may be.

(2) Notify the Component concerned when and if the determination is a final action. The notice must include an explanation of:

(i) The determination and the reasons for it, and

(ii) The appropriate Component action to resolve the debt as a consequence of the determination, if it is or becomes a final action (the finality of an initial determination is explained at paragraph (g) of this Appendix).

(g) *Finality of an Initial Determination.* An initial determination that grants the entire waiver application, or that finds that the application was timely received, as the case may be, is a final action when it is issued. Otherwise, an initial determination (including one of untimely receipt) is a final action if the determining official does not receive an appeal within 30 days of the date of the initial determination (plus any extension of up to 30 additional days granted by the determining official for good cause shown).

Appendix E to Part 284—Appeals

(a) *Who May Appeal.* An applicant may appeal if an initial determination denies all or part of a waiver application or finds that the application was not received by the Component concerned within the time limit required by statute.

(b) *When and Where to Submit an Appeal.*

(1) When the determining official is not in DOHA [1], they must receive an applicant's appeal within 30 days of the date of the initial determination. The determining official may extend this period for up to an additional 30 days for good cause shown. No appeal may be accepted after this time has expired. The appeal will be processed under the procedures in paragraph (c) through paragraph (k) of this Appendix.

(2) When the determining official is in DOHA, DOHA must receive an applicant's appeal within 30 days of the date of the initial determination. DOHA may extend this period for up to an additional 30 days for good cause shown. No appeal may be accepted after this time has expired. The appeal will be considered to be a request for reconsideration and will be processed under the procedures in paragraph (l) through paragraph (q) of this Appendix.

(c) *Content of an Appeal.* The appeal must be written and signed by the applicant, the applicant's authorized agent, or the applicant's attorney, and should:

(1) Provide the applicant's mailing address;

(2) Provide the applicant's telephone number;

(3) Provide the applicant's social security number;

(4) Identify specific:

(i) Errors or omissions of material and relevant fact,

(ii) Legal or equitable (under the standards in Appendix A to this part) considerations that were overlooked or misapplied, and

(iii) Findings that were arbitrary, capricious, or an abuse of discretion.

(5) Present evidence of the correct or additional facts alleged;

(6) Explain the reasons the findings should be reversed or modified;

(7) Have attached copies of documents referred to in the appeal; and

(8) Include or have attached statements (that are attested to be true and correct to the best of the individual's knowledge and belief) by the applicant or other persons in support of the appeal.

(d) *Determining Officials' Review.* The determining official must review an applicant's appeal, and affirm, modify, or reverse the initial determination.

(1) If upon review of an appeal in a case involving a debt in the aggregate amount of $1500 or less, the determining official grants the entire waiver appeal or grants the application to the extent requested in the appeal, the determining official must notify the applicant and the Component concerned, if the determining official is not an official of the Component concerned. The notice must explain the appropriate action to resolve the debt. This is a final action.

(2) If the appeal concerns the untimely receipt of the waiver application and, upon the review of the appeal, the determining official finds that the application was received within the time limit required by statute, the official must notify the applicant in writing and take the appropriate action

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[1] Depending on the context, the term "Component concerned" or "Compooent," as used in this Appendix, means the official designated by the head of the Component concerned or by Component regulations to perform the function or take the action indicated.

[2] Depending on the context, "DOHA," as used in this Appendix, means the Director, Defense Office of Hearings and Appeals, or the individual(s) designated by the Director to perform the function or take the action indicated.

[1] Depending on the context, "DOHA," as used in this appendix, means the Director, Defense Office of Hearings and Appeals, or the individual(s) designated by the Director to perform the function or take the action indicated.

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under paragraph (b)(4) of Appendix C to this part or paragraph (b)(4) of Appendix D to this part, as appropriate.

(3) In all other cases, the determining official must forward the appeal to DOHA in accordance with paragraph (e) of this Appendix. The determining official must prepare a recommendation and administrative report (as explained in paragraph (f) of this Appendix) and send a copy to the applicant, with a notice that the applicant may submit a rebuttal to the determining official (as explained in paragraph (g) of this Appendix).

(e) *Submission of Appeal to DOHA.* No earlier than 31 days after the date of the administrative report or the day after the applicant's rebuttal period, as extended, expires, the determining official must send the entire record along with the recommendation and administrative report described in paragraph (f) of this Appendix to: Defense Office of Hearings and Appeals, Claims Division, P.O. Box 3656, Arlington, Virginia 22203–1995.

(f) *Recommendation and Administrative Report.* The recommendation and administrative report required by paragraph (d)(3) of this Appendix must describe the recommended action (and the reasons for it) and, unless included in a report in the record that was prepared in the initial determination process as follows:

(1) The names and mailing addresses of each employee, member, or other person from whom collection is sought, or a statement that the person cannot reasonably be located;

(2) The aggregate amount of the debt, including an itemization showing the elements of the aggregate amount;

(3) The date the erroneous payment was discovered;

(4) The date the recipient was notified of the error, and a statement of the erroneous amounts paid before and after receipt of such notice;

(5) A summary of the facts and circumstances describing: how the erroneous payment occurred; the recipient's knowledge of the erroneous nature of the payment; and the steps the recipient took, if any, to bring the matter to the attention of the appropriate official, and the Component's response, if any;

(6) A finding of whether there is any indication of fraud, misrepresentation, fault, or lack of good faith on the part of the applicant and the reasons for such a finding;

(7) Legible copies or the originals of supporting documents, such as leave and earnings statements, notifications of personnel actions, travel authorizations and vouchers; and military orders; and

(8) Statements (that are attested to be true and correct to the best of the individual's knowledge and belief) of the applicant or other persons in support of the application;

(g) *Applicant's Rebuttal.* An applicant may submit a written rebuttal, signed by the applicant or the applicant's agent or attorney, to the recommendation and administrative report. The rebuttal must be submitted to the determining official within 30 days of the date of the recommendation and administrative report. The determining official may grant an extension of up to an additional 30 days for good cause shown. The rebuttal should include:

(1) An explanation of the points and reasons for disagreeing with the report;

(2) The file reference number;

(3) Any documents referred to in the rebuttal; and

(4) Statements (that are attested to be true and correct to the best of the individual's knowledge and belief) by the applicant or other persons in support of the rebuttal.

(h) *Action by the Determining Official on Appeal.* The determining official must:

(1) Date stamp the applicant's rebuttal on the date it is received.

(2) Send the entire record to DOHA, but no earlier than 31 days after the date of the report, or the day after the applicant's rebuttal period, as extended, expires (as explained in paragraph (g) of this Appendix).

(i) *DOHA Appeal Decision.* Except as provided in paragraph (q) of this Appendix, DOHA must base its decision on the written record, including the recommendation and administrative report and any rebuttal by the applicant. The written decision must:

(1) Affirm, modify, reverse, or remand the initial determination and decide the application on the merits or return the application to the Component concerned for investigation and processing for an initial determination on the merits in accordance with Appendix C to this part;

(2) State the amount of the waiver application that is granted and the amount that is denied and/or state that the application was or was not received within the statutory time limit, as appropriate; and

(3) Explain the reasons for the decision.

(j) *Processing After the Appeal Decision.* After issuing an appeal decision, DOHA must:

(1) Send the applicant the decision and notify the applicant of:

(i) The appropriate Component action to resolve the debt as a consequence of the decision, if it is or becomes a final action (as explained in paragraph (k) of this Appendix); and

(ii) The procedures under this Appendix to request reconsideration (as explained in paragraphs (l) through (n) of this Appendix), if the decision does not grant the waiver application to the extent requested, or does not contain a finding of timely receipt, as the case may be.

(2) Notify Component concerned of the decision, and the appropriate Component action to resolve the debt as a consequence of the decision.

(k) *Finality of a DOHA Appeal Decision.* An appeal decision that grants the waiver application to the extent requested on appeal, or that finds that the application was timely received, as the case may be, is a final action when issued. Otherwise, an appeal decision is a final action if DOHA does not receive a request for reconsideration within 30 days of the date of the appeal decision (plus any extension of up to 30 additional days granted by DOHA for good cause shown).

Note: In the case of a DOHA appeal decision issued before [the effective date of this part] that denied all or part of the waiver application, a request for reconsideration by the General Counsel of the Department of Defense, or designee, may be submitted within 60 days of [the effective date of this part]. The General Counsel of the Department of Defense, or designee, shall consider such requests and affirm, modify, reverse, or remand the DOHA appeal decision. Requests for reconsideration by the General Counsel of the Department of Defense, or designee, received more than 60 days after [the effective date of this part] will not be accepted. Requests must be submitted to the address in paragraph (e) of this Appendix. The provisions of paragraph (n) of this Appendix apply.

(l) *Who May Request Reconsideration.* An applicant may request reconsideration of a DOHA appeal decision.

(m) *When and Where to Submit a Request for Reconsideration.* DOHA must receive a request for reconsideration within 30 days of the date of the appeal decision.[2] DOHA may extend this period for up to an additional 30 days for good cause down. No request for reconsideration may be accepted after this time has expired. A request for reconsideration must be sent to DOHA at the address in paragraph (e) of this Appendix.

(n) *Content of a Request for Reconsideration.* The requirements of paragraph (c) of this Appendix concerning the content of an appeal, apply to a request for reconsideration.

(o) *DOHA's Review of a Request for Reconsideration.* No earlier than 31 days after the date of the appeal decision, or the day after the last period for submitting a request, as extended, expires, DOHA must:

(1) Consider a request for reconsideration;

(2) Affirm, modify, or reverse the appeal decision;

(3) Prepare a response that explains the reasons for the finding;

(4) Send the response to the applicant and the Component concerned and notify both of the appropriate action on the debt.

(p) The response is a final action. It is precedent in the consideration of waiver applications covered by this part unless otherwise stated in the document.

(q) *Consideration of Appeals and Requests for Reconsideration.* When considering an appeal or request for reconsideration, DOHA may:

(1) Consider additional evidence not included in the record as presented. The applicant must be provided a copy of the additional evidence and must be given a reasonable time to comment.

(2) Take administrative notice of matters that are generally known or are capable of confirmation by resort to sources whose accuracy cannot reasonably be questioned.

(3) Remand a matter to the Component with instructions to provide additional information.

[2] With respect to appeal decisions issued before [the effective date of this part], the request for reconsideration by DOHA must be received within 30 days of [the effective date of this part].

Dated: November 4, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liasion Officer, Department of Defense.

[FR Doc. 02–28735 Filed 11–13–02; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA134–138–4193b; FRL–7391–7]

Approval and Promulgation of Air Quality Implementation Plans; PA; Revisions to Allegheny County Articles XX and XXI

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania on behalf of Allegheny County. EPA is proposing approval of: A recodification of Allegheny County's air pollution control regulations, from articles XX to XXI; revisions of Allegheny County's article XXI regulations pertaining to general administrative provisions, emissions standards, emergency episode plans, test methods, and the permitting provisions for new and modified sources; approval of new and revised definitions associated with the article XXI provisions; and removal from the SIP of outdated and outmoded article XX provisions which are no longer codified in article XXI. In the final rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A more detailed description of the state submittal and EPA's evaluation are included in a Technical Support Document (TSD) prepared in support of this rulemaking action. A copy of the TSD is available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this document. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

DATES: Comments must be received in writing by December 16, 2002.

ADDRESSES: Written comments should be addressed to, Harold A. Frankford, Office of Air Programs, Mailcode 3AP20, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; Allegheny County Health Department, Bureau of Environmental Quality, Division of Air Quality, 301 39th Street, Pittsburgh, Pennsylvania 15201; and the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Harold A. Frankford, (215) 814–2108, or by e-mail at *frankford.harold@epa.gov*. Please note that while questions may be posed via telephone and e-mail, formal comments must be submitted in writing, as indicated in the **ADDRESSES** section of this document.

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action for Pennsyvania, with the same title, that is located in the "Rules and Regulations" section of this **Federal Register** publication. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

Dated: September 27, 2002.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. 02–28697 Filed 11–13–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 131

[EPA Docket ID No. OW–2002–0022; FRL–7408–3]

Water Quality Standards for Kentucky

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and request for comments.

SUMMARY: EPA is proposing water quality standards that establish an antidegradation policy and implementation methods for high quality waters in the Commonwealth of Kentucky. On August 7, 1997, EPA disapproved the Commonwealth's antidegradation provisions for "high quality waters" because the criteria for designating such waters were not sufficiently inclusive. The Commonwealth subsequently revised portions of the antidegradation provisions. However, the replacement standards did not address all of the disapproved items. The Clean Water Act requires the Administrator to propose and promulgate revised water quality standards if she determines that a standard adopted by a State is inconsistent with the Act.

DATES: EPA will consider written comments on the proposal received by March 14, 2003.

EPA will hold a public hearing on this proposed rule on January 23, 2003, from 2 pm to 5 pm and from 7 pm to 10 pm. If you need special accommodations at this meeting, including wheelchair access or sign language interpreter, you should contact Fritz Wagener at 404/562–9267 at least 15 business days prior to the meeting so that we can make appropriate arrangements.

ADDRESSES: Send your comments by mail to: Docket Manager, Attention Docket ID No. OW–2002–0022, Water Quality Standards for Kentucky, EPA, Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303–3104. You may also submit comments electronically, or through hand delivery or courier. Follow the detailed instructions provided in I.C. The hearing will be conducted at the Capital Plaza Convention Complex, 405 Mero Street, Frankfort, Kentucky.

Comments may be submitted electronically, by mail, or through hand delivery or courier. Follow the detailed instructions provided in **SUPPLEMENTARY INFORMATION** Part I. General Information.

FOR FURTHER INFORMATION CONTACT: Fritz Wagener, Water Quality Standards

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Coordinator, Water Management Division, EPA, Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303–3104, 404/562–9267, *wagener.fritz@epa.gov*.

SUPPLEMENTARY INFORMATION: This section is organized as follows:

I. General Information
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I. General Information

A. What Entities May Be Affected by This Action?

Citizens concerned with water quality in Kentucky may be interested in this proposed rulemaking. Today's proposal, if made final, will establish an antidegradation policy for high quality waters in the Commonwealth of Kentucky (hereafter, "the Commonwealth" or "Kentucky") and methods for implementing the policy. High quality waters are waters where the quality of the water is better than the levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water. Waters that currently are regulated by Kentucky under the Commonwealth's exceptional waters and outstanding national resource waters provisions of its regulations would not be subject to this rule because they are already protected under Kentucky's antidegradation program.

Entities potentially indirectly affected by this action are National Pollutant Discharge Elimination System (NPDES) permit applicants in Kentucky. Kentucky is authorized to issue these permits and does so through the Kentucky Pollutant Discharge Elimination System (KPDES) program, CWA section 404 dredge and fill permits, and other activities requiring a CWA 401 certification. The KPDES permit applicants (*e.g.*, industries or municipalities) which request authorization from the Commonwealth of Kentucky for a new or an increased discharge to high quality waters in Kentucky are the entities potentially indirectly affected by this action. Categories and entities that may be indirectly affected include:

Category	Examples of potentially affected entities
Industry	Industries discharging pollutants to Kentucky high quality waters as defined in § 131.39 of this proposed rule.
Municipalities	Publicly-owned treatment works discharging pollutants to Kentucky high quality waters as defined in § 131.39 of this proposed rule.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding KPDES regulated entities likely to be affected by this action. This table lists the types of entities that EPA is now aware could potentially be affected by this action. Other types of entities not listed in the table could also be affected. To determine whether your facility may be affected by this action, you should carefully examine today's proposed rule. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. How Can I Get Copies of This Document and Related Information?

1. Docket. EPA has established an official public docket for this action under Docket ID No. OW–2002–0022. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing under *Water Quality Standards for Kentucky* at Water Management Division, EPA, Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303–3104. This Docket Facility is open from 9 am to 3:30 pm, Monday through Friday, excluding legal holidays. The Docket telephone number is 404–562–9267. A reasonable fee will be charged for copies.

2. Electronic Access. You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in OW–2002–0022, the docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or on paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket identified in I.B.1.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

For additional information about EPA's electronic public docket, visit EPA Dockets online or *see* 67 FR 38102, May 31, 2002.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery or courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. The Agency will make every attempt to consider them, however.

1. Electronically. If you submit an electronic comment as prescribed in this section, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *E-Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket*, and follow the online instructions for submitting comments. To access EPA's electronic public docket from the EPA Internet Home Page, select "Information Sources," "Dockets," and "EPA Dockets." Once in the system, select "search," and then key in Docket ID No. OW–2002–0022. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by electronic mail (e-mail) to *wagener.fritz@epa.gov*, Attention Docket ID No. OW–2002–0022, Water Quality Standards for Kentucky. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address in I.C.1. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send your comments to: Docket Manager, Attention Docket ID No. OW–2002–0022, Water Quality Standards for Kentucky, EPA, Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303–3104.

3. *By Hand Delivery or Courier.* Deliver your comments to: Docket Manager, Attention Docket ID No. OW–2002–0022, Water Quality Standards for Kentucky, EPA, Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303–3104. Such deliveries are only accepted during the Docket's normal hours of operation as identified in I.B.1.

D. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at your estimate.
5. Provide specific examples to illustrate your concerns.
6. Offer alternatives.
7. Make sure to submit your comments by the comment period deadline identified.
8. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

II. Background

A. What Are the Applicable Federal Statutory and Regulatory Requirements?

Section 303 (33 U.S.C. 1313) of the Clean Water Act (CWA) requires States and authorized Tribes to adopt water quality standards for waters of the United States within their applicable jurisdictions. Such water quality standards must include, at a minimum: (1) Designated uses for all water bodies within their jurisdictions, (2) water quality criteria necessary to protect the most sensitive of the uses, and (3) antidegradation provisions consistent with the regulations at 40 CFR 131.12.

Antidegradation is an important tool for States and authorized Tribes to use in meeting the CWA's requirement that water quality standards protect the public health or welfare, enhance the quality of water and meet the objective of the CWA to restore and maintain the chemical, physical and biological integrity of the nation's waters.

EPA's regulation at 40 CFR 131.12 requires that States and authorized Tribes adopt antidegradation policies and identify implementation methods to provide three levels of water quality protection. The first level of protection at 40 CFR 131.12(a)(1) requires the maintenance and protection of existing instream water uses and the level of water quality necessary to protect those existing uses. Protection of existing uses is the *floor* of water quality protection afforded to all waters of the United States. Existing uses are ". . . those uses actually attained in the water body on or after November 28, 1975, whether

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or not they are included in the water quality standards." (40 CFR 131.3(e))

The second level of protection is for high quality waters. High quality waters are defined in 40 CFR 131.12(a)(2) as waters where the quality of the waters is better than the levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water. This water quality is to be maintained and protected unless the State or authorized Tribe finds, after public participation and intergovernmental review, that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located. In allowing lower water quality, the State or authorized Tribe must assure water quality adequate to protect existing uses. Further, the State or authorized Tribe must ensure that all applicable statutory and regulatory requirements are achieved for all new and existing point sources and all cost-effective and reasonable best management practices are achieved for nonpoint source control.

Finally, the third and highest level of antidegradation protection is for outstanding national resource waters (ONRWs). If a State or authorized Tribe determines that the characteristics of a water body constitute an outstanding national resource, such as waters of National and State parks and wildlife refuges and waters of exceptional recreational or ecological significance, and designates a water body as such, then those characteristics must be maintained and protected (*see* 40 CFR 131.12(a)(3)).

B. What Are Kentucky's Antidegradation Provisions?

The Commonwealth's antidegradation regulations are contained in 401 Kentucky Administrative Register (KAR) 5:029 section 1 and KAR 5:030. For the purposes of implementing antidegradation requirements, Kentucky places surface waters in one of three categories: ONRWs, exceptional waters, and use protected waters. Following is a brief discussion of these categories:

ONRWs. The two criteria that must be met in order for the Commonwealth to designate a water body as an ONRW are included in 401 KAR 5:030, section 1.(1)(a), as follows:

1. Surface water that meets, at a minimum, the requirements for an outstanding state resource water classification found in 401 KAR 5:031 section 7; and
2. Surface water that demonstrates to be of national ecological or recreational significance.

The provisions of 401 KAR 5:031 section 7 require the designation as an outstanding state resource water for the following: Waters designated under the Kentucky Wild Rivers Act; waters designated under the Federal Wild and Scenic Rivers Act; waters identified under the Kentucky Nature Preserves Act that are contained within a formally dedicated nature preserve or are published in the registry of natural areas; and waters that support federally recognized endangered or threatened species under the Endangered Species Act. Other waters of the Commonwealth given consideration for an outstanding state resource water designation include: Waters which flow through or are bounded by State or Federal forest land; waters that are of exceptional aesthetic or ecological value; waters that are a part of a unique geological or historical area recognized by State or Federal designation; or a water which is a component part of an undisturbed or relatively undisturbed watershed that can provide basic scientific data and exhibits two of the following characteristics: (1) The water body supports a diverse or unique native aquatic flora or fauna; (2) the water body possesses physical or chemical characteristics that provide an unusual and uncommon aquatic habitat; or (3) the water body provides a unique aquatic environment within a physiographic region. (*See* 401 KAR 5:031 section 7).

Kentucky requires that water quality in ONRWs be maintained and protected. Temporary or short-term changes in water quality may be allowed if the changes will not have a demonstrable impact on the ability of the ONRW to support its designation. Kentucky's provisions for ONRWs are consistent with EPA's requirements at 40 CFR 131.12(a)(3).

Exceptional Waters. Paragraph (2) of 401 KAR 5:029 section 1 contains the portion of Kentucky's antidegradation policy which addresses the requirements for waters with quality that is better than the levels necessary to support propagation of fish, shellfish and wildlife and recreation in and on the water. Kentucky defines exceptional waters in 401 KAR 5:030, section 1.(1)(b), using the following criteria:

1. Surface water designated as a Kentucky Wild River, unless it is categorized as an outstanding national resource water;
2. Outstanding state resource water that does not support a federally threatened or endangered aquatic species;
3. Surface water that fully supports all applicable designated uses and contains:
   a. A fish community that is rated "excellent" by the use of the Index of Biotic Integrity, included in "Methods for Assessing Biological Integrity of Surface Waters," incorporated by reference in section 4 of this administrative regulation; or
   b. A macroinvertebrate community that is rated "excellent" by the Macroinvertebrate Bioassessment Index, included in "A Macroinvertebrate Bioassessment Index for Streams of the Interior Plateau Ecoregion in Kentucky," incorporated by reference in section 4 of this administrative regulation; and
4. Water in Kentucky's Natural Resources and Environmental Protection Cabinet's reference reach network.

Water bodies are included in Kentucky's Reference Reach Network after an extensive evaluation of water body and watershed characteristics. After initial and secondary screening based on factors such as riparian zone condition, surrounding land use, extent of hydrologic modification, habitat, and other physical characteristics, waters are selected for inclusion in the Reference Reach Network based on a review of the following: (1) Condition of the riparian zone, (2) bank stability, (3) percentage of fine sediment and algal mats in the substrate, (4) amount of suspended solids during normal weather conditions, (5) stable bottom habitat, (6) amount of solid waste in the water body and its banks, (7) land use, and (8) accessibility.

Kentucky's process for implementing antidegradation provisions for exceptional waters involves the application of specified effluent limitations for new or expanded discharges. For example, domestic discharges are limited to discharge at levels of 10 mg/l for five-day carbonaceous biochemical oxygen demand, 2 mg/l of ammonia nitrogen, 10 mg/l total suspended solids, and 7 mg/l dissolved oxygen, among others. Also, certain discharges are restricted to no more than one-half of the limitation that would have been permitted for use protected waters for other parameters. These limitations apply to new or expanded discharges, unless a permit applicant can meet the following requirements:

* * * the applicant will demonstrate to the satisfaction of the cabinet that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located following the guidelines in "Interim Economic Guidance for Water Quality Standards Workbook," EPA, March 1995 incorporated by reference in section 4 of this administrative regulation and include an alternative analysis that shall consider the following:

1. Discharge to other treatment facilities;
2. Use of other discharge locations;
3. Water reuse or recycle;
4. Process and treatment alternatives; and
5. On-site or subsurface disposal.

KPDES permit renewals with discharges to exceptional waters that result in less than a 20 percent increase in pollutant loading are exempt from these antidegradation requirements. (*See* 401 KAR 5:030 section 1.(3)(a)6.)

Use protected waters. The Commonwealth's use protected category includes a mix of waters. Use protected waters are defined in 401 KAR 5:030, section 1.(1)(c) as including any "water not listed in section 3 of this administrative regulation as (an) outstanding national resource water or exceptional water."

Kentucky's regulations at 401 KAR 5:030 section 1.(4)(a) provide that: "All existing uses shall be protected and the level of water quality necessary to protect the uses shall be assured in the use protected water." A use protected water is also protected through the application of all applicable water quality criteria necessary to support its designated uses. In a letter dated May 24, 2001, from Mr. Jack A. Wilson, Director, Kentucky Division of Water, to Ms. Beverly Banister, Director, EPA Region 4 Water Management Division, the Commonwealth gave the following explanation of this category:

* * * the use-protected category included all waters that were not ONRWs or exceptional, *i.e.*, waters that met uses and were impaired. It is more clear and straightforward to separate this use protected category into two categories: high quality water[s] (Tier 2) and impaired [waters] (Tier 1).

Based on this explanation, waters designated for antidegradation purposes as use protected waters include: (1) Waters with quality that is better than the levels necessary to support propagation of fish, shellfish, wildlife, and recreation in and on the water (in addition to waters meeting these criteria already designated as exceptional waters), (2) waters that just meet their designated aquatic life and recreation uses and (3) impaired waters which are not attaining their designated uses.

C. Why Is EPA Proposing Federal Antidegradation Provisions for the Commonwealth of Kentucky?

EPA is proposing Federal water quality standards for high quality waters in Kentucky because EPA disapproved the Commonwealth's antidegradation provisions that were intended to establish requirements for high quality waters commensurate with those required by EPA's Water Quality Standards regulation at 40 CFR 131.12(a)(2). The Commonwealth's provisions only apply to a limited subset of high quality waters rather than to all waters whose quality is better than the levels necessary to support propagation of fish, shellfish and wildlife and recreation in and on the water.

The following table shows EPA's estimate of the number of stream miles and water bodies in each of Kentucky's antidegradation categories.

Category of waters	Stream miles	Water bodies	% of total stream miles
Total	49,100.0		100
Outstanding national resource waters	29.6	3	0.06
Exceptional waters	665.0	75	1.35
Use protected, but impaired	3,945.0	700	8.0
Use protected, and not determined to be impaired	44,460.0	(1)	90.6

[1] All others.

These estimates are based on EPA's analysis of waters currently listed in KAR 5:030 section 3, and information provided in the May 24, 2001, letter from the Kentucky Division of Water to EPA. The mileage reported as use protected and not determined to be impaired was estimated using the length of waters classified as *Partially Supporting* or *Not Supporting*, for aquatic life and swimming uses in the "1998 Kentucky Report to Congress on Water Quality," (*i.e.*, Kentucky's 305(b) Report) (Kentucky Natural Resources and Environmental Protection Cabinet, Division of Water, January 1999). EPA generated the stream mile estimates above for those use protected waters determined not to be impaired by subtracting the sum of the waters designated as ONRWs, waters designated as exceptional waters, and use protected waters, but impaired, from the total mileage reported in the Commonwealth.

Kentucky's approach limits the use of the special protections for high quality waters to the Commonwealth's exceptional waters category which comprise just 1.35 percent of all its waters. However, Kentucky's 1998 305(b) Report shows that approximately 67 percent of the Commonwealth's unassessed waters are candidates for the high quality water protections. This pattern is confirmed by recent intensive watershed sampling in the Kentucky, Salt and Licking River basins, as well as data from random statewide aquatic life biological sample in wadeable streams conducted by the Kentucky Division of Water over the last two years. This recent sampling shows that approximately 60 percent of the sites fully support their designated uses.

The above information and analysis show that the eligibility criteria adopted by the Commonwealth for the exceptional waters category results in only a relatively small percentage of surface waters receiving the protection of the high quality water provisions at 401 KAR 5:029 section 1.(2). Therefore, EPA determined that Kentucky's exceptional waters category does not include other waters whose quality exceed levels necessary to support propagation of fish, shellfish and wildlife and recreation in and on the water, as required in 40 CFR 131.12(a)(2). In addition, Kentucky's implementation procedures for the use protected category (401 KAR 5:030 section 1.(4)) do not require that the Commonwealth evaluate the necessity of lowering water quality, even though this category does include high quality waters.

In a letter of August 7, 1997, from John H. Hankinson, Jr., EPA Region 4 Regional Administrator, to General James E. Bickford, Secretary, Commonwealth of Kentucky Natural Resources and Environmental Protection Cabinet, EPA Region 4 disapproved the Commonwealth's eligibility criteria in 401 KAR 5:030 section 1.(3) for designating waters to be given high quality water protection, and specified the changes needed for EPA to approve a revised water quality standard. In an October 9, 1997, letter from General James E. Bickford, Secretary, Commonwealth of Kentucky Natural Resources and Environmental Protection Cabinet to John H. Hankinson, Jr., EPA Region 4 Regional

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Administrator, responding to EPA's disapproval, Kentucky stated its intention to expand the universe of high quality waters receiving added protection from the effects of point source discharges regulated under the KPDES program. Kentucky also indicated that the revisions would be part of its upcoming triennial review of water quality standards.

Kentucky began its water quality standards triennial review in October 1998 with a public notice and mailing to interested parties of its intent to update uses, revise numeric criteria, strengthen mixing zone language, and to respond to EPA's 1997 antidegradation disapproval. The February 1999 "Administrative Register of Kentucky" included a notice of intent to revise the water quality standards regulation and to hold a public hearing on February 25, 1999. After adoption of revisions to Kentucky water quality standards on December 8, 1999, Kentucky submitted the results of its triennial review to EPA on December 15, 1999. However, the revisions did not sufficiently broaden the criteria to increase the number of eligible waters for the exceptional waters category, consistent with EPA's regulation at 40 CFR 131.12(a)(2). Therefore on August 30, 2000, EPA Region 4 notified the Commonwealth that the high quality waters provisions of Kentucky's water quality standards remained disapproved.

In a letter of May 24, 2001, from Mr. Jack A. Wilson, Director, Division of Water, to Ms. Beverly Banister, Director, Water Management Division, Kentucky clarified that the exceptional waters category is intended to provide a higher level of protection than the level for other high quality waters. Several States and authorized Tribes have created an additional category of water between high quality waters and ONRWs in their antidegradation policy. Kentucky's exceptional waters category generally includes more stringent controls than those required for high quality waters, but allows more flexibility to make adjustments in criteria and in permitting decisions than would normally be allowed if the water body were designated as an ONRW. EPA believes such a category is consistent with the intent and spirit of the antidegradation policy when supplementing the high quality water and the ONRW categories.

The Commonwealth has an active program to identify candidates for the exceptional waters category. The Kentucky Division of Water has identified 133 segments, which cover approximately 567 stream miles, meeting the criteria for inclusion in the exceptional waters category since the previous triennial review completed in 1999. These waters have been found to meet the exceptional waters criteria based on ambient sampling in the Salt, Licking, Upper and Lower Cumberland, Tennessee, and Mississippi river basins. Many of these segments have been included in Kentucky's Reference Reach Network, and others have been found to contain either fish or macroinvertebrate communities rated as excellent using the Commonwealth's assessment methodologies for evaluation of biological integrity. However, as discussed in this section, Kentucky has no separate, readily identified high quality waters category commensurate with 40 CFR 131.12(a)(2).

III. Today's Proposed Rule

Today's **Federal Register** notice proposes a high quality waters antidegradation policy, a definition of waters to which the policy would apply and methods for implementing the policy. Consistent with section 303(c)(4) of the CWA, if during the Federal rulemaking process, Kentucky adopts revisions to its antidegradation provisions which are approved by EPA Region 4, the proposal would not be made final. In addition, if Kentucky adopts revisions to its antidegradation provisions which are approved following publication of a final Federal rule, EPA would withdraw its rule.

EPA is providing an extended comment period in response to a request from members of the public. While EPA has a statutory obligation to take final action on the proposal in a timely manner, we also want to ensure that interested parties have an adequate opportunity to prepare and submit comments and to provide Kentucky with an opportunity to adopt its own revisions to the Commonwealth's antidegradation provisions.

A. What Is the Proposed Policy To Protect Kentucky's High Quality Waters?

EPA is proposing that the antidegradation policy in 40 CFR 131.12(a)(2) apply to high quality waters in the Commonwealth of Kentucky. The Agency notes that the language of the proposed policy is somewhat different from 40 CFR 131.12(a)(2). Those differences result only from our efforts to make the policy easier to understand, and do not suggest any substantive difference in the Agency's interpretation of 40 CFR 131.12(a)(2). The proposed high quality waters antidegradation policy in section 131.39(a) reads as follows:

(1) Where the quality of the water is better than levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water, the Commonwealth of Kentucky (hereafter, Commonwealth or Kentucky) shall maintain and protect that quality unless Kentucky finds, after full satisfaction of the intergovernmental coordination and public participation provisions of the Commonwealth's continuing planning process, that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the water is located.

(2) Before allowing lower water quality, the Commonwealth shall ensure that all measures to fully protect existing uses shall be achieved.

(3) Before allowing lower water quality, the Commonwealth shall ensure that the most protective statutory and regulatory requirements for all new and existing point sources and all cost-effective and reasonable best management practices for nonpoint source control shall be achieved.

Today's proposal is substantially the same as Kentucky's current antidegradation policy in 401 KAR 5:029 section 1.(2), with the critical exception that EPA's proposal does not include the sentence: "For point source discharges, water quality shall be maintained and protected according to the procedures specified in 401 KAR 5:030, section 1.(3)."

This sentence in Kentucky's policy limits the number of waters protected to those identified as exceptional waters. As discussed in section II.C., EPA disapproved the Commonwealth's high quality antidegradation provisions because the eligibility criteria were not sufficiently inclusive.

EPA recognizes that the Commonwealth has adopted an antidegradation policy consistent with the provisions in 40 CFR 131.12(a)(2) for some of its high quality waters. EPA is proposing the policy for high quality waters in Kentucky, except for ONRWs and exceptional waters, in order to include high quality waters not currently recognized as such in Kentucky's water quality standards. This would allow the application of the antidegradation policy to certain waters now in the Commonwealth's use protected waters category.

EPA's proposed high quality waters policy in conjunction with the Commonwealth's existing antidegradation policy provides that before authorizing lower water quality in a high quality water, the Commonwealth shall ensure the implementation of all measures to fully protect existing uses. EPA interprets this provision to mean that Kentucky will evaluate the cumulative effects from previous loading increases to ensure that water quality will continue to protect existing uses. As stated previously, this level of protection is the "floor" of water quality protection afforded to all waters.

The proposed antidegradation policy for high quality waters further provides that before lowering the water quality in high quality waters, Kentucky shall ensure that the most protective statutory and regulatory requirements for all new and existing point sources and all cost-effective and reasonable best management practices for nonpoint source control shall be achieved.

EPA does not interpret the nonpoint source provision to require the establishment of nonpoint source control requirements where none exist. Rather, where nonpoint source control programs or regulatory requirements have been established under State authorities, these requirements are to be implemented prior to lowering the quality of high quality waters (see Memorandum from Tudor T. Davies, Director, EPA Office of Science and Technology to EPA Water Management Division Directors, Regions 1–10, Subject: Interpretation of Federal Antidegradation Regulatory Requirement, February 22, 1994).

B. How Will Kentucky Identify a High Quality Water?

Today's proposal, if finalized, defines high quality waters as any surface water other than those currently designated by the Commonwealth as exceptional waters or ONRWs, where the quality of the water is better than the levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water. EPA's current regulation provides a great deal of flexibility to States and authorized Tribes in making those decisions.

Identifying high quality waters is key for antidegradation to be effective. In general, States and authorized Tribes identify high quality waters using one of two approaches: (1) The parameter-by-parameter or pollutant-by-pollutant approach or (2) the designational or water body-by-water body approach. Under the parameter-by-parameter approach, States and authorized Tribes determine whether water quality is better than the applicable criteria for a specific parameter or pollutant that would be affected by a new discharge or an increase in an existing discharge of the pollutant. For example, if dissolved oxygen levels were at 7 milligrams per liter (mg/L) and the criteria were 5 mg/L, that water body would be a high quality water for dissolved oxygen, but might not necessarily be a high quality water for another parameter. Such determinations are generally made at the time of a permit application for a new discharge or an increase in an existing discharge of the pollutant in question. The designational approach weighs chemical, physical, biological, or other factors to judge a water body's overall quality. EPA has approved both approaches, and, under today's proposed rule, either approach or a combination of the approaches would be available to the Commonwealth for identifying high quality waters.

Some States use the designational approach to identify high quality waters. Under one type of designational approach, a water body must attain both the aquatic life and recreational uses to be considered a high quality water. For example, a water body that is attaining one of it designated uses (such as aquatic life) would not receive an antidegradation review if the water body were not attaining its other use (such as recreation). EPA has found this approach to be consistent with 40 CFR 131.12. There are other ways to implement the designational approach. For example, a State could designate a water body as a high quality water for that use if the water body were attaining either the aquatic life use or the recreational use. Under this approach, an antidegradation review would be conducted for aquatic life uses when, for example, biological indices rated the macroinvertebrate or fish populations as "good" even if the fecal coliform densities exceeded levels safe for recreation in and on the water.

In today's proposal, EPA is not requiring a specific approach that Kentucky must use in identifying high quality waters. Rather, the Agency is continuing its long-standing policy that would allow Kentucky to use, as appropriate, biological or chemical data or a combination of both on a parameter-by-parameter basis, or a designational approach to identify high quality waters. EPA is seeking comments on the pollutant-by-pollutant and designational approaches for identifying high quality waters.

The Commonwealth may identify high quality waters at the time of a permit application for a new discharge or an increase in an existing discharge, or may identify high quality waters at any time based on a review of ambient data showing that the quality of the water is better than the levels necessary to support the propagation of fish, shellfish, and wildlife and recreation in and on the water. To comply with the antidegradation policy for a high quality water, the Commonwealth must make a high quality water determination prior to allowing lower water quality in the water body.

Kentucky, in a May 24, 2001, letter from Jack A. Wilson, Director, Kentucky Division of Water, to Ms. Beverly Banister, Director, Water Management Division, EPA Region 4, stated, " * * * the DOW (Division of Water) strongly disagrees with the parameter-by-parameter approach." EPA interprets this statement as a strong preference by the Commonwealth that any Federal rule be written in a way not to limit its approach for the identification of high quality waters to the use of ambient chemical data.

The Commonwealth's existing antidegradation program uses biological data and information to rate and evaluate waters. EPA considers Kentucky's biological approach to be a valid framework for identifying high quality waters under today's proposal. Kentucky has developed a substantial database on the occurrence and diversity of ambient macroinvertebrate populations and fish populations found in surface waters of the Commonwealth, and has used this data to establish indices of relative aquatic health for these two subpopulations of aquatic life.

Based on EPA's review of Kentucky's biomonitoring program, the data and the indices generated by the Commonwealth, EPA believes that the assessment of any segment resulting in a biological rating of "good," rather than "excellent," for either a macroinvertebrate or a fish population, when using the methods referenced in 401 KAR 5:030, section 1.(1)(b)3.a. and b., is sufficient to conclude that the ambient water quality of that segment is better than that "necessary to support propagation of fish, shellfish, and wildlife," and, therefore, that segment should be considered to be a high quality water.

EPA believes that the Commonwealth, in some cases, has sufficient biological data for the assessment of aquatic life uses, and determinations for high quality waters, but, in other instances, additional data and information may be required. Where additional data and information are required for a determination, Kentucky could request the permit applicant to collect additional biological data using the methodologies referenced in the Commonwealth's water quality standards regulation. If no biological data are available for the segment's macroinvertebrate or fish population, a survey should be conducted for both macroinvertebrate and fish populations; a rating of "good" for either population is sufficient to document that the segment is a high quality water. However, EPA also believes that there may be some instances where the Commonwealth may choose to collect the necessary chemical data.

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For recreational uses, the Commonwealth may use ambient water column data on bacteriological densities. Kentucky's existing water quality standards specify fecal coliform bacteriological criteria for protection of recreation in and on the water. In making judgments of water quality that is better than the levels necessary to support recreation in and on the water, the Commonwealth can use ambient data for fecal coliform densities. If Kentucky water quality standards are revised to include the use of water quality criteria for E. coli or enterococci, Kentucky must use the bacteria criteria that are adopted and approved at the time a determination for recreation high quality is made.

Under today's proposal, EPA does not require the Commonwealth to take a particular approach where there are insufficient data to make a definitive determination that a water body is high quality water. In the absence of definitive data and information which demonstrates that a water body is high quality, the Commonwealth may either consider the water body to be a high quality water for the purposes of meeting antidegradation permitting requirements, or require the collection of additional data for a high quality determination. If the Commonwealth considers the water body to be a high quality water, the Commonwealth will ensure that all other antidegradation requirements are met prior to making a determination as to whether the discharge is necessary to accommodate important economic or social development in the area in which the waters are located, and whether the discharge will be allowed.

EPA is soliciting comments on the approach in today's proposal, which provides Kentucky broad latitude in identifying high quality waters. EPA recognizes that Kentucky is likely to use the biological indices developed by the Commonwealth for rating ambient macroinvertebrate and fish populations, as an acceptable means for identifying the Commonwealth's high quality waters. EPA specifically requests comment on the use of biological data, and requests that commenters identify cases where a water body or water segment would not be identified as a high quality water using biological data, but that water body or segment would be demonstrated to be a high quality water through the consideration of ambient chemical data.

EPA also solicits comments on whether the regulation, if made final, should require the Commonwealth to use a particular approach in identifying high quality waters. EPA considered specifying the parameter-by-parameter approach using only chemical data in the proposed rule. The parameter-by-parameter approach takes advantage of water column data, which, in many States, are more readily available than other types of data. Therefore, EPA is also requesting comments on this alternative approach to today's proposal.

C. How Will Kentucky Implement the Proposed High Quality Waters Policy?

1. Significance of the discharge. Proposed activities that could result in a lowering of water quality in a high quality water, including proposed KPDES permits for new or increased discharges, would require an antidegradation review, unless the Commonwealth determines that the proposed activity will not result in a significant lowering of water quality. EPA's practice defers to States' judgment on identifying when an antidegradation review would not be needed. EPA does not interpret the antidegradation policy to preclude a determination that certain proposed new discharges or increases in existing discharges may have an insignificant or *de minimis* impact on water quality and, therefore, may not require an antidegradation review.

EPA's water quality standards regulation does not specify a threshold below which an antidegradation review would not be needed. However, EPA has long interpreted the antidegradation policy to allow a determination that certain proposed new discharges or increases in existing discharges may have an insignificant or *de minimis* impact on water quality and, therefore, may not require an antidegradation review. (*See*, for example, the November 10, 1986, memorandum signed by William A. Whittington, Director of the Office of Water Regulations and Standards, and James R. Elder, Director, Office of Water Enforcement and Permits, indicating that one of the principles of the antidegradation policy is a focus on significant actions.)

EPA has reflected this principle in the development of its own rulemakings. For example, in the "Proposed Water Quality Guidance for the Great Lakes System," (GLI) 58 FR 20802, April 16, 1993, EPA defined the term "significant lowering of water quality" and discussed the concept generally, stating that:

> EPA and the Great Lakes States have chosen to prioritize actions that pose a threat to the protection and maintenance of water quality in high quality waters by focusing the Proposed Guidance on significant lowering of water quality. (*Id.*, p. 20894)

In the proposed Great Lakes rule, EPA considered certain chemicals to be bioaccumulative chemicals of concern (BCCs) and distinguished those chemicals from other parameters affecting water quality. For BCCs, EPA also considered any increase in mass loading of such a pollutant to result in a significant lowering of water quality. But for other pollutants, EPA included other factors such as assimilative capacity (in addition to loading) in determining whether a proposed discharge would result in a significant lowering of water quality. The proposed Great Lakes rule also noted that the decision-maker can make a case-by-case determination regarding the significant lowering of water quality based on other relevant considerations. The final rule did not reflect the significant lowering of water quality based on other relevant factors because it dealt only with BCCs.

As for non-BCCs, the Agency also discussed in the proposed Great Lakes rule the position that certain proposed discharges may not result in a significant lowering of water quality and, therefore, would not require an antidegradation review. EPA indicated that the definition of significant lowering of water quality for non-BCC pollutants is adequate to maintain and protect water quality of in the Great Lakes system. EPA also stated:

> It does not undercut the requirement that limitations protect existing uses, *i.e.*, protect all applicable water quality standards. Rather, it limits the requirement to conduct an antidegradation review to situations when a source sought to increase existing permit limitations on the rate of mass loading, except as the increase is *de minimis* or there would be no change in ambient water quality, and thereby will limit the number of actions subject to a full antidegradation review. *EPA believes this is an appropriate balance between the need to protect water quality for these substances and the burden, to both the regulated community and the regulatory agencies, of conducting an antidegradation review.* (emphasis added). (*Id.*, p. 20895)

EPA has also discussed the concept of significant degradation in the "Advance Notice of Proposed Rulemaking," 63 FR 36742, July 7, 1998. EPA noted the use of significance determinations by States and Tribes and commented upon the concept generally:

> Although not discussed in 40 CFR section 131.12 of the water quality standards regulation, State and on occasion Tribal Tier 2 implementation procedures often include guidelines which are used to determine when the water quality degradation that will result from a proposed activity is significant enough to warrant further antidegradation review. Where the degradation is not significant, the antidegradation review is typically terminated for that proposed activity. The significance evaluation is usually conducted on a pollutant-by-pollutant basis, even where a water body-by-water body approach is used to identify high quality waters, and significant degradation for any one pollutant triggers further review for that pollutant. *Applying antidegradation requirements only to activities that will result in significant degradation is a useful approach that allows States and Tribes to focus limited resources where they may result in the greatest environmental protection.* (emphasis added). (*Id.*, p. 36783)

EPA considers the rationale set forth in the memorandum and these notices of proposed rulemakings, relative to the application of antidegradation review to activities involving a significant lowering of water quality, to be equally applicable here.

EPA believes that the assessment of the degree to which water quality is projected to be lowered as a result of proposed activities should consider factors such as:

- The projected magnitude of impact on the receiving stream (or possible effects on water bodies downstream of the receiving stream),
- The projected reduction in the assimilative capacity of the receiving stream(s), and potential impacts on sediment and biota,
- The magnitude of the increase in the discharge from a facility over existing or previously permitted discharges (or existing discharge loadings),
- The temporary nature of lowering water quality, or
- An evaluation which captures a combination of these factors.

These factors are similar to those which EPA Region 4 included in draft guidance to Region 4 States and Tribes on this issue. (*See* May 7, 1996, letter from Fritz Wagener, Chief Water Quality Standards Section to Terry Anderson, Water Quality Branch, Kentucky Division of Water.) However, this guidance also cautions States that the use of too high of a threshold in a determination of *de minimis* degradation could unduly restrict the number of proposed activities that are subject to a full antidegradation review.

EPA also believes that some situations will result in little or no impact, and these situations do not rise to the level that warrants further consideration under the high quality waters provisions of the antidegradation policy. Such a situation might involve the issuance of a general KPDES permit for a category of discharges where no water quality impact, or a very minimal water quality impact, is expected to result from the cumulative effect of all discharges that are authorized by the issuance of the general permit.

2. Alternatives to lowering water quality. Those most likely to be indirectly affected by this rulemaking are persons requesting new permits to discharge into high quality waters and current permittees who are requesting a revision of their permits to expand their discharges into high quality waters. If the Commonwealth determines that the new or expanded discharge could result in a significant lowering of water quality, the proposed regulation for implementing the high quality water policy requires the Commonwealth before authorizing the lowering of water quality to determine that an increased discharge is necessary and that the lowering of water quality will accommodate important economic or social development. In making that determination, the Commonwealth would evaluate whether there are alternatives that would avoid the need to lower water quality and whether the lowering of water quality is important for economic and social development in the area of the discharge.

EPA considers pollution prevention and enhanced treatment alternatives analyses as an appropriate starting point and of particular importance in an antidegradation review for both industrial and municipal dischargers. Given the variety of engineering approaches to pollution control, a number of options are available that could reduce or eliminate the anticipated lowering of water quality. Some of these include substituting less-toxic or less-bioaccumulative chemicals for the toxic or bioaccumulative chemical. Another approach could involve water conservation to reduce the overall volume of waste water and possibly reduce pollutant mass loadings. Other approaches could include more careful control of the materials in the process stream, the recycle or reuse of waste byproducts, and operational changes to reduce the quantities of waste. Kentucky would need to make a determination that an alternative or combination of alternatives is cost-effective. If cost-effective pollution prevention alternatives are available, there would be no need for the lowering of water quality.

If the pollution prevention alternatives alone were not sufficient to eliminate the necessity for lowering of water quality, Kentucky would focus on ensuring that the actual degradation of the high quality water is reduced to the greatest extent practicable. EPA expects that Kentucky would evaluate whether the relative cost of the least costly option for enhanced treatment would still allow the proposed activity to occur without resulting in a significant lowering of water quality. EPA has not established a benchmark for determining whether alternative or enhanced treatment options are affordable. Kentucky would make the determination.

As described in section II.B, Kentucky has adopted implementation procedures for exceptional waters at 401 KAR 5:030 section 1.(3). These procedures require the consideration of the following discharge and enhanced treatment alternatives in a demonstration that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located:

1. Discharge to other treatment facilities;
2. Use of other discharge locations;
3. Water reuse or recycling;
4. Process or treatment alternatives; and
5. On-site or subsurface disposal.

Kentucky's current regulations limit the application of this evaluation process to exceptional waters. EPA did not propose these specific elements for consideration in high quality waters because they might limit the type of information that the Commonwealth could potentially use in making a determination on the proposed lowering of water quality. For example, a more costly alternative could be available which might result in less water quality degradation, but the additional cost might be considered to be reasonable, in light of the degradation that would occur. Although EPA chose not to adopt Kentucky's procedures for exceptional waters for today's proposal, the Agency solicits comment on whether the Agency should use these provisions rather than the more general ones included in today's proposal.

3. Impact of lowering water quality. If the increased loading is determined to be necessary, Kentucky would then have to determine that the lowering of water quality would support important economic or social development in the area where the discharge is to occur. Kentucky's current regulations include a methodology ("The Interim Economic Guidance for Water Quality Standards: Workbook," U.S. EPA, 1995) for an applicant to follow when requesting a new or significantly increased discharge in exceptional waters. EPA believes that several types of analyses could be used to determine the effect of more stringent controls on the economic and social well-being of a community. Therefore, the proposed rule does not limit the Commonwealth to one methodology. The Commonwealth could develop or

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identify guidance for applicants to use in evaluating the socioeconomic benefits to the affected community. The Agency would be particularly interested in receiving any peer-reviewed methodologies or literature relevant to these analyses.

Antidegradation reviews are typically triggered when a new or increased discharge is requested as part of a CWA section 402 KPDES permit, CWA section 404 dredge and fill permits, and other activities requiring a CWA 401 certification. Some States conduct antidegradation reviews as part of their continuing planning process or consider antidegradation reviews as part of their watershed planning process.

On October 1, 1999, Kentucky proposed revisions to the Commonwealth's water quality standards which included specific provisions for evaluation of new and expanded discharges to the category of use protected waters. These proposed provisions comprised an evaluation process for consideration of lowering water quality in use protected waters. However, the provisions were subsequently withdrawn from consideration prior to final adoption of the revisions to Kentucky's antidegradation provisions on December 8, 1999.

EPA is requesting comment on whether Kentucky's detailed October 1, 1999, proposal should be part of the final Federal regulation itself, or used to implement the broader regulatory language in today's proposed rule. Kentucky recommended in a letter of May 24, 2001, from Mr. Jack A. Wilson, Director, Division of Water, to Ms. Beverly Banister, Director, Water Management Division, that EPA pursue an approach based on the provisions formally proposed for adoption as revisions to Kentucky water quality standards on October 1, 1999, during the triennial review conducted by the Commonwealth. In that proposal, Kentucky included a socioeconomic demonstration, including an alternatives analysis, for the category of waters defined as "use protected" waters, but these provisions were withdrawn prior to adoption of the triennial review revisions to Kentucky water quality standards. As discussed in section B, the use protected category of waters includes any water not designated as an exceptional water or an outstanding national resource water by the Commonwealth. Kentucky also suggested that waters currently listed pursuant to CWA section 303(d) as having "impaired uses" be excluded from high quality water antidegradation requirements.

The eleven factors included in the October 1, 1999, proposal were:

1. The effect of the facility on an existing environmental or public health problem;
2. The increase or avoidance of a decrease in employment;
3. The increase in production level;
4. An increase in efficiency;
5. Industrial, commercial, or residential growth;
6. Any other economic or social benefit to the community;
7. Discharge to other treatment facilities;
8. Use of other discharge locations;
9. Water reuse or recycle;
10. Process and treatment alternatives; and
11. On site or sub-surface disposal.

EPA did not choose to include this level of specificity in the proposed rule because the list may not include all of the factors or alternatives that might arise in every circumstance. Further, EPA's historical position is that the States should retain some discretion in identifying the relevant factors to examine and the threshold of socioeconomic benefits necessary to justify a lowering of water quality in a high quality water.

EPA is also requesting comment on another alternative to today's proposal that would expand the number of waters in the exceptional waters category. Under such an approach, the entire suite of Kentucky's exceptional water implementation provisions in 401 KAR 5:030, section 1.(1)(a) and (b) would apply to all high quality waters in the Commonwealth. As stated previously in section II.B., Kentucky's exceptional waters implementation provisions generally include more stringent controls than those required by EPA's regulations at 40 CFR 131.12(a)(2) for high quality waters. EPA also recognizes that the Kentucky Division of Water has stated that portions of the implementation provisions for exceptional waters are more detailed than the Division would consider as applying to high quality waters. Therefore, any consideration of this alternative for inclusion in a final rule would be conditioned upon an agreement by the Commonwealth that application of all exceptional water implementation provisions was appropriate for all high quality waters in the Commonwealth.

4. *Administrative process.* EPA believes that the Commonwealth's existing administrative processes for public review of proposed decisions for waters protected under the provisions of 401 KAR 5:029 section 1.(2) may be used for all high quality waters. Kentucky's existing mechanisms for intergovernmental coordination and public participation processes in antidegradation decisions for the Commonwealth's existing categories of surface waters will serve decision-making well on all high quality waters. These existing administrative processes are contained in 401 KAR 5:030, 401 KAR 5:075, and sections .015, .017, .160, .270, .280, and .320 of Kentucky Revised Statute (KRS) chapter 013A. These provisions include the following:

A copy of the public notice is mailed to:

1. The applicant,
2. EPA Region 4,
3. Federal and State agencies with jurisdiction over fish, shellfish and wildlife resources, the Advisory Council on Historic Preservation, Kentucky Historical Society and other appropriate authorities, including any affected States,
4. The U.S. Corps of Engineers, the U.S. Fish and Wildlife Service, and the National Marine Fisheries Service,
5. Any user identified in the permit application of a privately-owned treatment works, and
6. Persons on a mailing list developed by the Kentucky Division of Water by:

—Including those who request in writing to be on the list,
—Soliciting persons from lists of participants in past permit proceedings in the area, and
—Notifying the public of the opportunity to be put on the mailing list through periodic publication in the public press and in such publications as newsletters, environmental bulletins, or State law journals.

In addition, KDOW maintains a list of Electronic Mail addresses as a replacement or as a supplement to its mailing list, and publishes a notice of proposed KPDES permitting actions on the KDOW web site. For major KPDES permits, Kentucky Division of Water is required to publish a notice in a daily or weekly newspaper in the area potentially affected by the facility or activity.

EPA believes that Kentucky's public participation processes are consistent with the Agency's requirements and therefore, does not see the need for additional implementing regulations for this purpose. For an example of a Public Notice which includes notification that provisions of the Commonwealth's antidegradation policy have been applied in the development of KPDES permit conditions, please visit the Web site: *http://water.nr.state.ky.us/dow/2002-23.htm.*

EPA, in developing today's proposed rule, reviewed the provisions of Kentucky Revised Statutes chapter 013A00 section .100, which require an administrative body in the Commonwealth to prescribe by administrative regulation, the

implementation, or interpretation of a statement, policy, procedure, or other requirement of general applicability. EPA acknowledges that many of the details and/or options for implementing the proposed rule are outlined in the notice of today's proposed rule. While EPA is publishing today's proposed rule based on the conclusion that the Commonwealth should be in a position to implement the rule as proposed, the level of detail in any final rule will be determined after a thorough review of all comments that relate to this statutory provision limiting Kentucky's ability to implement the regulation.

EPA is particularly interested in receiving comments relating to whether today's proposal provides a sufficient level of detail and provides an adequate regulatory basis for the Commonwealth (1) to consider protection of high quality waters in the Commonwealth, and (2) to issue KPDES permits in cases where important social or economic development can be demonstrated to be necessary for lowering of water quality in these high quality waters. In light of Kentucky's statutory provision, the Agency also seeks comment on whether some of the guidance set forth in this notice should instead be codified as a part of the rule.

D. What Are the Potential Cost Implications of the Proposed Rule?

The total annualized cost of today's proposed rule for both the Commonwealth and the dischargers could range from $127,000 to $3,000,000. The proposal does not impose any predictable impacts with the exception that EPA's rule could increase the number of waters that may benefit from high quality waters protection. However, economic consequences that would flow from this proposal are uncertain because they are wholly dependent on discretionary activities of individual dischargers and the Commonwealth.

If the Commonwealth were to identify high quality waters as a result of this rule, all new and existing dischargers wanting to increase their discharges into those waters would have to ask Kentucky to authorize the discharge, including any lowering of the water quality. If Kentucky were to grant the request, the only cost to the discharger would be the cost of its request (and supporting documentation) to Kentucky.

If Kentucky were to deny the request to lower water quality, the discharger would bear the additional cost for the controls needed to avoid lowering the water quality. Economic consequences flowing from EPA's proposal if finalized would depend on the Commonwealth's actions (including waiving antidegradation reviews for increased discharges that it determines would not significantly affect water quality). Given the uncertainty of possible outcomes, EPA cannot fully predict the economic consequence of its action.

Although this proposed rule does not directly impact small entities, EPA nonetheless tried to examine the costs of having to supply the necessary documentation to support a request for a discharge that would lower water quality for a high quality water in Kentucky. EPA examined the costs of submitting the analyses and concluded that, relying on conservative assumptions, this cost could range from $2,300 to $30,000 for a minor discharger and $10,000 to $72,000 for a major discharger. Small entities may be more likely to be classified as minor dischargers than as major dischargers; minor dischargers may be less likely to request increases in discharges because they discharge and are permitted for fewer toxic pollutants, which are more likely to adversely affect water quality in small amounts triggering an antidegradation review. However, EPA cannot determine the number of small entities that may incur this onetime cost, or the impact of this cost on affected small entities (because high quality waters in the State of Kentucky have not been identified, and the specific facilities or types of facilities likely to be affected cannot be estimated). Nonetheless, given the low magnitude of these costs, that they are onetime costs, and that increased discharges are likely to be associated with increases in production, revenues (which could result in a change in classification from small entities to large entities), and profits, the costs would not likely impose a significant economic impact on a substantial number of small entities.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866 (Regulatory Planning and Review)

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

1. Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;
2. Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
3. Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
4. Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Executive Order 13045 (Protection of Children From Environmental Health Risks and Safety Risks)

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The proposed rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866. Further, it does not concern an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children.

C. Executive Order 13132 (Federalism)

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" are defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States,

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on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The proposed rule would not affect the nature of the relationship between EPA and States generally, for the rule only applies to high quality waters in Kentucky. Further, the proposed rule would not substantially affect the relationship of EPA and the Commonwealth of Kentucky, or the distribution of power or responsibilities between EPA and the various levels of government. The proposed rule would not alter the State's authority to issue KPDES permits or the State's considerable discretion in implementing the antidegradation high quality waters provisions. Further, this proposed rule would not preclude Kentucky from adopting water quality standards that meet the requirements of the CWA. Thus, Executive Order 13132 does not apply to this rule.

Although Executive Order 13132 does not apply to this rule, EPA did consult with representatives of the Commonwealth of Kentucky in developing this rule. EPA met with representatives of the Kentucky Division of Water on December 13, 2001, and on December 14, 2001, with representatives of the Kentucky Natural Resources and Environmental Protection Cabinet and the Division of Water on approaches addressed in the proposal. The representatives with whom EPA met expressed strong disagreement with the parameter-by-parameter approach to identifying high quality waters. Their strong preference was for any Federal rule not to limit Kentucky's approach for the identification of high quality waters to the use of ambient chemical data. The Commonwealth's existing antidegradation program uses biological data and information to rate and evaluate waters. EPA is proposing to continue its longstanding policy that would allow Kentucky to use, as appropriate, biological data, chemical data or a combination of both types of data on a parameter-by-parameter basis or a designational approach to identify high quality waters.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials. EPA plans to continue to help Kentucky adopt its own antidegradation high quality waters provisions so that EPA will not have to finalize the rule. In addition, the proposed rule provides an extended 120 day comment period which will help provide additional time for the Commonwealth.

D. Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

This proposed rule does not have tribal implications. It will not have a substantial direct effect on tribal governments, on the relationship between the Federal government and Indial tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. There are no Indian tribes in Kentucky. Thus, Executive Order 13175 does not apply to this rule. In the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and tribal governments, EPA specifically solicits comment on this proposed rule from tribal officials.

E. Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use)

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

F. Paperwork Reduction Act

This proposed action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* It does not include any information collection, reporting or recordkeeping requirements. Burden means the total time, effort or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

G. Regulatory Flexibility Act, as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996

The Regulatory Flexibility Act (RFA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (5 U.S.C. 601 *et seq.*), generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations and small governmental jurisdictions.

For purposes of assessing the impacts of today's proposed rule on small entities, small entity is defined as: (1) A small business according to RFA default definitions for small business (based on SBA size standards); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This proposed rule will not impose any requirements on small entities.

The RFA requires analysis of the impacts of a rule on the small entities subject to the rule's requirements. *See United States Distribution Companies* v. *FERC*, 88 F.3d 1105, 1170 (D.C. Cir. 1996). Today's proposed rule establishes no requirements applicable to small entities, and so is not susceptible to regulatory flexibility analysis as prescribed by the RFA. ("[N]o [regulatory flexibility] analysis is necessary when an agency determines that the rule will not have a significant economic impact on a substantial number of small entities *that are subject to the requirements of the rule*," *United Distribution* at 1170, quoting *Mid-Tex Elec. Co-op* v. *FERC*, 773 F.2d 327, 342 (D.C. Cir. 1985) (emphasis added by *United Distribution* court).) The Agency is thus certifying that today's proposed rule will not have a significant economic impact on a substantial number of small entities, within the meaning of the RFA.

Under the CWA water quality standards program, States must adopt water quality standards for their waters that include antidegradation policies and implementation methods and must submit those water quality standards to EPA for approval; if the Agency disapproves a State standard and the State does not adopt appropriate revisions to address EPA's disapproval, EPA must promulgate standards consistent with the statutory requirements. EPA also has the authority to promulgate uses and criteria in any case where the Administrator determines that a new or revised standard is necessary to meet the requirements of the Act. These State standards (or EPA-promulgated standards) are implemented through various water quality control programs including the National Pollutant Discharge Elimination System (NPDES) program, which limits discharges to navigable waters except in compliance with an EPA permit or a permit issued under an approved State program. The CWA requires that all NPDES permits include any limits on discharges that are necessary to meet applicable water quality standards.

Thus, under the CWA, EPA's promulgation of water quality standards establishes standards that the State implements through the NPDES permit process. The State has discretion in deciding how to meet the water quality standards and in developing discharge limits as needed to meet the standards. While the State's implementation of Federally promulgated water quality standards may result in new or revised discharge limits being placed on small entities, the standards themselves do not apply directly to any discharger, including small entities.

Today's proposed rule, as explained earlier, does not itself establish any requirements that are directly applicable to small entities. As a result of this action, the Commonwealth of Kentucky will need to ensure that permits it issues include any limitations on discharges necessary to comply with the antidegradation policy and procedures for high quality waters established in the final rule. In doing so, the Commonwealth will have a number of discretionary choices associated with permit writing. While Kentucky's implementation of the rule may ultimately result in some new or revised permit conditions for some dischargers, including small entities, EPA's action today does not impose any of these as yet unknown requirements on small entities.

H. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's proposed rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local or Tribal governments or the private sector. The proposed rule imposes no enforceable duty on the State or any local or Tribal government or the private sector; rather this rule proposes an antidegradation policy and implementation methods for certain high quality waters in Kentucky which, when combined with the uses Kentucky designated for the waters of the Commonwealth and the water quality criteria adopted to protect the designated uses, constitute the water quality standards for high quality waters. The Commonwealth may use these resulting water quality standards in implementing its water quality control programs. Today's proposed rule does not regulate or affect any entity and, therefore, is not subject to the requirements of sections 202 and 205 of the UMRA.

EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect any small governments. As stated, the proposed rule imposes no enforceable requirements on any party, including small governments. Moreover, any water quality standards, including those proposed here, apply broadly to dischargers and are not uniquely applicable to small governments. Thus this proposed rule is not subject to the requirements of section 203 of the UMRA.

I. National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposal does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards. EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially applicable voluntary consensus standards and to explain why such

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standards should be used in this regulation.

J. Endangered Species Act

Pursuant to section 7 of the Endangered Species Act (ESA), 16 U.S.C. 1536, in consultation with the U.S. Fish and Wildlife Service (FWS) and National Marine Fisheries Service (NMFS), Federal agencies must ensure that their actions are not likely to jeopardize the continued existence of any listed, threatened or endangered species or result in the destruction or adverse modification of designated critical habitat of such species. Today's proposal would extend antidegradation protection for waters that presently may be under-protected by Kentucky's standards and would potentially improve the protection afforded to threatened and endangered species.

The U.S. Fish and Wildlife Service (the Service or FWS) has been involved in several ways during the development of the various provisions of 401 KAR 5:030, and has supported the revision to Kentucky's water quality standards which established 401 KAR 5:030 as new regulatory provisions of the Commonwealth. In a letter dated September 11, 1995, from Dr. Lee A. Barclay, Cookeville, Tennessee Field Supervisor, to Fritz Wagener, Chief, Water Quality Standards Section, EPA Region 4, the Service responded to EPA Region 4's request for comments on the initially adopted antidegradation implementation procedures, as follows: "The Service endorses this revision to Kentucky's water quality standards."

In addition, EPA and the Service conducted an informal consultation of EPA's August 30, 2000, approval of other revisions to Kentucky's standards. The Service provided comments on the EPA's draft Biological Evaluation of the standards revisions by letter November 1, 2000. On July 10, 2001, the informal consultation was completed, based on the Service's concurrence submitted from Dr. Lee A. Barclay, Cookeville, Tennessee Field Supervisor, FWS, to Ms. Beverly H. Banister, Director, Water Management Division, EPA Region 4, that the revisions to the standards were not likely to adversely affect threatened or endangered species.

The Service's endorsement of Kentucky's water quality standards pertains only to compliance with Endangered Species Act. EPA determines whether the State or Tribal water quality standards are in compliance with the CWA and implementing regulations.

EPA is transmitting this proposed rule to the Service for review and comment, concurrent with the publication of today's notice. That transmittal constitutes EPA's initiation of informal consultation with the Service on this proposed rule, pursuant to section 7 of the Endangered Species Act and its implementing regulations. EPA will continue to work closely with the Service to ensure the final rule will not adversely affect threatened or endangered species.

K. Plain Language

Executive order 12886 directs each agency to write all rules in plain language. We invite your comments on how to make this proposed rule easier to understand. For example:

—Have we organized the material to suit your needs?
—Are the requirements in the rule clearly stated?
—Does the rule contain technical language or jargon that isn't clear?
—Would a different (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
—Would more (but shorter) sections be better?
—What else could we do to make the rule easier to understand?

List of Subjects in 40 CFR Part 131

Environmental protection, Indian lands, Intergovernmental relations, Reporting and recordkeeping requirements, Water pollution control.

Dated: November 7, 2002.

Christine Todd Whitman,

Administrator.

For the reasons set out in the preamble, EPA proposes to amend 40 CFR part 131 as follows:

PART 131—WATER QUALITY STANDARDS

1. The authority citation for part 131 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

Subpart D—[Amended]

2. Section 131.39 is added to read as follows:

§ 131.39 Kentucky.

(a) *What antidegradation policy applies to high quality waters in the Commonwealth of Kentucky?* (1) Where the quality of the water is better than levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water, the Commonwealth of Kentucky (hereafter, Commonwealth or Kentucky) shall maintain and protect that quality unless Kentucky finds, after full satisfaction of the intergovernmental coordination and public participation provisions of the Commonwealth's continuing planning process, that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the water is located.

(2) Before allowing lower water quality, the Commonwealth shall ensure that all measures to fully protect existing uses are implemented.

(3) Before allowing lower water quality, the Commonwealth shall ensure that the most protective statutory and regulatory requirements for all new and existing point sources and all cost-effective and reasonable best management practices for nonpoint source control shall be achieved.

(b) *What are high quality waters?* High quality waters include any surface water of the United States within the Commonwealth of Kentucky where the quality of the water is better than that necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water, except for waters regulated by Kentucky under 401 Kentucky Administrative Register 5:030 sections 1.(1)(a) and (b).

(c) *How will the Commonwealth evaluate requests to lower water quality?* The Commonwealth shall evaluate the following information when deciding whether to approve a request to lower water quality in a high quality water:

(1) Alternatives to the Request to Lower Water Quality. Any cost effective pollution prevention alternatives, enhanced treatment techniques, or other alternatives that are available to the entity, that would eliminate or significantly reduce the extent to which the increased loading results in a lowering of water quality.

(2) Important Economic or Social Development. The economic or social development and the benefits to the area in which the waters are located that will be foregone if the lowering of water quality is not allowed.

[FR Doc. 02–28922 Filed 11–13–02; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register

Vol. 67, No. 220

Thursday, November 14, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 02–041N]

Summit on Listeria Monocytogenes

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of public meeting.

SUMMARY: The Food Safety and Inspection Service (FSIS) is announcing that it will hold a one day summit on *Listeria monocytogenes* on November 18, 2002. The summit will provide a forum for experts from government, academia, industry and consumer organizations to discuss current government thinking and activities regarding *L. monocytogenes*.

DATES: The public meeting is scheduled for Monday, November 18, 2002. The meeting will be held from 8:30 a.m. to 5:30 p.m.

ADDRESSES: The public meeting will be held at the Holiday Inn, 550 C Street, SW., Washington, DC. A tentative agenda is available in the FSIS Docket Room and on the Internet at *http://www.fsis.usda.gov*. FSIS welcomes comments on the topics to be discussed at the public meeting. Please send an original to the FSIS Docket Room, Reference Docket #02–041N, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 102 Cotton Annex, 300 12th Street, SW., Washington, DC 20250–3700. All comments and the official transcript of the meeting, when they become available, will be kept in the FSIS Docket Room at the address provided above.

FOR FURTHER INFORMATION CONTACT: Karen Hulebak at (202) 720–2644. Registration for the meeting will be onsite. FSIS encourages attendees to pre-register as soon as possible by contacting Ms. Mary Harris of the FSIS Planning Staff at (202) 690–6497 or by e-mail to *mary.harris@fsis.usda.gov*. If a sign language interpreter or other special accommodations are necessary, contact Ms. Harris at the above numbers no later than November 15, 2002.

SUPPLEMENTARY INFORMATION:

Background

On February 27, 2001, FSIS published a proposed rule "Performance Standards for the Production of Processed Meat and Poultry Products" (66 FR 12590). In that document, the Agency proposed testing requirements intended to reduce the incidence of *Listeria monocytogenes* in ready-to-eat (RTE) meat and poultry products, as well as food safety performance standards applicable to all RTE and partially heat-treated meat and poultry products. The Agency received numerous comments on several aspects of the proposed rule.

Public Meeting

The Agency is providing a forum for experts from government, industry, academia, and consumer organizations to discuss current research and information on the best methods to identify and control *L. monocytogenes* in the processing environment and reduce the incidence in all RTE meat and poultry products.

The meeting will consist of sessions on *Listeria* risk assessment, risk management, and risk communication. The FSIS moderators for the sessions on risk assessment, management, and communication will provide an overview of current Agency activities. Representatives from industry, government, and academia will discuss various issues related to assessing, managing, and communicating the risks associated with *Listeria monocytogenes*. Following these three sessions, stakeholders from industry, consumer groups, and academia will provide their perspectives on the current and proposed regulatory and industry practices and research needs. The Agency will invite comment and discussion at each of the sessions.

FSIS has developed a list of questions for which it seeks input.

Regarding risk assessment:

- How can risk assessment be used to improve HACCP (e.g., the use of food safety objectives) as it relates to *L. monocytogenes*?
- What approaches might be employed to collect data on the presence or level of *L. monocytogenes* on a RTE product, or on possible correlations between *L. monocytogenes* in the environment and *L. monocytogenes* in product produced in that environment. Such data are critical for risk assessments in order to inform decision makers and other stakeholders in the development of effective controls.
- What is the nature and level of peer-review that is necessary to obtain a scientifically sound assessment upon which to base regulatory decisions? When in the process should FSIS seek such input?

Regarding risk management:

- What is the relative role of environmental and product testing in detecting and preventing *L. monocytogenes* contamination? What are elements of an effective testing program?
- For processing interventions, what are the different types, the level of pathogen reduction achieved by each, and the interventions best suited for small and very small establishments?

Regarding risk communication:

- Through what channels and tools can FSIS most effectively disseminate food safety advice to those at particular risk of developing listeriosis? Are people listening to the messages out there now?
- What role does the food industry see itself playing in communicating risks associated with RTE foods to the public?
- When should FSIS issue a public health alert in an outbreak situation? Should it do so even if the cause of the outbreak has not yet been determined so that consumers—particularly those at high risk—can take precautions?

Additional Public Notification

Public involvement in all segments of rulemaking and policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this notice and informed about the mechanism for providing their comments, FSIS will announce it and make copies of this **Federal Register** publication available through the FSIS Constituent Update. FSIS provides a weekly FSIS Constituent Update, which is communicated via Listserv, a free e-mail subscription service. In addition, the update is available on line through the Internet at *http://www.fsis.usda.gov*. The update is used to provide

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information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents and stakeholders. The constituent Listserv consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals who have requested to be included. Through the Listserv and web page, FSIS is able to provide information to a much broader, more diverse audience.

For more information, contact the Congressional and Public Affairs Office at (202) 720–9113. To be added to the free e-mail subscription service (Listserv), go to the "Constituent Update" page on the FSIS Web site at *http://www.fsis.usda.gov/oa/update.htm*. Click on the "Subscribe to the Constituent Update Listserv" link, then fill out and submit the form.

Done in Washington, DC, on November 8, 2002.

Dr. Garry L. McKee,

Administrator.

[FR Doc. 02–28915 Filed 11–13–02; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for Clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: Annual Capital Expenditures Survey.

Form Number(s): ACE–1(S), ACE–1(M), ACE–1(Long), ACE–2.

Agency Approval Number: 0607–0782.

Type of Request: Revision of a currently approved collection.

Burden: 145,000 hours.

Number of Respondents: 61,000.

Avg. Hours Per Response: 2 hours and 23 minutes.

Needs and Uses: Data on the amount of business expenditures for new plant and equipment and measures of the stock of existing facilities are critical to evaluate productivity growth, the ability of U.S. business to compete with foreign business, changes in industrial capacity, and measures of overall economic performance. The ACES is the current source of comprehensive statistics on business investment in buildings and other structures, machinery, and equipment for private non-farm businesses in the United States.

The plan for the continued survey is a basic annual survey that collects fixed assets and depreciation, sales and receipts, and total capital expenditures for new and used structures and equipment separately, from employer enterprises. This collection is intended to represent the capital expenditure activity of all employer firms and provide comprehensive control estimates of total capital expenditures for structures and equipment by industry. A mail out/mail back survey form will be used to collect data. Employer companies will be mailed one of three forms based on their diversity of operations and number of industries with payroll. Major planned revisions from the previously approved collection are the elimination of the separate question on the amount of capitalized interest incurred during the year to produce or construct assets reported as capital expenditures; and, the addition of a request for data on capitalized costs of computer software developed or obtained for internal use.

The ACES is an integral part of the Federal Government statistical program to improve and supplement ongoing statistical programs. Federal Government agencies, including the Census Bureau, use the data to improve and supplement ongoing statistical programs.

Affected Public: Business or other for-profit, not-for-profit institutions.

Frequency: Annually.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13 U.S.C., Sections 182, 224, and 225.

OMB Desk Officer: Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dhynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer either by fax (202) 395–7245) or e-mail (*susan_schechter@omb.eop.gov*).

Dated: November 8, 2002.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02–28912 Filed 11–13–02; 8:45 am]

BILLING CODE 3510–7–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: Quarterly Survey of Residential Alterations and Repairs.

Form Number(s): SORAR–705.

Agency Approval Number: 0607–0130.

Type of Request: Extension of a currently approved collection.

Burden: 2,400 hours.

Number of Respondents: 2,400.

Avg Hours Per Response: 15 minutes.

Needs and Uses: The U.S. Census Bureau is requesting an extension of the current approved collection for the Quarterly Survey of Residential Alterations and Repairs. The Census Bureau is responsible for preparing estimates of the expenditures for residential improvement and repairs. This segment of the construction industry amounted to over $150 billion in 2000. While the majority of the data are gathered from the Consumer Expenditure Survey (OMB number 1220–0050), a portion of the data (nearly $50 billion in 2000) are collected in this survey. The survey form is mailed quarterly to a sample of owners of rental or vacant residential properties. Since residential improvement and repairs are a large growing economic sector, any measure of the construction industry would be incomplete without the inclusion of these data.

The Census Bureau uses the information collected to publish improvement and repair expenditures for rental and vacant residential properties. Data on improvements and repairs to owner-occupied properties are collected in the Consumer Expenditures Survey. Combined published estimates are used by a variety of private businesses and trade associations for marketing studies, economic forecasts and assessments of the construction industry. They also provide all levels of Government with a tool to evaluate economic policy and measure progress towards established goals. For example, the Bureau of Economic Analysis (BEA) uses improvement statistics to develop the residential structures component of the gross private domestic investment in the national income and product accounts.

Affected Public: Individuals or households, business or other for-profit, State, local or tribal governments.

Frequency: Quarterly.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C., section 182.

OMB Desk Officer: Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dhynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer either by fax (202–395–7245) or e-mail (*susan_schechter@omb.eop.gov*).

Dated: November 8, 2002.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02–28913 Filed 11–13–02; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570–855]

Certain Non-Frozen Apple Juice Concentrate from the People's Republic of China: Final Results of 1999–2001 Administrative Review and Partial Rescission of Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of 1999–2001 Administrative Review and Partial Rescission of Review.

SUMMARY: We have determined that sales of certain non-frozen apple juice concentrate from the People's Republic of China were made below normal value during the period November 23, 1999, through May 31, 2001. We are also rescinding the review, in part, in accordance with 19 CFR 351.213(d)(3).

Based on our review of comments received and a reexamination of surrogate value data, we have made certain changes in the margin calculations of all of the reviewed companies. Consequently, the final results differ from the preliminary results. The final weighted-average dumping margins for these firms are listed below in the section entitled "Final Results of the Review." Based on these final results of review, we will instruct the Customs Service to assess antidumping duties based on the difference between the export price and normal value on all appropriate entries.

EFFECTIVE DATE: November 14, 2002.

FOR FURTHER INFORMATION CONTACT: Audrey Twyman, Stephen Cho, or John Brinkmann, Group 1, Office I, Antidumping/Countervailing Duty Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230; telephone (202) 482–3534, (202) 482–3798, and (202) 482–4126, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department of Commerce's ("the Department") regulations are to 19 CFR Part 351 (April 2001).

Background

On July 9, 2002, the Department published the preliminary results of this review of certain non-frozen apple juice concentrate ("NFAJC") from the People's Republic of China ("PRC"). *See Certain Non-Frozen Apple Juice Concentrate From the People's Republic of China: Preliminary Results of 1999–2001 Administrative Review and Partial Rescission of Review*, 67 FR 45462 (July 9, 2002) ("*Preliminary Results*"). The period of review ("POR") is November 23, 1999, through May 31, 2001. This review covers the following producers or exporters (referred to collectively as "the respondents"): Shaanxi Haisheng Fresh Fruit Juice Co., Ltd. ("Haisheng"), Shandong Zhonglu Juice Group Co., Ltd. ("ZhongLu"), Yantai Oriental Juice Co., Ltd. ("Oriental"), Qingdao Nannan Foods Co., Ltd. ("Nannan"), Xian Asia Qin Fruit Co., Ltd. ("Xian Asia"), Changsha Industrial Products & Minerals Import and Export Co., Ltd. ("Changsha"), Shandong Foodstuffs Import and Export Corporation ("Shandong"), Shaanxi Hengxing Fruit Juice Co., Ltd. ("Hengxing"), Shaanxi Machinery and Equipment Import and Export Corporation ("SAAME"), Shaanxi Gold Peter Natural Drink Co., Ltd. ("Gold Peter"), Xian Yang Fuan Juice Co., Ltd. ("Xian Yang"), and Sanmenxia Lakeside Fruit Juice Co., Ltd. ("Lakeside").

In May, 2002, we conducted verification of the questionnaire responses submitted by the following respondents: Hengxing, Xian Asia, and Haisheng. We issued verification reports on July 17, 2002.

We invited parties to comment on the *Preliminary Results*. On August 8, 2002, we received case briefs from Lakeside, and a combined case brief from Haisheng, Zhonglu, Oriental, Nannan, Xian Asia, Shandong, and Hengxing. On August 13, 2002, the petitioners [1] submitted a rebuttal brief. No hearing was held because none was requested.

The Department has conducted this administrative review in accordance with section 751 of the Act.

Scope of Review

Merchandise covered by this review is NFAJC from the PRC. NFAJC is defined as all non-frozen concentrated apple juice with a Brix scale of 40 or greater, whether or not containing added sugar or other sweetening matter, and whether or not fortified with vitamins or minerals. Excluded from the scope of this order are: frozen concentrated apple juice; non-frozen concentrated apple juice that has been fermented; and non-frozen concentrated apple juice to which spirits have been added.

The merchandise subject to this order is classified in the *Harmonized Tariff Schedule of the United States* ("HTSUS") at subheadings 2009.70.00.20 and 2106.90.52. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

Rescission of Review in Part

As noted in the *Preliminary Results*, Xian Yang reported no shipments of subject merchandise to the United States during the POR. Entry data provided by the Customs Service confirm that there were no POR entries from Xian Yang of NFAJC. Therefore, consistent with the Department's regulations and practice, we are rescinding this review with respect to Xian Yang. (See 19 CFR 351.213(d)(3); *see, also, Silicon Metal from Brazil; Final Results of Antidumping Duty Administrative Review*, 61 FR 46763 (September 5, 1996).)

Use of Facts Otherwise Available

As discussed in detail in the *Preliminary Results*, we have determined that companies which did not respond to the Department's questionnaire in this proceeding should not receive separate rates and, thus, are

[1] Coloma Frozen Foods, Inc., Green Valley Packers, Knouse Foods Cooperative, Inc., Mason County Fruit Packers Co-op, Inc., and Tree Top, Inc.

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viewed as part of the PRC-wide entity. Moreover, as noted in the *Preliminary Results*, we determine that, in accordance with sections 776(a) and (b) of the Act, the use of adverse facts available is appropriate for companies which did not respond to our requests for information. No party in this proceeding has commented on these issues since the publication of the *Preliminary Results*. Thus, for these final results, we have continued to assign the PRC-wide rate of 51.74 percent to Changsha Industrial Products & Minerals Import and Export Co. and other companies subject to the PRC-wide rate.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this review are addressed in the "Issues and Decision Memorandum" from Richard W. Moreland, Deputy Assistant Secretary, Import Administration to Faryar Shirzad, Assistant Secretary, Import Administration, dated November 6, 2002 ("*Decision Memorandum*"), which is hereby adopted by this notice. Attached to this notice as an Appendix is a list of the issues which parties have raised and to which we have responded in the *Decision Memorandum*. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, room B-099 of the main Department building. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the Internet at http://ia.ita.doc.gov/frn/ under the heading "China PRC." The paper copy and electronic version of the Decision Memorandum are identical in content.

Changes Since the Preliminary Results

Based on our review of comments received and a reexamination of surrogate value data, we have made certain changes to the calculations for the final results. These changes are discussed in the following Comments in the *Decision Memorandum* or in the referenced final calculation memoranda for particular companies:

All Companies

Steam Coal: *Decision* Memorandum Comment 1

Domestic Brokerage and Handling: Decision Memorandum Comment 2

Labor: Pursuant to section 351.408(c)(3) of the Department's regulations, we valued labor using the regression-based wage rate for the PRC published by Import Administration on its website. This data has recently been updated and the revised PRC estimated average hourly wage rate is $0.84 per hour for 2000. See www.ia.ita.doc.gov/wages/00wages/00wages.htm.

Final Results of Review

We determine that the following dumping margins exist for the period November 23, 1999, through May 31, 2001:

Exporter/manufacturer	Weighted-average margin percentage
Qingdao Nannan Foods Co., Ltd.	0.00
Sanmenxia Lakeside Fruit Juice Co., Ltd.	0.00
Shaanxi Gold Peter Natural Drink Co., Ltd.	0.00
Shaanxi Haisheng Fresh Fruit Juice Co., Ltd.	0.00
Shaanxi Hengxing Fruit Juice Co., Ltd.	0.00
Shaanxi Machinery and Equipment Import and Export Corporation	0.00
Shandong Foodstuffs Import and Export Corporation	0.00
Shandong Zhonglu Juice Group Co., Ltd.	0.00
Xian Asia Qin Fruit Co., Ltd.	0.00
Yantai Oriental Juice Co., Ltd.	0.00
PRC-wide rate (including Changsha Industrial Products & Minerals Import and Export Co., Ltd.)	51.74

The PRC-wide rate applies to all entries of the subject merchandise, including entries from Changsha Industrial Products & Minerals Import and Export Co., Ltd., except for entries from exporters that are identified individually above.

Assessment Rates

In accordance with 19 CFR 351.212(b)(1), we have calculated importer (or customer)-specific assessment rates for the merchandise subject to this review. To determine whether the duty assessment rates were *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we calculated importer (or customer)-specific *ad valorem* rates by aggregating the dumping margins calculated for all U.S. sales to that importer (or customer) and dividing this amount by the total value of the sales to that importer (or customer). Where an importer (or customer)-specific *ad valorem* rate was greater than *de minimis*, we calculated a per unit assessment rate by aggregating the dumping margins calculated for all U.S. sales to that importer (or customer) and dividing this amount by the total quantity sold to that importer (or customer). All entries subject to the PRC-wide rate will be assessed duties at the PRC-wide rate listed above.

All other entries of the subject merchandise during the POR will be liquidated at the antidumping duty rate in place at the time of entry.

The Department will issue appropriate assessment instructions directly to the Customs Service within 15 days of publication of these final results of review. We will not be ordering liquidation of entries from Oriental, Nannan, Lakeside, Haisheng, ZhongLu, Xian Yang, Xian Asia, Changsha and Shandong as we have been enjoined from liquidating subject merchandise exported by these companies.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) for the PRC companies named above, the cash deposit rates will be the rates for these firms established in the final results of this review, except that, for exporters with *de minimis* rates (*i.e.*, less than 0.5 percent) no deposit will be required; (2) for previously-reviewed PRC and non-PRC exporters with separate rates, the cash deposit rate will be the company-specific rate established for the most recent period during which they were reviewed; (3) for all other PRC exporters, the rate will be the PRC country-wide rate, which is 51.74 percent; and (4) for all other non-PRC exporters of subject merchandise from the PRC, the cash deposit rate will be the rate applicable to the PRC supplier of that exporter. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Notification Regarding APOs

This notice also serves as a reminder to parties subject to administrative protective orders ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination and notice in accordance with sections section 751(a)(3) and 777(i) of the Act.

Dated: November 6, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

Appendix

List of Comments and Issues in the Decision Memorandum

Comment 1: Valuation of Steam Coal

Comment 2: Deduction of Domestic Brokerage and Handling Charges from U.S. Sales Price

Comment 3: Valuation of Aseptic Bags

Comment 4: Inclusion of Government MIS Apple Price in Surrogate Value Calculation

[FR Doc. 02–28925 Filed 11–13–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-580–834]

Stainless Steel Sheet and Strip in Coils from the Republic of Korea: Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Rescission of Antidumping Duty Administrative Review.

SUMMARY: On August 27, 2002, in response to timely requests from petitioners[1] and DaiYang Metal Corporation Ltd. ("DMC"), a Korean producer and exporter of subject merchandise, in accordance with section 751(a) of the Act, the Department published in the **Federal Register** a notice of initiation of this antidumping duty administrative review of sales by DMC and Pohang Iron & Steel Co., Ltd. ("POSCO") of stainless steel sheet and strip in coils from the Republic of Korea ("SSSS") for the period July 1, 2001 through June 30, 2002. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 67 FR 55000 (August 27, 2002) ("*Initiation Notice*"). Because both DMC and petitioners have withdrawn their requests for administrative review, the Department is rescinding this review, in accordance with 19 CFR 351.213(d)(1). The Department is now publishing its determination to rescind this review.

EFFECTIVE DATE: November 14, 2002.

FOR FURTHER INFORMATION CONTACT: Lilit Astvatsatrian, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone: (202) 482–6412.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's regulations are to 19 CFR part 351 (2001).

[1] Allegheny Ludlum, AK Steel Corporation, J&L Specialty Steel, North American Stainless, Butler-Armco Independent Union, United Steelworkers of America, AFL-CIO/CLC, and Zanesville Armco Independent Organization

Background

On July 1, 2002, the Department published a notice of opportunity to request administrative review. *See Notice of opportunity to request administrative review of antidumping or countervailing duty order, finding, or suspended investigation*, 67 FR 44172 (July 1, 2002). On July 31, 2002, the petitioners requested that the Department conduct an administrative review for the period July 1, 2001 through June 30, 2002, of POSCO, a producer/exporter of the subject merchandise from Republic of Korea. On July 31, 2002, DMC requested that the Department conduct an administrative review for its sale of the subject merchandise during the period July 1, 2001 through June 30, 2002. On August 27, 2002, the Department published its *Initiation Notice* on SSSS from Republic of Korea. On September 4, 2002, the Department issued antidumping duty questionnaires to POSCO and DMC. On October 7, 2002, DMC withdrew its request for the administrative review and requested that the Department rescind the review. *See Letter to Withdraw DMC's Review Request* dated October 7, 2002. On October 9, 2002, POSCO submitted its Section A response to the Department's questionnaire. See Section A Response of Antidumping Questionnaire dated October 9, 2002. On October 10, 2002, petitioners withdrew their request for an administrative review of POSCO. *See Letter to Withdraw POSCO's Review Request* dated October 10, 2002.

Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), the Department will rescind an administrative review, in whole or in part, if a party that requested a review withdraws the request within 90 days of the date of publication of notice of initiation of requested review. Both petitioners and respondents withdrew their respective requests for review within the 90 day time limit; accordingly, we are rescinding the administrative review for the period July 1, 2001 through June 30, 2002, and will issue appropriate assessment instructions to the U.S. Customs Service.

This notice serves as a reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or

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destruction of APO materials or conversion to judicial protective order is hereby requested.

Failure to comply with the regulations and terms of APO is a sanctionable violation. This determination is issued in accordance with 19 CFR 351.213(d)(4) and section 777(i)(1) of the Act.

Dated: November 1, 2002.

Joseph A. Spetrini,

Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 02–28926 Filed 11–13–02; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-570–601]

Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of 2000–2001 Administrative Review, Partial Rescission of Review, and Determination to Revoke Order, In Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of 2000–2001 administrative review, partial rescission of the review, and determination to revoke the order in part.

SUMMARY: We have determined that sales of tapered roller bearings and parts thereof, finished and unfinished, from the People's Republic of China, were made below normal value during the period June 1, 2000, through May 31, 2001. We are also rescinding the review, in part, in accordance with 19 CFR 351.213(d)(3).

Based on our review of comments received and a reexamination of surrogate value data, we have made certain changes in the margin calculations of all of the reviewed companies. Consequently, the final results differ from the preliminary results. The final weighted-average dumping margins for these firms are listed below in the section entitled "Final Results of the Review." Based on these final results of review, we will instruct the Customs Service to assess antidumping duties based on the difference between the export price and normal value on all appropriate entries.

Tianshui Hailin Import and Export Corporation and Hailin Bearing Factory, Wanxiang Group Corporation, and Zhejiang Machinery Import & Export Corp. have requested revocation of the antidumping duty order in part. Based on record evidence, we find that only Tianshui Hailin Import and Export Corporation and Hailin Bearing Factory qualifies for revocation. Accordingly, we are revoking the order with respect to the subject merchandise produced and exported by Tianshui Hailin Import and Export Corporation and Hailin Bearing Factory.

EFFECTIVE DATE: November 14, 2002.

FOR FURTHER INFORMATION CONTACT: Melani Miller, S. Anthony Grasso, Andrew Smith, or Daniel J. Alexy, Group 1, Office I, Antidumping/Countervailing Duty Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230; telephone (202) 482–0116, (202) 482–0189, (202) 482–3853, (202) 482–1174, and (202) 482–1540, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's ("the Department") regulations are to 19 CFR Part 351 (April 2001).

Background

On July 9, 2002, the Department published the preliminary results of this review of tapered roller bearings and parts thereof, finished and unfinished ("TRBs") from the People's Republic of China ("PRC"). *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Preliminary Results of 2000–2001 Administrative Review, Partial Rescission of Review, and Notice of Intent to Revoke Order in Part*, 67 FR 45451 (July 9, 2002) ("*Preliminary Results*"). The period of review ("POR") is June 1, 2000, through May 31, 2001. This review covers the following producers or exporters (referred to collectively as "the respondents"): Zhejiang Machinery Import &Export Corp. ("ZMC"), Wanxiang Group Corporation ("Wanxiang"), China National Machinery Import & Export Corporation ("CMC"), Tianshui Hailin Import and Export Corporation and Hailin Bearing Factory ("Hailin"), Luoyang Bearing Corporation (Group) ("Luoyang"), and Weihai Machinery Holding (Group) Co., Ltd. ("Weihai"), Chin Jun Industrial Ltd. ("Chin Jun").

We invited parties to comment on the *Preliminary Results*. On September 9, 2002, we received case briefs from the Timken Company ("the petitioner"), ZMC, and a combined case brief from CMC, Luoyang, Wanxiang, and Hailin. On September 17, 2002, each of these parties submitted rebuttal briefs.

The Department has conducted this administrative review in accordance with section 751 of the Act.

Scope of Review

Merchandise covered by this review is TRBs from the PRC; flange, take up cartridge, and hanger units incorporating tapered roller bearings; and tapered roller housings (except pillow blocks) incorporating tapered rollers, with or without spindles, whether or not for automotive use. This merchandise is currently classifiable under the *Harmonized Tariff Schedule* of the United States ("HTSUS") item numbers 8482.20.00, 8482.91.00.50, 8482.99.30, 8483.20.40, 8483.20.80, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.80, 8708.99.80.15, and 8708.99.80.80. Although the HTSUS item numbers are provided for convenience and customs purposes, the written description of the scope of the order and this review is dispositive.

Rescission of Review in Part

As noted in the Preliminary Results, on April 4, 2002, Weihai withdrew its request for a review. The petitioner did not request a review for Weihai. While Weihai's rescission request was made more than 90 days after initiation, 19 CFR 351.213(d)(1) provides that the Department may extend this deadline, and it is the Department's practice to do so where it poses no undue burden on the parties or on the Department. Therefore, in accordance with 19 CFR 351.213(d)(1), we have accepted Weihai's request and we are rescinding the review with respect to Weihai. For a complete discussion of this decision see the Memorandum from Team to Susan Kuhbach, "Partial Rescission of Review," dated May 20, 2002, which is on file in the Department's Central Records Unit located in the main Commerce building in Room B-099 ("CRU").

With respect to Chin Jun, as stated in the *Preliminary Results*, Chin Jun reported no shipments of subject merchandise to the United States during the POR. Entry data provided by the Customs Service confirms that there were no POR entries from Chin Jun of TRBs. Therefore, consistent with the Department's regulations and practice, we are rescinding this review with respect to Chin Jun. (*See* 19 CFR 351.213(d)(3); *see, also, Silicon Metal from Brazil; Final Results of Antidumping Duty Administrative Review*, 61 FR 46763 (September 5, 1996).)

Determination To Revoke the Order, In Part

The Department "may revoke, in whole or in part" an antidumping duty order upon completion of a review under section 751 of the Act. While Congress has not specified the procedures that the Department must follow in revoking an order, the Department has developed a procedure for revocation that is described in 19 CFR 351.222. This regulation requires, *inter alia*, that a company requesting revocation must submit the following: (1) A certification that the company has sold the subject merchandise at not less than NV in the current review period and that the company will not sell at less than NV in the future; (2) a certification that the company sold the subject merchandise in each of the three years forming the basis of the request in commercial quantities; and (3) an agreement to reinstatement of the order if the Department concludes that the company, subsequent to the revocation, sold subject merchandise at less than NV. *See* 19 CFR 351.222(e)(1).

As noted in the *Preliminary Results*, pursuant to 19 CFR 351.222(e)(1), Hailin, Wanxiang, and ZMC requested revocation of the antidumping duty order as it pertains to them. Weihai also requested revocation of the antidumping duty order, in part, on this same basis. However, as we are rescinding this review with respect to Weihai, as discussed above, no further analysis is required with respect to partial revocation of the antidumping duty order as it pertains to Weihai.

According to 19 CFR 351.222(b)(2), upon receipt of such a request, the Department may revoke an order, in part, if it concludes that (1) the company in question has sold subject merchandise at not less than NV for a period of at least three consecutive years; (2) the continued application of the antidumping duty order is not otherwise necessary to offset dumping; and (3) the company has agreed to its immediate reinstatement in the order if the Department concludes that the company, subsequent to the revocation, sold subject merchandise at less than NV.

With respect to ZMC, we find that a dumping margin exists for ZMC in the instant review. Moreover, in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results of 1998–1999 Administrative Review, Partial Rescission of Review, and Determination Not to Revoke Order in Part*, 66 FR 1953 (January 10, 2001) and *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Amended Final Results of 1998–1999 Administrative Review and Determination to Revoke Order in Part*, 66 FR 11562 (February 26, 2001) (collectively, "*TRBs XII*"), ZMC was found to have made sales below NV. Because ZMC does not have three consecutive years of sales at not less than NV, we find that ZMC does not qualify for revocation of the order on TRBs pursuant to 19 CFR 351.222(b).

As for Wanxiang, in *TRBs XII* and *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results of 1999–2000 Administrative Review, Partial Rescission of Review, and Determination Not to Revoke Order in Part*, 66 FR 57420 (November 15, 2001), we determined that Wanxiang did not qualify for revocation because it did not sell the subject merchandise in the United States in commercial quantities in each of the three years underlying its request for revocation. In the instant review, based on our previous determination that Wanxiang did not make sales in commercial quantities during at least one of the three years forming the basis of the revocation request, *i.e.*, *TRBs XII*, we do not need to examine whether Wanxiang made sales in commercial quantities in either of the other two years underlying Wanxiang's request for revocation. Thus, because Wanxiang did not make sales in commercial quantities in each of the three years cited by the company to support its revocation request, we find that Wanxiang does not qualify for revocation of the order on TRBs pursuant to 19 CFR 351.222(b).

Finally, with respect to Hailin, Hailin sold the subject merchandise at not less than NV for a period of at least three consecutive years. Hailin has also agreed in writing to the immediate reinstatement in the order, as long as any exporter or producer is subject to the order, if the Department concludes that Hailin, subsequent to the revocation, sold the subject merchandise at less than NV. Finally, based on our examination of the sales data submitted by Hailin (*see* Hailin's July 1, 2002, preliminary results calculation memorandum, which is on file in the Department's CRU, for our commercial quantities analysis with respect to this data), we determine that Hailin sold the subject merchandise in the United States in commercial quantities in each of the three years cited by Hailin to support its request for revocation. Therefore, based on the above facts, and absent evidence on the record that the continued application of the antidumping order is otherwise necessary to offset dumping from Hailin, we determine that Hailin qualifies for revocation of the order on TRBs pursuant to 19 CFR 351.222(b)(2). Accordingly, we are revoking the order with respect to merchandise produced and exported by Hailin.

Use of Facts Otherwise Available

As discussed in detail in the *Preliminary Results*, we have determined that companieswhich did not respond to the Department's questionnaire in this proceeding should not receive separate rates and, thus, are viewed as part of the PRC-wide entity. Moreover, as noted in the *Preliminary Results*, we determine that, in accordance with sections 776(a) and (b) of the Act, the use of adverse facts available is appropriate for companies that did not respond to our requests for information. No party in this proceeding has commented on these issues since the publication of the *Preliminary Results*. Thus, for these final results, we have continued to assign the PRC-wide rate of 33.18 percent to companies that are part of the PRC-entity.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this investigation are addressed in the "Issues and Decision Memorandum" from Richard W. Moreland, Deputy Assistant Secretary, Import Administration, to Faryar Shirzad, Assistant Secretary, Import Administration, dated November 6, 2002 ("*Decision Memorandum*"), which is hereby adopted by this notice. Attached to this notice as an Appendix is a list of the issues that parties have raised and to which we have responded in the *Decision Memorandum*. Parties can find a complete discussion of all issues raised in this investigation and the corresponding recommendations in this public memorandum which is on file in the CRU. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the Internet at http://ia.ita.doc.gov/frn/ under the heading "China PRC." The paper copy and electronic version of the *Decision Memorandum* are identical in content.

Changes Since the Preliminary Results

Based on our review of comments received and a reexamination of

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surrogate value data, we have made certain changes to the calculations for the final results. These changes are discussed in the following Comments in the *Decision Memorandum* or in the referenced final calculation memoranda for particular companies:

All Companies

- Cup and Cone Steel Valuation

Decision Memorandum Comment 2

- Roller and Cage Steel and Scrap Valuations

Decision Memorandum Comment 4

- Profit Ratio

Decision Memorandum Comment 5

Assessment Rates

In the *Preliminary Results*, we miscalculated the per-unit assessment rates of Luoyang, Hailin, and ZMC by incorrectly multiplying the importer-specific per-unit duty by 100. This error has been corrected in these final results. Also, for all respondents, we have added programming language to determine whether the importer-specific duty assessment rates were *de minimis* (*i.e.*, less than 0.50 percent).

Wanxiang

We excluded domestic brokerage and handling costs from Wanxiang's reported SG&A labor factor and deducted these expenses as a movement expense in Wanxiang's U.S. price calculation. *See* Comment 12 in the *Decision Memorandum*.

ZMC

We revised ZMC's final results calculations to take into account a minor reporting error noted by ZMC in its case briefs. *See* Memorandum from Case Analyst to File, "Final Results Calculation Memorandum for Zhejiang Machinery Import and Export Corporation," dated November 6, 2002, which is on file in the Department's CRU.

Final Results of Review

We determine that the following dumping margins exist for the period June 1, 2000, through May 31, 2001:

Exporter/manufacturer	Weighted-average margin percentage.
China National Machinery Import & Export Corporation	0.71
Wanxiang Group Corporation	0.00
Tianshui Hailin Import and Export Corporation and Hailin Bearing Factory	0.00
Luoyang Bearing Corporation (Group)	0.06 (de minimis)
Zhejiang Machinery Import & Export Corp.	0.81
PRC-wide rate	33.18

Assessment Rates

In accordance with 19 CFR 351.212(b)(1), we have calculated importer (or customer)-specific assessment rates for the merchandise subject to this review. To determine whether the duty assessment rates were *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we calculated importer (or customer)-specific *ad valorem* rates by aggregating the dumping margins calculated for all U.S. sales to that importer (or customer) and dividing this amount by the total value of the sales to that importer (or customer). Where an importer (or customer)-specific *ad valorem* rate was greater than *de minimis*, we calculated a per unit assessment rate by aggregating the dumping margins calculated for all U.S. sales to that importer (or customer) and dividing this amount by the total quantity sold to that importer (or customer). All entries subject to the PRC-wide rate will be assessed duties at the PRC-wide rate listed above.

All other entries of the subject merchandise during the POR will be liquidated at the antidumping duty rate in place at the time of entry.

The Department will issue appropriate assessment instructions directly to the Customs Service within 15 days of publication of these final results of review.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the finalresults of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) for the PRC companies named above, the cash deposit rates will be the rates for these firms shown above, except that, for exporters with *de minimis* rates (*i.e.*, less than 0.5 percent) no deposit will be required; (2) for previously-reviewed PRC and non-PRC exporters with separate rates, the cash deposit rate will be the company-specific rate established for the most recent period for which they were reviewed; (3) for all other PRC exporters, the rate will be the PRC country-wide rate, which is 33.18 percent; and (4) for all other non-PRC exporters of subject merchandise from the PRC, the cash deposit rate will be the rate applicable to the PRC supplier of that exporter. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Notification Regarding APOs

This notice also serves as a reminder to parties subject to administrative protective orders ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination and notice in accordance with sections section 751(a)(1) and 771(i) of the Act.

Dated: November 6, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

APPENDIX

List of Comments and Issues in the Decision Memorandum

Comment 1: Steel Data Used for Valuing Cups and Cones is Aberrational
Comment 2: Excluding Certain Data from the Cups and Cones Valuation
Comment 3: Steel Data Used for Valuing Rollers and Cages is Aberrational
Comment 4: Excluding Certain Data Used in Steel and Scrap Surrogate Values
Comment 5: Overhead, Selling, General, and Administrative Expense ("SG&A"), and Profit Ratios
Comment 6: Marine Insurance
Comment 7: Energy Factors
Comment 8: Seals Allegedly Used in the Manufacture of TRBs
Comment 9: Treatment of Sales Above Normal Value ("NV")
Comment 10: Revocations
Comment 11: Wanxiang Group Corporation ("Wanxiang") Constructed Export Price ("CEP") vs. Export Price ("EP") Sales
Comment 12: Wanxiang Domestic Brokerage and Handling
Comment 13: Wanxiang Credit Expenses
Comment 14: Zhejiang Machinery Import & Export Corp.'s ("ZMC") Market Economy Steel
Comment 15: ZMC Ocean Freight
Comment 16: Valuation of ZMC's Ocean Freight Costs on a Packed Weight Basis
Comment 17: ZMC Labor Hours
Comment 18: China National Machinery Import & Export Corporation ("CMC") Cage Steel
Comment 19: Valuation of CMC's U.S. Inland Freight Costs on a Packed Weight Basis

[FR Doc. 02–28924 Filed 11–13–02; 8:45 am]
BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

Technology Administration

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Technology Administration.

Title: National Medal of Technology Nomination Applications.

Agency Form Number(s): None.

OMB Approval Number: 0692–0001.

Type of Review: Regular submission.

Burden Hours: 2,625.

Number of Respondents: 105.

Average Hours Per Respondents: 25 hours.

Needs and Uses: The National Medal of Technology is the highest honor bestowed by the President of the United States to America's leading innovators. The Medal has been given annually since 1985 to individuals, teams, or companies for accomplishments in the innovation, development, commercialization, and management of technology. This information collection is critical for the Medal's Nomination Evaluation Committee to determine nomination eligibility and merit according to specified criteria. This information is needed in order to comply with Pub. L. 105–309. Comparable information is not available on a standardized basis.

Affected Public: Individuals or households, business or other for-profit organizations, not-for-profit institutions, and the Federal government.

Frequency: Annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 1401 Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent no later than 30 days after publication of this notice, to David Rostker, OMB Desk Officer, Office of Management and Budget, Room 10202, Washington, DC 20530.

Dated: November 8, 2002.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02–28914 Filed 11–13–02; 8:45 am]
BILLING CODE 3510–18–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in India

November 7, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: November 14, 2002.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for swing and carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 66 FR 65178, published on December 18, 2001). Also see 66 FR 59577, published on November 29, 2001.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 7, 2002.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 23, 2001, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced

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or manufactured in India and exported during the twelve-month period which began on January 1, 2002 and extends through December 31, 2002.

Effective on November 14, 2002, you are directed to adjust the current limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Levels in Group I	
219	91,763,408 square meters.
313	63,500,587 square meters.
317	23,860,878 square meters.
363	74,877,772 numbers.
369–S [2]	1,207,345 kilograms.
Group II	
200, 201, 220, 224–227, 237, 239pt. [3], 300, 301, 331pt. [4], 332, 333, 352, 359pt. [5], 360–362, 603, 604, 611–620, 624–629, 631pt. [6], 633, 638, 639, 643–646, 652, 659pt. [7], 666pt. [8], 845, 846 and 852, as a group	173,115,992 square meters equivalent.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2001.

[2] Category 369–S: only HTS number 6307.10.2005.

[3] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[4] Category 331pt.: all HTS numbers except 6116.10.1720, 6116.10.4810, 6116.10.5510, 6116.10.7510, 6116.92.6410, 6116.92.6420, 6116.92.6430, 6116.92.6440, 6116.92.7450, 6116.92.7460, 6116.92.7470, 6116.92.8800, 6116.92.9400 and 6116.99.9510.

[5] Category 359pt.: all HTS numbers except 6115.19.8010, 6117.10.6010, 6117.20.9010, 6203.22.1000, 6204.22.1000, 6212.90.0010, 6214.90.0010, 6406.99.1550, 6505.90.1525, 6505.90.1540, 6505.90.2060 and 6505.90.2545.

[6] Category 631pt.: all HTS numbers except 6116.10.1730, 6116.10.4820, 6116.10.5520, 6116.10.7520, 6116.93.8800, 6116.93.9400, 6116.99.4800, 6116.99.5400 and 6116.99.9530.

[7] Category 659pt.: all HTS numbers except 6115.11.0010, 6115.12.2000, 6117.10.2030, 6117.20.9030, 6212.90.0030, 6214.30.0000, 6214.40.0000, 6406.99.1510 and 6406.99.1540.

[8] Category 666pt.: all HTS numbers except 5805.00.4010, 6301.10.0000, 6301.40.0010, 6301.40.0020, 6301.90.0010, 6302.53.0010, 6302.53.0020, 6302.53.0030, 6302.93.1000, 6302.93.2000, 6303.12.0000, 6303.19.0010, 6303.92.1000, 6303.92.2010, 6303.92.2020, 6303.99.0010, 6304.11.2000, 6304.19.1500, 6304.19.2000, 6304.91.0040, 6304.93.0000, 6304.99.6020, 6307.90.9884, 9404.90.8522 and 9404.90.9522.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
James C. Leonard III,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 02–28888 Filed 11–13–02 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textiles and Textile Products Produced or Manufactured in Thailand

November 7, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: November 14, 2002.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted, variously, for carryover, the cancellation of carryover, carryforward, the recrediting of unused carryforward, swing and special shift.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 66 FR 65178, published on December 18, 2001). Also see 66 FR 63036, published on December 4, 2001.

James C. Leonard III,
Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 7, 2002.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 27, 2001, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Thailand and exported during the twelve-month period which began on January 1, 2002 and extends through December 31, 2002.

Effective on November 14, 2002, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Levels in Group I	
200	1,813,256 kilograms.
218	24,956,130 square meters.
300	6,591,528 kilograms.
313–O [2]	30,098,958 square meters.
363	31,429,809 numbers.
613/614/615	66,902,279 square meters of which not more than 39,767,408 square meters shall be in Categories 613/615 and not more than 39,767,408 square meters shall be in Category 614.
619	11,489,616 square meters.
625/626/627/628/629	23,505,436 square meters of which not more than 15,816,582 square meters shall be in Category 625.
Sublevels in Group II	
334/634	978,143 dozen.
336/636	533,244 dozen.
338/339	3,079,535 dozen.
340	479,441 dozen.
341/641	1,031,840 dozen.
342/642	986,503 dozen.
345	469,356 dozen.
347/348	1,471,248 dozen.
435	61,423 dozen.
442	23,148 dozen.
638/639	2,896,059 dozen.
640	827,657 dozen.
645/646	501,611 dozen.
647/648	1,682,223 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2001.

[2] Category 313–O: all HTS numbers except 5208.52.3035, 5208.52.4035 and 5209.51.6032.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
James C. Leonard III,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 02–28887 Filed 11–13–02; 8:45 am]

BILLING CODE 3510–DR–S

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities: Notice of Intent To Renew Collection 3038–0043, Rules Relating to Review of National Futures Association Decisions in Disciplinary, Membership Denial, Registration, and Member Responsibility Actions

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: The Commodity Futures Trading Commission (CFTC) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3510 *et seq.*, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on rules relating to review of National Futures Association decisions in disciplinary, membership denial, registration, and member responsibility Actions.

DATES: Comments must be submitted on or before January 13, 2003.

ADDRESSES: Comments may be mailed to Linda Mauldin, Office of General Counsel, U.S. Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581.

FOR FURTHER INFORMATION CONTACT: Linda Mauldin, (202) 418–5497; Fax: (202) 418–5524; email: *lmauldin@cftc.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the CFTC is publishing notice of the proposed collection of information listed below.

With respect to the following collection of information, the CFTC invites comments on:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- The accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Ways to enhance the quality, usefulness, and clarity of the information to be collected; and
- Ways to minimize the burden of collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses.

Rules Relating to Review of National Futures Association Decisions in Disciplinary, Membership Denial, Registration, and Member Responsibility Actions, OMB control number 3038–0043—Extension.

These rules establish procedures and standards for Commission review of registered futures association procedures for membership and disciplinary actions.

The Commission estimates the burden of this collection of information as follows:

ESTIMATED ANNUAL REPORTING BURDEN

17CFR	Annual number of respondents	Frequency of response	Total annual responses	Hours per response	Total hours
17 CFR part 171	22	On occasion	89	1.4	125

There are no capital costs or operating and maintenance costs associated with this collection.

Dated: November 7, 2002.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 02–28865 Filed 11–13–02; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Provisional Patent Application Concerning a Portable Thermocycler

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6 and 404.7, announcement is made of the availability for licensing of the invention set forth in U.S. Provisional Patent Application No. 60/412,802 entitled "Portable Thermocycler," filed September 24, 2002. The United States Government, as represented by the Secretary of the Army, has rights in this invention.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, MD 21702–5012.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For

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licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 619–6664, both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: This invention relates to a portable thermocycler having a unique geometric configuration, which allows the device to be made durable, compact and adapted for field-use.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 02–28906 Filed 11–13–02; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Performance Review Boards Membership

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: Notice is given of the names of members of a Performance Review Board for the Department of the Army.

EFFECTIVE DATE: November 6, 2002.

FOR FURTHER INFORMATION CONTACT: Marilyn Ervin, U.S. Army Senior Executive Service Office, Assistant Secretary of the Army, Manpower & Reserve Affairs, 111 Army Pentagon, Washington, DC 20310–0111.

SUPPLEMENTARY INFORMATION: Section 4314(c)(1) through (5) of Title 5, U.S.C., requires each agency to establish, in accordance with regulations, one or more Senior Executive Service performance review boards. The boards shall review and evaluate the initial appraisal of senior executives' performance by supervisors and make recommendations to the appointing authority or rating official relative to the performance of these executives.

(a) The members of the Performance Review Board for the U.S. Army Acquisition Executives are:

1. BG Roger A. Nadeau, Program Executive Officer, Combat Support and Combat Service Support.

2. Mr. Donald L. Damstetter, Jr., Deputy Assistant Secretary of the Army for Plans and Program Resources.

3. Mr. Edward G. Elgart, Director, Communications-Electronics Command Acquisition Center.

(b) The members of the Performance Review Board for the U.S. Army Tank-automotive Command (TACOM), U.S. Army Materiel Command are:

1. Daniel G. Mehney, Deputy for Contracting and Acquisition, TACOM.

2. Thomas C. Boyle, Deputy for Commodity Business Operations, TACOM.

3. Sallie H. Flavin, Deputy Director, Defense Contract Management Agency.

4. John F. Hedderich, III, Associate Technology Director (Systems Concepts and Technology), Armament Research, Development and Engineering Center, TACOM.

5. Richard E. McClelland, Director of Tank-Automotive Research, Development and Engineering Center.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 02–28905 Filed 11–13–02; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before December 16, 2002.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Karen Lee, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address *Karen_F._Lee@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: November 7, 2002.

John D. Tressler,

Leader, Regulatory Management Group, Office of the Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: Reinstatement.

Title: National Study of Postsecondary Faculty: 2004 (NSOPF: 04)—Faculty Survey.

Frequency: Survey conducted approximately every four years.

Affected Public: Individuals or households; not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 1,200.

Burden Hours: 510.

Abstract: The fourth cycle of the NSOPF is being conducted in response to a continuing need for data on faculty and instructional staff at U.S. postsecondary education institutions. Information about these key staff at postsecondary institutions is critical to understanding and explaining the quality of education and research in these institutions. This study will expand the information about faculty and instructional staff in two ways: allowing comparisons to be made over time and examining critical issues surrounding faculty that have developed since the first three studies. This clearance request covers field test and full-scale activities for the second phase of the study—a self-directed WEB or CATI interview with faculty and instructional staff in 2- and 4-year postsecondary institutions. The interview will collect information on the background, responsibilities, workload, salaries, benefits, and attitudes of faculty members.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2146. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivan.reese@ed.gov.* Requests may also

be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Katrina Ingalls at *Katrina.Ingalls@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–28868 Filed 11–13–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

National Board of the Fund for the Improvement of Postsecondary Education, Department of Education

ACTION: Notice of meeting.

SUMMARY: This notice provides the proposed agenda of a forthcoming meeting of the National Board of the Fund for the Improvement of Postsecondary Education. This notice also describes the functions of the Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This notice is published less than 15 days prior to the date of the meeting as a result of special administrative clearances.

Date and Time: November 22, 2002, 12 p.m. to 4 p.m.

ADDRESSES: Hilton Washington Hotel and Towers, 1919 Connecticut Avenue, NW., Washington, DC 20009. Telephone: (202) 483–3000.

FOR FURTHER INFORMATION CONTACT: Donald Fischer, U.S. Department of Education, 1990 K Street NW., Washington, DC 20006–8544. Telephone: (202) 502–7500 or by e-mail: *donald_fischer@ed.gov.* Individuals who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this document in an alternate format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION: The National Board of the Fund for the Improvement of Postsecondary Education is established under Title VII, Part B, section 742 of the Higher Education Amendments of 1998 (20 U.S.C. 1138a). The National Board of the Fund is authorized to recommend to the Director of the Fund and the Assistant Secretary for Postsecondary Education priorities for funding and procedures for grant awards.

On Friday, November 22, 2002, from 1 p.m. to 4 p.m. the Board will meet in open session. The proposed agenda for the open portion of the meeting will include discussions of the Fund's programs and special initiatives.

On Friday, November 22, 2002, from 12 p.m. to 1 p.m. the meeting will be closed to the public for the purpose of discussing personnel matters associated with the work of the Board. This portion of the meeting will be closed under the authority of section 10(d) of the Federal Advisory Act (Pub. L. 92–463; 5 U.S.C.A. Appendix 2) and under exemptions (2) and (6) of the Government in the Sunshine Act (Pub. L. 94–409), 5 U.S.C. 552b(c)(2) and (6). The review and discussion of Board personnel matters will relate solely to the internal personnel rules and practices of an agency, and may disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy if conducted in open session.

The meeting site is accessible to individuals with disabilities. An individual with a disability who will need an auxiliary aid or service to participate in the meeting (*e.g.*, interpreting service, assistive listening device or materials in an alternate format) should notify the contact person listed in this notice at least two weeks before the scheduled meeting date. Although the Department will attempt to meet a request received after that date, the requested auxiliary aid or service may not be available because of insufficient time to arrange it.

Records are kept of all Board proceedings, and are available for public inspection at the office of the Fund for the Improvement of Postsecondary Education, 8th Floor, 1990 K Street NW., Washington, DC 20006–8544 from the hours of 8 a.m. to 4:30 p.m.

Sally L. Stroup,

Assistant Secretary, Office of Postsecondary Education.

[FR Doc. 02–28864 Filed 11–13–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Fossil Energy; Orders Granting, Amending and Vacating Authority to Import and Export Natural Gas, Including Liquefied Natural Gas

In the matter of: [FR Docket No. 99–41–NG, 02–65–LNG, 02–66–NG, 02–67–NG, 02–68–NG, 02–69–NG, 02–70–NG, 02–71–NG, 02–72–NG, 02–73–NG, 02–75–LNG, 02–76–NG, 02–74–NG, 02–77–NG, 02–78–NG, Texaco Natural Gas Inc. Duke Energy LNG Marketing and Management Company, Kimball Energy Corporation, Westcoast Gas Services Inc., Westcoast Energy (U.S.) LLC, Pioneer Natural Resources Canada Inc., Nexen Marketing U.S.A. Inc., Alliance Canada Marketing L.P., National Fuel Gas Distribution Corporation, CoEnergy Trading Company, Duke Energy Trading and Marketing, L.L.C., TransCanada Energy Ltd., WPS Energy Services, Inc., Cannat Energy Inc., WPS Energy Services of Canada Corp.,

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of orders.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy gives notice that during October 2002, it issued Orders granting, amending and vacating authority to import and export natural gas, including liquefied natural gas. These Orders are summarized in the attached appendix and may be found on the FE Web site at *http://www.fe.doe.gov* (select gas regulation), or on the electronic bulletin board at (202) 586–7853. They are also available for inspection and copying in the Office of Natural Gas & Petroleum Import & Export Activities, Docket Room 3E–033, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The Docket Room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on November 7, 2002.

Clifford P. Tomaszewski,

Manager, Natural Gas Regulation, Office of Natural Gas & Petroleum Import & Export Activities, Office of Fossil Energy.

Appendix—Orders Granting, Amending and Vacating Import/Export Authorizations

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Order No.	Date issued	Importer/Exporter FE docket No.	Import volume	Export volume	Comments
1488-A	10–4–02	Texaco Natural Gas Inc. 99–41–NG.			Vacate blanket authority to export of natural gas from Mexico. —
1813	10–4–02	Duke Energy LNG Marketing and Management Company, 02–65–LNG.	700 Bcf		Import LNG from various international sources beginning on October 4, 2002, and extending through October 3, 2004.
1814	10–7–02	Kimball Energy Corporation, 02–66–NG.	75 Bcf		Import natural gas from Canada, beginning on April 1, 2002, and extending through March 31, 2004.
1815	10–8–02	Westcoast Gas Services Inc., 02–67–NG.	200 Bcf		Import and export a combined total of natural gas from and to Canada, beginning on December 1, 2002, and extending through November 30, 2004.
1816	10–8–02	Westcoast Energy (U.S.) LLC, 02–68–NG.	200 Bcf		Import and export a combined total of natural gas from and to Canada, beginning on December 1, 2002, and extending through November 30, 2004.
1817	10–10–02	Pioneer Natural Resources Canada Inc., 02–69–NG.	76.8 Bcf		Import natural gas from Canada, beginning on October 30, 2002, and extending through October 29, 2004.
1818	10–23–02	Nexen Marketing U.S.A. Inc., 02–70–NG.	200 Bcf		200 Import and export a combined total of natural gas from and to Canada and Mexico, beginning on January 1, 2003, and extending through December 31, 2004.
1819	10–24–02	Alliance Canada Marketing, 02–71–NG.	69.535 Bcf		Import natural gas from Canada, L.P. beginning on November 13, 2002, and extending through November 12, 2004.
1820	10–24–02	National Fuel Gas Distribution Corporation, 02–72–NG.	33.5 Bcf		Import and export a combined total of natural gas from and to Canada, beginning on January 28, 2003, extending through January 27, 2005.
1821	10–24–02	CoEnergy Trading Company, 02–73–NG.	150 Bcf	100 Bcf	Import and export natural gas from and to Canada, beginning on September 30, 2002, and extending through September 29, 2004.
1822	10–28–02	Duke Energy Trading and Marketing, L.L.C., 02–75–LNG.	900 Bcf		Import and export natural gas, including liquefied natural gas, from and to Canada and Mexico, and to import liquefied natural gas from other countries, up to a combined total, beginning on October 31, 2002, and extending through October 30, 2004.
1823	10–28–02	TransCanada Energy Ltd. 02–76–NG.	700 Bcf	300 Bcf	Import natural gas from Canada, and export a combined total of natural gas to Canada and Mexico, beginning on November 1, 2002, and extending through October 31, 2004.
1824	10–29–02	WPS Energy Services, Inc. 02–74–NG.	100 Bcf	50 Bcf	Import and export natural gas from and to Canada, beginning on November 1, 2002, and extending through October 31, 2004.
1825	10–29–02	Cannat Energy Inc., 02–77–NG.	190 Bcf		Import natural gas from Canada, beginning on December 1, 2002, and extending through November 30, 2004.
1826	10–30–02	WPS Energy Services of Canada Corp., 02–78–NG.	100 Bcf	50 Bcf	Import and export natural gas from and to Canada, beginning on November 1, 2004, and extending through October 31, 2002.

[FR Doc. 02–28895 Filed 11–13–02; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–561–002]

CenterPoint Energy Gas Transmission Company; Notice of Compliance Filing

November 7, 2002.

Take notice that on November 4, 2002, CenterPoint Energy Gas Transmission Company (CEGT), formerly Reliant Energy Gas Transmission Company, tendered for filing its compliance filing in conformity with the order of the Commission issued on October 25, 2002, 101 FERC ¶ 61,085 (2002) and the Commission's unpublished letter order dated November 1, 2002.

CEGT states that a copy of this filing has been served on each person designated on the official service list in Docket No. RP02–561–001.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–29008 Filed 11–13–02; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–200–088]

Centerpoint Energy Gas Transmission Company; Notice of Withdrawal of Tariff Filing

November 7, 2002.

Take notice that on November 1, 2002, CenterPoint Energy Gas Transmission Company (CEGT) tendered for filing a notice that it was withdrawing tariff sheets filed October 18, 2002, in this docket. Such sheets were filed to implement two new negotiated rate transactions to be effective November 1, 2002.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–29010 Filed 11–13–02; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP02–396–000 and PF01–1–000]

Greenbrier Pipeline Company, LLC; Notice of Site Visit

November 7, 2002.

On November 20, 2002, the staff of the Office of Energy Projects will conduct a site visit of Greenbrier Pipeline Company, LLC's Greenbrier Pipeline Project in North Carolina and Virginia. The project area will be inspected by automobile and on foot, as appropriate.

All interested parties may attend the site visit. Those planning to attend must provide their own transportation. For additional information about the site visit, contact the Commission's Office of External Affairs at 1 866 208–FERC (3372).

Magalie R. Salas,

Secretary.

[FR Doc. 02–29006 Filed 11–13–02; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–562–002]

Mississippi River Transmission Corporation; Notice of Compliance Filing

November 7, 2002.

Take notice that on November 4, 2002, CenterPoint Energy—Mississippi River Transmission Corporation (MRT) tendered for filing its compliance filing in conformity with the order of the Commission issued on October 25, 2002, 101 FERC ¶ 61,080 (2002) and the Commission's unpublished letter order dated November 1, 2002.

MRT states that a copy of this filing has been served on each person designated on the official service list in Docket No. RP02–562–000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to

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the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–29009 Filed 11–13–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–408–001]

Sabine Pipe Line LLC; Notice of Compliance Filing

November 7, 2002.

Take notice that on November 5, 2002, Sabine Pipe Line LLC (Sabine) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, to become effective October 1, 2002:

First Revised Sheet No. 226 First Revised Sheet No. 226A
First Revised Sheet No. 226B
First Revised Sheet No. 226C
Substitute Third Revised Sheet No. 297
Substitute Third Revised Sheet No. 298

Sabine states that the tariff sheets are being filed to comply with the directives of the Commission's Letter Order issued September 27, 2002, in Docket No. RP02–408–000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–29007 Filed 11–13–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–312–116]

Tennessee Gas Pipeline Company; Notice of Negotiated Rates

November 7, 2002.

Take notice that on November 4, 2002, Tennessee Gas Pipeline Company (Tennessee), tendered for filing a notice of a change in the rates for the October 18, 2001 Negotiated Rate Agreement between Tennessee and NJR Energy Services (Negotiated Rate Agreement) which was accepted by the Commission in Tennessee Gas Pipeline Company, 97 FERC ¶61,248 (2001) (November 30 Order). As agreed to in the November 30 Order, Tennessee is providing notice of a change in rate to be effective November 1, 2002.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–29011 Filed 11–13–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–301–061]

ANR Pipeline Company; Notice of Negotiated Rates

November 7, 2002.

Take notice that on November 4, 2002, ANR Pipeline Company (ANR) tendered for filing a service agreement, and an amendment to an existing service agreement, between ANR and NG Energy Trading, L.L.C.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions

on the Commission's web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–29012 Filed 11–13–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7405–7]

Investigator Initiated Grants, Request for Applications, Ecology and Oceanography of Harmful Algal Blooms Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of financial assistance for project assistance.

SUMMARY: The purpose of this notice is to advise the public that the participating agencies are soliciting individual research proposals of up to 3 years duration, and depending on appropriations, multi-disciplinary regional studies of up to 5 years duration, for the Ecology and Oceanography of Harmful Algal Blooms (ECOHAB) program. This program provides support for research on algal species whose populations may cause or result in deleterious effects on ecosystems and human health. Studies of the causes of such blooms, their detection, effects, mitigation, and control in U.S. coastal waters (including estuaries and Great Lakes) are solicited. This document details the requirements for applications for research support that will be considered by the Federal research partnership.

DATES: The deadline for applications is January 28, 2003 by 4:00 EST.

ADDRESSES: Submit the original and eighteen copies of your proposal to Coastal Ocean Program Office, N/SCI2, SSMC#4, 8th Floor, Room 8243, 1305 East-West Highway, Silver Spring, MD 20910. The required forms for applications with instructions are accessible on the Internet at *http://es.epa.gov/ncer/rfa/forms/index.html*. Forms may be printed from this site.

The complete program announcement can be accessed on the Internet at *http://es.epa.gov/ncer/rfa/* under "Science To Achieve Results (STAR) Research Grants".

Awards: Final selection of awardees by the participating agencies will be determined on the basis of peer and panel recommendations, applicability of the proposed effort to the interests and objectives of an agency, and the availability of funds. It is anticipated that each award will be made and be administered by a single agency; however, several agencies may participate in providing assistance to individual components of multi-institutional projects. Applicants recommended for funding will be requested to resubmit their applications and may be asked to modify their budgets and/or work plans to comply with special requirements of the particular agency supporting their awards. Awards will be subject to the terms and conditions of the sponsoring agency.

FOR FURTHER INFORMATION CONTACT: Technical Information: Susan Banahan, ECOHAB Coordinator, CSCOR/COP Office, (301) 713–3338/ext 148, E-mail: *susan.banahan@noaa.gov*. Administrative Information: Gina Perovich, EPA/NCER, (202) 564–2248, E-mail: *perovich.gina@epa.gov*.

SUPPLEMENTARY INFORMATION:

Program Goals and Topic Areas

The National Center for Environmental Research/Environmental Protection Agency (EPA); the Coastal Ocean Program and the Office of Protected Resources/National Oceanic and Atmospheric Administration (NOAA)/Department of Commerce; the Directorate for Geosciences, Division of Ocean Sciences/National Science Foundation (NSF); the Office of Naval Research (ONR)/Department of Defense; and the Office of Earth Science/National Aeronautics Space Administration (NASA) are cooperating in an opportunity for investigators to propose activities to address fundamental ecological and oceanographic questions related to the national harmful algal bloom (HAB) problem.

Proposals are encouraged in the following areas: (1) The prevention, control, and mitigation of HABs and their impacts; (2) the transition of current biophysical models for HABs in specific regions into operational HAB forecasts; (3) biological and physical oceanographic regional studies that include the development of linked biophysical models of bloom development and transport; and (4) studies addressing gaps in general knowledge of HAB phenomena. These special emphasis areas are described in greater detail in the complete program announcement (see **ADDRESSES** in this announcement).

ECOHAB will support projects ranging from laboratory studies by individual investigators or small teams, up to larger teams of investigators conducting coordinated, well-integrated, multi-disciplinary regional field programs. For individuals and small teams, support may be requested for 1–3 years duration. Projects focused on multi-disciplinary regional studies may request support for up to 5 years duration. However, the size and duration of the latter studies are dependent on appropriations, and potential applicants are encouraged to correspond with the ECOHAB Coordinator (see **CONTACTS** in this announcement) prior to preparation of proposals.

Eligibility: Institutions of higher education and not-for-profit institutions located in the U.S., and state or local governments, are eligible under all existing authorizations. Some participating agencies are authorized to make awards to international institutions, and commercial organizations located in the U.S. Federal agencies and laboratories may be eligible, but will be required to submit certifications or documentation which clearly show that they have specific legal authority to receive funds from another Federal agency in excess of their appropriations. Funding for salaries of full time Federal employees will be in accord with individual agency policies. Applications from non-Federal and Federal applicants will evaluated under the same review/selection process. Proposals from non-Federal applicants that are selected for funding will be funded through a project grant or cooperative agreement under the terms of this announcement. Proposals from Federal agencies or laboratories deemed acceptable and selected for funding will be funded through a medium other than a grant or cooperative agreement, such as inter- or intra-agency transfers, where legal authority exists for such funding. Note that this announcement is not proposing to procure goods and services from Federal applicants; therefore the Economy Act (31 U.S.C. 1535) is not an appropriate legal basis.

How to Apply: The original and eighteen (18) copies of the fully developed application (19 in all) and one (1) additional copy of the abstract, prepared in accordance with the full announcement, must be received by NOAA no later than 4:00 P.M. Eastern Time on the closing date, January 28, 2003.

Program Authorities: For COP: 33 U.S.C. 883d and Pub. L. 105–383; for Office of Protected Resources/NOAA: 16 U.S.C. 1382 and 16 U.S.C. 1421a; EPA: 33 U.S.C 1251 *et seq.* and 40 CFR parts 30 and 40; for NSF: 42 U.S.C. 1861 *et seq.*; for ONR: 10 U.S.C 2358 as

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amended and 31 U.S.C 6304; and for NASA: 14 CFR part 1260.

Dated: October 29, 2002.

Catalog of Federal Domestic Assistance (CFDA) Numbers. 11.478 for the Coastal Ocean Program; 11.472 for NOAA/Office of Protected Resources; 66.500 for the Environmental Protection Agency; 47.050 for the National Science Foundation, and 12.300 for the Office of Naval Research.

John C. Puzak,

Acting Director, National Center for Environmental Research.

[FR Doc. 02–28921 Filed 11–13–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2002–0059; FRL–7277–4]

Endocrine Disruptor Methods Validation Subcommittee Under the National Advisory Council for Environmental Policy and Technology; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is announcing a 2–hour teleconference meeting of the Endocrine Disruptor Methods Validation Subcommittee (EDMVS), a subcommittee under the National Advisory Council for Environmental Policy and Technology (NACEPT), a Federal advisory committee. The EDMVS will provide technical advice on a fish lifecycle assay detailed review paper presented by the Endocrine Disruptor Screening Program (EDSP). The upcoming teleconference meeting is open to the public.

DATES: The teleconference meeting will be held on Wednesday, December 4, 2002, from 10 a.m. to noon, eastern standard time.

ADDRESSES: The meeting will originate at RESOLVE, 1255 23rd St., NW., Suite 275, Washington, DC.

To participate in the EDMVS teleconference meeting, or to request special accommodations, including wheelchair access, one should contact the Designated Federal Official (DFO) under **FOR FURTHER INFORMATION CONTACT** at least 5 business days prior to the meeting.

FOR FURTHER INFORMATION CONTACT: Jane Smith, DFO, Office of Science Coordination and Policy (7201M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8476; fax number: (202) 564–8483; e-mail address: *smith.jane-scott@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest if you produce, manufacture, use, consume, work with, or import pesticide chemical and other substances etc. To determine whether you or your business may have an interest in this notice you should carefully examine section 408(p) of the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170), 21 U.S.C. 346A (p) and amendments to the Safe Drinking Water Act (SDWA) (Public Law 104–182), 42 U.S.C. 300j–17. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the DFO under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPPT–2002–0059. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102–Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*, or through the EDSP Web site for the EDMVS at *http://www.epa.gov/scipoly/oscpendo/edmvs.htm.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

C. How Can I Request to Participate in this Meeting?

You may submit a request to participate in the meeting to the DFO listed under **FOR FURTHER INFORMATION CONTACT.** You can request special accommodations by electronic mail, telephone, fax, or in person. Seating is on a first-come basis. We would normally accept requests by mail, but in this time of delays in delivery of Federal government mail due to health and security concerns, we can not assure your request would arrive in a timely manner. Do not submit any information in your request that is considered CBI. Your request must be received by EPA on or before November 27, 2002. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPPT–2002–0059, in the subject line on the first page of your request.

1. *Electronically.* You may submit your request by e-mail to oppt-ncic@epa.gov. Do not submit any information electronically that you consider to be CBI. Use WordPerfect 6.1/8.0 or ASCII file format and avoid the use of special characters and any form of encryption. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPPT–2002–0059, in the subject line on the first page of your request.

2. *By telephone or fax.* Contact Jane Smith, the person listed under **FOR FURTHER INFORMATION CONTACT.**

3. *By hand delivery or courier.* Deliver your comments to: OPPT Document Control Office (DCO) to EPA East Building Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number OPPT–2002–0059. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, 8 a.m. to noon and 2 p.m. to 4 p.m., excluding legal holidays. The telephone number for the DCO is (202) 564–8930.

II. Background

In 1996, through enactment of FQPA, which amended the FFDCA, Congress directed EPA to develop a screening program, using appropriate validated

test systems and other scientifically relevant information, to determine whether certain substances may have hormonal effects in humans. In 1996, EPA chartered a scientific advisory committee, the Endocrine Disruptor Screening and Testing Advisory Committee (EDSTAC), under the authority of the Federal Advisory Committee Act (FACA) to advise it on establishing a program to carry out Congress' directive. EDSTAC recommended a multi-step approach including a series of screens (Tier I Screens) and tests (Tier II Tests) for determining whether a chemical substance may have an effect similar to that produced by naturally occurring hormones. EPA adopted many of EDSTAC's recommendations in the program that it developed, the EDSP, to carry out Congress' directive.

EDSTAC also recognized that there currently are no validated testing systems for determining whether a chemical may have an effect in humans that is similar to an effect produced by naturally occurring hormones. Consequently, EPA is in the process of developing and validating the screens and tests that EDSTAC recommended for inclusion in the EDSP. In carrying out this validation exercise, EPA is working closely with, and adhering to the principles of the Interagency Coordinating Committee for the Validation of Alternate Methods (ICCVAM). EPA also is working closely with the Organization for Economic Cooperation and Development's (OECD) Endocine Testing and Assessment Task Force to validate and harmonize endocrine screening tests of international interest.

Finally, to ensure that EPA has the best and most up-to-date advice available regarding the valtdation of the screens and tests in the EDSP, EPA recently chartered EDMVS of the NACEPT. EDMVS provides independent advice and counsel to the Agency through NACEPT, on scientific and technical issues related to validation of the EDSP Tier I screens and Tier II tests, including advice on methods for reducing animal use, refining procedures involving animals to make them less stressful, and replacing animals where scientifically appropriate.

EDMVS has met five times since its establishment in September 2001.

The objectives of the October 2001 meeting (docket control number OPPTS–42212D) were for EPA to provide:

1. An overview of EPA's EDSP.

2. Background information on test protocol validation and approaches.

3. For the EDMVS to develop a clear understanding of their scope, purpose and operating procedures.

4. For the EDMVS and the EDSP to determine the next steps.

The objectives of the December 2001 meeting (docket control number OPPTS–42212E) were for the EDMVS to provide input and advice on:

1. EDMVS's mission statement and work plan.

2. The *in utero* through lactation assay detailed review paper.

3. The pubertal assay study design for the multi-dose and chemical array protocols.

4. The mammalian 1-generation study design.

The objectives of the March 2002 meeting (docket control number OPPTS–42212F) were for the EDMS to provide input and advice on:

1. EDSP's implementation process and practical aspects of validation.

2. The *in utero* through lactation assay protocol.

3. The fish reproduction assay detailed review paper.

4. Special studies on fathead minnow assays, vitellogenin assay, and avian dosing protocol.

5. The steroidogenesis detailed review paper.

6. The aromatase detailed review paper.

7. A proposed standard suite of chemicals for testing in the Tier I screening assay.

8. The current efforts related to evaluating the relevance of animal data to human health.

9. EPA's approach to addressing low-dose issues.

The objective of the June 2002 teleconference meeting (docket ID number OPPT–2002–0020) was for the EDMVS to provide input and advice on the steroidogenesis detailed review paper.

The objectives of the July 2002 meeting (docket ID number OPPT 2002–0029) were:

1. To review criteria, recommended by EDSTAC and adopted by EDSP for screens.

2. To receive an update on the NICEATM estrogen and androgen receptor binding efforts.

3. To discuss and provide advice on general dose setting issues, and to provide comments and advice on:

- A pubertals—special study—restricted feeding.
- A mammalian 2-generation—draft PTU special study.
- An amphibian metamorphosis detailed review paper.
- An invertebrate detailed review paper.

III. Meeting Objectives for the December 2002 Teleconference Meeting

The objective of the December 2002 teleconference meeting (docket ID number OPPT–2002–0059) is for the EDMVS to provide input and advice on the Tier II fish lifecycle assay detailed review paper.

A list of the EDMVS members and meeting materials are available on our Web site (*http://www.epa.gov/scipoly/oscpendo/edmvs.htm*), and in the EPA Docket.

List of Subjects

Environmental protection, Endocrine disruptors.

Dated: November 4, 2002.

Joseph Merenda,

Director, Office of Science Coordination and Policy, Office of Prevention, Pesticides and Toxic Substances.

[FR Doc. 02–28910 Filed 11–13–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0294; FRL–7279–3]

Alpha-cyclodextrin, Beta-cyclodextrin, and Gamma-cyclodextrin; Notice of Filing a Pesticide Petition to Establish an Exemption from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of alpha-cyclodextrin, beta-cyclodextrin, and gamma-cyclodextrin in or on various food commodities.

DATES: Comments, identified by docket ID number OPP–2002–0294, must be received on or before December 16, 2002.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Treva Alston, Minor Use, Inerts, and Emergency Reponse Branch, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8373; e-mail address: *alston.treva@epa.gov.*

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SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111)
- Animal production (NAICS code 112)
- Food manufacturing (NAICS code 311)
- Pesticide manufacturing (NAICS code 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket ID number OPP–2002–0294. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although, a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA internet under the "**Federal Register**" listings at *http://www.epa.gov//fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA dockets. You may use EPA dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although, not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although, not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA dockets at *http://www.epa.gov/edocket*, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2002–0294. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID number OPP–2002–0294. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID number OPP–2002–0294.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID number OPP–2002–0294. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI To the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI, and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 4, 2002.

Debra Edwards,

Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by FFDCA section 408(d)(3). The summary of the petition was prepared by the Wacker Biochem Corporation and represents the view of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

PP 2E6514

Summary of Petitions

EPA has received a pesticide petition (2E6514) from Wacker Biochem Corporation, 3301 Sutton Road, Adrian, MI 49221–9397 proposing, pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR 180.950 to establish an exemption from the requirement of a tolerance for alpha-cyclodextrin (CAS No. 10016–20–3), beta-cyclodextrin (CAS No. 7585–39–9), and gamma-cyclodextrin (CAS No. 17465–86–0) in or on raw agricultural commodities resulting from the use of alpha-, beta-, and gamma-cyclodextrin as ingredients in pesticide formulations used in accordance with good agricultural practices. Alpha-cyclodextrin, beta-cyclodextrin, and gamma-cyclodextrin are naturally occurring compounds derived from the degradation of starch by the glucosyltransferase enzyme (CGTase). D-glucose molecules that are formed by the digestion of starch are joined "head-to-tail" to form alpha-, beta-, and gamma-cyclodextrin which are ring-shaped molecules. Alpha-, beta-, and gamma-cyclodextrin are comprised of six, seven and eight D-glucose units, respectively. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* While no studies have been conducted to evaluate the metabolism of alpha-, beta-, and gamma-cyclodextrin in plants, the metabolic products in plants are anticipated to be

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ubiquitous, naturally occurring simple sugars and CO_2. The anticipated plant metabolites are not of toxicological concern.

2. *Analytical method.* An analytical method is not required for enforcement purposes since Wacker Biochem is requesting the establishiment of an exemption from the requirement of a tolerance without any numerical limitation.

B. Toxicological Profile

Alpha-cyclodextrin: The Food & Agriculture Organization/World Health Organization (FAO/WHO) Joint Expert Committee on Food Additives (JECFA) has evaluated alpha-cyclodextrin and in 2001 allocated an acceptable daily intake (ADI) of "not specified." This is the most desirable ADI allocation issued by JECFA.

Beta-cyclodextrin: A GRAS (generally recognized as safe) petition was submitted by Roquette America Inc/ American Maize-Products Co. for use as a formulation aid in the production of dry flavoring mixes (February 3, 1992) and for use as a flavor protectant (September 20, 1996). A self-affirmation of beta-cyclodextrin as a flavor carrier in foods was completed by Cerestar USA on February 4, 1998. Wacker Biochem Corporation has submitted to the FDA an independent GRAS determination for beta-cyclodextrin for use as a flavor carrier or protectant in baked goods prepared from dry mixes, breakfast cereal, chewing gum, compressed, candies, gelatins and puddings, flavored coffee and tea, processed cheese products, dry mix for beverages, flavored savory snacks and crackers, dry mixes for soups (GRAS Notice No. 74). FDA has not yet completed its review of the self-affirmation.

Gamma-cyclodextrin: Wacker Biochem Corporation has determined that gamma-cyclodextrin is generally recognized as safe (GRAS) when used as a stabilizer, emulsifier, carrier and formulation aid in foods.

The toxicology and metabolism data relevant to the proposed tolerance exemption are summarized in Table 1.

TABLE 1.—TOXICITY AND METABOLISM

Study	Cyclo-dextrin	Result
Acute oral toxicity	Alpha-	LD_{50} >10,000 mg/kg (rat)
	Beta-	LD_{50} >12,000 mg/kg (rabbit)
	Gamma-	LD_{50} >8,000 mg/kg (rat)
Acute dermal toxicity		No data are available
Acute inhalation toxicity		No data are available
Primary eye irritation	Alpha-	Crystalline form: Eye irritant, but not corrosive 50% suspension: Non-irritant
	Beta-	Slight irritant
	Gamma-	Non-irritant
Primary dermal irritation	Alpha-	Non-irritant
	Beta-	Non-irritant
Dermal sensitization	Alpha-	Non-sensitizer
	Beta-	Non-sensitizer
	Gamma-	Non-sensitizer
28–Day feeding study: rodent	Alpha-	NOEL = 5% in the diet
	Beta-	NOEL = 5% in the diet
90–Day feeding study: rat	Alpha-	NOAEL = 20% in diet highest dose tested (HDT)
	Beta-	NOAEL = 400 mg/kg/day by gavage
	Gamma-	NOAEL = 20% in diet HDT
90–Day feeding study: dog	Alpha-	NOAEL = 20% in diet HDT
	Beta-	NOEL = 2.5% in diet LOEL = 5% in diet. Hematology and clinical chemistryeffects observed indicated slight toxicity
	Gamma-	NOAEL = 20% in diet HDT

TABLE 1.—TOXICITY AND METABOLISM—Continued

Study	Cyclo-dextrin	Result
Subchronic dermal toxicity		No data are available
Chronic feeding and oncogenicity	Beta-	1–year dog NOAEL = 1% in diet = 350 mg/kg/day LOAEL = 2.5% in diet = 925 mg/kg/day Increased levels of protein were observed in urine 2-year rat: NOEL for oncogenicity = 6% in diet Small percentage is absorbed by the intestinal walls and causes kidney damage. Beta-cyclodextrin is not degraded in the small intestine. In the large intestine, it undergoes bacterial degradation, leading to gas generation and diarrhea
Teratology study: rodent	Alpha-	Not teratogenic, embryotoxic or fetotoxic at doses up to 20% of diets in both rats and rabbits HDT
	Beta-	Not teratogenic, embryotoxic or fetotoxic at 5,000 mg/kg/day in rats HDT and at 1,000 mg/kg/day in rabbits HDT
	Gamma-	Not teratogenic, embryotoxic or fetotoxic at doses up to 20% of diets in both rats and rabbits HDT
2-Generation reproduction	Beta-	NOAEL in rats = 1% in diet = 700 mg/kg/day LOAEL in dams and offspring = 2.5% in the diet
Gene mutation test	Alpha-	Negative Ames test
	Gamma-	Negative Ames test
Structural chromosomal aberration test	Beta-	Negative in rats at dose of 2% in diet
Other genotoxic effects	Alpha-	Negative micronucleus test
	Gamma-	Negative micronucleus test
Metabolism (oral dosing)	Alpha	Absorption: 2% dose absorbed Distribution: Liver (>0.05% dose) and kidney (>0.01% dose) Metabolism: Extensively and predominantly metabolized to CO_2 by intestinal flora Excretion: 60% dose expelled as CO_2 26–33% dose incorporated 7–14% dose excreted in urine and feces
	Beta-	Absorption: No significant absorption as intact molecule. Absorption as sugars is similar to that of glucose; occurs via passive transport Distribution: Max. 0.9% in GI tract 60 hours after dosing Metabolism: Hydrolysis to open chain dextrins and glucose occurs in the large intestine by intestinal flora Excretion: 66.8% dose as CO_2 in expired air within 23 hours of dosing. 0.6% to 4% in feces within 60 hours of dosing
	Gamma-	Absorption: >0.1% as intact molecule Metabolism: Rapid and total degradation to glucose in the upper intestinal tract by intestinal flora Excretion: 60% dose expelled as CO_2 37% dose incorporated 3% dose excreted in urine and feces

1. *Metabolite toxicology.* Alpha-, beta-, and gamma-cyclodextrin are metabolized to simple sugars and CO_2. These metabolites are also metabolites of the digestion of carbohydrates in the diet and have no significant toxicity.

2. *Endocrine disruption.* Based upon the available data, alpha-, beta-, and gamma-cyclodextrin are not anticipated to disrupt the endocrine system.

C. Aggregate Exposure

1. *Food.* Alpha-cyclodextrin, beta-cyclodextrin, and beta-cyclodextrin are naturally occurring compounds and are used as food additives.

Alpha-cyclodextrin food additive uses include: Carrier; encapsulating agent for food additives, flavorings and vitamins; stabilizer; and absorbent. The ADI is "not specified."

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Beta-cyclodextrin is used as a flavor carrier or protectant. See Table 2 for a detailed list of uses and the maximum concentrations.

TABLE 2.–MAXIMUM CONCENTRATION OF BETA-CYCLODEXTRIN IN FOODS

Beta-Cyclodextrin Use	Maximum Concentration
Baked goods prepared from dry mixes breakfast cereal chewing gum compressed candies	2%
Gelatins and puddings flavored coffee and tea processed cheese products dry mix for beverages	1%
Flavored savory snacks and crackers	0.5%
Dry mixes for soups	0.2%

Gamma-cyclodextrin is used in foods such as bread spreads, frozen dairy desserts, ready to eat dairy desserts, desserts prepared from dry mixes, fruit fillings, cheese and cream fillings, chewing gum, dietary supplements. See Table 3 for a complete list of uses and the maximum concentrations.

. TABLE 3.–MAXIMUM CONCENTRATION OF GAMMA-CYCLODEXTRIN IN FOODS

Gamma-Cyclodextrin Use	Maximum Use Concentration
Carrier for flavors, sweeteners and colors	<1%
Dry mixes for beverages	<1%
Dry mixes for soups	<1%
Dry mixes for dressings, gravies, and sauces	<1%
Dry mixes for puddings, gelatins, and fillings	<1%
Instant coffee and instant tea	<1%
Coffee whiteners	<1%
Compressed candies	<1%
Chewing gum	<1%
Breakfast cereals (ready-to-eat)	<1%
Savory snacks and crackers	<1%
Spices and seasonings	<1%
Carrier for vitamins	<1%
For use in dry food mixes and dietary supplements	<90%[1]
Carrier for polyunsaturated fatty acids	
For use in dry food mixes and dietary supplements	<80%[1]
Flavor modifier	
Soya milk	<2%
Stabilizer	
Bread spreads (fat-reduced)	<20%
Frozen dairy desserts	<3%
Baked goods (excl. bread, but incl. dough and baking mixes)	<2%
Bread	<1%
Fruit-based fillings	<3%
Fat-based fillings	<5%

TABLE 3.–MAXIMUM CONCENTRATION OF GAMMA-CYCLODEXTRIN IN FOODS—Continued

Gamma-Cyclodextrin Use	Maximum Use Concentration
Processed cheese	<3%
Dairy deserts (ready-to-eat and prepared from dry mixes)	<3%

[1]Percent by weight of gamma-cyclodextrin relative to the nutrient for which gamma-cyclodextrin is used as a carrier.

The proposed use of alpha-, beta-, and gamma-cyclodextrin as ingredients in pesticide formulations is anticipated to result in no significant additional dietary exposure to alpha-, beta-, and gamma-cyclodextrin.

2. *Drinking water.* Any alpha-, beta-, and gamma-cyclodextrin in drinking water sources is anticipated to degrade to simple sugars and CO_2 that will be used by plants as building blocks for the plant's growth. No significant exposure of alpha-, beta-, and gamma-cyclodextrin via drinking water is anticipated.

3. *Non-dietary exposure.* Cyclodextrins are used extensively in the cosmetic industry. Alpha-, beta-, and gamma-cyclodextrin are too large to be absorbed through the skin, so no significant systemic exposure is anticipated to result from the cosmetic use or other residential uses of alpha-, beta-, and gamma-cyclodextrin.

D. Cumulative Effects

Alpha-, beta-, and gamma-cyclodextrin have no significant toxic effects for consideration of cumulative effects.

E. Safety Determination

1. *U.S. population.* Alpha-, beta-, and gamma-cyclodextrin are low toxicity, naturally occurring compounds that are use as food additives. The D-glucose building blocks of alpha-, beta-, and gamma-cyclodextrin are also the result of digestion of starchy foods such as bread, rice, potatoes and pasta. Alpha-, beta-, and gamma-cyclodextrin are part of the current U.S. diet, and the proposed new uses of alpha-, beta-, and gamma-cyclodextrin as ingredients in pesticide formulations is not anticipated to contribute significantly to the amount of alpha-, beta-, and gamma-cyclodextrin in the U.S. diet. The proposed new use of alpha-, beta-, and gamma-cyclodextrin for use as an inert ingredient in pesticide formulations has a reasonable certainty of no harm to the U.S. population.

2. *Infants and children.* Alpha-, beta-, and gamma- cyclodextrin have no significant toxic effects that are specific to infants or children. The proposed new uses of alpha-, beta-, and gamma-cyclodextrin as ingredients in pesticide formulations has a reasonable certainty of no harm to infants or children.

F. International Tolerances

Alpha-cyclodextrin: The FAO/WHO JECFA has evaluated alpha-cyclodextrin and in 2001 allocated an ADI of "not specified." This is the most desirable ADI and is limited to low toxicity compounds.

Beta-cyclodextrin: A request was submitted to the CODEX Alimentarius Commission for additive clearance in the General Standard on Food Additives (INS No. 459) at a maximum level of 50,000 milligrams/kilogram (mg/kg) in food category 5.3, for chewing gum. A new monograph for beta-cyclodextrin has been published in the First Supplement to the Fourth Edition of the Food Chemicals Codex. Beta-cyclodextrin is published in Annex V of the Official Journal of the European Communities-Food Additives as a carrier only for food additives up to 1 gram/kilogram food. An ADI of 5 mg/kg body weight was established at the February 1995 joint FAO/WHO meeting of the expert committee on food additives and is published in WHO Food Additive Series 35.

Gamma-cyclodextrin: The FAO/WHO JECFA has evaluated alpha-cyclodextrin and in 2,000 (53rd meeting) allocated an ADI of "not specified." This is the most desirable ADI and is limited to low toxicity compounds.

[FR Doc. 02–28909 Filed 11–13–02; 8:45 am]
BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

November 7, 2002.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a current valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before January 13, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *lesmith@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s) contact Les Smith at 202–418–0217 or via the Internet at *lesmith@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0960.

Title: Application of Network Non-Duplication, Syndicated Exclusivity, and Sports Blackout Rules to Satellite Retransmissions of Broadcast Signals.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Businesses or other for-profit entities.

Number of Respondents: 1,407.

Estimated Time per Response: 0.5 to 1.0 hours.

Frequency of Response: On occasion reporting requirements; Third party disclosure.

Total Annual Burden: 63,992 hours.

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Total Annual Costs: None.

Needs and Uses: In response to the FCC's Report and Order in *Implementation of the Satellite Home Viewer Improvement Act of 1999: Application of Network Non-duplication, Syndicated Exclusivity and Sports Blackout Rules to Satellite Retransmission of Broadcast Signals*, CS Docket No. 00–2, FCC 00–38 (rel. November 2, 2000), parties filed petitions to reconsider certain aspects of the satellite program exclusivity rules adopted therein. In its Order on Reconsideration in the same docket, FCC 02–287 (rel. October 17, 2002), published elsewhere in this issue of the **Federal Register**, the Commission denied petitions to extend the phase-in period for implementation of the rules, and also maintained the application of the sports blackout rule to satellite carriage of network stations. The Commission revised section 76.122(c)(2), pertaining to identification of information about programming to be deleted, so that the satellite rule conforms to the cable rules. In addition, the Commission clarified and amended section 76.127(c), pertaining to notifications of deletions for sports broadcasts, to permit sports rights holders with a discernable season to submit blackout notifications for an entire season, but also to establish a date certain by when those notifications must be received by satellite carriers.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–28893 Filed 11–13–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 02–2751]

Verification OF ITFS, MDS, and MMDS License Status and Pending Applications

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document the Federal Communications Commission, (Commission), Wireless Telecommunications Bureau, seeks to verify ITFS, MDS, and MMDS licensing information contained in the Broadband Licensing System in preparation for the transition to the Universal Licensing System (ULS). The Commission is requesting that all ITFS, MDS and MMDS licensees and applicants review and verify licensing information set forth in the Tables released for public inspection. Also, the Commission is requesting that ITFS, MDS, and MMDS licensees and applicants submit written requests for continued processing for all pending applications filed prior to March 25, 2002. Finally, at the Commission will close the review and verification period on December 17, 2002.

DATES: Comments are due on or before December 16, 2002 and reply comments are due on or before December 30. 2002.

ADDRESSES: Federal Communications Commission 445 12th Street, SW., TW–A325, Washington, DC 20554. *See* Supplementary Information for filing instructions.

FOR FURTHER INFORMATION CONTACT: Licensees and applicants should visit *http://wireless.fcc.gov/services/itfs&mds/licensing/inventory.html* in order to review the tables. For all questions regarding technical aspects of public access to BLS data, contact the FCC Technical Support Hotline: Call (202) 414–1250 (TTY (202) 414–1255) or e-mail to *ulscomm@fcc.gov*. The hotline is available Monday through Friday 8 a.m. to 6 p.m. Eastern Time. All calls to the hotline are recorded.

For all questions regarding legal matters relating to this Public Notice, contact John J. Schauble, Chief, Policy and Rules Branch, Kim Varner, Esq., Policy and Rules Branch, Public Safety and Private Wireless Division, or Stephen Svab, Esq., Policy and Rules Branch, Public Safety and Private Wireless Division, at (202) 418–0680.

For all questions regarding data corrections, and how to file those corrections, contact the Licensing Support Hotline at 1–888–225–5322 and select option 2.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Public Notice*, DA 02–2751, released on October 18, 2002. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the Commission's copy contractor, Qualex International, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The full text may also be downloaded at: *http://www.fcc.gov*. Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365 or at *bmillin@fcc.gov*.

On March 25, 2002, the Wireless Telecommunications Bureau (WTB) became responsible for the administration of the Instructional Television Fixed Service (ITFS), the Multipoint Distribution Service (MDS), and the Multichannel Multipoint Distribution Service (MMDS) (collectively, the Services). Prior to March 25, 2002, the Services were administered by the former Mass Media Bureau using the Broadband Licensing System (BLS) as the licensing database for the Services. As part of the transition process, WTB will be migrating these services to the Universal Licensing System (ULS) that governs all WTB services. In so doing, WTB seeks to ensure that all information contained within the BLS is accurate, current and comprehensive. In order to facilitate this process, WTB is requesting that all ITFS, MDS and MMDS licensees and applicants review and verify important licensing information as explained in this public notice. This review will assist WTB in ensuring the integrity of the data in the database and permit a smooth transition of the data to WTB's licensing database. In addition, in order to efficiently process all pending applications, petitions, and other requests, WTB is requesting that applicants and petitioners re-affirm, in writing, that continued processing of certain applications and petitions, as detailed below is desired.

It is very important that all ITFS, MDS, and MMDS licensees and applicants carefully review this public notice and the tables of licensing information described below. Failure to follow the instructions in this public notice may result in the cancellation of licenses and/or dismissal of pending applications.

ITFS/MDS/MMDS Licenses

WTB is making available for public inspection four tables of licensing information at: *http://wireless.fcc.gov/services/itfs&mds/licensing/inventory.html*. A hard copy of each table is also available for public inspection at the Commission's Reference Information Center, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. Table A lists all ITFS licenses including main station and two-way stations shown in BLS. Table B lists all MDS and MMDS licenses, including Basic Trading Area authorizations, main stations and two-way stations contained in BLS. Table C lists all granted modifications and construction permits for ITFS for which certifications of construction have not yet been filed. Table D lists all granted MDS/MMDS modifications and conditional licenses for which certifications of construction have not yet been filed. Tables A, B, C, and D contain the following information for each listed license: license status, latest license status date, renewal expiration date, channel(s), location of the facility, construction expiration date of each unconstructed station and additional administrative information concerning the licenses. Technical information is not included in these tables.

In addition, for licensed stations only, additional technical information concerning those licenses is available at *http://wireless.fcc.gov/services/itfs&mds/licensing/inventory.html*. Licensees are requested to review this data for their licenses and ascertain that the information is correct (including verification that the specification of North American Datum 1927 (NAD27) or North American Datum 1983 (NAD83) for all coordinates on the license).

Within sixty days of the release date of this public notice, licensees are requested to review the referenced tables and to review the technical information pertaining to their licenses and submit any necessary corrections. Specifically, licensees are instructed to verify, under penalty of perjury, that their respective station licenses, conditional licenses, and construction permits are listed on the appropriate table and that all information (including the technical information available at the above-referenced internet address) is correct. All data corrections submitted should include a cover sheet with the following information: FCC Registration Number, which table the change is being requested for, call sign of the licensed station, Facility ID, and a current contact person (including mailing address, telephone number and e-mail address if available). If the licensee disputes any of the technical information, the licensee should print the technical information from the internet site and make the corrections on that print out. All corrections should be hand-written on the printed copy and submitted in duplicate, along with documents supporting the requested correction.

If the information pertaining to the licenses is accurate, no further action is required. If the license is listed as licensed but operation of the station has been permanently discontinued, the licensee is required to turn the license in for cancellation. If a valid license is not listed on the appropriate table or the licensee believes that it is listed incorrectly as forfeited or cancelled, the licensee must submit, within sixty days of the release of this public notice, a copy of the license. In addition, with the same filing, the licensee must also submit a declaration, signed by an authorized representative of the licensee that the license is valid along with an explanation as to why the license has not been forfeited or cancelled.

If a conditional license or construction permit is listed as an unconstructed station, but a certification of construction has been filed, the licensee is requested to submit an FCC date-stamped copy of that filing or other contemporaneous evidence demonstrating that the certification of construction was timely filed. In addition, with the same filing, the licensee must also submit a declaration, signed by an authorized representative of the licensee that the license is valid along with an explanation as to why the license has not been forfeited or cancelled.

If the information requested previously is being sent via United States Postal Service, licensees must use the following address: Federal Communications Commission, MDS/ITFS Database Corrections, 1270 Fairfield Road, Gettysburg, PA 17325.

Correspondence sent by overnight mail couriers (*e.g.*, Federal Express, United Parcel Service, Airborne), hand-delivery or messenger must be addressed to: Federal Communications Commission, MDS/ITFS Database Corrections, 1120 Fairfield Road, Gettysburg, PA 17325.

Pending ITFS/MDS/MMDS Applications

WTB is also making available for public inspection two tables of pending ITFS/MDS/MMDS applications on the Commission's internet Web site at *http://wireless.fcc.gov/services/itfs&mds/licensing/inventory.html*. These tables include all electronically filed pending applications as of October 16, 2002, and all manually filed applications, filed prior to August 1, 2002. A hard copy of each table is also available for public inspection at the Commission's Reference Information Center, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. Table E lists all pending ITFS applications. Table F lists all pending MDS/MMDS applications. Tables E and F contain the following information for each pending application: file number, application purpose, facility ID, location, channel and additional administrative information concerning the pending application. Technical information is not included in the tables. Technical information for pending applications for new stations or a modification of license can be queried on the Internet at *http://wireless.fcc.gov/services/itfs&mds/licensing/inventory.html*. These applications may be queried by using the facility ID.

Within sixty days of the release of this public notice, ITFS/MDS/MMDS licensees and applicants are requested to review and, where appropriate, verify the attached pending application tables and technical information for the following: (1) That the pending application(s) is/are listed on the appropriate table; (2) that the information listed on the table for the pending application is accurate and complete; (3) that the associated technical data for a pending application requesting a new station or a modified station is correct (including verification that the specification of NAD27 or NAD83 for all coordinates on the application is correct); and (4) for all applications filed prior to March 25, 2002, that Commission action on the pending application(s) is still requested. All data corrections submitted should include a cover sheet with the following information: FCC Registration Number, which table the change is being requested for, call sign of the licensed station, Facility ID, and a current contact person (including mailing address, telephone number and e-mail address if available).

If the information for the application is accurate and the application was filed after March 25, 2002, no further action is required. If, on the other hand, a pending application is not listed in the appropriate table and processing is requested, the applicant, by its authorized representative, is requested to submit within sixty days of the release of this public notice two FCC date-stamped copies of the omitted application.

In addition, for pending applications filed prior to March 25, 2002, the applicant must: (1) Affirm, in writing, within sixty days of the release of this public notice that continued processing of the application is requested by contacting the Commission at the addresses listed below in this subsection, and (2) submit a copy of the application with the written affirmation request.

If an application is listed as pending, but has in fact been granted, dismissed or withdrawn, the licensee or applicant is requested within sixty days of the release of this public notice to submit updated information concerning the status of the application. If the application has been granted, the licensee or applicant must submit a copy of the associated license or other authorization, or other documentation that demonstrates that the application has been granted.

If an applicant/licensee disputes any of the technical information of a pending application for a new station or

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the modification of a station, the applicant/licensee should print the technical information from the internet site. All corrections should be hand-written on the printed copy and submitted in duplicate, along with documents supporting the requested correction.

Applicants sending information via the United States Postal Service, should use the following address: Federal Communications Commission, MDS/ITFS Database Corrections, 1270 Fairfield Road, Gettysburg, PA 17325.

Applicants sending information via overnight mail couriers, hand-delivery or messenger should use the following address: Federal Communications Commission, MDS/ITFS Database Corrections, 1120 Fairfield Road, Gettysburg, PA 17325.

Termination of Review Period

At the end of the sixty-day review period, WTB will evaluate and update, where appropriate, all information received in response to this public notice. For any applications for which written affirmations requesting further processing have not been received, those applications will be dismissed without prejudice. At the conclusion of this review period, WTB will not entertain any future claims that licenses, conditional licenses, construction permits, applications, or pleadings may have been omitted from the BLS or accept any additional information from entities seeking to reinstate licenses, conditional licenses, or construction permits or prosecute dismissed applications and pleadings or applications that are dismissed pursuant to this Public Notice.

Contact Information

Licensees and applicants should visit *http://wireless.fcc.gov/services/itfs&mds/licensing/inventory.html* in order to review the tables. For all questions regarding technical aspects of public access to BLS data, contact the FCC Technical Support Hotline: Call (202) 414–1250 (TTY 202–414–1255) or e-mail to *ulscomm@fcc.gov*. The hotline is available Monday through Friday 8 a.m. to 6 p.m. Eastern Time. All calls to the hotline are recorded.

For all questions regarding legal matters relating to this Public Notice, contact John J. Schauble, Chief, Policy and Rules Branch, Kim Varner, Esq., Policy and Rules Branch, Public Safety and Private Wireless Division, or Stephen Svab, Esq., Policy and Rules Branch, Public Safety and Private Wireless Division, at (202) 418–0680.

For all questions regarding data corrections, and how to file those corrections, contact the Licensing Support Hotline at 1–888–225–5322 and select option 2.

FCC Notice Required by the Paperwork Reduction Act

The public reporting for this collection of information is estimated to average .50 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the required data, and completing and reviewing the collection of information. If you have any comments on this burden estimate, or how we can improve the collection and reduce the burden it causes you, please write to the Federal Communications Commission, AMD–PERM, Paperwork Reduction Project (3060–0893), Washington, DC 20554. We will also accept your comments regarding the Paperwork Reduction Act aspects of this collection via the Internet if you send them to *jboley@fcc.gov*. Please do not Send your Response to this Address.

Remember—You are not required to respond to a collection of information sponsored by the Federal government, and the government may not conduct or sponsor this collection, unless it displays a currently valid OMB control number or if we fail to provide you with this notice. This collection has been assigned an OMB control number of 3060–0893.

The Foregoing Notice is Required by the Paperwork Reduction Act of 1995, Pub. L. 104–13, October 1, 1995, 44 U.S.C. 3507.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–28890 Filed 11–13–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 9:48 a.m. on Friday, November 8, 2002, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to the Corporation's resolution activities.

In calling the meeting, the Board determined, on motion of Director James E. Gilleran (Director, Office of Thrift Supervision), seconded by Director John M. Reich (Appointive), concurred in by Julie L. Williams, acting in the place and stead of John D. Hawke, Jr., (Comptroller of the Currency), and Chairman Donald E. Powell, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Subshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Dated: November 8, 2002.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 02–29020 Filed 11–12–02; 10:45 am]

BILLING CODE 6714–01–M

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

PREVIOUSLY ANNOUNCED DATE & TIME: Thursday, November 14, 2002,

MEETING OPEN TO THE PUBLIC: The following item was added to the agenda: Report of the Audit Division—Nader 2000 Primary Committee, Inc.

DATE & TIME: Tuesday, November 19, 2002 at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, § 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

DATE & TIME: Thursday, November 21, 2002 at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.

Final Rules and Explanation and Justification on Disclaimers, Fraudulent Solicitations, Personal Use of Campaign Funds, and Civil Penalties.

Routine Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 02–29101 Filed 11–12–02; 3:13 am]

BILLING CODE 6715–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 010776–122.

Title: Asia North America Eastbound Rate Agreement.

Parties: American President Lines, Ltd, APL Co. Pte Ltd., A.P. Moller-Maersk Sealand, Kawasaki Kisen Kaisha, Ltd., Hapag-Lloyd Container Linie GmbH, Nippon Yusen Kaisha, Orient Overseas Container Line Limited, P&O Nedlloyd Limited, Mitsui O.S.K. Lines, Ltd., P&O Nedlloyd B.V.

Synopsis: The amendment extends the current suspension for an additional six months through May 1, 2003.

Agreement No.: 011375–060.

Title: The Trans-Atlantic Conference Agreement.

Parties: A.P. Moller-Maersk Sealand, Atlantic Container Line AB, Hapag-Lloyd Container Linie GmbH, Mediterranean Shipping Company, S.A., Nippon Yusen Kaisha, Orient Overseas Container Lines Limited, P&O Nedlloyd Limited.

Synopsis: The amendment renews the conference's Temporary Slot Assistance Program for the period from the last week of December 2002 through the second week of February 2003.

Agreement No.: 201048–001.

Title: Philadelphia Regional Port Authority and Delaware River Stevedores, Inc. Lease Agreement.

Parties: Philadelphia Regional Port Authority, Delaware River Stevedores, Inc.

Synopsis: The agreement amendment restates the entire agreement and revises the minimum vessel calls and tonnage requirements.

Agreement No.: 201113–002.

Title: Non-Exclusive Preferential Assignment Agreement Between the Port of Oakland and SSA Terminals, LLC.

Parties: Port of Oakland, SSA Terminals, LLC.

Synopsis: The amendment clarifies the term of the agreement in view of certain events that have taken place.

By Order of the Federal Maritime Commission.

Dated: November 8, 2002.

Theodore A. Zook,

Assistant Secretary.

[FR Doc. 02–28911 Filed 11–13–02; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 6, 2002.

A. Federal Reserve Bank of Minneapolis (Julie Stackhouse, Sr. Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1. First Interstate Bancsystem, Inc., Billings, Montana; to acquire 100 percent of the voting shares of Silver Run Bancorporation, Inc., Red Lodge, Montana, and thereby indirectly acquire voting shares of United States National Bank of Red Lodge, Red Lodge, Montana.

Board of Governors of the Federal Reserve System, November 6, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–28748 Filed 11–13–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Federal Open Market Committee; Domestic Policy Directive of September 24, 2002

In accordance with § 271.25 of its rules regarding availability of information (12 CFR part 271), there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting held on September 24, 2002.[1]

The Federal Open Market Committee seeks monetary and financial conditions that will foster price stability and promote sustainable growth in output. To further its long-run objectives, the Committee in the immediate future seeks conditions in reserve markets consistent with maintaining the federal funds rate at an average of around 1¾ percent.

By order of the Federal Open Market Committee, November 7, 2002.

Vincent R. Reinhart,

Secretary, Federal Open Market Committee.

[FR Doc. 02–28874 Filed 11–13–02; 8:45 am]

BILLING CODE 6210–01–M

[1] Copies of the Minutes of the Federal Open Market Committee meeting on September 24, 2002, which includes the domestic policy directive issued at the meeting, are available upon request to the Board of Governors of the Federal Reserve System, Washington, DC 20551. The minutes are published in the Federal Reserve Bulletin and in the Board's annual report.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01E–0094]

Determination of Regulatory Review Period for Purposes of Patent Extension; COLAZAL

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for COLAZAL and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Submit written comments and petitions to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments.

FOR FURTHER INFORMATION CONTACT: Claudia Grillo, Regulatory Policy Staff (HFD–013), Food and Drug dministration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3460.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product COLAZAL (balsalzide disodium). COLAZAL is indicated for treatment of mildly to moderately active ulcerative colitis. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for COLAZAL (U.S. Patent No. 4,412,992) from Biorex Laboratories Unlimited, and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated February 14, 2002, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of COLAZAL represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for COLAZAL is 2,950 days. Of this time, 1,828 days occurred during the testing phase of the regulatory review period, while 1,122 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355) became effective*: June 22, 1992. The applicant claims June 9, 1992, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was June 22, 1992, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the act*: June 23, 1997. FDA has verified the applicant's claim that the new drug application (NDA) for COLAZAL (NDA 20–610) was initially submitted on June 23, 1997.

3. *The date the application was approved*: July 18, 2000. FDA has verified the applicant's claim that NDA 20–610 was approved on July 18, 2000.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,825 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments and ask for a redetermination by January 13, 2003. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by May 13, 2003. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch. Three copies of any information is to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: September 24, 2002.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 02–28882 Filed 11–13–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01E–0420]

Determination of Regulatory Review Period for Purposes of Patent Extension; LOTRONEX

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for LOTRONEX and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Submit written comments and petitions to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments.

FOR FURTHER INFORMATION CONTACT: Claudia Grillo, Regulatory Policy Staff (HFD–013), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3460.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product LOTRONEX (alosetron hydrochloride). LOTRONEX is indicated for the treatment of irritable bowel syndrome in female patients whose predominant bowel symptom is diarrhea. The safety and effectiveness in men have not been established. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for LOTRONEX (U.S. Patent No. 5,360,800) from Glaxo Wellcome, Inc., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated February 14, 2002, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of LOTRONEX represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for LOTRONEX is 3,564 days. Of this time, 3,339 days occurred during the testing phase of the regulatory review period, while 225 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355) became effective*: May 10, 1990. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on May 10, 1990.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the act*: June 30, 1999. FDA has verified the applicant's claim that the new drug application (NDA) for LOTRONEX (NDA 21–107) was initially submitted on June 30, 1999.

3. *The date the application was approved*: February 9, 2000. FDA has verified the applicant's claim that NDA 21–107 was approved on February 9, 2000.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,076 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments and ask for a redetermination by January 13, 2003. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by May 13, 2003. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch. Three copies of any information is to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: September 24, 2002.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 02–28883 Filed 11–13–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01E–0091]

Determination of Regulatory Review Period for Purposes of Patent Extension; ACOVA

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for ACOVA and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Submit written comments and petitions to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments.

FOR FURTHER INFORMATION CONTACT: Claudia V. Grillo, Office of Regulatory Policy (HFD–013), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3460.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug

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product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted, as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product ACOVA (argatroban). ACOVA is an anticoagulant for prophylaxis or treatment of thrombosis in patients with heparin-induced thrombocytopenia. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for ACOVA (U.S. Patent No. 5,214,052) from Texas Biotechnology Corp., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated May 3, 2001, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of ACOVA represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for ACOVA is 4,022 days. Of this time, 2,971 days occurred during the testing phase of the regulatory review period, while 1,051 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(i)) became effective*: June 28, 1989. The applicant claims January 12, 1989, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was June 28, 1989, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the act*: August 15, 1997. The applicant claims August 20, 1997, as the date the new drug application (NDA) for ACOVA (NDA 20–883) was initially submitted. However, FDA records indicate that NDA 20–883 was submitted on August 15, 1997.

3. *The date the application was approved*: June 30, 2000. FDA has verified the applicant's claim that NDA 20–883 was approved on June 30, 2000.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 839 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments and ask for a redetermination by January 13, 2003. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by May 13, 2003. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch. Three copies of any information is to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: September 24, 2002.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 02–28884 Filed 11–13–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02E–0022]

Determination of Regulatory Review Period for Purposes of Patent Extension; SOLAGE

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for SOLAGE and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Submit written comments and petitions to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments.

FOR FURTHER INFORMATION CONTACT: Claudia Grillo, Regulatory Policy Staff (HFD–013), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3460.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product SOLAGE (mequinol). SOLAGE is indicated for the treatment of solar lentigines. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for SOLAGE (U.S. Patent No. 5,194,247) from Bristol-Myers Squibb Co., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated February 14, 2002, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of SOLAGE represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for SOLAGE is 2,689 days. Of this time, 1,978 days occurred during the testing phase of the regulatory review period, while 711 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355) became effective*: August 1, 1992. The applicant claims August 3, 1992, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was August 1, 1992, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the act*: December 30, 1997. FDA has verified the applicant's claim that the new drug application (NDA) for SOLAGE (NDA 20–922) was initially submitted on December 30, 1997.

3. *The date the application was approved*: December 10, 1999. FDA has verified the applicant's claim that NDA 20–922 was approved on December 10, 1999.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,365 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments and ask for a redetermination by January 13, 2003. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by May 13, 2003. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch. Three copies of any information is to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: September 24, 2002.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 02–28885 Filed 11–13–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE INTERIOR

Meeting To Update Stakeholders on the Progress of the Recreation One-Stop Initiative

Date: Thursday, November 21, 2002.
Registration: 12:30 p.m.–1 p.m.
Meeting: 1 p.m.–4 p.m.
Location: American Institute of Architects (AIA), 1735 New York Avenue NW., Washington, DC 20006.

Background

Recreation.gov (*www.recreation.gov*) is an Internet portal providing one-stop access to federal recreation information. The service, which is hosted by the Interior Department, is a partnership among Federal natural resources agencies, with participation from State and local agencies. Recreation.gov is being expanded to a broader service called Recreation One-Stop. The Administration's E-Government task force selected Recreation One-Stop as one of 24 government-wide Internet projects intended to expand and improve on-line access to government information and services. The goals of the Recreation One-Stop initiative are to improve the quality and availability of recreation information through partnerships, data sharing, and innovative uses of technology.

The Recreation One-Stop Team held a public meeting on March 7, 2002, in Washington, DC to discuss the goals and objectives of the project, and to obtain feedback from stakeholders and interested parties. A summary of the meeting is available on the web at *http://recreation.gov/summary.cfm*.

The project team has taken action on many of the recommendations made at the March 7 meeting. Additional features have been added to the Recreation.gov site, and the project team commissioned an independent report by the Industry Advisory Council (IAC) to identify best practices related to development of data standards and governance of intergovernmental portal projects.

Purpose of Meeting

The purpose of this meeting is to provide the public and our stakeholders with an update on actions taken since the March meeting, and to solicit feedback and suggestions on the next phases of the project.

Topics

Areas to be covered at the meeting include the following:

Update: The Recreation One-Stop Team will provide an overview of actions taken since the last stakeholder meeting, and provide an overview of the IAC best practices study.

Technology: One of the common themes from the March stakeholder meeting was the importance of developing data standards and the importance of data quality and availability. The status of intergovernmental data standards for recreation will be discussed.

Governance: Recreation One-Stop is evolving toward a Federal-State/Public-Private partnership to promote data sharing related to recreational resources. One of the issues to be discussed is the development of an appropriate governance structure for this initiative.

Attendance

This is a public meeting open to anyone interested in learning more about Recreation One-Stop and providing input on the development of the project. For more information, please contact Charlie Grymes at the

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Department of the Interior at 202–219–1285. Space is limited; if you plan to attend, please respond by November 14 to Angela Mathews at 202–208–5606. Please let us know if you have special needs.

Other Details

The AIA building is directly behind the Octagon House. The closest Metro stops are Farragut West (Blue and Orange Line) and Farragut North (Red Line). Exit the Metro on the 18th Street side and walk approximately 4 blocks south. Street parking is available, but parking in this area is limited. There is parking available for a fee at the Colonial parking garage at G and 18th St. There are also numerous coffee shops and restaurants in the area.

Dated: November 7, 2002.

Scott Cameron,

Deputy Assistant Secretary, Performance and Management.

[FR Doc. 02–28916 Filed 11–13–02; 8:45 am]

BILLING CODE 4310–RK–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

National Wildlife Refuge System; Big Game Guide Permits; Solicitations and Extensions

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of solicitation of applications for refuge big game guide permits and extension of existing refuge permits.

SUMMARY: The Fish and Wildlife Service is soliciting proposals to conduct commercial big game guide services on National Wildlife Refuges in Alaska for a 5-year period beginning in 2004. We are also providing a 6-month extension of existing big game guide permits.

DATES: The application period opens November 14, 2002. Applications must be received at the address indicated below by 4 p.m., Friday, February 28, 2003.

FOR MORE INFORMATION CONTACT: Tony Booth, U.S. Fish and Wildlife Service, Division of Visitor Services and Communications, 1011 East Tudor Road MS 235, Anchorage, Alaska, 99503; telephone (907) 786–3357; e-mail *tony_booth@fws.gov.*

SUPPLEMENTARY INFORMATION: The Fish and Wildlife Service is requesting proposals to conduct commercial big game guide services within designated guide use areas in each of the National Wildlife Refuges in Alaska. The Service will award special use permits to successful applicants authorizing them to provide commercial guide services to the public in specific refuge guide use areas for the period of January 1, 2004, through December 31, 2008. We will award the permits through a competitive selection process in which qualified big game guides may apply for specific refuge areas offered by the Service. Each application or proposal will be evaluated and scored/ranked according to evaluation criteria and selection factors developed by the Service.

The application period will begin on the date specified in the DATES section near the beginning of this notice. We will send a letter to all registered big game guides in the State of Alaska providing information on the guide areas being offered and application instructions. We are also publishing notices in Anchorage and Fairbanks newspapers that provide general circulation in Alaska. Applications are available to any interested party by calling or writing to the above address. Applicants must postmark their proposals or hand deliver them to the above address by Friday, February 28, 2003.

The Service is also providing notice that we are extending the expiration date of existing Alaska National Wildlife Refuge big game guide permits and the competitive guide selection process for 6 months. This 6-month extension will put all permits on a calendar year cycle. The big game guide permits currently in effect for the refuge use areas being offered will expire on June 30, 2003. We are extending the expiration date of these permits to December 31, 2003. We are moving the effective date for new guide permits from July 1, 2003, to January 1, 2004.

The Service issued 12 big game guide permits under the competitive selection process in 1999 to fill vacant guide use areas where we did not renew permits. These permits are slated to expire on June 30, 2004. This notice extends the terms of these permits to December 31, 2004, to make them consistent with the calendar year cycle as well. The new permit cycle will be consistent with most other State and Federal licensing and permitting requirements for Alaska big game guides. The State of Alaska Division of Occupational Licensing administers hunting guide and transporter licenses on a calendar year basis.

The extension in the selection process was also necessary to allow the Service to extend the public review period for the proposed revisions of the evaluation factors and guidance that we will use to score and rank guide applications. This was done in response to public requests, and to provide a longer and more reasonable application period for big game guide permits. The extension of the permitting process will accommodate flexibility to extend the permit application deadline further into the winter, well after the fall hunting season, and thereby allow guides more reasonable time to prepare their applications during the slower time of year for the guiding industry.

Alaska refuge permit regulations (50 CFR part 36.41(e)(10)) require the Service to issue competitively awarded permits for 5-year terms (except where permits are issued to fill vacancies occurring during a scheduled award cycle). The regulations require the refuge manager to renew the permits noncompetitively for 5 additional years, if the permittee applies for the renewal, and has maintained a satisfactory record of performance and complied with all applicable permit terms and conditions. The regulations state that after one renewal the Service will not extend or noncompetitively renew another permit. We are providing 6-month extensions to all existing guide permits, in addition to the 5-year renewals cited above. Therefore, the 6-month extensions require a one time waiver of the Alaska refuge permit regulations.

Dated: August 29, 2002.

David B. Allen,

Regional Director.

[FR Doc. 02–28871 Filed 11–13–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–090–1610–PG; DBG–0200001]

Notice of Public Meeting: Resource Advisory Council to the Lower Snake River District, Bureau of Land Management, Department of the Interior

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Lower Snake River District Resource Advisory Council (RAC), will meet as indicated below.

DATES: The meeting will be held December 4, 2002, at the Lower Snake River District Office, located at 3948 Development Avenue, Boise, Idaho, beginning at 9 a.m. The public comment periods will be held after each topic. The meeting is expected to adjourn at 4 p.m.

FOR FURTHER INFORMATION CONTACT: MJ Byrne, Public Affairs Officer and RAC Coordinator, Lower Snake River District, 3948 Development Ave., Boise, ID 83705, Telephone (208) 384–3393.

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in southwestern Idaho. At this meeting, the following topics for discussion will include:

- Subgroup reports on Sage Grouse Habitat Management, OHV Initiative, River Recreation and Resource Management Plans, and Fire and Fuels Management;
- RAC Members will discuss what they heard from the Secretary of Interior, the BLM Director, RAC Chairpersons and other RAC Members during the November 20 tele-video conference regarding issues and priorities for the RAC's to address across the nation;
- The LSRD RAC Chair, Don Weilmunster will provide a report to the Members of what he learned while attending the National RAC Conference in Phoenix, November 18–20, 2002;
- RAC Members will discuss how this direction from Washington, DC can be incorporated into their workplans for each sub-group for fiscal year 2003;
- An update will be given on the two Resource Management Plans under development in the District, and
- Each Field Office Manager will provide a brief update on current activities and issues in each of their field office areas.

All meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, tour transportation or other reasonable accommodations, should contact the BLM as provided below.

Dated: November 6, 2002.

Howard Hedrick,

Associate District Manager.

[FR Doc. 02–28872 Filed 11–13–02; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Submitted for Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of extension and revision of a currently approved information collection (OMB Control Number 1010–0050).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are notifying the public that we have submitted to OMB an information collection request (ICR) to renew approval of the paperwork requirements in the regulations under 30 CFR part 250, subpart J, Pipelines and Pipeline Rights-of-Way and related documents. This notice also provides the public a second opportunity to comment on the paperwork burden of these regulatory requirements and related form.

DATES: Submit written comments by December 16, 2002.

ADDRESSES: You may submit comments directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (1010–0050), 725 17th Street, NW., Washington, DC 20503. Mail or hand-carry a copy of your comments to the Department of the Interior; Minerals Management Service; Attention: Rules Processing Team; Mail Stop 4024; 381 Elden Street; Herndon, Virginia 20170–4817. If you wish to E-mail your comments to MMS, the address is: rules.comments@MMS.gov. Reference Information Collection 1010–0050 in your subject line. Include your name and return address, and mark your message for return receipt.

FOR FURTHER INFORMATION CONTACT: Alexis London, Rules Processing Team, telephone (703) 787–1600. You may also contact Alexis London to obtain a copy at no cost of the regulations and form MMS–2030 that require the subject collection of information.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR part 250, Subpart J, Pipelines and Pipeline Rights-of-Way.

Form Number: MMS–2030, Outer Continental Shelf (OCS) Right-of-Way Grant Bond.

OMB Control Number: 1010–0050, incorporating 1010–0134.

Abstract: The Outer Continental Shelf (OCS) Lands Act, as amended (43 U.S.C. 1331 *et seq.* and 43 U.S.C. 1801 *et seq.*), authorizes the Secretary of the Interior (Secretary) to prescribe rules and regulations to administer leasing of the OCS. Such rules and regulations will apply to all operations conducted under a lease. Section 1334(e) authorizes the Secretary to grant rights-of-way through the submerged lands of the OCS for pipelines "for the transportation of oil, natural gas, sulphur, or other minerals, or under such regulations and upon such conditions as may be prescribed by the Secretary, * * * including (as provided in section 1347(b) of this title) assuring maximum environmental protection by utilization of the best available and safest technologies, including the safest practices for pipeline burial. * * *"

The Independent Offices Appropriations Act (31 U.S.C. 9701) authorizes Federal agencies to recover the full cost of services that provide special benefits. Under the Department of the Interior's (DOI) policy implementing the IOAA, MMS is required to charge the full cost for services that provide special benefits or privileges to an identifiable non-Federal recipient above and beyond those which accrue to the public at large. Pipeline rights-of-way and assignments are subject to cost recovery and MMS regulations specify filing fees for applications.

This notice concerns the reporting and recordkeeping elements of 30 CFR part 250, subpart J and related forms and NTLs. OMB approved the information collection requirements in current subpart J regulations under control numbers 1010–0050 and 1010–0134. The first is the primary collection for subpart J. The latter was approved in connection with a final rule amending § 250.1000(c) to clarify regulatory issues involving the 1996 Memorandum of Understanding between DOI and the Department of Transportation (DOT). Our submission will consolidate these two subpart J collections under 1010–0050. Responses are mandatory or are required to obtain or retain a benefit. No questions of a "sensitive" nature are asked. MMS will protect proprietary information according to 30 CFR 250.196 (Data and information to be made available to the public), 30 CFR part 252 (OCS Oil and Gas Information Program), and the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR part 2).

The lessees and transmission companies design the pipelines that they install, maintain, and operate. To ensure those activities are performed in a safe manner, MMS needs information concerning the proposed pipeline and safety equipment, inspections and tests,

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and natural and manmade hazards near the proposed pipeline route. MMS field offices use the information collected under subpart J to review pipeline designs prior to approving an application for a right-of-way or a pipeline permitted under a lease to ensure that the pipeline, as constructed, will provide for safe transportation of minerals through the submerged lands of the OCS. They review proposed routes of a right-of-way to ensure that the right-of-way, if granted, would not conflict with any State requirements or unduly interfere with other OCS activities. MMS field offices review plans for taking pipeline safety equipment out of service to ensure alternate measures are used that will properly provide for the safety of the pipeline and associated facilities (platform, etc.). They review notification of relinquishment of a right-of-way grant and requests to abandon pipelines to ensure that all legal obligations are met and pipelines are properly abandoned. MMS inspectors monitor the records on pipeline inspections and tests to ensure safety of operations and protection of the environment and to schedule their workload to permit witnessing and inspecting operations. Information is also necessary to determine the point at which DOI or DOT has regulatory responsibility for a pipeline and to be informed of the responsible operator if not the same as the right-of-way holder.

Frequency: The frequency of reporting is on occasion or annual.

Estimated Number and Description of Respondents: Approximately 130 Federal OCS oil, gas, and sulphur lessees and 115 pipeline right-of way holders.

Estimated Reporting and Recordkeeping "Hour" Burden: The estimated annual hour burden for the consolidated 30 CFR part 250, subpart J, information collection is a total of 106,086 hours. The following chart details the individual components and estimated hour burdens. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burdens.

Citation 30 CFR part 250, subpart J	Reporting and recordkeeping requirement	Hour burden	Average annual responses	Annual burden hours
1000(b), 1007(a)	Submit application to install new lease-term pipeline (P/L), including exceptions/departures, consents and notices, required reports, and attachments.	140	256 new lease-term P/Ls.	35,840
1000(b), (d); 1007(a); 1009(a)(1), (b)(1); 1010; 1011.	Apply for P/L right-of-way (ROW) grant and installation of new ROW P/L, including exceptions/departures, consents and notices, required reports, and attachments.	140	152 new ROW P/Ls	21,280
1000(b); 1007(b); 1010; 1012(b)(2), (c).	Submit application to modify lease-term or ROW P/L or ROW grant, including exceptions/departures; notify operators of deviation.	40	615 modifications	24,600
1000(b); 1009(c)(9); 1014.	Apply to relinquish P/L ROW grant, including exceptions/departures.	8	97 P/L ROW relinquishments.	776
1000(c)(2)	Identify in writing P/L operator on ROW if different from ROW grant holder.	¼	4 submissions	1
1000(c)(3)	Mark specific point on P/L where operating responsibility transfers to transporting operator or depict transfer point on a schematic located on the facility. One-time requirement after final rule published; now part of application or construction process involving no additional burdens.	0		
1000(c)(4)	Petition to MMS for exceptions to general operations transfer point description.	5	1 petition (none received to date.).	5
1000(c)(8)	Request MMS recognize valves landward of last production facility but still located on OCS as point where MMS regulatory authority begins.	1	1 request	1
1000(c)(12)	Petition to MMS to continue to operate under DOT regs upstream of last valve on last production facility.	40	1 petition (none received to date.).	40
1000(c)(13)	Transporting P/L operator petition to DOT and MMS to continue to operate under MMS regs.	40	1 petition (none received to date.).	40
1004(c)	Place sign on safety equipment identified as ineffective and removed from service.	See footnote 1		0
1008(a), (c), (d), (e), (f), (h).	Notify MMS; and as requested submit procedures before performing work; and submit post-report on P/L or P/L safety equipment repair, removal from service, analysis results, or potential measurements.	16	620 notices/ reports	9,920
1008(b)	Submit P/L construction report	16	290 reports	4,640
1008(g)	Submit plan of corrective action and report of remedial action	16	6 plans/reports	96
1009(b)	Submit surety bond on form MMS–2030	¼	152 forms	38
1009(c)(4)	Notify MMS of any archaeological resource discovery	4	2 discovery notices	8
1009(c)(5)	Inform MMS of P/L ROW holder's name and address changes	Exempt under 5 CFR 1320.3(h)		0
1010(a)	Apply to convert lease-term P/L to ROW grant P/L; notify operators of deviation, including various exceptions/departures.	20	8 conversions	160
1011(d)	Request opportunity to eliminate conflict when application has been rejected.	1	1 request	1
1013	Apply for assignment of a ROW grant	16	175 assignments	2,800
1000–1014	General departure and alternative compliance requests not specifically covered elsewhere in subpart J regulations.	2	175 requests	350
Subtotal—Reporting.			2,557	100,596

Citation 30 CFR part 250, subpart J	Reporting and recordkeeping requirement	Hour burden	Average annual responses	Annual burden hours
1000–1008	Make available to MMS design, construction, operation, maintenance, testing, and repair records on lease-term P/Ls[2].	2	130 lease-term P/L operators.	260
1005(a)	Inspect P/L routes for indication of leakage[1], record results, maintain records 2 years[2].	(3)	170 lease-term or ROW P/L operators.	4,080
1009(c)(8)	Make available to MMS design, construction, operation, maintenance, testing, and repair records on P/L ROW area and improvements[2].	10	115 P/L ROW holders	1,150
Subtotal—Recordkeeping.			415	5,490
Total Hour Burden.			2,972	106,086

[1] These activities are usual and customary practices for prudent operators.
[2] Retaining these records is usual and customary business practice; required burden is minimal to make available to MMS.
[3] 2 per month=24.

Estimated Reporting and Recordkeeping "Non-Hour Cost" Burden: The estimated annual non-hour cost burden for the consolidated 30 CFR part 250, subpart J, information collection is a total of $370,100. Section 250.1010(a) specifies that an applicant must pay a non-refundable filing fee when applying for a pipeline right-of-way grant to install a new pipeline ($2,350) or to convert an existing lease-term pipeline into a right-of-way pipeline ($300). Under § 250.1013(b) an applicant must pay a non-refundable filing fee ($60) when applying for approval of an assignment of a right-of-way grant.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3501, *et seq.*) requires each agency "* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *". Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

To comply with the public consultation process, on April 1, 2002, we published a **Federal Register** notice (67 FR 15409) announcing that we would submit this ICR to OMB for approval. The notice provided the required 60-day comment period. In addition, § 250.199 provides the OMB control numbers for the information collection requirements imposed by the 30 CFR part 250 regulations and forms. That regulation also informs the public that they may comment at any time on the collections of information and provides the address to which they should send comments. We have received no comments in response to these efforts. The required PRA public disclosure and comment statements will be displayed on forms MMS–2030.

If you wish to comment in response to this notice, you may send your comments to the offices listed under the **ADDRESSES** section of this notice. OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by December 16, 2002.

Public Comment Policy: Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There may be circumstances in which we would withhold from the record a respondent's identity, as allowable by the law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach, (202) 208–7744.

Dated: September 24, 2002.

Gregory J. Gould,

Acting Chief, Engineering and Operations Division.

[FR Doc. 02–28860 Filed 11–13–02; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Submitted for Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of an extension of a currently approved information collection (OMB Control Number 1010–0119).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are notifying the public that we have submitted to OMB an information collection request (ICR) to renew approval of the paperwork requirements in the regulations under 30 CFR part 208, subpart A, General Provisions. This notice also provides the public a second opportunity to comment on the paperwork burden of these regulatory requirements. The ICR is titled "Royalty Oil Sales to Eligible Refiners (30 CFR 208.4(a) and (d))."

DATES: Submit written comments on or before December 16, 2002.

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ADDRESSES: Submit written comments directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (OMB Control Number 1010–0119), 725 17th Street, NW., Washington, DC 20503. Mail or hand-carry a copy of your comments to Sharron L. Gebhardt, Regulatory Specialist, Minerals Management Service, Minerals Revenue Management, PO Box 25165, MS 320B2, Denver, Colorado 80225. If you use an overnight courier service, our courier address is Building 85, Room A–614, Denver Federal Center, Denver, Colorado 80225. You may also email your comments to us at *mrm.comments@mms.gov*. Include the title of the information collection and the OMB Control Number in the "Attention" line of your comment. Also include your name and return address. Submit electronic comments as an ASCII file avoiding the use of special characters and any form of encryption. If you do not receive a confirmation that we have received your email, contact Ms. Gebhardt at (303) 231–3211.

FOR FURTHER INFORMATION CONTACT: Sharron L. Gebhardt, telephone (303) 231–3211, FAX (303) 231–3385, email *Sharron.Gebhardt@mms.gov*.

SUPPLEMENTARY INFORMATION:

Title: Royalty Oil Sale to Eligible Refiners (30 CFR 208.4(a) and (d)).

OMB Control Number: 1010–0119.

Bureau Form Number: None.

Abstract: The Department of the Interior is responsible for matters relevant to mineral resource development on Federal and Indian lands and the Outer Continental Shelf (OCS). The Secretary of the Interior is responsible for managing the production of minerals from Federal and Indian lands and the OCS, collecting royalties from lessees who produce minerals, and distributing the funds collected in accordance with applicable laws. The Secretary has an Indian trust responsibility to manage Indian lands and seek advice and information from Indian beneficiaries. The MMS performs the royalty management functions and assists the Secretary in carrying out DOI's Indian trust responsibility.

The MMS, on behalf of the Secretary, also performs Determinations of Need prior to issuing a notice of availability of sale in the **Federal Register** advising industry of a forthcoming RIK sale. The first step in this process is to issue a **Federal Register** notice requesting specific information from eligible refiners, such as: The location of their refinery; desirability of offshore versus onshore crude; type of crude desired (*e.g.*, Wyoming Sweet); ability to obtain long-term supply of desired crude (with supporting documentation such as "denial" by major supplier); ability to obtain desired crude at fair market prices (with supporting documentation that desired oil was not available or equitably priced for the area or region in question); percentage of total refining capacity attributable to Federal oil versus other sources; *etc.* The MMS uses feedback from refiners (or other interested parties, like lease owners or operators) to assess current marketplace conditions—*i.e.*, whether small, independent refiners have access to ongoing supplies of crude oil at equitable prices. If MMS determines that small refiners do not have adequate access to crude oil supplies, we will take the Government's royalty oil in kind and offer the oil for sale to small refiners.

The MMS is requesting OMB's approval to continue to collect this information. Without feedback from interested refiners regarding their recent marketplace experience in obtaining adequate crude oil supplies and whether those supplies are fairly priced, MMS cannot perform a reasonable or meaningful Determination of Need. Proprietary information that is submitted is protected, and there are no questions of a sensitive nature included in this information collection. We changed the title of this ICR from "Royalty-in-Kind (RIK) Determination of Need" to the title listed above to clarify the regulatory language we are covering in this ICR under 30 CFR part 208.

Frequency: On occasion.

Estimated Number and Description of Respondents: 25 small refiners.

Estimated Annual Reporting and Recordkeeping "Hour" Burden: 100 hours. The table below shows the breakdown of burden hours by CFR section and paragraph:

30 CFR section	Reporting requirement	Burden hours per response	Annual number of responses	Annual burden hours
208.4(a) and (d)	The Secretary may evaluate crude oil market conditions from time to time. * * * The Secretary will review these items (submitted by small refiners) and will determine whether eligible refiners have access to adequate supplies of crude oil * * * *Interim sales.* The potentially eligible refiners, individually or collectively, must submit documentation demonstrating that adequate supplies of crude oil at equitable prices are not available for purchase * * *.	4	25	100

Estimated Annual Reporting and Recordkeeping "Non-hour Cost" Burden: We have identified no "non-hour" cost burdens.

Comments: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Before submitting an ICR to OMB, PRA section 3506(c)(2)(A) requires each agency "* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *." Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

The PRA also requires agencies to estimate the total annual reporting "non-hour cost" burden to respondents or record keepers resulting from the collection of information. We have not identified non-hour cost burdens for this information collection. If you have costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information; monitoring, sampling, testing equipment; and record storage facilities. Generally, your estimates should not include equipment or services purchased: (i) Before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

We will summarize written responses to this notice and address them in our ICR submission for OMB approval, including appropriate adjustments to the estimated burden. We will provide a copy of the ICR to you without charge upon request and the ICR will also be posted on our Web site at *http://www.mrm.mms.gov/Laws_R_D/FRNotices/FRInfColl.htm*.

Public Comment Policy. We will post all comments in response to this notice on our web site at *http://www.mrm.mms.gov/Laws_R_D/InfoColl/InfoColCom.htm*. We will also make copies of the comments available for public review, including names and addresses of respondents, during regular business hours at our offices in Lakewood, Colorado. Individual respondents may request that we withhold their home address from the public record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you request that we withhold your name and/or address, state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach, (202) 208–7744.

Dated: October 15, 2002.

Lucy Querques Denett,

Associate Director for Minerals Revenue Management.

[FR Doc. 02–28861 Filed 11–13–02; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Submitted for Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of extension of an information collection (1010–0057).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are notifying the public that we have submitted to OMB an information collection request (ICR) to renew approval of the paperwork requirements in the regulations under 30 CFR part 250, subpart C, Pollution Prevention Control, and related documents. This notice also provides the public a second opportunity to comment on the paperwork burden of these regulatory requirements.

DATES: Submit written comments by December 16, 2002.

ADDRESSES: You may submit comments directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (1010–0057), 725 17th Street, NW., Washington, DC 20503. Mail or hand-carry a copy of your comments to the Department of the Interior; Minerals Management Service; Attention: Rules Processing Team; Mail Stop 4024; 381 Elden Street; Herndon, Virginia 20170–4817. If you wish to E-mail your comments to MMS, the address is: *rules.comments@MMS.gov*. Reference Information Collection 1010–0057 in your subject line. Include your name and return address, and mark your message for return receipt.

FOR FURTHER INFORMATION CONTACT: Alexis London, Rules Processing Team, telephone (703) 787–1600. You may also contact Alexis London to obtain a copy at no cost of the regulations that require the subject collection of information.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR part 250, Subpart C, Pollution Prevention and Control.

OMB Control Number: 1010–0057.

Abstract: The Outer Continental Shelf (OCS) Lands Act, as amended (43 U.S.C. 1331 *et seq.* and 43 U.S.C. 1801 *et seq.*), authorizes the Secretary of the Interior to prescribe rules and regulations to administer leasing of the OCS. Such rules and regulations will apply to all operations conducted under a lease. Operations on the OCS must preserve, protect, and develop oil and natural gas resources in a manner which is consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; to balance orderly energy resource development with protection of human, marine, and coastal environments; to ensure the public a fair and equitable return on the resources of the OCS; and to preserve and maintain free enterprise competition.

Section 1332(6) states that "operations in the [O]uter Continental Shelf should be conducted in a safe manner by well-trained personnel using technology, precautions, and techniques sufficient to prevent or minimize the likelihood of blowouts, loss of well control, fires, spillages, physical obstruction to other users of the waters or subsoil and seabed, or other occurrences which may cause damage to the environment or to property, or endanger life or health." Section 1334(a)(8) requires that regulations prescribed by the Secretary include provisions "for compliance with the national ambient air quality standards pursuant to the Clean Air Act (42 U.S.C. 7401 *et seq.*), to the extent that activities authorized under this Act significantly affect the air quality of any State." Section 1843(b) calls for "regulations requiring all materials, equipment, tools, containers, and all other items used on the Outer Continental Shelf to be properly color coded, stamped, or labeled, wherever practicable, with the owner's identification prior to actual use."

This notice concerns the reporting and recordkeeping elements of 30 CFR part 250, subpart C, Pollution Prevention and Control, and related notices to lessees and operators that clarify and provide additional guidance on some aspects of the regulations. Responses are mandatory. No questions of a "sensitive" nature are asked. MMS will protect proprietary information according to 30 CFR 250.196 (Data and information to be made available to the public), 30 CFR part 252 (OCS Oil and Gas Information Program), and the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR 2).

MMS OCS Regions collect information required under subpart C to ensure that there is no threat of serious, irreparable, or immediate damage to the marine environment, and to identify potential hazards to commercial fishing caused by OCS activities. We also use the information collected to ensure that operations are conducted according to all applicable regulations and permit conditions/requirements, comply with the approved emission levels to minimize air pollution of the OCS and adjacent onshore areas, and are

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conducted in a safe and workmanlike manner. In addition, we require daily inspection of facilities to prevent pollution and to ensure that problems observed have been corrected.

In the Gulf of Mexico OCS Region (GOMR), we require lessees/operators to periodically monitor and collect air emissions and meteorological data to satisfy Environmental Protection Agency and Clean Air Act requirements. The States and regional air quality groups use the information to perform regional air quality modeling in support of State Implementation Plans (SIPs). The GOMR plans regional modeling for emissions data in the year 2005. In preparation, affected respondents will be required to collect and report air pollutant emissions data for OCS activities in the GOMR for the year 2005. The year 2005 corresponds to a Clean Air Act requirement for States with non-attainment areas to prepare and/or update air pollutant emission inventories suitable for air quality modeling in support of the development of SIPs. Thus the year 2005 OCS emissions inventory will be contemporary with the emissions inventory the States are required to prepare. The onshore and OCS 2005 data will be used in regional air quality modeling and emissions control decision-making. Respondents will gather OCS 2005 data during the calendar year 2005 and report in 2006.

Frequency: On occasion, monthly, or annually; and daily for pollution inspection records.

Estimated Number and Description of Respondents: Approximately 130 Federal OCS oil and gas or sulphur lessees and 17 States.

Estimated Reporting and Recordkeeping "Hour" Burden: The estimated annual hour burden for this information collection is 159,913 hours. The following chart details the individual components and estimated hour burdens. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

Citation 30 CFR 250 subpart C	Reporting and recordkeeping requirement	Hour burden	Average annual responses	Annual burden hours
300(b)(1), (2)	Obtain approval to add petroleum-based substance to drilling mud system or approval for method of disposal of drill cuttings, sand, & other well solids, including those containing NORM.	3	130 lessees	390
300(c)	Mark items that could snag fishing devices	½	130 lessees	65
300(d)	Report items lost overboard	1	130 lessees	130
303(a) thru (d), (i), (j); 304(a),(f)	Submit or revise Exploration Plans and Development and Production Plans; submit information required under 30 CFR part 250, subpart B.	Burden covered under 1010–0049		0
303(k); 304(g)	If requested, submit additional follow-up monitoring information for year 2000 study of selected sites in the BNWA area.	8	75% of 350 platforms = 262.	2,100 over 3 years = 700
303(k); 304(a), (g)	If requested, submit additional or follow-up monitoring information for year 2000 study of selected sites in the western/central GOM area on ozone and regional haze air quality.	4	75% of 1,500 platforms = 1,125.	4,500 over 3 years = 1,500
303(k); 304(a), (g)	Monitor air quality emissions and submit data to MMS or to a State (new 1-year study of sites in the western/central GOM area on ozone and regional haze air quality; data collection in 2005; report submitted in 2006).	2 hours per month × 12 months = 24.	1,850 platforms	44,400 over 3 years = 14,800
303(l); 304(h)	Collect and submit meteorological data (not routinely collected).	None planned in the next 3 years		0
304(a), (f)	Affected State may submit request to MMS for basic emission data from existing facilities to update State's emission inventory.	4	5 requests	20
304(e)(2)	Submit compliance schedule for application of best available control technology.	40	10 schedules	400
304(e)(2)	Apply for suspension of operations	Burden covered under 1010–0114		0
304(f)	Submit information to demonstrate that exempt facility is not significantly affecting air quality of onshore area of a State.	8	10 submissions	80
300–304	General departure and alternative compliance requests not specifically covered elsewhere in subpart C regulations.	2	130 requests	260
Subtotal—Reporting			3,782	18,345
300(d)	Record items lost overboard	1	130 lessees	130
301(a)	Inspect drilling/production facilities daily for pollution; maintain inspection/repair records 2 years.	¼ hour/day × 365 days = 91.25.	1,550 facilities	141,438
Subtotal—Recordkeeping			1,680	141,568
Total hour burden			5,462	159,913

Estimated Reporting and Recordkeeping "Non-Hour Cost" Burden: We anticipate no paperwork non-hour cost burdens during the next 3 years.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3501, *et seq.*) requires each agency "* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. * * *" Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

To comply with the public consultation process, on March 28, 2002, we published a **Federal Register** notice (67 FR 14964) announcing that we would submit this ICR to OMB for approval. The notice provided the required 60-day comment period. In addition, § 250.199 provides the OMB control numbers for the information collection requirements imposed by the 30 CFR part 250 regulations and forms. That regulation also informs the public at they may comment at any time on the collections of information and provides the address to which they should send comments. We received no comments in response to the notice or unsolicited comments from respondents covered under these regulations.

If you wish to comment in response to this notice, you may send your comments to the offices listed under the **ADDRESSES** section of this notice. OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by December 16, 2002.

Public Comment Policy: Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by the law. There may be circumstances in which we would withhold from the record a respondent's identity, as allowable by the law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach, (202) 208–7744.

Dated: October 10, 2002.

E. P. Danenberger,

Chief, Engineering and Operations Division.

[FR Doc. 02–28862 Filed 11–13–02; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Submitted for Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of extension and revision of a currently approved information collection (OMB Control Number 1010–0059).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are notifying the public that we have submitted to OMB an information collection request (ICR) to renew approval of the paperwork requirements in the regulations under 30 CFR part 250, subpart H, Oil and Gas Production Safety Systems, and related documents. This notice also provides the public a second opportunity to comment on the paperwork burden of these regulatory requirements.

DATES: Submit written comments by December 16, 2002.

ADDRESSES: You may submit comments directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (1010–0059), 725 17th Street, NW., Washington, DC 20503. Mail or hand-carry a copy of your comments to the Department of the Interior; Minerals Management Service; Attention: Rules Processing Team; Mail Stop 4024; 381 Elden Street; Herndon, Virginia 20170–4817. If you wish to E-mail your comments to MMS, the address is: *rules.comments@MMS.gov.* Reference Information Collection 1010–0059 in your subject line and mark your message for return receipt. Include your name and return address in your message text.

FOR FURTHER INFORMATION CONTACT: Alexis London, Rules Processing Team, telephone (703) 787–1600. You may also contact Alexis London to obtain a copy at no cost of the regulations that require the subject collection of information.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR part 250, Subpart H, Oil and Gas Production Safety Systems.

OMB Control Number: 1010–0059.

Abstract: The Outer Continental Shelf (OCS) Lands Act, as amended (43 U.S.C. 1331 *et seq.* and 43 U.S.C. 1801 *et seq.*), authorizes the Secretary of the Interior to prescribe rules and regulations to administer leasing of the OCS. Such rules and regulations will apply to all operations conducted under a lease. Operations on the OCS must preserve, protect and develop oil and natural gas resources in a manner which is consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; to balance orderly energy resource development with protection of human, marine, and coastal environments; to ensure the public a fair and equitable return on the resources of the OCS; and to preserve and maintain free enterprise competition. The OCS Lands Act at 43 U.S.C. 1332(6) states that "operations in the [O]uter Continental Shelf should be conducted in a safe manner by well-trained personnel using technology, precautions, and techniques sufficient to prevent or minimize the likelihood of blowouts, loss of well control, fires, spillages, physical obstruction to other users of the waters or subsoil and seabed, or other occurrences which may cause damage to the environment or to property, or endanger life or health."

This notice concerns the reporting and recordkeeping elements of 30 CFR part 250, subpart H, Oil and Gas Production Safety Systems, and related notices to lessees and operators that clarify and provide additional guidance on some aspects of the regulations. Responses are mandatory. No questions of a "sensitive" nature are asked. MMS will protect proprietary information according to 30 CFR 250.196 (Data and information to be made available to the public), 30 CFR part 252 (OCS Oil and Gas Information Program), and the Freedom of Information Act (5 U.S.C.

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552) and its implementing regulations (43 CFR part 2).

MMS OCS Regions use the information submitted under subpart H to evaluate equipment and/or procedures that lessees propose to use during production operations, including evaluation of requests for departures or use of alternative procedures. Information submitted is also used to verify the no-flow condition of wells to continue the waiver of requirements to install valves capable of preventing backflow. MMS inspectors review the records maintained to verify compliance with testing and minimum safety requirements.

The Gulf of Mexico OCS Region (GOMR) has recently re-evaluated its policy, and issued guidance, regarding approval of "new" requests to use a chemical-only fire prevention and control system in lieu of a water system. With respect to "currently-approved" departures, MMS may require additional information be submitted to maintain approval of the departure. They use the information to determine if the chemical-only system provides the equivalent protection of a water system for the egress of personnel should a fire occur.

In the Pacific OCS Region, MMS reviews copies of the Emergency Action Plans (EAP) that lessees and operators submit to their local air quality agencies to ensure that abatement procedures do not jeopardize safe platform operations.

Frequency: The frequency of reporting is on occasion or annual.

Estimated Number and Description of Respondents: Approximately 130 Federal OCS oil and gas or sulphur lessees.

Estimated Reporting and Recordkeeping "Hour" Burden: The estimated annual "hour" burden for this information collection is a total of 11,357 hours. The following chart details the individual components and estimated hour burdens. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

Citation 30 CFR 250 subpart H	Reporting and recordkeeping requirement	Hour burden	Average annual responses	Annual burden hours
800; 801; 802; 803; related NTLs.	Submit application and request submissions approval for design, installation, and operation of subsurface safety devices and surface production-safety systems; including related requests for departures or use of alternative procedures (supervisory control and data acquisition systems, valve closure times, time delay circuitry, etc.).	8	540 submissions	4,320
801(g)	Submit annual verification of no-flow condition of well	2	50 verifications	100
801(h)(1)	Form MMS–124, Sundry Notices and Reports on Wells (renamed Application for Permit to Modify).	Burden covered under 1010–0045		0
801(h)(2); 803(c)	Identify well with sign on wellhead that subsurface safety device is removed; flag safety devices that are out of service.	Usual/customary safety procedure for removing or identifying out-of-service safety devices		0
802(e)(5)	Submit statement certifying final surface production safety system installed conforms to approved design.	3	175 statements	525
803(b)(8); related NTLs	Submit information (risk assessment) to request new firefighting system departure approval (GOMR).	4	150 submissions	600
803(b)(8); related NTLs	Submit information (risk assessment) to retain current firefighting system departure approval (GOMR).	4	100 submissions	400
803(b)(8)(iv)	Post diagram of firefighting system	2	95 postings	190
804(a)(11); 800	Notify MMS prior to production when ready to conduct pre-production test and inspection.	½	175 notices	88
804; related NTLs	Request departure from testing schedule requirements	1	105 requests	105
804; related NTL	Submit copy of state-required EAP containing test abatement plans (Pacific OCS Region).	1	7 plans	7
806(c)	Request evaluation and approval of other quality assurance programs covering manufacture of SPPE.	2	1 request	2
800–807	General departure and alternative compliance requests not specifically covered elsewhere in subpart H regulations.	4	215 requests	860
Subtotal Reporting.			1,613	7,197
801(h)(2); 802(e); 804(b).	Maintain records on subsurface and surface safety devices to include approved design & installation features, testing, repair, removal, etc.	12	130 lessees	1,560
803(b)(1)(iii), (2)(i)	Maintain pressure-recorder charts.	12	130 lessees	1,560
803(b)(4)(iii)	Maintain schematic of the emergency shutdown which indicates the control functions of all safety devices.	4	130 lessees	520
803(b)(11)	Maintain records of wells which have erosion-control programs and results.	4	130 lessees	520
Subtotal Recordkeeping.			520	4,160
Total Hour Burden.			2,133	11,357

Estimated Reporting and Recordkeeping "Non-Hour Cost" Burden: We have identified no paperwork "non-hour cost" burdens associated with the collection of information.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3501, *et seq.*) requires each agency "* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *" Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

To comply with the public consultation process, on March 28, 2002, we published a **Federal Register** notice (67 FR 14966) announcing that we would submit this ICR to OMB for approval. The notice provided the required 60-day comment period. In addition, § 250.199 provides the OMB control numbers for the information collection requirements imposed by the 30 CFR part 250 regulations and forms. That regulation also informs the public that they may comment at any time on the collections of information and provides the address to which they should send comments. We have received no comments in response to these efforts.

If you wish to comment in response to this notice, you may send your comments to the offices listed under the **ADDRESSES** section of this notice. OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by December 16, 2002.

Public Comment Policy: Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There may be circumstances in which we would withhold from the record a respondent's identity, as allowable by the law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach, (202) 208–7744.

Dated: October 17, 2002.

E.P. Danenberger,

Chief, Engineering and Operations Division.

[FR Doc. 02–28863 Filed 11–13–02; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Capital Region; Comment Request

ACTION: Notice/Request for Comments—The Christmas Pageant of Peace.

SUMMARY: The National Park Service is seeking public comments and suggestions on the planning of the 2002 Christmas Pageant of Peace.

SUPPLEMENTARY INFORMATION: The National Park Service is seeking public comments and suggestions on the planning of the 2002 Christmas Pageant of Peace, which opens on December 5, on the Ellipse (President's Parks), south of the White House. The meeting will be held at 10 a.m., on November 19, 2002, in Room 234 of the National Capital Region Building, at 1100 Ohio Drive, SW., Washington, DC (East Potomac Park).

Due to ongoing organizations realignments, the notice could not be published at least 15 days prior to the meeting date. The National Park Service regrets this error, but is compelled to hold the meeting as scheduled because of the high level of anticipation by all parties who will be participating in the planning of this event. Since the proposed meeting date has received widespread publicity among the parties most affected, the National Park Service believes that the public interest will not be adversely affected by the less-than-15-days advance notice in the **Federal Register**.

Persons who would like to comment at the meeting should notify the National Park Service by November 15, 2002 by calling the White House Visitor Center weekdays between 9 a.m., and 4 p.m., at (202) 208–1631. Written comments may be sent to the Park Manager, White House Visitor Center 1100 Ohio Drive, SW., Washington, DC 20242, and can be accepted until November 18, 2002.

DATES: The meeting will be held on Tuesday, November 19. Written comments will be accepted until Monday, November 18, 2002.

ADDRESSES: The meeting will be held at 10 a.m. on November 19, in room 234 of the National Capital Region Building, at 1100 Ohio Drive, SW., Washington, DC (East Potomac Park). Written comments may be sent to the Park Manager, White House Visitor Center 1100 Ohio Drive, SW., Washington, DC 20242. It is recommended, due to delays in mail delivery, that comments be provided by telefax at 202–619–6353 or by email at *stanley_lock@nps.gov*. Comments may also be delivered by messenger to Room 344, National Park Service, 1100 Ohio Drive, SW., Washington, DC 20242.

FOR FURTHER INFORMATION CONTACT: Park Manager Rachel Frantum at the White House Visitor Center weekdays between 9 a.m., and 4 p.m., at (202) 208–1631.

Dated: November 7, 2002.

Stan Lock,

Deputy Director, White House Liaison.

[FR Doc. 02–29027 Filed 11–13–02; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Information Quality Guidelines Pursuant to Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability of final Information Quality Guidelines.

SUMMARY: The Office of Management and Budget (OMB) issued guidelines in the **Federal Register** on February 22, 2002 (67 FR 8452), that directed Federal agencies to issue and implement guidelines to ensure and maximize the quality, objectivity, utility, and integrity of Government information disseminated to the public. In

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compliance with OMB's guidelines, the Bureau of Reclamation announces the availability of its final Information Quality Guidelines on its Web site.

ADDRESSES: You may access Reclamation's Information Quality Guidelines on its Web site at: *http://www.usbr.gov/main/qoi/*. Our mailing address is: Department of the Interior, Bureau of Reclamation, Attn: Web Manager (W–1540), Mail Stop 7060, 1849 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Trudy Harlow; telephone (202) 513–0575; Fax (202) 513–0305; e-mail: tharlow@usbr.gov.

SUPPLEMENTARY INFORMATION: Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554) directed OMB to issue government-wide guidelines that "provide policy and procedural guidance to Federal agencies for ensuring and maximizing the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by Federal agencies." OMB complied by issuing guidelines that directed each Federal agency to: (a) issue its own guidelines; (b) establish administrative mechanisms allowing affected persons to seek and obtain correction of information that does not comply with OMB's 515 guidelines; and (c) report periodically to the Director of OMB on the number and nature of complaints received by the agency regarding the accuracy of information disseminated by the agency and how such complaints were handled by the agency.

In compliance with OMB's directives, the Department of the Interior (DOI) issued draft Information Quality Guidelines in the **Federal Register** on May 24, 2002 (65 FR 26642), that instructed each bureau to prepare its own guidelines. In response to DOI's **Federal Register** Notice, Reclamation developed and issued draft guidelines for comment on its Web site on August 1, 2002. We received comments from one private organization and several individuals. We considered their comments, and where applicable or appropriate, we incorporated them into our final guidelines.

We have now finalized our guidelines and posted them to our Web site. These guidelines are a living document and may be revised periodically to reflect changes in DOI's or Reclamation's policy, or as best practices emerge, about how best to address, ensure, and maximize information quality. Reclamation welcomes comments on these guidelines at any time and will consider those comments in any future revisions.

Dated: October 10, 2002.

John W. Keys III,

Commissioner, Bureau of Reclamation.

[FR Doc. 02–28717 Filed 11–13–02; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF JUSTICE

Parole Commission

Sunshine Act Meeting; Pursuant to the Government in the Sunshine Act (Pub. L. 94–409) [5 U.S.C. Section 552(b)]

AGENCY HOLDING MEETING: Department of Justice, United States Parole Commission.

TIME AND DATE: 9:30 a.m., Thursday, November 14, 2002.

PLACE: 5550 Friendship Blvd., Fourth Floor, Chevy Chase, MD 20815.

STATUS: Open.

MATTERS TO BE CONSIDERED: The following matters have been placed on the agenda for the open Parole Commission meeting:

1. Approval of minutes of Previous Commission Meeting.
2. Reports from the Chairman, Commissioners, Legal, Chief of Staff, Case Operations, and Administrative Sections.
3. Discussion and approval of Salient Factor Scoring Manual Amendments.

AGENCY CONTACT: Sam Robertson, Case Operations, United States Parole Commission, (301) 492–5962.

Dated: November 8, 2002.

Rockne Chickinell,

General Counsel, U.S. Parole Commission.

[FR Doc. 02–28997 Filed 11–12–02; 8:45 am]

BILLING CODE 4410–31–M

DEPARTMENT OF JUSTICE

Parole Commission

Sunshine Act Meeting; Pursuant to the Government in the Sunshine Act [5 U.S.C. Section 552b]

AGENCY HOLDING MEETING: Department of Justice, United States Parole Commission.

DATE AND TIME: 11 a.m., Thursday, November 14, 2002

PLACE: U.S. Parole Commission, 5550 Friendship Boulevard, 4th Floor, Chevy Chase, Maryland 20815.

STATUS: Closed—Meeting.

MATTERS CONSIDERED: The following matter will be considered during the closed portion of the Commission's Business Meeting:

Appeals to the Commission involved approximately four cases decided by the National Commissioners pursuant to a reference under 28 CFR 2.27. These cases were originally heard by an examiner panel wherein inmates of Federal prisons have applied for parole and are contesting revocation of parole or mandatory release.

AGENCY CONTACT: Sam Robertson, Case Operations, United States Parole Commission, (301) 492–5962.

Dated: November 8, 2002.

Rockne Chickinell,

General Counsel.

[FR Doc. 02–28998 Filed 11–12–02; 10:10 am]

BILLING CODE 4410–31–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

October 31, 2002.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Marlene Howze at (202) 693–4158 or Email *Howze-Marlene@dol.gov*.

Comments should be sent to office of Information and Regulatory Affairs, Attn: OMB Desk Officer for ESA, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register.**

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Type of Review: New collection.

Agency: Employment Standards Administration (ESA).

Title: Alternate Employment Information Request.

OMB Number: 1215–0NEW.

Affected Public: Business or other for-profit and not-for-profit institutions.

Frequency: As needed.

Number of Respondents: 100.

Number of Annual Reponses: 2,000.

Estimated Time Per Response: 30 minutes.

Total Burden Hours: 1,000.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: The Energy Employees Occupational Illness Compensation Program Act of 2000, as amended (EEOICPA or Act), 42 U.S.C. 7384 *et seq.*, established a program to provide compensation to covered employees and, where applicable, survivors of such employees, suffering from illnesses incurred in the performance of duty for the Department of Energy (DOE) and certain of its contractors, subcontractors and vendors. When the DOE is unable to verify employment history to establish benefit eligibility, section 7384d(a) of the Act gives the Office of Workers Compensation (OWCP) legal authority to request employment information from private entities who are not current contractors or subcontractors of DOE and who have voluntarily agreed to respond to such requests. Section 7384v(c) of the Act gives OWCP legal authority to make these same requests to current DOER contractors and subcontractors. This information collection request will use a variety of methods to contract designated respondents and will accept information responses via e-mail, telephone, Fax or mail.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 02–28929 Filed 11–13–02; 8:45 am]

BILLING CODE 4510–CH–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

November 4, 2002.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Darrin King on 202–693–4129 or e-Mail: *King-Darrin@dol.gov*.

Comments should be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for ETA, Office of Management and Budget, Room 10235, Washington, DC 20503 (202–395–7316), within 30 days from the date of this publication in the **Federal Register.**

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of response.

Agency: Employment and Training Administration (ETA).

Type of Review: New collection.

Title: Revising Quarterly Contribution and Wage Reports to Accommodate Expanded Name Fields and Additional Labor Market Information.

OMB Number: 1205–0NEW.

Affected Public: Business or other for-profit.

Type of Response: Reporting.

Frequency: One time.

Number of Respondents: 1,600.

Annual Responses: 1,615.

Average Response Time: 30 minutes to complete the survey and 90 minutes to conduct a case study interview.

Estimated Burden Hours: 823.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: The information collected with this survey is necessary to assess of the burden employers and State Employment Security Agencies (SESAs) would experience if the quarterly contribution and wage reports filed by employers and processed by SESAs were revised to accommodate full names and additional labor market information (LMI). The full name fields are necessary to enhance the efficiency of the National Directory of New Hires database in locating the employment of individuals who are not meeting their parental responsibilities. The additional LMI data is needed to improve the ability to accurately assess the value of various workforce Investment Act vocational training programs and to enrich the pool of LMI data available.

Ira L. Mills

Departmental Clearance Officer.

[FR Doc. 02–28930 Filed 11–13–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Trade Adjustment Assistance Program: Training and Employment Guidance Letter Interpreting Federal Law

The Employment and Training Administration interprets federal law requirements pertaining to Trade Adjustment Assistance (TAA). These interpretations are issued in Training and Employment Guidance Letters (TEGLs) to the State Workforce Agencies. The TEGL described below is published in the **Federal Register** in order to inform the public.

TEGL 11–02

TEGL 11–02 advises states of the federal law requirements applicable to implementing reforms of the Trade Adjustment Assistance (TAA) program enacted by the TAA-Reform Act of 2002.

The operating instructions in TEGL 11–02 are issued to the States and the cooperating state workforce agencies (SWAs) as guidance provided by the Department of Labor (DOL) in its role as the principal in the TAA program. As agents of the Secretary of Labor, the

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States and cooperating SWAs may not vary from the operating instructions in TEGL 11–02 without prior approval from DOL.

Pending the issuance of regulations implementing the provisions of the TAA Reform Act of 2002, the operating instructions in TEGL 11–02 constitute the controlling guidance for the States and the cooperating SWAs implementing and administering the Trade Act of 1974, as amended, pursuant to the agreements between the States and the Secretary of Labor under section 239 of the Trade Act of 1974, as amended.

Changes to the TAA program are set out in TEGL 11–02 according to the principal parts of the TAA program and generally in the order in which they appear in the TAA Reform Act of 2002. The changes to each part, and those aspects of each part that remain unchanged, are explained in turn, along with the regulations principally affected and the changes in program administration that may be required. Sections of the Trade Act of 1974 that are entirely unchanged by the TAA Reform Act of 2002 are discussed after the sections that are changed.

Dated: November 7, 2002.

Emily Stover DeRocco,

Assistant Secretary of Labor.

Training and Employment Guidance Letter No. 11–02

To: All State workforce liaisons, All State workforce agencies, All one-stop center system leads.

From: Emily Stover DeRocco, assistant Secretary.

Subject: Operating Instructions for Implementing the Amendments to the Trade Act of 1974 Enacted by the Trade Act of 2002.

1. *Purpose.* To assist the State Workforce Agencies (SWA) in implementing the provisions of the Trade Act of 2002 that amend the current Trade Adjustment Assistance program and repeal the North American Free Trade-Transitional Adjustment Assistance program.

2. *References.* The Trade Act of 1974, as amended (Pub. L. 93–618, as amended); the Trade Act of 2002 (Pub. L. 107–210); 20 CFR part 617; 29 CFR part 90; General Administration Letter 7–94 with changes 1, 2, and 3. The amendments to the TAA program may also be referred to as the Trade Adjustment Assistance Reform Act of 2002. Forthcoming directives: Unemployment Insurance Program Letter (UIPL) No. 02–03; ETA guidance—Use of National Emergency Grant Funds Under the Workforce Investment Act, as Amended, to Support Healthcare Assistance for Trade Impacted Workers; Department of the Treasury instructions and guidance on implementing the Health Insurance Tax Credit provisions of the Trade Act of 2002.

To provide guidance on the implementation of various aspects of the Trade Act of 2002, ETA plans to issue the following additional instructions:

Provision	Instructions	Expected issue date	Effective date of provision
Health Insurance Assistance NEGs for System-Building	TEGL: Use of NEGs to Develop Systems for Health Insurance Coverage Assistance for Trade-Impacted Workers.	10/10/02	8/6/02
End-of-Year Tax Credit	UIPL No. 02–03: Health Insurance Tax Credit for Eligible Trade Adjustment Assistance/Trade Readjustment Allowances (TAA/TRA) Recipients.	10/10/02	12/1/02
New Petition Procedures	TEGL	Spring 2003	
Advance Tax Credit	Companion Advisory to IRS Instructions	Late Spring 2003.	8/1/03
Alternative TAA for Older Workers Program	TEGL	Spring 2003	8/6/03

3. *Guiding Principle for TAA Implementation.* The reauthorization and reform of the TAA program and repeal of the NAFTA–TAA program provide an opportunity to ensure that effective strategies are employed to assist affected workers in obtaining reemployment. It is essential that DOL and the states work together to move trade-affected workers into new jobs as quickly and effectively as possible so that they continue to be productive members of our workforce and so that our businesses remain competitive. To this end, the intervention strategies used for program benefits and services will be aimed toward rapid, suitable and long-term employment for adversely affected workers. States must:

A. Increase the focus on early intervention, upfront assessment, and reemployment services for adversely affected workers. It should not be assumed that the best reemployment strategy for all workers is the long-term training and extended income support that has traditionally been the focus of the program. The new requirements in the 2002 Amendments requiring the provision of rapid response and core and intensive services available under WIA and other Federal programs to workers filing a TAA petition afford an important opportunity to stress early intervention and more rapid reemployment. providing an early assessment and identification of the worker's marketable skills, and the provision of job search assistance and other reemployment services will assist many workers in obtaining suitable reemployment quickly.

B. Use One-Stop Career Centers as the main point of participant intake and delivery of benefits and services. This will encourage coordination among programs in order to better serve workers and promote efficiencies in the workforce system.

C. Maintain fiscal integrity and promote performance accountability. ETA will ensure that money allocated for TAA is sued for the purposes Congress intended—to improve the economy, and assist workers and businesses—and that it is spent with the interests of taxpayers in mind. This will occur, in part, through strengthened participant outcome measures for the program.

4. *Background.* the Trade Adjustment Assistance (TAA) program for workers was first established at the U.S. Department of Labor (DOL) by the Trade Act of 1974 (1974 Act). Currently, when DOL receives a petition for TAA from a group of workers or its authorized representative, DOL conducts a fact-finding investigation to determine whether increased imports have contributed importantly to the workers' dispacement. IF the findings of the investigation show that the workers have been adversely affected by import competition, the Secretary of Labor issues a certification of eligibility to apply for adjustment assistance. Once a certification is issued, it is transmitted

to the State. The SWAs act as agents of the Secretary to notify certified workers of potential Trade Act benefits and services, make eligibility determinations for individuals, and deliver benefits and services. Individual workers who are members of the certified worker group apply for benefits and services at a One-Stop Career Center or other local office of the SWA. Individual workers who meet the qualifying criteria may receive up to 104 weeks of job retraining, up to 52 weeks (generally) of income support in the form of Trade Readjustment Allowances (TRA), job search allowances, and relocation allowances. In addition, all workers covered by a certification are eligible for basic reemployment services such as job referrals, job clubs, resume-writing assistance, and so forth. Most of the steps in this current process have been affected by the provisions of the Trade Act of 2002 (2002 Act).

The 1974 Act has been amended several times since its initial passage. In December 1993, the North American Free Trade Implementation Act created the North American Free Trade Agreement—Transitional Adjustment Assistance (NAFTA–TAA) program by adding subchapter D to chapter 2 of title II of the 1974 Act. Subchapter D contains one section, section 250, which established the NAFTA–TAA program and specified some differences between it and the regular TAA program. Certifications of worker groups under NAFTA–TAA were made only if imports from Canada and/or Mexico caused the import impact, or if the workers' firm shifted production to either Canada or Mexico. Workers filed their petitions with the Governor of the State in which they were employed, not directly with DOL, and the State performed a preliminary investigation. If the workers appeared to be impacted by imports from Canada or Mexico or a shift of production to Canada or Mexico, the state provided rapid response assistance under the Workforce Investment Act of 1998 (WIA). The State then transmitted all information gathered in the preliminary investigation to DOL, which issued the final determination on eligibility to apply. In order to qualify for TRA, workers had to be enrolled in training within specific time limits. Workers certified under NAFTA–TAA had to be enrolled in approved training in order to qualify for TRA; no waivers from this requirement were allowed. Regular TAA allowed waivers if training was "not feasible or appropriate" for the worker.

Along with the creation of the NAFTA–TAA program, the Clinton Administration issued a Statement of Administrative Action (SAA) that committed to providing assistance to workers who were not directly impacted by trade with Canada or Mexico, but were indirectly impacted because their firm supplied components to, or performed finishing operations for, a firm which was directly impacted. These secondarily-impacted workers petitioned for certification in the same way as for the NAFTA–TAA program, or DOL initiated a secondary investigation if the result of a primary NAFTA–TAA investigation was a denial of eligibility to apply. In either case, if the worker group was found to be secondarily impacted by imports from Canada and/or Mexico or a shift of production to Canada or Mexico, the members of the group qualified for benefits and services delivered through the dislocated worker program under WIA.

On August 6, 2002, President George W. Bush signed into law H.R. 3009, the Trade Act of 2002 (2002 Act), Pub. L. 107–210. The 2002 Act makes several amendments to the 1974 Act. The amendments that are covered in these operating instructions apply to petitions for adjustment assistance that are filed on or after November 4, 2002. Petitions filed on or before November 3, 2002, are covered by the provisions of the 1974 Act that were in effect on September 30, 2001.

The 2002 Act repeals subchapter D of chapter 2 of title II of the 1974 Act (the NAFTA–TAA program). However, workers covered under certifications issued pursuant to NAFTA–TAA petitions filed on or before November 3, 2002, will continue to be covered under the provisions of the NAFTA–TAA program that were in effect on September 30, 2001. The 2002 Act generally did not amend the job retraining provisions of the 1974 Act, except that customized training may now be approved for import-impacted workers. The statutory cap on funds that may be allocated to the States for training is raised from $110 million to $220 million per year. The maximum amount of TRA is increased by 26 weeks of additional TRA for all workers in training. Up to 26 more weeks of additional TRA may be approved if the worker must undergo remedial training as part of his/her retraining program. In order to qualify for TRA, a worker must be enrolled in training within 16 weeks of his/her most recent total qualifying separation, or within 8 weeks of the issuance of the certification, whichever is later. However, States may grant an extension of these requirements for up to 45 days if there are extenuating circumstances. Waivers from the training requirement are available under six specific conditions. A worker may continue to receive TRA during a break in training that lasts up to 30 days (raised from 14 days).

To petition for eligibility to apply for TAA, workers or their authorized representatives must now file the petition simultaneously with the Secretary of Labor and the Governor of the State where the workers were employed. The Governor no longer has responsibility for conducting a preliminary investigation. However, the Governor must provide rapid response services and appropriate core and intensive to all petitioning workers. DOL has 40 days to conduct an eligibility investigation and issue a determination. The 2002 Act also makes the secondary-worker coverage, as provided under the Statement of Administrative Action, statutory. Workers who are found to be secondarily-impacted, as defined in the Act, are eligible to apply for the same benefits and services as workers certified as primarily impacted; the benefits and services for both primarily and secondarily-affected workers are paid from TAA funds.

The 2002 Act creates a program of health insurance tax credits (HITC) for certain trade-impacted workers and others. Covered individuals include workers who are eligible for TRA (including those workers who would be eligible except that they have not exhausted all entitlement to unemployment insurance), workers participating in the alternative TAA program (next paragraph), and individuals over 55 years old who are receiving monthly benefits paid by the Pension Benefit Guaranty Corporation (PBGC). Covered individuals may be eligible to receive a tax credit equal to 65% of the amount they paid for qualifying coverage under qualified health insurance. The tax credit may be claimed at the end of the year, or, beginning in August 2003, a qualified individual may receive the credit in the form of monthly advance payments to the health insurance provider.

The 2002 Act creates the Alternative TAA (ATAA) for Older Workers program. Under the ATAA, workers at least 50 years who obtain different, full-time employment within 26 weeks of separation from adversely-affected employment at wages less than the wages earned in the adversely-affected employment may receive 50 percent of the wage differential, up to a maximum of $10,000, during their two-year eligibility period. To be eligible for the ATAA program, workers may not earn more than $50,000 per year in the new employment. Also, the firm where the

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workers worked must meet certain eligibility criteria. Workers who take advantage of the ATAA cannot receive three of the regular TAA benefits and services (training, TRA, and job search allowances); they are, however, eligible to apply for relocation allowances and the health insurance tax credit.

The 2002 Act also creates a separate TAA program for farmers. Eligibility determinations for that program are the responsibility of the Secretary of Agriculture. Farmers certified under that program are entitled to the same DOL-funded basic reemployment services, training, job search, and relocation services as regular TAA workers, but they may not receive TRA. The Secretary of Agriculture is authorized to make cash assistance payments (up to $10,000 per year) to eligible farmers.

5. *Operating Instructions.* The operating instructions in this document are issued to the States and the cooperating SWAs as guidance provided by the Department of Labor (DOL) in its role as the principal in the TAA program. As agents of the Secretary of Labor, the States and cooperating State agencies may not vary from the operating instructions in this document without prior approval from DOL.

Pending the issuance of regulations implementing the provisions of the 2002 Act, the operating instructions in this document constitute the controlling guidance for the States and the cooperating State agencies in implementing and administering the 1974 Act, as amended, pursuant to the agreements between the States and the Secretary of Labor under section 239 of the 1974 Act, as amended.

Changes to the TAA program are set out in this document according to the principal parts of the TAA program and generally in the order in which they appear in the 2002 Act. The changes to each part, and those aspects of each part that remain unchanged, are explained in turn, along with the regulations principally affected and the changes in program administration that may be required. Sections of the 1974 Act which are entirely unchanged by the 2002 Act are discussed after the sections that are changed.

In general, the amendments to the 1974 Act made by the 2002 Act take effect on November 4, 2002, 90 days after the President signed the 2002 Act into law.

All of the changes to the petitioning process apply to petitions filed on or after November 4, 2002. Changes to the eligibility requirements and levels of Trade Act benefits and services apply to workers covered by certifications issued pursuant to petitions filed on or after November 4, 2002. For convenience and emphasis, the effective date is repeated in several sections of these instructions. Exceptions to this effective date apply to certain aspects of the health insurance tax credit and to the ATAA program. Instructions for those are not included in this document, but will be issued in separate directives in the near future.

There are provisions of the 2002 Act that are not covered by these operating instructions. The Health Insurance Tax Credit (HITC) provisions involve several Departments, including the Departments of Labor, Health and Human Services, and the Treasury (including the Internal Revenue Service). Guidance and instructions for the HITC are forthcoming. Similarly, the ATAA will not be implemented until the summer of 2003. Complete guidance and operating instructions for the ATAA are forthcoming. The HITC and the ATAA are discussed briefly in this document, and only for informational purposes.

For purposes of these operating instructions, the following definitions will apply:

1. 2002 Act means the Trade Act of 2002, Pub. L. 107–210.

2. 1974 Act means the Trade Act of 1974, as amended (but not including the amendments in the 2002 Act), Pub. L. 93–618, as amended.

3. DOL means the U.S. Department of Labor.

4. Secretary means the Secretary of Labor.

5. TAA means the Trade Adjustment Assistance program.

6. NAFTA–TAA means the North American Free Trade Agreement-Transitional Adjustment Assistance program.

7. TRA means Trade Readjustment Allowances.

8. ATAA means Alternative Trade Adjustment Assistance program.

9. HITC means Health Insurance Tax Credit.

10. WIA means the Workforce Investment Act of 1998.

A. Reauthorization, Termination, and Expenditure Record

Statutory Change: Section 111 of the 2002 Act amends sections 245 and 285 of the 1974 Act as follows:

Sec. 285. Termination

(a) Assistance for Workers.—Section 245 of the Trade Act of 1974 (19 U.S.C. 2317) is amended by striking 'October 1, 1998, and ending September 30, 2001, each place it appears and inserting October 1, 2001, and ending September 30, 2007,'.

(c) Termination.—Section 285 of the Trade Act of 1974 is amended to read as follows:

(a) Assistance for Workers.—

(1) *In General.*—Except as provided in paragraph (2), trade adjustment assistance, vouchers, allowances, and other payments or benefits may not be provided under chapter 2 after September 30, 2007.

(2) *Exception.*—Notwithstanding paragraph (1), a worker shall continue to receive trade adjustment assistance benefits and other benefits under chapter 2 for any week for which the worker meets the eligibility requirements of that chapter, if on or before September 30, 2007, the worker is—

(A) Certified as eligible for trade adjustment assistance benefits under chapter 2 of this title; and

(B) Otherwise eligible to receive trade adjustment benefits under chapter 2.

Administration: The trade adjustment assistance program for workers is reauthorized through September 30, 2007, the end of fiscal year 2007. The amendment also authorizes the payment past that date of program benefits to workers who are covered by a certification issued on or before that date and are otherwise eligible to receive the benefits.

Statutory Change: Section 120 of the 2002 Act amends section 245 of the 1974 Act as follows:

Section 245 of the Trade Act of 1974 (19 U.S.C. 2317), as amended by section 111(a) of this Act, is further amended by amending subsection (b) to read as follows:

(b) *Period of Expenditure.*—Funds obligated for any fiscal year to carry out activities under sections 235 through 238 may be expended by each State receiving such funds during that fiscal year and the succeeding two fiscal years.

Administration: This amendment codifies the existing way of handling funds allocated to States for job training (including transportation and subsistence allowances), job search allowances, and relocation allowances.

States may accrue expenditures during the fiscal year in which they receive funding, and during the succeeding two fiscal years. States must liquidate all accrued expenditures charged to a particular fiscal year within 90 days after the close of the second succeeding fiscal year (29 CFR 97.23(b)).

B. Petition Filing and Provision of Rapid Response Assistance

B.1. Petition Filing

Statutory Change: Section 112(a) of the 2002 Act amends section 221(a) of the 1974 Act to read as follows:

(a)(1) A petition for certification of eligibility to apply for adjustment assistance for a group of workers under this chapter may be filed simultaneously with the Secretary and the Governor of the State in which such workers' firm or subdivision is located by any of the following:

(A) The group of workers (including workers in an agricultural firm or subdivision of an agricultural firm).

(B) The certified or recognized union or other dully authorized representative of such workers.

(C) Employers of such workers, one-stop operators are one-stop partners (as defined in section 101 of the Workforce Investment Act of 198 (29 U.S.C. 2801)), including State employment security agencies, or the State dislocated worker unit established under title I of such Act, on behalf of such workers.

(2) Upon receipt of a petition filed under paragraph (1), the Governor shall—

(A) Ensure that rapid response assistance, and appropriate core and intensive services (as described in section 134 of the Workforce Investment Act of 1998 (29 U.S.C. 2864)) authorized under other Federal laws are made available to the workers covered by the petition to the extent authorized under such laws; and

(B) Assist the Secretary in the review of the petition by verifying such information and providing such other assistance as the Secretary may request.

Administration: Beginning on November 4, 202, petitions for certification of eligibility to apply for adjustment assistance must be filed simultaneously with the Secretary of Labor and the Governor of the State where the petitioning workers worked. Although the language of the statute says "may" be filed simultaneously, the legal interpretation is that anyone who has standing to file a petition and who wishers to do so *must* file simultaneously with the Secretary and the Governor in order that they are both able to carry out their statutory responsibilities. If the statute had said "shall" file simultaneously, that would be a legal requirement that all persons in the United States who fit into one or more of the three listed categories must file petitions for adjustment assistance.

Throughout those operating instructions, the terms "filed" and "received" have the same meaning with respect to the petitioning process. Regulations published at 29 CFR 90.2 state that "*Date of filing* means the date on which petitions and other documents are received by the Office of Trade Adjustments Assistance. Employment and Training Administration, U.S. Department of Labor * * *".

Petitions may be filed by any of the following:

1. Three or more individual members of the affected worker group;

2. An official of the certified or recognized union that represents the workers;

3. An official of the company where the workers worked;

4. One-Stop operators are partners as defined in section 101 of the WIA, including SWAs or the State dislocated worker unit.

The States is also required to assist the Secretary in the review of the petition by verifying such information and providing other assistance as the Secretary may request. However, States no longer perform preliminary investigations as they did under the NAFTA–TAA program.

States must be prepared to assist petitioners in completing and filing petitions. Petitions forms must be readily available at all One-Stop Career Centers and other local offices of the SWA. Upon receiving a petition, the State must immediately transmit the petition by facsimile or other electronic means to DOL. If a petition is received both in the State and transmitted to DOL on the same day, the petition will be considered to have been filed simultaneously with the Secretary and the Governor. However, in practice, strictly simultaneous filing may not be practical. If a petition is not received on the same day by both the Secretary and the Governor, it will be considered to be filed on the later of the two different dates of receipt. A new petition form will be supplied to the States by DOL; the new petition form will also be available for download from the TAA Web site (*http://www.doleta.gov/tradeact*). Petitions filed on or after November 4, 2002, must use the new form.

B.2. Rapid Response

Upon receipt of a petition on or after November 4, 2002, the State must ensure that rapid response assistance and appropriate core and intensive services, as described in section 134 of the WIA, are made available to the workers covered by the petition to the extent authorized under the WIA and other Federal laws. This requirement applies to every petition received. If a petition is generated during the course of rapid response assistance to a worker group, this requirement will be satisfied for that petition. The State shall use the date that the petition is received by the State as the criterion for providing rapid response assistance.

C. Group Eligibility Requirements

Section 113 of the 2002 Act amends section 222 of the 1974 Act by broadening the criteria for certification and adding eligibility for certain secondarily-affected workers. In order to properly assist workers or their representatives to file petitions for adjustment assistance, or to properly file themselves on behalf of workers, States must know the new criteria for certification of petitions for both primarily-affected workers and secondarily-affected workers. Responsibility for investigating petitions and applying the criteria for certification will rest with DOL.

It is important to note from the outset that the inclusion of secondarily-affected workers does *not* create a separate group of certified workers who are eligible for benefits and services that are different from those available to other certified workers. All workers covered by certifications issued pursuant to petitions filed on or after November 4, 2002, whether they are 'primarily affected' or 'secondarily affected', are eligible to apply for the same set of benefits and services.

C.1. Certification Criteria

Statutory Change: Section 113 of the 2002 Act amends section 222(a) of the 1974 Act to read as follows:

(a) In General.—A group of workers (including workers in any agricultural firm of subdivision of an agricultural firm) shall be certified by the Secretary as eligible to apply for adjustment assistance under this chapter pursuant to a petition filed under section 221 if the Secretary determines that—

(1) A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated; and

(2)(A)(i) The sales or production, or both, of such firm or subdivision have decreased absolutely;

(ii) Important of articles like or directly competitive with articles produced by such firm or subdivision have increased; and

(iii) The increase in imports described in clause (ii) contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

(B)(i) There has been a shift of production by such workers' firm or subdivision to a foreign country of articles like or directly competitive with articles which are produced by such firm or subdivision; and

(ii)(I) The country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

(II) The country to which the workers' firm has shifted production of the articles is a beneficiary country under the Andean Trade Preferences Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

(III) There has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

Administration: The criteria for certification of eligibility to apply for adjustment assistance now cover adverse effects either from increased imports or from a shift of production to certain countries. In order for a certification to be issued, the petition must satisfy these two criteria:

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1. A significant number or proportion of the workers in the workers' firm, or an appropriate subdivision of such firm, must have become totally or partially separated or be threatened with total or partial separation.

2. The second criterion is satisfied if either A or B below are satisfied:

A.(i) Sales or production, or both, at the petitioning workers' firm or subdivision must have decreased absolutely, and

(ii) Imports of articles like or directly competitive with articles produced by the petitioning workers' firm or subdivision have increased, and

(iii) The increase in imports described in (ii) contributed importantly to the petitioning workers' separation or threat of separation and to the decline in sales or production at the firm or subdivision.

B. (i) There has been a shift of production by the petitioning workers' firm or subdivision to a foreign country of articles like or directly competitive with the articles which are produced by the firm or subdivision, and

(ii) one of the following conditions applies:

a. The country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States; or

b. The country to which the workers' firm has shifted production of the articles is a beneficiary country under the Andean Trade Preference Act, the African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act, or

c. There has been or is likely to be an increase in imports of the articles that are like or directly competitive with articles which are or were produced by the firm or subdivision.

The new certification criteria are basically a combination of the criteria for the old TAA program and those for the NAFTA–TAA program. the first set of criteria for certification are the same as those that have applied to the TAA program since its inception. The second set of criteria takes the shift of production criterion from the NAFTA–TAA program and modifies it to cover shifts to many, but not all, countries. The applicable countries are those included in three specific trade-promotion Acts and any others that are parties to free-trade agreements with the United States. The group of countries that are applicable for these purposes may change from time to time; a current list of such countries will be available on the TAA Web site. For shifts of production to countries that do not fall into either of those groups, there is a third criterion that covers actual or prospective increases of imports of like or directly competitive products. The latter criterion does *not* require that the actual or prospective increases in imports come from the country to which the shift of production occurred.

C.2. Secondarily-Affected Worker Eligibility

Statutory Change: Section 113(b) of the 2002 Act continues the amendments to section 222 of the 1974 Act by redesignating section 222(b) of the 1974 Act as section 222(c) and inserting the following:

(b) Adversely Affected Secondary Workers.—A group of workers (including workers in any agricultural firm or subdivision of an agricultural firm) shall be certified by the Secretary as eligible to apply for adjustment assistance benefits under this chapter if the Secretary determines that—

(1) A significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a certification of eligibility under subsection (a), and such supply or production is related to the article that was the basis for such certification (as defined in subsection (c)(3) and (4)); and

(3) Either—

(A) the workers' firm is a supplier and the component parts it supplied to the firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss of business by the workers' firm with the firm (or subdivision) described in paragraph (2) contributed importantly to the workers' separation or threat of separation determined under paragraph (a).

Section 113(b) of the 2002 Act amends section 222(c) (as redesignated) of the 1974 Act by adding the following:

(3) Downstream Producer.—The term 'downstream producer' means a firm that performs additional, value-added production processes for a firm or subdivision, including a firm that performs final assembly or finishing, directly for another firm (or subdivision), for articles that were the basis for a certification of eligibility under subsection (a) of a group of workers employed by such other firm, if the certification of eligibility under subsection (a) is based on an increase in imports from, or a shift of production to, Canada or Mexico.

(4) Supplier.—The term 'supplier' means a firm that produces and supplies directly to another firm (or subdivision) component part for articles that were the basis for a certification of eligibility under subsection (a) of a group of workers employed by such other firm.

Administration: there are basically two groups of workers that can be certified as eligible to apply for adjustment assistance because the workers are secondarily affected—workers who supply components (upstream) to a firm whose workers are certified (primary) or workers who perform additional, value-added production and finishing operations (downstream) for a firm whose workers are certified (primary).

Upstream workers must directly supply the primary firms. the articles produced by upstream workers must be directly incorporated into the articles that were the basis for the certification of the primary firm's workers. Supplier chains are often categorized according to "tiers." Firms in the first tier supply components directly to the producer of the final product. Firms in the second tier supply components to firms in the first tier, and so forth. The secondary-worker coverage applies only to workers employed by firms in the first tier. The components supplied to the primary firm by the upstream workers must either account for at least 20 percent to the production or sales of the upstream firm, or the loss of business with the primary firm by the upstream firm must have contributed importantly to the upstream workers' separations or threat of separations. For upstream workers to be certified as secondarily affected, the import impact on the primary firm can come from increased imports from any country or a shift of production to any country that qualifies under the shift-of-production criteria.

Downstream workers must directly perform additional, value-added production processes, including final assemble or finishing, on the products of the primary firm. Downstream workers can only be certified as secondarily affected if the workers of the primary firm are certified based on increased imports from Canada or Mexico or a shift of production to Canada or Mexico. Also, the downstream workers' firm must have suffered a loss of business with the primary firm that contributed importantly to the workers' separations or threat of separations.

C.3. Secondary Worker Coverage Under the SAA

The secondary-worker coverage that was established by the Statement of Administrative Action (SAA) that accompanied the NAFTA implementing legislation applied only to workers who were adversely affected by imports from, or a shift of production to, Canada or Mexico. Workers determined to be secondarily impacted under the SAA received benefits and services through the dislocated worker program under WIA. Under the 2002 Act, the TAA program will be responsible for benefits and services provided to workers who are certified as secondarily affected pursuant to petitions received on or after November 4, 2002. The benefits and services available to such workers, and the eligibility critiera applicable to them, are exactly the same as for workers who are certified as primarily impacted.

D. Trade Readjustment Allowances

D.1. Exhaustion of Unemployment Insurance

Statutory Change: Section 114(a) of the 2002 Act amends section 231(a)(3)(B) of the 1974 Act by inserting at the end of the subsection "except additional compensation that is funded by a State and is not reimbursed from any Federal funds."

Administration: As amended, section 231(a)(3)(B) requires that a worker must exhaust all entitlement to unemployment insurance in order to be eligible for TRA. Entitlement to unemployment insurance includes regular UC and Extended Benefits (EB) and Temporary Extended Unemployment Compensation (TEUC). However, the new amendment means that an eligible worker may receive TRA before (or, depending on State law, along with) receiving additional compensation that is entirely State-funded.

Under section 233(a)(1) of the 1974 Act, which has not been amended, a determination of the amount of basic TRA to which an eligible worker is entitled is made by computing 52 times the most recent TRA weekly benefit amount (WRA), then deducting from that amount the sum of the unemployment insurance to which the worker was entitled in the worker's first benefit period. However, the statutory change to section 231(a)(3)(B) is interpreted to mean that additional compensation that is entirely State-funded shall not be deducted from the product of 52 times the worker's WBA in computing a worker's basic TRA maximum benefit amount.

D.2. Enrollment in Training Requirement

Statutory Change: Section 114(b) of the 2002 Act amends section 231(a)(5)(A) of the 1974 Act to read;

(5) Such worker

(A)(i) Is enrolled in a training program approved by the Secretary under section 236(a) of this title, and

(ii) The enrollment required under clause 9i) occurs no later than the latest of—

(I) The last day of the 16th week after the worker's most recent total separation form adversely affected employment which meets the requirements of paragraphs (1) and (2),

(II) The last day of the 8th week after the week in which the Secretary issues a certification covering the worker,

(III) 45 days after the later of the dates specified in subclause (I) or (II), if the Secretary determines that there are extenuating circumstances that justify an extension in the enrollment period, or

(IV) The last day of a period determined by the Secretary to be approved for enrollment after the termination of a waiver issued pursuant to subsection (c).

Administration: "Enrolled in training" means that the worker's application for training has been approved by the SWA and that the training institution has furnished written notice to the SWA that the worker has been accepted into the approved program which is to begin within 30 days of such approval (20 CFR 617.11(a)(2)(vii)(D)). States are encourage to select training providers that have met the qualifications necessary to be included in the Eligible Training Provider List (ETPL) as defined in the WIA.

"Extenuating circumstances" are situations that could arise when training programs are abruptly cancelled or where the first available enrollment date is past the end of the 60-day period, as well as in cases where a worker suffers injury or illness that adversely affects the worker's ability to enroll in training. These new enrollment deadlines are nearly the same as those that have existed for the NAFTA–TAA program since 1994. These deadlines may be waived for specified reasons, which are discussed next. However, the intent of time limitations is that adversely-affected workers who are in need of training be enrolled in training quickly in order to expedite their adjustment and reemployment.

For purposes of subsection IV, "the last day of a period determined by the Secretary" is the first Monday of the week following the week in which the waiver is terminated, whether by revocation or expiration, until such time as this issue is addressed in regulations.

D.3. Training Waivers

Statutory Change: Section 115 of the 2002 Act amends section 231(c) of the 1974 Act to read as follows:

(c) Waivers of Training Requirements.—

(1) Issuance of waivers.—The Secretary may issue a written statement to an adversely affected worker waiving the requirement to be enrolled in training described in subsection (a)(5)(A) if the Secretary determines that it is not feasible or appropriate for the workers, because of 1 or more of the following reasons:

(A) Recall.—The workers has been notified that the workers will be recalled by the firm from which the separation occurred.

(B) Marketable Skills.—The workers possesses marketable skills for suitable employment (as determined pursuant to an assessment of the worker, which may include the profiling system under section 303(j) of the Social Security Act (42 U:S.C. 503(j)), carried out in accordance with guidelines issued by the Secretary) and there is a reasonable expectation of employment at equivalent wages in the foreseeable future.

(C) Retirement.—The worker is within 2 years of meeting all requirements for entitlement to either—

(i) Old-age insurance benefits under title II of the Social Security Act (42 U.S.C. 401 *et seq.*) (except for application therefor); or

(ii) A private pension sponsored by an employer or labor organization.

(D) Health.—The worker is unable to participate in training due to the health of the worker, except that a waiver under this subparagraph shall not be.construed to exempt a worker from requirements relating to the availability for work, active search for work, or refusal to accept work under Federal or State unemployment compensation laws.

(E) Enrollment Unavailable.—The first available enrollment date for the approved training of the worker is within 60 days after the date of the determination made under this paragraph, or, if later, there are extenuating circumstances for the delay in enrollment, as determined pursuant to guidelines issued by the Secretary.

(F) Training Not Available.—Training approved by the Secretary is not reasonably available to the worker from either governmental agencies or private sources (which may include area vocational education schools, as defined in section 3 of the Carl D. Perkins Vocational and Technical Education Act of 1988 (20 U.S.C. 2302), and employers), no training that is suitable for the worker is available at reasonable cost, or no training funds are available .

(2) Duration of Waivers.—

(A) In General.—A waiver issued under paragraph (1) shall be effective for not more than 6 months after the date on which the waiver is issued, unless the Secretary determines otherwise.

(B) Revocation.—The Secretary shall revoke a waiver issued under paragraph (1) if the Secretary determines that the basis of a waiver is no longer applicable to the worker and shall notify the worker in writing of the revocation.

(3) Agreements Under Section 239.—

(A) Issuance by Cooperating States.—Pursuant to an agreement under section 239, the Secretary may authorize a cooperating State to issue waivers as described in paragraph (1).

(B) Submission of Statements.—An agreement under section 239 shall include a requirement that the cooperating State submit to the Secretary the written statements provided under paragraph (1) and a statement of the reasons for the waiver.

Section 115 of the 2002 Act also amends section 231(a)(5)(C) of the 1974 Act by striking the word "certified".

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Administration: There are now six specific criteria for issuing a waiver of the training requirement. Criterion (A) requires that a worker has received specific notice of recall to the worker's adversely-affected employment. States shall require that this notice of recall be in writing from the firm. Criterion (B) should be used as a means of encouraging more rapid reemployment and the use of up-front job search. As part of the marketable skills test, workers in a petitioning worker group may receive core and intensive services using rapid response funding before their petition is certified to encourage more rapid reemployment. Criterion (E) requires that the worker's training begin within 60 days after the approval of the waiver, unless there are extenuating circumstances. Such circumstances could arise when training programs are abruptly cancelled or where the first available enrollment date is past the end of the 60-day period, as well as in cases where a worker suffers injury or illness that adversely affects the worker's ability to enroll in training. The statutory language in criteria (C), (D), and (F) needs no further explanation.

Also, as before, a waiver only applies to eligibility for basic TRA, not additional TRA. In order to receive additional TRA, a worker must be participating in approved training in each week for which the additional TRA is paid.

In accordance with section 231(c)(3)(A) of the 1974 Act, as amended by the 2002 Act, States may issue waivers from the training requirement, when necessary and proper, in accordance with the statutory language and these instructions for eligible workers who are covered by certifications issued pursuant to petitions received on or after November 4, 2002. Also, in accordance with section 231(c)(3)(B) of the 1974 Act, as amended by the 2002 Act, States must submit to the Secretary reports on all waivers issued. The required reports are discussed in more detail in these instructions in section K, Program Reporting.

D.4. Limitations on TRA

Statutory Change: Section 116(a) of the 2002 Act amends section 233(a) of the 1974 Act so that paragraph (2) reads as follows:

(2) A trade readjustment allowance shall not be paid for any week occurring after the close of the 104-week period (or, in the case of an adversely affected worker who requires a program of remedial education (as described in section 236(a)(5)(D)) in order to complete training approved for the worker under section 235, the 130-week period) that begins with the first week following the week in which the adversely affected worker was most recently totally separated from adversely affected employment—

(A) Within the period which is described in section 231(a)(1) of this title, and

(B) With respect to which the worker meets the requirements of section 231(a)(2) of this title.

Administration: This section of the 1974 Act creates as 104-week period beginning with a worker's most recent total qualifying separation during which the worker may receive any basic TRA to which the worker is entitled. States must continue to apply this rule, except that, in cases where a worker requires remedial education as part of the worker's reemployment plan, such a worker has a 130-period in which to receive any basic TRA to which the worker is entitled.

Statutory Change: Section 116(a) of the 2002 Act also amends section 233(a) of the 1974 Act so that paragraph (3) reads as follows:

(3) Notwithstanding paragraph (1), in order to assist the adversely affected worker to complete training approved for him under section 236 of this title, and in accordance with regulations prescribed by the Secretary, payments may be made as trade readjustment allowances for up to 52 additional weeks in the 52-week period that—

(A) Follows the last week of entitlement to trade readjustment allowances otherwise payable under this part; or

(B) Begins with the first week of such training, if such training begins after the last week described in subparagraph (A).

Payments for such additional weeks may be made only for weeks in such 52-week period during which the individual is participating in such training.

Administration: This amendment increases the maximum number of weeks of additional TRA for all eligible workers from 26 to 52. In all other respects, the regulations and operating instructions related to additional TRA are unchanged, except for the case where a worker who undergoes remedial training may qualify for up to 36 more weeks of additional TRA (see below).

States must continue to apply the regulatory definition of additional TRA (20 CFR 617.3(m)(2)), and the regulations on weeks of additional TRA (20 CFR 617.15(b)), which continue to be in effect until they are superseded by new regulations, except that all occurrences of "26 weeks" in the regulations are interpreted as referring to "52 weeks" for workers covered by certifications that are issued pursuant to petitions received on or after November 4, 2002.

Statutory Change: Section 116(b) of the 2002 Act amends section 233(f) of the 1974 Act to read:

(f) Workers treated as participating in training. For purposes of this part, a worker shall be treated as participating in training during any week which is part of a break in training that does not exceed 30 days if—

(1) The worker was participating in a training program approved under section 236 of this title before the beginning of such break in training, and

(2) The break is provided under such program.

Administration: A State must continue to pay TRA to a worker who is receiving TRA while participating in approved training during scheduled or other normal breaks in the training that last for up to 30 days. The regulations which govern breaks in training, 20 CFR 617.15(d), continue in effect, except that the number "14" in that section is interpreted as "30" and the number "15" found in section 617.15(d)(3) is interpreted as "31" until they are superseded by new regulations. In addition, the reference to "14-day break in training" in 20 CFR 617.22(f)(3)(ii) is interpreted as "30-day break in training".

Statutory Change: Section 116(c) of the 2002 Act amends section 233 of the 1974 Act by adding the following subsection at the end:

(g) Notwithstanding any other provision of this section, in order to assist an adversely affected worker to complete training approved for the worker under section 236 which includes a program of remedial education (as described in section 236(a)(5)(D)), and in accordance with regulations prescribed by the Secretary, payments may be made as trade readjustment allowances for up to 26 additional weeks in the 26-week period that follows the last week of entitlement to trade readjustment allowances otherwise payable under this chapter.

Administration: Remedial education is defined as training in the elementary skills that every worker must have in order to achieve basic reemployability. Remedial training should be considered pre-vocational; that is, it leads to occupational, on-the-job, or customized training that will equip the participant with specific job skills. Wherever practical, remedial training should be conducted concurrently with the early parts of occupational training. Examples of remedial education are basic writing and mathematical skills training, English as a Second Language (ESL) and courses leading to a G.E.D.

For a worker who must undergo remedial education as part of the worker's retraining plan, the maximum number of weeks of additional TRA is 78, or 26 more than the maximum for workers who do not participate in remedial education. States must also apply the definition of additional TRA

(20 CFR 617.3(m)(2)) as well as the regulations on weeks of additional TRA (20 CFR 617.15(b)), which continue to be in effect until they are superseded by new regulations, except that all occurrences of "26 weeks" in the regulations shall be interpreted as referring to "78 weeks" for workers who undergo remedial education and are covered by certifications that are issued pursuant to petitions received on or after November 4, 2002. In addition, States must pay the weeks of the TRA for trainees in remedial education on the basis of one week of this additional TRA for one week of remedial education, up to the 26-week maximum. For example, of a worker undergoes 15 weeks of remedial education, then participates in occupational training, the State may not pay more than 15 weeks of this additional TRA for trainees in remedial education. If a worker undergoes more than 26 weeks of remedial education, the worker may not receive more than the maximum of 26 weeks of this additional TRA. However many weeks a worker is eligible for, those weeks must be a fixed, continuous time period of that many weeks. The weeks of additional TRA for remedial education must follow the last week of entitlement to any other TRA otherwise payable.

D.5. TRA-Related Provisions That Are Unchanged

Most of the statutory provisions related to trade readjustment allowances remain the same as they were before the 2002 Act. Except for the specific provision discussed above, the TRA provisions found in sections 231 through 234 of the 1974 Act (19 U.S.C. 2291 through 19 U.S.C. 2294) must be administered according to regulations published at 20 CFR 617.10 through 617.19 until those regulations are superseded by regulations implemented as a result of the enactment of the 2002 Act. In summary, the unchanged TRA-related provisions are:

1. Qualifying requirements for TRA that are unchanged are:

A. The worker's separation must have occurred between the impact date and the expiration date that are specified in the certification under which the worker is covered.

B. The worker must have had, during the 52-week period ending with the week in which the worker's qualifying separation occurred, 26 weeks of employment at wages of $30 or more per week in adversely affected employment with a single firm or subdivision of a firm. The statutory provisions regarding the definition of weeks of employment continue to apply.

C. The worker must be entitled to, or would be entitled to if the worker applied for, unemployment insurance for a week within the benefit period in which the worker's qualifying separation took place or which began, or would have begun, by reason of filing of a claim for unemployment insurance by such worker after such qualifying separation.

D. The worker would not be disqualified for extended compensation under the Federal-State Extended Unemployment Compensation Act of 1970 by reason of the work acceptance and job search requirements in section 202(a)(3) of such Act for weeks in which the worker is not in approved training.

E. The worker is enrolled in an approved training program, or has completed the approved training program, or has a waiver from these requirements.

2. The prohibition against paying TRA to any worker who has failed to begin participation in training, or has ceased to participate in training, without justifiable cause, is unchanged.

3. The statutory provisions related to weekly amounts of TRA are unchanged.

4. The requirement that, in order to be eligible for additional TRA, a worker make a *bona fide* application for training within 210 days of the later of the worker's most recent qualifying separation or the first certification of eligibility to apply for adjustment assistance that covers the worker remains unchanged. Under the NAFTA–TAA program, this requirement was irrelevant because no waivers of the training requirement were permitted under that program. Therefore, a worker not only had to file a bona fide training plan, the worker was required to be enrolled in training within the 5/16-week time limits in order to receive any TRA. However, the possibility that a worker could receive a waiver of up to six-months' duration of the 5/16-week time limits implies that it is possible for a worker to file a bona fide training plan, and enroll in training, more than 210 days after the later of the dates mentioned above and before the worker's basic TRA entitlement is exhausted. Hence, this provision of the law is still applicable.

5. The statutory provisions in section 233(c) related to adjustment of amounts payable are unchanged.

6. The provisions in Section 234 on application of State laws are unchanged.

E. Job Retraining

E.1. Cap on Training Funds

Statutory Change: Section 117 of the 2002 Act amends section 236(a)(2)(A) of the 1974 Act by increasing the cap on training funds that can be allocated to the States to $220 million per year.

Administration: These funds must cover training, including necessary transportation and subsistence allowances, for all eligible workers, including those covered by certifications issued under the NAFTA–TAA program. States apply for training funds in the same way as before, by submitting form ETA 9023 through the appropriate Regional office.

E.2. Employer-Based Training

Statutory Change: Section 118(a) of the 2002 Act amends section 236(a)(5)(A) of the 1974 act by changing "on-the-job training" to "employer-based training, including (i) on-the-job training and (ii) customized training." In addition, section 118(b) of the 2002 Act amends section 236(c)(8) of the 1974 Act to read "the employer is provided reimbursement of not more than 50 percent of the wage rate of the participant, for the cost of providing the training and additional supervision related to the training." (Note: the previous language of section 236(c)(8), which is replaced, was "the employer certifies to the Secretary that the employer will continue to employ such worker for at least 26 weeks after completion of such training if the worker desires to continue such employment and the employer does not have due cause to terminate such employment.")

Finally, section 118(c) of the 2002 Act adds a subsection to the end of section 236 of the 1974 act as follows:

(c) For purposes of this section, the term "customized training" means training that is—

(1) Designed to meet the special requirements of an employer or group of employers;

(2) Conducted with a commitment by the employer or group of employers to employ an individual upon successful completion of the training; and

(3) For which the employer pays for a significant portion (but in no case less than 50 percent) of the cost of such training, as determined by the Secretary.

Administration: The previous requirement for on-the-job training, that the employer promise to continue to employ a worker in on-the-job training for at least 26 weeks after the completion of the training (provided that the worker wants to continue employment and the employer does not have due cause to terminate the employment) is not applicable to workers covered by certifications issued pursuant to petitions filed on or after November 4, 2002. The definitions of

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on-the-job and customized training, and the approval criteria for such training, are now very similar to the equivalent definitions and approval criteria for such training under the dislocated worker program of WIA. On-the-job training is job training that occurs at a firm where the trainee is employed by the firm. Customized training is training designed to the specific requirements of a firm or group of firms, but conducted by a separate training vendor. In customized training, the trainee is not employed by the firm or group of firms for which the training is designed.

Current TAA regulations published at 20 CFR 617.23(c)(1) require that States give priority, insofar as possible, to on-the-job training when designing a reemployment program for an eligible worker. States shall also give priority, insofar as possible, to customized training for eligible workers. These forms of training ensure that workers obtain job skills which are necessary to obtain employment in a particular occupation.

E.3. Length of Training

The limit of 104 weeks on the length of a TAA-approved training program is not statutory. That limit is in the regulations (20 CFR 617.22(f)(2)). The new limits on weeks of TRA that are contained in the 2002 Act are interpreted to mean that Congress intended to match the maximum number of weeks of training with the maximum number of weeks of income support (UI plus TRA). The 2002 Act allows up to 26 weeks of TRA for workers who must complete some remedial education before beginning their retraining programs. Therefore, the intent of the statute is interpreted as allowing a maximum of 130 weeks of training in cases where workers require remedial education before they can enroll in occupational training. The number of weeks of training that are between 104 and 130 cannot be more than the number of weeks of the remedial training. For example, if a worker's remedial training lasts for only 10 weeks, then the maximum number of weeks of training for that worker would be 114 weeks. Even if the remedial training is more than 26 weeks, the maximum number of weeks for the total retraining plan cannot exceed 130.

E.4. Statutory Training-Related Provisions That Are Unchanged

Most of the statutory provisions related to job retraining remain the same as they were prior to the 2002 Act. Except for the two specific provisions discussed above, the job training provisions found in section 236 of the 1974 Act (19 U.S.C. 2296) shall be administered according to regulations published at 20 CFR 617.22 through 617.25 until those regulations are superseded by regulations implementing the 2002 Act. In summary, the unchanged training-related provisions are:

1. The six criteria for approving training which are found in section 236(a)(1) of the 1974 Act (19 U.S.C. 2296(a)(1));

2. The prohibitions against non-duplication of payments which are found in sections 236(a)(4), 236(a)(6), and 236(a)(7) of the 1974 Act (19 U.S.C. 2296(a)(4), 2296(a)(6), and 2296(a)(7));

3. The types of training that may be approved for eligible workers which are found in section 236(a)(5) of the 1974 Act (19 U.S.C. 2296(a)(5));

4. Supplementary assistance to defray the costs of transportation and subsistence expenses when training is provided in facilities which are not within the commuting distance of the worker's regular place of residence provided in section 236(b) of the 1974 Act (19 U.S.C. 2296(b));

5. Criteria for approving on-the-job and customized training (except for criterion 8 discussed above) which are found in section 236(c) of the 1974 Act (19 U.S.C. 2296(c));

6. The prohibition against finding a worker ineligible for unemployment insurance because of participation in approved training found in section 236(d) of the 1974 Act (19 U.S.C. 2296(d); and

7. The definition of the term "suitable employment," used for the purposes of Section 236 only, found in section 236(e) of the 1974 Act (19 U.S.C. 2296(e).

F. Job Search Allowances

Statutory Change: Section 121 of the 2002 Act amends section 237 of the 1974 Act to read as follows:

Sec. 237. Job Search Allowances

(a) Job Search Allowance Authorized—

(1) In General.—An adversely affected worker covered by a certification issued under subchapter A of this chapter may file an application with the Secretary for payment of a job search allowance.

(1) Approval of Applications.—The Secretary may grant an allowance pursuant to an application filed under paragraph (1) when all of the following apply:

(A) Assist Adversely Affected Worker.—The allowance is paid to assist an adversely affected worker who has been totally separated in securing a job within the United States.

(B) Local Employment Not Available.—The Secretary determines that the worker cannot reasonably be expected to secure suitable employment in the commuting area in which the worker resides.

(C) Application.—The worker has filed an application for the allowance with the Secretary before—

(i) The later of—

(I) The 365th day after the date of the certification under which the worker is certified eligible; or

(II) The 365th day after the date of the worker's last total separation; or

(ii) The date that is the 182nd day after the date on which the worker concluded training, unless the worker received a waiver under section 231(c).

(b) Amount of Allowance.—

(1) In General.—An allowance granted under subsection (a) shall provide reimbursement to the worker of 90 percent of the cost of necessary job search expenses as prescribed by the Secretary in regulations.

(2) Maximum Allowance.—Reimbursement under this subsection may not exceed $1,250 for any worker.

(3) Allowance for Subsistence and Transportation.—Reimbursement under this subsection may not be made for subsistence and transportation expenses at levels exceeding those allowable under section 236(b)(1) and (2).

(c) Exception.—Notwithstanding subsection (b), the Secretary shall reimburse any adversely affected worker for necessary expenses incurred by the worker in participating in a job search program approved by the Secretary.

Adminstration: The new job search section is simply a rewriting of the previous job search section. The qualifying conditions are the same as before and the application deadlines are the same as before, except that the new limit for reimbursement per worker per certification is $1,250. Therefore, States must continue to administer job search allowances in accordance with regulations published at 20 CFR 617.30 through 617.35, except that the "$800" in section 617.34(b) is interpreted to be "$1,250." until those regulations are superseded by new regulations.

G. Relocation Allowances

Statutory Change: Section 122 of the 2002 Act amends section 238 of the 1974 Act to read as follows:

Sec. 238. Relocation Allowances

(a) Relocation Allowance Authorized—

(1) In General.—Any adversely affected worker covered by a certification issued under subchapter A of this chapter may file an application for a relocation allowance with the Secretary, and the Secretary may grant the relocation allowance, subject to the terms and conditions of this section.

(2) Conditions for Granting Allowance.—A relocation allowance may be granted if all of the following terms and conditions are met:

(A) Assist An Adversely Affected Worker.—The relocation allowance will assist an adversely affected worker in relocating within the United States.

(B) Local Employment Not Available.—The Secretary determines that the worker cannot reasonably be expected to secure suitable employment in the commuting area in which the worker resides.

(c) Total Separation.—The worker is totally separated from employment at the time the relocation commences.

(D) Suitable Employment Obtained.—The worker

(i) Has obtained suitable employment affording a reasonable expectation of long-term duration in the area in which the worker wished to relocate; or

(ii) Has obtained a bona fide offer of such employment.

(E) Application.—The worker filed an application with the Secretary before—

(i) The later of—

(I) The 425th day after the date of the certification under subchapter A of this chapter; or

(II) The 425th day after the date of the worker's last total separation; or

(ii) The date that is the 182nd day after the date on which the worker concluded training, unless the worker received a waiver under section 231(c).

(b) Amount of Allowance.—The relocation allowance granted to a worker under subsection (a) includes—

(1) 90 percent of the reasonable and necessary expenses (including, but not limited to, subsistence and transportation expenses at levels not exceeding those allowable under section 235(b)(1) and (2) specified in regulations prescribed by the Secretary, incurred in transporting the worker, the worker's family, and household effects; and

(2) A lump sum equivalent to 3 times the worker's average weekly wage, up to a maximum payment of $1,250.

(c) Limitations.—A relocation allowance may not be granted to a worker unless—

(1) The relocation occurs within 182 days after the filing of the application for relocation assistance; or

(2) The relocation occurs within 182 days after the conclusion of training, if the worker entered a training program approved by the Secretary under section 236(b)(1) and (2)."

Administration: Like the amendment to the job search section, the amendment to the relocation section is simply a rewording of the previous language, except that the one-time payment limit is raised to $1,250. States shall continue to administer relocation allowances in accordance with regulations published at 20 CFR 617.40 through 617.48, except that "$800" found in section 617.45(a)(3) shall be interpreted as "$1,250," until those regulations are superseded by new regulations.

H. Repeal of the NAFTA-TAA Program

Section 123 of the 2002 Act repeals subchapter D of chapter 2 of title II of the 1974 Act, as amended. Section 123 also establishes transition procedures that will be in effect for petitions filed before the effective date of the 2002 Act and workers currently receiving benefits and services under the NAFTA–TAA program.

H.1. Repeal of the NAFTA–TAA program

Statutory Change: Section 123(a) repeals the NAFTA–TAA program as follows:

(a) In General.—Subchapter D of chapter 2 of title II of such Act (19 U.S.C. 2331) is repealed.

Section 123(b) of the 2002 Act makes conforming amendments to other parts of the 1974 Act as follows:

(b) Conforming Amendments.—

(1) Section 225(b)(1) and (2) of the Trade Act of 1974 (19 U.S.C. 2275(B)(1) and (2)) is amended by striking "or subchapter D" each place it appears.

(2) Section 249A of such Act (19 U.S.C. 2322) is repealed.

(3) The table of contents of such Act is amended—

(A) By striking the item relating to section 249A; and

(B) By striking the items relating to subchapter D of chapter 2 of title II.

(4) Section 284(a) of such Act is amended by striking "or section 250(c)"

H.2. Transition Procedures

Section 123(c) of the 2002 Act establishes an effective date and transition procedures as follows:

(c) Effective Date.—

(1) In General.—The amendments made by this section shall apply with respect to petitions filed under chapter 2 of title II of the Trade Act of 1974, on or after the date that is 90 days after the date of enactment of this Act.

(2) Workers Certified As Eligible Before Effective Date.—Notwithstanding subsection (a), a worker receiving benefits under chapter 2 of title II of the Trade Act of 1974 shall continue to receive (or be eligible to receive) benefits and services under chapter 2 of title II of the Trade Act of 1974, as in effect on the day before the amendments made by this section take effect under subsection (a), for any week for which the worker meets the eligibility requirements of such chapter 2 as in effect on such date.

Administration: Sections 123(c)(1) and 123(c)(2) of the 2002 Act set out the transition procedures for the NAFTA–TAA program. The operating instructions for the NAFTA–TAA program that are contained in General Administration Letter 7–94, along with changes 1, 2, and 3 thereto, continue in effect for petitions received by the State before the effective date of the 2002 Act, which is November 4, 2002. The Governor's agent that now receives NAFTA–TAA petitions must continue to receive NAFTA–TAA petitions, and perform preliminary investigations thereon, until the preliminary investigations are completed on all NAFTA–TAA petitions received on or before November 3, 2002. The State must immediately transmit all such petitions, and all information and documentation gathered during the preliminary investigation, to DOL. Any NAFTA–TAA petition *received* on or after November 4, 2002, is invalid and must be returned to the petitioners with an explanation of the provisions of the 2002 Act that make the petition invalid. The State must also include a blank petition for the new TAA program in case the petitioners want to file such a petition. This instruction also applies to NAFTA–TAA petitions *dated* prior to November 4, 2002, but *received* on or after that date; such petitions are not valid.

Eligible workers who are covered by NAFTA–TAA certifications resulting from petitions received on or before November 3, 2002, regardless of the date that such certifications are issued by DOL, must receive benefits and services under the provisions of the NAFTA–TAA program as in effect on November 3, 2002. Workers being served under NAFTA–TAA certifications are not eligible for waivers under the new waiver provisions established by the 2002 Act for the regular TAA program. In order to be eligible for TRA, such workers are also required to be enrolled in approved training by the end of the 16th week after the worker's most recent qualifying separation, or the end of the 6th week after the issuance of the certification, whichever is later. The new enrollment deadlines in the 2002 Act do not apply to such workers.

In fiscal years 2003 and 2004, there will continue to be a NAFTA–TAA funding stream separate from the TAA funding stream. States must continue to request funds from DOL for NAFTA–TAA benefits and services separately from their requests for funds for TAA benefits and services.

I. Coordination With WIA

Statutory Change: Section 119 of the 2002 Act amends section 235 of the 1974 Act as follows:

Section 235 of the Trade Act of 1974 (19 U.S.C. 2295) is amended by inserting before the period at the end of the first sentence the following: ", including the services provided through one-stop delivery systems described in section 134(c) of the Workforce Investment Act of 1998 (29 U.S.C. 2864(c))".

Statutory Change: Section 125 of the 2002 Act establishes a Declaration of Policy by the Congress as follows:

(a) Declaration of Policy.—Congress reiterates that, under the trade adjustment assistance program under chapter 2 of title II of the Trade Act of 1974, workers are eligible for transportation, childcare, and healthcare assistance, as well as other related assistance under programs administered by the Department of Labor.

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Administration: States shall make every reasonable effort to secure for adversely-affected workers covered by certifications counseling, testing, and placement services, and supportive and other services, provided for under any other Federal law, including the Wagner-Peyser Act and the WIA.

In the One-Stop environment established by WIA, the concept of co-enrollment of trade-certified workers can be further enhanced and expanded to include multiple enrollments with a broader range of service delivery partners and programs. Multiple enrollment resources may include Wagner-Peyser activities, faith-based and community-based programs, vocational rehabilitation services, and veterans' programs.

The timely provision of core and intensive services to trade-impacted workers is an important step toward improving both the efficiency and the effectiveness of the Trade Act programs. Immediately beginning the process of needs assessment improves participation rates and allows individuals more time to consider all of the options available to them. Early intervention services that will be beneficial to trade-impacted workers may include orientation; initial assessment of skill levels, aptitudes, and abilities; provision of labor market information; job search assistance; and financial management workshops.

Properly implemented, co-enrollment or multiple-enrollment of trade-impacted workers in the programs offered in the One-Stop environment, as well as early provision of rapid response services, will enhance the workers' adjustment process and promote the most rapid possible return to employment for all workers. Co-enrollment or multiple-enrollment also allows trade-impacted workers to receive supportive services that may assist in a quicker transition to work.

J. Unamended Provisions of the 1974 Act

Many of the provisions of the 1974 Act remain unchanged; for completeness, these are listed below, along with the citation from the United States Code. Although not all of the provisions listed below are administered by the States, States shall administer applicable provisions according to the law and to regulations published at 20 CFR 617.

1. Section 221(b) (19 U.S.C. 2271(b)) which provides for public hearings on petitions.
2. Section 222(b)(2) (19 U.S.C. 2272(b)(2)) which provides special definitions for "firm" and "directly competitive" in relation to oil and gas exploration and production.
3. Section 223 (19 U.S.C. 2273) is unchanged except for changing "60 days" to "40 days". This section contains definitions of impact date and expiration date of a certification, along with requirements to publish notices in the **Federal Register**.
4. Section 224 (19 U.S.C. 2274) relating to studies by the Secretary whenever the U.S. International Trade Commission conducts an investigation with respect to an industry.
5. Section 225 (19 U.S.C. 2275) containing the requirements for notification to workers who are covered by certifications of benefits and services that they may be eligible to receive.
6. Section 232 (19 U.S.C. 2292) covering the determination of weekly amounts of TRA.
7. Section 234 (19 U.S.C. 2294) relating to the applicability of State unemployment insurance laws.
8. Section 239 (19 U.S.C. 2311) relating to agreements with States.
9. Section 240 (19 U.S.C. 2312) relating to program administration absent an agreement with a State.
10. Section 241 (19 U.S.C. 2313) relating to payments to States.
11. Section 242 (19 U.S.C. 2314) relating to liabilities of certifying and disbursing officers.
12. Section 243 (19 U.S.C. 2315) relating to fraud and recovery of overpayments.
13. Section 244 (19 U.S.C. 2316) relating to penalties for false statements and failure to disclose material facts.
14. Section 247 (19 U.S.C. 2319)—definitions.
15. Section 28 (19 U.S.C. 2320) relating to the Secretary's authority to prescribe regulations.
16. Section 249 (19 U.S.C. 2321) relating to the Secretary's subpoena power.

K. Program Reporting

Trade Act Participant Report (TAPR): The TAPR is unchanged. States must continue to report TAPR data according to instructions set forth in General Administration Letter 11–00.

Form ETA 563: Form ETA 563 is being revised; the new form will be available early in calendar year 2003. For the quarters ending September 30, 2002, and December 31, 2002, States must continue reporting data on form ETA 563 according to the instructions contained in ETA Handbook 315. New instructions will accompany the revised form.

The 2002 Act requires that the States report to the Secretary on each waiver and the reasons for issuing each waiver. Therefore, States should expect a new reporting form along with the revised form ETA 563. This reporting form will be very much like form ETA 9027, which was discontinued in 1997. This new form will also be available early in calendar year 2003, accompanied by full instructions.

L. Alternative Trade ADjustment Assistance for Older Workers

Section 124 of the 2002 Act strikes section 246 of the 1974 Act and replaces it with a demonstration project for alternative trade adjustment assistance for older workers. The statute allows the Secretary up to one year from the date of enactment (August 6, 2002) to establish the ATAA program. Therefore, these operating instructions do not include instructions for administering the ATAA program. However, for completeness and to give States some advance notice of future developments, the general outlines of the ATAA program are described below.

Petitioning workers must be given the opportunity to request that they be considered for certification under the ATAA program. In determining whether to certify a group of workers as eligible for ATAA, the following criteria are to be used:

1. Whether a significant number of the workers at the workers' firm are 50 years of age or older.
2. Whether the workers in the workers' firm possess skills that are not easily transferable.
3. The competitive conditions within the workers' industry.

An individual worker who is covered by a certification for ATAA must also satisfy all of the following individual qualifying criteria:

1. The worker is covered under a regular TAA certification.
2. The worker has obtained reemployment not more than 26 weeks after the date of the worker's separation from adversely-affected employment.
3. The worker is at least 50 years of age.
4. The worker earns not more that $50,000 per year in wages from reemployment.
5. The worker is employed on a full-time basis as defined by State law of the State in which the worker is reemployed.
6. The worker does not return to the employment from which the worker was separated.

Eligible workers who choose the benefits of ATAA may not receive three of the regular TAA benefits and services—training, TRA, and job search allowances. They may, however, receive relocation allowances if suitable employment is not reasonably available in the commuting area. Eligible workers who choose ATAA receive the following benefits:

1. 50 percent of the difference between the wages the worker receives from reemployment and the wages received by the worker at separation from adversely-affected employment. This payment is subject to the following limitaitons:

A. The payments may not be made for longer than two years.

B. The total of all payments may not exceed $10,000 during the two-year eligibility period.

2. The health insurance tax credit, only for the period in which the worker is participating in ATAA (not to exceed two years). Further guidance and instructions for the ATAA program will be transmitted to the States in the near future.

M. Health Insurance Tax Credit

Sections 201 and 202 of the 2002 Act establish a program of tax credits for health insurance costs. This program will be implemented through the cooperative efforts of the Department of Labor, the Department of Health and Human Services, and the Department of the Treasury (including the Internal Revenue Service). Guidance and operating instructions for the HITC program will be issued separately.

6. *Action Required.* States are required to implement the amendments to the 1974 Act made by the 2002 Act and set forth in these operating instructions as of the effective date, November 4, 2002. States shall inform all appropriate staff of the contents of these instructions.

7. *Inquiries.* States should direct all inquiries to the appropriate ETA Regional office.

8. *Attachment.* Subtitle A of Title I, and Title II, of the Trade Act of 2002.[1]

[FR Doc. 02–28932 Filed 11–13–02; 8:45 am]

BILLING CODE 4510–30–M

[1] This *attachment* is available at the following Web site: *www.doleta.gov/tradeact/2002act_index.asp.*

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Summary of Decisions Granting In Whole or In Part Petitions for Modification

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Notice of affirmative decisions issued by the Administrators for Coal Mine Safety and Health and Metal and Nonmetal Mine Safety and Health on petitions for modification of the application of mandatory safety standards.

SUMMARY: Under section 101 of the Federal Mine Safety and Health Act of 1977, the Secretary of Labor (Secretary) may allow the modification of the application of a mandatory safety standard to a mine if the Secretary determines either that an alternate method exists at a specific mine that will guarantee no less protection for the miners affected than that provided by the standard, or that the application of the standard at a specific mine will result in a diminution of safety to the affected miners.

Final decisions on these petitions are based upon the petitioner's statements, comments and information submitted by interested persons, and a field investigation of the conditions at the mine. MSHA, as designee of the Secretary, has granted or partially granted the requests for modification listed below. In some instances, the decisions are conditioned upon compliance with stipulations stated in the decision. The term FR Notice appears in the list of affirmative decisions below. The term refers to the **Federal Register** volume and page where MSHA published a notice of the filing of the petition for modification.

FOR FURTHER INFORMATION CONTACT: Petitions and copies of the final decisions are available for examination by the public in the Office of Standards, Regulations, and Variances, MSHA, 1100 Wilson Boulevard, Room 2352, Arlington, Virginia 22209. Contact Barbara Barron at 202–693–9447.

Dated at Arlington, Virginia, this 7th day of November, 2002.

Marvin W. Nichols, Jr.,

Director, Office of Standards, Regulations, and Variances.

Affirmative Decisions on Petitions for Modification

Docket No.: M–2002–009–C.
FR Notice: 67 FR 13196.
Petitioner: M & H Coal Company.
Regulation Affected: 30 CFR 75.1100–2(a)(2).
Summary of Findings: Petitioner's proposal is to use only portable fire extinguishers to replace existing requirements where rock dust, water cars, and other water storage equipped with three (3) ten quart pails is not practical; and to use two (2) fire extinguishers near the slope bottom and an additional portable fire extinguisher within 500 feet of the working face for equivalent fire protection. This is considered an acceptable alternative method for the Mercury Slope Mine. MSHA grants the petition for modification for the Mercury Slope Mine with conditions.

Docket No.: M–2002–014–C.
FR Notice: 67 FR 14977.
Petitioner: Laurel Creek Company, Inc.
Regulation Affected: 30 CFR 75.503 [18.41(f) of Part 18].
Summary of Findings: Petitioner's proposal is to use a permanently installed spring-loaded locking device on battery plug connectors, for mobile battery-powered machines used inby the last open crosscut, in lieu of a padlock to prevent the plug connector from accidental disengaging while under load; to install a warning tag that states "Do Not Disengage Under Load" on all battery plug connectors; and to instruct all persons who operate or maintain the battery-powered machines on the safe practices and provisions for complying with its proposed alternative method. This is considered an acceptable alternative method for the Mine No. 4. MSHA grants the petition for modification for the Mine No. 4 with conditions.

Docket No.: M–2002–025–C.
FR Notice: 67 FR 14978.
Petitioner: Rosebud Mining Company.
Regulation Affected: 30 CFR 75.1100–2(e)(2).
Summary of Findings: Petitioner's proposal is to use two (2) fire extinguishers or one fire extinguisher of twice the required capacity at all temporary electrical installations in lieu of using 240 pounds of rock dust. This is considered an acceptable alternative method for the Logansport Mine. MSHA grants the petition for modification for the temporary electrical installations provided the petitioner maintains two portable fire extinguishers having at least the minimum capacity specified for a portable fire extinguisher in 30 CFR 75.1100–1(e) at each of the temporary electrical installations at the Logansport Mine.

Docket No.: M–2002–032–C.
FR Notice: 67 FR 19285.
Petitioner: Fools Gold Energy Corporation.
Regulation Affected: 30 CFR 75.503 [18.41(f) of Part 18].
Summary of Findings: Petitioner's proposal is to use permanently installed spring-loaded locking devices to secure battery plugs on mobile battery-powered machines to prevent unintentional loosening of the battery plugs from battery receptacles, and to eliminate the potential hazards associated with difficult removal of padlocks during emergency situations. This is considered an acceptable alternative method for the No. 4 Mine. MSHA grants the petition for modification for the No. 4 Mine with conditions.

Docket No.: M–2002–033–C.
FR Notice: 67 FR 19285.
Petitioner: Grace Mining, Inc.
Regulation Affected: 30 CFR 75.503 [18.41(f) of Part 18].
Summary of Findings: Petitioner's proposal is to use permanently installed spring-loaded locking devices to secure battery plugs on mobile battery-powered machines to prevent unintentional loosening of the battery plugs from battery receptacles, and to eliminate the potential hazards associated with difficult removal of padlocks during emergency situations. This is considered an acceptable alternative method for the No. 4 Mine. MSHA grants the petition for modification for the No. 4 Mine with conditions.

Docket No.: M–2002–037–C.
FR Notice: 67 FR 19286.
Petitioner: Rivers Edge Mining, Inc.
Regulation Affected: 30 CFR 75.503 [18.41(f) of Part 18].
Summary of Findings: Petitioner's proposal is to use a threaded ring and a spring-loaded device in lieu of a padlock on all battery-plug connectors on mobile battery-powered machines

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used inby the last open crosscut to prevent the plug connector from accidentally disengaging while under load; to install warning tags stating "Do Not Disengage Plugs Under Load" on all battery plug connectors on the battery-powered machines; and to instruct all persons who operate or maintain the battery-powered machines on the safe practices and provision for compliance with its proposed alternative method. This is considered an acceptable alternative method for the Rivers Edge Mine. MSHA grants the petition for modification for the use of permanently installed spring-loaded locking devices in lieu of battery plugs at the Rivers Edge Mine with conditions.

Docket No.: M–2002–038–C.
FR Notice: 67 FR 19286.
Petitioner: Coastal Coal-West Virginia, LLC.
Regulation Affected: 30 CFR 75.1002.
Summary of Findings: Petitioner's proposal is to use continuous mining machines with nominal voltage power circuits not to exceed 2,400 volts at its Mine No. 4A East. This is considered an acceptable alternative method for the Mine No. 4A East. MSHA grants the petition for modification for the use of 2,400 volt continuous miners at the Mine No. 4A East with conditions.

Docket No.: M–2002–040–C.
FR Notice: 67 FR 31835.
Petitioner: Cook & Sons Mining, Inc.
Regulation Affected: 30 CFR 75.503 [18.41(f) of Part 18].
Summary of Findings: Petitioner's proposal is to use permanently installed spring-loaded locking devices to secure battery plugs on mobile battery-powered machines to prevent unintentional loosening of the battery plugs from battery receptacles, and to eliminate the potential hazards associated with difficult removal of padlocks during emergency situations. This is considered an acceptable alternative method for the Spring Branch Mine #2, Nu Enterprise Mine, and the UZ Mine. MSHA grants the petition for modification for use at the Spring Branch #2 Mine, Nu Enterprise Mine, and the UZ Mine with conditions.

Docket No.: M–2001–031–C.
FR Notice: 66 FR 30232.
Petitioner: Aracoma Coal Company, Inc.
Regulation Affected: 30 CFR 75.503 [18.41(f) of Part 18].
Summary of Findings: Petitioner's proposal is to use a threaded ring and a spring-loaded device instead of padlocks on mobile battery-powered machines to prevent the plug connector from accidentally disengaging while under load; to place warning tags on all battery connectors; and instruct all battery machine operators on the safe practices and compliance with its alternative method. This is considered an acceptable alternative method for the Hernshaw Mine. MSHA grants the petition for modification for the Hernshaw Mine with conditions.

Docket No.: M–2001–032–C.
FR Notice: 66 FR 30232.
Petitioner: Aracoma Coal Company, Inc.
Regulation Affected: 30 CFR 75.503 [18.41(f)) of Part 18].
Summary of Findings: Petitioner's proposal is to use a threaded ring and a spring loaded device instead of padlocks on battery connectors on mobile battery-powered machines used inby the last open crosscut to prevent the plug connector from accidentally disengaging while under load; to place warning tags stating "Do Not Disengage Plugs Under Load" on all battery connectors; and instruct all battery machine operators on the safe practices and compliance with its alternative method. This is considered an acceptable alternative method for the Aracoma Alma No. 1 Mine. MSHA grants the petition for modification for the Aracoma Alma No. 1 Mine with conditions.

Docket No.: M–2001–034–C.
FR Notice: 66 FR 30233.
Petitioner: Newtown Energy, Inc.
Regulation Affected: 30 CFR 75.503 [18.41(f) of Part 18].
Summary of Findings: Petitioner's proposal is to use permanently installed spring-loaded devices instead of padlocks on battery plugs on mobile battery-powered machines to prevent the threaded ring from unintentional loosening while under load, to place warning tags stating "Do Not Disengage Plugs Under Load" on all battery connectors on the battery-powered equipment, and to provide instructions to all persons on the safe practices and provisions for compliance when operating and maintaining the battery-powered machines. This is considered an acceptable alternative method for the Eagle Mine No. 1. MSHA grants the petition for modification for the Eagle Mine No. 1 with conditions.

Docket No.: M–2001–035–C.
FR Notice: 66 FR 30233.
Petitioner: Twentymile Coal Company.
Regulation Affected: 30 CFR 75.901(a).
Summary of Findings: Petitioner's proposal is to amend Paragraph 1 of the Proposed Decision and Order for its granted petition for modification, docket number M–1998–056–C, to include moving equipment from section to section within the mine and to perform temporary work in areas outby section loading points; and amend Paragraph 12 to allow 995-volt mobile equipment with cable reels to use either SHD–GC or 2,000-volt rated cables instead of only a SHD–GC cable. This is considered an acceptable alternative method for the Foidel Creek Mine. MSHA grants the petition for modification for the Foidel Creek Mine with conditions.

Docket No.: M–2001–036–C.
FR Notice: 66 FR 30233.
Petitioner: Twentymile Coal Company.
Regulation Affected: 30 CFR 75.701.
Summary of Findings: Petitioner's proposal is to use an alternate method of compliance for grounding of its diesel generator to provide power to electric powered equipment used to travel through the mine and to haul equipment and supplies. The petitioner proposes to ground the portable diesel generator to a low ground field and incorporate a ground fault system for the power circuits that would deenergize the mining equipment if a phase to frame fault occurs. This is considered an acceptable alternative method for the Foidel Creek Mine. MSHA grants the petition for modification for the Foidel Creek Mine with conditions.

Docket No.: M–2001–057–C.
FR Notice: 66 FR 34465.
Petitioner: Turris Coal Company.
Regulation Affected: 30 CFR 77.214(a).
Summary of Findings: Petitioner's proposal to fill the abandoned exhaust shaft with non-combustible materials and permanently seal it with a reinforced concrete cap, covering the cap and shaft with soil and up to 60 feet of coarse coal refuse during the expansion of North Coarse Refuse Pile, MSHA ID No. 1211–IL08–02664–05. This is considered an acceptable alternative method for the Elkhart Mine. MSHA grants the petition for modification for the Elkhart Mine with conditions.

Docket No.: M–2001–063–C.
FR Notice: 66 FR 38748.
Petitioner: Kentucky May Coal Company, Inc.
Regulation Affected: 30 CFR 77.214(a).
Summary of Findings: Petitioner's proposal is to fill its Refuse Disposal Fill "A" with refuse generated from its Arnold Fork Preparation Plant. The petitioner states that Refuse Fill "A" is a combined fill being constructed by the structural shell method, and that proposed modifications to Fill "A" to raise the proposed top of the fill from

elevation 1700 feet to elevation 1750 feet have been submitted to the Barbourville Regional Office for review and approval. The petitioner submits this petition to supplement the modifications since the proposed top of the fill is now above an abandoned underground mining operation in the Hazard No. 4 Coal Seam which is currently backfilled and the Coal Seam dips toward Face-up No. 2. The petitioner states that a four inch PVC Pipe has been installed in the lowest entry of Face-up No. 2 during backfilling operations to prevent the impoundment of water in the old mine works. The petitioner lists specific procedures in its petition that would be used when the proposed alternative method is implemented. This is considered an acceptable alternative method for the Kentucky May Coal Company's Arnold Fork Preparation Plant. MSHA grants the petition for modification for the Kentucky May Coal Company's Arnold Fork Preparation Plant with conditions.

Docket No.: M–2001–064–C.
FR Notice: 66 FR 38749.
Petitioner: DLR Mining, Inc.
Regulation Affected: 30 CFR 75.350.
Summary of Findings: Petitioner's proposal is to install carbon monoxide sensors as an early warning fire detection system in all belt entries used to course air through the belt entry to ventilate active working places. The sensors would be capable of providing both visual and audible alarm signals. This is considered an acceptable alternative method for the Nolo Mine. MSHA grants the petition for modification for the Nolo Mine with conditions.

Docket No.: M–2001–073–C.
FR Notice: 66 FR 38750.
Petitioner: Mettiki Coal, LLC.
Regulation Affected: 30 CFR 75.1002.
Summary of Findings: Petitioner's proposal is to use high-voltage (2,400-volts) on its longwall face conveyor circuits and its shearer circuits when new longwall equipment is installed and has been inspected by MSHA, and to request that its previously granted petition, docket number M–98–032–C be revoked. This is considered an acceptable alternative method for the Mettiki Mine. MSHA grants the petition for modification for the 2,400-volt longwall equipment for the Mettiki Mine with conditions.

Docket No.: M–2001–074–C.
FR Notice: 66 FR 38750.
Petitioner: San Juan Coal Company.
Regulation Affected: 30 CFR 75.1726(a).
Summary of Findings: Petitioner's proposal is to use modified scoops to provide an elevated work platform for miners at the San Juan South Mine and the San Juan Deep Mine. This is considered an acceptable alternative method for the San Juan South Mine and the San Juan Deep Mine. MSHA grants the petition for modification for the San Juan South Mine and the San Juan Deep Mine with conditions. MSHA grants application for Relief to Give Effect to May 22, 2002.

Docket No.: M–2001–077–C.
FR Notice: 66 FR 41891.
Petitioner: San Juan Coal Company.
Regulation Affected: 30 CFR 75.804.
Summary of Findings: Petitioner's proposal is to use 4,160-volt cables for longwall equipment, with a symmetrical 3/C, 3/G, and 1/GC construction and a ground check conductor not smaller than a No. 16 (AWG). The high-voltage cables would be Cablec Anaconda brand 5KV 3/C type SHD+GC or similar 5,000-volt cable with a center ground check conductor, but otherwise manufactured to the ICEA Standard S–75–381 for Type SHD, three-conductor cables. The petitioner asserts that the cables would be MSHA accepted flame-resistant. This is considered an acceptable alternative method for the San Juan South Mine. MSHA grants the petition for modification for the San Juan South Undergound Mine with conditions. The petitioner's request for 30 CFR 75.804 for the San Juan Deep Mine is dismissed.

Docket No.: M–2001–087–C.
FR Notice: 66 FR 52155.
Petitioner: Maple Creek Mining, Inc.
Regulation Affected: 30 CFR 75.804(a).
Summary of Findings: Petitioner's proposal is to use a high-voltage, MSHA-accepted, flame-resistant cable with an internal ground check conductor smaller that No. 10 AWG and to provide training to all qualified electrical personnel before implementing its proposal. This is considered an acceptable alternative method for the High Quality Mine. MSHA grants the petition for modification for the use of high-voltage cables for high-voltage longwall equipment at the Maple Creek Mining, Inc., High Quality Mine longwall system with conditions. The high-voltage cables shall be 5KV, 3/C type SHD–GC or similar 5,000-volt cable with a center ground check conductor, but otherwise manufactured to the ICEA Standard S–75–381 for Type SHD, three-conductor cables, and MSHA-accepted flame-resistant. The cable construction shall be symmetrical 3/C, 3/G, and 1/GC. The ground check conductor shall not be smaller than a No. 16 AWG stranded conductor, and hands-on training shall be provided to all qualified electrical personnel who perform maintenance on the longwall equipment before the alternative method is implemented.

Docket No.: M–2001–089–C.
FR Notice: 66 FR 52155.
Petitioner: Maple Creek Mining, Inc.
Regulation Affected: 30 CFR 75.1700.
Summary of Findings: Petitioner's proposal is to plug and mine through oil and gas wells. This is considered an acceptable alternative method for the High Quality Mine. MSHA grants the petition for modification for the High Quality Mine with conditions.

Docket No.: M–2001–092–C.
FR Notice: 66 FR 52155.
Petitioner: 3–D Management Services, Inc.
Regulation Affected: 30 CFR 75.503 [18.41(f) of Part 18].
Summary of Findings: Petitioner's proposal is to use a threaded ring and a spring-loaded locking device instead of a padlock on mobile battery-powered machines to prevent the plug connector from accidentally disengaging while under load. This is considered an acceptable alternative method for the Tiny Creek No. 2 Mine. MSHA grants the petition for modification for the use of permanently installed spring-loaded locking devices in lieu of padlocks on battery plugs at the Tiny Creek No. 2 Mine with conditions.

Docket No.: M–2001–097–C.
FR Notice: 66 FR 52156.
Petitioner: American Energy Corporation.
Regulation Affected: 30 CFR 75.1700.
Summary of Findings: Petitioner's proposal is to plug and mine through oil and gas wells at the Century Mine using specific procedures outlined in its petition for modification. This is considered an acceptable alternative method for the Century Mine. MSHA grants the petition for modification for mining through or near (whenever the safety barrier diameter is reduced to a distance less than the District Manager would approve pursuant to Section 75.1700) plugged oil or gas wells penetrating the Pittsburgh No. 8 Coal Seam and other mineable coal seams at the Century Mine with conditions.

Docket No.: M–2001–101–C.
FR Notice: 66 FR 64992.
Petitioner: Canyon Fuel Company, LLC.
Regulation Affected: 30 CFR 75.500(d).
Summary of Findings: Petitioner's proposal is to use the following non-permissible low-voltage or battery powered electronic testing and diagnostic equipment inby the last open

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crosscut: lap top computers, oscilloscopes, vibration analysis machines, cable fault detectors, point temperature probes, infrared temperature devices and recorders, pressure and flow measurement devices, signal analyzer devices, ultrasonic thickness gauges, electronic component testers, and electronic tachometers, and to use other testing and diagnostic equipment if approved by the District Office. The petitioner states that all other test and diagnostic equipment use in or inby the last open crosscut will be permissible. The petitioner has listed in this petition for modification specific procedures that would be followed when using this equipment. This is considered an acceptable alternative method for the Dugout Canyon Mine. MSHA grants the petition for modification for the use of low voltage or battery powered non-permissible electronic testing and diagnostic equipment in or inby the last open crosscut, under controlled conditions, for testing and diagnosing the mining equipment at the Dugout Canyon Mine with conditions.

Docket No.: M–2001–102–C.
FR Notice: 66 FR 64993.
Petitioner: Canyon Fuel Company, LLC.
Regulation Affected: 30 CFR 75.1002–1(a).
Summary of Findings: Petitioner's proposal is to use the following non-permissible low-voltage or battery powered electronic testing and diagnostic equipment inby the last open crosscut: lap top computers, oscilloscopes, vibration analysis machines, cable fault detectors, point temperature probes, infrared temperature devices and recorders, pressure and flow measurement devices, signal analyzer devices, ultrasonic thickness gauges, electronic component testers, and electronic tachometers, and may use other testing and diagnostic equipment if approved by the District Office. The petitioner states that all other test and diagnostic equipment used in or inby the last open crosscut will be permissible. This is considered an acceptable alternative method for the Dugout Canyon Mine. MSHA grants the petition for modification for the use of low-voltage or battery-powered non-permissible electronic testing and diagnostic equipment within 150 feet of pillar workings, for testing and diagnosing the mining equipment, under controlled conditions at the Dugout Canyon Mine with conditions.

Docket No.: M–2001–107–C.
FR Notice: 67 FR 1368.
Petitioner: Ohio County Coal Company, Inc.
Regulation Affected: 30 CFR 75.1700.
Summary of Findings: Petitioner's proposal is to mine through oil and gas wells located within an approved mining area using the specific procedures outlined in its petition for modification. This is considered an acceptable alternative method for the Freedom Mine. MSHA grants the petition for modification with conditions, for mining through or near (whenever the safety barrier diameter is reduced to a distance less than the District Manager would approve pursuant to Section 75.1700) plugged oil or gas wells penetrating the Western Kentucky No. 9 seam and other mineable coal seams for the Freedom Mine.

Docket No.: M–2001–108–C.
FR Notice: 67 FR 1368.
Petitioner: Addington, Inc.
Regulation Affected: 30 CFR 75.503 [18.41(f) of Part 18].
Summary of Findings: Petitioner's proposal is to use a spring-loaded locking device instead of a padlock on mobile battery-powered equipment to prevent unintentional loosening of battery plugs from battery receptacles to eliminate the hazards associated with difficult removal of padlocks during emergency situations. This is considered an acceptable alternative method for the Pond Creek No. 1 Mine. MSHA grants the petition for modification for the use of permanently installed spring-loaded locking devices in lieu of padlocks on battery plugs at the Pond Creek Mine No. 1 with conditions.

Docket No.: M–2001–115–C.
FR Notice: 66 FR 67551.
Petitioner: Centralia Mining.
Regulation Affected: 30 CFR 75.1200 (d) and (i).
Summary of Findings: Petitioner's proposal is to use cross-sections instead of contour lines through the intake slope, at locations of rock tunnel connections between veins, and at 1,000 foot intervals of advance from the intake slope; and to limit the required mapping of the mine workings above and below to those present within 100 feet of the vein being mined except when veins are interconnected to other veins beyond the 100-foot limit through rock tunnels. The petitioner asserts that due to the steep pitch encountered in mining anthracite coal veins, contours provide no useful information and their presence would make portions of the map illegible. The petitioner further asserts that use of cross-sections in lieu of contour lines has been practiced since the late 1800's thereby providing critical information relative to the spacing between veins and proximity to other mine workings which fluctuate considerably. This is considered an acceptable alternative method for the Skidmore Slope Mine. MSHA grants the petition for modification for the Skidmore Slope Mine with conditions.

Docket No.: M–2001–116–C.
FR Notice: 66 FR 67551.
Petitioner: Centralia Mining.
Regulation Affected: 30 CFR 75.1202–1(a).
Summary of Findings: Petitioner's proposal is to revise and supplement mine maps annually instead of every 6 months as required, and to update maps daily by hand notations. The petitioner also proposes to conduct surveys prior to commencing retreat mining and whenever either a drilling program under 30 CFR 75.388 or plan for mining into inaccessible areas under 30 CFR 75.389 is required. This is considered an acceptable alternative method for the Skidmore Slope Mine. MSHA grants the petition for modification for annual revisions and supplements of the mine map at the Skidmore Slope Mine with conditions.

Docket No.: M–2001–117–C.
FR Notice: 66 FR 67551.
Petitioner: Centralia Mining.
Regulation Affected: 30 CFR 75.1400(c).
Summary of Findings: Petitioner's proposal is to use a slope conveyance (gunboat) in transporting persons without installing safety catches or other no less effective devices but instead use increased rope strength and secondary rope connection in place of such devices. This is considered an acceptable alternative method for the Skidmore Slope Mine. MSHA grants the petition for modification for the use of the hoist conveyance (gunboat) without safety catches at the Skidmore Slope Mine with conditions.

Docket No.: M–2001–120–C.
FR Notice: 66 FR 67552.
Petitioner: White County Coal, L.L.C.
Regulation Affected: 75.901(a).
Summary of Findings: Petitioner's proposal is to use a 200KW, 480-volt, diesel powered generator set with an approved diesel drive engine to power electrical equipment that would only move equipment in, out, and around the mine and to perform work in areas outby section loading points where equipment is not required to be maintained as permissible. This is considered an acceptable alternative method for the Pattiki Mine II. MSHA grants the petition for modification for the 480-volt, three-phase, 200KW diesel powered generator (DPG) set, supplying power to a 250 KVA three-phase transformer and three-phase 480- and 995-volt power circuits at the Pattiki Mine II with conditions.

Docket No.: M–1999–035–C.
FR Notice: 64 FR 32552.
Petitioner: Sea "B" Mining Company.
Regulation Affected: 30 CR 75.1710–1(a).
Summary of Findings: Petitioner's proposal is to amend the Proposed Decision and Order for its previously granted petition, docket number M–98–033–C, to include the following equipment: three center-driven Joy 21SC shuttle cars, Serial Nos. ET10956, ET11195, ET14880; Long Airdox Scoop 482, Serial No. 482–2229; and Fletcher Roof Bolting Machine, Model RRII–15 W/T–Bar ATRS, Serial No. 96053. The petitioner asserts that using canopies on this equipment in mining heights less that 46 inches would result in a diminution of safety to the miners. This is considered an acceptable alternative method for the Silver Creek Mine. MSHA grants the petition for modification for the Silver Creek Mine with conditions.

Docket No.: M–2001–001–M.
FR Notice: 66 FR 9725.
Petitioner: New Tech Oil Company.
Regulation Affected: 30 CFR 57.11050.
Summary of Findings: Petitioner's proposal is to use its hoist and ladder man-way as two separate escapeways. This is considered an acceptable alternative method for the North Tisdale Shaft #1 Mine. MSHA grants the petition for modification for the North Tisdale Shaft #1 Mine with conditions.

Docket No.: M–2001–002–M.
FR Notice: 66 FR 9725.
Petitioner: New Tech Oil Company.
Regulation Affected: 30 CFR 57.19054.
Summary of Findings: Petitioner's proposal is to use bridge strand wire rope in lieu of locked coil wire rope on the mine hoist. This is considered an acceptable alternative method for the North Tisdale Shaft No. 1 Mine. MSHA grants the petition for modification for the North Tisdale Shaft No. 1 Mine with conditions.

[FR Doc. 02–28918 Filed 11–13–02; 8:45 am]
BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Advisory Committee on Construction Safety and Health; Notice of Open Meeting

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of a meeting of the Advisory Committee on Construction Safety and Health (ACCSH).

SUMMARY: ACCSH will hold a meeting on December 5–6, 2002, in Washington, DC. This meeting is open to the public.

Time and Date: ACCSH will meet from 8 a.m. to 4:30 p.m., Thursday, December 5, and from 8:30 a.m. to noon, Friday, December 6. *See* **SUPPLEMENTARY INFORMATION** section for meeting times and dates of ACCSH work groups.

Place: The ACCSH meeting will be held in Rooms N–3437 A–C, Frances Perkins Building, 200 Constitution Avenue, NW., Washington, DC. *See* **SUPPLEMENTARY INFORMATION** section for room locations in the Frances Perkins Building for ACCSH work group meetings.

FOR FURTHER INFORMATION CONTACT: *For general information about ACCSH and ACCSH meetings:* Jim Boom, OSHA, Directorate of Construction, Room N–3476, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–1839. *For information about submission of comments, requests to speak, and special accommodations for the meeting:* Veneta Chatmon, OSHA, Office of Public Affairs, Room N–3647, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–1999. Electronic copies of this **Federal Register** notice, as well as information about ACCSH work groups and other relevant documents, are available at OSHA's Webpage on the Internet at *http://www.OSHA.gov.*

SUPPLEMENTARY INFORMATION: ACCSH will meet December 5–6, 2002, in Washington, DC. This meeting is open to the public. The agenda for this meeting includes:

Thursday, December 5, 2002

- Directorate of Construction—Update
- Partnerships, Alliances, Agreements
- Remarks—Assistant Secretary Henshaw
- Subpart V—Power Transmission and Distribution
- Subpart N—Crane Workgroup Report
- Negotiated Rulemaking—Subpart N—Cranes and Derricks
- Manual for Uniform Traffic Control Devices (MUTCD)
- Hearing Conservation
- Silica
- Proposed Assigned Protection Factor (APF)—Rulemaking

Friday, December 6, 2002

- Subpart R—Steel Erection
- Highway Work Zone Safety

All ACCSH meetings and those of its work groups are open to the public. An official record of the meeting will be available for public inspection at the OSHA Docket Office, Room N–2625, at the address above; telephone (202) 693–2350. Individuals needing special accommodation should contact Veneta Chatmon no later than November 29, at the address above.

Interested parties may submit written data, views or comments, preferably with 20 copies, to Veneta Chatmon at the address above. OSHA will provide submissions received prior to the meeting to ACCSH members and will include all submissions in the record of the meeting.

Attendees may also request to make an oral presentation by notifying Veneta Chatmon no later than November 25 at the address above. The request must state the amount of time desired, the interest represented by the presenter (*e.g.*, the names of the business, trade association, government Agency) if any, and a brief outline of the presentation. The chair of ACCSH may grant the request at his discretion and as time permits.

The following ACCSH work groups will meet in the Francis Perkins Building:

- Subpart N—Cranes—8 a.m. to 5 p.m., Tuesday, December 3, and 8 a.m. to 5 p.m., Wednesday, December 4, in Room N–3437 A&B.

For further information on meetings of ACCSH work groups, please contact Jim Boom at the address above or look on OSHA's webpage at *http://www.osha.gov.*

Authority: John L. Henshaw, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice under the authority granted by section 7 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656), section 107 of the Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 333), and Secretary of Labor's Order No. 5–2002 (67 FR 65008).

Signed in Washington, DC, on this 7th day of November, 2002.

John L. Henshaw,
Assistant Secretary of Labor.

[FR Doc. 02–28931 Filed 11–13–02; 8:45 am]
BILLING CODE 4510–26–P

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DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemptions 2002–45 & 2022–46; Exemption Application Nos. D–10924 & D–10925]

Deutsche Bank AG (DB) Located in Germany, With Affiliates In New York, NY, and Other Locations & Barclays Global Investors, N.A. (BGI) Located in San Francisco, CA

AGENCY: Pension and Welfare Benefits Administration, U.S. Department of Labor (the Department).

ACTION: Notice of technical correction.

On September 23, 2002, the Department published PTE 2002–45 and PTE 2002–46 in the **Federal Register**, at 67 FR 59564 and 67 FR 59569, respectively. PTE 2002–45 and PTE 2002–46 permit securities lending to certain DB or BGI affiliates by employee benefit plans for which DB or BGI acts as securities lending agent or subagent.

On page 59567 and 59571, respectively, of the notices granting PTE 2002–45 and PTE 2002–46, the Department hereby corrects the last sentence of subparagraph (p)(2) of Section II to read as follows:

In addition, none of the entities described above are formed for the sole purpose of making loans of securities; and

On page 59567 and 59571, respectively, of the notices granting PTE 2002–45 and PTE 2002–46, the Department hereby inserts the following subparagraph (p)(3) of Section II to read as follows:

(3) In the case of two or more Client Plans invested in a Commingled Fund, whether or not through an entity described in (p)(1) or (p)(2), the $50 million requirement shall be deemed satisfied if 50 percent or more of the units of beneficial interest in such Commingled Fund are held by investors each having total net assets of at least $50 million. Such investors may include Client Plans, entities described in (p)(1) or (p)(2), or other investors that are not employee benefit plans covered by section 406 of ERISA, section 4975 of the Code, or section 8477 of FERSA.

EFFECTIVE DATE: This technical correction to PTE 2002–45 and PTE 2002–46 is effective as of September 23, 2002, the date those exemptions were published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Gary Lefkowitz or Karen Lloyd of the Department, telephone (202) 693–8540. (This is not a toll-free number).

Signed at Washington, DC, this 8th day of November, 2002.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfore Benefits Administration, U.S. Department of Labor.

[FR Doc. 02–28935 Filed 11–13–02; 8:45 am]

BILLING CODE 4520–29–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 02–141]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that GeoTech Chemical Company, LLC, of Tallmadge, Ohio, has applied for an exclusive patent license for "Ferromagnetic Conducting Lignosulfonic Acid-Doped Polyaniline Nanocomposites," U.S. Serial No. 09/994,996, and "Corrosion Prevention of Cold Rolled Steel Using Water Dispersible Lignosulfonic AcidDoped Polyaniline," U.S. Serial No. 09/903,260, both of which are assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. These technologies implement a technology that has been previously exclusively licensed to GeoTech. Written objections to the prospective grant of a license should be sent to John F. Kennedy Space Center.

DATES: Responses to this Notice must be received within 15 days from date of publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Randall M. Heald, Assistant Chief Counsel/Patent Counsel, John F. Kennedy Space Center, Mail Code: CC–A, Kennedy Space Center, FL 32899, telephone (321) 867–7214.

Dated: November 7, 2002.

Robert M. Stephens,

Deputy General Counsel.

[FR Doc. 02–28908 Filed 11–13–02; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL FOUNDATION FOR THE ARTS AND HUMANITIES

Recruiting and Educating Librarians for the 21st Century Guidelines and Application Forms; Submission for OMB Review, Comment Request

AGENCY: Institute of Museum and Library Services, NFAH.

ACTION: Notice of requests for new information collection approval.

SUMMARY: The Institute of Museum and Library Services announces the following information collection has been submitted to the Office of Management and Budget for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). Currently, the Institute of Museum and Library Services is soliciting comment concerning extending collection entitled, Technology Survey for Libraries and Museums. A copy of this proposed form, with applicable supporting documentation, may be obtained by calling the Institute of Museum and Library Services, Director of Public and Legislative Affairs, Mamie Bittner at (202) 606–8339. Individuals who use a telecommunications device for the deaf (TTY/TDD) may call (202) 606–8636.

DATES: Comments must be received by December 16, 2002. The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

ADDRESSES: For a copy of the form contact: Mamie Bittner, Director of Legislative and Public Affairs, Institute of Museum and Library Services, 1100 Pennsylvania Ave., NW., Room 510, Washington, DC 20506.

SUPPLEMENTARY INFORMATION:

I. Background

Pub. L. 104–208 enacted on September 30, 1996 contains the former Museum Services Act and the Library Services and Technology Act, a reauthorization. Pub. L. 104–208 authorizes the Director of the Institute of Museum and Library Services to make grants to improve museum and library service throughout the United States.

Agency: Institute of Museum and Library Services.

Title: Recruiting and Educating Librarians for the 21st Century.

OMB Number: None.

Agency Number: 3137.

Frequency: One-time.

Affected Public: Libraries.

Number of Respondents: 120.

Estimated Time Per Respondent: 40 hours.

Total Burden Hours: 4800.

Total Annualized capital/startup costs: n/a.

Total Annual Costs: n/a.

FOR FURTHER INFORMATION CONTACT: Comments should be sent to Office of Information and Regulatory Affairs, Attn.: OMB Desk Officer for Education, Office of Management and Budget, Room 10235, Washington, DC 20503, (202) 395–7316.

Mamie Bittner,

Director Public and Legislative Affairs.

[FR Doc. 02–28878 Filed 11–13–02; 8:45 am]

BILLING CODE 7036–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Combined Arts Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that four meetings of the Combined Arts Advisory Panel to the National Council on the Arts will be held at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC, 20506 as follows:

Literature: December 2–3, 2002, Room 714 (Access and Heritage & Preservation categories). A portion of this meeting, from 11 a.m. to 12:30 p.m. on December 3rd, will be open to the public for policy discussion. The remaining portions of this meeting, from 9 a.m. to 6 p.m. on December 2nd and from 9:30 a.m. to 11 a.m. and 12:30 p.m. to 3 p.m. on December 3rd, will be closed.

Folk & Traditional Arts: December 3–6, 2002, Room 716 (Access and Heritage & Preservation categories). A portion of this meeting, from 11 a.m. to 12:30 p.m. on December 5th, will be open to the public for policy discussion. The remaining portions of this meeting, from 9 a.m. to 6:30 p.m. on December 3rd and 4th, from 9 a.m. to 11 a.m. and 12:30 p.m. to 6:30 p.m. on December 5th, and from 9 a.m. to 5:30 p.m. on December 6th, will be closed.

Museums: December 10–12, 2002, Room 716 (Access and Heritage & Preservation categories). A portion of this meeting, from 1:30 p.m. to 2:30 p.m. on December 12th, will be open to the public for policy discussion. The remaining portions of this meeting, from 9 a.m. to 6 p.m. on December 10th and 11th, and from 9 a.m. to 1:30 p.m. and 2:30 p.m. to 4:30 p.m., on December 12th, will be closed.

Arts Education: December 16–19, 2002, Room 716 (Arts Learning category). A portion of this meeting, from 1 p.m. to 2 p.m. on December 19th, will be open to the public for policy discussion. The remaining portions of this meeting, from 9 a.m. to 6 p.m. on December 16th and 18th, from 9 a.m. to 6:30 p.m. on December 17th, and from 9 a.m. to 1 p.m. and 2 p.m. to 3:45 p.m. on December 19th, will be closed.

The closed portions of these meetings are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of May 2, 2002, these sessions will be closed to the public pursuant to (c)(4)(6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels that are open to the public, and, if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, (202) 682–5532, TDY–TDD (202) 682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5691.

Dated: November 6, 2002.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 02–28879 Filed 11–13–02; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request

AGENCY: National Science Foundation.

ACTION: Submission for OMB review; comment request.

SUMMARY: Under the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3501 *et seq.*), and as part of its continuing effort to reduce paperwork and respondent burden, the National Science Foundation (NSF) is inviting the general public and other Federal agencies to comment on this proposed continuing information collection. This is the second notice for public comment; the first was published in the **Federal Register** at 67 FR 56315 and no comments were received. NSF is forwarding the proposed submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice.

DATES: Comments regarding these information collections are best assured of having their full effect if received by OMB within 30 days of publication in the **Federal Register**.

ADDRESSES: Written comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of NSF, including whether the information will have practical utility; (b) the accuracy of NSF's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; or (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for National Science Foundation, 725—17th Street, NW., Room 10235, Washington, DC 20503, and to Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230 or send email to *splimpto@nsf.gov*. Copies of the submission may be obtained by calling (703) 292–7556.

FOR FURTHER INFORMATION CONTACT: Suzanne H. Plimpton, NSF Reports Clearance Officer at (703) 292–7556 or send e-mail to *splimpto@nsf.gov*.

An agency may not conduct or sponsor a collection of information

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unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

SUPPLEMENTARY INFORMATION:

Title of Collection: Grantee Reporting Requirements for Science and Technology Centers (STC): Integrative Partnerships.

OMB Control No.: 3145–New.

Proposed Project: The Science and Technology Centers (STC): Integrative Partnerships Program supports innovation in the integrative conduct of research, education and knowledge transfer. Science and Technology Centers build intellectual and physical infrastructure within and between disciplines, weaving together knowledge creation, knowledge integration, and knowledge transfer. STCs conduct world-class research through partnerships of academic institutions, national laboratories, industrial organizations, and/or other public/private entities. New knowledge thus created is meaningfully linked to society.

STCs enable and foster excellent education, integrate research and education, and create bonds between learning and inquiry so that discovery and creativity more fully support the learning process. STCs capitalize on diversity through participation in center activities and demonstrate leadership in the involvement of groups underrepresented in science and engineering.

Centers selected will be required to submit annual reports on progress and plans, which will be used as a basis for perofmrance review and determining the level of continued funding. To support this review and the management of a Center, STCs will be required to develop a set of management and performance indicators for submission annually to NSF via an NSF evaluation technical assistance contractor. These indicators are both quantitative and descriptive and may include, for example, the characteristics of center personnel and students; sources of financial support and in-kind support; expenditures by operational component; characteristics of industrial and/or other sector participation; research activities; education activities; knowledge transfer activities; patents, licenses; publications; degree granted to students involved in Center activities; descriptions of significant advances and other outcomes of the STC effort. Part of this reporting will take the form of a database which will be owned by the institution and eventually made available to an evaluation contractor. This database will capture specific information to demonstrate progress towards achieving the goals of the program. Such reporting requirements will be included in the cooperative agreement which is binding between the academic institution and the NSF.

Each Center's annual report will address the following categories of activities; (1) Research, (2) education, (3) knowledge transfer, (4) partnerships, (5) diversity, (6) management and (7) budget issues.

For each of the categories the report will describe overall objectives for the year, problems the Center has encountered in making progress towards goals, anticipated problems in the following year, and specific outputs and outcomes.

Use of the Information: NSF will use the information to continue funding of the Centers, and to evaluate the progress of the program.

Estimate of Burden: In the first year, for the anticipated six centers' awards time estimate is total of 600 hours. In the subsequent years time estimate is 450 hours.

Respondents: Non-profit institutions; federal government.

Estimated Number of Responses per Report: One from each of the six centers.

Comments: Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) way8s to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: November 7, 2002.

Teresa R. Pierce,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 02–28870 Filed 11–13–02; 8:45 am]

BILLING CODE 2555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–8027]

Notice of Consideration of Amendment Request for Sequoyah Fuels Corp., Gore, OK and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of a license amendment to materials license SUB–1010 issued to Sequoyah Fuels Corp. (SFC), to possess byproduct material as defined in the Atomic Energy Act (AEA) Section 11e.(2) at its site near Gore, Oklahoma.

On January 5, 2001, SFC requested that the Nuclear Regulatory Commission (NRC) determine if waste material from the solvent extraction process at its site could be classified as AEA 11e.(2) byproduct material. By Staff Requirements Memorandum to SECY–02–0095, dated July 25, 2002, the Commission concluded that some of the waste at the SFC site could properly be classified as AEA 11e.(2) byproduct material. By letter dated September 30, 2002, SFC requested license SUB–1010 be amended to possess 11e.(2) byproduct material. An NRC administrative review found the request for license amendment (LA) acceptable to begin a technical review. If NRC approves the amendment request, SFC will be required to submit a reclamation plan for the site that meets the requirements of Appendix A to 10 CFR 40. If that plan is approved and SFC remediates the site to the specified criteria, the U.S. Department of Energy would become the owner of the land and responsible for long term stewardship under provisions of Title II to the Uranium Mill Tailings Radiation Control Act.

If the NRC approves this LA, the approval will be documented in an amendment to NRC license SUB–1010. NRC considers the amendment to be administrative in nature, in that the Commission has determined that material possessed by SFC is 11e.(2) byproduct material and the license amendment will give SFC formal permission to possess that material. There will be no changes in the management of the facility, changes to the facility itself or to license conditions or procedures as a result of the proposed amendment that could impact public health, safety or the environment. Therefore, neither a Safety Evaluation Report nor an environmental evaluation will be prepared for the amendment.

NRC hereby provides notice that this is a proceeding on an application for an amendment of a license falling within the scope of Subpart L, "Informal Hearing Procedures for Adjudication in Materials Licensing Proceedings," of NRC's rules of practice for domestic licensing proceedings in 10 CFR part 2. Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing in accordance with § 2.1205(d). A request for a hearing must be filed within thirty (30) days of the date of publication of this **Federal Register** notice.

The request for a hearing must be filed with the Office of the Secretary either:

1. By delivery to Secretary, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738;, between 7:45 a.m. and 4:15 p.m. Federal workdays; or

2. By mail, telegram, or facsimile addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Attention: Docketing and Services Branch. Because of continuing disruptions in the delivery of mail to United States Government offices, it is requested that requests for hearing be also transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101, or by e-mail to *hearingdocket@nrc.gov*.

In accordance with 10 CFR § 2.1205(f), each request for a hearing must also be served, by delivering it personally or by mail, to:

1. The applicant, Sequoyah Fuels Corporation, PO Box 610, Gore, Oklahoma, Attention: Mr. John Ellis, and;

2. The NRC staff, by delivery to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738, between 7:45 a.m. and 4:15 p.m. Federal workdays, or by mail, addressed to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Because of continuing disruptions in the delivery of mail to United States Government offices, it is requested that requests for hearing be also transmitted to the Office of the General Counsel either by means of facsimile transmission to 301–415–3725, or by e-mail to *OGCMailCenter@nrc.gov*.

In addition to meeting other applicable requirements of 10 CFR part 2 of NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

1. The interest of the requester in the proceeding;

2. How that interest may be affected by the results of the proceeding, including the reasons why the requester should be permitted a hearing, with particular reference to the factors set out in § 2.1205(h);

3. The requester's areas of concern about the licensing activity that is the subject matter of the proceeding; and

4. The circumstance establishing that the request for a hearing is timely in accordance with § 2.1205(d).

FOR FURTHER INFORMATION: The application for amendment and supporting documentation are available for inspection at NRC's Public Electronic Reading Room on the NRC Web site *http://www.nrc.gov/reading-rm.html*. Questions with respect to this action should be referred to Mr. Myron Fliegel, Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone: (301) 415–6629.

Dated at Rockville, Maryland, this 6th day of November, 2002.

For the Nuclear Regulatory Commission.

Scott W. Moore,

Acting Chief, Decommissioning Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 02–28903 Filed 11–13–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 040–08838]

Notice of Consideration of Amendment Request for the U.S. Army's Jefferson Proving Ground Facility at Madison, IN, and Opportunity for Providing Comments and Requesting a Hearing

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of a license amendment to Material License No. SUB–1435 issued to the U.S. Army (the licensee), to authorize decommissioning of its Jefferson Proving Ground (JPG) facility in Madison, Indiana.

The U.S. Army submitted a revised decommissioning plan (DP) on June 27, 2002, to decommission JPG with restricted release. An NRC administrative review, documented in a letter to the U.S. Army dated October 1, 2002, found the DP acceptable to begin a technical review.

If the NRC approves the DP, the approval will be documented in an amendment to NRC License No. SUB–1435. However, before approving the proposed amendment, the NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended, and NRC's regulations. These findings will be documented in a Safety Evaluation Report and either an Environmental Assessment or Environmental Impact Statement.

II. Opportunity To Provide Comments

In accordance with 10 CFR 20.1405, the NRC is providing notice to individuals in the vicinity of the site that the NRC is in receipt of a DP, and will accept comments concerning this decommissioning proposal and its associated environmental impacts. Comments with respect to this action should be provided in writing within 30 days of this notice and addressed to Tom McLaughlin, Decommissioning Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone: (301) 415–5869, fax number (301) 415–5398, e-mail: *tgm@nrc.gov*. Comments received after 30 days will be considered if practicable to do so, but only those comments received on or before the due date can be assured consideration.

III. Opportunity To Request a Hearing

NRC also provides notice that this is a proceeding on an application for an amendment of a license falling within the scope of subpart L, "Informal Hearing Procedures for Adjudication in Materials Licensing Proceedings," of NRC's rules of practice for domestic licensing proceedings in 10 CFR part 2. Whether or not a person has or intends to provide comments as set out in section II above, pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing in accordance with § 2.1205(d). A request for a hearing must be filed within 30 days of the date of publication of this **Federal Register** notice.

The request for a hearing must be filed with the Office of the Secretary either:

1. By delivery to the Docketing and Service Branch of the Office of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852; or

2. By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch. Because of continuing disruptions in the delivery of mail to United States Government offices, it is requested that requests for hearing be

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also transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101, or by e-mail to *hearingdocket@nrc.gov*.

In accordance with 10 CFR 2.1205(f), each request for a hearing must also be served, by delivering it personally or by mail, to:

1. The applicant, U.S. Army Soldier and Biological Chemical Command, 5183 Black Hawk Road, Aberdeen Proving Ground, MD 21010–5423, Attention: Dr. John Ferriter, and;

2. The NRC staff, by delivery to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, One White flint North, 11555 Rockville Pike, Rockville, MD 20852, or by mail addressed to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Because of continuing disruptions in the delivery of mail to United States Government offices, it is requested that requests for hearing be transmitted to the Office of the General Counsel either by means of facsimile transmission to 301–415–3725, or by e-mail to *OGCMailCenter@nrc.gov*.

In addition to meeting other applicable requirements of 10 CFR part 2 of NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

1. The interest of the requester in the proceeding;

2. How that interest may be affected by the results of the proceeding, including the reasons why the requester should be permitted a hearing, with particular reference to the factors set out in § 2.1205(h);

3. The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

4. The circumstance establishing that the request for a hearing is timely in accordance with § 2.1205(d).

IV. Further Information

The application for the license amendment and supporting documentation are available for inspection at NRC's Public Electronic Reading Room at *http://www.nrc.gov/NRC/ADAMS/index.html*. The DP is in ADAMS in two parts with part 1 at ML021930415 and part 2 at ML021930461. The acceptance letter for the DP is in ADAMS at ML022730012. Any questions with respect to this action should be referred to Tom McLaughlin, Decommissioning Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone: (301) 415–5869. Fax: (301) 415–5398.

Dated in Rockville, Maryland, this 5th day of November, 2002.

For the Nuclear Regulatory Commission.

Claudia M. Craig,

Acting Chief, Decommissioning Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 02–28901 Filed 11–13–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 040–08794]

Notice of Consideration of Amendment Request for the Molycorp Facility at York, PA, and Opportunity for Providing Comments and Requesting a Hearing

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of a license amendment to Source Materials License SMB–1408 issued to Molycorp, Inc., (Molycorp), to allow for an alternate decommissioning schedule for its York, PA, site. Molycorp's license required Molycorp to decommission by June 2002, which is within 2 years of the date that the decommissioning plan was approved. Molycorp was granted a three month extension from the regulatory requirements of the Timeliness Rule in order to determine if there is a more efficient way to complete decommissioning the remaining portion of the site. Molycorp submitted an alternate decommissioning schedule in a letter dated September 30, 2002. Molycorp proposes to use a phased approach where a new site characterization plan is developed and submitted to NRC for concurrence prior to the resumption of remediation. Molycorp is to submit a revised remediation schedule by February 15, 2003.

If the NRC approves this request, the approval will be documented in a license amendment to NRC License SMB–1408. However, before approving the proposed amendment, the NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended, and NRC's regulations. These findings will be documented in a safety evaluation report.

II. Opportunity To Request a Hearing

NRC also provides notice that this is a proceeding on an application for an amendment of a license falling within the scope of subpart L, "Informal Hearing Procedures for Adjudication in Materials Licensing Proceedings," of NRC's rules of practice for domestic licensing proceedings in 10 CFR part 2. Whether or not a person has or intends to provide comments as set out in section II above, pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing in accordance with § 2.1205(d). A request for a hearing must be filed within 30 days of the date of publication of this **Federal Register** notice.

The request for a hearing must be filed with the Office of the Secretary either:

1. By delivery to the Docketing and Service Branch of the Office of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852; or

2. By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch. Because of continuing disruptions in the delivery of mail to United States Government offices, it is requested that requests for hearing be also transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101, or by e-mail to *hearingdocket@nrc.gov*.

In accordance with 10 CFR 2.1205(f), each request for a hearing must also be served, by delivering it personally or by mail, to:

1. The applicant, Molycorp, Inc., PO Box 469, Questa, NM 87556–0469, Attention: Ray Cherniske, and,

2. The NRC staff, by delivery to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, or by mail addressed to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Because of continuing disruptions in the delivery of mail to United States Government offices, it is requested that requests for hearing be also transmitted to the Office of the General Counsel either by means of facsimile transmission to 301–415–3725, or by e-mail to *OGCMailCenter@nrc.gov*.

In addition to meeting other applicable requirements of 10 CFR part 2 of NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

1. The interest of the requestor in the proceeding;

2. How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with

particular reference to the factors set out in § 2.1205(h);

3. The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

4. The circumstance establishing that the request for a hearing is timely in accordance with § 2.1205(d).

III. Further Information

The application for the license amendment and supporting documentation are available for inspection at NRC's Public Electronic Reading Room at *http://www.nrc.gov/NRC/ADAMS/index.html*. The June 17, 2002, request from Molycorp for an extension from the regulatory requirements of the Timeliness Rule is in ADAMS at ML021700600. The granting of the extension from the Timeliness Rule on June 20, 2002, is in ADAMS at ML021680158. The report of a meeting at NRC headquarters with Molycorp to discuss its proposed alternate decommissioning schedule is in ADAMS at ML022680692. Any questions with respect to this action should be referred to Tom McLaughlin, Decommissioning Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone: (301) 415–5869. Fax: (301) 415–5398.

Dated in Rockville, Maryland, this fifth day of November 2002.

For the Nuclear Regulatory Commission.

Claudia M. Craig,

Acting Chief, Decommissioning Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 02–28902 Filed 11–13–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket 72–31]

Yankee Atomic Electric Company, Independent Spent Fuel Storage Installation; Issuance of Environmental Assessment and Finding of No Significant Impact for a Proposed Exemption

The U.S. Nuclear Regulatory Commission (NRC or Commission) is considering issuance of an exemption to Yankee Atomic Electric Company (YAEC or licensee), pursuant to 10 CFR 72.7, from specific provisions of 10 CFR 72.212(a)(2), 72.212(b)(2)(i)(A), and 10 CFR 72.214. The licensee is planning to use the NAC–MPC storage system to store spent nuclear fuel from the decommissioning reactor. The requested exemption would allow YAEC to deviate from the approved contents specified in the NAC–MPC Certificate of Compliance No. 1025 (CoC or Certificate) to store: (1) Fuel with assembly weights up to 950 pounds; (2) fuel assemblies with unique design features; (3) non-intact fuel in damaged fuel cans; and (4) specific re-caged fuel assemblies in the NAC–MPC dry spent fuel storage systems at the Yankee Nuclear Power Station.

In a letter dated May 15, 2002, the designer of the NAC–MPC system, NAC International, requested an amendment to CoC No. 1025 to incorporate the additional fuel assembly configurations as approved contents for the storage system. That request was supplemented on October 3, 2002. The information provided in the amendment request, as supplemented, corresponds with the YAEC exemption request and provides the safety basis for storing these additional fuel assembly configurations.

Environmental Assessment (EA)

Identification of Proposed Action

By letter dated October 10, 2002, YAEC requested an exemption from the requirements of 10 CFR 72.212(a)(2), 72.212(b)(2)(i)(A), and 10 CFR 72.214 to deviate from the approved contents specified in CoC No. 1025 for the NAC–MPC storage system. YAEC has informed the NRC of its plans to store spent nuclear fuel under the general licensing provisions of 10 CFR Part 72. The licensee has begun loading spent fuel into the NAC–MPC system at an Independent Spent Fuel Storage Installation located at the Yankee Nuclear Power Station near Rowe, Massachusetts.

By exempting YAEC from 10 CFR 72.212(a)(2), 72.212(b)(2)(i)(A), and 10 CFR 72.214, YAEC will be authorized to store additional specific fuel assembly configurations.

The proposed action before the Commission is whether to grant this exemption under 10 CFR 72.7. The NRC staff has reviewed the exemption request and determined that storage of the additional fuel assembly configurations are consistent with the safety analyses previously reviewed for the NAC–MPC system, and would have no impact on the design basis and would not be inimical to public health and safety.

Need for the Proposed Action

YAEC completed loading the first NAC–MPC at the Yankee Nuclear Power Station on June 26, 2002. The licensee is proceeding with unloading of fuel assemblies from the spent fuel pool and loading of the assemblies into additional NAC–MPC systems. The spent fuel pool uses a two tier rack system for fuel storage. The licensee has completed removal of all of the fuel from the upper rack, which has enabled a detailed inspection of the fuel stored in the lower rack. The licensee identified some fuel assembly types and configurations that were not addressed in the NAC–MPC storage system Final Safety Analysis Report. This prompted the NAC–MPC designer to submit an amendment application to NRC for the NAC–MPC CoC to incorporate the additional fuel configurations identified in the lower pool rack.

YAEC requested this exemption to store the additional fuel assembly configurations in an effort to continue the removal of spent fuel from the spent fuel pool into the NAC–MPC storage systems using the same experienced and trained individuals involved in loading the previous NAC–MPC systems. The exemption would likely minimize personnel exposure by continuing to use the same individuals and by implementing lessons learned from the previous loading activities.

Environmental Impacts of the Proposed Action

YAEC requested the exemption to store additional fuel assembly configurations to enable transfer of all spent fuel from the spent fuel pool to the NAC–MPC dry spent fuel storage system. The staff performed a safety evaluation of the proposed exemption. NRC staff reviewed the analysis provided in the NAC–MPC amendment application addressing storage of additional specific fuel assembly configurations. The safety evaluation performed by the staff concludes that the NRC has reasonable assurance that storage of the additional fuel configurations has minimal impact on off-site doses, results in a dose savings to workers, and meets the requirements of 10 CFR 72.104, 10 CFR 72.106 and 10 CFR 20.1301, and is therefore acceptable.

Therefore, the environmental impact of storing the additional specific fuel assemblies is no greater than the environmental impact already assessed in the initial rulemaking for the NAC–MPC storage system (65 FR 12444, dated March 9, 2000).

The proposed action will not significantly increase the probability or consequences of the analyzed accidents, no changes are being made to the types of effluents that may be released offsite, and there is no significant increase in occupational or public radiation

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exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action. Therefore, the staff has determined that there is no reduction in the ability of the system to perform its safety function, nor significant environmental impacts, as a result of storing the additional fuel assembly configurations.

Alternative to the Proposed Action

Since there is no significant environment impact associated with the proposed action, alternatives with equal or greater environmental impact are not evaluated. The alternative to the proposed action would be to deny approval of the exemption. Denial of the exemption request will have the same environmental impact, but would result in a potential dose increase to workers involved in cask loading activities.

Agencies and Persons Consulted

On November 4, 2002, Mr. Jim Muckerheide, Nuclear Engineer, Nuclear Safety of the Massachusetts Emergency Management Agency was contacted about the proposed action and had no comments.

Finding of No Significant Impact

The environmental impacts of the proposed action have been reviewed in accordance with the requirements set forth in 10 CFR part 51. Based upon the foregoing EA, the Commission finds that the proposed action of granting the exemption from 10 CFR 72.212(a)(2), 72.212(b)(2)(i)(A), and 10 CFR 72.214 and allowing YAEC to store additional specific fuel assembly configurations in the NAC–MPC storage system will not significantly impact the quality of the human environment. Accordingly, the Commission has determined that an environmental impact statement for the proposed exemption is not warranted.

The request for exemption was docketed under 10 CFR Part 72, Docket 72–31. For further details with respect to this action, see the exemption request dated October 10, 2002. The NRC maintains an Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. These documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/NRC/ADAMS/index.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 7th day of November, 2002.

For the Nuclear Regulatory Commission.

Stephen C. O'Connor, Sr.

Project Manager, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 02–28904 Filed 11–13–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of November 11, 18, 25, December 2, 9, 16, 2002.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of November 11, 2002

Thursday, November 14, 2002

2 p.m.—Discussion of Management Issues (Closed—Ex. 2).

Week of November 18, 2002—Tentative

Thursday, November 21, 2002

10 a.m.—Briefing on Proposed Rulemaking to Add New Section 10 CFR 50.69, "Risk-Informed Categorization and Treatment of Structures, Systems, and Components for Nuclear Power Reactors" (Public Meeting) (Contact: Eileen McKenna, (301) 415–2189, or Timothy Reed, (301) 415–1462).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

2 p.m.—Discussion of Security Issues (Closed—Ex. 1).

Week of November 25, 2002—Tentative

Tuesday, November 26, 2002

9:30 a.m.—Discussion of Security Issues (Closed—Ex. 1).

Week of December 2, 2002—Tentative

Wednesday, December 4, 2002

10 a.m.—Briefing on Decommissioning Bankruptcy Issues (Closed—Ex. 4 & 9).

Week of December 9, 2002—Tentative

There are no meetings scheduled for the Week of December 9, 2002.

Week of December 16, 2002—Tentative

Wednesday, December 18, 2002.

9:30 a.m.—Meeting with Advisory Committee on Nuclear Waste (ACNW) (Public Meeting) (Contact: John Larkins, (301) 415–7360).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: R. Michelle Schroll, (301) 415–1662.

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/what-we-do/policy-making/schedule.html.*

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555, ((301) 415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov.*

Dated: November 7, 2002.

R. Michelle Schroll,

Acting Technical Coordinator, Office of the Secretary.

[FR Doc. 02–29064 Filed 11–12–02; 2:07 pm]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46782; File No. SR–NYSE–2002–53]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change and Amendment No. 1 Thereto on a Pilot Basis by the New York Stock Exchange, Inc. Amending NYSE Rule 431, Margin Requirements for Security Futures

November 7, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 23, 2002, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On November 6, 2002, the NYSE filed an amendment to the proposed rule change.[3] The Commission is publishing

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated November 5, 2002 ("Amendment No. 1"). Amendment No. 1 replaced the original rule filing in its entirety. Amendment No. 1 also proposed that the changes be for a sixty-day pilot, and requested accelerated approval of the proposed rule change.

[4] 17 CFR 270.2a–7.

[5] 15 U.S.C. 80a *et seq.*

this notice to solicit comments on the proposed rule change, as amended, from interested persons and to grant accelerated approval of the proposed rule change, as amended, on a pilot basis for sixty days beginning on the date of this order.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing amendments to NYSE Rule 431 ("Margin Requirements") to establish margin requirements for security futures contracts. The proposed amendments to the Exchange's existing margin rule are intended to be consistent with the customer margin rules already adopted by the SEC and the Commodity Futures Trading Commission ("CFTC"), and those filed by other self-regulatory organizations ("SROs") regarding security futures.

The proposed amendments would: (1) Permit customer margining of security futures contracts, and establish initial and maintenance margin levels for security futures contracts; (2) allow initial and maintenance margin levels for offsetting positions involving security futures contracts to be lower than would be required if margined separately; (3) allow for a Market Maker exclusion for proprietary trades of a Security Futures Dealer ("SFD") and allow for "good faith" margin treatment for the accounts of approved options specialists, market makers, and other specialists; (4) provide definitions relative to security futures for the application of this rule; (5) provide that security futures contracts transacted in a futures account shall not be subject to any provisions of NYSE Rule 431; (6) provide that money market mutual funds, as defined in Rule 2a-7[4] under the Investment Company Act of 1940 (the "ICA"),[5] may be used to satisfy margin requirements for security futures contracts provided that certain conditions are met; (7) require that security futures contracts transacted in a securities account be subject to all other provisions of NYSE Rule 431, in particular NYSE Rule 431(f)(8)(B) ("Day Trading"); and (8) permit members and member organizations for which the Exchange is the Designated Examining Authority ("DEA") to participate in the trading of security futures contracts when trading commences. Below is the text of the proposed rule change. Proposed new language is *italicized;* proposed deletions are in brackets.

* * * * *

Rule 431 ("Margin Requirements")

Rule 431. (a) For purposes of this Rule, the following terms shall have the meanings specified below:

(1) The term "current market value" means the total cost or net proceeds of a security on the day it was purchased or sold or at any other time the preceding business day's closing price as shown by any regularly published reporting or quotation service, *except for security futures contracts (see Section (f)(10) (C)(ii)).* If there is no closing price, a member organization may use a reasonable estimate of the market value of the security as of the close of business on the preceding business day.

Rule 431 (a)(2) through (a)(3) unchanged.

(4) The term "equity" means the customer's ownership interest in the account, computed by adding the current market value of all securities "long" and the amount of any credit balance and subtracting the current market value of all securities "short" and the amount of any debit balance. *Any variation settlement received or paid on a security futures contract shall be considered a credit or debit to the account for purposes of equity.*

(5) The term "exempted security" or "exempted securities" has the meaning as in section 3(a)(12) of the Securities Exchange Act of 1934 *(the "Exchange Act" or "SEA").*

(6) The term "margin" means the amount of equity to be maintained on a security position held or carried in an account.

(7) The term "person" has the meaning as in section 3(a)(9) of the [Securities Exchange Act of 1934] *Exchange Act.*

(8) The term "basket" shall mean a group of stocks that the Exchange or any national securities exchange designates as eligible for execution in a single trade through its trading facilities and that consists of stocks whose inclusion and relative representation in the group are determined by the inclusion and relative representation of their current market prices in a widely-disseminated stock index reflecting the stock market as a whole.

Initial Margin

(b) For the purpose of effecting new securities transactions and commitments, the customer shall be required to deposit margin in cash and/or securities in the account which shall be at least the greater of:

(1) The amount specified in Regulation T of the Board of Governors of the Federal Reserve System *or Rules 400 through 406 of the Exchange Act or Rules 41.42 through 41.48 of The Commodity Exchange Act ("CEA")*, or

(2) The amount specified in section (c) of this Rule, or

(3) Such greater amount as the Exchange may from time to time require for specific securities, or

(4) Equity of at least $2,000 except that cash need not be deposited in excess of the cost of any security purchased (this equity and cost of purchase provision shall not apply to "when distributed" securities in a cash account). The minimum equity requirement for a "pattern day trader" is $25,000 pursuant to paragraph (f)(8)(B)(iv)(1) of this Rule.

Withdrawals of cash or securities may be made from any account which has a debit balance, "short" position or commitments, provided it is in compliance with Regulation T of the Board of Governors of the Federal Reserve System *and Rules 400 through 406 of the Exchange Act and Rules 41.42 through 41.48 of the CEA* and after such withdrawal the equity in the account is at least the greater of $2,000 ($25,000 in the case of "pattern day traders") or an amount sufficient to meet the maintenance margin requirements of this Rule.

Maintenance Margin

(c) The margin which must be maintained in all accounts of customers, except for cash accounts subject to Regulation T unless a transaction in a cash account is subject to other provisions of this rule, shall be as follows:

(1) 25% of the current market value of all securities *except for security futures contracts,* "long" in the account; plus

(2) $2.50 per share or 100% of the current market value, whichever amount is greater, of each stock "short" in the account selling at less than $5.00 per share; plus

(3) $5.00 per share or 30% of the current market value, whichever amount is greater, of each stock "short" in the account selling at $5.00 per share or above; plus

(4) 5% of the principal amount or 30% of the current market value, whichever amount is greater, of each bond "short" in the account.

(5) The minimum maintenance margin levels for security futures contracts, long and short, shall be 20% of the current market value of such contract. (See

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paragraph (f) of this Rule for other provisions pertaining to security futures contracts.)

Rule 431 (d) through (e)(5) unchanged.

(e)(6)(A) Broker/Dealer Accounts.—A member organization may carry the proprietary account of another broker/dealer, which is registered with the Securities and Exchange Commission, upon a margin basis which is satisfactory to both parties, provided the requirements of Regulation T of the Board of Governors of the Federal Reserve System *and Rules 400 through 406 under the Exchange Act and Rules 41.42 through 41.48 under the CEA* are adhered to and the account is not carried in a deficit equity condition. The amount of any deficiency between the equity maintained in the account and the haircut requirements pursuant to SEA Rule 15c3–1 (Net Capital) shall be deducted in computing the Net Capital of the member organization under the Exchange's Capital Requirements. However, when computing Net Capital deductions for transactions in securities covered by paragraphs (e)(2)(F) and (e)(2)(G) of this Rule, the respective requirements of those paragraphs may be used, rather than the haircut requirements of SEA Rule 15c3–1.

Rule 431(e)(6)(B) unchanged.

(e)(7) Nonpurpose Credit—In a nonsecurities credit account, a member organization may extend and maintain nonpurpose credit to or for any customer without collateral or on any collateral whatever, provided:

(A) The account is recorded separately and confined to the transactions and relations specifically authorized by Regulation T of the Board of Governors of the Federal Reserve System;

(B) The account is not used in any way for the purpose of evading or circumventing any regulation of the Exchange or of the Board of Governors of the Federal Reserve System *and Rules 400 through 406 under the Exchange Act and Rules 41.42 through 41.48 under the CEA;* and

(C) The amount of any deficiency between the equity in the account and the margin required by the other provisions of this Rule shall be deducted by computing the Net Capital of the member organization under the Exchange's Capital Requirements.

(The term "nonpurpose credit" means an extension of credit other than "purpose credit," as defined in Section 220.2 of Regulation T of the Board of Governors of the Federal Reserve System.)

Rule 431(e)(8) through (f)(9) unchanged.

(f) (10) *Customer Margin Rules Relating to Security Futures.*

(A) *Applicability. No member or member organization may effect a transaction involving, or carry an account containing, a security futures contract with or for a customer in a margin account, without obtaining proper and adequate margin as set forth in this section.*

(B) Amount of customer margin.

(i) *General Rule. As set forth in sections (b) and (c) of this Rule, the minimum initial and maintenance margin levels for each security futures contract, long and short, shall be twenty (20) percent of the current market value of such contract.*

(ii) *Excluded from the rules' requirements are arrangements between a member or member organization and a customer with respect to the customer's financing of proprietary positions in security futures, based on the member's or member organization's good faith determination that the customer is an "Exempted Person", as defined in Rule 401(a)(9) under the Exchange Act, and Rule 41.43(a)(9) of the CEA, except for the proprietary account of a broker-dealer carried by a member organization pursuant to Section (e)(6)(A) of this Rule. Once a registered broker or dealer, or member of a national securities exchange ceases to qualify as an exempted person, it shall notify the member or member organization of this fact before establishing any new security futures positions. Any new security futures positions will be subject to the provisions of this part.*

(iii) *Permissible Offsets.—Notwithstanding the minimum margin levels specified in paragraph (f)(10)(B)(i) of this Rule, customers with offset positions involving security futures and related positions may have initial or maintenance margin levels (pursuant to the offset table below) that are lower than the levels specified in paragraph (f)(10)(B)(i) of this Rule.*

	Description of offset	Security underlying the security future	Initial margin requirement	Maintenance margin requirement
1	Long security future (or basket of security futures representing each component of a narrow-based securities index) *and* long put option on the same underlying security (or index).	Individual stock or narrow-based security index.	20% of the current market value of the long security future, plus pay for the long put in full.	The lower of: (1) 10% of the aggregate exercise price of the put plus the aggregate put out-of-the-money amount, if any; or (2) 20% of the current market value of the long security future.
2	Short security future (or basket of security futures representing each component of a narrow-based securities index) *and* short put option on the same underlying security (or index).	Individual stock or narrow-based security index.	20% of the current market value of the short security future, plus the aggregate put in-the-money amount, if any. Proceeds from the put sale may be applied.	20% of the current market value of the short security future, plus the aggregate put in-the-money amount, if any.
3	Long security future *and* Short position in the same security (or securities basket) underlying the security future.	Individual stock or narrow-based security index.	The initial margin required under Regulation T for the short stock or stocks.	5% of the current market value as defined in Regulation T of the stock or stocks underlying the security future.
4	Long security future (or basket of security futures representing each component of a narrow-based securities index) *and* short call option on the same underlying security (or index).	Individual stock or narrow-based security index.	20% of the current market value of the long security future, plus the aggregate call in-the-money amount, if any. Proceeds from the call sale may be applied.	20% of the current market value of the long security future, plus the aggregate call in-the-money amount, if any.

	Description of offset	Security underlying the security future	Initial margin requirement	Maintenance margin requirement
5	Long a basket of narrow-based security futures that together tracks a broad based index *and* short a broad-based security index call option contract on the same index.	Narrow-based security index.	20% of the current market value of the long basket of narrow-based security futures, plus the aggregate call in-the-money amount, if any. Proceeds from the call sale may be applied.	20% of the current market value of the long basket of narrow-based security futures, plus the aggregate call in-the-money amount, if any.
6	Short a basket of narrow-based security futures that together tracks a broad-based security index *and* short a broad-based security index put option contract on the same index.	Narrow-based security index.	20% of the current market value of the short basket of narrow-based security futures, plus the aggregate put in-the-money amount, if any. Proceeds from the put sale may be applied.	20% of the current market value of the short basket of narrow-based security futures, plus the aggregate put in-the-money amount, if any.
7	Long a basket of narrow-based security futures that together tracks a broad-based security index *and* long a broad-based security index put option contract on the same index.	Narrow-based security index.	20% of the current market value of the long basket of narrow-based security futures, plus pay for the long put in full.	The lower of: (1) 10% of the aggregate exercise price of the put, plus the aggregate put out-of-the-money amount, if any; or (2) 20% of the current market value of the long basket of security futures.
8	Short a basket of narrow-based security futures that together tracks a broad-based security index *and* long a broad-based security index call option contract on the same index.	Narrow-based security index.	20% of the current market value of the short basket of narrow-based security futures, plus pay for the long call in full.	The lower of: (1) 10% of the aggregate exercise price of the call, plus the aggregate call out-of-the-money amount, if any; or (2) 20% of the current market value of the short basket of security futures.
9	Long security future *and* short security future on the same underlying security (or index).	Individual stock or narrow-based security index.	The greater of: (1) 5% of the current market value of the long security future; or (2) 5% of the current market value of the short security future.	The greater of: 5% of the current market value of the long security future; or (2) 5% of the current market value of the short security future.
10	Long security future, long put option *and* short call option. The long security future, long put and short call must be on the same underlying security and the put and call must have the same exercise price. (Conversion).	Individual stock or narrow-based security index.	20% of the current market value of the long security future, plus the aggregate call in-the-money amount, if any, plus pay for the put in full. Proceeds from the call sale may be applied.	10% of the aggregate exercise price, plus the aggregate call in-the-money amount, if any.
11	Long security future, long put option *and* short call option. The long security future, long put and short call must be on the same underlying security and the put exercise price must be below the call exercise price. (Collar).	Individual stock or narrow-based security index.	20% of the current market value of the long security future, plus the aggregate call in-the-money amount, if any, plus pay for the put in full. Proceeds from call sale may be applied.	The lower of: (1) 10% of the aggregate exercise price of the put plus the aggregate put out-of-the-money amount, if any; or (2) 20% of the aggregate exercise price of the call, plus the aggregate call in-the-money amount, if any.
12	Short security future *and* long position in the same security (or securities basket) underlying the security future.	Individual stock or narrow-based security index.	The initial margin required under Regulation T for the long security or securities.	5% of the current market value, as defined in Regulation T, of the long stock or stocks.
13	Short security future *and* long position in a security immediately convertible into the same security underlying the security future, without restriction, including the payment of money.	Individual stock or narrow-based security index.	The initial margin required under Regulation T for the long security or securities.	10% of the current market value, as defined in Regulation T, of the long stock or stocks.
14	Short security future (*or* basket of security futures representing each component of a narrow-based securities index) *and* Long call option or warrant on the same underlying security (or index).	Individual stock or narrow-based security index.	20% of the current market value of the short security future, plus pay for the call in full.	The lower of: (1) 10% of the aggregate exercise price of the call, plus the aggregate call out-of-the-money amount, if any; or (2) 20% of the current market value of the short security future.
15	Short security future, short put option and long call option. The short security future, short put and long call must be on the same underlying security and the put and call must have the same exercise price. (Reverse Conversion).	Individual stock or narrow-based security index.	20% of the current market value of the short security future, plus the aggregate put in-the-money amount, if any, plus pay for the call in full. Proceeds from put sale may be applied.	10% of the aggregate exercise price, plus the aggregate put in-the-money amount, if any.
16	Long (short) a security future *and* short (long) an identical[6] security future traded on a different market.	Individual stock and narrow-based security index.	The greater of: (1) 3% of the current market value of the long security future(s); or (2) 3% of the current market value of the short security future(s).	The greater of: (1) 3% of the current market value of the long security future(s); or (2) 3% of the current market value of the short security future(s).

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	Description of offset	Security underlying the security future	Initial margin requirement	Maintenance margin requirement
17	Long (short) a basket of security futures that together tracks a narrow-based index and short (long) a narrow based index future.	Individual stock and narrow-based security index.	The greater of: (1) 5% of the current market value of the long security future(s); or (2) 5% of the current market value of the short security future(s).	The greater of: (1) 5% of the current market value of the long security future(s); or (2) 5% of the current market value of the short security future(s).

(C) *Definitions. For the purposes of section (f)(10) of this Rule and the offset table noted above, with respect to the term "security futures contracts," the following terms shall have the meanings specified below:*

(i) *The term "security futures contract" means a "security future" as defined in Section 3(a)(55) of the Exchange Act.*

(ii) *The term "current market value" has the same meaning as it is as defined in Rule 401(4) under the Exchange Act and Rule 41.43(a)(4) of the CEA.*

(iii) *The term "underlying security" means, in the case of physically settled security futures contracts, the security that is delivered upon expiration of the contract, and, in the case of cash settled security futures contracts, the security or securities index the price or level of which determines the final settlement price for the security futures contract upon its expiration.*

(iv) *The term "underlying basket" means, in the case of a securities index, a group of security futures contracts where the underlying securities as defined in paragraph (iii) above include each of the component securities of the applicable index and which meets the following conditions: (1) The quantity of each underlying security is proportional to its representation in the index, (2) the total market value of the security is equal to the aggregate value of the applicable index, (3) the basket cannot be used to offset more than the number of contracts or warrants represented by its total market value, and (4) the security futures contracts shall be unavailable to support any other contract or warrant transaction in the account.*

(v) *The term "underlying stock basket" means a group of securities which includes each of the component securities of the applicable index and which meets the following conditions: (1) The quantity of each stock in the basket is proportional to its representation in the index, (2) the total market value of the basket is equal to the underlying index value of the index options or warrants to be covered (3) the securities in the basket cannot be used to cover more than the number of index options or warrants represented by that value, and (4) the securities in the basket shall be unavailable to support any other option or warrant transaction in the account.*

(vi) *The term "variation settlement" has the same meaning as it is defined in Rule 401(a) of the Exchange Act and Rule 41.43(a)(32) of the CEA.*

(D) Security Futures Dealers' Accounts. Notwithstanding the other provisions of this section (f)(10), a member organization may carry and clear the market maker permitted offset positions (as defined below) of one or more security future dealers in an account which is limited to bonafide market maker transactions, upon a "Good Faith" margin basis which is satisfactory to the concerned parties, provided the "Good Faith" margin requirement is not less than the Net Capital haircut deduction of the member organization carrying the transaction pursuant to Rule 325. In lieu of collecting the "Good Faith" margin requirement, a carrying member organization may elect to deduct in computing its Net Capital the amount of any deficiency between the equity maintained in the account and the "Good Faith" margin required.

For the purpose of this paragraph (f)(10)(D), the term "security futures dealer" means a security futures dealer as defined in Rule 400 (c)(2)(v) of the Exchange Act and Rule 41.42(c)(2)(v) of the CEA.

For purposes of this paragraph (f)(10)(D), a permitted offset position means in the case of a security futures contract in which a security futures dealer makes a market, a position in the underlying asset or other related assets, or positions in options overlying the asset or other related assets. Accordingly, a security futures dealer may establish a long or short position in the assets underlying the security futures contracts in which the security futures dealer makes a market, and may purchase or write options overlying those assets, if the account holds the following permitted offset positions:

(i) A long position in the security futures contract or underlying asset offset by a short option position which is "in or at the money";

(ii) A short position in the security futures contract or underlying asset offset by a long option position which is "in or at the money";

(ii) A position in the underlying asset resulting from the assignment of a market-maker short option position or making delivery in respect of a short security futures contract;

(iv) A position in the underlying asset resulting from the assignment of a market-maker long option position or taking delivery in respect of a long security futures contract;

(v) A net long position in a security futures contract in which a security futures dealer makes a market or the underlying asset;

(vi) A net short position in a security future contract in which a security futures dealer makes a market or the underlying asset; or

(vii) An offset position as defined in SEC Rule 15c3–1, including its appendices, or any applicable SEC staff interpretation or no-action position.

(E) Approved Options Specialists' or Market Makers' Accounts. Notwithstanding the other provisions of (f)(10) and (f)(2)(j), a member organization may carry and clear the market maker permitted offset positions (as defined below) of one or more approved options specialists or market makers in an account which is limited to bonafide approved options specialist or market maker transactions, upon a "Good Faith" margin basis which is satisfactory to the concerned parties, provided the "Good Faith" margin requirement is not less than the Net Capital haircut deduction of the member organization carrying the transaction pursuant to Rule 325. In lieu of collecting the "Good Faith" margin requirement, a carrying member organization may elect to deduct in computing its Net Capital the amount of any deficiency between the equity maintained in the account and the "Good Faith" margin required. For the purpose of this paragraph (f)(10)(E), the term "approved options specialist or market maker" means a specialist, market maker, or registered trader in options as referenced in paragraph (f)(2)(j) of this Rule, who is deemed a specialist for all purposes under the Exchange Act and who is registered pursuant to the rules of a national securities exchange.

For purposes of this paragraph (f)(10)(E), a permitted offset position means a position in the underlying asset or other related assets. Accordingly, a specialist or market maker may establish a long or short position in the assets underlying the options in which the specialist or market maker makes a market, or a security futures contract thereon, if the account holds the following permitted offset positions:

(i) A long position in the underlying instrument or security futures contract offset by a short option position which is "in or at the money";

(ii) A short position in the underlying instrument or security futures contracts offset by a long option position which is "in or at the money";

(iii) A stock position resulting from the assignment of a market maker short option position or delivery in respect of a short security futures contract;

(iv) A stock position resulting from the exercise of a market maker long option position or taking delivery in respect of a long security futures contract;

(v) A net long position in a security (other than an option) in which a market maker makes a market;

(vi) A net short position in a security (other than an option) in which the market maker makes a market; or

(vii) An offset position as defined in SEC Rule 15c3–1, including the appendices, or any applicable SEC staff interpretation or no-action position.

For purposes of paragraphs (f)(10)(D) and (E), the term "in or at the money" means the current market price of the underlying security is not more than the two standard exercise intervals below (with respect to a call option) or above (with respect to a put option) the exercise price of the option; the term "in the money" means the current market price of the underlying asset or index is not below (with respect to a call option) or above (with respect to a put option) the exercise price of the option; and the term "overlying option" means a put option purchased or a call option written against a long position in an underlying asset; or a call option purchased or a put option written against a short position in an underlying asset.

Securities, including options and security futures contracts, in such accounts shall be valued conservatively in the light of current market prices and the amount which might be realized upon liquidation. Substantial additional margin must be required or excess Net Capital maintained in all cases where the securities carried: (i) Are subject to unusually rapid or violent changes in value including volatility in the expiration months of options or security futures products, (ii) do not have an active market, or (iii) in one or more or all accounts, including proprietary accounts combined, are such that they cannot be liquidated promptly or represent undue concentration of risk in view of the carrying member or member organization's Net Capital and its overall exposure to material loss.

(F) Approved Specialists' Accounts—others. Notwithstanding the other provisions of (f)(10) and (f)(2)(j), a member organization may carry the account of an "approved specialist," which account is limited to bonafide specialist transactions including hedge transactions with security futures contracts upon a margin basis which is satisfactory to both parties. The amount of any deficiency between the equity in the account and haircut requirements pursuant to SEA Rule 15c3–1 (Net Capital) shall be deducted in computing the Net Capital of the member organization under the Exchange's Capital Requirements.

For purposes of this paragraph F (10)(F) the term "approved specialist" means a specialist who is deemed a specialist for all purposes under the Exchange Act and who is registered pursuant to the rules of a national securities exchange.

.70 Money market mutual funds, as defined under Rule 2a-7 of the Investment Company Act of 1940, can be used for satisfying margin requirements under this subsection (f)(10), provided that the requirements of Rule 404(b) of the Exchange Act and Rule 46(b)(2) under the CEA are satisfied.

.80 Day-trading of security futures is subject to the minimum requirements of this Rule. If deemed a pattern day-trader, the customer must maintain equity of $25,000. The 20% requirement, for security futures contracts, should be calculated based on the greater of the initial or closing transaction and any amount exceeding NYSE excess must be collected. The creation of a customer call subjects the account to all the restrictions contained in Rule 431(f)(8)(B).

.90 The use of the "time and tick" method is based on the member's or member organization's ability to substantiate the validity of the system used. Lacking this ability dictates the use of the aggregate method.

.100 Security futures contracts transacted or held in a futures account shall not be subject to any provision of this Rule.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below and is set forth in Sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Background

The CFTC and SEC have adopted customer margin requirements for the trading of futures on narrow-based indices and single stocks (collectively referred to as "security futures contracts" or "SFCs") ("SEC/CFTC Margin Regulations")[7] pursuant to authority delegated to them by the Federal Reserve Board ("FRB") under Section 7(c)(2)(B) of Act.[8] As noted in the adopting release,[9] Section 7(c)(2) of the Act provides that the customer margin requirements for SFCs must satisfy four requirements: (1) They must preserve the financial integrity of markets trading security futures contracts; (2) they must prevent systemic risk; (3) they must (a) be consistent with the margin requirements for comparable options traded on an exchange registered pursuant to Section 6(a) of the Act,[10] and (b) provide for initial and maintenance margin that are not lower than the lowest level of margin, exclusive of premium, required for comparable exchange traded options; and (4) they must be and remain consistent with the margin requirements established by the FRB under Regulation T.[11] The regulations on customer margin for security futures became effective on September 13, 2002. The Exchange believes that the proposed amendments discussed below

[6] Two security futures contracts will be considered "identical" for this purpose if they are issued by the same clearing agency or cleared and contracts guaranteed by the same derivatives clearing organization, have identical specifications, and would offset each other at the clearing level.

[7] 17 CFR 240.400 through 406; 17 CFR 41.41 through 41.48.

[8] 15 U.S.C. 78g(c)(2)(B).

[9] See Securities Exchange Act Release No. 46292 (August 1, 2002), 67 FR 53146 (August 14, 2002).

[10] 15 U.S.C. 78f.

[11] 12 CFR 220.

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conform NYSE margin rules to these new requirements.

Proposed Amendments

NYSE Rule 431 prescribes specific margin requirements for members and member organizations of the Exchange, which must be maintained in all accounts of their customers, based on the type of securities products held in such accounts.

The Exchange proposes to amend NYSE Rule 431(b) and (c) to provide that the amount of initial and maintenance margin required for long and short SFCs held in a securities account must be 20% of the current market value of such SFC. The Exchange believes that this amendment would essentially make margin requirements for SFCs consistent with the margin requirements for comparable exchange-traded options contracts, which are premium plus 20% of the underlying securities.

In addition, the Exchange proposes to amend NYSE Rule 431(e)(6)(A) ("Broker/Dealer Accounts") to permit introducing broker-dealers trading SFCs to deduct from their proprietary accounts any deficiency between the equity in the account and the haircut requirements pursuant to Rule 15c3–1 of the Exchange Act ("Net Capital Rule")[12] in computing the net capital of the member or member organization, in lieu of collecting margin.

The Exchange is proposing a new provision, NYSE Rule 431(f)(10) ("Customer Margin Rules Relating to Security Futures") to provide that SFCs transacted in a securities account will be subject to all other provisions of NYSE Rule 431, including NYSE Rule 431(f)(8)(B)("Day Trading"). Excluded from the Exchange's margin requirements are arrangements between a member or member organization and a borrower, whereby the borrower is defined as an "Exempted Person," under Rule 401(a)(9) of the Act,[13] and Rule 41.43(a)(9)[14] of the Commodity Exchange Act. Further, SFCs transacted in a futures account would not be subject to NYSE Rule 431.

NYSE Rule 431(f)(10)(B)(4) ("Permissible Offsets") is also a new provision that permits margin requirements to be lower than the 20% general requirement, and recognizes the hedged nature of certain offsetting positions involving SFCs and related positions. Margin levels for offsetting positions involving SFCs and related positions would thus be lower than would be required if those positions were margined separately. Further, the Exchange believes that the proposed amendment makes the Exchange's rule consistent with the table of offsets included in the recently adopted SEC/CFTC margin regulations noted above.

Proposed NYSE Rule 431(f)(10)(C) is a new provision that would provide certain definitions applicable specifically to SFCs, including, among other things, the definitions of "security futures contract," "current market value," and "underlying security."

Proposed NYSE Rule 431(f)(10)(D) ("Security Futures Dealers" Accounts"), NYSE Rule 431(f)(10)(E) ("Approved Options Specialists" or Market Makers' Accounts") and NYSE Rule 431(f)(10)(F) ("Approved Specialists" Accounts-others") are new rule provisions. As proposed, the new provisions would permit "good faith" margin treatment for specified hedged offset positions carried in the accounts noted above. However, unlike the amendments proposed by other SROs on SFCs, [15] the Exchange believes that its proposal will permit member organizations to accord offset treatment in accounts carried for such specialists, market makers and security futures dealers only when their activity is limited to bona fide specialist or market making transactions. According to the Exchange, the limitations imposed are consistent with its belief that market makers bear the primary responsibility and obligation to maintain fair and orderly markets, and provide liquidity to the marketplace. Were a revenue or other test substituted for the affirmative obligation standard proposed, the Exchange believes that entities other than qualified market makers would be permitted to act as market makers. The Exchange believes that this was not the intent of the Commission or CFTC when adopting margin regulations for security futures.

Proposed .70 of NYSE Rule 431(f)(10) is a new provision that will permit money market mutual funds as defined in Rule 2a–7 under the ICA to be used for satisfying margin requirements for security futures contracts, provided that the requirements of Rule 404(b) under the Act,[16] and Rule 41.46(b)(2) under the CEA [17] are satisfied. Presently, money market mutual funds may be used as collateral to satisfy margin requirements under Regulation T in a securities margin account. The proposed amendments to NYSE Rule 431 permit the use of such funds as collateral for SFCs as is required by the new SEC/CFTC Margin Regulations described above.

Except as otherwise intended, the Exchange believes that these proposed amendments are consistent with other SRO rule amendments recently filed with the SEC for approval.

2. Statutory Basis

The statutory basis for the proposed rule change is section 6(b)(5) of the Act,[18] which requires, among other things, that the rules of the Exchange are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to perfect the mechanism of a free and open market and national market system, and in general to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be

[12] 17 CFR 240.15c3–1.
[13] 17 CFR 240.401(a)(9).
[14] 17 CFR 41.43(a)(9).
[15] *See e.g.*, Securities Exchange Act Release No. 46555 (September 26, 2002), 67 FR 61707 (October 1, 2002) (SR–OC–2002–01).
[16] 17 CFR 240.404(b).
[17] 17 CFR 41.46(b)(2).
[18] 15 U.S.C. 78f(b)(5).

available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to File No. SR–NYSE–2002–53 and should be submitted by December 5, 2002.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The NYSE has asked the Commission to approve the proposed rule change and Amendment No. 1 thereto prior to the thirtieth day after the date of publication of notice of the filing to accommodate the timetable for the trading of security futures.

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[19] In particular, the Commission believes that the proposed rule change is consistent with the requirements of section 6(b)(5) of the Act,[20] which requires, among other things, to promote just and equitable principles of trade and, in general, to protect investors and the public interest.[21] In addition, the Commission believes that the proposed rule change is consistent with section 7(c)(2)(B) of the Act,[22] which provides, among other things, that the margin requirements for security futures must preserve the financial integrity of markets trading security futures, prevent systemic risk, be consistent with the margin requirements for comparable exchange-traded options, and provides that the margin levels for security futures may be no lower than the lowest level of margin, exclusive of premium, required for any comparable exchange-traded option.

The Commission believes that the rule change is generally consistent with the customer margin rules for security futures adopted by the Commission and the CFTC. In particular, the Commission notes that, consistent with Rule 403 under the Act, NYSE's proposed rule provides for a minimum margin level of 20% of current market value for all positions in security futures carried in a securities account. The Commission believes that 20% is the minimum margin level necessary to satisfy the requirements of section 7(c)(2)(B) of the Act. Rule 403 under the Act [23] also provides that a national securities exchange may set margin levels lower than 20% of the current market value of the security future for an offsetting position involving security futures and related positions, provided that an exchange's margin levels for offsetting positions meet the criteria set forth in section 7(c)(2)(B) of the Act. The offsets proposed by NYSE are consistent with the strategy-based offsets permitted for comparable offset positions involving exchange-traded options and therefore consistent with section 7(c)(2)(B) of the Act.

The Commission also believes that the treatment proposed by NYSE for security futures dealers under Rule 431 is consistent with the Act, and Rule 400(c)(2)(v) thereunder.[24] Specifically, the rule would permit NYSE member organizations to accord "good faith" margin treatment to specified offsetting positions involving security futures, carried in a securities account for a security futures dealer, consistent with the customer margin rules for security futures adopted by the Commission and the CFTC.

Finally, the Commission believes it is consistent with the Act for the NYSE to exclude from its margin requirements positions in SFCs carried in a futures account. The Commission believes that by choosing to exclude such positions from the scope of Rule 431, the NYSE's proposal will make compliance by members with the regulatory requirements of several SROs easier.

The Commission finds good cause for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission believes that accelerated approval of the proposed rule change should enable NYSE members to trade security futures in securities accounts from the outset of security futures trading.[25] In addition, the Commission believes that granting accelerated approval to the proposed rule change and Amendment No. 1 thereto should clarify NYSE members' obligations under NYSE Rule 431 with respect to their trading in security futures. The Commission notes that the NYSE has filed the proposed rule change as a temporary pilot to give members of the public an opportunity to comment on the substance of the proposed rule change before it requests permanent approval.

Accordingly, the Commission finds good cause, consistent with section 19(b)(2) of the Act,[26] to approve the proposed rule change, as amended, prior to the thirtieth day after publication of the notice of filing on a pilot basis for sixty days beginning on the date of this order.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[27] that the proposed rule change, as amended (File No. SR–NYSE–2002–53), be, approved until January 6, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[28]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–28897 Filed 11–13–02; 8:45 am]

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[19] 15 U.S.C. 78s(b)(2).
[20] 15 U.S.C. 78f(b)(5).
[21] In approving the proposed rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).
[22] 15 U.S.C. 78g(c)(2)(B).
[23] 17 CFR 240.403(b)(2).
[24] 17 CFR 200.400(c)(2)(v).
[25] The Commission understands that trading in security futures is scheduled to begin on November 8, 2002.
[26] 15 U.S.C. 78f(b)(5); 15 U.S.C. 78s(b)(2).
[27] 15 U.S.C. 78s(b)(2).
[28] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46787; File No. SR–OC–2002–01]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendment Nos. 1 and 2 Thereto, and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 3 Thereto, by OneChicago, LLC Relating to Customer Margin Requirements for Security Futures

November 7, 2002.

On August 30, 2002, OneChicago, LLC ("OneChicago" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change relating to customer margin requirements for security futures. On September 25, 2002, OneChicago submitted Amendment No. 1 to the proposed rule change.[3] On September 25, 2002, OneChicago submitted Amendment No. 2 to the proposed rule change.[4] The proposed rule change was

[1] 15 U.S.C. 78s(b)(1).
[2] 17 CFR 240.19b–4.
[3] *See* letter from Kieran P. Hennigan, Sullivan & Cromwell, to Assistant Director for Security Futures Products, Division of Market Regulation ("Division"), Commission, dated September 24, 2002, ("Amendment No. 1").
[4] *See* letter from Frank Ochsenfeld, Sullivan & Cromwell, attention to T.R. Lazo, Senior Special

Continued

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published for comment in the **Federal Register** on October 1, 2002.[5] The Commission received nine comment letters from ten commenters on the proposed rule change.[6] On November 7, 2002, OneChicago submitted Amendment No. 3 to the proposed rule change.[7] In addition, OneChicago submitted a letter in response to the commenters.[8] This order approves the proposed rule change and Amendment Nos. 1 and 2 thereto, accelerates approval of Amendment No. 3, and solicits comments from interested persons on Amendment No. 3.

I. Description of the Proposed Rule Change

Introduction

On August 1, 2002, the Commodity Futures Trading Commission ("CFTC") and SEC (collectively, the "Commissions") jointly adopted customer margin requirements for security futures.[9] Under the Commissions' "account specific" approach, the Commissions' margin rules apply certain core requirements to all security futures, and direct that the more specific requirements depend on the type of account in which the security futures are held (*i.e.*, a futures account or securities account).

Proposal

The proposed rule change sets forth margin requirements for security futures traded on OneChicago that are held in futures accounts.[10] Specifically, the proposed rule change sets the minimum initial and maintenance customer margin rates for such security futures and provides for lower margin levels for permitted strategy-based offset positions. The proposed rules exclude certain financial relations to which the Commissions' margin rules do not apply. The proposed rule change also establishes standards under which members may qualify as Security Futures Dealers and therefore be excluded from OneChicago's margin rules.

Margin Levels

The Commissions' margin rules require that customers deposit in their accounts minimum margin of 20 percent of the current market value of security futures.[11] In addition, the Commissions' rules permit national securities exchanges to set margin levels below 20 percent of the current market value of security futures for certain offsetting positions in security futures and other securities or futures. The proposed rule change establishes a minimum margin rate of 20 percent for both long and short positions in security futures, except with respect to specified, permitted offsetting positions. Under the proposed rule change, OneChicago permits reduced margin levels for eighteen specific offsetting positions.[12]

Security Futures Dealers

As noted above, the proposed rule change provides an exclusion from OneChicago's margin rules for market makers. Under the proposed rule change, OneChicago's market maker exclusion provides that in order to qualify for the exclusion from the margin rules, a person must (1) be a OneChicago member that is registered with the Exchange as a dealer in security futures; (2) be registered as a floor trader or a floor broker with the CFTC under Section 4f(a)(1) of the CEA or as a dealer with the Commission under Section 15(b) of the Act; (3) maintain records sufficient to prove compliance with the requirements of OneChicago Rule 515(n) and Rule 41.42(c)(2)(v) under the CEA and Rule 400(c)(2)(v) under the Act, as applicable, "including without limitation trading account statements and other financial records sufficient to detail activity;"[13] and (4) hold itself out as being willing to buy and sell security futures for its own account on a regular or continuous basis. In addition, the market maker exclusion provides that any market maker that fails to comply with the Rules of the Exchange or the margin rules adopted by the Commission and the CFTC shall be subject to disciplinary action in accordance with Chapter 7 of OneChicago's rules, and that appropriate sanctions in the case of any such failure shall include, without limitation, a revocation of such market maker's registration as a dealer in security futures.

As originally submitted, the market maker exclusion further provided that a market maker would be considered to be holding itself out as being willing to buy and sell security futures for its own account on a regular or continuous basis if either (1) at least 75% of its gross revenue on an annual basis is derived from business activities or occupations from trading listed financial derivatives and the instruments underlying those derivatives, including security futures, stock index futures and options, stock and index options, stocks, foreign currency futures and options, foreign currencies, interest rate futures and options, fixed income instruments and commodity futures and options; or (2) except for unusual circumstances, at least fifty percent (50%) of its trading activity on OneChicago in any calendar quarter is in classes of security futures

Counsel, Division, Commission, dated September 24, 2002, ("Amendment No. 2").

[5] Securities Exchange Act Release No. 46555 (September 26, 2002), 67 FR 61707.

[6] *See* letters to Jonathan Katz, Secretary, Commission, from: Philip D. DeFeo, Chairman and Chief Executive Officer, Pacific Stock Exchange, dated October 15, 2002 ("PCX Letter"); Marc Menchel, Senior Vice President and General Counsel, National Association of Securities Dealers, dated October 23, 2002 ("NASD Letter"); Richard Ketchum, Deputy Vice Chairman and President, The Nasdaq Stock Market, Inc., dated October 23, 2002 ("Nasdaq Letter"); Michael J. Simon, Senior Vice President and Secretary, International Securities Exchange, Inc., dated October 22, 2002 ("ISE Letter"); Michael J. Ryan, Jr., Executive Vice President and General Counsel, American Stock Exchange, Inc., dated October 22, 2002 ("Amex Letter"); John P. Davidson, Managing Director, Morgan Stanley & Co. Inc., and Mitchell J. Lieberman, Managing Director, Goldman, Sachs & Co., dated October 23, 2002 ("Morgan/Goldman Letter"); Kathleen M. Hamm, Senior Vice President, Nasdaq Liffe Markets, LLC, dated October 22, 2002 ("NQLX Letter"); Darla C. Stuckey, Corporate Secretary, New York Stock Exchange, Inc., dated October 24, 2002 ("NYSE Letter"); and Michael R. Schaefer, Managing Director, Salomon Smith Barney, dated October 25, 2002 ("SSB Letter").

[7] *See* letter from Frank Ochsenfeld, Sullivan & Cromwell, attention to T.R. Lazo, Senior Special Counsel, Division, Commission, dated November 7, 2002, ("Amendment No. 3"). In Amendment No. 3, OneChicago modified certain aspects of its exclusion for market making activity.

[8] Letter from C. Robert Paul, General Counsel, OneChicago, to Jonathan G. Katz, Secretary, Commission, dated November 7, 2002 ("OneChicago Letter").

[9] Securities Exchange Act Release No. 46292, 67 FR 53146 (August 14, 2002).

[10] The proposed rule change limits the scope of OneChicago's customer margin rules to positions in futures accounts, except with respect to the exclusion for market making activity (which is discussed below) where the proposed rule change provides that the rules apply to positions in both futures accounts and securities accounts. However, the Commission notes that OneChicago's market maker exclusion will apply to a member's positions in securities accounts only to the extent recognized by the rules of the member's designated examining authority.

[11] Rule 403(b)(1) under the Act and Rule 41.45(b)(1) under the Commodity Exchange Act ("CEA") 17 CFR 240.403(b)(1) and 17 CFR 41.45(b)(1).

[12] In its release adopting the customer margin rules for security futures, the Commissions' published a table of eighteen offsetting positions and corresponding margin levels that are consistent with comparable offsets permitted for positions involving exchange-traded options. The proposed rule change includes all of the offsetting positions that the Commissions included in their table. However, OneChicago's customer margin rules will only apply to positions held in futures accounts. Because any offset that includes a security (other than a security future) must be carried in a securities account, OneChicago's rule applies only to those offsetting positions that may be carried in a futures account (*i.e.*, offsets that do not include securities other than security futures).

[13] OneChicago added the quoted language to this requirement of the market maker exclusion in Amendment No. 3.

products to which it is assigned under a market making program adopted by OneChicago pursuant to Rule 514.

In Amendment No. 3, OneChicago amended this aspect of its proposed rule change. As amended, the market maker exclusion now provides three alternative ways for a member to satisfy the requirement that a security futures dealer hold itself out as being willing to buy and sell security futures for its own account on a regular or continuous basis. Under the first alternative, the market maker must (1) provide continuous two-sided quotations throughout the trading day for all delivery months of security futures representing a meaningful proportion of the total trading volume on the Exchange,[14] subject to relaxation during unusual market conditions as determined by OneChicago (such as a fast market in either a security future an underlying security) at which times the market maker must use its best efforts to quote continuously and competitively; and (2) when providing quotations, quote with a maximum bid/ask spread of no more than the greater of $0.20 or 150% of the bid/ask spread in the primary market for the security underlying each security future.

Under the second alternative, the market maker must (1) respond to at least 75% of the requests for quotation for all delivery months of security futures representing a meaningful proportion of the total trading volume on the Exchange[15], subject to relaxation during unusual market conditions as determined by the OneChicago (such as a fast market in either a security future or an underlying security) at which times such Market Maker must use its best efforts to quote competitively; and (2) when responding to requests for quotation, quote within five seconds with a maximum bid/ask spread of no more than the greater of $0.20 or 150% of the bid/ask spread in the primary market for the security underlying each security future.

Under the third alternative, the market maker is assigned to a group of security futures that is either unlimited in nature ("Unlimited Assignment") or is assigned to no more than 20% of the security futures listed on the Exchange ("Limited Assignment"). In addition, this alternative provides that: (a) At least 75% of the market maker's total trading activity in OneChicago products is in its assigned security futures, measured on a quarterly basis; (b) during at least 50% of the trading day the market maker has bids or offers in the market that are at or near the best market, except in unusual market conditions (such as a fast market in either a security future or an underlying security), with respect to at least 25% (in the case of an Unlimited Assignment) or at least one (in the case of a Limited Assignment) of its assigned security futures; and (c) the first two requirements are satisfied on at least 90% (in the case of an Unlimited Assignment) or 80% (in the case of a Limited Assignment) of the trading days in each calendar quarter.

II. Summary of Comments

As noted above, the Commission received nine comment letters from ten commenters on the proposed rule change,[16] and OneChicago submitted a letter in response to the comments.[17]

Market Maker Exclusion

All of the comments expressed concern with OneChicago's proposed market maker exclusion. In particular, the commenters objected to the provision that would allow OneChicago members to qualify for the market maker exclusion based on the amount of revenue they derive from trading listed financial derivatives and underlying instruments. Six comments expressed the view that this test was inconsistent with the guidelines provided by the Commission and the CFTC,[18] and six comments maintained that the proposed revenue requirement was not consistent with the margin requirements for comparable exchange-traded options and therefore did not satisfy the requirements of section 7(c)(2) of the Act.[19] Commenters argued that the revenue test would allow OneChicago members to qualify for the market maker exclusion without actually providing liquidity to the market for security futures.[20] Other commenters contended that the revenue test would increase systemic risk in the marketplace for security futures, and therefore did not satisfy section 7(c)(2) of the Act, by allowing an excessively high number of market professionals to trade security futures with reduced margin requirements.[21]

Three comments also expressed concern with the provision that would allow a OneChicago member to qualify for the market maker exclusion if at least 50% of its trading activity per quarter was in contracts to which it is assigned pursuant to a market making program adopted by OneChicago.[22] Those comments generally expressed the belief that the requirement was too vague and asked the Commission not to approve it until OneChicago had explained the nature of its market making program more fully.

In response to the commenters' concerns, OneChicago modified the tests that a member must satisfy to qualify for the market maker exclusion by eliminating the test based on revenue and revising the test based on trading activity. OneChicago stated that it believes that its revised test is consistent with the rules of the options exchanges. In addition, OneChicago noted that it requested approval of the revised tests on a six-month pilot basis and stated that it intends to use this pilot program to monitor carefully the operation and affect of the revised tests. OneChicago, in response to commenters' concerns. The Commission believes that Amendment No. 3 addresses the commenters' concerns by modifying the requirements of the market maker exclusion, particularly by eliminating the revenue test, and notes that any changes or additions to OneChicago's current market making program would be filed with the Commission for approval under section 19(b)(2) of the Act.

In addition, two comments expressed the view that OneChicago's proposed market maker exclusion would encourage imprudent risk taking, speculation, and leverage because there would be no net capital requirements imposed either on a floor broker that qualifies for the market maker exclusion or on its carrying broker-dealer or FCM.[23] The commenters' concern is that the regulatory capital requirements for certain security futures market participants is inadequate. Moreover, those commenters expressed concern that in the event of a bankruptcy of a carrying firm, a bankruptcy receiver or

[14] Beginning on the 181st calendar day after the commencement of trading on the Exchange, a "meaningful proportion of the total trading volume on the Exchange from time to time" shall mean a minimum of 20% of such trading volume.

[15] Beginning on the 181st calendar day after the commencement of trading on the Exchange, a "meaningful proportion of the total trading volume on the Exchange from time to time" shall mean a minimum of 20% of such trading volume.

[16] PCX Letter, NASD Letter, Nasdaq Letter, ISE Letter, Amex Letter, Morgan/Goldman Letter, NQLX Letter, NYSE Letter, and SSB Letter. *See supra* note 6. The SSB Letter stated that it agreed generally with the comments expressed in the Morgan/Goldman Letter.

[17] OneChicago Letter, *supra* note 8.

[18] NASD Letter, Morgan/Goldman Letter, NQLX Letter, NYSE Letter, Nasdaq Letter, SSB Letter, and Amex Letter.

[19] PCX Letter, NASD Letter, ISE Letter, Amex Letter, Morgan/Goldman Letter, and SSB Letter.

[20] PCX Letter, ISE Letter, and NQLX Letter, Morgan/Goldman Letter.

[21] Morgan/Goldman Letter, NASD Letter, SSB Letter.

[22] PCX Letter, Amex Letter, and NQLX Letter.

[23] Morgan/Goldman Letter and SSB Letter.

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trustee would pay out to the floor broker a pro rata share of the available pool of assets on the same terms as customers, notwithstanding that the floor broker was not required to post customer margin.

In response, OneChicago stated that Rule 1.17 under the CEA and the minimum financial requirements of the futures exchanges all require that a futures commission merchant maintain adjusted net capital of at least four percent of customer segregated funds (an amount which includes required margin deposits as well as open trade equity) and to deduct from net capital the amount of undermargined and deficit customer and non-customer accounts. In addition, OneChicago stated that a market maker is entitled to nothing more than its pro rata share of customer property in a bankruptcy proceeding, and that if a market maker had reduced margin requirements its share of the customer estate would be correspondingly reduced.

The Commission believes that the determination of what amount of capital is sufficient for a market participant is within the purview of the participant's primary regulator and does not believe that it would be appropriate to require OneChicago's margin rules to address these concerns indirectly. In addition, the Commission believes that any concerns regarding a market maker's share of a customer's estate in a bankruptcy proceeding would be more properly addressed by changes to the insolvency regime applicable to those market participants.

Finally, three commenters expressed concern with the fact that certain aspects of OneChicago's margin rules would apply to positions carried in securities accounts. One commenter objected to OneChicago's proposal to adopt margin levels for offsetting positions that may only be held in securities accounts even though its rules apply only to positions in futures accounts because the proposal gave the impression that those offsets were permitted to be carried in a futures account.[24] Two commenters also objected to the provisions in OneChicago's rules asserting that, with respect to the exclusion for market makers, OneChicago's margin rules would apply to positions in both futures accounts and securities accounts.[25] These comments argued that this aspect of the proposed rule change would conflict with current margin requirements governing securities accounts of broker-dealers and would create confusion by subjecting those market makers to the margin requirements of both OneChicago and their designated examining authority.

In response to these comments, OneChicago stated that it prefers to retain the full range of permitted margin offsets, so that they can be made effective if OneChicago later amends its margin rules to apply them to securities accounts or if the Commission at some future date takes steps that would permit these margin offsets to be carried in a futures account. In addition, OneChicago stated its view that it should be free to adopt its own rule and to apply that rule to its own members. However, OneChicago also clarified that it was not suggesting that OneChicago's margin rule supersedes that of any other self-regulatory organization. Rather, OneChicago explained that there may be broker-dealers that do not do a customer business that are members only of OneChicago and that these broker-dealers should be able to claim the advantages of market maker margin treatment without regard to whether they carry their positions in a securities or a futures account.

The Commission reiterates that because any offset that includes a security (other than a security future) must be carried in a securities account, OneChicago's rule applies only to those offsetting positions that may be carried in a futures account (*i.e.*, offsets that do not include securities other than security futures). In addition, the Commission emphasizes that approval of the proposed rule change does not affect the applicability of the rules of another self-regulatory organization to its members. As a result, OneChicago's market maker exclusion will apply to a member's positions in securities accounts only to the extent recognized by the rules of the member's designated examining authority.

III. Discussion

Under section 19(b)(2) of the Act, the Commission is directed to approve the proposed rule change if it finds that it is consistent with the requirements of the Act and the rules and the rules and regulations thereunder applicable to a national securities exchange.[26] Section 6(b)(5) of the Act[27] requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade and, in general, to protect investors and the public interest.[28] In addition, section 7(c)(2)(B) of the Act[29] provides, among other things, that the margin rules for security futures must preserve the financial integrity of markets trading security futures, prevent systemic risk, and be consistent with the margin requirements for comparable exchange-traded options. Section 7(c)(2)(B) also provides that the margin levels for security futures may be no lower than the lowest level of margin, exclusive of premium, required for any comparable exchange-traded option. For the reasons discussed below, after careful review and consideration of the commenters' views, the Commission finds that the rule change is consistent with OneChicago's obligations under the Act and the rules and regulations thereunder.

The Commission believes that the rule change is generally consistent with the customer margin rules for security futures adopted by the Commission and the CFTC. In particular, the Commission notes that, consistent with Rule 403 under the Act, OneChicago's proposed rule provides for a minimum margin level of 20% of current market value for all positions in security futures. The Commission believes that 20% is the minimum margin level necessary to satisfy the requirements of section 7(c)(2)(B) of the Act. Rule 403 under the Act[30] also provides that a national securities exchange may set margin levels lower than 20% of the current market value of the security future for an offsetting position involving security futures and related positions, provided that an exchange's margin levels for offsetting positions meet the criteria set forth in section 7(c)(2)(B) of the Act. The offsets proposed by OneChicago are consistent with the strategy-based offsets permitted for comparable offset positions involving exchange-traded options and therefore consistent with section 7(c)(2)(B) of the Act.

Finally, the Commission believes that the standards for OneChicago's market maker exclusion, as amended by Amendment No. 3, are consistent with the Act, and Rule 400(c)(2)(v) thereunder.[31] Specifically, the Commissions' margin rules do not apply to a member of a national securities exchange that is registered with such exchange as a "security futures dealer" pursuant to exchange rules that must meet several criteria, including a requirement that a security futures dealer be required "to hold itself out as being willing to buy and sell security futures for its own account on a regular or continuous basis." The Commission believes that the affirmative obligations required by OneChicago Rule 515(n) satisfy this requirement.

[24] NQLX Letter.

[25] NASD Letter, Nasdaq Letter.

[26] 15 U.S.C. 78s(b)(2).

[27] 15 U.S.C. 78f(b)(5).

[28] In approving this rule change, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c–3(b)(9).

[29] 15 U.S.C. 78g(c)(2)(B).

[30] 17 CFR 240.403(b)(2).

[31] 17 CFR 200.400(c)(2)(v).

IV. Accelerated Approval of Amendment No. 3

OneChicago has asked the Commission to approve Amendment No. 3 to the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing to accommodate the timetable for the trading of security futures. Amendment No. 3 modifies two aspects of OneChicago's market maker exclusion. First, Amendment No. 3 clarifies the recordkeeping requirements that market makers must meet in order to qualify for the exclusion. The amendments to the recordkeeping requirement of the market maker exclusion clarify the types of records that, consistent with Rule 400(c)(2)(v)(2) under the Act, a market maker must keep in order to qualify for the exclusion for security futures dealers from OneChicago's margin requirements.

Second, Amendment No. 3 modifies the trading obligations that market maker must meet to qualify for the exclusion. The amendments to the trading obligations are in response to the commenters' concerns, and clarify the minimum trading requirements imposed on market makers in order to satisfy the requirement of the exclusion that a market maker hold itself out as being willing to buy and sell security futures for its own account on a regular or continuous basis. OneChicago has also requested that the Commission approve the amendments to the trading obligations as a pilot program for six months beginning on the date of this order.

The Commission finds good cause for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission believes that accelerated approval of the proposed rule change should enable OneChicago to begin trading security futures from the outset of security futures trading.[32] In addition, the Commission believes that granting accelerated approval to Amendment No. 3 thereto should clarify obligations the obligations that OneChicago members must meet in order to qualify for the market maker exclusion from the margin requirements. In addition, the Commission notes that the modifications to the trading obligations of the market maker exclusion set forth in Amendment No. 3 will take effect as a temporary pilot to give members of the public an opportunity to comment on the substance of that aspect of Amendment No. 3 before OneChicago requests permanent approval. Accordingly, the Commission believes that there is good cause, consistent with Section 19(b) of the Act, to approve Amendment No. 3 to the proposed rule change on an accelerated basis.

V. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether Amendment No. 3 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–OC–2002–01 and should be submitted by December 5 2002.

VI. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act[33], that the proposed rule change, as amended, (File No. SR–OC–2002–01) be, and hereby is, approved, *provided, however*, that OneChicago Rule 515(n)(ii)(C) is approved until May 7, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[34]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–28896 Filed 11–13–02; 8:45 am]

BILLING CODE 8010–01–P

[32] The Commission understands that trading in security futures is scheduled to begin on November 8, 2002.

[33] 15 U.S.C. 78s(b)(2).

[34] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3459]

State of Texas

As a result of the President's major disaster declaration on November 5, 2002, I find that Nueces County in the State of Texas constitutes a disaster area due to damages caused by severe storms, tornadoes, and flooding occurring on October 24, 2002, and continuing. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on January 6, 2003 and for economic injury until the close of business on August 5, 2003 at the address listed below or other locally announced locations:

U.S. Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., Suite 102, Fort Worth, TX 76155.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Jim Wells, Kleberg and San Patricio in the State of Texas.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	5.875
Homeowners without credit available elsewhere	2.937
Businesses with credit available elsewhere	6.648
Businesses and non-profit organizations without credit available elsewhere	3.324
Others (including non-profit organizations) with credit available elsewhere	5.500
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	3.324

The number assigned to this disaster for physical damage is 345911. For economic injury the number is 9S4800.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: November 6, 2002.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 02–28877 Filed 11–13–02; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Senior Executive Service; Performance Review Board Members

AGENCY: Small Business Administration.

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ACTION: Notice of members of the FY 2002 Performance Review Board.

SUMMARY: Section 4314(c)(4) of Title 5, U.S.C. requires each agency to publish notification of the appointment of individuals who may serve as members of that Agency's Performance Review Boards (PRB). The following have been designated to serve on the FY 2002 Performance Review Boards for the U.S. Small Business Administration:

1. John Whitmore, Chief of Staff;
2. Michael Barrera, National Ombudsman;
3. Richard Spence, Assistant Administrator for Congressional and Legislative Affairs;
4. Alfredo Armendariz, Associate Deputy Administrator for Government Contracting and Business Development;
5. Kaaren Street, Associate Deputy Administrator for Entrepreneurial Development;
6. Monika Edwards Harrison, Assistant Administrator for Human Resources;
7. Jams Rivera, Associate Administrator for Financial Assistance;
8. Francisco Marrero, District Director, South Florida;
9. Alberto Alvarado, District Director, Los Angeles;
10. Linda Williams, Associate Administrator for Government Contracting;
11. Eric Benderson, Associate General Counsel for Litigation.

Dated: November 6, 2002.

Hector V. Barreto,

Administrator.

[FR Doc. 02–28858 Filed 11–13–02; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF STATE

Bureau of Diplomatic Security, Office of Foreign Missions, Diplomatic Motor Vehicles

[Public Notice 4178]

Notice of Information Collection Under Emergency Review: Forms DS–2003, DS–2004, DS–2005, DS–2006, DS–2007, DS–2008, U.S. Department of State's Notifications of Appointment, Change or Termination of Diplomatic, Consular or Foreign Government Employees; OMB Collection Numbers: 1405–0060; 1405–0061; 1405–0062; 1405–0064; 1405–0069; and 1405–0090

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the emergency review procedures of the Paperwork Reduction Act of 1995.

Type of Request: Emergency Review.
Originating Office: DS/OFM.
Title of Information Collection: Notification of Appointment of Foreign Diplomatic and Career Consular Officer.
Frequency: As often as necessary to add a new person to a foreign mission roster.
Form Number: DS–2003.
Respondents: Foreign government representatives.
Estimated Number of Respondents: 2,000.
Average Hours Per Response: 25 minutes.
Total Estimated Burden: 850.
Title of Information Collection: Notification of Appointment of Foreign Government Employee.
Frequency: As often as necessary to add a new person to a foreign mission roster.
Form Number: DS–2004.
Respondents: Foreign government representatives.
Estimated Number of Respondents: 5,000.
Average Hours Per Response: 25 minutes.
Total Estimated Burden: 2,125.
Title of Information Collection: Notification of Appointment of Honorary Consular Officer.
Frequency: As often as necessary to add a new person to a foreign mission roster.
Form Number: DS–2005.
Respondents: Foreign government representatives.
Estimated Number of Respondents: 200.
Average Hours Per Response: 20 minutes.
Total Estimated Burden: 80.
Title of Information Collection: Notification of Change, Identification Card Request.
Frequency: As often as necessary to add a new person to a foreign mission roster.
Form Number: DS–2006.
Respondents: Foreign government representatives.
Estimated Number of Respondents: 5,000.
Average Hours Per Response: 9 minutes.
Total Estimated Burden: 600.
Title of Information Collection: Notification of Dependents of Diplomatic, Consular and Foreign Government Employees.
Frequency: As often as necessary to add a new person to a principal record.
Form Number: DS–2007.
Respondents: Foreign government representatives.
Estimated Number of Respondents: 7,000.
Average Hours Per Response: 10 minutes.
Total Estimated Burden: 840.
Title of Information Collection: Notification of Termination of Diplomatic, Consular or Foreign Government Employment.
Frequency: As often as necessary to terminate foreign mission members.
Form Number: DS–2008.
Respondents: Foreign government representatives.
Estimated Number of Respondents: 6,000.
Average Hours Per Response: 10 minutes.
Total Estimated Burden: 720.

The proposed information collection is published to obtain comments from the public and affected agencies. Emergency review and approval of this collection has been requested from OMB by November 15, 2002. If granted, the emergency approval is only valid for 180 days. Comments should be directed to the State Department Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20530, who may be reached on 202–395–3897.

During the first 60 days of this same period a regular review of this information collection is also being undertaken. Comments are encouraged and will be accepted until 60

Average Hours Per Response: 10 minutes.
Total Estimated Burden: 720.

The proposed information collection is published to obtain comments from the public and affected agencies. Emergency review and approval of this collection has been requested from OMB by November 15, 2002. If granted, the emergency approval is only valid for 180 days. Comments should be directed to the State Department Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20530, who may be reached on 202–395–3897.

During the first 60 days of this same period a regular review of this information collection is also being undertaken. Comments are encouraged and will be accepted until 60 days from the date that this notice is published in the **Federal Register.** The agency requests written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments are being solicited to permit the agency to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR FURTHER INFORMATION CONTACT: Public comments, or requests for additional information, regarding the collection listed in this notice should be directed to Jacqueline D. Robinson, U.S. Department of State, Office of Foreign Missions, Washington, DC 20520–3302, who may be reached on (202) 895–3532. Public comments and questions should be directed to the State Department Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20530, who may be reached on (202) 395–3897.

Dated: July 19, 2002.

Jacqueline D. Robinson,

Director, Accreditations & Diplomatic Motor Vehicles, Office of Foreign Missions, Department of State.

[FR Doc. 02–27353 Filed 11–13–02; 8:45 am]

BILLING CODE 4710–43–P

DEPARTMENT OF STATE

[Public Notice 4157]

Shipping Coordinating Committee; Notice of Meeting

The Shipping Coordinating Committee will conduct an open meeting at 9:30 a.m. on November 26, 2002, in Room 2415 at U.S. Coast Guard Headquarters, 2100 2nd Street, SW, Washington, DC, 20593–0001. The purpose of this meeting will be to finalize preparations for the 76th Session of the Maritime Safety Committee (MSC 76) and associated bodies of the International Maritime Organization (IMO) scheduled for December 2–13, 2002 at IMO Headquarters in London. The meeting will also finalize preparations for the International Conference on Maritime Security, to be held in conjunction with the second week of MSC 76, December 9–13, 2002.

At this meeting, papers received from IMO and draft U.S. positions for MSC 76 will be discussed. Agenda items include, among other things:

— Large passenger ship safety
— Bulk carrier safety
— Measures to enhance maritime security
— Implementation of the revised STCW Convention
— Piracy and armed robbery against ships
— Reports of six subcommittees—Stability, Load Lines and Fishing Vessel Safety (SLF), Safety of Navigation (NAV), Flag State Implementation (FSI), Bulk Liquids and Gases (BLG), Ship Design and Equipment (DE) and Dangerous Goods, Solid Cargoes and Containers (DSC).

The Conference on Maritime Security will begin after completion of MSC 76 and will include:

— Consideration and adoption of amendments to SOLAS for maritime security.
— Consideration and adoption of an International Ship and Port Facility Security (ISPS) Code; and
— Consideration and adoption of resolutions and recommendations related to maritime security.

Members of the public may attend this meeting up to the seating capacity of the room. Interested persons may seek information by writing to Mr. Joseph J. Angelo, Commandant (G–MS), U.S. Coast Guard Headquarters, 2100 2nd Street, SW, Room 1218, Washington, DC 20593–0001 or by calling (202) 267–2988.

Dated: November 5, 2002.

Stephen Miller,

Executive Secretary, Shipping Coordinating Committee, Department of State.

[FR Doc. 02–28927 Filed 11–13–02; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF STATE

[Public Notice 4156]

Shipping Coordinating Committee; Notice of Meeting

The Shipping Coordinating Committee will conduct an open meeting at 9 a.m. on Friday, December 13, 2002, in Room 6319, at U.S. Coast Guard Headquarters, 2100 Second Street, SW, Washington, DC 20593–0001. The meeting will discuss the upcoming 46th Session of the Subcommittee on Stability and Load Lines and on Fishing Vessels Safety (SLF) and associated bodies of the International Maritime Organization (IMO) which will be held September 8–12, 2003, at the IMO Headquarters in London, England.

Items of discussion will include:

a. Harmonization of damage stability provisions in SOLAS Chapter II–1,
b. Large Passenger Ship Safety,
c. Review of the Intact Stability Code,
d. Revision of the Fishing Vessel Safety Code and Voluntary Guidelines,
e. Review of the Offshore Supply Vessel Guidelines, and
f. Harmonization of damage stability provisions in other IMO instruments, including the 1993 Torremolinos Protocol (probabilistic method).

Members of the public may attend this meeting up to the seating capacity of the room. Interested persons may seek information by writing: Mr. Paul Cojeen, U.S. Coast Guard Headquarters, Commandant (G–MSE–2), Room 1308, 2100 Second Street, SW, Washington, DC 20593–0001 or by calling (202) 267–2988.

Dated: October 23, 2002.

Stephen Miller,

Executive Secretary, Shipping Coordinating Committee, Department of State.

[FR Doc. 02–28928 Filed 11–13–02; 8:45 am]

BILLING CODE 4710–07–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Technical Corrections to the Harmonized Tariff Schedule of the United States

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: Pursuant to authority delegated to the United States Trade Representative ("USTR") in Presidential Proclamation 6969 of January 27, 1997 (62 FR 4415), USTR is making technical corrections to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States (HTS) as set forth in the annex to this notice. These modifications correct several inadvertent errors and omissions in subheadings 9903.72.30 through 9903.74.24 of the HTS so that the intended tariff treatment is provided. Pursuant to authority delegated to the USTR in Presidential Proclamation 7576 of July 3, 2002 (67 FR 45285), USTR has determined that it is appropriate to add Macedonia to the list of countries in subdivision (d)(i) of U.S. Note 11 to subchapter III of chapter 99 of the HTS ("Note 11"), and is modifying that note accordingly.

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EFFECTIVE DATE: The corrections made in this notice are effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after the dates set forth in the annex to this notice.

FOR FURTHER INFORMATION CONTACT: Office of Industry, Office of the United States Trade Representative, 600 17th Street, NW., Room 501, Washington DC, 20508. Telephone (202) 395–5656.

SUPPLEMENTARY INFORMATION: On March 5, 2002, pursuant to section 203 of the Trade Act of 1974, as amended (the "Trade Act") (19 U.S.C. 2253), the President issued Proclamation 7529 (67 FR 10553), which imposed tariffs and a tariff-rate quota on (a) Certain flat steel, consisting of: slabs, plate, hot-rolled steel, cold-rolled steel, and coated steel; (b) hot-rolled bar; (c) cold-finished bar; (d) rebar; (e) certain tubular products; (f) carbon and alloy fittings; (g) stainless steel bar; (h) stainless steel rod; (i) tin mill products; and (j) stainless steel wire, as provided for in subheadings 9903.72.30 through 9903.74.24 of the Harmonized Tariff Schedule of the United States ("HTS") ("safeguard measures") for a period of three years plus 1 day. Effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after 12:01 a.m., EST, on March 20, 2002, Proclamation 7529 modified subchapter III of chapter 99 of the HTS so as to provide for such increased duties and a tariff-rate quota. Proclamation 7529 also delegated to the USTR the authority to consider requests for exclusion of a particular product submitted in accordance with the procedures set out in 66 FR 54321, 54322–54323 (October 26, 2001) and, upon publication in the **Federal Register** of a notice of his finding that a particular product should be excluded, to modify the HTS provision created by the annex to that proclamation to exclude such particular product from the pertinent safeguard measure. On April 5, 2002, USTR published a notice in the **Federal Register** excluding particular products from the safeguard measures, and modified the HTS accordingly. 67 FR 16484. On July 3, the President issued Proclamation 7576, which extended the period for granting exclusions until August 31, 2002. On July 12, 2002, and August 30, 2002, USTR published notices in the **Federal Register** excluding additional products from the safeguard measures, and modified the HTS accordingly. 67 FR 46221 and 67. FR 56182.

On March 19, 2002, June 4, 2002, July 12, 2002, and August 30, 2002, USTR published **Federal Register** notices (67 FR 12635, 67 FR 38541, 67 FR 46221, and 67 FR 56182, respectively) making technical corrections to subchapter III of chapter 99 of the HTS to remedy several technical errors introduced in the annex to Proclamation 7529. These corrections ensured that the intended tariff treatment was provided. Since the publication of these **Federal Register** notices, additional technical errors and omissions in subchapter III of chapter 99 have come to the attention of USTR. The annex to this notice makes technical corrections to the HTS to remedy these errors and omissions. In particular, the annex to this notice corrects errors in the descriptions of the physical dimensions or chemical composition of certain products excluded from the application of the safeguard measures.

Proclamation 6969 authorized the USTR to exercise the authority provided to the President under section 604 of the Trade Act of 1974 (19 U.S.C. 2483) to embody rectifications, technical or conforming changes, or similar modifications in the HTS. Under authority vested in the USTR by Proclamation 6969, the rectifications, technical and conforming changes, and similar modifications set forth in the annex to this notice shall be embodied in the HTS with respect to goods entered, or withdrawn from warehouse for consumption, on or after the dates set forth in the Annex to this notice.

In clause (3) of Proclamation 7529, the President excluded imports of certain steel products that are the product of World Trade Organization ("WTO") member developing countries, as provided in subdivision (d)(i) of Note 11. Proclamation 7576 authorized the USTR, upon publication of a notice in the **Federal Register** of his determination that it is appropriate to add WTO member developing countries to the list of countries in subdivision (d)(i) of U.S. Note 11, to add such countries to that list. I have determined that it is appropriate to add Macedonia to that list, and am modifying the list accordingly.

Robert B. Zoellick,

United States Trade Representative.

Annex

Subchapter III of chapter 99 of the Harmonized Tariff Schedule (HTS) is modified as set forth in this annex, with bracketed matter included to assist in the understanding of the modifications. The following provisions supersede matter now in the HTS, with the new subheadings being inserted by this notice set forth in columnar format and the material inserted in the HTS columns entitled "Heading/Subheading", "Article Description", "Rates of Duty 1 General", "Rates of Duty 1 Special", and "Rates of Duty 2", respectively. The corrections to the text of individual subdivisions of U.S. note 11 to such subchapter III set forth herein, and to their associated subheadings, shall be effective with respect to covered goods entered, or withdrawn from warehouse for consumption, on or after 12:01 a.m. EDT on the date that each such subdivision of U.S. note 11 to subchapter III became effective, or in the case of corrections to text previously modified the effective date of such previous modification to such subdivision as appropriate. New subdivision (c)(ccviii) of U.S. note 11 shall be effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after September 1, 2002. The new subdivisions (c)(ccix) to (c)(ccxi) of U.S. note 11 shall be effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after March 20, 2002. The new subheadings established by item 3 of this annex and associated conforming changes shall be effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after 12:01 a.m. EST, on the date that the related subdivision of such U.S. note 11 was or is established. The modification made by item 4 of this annex shall be effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after October 15, 2002.

1. U.S. note 11 to such subchapter III is hereby modified as follows:

(i) In subdivision (b)(vii)(B), "SAE 1008" is deleted and "SAE 1010" is inserted in lieu thereof, the phrase "or equal to" is inserted immediately after the phrase "less than", and "SAE standard 783" is deleted and the phrase "SAE standard 788" is inserted in lieu thereof;

(ii) in subdivision (b)(vii)(C), "and maximum 1 percent other materials" is deleted and ", less than 0.05 percent phosphorus, less than 0.35 percent iron and less than or equal to 1 percent other materials" is inserted in lieu thereof, and "SAE standard 792" is deleted and "SAE standard 797" is inserted in lieu thereof;

(iii) in subdivision (b)(vii)(H), "SAE 1008" is deleted and "SAE 1010" is inserted in lieu thereof, "20 percent tin" is deleted and "19 percent to 20 percent tin" is inserted in lieu thereof, and "1 percent copper," is deleted and "1 percent to 1.2 percent copper, less than" is inserted in lieu thereof;

(iv) in subdivision (b)(vii)(I), "SAE 1008" is deleted and "SAE 1010" is inserted in lieu thereof, "less than 1 percent in the aggregate of other materials" is deleted and "less than or equal to 1 percent in the aggregate of other materials" is inserted in lieu thereof, "SAE standard 792" is deleted and "SAE standard 797" is inserted in lieu thereof, and "38 percent or more but not more than 50 percent PTFE," is deleted, and ", with the remainder made up of polytetrafluoroethylene (PTFE) (approximately 38 percent to 52 percent) and up to" is inserted before "2 percent in the aggregate of other materials";

(v) in subdivision (b)(vii)(D), "SAE 1008" is deleted and "SAE 1010" is inserted in lieu thereof, "and less than 0.35 percent iron" is deleted and ", less than 1 percent zinc and less than or equal to 1 percent other materials" is inserted in lieu thereof, "SAE standard 792" is deleted and "SAE standard 797" is inserted in lieu thereof, and "and the remainder (approx. 40–52 percent) of PTFE" is deleted and "and the remainder made up of PTFE (approximately 38 percent to 52 percent) and less than 2 percent in the aggregate of other materials" inserted in lieu thereof;

(vi) in subdivision (b)(ix)(A), "+10%" is deleted and "±10%" is inserted in lieu thereof in three appearances, and "−0/+1.588 mm" is deleted and "±1.588 mm" is inserted in lieu thereof;

(vii) in subdivision (b)(xi)(B), the phrase "manganese 0.90 to 0.98" is deleted and "manganese not over 0.98" is inserted in lieu thereof; (viii) in subdivision (b)(xxii)(D), the phrase "manganese 1.4 to 1.7" is deleted and "manganese 1.4 to 1.8" is inserted in lieu thereof;

(ix) in subdivison(b)(xxiii)(C), the phrase "900 to 1,200 kg per cm width" is deleted and "143 to 179 kg per cm width" is inserted in lieu thereof; and the phrase "600 and 900 kg per cm width" is deleted and "89 and 143 kg per cm width" is inserted in lieu thereof;

(x) in subdivision (b)(xxvi)(B) and its paragraphs (I) through (IV), at each occurrence the word "coated" is replaced by the word "treated" and the word "coating" is replaced by the word "treatment';

(xi) in subdivison (b)(xxxii)(E), the phrase "± 0.2997 mm over" is deleted and "±0.7620 mm per" is inserted in lieu thereof; and "± 0.7620 mm over" is deleted and "±0.7620 mm per" is inserted in lieu thereof;

(xii) in subdivision (b)(xxxiv)(B), the phrase ", provided for in subheading 7226.92.80" is deleted

(xiii) in subdivision (b)(xxxiv)(M), the phrase "hardened and tempered" is deleted;

(xiv) in subdivision (b)(xxxiv)(N), "1075" is deleted and "1095" is inserted in lieu thereof;

(xv) in subdivision (b)(xxxvii), "DZ" is deleted and "DQ" is inserted in lieu thereof; the phrase "flatness to be 3.18 mm" is deleted and the phrase "center buckle to be 3.18 mm" is inserted in lieu thereof; the phrase "75 MG each side maximum" is deleted and the phrase "oil weight of 250 mg/m2 maximum on any one side" is inserted in lieu thereof; and the phrase "9071.85 kg maximum coil weights," is deleted;

(xvi) in subdivision (b)(xliv)(A), the phrase "provided for in subheading 7326.90.85" is deleted;

(xvii) in subdivision (b)(xliv)(C), the phrase "entered in an aggregate annual quantity not to exceed 36,000 t during the 12-month period beginning on July 12, 2002 or July 12, 2003 or during the period July 12, 2004 through March 20, 2005, inclusive," is inserted after the phrase "tin-coated steel,", and the phrase "858.8375 mm or more but not over 862.0125 mm or a width of" is inserted after "of a width of";

(xviii) in subdivision (c)(i)(A), the phrase "entered in an aggregate annual quantity not to exceed 45,000 t during the 12-month period beginning on July 12, 2002 or July 12, 2003 or during the period July 12, 2004 through March 20, 2005, inclusive," is deleted;

(xix) in subdivision (c)(i)(B), the phrase "entered in an aggregate annual quantity not to exceed 5,700 t during the 12-month period beginning on July 12, 2002 or July 12, 2003 or during the period July 12, 2004 through March 20, 2005, inclusive," is deleted; and in subdivision (c)(i)(C), the phrase "entered in an aggregate annual quantity not to exceed 17,500 t during the 12-month period beginning on July 12, 2002 or July 12, 2003 or during the period July 12, 2004 through March 20, 2005, inclusive," is deleted;

(xx) in subdivision (c)(vi)(A), "carbon 0.90 to 1.30" is deleted and "carbon 0.090 to 0.130" is inserted in lieu thereof;

(xxi) in subdivision (c)(xii), the phrase "aluminum 0.070 to 0.100" is deleted and the phrase "aluminum not more than 0.100" is inserted in lieu thereof;

(xxii) in subdivisions (c)(xviii)(A), (B) and (C) at each occurrence "MN/6 (Cr" is deleted and "Mn/6 + (Cr" is inserted in lieu thereof;

(xxiii) in subdivision (c)(xviii)(A), the phrase "of 0.29 to 0.035" is deleted and "of 0.29 to 0.35" is inserted in lieu thereof;

(xxiv) in subdivision (c)(xxiii)(A), the phrase "sometimes referred to as (but not limited to) products known as Socatri 1000;" is inserted after the phrase "corrosive attack;';

(xxv) in subdivision (c)(xxiii)(B), the phrase "sometimes referred to as (but not limited to) products known as Cromax;" is inserted after the phrase "without corrosion;';

(xxvi) in subdivision (c)(xxviii), the phrase "semi-processed silicon electrical steel" is deleted, and:

(A) in paragraphs (A) and (B), "Products" is deleted and the phrase "Semi-processed silicon electrical steel products," is inserted before "entered";

(B) in paragraph (C), the phrase "fully processed" is inserted after "bearing,";

(xxvii) in subdivision (c)(xxix)(A), "0264" is deleted and "0.264" is inserted in lieu thereof;

(xxviii) in subdivision (c)(xxxi)(B), the phrase "0.44 m x 82.87 cm" is deleted and "0.44 mm x 82.87 cm" is inserted in lieu thereof; and "0.38 mm x 91.76" is deleted and "0.38 mm x 91.76 cm" is inserted in lieu thereof;

(xxix) in subdivision (c)(xxxiii)(A), the text following "not revealing oxides" is deleted and "greater than 1 micrometer; and inclusion groups or clusters shall not exceed 5 micrometers in length;" is inserted in lieu thereof;

(xxx) in subdivision (c)(xxxiii)(C), the text following "not revealing oxides" is deleted and "greater than 1 micrometer; and inclusion groups or clusters shall not exceed 5 micrometers in length; or" is inserted in lieu thereof;

(xxxi) in subdivision (c)(xlii), the text is deleted and "Thermal refined, hot rolled, water quenched and tempered steel bar, the foregoing containing (percent by weight): carbon 0.43 to 0.48 and manganese 0.75 to 0.95; hardness 215 to 255 HV; microstructure with layer of tempered martensite for 5 mm to 8 mm followed by 1 mm of tempered martensite and transition products and general bar structure of pearlite and ferrite; maximum decarburization 0.8 percent of bar diameter; designated as X–075;" is inserted in lieu thereof;

(xxxii) in subdivision (c)(xliii)(C), the phrase "manganese 1.4 to 1.7" is deleted and "manganese 1.4 to 1.8" is inserted in lieu thereof;

(xxxiii) in subdivision (c)(xlvi)(C), "A1001CSB" is deleted and "A1011CSB" is inserted in lieu thereof;

(xxxiv) in subdivision (c)(xlviii), the phrase "not further worked that hot-rolled, with the following features: sulfur content 0.005 percent by weight maximum; elongation: 18 percent minimum/31 percent maximum for 1.6 mm to 2.0 mm, 20 percent minimum/32 percent maximum for 2.0 mm to 3.2

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mm, 21 percent minimum/33 percent maximum for 3.2 mm to 6.3 mm, 22 percent minimum for 6.3 mm to 12.00 mm; total thickness tolerance: 0.20 mm maximum for 1.6 mm to 4.0 mm, 0.25 mm maximum for 4.0 mm to 6.0 mm, 0.30 mm maximum for 6.0 mm to 8.0 mm, 0.35 mm maximum for 8.0 mm to 12.0 mm; with" is deleted;

(xxxv) in subdivision (c)(l)(A), "158.4 MPa" is deleted and "758.4 MPa" is inserted in lieu thereof;

(xxxvi) in subdivision (c)(lv), the phrase "and entered in an aggregate annual quantity not to exceed 75,000 t during the 12-month period beginning on July 12, 2002 or July 12, 2003 or during the period July 12, 2004 through March 20, 2005, inclusive;" is deleted;

(xxxvii) in subdivision (c)(lxii), "flat-rolled tin mill products" is deleted and "flat-rolled products" is inserted in lieu thereof, and the word "minimum" is inserted after the phrase "21 percent";

(xxxviii) in subdivision (c)(lxiii), the text following "chlorine in water phase)," is deleted and "and exposed to a temperature of 45°C for 4 weeks, the eluted mass of the coating is less than 100 mg;" is inserted in lieu thereof;

(xxxix) in subdivision (c)(lxxii)(F), "strength 1,314 MPa" is deleted and "strength 1,413.4 MPa" is inserted in lieu thereof;

(xl) subdivision (c)(lxxiii) is modified to read as follows:

"(lxxiii) Flat-rolled products, designated as X–048, N–316 or N–472 and meeting the characteristics described below:

(A) Coated with zinc-aluminum allow consisting of 95 percent zinc and 5 percent aluminum by weight, sometimes referred to as (but not limited to) products known as "Ragal Galfan"; thickness not over 0.75 mm; width 1,220 mm or more;

(B) coated with hot dipped 95 percent zinc/5 percent aluminum/trace mischmetal alloy coating; sometimes referred to as (but not limited to) products known as "Galfan"; thickness 0.4572 mm to 1.4224 mm; with coating of GF 30, produced in accordance with ASTM A–875;

(C) ASTM A875 DDS interstitial-free (IFS) boron-treated for antibrittleness: yield strength 220 MPa maximum; tensile strength 270 to 350 MPa; elongation 34 percent minimum in a standard ASTM sample; with chemical composition (percent by weight): carbon not over 0.0044, manganese 0.70 to 0.20, boron 0.0002 to 0.0009, aluminum of 0.01 to 0.10, phosphorus not over 0.015 and sulfur not over 0.020; sometimes referred to as (but not limited to) products known as "Galfan"; or

(D) ASTM A875 interstitial-free (IFS); yield point 230 MPa minimum; tensile strength 325 to 400 MPa; elongation 34 percent minimum in a standard ASTM sample; Langford coefficient (n) 0.17; minimum anisotropy ratio (r) 1.5 minimum in transverse direction; with chemical composition (percent by weight): carbon not over 0.009, titanium 0.050 or greater and phosphorus 0.02 to 0.04; sometimes referred to as (but not limited to) products known as "Galfan";"

(xli) in subdivision (c)(lxxxv), the phrase "sulfur not over 0.003" is deleted and "sulfur not over 0.009" is inserted in lieu thereof;

(xlii) in subdivisions (c)(lxxxix)(B), (E), (H) and (I), the phrase "0.6 percent carbon" is deleted and "0.28 percent carbon" is inserted in lieu thereof; and in subdivision (c)(lxxxix)(D), the phrase "0.06 percent carbon" is deleted and "0.28 percent carbon" is inserted in lieu thereof;

(xliii) in subdivision (c)(xcviii)(A), the phrase "DSE 220" is deleted and "SE 220" is inserted in lieu thereof; the phrase "yield strength 220 to 270 MPa" is deleted and "yield strength 220 to 280 MPa" is inserted in lieu thereof; and the phrase "tensile strength 320 to 370 MPa" is deleted and "tensile strength 320 to 380 MPa" is inserted in lieu thereof;

(xliv) in subdivision (c)(xcviii)(B), the phrase "HRB 50 to 65" is deleted and "HRB 45 to 65" is inserted in lieu thereof;

(xlv) in subdivision (c)(civ), the phrase "quantity not to exceed 3,000 t" is deleted and "entered in an aggregate quantity not to exceed 3,000 t during the 12-month period beginning on September 1, 2002 or September 1, 2003 or during the period from September 1, 2004 through March 20, 2005, inclusive" is inserted lieu thereof;

(xlvi) in subdivision (c)(cxi), "A1001CSB" is deleted and "A1011CSB" is inserted in lieu thereof;

(xlvii) in subdivision (c)(cxv), the phrase "aluminum 0.02 to 0.05" is deleted and "aluminum 0.01 to 0.05" is inserted in lieu thereof;

(xlviii) in subdivision (c)((cxvi), the phrase "with iron as the only remaining input" is deleted;

(xlix) in subdivision (c)(cxxiv), "minimum Charpy-notch" is deleted and "maximum Charpy-notch" is inserted in lieu thereof;

(l) in subdivision (c)(cxxx)(C), "0.967" is deleted and "0.96" is inserted in lieu thereof;

(li) in subdivision (c)(cxxx)(E), the phrase "lead 33 to 37, aromatic polyester 28 to 32 and other materials less than 2 percent with a balance of polytetrafluoroethylene (PTFE)" is deleted and the phrase "carbon 13 to 17, aromatic polyester 13 to 17, with a balance (approximately 66 to 74) of polytetrafluoroethylene (PTFE)" is inserted in lieu thereof;

(lii) in subdivision (c)(cxxx)(F), "1.22" is deleted and "1.2" is inserted in lieu thereof;

(liii) in subheading (c)(cxxxv), "N–376" is deleted and "N–367" is inserted in lieu thereof;

(liv) in subdivisions (c)(cxlviii)(A), (B), (C), (G), (H), (I), (J) and (L), the phrase "0.60 percent carbon" is deleted and "0.28 percent carbon" is inserted in lieu thereof;

(lv) subdivision (c)(cliv) is modified to read as follows:

"(cliv) certain stainless steel products, designated as N–378, as described below:

(A) Straight bars and rods, or round wire on spools or in coils, all the foregoing with the specifications below:

(I) Chemical composition (percent by weight): carbon not over 0.08, silicon not over 0.70, manganese not over 0.50, chromium 20.50 to 23.50, aluminum 5.0 to 6.0, and balance iron; sometimes referred to as (but not limited to) products known as "Kanthal APM.";

(II) chemical composition (percent by weight): carbon not over 0.08, silicon not over 0.70, manganese not over 0.50, chromium 20.50 to 23.50, aluminum 4.30 to 5.30, and balance iron; sometimes referred to as (but not limited to) products known as "Kanthal D";

(III) chemical composition (percent by weight): carbon not over 0.08, silicon not over 0.07, manganese not over 0.40, chromium 20.50 to 23.50, aluminum 4.80 to 5.8, and balance iron; sometimes referred to as (but not limited to) products known as "Kanthal AF"; or

(IV) chemical composition (percent by weight): carbon not greater than 0.08, silicon not greater than 0.70, manganese not greater than 0.40, aluminum 5.30 to 6.30, chromium 20.50 to 23.50, balance iron; sometimes referred to as (but not limited to) products known as "Kanthal A–1"; or

(B) *round wire on spools or in coils, with the specifications below:*

(I) Chemical composition (percent by weight): carbon not over 0.08, silicon not over 0.70, manganese not over 0.50, chromium 20.50 to 23.50, aluminum 4.60 to 5.60 and balance iron; sometimes referred to as (but not limited to) products known as "Kanthal DT";

(II) chemical composition (percent by weight): carbon not over 0.10, manganese not over 1.00, silicon 1.60 to 2.50, chromium 18.0 to 21.0, nickel 34.0 to 37.0 and balance iron; sometimes referred to as (but not limited to) products known as "Nikrothal 40";

(III) chemical composition (percent by weight): carbon not over 0.10, manganese not over 1.00, silicon 1.60 to 2.50, chromium 18.0 to 21.0, nickel 34.0 to 37.0 and balance iron; sometimes referred to as (but not limited to) products known as "Nikrothal 40";

(IV) chemical composition (percent by weight): carbon not over 0.08, silicon not over 0.70, manganese not over 0.50, chromium 20.50 to 23.50, aluminum 4.80 to 5.80 and balance iron; sometimes referred to as (but not limited to) products known as "Kanthal A"; or

(V) chemical composition (percent by weight): carbon not over 0.08, silicon not over 0.70, manganese not over 0.50, chromium 14.00 to 16.00, aluminum 3.80 to 4.80 and balance iron; sometimes referred to as (but not limited to) products known as "Alkrothal 14";

(lvi) in subdivision (c)(clix), the phrase "thickness 0.020 mm or more but not over 0.045 mm" is deleted and "thickness 0.508 mm or more but not over 1.143 mm" is inserted in lieu thereof;

(lvii) in subdivision (c)(clxiv)(A) (N–444), "tensile strength from 680 to 800 MPa; minimum yield strength 630 MPa, minimum elongation 10 percent," is inserted before "number 3 slit edge";

(lviii) in subdivision (c)(clxxiii), the phrase "during the 12-month period beginning on September 1, 2002 or September 1, 2003 or during the period from September 1, 2004 through March 20, 2005, inclusive" is inserted after "not to exceed 1,000 t", and the phrase "RAGALLITEC DPF" is deleted and the phase "RAGAL LITEC DPF" is inserted in lieu thereof;

(lix) in subdivision (c)(clxxvi), the text is deleted and the following is inserted in lieu thereof:

Hot-rolled flat-rolled products, in coils, designated as N–316, the foregoing of API Grade X56 hydrogen-induced cracking resistant (NACE) steel with the following characteristics: tensile properties guaranteed per X56 for pipe with coil tensile properties of: yield strength 390 to 510 MPa, tensile strength 490 to 600 MPa, elongation not less than 27 percent, and resilience of 8 J at −40°C; thicknesses from 2.54 mm to 16 mm; width from 1.02 m to 2.01 m; with chemical composition (percent by weight): carbon not over 0.1, manganese not over 1.6, phosphorus not over 0.015, sulfur not over 0.02, silicon not over 0.3, aluminum not over 0.06, copper not over 0.1, nickel not over 0.1, chromium not over 0.1 and vanadium not over 0.05; and with a hydrogen-induced cracking guarantee with an average of 9 cuts of: NACE solution A pH 3: crack length ratio less than 10 percent, crack thickness ratio less than 3 percent and crack sensitivity ratio less than 1 percent; and NACE solution B pH 5: crack length ratio less than 5 percent, crack thickness ratio less than 1.5 percent and crack sensitivity ratio less than 1 percent;";

(lx) in subheading (c)(clxxxv), "temper rolled; meeting SAEJ1392 O50; whether or not pickled and oiled or tension leveled" is deleted and "whether or not rolled or pickled and oiled or tension leveled, meeting SAEJ1392 O50;" is inserted in lieu thereof; "carbon 0.030 to 0.89" is deleted and "carbon 0.035 to 0.084" is inserted in lieu thereof; "manganese 0.190 to 0.309" is deleted and "manganese 0.195 to 0.304" is inserted in lieu thereof; "aluminum 0.010 to 0.060" is deleted and "aluminum 0.015 to 0.055" is inserted in lieu thereof; "niobium (columbium) 0.025 to 0.035" is deleted and "niobium (columbium) 0.020 to 0.030" is inserted in lieu thereof; "titanium 0.005 to 0.025" is deleted and "titanium not over 0.005" is inserted in lieu thereof; "thickness of 1.80 mm to 2.49 mm" is deleted and "thickness 1.96 mm to 3.98 mm" is inserted in lieu thereof; and "with tolerance of one half standard gauge tolerance specified in ASTM 568" is deleted and "with the following gauges (specified in millimeters, per ASTM 568): 1.96 −0/+0.17, 2.00 −0/+0.15, 2.13 −0/+ 0.20, 2.23 −0/+0.20, 2.28 −0/+0.20, 2.99 −0/+0.20, 3.07 −0/+0.20, 3.35 −0/+0.20, 3.40 −0/+0.20, 3.83 −0/+0.22, 3.98 −0/+0.25" is inserted in lieu thereof;

(lxi) in subdivision (c)(clxxxvii), the phrase "certified that coiled tubing will satisfy fatigue test (SPE papers 22820, 38407, and 54482) constantly;" is deleted and "for use in the production of tubing able to meet the requirements of the coiled tubing fatigue test in SPE papers 22820, 38407 and 54482;" is inserted in lieu thereof;

(lxii) in subdivision (c)(cxcv) "API6A and NACE MR0175;" is deleted and "API6A or NACE MR0175" is inserted in lieu thereof;

(lxiii) in subdivision (c)(cxcvi), the language "microstructure containing complex oxides of lime-silico-aluminate (comprising metallurgical phases anhorthite and/or pseudowollastonite); with calcium content from 30 to 300 ppm and oxygen from 70 to 300 ppm, and with calcium-to-oxygen ratio from 0.2 to 0.6; sometimes referred to as (but not limited to) products known as 'UGIMA'" is deleted and "austenitic, ferritic or martensitic crystalline structure as applicable, and containing oxides of lime silicoaluminate that form the $CaO-Al_2O_3-SiO_2$ ternary composition primarily comprising anorthite and/or pseudowollastonite phases; with calcium content between 30 and 100 ppm and oxygen content between 70 and 200 ppm; products referred to as 'UGIMA'" is inserted in lieu thereof;

(lxiv) in subdivision (c)(cc)(A), "0.195 mm to 0.215 mm (tolerance +8/−5 percent)," is deleted and "0.195 mm (tolerance +5/−8 percent) or 0.215 mm (tolerance +5/−8 percent)," is inserted in lieu thereof;

(lxv) in subdivision (c)(cc)(B), the phrase "tolerance +8/−5 percent" is deleted and "tolerance +5/−8 percent" is inserted in lieu thereof;

(lxvi) in subdivision (c)(ccii)(A) the phrase "[add exception?]" is deleted, and "in any heat treatment class, or with outside diameters of greater than 60.96 cm in heat treatment classes 30 or higher;" is inserted in lieu thereof;

(lxvii) in subdivision (c)(ccvi), "12.00 mm or more but not over 30.00 mm" is deleted and "10.00 mm or more but not over 35.00 mm" is inserted in lieu thereof; and

(lxviii) at the end of subdivision (c) of such note 11, the following new subdivisions are inserted:

"(ccviii) Stainless steel bar, if entered in an aggregate quantity not to exceed 12 t during the 12-month period beginning on September 1, 2002 or September 1, 2003 or during the period from September 1, 2004 through March 20, 2005, inclusive: the foregoing with chemical composition (percent by weight): carbon 0.35 to 0.45, silicon 0.20 to 0.50, manganese 0.50 to 0.90, phosphorus not over 0.025, sulfur not over 0.0050, chromium 15.0 to 17.0, nickel 0.70 to 1.00, molybdenum 0.80 to 1.20, niobium (columbium) not over 0.080 and copper not over 0.30; sometimes referred to as (but not limited to) products known as M300 High Chromium Mold Steel; martensitic stainless; either (I) round with diameter from 12.7 mm to 762 mm, or (II) flat, thickness 11 mm to 610 mm, width 45 mm to 915 mm, vacuum degassed, forged or rolled; the foregoing designated as N–387;

(ccix) Cold-rolled, electrocoated on one side with zinc-nickel coating, steel products, with the following characteristics: thickness 0.70 mm (+/−0.04 mm) to 0.75 mm (+/−0.04 mm), width 1485 mm to 1570 mm; with chemical composition (percent by weight): carbon 0.0010 to 0.0023, sulfur not more than 0.006, manganese not more than 0.12; titanium stabilized; certified by the importer to have the following mechanical properties using JIS (Japan Industry Standard) testing methods: elongation not less than 47 percent nor more than 51 percent, yield strength not less than 140 MPa nor more than 165 MPa, tensile strength 270 MPa to 300 MPa, N–Value, equal to or greater than 0.25 and R–Value equal or greater than 1.9 (in all directions: longitudinal, transverse and diagonal); the foregoing sometimes referred to as (but not limited to) products known as EDDQ Zn-Ni UC, and designated as N–380;

(ccx) Hot-rolled flat rolled products, alloy and non-alloy, not further worked than hot rolled, with the following characteristics: sulfur content not more than 0.005 percent by weight, tensile strength not less than 780 MPa, elongation at least 18 percent but not more than 31 percent for 1.6 mm to 2.0 mm thicknesses, at least 20 percent but not more than 32 percent for 2.0 mm to 3.2 mm thicknesses, at least 21 percent but not more than 33 percent for 3.2 mm to 6.3 mm thicknesses, at least 22 percent for 6.3 mm to 12.00 mm thicknesses; thickness tolerance: +/−0.10 mm for 1.6 mm to 4.0 mm thicknesses, +/−0.125 mm for 4.0 mm to 6.0 mm thicknesses, +/−0.15 mm for 6.0 mm to 8.0 mm thicknesses, +/−0.175 mm for 8.0 mm to 12.0 mm thicknesses; the foregoing designated as X–075;

(ccxi) Hot-rolled flat-rolled products, designated as N–316, dual phase with low silicon; with thickness of 2.5 mm to 6 mm; width not exceeding 1.46 m; tensile strength of 750 MPa to 900 MPa; elongation not less than 14 percent in thickness of 2.5 mm to 2.999 mm, elongation not less than 15

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percent in thickness of 3 mm to 6 mm; with chemical composition (percent by weight): carbon 0.07 to 0.09, manganese 0.9 to 0.98, phosphorus not over 0.045, sulfur not over 0.002, silicon not over 0.25, aluminum 0.02 to 0.06, copper not over 0.10, nickel not over 0.10 and chromium not over 0.8; sometimes referred to as (but not limited to) products known as Usiphase D 80;

(ccxii) Ball-bearing steel (as defined in additional U.S. note 1(h) to chapter 72), bars and rods not further worked than cold-formed or cold finished, having a diameter less than 47.625 mm, the foregoing designated as X–015 or N–438;"

(lxix) in subdivision (d)(iv), the text "the phrase "products of Canada" "is deleted and "the reference to products of Canada or of Mexico" is inserted in lieu thereof, and "or in Mexico" is inserted after "in Canada".

2. The enumerated subheadings in such subchapter III are modified as follows:

(i) Subheading 9903.72.55 is deleted;

(ii) in subheading 9903.72.67, "or X–011" is inserted after "X–061";

(iii) in subheading 9903.72.68, the phrase "or 11(c)(ccx)" is inserted after "note 11(b)(xviii)";

(iv) in subheading 9903.74.39, the phrase "or 11(c)(ccxi)" is inserted after "note 11(c)(lii)";

(v) in subheading 9903.74.42, the phrase ", and entered in an aggregate annual quantity not to exceed 75,000 t" is deleted;

(vi) in subheading 9903.74.75, the phrase "or note 11(c)(ccxi)" is inserted after "note 11(c)(xlvi)";

(vii) subheadings 9903.72.55, 9903.74.66 through 9903.74.73, 9903.74.92, 9903.74.93, 9903.75.11, 9903.75.33, 9903.75.34, 9903.75.35, and 9903.75.47 are deleted;

(viii) the second appearing subheading 9903.74.82 is redesignated as 9903.75.13;

(ix) the second appearing subheading 9903.74.83 is redesignated as 9903.75.14;

(x) the second appearing subheading 9903.77.86 is redesignated as 9903.76.36;

(xi) in subheading 9903.75.04, the phrase "and entered in an aggregate quantity not to exceed 1,000 t during a time period specified in such note" is inserted after "subchapter";

(xii) in subheading 9903.76.10, "(cv)" is deleted and "(civ)" is inserted in lieu thereof;

(xiii) in subheading 9903.76.29, "11(c)(lxvii)" is deleted and "11(c)(lxvii)(A)" is inserted in lieu thereof;

(xiv) the superior text to subheading 9903.73.42 is modified by deleting the phrase "not further worked than hot-rolled, hot-drawn or extruded";

(xv) in subheading 9903.76.79, the phrase "and entered in an aggregate quantity not to exceed 300 t during a time period specified in such note" is inserted after "subchapter";

(xvi) in subheading 9903.77.50, the phrase "and entered in an aggregate quantity not to exceed 3,000 t during a time period specified in such note" is inserted after "subchapter";

(xvii) in subheading 9903.77.68, the phrase "and entered in an aggregate quantity not to exceed 5 t during a time period specified in such note" is inserted after "subchapter";

(xviii) in subheading 9903.77.85, "(v)" is deleted and "(xiv)" is inserted in lieu thereof; and

(xix) in subheading 9903.76.20, the phrase "and entered in an aggregate quantity not to exceed 1,000 t during a time period specified in such note" is inserted after "subchapter".

3. The following new subheadings are inserted in numerical sequence:

	[Goods * * *:]			
"9903.74.50	Enumerated in U.S. note 11(c)(xviii)(A) to this subchapter, and entered in an aggregate annual quantity not to exceed 1,953 t.	No change	No change	No change
9903.74.51	Enumerated in U.S. note 11(c)(xviii)(B) to this subchapter, and entered in an aggregate annual quantity not to exceed 1,000 t.	No change	No change	No change
9903.74.52	Enumerated in U.S. note 11(c)(xviii)(C) to this subchapter, and entered in an aggregate annual quantity not to exceed 1,000 t.	No change	No change	No change
9903.74.53	Enumerated in U.S. note 11(c)(xix) to this subchapter, and entered in an aggregate annual quantity not to exceed 3,850 t.	No change	No change	No change
9903.74.54	Enumerated in U.S. note 11(c)(xx)(A) or (B) to this subchapter	No change	No change	No change
9903.74.55	Enumerated in U.S. note 11(c)(xx)(C) to this subchapter, and entered in an aggregate annual quantity to exceed 439 t.	No change	No change	No change
9903.74.56	Enumerated in U.S. note 11(c)(xx)(D) to this subchapter, and entered in an aggregate annual quantity not to exceed 432 t.	No change	No change	No change
9903.74.57	Enumerated in U.S. note 11(c)(xx)(E) to this subchapter, and entered in an aggregate annual quantity not to exceed 6,500 t.	No change	No change	No change
9903.74.58	Enumerated in U.S. note 11(c)(ccx) to this subchapter	No change	No change	No change
9903.76.21	Enumerated in U.S. note 11(c)(ccix) to this subchapter	No change	No change	No change
9903.76.22	Enumerated in U.S. note 11(c)(cxxx) to this subchapter	No change	No change	No change
9903.76.37	Enumerated in U.S. note 11(c)(lxvii)(B) to this subchapter	No change	No change	No change
9903.77.02	Enumerated in U.S. note 11(c)(ccxii) to this subchapter	No change	No change	No change
9903.77.77	Enumerated in U.S. note 11(c)(cliv)(A) to this subchapter	No change	No change	No change
9903.77.78	Enumerated in U.S. note 11(c)(ccviii) to this subchapter and entered in an aggregate quantity not to exceed 12 t during a time period specified in such note.	No change	No change	No change
9903.78.15	Enumerated in U.S. note 11(c)(cliv) to this subchapter	No change	No change	No change"

Conforming changes:

Subheading 9903.72.57 is modified by deleting "9903.74.47" and by inserting in lieu thereof "9903.74.58".
Subheading 9903.72.78 is modified by deleting "9903.75.11" and by inserting in lieu thereof "9903.75.14".
Subheading 9903.73.18 is modified by deleting "9903.76.20" and by inserting in lieu thereof "9903.76.22".
Subheading 9903.73.35 is modified by deleting "9903.76.36" and by inserting in lieu thereof "9903.76.37".
Subheading 9903.73.55 is modified by deleting "9903.77.01" and by inserting in lieu thereof "9903.77.02".
Subheading 9903.74.01 is modified by deleting "9903.77.76" and by inserting in lieu thereof "9903.77.78".
Subheading 9903.74.12 is modified by deleting "subheading 9903.77.85" and by inserting in lieu thereof "subheadings 9903.77.85 through 9903.77.86".
Subheading 9903.74.18 is modified by deleting "9903.78.14" and by inserting in lieu thereof "9903.78.15".

4. U.S. note 11(d)(i) to such subchapter III is modified by inserting in alphabetical sequence, in the enumeration of developing countries that are members of the World Trade Organization and that are excluded from the import relief set forth in subchapter III, "Macedonia,".

[FR Doc. 02–28866 Filed 11–13–02; 8:45 am]
BILLING CODE 3190–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–6 (Sub–No. 396X)]

The Burlington Northern and Santa Fe Railway Company—Abandonment Exemption—in Franklin County, KS

The Burlington Northern and Santa Fe Railway Company (BNSF) has filed a notice of exemption under 49 CFR 1152 subpart F—*Exempt Abandonments* to abandon and discontinue service over a 0.21-mile line of railroad between milepost 58.05 and milepost 58.26 in Ottawa, Franklin County, KS. The line traverses United States Postal Service zip code 66067.

BNSF has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on December 14, 2002, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by November 25, 2002. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by December 4, 2002, with: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to BNSF's representative: Michael Smith, Freeborn & Peters, 311 S. Wacker Dr., Suite 3000, Chicago, IL 60606–6677.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

BNSF has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. SEA will issue an environmental assessment (EA) by November 19, 2002. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1552. (Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.) Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), BNSF shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned its line. If consummation has not been effected by BNSF's filing of a notice of consummation by November 14, 2003, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at "*http://www.stb.dot.gov*."

Decided: November 5, 2002.

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each OFA must be accompanied by the filing fee, which currently is set at $1,100. *See* 49 CFR 1002.2(f)(25).

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

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BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–844X]

Santa Maria Valley Railroad Company—Abandonment Exemption—in Santa Barbara County, CA

Santa Maria Valley Railroad Company (SMVRR) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon a 4.87-mile line of railroad between milepost 9.75 at College Drive and milepost 14.62 at Gates Station, in the city of Santa Maria, in Santa Barbara County, CA. The line traverses United States Postal Service Zip Code 93454.

SMVRR has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there has been no overhead traffic on the line during the past 2 years and any overhead traffic could be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on December 14, 2002, unless stayed pending reconsideration. Petitions to stay that do not involve

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environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by November 25, 2002. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by December 4, 2002, with: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to SMVRR's representative: R. Curtis Ballantyne, Hill, Farrer & Burrill LLP, One California Plaza, 37th Floor, 300 South Grand Avenue, Los Angeles, CA 90071.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

SMVRR has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. SEA will issue an environmental assessment (EA) by November 19, 2002. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1552. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), SMVRR shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned its line. If consummation has not been effected by SMVRR's filing of a notice of consummation by November 14, 2003, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at "*http://www.stb.dot.gov.*"

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each OFA must be accompanied by the filing fee, which currently is set at $1,100. *See* 49 CFR 1002.2(f)(25).

Decided: November 5, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–28804 Filed 11–13–02; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Administrative Matter No. 3]

Implementation of the Regulatory Flexibility Act—STB Issuance No. 52

AGENCY: Surface Transportation Board, Transportation.

ACTION: Amendment of internal procedures.

SUMMARY: The Surface Transportation Board (STB) is revising its internal procedures for implementing the Regulatory Flexibility Act, which requires agencies to consider the effects of their rules on small entities.

EFFECTIVE DATE: The STB's revised internal procedures are effective on November 14, 2002.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 565–1600. (Federal Information Relay Service (FIRS) for the hearing impaired: 1–800–877–8339.)

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (RFA), 5 U.S.C. 601, *et seq.*, requires federal government agencies, including the STB, to consider the effects of their regulations on "small entities." Under the RFA, small entities are defined as small businesses, small not-for-profit enterprises, and small governmental jurisdictions. The RFA requires that agencies: (1) Publish lists of rules that have, or are likely to have in the future, a significant economic impact on small entities; (2) adopt procedures for furthering the participation of small entities in the rulemaking process; (3) on a rulemaking-by-rulemaking basis, determine the extent to which each rulemaking will affect small entities; (4) for rules that are expected to have a significant adverse effect on small entities, describe the steps taken to minimize the adverse effect in a manner that is consistent with the stated objectives of applicable statutes; and (5) provide for review of rules for small-entity impact every 10 years.

On October 9, 1981, our predecessor agency, the Interstate Commerce Commission (ICC or Commission), adopted internal procedures to implement the RFA, in Commission Issuance No. 52, *Implementation of the Regulatory Flexibility Act*, and published these procedures in the **Federal Register** at 46 FR 50158.[1] This issuance needs to be updated to reflect the STB's assumption of statutory functions of the ICC, intervening changes in the STB's internal organization and procedures, and experience under the RFA. Accordingly, we are revising STB Issuance No. 52 as set forth in the Appendix to this notice. Because our revision governs the internal operations and procedures of the STB, it is being issued in final form, and public comments are not being sought. This issuance is intended solely to provide for the internal processing of issues arising under the RFA, not to resolve substantive issues involving the interpretation and application of that statute.

Decided: November 7, 2002.

By the Board, Chairman Morgan and Vice Chairman Burkes.

Vernon A. Williams,

Secretary.

Appendix

52. Implementation of the Regulatory Flexibility Act

A. *Purpose.*—This issuance sets forth how the Surface Transportation Board (Board) implements the Regulatory Flexibility Act (RFA) in its formulation of agency policies and regulations.

B. *Background.*—The RFA was first enacted by Congress on September 19, 1980, Public Law 96–354 (94 Stat. 1164), and later amended on March 29, 1996, Public Law 104–121 (110 Stat. 847). The RFA directs that agencies endeavor to fit their regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to those requirements. Towards that end, the RFA requires agencies, when appropriate, to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration.

C. *Policy.*—The Board and its predecessor agency, the Interstate Commerce Commission, have taken many steps to reduce the regulatory burden on small business entities. Under the RFA, the scope of the agency's analysis of economic impacts of proposed rulemakings encompasses not only small carriers, but also small communities and municipalities, shippers, receivers and others.

D. *Regulatory Flexibility Officer.*—The Director of the Office of Proceedings is designated Regulatory Flexibility Officer.

E. *Definitions.*—"Small entity" shall have the same meaning as the terms "small business", "small organization" and "small governmental jurisdiction," as defined below:

[1] Commission issuances became applicable to the STB upon its creation.

1. *Small Business*—Generally, an independently owned and operated business that is not dominant in its field. The Board may, however, redefine "small" for various transportation modes by rule in accordance with the RFA.

2. *Small Organization*—Generally, a non-profit enterprise that is independently owned and operated and is not dominant in its field.

3. *Small Governmental Jurisdiction*—Generally, a political unit covering an area with a population under 50,000.

F. *Initial Regulatory Flexibility Analysis (IRFA).*—

1. An analysis of the impact of the proposed rule on small entities will be included in each notice of proposed rulemaking (NPR) that may have a significant economic impact on a substantial number of small entities. Such analysis will contain:

a. A description of the reasons why action by the agency is being considered;

b. A succinct statement of the objectives of, and legal basis for, the proposed rule;

c. A description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply;

d. A description of the projected reporting, recordkeeping and other compliance requirements of the proposed rule, including an estimate of the classes of small entities that will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; and

e. An identification, to the extent practicable, of all relevant Federal rules that may duplicate, overlap or conflict with the proposed rule.

2. In addition, each initial regulatory flexibility analysis will contain a description of any significant alternatives to the proposed rule that would accomplish the stated objectives of applicable statutes and would minimize any significant economic impact of the proposed rule on small entities. Consistent with the stated objectives of applicable statutes, the analysis will discuss significant alternatives, such as:

a. The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;

b. The clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities;

c. The use of performance, rather than design, standards; and

d. An exemption from coverage of the rule, or any part thereof, for such small entities.

G. *Final Regulatory Flexibility Analysis (FRFA).*—A final analysis of the impact of the proposed rule on small entities will be prepared on all final rules to be promulgated that may have a significant economic impact on a substantial number of small entities. The final analysis will contain:

1. A succinct statement of the need for, and the objectives of, the rule;

2. A summary of the issues raised by the public comments in response to the initial regulatory flexibility analysis, a summary of the assessment of the agency of those issues, and a statement of any changes made in the proposed rule as a result of the comments;

3. A description of and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available;

4. A description of the projected reporting, recordkeeping and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for the preparation of the report or record; and

5. A description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.

H. *Certification.*—In any rulemaking involving a proposed or final rule that will not, if promulgated, have a significant economic impact on a substantial number of small entities, a certification of that fact can be made in lieu of an IRFA and a FRFA. Such "certification of no significant economic impact" must contain a statement explaining the factual basis for the certification. Any proceeding involving a final rule, in which a previous certification has been made, should state that, in the NPR, we certified that the rule would have no significant impact on a substantial number of small entities.

I. *Responsibilities.*—

1. *Regulatory Flexibility Officer.*

a. The Regulatory Flexibility Officer is directed to prepare for the Board the Regulatory Flexibility Agenda, which will be part of the semi-annual Unified Agenda of Federal Regulatory and Deregulatory Actions.

b. The Regulatory Flexibility Officer will also review the following agency actions:

(1) All NPRs—prior to assignment for preparation of a draft decision—to determine if the proposed rule may have a significant economic impact on a substantial number of small entities. The results of this review shall be clearly indicated and affixed to the NPR and forwarded to the originating STB Office; and

(2) All NPRs and final rules—after preparation of a draft decision but prior to circulation for Board vote—to reevaluate the appropriateness of any certification, IRFA or FRFA to determine the sufficiency thereof. In all cases, the Regulatory Flexibility Officer is assigned the task of preparing or causing to be prepared, as appropriate, certifications of no significant impact; exemptions from coverage of the rule, or any part thereof, for small entities, if appropriate, as discussed in 5 U.S.C. 603(c)(4); or waivers or delays of some or all of the IRFA requirement (*see* Section F, above) in response to an emergency that makes compliance impracticable, as provided in 5 U.S.C. 608.

2. *Heads of Offices* are to assure that all NPRs and final rules to be promulgated, including exemptions, waivers or delays, have been cleared by the Regulatory Flexibility Officer at the earliest possible stage. NPRs should be referred prior to assignment for preparation of a draft decision, and NPRs and final rules should be referred for appropriate review and clearance after preparation of the draft decision but prior to circulation for Board consideration. The circulation memorandum on each decision should indicate that the Regulatory Flexibility Officer has approved of the Regulatory Flexibility action taken, waived or delayed. In all cases in which a voluminous IRFA has been necessary, the originating Office may prepare a separate IRFA summary to be published in the **Federal Register** at the time of publication of the general NPR.

3. *The Regulatory Flexibility Officer* will assure that all certifications, IRFAs, and FRFAs are published in the **Federal Register** and served directly on the Chief Counsel for Advocacy, Small Business Administration, and that all waivers or delays are published in the **Federal Register**.

[FR Doc. 02–28907 Filed 11–13–02; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[FI–81–86]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, FI–81–86 (TD 8513). Bad Debt reserves of Banks (§ 1.585–8).

DATES: Written comments should be received on or before January 13, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Larnice Mack (202) 622–3179, or through the Internet (*Larnice.Mack@irs.gov*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Bad Debt Reserves of Banks.

OMB Number: 1545–1290.

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Regulation Project Number: FI–81–86.

Abstract: Section 585(c) of the Internal Revenue Code requires large banks to change from reserve method of accounting to the specific charge off method of accounting for bad debts. Section 1.585–8 of the regulation contains reporting requirements in cases in which large banks elect (1) to include in income an amount greater than that prescribed by the Code; (2) to use the elective cut-off method of accounting: or (3) to revoke any elections previously made.

Current Actions: There is no change to these existing regulations.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 2,500.

Estimated Time Per Respondent: 15 min.

Estimated Total Annual Burden Hours: 625 hours.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 4, 2002.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 02–28936 Filed 11–13–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

United States Mint

Request for CCCAC Membership Applications

Summary: The United States Mint is accepting applications for membership to the Citizens Commemorative Coin Advisory Committee (CCCAC). The CCCAC was established in 1993 under Public Law 102–390 to: designate annually the events, persons, or places the committee recommends be commemorated by the issuance of commemorative coins; make recommendations with respect to the mintage level for any commemorative coin recommended; submit a report to the Congress containing a description of the recommendations and the Committee's reasons for such recommendation; and review and comment on proposed designs for commemorative coins and the 50 State Quarters® Program.

Membership consists of seven voting members appointed to four-year terms by the Secretary of the Treasury: three members shall be appointed from among individuals specially qualified to serve by reason of their education, training or experience in art, art history, museum or numismatic collection curation, or numismatics; three members shall be appointed from among individuals who will represent the interest of the general public; and one member shall be appointed from officers or employees of the United States Mint to represent the interests of the United States Mint.

The Committee is subject to the direction of the Secretary of the Treasury. The United States Mint is responsible for providing the necessary support services for the Committee. Committee members are not paid for their time or services, but consistent with Federal travel regulations, members are reimbursed for their travel and lodging expenses to attend approximately two meetings each year. Members may be subject to the Standards of Ethical Conduct for Employees of the Executive Branch (5 CFR part 2653).

The United States Mint will review all submissions and will forward its recommendations to the Secretary of the Treasury for appointment consideration. Candidates who believe that they are specially qualified to serve by reason of their education, training, or experience in the fields of art, art history, museum or numismatic collection curation, or numismatics should include specific skills, abilities, talents, and credentials to support their applications. All candidates should submit any relevant information that demonstrates their qualifications to represent the interests of the public, including demonstrated experience with history, education, youth or American heritage and culture. The United States Mint is also interested in candidates who have demonstrated leadership skills, who have received recognition by their peers in their field of interest, who have a record of participation in public service or activities, and who are willing to commit the time and effort to participate in the Committee meetings and related activities.

Application Deadline: December 2, 2002.

Receipt of Applications: Any member of the public wishing to be considered for participation on the committee should submit a resume or letter describing qualifications for membership, by e-mail to *cccacmembership@usmint.treas.gov* or by mail to the United States Mint, 801 9th Street, NW., Washington, DC 20001, Attn: CCCAC Membership. Submissions must be postmarked no later than December 2, 2002. Applications submitted previously in 2002 have been retained on file and will be reviewed and considered along with new applicants—it is not necessary to reapply.

Dated: November 7, 2002.

Henrietta Holsman Fore,

Director, United States Mint.

[FR Doc. 02–28867 Filed 11–13–02; 8:45 am]

BILLING CODE 4810–37–P

Corrections

Federal Register

Vol. 67, No. 220

Thursday, November 14, 2002

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP01–36–000, CP01–382–000, CP01–52–000 and CP01–383–000

Zia Natural Gas Company, an Operating Division of Natural Gas Processing Company v. Raton Gas Transmission Compnay [Not Consolidated]; Notice of Technical Conference

October 24, 2002.

Correction

In notice document 02–27921 appearing on page 67162 in the issue of Monday, November 4, 2002 make the following correction:

On page 67162, in the third column, the docket number is corrected to read as set forth above.

[FR Doc. C2–27921 Filed 11–13–02; 8:45 am]

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Federal Register

Thursday,
November 14, 2002

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 18
Florida Manatees; Incidental Take During Specified Activities; Proposed Rule

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 18

RIN 1018–AH86

Florida Manatees; Incidental Take During Specified Activities

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of availability.

SUMMARY: We, the Fish and Wildlife Service, are proposing regulations that would authorize for the next five years the incidental, unintentional take of small numbers of Florida manatees (*Trichechus manatus latirostris*) resulting from government activities related to watercraft and watercraft access facilities within three regions of Florida.

Under the provisions of the Marine Mammal Protection Act (MMPA), the Secretary of the Department of the Interior may authorize the incidental taking of small numbers of marine mammals in a specified geographic area if the Secretary finds, based on the best scientific evidence available, that the total taking for the authorized period will have no more than a negligible impact on the species or stock. If this finding is made, specific regulations will be established for the activities that describe permissible methods of taking; means of effecting the least practicable adverse impact on the species and its habitat; and requirements for monitoring and reporting. If the Secretary cannot make a finding that the total taking will have a negligible impact on the species or stock, the Secretary must publish the negative finding in the **Federal Register** along with the basis for such determination.

We have defined the specified geographic area for this proposed rule to be the species' range within the State of Florida. Long-term studies suggest four regional populations of manatees in Florida—Northwest, Upper St. Johns River (from Palatka south), Atlantic (including the St. Johns River north of Palatka), and Southwest. Through this rule, we have defined these populations as stocks. We are proposing a finding that the total expected takings of Florida manatee resulting from government activities related to watercraft and watercraft access facilities would have a negligible impact in the Upper St. Johns River and Northwest stocks and a negligible impact with the implementation of additional mitigating measures on the Atlantic Stock. For the Southwest Stock, the best available information indicates that these activities would have more than a negligible impact on the Stock and, therefore, we are not proposing to authorize incidental take for this Stock (*i.e.*, a negative finding). We also announce the availability of a draft environmental impact statement for this action.

DATES: We will consider comments on both the proposed rule and the draft environmental impact statement that are received by January 13, 2003.

We will hold six public hearings as follows: on December 2, 2002, in Ft. Myers; on December 3, 2002, in Tampa; on December 4, 2002, in Melbourne; on December 5, 2002, in Daytona Beach; on December 9, 2002, in Palatka; and on December 10, 2002, in Gainesville. All hearings will run from 6 p.m. to 9 p.m. We will hold additional public hearings if requested.

Persons needing reasonable accommodations in order to attend and participate in the public hearing should contact Chuck Underwood of the Jacksonville Field Office (see **ADDRESSES** section) as soon as possible. In order to allow sufficient time to process requests, please call no later than one week before the hearing.

ADDRESSES: If you wish to comment, you may submit your comments by any one of the following methods:

1. You may submit written comments and information to the Field Supervisor, Jacksonville Field Office, U.S. Fish and Wildlife Service, 6620 Southpoint Drive South, Suite 310, Jacksonville, Florida 32216.

2. You may hand deliver written comments to our Jacksonville Field Office, at the above address, or fax your comments to 904/232–2404.

3. You may send comments by electronic mail (e-mail) to *manatee@fws.gov*. For directions on how to submit electronic comment files, see the "Public Comments Solicited" section.

We request that you identify whether you are commenting on the proposed rule or draft environmental impact statement. Comments and materials received, as well as supporting documentation used in the preparation of this proposed rule, will be available for public inspection, by appointment, during normal business hours from 8 a.m. to 4:30 p.m. Monday through Friday, at the above address. You may obtain copies of the draft environmental impact statement from the above address or by calling 904/232–2580, or from our Web site at *http://northflorida.fws.gov*. Information regarding this proposal is available in alternative formats upon request.

The public hearings will be held at the following locations:

1. Harborside Convention Hall, 1375 Monroe St., Ft. Myers;

2. Holiday Inn & Conference Center, 4732 N. Dale Mabry Hwy, Tampa;

3. Radisson Hotel & Conference Center, 3101 N. Highway A1A, Melbourne;

4. Daytona Beach Resort & Conference Center, 2700 N. Atlantic Ave., Daytona Beach;

5. Holiday Inn, 201 N. 1st St., Palatka; and,

6. Doubletree University Florida Hotel & Conference Center, 1714 SW 34th St., Gainesville.

FOR FURTHER INFORMATION CONTACT: Pete Benjamin, Assistant Field Supervisor (see **ADDRESSES** section), telephone 904/232–2580; or visit our Web site at *http://northflorida.fws.gov*.

SUPPLEMENTARY INFORMATION:

Background

The Marine Mammal Protection Act (MMPA) of 1972 (16 U.S.C. 1361–1407) sets a general moratorium, with certain exceptions, on the taking and importation of marine mammals and marine mammal products and makes it unlawful for any person to take, possess, transport, purchase, sell, export, or offer to purchase, sell, or export, any marine mammal or marine mammal product unless authorized. "Take" as defined by the MMPA and its implementing regulations (50 CFR part 18) means "to harass, hunt, capture, collect, or kill, or attempt to harass, hunt, capture, collect, or kill any marine mammal, including, without limitation, any of the following—the collection of dead animals or parts thereof; the restraint or detention of a marine mammal, no matter how temporary; tagging a marine mammal; or the negligent or intentional operation of an aircraft or vessel, or the doing of any other negligent or intentional act which results in the disturbing or molesting of a marine mammal."

"Harassment" is defined under the MMPA as, "any act of pursuit, torment, or annoyance which—(i) has the potential to injure a marine mammal or marine mammal stock in the wild; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering."

The prohibitions on take apply to all persons, including Federal, State, and local government agencies with the exception of humane taking (including euthanasia) by government officials while engaged in their official duties, if such taking is (1) for the protection or welfare of a marine mammal; (2) for the protection of the public health and welfare; or (3) the non-lethal removal of nuisance animals. When feasible, steps designed to ensure return of such animals to their natural habitat, if not killed in the course of such taking, must be implemented (16 U.S.C. 1379(h)).

Section 101(a)(5)(A) of the MMPA allows the Secretary of the Department of the Interior, through the Director of the Fish and Wildlife Service (Service), upon request, to authorize by specific regulation the incidental, unintentional take of a small number of marine mammals by U.S. citizens engaged in specific identified activities (other than commercial fishing) within specific geographic areas. This is the mechanism by which incidental, but not intentional, take of small numbers of marine mammals may be authorized in accordance with Federal law for activities other than commercial fishing if certain findings are made and regulations are enacted pursuant to 50 CFR 18.27. The Director must find that the total of such taking during the specified time period (which cannot be more than five consecutive years) will have no more than a negligible impact on the species or stock and will not have an unmitigable impact on the availability of such species or stock for subsistence uses. The subsistence provision is not applicable to Florida manatees.

The regulations implementing the MMPA define "negligible impact" as, "an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival" (50 CFR 18.27(c)). If such findings are made, we would then establish specific regulations identifying permissible methods of taking by such activity, means of effecting the least practicable adverse impact on the species or stock and its habitat, and requirements for monitoring and reporting such taking. If a finding cannot be made that the total taking will have a negligible impact on the species or stock, the "negative finding" and the basis for denying the request for the incidental take must be published in the **Federal Register** (50 CFR 18.27(d)(4)).

Following issuance of incidental take regulations, U.S. citizens (including government agencies) who engage in the specified activities in the specified area could apply for a Letter of Authorization (LOA), which, if granted, would authorize incidental take associated with the applicant's activities. In return for committing to specific measures that minimize the applicant's impact on the species or stock and ensure that the total taking remains at the negligible level, the applicant receives authorization for any remaining take that occurs and that would otherwise be unlawful under the MMPA. General procedures for obtaining an LOA are described at 50 CFR 18.27(f).

Summary of Request

The Florida Manatee Recovery Plan, Third Revision (U.S. Fish and Wildlife Service 2001), states that the largest known human-related cause of manatee deaths is collisions with watercraft. Between 1976 and 2000, the total number of carcasses (*i.e.*, deaths due to all causes) collected has increased at a rate of 6.0 percent per year. Between 1976 and 2002 deaths attributed to watercraft increased by 7.3 percent per year (Florida Marine Research Institute 2002). In 2000 and 2001, watercraft-related deaths accounted for at least 29 percent and 25 percent, respectively, of the total number of known manatee deaths. During the past five years (1997 to 2001) watercraft-related deaths have been the highest on record ranging from 52 to 82 per year.

In the State of Florida, government agencies (including Federal, State, and local agencies) engage in a variety of activities related to watercraft that may affect manatees, positively or negatively. Many of these activities relate to the use and regulation of watercraft operated in Florida waters accessible to manatees, including—(1) regulating watercraft operation (*e.g.*, regulation of marine events); (2) authorizing construction of watercraft access facilities (marinas, docks, boat ramps, etc.); (3) funding construction of watercraft access facilities; (4) operating watercraft access facilities; and (5) operating watercraft. To date, there are no regulations under the MMPA to authorize the incidental, unintentional death, injury, or harassment of manatees caused by these otherwise legal activities.

We, the U.S. Fish and Wildlife Service, engage in, or have the authority to engage in, each of the above five categories of activities; therefore, our activities could result in the incidental, unintentional take of manatees. As such, we initiated the development of incidental take regulations for our own activities related to watercraft in Florida. Other Federal agencies also engage in some or all of these activities, as do a variety of State and local agencies. We have encouraged other Federal and State agencies involved in these same types of activities to join us in our rulemaking process as a means to coordinate Federal, State, and local measures that would reduce the taking of manatees by watercraft; develop additional protective measures; and insulate partner agencies against liability for take through the authorization process. The U.S. Coast Guard, National Park Service, and U.S. Army Corps of Engineers have agreed to join us in this rulemaking process.

Specified Activities

Only activities of government agencies related to watercraft and watercraft access facilities are considered within the scope of this rule. While it is our view that the operation of watercraft is the most important factor influencing watercraft/manatee interactions (see "Watercraft-Related Impacts to the Florida Manatee" section below), virtually all aspects of watercraft operation and access are regulated by Federal, State, and/or local government agencies. As such, those government agencies who hold a Letter of Authorization will have protection from liability for take associated with these activities. Liability protection afforded under these regulations would also extend to individual non-governmental operators of watercraft and watercraft access facilities who are authorized or regulated by a Federal, State, or local government agency holding a Letter of Authorization, provided (1) the government authorization or regulation is implemented in accordance with the Letter of Authorization; and (2) the individual is in compliance with the terms of the agency authorization or regulation. For example, by issuing a Letter of Authorization to an agency that permits the construction of watercraft access facilities, entities receiving such permits would be covered under the agency's Letter of Authorization.

The following five categories of activities were considered in the scope of this rulemaking evaluation as watercraft-related activities of government agencies that could cause the incidental take of manatees, including mortality, injury, and harassment. Activities of government agencies that have the potential to reduce watercraft-related take of manatees are described below under "Mitigating Measures."

1. *Regulating the operation of watercraft on Florida waters*—This category of activity includes government programs responsible for the establishment of watercraft speed zones and restricted access areas. Local, State,

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and Federal agencies establish speed zones and restricted access areas in order to reduce watercraft-related take of manatees by slowing watercraft speeds or prohibiting waterborne activities in areas of importance to manatees such as aggregation areas, travel corridors, feeding areas, resting areas, calving areas, and other areas where manatees occur. The establishment of such areas does not cause or contribute to take. However, to the extent that agencies exempt, except, permit, or otherwise allow prohibited activities to occur in such areas, such authorization may cause or contribute to the incidental take of manatees.

This category also includes government programs (e.g., State/local registration, U.S. Coast Guard vessel documentation) that register watercraft for operation in waters inhabited by manatees. This activity may cause or contribute to incidental take of manatees to the extent that watercraft which are not properly registered are not authorized to operate on Florida waters. Finally, this category includes the authorization and regulation of marine events (e.g., high-speed races, parades, etc.) in Florida waters inhabited by manatees. Such events, particularly events that involve high-speed watercraft operation, have the potential to cause or contribute to the incidental take of manatees.

2. *Authorizing construction of watercraft access facilities (e.g., boat ramps, docks, and marinas) that provide watercraft access to waters inhabited by manatees*—This category of activity includes government programs that regulate the location and construction of watercraft access facilities including boat ramps, marinas, private and public docks, and other such structures that provide watercraft access to waters inhabited by manatees. Construction of watercraft access facilities is authorized by local, State, and Federal agencies. At the local level, construction of watercraft access facilities is regulated primarily through zoning ordinances. Several Florida counties have adopted Manatee Protection Plans (MPP) which include facility siting plans. Facility siting plans generally identify areas within a county where construction of additional watercraft access facilities are encouraged or discouraged, or define criteria for assessing the suitability of sites for construction of new facilities. County MPPs must be approved by the Florida Fish and Wildlife Conservation Commission (FWC). Upon approval, the facility siting plans must be incorporated into the County's comprehensive plan.

At the State level, construction of watercraft access facilities is regulated by the Florida Department of Environmental Protection and the water management districts pursuant to the State's Environmental Resource Permit Procedures (62–343 Florida Administrative Code [F.A.C.]). Permit applications received by the State regulatory agencies are also reviewed by the FWC, Bureau of Protected Species Management (BPSM), which uses the FWC Manatee Environmental Resource Permit Coordination Guidance, and provides an environmental assessment of potential adverse impacts to manatees from regulated activities.

At the Federal level, construction of watercraft access facilities is regulated by the Army Corps of Engineers (Corps) through section 404 of the Clean Water Act of 1972 and section 10 of the Rivers and Harbors Act of 1899. Section 7 of the Endangered Species Act (ESA) of 1973 (16 U.S.C. 1531 *et seq.*), as amended, requires the Corps to assess the effects of any facility under their review on federally listed species and consult with us or the National Marine Fisheries Service (NOAA-Fisheries), as appropriate, if they determine that the facility in question may affect listed species or their designated critical habitat. The Corps utilizes a decision-making key developed in cooperation with us to assist in determining whether a proposed project may affect manatees. If potential adverse effects to manatees or manatee habitat are identified, the permit can be specifically conditioned to avoid the adverse impacts, or where appropriate, denied. Typical permit conditions include limitations on the number of slips, and avoidance or minimization of impacts to sea grasses. Additionally, standard manatee construction conditions have been developed that are utilized by the Corps as well as State regulatory agencies to minimize the effects of watercraft access facilities on manatees and manatee habitat.

3. *Funding construction of watercraft access facilities that provides watercraft access to waters inhabited by manatees*—In addition to authorizing construction of watercraft access facilities, many local, State, and Federal agencies fund their construction. The effects of funding construction of watercraft access facilities are the same as those described for permitting construction of watercraft access facilities.

4. *Operating facilities that provide watercraft access to waters inhabited by manatees*—Many government agencies operate watercraft access facilities. Operation includes any act of owning, maintaining, or directly or indirectly controlling who has access to waters inhabited by manatees through use of any watercraft access facility.

5. *Operating government-owned watercraft in Florida waters accessible to manatees for official government business other than that covered under section 109(h) of the MMPA*—Many government agencies own and operate watercraft. Incidental take directly related to the protection of manatees is covered under the exemption provided under section 109(h) of the MMPA. Other government watercraft activities require authorization under the MMPA like that of private watercraft operators.

Other human activities cause the incidental take of manatees including, but not limited to, the operation of locks and water control structures, port operations, naval and other military activities, the operation of industrial warm-water outfalls, commercial and recreational fisheries, implementation of projects that affect the quality and quantity of water flow from warm water springs, and the implementation of water manipulation projects that affect the distribution, timing, quality, and quantity of waterflow in manatee habitat. These activities are outside of the scope considered in this evaluation, but may be subject to the future publication of rules.

Specified Geographic Region

While the summer range of the Florida manatee extends beyond Florida, the entire natural winter range is within Florida where the majority of watercraft-related incidental take occurs. The effective control of watercraft-related incidental take depends on actions of the operators of watercraft and government agencies in Florida. Therefore, the specific geographic area considered for coverage by this regulation was limited to those waters within the State of Florida that are accessible to manatees. Separate regulations for government activities in other geographic areas outside of the State of Florida may be considered under subsequent rulemakings, if requested.

Long-term studies suggest four regional populations of manatees in Florida—(a) the Northwest Region, consisting of the counties along the Gulf of Mexico from Escambia County east and south to Hernando, Lafayette, and Gilchrist counties, and Marion County adjacent to the Withlacoochee River; (b) the Upper St. Johns River Region, consisting of Putnam County from Palatka south, Volusia, Flagler, and Marion counties adjacent to the St. Johns River or its tributaries, and Lake

and Seminole counties; (c) the Atlantic Region, consisting of counties along the Atlantic coast from Nassau County south to Miami-Dade County, the portion of Monroe County adjacent to the Florida Bay and the Florida Keys, Okeechobee County, and counties along the lower portion of the St. Johns River north of Palatka, which includes Putnam, St. Johns, Clay, and Duval counties; and (d) the Southwest Region, consisting of the counties along the Gulf of Mexico from Pasco County south to Whitewater Bay in Monroe County and DeSoto, Glades, and Hendry counties.

These divisions are based primarily on documented manatee use of wintering sites and from radio-tracking studies of individuals' movements. Radio-tracking studies (Bengtson 1981) and other information (U.S. Fish and Wildlife Service 2001, Marine Mammal Commission [MMC] 1988) suggest that most manatees wintering at Blue Spring tend to remain in the area identified as the Upper St. Johns River Region. The manatees of this region comprise approximately four percent of the total Florida manatee population. The lower St. Johns River, the Atlantic coast, and the Florida Keys are considered to represent the Atlantic Region, based on the results of long-term radio tracking and photo-identification studies (Beck and Reid 1995, Reid *et al.* 1995, Deutsch *et al.* 1998). The manatees of this region comprise approximately 42 percent of the total Florida manatee population.

On the west coast, Rathbun *et al.* (1995) reported that, of 269 recognizable manatees identified at the Kings Bay and Homosassa River warm-water refuges in northwest Florida between 1978 and 1991, 93 percent of the females and 87 percent of the males returned to the same refuge each year. Radio-tracking results suggest that many animals wintering at Crystal River disperse north in warm seasons to rivers along the Big Bend coast, particularly the Suwannee River (Rathbun *et al.* 1990). The manatees of this region comprise approximately 12 percent of the total Florida manatee population. The existence of more or less distinct subgroups in the southwestern area of Florida (*i.e.*, from Tampa Bay south) is not clear. It is possible that manatees using warm-water refuges in Tampa Bay, the Caloosahatchee River, and Collier County may be somewhat discrete groups; however, the best available data before us and the Florida Manatee Recovery Team indicated that we should identify them as one group. The manatees of this region comprise approximately 42 percent of the total Florida manatee population.

Although some movement occurs among regional populations, researchers found that analysis of manatee status on a regional level provided significant insights into important factors related to manatee recovery, such as winter aggregation areas, manatee movement patterns, and human interactions (U.S. Fish and Wildlife Service 2001). This led the Florida Manatee Recovery Team and the Service to establish objective and measurable recovery criteria for the four regions based upon demographic benchmarks for certain aspects of manatee life history—adult survival, reproduction, and population growth—in the Florida Manatee Recovery Plan.

Based on available information, we have concluded that these regions meet the criteria for classification as separate stocks under the MMPA. The guidelines for assessing marine mammal stocks (Barlow *et al.* 1995) advise a risk-averse strategy when determining stock structure. The guidelines advise that this requires starting with a definition of stocks based on the smallest groupings that are biologically reasonable and are practical from a management perspective. Biological evidence indicates considerable demographic differences among the four regions. For example, based on recent analysis (Langtimm *et al.* 2002) estimates of adult survival rates vary among regions; ranging from a high of 96.2 (95 percent confidence interval (CI) that ranges from 95.3 to 97.2) in the Northwest Region to a low of 90.6 (95 percent CI 86.7 to 94.4) in the Southwest Region. Adult survival in the Atlantic Region is estimated to be 94.3 percent (95 percent CI 92.3 to 96.2), and adult survival in the Upper St. Johns River Region is 96.1 (95 percent CI 90.0 to 98.5). Similarly, estimates of population growth rates vary among regions. According to a recent analysis by Runge *et al.* (2002 unpubl. analysis), the growth rate is estimated to be highest in the Upper St. Johns River Region at 6.1 percent per year (95 percent CI 1.7 to 8.7), followed by the Northwest Region (5.0 percent growth per year; 95 percent CI 3.2 to 6.8), and the Atlantic Region (3.2 percent growth per year; 95 percent CI 0.3 to 5.7). Growth rate has not been calculated for the Southwest Region, although it is thought that the population is declining or is, at best, stable.

As noted above, available evidence indicates that there is relatively little movement of manatees among the regions. The highest dispersal rate assumed by the FWC for the purposes of their recent population viability analysis (PVA) (see "The Status of the Florida Manatee" section) was two percent per year between the Upper St. Johns River Region and the Atlantic Region (Florida Marine Research Institute 2002). The FWC assumed that dispersal rates among the other regions did not exceed 0.5 percent per year. This indicates that dispersal from regions in which the population is likely growing (e.g., the Northwest Region) is likely not sufficient to compensate for high levels of human-related mortality in other regions (e.g., the Southwest Region). The stock assessment guidelines warn that managing areas with differential levels of take as a single stock can lead to depletion (Wade and Angliss 1997).

The threats facing manatees also vary among regions. For example, the number of watercraft-related deaths has been reported (U.S. Fish and Wildlife Service 2001) as increasing at a rate of 10.8 percent per year in the Northwest Region between 1980 and 1999; although the number of manatees killed by watercraft in this region over that period was low (N=32). Conversely, watercraft-related deaths in the Southwest Region increased at a rate of 7.1 percent per year during the same period, and a far greater number of manatees were killed (N=331). The disproportionate amounts of incidental take in the Southwest and Atlantic regions supports the definition of separate stocks. Additionally, manatees in the Southwest Region are more vulnerable to red tide than in other regions, and manatees in the Atlantic and Southwest regions are more dependent on man-made warm water sources than are manatees in the Upper St. Johns River and Northwest regions (U.S. Fish and Wildlife Service 2001). Addressing these threats necessitates application of different management approaches in each region. This further supports the definition of these as separate stocks.

Based on the preceding analysis, we conclude that the four regions identified in the Florida Manatee Recovery Plan meet the criteria for designation as separate stocks under the MMPA. We intend to use this determination in the next revision of the Stock Assessment Report for the West Indian Manatee, and for the remainder of this document we will refer to the regions as the Northwest Stock, Upper St. Johns River Stock, Atlantic Stock, and Southwest Stock. Ideally, we would have preferred to review and revise the Stock Assessment Report prior to this rulemaking; however, settlement obligations precluded our ability to do this.

We have determined that these stocks, under the MMPA, do not meet the criteria for designation as Discrete

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Population Segments pursuant to the ESA, and as such it would not be possible or appropriate for us to consider reclassification of the stocks separately under the ESA.

Summary of Proposed Rule

We are proposing regulations to allow the incidental, unintentional take of Florida manatee within the Northwest, Upper St. Johns River, and Atlantic stocks in Florida. The regulations would be in effect year-round from the date of enactment for a period of five years for government activities related to the operation of watercraft and watercraft access facilities. The proposed regulations would not authorize the intentional harassment, hunting, capturing, or killing of Florida manatee. These regulations do not permit the actual activities associated with use and regulation of watercraft and watercraft access facilities in Florida waters, but rather allow the incidental, unintentional take of the Florida manatee resulting from these otherwise lawful activities. We are not proposing to authorize incidental take of manatees from the Southwest Stock at this time. However, we will continue to monitor the status of the Southwest Stock, and will propose incidental take regulations as soon as available information indicates that watercraft-related incidental take in this region is having no more than a negligible impact on the Southwest Stock, or could be reduced to the negligible impact level with implementation of mitigating measures.

The proposed regulations include requirements for monitoring and reporting, and measures to reduce adverse impacts on the Florida manatee and its habitat to the maximum extent practicable. The regulations are based on the finding that the authorization and regulation of watercraft and watercraft access facilities in Florida may result in the taking of Florida manatee. We find that with the continued and/or additional implementation of the mitigating measures described in this proposed rule, the total impact of the takings in three of the four stocks will have a negligible impact on these stocks.

After establishing these regulations, in order to implement the regulations and for a person or agency to receive the protections offered by the MMPA, government agencies that engage in the specified activities would need to apply for and obtain an LOA. The process for requesting an LOA is described in the "Proposed LOA Process" section of this proposed rule.

The Status of the Florida Manatee

In the southeastern United States, manatees occur primarily in Florida and southeastern Georgia, but individuals can range as far north as Rhode Island on the Atlantic coast (U.S. Fish and Wildlife Service 2001), and as far west as Texas on the Gulf coast. During the winter, cold temperatures keep the population concentrated in peninsular Florida and many manatees rely on the warm water from natural springs and power plant outfalls. We have divided this population into four stocks as explained above.

Research in the early 1980s indicated to scientists that development of a means of estimating or monitoring trends in the size of the overall manatee population in the southeastern United States would be difficult (O'Shea 1988, O'Shea *et al.* 1992, Lefebvre *et al.* 1995). Even though many manatees aggregate at warm-water refuges in winter and most if not all such refuges are known, direct counting methods (*i.e.*, by aerial and ground surveys) have been unable to account for the number of animals that may be away from these refuges, are not seen because of turbid water, or for other factors. The use of mark-resighting techniques to estimate manatee population size based on known animals in the manatee photo-identification database also has been impractical, as the proportion of unmarked manatees has not been estimated.

The only data on population size have been uncalibrated indices based on maximum counts of animals at winter refuges made within one or two days of each other. Based on such information in the late 1980s, the total number of manatees throughout Florida was indicated to be at least 1,200 animals (U.S. Fish and Wildlife Service 2001). Because aerial and ground counts at winter refuges are variable because of the weather, water clarity, manatee behavior, and other factors (Packard *et al.* 1985, Lefebvre *et al.* 1995), interpretation of analyses for short-lived trends is difficult (Packard and Mulholland 1983, Garrott *et al.* 1994). Strip-transect aerial surveys are used routinely to estimate dugong (*Dugong dugon*) population size and trends (U.S. Fish and Wildlife Service 2001); however, these surveys do not adapt to manatees because of their more linear (*i.e.*, coastal and riverine) distribution. This survey method was tested in the Banana River, Brevard County, and recommended for use in that area to monitor manatee population trends (Miller *et al.* 1998). This approach may also have utility in the Ten Thousand Islands-Everglades area, where manatee population size and distribution is poorly understood.

Beginning in 1991, the former Florida Department of Natural Resources (FDNR) initiated a statewide aerial survey program to count manatees in potential winter habitat during periods of severe cold weather (Ackerman 1995). These surveys are more comprehensive than those used to estimate a minimum population during the 1980s. The highest two-day minimum count of manatees from these winter synoptic aerial surveys and ground counts is 3,276 manatees in January 2001; the highest count on the east coast of Florida is 1,756, and the highest on the west coast is 1,520, both in 2001. However, the manatee counts of March 2002, when weather conditions were less favorable, resulted in a total count of 1,796. The FWC stated in their March 6, 2002, press release that the "low count merely reflects the poor visibility during the count, not a dramatic change in the manatee population." Due to the nearly ideal conditions for the 2001 synoptic survey, the results of that survey are considered the best available estimate of the current minimum population size (*i.e.*, 3,276).

It remains unknown what proportions of the total manatee population were counted in these surveys. No statewide surveys were done during the winters of 1992–93 or 1993–94 because of the lack of strong mid-winter cold fronts. These uncorrected counts do not provide a basis for assessing population trends. However, trend analyses of temperature-adjusted aerial survey counts show promise for providing insight to general patterns of population growth in some regions (Garrott *et al.* 1994, 1995, Craig *et al.* 1997, Eberhardt *et al.* 1999).

It has been possible to monitor the number of manatees using the Blue Spring and Crystal River warm-water refuges. At Blue Spring, with its unique combination of clear water and a confined spring area, it has been possible to count the number of resident animals by identifying individual manatees from scar patterns. The data indicate that this group of animals has increased steadily since the early 1970s when it was first studied. During the 1970s the number of manatees using the spring increased from 11 to 25 (Bengtson 1981). In the mid-1980s about 50 manatees used the spring (U.S. Fish and Wildlife Service 2001), and by the winter of 1999–2000, the number had increased to 147 (Hartley 2001).

On the northwest coast of Florida, the clear, shallow waters of Kings Bay have made it possible to monitor the number of manatees using the warm-water refuge in Kings Bay at the head of the Crystal River. Large aggregations of manatees apparently did not exist there until recent times (U.S. Fish and Wildlife Service 2001). The first counts were made in the late 1960s, when 38 animals were counted in King Bay during the winter of 1967/1968 (Hartman 1979). By the winter of 1981/1982, the maximum winter count had increased to 114 manatees (Powell and Rathbun 1984), and in December 1997, the maximum count was 284 (Buckingham *et al.* 1999). Both births and immigration of animals from other areas have contributed to the increases in manatee numbers at Crystal River and Blue Spring. The increases in counts at Blue Spring and Crystal River are accompanied by estimates of adult survival and population growth that are higher than those determined for the Atlantic coast (Eberhardt and O'Shea 1995, Langtimm *et al.* 1998, Eberhardt *et al.* 1999).

While aircraft synoptic surveys provide a "best estimate" of the minimum manatee population size, there are no estimates or confidence intervals for the size of the Florida manatee population that have been derived by reliable, statistically based, population-estimation techniques. A *census* is a complete count of individuals within a specified area and time period. A *survey*, in contrast, is an incomplete count. With the exception of a few places where manatees may aggregate in clear, shallow water, not all manatees can be seen from aircraft because of water turbidity, depth, surface conditions, variable times spent submerged, and other considerations. Thus, results obtained during typical manatee synoptic surveys yield partial counts. While these results are of value in providing information on where manatees occur, likely relative abundance in various areas, and seasonal shifts in manatee abundance, they do not provide good population estimates, nor can they reliably measure trends in the manatee population. Consequently, the Florida Manatee Recovery Plan concludes—"Despite considerable effort in the early 1980s, scientists have been unable to develop a useful means of estimating or monitoring trends in size of the overall manatee populations in the southeastern United States" (U.S. Fish and Wildlife Service 2001).

Population models employ mathematical relationships based on survival and reproduction rates to calculate population growth and trends in growth. A deterministic model (a model in which there are no random events) using classical mathematical approaches and various computational procedures with data on reproduction and survival of living, identifiable manatees suggests a maximum growth rate of about seven percent per year, excluding emigration or immigration (Eberhardt and O'Shea 1995). This maximum was based on studies conducted between the late 1970s and early 1990s in the protected winter aggregation area at Crystal River and did not require estimates of population size. The analysis showed that the chief factor affecting the potential for population growth is survival of adults.

Estimated adult survival in the Atlantic Region has suggested a slower rate or no population growth over a similar period, compared to the Upper St. Johns River and Northwest regions. This modeling shows the value of using survival and reproduction data obtained from photo-identification studies of living manatees to compute population growth rates with confidence intervals, providing information which can be used to infer long-term trends in the absence of reliable population size estimates. However, collection of similar data has been initiated only recently for other areas of Florida (notably from Tampa Bay to the Caloosahatchee River beginning in the mid-1990s), and none is available over much of the remaining areas used by manatees in southwestern Florida.

A PVA is a stochastic modeling approach (*i.e.*, a model in which random events, such as red tide and extremely cold winters, are incorporated), which varies potential scenarios influencing reproduction and survival over long periods, and predicts responses in population growth. A PVA was carried out for manatees based on age-specific mortality rates computed from the age distribution of manatees found dead throughout Florida from 1979 through 1992 (Marmontel *et al.* 1997). This method of computing survival rests on certain assumptions that were not fully testable; yet, results point out the importance of adult survival to population persistence.

Given population sizes that may reflect current abundance, the PVA showed that if adult mortality as estimated for the study period were reduced by a modest amount (*e.g.*, from 11 percent down to nine percent), the Florida manatee population would likely remain viable for many years. However, the PVA also showed that slight increases in adult mortality would result in extinction of manatees over the long term.

The above review demonstrates that the basis for statewide population size "estimates" of any kind, based on current survey methods, cannot be used for computing population trends in manatees. The weight of scientific evidence suggests that the potential for population increases over the last two decades is strong for two protected aggregation areas. New population analyses, based on more recent (since 1992) information, are not yet available in the peer-reviewed literature. These analyses will be fundamental to management decisions that are more relevant today.

The most significant problem presently faced by manatees in Florida is death or serious injury from boat strikes. An additional long-term threat is the lack of availability of warm-water refuges. The availability of warm-water refuges for manatees is uncertain if minimum flows and levels are not established for the natural springs on which many manatees depend, and if industrial warm-water refuges are lost as deregulation of the power industry in Florida occurs. Consequences of an increasing human population and intensive coastal development are also long-term threats to the Florida manatee. Survival of the manatee will depend on maintaining the integrity of the ecosystem and habitat sufficient to support a viable manatee population.

Data on manatee deaths in the southeastern United States have been collected since 1974 (O'Shea *et al.* 1985, Ackerman *et al.* 1995, FWC unpubl. data). Data since 1976 were used in the following summary, as carcass collection efforts were more consistent following that year. They indicate a clear increase in manatee deaths over the last 25 years (6.0 percent per year exponential regression between 1976 and 2000; U.S. Fish and Wildlife Service 2001). Most of the increase can be attributed to increases in watercraft-related and perinatal deaths (Marine Mammal Commission 1993). Between 1976 and 2002, watercraft-related deaths increased at an average of 7.3 percent per year (Florida Marine Research Institute 2002). However, it is unclear whether this represents an increase in the overall mortality rate or a proportional increase relative to the overall population of manatees. The reported rate of increase in manatee mortality, and watercraft-related mortality in particular, is greater than the likely rate of population increase reported by Runge *et al.* (2002).

Natural causes of death include disease, parasitism, reproductive complications, and other non-human-related injuries, as well as occasional exposure to cold and red tide (O'Shea *et al.* 1985, Ackerman *et al.* 1995). These

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natural causes of death accounted for 17 percent of all deaths between 1976 and 2000 (FWC, unpublished data). Perinatal deaths accounted for 21 percent of all deaths in the same period. Human-related causes of death include watercraft collisions, manatees crushed in water control structures and navigational locks, and a variety of less-common causes. Human-related causes of death accounted for at least 31 percent of deaths between 1976 and 2000. Cause of death of some individuals could not be determined because of advanced decomposition, the cause was forensically undeterminable, or the carcass was not recovered. These carcasses were classified as undetermined, and accounted for 30 percent of deaths between 1976 and 2000.

A natural cause of death in some years is exposure to cold. Following a severe winter cold spell at the end of 1989, at least 46 manatee carcasses were recovered in 1990; the cause of death for each was attributed to cold stress. Exposure to cold is believed to have caused many deaths in the winters of 1977, 1981, 1984, 1990, and 2001 and has been documented as early as the 19th century (Ackerman *et al.* 1995, O'Shea *et al.* 1985, FWC, unpubl. data).

In 1982, a large number of manatees also died during an outbreak of the red tide dinoflagellate (*Gymnodinium breve*) between February and March in Lee County, Florida (O'Shea *et al.* 1991). At least 37 manatees died, perhaps in part due to incidental ingestion of filter-feeding tunicates that had accumulated the neurotoxin-producing dinoflagellates responsible for causing red tide. In 1996, from March to May, at least 145 manatees died in a red tide outbreak over a larger area of southwest Florida (Bossart *et al.* 1998, Landsberg and Steidinger 1998). Although the exact mechanism of manatee exposure to the red tide brevetoxin is unknown in the 1982 and 1996 outbreaks, ingestion, inhalation, or both are suspected (Bossart *et al.* 1998). The critical circumstances contributing to high red tide-related deaths are concentration and distribution of the red tide, timing and scale of manatee aggregations, salinity, and timing and persistence of the bloom (Landsberg and Steidinger 1998). It is difficult to manage for these rare but catastrophic causes of mortality.

Perinatal deaths are carcasses of manatees less than 59 inches long (O'Shea *et al.* 1995). Some are aborted fetuses; others are stillborn or die of natural causes within a few days of birth. Some may die from disease, reproductive complications, and/or congenital abnormalities. The cause of many perinatal deaths is difficult to determine, because these carcasses are generally in an advanced state of decomposition at the time they are retrieved. Most perinatal deaths appear to be due to natural causes; however, watercraft-related injuries or disturbance, or other human-related factors affecting pregnant and nursing mothers also may be responsible for a significant number of perinatal deaths. It has also been suggested that some may die from harassment by adult male manatees (O'Shea and Hartley 1995). Between 1976 and 1999, perinatal deaths increased at an average of 8.8 percent per year, increasing from 14 percent of all deaths between 1976 and 1980, to 22 percent between 1992 and 2000 (Ackerman *et al.* 1995, FWC unpubl. data).

The largest known cause of human-related manatee deaths is collisions with watercraft. The next largest human-related cause of deaths is entrapment or crushing in water control structures and navigational locks, which accounted for four percent of total mortality between 1976 and 2000 (Ackerman *et al.* 1995, FWC unpubl. data). These deaths were first recognized in the 1970s (Odell and Reynolds 1979), and steps have been taken to eliminate this source of death. Other known causes of human-related manatee deaths include poaching and vandalism, entanglement in shrimp nets and monofilament line (and other fishing gear), entrapment in culverts and pipes, and ingestion of debris. These accounted for three percent of the total mortality from 1976 to 2000.

In 2001, the Manatee Population Status Working Group (MPSWG) provided a statement summarizing what they believed to be the status of the Florida manatee at that time (U.S. Fish and Wildlife Service 2001). The MPSWG stated, that for the Northwest and Upper St. Johns River regions, available evidence indicated that there had been a steady increase in animals over the last 25 years. Such growth was consistent with the conditions of these regions—low numbers of human-related deaths, high estimates of adult survival, and good habitat. The statement was less optimistic for the Atlantic Region due to an adult survival rate that was lower than the rate necessary to sustain population growth. The MPSWG believed that this region had likely been growing slowly in the 1980s but may then have leveled off or even possibly declined. They considered the status of the Atlantic Region to be "too close to call." This finding was consistent with high levels of human-related and, in some years, cold-related deaths in this region. Regarding the Southwest Region, the MPSWG acknowledged that further data collection and analysis would be necessary to provide an assessment of the manatee's status in this region. Preliminary estimates of adult survival available to the MPSWG at that time indicated that the Southwest Region was similar to the Atlantic Region and "substantially lower than [the adult survival estimates] for the Northwest and Upper St. Johns Regions." The Southwest Region was cited as having had high levels of watercraft-related deaths and injuries and natural mortality events (*i.e.*, red tide and severe cold).

Since the above-mentioned assessment by the MPSWG, additional information and analyses have become available. Based on the data provided at the April 2002 Manatee Population Ecology and Management Workshop, we now believe that the Northwest and Upper St. Johns River stocks continue to do well and that these stocks are approaching the demographic benchmarks established in the Florida Manatee Recovery Plan for downlisting and delisting under the ESA. Furthermore, we believe that the Atlantic Stock may be close to meeting the ESA downlisting benchmark for adult survival, at a minimum, and is likely close to meeting or exceeding the other benchmarks. We are less optimistic, however, regarding the Southwest Stock. Although data are still insufficient or lacking to compare the Southwest Stock's status to the ESA downlisting/delisting criteria, preliminary data for adult survival indicate that the Southwest Stock is below the benchmarks established in the Florida Manatee Recovery Plan.

Although we are optimistic about the apparent increases in population in three out of the four stocks, it is important to clarify that, in order to downlist or delist the manatee pursuant to the ESA, all four stocks must simultaneously meet the appropriate criteria as described in the Florida Manatee Recovery Plan. Additionally, any action under the ESA would be based on a status assessment for the species throughout its range and must consider the factors, as described in section 4(a)(1) of the ESA, that determine whether any species meets the definition of endangered or threatened.

Watercraft-Related Impacts to the Florida Manatee

Between 1976 and 2002, watercraft-related mortality accounted for 24 percent of total mortality and increased at an average rate of 7.3 percent per year

(Florida Marine Research Institute 2002). From 1996 to 2002, watercraft-related deaths have been the highest on record. Additionally, many living manatees also bear scars or wounds from vessel strikes, indicating that watercraft are also responsible for a substantial amount of harassment of manatees. An analysis of injuries to 406 manatees killed by watercraft and recovered between 1979 and 1991 found that 55 percent were killed by impact, 39 percent were killed by propeller cuts, four percent had both types of injuries, either of which could have been fatal, and unidentified specifics of the collision had caused two percent of the mortalities (Wright *et al.* 1995). The vast majority of available information regarding the effects of watercraft-related activities on manatees is related to lethal take of manatees. For the purposes of this analysis, we are assuming that activities that result in the lethal take of manatees also have similar levels of sub-lethal effects on manatees and manatee habitat.

Watercraft speed is the primary factor contributing to collisions with manatees. At high speeds, watercraft operators are less able to detect and avoid objects (such as manatees) in the path of the vessel and manatees have less time to detect and avoid the on-coming vessel. Due to these facts, Federal, State, and local officials have sought to limit watercraft speeds in areas where manatees are most likely to occur to afford both manatees and boaters time to avoid collisions. Additionally, the mere presence of watercraft can cause harassment of manatees in certain situations; most notably at warm water aggregation areas, where large numbers of manatees congregate to stay warm during winter months. Disturbance of manatees at these sites can cause manatees to leave the warm water area, exposing them to potentially harmful cold water conditions. To address this threat, State and Federal officials have restricted human access to many important warm water sites during winter months. The establishment of speed zones and restricted access areas do not cause or contribute to incidental take, per se; however, to the extent that agencies exempt, except, permit, or otherwise authorize restricted or prohibited activities to occur in such areas, such authorization may cause or contribute to the incidental take of manatees.

The number of watercraft operating on Florida's waters may also be a factor. The FWC Division of Law Enforcement reported that, in 1999, more than one million vessels used Florida's waterways, including over 829,000 State-registered vessels and about 300,000 out-of-state vessels. Boating continues to increase in Florida as evidenced by just over 943,600 State-registered vessels (FWC 2002a) and more than 400,000 out-of-state vessels for 2001. At the same time, watercraft-related manatee mortality and increasing mortality trends have been documented since collection of manatee mortality data began in 1974. Data regarding causes of manatee deaths, and particularly the increasing number of watercraft-related deaths, should be viewed in the context of Florida's growing human population, which has increased by 130 percent since 1970, from 6.8 to 15.7 million in 2000 (Florida Office of Economic and Demographic Research 2001). The rise in manatee deaths during this period is attributable, in part, to the increasing number of people and watercrafts sharing the same waterways. It should also be noted that the increasing number of deaths could, in part, be due to increasing numbers of manatees. If existing protection (zones and enforcement) for manatees remains at its current standards, we anticipate that human-caused take will continue to increase to levels that will lead to a declining population in certain portions of the population, which may already be occurring for the Southwest Stock. As noted above, the number of manatee carcasses recovered statewide each year is increasing at a rate that is likely, greater than the rate of increase in the manatee population. Continuation of this trend would inevitably lead to a population decline. During the past five years (1997 to 2001), the watercraft-related deaths have been the highest on record with 55, 66, 82, 78 and 81, respectively. This year (2002), watercraft-related mortalities have surpassed 1999 as highest on record.

As noted above, where and how fast watercraft are operated are the most important factors in watercraft-related incidental take of manatees. However, other activities related to operation of watercraft are contributing factors to incidental take. Virtually all watercraft operating in Florida waters gain access to those waters by watercraft access facilities. Construction and operation of such facilities have the potential to affect manatee habitat such as seagrass beds, and construction activities have the potential to harass manatees. Additionally, the availability and location of watercraft access facilities influence the number of watercraft that use any given waterbody, as well as watercraft travel patterns. To the extent that the location and size of a watercraft access facility contributes to increased watercraft access to areas of importance to manatees such as aggregation areas, travel corridors, feeding areas, resting areas, calving areas, and other areas where manatees occur, these facilities can indirectly cause or contribute to the incidental take of manatees by watercraft. Given that over one million watercraft use Florida waters each year, the relative effect of any particular watercraft access facility on watercraft traffic volume or travel is generally small statewide. However, the cumulative effects of constructing many facilities substantially influences the number of watercraft on Florida's waters and the travel patterns of those vessels, which can substantially influence interactions between watercraft and manatees. Additionally, in certain situations the construction of a new watercraft access facility may substantially influence watercraft travel patterns and volume locally. As such, the authorization, funding, and/or operation of watercraft access facilities by government agencies can cause or contribute to incidental take of manatees.

Determination of Negligible Impact

Background

The MMPA states that, "it is the sense of the Congress that [marine mammals] should be protected and encouraged to develop to the greatest extent feasible commensurate with sound principles of resource management and that the primary objective of their management should be to maintain the health and stability of the marine ecosystem." Section 2 of the MMPA also identifies a specific goal of maintaining marine mammal stocks within their Optimum Sustainable Population (OSP) level. However, it is also clear that Congress did not intend that the level of incidental take must in every case be reduced to zero. Section 101(a)(5)(A) clearly indicates that some level of incidental take of even depleted marine mammals can be authorized as long as the impact is negligible.

In the 1986 amendments to the MMPA, Congress expanded the provisions for the authorization of incidental take of marine mammals related to activities other than commercial fisheries by allowing authorization of take of depleted species as well as non-depleted species. Section 3 of the MMPA defines a "depleted" species as one that is either below its OSP or is listed as endangered or threatened under the ESA. The Florida manatee is listed as an endangered species under the ESA, and therefore,

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all four stocks are categorized as depleted under the MMPA.

The NOAA-Fisheries and the Service issued final rules implementing the 1986 amendments to the MMPA on September 29, 1989 (54 FR 40338). These regulations define "negligible impact" as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 18.27(c)). The preamble to these regulations described the analytical framework the agencies would use when making negligible impact determinations. For non-depleted stocks (*i.e.*, stocks that are within the range of OSP) the agencies stated that a finding of negligible impact could only be made if the specified activities are not likely to reduce the stock below its OSP. However, it was also noted that not all takings that do not reduce the population below OSP would be considered negligible. The agencies explained that—"healthy marine mammal populations that have reached an equilibrium level usually experience fluctuations in population numbers within some normal range due to a variety of environmental and biological factors. Such fluctuations may involve short-term population declines that do not pose a risk to the stocks remaining within the limits of OSP. We believe that minimal impacts on a healthy stock caused by incidental taking can still be considered negligible if such taking does not cause the population to fluctuate beyond normal limits. In other words, for a population stock that is at its OSP level, slight impacts on the stock resulting from incidental take do not rise to the level of 'adverse effects' on annual rates of recruitment or survival if the population stock is maintained at essentially the same level."

With respect to depleted stocks, the preamble to the 1989 regulations states— "In order to make a negligible impact finding, the proposed incidental take must not prevent a depleted population from increasing toward its OSP at a biologically acceptable rate." In explaining what would constitute a "biologically acceptable rate" of population increase, the agencies stated that in order to be considered "negligible" the effects of the authorized take must have no significant effect on annual rates of recruitment or survival. The population growth rate for any species is the result of all births during the year (recruitment) minus all deaths (animals that do not survive). As such, to be considered "negligible," authorized incidental take must not affect annual rates of recruitment or survival in such a way as to significantly affect the population growth rate of a depleted stock. The analytical framework made clear that it was not necessary to demonstrate that an authorized level of take would have "no effect" on a stock's rate of increase toward OSP, but only that the take would not significantly affect the long-term population trend.

Methodology

The language of the MMPA and its implementing regulations provide qualitative descriptions of the goals with respect to take of marine mammals. For the purposes of this rulemaking, we translated these goals into standards against which the effects of the specified activity may be measured. The means of making the best use of available scientific information regarding the Florida manatee in our negligible impact determination was discussed at the April 2002 Manatee Population Ecology and Management Workshop. We provided the expert panelists convened at the workshop with background information including a summary of the existing statute and regulations, rulemaking criteria and timeframes, and methods previously considered, and the topic was discussed at a general session of the Workshop. We also presented new information at the April 2002 Workshop regarding the status of the manatee population and the status of manatee research. Additionally, we presented new population models and analyses that showed substantial promise for improving our ability to assess the status of manatee stocks, and to predict and monitor the effects of various factors, including human factors, on manatee populations.

Following the April 2002 Workshop, we held a meeting of scientists from the U.S. Geological Survey (USGS), the Service, and other organizations with specific expertise in population modeling and marine mammals to further clarify the Workshop discussions. Based on our review of the legislative history of the MMPA, its implementing regulations, existing guidance, past incidental take rulemakings, the scientific literature, and the results of the Workshop and the follow-up meeting, we were able to develop a solid conceptual framework upon which to build our negligible impact determination.

In reviewing existing guidance and previous rulemakings, we note that participants at the 1994 Potential Biological Removal (PBR) Workshop (Barlow *et al.* 1995) agreed that the term "insignificant" in the Zero Mortality Rate Goal for commercial fisheries (as stated in section 101(a)(2) of the MMPA) was relative to the biological significance of the incidental take. They further agreed that an "insignificant" level of mortality was a level that would have a "negligible" impact on a given marine mammal stock. In terms of stocks that are depleted (*i.e.*, population levels below OSP), it is generally accepted that the large majority of annual net productivity must be reserved for the recovery of the stock to its OSP level, and that only a small portion should be allocated for incidental take, so that human-related take does not significantly increase the time needed to reach OSP. Therefore, based on our interpretation of the MMPA, its implementing regulations, previous incidental take rulemakings, and our current understanding of manatee population dynamics, we concluded that in order for us to determine that the allowable level of human-related incidental take would have a "negligible impact" we must be reasonably certain that the take would not significantly increase the time needed to achieve OSP.

For this rulemaking we must ensure that the total taking authorized over the life of the rule has no more than a negligible impact on the stocks through effects on annual rates on recruitment or survival, so the species will continue to increase toward OSP at a biologically acceptable rate. As such, in order to find that watercraft-related incidental take is having a negligible impact on each manatee stock we must find that:

1. There is reasonable certainty that authorized incidental take will not significantly increase the time needed to reach OSP.

The PBR formula was suggested as an available method for quantitatively making our negligible impact determination for this rule. The PBR formula was included in sections 117 and 118 as part of the 1994 amendments to the MMPA to allow resource managers to conservatively estimate an acceptable amount of human-related incidental take of marine mammals relative to commercial fishing operations. We do not believe it was intended for assessing incidental take relative to the "negligible impact" standard prescribed by the MMPA for activities other than commercial fishing, which was added to the MMPA in 1981. Additionally, the PBR formula is a simplified model that uses limited data and default values that we believe are not appropriate for determining the negligible impact threshold for

manatees. There is a relatively large body of data regarding the Florida manatee stocks which is not utilized in the PBR formula. As such, the use of the PBR formula for management decision-making related to manatees would not enable managers to use the best available scientific information.

As stated previously, our negligible impact standard is that there is reasonable certainty that the authorized level of incidental take would not significantly increase the time needed to reach OSP. Determining the OSP level for a species or stock requires an understanding of the carrying capacity of the environment for that species or stock and the maximum net productivity level. These values are currently unknown for the Florida manatee; therefore, we can not directly assess the status of the population relative to OSP, or estimate the amount of time it may take for the population to reach OSP. However, our regulations do not require a formal determination of OSP in order to make a negligible impact finding. Rather, one need only establish that the total take would not "significantly reduce the increase of that population" and would not prevent ultimate achievement of OSP (54 FR 40341).

The Florida Manatee Recovery Plan (U.S. Fish and Wildlife Service 2001) developed quantifiable demographic benchmarks for determining when recovery has been achieved for purposes of the ESA. The demographic benchmarks were based on published estimates of survival, reproduction, and population growth rate. These benchmarks are—(1) statistical confidence (95 percent) that the average annual rate of adult manatee survival is 90 percent or greater; (2) statistical confidence that the average annual percentage of adult female manatees accompanied by first or second year calves in winter is 40 percent or greater; and (3) statistical confidence that the average annual rate of population growth is equal to or greater than zero. The Florida Manatee Recovery Plan states that these benchmarks must be based on estimates from at least a twenty-year data set. Twenty years was thought to encompass approximately two manatee generations, which was deemed to be a sufficient data set to ensure that estimated benchmark rates were reflective of genuine population trends as opposed to short-term fluctuations.

Adult survival is the most influential factor determining manatee population dynamics (Eberhardt and O'Shea 1995, Marmontel *et al.* 1997, Langtimm *et al.* 1998). A one percent increase in adult survival rate results in a one percent increase in growth rate; no other life-history parameter has this strong an effect (Eberhardt and O'Shea 1995). While manatee population growth is less sensitive to changes in reproductive rates than adult survival rates (Eberhardt and O'Shea 1995, Marmontel *et al.* 1997), annual variation in reproductive rates might be greater than annual variation in survival rates, and may reflect demographic pressures not captured by survival rate, so the Manatee Population Status Working Group concluded that reproductive rates are another useful indicator of manatee population status. The population growth rate benchmark was selected to ensure the manatee population continues to increase toward OSP, regardless of any uncertainty regarding the relationship between the other two benchmarks and the overall population trend.

As stated above, it was concluded in the Florida Manatee Recovery Plan that the Florida manatee population could be considered to be "healthy" and able to sustain itself after the demographic benchmarks were met for all four stocks based on at least a 20-year data set. Assuming that none of the stocks were severely depleted when data collection relative to the demographic benchmarks began (in the late 1970s and 1980s), twenty years of continued growth at the benchmark rates would in all likelihood result in stocks that are within or near the range of OSP. As such, we have determined that it is reasonable to assume that achievement of the demographic benchmarks will result in a population that is within or near the range of OSP, and that the negligible impact threshold would be that level of incidental take that does not significantly increase the time needed to achieve the demographic benchmarks.

We examined the current data set and analyses of survival rates, and recruitment, and reviewed population growth rate projections generated by the model presented by Runge *et al.* at the April 2002 Manatee Population Ecology and Management Workshop (Runge unpubl. analysis), which incorporate the historically observed level of watercraft-related incidental take. This enabled us to qualitatively assess the status of the four stocks relative to the demographic benchmarks, and determine whether anticipated levels of watercraft-related take during the five-year period of the rule are likely to significantly increase the time needed for the stocks to reach OSP. These assessments were based on a twenty year data set including 15 years of historical data and projections (including levels of watercraft-related take) for the five-year period of the rule. For the Southwest population, for which a 15 year historical data set is not available, we made projections based on the available historical data and the long-term trends of the survival rates (which incorporate watercraft-related take), recruitment, and population growth rates of the 15 year period necessary to run our assessment

For each of the stocks, our projected information covered a twenty-year period ending with the five-year period of this rule. Using these projections, we qualitatively assessed the status of the four stocks relative to the demographic benchmarks. As part of this analysis we considered effects of activities that would occur within the five-year period of this rule but that may not manifest themselves until after the five-year period. Due to life history characteristics, the Florida manatee population may experience a delayed response to changes in mortality rates. Therefore, effects resulting from incidental take may not produce noticeable changes during the five-year period, but could affect the ability of the stock to maintain itself within OSP or affect the rate of increase toward OSP over a longer term. We also assessed the availability and relative effectiveness of various types of mitigating measures.

In addition, separate from this rulemaking process, we are working to ensure that we meet the MMPA's long term goal of maintaining marine mammal populations within OSP. The Florida Fish and Wildlife Conservation Commission (2002b) noted that manatees have a low reproductive rate, low intrinsic population growth rates, low genetic variability, and high vulnerability to stochastic and epizootic events such as extreme cold and red tide. The Florida Marine Research Institute (2002) also noted that long term threats to the Florida manatee related to natural and man-made warm water sites are likely to be felt over the next 50 to 100 years. As such, we have the established standards to measure the stocks' relationship to OSP over the longer term. These objectives are stated as follows:

2. There is reasonable certainty that the manatee stock will remain within OSP for 50 years; and

3. There is reasonable certainty that the manatee stock will remain within OSP for 100 years.

The determinations in this proposed rule are based on our review of the best available data, and we believe this method is adequate for making this negligible impact determination. We believe that it may be possible to refine this analysis based on a modeling effort

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that is currently being developed. As stated above, in terms of stocks that are depleted (*i.e.*, population levels below OSP), it is generally accepted that the large majority of annual net productivity must be reserved for the recovery of the stock to its OSP level, and that only a small portion should be allocated for incidental take, so that human-related take does not significantly increase the time needed to reach OSP. It is also generally accepted that the "small portion" of net productivity authorized for removal due to human causes should not exceed ten percent of annual net productivity, and that for depleted stocks of marine mammals generally, incidental take should not increase the time needed to reach OSP by more than ten percent (Wade 1994, Wade and Angliss 1997).

The concept of increasing the time needed to achieve OSP by not more than ten percent is embodied in the PBR guidelines and is consistent with recommendations submitted to the NOAA-Fisheries by the Marine Mammal Commission in 1990 regarding the regulation of incidental take related to commercial fishing operations (65 FR 35904). This concept also appeared in the 1992 legislative proposal by NOAA-Fisheries, which became the basis for the 1994 amendments to the MMPA (Wade 1998).

Because most marine mammal species, including manatees, are difficult to observe and study, it is difficult to collect data of sufficient quality to allow detection of statistically significant changes in population parameters such as abundance or growth rate within the timeframes and with the precision needed for effective management (Wade 1998). As such, assessing the probability of a given action (or set of actions) causing a greater than ten percent increase in time needed to achieve OSP provides a reasonable standard, whereas attempting to quickly detect statistically significant changes in population parameters is impracticable.

The negligible impact standard established above could be restated quantitatively as follows:

1. There is 95 percent certainty that authorized incidental take will not increase the time needed to reach OSP by more than ten percent;

Additionally, the long term standards established above could be restated as follows:

2. There is a 95 percent probability that the manatee stock will be within OSP in 50 years; and

3. There is a 99 percent probability that the manatee stock will be within OSP in 100 years.

Regarding the probabilities associated with the above standards, the 95 percent probabilities for the first two standards were chosen to be consistent with the modeling approach used by Wade (1994) for selecting appropriate values for the PBR equation variables. We selected a higher probability value for the third standard to reflect the relative importance of our long term desire to ensure that each stock remains within OSP.

New population models and analyses were presented at the April 2002 Manatee Population Ecology and Management Workshop that clearly represent state-of-the-art analyses of manatee population status. Additionally, new data were presented regarding important manatee life history parameters; particularly, survival estimations for various life stages. In reviewing the models and analyses presented, it was decided that the model presented by Runge *et al.* (2002) was most suitable for adaptation for use in our negligible impact determination. This model was determined to be particularly well suited for use in the negligible impact determination because it utilizes the best available scientific information regarding Florida manatee survival estimates. It also utilizes the best available information regarding reproductive rates (recruitment) in Florida manatees. The fact that the model is built on estimates of survival and recruitment also corresponds directly to the regulatory definition of "negligible impact."

The Negligible Impact Model (model), based on the work of Runge *et al.* (2002), is described in detail in Appendix I of the draft Environmental Impact Statement. The model is based on female manatee population dynamics. The female manatee population is separated by age and reproductive status. Survival and reproductive probabilities are defined for each class. The model projects population trends for each of the four manatee stocks based on repeated simulations that incorporate environmental and demographic variability, as well as varying levels of human-related take.

Discussions with the model's author indicated that the model could be modified to allow for estimation of the effects of varying levels of human-related incidental take on population structure and growth. Projections can be made assuming that no human-related take occurs. This establishes the baseline condition for purposes of comparison. In other words, in the absence of any incidental take, the four stocks would be expected to achieve the demographic benchmarks as quickly as possible. This baseline can then be compared to projections based on various levels of incidental take to determine at what point such take causes a greater than ten percent increase in the time needed to achieve the demographic benchmarks. Repeated simulations are performed to create a distribution of population projections from which the probability of achieving the benchmarks for a given level of take can be calculated.

In examining the possibility of modeling the time needed to achieve the demographic benchmarks, we realized that the Negligible Impact Model may indicate, under certain foreseeable scenarios, that the demographic benchmarks cannot be achieved even in the absence of incidental take. As mentioned above (see "The Status of the Florida Manatee" section), a substantial portion of the Florida manatee population currently depends on industrial warm water outfalls for survival during cold weather. It is likely that these sites will cease operation over the next 100 years; although we do not believe the loss of any significant warm water sites is currently imminent or likely over the term of this proposed rule. If alternative warm water sites are not available, the carrying capacity of the environment for manatees could be substantially reduced. This could substantially affect future demographic factors such as survival rates and population growth rates, even if no other human-related take occurs. It would also affect the OSP level for the species. The model will be used to assess scenarios based on the assumption of a declining carrying capacity as well as scenarios in which the carrying capacity is assumed to remain unchanged. If model results indicate that the demographic benchmarks cannot be maintained over 50 and 100 years for reasons unrelated to watercraft-related incidental take, we will reassess our assumed relationship between the demographic benchmarks and OSP; and base our final determination on the best available scientific information.

If our analysis indicates that the currently observed level of incidental take exceeds the negligible impact standards (*i.e.*, if current incidental take levels are increasing the time needed to achieve the demographic benchmarks by more than ten percent and/or are likely to prevent the stocks from continuing to meet the benchmarks over 50 and 100 years), then we would assess whether mitigating measures (discussed below) are available that could reduce incidental take to the negligible impact level.

Mitigating Measures

We have identified five categories of mitigating measures that government agencies can implement to reduce and control watercraft-related incidental take. In decreasing order of effectiveness these include—(1) establishment of speed zones and protected areas to control watercraft speeds and/or restrict access to areas of importance to manatees; (2) law enforcement to ensure compliance with restrictions established pursuant to (1); (3) education to improve public understanding of manatee conservation needs and enhance compliance with manatee protection measures; (4) review of proposals to construct watercraft access facilities with a view toward minimizing the effects of such facilities on manatees and manatee habitat; and (5) other measures that are available or may become available over the period of this rule. Although the categories vary in terms of their relative effectiveness, they cannot be viewed as completely separate measures because the effectiveness of each depends on others. For example, speed zones must be enforced and the public must be informed and educated about the zones through appropriate signage and outreach in order for the zones to provide effective protection of manatees.

1. *Watercraft Regulations*—As previously stated (see Watercraft-Related Impacts to the Florida Manatee) watercraft operation and speed are the primary factors contributing to collisions with manatees. As such, government programs that regulate watercraft speeds and access to areas of importance to manatees have the greatest potential to control watercraft-related incidental take. At high speeds, watercraft operators are less able to detect and avoid objects in the path of the vessel (such as manatees) and manatees have less time to detect and avoid the on-coming vessel. Additionally, when collisions do occur, high-speed collisions are more likely to cause death or serious injury than low speed collisions. Due to these facts, Federal, State and local officials have sought to limit watercraft speeds in areas where manatees are most likely to occur to afford both manatees and boaters time to avoid collisions.

In addition to the threat posed by collisions with watercraft, the mere presence of watercraft can cause harassment of manatees in certain situations; most notably at warm water aggregation areas, where large numbers of manatees congregate in small areas in order to stay warm during winter months. Disturbance of manatees at these sites can cause manatees to leave the warm water area, exposing them to potentially harmful cold water conditions. To address this threat, Federal, State and local managers have restricted human access to many important warm water sites during winter months.

Watercraft speed and access are controlled through—(a) establishment of watercraft speed zones and restricted access areas, including posting of appropriate signage; and (b) regulation of specific marine events; particularly high-speed watercraft races. Federal, State, and local government agencies have the authority to designate speed zones and restricted access areas within waters accessible to manatees. At the Federal level, we designate "manatee protection areas" pursuant to 50 CFR 17.103. We may, by regulation, establish manatee protection areas whenever there is substantial evidence showing such establishment is necessary to prevent the taking of one or more manatees. We may establish two types of manatee protection areas—manatee refuges and manatee sanctuaries. A manatee refuge, as defined in 50 CFR 17.102, is an area in which we have determined that certain waterborne activities would result in the taking of one or more manatees, or that certain waterborne activities must be restricted to prevent the taking of one or more manatees, including but not limited to a taking by harassment. A manatee sanctuary is an area in which we have determined that any waterborne activity would result in the taking of one or more manatees, including but not limited to a taking by harassment. A waterborne activity is defined as including, but not limited to, swimming, diving (including skin and SCUBA diving), snorkeling, water skiing, surfing, fishing, the use of water vehicles, and dredging and filling activities.

State manatee protection rules are established by the FWC to restrict the speed and operation of vessels where necessary to protect manatees from harmful collisions with vessels and from harassment. In areas that are especially important to manatees, the State's rules can prohibit or limit entry into an area as well as restrict what activities can be performed in the area. The FWC is authorized to adopt these rules by the Manatee Sanctuary Act (370.12(2), Florida Statutes). The rules appear in Chapter 68C–22 of the Florida Administrative Code (FAC).

Local governments can also establish manatee protection zones through the adoption of a local ordinance. These zones must be approved by FWC before they can take effect, as required by Chapter 370.12(2)(o), F.S. The only other limitation on a local government's ability to establish manatee protection zones is that local zones cannot include waters within the main marked channel of the Florida Intracoastal Waterway or waters within 100 feet. The FWC manatee protection rulemaking process is described in rule 68C–22.001, FAC.

The goal with respect to the establishment of watercraft speed zones and restricted access areas is to identify areas of importance to manatees, including wintering sites, travel corridors, feeding areas, calving areas, and other areas of similar importance, and to ensure that such areas are protected with appropriate designations. Designations should be consistent at a regional level and configured as simply as possible to facilitate public understanding and compliance. Signage for all designated areas should be consistently and appropriately worded and located in order to enhance compliance in all manatee protection areas.

Marine events are regulated at the Federal level by the U.S. Coast Guard (USCG), in consultation with us. Marine events include watercraft races, ski shows, fishing tournaments, boat parades and events such as fireworks shows, which can attract large numbers of spectators in watercraft. Marine events involving high-speed activities are of primary concern as it relates to threats to manatees. These events generally include races, waterskiing and fishing tournaments with high-speed starts or other high-speed operations. The USCG is authorized to issue regulations to promote the safety of life on navigable waters during regattas and marine parades (33 U.S.C. 1233). This authority includes events on, in, and under the water.

Whenever a marine event is planned by an individual or an organization (the sponsor) which, by its nature, circumstances, or location, will restrict navigation or otherwise introduce extra or unusual hazards to the safety of life on navigable waters of the United States, the sponsor must submit an application to the USCG for review and approval. The application is received and investigated by respective district, group, or unit offices that have authority to permit or deny the proposed event. Current USCG policy allows issuing authorities to add conditions or deny permits for marine events based on environmental concerns (COMDTINST 16751.3A, Regattas and Marine Parades). In Florida, sponsors apply to USCG group offices in Key West,

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Mayport, Miami, and St. Petersburg. USCG reviewers investigate each application and, when appropriate and as required under section 7 of the ESA, request consultation with us when it is apparent that the proposed event may affect manatees or other listed species. The USCG also coordinates with the Florida Department of Environmental Protection for events held in State waters. Through these review processes it is generally recommended that marine events be held in areas and at times when there is little or no likelihood of encountering manatees. When this is not possible, it is either recommended that the event not be held or that certain measures be adopted as a condition of the USCG permit to minimize the effect of the event on manatees and manatee habitat. These measures include the use of manatee watches, designating slow speed areas for the duration of an event, education of event participants and spectators, and other measures.

2. *Enforcement*—In order to be effective in controlling watercraft-related incidental take, there must be a high level of compliance with established watercraft speed zones and restricted access areas. Enforcement is an important element of compliance. Ideally, our goal is to achieve full compliance with manatee protection regulations. Studies indicate that in the absence of law enforcement roughly 54 to 63 percent of boaters are in compliance with posted speed zones; while 20 to 51 percent are in technical non-compliance (exceeding posted speeds by one speed category or any level of excessive speed for a relatively small distance within the posted area), and the remainder are in blatant non-compliance (exceeding posted speeds by greater than one speed category for a significant portion of the posted area) (Gorzelany 1996, 1998, 2001; Shapiro 2001). Studies have found, however, that the level of boater compliance is variable depending on location. For example, Gorzelany (1998) found overall boater compliance for several sites in the Caloosahatchee River averaged 57.3 percent, but ranged from a low of 12 percent to a high of 77 percent. In the presence of law enforcement, Shapiro (2001) recorded a compliance rate of up to 89 percent. Gorzelany (2001) observed an increase of compliance from 29–44 percent to 64–73 percent in the presence of law enforcement. Our proposed compliance goal, based on recent work by Mote Marine Laboratory and Florida Marine Research Institute (Gorzelany 1996, 1998, 2001, Shapiro 2001), is to achieve 70 percent or greater full compliance and no more than ten percent blatant non-compliance levels throughout the State, as determined by independent monitoring studies. Based on the above-mentioned studies, this level of compliance appears to be achievable, while also representing the upper range of observed compliance levels in the presence of enforcement. We recognize that this goal does not assess the effects of other important aspects of compliance. For example, in situations where there are very high number of watercraft operating in an area with high numbers of manatees, achieving the above compliance standard could still lead to a high number of non-compliant watercraft operating in a manner that poses a threat to manatees.

Enforcement of manatee protection rules is provided by officers of the Service, FWC, USCG, and local law enforcement agencies, as well as the courts. To ensure compliance with the waterway speed and access rules and with manatee harassment provisions, enforcement capabilities must be expanded and coordinated. Although efforts have increased significantly during the past few years, manatee enforcement operations still must be expanded in both geographic scope and frequency. To meet these needs, Federal and State enforcement agencies should take all possible steps to increase funding and heighten agency priority for manatee-related law enforcement activities. Those activities should be maintained at levels commensurate with those of vessel traffic, watercraft-related manatee deaths, and added enforcement responsibilities. To carry out enforcement activities as efficiently and cost-effectively as possible, involved agencies should coordinate enforcement efforts. In addition, enforcement agencies should review and assist as much as possible with the development of new manatee protection statutes and regulations, the posting of manatee regulatory signs, enforcement training seminars, studies to monitor regulatory compliance, and actions by the judiciary to prosecute violations.

3. *Watercraft Operator Education/Awareness*—In addition to signage and enforcement, watercraft operator education and awareness is essential to achieving greater compliance within and understanding/recognition of manatee protection areas, as well as the general public's understanding of manatee conservation issues. A study by the Environmental Protection Agency (EPA) found that the more the EPA invested in outreach and education through various avenues, including press releases, trade articles, and plain English brochures, the greater the likelihood that companies would be informed about environmental regulations and be likely to comply (Eustis 1993). Many manatee and habitat education programs and materials are produced and made available to school systems as well as the general public and user groups; however, such efforts need to be continually evaluated and updated. This information must be clear, consistent, concise, and readily available to the general public and target user groups. As such, Federal and State agencies should cooperatively develop uniform multi-media educational programs/curricula for the general public and schools, and ensure that these materials are provided to all watercraft operators utilizing Florida waters.

The success of manatee/habitat conservation efforts requires identification of target audiences and locations. Target audiences and key locations should be prioritized by need, *i.e.*, areas where manatee mortality and injury are highest, areas where manatee/human interaction occurs frequently, and areas where habitat is most at risk. These areas include, but are not limited to, high watercraft use areas, boat ramps, manatee aggregation sites, manatee observation areas, fishing piers, seagrass areas, and other areas identified as having important habitat features (*e.g.*, fresh water areas and areas used for resting and/or calving). It is also important that some materials explicitly target specific user groups, such as boaters in areas of high watercraft mortality.

4. *Watercraft Access Facility Siting*—The siting and construction of watercraft access facilities can be directed through local zoning, in the form of facility siting components of county manatee protection plans (MPPs), or through Federal and State permitting processes.

A. Watercraft Access Facility Siting Plans—Development of MPPs is mandated by the Florida Manatee Sanctuary Act (Chapter 370.12, F.S.). Watercraft access facility siting plans, as components of comprehensive county MPPs, are excellent tools for guiding long-term watercraft access facility development and anticipating and addressing the cumulative impacts of such facilities. By anticipating and planning for the future access needs at a county-wide level, the cumulative effects on manatees and manatee habitat can be anticipated and mitigated. It is our view that this forward-looking approach is preferable to the more reactive approach or dealing with the effects of such facilities on a case-by-case basis. Under the Florida Manatee Sanctuary Act, 13 counties are mandated to develop MPPs by July 1, 2004. The FWC is to designate any other county where there exists a substantial risk to manatees by January 1, 2005, and those counties are to develop MPPs by July 1, 2006.

B. Permit review—The agencies involved in the authorization of watercraft access facilities and their regulatory processes are described above (see Specified Activities). Through these review processes, the potential adverse effects to manatees or manatee habitat are identified, and if necessary permits can be specifically conditioned to avoid the adverse impacts, or where appropriate, denied. Typical permit conditions include limitations on the number of slips, and avoidance or minimization of impacts to sea grasses and other habitat features. Additionally, standard manatee construction conditions have been developed that are utilized by the Corps as well as State regulatory agencies to minimize the direct effects of watercraft access facilities on manatees and manatee habitat. These conditions include education of construction personnel regarding manatee awareness; control of construction-related vessel speeds; use of construction equipment such as siltation barriers that avoid manatee entrapment; stand-off distances from manatees sighted in construction area; and manatee awareness signage. These standard conditions and other conditions developed through the permit review process have been effective in minimizing the direct effects of watercraft access facilities and their construction on manatees and manatee habitat.

5. *Technological and Other Mitigating Measures*—Devices such as propeller guards have been used in limited circumstances to reduce the threat of manatee death or injury. Other technologies have been discussed or proposed; however, none have yet been demonstrated to be effective or practical. The FWC has recently funded additional research into various types of technological measures to reduce watercraft-related take of manatees, and any such measures that are demonstrated by this research, to be effective and practicable to implement during the period of this rule will be considered along with the mitigating measures described above. This would occur through future review and renewal of agency LOAs.

Negligible Impact Analysis and Conclusions

Based on our application of the above described method for assessing the status of Florida manatee stocks relative to the "negligible impact" standards and our review of the existing and potentially available/necessary mitigating measures, we have made the following findings for each of the four stocks. As stated above, these determinations are based on our review of the best available data, and we believe this method is adequate for making this negligible impact determination. It may be possible to refine this analysis for the final rule based on a modeling effort that is currently being developed.

1. *Upper St. Johns River Stock*—Adult survival for this Stock has been calculated to be 96.1 percent with a 95 percent confidence interval range from 90.0 to 98.5 percent (Langtimm *et al.* 1998), based on data collected between 1977 and 1993. It is estimated that 41 percent of females at the winter sites are accompanied by first or second-year calves (U.S. Fish and Wildlife Service 2001). It is also estimated that this stock is growing at a rate of 6.1 percent per year, with a 95 percent confidence interval between 1.7 and 8.7 (Runge, unpubl. analysis). All three estimates exceed the levels indicated in the demographic benchmarks, which indicates a healthy and growing population, and provided the factors affecting this population remain essentially the same (including continued implementation of existing conservation measures), we anticipate that the stock will continue to increase toward OSP at a biologically acceptable rate.

Existing conservation measures in this area include an adequate system of watercraft speed zones that have been implemented by the FWC. There is also a seasonal motorboat prohibited zone at Blue Spring, the primary wintering site for this stock. These zones are enforced by local, State and Federal law enforcement. Shapiro (2001) reported 85 percent compliance with speed zones near Blue Spring in the presence of law enforcement. There are no County MPPs in place within this Stock; however, Volusia County is in the process of preparing one. In the absence of county MPPs, applications for construction of watercraft access facilities are reviewed on a case-by-case basis, and effective measures to reduce impacts on manatees will be required. Other measures such as boater education and regulation of marine events are also carried out within this Stock. As reflected by rates that exceed the demographic benchmarks, these measures are effectively controlling the amount of watercraft-related incidental take. Our analysis of historic levels of watercraft-related incidental take, levels of take anticipated during the five-year period, and the effectiveness of existing measures indicates that the anticipated take during the five-year period will not significantly affect rates of recruitment or survival. Provided existing measures continue to be implemented we expect this Stock to continue to perform at the currently observed level, and there will be no significant delay in achieving OSP. Therefore, we find that watercraft-related incidental take is having a negligible impact on this Stock. Separate from our negligible impact finding, we also find no evidence to suggest that the currently observed levels of watercraft-related incidental take will adversely affect long term population trends.

2. *Northwest Stock*—Adult survival for this Stock has been calculated to be 96.2 percent with a 95 percent confidence interval range from 95.3 to 97.2 percent (Langtimm *et al.*, unpubl. analysis), based on data collected between 1981 and 2000. It is estimated that 43 percent of females at the winter sites are accompanied by first or second-year calves (U.S. Fish and Wildlife Service 2001). It is also estimated that this Stock is growing at a rate of 5.0 percent per year, with a 95 percent confidence interval between 3.2 and 6.8 (Runge, unpubl. analysis). All three estimates exceed the levels indicated in the demographic benchmarks, which indicates a healthy and growing population, and provided the factors affecting this population remain essentially the same (including continued implementation of existing conservation measures), we anticipate that the stock will continue to increase toward OSP at a biologically acceptable rate.

As reflected through rates that exceed the demographic benchmarks, the existing measures that are in place in this stock are effectively controlling the amount of watercraft-related incidental take. These measures include implementation of the Citrus County MPP. This plan was adopted in 1993 and includes, among other components, an adequate set of speed zones in areas of importance to manatees. Additionally, we have established several manatee protection areas that prohibit and control watercraft access to important wintering sites within the County. One of these sites is also designated as a seasonal watercraft prohibited area by the FWC. The speed zone and restricted access area regulations are enforced by County, State and Federal law enforcement.

The Citrus County MPP also includes a watercraft facility siting component

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that establishes effective criteria for the location and construction of such facilities within the County. The MPP has been adopted by local, State, and Federal agencies for evaluating the effects of proposed watercraft access facilities on manatees and manatee habitat. Other measures, such as boater education and regulation of marine events, are also carried out within this Stock.

No other counties within this stock have adopted MPPs and no other speed zones or restricted access areas have been established for manatee protection. However, manatee use of the waters outside Citrus County is limited to the warm season, and this portion of Florida is much less densely populated than other areas of Florida. As such, there is much less watercraft traffic and the threat of collisions between boats and manatees is low. Our analysis of historic levels of watercraft-related incidental take, levels of take anticipated during the five-year period, and the effectiveness of existing measures indicates that the anticipated take during the five-year period will not significantly affect rates of recruitment or survival. Provided existing measures continue to be implemented we expect this Stock to continue to perform at the currently observed level, and there will be no significant delay in achieving OSP. Therefore, we find that watercraft-related incidental take is having a negligible impact on this Stock. Separate from this negligible impact determination, we also find no evidence to suggest that the currently observed levels of watercraft-related incidental take will adversely affect long term population trends.

3. *Atlantic Stock*—Adult survival in this Stock has been calculated to be 94.3 percent with a 95 percent confidence interval range from 92.3 to 96.2 (Langtimm *et al.*, unpubl. analysis), based on data collected between 1984 and 2000. The percentage of adult females with first and second-year calves has been estimated to be 42 percent (U.S. Fish and Wildlife Service 2001). The annual population growth rate has been calculated to be 3.2 percent with a 95 percent confidence interval range between 0.3 and 5.7 (Runge unpubl. analysis). These three estimates are close to the demographic benchmarks. However, the number of manatees killed by watercraft increased at a rate of 5.5 percent per year between 1980 and 1999 (U.S. Fish and Wildlife Service 2001), which is higher than the estimated population growth rate. Additionally, Langtimm *et al.* (unpubl. analysis) found evidence for a decline in adult survival in the Atlantic Stock in the latter part of a 16-year time period. This apparent trend is currently being studied further with other statistical methods (Langtimm, personal communication).

Numerous manatee protection measures are currently in place for the Atlantic Stock. Speed zones and/or restricted access areas have been established in Duval, Volusia, Brevard, Indian River, St. Lucie, Martin, Palm Beach, Broward, and Miami-Dade counties. We recently implemented Federal manatee protection areas at two sites in Brevard County, and the FWC has recently enacted new speed zones in Brevard and Indian River counties. MPPs have been approved by the FWC for Miami-Dade, Duval, Indian River and St. Lucie counties. We believe that manatee protection measures recently implemented by the FWC and us in the Atlantic Stock as well as the additional measures described below will reduce levels of incidental take in the Atlantic Stock to the negligible impact level.

In order to determine where additional mitigating measures need to be implemented, we have examined mortality trends within this Stock in an attempt to focus implementation of mitigating measures in those areas with continuing histories of high levels of watercraft-related incidental take. The analysis conducted by Flamm (2002) identified three primary manatee mortality concentration areas within the Atlantic Stock—(1) the Duval County area, (2) the Volusia-Brevard County area, and (3) Palm Beach-Broward County area. The best available information indicates that in order to reduce incidental take to a level that would have a negligible impact on this stock, mitigating measures must be focused in these areas.

Within regard to the Duval County area, the FWC approved the Duval County MPP in 1999, which includes speed zones, facility siting criteria, education, and enforcement components. We have determined that the configuration of the speed zones is minimally acceptable, and the recent decision by the County to improve signage of the zones on the St. Johns River will improve manatee protection in this area. Implementation of the Duval County MPP should reduce manatee mortality in this area. Shapiro (2001) observed a 56 percent compliance rate and a seven percent blatant non-compliance rate at a site in Duval County, indicating that additional mitigating measures in this area should include improved enforcement and boater education efforts.

Within the Volusia-Brevard County area, we believe that the newly enacted speed zones in Brevard County are adequate and appropriate, and given that Brevard County has historically been the area in the Atlantic Stock with the highest levels of watercraft-related mortality, the new Brevard County zones will substantially enhance protection of the Atlantic Stock. There is a continued high level of watercraft-related manatee mortality in portions of Volusia County, including the Halifax and Tomoka Rivers, and no recent actions have been taken to improve the speed zones in these areas. We believe additional protective measures are needed in these areas.

In addition to improvements in watercraft speed zones, it is likely that efforts are necessary to improve compliance with speed zone regulations. As noted above, Shapiro (2001) observed levels of compliance at sites within the Atlantic Stock that were below our above-stated compliance goal. As such, additional law enforcement and boater education efforts, focused within the above-described manatee mortality concentration areas (Flamm 2002) are considered to be appropriate and necessary mitigating measures to reduce watercraft-related incidental take within the Atlantic Stock.

We are continuously collecting and evaluating information regarding trends in watercraft-related mortality, and as new information becomes available, additional or different specific sites may be identified as being in need of additional protection. It is also possible that additional information could alter our views regarding the adequacy of protection measures in the above-identified areas. However, based on our current assessment of the best available information, implementation of the above-mentioned measures will be effective in reducing watercraft-related incidental take within the Atlantic Stock.

In regard to the review of applications to construct watercraft access facilities, as stated above the preferred method is through the development and implementation of county MPPs, and the use of the facility siting component of those plans to guide local, State, and Federal permit review processes. It is our view that MPPs should be developed and implemented for all counties where the watercraft-related manatee mortality rate for the preceding five years averages one or more manatees. Based on current data, this includes the following counties within the Atlantic Stock— Brevard, Broward, Duval, Indian River, Martin, Miami-Dade, Palm Beach, and Volusia. As noted above, MPPs have been approved by the FWC for Miami-Dade, Duval, Indian River and St. Lucie counties. While development of MPPs for the above counties would be an appropriate, and indeed preferable mitigating measure with respect to the effects of watercraft access facilities, we have determined that it is not necessary to ensure that the effects of the authorized activities have a negligible impact on manatees, because until such plans are adopted the effects of watercraft access facilities on manatees and manatee habitat will continue to be assessed and reduced on a case-by-case basis through effective State and Federal regulatory processes, as described above.

In summary, the Atlantic Stock is close to the demographic benchmarks; however, watercraft-related take is high, and it appears that this level of watercraft-related incidental take may affect this stock's ability to continue to increase toward OSP. Based on this, we conclude that the current level of watercraft-related incidental take is having a greater than negligible impact on this Stock. However, with the continued implementation of existing effective measures along with implementation of the additional mitigating measures described above, we conclude that the total effect of watercraft-related incidental take will have a negligible impact on this Stock. Our analysis of historic levels of watercraft-related incidental take, levels of take anticipated during the five-year period, and the effectiveness of existing and additional measures indicates that the anticipated take during the five-year period will not significantly affect rates of recruitment or survival. Separate from our negligible impact determination, if the apparent recent decline in adult survival is confirmed and continues, it will inevitably lead to a population decline that would adversely affect the long term population trend and prevent the stock from maintaining itself within OSP; however, we conclude that with the continued implementation of existing effective measures along with implementation of the additional mitigating measures described above, the total effect of watercraft-related incidental take will not adversely affect the long-term population trend.

4. *Southwest Stock*—Adult survival for this Stock has been calculated to be 90.6 percent with a 95 percent confidence interval range from 86.7 to 94.4 percent (Langtimm *et al.* unpubl. analysis), based on data collected between 1994 and 2001. There are no reliable estimates of the percent of adult females at the winter sites that are accompanied by first or second-year calves, although we are working with our partners to collect these data. It seems reasonable to assume that the recruitment rate for the Southwest Stock is similar to or lower than observed for the Atlantic Stock. There are no estimates of the population trend for this Stock. However, based on the estimated adult survival rate, it is likely that this Stock is currently declining or is, at best, stable. It seems unlikely that the Southwest Stock is meeting any of the demographic benchmarks at this time, and based on the adult survival estimates, it appears as though considerable improvement will be needed in order to begin to move this Stock toward achieving the demographic benchmarks. Additionally, watercraft-related mortality has increased greatly in recent years. The average annual number of manatee mortalities attributed to watercraft during the past five years (1997 to 2001) was 34.2, compared to 19.0 for the previous five-year period (1992 to 1996), and the number of manatees killed by watercraft increased at a rate of 7.3 percent per year between 1976 and 2002, which is a likely cause of the stable or declining population trend. Further, given the susceptibility of this Stock to naturally occurring mortality events such as red tide, it is possible that this Stock is less capable than other stocks of sustaining itself in the face of high levels of human-related take.

Numerous manatee protection measures are currently in place within the Southwest Stock. Speed zones and/or restricted access areas have been established in portions of Hillsborough, Pinellas, Manatee, Sarasota, Charlotte, Lee, and Collier counties. We recently enacted Federal manatee protection areas at sites in Hillsborough, Pinellas, Sarasota, Charlotte, Desoto, and Lee counties, and the FWC has recently enacted new speed zones in Hillsborough, Manatee, Sarasota, Charlotte, and Desoto counties. A MPP has been approved by the FWC for Collier County. We believe that manatee protection measures recently implemented by the FWC and us for the Southwest Stock will reduce the rate of increase in the number of watercraft-related mortalities.

In considering where additional mitigating measures need to be implemented, we have examined mortality trends within this Stock in an attempt to focus implementation of mitigating measures in those areas with continuing histories of high levels of watercraft-related incidental take. The analysis conducted by Flamm (2002) identified one primary manatee mortality concentration area within the Southwest Stock (*i.e.*, the Charlotte, Lee, Collier County area). Additionally, review of mortality statistics indicate that the number of manatees killed by watercraft in the greater Tampa Bay area (Hillsborough, Pinellas, Manatee, and Sarasota counties) has increased rapidly in recent years. For the period between 1992 and 1996 an average of 4.6 manatees were killed by watercraft in the greater Tampa Bay area each year, whereas an average of 8.6 manatees per year were killed by watercraft between 1997 and 2001. It is our view that in order to reduce incidental take to a level that would have a negligible impact on the manatee, mitigating measures must be focused in these areas.

Within the greater Tampa Bay area, substantial efforts have been made to improve manatee protection by local governments, and recently by the FWC and us; however, large areas of these bays that are of importance to manatees remain unprotected. We understand that the FWC will begin to prepare a rulemaking proposal for Tampa Bay in the near future. It is our view that implementation of additional protection measures in Tampa Bay, Old Tampa Bay, and Hillsborough Bay are appropriate and necessary mitigating measures to reduce watercraft-related incidental take within the Southwest Stock.

Speed zones for manatee protection have been established only in very limited portions of Manatee County. There are no significant wintering sites in Manatee County. However, waters throughout the county receive considerable use by manatees; particularly Terra Ceia Bay, Anna Maria Sound, Sarasota Bay, the Manatee River and the Braden River. Recent enactment of speed zones in Terra Ceia Bay by the FWC will benefit manatees. It is our view that implementation of additional protection measures in Manatee County are appropriate and necessary mitigating measures to reduce watercraft-related incidental take within the Southwest Stock.

Within the Charlotte-Lee-Collier County area, the recent enactment of speed zones on Lemon Bay and the Peace River by the FWC and us will improve manatee protection in these areas. Additionally, the FWC is conducting a study of the Caloosahatchee River, which may lead to recommendations for improving manatee protection in this area. Additionally, the FWC will conduct a broader study of the existing speed zone rules in Lee County, and a study of the waters of the Ten Thousand Islands area of Collier County, which may lead to recommendations for addressing our concerns regarding the waters near

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Bokeelia Point, the Ten-mile Canal, Mullock Creek, and Chokoloskee Bay. Finally, the National Park Service (NPS) intends to address manatee protection measures within Everglades National Park as part of their General Management Plan process. It is our view that implementation of additional protection measures in the above-identified waterbodies are appropriate and necessary mitigating measures to reduce watercraft-related incidental take within the Southwest Stock.

As new information becomes available, additional areas of importance to manatees may be identified as being in need of additional protection. It is also possible that additional information could alter our views regarding the adequacy of protection measures in the above-identified areas. However, based on our current assessment of available information, resolution of the above-mentioned deficiencies are considered to be appropriate and necessary mitigating measures to reduce watercraft-related incidental take within the Southwest Stock.

In addition to improvements in watercraft speed zones, efforts are necessary to improve compliance with speed zone regulations. As noted above, Shapiro (2001) and Gorzelany (1996, 1998, 2001) observed levels of compliance at sites within the Southwest Stock that were below our above-stated compliance goal. As such, additional law enforcement and boater education efforts, focused within the greater Tampa Bay area and the Charlotte-Lee-Collier County area are considered to be appropriate and necessary mitigating measures to reduce watercraft-related incidental take within the Southwest Stock.

In regard to the review of applications to construct watercraft access facilities, as stated above the preferred method is through the development and implementation of county MPPs, and the use of the facility siting component of those plans to guide local, State, and Federal permit review processes. It is our view that MPPs should be developed and implemented for all counties where the watercraft-related manatee mortality rate for the preceding 5 years averages one or more manatees. Based on current data, this includes the following counties within the Southwest Stock—Charlotte, Collier, Glades, Hillsborough, Lee, Manatee, Monroe, Pinellas, and Sarasota. As noted above, an MPP has been approved by the FWC for Collier County. We note that per the Florida Manatee Sanctuary Act MPPs are not currently mandated to be completed for all these counties and no MPPs are required to be completed before July 1, 2004. As such, the implementation of MPPs does not appear to be a mitigating measure that is likely to be implemented within the timeframe of this rule, and applications to construct watercraft access facilities will continue to be reviewed on a case-by-case basis through State and Federal regulatory processes.

As indicated above, there is a need for considerable improvement in the status of the Southwest Stock, and numerous measures are needed to bring about those improvements. It is our view that implementation of necessary mitigating measures is unlikely to occur within the timeframe (five years) necessary to reduce the effects of watercraft-related take to negligible levels per this proposed rule. As such, we conclude that the current level of human-related take of manatees is substantially increasing the time needed to achieve the demographic benchmarks and is having a more than negligible impact on this Stock, and incidental take of manatees cannot be authorized. This constitutes a negative finding pursuant to 50 CFR 18.27(d)(4). We further conclude that it is unlikely that the Stock will be able to achieve or maintain OSP levels over the near or long term under current levels of watercraft-related incidental take.

We will continue to work with our partner agencies and stakeholders to develop and implement measures to reduce incidental take within this Stock. Additionally, we will also continue to work with the scientific community to collect the data necessary to improve our assessment of the status of the Southwest Stock relative to the demographic criteria. It is possible that additional and/or improved data collection and analysis will result in stronger data sets with greater statistical confidence. We believe that if incidental take can be reduced and controlled, and the necessary population data is collected, it may become possible at a future date to promulgate regulations authorizing incidental take in this region. We will continuously monitor the status of this Stock relative to the benchmarks, and will propose incidental take regulation as soon as we determine that incidental take within this Stock has been reduced to a negligible level, or could be reduced to a negligible level through implementation of mitigating measures. This could occur at any time during the five-year period of this rule, or in subsequent rulemakings.

Monitoring and Reporting

Reducing and controlling the incidental take of manatees at a level that would have a negligible impact on the species requires active participation of all stakeholders, including boaters, marine manufacturers and industry, government agencies, and the general public. In order to provide all parties a continuing role in this process and implementation of this rule, we propose to establish a Working Group on Watercraft-related Incidental Take (WGWIT).

The WGWIT will be organized as a sub-committee of the Florida Manatee Recovery Team, similar to what has been done with the Habitat Working Group and the Warm Water Task Force. The composition of the WGWIT will have representation from the Florida Manatee Recovery Team and participants from each of the following parties/stakeholders—recreational power boaters, personal watercraft operators, non-motorized boating groups, commercial fishermen, fishing guides, recreational fishing organizations, marine manufacturers, marina owners, environmental advocates, consultants and each government agency obtaining an LOA from us per the final rule. WGWIT members will serve without compensation. Through this notice we are requesting suggestions on groups that should be included in the WGWIT and nominations of persons interested in serving on this panel. Nominations for the WGWIT should be submitted as part of the comments to this proposed rule. Comments are due on the date stated above in **DATES**, and you should refer to the **ADDRESSES** section of this proposed rule on how to submit comments. Based upon the nominations, we will send out invitations for participation in the WGWIT in late January 2003.

Once the final rule is in effect, the WGWIT will meet regularly (twice yearly) to assist in evaluating the effectiveness of the mitigating measures in reducing incidental take of manatees. Based upon these evaluations, the WGWIT will make recommendations to us regarding means of improving the effectiveness of existing mitigating measures, elimination of ineffective or unnecessary mitigating measures, and additional mitigating measures that may be necessary, and will advise the Service on needs related to research and monitoring. Recommendations from the WGWIT will be non-binding on our actions, but will be given strong consideration in the implementation of the incidental take regulations.

We also intend to form a Law Enforcement Committee under the WGWIT, comprising of the Federal, State and local entities involved with the (1) design, location, installation, and/or maintenance of signs, (2) enforcement of speed zone and restricted access regulations, and (3) prosecutorial discretion to take action against violators. We envision this committee to include representatives from the Service (Ecological Services and Law Enforcement), FWC (Bureau of Protected Species Management and Law Enforcement), FDEP, Corps, USCG, Inland Navigation Districts, and the U.S. Attorney's Office. The Law Enforcement Committee would be tasked with development of a statewide violation tracking system as well as a uniform profile and fine structure. The committee would also assist researchers and managers in the identification and prioritization of manatee protection areas for targeted compliance monitoring and enforcement. We believe improved coordination among law enforcement entities will result in improved compliance and improved manatee protection overall.

The monitoring and reporting requirements associated with this rule are intended to enable us to track agency compliance with the terms and conditions of issued LOAs, and to evaluate observed levels of incidental take against the negligible impact threshold. We intend to integrate information received through these requirements with current and future research efforts in order to evaluate the effectiveness of mitigative measures with a view toward refining measures to improve results, and to identify and fill data gaps in order to improve future decision-making.

Monitoring efforts for each of the five categories of mitigating measures will be structured as follows. We anticipate improvement of these efforts as information is gathered and the WGWIT has the opportunity to evaluate the monitoring methods and standards.

1. *Watercraft Speed Regulations*—We, in coordination with the FWC and other LOA holders, will evaluate areas of manatee habitat, with or without designated watercraft speed zones and restricted access areas, to determine if an adequate system of protective measures has been established. The evaluation would include, but not be limited to, carcass retrieval information/annual mortality statistics, aerial surveys, speed zone compliance, mapping quantity and quality of important habitat features (e.g., warm water refugia, fresh water sources, seagrass beds, etc.), and the status of the development or implementation of facility siting plans.

2. *Enforcement*—To monitor the level of compliance in designated speed zones and restricted access areas, we propose the use of the methodology developed by Mote Marine Laboratory (Gorzelany 1996 and 1998).

For each site to be monitored, a land- or water-based observation area should be chosen to provide the observer with a vantage point that also allows discreet observation so as not to influence speed or behavior of watercraft operators utilizing the site. At each site, three 2-hour observation periods per month should be conducted and include two weekend days (Saturday and Sunday) and one weekday (Monday-Friday). For the purposes of this rule, the duration and time of year of monitoring will be site specific and determined by several factors, including but not limited to, peak season(s) of manatee use in relation to peak season(s) of watercraft use, historic and present level of watercraft-related manatee mortality, proximity to winter aggregation site or other important habitat features, and seasonality, if any, of the manatee protection area. Each site should be sampled equally among three different 2-hour time windows: 0800–1000 hours, 1100–1300 hours, and 1400–1600 hours. For each observation day, the observer(s) should record the weather, wind, wave, and boating conditions for each site. For each watercraft observed, the observer(s) should record the time, vessel type, vessel size, activity the vessel is engaging in, origin, destination, vessel speed, evaluation of compliance, and any additional comments. Gorzelany (1996) provides a detailed description of the categories and definitions of the data to be collected as well as an example of a data collection sheet. Data should be compiled and analyzed consistent with Gorzelany (1996 and 1998) in order to have meaningful, comparable results throughout the state.

3. *Watercraft Operator Education/Awareness*—Monitoring of education/awareness efforts would be accomplished by LOA holders through participant evaluation forms included in education packages for watercraft operator safety programs as well as programs designed for the general public and schools. Periodic surveys of the public at large should also be developed through the WGWIT and administered in a random, statewide study to determine the overall effectiveness of manatee education and outreach.

4. *Watercraft Access Facility Siting*—The FWC's BPSM currently tracks and reports on the status of county MPPs. In addition, LOA holders who permit watercraft access facilities will be required to report the numbers and types of watercraft access facilities authorized each year by water body, as well as other relevant information including permit conditions and permit denials.

Each agency receiving an LOA will be required to submit a report of all activities conducted pursuant to the LOA annually. The specific reporting requirements, including which activities must be reported and the level of detail necessary for reporting, will depend on the specific activities for which each agency seeks an LOA, and will be specified in the LOA.

Research

On-going and additional research activities will provide additional information for implementation of this rule and development of future rules and conservation efforts. These include, but are not limited to, the following—continued efforts to gather data on survival rates for the various life stages and the reproductive rates defined in the population model; continued and expanded efforts to assess the effectiveness of watercraft speed zones as tools for reducing watercraft-related incidental take; expanded research on the effects of speed zones and watercraft access facility siting on boater behavior and travel patterns; continued and expanded monitoring of compliance with posted speed zones; and continued research into development of technologies to reduce manatee/watercraft interactions. These and future studies will be used to further evaluate and modify this process through time. Additionally, this research may help us make future findings for the Southwest Stock, as mentioned above.

Proposed LOA Process

The proposed regulations have been designed to identify the appropriate mitigation, monitoring, and reporting requirements to be detailed in the LOA, rather than in these regulations. This has been done because of the variable scope of authority, area of responsibility, and activities engaged in by the potential LOA applicants, and because appropriate measures need to be tailored to particular areas. Mitigating measures identified above as appropriate and necessary to ensure the effects of watercraft-related activities have a negligible impact on manatees must be in place before incidental take authorization can be granted.

Additional mitigating measures are not required for the Northwest and Upper St. Johns River stocks beyond those actions currently being taken by local, State, and Federal agencies; therefore, we anticipate that as long as

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applicants for LOAs commit to continue to engage in their current efforts to conserve manatees and to minimize the potential adverse affects of their activities on manatees, and these stocks continue to meet or exceed the demographic criteria, incidental take can be authorized. In the Atlantic Stock, however, those government agencies that have the necessary authority and resources will need to work with us to implement the appropriate mitigating measures in order to achieve negligible impact. Without their participation, other parties will not be able to receive authorization for incidental take within this Stock. Participation by other LOA holders will help reduce levels of take, but individually we do not believe that smaller government agencies can implement mitigative measures necessary to reduce watercraft-related manatee mortality to the negligible level within the Atlantic Stock.

In regard to local governments, most of the activities engaged in by local governments with respect to this rule are conducted under the purview of the State. For example, local MPPs and associated speed zones are approved by the FWC, and watercraft facility siting plans are incorporated into county comprehensive plans per the Department of Community Affairs. As such, should the State of Florida seek and receive an LOA that addresses incidental take related to their oversight of such local government activities, separate LOAs would not be needed by the counties.

No incidental take is authorized until LOAs are issued. Where there is the likelihood of taking Florida manatee, the entities who conduct activities described in the Specified Activities section may request an LOA. The proposed regulations require those who request an LOA to submit (1) a description of the specific activity or class of activities that can be expected to result in the incidental take of manatees; (2) the dates and duration of such activity and the specific geographical region where it will occur; (3) the anticipated impact of the activity on manatees (*i.e.*, death, injury, harassment, etc.); (4) the anticipated impact of the activity to manatee habitat and the likelihood of restoration of the affected habitat; (5) the anticipated impact of the loss or modification of manatee habitat; (6) the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting such activity or other means of effecting the least practicable adverse impact on the manatee and its habitat; (7) suggested means of accomplishing the necessary monitoring and reporting; and (8) suggested means of encouraging and coordinating research opportunities, plans, and activities to reduce such incidental take.

Each request for an LOA will be evaluated for the specific activity and the specific area for which authorization of incidental take is requested, and we will specifically condition each LOA for that activity and area. LOAs will be valid for one calendar year from the date of issuance, with re-authorization contingent on the submission of required report(s), including but not limited to, the status of implementation of LOA conditions and results of required monitoring. We will withdraw or suspend an LOA if we find that either the LOA or regulations are not being substantially complied with or that the authorized level of take is having or is likely to have more than a negligible impact on the Florida manatee (50 CFR 18.27(f)(5)). We anticipate that in the event that an LOA holder is not substantially complying with the conditions of an LOA in a manner that leads to incidental take that is or is likely to be higher than the negligible impact level for the stock for which incidental take is being authorized, all LOAs issued may have to be suspended or withdrawn. Except in emergency situations where we have determined that there is a significant risk to the well-being of the Florida manatee, suspension or withdrawal of LOAs will not occur prior to notice and opportunity for public comment.

Public Comments Solicited

We intend that any final action resulting from this proposal will be based on the best available information. Therefore, we solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule.

We welcome any and all suggestions, materials, and recommendations to assist and guide us in this endeavor. Specifically, we are seeking:

1. Information regarding manatee population studies/data, particularly for the Southwest Stock;
2. Information regarding measures, including technological measures, that would result in the least practicable impact on manatees and their habitat;
3. Information regarding the effectiveness of mitigating measures currently in place;
4. Information regarding the potential social and economic effects of the proposed regulations;
5. Information regarding means of minimizing potential social and economic effects of the negative finding for the Southwest Stock;
6. Suggested means and measures to report and monitor the effects of incidental take on manatees;
7. Suggested additional research efforts related to the findings of this rule; and
8. Nominations for participants to serve on the Working Group on Watercraft-related Incidental Take.

Additionally, we are requesting specific public comment on the following issues pertaining to the economic analysis, which is printed in its entirety in the EIS for this action:

1. Information to better model the change in boater behavior and/or the economic surplus impacts of changes in marine access;
2. Additional estimates of the difference in residential property values with and without the potential to construct private boat dock;
3. Information to estimate the number and regional distribution of boaters in Florida who register their boats out-of-state; and
4. Alternative regional impact models (*i.e.*, alternatives to IMPLAN) that would more accurately capture changes in sector outputs and employment resulting from the rule.

Please submit comments as a DOS text file format and avoid the use of special characters and encryption. Please also include "Attn—RIN 1018–AH86" and your name and return address in your email message. If you do not receive a confirmation from the system that we have received your email message, contact us directly by calling the Jacksonville Field Office (see **ADDRESSES** section).

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their name and home address from the rulemaking record, which we will honor to the extent allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Public Hearings

The MMPA provides for one or more public hearings on this proposal, if requested. Requests must be filed within 30 days of the date of this proposal. We have scheduled six public hearings for this proposal (see **DATES** and **ADDRESSES** sections). We will hold additional public hearings at dates, times, and sites to be determined, if requested. Requests for additional hearings must be made in writing and should be addressed to the Field Supervisor, Jacksonville Field Office (see **ADDRESSES** section). We will publish a separate notice in the **Federal Register** providing information about the time and locations of those hearings. Written comments submitted during the comment period receive equal consideration with those comments presented at a public hearing.

Clarity of Rule

Executive Order (E.O.) 12866 requires each agency to write regulations/notices that are easy to understand. We invite your comments on how to make this proposed rule easier to understand, including answers to questions such as the following—(1) Are the requirements in the proposed rule clearly stated? (2) Does the proposed rule contain unnecessary technical language or jargon that interferes with the clarity? (3) Does the format of the proposed rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Is the description of the proposed rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the proposed rule? (5) What else could we do to make the proposed rule easier to understand?

Send a copy of any comments that concern how we could make this proposed rule easier to understand to—Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may e-mail your comments to the following address—*Execsec@ios.doi.gov*.

Required Determinations

Regulatory Planning and Review

Under EO 12866 (58 FR 51735), we must determine whether this proposed regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the EO. The EO defines "significant regulatory action" as one that is likely to result in a rule that may—(1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user transfer fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in EO 12866. In accordance with the criteria in EO 12866, this rule is a significant regulatory action. OMB makes the final determination under EO 12866.

a. This proposed rule will not have an annual economic impact of over $100 million, but may adversely affect an economic sector, productivity, jobs, the environment, or other units of government. A complete analysis is available in "Alternative 3—Socioeconomic Impacts" in the Draft Environmental Impact Statement for this proposed rulemaking.

Regulatory impact analysis requires the comparison of expected costs for each alternative against a "baseline," which typically reflects the regulatory requirements in existence prior to the rulemaking. The baseline being considered in this analysis assumes that the Service takes no regulatory actions to protect the manatee. In fact, existing requirements to protect the manatee do exist, and currently impose costs on the regulated community. We were not, however, able to monetize the current level of regulatory burden. Thus, the cost estimates presented below represent a conservative (i.e., more likely to overstate as opposed to understate) estimate of the costs of this rule. That is, the rule being proposed will, in some cases, result in the continuance of costs experienced in the past (i.e., no change in regulatory burden), in some cases a reduction in these costs (i.e., will reduce overall regulatory burden), and in some cases an increase in the current cost of regulation.

The purpose of this proposed rule is to authorize where appropriate the incidental, unintentional take of small numbers of Florida manatees resulting from government activities related to watercraft and watercraft access facilities in Florida. This rule may lead to actions designed to reduce the watercraft-related take of manatees, including designating and enforcing manatee protection areas, managing manatee habitat, and promoting manatee related research and education and outreach. The rule may also be associated with changes to permit review procedures. These actions are undertaken to protect and enhance Florida's manatee populations.

The associated economic impacts are due to the implementation of MMPA incidental take regulations and any ancillary changes in permit review procedures. The analysis estimates the economic impact for the five-year duration of the proposed rule for four Florida stocks of manatee: Northwest, Upper St. Johns, Atlantic, and Southwest. Under the proposed rule, incidental take of manatees would be authorized in the Northwest, Upper St. Johns and Atlantic stocks. As the level of take is already meeting the negligible standard in the Northwest and Upper St. Johns stocks, no mitigating measures would be required for these stocks. The only impacts in the Northwest and Upper St. Johns stocks would be related to increased administrative activities associated with issuing Letters of Authorization (LOAs). In order to authorize incidental take in the Atlantic Stock, some mitigating measures would be implemented. The socioeconomic impacts associated with these mitigating measures are likely to be minimal. However, the inability to authorize incidental take in the Southwest stock may continue the substantial economic effects of limiting the authorization and construction of boat docks, marinas, boat ramps, and other watercraft access facilities.

The economic effect of the proposed rule, including the economic effect associated with the inability to authorize incidental take under this rule for the Southwest stock and any associated changes in permit review procedures, will most likely be manifested in three ways. First, there will be a continuation of administrative costs associated with various manatee protection and management measures. Second, there will be a reduction in the economic value of some waterfront properties, reflecting the loss in opportunity for marine access associated with residential development. The effect will be borne by individual property owners (in terms of a reduction in the value of their asset), but it is equivalently a welfare loss to society, reflecting a reduction in the value of services potentially provided by coastal properties. This category of impact is estimated by considering available data on the difference in waterfront property prices for properties with marine access versus waterfront property without marine access. Third, there will be a reduction in the supply of marine access. This change in supply will be expressed in terms of fewer boat ramps, marina slips and residential slips than would exist in the baseline (i.e., in the absence of

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limitations on permitting of these facilities). The result of this reduction in marine access will be a price effect; that is, the cost of access to marine waters for all users will rise. This price impact will likely be felt by users in the form of higher rental rates for marina facilities, higher prices for commercial ramp facilities, longer wait times at ramp facilities, and/or the need for boaters to travel farther to obtain marine access. Because data do not exist to estimate these expected price effects, this analysis uses proxy measures of economic impact, by assuming that some boaters will choose not to boat in response to the change in marine access.

Because the analysis predicts the construction of fewer marine access facilities (residential docks, commercial marina slips, boat ramps), it is also expected that there would be a secondary effect in the form of a reduction in output (and jobs) in the marine construction sector from the level that would be expected in the baseline. In addition, because the analysis predicts fewer overall boating trips by Florida boaters, there will be a reduction in the economic output (and jobs) in industries that supply goods and services to marine boaters.

The economic impacts discussed in this analysis are incurred due to restricting permits on marine access facilities in the Southwest stock. Based on analysis of historical permitting activities, we assume that the Service will not concur with 37 percent of permit applications for development activities (i.e., boat docks, marinas, boat ramps) in manatee habitat areas in the Southwest stock. Associated costs are due to (1) continued administration of manatee protection programs, (2) diminishment of recreational boating opportunities due to limits on access to the water, (3) reduced waterfront property values, (4) decreased recreational boating expenditures, and (5) reduced marine construction. The impacts include both economic efficiency (i.e., social welfare) changes and distributional impacts (i.e., changes in regional economic performance, in the form of reductions in economic output and jobs from the baseline). All impacts are summarized in Tables 1 and 2.

TABLE 1.—SUMMARY OF EFFICIENCY (ECONOMIC SURPLUS) LOSSES

[Millions of 2001 dollars]

	Nominal impacts					Discounted impacts		
	Year 1	Year 2	Year 3	Year 4	Year 5	Present value total 3%	Present value total 7%	Annualized 7%
Northwest	$0	$0	$0	$0	$0	$0	0	$0
Upper St. Johns	0	0	0	0	0	0	0	0
Atlantic	0	0	0	0	0	0	0	0
Southwest	18–25	20–35	21–44	23–53	25–62	97–198	87–175	21–43
Subtotal	18–25	20–35	21–44	23–53	25–62	97–198	87–175	21–43
Administrative costs[a]	10	10	10	10	10	48	43	10

[a] Sufficient data do not exist to allow administrative costs to be reported by stock.

TABLE 2.—SUMMARY OF DISTRIBUTIONAL (REGIONAL ECONOMIC EFFECTS) IMPACTS

[Millions of 2001 dollars]

	Nominal impacts				
	Year 1	Year 2	Year 3	Year 4	Year 5
Northwest Reduction in economic output	$00–$00	$00–$00	$00–$00	$00–$00	$00–$00
Reduction in jobs	0	0	0	0	0
Upper St. Johns Reduction in economic output	$00–$00	$00–$00	$00–$00	$00–$00	$00–$00
Reduction in jobs	0	0	0	0	0
Atlantic Reduction in economic output	$00–$00	$00–$00	$00–$00	$00–$00	$00–$00
Reduction in jobs	0	0	0	0	0
Southwest Reduction in economic output	$14–$24	$15–$36	$17–$47	$18–$59	$20–$70
Reduction in jobs	147	170	193	217	240
Subtotal Reduction in economic output	$14–$24	$15–$36	$17–$47	$18–$59	$20–$70
Reduction in jobs	147	170	193	217	240

[a] Distributional impact estimates reflect the expected change in regional economic output and jobs; these measures should not be summed with reported efficiency (surplus) effects, but viewed as separate measures of economic impact.

The inability to authorize incidental take for the Southwest stock under the proposed rule is expected to result in present value economic surplus losses of approximately $87 to $175 million over five years (assuming a seven percent discount rate), or $21 to $43 million per year (annualized to 2001). Between 40 and 75 percent of these losses are associated with the expected reduction in waterfront property values. The principal source of uncertainty in these estimates is the lack of a model to estimate boaters' responses to a change in the supply of marine access facilities.

In addition, it is expected that the inability to authorize incidental take for the Southwest stock under the proposed rule will result in a reduction in economic output and employment in each of the five years. The impact ranges from approximately $14–$24 million and 147 jobs in year one, to approximately $20–$70 million and 240 jobs in year five. The majority of the reduction in economic output in year five is associated with a decrease in recreational boating trips in the Southwest region, in the high end estimate. Again, the principal source of uncertainty in these estimates is the lack of information on the likely behavior of marine boaters in response to a change in the supply of marine access.

It is important to recognize the uncertainty inherent in the assumptions underlying this analysis. There are a number of factors that may lead this analysis to under- or overestimate economic losses. In addition to the sources of uncertainty discussed above, we may understate economic losses based on the following assumptions.

- The analysis does not account for growth in Florida boaters who register their boats out-of-state.
- Historical residential permitting rates are assumed to continue into the future. This assumption may lead us to understate economic losses resulting from permitting restrictions associated with the inability to authorize incidental take for the Southwest stock.

In addition, we may overstate economic losses, for the following reasons.

- The analysis assumes demand for watercraft access facilities is not going to be met in certain areas due to permitting restrictions associated with the inability to authorize incidental take for the Southwest stock under the rule (*i.e.*, that there is no excess marina and boat ramp capacity currently). These assumptions may lead us to overstate economic losses.
- The model used to estimate regional economic impacts is a static model, and thus does not account for adjustments by the economy following regulatory or other changes. That is, this model measures the effects of a specific policy change at one point in time. Over the long-run, the economic losses predicted by the model may be overstated as adjustments such as re-employment of displaced workers occurs.
- The analysis calculates surplus loss for residential property owners who are unable to build a dock on their property, as well as surplus losses associated with property value impacts. This may result in some degree of double counting of regulatory costs.

In addition to the caveats noted above, our analysis does not take into account any economic benefits. For example, there may be economic benefits related to reduced congestion on the water and avoided costs for maintaining shoreline protection.

Administrative Costs. Administrative costs statewide over the next five years are associated with the development and enforcement of manatee protection areas ($19 million), agency administrative efforts ($15 million), education and outreach ($3 million), permitting efforts ($4 million), and additional impacts ($11 million). These would be costs incurred by Federal, State and other agencies.

Efficiency (Economic Surplus) Losses. The inability to authorize incidental take for the Southwest stock may limit authorization and construction of watercraft access facilities, causing economic impacts to waterfront property owners by impacting recreational boating activities and waterfront property values. Some homeowners who would otherwise have constructed residential dock facilities on their properties in the Southwest stock will be unable to obtain required permits, thus affecting their recreational boating activities and their property values.

Recreational boating will be impacted based upon the assumption that these homeowners would instead rent slips at an existing marina facility. Welfare losses incurred by waterfront homeowners are associated with marina rentals and the time and effort spent to travel to the marina. We estimate that, cumulatively over the five-year period, unmet residential slip demand would result in demand for 10,600 marina slip rentals in the Southwest region. Using the range of annual wet and dry marina slip rental costs (from $1,500 to $4,600 per slip per year) yields a five-year welfare loss between $13 to $38 million (2001 dollars with a seven percent discount rate).

The inability to authorize incidental take for the Southwest stock under the proposed rule would also impact property values for some waterfront property owners. Property owners who would otherwise have been able to construct residential docking facilities would experience a reduction in their property's value. To estimate this loss, we assume that a residential boat slip adds approximately $68,000 to the value of a waterfront property in Florida. Using the number of waterfront property owners that would not be able to construct a residential slip (236 annually), we estimate the economic cost to be $66 million over five years (2001 dollars with a seven percent discount rate).

Existing data indicates that marina facilities currently have capacity to handle some increase in slip rental demand without new construction, but this capacity will not address all of the expected demand for slips over the five-year period of the rule. Thus, boat owners who otherwise would utilize marina facilities or boat launches may be unable to access these facilities.

This analysis assumes that, as demand for watercraft access increases, some boaters will be unable to obtain access, and thus the total number of boat trips originating from marinas will decrease. To estimate welfare losses to these boaters over the five-year period, we apply the willingness to pay for a boating day ($40), multiplied by the cumulative future unmet marina slip demand (*i.e.*, 4,500 slips) and the average number of boating trips taken per year (60 trips/year). Discounting these figures using a seven percent discount rate, the welfare loss over the five-year period is estimated to be $8 million (2001 dollars).

Due to the inability to authorize incidental take for the Southwest stock under the proposed rule, it is assumed that the Service would not concur with 37 percent of permit applications for the construction of new boat ramps, resulting in an increased demand for existing boat ramp facilities. This demand for existing boat ramp facilities in the Southwest region will likely exceed supply in the next five years. As boat ramp congestion increases over time, boaters may decide not to use a boat ramp to launch their vessel, and may choose to refrain from boating. Similar to our estimate of losses to marina users, we estimate welfare losses to boat ramp users based on information on projected growth in boat ramp usage, and estimates of boating values and boating trips per year. Because we lack data on boat ramp capacity, we provide a range of surplus loss estimates based on assumptions about the lost number of boating trips attributable to the proposed rule. The low end is zero while the high-end represents the maximum possible surplus loss by assuming that some boat ramp users (equal to the number to newly registered boats expected to use ramps) choose not to participate in boating activities. This high end assumption likely overestimates the actual surplus losses. Applying the value for a day of boating ($40) to the five-year cumulative reduction in boat ramp trips (ranging between zero and two million), we estimate the welfare loss for boat ramp users for the Southwest region. When these figures are discounted using a seven percent discount rate, the welfare loss over the five-year period ranges from $0 to $62 million (2001 dollars).

Marine Industry Impacts. The inability to authorize incidental take for the Southwest stock under the proposed

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rule would likely lead to two categories of indirect impacts. First, a loss of marine access points would result in a decrease in recreational boat trips for marina users and boat ramp users. This decrease in boating activity may lead to a reduction in expenditures related to recreational boating. Second, a limit on the authorization and construction of such facilities as boat docks, marinas, and boat ramps is likely to result in a reduction in the demand for marine construction services.

This analysis assumes that the inability to authorize incidental take for the Southwest stock under the proposed rule will lead to a reduction in recreational boating activity, equal to 132,000 trips accumulating per year from boat ramps and 18,000 trips accumulating per year from marina slips. The decrease in trips from boat ramp users will result in an estimated annual decrease in direct expenditures ranging from $6 million in year one to $32 million in year five, and a regional economic impact ranging from $10 million in year one to $51 million in year five. The decrease in trips from marina slip users will result in an estimated annual decrease in direct expenditures ranging from $1 million in year one to $4.3 million in year five, and a regional economic impact ranging from $1 million in year one and $7 million in year five for marina slip users (2001 dollars).

In addition to impacts from reduced recreational boating activity, marine industry would also be impacted by the reduced demand for marine construction. Applying the cost of building docks, marina slips, and boat ramps to the projected unmet demand for these marine access facilities in the Southwest stock, we estimate the total revenue likely to be lost to the marine construction industry to be $7 million annually. This decrease in marine construction would lead to a regional impact of $13 million annually for five years.

b. This rule will not create inconsistencies with other agencies' actions. The Service will continue to work with State and local agencies to monitor and evaluate the need for incidental take regulations. The Service recognizes the important role of State and local partners, and the Service continues to support and encourage State and local measures to improve manatee protection. Furthermore, the Service will be able to issue LOAs covering agency activities in the Northwest, Upper St. Johns, and Atlantic stocks. The application process will likely only cause minimal impacts on applicant agencies.

c. This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. There are restrictions to existing human uses of the proposed sites as a result of this rule, but the restriction is not expected to have a material effect.

d. This rule will not raise novel legal or policy issues. This proposed action will reduce the need for enforcement actions to prevent the takings of manatees by harassment resulting form human-related waterborne activities in the Northwest, Upper St. John, and Atlantic stocks. Within the Southwest stocks, there will be a lack of incidental take regulations. However, property owners already experience a variety of county and Federal development restrictions due to numerous other regulations including: the Endangered Species Act, National Historic Preservation Act, Coastal Zone Management Act, Magnuson-Stevens Fishery Management and Conservation Act, Fish and Wildlife Coordination Act, and the Marine Mammal Protection Act.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. A "substantial number" of small entities is more than 20 percent of those small entities affected by the regulation, out of the total universe of small entities in the industry or, if appropriate, industry segment.

SBREFA amended the RFA to require Federal agencies to provide a statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities. SBREFA also amended the RFA to require a certification statement. According to the Small Business Administration, small entities include small organizations, such as independent nonprofit organizations, and small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents, as well as small businesses (13 CFR part 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000.

We certify that this rule would not have a significant economic effect on a substantial number of small entities as defined under the RFA Act (5 U.S.C. 601 *et seq.*). A Regulatory Flexibility Analysis is not required. Accordingly, a Small Entity Compliance Guide is not required.

Marine Recreation Impacts. As noted in the previous section, reduced recreational boat trips could lead to an estimated $4 to $36 million decrease in direct expenditures, which would yield a regional economic impact to the Southwest stock between $7 to $58 million annually for five years. Expenditures that would be affected would be for food and lodging, transportation, and other incidental expenses. The table below describes the total business activity for these sectors in the Southwest stock. Sales in these sectors total to $7 billion. Pinellas and Hillsborough counties account for the largest proportion of the sales while Glades and De Soto counties account for the smallest proportion. The decreased recreational boating expenditures ($4 to $36 million) would represent less than one percent of the region's total sales in these sectors.

TABLE 3.—AFFECTED ESTABLISHMENTS IN THE AFFECTED COUNTIES IN FLORIDA—1997

[Includes NAICS codes 451 and 72] [1]

Counties	Total sales (thousands of 2001 dollars)	Total establishments	Establishments with less than 10 employees
Southwest	$6,842,646	8,271	4,699
Manatee	298,331	438	255
Sarasota	593,332	798	441
Pasco	302,965	495	307
Pinellas	1,727,750	2,233	1,314
Hillsborough	1,574,791	1,774	939
Lee	844,625	934	517
Collier	649,629	603	353
Charlotte	155,756	252	138
De Soto	13,335	35	18
Glades	5,047	20	14
Hendry	19,781	48	33
Monroe	657,304	641	370

[1] NAICS 451—Sporting Goods. NAICS 72—Food and Accommodation.
Source: U.S. Census Bureau, 1997.

Marine Construction Impacts. In 1997, Construction in Building, Developing, and General Contracting (NAICS 233) in Florida accounted for $25.5 billion (1997 $) in gross sales, 10,130 establishments, and 77,238 employees.[1] Because county-level data is not published for Construction, it is difficult to assess the direct effect on individual businesses due to decreased marine construction. However, using IMPLAN, we can calculate the change in net employment (Table 4). The impact in the Southwest stock would be a reduction of approximately $13 million in economic activity, which would result in a reduction of approximately 123 jobs. Within the construction sector, the decrease in the Southwest stock represents less than one percent of gross sales and less than one percent of employees in the State of Florida.

TABLE 4.—ANNUAL REGIONAL ECONOMIC IMPACT OF A REDUCTION IN BOAT DOCK, MARINA, AND SLIP CONSTRUCTION EXPENDITURES ON SOUTHWEST STOCK

	Decrease in regional output (millions of 2001 dollars)	Decrease in regional employment (persons)
Initial Expenditures	$6.9	46
Indirect Impact	2.9	37
Induced Impact	2.8	40
Total Impact	12.6	123

Small Business Regulatory Enforcement Fairness Act

This proposed rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This proposed rule:

a. Will not have a significant impact on a substantial number of small entities. As shown above, the inability to authorize incidental take for the Southwest stock under this proposed rule may decrease recreational boating expenditures and marine construction with a direct impact estimated between $11 to $43 million per year (2001 dollars), resulting in a total regional economic impact between $20 to $70 million per year. The cost of the inability to authorize incidental take for the Southwest stock under this rule for businesses both small and large would be dispersed across Southwest Florida. The Small Business Administration defines a "small business" as one with annual revenue that meets or is below the established size standard, which is $29 million for NAICS 23 Construction, $6 million for NAICS 451 Sporting Goods, and $6 million NAICS 72 Food and Accommodation. An unknown portion of the establishments shown in Table 3 could be affected by this rule. In Table 3, over half of the establishments have less than 10 employees. If the expenditure impact ($11 to $43 million) were evenly distributed across the affected establishments, gross sales at each would reduced by up to $9,200. If an establishment has gross sales of $500,000, the inability to authorize incidental take for the Southwest stock under this proposed rule would impact the gross sales by just 1.8 percent. Thus, we do not expect the impact to be significant.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. It is unlikely that there are unforseen changes in costs or prices for consumers stemming from this proposed rule. This proposed rule will have an effect on the costs of recreational boating. However, the Service believes that it is unlikely that an increased cost of slip rentals or boat ramps will result in a significant economic effect. Based on an analysis of public comment, further refinement of the impact on this industry may be possible.

[1] Source: U.S. Census Bureau.

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c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises. As stated above, the inability to authorize incidental take for the Southwest stock under this proposed rule may result in a loss of jobs due to decreased marine construction. The total impact would be less than a one percent job reduction in Florida's construction sector.

Energy Supply, Distribution or Use (EO 13211)

On May 18, 2001, the President issued EO 13211 on regulations that significantly affect energy supply, distribution, and use. EO 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions.

In accordance with EO 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use," the Service asserts that this rule is not likely to have a significant adverse effect on the supply, distribution or use of energy. This rulemaking to authorize incidental and unintentional take of Florida manatees by U.S. citizens engaged in specific activities within certain geographic areas, does not impact the Nation's energy resources. This rulemaking does not affect areas having oil or gas reserves, whether in production or otherwise identified for future use.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), this rule will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required. The development of incidental, unintentional take regulations for government activities related to watercraft and watercraft access facilities within certain geographic areas of the species' range in Florida for a period of not more than five years, pursuant to the MMPA, imposes no new obligations on State or local governments.

Takings

In accordance with EO 12630 ("Government Actions and Interference with Constitutionally Protected Private Property Rights"), this rule does not have significant takings implications. A takings implication assessment is not required. Any property owners will have navigational access and the opportunity to maintain property.

Federalism

In accordance with EO 13132, this rule does not have significant Federalism effects, therefore a Federalism assessment is not required. This rule does not require or mandate the State or any other government entities to apply for an LOA; therefore, it will not have substantial direct effects on the State, in the relationship between the Federal Government and the State, or on the distribution of power and responsibilities among the various levels of government. As discussed earlier, and in keeping with Department of the Interior policies, we coordinated with the State of Florida to the extent possible on the development of this proposed rule.

Civil Justice Reform

In accordance with EO 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We are proposing to develop incidental, unintentional take regulations for government activities related to the operation of watercraft and watercraft access facilities within certain geographic areas of the species' range in Florida for a period of not more than five years, pursuant to the MMPA.

Paperwork Reduction Act of 1995

This rule does not contain any information collection requirements for which Office of Management and Budget approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) is required because we do not anticipate that more than ten agencies would apply for an LOA.

National Environmental Policy Act

The Service has determined that it is necessary to prepare an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969 (NEPA). On June 10, 2002 (67 FR 39668), the Service announced intent to prepare an EIS to evaluate the effects of authorizing the incidental, unintentional take of small numbers of Florida manatees within certain regions of Florida. Pursuant to the MMPA, the Service is in the process of developing incidental take regulations for government activities related to the operation of watercraft and watercraft access facilities within three geographic areas of the species' range in Florida for a period of not more than five years. The public comment period on the notice of intent to prepare an EIS ended on July 25, 2002.

Endangered Species Act

We will be conducting an intra-service consultation under section 7 of the ESA on this action. The consultation will be concluded prior to a determination on issuance of a final rule.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), EO 13175, and the Department of Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. We have determined that there are no tribal lands essential for the conservation of the Florida manatee; therefore, proposing to develop incidental take regulations for government activities related to the operation of watercraft within certain areas of the species' range in Florida, will not adversely affect Tribal lands.

Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

The purpose of EO 12906, signed on April 11, 1994, is to bring attention to the need for accurate geographic information. This information is critical to promote economic development, improve stewardship of natural resources, and protect the environment. Modern technology now permits improved acquisition, distribution, and utilization of geographic (or geospatial) data and mapping.

The National Performance Review has recommended that the executive branch develop, in cooperation with State, local, and tribal governments, and the private sector, a coordinated National Spatial Data Infrastructure to support public and private sector applications of geospatial data in such areas as transportation, community development, agriculture, emergency response, environmental management, and information technology. The Federal Geographic Data Committee, established by the Office of Management and Budget and chaired by the Secretary of the Department of the Interior or the Secretary's designee, shall coordinate the Federal Government's development of the National Spatial Data Infrastructure.

References Cited

A complete list of all references cited in this proposed rule is available upon request from the Jacksonville Field Office (see **ADDRESSES** section).

Author

The primary authors of this document are Pete Benjamin (904/232–2580, extension 106), and Stefanie Barrett (904/232–2580, extension 114), (see **ADDRESSES** section).

Authority

The authority to establish regulations that would authorize for the next five years the incidental, unintentional take of small numbers of Florida manatees is provided by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), as amended.

List of Subjects in 50 CFR Part 18

Administrative practice and procedure, Alaska, Imports, Indians, Marine mammals, Oil and gas exploration, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 18, subchapter B of chapter 1, title 50 of the Code of Federal Regulations as follows.

PART 18—MARINE MAMMALS

1. The authority citation for part 18 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*

2. Add subpart K to read as follows:

Subpart K—Taking of Florida Manatees Incidental to Government Activities Related to Watercraft Operations and Watercraft Access Facilities in Florida

Sec.

18.131 What specified activities does this subpart cover?
18.132 In what specified geographic region does this subpart apply?
18.133 When is this subpart effective?
18.134 How can I obtain a Letter of Authorization?
18.135 What criteria does the Service use to evaluate Letter of Authorization requests?
18.136 What does a Letter of Authorization allow?
18.137 What activities are prohibited?
18.138 What monitoring and reporting requirements must I meet?

§ 18.131 What specified activities does this subpart cover?

This subpart applies to the incidental, but not intentional, take of small numbers of Florida manatees by Federal, State, and local government agencies engaged in activities related to the authorization, regulation, or operation of watercraft or watercraft access facilities.

§ 18.132 In what specified geographic region does this subpart apply?

(a) This subpart applies to the specified geographic area for three stocks of manatees within the state of Florida:

(1) The Northwest Stock, consisting of the counties along the Gulf of Mexico from Escambia County east and south to Hernando County; Lafayette and Gilchrist counties; and Marion County adjacent to the Withlacoochee River;

(2) The Upper St. Johns River Stock, consisting of Putnam County from Palatka south; Volusia, Flagler, and Marion counties adjacent to the St. Johns River or its tributaries; and Lake and Seminole counties; and

(3) The Atlantic Stock, consisting of counties along the Atlantic coast from Nassau County south to Miami-Dade County; the portion of Monroe County adjacent to the Florida Bay and the Florida Keys; Okeechobee County; and counties along the lower portion of the St. Johns River north of Palatka, which includes Putnam, St Johns, Clay, and Duval counties.

(b) A fourth region, the Southwest Stock, is excluded from this subpart. The Southwest Stock consists of the counties along the Gulf of Mexico from Pasco County south to Whitewater Bay in Monroe County; and DeSoto, Glades, and Hendry counties.

§ 18.133 When is this subpart effective?

This subpart is effective from [*insert date 120 days after date of publication of final rule in the* **Federal Register**] through [*insert date five years from the effective date*] for government agencies engaged in activities related to the authorization, regulation, or operation of watercraft or watercraft access facilities.

§ 18.134 Who can obtain a Letter of Authorization?

(a) Federal, State, or local agencies are eligible to apply for a Letter of Authorization.

(b) You should apply for a Letter of Authorization if you are conducting activities that:

(1) Are related to the authorization, regulation, or operation of watercraft or watercraft access facilities in the specified geographic area described in § 18.132; and

(2) May cause the taking of a Florida manatee.

(c) You must submit an application for a Letter of Authorization to our Jacksonville Field Office at least 90 days before the start of the proposed activity.

(d) Your application for a Letter of Authorization must include the following information:

(1) A description of the specific activity or class of activities;

(2) The dates and duration of the activity and the specific geographic region where it will occur;

(3) The anticipated impact of the activity on manatees;

(4) The anticipated impact of the activity on manatee habitat and the likelihood of restoration of the affected habitat;

(5) The anticipated impact to manatees from the loss or modification of habitat;

(6) The availability and feasibility (economic and technological) of using equipment, methods, and other manner of conducting the activity or other means of effecting the least practicable adverse impact on the manatee and its habitat;

(7) Suggested means of accomplishing the necessary monitoring and reporting; and

(8) Suggested means of encouraging and coordinating research opportunities, plans, and activities to reduce incidental take.

(e) We will evaluate each request for a Letter of Authorization based on the specific activity and the specific geographic location. Each Letter of Authorization will identify allowable conditions or methods that are specific to the activity and location.

§ 18.135 What criteria does FWS use to evaluate Letter of Authorization requests?

We will evaluate your request for a Letter of Authorization using the standards in this section.

(a) We will determine whether the level of activity you are requesting exceeds the level that we consider to have a negligible impact on the stock. If the level you are requesting is greater, we will re-evaluate our findings to determine if those findings continue to be appropriate based on the greater level of activity. Depending on the results of the evaluation, we may grant the authorization as requested, add further conditions, or deny the authorization.

(b) In accordance with § 18.27(f)(5), we will make decisions concerning withdrawals or suspensions of Letters of Authorization, either on an individual or class basis, only after notice and opportunity for public comment.

(c) The requirement for notice and public comment in § 18.135(b) will not apply if we determine that an emergency exists that poses a significant risk to the well-being of the stock.

§ 18.136 What does a Letter of Authorization allow?

(a) Your Letter of Authorization will vary depending upon what you request

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in your application. Your Letter will allow the incidental, but not intentional, take of Florida manatees when you are carrying out one or more of the following activities within one of the specified geographic regions defined in § 18.132:

(1) Regulating watercraft operation, including government programs responsible for regulating watercraft speed zones and restricted access areas for manatee protection, programs authorizing access or operation of watercraft, and programs authorizing marine events (*e.g.*, high-speed races, parades, etc.);

(2) Authorizing or regulating the location and construction of watercraft access facilities, including boat ramps, marinas, private and public boat docks, and other structures providing watercraft access to waters inhabited by manatees;

(3) Financing, in whole or in part, construction of watercraft access facilities;

(4) Operating government-owned or controlled facilities that provide watercraft access; and

(5) Operating government-owned or controlled watercraft for official government business other than that covered under § 18.22(a).

(b) You must conduct methods and activities identified in your Letter of Authorization in a manner that minimizes, to the greatest extent practicable, adverse impacts on Florida manatees and their habitat.

(c) Each Letter of Authorization will identify allowable conditions or methods that are specific to the activity and location.

§ 18.137 What activities are prohibited?

(a) You must not intentionally take Florida manatees under this subpart.

(b) Letters of Authorization do not authorize any take that does not comply with the terms and conditions of this subpart or the terms of the relevant Letter of Authorization.

(c) This subpart does not authorize the incidental take of Florida manatees during the illegal or reckless operation of watercraft or unauthorized construction of watercraft access facilities.

§ 18.138 What monitoring and reporting requirements must I meet?

(a) Holders of Letters of Authorization must cooperate with us and other designated agencies to monitor the impacts of activities related to watercraft operation and watercraft access facilities on Florida manatees.

(b) Holders of Letters of Authorization must designate a qualified individual or individuals to observe, record, and report the effects of their activities on Florida manatees.

Dated: November 5, 2002.

Paul Hoffman,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 02–28607 Filed 11–13–02; 8:45 am]

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Federal Register

Thursday,
November 14, 2002

Part III

Department of Transportation

Federal Aviation Adminstration

14 CFR Part 61

Robinson R–22/R–44 Special Training And Experience Requirements; Proposed Rule

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 61

[Docket No. FAA–2002–13744; SFAR No. 73–1]

RIN 2120–AH94

Robinson R–22/R–44 Special Training And Experience Requirements

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to extend the expiration date of Special Federal Aviation Regulation (SFAR) 73. SFAR 73 establishes special training and experience requirements for pilots operating the Robinson model R–22 or R–44 helicopters in order to maintain the safe operation of Robinson helicopters. It also proposes special training and experience requirements for certified flight instructors conducting student instruction or flight reviews.

DATES: Comments must be received by December 16, 2002.

ADDRESSES: Address your comments to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2002–13744 at the beginning of your comments, and you should submit two copies of your comments. If you wish to receive confirmation that FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to *http://dms.dot.gov*. You may review the public docket containing comments to these proposed regulations in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Robert J. O'Haver, Operations Branch, AFS–820, General Aviation and Commercial Division, 800 Independence Ave. SW., Washington, DC 20591; Telephone: (202) 267–7031.

SUPPLEMENTARY INFORMATION: The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also review the docket using the Internet at the web address in the **ADDRESSES** section.

Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

If you want the FAA to acknowledge receipt of your comments on this proposal, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it to you.

Availability of Rulemaking Documents

You can get an electronic copy using the Internet by taking the following steps:

(1) Go to the search function of the Department of Transportation's electronic Docket Management System (DMS) Web page (*http://dms.dot.gov/search*).

(2) On the search page type in the last five digits (13744) of the Docket number shown at the beginning of this notice. Click on "search."

(3) On the next page, which contains the Docket summary information for the Docket you selected, click on the document number of the item you wish to view.

You can also get an electronic copy using the Internet through the Office of Rulemaking's Web page at *http://www.faa.gov/avr/armhome.htm* or the Government Printing Office's Web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html*.

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the docket number, notice number, or amendment number of this rulemaking.

Background

Part 61 of Title 14 of the Code of Federal Regulations (14 CFR part 61) details the certification requirements for pilots and flight instructors. Particular requirements for pilots and flight instructors in rotorcraft are found in Subparts C through G, and Appendix B of part 61. These requirements do not address any specific type or model of rotorcraft. However, the FAA determined in 1995 that specific training and experience requirements are necessary for the safe operation of Robinson R–22 and R–44 model helicopters.

The R–22 is a 2-seat, reciprocating engine powered helicopter that is frequently used as a low-cost initial student training aircraft. The R–44 is a 4-seat helicopter with operating characteristics and design features that are similar to the R–22. The R–22 is the smallest helicopter in its class and incorporates a unique cyclic control and rotor system. Certain aerodynamic and design features of the aircraft cause specific flight characteristics that require particular pilot awareness and responsiveness.

The FAA found that the R–22 met 14 CFR part 27 certification requirements and issued a type certificate in 1979. The small size and relatively low operating costs of this helicopter made it popular as a training or small utility aircraft. Thus, a significant number of the pilots operating R–22 helicopters were relatively inexperienced. Prior to issuance of SFAR 73, the Robinson R–22 experienced a higher number of fatal accidents due to main rotor/airframe contact than other piston-powered helicopters. Many of these accidents were caused by low rotor revolutions per minute (RPM) or low "G" conditions that resulted in mast bumping or main rotor-airframe contact accidents. Aviation safety authorities attributed this to pilot error by inexperienced pilots.

In its analysis of accident data, the FAA found that apparently qualified pilots may not be properly prepared to safely operate the R–22 and R–44 helicopters in certain flight conditions. The FAA has determined that additional pilot training, originally established by SFAR 73, as modified in SFAR 73–1, continues to be needed for the safe operation of these helicopters.

Previous Regulatory Action

To address the safety issues, on March 1, 1995, the FAA published SFAR 73 (60 FR 11256). This SFAR required certain experience and training to perform pilot-in-command (PIC) and/or certified flight instructor (CFI) duties. SFAR 73 was issued on an emergency basis, with an expiration date of December 31, 1997. On November 21, 1997 (62 FR 62486), the FAA published an NPRM to extend SFAR 73 to December 31, 2002, with a minor amendment. The Final Rule extending SFAR 73 to December 31, 2002 was published on January 7, 1998 (63 FR 660).

Why the FAA Is Proposing To Extend SFAR 73

Since the issuance of SFAR 73, there has been a drop in the accident rate of Robinson helicopters associated with low "G" manuevers (low rotor RPM) resulting in main rotor/tailboom contact. Between the publication of SFAR 73 in 1995 and the first extension of the SFAR in 1997 no accidents occurred in the R–22 or R–44 that were related to low rotor RPM and tailboom/main rotor contact. There have been two accidents since the first extension in 1997. The FAA believes that SFAR 73 has been effective in improving the safe operation of these helicopters.

The FAA has taken several steps to permanently improve the safety of Robinson helicopters. The FAA has improved the airworthiness of the R–22 and R–44 through the issuance of a number of airworthiness directives. The FAA is also working on regulations and policies to govern pilot and certified flight instructor training and experience, based on the experience gained from SFAR 73. The FAA intends to fully implement these regulations and policies prior to 2007. In the meantime, the FAA believes that the additional training required by SFAR 73 is necessary for safety. The FAA therefore proposes to extend the expiration date of SFAR 73 for 5 years.

Regulatory Evaluation Summary

Proposed changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that a Federal agency may propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis for U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Public Law 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation).

In conducting these analyses, FAA has determined this proposed rule: (1) Would generate benefits that exceed costs, is not a "significant regulatory action" as defined in section 3(f) of Executive Order 12866, and is not "significant" as defined in DOT's Regulatory Policies and Procedures; (2) would not have a significant economic impact on a substantial number of small entities; (3) would not constitute a barrier to international trade; and does not impose an unfunded mandate on state, local, or tribal governments, or on the private sector.

This proposed rule would extend the requirements of SFAR 73–1, which will expire on December 31, 2002, for an additional 5 years. It would impose costs on those receiving instruction in Robinson model R–22 and R–44 helicopters. Before they can be certificated, affected individuals would be required to receive additional model-specific training and experience for each model of Robinson helicopter. The individuals affected include flight instructors and students seeking to be certified to operate Robinson model helicopters. These individuals can avoid the costs of this proposed rule by receiving their instruction in a helicopter other than a Robinson model. However, they would not be certificated for Robinson model helicopters.

Regarding benefits, the adoption of this proposal would continue the observed reduction in the number of fatal accidents that occur in Robinson helicopters associated with low "G" maneuvers that can result in main rotor contact with the airframe. Prior to the issuance of SFAR 73 there were 15 accidents and 24 fatalities due to main rotor contact with the airframe. Since the SFAR was issued in 1995, however, there have been only two accidents and only one fatality involving R–22 or R–44 aircraft associated with low "G" operations and main rotor contact with the airframe.

Even though two accidents involving low "G" operations have occurred since SFAR 73 was extended in 1997, the FAA finds that the potential safety benefits still exceed costs and justify the adoption of this proposed rule. The FAA seeks public comments regarding these benefits and costs.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation." To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

This proposed rule would require students and rated pilots seeking to conduct student instructions or flight reviews in a Robinson helicopter to incur added costs. Thus, the requirements of the SFAR impact individuals rather than entities. For these reasons, the FAA certifies that the rule will not have a significant economic impact on a substantial number of small operators. The FAA seeks public comments regarding this finding.

Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as

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safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

The NPRM proposes to impose costs on those receiving instruction on Robinson helicopters. These costs have been in effect for almost seven years and apparently have not affected sales of the aircraft. The FAA has assessed the potential effect of this proposed rule and determined that it would have a neutral impact on foreign trade and, therefore, create no obstacles to the foreign commerce of the United States.

Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 (the Act) is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action."

This proposed rule does not contain such a mandate. The requirements of Title II do not apply.

Federalism Implications

The SFAR proposed herein will not have substantial direct effects on the states, on the relationship between the Federal government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12866, it is determined that this proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

International Civil Aviation Organization (ICAO) and Joint Aviation Regulations

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with ICAO Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that this proposed rule does not conflict with any international agreement of the United States.

Paperwork Reduction Act

The OMB control number assigned to the collection of information for this proposed rule is 2120–0021.

Conclusion

For the reasons previously discussed in the preamble, the FAA has determined that this SFAR is not significant under Executive Order 12866. Based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA certifies that this proposed rule will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This SFAR is not considered significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

List of Subjects in 14 CFR Part 61

Aircraft, Aircraft pilots, Airmen, Airplanes, Air safety, Air transportation, Aviation safety, Balloons, Helicopters, Rotorcraft, Students.

The Proposal

In consideration of the foregoing, the Federal Aviation Administration proposes to amend part 61 of Title 14 of the Code of Federal Regulations (14 CFR part 61) as follows:

PART 61—CERTIFICATION: PILOTS, FLIGHT INSTRUCTORS, AND GROUND INSTRUCTORS

1. The authority citation for part 61 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44703, 44707, 44709–44711, 45102–45103, 45301–45302.

2. Revise section 3 of SFAR No. 73 to read as follows:

Special Federal Aviation Regulations

* * * * *

Special Federal Aviation Regulation No. 73—Robinson R–22/R–44 Special Training and Experience Requirements

* * * * *

3. *Expiration date.* This SFAR terminates on December 31, 2007, unless sooner superceded or rescinded.

Issued in Washington, DC, on November 7, 2002.

Louis C. Cusimano,

Acting Director, Flight Standards Service.

[FR Doc. 02–28963 Filed 11–8–02; 4:17 pm]

BILLING CODE 4910–13–P

Federal Register

Thursday,
November 14, 2002

Part IV

Department of Commerce

National Oceanic and Atmospheric Administration

Joint Program Announcement on Climate Variability and Human Health for FY 2003; Notice

VOL 67 ISS 220 NO 14 2002 UMI

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 021106269]

RIN 0648–ZB33

Joint Program Announcement on Climate Variability and Human Health for FY 2003; National Oceanic and Atmospheric Administration (NOAA), in Collaboration With; National Science Foundation (NSF), Environmental Protection Agency (EPA) and EPRI (Formerly the Electric Power Research Institute)

AGENCY: Office of Global Programs, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration, Commerce.

SUMMARY: With the intent of stimulating integrated multidisciplinary studies and enhancing institutional collaboration, National Oceanic Atmospheric Administration (NOAA), Environmental Protection Agency (EPA), the National Science Foundation (NSF), and the Electric Power Research Institute (EPRI), announce our interest in receiving research proposals to improve our understanding of the human health consequences related to climate variability and enhance the integration of useful climate information into public health policy and decision-making. This joint announcement is intended to support the formation of multidisciplinary teams working in close collaboration on integrated projects to illuminate the human, biological, and physical pathways by which climate may affect human health, and which explore the potential for applying climate and environmental information toward the goal of improved public health. We are also interested in understanding how the human health impacts and responses related to climate variability affect our knowledge of potential consequences of, and adaptation and vulnerability to, longer term changes in the climate system.

Relevance of This Joint Announcement

Published in 2001, the U.S. National Research Council (NRC) report "Under the Weather: Climate, Ecosystems and Infectious Disease" highlights the need for strengthening research on the linkages between climate and infectious disease and recommends highly interdisciplinary collaboration involving modelers, meteorologists, climatologists, ecologists, social scientists, and a wide array of medical and public health professionals. The report recognizes that the effectiveness of disease early warning systems will depend upon the context in which they are used, and recommends that the development of such systems should involve the active participation of the system's end users. Also, the U.S. National Assessment of the Potential Consequences of Climate Variability and Change, Health Sector Report, published in 2000, calls for a greater scientific understanding of the causal relationships between climate and human health, and the need to take an interdisciplinary approach that actively involves decisionmakers and practitioners.

Several multi-agency sponsored workshops such as the American Academy of Microbiology Colloquium on Climate Variability and Human Health: An Interdisciplinary Perspective, and the workshop on Climate Change and Vector-borne and other Infectious Disease: A Research Agenda, called for cross-agency collaboration in supporting integrated research in this emerging discipline. The 1999 NRC report, Global Environmental Change: Research Pathways for the Next Decade, recognizes that climate may have important impacts on human health but that further study is necessary, and that such studies must also address issues of social vulnerability and adaptability.

It is well recognized that although early research has demonstrated a connection between climate and health in some cases, more rigorous and interdisciplinary research is required. This, coupled with an evolving capacity to understand and predict natural changes in the climate system, and a desire to develop and provide climate and environmental information for social benefit, particularly in the public health sector, has driven demand for improved understanding of the relationship between climate variability and human health.

Both the scientific research results and recommendations stemming from various reports and meetings highlight the complexity of the research questions and the need for a coordinated multi-agency and interdisciplinary approach. The very nature of the research required cuts across disciplinary boundaries, and spans a range of agency missions and mandates and private sector interests. The NOAA Office of Global Programs is interested in the effective use of climate information in climate-sensitive sectors. The NSF focuses on broadly based fundamental research to improve understanding of the Earth system. EPA is concerned with the impacts of climate change and variability on human health, and EPRI addresses key research gaps in climate change and human health. This announcement is offered as an experimental mechanism to fill critical gaps in climate variability and human health research and to coordinate funding of overlapping agency and institutional interests in such research. Other private sector organizations interested in jointly funding research through this announcement process should contact the NOAA Program Manager, Juli Trtanj (301) 427–2089, ext. 134, or Internet: *juli.trtanj@noaa.gov*. Research projects will be funded for a one, two or three year period.

Program Objectives

The overarching goal of this announcement is to develop and demonstrate the feasibility of new approaches or field studies that investigate or validate well-formed hypotheses or models of climate variability and health interactions.

This announcement is offered as part of an interagency effort to build an integrated climate and health community. Proposed research submitted under this announcement is encouraged to build on existing research activities, programs, research sites and facilities, or data sets.

Proposal Requirements and General Guidance

Research teams should include, at a minimum, one investigator each from the public health or medical response, ecology, and climate communities working in close collaboration on an integrated project. Research proposals submitted under this announcement are strongly encouraged to include components addressing either the adaptation or vulnerability of human and public health systems to climate variability, or an economic analysis of using climate information, or both. (See Criteria for Evaluation b). The funding partners will look favorably on research activities that involve end-users from the public health arena (*i.e.*, local public health officials, regional or international health organizations, other public health or disaster management agencies and institutions) and which address the means by which public health policy and decision-makers can use their research results. (See Criteria d). Investigators are encouraged to demonstrate that they will disseminate research results through formal presentation during at least one professional meeting and publication in a peer-reviewed journal. (See Criteria b).

Investigators should also plan to participate in an annual meeting of researchers funded under this announcement. This meeting will be organized by the funding partners and is intended to facilitate midpoint discussions of research and methodology as well as presentations of final research results. The participation of other team members, particularly new researchers at the graduate and postdoctoral level, is highly encouraged.

DATES: Unless otherwise noted, strict deadlines by which NOAA OGP must receive proposals for submission to the FY 2003 process are: Pre-proposals must be received by OGP no later than August 30, 2002, and full proposals must be received no later than November 29, 2002; Applications who have not received a response to their pre-proposal within four weeks should contact the program manager: Juli Trtanj (301) 427–2089, ext. 134 or internet: *juli.trtanj@noaa.gov*. The time from target date to grant award varies. We anticipate that review of full proposals will occur in February 2003, for most approved projects.

June 1, 2003, may be used as the earliest proposed start date on the proposal, unless otherwise directed by the Program Manager. Applicants should be notified of their status within six months of full proposal submission. All proposals must be submitted in accordance with the requirements listed below. Failure to heed the requirements may result in proposals being returned without review.

ADDRESSES: All submissions should be directed to: Office of Global Programs (OGP), National Oceanic and Atmospheric Administration, 1100 Wayne Avenue, Suite 1225, Silver Spring, MD 20910–5603.

FOR FURTHER INFORMATION CONTACT: Irma duPree at the above address or phone (301) 427–2089, exit. 107, fax: (301) 427–2222, Internet: *irma.duPree@noaa.gov*.

SUPPLEMENTARY INFORMATION:

1. Funding Availability

NOAA, NSF, EPA, and EPRI believed that research on the relationship between climate variability and human health will benefit significantly from a strong partnership with outside investigators. An estimated 1.5 million will be available for FY03. Current plans assume that over 50% of the total resources provided through this announcement will support extramural efforts, particularly those involving the broad academic community. Additional funding may be provided by NOAA, NSF, EPA, or EPRI.

This Program Announcement is for projects to be conducted by investigators both inside and outside of NOAA, NSF, EPA, and EPRI. The funding instrument for extramural awards will be a grant unless it is anticipated that any of the funding entities will be substantially involved in the implementation of the project, in which case the funding instrument should be a cooperative agreement. Examples of substantial involvement may include but are not limited to proposals for collaboration between a funding entity or funding entity scientist, and a recipient scientist or technician and/or contemplation by NOAA, NSF, or EPA of detailing Federal personnel to work on proposed projects. NOAA, NSF, and EPA will make decisions regarding the use of a cooperative agreement on a case-by-case basis. This program does not require matching share.

2. Eligibility

Participation in this competition is open to all institutions eligible to receive support for NOAA, NSF, EPA, and EPRI. For awards to be issued by NOAA, eligible applicants are institutions of higher education, hospitals, other nonprofits, commercial organizations, foreign governments, organizations under the jurisdiction of foreign governments, international organizations, state, local and Indian tribal governments and Federal agencies. Applications from non-Federal and Federal applicants will be competed against each other. Proposals selected for funding from non-Federal applicants will be funded through a project grant or cooperative agreement under the terms of this notice. Proposals selected for funding from NOAA employees shall be effected by an interagency funds transfer. Proposals selected for funding from a non-NOAA Federal Agency will be funded through an interagency transfer. Before non-NOAA Federal applicants may be funded, they must demonstrate that they have legal authority to receive funds from another federal agency in excess of their appropriation. Because this announcement is not proposing to procure goods or services from applicants, the Economy Act (31 U.S.C. 1535) is not an appropriate legal basis.

3. Program Authority

NOAA Authority: U.S.C. 2931 *et seq.*; (CFDA No. 11.431)—Climate and Atmospheric Research.

NSF Authority: 42 U.S.C. 1861–75; (CFDA No. 47.050)—Geosciences.

EPA Authority: 42 U.S.C. 7403(a); 42 U.S.C. 7403(b); 42 U.S.C. 7403(g); 15 U.S.C. 2907(a); (CFDA No. 66.500)—Office of Research and Development.

Guidelines for Submission

1. Pre-Proposals

(a) Pre-proposals should be no longer than eight pages in length (no attachments will be accepted) and include the names and institutions of all investigators, a statement of the problem, description of data and methodology including names of data sets and types of models or analysis, a general budget for the project, a description of intended use of results for public health policy and decision making, and brief biographical sketches for each investigator. Pre-proposals can be submitted electronically to Irma duPree at *irma.dupree@noaa.gov*, unless other arrangements have been made with the Program Manager. Pre-proposals must be prepared using a 10 point font or larger, with one-inch margins. Pre-proposals longer than eight pages or with attachments will not be accepted.

(b) The Program Officers will evaluate the pre-proposals.

(c) Submission of pre-proposals is not a requirement, but it is in the best interest of the applicants and their institutions.

(d) Facsimile and e-mail submissions are acceptable for pre-proposals only.

(e) Projects deemed unsuitable during pre-proposal review will not be encouraged to submit full proposals.

(f) Investigators who are not encouraged to submit full proposals will not be precluded from submitting full proposals.

2. Criteria for Evaluation

Below are the criteria for evaluation that will be used for making award decisions. Pre-proposals will be evaluated on ability to meet these criteria.

(a) Scientific Merit—60% (to include: Methodology, proof of data quality and availability, experience of team and team members, and relevant peer-reviewed publications).

(b) Responsiveness to announcement—20%.

(c) Explicit multidisciplinary participation and collaboration—10%.

(d) Potential for use by climate, ecology and health community or public/environmental health community—10%.

3. Selection Procedures and Review Process

The Program Officers will not be voting members of an independent peer

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panel. Each Program Officer will individually rank the proposals considering the recommendations and evaluations of the independent peer panel and the program policy factors listed below. The Federal Agency Program Officers will then make the funding selections taking into account these rankings, the panel review and evaluations, and program policy factors listed below. Proposals are usually awarded in the numerical order they are ranked based on the independent peer mail review or the independent peer panel review. However, the Program Officers may consider the following program policy factors:

(a) Whether proposals do not substantially duplicate other projects that are currently funded by NOAA, other Federal agencies or funding sources; (b) whether proposals do not substantially duplicate other proposals submitted in response to this announcement; (c) whether proposals funded maximize use of available funds; and (d) whether proposal cost falls within remaining funds available. As a result of this review, the Program Officers may decide to select an award out of order. The Program Officers will also determine the total duration and amount of funding for each selected proposal. Both agency and non-agency experts in the field may be used in this process.

Unsatisfactory performance by a recipient under prior Federal awards may result in an application not being considered for funding. Federal agency employees are subject to statutes pertaining to non-disclosure and confidentiality requirements protecting proprietary information that may be contained in applications submitted for potential funding. Non-Federal evaluators have agreed in writing to similar non-disclosure and confidentiality provisions. Please note, however, that should EPRI or another participating private organization which jointly funds research under this notice select an application for funding, none of the participating Federal agencies is responsible for any unauthorized disclosure of information that may occur on any dispute that may arise.

4. Proposal Submission

The following forms are required in each application, with original signatures on each federal form. Failure to comply with these provisions will result in proposals being returned without review.

(a) *Full Proposals:* (1) Proposals submitted to the NOAA Climate and Global Change Program must include the original and two unbound copies of the proposal. (2) Investigators are required to submit 3 copies of the proposal; however, the normal review process requires 20 copies. Investigators are encouraged to submit sufficient proposal copies for the full review process if they wish all reviewers to receive color, unusually sized (not 8.5 x 11"), or otherwise unusual materials submitted as part of the proposal. Only three copies of the federally required forms are needed. (3) Proposals must be limited to 40 pages (numbered), including abstract, results of prior research, statement of work, budget justification, budget, investigators' vitae, and all appendices. Append information may not be used to circumvent the page length limit. Federally mandated forms are not included within the page count. (4) Proposals should be sent to the NOAA Office of Global Programs at the above address. (5) Facsimile transmissions and electronic mail submission of full proposals will not be accepted.

(b) *Required Elements:* All proposals must include the following elements:

(1) *Signed title page:* The title page must be signed by the Principal Investigator (PI) and the institutional representative. If more than one investigator is listed on the title page, please identify the lead investigator. The PI and institutional representative should be identified by full name, title, organization, telephone number and address. The amount of Federal funds being requested should be listed for each budget period and for the total project.

(2) *Abstract:* An abstract must be included and should contain an introduction of the problem, rationale and a brief summary of work to be completed. The abstract should appear on a separate page, headed with the proposal title, institution(s), investigator(s), total proposed cost and budget period.

(3) *Results from prior research:* The results of related research activities should be described, including their relation to the currently proposed work. Reference to each prior research award should include the title, agency or institution, award number, PIs, period of award and total award. The section should be a brief summary and should not exceed two pages total.

(4) *Statement of work:* The proposed project must be completely described, including identification of the problem, scientific objectives, proposed methodology, and relevance to the announcement. Benefits of the proposed project to the general public and the scientific community should also be discussed. A summary of proposed work must be included clearly indicating that the proposed work is achievable. The statement of work, including references but excluding figures and other visual materials must not exceed 15 pages of text.

(5) *Budget Justification:* A brief description of the expenses listed on the budget and how they address the proposed work. Itemized justification must include salaries, equipment, publications, supplies, tuition, travel, etc.

(6) *Budget;* the proposal must include total and annual budget corresponding with the descriptions provided in the statement of work. A sample budget sheet can be found in the standard NOAA application kit-Federal Applicants must submit a Standard Form 424 94–92) "Application for Federal Assistance", including a detailed budget using the Standard Form 424a (4–92), "Budget Information—Non-Construction Programs". The form is included in the standard NOAA application kit. Additional text to justify expenses should be included as necessary. Federal researchers should contact Irma duPree at (301) 427–2089 ext. 107, for guidance regarding the types of forms required for submission. Additionally, Federal researchers should provide, with their application, the appropriate statutory authority that allows their agency to receive funds from another Federal agency to complete the work outlined in their proposal.

(7) *Vitae:* Abbreviated curriculum vitae are sought with each proposal. Reference lists should be limited to 10–15 of the most recent and relevant publications with up to five other relevant papers.

(8) *Current and pending support:* For each investigator, submit a list that includes project title, supporting agency with grant number, investigator months, dollar value and duration. Requested values should be listed for pending support.

(9) *List of suggested reviewers:* The cover letter may include a list of individuals qualified and suggested to review the proposal. It also may include a list of individuals that applicants would prefer to not review the proposals. Such lists may be considered at the discretion of the Program Offices.

(c) *Other requirements:* Applicants may obtain a Standard NOAA application kit from the Program homepage at *http://www.ogp.noaa.gov/*, or from Irma duPree at the Program Office (301) 427–2089 X107. Primary applicant certification—All primary applicants must submit a completed Form CD–511, "Certification Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying" Applicants are also hereby notified of the following:

1. Nonprocurment Debarment and Suspension-Prospective participants (as defined at 26 CFR part 26, section 105) are subject to 15 CFR part 26, "Nonprocurment Debarment and Suspension" and the related section of the certification form prescribed above applies.

2. Drug Free workplace—Grantees (as defined at 15 CFR part 26, section 605) are subject to 15 CFR part 26, subpart F, Government-wide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies;

3. Anti-Lobbying—Persons (as defined at 15 CFR part 28, section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions", and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater; and (4) Anti-Lobbying disclosures—Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL. "Disclosure of Lobbying Activities," as required under 15 CFR part 28, appendix B.

(d) *Lower Tier Certifications:* (1) Recipients must require applicants/bidders for subgrants, contracts, subcontracts, or lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form SF–LLL, "Disclosure of Lobbying Activities" Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

(2) Recipients and subrecipients are subject to all applicable Federal laws and Federal and Department of Commerce policies, regulations, and procedures applicable to Federal Financial assistance awards.

(3) Pre-award Activities—If applicants incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that may have been received, there is no obligation to the applicant on the part of Department of Commerce to cover pre-award costs.

(4) This program is subject to the requirements of OMB Circular No. A–110, "Uniform Administrative Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations", and 15 CFR part 24, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments", as applicable. Applications under this program are not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

(5) All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of, or are presently facing criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management, honesty, or financial integrity.

(6) A false statement on an application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

(7) No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either:

(i) The delinquent account is paid in full, (ii) A negotiated repayment schedule is established and at least one payment is received, or (iii) Other arrangements satisfactory to the Department of Commerce are made.

(8) Buy American-Made Equipment or Products—Applicants are encouraged that any equipment or products authorized to be purchased with funding provided under this program must be American-made to the maximum extent feasible.

(9) The total dollar amount of the indirect costs proposed in an application under this program must not exceed the indirect cost rate negotiated and approved by a cognizant Federal agency prior to the proposed effective date of the award or 100 percent of the total proposed direct cost dollar amount in the application, whichever is less.

(e) If an application is selected for funding, the Department of Commerce has no obligation to provide any additional future funding in connection with the award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of the Department of Commerce.

(f) In accordance with Federal statutes and regulations, no person on grounds of race, color, age, sex, national origin or disability shall be excluded from participation in, denied benefits of, or be subjected to discrimination under any program or activity receiving financial assistance from the NOAA Climate and Global Change program. The NOAA Climate and Global Change Program does not have direct TDD (Telephonic Device for the Deaf) capabilities, but can be reached through the State of Maryland supplied TDD contact number, 800–735–2258, between the hours of 8 a.m.–4:30 p.m.

Classification: This notice contains collection-of-information requirements subject to the Paperwork Reduction Act. The use of Standard Forms 424, 424A, and SF–LLL have been approved by OMB under the respective control numbers 0348–0043, 0348–0044, and 0348–0046. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the Paper Reduction Act, unless that collection displays a currently valid OMB control number. This notice has been determined to be not significant for purposes of Executive Order 12866.

Louisa Koch,

Acting Assistant Administrator, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. 02–29087 Filed 11–13–02; 8:45 am]

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Part V

The President

Proclamation 7625—World Freedom Day, 2002

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Title 3—

The President

Proclamation 7625 of November 8, 2002

World Freedom Day, 2002

By the President of the United States of America

A Proclamation

On World Freedom Day, the United States joins with the nations of the world that are dedicated to liberty and democratic values in commemorating the fall of the Berlin Wall, which occurred on November 9, 1989. As we remember this historic event, we renew our commitment to advancing democracy, peace, and freedom for all throughout the world.

The fall of the Berlin Wall ushered in a new era of liberty and self-determination in Central and Eastern Europe. In the years that followed this remarkable event, the citizens of formerly Communist states participated in open elections, secured their common rights to free speech, and claimed other fundamental freedoms. This triumph for democracy demonstrated that tyranny is temporary, and that liberty is the universal and guiding goal for all mankind.

Since the fall of the Berlin Wall, we have made great progress in encouraging free and open societies on every continent. But challenges remain. Today, too many people still suffer at the hands of dictators who deny liberty and support activities and organizations that aim to disrupt the freedom of other countries.

On World Freedom Day, we celebrate freedom and its capacity to improve lives around the world. We also honor the people of the former Soviet bloc countries who fought against tyranny, and we recognize those who continue the struggle for freedom worldwide. As we face new challenges and welcome new opportunities, we remain committed to protecting our freedom and helping others realize their dreams of liberty.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim November 9, 2002, as World Freedom Day. I call upon the people of the United States to observe this day with appropriate ceremonies and activities and to reaffirm their dedication to freedom and democracy for all.

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IN WITNESS WHEREOF, I have hereunto set my hand this eighth day of November, in the year of our Lord two thousand two, and of the Independence of the United States of America the two hundred and twenty-seventh.

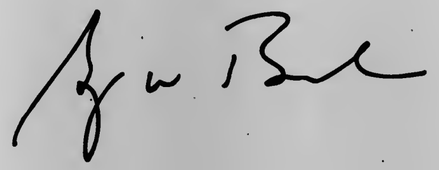

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H.R. 4013/P.L. 107–280

Rare Diseases Act of 2002 (Nov. 6, 2002; 116 Stat. 1988)

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Clark County Conservation of Public Land and Natural Resources Act of 2002 (Nov. 6, 2002; 116 Stat. 1994)

H.R. 5308/P.L. 107–283

To designate the facility of the United States Postal Service located at 301 South Howes Street in Fort Collins, Colorado, as the "Barney Apodaca Post Office". (Nov. 6, 2002; 116 Stat. 2020)

H.R. 5333/P.L. 107–284

To designate the facility of the United States Postal Service located at 4 East Central Street in Worcester, Massachusetts, as the "Joseph D. Early Post Office Building". (Nov. 6, 2002; 116 Stat. 2021)

H.R. 5336/P.L. 107–285

To designate the facility of the United States Postal Service located at 380 Main Street in Farmingdale, New York, as the "Peter J. Ganci, Jr. Post Office Building". (Nov. 6, 2002; 116 Stat. 2022)

H.R. 5340/P.L. 107–286

To designate the facility of the United States Postal Service located at 5805 White Oak Avenue in Encino, California, as the "Francis Dayle 'Chick' Hearn Post Office". (Nov. 6, 2002; 116 Stat. 2023)

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H.R. 4685/P.L. 107–289

Accountability of Tax Dollars Act of 2002 (Nov. 7, 2002; 116 Stat. 2049)

H.R. 5205/P.L. 107–290

To amend the District of Columbia Retirement Protection Act of 1997 to permit the Secretary of the Treasury to use estimated amounts in determining the service longevity component of the Federal benefit payment required to be paid under such Act to certain retirees of the Metropolitan Police Department of the District of Columbia. (Nov. 7, 2002; 116 Stat. 2051)

H.R. 5574/P.L. 107–291

To designate the facility of the United States Postal Service located at 206 South Main Street in Glennville, Georgia, as the "Michael Lee Woodcock Post Office". (Nov. 7, 2002; 116 Stat. 2052)

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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 880

[Docket No. 01N–0339]

Medical Devices; Classification for Medical Washer and Medical Washer-Disinfector

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is classifying the medical washer and medical washer-disinfector intended for general medical purposes to clean and dry surgical instruments, decontaminate or disinfect anesthesia equipment, hollowware, and other medical devices into class II (special controls). FDA is also identifying the guidance document entitled "Class II Special Controls Guidance Document: Medical Washers and Medical Washer-Disinfectors" (the guidance) as the special control that, in addition to general controls, the agency believes will reasonably ensure the safety and effectiveness of the device. This action is being taken under the Federal Food, Drug, and Cosmetic Act (the act), as amended by the Medical Device Amendments of 1976 (the 1976 amendments), the Safe Medical Devices Act of 1990 (the SMDA), and the Food and Drug Administration Modernization Act of 1997 (the FDAMA).

DATES: This rule is effective December 16, 2002.

FOR FURTHER INFORMATION CONTACT: Chiu S. Lin, Center for Devices and Radiological Health (HFZ–480), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–443–8913.

SUPPLEMENTARY INFORMATION:

I. Background

The act (21 U.S.C. 301 *et seq.*), as amended by the 1976 amendments (Public Law 94–295), the SMDA (Public Law 101–629), and the FDAMA (Public Law 105–115), established a comprehensive system for the regulation of medical devices intended for human use. Section 513 of the act (21 U.S.C. 360c) established three categories (classes) of devices, depending on the regulatory controls needed to provide reasonable assurance of their safety and effectiveness. The three categories of devices are class I (general controls), class II (special controls), and class III (premarket approval).

Under section 513 of the act, devices that were in commercial distribution before May 28, 1976 (the date of enactment of the 1976 amendments), generally referred to as preamendments devices, are classified after FDA has: (1) Received a recommendation from a device classification panel (an FDA advisory committee); (2) published the panel's recommendation for comment, along with a proposed regulation classifying the device; and (3) published a final regulation classifying the device. FDA has classified most preamendments devices under these procedures.

Devices that were not in commercial distribution prior to May 28, 1976, generally referred to as postamendments devices, are classified automatically by statute (section 513(f) of the act) into class III without any FDA rulemaking process. Those devices remain in class III and require premarket approval, unless and until: (1) The device is reclassified into class I or II; (2) FDA issues an order classifying the device into class I or II in accordance with new section 513(f)(2) of the act, as amended by the FDAMA; or (3) FDA issues an order finding the device to be substantially equivalent, in accordance with section 513(i) of the act, to a predicate device that does not require premarket approval. The agency determines whether new devices are substantially equivalent to previously offered devices by means of premarket notification procedures in section 510(k) of the act (21 U.S.C. 360(k)) and 21 CFR part 807 of the regulations.

A preamendments device that has been classified into class III may be marketed, by means of premarket notification procedures, without submission of a premarket approval application (PMA) until FDA issues a final regulation under section 515(b) of the act (21 U.S.C. 360e(b)) requiring premarket approval. Consistent with the act and the regulations, FDA consulted with the General Hospital and Personal Use Devices Panel (the Panel), an FDA advisory committee, regarding the classification of this device.

II. Regulatory History of the Device

In the **Federal Register** of February 7, 2002 (67 FR 5750), FDA proposed to classify the medical washer and medical washer-disinfector into class II (special controls). This device is intended for general medical purposes to clean and dry surgical instruments, decontaminate or disinfect anesthesia equipment, hollowware, and other medical devices.

Interested persons were given until May 8, 2002 to comment on the proposed regulation.

FDA received a total of three comments from one health professional, a consumer group, and one consumer. All three comments agreed with the proposed rule. In addition, one comment suggested that FDA require manufacturers to include testing to monitor cleaning efficacy.

III. Summary of Final Rule

FDA believes that in order to reduce the potential for confusion, the identification terms "general use" washer and "general use washer-disinfector" as recommended by the Panel should be changed to "medical washer" and "medical washer-disinfector." The new terms will distinguish these devices from "general purpose article" washers and washer-disinfectors that are exempt from section 510(k) of the act requirements. FDA also believes that decontamination and disinfection are distinct intended uses that require FDA to distinguish washers from washer-disinfectors in classification descriptions.

FDA concurred with the Panel that the medical washers and washer-disinfectors should be classified into class II because special controls, in addition to general controls, would provide reasonable assurance of the safety and effectiveness of the device, and there is sufficient information to establish special controls to provide such assurance. FDA identified the guidance entitled "Class II Special Controls Guidance Document: Medical

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Washers and Medical Washer-Disinfectors" as the special control for these devices. Following the effective date of this final classification rule, any firm submitting a section 510(k) of the act premarket notification for a medical washer or medical washer disinfector will need to address the issues covered in the special control guidance. However, the firm need only show that its device meets the recommendations of the guidance or in some other way provides equivalent assurance of safety and effectiveness.

As the Panel initially recommended, FDA believes that the medical washer is exempt from section 510(k) of the act requirements and that some medical washer-disinfectors can also be exempt from section 510(k) of the act requirements; depending on intended use. The medical washer-disinfector intended to clean and provide high level disinfection to medical devices should be subject to section 510(k) of the act requirements because the reusable devices subject to a high level disinfection process may pose a high risk of infection and other serious sequelae if the washer-disinfector is unsafe or ineffective. The medical washer-disinfector intended to clean and provide low or intermediate level disinfection can be exempt from 510(k) requirements because the reusable devices subject to low or intermediate disinfection pose a relatively lower risk of infection and other serious sequelae if the washer-disinfector is unsafe or ineffective.

In order to receive the guidance entitled "Class II Special Controls Guidance Document: Medical Washers and Medical Washer-Disinfectors" via your fax machine, call the CDRH Facts-on-Demand system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. At the first voice prompt press 1 to enter the system. At the second voice prompt press 1 to order a document. Enter the document number (1252) followed by the pound sign (#). Follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the guidance may also do so using the Internet. CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with Internet access. Updated on a regular basis, the CDRH home page includes the civil money penalty guidance documents package, device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturers' assistance, information on video conferencing and electronic submissions, Mammography Matters, and other device-oriented information. The CDRH home page may be accessed at http://www.fda.gov/cdrh. The document entitled "Class II Special Controls Guidance Document: Medical Washer and Medical Washer-Disinfector" is available on the Internet at http://www.fda.gov/cdrh/ode/guidance/1252.pdf.

IV. Analysis of Comments and FDA's Response

FDA received three comments. All three comments agreed with the classification. One comment also suggested that FDA require manufacturers to include testing to monitor cleaning efficacy.

Currently, there is no standard for validating cleaning efficacy. Manufacturers can include in their manuals recommendations for routine monitoring of cleaning efficacy and frequency of testing. The guidance document does not prevent them from doing this. Once standardized test methods are available, FDA will review and recognize those standardized test methods as appropriate.

Therefore, under section 513 of the act, FDA is adopting the summary of reasons for the Panel's recommendation and the summary of data upon which the Panel's recommendation is based, in its entirety. FDA is also adopting the assessment of the risks to public health stated in the proposed rule published on February 7, 2002. Furthermore, FDA is issuing this final rule that classifies the generic type of device, medical washer and medical washer-disinfector into class II.

V. Environmental Impact

The agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4)). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety and other advantages, distributive impacts, and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive order. In addition, the final rule is not a significant regulatory action as defined by the Executive order and so is not subject to review under the Executive order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. The special controls guidance document does not impose any new burdens on these or future manufacturers. It merely assures that, in the future, devices of this generic type will be at least as safe and effective as the presently marketed devices. These devices are already subject to premarket notification and labeling requirements. The guidance document merely advises manufacturers on appropriate means of complying with these requirements. The agency therefore certifies that this final rule will not have a significant economic impact on a substantial number of small entities. In addition, this final rule will not impose costs of $100 million or more on either the private sector or state, local, and tribal governments in the aggregate, and therefore a summary statement or analysis under section 202(a) of the Unfunded Mandates Reform Act of 1995 is not required.

VII. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the agency has concluded that the rule does not contain policies that have federalism implications as defined in the order and, consequently, a federalism summary impact statement is not required.

VIII. Paperwork Reduction Act of 1995

This final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520) is not required.

The information collections addressed in the special control guidance document identified by this rule have been approved by OMB in accordance with the PRA under the regulations governing premarket notification submissions, 21 CFR part 807, subpart E, OMB control number 0910–0120.

IX. Reference

The following reference has been placed on display in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. This reference may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Transcript of General Hospital and Personal Use Devices Panel of the Medical Devices Advisory Committee Meeting, September 14, 1998.

List of Subjects in 21 CFR Part 880

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 880 is amended as follows:

PART 880—GENERAL HOSPITAL AND PERSONAL USE DEVICES

1. The authority citation for 21 CFR part 880 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

2. Section 880.6991 is added to subpart G to read as follows:

§ 880.6991 Medical washer.

(a) *Identification.* A medical washer is a device that is intended for general medical purposes to clean and dry surgical instruments, anesthesia equipment, hollowware, and other medical devices.

(b) *Classification.* Class II (special controls). The special control for this device is the FDA guidance document entitled "Class II Special Controls Guidance Document: Medical Washers and Medical Washer-Disinfectors." The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 880.9.

3. Section 880.6992 is added to subpart G to read as follows:

§ 880.6992 Medical washer-disinfector.

(a) *Identification.* A medical washer-disinfector is a device that is intended for general medical purposes to clean, decontaminate, disinfect, and dry surgical instruments, anesthesia equipment, hollowware, and other medical devices.

(b) *Classification.* Class II (special controls). The special control for this device is the FDA guidance document entitled "Class II Special Controls Guidance Document: Medical Washers and Medical Washer-Disinfectors."

(1) Medical washer-disinfectors that are intended to clean, high level disinfect, and dry surgical instruments, anesthesia equipment, hollowware, and other medical devices.

(2) Medical washer-disinfectors that are intended to clean, low or intermediate level disinfect, and dry surgical instruments, anesthesia equipment, hollowware, and other medical devices are exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 880.9.

Dated: October 28, 2002.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 02–28942 Filed 11–14–02; 8:45 am]

BILLING CODE 4160–01–S

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4022 and 4044

Benefits Payable in Terminated Single-Employer Plans; Allocation of Assets in Single-Employer Plans; Interest Assumptions for Valuing and Paying Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: The Pension Benefit Guaranty Corporation's regulations on Benefits Payable in Terminated Single-Employer Plans and Allocation of Assets in Single-Employer Plans prescribe interest assumptions for valuing and paying benefits under terminating single-employer plans. This final rule amends the regulations to adopt interest assumptions for plans with valuation dates in December 2002. Interest assumptions are also published on the PBGC's Web site (*http://www.pbgc.gov*).

EFFECTIVE DATE: December 1, 2002.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: The PBGC's regulations prescribe actuarial assumptions—including interest assumptions—for valuing and paying plan benefits of terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974. The interest assumptions are intended to reflect current conditions in the financial and annuity markets.

Three sets of interest assumptions are prescribed: (1) A set for the valuation of benefits for allocation purposes under section 4044 (found in Appendix B to part 4044), (2) a set for the PBGC to use to determine whether a benefit is payable as a lump sum and to determine lump-sum amounts to be paid by the PBGC (found in Appendix B to part 4022), and (3) a set for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology (found in Appendix C to part 4022).

Accordingly, this amendment (1) adds to Appendix B to Part 4044 the interest assumptions for valuing benefits for allocation purposes in plans with valuation dates during December 2002, (2) adds to Appendix B to part 4022 the interest assumptions for the PBGC to use for its own lump-sum payments in plans with valuation dates during December 2002, and (3) adds to Appendix C to part 4022 the interest assumptions for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology for valuation dates during December 2002.

For valuation of benefits for allocation purposes, the interest assumptions that the PBGC will use (set forth in Appendix B to part 4044) will be 5.30 percent for the first 25 years following the valuation date and 4.25 percent thereafter. These interest assumptions represent an increase (from those in effect for November 2002) of 0.30 percent for the first 25 years following the valuation date and are otherwise unchanged.

The interest assumptions that the PBGC will use for its own lump-sum payments (set forth in Appendix B to part 4022) will be 4.00 percent for the period during which a benefit is in pay status and 4.00 percent during any years preceding the benefit's placement in pay status. These interest assumptions represent an increase (from those in effect for November 2002) of 0.25 percent for the period during which a benefit is in pay status and are otherwise unchanged.

For private-sector payments, the interest assumptions (set forth in Appendix C to part 4022) will be the same as those used by the PBGC for determining and paying lump sums (set forth in Appendix B to part 4022).

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The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest assumptions promptly so that the assumptions can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation and payment of benefits in plans with valuation dates during December 2002, the PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this action is not a "significant regulatory action" under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects

29 CFR Part 4022

Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

29 CFR Part 4044

Employee benefit plans, Pension insurance, Pensions.

In consideration of the foregoing, 29 CFR parts 4022 and 4044 are amended as follows:

PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS

1. The authority citation for part 4022 continues to read as follows:

Authority: 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D), and 1344.

2. In appendix B to part 4022, Rate Set 110, as set forth below, is added to the table. (The introductory text of the table is omitted.)

Appendix B to Part 4022—Lump Sum Interest Rates for PBGC Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
•	•	•	•	•	•	•	•	•
110	12–1–02	1–1–03	4.00	4.00	4.00	4.00	7	8

3. In appendix C to part 4022, Rate Set 110, as set forth below, is added to the table. (The introductory text of the table is omitted.)

Appendix C to Part 4022—Lump Sum Interest Rates for Private-Sector Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
•	•	•	•	•	•	•	•	•
110	12–1–02	1–1–03	4.00	4.00	4.00	4.00	7	8

PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS

4. The authority citation for part 4044 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

5. In appendix B to part 4044, a new entry, as set forth below, is added to the table. (The introductory text of the table is omitted.)

Appendix B to Part 4044—Interest Rates Used To Value Benefits

* * * * *

For valuation dates occurring in the month—	The values of i_t are:					
	i_t	for t =	i_t	for t =	i_t	for t =
•	•	•	•	•	•	•
December 2002	.0530	1–25	.0425	>25	N/A	N/A

Issued in Washington, DC, on this 8th day of November 2002.

Joseph H. Grant,

Deputy Executive Director and Chief Operating Officer, Pension Benefit Guaranty Corporation.

[FR Doc. 02–29024 Filed 11–14–02; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 918

[LA–022–FOR]

Louisiana Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), are approving an amendment to the Louisiana regulatory program (Louisiana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Louisiana proposed revisions to its regulations concerning revegetation success standards for post-mining land uses of pastureland and wildlife habitat. Louisiana also proposed to add to its program a policy document that describes the criteria and procedures for determining reclamation phase III ground cover and tree and shrub stocking success for areas developed for wildlife habitat. Louisiana revised its program to be consistent with the corresponding Federal regulations.

EFFECTIVE DATE: November 15, 2002.

FOR FURTHER INFORMATION CONTACT: Michael C. Wolfrom, Director, Tulsa Field Office. Telephone: (918) 581–6430. Internet: *mwolfrom@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Louisiana Program
II. Submission of the Amendment
III. OSM's Findings
IV. Summary and Disposition of Comments
V. OSM's Decision
VI. Procedural Determinations

I. Background on the Louisiana Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, "* * * a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act." See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Louisiana program on October 10, 1980. You can find background information on the Louisiana program, including the Secretary's findings, the disposition of comments, and the conditions of approval in the October 10, 1980, **Federal Register** (45 FR 67340). You can also find later actions concerning the Louisiana program and program amendments at 30 CFR 918.15 and 918.16.

II. Submission of the Amendment

By letter dated October 2, 2001 (Administrative Record No. LA–367), Louisiana sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). Louisiana sent the amendment in response to our letters dated March 24, 1999, and August 16, 2000 (Administrative Record Nos. LA–365 and LA–365.01, respectively), that we sent to Louisiana in accordance with 30 CFR 732.17(c). Louisiana proposed revisions to the Louisiana Surface Mining Regulations found in the Louisiana Administrative Code, Title 43, Part XV (LAC) concerning revegetation success standards for post-mining land uses of pastureland and wildlife habitat. Louisiana also proposed to add to its program a policy document that describes the criteria and procedures for determining reclamation phase III ground cover and tree and shrub stocking success for areas developed for wildlife habitat.

We announced receipt of the proposed amendment in the November 2, 2001, **Federal Register** (66 FR 55609). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the amendment's adequacy. We did not hold a public hearing or meeting because no one requested one. The public comment period ended on December 3, 2001. We received comments from two Federal agencies. One of these agencies, the U. S. Fish and Wildlife Service (FWS), offered several comments on the proposed amendment. We forwarded these comments to Louisiana on January 25, 2002 (Administrative Record No. LA–367.06). By telephone, the State informed us that it would have to study the comments before responding to them (Administrative Record No. LA–367.08). We received Louisiana's response to the FWS comments in a letter dated June 11, 2002 (Administrative Record No. LA–367.05). Louisiana stated that it felt that its proposed revegetation success standards are consistent with SMCRA and no less effective than the Federal surface mining regulations. Therefore, we are proceeding with the final rule **Federal Register** document.

III. OSM's Findings

Following are the findings we made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are approving the amendment. Any revisions that we do not discuss below concern nonsubstantive wording or editorial changes or revised cross-references and paragraph notations to reflect organizational changes resulting from this amendment.

A. Section 5423. Revegetation: Standards for Success

Louisiana added new paragraph B.1.e. stating that the criteria and procedures for determining ground cover and production success for pastureland are found at Section 5424. Louisiana also added new paragraph B.8.a. stating that the criteria and procedures for determining ground cover and stocking success for fish and wildlife habitat are found at Section 5425. There are no Federal counterpart regulations stating where to find in the regulations criteria and procedures for determining ground cover and production success for areas

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developed for use as pastureland. Also, there are no Federal counterpart regulations stating where to find in the regulations criteria and procedures for determining ground cover and stocking success for areas developed for fish and wildlife habitat. We are approving the addition of these two new paragraphs because they merely direct readers to where they can find specific criteria and procedures for determining ground cover and production success for pastureland or ground cover and stocking success for fish and wildlife habitat.

B. Section 5424. Revegetation: Standards for Success—Post-Mining Land Use of Pastureland

1. Section 5424.A. Introduction

Louisiana proposed regulations that describe the criteria and procedures for determining ground cover and production success for areas being restored to pastureland. According to Section 5423, ground cover and production success on pastureland determinations must be based on the following criteria: (1) General revegetation requirements of the approved permit, (2) ground cover density, and (3) production. Also, the permittee is responsible for determining and measuring ground cover and production and for submitting this data to the Commissioner of Conservation (Commissioner) for evaluation.

The Federal regulation at 30 CFR 816.116(b) provides that the standards for revegetation success must be applied in accordance with the approved post-mining land use. It also provides that the ground cover and vegetation production parameters must be measured and compared to an appropriate revegetation standard in order to determine if the post-mining land use area has been successfully revegetated. We find that Louisiana's proposed regulation concerning the requirement to measure post-mining vegetation cover and production for the land use of pasture is no less effective than the Federal regulation at 30 CFR 816.116(b). Therefore, we are approving the proposed Louisiana regulation.

2. Section 5424.B. Success Standards and Measurement Frequency

a. *Ground Cover and Forage Production.* In paragraphs B.1. and B.2., Louisiana proposed regulations for ground cover and forage production, respectively. In paragraph B.1., Louisiana sets forth the criteria and procedures for determining ground cover and production success on pastureland. The criteria include an acceptable ground cover that is at least 90 percent of the approved success standard at a 90-percent confidence interval. The success standard is 90 percent. The criteria also include how to measure the ground cover; what types of species mixtures are required; sampling techniques for measuring success; when and how often to sample; and the length of the responsibility period. In paragraph B.2., Louisiana sets forth the criteria and procedures for determining forage production success on pastureland. The criteria include the success standard for hay production; when and how often to sample; and the length of the responsibility period.

The Federal regulation at 30 CFR 816.116(a)(2) provides the requirements for establishing revegetation success standards for ground cover and forage production for pastureland and the sampling techniques for measuring success. The Federal regulation at 30 CFR 816.116(c)(2) provides the length of the responsibility period and the time frame for sampling. We find that Louisiana's proposed regulations meet the requirements of the Federal regulations at 30 CFR 816.116(a)(2) and (c)(2) and are no less effective. Therefore, we are approving them.

b. *Reference Area Requirements.* In paragraphs B.3., Louisiana proposed regulations for reference area requirements. Louisiana proposed that reference areas must be representative of soils, slope, aspect, and vegetation in the pre-mined permit area. However, in cases where differences exist because of mixing of several soil series on the reclaimed area or unavailability of a reference area, yields must be adjusted. Reference area pastureland must also be under the same management as pastureland in the reclaimed area and must consist of a single plot (whole plot) at least four acres in size. Forage yields for the reference plot must be at a level that is reasonably comparable to the parish average for a given crop. Reference areas may be located on undisturbed acreage within permitted areas. When release areas and reference plots fall on different soil series, adjustments must be made to compensate for the productivity difference.

The Federal regulation at 30 CFR 816.116(a)(2) requires standards for success to include criteria representative of unmined lands in the area being reclaimed to evaluate the appropriate vegetation parameters of ground cover, production, or stocking. At 30 CFR 816.116(b), the Federal regulation requires that standards for success must be applied in accordance with the approved post-mining land use. Also, for areas developed for use as pastureland, the ground cover and production of living plants on the revegetated area must be at least equal to that of a reference area or such other success standards approved by the regulatory authority.

Louisiana proposed regulations that provided details for using reference areas as a standard for comparison with areas reclaimed to pastureland. The use of reference areas is consistent with standard scientific studies that use reference areas for studying vegetation. We find that Louisiana's proposed regulations concerning the use of these reference areas are not inconsistent with and are no less effective than the Federal regulations. Therefore, we are approving them.

3. Section 5424.C. Sampling Procedures

a. *Random Sampling and Sampling Techniques for Ground Cover.* In paragraphs C.1. and C.2.a., Louisiana proposed regulations for random sampling procedures and ground cover sampling techniques to assure that the samples truly represent the vegetative characteristics of the whole release or reference area. The regulations require permittees to use methods that will provide the following: (1) A random selection of sampling sites, (2) a sampling technique unaffected by the sampler's preference, and (3) sufficient samples to represent the true mean of the vegetation characteristics. The regulations instruct the permittees on how to select sampling points. They also require permittees to notify regulatory personnel ten days before conducting sampling or other harvesting operations to allow them an opportunity to monitor the sampling procedures. In addition, the regulations list the three approved statistically valid sampling techniques for measuring ground cover on pastureland and provide instructions for using them. The approved sampling techniques are pin method, point frame method, and line intercept method.

The Federal regulation at 30 CFR 816.116(a)(1) requires a regulatory authority to select and include in its approved regulatory program standards for vegetation success and statistically valid sampling techniques for measuring vegetation success. Louisiana proposed regulations requiring a random sampling technique to ensure that sample selection used for measuring success is not biased and will result in a statistically valid sample of adequate size. Also, Louisiana proposed regulations that allow the use of three separate statistically valid sampling methods that can be used to measure ground cover on pastureland. The proposed regulations are not inconsistent with and are no less effective than the Federal regulations and we are approving them.

b. *Sampling Techniques for Productivity.* In paragraph C.2.b., Louisiana proposed regulations for measuring vegetation productivity on pastureland. The proposed regulations set forth procedures for controlling two components (time of harvest and moisture content) that may potentially influence production yield. The proposed regulations also set forth the following two statistically valid sampling methods that can be used to evaluate production: (1) Sampling frames for harvesting plots, or (2) whole field or whole area harvesting.

The Federal regulation at 30 CFR 816.116(a)(1) requires a regulatory authority to select and include in its approved regulatory program standards for success and statistically valid sampling techniques for measuring success. Louisiana proposed procedures for controlling for two components that may influence vegetation production and set forth two statistically valid sampling methods that can be used to evaluate production. Therefore, we find that Louisiana's proposed regulations are not inconsistent with and are no less effective than the Federal regulations.

c. *Sample Adequacy.* In paragraph C.3., Louisiana proposed regulations for sampling adequacy. The proposed regulations set forth the procedure and formula to use for determining the actual number of samples needed to measure ground cover and productivity. The regulation requires the collection of data using a multi-staged sampling procedure. The proposed formula is a standard scientific formula for determining sample adequacy in order to ensure that vegetation sampling is statistically valid.

The Federal regulation at 30 CFR 816.116(a)(1) requires a regulatory authority to select and include in its approved regulatory program standards for success and statistically valid sampling techniques for measuring success. Louisiana's proposed regulations contain a procedure and a standard scientific formula to use for determining sample adequacy and to ensure that vegetation sampling is statistically valid. Therefore, we find that Louisiana's proposed regulations are not inconsistent with and are no less effective than the Federal regulations.

4. Section 5424.D. Data Submission and Analysis

Louisiana proposed the following regulations: (1) When to submit data to the Commissioner for review, (2) what is successful vegetation ground cover and production for the release area, (3) what to do when data indicates that average ground cover and average forage production for the release area is insufficient, and (4) making adjustments to forage production yields to account for moisture content before making statistical comparisons.

The Federal regulation at 30 CFR 816.116(a)(1) requires a regulatory authority to select and include in its approved regulatory program standards for success and statistically valid sampling techniques for measuring success. Louisiana is adopting requirements for data submission and analysis in order to ensure that vegetation sampling will be statistically valid. Therefore, we find that Louisiana's proposed regulations are not inconsistent with and are no less effective than the Federal regulations.

5. Section 5424.E. Maps

Louisiana proposed regulations requiring permittees to submit maps with their requests for reclamation phase III bond release. The maps must show the location of the proposed release area, the location of the reference plots, and all permit boundaries. When permittees submit data from a previously approved reclamation plan, maps must accompany the data. The maps must show the location of reference plots and each sampling point, the area covered by the sampling, and all permit boundaries.

The Federal regulation at 30 CFR 816.116(a)(1) requires a regulatory authority to select and include in its approved regulatory program standards for success and statistically valid sampling techniques for measuring success. Louisiana is adopting requirements for submission of maps as part of the bond release application in order to ensure that vegetation sampling will be statistically valid. Therefore, we find that Louisiana's proposed regulations are not inconsistent with and are no less effective than the Federal regulations.

6. Section 5424.F. Mitigation Plan

Louisiana proposed a set of criteria for developing a new phase III release plan in the event that the operator cannot demonstrate successful forage productivity and ground cover on the release area after the full five years of the phase III responsibility period.

The Federal regulations at 30 CFR 816.116(c)(1) and (c)(2) require that "the period of extended responsibility for successful revegetation shall begin after the last year of augmented seeding, fertilizing, irrigation, or other work * * *." In areas where the annual average precipitation is more than 26.0 inches, the period of responsibility must continue at least five full years. Vegetative ground cover and production for pasture land must also equal or exceed the approved success standard during the growing season of any two years of the responsibility period, except the first year. Louisiana is adopting requirements for the development of a mitigation plan in the event that the operator is not able to demonstrate revegetation success during the phase III responsibility period. The proposed regulations are not inconsistent with and are no less effective than the Federal regulations. Therefore, we are approving them.

C. Section 5425. Revegetation: Standards for Success—Post-Mining Land Use of Wildlife Habitat

1. Section 5425.A. Introduction

Louisiana proposed regulations that describe the criteria and procedures for determining ground cover and stocking success for areas being developed for wildlife habitat. According to Section 5423, ground cover and stocking success on wildlife habitat determinations must be based on the following criteria: (1) General revegetation requirements of the approved permit, (2) ground cover density, and (3) tree or shrub stocking and survival. Also, the permittee is responsible for determining and measuring ground cover and production and for submitting this data to the Commissioner for evaluation.

The Federal regulation at 30 CFR 816.116(b) provides that the standards for revegetation success must be applied in accordance with the approved post-mining land use. Also, for areas developed for wildlife habitat, the success of vegetation must be determined on the basis of tree and shrub stocking and vegetative ground cover. We find that Louisiana's proposed regulation concerning the requirement to measure post-mining vegetation cover and stocking for the land use of wildlife habitat is no less effective than the Federal regulation at 30 CFR 816.116(b). Therefore, we are approving the proposed Louisiana regulation.

2. Section 5425.B. Success Standards and Measurement Frequency

Ground Cover and Tree and Shrub Stocking Rate

In paragraphs B.1. and B.2., Louisiana proposed regulations for ground cover and tree and shrub stocking rate, respectively. In paragraph B.1.,

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Louisiana sets forth the criteria and procedures for determining ground cover on wildlife habitat. The criteria include a ground cover of at least 70 percent density with a 90-percent statistical confidence interval for the last year of the 5-year responsibility period. The criteria also include how to measure the ground cover and what types of species mixture are required.

In paragraph B.2., Louisiana sets forth the criteria and procedures for determining tree and shrub stocking success on wildlife habitat. The criteria require that the State consult with and receive approval from the Louisiana Department of Wildlife and Fisheries, on a permit-specific basis, when determining the stocking rate for trees and shrubs. Also, the trees and shrubs that will be used in determining the success of stocking and the adequacy of the plant arrangement must have utility for the approved post-mining land use. When these two aspects of the criteria are met and acceptable ground cover is achieved, the 5-year responsibility period begins. The success standard for tree and shrub stocking rate is equal to or greater than 90 percent of the stocking rate approved in the permit at a 90-percent statistical confidence interval. The criteria for the stocking rate also provides the following: (1) When and how often to sample, (2) what physical condition the trees and shrubs must be in to be counted, and (3) what percent of the trees and shrubs used to determine success must be in place and for how long.

The Federal regulation at 30 CFR 816.116(a)(2) provides that ground cover and stocking is considered equal to the approved success standard when they are not less than 90 percent of the success standard at a 90-percent statistical confidence interval. The Federal regulation at 30 CFR 816.116(b) requires that standards for success must be applied in accordance with the approved post-mining land use and, at a minimum, the success of vegetation must be determined on the basis of tree and shrub stocking and vegetative ground cover. The regulatory authority must specify the minimum stocking and planting arrangements on the basis of local and regional conditions. However, the regulatory authority must first consult with and receive approval from the State agencies responsible for the administration of forestry and wildlife programs. Consultation and approval may occur on either a program-wide or a permit-specific basis. Trees and shrubs to be used in determining the success of stocking and the adequacy of the plant arrangement must have utility for the approved post-mining land use. Trees and shrubs counted in determining such success must be healthy and have been in place for not less than 2 growing seasons. At the time of bond release, at least 80 percent of the trees and shrubs used to determine such success must have been in place for 60 percent of the applicable minimum period of responsibility. The Federal regulation at 30 CFR 816.116(c)(2) requires the period of extended responsibility for successful revegetation to begin after the last year of augmented seeding, fertilizing, irrigation, or other work. In areas that receive more than 26.0 inches of annual average precipitation, the period of responsibility must continue for not less than 5 years. Areas approved for wildlife habitat must equal or exceed the applicable success standard during the growing season of the last year of the responsibility period.

In its amendment, Louisiana proposed the requirement for revegetation success standards, measurement techniques, local wildlife agency consultation and approval, and liability period requirements for wildlife habitat. We find that the State's proposed revisions are not inconsistent with and are no less effective than the Federal regulations. Therefore, we are approving them.

3. Section 5425.C. Sampling Procedures

a. *Random Sampling and Sampling Technique for Ground Cover.* In paragraphs C.1. and C.2.a., Louisiana proposed regulations for random sampling procedures and ground cover sampling techniques, respectively, to assure that the samples truly represent the vegetative characteristics of the whole release or reference area. The regulations require permittees to use methods that will provide the following: (1) A random selection of sampling sites, (2) a sampling technique unaffected by the sampler's preference, and (3) sufficient samples to represent the true mean of the vegetation characteristics. The regulations instruct the permittees on how to select sampling points. They also require permittees to notify regulatory personnel ten days before conducting sampling or other harvesting operations to allow them an opportunity to monitor the sampling procedures. In addition, the regulations list the three approved statistically valid sampling techniques for measuring ground cover on wildlife habitat and provide instructions for using them. The approved sampling techniques are pin method, point frame method, and line intercept method.

The Federal regulation at 30 CFR 816.116(a)(1) requires a regulatory authority to select and include in its approved regulatory program, standards for vegetation success and statistically valid sampling techniques for measuring vegetation success. Louisiana proposed regulations requiring a random sampling technique to ensure that sample selection used for measuring success is not biased and will result in a statistically valid sample of adequate size. Also, Louisiana proposed regulations that allow the use of three separate statistically valid sampling methods that can be used to measure ground cover on wildlife habitat. The proposed regulations are not inconsistent with and are no less effective than the Federal regulations and we are approving them.

b. *Sampling Technique for Sampling Circles.* In paragraph C.2.b., Louisiana proposed instructions on how to count trees and shrubs using sampling circles. Louisiana also provided criteria on which trees and shrubs to count. The tree or shrub to be counted must be healthy and must have been in place for at least two years. At the time of liability release, 80 percent of the trees and shrubs must have been in place for three years.

The Federal regulation at 30 CFR 816.116(a)(1) requires the regulatory authority to select the standards for success and the statistically valid sampling techniques for measuring success. The selected standards and sampling techniques must be included in the regulatory authority's approved regulatory program. Louisiana proposed the use of sampling circles as a statistically valid sampling method for measuring tree or shrub stocking on the wildlife habitat. The proposed regulation is not inconsistent with and is no less effective than the Federal regulation, therefore, we are approving it.

c. *Sample Adequacy.* In paragraph C.3., Louisiana proposed regulations for sampling adequacy. The proposed regulations set forth the procedure and formula to use for determining the actual number of samples needed to measure ground cover and productivity. The regulation requires the collection of data using a multi-staged sampling procedure. The proposed formula is a standard scientific formula for determining sample adequacy in order to ensure that vegetation sampling is statistically valid.

The Federal regulation at 30 CFR 816.116(a)(1) requires a regulatory authority to select and include in its approved regulatory program standards for success and statistically valid sampling techniques for measuring success. Louisiana's proposed regulations contain a procedure and a standard scientific formula to use for determining sample adequacy and to ensure that vegetation sampling is statistically valid. Therefore, we find that Louisiana's proposed regulations are not inconsistent with and are no less effective than the Federal regulations.

4. Section 5425.D. Data Submission and Analysis

Louisiana proposed the following regulations: (1) When to submit data to the Commissioner for review, (2) what is successful vegetation ground cover and stocking for the release area, and (3) what to do when data indicates that average ground cover and average tree and shrub stocking density for the release area is insufficient.

The Federal regulation at 30 CFR 816.116(a)(1) requires a regulatory authority to select and include in its approved regulatory program standards for success and statistically valid sampling techniques for measuring success. Louisiana proposed to adopt requirements for data submission and analysis in order to ensure that vegetation sampling will be statistically valid. Therefore, we find that Louisiana's proposed regulations are not inconsistent with and are no less effective than the Federal regulations.

5. Section 5425.E. Maps

Louisiana proposed regulations requiring permittees to submit maps with their requests for reclamation phase III bond release. The maps must show the location of the proposed release area, the location of the reference plots, and all permit boundaries. When permittees submit data from a previously approved reclamation plan, maps must accompany the data. The maps must show the location of each transect and sampling circle location, the area covered by the sampling, and all permit boundaries.

The Federal regulation at 30 CFR 816.116(a)(1) requires a regulatory authority to select and include in its approved regulatory program standards for success and statistically valid sampling techniques for measuring success. Louisiana is adopting requirements for submission of maps as part of the bond release application in order to ensure that vegetation sampling will be statistically valid. Therefore, we find that Louisiana's proposed regulations are not inconsistent with and are no less effective than the Federal regulations.

6. Section 5425.F. Mitigation Plan

Louisiana proposed a set of criteria for developing a new phase III release plan in the event that the operator cannot demonstrate successful vegetation ground cover and tree and shrub stocking on the release area after the full five years of the phase III responsibility period.

The Federal regulations at 30 CFR 816.116(c)(1) and (c)(2) require that "the period of extended responsibility for successful revegetation shall begin after the last year of augmented seeding, fertilizing, irrigation, or other work * * *." In areas where the annual average precipitation is more than 26.0 inches, the period of responsibility must continue for at least five full years. Vegetative ground cover for wildlife habitat must also equal or exceed the approved success standard during the growing season of the last year of the responsibility period. Louisiana is adopting requirements for the development of a mitigation plan in the event that the operator is not able to demonstrate revegetation success during the phase III responsibility period. The proposed regulations are not inconsistent with and are no less effective than the Federal regulations. Therefore, we are approving them.

D. Reclamation Phase III Revegetation Success Standards for Post-Mining Land Use of Wildlife Habitat (Policy Document)

Louisiana submitted revegetation success guidelines in a policy document that describe the standards and procedures for determining revegetation success on wildlife habitat. The Federal regulations at 30 CFR 816.116(a)(1) require that each regulatory authority select revegetation success standards and statistically valid sampling techniques for measuring revegetation success and include them in its approved regulatory program. Louisiana developed its revegetation success guidelines for wildlife habitat to satisfy this requirement. The guidelines for wildlife habitat include revegetation success standards and statistically valid sampling techniques for measuring revegetation success of reclaimed wildlife habitat in accordance with Louisiana's counterpart to 30 CFR 816.116. Louisiana's standards, criteria, and parameters for revegetation success on wildlife habitat reflect the extent of vegetative cover, species composition, and soil stabilization required in the Federal regulations at 30 CFR 816.111. As required by the Federal regulations at 30 CFR 816.116(a)(2) and (b), Louisiana's revegetation success standards include criteria representative of unmined lands in the area being reclaimed to evaluate the appropriate vegetation parameters of ground cover and trees and shrubs stocking and production suitable to the approved postmining land use of wildlife habitat. Louisiana's guidelines specify the procedures and techniques to be used for sampling, measuring, and analyzing vegetation parameters. Ground cover, production, and stocking suitable to the approved postmining land use of wildlife habitat is considered equal to the approved success standard when they are not less than 90 percent of the success standard. Sampling techniques for measuring success use a 90-percent statistical confidence interval. We find that use of these procedures and techniques will ensure consistent, objective collection of vegetation data.

Appendices are included in the policy document. Appendix A—Selection of Random Sampling Sites includes procedures for selecting random sampling points, a set of random numbers, and an example of how to perform a random sample locations grid overlay. Appendix B—Data Form for Measuring Ground Cover Using a Pin Method and Appendix C—Example Data Form for Sampling Circles are data forms used for recording data and calculating the results from performing ground cover measurements and tree and shrub stocking measurements, respectively. Appendix D—T-Table, provides the t-values that are used for the sample adequacy calculations. Appendix E—Example Use of Sample Adequacy Formula for Ground Cover Measurements and Appendix F—Example Use of Sample Adequacy Formula for Tree and Shrub Counts give examples of how to determine sample adequacy for ground cover and tree and shrub counts, respectively. Appendix G—Statistical Analysis on Ground Cover Measurements and Appendix H—Statistical Analysis on Tree and Shrub Stocking Measurements describe how to perform statistical analyses on the ground cover and tree and shrub stocking data, respectively, to determine if there is a statistically significant difference between the data and the success standards if the data do not meet the success standards. Appendix I—Acceptable Plant Species for Revegetation of Wildlife Habitat Land Use lists plant species that are acceptable for use on land reclaimed for wildlife habitat. Appendix J—References provides a list of reference materials. Appendix K—Measuring Ground Cover Using a Pin Method is the last appendix in the policy document. This appendix describes how to perform ground cover measurements using a metal pin or a cross-hair sighting device.

The Federal regulation at 30 CFR 816.116(a)(1) requires a regulatory authority to select and include in its

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approved regulatory program standards for success and statistically valid sampling techniques for measuring success. Louisiana proposed to adopt a detailed policy illustrating the methods permittees may use to measure revegetation success for wildlife habitat. The policy document is not inconsistent with and is no less effective than the Federal regulations. Therefore, we are approving it.

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment, but did not receive any.

Federal Agency Comments

Under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Louisiana program (Administrative Record No. LA–367.04). We received comments from two Federal agencies, the FWS and the U.S. Army Corps of Engineers (Administrative Record Nos. LA–367.02 and LA–367.03, respectively).

All of the FWS comments pertained to wildlife habitat. The FWS stated that it is pleased that Louisiana is developing post-mining reclamation and revegetation success standards for wildlife habitat. The agency also made several recommendations and suggestions concerning the following topics: (1) Control of noxious plants on reclaimed sites, (2) the time frame for when to begin stocking of trees and shrubs, (3) unacceptable vegetation not approved in the permit, and (4) scientific and commons names of acceptable plant species for revegetation of wildlife habitat. In a specific comment regarding the time frame for when to begin stocking of trees and shrubs, the FWS believed that Louisiana's proposed regulations at Section 5425.B. implied that it would take five years to determine acceptable ground cover and that woody vegetation could not be planted until after this 5-year period. The FWS's concern was that because it takes many years for tree species to reach maturity it believed that an effort should be made to plant woody vegetation as soon as possible. Louisiana's proposed regulations at Section 5425.B. do not require delaying the planting of trees and shrubs until after the determination of successful ground cover is made. Therefore, woody vegetation can be planted before this determination is made thereby resolving any concerns the FWS may have regarding this matter. On January 25, 2002 (Administrative Record No. LA–367.06), we forwarded the FWS's comments to Louisiana. By telephone, the State informed us that it would have to study the comments before responding to them (Administrative Record No. LA–367.08). In a letter dated June 11, 2002 (Administrative Record No. LA–367.05), we received Louisiana's response to the FWS comments. Louisiana stated that it felt that its proposed revegetation success standards are consistent with SMCRA and no less effective than the Federal surface mining regulations. As stated in III. OSM's Findings, we find that Louisiana's proposed amendment is no less effective than the Federal regulations. Therefore, we are approving it.

The U.S. Army Corps of Engineers stated in a letter we received on November 19, 2001, that it found Louisiana's proposed amendment satisfactory (Administrative Record No. LA–367.03).

Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(ii), we are required to get a written concurrence from the EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Louisiana proposed to make in this amendment pertain to air or water quality standards. Therefore, we did not ask the EPA to concur on the amendment.

Under 30 CFR 732.17(h)(11)(i), we requested comments on the amendment from the EPA (Administrative Record No. LA–367.04): The EPA did not respond to our request.

State Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On October 16, 2001, we requested comments on Louisiana's amendment (Administrative Record No. LA–367.04), but neither responded to our request.

V. OSM's Decision

Based on the above findings, we approve the amendment as submitted by Louisiana on October 2, 2001, with the provision that they be fully promulgated in identical form to the regulations submitted to and reviewed by OSM and the public.

To implement this decision, we are amending the Federal regulations at 30 CFR Part 918, which codify decisions concerning the Louisiana program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a) of SMCRA requires that the State's program demonstrate that the State has the capability of carrying out the provisions of the Act and meeting its purposes. Making this rule effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

VI. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations "consistent with" regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 918

Intergovernmental relations, Surface mining, Underground mining.

Dated: October 10, 2002.

Charles E. Sandberg,

Acting Regional Director, Mid-Continent Regional Coordinating Center.

For the reasons set out in the preamble, 30 CFR Part 918 is amended as set forth below:

PART 918—LOUISIANA

1. The authority citation for Part 918 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 918.15 is amended in the table by adding a new entry in chronological order by "Date of final publication" to read as follows:

§ 918.15 Approval of Louisiana regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
October 2, 2001	November 15, 2002	LAC Sections 5423.B.1.e. and 8.a.; 5424; 5425; and policy document titled, "Reclamation Phase III Revegetation Success Standards for Post-Mining Land Use of Wildlife Habitat.

[FR Doc. 02–28799 Filed 11–14–02; 8:45 am]
BILLING CODE 4310–05–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD08–02–030]

RIN 2115–AE47

Drawbridge Operation Regulation; Portage Bayou, Pass Christian, MS

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is removing the existing drawbridge operation regulation for the draw of the Portage bascule bridge across Portage Bayou, mile 2.0, at Pass Christian, Mississippi. The existing bridge has been removed from service and a replacement bridge will be constructed on the same alignment. Since the bridge is being removed, the regulation controlling the opening and closing of the bridge is no longer necessary.

DATES: This rule is effective November 15, 2002.

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ADDRESSES: Documents referred to in this rule are available for inspection or copying at Eighth Coast Guard District, Bridge Administration Branch, 501 Magazine Street, New Orleans, Louisiana 70130–3396, between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (504) 589–2965. The Commander, Eighth Coast Guard District, Bridge Administration Branch maintains the public docket for this rulemaking.

FOR FURTHER INFORMATION CONTACT: Mr. David Frank, Bridge Administration Branch, at (504) 589–2965.

SUPPLEMENTARY INFORMATION:

Good Cause for Not Publishing an NPRM

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds good cause exists for not publishing an NPRM. Public comment is not necessary since the bridge that the regulation governed is out of service and is being completely removed. The bridge no longer affects navigation through the area.

Good Cause for Making Rule Effective in Less Than 30 Days

Under 5 U.S.C. 553(d)(3), the Coast Guard finds good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. There is no need to delay the implementation of this rule because the bridge it governs is already out of service and is being removed.

Background and Purpose

The existing bascule bridge across Portage Bayou, mile 2.0, which had previously serviced the area is in the process of being removed and no longer affects navigation. The regulation governing the operation of the pontoon bridge is found in 33 CFR 117.684. The purpose of this rule is to remove 33 CFR 117.684 from the Code of Federal Regulations since it governs a bridge that is no longer in service and is being removed.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT)(44 FR 11040, February 26, 1979).

This rule removes the special regulation for a bridge that is already out of service and is being removed.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will have no impact on any small entities because the regulation being removed applies to a bridge that has already been taken out of service and is being removed.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (32)(e), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation. This final rule only involves removal of the drawbridge operation regulation for a drawbridge that has been removed from service. It will not have any impact on the environment. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons set out in the preamble, the Coast Guard is amending Part 117 of Title 33, Code of Federal Regulations as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of P. L. 102–587, 106 Stat. 5039.

§ 117.684 [Removed]

2. Section 117.684 is removed.

Dated: November 5, 2002.

Roy J. Casto,

Rear Admiral, Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 02–28965 Filed 11–14–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD08–02–031]

RIN 2115–AE47

Drawbridge Operation Regulation; Industrial Seaway Canal, Gulfport, MS

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is removing the existing drawbridge operation regulation for the draw of the Lorraine-Cowan Road Bridge across the Industrial Seaway Canal, mile 11.3, at Gulfport, Mississippi. A replacement bridge has been constructed and the existing bridge has been removed from service. Since the bridge is being removed, the regulation controlling the opening and closing of the bridge is no longer necessary.

DATES: This rule is effective November 15, 2002.

ADDRESSES: Documents referred to in this rule are available for inspection or copying at Eighth Coast Guard District, Bridge Administration Branch, 501 Magazine Street, New Orleans, Louisiana 70130–3396, between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (504) 589–2965. The Commander, Eighth Coast Guard District, Bridge Administration Branch maintains the public docket for this rulemaking.

FOR FURTHER INFORMATION CONTACT: Mr. David Frank, Bridge Administration Branch, at (504) 589–2965.

SUPPLEMENTARY INFORMATION:

Good Cause for Not Publishing an NPRM

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds good cause exists for not publishing an NPRM. Public comment is not necessary since the bridge that the regulation governed is out of service and is being completely removed. The bridge no longer affects navigation through the area.

Good Cause for Making Rule Effective in Less Than 30 Days

Under 5 U.S.C. 553(d)(3), the Coast Guard finds good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. There is no need to delay the implementation of this rule because the bridge it governs is already out of service and is being removed.

Background and Purpose

A new SR 605 bascule bridge across the Industrial Seaway Canal, mile 11.3, at Gulfport, was opened to traffic in October of 2002. The existing bascule bridge which had previously serviced the area is in the process of being removed and no longer affects navigation. The regulation governing the operation of the pontoon bridge is found in 33 CFR 117.680. The purpose of this rule is to remove 33 CFR 117.680 from the Code of Federal Regulations since it governs a bridge that is no longer in service and is being removed.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

This rule removes the special regulation for a bridge that is already out of service and is being removed.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will have no impact on any small entities because the regulation being removed applies to a bridge that has already been taken out of service and is being removed.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

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Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (32)(e), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation. This final rule only involves removal of the drawbridge operation regulation for a drawbridge that has been removed from service. It will not have any impact on the environment. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons set out in the preamble, the Coast Guard is amending Part 117 of Title 33, Code of Federal Regulations as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

§ 117.680 [Removed]

2. Section 117.680 is removed.

Dated: November 5, 2002.

Roy J. Casto,

Rear Admiral, Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 02–28964 Filed 11–14–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–01–187]

RIN 2115–AA84, AA97

Regulated Navigation Area, Safety and Security Zones; Long Island Sound Marine Inspection and Captain of the Port Zone

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule; change in effective period.

SUMMARY: The Coast Guard is extending the effective period of a regulated navigation area (RNA) and certain safety and security zones published January 4, 2002. This change will extend the effective period of the temporary final rule through March 15, 2003, allowing adequate time for informal rulemaking to develop a permanent rule. This rule will continue to regulate the conditions under which certain vessels may enter, transit or operate within the regulated navigation area and will exclude all vessels from operating within 700 yards of the Millstone Nuclear Power Plant or 100 yards of anchored Coast Guard vessels.

DATES: The amendments of §§ 165.T01–153 and 165.T01–154 in this rule are effective November 15, 2002. Sections 165.T01–153 and 165.T01–154, added at 67 FR 519 and 520, January 4, 2002, effective December 10, 2001 until June 15, 2002, and extended at 67 FR 40861, June 14, 2002 through November 15, 2002, as amended in this rule, are extended in effect through March 15, 2003.

ADDRESSES: Documents indicated in this preamble are available for inspection and copying at Waterways Management, Coast Guard Group/Marine Safety Office Long Island Sound, 120 Woodward Ave., New Haven, CT 06512, between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant A. Logman, Waterways Management, Coast Guard GP/MSO Long Island Sound at (203) 468–4429.

Regulatory Information

On January 4, 2002, we published a temporary final rule (TFR) entitled "Regulated Navigation Areas, Safety And Security Zones: Long Island Sound Marine Inspection Zone and Captain of the Port Zone" in the **Federal Register** (67 FR 517). The effective period for that rule was from December 10, 2001 until June 15, 2002 and it was then extended through November 15, 2002. (67 FR 40859, June 14, 2002).

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. The original TFR was urgently required to prevent terrorist strikes within and adjacent to waters within the Long Island Sound Marine Inspection Zone and Captain of the Port Zone. It was anticipated that we would assess the security environment at the end of the effective period to determine whether continuing security precautions were required and, if so, propose regulations responsive to existing conditions. We have determined that the need for continued security regulations exists. The Coast Guard will utilize the extended effective period of this TFR to engage in notice and comment rulemaking to develop permanent regulations tailored to the present and foreseeable security environment within the Ports of Long Island Sound.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The measures contemplated by the rule were intended to prevent future terrorist attacks. The delay inherent in the NPRM process for developing a permanent rule is contrary to the public interest insofar as it may render individuals, vessels and facilities within and adjacent to the Long Island Sound Marine Inspection Zone and Captain of the Port Zone vulnerable to subversive activity, sabotage or terrorist attack. The Coast Guard will be publishing a NPRM to establish permanent safety and security zones that are temporarily effective under this rule. This revision preserves the status quo within the Port while permanent rules are developed. The present TFR has not been burdensome on the maritime public. The Coast Guard has not received written comments or suggestion to modify the scope of the existing TFR.

Background and Purpose

On September 11, 2001, two commercial aircraft were hijacked from Logan Airport in Boston, MA and flown into the World Trade Center in New York, NY inflicting catastrophic human casualties and property damage. A similar attack was conducted on the Pentagon with a plane launched from Newark, NJ on the same day. National security and intelligence officials warn that future terrorist attacks against civilian targets may be anticipated. The Coast Guard established RNA's and safety and security zones within defined areas of water as part of a comprehensive, port security regime designed to safeguard human life, vessels and waterfront facilities from sabotage or terrorist acts. As mentioned in the original TFR, these regulations were designed to provide the Captain of the Port of Long Island Sound with maximum flexibility to respond to emergent threats and dangerous conditions. When less stringent security measures are required, the Captain of the Port communicates relaxed enforcement policies to the public. As a result, the full scope of these regulations is rarely imposed. Nevertheless, the flexibility to utilize those measures permitted by the TFR and required by the circumstances is vital to ensure port security in the present environment.

A change in the effective period of this rule was published on June 14, 2002 (67 FR 40859), which extended the rule through November 15, 2002. This change was necessary in order to conduct rulemaking for the establishment of permanent safety and security zones and regulated navigation area. Additional time is necessary to ensure the public has sufficient time to participate in the rulemaking process. The Coast Guard is extending the effective date of this rule until March 15, 2003, to allow the establishment of permanent safety and security zones, and a regulated navigation area by notice and comment rulemaking.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12886, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

The Coast Guard expects the economic impact of this final rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. This finding is based on that the sizes of the zones are the minimum necessary to provide adequate protection for the public, vessels, and vessel crews. Any vessels seeking entry into or movement within the safety and security zones must request permission from the Captain of the Port or his authorized patrol representative. Any hardships experienced by persons or vessels are considered minimal compared to the national interest protecting the public, vessels, and vessel crews from the further devastating consequences of the aforementioned acts of terrorism, and from potential future sabotage or other subversive acts, accidents, or other causes of a similar nature.

The Coast Guard will be publishing a NPRM to establish permanent safety and security zones and the regulated navigation area that are temporarily effective under this rule.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

For the reasons addressed under the "Regulatory Evaluation" above, the Coast Guard expects the impact of this regulation to be minimal and certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601–612) that this final rule will not have a significant economic impact on a substantial number of small entities. Maritime advisories will be initiated by normal methods and means and be widely available to users of the area.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lieutenant A. Logman, Waterways Management, Coast Guard GP/MSO, Long Island Sound, (203) 468–4429.

Small Businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

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Collection of Information

This rule calls for no new collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES**.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that Order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. Revise temporary § 165.T01–153(c) to read as follows:

§ 165.T01–153 Regulated Navigation Area; Long Island Sound Marine Inspection Zone and Captain of the Port Zone

* * * * *

(c) *Effective dates.* This section is effective from December 10, 2001 through March 15, 2003.

* * * * *

3. Revise temporary § 165.T01–154(b) to read as follows:

§ 165.T01–154 Safety and Security Zones; Long Island Sound Inspection Zone and Captain of the Port Zone.

* * * * *

(b) *Effective dates.* This section is effective from November 15, 2002 through March 15, 2003.

* * * * *

Dated: November 7, 2002.

V.S. Crea,

Rear Admiral, Coast Guard, Commander, First Coast Guard District.

[FR Doc. 02–29069 Filed 11–12–02; 4:49 pm]

BILLING CODE 4910–15–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. RM 2001–2A]

Notice of Termination

AGENCY: Copyright Office, Library of Congress.

ACTION: Final rule.

SUMMARY: The Copyright Office is publishing a final rule amending its regulation governing notices of termination of transfers and licenses covering the extended renewal term. The current regulation is limited to notices of termination made under section 304(c) of the copyright law. The Sonny Bono Copyright Term Extension Act created a separate termination right under section 304(d). The final rule establishes procedures governing notices of termination of the extended renewal term under either section 304(c) or section 304(d).

EFFECTIVE DATE: January 1, 2003.

FOR FURTHER INFORMATION CONTACT: Kent Dunlap, Principal Legal Advisor for the General Counsel. Telephone: (202) 707–8380. Telefax: (202) 707–8366.

SUPPLEMENTARY INFORMATION:

1. Background

Under the 1909 copyright law, works copyrighted in the United States before January 1, 1978, were subject to a renewal system in which the term of copyright was divided into two consecutive terms. Under the system initially established by the 1909 legislation, the duration of copyright protection was for an original copyright term of 28 years and a renewal term of an additional 28 years. The Copyright Act of 1976, Public Law 94–554, retained the renewal system for works that were copyrighted before 1978, and were still in their first term on January 1, 1978. However, under section 304 of the copyright law, the renewal term was extended to 47 years, creating a total potential duration period of 75 years.

Besides generally extending the renewal term to 47 years, Congress also provided a termination procedure authorizing the termination of transfers or licenses during the extended portion of the renewal term. Established under section 304(c) of the copyright law, this provision created a means for authors and heirs of authors to secure the benefits of the additional 19 years added to the renewal term. In 1977, the Copyright Office adopted a regulation establishing the procedures for exercising the termination right. 37 CFR 201.10.

On October 27, 1998, President Clinton signed into law the Sonny Bono Copyright Term Extension Act, ("CTEA"), Public Law 105–298, 112 Stat. 2827 (1998). The CTEA amended the copyright law, title 17 of the United States Code, to extend for an additional 20 years the term of copyright protection in the United States. For works for which the duration of protection was determined under section 304 of title 17, the renewal term was extended from 47 years to 67 years. Like the Copyright Act of 1976, CTEA also contained a termination provision covering the newly extended portion (in this case, the last twenty years) of the extended renewal term. Established under section 304(d), this new right of termination was available only if the termination right under section 304(c) had expired by the effective date of CTEA, and if no termination had been previously exercised under section 304(c).

2. Proposed Regulation

On May 3, 2001, the Copyright Office published a proposed regulation modifying the termination regulation to include terminations made under section 304(d), in addition to terminations under section 304(c). 66 FR 22139. This was to be accomplished by making several adjustments to existing Copyright Office regulations.

Most of the changes involved 37 CFR 201.10, which governs notices of termination of transfers and licenses covering the extended renewal term. The proposed regulation added introductory text clarifying that the scope of the regulation covers terminations under either section 304(c) or section 304(d). In provisions where the existing regulation referred to section 304(c), the proposed regulation added an alternative reference to section 304(d).

The Office proposed substantive changes in only two areas. First, subsection (c)(i) of the proposed regulation provided that if the termination is made under section 304(d), the notice will provide a statement to that effect. Most of the notices of termination made under 304(d) which have been received in this Office already contained such a statement. No corresponding requirement was imposed in notices of termination issued under section 304(c) because such a requirement would have upset established legal practices in issuing notices under that section.

The second substantive change in the proposed regulation created new subsection (c)(vi), requiring that notices under section 304(d) contain a statement that termination of rights for the extended renewal term had not been previously exercised. This is a statutory requirement imposed in subsection 304(d), and including the requirement as part of the notice made it less likely that second notices of terminations would be filed.

The proposal further included a provision modifying 37 CFR 201.4(a)(v), regarding recordation of transfers and certain other documents, to include a reference to section 304(d).

3. Comments and Modifications

The Copyright Office received one comment on the proposed modification of the regulations. Professor Tyler Ochoa of Whitter Law School suggested two modifications in the content of the termination notice to make it consistent with the statute. First, he noted that since terminations cannot be made for works made for hire, notices of termination for both section 304(c) and (d) should affirmatively state that the work is not a work made for hire. Second, he pointed out that in order to be eligible to terminate under section 304(d), the termination right under section 304(c) must have expired by the effective date of the Sonny Bono Copyright Term Extension Act. Since CTEA took effect on October 27, 1998, Professor Ochoa calculated that termination under section 304(d) would only be available for works first published between January 1, 1923, and October 27, 1939. Accordingly, he asserted that notices of termination under section 304(d) should affirmatively assert that the work was originally published between these dates.

The Copyright Office has considered Professor Ochoa's comments carefully. The requirement in section 304(d) that the termination right under section 304(c) must have expired at the time CTEA took effect was not a provision reflected in the proposed regulation. We agree in principle with Professor Ochoa's comments on this point. However, we disagree with some of the details of his analysis. First, he states that the relevant dates are January 1, 1923, and October 27, 1939. In fact, although Professor Ochoa is correct in calculating that January 1, 1923, (the copyright date of the earliest works the terms of which were extended by CTEA) is the first of the two relevant dates, he appears to be a day late in his calculation of the second date. The better reading of section 304(d) is that copyright must have been secured no later than October 26, 1939. That is the last date on which copyright could have been secured for any work for which the section 304(c) termination right had already expired by October 27, 1998, the effective date of CTEA.

We calculate this date by noting that termination of a transfer or license under section 304(c) may be effected during a period of five years commencing "fifty-six years from the date copyright was originally secured," 17 U.S.C. 304(c)(3), meaning that termination may be effected up to 61 years (56 + 5) after copyright was secured. However, in order to effect a termination, an author or an author's successor must serve a notice of termination "not less than two years before" the effective date, *i.e.*, up to 59 years (61 − 2) after copyright was secured. 17 U.S.C. 304(c)(4)(a). Therefore, the termination right will have "expired," see 17 U.S.C. 304(d), 59 years after copyright was secured. See S. Rep. No. 104–315, at 22 (1996) (purpose of section 304(d) was to "provide a revived power of termination for individual authors whose right to terminate prior transfers and licenses of copyright under section 304(c) has expired, provided the author has not previously exercised that right"). On the effective date of CTEA, October 27, 1998, an author of a work for which copyright had first been secured on October 27, 1939, could still have served an effective notice of termination under section 304(c). Therefore, there would have been no need to give that author the additional right to serve a notice of termination under section 304(d). But an author of a work for which copyright had first been secured on October 26, 1939, could not have served an effective notice of termination on October 27, 1998, because the 59-year deadline for serving a notice of termination would have expired at the end of the previous day, *i.e.*, on October 26, 1998. Hence, works for which copyright was secured between January 1, 1923, and October 26, 1939, (and for which the section 304(c) termination right was not exercised) are eligible for the section 304(d) termination right.

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Second, Professor Ochoa states that the requirement is that the work was first published between the relevant dates in 1923 and 1939. In fact the requirement is somewhat broader: copyright must have been secured on or between those dates. See 17 U.S.C. 304(d)(2). Although publication with notice was the most common means of securing copyright under the Copyright Act of 1909, copyright could also be secured for certain unpublished works by registering those works with the Copyright Office. See section 11 of the 1909 Act, 17 U.S.C. 12 (repealed effective Jan. 1, 1978).

Although we agree in principle with Professor Ochoa's observation, we note that the regulation already requires that the notice of termination designate the date on which copyright was originally secured. To add to this requirement an additional statement that the copyright was secured between January 1, 1923, and October 26, 1939, would be redundant. Nevertheless, it would be useful for parties involved in a termination under section 304(d) to be aware of this requirement. For this reason, we are adding the following sentence to the introductory paragraph of § 201.10: "a termination under section 304(d) is possible only if no termination was made under section 304(c), and federal copyright was originally secured on or between January 1, 1923, and October 26, 1939."

With regard to the proposal to add a statement in the notice of termination that the work was not a work made for hire, the Copyright Office has decided not to adopt this suggestion. The regulation on notice of termination has never required that a notice of termination recite all of the statutory requirements underlying termination. The current regulation has been in effect since 1977, and no practitioner has reported a problem because the notice does not affirmatively state that the work being terminated is not a work made for hire. For this reason, the Copyright Office has decided not to disrupt settled practice in this area.

In reviewing generally the proposed regulation, the Copyright Office has also decided to adopt a number of technical corrections. In the proposed regulation, a new subsection (b)(vi) required that notices under section 304(d) contain a statement "that termination of rights for the extended renewal term has not been previously exercised." This provision was intended to apply to the 19-year extended renewal term under section 304(c), rather than the 20-year extended renewal term under section 304(d). In order to clarify this matter, the language has been revised to read: "If termination is made under section 304(d), a statement that termination of renewal term rights under section 304(c) has not been previously exercised."

In order to give authors and practitioners sufficient time to learn of these new requirements, the effective date of these amendments to the regulation is January 1, 2003. Notices of termination served on or after January 1, 2003, must comply with the amended regulation. Of course, authors and their representatives who serve notices of termination prior to that date are encouraged, although not required, to include the information that will be required in the amended regulation.

List of Subjects in 37 CFR Part 201

Copyright.

Final Regulation

In consideration of the foregoing, the Copyright Office is amending part 201 of 37 CFR, chapter II in the manner set forth below:

PART 201—GENERAL PROVISIONS

1. The authority citation for part 201 is revised to read as follows:

Authority: 17 U.S.C. 702.

Section 201.10 also issued under 17 U.S.C. 304.

§ 201.4 [Amended]

2. In § 201.4(a)(1)(v), add "and (d)" after "304(c)."

§ 201.10 [Amended]

3. Section 201.10 is amended as follows:

a. by adding introductory text before paragraph (a);

b. by redesignating paragraphs (b)(1)(i) through (v) as (b)(1)(ii) through (v) and (vii), respectively;

c. by adding new paragraphs (b)(1)(i) and (vi);

d. by removing "paragraph (v)" in newly redesignated paragraph (b)(1)(vii) and adding "paragraph (vii)" in its place; and

e. by revising paragraphs (c)(2), (d)(2), (d)(4) and (e).

The revisions and additions to § 201.10 read as follows:

§ 201.10 Notices of terminations of transfers and licenses covering extended renewal term.

This section covers notices of termination of transfers and licenses covering the extended renewal term under sections 304(c) and 304(d) of title 17, of the United States Code. A termination under section 304(d) is possible only if no termination was made under section 304(c), and federal copyright was originally secured on or between January 1, 1923, and October 26, 1939."

* * * * *

(b) * * *

(1) * * *

(i) If the termination is made under section 304(d), a statement to that effect;

* * * * *

(vi) If termination is made under section 304(d), a statement that termination of renewal term rights under section 304(c) has not been previously exercised; and

* * * * *

(c) * * *

(2) In the case of a termination of a grant executed by one or more of the authors of the work, the notice as to any one author's share shall be signed by that author or by his or her duly authorized agent. If that author is dead, the notice shall be signed by the number and proportion of the owners of that author's termination interest required under section 304(c) or section 304(d), whichever applies, of title 17, U.S.C., or by their duly authorized agents, and shall contain a brief statement of their relationship or relationships to that author.

* * * * *

(d) * * *

(2) The service provision of either section 304(c) or section 304(d) of title 17, U.S.C., whichever applies, will be satisfied if, before the notice of termination is served, a reasonable investigation is made by the person or persons executing the notice as to the current ownership of the rights being terminated, and based on such investigation:

(i) If there is no reason to believe that such rights have been transferred by the grantee to a successor in title, the notice is served on the grantee; or

(ii) If there is reason to believe that such rights have been transferred by the grantee to a particular successor in title, the notice is served on such successor in title.

* * * * *

(4) Compliance with the provisions of paragraphs (d)(2) and (3) of this section will satisfy the service requirements of either section 304(c) or section 304(d) of title 17, U.S.C., whichever applies. However, as long as the statutory requirements have been met, the failure to comply with the regulatory provisions of paragraph (d)(2) or (d)(3) of this section will not affect the validity of the service.

(e) *Harmless errors.* (1) Harmless errors in a notice that do not materially affect the adequacy of the information required to serve the purposes of either section 304(c) or section 304(d) of title 17, U.S.C., whichever applies, shall not render the notice invalid.

(2) Without prejudice to the general rule provided by paragraph (e)(1) of this section, errors made in giving the date or registration number referred to in paragraph (b)(1)(iii) of this section, or in complying with the provisions of paragraph (b)(1)(vii) of this section, or in describing the precise relationships under paragraph (c)(2) of this section, shall not affect the validity of the notice if the errors were made in good faith and without any intention to deceive, mislead, or conceal relevant information.

* * * * *

Dated: October 28, 2002.

Marybeth Peters,

Register of Copyrights.

James H. Billington,

The Librarian of Congress.

[FR Doc. 02–28920 Filed 11–14–02; 8:45 am]

BILLING CODE 1410–30–P

POSTAL SERVICE

39 CFR Part 501

Authorization To Manufacture and Distribute Postage Meters

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This final rule amends the regulations for checking postage meters out of service and for handling faulty meters. The need to ensure the security of Postal Service revenues mandates these changes. The changes will clarify the responsibilities of the meter provider and improve the secure handling of faulty postage meters.

DATES: The rule is effective November 15, 2002.

FOR FURTHER INFORMATION CONTACT: Wayne Wilkerson, Manager of Postage Technology Management, at 703–292–3782, or by fax at 703–292–4050.

SUPPLEMENTARY INFORMATION: The United States Postal Service is seeking to improve the secure handling of faulty postage meters by the approved postage meter providers and to enhance the accuracy of determinations by the postage meter providers of the proper amounts of postage to be refunded from faulty postage meters. We are amending the regulations for checking postage meters out of service and for handling faulty meters to address these concerns and to align the regulations with changes to the *Domestic Mail Manual* (DMM) regarding postage meters published in the **Federal Register** on November 8, 2001 (Vol. 66, No. 217, pages 56432–56447). We have deleted references to mechanical meters from the amended section since all mechanical postage meters have been decertified since 1999 and should no longer be in service. In this final rule, the Postal Service clarifies the definition of "faulty" as it applies to postage meters. In the proposed rule, the manufacturer sent all faulty meters to a special, secure facility for examination to determine the additional processing required to withdraw each meter. In this final rule, the initial examination of a faulty meter occurs in the field where the manufacturer or the manufacturer's agent determines whether the faulty meter can be withdrawn in accordance with procedures for a nonfaulty meter, or needs to be handled at the special, secure facility. We are also revising the regulation to allow 7 business days to prepare and file the report on faulty meters when the meter registers cannot be read, a summary report of the appropriate redundant electronic register memory readouts cannot be retrieved, and there is no evidence of tampering. We will amend the remaining sections of CFR part 501 in the near future so that they reflect the changes in the postage meter population and changes in the DMM.

The proposed rule was published in the **Federal Register** on May 2, 2002 (Vol. 67, No. 85, pages 22025–22027), with a request for submission of comments by June 3, 2002. We received three submissions from postage meter manufacturers in response to the solicitation of public comments. The Postal Service gave thorough consideration to the comments it received, modified the proposed rule as appropriate, and now announces the adoption of the final rule.

Discussion of Comments

1. The three commenters requested clarification of the term "faulty."

The Postal Service clarified the definition of "faulty" as it applies to postage meters. Faulty meters include those that are inoperable, those that are misregistering or the registers are unreadable, those that inaccurately reflect their current status, those that show any evidence of tampering or abuse, and those for which there is information or other indication that the meter has some mechanical or electrical malfunction of any critical security component, such as any component the improper operation of which could adversely affect Postal Service revenues, or of any memory component, or that affects the accuracy of the registers or the accuracy of the value printed. The proposed rule is revised in response to these comments.

2. One commenter assumed that the requirement for manufacturers to "(e)nsure that faulty meters are not presented to the licensing Post Office for checkout or withdrawal" meant that nonfaulty meters could be presented to the licensing Post Office.

This assumption is incorrect. The meter licensee returns all meters to the manufacturer or the manufacturer's agent for withdrawal, as directed in DMM 57, section P030.3.13, Returning a Postage Evidencing System or PSD. The manufacturer or its agent checks nonfaulty meters out of service under § 510.23(g) and either has an approved process for withdrawal, or ensures that the meter is examined by a Postal Service employee. Faulty meters are returned to the manufacturer and handled by the manufacturer in accordance with the procedures in § 501.23(h). To clarify the withdrawal process, we deleted the paragraph referenced in this comment from the proposed rule.

3. Two commenters noted the difficulty of complying with the requirements for obtaining the licensee's signature to complete PS Form 3601–C, Postage Meter Activity Report, for faulty meters.

The Postal Service understands that as of the effective date of this rule, PS Form 3601–C does not include a specific place for the licensee's signature confirming that the information on the form is correct, as required by the proposed regulation. However, until the form is revised and widely distributed, and the inventory of old versions of the form is depleted, the manufacturer's representative should ensure that the licensee (or the licensee's approved representative) signs the form and prints his or her name clearly under items C3 and C5. The Postal Service suggests that when the licensee is unavailable, the licensee's representative or agent who is responsible for releasing the meter to the manufacturer and signing the manufacturer's paperwork should also be responsible to review and sign the Postal Service form. There is no change to the proposed rule as a result of this comment.

4. Some commenters requested more information on the reporting requirements for faulty meters. Commenters also requested additional time to submit the reports.

Postage Technology Management will notify manufacturers when there are any changes from current reporting requirements for faulty meters. The Postal Service has reviewed the request

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for additional time to submit required reports and agrees that additional time should be allowed. The regulation is revised to allow 7 business days to prepare and file the report on faulty meters when the meter registers cannot be read, a summary report of the appropriate redundant electronic register memory readouts cannot be retrieved, and there is no evidence of tampering.

5. One commenter suggested that instead of requiring licensees to submit daily usage logs whenever register values cannot be read, the logs should only be required when the manufacturer is unable to obtain the systems report from the meter.

The Postal Service wants to encourage meter licensees to keep daily usage logs. Providing adequate backup for register values is the manufacturer's responsibility and the logs can provide the information when the meter is faulty. There is no change to the proposed rule as a result of this comment.

6. One commenter asked if there can be more than one dedicated secure facility for handling faulty meters that cannot be handled under the procedures used for nonfaulty meters.

A manufacturer can have multiple secure facilities for handling faulty meters that cannot be handled under the procedures used for nonfaulty meters. However, the Postal Service must inspect and approve each such facility. No change is made to the proposed rule as a result of this comment.

7. Some commenters questioned the requirement to ship faulty meters via Registered Mail service, Express Mail® service, or Priority Mail® service with Delivery Confirmation™ service.

The initial examination of a faulty meter occurs in the field where the manufacturer or the manufacturer s agent determines whether the faulty meter can be withdrawn in accordance with procedures for a nonfaulty meter, or needs special handling. However, when the registers cannot be read, or a summary report of the appropriate redundant electronic register memory readouts is not available using Postal Service-approved methods, or there is evidence of tampering, or there is some information or other indication that the meter has some mechanical or electrical malfunction that affects the accuracy of the registers or the accuracy of the value printed, the meter must be returned to the special, secure facility for processing. Shipment of these meters poses a special risk. No manufacturer has or will be granted written Postal Service approval to ship these faulty meters using means other than Registered Mail service, Express Mail service, or Priority Mail service with Delivery Confirmation service. If these meters are shipped by alternative (non-Postal Service) means, the Postal Service will not authorize payment of refunds for postage value left on the meter, since a lack of security in shipping could make the faulty meter vulnerable to tampering. However, nonfaulty meters, and faulty meters that can be withdrawn using the same procedures as for nonfaulty meters, may be shipped using alternate carriers when the manager of Postage Technology Management, Postal Service Headquarters, gives written permission to ship by another means or service, based upon an assessment of the security of the proposed alternative. No change is made to the regulation in response to these comments.

8. One of the commenters questioned the use of "highest average daily usage" in calculating refund amounts, especially for seasonal users, and asked that the regulation recognize other means to retrieve meter register readings.

The methods for developing other data to support the request for Postal Service approval of a refund amount are given as examples of approved approaches and are not meant to preclude the use of other approaches. No change is made to the regulation in response to this comment.

9. One of the commenters suggested the Postal Service consider a minimum hold period for faulty meters to be sure all Postal Service questions are answered.

The manufacturer should hold the faulty meter for as long as it believes necessary to respond to any questions from the Postal Service or to appeal a Postal Service decision on a postage adjustment amount. No change is made to the regulation in response to this comment.

10. Commenters asked for clarification of when the Postal Service would require the manufacturer, rather than the Postal Service, to issue the refund of any postage value said to remain in a faulty meter. One commenter suggested that the Postal Service give prior notice to the manufacturer before requiring the manufacturer to issue the refunds. The commenters also suggested alternative methods for handling refunds for postage value remaining on a faulty meter.

The Postal Service reimburses remaining postage value in a defective postage meter because the funds are Postal Service funds. Normally, the Postal Service handles the refund and processes the reimbursement for customer convenience. However, when a meter or meter model is defective, the manufacturer, rather than the Postal Service, is responsible for the defect and should be responsible for handling the refund of Postal Service funds to the customer subject to reimbursement by the Postal Service. The Postal Service may not have prior notice that a meter model was defective and susceptible to malfunctioning until it sees a pattern of excessive refund requests. Excessive defects may require resubmission of the meter model in question for additional testing to ensure that it meets all performance criteria and maintains the security of Postal Service funds. The regulation does not specify or limit the choice of payment mechanism to be used when the manufacturer issues the refund of any postage value remaining in a faulty meter. No change is made to the regulation as a result of these comments.

List of Subjects in 39 CFR Part 501

Administrative practice and procedure, Postal Service.

The Amendment

For the reasons set out in this document, the Postal Service is amending 39 CFR part 501 as follows:

PART 501—AUTHORIZATION TO MANUFACTURE AND DISTRIBUTE POSTAGE METERS

1. The authority citation for part 501 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 410, 2601, 2605; Inspector General Act of 1978, as amended (Pub. L. 95–452, as amended); and 5 U.S.C. App. 3.

2. Revise paragraphs (g) and (h) of § 501.23 to read as follows:

§ 501.23 Distribution controls.

* * * * *

(g) Check a nonfaulty meter out of service in accordance with the procedures that the Postal Service has approved for that meter when the meter is to be removed from service for any reason. Ensure that a Postal Service employee certifies the register readings and clears the descending register when the meter is checked out of service, unless the Postal Service has approved other procedures for the specific meter model. Complete the checkout process in a timely manner and transmit the required data to the appropriate Postal Service information systems. Ensure that no employee of the meter manufacturer or any third-party changes, interferes with, or performs any element of the Postal Service employee's established checkout and withdrawal process for any meter, unless approval for the change in procedures is granted in writing by the Postal Service.

(h) Handle faulty meters, including those that are inoperable, those that are misregistering or the registers are unreadable, those that inaccurately reflect their current status, those that show any evidence of tampering or abuse, and those for which there is information or other indication that the meter has some mechanical or electrical malfunction of any critical security component, such as any component the improper operation of which could adversely affect Postal Service revenues, or of any memory component, or that affects the accuracy of the registers or the accuracy of the value printed, as follows:

(1) Ensure that all functions required to handle faulty meters are completed in a timely manner and in accordance with Postal Service regulations and procedures.

(2) Begin the process to retrieve any faulty meter within 2 business days of being notified of a problem.

(3) Complete PS Form 3601–C, Postage Meter Activity Report, in the presence of the licensee and obtain the licensee's signature on the form confirming that the information is accurate.

(i) Include the register information on the form when the registers can be read.

(ii) Print the system report, if available for the meter, and attach the report to PS Form 3601–C when the register values cannot be read.

(iii)Have the licensee provide any original daily usage logs with PS Form 3601–C for refund calculation when the register values cannot be read.

(4) Identify and tag the meter as faulty as soon as the manufacturer or the manufacturer's agent receives it from the customer. Keep the identification tag and the PS Form 3601–C, which was completed under paragraph (h)(3) of this section, with the faulty meter until processing is completed and the meter is returned to service or is scrapped.

(5) Secure all faulty meters and maintain the integrity of the meter and of the information residing on the meter. Maintain control of the meter until processing is completed.

(6) Ensure that under no circumstance are registers on a faulty meter cleared or any funds refunded or transferred until examination and processing are completed, the Postal Service has reviewed and analyzed the manufacturer's report and determined the appropriate postage adjustment, if any, and approved refund procedures are followed.

(7) Maintain a record of the faulty meter and all changes in its custody, state, and condition (including availability of register information) from the time the meter is reported as faulty until processing is completed under paragraphs (h)(9), (12), or (14) of this section. Make the record available to the Postal Service for its review upon request.

(8) Examine each meter withdrawn for faulty operation as soon it is received from the customer to determine if the registers can be read and if there is any evidence of tampering.

(9) When the registers can be read or a summary report of the appropriate redundant electronic register memory readouts is available using Postal Service-approved methods, and there is no evidence of tampering or any problem covered by paragraph (h)(13) of this section:

(i) Check out the meter and withdraw it from service under paragraph (g) of this section.

(ii) Submit a report to the Postal Service by the 15th of each month listing all faulty meters with readable displays and no other problems received in the prior month, identifying the meter and including an explanation of the meter malfunction.

(10) Maintain a dedicated, secure facility, approved by the Postal Service, for handling faulty meters that cannot be handled under paragraph (h)(9) of this section.

(11) Ship faulty meters not handled under paragraph (h)(9) of this section directly to the secure facility described in paragraph (h)(10) of this section for processing. Ship these faulty meters via Registered Mail service, Express Mail service, or Priority Mail service with Delivery Confirmation service.

(12) If there is no evidence of tampering, if the meter registers cannot be read, and if a summary report of the appropriate redundant electronic register memory readouts cannot be retrieved:

(i) Develop other data to support the request for Postal Service approval of a postage adjustment amount, such as a manual calculation of the estimated value of the descending register based on estimated highest average daily usage, or applicable system-generated register documentation. Include the original daily usage logs maintained by the customer, if any, with the supporting data.

(ii) Furnish a report explaining the malfunction to the Postal Service within 7 days of receiving the meter. Accompany the report with a recommendation of the postage adjustment amount that includes all data developed to support the recommendation.

(iii) Maintain control of those meters that have unreadable registers and hold them in the manufacturer's dedicated, secure facility described in paragraph (h)(10) of this section until a representative of the Postal Service approves the postage adjustment amount or verifies the condition of the meter before proceeding with the meter repair or destruction.

(13) In some instances, even though the registers can be read, there is information or other indication that the meter has some mechanical or electrical malfunction that affects the accuracy of the registers or the accuracy of the value printed. Handle such meters under paragraph (h)(12) of this section.

(14) If there is evidence or suspicion of tampering:

(i) Ensure that the meter is handled in a secure manner and maintained in its original state until the Postal Service or its agent can be present during the examination.

(ii) After examination, if approved by the Postal Service or its agent, process the meter under paragraph (h)(12) of this section.

(15) Issue the refund of any postage value said to remain in a faulty meter, after Postal Service approval of the amount of the refund, when the Postal Service requires it. Request reimbursement from the Postal Service for these refunds by periodically submitting a reimbursement request letter to the Postal Service. Accompany the letter with listings and support documentation for each refund and indicate the cause of failure for each incident.

* * * * *

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 02–28937 Filed 11–14–02; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA–079–SIPS; FRL–7408–5]

Motor Vehicle Emissions Budgets in Progress, Attainment, and Maintenance State Implementation Plans for Ozone, Carbon Monoxide, and Nitrogen Dioxide; California

AGENCY: Environmental Protection Agency (EPA).

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ACTION: Final rule.

SUMMARY: EPA is taking final action to limit the duration of our approvals of motor vehicle emissions budgets ("budgets") in certain existing California state implementation plans (SIPs) that provide for progress, attainment, and maintenance of the 1-hour ozone, 8-hour carbon monoxide (CO), and annual nitrogen dioxide (NO2) national ambient air quality standards (NAAQS). Specifically, we are limiting our approvals of the existing budgets to last only until the effective date of our adequacy finding for new budgets that replace the existing approved budgets for the same pollutant, Clean Air Act (CAA) requirement, and year. The State of California will submit new budgets as part of comprehensive revisions to certain approved progress, attainment, and maintenance plans that reflect updated information and a new version of California's motor vehicle emission factor model. On the effective date of EPA's adequacy finding for a new budget, our approval of the existing budget would terminate and thus the new adequate budget would apply instead of the existing budget for transportation conformity purposes.

EFFECTIVE DATE: This rule is effective on December 16, 2002.

ADDRESSES: You can inspect copies of the docket for this action at EPA's Region 9 office during normal business hours. You can inspect copies of the SIP materials at the following locations:

U.S. EPA, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901.
California Air Resources Board, 1001 I Street, Sacramento, CA 95814.

FOR FURTHER INFORMATION CONTACT: Dave Jesson, EPA Region 9, (415) 972–3957, or *Jesson.David@epa.gov*

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us," and "our" refer to EPA.

I. Proposed Action

On July 16, 2002 (67 FR 46618), we proposed to limit the duration of our prior approvals of existing motor vehicle emissions budgets associated with the SIPs for the areas listed below in Table 1—California SIPs Whose Budget Approvals Are Being Modified. Under this modification, the existing budgets will be approved and apply for transportation conformity purposes only until we have found the new budgets that California submits to be adequate. The proposed action provides background information on the California SIPs, the State's request, the federal rule (40 CFR part 93) and current policies to implement the transportation conformity provisions of CAA section 176(c), and our process for determining adequacy of motor vehicle emission budgets.[1]

TABLE 1.—CALIFORNIA SIPS WHOSE BUDGET APPROVALS ARE BEING MODIFIED

Area	Pollutant	Plan	Adoption	Submittal	FR approval
Antelope Valley (SE Desert).	Ozone	Attainment Plan	9/9/94 12/9/94 4/12/96	11/15/94 12/29/94 7/10/96	1/8/97, 62 FR 1150.
Bakersfield	CO	Maintenance Plan	4/26/96	7/3/96	3/31/98, 63 FR 15305.
Chico	CO	Maintenance Plan	4/26/96	7/3/96	3/31/98, 63 FR 15305.
Coachella (SE Desert)	Ozone	Attainment Plan	9/9/94 12/9/94 12/29/94	11/15/94 12/29/94 7/10/96	1/8/97, 62 FR 1150.
Fresno	CO	Maintenance Plan	4/26/96	7/3/96	3/31/98, 63 FR 15305.
Kern (SE Desert)	Ozone	Attainment Plan	12/1/94	1/28/94	1/8/97, 62 FR 1150.
Lake Tahoe—North	CO	Maintenance Plan	4/26/96	7/3/96	3/31/98, 63 FR 15305.
Lake Tahoe—South	CO	Maintenance Plan	4/26/96	7/3/96	3/31/98, 63 FR 15305.
Modesto	CO	Maintenance Plan	4/26/96	7/3/96	3/31/98, 63 FR 15305.
Mojave (SE Desert)	Ozone	Attainment Plan	10/26/94	11/15/94	1/8/97, 62 FR 1150.
Monterey	Ozone	Maintenance Plan	5/25/94 10/19/94	7/14/94 11/14/94	1/17/97, 62 FR 2597.
Sacramento	Ozone	Attainment Plan	12/1/94 12/12/94 12/13/94 12/14/94 12/20/94	12/29/94	1/8/97, 62 FR 1150.
Sacramento	CO	Maintenance Plan	4/26/96	7/3/96	3/31/98, 63 FR 15305.
San Diego	CO	Maintenance Plan	4/26/96	7/3/96	3/31/98, 63 FR 15305.
San Francisco Bay Area	CO	Maintenance Plan	4/26/96	7/3/96	3/31/98, 63 FR 15305.
South Coast	Ozone	Attainment Plan	11/15/96 12/10/99	2/5/97 2/4/00	4/10/00, 65 FR 18903.
South Coast	NO_2	Maintenance Plan	11/15/96	2/5/97	7/24/98, 63 FR 39747.
Stockton	CO	Maintenance Plan	4/26/96	7/3/96	3/31/98, 63 FR 15305.
Ventura	Ozone	Attainment Plan	11/8/94 12/19/95	11/15/94 7/12/96	1/8/97, 62 FR 1150.

Note: The Attainment plans typically also address CAA provisions relating to progress.

Our proposed action was requested by the California Air Resources Board (CARB) because the State is in the process of making comprehensive updates and enhancements to most of its air quality plans and budgets, which will include much more accurate motor vehicle emission information than existing SIPs. California wishes to replace the existing approved budgets as soon as possible so that the new budgets can be used in conformity. Normally, new budgets that replace existing budgets in approved plans cannot be used until the corresponding plans have been fully approved as part of the SIP. However, if approval of the existing budgets expires when we determine that the new budgets are adequate (as we proposed), the superior new budgets can be then employed in transportation conformity determinations within a few months of their submission, rather than only when the SIP is finally approved, which could take as long as 18 months.

In a June 14, 2002, letter from Mike Kenny, CARB Executive Officer, to Wayne Nastri, EPA Region 9 Regional Administrator, CARB states that the new plan revisions will benefit air quality and strengthen the SIPs by incorporating: New federally enforceable commitments and control measures; new and updated data that reflect the various emission control rules adopted since the old SIPs were developed; recent vehicle test data for cars and trucks to better represent real-world emissions; and updated vehicle registration data and activity data. The CARB letter concludes: "Without the ability to replace existing budgets with submitted ones using the budget adequacy process, the benefits of using the updated data from the stronger, more effective SIPs would not be realized for a year or more after the SIPs are submitted, due to the SIP approval process." In response, we proposed to modify our approvals of the California SIPs in light of the age of the motor vehicle data in the existing SIPs and the improvements to be included in the new SIPs.

Today's final action is not intended to modify the generally applicable rules regarding when submitted budgets become effective for the purposes of transportation conformity. Rather, today's action sets forth a means to accommodate the State's request to allow for the prompt use of new more accurate budgets in California within the bounds of existing regulatory and statutory requirements.

II. Public Comments

We received three comments: one letter of support, one letter requesting clarification, and one letter opposing the proposed action. We summarize and respond to the comments below.

A. Comments From Georgia

A letter of support was submitted jointly by the Environmental Protection Division of the Georgia Department of Natural Resources, the Georgia Regional Transportation Authority, and the Atlanta Regional Commission. These agencies supported the flexibility being proposed for California and encouraged its wide application for other nonattainment and maintenance areas:

The Agencies are in complete support of the proposed EPA action, in California and elsewhere, as it will eliminate the lengthy SIP approval process currently needed to replace existing SIP budgets, and will enable a quicker, smoother transition to motor vehicle emissions budgets which more accurately reflect current conditions-with the ultimate end being improved alignment between mobile source emission estimates used in both the SIP and the transportation plan and program. By reducing the potential delay experienced before new budgets may be utilized and by reducing the associated risk to the transportation planning process, we believe that this rulemaking also provides an incentive for nonattainment and maintenance areas to revisit their approved budgets more frequently. This would improve the air quality planning process, and ultimately air quality, by causing newer and better planning assumptions to be incorporated into SIPs more often. Therefore, we encourage EPA to provide the flexibility contained in this rulemaking throughout the country, especially in those areas, such as Atlanta, where there is an active and effective interagency consultation process.

Response: We appreciate the support of the Environmental Protection Division of the Georgia Department of Natural Resources, the Georgia Regional Transportation Authority, and the Atlanta Regional Commission for this action on SIPs in California. In response to their request that we extend this flexibility to all nonattainment and maintenance areas, we can only do so under certain specific circumstances. First, a state must acknowledge that its currently approved budgets have become outdated or are deficient. Second, the state must make a commitment to update these budgets as part of a comprehensive update of its SIP. Third, a state must request that EPA limit the duration of the approval of the state's current approved SIPs. If a state meets all of these criteria, it would be appropriate to allow that state also to take advantage of this flexibility.

California has committed to undertake comprehensive updates of nearly two dozen attainment demonstrations and/or maintenance plans. Many of these plans have not been updated in the last eight years. In that time much has been learned about motor vehicle emissions and many planning assumptions have been updated. As discussed above, California has sent a letter to EPA formally requesting that we limit the duration of the State's currently approved SIPs. Therefore, California has fulfilled the criteria necessary to receive this flexibility and we believe it is now appropriate to limit our prior SIP approvals and allow new budgets that come from these revised SIPs and reflect much better information to be used for conformity after they are found adequate.

B. Comments From Miwok Indians

The following comments were submitted on behalf of the Shingle Springs Band of Miwok Indians ("Tribe").

1. *EPA should clarify that projects from federally approved transportation plans may continue if new budgets apply.*

Response: In general, the establishment of new applicable budgets would not affect projects incorporated in approved regional transportation plans (RTPs) and transportation improvement plans (TIPs). A conformity determination remains valid even if we later, upon further analysis, find new budgets applicable. The fact that new information became available that changed the applicable budgets does not affect a prior conformity determination; a subsequent conformity determination would take the new information into account. However, whether or not a new budget applies, a project carried forward into a new RTP or TIP must be analyzed, together with all other federally supported highway and transit activities, to demonstrate that the RTP or TIP as a whole is consistent with the SIP, using the latest planning assumptions, the approved motor vehicle emissions factor model, and the currently applicable budgets. Also, regardless of which budget applies, the Metropolitan Planning Organization (MPO) may elect not to include any project in the next RTP or TIP for the area.

2. *EPA failed to include proposed regulatory language in the proposal.*

Response: We are not obligated to issue rule language in a proposed rulemaking, and generally do not do so in actions on State plans. We believe that the proposed rulemaking was clear in expressing our intended action.

C. Comments From Marc Chytilo

Marc Chytilo submitted comments on behalf of Transportation Solutions Defense and Education Fund, Communities for a Better Environment, Our Children's Earth Foundation, Earthjustice, Sierra Club, Latino Issues Forum, and Urban Habitat. Mr. Chytilo objected to the proposal for several reasons, which are summarized and discussed below.

[1] The adequacy process is explained at 40 CFR 93.118(e)(4) and (5), and in a May 14, 1999 memo from Gay MacGregor, Director, Regional and State Programs Division, Office of Mobile Sources, entitled, "Conformity Guidance on Implementation of March 2, 1999 Conformity Court Decision."

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1. *EPA's rulemaking record must disclose that ARB's proposed action is being undertaken to avoid statewide conformity issues by replacing the emissions budgets used to demonstrate attainment in currently approved SIPs with enlarged emissions budgets that have no demonstrated relationship to attainment of the NAAQS. ARB has apparently not clearly committed to review the adequacy of prior attainment demonstrations, or submit new demonstrations, as part of its current plan to develop revised MVEBs using current estimates of motor vehicle emissions.*

Response: The purpose of our action is to expedite use of new budgets based on updated planning data and models, and consistent with comprehensive new progress, attainment, and maintenance plans. We expect that the new budgets would have a demonstrated relationship to attainment and maintenance of the NAAQS, and we would not find the new budgets adequate if that were not the case. We can find the budgets adequate only if the plans meet all the criteria in § 93.118(e)(4), as discussed below in response to comment 3. In fact, we expect that the use of updated information on motor vehicle emissions, emissions of other pollutant categories, air quality data, and air quality assessments in revised plans should strengthen the relationship of the budgets to the demonstrations of attainment and maintenance in each affected area.

2. *The proposed action is inconsistent with the statute, judicial interpretations, and EPA's previous interpretations. a. CAA section 176(c) requires conformity using the EPA approved or promulgated implementation plan.*

Response: Our proposal to terminate the approval of existing budgets in certain California SIPs at the time of an adequacy finding for new budgets does not conflict with judicial interpretations or CAA section 176(c). As discussed below, our transportation conformity regulations do allow for submitted budgets to apply following our determination of adequacy but before SIP approval, under circumstances detailed in 40 CFR 93.118(e). Although the court in *Environmental Defense Fund* v. *EPA et al.*, 167 F.3d 641 (D.C. Cir. 1999) remanded 40 CFR 93.118(e)(1), the offending provision was an automatic assumption of adequacy 45 days after the SIP was submitted, unless before that date we determined that the budgets were inadequate. The court did not remand the other regulatory provisions relating to use of adequate budgets, and our proposal is entirely consistent with the our current regulations. In addition, the fourth circuit also recently found it appropriate to use submitted budgets that had been found adequate where no prior approved budget was in place. *See* 1000 *Friends of Maryland* v. *Browner*, 265 F.3d 216 (4th Cir. 2001).

Our proposal provides a mechanism for enhancing compliance with the CAA section 176(c)(1) requirement that "[t]he determination of conformity shall be based on the most recent estimates of emissions. * * *" Absent our proposed mechanism, transportation conformity determinations in these areas of California would need to be based on budgets and air quality plans that may have been prepared more than eight years ago until we complete comprehensive review of the air quality plans, propose rulemaking, and issue final approval of the budgets and plans. This period may take as much as 18 months from the date on which the plans and budgets were submitted. Under our proposed mechanism, transportation planning organizations must use new budgets that are based upon updated air quality plans using the most recent emissions estimates, as soon as we find these budgets to be adequate under the provisions of 40 CFR 93.118, a process that is generally completed within approximately 90 days from the submittal date.

b. *EPA's conformity regulations (40 CFR 93.118(e)) provide that submitted SIPs do not supersede budgets in approved SIPs for the period of years addressed by the approved implementation plan.*

Response: As mentioned, our proposal to terminate the approval of existing budgets in certain SIPs at the time of an adequacy finding for new budgets does not change our transportation conformity regulations, which allow for use of a budget prior to SIP approval in cases where there is no budget approved in the SIP for the same year and CAA requirement (40 CFR 93.118(e)). By terminating our approval of the existing budgets on the date that we find new, revised budgets to be adequate, we eliminate the old budgets from the approved SIP and thus allow the new budgets to apply under the conformity rules for purposes of transportation conformity. In this manner, our proposed action provides an option, within the framework of our existing regulations, for accelerating the air quality and transportation benefits of basing transportation plans and conformity determinations on California's new and improved plans and budgets, in lieu of the outdated SIPs and budgets that were developed and adopted, in many cases, eight years ago.

Before the revised budgets may go into effect, however, we must first review both the budgets and the air quality plans and make a finding that these updated budgets are adequate. Our finding must follow the procedures and criteria in 40 CFR 93.118 (e)(4) and (5), and the guidance contained in the EPA Guidance Memorandum from Gay MacGregor to Regional Air Directors entitled "Conformity Guidance on the Implementation of the March 2, 1999 Conformity Court Decision" (May 14, 1999). Therefore, our proposed mechanism for allowing use of these new budgets complies with the 40 CFR 93.118(e) provisions in our transportation conformity regulations, and our findings on the adequacy of the budgets in the submittals will comply with all applicable provisions of the regulations.

3. *EPA may attempt to find budgets adequate based on incomplete and/or patently inadequate SIPs, creating great uncertainty in air quality and transportation planning processes while compromising air quality and public health.*

Response: We will follow the statutory criteria and the regulatory criteria in 40 CFR 93.118(e)(4) and (5) for finding submitted budgets adequate. Among other mandated findings, we must analyze the budget and air quality plan and determine that the following provisions of 93.118(e)(4) have been met:

(iv) The motor vehicle emissions budget(s), when considered together with all other emissions sources, is consistent with applicable requirements for reasonable further progress, attainment, or maintenance (whichever is relevant to the given implementation plan submission);

(v) The motor vehicle emissions budget(s) is consistent with and clearly related to the emissions inventory and the control measures in the submitted control strategy implementation plan revision or maintenance plan; and

(vi) Revisions to previously submitted control strategy implementation plans or maintenance plans explain and document any changes to previously submitted budgets and control measures; impacts on point and area source emissions; any changes to established safety margins * * *; and reasons for the changes (including the basis for any changes related to emission factors or estimates of vehicle miles traveled).

If the SIPs are incomplete or inadequate or otherwise fail to meet applicable requirements in our transportation conformity regulations, we will not determine the new budgets

adequate, and the existing budgets will continue to apply. Additionally, the public will have the opportunity to comment on both California's proposed SIP revisions and on our adequacy findings. We will take all submitted comments into account when making adequacy determinations.

4. *EPA previously rejected this interpretation in the 1997 conformity regulations: "Although EPA acknowledges that using updated budgets may be preferable, EPA does not believe that it is legal to allow a submitted SIP to supersede an approved SIP for years addressed by the approved SIP. As stated in the proposal, Section 176(c) specifically requires conformity to be demonstrated to approved SIPs." 62 FR 43783.*

Response: Again, our proposal would not amend the existing regulation, which provides that "submitted implementation plans do not supersede the motor vehicle emissions budgets in approved implementation plans for the period of years addressed by the approved implementation plan." 40 CFR 93.118(e)(1). California has requested that we approve its request to terminate the approval of the existing budgets when we find new budgets to be adequate, as a means of complying with the regulation while reducing the period of time before which the new budgets can be used for transportation planning purposes. There is nothing in the law or regulations that prohibits us from limiting the duration of a SIP approval if it is requested by the state. If our approval expires and there is no approved SIP with budgets for a given year and CAA purpose, then adequate budgets for that year and CAA purpose can apply for conformity. We agree with the State that, for the SIPs identified above in Table 1, the benefits of speeding the applicability of the new budgets are considerable. This is primarily because the existing California SIPs and budgets were developed, adopted, and approved many years ago, and new budgets and SIPs for these areas are expected to be based on comprehensively updated and enhanced information and control measures. We are taking this action because California has acknowledged the age of the information in the existing SIPs, has requested that we limit the duration of the approval, and has committed to submit new SIPs which include superior motor vehicle emissions data. We continue to agree with the State that in these cases it would provide an advantage to air quality and public health protection if the new budgets could be used once we find them to be adequate before comprehensive rulemaking on the new attainment, progress, and maintenance submittals can be completed.

5. *Budget adequacy can only be based on valid, modeled attainment demonstrations. Budgets must be demonstrated through modeling to be consistent with attainment, maintenance, and rate of progress.*

Response: We expect that the new SIP submittals will document the consistency of the budgets and the attainment, maintenance, and rate of progress plan elements, as applicable, and we cannot find them adequate if they do not. However, while ambient modeling is required for most attainment plans, it is not mandatory for maintenance plans and it is not a relevant exercise for rate of progress plans, which address CAA-specified schedules of emission reductions from a SIP emissions baseline level.

6. *The proposed rulemaking is silent on the standards that EPA will employ in determining the adequacy of control strategies achieving emissions reductions necessary to accomplish attainment. The proposed strategy is unlawful to the extent that the State relies on enforceable commitments to submit later demonstrations that the NAAQS will be attained if higher estimates of motor vehicle emissions are allowed, and subsequent enforceable measures will be submitted to make up for excess emissions resulting from enlarged budgets. EPA's reliance upon mere "enforceable commitments" to accomplish further emissions reductions necessary for attainment, maintenance or rate of progress is patently illegal.*

Response: The standards we use to determine whether control strategies in a submitted SIP are approvable were not explicitly set forth in the proposal. As mentioned earlier, the standards for finding budgets adequate are found in the conformity rule at 40 CFR 93.118(e)(4) and (5). Since areas can account for the air quality benefit of control measures not yet implemented but which are defined in a written commitment, it is appropriate to find a SIP adequate for conformity purposes even if it contains written commitments.

The comment raises potential SIP approval issues, which could be germane to our future rulemaking on the new plan submittals. If the commenter believes that these approval issues arise at that time, we invite the commenter to submit comments specific to the submitted SIPs during the public comment periods associated with our rulemaking on the plans. In today's action, we are simply limiting the time frame of prior approvals of budgets and are not approving any new plan submittals.

7. *EPA cannot rely on its failure to conform its regulations to the Court's remand in EDF* versus *EPA as a basis for conducting a state-specific rulemaking that attempts to avoid the national rulemaking process required by Congress for promulgation of conformity regulations.*

Response: The commenter indicates that we are taking this action to limit the approval of California's SIPs because we have not yet revised the conformity regulation to reflect the court's March 2, 1999, decision on the EDF lawsuit. However, this action is not connected to the March 2, 1999, court decision. We are taking this action in response to a request from California to revise the approval of attainment demonstrations and maintenance plans within the State based upon the age of the information in those plans. We would have to act on this request whether or not we had revised the conformity regulation in response to the court's March 2, 1999, decision.

Our action to limit the approval of California's SIPs does not make any change to the existing transportation conformity rule or to the way it is normally implemented with respect to other submitted and approved SIPs, but rather applies narrowly to the specific SIPs and circumstances as discussed above. Since we are not changing the federal conformity regulation we do not need a national rulemaking. We are acting appropriately in that we are taking a local action to amend the approval of attainment demonstrations and maintenance plans within one state at the request of that state. In any event, we are conducting rulemaking proceedings, are considering all submitted comments, and have coordinated with the U.S. Department of Transportation on this action.

We are approving California's commitment to revise the currently approved budgets; therefore, we want our approval of the current budgets to last only until adequate revised budgets are submitted pursuant to the commitment. We believe the revised budgets should apply as soon as we find them adequate; we do not believe it is appropriate to wait until we have approved the revised attainment demonstrations and/or maintenance plans. This is because we know now that once we have confirmed that the revised budgets are adequate, they will be more appropriate than the originally approved budgets for conformity purposes.

Specifically, once California has updated the currently approved SIPs to

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reflect all current control measures and the latest information on vehicle emissions, the appropriate motor vehicle emissions budgets should reflect those measures and vehicle emission information. Otherwise, the budget would not be the level of motor vehicle emissions that is consistent with the attainment demonstrations or maintenance plans.

If we do not clarify our approval of the current budgets, California will revise the budgets as committed, but they would not be able to use them for conformity purposes until the SIPs were approved. This would defeat the purpose of California's commitment for the budgets to be revised quickly to incorporate updated more accurate information. In contrast, according to today's proposal, the revised budgets could be used for conformity after we have completed our adequacy review process, which we generally complete within 90 days after revisions are submitted, provided they are adequate. Today's action is consistent with the court's decision. The court held that budgets could not automatically become adequate after a certain period of time, but that we must make an affirmative finding on the adequacy of budgets after allowing the public the opportunity to comment. We will be making a finding of adequacy before the new submitted budgets are used.

8. *Enforceability issues are muddled. If revised control strategies are not fully consistent with strategies in the approved SIP, industry may be able to sue to enforce the approved SIPs' less effective control measures until the effective date of EPA's approval of revised SIPs.*

Response: We do not believe that this comment is relevant to our proposed rulemaking, which deals with the replacement of budgets, not control measures. In addition, we do not anticipate that this will be a problem since the control measures in the submitted SIPs would have to be enforceable at the State level prior to submission to EPA.

9. *Commenter is adversely affected by EPA's action, which will permit the expenditure of federal transportation funds on projects that fail to reduce air pollution emissions and thus cause or contribute to unhealthful air quality. EPA's action will promote single occupancy vehicle travel rather than creating viable alternative transportation systems.*

Response: The commenter did not explain how our proposed action would promote single occupancy vehicle travel or fail to promote alternative transportation systems. Our proposed action does not permit the expenditure of federal transportation funds. We merely propose to terminate the approval of existing budgets for specified SIPs on the effective date of our adequacy finding, if any, on new budgets. Further, we cannot find any new budgets adequate unless they are consistent with attainment, progress, and maintenance of the air quality standards. Before federal transportation funds are awarded, the MPO must make a conformity determination on its long range plan and transportation improvement program. The public has the opportunity to comment on the content of the long range plan, transportation improvement program and conformity determination. The Federal Highway Administration and Federal Transit Administration must also determine the conformity of federally funded or approved highway and transit plans, programs, and projects to the applicable budget, based on the conformity determination prepared by the metropolitan planning organization for the area prior to awarding any federal funds.

10. *The venue for any petition for review of the proposed action will lie in the U.S. Court of Appeals for the Ninth Circuit pursuant to Section 307(b).*

Response: We agree with this comment.

11. *Transportation plans, programs, and project approvals based on budgets that are subsequently determined to not be adequate as part of a judicial proceeding or SIP disapproval without a protective finding are subject to suspension, unless the project demonstrates a net air quality improvement or conformity exemption.*

Response: We are not proposing any change in the transportation conformity regulations, which set out the consequences of SIP disapproval at 40 CFR 93.120(a). However, under 40 CFR 93.118(e)(3), conformity determinations made to adequate budgets are not disturbed by subsequent findings of inadequacy.

12. *Because the proposed action deviates from each area's SIP relating to conformity criteria, procedures, and regulations, each area's SIP will need to be revised to reflect the ad hoc exemption from the national conformity rules.*

Response: The San Francisco Bay Area has approved SIP regulations for transportation conformity. The remaining responsible California air quality agencies for the areas listed in Table 1 do not have approved SIP rules addressing transportation conformity, but rather comply with the Federal transportation conformity regulations at 40 CFR part 93, Subpart A. As mentioned above, we are not changing these Federal regulations in this action. We will ensure that the responsible California agencies, if they elect to adopt a revision to their attainment, progress, or maintenance SIPs and establish replacement budgets, do so through a process consistent with the applicable transportation conformity regulations, and that this process clearly identifies that one of the consequences of adopting and submitting a revised budget would be the termination of our approval of the existing budget if and when we find the replacement budget adequate.

13. *Commenter calls upon the State to aggressively develop statewide transportation control measures for the 2003 SIPs, including the commuter choice program; state and federal tax incentives for parking cash out; promotion of regional transit systems; and smart growth.*

Response: While we support the development of transportation control measures (TCMs) as components of SIPs, including such measures as the commenter advocates, we do not consider the comment germane to our action to limit approval of past SIPs, nor do we have a position with respect to the appropriateness of statewide TCMs as opposed to regional or local TCMs.

III. Final Action

For the reasons stated above, and in the July 16, 2002, proposal, we are taking final action to limit the duration of our approvals of budgets in the existing SIPs identified in Table 1. In all other respects, the Table 1 SIPs will remain federally approved and enforceable unless and until we finalize approval of revised plans, and our limitations apply only to the extent that any new plans that we find adequate explicitly supersede the approved SIPs.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

B. Executive Order 13045

Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

C. Executive Order 13132

Executive Order 13132, entitled Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612, Federalism and 12875, Enhancing the Intergovernmental Partnership. Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely modifies certain previous SIP approval actions and imposes no additional requirements beyond those imposed by state law. The rule does not therefore alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

D. Executive Order 13175

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

This final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

E. Executive Order 13211

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

F. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This final rule will not have a significant impact on a substantial number of small entities because these modifications of SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements. Therefore, because the Federal modification of certain previous SIP approvals does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

G. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the modification of certain prior SIP approvals does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

H. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

EPA believes that VCS are inapplicable to today's action because it does not require the public to perform activities conducive to the use of VCS.

I. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small

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Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

J. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 14, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: November 5, 2002.

Alexis Strauss,

Acting Regional Administrator, Region IX.

Part 52, chapter I, title 40 of the CFR is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

2. Section 52.244 is added to read as follows:

§ 52.244 Motor vehicle emissions budgets.

(a) Approval of the motor vehicle emissions budgets for the following ozone rate-of-progress and attainment SIPs will apply for transportation conformity purposes only until new budgets based on updated planning data and models have been submitted and EPA has found the budgets to be adequate for conformity purposes.

(1) Antelope Valley, approved January 8, 1997;

(2) Coachella, approved January 8, 1997;

(3) Kern, approved January 8, 1997;

(4) Mojave, approved January 8, 1997;

(5) Sacramento, approved January 8, 1997;

(6) South Coast, approved April 10, 2000;

(7) Ventura, approved January 8, 1997.

(b) Approval of the motor vehicle emissions budgets for the following ozone maintenance SIP will apply for transportation conformity purposes only until new budgets based on updated planning data and models have been submitted and EPA has found the budgets to be adequate for conformity purposes.

(1) Monterey, approved January 17, 1997.

(2) [Reserved].

(c) Approval of the motor vehicle emissions budgets for the following carbon monoxide maintenance SIPs will apply for transportation conformity purposes only until new budgets based on updated planning data and models have been submitted and EPA has found the budgets to be adequate for conformity purposes.

(1) Bakersfield, approved March 31, 1998;

(2) Chico, approved March 31, 1998;

(3) Fresno, approved March 31, 1998;

(4) Lake Tahoe-North, approved March 31, 1998;

(5) Lake Tahoe-South, approved March 31, 1998;

(6) Modesto, approved March 31, 1998;

(7) Sacramento, approved March 31, 1998;

(8) San Diego, approved March 31, 1998;

(9) San Francisco Bay Area, approved March 31, 1998;

(10) Stockton, approved March 31, 1998.

(d) Approval of the motor vehicle emissions budgets for the following nitrogen dioxide maintenance SIP will apply for transportation conformity purposes only until new budgets based on updated planning data and models have been submitted and EPA has found the budgets to be adequate for conformity purposes.

(1) South Coast, approved on July 24, 1998.

(2) [Reserved].

[FR Doc. 02–28919 Filed 11–14–02; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 405 and 419

[CMS–1206–CN]

RIN 0938–AL19

Medicare Program; Changes to the Hospital Outpatient Prospective Payment System and Calendar Year 2003 Payment Rates; and Changes to Payment Suspension for Unfiled Cost Reports; Correction

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Correction of final rule with comment period.

SUMMARY: This document corrects errors that appeared in the final rule with comment period published in the **Federal Register** on November 1, 2002 entitled "Changes to the Hospital Outpatient Prospective Payment System and Calendar Year 2003 Payment Rates; and Changes to Payment Suspension for Unfiled Cost Reports." This notice is a supplement to the November 1, 2002 final rule with comment period.

EFFECTIVE DATE: November 1, 2002.

FOR FURTHER INFORMATION CONTACT: Anita Heygster, (410) 786–0378.

SUPPLEMENTARY INFORMATION:

I. Background

In FR Doc. 02–27548 of November 1, 2002 (67 FR 66718), we omitted addresses and instructions for submitting public comments and language that justified waiving notice and comment procedures for two specific policies. This notice is a supplement to the November 1, 2002 final rule with comment period, and sets forth our rationale for waiving the notice and comment period for certain provisions. More detail regarding this correction is provided in the Correction of Errors section below. The provisions in this correction notice are effective as if they had been included in the document published November 1, 2002. Accordingly, the corrections are effective January 1, 2003.

II. Correction of Errors

In FR Doc. 02–27548 of November 1, 2002 (67 FR 66719), make the following corrections:

1. On page 66718, at the top of the second column, immediately preceding the heading **FOR FURTHER INFORMATION CONTACT**, insert the following language:

"**ADDRESSES:** In commenting, please refer to file code CMS–1206–FC.

Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission. Mail written comments (one original and two copies) to the following address only: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1206–FC, P.O. Box 8018, Baltimore, MD 21244–8018.

Please allow sufficient time for mailed comments to be timely received in the event of delivery delays.

If you prefer, you may deliver (by hand or courier) your written comments (one original and two copies) to one of the following addresses: Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or Room C5–14–03, 7500 Security Boulevard, Baltimore, MD 21244–1850. (Because access to the interior of the HHH Building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.) Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and could be considered late.

Inspection of Public Comments: Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, call (410) 786–7197."

2. On page 66813, at the end of the first column, insert the following section:

"XVI. Waiver of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** and invite public comment on the proposed rule. The notice of proposed rulemaking includes a reference to the legal authority under which the rule is proposed, and the terms and substances of the proposed rule or a description of the subjects and issues involved. This procedure can be waived, however, if an agency finds good cause that a notice-and-comment procedure is impracticable, unnecessary, or contrary to the public interest and incorporates a statement of the finding and its reasons in the rule issued.

While this final rule with comment finalizes provisions set forth in the August 9, 2002 proposed rule (67 FR 52092), the following policies were not included in that rule and are subject to comment. We are issuing APC assignments for codes that are new for 2003 as final with comment because we believe that it is necessary to avoid harm to hospitals and beneficiaries and because it is necessary to implement the requirements of the HIPAA when it becomes effective for all providers and payers in October 2003. Specifically, APC assignments for new codes are necessary for hospitals to be able to report the services they furnish and to be properly paid for them. To do otherwise would leave hospitals no other option but to report incorrect codes and to receive incorrect payments for the services that should be reported under the new codes. New HCPCS codes for the forthcoming year are not announced by the American Medical Association (with regard to the current procedural terminology, CPT portion of HCPCS) and by CMS (with regard to the alpha numeric portion of HCPCS) until September of each year for the forthcoming year. Hence, CMS is not able to include most new codes and proposed APC assignments in its annual notice of proposed rulemaking for OPPS. Where possible, we do include mid year G codes and proposed codes in the proposed rule but these represent a very limited subset of the many changes that occur in HCPCS coding each year.

Similarly, recognition of new codes for 2003 is necessary for both CMS and hospitals to comply with the requirements of HIPAA that will require all providers to use HCPCS codes no later than October 16, 2003. For CMS to not recognize HCPCS codes that are new for 2003 until 2004 would be to violate these requirements.

We are issuing the change to our policy regarding influenza and pneumococcal pneumonia vaccines as final with comment because we believe that this change in policy is necessary to protect the health of the Medicare population. As we discussed previously this notice is a supplement to the November 1, 2002 final rule with comment period. In this preamble, we have had considerable discussions in which we have been advised by providers that OPPS payment was insufficient for them to be able to guarantee that they would be able to offer these important vaccines to the Medicare patients they treat. They cited the timing of updates to the OPPS (which go into effect in January, 9 months before the start of the flu and PPV immunization season) and the volatility of the costs as a result of irregular supplies as their main concern. Each year a new vaccine is produced; the cost of the vaccine is frequently higher than the previous year's cost. Thus from September through December, providers paid under the OPPS for administering flu vaccines (which include home health agencies, which immunize many beneficiaries, homebound and otherwise) do not receive benefit of the update that will occur the following January. We believe that paying for influenza and PPV vaccines based on reasonable cost is the best way we can ensure that we maximize the potential for providers to secure the vaccine they need to immunize the Medicare population and that therefore, implementing this change as a final policy with public comment is justified.

Therefore, we find good cause to waive notice and comment procedures and to implement these policies as final with a comment period. We are providing a 60-day public comment period.

III. Waiver of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** to provide a period for public comment before the provisions of a rule take effect. We can waive this procedure, however, if we find good cause that notice and comment procedure is impracticable, unnecessary, or contrary to the public interest and incorporate a statement of the finding and the reasons for it into the rule issued.

For the two policies addressed above in Section II., Correction of Errors, and for the reasons set forth in that section, we find it unnecessary to undertake notice and comment rulemaking. Therefore, we find good cause to waive notice and comment procedures.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: November 6, 2002.

Ann Agnew,

Executive Secretary to the Department.

[FR Doc. 02–29075 Filed 11–14–02; 8:45 am]

BILLING CODE 4120–01–P

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 011109274–1301–02; I.D. 101602E]

Fisheries of the Northeastern United States; Black Sea Bass Fishery; Commercial Quota Harvested for Quarter 4 Period

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS announces that the black sea bass commercial quota available in the Quarter 4 period to the coastal states from Maine through North Carolina has been harvested. Commercial vessels may not land black sea bass in these states north of 35°15.3' N. lat. for the remainder of the 2002 Quarter 4 quota period (through December 31, 2002). Regulations governing the black sea bass fishery require publication of this notification to advise the coastal states from Maine through North Carolina that the quota has been harvested and to advise vessel permit holders and dealer permit holders that no commercial quota is available for landing black sea bass in these states north of 35°15.3' N. lat.

DATES: Effective 0001 hrs local time, November 20, 2002, through 2400 hrs local time, December 31, 2002.

FOR FURTHER INFORMATION CONTACT: Richard A. Pearson, Fishery Policy Analyst, at (978) 281–9279.

SUPPLEMENTARY INFORMATION: Regulations governing the black sea bass fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota that is allocated into four quota periods, based upon percentages of the annual quota. The Quarter 4 (October through December) commercial quota is distributed to the coastal states from Maine through North Carolina. The process to set the annual commercial quota is described in § 648.140.

The total commercial quota for black sea bass for the 2002 calendar year was initially set at 3,332,000 lb (1,511,370 kg) and then adjusted downward to 3,294,758 lb (1,494,477 kg) to account for research quota set-asides (66 FR 66351; December 26, 2001). The Quarter 4 period quota, which is equal to 12.33 percent of the annual commercial quota, is 651,374 lb (295,458 kg). The quota did not have to be adjusted to compensate for 2001 Quarter 4 landings in excess of the 2001 Quarter 4 quota. However, the 2002 Quarter 4 commercial quota was increased by 4,900 lb (2,223 kg), due to the disapproval of a research project for which quota had been set aside (67 FR 56229, September 3, 2002). The final adjusted 2002 Quarter 4 quota is 656,274 lb (297,681 kg).

The Regional Administrator, Northeast Region, NMFS (Regional Administrator) monitors the commercial black sea bass quota for each quota period using dealer reports, state data, and other available information to determine when the commercial quota has been harvested. NMFS is required to publish a notification in the **Federal Register** advising and notifying commercial vessels and dealer permit holders that, effective upon a specific date, the black sea bass commercial quota has been harvested and no commercial quota is available for landing black sea bass for the remainder of the Quarter 4 period, north of 35°15.3' N. lat. The Regional Administrator has determined, based upon dealer reports and other available information, that the black sea bass commercial quota for the 2002 Quarter 4 period has been harvested.

The regulations at § 648.4(b) provide that Federal black sea bass moratorium permit holders agree, as a condition of the permit, not to land black sea bass in any state after NMFS has published notification in the **Federal Register** stating that the commercial quota for the period has been harvested and that no commercial quota for black sea bass is available. The Regional Administrator has determined that the Quarter 4 period for black sea bass no longer has commercial quota available. Therefore, effective 0001 hrs local time, November 20, 2002, further landings of black sea bass in coastal states from Maine through North Carolina, north of 35°15.3' N. lat., by vessels holding commercial Federal fisheries permits, are prohibited through December 31, 2002. The 2003 Quarter 1 period for commercial black sea bass harvest will open on January 1, 2003. Effective November 20, 2002, federally permitted dealers are also advised that they may not purchase black sea bass from federally permitted black sea bass moratorium permit holders who land in coastal states from Maine through North Carolina, north of 35°15.3' N. lat., for the remainder of the Quarter 4 period (through December 31, 2002).

The regulations at § 648.4(b) also provide that, if the commercial black sea bass quota for a period is harvested and the coast is closed to the possession of black sea bass north of 35°15.3' N. lat., any vessel owners who hold valid commercial permits for both the black sea bass and the NMFS Southeast Region snapper-grouper fisheries may surrender their black sea bass moratorium permit by certified mail addressed to the Regional Administrator (see table 1 at § 600.502) and fish pursuant to their snapper-grouper permit, as long as fishing is conducted exclusively in waters, and landings are made, south of 35°15.3' N. lat. A moratorium permit for the black sea bass fishery that is voluntarily relinquished or surrendered will be reissued upon the receipt of the vessel owner's written request after a minimum period of 6 months from the date of cancellation.

Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 8, 2002.

Bruce C. Morehead,

Acting Director, Office of Sustainable FisheriesNationol Marine Fisheries Service.

[FR Doc. 02–29084 Filed 11–12–02; 3:33 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register

Vol. 67, No. 221

Friday, November 15, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 1, 60, 61, 63, 141, and 142

[Docket No. FAA–2002–12461; Notice No. 02–11]

RIN 2120–AH07

Flight Simulation Device Initial and Continuing Qualification and Use

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); extension of comment period.

SUMMARY: This action extends the comment period for an NPRM that was published on September 25, 2002. In that document, the FAA proposed requirements to establish flight simulation device qualification requirements in a new part. This extension is a result of requests from Air Transport Association and Covington & Burling, on behalf of CAE.

DATES: Comments must be received on or before February 24, 2003.

ADDRESSES: Comments on this document should be mailed or delivered, in duplicate, to: U.S. Department of Transportation Dockets, Docket No. FAA–2002–12461, 400 Seventh Street, SW., Room Plaza 401, Washington, DC 20590. Comments may be filed and examined in Room Plaza 401 between 10 a.m. and 5 p.m. weekdays, except Federal holidays. Comments also may be sent electronically to the Dockets Management System (DMS) at the following Internet address: *http://dms.dot.gov* at any time. Commenters who wish to file comments electronically should follow the instructions on the DMS Web site.

FOR FURTHER INFORMATION CONTACT: Edward Cook, National Simulator Program Staff (AFS–205), Flight Standards Service, Federal Aviation Administration, 1701 Columbia Avenue, College Park, GA 30337; telephone (404) 305–6100.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in the NPRM, Notice No. 02–11. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also review the docket using the Internet at the web address in the **ADDRESSES** section.

Before acting on the proposals in the NPRM, Notice No. 02–11, we will consider all comments we receive on or before the closing date. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change the proposals in light of the comments we receive.

If you want the FAA to acknowledge receipt of your comments, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it to you.

Background

On September 25, 2002, the FAA published NPRM, Notice No. 02–11, Flight Simulation Device Initial and Continuing Qualification and Use (67 FR 60284). Comments to that document were to be received on or before December 24, 2002.

By letter dated October 16, 2002, the Air Transport Association requested that the FAA extend the comment period for Notice No. 02–11 until March 31, 2003. In addition, by letter dated October 24, 2002, Covington & Burling, on behalf of CAE (a flight simulation manufacturer), requested that the FAA extend the comment period for Notice No. 02–11 until March 31, 2003. The commenters noted that the NPRM was large and that a 90-day comment ending December 24, 2002, was not sufficient in order to make substantive and comprehensive comments.

The FAA agrees that additional time for comments may be needed because of the timing of the 90-day comment period. However, the FAA believes that a 90-day extension would be excessive. Therefore, the FAA believes an additional 60 days would be adequate for these entities to provide comment to Notice No. 02–11.

Extension of Comment Period

In accordance with § 11.47 of Title 14, Code of Federal Regulations, the FAA has reviewed the requests made by Air Transport Association and Covington & Burling, on behalf of CAE, for extension of the comment period to Notice No. 02–11. The FAA has found good cause for extending the comment period for 60 days. The FAA also has determined that extension of the comment period is consistent with the public interest.

Accordingly, the comment period for Notice No. 02–11 is extended until February 24, 2003.

Issued in Washington, DC, on November 7, 2002.

Louis C. Cusimano,

Acting Director, Flight Standards Service.

[FR Doc. 02–29067 Filed 11–14–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–CE–63–AD]

RIN 2120–AA64

Airworthiness Directives; Robert E. Rust Models DeHavilland DH.C1 Chipmunk 21, 22, and 22A Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Robert E. Rust (R.E. Rust) Models DeHavilland

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DH.C1 Chipmunk 21, 22, and 22A airplanes. This proposed AD would require you to inspect the fuselage to determine if a steel fuselage center-section tie bar fitted with bushings in the end lug bolt holes is installed. If this bushed steel fuselage center-section tie bar is installed, this proposed AD would decrease the safe life limit. This proposed AD is the result of reports that certain replacement steel fuselage center-section tie bars installed on the affected airplanes could fail before the originally published safe life limit. The actions specified by this proposed AD are intended to prevent early failure of these bushed steel fuselage center-section tie bars, which could result in reduced structural integrity of the wings. Such a condition could lead to loss of control of the airplane.

DATES: The Federal Aviation Administration (FAA) must receive any comments on this proposed rule on or before January 22, 2003.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–CE–63–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. You may also send comments electronically to the following address: *9-ACE-7-Docket@faa.gov*. Comments sent electronically must contain "Docket No. 2000–CE–63–AD" in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII text.

You may get service information that applies to this proposed AD from DeHavilland Support Limited, Duxford Airfield, Bldg. 213, Cambridgeshire, CB2 4QR, United Kingdom, telephone: +44 1223 830090, facsimile: +44 1223 830085, e-mail: *info@dhsupport.com*. You may also view this information at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Cindy Lorenzen, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia; telephone: (770) 703–6078; facsimile: (770) 703–6097.

SUPPLEMENTARY INFORMATION:

Comments Invited

How Do I Comment on This Proposed AD?

The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments to the address specified under the caption **ADDRESSES.** We will consider all comments received on or before the closing date. We may amend this proposed rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of this proposed AD action and determining whether we need to take additional rulemaking action.

Are There Any Specific Portions of This Proposed AD I Should Pay Attention to?

The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this proposed rule that might suggest a need to modify the rule. You may view all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each contact we have with the public that concerns the substantive parts of this proposed AD.

How Can I Be Sure FAA Receives My Comment?

If you want FAA to acknowledge the receipt of your mailed comments, you must include a self-addressed, stamped postcard. On the postcard, write "Comments to Docket No. 2000–CE–63–AD." We will date stamp and mail the postcard back to you.

Discussion

What Events Have Caused This Proposed AD?

The FAA has received reports that an unsafe condition may exist on certain R.E. Rust Models DeHavilland DH.C1 Chipmunk 21, 22, and 22A airplanes. After a review of several of these airplanes, we have determined that steel fuselage center-section tie bars, part number RD.C1.FS.107, are being installed as replacements parts. Some of these part numbers have been fitted with bushings in the end lugs to cover scored or oversized holes.

The use of bushings in the end of the lugs on these parts severely reduces the safe life limit. The original safe life limit established for the steel fuselage center-section tie bar was 30,000 fatigue hours. Fatigue hours are hours time-in-service multiplied by the role factor (operational use).

What Are the Consequences If the Condition Is Not Corrected?

This condition, if not corrected, could result in failure of the steel fuselage center-section tie bar. Such failure could lead to loss of control of the airplane.

Is There Service Information That Applies to This Subject?

British Aerospace (now DeHavilland Support Limited) has issued Mandatory Technical News Sheet No. 175, Issue: 1, dated August 1, 1985 and Mandatory Technical News Sheet No. 138, Issue 5, dated August 1, 1985.

What Are the Provisions of This Service Information?

These Technical News Sheets include procedures for inspecting the steel fuselage center-section tie bar to determine if the bolt holes in the lug have bushings and procedures for calculating fatigue hours.

The FAA's Determination and an Explanation of the Provisions of this Proposed AD

What Has FAA Decided?

After examining the circumstances and reviewing all available information related to the incidents described above, we have determined that:

—The unsafe condition referenced in this document exists or could develop on other R.E. Rust Models DeHavilland DH.C1 Chipmunk 21, 22, and 22A airplanes of the same type design;

—The actions specified in the previously-referenced service information should be accomplished on the affected airplanes; and

—AD action should be taken in order to correct this unsafe condition.

What Would This Proposed AD Require?

This proposed AD would require you to check the airplane logbook to determine if a steel fuselage center-section tie bar, part number RD.C1.FS.107, is installed on the airplane. If this part number is installed, this proposed AD would require you to inspect the end lugs to determine if bushings are installed in the bolt holes. If bushings are present, this proposed AD would also reduce the safe life of that part from 30,000 fatigue hours to 16, 000 fatigue hours.

Cost Impact

How Many Airplanes Would This Proposed AD Impact?

We estimate that this proposed AD affects 54 airplanes in the U.S. registry.

What Would Be the Cost Impact of This Proposed AD on Owners/Operators of the Affected Airplanes?

We estimate the following costs to accomplish the proposed inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
12 workhours × $60 per hour = $720	No parts required	$720	$720 × 54 = $38,880

We estimate the following costs to accomplish any necessary replacements that would be required based on the results of the proposed inspection. We have no way of determining the number of airplanes that may need such replacement:

Labor cost	Parts cost	Total cost per airplane
80 workhours × $60 per hour = $4,800	$2,250	$4,800 + $2,250 = $7,050

Regulatory Impact

Would This Proposed AD Impact Various Entities?

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposed rule would not have federalism implications under Executive Order 13132.

Would This Proposed AD Involve a Significant Rule or Regulatory Action?

For the reasons discussed above, I certify that this proposed action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new airworthiness directive (AD) to read as follows:

Robert E. Rust: Docket No. 2000–CE–63–AD.

(a) *What airplanes are affected by this AD?* This AD affects R.E. Rust Models DeHavilland DH.C1 Chipmunk 21, 22, and 22A airplanes, serial numbers C1–001 through C1–1014, that are type certificated in any category.

Note 1: We recommend all owners/operators of DeHavilland DH.C1 Chipmunk 21, 22, and 22A airplanes, serial numbers C1–001 through C1–1014, with experimental airworthiness certificates comply with the actions required in this AD.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to prevent failure of the steel fuselage center-section tie bar prior to the originally published safe life, which could result in reduced structural integrity of the wings. Such a condition could lead to loss of control of the airplane. Steel fuselage center-section tie bars fitted with bushings in the end lug bolt holes have a reduced safe life of 16,000 fatigue hours.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) Check the airplane logbook to determine if a steel fuselage center-section tie bar, part number (P/N) RD.C1.FS.107, is installed. Initial steel tie bar fitments were done under cover of Repair Drawings R.C1.FS.191 and RD.C1.FS.106. Later these drawings were included in Modification H.288 so fitment may be logged under either.	Upon accumulating 16,000 fatigue hours or within the next 100 hours time-in-service (TIS) after the effective date of this AD, whichever occurs later.	The owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7) may check the airplane logbook. Calculate fatigue hours by multiplying the TIS by the role factor in accordance with British Aerospace Mandatory Technical News Sheet Series: Chipmunk (C1), No. 138, Issue: 5, dated August 1, 1985.
(2) If, by checking the airplane logbook, you can positively determine that a steel fuselage center-section tie bar, P/N RD.C1.FS.107, is not installed: (i) you must make an entry into the aircraft records that shows compliance with paragraphs (d)(1) and (d)(2) of this AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9); and (ii) continue to comply with the published life limits of the installed tie bar.	Not applicable	The owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7) may check the airplane logbook.

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Actions	Compliance	Procedures
(3) If, by checking the airplane logbook, you determine that a steel fuselage center-section tie bar, P/N RD.C1.FS.107, is installed, or cannot positively show that one is not installed: (i) inspect the lug bolt holes to determine if bushings have been installed; (ii) if bushings have been installed, the safe life limit for that part is now 16,000 fatigue hours; (iii) if bushing have not been installed, the safe life limit for that part remains at 30,000 fatigue hours; and (iv) make an entry into the aircraft records that shows compliance with this portion of the AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).	Prior to further flight after the logbook check required in paragraph (d)(1) of this AD.	In accordance with British Aerospace Mandatory Technical News Sheet No. 175, Issue 1, dated August 1, 1985.
(4) The following are the safe life limit for steel fuselage center-section tie bars, P/N RD.C1.FS.107: (i) If fitted with bushings in the end lug bolt holes: 16,000 fatigue hours; and (ii) If not fitted with bushings in the end lug bolt holes: 30,000 fatigue hours.	As of the effective date of this AD.	Not applicable.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Atlanta Aircraft Certification Office (ACO), approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Cindy Lorenzen, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia; telephone: (770) 703–6078; facsimile: (770) 703–6097.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under §§ sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *How do I get copies of the documents referenced in this AD?* You may get copies of the documents referenced in this AD from DeHavilland Support Limited, Duxford Airfield, Bldg. 213, Cambridgeshire, CB2 4QR, United Kingdom, telephone: +44 1223 830090, facsimile: +44 1223 830085, e-mail: info@dhsupport.com. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on November 6, 2002.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–28999 Filed 11–14–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NE–27–AD]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney JT8D–1, –1A, –1B, –7, –7A, –7B, –9, –9A, –11, –15, –15A, –17, –17A, –17R, and –17AR Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Federal Aviation Administration (FAA) proposes to adopt a new airworthiness directive (AD) that is applicable to Pratt & Whitney JT8D–1, –1A, –1B, –7, –7A, –7B, –9, –9A, –11, –15, –15A, –17, –17A, –17R, and –17AR turbofan engines. This proposal would require removal from service of certain part number (P/N) 3rd–4th and 4th–5th stage compressor rotor spacer assemblies and incorporation of a new tierod retention configuration. This proposal is prompted by two reports of uncontained failure of JT8D turbofan engines, caused by turbine rotor overspeed resulting from first and second stage fan section separation from the low pressure compressor (LPC). The actions specified by the proposed AD are intended to prevent first and second stage fan section separation from the LPC, resulting in turbine rotor overspeed, uncontained engine failure, and damage to the airplane.

DATES: Comments must be received by January 14, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–NE–27–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location, by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Comments may also be sent via the Internet using the following address: "*9-ane-adcomment@faa.gov*". Comments sent via the Internet must contain the docket number in the subject line.

The service information referenced in the proposed rule may be obtained from Pratt & Whitney, 400 Main St., East Hartford, CT 06108; telephone (860) 565–8770; fax (860) 565–4503. This information may be examined, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Christopher Spinney, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7175, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NE–27–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–NE–27–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

The FAA has received two reports of turbine rotor overspeed resulting in uncontained engine failure on JT8D turbofan engines. The overspeeds resulted from separation of the first and second stage fan section from the rear stages of the LPC. The separations resulted from LPC tierod fractures, which were caused by fretting due to spacer-to-disk snap diameter looseness. The manufacturer has determined that incorporating a tighter snap diameter fit by installing new design or modified parts and incorporating increased sleeve-to-tierod clearances will reduce the number of tierod fractures due to fatigue initiated by fretting. Installation of the new tierod retention configuration will reduce the likelihood of a single tierod fracture damaging the remaining tierods. This condition, if not corrected, could result in a first and second stage fan section separation from the LPC, uncontained engine failure, and damage to the airplane.

Manufacturer's Service Information

The FAA has reviewed and approved the technical contents of Pratt & Whitney Service Bulletin (SB) No. JT8D 6429, dated August 23, 2002, that describes procedures for incorporating a new tierod retention configuration. Pratt & Whitney SB's No. 5409, No. SB 5716, and No. SB No. 5734 are referenced in this proposal because they provide information on modification of the parts requiring removal to make them serviceable.

FAA's Determination of an Unsafe Condition and Proposed Actions

Since an unsafe condition has been identified that is likely to exist or develop on other JT8D–1, –1A, –1B, –7, –7A, –7B, –9, –9A, –11, –15, –15A, –17, –17A, –17R, and –17AR turbofan engines of the same type design that are used on airplanes registered in the United States, the proposed AD would require at the next accessibility:

- Removing from service of 3rd–4th stage compressor rotor spacer assemblies part numbers (P/N's) 479927, 522194, 583385, 656814, 656815, 660649, 660655, 716851, 716853, 716854, 762140, 762145, 762271, 762468, 789554, and 789752 and replacement with a serviceable part.
- Removing from service of 4th–5th stage compressor rotor spacer assemblies P/N's 479929, 522196, 656816, 656817, 660650, 660656, 716855, 762138, and 762142 and replacement with a serviceable part.
- Removing from service 4th-5th stage compressor rotor spacer assemblies P/N 628778 that do not incorporate SB 5409 and replacement with a serviceable part.
- Incorporating a new tierod retention configuration in accordance with the service bulletin described previously.

Economic Analysis

There are approximately 4,180 engines of the affected design in the worldwide fleet. The FAA estimates that 1,800 engines installed on aircraft of U.S. registry would be affected by this proposed AD. The FAA also estimates that it would take approximately 41 work hours per engine to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $3,600 per engine. Based on these figures, the total cost of the proposed AD to U.S. operators is estimated to be $10,908,000.

Regulatory Analysis

This proposed rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this proposed rule.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Pratt & Whitney: Docket No. 2002–NE–27–AD.

Applicability: This airworthiness directive (AD) is applicable to Pratt & Whitney JT8D–1, –1A, –1B, –7, –7A, –7B, –9, –9A, –11, –15, –15A, –17, –17A, –17R, and –17AR turbofan engines. These engines are installed on, but

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not limited to Boeing 727 and 737 series, and McDonnell Douglas DC–9 series airplanes.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Compliance with this AD is required as indicated, unless already done.

To prevent first and second stage fan section separation from the low pressure compressor (LPC), resulting in turbine rotor overspeed, uncontained engine failure, and damage to the airplane, do the following:

(a) At the next accessibility, do the following:

(1) Remove from service 3rd–4th stage compressor rotor spacer assemblies part numbers (P/N's) 479927, 522194, 583385, 656814, 656815, 660649, 660655, 716851, 716853, 716854, 762140, 762145, 762271, 762468, 789554, and 789752 and replace with a serviceable part,

(2) Remove from service 4th–5th stage compressor rotor spacer assemblies P/N's 479929, 522196, 656816, 656817, 660650, 660656, 716855, 762138, and 762142 and replace with a serviceable part.

(3) Remove from service 4th–5th stage compressor rotor spacer assemblies P/N's 628778 that do not incorporate SB 5409, and replace with a serviceable part.

Note 2: Information on modifying parts listed in paragraphs (a)(1), (a)(2), and (a)(3) of this AD into servicable parts is contained in Pratt & Whitney (PW) SB's No. 5409, No. SB 5716, and No. SB No. 5734.

(4) Incorporate new tierods, retaining rings, 2nd stage compressor air seal or spacer assembly, flat washers and tierod nuts in the LPC in accordance with the Accomplishment Instructions of PW SB JT8D 6429, dated August 23, 2002.

(b) After the effective date of this AD, do not install 3rd–4th or 4th–5th stage compressor rotor spacer assemblies listed in paragraphs (a)(1), (a)(2), and (a)(3) of this AD into any engine.

Definition

(c) For the purpose of this AD, accessibility means removal of the LPC from the engine and disassembly that provides piece-part exposure to the parts listed in paragraph (a) of this AD.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). Operators must submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

Special Flight Permits

(e) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be done.

Issued in Burlington, Massachusetts, on November 8, 2002.

Francis A. Favara,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 02–29002 Filed 11–14–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–CE–43–AD]

RIN 2120–AA64

Airworthiness Directives; SOCATA—Groupe AEROSPATIALE Models TB 9, TB 10, TB 20, TB 21, and TB 200 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to all SOCATA—Groupe AEROSPATIALE (Socata) Models TB 9, TB 10, TB 20, TB 21, and TB 200 airplanes. This proposed AD would require you to inspect the aileron control gimbal joint for correct alignment and correct operation, and replace any misaligned or defective gimbal joint. This proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for France. The actions specified by this proposed AD are intended to prevent failure of the aileron control gimbal joint. Such failure could lead to loss of control of the airplane.

DATES: The Federal Aviation Administration (FAA) must receive any comments on this proposed rule on or before January 3, 2003.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–CE–43–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. You may also send comments electronically to the following address: *9-ACE-7-Docket@faa.gov*. Comments sent 1 electronically must contain "Docket No. 2002–CE–43–AD" in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII text.

You may get service information that applies to this proposed AD from SOCATA Groupe AEROSPATIALE, Customer Support, Aerodrome Tarbes-Ossun-Lourdes, BP 930—F65009 Tarbes Cedex, France; telephone: 011 33 5 62 41 73 00; facsimile: 011 33 5 62 41 76 54; or the Product Support Manager, SOCATA—Groupe AEROSPATIALE, North Perry Airport, 7501 Pembroke Road, Pembroke Pines, Florida 33023; telephone: (954) 893–1400; facsimile: (954) 964–4141. You may also view this information at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4146; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

How Do I Comment on This Proposed AD?

The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments to the address specified under the caption **ADDRESSES.** We will consider all comments received on or before the closing date. We may amend this proposed rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of this proposed AD action and determining whether we need to take additional rulemaking action.

Are There Any Specific Portions of This Proposed AD I Should Pay Attention To?

The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this proposed rule that might suggest a need to modify the rule. You may view all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each contact we have with the public that concerns the substantive parts of this proposed AD.

How Can I Be Sure FAA Receives My Comment?

If you want FAA to acknowledge the receipt of your mailed comments, you must include a self-addressed, stamped postcard. On the postcard, write "Comments to Docket No. 2002–CE–43–AD." We will date stamp and mail the postcard back to you.

Discussion

What Events Have Caused This Proposed AD?

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified FAA that an unsafe condition may exist on all Socata Models TB 9, TB 10, TB 20, TB 21, and TB 200 airplanes. The DGAC reported an incident involving a Model TB 9 airplane. During flight, the pilot experienced loss of aileron control. Loss of aileron control resulted because the gimbal joint became disconnected from the aileron.

The gimbal joint became disconnected from the aileron because the safety pin broke. The cause of the safety pin breaking is being investigated by the manufacturer. The result of the investigation may result in a future design change.

What Are the Consequences if the Condition Is Not Corrected?

This condition, if not corrected, could result in failure of the aileron control gimbal joint. Such failure could lead to loss of control of the airplane.

Is There Service Information That Applies to This Subject?

Socata has issued TB Aircraft Mandatory Service Bulletin SB 10–130 27, dated April, 2002.

What Are the Provisions of This Service Information?

The service bulletin includes procedures for:

—Repetitively inspecting the aileron control gimbal joint for correct alignment and correct operation; and

—Replacing misaligned or defective gimbal joints.

What Action Did the DGAC Take?

The DGAC classified this service bulletin as mandatory and issued French AD 2002–225(A), dated May 15, 2002, in order to ensure the continued airworthiness of these airplanes in France.

Was This in Accordance With the Bilateral Airworthiness Agreement?

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

Pursuant to this bilateral airworthiness agreement, the DGAC has kept FAA informed of the situation described above.

The FAA's Determination and an Explanation of the Provisions of This Proposed AD What Has FAA Decided?

The FAA has examined the findings of the DGAC; reviewed all available information, including the service information referenced above; and determined that:

—The unsafe condition referenced in this document exists or could develop on other Socata Models TB 9, TB 10, TB 20, TB 21, and TB 200 airplanes of the same type design that are on the U.S. registry;

—The actions specified in the previously-referenced service information should be accomplished on the affected airplanes; and

—AD action should be taken in order to correct this unsafe condition.

What Would This Proposed AD Require?

This proposed AD would require you to incorporate the actions in the previously-referenced service bulletin.

Is There a Modification I Can Incorporate Instead of Repetitively Inspecting the Aileron Control Gimbal Joint?

The FAA has determined that long-term continued operational safety would be better assured by design changes that remove the source of the problem rather than by repetitive inspections or other special procedures. With this in mind, FAA will continue to work with Socata in collecting information and in performing fatigue analysis to determine whether a future design change may be necessary.

Cost Impact

How Many Airplanes Would This Proposed AD Impact?

We estimate that this proposed AD affects 346 airplanes in the U.S. registry.

What Would be the Cost Impact of this Proposed AD on Owners/Operators of the Affected Airplanes?

We estimate the following costs to accomplish the proposed initial inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
2 workhour × $60 per hour = $120	No parts required for the inspection	$120	$120 × 346 = $41,520.

The FAA has no method of determining the number of repetitive inspections each owner/operator would incur over the life of each of the affected airplanes so the cost impact is based on the initial inspection.

We estimate the following costs to accomplish any necessary replacements that would be required based on the results of the proposed inspection. We have no way of determining the number of airplanes that may need such replacement:

Labor cost	Parts cost	Total cost per airplane
6 workhours × $60 per hour = $360	$469	$360 + $469 = $829.

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Regulatory Impact

Would This Proposed AD Impact Various Entities?

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposed rule would not have federalism implications under Executive Order 13132.

Would This Proposed AD Involve a Significant Rule or Regulatory Action?

For the reasons discussed above, I certify that this proposed action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new airworthiness directive (AD) to read as follows:

SOCATA—Groupe AEROSPATIALE: Docket No. 2002–CE–43–AD

(a) *What airplanes are affected by this AD?* This AD affects Models TB 9, TB 10, TB 20, TB 21, and TB 200 airplanes, all serial numbers, that are certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to prevent failure of the aileron control gimbal joint. Such failure could lead to loss of control of the airplane.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) Inspect the aileron control gimbal joint for correct alignment and correct operation.	Upon accumulating 300 hours time-in-service (TIS) on the aileron control gimbal joint or within the next 30 hours TIS after the effective date of this AD, whichever occurs later. Repetitively inspect thereafter at intervals not to exceed 100 hours TIS.	In accordance with the Accomplishment Instructions in Socata TB Aircraft Mandatory Service Bulletin SB 10–130 27, dated April 2002.
(2) Replace misaligned or defective gimbal joints during any inspection required in paragraph (d)(1) of this AD.	Prior to further flight after the inspection where a misaligned or defective gimbal joint was found. The inspection requirements of paragraph (d)(1) start over after each replacement.	In accordance with the Accomplishment Instructions in Socata TB Aircraft Mandatory Service Bulletin SB 10–130 27, dated April 2002, and the applicable maintenance manual.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Standards Office, Small Airplane Directorate, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standards Office.

Note 1: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4146; facsimile: (816) 329–4090.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *How do I get copies of the documents referenced in this AD?* You may get copies of the documents referenced in this AD from SOCATA Groupe AEROSPATIALE, Customer Support, Aerodrome Tarbes-Ossun-Lourdes, BP 930–F65009 Tarbes Cedex, France; telephone: 011 33 5 62 41 73 00; facsimile: 011 33 5 62 41 76 54; or the Product Support Manager, SOCATA Groupe AEROSPATIALE, North Perry Airport, 7501 Pembroke Road, Pembroke Pines, Florida 33023; telephone: (954) 893–1400; facsimile: (954) 964–4141. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Note 2: The subject of this AD is addressed in French AD 2002–225(A), dated May 15, 2002.

Issued in Kansas City, Missouri, on November 8, 2002.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–29004 Filed 11–14–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–240–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–600, –700, –700C, –800, and –900 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 737–600, –700, –700C, –800, and –900 series airplanes. This proposal would require installing speedbrake limitation placards in the flight compartment; and revising the Limitations Section of the Airplane Flight Manual to ensure the flightcrew is advised not to extend the speedbrake lever beyond the flight detent. For certain airplanes, this proposal would require modifying the elevator and elevator tab assembly. This action is necessary to prevent severe vibration of the elevator and elevator tab assembly, which could result in severe damage to the horizontal stabilizer, followed by possible loss of the elevator tab and consequent loss of controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by December 30, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–240–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2002-NM–240-AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Nancy H. Marsh, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2028; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002-NM–240-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–240–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received several reports of excessive in-flight vibrations of the elevator and elevator tab on certain Boeing Model 737–600, –700, –700C, –800, and –900 series airplanes. The FAA responded to these reports by issuing several rulemaking actions (listed below). These actions were identified as interim action until a modification for the elevator and elevator tab assemblies was developed, approved, and available. The intent of such a modification is to reduce the reliance on inspections to assure the continued airworthiness of the affected airplanes and to relieve certain significant operational restrictions imposed on the affected airplanes. The manufacturer now has developed such a modification, and the FAA has determined that further rulemaking action is indeed necessary; this proposed AD follows from that determination.

The elevator and elevator tab are susceptible to excessive vibration and, under certain conditions, limit-cycle flutter. These vibration events have been attributed to loose or missing components, excessive wear, or excessive freeplay of the tab. Elevator tab vibrations following deployment of the speedbrakes can result in wear to the elevator tab hinges and components of the elevator tab control system. Such wear can cause the elevator tab assemblies to become loose. Continued exposure to spoiler buffeting can cause excessive wear to the elevator tab components. Continued operation of these airplanes in such conditions could result in severe damage to the horizontal stabilizer, followed by possible loss of the elevator tab and consequent loss of controllability of the airplane.

Terminating Action for Related Rulemaking

The requirements of this AD are intended to be terminating action for the following ADs:

- AD 99–15–09, amendment 39–11229 (64 FR 40514, July 27, 1999), was issued on July 13, 1999, and is applicable to certain Boeing Model 737–600 series airplanes. That AD requires revising the Airplane Flight Manual (AFM) to prohibit operation of the airplane under certain conditions; repetitive inspections of the tab mast fittings of the elevator tab assemblies to detect cracking; an elevator tab freeplay check; and corrective actions, if necessary. That AD also requires installing an additional fastener on the elevator tab mast fitting, which terminates the AFM revision and

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extends certain repetitive inspections. That AD also requires replacement of the elevator tab mast fitting with a new, improved fitting, which terminates the required actions.

• AD 99–18–01, amendment 39–11267 (64 FR 46259, August 25, 1999), was issued on August 18, 1999, and is applicable to certain Boeing Model 737–700 and –800 series airplanes. That AD supersedes AD 99–13–51, amendment 39–11213 (64 FR 34976, June 30, 1999), to continue to require revising the AFM to prohibit operation of the airplane under certain conditions; repetitive inspections of the tab mast fitting of the elevator tab assemblies to detect cracking; an elevator tab freeplay check; and corrective actions, if necessary. AD 99–18–01 also continues to provide for optional terminating action only for certain repetitive inspections; and installing an additional fastener on the elevator tab mast fitting, which terminates the AFM revision and extends certain repetitive inspection intervals.

• AD 2001–08–09, amendment 39–12186 (66 FR 20194, April 20, 2001), was issued on April 13, 2001, and is applicable to certain Boeing Model 737–600, –700, –800, and –700C series airplanes. That AD supersedes AD 2001–04–08, amendment 39–12127 (66 FR 13229, March 5, 2001), to continue to require initial and repetitive inspections of the elevator tab assembly to detect any damage or discrepancy; and corrective actions, if necessary. AD 2001–08–09 also clarifies the applicability and certain requirements of AD 2001–04–08.

• AD 2001–09–51, amendment 39–12251 (66 FR 31141, June 11, 2001), was issued on May 25, 2001, and is applicable to certain Boeing Model 737–600, –700, –700C, and –800 series airplanes. That AD requires inspection of the small jam nut on the elevator tab control rods to detect inspection putty and to determine its condition; a torque check of the small and large jam nuts on the tab control rod, if necessary; and corrective actions, as applicable. For certain airplanes, that AD also requires a one-time inspection for torque of the small and large jam nuts on the tab control rods; and corrective actions, as applicable.

• AD 2001–12–51, amendment 39–12294 (66 FR 34098, June 27, 2001), was issued on June 20, 2001, and is applicable to all Boeing Model 737–800 series airplanes. That AD requires revising the AFM to prohibit operating the airplane at speeds in excess of 300 knots indicated airspeed (KIAS) with speedbrakes extended. That AD also provides for optional terminating action for the AFM revision.

• AD 2001–14–05, amendment 39–12315 (66 FR 36145, July 12, 2001), was issued on July 2, 2001, and is applicable to all Boeing Model 737–600, –700, –700C, and –800 series airplanes. That AD prohibits installation of repairs of the elevator tab using previously approved repair procedures.

• AD 2002–08–52, amendment 39–12727 (67 FR 20626, April 26, 2002), was issued on April 19, 2002, and is applicable to all Boeing Model 737–600, –700, and –700C series airplanes. That AD requires revising the AFM to ensure that the flightcrew is advised of the potential hazard associated with extending the speedbrakes at speeds in excess of 300 KIAS. That AD also provides for optional modification or retrofit of the elevator tab assembly.

• AD 2002–08–20, amendment 39–12732 (67 FR 20628, April 26, 2002), was issued on April 19, 2002, and is applicable to all Boeing Model 737–600, –700, –700C, and 800 series airplanes. That AD requires inspecting the airplane following any suspected limit cycle oscillation (LCO) of the elevator tab; and revising the AFM to limit airspeeds under certain conditions and to provide the flight crew with information regarding elevator tab LCO. That AD also requires repetitive cleaning of the elevator tab and a one-time cleaning of the elevator balance bays. That AD provides for the option to repetitively clean the elevator tab and balance bays following every deicing/anti-icing of the horizontal stabilizer, which would temporarily allow airspeeds exceeding those limited by the AFM revision. For certain airplanes, that AD requires trimming the elevator balance panel seals, which will terminate the optional repetitive cleaning procedures for the balance bays.

Related AD

AD 2001–23–01, amendment 39–12498 (66 FR 56989, November 14, 2001), was issued on November 5, 2001, and is applicable to certain Boeing Model 737–600, –700, and –800 series airplanes. That AD supersedes AD 2001–06–08, amendment 39–12155 (66 FR 16116, March 23, 2001), to continue to require repetitive inspections of certain elevator hinge plates, and corrective action, if necessary. That AD also requires accomplishment of the previously optional replacement of the elevator hinge plates with new, improved hinge plates, as terminating action for the repetitive inspections. The requirements of AD 2001–23–01 are prerequisite to the requirements contained in the proposed AD.

Explanation of Relevant Service Information

We have reviewed and approved Boeing Alert Service Bulletin 737–11A1109, dated March 28, 2002, which, for certain airplanes, describes procedures for installation of a speedbrake limitation marker (placard) on the P1–1 and P3–3 panel assemblies. For Group 1 airplanes, the placard is centered directly over the Captain's and the First Officer's clocks; for Group 2 airplanes, the placard is centered directly over the Captain's clock, and directly under the First Officer's clock.

We also have reviewed and approved Boeing Alert Service Bulletin 737–55A1080, dated September 19, 2002, which describes procedures for modification of the elevator and elevator tab assembly. The modification includes installation of a new clevis fitting and a new tab mechanism on the horizontal stabilizer and, for certain airplanes, examination of the hinge plates on the stabilizer trailing edge to make sure the specified hinges are installed. The modification also includes changes to the seals in the balance bays and installation of new elevators and tab assemblies, followed by adjustments and tests of the new installation.

Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously, except as discussed below.

Differences Between Proposed AD and Service Information

Boeing Alert Service Bulletin 737–11A1109

Although the service bulletin recommends accomplishing the installation of the placards "at the first maintenance period when material and manpower are available," we have determined that such an imprecise compliance time would not address the identified unsafe condition in a timely manner. In developing an appropriate compliance time for the installation in this proposed AD, we considered not only the manufacturer's recommendation, but the degree of urgency associated with addressing the subject unsafe condition, the average utilization of the affected fleet, and the time necessary to perform the modifications. In light of all of these factors, we find a compliance time of 90 days for completing the required installation to be warranted, in that it represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety.

Additionally, the service bulletin does not recommend a corresponding change to the Limitations Section of the AFM to reflect the speedbrake limitation on the placards; however, this proposed AD requires that, for certain airplanes, such a change be made within 90 days to instruct the flightcrew not to extend the speedbrake lever beyond the flight detent in flight.

Boeing Alert Service Bulletin 737–55A1080

The service bulletin specifies accomplishment of certain actions required by this proposed AD in accordance with either the Boeing 737 Airplane Maintenance Manual (AMM) or an "operator's equivalent procedure." However, this proposed AD requires that the actions required by those paragraphs be accomplished in accordance with the procedures specified in the Boeing 737 AMM. "Operators' equivalent procedures" may be used only if approved as an alternative method of compliance in accordance with paragraph (e) of this AD.

Cost Impact

There are approximately 1,174 airplanes of the affected design in the worldwide fleet. We estimate that 550 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 1 work hour per airplane to accomplish the proposed placard installation, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed installation on U.S. operators is estimated to be $33,000, or $60 per airplane.

It would take approximately 1 work hour per airplane to accomplish the proposed AFM revision, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed revision on U.S. operators is estimated to be $33,000, or $60 per airplane.

It would take approximately 88 work hours per airplane to accomplish the proposed modification of the elevator and elevator tab assembly, at an average labor rate of $60 per work hour. The FAA has been advised by Boeing that the manufacturer will provide parts for the elevator/tab retrofit, including shipping, at no cost to operators. The manufacturer will have operators "exchange" their existing parts for new parts to support the retrofit program. Based on this information, the cost impact of the proposed modification on U.S. operators is estimated to be $2,904,000, or $5,280 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 2002–NM–240–AD.

Applicability: Model 737–600, –700, –700C, –800, and –900 series airplanes; line numbers 1 through 1174 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent severe vibration of the elevator and elevator tab assembly, which could result in severe damage to the horizontal stabilizer, followed by possible loss of the elevator tab and consequent loss of controllability of the airplane, accomplish the following:

Airplane Flight Manual (AFM) Revision/Placard Installation

(a) For Model 737–600, –700, –700C, –800, and –900 series airplanes having line numbers 1 through 1043 inclusive: Within 90 days after the effective date of this AD, do the actions specified in paragraphs (a)(1) and (a)(2) of this AD.

(1) Install a speedbrake limitation placard on the P1–1 and P3–3 panel assemblies per Figure 1 or Figure 2, as applicable, of paragraph 3.B., "Work Instructions," of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–11A1109, dated March 28, 2002.

(2) Revise the Limitations Section of the FAA-approved AFM to include the following statement (this may be accomplished by inserting a copy of this AD in the AFM): "Do not extend the speedbrake lever beyond the flight detent in flight."

Modification

(b) For Model 737–600, –700, –700C, and –800 series airplanes having line numbers 1 through 1174 inclusive: Before the accumulation of 18,000 total flight cycles, or within 2 years after the effective date of this AD, whichever occurs first, modify the elevator and elevator tab assemblies (including installation of a new clevis fitting

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and a new tab mechanism on the horizontal stabilizer and, for certain airplanes, examination of the hinge plates on the stabilizer trailing edge to make sure the specified hinges are installed; changes to the seals in the balance bays; and installation of new elevators and tab assemblies, followed by adjustments and tests of the new installation), per the Accomplishment Instructions of Boeing Alert Service Bulletin 737–55A1080, dated September 19, 2002.

(c) Accomplishment of the modification required by paragraph (b) of this AD terminates the actions required by the ADs specified in the table below.

AD No.	Amendment No.
AD 99–15–09	39–11229
AD 99–18–01	39–11267
AD 2001–08–09	39–12186
AD 2001–09–51	39–12251
AD 2001–12–51	39–12294
AD 2001–14–05	39–12315
AD 2002–08–52	39–12727
AD 2002–08–20	39–12732

Operator's Equivalent Procedure

(d) If the Accomplishment Instructions of Boeing Alert Service Bulletin 737–55A1080, dated September 19, 2002, specify that the actions may be accomplished in accordance with an operator's "equivalent procedure:" The actions must be accomplished per the applicable chapter of the Boeing 737 Airplane Maintenance Manual specified in the alert service bulletin.

Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permit

(f) Special flight permits may be issued in accordance with sections § § 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on November 8, 2002.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–29005 Filed 11–14–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NE–12–AD]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce plc Model RB211 Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Federal Aviation Administration (FAA) proposes to adopt a new airworthiness directive (AD) that is applicable to Rolls-Royce plc (RR) model RB211–535E4–B–37 and RB211–535E4–B–75 turbofan engines. This proposal would require removal from service of certain high pressure (HP) turbine discs before they reach newly established life limits. This proposal is prompted by the manufacturer's inspections and analysis of HP turbine discs that have accumulated high cycles. The analysis reveals these discs to be sensitive to corrosion-induced cracking in the disc rim cooling hole area, which could result in uncontained HP disc failure. The actions specified by the proposed AD are intended to prevent corrosion-induced cracking of the HP turbine disc which could cause an uncontained HP turbine disc failure and damage to the airplane.

DATES: Comments must be received by January 14, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–NE–12–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location, by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Comments may also be sent via the Internet using the following address: "*9-ane-adcomment@faa.gov*". Comments sent via the Internet must contain the docket number in the subject line.

Information regarding this action may be examined, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Keith Mead, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299, telephone (781) 238–7744; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NE–12–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–NE–12–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

The manufacturer has inspected and analyzed some HP turbine discs that have accumulated high cycles that were installed in model RB211–535E4–B–37 and RB211–535E4–B–75 turbofan engines. The inspection and analysis reveals these discs to be sensitive to corrosion and crack propagation in the disc rim cooling hole area, which could result in uncontained HP turbine disc failure. The manufacturer has determined that the affected HP turbine discs are unable to achieve the previously published life limit of 20,000 cycles-since-new (CSN), due to the potential for corrosion-induced cracking

to occur at or near that published life limit.

Proposed Requirements of This AD

Since an unsafe condition has been identified that is likely to exist or develop on other RR model RB211–535E4–B–37 and RB211–535E4–B–75 turbofan engines of the same type design that are used on airplanes registered in the United States, the proposed AD would require removing from service HP turbine discs, P/N's UL27680, UL27681, UL39766, and UL39767 before reaching the new life limit of 15,000 CSN.

Economic Analysis

There are approximately 400 RR model RB211–535E4–B–37 and RB211–535E4–B–75 turbofan engines in the worldwide fleet containing the affected HP turbine discs, P/N's UL27680, UL27681, UL39766, and UL39767. The FAA estimates that 346 engines installed on airplanes of U.S. registry will be affected by this AD, that it will take approximately 112 work hours per engine to replace an affected disc, and that the average labor rate is $60 per work hour. The FAA estimates that the prorated cost of the life reduction per engine would be approximately $64,000. Based on these figures, the total cost of the AD to remove from service the HP turbine discs at the new life limit of 15,000 CIS, rather than the former life limit of 20,000 CIS, is estimated to be $24,469,120.

Regulatory Analysis

This proposed rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this proposed rule.

For the reasons discussed above, I certify that this proposed regulation (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Rolls-Royce plc: Docket No. 2002–NE–12–AD.

Applicability: This airworthiness directive (AD) is applicable to Rolls-Royce plc (RR) model RB211–535E4–B–37 and RB211–535E4–B–75 turbofan engines with high pressure (HP) turbine disc, P/N UL27680, UL27681, UL39766, or UL39767 installed. These engines are installed on, but not limited to Boeing 757 and Tupolev Tu204 airplanes.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Compliance with this AD is required as indicated, unless already done. To prevent corrosion-induced cracking of the HP turbine disc which could cause an uncontained HP turbine disc failure and damage to the airplane, do the following:

(a) Remove HP turbine disc from service before accumulating 15,000 cycles-since-new (CSN).

(b) After the effective date of this AD, do not install any HP turbine disc listed in this AD that exceeds 15,000 CSN.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). Operators must submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be done.

Issued in Burlington, Massachusetts, on November 6, 2002.

Francis A. Favara,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 02–28954 Filed 11–14–02; 8:45 am]

BILLING CODE 4910–13–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

[Regulations No. 4 and 16]

RIN 0960–AF79

Claimant Identification Pilot Projects

AGENCY: Social Security Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: We propose to conduct pilot projects wherein we will request photographic identification from individuals filing for title II and title XVI disability benefits in specified geographic areas covered by the pilot projects. In addition, we would require individuals to allow us to take their photograph and we would make these photographs a part of the claims folder. We would permit an exception to the photograph requirement when an individual has a sincere religious objection. This process would strengthen the integrity of the disability claims process by helping to ensure that the individual filing the application is the same individual examined by the consultative examination (CE) physician.

DATES: To consider your comments, we must receive them no later than January 14, 2003.

ADDRESSES: You may give us your comments by using: our Internet site facility (*i.e.*, Social Security Online) at *http://www.ssa.gov/regulations*, e-mail to *regulations@ssa.gov*; by telefax to (410) 966–2830; or by letter to the Commissioner of Social Security, P.O. Box 17703, Baltimore, MD 21235–7703.

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You may also deliver them to the Office of Process and Innovation Management, Social Security Administration, 2109 West Low Rise Building, 6401 Security Boulevard, Baltimore, MD 21235–6401, between 8 a.m. and 4:30 p.m. on regular business days. Comments are posted on our Internet site for your review, or you may inspect them on regular business days by making arrangements with the contact person shown under **FOR FURTHER INFORMATION CONTACT.**

Electronic version: The electronic file of this document is available on the date of publication in the **Federal Register** at *http://www.access.gpo.gov/su_docs/aces/aces140.html.* It is also available on the Internet site for SSA (*i.e.*, Social Security Online) at *http://www.ssa.gov/regulations.*

FOR FURTHER INFORMATION CONTACT: Georgia E. Myers, Regulations Officer, Office of Process and Innovation Management, 2109 West Low Rise Building, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, *regulations@ssa.gov*, 410–965–3632 or TTY 410–966–5609 for information about these rules. For information on eligibility or filing for benefits: call our national toll-free numbers, 1–800–772–1213 or TTY 1–800–325–0778 or visit our Internet web site, Social Security Online, at *http://www.ssa.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Pilot Project

The purpose of the claimant identification pilots is to test and gather information in the use of photographic identification to address the issue of complicit impersonation in the disability claims process. Complicit impersonation is accomplished when an individual, posing as the intended claimant, and with the consent of the claimant, responds to a consultative examination appointment in order to misrepresent the claimant's true medical condition or provides false or misleading information that affects eligibility during interviews with SSA field office employees. SSA and the Office of the Inspector General (OIG) have noticed an upward trend in the number of such instances. It has become apparent that we need to strengthen our procedures for identity verification. We believe that the technology for the photographic identification process is currently available and could be implemented over a short time frame. The photographic identification process should give SSA an economical yet effective means of providing improved identity documents to CE physicians. We anticipate that it will be readily accepted by the public. We will evaluate the results of the pilot and expand or modify the procedures accordingly.

How We Would Conduct the Pilot Project

We propose to conduct the pilots in the following designated geographic areas:

(1) All SSA field offices in the State of South Carolina,

(2) The Augusta, Georgia SSA field office.

(3) All SSA field offices in the State of Kansas.

(4) Selected SSA field offices located in New York City.

The pilots would be in effect for a six-month period of time and would begin upon the effective date of the final rules.

Who Would Be Affected

Individuals filing for title II and/or title XVI disability benefits at a Social Security office in the designated areas noted above would be required to participate in the claimant identification pilots. Individuals filing via the Internet or by telephone would also be included. We will be monitoring any possible impact that the pilot procedures might have on SSA's initiative to encourage the filing of applications online via the Internet.

Providing Photographic Identification

While not part of the regulatory requirement, each individual would be asked to provide some form of photographic identification. This identification would be photocopied and the copy made a part of the SSA claims folder. SSA personnel would continue to follow regular identification procedures by asking the individuals questions based on information in the SSA database to ensure that the individuals are who they hold themselves out to be. SSA personnel would obtain additional identifying information if there is a doubt about the identity of the individual. If the individual does not have photographic identification available or does not wish to provide it to us, SSA personnel would not require it but will still follow regular identification procedures as before the pilots went into effect.

Photographs Taken by SSA

Also as part of the claimant identification pilots, each individual filing for disability benefits at a location participating in the pilot program would be required to have a photograph taken by SSA personnel, regardless of whether the individual provides the photographic identification discussed above. A copy would be made of this image and placed in the SSA claims folder. Images would also be stored electronically and accessed by authorized SSA and Disability Determination Service (DDS) personnel.

If We Request a Consultative Examination

If DDS personnel request a consultative examination (CE) for the individual, a hard copy image of the photograph would be made available to the person conducting the CE. This would help to determine whether the individual presenting himself or herself for examination is the same individual who presented himself or herself as the individual filing for disability benefits. We would ask the CE physician to copy the individual's own photographic identification when the physician was not provided with a photo or a copy of a photographic identification previously taken by SSA personnel.

Other Situations

This same procedure would be used to verify the identity of pilot participants in the following situations:

- After allowance, subsequent interviews for payment purposes.
- Continuing Disability Reviews (CDR).
- SSI Redeterminations.
- If denied, appeals and any associated CE.

Explanation of Proposed Changes

Section 404.617 Pilot Program for Photographic Identification of Disability Benefit Applicants in Designated Geographic Areas

In this new section we are proposing to require individuals filing for title II disability benefits to have their photograph taken by the Social Security Administration. We would permit an exception to the photograph requirement when an individual has a sincere religious objection.

Section 416.327 Pilot Program for Photographic Identification of Disability Benefit Applicants in Designated Geographic Areas

In this new section we are proposing to require individuals filing for title XVI disability benefits to have their photograph taken by the Social Security Administration. We would permit an exception to the photograph requirement when an individual has a sincere religious objection.

Federal Register Notice for Modifying Privacy Act System of Records

A formal notice that will modify the Privacy Act system of records for the Claims Folder System will be published in the **Federal Register** to reflect the new information to be collected during the pilot projects.

Regulatory Procedures

Clarity of These Regulations

Executive Order 12866, as amended by Executive Order 13258, requires each agency to write all rules in plain language. In addition to your substantive comments on these proposed rules, we invite your comments on how to make these proposed rules easier to understand. For example:

- Have we organized the material to suit your needs?
- Are the requirements in the rules clearly stated?
- Do the rules contain technical language or jargon that isn't clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rules easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rules easier to understand?

Executive Order 12866, as Amended by Executive Order 13258

The Office of Management and Budget (OMB) has reviewed these proposed rules in accordance with Executive Order 12866, as amended by Executive Order 13258. Because of the pilot's short time duration and limited geographic coverage, we expect any costs or savings to be negligible (*i.e.*, less than $2.5 million).

Regulatory Flexibility Act

We certify that these proposed rules will not have a significant economic impact on a substantial number of small entities because they affect only individuals or States. Thus, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

These proposed rules contain reporting requirements as shown in the following table.

Section	Annual number of responses	Frequency of response	Average burden per response (minutes)	Estimated annual burden (hours)
404.617	13,910	1	5	1,159
416.327	14,080	1	5	1,173
Total	27,990			2,332

An Information Collection Request has been submitted to OMB for clearance. We are soliciting comments on the burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize the burden on respondents, including the use of automated collection techniques or other forms of information technology. Comments may be mailed or faxed to the Office of Management and Budget and the Social Security Administration at the following addresses/fax numbers:

Office of Management and Budget, Attn: OMB Desk Officer, Rm. 10235, New Executive Office Building, 725 17th St., NW., Washington, DC 20503, Fax No. 202–395–6974.

Social Security Administration, Attn: SSA Reports Clearance Officer, Rm. 1–A–20 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235–6401, Fax No. 410–965–6400.

Comments can be received between 30 and 60 days after publication of this notice and will be most useful if received by SSA within 30 days of publication.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security—Disability Insurance and 96.006, . Supplemental Security Income)

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Aged, Blind, Disability benefits, Old-age, Survivors and Disability Insurance, Reporting and recordkeeping requirements, Social security.

20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental Security Income (SSI).

Dated: October 9, 2002.

Jo Anne B. Barnhart,

Commissioner of Social Security.

For the reasons set out in the preamble, we propose to amend part 404, subpart G of chapter III, title 20 Code of Federal Regulations and part 416, subpart C of chapter III title 20 Code of Federal Regulations as follows:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

Subpart G—[Amended]

1. The authority citation for subpart G of part 404 continues to read as follows:

Authority: Secs. 202(i), (j), (o), (p), and (r), 205(a), 216(i)(2), 223(b), 228(a), and 702(a)(5) of the Social Security Act (42 U.S.C. 402(i), (j), (o), (p), and (r), 405(a), 416(i)(2), 423(b), 428(a), and 902(a)(5)).

2. Add new § 404.617 under the existing heading, APPLICATIONS, to read as follows:

§ 404.617 Pilot program for photographic identification of disability benefit applicants in designated geographic areas.

(a) To be eligible for Social Security disability insurance benefits in the designated pilot geographic areas during the time period of the pilot, you or a person acting on your behalf must give SSA permission to take your photograph and make this photograph a part of the claims folder. You must give us this permission when you apply for benefits and/or when we ask for it at a later time. Failure to cooperate will result in denial of benefits. We will permit an exception to the photograph requirement when an individual has a sincere religious objection. This pilot will be in effect for a six-month period after the final rules become effective.

(b) *Designated pilot geographic areas means:*

(1) All SSA field offices in the State of South Carolina.

(2) The Augusta, Georgia SSA field office.

(3) All SSA field offices in the State of Kansas.

(4) Selected SSA field offices located in New York City.

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PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND AND DISABLED

Subpart C—[Amended]

3. The authority citation for subpart C of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1611, and 1631(a), (d), and (e) of the Social Security Act (42 U.S.C. 902(a)(5), 1382, and 1383(a), (d), and (e)).

4. Add new § 416.327 under the existing heading, APPLICATIONS, to read as follows:

§ 416.327 Pilot program for photographic identification of disability benefit applicants in designated geographic areas.

(a) To be eligible for SSI disability benefits in the designated pilot geographic areas during the time period of the pilot, you or a person acting on your behalf must give SSA permission to take your photograph and make this photograph a part of the claims folder. You must give us this permission when you apply for benefits and/or when we ask for it at a later time. Failure to cooperate will result in denial of benefits. We will permit an exception to the photograph requirement when an individual has a sincere religious objection. This pilot will be in effect for a six-month period after the final rules become effective.

(b) *Designated pilot geographic areas means:*

(1) All SSA field offices in the State of South Carolina.

(2) The Augusta, Georgia SSA field office.

(3) All SSA field offices in the State of Kansas.

(4) Selected SSA field offices located in New York City.

[FR Doc. 02–28957 Filed 11–14–02; 8:45 am]

BILLING CODE 4191–02–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404, 416 and 422

RIN 0960–AE92

Federal Old-Age, Survivors, and Disability Insurance and Supplemental Security Income; Collection of Overdue Program and Administrative Debts Using Administrative Wage Garnishment

AGENCY: Social Security Administration.

ACTION: Proposed rules.

SUMMARY: We propose to modify our regulations dealing with the collection of program overpayment debts that arise under titles II and XVI of the Social Security Act (the Act) and administrative debts owed to us. Specifically, we propose to make some changes and establish new regulations that will establish our rules on the use of administrative wage garnishment (AWG) to collect such debts when they are past due. AWG is a process whereby we order the debtor's employer to withhold and pay to us up to 15 percent of the debtor's disposable pay every payday until the debt is repaid. The employer is required by law to comply with our AWG order.

DATES: To be sure your comments are considered, we must receive them no later than January 14, 2003.

ADDRESSES: You may give us your comments by using: our Internet site facility (*i.e.*, Social Security Online) at *http://www.ssa.gov/regulations/*, e-mail to *regulations@ssa.gov*, by telefax to (410) 966–2830 or by letter to the Commissioner of Social Security, P.O. Box 17703, Baltimore, Maryland 21235–7703. You may also deliver them to the Office of Process and Innovation Management, Social Security Administration, 2109 West Low Rise Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, between 8 a.m. and 4:30 p.m. on regular business days. Comments are posted to our Internet site for your review, or you may inspect them on regular business days by making arrangements with the contact person shown in this preamble.

Electronic version: The electronic file of this document is available on the date of publication in the **Federal Register** at *http://www.access.gpo.gov/su_docs/aces/aces140.html*. It is also available on the Internet site for SSA (*i.e.*, Social Security Online): *http://www.ssa.gov/regulations*.

FOR FURTHER INFORMATION CONTACT: Patricia Hora, Social Insurance Specialist, Office of Process and Innovation Management, Social Security Administration, 2109 West Low Rise Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, (410) 965–7183 or TTY (410) 966–5609. For information on eligibility or filing for benefits: Call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778 or visit our Internet web site, Social Security Online, at *http://www.ssa.gov/*.

SUPPLEMENTARY INFORMATION: Section 31001(o)(1) of Public Law 104–134 amended Chapter 37, subchapter II, of title 31, United States Code, by adding section 3720D to permit Federal agencies to use AWG to recover past due debts. We propose to pursue AWG to collect past due program overpayment debts incurred under title II and title XVI of the Act and past due administrative debts (*see* 20 CFR 422.306(a) for examples of administrative debts). The proposed regulations discussed below would implement 31 U.S.C. 3720D under the guidance provided by the Department of the Treasury at 31 CFR 285.11.

Explanation of Changes to Regulations

We propose to create a new subpart E in part 422 of our regulations containing the rules we will use to collect both title II and title XVI program overpayments and administrative debts by AWG. Proposed subpart E would include sections that would explain the conditions for our use of AWG, the rights of the debtor and the responsibilities of the employer.

In proposed § 422.401, we describe the scope of this subpart—our use of AWG under 31 U.S.C. 3720D to recover past due debts that you owe.

Proposed § 422.402 contains definitions of several terms used in the new subpart, including:

- Paragraph (a), defining "administrative wage garnishment" as the process whereby we order your employer to withhold from your disposable pay and send the amount withheld to us;
- Paragraph (b), defining the term "debt" to mean any amount of money or property that we determine is owed to the United States government and that arises from a program that we administer or an activity that we perform;
- Paragraph (c), defining the term "disposable pay" to mean the amount equal to your total compensation from an employer (including, among other things, wages or salary, bonuses, commissions and vacation pay) after deduction of health insurance premiums and amounts withheld as required by law other than amounts withheld under court order.

Proposed § 422.403 would provide that, subject to certain exceptions and conditions, we would use AWG to collect any debt that is past due. We may use AWG concurrently with other practices, such as, tax refund offset and other administrative offset conducted by the Department of the Treasury and referral of information about the debt to consumer reporting agencies. *See* paragraph (a). We would not use AWG to collect a debt from salary or wages paid by the United States Government. If you have been separated involuntarily from employment, we will not use AWG against you until you have been re-employed continuously for at least 12 months. *See* paragraph (b).

In paragraphs (c) and (d) of proposed § 422.403, we describe the conditions under which we could apply AWG to recover title II and title XVI program overpayment debts, respectively. We could apply AWG if all of the following conditions are met.

- You are not receiving benefits under the program under which the overpayment occurred.
- For an overpayment under title XVI, we are not collecting the debt by reducing your title II benefits.
- We have completed our billing sequence (*i.e.*, we have sent an overpayment notice, reminder notice and past-due notice) or we have terminated or suspended collection activity.
- We have no installment payment arrangement with you, or you failed to make payment under such an arrangement for two consecutive months.
- You have not requested that we waive collection of the overpayment, or you requested waiver but we determined that we would not waive collection.
- You have not requested reconsideration of the initial overpayment determination, or you requested reconsideration but we affirmed the initial determination in whole or in part.
- We cannot recover the overpayment by adjustment of benefits payable to someone other than you.

According to 31 U.S.C. 3720D(b), we must send you written notice at least 30 days prior to taking AWG action. We propose to send the notice at least 60 days before we would take AWG action. Proposed § 422.405 describes the information we would include in that notice:

- The payment of your debt is past due;
- The nature and amount of your debt;
- Our intention to collect the debt by AWG;
- The amount that could be withheld from your disposable pay (the payment schedule) under AWG;
- You may inspect and copy our records about the debt;
- You may ask us to review the debt (*i.e.*, whether you owe the amount stated in the notice) or the payment schedule stated in the notice;
- You may request an installment payment plan.

The notice would also explain that at the expiration of 60 calendar days from the date of the notice we would order your employer to begin withholding from your disposable pay, unless within that 60-day period you pay us the full amount of the debt, request review of the debt or the payment schedule or request to establish a written agreement to pay us by installments. We would keep an electronic record of the notice, showing the date we mailed it and the amount of the debt.

Proposed § 422.410 explains the actions we would take after we send the notice. We would not send an AWG order to your employer before the expiration of 60 calendar days from the date of the notice. If within that 60-day period you would request that we review the debt (see proposed § 422.425) or the payment schedule (see proposed § 422.415) stated in the notice or request an installment payment arrangement, we would not take further action until we send you a written notice of our decision. If within that 60-day period you do not pay the full balance of the debt, request review, or request an installment payment arrangement, we may send the AWG order to your employer without further delay. If your request for review is late, we would still perform the review even though we would send the AWG order to your employer. However, if you had good cause for failing to request review of the debt or the payment schedule on time, we would treat your request as if we received it within the 60-day period and delay further action until we send you our decision. Paragraph (b) of proposed § 422.410 describes the circumstances that show good cause for your failure and gives examples. If we arrange an installment payment plan with you after we send you the AWG notice and you fail to make the installment payments for two consecutive months, we may send your employer an AWG order without further delay.

Under 31 U.S.C. 3720D(b)(3) and (5) and (c), we must give you the opportunity to inspect and copy our records relating to the debt and the opportunity for a hearing on the existence and amount of the debt and the terms of the repayment schedule. We address these requirements in proposed §§ 422.415, 422.420 and 422.425.

Proposed § 422.415 provides that, upon your request, we would review the amount that your employer would withhold from your disposable pay (the payment schedule) and, when we find that withholding a particular amount would cause financial hardship, we would reduce that amount. We would not reduce the amount to be withheld every payday below $ 10.00. We would find financial hardship when evidence submitted by you shows that withholding a particular amount from your disposable pay would deprive you of income necessary to meet ordinary and necessary living expenses. Such expenses would include, among other things, the cost of food, clothing, housing, medical care, insurance, and support of others for whom you are legally responsible. We would not reduce the amount the employer would withhold for financial hardship if the debt was caused by your intentional false statement or willful concealment of or failure to furnish material information.

Proposed § 422.420 explains that we would arrange to make our records relating to the debt available for your inspection and copying if you notify us of your intention to inspect and copy them.

Proposed § 422.425 describes the hearing process, the process by which we would review the debt at your request. Essentially, this would be the same process that we employ to review the debt upon your request before we would refer information to the Department of the Treasury for collection by administrative offset or refer information about the debt to consumer reporting agencies. See 20 CFR 422.317. To exercise your right to this review, you must request review and give us evidence that you do not owe all or part of the debt described in the notice or that we do not have the right to collect it. If you do not request review and give us the evidence before the expiration of 60 calendar days from the date of the notice, we may issue the AWG order without further delay. If you would request review and give us the evidence within that 60-day period, or if you had good cause for failing to request review and give us the evidence on time, we would not take further AWG action unless and until we consider all of the evidence (including our own records) and send you our written findings that all or part of the debt is past due and we have the right to collect it. Our findings would include supporting rationale and would be our final decision on your request. If we would find that you do not owe the debt, or the debt is not overdue, or we do not have the right to collect it, we would not send your employer an AWG order.

Proposed § 422.430 states that, if we would determine that you do not owe the debt or we do not have the right to collect it, we would cancel any AWG order that we issued and refund promptly any amount withheld from your pay under that order. Refunds will not bear interest unless Federal law or contract requires interest.

In proposed § 422.435, we describe the AWG order, the factors that

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determine the amount your employer must withhold and the information that your employer must send us. Paragraph (a) describes the information that would appear in the AWG order (your name, address and social security number; the amount of the debt; information about the amount that the employer must withhold; and where to send the withheld amount). We would maintain an electronic record of the order showing the date that we mailed the order. See paragraph (b). We would require the employer to certify within 20 days of receipt of the AWG order your employment status and the amount of disposable pay available for withholding. See paragraph (c).

Paragraph (d) of proposed § 422.435 explains how the employer would calculate the actual amount to withhold from your disposable pay on each payday and remit to us. This section would implement 31 U.S.C. 3720D(b)(1) and 31 CFR 285.11(i). Usually, the amount to be withheld under the AWG order would be the lesser of the amount indicated in the order (up to 15% of disposable pay) or the amount by which disposable pay exceeds thirty times the minimum wage.

Paragraph (e) of proposed § 422.435 discusses our rules that would apply if your disposable pay is subject to more than one garnishment order. A withholding order for family support always would have priority over our AWG order. Our AWG order would have priority over other types of orders served after our AWG order unless Federal law provides otherwise. When your disposable pay is already subject to one or more withholding orders with higher or equal priority with our AWG order, the amount that your employer must withhold and remit to us would not be more than an amount calculated by subtracting the amount(s) withheld under the other withholding order(s) from 25% of your disposable pay. Under proposed paragraph (f), we would have your employer withhold more than the amount calculated under these rules if you would request in writing the higher rate of withholding. Moreover, as noted above, we would reduce the amount that your employer would withhold if we find under proposed § 422.415(b) that withholding at that amount would cause you financial hardship.

In paragraphs (a)–(e) of proposed § 422.440, we discuss the responsibilities of your employer under the AWG order. The proposed rules would require your employer to begin withholding the appropriate amount on the first payday following receipt of the AWG order, or on the first or second payday after such receipt if the employer received the AWG order within 10 days before the first payday. The proposed rules would require your employer to continue to withhold and promptly pay the withheld amount to us every payday until we have recovered the debt and any interest, penalties and administrative costs that we may charge you under applicable law. Your employer need not alter its normal pay and disbursement cycles. However, your employer cannot honor any allotment or assignment of pay by you (other than arrangements made to satisfy a family support judgement or order) to the extent that such assignment or allotment would interfere with or prevent withholding under the AWG order.

In paragraph (f) of proposed § 422.440, we explain that Federal law prohibits your employer from using an AWG order as the basis for firing, refusing to employ or disciplining you. You may file a civil action in Federal or State court against an employer who violates the prohibition. See 31 U.S.C. 3720D(e).

In proposed § 422.445, we explain that we may file a civil action in Federal court against the employer for any amounts that it fails to withhold in compliance with our AWG order issued under proposed § 422.435, and the employer may also be liable for our attorney fees and other associated costs and damages. *See* 31 U.S.C. 3720D(f). We would not bring a civil action against your employer until we terminate collection action against you in accordance with applicable Federal standards, unless earlier filing is necessary to avoid the expiration of any applicable statute of limitations. We would deem collection to be terminated if we receive no payment on the debt for one year.

Other Changes

We would amend 20 CFR 404.527 and 416.590 to mention that we may recover title II and title XVI overpayments, respectively, under the rules in subpart E of part 422.

We propose to add to 20 CFR 404.903 a new paragraph (v) to include in the list of administrative actions that are not initial determinations our determination to use AWG to collect an overpayment made under title II of the Act. We propose to add to 20 CFR 416.1403(a) a new paragraph (20) to include in the list of administrative actions that are not initial determinations our determination to use AWG to collect an overpayment made under title XVI of the Act. As a result of these two revisions, the administrative review procedures in 20 CFR part 404, subpart J, and part 416, subpart N, would not apply to the determination to use AWG. Moreover, that determination would not be subject to judicial review under 42 U.S.C. 405(g) or 1383(c)(3).

Clarity of This Regulation

Executive Order (E.O.) 12866, as amended by E.O. 13258, requires each agency to write all rules in plain language. In addition to your substantive comments on these proposed rules, we invite your comments on how to make these proposed rules easier to understand.

For example:

- Have we organized the material to suit your needs?
- Are the requirements in the rules clearly stated?
- Do the rules contain technical language or jargon that is unclear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rules easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rules easier to understand?

Regulatory Procedures

Executive Order 12866

The Office of Management and Budget (OMB) has reviewed these proposed rules in accordance with E.O. 12866, as amended by Executive Order 13258.

Regulatory Flexibility Act

We certify that these proposed regulations would not have a significant impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis, as provided in the Regulatory Flexibility Act, as amended, is not required.

Some entities, as employers of some individuals who owe debts to us, would be subjected to these proposed regulations and to the certification requirement in proposed § 422.435(c). However, any particular small employer is not likely to receive wage garnishment orders from us concerning a significant number of employees. Under proposed § 422.435(c), employers of delinquent debtors must certify certain information about the debtor's status such as the debtor's employment status and earnings. This information is contained in the employer's payroll records. Therefore, it would not take a significant amount of time or result in a significant cost for an employer to complete the certification form. Even if an employer receives withholding orders from us on several employees over the course of a year, the cost imposed on the employer to complete the certifications, withhold from disposable pay, and remit those amounts to us would not have a significant economic impact on that entity. Employers would not be required to vary their normal pay cycles to comply with a withholding order that would be issued under the proposed rules.

Federalism

We have reviewed these proposed rules under the threshold criteria of E.O. 13132, "Federalism," and determined that they would not have substantial direct effects on the States, on the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government.

Although States and local governments, as employers of some individuals who owe debts to us, would be subjected to these proposed regulations and to the certification requirement in § 422.435(c), there will be a relatively small number of debtors who would meet the criteria for selection who are employed by the States and local governments. Any particular State or local government is not likely to receive AWG orders from us concerning a significant number of employees. Under proposed § 422.435(c), States and local governments that employ delinquent debtors must certify certain information about the debtors' status such as the debtors' employment status and earnings. This information is contained in the States' or local governments' payroll records. Therefore, it would not take a significant amount of time or result in a significant cost for a State or local government to complete the certification form. Even if a State or local government receives AWG orders from us on several employees over the course of a year, the cost imposed on the State or local government to complete the certifications, withhold from disposable pay, and remit those amounts to us would not have a significant economic impact on that entity. States or local governments would not be required to vary their normal pay cycles to comply with AWG orders that would be issued under the proposed rules.

Paperwork Reduction Act

The proposed rules in new subpart E of part 422 contain information collection activities at §§ 422.415, 422.425 and 422.435. The activities are exempt as administrative actions under 44 U.S.C. 3518(c)(1)(B)(ii) from the clearance requirements of 44 U.S.C. 3507 as amended by section 2 of Public Law 104–13 (May 22, 1995), the Paperwork Reduction Act of 1995.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security—Disability Insurance; 96.002 Social Security—Retirement Insurance; 96.003 Social Security—Special Benefits for Persons Aged 72 and Over; 96.004, Social Security—Survivors Insurance; 96.006, Supplemental Security Income)

List of Subjects

20 CFR Part 404

Administrative practice and procedure; Death benefits; Blind, Disability benefits; Old-Age, Survivors and Disability Insurance; Reporting and recordkeeping requirements, Social Security.

20 CFR Part 416

Administrative practice and procedure; Aged, Blind, Disability benefits; Public assistance programs, Reporting and recordkeeping requirements, Supplemental Security Income (SSI).

20 CFR Part 422

Administrative practice and procedure, Organization and functions (Government agencies), Social Security.

Dated: August 12, 2002.

Jo Anne B. Barnhart,

Commissioner of Social Security.

For the reasons set out in the preamble, we propose to amend parts 404, 416 and 422 of Title 20 of the Code of Federal Regulations as follows:

PART 404—[AMENDED]

1. The authority citation for subpart F of part 404 continues to read as follows:

Authority: Secs. 204, 205(a), and 702(a)(5) of the Social Security Act (42 U.S.C. 404, 405(a) and 902(a)); 31 U.S.C. 3720A.

2. Paragraph (a), introductory text, of § 404.527 is revised to read as follows:

§ 404.527 Additional methods for recovery of title II benefit overpayments.

(a) *General.* In addition to the methods specified in §§ 404.502 and 404.520, an overpayment under title II of the Act is also subject to recovery under the rules in subparts D and E of part 422 of this chapter. Subpart D of part 422 of this chapter applies only under the following conditions:

* * * * *

3. The authority citation for subpart J of part 404 is revised to read as follows:

Authority: Secs. 201(j), 204(f), 205(a), (b), (d)–(h), and (j), 221, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 401(j), 404(f), 405(a), (b), (d)–(h), and (j), 421, 425, and 902(a)(5)); sec. 5, Pub. L. 97–455, 96 Stat. 2500 (42 U.S.C. 405 note); secs. 5, 6(c)–(e), and 15, Pub. L. 98–460, 98 Stat. 1802 (42 U.S.C. 421 note).

4. Section 404.903 is amended by removing the word "and" at the end of paragraph (t), replacing the period at the end of paragraph (u) with "; and", and adding paragraph (v) to read as follows:

§ 404.903 Administrative actions that are not initial determinations.

* * * * *

(v) Determining whether we will order your employer to withhold from your disposable pay to collect an overpayment you received under title II of the Social Security Act (see part 422, subpart E, of this chapter).

PART 416—[AMENDED]

5. The authority citation for subpart E of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1601, 1602, 1611(c) and (e), and 1631(a)–(d) and (g) of the Social Security Act (42 U.S.C. 902(a)(5), 1381, 1381a, 1382(c) and (e), and 1383(a)–(d) and (g)); 31 U.S.C. 3720A.

6. Paragraph (a), introductory text, of § 416.590 is revised to read as follows:

§ 416.590 Are there additional methods for recovery of title XVI benefit overpayments?

(a) *General.* In addition to the methods specified in §§ 416.560, 416.570, 416.572 and 404.580, we may recover an overpayment under title XVI of the Act from you under the rules in subparts D and E of part 422 of this chapter. Subpart D of part 422 of this chapter applies only under the following conditions:

* * * * *

7. The authority citation for subpart N of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1631, and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1383, and 1383b).

8. Section 416.1403 is amended by removing the word "and" at the end of paragraph (a)(18), replacing the period at the end of paragraph (a)(19) with "; and", and adding paragraph (a)(20) to read as follows:

§ 416.1403 Administrative actions that are not initial determinations.

(a) * * *

(20) Determining whether we will order your employer to withhold from your disposable pay to collect an overpayment you received under title XVI of the Social Security Act (see part 422, subpart E, of this chapter).

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PART 422—[AMENDED]

9. Subpart E is added to read as follows:

Subpart E—Collection of Debts by Administrative Wage Garnishment

422.401 What is the scope of this subpart?
422.402 What special definitions apply to this subpart?
422.403 When may we use administrative wage garnishment?
422.405 What notice will we send you about administrative wage garnishment?
422.410 What actions will we take after we send you the notice?
422.415 Will we reduce the amount that your employer must withhold from your pay when withholding that amount causes financial hardship?
422.420 May you inspect and copy our records related to the debt?
422.425 How will we conduct our review of the debt?
422.430 When will we refund amounts of your pay withheld by administrative wage garnishment?
422.435 What happens when we decide to send an administrative wage garnishment order to your employer?
422.440 What are your employer's responsibilities under an administrative wage garnishment order?
422.445 May we bring a civil action against your employer for failure to comply with our administrative wage garnishment order?

Subpart E—Collection of Debts by Administrative Wage Garnishment

Authority: Secs. 205(a), 702(a)(5) and 1631(d)(1) of the Social Security Act (42 U.S.C. 405(a), 905(a)(5) and 1383(d)(1)) and 31 U.S.C. 3720D.

§ 422.401 What is the scope of this subpart?

This subpart describes the procedures relating to our use of administrative wage garnishment under 31 U.S.C. 3720D to recover past due debts that you owe.

§ 422.402 What special definitions apply to this subpart?

(a) *Administrative wage garnishment* is a process whereby we order your employer to withhold a certain amount from your disposable pay and send the withheld amount to us. The law requires your employer to comply with our garnishment order.

(b) *Debt* means any amount of money or property that we determine is owed to the United States and that arises from a program that we administer or an activity that we perform. These debts include program overpayments made under title II or title XVI of the Social Security Act and any other debt that meets the definition of "claim" or "debt" at 31 U.S.C. 3701(b).

(c) *Disposable pay* means that part of your total compensation (including, but not limited to, salary or wages, bonuses, commissions, and vacation pay) from your employer after deduction of health insurance premiums and amounts withheld as required by law. Amounts withheld as required by law include such things as Federal, State and local taxes but do not include amounts withheld under court order.

(d) *We, our,* or *us* means the Social Security Administration.

(e) *You* means an individual who owes a debt to the United States within the scope of this subpart.

§ 422.403 When may we use administrative wage garnishment?

(a) *General.* Subject to the exceptions described in paragraph (b) and the conditions described in paragraphs (c) and (d) of this section, we may use administrative wage garnishment to collect any debt that is past due. We may use administrative wage garnishment while we are taking other action regarding the debt, such as, using tax refund offset under § 404.520–404.526 and 416.580–416.586 of this chapter and taking action under subpart D of this part.

(b) *Exceptions.*

(1) We will not use this subpart to collect a debt from salary or wages paid by the United States Government.

(2) If you have been separated involuntarily from employment, we will not order your employer to withhold amounts from your disposable pay until you have been re-employed continuously for at least 12 months. You have the burden of informing us about an involuntary separation from employment.

(c) *Overpayments under title II of the Social Security Act.* This subpart applies to overpayments under title II of the Social Security Act if all of the following conditions are met:

(1) You are not receiving title II benefits.

(2) We have completed our billing system sequence (*i.e.*, we have sent you an initial notice of the overpayment, a reminder notice, and a past-due notice) or we have suspended or terminated collection activity in accordance with applicable rules, such as, the Federal Claims Collection Standards in 31 CFR 903.2 or 31 CFR 903.3.

(3) We have not made an installment payment arrangement with you or, if we have made such an arrangement, you have failed to make any payment for two consecutive months.

(4) You have not requested waiver pursuant to § 404.506 or § 404.522 of this chapter or, after a review conducted pursuant to those sections, we have determined that we will not waive collection of the overpayment.

(5) You have not requested reconsideration of the initial overpayment determination pursuant to §§ 404.907 and 404.909 of this chapter or, after a review conducted pursuant to § 404.913 of this chapter, we have affirmed, in whole or in part, the initial overpayment determination.

(6) The overpayment cannot be recovered pursuant to § 404.502 of this chapter by adjustment of benefits payable to any individual other than you. For purposes of this paragraph, an overpayment will be deemed to be unrecoverable from any individual who was living in a separate household from yours at the time of the overpayment and who did not receive the overpayment.

(d) *Overpayments under title XVI of the Social Security Act.* This subpart applies to overpayments under title XVI of the Social Security Act if all of the following conditions are met:

(1) You are not receiving benefits under title XVI of the Social Security Act.

(2) We are not collecting your title XVI overpayment by reducing title II benefits payable to you.

(3) We have completed our billing system sequence (*i.e.*, we have sent you an initial notice of the overpayment, a reminder notice, and a past-due notice) or we have suspended or terminated collection activity under applicable rules, such as, the Federal Claims Collection Standards in 31 CFR 903.2 or 31 CFR 903.3.

(4) We have not made an installment payment arrangement with you or, if we have made such an arrangement, you have failed to make any payment for two consecutive months.

(5) You have not requested waiver pursuant to § 416.550 or § 416.582 of this chapter or, after a review conducted pursuant to those sections, we have determined that we will not waive collection of the overpayment.

(6) You have not requested reconsideration of the initial overpayment determination pursuant to §§ 416.1407 and 416.1409 of this chapter or, after a review conducted pursuant to § 416.1413 of this chapter, we have affirmed all or part of the initial overpayment determination.

(7) We cannot recover your overpayment pursuant to § 416.570 of this chapter by adjustment of benefits payable to any individual other than you. For purposes of this paragraph, if you are a member of an eligible couple that is legally separated and/or living apart, we will deem unrecoverable from the other person that part of your overpayment which he or she did not receive.

§ 422.405 What notice will we send you about administrative wage garnishment?

(a) *General.* Before we order your employer to collect a debt by deduction from your disposable pay, we will send you written notice of our intention to do so.

(b) *Contents of the notice.* The notice will contain the following information:

(1) we have determined that payment of the debt is past due;

(2) the nature and amount of the debt;

(3) information about the amount that your employer could withhold from your disposable pay each payday (the payment schedule);

(4) no sooner than 60 calendar days after the date of the notice, we will order your employer to withhold the debt from your disposable pay unless, within that 60-day period, you pay the full amount of the debt or take either of the actions described in paragraphs (b)(6) or (7) of this section;

(5) you may inspect and copy our records about the debt (*see* § 422.420);

(6) you may request a review of the debt (*see* § 422.425) or the payment schedule stated in the notice (*see* § 422.415); and

(7) you may request to pay the debt by monthly installment payments to us.

(c) *Mailing address.* We will send the notice to the most current mailing address that we have for you in our records.

(d) *Electronic record of the notice.* We will keep an electronic record of the notice that shows the date we mailed the notice to you and the amount of your debt.

§ 422.410 What actions will we take after we send you the notice?

(a) *General.*

(1) We will not send an administrative wage garnishment order to your employer before 60 calendar days elapse from the date of the notice described in § 422.405.

(2) If paragraph (b) of this section does not apply and you do not pay the debt in full or do not take either of the actions described in paragraphs (b)(6) or (7) of § 422.405 within 60 calendar days from the date of the notice described in § 422.405, we may order your employer to withhold and send us part of your disposable pay each payday until your debt is paid.

(3) If you request review of the debt or the payment schedule after the 60 calendar day period ends and paragraph (b) of this section does not apply, we will conduct the review. However, we may send the administrative wage garnishment order to your employer without further delay.

(4) We may send an administrative wage garnishment order to your employer without further delay if

(i) You request an installment payment plan after receiving the notice described in § 422.405, and

(ii) We arrange such a plan with you, and

(iii) You fail to make payments in accordance with that arrangement for two consecutive months.

(b) *Good cause for failing to request review on time.* If we decide that you had good cause for failing to request review within the 60-day period mentioned in paragraph (a)(2) of this section, we will treat your request for review as if we received it within that 60-day period.

(1) *Determining good cause.* In determining whether you had good cause, we will consider—

(i) Any circumstances that kept you from making the request on time;

(ii) Whether our action misled you;

(iii) Whether you had any physical, mental, educational, or linguistic limitations (including any lack of facility with the English language) which prevented you from making a request on time or from understanding the need to make a request on time.

(2) *Examples of good cause.* Examples of facts supporting good cause include, but are not limited to, the following.

(i) Your serious illness prevented you from contacting us yourself or through another person.

(ii) There was a death or serious illness in your family.

(iii) Fire or other accidental cause destroyed important records.

(iv) You did not receive the notice described in § 422.405.

(v) In good faith, you sent the request to another government agency within the 60-day period, and we received the request after the end of that period.

(3) *If we issued the administrative wage garnishment order.* If we determine that you had good cause under paragraph (b) of this section and we already had sent an administrative wage garnishment order to your employer, we will tell your employer to stop withholding from your disposable pay until we make our decision.

§ 422.415 Will we reduce the amount that your employer must withhold from your pay when withholding that amount causes financial hardship?

(a) *General.* Unless paragraph (d) of this section applies, we will reduce the amount that your employer must withhold from your pay when you request the reduction and we find financial hardship. In any event, we will not reduce the amount your employer must withhold each payday below $10. When we decide to reduce the amount that your employer withholds, we will give you and your employer written notice.

(1) You may ask us at any time to reduce the amount due to financial hardship.

(2) If you request review of the payment schedule stated in the notice described in § 422.405 within the 60-day period stated in the notice, we will not issue a garnishment order to your employer until we notify you of our decision.

(b) *Financial hardship.* We will find financial hardship when you show that withholding a particular amount from your pay would deprive you of income necessary to meet your ordinary and necessary living expenses. You must give us evidence of your financial resources and expenses.

(c) *Ordinary and necessary living expenses.* Ordinary and necessary living expenses include:

(1) Fixed expenses such as food, clothing, housing, utilities, maintenance, insurance, tax payments;

(2) Medical, hospitalization and similar expenses;

(3) Expenses for the support of others for whom you are legally responsible; and

(4) Other reasonable and necessary miscellaneous expenses which are part of your standard of living.

(d) *Fraud and willful concealment or failure to furnish information.* (1) We will not reduce the amount that your employer withholds from your disposable pay if your debt was caused by:

(i) Your intentional false statement, or

(ii) Your willful concealment of, or failure to furnish, material information.

(2) "Willful concealment" means an intentional, knowing and purposeful delay in providing, or failure to reveal, material information.

§ 422.420 May you inspect and copy our records related to the debt?

You may inspect and copy our records related to the debt. You must notify us of your intention to review our records. After you notify us, we will arrange with you the place and time the records will be available to you. At our discretion, we may send copies of the records to you.

§ 422.425 How will we conduct our review of the debt?

(a) *You must request review and present evidence.* If you receive a notice

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described in § 422.405, you have the right to have us review the debt. To exercise this right, you must request review and give us evidence that you do not owe all or part of the debt or that we do not have the right to collect it. If you do not request review and give us this evidence within 60 calendar days from the date of our notice, we may issue the garnishment order to your employer without further delay. If you request review of the debt and present evidence within that 60 calendar-day period, we will not send a garnishment order to your employer unless and until we consider all of the evidence and send you our findings that all or part of the debt is overdue and we have the right to collect it.

(b) *Review of the evidence.* If you request review of the debt, we will review our records related to the debt and any evidence that you present.

(c) *Our findings.* Following our review of all of the evidence, we will send you written findings, including the supporting rationale for the findings. Issuance of these findings will be our final action on your request for review. If we find that you do not owe the debt, or the debt is not overdue, or we do not have the right to collect it, we will not send a garnishment order to your employer.

§ 422.430 When will we refund amounts of your pay withheld by administrative wage garnishment?

If we find that you do not owe the debt or that we have no right to collect it, we will promptly refund to you any amount withheld from your disposable pay under this subpart that we received and cancel any administrative wage garnishment order that we issued. Refunds under this section will not bear interest unless Federal law or contract requires interest.

§ 422.435 What happens when we decide to send an administrative wage garnishment order to your employer?

(a) *The wage garnishment order.* The wage garnishment order that we send to your employer will contain only the information necessary for the employer to comply with the order. This information includes:

(1) Your name, address, and social security number,

(2) The amount of the debt,

(3) Information about the amount to be withheld, and

(4) Information about where to send the withheld amount.

(b) *Electronic record of the garnishment order.* We will keep an electronic record of the garnishment order that shows the date we mailed the order to your employer.

(c) *Employer certification.* Along with the garnishment order, we will send your employer a certification form to complete about your employment status and the amount of your disposable pay available for withholding. Your employer must complete the certification and return it to SSA within 20 days of receipt.

(d) *Amounts to be withheld from your disposable pay.* After receipt of the garnishment order issued under this section, your employer must begin withholding from your disposable pay each payday the lesser of:

(1) The amount indicated on the order (up to 15% of your disposable pay); or

(2) The amount by which your disposable pay exceeds thirty times the minimum wage as provided in 15 U.S.C. 1673(a)(2).

(e) *Multiple withholding orders.* If your disposable pay is subject to more than one withholding order, we apply the following rules to determine the amount that your employer will withhold from your disposable pay:

(1) Unless otherwise provided by Federal law or paragraph (e)(2) of this section, a garnishment order issued under this section has priority over other withholding orders served later in time.

(2) Withholding orders for family support have priority over garnishment orders issued under this section.

(3) If at the time we issue a garnishment order to your employer amounts are already being withheld from your pay under another withholding order, or if a withholding order for family support is served on your employer at any time, the amounts to be withheld under this section will be the lesser of:

(i) The amount calculated under paragraph (d) of this section; or

(ii) The amount calculated by subtracting the amount(s) withheld under the withholding order(s) with priority from 25% of your disposable pay.

(4) If you owe more than one debt to us, we may issue multiple garnishment orders. If we issue more than one garnishment order, the total amount to be withheld from your disposable pay under such orders will not exceed the amount set forth in paragraph (d) or (e)(3) of this section, as appropriate.

(f) *You may request that your employer withhold more.* If you request in writing that your employer withhold more than the amount determined under paragraphs (d) or (e) of this section, we will order your employer to withhold the amount that you request.

§ 422.440 What are your employer's responsibilities under an administrative wage garnishment order?

(a) *When withholding must begin.* Your employer must withhold the appropriate amount from your disposable pay on each payday beginning on the first payday after receiving the garnishment order issued under this section. If the first payday is within 10 days after your employer receives the order, then your employer must begin withholding on the first or second payday after your employer receives the order. Withholding must continue until we notify your employer to stop withholding.

(b) *Payment of amounts withheld.* Your employer must promptly pay to the Social Security Administration all amounts withheld under this section.

(c) *Other assignments or allotments of pay.* Your employer cannot honor an assignment or allotment of your pay to the extent that it would interfere with or prevent withholding under this section, unless the assignment or allotment is made under a family support judgment or order.

(d) *Effect of withholding on employer pay and disbursement cycles.* Your employer will not be required to vary its normal pay and disbursement cycles in order to comply with the garnishment order.

(e) *When withholding ends.* When we have fully recovered the amounts you owe, including interest, penalties, and administrative costs that we charge you as allowed by law, we will tell your employer to stop withholding from your disposable pay. As an added precaution, we will review our debtors' accounts at least annually to ensure that withholding has been terminated for accounts paid in full.

(f) *Certain actions by an employer against you are prohibited.* Federal law prohibits an employer from using a garnishment order issued under this section as the basis for discharging you from employment, refusing to employ you, or taking disciplinary action against you. If your employer violates this prohibition, you may file a civil action against your employer in a Federal or State court of competent jurisdiction.

§ 422.445 May we bring a civil action against your employer for failure to comply with our administrative wage garnishment order?

(a) We may bring a civil action against your employer for any amount that the employer fails to withhold from your disposable pay in accordance with paragraphs (d), (e) and (f) of § 422.435. Your employer may also be liable for attorney fees, costs of the lawsuit and (in the court's discretion) punitive damages.

(b) We will not file a civil action against your employer before we terminate collection action against you, unless earlier filing is necessary to avoid expiration of any applicable statute of limitations period. For purposes of this section, "terminate collection action" means that we have terminated collection action in accordance with the Federal Claims Collection Standards (31 CFR 903.3) or other applicable standards. In any event, we will consider that collection action has been terminated if we have not received any payments to satisfy the debt for a period of one year.

[FR Doc. 02–28856 Filed 11–14–02; 8:45 am]
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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 94P–0036]

RIN 0910–AB66

Food Labeling: Trans Fatty Acids in Nutrition Labeling, Nutrient Content Claims, and Health Claims; Reopening of the Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; reopening of the comment period.

SUMMARY: The Food and Drug Administration (FDA) is reopening to December 16, 2002, the comment period for a proposed rule published in the **Federal Register** of November 17, 1999 (64 FR 62746), in which FDA proposed to amend its regulations on nutrition labeling to include the amount of *trans* fatty acids present in a food in the amount and percent Daily Value declared for saturated fatty acids. Since publication of the proposed rule, the National Academy of Sciences issued a report entitled "Dietary Reference Intakes for Energy, Carbohydrate, Fiber, Fat, Fatty Acids, Cholesterol, Protein and Amino Acids" that did not provide a dietary reference intake value for *trans* fat. In response to this report, FDA intends to take a more incremental approach and provide for mandatory declaration of *trans* fat content on a separate line within the Nutrition Facts panel. FDA is reopening the comment period to receive comment on a footnote statement that it is proposing be required on the label when *trans* fat is listed. Lastly, FDA is outlining conditions for when it would consider exercising enforcement discretion for manufacturers who wish to begin labeling the *trans* fat content of food products prior to publication of a final rule.

DATES: Submit written or electronic comments on the proposed footnote by December 16, 2002.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments.

FOR FURTHER INFORMATION CONTACT: Joyce Saltsman, Center for Food Safety and Applied Nutrition (HFS–306), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–1641.

SUPPLEMENTARY INFORMATION:

I. Reopening of Comment Period

In the **Federal Register** of November 17, 1999 (64 FR 62746) (the November 1999 proposal), FDA (we) proposed to amend our regulations on nutrition labeling to require that the amount of *trans* fatty acids (*trans* fats) present in a food, including dietary supplements, be included in the amount and percent of Daily Value (% DV) declared for saturated fatty acids. We also proposed that, wherever saturated fat limits are placed on nutrient content claims, health claims, or disclosure or disqualifying levels, the amount of *trans* fatty acids be limited as well. Finally, we proposed to define the nutrient content claim "*trans* fat free." In that document, we requested comments on the proposal by February 15, 2000. In the **Federal Register** of February 16, 2000 (65 FR 7806), we reopened the comment period to April 17, 2000, in response to requests for more time to submit comments. In the **Federal Register** of December 5, 2000 (65 FR 75887), we again reopened the comment period to January 19, 2001, in response to comments regarding nutrient content claims.

Subsequent to FDA's November 1999 proposal, the Institute of Medicine of the National Academy of Sciences (IOM/NAS) issued a report entitled "Dietary Reference Intakes for Energy, Carbohydrate, Fiber, Fat, Fatty Acids, Cholesterol, Protein and Amino Acids" (the IOM/NAS macronutrient report) and found "a positive linear trend" between *trans* fatty acid intake and total and low density lipoprotein-cholesterol (LDL–C) concentration, and therefore increased risk of coronary heart disease (Ref. 1).

The report summarized that the scientific evidence would suggest a tolerable upper intake level (UL) of zero, but because *trans* fats are unavoidable in ordinary diets and achieving such a UL would require extraordinary changes in dietary intake patterns that might introduce other undesirable effects and unknown health risks, a UL was not proposed. Instead, the report recommended "that *trans* fat consumption be as low as possible while consuming a nutritionally adequate diet." Likewise, the conclusions in the Dietary Guidelines for Americans, 2000 (Ref. 2) and recent guidelines from the National Cholesterol Education Program (NCEP) (Ref. 3) are similar with recommendations to limit *trans* fat intake in the diet.

The IOM/NAS report (Ref. 1) underscores the relationship between the intake of *trans* fat and the increased risk for heart disease and emphasizes that consumers need to limit *trans* fat in their diets. FDA recognizes that, to accomplish this, information on the *trans* fat content of foods needs to be available on food labels. But the IOM/NAS report did not provide a dietary reference intake (DRI) value for *trans* fat or information that the agency believes is sufficient to support its establishing a daily reference value (DRV) to assist the agency in providing other information on the label, such as a % DV for *trans* fat.

Comments to the November 1999 proposal stressed the importance of helping consumers understand the relevance of the quantitative amount of *trans* fat in relation to recommended dietary intake patterns. In addition, Section 2(b) of the Nutrition Labeling and Education Act of 1990 (the 1990 amendments) (Public Law 101–535) states that the Secretary of Health and Human Services, and by delegation FDA, shall require the declaration of nutrients "be conveyed to the public in a manner which enables the public to readily observe and comprehend such information and to understand its relative significance in the context of a total daily diet." The % DV has been added to nutrition labeling for most nutrients to achieve this purpose. However, we do not have a basis on which to establish a DV for *trans* fat at this time. Therefore, in light of the public health recommendations to reduce *trans* fat intake in the American diet, FDA is proposing to require an asterisk (or other symbol) in the % DV column for *trans* fat when it is listed, that is tied to a similar symbol at the bottom of the Nutrition Facts box and

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that is followed by the statement "Intake of *trans* fat should be as low as possible." In the absence of a % DV for *trans* fat, the footnote statement will provide guidance to consumers when using the quantitative information to help maintain healthy dietary practices. This statement is taken from the IOM/NAS macronutrient report and is consistent with the dietary guidance in the other recent scientific reports referenced in this document.

For interested parties who would like to submit comments on the proposed use of the footnote statement "Intake of *trans* fat should be as low as possible," we are reopening the comment period of the November 1999 proposal for a period of 30 days. Comments submitted during this period are to be limited to those that directly address the proposed use of the footnote. We are not requesting comments on any other issue, and we do not intend to consider such comments if submitted.

Following receipt of comments on this document, FDA intends to publish in early 2003 a final rule requiring mandatory declaration of *trans* fat content within the Nutrition Facts panel under the declaration for saturated fat, similar to the declarations of mono- and polyunsaturated fats. In response to interest expressed by manufacturers and trade associations to begin labeling the *trans* fat content of food products prior to publication of the final rule, we will consider the exercise of our enforcement discretion for such labeling as long as the footnote statement is also included in the Nutrition Facts panel. The agency cautions manufacturers that a final rule on this issue may differ from this proposal and that manufacturers would then be required to change their labels to conform to the final rule.

II. How to Submit Comments

Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments. Two copies of any mailed comments are to be submitted, except that individuals may submit one copy. Submit electronic comments to http://www.fda.gov/dockets/ecomments. Identify all comments with the docket number found in brackets in the heading of this document. You may review received comments in the Dockets Management Branch office between 9 a.m. and 4 p.m., Monday through Friday.

III. References

The following references have been placed on display in the Dockets Management Branch (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday. FDA has verified the following three Web site addresses, but is not responsible for subsequent changes to the Web sites after this document publishes in the **Federal Register**.

1. IOM/NAS, "Dietary Reference Intakes for Energy, Carbohydrate, Fiber, Fat, Fatty Acids, Cholesterol, Protein and Amino Acids," chapter 8, National Academy Press, Washington, DC, pp. 335–432, 2002 (Internet address: http://www.nap.edu/books/0309085373/html/).

2. U.S. Department of Agriculture and U.S. Department of Health and Human Services, *Nutrition and Your Health: Dietary Guidelines for Americans*, 5th ed. Washington, DC; Home and Garden Bulletin No. 232. pp. 27–31, 2000 (Internet address: http://www.usda.gov/cnpp/Pubs/DG2000/Index.htm).

3. Expert Panel on Detection, Evaluation, and Treatment of High Blood Cholesterol in Adults, Third Report of the National Cholesterol Education Program (NCEP) Expert Panel on Detection, Evaluation, and Treatment of High Blood Cholesterol in Adults (Adult Treatment Panel III), Chapter II. "Rationale for Intervention" and Chapter V "Adopting Healthful Lifestyle Habits to Lower LDL Cholesterol and Reduce CHD Risk," 2001 (Internet address: http://www.nhlbi.nih.gov/guidelines/cholesterol/index.htm).

Dated: November 8, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–29096 Filed 11–12–02; 3:33 pm]

BILLING CODE 4160–01–S

AMERICAN BATTLE MONUMENTS COMMISSION

36 CFR Part 404

Revision of the Freedom of Information Act Regulations and Implementation of the Electronic Freedom of Information Act Amendments of 1996

AGENCY: American Battle Monuments Commission.

ACTION: Proposed rule.

SUMMARY: The American Battle Monuments Commission proposes to revise its regulations for responding to public requests for access to records or information under the Freedom of Information Act (FOIA). These regulations update and amplify the Commission's current regulations.

DATES: We will accept comments from all interested parties until January 14, 2003.

ADDRESSES: Submit your comments to Mr. Thomas R. Sole, FOIA Officer, Courthouse Plaza II, Suite 500, 2300 Clarendon Boulevard, Arlington, VA 22201–3367; fax (703) 696–6666. All comments received will be available for public inspection at that address.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas R. Sole, Freedom of Information Officer, American Battle Monuments Commission or Ms. Martha Sell, Freedom of Information Act Representative, Courthouse Plaza II, Suite 500, 2300 Clarendon Blvd., Arlington, VA 22202 or by telephone at 703–696–6897.

SUPPLEMENTARY INFORMATION: This proposed rule replaces 36 CFR Parts 404 and 405. It updates Commission addresses, organizational information, and fee schedule and explicitly incorporates electronic format information as within the scope of covered information consistent with the Electronic Freedom of Information Act of 1996 (Pub. L. 104–231).

List of Subjects in 36 CFR Parts 404 and 405

Freedom of information.

For the reasons stated in the preamble, the American Battle Monuments Commission amends 36 CFR chapter IV as follows:

1. Revise part 404 to read as follows:

PART 404—PROCEDURES AND GUIDELINES FOR COMPLIANCE WITH THE FREEDOM OF INFORMATION ACT

Sec.

404.1 General.
404.2 Authority and functions.
404.3 Organization.
404.4. Access to information.
404.5 Inspection and copying.
404.6 Definitions.
404.7 Fees to be charged—general.
404.8 Fees to be charged—categories of requesters.
404.9 Miscellaneous fee provisions.
404.10 Waiver or reduction of charges.

Authority: 5 U.S.C. 552.

§ 404.1 General.

This information is furnished for the guidance of the public and in compliance with the requirements of section 552 of Title 5, United States Code, as amended.

§ 404.2 Authority and functions.

The general functions of the American Battle Monuments Commission, as provided by statute, 36 U.S.C. 2101, *et seq.*, are to build and maintain suitable memorials commemorating the service of American Armed Forces and to maintain permanent American military cemeteries in foreign countries.

§ 404.3 Organization.

(a) The brief description of the central organization of the American Battle Monuments Commission follows:

(1) The Commission is composed of not more than eleven members appointed by the President.

(2) The day to day operation of the Commission is under the direction of a secretary appointed by the President.

(3) Principal Officials include the Executive Director, Director of Finance, Director of Procurement and Contracting, Director of Engineering, Maintenance, and Operations and Director of Personnel and Administration.

(4) The Commission also creates temporary offices when tasked with major additional responsibilities not of a permanent nature.

(b) *Locations.* (1) The principal offices of the American Battle Monuments Commission are located at Courthouse Plaza II, Suite 500, 2300 Clarendon Boulevard, Arlington, VA 22201. Persons desiring to visit offices or employees of the American Battle Monuments Commission should write or telephone ahead (703–696–6897 or 703–696–6895) to make an appointment.

(2) Field offices are located in Paris, France; Rome, Italy; Manila, Republic of the Philippines; the Republic of Panama; and Mexico City, Mexico.

§ 404.4 Access to information.

(a) The American Battle Monuments Commission makes available information pertaining to Commission matters within the scope of 5 U.S.C. 552(a)(2) by publishing them electronically at the ABMC home page at *www.abmc.gov*.

(b) The ABMC FOIA Officer is responsible for acting on all initial requests. Individuals wishing to file a request under the Freedom of Information Act (FOIA) should address their request in writing to the FOIA Officer, American Battle Monuments Commission, Courthouse Plaza II, Suite 500, 2300 Clarendon Boulevard, Arlington, VA 22201 (telephone 703–696–6897 or 703–696–6895). Requests for information shall be as specific as possible.

(c) Upon receipt of any request for information or records, the FOIA Officer will determine within 20 days (excepting Saturdays, Sundays and legal public holidays) after the receipt of such request whether it is appropriate to grant the request and will immediately provide written notification to the person making the request. If the request is denied, the written notification to the person making the request shall include the names of the individuals who participated in the determination, the reasons for the denial, and a notice that an appeal may be lodged within the American Battle Monuments Commission. (Receipt of a request as used herein means the date the request is received in the office of the FOIA Officer.)

(d) *Expedited processing.* (1) Requests and appeals will be taken out of order and given expedited treatment whenever it is determined that they involve:

(i) Circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual;

(ii) An urgency to inform the public about an actual or alleged federal government activity, if made by a person primarily engaged in disseminating information;

(iii) The loss of substantial due process rights; or

(iv) A matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity which effect public confidence.

(2) A request for expedited processing may be made at the time of the initial request for records or at any later time.

(3) A requester who seeks expedited processing must submit a statement, certified to be true and correct to the best of that person's knowledge and belief, explaining in detail the basis for requesting expedited processing. For example, a requester within the category described in paragraph (d)(1)(ii) of this section, if not a full-time member of the news media, must establish that he or she is a person whose main professional activity or occupation is information dissemination, though it need not be his or her sole occupation. A requester within the category (d)(1)(ii) of this section also must establish a particular urgency to inform the public about the government activity involved in the request, beyond the public's right to know about government activity generally. The formality of certification may be waived as a matter of administrative discretion.

(4) Within ten days of its receipt of a request for expedited processing, ABMC will decide whether to grant it and will notify the requester of the decision. If a request for expedited treatment is granted, the request will be given priority and will be processed as soon as practicable. If a request for expedited processing is denied, any appeal of that decision will be acted on expeditiously.

(e) Appeals shall be set forth in writing within 30 days of receipt of a denial and addressed to the FOIA Officer at the address specified in paragraph (b) of this section. The appeal shall include a statement explaining the basis for the appeal. Determinations of appeals will be set forth in writing and signed by the Executive Director, or his designee, within 20 days (excepting Saturdays, Sundays, and legal public holidays). If, on appeal, the denial is in whole or in part upheld, the written determination will also contain a notification of the provisions for judicial review and the names of the persons who participated in the determination.

(f) In unusual circumstances, the time limits prescribed in paragraphs (c) and (e) of this section may be extended for not more than 10 days (excepting Saturdays, Sundays, or legal public holidays). Extensions may be granted by the FOIA Officer. The extension period may be split between the initial request and the appeal but in no instance may the total period exceed 10 working days. Extensions will be by written notice to the persons making the request and will set forth the reasons for the extension and the date the determination is expected.

(g) With respect to a request for which a written notice under paragraph (f) of this section extends the time limits prescribed under paragraph (c) of this section, the agency shall notify the person making the request if the request cannot be processed within the time limit specified in paragraph (f) of this section and shall provide the person an opportunity to limit the scope of the request so that it may be processed within that time limit or an opportunity to arrange with the agency an alternative time frame for processing the request or a modified request. Refusal by the person to reasonably modify the request or arrange such an alternative time frame shall be considered as a factor in determining whether exceptional circumstances exist for purposes of 5 U.S.C. 552(a)(6)(C). When ABMC reasonably believes that a requester, or a group of requestors acting in concert, has submitted requests that constitute a single request, involving clearly related matters, ABMC may aggregate those requests for purposes of this paragraph. One element to be considered in determining whether a belief would be reasonable is the time period over which the requests have occurred.

(h) As used herein, but only to the extent reasonably necessary to the proper processing of the particular request, the term unusual circumstances means:

(1) The need to search for and collect the requested records from establishments that are separated from the office processing the request;

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records

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which are demanded in a single request; or

The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency which have a substantial subject matter interest therein.

§ 404.5 Inspection and copying.

When a request for information has been approved pursuant to § 404.4, the person making the request may make an appointment to inspect or copy the materials requested during regular business hours by writing or telephoning the FOIA Officer at the address or telephone number listed in § 404.4(b). Such materials may be copied and reasonable facilities will be made available for that purpose. Copies of individual pages of such materials will be made available at the price per page specified in § 404.7(d); however, the right is reserved to limit to a reasonable quantity the copies of such materials which may be made available in this manner when copies also are offered for sale by the Superintendent of Documents.

§ 404.6 Definitions.

For the purpose of the regulations in this part:

(a) All the terms defined in the Freedom of Information Act apply.

(b) A statute specifically providing for setting the level of fees for particular types of records (5 U.S.C. 552(a)(4)(A)(vi)) means any statute that specifically requires a government agency, such as the Government Printing Office (GPO) or the National Technical Information Service (NTIS), to set the level of fees for particular types of records, in order to:

(1) Serve both the general public and private sector organizations by conveniently making available government information;

(2) Ensure that groups and individuals pay the cost of publications and other services that are for their special use so that these costs are not borne by the general taxpaying public;

(3) Operate an information dissemination activity on a self-sustaining basis to the maximum extent possible; or

(4) Return revenue to the Treasury for defraying, wholly or in part, appropriated funds used to pay the cost of disseminating government information. Statutes, such as the User Fee Statute, which only provide a general discussion of fees without explicitly requiring that an agency set and collect fees for particular documents do not supersede the Freedom of Information Act under section (a)(4)(A)(vi) of that statute.

(c) The term direct costs means those expenditures that ABMC actually incurs in searching for and duplicating (and in the case of commercial requesters, reviewing) documents to respond to a FOIA request. Direct costs include, for example, the salary of the employee performing work (the basic rate of pay for the employee plus 16 percent of that rate to cover benefits) and the cost of operating duplicating machinery. Not included in direct costs are overhead expenses such as costs of space, and heating or lighting the facility in which the records are stored.

(d) The term search means the process of looking for and retrieving records or information responsive to a request. It includes page-by-page or line-by-line identification of information within records and also includes reasonable efforts to locate and retrieve information from records maintained in electronic form or format. ABMC employees should ensure that searching for material is done in the most efficient and least expensive manner so as to minimize costs for both the agency and the requester. For example, employees should not engage in line-by-line search when merely duplicating an entire document would prove the less expensive and quicker method of complying with a request. Search should be distinguished, moreover, from review of material in order to determine whether the material is exempt from disclosure (see paragraph (f) of this section).

(e) The term duplication means the making of a copy of a document, or of the information contained in it, necessary to respond to a FOIA request. Such copies can take the form of paper, microform, audio-visual materials, or electronic records (*e.g.*, magnetic tape or disk), among others. The requester's specified preference of form or format of disclosure will be honored if the record is readily reproducible in that format.

(f) The term review refers to the process of examining documents located in response to a request that is for a commercial use (see paragraph (g) of this section) to determine whether any portion of any document located is permitted to be withheld. It also includes processing any documents for disclosure, *e.g.*, doing all that is necessary to excise them and otherwise prepare them for release. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(g) The term commercial use request refers to a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made. In determining whether a requester properly belongs in this category, ABMC must determine the use to which a requester will put the documents requested. Moreover, where an ABMC employee has reasonable cause to doubt the use to which a requester will put the records sought, or where that use is not clear from the request itself, the employee should seek additional clarification before assigning the request to a specific category.

(h) The term educational institution refers to a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, or an institution of vocational education, that operates a program or programs of scholarly research.

(i) The term non-commercial scientific institution refers to an institution that is not operated on a commercial basis (as that term is referenced in paragraph (g) of this section), and that is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

The term representative of the news media refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term news means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of news) who make their products available for purchase or subscription by the general public. These examples are not intended to be all-inclusive. Moreover, as traditional methods of news delivery evolve (*e.g.*, electronic dissemination of newspapers through telecommunications services), such alternative media would be included in this category. In the case of freelance journalists, they may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it. A publication contract would be the clearest proof, but ABMC may also look to the past publication record of a requester in making this determination.

§ 404.7 Fees to be charged—general.

ABMC shall charge fees that recoup the full allowable direct costs it incurs. Moreover, it shall use the most efficient and least costly methods to comply with requests for documents made under the FOIA. When documents that would be responsive to a request are maintained for distribution by agencies operating statutory-based fee schedule programs (see definition in §404.5(b)), such as the NTIS, ABMC should inform requesters of the steps necessary to obtain records from those sources.

(a) *Manual searches for records.* ABMC will charge at the salary rate(s) (i.e., basic pay plus 16 percent) of the employee(s) making the search.

(b) *Computer searches for records.* ABMC will charge at the actual direct cost of providing the service. This will include the cost of operating the central processing unit (CPU) for that portion of operating time that is directly attributable to searching for records responsive to a FOIA request and operator/programmer salary apportionable to the search.

(c) *Review of records.* Only requesters who are seeking documents for commercial use may be charged for time spent reviewing records to determine whether they are exempt from mandatory disclosure. Charges may be assessed only for the initial review; i.e., the review undertaken the first time ABMC analyzes the applicability of a specific exemption to a particular record or portion of a record. Records or portions of records withheld in full under an exemption that is subsequently determined not to apply may be reviewed again to determine the applicability of other exemptions not previously considered. The costs for such a subsequent review is assessable.

(d) *Duplication of records.* Records will be duplicated at a rate of $.15 per page. For copies prepared by computer, such as tapes or printouts, ABMC shall charge the actual cost, including operator time, of production of the tape or printout. For other methods of reproduction or duplication, ABMC will charge the actual direct costs of producing the document(s). If ABMC estimates that duplication charges are likely to exceed $25, it shall notify the requester of the estimated amount of fees, unless the requester has indicated in advance his willingness to pay fees as high as those anticipated. Such a notice shall offer a requester the opportunity to confer with agency personnel with the object of reformulating the request to meet his or her needs at a lower cost.

(e) *Other charges.* ABMC will recover the full costs of providing services such as those enumerated below when it elects to provide them:

(1) Certifying that records are true copies;

(2) Sending records by special methods such as express mail.

(3) Eight by ten inch black and white photographs—$3.75

(4) Eight by ten inch color photographs—$5.00

(5) $1.50 per publication

(6) Video Purchase: The Price of Freedom—$13.00

(f) Remittances shall be in the form either of a personal check or bank draft drawn on a bank in the United States, or a postal money order. Remittances shall be made payable to the order of the Treasury of the United States and mailed to the FOIA Officer, American Battle Monuments Commission, Courthouse Plaza II, Suite 500, 2300 Clarendon Blvd., Arlington, Virginia 22201.

(g) A receipt for fees paid will be given upon request. Refund of fees paid for services actually rendered will not be made.

(h) *Restrictions on assessing fees.* With the exception of requesters seeking documents for a commercial use, ABMC will provide the first 100 pages of duplication and the first two hours of search time without charge. Moreover, ABMC will not charge fees to any requester, including commercial use requesters, if the cost of collecting a fee would be equal to or greater than the fee itself.

(1) The elements to be considered in determining the cost of collecting a fee are the administrative costs of receiving and recording a requester's remittance, and processing the fee for deposit in the Treasury Department's special account.

(2) For purposes of these restrictions on assessment of fees, the word pages refers to paper copies of 8½ x 11 or 11 x 14. Thus, requesters are not entitled to 100 microfiche or 100 computer disks, for example. A microfiche containing the equivalent of 100 pages or 100 pages of computer printout, does meet the terms of the restriction.

(3) Similarly, the term search time in this context has as its basis, manual search. To apply this term to searches made by computer, ABMC will determine the hourly cost of operating the central processing unit and the operator's hourly salary plus 16 percent. When the cost of search (including the operator time and the cost of operating the computer to process a request) equals the equivalent dollar amount of two hours of the salary of the person performing the search, *i.e.*, the operator, ABMC will begin assessing charges for computer search.

§ 404.8 Fees to be charged—categories of requesters.

There are four categories of FOIA requesters: commercial use requesters; educational and non-commercial scientific institutions; representatives of the news media; and all other requesters. The specific levels of fees for each of these categories:

(a) *Commercial use requesters.* When ABMC receives a request for documents for commercial use, it will assess charges that recover the full direct costs of searching for, reviewing for release, and duplicating the record sought. Requesters must reasonably describe the records sought. Commercial use requesters are not entitled to two hours of free search time nor 100 free pages of reproduction of documents. ABMC may recover the cost of searching for and reviewing records even if there is ultimately no disclosure of records (see § 404.8(b)).

(b) *Educational and non-commercial scientific institution requesters.* ABMC shall provide documents to requesters in this category for the cost of reproduction alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, requesters must show that the request is being made as authorized by and under the auspices of a qualifying institution and that the records are not sought for a commercial use, but are sought in furtherance of scholarly (if the request is from an educational institution) or scientific (if the request is from a non-commercial scientific institution) research. Requesters must reasonably describe the records sought.

(c) *Requesters who are representatives of the news media.* ABMC shall provide documents to requesters in this category when serving the news dissemination function for the cost of reproduction alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, a requester must meet the criteria in § 404.4(j), and his or her request must not be made for a commercial use. In reference to this class of requester, a request for records supporting the news dissemination function of the requester shall not be considered to be a request that is for a commercial use. Requesters must reasonably describe the records sought.

(d) *All other requesters.* ABMC shall charge requesters who do not fit into any of the categories above fees that recover the full reasonable direct cost of searching for and reproducing records

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that are responsive to the request, except that the first 100 pages of reproduction and the first two hours of search time shall be furnished without charge. Moreover, requests for records about the requesters filed in ABMC's systems of records will continue to be treated under the fee provisions of the Privacy Act of 1974 which permit fees only for reproduction. Requesters must reasonably describe the records sought.

§ 404.9 Miscellaneous fee provisions.

(a) *Charging interest—notice and rate.* ABMC may begin assessing interest charges on an unpaid bill starting on the 31st day following the day on which the billing was sent. The fact that the fee has been received by ABMC within the thirty day grace period, even if not processed, will suffice to stay the accrual of interest. Interest will be at the rate prescribed in section 3717 of Title 31 of the United States Code and will accrue from the date of the billing.

(b) *Charges for unsuccessful search.* ABMC may assess charges for time spent searching, even if it fails to locate the records or if records located are determined to be exempt from disclosure. If ABMC estimates that search charges are likely to exceed $25, it shall notify the requester of the estimated amount of fees, unless the requester has indicated in advance his willingness to pay fees as high as those anticipated. Such a notice shall offer the requester the opportunity to confer with agency personnel with the object of reformulating the request to meet his or her needs at a lower cost.

(c) *Aggregating requests.* A requester may not file multiple requests at the same time, each seeking portions of a document or documents, solely in order to avoid payment of fees. When ABMC reasonably believes that a requester, or a group of requestors acting in concert, has submitted requests that constitute a single request, involving clearly related matters, ABMC may aggregate those requests and charge accordingly. One element to be considered in determining whether a belief would be reasonable is the time period over which the requests have occurred.

(d) *Advance payments.* ABMC may not require a requester to make an advance payment, *i.e.*, payment before work is commenced or continued on a request, unless:

(1) ABMC estimates or determines that allowable charges that a requester may be required to pay are likely to exceed $250. Then, ABMC will notify the requester of the likely cost and obtain satisfactory assurance of full payment where the requester has a history of prompt payment of FOIA fees, or require an advance payment of an amount up to the full estimated charges in the case of requesters with no history of payment; or

(2) A requester has previously failed to pay a fee charged in a timely fashion (*i.e.*, within 30 days of the date of the billing). Then, ABMC may require the requester to pay the full amount owed plus any applicable interest as provided above or demonstrate that he or she has, in fact, paid the fee, and to make an advance payment of the full amount of the estimated fee before the agency begins to process a new request or a pending request from that requester.

(3) When ABMC acts under paragraph (d)(1) or (2) of this section, the administrative time limits prescribed in the FOIA, 5 U.S.C. 552(a)(6) (*i.e.*, 20 working days from receipt of initial requests and 20 working days from receipt of appeals from initial denial, plus permissible extensions of these time limits), will begin only after ABMC has received fee payments described in paragraphs (d)(1) and (2) of this section.

(e) *Effect of the Debt Collection Act of 1982 (Pub. L. 97–365).* ABMC should comply with provisions of the Debt Collection Act, including disclosure to consumer reporting agencies and use of collection agencies, where appropriate, to encourage repayment.

§ 404.10 Waiver or reduction of charges.

Fees otherwise chargeable in connection with a request for disclosure of a record shall be waived or reduced where it is determined that disclosure is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government and is not primarily in the commercial interest of the requester.

PART 405—[REMOVED]

2. Remove part 405.

Dated: November 5, 2002.

Theodore Gloukhoff,

Director, Personnel and Administration.

[FR Doc. 02–28900 Filed 11–14–02; 8:45 am]

BILLING CODE 6120–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018—AH10

Endangered and Threatened Wildlife and Plants; Designations of Critical Habitat for Plant Species From the Island of Lanai, HI

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service) announce the reopening of the public comment period for the proposed rule to designate critical habitat for 32 plants from the island of Lanai, Hawaii. We have received new information since the close of the comment period and the comment period is reopened to allow additional time for all interested parties to consider the information and submit written comments on the proposal. Comments already submitted on the proposed rule need not be resubmitted as they already have been incorporated into the public record and will be fully considered in the final determination.

DATES: The comment period for this proposal now closes on November 25, 2002. Any comments received by the closing date will be considered in the final decision on this proposal.

ADDRESSES: Written comments and information should be submitted to the Field Supervisor, U.S. Fish and Wildlife Service, Pacific Islands Office, 300 Ala Moana Boulevard, Room 3–122, P.O. Box 50088, Honolulu, HI 96850. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Paul Henson, at the above address (telephone 808/541–3441; facsimile 808/541–3470).

SUPPLEMENTARY INFORMATION:

Background

On March 4, 2002, we published a revised proposed critical habitat rule for 32 of the 37 plant species listed under the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), known historically from the island of Lanai (67 FR 9806). The original comment period closed on May 3, 2002. The comment period was reopened on July 15, 2002 and closed on August 30, 2002. The current comment period closes on November 25, 2002.

A total of 37 species historically found on Lanai were listed as endangered or threatened species under the Act between 1991 and 1999. Some of these species may also occur on other Hawaiian islands. Previously, we proposed that designation of critical habitat was prudent for 32 (*Abutilon eremitopetalum, Adenophorus periens, Bidens micrantha* ssp. *kalealaha, Bonamia menziesii, Brighamia rockii, Cenchrus agrimonioides, Centaurium sebaeoides, Clermontia oblongifolia* ssp. *mauiensis, Ctenitis squamigera, Cyanea grimesiana* ssp. *grimesiana, Cyanea lobata, Cyanea macrostegia* ssp. *gibsonii, Cyperus trachysanthos, Cyrtandra munroi, Diellia erecta, Diplazium molokaiense, Gahnia lanaiensis, Hedyotis mannii, Hesperomannia arborescens, Hibiscus brackenridgei, Isodendrion pyrifolium, Mariscus fauriei, Neraudia sericea, Portulaca sclerocarpa, Sesbania tomentosa, Silene lanceolata, Solanum incompletum, Spermolepis hawaiiensis, Tetramolopium remyi, Vigna o-wahuensis, Viola lanaiensis*, and *Zanthoxylum hawaiiense*) of the 37 species reported from the island of Lanai. No change is made to the 32 proposed prudency determinations in the March 4, 2002, revised proposed critical habitat rule for plants from Lanai. We previously proposed that designation of critical habitat was not prudent for *Phyllostegia glabra* var. *lanaiensis* because it had not been seen recently in the wild, and no viable genetic material of this species is known to exist (65 FR 82086). No change is made to this proposed prudency determination in the March 4, 2002, revised proposed critical habitat rule (67 FR 9806). In the March 4, 2002, revised proposed critical habitat rule, we proposed that designation of critical habitat is prudent for *Tetramolopium lepidotum* ssp. *lepidotum*, a species for which a prudency determination has not been made previously. We determined that designation of critical habitat was prudent for *Hedyotis schlechtendahliana* var. *remyi, Labordia tinifolia* var. *lanaiensis*, and *Melicope munroi* at the time of their listing in 1999.

We also proposed designation of critical habitat for 32 (*Abutilon eremitopetalum, Adenophorus periens, Bidens micrantha* ssp. *kalealaha, Bonamia menziesii, Brighamia rockii, Cenchrus agrimonioides, Centaurium sebaeoides, Clermontia oblongifolia* ssp. *mauiensis, Ctenitis squamigera, Cyanea grimesiana* ssp. *grimesiana, Cyanea lobata, Cyanea macrostegia* ssp. *gibsonii, Cyperus trachysanthos, Cyrtandra munroi, Diellia erecta, Diplazium molokaiense, Gahnia lanaiensis, Hedyotis mannii, Hedyotis schlechtendahliana* var. *remyi, Hesperomannia arborescens, Hibiscus brackenridgei, Isodendrion pyrifolium, Labordia tinifolia* var. *lanaiensis, Melicope munroi, Neraudia sericea, Portulaca sclerocarpa, Sesbania tomentosa, Solanum incompletum, Spermolepis hawaiiensis, Tetramolopium remyi, Vigna o-wahuensis*, and *Viola lanaiensis*) plant species. Critical habitat is not proposed for four (*Mariscus fauriei, Silene lanceolata, Tetramolopium lepidotum* ssp. *lepidotum*, and *Zanthoxylum hawaiiense*) of the 37 species which no longer occur on the island of Lanai, and for which we are unable to identify any habitat that is essential to their conservation on the island of Lanai. Critical habitat is not proposed for *Phyllostegia glabra* var. *lanaiensis* for the reasons given above. Eight critical habitat units, totaling approximately 7,853 hectares (19,405 acres), are proposed for designation on the island of Lanai. For locations of these proposed units, please consult the proposed rule (67 FR 9806).

Public Comments Solicited

Since the close of the comment period, we have received new information in the form of a draft conservation agreement (copy available upon request) from the owner of Unit D. The comment period is reopened to allow additional time for all interested parties to consider the information and submit written comments on the proposal. One possible outcome may be a decision to exclude this area from the final designation pursuant to section 4(b)(2) of the Act.

We will accept written comments and information during this reopened comment period. If you wish to comment, you may submit your comments and materials concerning this proposal by any of the following methods:

(1) You may submit written comments and information to the Field Supervisor, U.S. Fish and Wildlife Service, Pacific Islands Office, 300 Ala Moana Blvd., P.O. Box 50088, Honolulu, HI 96850–0001.

(2) You may hand-deliver comments to our Honolulu Fish and Wildlife Office at the address given above.

Comments and materials received, as well as supporting documentation used in preparation of the proposal to designate critical habitat, will be available for inspection, by appointment, during normal business hours at the address under (1) above. Copies of the draft document are available on the Internet at *http://pacificislands.fws.gov* or by request from the Field Supervisor at the address and phone number under (1 and 2) above.

Information regarding this proposal is available in alternative formats upon request.

Author

The primary author of this notice is Gina Shultz (see **ADDRESSES** section).

Authority: The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: November 5, 2002.

Paul Hoffman,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 02–29047 Filed 11–12–02; 3:04 pm]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018—AH01

Endangered and Threatened Wildlife and Plants; Determination of Critical Habitat for the Kauai Cave Wolf Spider and Kauai Cave Amphipod

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; extension of comment period and notice of availability of draft economic analysis.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce the availability of the draft economic analysis for the proposed designations of critical habitat for the Kauai cave wolf spider and Kauai cave amphipod from the island of Kauai, Hawaii. We are now providing notice of extending the comment period to allow peer reviewers and all interested parties to comment simultaneously on the proposed rule and the associated draft economic analysis. The draft economic analysis shows a range likely costs from the proposed critical habitat designation of between $743 million to $1.955 billion over the 18 year period from 2003 to 2020. Comments previously submitted need not be resubmitted as they will be incorporated into the public record as part of this extended comment period and will be fully considered in preparation of the final rule.

DATES: We will accept public comments until December 16, 2002.

ADDRESSES: Written comments and information should be submitted to Field Supervisor, U.S. Fish and Wildlife

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Service, Pacific Islands Office, 300 Ala Moana Blvd., P.O. Box 50088, Honolulu, HI 96850–0001. Copies of the draft economic analysis are available on the Internet at *http://pacificislands.fws.gov* or by request from the Field Supervisor at the above address and 808/541–3441. For further instructions on commenting, refer to Public Comments Solicited section of this notice.

FOR FURTHER INFORMATION CONTACT: Paul Henson, Field Supervisor, Pacific Islands Office, at the above address (telephone: 808/541–3441; facsimile: 808/541–3470).

SUPPLEMENTARY INFORMATION:

Background

On June 16, 1978, we published in the **Federal Register** a proposal to list the Kauai cave wolf spider (*Adelocosa anops*) as an endangered species and the Kauai cave amphipod (*Spelaeorchestia koloana*) as threatened (43 FR 26084). That proposal was withdrawn on September 2, 1980 (45 FR 58171) as a result of a provision in the 1978 Amendments to the Endangered Species Act of 1973 that required withdrawal of all pending proposals that were not made final within 2 years of the proposal or within one year after passage of the Amendments, which ever period was longer. An initial comprehensive Notice of Review for invertebrate animals was published on May 22, 1984 (49 FR 21664), in which the Kauai cave wolf spider and Kauai cave amphipod were treated as category 2 candidates for Federal listing. Category 2 taxa were those for which conclusive data on biological vulnerability and threats were not currently available to support proposed rules.

We published an updated Notice of Review for animals on January 6, 1989 (54 FR 554). In this notice, the Kauai cave wolf spider and Kauai cave amphipod were treated as category 1 candidates for Federal listing. Category 1 taxa were those for which we had on file substantial information on biological vulnerability and threats to support preparation of listing proposals. However, in the Notice of Review for all animal taxa published on November 21, 1991 (56 FR 58804), the two Kauai cave arthropods were listed as category 2 candidates. In the November 15, 1994, Notice of Review for all animal taxa (59 FR 58982), the two Kauai cave arthropods were again elevated to category 1 candidates. Upon publication of the February 28, 1996, Notice of Review (61 FR 7596), we ceased using candidate category designations and included the two cave arthropods as candidate species. Candidate species are those for which we have on file sufficient information on biological vulnerability and threats to support proposals to list the species as threatened or endangered. The two cave arthropods were included as candidate species in the September 19, 1997 (62 FR 49398), Notice of Review.

A proposed rule to list these two species as endangered was published on December 5, 1997 (62 FR 64340), and the final rule to list them was published on January 14, 2000 (65 FR 2348). In the proposed listing rule, we indicated that designation of critical habitat for the Kauai cave wolf spider and Kauai cave amphipod was not prudent. Our concern was that publication of precise maps and descriptions of critical habitat in the **Federal Register** could increase human visitation to these highly sensitive cave habitats, which could lead to incidents of vandalism, destruction of habitat, and unintentional cases of take. Also, we believed that critical habitat designation would not provide any additional benefit to these species beyond that provided through listing as endangered.

However, in the final rule, we determined that critical habitat designation was prudent as at the time we did not find specific evidence of taking, vandalism, collection, or trade of these species or any other similarly situated species. Also, we did find that there may also be some educational or informational benefit to designating critical habitat. Therefore, we found that the benefits of designating critical habitat for these two species outweighed the benefits of not designating critical habitat. In that final rule, we determined that critical habitat designation would be prudent, and we also indicated that we were not able to develop a proposed critical habitat designation for both species at that time due to budgetary and workload constraints.

On June 2, 2000, we were ordered by the U.S. District Court for the District of Hawaii (in *Center for Biological Diversity* v. *Babbitt and Clark*, Civ. No. 99–00603 (D. Haw.) to publish the final critical habitat designation for both cave animals by February 1, 2002. The plaintiffs and the Service entered into a consent decree in a separate action agreeing to jointly seek an extension of this deadline (*Center for Biological Diversity* v. *Norton*, Civ. No. 01–2063 D.D.C. October 2, 2001).

On January 30, 2002, the U.S. District Court in Hawaii approved a joint stipulation to modify the terms of the June 2 order to extend the deadline to August 10, 2002. Subsequently, the Service determined that an additional extension of time was needed to complete this designation making process. On August 21, 2002, the U.S. District Court in Hawaii approved another joint stipulation extending the date for the final rule designating critical habitat for this species to March 31, 2003.

We proposed critical habitat designations for the Kauai cave wolf spider and the Kauai cave amphipod on March 27, 2002, totaling approximately 1,697 hectares (ha) (4,193 acres (ac)) on the island of Kauai, Hawaii (67 FR 14671).

Critical habitat receives protection from destruction or adverse modification through required consultation under section 7 of the Act (16 U.S.C. 1531 *et seq.*) with regard to actions carried out, funded, or authorized by a Federal agency. Section 4(b)(2) of the Act requires that the Secretary shall designate or revise critical habitat based upon the best scientific and commercial data available, and after taking into consideration the economic impact of specifying any particular area as critical habitat. We have prepared a draft economic analysis of the proposed critical habitat designation. The draft economic analysis is available on the Internet and from the mailing address in the Public Comments Solicited section below.

The public comment period for the March 27, 2002, proposal originally closed on May 28, 2002. We are now announcing the availability of the draft economic analysis and the extension of the comment period for the Kauai cave wolf spider and Kauai cave amphipod. We will accept public comments on the proposal and the associated draft economic analysis for the Kauai cave wolf spider and Kauai cave amphipod until the close of this comment period (see **DATES**). The extension of the comment period gives all interested parties the opportunity to comment on the proposal and the associated draft economic analysis for the Kauai cave wolf spider and Kauai cave amphipod. Comments already submitted on the proposed designation of critical habitat for the Kauai cave wolf spider and Kauai cave amphipod need not be resubmitted as they will be fully considered in the final determinations.

Public Comments Solicited

We will accept written comments and information during this re-opened comment period. If you wish to comment, you may submit your comments and materials concerning this proposal by any of several methods:

(1) You may submit written comments and information to the Field Supervisor, U.S. Fish and Wildlife Service, Pacific Islands Office, 300 Ala Moana Blvd., P.O. Box 50088, Honolulu, HI 96850–0001. Or by facsimile at 808/541–3470.

(2) You may hand-deliver comments to our Honolulu Fish and Wildlife Office at the address given above.

Comments and materials received, as well as supporting documentation used in preparation of the proposal to designate critical habitat, will be available for inspection, by appointment, during normal business hours at the address under (1) above. Copies of the draft economic analysis are available on the Internet at *http://pacificislands.fws.gov* or by request from the Field Supervisor at the address and phone number under (1 and 2) above.

Author(s)

The primary author of this notice is Lorena Wada (*see* **ADDRESSES**).

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: November 5, 2002.

Paul Hoffman,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 02–29048 Filed 11–12–02; 3:04 pm]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AH94

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Blackburn's Sphinx Moth

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of availability of draft economic analysis.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce the availability of the draft economic analysis for the proposed designations of critical habitat for the Blackburn's sphinx moth (*Manduca blackburni*) on the islands of Maui, Hawaii, Molokai, and Kahoolawe, Hawaii. The comment period to allow peer reviewers and all interested parties to comment simultaneously on the proposed rule (67 FR 54763) and the associated draft economic analysis currently ends on December 30, 2002. Over a 10-year period, the draft economic analysis shows a range of direct costs from $1.2 to 1.9 million, and the possibility of indirect costs approaching $500 million. However, many of the indirect costs shown in the analysis result from uncertain and possibly unlikely future private and governmental actions, and we expressly request comments as to the likelihood of these actions occurring and of the indicated costs from these possible actions being incurred. Comments previously submitted need not be resubmitted as they will be incorporated into the public record as part of this extended comment period and will be fully considered in preparation of the final rule.

DATES: We will accept public comments until December 30, 2002. Any comments received by the closing date will be considered in the final decision on this proposal.

ADDRESSES: Written comments and information should be submitted to Field Supervisor, U.S. Fish and Wildlife Service, Pacific Islands Office, 300 Ala Moana Blvd., P.O. Box 50088, Honolulu, HI 96850–0001. Copies of the draft economic analysis are available on the Internet at *http://pacificislands.fws.gov* or by request from the Field Supervisor at above address and 808/541–3441. For further instructions on commenting, refer to Public Comments Solicited section of this notice.

FOR FURTHER INFORMATION CONTACT: Paul Henson, Field Supervisor, Pacific Islands Office, at the above address (telephone: 808/541–3441; facsimile: 808/541–3470).

SUPPLEMENTARY INFORMATION:

Background

An initial comprehensive Notice of Review for Invertebrate Animals was published in the **Federal Register** on May 22, 1984 (49 FR 21664). In that notice, we identified Blackburn's sphinx moth as a category 3A taxon. Category 3A taxa were those for which we had persuasive evidence of extinction. We published an updated Notice of Review for animals on January 6, 1989 (54 FR 554). Although Blackburn's sphinx moth had been rediscovered by 1985, in the 1989 Notice of Review this taxon was again identified as category 3A. In the next Notice of Review on November 15, 1994 (59 FR 58982), this species was reclassified as a category 1 candidate for listing. Category 1 candidates were those taxa for which we had on file sufficient information on biological vulnerability and threats to support preparation of listing proposals. Beginning with our February 28, 1996, Notice of Review (61 FR 7596), we discontinued the designation of multiple categories of candidates, and only those taxa meeting the definition of former category 1 candidates are now considered candidates for listing purposes. In the February 28, 1996, Notice of Review, we identified Blackburn's sphinx moth as a candidate species (61 FR 7596). A proposed rule to list Blackburn's sphinx moth as endangered was published on April 2, 1997 (62 FR 15640). In the September 19, 1997, Notice of Review (62 FR 49398), this species was included as proposed for endangered status.

A final listing rule, listing the Blackburn's sphinx moth as endangered, was published in the **Federal Register** on February 1, 2000 (65 FR 4770). In that final rule, we determined that critical habitat designation for the moth would be prudent, and we also indicated that we were not able to develop a proposed critical habitat designation for the species at that time due to budgetary and workload constraints.

On June 2, 2000, we were ordered by the U.S. District Court for the District of Hawaii (in *Center for Biological Diversity* v. *Babbitt*, Civil No. 99–00603) to publish the final critical habitat designation for Blackburn's sphinx moth by February 1, 2002. The plaintiffs and the Service have entered into a consent decree agreeing to extend the deadline to May 30, 2003. *Center for Biological Diversity, et al.* v. *Norton*, Civ. No. 99–00603 (Aug. 22, 2002).

In response to the court order, on June 13, 2002, we published a proposed critical habitat rule for the Blackburn's sphinx moth. The species is known historically from the islands of Hawaii, Kauai, Maui, Molokai, and Oahu, and known currently from the islands of Hawaii, Kahoolawe, and Maui (67 FR 40633). We proposed a total of approximately 40,240 hectares (99,433 acres) on the islands of Maui, Hawaii, Molokai, and Kahoolawe.

Critical habitat receives protection from destruction or adverse modification through required consultation under section 7 of the Act (16 U.S.C. 1531 *et seq.*) with regard to actions carried out, funded, or authorized by a Federal agency. Section 4(b)(2) of the Act requires that the Secretary designate critical habitat based upon the best scientific and commercial data available, and after taking into consideration the economic impact of specifying any particular area as critical habitat. We have prepared a draft economic analysis of the proposed critical habitat designation. The draft economic analysis is available on the Internet and from the mailing address in

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the Public Comments Solicited section below.

The public comment period for the June 13, 2002, proposal originally closed on August 12, 2002. On August 26, 2002, we published a **Federal Register** notice (67 FR 54763) extending the comment period for the proposed designation of critical habitat for Blackburn's sphinx moth. We are now announcing the availability of the draft economic analysis. We will accept public comments on the proposal and the associated draft economic analysis for the Blackburn's sphinx moth until December 30, 2002. Comments already submitted on the proposed designation of critical habitat for the Blackburn's sphinx moth do not need to be resubmitted as they will be fully considered in the final determinations. Written comments should be submitted to us (*see* **ADDRESSES**).

Public Comments Solicited

We will accept written comments and information on the proposed critical habitat designation and draft economic analysis for Blackburn's sphinx moth. If you wish to comment, you may submit your comments and materials concerning the proposal and draft economic analysis by the following methods:

(1) You may submit written comments and information to the Field Supervisor by mail, U.S. Fish and Wildlife Service, Pacific Islands Office, 300 Ala Moana Blvd., P.O. Box 50088, Honolulu, HI 96850–0001, or by facsimile, (808) 541–3470.

(2) You may hand-deliver comments to our Honolulu Fish and Wildlife Office at the address given above.

Comments and materials received, as well as supporting documentation used in preparation of the proposal to designate critical habitat, will be available for inspection, by appointment, during normal business hours at the address under (1) above. Copies of the draft economic analysis are available on the Internet at *http://pacificislands.fws.gov* or by request from the Field Supervisor at the address and phone number under (1) above.

Author(s)

The primary author of this notice is Mike Richardson (*see* **ADDRESSES**).

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: November 5, 2002.

Paul Hoffman,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 02–29049 Filed 11–12–02; 3:04 pm]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[I.D. 103102B]

Atlantic Highly Migratory Species; Environmental Impact Statement (EIS) for Amendment 1 to the Fishery Management Plan for Atlantic Tunas, Swordfish and Sharks; Shark Management Measures

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of intent (NOI) to prepare an EIS; request for comments.

SUMMARY: NMFS announces its intent to prepare an EIS under the National Environmental Policy Act to assess the potential effects on the human environment of its proposed action to initiate Amendment 1 to the Fishery Management Plan for Atlantic Tunas, Swordfish and Sharks based on the results of the 2002 stock assessments of large coastal sharks (LCS) and small coastal sharks (SCS). The amendment will examine management alternatives available to rebuild or prevent overfishing of Atlantic sharks, consistent with the LCS and SCS stock assessments, the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), and other relevant Federal laws. NMFS is requesting comments on a wide range of commercial and recreational management measures including, but not limited to, quotas, minimum sizes, and prohibited species.

DATES: Comments on this action must be received no later than 5 p.m., local time, on March 17, 2003.

ADDRESSES: Written comments on this action should be mailed to Christopher Rogers, Chief, NMFS Highly Migratory Species Management Division, 1315 East-West Highway, Silver Spring, MD 20910; or faxed to (301) 713–1917. Comments will not be accepted if submitted via email or Internet. For a copy of the 2002 stock assessments, contact Kimberly Marshall, Heather Stirratt, or Karyl Brewster-Geisz at (301) 713–2347.

FOR FURTHER INFORMATION CONTACT: Karyl Brewster-Geisz,Kimberly Marshall, or Heather Stirratt at (301) 713–2347.

SUPPLEMENTARY INFORMATION: The Atlantic shark fisheries are managed under the authority of the Magnuson-Stevens Act. The Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP) is implemented by regulations at 50 CFR part 635.

Background

LCS

The LCS complex is composed of several species including, but not limited to, sandbar, blacktip, spinner, bull, and tiger sharks. Since the 1993 Shark FMP, LCS have been considered overfished. The latest stock assessment of LCS in the U.S. Atlantic and Gulf of Mexico, completed in September 2002, provides an update on the status of LCS stocks and projects their future abundance under a variety of catch levels in waters off the U.S. Atlantic and Gulf of Mexico coasts. The 2002 assessment includes catch estimates, new biological data, and a number of fishery-independent catch rate series, as well as extended fishery-dependent catch rate series.

The results for the LCS complex indicate that overfishing could still be occurring and the resource may be overfished. However, for sandbar sharks, the stock assessment indicates that, while overfishing could be occurring, current biomass could be near, or somewhat above, maximum sustainable yield (MSY). Additionally, the stock assessment indicates that no reduction in catch for blacktip sharks is needed to maintain the stock at current levels and that some increase may be sustainable in the long term. This stock assessment is currently under peer review.

SCS

The SCS complex is comprised of four species including Atlantic sharpnose, blacknose, bonnethead, and finetooth. The 1992 stock assessment classified SCS as being fully utilized. The 2002 stock assessment of SCS in the U.S. and Gulf of Mexico indicates that the current level of removals is sustainable for the SCS aggregate. Aggregate biomass levels for the SCS aggregate are estimated at or above those which could produce MSY, and are not considered to be overfished. However, recent fishing mortality of finetooth sharks exceeds the fishing mortality at MSY, indicating overfishing is occurring for this species.

Copies of the assessments are available for review (see **ADDRESSES**).

Management Options

NMFS requests comments on management options for this action. Specifically, NMFS requests comments on commercial management options including quota levels, regional and seasonal quotas, trip limits, minimum sizes, applying dead discards and state landings after a Federal closure to the quota, counting quota over- and underages, and fishery closure and opening notices. Additionally, NMFS request comments on recreational management options including retention limits, minimum sizes, authorized gear, and landing requirements. NMFS also seeks comment regarding deep water and prohibited shark species, display quotas, time/area closures and the organization of species groupings. Comments received on this action will assist NMFS in determining the options for rulemaking to conserve and manage shark resources and shark fisheries.

NMFS intends to publish an Issues and Options paper summarizing the different options under consideration and will announce the availability of this document at a later date. Within the comment period established in this action, NMFS will hold at least one scoping meeting to gather public comment on the implementation of new management measures for Atlantic sharks (time and location details of which will be announced in a subsequent **Federal Register** notification).

Based on the 2002 stock assessments, NMFS believes the implementation of new management measures via an amendment to the HMS FMP is necessary to rebuild or prevent overfishing of Atlantic sharks. NMFS anticipates completing this amendment and any related documents by January 1, 2004. NMFS is currently in the process of developing new interim management measures via a proposed and final rule. These interim management measures would address quotas and other management measures currently in place and would remain in effect until the amendment is finalized.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 12, 2002.

John H. Dunnigan,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–29086 Filed 11–14–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 021101264–2264–01; I.D. 101802D]

RIN 0648–AQ33

Fisheries of the Northeastern United States; Atlantic Herring Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed 2003 specifications for the Atlantic herring fishery; request for comments.

SUMMARY: NMFS proposes specifications for the 2003 Atlantic herring fishery. The regulations for the Atlantic herring fishery require NMFS to publish specifications for the upcoming year and to provide an opportunity for public comment. The intent of the specifications is to conserve and manage the Atlantic herring resource and provide for a sustainable fishery.

DATES: Comments must be received no later than 5 p.m., Eastern Standard Time, on December 16, 2002.

ADDRESSES: Copies of supporting documents, including the Environmental Assessment, Regulatory Impact Review, Initial Regulatory Flexibility Analysis (EA/RIR/IRFA), Essential Fish Habitat Assessment, and the Stock Assessment and Fishery Evaluation (SAFE) Report for the 2001 Atlantic Herring Fishing Year are available from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950. The EA/RIR/IRFA is accessible via the Internet at *http://www.nero.nmfs.gov/ro/doc/nero.html*.

Written comments on the proposed specifications should be sent to Patricia A. Kurkul, Regional Administrator, National Marine Fisheries Service, 1 Blackburn Drive, Gloucester, MA 01930. Mark on the outside of the envelope: "Comments--2003 Herring Specifications." Comments may also be sent via facsimile (fax) to (978) 281–9371. Comments will not be accepted if submitted via e-mail or the Internet.

FOR FURTHER INFORMATION CONTACT: Paul H. Jones, Fishery Policy Analyst, (978) 281–9273, e-mail at *paul.h.jones@noaa.gov*, fax at (978) 281–9135.

SUPPLEMENTARY INFORMATION: Regulations implementing the Atlantic Herring Fishery Management Plan (FMP) require the New England Fishery Management Council's (Council) Atlantic Herring Plan Development Team (PDT) to meet at least annually, no later than July each year, with the Atlantic States Marine Fisheries Commission's (Commission) Atlantic Herring Plan Review Team (PRT) to develop and recommend the following specifications for consideration by the Council's Atlantic Herring Oversight Committee: Allowable biological catch (ABC), optimum yield (OY), domestic annual harvest (DAH), domestic annual processing (DAP), total foreign processing (JVPt), joint venture processing (JVP), internal waters processing (IWP), U.S. at-sea processing (USAP), border transfer (BT), total allowable level of foreign fishing (TALFF), and reserve (if any). The PDT and PRT also recommend the total allowable catch (TAC) for each management area and subarea identified in the FMP. As the basis for its recommendations, the PDT reviews available data pertaining to: Commercial and recreational catch; current estimates of fishing mortality; stock status; recent estimates of recruitment; virtual population analysis results and other estimates of stock size; sea sampling and trawl survey data or, if sea sampling data are unavailable, length frequency information from trawl surveys; impact of other fisheries on herring mortality; and any other relevant information. Recommended specifications are presented to the Council for adoption and recommendation to NMFS.

Proposed 2003 Specifications

At its August 2002 meeting, the Council recommended specifications for the 2003 Atlantic herring fishery. Based on the Council's recommendations, NMFS proposes the specifications and Area TACs contained in the following table.

SPECIFICATIONS AND AREA TACS FOR THE 2003 ATLANTIC HERRING FISHERY

Specification	Proposed Allocation (mt)
ABC	300,000
OY	250,000
DAH	250,000
DAP	226,000
JVPt	20,000
JVP	10,000
	(Area 2 and 3 only)
IWP	10,000
USAP	20,000
	(Area 2 and 3 only)
BT	4,000
TALFF	0
Reserve	0

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SPECIFICATIONS AND AREA TACS FOR THE 2003 ATLANTIC HERRING FISHERY—Continued

Specification	Proposed Allocation (mt)
TAC–Area 1A	60,000
TAC–Area 1B	10,000
TAC–Area 2	50,000 (TAC reserve: 70,000)
TAC–Area 3	60,000

There are two proposed changes from the specifications approved by NMFS for the 2002 fishery: A transfer of 10,000 mt from the Area 2 TAC reserve to the Area 3, TAC resulting in an Area 3 TAC of 60,000 mt and an Area 2 TAC reserve of 70,000 mt; and a restriction on USAP vessels to receive fish from Areas 2 and 3 only. A discussion of impacts of these proposed changes follows.

Increase to the Area 3 TAC

The proposed increase in the Area 3 TAC from 50,000 to 60,000 mt, and concomitant decrease in the Area 2 TAC reserve from 80,000 to 70,000 mt will have no significant impact on the Atlantic herring stock or the Southern New England/Georges Bank Atlantic herring spawning component. Landings from Area 3 totaled 34,510 mt in 2001, a large increase over the 12,884 mt landed from Area 3 in 2000. This would suggest that the Area 3 TAC could be fully harvested in the future, especially if shoreside processors are able to expand markets and processing capacity. Harvest from Area 2 totaled 15,388 mt in 2001, well below the 50,000–mt TAC and 80,000–mt TAC reserve for that area. Therefore, the proposed TAC-reserve reduction to 70,000 mt in Area 2 is not expected to have any impact on the fishery.

USAP

No biological impacts on the stock of Atlantic herring are anticipated as a result of restricting USAP vessels to receiving fish from Areas 2 and 3 only. No vessel has fished under the USAP category since the FMP was implemented. However, if a USAP vessel has the opportunity to operate in or near Area 1 at a lower cost (for fuel, maintenance, or other operational expenses) than it would incur from fishing in Areas 2 or 3, and it is restricted from fishing in Area 1, the profitability of the USAP vessel could be compromised. However, the prohibition on harvesting Area 1 fish for delivery to USAP vessels would leave more fish available to shoreside processors and bait dealers operating on the coasts of Maine, New Hampshire, and Massachusetts, the three states that border Area 1A (the inshore portion of Area 1). The quota for Area 1A was taken prior to the end of both the 2000 and 2001 fishing years.

Classification

This proposed rule has been determined to be not significant under Executive Order 12866.

The Council and NOAA Fisheries prepared an initial regulatory flexibility analysis (IRFA) as required by section 603 of the Regulatory Flexibility Act. The IRFA describes the economic impact that this proposed rule, if adopted, would have on small entities. A summary of the analysis follows:

A description of the reasons why this action is being considered, and the objectives of this proposed rule can be found in the preamble to this proposed rule and are not repeated here. This action does not contain any collection-of-information, reporting, or recordkeeping requirements. It would not duplicate, overlap, or conflict with any other Federal rules.

All of the affected businesses (fishing vessels and dealers) are considered small entities under the standards described in NOAA Fisheries guidelines because they have annual returns (revenues) that do not exceed $3.5 million annually. The last full year of data available for the Atlantic herring fishery is for 2001. There were 146 vessels, 6 processors, and 190 dealers participating in the fishery in 2001. Given that vessels caught less than half the OY in 2001, the proposed status quo OY should not impact harvest levels in 2003.

The Council, in proposing an increase in the Area 3 TAC from 50,000 to 60,000 mt, and concomitant decrease in the Area 2 TAC reserve from 80,000 to 70,000 mt, considered only a zero-sum transfer that would not alter the proposed OY of 250,000 mt. Landings from Area 3 increased from 12,884 mt in 2000 to 34,150 mt in 2001. The Council sought to provide additional opportunity for the industry to increase its activity in Area 3. The Council did not consider transferring any TAC from Area 1 because that is the area in which the fishery has historically concentrated its activity. In fact in 2001, landings from Area 1A and Area 1B totaled 68,130 mt, nearly attaining the combined TAC for both areas of 70,000 mt. Landings from Area 2 in 2001 were 15,388 mt out of a combined Area 2 TAC and Area 2 TAC Reserve of 130,000 mt. Thus the Council concluded that the transfer of 10,000 mt from the Reserve would still leave a substantial amount of TAC for the fishery to expand its activity in Area 2. If the transfer is fully utilized, an additional 10,000 mt would produce additional revenues of 1.2M (assuming $120/mt) to vessels and a proportionate increase in profits to processors.

As noted above, landings from Area 1 in 2001 neared the total TAC for the area. The Council was concerned that future USAP activity, if allowed in Area 1, would have negative impact on firms that have historically harvested Area 1 fish for sale to shoreside processors. If the Area 1 TACs were attained, harvesting vessels that sell their catch to shoreside processors would have to fish further offshore, increasing their operating costs and potentially reducing their profitability. The economic impact on USAP vessels from prohibition on receiving fish harvested in Areas 1A and 1B cannot be directly measured since there is no history of over-the-side purchases upon which to base economic impacts.

The Council considered a Committee recommendation to reduce USAP by 5,000 mt, but rejected it based on comments that a vessel may operate under this specification in 2003 and be able to utilize 20,000 mt. The specification of 15,000 mt would reduce potential profits of USAP operations when compared to the status quo specification of 20,000 mt, although as yet, no part of USAP has been utilized. The Council did not consider a recommendation to increase USAP by 5,000 mt, because no vessel has fished under the USAP category since the FMP was implemented.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 12, 2002.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 02–29181 Filed 11–14–02; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 67, No. 221

Friday, November 15, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc. No. FV–02–338]

United States Standards for Grades of Grapefruit Juice

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice; withdrawal.

SUMMARY: The Agricultural Marketing Service (AMS) is withdrawing a notice soliciting public comments on a petition to change the United States Standards for Grades of Grapefruit Juice. This notice is in response to a letter from a petitioner requesting that their petition be withdrawn.

EFFECTIVE DATE: November 15, 2002.

FOR FURTHER INFORMATION CONTACT: Karen L. Kaufman at (202) 720–5021 or e-mail at *karen.kaufman@usda.gov*.

SUPPLEMENTARY INFORMATION: A notice was published in the **Federal Register** (67 FR 39671; June 10, 2002) requesting comments on a petition to change the United States Standards for Grades of Grapefruit Juice. The petitioner, Indian River Citrus League, requested the replacement of the current requirements for U.S. Grade A with the requirements of the Florida Department of Citrus "Gold Standard". Prior to undertaking research and other work associated with revising the grade standards, AMS decided to seek public comments on the petition.

In response to our request for comments, AMS received six comments from trade associations and various other interested parties. Four of the six comments opposed the proposed new standard.

In a letter dated August 20, 2002, the Indian River Citrus League requested that their petition to change the standards be withdrawn.

The Department is therefore withdrawing the notice published on June 10, 2002, seeking public comments based on the letter from the petitioner withdrawing their request to change the United States Standard for Grade of Grapefruit Juice.

Dated: November 8, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–29033 Filed 11–14–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 02–037N]

Codex Alimentarius Commission: Eighteenth Session of the Codex Committee on Fats and Oils

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of public meeting and request for comments.

SUMMARY: The Office of the Under Secretary for Food Safety, of the U.S. Department of Agriculture and the Food and Drug Administration, of the Department of Health and Human Services, are sponsoring a public meeting on January 7, 2003, to review the technical contents of the agenda item documents and to receive comments on all issues coming before the Eighteenth Session of the Codex Committee on Fats and Oils, which will be held in London, United Kingdom, February 3–7, 2003.

DATES: The public meeting is scheduled for Tuesday, January 7, 2003 from 10 a.m. to 12 noon.

ADDRESSES: The public meeting will be held in the Harvey Wiley Federal Building, 5100 Paint Branch Parkway, College Park, Maryland 20740, in Conference Room 1B–042. To receive copies of the documents relevant to this notice, contact the Food Safety and Inspection Service (FSIS) Docket Room, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 102, Cotton Annex, 300 12th Street, SW., Washington, DC 20250–3700. The documents will also be accessible via the World Wide Web at the following address: *http://www.codexalimentarius.net.*

Send comments (an original and two copies) to the FSIS Docket Room and reference Docket # 02–037N. All comments submitted in response to this notice will be available for public inspection in the FSIS Docket Room between 8:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Syed Amjad Ali, International Issues Analyst, U.S. Codex Office, FSIS, Room 4861, South Agriculture Building, 1400 Independence Avenue SW., Washington, DC 20250–3700, telephone (202) 205–7760; Fax (202) 720–3157. Persons requiring a sign language interpreter or other special accommodations should notify Mr. Charles W. Cooper, Director, International Activities Staff, FDA, at telephone (301) 436–1714; Fax (301) 436–2618.

SUPPLEMENTARY INFORMATION:

Background

The Codex Alimentarius Commission (Codex) was established in 1962 by two United Nations organizations, the Food and Agriculture Organization and the World Health Organization. Codex is the major international organization for encouraging fair international trade in food and protecting the health and economic interests of consumers. Through adoption of food standards, codes of practice and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, Codex seeks to ensure that the world's food supply is sound, wholesome, free from adulteration, and correctly labeled. The Codex Committee on Fats and Oils (CCFO) was established to elaborate worldwide standards for fats and oils and their products. The Government of United Kingdom hosts this committee and will chair the Committee meeting.

Issues To Be Discussed at the Public Meeting

The following specific issues will be discussed during the public meeting:

1. Matters referred by the Codex Alimentarius Commission and other Codex Committees.
2. Proposed Draft Amendments to the Standard for Named Vegetable Oils(including provisions for Mid-Oleic Acid Sunflower Oil and Super Palm Olein.
3. Proposed Draft Amendment to the Code of Practice for the Storage and Transport of Edible Fats and Oils in Bulk: Lists of Acceptable Previous Cargoes and Lists of Banned Immediate Previous Cargoes.

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4. Proposed Draft Standard for Fat Spreads and Blended Spreads.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this notice, FSIS will announce it and make copies of this **Federal Register** publication available through the FSIS Constituent Update. FSIS provides a weekly Constituent Update, which is communicated via Listserv, a free e-mail subscription service. In addition, the update is available on-line through the FSIS web page located at *http://www.fsis.usda.gov*. The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents/stakeholders. The constituent Listserv consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals that have requested to be included. Through the Listserv and web page, FSIS is able to provide information to a much broader, more diverse audience.

For more information contact the Congressional and Public Affairs Office, at (202) 720–9113. To be added to the free e-mail subscription service (Listserv) go to the "Constituent Update" page on the FSIS web site at *http://www.fsis.usda.gov/oa/update/update.htm*. Click on the "Subscribe to the Constituent Update Listserv" link, then fill out and submit the form.

Done at Washington, DC on November 8, 2002.

F. Edward Scarbrough,

U.S. Manager for Codex Alimentarius.

[FR Doc. 02–29029 Filed 11–14–02; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

Black Hills National Forest, South Dakota, Elk Bugs and Fuel Project

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: In accordance with the National Environmental Policy Act, notice is hereby given that the Forest Service, Black Hills National Forest will prepare a Draft Environmental Impact Statement to disclose the environmental consequences of the proposed Elk Bugs and Fuel Project which encompasses approximately 45,498 acres of National Forest System Land (NFS) and 15,068 acres of interspersed private and state lands. Mountain pine beetles are at epidemic levels in portions of the project area and have caused significant mortality of ponderosa pine. Proposed treatments will focus on reducing hazardous fuel concentrations and stand susceptibility to beetle infestation. Priority will be given to treatments on NFS land near private land and those that would contribute to firefighter safety.

In order to move towards the desired future condition as described in the Black Hills National Forest Land and Resource Management Plan as well as meet the purpose and need of the project proposal, proposed activities include: (1) Commercial hardwood restoration; (2) non-commercial hardwood restoration; (3) commercial thinning; (4) non-commercial thinning; (5) commercial thinning and bait and sanitation cutting; (6) prescribed burning; (7) bait and sanitation cutting; (8) shaded fuel breaks; and (9) transportation activities consisting of road construction, reconstruction, and eliminating unnecessary roads.

In accordance with the National Environmental Policy Act and the National Forest Management Act, the Black Hills National Forest will also evaluate the environmental consequences of four nonsignificant Forest Plan Amendments in the Elk Bugs and Fuel environmental impact statement. The amendments, if approved, would apply only to the Elk Bugs and Fuel project.

The treatments authorized by Pub. L. 107–206 are not subject to the decision that will be made by the Elk Bugs and Fuel Record of Decision. However, section 706 of Pub. L. 107–206 requires that the effects of section 706 actions be disclosed in the Elk Bugs and Fuel cumulative effects analysis for past, present, and reasonable foreseeable future actions. This project proposal does not include any proposed treatments in the Greater Beaver Park Lawsuit Settlement Area, including the Beaver Park roadless area.

DATES: Comments concerning the scope of the analysis must be received by December 16, 2002. The draft environmental impact statement is expected to be available for public review in April 2003 and the final environmental impact statement is expected to be available in July 2003.

ADDRESSES: Submit written, oral, or e-mail comments by: (1) Mail—Elk Bugs and Fuel Project; Carl Leland, U.S. Post Office, Room 201, 18 South Mill Ave, Ridgway, PA 15853; (2) phone—(814) 772–2028; (3) e-mail—*cleland@fs.fed.us*.

FOR FURTHER INFORMATION CONTACT: Carl Leland at (814) 772–2028

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

The purpose and need for action of the Elk Bugs and Fuel Project is to reduce mountain pine beetle populations in pine stands, decrease the risk and hazard of wildfire in the proximity of private lands and homes, and to reduce the susceptibility of vegetation to catastrophic fire and further mountain pine beetle attacks.

Proposed Action

The proposed actions to meet the purpose and need include: (1) 409 acres of commercial hardwood restoration; (2) 144 acres of non-commercial hardwood restoration; (3) 10,348 acres of commercial thinning; (4) 3,282 acres of non-commercial thinning; (5) 434 acres of commercial thinning followed by pheromone baiting and sanitation cutting; (6) 562 acres of prescribed burning; (7) 126 acres of pheromone baiting and sanitation cutting; (8) 2,745 acres of shaded fuel breaks; and (9) transportation activities consisting of 42.9 miles of new road construction, 33.9 miles of reconstruction, and 63.5 miles of road decommissioning.

The Black Hills National Forest also proposes to disclose the effects of four nonsignificant Forest Plan Amendments that are needed because of changed conditions brought about by mountain pine beetle infestations and the associated potential for catastrophic wildfire events. The proposed amendments to the Forest Plan, if approved, would apply only to the Elk Bugs and Fuel Project.

Forest Standard 3202, General Wildlife and Fish Direction, provides for big game screening along 20 percent of the edges of arterial and collector roads. Providing shaded fuel breaks along roads in order to protect resources from potential wildfires will require that this standard be reduced to approximately 14 percent for the project area. Management Area (MA) 5.4, Big Game Winter Range Emphasis, Objective 5.4–205 provides for thermal cover for elk, deer and winter turkey habitat on at least 20 percent of the forested portions of the management area. Standard 5.4–2101 states that thermal cover should not be harvested if the planning unit does not meet Objective 5.4–205. In order to maintain the health of many of the insect infested stands, it is necessary to reduce the basal area so that the remaining healthy trees are less stressed and therefore more capable of withstanding insect attacks. Reducing the basal area of some of these stands will decrease their effectiveness in providing thermal cover. It is therefore necessary to temporarily lower the 20 percent standard to approximately 14 percent within the project area until the stands are treated, recover, and grow to a density that will provide thermal cover in the future.

Management Area 5.4, Big Game Winter Range Emphasis. Standard 5.4–3203 states that deer and elk habitat effectiveness should at least meet the following values: Elk Summer = 54 percent; Elk Winter = 47 percent; Deer Summer = 45 percent; and Deer Winter = 46 percent. In order to meet the purpose and need of this project proposal, it will be necessary to amend the Forest Plan, Standard 5.4–3203 to the following approximate values: Elk Summer = 47 percent; Elk Winter = 42 percent; Deer Summer = 44 percent; and Deer Winter = 40 percent.

Management Area 3.31, Backcountry Motorized recreation Emphasis. Standard 3.31–3202 states that deer and elk habitat effectiveness should at least meet the following values: Elk Summer = 40 percent; Elk Winter = 35 percent; Deer Summer = 37 percent; and Deer Winter = 33 percent. In order to meet the purpose and need of this project proposal, it will be necessary to amend the Forest Plan, Standard 3.31–3202 to the following approximate values: Elk Summer = 32 percent; Elk Winter = 28 percent; Deer Summer = 28 percent; and Deer Winter = 25 percent.

Responsible Official

The responsible official for the Elk Bugs and Fuel Project is John C. Twiss, Forest Supervisor, Black Hills National Forest.

Nature of Decision To Be Made

The Elk Bugs and Fuel environmental impact statement will evaluate site specific management proposals, consider alternatives, and analyze the effects of the activities proposed in these alternatives. It will form the basis for the Responsible Official to determine: (1) Whether or not the proposed activities and alternatives are responsive to the issues, are consistent with Forest Plan direction, meet the purpose and need, and are consistent with other related laws and regulations directing National Forest Management Activities; (2) which actions, if any, to approve; (3) whether or not the information in the analysis is sufficient to implement proposed activities; and (4) whether or not to amend the Black Hills National Forest Management Plan, as previously described.

Scoping Process

Comments will be accepted during the 30-day scoping period as described in this notice of intent. Comments will be reviewed and issues identified. Issues that cannot be resolved by mitigation or minor changes to the proposed action may generate alternatives to the proposed action. This process is driven by comments received from the public, other agencies, and internal Forest Service concerns. To assist in commenting, a scoping letter providing more detailed information on the project proposal has been prepared and is available to interested parties. Contact Carl Leland, Interdisciplinary Team Leader, at the address listed in this notice of intent if you would like to receive a copy.

Preliminary Issues

Preliminary Issues were developed based on past projects in the area (environmental analysis), issues developed for similar projects, and Forest Service concerns and opportunities identified in the Project Area. These issues are listed below:

1. *Road management*—The Forest Service will complete a Roads Analysis, which includes evaluating all roads in the Project Area for effects to the ecosystem. The proposed action requires examining the road system to determine if the existing road system is adequate (or if improvements are needed), and if any roads need to be closed for resource protection or other reasons (*e.g.*, water quality, wildlife, or recreation opportunities).

2. *Mountain pine beetle and forest health*—The spread of mountain pine beetle attacks has caused a concern that there could be large-scale mortality if these areas are not treated.

3. *Prescribed burns, fuels, and wildland-urban interface*—There is a concern for an increased potential for wildfires where there are large areas of unmanaged forest, or where mortality from mountain pine beetle infestations has increased fuels.

4. *Wildlife habitat*—As evidenced by the proposed Forest Plan Amendments, wildlife habitat will fall below present Forest Plan Standards in several areas. The Proposed Action was developed by weighing the potential effects of the proposed treatments to wildlife habitat against the on-going loss of wildlife habitat through mountain pine beetle attacks plus the potential effects of the increased risk of catastrophic wildfire events. This issue will be fully explored in the environmental impact statement. These issues may be modified as additional issues are identified during scoping. A range of alternatives will be considered after public comments are received and analyzed.

Comment Requested

This notice of intent initiates the scoping process that guides the development of the environmental impact statement. Comments that are site-specific in nature are most helpful to resource professionals when trying to narrow and address the public's issues and concerns.

Early Notice of Importance of Public Participation in Subsequent Environmental Review

A draft environmental impact statement will be prepared for comment. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement.

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Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21)

Dated: November 7, 2002.

William G. Schleining,

Acting Forest Supervisor.

[FR Doc. 02–28876 Filed 11–14–02; 8:45 am]

BILLING CODE 3410–11–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

Comments must be received on or before: December 15, 2002.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, the entities of the Federal Government identified in the notice for each service will be required to procure the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.
2. If approved, the action will result in authorizing small entities to furnish the services to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following services are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Services

Service Type/Location: Janitorial and Mailroom Operations, Environmental Protection Agency, Environmental Science Center, Fort Meade, Maryland.
NPA: Goodwill Industries of the Chesapeake, Inc., Baltimore, Maryland.
Contract Activity: Environmental Protection Agency, Philadelphia, Pennsylvania.
Service Type/Location: Janitorial/Custodial, U.S. Army Reserve Center, Pewaukee, Wisconsin.
NPA: Milwaukee Center for Independence, Inc., Milwaukee, Wisconsin.
Contract Activity: HQ, 88th Regional Support Command, Fort Snelling, Minnesota.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 02–29070 Filed 11–14–02; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Modification concerning affiliated party sales in the comparison market.

SUMMARY: The Department of Commerce is modifying its methodology in antidumping proceedings concerning the determination of whether sales to affiliated parties in the comparison market are made in the ordinary course of trade and thus may be considered for use in calculating normal value. The schedule for implementing this change is set forth in the "Timetable" section, below.

FOR FURTHER INFORMATION CONTACT: Kris Campbell (202) 482–1032, Office of Policy, Import Administration, International Trade Administration.

SUPPLEMENTARY INFORMATION:

Background

This change in methodology concerns the test used in antidumping proceedings to determine whether comparison market sales between affiliated parties are made at arm's length and thus may be considered to be within the "ordinary course of trade."

Article 2.1 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (the "AD Agreement") requires that investigating authorities exclude sales not made in the "ordinary course of trade" from calculations of normal value.[1] Section 773(a)(1) of the Tariff Act of 1930, as amended ("the Act"), implements this provision by restricting comparison market sales used to determine normal value to those made in the ordinary course of trade. Under current Department practice, comparison market sales by an exporter or producer to an affiliated customer are treated as having been made at arm's length, and may be considered to be within the ordinary course of trade,[2] if prices to that affiliated customer are, on average, at least 99.5 percent of the prices charged by that exporter or producer to unaffiliated comparison market customers.

Under this 99.5 percent test, the Department determines the weighted-average comparison market selling price for each product for sales by the exporter or producer to each affiliated party. The Department also determines the weighted-average selling price for each product to the group of unaffiliated comparison market customers. For each affiliated customer, the Department compares the weighted-average price to that affiliate for each product to the weighted-average price of the same product to all unaffiliated customers.

[1] Article 2.1 states: "For the purpose of this Agreement, a product is to be considered as being dumped, *i.e.*, introduced into the commerce of another country at less than its normal value, if the export price of the product exported from one country to another is less than the comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting county."

[2] Such sales may be outside the ordinary course of trade for other reasons, *e.g.*, if they are below cost.

The Department then weight averages the ratios found for all products sold to the affiliated customer. If the result shows sales prices to an individual affiliated party are, on average, at least 99.5 percent of the sales prices to all unaffiliated comparison market customers (*i.e.*, the overall ratio is at least 99.5 percent), all of the sales to that affiliated party may be treated as being made in the ordinary course of trade and may be used in calculating normal value. Otherwise, if the prices to the affiliate are, on average, less than 99.5 percent of prices to non-affiliates, it is the Department's practice to disregard them. Additionally, for affiliates that pass this test (*i.e.*, those whose weighted-average prices are above 99.5 percent), the exporter or producer may request the exclusion of individual sales to such an affiliate upon a showing that such sales are for other reasons outside the ordinary course of trade, *e.g.*, the prices are "aberrationally" or "artificially" high.

In July 2001, the WTO Appellate Body issued a report in a dispute involving U.S. antidumping measures on certain hot-rolled steel products from Japan ("Japan Hot-Rolled"),[3] concerning, among other things, the Department's determination of whether sales made to affiliated parties in the comparison market were made in the ordinary course of trade and thus may be considered for use in calculating normal value. In its report in Japan Hot-Rolled, the Appellate Body found that the Department's application of its 99.5 percent arm's-length test in the underlying proceeding was inconsistent with the obligations of the United States under Article 2.1 of the AD Agreement. In the view of the Appellate Body, "[i]f a Member elects to adopt general rules to prevent distortion of normal value through sales between affiliates, those rules must reflect, even-handedly, the fact that both high and low-priced sales between affiliates might not be "in the ordinary course of trade'."[4] Furthermore, "the duties of investigating authorities, under Article 2.1 of the Anti-Dumping Agreement, are precisely the same, whether the sales price is higher or lower than the 'ordinary course' price, and irrespective of the reason why the transaction is not in the ordinary course of trade."

[3] Dispute Settlement Panel Report on Japan complaint concerning U.S. Anti-dumping Measures on Certain Hot-Rolled Steel Products from Japan, WT/DS184/R (Feb. 28, 2001) ("Panel Report." Appellate Body Report on Japan Complaint Concerning U.S. Anti-dumping Measures on Certain Hot-Rolled Steel Products from Japan, WT/DS184/AB/R (July 24, 2002) ("AB Report").

[4] AB *Report*, paragraph 148.

Investigating authorities must exclude, from the calculation of normal value, all sales which are not made in the ordinary course of trade."[5] However, investigating authorities do not need to utilize identical rules to scrutinize each category of sales that is potentially not in the ordinary course of trade.[6] WTO Members are afforded discretion in this determination, but such discretion must be exercised in an "even-handed" manner.[7]

The United States and Japan entered into arbitration over the period of time in which to implement the Appellate Body's findings in the Japan Hot-Rolled dispute. The arbitrator found that the United States has until November 23, 2002, for implementation.

On August 15, 2002, we solicited public comment on our proposed modification to practice with respect to treatment of affiliated party sales in the comparison market.[8] We received numerous comments and rebuttal comments submitted pursuant to this notice, as discussed below.

Final Modification to Arm's-Length Methodology

The final modification to the Department's arm's-length test is the same as the proposed modification, with the exception of comparing prices of "similar" products where an identical comparison product was not sold to unaffiliated parties, as described below. The new test will provide that, for sales by the exporter or producer to an affiliate to be included in the normal value calculation, those sales prices must fall, on average, within a defined range, or band, around sales prices of the same or comparable merchandise sold by that exporter or producer to all unaffiliated customers. The band applied for this purpose will provide that the overall ratio calculated for an affiliate be between 98 percent and 102 percent, inclusive, of prices to unaffiliated customers in order for sales to that affiliate to be considered "in the ordinary course of trade" and used in the normal value calculation. This new test is consistent with the view, expressed by the WTO Appellate Body, that rules aimed at preventing the distortion of normal value through sales between affiliates should reflect, "even-handedly," that "both high and low-priced sales between affiliates might not be "in the ordinary course of trade'."

[5] *Id.*, paragraph 145.

[6] *Id.*, paragraph 146.

[7] *Id.*, paragraph 148.

[8] "Request for public comment pursuant to section 129(g)(1)(C) of the Uruguay round Agreements Act," 67 FR 53339 (August 15, 2002) ("Proposed Modification").

The single change from the proposed arm's-length methodology involves comparing prices of products sold to affiliates with prices of non-identical products sold to unaffiliated customers, with an adjustment for physical differences in the products, where there is no identical product sold to non-affiliates. This methodology corresponds to that used in comparing prices of products sold in the U.S. and comparison markets in the dumping analysis. In comparing prices across markets, the Department first seeks to match U.S. sales with comparison market sales of identical merchandise. If there are no appropriate sales of identical merchandise in the comparison market, the Department seeks the most comparable merchandise based on the relevant product matching characteristics. When comparing non-identical merchandise, the Department makes an adjustment, where appropriate, to normal value for differences in physical characteristics.[9] This adjustment normally is based on differences in the variable costs of manufacturing attributable to the physical differences between the products.[10] While product characteristics differ from case to case, the Department generally does not compare a comparison market product to a given product sold in the United States if the difference in variable manufacturing costs of the two products is greater than 20 percent.

We plan to employ a corresponding methodology, including adjustments for differences in variable costs and application of the 20 percent "difmer cap," in analyzing non-identical product matches between sales to affiliated and unaffiliated customers for purposes of the arm's-length test. In many cases the information needed, including matching criteria and variable and total cost information, will be on the record pursuant to our standard information requests.[11] Where we lack the necessary information we will limit our analysis to identical merchandise, consistent with our current methodology. That is, we will determine

[9] See section 773(a)(6)(C)(ii) of the Act.

[10] See 19 CFR 351.411.

[11] In determining product matches across markets, the 20 percent difmer cap is calculated by dividing the difference in variable manufacturing costs between the two porducts by the total manufacturing costs of the U.S. product. For the arm's-length test, we will divide the difference invariable manufacturing costs between the two products by the total manufacturing costs of the product sold to the affiliated party. Variable manufacturing costs for home market sales normally are requested in all cases, while total manufacturing costs for home market sales currently are requested incases involving below-cost inquiries.

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the overall ratio for a given affiliate only on the basis of sales of those products that were also sold to non-affiliates.

The inclusion of comparisons of non-identical matches will enhance the reliability of the arm's-length test by increasing the pool of sales used to calculate the affiliate-specific ratios that are assessed against the 98–102 percent band. While some of the public comments submitted expressed concern that comparing non-identical merchandise will add unnecessarily to the complexity of the arm's-length test, or will otherwise increase the chance of error resulting from data not fully analyzed at the time the arm's-length test is conducted, we believe the benefits of bringing these matches within the ambit of the test outweigh these concerns.[12]

Finally, as noted in the Proposed Modification and as further discussed in the "Comments" section below, we will continue our present practices with regard to the use of so-called "downstream" sales (sales made by an affiliated buyer to that buyer's subsequent customer). Specifically:

1. If sales to all affiliates account for less than five percent of all comparison market sales, we normally will disregard downstream sales.

2. If sales to an affiliate fail the arm's-length test, and (1) does not apply, we normally will request the affiliate's downstream sales and use those instead of the sales which failed that test.

3. If a respondent has cooperated to the best of its ability and is unable to obtain downstream sales, we will not use adverse facts available for those sales.

Analysis of Public Comments

Numerous comments and rebuttal comments were submitted in response to the Proposed Modification. We have carefully considered each of the comments submitted. While we have not adopted suggested alternatives to the proposed 98–102 percent band test, the comments were useful in helping to clarify the concepts underlying the "ordinary course of trade" analysis and in refining the test by allowing for comparisons of non-identical products. As such, we are grateful to those who took the time to comment on this aspect of the Department's antidumping methodology. Specific proposals are summarized below, along with our response to each. For more detail on the comments submitted, see the Department's web site at http://ia.ita.doc.gov, where all comments received have been posted in their entirety.

1. Proposals for Automatically Disregarding Comparison Market Sales Between Affiliates and Requesting Downstream Sales

A number of commenters proposed that the Department should presume that comparison market sales between affiliates are always made outside the ordinary course of trade, and should automatically request downstream sales (sales from the affiliated purchaser to unaffiliated customers). These commenters maintain that such a methodology would be consistent with the Appellate Body report in Japan Hot-Rolled, which explicitly allowed for the use of downstream sales in determining normal value, and would also bring the normal value analysis into alignment with the analysis for U.S. sales, in which sales between affiliates are automatically disregarded. In the view of these commenters, such a methodology would reflect the fact that affiliated party sales are inherently suspect and subject to manipulation. They also suggest that the Act explicitly allows for use of comparison market downstream sales while it does not require the use of prices between affiliates. However, one commenter who recommends this approach acknowledges that it would require a change in the Department's regulations, in particular 19 CFR 351.403(c)–(d). This commenter recommends that the change in practice be accompanied by an announcement that the Department intends to change the regulations to conform to the new practice.

Several commenters objected to this proposal. Some asserted that it is contrary to U.S. law, claiming that the Department must examine all sales in the ordinary course of trade, and citing section 773(f)(2) of the Act in support of the general proposition that the Department must make an affirmative finding that transactions between affiliates do not fairly reflect market value before disregarding them. Others claimed that it is contrary to U.S. regulations, and also is likely to give rise to problems of WTO consistency with respect to the obligation to make fair comparisons.

Department's Position: While we disagree with the comment that U.S. law prohibits requesting downstream sales in lieu of upstream sales to affiliated parties,[13] we are not adopting the proposal to automatically disregard sales to affiliates. As we stated in the Proposed Modification and as acknowledged by at least one proponent of automatically excluding sales to affiliates, this proposal conflicts with the assumptions underlying the Department's regulations on affiliated party sales (19 CFR 351.403(c)–(d)) that such sales normally will be used in the dumping analysis if shown to be in the ordinary course of trade.

We do not believe it necessary or appropriate to change these provisions, as suggested by one commenter. The current regulations were developed after extensive comment, including comment on the issue of whether to require in all cases that respondents report downstream sales. In our view, the regulatory scheme for reporting and analyzing affiliated party sales established by 19 CFR 351.403(c) and (d) strikes the appropriate balance between seeking to use first-level sales from the respondent where such sales can be demonstrated to be within the ordinary course of trade, and requiring downstream sales where sales to affiliates do not meet this standard. While this approach does not look to downstream sales automatically, it places an affirmative obligation on respondents to report such sales where sales to an affiliate cannot be shown to be at arm's length. As noted in the preamble to the regulations, the Department "will require a respondent to demonstrate in each segment of an AD proceeding that the reporting of downstream sales is not necessary."[14] This is accomplished in practice by maintaining a requirement that respondents report downstream sales for all affiliated party sales that do not pass the arm's-length test.

2. Proposals for Using Statistical Testing Methods Instead of a Percentage Band Approach

Several commenters suggested that the Department incorrectly rejected statistically valid testing (e.g., standard deviation, difference in means, non-parametric tests) in the Proposed Modification in favor of the 98–102 percentage band approach. One commenter took issue with the reasons given in the Proposed Modification for not relying on statistical testing in determining whether sales are made in the ordinary course of trade, in particular the statement that "[s]uch tests, properly applied, would allow certain affiliated party sales to be deemed in the ordinary course of trade, including sales with prices below unaffiliated sales prices, that we believe would distort dumping calculations."[15] This statement, according to the commenter, is results-oriented reasoning because the Department is focusing on low-priced sales to affiliates and expressly rejecting statistical tests on the basis that, when properly applied, these tests would not exclude affiliated party transactions that the Department believes would result in the calculation of "distorted" margins. This commenter suggests that the concern over distorted margins is inappropriate in this context, since statistical approaches, if properly structured, by definition are intended to operate in a mathematically neutral manner.

Another commenter proposed standard deviation testing as an example of a statistically valid methodology more suitable to identifying outlier transactions than the percentage band approach. Citing a proposal for such testing by one of the Japanese respondents in the investigation underlying the Japan Hot-Rolled report, this commenter suggests that, in general, respondents should be allowed on a case-by-case basis to propose alternative testing methods that are reasonable and easy to administer.

Department's Position: While we appreciate the desire for a statistical-testing approach to the arm's-length test, as we indicated in the Proposed Modification, we have been unable to identify an alternative test that adequately serves the purposes of a dumping analysis and can be readily applied in the context of the variety of situations we encounter, including situations that involve multiple products sold to an affiliate. The comment that the Department's reasoning is "results oriented" implies that the Department should be unconcerned that parties might manipulate pricing to affiliates for purposes of a dumping case. We disagree. We do not believe that the purpose of the types of statistical tests considered is applicable in this context. Moreover, the only specific proposal offered for a statistical test would apply the test on a CONNUM-specific basis, which is inconsistent with the purpose of evaluating the overall pricing relationship between the affiliates. (*See* comment 6 below.) Therefore, we are not persuaded that a statistical test is appropriate in this context.

3. Proposals Regarding Appropriate Size of the Band

A number of commenters proposed that, if the Department decides to use a "band" approach in determining whether comparison market sales to affiliates were made at arm's-length, it should alter the band size from the 98–102 percent range set forth in the Proposed Modification. Three types of proposals were made in this regard: (1) A wider band (*e.g.*, 90–110); (2) a narrower band (*e.g.*, 99.5–100.5); and an "asymmetrical" band (*e.g.*, 99.5–125).

Those favoring a wider band argue that a 98–102 percent range does not sufficiently recognize natural variability within a respondent's pricing data, both between customers and over time. This range, therefore, will produce results that fail to reflect commercial reality, leading to the inappropriate rejection of *bona fide* arm's-length sales.

These commenters suggest that pricing differences of up to ten percent can occur in the normal course of business for reasons unconnected with affiliation, such as differences in quantities and relative differences in bargaining power. One commenter suggested in addition that some variability in POI-average prices to affiliates and non-affiliates can result from selling in different quantities over time to the two groups, *e.g.*, a higher quantity to affiliated customers early in the POI and a higher quantity to unaffiliated customers later in the POI. Under this scenario, even where there is no variation in pricing to affiliates and non-affiliates at any single point in time, the affiliate-specific ratios calculated by the Department will show variance from average prices to non-affiliates.

These commenters also contend that a restrictive band for determining whether sales to affiliates are within the ordinary course of trade is counter to the general preference in both the AD Agreement and U.S. law for establishing normal value based on comparison market sales. Further, in the event that the Department seeks to replace sales that fail the new arm's-length test with downstream sales (as indicated in the Proposed Modification), a narrow test may impose overly burdensome reporting requirements, in which case it may not be considered sufficiently "even-handed" as the term is used in the Japan Hot-Rolled report.

Finally, certain commenters favoring a broader band suggest that, to the extent there is concern over manipulation of pricing (via clustering of sales to affiliates at the low end of the band), the Department could test for such pricing patterns upon receipt of a respondent's sales databases, and could address such problems on a case-by-case basis, through the fictitious markets provision[16] as well as the ordinary course of trade provision.

Commenters arguing for a narrower band (99.5–100.5) stress that the change in practice under the proposed 98–102 percent band would go beyond the requirements of the Appellate Body report in Japan Hot-Rolled and would enhance respondents' ability to manipulate home market sales to mask dumping. One commenter provides a hypothetical example of this potential for manipulation, highlighting perceived weaknesses both in the range of acceptable prices in the new standard and the fact that, as with the old standard, it would be applied on an affiliate-specific, and not product-specific, basis.[17] This combination, according to the commenter, would allow respondents to make sales to an affiliate of products matching to U.S. products at prices significantly below the 98 percent threshold (*e.g.*, at 80 percent of prices to non-affiliates) while still passing the test by selling non-matched products to the same affiliate at prices above the threshold (*e.g.*, 120 percent). This commenter maintains that, while such manipulation is possible under the current test, it would be "dramatically easier" under the proposed 98–102 standard.

Another commenter suggests that, if the Department retains the 98–102 standard for investigations, it should at a minimum use a 99.5–100.5 standard for administrative reviews. This approach would place the arm's-length test on a consistent footing with the two percent and 0.5 percent *de minimis* dumping standards used in investigations and reviews, respectively.

Linking the standards used in the arm's-length test with those used in determining *de minimis* dumping would, according to this commenter, reduce any perceived arbitrariness over the range selected, thereby lowering its susceptibility to further WTO challenges. It would also reflect the greater potential for manipulation of pricing that can occur after imposition of an order than during the initial period of investigation.

Commenters in favor of an "asymmetrical" test base their arguments on language from a footnote in the Japan Hot-Rolled report providing that, "in finding that the application of the 99.5 percent test was not sufficiently even-handed, we do not suggest that the

[12] See also "Analysis of Public Comments," comment 5, below.

[13] Discretion to request downstream sales is explicit in section 773(a)(5) of the Act ("If the foreign like product is sold, or, in the absence of sales, offered for sale through an affiliated party, the prices at which the foreign like product is sold (or offered for sale) by such affiliated party may be used in determining normal value.").

[14] Preamble to Dep't of Commerce Regulations, 62 FR 27296, 27356 (May 19, 1997) ("Preamble").

[15] Proposed Methodology at 53340–53341.

[16] Section 773(a)(2) of the Act.

[17] See also comment 6, below, regarding the affiliate-specific nature of the test.

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methods for verifying whether high and low-priced sales to affiliates are 'in the ordinary course of trade' must necessarily be identical."[18] Accordingly, these commenters suggest, the Department retains the discretion to tailor an arm's-length test for comparison market sales between affiliates geared toward the primary concern in a dumping context: namely, low-priced sales designed to reduce normal value. These commenters maintain that an asymmetrical test is consistent with the WTO report since it imposes a "bright line" standard for high-priced sales, and is otherwise appropriate because it would retain a broader base of profitable sales made in the normal course of business than the proposed 98–102 percent test. It would also reflect the fact that a different set of circumstances exists for high-priced sales between affiliates, which are priced as such for internal company-specific reasons unrelated to the dumping analysis.

Department's Position: We have carefully considered each of the ranges proposed as alternatives to the 98–102 percent test. While some of these ranges (*e.g.*, 99.5–100.5) were previously examined in the course of arriving at the Proposed Modification,[19] we have reconsidered all options regarding upper and lower limits of the band in light of the arguments and hypothetical situations provided in the comments received.

As indicated in the Proposed Modification, the range adopted must account for concerns that the band be neither overly narrow, which would reduce the utility of the test as few affiliates would pass, nor overly broad, which could increase the potential for manipulating normal value through clustering of sales prices to affiliates at the lower end of the band.[20] Having considered the alternative suggestions regarding the appropriate band size, we continue to believe that the 98–102 range strikes the best balance in providing a reasonable and predictable means of assessing whether affiliated party sales were made at arm's-length prices. First, contrary to the argument of advocates for the 99.5–100.5 band, we do not believe that extending the lower end of the acceptable range from 99.5 percent to 98 percent provides a significant opportunity for manipulation of normal value, either in investigations or administrative reviews. The range established retains a standard that reasonably ensures that we only use sales between affiliates that are appropriate for use in the dumping analysis, in light of the fact that such sales are inherently suspect unless demonstrated to be in accord with prices negotiated by independent parties. While a particular concern arises regarding low-priced sales between affiliates in an antidumping context, the requirement that such sales, on average, fall within two percent of average prices to non-affiliates will provide a reasonable means of continuing to ensure against such manipulation.

As noted, several commenters suggest that the proposed 98–102 standard will have largely the same effect as a 99.5–100.5 band, arguing that sales prices routinely diverge by more than this range in the normal course of business, and that the ratio can be affected by other factors such as the timing of sales to affiliates and non-affiliates within the period of investigation. In response, we note first that the test recognizes that pricing of individual transactions may vary by more than two percent in the normal course of business. Such sales may still be found to be at arm's length and included in the dumping analysis as long as sales to the affiliate are, on average, within the band. The test in this respect is appropriately geared toward a recognition that, while individual sales transactions may be expected to vary in the normal course of business, systematic underpricing or overpricing between affiliates over the period examined in the dumping analysis is indicative of sales not made at arm's length.

Second, as discussed in more detail in comment 4, below, in comparing prices under the arm's-length test we routinely adjust for many of the factors that give rise to differences in pricing, and allow for additional adjustments, *e.g.*, for differences in quantities, where warranted.

Third, we disagree with suggestions for a broader band (*e.g.*, 90–110) coupled with the proviso that, if the Department finds upon further analysis that sales to affiliates are clustered at the low end of the band, it may then consider, on a case-by-case basis, whether to disregard them under either the fictitious market provision or the ordinary course of trade provision. The fictitious market provision is inappropriate for this analysis; whether or not a fictitious market exists, prices between affiliates may not reflect arm's-length transactions. Applying the fictitious market standard would not adequately serve the purpose of identifying systematic underpricing or overpricing between affiliates. Furthermore, as we have stated in past cases, it is to be used in exceptional circumstances and not employed as a routine part of the Department's analysis.[21] Such inquiries typically require an allegation from an interested party and call for analyses based on information that is quantitatively and/or qualitatively different from the information normally gathered by the Department as part of its standard antidumping analysis.[22] In addition, the suggested approach is not sufficiently in accord with the concept that sales between affiliates are inherently suspect until demonstrated to be in the ordinary course of trade. In effect, it would reverse this concept for certain sales that in our view are suspect, requiring an additional finding, on a case-by-case basis, that other factors render such sales not at arm's length. Finally, there are serious concerns that any such approach would not be reasonably administrable within the time limits of an antidumping proceeding, particularly given the requirement in most instances for downstream sales once a determination is made that sales between affiliates are not at arm's length.

In light of these concerns, we believe the more appropriate finding is that sales below the 98 percent threshold, but within the proposed broader band, are outside the ordinary course of trade. However, as discussed in comment 4, below, we will consider arguments on a case-by-case basis that such pricing patterns were determined entirely by market factors not captured by the arm's-length test, such as the timing of sales made to affiliated and unaffiliated parties during the period of investigation.

Finally, we disagree with suggestions that an "asymmetrical" test would be consistent with the WTO report in Japan Hot-Rolled or is otherwise appropriate as a test for sales not made at arm's length. While the Appellate Body provided in a footnote that the tests for whether low-priced and high-priced sales to affiliates are in the ordinary course of trade did not necessarily have to be "identical," this was made in the context of statements that the current test was not sufficiently "evenhanded" to the extent that it "operated systematically to raise normal value, through the automatic exclusion of marginally low-priced sales, coupled with the automatic inclusion of high-priced sales, except those proved, upon request, to be aberrationally high priced." The Appellate Body's finding that the application of the 99.5 percent test in the Japan Hot-Rolled case violates Article 2.1 of the AD Agreement was based on its assessment that the test "focuses predominantly" on the distortion that results from low-priced sales and does not "take equal account of the possibility that prices 'above the (99.5 percent) threshold' can also 'distort' normal value."[23] We believe that automatically disregarding sales to affiliates at prices below the 99.5 percent threshold while automatically including sales at prices up to a 125 percent threshold would be inconsistent with this reasoning.

[18] AB Report, footnote 113.

[19] Proposed Modification at 53340. See also Preamble at 27356.

[20] Proposed Modification at 53340.

[21] Certain Corrosion-Resistant Carbon Steel Flat Products from Japan, 64 FR 12951, 12956 (March 16, 1999).

[22] Preamble at 27357.

4. Proposals To Take Into Account Relevant Commercial Circumstances

Numerous commenters proposed that, in assessing whether affiliated party sales were made in the ordinary course of trade, the arm's-length test should not focus exclusively on price, but should take into account all relevant commercial circumstances. Referencing a statement in the Appellate Body report that "price is merely one of the terms and conditions of a transaction,"[24] these commenters suggest that, to the extent the arm's-length test ignores the commercial circumstances pertaining to affiliated and unaffiliated party sales, the new methodology will produce distorted results. Suggestions for factors to examine include level of trade, customer categories, quantities sold, product mix, and any other terms of sale relevant to the transactions under examination.

The suggestions vary with respect to the relationship between these factors and the arm's-length test as described in the Proposed Modification. One proposal is that affiliated party sales should be found within the ordinary course of trade wherever their terms of sale are the same as sales made at the same time to unaffiliated parties. Other commenters suggest that, if a price analysis is conducted, it needs to ensure that any differences in commercial terms and conditions between affiliated and unaffiliated party sales that could impact price are taken into account. A third proposal is that the price analysis should merely establish a rebuttable presumption that sales to an affiliated party are outside the ordinary course of trade, which could be countered by other information demonstrating that such sales were in fact made under the conditions and practices that are normal in the comparison market and, thus, are in the ordinary course of trade.

Department's Position: As with the current test, the new methodology takes account of many of the factors suggested by commenters as relevant to the ordinary course of trade analysis. We take this opportunity to clarify those aspects of the methodology used to establish the affiliate-specific price ratios that relate to this issue.

First, price comparisons between affiliated and unaffiliated party sales that are factored into the affiliate-specific price ratios (which are then applied against the 98–102 percent range) are made at the same level of trade, where appropriate. That is, the arm's-length test generally does not compare prices of sales made at different levels of trade. Any sales to affiliates for which there are no comparable sales to unaffiliated parties at the same level of trade are not used in determining the affiliate-specific price ratios. This does not mean that such sales are automatically disregarded from use in determining normal value, but simply that such sales are not used in determining whether, overall, sales to a given affiliate are made at arm's length. If, based on the sales that are used in the analysis, it is determined that sales to an affiliate were made at arm's length, all sales to the affiliate, including sales without comparable unaffiliated sales at the same level of trade, are included in the comparison market database used to establish normal value.[25]

In addition to comparing sales at the same level of trade, the test adjusts affiliated and unaffiliated party prices for numerous differences relating to the sales. The adjustments account for, among other things, differences in packing expenses, movement expenses from the original place of shipment, discounts and rebates, and selling expenses that relate directly to the sale at issue. While the Department's questionnaire specifically requests information pertaining to a number of adjustments, it also allows for responding companies to claim additional adjustments for other expenses relating to the sales at issue. Thus, provided that a respondent has accurately reported its claimed differences in circumstances of sale, along with other expenses and price adjustments relating to the reported sales, the arm's-length test will account for such differences between sales to affiliates and non-affiliates.

With respect to the request by numerous commenters that the test also take into account the price effect of any difference between sales to affiliates and non-affiliates in quantities sold, we note that adjustments for differences in quantity are addressed at § 351.409 of the Department's regulations. We do not automatically adjust for differences in quantities, but will do so under the conditions specified in this regulation. Moreover, the fact that the arm's-length test makes comparisons only at the same level of trade should reduce the number of instances in which sales of significantly different quantities are compared. As stated in the preamble to the Department's regulations, based on our experience we believe that differences in quantity are more likely to occur at different levels of trade.[26]

Considering these aspects of the arm's-length test in light of the proposals made, we believe the test adequately accounts for the factors alleged by the commenters to affect price comparisons between sales to affiliated and unaffiliated parties. Beyond this, we are not in a position to speculate on any case-specific circumstances that might warrant additional consideration. Accordingly, we have not changed the test in response to these comments. However, as with other aspects of the Department's dumping analysis, parties have a right to submit comments on the record of a proceeding regarding the adjustments that must be made under the statute in order to ensure a fair comparison. We will consider any comments submitted regarding case-specific adjustments made in the arm's-length analysis in that light. While this does not constitute what one commenter referred to as a rebuttable presumption with respect to the results of the 98–102 percent test, and is not a change in our practice of generally limiting the analysis to pricing as adjusted, as upheld by the Court of International Trade,[27] it does provide a fair opportunity to ensure that all appropriate adjustments are made in deriving the affiliate-specific ratios to which the band applies.

Finally, we have not adopted the proposal that equivalent terms of sale for affiliates and non-affiliates should conclusively establish that affiliated

[23] AB Report, paragraph 157.

[24] AB Report, paragraph 142.

[25] Under the current test, the same holds true regarding affiliated party sales that have no identical matching unaffiliated party sales. See comment 5 regarding the change in methodology allowing for non-identical comparisons. In both situations, where there are no sales to an affiliate that can be compared with unaffiliated party sales, sales to this affiliate would not be used in the dumping analysis.

[26] *Preamble* at 27368.

[27] *NTN Bearing Corp. v. United States*, 905 F. Supp1083, 1099–1100 (October 2, 1995).

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party sales are in the ordinary course of trade. This proposal, like others offered, appears to be based on a sale-by-sale analysis.[28] As we discuss further below, we do not believe this approach appropriately addresses the question of the nature of the relationship between the affiliates.

5. Treatment of Sales to Affiliated Parties of Products Not Sold to Unaffiliated Parties

Certain commenters suggested that the Department alter the manner in which it treats sales to affiliated parties of products not sold to unaffiliated parties. Currently, as with affiliated party sales that cannot be compared to unaffiliated party sales at the same level of trade (*see* comment 4, above), sales to affiliates with no identical match to an unaffiliated party sale are not used in determining the affiliate-specific ratios that are compared against the 99.5 percent threshold.

However, such sales are not automatically disregarded for determining normal value; they are retained in the comparison market database if the affiliate passes the arm's-length test based on sales that could be compared with unaffiliated party sales.[29]

One commenter suggested that the new test should seek to compare affiliated party sales with sales of non-identical merchandise sold to unaffiliated parties, where there are no comparable sales of identical merchandise. This revision would, according to this commenter, expand the pool of sales used to determine whether pricing to an affiliate was made at arm's-length, and would also be in accord with the Department's regulations on affiliated party sales. These regulations provide that "the Secretary may calculate normal value based on [affiliated party sales] only if satisfied the price is comparable to the price at which the exporter or producer sold the foreign like product to a person who is not affiliated with the seller."[30] The use of the term "foreign like product" in this context, according to this commenter, indicates that the determination of whether affiliated party sales are made at arm's length is to be established with reference to the price of identical and similar merchandise sold to unaffiliated parties.

Another commenter suggests an alternative means of including sales to affiliates of products lacking an identical match in the arm's-length analysis; namely, that the Department should assume that such sales were made at 100 percent of the price to non-affiliates, and factor this into the affiliate-specific ratio.

Department's Position: As noted in the "Final Modification to Arm's-Length Methodology" section, above, we intend to match non-identical merchandise where there are no comparable sales of identical merchandise. The reference in the governing regulation to comparing prices of affiliated party sales with sales to non-affiliates of the "foreign like product" makes clear that the price of non-identical merchandise is appropriate for use in determining whether sales were made at arm's length. We expect to be able to make such comparisons where the respondent has provided both total and variable home market costs, typically in cases involving sales-below-cost inquiries. While we will not require total home market costs in non-cost cases solely for purposes of making comparisons in the arm's-length test, we will accept the reporting of such costs on a voluntary basis in such cases. While some commenters maintain that expanding the arm's-length test in this manner will add unnecessarily to the complexity of the analysis, we believe that comparisons to non-identical merchandise can be accommodated within the existing framework for the conduct of antidumping proceedings.

We can see no reason to adopt the alternative proposal for assuming sales with no identical match were made at 100 percent of the price to unaffiliated parties. There is no claim that such an assumption is grounded in fact, and could lead, in effect, to an assumption that affiliated party sales were made at arm's length.

6. Comments Regarding Appropriate Level for Determining Whether Sales are at Arm's Length: by Individual Sale; by Product; by Affiliate

As described in the Background section, above, the Department currently assesses whether sales were made at arm's length at the level of the individual affiliate. Both the methodology used in the 99.5 percent test and the Proposed Modification weight average the product-specific price ratios for all products sold to an affiliated customer to arrive at an affiliate-specific price ratio. If the result shows sales prices to an individual affiliated party are, on average, at least 99.5 percent of the sales prices to all unaffiliated comparison market customers (under the 99.5 percent test) or between 98–102 percent, inclusive, of unaffiliated prices (under the 98–102 percent test), then all sales to that affiliated party may be treated as being made in the ordinary course of trade and may be used in calculating normal value, including any sales made at prices below the threshold. Otherwise, if the affiliate-specific price ratios do not meet these criteria, all sales to the affiliate are generally considered outside the ordinary course of trade, including sales at prices above the 98–102 band.

A variety of proposals were submitted that would allow the arm's-length determination to be made on the basis of individual sale prices or weighted-average prices by product, as opposed to the affiliate-wide determination described above. One commenter suggests that the determination should be done on a sale-by-sale basis. Under this proposal, any individual sale to an affiliated party would be considered as made at arm's-length as long as it is priced at a level equivalent to any comparable sale to an unaffiliated party. According to this commenter, there is no basis to disregard such sales to affiliates where the comparable sale to the unaffiliated party is determined to be in the ordinary course of trade. Another commenter takes the opposite approach, recommending that all individual sales to an affiliate must be found to be priced at levels establishing the arm's-length nature of the transaction in order for any sales to the affiliate to be used.

Another commenter proposes a product-specific approach for each customer, whereby the product-specific average price, as sold to an individual affiliate, must be within the band established for arm's-length sales in order for such sales to be used in determining normal value. According to this commenter, a product-specific approach to determining sales in the ordinary course of trade is more in line with the rest of the statutory framework for determining normal value, which is centered on the price of the foreign like product, *i.e.*, a model-specific hierarchy of merchandise for comparison. Yet another commenter views "foreign like product" broadly (akin to class or kind) and contends that the arm's-length analysis should focus on this broad basis, since a corporation's pricing decisions are rarely, if ever, made on a CONNUM-specific basis.

Department's Position: While we have carefully considered each of these alternative proposals for the appropriate level at which to determine whether affiliated party sales are made within the ordinary course of trade, we have decided to retain our normal practice of making this determination on an affiliate-wide basis. While certain individual sales and products that would pass the test on their own may be excluded under this approach, and vice-versa, an affiliate-wide analysis does not systematically bias the arm's-length determination in one direction or another. Our reasons for preferring that the determination of whether sales are made at arm's-length be conducted at the level of the individual affiliate were set forth in the investigation underlying the AB Report in Japan Hot-Rolled:

> With respect to NKK's concern of applying the arm's-length test on a customer basis, we note that the question underlying the arm's-length test is whether affiliation between the seller and the customer has (in general) affected pricing. Because affiliation is the result of relationships between firms, the focus of the arm's-length test is the customer, not a particular product. For this reason, the Department makes one up-or-down call on pricing to an affiliated customer: Either there is arm's-length pricing or there is not. However, under NKK's [product-specific] approach, affiliation could be found to matter for some connums, but not for others, even though the customer in both cases is the same.[31]

This aspect of the Department's methodology was not at issue before either the WTO Panel or the Appellate Body in Japan Hot-Rolled, and we do not find sufficient reason to depart from the current approach in adopting the new methodology. Moreover, abandoning the focus on the pricing relationship with the affiliate would fundamentally alter the nature of the test and introduce many complicated questions about other aspects of the test as well as use of downstream sales.

While the explanation cited above pertains to requests for a product-specific approach, its rationale applies as well to requests for a sale-specific approach. In particular, the proposal to retain an individual affiliated party sale if priced at a level equivalent to a comparable sale to an unaffiliated party would require that we ignore the potential for manipulation that results from the affiliation. Under this approach, affiliated party sales could be priced on average far below market price and still be retained for determining normal value as long as they are made at the price of the lowest individual sale price to an unaffiliated customer. The adoption of this method for determining arm's-length sales would, therefore, not establish that affiliated party sales are appropriate for use in the dumping analysis.

7. Proposals for Treatment of Merchandise "Consumed" by Affiliates, as Distinguished from Merchandise Resold

Certain commenters submitted proposals for differentiating between sales of the foreign like product "consumed" (not resold as subject merchandise) by an affiliate and sales to an affiliate that are resold as subject merchandise.[32]

One commenter suggested that, when sales to affiliated parties are not resold but are instead "consumed," the standard used in the arm's-length test should be different. In particular, this commenter suggests dropping the requirement that sales, on average, be within the band and allowing any individual sales within the band to pass the arm's-length test. This commenter suggests that the broader requirement that pricing overall to the affiliate be within the band is less relevant where an affiliate consumes the merchandise by producing and selling a product that is outside the scope of the order.

Another commenter, while proposing that the Department automatically request downstream sales in the case of resales (*see* comment 1, above), suggested applying an arm's-length test in the limited instance of sales of merchandise "consumed" by an affiliate. Alternatively, a third commenter, while agreeing that the Department should automatically request downstream resales, suggested eliminating sales of merchandise consumed by an affiliate from the analysis. This commenter suggests that the Department's concern over a methodology that leads to fewer comparisons based on the preferred methodology (home market sales) is overstated, given the U.S. Court of Appeals ruling in *Cemex S.A.* v. *United States* with respect to matching to similar merchandise[33]. Further, according to this commenter, disregarding all sales to affiliated consumers would not be contrary to the Department's regulations or Congressional intent, since the former must be read in light of the general suspicion of affiliated party sales encompassed in the Statement of Administrative Action accompanying the Uruguay Round Agreements Act (SAA), and the latter anticipates that Commerce, "in general," will not rely on sales to affiliates in determining normal value.[34]

Department's Position: Consistent with our current practice and with § 351.403(c) of the Department's regulations, we intend to continue using sales to affiliates, whether of merchandise consumed or resold, to determine normal value where such sales are shown to be at arm's length. The comments submitted proposing different treatment of sales of merchandise consumed by affiliates do not provide sufficient reasons to depart from this practice.

With respect to the proposal that individual sales of merchandise consumed by affiliates should be found to have passed the arm's-length test whenever such sales prices are within the established price band, no underlying rationale was provided for this difference in treatment other than to claim that the affiliate-wide pricing requirement "makes no sense" as applied to affiliated consumers. We do not believe that there is sufficient reason to apply a different standard with respect to such sales. Whether the affiliate consumes or resells the subject merchandise, the question posed is the same and the test applied should be the same.

With respect to the suggestions that we should automatically disregard sales to affiliated consumers, or that we should apply an arm's-length test only to such sales while automatically disregarding sales to affiliated resellers, our response to comment 1, above, which provides our reasons for applying an arm's-length test to upstream sales to resellers (as opposed to automatically disregarding such sales), applies as well to applying an arm's-length test to sales to affiliated consumers and using such sales to establish normal value when

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[28] Comment 6, below, addresses a similar proposal to retain all individual affiliated party sales that are priced at the level of any unaffiliated party sale considered to be in the ordinary course of trade.

[29] A number of comments received on this issue assume that such sales are automatically considered to have "failed" the arm's-length test and, as such, are disregarded in determining normal value. One commenter suggests that, in a variant of the test, the Department makes an adverse assumption and assigns all affiliated party sales of products with no match to unaffiliated party sales a CONNUM-specific ratio of 0 percent. While the commenter does not cite specific cases employing different methodologies, we will ensure that future cases are consistent in their treatment of affiliated party sales with no match to unaffiliated sales.

[30] 19 CFR 351.403(c) (emphasis added).

[31] Final Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Japan, 64 FR 24329, 24342 (May 6, 1999).

[32] Sales by an affiliate of subject merchandise are referred to in the Preamble to the Department's regulations, and in this notice, as "downstream sales." Preamble at 27356. Sales from the respondent company to the affiliated reseller are described in this notice as "upstream sales."

[33] 133 F.3d 897 (Fed. Cir. 1998) (citing also DOC Policy Bulletin 98.1, which specifies that, henceforth, when all sales of a particular home market model are below cost, instead of automatically resorting to constructed value to determine normal value, the Department will first attempt to use prices of a non-identical model that remains above cost.).

[34] Cting H.R. Rep. No. 103–826, at 82 (1994).

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they are demonstrated to be at arm's length. There is insufficient reason to apply different methodologies to these two groups of sales to affiliated parties. We also note that, to the extent there is ambiguity regarding reporting requirements for these two types of affiliated party sales, we intend in the future to make clear that sales to affiliates, whether consumers or resellers, will be used in the dumping analysis where shown to be at arm's length based on the 98–102 price band methodology.

8. Other Methodological Proposals for Determining Sales at Arm's Length

Other proposals made regarding the arm's-length test include:

- A proposal by the commenter who recommended a sale-by-sale approach to use, as an alternative in the event the sale-by-sale approach is not adopted, the quantity-based test described as an alternate option in the Proposed Methodology. Under this option, affiliated party sales would be found within the ordinary course of trade as long as a sufficient quantity of comparable sales to non-affiliates were priced above and below the affiliated price. This commenter believes the Department's concerns over this option, centering on complexity, implementation, and uncertainty over the appropriate level of quantities needed to pass the test, are overstated, and provides examples of how it could be implemented without undue difficulty.
- A suggestion to apply the arm's-length test only when common ownership between affiliates reaches a level of 50 percent or more. This approach, the commenter suggests, will more accurately reflect those situations where actual control exists sufficient to give rise to concerns over manipulation of pricing.
- A request for clarification of the methodology with respect to a single affiliate with multiple customer codes in the reported home market database, due to, for instance multiple billing addresses. This commenter requests that Commerce adopt in all cases the methodology used in Certain Cold-Rolled Carbon Steel Flat Products from France,[35] where it "collapsed" multiple customer codes and performed the arm's-length test on an aggregate basis.
- A request that the Department explain how a band approach, containing an upper-level ceiling on affiliated party prices, is consistent with the test applied for valuing inputs sold between affiliates, as prescribed at sections 773(f)(2) and (3) of the Act. The commenter believes any differences could be interpreted as reflecting inconsistent definitions of the term "foreign like product," one relating to price-based normal value (arm's-length test) and one relating to constructed value (the provisions of the Act cited above). This commenter requests that this explanation be made with reference to a recent remand by the Court of International Trade (as directed by the Court of Appeals for the Federal Circuit), in which the Department was asked to clarify why it uses different definitions of the term "foreign like product" for price-based and cost-based calculations.[36] The commenter also references the recent determination in Certain Cold-Rolled Carbon Steel Flat Products from France,[37] where, the commenter maintains, the arm's-length and cost valuation issues were joined, since a transaction that failed the current arm's-length test could be evaluated under the major input rule for use in determining input costs.
- A request for clarification that, when the Department finds an insufficient volume of sales to unaffiliated purchasers, it will continue its practice, as noted in the preamble to the Department's regulations,[38] of disregarding affiliated party sales.
- A request that the Department explicitly place on respondents the burden of proof for establishing that affiliated party sales are in the ordinary course of trade, and clarify that all such sales will be disregarded until this burden of proof is met.
- A request for clarification regarding whether all affiliated party sales that fail the arm's-length test will continue to be excluded from the CEP profit calculation. This commenter notes that the current practice is centered on low-priced sales falling below the 99.5 percent threshold,[39] and asks whether high-priced sales above the 98–102 band would also be excluded. This commenter suggests that "capping" the CEP profit calculation by excluding high-priced sales that fail the arm's-length test would conflict with the preamble to the Department's regulations and with its statutory obligations.[40]

Department's Position: We respond to each item, in turn. With respect to the suggestion favoring the use of a quantity-based test, our concerns with this test, as set forth in the Proposed Modification, remain despite the suggestions by the commenter. These include, in addition to the general complexity and implementation concerns cited by the commenter, concerns over whether to apply the test by affiliate or for all affiliates combined by product, and questions as whether this might not be an overly narrow definition of the "normal" price range of sales to affiliated parties. We continue to believe the 98–102 percent band provides a more reasonable, predictable, and administrable test.

With respect to the suggestion that we only apply the arm's-length test in situations involving 50 percent or greater cross-ownership between affiliates, as we stated in the preamble to the Department's regulations, we believe an arm's-length analysis is appropriate "whenever there are transactions between parties within the meaning of section 771(33) of the Act. Therefore, if two parties are affiliated, any transactions between them are subject to paragraphs (c) and (d) of 19 CFR 351.403, allowing use of transactions between affiliated party sales only if found to be made at arm's length."[41] We have not changed our view in this regard.

With respect to the issue of multiple customer codes for a single affiliate, we confirm that we intend to aggregate sales to a single affiliate for purposes of the arm's-length test.

With respect to the comment regarding a perceived inconsistency between the arm's-length standard as set forth in the Proposed Modification and the statutory requirements for valuing affiliated party inputs (sections 773(f)(2) and (3)), we disagree that the arm's-length test must apply the standard or test used for valuing affiliated party inputs. These tests are employed for different purposes in analytically distinct areas of the dumping analysis. As for the CIT remand cited by the commenter, we note that this remand concerned a separate issue relating to the statutory definition of "foreign like product" as the term is used in various parts of the antidumping statute. The commenter did not explain the relevance of this court decision, nor do we believe that the modification of the arm's-length test depends on or implies any application of different definitions of the term "foreign like product."

[35] 67 FR 31204 (May 9, 2002).

[36] *FAG Italia* v. *United States*, 291 F.3d 806 (CIT 2002).

[37] 67 FR 31204 (May 9, 2002).

[38] Preamble at 27355.

[39] Citing Import Administration Policy Bulletin 97.1: Calculation of Profit for Constructed Export Price Transactions, at pages 3–5 (September 4, 1997).

[40] Citing Preamble at 27354 ("the statute does not authorize a cap on the amount of profit deducted from CEP").

[41] Preamble at 27356.

With respect to the request for clarification on our intended practice regarding insufficient unaffiliated party sales, we confirm that, consistent with the preamble to our regulations, affiliated party sales will not be used where there are insufficient unaffiliated party sales for use in the arm's-length test.

With respect to the comment on burden of proof, we believe the Department's regulations speak for themselves, namely that affiliated party sales will be used only where the Department is satisfied that the price to an affiliate is comparable to unaffiliated prices.[42]

With respect to the request for clarification regarding affiliated party sales used in determining CEP profit, the Department's current practice is to exclude non-arm's-length sales and include downstream sales of the same merchandise where such sales are reported. We have not changed that policy.

9. Treatment of Downstream Sales

Aside from the methodology used to determine whether sales to affiliates are made in the ordinary course of trade, numerous commenters submitted proposals regarding the use of downstream sales by affiliated parties where upstream sales fail the arm's-length test.[43]

Several commenters maintain that the 98–102 percent test, if adopted, will increase reliance on downstream sales and will, as a result, create greater potential for facts available given the frequent reluctance on the part of affiliated resellers to provide information regarding downstream sales. One commenter suggests that, in order to balance this likely effect, the current "five percent" exemption for reporting downstream sales[44] should be broadened to a "20 percent" exemption, analogous to the rule for determining whether "substantial quantities" of sales were made below cost. Under this approach, the Department would not request downstream sales for any respondent whose comparison market sales to affiliates comprise less than 20 percent of the value (or quantity) of all comparison market sales of the foreign like product. Alternatively, this commenter suggests applying the five percent test on a different basis than that currently used. Specifically, instead of determining whether sales to all affiliates are less than 5 percent of total sales of the foreign like product, the Department would under this proposal determine whether only those sales of merchandise to affiliates that (1) failed the arm's-length test and (2) are resold (not consumed) are less than five percent of all sales of the foreign like product, and would not request any downstream sales if this standard was met.

Another commenter suggests that the Department should not request downstream sales under the following circumstances: (1) Where sales to an individual affiliate constitute less than one percent of all comparison market sales of the foreign like product, regardless of whether the five percent exemption is met in the aggregate; (2) where respondents demonstrate that downstream sales prices are lower than upstream sales prices, provided they agree that upstream prices would be used in determining normal value; and (3) where resales are made in small quantities or at different levels of trade than the other comparison market and U.S. sales.

Other commenters propose stricter reporting requirements and expanded coverage of downstream sales. One suggestion is to eliminate or lower (to 0.5 percent) the five percent exemption for reporting downstream sales in order to counteract what is likely to be a larger amount of sales disregarded—particularly high-priced sales—under the revised test compared with the 99.5 percent test.

Another commenter recommends a different standard be applied in investigations and reviews regarding the respondent's obligations to report downstream sales. This proposal would allow for downstream sales to be disregarded in investigations when a respondent demonstrates to the Department that it cannot obtain such sales, but would require respondents to include, as a condition of sale to affiliates, a requirement that such affiliates provide information on their sales in antidumping reviews. This proposal would have the Department issue a statement of practice pertaining to administrative reviews providing, among other things, that "[i]f a respondent claims that it is otherwise unable to submit the downstream sales data of an affiliated seller, the Department will apply adverse facts available."

Finally, another commenter asks that the Department make clear that it will apply an arm's-length test to downstream sales, where such sales are sold to a second-level affiliate.

Department's Position: We have not changed our requirements regarding downstream sales based on these suggestions. With respect to the five-percent threshold for reporting downstream sales by affiliates set forth at § 351.403(d) of the Department's regulations, the proposals to raise or to lower this standard do not address the proposed change in the arm's-length test itself. In any event, we do not believe that a change in the regulations is warranted by these suggestions.

The adoption of the five-percent threshold was based on the premise "that imposing the burden of reporting small numbers of downstream sales often is not warranted, and that the accuracy of determinations generally is not compromised by the absence of such sales."[45] We continue to believe that a five-percent standard normally balances these considerations appropriately. The proposed 20 percent standard is too high to warrant confidence that exceptions to reporting downstream sales based on this threshold would not compromise the accuracy of our determinations. On the other hand, the proposed 0.5 percent threshold is based on a misplaced analogy to the *de minimis* dumping standard in administrative reviews. We do not believe that exempting downstream reporting where a respondent sells less than five percent of the foreign like product to affiliates, and basing normal value on other sales or on constructed value, gives rise to concerns about the accuracy of our determinations.

With respect to the proposal that the sales of the foreign like product used to determine whether the five-percent threshold is met should be narrowed to only those that fail the arm's-length test and are not consumed by the reseller, we continue to believe that the five-percent standard, as stated in the regulation, is appropriate. The assessment by the Department, in the preamble to the regulations, that excusing reporting of downstream sales would not compromise the accuracy of its determinations was predicated on a finding that the respondent's total sales of the foreign like product to affiliates were less than five percent of all sales of the foreign like product. While we may determine in certain cases that it is appropriate to excuse downstream reporting along the lines suggested by this commenter, we do not believe the

[42] 19 CFR 351.403(c).

[43] See page 7, above, and Proposed Modification, 67 FR at 53340, for a summary of the Department's practice concerning downstream sales.

[44] *See* § 351.403(d) of the Department's regulations, specifying that the Department generally will not calculate normal value based on downstream sales where sales of the foreign like product to affiliated parties constitute less than five percent of the total value (or quantity) of the respondent's sales of the foreign like product in the market in question.

[45] *Preamble* at 27356.

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proposal could be applied generally without compromising accuracy. For similar reasons, we also disagree with the proposal to exempt individual affiliates from reporting downstream sales based on the proposed "one-percent" standard, though we may exempt reporting of such sales in individual cases. In our view, the five-percent standard, based on a company's aggregate sales to all affiliates, provides a reasonable test for whether to exempt a respondent from downstream reporting.

Regarding the proposal that we exempt respondents from downstream sales reporting where they can show such sales were made at prices below the relevant upstream sale and agree to use the upstream sale in its place, we do not believe it would be appropriate to address such hypothetical situations. We will do so if and when such issues are raised in a case.

Regarding the proposal that we exempt downstream sales made at different levels of trade than other comparison market sales or U.S. sales, such an exemption could conflict with our practice of matching U.S. and comparison market sales at different levels of trade in the absence of comparable sales at the same level of trade. As such, it could inappropriately reduce the number of price-based comparisons in the dumping analysis. However, as stated in the Preamble to the Department's regulations, the Department does not believe it necessary or appropriate to require the reporting of downstream sales in all instances, though the Department will require a respondent to demonstrate in each segment of a proceeding that the reporting of downstream sales is not necessary.

Regarding the proposal that we exempt downstream sales made in small quantities, as noted above, we believe that, as a general matter, the correct level at which to determine whether sales are so small as to warrant not reporting is at the level of the upstream sale between affiliates. This is the level at which the five-percent threshold is applied. Any other requests for exemptions from reporting based on a small quantity of sales would need to be considered on a case-by-case basis.

Regarding the proposal that we apply different standards in investigations and administrative reviews regarding a respondent's claim that it cannot submit downstream sales data, we disagree with the suggestion that we automatically resort to adverse facts available in administrative reviews. We will continue to determine, based on the facts of each case, the extent to which an individual respondent has failed to cooperate by not providing requested information. This approach is consistent with our statutory and WTO obligations regarding the use of adverse facts available. While we do not disagree in principle with the suggestion that a respondent who has participated in an initial investigation may be expected in subsequent administrative reviews to have gone to greater lengths to secure such data, any finding of uncooperativeness must be made with reference to the particular facts of each segment of the proceeding.

Finally, we intend to continue our practice of applying the arm's-length test to any sales made to affiliated parties, including downstream sales to second-level affiliates.

10. Proceedings/Entries Governed by Revised Arm's-Length Test

One commenter argued that the Department's proposed timetable for applying the new methodology with respect to other proceedings and segments of the Japan hot-rolled proceeding other than the investigation (*i.e.*, reviews initiated on the basis of requests received on or after the first day of the month following the date of publication of the Department's final notice of that new methodology) would contravene section 129(c) of the URAA (19 U.S.C. 3538(c)). That section, the commenter claimed, requires that such changes be implemented only with respect to entries made, not proceedings requested or initiated, on or after the implementation date.

Department's Position: The Department's timetable for applying its new methodology beyond the Japan hot-rolled investigation is legally permissible and appropriate. Specifically, contrary to the commenter's assertions, section 129 of the URAA applies only to changes implemented with respect to the segment of the proceeding that gave rise to the WTO challenge. That is, section 129 of the URAA applies only to changes made as a result of "an action by the administering authority in a proceeding under title VII * * * [that] is not in conformity with the obligations of the United States under the Antidumping Agreement * * *." Section 129(b)(1) (emphasis added). Therefore, the timing provisions of section 129(c) (which deal with implementation under section 129) also apply only to changes to measures "as implemented" with respect to the segment of the proceeding which served as the basis for the WTO challenge.

In contrast, changes in agency practice (such as this change with respect to the arm's-length test) made in connection with an adverse WTO panel or Appellate Body are governed by a different provision of the URAA. See section 123(g) of the URAA. Section 123 has its own "effective date of modification" provision (section 123(g)(2)). This provides for a single limitation on the effective date: "the final rule or other modification may not go into effect before the end of the 60-day period beginning on the date on which consultations [with the appropriate congressional committees on the proposed content of the modification] begin [unless the President determines that an earlier effective date is in the national interest]." Because this new methodology will "go into effect," for other proceedings and other segments of the Japan hot-rolled proceeding, after the 60-day period will have ended, the timetable for implementation is lawful. Thus, Commerce's decision to apply its new methodology prospectively, beginning with segments of proceedings initiated on or after November 23, 2002,[46] is proper.

The fact that, under the proposed implementation timetable, the new arm's-length methodology "would affect" margins on imports which entered prior to the implementation date, but for which the margins would be calculated in a review initiated after the implementation date, does not compel the result urged by the commenter. The commenter's broad reading of the legislative history of section 129 does not provide authority for extending the effective date provision of that section to areas covered instead by section 123, especially given that section 123 has its own, different, provision that controls such a new methodology.

It is significant that section 123 uses the term "go into effect" (which refers to the beginning of *use* of a methodology), rather than language of section 129, which refers to which entries will be affected. There is no legislative inconsistency with the use of a new methodology "affecting" entries made prior to the date on which the methodology changed. Indeed, except where otherwise specified (as in section 129 with respect to the actions of the Department in the contested segment of the proceeding), the Department's practice has normally been to begin application of a new methodology with respect to segments of proceedings requested or initiated after a given date, rather than applying different methodologies within the same segment

[46] See "Timetable" section, below.

of the proceeding. See, *e.g.*, section 291(a)(2) of the URAA (the URAA amendments shall "take effect" on the date the WTO Agreements enter into force and "shall apply with respect to" reviews initiated pursuant to a request filed after such date); 19 CFR 351.701 (regulations implementing the changes made by the URAA "apply to all administrative reviews initiated on the basis of requests made after June 18, 1997" (the "effective date" provided in the notice of final rule published in the **Federal Register** on May 19, 1997).

11. Applicability of Administrative Procedures Act To Revised Arm's-Length Test

One commenter contended that the change to the arm's-length test is tantamount to creating a rule as set forth in 5 U.S.C. 553 of the Administrative Procedures Act (APA). More specifically, citing *Carlisle Tire & Rubber Co.* v. *United States*, 10 C.I.T. 301, 305–06 (1986) (*Carlisle*), the commenter suggests that the Department's notice and comment procedures should comply with those set forth under APA. In this commenter's view, the 15 day notice and comment period provided by the Department falls short of the 60 day period required under the APA.

Department's Position: As discussed above, the revised arm's-length methodology has been developed taking into account the finding in the AB Report that the application of the 99.5 percent arm's-length test in the underlying investigation was inconsistent with the obligations of the United States under Article 2.1 of the AD Agreement. As a result, the revised arm's-length test represents a methodology consistent with section 2.1 of the AD Agreement in accordance with the AB Report. Unlike the methodologies contested in *Carlisle*, our arm's-length methodology does not create an inflexible rule. In short, the Department's arm's-length methodology is not subject to the APA because, unlike the methodology underlying *Carlisle*, it only interprets the law.

The Department also notes that section 123(g) does not provide for application of the APA within the context of the remediation of the Department's practice. Section 123(g) only requires, in relevant part, that the Department provide the public with the proposed change, an explanation of how that change would implement the panel or Appellate Body report, and an opportunity for comment. Consequently, under a plain language reading of section 123(g), the Department's announced change in practice would not be subject to the notice and comment procedures of the APA.

Timetable

This methodology will be used in implementing the Japan Hot-Rolled findings pursuant to section 129 of the URAA. In accordance with section 129(c)(1) of the URAA, the section 129 determination in Japan Hot-Rolled will establish new cash deposit rates for all producers for whom the investigation rates are still applicable and will apply with respect to unliquidated entries of the subject merchandise which are entered, or withdrawn from warehouse, for consumption on or after the date on which the United States Trade Representative directs the Department to implement that determination. With respect to other proceedings and other segments of the Japan hot-rolled proceeding, the new methodology will be applied in all investigations and reviews initiated on or after November 23, 2002.[47]

Dated: November 8, 2002.

Faryar Shirzad.

Assistant Secretary for Import Administration.

[FR Doc. 02–29065 Filed 11–14–02; 8:45 am]

BILLING CODE 3510–DS–P

[47] This is a slight modification of the Timetable as set forth in the Proposed Modification. Previously, the Timetable anticipated that the implementation of this practice would go into effect with respect to investigations initiated on the basis of requests received after the publication date of this notice, and for reviews initiated on the basis of requests received in the month following publication of this notice. Upon further consideration, we have determined that it is appropriate to employ this methodology in all investigations and reviews initiated on or after November 23, 2002.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 021028257–2257–01]

RIN 0648–ZB32

NOAA Ocean Exploration Initiative, Fiscal Year 2003

AGENCY: Office of Ocean Exploration, National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: NOAA's Office of Ocean Exploration (OE) is seeking pre-proposals and full proposals for grants and cooperative agreements and other financial collaborations in support of OE's mission to expand our knowledge base of the ocean's physical, chemical and biological characteristics, processes, and resources and to learn more about our maritime cultural heritage by means of experiments and expeditions to unknown, or poorly known oceanic and Great Lakes regions. With an emphasis on stimulating integrated, interdisciplinary efforts and institutional collaborations, the goal is to foster a program in ocean exploration in which discovery and the spirit of challenge are the cornerstones.

DATES: Pre-proposals are required and must be received in the NOAA Office of Ocean Exploration by close of business (U.S. Eastern Time Zone), December 16, 2002, and full proposals by close of business, January 29, 2003. In the event these dates fall on a weekend or holiday, the application deadline shall be the first working day after the date specified. E-mail submissions of the pre-proposals and proposals are strongly encouraged. Facsimile pre-proposals and/or facsimile proposals will not be accepted.

ADDRESSES: Send proposals to NOAA, Office of Ocean Exploration, ATTN: OE Science Program Coordinator, Bldg. SSMC3, Rm. 10221, 1315 East West Highway, Silver Spring, MD 20910 or via e-mail to: *oar.oe.submissions@noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Margot Bohan, OE Science Program Coordinator, or Randi Neff, OE Program Grants Coordinator, NOAA Office of Ocean Exploration, 301–713–9444, facsimile 301–713–4252 or submit inquiries via e-mail to the Frequently Asked Questions address: *oar.oe.FAQ@noaa.gov.* A copy of this notice, as well as ancillary information, will be posted on the Ocean Explorer Website which can be found at: *http://www.explore.noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Program Authority

Authority: 33 U.S.C. 883d. *Catalog of Federal Domestic Assistance Number:* 11.460.

II. Program Description

A. Background

In June 2000, the Secretary of Commerce was given a Presidential directive to convene a panel of leading ocean explorers, scientists, and educators to develop a national strategy for exploring the oceans. Upon completion of its undertaking, the Presidential Panel presented its recommendations in the report entitled, *Discovering Earth's Final Frontier: A U.S. Strategy for Ocean Exploration (Presidential Panel Report) (http://*

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oceanpanel.nos.noaa.gov). Among them was a recommendation to designate a lead Federal agency to guide a national program in ocean exploration. NOAA was selected and established the Office of Ocean Exploration in 2001.

Through implementation of the vision of the Presidential Panel, OE seeks to challenge our Nation's scientists to explore the frontiers of ocean science and technology for the purpose of discovery and the advancement of knowledge of the oceans and their resources.

B. Program Mission

The mission of OE is to expand our knowledge base of the ocean's physical, chemical and biological characteristics, processes and resources and to learn more about our maritime cultural heritage by means of experiments and expeditions to unknown, or poorly known oceanic and Great Lakes regions.

III. Program Notice

A. Notice Objectives

The purpose of this announcement is to invite the submission of pre-proposals and full proposals for grants and cooperative agreements and other financial collaborations whose objectives are to explore the ocean and map its resources, to gain new insights about its physical and chemical processes and its living and non-living resources, including maritime cultural heritage, and to contribute to the advancement and utilization of ocean technology.

B. General Guidance

Themes. In 2002, OE conducted eight U.S. regional workshops to engage a broad and diverse representation of ocean scientists, explorers, and educators from public, private and commercial organizations to help define and prioritize ocean exploration objectives for the coming years. A number of exploration themes, which refine and complement those of the Presidential Panel Report, emerged as a result. Persons submitting proposals may elect to address these preferred themes, which are listed below (in no order of priority).

- Mapping ocean characteristics and bathymetry;
- Marine life inventories: vertebrate, invertebrate, macro-organisms and micro-organisms
- Marine archaeology characterization of benthic and pelagic habitats and ecosystems
- Locating and mapping corals (including deep corals)
- New ocean resources
- Passive ocean acoustics
- Technology: innovative applications and leveraged development

Geographic Areas of Interest. OE is especially interested in, but will not limit its consideration to, proposals for exploration within the U.S. EEZ and other areas of U.S. jurisdiction, including the Great Lakes. Additional areas of geographic interest include the Polar Regions and the following regions where OE anticipates being able to provide the noted resources:

- Gulf of Mexico/Caribbean/ Southwest North Atlantic [Class I ship w/ sub or ROV, 30 days]
- Gulf of Mexico/U.S. East Coast/ Caribbean [Class II ship with sub or ROV, 40 days]
- U.S. East Coast, [Class I ship with ROV, 60 days]
- U.S. East Coast, [Class III ship, 30 days]
- Northwestern Hawaiian Islands [Class II ship with sub or ROV, 60 days]

Investigators with non-OE-funded shiptime, projects, or other resources may wish to propose supplementing them by the addition of tasks or objectives that are consistent with (and are, therefore, eligible for funding by) the OE program.

Establishment and support of facilities and infrastructure are not OE priorities. Proposals focused solely on ocean-climate issues are also not an OE priority.

C. Proposal Requirements

Outreach & Education. A key recommendation of the Presidential Panel Report is "reaching out in new ways to stakeholders, to improve to the literacy of learners of all ages with respect to ocean issues."

All funded Principal Investigators (PIs) and collaborators will be required to cooperate with OE in facilitating education and outreach activities. This may entail development of lesson plans, professional development for teachers, accommodation of a teacher/educator-at-sea, and at-sea media participation.

Data Management. In accepting full or partial OE sponsorship, each PI is obligated to meet certain data management requirements including:

1. PIs will provide metadata, e.g., number and type of data, and description of the data collected immediately upon completion of a project cruise. Other data or data products may also be required at the discretion of the OE Director.

2. PIs will provide OE and the public access to the acquired data sets collected as soon as practical and, in no case, later than one year following the data of collection, unless an extension is specially granted by OE.

Proposals should include a description and justification of data funding needs and explain how data will be made accessible or available to the public.

3. NOAA's ocean Explorer Web site (*http://oceanexplorer. noaa.gov*) is the principal vehicle for chronicling and documenting all missions supported by OE. PIs and mission participants will be required to provide material (i.e., throughout the mission) for this site such as cruise tracks, preliminary bathymetry, characterization of data collected, photographic or other images from the mission, and participants interviews, essays, or written materials. Funded PI's will be required to cooperate with the NOAA Ocean Explorer website team which may include accommodation of a NOAA web team member. (See Ancillary Information at: *http://explore.noaa.gov*).

IV. Funding Availability

FY2003 funding for this program has not yet been appropriated. Proposals are encouraged for collaborations and explorations ranging from the tens of thousands of dollars to funds appropriate for up to two months of expeditionary exploration work. Multi-year proposals will be accepted, although the principal focus in the first several years of the OE program will be on one-year projects and expeditions. Out-year funding will be contingent upon factors including successful accomplishment of prior-year objectives as well as availability of program funding and other relevant resources.

The funding instrument of extramural awards may be a grant or cooperative agreement. A cooperative agreement is appropriate when substantial NOAA involvement is anticipated. This means that the recipient can expect substantial agency collaboration, participation, or intervention in project performance. Substantial involvement exists when: responsibility for the management, control, direction or performance of the project is shared by the assisting agency and the recipient; or the assisting agency has the right to intervene (including interruption or modification) in the conduct or performance of project activities. NOAA will make decisions regarding the use of cooperative agreements on a case-by-case basis. NOAA encourages the participation of NOAA scientists in collaborative efforts. Applications determined to be for the acquisition of property or services for the direct benefit or use of the U.S. government will evaluated for funding

under agency contract procurements outside of this announcement.

There is no guarantee that sufficient funds will be available to make awards for all qualified projects. Publication of this Notice does not obligate NOAA to award any specific project or to obligate all or any part of the available funds.

V. Eligibility

Eligible applicants are institutions of higher education, other nonprofits, commercial organizations, international organizations, state, local and Indian tribal governments. Applications from non-Federal and Federal applicants will be competed against each other. (**Note:** NOAA/OE spent approximately 70 percent of Fiscal Year 2002 funds outside the agency.) Proposals selected for funding from non-Federal applicants will be funded through a project-grant or cooperative agreement under the terms of this notice. Proposals selected for funding from NOAA scientists shall be affected by an intra-agency fund transfer. Proposals selected for funding from a non-NOAA Federal agency will be funded through an inter-agency transfer. **Please Note:** Before non-NOAA Federal applicants may be funded, they must demonstrate that they have legal authority to receive funds from another Federal agency in excess of their appropriation. Because this announcement is not proposing to procure goods or services from applicants, the Economy Act (31 U.S.C. 1535) is not an appropriate legal basis.

VI. Project Funding Considerations

Ideally, proposals should be interdisciplinary, involve legitimate collaborations with other institutions or agencies, and have contributory funding. An interdisciplinary approach will likely to result in a greater breadth of science product. Collaborations will enhance the proposal through the contribution of scientific or technical expertise, funds, personal, shiptime, and/or equipment. Although cost sharing is not required, it is encouraged. Contributory funding will leverage OE funds.

The geographic area of interest of a proposal will also be a project funding consideration.

Communication of research through outreach and education is a critical element of the programs, projects and activities that OE supports. Proposals should reflect a willingness to facilitate and participate in such activities.

OE may share proposals with other funding entities, such as the agencies of the National Ocean Partnership Program, and other NOAA funding sources, to ensure the most appropriate funding (see Section VIII.B.).

VII. Guidelines for Submission

There will be a two-stage competition with pre-proposals utilized for an initial selection process. Full proposals will be solicited from investigators who submit successful pre-proposals. An approved pre-proposal is a requisite for submission of a full proposal. All pre-proposals and proposals must conform with the requirements published in this notice. Pre-proposals will be judged in terms of their consistency with the Presidential Panel Report and the Ocean Exploration program's themes (see Section III.B.). The cost of the proposed activities relative to available program funds will also be taken into consideration.

A. Preliminary Proposals

A pre-proposal should include a summary of the proposed research, project priorities, a statement of objectives, and a description of how the proposed project is in keeping with the OE mission described in this notice. The area of proposed operations must be clearly defined (e.g., including latitude, longitude, and depth). Required platforms or other critical assets should be identified. The pre-proposal should make clear any time or other operational constraints, especially with regard to field operations. Any auxiliary funding sources for the proposed project should be identified. Pre-proposals should also identify all collaborators and include a summary budget. Pre-proposals may not exceed two typewritten single-sided pages, using 10-point font or larger. All pre-proposals must also include a completed pre-proposal cover page (available electronically at *http://explore.noaa.gov)* (see **FOR FURTHER INFORMATION CONTACT** to request a hard copy version). Electronic submission of pre-proposals to *oar.oe.submissions@noaa.gov* is strongly encouraged. See **ADDRESSES** to submit a hard copy submission.

B. Proposals

All proposals must include the following, packaged in the order listed here: (a) A completed proposal cover page (available electronically at *http://explore.noaa.gov*); (b) a maximum half-page executive summary; (c) a maximum 15-page description of the entire project (including work plan, schedule, and collaborations); (d) a summary of relevant current funding support; (e) brief resumes for each investigator, including recent relevant publication references, (f) a detailed budget (including any ship and equipment costs) and budget narrative (including justification for non-standard items) and (g) all government forms required for submission (see Section VII.C.). All pages should be single-sided, single—or double-spaced, typewritten margin in a minimum 10-point font on a 8½″ x 11″ page. Tables and visual materials, including charts, graphs, maps, photographs, and other pictorial presentations are to be including in the 15-page limit. The signature page, executive summary, references/ literature cited, budgets and budget notes, current and pending support sections and resumes need not be counted against the 15-page limit. All information needed for review of the proposal should be included in the main text, e.g., not submitted as appendices.

The proposal must clearly explain each participant's efforts and their respective requests for OE funds, as well as any cost-sharing. Separate budgets within the single proposal must be provided if more than one funding action is anticipated (e.g., if funds are to be allocated to more than one institution or agency).

Forms must be submitted in triplicate, each with original signatures, along with any electronic submissions, by the closing timed identified in this announcement. All required forms (see Section VII.C.) must be mailed to OE. With the exception of these forms, electronic submission of proposals to *oar.oe.submissions@noaa.gov* is strongly encouraged and will have a positive influence on the processing time for such proposals. Investigators who elect to submit hard copies of their proposal are required to submit 3 copies but are encouraged to submit 15 copies, particularly if they wish reviewers to receive included color graphics, glossy photographs, or other unusual materials. For further information, see *Announcement of Opportunity: Application Kit* at *http://www.explore.noaa.gov/* or see **ADDRESSES** and/or **FOR FURTHER INFORMATION.**

Proposals and required forms received after the deadline, or proposals that deviate from the format described in this Notice will not be accepted.

C. Forms

Standard Forms 424, Application for Federal Assistance, 424A, Budget Information-Non-Construction Programs, 424B, Assurances-Non-Construction Programs, SF–LLL, Disclosure of Lobbying Activities (Rev. 7–97) (if applicable); DOC forms, CD–346, Applicant for Funding Assistance, CD–511, Certifications Regarding

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Debarment, Suspension and Other Responsibility Matters: Drug-Free Workplace Requirements and Lobbying, CD–512, Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying shall be used in applying for financial assistance, and, if applicable, please submit your most current negotiated indirect cost rate agreement. All necessary forms may be obtained via the OE Internet site (see: OE Application Kit) at *http://explore.noaa.gov*. For hard copies, see **ADDRESSES** and/or **FOR FURTHER INFORMATION.**

VIII. Pre-Proposal and Proposal Selection Process

A. Pre-Proposals

The OE Director will make the decisions regarding pre-proposal acceptance or rejection. These decisions will be based on the following factors: (1) Is the proposal consistent with the Presidential Panel Report and OE mission?, (2) Does it touch on the OE themes and project funding considerations?, (3) Are the costs of the proposed activities relative to available program funds?

B. Proposals

Proposals will be evaluated and rated individually by (a) ad hoc independent peer review and/or by (b) independent peer panel review using the following equally weighted criteria. In general, the pool of reviewers will be composed of scientists, engineers, social scientists, economists, outreach specialists, and resource managers as appropriate to the scope of proposals received in response to this announcement.

Scientific and Technical merit: The scientific and/or technical value of the work proposed, its probability of success, and the applicant's scientific and/or technical capabilities to undertake the proposed work.

Program Relevance: The degree to which the proposal addresses and supports Ocean Exploration's mission and notice objectives (see Section II and Section III.A.).

Usability of results: The anticipated scientific and/or technical impact of project results on the advancement of knowledge within the field(s) of endeavor.

All proposals submitted for funding via a grant or cooperative agreement (or intra/interagency transfer) will be rated by the independent peer reviewers according to an adjectival scale ranging in order of decreasing merit, as follows:

Excellent: Comprehensive, thorough and of exceptional merit, one or more major strengths, no major weaknesses, and any minor weaknesses easily correctable.

Very Good: Competent, one or more major strengths, strengths outweigh weaknesses, and major weaknesses correctable.

Good: Reasonable, may be strengths and/or weaknesses, weaknesses do not significantly detract from the proposal's viability, any major weaknesses are correctable.

Fair: One or more major weaknesses, weaknesses outweigh strengths, major weaknesses may possibly be corrected or minimized.

Poor: One or more major weaknesses which will be difficult to correct or may not be correctable.

Following the peer review, the OE Chief Scientist will compile the individual ratings and make recommendations for funding based on OE's mission, notice objectives and the project funding considerations.

The OE Director will have the final authority and responsibility for decisions regarding proposal selection. The Director shall have discretion in making final decisions and will consider: (1) Peer reviews; (2) the Chief Scientist's recommendations; (3) the avoidance of duplication with other projects funded by NOAA or other Federal Agencies or the proprietary of other funding sources; (4) the extent to which the proposal is in the best interest of OE's mission and the notice objectives (see Section II and III), (5) the extent to which it addresses funding considerations identified in this announcement (see Section VI), (6) the availability of program funding, and (7) the proposal's geographic location. High proposal peer review ratings may not result in funding for a given proposal. Investigators may be asked to modify objectives, work plans, or budgets prior to approval of the award. Subsequent administrative processing will be in accordance with current NOAA financial administrative procedures.

Other NOAA agencies and programs also have mission objectives which involve ocean research and technology development. Examples include the National Undersea Research Program, the National Sea Grant College Program, the Arctic Research Office, NOAA Fisheries and the National Ocean Service. OE anticipates and encourages collaborative proposals involving these agencies and programs. Investigators who wish to work with OE through any of these other entities should contact them directly. Prospective collaborative projects facilitated by these other programs will be subject to the OE's proposal review and decision-making process. For additional details about these other programs, *see: http://oceanexplorer.noaa.gov*.

C. Disposition of Unsuccessful Applications

Those proposals that are not ultimately selected for OE funding will be destroyed.

IX. Federal Policies and Procedures Applicable to OE

A. Environmental Impact

Applicants whose proposed projects may have an environmental impact should furnish sufficient information to assist proposal reviewers in assessing the potential environmental consequences of supporting the project.

B. Permits and Authorizations

Proposers are responsible for obtaining relevant permits and authorizations required under the laws of the jurisdiction in which the work is to be performed and under U.S. law.

For further information about permits, authorizations or viewing marine mammals and other protected species in the wild please visit the following NOAA Fisheries Web site: *http://www.nmfs.noaa.gov/prot_res/overview/permits.html* and *http://www.nmfs.noaa.gov/prot_res/MMWatch/MMViewing.html*.

X. Other Requirements

The Department of Commerce Pre-award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** Notice (66 FR 49917) published on October 1, 2001, are applicable to this solicitation.

Intergovernmental Review. Applications under this program are subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

Classification

Prior notice and an opportunity for public comments are not required by the Administrative Procedure Act (5 U.S.C. 553(a)(2)) or any other law for this notice concerning grants, benefits, and contracts.

Therefore, a regulatory flexibility analysis is not required for purposes of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

This action has been determined to be not significant for purposes of Executive Order 12866.

This notice contains collection-of-information requirements which are subject to the Paperwork Reduction Act. The use of Standard Forms 424, 424A, 424B, SF–LLL, and CD–346 have been approved by OMB under the respective

control numbers 0348–0043, 0348–0044, 0348–0040, 0348–0046, and 0605–0001. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the Paperwork Reduction Act, unless than collection of information displays a currently valid OMB control number.

Louisa Koch,

Acting Assistant Administrator, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. 02–29120 Filed 11–14–02; 8:45 am]

BILLING CODE 3510–KD–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 110502D]

Marine Mammals; File No. 774–1649–01

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit amendment.

SUMMARY: Notice is hereby given that Permit No. 774–1649–00 issued to the Southwest Fisheries Science Center, National Marine Fisheries Service, 8604 La Jolla Shores Drive, La Jolla, California 92038 (Principle Investigator: Rennie Holt, Ph.D.) has been amended.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376; and

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562)980–4001; fax (562)980–4018;

FOR FURTHER INFORMATION CONTACT: Ruth Johnson or Amy Sloan (301)713–2289.

SUPPLEMENTARY INFORMATION: On October 2, 2002, notice was published in the **Federal Register** (67 FR 61850) that an amendment of Permit No. 774–1649, issued November 14, 2001 (66 FR 58445), had been requested by the above-named organization. The requested amendment has been granted under authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

The Amended Permit authorizes the Holder to capture, weigh, measure, tag and release southern elephant seal pups.

Dated: Novemver 7, 2002.

Eugene T. Nitta,

Acting Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–29085 Filed 11–14–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

[Docket No. 010222048–2243–05]

The Housing Foreclosure, Repossession, and Default Notices Exception to the Electronic Signatures in Global and National Commerce Act

AGENCY: National Telecommunications and Information Administration (NTIA), U.S. Department of Commerce

ACTION: Notice, Request For Comments

SUMMARY: Section 101 of the Electronic Signatures in Global and National Commerce Act, Pub. L. 106–229, *codified at* 15 U.S.C. 7001 *et seq.* ("ESIGN" or "the Act"), preserves the legal effect, validity, and enforceability of signatures and contracts relating to electronic transactions and electronic signatures used in the formation of electronic contracts. 15 U.S.C. 7001(a). Section 103 (a) and (b) of the Act, however, provides that the provisions of section 101 do not apply to contracts and records governed by statutes and regulations regarding probate and domestic law matters; state commercial law; consumer law covering utility services, residential property foreclosures and defaults, and insurance benefits; product recall notices; and hazardous materials papers. 15 U.S.C. 7003(a),(b). Section 103 of the Act also requires the Secretary of Commerce, through the Assistant Secretary for Communications and Information, to review the operation of these exceptions to evaluate whether they continue to be necessary for consumer protection, and to make recommendations to Congress based on this evaluation. 15 U.S.C. 7003(c)(1). This Notice is intended to solicit comments from interested parties to provide information for this evaluation, specifically on the ESIGN exception for notices that communicate information regarding the primary residence of an individual concerning default, acceleration, repossession, foreclosure, eviction, and the right to cure (hereinafter referred to as "residential default, foreclosure, and eviction notices"). *See* 15 U.S.C. 7003(b)(2)(B).

DATES: Written comments and papers are requested to be submitted on or before [sixty (60) days after publication in the **Federal Register**].

ADDRESSES: Written comments should be submitted to Josephine Scarlett, Senior Attorney, National Telecommunications and Information Administration, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Paper submissions should include a 3 and one-half inch computer diskette in HTML, ASCII, Word, or WordPerfect format (please specify version). Diskettes should be labeled with the name and organizational affiliation of the filer, and the name of the word processing program used to create the document. In the alternative, comments may be submitted electronically to the following electronic mail address: esignstudy__default@ntia.doc.gov. Comments submitted via electronic mail also should be submitted in one or more of the formats specified above.

FOR FURTHER INFORMATION CONTACT: For questions about this request for comment, contact: Josephine Scarlett, Attorney, Office of the Chief Counsel, NTIA, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone (202) 482–1816 or electronic mail: jscarlett@ntia.doc.gov. Media inquiries should be directed to the Office of Public Affairs, National Telecommunications and Information Administration, at (202) 482–7002.

SUPPLEMENTARY INFORMATION:

Background: Electronic Signatures in Global and National Commerce Act

Congress enacted the Electronic Signatures in Global and National Commerce Act, Pub. L. 106–229, 114 Stat. 464 (2000), to facilitate the use of electronic records and signatures in interstate and foreign commerce and to remove uncertainty about the validity of contracts entered into electronically. Section 101 requires, among other things, that electronic signatures, contracts, and records be given legal effect, validity, and enforceability. Sections 103(a) and (b) of the Act provides that the requirements of section 101 shall not apply to contracts and records governed by statutes and regulations regarding: probate and domestic law matters; state commercial law; consumer law covering utility services, residential property default, foreclosure, and eviction notices, and insurance benefits; product recall notices; and hazardous materials papers.

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The statutory language providing for an exception to section 101 of ESIGN for notices of default, acceleration, repossession, foreclosure or eviction for a primary residence of an individual is found in section 103(b)(2)(B) of the Act:

Sec. 103. [15 U.S.C. 7003] Specific Exceptions.

(b) Additional Exceptions.—The provisions of section 101 shall not apply to

* * * *

(2) any notice of—

* * * *

(B) default, acceleration, repossession, foreclosure, or eviction, or the right to cure, under a credit agreement secured by, or a rental agreement for, a primary residence of an individual;

* * * *

The statutory language requiring the Assistant Secretary for Communications and Information to submit a report to Congress on the results of the evaluation of the section 103 exceptions to the ESIGN Act is found in section 103(c)(1) of the Act as set forth below.

(c) Review of Exceptions.—

(1) Evaluation required.— The Secretary of Commerce, acting through the Assistant Secretary for Communications and Information, shall review the operation of the exceptions in subsections (a) and (b) to evaluate, over a period of 3 years, whether such exceptions continue to be necessary for the protection of consumers. Within 3 years after the date of enactment of this Act, the Assistant Secretary shall submit a report to Congress on the results of such evaluation.

Housing Default, Acceleration, Repossession, Foreclosure, Eviction and Right to Cure Regulations

The ESIGN exception for residential default, foreclosure, and eviction notices prohibits creditors from sending electronic documents or information to consumers as notice of an impending foreclosure or eviction. Residential default, foreclosure, and eviction notices forwarded to consumers in electronic format are *not* required to be accorded legal validity and effect. Federal and state regulations governing foreclosures and evictions require that the creditors or landlords give consumer mortgagors and tenants written notice of default, foreclosure and eviction and that the notice be sent by certified or registered mail prior to action by the mortgagee or landlord to recover possession of the property. The regulations discussed herein are representative of the types of residential, default, foreclosure, and eviction notice requirements that are covered by the ESIGN exception and are not intended to provide an exhaustive list of the existing statutory requirements governing housing default, foreclosure, and eviction notice under federal and state law.

The Department of Agriculture (USDA), the Federal Reserve Board (Board), the Department of Housing and Urban Development (HUD), the Department of Treasury (DOT), and the Department of Veteran's Affairs (VA) have federal regulatory oversight over the housing and mortgage industry and, more specifically, over single family mortgage loans and programs that guarantee or secure funding for housing. These regulations and laws govern the type of notice and the manner of service that mortgage companies, banks, and other lenders are required to provide consumers prior to taking action to foreclose on residential properties or to evict a tenant. The states have concurrent jurisdiction in these areas and, thus, also have laws that govern residential foreclosure proceedings and tenant eviction processes. Section 104 of ESIGN allows federal and state regulatory agencies that are responsible for rulemaking under any other statute to interpret the consumer provisions of ESIGN through interpretive rules, orders, and regulations. *See* 15 U.S.C.7004(b)(1).

The Farm Credit Administration (FCA) of the USDA has created new rules and amended others to remove regulatory barriers to electronic commerce for Farm Credit System institutions and their customers. 67 *FR* 16627, 16628 (2002); *see also* 12 CFR 609.910. FCA recognized the ESIGN exception for residential default, foreclosure, and eviction notices and concluded that some of its system institutions cannot use electronic notification to deliver some of the notices required under part 614 of the rules. *See id.* at 16632. These rules provide that a lender "shall provide written notice to the borrower that the loan may be suitable for restructuring" not later than 45 days before the lender begins foreclosure proceedings. *See* 12 CFR 614.4516, 614.4519.

Similarly, the notice rules of the Office of Thrift Supervision require a creditor to provide written notice by registered or certified mail with return receipt requested no later than 30 days before the creditor acts to foreclose or accelerate payments on a federally related loan or mortgage. *See* 12 CFR 590.4(h). The foreclosure rules of the Department of Veteran's Affairs require the Department to provide borrowers with certain written information regarding the alternatives to foreclosure after receiving notice of default from the holder of a note on a loan guaranteed by the Department. *See* 38 U.S.C. 3732.

The Federal Reserve Board (Board) and Department of Treasury (DOT) have revised their regulations to authorize the electronic delivery of disclosures regarding certain home mortgages consistent with the ESIGN Act. In March, 2001, the Federal Reserve amended Regulation Z, 12 CFR part 226, in response to the ESIGN Act. *See* 66 *FR* 17329 (2001). Regulation Z implements the Truth in Lending Act, 15 U.S.C. section 1601 *et seq.*, and requires that creditors make certain written disclosures to consumers about the terms and cost of credit before the transaction is consummated. The Board interpreted ESIGN as containing special rules for use of electronic disclosures that may be provided only if the consumer affirmatively consents after receiving certain information. *Id.* at 17330. The amendment to Regulation Z allows depository institutions, creditors, lessors and others to provide information to consumers regarding financial transactions if the disclosures are clear and conspicuous and the creditor complies with the consumer consent provisions of section 101(c) of ESIGN. *Id.* at 17334. Specifically regarding notices relating to the primary residence of an individual, the Board amended its rules to permit a creditor to provide a single rescission notice by electronic communication to each consumer with an ownership interest in a dwelling who has affirmatively assented to electronic delivery of the notice. *Id.* at 17332, 17333; *see also*, 12 U.S.C. 226.15(b)(1) and 226.23.

The Board also amended Regulation B, to allow for electronic disclosure of information required by the Equal Credit Opportunity Act (ECOA), 15 U.S.C. section 1691 *et seq.* *See* 66 *FR* 17779 (2001). ECOA prohibits discrimination by a creditor in any aspect of a credit transaction on the basis of sex, race, color, religion, national origin, marital status, age, receipt of public assistance, or good faith reliance on provisions of the Consumer Credit Protection Act. 12 CFR part 202. Regulation B provides guidance on the timing and delivery of written disclosures required by ECOA. The Board's amendment of Regulation B requires that creditors comply with the consumer consent provisions of section 101(c) of ESIGN when making disclosures electronically by e-mail or through website postings. *See* 12 CFR 202.17(b). Recently, the Department of the Treasury's Office of the Comptroller of the Currency (OCC) also amended its regulations, adding Subpart E, to facilitate the ability of national banks to conduct business using electronic technologies. *See* 67 FR 34992 (May 17, 2002); 12 CFR 7.5000 *et seq.*

The regulations of the Department of Housing and Urban Development (HUD) contain several requirements for residential default, foreclosure, and eviction notices to be provided to consumers of multifamily and single family housing.[1] HUD insures mortgages secured by multifamily housing projects under the National Housing Act. Mortgagees are required to notify HUD of a default on a HUD-insured loan within 30 days of the date of the initial event of default. *See* HUD Handbook 4350.4, Table 2, Default Dates and Deadlines. The procedures for nonjudicial foreclosure of multifamily properties are set forth in the Multifamily Mortgage Foreclosure Act of 1981. *See* 12 U.S.C. 3701 *et seq.* For these mortgages, HUD's foreclosure commissioner must serve notice of default and foreclosure by certified or registered mail, postage prepaid and return receipt requested to the owners, mortgagors, dwelling units, and other lienholders not less than 21 days prior to the foreclosure sale. *See* 12 U.S.C. 3708; *see also*, 24 CFR 27.15(a). Notice must be served by mail, publication, or posting on the secured property. *Id.* Notices under this section are deemed duly given upon mailing, regardless of whether the addressee actually receives the letter. *Id.* HUD's regulations do allow, under limited circumstances, the electronic transmission of information for some mortgage defaults and foreclosures. The lenders or mortgagees that hold multifamily housing mortgages insured or coinsured by HUD are allowed to fulfill reporting requirements for mortgage defaults and delinquencies by electronically submitting the information to HUD. 24 CFR 200.120.

HUD's Office of the Assistant Secretary for Housing also oversees the requirements for and the manner of eviction notices given to tenants of subsidized housing and HUD-owned projects. The regulations provide that a landlord's determination to terminate a tenancy must be in writing and served on the tenant by first class mail or hand-delivery to an adult person at the residence no earlier than 30 days prior to the termination of the tenancy. *See* HUD Handbook 4350.3, Chapter 4, No. 4–21; 24 CFR 247.4.

HUD provides rental assistance for low income families under the public housing program, various Section 8 project-based assistance programs, and the section 8 tenant-based voucher program. Federal statutes and regulations set the tenancy requirements, however, the tenancies are governed by State law and procedure in all other respects. In all of the programs, tenants may be evicted for violations of the lease or other good cause. Under HUD's regulations, the landlord, owner, or public housing agency must give written notice of the grounds for eviction, and this notice may be combined with a notice to vacate issued under State law. *See* 24 CFR 880.607(c), 882.511(d), 966.4(l)(3), and 982.310(e).

The Single Family Mortgage Foreclosure Act of 1994, Pub. L. 103–227, requires several written notices and communications for single family mortgages during the pre-foreclosure, foreclosure sale, and mortgage collection processes. The regulations require that the mortgagees or lenders give the mortgagors in default on loans insured by HUD a written notice of delinquency. *See* 24 CFR 203.602. In addition, the regulations require that the foreclosure commissioner must serve notice of default and foreclosure sale by certified or registered mail, postage prepaid and return receipt requested on the current owner, occupants, mortgagors and lienholders not less than 21 days before the foreclosure sale. *See* 12 U.S.C. 3758; *see also* 24 CFR 27.103 and 27.105. For notices of default and acceleration, the lender or mortgagee must provide the borrower with written notice, by certified mail, that the loan is in default. 24 CFR 201.50. The lender, or mortgagee, is required to notify the mortgagor, or borrower, and each head of household who is actually occupying a unit of the property of its potential acquisition by HUD at least 60 days before the date on which the mortgagee reasonably expects to acquire title to the property. *See* 24 CFR 203.675.

We note that the states also have jurisdiction over the residential default, foreclosure, and processes as applied to the real estate located within state borders. In addition, the laws regarding default and eviction notices for most rental property are within the primary jurisdiction of the states. For example, Colorado provides that with respect to a default on any consumer loan secured by a deed of trust or mortgage, recorded after January 1, 2002, which encumbers a dwelling, the owner of the evidence of indebtedness shall, not more than 45 days after initial default and at least 20 days prior to the recording of a notice of election and demand, or the initiation of a suit for foreclosure, provide written notice of such default and the opportunity to cure, to all persons liable on the debt at the address of the residence of each such person. Colorado Revised Statutes § 38–38–102.5(c)(2). Similarly, Georgia's rules regarding foreclosure provide that notice of the initiation of proceedings to exercise a power of sale in a mortgage, security deed, or other lien contract shall be given to the debtor by the secured creditor no later than 15 days before the date of the proposed foreclosure. Georgia Code Ann. § 44–14–162.2(a). The Georgia rules require that the notice shall be in writing and shall be sent by registered or certified mail or statutory overnight delivery, return receipt requested, to the property address or to such other address as the debtor may designate by written notice to the secured creditor, and shall be deemed given on the official postmark day or day on which it is received for delivery by a commercial delivery firm. *Id.*

Just as the state requirements vary regarding the manner of notice provided to home owners and renters upon default, the state electronic transactions laws are also different. Approximately 39 states have enacted their own electronic transactions laws and ESIGN no longer applies to these states. Several of the states that have enacted electronic transactions laws have retained an exception for housing foreclosure and rental default notices. *See e.g.*, Ala. Code § 8–1A–3(c)(2)(b)(2001); 5 Ill.Comp.Stat. 175/5–106 (2001). The ESIGN Act continues to apply to the remaining states and, therefore, housing foreclosure and rental default notices that are transmitted or executed in an electronic format or using an electronic signature are *not* legally valid in those states without UETA laws. The various state and federal laws that require written notice control the manner in which housing consumers receive notice of the delinquencies that threatened ownership and tenancy rights. The removal of the foreclosure and rental default notices exception to the ESIGN Act would give mortgagees and landlords an additional method of communicating this information to consumers via any electronic format available to them, including but not limited to facsimile, electronic mail, and digital or wireless devices. Information

[1] This notice is not an interpretive statement of the applicability of ESIGN's provisions to HUD's multifamily and single family housing regulations, but is designed to provide information regarding the type of residential default, foreclosure, and eviction notices that may be issued to consumers pursuant to HUD's rules and regulations. As noted above regarding the Fedral Reserve Board and the Farm Credit Administration's regulations, federal agencies may issue regulations and rulings to interpret the application of ESIGN's provisions on the specific statutes under their purview.

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regarding the potential impact on state and federal laws, and on consumers of the removal of the foreclosure and rental default notices exception from the ESIGN Act would assist in this evaluation.

The ESIGN Section 103 Evaluation

The ESIGN Act directs the Assistant Secretary of Communications and Information to conduct an evaluation of the exceptions set out in section 103 of the Act to determine whether the exceptions continue to be necessary for the protection of consumers, and to submit a report to Congress on the results of the evaluation no later than June 30, 2003. The Assistant Secretary for Communications and Information is the chief administrator of NTIA. As the President's principal advisor on telecommunications policies pertaining to the Nation's economic and technological advancement, NTIA is the executive branch agency responsible for developing and articulating domestic and international telecommunications policy.

The ESIGN section 103 evaluation is intended to examine the current status of federal and state regulations that govern, and industry practices among companies that issue notices for residential default, foreclosure, and eviction in preparation for a report to Congress on whether this exception remains necessary to protect consumers. This evaluation is not a review or analysis of federal and state regulations and rules relating to residential default, foreclosure, or eviction notices for the purpose of recommending changes to those regulations but to advise Congress of the current state of law, practice, and procedure regarding this issue. Comments filed in response to this Notice should not be considered to have a connection with or impact on ongoing specific federal and state procedures or rulemaking proceedings concerning residential default, foreclosure, and eviction notices.

Invitation to Comment

NTIA requests that all interested parties submit written comments on any issue of fact, law, or policy that may assist in the evaluation required by section 103(c). We invite comments on ESIGN generally that assists in evaluating the narrower issues associated with residential default, foreclosure, and eviction notices as governed by the substantive law in these areas. The following questions are intended to provide guidance as to the specific subject areas to be examined as a part of the evaluation. Commenters are invited to discuss any relevant issue, regardless of whether it is identified below.

1. Provide information regarding federal, state, and municipal regulations, laws, and ordinances that require written notice to consumers for residential defaults, foreclosures, and evictions.

2. Provide state Uniform Electronic Transactions Act (UETA) provisions that require written notice to consumers by excluding housing foreclosure, repossession, and default notices from the provisions of the statute.

3. Describe state or federal regulations, other than UETA or ESIGN laws, that require residential default, foreclosure, and eviction notices to be provided in written form or to be excluded from the operation of ESIGN or the applicable state UETA.

4. Provide information regarding federal, state, and municipal laws or regulations that allow notice to consumers regarding residential defaults, foreclosures, and evictions in an electronic format.

5. Discuss the impact that the removal of the residential default, foreclosure, and eviction notices exception from ESIGN, to allow mortgage or rental companies to send notices by electronic methods mail, may have on consumers and on federal or state consumer protection policies.

6. If it is necessary to retain the residential default, foreclosure, or eviction notices exception to the ESIGN requirements, discuss the interest that this exception continues to serve or protect.

7. Discuss the methods that are available for consumer protection, if the residential default, foreclosure, and eviction notices exception to ESIGN is eliminated from the statute. Describe the methods that may be used to verify:

a. the notice was sent and/or received;

b. the security of the transmission; and

c. the recipient has the capability of receiving and reading the notice.

8. What effect, if any, would the elimination of the residential default, foreclosure, and eviction notices exception to ESIGN have on the mission of federal and state agencies and organizations that have regulatory authority over the process and service of notice of default, eviction and foreclosure?

Please provide copies of studies, reports, opinions, research or other empirical data referenced in the responses.

Dated: November 12, 2002.

Kathy D. Smith,

Chief Counsel, National Telecommunications and Information Administration.

[FR Doc. 02–29025 Filed 11–14–02; 8:45 am]

BILLING CODE 3510–60–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Joint Military Intelligence College Board of Visitors Closed Meeting

AGENCY: Joint Military Intelligence College, Defense Intelligence Agency, DoD.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the provisions of subsection (d) of section 10 of Public Law 92–463, as amended by section 5 of Public Law 94–409, notice is hereby given that a closed meeting of the Defense Intelligence Agency Joint Military Intelligence College Board of Visitors has been scheduled as follows:

DATES: Tuesday, January 7, 2003, 0800 to 1700; and Wednesday, January 8, 2003, 0800 to 1200.

ADDRESSES: Joint Military Intelligence College, Washington, DC 20340–5100.

FOR FURTHER INFORMATION CONTACT: Mr. A. Denis Clift, President, Defense Intelligence Agency Joint Military Intelligence College, Washington, DC 20340–5100, telephone: 202–231–3344.

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in section 552b(c)(1), title 5 of the United States Code and therefore will be closed. The Board will discuss several current critical intelligence issues and advise the Director, Defense Intelligence Agency, as to the successful accomplishment of the mission assigned to the Joint Military Intelligence College.

Dated: November 4, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–28960 Filed 11–14–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Change in Meeting Date of the DOD Advisory Group on Electron Devices

AGENCY: Advisory Group on Electron Devices, Department of Defense.

ACTION: Notice.

SUMMARY: Working Group B (Microelectronics) of the DoD Advisory Group on Electron Devices (AGED) announces a change to a closed session meeting.

DATES: The meeting will be held at 1400, Friday, November 22, 2002.

ADDRESSES: The meeting will be held the Seaside Room, Hyatt Monterey, 1 Old Golf Course Drive, Monterey, CA 93940.

FOR FURTHER INFORMATION CONTACT: Elise Rabin, AGED Secretariat, 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide advice to the Under Secretary of Defense for Acquisition and Technology, to the Director Defense Research and Engineering (DDR&E), and through the DDR&E, to the Director Defense Advanced Research Projects Agency and the Military Departments in planning and managing an effective research and development program in the field of electron devices.

The Working Group B meeting will be limited to review of research and development programs which the military proposes to initiate with industry, universities or in their laboratories. The microelectronics area includes such programs on semiconductor materials, integrated circuits, charge coupled devices and memories. The review will include classified program details throughout.

In accordance with section 10(d) of Public Law 92–463, as amended, (5 U.S.C. App. sec 10(d)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1), and that accordingly, this meeting will be closed to the public.

Dated: November 4, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–28959 Filed 11–14–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary, DoD.

ACTION: Notice to transfer and delete systems of records.

SUMMARY: The Defense Security Service (DSS) is transferring two systems of records to the Defense Human Resources Activity, Office of the Secretary of Defense (OSD). The systems of records are identified as V5–05, entitled 'Security Research Center Espionage Database'', and V5–07, entitled 'Security Research Center Export Violations Database'.

The systems of records will be known as DHRA 01, entitled 'PERSEREC Espionage Database', and DHRA 03, 'PERSEREC Export Violations Database', respectively. Before being transferred, administrative changes have been made to the notices.

DATES: The changes will be effective on December 16, 2002, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to OSD Privacy Act Coordinator, Records Management Section, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155.

FOR FURTHER INFORMATION CONTACT: Mr. David Bosworth at (703) 601–4728.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: November 4, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Deletions

SYSTEM NAME:

V5–05; Security Research Center Espionage Database (June 1, 1999, 64 FR 29281).

Reason: The responsibility for this system of records is being transferred to the Defense Human Resources Activity (DHRA), Office of the Secretary of Defense. The system of records will be known as DHRA 01, entitled 'PERSEREC Espionage Database'.

SYSTEM NAME:

V5–07; Security Research Center Export Violations Database (June 1, 1999, 64 FR 29281).

Reason: The responsibility for this system of records is being transferred to the Defense Human Resources Activity (DHRA), Office of the Secretary of Defense. The system of records will be known as DHRA 03, entitled 'PERSEREC Export Violations Database'.

* * * * *

SYSTEM NAME:

DHRA 01; PERSEREC Espionage Database.

SYSTEM LOCATION:

Defense Personnel Security Research and Education Center, 99 Pacific Street, Building 455E, Monterey, CA 93940–2481.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have been arrested and convicted of espionage or related offense; those who have been prosecuted for espionage who committed suicide before trial or sentencing; and those arrested or under warrant for arrest for espionage who were not prosecuted because of death, suicide, or defection.

CATEGORIES OF RECORDS IN THE SYSTEM:

Background information including individual's name, Social Security Number, date of birth, city/state/country of birth, education, marital status, gender, race, civilian or military member, rank (if military), security clearance (if applicable), years of federal service (if applicable), occupational category, job organization and location, age began espionage, first espionage contact, whether volunteered or recruited, receiving country, payment (if any), foreign relatives (if any), motivation-related, substance abuse (if applicable), date of arrest, arresting agency, date of sentence, sentence, and duration of espionage. Sources for records are newspaper and magazine articles, the biographies of spies, and similar open source works are included in paper files. Some of the missing variables have been filled in using information supplied by the agencies that investigated the case.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; DoD Directive 5210.79, and ASD(C3I) October 31, 1991 memo, Subject: Request for Exemption from DoD Directive 5200.27; and E.O. 9397 (SSN);

PURPOSE(S):

To analyze factors which may contribute to acts of espionage and assemble a body of knowledge useful to improved personnel security procedures. This information will permit examination of espionage trends

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and will help identify personal and situational variables of interest to policy-makers and others concerned with personnel security issues.

Aggregate statistics will be reported to DoD and other Government agencies in a technical report prepared from open-sources and containing some illustrative material mentioning some of the more famous cases by name.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of the OSD compilation of systems of records notices apply to this system.

Policies and Practices for Storing, Retrieving, Accessing, Retaining, and Disposing of Records in the System:

STORAGE:

Maintained on paper, computer and computer output products, and in microform.

RETRIEVABILITY:

Records may be retrieved by name and Social Security Number.

SAFEGUARDS:

Records are stored under lock and key in secure containers, and in a computer system with intrusion safeguards.

RETENTION AND DISPOSAL:

Records are treated as permanent pending a determination by the NARA of authority for disposition of the records.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Defense Personnel Security Research and Education Center, 99 Pacific Street, Building 455E, Monterey, CA 93940–2481.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to Director, Defense Personnel Security Research and Education Center, 99 Pacific Street, Building 455E, Monterey, CA 93940–2481.

The inquiry should include full name and Social Security Number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address a written request to Director, Defense Personnel Security Research and Education Center, 99 Pacific Street, Building 455E, Monterey, CA 93940–2481.

The inquiry should include full name and Social Security Number.

CONTESTING RECORD PROCEDURES:

The OSD rules for accessing records, for contesting contents and appealing initial agency determinations are published in OSD Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information is obtained from newspaper and magazine articles and similar open source documents. Some of the missing variables were filled in using information supplied by the agencies that investigated the case.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

SYSTEM NAME:

DHRA 03; PERSEREC Export Violations Database.

SYSTEM LOCATION:

Defense Personnel Security Research and Education Center, 99 Pacific Street, Building 455E, Monterey, CA 93940–2481.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have been convicted of violating U.S. export control laws.

CATEGORIES OF RECORDS IN THE SYSTEM:

Extracts of reports, court records, newspaper, magazine, and other open source materials.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; and ASD(C3I) July 20, 1993 memo, Subject: Exemption from DoD Directive 5200.27.

PURPOSE(S):

To analyze factors which may contribute to acts of illegal technology transfer in violation of U.S. export controls and to assemble a body of knowledge useful for improving security procedures. This information will permit examination of trends in illegal technology transfer since 1981 and help identify personal and situational variables of interest to policy makers and others concerned with counteracting export control violations. Aggregate statistics will be reported in a technical report. The report will include some vignettes of the more famous cases, using the individual's name, based on material found in open sources.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of the OSD compilation of systems of records notices apply to this system.

Policies and Practices for Storing, Retrieving, Accessing, Retaining, and Disposing of Records in the System:

STORAGE:

Maintained on paper, computer and computer output products, and in microform.

RETRIEVABILITY:

Records are retrieved by individual's name.

SAFEGUARDS:

Records are stored under lock and key in secure containers, and in a computer system with intrusion safeguards.

RETENTION AND DISPOSAL:

Records are treated as permanent pending a determination by the NARA of authority for disposition of the records.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Defense Personnel Security Research and Education Center, 99 Pacific Street, Building 455E, Monterey, CA 93940–2481.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to Director, Defense Personnel Security Research and Education Center, 99 Pacific Street, Building 455E, Monterey, CA 93940–2481.

The inquiry should include the individual's full name.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address a written request to Director, Defense Personnel Security Research and Education Center, 99 Pacific Street, Building 455E, Monterey, CA 93940–2481.

The inquiry should include the individual's full name.

CONTESTING RECORD PROCEDURES:

The OSD rules for accessing records, for contesting contents and appealing initial agency determinations are published in OSD Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Justice Department Export Control Cases listing, newspaper and magazine articles and other open source documents.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 02–28958 Filed 11–14–02; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF EDUCATION

[CFDA NO. 84.031H]

Office of Postsecondary Education; Strengthening Institutions (SIP), American Indian Tribally Controlled Colleges and Universities (TCCU), Alaska Native and Native Hawaiian-Serving Institutions (ANNH) and Hispanic-Serving Institutions (HSI) Programs; Notice of Reopening the Processes for Designation as an Eligible Institution for Fiscal Year (FY) 2001 and FY 2002 for a Limited Purpose

Summary: An institution of higher education (IHE) that is designated an eligible institution under the SIP, TCCU, ANNH and HSI Programs may receive a waiver of certain non-Federal share requirements under the Federal Work Study (FWS) and Federal Supplemental Educational Opportunity Grant (FSEOG) Programs. The SIP, TCCU, and ANNH Programs are authorized under Title III, Part A of the Higher Education Act of 1965, as amended (HEA). The HSI Program is authorized under Title V of the HEA. The FWS and FSEOG Programs are authorized under Title IV of the HEA.

On November 16, 2000 and December 26, 2001, we published **Federal Register** notices (65 FR 69291–69293 and 66 FR 66407–66409) that announced the processes for IHEs to apply for eligibility designation for FY 2001 and FY 2002 for the SIP, TCCU, ANNH and the HSI Programs. Some IHEs did not meet the established deadlines for submitting the applications, and therefore were not designated eligible to receive waivers of certain cost-sharing requirements under the FWS and FSEOG Programs. We are reopening the FY 2001 and FY 2002 eligibility processes to allow IHEs to apply for designation as eligible institutions under the SIP, TCCU, ANNH and HSI Programs for the limited purpose of receiving waivers of certain non-Federal share requirements of the FWS and FSEOG Programs for FY 2001 and FY 2002.

Deadline for Transmittal of Applications: January 31, 2003.

Applications Available: November 15, 2002.

For Applications and Further Information Contact: Thomas M. Keyes, Margaret A. Wheeler or Ellen Sealey, Institutional Development and Undergraduate Education Service, U. S. Department of Education, 1990 K Street, Room 6048, Request for FY 2001 and FY 2002 Eligibility Designation, Washington, DC 20202–8513. Mr. Keyes's telephone number is (202) 502–7577. Ms. Wheeler's telephone number is (202) 502–7583. Ms. Sealey's telephone number is (202) 502–7580. They may be reached via Internet:

Thomas.Keyes@ed.gov
Margaret.Wheeler@ed.gov
Ellen.Sealey@ed.gov

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audio tape, or computer diskette) on request to the contact persons listed under *For Applications and Further Information Contact.*

Individuals with disabilities may obtain a copy of the application package in an alternative format by contacting those persons. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/legislation/FedRegister.*

To use PDF, you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html*

Program Authority: 20 U.S.C. 1057–1059d. 1101–1103g.

Dated: November 12, 2002.

Sally L. Stroup,

Assistant Secretary, Office of Postsecondary Education.

[FR Doc. 02–29036 Filed 11–14–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No.: 84.250D]

Vocational Rehabilitation Service Projects for American Indians With Disabilities; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2003

Purpose of Program: To provide vocational rehabilitation services to American Indians with disabilities who reside on or near Federal or State reservations, consistent with their individual strengths, resources, priorities, concerns, abilities, capabilities, and informed choices, so that they may prepare for and engage in gainful employment, including self-employment, telecommuting, or business ownership.

Eligible Applicants: Applications may be submitted only by the governing bodies of Indian tribes (and consortia of those governing bodies) located on Federal or State reservations.

Applications Available: November 18, 2002.

Deadline for Transmittal of Applications: March 31, 2003.

Estimated Available Funds: $7,659,000.

The Administration has requested $26,804,000 for this program for FY 2003, of which $7,659,000 is expected to be used for this competition. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process, if Congress appropriates funds for this program.

Estimated Range of Awards: $300,000–$400,000.

Estimated Average Size of Awards: $350,000.

Estimated Number of Awards: 21.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Applicable regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 80, 81, and 82; and (b) The regulations for this program in 34 CFR part 371.

Priority: Under section 121(b)(4) of the Rehabilitation Act of 1973, as

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amended (29 U.S.C. 741), we give preference to applications that meet the following competitive priority (see 34 CFR 75.105(b)(2)(iv)). Under 34 CFR 75.105(c)(2)(i) we award 10 points to an application that meets this competitive priority. These points are in addition to any points the application earns under the selection criteria:

Competitive Preference Priority—Continuation of Previously Funded Tribal Programs

In making new awards under this program, we give priority consideration to applications for the continuation of tribal programs that have been funded under this program.

Selection Criteria: In evaluating an application for a new grant under this competition, we use selection criteria chosen from the general selection criteria in 34 CFR 75.210 of EDGAR. The selection criteria to be used for this competition will be provided in the application package for this competition.

For Applications Contact: Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html*. Or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov*.

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.250D.

Individuals with disabilities may obtain a copy of the application package in an alternative format by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 3317, Switzer Building, Washington, DC 20202–2550. Telephone: (202) 205–8207. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

For Further Information Contact: Pamela Martin or Suzanne Tillman, U.S. Department of Education, 400 Maryland Avenue, SW., room 3314, Switzer Building, Washington, DC 20202–2650. Telephone: for Pamela Martin (202) 205–8494; for Suzanne Tillman (202) 205–8303. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact persons listed in the preceding paragraph.

Electronic Access to This Document

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Program Authority: 29 U.S.C. 773(b).

Dated: November 12, 2002.

Robert H. Pasternack,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 02–29035 Filed 11–14–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Science Financial Assistance Program Notice 03–05: Genomes to Life

AGENCY: Department of Energy.

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Biological and Environmental Research (OBER) and the Office of Advanced Scientific Computing Research (ASCR) of the Office of Science (SC), U.S. Department of Energy (DOE), hereby announce their interest in receiving applications for research in the following areas that support the Genomes to Life research program (*http://www.doegenomestolife.org/*):

(1) Technologies and strategies to image individual proteins and multi-protein complexes in microbes and to image complex microbial communities;

(2) Technologies for the high-throughput synthesis of proteins and their biological characterization;

(3) Molecular tags to identify individual proteins and to characterize multi-protein complexes in microbial cells;

(4) High resolution, quantitative microbial biochemistry;

(5) New genomic strategies and technologies for studying complex microbial communities;

(6) Pathway inference in prokaryotes;

(7) Implications for society, the law, education, and technology transfer; and

(8) Other novel and innovative technologies and research strategies to address the core goals of the Genomes to Life research program.

DATES: Statements of intent to apply, including information on collaborators, areas of proposed research and technology development, and a short (one page) summary of the proposed research should be submitted by Tuesday, January 7, 2003.

Formal research applications are due by 4:30 PM E.D.T., Tuesday, April 22, 2003.

ADDRESSES: Statements of intent to apply should be sent to Ms. Joanne Corcoran by e-mail at: *joanne.corcoran@science.doe.gov* with copies to Dr. David Thomassen at: *david.thomassen@science.doe.gov* and Dr. Gary Johnson at: *gary.johnson@science.doe.gov*.

Formal applications in response to this solicitation are to be electronically submitted by an authorized institutional business official through DOE's Industry Interactive Procurement System (IIPS) at: *http://e-center.doe.gov/*. IIPS provides for the posting of solicitations and receipt of applications in a paperless environment via the Internet. In order to submit applications through IIPS your business official will need to register at the IIPS website. The Office of Science will include attachments as part of this notice that provide the appropriate forms in PDF fillable format that are to be submitted through IIPS. Color images should be submitted in IIPS as a separate file in PDF format and identified as such. These images should be kept to a minimum due to the limitations of reproducing them. They should be numbered and referred to in the body of the technical scientific application as Color image 1, Color image 2, etc. Questions regarding the operation of IIPS may be e-mailed to the IIPS Help Desk at: *HelpDesk@e-center.doe.gov* or you may call the help desk at: (800) 683–0751. Further information on the use of IIPS by the Office of Science is available at: *http://www.science.doe.gov/production/grants/grants.html*.

If you are unable to submit an application through IIPS please contact the Grants and Contracts Division, Office of Science at: (301) 903–5212 in order to gain assistance for submission through IIPS or to receive special approval and instructions on how to submit printed applications.

FOR FURTHER INFORMATION CONTACT: Dr. David Thomassen, telephone: (301) 903–9817, e-mail: *david.thomassen@science.doe.gov*, Office of Biological and Environmental Research, SC–72/Germantown Building; U.S. Department of Energy; 1000 Independence Avenue, SW.; Washington, DC 20585–1290.

A complementary request for proposals from DOE national laboratories has been issued, Program Solicitation LAB 03–05.

SUPPLEMENTARY INFORMATION: Biology has entered a new era—the era of systems biology—in which we will understand entire living organisms and their interactions with the environment. While scientists have long tried to understand the workings of individual genes or small groups of genes this new era in biology will focus research on entire networks of genes and even entire biological systems—small, single celled organisms at first and later more complex creatures ultimately including humans.

This dramatic advance is possible, in large part, because of the scientific and technical successes of the Human Genome Project. The information and technology now available to all scientists on the human genome and on a rapidly growing list of the genomes of other organisms from microbes to plants to worms to mice not only gives us new perspectives on the inner workings of biological systems but provides new opportunities to use this knowledge to solve problems in energy.

The Genomes to Life program is a systems biology research program that offers the possibility of biotechnology solutions that can give us abundant sources of clean energy yet control greenhouse gases like carbon dioxide, a key factor in global climate change, and that can help us clean up past contamination of the environment.

The overall goals of the Genomes to Life program include understanding:

1. Natural, multi-protein molecular machines of complex living systems.

2. Complex networks that control the assembly and operation of these machines.

3. The organization and biochemical capabilities of complex microbial communities.

These three goals will only be achieved if we develop:

4. A computational infrastructure for systems biology that enables the development of computational models for complex biological systems that can predict the behavior of these complex systems and their responses to the environment.

The Genomes to Life program supports a combination of large, well integrated, multidisciplinary research teams and smaller, focused research projects. This solicitation will support smaller, focused research projects to develop new technologies, research strategies, or research resources needed by the Genomes to Life program. Future solicitations will likely request applications for both large, well integrated, multidisciplinary research teams and smaller, focused research projects.

Information on the research projects currently funded by the Genomes to Life program and a description of project goals and overall program organization can be found at: *http://www.doegenomestolife.org/*.

Other useful Web sites include:

Microbial Genome Program Home Page—*http://www.sc.doe.gov/ober/microbial.html*.

DOE Joint Genome Institute Microbial Web Page—*http://www.jgi.doe.gov/JGI_microbial/html/*.

Microbes of Interest to DOE. The initial focus of Genomes to Life is on microbes (including fungi) directly relevant to DOE mission needs in energy (cleaner energy, biomass conversion, carbon sequestration) or the environment (cleanup of metals and radionuclides at DOE sites). Research in Goals 1 and 2 takes advantage of and focuses on microbes whose complete DNA sequence is already known. Research in Goal 3 focuses on microbes or microbial communities of interest to, directly relevant to, or that will contribute substantially to an ability to address DOE mission needs. Selected, well-justified research using yeast is appropriate as a means of quickly generating data that addresses the needs of the Genomes to Life Program. However, the use of yeast as a long-term research focus will not be encouraged.

Data and Other Results. Any data and results generated through the investigations into Goals 1 through 4 that are appropriate to share with the broader community should be provided in timely, open, and machine-readable format where possible or appropriate. Microbial DNA sequence data will be publicly released according to the "Data Release Requirements: Microbial Genome Sequencing Projects" (*http://www.sc.doe.gov/production/ober/EPR/data.html*).

Software Development and Distribution. Software developed by research teams that is appropriate for distribution beyond the research team shall be made available to the biological and computational community. It is our intent that this software be accessible, useful, affordable, and interoperable with other software and with data. Applications should include plans for assuring availability, stating whether: the software will be available as binary or source code, a fee will be charged for the use of the software, some users (e.g., commercial) will be charged while others not, in what way derivative products will be treated, etc. Statements such as that by the International Society for Computational Biology on Bioinformatics Software Availability, *http://www.iscb.org/pr.shtml*, may be used for reference.

Research Focus

(1) Technologies and Strategies to Image Individual Proteins and Multi Protein Complexes in Microbes and to Image Complex Microbial Communities

This solicitation will promote the development of imaging technology (probes, instrumentation and computational methodology) needed to accomplish the Genomes to Life program goals. Applications or development of imaging technology should be directed to or easily adapted to the study of microbes. Development of probes and instrumentation should be complementary to and facilitate completion of Genomes to Life program goals, including currently funded projects (see currently funded projects at: *http://www.doegenomestolife.org/*).

Additional information on the projected imaging needs of the Genomes to Life program can be found at: *http://www.doegenomestolife.org/technology/imaging/GTLimaging2002.pdf*.

Specific research needs include:

• *Development of novel probes* (fluorescent, electron dense, vibrational tags, etc.) with optimum physico-chemical properties that enable:

—Visualization, tracking, assembly and disassembly of multi-protein molecular machines and their individual components. Multifunctional probes that measure structure, including post-translational modification and function in real time, are needed.

—Rapid visualization and quantitation of intracellular processes with high spatial resolution.

—Visualization and quantitation of microbial populations and communities with respect to their structure, functions, stability and response to environmental stress.

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Probes should be developed to determine the spatial and temporal concentration of nutrients, metabolites, signaling molecules, elements, extra cellular matrices and other biomolecules critical to maintaining microbial community structure and function. This should also include dynamic measuring of oxidative states and energy transfer kinetics.

Probes should be selective, non-perturbative, and resistant to degradation and should have unique spectroscopic signatures. Unambiguous experimental systems to validate probe performance should be presented.

• *Development of new high-throughput tagging methods* for chromophores, electron dense and other probes. Methods should be capable of being transported to the broader scientific community.

• *Development of innovative optical and non-optical instrumentation* that will visualize and quantitate dynamic aspects of molecular machines over a wide range of dimensions and time scales; enable simultaneous co-localization of different intra-cellular processes with high spatial resolution; and/or permit visualization of bacterial community composition and functions in the field as well as in the laboratory.

• *Development of computational methods* for rapid processing, storing, reconstructing, and three dimensional modeling of large image data sets, *e.g.*, from cryoelectron microscopy. Computational methods are needed that can predict capabilities and limitations of various probes and instruments over a wide range of size and time scales. Novel computational tools are needed to integrate cellular image data sets derived from different instruments and technologies. Models of bacterial community structure, growth, functions and adaptive responses should be constructed based on experimental data and should facilitate development of alternative experimental approaches.

(2) Technologies for the High-Throughput Synthesis of Proteins and Their Biophysical Characterization

This solicitation seeks to promote the development of techniques and protocols for high-throughput, low-cost synthesis of full-length proteins directly from coding sequence and for their subsequent biophysical characterization. Availability of proteins will enable the production and confirmation of selective, non-perterbutive probes and molecular tags needed to address the broad goals of the Genomes to Life program.

An essential early requirement for turning genome information into biological understanding is having access to purified samples of at least the majority of the proteins encoded in the genomes of interest. Even within the microbial-focus of Genomes to Life, this requirement is daunting. It must encompass, within the next decade, hundreds of different microbes and therefore many tens of thousands of proteins. Both the production and characterization goals are significantly broader than those of structural genomics programs. In those programs the goals are limited to the structural characterization of a relatively small fraction of proteins, and often protein fragments, that represent structurally novel motifs.

It is recognized that no satisfactory general approach currently exists and that not all proteins will likely yield to the same techniques. It is expected that a variety of both cell-free and cell-based systems will be required, as well as multiple characterization methods. Production and characterization technologies should be scalable, economic, and sufficiently robust to meet the production goal of milligram quantities of approximately 10,000 proteins per year.

An essential early need is the development of improved techniques for predicting from sequence what production and purification approaches are most likely to succeed with each protein. Thus, informatics is an integral component. Algorithms based on data from successful and failed protein expressions are expected to substantially inform and improve future protein production efficiency.

Informatics coupled with biophysical characterizations are expected to provide functional insights that may also explain why such a large number of biologically important, full-length proteins either can not be expressed in soluble form, or have whose structures that cannot be determined once expressed. These proteins may include substantial disordered regions that adopt structures only after interaction with appropriate protein binding partners. Reliable predictive algorithms based on expression and characterization databases are therefore needed to predict disorder and binding partners.

Areas in which improvements are sought include:

• Optimization of cloning and clone validation techniques to support the protein production process.

• Optimization of cell-free and cellular expression methods.

• Optimization of protein purification protocols.

• Improved strategies for increasing the fraction of proteins that can be synthesized by automated methods. This may include sequence-based predictions of methods most likely to succeed and insights for optimization of expression protocols.

High-throughput, economical approaches for characterizing synthesized protein to assess product quality and to predict protein function are also solicited. A goal is to provide multiple benchmark biophysical characterizations for each protein under several conditions. These approaches are expected to include:

• Biophysical techniques, e.g., mass spectrometry circular dichroism, calorimetry, partial proteolysis, deuterium exchange, surface plasmon resonance, neutron scattering, nuclear magnetic resonance.

• Improved techniques for predicting, from protein sequence, ordered and dis-ordered domains and for predicting solubility properties of proteins and protein domains.

• Integrated data acquisition and management tools for tracking all steps of the production and characterization process and for supporting detailed QC/QA procedures.

• Improved high-throughput methods to predict, then rapidly test, and finally to confirm binding partners for proteins so that the nearly infinite number of potential interactions is reduced to experimentally testable subset.

(3) Molecular Tags To Identify Individual Proteins and To Characterize Multi-Protein Complexes in Microbial Cells

This solicitation seeks advances in technology needed to mass-produce molecular tags for proteins and protein complexes, as tools to be used for determining function. As a top priority, technologies are sought for mass-producing specific protein recognition tags capable of functioning as:

• Capture reagents in affinity extraction and purification protocols, and as.

• Labeling reagents for intracellular and 'in situ' localization and mapping studies.

These technologies must be scalable to permit tens of thousands of successful tags to be produced and characterized per year at affordable costs. It is recognized that none of the many approaches under development to address this problem have yet demonstrated compelling promise—even as generally effective laboratory-scale methods. Yet for the purposes of

Genomes to Life and for modern biology altogether, very high-throughput, industrially robust methods to address this problem are required.

For the purposes of this solicitation, it is assumed that purified protein 'targets' will be provided to the researchers in micro-gram to milli-gram quantities so that tags can be optimized and characterized. Tags that interfere with function as well as those that do not interfere with protein function are both needed to help better define the biological roles of proteins. Areas in which technological improvements are sought include:

• Scalable methods for producing 'epitope-directed' affinity reagents of high specificity and affinity for proteins capable of functioning either as affinity extraction and capture reagents or as intra-cellular labeling reagents. High success ratios (fraction of protein epitopes yielding useful reagents) are essential.

• Improvements in protein-directed affinity tag design to improve tag utility, *e.g.*, to facilitate subsequent purification and or/imaging, to facilitate release of the tagged protein, to image with and without disrupting activity, etc.

• Improved methods for developing tags directed specifically to protein complexes as distinct from their component proteins. Labeling complexes with and without disrupting interactions amongst protein components will provide important functional insights.

• Improved strategies for predicting, from sequence data, what potential protein epitopes are likely to be successful targets for tagging with and without interfering with function, and for predicting what tag development methods are likely to work for a particular protein/epitope.

• Imaging and labeling methods for multiplex mapping of proteins within cells. Simultaneously monitoring multiple labeled proteins will provide more comprehensive views of multi-protein complexes and their activities.

• Informatics tools both for managing tag production processes and for managing the data resulting from their use.

(4) High Resolution, Quantitative Microbial Biochemistry

As noted above, the initial focus of Genomes to Life is on microbes (including fungi) directly relevant to DOE mission needs in energy (cleaner energy, biomass conversion, carbon sequestration) or the environment (cleanup of metals and radionuclides at DOE sites). To this end, development of novel technologies are encouraged to support the characterization of the internal environment and organization of prokaryotic microbes relevant to DOE missions and the Genomes to Life program and to explore how the characteristics of a microbe's internal environment affect its metabolism and physiology.

Very little is known of the internal "milieu" of any cell. A microbial cell is not likely to be a "bag of dilute salt water" within which metabolites and gene products freely diffuse. There is internal organization due to structural cytoskeletal components, partitioning of gene products in different parts of the cell so that they can efficiently mediate their appropriate pathways, concentration gradients of proteins and small molecules across the volume of the cell, and physical effects caused by the cell membrane and intracellular constituents including the viscosity of a cell's cytoplasm.

A protein's localization within a cell, its relationships with other proteins, concentrations, and subcellular dynamics are critically important parameters in determining its function, for identifying functional networks of proteins in a morphological context, and for expanding our understanding of whole-cell function. Thus, studies on the topological, physical, and chemical properties of cellular cytoplasm, their effects on protein dynamics, on flux rates of metabolites, on protein-protein and protein-ligand interactions, and ultimately, on protein function are needed.

Research is needed that furnishes information on the dynamic behavior of these various molecules as the "molecular machines" perform their functions and on the distribution, localization, movement, and temporal variations of the molecules and complexes inside individual microbes as they carry out reactions of relevance to DOE missions and the Genomes to Life Program. Research is also needed to characterize topological, physical, and chemical characteristics underlying cellular responses to external stimuli, *e.g.*, nutrients, toxins, or changes in environmental conditions. Similarly, computational algorithms designed to recognize regulatory networks or patterns of gene expression under different circumstances are needed that can provide insights into co-regulated genes.

New methods that accomplish any of several aims are solicited:

• Techniques to map the spatial distribution and concentrations of proteins and metabolites within prokaryotes.

• Techniques to assess fluxes and changes in concentrations of metabolites as a function of intracellular parameters and spatial location.

• Techniques to effectively map the immediate environment surrounding specific proteins, protein complexes, or other structural components within prokaryotes.

• Techniques to measure changes in enzyme-catalyzed reaction rates (catabolic and anabolic) and fluxes, as a function of the internal cell milieu, *e.g.*, distance from the inner membrane surface, proton concentration, temperature, etc.

• Techniques to quantitate intracellular protein-protein association/dissociation rates as a function of ion concentrations, dielectric constants, protein concentrations, small molecule (metabolite, cofactor, ligand, etc.) concentrations, or temperature.

• Techniques to link data from experiments addressing the above aims to the broader goals of the Genomes to Life Program.

• Techniques to exploit computational methods to interrogate resulting datasets in order to suggest experimental priorities and derive insights into the underlying biology.

(5) New Genomic Strategies and Technologies for Studying Complex Microbial Communities

Microorganisms are the largest reservoir of genetic and biochemical diversity on earth. New methods for examining microbial communities have revealed that uncultured microbes make up more than 99% of many natural microbial communities. DNA isolated directly from environmental samples is a tremendous resource for examining the structure and function of microbial communities. The science of microbial ecology will be advanced by understanding the distribution, diversity, relative abundance, and interactions of the microorganisms in these communities.

A goal of the Genomes to Life Program (Goal 3) is to dramatically extend current scientific and technical understanding of the genetic diversity and metabolic capabilities of microbial communities in the environment, especially those related to remediation, biogeochemical cycles, climate changes, energy production, and biotechnology. A challenge to achieving this objective, however, is the difficulty in characterizing the complexity of microbial communities in nature. For example, it has been estimated that there may be thousands of different species in surface soils. Thus, new

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strategies and technologies are needed to help define and assess the repertoire of metabolic capabilities as embodied in the collective community's genomic sequence.

We need new technologies that enable us to:

• Determine whole-genome sequences of dominant uncultured microorganisms to estimate their genetic diversity and interrelationships. Novel technologies and strategies are needed to use the genome sequence to identify the genes, metabolic pathways, regulatory network and proteins needed for survival, growth and adaptation to the environment.

• Identify the extent, patterns and spatial distribution of genetic diversity in microbial communities of interest to the DOE mission areas. In particular, we need to understand how microbial diversity supports community structure and function, and the relationship of genetic diversity to key environmental parameters. For example, one strategy for understanding the extent and pattern of genetic diversity in microbial communities is to sequence bacterial artificial chromosome (BAC) clones from individual microbial communities by the shotgun approach. Comparing BAC clone sequences should lead to insights into community genetic diversity and metabolic capacity.

• Understand the ecological functions of the uncultured microorganisms. We need to identify the metabolic functions that these genomes encode and to understand how those functions contribute to the community's ecological role in the environment. Of particular interest is the unique role of novel uncultured microorganisms in ecosystems relevant to DOE's missions in bioremediation, carbon sequestration, global climate change, energy production, and biotechnology.

• Determine cellular and biochemical functions of genes discovered in uncultured community members. This includes determining the protein complexes unique to uncultured microorganisms in ecosystems of DOE relevance, and whether their unique characteristics can be used for protein engineering.

• Understand the genetic basis of microbial community functional stability and adaptation in environments important to DOE missions. We need to understand the relationship between genetic diversity and microbial community stability. For example, the genetic basis and factors controlling microbial community stability and adaptation is of great importance in managing microbial communities to bioremediate contaminated sites, sequester carbon from the atmosphere, and contribute to sustainable energy production.

Key technologies needed to achieve these goals include, but are not limited to:

• New approaches for recovering RNA and high-molecular-weight DNA from environmental samples.

• New approaches for isolating single cells of uncultured microorganisms.

• New parallel comparative approaches that allow unique microbial community DNA fragments to be identified and the community to be characterized in automated high-throughput ways.

• Novel technologies and approaches for defining the patterns of expression and functions of genes from microbial communities with large numbers of uncultured microorganisms, under different environmental conditions.

• Advanced methods for community genome sequence assembly, genome comparison, microarray data analysis, and data management.

In addition, there are many computational challenges to characterizing the composition and functional capabilities of microbial communities. New algorithms for DNA sequence assembly and annotation will be required to analyze the multiorganism sequence data, and new modeling methods will be required to predict the behavior of microbial communities. Computational methods needed include the ability to deconvolute mixtures of partial genomes sampled in the environment and to identify individual organisms; to facilitate multiple-organism shotgun-sequence assembly; to improve comparative approaches to microbial sequence annotation and gene finding; to reconstruct pathways from sequenced or partially sequenced genomes; and to evaluate the combined metabolic capabilities of heterogeneous microbial populations. Importantly, computational methods are needed to correlate genomic, physiological, and biogeochemical site parameters, as well as their spatial and temporal distribution. Finally, methods to integrate regulatory-network, pathway, and expression data into integrated models of microbial community function are needed.

(6) Pathway Inference in Prokaryotes

Many of the future solutions to the problems of supplying energy without net greenhouse gas emissions, managing the atmosphere's carbon budget, and remediating environmental contamination from metals, radionuclides, and toxic chemicals, will be based on biotechnology. Most of the new biotechnologies will almost certainly arise from fundamental advances in our understanding the "microbial world". This is primarily due to two facts. First, the metabolism of naturally occurring microorganisms plays a major role, often a dominant one, in many of the key chemical and energy fluxes of the planet. Second, virtually all of the biochemical transformations needed for safe energy production, carbon management, and environmental cleanup are part of the natural repertoire of one or more microorganisms. The challenge therefore is to explore and understand the immense chemical processing power that the microbial world possesses and uses. Achieving the needed understanding will require a nearly complete predictive mastery of the microbial cell from a 'systems' point of view—including their metabolic and signaling pathways, their regulatory networks, their material and energy flow constraints, etc. Data sets of considerable size and complexity must be obtained, managed, and mined. In addition, entirely new realms of modeling and simulation must be mastered.

The research requested in this section builds on advances in both computation and data base management as well as the extraordinary increase in the speed and capacity—and a corresponding reduction in the cost—of genome sequencing. Most fundamentally, it builds on the new and massive investment in the systems-level genomic-style study of microbial cells and microbial communities being undertaken as part of the Genomes to Life initiative.

The research requested in this section will facilitate the use of data obtained from the genomic and 'systems-level' experimental study of microbes (primarily prokaryotes) and microbial communities. It will in particular assist in using these data to predict the role played by each of the proteins encoded in the microbe's genome, the microbe's signaling and metabolic pathways, its regulatory mechanisms, and its biochemical capacities. This research will help enable the re-annotation of incorrectly annotated genomes, the prediction of functions for unknown genes, and discovery of known functions for which no genes have been identified. Biochemical capacities with direct relevance to DOE missions, such as energy production, carbon fixation, bioremediation, etc. are of particular interest.

Pathway Inference: Information on regulatory, metabolic, and signaling pathways in prokaryotes is growing rapidly. Just as the use of similarity searches, such as Basic Local Alignment Search Tool, across genomes of multiple organisms has provided extraordinarily useful information regarding the imputed function of the target gene sequences, the research requested in this section is intended to facilitate similar inferences through probes of pathways in other organisms, primarily microbes. Although, some new knowledge may be required experimentally, the emphasis is on providing a computational infrastructure for this homology searching. Investigators may propose the construction of specific databases, research on knowledge representation, and/or tools to measure similarity or provide inference. Any proposed databases should contain references to the source of the data, including measures of presumed accuracy, based partly on whether annotations were derived from experimental results or computational analogy. Research may be proposed on data structures and data access tools for the integrative storage of pathway, signaling, and regulation information needed to support 'knowledge' extraction and in particular the computation of inferences about pathway structure and function. This goal presents questions concerning the types of data that should be stored and how they are to be interrelated, queried, presented, etc. Research also may be proposed to develop tools and resources that will support computational methods for inferring the existence and function of signaling, regulatory, and metabolic pathways. The research in this element initially may be conducted on organisms chosen for their utility to the research rather than for their importance to DOE, but the proposed research should show that it will be transferable to prokaryotes and pathways of DOE interest.

(7) Implications for Society, the Law, Education, and Technology Transfer

Scientific research takes place in a context of ongoing societal concerns and expectations. Headlines about DNA, genes, and the new powers of science to analyze and manipulate fundamental elements of life vie for our attention daily. The dazzling diversity of applications of DNA science to fields ranging from medicine and agriculture to forensics and environmental restoration are having and will continue to have profound impacts on society and the lives of our citizenry. Many recent discoveries stem from data and tools generated by the Human Genome Project, whose goal is to describe in intricate detail the DNA from humans and other selected organisms by 2003. DNA is the information molecule that carries instructions for creating and maintaining all life. Resources and analytical technologies generated by the Human Genome Project and other genetic research can be applied to the DNA of all other organisms including those that are currently centerpieces of Genomes to Life research. Thus, it is important for the Genomes to Life program to address some of the ethical, legal, and social issues that may arise from the project.

The Genomes to Life program initially focuses on nonpathogenic microbes of environmental importance and those that have potential to address DOE missions such as bioremediation, energy production, global climate change processes and biotechnology. To this end, research is solicited into the Implications for Society, the Law, Education, and Technology Transfer from the research being conducted under the Genomes to Life program. Investigations are encouraged that focus on:

• Defining the range, nature and scope of issues raised by Genomes to Life research or the applications of that research;

• Exploring legal issues such as intellectual property protection and commercialization practices that may be relevant to advances in the Genomes to Life program;

• Exploring potential economic sequelae to the introduction of Genomes to Life scientific developments into the marketplace, *e.g.*, impacts on the biotechnology sector and other industries;

• Educational challenges from the Genomes to Life mediated "paradigm shift" from reductionist science to a more "reconstructionist" science, *e.g.*, the need to present science as more of a synthetic activity requiring insights from different scientific disciplines.

The scope of research on the Implications for Society, the Law, Economics and Education is a work in progress and emphases will evolve as opportunities are identified to explore the consequences of Genomes to Life science for society.

(8) Other Novel and Innovative Technologies and Research Strategies To Address the Core Goals of the Genomes to Life Research Program

Many different technologies, research strategies, and data resources will be required to successfully address the core goals of the Genomes to Life program. Applications will be accepted that propose to develop additional tools, research strategies, or resources that will help speed success in reaching the core goals of the Genomes to Life program. In most cases, these new technologies and research strategies should be scalable and automatable for genome-scale analyses. A strategy for or demonstration of scalability and automatability should be described. The relevance to Genomes to Life goals should be clearly described.

Program Funding

Up to $10 million is available in Fiscal Year 2003, contingent upon availability of appropriated funds. It is anticipated that individual research grants will be funded at a level of $250,000 to $1,000,000 per year.

Merit and Relevance Review

Applications will be subjected to scientific merit review (peer review) and will be evaluated against the following evaluation criteria listed in descending order of importance as codified at 10 CFR 605.10(d):

1. Scientific and/or Technical Merit of the Project;

2. Appropriateness of the Proposed Method or Approach;

3. Competency of Applicant's Personnel and Adequacy of Proposed Resources;

4. Reasonableness and Appropriateness of the Proposed Budget.

The evaluation will include program policy factors such as the relevance of the proposed research to the terms of the announcement and the Department's programmatic needs. External peer reviewers are selected with regard to both their scientific expertise and the absence of conflict-of-interest issues. Non-federal reviewers may be used, and submission of an application constitutes agreement that this is acceptable to the investigator(s) and the submitting institution.

Applications

Information about the development and submission of applications, eligibility, limitations, evaluation, selection process, and other policies and procedures may be found in the Application Guide for the Office of Science Financial Assistance Program and 10 CFR Part 605. Electronic access to the Guide and required forms is made available via the World Wide Web at: *http://www.science.doe.gov/production/grants/grants.html*. DOE is under no obligation to pay for any costs associated with the preparation or submission of applications if an award is not made.

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The application must contain an abstract or project summary, letters of intent from collaborators, and short curriculum vitas consistent with NIH guidelines for all Principal and co-Principal Investigators.

Adherence to type size and line spacing requirements is necessary for several reasons. No applicants should have the advantage, or by using small type, of providing more text in their applications. Small type may also make it difficult for reviewers to read the application. Applications must have 1-inch margins at the top, bottom, and on each side. Type sizes must be 10 point or larger. Line spacing is at the discretion of the applicant but there must be no more than 6 lines per vertical inch of text. Pages should be standard 8½" x 11" (or metric A4, *i.e.*, 210 mm x 297 mm).

As noted above, color images should be submitted in IIPS as a separate file in PDF format and identified as such. These images should be kept to a minimum due to the limitations of reproducing them. They should be numbered and referred to in the body of the technical scientific application as Color image 1, Color image 2, *etc.*

Applicants are expected to use the following ordered format to prepare Applications in addition to following instructions in the Application Guide for the Office of Science Financial Assistance Program. Applications must be written in English, with all budgets in U.S. dollars.

- Face page (DOE F 4650.2 (10–91))
- Project abstract (no more than one page) including the name of the applicant, mailing address, phone, Fax, and e-mail
- Budgets for each year and a summary budget page for the entire project period (using DOE F 4620.1)
- Budget explanation
- Budgets and budget explanation for each collaborative subproject, if any
- Project description (includes goals, background, research plan, preliminary studies and progress, and research design and methodologies) not to exceed 20 pages.

—Goals
—Background
—Research plan
—Preliminary studies and progress (if applicable)
—Research design and methodologies

- Literature cited.
- Collaborative arrangements (if applicable).
- Biographical sketches (limit 2 pages per senior investigator).
- Description of facilities and resources.
- Current and pending support for each senior investigator.

The Office of Science, as part of its grant regulations, requires at 10 CFR 605.11(b) that a recipient receiving a grant to perform research involving recombinant DNA molecules and/or organisms and viruses containing recombinant DNA molecules shall comply with the National Institutes of Health "Guidelines for Research Involving Recombinant DNA Molecules", which is available via the world wide Web at: *http://www.niehs.nih.gov/odhsb/biosafe/nih/rdna-apr98.pdf*, (59 FR 34496, July 5, 1994), or such later revision of those guidelines as may be published in the **Federal Register**.

DOE policy requires that potential applicants adhere to 10 CFR part 745 "Protection of Human Subjects" (if applicable), or such later revision of those guidelines as may be published in the **Federal Register**.

The Catalog of Federal Domestic Assistance Number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR part 605.

Issued in Washington, DC, on November 7, 2002.

Ralph H. De Lorenzo,

Acting Associate Director of Science for Resource Management.

[FR Doc. 02–29022 Filed 11–14–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Science

Biological and Environmental Research Advisory Committee

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Biological and Environmental Research Advisory Committee. Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Tuesday, December 3, 2002, 8:30 a.m. to 5 p.m.; and Wednesday, December 4, 2002, 8:30 a.m. to 12 p.m.

ADDRESSES: American Geophysical Union, 2000 Florida Avenue, NW., Washington, DC 20009.

FOR FURTHER INFORMATION CONTACT: Dr. David Thomassen (301–903–9817; *david.thomassen@science.doe.gov*), or Ms. Shirley Derflinger (301–903–0044; *shirley.derflinger@science.doe.gov*), Designated Federal Officers, Biological and Environmental Research Advisory Committee, U.S. Department of Energy, Office of Science, Office of Biological and Environmental Research, SC–70/Germantown Building, 1000 Independence Avenue, SW., Washington, DC 20585–1290. The most current information concerning this meeting can be found on the Web site: *http://www.science.doe.gov/ober/berac/announce.html*.

SUPPLEMENTARY INFORMATION: *Purpose of the Meeting:* To provide advice on a continuing basis to the Director, Office of Science of the Department of Energy, on the many complex scientific and technical issues that arise in the development and implementation of the Biological and Environmental Research Program.

Tentative Agenda

Tuesday, December 3, and Wednesday, December 4, 2002

- Minisymposium on proposed facilities for the Genomes to Life program
- Review of Free Air Carbon Dioxide Enrichment facilities
- Science talk on nuclear medicine by Dr. Steve Larson, Memorial Sloan-Kettering Cancer Center, New York
- Comments from Dr. Ray Orbach, Director, Office of Science
- Presentation by Dr. Margaret Wright, Chair, Office of Advanced Scientific Computing Research Advisory Committee
- Report by Dr. Ari Patrinos, Associate Director of Science for Biological and Environmental Research
- Report of the Natural and Accelerated Bioremediation Research BERAC Subcommittee
- New Business
- Public Comment (10 minute rule)

Public Participation: The day and a half meeting is open to the public. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact David Thomassen or Shirley Derflinger at the address or telephone numbers listed above. You must make your request for an oral statement at least five business days before the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

Minutes: The minutes of this meeting will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room, IE–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC on November 12, 2002.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 02–29021 Filed 11–14–02; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6635–1]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in the **Federal Register** dated April 12, 2002 (67 FR 17992).

Draft EISs

ERP No. D–COE–E35086–FL Rating EC2, Fort Pierce Shore Protection Project, Future Dredging of Capron Shoal, Implementation, St. Lucie County, FL.

Summary: EPA has environmental concerns regarding the direct and indirect consequences of this proposal which will require additional information to determine if the unavoidable losses will be appropriately mitigated.

ERP No. D–DOE–L08063–WA Rating EC2, Plymouth Generating Facility, Construction and Operation of a 307-megawatt (MW) Natural Gas-Fired Combined Cycle Power Generation Facility on a 44.5 Acre Site, Conditional Use/Special Use Permit Issuance, Benton County, WA.

Summary: EPA identified environmental concerns with the proposed project based on its contribution to significant cumulative visibility degradation in the Columbia River Gorge National Scenic Area and at Mount Hood. EPA recommended that the EIS be revised to include a more comprehensive air quality analysis.

ERP No. D–NOA–E91011–00 Rating LO, Northeast Skate Complex Fishery Management Plan, Implementation of Management Measures, Magnuson-Stevens Fishery Conservation and Management Act, New England Fishery Management Council.

Summary: EPA has no objection to the proposal, but made suggestions on enhancing the efficacy of the study fleet and on multi-species zone closures.

ERP No. D–NOA–E91012–00 Rating LO, Atlantic Surfclam and Ocean Quahog Fishery Management Plan Amendment 13, Implementation, US Exclusive Economic Zone along the Atlantic Seaboard from Maine through North Carolina.

Summary: EPA expressed no objection to Amendment 13, but made suggestions for periodic stock assessment monitoring; for reducing clam dredge bycatch; and, for determining gear effects on fauna.

ERP No. DS–COE–H32002–00 Rating LO, Missouri River Fish and Wildlife Mitigation Project to Restore Fish and Wildlife Habitat Losses Resulting from Construction, Operation and Maintenance of the Missouri River Bank Stabilization and Navigation Project (BSNP), Missouri River, Sioux City, Iowa to the Mouth near St. Louis, NB, KS and MO.

Summary The Draft Supplemental EIS for this project was adequate and considered all appropriate environmental impacts. Comments made on the DSEIS consisted of suggestions to improve the presentation or organization of data to ease the reader's understanding.

ERP No. DS–UAF–K11076–00 Rating LO, Airborne Laser (ABL) Program to Conduct Test Activities at Kirtland Air Force Base (AFB) and White Sands Missile Range/Holloman AFB, New Mexico and Edwards AFB and Vandenberg AFB CA.

Summary: EPA expressed a lack of objection on the proposed action but requested clarification on the applicability of this project to the Emergency Planning and Community Right-to-Know Act, the Pollution Prevention Act and Executive Order 13148 for ammonia, chlorine and sulfuric acid.

Final EISs

ERP No. F–BIA–K39071–00 Truckee River Water Quality Settlement Agreement-Federal Water Right Acquisition, Implementation, Truckee River, Placer County, CA and Washoe, Storey and Lyon Counties, NV.

Summary: EPA commended the Truckee River Water Quality Settlement Agreement signatories' work to permanently improve Truckee River water quality and reduce violations of water quality standards. EPA encouraged them to continue to work with EPA in achieving full compliance with water quality standards. The FEIS adequately addresses our concerns.

ERP No. F–DOE–G06012–00, Technical Area 18 (TA–18) Relocation of Capabilities and Materials at the Los Almos National Laboratory (LANL), Operational Activities involve Research in and the Design, Development, Construction, and Application of Experiments on Nuclear Criticality, NM, NV and ID.

Summary: EPA has no objections to the selection of the preferred alternative since EPA comments on the draft document have been adequately responded to.

ERP No. F–FHW–E40786–FL, I–4 Corridor Improvements, Upgrading the Safety and Mobility of the existing I–4 from west of FL–528 (Bee Line Expressway) Interchange in Orange County to east of FL–472 Interchange in Volusia County, Funding, U.S. Army COE Section 10 and 404 and NPDES Permits Issuance, Orange, Seminole, and Volusia Counties, FL.

Summary: EPA continues to have environmental concerns about the extent and mitigation of related socio-economic impacts. EPA suggests that a schedule for construction and operation of all project components be documented in the Record of Decision to ensure that alternative project considerations are consistent with comprehensive review procedures under NEPA.

ERP No. F–FRC–E03009–00, Patriot Project, Construction and Operation of Mainline Expansion and Patriot Extension in order to Transport 510.000 dekatherms per day (dth/day) of Natural Gas, TN, VA and NC.

Summary: EPA has environmental concerns regarding the need for better documentation regarding cumulative and secondary impacts, environmental justice issues, sampling and analysis of potentially contaminated sediments at Mud Creek, and pipeline safety.

ERP No. FS–COE–E34030–FL, Central and Southern Florida Project, Indian River Lagoon-South Feasibility Study, Additional Information concerning Selection of Plan, Alternative 6, Restoration of the Southern Indian River Lagoon and the St. Lucie Estuary Ecosystem, Martin, St. Lucie and Okeechobee Counties, FL.

Summary: EPA supports the positive water quality and habitat benefits which should result from the proposed IRLS plan.

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Dated: November 12, 2002.
Joseph C. Montgomery,
Director, NEPA Compliance Division, Office of Federal Activities.
[FR Doc. 02–29052 Filed 11–14–02; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6634–9]

Environmental Impact Statements; Notice of Availability

RESPONSIBLE AGENCY: Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/compliance/nepa/.*

Weekly receipt of Environmental Impact Statements
Filed November 4, 2002, through November 8, 2002,
Pursuant to 40 CFR 1506.9.

EIS No. 020457, Draft EIS, AFS, UT, Fox and Cresent Reservoirs Maintenance Project, to operate and maintain the dam structures, special use permit, High Uintas Wilderness, Ashley National Forest, Uinta Basin, Duchesne County, UT, Due: December 30, 2002, Contact: Clark Tucker (435) 781–5203.

EIS No. 020458, Draft EIS, AFS, ID, Salmon-Challis National Forest Noxious Weed Management Program, to implement an integrated series of weed treatment and non-treatment practices, Custer, Lemhi, Butte and Blaine Counties, ID, Due: January 14, 2003, Contact: William Diage (208) 756–5100.

EIS No. 020459, Final EIS, MMS, AL, LA, MS, TX, Gulf of Mexico Outer Continental Shelf Oil and Gas Lease Sales: 2003–2007, starting in 2002 the proposed central planning area sales 185, 190, 194, 198, and 201 and western planning area sales 187, 192, 196, and 200, offshore marine environment, coastal counties and parishes of TX, LA, AL and MS, Due: December 16, 2002, Contact: Archie Melancon (703) 787–1547.

EIS No. 020460, Final EIS, AFS, MT, Cave Gulch post-fire salvage sale, harvesting dead or dying trees, implementation, Helena National Forest, Big Belts Mountain, Lewis and Clark Counties, MT, Due: December 16, 2002, Contact: Jerry Meyer (406) 449–5201.

EIS No. 020461, Draft EIS, EPA, CA, Lower Owens River Project, to implement a large-scale habitat restoration project, funding, NPDES permit and COE section 404 permit, Owens Valley, Inyo County, CA, Due: January 14, 2003, Contact: Gail Louis (414) 972–3467. This document is available on the Internet at: *http://lorpeir.com*

EIS No. 020462, Draft EIS, DOE, CA, Sacramento Area Voltage Support Project, to improve system reliability and provide voltage support, Sierra Nevada Region, Alamenda, Contra Costa, Placer, Sacramento, San Joaquin and Sutter Counties, CA, Due: December 30, 2002, Contact: Loreen McMahon (916) 353–4460. This document is available on the Internet at: *http://www.wapa.gov.*

EIS No. 020463, Draft EIS, SFW, CA, Western Riverside County Multiple Species Habitat Conservation Plan (MSHCP), implementation, issuing incidental take permits, Riverside and Orange County, CA, Due: January 15, 2003, Contact: Jim Bartel (760) 431–9440.

EIS No. 020464, Draft EIS, APH, importation of solid wood packing material, to exclude, eradicate and/or control invasive alien agricultural pest, implementation, United States, Due: December 30, 2002, Contact: Ray Nosbaum (301) 734–6280. This document is available on the Internet at: *http://www.aphis.usda.gov/ppd/es/ppq/swpmdeis.pdf.*

EIS No. 020465, Draft EIS, COE, LA, Bayou Sorrel Lock Replacement (formerly IWW Locks) feasibility study, to relieve navigation delays and/or provide adequate flood protection, Atchafalaya Basin Floodway, Iberville Parish, LA, Due: December 30, 2002, Contact: Richard Boe (504) 862–1505.

EIS No. 020467, Draft EIS, FHW, IL, Milan Beltway Extension (FAU 5822) Airport Road to Blackhawk Road/John Deere Expressway, to provide a connections between the developing areas, Black Hawk State historic site, Rock Island County, IL, Due: January 13, 2003, Contact: Roger E. Rocke (815) 284–2271.

EIS No. 020468, Final EIS, COE, TX, Texas City's Proposed Shoal Point Container Terminal Project, containerized cargo gateway development, U.S. Army COE section 404 and 10 permits issuance, material placement area (DMPA), City of Texas, Galveston County, TX, Due: December 16, 2002, Contact: Sharon Manzaella-Tirpak (409) 766–3136.

EIS No. 020469, Draft Supplement, FTA, FL, Miami-Miami Beach (Bay Link) Transportation Corridor Study, transportation improvements connecting government center and downtown Miami Beach Convention Center, Dade County, FL, Due: December 30, 2002, Contact: Elizabeth B. Martin (404) 562–3509.

EIS No. 020470, Final EIS, FTA, AZ, Central Phoenix/East Valley Light Rail Transit Corridor, construction, operation and maintenance, funding, Cities of Phoenix, Tempe and Mesa, Maricopa County, AZ, Due: December 16, 2002, Contact: Hymie Luden (415) 744–3115.

EIS No. 020471, Draft EIS, SFW, FL, proposed rulemaking for: the incidental take of small numbers of Florida manatees (*Trichechus manatus latirostris*) resulting from government programs related to watercraft access and watercraft operation in the State of Florida, Due: January 10, 2003, Contact: Pete Benjamin (904) 232–2580.

Amended Notices

EIS No. 020418, Draft EIS, USN, CA, Advanced Amphibious Assault Vehicle (AAAV) development, replacement and establishment, implementation, Del Mar Basin Area of Marine Base Corps (MCB) Camp Pendelton, San Diego County, CA, *Due:* December 03, 2002, Contact: Lisa Seneca (619) 532–4744. Revision of **Federal Register** notice published on 10/11/2002: CEQ comment period ending 11/25/2002 has been extended to 12/3/2002.

EIS No. 020452, Final Supplement, AFS, GA, AL, FL, SC, LA, NC, MS, TX, vegetation management in the Coastal Plain/ Piedmont, proposal to clarify direction for conducting project-level inventories for biological evaluations (BEs), US Forest Service Southern Region, Al, GA, FL, SC, NC, LA, MS and TX, Due: December 9, 2002, Contact: Robert Wilhelm (404) 347–7076. Revision of **Federal Register** notice published on 11–8–2002: correction to website address on the Internet at: *http://www.southregion.fs.fed.us/planning/vmeis/index.htm.*

EIS No. 020453, Final Supplement, AFS, AL, GA, KY, NC, SC, TN, VA, WV, vegetation management in the Appalachian Mountains, proposal to clarify direction for conducting project-level inventories for biological evaluations (BEs), AL, GA, KY, NC, SC, TN, VA and WV, Due: December 9, 2002, Contact: Robert Wilhelm (404) 347–7076. Revision of **Federal Register** notice published 11–08–02 correction to website address. This document is available on the Internet at: *http://www.southregion.fs.fed.us/planning/vmeis/index.htm.*

Dated: November 12, 2002.
Joseph C. Montgomery,
Director, NEPA Compliance Division, Office of Federal Activities.
[FR Doc. 02–29053 Filed 11–14–02; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7408–8]

Notice of Meeting of the EPA's Children's Health Protection Advisory Committee (CHPAC)

AGENCY: Environmental Protection Agency (EPA).
ACTION: Notice of meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the next meeting of the Children's Health Protection Advisory Committee (CHPAC) will be held December 2–4, 2002 at the Hotel Washington, Washington, DC. The CHPAC was created to advise the Environmental Protection Agency on science, regulations, and other issues relating to children's environmental health.

DATES: Monday, December 2, the Science/Regulatory Work Group and the Smart Growth Work Group will meet; plenary sessions will take place Tuesday, December 3, and Wednesday, December 4.

ADDRESSES: Hotel Washington, 515 15th Street, NW, Washington, DC.

Agenda Items: The meetings of the CHPAC are open to the public. The Science/Regulatory Work Group will meet December 2, from 9 a.m. to 5 p.m. The Smart Growth Workgroup will meet on December 2, from 1 p.m. to 5 p.m. The plenary CHPAC will meet on Tuesday, December 3, from 9 a.m. to 5:30 p.m., with a public comment period at 5:15 p.m., and on Wednesday, December 4, from 8:30 a.m. to 12 p.m.

The plenary session will open with introductions and a review of the agenda and objectives for the meeting. Agenda items include highlights of the Office of Children's Health Protection (OCHP) activities and reports from the Smart Growth Workgroup and the Science and Regulatory Work Group. Other potential agenda items include an EPA Briefing on the Draft Cancer Guidelines and Interim Policy Statement and an informational panel on the National Children's Study.

FOR FURTHER INFORMATION CONTACT: Contact Joanne Rodman, Office of Children's Health Protection, USEPA, MC 1107A, 1200 Pennsylvania Avenue, NW, Washington, DC 20460, (202) 564–2188, rodman.joanne@epa.gov.

Dated: November 8, 2002.
Joanne K. Rodman,
Designated Federal Official.
[FR Doc. 02–29055 Filed 11–14–02; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0284; FRL–7280–1]

Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).
ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket ID number OPP–2002–0284, must be received on or before December 16, 2002.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Bipin Gandhi, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8380; e-mail address: gandhi.bipin@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, pesticide manufacturer, or antimicrobial pesticide manufacturer. Potentially affected entities may include, but are not limited to:

Categories	NAICS	Examples of Potentially Affected Entities
Industry	111	Crop Production
	112	Animal Production
	311	Food manufacturing
	32532	Pesticide Manufacturing
	32561	Antimicrobial Pesticide

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2002–0284. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall# 2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in

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the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at http://www.epa.gov/edocket, and follow the online instructions for submitting comments. Once in the system, select" search," and then key in docket ID number OPP–2002–0284. The system is an" anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to opp-docket@epa.gov, Attention: Docket ID Number OPP–2002–0284. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2002–0284.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall# 2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2002–0284. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI To the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 6, 2002.

Debra Edwards,

Acting Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by FFDCA section 408(d)(3). The summary of the petition was prepared by the petitioner and represents the view of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Rhodia, Inc.,

PP 2E6515

EPA has received a pesticide petition (2E6515) from Rhodia, Inc., CN 7500, Prospect Plains Rd., Cranbury, NJ 08512-7500, proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 to establish an exemption from the requirement of a tolerance for 1,3-Benzene dicarboxylic acid, 5-sulfo-, 1,3-dimethyl ester, Sodium salt, polymer with 1,3-benzenedicarboxylic acid, 1,4-benzene dicarboxylic acid, dimethyl 1,4-benzenedicarboxylate and 1,2 ethanediol (CAS Reg. No. 212842–88–1) when used as an inert ingredient in pesticide formulations under 40 CFR 180.960 (polymers). EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

Rhodia, Inc. is petitioning that 1,3-Benzene dicarboxylic acid, 5-sulfo-, 1,3-dimethyl ester, Sodium salt, polymer with 1,3-benzenedicarboxylic acid, 1,4-benzene dicarboxylic acid, dimethyl 1,4-benzene dicarboxylate and 1,2 ethanediol be exempt from the requirement of a tolerance based upon the definition of a low risk polymer under 40 CFR 723.250(e). Consequently, the analytical method to determine residues, the residues present in plant material, and the magnitude of 1,3-Benzene dicarboxylic acid, 5-sulfo-, 1,3-dimethyl ester, Sodium salt, polymer with 1,3-benzenedicarboxylic acid, 1,4-benzene dicarboxylic acid, dimethyl 1,4-benzene dicarboxylate and 1,2 ethanediol residues in raw agricultural commodities is not relevant.

B. Toxicological Profile

Where it can be determined that an inert ingredient meets the definition of a low risk polymer (40 CFR 723.250), then the production of data is generally not required by EPA to establish a tolerance or the exemption from a tolerance. Rhodia, Inc. asserts that the data and information provided below is sufficient to establish the activity and toxicity associated with 1,3-Benzene dicarboxylic acid, 5-sulfo-, 1,3-dimethyl ester, Sodium salt, with polymer with 1,3-benzenedicarboxylic acid, 1,4-benzene dicarboxylic acid, dimethyl 1,4-benzene dicarboxylate and 1,2 ethanediol as an inert ingredient when applied to growing crops or raw agricultural commodities.

Further, in the case of chemical substances described as polymers, EPA has established criteria, which when they are met or exceeded, are considered low risk. These criteria are described in 40 CFR 723.250, and identify the polymers that are relatively unreactive, stable, and typically are not absorbed when compared to other chemical substances including some polymers. Rhodia, Inc. has previously submitted information regarding 1,3-Benzene dicarboxylic acid, 5-sulfo-, 1,3-dimethyl ester, Sodium salt, with polymer 1,3-benzene dicarboxylic acid, 1,4-benzene dicarboxylic acid, dimethyl 1,4-benzene dicarboxylate and 1,2 ethanediol to the Environmental Protection Agency in a Pre Manufacturing Notice for consideration under the polymer exemption rule (PMN Number P96–818).

The criteria described in 40 CFR 723.250, and addressed below, will generally exclude polymer chemicals that are not well known and understood, and present great risk of adverse effects. Therefore, the polymers that meet or exceed these criteria can be considered of minimal or no risk.

1,3-Benzene dicarboxylic acid, 5-sulfo-, 1,3-dimethyl ester, Sodium salt, polymer with 1,3-benzene dicarboxylic acid, 1,4-benzene dicarboxylic acid, dimethyl 1,4-benzene dicarboxylate and 1,2 ethanediol conforms to the definition of a low risk polymer as described in 40 CFR 723.250 as described below:

a. 1,3-Benzene dicarboxylic acid, 5-sulfo-, 1,3-dimethyl ester, Sodium salt, polymer with 1,3-benzene dicarboxylic acid, 1,4-benzene dicarboxylic acid, dimethyl 1,4-benzene dicarboxylate and 1,2 ethanediol is not a cationic polymer, nor is it reasonably anticipated to become a cationic polymer in a natural aquatic environment.

b. 1,3-Benzene dicarboxylic acid, 5-sulfo-, 1,3-dimethyl ester, Sodium salt, polymer with 1,3-benzene dicarboxylic acid, 1,4-benzene dicarboxylic acid, dimethyl 1,4-benzene dicarboxylate and 1,2 ethanediol contains as the integral part of its composition the atomic elements hydrogen, oxygen, carbon, and sulfur.

c.1,3-Benzene dicarboxylic acid, 5-sulfo-, 1,3-dimethyl ester, Sodium salt, polymer with 1,3-benzene dicarboxylic acid, 1,4-benzene dicarboxylic acid, dimethyl 1,4-benzene dicarboxylate and

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1,2 ethanediol does not contain as an integral part of its composition, except as impurities, any elements other than those listed in 40 CFR 723.250(d)(2)(ii).

d.1,3-Benzene dicarboxylic acid, 5-sulfo-, 1,3-dimethyl ester, Sodium salt, polymer with 1,3-benzene dicarboxylic acid, 1,4-benzene dicarboxylic acid, dimethyl 1,4-benzene dicarboxylate and 1,2 ethanediol is not designed nor reasonably anticipated to substantially depolymerize, degrade, or decompose.

e. 1,3-Benzene dicarboxylic acid, 5-sulfo-, 1,3-dimethyl ester, Sodium salt, polymer with 1,3-benzene dicarboxylic acid, 1,4-benzene dicarboxylic acid, dimethyl 1,4-benzene dicarboxylate and 1,2 ethanediol is manufactured from monomers that are listed in the Toxic Substance Control Act (TSCA) Chemical Substance Inventory or manufactured under an applicable TSCA section 5 exemption.

f. 1,3-Benzene dicarboxylic acid, 5-sulfo-, 1,3-dimethyl ester, Sodium salt, polymer with 1,3-benzene dicarboxylic acid, 1,4-benzene dicarboxylic acid, dimethyl 1,4-benzene dicarboxylate and 1,2 ethanediol is not a water-absorbing polymer.

g. 1,3-Benzene dicarboxylic acid, 5-sulfo-, 1,3-dimethyl ester, Sodium salt, polymer with 1,3-benzene dicarboxylic acid, 1,4-benzene dicarboxylic acid, dimethyl 1,4-benzene dicarboxylate and 1,2 ethanediol does not contain any reactive functional groups.

h. The minimum number-average molecular weight of 1,3-Benzene dicarboxylic acid, 5-sulfo-, 1,3-dimethyl ester, Sodium salt, polymer with 1,3-benzene dicarboxylic acid, 1,4-benzene dicarboxylic acid, dimethyl 1,4-benzene dicarboxylate and 1,2 ethanediol is 2,580 Daltons. Substances with molecular weights greater than 400 Daltons are generally not absorbed through the intact skin, and substances with molecular weights greater than 1,000 generally are not absorbed through the intact gastrointestinal (GI) tract. Chemicals not absorbed through the skin or GI tract are incapable of eliciting a toxic response via these routes of exposure.

i. 1,3-Benzene dicarboxylic acid, 5-sulfo-, 1,3-dimethyl ester, Sodium salt, polymer with 1,3-benzene dicarboxylic acid, 1,4-benzene dicarboxylic acid, dimethyl 1,4-benzene dicarboxylate and 1,2 ethanediol has a number average molecular weight of approximately 2,580 Daltons and contains less than 4.3% oligomeric material below molecular weight of 500 Daltons and less than 7.0% oligomeric material below 1,000 molecular weight.

C. Aggregate Exposure

1. *Dietary exposure.* The physical-chemical characteristics of 1,3-Benzene dicarboxylic acid, 5-sulfo-, 1,3-dimethyl ester, Sodium salt, polymer with 1,3-benzene dicarboxylic acid, 1,4-benzene dicarboxylic acid, dimethyl 1,4-benzene dicarboxylate and 1,2 ethanediol lead to the conclusion that there is a reasonable certainty of no harm from exposure to the polymer from food or drinking water nor from an aggregate exposure.

2. *Non-dietary exposure.* The physical-chemical characteristics of 1,3-Benzene dicarboxylic acid, 5-sulfo-, 1,3-dimethyl ester, Sodium salt, polymer with 1,3-benzene dicarboxylic acid, 1,4-benzene dicarboxylic acid, dimethyl 1,4-benzene dicarboxylate and 1,2 ethanediol lead to the conclusion that there is a reasonable certainty of no harm from exposure to the polymer from non-dietary means.

D. Cumulative Effects

At this time there is no information to indicate that any toxic effects produced by 1,3-Benzene dicarboxylic acid, 5-sulfo-, 1,3-dimethyl ester, Sodium salt, polymer with 1,3-benzene dicarboxylic acid, 1,4-benzene dicarboxylic acid, dimethyl 1,4-benzene dicarboxylate and 1,2 ethanediol would be cumulative with those of any other chemical. Given the compound's categorization as a low risk polymer, and its proposed use in pesticide formulations, there is no expectation of increased risk due to cumulative exposure.

E. Safety Determination

1. *U.S. population.* Based on the polymer's physical-chemical properties. and that it meets or exceeds the polymer exemption criteria at 40 CFR 723.250 for low-risk polymers, adverse effects are not expected.

2. *Infants and children.* Based on the polymer's physical-chemical properties, and that it meets or exceeds the polymer exemption criteria at 40 CFR 723.250 for low-risk polymers, adverse effects are not expected.

F. International Tolerances

There are no CODEX maximum residue limits established for 1,3-Benzene dicarboxylic acid, 5-sulfo-, 1,3-dimethyl ester, Sodium salt, polymer with 1,3-benzene dicarboxylic acid, 1,4-benzene dicarboxylic acid, dimethyl 1,4-benzene dicarboxylate and 1,2 ethanediol in or on crops or commodities at this time.

[FR Doc. 02–29056 Filed 11–14–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7408–4]

Notice of Availability of Annual Reports as Required by the Energy Policy Act of 1992 (EPAct)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of annual reports as required by the EPAct of 1992.

SUMMARY: The Environmental Protection Agency announces the availability of reports summarizing compliance with alternative fueled vehicle acquisition requiremetns of the Energy Policy Act of 1992 (EPAct). These reports are available at the following Web site: *http://www.epa.gov/greeningepa/greenfleet/index.htm.* or by request to the Environmental Protection Agency (EPA) Transportation Management Office. These reports have been prepared and are being made publicly available as mandated by EPAct, which was designed to increase United States energy security in cost-effective and environmentally beneficial ways, in part through increased use of alternative fuels by vehicles owned and operated by the Federal governmnet.

DATES: These reports will be available starting December 1, 2002.

FOR FURTHER INFORMATION CONTACT: Melvin Joppy, EPA Transportation Management Office at (202) 564–6232 or by e-mail at *Joppy.Melvin@epa.gov.*

David R. Lloyd,

Acting Director, Facilities Management and Services Division.

[FR Doc. 02–29057 Filed 11–14–02; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7408–7]

Proposed Prospective Purchaser Agreement Under CERCLA for the Pruitt & Grace Superfund Site

AGENCY: Environmental Protection Agency ("EPA").

ACTION: Notice; proposal of CERCLA Prospective Purchaser Agreement for the Pruitt & Grace Superfund site.

SUMMARY: EPA is proposing to execute a Prospective Purchaser Agreement ("PPA") under authority of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), 42 U.S.C. 9601 *et seq.*, as amended, and under the inherent authority of the Attorney General of the United States to compromise and settle claims of the United States, for the transfer of title to property at the Pruitt & Grace Superfund site to Patrick Electric Company, Inc., and Mr. Robert Patrick II. The company and Mr. Patrick are both settling respondents under the PPA. In return for a covenant not to sue and contribution protection from EPA, the settling respondents will pay $2,000 to EPA, and will redevelop and operate the site. Settling respondents further agree to: Provide EPA and the Ohio Environmental Protection Agency ("OEPA") with continued access to the site if necessary; exercise due care with respect to any existing contamination; cooperate with EPA and OEPA; and comply with all environmental laws and regulations. Patrick Electric further covenants not to sue the United States.

The proposed PPA has been executed by the settling respondents, and has been submitted to the Attorney General for approval. EPA today is proposing to execute the PPA because it achieves a benefit for the community where the site is located by encouraging the reuse or redevelopment of property at which fear of Superfund liability may have been a barrier, thereby fulfilling EPA's Brownfields policies and goals. The site is not on the National Priorities List. No further response activities by EPA are anticipated at the site at this time.

DATES: Comments on this proposed PPA must be received by December 16, 2002.

ADDRESSES: A copy of the proposed PPA is available for review at EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. Please contact Kevin C. Chow at (312) 353–6181, prior to visiting the Region 5 office. Comments on the proposed PPA should be addressed to Kevin C. Chow, Office of Regional Counsel (C–14J), EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Kevin C. Chow, Office of Regional Counsel, at (312) 353–6181.

SUPPLEMENTARY INFORMATION: The site is located at 1228 West 15th Street, Lorain, Lorain County, Ohio. It is approximately one acre in size and is bounded to the north by railroad tracks, to the south by West 15th Street and private residences, and to the east by Oberlin Avenue and small businesses. The facility was operated by Pruitt & Grace Prime Line, Inc. and Pruitt & Grace Development Corporation (collectively, "Pruitt & Grace"). Pruitt & Grace ceased operating in the mid-1980s. As a result, Pruitt & Grace left behind approximately 325 55-gallon drums and a number of 5-gallon drums. Access to the site was unrestricted. The drums were left outdoors and were rusty, bulging, leaking, open, or in various stages of deterioration, which prompted neighborhood complaints about odor and other problems. The drums contained abandoned or waste paints, lacquers, solvents (including tetrachloroethylene), and other substances. Several drums were labeled inflammable. EPA sampled open containers and found organic vapors with concentrations as high as 200 parts per million ("ppm"). Based on these results, EPA performed field hazard characterization tests for ignitability on several drums and confirmed that ignitable and/or inflammable materials existed at the site.

EPA determined that, among other things, the site posed a threat of fire or explosion and that an imminent and substantial endangerment to human health or the environment existed. EPA took an emergency removal action as authorized by section 104 of CERCLA, 42 U.S.C. 9604, to mitigate the threat of fire or explosion. Actions taken by EPA included: Installation of a fence along the northern boundary of the site; inventorying and sampling of drum contents; pumping and off-site disposal of liquid fractions from all drums; consolidation of partially full drums; over-packing of full drums; crushing and off-site disposal of empty drums; and off-site disposal of all hazardous wastes, including one 55-gallon drum of waste oil. EPA completed the clean-up on January 17, 1992. Total costs incurred by EPA amounted to at least $144,358.73.

Under the proposed PPA, the settling respondents will redevelop the site and move their electrical services contracting business there, thus returning an abandoned Superfund site to productive use and preserving or creating jobs. The settling respondents will also pay $2,000 to EPA; provide future access to the site if necessary to EPA and the Ohio Environmental Protection Agency ("OEPA"); exercise due care with respect to any existing contamination; cooperate with EPA and OEPA; and comply with all environmental laws and regulations. They further covenant not to sue the United States. In return, EPA covenants not to sue and provides contribution protection to the settling respondents, subject to certain reservations of rights. A 30-day period, beginning on the date of publication of this notice, is open for comments on the proposed Prospective Purchaser Agreement.

Dated: October 15, 2002.

William E. Muno,

Director, Superfund Division, Region 5.

[FR Doc. 02–29058 Filed 11–14–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. AUC–02–47–B (Auction No. 47); DA 02–2797]

Revised Inventory and Auction Start Date for Closed Auction of Licenses for Cellular Unserved Service Areas; Comment Sought on Reserve Prices or Minimum Opening Bids and Other Auction Procedures

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document revises the starting date for Auction No. 47, revises the auction inventory to include three additional licenses, and seeks comment on procedural issues related to the auction of these additional licenses. This document revises the auction start date to provide additional time for bidder preparation and planning.

DATES: Comments are due on or before November 1, 2002, and reply comments are due on or before November 8, 2002.

ADDRESSES: All comments and reply comments must be filed electronically to the following address: *auction47@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: *For legal questions:* Kenneth Burnley (202) 418–0660. *For general auction questions:* Jeff Crooks (202) 418–0660 or Lisa Stover (717) 338–2888. *For service rule questions:* Amal Abdallah, Jay O'Connor or Mike Kleeb at (202) 418–0620.

SUPPLEMENTARY INFORMATION: This is a summary of the *Auction No. 47 Revised License Inventory and Auction Start Date Public Notice* released October 25, 2002. The complete text of the *Auction No. 47 Revised License Inventory and Auction Start Date Public Notice*, including the attachment, is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The *Auction No. 47 Revised License Inventory and Auction Start Date Public Notice* may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202)

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863–2893, facsimile (202) 863–2898, or via e-mail to *qualexint@aol.com*.

I. Background

1. In the *Auction No. 47 Comment Public Notice*, the Wireless Telecommunications Bureau ("Bureau") announced the auction of four licenses to provide cellular service in four unserved areas ("Auction No. 47") scheduled to commence on December 4, 2002.[1] By the *Auction No. 47 Revised License Inventory and Auction Start Date Public Notice* the Bureau revises the starting date for Auction No. 47 to February 12, 2003 and revises the auction inventory to include three additional licenses in the Cellular Radiotelephone Service. The additional spectrum to be auctioned is the subject of pending mutually exclusive long-form applications for three additional unserved area licenses. One additional license will be auctioned for each of the three additional mutually exclusive applicant groups ("MX Groups"). The three additional licenses that will be offered in Auction No. 47 and three additional MX Groups are identified in Attachment A of the *Auction No. 47 Revised License Inventory and Auction Start Date Public Notice*. The *Auction No. 47 Revised License Inventory and Auction Start Date Public Notice* seeks comment on procedural issues related to the auction of these licenses. The auction start date has been revised to provide additional time for bidder preparation and planning.

II. Auction Structure

A. Single-Round Sealed-Bid Auction Design

2. In the *Auction No. 47 Comment Public Notice*, the Bureau proposed to award licenses included in Auction No. 47 in a single-round sealed-bid auction. This methodology offers every license for bid at the same time with bidders placing one bid per license. For the same reasons the Bureau proposed to use the single-round sealed-bid format in the *Auction No. 47 Comment Public Notice*, it proposes to use this format for the additional licenses. The Bureau seeks comment on this proposal. It will consider comments received in response to the *Auction No. 47 Comment Public Notice* as well as comments filed in response to the *Auction No. 47 Revised License Inventory and Auction Start Date Public Notice* in considering whether to use a single-round sealed-bid auction design as proposed.

[1] In addition, procedures were proposed in the *Auction No. 47 Comment Public Notice* with actual notice and an opportunity to comment provided to all of the parties in this closed auction.

III. Reserve Price or Minimum Opening Bid

3. For the additional licenses offered in Auction No. 47, the Bureau proposes to utilize the same minimum opening bid of $500 per license as proposed in the *Auction No. 47 Comment Public Notice*. A complete list of all licenses to be offered in Auction No. 47 and their proposed minimum opening bids is provided in Attachment A of the *Auction No. 47 Revised License Inventory and Auction Start Date Public Notice*. Comment is sought on this proposal. Alternatively, comment is sought on whether, consistent with the Balanced Budget Act of 1997, the public interest would be served by having no minimum opening bid or reserve price.

IV. Upfront Payments and Initial Maximum Eligibility for Each Bidder

4. For the additional licenses in Auction No. 47, the Bureau proposes to use the same upfront payment of $500 per license as previously proposed for the cellular unserved service area licenses in the *Auction No. 47 Comment Public Notice*. A complete list of all licenses to be offered in Auction No. 47, including their related geographic service areas and upfront payments, is included in Attachment A of the *Auction No. 47 Revised License Inventory and Auction Start Date Public Notice*. The Bureau seeks comment on this proposal.

5. The Bureau further proposes that the amount of the upfront payment submitted by a bidder will determine the number of bidding units on which a bidder may place bids. This limit is a bidder's "maximum eligibility." This number does not reflect the maximum bid that can be placed on each license. Rather, a bidder may place bids on any number of licenses as long as the sum of the bidding units associated with those licenses does not exceed its maximum eligibility. Thus, in calculating the upfront payment amount, an applicant must determine the maximum number of bidding units it may wish to bid on, and submit an upfront payment covering that number of bidding units. The Bureau seeks comment on this proposal.

V. Other Auction Procedural Issues

6. In the *Auction No. 47 Comment Public Notice*, the Bureau also set forth and sought comment on the following proposals relating to auction structure and bidding procedures: (i) Information relating to auction delay, suspension or cancellation; (ii) round structure; (iii) minimum acceptable bids; (iv) winning bids and tied bids; and (v) information regarding bid withdrawal and bid removal. For the additional licenses in Auction No. 47, the Bureau proposes to utilize the same auction structure and bidding procedures proposed in the *Auction No. 47 Comment Public Notice*. The Bureau seeks comment on these proposals as they relate to the three additional licenses included in Attachment A of the *Auction No. 47 Revised License Inventory and Auction Start Date Public Notice*.

VI. Conclusion

7. Comments are due on or before November 1, 2002, and reply comments are due on or before November 8, 2002. The Bureau requires that all comments and reply comments be filed electronically. Comments and reply comments must be sent by electronic mail to the following address: *auction47@fcc.gov*. The electronic mail containing the comments or reply comments must include a subject or caption referring to Auction No. 47 Comments. The Bureau requests that parties format any attachments to electronic mail as Adobe® Acrobat® (pdf) or Microsoft® Word documents. Copies of comments and reply comments will be available for public inspection during regular business hours in the FCC Public Reference Room, Room CY–A257, 445 12th Street, SW., Washington, DC 20554. In addition, the Bureau requests that commenters fax a courtesy copy of their comments and reply comments to the attention of Kathryn Garland at (717) 338–2850.

8. This proceeding has been designated as a "permit-but-disclose" proceeding in accordance with the Commission's ex parte rules. Persons making oral ex parte presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. Other rules pertaining to oral and written ex parte presentations in permit-but-disclose proceedings are set forth in § 1.1206(b) of the Commission's rules.

Federal Communications Commission.

Margaret Wiener,

Chief, Auctions and Industry Analysis Division, WTB.

[FR Doc. 02–28943 Filed 11–14–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 29, 2002.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. Robert Lee Riley, Holliday, Missouri; to acquire voting shares of Paris Bancshares, Inc., Paris, Missouri, and thereby indirectly acquire voting shares of The Paris National Bank, Paris, Missouri.

Board of Governors of the Federal Reserve System, November 8, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–28946 Filed 11–14–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 9, 2002.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. M&T Bank Corporation, Buffalo, New York; to merge with Allfirst Financial Inc., Baltimore, Maryland, and thereby indirectly acquire voting shares of Allfirst Financial Center National Association, Millsboro, Delaware, and Allfirst Bank, Baltimore, Maryland.

In connection with this application, Applicant also has applied to acquire Allfirst Leasing Corporation, Baltimore, Maryland; Allfirst Mortgage Corporation, Baltimore, Maryland; Allfirst Life Insurance Corporation, Phoenix, Arizona; Williams, Daniels & Associates, Inc., Baltimore, Maryland; Zirkin-Cutler Investments, Inc., Bethesda, Maryland, and Loans USA, Inc., Pasadena, Maryland, and thereby engage in certain nonbanking activities including insurance, leasing insurance, financial and investment advisement, data processing and the extension of credit, pursuant to §§ 225.28(b)(1), (b)(3), (b)(6), (b)(11), and (b)(14) of Regulation Y.

2. Allied Irish Banks, P.L.C., Dublin, Ireland; to acquire up to 25 percent of the voting shares of M&T Bank Corporation, Buffalo, New York, and thereby will control indirectly shares of Manufacturers and Traders Trust Company, Buffalo, New York.

In connection with this application, Applicant also has applied to acquire Keystone Financial Life Insurance Company, Phoenix, Arizona, and thereby indirectly acquire Martindale Andres & Company, LLC, West Conshohocken, Pennsylvania, and engage in certain nonbanking activities including insurance, and investment services, pursuant to §§ 225.28(b)(6) and (b)(11) of Regulation Y.

Applicant currently owns Allfirst Financial Inc., with has applied to merge with M&T Bank Corporation. After the merger, Applicant also indirectly would own an interest in all of Allfirst's current subsidiaries including, Allfirst Financial Center, N.A., Misllsboro, Delawre.

B. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. Synovus Financial Corp., Columbus, Georgia; to merge with FNB Newton Bankshares, Inc., Covington, Georgia, and thereby indirectly acquire voting shares of First Nation Bank, Covington, Georgia.

Board of Governors of the Federal Reserve System, November 8, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–28945 Filed 11–14–02; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Federal Financial Participation in State Assistance Expenditures; Federal Matching Shares for Medicaid, the State Children's Health Insurance Program, and Aid to Needy Aged, Blind, or Disabled Persons for October 1, 2003 Through September 30, 2004

AGENCY: Office of the Secretary, DHHS.

ACTION: Notice.

SUMMARY: The Federal Medical Assistance Percentages and Enhanced Federal Medical Assistance Percentages for Fiscal Year 2004 have been calculated pursuant to the Social Security Act (the Act). These percentages will be effective from October 1, 2003 through September 30, 2004. This notice announces the calculated "Federal Medical Assistance Percentages" and "Enhanced Federal Medical Assistance Percentages" that we will use in determining the amount of Federal matching for State medical assistance (Medicaid) and State Children's Health Insurance Program (SCHIP) expenditures, and Temporary Assistance for Needy Families (TANF) Contingency Funds, the federal share of Child Support Enforcement collections, Child Care Mandatory and Matching Funds for the Child Care and Development Fund, Foster Care Title IV–E Maintenance payments, and Adoption Assistance payments. The table give figures for each of the 50 States, the District of Columbia, Puerto

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Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands. Programs under title XIX of the Act exist in each jurisdiction; programs under titles I, X, and XIV operate only in Guam and the Virgin Islands; while a program under title XVI (Aid to the Aged, Blind, or Disabled) operates only in Puerto Rico. Programs under title XXI began functioning in fiscal year 1998. The percentages in this notice apply to State expenditures for most medical services and medical insurance services, and assistance payments for certain social services. The statute provides separately for Federal matching of administrative costs.

Sections 1905(b) and 1101(a)(8)(B) of the Act require the Secretary of Health and Human Services to publish the Federal Medical Assistance Percentages each year. The Secretary is to figure the percentages, by formulas in sections 1905(b) and 1101(a)(8)(B), from a Department of Commerce's statistics of average income per person in each State and in the Nation as a whole. The percentages are within the upper and lower limits given in section 1905(b) of the Act. The percentages to be applied to the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands are specified in statute, and thus are not based on the statutory formula that determines the percentage for the 50 states.

The "Federal Medical Assistance Percentages" are for Medicaid. Section 1905(b) of the Act specifies the formula for calculating Federal Medical Assistance Percentages as follows:

"Federal medical assistance percentage" for any State shall be 100 per centum less the State percentage; and the State percentage shall be that percentage which bears the same ratio to 45 per centum as the square of the per capita income of such State bears to the square of the per capita income of the continental United States (including Alaska) and Hawaii; except that (1) the Federal medical assistance percentage shall in no case be less than 50 per centum or more than 83 per centum, (2) the Federal medical assistance for Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands, and American Samoa shall be 50 per centum.

A provision in the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 modified the formula to calculate the percentages to be applied to Alaska for fiscal years 2001 through 2005. For Alaska only, the formula requires dividing the state's three-year average per capita income by 10.5 instead of 1.0. Section 2105(b) of the Act specifies the formula for calculating the Enhanced Federal Medical Assistance Percentages as follows:

The "enhanced FMAP", for a State for a fiscal year, is equal to the Federal medical assistance percentage (as defined in the first sentence of section 1905(b)) for the State increased by a number of percentage points equal to 30 percent of the number of percentage points by which (1) such Federal medical assistance percentage for the State, is less than (2) 100 percent; but in no case shall the enhanced FMAP for a State exceed 85 percent.

The "Enhanced Federal Medical Assistance Percentages" are for use in the State Children's Health Insurance Program under Title XXI, and in the Medicaid program for certain children for expenditures for medical assistance described in sections 1095(u)(2) and 1905(u)(3) of the Act. There is no specific requirement to publish the Enhanced Federal Medical Assistance Percentages. We include them in this notice for the convenience of the States.

EFFECTIVE DATES: The percentages listed will be effective for each of the 4 quarter-year periods in the period beginning October 1, 2003 and ending September 30, 2004.

FOR FURTHER INFORMATION CONTACT: Adelle Simmons or Robert Stewart, Office of Health Policy, Office of the Assistant Secretary for Planning and Evaluation, Room 442E—Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, (202) 690–6870.

(Catalog of Federal Domestic Assistance Program Nos. 93.558: TANF Contingency Funds; 93.563: Child Support Enforcement; 93–596: Child Care Mandatory and Matching Funds for the Child Care and Development Fund; 93.658: Foster Care Title IV–E; 93.659: Adoption Assistance; 93.778: Medical Assistance Program; 93.767: State Children's Health Insurance Program)

Dated: October 30, 2002.

Tommy G. Thompson,

Secretary of Health and Human Services.

FEDERAL MEDICAL ASSISTANCE PERCENTAGES AND ENHANCED FEDERAL MEDICAL ASSISTANCE PERCENTAGES

[Effective October 1, 2003–September 30, 2004 (Fiscal Year 2004)

State	Federal medical assistance percentages	Enhanced Federal medical assistance percentages
Alabama	70.75	79.53
Alaska**	58.39	70.87
American Samoa*	50.00	65.00
Arizona	67.26	77.08
Arkansas	74.67	82.27
California	50.00	65.00
Colorado	50.00	65.00
Connecticut	50.00	65.00
Delaware	50.00	65.00
District of Columbia**	70.00	79.00
Florida	58.93	71.25
Georgia	59.58	71.71
Guam*	50.00	65.00
Hawaii	58.90	71.23
Idaho	70.46	79.32
Illinois	50.00	65.00
Indiana	62.32	73.62
Iowa	63.93	74.75
Kansas	60.82	72.57
Kentucky	70.09	79.06
Louisiana	71.63	80.14
Maine	66.01	76.21
Maryland	50.00	65.00
Massachusetts	50.00	65.00
Michigan	55.89	69.12
Minnesota	50.00	65.00
Mississippi	77.08	83.96
Missouri	61.47	73.03
Montana	72.85	81.00
Nebraska	59.89	71.92
Nevada	54.93	68.45
New Hampshire	50.00	65.00
New Jersey	50.00	65.00
New Mexico	74.85	82.40
New York	50.00	65.00
North Carolina	62.85	74.00
North Dakota	68.31	77.82
Northern Mariana Islands*	50.00	65.00
Ohio	59.23	71.46
Oklahoma	70.24	79.17
Oregon	60.81	72.57
Pennsylvania	54.76	68.33
Puerto Rico*	50.00	65.00
Rhode Island	56.03	69.22
South Carolina	69.86	78.90
South Dakota	65.67	75.97
Tennessee	64.40	75.08
Texas	60.22	72.15
Utah	71.72	80.20
Vermont	61.34	72.94
Virgin Islands*	50.00	65.00
Virginia	50.00	65.00
Washington	50.00	65.00
West Virginia	75.19	82.63
Wisconsin	58.41	70.89
Wyoming	59.77	71.84

*For purposes of section 1118 of the Social Security Act, the percentage used under titles I, X, XIV, and XVI will be 75 per centum.

**The values for Alaska and the District of Columbia in the table were set for the state plan under titles XIX and XXI and for capitation payments and DSH allotments under those titles. For other purposes, including programs remaining in Title IV of the Act, the percentage for D.C. is 50.00.

[FR Doc. 02–28985 Filed 11–14–02; 8:45 am]

BILLING CODE 4154–05–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–04–03]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Project: Impact of Community Coordinated Response for the Prevention of Intimate Partner Violence: A Random Digital Dial Survey—NEW—National Center for Injury Prevention and Control (NCIPC), Centers for Disease Control and Prevention (CDC).

A random digit dial survey will be conducted with 12,000 male and female adults in the communities of ten experimental sites and ten control sites (600 per site). The survey will determine whether adding resources to a community to develop a coordinated community response to intimate partner violence (IPV), leads to increased knowledge about IPV such as where to go for help and how to assist a victim, child witness and/or perpetrator of IPV. A base survey instrument will be administered along with an addendum from the sites that wish to address other research needs in their experiment and control communities.

While previous surveys such as the National Violence Against Women Survey (1996) have collected information on intimate partner violence, no previous survey has explored the effects of a coordinated community response, enhanced services, and public awareness campaigns between experimental and control sites.

Interviews will be conducted with persons at residential phone numbers selected using random digit dialing. No more than one respondent per household will be selected, and each sample member will complete just one interview. Non-residential numbers are ineligible for the sample and will not be interviewed. Female interviewers will be used and bi-lingual Spanish interviewers will conduct interviews in Spanish to reduce language barriers to participation. The estimated annualized burden is 3813 hours.

Respondents	Number of respondents	Number of responses/ respondent	Avg. burden/ response (in hours)
Pretest	50	1	15/60
Contacted but not eligible or refused	15,000	1	2/60
Core questionnaire (7 sites and comparison communities)*	8,400	1	15/60
Core questionnaire plus addendums*	3,600	1	20/60

Dated: November 6, 2002.

Nancy E. Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 02–29000 Filed 11–14–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Contaminants and Natural Toxicants Subcommittee of the Food Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Contaminants and Natural Toxicants Subcommittee of the Food Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on December 4 and 5, 2002, from 8:30 a.m. to 6 p.m.

Location: The Inn and Conference Center, University of Maryland University College, 3501 University Boulevard East, Adelphi, MD 20783, 301–985–7300.

Contact Person: Henry Kim, Center for Food Safety and Applied Nutrition (HFS–306), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–2023, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 10564. Please call the Information Line for up-to-date information on this meeting.

Agenda: The subcommittee will discuss FDA's action plan for addressing the issue of acrylamide in food. An agenda for the meeting will be available on the Internet at http://www.cfsan.fda.gov/list.html and at the meeting location on the day of the meeting.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by November 20, 2002. Oral presentations from the public will be scheduled between approximately 4:30 p.m. and 6 p.m. on December 4, 2002, on issues related to acrylamide in food. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before November 20, 2002, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Henry Kim at least 7 days in advance of the meeting.

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Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: November 7, 2002.

Linda Arey Skladany,

Senior Associate Commissioner for External Relations.

[FR Doc. 02–28941 Filed 11–14–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Vaccines and Related Biological Products Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Vaccines and Related Biological Products Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on December 17, 2002, from 8:30 a.m. to 5 p.m.

Location: Bethesda Marriott Hotel, 5151 Pooks Hill Rd., Bethesda, MD.

Contact Person: Jody G. Sachs or Denise H. Royster, Center for Biologics Evaluation and Research (HFM–71), Food and Drug Administration, 301–827–0314, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12391. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will review and discuss safety and efficacy and proposed indications for the product, FluMist, a cold-adapted, live attenuated, trivalent influenza vaccine for the prevention of influenza sponsored by MedImmune Vaccines, Inc.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by December 1, 2002. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before December 1, 2002, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Jody G. Sachs or Denise H. Royster at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: November 7, 2002.

Linda Arey Skladany,

Senior Associate Commissioner for External Relations.

[FR Doc. 02–28940 Filed 11–14–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Voluntary Partner Surveys To Implement Executive Order 12862 in the Health Resources and Services Administration—(OMB No. 0915–0212)—Extension

In response to Executive Order 12862, the Health Resources and Services Administration (HRSA) is proposing to conduct voluntary customer surveys of its "partners" to assess strengths and weaknesses in program services. A generic approval is being requested from OMB to conduct the partner surveys. HRSA partners are typically State or local governments, health care facilities, health care consortia, health care providers, and researchers.

Partner surveys to be conducted by HRSA might include, for example, mail or telephone surveys of grantees to determine satisfaction with a technical assistance contractor, or in-class evaluation forms completed by providers who receive training from HRSA grantees, to measure satisfaction with the training experience. Results of these surveys will be used to plan and redirect resources and efforts as needed to improve service. Focus groups may also be used to gain partner input into the design of mail and telephone surveys. Focus groups in-class evaluation forms, mail surveys, and telephone surveys are expected to be the preferred methodologies.

A generic approval will permit HRSA to conduct a limited number of partner surveys without a full-scale OMB review of each survey. If generic approval is granted, information on each individual partner survey will not be published in the **Federal Register**.

The estimated response burden is as follows:

Type of survey	Number of respondents	Responses per response	Hours per response	Total hour burden
In-class evaluations	40,000	1	.05	2,000
Mail/Telephone surveys	12,000	1	.25	3,000

Type of survey	Number of respondents	Responses per response	Hours per response	Total hour burden
Focus groups	50	1	1.5	75
Total	52,050	1	.10	5,075

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 11A–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: November 7, 2002.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 02–28939 Filed 11–14–02; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Initial Review Group, Subcommittee E—Cancer Epidemiology, Prevention & Control.

Date: December 11–12, 2002.

Time: 8 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Mary C. Fletcher, PhD, Scientific Review Administrator, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Rm 8115, Bethesda, MD 20892, 301/496–7413.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institute of Health, HHS)

Dated: November 6, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–29013 Filed 11–14–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Initial Review Group, Subcommittee D—Clinical Studies.

Date: December 11–12, 2002.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: William D. Merritt, PhD, Scientific Review Administrator, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, Bethesda, MD 20892–8328, 301–496–9767.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: November 6, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–29014 Filed 11–14–02; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, SEP for NIMH PA R13: Support of Scientific Meetings.

Date: November 22, 2002.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of health, 6001 Executive of Blvd., Bethesda, MD 20892, (Telephone Conference Cal).

Contact Person: Benjamin Xu, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Boulevard, Room 6143, MSC 9608, Bethesda, MD 20892–9608, 301–443–1178, *benxu1@mail.nih.gov.*

This notice is being published less than 15 days prior to the meting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research

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Service Awards for Research Training, National Institutes of Health, HHS)

Dated: November 5, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–29016 Filed 11–14–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institutes on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel, ZAAA1BB (02) R01 and R21 Application Review Meeting.

Date: November 19, 2002.

Time: 10 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Willco Building, Suite 409, 6000 Executive Boulevard, Rockville, MD 20892, (Telephone Conference Call).

Contact Person: Elsie D. Taylor, Scientific Review Administrator, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Blvd., Bethesda, MD 20892–7003, 301–443–9787, *etaylor@niaaa.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: November 5, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–29017 Filed 11–14–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the PubMed Central National Advisory Committee.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: PubMed Central National Advisory Committee.

Date: January 16, 2003.

Time: 9 a.m. to 5 p.m.

Agenda: Program documents.

Place: Library of Medicine, Board Room, Room 2E17, Bldg. 38, 8600 Rockville Pike, Bethesda, MD 20892.

Contact Person: David J. Lipman, MD, Director, Natl Ctr For Biotechnology Information, National Library of Medicine Department of Health and Human Services, Bethesda, MD 20894.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

Information is also available on the Institute's/Center's home page: www.pubmedcentral.nih.gov/about/nac/html, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: November 5, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–29015 Filed 11–14–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 BBCA (40) Chemistry/Biophysics Program Project Panel.

Date: November 13–15, 2002.

Time: 6 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: The Churchill Hotel, 1914 Connecticut Avenue, NW., Washington, DC 20009.

Contact Person: Nancy Lamontagne, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4170, MSC 7806, Bethesda, MD 20892, (301) 435–1726, *lamontan@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Immunology Gene Therapy.

Date: November 18, 2002.

Time: 11 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Stephen M. Nigida, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4112, MSC 7812, Bethesda, MD 20892, (301) 435–3565.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Ethics of Health Research.

Date: November 19, 2002.

Time: 1:30 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Mary Ann Guadagno, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1104, MSC 7770, Bethesda, MD 20892, (301) 451–8011.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, SNEM–5 (03) M Member Conflict: Behavioral Genetics and Mental Health.

Date: November 22, 2002.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Ann Hardy, DRPH, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3158, MSC 7770, Bethesda, MD 20892, (301) 435–0695, *hardyan@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, TNF–Family and Autoimmunity.

Date: November 25, 2002.

Time: 12 p.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: George W. Chacko, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room: 4202, MSC: 7812, Bethesda, MD 20892, (301) 435–1220, *chackoge@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Family, Developmental Pathways, and Risk for Substance Use.

Date: November 25, 2002.

Time: 12:30 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Mariela Shirley, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4112, MSC 7848, Bethesda, MD 20892, (301) 435–3554, *shirleym@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Renin-Ang II in Cardiovascular Remodeling.

Date: December 3, 2002.

Time: 10:30 a.m. to 11:30 a.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Anshumali Chaudhari, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4124, MSC 7802, Bethesda, MD 20892, (301) 435–1210.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Cancer Stem Cells.

Date: December 5, 2002.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Gerhard Ehrenspeck, PhD, Scientific Review Administrator, National Institutes of Health, Center for Scientific Review, 6701 Rockledge Drive, Room 5138, MSC 7840, Bethesda, MD 20892, (301) 435–1022. *ehrnespeckg@nih.csr.gov*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: November 5, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–29018 Filed 11–14–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Clinical Center; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Governors of the Warren Grant Magnuson Clinical Center.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Board of Governors of the Warren Grant Magnuson Clinical Center, Executive Committee.

Date: November 22, 2002.

Time: 9 a.m. to 12 p.m.

Agenda: Review of Clinical Center strategic planning, budgetary and operational issues.

Place: National Institutes of Health, Building 10, 10 Center Drive, Medical Board Room 2C116, Bethesda, MD 20892.

Contact Person: Maureen E Gormley, Executive Secretary, Warren Grant Magnuson Clinical Center, National Institutes of Health, Building 10, Room 2C146, Bethesda, MD 20892, (301) 496–2897.

This notice is being published less than 15 days prior to the meeting due to administrative error. Information is also available on the Institute's/Center's home page: *www.cc.nih.gov/*, where an agenda and any additional information for the meeting will be posted when available.

Dated: November 5, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–29019 Filed 11–14–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

The President's New Freedom Commission on Mental Health; Notice of Meeting

Pursuant to Executive Order 13263, notice is hereby given of a meeting of the President's New Freedom Commission on Mental Health in December 2002.

The meeting will be open and will consider how to accomplish the Commission's mandate to conduct a comprehensive study of the United States mental health service delivery system and to make recommendations on improving the delivery of public and private mental health services for adults and children. The Commission meeting will receive reports from several of its subcommittees, including Suicide Prevention, Criminal Justice, Co-Occurring Disorders and Evidence-Based Practices. There will also be panel presentations on several related topics.

Attendance by the public will be limited to space available. Public comments are welcome. Please communicate with the individual listed as contact below to make arrangements to comment or to request special accommodations for persons with disabilities.

Additional information and a roster of Commission members may be obtained either by accessing the Commission website, *http://www.mentalhealthcommission.gov*, or

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by communicating with the contact whose name and telephone number is listed below.

Committee Name: The President's New Freedom Commission on Mental Health.

Meeting Date/Time:

Open: December 4, 2002, 3:30 p.m. to 6 p.m.

Open: December 5, 2002, 8:30 a.m. to 10 a.m.

Open: December 5, 2002, 3:15 p.m. to 5:15 p.m.

Open: December 6, 2002, 8:30 a.m. to 12:30 p.m.

Place: Crystal Gateway Marriott, 1700 Jefferson Davis Highway, Arlington, Virginia.

Contact: Claire Heffernan, Executive Secretary, 5600 Fishers Lane, Parklawn Building, Room 13C–26, Rockville, MD 20857, Telephone: (301) 443–1545; Fax: (301) 480–1554 and e-mail: *Cheffern@samhsa.gov*; website: *http://www.mentalhealthcommission.gov.*

Dated: November 7, 2002.

Toian Vaughn,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 02–28938 Filed 11–14–02; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4739–N–46]

Notice of Proposed Information Collection: Comment Request; Request for Termination of Multifamily Mortgage Insurance

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments Due Date: January 14, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8003, Washington, DC 20410 or *Wayne_Eddins@hud.gov.*

FOR FURTHER INFORMATION CONTACT: Beverly J. Miller, Director, Office of Asset Management, Department of Housing and Urban Development 451 7th Street, SW., Washington, DC 20410, telephone (202) 7008–3730 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Request for Termination of Multifamily Mortgage Insurance.

OMB Control Number, if applicable: 2502–0416.

Description of the need for the information and proposed use: The information collection is used to notify HUD that the mortgagor and mortgagee mutually agree to terminate the HUD multifamily mortgage insurance.

Agency form numbers, if applicable: HUD–9807.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The total number of respondents is estimated to be 1,400 generating approximately 1,400 annual responses, the estimated time needed to prepare the response is .125 hours, and the total annual burden requested is 175 hours.

Status of the proposed information collection: Extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., chapter 35, as amended.

Dated: November 1, 2002.

Sean G. Cassidy,

General Deputy Assistant Secretary for Housing, Deputy Federal Housing Commissioner.

[FR Doc. 02–28961 Filed 11–14–02; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4730–N–46]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

DATES: Mark Johnston, room 7266, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or

(3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for "off-site use only" recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Brian Rooney, Division of Property Management, Program Support Center, HHS, room 5B–41, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: *Army:* Ms. Julie Jones-Conte, Headquarters, Department of the Army, Office of the Assistant Chief of Staff for Installation Management, Attn: DAIM–MD, Room 1E677, 600 Army Pentagon, Washington, DC 20310–0600; (703) 692–9223; *GSA:* Mr. Brian K. Polly, Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th and F Streets, NW., Washington, DC 20405; (202) 501–0052; *Navy:* Mr. Charles C. Cocks, Director, Department of the Navy, Real Estate Policy Division, Naval Facilities Engineering Command, Washington, Navy Yard, 1322 Patterson Ave., SE., Suite 1000, Washington, DC 20374–5065; (202) 685–9200; (These are not toll-free numbers).

Dated: November 6, 2002.

John D. Garrity,

Director, Office of Special Needs Assistance Programs.

Suitable/Available Properties

Buildings (by State)

New Jersey

Chapel Hill Front Range Light
N. Lenard Ave.
Middletown Co: Monmouth NJ
Landholding Agency: GSA
Property Number: 54200240011
Status: Excess
Comment: steel tower on 0.40 acres, possible flood hazard, wetlands & possible endangered species
GSA Number: 1–U–NJ–0627

Puerto Rico

7.5 Naval Reservation
Munoz Rivera Ave.
San Juan Co: PR
Landholding Agency: GSA
Property Number: 54200240012
Status: Excess
Comment: multi-use structures including admin. and residential, presence of asbestos/lead paint, exhibits historical and archeological significance
GSA Number: 1–N–PR–497

Land (by State)

Montana

Canyon Ferry Reservoir Portion
Tracts FS–1, FS–2, FS–3, FS–4
Lewis & Clark Co: MT 59602–
Landholding Agency: GSA
Property Number: 54200240010
Status: Surplus
Comment: 8.47 acres, subject to existing easements, buffer zone
GSA Number: 7–I–MT–0409

Unsuitable Properties

Buildings (by State)

Alabama

Bldg. 01306
Fort Rucker
Ft. Rucker Co: AL 36362–
Landholding Agency: Army
Property Number: 21200240001
Status: Unutilized
Reason: Extensive deterioration

Bldg. 01314
Fort Rucker
Ft. Rucker Co: AL 36362–
Landholding Agency: Army
Property Number: 21200240002
Status: Unutilized
Reason: Extensive deterioration

Bldg. 01316
Fort Rucker
Ft. Rucker Co: AL 36362–
Landholding Agency: Army
Property Number: 21200240003
Status: Unutilized
Reason: Extensive deterioration

Bldg. 01318
Fort Rucker
Ft. Rucker Co: AL 36362–
Landholding Agency: Army
Property Number: 21200240004
Status: Unutilized
Reason: Extensive deterioration

Bldg. 9001
Fort Rucker
Ft. Rucker Co: AL 36362–
Landholding Agency: Army
Property Number: 21200240005
Status: Unutilized
Reason: Extensive deterioration

Bldg. 112
Redstone Arsenal
Redstone Arsenal Co: Madison AL 35898–
Landholding Agency: Army
Property Number: 21200240006
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 01200
Redstone Arsenal
Redstone Arsenal Co: Madison AL 35898–
Landholding Agency: Army
Property Number: 21200240007
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 1400A
Redstone Arsenal
Redstone Arsenal Co: Madison AL 35898–
Landholding Agency: Army
Property Number: 21200240008
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 1407A
Redstone Arsenal
Redstone Arsenal Co: Madison AL 35898–
Landholding Agency: Army
Property Number: 21200240009
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 1413A
Redstone Arsenal
Redstone Arsenal Co: Madison AL 35898–
Landholding Agency: Army
Property Number: 21200240010
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

8 Bldgs.

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Redstone Arsenal
1417A thru 1424A
Redstone Arsenal Co: Madison AL 35898–
Landholding Agency: Army
Property Number: 21200240011
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

5 Bldgs.
Redstone Arsenal
1426A thru 1430A
Redstone Arsenal Co: Madison AL 35898–
Landholding Agency: Army
Property Number: 21200240012
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

5 Bldgs.
Redstone Arsenal
1433A thru 1437A
Redstone Arsenal Co: Madison AL 35898–
Landholding Agency: Army
Property Number: 21200240013
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 03140
Redstone Arsenal
Redstone Arsenal Co: Madison AL 35898–
Landholding Agency: Army
Property Number: 21200240014
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldgs. 03436, 03462
Redstone Arsenal
Redstone Arsenal Co: Madison AL 35898–
Landholding Agency: Army
Property Number: 21200240015
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 03524
Redstone Arsenal
Redstone Co: Madison AL 35898–
Landhonding Agency; Army
Property Number: 21200240016
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 515–5107
Redstone Arsenal
Redstone Arsenal Co: Madison AL 35898–
Landhonding Agency: Army
Property Number: 21200240017
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 7309A
Redstone Arsenal
Redstone Arsenal Co: Madison AL 35898–
Landhonding Agency: Army
Property Number: 21200240018
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldgs. 7360B, 7368A, 7382A
Redstone Arsenal
Redstone Arsenal Co: Madison AL 35898–
Landhonding Agency: Army
Property Number: 21200240019
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 07587
Redstone Arsenal
Redstone Arsenal Co: Madison AL 35898–
Landhonding Agency: Army
Property Number: 21200240020
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldgs. 7632A, 7660A
Redstone Arsenal
Redstone Arsenal Co: Madison AL 35898–
Landhonding Agency: Army
Property Number: 21200240021
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 07716
Redstone Arsenal
Redstone Arsenal Co: Madison AL 35898–
Landholding Agency: Army
Property Number: 21200240022
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 08027
Redstone Arsenal
Redstone Arsenal Co: Madison AL 35898–
Landholding Agency: Army
Property Number: 21200240023
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Arizona

Bldg. 15348
Fort Huachuca
Ft. Huachuca Co: Cochise AZ 85613–6000
Landholding Agency: Army
Property Number: 21200240024
Status: Excess
Reason: Extensive deterioration

California

3 Bldgs.
DDJC Sharpe
S00004, 00006, 00012
Lathrop Co: San Joaquin CA 95231–
Landholding Agency: Army
Property Number: 21200240025
Status: Unutilized
Reason: Secured Area

Bldg. S00108
DDJC Sharpe
Lathrop Co: San Joaquin CA 95231–
Landholding Agency: Army
Property Number: 21200240026
Status: Unutilized
Reason: Secured Area

Bldgs. S00161, 00162
DDJC Sharpe
Lathrop Co: San Joaquin CA 95231–
Landholding Agency: Army
Property Number: 21200240027
Status: Unutilized
Reason: Secured Area

Bldg. S00221
DDJC Sharpe
Lathrop Co: San Joaquin CA 95231–
Landholding Agency: Army
Property Number: 21200240028
Status: Unutilized
Reason: Secured Area

4 Bldgs.
DDJC Sharpe
S00482, 00483, 00484, 00485
Lathop Co: San Joaquin CA 95231–
Landholding Agency: Army
Property Number: 21200240029
Status: Unutilized
Reason: Secured Area

Bldg. S00660
DDJC Sharpe
Lathrop Co: San Joaquin CA 95231–
Landholding Agency: Army
Property Number: 21200240030
Status: Unutilized
Reason; Secured Area

Bldg. 00352
Fort Irwin
Ft. Irwin Co: San Bernardino CA 92310–
Landholding Agency: Army
Property Number: 21200240031
Status: Excess
Reason: Extensive deterioration

Bldg2. 00516, 00520, 00547
Fort Irwin
Ft. Irwin Co: San Bernardino CA 92310–
Landholding Agency: Army
Property Number: 21200240032
Status: Excess
Reason: Extensive deterioration

Bldg. 00818
Fort Irwin
Ft. Irwin Co: San Bernardino CA 92310–
Landholding Agency: Army
Property Number: 21200240033
Status: Excess
Reason: Extensive deterioration

Hawaii

Bldgs. 01507, 01522, 06023
Fort Shafter
Honolulu Co: HI 96819–
Landholding Agency: Army
Property Number: 21200240034
Status: Unutilized
Reason: Extensive deterioration

Kentucky

5 Bldgs.
Fort Knox
Ft. Knox Co: Ky 40121–
Location: 04804, 04818, 04955, 04985
Landholding Agency: Army
Property Number: 21200240035
Status: Unutilized
Reason: Extensive deterioration

48 Bldgs.
Fort Knox
Ft. Knox Co: KY 40121–
Location: 363 sq. ft.—housing
Landholding AGency: Army
Property Number: 21200240036
Status: Unutilized
Reason: Extensive deterioration

40 Bldgs.
Fort Knox
Ft. Knox Co: KY 40121–
Location: 5,680 sq. ft.—housing
Landholding Agency: Army
Property Number: 21200240037
Status: Unutilized
Reason: Extensive deterioration

19 Bldgs.
Fort Knox
Ft. Knox Co: KY 40121–
Location: 04809, 04812, 04832, 04843, 04849, 04852, 04869, 04873, 04890, 04919, 04920, 04935, 04941, 04962, 04968, 04975, 04978, 04980, 04988

Landholding Agency: Army
Property Number: 21200240038
Status: Unutilized
Reason: Extensive deterioration

13 Bldgs.
Fort Knox
Ft. Knox Co: KY 40121–
Location: 04810, 04842, 04868, 04884, 04891, 04899, 04904, 04940, 04947, 04961, 04974, 04979, 04987
Landholding Agency: Army
Property Number: 21200240039
Status: Unutilized
Reason: Extensive deterioration

17 Bldgs.
Fort Knox
Ft. Knox Co: KY 40121–
Location: 04829, 04833, 04838, 04844, 04850, 04870, 04875, 04908, 04918, 04921, 04926, 04936, 04942, 04951, 04957, 04963, 04969
Landholding Agency: Army
Property Number: 21200240040
Status: Unutilized
Reason: Extensive deterioration

5 Bldgs.
Fort Knox
Ft. Knox Co: KY 40121–
Location: 04851, 04911, 04912, 04915, 04916
Landholding Agency: Army
Property Number: 21200240041
Status: Unutilized
Reason: Extensive deterioration

16 Bldgs.
Fort Knox
Ft. Knox Co: KY 40121–
Location: 04857, 04858, 04885, 04886, 04892, 04893, 04895, 04896, 04905, 04906, 04932, 04933, 04948, 04949, 04982, 04983
Landholding Agency: Army
Property Number: 21200240042
Status: Unutilized
Reason: Extensive deterioration

Bldg. 04914
Fort Knox
Ft. Knox Co: KY 40121–
Landholding Agency: Army
Property Number: 21200240043
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 4955, 4985
Fort Knox
Ft. Knox Co: KY 40121–
Landholding Agency: Army
Property Number: 21200240044
Status: Unutilized
Reason: Extensive deterioration

12 Bldgs.
Fort Knox
Ft. Knox Co: KY 40121–
Location: 06818, 06824, 06853, 06857, 06869, 06872, 06887, 06891, 07023, 07027, 07053, 07089
Landholding Agency: Army
Property Number: 21200240045
Status: Unutilized
Reason: Extensive deterioration

Maine

Bldg. M–4
Portsmouth Naval Shipyard
Kittery Co: York ME 03904–
Landholding Agency: Navy
Property Number: 77200240012
Status: Excess
Reason: Secured Area

Bldg. M–6
Portsmouth Naval Shipyard
Kittery Co: York ME 03904–
Landholding Agency: Navy
Property Number: 77200240013
Status: Excess
Reason: Secured Area

Bldg. M–9
Portsmouth Naval Shipyard
Kittery Co: York ME 03904–
Landholding Agency: Navy
Property Number: 77200240014
Status: Excess
Reason: Secured Area

Bldg. M–10
Portsmouth Naval Shipyard
Kittery Co: York Me 03904–
Landholding Agency: Navy
Property Number: 77200240015
Status: Excess
Reason: Secured Area

Bldg. M–11
Portsmouth Naval Shipyard
Kittery Co: York ME 03904–
Landholding Agency: Navy
Property Number: 77200240016
Status: Excess
Reason: Secured Area

Bldg. M–18
Portsmouth Naval Shipyard
Kittery Co: York ME 03904–
Landholding Agency: Navy
Property Number: 77200240017
Status: Excess
Reason: Secured Area

Bldg. H–29
Portsmouth Naval Shipyard
Kittery Co: York ME 03904–
Landholding Agency: Navy
Property Number: 77200240018
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 33
Portsmouth Naval Shipyard
Kittery Co: York ME 03904–
Landholding Agency: Navy
Property Number: 77200240019
Status: Excess
Reason: Secured Area

Bldg. 34
Portsmouth Naval Shipyard
Kittery Co: York ME 03904–
Landholding Agency: Navy
Property Number: 77200240020
Status: Excess
Reason: Secured Area

Bldg. 41
Portsmouth Naval Shipyard
Kittery Co: York ME 03904–
Landholding Agency: Navy
Property Number: 77200240021
Status: Excess
Reason: Secured Area

Bldg. 55
Portsmouth Naval Shipyard
Kittery Co: York ME 03904–
Landholding Agency: Navy
Property Number: 77200240022
Status: Excess
Reason: Secured Area

Bldg. 62/62A
Portsmouth Naval Shipyard
Kittery Co: York ME 03904–
Landholding Agency: Navy
Property Number: 77200240023
Status: Excess
Reason: Secured Area

Bldg. 63
Portsmouth Naval Shipyard
Kittery Co: York ME 03904–
Landholding Agency: Navy
Property Number: 77200240024
Status: Excess
Reason: Secured Area

Bldg. 65
Portsmouth Naval Shipyard
Kittery Co: York ME 03904–
Landholding Agency: Navy
Property Number: 77200240025
Status: Excess
Reason: Secured Area

Bldg. 158
Portsmouth Naval Shipyard
Kittery Co: York ME 03904–
Landholding Agency: Navy
Property Number: 77200240026
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 188
Portsmouth Naval Shipyard
Kittery Co: York ME 03904–
Landholding Agency: Navy
Property Number: 77200240027
Status: Excess
Reason: Secured Area

Bldg. 189
Portsmouth Naval Shipyard
Kittery Co: York ME 03904–
Landholding Agency: Navy
Property Number: 77200240028
Status: Excess
Reason: Secured Area

Bldg. 237
Portsmouth Naval Shipyard
Kittery Co: York ME 03904–
Landholding Agency: Navy
Property Number: 77200240029
Status: Excess
Reason: Secured Area

Bldg. 322
Portsmouth Naval Shipyard
Kittery Co: York ME 03904–
Landholding Agency: Navy
Property Number: 77200240030
Status: Excess
Reason: Secured Area

Maryland

12 Bldgs.
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Location: 1600, 1604, 1609, 1614, 1617, 1620, 1622, 1625, 1820, 1823, 1826, 1829
Landholding Agency: Army
Property Number: 21200240046
Status: Unutilized
Reason: Extensive deterioration

6 Bldgs.
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Location: 1603, 1606, 1607, 1610, 1613, 1618
Landholding Agency: Army
Property Number: 21200240047
Status: Unutilized
Reason: Extensive deterioration

12 Bldgs.
Fort George G. Meade

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Ft. Meade Co: Anne Arundel MD 20755–5115
Location: 1601, 1602, 1605, 1608, 1611, 1612, 1615, 1616, 1619, 1621, 1623, 1624
Landholding Agency: Army
Property Number: 21200240048
Status: Unutilized
Reason: Extensive deterioration

7 Bldgs.
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Location: 1646, 1647, 1728, 1729, 1730, 1731, 1879
Landholding Agency: Army
Property Number: 21200240049
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 1700–1723
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 21200240050
Status: Unutilized
Reason: Extensive deterioration

9 Bldgs.
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Location: 1819, 1821, 1822, 1824, 1825, 1827, 1828, 1830, 1831
Landholding Agency: Army
Property Number: 21200240051
Status: Unutilized
Reason: Extensive deterioration

Bldg. 2221
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 21200240052
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 2247, 2249A
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 21200240053
Status: Unutilized
Reason: Extensive deterioration

Massachusetts

Wayland Army Natl Guard Fac.
Oxbow Road
Wayland Co: MA 01778–
Landholding Agency: GSA
Property Number: 54200240007
Status: Excess
Reason: Extensive deterioration
GSA Number: 1–D–MA–0725

Missouri

Bldg. 218A
U.S. Army Reserve Center
St. Louis Co: St. Charles MO 63120–1794
Landholding Agency: Army
Property Number: 21200240054
Status: Unutilized
Reason: Extensive deterioration

Bldg. P4122
U.S. Army Reserve Center
St. Louis Co: St. Charles MO 63120–1794
Landholding Agency: Army
Property Number: 21200240055
Status: Unutilized
Reason: Extensive deterioration

Bldg. 6140
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65743–8944
Landholding Agency: Army
Property Number: 21200240056
Status: Unutilized
Reason: Extensive deterioration

New Hampshire

Bldg. 40
Portsmouth Naval Shipyard
Portsmouth Co: NH 03804–5000
Landholding Agency: Navy
Property Number: 77200240031
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

New Mexico

Bldgs. 20854, 21694
White Sands Missile Range
Dona Ana Co: NM 88002–
Landholding Agency: Army
Property Number: 21200240057
Status: Excess
Reason: Extensive deterioration

Ohio

Bldg. 12
Defense Supply Center
Columbus Co: Franklin OH 43216–5000
Landholding Agency: Army
Property Number: 21200240058
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldgs. 32, 33, 34, 35
Defense Supply Center
Columbus Co: Franklin OH 43216–5000
Landholding Agency: Army
Property Number: 21200240059
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldgs. 36, 38, 39, 40
Defense Supply Center
Columbus Co: Franklin OH 43216–5000
Landholding Agency: Army
Property Number: 21200240060
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

4 Bldgs.
Ravenna Army Amo Plant
Ravenna Co: Portage OH 44266–9297
Location: WS001, WS01A, WS002, WS02A
Landholding Agency: Army
Property Number: 21200240061
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Within airport runway clear zone; Secured Area; Extensive deterioration

27 Bldgs.
Ravenna Army Amo Plant
Ravenna Co: Portage OH 44266–9297
Location: 002F1–02F36, 00651, 1101; Load Line 6
Landholding Agency: Army
Property Number: 21200240062
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Within airport runway clear zone; Secured Area; Extensive deterioration

40 Bldgs.
Ravenna Army Amo Plant
Ravenna Co: Portage OH 44266–9297
Location: DT001–DT031, DT033–DT035, DT052, DT054–DT056, 09051; Load—Line 9
Landholding Agency: Army
Property Number: 21200240063
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Within airport runway clear zone; Secured Area; Extensive deterioration

32 Bldgs.
Ravenna Army Amo Plant
Ravenna Co: Portage, OH 44266–9297
Location: PE001–PE031; Load—Line 10
Landholding Agency: Army
Property Number : 21200240064
Status: Excess
Reasons: in 2000 ft. of flammable or explosive material; Within airport runway clear zone; Secured Area; Extensive deterioration

Tennessee

Bldg. 2438
Fort Campbell
Ft. Campbell Co: Montgomery TN 42223–
Landholding Agency: Army
Property Number: 21200240065
Status: Unutilized
Reason: Extensive deterioration

Bldg. 103
Holston Army Amo Plant
Kingsport Co: Sullivan TN 37660–
Landholding Agency: Army
Property Number: 21200240066
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Virginia

Bldgs. F0050, F0051
Fort A.P. Hill
Bowling Green Co: Caroline VA 22427–
Landholding Agency: Army
Property Number: 21200240067
Status: Unutilized.
Reason: Extensive deterioration

Bldg. T0130
Fort A.P. Hill
Bowling Green Co: Caroline VA 22427–
Landholding Agency: Army
Property Number: 21200240068
Status: Unutilized
Reason: Extensive deterioration

Bldgs. T0131, T0132, T0133
Fort A.P. Hill
Bowling Green Co: Caroline VA 22427–
Landholding Agency: Army
Property Number: 21200240069
Status: Unutilized
Reason: Extensive deterioration

Bldg. 11503
Fort Lee
Ft. Lee Co: Prince George VA 23801–
Landholding Agency: Army
Property Number: 21200240070
Status: Unutilized
Reason: Extensive deterioration

Bldg. 00200
Radford Army Amo Plant
Radford Co: VA 24143–0100
Landholding Agency: Army
Property Number: 21200240071
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. T4022
Radford Army Amo Plant
Radford Co: VA 24143–0100
Landholding Agency: Army
Property Number: 21200240072
Status: Unutilized
Reasons: Within 2000ft. of flammable or explosive material; Secured Area; Extensive deterioration

Washington

Bldg. 66
Naval Magazine
Indian Island
Port Hadlock Co: Jefferson WA 98339–9723
Landholding Agency: Navy
Property Number: 77200240032
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration

Bldg. 67
Naval Magazine
Indian Island
Port Hadlock Co: Jefferson WA 98339–9723
Landholding Agency: Navy
Property Number: 77200240033
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration

Bldg. 180
Naval Magazine
Indian Island
Port Hadlock Co: Jefferson WA 98339–9723
Landholding Agency: Navy
Property Number: 77200240034
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration

Bldg. 182
Naval Magazine
Indian Island
Port Hadlock Co: Jefferson WA 98339–9723
Landholding Agency: Navy
Property Number: 77200240035
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration

Bldg. 214
Naval Magazine
Indian Island
Port Hadlock Co: Jefferson WA 98339–9723
Landholding Agency: Navy
Property Number: 77200240036
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration

Bldg. 273
Naval Magazine
Indian Island
Port Hadlock Co: Jefferson WA 98339–9723
Landholding Agency: Navy
Property Number: 77200240037
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration

Bldg. 937
Naval Undersea Warfare
Keyport Co: Kitsap WA 98345–7610
Landholding Agency: Navy
Property Number: 77200240038
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 2801A
Naval Undersea Warfare
Keyport Co: Kitsap WA 98345–7610
Landholding Agency: Navy
Property Number: 77200240039
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 7634
Naval Undersea Warfare
Keyport Co: Kitsap WA 98345–7610
Landholding Agency: Navy
Property Number: 77200240040
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Wisconsin

Bldg. 1366
Fort McCoy
Ft. McCoy Co: Monroe WI 54656–5136
Landholding Agency: Army
Property Number: 21200240073
Status: Unutilized
Reason: Extensive deterioration

Bldg. 420–8
Badger Army Amo Plant
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 21200240074
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldgs. 750, 751, 753
Badger Army Amo Plant
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 21200240075
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldgs. 754–1 thru 754–6
Badger Army Amo Plant
Baraboo Co: Sauk WI 53919–
Landholding Agency: Army
Property Number: 21200240076
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldgs. 763, 765, 768
Badger Army Amo Plant
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 21200240077
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldgs. 770–1 thru 770–3
Badger Army Amo Plant
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 21200240078
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldgs. 771, 00778
Badger Army Amo Plant
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 21200240079
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldgs. 791,-793
Badger Army Amo Plant
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 21200240080
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Land (by State)

Michigan

20.3 acres
Moon Island
Munuscong Lake Co: Chippewa MI
Landholding Agency: GSA
Property Number: 54200240008
Status: Excess
Reason; Not accessible by road
GSA Number: 1–U–MI–803

5.43 acres
Drummond Island
Drummond Tnshp Co: Cheppawa MI
Landholding Agency; GSA
Property Number: 54200240009
Status: Excess
Reason: Not accessible by road
GSA Number: 1–U–MI–449A

[FR Doc. 02–28962 Filed 11–14–02; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary, *Exxon Valdez* Oil Spill Trustee Council; Notice of Meeting

AGENCY: Office of the Secretary, Department of the Interior.

ACTION: Notice of meeting.

SUMMARY: The Department of the Interior, Office of the Secretary is announcing a public meeting of the *Exxon Valdez* Oil Spill Public Advisory Committee.

DATES: December 3–4, 2002, at 8:30 a.m.

ADDRESSES: Fifth floor conference room, 441 West 5th Avenue, Anchorage, Alaska.

FOR FURTHER INFORMATION CONTACT: Douglas Mutter, Department of the Interior, Office of Environmental Policy and Compliance, 1689 "C" Street, Suite 119, Anchorage, Alaska, (907) 271–5011.

SUPPLEMENTARY INFORMATION: The Public Advisory Committee was created by Paragraph V.A.4 of the Memorandum of Agreement and Consent Decree entered into by the United States of America and the State of Alaska on August 27, 1991, and approved by the United States District Court for the District of Alaska in settlement of *United States of America* v. *State of Alaska*, Civil Action No. A91–081 CV. The meeting agenda will feature a

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comprehensive briefing for new Public Advisory Committee members, discussions about the status of the Gulf of Alaska Ecosystem Monitoring and Research program, an update on lingering oil injury, and a review of the habitat protection program.

Willie R. Taylor,

Director, Office of Environmental Policy and Compliance.

[FR Doc. 02–29080 Filed 11–14–02; 8:45 am]

BILLING CODE 4310–RG–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary, *Exxon Valdez* Oil Spill Trustee Council; Invitation for Comment

AGENCY: Office of the Secretary, Department of the Interior.

ACTION: Notice.

SUMMARY: The *Exxon Valdez* Oil Spill Trustee Council is asking the public, private organizations, and government agencies to submit comments on the Draft Work Plan for Federal Fiscal Year 2003: Phase II, which implements the Gulf Ecosystem Monitoring and Research Program. The Draft Work Plan is available on the Internet site listed below. Paper copies of the Draft Work Plan are available upon request.

DATES: Comments are due November 25, 2002.

ADDRESSES: Submit comments to *Exxon Valdez* Oil Spill Trustee Council, 441 West 5th Avenue, Suite 500, Anchorage, Alaska 99501–2340. See **SUPPLEMENTARY INFORMATION** for additional instructions about submitting comments.

FOR FURTHER INFORMATION CONTACT: The Trustee Council Office, (907) 278–8012 or toll free at (800) 478–7745 (in Alaska) or (800) 283–7745 (outside Alaska) or via Internet at *www.oilspill.state.ak.us.*

SUPPLEMENTARY INFORMATION: Following the *Exxon Valdez* oil spill in March 1989, a Trustee Council of three state and three federal trustees, including the Secretary of the Interior, was formed. The Trustee Council prepared a restoration plan for the injured resources and services within the oil spill area. The restoration plan called for annual work plans identifying projects to accomplish restoration. An extension of the Restoration Plan, the Gulf Ecosystem Monitoring and Research Program, also requires implementation through annual work plans. Each year proposals for restoration, monitoring, and research projects are solicited from a variety of organizations, including the public. Comments may be mailed to the above address, telephoned to the above telephone numbers (collect calls will be accepted from fishers and boaters who call through the marine operator), faxed to (907) 276–7178, or e-mailed to *paula_banks@oilspill.state.ak.us.* Public comment will also be accepted at the Trustee Council meeting, at 10:30 a.m. on Monday, November 25, 2002.

Willie R. Taylor,

Director, Office of Environmental Policy and Compliance.

[FR Doc. 02–29079 Filed 11–14–02; 8:45 am]

BILLING CODE 4310–RG–P

DEPARTMENT OF THE INTERIOR

Performance Review Board Appointments

AGENCY: Department of the Interior.

ACTION: Notice of Performance Review Board Appointments.

SUMMARY: This notice provides the names of individuals who have been appointed to serve as members of the Department of the Interior Performance Review Board.

DATES: These appointments are effective upon publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Carolyn Cohen, Director of Personnel Policy, Office of the Secretary, Department of the Interior, 1849 C Street, NW., Washington, DC 20240, Telephone Number: (202) 208–6761.

2002 SES Performance Review Board

The following individuals have been appointed to serve on the Department of Interior 2002 Performance Review Board.

Mary K. Adler—Deputy Inspector General
Edith R. Blackwell—Deputy Assoc Solicitor—Indian Affairs
Brian P. Burns—Chief Information Officer
Terry R. Carlstrom—Field Director, National Capital Field Area
Horace J. Clark—Southeast Regional Solicitor (Atlanta)
Robert D. Comer—Associate Solicitor (Land and Water Resources)
Walter D. Cruickshank—Deputy Director, Minerals Management Service
Sharon Eller—Assistant Inspector General for Management and Policy
Pamela K. Haze—Deputy Director, Office of Budget
Paul W. Henne—Assistant Director—Business Management and Operations
James M. Hughes—Assistant Director for Policy & External Affairs
Donald Murphy—Deputy Director
Jonathan B. Jarvis—Field Director, Pacific West Area
Arthur D. Jones—Deputy Director, Internal Management
Daniel H. Jorjani—Special Assistant and Counselor to the Asst Secretary
Roger LaRouche—Assistant Inspector General for Audits
Phillip P. Leahy—Associate Director for Geology
Aurene Martin—Deputy Assistant Secretary—Indian Affairs
David A. Montoya—Assistant Inspector General for Investigations
Michael D. Nedd—State Director, Eastern State Office
Glenda Owens—Deputy Director
Mamie Parker—Regional Director—Hadley
Clinton M. Riley—Special Assistant
William Rinne—Director, Operations
Michael Rolutti—Director, Technical Service Center
David P. Russ—Regional Geologist, Eastern Region
Carol L. Sampson—Deputy Director for Finance and Administration
Christine M. Schabacker—Counselor to the Assistant Secretary
Denise E. Sheehan—Asst Director—Budget, Planning and Human Resources
Margaret Sibley—Director, Office of Policy
George T.C. Skibine—Director, Office of Indian Gaming Management
Michael R. Smith—Director, Office of Tribal Services
Paul Smyth—Deputy Assoc Solicitor—Land and Water
Willie R. Taylor—Director, Office of Environmental Policy Compliance
Robyn Thorson—Assistant Director—External Affairs
Michael Tollefson—Park Manager, Great Smokey Mountains National Park
Michael J. Trujillo—Dep Asst Secretary for Human Resources & Workforce Diversity
Sarah E. Wisely—State Director, Utah
Robert W. Wolf—Director, Program, Budget and Liaison
Elaine Y. Zielinski—State Director, Arizona

Dated: November 8, 2002.

Carolyn Cohen,

Director of Personnel Policy.

[FR Doc. 02–29051 Filed 11–14–02; 8:45 am]

BILLING CODE 4310–10–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of a Draft Environmental Impact Statement/ Environmental Impact Report and Receipt of an Application for an Incidental Take Permit for the Western Riverside County Multiple Species Habitat Conservation Plan

AGENCY: Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of Availability; Receipt of Application.

SUMMARY: The County of Riverside (County), Riverside County Flood Control and Water Conservation District, Riverside County Transportation Commission, Riverside County Parks and Open Space District, Riverside County Waste Department, California Department of Transportation, California Department of Parks and Recreation, and 14 western Riverside County cities (Applicants) have applied to the U.S. Fish and Wildlife Service (Service) for an incidental take permit pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). The Service is requesting public comment on the Draft Multiple Species Habitat Conservation Plan (MSHCP) and draft Implementing Agreement. The Applicants seek a permit to authorize incidental take of 146 species, including unlisted species that may become listed during the term of the permit. An incidental take permit is required to authorize take of listed species during urban and rural development in the approximately 1.26 million-acre (1,967 square-mile) Plan Area in western Riverside County. The proposed term of the permit is 75 years.

A Draft Environmental Impact Statement, which is the Federal portion of the Draft Environmental Impact Statement/Environmental Impact Report (EIS/EIR), has been prepared jointly by the Service and the County of Riverside to analyze the impacts of the MSHCP and is also available for public review. The analyses provided in the Draft EIS/EIR are intended to inform the public of our proposed action, alternatives, and associated impacts; address public comments received during the scoping period for the Draft EIS/EIR; disclose the direct, indirect, and cumulative environmental effects of the proposed action and each of the alternatives; and indicate any irreversible commitment of resources that would result from implementation of the proposed action.

DATES: Written comments should be received on or before January 14, 2003.

ADDRESSES: Send comments to Mr. Jim Bartel, Field Supervisor, U.S. Fish and Wildlife Service, 2730 Loker Avenue West, Carlsbad, California 92008. You also may submit comments by facsimile to (760) 431–9618. Information, comments and/or questions related to the EIR and the California Environmental Quality Act should be submitted to Ms. Kristi Lovelady, Riverside County Transportation Land Management Agency, PO Box 1605, 4080 Lemon Street—7th Floor, Riverside CA 92502; facsimile (909) 955–6879.

FOR FURTHER INFORMATION CONTACT: Ms. Karen Evans, Assistant Field Supervisor, at the Carlsbad Fish and Wildlife Office above; telephone (760) 431–9440.

SUPPLEMENTARY INFORMATION:

Availability of Documents

Documents available for public review, includes the applications, the Public Review Draft MSHCP Volumes I (the proposed plan and mitigation) and II (the MSHCP reference document), and the accompanying Implementing Agreement, and the Draft EIS/EIR.

Individuals wishing copies of the documents should contact the Service by telephone at (760) 431–9440 or by letter to the Carlsbad Fish and Wildlife Office. Copies of the MSHCP, Draft EIS/EIR, and Draft Implementing Agreement also are available for public inspection, by appointment, during regular business hours, at the Carlsbad Fish and Wildlife Office (see **ADDRESSES**). Copies are also available for viewing at the Riverside County Administrative Center, 4080 Lemon Street, 7th Floor, Riverside, California; at public libraries in each of the applicant cities; and on the World Wide Web in the library section at *http://www.rcip.org.*

Background Information

Section 9 of the Act and Federal regulation prohibit the "take" of fish and wildlife species federally listed as endangered or threatened. Take of federally listed fish or wildlife is defined under the Act to include kill, harm, or harass. Harm includes significant habitat modification or degradation that actually kills or injures listed wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, and sheltering (50 CFR 17.3(c)). Under limited circumstances, the Service may issue permits to authorize incidental take; *i.e.*, take that is incidental to, and not the purpose of, otherwise lawful activity. Regulations governing incidental take permits for threatened and endangered species are found in 50 CFR 17.32 and 17.22, respectively.

The Applicants seek a permit to cover a total of 146 species, including 64 plant species (8 endangered, 3 threatened, and 53 unlisted); 3 crustacean species (1 endangered, 1 threatened and 1 unlisted); 2 insect species (both endangered); 2 fish species (1 threatened and 1 unlisted); 5 amphibian species (2 endangered, 1 threatened, and 2 unlisted); 12 reptile species (all unlisted); 45 bird species (2 endangered, 2 threatened, 1 proposed threatened, 1 candidate and 39 unlisted); and 14 mammal species (2 endangered and 12 unlisted). Collectively the 146 listed and unlisted species are referred to as "Covered Species" by the MSHCP. The permit would provide take authorization for covered animal species identified by the MSHCP as "Covered Species Adequately Conserved." Currently, the Draft MSHCP identifies 128 species as "Covered Species Adequately Conserved." The remaining species would be included as "Covered Species Adequately Conserved" upon completion of the conservation measures identified in the Draft MSHCP.

The MSHCP is intended to protect and sustain viable populations of native plant and animal species and their habitats in perpetuity through the creation of a preserve system, while accommodating continued economic development and quality of life for residents of western Riverside County. In the year 2020, the Southern California Association of Governments estimates that Riverside County will be home to approximately 2.8 million people, who will occupy approximately 918,000 dwelling units. This represents a doubling of the County's present population and housing stock. Another study by the California Department of Finance estimates that the County will continue to grow to 3.5 million people by 2030 and 4.5 million people by 2040. These residents will be located within 14 incorporated cities, as well as within numerous unincorporated areas.

The MSHCP is one part of the Riverside County Integrated Project (RCIP) intended to integrate and provide for future land use, transportation and conservation needs in Riverside County. The MSHCP plan area encompasses 1.2 million acres in western Riverside County and includes the following fourteen incorporated cities: Banning, Beaumont, Calimesa, Canyon Lake, Corona, Hemet, Lake Elsinore, Moreno Valley, Murietta, Norco, Perris, Riverside, San Jacinto, and Temecula. It is one of two large, multiple-jurisdictional habitat planning efforts in Riverside County, each of which constitutes a "subregional" plan under the State of California's Natural Community Conservation Planning (NCCP) Act of 1991.

As described in Volumes I and II of the Public Review Draft MSHCP and the Draft EIS/EIR, the proposed MSHCP would provide for the creation of a preserve system that protects and manages 153,000 acres of habitat for the Covered Species, consisting of 97,000 acres conserved as the local mitigation component, 6,000 acres conserved as mitigation for State Permittee Projects (California Department of Transportation and California Department of Parks and Recreation) and it is anticipated that the State and Federal Wildlife Agencies would provide an additional 50,000 acres to

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help achieve conservation identified in the MSHCP. The financing plan for the local portion of the reserve assembly of 97,000 acres includes a mitigation fee, tipping fee for use of waste management facilities, and other funding sources to conserve 56,000 acres. Conservation of the remaining 41,000 acres would accrue through the implementation of developer incentives and on-site set asides accomplished through the development review process. The proposed 153,000 acre reserve area is not specifically identified in the MSHCP. The conservation of 153,000 acres is anticipated to occur over the first 25 years of the program and when completed, must be in a configuration to, and include the vegetation communities that, provide for the conservation of covered species. To accomplish this, the proposed reserve will be assembled pursuant to written criteria that describe a possible design for the 153,000 acre reserve to be established within an approximately 300,000-acre area termed the "Criteria Area."

Covered Activities would include, but are not limited to: public and private development within the plan area that requires a discretionary action by a permittee subject to consistency with MSHCP policies, two internal regional transportation facilities, maintenance of and safety improvements on existing roads, the Circulation Elements of the permittees, maintenance and construction of flood control facilities, single family homes on existing legal parcels within the Criteria Area, up to 10,000 new acres of agricultural activity within the Criteria Area, and compatible uses in the reserve. The MSHCP makes a provision for the inclusion of special districts and other non-permittee entities in the permit with a certificate of inclusion.

The EIS/EIR considers analyzes four other alternatives in addition to the proposed MSHCP Project Alternative described above including: A listed, proposed and strong candidate species alternative; A listed and proposed species alternative; an existing reserves alternative; and a no project alternative.

The listed, proposed and strong candidate species alternative focuses on the conservation of 29 State and/or federally listed species and 7 unlisted species. This alternative would conserve approximately 119,300 acres.

The listed and proposed species alternative focuses on the conservation of 29 State and/or federally listed or proposed species. This alternative is approximately 93,800 acres.

The existing reserves alternative does not provide any new land acquisition for conservation purposes, but instead focuses on conservation for six State and/or federally listed or candidate species and some unlisted species present in existing reserves. Species coverage would be dependent upon additional management regimes in the existing reserves.

Public Comments

The Service invites the public to comment on the Draft MSHCP, Draft Implementing Agreement, and Draft EIS/EIR during a 60-day public comment period beginning the date of this notice. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public. This notice is provided pursuant to section 10(a) of the Endangered Species Act and Service regulations for implementing the National Environmental Policy Act of 1969 (40 CFR 1506.6). The Service will evaluate the application, associated documents, and comments submitted thereon to prepare a Final Environmental Impact Statement. A permit decision will be made no sooner than 30 days after the publication of the Final Environmental Impact Statement and completion of the Record of Decision.

Dated: November 7, 2002.

Miel R. Corbett,

Acting Deputy Manager, Region 1, California/Nevada Operations Office, Sacramento, California.

[FR Doc. 02–28875 Filed 11–14–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Proposed Agency Information Collection; Comment Request

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this notice announces that we are seeking comments from interested parties to renew the clearance for Application for Job Placement and Training Program, OMB No. 1076–0062.

DATES: Written comments must be received by January 14, 2003.

ADDRESSES: Written comments should be sent to: Lynn Forcia, Office of Economic Development, Bureau of Indian Affairs, 1849 C Street, NW., Mail Stop 4640–MIB, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: For more information or copies of the forms, call Lynn Forcia at 202–219–5270 (This is not a toll-free number). You may send requests by facsimile to 202–208–3664.

SUPPLEMENTARY INFORMATION: Public Law 84–959 and Public Law 88–230 authorize the Department of the Interior, Bureau of Indian Affairs (BIA) to help adult Indians who reside on or near Indian reservations to obtain reasonable and satisfactory employment. The information collection documents provide information necessary to administer the program for Job Placement and Training Program. The Department is authorized to undertake a program of vocational training and direct employment that provides vocational counseling, guidance, and training in any recognized vocation, apprenticeship, trade, or on-the-job training. The program is available to Indians who are primarily not less than 18 years old and not more than 35 years old who reside on or near an Indian reservation. The acts authorize the BIA to enter into contracts or agreements with Federal, State, local government agencies or associations with apprenticeship programs or on-the-job training that leads to skilled employment. The same application form is used for both 25 CFR parts 26 and 27. We are also proposing to combine 25 CFR parts 26 and 27 into one comprehensive Federal regulation combining vocational training and direct employment services. Information of a confidential nature is protected by the Privacy Act.

You are asked to comment on the necessity of the information collection to fulfill the functions of the bureau; whether the burden estimate is accurate and the methodology and assumptions are valid; the utility, quality, and clarity of information requested; and ways that the burden might be minimized for respondents. All comments are subject to review by the public during regular business hours (9 a.m. to 3 p.m.). If you wish your name or address withheld, you must state this prominently at the beginning of your comments. We will honor your request to the extent allowed by the law. Individuals who represent businesses, or companies will have comments available for review by the public. In some cases we may decide to withhold comments from review for good reason.

Please note that an agency may not sponsor or conduct, and a person need not respond to, an information collection unless a currently valid OMB Control Number is displayed.

Title: Application for Job Placement and Training, 25 CFR 26 and 27 (Proposed 25 CFR 26 combining both regulations.

OMB Control Number: 1076–0062.

Description of Respondents: Individual Indians living on or near a reservation who seek training or employment provide the information in order to receive a benefit.

Respondents: 4900.

Burden: 30 minutes to complete, total: 2450 hours.

Dated: November 6, 2002.

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

[FR Doc. 02–29082 Filed 11–14–02; 8:45 am]

BILLING CODE 4310–4M–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Mooretown Rancheria Alcoholic Beverage Control Law Amendment

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the Mooretown Rancheria Alcoholic Beverage Control Law Amendment as set forth by Resolution 98–16. The Mooretown Rancheria Alcoholic Beverage Control Law was originally published in the **Federal Register** of February 11, 2000. This amendment increases the tax on sales of alcoholic beverages from 1 percent of the amount actually collected, including payments by major credit cards, to an amount equal to the current sales tax rate of the State of California. Further, the amendment exempts a tribal enterprise, the Feather Falls Mini Mart, from application of the sales tax. This is in conformity with the laws of the State of California, where applicable and necessary. Although the amendment was adopted on January 3, 2002, it does not become effective until published in the **Federal Register**, because the failure to comply with the ordinance may result in criminal charges.

EFFECTIVE DATE: This amendment is effective on November 15, 2002.

FOR FURTHER INFORMATION CONTACT: Kaye Armstrong, Office of Tribal Services, 1849 C Street, NW., MS 4631–MIB, Washington, DC 20240–4001; telephone (202) 208–4400.

SUPPLEMENTARY INFORMATION: Pursuant to the Act of August 15, 1953, Pub. L. 83–277, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice* v. *Rehner*, 463 U.S. 713 (1983), the Secretary of the Interior shall certify and publish in the **Federal Register** notice of adopted liquor ordinances for the purpose of regulating liquor transactions in Indian country. The Mooretown Rancheria Alcoholic Beverage Control Law Amendment, Resolution No. 98–16, was duly adopted by the Tribal Council of the Mooretown Rancheria on January 3, 2002. The Mooretown Rancheria, in furtherance of its economic and social goals, has taken positive steps to regulate retail sales of alcohol and use revenues to combat alcohol abuse and its debilitating effects among individuals and family members within the Mooretown Rancheria.

This notice is published in accordance with the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 Departmental Manual 8.1.

I certify that by Resolution 98–16, the Mooretown Rancheria Alcoholic Beverage Control Law Amendment was duly adopted by the Mooretown Rancheria Tribal Council on January 3, 2002.

Dated: October 9, 2002.

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

The Mooretown Rancheria Alcoholic Beverage Control Law Amendment, Resolution No. 98–16, reads as follows:

Chapter VII—Taxes

Section 701. Sales Tax. There is hereby levied and shall be collected a tax on each sales of alcoholic beverages on the Rancheria in the amount equal to the current sales tax rate of the State of California. The tax imposed by this section shall apply to all retail sales of liquor on the Rancheria (except at Feather Falls Mini Mart) and shall preempt any tax imposed on such liquor sales by the State of California.

[FR Doc. 02–29083 Filed 11–14–02; 8:45 am]

BILLING CODE 4310–4J–P

DEPARTMENT OF THE INTERIOR

National Park Service

Fire Management Plan, Environmental Impact Statement, Carlsbad Caverns National Park, New Mexico

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of intent to prepare an environmental impact statement for the Fire Management Plan for Carlsbad Caverns National Park.

SUMMARY: Under the provisions of the National Environmental Policy Act of 1969, the National Park Service is preparing an environmental impact statement for the Fire Management Plan for Carlsbad Caverns National Park. This effort will result in a new wildland fire management plan that meets current policies, provides a framework for making fire-related decisions, and serves as an operational manual. Development of a new fire plan is compatible with the broader goals and objectives derived from the park purpose that governs resources management. Alternatives to be considered include: (1) No-action, (2) a fully integrated fire management plan with all strategies available for use, and (3) a plan allowing limited prescribed burning and not allowing lightning-started fires (wildland fire use). The no-action alternative maintains the current 1995 fire management plan strategy of suppression, wildland fire use, and prescribed burning. The proposed fully integrated plan alternative defines a relatively small fire management unit (FMU) surrounding the visitor center area, facilities, residences, and the area of the park adjacent to Whites City. This FMU applies full suppression and prescribed burning. The rest of the park comprises the second FMU, in which wildland fire use, prescribed fire, and suppression are management options. This second FMU specifies protection measures for special features, such as habitat of threatened and endangered species and sensitive cultural resources. The limited prescribed burning alternative does not allow wildland fire use. Conservative use of prescribed fire for fuels management or research is an option.

Major issues are environmental effects of the FMP that are potential problems. These include: protection of cultural resources, protection of plant and wildlife habitats, effects on non-native species, habitat protection for threatened and endangered species, protection of park neighbors' property, reducing impacts to park visitors, protection of life and property, effects on tourism, and changes in landscape-scale vegetation patterns.

A scoping brochure has been prepared describing the issues identified to date. Copies of the brochure may be obtained from Superintendent, Carlsbad Caverns National Park, 3225 National Parks Hwy., Carlsbad, New Mexico 88220.

DATES: The scoping period will be 30 days from the date this notice is published in the **Federal Register**.

ADDRESSES: Information will be available for public review and comment in the office of the Superintendent, Mary Gibson Scott,

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3225 National Parks Highway, Carlsbad, NM 88220, (505) 785–2232 ext. 320.

FOR FURTHER INFORMATION CONTACT: Contact Superintendent, Carlsbad Caverns National Park, (505) 785–2232 x320.

SUPPLEMENTARY INFORMATION: If you wish to comment on the scoping brochure or on any other issues associated with the plan, you may submit your comments by any one of several methods. You may mail comments to Superintendent, Carlsbad Caverns National Park, 3225 National Parks Hwy., Carlsbad, New Mexico 88220. You may also comment via the Internet to *CAVE_superintendent@nps.gov*. Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include "Attn: Carlsbad Fire Management Plan" and your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly at Resources Stewardship and Science at (505) 785–2232 x380. Finally, you may hand-deliver comments to the above address or at public meetings that will be held in Carlsbad and Queen, New Mexico. The schedule for these public meetings is included in the scoping brochure.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Dated: September 23, 2002.

Michael Snyder,

Director, Intermountain Region, National Park Service.

[FR Doc. 02–29026 Filed 11–14–02; 8:45 am]

BILLING CODE 4310–10–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Quarterly Status Report of Water Service, Repayment, and Other Water-Related Contract Negotiations

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given of proposed contractual actions that are new modified, discontinued, or completed since the last publication of this notice on August 5, 2002. The January 31, 2002, notice should be used as a reference point to identify changes. This notice is one of a variety of means used to inform the public about proposed contractual actions for capital recovery and management of project resources and facilities. Additional Bureau of Reclamation (Reclamation) announcements of individual contract actions may be published in the **Federal Register** and in newspapers of general circulation in the areas determined by Reclamation to be affected by the proposed action. Announcements may be in the form of news releases, legal notices, official letters, memorandums, or other forms of written material. Meetings, workshops, and/or hearings may also be used, as appropriate, to provide local publicity. The public participation procedures do not apply to proposed contracts for sale of surplus or interim irrigation water for a term of 1 year or less. Either of the contracting parties may invite the public to observe contract proceedings. All public participation procedures will be coordinated with those involved in complying with the National Environmental Policy Act.

ADDRESSES: The identity of the approving officer and other information pertaining to a specific contract proposal may be obtained by calling or writing the appropriate regional office at the address and telephone number given for each region in the supplementary information.

FOR FURTHER INFORMATION CONTACT: Sandra L. Simons, Manager, Water Contracts and Repayment Office, Bureau of Reclamation, P.O. Box 25007, Denver, Colorado 80225–0007; telephone (303) 445–2902.

SUPPLEMENTARY INFORMATION: Consistent with section 226 of the Reclamation Reform Act of 1982 (96 Stat. 1273) and 43 CFR 426.20 of the rules and regulations published in 52 FR 11954, April 13, 1987, Reclamation will publish notice of the proposed or amendatory contract actions for any contract for the delivery of project water for authorized uses in newspapers of general circulation in the affected area at least 60 days prior to contract execution. Pursuant to the "Final Revised Public Participation Procedures" for water resource-related contract negotiations, published in 47 FR 7763, February 22, 1982, a tabulation is provided of all proposed contractual actions in each of the five Reclamation regions. Each proposed action is, or is expected to be, in some stage of the contract negotiation process in 2002. When contract negotiations are completed, and prior to execution, each proposed contract form must be approved by the Secretary of the Interior, or pursuant to delegated or redelegated authority, the Commissioner of Reclamation or one of the regional directors. In some instances, congressional review and approval of a report, water rate, or other terms and conditions of the contract may be involved.

Public participation in and receipt of comments on contract proposals will be facilitated by adherence to the following procedures:

1. Only persons authorized to act on behalf of the contracting entities may negotiate the terms and conditions of a specific contract proposal.

2. Advance notice of meetings or hearings will be furnished to those parties that have made a timely written request for such notice to the appropriate regional or project office of Reclamation.

3. Written correspondence regarding proposed contracts may be made available to the general public pursuant to the terms and procedures of the Freedom of Information Act (80 Stat. 383), as amended.

4. Written comments on a proposed contract or contract action must be submitted to the appropriate regional officials at the locations and within the time limits set forth in the advance public notices.

5. All written comments received and testimony presented at any public hearings will be reviewed and summarized by the appropriate regional office for use by the contract approving authority.

6. Copies of specific proposed contracts may be obtained from the appropriate regional director or his designated public contact as they become available for review and comment.

7. In the event modifications are made in the form of a proposed contract, the appropriate regional director shall determine whether republication of the notice and/or extension of the comment period is necessary.

Factors considered in making such a determination shall include, but are not limited to: (i) The significance of the modification, and (ii) the degree of public interest which has been expressed over the course of the negotiations. As a minimum, the regional director shall furnish revised contracts to all parties who requested the contract in response to the initial public notice.

Acronym Definitions Used Herein

BON Basis of Negotiation
BCP Boulder Canyon Project
Reclamation Bureau of Reclamation
CAP Central Arizona Project
CUP Central Utah Project
CVP Central Valley Project
CRSP Colorado River Storage Project
D&MC Drainage and Minor Construction
FR Federal Register
IDD Irrigation and Drainage District
ID Irrigation District
M&I Municipal and Industrial
NEPA National Environmental Policy Act
O&M Operation and Maintenance
P–SMBP Pick-Sloan Missouri Basin Program
PPR Present Perfected Right
RRA Reclamation Reform Act
R&B Rehabilitation and Betterment
SOD Safety of Dams
SRPA Small Reclamation Projects Act
WCUA Water Conservation and Utilization Act
WD Water District

Pacific Northwest Region: Bureau of Reclamation, 1150 North Curtis Road, Suite 100, Boise, Idaho 83706–1234, telephone (208) 378–5223.

Modified Contract Action

4. Pioneer Ditch Company, Boise Project, Idaho; Clark and Edwards Canal and Irrigation Company, Enterprise Canal Company, Ltd., Lenroot Canal Company, Liberty Park Canal Company, Poplar ID, all in the Minidoka Project, Idaho; and Juniper Flat District Improvement Company, Wapinitia Project, Oregon: Amendatory repayment and water service contracts; purpose is to conform to the RRA (Pub. L. 97–293).

Completed Contract Action

4. Pioneer Ditch Company, Boise Project, Idaho; Clark and Edwards Canal and Irrigation Company, Enterprise Canal Company, Ltd., Fremont-Madison ID, Lenroot Canal Company, Liberty Park Canal Company, Poplar ID, all in the Minidoka Project, Idaho; and Juniper Flat District Improvement Company, Wapinitia Project, Oregon: Amendatory repayment and water service contracts; purpose is to conform to the RRA (Pub. L. 97–293). Contract with Fremont-Madison ID was executed on September 16, 2002.

Mid-Pacific Region: Bureau of Reclamation, 2800 Cottage Way, Sacramento, California 95825–1898, telephone 916–978–5250.

New Contract Action

41. *San Joaquin Valley National Cemetery, U.S. Department of Veteran Affairs, Delta Division, CVP, California:* Renewal of the long-term water service contract for up to 850 acre-feet with conveyance through the California State Aqueduct pursuant to the CVP–SWP wheeling agreement.

Modified Contract Actions

35. *Sacramento Suburban WD (formerly Northridge WD), CVP, California:* Execution of long-term Warren Act contract for conveyance of nonproject water. This contract will allow CVP facilities to be used to deliver nonproject water to the Sacramento Suburban WD for use within their service area.

38. *Cachuma Operation and Maintenance Board, Cachuma Project, California:* Long-term contract to transfer responsibility for O&M and O&M funding of certain Cachuma Project facilities to the member units.

Completed Contract Actions

7. *Cachuma Operation and Maintenance Board, Cachuma Project, California:* Repayment contract for SOD work on Bradbury Dam. Contract was executed July 1, 2002.

12. *Cachuma Operations and Maintenance Board, Cachuma Project, California:* Temporary interim contract (not to exceed 1 year) to transfer responsibility of certain Cachuma Project facilities to member units. Temporary interim contract executed on January 1, 2002, and expired on October 31, 2002.

15. *Placer County Water Agency, CVP, California:* Amendment of existing water service contract to allow for additional points of diversion and adjustment to Project water quantities. The amended contract will conform to current Reclamation law. Amendatory contract executed August 27, 2002.

Lower Colorado Region: Bureau of Reclamation, PO Box 61470 (Nevada Highway and Park Street), Boulder City, Nevada 89006–1470, telephone 702–293–8536.

New Contract Actions

49. *All-American Canal, BCP, California:* Agreement among Reclamation, Imperial ID, and Metropolitan WD to provide for the construction of lining for 23 miles of the All-American Canal, funded by the State of California.

50. *All-American Canal, BCP, California:* Agreement among Reclamation, Imperial ID, Metropolitan WD, and Coachella Valley WD for the Federally funded construction of a reservoir(s) and associated facilities that will improve Reclamation's ability to regulate and manage Colorado River water.

51. *Pasquinelli, Gary J. and Barbara J., BCP, Arizona:* Contract for the delivery of 486 acre-feet of Colorado River water for agricultural purposes.

52. *Sun City West Company, CAP, Arizona:* Assignment of M&I subcontract rights and responsibilities to Arizona American Water Company.

53. *Sun City Company, CAP, Arizona:* Assignment of M&I subcontract rights and responsibilities to Arizona American Water Company.

54. *Citizens Communications Company, Agua Fria Division, CAP, Arizona:* Assignment of M&I subcontract rights and responsibilities to Arizona American Water Company.

Modified Contract Action

24. *ASARCO Inc., CAP, Arizona:* Amendment of subcontract to extend the deadline until December 31, 2003, for giving notice of termination on exchange.

Completed Contract Action

13. *City of Needles, Lower Colorado Water Supply Project, California:* Amend contract No. 2–07–30–W0280 to extend the City's water service subcontracting authority to the Counties of Imperial and Riverside.

Upper Colorado Region: Bureau of Reclamation, 125 South State Street, Room 6107, Salt Lake City, Utah 84138–1102, telephone 801–524–4419.

New Contract Actions

22. *City of Page, Arizona, Glen Canyon Unit, CRSP, Arizona:* Long-term contract for 1,000 acre-feet of water for municipal purposes.

23. *Castle Valley Special Service District, City of Huntington, Emery County Project:* Assignment of contract for 189 acre-feet of water for municipal purposes.

Discontinued Contract Action

19. *Ute Mountain Ute Tribe, Dolores Project, Colorado:* Short-term (5-year) carriage contract with the Ute Mountain Ute Tribe to carry up to 3,500 acre-feet of nonproject water in project facilities under the authority of the Warren Act of 1911.

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Completed Contract Action

15. *Mancos Water Conservancy District, Mancos Project, Colorado:* Various carriage contracts with individual irrigators and the District to allow the carriage of up to 1,000 acre-feet of nonproject irrigation water in project facilities under the authority of Pub. L. 106–549 for the Mancos Project. Contracts executed June 10, 2002.

Great Plains Region: Bureau of Reclamation, PO Box 36900, Federal Building, 316 North 26th Street, Billings, Montana 59107–6900, telephone 406–247–7730.

New Contract Action

43. *Chippewa Cree Tribe, Rocky Boy's Indian Reservation, Montana:* Pursuant to Title II, section 201(a)(2), of the Rocky Boy's Indian Reserved Water Rights Settlement and Water Supply Enhancement Act of 1999 (Pub. L. 106–163), Reclamation is negotiating to allocate 10,000 acre-feet per year of stored water in Lake Elwell.

Modified Contract Actions

8. *Angostura ID, Angostura Unit, P–SMBP, South Dakota:* An interim 3-year contract was executed on June 9, 2000, to provide for a continuing water supply and allow adequate time for completion of the Environmental Impact Statement for long-term contract renewal. A BON for a long-term contract renewal has been approved by the Commissioner's Office. Contract negotiations for a long-term contract are expected to be completed by the end of the calendar year.

31. *Lower Marias Unit, P–SMBP, Montana:* Town of Chester water service contract expires December of 2002. Initiating negotiation for renewal of a long-term water service contract for an annual supply of raw water for domestic use from Tiber Reservoir not to exceed 500 acre-feet. An interim contract may be issued to continue delivery of water until the necessary actions can be completed to renew the long-term contract.

32. *City of Dickinson, P–SMBP, Dickinson Unit, North Dakota:* A temporary contract has been negotiated with the Park Board for minor amounts of water from Dickinson Dam. Negotiate a long-term water service contract with the City of Dickinson or Park Board, for minor amounts of water from Dickinson Dam.

35. *Pueblo Board of Water Works, Fryingpan-Arkansas Project, Colorado:* Water conveyance contract expires in October of 2002. On September 25, 2002, an amendment was executed to extend the contract term by 1 year, thereby extending the expiration date to October 1, 2003. Initiating negotiations for renewal of a water conveyance contract for annual conveyance of up to 750 acre-feet of nonproject water through the Nast and Boustead Tunnel System.

Completed Contract Action

39. *La Feria ID, Lower Rio Grande Rehabilitation Project, La Feria Division, Texas:* The District has repaid the repayment obligation and title to all project works, lands, or interests in lands originally conveyed by the District to the United States shall now be transferred back to the District in accordance with the authorizing legislation, Pub. L. 86–357 dated September 22, 1959, and the contract shall be terminated. Title to the project has been transferred to the District effective September 3, 2002.

Dated: October 16, 2002.

Elizabeth Cordova-Harrison,

Deputy Director, Office of Policy.

[FR Doc. 02–28996 Filed 11–14–02; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF JUSTICE

Office of Community Policing Services; Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-day notice of information collection under review: new collection; Making Officer Redeployment Effective (MORE) Closeout Report.

The Department of Justice (DOJ), Office of Community Oriented Policing Services (COPS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the pubic and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 67, Number 163, page 54462 on August 22, 2002, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until December 16, 2002. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* New collection.

(2) *Title of the Form/Collection:* Making Officer Redeployment Effective (MORE) Closeout Report.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* COPS Form Number: N/A. Office of Community Oriented Policing Services, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: MORE award recipients. Other: None. Abstract: The information collected will be used by the COPS Office to determine that MORE award recipients have completed the grant programmatic requirements.

(5) *As estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There will be an estimated 1,856 respondents responding to the survey. The estimated amount of time required for the average respondent to respond is 1 hour.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are approximately 3,712 annual burden hours associated with this collection.

If additional information is required contact: Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street NW., Washington, DC 20530.

Dated: November 7, 2002.

Brenda E. Dyer,

Department Deputy Clearance Officer, Department of Justice.

[FR Doc. 02–28984 Filed 11–14–02; 8:45 am]

BILLING CODE 4410–AT–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to CERCLA

Notice is hereby given that on November 4, 2002, the United States lodged a proposed Consent Decree between the United States, the State of Arkansas and Oakley-Keesee Ford, Inc. ("Oakley-Keesee") with the United States District Court for the Eastern District of Arkansas in *United States et al.* v. *Oakley-Keesee Ford,* Nos. 3:98CV00362, 3:98CV00363, consolidated with *Signature Comb, Inc. et al.* v. *Oakley-Keesee Ford,* No. 3:02CV00125 (SMR).

The proposed Consent Decree resolves the claims of the United States and the State of Arkansas against Oakley-Keesee under sections 106(b) and 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act, ("CERCLA"), 42 U.S.C. 9606, 9607, regarding the Gurley Pit and South 8th Street Superfund Sites located in Crittenden County, Arkansas. Under the proposed decree, Oakley-Keesee has agreed to pay the plaintiffs $310,000 within 30 days of the effective date of the Consent Decree as follows: (1) $200,000 will be paid to the Superfund in partial reimbursement of the United States' past and future response costs at the Sites; (2) $100,000 will be paid to the Superfund in penalties for the defendant's failure to comply with the Unilateral Administrative Order to perform the remedial action at the South 8th Street Site; and (3) $10,000 will be paid to the State in partial reimbursement of State's past and future response costs at the Sites.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, United States Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044–7611, and should refer to *United States et al.* v. *Oakley-Keesee Ford,* DJ No. 90–11–2–196/2.

The proposed Consent Decree may be examined at the Office of the United States Attorney for the Eastern District of Arkansas, 425 West Capital, Suite 500, Little Rock, Arkansas 72201; and at the Region VI Office of the United States Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202. A copy of the proposed Consent Decree may be obtained by mail from the Department of Justice Consent Decree Library, P.O. Box 7611, Washington, DC 20044–7611. In requesting a copy, please enclose a check for reproduction costs (at 25 cents per page) in the amount of $7.50, payable to the U.S. Treasury.

Thomas A. Mariani, Jr.,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–28951 Filed 11–14–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on October 28, 2002, two proposed consent decrees in *United States* v. *Ponderosa Fibres of America, Inc., et al.,* Civil Action No. 99–CV–1305 (FJS/RWS), were lodged with the United States District Court for the Northern District of New York.

The United States' Amended Complaint in this action alleges that Ponderosa Fibres of America, Inc. ("PFC"), Martin Bernstein and Jerome Goodman are jointly and severally liable for past and future response costs, currently totaling over $1.3 million, incurred by the United States in connection with the U.S. Environmental Protection Agency's removal of hazardous substances from the St. Lawrence Pulp and Paper Superfund Site in Ogdensburg, St. Lawrence County, New York ("Site"), pursuant to section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9607(a). The Complaint also alleges that certain transfers of funds from PFA to six current and former PFA officers and shareholders, Martin Bernstein, Jeffrey Feil, the Estate of Louis Feil, Nathan Bernstein, Robert L. Pitman and Roland O.A. Fjallstrom, violated the fraudulent transfer provisions of the Federal Debt Collection Procedures Act ("FDCPA"), 28 U.S.C. 3304, 3306, and the Federal Priority Statute ("FPS"), 31 U.S.C. 3713(b). After the United States initiated its recovery action against PFA, the company brought a third-party contribution action against six entities, including The Bank of New York ("BNY") and Sonoco Products Company ("Sonoco"), pursuant to section 113(f) of CERCLA, 42 U.S.C. 9613(f). In April 2002, the Court entered a Consent Decree under which BNY paid $71,250 in partial reimbursement of the United States' response costs.

The first of the two proposed Consent Decrees lodged on October 28 resolves cost recovery and contribution claims against Third-Party Defendant Sonoco Products Company for $110,000. The second proposed Decree resolves FDCPA, FPS and potential cost recovery and contribution claims against Defendants Jeffrey Feil and Estate of Louis Feil for $75,000.

For a period of thirty (30) days from the date of this publication, the Department of Justice will accept comments relating to the proposed Sonoco and Feils Consent Decrees. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, U.S. Department of Justice, c/o David L. Weigert, Esq., Environmental Enforcement Section, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044–7611, and should refer to *United States* v. *Ponderosa Fibres of America, Inc., et al.,* Civil Action No. 99–CV–1305 (FJS/RWS), DJ # 90–11–2–1223/1.

The proposed Consent Decrees may be examined at the Office of the United Statesss Attorney, Northern District of New York, 231 Foley U.S. Courthouse, 445 Broadway, Albany, New York and at U.S. Environmental Protection Agency Region II, 290 Broadway, New York, New York. Copies of the proposed Consent Decrees may also be obtained by mail from the Consent Decree Library, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or by faxing a request to Tonia Fleetwood at (202) 514–0097, phone confirmation number (202) 514–1547. If requesting copies of one or both the proposed Consent Decrees, please specify the requested Decree(s) and enclose a check in the amount of $4.75

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per Decree (25 cents per reproduced page), payable to the U.S. Treasury.

Ronald G. Gluck,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division, Department of Justice.

[FR Doc. 02–28953 Filed 11–14–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under Comprehensive Environmental Response, Compensation and Liability Act

Under 28 CFR 50.7, notice is hereby given that on October 11, 2002, a proposed consent decree in *Reinhold Industries, Inc.* v. *The National Park Service*, 01 Civ. 1806 (MBM), was lodged with the United States District Court for the Southern District of New York.

In this action, Reinhold Industries, Inc. ("Reinhold") seeks a declaratory judgment that any claims asserted by the United States for recovery of costs incurred, or to be incurred, for response actions taken at or in connection with the release or threatened release of hazardous substances at the Valley Forge National Historic Park in Montgomery, Pennsylvania ("Valley Forge") were discharged in bankruptcy. The United States, on behalf of the Secretary of the United States Department of Interior's ("DOI") National Park Service, filed a counterclaim pursuant to section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. 9607, against Reinhold seeking reimbursement of response costs incurred in connection with Valley Forge.

Pursuant to the proposed consent decree, Reinhold shall make a payment in the amount of $500,000.00 to the DOI in reimbursement of response costs.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and transmitted by one of the following methods: (1) Via U.S. Mail to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611; (2) by facsimile to (202) 353–0296; and/or (3) by overnight delivery, other than through the U.S. Postal Service, c/o Chief, Environmental Enforcement Section, 1425 New York Avenue, NW., 13th Floor, Washington, DC 20005. Each communication should reference *Reinhold Industries, Inc.* v. *The National Park Service*, DOJ # 90–11–2–06991.

The proposed consent decree may be examined at the United States Attorney's Office, 33 Whitehall Street, New York, New York—contact AUSA Silvia L. Serpe at (718) 422–5686. A copy of the proposed consent decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611. When requesting a copy, please enclose a check in the amount of $8.50 (25 cents per page reproduction cost) payable to the U.S. Treasury. Exhibits to the consent decree may be obtained for an additional charge.

Robert Brook,

Assistant Section Chief, Environmental Enforcement Section, Department of Justice.

[FR Doc. 02–28948 Filed 11–14–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging Proposed Consent Decree

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Janice D. Todd*, Civil Action No. 2:01–2179–11 (D.S.C.), was lodged with the United States District Court for the District South Carolina on November 6, 2002. This proposed Consent Decree concerns a complaint filed by the United States of America against Janice D. Todd, pursuant to section 301 of the Clean Water Act, 33 U.S.C. 1311(a), to obtain injunctive relief from and impose civil penalties against the Defendant for constructing a logging road in wetlands adjacent to the Little Salkehatchie River in Colleton County, South Carolina.

The proposed Consent Decree prohibits Janice D. Todd from discharging any pollutant into waters of the United States, unless such discharge complies with the provisions of the Clean Water Act and its implementing regulations, and requires the payment of a civil penalty.

The Department of Justice will accept written comments relating to this proposed consent Decree for thirty (30) days from the date of publication of this notice. Please address comments to Joseph P. Griffith, Jr., Assistant U.S. Attorney, 151 Meeting Street, Suite 200, P.O. Box 978, Charleston, South Carolina and refer to DJ # 90–5–1–1–16818 and civil action number 2:01–2179–11.

The proposed Consent Decree may be examined at the Clerk's Office, United States District Court for the District South Carolina, Hollings, Judicial Center, Meeting Street at Broad Street, Charleston, South Carolina 29401. In addition, the proposed Consent Decree may be viewed on the World Wide Web at *http://www.usdoj.gov/enrd/enrd-home.html*.

Joseph P. Griffith, Jr.,

Assistant United States Attorney, United States Attorney's Office.

[FR Doc. 02–28952 Filed 11–14–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Financial Services Technology Consortium, Inc.

Notice is hereby given that, on September 30, 2002, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Financial Technology Consortium, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Zions Bancorporation, Salt Lake City, UT; Verifia, Mountain View, CA; Harex InfoTech (ZOOP), San Jose, CA; eOne Global, Napa, CA; Top Layer Networks, Westboro, MA; Cape Clear Softwear, Waltham, MA; Gotham Group, New York, NY; and InterComputer Corp., Fullerton, CA have been added as parties to this venture.

Also, Fleet Bank, Dorchester, MA; Authentor Systems, Englewood, CA; Bank of Montreal, Toronto, Ontario, Canada; Telcordia, Morristown, NJ; Visa, Foster City, CA; Online Resources, McLean, VA; Business Logic Corp., Chicago, IL; BAI, Chicago, IL; and CrossCheck, Rohnert Park, CA have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Financial Technology Consortium, Inc., intends to file additional written notification disclosing all changes in membership.

On October 21, 1993, Financial Technology Consortium, Inc. filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on December 14, 1993 (58 FR 65399).

The last notification was filed with the Department on June 28, 2002. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on August 6, 2002 (67 FR 50898).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02–28950 Filed 11–14–02; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Multiservice Switching Forum

Notice is hereby given that, on October 9, 2002, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Multiservice Switching Forum ("MSF") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Bay Packets, Fremont, CA; Catena Networks, Morrisville, NC; Convedia Corporation, Vancouver, British Columbia, Canada; Empirix, Wilmington, MA; Italtel, Milan, Italy; KT Corporation, Seoul, South Korea; Leapstone Systems, Somerset, NJ; MetaSwitch, Alameda, CA; National Communications System, Arlington, VA; NetTest, Markham, Ontario, Canada; Spirent Communications, Sunnyvale, CA; and ZTE Corporation, Shenzhen, Guangdong, China have been added as parties to this venture. ipVerse has changed its name to NexVerse, San Jose, CA; and LM Ericsson has changed its name to Ericsson, Stockholm, Sweden. Also, Armillaire Technologies, Bethesda, MD; CPlane, Menlo Park, CA; Data Connection, Enfield, United Kingdom; France Telecom, Lannion, Cedex. France; General Bandwidth, Austin, TX; Intel, Santa Clara, CA; KPN Telecom, The Hague, The Netherlands; Mahi Networks, Petaluma, CA; Mercury Communications, Middletown, NJ; Nokia, Helsinki, Finland; OKI Electric Industry, Chiba, Japan; SBC, Austin, TX; Swisscom AG, Berne, Switzerland; Tachion Networks, Eatontown, NJ; Telcordia Technologies, Morristown, NJ; Telecom Italia, Rome Italy; Turin Networks, Petaluma, CA; Voxpath Networks, Austin, TX; and Westwave Communications, Santa Rosa, CA have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and MSF intends to file additional written notifications disclosing all changes in membership.

On January 22, 1999, MSF filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on May 26, 1999 (64 FR 28519).

The last notification was filed with the Department on April 4, 2001. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on May 23, 2001 (66 FR 28546).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02–28949 Filed 11–14–02; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-day notice of information collection under review: new collection; NTTAC user Feedback Form.

The Department of Justice (DOJ), Office of Justice Programs has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 67, Number 161, page 53967 on August 20, 2002, allowing for a 60 day comment period. The purpose of this notice is to allow for an additional 30 days for public comment until December 16, 2002. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20530. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* New collection.

(2) *Title of the Form/Collection:* NTTAC user Feedback Form.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: None. Office of Justice Programs, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* State, Local or Tribal Government; Individuals or households: Not-for-profit institutions; Businesses or other for-profit. The NTTAC User Feedback Form is designed to collect the data necessary to continuously improve customer service intended to meet the needs of the juvenile justice field at-large and the OJJDP-funded TA provider network. Within 15 days of satisfying a request for technical assistance (TA), NTTAC staff will send this Form to TA requester to capture important feedback on the TA requester's satisfaction with the quality,

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efficiency, referrals, and resources of the NTTAC.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There will be an estimated 290 responses, one for each respondent. The estimated amount of time required for the average respondent to respond is 8 minutes.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 2,320 burden hours annually associated with this information collection.

If additional information is required contact: Mrs. Brenda E. Dyer, Deputy Clearance Officer, U.S. Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street NW., Washington, DC 20530.

Dated: November 8, 2002.

Brenda E. Dyer,

Department Deputy Clearance Officer, Department of Justice.

[FR Doc. 02–28983 Filed 11–14–02; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

[OJP(OJJDP)–1358]

Program Announcement for the Promising Programs for Substance Abuse Prevention: Replication and Evaluation Initiative

AGENCY: Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, Justice.

ACTION: Notice of solicitation.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention (OJJDP) is requesting applications for the Promising Programs for Substance Abuse Prevention: Replication and Evaluation Initiative, a 2-year initiative that will replicate and evaluate the effectiveness of two school-based substance abuse prevention programs: Project ALERT and Project SUCCESS. Through this research initiative, OJJDP seeks to determine whether positive program outcomes can be replicated in different communities and sustained over time. The evaluator will select two replication sites (one for each program model), oversee program implementation in those sites, and work with program developers to assess and promote program fidelity at each site. The evaluator will conduct an outcome evaluation of the programs' effectiveness in preventing, reducing, and/or eliminating substance abuse by youth. Findings will enhance knowledge about effective strategies for prevention of substance abuse by youth and help communities decide how to spend the limited resources that are available for prevention activities.

DATES: Applications must be received by December 30, 2002.

ADDRESSES: Interested applicants can obtain the *OJJDP Application Kit* by calling the Juvenile Justice Clearinghouse at 800–638–8736, by sending an e-mail request to *puborder@ncjrs.org*, or through fax-on-demand. (For fax-on-demand, call 800–638–8736, select option 1, then select option 2 and enter the following four-digit numbers: 9119, 9120, 9121, and 9122. Application kits will be faxed in four sections because of the number of pages.) The *Application Kit* is also available online at *http://www.ncjrs.org/pdffiles1/ojjdp/sl000480.pdf*.

All applicants must submit the original application (signed in blue ink) and five copies. Applications should be unbound and fastened by a binder clip in the top left-hand corner. OJJDP strongly recommends that applicants number each page of the application. To ensure that applications are received by the due date, applicants should use a mail service that documents the date of receipt. Because OJJDP anticipates sending applicants written notification of application receipt approximately 4 weeks after the solicitation closing date, applicants are encouraged to use a traceable shipping method. Faxed or e-mailed applications will not be accepted. Postmark dates will not be accepted as proof of meeting the deadline. Applications received after 5 p.m. ET on December 30, 2002 will be deemed late and may not be accepted. The closing date and time apply to all applications. To ensure prompt delivery, please adhere to the following guidelines:

Applications sent by U.S. mail: Use registered mail to send applications to the following address: Office of Juvenile Justice and Delinquency Prevention, c/o Juvenile Justice Resource Center, 2277 Research Boulevard, Mail Stop 2K, Rockville, MD 20850. In the lower left-hand corner of the envelope, clearly write "Promising Programs for Substance Abuse Prevention: Replication and Evaluation Initiative."

Applications sent by overnight delivery service: Allow at least 48 hours for delivery. Send applications to the following address: Office of Juvenile Justice and Delinquency Prevention, c/o Juvenile Justice Resource Center, 2277 Research Boulevard, Mail Stop 2K, Rockville, MD 20850; 800–638–8736 (phone number required by some carriers). In the lower left-hand corner of the envelope, clearly write "Promising Programs for Substance Abuse Prevention: Replication and Evaluation Initiative."

Applications delivered by hand: Deliver by 5 p.m. ET, December 30, 2002, to the Juvenile Justice Resource Center, 2277 Research Boulevard, Rockville, MD 20850; 301–519–5535. Hand deliveries will be accepted daily between 8:30 a.m. and 5 p.m. ET, excluding Saturdays, Sundays, and Federal holidays. Entrance to the resource center requires proper photo identification.

FOR FURTHER INFORMATION CONTACT: Janet Chiancone, Program Manager, Research and Program Development Division, Office of Juvenile Justice and Delinquency Prevention, 202–353–9258 [This is not a toll-free number.] (e-mail: *chiancoj@ojp.usdoj.gov.*)

SUPPLEMENTARY INFORMATION:

Purpose

The purpose of the Promising Programs for Substance Abuse Prevention: Replication and Evaluation Initiative is to replicate and test the effectiveness of two school-based substance abuse prevention programs: Project ALERT and Project SUCCESS.[1] OJJDP seeks to determine whether the positive outcomes found in prior evaluations can be replicated in other sites. Identifying programs that meet these requirements will enhance the field's knowledge about "what works" in youth substance abuse prevention and will help communities decide how to spend the limited resources that are available for prevention activities.

As a result of this solicitation, OJJDP will select a grantee to oversee the replication of Project ALERT and Project SUCCESS and then evaluate the outcomes.

Background

This program is authorized by Congress as set forth under the Fiscal Year 2002 Appropriations Act, Public Law 107–77 (November 28, 2001).

Substance abuse is one of the most troubling problems facing communities throughout the Nation. It touches many facets of Americans' lives, affecting crime, education, health care costs, and

[1] Detailed information about both program models is available on the OJJDP Web site at *ojjdp.ncjrs.org/grants/current.html*. To receive faxed information about the program models, call 800–638–8736 or 301–519–6556 and follow the step-by-step instructions to request item number 2005.

the productivity of the Nation as a whole. Estimates indicate that substance abuse contributes to 130,000 deaths annually and costs approximately $275 billion in health care expenses, lost productivity, related crime, and other social costs (U.S. Department of Justice, Office of Justice Programs, 2000).

Over the past several decades, prevention research has focused on identifying the factors that put young people at risk for delinquency (risk factors) and those that decrease the likelihood that they will engage in problem behaviors (protective factors). Studies of risk and protective factors for delinquency have enabled researchers to identify the probability that youth will become involved in delinquent and predelinquent behavior. These efforts have identified numerous risk factors for substance abuse, including the availability of drugs, early academic failure, family conflict, and extreme economic deprivation (Howell, 1995). Many of these risk factors are associated not only with substance abuse but also with an array of physical, mental, and behavioral problems. For example, school failure is a strong predictor of substance abuse, juvenile delinquency, and other problem behaviors (Howell, 1995). Research has also demonstrated that early youth involvement with any drug is a risk factor for later problem behavior and criminal activity. Further, the more severe the early involvement, the greater the likelihood that antisocial behaviors will emerge. OJJDP's Program of Research on the Causes and Correlates of Delinquency found a strong relationship between drug use and serious delinquent behavior (Huizinga *et al.*, 2000). Although none of these findings indicate that substance abuse is a direct cause of crime and/or violence, the two are clearly interrelated.

Exposure to these risk factors, however, does not guarantee that a youth will engage in problem behaviors or develop a substance abuse problem. Many youth exposed to multiple risk factors avoid problem behaviors as a result of protective factors that help to insulate them from these influences. Protective factors include bonds with adults who exert a positive influence, a positive social orientation, and/or a resilient temperament. Such factors appear to protect youth from initiating drug use and engaging in other problem behaviors.

A recent report published by The National Center on Addiction and Substance Abuse at Columbia University (CASA) indicates that religion may provide some protective influence for youth when it comes to substance abuse (National Center on Addiction and Substance Abuse, 2001). For example, CASA's annual teen surveys of attitudes on substance abuse have consistently found that adolescents who report attending religious services are less likely to report substance abuse. The CASA report also cites some other research studies which have found that involvement in faith-based activities is associated with lower levels of substance use.

Prevention efforts must seek to reduce youth's exposure to risk factors while increasing the number of protective factors in their lives. In addition, prevention programs must be appropriate for the culture, gender, and age of the target population.

As knowledge of risk and protective factors has grown, policymakers, funding agencies, and program administrators have increasingly called for more accountability from prevention programs. Efforts sponsored by Federal agencies, State governments, private foundations, and other organizations have stressed the importance of implementing approaches that have been researched and proven effective. This increased emphasis on performance has prompted many needed developments, including the recognition that programs with scientifically defensible findings must drive services. In addition, although effective drug prevention curriculums exist, research suggests that most of the drug prevention funding in this country is spent on aggressively marketed programs that have not been evaluated or proven effective (Dusenbury, Falco, and Lake, 1997).

Although prevention research has made great strides over the past several decades, the focus on research-based programs poses a challenge to prevention practitioners. It is particularly difficult for them to identify prevention efforts that have clearly linked program outcomes to program interventions. Therefore, it is critical to identify such approaches and to disseminate this information to the field so that research-based prevention programs are implemented.

Additionally, a lack of research funding often results in evaluations of substance abuse prevention programs that are limited in scope and do not have the level of rigor needed to determine true effectiveness. In an attempt to serve as many youth and families as possible, funds often are spent primarily on program activities, while spending on evaluation activities is restricted. Even when program effectiveness is measured, programs rarely conduct followup research to determine whether those effects are sustained over time. If OJJDP and the juvenile justice community are to identify what strategies prevent juvenile substance abuse, program evaluations must meet higher standards.

In developing this initiative, OJJDP relied on the knowledge and experience of two prevention centers: The Center for the Study and Prevention of Violence (CSPV) at the University of Colorado, Boulder (*http://www.colorado.edu/cspv/blueprints*) and The Center for Substance Abuse Prevention (CSAP) National Registry of Effective Prevention Programs (*http://www.samhsa.gov/centers/csap/modelprograms*). These centers provide communities with information about programs that effectively prevent substance abuse and/or violence among juveniles.

Goals

The overall goal of OJJDP's Promising Programs for Substance Abuse Prevention: Replication and Evaluation Initiative is to evaluate two substance abuse prevention program models that have shown promising results. Through this research initiative, OJJDP seeks to determine whether positive outcomes can be replicated in different communities and sustained over time. Specific research questions that OJJDP seeks to answer through this evaluation include:

- Are these programs effective in preventing, reducing, and/or eliminating youth substance abuse?
- Can the positive effects of these programs be replicated in other sites?
- Can the positive effects be sustained for 1 year after program completion?

Objectives

The objectives of this initiative are as follows:

- Select two appropriate replication sites and oversee the implementation of program activities in those sites.
- Work with the developer of each program model to document program implementation of the replication sites and to assess and promote program fidelity.
- Conduct a rigorous outcome evaluation of the replication efforts to measure the programs' effectiveness in preventing, reducing, and/or eliminating youth substance use.

Project Strategy

OJJDP will competitively award one cooperative agreement from this solicitation. The applicant selected will be responsible for overseeing the identification of appropriate replication sites, working with developers of the

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program models to ensure that the programs are implemented with fidelity to the respective model, and conducting a rigorous outcome evaluation of both replication efforts. Given the purpose and goals of this initiative, OJJDP requires that the evaluation meet these minimum standards:

- *Experimental or quasi-experimental design.* The evaluator must use either an experimental or quasi-experimental design. Ideally, an evaluation design randomly assigns subjects to either experimental or control conditions. However, if a service intervention applies to a group (such as a classroom), this design may simply not be feasible (Wagner, Swenson, and Henggeler, 2000). In such cases, a quasi-experimental design in which experimental classrooms or schools are matched with control classrooms or schools might be more appropriate. For this initiative, OJJDP intends to use the most rigorous evaluation design possible for each program model.
- *Adequate sample sizes.* Evaluators must ensure that sample sizes are large enough to detect statistically significant differences between experimental and control groups. Although it is difficult to quantify in advance the actual number of subjects that will be needed, the national evaluator should plan on a minimum sample size of 200 subjects (100 in the experimental group and 100 in the control group) throughout the project period. Keeping in mind the probability of a high attrition rate (especially with at-risk subjects), the national evaluator must plan for a sample size that will be adequate after attrition.
- *Appropriate measures.* The evaluator must use measures proven to be reliable and valid. Because this initiative intends to further test the effectiveness of these two programs, the national evaluator should use instruments that, at a minimum, measure the same indicators as those measured in previous program evaluations. As part of their proposals, applicants must fully describe the measures they plan to use and justify their selection of those measures. However, the final selection of measures will occur in consultation with the Evaluation Advisory Board (discussed later in this solicitation) and OJJDP. The national evaluator must apply evaluation measures fairly, accurately, and consistently with regard to all study participants.
- *Measurement of sustained effects.* One factor that determines program effectiveness is whether the effects of the program extend beyond the program period. The national evaluator should plan to measure the effects of each program model 1 year after the program ends.

Eligibility Requirements

OJJDP invites applications from public and private agencies, organizations, institutions, and individuals. Applicants must demonstrate both a capacity to manage this replication effort and experience in evaluating substance abuse prevention programs. Private, for-profit organizations must agree to waive any profit or fee. Joint applications from two or more eligible applicants are welcome, as long as one is designated as the primary applicant and the others are designated as coapplicants.

Major Tasks

The applicant selected for funding will be required to perform the following activities.

Identify and Recommend Selection of Replication Sites

The applicant selected as the national evaluator should be prepared to work with OJJDP and the Advisory Board to identify and select two replication sites (one for each program model). A primary factor in determining whether to select a site for replication will be the site's preparedness to implement the program and participate in a rigorous evaluation.

Within the first 2 months of award, the evaluator will be responsible for developing the criteria that will determine the preparedness of a site for selection as a replication site. Identification of replication sites may include conducting site visits (possibly in conjunction with OJJDP staff and program model developers) and meeting with school personnel, potential project partners, and others to determine the readiness of a site to participate in this replication initiative and evaluation. The national evaluator will compile and analyze the results of the site visits and other data and provide that information to OJJDP and the Evaluation Advisory Board (see the "Product Delivery and Timeline" section).

Establish Evaluation Advisory Board

During the first 3 months of the project, the national evaluator will establish and convene an Evaluation Advisory Board to oversee the activities in this project. The Advisory Board membership will include representatives from OJJDP, CSAP, CSPV, Project ALERT, and Project SUCCESS. Applicants must include letters of commitment from three other individuals who will serve on this Advisory Board. These individuals should have expertise in one or more of the following areas: Research design and methodology, youth substance abuse, youth and family development, organizational development and community-based programming, and research in school and/or community settings. Applicants should anticipate that the Evaluation Advisory Board will meet three times during the first budget period (24 months) at a location to be determined.

Process Evaluation

During the first 24 months of the project, the national evaluator will conduct a process evaluation of the two replication sites to ensure that the implementation remains true to the chosen program model. This activity will include developing materials that inform the local project staff about the process evaluation strategy, including instruments, mechanisms, and procedures for collecting and processing data. The national evaluator will be responsible for compiling and analyzing results of the process evaluation and providing routine feedback to the sites on the program planning, development, and implementation process.

Outcome Evaluation Design

During months 7–9, the national evaluator will design a rigorous outcome evaluation for each of the two replication sites. As part of their proposals, applicants must submit a basic framework for evaluating each of the two program models. These frameworks must be included in the application package submitted to OJJDP. Once the replication sites have been selected, the national evaluator must expand the two basic frameworks to create a detailed outcome evaluation design for each site. The outcome evaluations should include a strong research design that, at a minimum, meets the four standards set forth in the "Project Strategy" section of this solicitation. The evaluation must also include an onsite component.

The final evaluation designs will be prepared in consultation with the replication sites, the Evaluation Advisory Board, and OJJDP. During this period, the applicant will work with OJJDP to prepare information that will be submitted to the Office of Management and Budget (OMB) as required under the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. (See "Project Design" for more information about this requirement.)

Outcome Evaluation Implementation

Once OJJDP approves the final designs for the outcome evaluation, the national evaluator will conduct the evaluation at each replication site. Implementation of the outcome evaluation is expected to begin in month 10 and continue through month 24—the end of the first budget period—and beyond (see "Budget"). The national evaluator will provide onsite training and technical assistance to site staff regarding data handling procedures and confidentiality issues and will provide sites with the materials and expertise needed to collect and report data (including instruments, databases, and other materials).

Product Delivery and Timeline

The national evaluator will be required to develop several products, including the following:

- A draft document that outlines the criteria that will be used to select the two sites for replication and evaluation. This document is due to OJJDP and the Evaluation Advisory Board 3 months after the grant award.
- A document that recommends which two sites should be selected for participation in this evaluation initiative. This document is due to OJJDP and the Evaluation Advisory Board 6 months after the grant award.
- A draft document that details the evaluation designs for outcome evaluations of Project ALERT and Project SUCCESS. This document is due to OJJDP 9 months after the grant award.
- Copies of materials prepared for the replication sites; materials should communicate the process and outcome evaluation strategy, including instruments, mechanisms, and procedures to collect process data. These materials are due to OJJDP 12 months after the grant award.
- A draft article (written in a style appropriate for submission to a peer-reviewed research journal) that describes the methodology being used in conducting the outcome evaluations. This document is due to OJJDP 18 months after the grant award.
- An Interim Evaluation Report that documents the activities accomplished in the first budget period (24 months) and provides a workplan for the following budget period. This document is due to OJJDP 20 months after the grant award.

Following the first budget period, OJJDP may require the national evaluator to prepare additional products, including the following:

- An OJJDP Bulletin that details the activities and findings of the replication initiative, including the findings of the process and outcome evaluations.
- A minimum of two articles (written in a style appropriate for submission to a peer-reviewed research journal) that detail the findings of each program and of the outcome evaluation.

Selection Criteria

Applicants will be evaluated and rated by a peer review panel according to the criteria outlined below.

Problems To Be Addressed (25 points)

Applicants must clearly and concisely discuss their understanding of the effects of prevention, intervention, and treatment of youth substance abuse. The programs being replicated address risk and protective factors that include multiple domains and have causal linkages to youth substance abuse, including academic failure and mental health issues. Applicants should demonstrate an understanding of these risk factors, including their interrelationship and impact on youth substance abuse and delinquency. In addition, applicants should discuss evaluation methods for measuring the program's ability to prevent and/or reduce substance abuse among youth.

Applicants should also discuss how they will use rigorous evaluation methods to achieve the evaluation objectives. As part of this discussion, applicants should address any anticipated problems associated with identifying replication sites, carrying out the replication activities, and/or evaluating the two program models and should propose potential solutions. Applicants should demonstrate a thorough understanding of substance abuse prevention programming, theory-driven evaluation, school-based prevention and intervention programs, and experimental research methods.

Goals and Objectives (10 points)

To conduct and complete this evaluation effectively, applicants must define specific, measurable goals and objectives. These should be guided by the requirements of this solicitation.

Project Design (30 points)

Applicants must present a clear design, accompanied by a timetable, that details how they will accomplish the goals and objectives of this initiative and deliver the required products. Applicants should address the major activities described in this solicitation and how they will carry out the activities. Replication activities that should be discussed include the following:

- Developing criteria for site selection.
- Working with OJJDP and the program model developers to identify and select replication sites.
- Managing the distribution of funds to the replication sites.
- Providing oversight of program implementation activities.

Evaluation activities that should be discussed include, but are not limited to, the following:

- Consulting with the program model developers.
- Developing evaluation instruments.
- Determining methods.
- Disseminating information.
- Communicating with site personnel.
- Conducting (or managing) onsite evaluation activities.
- Monitoring the evaluation's progress.

Applicants must include in the proposal narrative two draft evaluation frameworks (each one no longer than four double-spaced pages) that outline the design and methodology proposed for evaluating each of the two program models. Applicants must propose evaluation designs that will foster a collaborative and supportive relationship between the program sites, the developers of the program models, OJJDP, and themselves.

The national evaluator should be prepared to work with OJJDP in preparing information that will be submitted to OMB as required under the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. Under this Act, the national evaluator must submit an extensive narrative that both states what goals and methods are planned for data collection and justifies the burden placed on respondents. The OMB clearance process includes two public comment periods and takes a minimum of 90 days, although it can take up to 180 days. Applicants should incorporate the activities associated with PRA requirements into the timetable.

Management/Organizational Capability (25 points)

Applicants must include a discussion of how they will manage and coordinate this replication evaluation initiative to achieve its goals and objectives. Management structure and staffing must be adequate and appropriate for successful project implementation. Applicants must identify responsible individuals and key consultants and specify their time commitments and major tasks. Key staff and consultants must have significant experience with evaluation research, particularly research on substance abuse prevention

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and research that uses an experimental or quasi-experimental design. Resumes for key staff and key consultants must be attached as part of the application's appendixes.

Applicants must demonstrate existing relationships and the ability to work effectively with a range of agencies and service providers, including, but not limited to, schools, courts, law enforcement agencies, child protective service agencies, mental health service providers, and other community agencies. Because the two models being replicated are school-based programs, experience in conducting evaluation research in a school setting is vital. In addition, applicants should highlight any previous experience in conducting evaluations of any of the programs being replicated through this initiative or any other prevention programs.

Applicants must present a detailed timeline that identifies responsible individuals and their time commitments, major tasks, and milestones (*e.g.*, advisory board meetings, products due to OJJDP).

Budget (10 points)

Applicants must provide a proposed budget that is complete, reasonable, and allowable in relation to the activities to be undertaken. The maximum funding available for the first budget period (24 months) is $2 million. This amount includes costs for all activities: The replication efforts, the process evaluations, and the outcome evaluations. Applicants should set aside $1 million of this amount for the replication efforts over a 3-year period ($650,000 for Project SUCCESS and $350,000 for Project ALERT). The remaining $1 million is for process and outcome evaluation activities for the first 24-month budget period, including the following mandatory items: costs related to site identification (including travel, if appropriate), costs for Evaluation Advisory Board meetings, travel costs, and costs associated with the evaluation activities. An applicant's budget should include the time, travel, and meeting costs incurred by the six non-Federal Advisory Board members. An applicant should also include in the budget any costs associated with process evaluation activities, including consultation with the developers of Project SUCCESS and Project ALERT.

The full project period is 5 years, and we anticipate that applicants will apply for continuation funding for the balance of the project during the 20th month.

Format

The narrative portion of this application must be submitted on 8½-by 11-inch paper, double spaced, on one side only, and printed in a standard 12-point font. All sections of the narrative must be double spaced, including bullets, lists, tables, and quotations. (References and/or endnotes at the end of the narrative, appendixes, forms, assurances, and budget worksheets and accompanying narrative do not count toward the page limit.) These requirements are necessary to maintain fair and uniform consideration of all applicants. If the narrative does not conform to these standards, OJJDP will deem the application ineligible for consideration. The application narrative must not exceed 50 pages, including the 8 pages describing the evaluation frameworks.

Award Period

OJJDP plans to fund the replication evaluation for 5 years. The present solicitation will award funding for the initial budget period of 24 months. Funding after the first budget period will depend on grantee performance, availability of funds, and other criteria established at the time of the award.

Award Amount

Up to $2 million is available for the initial 24-month budget period.

Human Subjects

Applicants are advised that any project that will involve the use of human research subjects must be reviewed by an Institutional Review Board (IRB), in accordance with U.S. Department of Justice regulations at 28 CFR 46. IRB review is not required prior to submission of the application. However, if an award is made and the project involves research using human subjects, OJJDP will place a special condition on the award requiring that the project be approved by an appropriate IRB before Federal funds can be expended on activities involving human subjects. Applicants should include plans for IRB review in the project timetable submitted with the proposal.

Performance Measurement

To ensure compliance under the Government Performance and Results Act (GPRA), Public Law 103–62, this solicitation notifies applicants that they are required to collect and report data that measure the results of the program implemented with this grant. Performance under this solicitation is to be measured by the number of youth served by each drug demonstration program.

Award recipients will be required to collect and report data to demonstrate performance on this measure. Specifically, award recipients will be required to collect and report the following performance data:

- Data on the selection of two replication sites (one for each school-based substance abuse prevention program model), implementation of the models, and the results of outcome evaluations of the program models.
- Data on whether both evaluation sites met the rigorous scientific standards of social science research (*e.g.*, appropriate sample sizes and instruments used) as determined after a formal, annual review to be conducted by the Advisory Board.
- Data on the review and resolution of any concerns identified in the Advisory Board's interim evaluation report.
- Best practices and methods for community prevention of juvenile substance abuse and allocation of limited substance abuse prevention resources, to be identified and disseminated after a peer review of the process and outcome evaluations.

Your assistance in obtaining this information will facilitate future program planning and will allow OJP to provide Congress with measurable results of federally funded programs.

Catalog of Federal Domestic Assistance (CFDA) Number

For this program, the CFDA number is 16.728. This number is required on Standard Form 424, Application for Federal Assistance. This form is included in the *OJJDP Application Kit*, available online at *http://www.ncjrs.org/pdffiles1/ojjdp/sl000480.pdf*.

Coordination of Federal Efforts

To encourage better coordination among Federal agencies in addressing State and local needs, DOJ requires applicants to provide information on the following items: (1) Active Federal grant award(s) from DOJ, (2) any pending application(s) for Federal funds for this or related efforts, and (3) plans for coordinating any funds described in items (1) and (2) with the funding sought by this application. For each Federal award, applicants must include the program and project title, Federal grantor agency, amount of the award, and a brief description of its purpose. For these purposes, the term "related efforts" is defined as one of the following:

- Efforts for the same purpose (i.e., the proposed award would supplement, expand, complement, or continue activities funded with other Federal grants).
- Another phase or component of the same program or project (e.g., to implement a planning effort supported by other Federal funds or to provide a substance abuse treatment or education component within a criminal justice project).
- Services of some kind (e.g., technical assistance, research, or evaluation) for the program or project described in the application.

Due Date

Applicants are responsible for ensuring that the original and five copies of the application package are received by 5 p.m. ET on December 30, 2002.

Contact Information

For further information, contact Janet Chiancone, Program Manager, Research and Program Development Division, 202–353–9258 (e-mail: *chiancoj@ojp.usdoj.gov*).

References

Dusenbury, L., Falco, M., and Lake, A. 1997. A review of the evaluation of 47 drug abuse prevention curricula available nationally. *Journal of School Health* 67(4):127–132.

Howell, J.C., ed. 1995. *Guide for Implementing the Comprehensive Strategy for Serious, Violent, and Chronic Juvenile Offenders.* Washington, DC: U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention.

Huizinga, D., Loeber, R., Thornberry, T., and Cothern, L. 2000. *Co-occurrence of Delinquency and Other Problem Behaviors.* Bulletin. Washington, DC: U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention.

U.S. Department of Justice, Office of Justice Programs. 2000. *Promising Strategies to Reduce Substance Abuse.* Report. Washington, DC: U.S. Department of Justice, Office of Justice Programs.

The National Center on Addiction and Substance Abuse (2001). So Help Me God: Substance Abuse, Religion and Spirituality (Report). New York, NY: The National Center on Addiction and Substance Abuse at Columbia University.

Wagner, E.F., Swenson, C.C., and Henggeler, S.W. 2000. Practical and methodological challenges in validating community-based interventions. *Children's Services: Social Policy, Research, and Practice* 3(4):211–231.

Suggested Readings

Ellickson, P.L., and Bell, R.M. 1990. Drug prevention in junior high: A multi-site longitudinal test. *Science* 247(4948):1299–1305.

Ellickson, P.L., Bell, R.M., and McGuigan, K. 1993. Preventing adolescent drug use: Long-term results of a junior high program. *American Journal of Public Health* 83(6):856–861.

Morehouse, E., and Tobler, N.S. 2000. Preventing and reducing substance use among institutionalized adolescents. *Adolescence* 35(137):1–28.

U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration. 2000. *Summary of Findings from the 1999 National Household Survey on Drug Abuse.* Washington, DC: U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration.

Dated: November 8, 2002.

J. Robert Flores,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 02–28970 Filed 11–14–02; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time to enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts,," shall be in the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or government agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department.

Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

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Modification to General Wage Determination Decisions

The number of the decisions listed to the Government Printing Office document entitled "General Wage Determination Issued Under the Davis-Bacon and related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Connecticut
CT020001 Mar. 1, 2002)
CT020002 Mar. 1, 2002)
CT020003 Mar. 1, 2002)
CT020004 Mar. 1, 2002)
CT020005 Mar. 1, 2002)
CT020008 Mar. 1, 2002)

Volume II

Maryland
MD020001 Mar. 1, 2002)
MD020002 Mar. 1, 2002)
MD020007 Mar. 1, 2002)
MD020011 Mar. 1, 2002)
MD020035 Mar. 1, 2002)
MD020042 Mar. 1, 2002)
MD020043 Mar. 1, 2002)
MD020058 Mar. 1, 2002)

Virginia
VA020003 Mar. 1, 2002)
VA020005 Mar. 1, 2002)
VA020006 Mar. 1, 2002)
VA020009 Mar. 1, 2002)
VA020015 Mar. 1, 2002)
VA020017 Mar. 1, 2002)
VA020018 Mar. 1, 2002)
VA020019 Mar. 1, 2002)
VA020022 Mar. 1, 2002)
VA020023 Mar. 1, 2002)
VA020031 Mar. 1, 2002)
VA020033 Mar. 1, 2002)
VA020035 Mar. 1, 2002)
VA020036 Mar. 1, 2002)
VA020044 Mar. 1, 2002)
VA020051 Mar. 1, 2002)
VA020054 Mar. 1, 2002)
VA020055 Mar. 1, 2002)
VA020076 Mar. 1, 2002)
VA020079 Mar. 1, 2002)
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VA020081 Mar. 1, 2002)
VA020084 Mar. 1, 2002)
VA020085 Mar. 1, 2002)
VA020087 Mar. 1, 2002)
VA020088 Mar. 1, 2002)
VA020092 Mar. 1, 2002)
VA020099 Mar. 1, 2002)

Volume III

South Carolina
SC020033 Mar. 1, 2002)
SC020037 Mar. 1, 2002)
SC020038 Mar. 1, 2002)

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Minnesota
MN020001 Mar. 1, 2002)
MN020003 Mar. 1, 2002)
MN020004 Mar. 1, 2002)
MN020005 Mar. 1, 2002)
MN020007 Mar. 1, 2002)
MN020008 Mar. 1, 2002)
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MN020054 Mar. 1, 2002)
MN020056 Mar. 1, 2002)
MN020057 Mar. 1, 2002)
MN020058 Mar. 1, 2002)
MN020059 Mar. 1, 2002)
MN020061 Mar. 1, 2002)

Ohio
OH020002 Mar. 1, 2002)
OH020006 Mar. 1, 2002)
OH020018 Mar. 1, 2002)
OH020029 Mar. 1, 2002)

Volume V

New Mexico
NM020001 Mar. 1, 2002)

Volume VI

North Dakota
ND020002 Mar. 1, 2002)

Volume VII

California
CA020030 Mar. 1, 2002)
CA020032 Mar. 1, 2002)

Hawaii
HI020001 Mar. 1, 2002)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon And Related Acts". This publication Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and related Acts are available electronically at no cost on the Government Printing Office site at *www.access.gpo.gov/davisbacon*. They are also available electronically by subscription to the Davis-Bacon Online Service (*http://davisbacon.fedworld.gov*) of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068. This subscription offers value-added features such as electronic delivery of modified wage decisions directly to the user's desktop, the ability to access prior wage decisions issued during the year, extensive Help desk Support, etc.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate Volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 7th day of November 2002.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 02–28933 Filed 11–14–02; 8:45 am]

BILLING CODE 4510–27–M

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of the Board of Directors

TIME AND DATE: The Board of Directors of the Legal Services Corporation will meet on November 25, 2002 via conference call. The meeting will begin at 11 a.m. and continue until conclusion of the Board's agenda.

LOCATION: 750 First Street, NE., 11th Floor, Washington, DC 20002, in Room 11026.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of the agenda.
2. Consider and act on Board of Directors' Semiannual Report to Congress for the period of April 1, 2002 through September 30, 2002.
3. Consider and act on other business.
4. Public comment.

FOR MORE INFORMATION CONTACT: Victor M. Fortuno, Vice President for Legal Affairs, General Counsel & Corporate Secretary, at (202) 336–8800.

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Elizabeth Cushing, at (202) 336–8800.

Dated: November 12, 2002.

Victor M. Fortuno,

Vice President for Legal Affairs, General Counsel & Corporate Secretary.

[FR Doc. 02–29122 Filed 11–12–02; 4:54 pm]

BILLING CODE 7050–01–P

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meeting Notice

AGENCY HOLDING MEETING: National Science Foundation, National Science Board.

DATE AND TIME: November 21, 2002: 11 a.m.–11:15 a.m.—Closed Session; November 21, 2002: 11:15 a.m.–11:30 a.m.—Closed Session; November 21, 2002: 12 noon–3:30 p.m. Open Session.

PLACE: The National Science Foundation, Room 1235, 4201 Wilson Boulevard, Arlington, VA 22230, *http://www.nsf.gov/nsb.*

STATUS: Part of this meeting will be closed to the public. Part of this meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Thursday, November 21, 2002

Executive Closed Session (11 a.m.–11:15 a.m.)

Closed Session Minutes, October, 2002.

Closed Session (11:15 a.m.–11:30 a.m.)

Awards and Agreements.

Open Session (12 Noon–3:30 p.m.)

Science Presentations
—Geosciences
—Mathematical and Physical Sciences
Open Session Minutes, October 2002
Closed Session Items for February 2003
Chairman's Report
Director's Report
Cost Sharing Resolution
Guidelines for Setting Priorities for Major Research Facilities
Infrastructure Task Force Report
NSF Advisory Committee for GPRA Performance Assessment
Committee Report
Other Business

Catherine J. Hines,

Operations Officer.

[FR Doc. 02–29158 Filed 11–13–02; 10:28 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. *Type of submission, new, revision, or extension:* Extension.

2. *The title of the information collection:* NRC Form 396, "Certification of Medical Examination by Facility Licensee".

3. *The form number if applicable:* NRC Form 396.

4. *How often the collection is required:* Upon application for an initial operator license, every six years for the renewal of operator or senior operator license, and upon notices of disability.

5. *Who will be required or asked to report:* Facility licensees who are tasked with certifying the medical fitness of an applicant or licensee.

6. *An estimate of the number of responses:* 1,240 (1,100 responses plus 140 recordkeepers).

7. *The estimated number of annual respondents:* 140.

8. *An estimate of the total number of hours needed annually to complete the requirement or request:* 751 (275 hours for reporting [.25 hours per response] and 476 hours for recordkeeping [3.4 hours per recordkeeper]).

9. *An indication of whether Section 3507(d), Public Law 104–13 applies:* Not applicable.

10. *Abstract:* NRC Form 396 is used to transmit information to the NRC regarding the medical condition of applicants for initial operator licenses or renewal of operator licenses and for the maintenance of medical records for all licensed operators. The information is used to determine whether the physical condition and general health of applicants for operator licensees is such that the applicant would not be expected to cause operational errors and endanger public health and safety.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F23, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by December 16, 2002. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date. Bryon Allen, Office of Information and Regulatory Affairs (3150–0024), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3087.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated at Rockville, Maryland, this 7th day of November 2002.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–29061 Filed 11–14–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–443]

North Atlantic Energy Service Corporation; Notice of Partial Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of North Atlantic Energy Service Corporation (the licensee) to withdraw a portion of its August 9, 2001, application for proposed amendment to Facility Operating License No. NPF–86 for the Seabrook Station, Unit No. 1, located in Rockingham County, New Hampshire.

The withdrawn portion of the proposed amendment would have revised the Seabrook Station, Unit No. 1, Technical Specifications (TSs) to relocate TS 3/4.9.3, "Decay Time," to the Seabrook Station Technical Requirements Manual.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on September 19, 2001 (66 FR 48290). However, by letters dated June 24, 2002, and October 14, 2002, the licensee withdrew this portion of the proposed change as discussed above.

For further details with respect to this action, see the application for amendment dated August 9, 2001, as supplemented September 17, 2001, and the licensee's letters dated June 24, 2002, and October 14, 2002, which withdrew a portion of the application

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for license amendment. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public ElectronicReading Room on the internet at the NRC Web site, *http://www.nrc. gov/reading-rm/adams/html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737 or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 8th day of November, 2002.

For the Nuclear Regulatory Commission.

Robert D. Starkey,

Project Manager, Section 2, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–29062 Filed 11–14–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–335 and 50–389]

Florida Power and Light Company, et al., St. Lucie, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption from Title 10 of the CFR, part 54, section 54.21(b), for Facility Operating License Nos. DPR–67 and NPF–16, issued to Florida Power & Light Company, *et al.* (the licensee), for operation of St. Lucie, Units 1 and 2, located in St. Lucie County, Florida.

Environmental Assessment

Identification of the Proposed Action

The proposed action would exempt the licensee from the requirement of 10 CFR 54.21(b), which specifies that an applicant (for the purposes of license renewal, the licensee is the applicant) must submit, each year following submittal of the license renewal application (LRA), and at least three months before scheduled completion of the NRC review, amendments to the renewal application that identify any change to the current licensing basis (CLB) of the facility that materially affects the contents of the LRA, including the final safety analysis report (FSAR) supplement.

The NRC staff initiated the proposed action on its own initiative.

The Need for the Proposed Action

In accordance with 10 CFR 54.21(b), the applicant is required to submit an LRA amendment by November 29, 2002, which is one year after the applicant submitted the application, and a second LRA amendment before April 3, 2003, which is three months prior to the scheduled completion of the NRC review. The exemption would allow the applicant to submit a single LRA amendment three months prior to the scheduled completion of the NRC review. The proposed action will reduce the burden on the staff and applicant associated with submitting two LRA amendments in a four month period.

Environmental Impacts of the Proposed Action

The exemption, if granted, will permit the applicant to prepare and submit a single LRA amendment at least three months prior to the scheduled completion of the NRC review. In short, granting of the exemption will not necessitate, or lead to, changes to the as-built plant design, or to existing procedures at St. Lucie, Units 1 and 2.

The staff evaluated potential radiological environmental impacts associated with the exemption. Since no plant design nor procedure changes will be made, no new accident causal mechanisms would be introduced.

The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to the potential nonradiological impacts, the proposed action does not affect any historic sites. The proposed action involves no plant design nor procedure changes, it does not increase or decrease nonradiological plant effluents, and has no other environmental impact from those previously evaluated by the staff in the final environmental statement (FES). Therefore, there are no significant nonradiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered not issuing the exemption (*i.e.*, the "no-action" alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the FES, for the St. Lucie Plant (NUREG–0842).

Agencies and Persons Contacted

In accordance with its stated policy, on October 8, 2002, the staff consulted with Florida State official, William Passetti, Bureau of Radiation Control, regarding the environmental impact of the proposed action. The State official had no comments or objections.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the LRA for St. Lucie, Units 1 and 2. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS). The ADAMS Public Electronic Reading Room is accessible from the NRC Web site at *http//www.nrc.gov/reading-rm/ADAMS.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC's PDR reference staff at 1–800–397–4229, 301–415–4737, or by e-mail to *PDR@NRC.gov*.

Dated at Rockville, Maryland, this 6th day of November, 2002.

For the Nuclear Regulatory Commission.

Samson Lee,

Chief, License Renewal Section, License Renewal and Environmental Impacts Program, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 02–29060 Filed 11–14–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

All Nuclear Power Reactor Licensees; Notice of Issuance of Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, has taken action on the October 24, 2001, Petition under § 2.206 of Title 10 of the Code of Federal Regulations (10 CFR 2.206) submitted by Mr. Michael D. Kohn (petitioner) on behalf of the National Whistleblower Center. By letter dated January 27, 2002, Mr. Michael D. Kohn submitted an amended Petition. The amended Petition included the names of six additional Petitioners who requested to be added to the Petition. The petitioner requested that the Nuclear Regulatory Commission (NRC) take corrective action to protect the public against the possibility of terrorists seizing control of a large commercial airliner and crashing it into a nuclear power plant in the United States. In addition, the petitioner requested that the NRC take compensatory measures, as set forth in the Petition, to protect the public and environment from the catastrophic impacts of any type of terrorist attack on a nuclear power plant or a spent fuel pool (SFP). The petitioner also requested that the NRC ensure that these compensatory measures are immediately implemented, and that the NRC issue permanent rules, as discussed in the Petition. As a basis for the request described above, the Petitioner stated that:

—No commercial nuclear power plant located in the United States can withstand the impact of a large commercial airliner.

—The NRC intentionally misled the public about its failure to adequately consider risks associated with an air assault on a nuclear facility.

—The NRC knew or should have known that the current design and security measures at the spent fuel pools [SFPs] located at each nuclear power plant are incapable of protecting the population from the catastrophic release of radiation from a potential terrorist attack and immediate and long-term compensatory measures are needed to protect the United States and its citizens.

—The NRC [sic] radioactive material contained in the spent fuel pools are [sic] extremely vulnerable to terrorist attack within six months of a refueling outage. Immediate and long-term compensatory measures are needed to protect the United States and its citizens from an attack on a spent fuel pool within this six month window.

—The NRC must work directly with other security offices in approving compensatory security measures and in approving utility security plans and must re-evaluate its 1979 EIS [Environmental Impact Statement] and 1998 Final Rule regarding SFPs.

—The current background screening requirements which permit "temporary" clearances at nuclear plants do not adequately protect the public.

—The current background screening requirements for long-term clearances at nuclear plants do not adequately protect the public.

—The NRC ended the public's ability to effectively challenge the NRC's decision not to require nuclear power plants to be able to withstand airborne assaults by changing its rules allowing nuclear plants to obtain new 40 year licenses without permitting citizens to challenge "generic" concerns, including risks from terrorist attack.

The NRC sent a copy of the proposed Director's Decision to the petitioner by letter dated May 16, 2002. The petitioner responded with comments by letter dated August 10, 2002. The comments and the staff response to them are enclosures to the Director's Decision.

The staff has partially granted the Petitioner's request to the extent that the NRC has addressed the Petitioner's concerns by issuing Orders on February 25, 2002, to all operating commercial nuclear power plant licensees to implement interim compensatory security measures for the generalized high-level threat environment. The reasons for this determination are explained in the Director's Decision pursuant to 10 CFR 2.206 (DD–02–04), the complete text of which is available in ADAMS for inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and from the ADAMS Public Library component on the NRC's Web site, *http://www.nrc.gov/reading-rm.html* (the Public Electronic Reading Room) at Accession No. ML022470090. If you do not have access to ADAMS or have problems in accessing the documents in ADAMS, contact the NRC Public Document Room reference staff at 1–800–397–4209 or 301–415–4737 or by e-mail to *pdr@nrc.gov*.

A copy of the Director's Decision will be filed with the Secretary of the Commission so that the Commission may review it in accordance with 10 CFR 2.206(c) of the Commission's regulations. As provided for by this regulation, the Director's Decision will constitute the final action of the Commission 25 days after the date of the decision unless the Commission, on its own motion, institutes a review of the decision within that time.

Dated at Rockville, Maryland, this 1st day of November 2002.

For the Nuclear Regulatory Commission.

Jon R. Johnson,

Deputy Director, Office of Nuclear Reactor Regulation.

[FR Doc. 02–29059 Filed 11–14–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Availability of NUREG–1307, Revision 10, "Report on Waste Burial Charges: Changes in Decommissioning Waste Disposal Costs at Low-Level Waste Burial Facilities"

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: The Nuclear Regulatory Commission is announcing the completion and availability of NUREG–1307, Revision 10, "Report on Waste Burial Charges," dated October 2002.

ADDRESSES: NUREG–1307 may be purchased from The Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20402–9328; *www.access.gpo.gov/su_docs; 202–512–1800;* or The National Technical Information Service, Springfield, Virginia 22161–0002; *www.ntis.gov;* 1–800–553–6847 or, locally, 703–605–6000.

This publication is also posted in the Electronic Reading Room at NRC's Web site address *http://www.nrc.gov/reading-rm.html*.

FOR FURTHER INFORMATION CONTACT: Rebecca L. Karas, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation, Washington, D.C. 20555–0001 (telephone 301–415–3711).

SUPPLEMENTARY INFORMATION: Nuclear power reactor licensees are required, per 10 CFR 50.75, to adjust annually the estimated decommissioning costs of their nuclear facilities in order to ensure adequate funds are available for decommissioning. The regulation references NUREG–1307 as the appropriate source for obtaining the adjustment factor for waste burial/disposition costs; this Revision 10 of NUREG–1307 provides the current waste burial costs at the Washington

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and South Carolina disposal sites. In addition, this revision provides costs for low-level radioactive waste disposition using waste vendors. Licensees can factor these numbers into the adjustment formula, as specified in 10 CFR 50.75(c)(2), to determine the minimum decommissioning fund requirement for their nuclear facilities.

Dated at Rockville, Maryland, this 8th day of November 2002.

For the Nuclear Regulatory Commission.

Dennis P. Allison,

Acting Section Chief, Policy and Rulemaking Program—Section B, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 02–29063 Filed 11–14–02; 8:45 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Required Interest Rate Assumption for Determining Variable-Rate Premium; Interest Assumptions for Multiemployer Plan Valuations Following Mass Withdrawal

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of interest rates and assumptions.

SUMMARY: This notice informs the public of the interest rates and assumptions to be used under certain Pension Benefit Guaranty Corporation regulations. These rates and assumptions are published elsewhere (or can be derived from rates published elsewhere), but are collected and published in this notice for the convenience of the public. Interest rates are also published on the PBGC's Web site (*http://www.pbgc.gov*).

DATES: The required interest rate for determining the variable-rate premium under part 4006 applies to premium payment years beginning in November 2002. The interest assumptions for performing multiemployer plan valuations following mass withdrawal under part 4281 apply to valuation dates occurring in December 2002.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION:

Variable-Rate Premiums

Section 4006(a)(3)(E)(iii)(II) of the Employee Retirement Income Security Act of 1974 (ERISA) and § 4006.4(b)(1) of the PBGC's regulation on Premium Rates (29 CFR part 4006) prescribe use of an assumed interest rate (the "required interest rate") in determining a single-employer plan's variable-rate premium. The required interest rate is the "applicable percentage" (currently 100 percent) of the annual yield on 30-year Treasury securities for the month preceding the beginning of the plan year for which premiums are being paid (the "premium payment year"). (Although the Treasury Department has ceased issuing 30-year securities, the Internal Revenue Service announces a surrogate yield figure each month—based on the 30-year Treasury bond maturing in February 2031—which the PBGC uses to determine the required interest rate.)

The required interest rate to be used in determining variable-rate premiums for premium payment years beginning in November 2002 is 4.93 percent.

The following table lists the required interest rates to be used in determining variable-rate premiums for premium payment years beginning between December 2001 and November 2002.

For premium payment years beginning in—	The required interest rate is—
December 2001	4.35
January 2002	5.48
February 2002	5.45
March 2002	5.40
April 2002	5.71
May 2002	5.68
June 2002	5.65
July 2002	5.52
August 2002	5.39
September 2002	5.08
October 2002	4.76
November 2002	4.93

Multiemployer Plan Valuations Following Mass Withdrawal

The PBGC's regulation on Duties of Plan Sponsor Following Mass Withdrawal (29 CFR part 4281) prescribes the use of interest assumptions under the PBGC's regulation on Allocation of Assets in Single-Employer Plans (29 CFR part 4044). The interest assumptions applicable to valuation dates in December 2002 under part 4044 are contained in an amendment to part 4044 published elsewhere in today's **Federal Register**. Tables showing the assumptions applicable to prior periods are codified in appendix B to 29 CFR part 4044.

Issued in Washington, DC on this 8th day of November 2002.

Joseph H. Grant,

Deputy Executive Director and Chief Operating Officer, Pension Benefit Guaranty Corporation.

[FR Doc. 02–29023 Filed 11–14–02; 8:45 am]

BILLING CODE 7708–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27598]

Filings Under the Public Utility Holding Company Act of 1935, as amended ("Act")

November 8, 2002.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by December 3, 2002 to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After December 3, 2002, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Alliant Energy Corporation, et al. (70–9891)

Alliant Energy Corporation ("Alliant Energy"), a registered holding company, 4902 N. Biltmore Lane, Madison, Wisconsin 53718, and certain of its direct and indirect nonutility subsidiaries (collectively, "Applicants") have filed with the Commission a post-effective amendment to a previously filed application-declaration under sections 6(a) and 7 of the Act and rule 54 under the Act.

I. Current Authority

By order dated October 3, 2001 (HCAR No. 27448) ("Prior Order"), the Commission authorized, among other things, Alliant Energy to issue and sell through December 31, 2004 ("Authorization Period"), directly or indirectly through one or more financing subsidiaries, common stock, long-term debt, and preferred stock and other forms of preferred or equity-linked securities in an aggregate amount at any time outstanding not to exceed $1.5 billion. The issuances and sales of these securities are subject to certain conditions and restrictions, including the following ("Prior Order Limitations"):

(1) The interest rate on long-term debt securities and the dividend rate on preferred or equity-linked securities will not exceed at the time of issuance 500 basis points over the yield to maturity of a U.S. Treasury security having a remaining term equal to the term of such securities.

(2) All preferred and equity-linked securities will be redeemed no later than fifty years after issuance.

(3) Except in accordance with a further order of the Commission in this proceeding, Alliant Energy will not issue any long-term debt or preferred stock or other type of preferred or equity-linked securities unless such securities are rated at the investment grade level as established by at least one "nationally recognized statistical rating organization" ("NRSRO"), as that term is used in paragraphs (c)(2)(vi)(E), (F) and (H) of rule 15c3–1 under the Securities Exchange Act of 1934.

II. Requested Authority

Alliant Energy now requests that the Commission issue a supplemental order to modify the Prior Order by replacing the Prior Order Limitations with the following ones:

(1) The interest rate on long-term debt securities issued by Alliant Energy may not exceed at the time of issuance the greater of 500 basis points over the yield to maturity of comparable term U.S. Treasury securities or a gross spread over U.S. Treasury securities that is consistent with similar securities of comparable credit quality and maturities issued by other companies.

(2) The dividend or distribution rate on preferred stock or other preferred or equity-linked securities issued by Alliant Energy may not exceed at the time of issuance the greater of 500 basis points over the yield to maturity of comparable term U.S. Treasury securities or a gross spread over U.S. Treasury securities that is consistent with similar securities of comparable credit quality and maturities issued by other companies.

(3) Preferred stock or other preferred securities issued by Alliant Energy may be redeemable or perpetual in duration.

(4) Without further order of the Commission, Alliant Energy will not publicly issue any long-term debt securities, preferred stock or other types of preferred or equity-linked securities unless such securities are rated as investment grade by at least one NRSO.

Applicants state that, since the Prior Order was issued, the credit markets have tightened significantly for energy companies in general and electric utilities and electric utility holding companies in particular. They state that spreads over U.S. Treasury securities have widened dramatically,[1] and Alliant Energy's current maximum interest rate and dividend spread (500 basis points) may limit the company's ability to access capital markets when necessary.

Applicants state that, except as specified above, no other modifications of the terms, conditions, or limitations imposed under the Prior Order are requested.

Alliant Energy Corporation, et al. (70–10052)

Alliant Energy Corporation ("Alliant Energy"), a registered holding company, 4902 N. Biltmore Lane, Madison, Wisconsin 53718, and certain of its utility and nonutility subsidiary companies ("Applicants"), including Interstate Power and Light Company ("IP&L"), a direct public-utility company subsidiary of Alliant Energy, Alliant Tower, 200 First Street S.E., Cedar Rapids, Iowa 52401, have filed with the Commission a post-effective amendment to a previously filed application-declaration under sections 6(a) and 7 of the Act and rule 54 under the Act.

I. Existing Authority

By order dated June 21, 2002 (HCAR No. 27542) ("Prior Order"), the Commission authorized Alliant Energy and certain of its public-utility company and nonutility subsidiaries to operate two separate money pools, a money pool for its public-utility company subsidiaries and Alliant Energy Corporate Services, Inc. ("Utility Money Pool") and a money pool for certain of its direct and indirect nonutility subsidiaries ("Nonutility Money Pool"). To the extent required, participating subsidiaries were authorized to borrow from and extend credit to each other through the Utility Money Pool or Nonutility Money Pool, as applicable. In addition, the Commission authorized Alliant Energy to issue and sell, through December 31, 2004 ("Authorization Period"), commercial paper and/or unsecured notes evidencing short-term borrowings from banks or other institutional lenders ("Short-term Debt") in an aggregate amount at any time outstanding not to exceed $1 billion.

Further, by order dated October 10, 2002 (HCAR No. 27575) ("Supplemental Order"), the Commission authorized IP&L, during the Authorization Period, to issue and sell Short-term Debt in an aggregate principal amount at any time outstanding which, when added to any borrowings by IP&L under the Utility Money Pool, will not exceed the lesser of the limit set by the Minnesota Public Utilities Commission ("MPUC") or $300 million.[2]

II. Requested Authority

Applicants now request that the Commission issue another supplemental order modifying one condition imposed by the Prior Order. Specifically, by the Prior Order, the Commission specified that, for all Short-term Debt issued by Alliant Energy and IP&L, the effective cost of money at the time of issuance cannot exceed 300 basis points over the London Interbank Offered Rate ("LIBOR") for maturities of one year or less. Applicants request that the Commission authorize Alliant Energy and IP&L to issue Short-term Debt that, at the time of issuance, has an effective cost that does not exceed the greater of 500 basis points over comparable-term LIBOR or a gross spread over LIBOR that is consistent with similar securities of comparable credit quality and maturities issued by other companies.

Both Alliant Energy and IP&L maintain commercial paper programs that are back-stopped by 364-day credit facilities with banks. Applicants state that the interest rates charged on borrowings under these bank facilities are a function of the current ratings on Alliant Energy's or IP&L's long-term unsecured debt, as the case may be. Applicants further state that, since the date of the Prior Order, spreads over LIBOR on unsecured short-term bank borrowings have widened significantly, and the authorized 300 basis-point spread over LIBOR could limit Alliant Energy's and IP&L's ability to borrow under back-up credit lines if the need

[1] Applicants state that, at the time that the Prior Order was issued, the spreads over U.S. Treasury securities for a company of Alliant Energy's credit quality ranged between 165 and 205 basis points for long-term unsecured holding company debt, and now those spreads have widened in recent weeks to between 190 and 590 basis points.

[2] At the time the Supplemental Order was issued, IP&L was authorized to issue up to $180 million through March 31, 2003.

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should arise. Except as specified above, the terms, conditions, and limitations imposed under the Prior Order would remain unchanged.

Interstate Power and Light Company (70–10077)

Interstate Power and Light Company ("Applicant"), 200 First Street, Cedar Rapids, Iowa 52401, a wholly owned public utility subsidiary of Alliant Energy Corporation ("Alliant"), 4902 North Biltmore Lane, Madison, Wisconsin 53718, a registered holding company has filed an application-declaration ("Application") under sections 6(a), 7, 9(a), 10, and 12(b) and rules 23, 24, 45 and 53 under the Act.

The Applicant proposes, from time to time through December 31, 2005 ("Authorization Period"):

(a) To organize and acquire the stock or other equity interests in one or more special purpose limited partnerships, statutory business trusts or limited liability companies ("Issuing Entities") for the sole purpose of issuing one or more series of preferred securities ("Entity Interests");

(b) For the Issuing Entities to issue and sell one or more series of preferred securities having a stated per share liquidation preference ("Entity Interests"). Applicant states that the issuance of the Entity Interests would also include the issuance of one or more series of the Applicant's subordinated debentures to Issuing Entities. Each series of subordinated debentures would be in an amount not to exceed the amount of the respective series of Entity Interests plus an equity contribution; and

(c) For the Applicant to issue one or more new series of the Applicant's preferred stock, par value $0.01 per share ("Preferred Stock").

The Applicant proposes that the combined aggregate amount of Entity Interests and Preferred Stock issued under the authorization granted in the Application not exceed $200 million ("Aggregate Limit") outstanding at any time. The Applicant anticipates that the issuance and sale of each series of Entity Interests and/or Preferred Stock will be by means of competitive bidding, negotiated public offering or private placement with institutional investors in order to secure the advantages of an advance marketing effort and/or the best available terms.

I. Issuing Entities

The Applicant proposes organize and acquire the Issuing Entities for the sole purpose of issuing Entity Interests. The Applicant requests authority to use Issuing Entities to issue preferred securities because these securities are assigned more equity content by certain rating agencies. Additionally, the Applicant states that the use of Issuing Entities will afford it greater access to new sources of capital and may offer increased state and federal tax efficiency. The Applicant states that the Entity Interests will be reflected on its consolidated balance sheet in accordance with accounting principles generally accepted in the United States of America.[3] One or more partners, trustees or members (individually and collectively, the "Manager") would conduct the business and affairs of the Issuing Entity. Provided that the Entity Interests are not then in default, the Applicant would, as a result of its ownership of all of the voting interests in the Issuing Entity, be entitled to appoint, remove or replace the Manager. In the case of a limited partnership, the Applicant proposes to either act as the general partner of the Issuing Entity or organize a special purpose, wholly owned corporation for the sole purpose of acting as the general partner ("Participating Subsidiary") of the Issuing Entity.[4]

II. Entity Interests, Entity Subordinated Debentures, Guarantees

The Applicant proposes to issue Entity Interests through the Issuing Entities in an amount up to the Aggregate Limit, when combined with Preferred Securities issued under this Application, through the Authorization Period. The Applicant states that the Entity Interests would have a stated per share liquidation preference and may be registered under the Securities Act of 1933, as amended ("Securities Act"). The holders of the Entity Interests would be either (a) the limited partners (in the case of a limited partnership); (b) the holders of preferred interests (in the case of a business trust) or (c) non-managing members (in the case of a limited liability company) of the Issuing Entity, and the amounts paid by the holders for the Entity Interests would be treated as capital contribution to the Issuing Entity.

The Applicant proposes to issue, from time to time in one or more series, subordinated debentures ("Entity Subordinated Debentures") to the Issuing Entity. The Issuing Entity would use the proceeds from the sale of its Entity Interests, plus the equity contributions made to it, directly or indirectly, by the Applicant, to purchase the Entity Subordinated Debentures. If the corresponding series of Entity Interests were registered under the Securities Act, then the Entity Subordinated Debentures would also be registered under the Securities Act. The Entity Subordinated Debentures would be issued by the Applicant under a debenture indenture, which, if the corresponding series of Entity Interests and Entity Subordinated Debentures are registered, will be qualified under the Trust Indenture Act of 1939, as amended.

The Applicant states that the interest rate, maturity, payment dates, redemption terms and other terms of each series of Entity Subordinated Debentures would be designed to parallel the distribution rate, maturity, payment dates, redemption terms and other terms of the Entity Interests to which they relate and would be determined by the Applicant at the time of issuance. The Applicant states that Entity Interests may be redeemable or may be perpetual in duration and, prior to maturity, the Applicant would pay interest only on the Entity Subordinated Debentures, at either a fixed or adjustable rate as set forth in the Entity Subordinated Debenture indenture. The interest paid by the Applicant on the Entity Subordinated Debentures would constitute the only source of income for the Issuing Entity and would be used by the Issuing Entity to make regular scheduled distributions on the Entity Interests.

The Applicant also proposes to enter into a guarantee ("Guarantee") under which it will unconditionally guarantee (a) payment of distributions on the Entity Interests, if and to the extent the Issuing Entity has funds legally available therefore; (b) payments to the holders of Entity Interests of certain amounts due upon liquidation of the Issuing Entity or redemption of the Entity Interests and (c) certain additional "gross up" amounts that may be payable in respect of the Entity Interests.[5]

The Applicant states that the Entity Subordinated Debentures and any related Guarantee issued by the Applicant will be expressly subordinated to senior indebtedness of the Applicant. The payment of interest on any Entity Subordinated Debentures may be deferred for specified periods without creating a default with respect thereto, so long as no dividends are being paid on, or certain actions are being taken with respect to the retirement of, the common or Preferred Stock of the Applicant during the period of deferral.

The Applicant states that distributions on the Entity Interests will be paid at regularly scheduled times as determined at the time of sale of each series and will be mandatory to the extent that the Issuing Entity has legally available funds sufficient for theses purposes. The availability of funds will depend entirely upon the Issuing Entity's receipt of the amounts due under the Entity Subordinated Debentures. The Applicant states that the Issuing Entity would have the right to defer distributions on the Entity Interests for a specified period, but only if and to the extent that the Applicant defers the interest payments on the Entity Subordinated Debentures as described below. The Applicant states that if distributions on the Entity Interests (including all previously deferred distributions, if any) are deferred beyond a specified period, then the holders of Entity Interests may have the right to appoint a special representative to enforce the Issuing Entity's rights under the Entity Subordinated Debentures indenture and Guarantee (if issued), including the right to accelerate the maturity of the Entity Subordinated Debentures.

The Applicant anticipates that interest payments on the Entity Subordinated Debentures made by the Applicant will be deductible by it for federal and state income tax purposes and that the Issuing Entity will be treated as either a partnership or a trust, as the case may be, for federal income tax purposes. Consequently, the holders of Entity Interests will be deemed to have received interest income rather than dividends, and will not be entitled to any "dividends received deduction" under the Internal Revenue Code.

The Applicant states that if, as a result of (a) the Entity Subordinated Debentures not being treated as indebtedness for federal income tax purposes, or (b) the Issuing Entity not being treated as either a partnership or a trust, as the case may be, for federal income tax purposes, the Issuing Entity is required under applicable tax laws to withhold or deduct from payments on the Entity Interests amounts that otherwise would not be required to be withheld or deducted, the Issuing Entity may also have the obligation to increase or "gross up" such payments so that the holders of Entity Interests will receive the same payment after the withholding or deduction as they would have received if no withholding or deduction were required.

The Applicant states that in the event of any voluntary or involuntary liquidation, dissolution or winding up of the Issuing Entity, holders of Entity Interests would be entitled to receive, an amount equal to the stated liquidation preference of the Entity Interests plus any accrued and unpaid distributions out of the assets of the Issuing Entity available for distribution before any distribution of assets to the Applicant.

Applicant propose that the distribution rate or interest rate payable on each series of Entity Interests (and any corresponding series of Entity Subordinated Debentures) would be determined at the time of sale and would be consistent with rates on similar securities of comparable credit quality and maturities issued by other companies, provided that, if no comparable securities have been issued recently, the Entity Interests (and corresponding series of Entity Subordinated Debentures) may have a fixed rate or initial adjustable rate thereon at the time of issuance not greater than (a) 500 basis points over the yield to maturity of a U.S. Treasury security having a remaining term comparable to the average life of such series ("Treasury Rate"), if issued at a fixed rate, or 500 basis points over the London Interbank Offered Rate ("LIBOR") for the relevant interest rate period, if issued at an adjustable rate.

The Applicant states that the initial distribution or interest rate on Entity Interests of each series having an adjustable rate will be determined in negotiations between the Applicant and the underwriters or purchasers of the series. The Applicant further states that thereafter, the distribution or interest rate on the Entity Interests ("Adjustable Rate Entity Interests" and on any corresponding series of Entity Subordinated Debentures) would be adjusted according to a pre-established formula or method of determination or would be that rate which, at the time of remarketing, would be sufficient to remarket the Entity Interests of the series ("Remarketed Interests") at their principal amount, provided that the distribution or interest rate on Remarketed Entity Interests after the initial distribution or interest rate period will not exceed 500 basis points over LIBOR.

The Applicant proposes that the holders of Remarketed Interests will have the right to tender, or can be required to tender, their Remarketed Interests and have them purchased at a price equal to the liquidation preference plus accrued and unpaid distributions, if any, on dates specified in, or established in accordance with the instruments creating the Remarketed Interests. The Applicant proposes that a tender agent ("Tender Agent") may be appointed to facilitate the tender of Remarketed Interests by holders. Any holder of Remarketed Interests wishing to have them purchased may be required to deliver the Remarketed Interests during a specified period of time preceding the purchase date to the Tender Agent, if one shall be appointed, or to the remarketing agent ("Remarketing Agent") appointed to reoffer the tendered Remarketed Interests for sale.

The Applicant states that the Issuing Entity would be obligated to pay amounts equal to the amounts to be paid to the Remarketing Agent or the Tender Agent for the purchase of Remarketed Interests tendered (on the dates the payments by the Remarketing Agent or the Tender Agent are to be made), reduced by the amount of any other moneys available, including the proceeds of the sale of the tendered Entity Interests by the Remarketing Agent. Upon the delivery of the Entity Interests by holders to the Remarketing Agent or the Tender Agent for purchase, the Remarketing Agent would use its best efforts to sell the Remarketed Interests at a price equal to the liquidation amount of the Remarketed Interests.

III. Preferred Stock

The Applicant proposes to directly issue Preferred Securities in an amount up to the Aggregate Limit, when combined with Preferred Securities issued under this Application, through the Authorization Period. The Applicant states that as of June 30, 2002, it had 24,000,000 authorized shares of common stock, 13,370,788 of which were issued and outstanding, and 1,927,787 authorized shares of Preferred Stock, 1,127,787 of which were issued and outstanding. In September 2002, the Applicant redeemed all of its outstanding shares of preferred stock according to rule 42. The Applicant states that its parent company, Alliant Energy, as the sole holder of the Applicant's common stock, has approved a restatement ("Restatement") of its Articles of Incorporation and the Applicant now requests authorization to act on the Restatement to authorize

[3] The Company states that by organizing Issuing Entities in jurisdictions and/or in forms that have favorable terms, it can indirectly offer securities with features and terms that are attractive to a wider investor base. The Company further states that increased tax efficiency can result if an Issuing Entity is located in a state or country that has tax laws that make the proposed financing transaction more tax efficient relative to the sponsor company's existing taxing jurisdiction.

[4] In the case of a limited liability company formed under the laws of a state in which a limited liability company is required to have at least two members, the Company may organize a Participating Subsidiary for the purpose of acquiring and holding a membership interest.

[5] Any Guarantee will be registered under the Securities Act if the corresponding Entity Interests are registered under the Securities Act.

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16,000,000 shares of Preferred Stock. The Applicant proposes that Preferred Stock be issued in one or more series with rights and preferences as the Applicant's board of directors may fix and determine from time to time during the Authorization Period, including, without limitation, the voting power (if any) of any series of Preferred Stock; the redemption price; the dividend rate; the right (if any) of the holders of any series of Preferred Stock to convert the same into, or exchange the same for, other classes of stock of the Applicant; liquidation preferences and sinking fund provisions.

Applicant proposes that the price, exclusive of accumulated dividends, to be paid to the Applicant for each series of Preferred Stock will be fixed from time to time by the board of directors. The dividend rate on each series of Preferred Stock would be consistent with the dividend rate on similar securities of comparable credit quality and maturities issued by other companies. If no comparable securities have been issued recently, the Applicant proposes that the series of Preferred Stock may have a dividend rate at the time of issuance not greater than 500 basis points over the applicable Treasury Rate, if issued at a fixed rate, or 500 basis points over LIBOR for the relevant interest rate period, if issued at a floating rate.

The Applicant proposes that each series of Preferred Stock may be redeemable at specified redemption prices, subject to a restriction on optional redemption for a given number of years; or may be perpetual in duration. The Applicant proposes to include, for any series of Preferred Stock, provisions for a sinking fund designed to redeem annually, commencing a specified number of years, at the stated value per share of the series, plus accumulated dividends, a number of shares equal to a stated percentage of the total number of shares of the series. In the case of the sinking fund provision, the Applicant proposes to have an option to redeem an additional number of shares annually up to a certain percentage of the total number of shares of the series.

The Applicant commits that it will not publicly issue any Preferred Stock or Equity Interests unless the securities are rated at the investment grade level as established by at least one nationally recognized statistical rating organization, as that term is used in paragraphs (c)(2)(vi)(E), (F) and (H) of rule 15c3–1 under the Securities Exchange Act of 1934 and that it will maintain its common equity as a percentage of capitalization (inclusive of short-term debt) at no less than thirty percent.

Union Electric Company (70–10089)

Union Electric Company ("AmerenUE"), 1901 Chouteau Avenue, St. Louis, Missouri 63103 ("Declarant"), an electric and gas utility subsidiary of Ameren Corporation ("Ameren"), a registered holding company, has filed a declaration under section 12(d) of the Act and rules 44 and 54 under the Act.

Declarant requests authority to sell its ownership interest in new electric generating facilities to the City of Bowling Green, Missouri ("Bowling Green"), and then lease back the facilities from Bowling Green for a term of approximately 20 years.

AmerenUE supplies electric service to approximately 1.2 million customers in a 24,500 square-mile area of Missouri and Illinois, including the greater St. Louis area. AmerenUE also provides retail gas service to approximately 130,000 customers in 90 Missouri communities and in the City of Alton, Illinois and vicinity. In 2001, AmerenUE derived approximately 95% of its revenues from electric operations and 5% from the sale of natural gas. At June 30, 2002, AmerenUE had $7.3 billion in total assets, including net property, plant and equipment of $5.8 billion. AmerenUE's consolidated capitalization at June 30, 2002, consisted of 55.7% common equity, 3.3% preferred stock, 33.5% long-term debt (excluding current maturities), and 7.5% of short-term debt (including current portion of long-term debt). AmerenUE's senior secured long-term debt is currently rated A+ by Standard & Poor's and Aa3 by Moody's Investors Service.

AmerenUE has constructed a new electric generating facility consisting of four 47 megawatt combustion turbine generating units, fueled primarily by natural gas with fuel oil as a back-up, in Bowling Green (the "Project"). In order to provide a financing structure and economic incentives to construct the Project in Bowling Green, AmerenUE has entered into a Pre-Annexation and Development Agreement (the "Grant Agreement") dated as of November 9, 2001, with the City, which provides, among other things, that (a) AmerenUE will convey certain land (the "Site") and any improvements located on the site, including the four combustion turbine generating units to Bowling Green in exchange for the issuance by Bowling Green of its taxable industrial development revenue bond in a principal amount not to exceed $125,000,000 (the "Bond"), and (b) Bowling Green will lease the Site and the Project to AmerenUE for a term of approximately 20 years.

The Trust Indenture will provide the specific terms of the Bond, including a final maturity of twenty years and an interest rate of 5.15%. The Trust Indenture will also specify the terms and details of the Bond and will contain various provisions, covenants and agreements to protect the security of the bondholders (initially AmerenUE). The Bond will be a special limited obligation of Bowling Green payable solely from the rental payments to be made by AmerenUE pursuant to a facility lease agreement, and in the event of a default by AmerenUE under such lease agreement, the rents, revenues and receipts of Bowling Green derived from the Site and the Project. The Bond will also be secured by a Deed of Trust and Security Agreement granted by Bowling Green encumbering the Site and the Project.

AmerenUE will transfer the Site and the Project to Bowling Green under to a Special Warranty Deed and a Bill of Sale. Concurrently with the issuance of the Bond, Bowling Green will lease the Site and Project constructed on the Site to AmerenUE pursuant to a Lease Agreement (the "Lease") between the City and AmerenUE. The Lease term will be the same as the final maturity of the Bond and will be a net lease, with AmerenUE being responsible for rental payments in an amount sufficient to pay the debt service on the Bond, equal to approximately $9.2 million per year. Under the Lease, AmerenUE will be responsible for maintaining, insuring, operating and paying any taxes related to the Project. AmerenUE will have the option, at any time during the term of the Lease, at the expiration of the twenty-year Lease, or if there is an early termination of the Grant Agreement, to purchase Bowling Green's interest in the Project and the Site upon providing for the payment of the principal balance of and interest on the Bond and the payment of a nominal fee to Bowling Green. AmerenUE will record the Lease as a capital lease on its accounting books and records.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 02–28987 Filed 11–14–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27599]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

November 8, 2002.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by December 3, 2002, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After December 3, 2002, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

E.ON AG (70–10090)

E.ON AG ("E.ON"), located at E.ON-Platz 1, 40479 Dusseldorf, Germany, a registered holding company, has submitted an application under sections 9(c)(3) and 33 of the Act seeking an extension of the deadline set by prior Commission order to divest part of its interest in an affiliated company, Hypo-Vereinsbank AG ("HVB"), a large private bank in Germany with assets of approximately (euro)712 billion.

By applications filed in SEC File Nos. 70–9961 and 70–9985, E.ON sought authorization to acquire Powergen plc ("Powergen"), a registered holding company, and other authorizations under the Public Utility Holding Company Act of 1935 (the "Act") related to E.ON's activities as a registered holding company after the Powergen acquisition. The Commission authorized the proposed acquisition by order dated June 14, 2002, Holding Co. Act Release No. 27539 ("Acquisition Order"). E.ON completed the acquisition of Powergen and registered as a holding company on July 1, 2002.

One of the conditions imposed in the Acquisition Order related to the ability of E.ON and its subsidiaries to invest in the equity securities of companies held for investment purposes ("Portfolio Securities") as reserves against two types of long-term liabilities: their pension obligations, and, for E.ON Energie only, its nuclear decommissioning obligations. These investments, which currently total approximately (euro)9 billion ($7.9 billion), include publicly traded common stocks of other companies.

The Acquisition Order authorized E.ON to continue to make these investments under section 9(c)(3) of the Act in the ordinary course of business provided that it complied with certain conditions. The Acquisition Order stipulated that equity investments for the purposes of funding future employee benefit and nuclear decommissioning obligations could be made only if, at the time of investment, the actuarial value of the prospective obligations exceeds the aggregate amount of the investments that will be held by E.ON immediately after the investment has been made. Further, E.ON was restricted from creating an affiliate relationship with any company within the terms of Section 2(a)(11) of the Act by acquiring 5% or more of the voting securities of any issuer. The Acquisition Order restated the commitment made by E.ON that during the year 2002, E.ON would reduce any stakes that it has that exceed 5% of a single company to below 5%.

E.ON's Portfolio Securities include only one stake in the voting securities of a company that exceeds 5%. This is E.ON's 6.72% voting equity interest in HVB. The application states that although E.ON continues to desire to reduce its voting equity interest in HVB to the level where it would not constitute an affiliate interest, recent declines in the market price of HVB shares have made share sales financially prohibitive at this time. Consequently, E.ON seeks an extension of the divestiture deadline until December 31, 2004. E.ON anticipates that the extension of the divestiture deadline would allow time for at least a partial recovery in the market price of its HVB shares.

For the Commission by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–29039 Filed 11–14–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25799; 813–272]

GC&H Investments, LLC, et al.; Notice of Application

November 8, 2002.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application for an order under sections 6(b) and 6(e) of the Investment Company Act of 1940 (the "Act") granting an exemption from all provisions of the Act, except section 9, section 17 (other than certain provisions of paragraphs (a), (d), (f), (g) and (j)), section 30 (other than certain provisions of paragraphs (a), (b), (e), and (h)), sections 36 through 53, and the rules and regulations under the Act.

SUMMARY OF THE APPLICATION: Applicants request an order to exempt certain investment funds formed for the benefit of eligible current and former employees of Cooley Godward LLP and its affiliates from certain provisions of the Act. Each fund will be an "employees" securities company" as defined in section 2(a)(13) of the Act.

APPLICANTS: GC&H Investments, LLC (the "Investment Fund") and Cooley Godward LLP (together with any entity that results from a reorganization of Cooley Godward LLP into a different type of business organization or into an entity organized under the laws of another jurisdiction, the "Company").

FILING DATES: The application was filed on May 30, 2000 and amended on November 7, 2002.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on December 3, 2002, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues

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contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549–0609. Applicants, One Maritime Plaza, 20th Floor, San Francisco, CA 94111–3580.

FOR FURTHER INFORMATION CONTACT: Marilyn Mann, Senior Counsel, at (202) 942–0582, or Mary Kay Frech, Branch Chief, at (202) 942–0564, (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 5th Street, NW., Washington, DC 20549–0102 (tel. 202–942–8090).

Applicants' Representations

1. The Company is a law firm organized as a California limited liability partnership. The Company and its "affiliates," as defined in rule 12b-2 under the Securities Exchange Act of 1934 (the "Exchange Act"), are referred to collectively as the "Cooley Godward Group" and individually as a "Cooley Godward Entity." The Company's equity owners are partners ("Partners").

2. The Investment Fund is a California limited liability company established pursuant to a limited liability company agreement. The applicants may in the future offer additional pooled investment vehicles identical in all material respects to the Investment Fund, other than investment objectives and strategies (the "Subsequent Funds," and together with the Investment Fund, the "Funds"). The applicants anticipate that each Subsequent Fund will also be structured as a limited liability company, although a Subsequent Fund could be structured as a limited partnership, corporation, trust or other business organization formed as an "employees" securities company" within the meaning of section 2(a)(13) of the Act. The Funds will operate as non-diversified, closed-end management investment companies. The Funds will be established to enable the Partners and certain attorney and non-attorney employees of Cooley Godward Group to participate in certain investment opportunities that come to the attention of Cooley Godward Group. Participation as investors in the Funds will allow the Eligible Investors, as defined below, to diversify their investments and to have the opportunity to participate in investments that might not otherwise be available to them or that might be beyond their individual means.

3. A group of Eligible Investors (as defined below), appointed by the Company, who are current or former Partners of the Company (the "Managers"), will manage the Funds. The Funds will have one or more investment committees ("Investment Committees"), each member of which shall be a current or former Partner. The Managers shall appoint the members of each Investment Committee. The Managers or any person involved in the operation of the Funds will register as investment advisers if required under the Investment Advisers Act of 1940 (the "Advisers Act"), or the rules under the Advisers Act.

4. Interests in the Funds ("Interests") will be offered without registration in reliance on section 4(2) of the Securities Act of 1933 (the "Securities Act"), Regulation D under the Securities Act or rule 701 under the Securities Act, or any successor rule, and will be sold solely to Eligible Investors. Eligible Investors consist of "Eligible Employees," "Qualified Investment Vehicles," "Immediate Family Members," each as defined below, and Cooley Godward Entities. The term "Fund Investors" refers to Eligible Investors who invest in the Funds. Prior to receiving a subscription agreement from an individual, the Managers must reasonably believe that the individual is a sophisticated investor capable of understanding and evaluating the risks of participating in the Fund without the benefit of regulatory safeguards. An "Eligible Employee" is a person who is, at the time of investment, a current or former Partner or an employee of Cooley Godward Group who (a) meets the standards of an "accredited investor" set forth in rule 501(a)(5) or rule 501(a)(6) of Regulation D under the Securities Act, (b) is one of 35 or fewer employees of Cooley Godward Group who meets certain salary and other requirements ("Category 2 investors"), or (c) is a lawyer employed by the Company who purchases Interests pursuant to an offering under rule 701 under the Securities Act ("rule 701") ("Category 3 investors").

5. Each Category 2 investor will be an employee of Cooley Godward Group, but not a lawyer employed by the Company, who meets the sophistication requirements set forth in rule 506(b)(2)(ii) of Regulation D under the Securities Act [1] and who (a) has a graduate degree, has a minimum of 3 years of business experience, has had compensation of at least $150,000 in the preceding 12 month period, and has a reasonable expectation of compensation of at least $150,000 in each of the 2 immediately succeeding 12 month periods, or (b) is a "knowledgeable employee," as defined in rule 3c–5 under the Act, of the Fund (with the Fund treated as though it were a "Covered Company" for purposes of the rule). In addition, a Category 2 investor qualifying under (a) above will not be permitted to invest in any calendar or fiscal year (as determined by the Company) more than 10% of his or her income from all sources for the immediately preceding calendar or fiscal year in one or more Funds.

6. Each Category 3 investor will be a lawyer employed by the Company who reasonably expects to have compensation of at least $120,000 in the next 12 months and who has a reasonable expectation of compensation of at least $150,000 in each of the 2 immediately succeeding 12 month periods. In addition, any Category 3 investor who is not a Partner will not be permitted to invest in any calendar or fiscal year (as determined by the Company) more than 10% (or 5%, if he or she has been employed as a lawyer for less than 3 years) of his or her reasonably expected income from all sources for that year in one or more Funds. Category 3 investors will purchase Interests pursuant to an offering under rule 701. Prior to receiving a subscription agreement from any potential Fund Investor pursuant to an offering in reliance on rule 701, the Company will make available at no charge to potential Fund Investors the services of an independent third party ("Financial Consultant") qualified to provide advice concerning the appropriateness of investing in a Fund.

7. A Qualified Investment Vehicle is a trust or other entity the sole beneficiaries of which are Eligible Employees or their Immediate Family Members or the settlors and trustees of which consist of Eligible Employees or Eligible Employees together with Immediate Family Members.[2] Immediate Family Members include any parent, child, grandchild, spouse of a child, spouse, brother or sister, and includes any step and adoptive relationships. A Qualified Investment Vehicle must be either (a) an accredited investor as defined in rule 501(a) of Regulation D or (b) an entity for which an Eligible Employee is a settlor and principal investment decision-maker. An Immediate Family Member who purchases Interests must be an accredited investor as defined in rule 501(a)(5) or rule 501(a)(6) of Regulation D.

8. Each Fund may issue its Interests in series (each, a "Series" and collectively, the "Series") with new Series of Interests being offered from time to time. Each Series may be further divided into two or more separate classes (each, a "Class"), having such terms and conditions as the Managers may establish. Each Series will represent an interest in some or all of those Fund investments made by the Fund during a specified period of time (the "Investment Period"). Following the end of a Series' Investment Period, no new investments will be made for that Series, although following a Series' Investment Period additional money may be contributed to an existing investment.

9. In order to comply with the requirements of rule 701, at the beginning of each Investment Period (and, if necessary, periodically thereafter), the Fund will accept capital contributions or irrevocable commitments for the relevant Series from those Eligible Investors investing pursuant to Regulation D (the "Regulation D Investors"), and then prepare a balance sheet as required by rule 701. The Fund may then receive and accept subscription agreements, and thereafter accept capital contributions or commitments for that Series from those Eligible Investors investing pursuant to rule 701 (the "Rule 701 Investors"). The capital contributions and commitments of the Rule 701 Investors, in the aggregate, will not exceed 15% of the total amount of capital contributions and irrevocable commitments received from the Regulation D Investors. No more than approximately 13% (*i.e.*, 15% of the total amount of capital contributions and irrevocable commitments received from the Regulation D Investors) of all Fund investments and other authorized expenditures for each Series will at any time be paid for out of money contributed to the Fund by Rule 701 Investors.

10. The terms of a Fund will be fully disclosed in the private offering memorandum of the Fund, and each Eligible Investor will receive a private offering memorandum and the Fund's limited liability company agreement (or other organizational documents) prior to his or her investment in the Fund. Each Fund will send its Fund Investors annual reports, which will contain audited financial statements with respect to those Series in which the Fund Investor has Interests, as soon as practicable after the end of each fiscal year. In addition, as soon as practicable after the end of each fiscal year, the Funds will send a report to each Fund Investor setting forth such tax information as shall be necessary for the preparation by the Fund Investor of his or her federal and state tax returns.

11. Eligible Investors will be permitted to transfer their Interests only with the express consent of the Managers. Any such transfer must be to another Eligible Investor. No fee of any kind will be charged in connection with the sale of Interests.

12. The Managers may require a Fund Investor to withdraw from a Fund if: (a) A Fund Investor ceases to be an Eligible Investor; (b) a Fund Investor is no longer deemed to be able to bear the economic risk of investment in a Fund; (c) adverse tax consequences were to inure to the Fund were a particular Fund Investor to remain; (d) the continued membership of the Fund Investor would violate applicable law or regulations; or (e) the Managers, in their sole discretion, deem such withdrawal in the best interest of the Fund. If the Managers require a Fund Investor to withdraw, the Fund may (a) directly repurchase the Eligible Investor's Interest in any or all Series, or (b) require such Eligible Investor to sell his or her Interest in any or all Series to any person or entity designated by the Managers who is an Eligible Investor and who agrees to pay any remaining capital contributions of the withdrawing Eligible Investor and to assume the withdrawing Eligible Investor's other obligations under the partnership or other governing agreements with respect to such investments.

13. The Company reserves the right to impose vesting provisions on a Fund Investor's investments in a Fund. In an investment program that provides for vesting provisions, all or a portion of a Fund Investor's Interests will be treated as unvested, and vesting will occur through the passage of a specified period of time or may be based on certain performance milestones (such as admission of an associate lawyer as a Partner of the Company). To the extent a Fund Investor's Interests are or become vested, the termination of the Fund Investor's employment with the Company will not affect the Fund Investor's rights with respect to the vested Interests. The portion of a Fund Investor's Interests that are unvested at the time of the termination of a Fund Investor's employment with the Company may be subject to repurchase or cancellation.

14. Upon any repurchase or cancellation of all or a portion of a Fund Investor's Interests, a Fund will at a minimum pay to the Fund Investor the lesser of (a) the amount actually paid by the Fund Investor to acquire the Interests less the amount of any distributions received by that Fund Investor from the Fund (plus interest at or above the prime rate, as determined by the Managers) and (b) the fair market value of the Interests determined at the time of repurchase or cancellation, as determined in good faith by the Managers. Any interest owed to a Fund Investor pursuant to (a) above will begin to accrue at the end of the Investment Period.

15. The Company may be reimbursed by a Fund for reasonable and necessary out-of-pocket costs directly associated with the organization and operation of the Funds, including administrative and overhead expenses. There will be no allocation of any of the Company's operating expenses to a Fund. In addition, the Company may allocate to a Series any out-of-pocket expenses specifically attributable to the organization and operation of that Series. No separate management fee will be charged to a Fund by the Managers, and no compensation will be paid by a Fund or by Fund Investors to the Managers for their services.

16. The Funds may borrow from Cooley Godward Group, a Partner, or a bank or other financial institution, provided that a Fund will not borrow from any person if the borrowing would cause any person not named in section 2(a)(13) of the Act to own outstanding securities of the Fund (other than short-term paper). Any borrowings by a Fund will be non-recourse other than to the Cooley Godward Group. If a Cooley Godward Entity or a Partner makes a loan to the Funds, the interest rate on the loan will be no less favorable to the Funds than the rate that could be obtained on an arm's length basis.

17. No Fund will acquire any security issued by a registered investment company if immediately after the acquisition the Fund would own more than 3% of the outstanding voting stock of the registered investment company.

Applicants' Legal Analysis

1. Section 6(b) of the Act provides, in part, that the Commission will exempt employees' securities companies from the provisions of the Act to the extent that the exemption is consistent with the protection of investors. Section 6(b) provides that the Commission will consider, in determining the provisions

[1] Some or all Category 2 investors may purchase their Interests in an offering under rule 701 rather than under Regulation D.

[2] A Qualified Investment Vehicle is not permitted to participate in a rule 701 offering. The Company or the Managers may, however, in their discretion and in compliance with rule 701, permit an Eligible Employee who purchases Interests in the Fund in a rule 701 offering to transfer some or all of those Interests to a Qualified Investment Vehicle.

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of the Act from which the company should be exempt, the company's form of organization and capital structure, the persons owning and controlling its securities, the price of the company's securities and the amount of any sales load, how the company's funds are invested, and the relationship between the company and the issuers of the securities in which it invests. Section 2(a)(13) defines an employees' securities company as any investment company all of whose securities (other than short-term paper) are beneficially owned (a) by current or former employees, or persons on retainer, of one or more affiliated employers, (b) by immediate family members of such persons, or (c) by such employer or employers together with any of the persons in (a) or (b).

2. Section 7 of the Act generally prohibits investment companies that are not registered under section 8 of the Act from selling or redeeming their securities. Section 6(e) provides that, in connection with any order exempting an investment company from any provision of section 7, certain provisions of the Act, as specified by the Commission, will be applicable to the company and other persons dealing with the company as though the company were registered under the Act. Applicants request an order under sections 6(b) and 6(e) of the Act exempting the Funds from all provisions of the Act, except section 9, section 17 (other than certain provisions of paragraphs (a), (d), (f), (g), and (j)), section 30 (other than certain provisions of paragraphs (a), (b), (e) and (h)), sections 36 through 53 of the Act, and the rules and regulations under the Act.

3. Section 17(a) generally prohibits any affiliated person or principal underwriter of a registered investment company, or any affiliated person of such an affiliated person or principal underwriter, acting as principal, from knowingly selling or purchasing any security or other property to or from the company. Applicants request an exemption from section 17(a) to permit a Fund to: (a) Purchase, from the Company or any affiliated person thereof, securities or interests in properties previously acquired for the account of the Company or any affiliated person thereof; (b) sell, to the Company or any affiliated person thereof, securities or interests in properties previously acquired by the Funds; (c) invest in companies, partnerships or other investment vehicles offered, sponsored or managed by the Company or any affiliated person thereof; and (d) purchase interests in any company or other investment vehicle (i) in which the Company owns 5% or more of the voting securities, or (ii) that otherwise is an affiliated person of the Fund (or an affiliated person of such a person) or an affiliated person of the Company.

4. Applicants state that an exemption from section 17(a) is consistent with the protection of investors and the purposes of the Act. Applicants state that the Eligible Investors will be informed in the Fund's private offering memorandum of the possible extent of the Fund's dealings with the Company or any affiliated person thereof. Applicants also state that, as financially sophisticated professionals, Eligible Investors will be able to evaluate the attendant risks. Applicants assert that the community of interest among the Fund Investors and the Company will provide the best protection against any risk of abuse.

5. Section 17(d) of the Act and rule 17d–1 under the Act prohibit any affiliated person or principal underwriter of a registered investment company, or any affiliated person of an affiliated person or principal underwriter, acting as principal, from participating in any joint arrangement with the company unless authorized by the Commission. Applicants request relief to permit affiliated persons of each Fund, or affiliated persons of any of these persons, to participate in any joint arrangement in which the Fund is a participant. Joint transactions in which a Fund may participate could include the following: (a) An investment by one or more Funds in a security in which the Company or its affiliated person, or another Fund, is a participant, or with respect to which the Company or an affiliated person of the Company is entitled to receive fees (including, but not limited to, legal fees, consulting fees, or other economic benefits or interests); (b) an investment by one or more Funds in an investment vehicle sponsored, offered or managed by the Company; and (c) an investment by one or more Funds in a security in which an affiliate is or may become a participant.

6. Applicants state that strict compliance with section 17(d) would cause the Funds to forego investment opportunities simply because a Fund Investor, the Company or other affiliates of the Fund also had made or contemplated making a similar investment. In addition, because investment opportunities of the types considered by the Funds often require that each participant make available funds in an amount that may be substantially greater than that available to the investor alone, there may be certain attractive opportunities of which a Fund may be unable to take advantage except as a co-participant with other persons, including affiliates. Applicants note that, in light of the Company's purpose of establishing the Funds so as to reward Eligible Investors and to attract highly qualified personnel to the Company, the possibility is minimal that an affiliated party investor will enter into a transaction with a Fund with the intent of disadvantaging the Fund. Finally, applicants contend that the possibility that a Fund may be disadvantaged by the participation of an affiliate in a transaction will be minimized by compliance with the lockstep procedures described in condition 4 below. Applicants assert that the flexibility to structure co-investments and joint investments will not involve abuses of the type section 17(d) and rule 17d–1 were designed to prevent.

7. Section 17(f) of the Act designates the entities that may act as investment company custodians, and rule 17f–2 allows an investment company to act as self-custodian, subject to certain requirements. Applicants request an exemption from section 17(f) and rule 17f–2 to permit the following exceptions from the requirements of rule 17f–2: (a) A Fund's investments may be kept in the locked files of the Company or of a Partner; (b) for purposes of paragraph (d) of the rule, (i) employees of the Company will be deemed employees of the Funds, (ii) the Managers of a Fund will be deemed to be officers of the Fund, and (iii) the Managers of a Fund will be deemed to be the board of directors of the Fund; and (c) in place of the verification procedure under paragraph (f) of the rule, verification will be effected quarterly by two employees of the Company. Applicants assert that the securities held by the Funds are most suitably kept in the Company's files, where they can be referred to as necessary.

8. Section 17(g) and rule 17g–1 generally require the bonding of officers and employees of a registered investment company who have access to its securities or funds. Rule 17g–1 requires that a majority of directors who are not interested persons ("disinterested directors") take certain actions and give certain approvals relating to fidelity bonding. Paragraph (g) of rule 17g–1 sets forth certain materials relating to the fidelity bond that must be filed with the Commission and certain notices relating to the fidelity bond that must be given to each member of the investment company's board of directors. Paragraph (h) of rule 17g–1 provides that an investment company must designate one of its officers to make the filings and give the notices required by paragraph (g).

Paragraph (j) of rule 17g–1 exempts a joint insured bond provided and maintained by an investment company and one or more other parties from section 17(d) of the Act and the rules thereunder. Rule 17g–1(j)(3) requires that investment companies relying on this exemption have a majority of disinterested directors, that those disinterested directors select and nominate any other disinterested directors, and that any legal counsel for those disinterested directors be independent.

9. Applicants request an exemption from section 17(g) and rule 17g–1 to the extent necessary to permit each Fund to comply with rule 17g–1 without the necessity of having a majority of the disinterested directors take such actions and make such approvals as are set forth in the rule. Specifically, each Fund will comply with rule 17g–1 by having the Managers take such actions and make such approvals as are set forth in rule 17g–1. Applicants state that, because the Managers will be interested persons of the Fund, a Fund could not comply with rule 17g–1 without the requested relief. Applicants also request an exemption from the requirements of rule 17g–1(g) and (h) relating to the filing of copies of fidelity bonds and related information with the Commission and the provision of notices to the board of directors and from the requirements of rule 17g–1(j)(3). Applicants believe the filing requirements are burdensome and unnecessary as applied to the Funds. The Managers will maintain the materials otherwise required to be filed with the Commission by rule 17g–1(g) and agree that all such material will be subject to examination by the Commission and its staff. The Managers will designate a person to maintain the records otherwise required to be filed with the Commission under paragraph (g) of the rule. Applicants also state that the notices otherwise required to be given to the board of directors would be unnecessary as the Funds will not have boards of directors. The Funds will comply with all other requirements of rule 17g–1.

10. Section 17(j) and paragraph (b) of rule 17j–1 make it unlawful for certain enumerated persons to engage in fraudulent or deceptive practices in connection with the purchase or sale of a security held or to be acquired by a registered investment company. Rule 17j–1 also requires that every registered investment company adopt a written code of ethics and that every access person of a registered investment company report personal securities transactions. Applicants request an exemption from the requirements of rule 17j–1, except for the anti-fraud provisions of paragraph (b), because they are unnecessarily burdensome as applied to the Funds.

11. Applicants request an exemption from the requirements in sections 30(a), 30(b) and 30(e), and the rules under those sections, that registered investment companies prepare and file with the Commission and mail to their shareholders certain periodic reports and financial statements. Applicants contend that the forms prescribed by the Commission for periodic reports have little relevance to the Funds and would entail administrative and legal costs that outweigh any benefit to the Fund Investors. Applicants request exemptive relief to the extent necessary to permit each Fund to report annually to its Fund Investors. Applicants also request an exemption from section 30(h) to the extent necessary to exempt the Managers of each Fund and any other persons who may be deemed members of an advisory board of a Fund from filing Forms 3, 4 and 5 under section 16 of the Exchange Act with respect to their ownership of Interests in the Fund. Applicants assert that, because there will be no trading market for Interests and transfers of Interests will be severely restricted, these filings are unnecessary for the protection of investors and burdensome to those required to make them.

Applicants' Conditions

The applicants agree that any order granting the requested relief will be subject to the following conditions:

Fund Operations

1. Each proposed transaction to which a Fund is a party otherwise prohibited by section 17(a) or section 17(d) and rule 17d–1 (each, a "Section 17 Transaction") will be effected only if the Managers determine that: (a) The terms of the Section 17 Transaction, including the consideration to be paid or received, are fair and reasonable to the Fund Investors of the participating Fund and do not involve overreaching of the Fund or its Fund Investors on the part of any person concerned; and (b) the Section 17 Transaction is consistent with the interests of the Fund Investors of the participating Fund, the Fund's organizational documents and the Fund's reports to its Fund Investors.

In addition, the Managers will record and preserve a description of such Section 17 Transactions, their findings, the information or materials upon which their findings are based and the basis therefor. All such records will be maintained for the life of a Fund and at least two years thereafter, and will be subject to examination by the Commission and its staff. All such records will be maintained in an easily accessible place for at least the first two years.

2. If purchases or sales are made by a Fund from or to an entity affiliated with the Fund by reason of a Partner or employee of the Cooley Godward Group (a) serving as an officer, director, general partner or investment adviser of the entity, or (b) having a 5% or more investment in the entity, such individual will not participate in the Fund's determination of whether or not to effect the purchase or sale.

3. The Managers will adopt, and periodically review and update, procedures designed to ensure that reasonable inquiry is made, prior to the consummation of any Section 17 Transaction, with respect to the possible involvement in the transaction of any affiliated person or promoter of or principal underwriter for the Funds, or any affiliated person of such a person, promoter, or principal underwriter.

4. The Managers will not make on behalf of a Fund any investment in which a Co-Investor, as defined below, has or proposes to acquire the same class of securities of the same issuer, where the investment involves a joint enterprise or other joint arrangement within the meaning of rule 17d–1 in which the Fund and the Co-Investor are participants, unless any such Co-Investor, prior to disposing of all or part of its investment: (a) Gives the Managers sufficient, but not less than one day's, notice of its intent to dispose of its investment, and (b) refrains from disposing of its investment unless the participating Fund holding such investment has the opportunity to dispose of its investment prior to or concurrently with, on the same terms as, and on a *pro rata* basis with, the Co-Investor. The term "Co-Investor" with respect to any Fund means any person who is (a) an "affiliated person" (as defined in section 2(a)(3) of the Act) of the Fund; (b) the Cooley Godward Group; (c) a Partner, lawyer, or employee of the Cooley Godward Group; (d) an investment vehicle offered, sponsored, or managed by the Company or an affiliated person of the Company; or (e) an entity in which a Cooley Godward Entity acts as a general partner, or has a similar capacity to control the sale or other disposition of the entity's securities.

The restrictions contained in this condition, however, shall not be deemed to limit or prevent the disposition of an investment by a Co-Investor: (a) To its direct or indirect wholly owned subsidiary, to any

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company (a "Parent") of which the Co-Investor is a direct or indirect wholly owned subsidiary, or to a direct or indirect wholly owned subsidiary of its Parent; (b) to Immediate Family Members of the Co-Investor or a trust established for any such Immediate Family Member; (c) when the investment is comprised of securities that are listed on a national securities exchange registered under section 6 of the Exchange Act; (d) when the investment is comprised of securities that are national market system securities pursuant to section 11A(a)(2) of the Exchange Act and rule 11Aa2–1 thereunder; or (e) when the investment is comprised of securities (i) that meet the requirements of and are authorized as Nasdaq SmallCap Market securities by The Nasdaq Stock Market, Inc., (ii) that have an average daily trading volume value over the last 60 calendar days of at least $1 million, and (iii) are issued by an issuer whose common equity securities have a public float value of at least $150 million.

5. The Managers of each Fund will send to each person who was a Fund Investor in such Fund at any time during the fiscal year then ended audited financial statements with respect to those Series in which the Fund Investor held Interests. At the end of each fiscal year, the Managers will make a valuation or have a valuation made of all of the assets of the Fund as of the fiscal year end in a manner consistent with customary practice with respect to the valuation of assets of the kind held by the Fund. In addition, as soon as practicable after the end of each fiscal year of each Fund, the Managers of the Fund shall send a report to each person who was a Fund Investor at any time during the fiscal year then ended, setting forth such tax information as shall be necessary for the preparation by the Fund Investor of his or her federal and state income tax returns and a report of the investment activities of such Fund during such year.

6. Each Fund and the Managers will maintain and preserve, for the life of each Series of that Fund and at least two years thereafter, such accounts, books, and other documents as constitute the record forming the basis for the audited financial statements and annual reports of such Series to be provided to its Fund Investors, and agree that all such records will be subject to examination by the Commission and its staff. All such records will be maintained in an easily accessible place for at least the first two years.

Compliance With Rule 701

7. Prior to receiving a subscription agreement from any potential Fund Investor pursuant to an offering in reliance on rule 701, the Company will make available at no charge to potential Fund Investors the services of a Financial Consultant qualified to provide advice concerning the appropriateness of investing in a Fund. Specifically, the Financial Consultant will hold one or more group meetings with potential Fund Investors at which the Financial Consultant will discuss the risks and other considerations relevant to determining whether to invest in a Fund. The Financial Consultant also will be available to the group of potential Fund Investors during the meeting to answer general questions regarding an investment in the Fund. In addition, potential Fund Investors will be given the opportunity to submit relevant questions and issues to the Financial Consultant in advance of the group meetings, so that the Financial Consultant can address those questions and issues at the meetings. The Company will not need to reveal the specific investments made by any Fund to the Financial Consultant, as long as the investment objectives, risk characteristics and other material information about the Fund of the type that would be disclosed in the offering documents for the Fund is made available to the Financial Consultant.

8. The Managers will at all times control each Fund, within the meaning of rule 405 under the Securities Act. In this regard, the Managers will be the sole managers of the Fund and make all investment and other operational decisions for the Fund.

9. The Company or a wholly-owned subsidiary will own not less than 5% of the economic Interests issued each year by the Fund, and at least 95% of the voting Interests of the Fund. In addition, the Company and its Partners (directly or through Qualified Investment Vehicles) together will own at least 80% of the economic Interests of each Series.

10. The Company prepares its financial statements on a modified cash basis, and does not consolidate the Fund's financial statements with its own. If, however, the Company prepared its financial statements in accordance with GAAP, it would consolidate the Fund's financial statements with its own.

11. The Company, when offering Interests pursuant to rule 701 under the Securities Act, will issue Interests in each Series in compliance with rule 701(d)(2),[3] and will comply with all applicable requirements of rule 701(e).[4]

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–29041 Filed 11–14–02; 8:45 am]

BILLING CODE 8010–01–P

[3] If the Company relies on rule 701(d)(2)(ii), it will not sell pursuant to rule 701, during any consecutive 12-month period, Interests in the Fund if the sales price of those Interests exceeds 15% of the total assets of the Fund.

[4] In order to comply with the requirements of rule 701, at the beginning of each Investment Period the Fund will accept capital contributions or irrevocable commitments from Regulation D Investors for the relevant Series, and then prepare a balance sheet as required by rule 701. The Fund may then receive and accept subscription agreements, and thereafter accept capital contributions or commitments, from Rule 701 Investors for that Series, which in the aggregate will not exceed 15% of the total amount of capital contributions and irrevocable commitments received from Regulation D Investors.

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–25800; File No. 812–12618]

Fortis Benefits Insurance Company, et al.; Notice of Application

November 8, 2002.

AGENCY: Securities and Exchange Commission. ("Commission").

ACTION: Notice of amended and restated application for an order pursuant to Section 26(c) of the Investment Company Act of 1940 (the "Act") approving certain substitutions of securities.

APPLICANTS: Fortis Benefits Insurance Company ("Fortis Benefits"), First Fortis Life Insurance Company ("First Fortis"), Variable Account D of Fortis Benefits Insurance Company ("Account D"), and Separate Account A of First Fortis Life Insurance Company ("Account A") (together, the "Applicants").

SUMMARY OF APPLICATION: Applicants request an order to permit Fortis Benefits and First Fortis to substitute shares of the Mid Cap Growth Fund II of Strong Variable Insurance Funds, Inc. ("Strong") for shares of the Discovery Fund II of Strong, and shares of the International Portfolio of Alliance Variable Products Series Funds, Inc. ("Alliance") for shares of the International Stock Fund II of Strong held by Account D and Account A to support variable annuity contracts ("Contracts").

FILING DATE: The application was filed on August 29, 2001 and amended and restated on November 1, 2002.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on December 3, 2002, and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, c/o Thomas S. Clark, Esq., Assistant Counsel, Hartford Life Insurance Company, 200 Hopmeadow Street, Simsbury, CT 06089. Copy to David S. Goldstein, Esq., Sutherland Asbill & Brennan LLP, 1275 Pennsylvania Avenue, NW., Washington, DC 20004–2415.

FOR FURTHER INFORMATION CONTACT: Kenneth C. Fang, Attorney, or Zandra Y. Bailes, Branch Chief, Office of Insurance Products, Division of Investment Management at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the Public Reference Branch of the Commission, 450 Fifth Street, NW., Washington, DC 20549–0102 (tel. (202) 942–8090).

Applicants' Representations

1. Fortis Benefits is a stock life insurance company incorporated under the laws of Minnesota. Fortis Benefits is engaged in the underwriting and sale of life insurance and annuity products in the District of Columbia and all states but New York. Fortis Benefits is a wholly-owned indirect subsidiary of Fortis, Inc. As of December 31, 2001, Fortis Benefits had assets of approximately $10 billion. For purposes of the Act, Fortis Benefits is the depositor and sponsor of Account D as interpreted by the Commission with respect to variable annuity separate accounts.

2. First Fortis is a stock life insurance company incorporated under the laws of New York. First Fortis is engaged in the business of writing individual and group life insurance and annuity contracts in New York. First Fortis is a wholly-owned subsidiary of Fortis, Inc. As of December 31, 2001, First Fortis had assets of approximately $374 million. For purposes of the Act, First Fortis is the depositor and sponsor of Account A as interpreted by the Commission with respect to variable annuity separate accounts.

3. Fortis Benefits established Account D on October 14, 1987 as a segregated investment account under Minnesota law. Under Minnesota law, the assets of Account D attributable to the Contracts through which interests are issued are owned by Fortis Benefits but are held separately from all other assets of Fortis Benefits for the benefit of the owners of, and the persons entitled to payment under, those Contracts. Consequently, such assets in Account D are not chargeable with liabilities arising out of any other business that Fortis Benefits may conduct. Income, gains, and losses, realized and unrealized, from the assets of Account D are credited to or charged against Account D without regard to the income, gains, or losses arising out of any other business that Fortis Benefits may conduct. Account D is a "separate account" as defined by Rule 0–1(e) under the Act and is registered with the Commission as a unit investment trust (File No. 811–05439), and interests in Account D offered through such Contracts have been registered under the Securities Act of 1933, as amended (the "1933 Act") on Form N–4 (File No. 33–63935).

4. First Fortis established Account A on October 1, 1993 as a segregated investment account under New York law. Under New York law, the assets of Account A attributable to the Contracts through which interests are issued are owned by First Fortis but are held separately from all other assets of First Fortis for the benefit of the owners of, and the persons entitled to payment under, those Contracts. Consequently, such assets in Account A are not chargeable with liabilities arising out of any other business that First Fortis may conduct. Income, gains, and losses, realized and unrealized, from the assets of Account A are credited to or charged against Account A without regard to the income, gains, or losses arising out of any other business that First Fortis may conduct. Account A is a "separate account" as defined by Rule 0–1(e) under the Act and is registered with the Commission as a unit investment trust (File No. 811–08154), and interests in Account A offered through such Contracts have been registered under the 1933 Act on Form N–4 (File No. 333–20343).

5. On April 2, 2001, Fortis Benefits and First Fortis consummated agreements with Hartford Life and Annuity Insurance Company ("Hartford L&A") and Hartford Life Insurance Company ("Hartford Life"), respectively, pursuant to which Hartford L&A and Hartford Life would reinsure all of the individual life insurance and annuity business of Fortis Benefits and First Fortis, respectively. Additionally, Fortis Benefits and First Fortis have contracted the administrative servicing obligations for the Contracts to Hartford L&A and Hartford Life, respectively. Although Fortis Benefits or First Fortis remains responsible for all Contract terms and conditions, Hartford L&A and Hartford Life are responsible for administering the Contracts, including processing premium payments, paying benefits, providing other Contract owner services, oversight of investment management of general account assets supporting the fixed account portion of the Contracts, and administration of the Accounts. With regard to administration of the Accounts, Hartford L&A and Hartford Life are responsible for making filings with the Commission, including the preparation and filing of applications for orders under section 26(c) of the Act if such becomes necessary for Fortis Benefits, First Fortis or the Accounts to respond to various contingencies involving underlying funds.

6. Strong was incorporated in Wisconsin on December 28, 1990. Strong is a series investment company as defined by Rule 18f–2 under the Act and is registered under the Act as an open-end management investment company (File No. 811–6553). Strong issues a separate series of shares of stock in connection with each fund and has registered these shares under the 1933 Act on Form N–1A (File No. 33–45321). Strong Capital Management, Inc. serves as investment adviser to the Strong Discovery Fund II ("Discovery"), the Strong International Stock Fund II ("Strong International"), and the Strong Mid Cap Growth Fund II ("Mid Cap Growth").

7. Discovery seeks capital growth. This fund primarily invests in a diversified portfolio of common stocks from small-, medium-, and large-capitalization companies that offer attractive opportunities for growth. If market conditions favor fixed-income investments, Discovery may invest a significant portion of its assets in intermediate- and long-term investment grade bonds as well as in foreign investments to a limited extent.

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8. Strong International seeks capital growth. This fund primarily invests in stocks of foreign issuers that appear to have strong growth potential relative to their risk.

9. Mid Cap Growth seeks capital growth. This fund invests at least 80% of its assets in stocks of medium-capitalization companies that have favorable prospects for growth of earnings and capital appreciation. Other Mid Cap Growth investments include futures and options transactions as well as writing put and call options and foreign securities. Except to the extent that Fortis Benefits or First Fortis may, from time to time, hold 5% or more of the shares of Mid Cap Growth, Mid Cap Growth is not an affiliated person of Fortis Benefits or First Fortis.

10. Alliance was incorporated in Maryland on November 17, 1987. Alliance is a series investment company as defined by Rule 18f–2 under the Act and is registered under the Act as an open-end management investment company (File No. 811–5398). Alliance issues a separate series of shares of common stock in connection with each portfolio and has registered these shares under the 1933 Act on Form N–1A (File No. 33–18647). Alliance Capital Management, L.P. serves as investment adviser to the International Portfolio ("Alliance International").

11. Alliance International seeks a total return on its assets from long-term growth of capital. This fund normally invests 80% of its assets in a broad portfolio of marketable securities of established international companies, companies participating in foreign economies with prospects for growth, and foreign government securities, including U.S. companies that have their principal activities and interests outside the U.S. Except to the extent that Fortis Benefits or First Fortis may, from time to time, hold 5% or more of the shares of Alliance International, Alliance International is not an affiliated person of Fortis Benefits or First Fortis.

12. The Contracts are individual and group flexible premium deferred combination variable and fixed annuity contracts. The Contracts provide for the accumulation of values on a variable basis, fixed basis, or both, during the accumulation period, and provide settlement or annuity payment options on a variable basis, fixed basis, or both. Under the Contracts, Fortis Benefits and First Fortis reserve the right to substitute shares of one fund for shares of another.

13. Under the Contracts, a Contract owner may make unlimited transfers of all or part of the Contract value from one subaccount to another during the accumulation period and four times per year during the annuity period. Fortis Benefits and First Fortis currently do not assess a charge on transfers; however, Fortis Benefits and First Fortis reserve the right to restrict the frequency of, or otherwise condition, terminate, or impose charges upon transfers from a subaccount in the future.

14. Fortis Benefits and First Fortis, on their behalf and on behalf of the Accounts, propose to substitute: (1) shares of Mid Cap Growth for shares of Discovery; and (2) shares of Alliance International for shares of Strong International. Applicants believe that by making the proposed substitutions, they can better serve the interests of the Contract owners.

15. On April 5, 2001, the board of directors of Discovery and Strong International (the "Board") voted to close these Funds (the "Old Funds") to new life insurance separate account investors effective April 6, 2001. Subsequently, on June 1, 2001, Strong Investments, Inc., Strong's distributor, notified Fortis Benefits and First Fortis of Strong's intention to terminate its participation agreements with them—to the extent that such agreements apply to the Old Funds—effective December 2001 and cease the Old Funds' operations soon thereafter. Strong Investments, Inc. indicated that the Board decided to close the Old Funds because of the Old Funds' small asset base, lack of expected asset growth, and lack of economies of scale. The Board also requested that all of the insurance companies currently having separate accounts invested in the Old Funds, including Fortis Benefits and First Fortis, seek an order from the Commission approving the substitutions of other securities for shares of Discovery and Strong International held currently by these separate accounts. Strong Investments, Inc. therefore suggested that closing the Old Funds would be best for the Applicants and the Contract owners.

16. Applicants represent that they had no control over the Board's decision to terminate the Old Funds. Further Applicants believe that some or all of these other insurance companies will seek an order from the Commission to substitute shares of certain securities for shares of the Old Funds. Accordingly, Applicants believe that the resulting decrease in assets of the Old Funds would likely result in higher expenses and less favorable performance, to the detriment of the Contract owners.

17. Mid Cap Growth and Discovery have an identical investment objective of capital growth. The investment strategies of both funds are somewhat similar; however, they differ in that Discovery invests in stocks having a wide range of capitalizations whereas Mid Cap Growth invests at least 80% of its assets in medium-capitalization stocks. If the market dictates, both funds will place their assets in other types of investments: Discovery may invest in intermediate- and long-term investment grade bonds, and Mid Cap Growth may invest in futures and options transactions and in foreign securities, as well as write put and call options. Overall, Applicants believe that both funds have substantially similar investment risk profiles; although Mid Cap Growth is permitted to invest in more types of investments, some of which could entail greater risks than most of the securities in Discovery's investment portfolio, Mid Cap Growth's actual portfolio, taken as a whole, is quite comparable to that of Discovery. After the proposed substitution, Contract owners will still have the ability to invest in a fund seeking capital growth through medium-capitalization stocks. Applicants believe that Contract owners will be better off with the proposed substitution because Mid Cap Growth has more assets and has had better performance than Discovery in recent periods.

18. Discovery has proven unpopular with investors. Over the last four years, Discovery has lost 43% of its assets, declining from $214 million at the end of 1997 to only $121 million as of December 31, 2001. Although Mid Cap Growth's assets experienced a decline in 2001, overall the fund's assets have grown by approximately $321 million over the last four years. The large growth in Mid Cap Growth's assets has created greater economies of scale than it had when its asset base was smaller. Mid Cap Growth currently maintains an expense ratio comparable to that of Discovery.

19. Mid Cap Growth has cumulative four-year returns that surpass or are comparable to its benchmark indices, the S&P Mid Cap 400, the Russell Midcap Index, and the Lipper Multi-Cap Index, even though Mid Cap Growth averaged returns below its benchmark indices last year.

20. The investment objectives and strategies of Alliance International and Strong International are substantially the same as they both seek capital growth through foreign investments. Alliance International, however, also invests in U.S. companies that have their principal activities and interests outside of the U.S. Overall, Applicants believe that both Funds have substantially similar investment risk profiles. In fact, Applicants believe that an investment in Alliance International would generally entail less risk than would an investment in Strong International in that Alliance International may invest in a broader spectrum of investments leading to greater diversification and correspondingly less risk. After the proposed substitution, Contract owners will still have the ability to invest in a fund that invests in the stocks of issuers located or doing business in foreign countries. Applicants believe that Contract owners will be better off with the proposed substitution because Alliance International has more assets, lower expenses, and better performance than Strong International.

21. Alliance International's expense ratio has consistently been lower than Strong International's expense ratio over the last four years. Alliance International has an expense ratio of 1.44% as of December 31, 2001. However, because of expense caps, Contract owners only paid 0.95%.

22. Alliance International has performed on par with its benchmark index, the MSCI EAFE Index. Whereas Alliance International has a five-year cumulative return of 0.38%, its benchmark index returned 0.90% over the same period. Last year, Alliance International and its benchmark posted somewhat comparable losses of −22.35% and −21.21% respectively.

23. The following charts show the approximate year-end size (in net assets), expense ratio (ratio of operating expenses as a percentage of average net assets), and annual total returns for each of the past five years for each of the funds.

	Net assets at year-end (millions)	In percent			
		Expense ratio (before imposition of expense caps)	Actual expense ratio	Management fee	Total return
Strong Discovery Fund II:					
1997	$214	1.2	1.2	1.00	11.4
1998	196	1.2	1.2	1.00	7.3
1999	152	1.2	1.1	1.00	5.1
2000	136	1.3	1.2	1.00	4.4
2001	121	1.2	1.2	1.00	4.1
Strong Mid Cap Growth Fund II:					
1997	2	2.0	1.2	1.00	29.8
1998	18	1.6	1.2	1.00	28.7
1999	324	1.2	1.1	1.00	89.9
2000	531	1.2	1.2	1.00	−14.8
2001	323	1.4	1.2	0.75	−30.8
Strong International Stock Fund II:					
1997	60	1.5	1.5	1.00	−13.50
1998	47	1.6	1.6	1.00	−4.80
1999	125	1.3	1.2	1.00	87.20
2000	55	1.6	1.2	1.00	−39.50
2001	33	1.5	1.0	1.00	−22.10
Alliance International Portfolio:					
1997	61	1.42	0.95	0.53	3.33
1998	65	1.37	0.95	0.67	13.02
1999	81	1.36	0.95	0.69	40.23
2000	79	1.34	0.95	0.69	−19.86
2001	64	1.44	0.95	0.61	−22.35

24. Prior to the date the substitution is effected, Fortis Benefits and First Fortis will send Contract owners a current prospectus for Alliance International and Mid Cap Growth (the "New Funds"). In addition, by supplements to the various prospectuses for the Contracts and the Accounts, Fortis Benefits and First Fortis will notify all owners of the Contracts of their intention to take the necessary actions, including seeking the orders requested by the Application, to substitute shares of the Funds as described herein. The supplements will inform Contract owners that until the date of the proposed substitutions, owners are permitted to make one transfer of all amounts under a Contract invested in any one of the affected subaccounts on the date of the supplement to another subaccount under a Contract (other than the other affected subaccount) without that transfer being treated as a transfer for the purpose of assessing transfer charges or for determining the number of remaining permissible transfers in a Contract year. The supplements also will inform Contract owners that Fortis Benefits and First Fortis will not exercise any rights reserved under any Contract to impose additional restrictions on transfers until at least 30 days after the proposed substitutions.

25. Fortis Benefits and First Fortis will redeem the shares: (1) Of Discovery for cash and use the redemption proceeds to purchase shares of Mid Cap Growth; and (2) of Strong International for cash and use the redemption proceeds to purchase shares of Alliance International. The proposed substitutions will take place at relative net asset value with no change in the amount of any Contract owner's Contract value or in the dollar value of his or her investment in either of the Accounts. As a result, Contract owners will remain fully invested. Contract owners will not incur any fees or charges as a result of the proposed substitutions, nor will their rights or Fortis Benefits' and First Fortis' obligations under the Contracts be altered in any way. All expenses incurred in connection with the proposed substitutions, including legal, accounting, brokerage, and other fees and expenses, will be the responsibility of Fortis Benefits and/or First Fortis. In addition, the proposed substitutions will not impose any tax liability on Contract owners. The proposed substitutions will not cause the Contract fees and charges currently being paid by

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existing Contract owners to be greater after the proposed substitutions than before the proposed substitutions. The proposed substitution will not, of course, be treated as a transfer for the purpose of assessing transfer charges or for determining the number of remaining permissible transfers in a Contract year. Fortis Benefits and First Fortis will not exercise any right they may have under the Contracts to impose additional restrictions on transfers under any of the Contracts for a period of at least 30 days following the substitutions. Contract owners having Contract value transferred to a New Fund by the proposed substitutions, may transfer out of the subaccount investing in that Fund during the 30 days following the date of the proposed substitutions without that transfer being treated as a transfer for the purpose of assessing transfer charges or for determining the number of remaining permissible transfers in a Contract year.

26. In addition to the supplements described above, Fortis Benefits and First Fortis will, if necessary, by supplements to the various prospectuses for the Contracts and the Accounts, notify all owners of the Contracts of the substitutions immediately after they occur.

27. In addition to the prospectus supplements distributed to Contract owners, within five days after the proposed substitution, any Contract owners who were affected by the substitutions will be sent a written notice informing them that the substitution was carried out and that they may transfer to another subaccount. Contract value invested in one of the affected subaccounts may be transferred free of charge for 30 days following the date of the substitutions without that transfer counting as one of a limited number of transfers permitted in a Contract year or as one of a limited number of transfers permitted in a Contract year. The notice will also reiterate the fact that Fortis Benefits and First Fortis will not exercise any rights reserved by them under the Contracts to impose additional restrictions on transfers until at least 30 days after the proposed substitutions. The notice will be preceded or accompanied by current prospectuses for the Alliance International and Mid Cap Growth.

Applicants' Legal Analysis

1. Section 26(c) was added to the Act by the Investment Company Amendments of 1970. Prior to the enactment of the 1970 amendments, a depositor of a unit investment trust could substitute new securities for those held by the trust by notifying the trust's security holders of the substitution within five days of the substitution. In 1966, the Commission, concerned with the high sales charges then common to most unit investment trusts and the disadvantageous position in which such charges placed investors who did not want to remain invested in the substituted fund, recommended that section 26 be amended to require that a proposed substitution of the underlying investments of a trust receive prior Commission approval.

2. Congress responded to the Commission's concerns by enacting section 26(c) to require that the Commission approve all substitutions by the depositor of investments held by unit investment trusts.

3. The proposed substitutions appear to involve the substitution of securities within the meaning of section 26(c) of the Act. Applicants therefore request an order from the Commission pursuant to section 26(c) approving the proposed substitutions.

4. Applicants state that the Contracts expressly reserve for Fortis Benefits and First Fortis the right, subject to compliance with applicable law, to substitute shares of another management company for shares of a management company held by a subaccount of the Accounts. Applicants state that Fortis Benefits and First Fortis reserved this right of substitution both to protect themselves and their Contract owners in situations where either might be harmed or disadvantaged by circumstances surrounding the issuer of the shares held by one or more of their separate accounts and to afford the opportunity to replace such shares where to do so could benefit themselves and Contract owners.

5. In addition to the foregoing, Applicants generally submit that the proposed substitutions meet the standards that the Commission and its staff have applied to similar substitutions that have been approved in the past.

6. Applicants further assert that the proposed substitutions are not the type of substitutions that section 26(c) was designed to prevent. Unlike traditional unit investment trusts where a depositor could only substitute an investment security in a manner which permanently affected all the investors in the trust, the Contracts provide each Contract owner with the right to exercise his or her own judgment and transfer Contract or cash values into other subaccounts. Moreover, the Contracts will offer Contract owners the opportunity to transfer amounts out of the affected subaccounts into any of the remaining subaccounts without cost or other disadvantage. Applicants believe the proposed substitutions, therefore, will not result in the types of costly forced redemption that section 26(c) was designed to prevent.

7. Applicants also believe that the proposed substitutions are unlike the type of substitutions that section 26(c) was designed to prevent in that by purchasing a Contract, Contract owners select much more than a particular investment company in which to invest their account values. They also select the specific type of insurance coverage offered by Fortis Benefits and First Fortis under their Contract as well as numerous other rights and privileges set forth in the Contract. Contract owners may also have considered Fortis Benefits' and First Fortis' size, financial condition, type, and reputation for service in selecting their Contract. Applicants state that these factors will not change as a result of the proposed substitutions.

8. Fortis Benefits and First Fortis will not receive, for three years from the date of the substitutions, any direct or indirect benefits from the New Funds, their advisers or underwriters, or from affiliates of the New Funds, their advisers or underwriters, in connection with assets attributable to the Contracts affected by the substitutions, at a higher rate than each received from the Old Funds, their advisers or underwriters, or from affiliates of the Old Funds, their advisers or underwriters, including without limitation Rule 12b-1 fees, shareholder service or administrative or other service fees, revenue sharing or other arrangements. Fortis Benefits and First Fortis each represent that the substitutions it carries out and its selection of New Funds was not motivated by any financial consideration paid or to be paid to it or to any of its affiliates by any of the New Funds, their advisers or underwriters, or by affiliates of the New Funds, their advisers or underwriters.

9. Applicants request an order of the Commission pursuant to section 26(c) of the Act approving the proposed substitutions by Fortis Benefits and First Fortis. Applicants submit that, for all the reasons stated above, the proposed substitutions are consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

For the reasons summarized above, Applicants assert that the proposed substitutions are consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act and therefore request that the substitutions be granted.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–29040 Filed 11–14–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46779; File No. SR–Amex–2001–07]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the American Stock Exchange LLC Relating to the Review of a Floor Official's Market Decision

November 6, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 14, 2001, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change, and amended such proposed rule change on August 27, 2001[3] and October 8, 2002,[4] as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See letter from William Floyd-Jones, Jr., Assistant General Counsel, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated August 24, 2001, replacing Form 19b–4 in its entirety ("Amendment No. 1"). In Amendment No. 1, the Amex, in part, amended the Exchange Constitution to clarify that there is no right to appeal a Floor Official's market decision or ruling to the Board of Governors ("Board"); clarified the definition of "market decision" and what types of market decisions may be subject to arbitration; provided more detail regarding the appeal process; and clarified the individuals who can hold various offices and hear appeals.

[4] See letter from William Floyd-Jones, Jr., Assistant General Counsel, Amex, to Nancy Sanow, Assistant Director, Division, Commission, dated October 7, 2002, replacing Form 19b–4 in its entirety ("Amendment No. 2"). In Amendment No. 2, the Amex deleted the proposed amendment to the Exchange Constitution originally proposed in Amendment No. 1; provided a separate procedure in Amex Rule 22 for appealing a decision of a Floor Official that is made with the concurrence of a Senior Floor Official; and amended the rule text to state that not all decisions or rulings on the Trading Floor may be subject to arbitration.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to amend Exchange Rule 22 to change the procedure for reviewing a Floor Official's market decision and to eliminate the right of appealing a Floor Official's market decision or ruling to the Board. Below is the text of the proposed rule change, as amended.[5] New text is italicized. Deleted text is bracketed.

* * * * *

Authority of Floor Officials

Rule 22. (a) through (d). No change.

(d) Review of Rulings.—[On request of a] *Any* member wishing a prompt (*i.e., prior to scheduled settlement*) on-Floor review of a Floor Official's market decision, [or a decision required to be made by a Floor Official with the concurrence of a Senior Floor Official, the Market Operations Division] shall, forthwith *and in the presence of the ruling Floor Official, present the matter to an Exchange Official* [arrange a meeting of the Senior Supervisory Officer on the Floor and the available Senior Floor Officials,] who shall confirm, amend, or overrule the decision. *An Exchange Official's decision in a matter may be promptly presented on appeal to a Governor who shall confirm, amend, or overrule the decision. A Governor's decision in a matter may be promptly presented on appeal to a panel of three Governors who have not already ruled on the matter which panel shall confirm, amend, or overrule the decision. The Senior Supervisory Officer on the Floor may serve on a panel as a Governor. In the event that three Governors are not available, Senior Floor Officials who have not already ruled on the matter may serve on a panel. Any remaining vacancies on a panel may be filled by Exchange Officials (who have not already ruled on the matter) in order of their seniority as Exchange Officials. Any member wishing a prompt (i.e., prior to scheduled settlement) on-Floor review of a market decision of a Floor Official made with the concurrence of a Senior Floor Official shall, forthwith and in the presence of the ruling Floor Official and Senior Floor Official, present the matter to a panel of three Governors who have not already ruled on the matter.*

Any member wishing a prompt (i.e., prior to scheduled settlement) on-Floor review of a market decision of a Floor Official made with the concurrence of a Senior Floor Official shall, forthwith and in the presence of the ruling Floor Official and Senior Floor Official, present the matter to a panel of three Governors who have not already ruled on the matter which panel shall confirm, amend, or overrule the decision. The Senior Supervisory Officer on the Floor may serve on a panel as a Governor. In the event that three Governors are not available, Senior Floor Officials who have not already ruled on the matter may serve on a panel. Any remaining vacancies on a panel may be filled by Exchange Officials (who have not already ruled on the matter) in order of their seniority as Exchange Officials.

The decision or ruling of a Floor Official or Officials, [or, if reviewed, the determination of the] *Exchange Official, Governor, or three-Governor panel* [Senior Supervisory Officer on the Floor and Senior Floor Officials,] shall be binding on members[, subject to any right of appeal under the Constitution or Rules of the Exchange]. *Notwithstanding the foregoing, at any point after establishing a loss (or profit) through clearance and complying with the highest decision (if any) made in a matter, either party to the matter may elect to submit it to arbitration pursuant to Article VIII of the Constitution. The final decision or ruling on the Trading Floor shall not be binding on the arbitrators, but they may give it such weight as they feel is appropriate. Not all decisions or rulings on the Trading Floor may be subject to arbitration.*

Commentary * * * No change.

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II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change, as amended, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[5] The proposed rule text in Amendment No. 2 replaces the proposed rule text in the original rule filing and Amendment No. 1 in its entirety. Telephone conversation between William Floyd-Jones, Jr., Assistant General Counsel, Amex, and Cyndi Nguyen, Attorney, Division, Commission, on November 4, 2002.

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A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Floor Officials are generally responsible for the supervision of operations on the Exchange Floor.[6] There are four classifications of a Floor Official. In ascending order of responsibility, these classifications are: (1) Floor Official, (2) Exchange Official, (3) Senior Floor Official, and (4) Senior Supervisory Officer. The Vice Chairman of the Exchange is a Floor Governor and serves as the Senior Supervisory Officer.[7] Governors of the Exchange that spend a substantial amount of time on the Floor are Senior Floor Officials.[8] The Board, in addition, may appoint additional Senior Floor Officials from among the Exchange Officials who have previously served on the Board and who spend a substantial part of their time on the Floor.[9] Three Floor Governors and three former Floor Governors currently serve as Senior Floor Officials. Article II, Section 3 of the Exchange Constitution ("Delegation of Powers") authorizes the Board to appoint a number of members and persons that are associated with member organizations in a senior capacity as Exchange Officials. Exchange Officials that spend a substantial portion of their time on the Floor are deemed to be Floor Officials.[10] Currently, there are approximately 38 on-Floor Exchange Officials that function as Floor Officials. Amex Rule 21(b) also authorizes the Chairman to appoint as Floor Officials, "such other persons familiar with the Floor as the Chairman, or the Chief Executive Office if delegated by the Chairman, shall determine to be necessary for the effective and orderly supervision of the operations on the Floor."[11] Currently there are approximately 80 "other" Floor Officials. Numerous provisions of the Exchange's rules specifically call for a Floor Official's involvement in the Exchange's operations.

Floor Officials make "rulings" or "market decisions" (the terms are synonymous) in two distinct sets of circumstances.[12] In the first set of circumstances, Floor Officials make rulings on behalf of the Exchange on matters that require action or review by the Exchange. Examples of situations where Floor Officials make decisions on behalf of the Exchange include decisions to (1) halt or reopen trading in a security,[13] (2) approve the specialist granting a stop in a minimum variation market,[14] (3) approve the cancellation or revision of a trade,[15] and (4) approve the specialist as a dealer electing a stop order by taking the offer or hitting the bid.[16] In the second set of circumstances, Floor Officials rule with respect to market disputes submitted to them by members.[17] An example of where Floor Officials may be called upon to resolve market disputes includes a situation where there is a disagreement between two members as to the price or size of a trade. In either circumstances, a Floor Official may not rule on a matter in which the Floor Official has a personal interest. A Floor Official also may not decide, or be part of a panel that decides, an appeal of a ruling that the same Floor Official previously made.

Members are not required to submit market disputes to Floor Officials for rulings. However, once they do so, they must conduct themselves in accordance with the rulings. The Exchange believes that the ability of Floor Officials to make prompt rulings on market disputes submitted to them by members is a time-honored and important feature both of the Exchange and other Floor-based markets. The Exchange believes that a Floor Official's review of member disputes permits the prompt (*i.e.*, prior to settlement) resolution of trading disputes and thereby limits financial risk to members and their customers from such disputes. Therefore, the Exchange believes that the ability of Floor Officials to rule on member disputes is in the public interest and the interest of investors.

Exchange Rule 22(d) currently provides that a member wishing a prompt, on-Floor review of a Floor Official's market decision (or a decision required to be made by a Floor Official with the concurrence of a Senior Floor Official) could request and Market Operations would "arrange a meeting of the Senior Supervisory Officer on the Floor and the available Senior Floor Officials, who shall confirm, amend or overrule the decision." Currently, the decisions would be binding, subject to a right of appeal under Article II, Section 3 of the Exchange Constitution.

When the Floor Official and appeal systems were originally adopted, the Amex had a different mix of securities, a smaller Trading Floor, fewer members, and far less volume than it has currently.[18] Aside from the new securities and a larger Trading Floor, the Exchange believes that the increased number of orders and transactions on the Floor and the speed with which market prices change and information needs to be provided to customers make the current appeals process unsatisfactory. Further, the Exchange believes that the ability to subject a ruling of a Floor Official to review by the Board or a Board level committee facilitated pointless rather than constructive appeals since, by the time the Board considered the appeal, the trade had long since settled and the Board could not award monetary damages.

To address these concerns, the Exchange is proposing to change the system of appealing Floor Official rulings. The Exchange believes that the proposed system takes advantage of the increased number of Exchange Officials as well as the speed with which an appeal could be handled if conducted by a single Exchange Official in the same vicinity as the matter in question.

As is currently the case, a member that seeks a Floor Official review either of a dispute or an event that requires a Floor Official's approval would seek a Floor Official with an understanding of the matter at hand and is in close physical proximity to the member. For example, a member with a market dispute involving options is unlikely to contact a Floor Official with limited options experience to rule on the matter. Under the proposed system, a member concerned with the appropriateness of the initial Floor Official's ruling could appeal to an Exchange Official. Next, a member aggrieved by an Exchange Official's ruling could then appeal the Exchange Official's ruling to a Floor Governor. The third appeal would be to a three-Governor panel. The proposed appeal process thus provides three levels of prompt review of a Floor Official's ruling. The Exchange believes that the several levels of review would assure that Floor Officials' decisions are fair and impartial as well as prompt.

There would be a slightly different appeal process for the limited number of situations where a Floor Official and a Senior Floor Official must rule together.[19] In these situations, the appeal would go directly to a three Governor panel since a Senior Floor Official either is a Floor Governor or is the equivalent of a Floor Governor in his or her authority to make rulings.

The proposed rule change, as amended, would eliminate the right of appeal to the Board which the Exchange believes only facilitates pointless appeals due to the time required to convene the Amex Adjudicatory Council to review matters.[20] The proposed rule change, as amended, however, would leave unchanged any right that a member or its customer may have to submit a market dispute to arbitration. The rule filing does not seek in any way to define the matters that may be brought to arbitration, and the arbitrability of claims would remain a matter to be determined by arbitrators or the courts.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6(b) of the Act [21] in general, and furthers the objectives of Section 6(b)(5) of the Act [22] in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest by providing for the prompt and fair resolution of a Floor Official's market decision.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change, as amended, will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange neither solicited nor received written comments with respect to the proposed rule change, as amended.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–2001–07 and should be submitted by December 6, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[23]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 02–28991 Filed 11–14–02; 8:45 am]

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[6] *See* Exchange Rule 21(b).

[7] *See* Exchange Rule 21(a). Telephone conversation between William Floyd-Jones, Jr., Assistant General Counsel, Amex, and Cyndi Nguyen, Attorney, Division, Commission, on November 4, 2002 (clarifying the applicability of a reference to Amex's Constitution).

[8] *See* Exchange Rule 21(a).

[9] *See* Exchange Rule 21(a).

[10] *See* Exchange Rule 21(b).

[11] There was a technical correction in this quoting of the rule text in Exchange Rule 21(b). Telephone conversation between William Floyd-Jones, Jr., Assistant General Counsel, Amex, and Cyndi Nguyen, Attorney, Division, Commission, on November 4, 2002.

[12] Floor Officials also may issue fines under the Exchange's Minor Rule Violation Fine Plan. The review of these fines is subject to a separate process described in Exchange Rule 590 that is not changed by the current proposal. *See* Part 2 of Exchange Rule 590. Telephone conversation between William Floyd-Jones, Jr., Assistant General Counsel, Amex, and Cyndi Nguyen, Attorney, Division, Commission, on November 4, 2002 (clarifying the Floor Officials' authority to issue fines only under Part 2 of Exchange Rule 590).

[13] *See* Exchange Rule 22(c)(2).

[14] *See* Exchange Rule 109(c).

[15] *See* Exchange Rule 135.

[16] *See* Exchange Rule 154.04.

[17] *See* Exchange Rule 22(c)(3).

[18] In 1965, there were 650 members, 25 Floor Officials, 2 Senior Floor Officials, and 10 Floor Governors.

[19] *See* Amendment No. 2, *supra* note . An example of a situation where a Floor Official must act jointly with a Senior Floor Official is found in Commentary .02 to Amex Rule 1. This rule provides that if an option trading rotation is in progress prior to 4:02 p.m., and a Senior Floor Official and a Floor Official determine that a final trading rotation is needed to assure a fair and orderly market, the rotation in progress shall be halted and the final rotation begun as promptly as possible after 4:02 p.m.

[20] The Board has delegated to the Amex Adjudicatory Council, a board level committee, the responsibility for reviewing appeals to the Board.

[21] 15 U.S.C. 78f(b).

[22] 15 U.S.C. 78f(b)(5).

[23] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46792; File No. SR–CME–2002–01]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendment No. 1 Thereto, and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 2 Thereto, by Chicago Mercantile Exchange, Inc. Relating to Customer Margin Requirements for Security Futures

November 8, 2002.

On September 27, 2002, Chicago Mercantile Exchange, Inc. ("CME" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change relating to customer margin requirements for security futures. On October 7, 2002, CME submitted Amendment No. 1 to the proposed rule change.[3] The proposed rule change was published for comment in the **Federal Register** on October 21, 2002.[4] On November 7, 2002, CME submitted Amendment No. 2 to the proposed rule change.[5] The Commission received no comment letters directly addressing the proposed rule change. However, the Commission received nine comment letters from ten commenters regarding a proposed rule change submitted by OneChicago, LLC ("OneChicago"), which is substantially similar to CME's proposed rule change.[6] Accordingly, the Commission has considered those comments in its review of the proposed

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Phupinder S. Gill, Managing Director and President, Clearing House Division, CME, to Office of Market Supervision, Division of Market Regulation, Commission, dated October 4, 2002 ("Amendment No. 1"). In Amendment No. 1, the Exchange replaced in its entirety the Form 19b–4 filed on September 27, 2002.

[4] Securities Exchange Act Release No. 46637 (October 10, 2002), 67 FR 64672.

[5] In Amendment No. 2, CME modified certain aspects of its exclusion for market making activity.

[6] *See* Securities Exchange Act Release No. 46555 (September 26, 2002), 67 FR 61707.

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rule change.[7] On November 7, 2002, CME submitted a letter in response to those comments.[8] This order approves the proposed rule change and Amendment No. 1 thereto, accelerates approval of Amendment No. 2, and solicits comments from interested persons on Amendment No. 2.

I. Description of the Proposed Rule Change

Introduction

On August 1, 2002, the Commodity Futures Trading Commission (CFTC) and SEC (collectively, the Commissions) jointly adopted customer margin requirements for security futures.[9] Under the Commissions' "account specific" approach, the Commissions" margin rules apply certain core requirements to all security futures, and direct that the more specific requirements depend on the type of account in which the security futures are held (*i.e.*, a futures account or securities account).

Proposal

The proposed rule change sets forth margin requirements for security futures traded on CME that are held in futures accounts.[10] Specifically, the proposed rule change sets the minimum initial and maintenance customer margin rates for such security futures and provides for lower margin levels for permitted strategy-based offset positions. The proposed rules exclude certain financial relations to which the Commissions' margin rules do not apply. The proposed rule change also establishes standards under which members may qualify as Security Futures Dealers and therefore be excluded from CME's margin rules.

Margin Levels

The Commissions' margin rules require that customers deposit in their accounts minimum margin of 20 percent of the current market value of security futures.[11] In addition, the Commissions' rules permit national securities exchanges to set margin levels below 20 percent of the current market value of security futures for certain offsetting positions in security futures and other securities or futures. The proposed rule change establishes a minimum margin rate of 20 percent for both long and short positions in security futures, except with respect to specified, permitted offsetting positions. Under the proposed rule change, CME permits reduced margin levels for eighteen specific offsetting positions.[12]

Security Futures Dealers

As noted above, the proposed rule change provides an exclusion from CME's margin rules for market makers. Under the proposed rule change, CME's market maker exclusion provides that in order to qualify for the exclusion from the margin rules, a person must (1) be a CME member that is registered with the Exchange as a dealer in security futures; (2) be registered as a floor trader or a floor broker with the CFTC under section 4f(a)(1) of the CEA or as a dealer with the Commission under section 15(b) of the Act; (3) maintain records sufficient to prove compliance with the requirements of CME Rule 930 and Rule 41.42(c)(2)(v) under the CEA and Rule 400(c)(2)(v) under the Act, as applicable, including without limitation trading account statements and other financial records sufficient to detail activity; and (4) hold itself out as being willing to buy and sell security futures for its own account on a regular or continuous basis. In addition, the market maker exclusion provides that any market maker that fails to comply with the applicable rules of the exchange or the margin rules adopted by the Commission and the CFTC shall be subject to disciplinary action in accordance with Chapter 4 of CME's rules, and that appropriate sanctions in the case of any such failure shall include, without limitation, a revocation of such market maker's registration as a dealer in security futures.

The CME's proposal, as amended by Amendment No. 1, provided that a market maker would be considered to be holding itself out as being willing to buy and sell security futures for its own account on a regular or continuous basis if either (1) At least 75% of its gross revenue on an annual basis is derived from business activities or occupations from trading listed financial derivatives and the instruments underlying those derivatives, including security futures, stock index futures and options, stock and index options, stocks, foreign currency futures and options, foreign currencies, interest rate futures and options, fixed income instruments and commodity futures and options; or (2) except for unusual circumstances, at least fifty percent (50%) of its trading activity on CME in any calendar quarter is in classes of security futures contracts to which it is assigned by CME.

In Amendment No. 2, CME amended this aspect of its proposed rule change. Specifically, the market maker exclusion now provides three alternatives ways for a member to satisfy the requirement that a security futures dealer hold itself out as being willing to buy and sell security futures for its own account on a regular or continuous basis. Under the first alternative, the market maker must (1) Provide continuous two-sided quotations throughout the trading day for all delivery months of security futures representing a meaningful proportion of the total trading volume on the Exchange,[13] subject to relaxation during unusual market conditions as determined by CME (such as a fast market in either a security future an underlying security) at which times the market maker must use its best efforts to quote continuously and competitively; and (2) when providing quotations, quote with a maximum bid/ask spread of no more than the greater of $0.20 or 150% of the bid/ask spread in the primary market for the security underlying each security future.

Under the second alternative, the market maker must (1) respond to at least 75% of the requests for quotation for all delivery months of security futures representing a meaningful proportion of the total trading volume on the Exchange,[14] subject to relaxation during unusual market conditions as determined by the CME (such as a fast market in either a security future or an underlying security) at which times such Market Maker must use its best efforts to quote competitively; and (2) when responding to requests for quotation, quote within five seconds with a maximum bid/ask spread of no more than the greater of $0.20 or 150% of the bid/ask spread in the primary market for the security underlying each security future.

Under the third alternative, the market maker is assigned to a group of security futures that is either unlimited in nature ("Unlimited Assignment") or is assigned to no more than 20% of the security futures listed on the Exchange ("Limited Assignment"). In addition, this alternative provides that: (a) At least 75% of the market maker's total trading activity in CME products is in its assigned security futures, measured on a quarterly basis; (b) during at least 50% of the trading day the market maker has bids or offers in the market that are at or near the best market, except in unusual market conditions (such as a fast market in either a security future or an underlying security), with respect to at least 25% (in the case of an Unlimited Assignment) or at least one (in the case of a Limited Assignment) of its assigned security futures; and (c) the first two requirements are satisfied on at least 90% (in the case of an Unlimited Assignment) or 80% (in the case of a Limited Assignment or in the case where the Exchange is listing four or fewer security futures contracts) of the trading days in each calendar quarter. CME has requested approval of this alternative on a six-month pilot basis beginning on the date of this order.

II. Summary of Comments

As noted above, the Commission received no comment letters directly addressing the proposed rule change, but did receive nine comment letters from ten commenters regarding a similar proposed rule change submitted by OneChicago. Accordingly, the Commission has considered those comments in its review of the proposed rule change.[15] CME submitted a letter in response to those comments.[16]

Market Maker Exclusion

All of the comments expressed concern with the proposed market maker exclusion. In particular, the commenters objected to the provision that would allow members to qualify for the market maker exclusion based on the amount of revenue they derive from trading listed financial derivatives and underlying instruments. Six comments expressed the view that this test was inconsistent with the guidelines provided by the Commission and the CFTC,[17] and six comments maintained that the proposed revenue requirement was not consistent with the margin requirements for comparable exchange-traded options and therefore did not satisfy the requirements of section 7(c)(2) of the Act.[18] Commenters argued that the revenue test would allow members to qualify for the market maker exclusion without actually providing liquidity to the market for security futures.[19] Other commenters contended that the revenue test would increase systemic risk in the marketplace for security futures, and therefore did not satisfy section 7(c)(2) of the Act, by allowing an excessively high number of market professionals to trade security futures with reduced margin requirements.[20]

In response to the commenters' concerns, CME stated that it had modified the tests that a CME member must satisfy in order to qualify for the market maker exclusion by eliminating the test based on revenue and revising the test based on trading activity. CME also stated that the futures industry tends to rely upon "local traders" acting as individual entrepreneurs as a primary source of liquidity, and that these local traders are typically not obligated to participate or otherwise be tied to a specific marketplace during the course of the trading day. In addition, CME stated that electronic trading systems developed to support futures trading have been developed to parallel open outcry trading practices, under which local traders may be physically unable to voice a bid and an offer simultaneously or to voice either a bid or offer continuously throughout the entire trading day on each and every trading day. CME maintained that, as a result, electronic futures trading systems may not necessarily support features such as request for quotes or the entry of two-sided quotations.

CME expressed the view that the first and second revised tests are substantively identical to tests that the Commission approved for Nasdaq Liffe Markets.[21] In addition, CME maintained that the third revised test is crafted to reflect the realities of the its electronic trading platform, as well as the fact that a number of CME's floor traders and floor brokers are individual entrepreneurs who cannot physically represent themselves in the market at all times on all trading days. Finally, CME stated that it requested that the third revised test of its market maker exclusion in proposed Rule 930.B.2.b.(3) be adopted on a six-month pilot basis, subject to public comment and subsequent approval by the Commission so that there would be an opportunity for the study of the effects and implications of the test before it is adopted on a permanent basis.

In addition, two comments expressed the view that the proposed market maker exclusion would encourage imprudent risk taking, speculation, and leverage because there would be no net capital requirements imposed either on a floor broker that qualifies for the market maker exclusion or on its carrying broker-dealer or FCM.[22] The commenters' concern is that the regulatory capital requirements for certain security futures market participants is inadequate. Moreover, those commenters expressed concern that in the event of a bankruptcy of a carrying firm, a bankruptcy receiver or trustee would pay out to the floor broker a pro rata share of the available pool of assets on the same terms as customers, notwithstanding that the floor broker was not required to post customer margin.

The Commission believes that the determination of what amount of capital is sufficient for a market participant is within the purview of the participant's primary regulator and does not believe that it would be appropriate to require CME's margin rules to address these

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[7] See letters to Jonathan Katz, Secretary, Commission, from: Philip D. DeFeo, Chairman and Chief Executive Officer, Pacific Stock Exchange, dated October 15, 2002 ("PCX Letter"); Marc Menchel, Senior Vice President and General Counsel, National Association of Securities Dealers, dated October 23, 2002 ("NASD Letter"); Richard Ketchum, Deputy Vice Chairman and President, The Nasdaq Stock Market, Inc., dated October 23, 2002 ("Nasdaq Letter"); Michael J. Simon, Senior Vice President and Secretary, International Securities Exchange, Inc., dated October 22, 2002 ("ISE Letter"); Michael J. Ryan, Jr., Executive Vice President and General Counsel, American Stock Exchange, Inc., dated October 22, 2002 ("Amex Letter"); John P. Davidson, Managing Director, Morgan Stanley & Co. Inc., and Mitchell J. Lieberman, Managing Director, Goldman, Sachs & Co., dated October 23, 2002 ("Morgan/Goldman Letter"); Kathleen M. Hamm, Senior Vice President, Nasdaq Liffe Markets, LLC, dated October 22, 2002 ("NQLX Letter"); Darla C. Stuckey, Corporate Secretary, New York Stock Exchange, Inc., dated October 24, 2002 ("NYSE Letter"); and Michael R. Schaefer, Managing Director, Salomon Smith Barney, dated October 25, 2002 ("SSB Letter").

[8] Letter from CME to Office of Market Supervision, Division of Market Regulation, Commission, dated November 7, 2002 ("CME Letter").

[9] Securities Exchange Act Release No. 46292, 67 FR 53146 (August 14, 2002).

[10] The proposed rule change limits the scope of CME's customer margin rules to positions in futures accounts.

[11] Rule 403(b)(1) under the Act and Rule 41.45(b)(1) under the Commodity Exchange Act ("CEA") 17 CFR 240.403(b)(1) and 17 CFR 41.45(b)(1).

[12] In its release adopting the customer margin rules for security futures, the Commissions published a table of eighteen offsetting positions and corresponding margin levels that are consistent with comparable offsets permitted for positions involving exchange-traded options. The proposed rule change includes all of the offsetting positions that the Commissions included in their table. However, CME's customer margin rules only apply to positions held in futures accounts. Because any offset that includes a security (other than a security future) must be carried in a securities account, CME's rule applies only to those offsetting positions that may be carried in a futures account (*i.e.*, offsets that do not include securities other than security futures).

[13] Beginning on the 181st calendar day after the commencement of trading on the Exchange, a "meaningful proportion of the total trading volume on the Exchange from time to time" shall mean a minimum of 20% of such trading volume.

[14] Beginning on the 181st calendar day after the commencement of trading on the Exchange, a "meaningful proportion of the total trading volume on the Exchange from time to time" shall mean a minimum of 20% of such trading volume.

[15] PCX Letter, NASD Letter, Nasdaq Letter, ISE Letter, Amex Letter, Morgan/Goldman Letter, NQLX Letter, NYSE Letter, and SSB Letter. *See supra* note 7. The SSB Letter stated that it agreed generally with the comments expressed in the Morgan/Goldman Letter.

[16] CME Letter, *supra* note 8.

[17] NASD Letter, Morgan/Goldman Letter, NQLX Letter, NYSE Letter, Nasdaq Letter, SSB Letter, and Amex Letter.

[18] PCX Letter, NASD Letter, ISE Letter, Amex Letter, Morgan/Goldman Letter, and SSB Letter.

[19] PCX Letter, ISE Letter, and NQLX Letter, Morgan/Goldman Letter.

[20] Morgan/Goldman Letter, NASD Letter, SSB Letter.

[21] *See* Securities Exchange Act Release No. 46771 (November 5, 2002).

[22] Morgan/Goldman Letter and SSB Letter.

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concerns indirectly. In addition, the Commission believes that any concerns regarding a market maker's share of a customer's estate in a bankruptcy proceeding would be more properly addressed by changes to the insolvency regime applicable to those market participants.

Finally, one commenter expressed concern with the fact that certain aspects of the margin rules would apply to positions carried in securities accounts. One commenter objected to the proposal to adopt margin levels for offsetting positions that only may be held in securities accounts even though its rules only apply to positions in futures accounts because the proposal gave the impression that those offsets were permitted to be carried in a futures account.[23] The Commission reiterates that because any offset that includes a security (other than a security future) must be carried in a securities account, CME's rule applies only to those offsetting positions that may be carried in a futures account (*i.e.*, offsets that do not include securities other than security futures). In addition, the Commission emphasizes that approval of the proposed rule change does not affect the applicability of the rules of another self-regulatory organization to its members.

III. Discussion

Under section 19(b)(2) of the Act, the Commission is directed to approve the proposed rule change if it finds that it is consistent with the requirements of the Act and the rules and the rules and regulations thereunder applicable to a national securities exchange.[24] Section 6(b)(5) of the Act[25] requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade and, in general, to protect investors and the public interest.[26] In addition, section 7(c)(2)(B) of the Act[27] provides, among other things, that the margin rules for security futures must preserve the financial integrity of markets trading security futures, prevent systemic risk, and be consistent with the margin requirements for comparable exchange-traded options. Section 7(c)(2)(B) also provides that the margin levels for security futures may be no lower than the lowest level of margin, exclusive of premium, required for any comparable exchange-traded option. For the reasons discussed below, after careful review and consideration of the commenters' views, the Commission finds that the rule change is consistent with CME's obligations under the Act and the rules and regulations thereunder.

The Commission believes that the rule change is generally consistent with the customer margin rules for security futures adopted by the Commission and the CFTC. In particular, the Commission notes that, consistent with Rule 403 under the Act, CME's proposed rule provides for a minimum margin level of 20% of current market value for all positions in security futures. The Commission believes that 20% is the minimum margin level necessary to satisfy the requirements of section 7(c)(2)(B) of the Act. Rule 403 under the Act[28] also provides that a national securities exchange may set margin levels lower than 20% of the current market value of the security future for an offsetting position involving security futures and related positions, provided that an exchange's margin levels for offsetting positions meet the criteria set forth in section 7(c)(2)(B) of the Act. The offsets proposed by CME are consistent with the strategy-based offsets permitted for comparable offset positions involving exchange-traded options and therefore consistent with Section 7(c)(2)(B) of the Act.

Finally, the Commission believes that the standards for CME's market maker exclusion, as amended by Amendment No. 2, are consistent with the Act, and Rule 400(c)(2)(v) thereunder.[29] Specifically, the Commissions' margin rules do not apply to a member of a national securities exchange that is registered with such exchange as a "security futures dealer" pursuant to exchange rules that must meet several criteria, including a requirement that a security futures dealer be required "to hold itself out as being willing to buy and sell security futures for its own account on a regular or continuous basis." The Commission believes that the affirmative obligations required by CME Rule 930.B.2.b satisfy this requirement.

IV. Accelerated Approval of Amendment No. 2

CME has asked the Commission to approve Amendment No. 2 to the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing. Amendment No. 2 modifies CME's market maker exclusion. Specifically, Amendment No. 2 modifies the trading obligations that market maker must meet to qualify for the exclusion. The amendments to the trading obligations are in response to the commenters' concerns, and clarify the minimum trading requirements imposed on market makers in order to satisfy the requirement of the exclusion that a market maker hold itself out as being willing to buy and sell security futures for its own account on a regular or continuous basis. CME has also requested that the Commission approve the revised test in CME Rule 930.B.2.b.(3) as a pilot program for six months beginning on the date of this order.

The Commission finds good cause for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission believes that accelerated approval of the proposed rule change should enable CME to begin trading security futures from the outset of security futures trading.[30] In addition, the Commission believes that granting accelerated approval to Amendment No. 2 thereto should clarify the obligations that CME members must meet in order to qualify for the market maker exclusion from the margin requirements. In addition, the Commission notes that certain of the modifications to the trading obligations of the market maker exclusion set forth in Amendment No. 2 will take effect as a temporary pilot to give members of the public an opportunity to comment on the substance of those aspects of Amendment No. 2 before CME requests permanent approval. Accordingly, the Commission believes that there is good cause, consistent with section 19(b) of the Act, to approve Amendment No. 2 to the proposed rule change on an accelerated basis.

V. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether Amendment No. 2 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CME–2002–01 and should be submitted by December 6, 2002.

VI. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[31] that the proposed rule change, as amended, (File No. SR–CME–2002–01) be, and hereby is, approved, *provided, however*, that CME Rule 930.B.2.b.(3) is approved until May 7, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[32]

J. Lynn Taylor,

Assistant Secretary.

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[23] NQLX Letter.

[24] 15 U.S.C. 78s(b)(2).

[25] 15 U.S.C. 78f(b)(5).

[26] In approving this rule change, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78*c*–3(b)(9).

[27] 15 U.S.C. 78g(c)(2)(B).

[28] 17 CFR 240.403(b)(2).

[29] 17 CFR 200.400(c)(2)(v).

[30] The Commission understands that trading in security futures is scheduled to begin on November 8, 2002.

[31] 15 U.S.C. 78s(b)(2).

[32] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46790; File Nos. SR–GSCC–2002–09 and SR–MBSCC–2002–01]

Self-Regulatory Organizations; Government Securities Clearing Corporation and MBS Clearing Corporation; Notice of Filing of Proposed Rule Changes Relating to the Merger of MBS Clearing Corporation into the Government Securities Clearing Corporation to Form the Fixed Income Clearing Corporation

November 7, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on October 7, 2002, the Government Securities Clearing Corporation ("GSCC") and the MBS Clearing Corporation ("MBSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule changes (File Nos. SR–GSCC–2002–09 and SR–MBSCC–2002–01). On October 31, 2002, and on November 5, 2002, GSCC and MBSCC amended the proposed rule changes. The proposed rule changes are described in Items I, II, and III below, which items have been prepared primarily by GSCC and MBSCC. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Changes

The proposed rule changes propose arrangements for the combination of GSCC with MBSCC. The subject proposal provides the following:

- MBSCC will merge into GSCC.
- GSCC will be renamed the Fixed Income Clearing Corporation ("FICC").
- FICC will provide services currently offered by GSCC and MBSCC through separate divisions of FICC ("Government Securities Division" and "Mortgage-Backed Securities Division" collectively referred to as "Divisions"). FICC will adopt the current rules of GSCC, as amended and described herein, as rules of the Government Securities Division and the current rules of MBSCC, as amended and described herein, as rules of the Mortgage-Backed Securities Division.
- After the merger, current GSCC members will receive the services they currently receive from GSCC from the Government Securities Division, and current MBSCC participants, limited purpose participants, and Electronic Pool Notification ("EPN") users will receive the services they currently receive from MBSCC from the Mortgage-Backed Securities Division. The membership agreements between GSCC and its members and between MBSCC and its participants, limited purpose participants, and EPN users will be modified to reflect the merger.
- The rules of GSCC and MBSCC will be modified to reflect that the formerly separate clearing corporations will be separate divisions of FICC.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In their filings with the Commission, GSCC and MBSCC included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments they received on the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. GSCC and MBSCC have prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

GSCC and MBSCC became wholly-owned, indirect subsidiaries of The Depository Trust and Clearing Corporation ("DTCC") as a result of merger and exchange offer transactions that took place in late 2001 ("DTCC Integration").[3] GSCC and MBSCC provide clearing and certain ancillary services for government securities and mortgage-backed securities, respectively. The clearing and other services for these different types of fixed-income products have many common elements. The handling of such products by different clearing corporations hinders development of uniform standards for the fixed-income services industry. The combination of GSCC and MBSCC will lead to development of uniform standards for messaging, reporting, netting and settlement mechanisms, standardized settlement practices, and coordinated cash and mark-to-market flows for fixed-income products. Moreover, combining GSCC and MBSCC will help the clearing corporations achieve important membership and risk management goals, such as building a consolidated risk management platform, optimizing cross-margining among various fixed-income products, and establishing uniform membership standards. Furthermore, redundant facilities, services, and operational aspects[4] will be eliminated as a result of the merger thereby reducing the costs of processing transactions in fixed-income products over time.

To effect the merger, MBSCC will be merged into GSCC under New York law. At the time of the merger, GSCC Acquisition Company LLC ("GSCC Parent"), the sole shareholder of GSCC, will pay MBSCC Holding Company, Inc., the sole shareholder of MBSCC, a nominal amount of money in consideration for canceling its shares of capital stock of MBSCC, and shares of capital stock of MBSCC will be cancelled. GSCC will be the surviving corporation of the merger and will be renamed FICC. GSCC Parent will be the sole direct shareholder of FICC. The current Certificate of Incorporation and Bylaws of GSCC will be amended to be the Certificate of Incorporation and

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by GSCC and MBSCC.

[3] Securities Exchange Act Release Nos. 44988 (October 25, 2001), 66 FR 55222 [SR–MBSCC–2001–01] and 44989 (October 25, 2001), 66 FR 55220 [SR–GSCC–2001–11].

[4] Operational aspects include such things as separate annual reports, regulatory reports, audits, financial statements, and regulatory examinations.

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Bylaws of FICC. FICC will form the Government Securities Division as the vehicle for delivering the services now provided by GSCC to GSCC members. FICC will form the Mortgage-Backed Securities Division as the vehicle for delivering the services now provided by MBSCC to MBSCC participants, limited purpose participants, and EPN users of MBSCC.

The members and participants receiving services from the Divisions will retain their shareholdings in DTCC and their rights to be shareholders in DTCC that they received during the DTCC Integration. The structure implemented during the DTCC Integration to assure fair representation for, among others, the members of GSCC and participants of MBSCC will also remain in place. After the DTCC shareholders that are members of GSCC begin receiving services from the Government Securities Division and after the DTCC shareholders that are participants of MBSCC begin receiving services from the Mortgage-Backed Securities Division, they will continue to elect persons to serve on the Board of Directors of DTCC ("DTCC Board") as they did prior to the creation of FICC. The individuals elected to serve on the DTCC board will, in turn, be selected by DTCC to serve as directors of FICC. On a periodic basis to be determined by DTCC pursuant to the DTCC shareholders agreement, DTCC common stock will continue to be reallocated to the shareholders using the services of The Depository Trust Company ("DTC"), Emerging Markets Clearing Corporation ("EMCC"), National Securities Clearing Corporation ("NSCC"), and the Divisions of FICC based upon their usage. The members receiving services from the Government Securities Division and the participants receiving services from the Mortgage-Backed Securities Division will continue to have the right but not the obligation to purchase some or all of the DTCC common stock to which they are entitled.

The charters of the two committees formed during the DTCC Integration, the DTCC/DTC/GSCC/MBSCC/NSCC Fixed Income Operations and Planning Committee of DTCC, which includes representatives of members of GSCC and participants of MBSCC, and the GSCC/MBSCC Membership and Risk Management Committee, which is comprised of the representatives of members of GSCC and participants of MBSCC, will be amended to refer to members receiving services from the Government Securities Division and participants receiving services from the Mortgage-Backed Securities Division.

The DTCC/DTC/GSCC/MBSCC/NSCC Fixed Income Operations and Planning Committee will be renamed the DTCC/DTC/FICC/NSCC Fixed Income Operations and Planning Committee. It will continue to advise the DTCC Board and management on its policies and procedures with respect to fixed-income products processed by and services of DTC, EMCC, NSCC, and FICC. The GSCC/MBSCC Membership and Risk Management Committee will be renamed the FICC Membership and Risk Management Committee. It will advise the Board of Directors and management of FICC with respect to membership, credit, and risk matters. Other functions may be assigned to the committees as they are today.

After the merger, FICC will satisfy the fair representation requirement of section 17A of the Act[5] by (i) continuing to give the members receiving services from the Government Securities Division and the participants receiving services from the Mortgage-Backed Securities Division, the right to purchase shares of DTCC common stock on a basis that reflects their use of the services of the Divisions, DTC, EMCC, and NSCC; (ii) continuing to allow members and participants receiving services from the Divisions to take part in the selection of individuals to be directors of DTCC (who will also be directors of FICC, DTC, EMCC, and NSCC) to ensure that all major constituencies in the securities industry will have a voice in the business and affairs of each of these companies; and (iii) utilizing the committee structure described above to ensure that the members and the participants receiving services from the Divisions will have a voice in the operations and affairs of the Divisions.

As a result of the merger, GSCC's Certificate of Incorporation and Bylaws will be amended to reflect the change of GSCC's name to FICC. The Rules of MBSCC will be adopted by FICC as part of the merger as the rules of the Mortgage-Backed Securities Division. The Rules of GSCC and MBSCC will be amended to reflect that (i) the Government Securities Division and the Mortgage-Backed Securities Division will be separate Divisions of FICC; (ii) neither Division of FICC will be liable for the obligations of the other Division; and (iii) that the clearing fund and other assets of each Division will not be available to satisfy the obligations of the other Division.

GSCC and MBSCC believe that the proposed rule changes are consistent with the requirements of section 17A of the Act[6] and the rules and regulations thereunder applicable to GSCC and MBSCC because they facilitate the prompt and accurate clearance and settlement of transactions in government securities and mortgage-backed securities by ensuring the continued availability of efficient and cost-effective clearing services to GSCC members and MBSCC participants.

(B) Self-Regulatory Organization's Statement on Burden on Competition

GSCC and MBSCC do not believe that the proposed rule changes will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Changes Received From Members, Participants or Others

No written comments relating to the proposed rule changes have been solicited or received.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule changes or

(B) institute proceedings to determine whether the proposed rule changes should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule changes are consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal offices of GSCC and MBSCC.

All submissions should refer to File Nos. SR-GSCC–2002–09 and SR–MBSCC–2002–01 and should be submitted by December 6, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

J. Lynn Taylor,

Assistant Secretary.

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[5] 15 U.S.C. 78q–1(b)(3)(C).

[6] 15 U.S.C. 78q–1.

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46783; File No. SR–NASD–2002–153]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Establish as Permanent Two Pilot Programs Currently Contained in NASD Rule 6541 Relating to Manning Rule Protection for Customer Limit Orders Executed on the Over-the-Counter Bulletin Board

November 7, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 25, 2002, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq is filing a proposed rule change to establish as permanent two pilot programs currently contained in NASD Rule 6541. Rule 6541, which generally prohibits member firms from trading ahead of customer limit orders in designated Over-the-Counter Bulletin Board ("OTCBB") securities, was established on a pilot basis for approximately 325 securities quoted on the OTCBB.[3] No new rule language is proposed.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On February 8, 2001, the Commission approved NASD Rule 6541, which, on a pilot basis, applied the basic customer limit order protection principles that presently apply to Nasdaq-listed securities to designated securities that are traded on the OTCBB.[4] Rule 6541(a) generally prohibited member firms that accepted customer limit orders in these securities from "trading ahead" of their customers for their own account at prices equal to or superior to the limit orders, without executing them at the limit price. Rule 6541(b) required member firms to provide a minimum level of price improvement of the lesser of $0.05 per share or one-half of the current inside spread to incoming orders in OTCBB securities if the member chose to trade as principal with those incoming orders while holding customer limit orders. If a member failed to provide the minimum level of price improvement to the incoming order, the member was required to execute its held customer limit orders.

The limit order protection embodied in Rule 6541 is an investor protection tool based on NASD IM–2110–2 (commonly known as the "Manning Rule"). In *Manning*, the NASD found and the Commission affirmed that a member firm that accepts a customer limit order has a fiduciary duty not to trade for its own account at prices more favorable than the customer order.[5] Rule 6541 expands to securities traded on the OTCBB the protections that IM–2110–2 provides to trading of Nasdaq National Market and SmallCap securities.

On March 2, 2001, and April 6, 2001, the Commission approved modifications to IM–2110–2 in Nasdaq listed securities.[6] In general, these modifications narrowed the amount of price improvement required to avoid the obligation to fill a customer limit order, in recognition of the introduction of decimal pricing of Nasdaq-listed securities. On July 26, 2001, Nasdaq filed and implemented an amendment to Rule 6541(b) (SR–NASD–2001–39) that likewise narrowed the amount of required price improvement in OTCBB securities.[7] Under SR–NASD–2001–39, the price improvement requirement was narrowed from $0.05 or one-half the inside spread to $0.01 or one-half the inside spread (whichever is less) for a member wishing to trade in front of held customer limit orders that are priced at or inside the current inside spread for an OTCBB security. For customer limit orders priced less than $0.01 outside the inside spread, however, SR–NASD–2001–39 required a member seeking to trade in front of such limit orders to execute its trades at a price at least equal to the inside bid (with respect to held customer limit orders to buy) or inside offer (for held orders to sell). Moreover, SR–NASD–2001–39 provided that limit order protection would not apply to customer limit orders that are priced more than $0.01 outside the current inside spread. The amendment to Rule 6541(b) adopted by SR–NASD–2001–39 was effective for a three-month pilot period that ended on November 1, 2001.

On November 1, 2001, Nasdaq amended Rule 6541(b) to eliminate the minimum price improvement requirement for limit orders outside the inside spread.[8] Accordingly, any degree of price improvement would relieve a member from the obligation to fill a limit order that is outside of the inside spread. The amendment also clarified that the basic prohibition on trading

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 43944 (February 8, 2001), 66 FR 10541 (February 15, 2001) (SR–NASD–00–22).

[4] *See* Securities Exchange Act Release No. 43944 (February 8, 2001), 66 FR 10541 (February 15, 2001) (SR–NASD–00–22).

[5] *See In re E.F. Hutton & Co.*, Securities Exchange Act Release No. 25887 (July 6, 1988).

[6] *See* Securities Exchange Act Release No. 44030 (March 2, 2001), 66 FR 14235 (March 9, 2001) (SR–NASD–2001–09); Securities Exchange Act Release No. 44165 (April 6, 2001), 66 FR 19268 (April 13, 2001) (SR–NASD–2001–27). *See also* Securities Exchange Act Release No. 44529 (July 9, 2001), 66 FR 37082 (July 16, 2001) (SR–NASD–2001–43).

[7] *See* Securities Exchange Act Release No. 44593 (July 26, 2001), 66 FR 40304 (August 2, 2001) (SR–NASD–2001–39).

[8] *See* Securities Exchange Act Release No. 34–45011 (November 1, 2001); 66 FR 56587 (November 8, 2001) (SR–NASD–2001–78).

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ahead of held limit orders at prices equal or superior to the limit orders applies to limit orders that are priced more than $0.01 away from the current inside spread. Thus, the basic prohibition on trading ahead of a customer limit order at a price equal or superior to the limit order without filling the limit order applies to all limit orders in OTCBB securities covered by Rule 6541. The amount of required price improvement for limit orders priced at or inside the current inside spread remained the lesser of $0.01 or one-half of the current inside spread. The pilots are currently scheduled to expire on December 15, 2002.[9]

Nasdaq has concluded that it is in investors' best interest to establish limit order protection requirements on a permanent basis for all securities quoted on the OTCBB. Nasdaq believes that limit order protection provides substantial protection to small investors by ensuring that members consider those orders when executing their own orders. In addition, Nasdaq believes that limit order protection prevents the isolation of customer limit orders that could otherwise occur when a member trades for its own account and a customer order fails to receive an execution. Nasdaq believes that the rule bolsters investors' confidence in the fairness of the market as a whole.

Nasdaq's Department of Economic Research ("ER") closely analyzed the impact of the Manning pilot on relevant aspects of the operation of the OTCBB. Nasdaq sought to ensure that the potential negative effects on the trading of OTCBB securities do not offset the positive effects of limit order protection. ER studied the following areas: impact on trading, market maker quoting activity, and spread behavior. To determine the impact of the pilot on trading activity, the study analyzed total volume, number of trades, and number of riskless principal trades (as a proxy for customer limit orders executed). ER studied changes to the number of market makers, quote updates, and bid/ask midpoint to determine that the pilot had no statistically significant impact on market maker quoting behavior. Finally, ER looked at a variety of spread statistics (quoted, effective, relative, relative effective). Overall, ER found no material negative implications on the measurable market quality of the OTCBB.

[9] On January 14, 2002, and again on July 16, 2002, Nasdaq filed to extend the pilot programs. *See* Securities Exchange Act Release No. 45276 (January 14, 2002), 67 FR 2936 (January 22, 2002) (SR–NASD–2002–06); Securities Exchange Act Release 46248 (July 24, 2002), 67 FR 49727 (July 31, 2002) (SR–NASD–2002–95).

Based upon this study and its experience with the operation of the Manning rule in securities listed on Nasdaq, Nasdaq has concluded that limit order protection is a necessary and appropriate rule in the OTCBB marketplace. Nasdaq believes that it is a highly visible investor protection advancement that is consistent with the maintenance of a viable, liquid market. Nasdaq believes that the pilot program has effectively demonstrated that limit order protection is not detrimental to trading of less-liquid, low priced securities on the OTCBB. Accordingly, Nasdaq is extending limit order protection to all securities on the OTCBB.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act[10] in general, and with Section 15A(b)(6) of the Act[11] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster competition and coordination with person engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to a free and open market, and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

[10] 15 U.S.C. 78o–3.

[11] 15 U.S.C. 78o–3(b)(6).

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2002–153 and should be submitted by December 6, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 02–28993 Filed 11–14–02; 8:45 am]

BILLING CODE 8010–01–P

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46786; File No. SR–NYSE–2002–52]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange, Inc., Relating to Transactional Fees for Certain Exchange Traded Funds

November 7, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 21, 2002, the New York Stock Exchange, Inc. ("NYSE" or "the Exchange") filed with the Securities and Exchange

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. Amendment No. 1 to the proposed rule change was filed on October 21, 2002. Amendment No. 2 to the proposed rule change was filed on November 7, 2002.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes that no transactional fees will be charged for shares of the Fresco^{SM} Dow Jones STOXX 50^{SM} Fund and Fresco^{SM} Dow Jones EURO STOXX 50^{SM} Fund (the "Funds"), to be listed and traded on the Exchange.[4]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NYSE included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NYSE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange anticipates that the Funds will shortly be listed and traded on the Exchange. The Exchange states that it desires to garner experience in providing a market for the Funds. Accordingly, the Exchange proposes to implement a "fee holiday," constituting zero transaction charges, for trading the Funds on the Exchange at this time.

[3] In Amendment Nos. 1 and 2, the NYSE corrected typographical errors and added specific text to its schedule of transaction fees to reflect the "fee holiday" that is the subject of the proposed rule change. *See* letters from Darla Stuckey, Corporate Secretary, NYSE, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated October 21, 2002 and November 6, 2002. The amendments were solely technical in nature.

[4] *See* Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the New York Stock Exchange, Inc. Regarding Listing and Trading of Exchange Traded Funds Based on Dow Jones STOXX 50 and Dow Jones EURO STOXX 50 Indexes, Securities Exchange Act Release No. 46686 (October 18, 2002), 67 FR 65388 (October 24, 2002).

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(4)[5] that an exchange have rules that provide for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change, which establishes or changes a due, fee or other charge imposed by the Exchange, has become effective pursuant to Section 19(b)(3)(A)[6] of the Act and subparagraph (f)(2) of Rule 19b–4 thereunder.[7] At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in the furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–2002–52 and should be submitted by December 6, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 02–28992 Filed 11–14–02; 8:45 am]

BILLING CODE 8010–01–P

[5] 15 U.S.C. 78f(b)(4).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(2).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46781; File No. SR–NYSE–2002–54]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by the New York Stock Exchange, Inc. Amending NYSE Rule 60 to Eliminate Depth Indications and Depth Conditions

November 7, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 22, 2002, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to delete Supplementary Material .30 of NYSE Rule 60 ("Dissemination of Quotations") relating to the dissemination of depth indications and depth conditions that reflect market interest in a security below the current published bid and above the current published offer. The text of the proposed rule change is available at the NYSE or at the Commission.

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in Sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In March 2001, the Exchange amended NYSE Rule 60 to permit an Exchange specialist to indicate that there is additional market interest in a security not shown in the published quotation (*i.e.*, interest to buy below the current published bid, or interest to sell above the current published offer).[3] The additional market interest reflected in the depth indication and depth condition could include the specialist's proprietary interest, orders the specialist has on his or her book, and other orders, such as percentage orders, which the specialist is representing as agent.

The dissemination of a depth indication or depth condition by a specialist is made on a "best efforts basis." The specialist is allowed to use his or her professional judgment to determine whether disseminating additional market interest would be useful with respect to current conditions in the security or the market in general. Depth indications and depth conditions are purely informational in nature and, therefore, do not themselves constitute a "firm" quotation for purposes of NYSE Rule 60 or Rule 11Ac1–1 under the Act.[4]

The Exchange now proposes to discontinue the use of depth indications and depth conditions. Since the initiation of depth indication and depth condition, the Exchange has undertaken the development of other means to provide market participants with current and useful market information to provide greater transparency with respect to the actual depth of the market below the best bid and above the best offer. One such initiative is NYSE OpenBook™, which was launched on January 24, 2002.[5] OpenBook provides a comprehensive view of NYSE limit order books for all Exchange-traded securities, enabling market participants to see aggregate limit order interest at price levels outside the displayed Exchange quotation.

The Exchange is currently developing another mechanism to provide greater transparency with respect to the existence of additional interest in Exchange-traded securities, which will consist of the display of a "liquidity quote" along with the best quote.[6] In the Liquidity Quote Proposal, the Exchange will be proposing to have liquidity quotes reflect aggregated trading interest at a specific price interval below the best bid or above the best offer. In addition, in the Liquidity Quote Proposal, the Exchange will be proposing that liquidity quotes are "firm" quotes for the purposes of NYSE and Commission rules. The Exchange therefore believes that the discontinuance of depth indications and depth conditions will allow the Exchange to utilize system capacity currently dedicated to depth conditions and depth indications to facilitate the development and testing of liquidity quotes.[7]

2. Statutory Basis

The Exchange believes that the statutory basis for this proposed rule change is Section 6(b)(5) of the Act,[8] which requires that an exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6) thereunder[10] because the proposal: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, provided that the NYSE has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the filing date of the proposed rule change or such shorter time as designated by the Commission.[11] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The Exchange believes that the advent of the OpenBook service and the Exchange's plan to introduce liquidity quote information will adequately replace information provided by depth indications and conditions and, therefore, the proposal is non-controversial.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE.

All submissions should refer to File No. SR–NYSE–2002–54 and should be submitted by December 6, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 02–28994 Filed 11–14–02; 8:45 am]

BILLING CODE 8010–01–P

[3] *See* Securities Exchange Act Release No. 44084 (March 16, 2001), 66 FR 16307 (March 23, 2001) (SR–NYSE–01–06).

[4] 17 CFR 240.11Ac1–1.

[5] For further details on NYSE OpenBook™, *see* Securities Exchange Act Release No. 45138 (December 18, 2001), 66 FR 66491 (December 26, 2001) (order approving the establishment of Exchange fees for NYSE OpenBook™).

[6] On October 28, 2002, the NYSE filed with the Commission a proposed rule change to amend its rules to display additional quotations showing the depth of market. *See* File No. SR–NYSE–2002–55 ("Liquidity Quote Proposal").

[7] The Exchange intends to provide notice before discontinuing dissemination of the depth condition and depth indicator to members via a floor memorandum, subscribers via e-mail, and vendors by telephone. Telephone conversation between Donald Siemer, Director, Market Surveillance, NYSE, and Kelly Riley, Senior Special Counsel, Division of Market Regulation, Commission, dated November 5, 2002.

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

[11] The NYSE has requested and the Commission has agreed to waive the five-day pre-filing notice requirement.

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46784; File No. SR–PCX–2002–68]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. To Amend Its Schedule of Fees and Charges To Increase the User Transaction Credit for Certain Transactions in American Depositary Receipts

November 7, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 8, 2002, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. On November 5, 2002, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange through its wholly owned subsidiary PCX Equities, Inc. ("PCXE"), proposes to amend its fee schedule to increase the user transaction credit for ETP Holders and Sponsored Participants who provide liquidity in exchange-listed American Depositary Receipts ("ADRs") that are traded on the Archipelago Exchange, the equities trading facility of PCXE. The text of the proposed rule change is available at the Exchange and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the Exchange's fee schedule by increasing the level of the transaction credit paid to ETP Holders[4] and Sponsored Participants[5] (collectively "Users") who provide liquidity in exchange-listed ADRs that are traded on the Archipelago Exchange ("ArcaEx").

Currently, Users who provide liquidity in ADRs by entering into the ArcaEx Book[6] resting limit orders that are subsequently executed against incoming marketable orders, earn a credit of $0.001 per share. The Exchange proposes to increase the level of the transaction credit for ADRs from $0.001 to $0.002 per share. The increased credit of $0.002 is the same amount that is currently applied to orders that provide liquidity in Exchange-Traded Funds. This credit is intended to create additional incentives to Users to provide liquidity in ADRs that are traded on the ArcaEx facility.

2. Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act,[7] in general, and Section 6(b)(4)[8] of the Act in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee, or other charge and, therefore, has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and subparagraph (f)(2) of Rule 19b–4 thereunder.[10] At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Peter D. Bloom, Director, Policy Development, PCX to Rebekah Liu, Special Counsel, Division of Market Regulation, Commission, dated November 5, 2002. In Amendment No. 1, the Exchange corrected the fee schedule attached as Exhibit A to the rule filing to accurately reflect that existing underlined text would be double-underscored. Amendment No. 1 contained no substantive changes to the fee schedule.

[4] *See* PCXE Rule 1.1(n).

[5] A "Sponsored Participant" means "a person which has entered into a sponsorship arrangement with a Sponsoring ETP Holder pursuant to [PCXE] Rule 7.29." See PCXE Rule 1.1(tt).

[6] ArcaEx maintains an electronic file of orders, called the ArcaEx Book, through which orders are displayed and matched. The ArcaEx Book is divided into four components, called processes—the Directed Order Process, the Display Order Process, the Working Order Process, and the Tracking Order Process. *See* PCXE Rules 7.36 and 7.37 for a detailed description of these order execution processes.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(2).

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statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-PCX-2002-68 and should be submitted by December 6, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02-29042 Filed 11-14-02; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46789; File No. SR-Phlx-2002-71]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 and Amendment No. 2 Thereto by the Philadelphia Stock Exchange, Inc. Relating to Maintenance Listing Criteria for Underlying Securities in Phlx Rule 1010 and Original Listing Criteria for Underlying Securities in Phlx Rule 1009

November 7, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on October 31, 2002, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Phlx. On November 5, 2002, Phlx filed Amendment No. 1 to the proposed rule change.[3] On November 6, 2002, Phlx filed Amendment No. 2 to the proposed rule change.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

[11] 17 CFR 200.30-3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 7 CFR 240.19b-4.

[3] See letter to Florence Harmon, Senior Special Counsel, Office of Market Supervision, Commission, from Jurij Trypupenko, Phlx, dated November 1, 2002 ("Amendment No. 1"). In Amendment No. 1, Phlx clarified that another purpose of the proposal was to allow the Exchange to reflect a change in the name of the department of the Exchange that will perform certain listing-related functions noted in Commentary .02 to Phlx Rule 1009. Specifically, the Exchange proposes to modify the language in Commentary .02 to Phlx Rule 1009 so that references to the Business and Operations Planning Department ("BOP") are changed to the Department of Securities ("DOS").

[4] See letter to Florence Harmon, Senior Special Counsel, Office of Market Supervision, Commission, from Jurij Trypupenko, Phlx, dated November 5, 2002 ("Amendment No. 2"). In Amendment No. 2, Phlx corrected a typographical error in Commentary .01 to Phlx Rule 1009 by changing "$7½" to "$7.50".

[5] Telephone call between Jennifer Lewis, Attorney, Division of Market Regulation, Commission, and Jurij Trypupenko, Phlx, on November 7, 2002.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to amend Commentaries .01 and .02 to Phlx Rule 1010 to allow the Exchange to list additional options series where the underlying security satisfies all of the maintenance listing requirements other than the underlying security trading at $3.00 per share of the underlying security, the series the Exchange wants to list is traded on at least one other registered national securities exchange, and at the time the other exchange listed the series the underlying security was trading at $3.00 or more.

The Exchange proposes to amend Commentary .01 to Phlx Rule 1009 to allow the Exchange to list an option on an underlying security that satisfies all of the initial listing requirements except the $7.50 share price requirement,[5] as long as the option that the Exchange wants to list trades on another options exchange, meets continued listing guidelines, and during the three calendar months preceding the date of selection to originally list an option on the Exchange, the average daily trading volume for such options has been at least 5,000 contracts.

The Exchange also proposes to make non-substantive changes to Commentary .02 to Phlx Rule 1009 to indicate a change in the name of the department of the Exchange that will perform certain listing-related functions noted therein.

The text of the proposed rule change is below. Proposed new language is italicized; deleted language is in brackets.

Rule 1010. Withdrawal Of Approval Of Underlying Securities Rule 1010. No change.

Commentary:

.01 The Board of Governors has established guidelines to be considered by the Exchange in determining whether an underlying security previously approved for Exchange option transactions no longer meets its requirements for the continuance of such approval. Absent exceptional circumstances, with respect to items 1, 2, 3, or 4 listed below, an underlying security will not be deemed to meet the Exchange's requirements for continued approval whenever any of the following occur:

1. No change.
2. No change.
3. No change.
4. *Subject to Commentary .02 below,* [T]the market price per share of the underlying security closed below $3 on the previous trading day as measured by the highest closing price reported in the primary market in which the underlying security traded.
5. No change.
6. No change.
7. No change.

.02 In connection with paragraph 4 of Commentary .01 above, the Exchange shall not open for trading any additional series of option contracts of the class covering an underlying security at any time when the market price per share of such underlying security is less than $3 in the primary market in which it is traded *unless the additional series is traded on at least one other registered national securities exchange and at the time the additional series was listed by such other registered national securities exchange it met the $3 market price requirement.* Subject to paragraph 4 of Commentary .01 above, the Exchange may open for trading additional series of option contracts of a class covering an underlying security when the market price per share of such underlying security is at or above $3 at the time such additional series are authorized for trading. For purposes of this Commentary .02, the market price of such underlying security is measured by (i) for intra-day series additions, the last reported trade in the primary market in which the underlying security traded at the time the Exchange determines to add these additional series intra-day, and (ii) for next-day and expiration series additions, the closing price reported in the primary market in which the underlying security is traded on the last trading day before the series are added.

Commentary .03 to .10 No change.

Rule 1009. Criteria for Underlying Securities

Rule 1009. (a) No change.
(b) No change.

(c) No change.

Commentary:

.01 The Board of Governors has established guidelines to be considered by the Exchange in evaluating potential underlying securities for Exchange option transactions. Absent exceptional circumstances with respect to items 1, 2, 3, or 4 listed below, at the time the Exchange selects an underlying security for Exchange options transactions, the following guidelines with respect to the issuer shall be met:

1. No change.
2. No change.
3. No change.
4. *Either (i)* [T]the market price per share of the underlying security has been at least $7.50 for the majority of business days during the three calendar months preceding the date of selection, as measured by the lowest closing price reported in any market in which the underlying security traded on each of the subject days *or (ii)(a) the underlying security meets the guidelines for continued listing in Rule 1010; (b) options on such underlying security are traded on at least one other registered national securities exchange; and (c) the average daily trading volume for such options over the last three (3) calendar months proceeding the date of selection has been at least 5,000 contracts.*

.02 (a) Members, member organizations or any person proposing to list any option not currently listed on the Exchange shall submit a form of request (a "Request to List an Option"), available from the Exchange's [Business and Operations Planning Department (BOP), to BOP] *Department of Securities ("DOS"), to DOS* staff.

(b) As soon as practicable, but not later than three (3) business days following receipt of the Request to List an Option, [BOP] *DOS* staff shall review the proposed option's eligibility for listing, using the objective listing criteria set forth in Commentary .01 of this Rule. If [BOP] *DOS* staff determines that the proposed option does not meet the objective listing criteria set forth in Commentary .01 of this Rule, [BOP] *DOS* staff shall prepare a responsive form (a "Notification Memorandum") stating the reason(s) why the proposed option is not eligible for listing. [BOP] *DOS* staff shall forward the Notification Memorandum to the member or member organization that submitted the Request to List an Option within three (3) business days of its determination that the proposed option does not meet objective listing criteria. [BOP] *DOS* staff shall maintain all Requests to List an Option and Notification Memoranda in a central file for a period of not less than five (5) years.

(c) If [BOP] *DOS* staff determines that the proposed option meets the objective listing criteria set forth in Commentary .01 of this Rule, [BOP] *DOS* staff shall present the initial Request to List an Option and the subsequent review to the Chairman of the Board of Governors or his designee, who shall, within ten (10) business days of receipt of the Request to List an Option, instruct [BOP] *DOS* staff to:

(i) Solicit options specialists to submit applications for specialist privileges in the option; or

(ii) Within three (3) business days, prepare and forward a letter to the member or member organization that submitted the Request to List an Option, setting forth in reasonable detail the basis on which the decision not to list, or to place limitations or conditions upon, the proposed option was made.

(d) In considering underlying securities, the Exchange shall ordinarily rely on information made publicly available by the issuer and/or the markets in which the security is traded.

(e) In determining whether to list an option that otherwise meets objective listing criteria, the Chairman of the Board of Governors or his designee may consider such factors as the Exchange's current and projected computer capacity, and the current and projected demands for that capacity, including telecommunications and Option Price Reporting Authority ("OPRA") inbound and outbound message capacity or message volume restrictions placed on the Exchange by OPRA; the projected likely number of series and open interest in the option; the projected likely volatility of the option; the projected likely liquidity of the option; name recognition of the option or underlying security; the projected volume of trading in the option that is likely to occur on the Exchange; the projected share of total trading in the option that is likely to occur at the Exchange; whether any intellectual property right or license thereof exists with respect to the option; whether the proposal is consistent with Exchange rules and/or the Securities Exchange Act of 1934 and the rules, regulations, and orders thereunder; whether unusual or unfavorable market conditions exist with respect to the option; and whether it is in the bona fide business interest of the Exchange to list the option. If, in denying a request or approving a request subject to conditions or limitations, the Exchange relies upon a factor of other bona fide business interests, the Exchange shall, in addition to providing the member with a written response specifying that the Exchange has relied upon other bona fide business interests, maintain a record of the bona fide business interests supporting its decision.

Commentary .03 to .07 No change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Phlx has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange represents that the purpose of the proposed rule change is to ensure that the Exchange will not be at a competitive disadvantage by not being able to list additional option series or to originally list options that are listed on other exchanges. The Exchange notes that, although maintenance listing and original listing standards are generally similar among the options exchanges, several exchanges have recently adopted changes similar to those proposed by the Phlx.[6]

Specifically, the Exchange seeks to list additional options series where the underlying security satisfies all of the maintenance listing requirements other than the underlying security trading at $3 per share of the underlying security,[7] the series the Exchange wants to list is traded on at least one other registered

[6] See maintenance listing filings at Securities Exchange Act Release Nos. 46375 (August 16, 2002), 67 FR 54628 (August 26, 2002) (SR-AMEX-2002-68); 46501 (September 16, 2002), 67 FR 59585 (SR-CBOE-2002-52); 46647 (October 11, 2002), 67 FR 64426 (October 18, 2002) (SR-ISE-2002-21); and 46406 (August 23, 2002), 67 FR 55446 (August 29, 2002) (SR-PCX-2002-51). See also original listing filings at Securities Exchange Act Release Nos. 45505 (March 5, 2002), 67 FR 10941 (March 11, 2002) (SR-AMEX-2002-13); 45220 (December 31, 2001), 67 FR 760 (January 7, 2002) (SR-ISE-2001-33); and 46382 (August 20, 2002), 67 FR 55054 (August 27, 2002) (SR-PCX-2002-41).

[7] The maintenance requirements of Phlx Rule 1010, which will continue to be applied under the proposal, include: (a) the underlying security consists of a large number of outstanding shares by non-affiliates of the issuer, (b) there is a large number of holders of the underlying security, (c) the underlying security is actively traded, and (d) the underlying security continues to be listed on a national securities exchange or traded through the facilities of a national securities association.

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national securities exchange, and the underlying security traded at least at $3.00 when that exchange listed the series. The purpose is also to allow the Exchange to list an option where the underlying security satisfies all of the initial listing requirements except that the price of the underlying security is below $7.50, as long as the option that the exchange wants to list trades on another options exchange, meets all continued listing guidelines, and during the three calendar months preceding the date of selection to originally list an option on the Exchange, the average daily trading volume for such options has been at least 5,000 contracts.

$3.00 Maintenance Listing

Currently, Commentary .01 to Phlx Rule 1010 provides the guidelines to be used in determining whether an underlying individual equity security, previously approved for options trading, meets the requirements for continued approval. In particular, Commentary .01 (4) of Rule 1010 provides that that the Exchange may not list additional series for an options class if the market price per share of the underlying security closed below $3.00 on the previous trading day as measured by the highest closing price reported on the primary market in which the underlying security traded.

The Exchange therefore proposes to amend Commentaries .01 and .02 to Phlx Rule 1010 to allow the Exchange to add additional series of options that satisfy all of the maintenance listing requirements other than the $3.00 per share requirement, so long as such series are traded on at least one other registered national securities exchange, and at the time that the additional series were listed by such other exchange, the underlying security met the $3.00 market price requirement. Without the proposed filing, the Exchange believes it would be at a significant competitive disadvantage if it could not list options series that are listed on other exchanges simply because the underlying security has fallen to a market price that is less than $3.00 when the Exchange wanted to list such series.

The Exchange believes that once an options series is trading on another exchange and the series is therefore already available to the investing public, the $3.00 market price threshold is not necessary and becomes an impediment to competition. The Exchange believes allowing the Exchange to list such series will increase competition for order flow and benefit investors.[8] Moreover, the Exchange believes that the maintenance listing standards other than the $3.00 market price would assure that options would be listed and traded on the securities of companies that should be financially sound.

$7.50 Original Listing

Currently, Commentary .01 to Phlx Rule 1009 sets forth the guidelines that must be used in order to determine whether the Exchange may originally list options covering underlying securities. In particular, Commentary .01(4) to Phlx Rule 1009 states that in order to list an equity option, the market price per share of the underlying security must be at least $7.50 for the majority of business days during the three calendar months preceding the date of selection (listing) of the option, as measured by the lowest closing price reported in any market in which the underlying security traded on each of the subject days.

The Exchange therefore proposes to amend Commentary .01 to Phlx Rule 1009 to allow an alternative listing standard.[9] Specifically, the Exchange proposes to allow listing an option where the underlying security satisfies all of the initial listing requirements except that the price of the underlying security is below $7.50, as long as the option that the Exchange wants to list:

—Trades on another options exchange,
—Meets the continued listing guidelines of Exchange Rule 1010, and
—During the three calendar months preceding the date of selection to originally list an option on the Exchange, the average daily trading volume for such options has been at least 5,000 contracts.

The Exchange believes that this proposal is narrowly drafted to address particularly those circumstances where an actively-traded option is currently ineligible for listing on the Phlx while at the same time, the option is trading on another options exchange. The Exchange believes that when one or more exchanges have listed and begun trading an option, allowing the Exchange to likewise list such option (regardless of the market price of the underlying security) will increase competition for order flow and benefit investors. Moreover, the Exchange believes that the proposal would not introduce any additional options classes.

Phlx believes the proposed amendments to Phlx Rule 1010 and 1009 listing standards would enhance competition among the options exchanges and would enable the Exchange to remain competitive in the current volatile options market.

Change in Department Name

Finally, the Phlx represents that the purpose of the proposal is also to allow the Exchange to make non-substantive changes to Commentary .02 to Phlx Rule 1009 for the sole purpose of reflecting a change in the name of the department of the Exchange that will perform certain listing-related functions noted in Commentary .02 to Phlx Rule 1009. In particular, the Exchange proposes to modify the language in Commentary .02 to Phlx Rule 1009 so that references to the Business and Operations Planning Department ("BOP") are changed to the Department of Securities ("DOS").

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[10] in general, and furthers the objectives of Section 6(b)(5) of the Act,[11] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest in that it would allow the Exchange to list additional options series and allow original listings where such series or listings are already traded on another exchange and meet certain requirements, and thereby promote competition to the benefit of investors.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written

[8] The Exchange represents that the proposal would not serve to introduce additional option series, and does not believe that it will be susceptible to manipulation.

[9] The Exchange will continue to be able to apply original listing criteria pursuant to Exchange Rule 1009 where the market price of the underlying security has been $7.50 or higher for the requisite period of time and the other requirements of Commentary .01 to the rule are met.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–2002–71 and should be submitted by December 6, 2002.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, the requirements of Section 6(b)(5) of the Act.[12]

The Commission believes investors benefit from the competition among options exchanges that results when options are listed on more than one options exchange; and that investors are sufficiently protected, even though, with respect to the portion of the proposal relating to the $3.00 maintenance requirement, Phlx will be permitted to list a series of option contracts when the market price of the underlying security is below $3, because the Exchange must comply with all of the other maintenance listing requirements, and the market price of the underlying security was at or above $3 when the options series was listed on the first options exchange.[13] With respect to the portion of the proposal relating to the $7.50 original listing requirement, Phlx will be permitted to list a series of options contracts when the market price of the underlying security is below $7.50 for the majority of business days during the three calendar months preceding the date of selection, because the Exchange must comply with all of the other listing requirements in Phlx Rule 1009 other than the $7.50 per share requirement, and must meet the guidelines for continued approval under Phlx Rule 1010. The Commission believes that these requirements should help to ensure that options traded on the Phlx are based on securities of companies that are financially sound and subject to adequate minimum standards. Therefore, the Commission finds that the proposed rule change, as amended, will promote just and equitable principles of trade, and, in general, protect investors and the public interest consistent with section 6(b)(5) of the Act.[14]

The Phlx has requested that the proposed rule change, as amended, be given accelerated approval pursuant to Section 19(b)(2) of the Act.[15] The Commission believes accelerated approval of the proposal would enhance competition among the options exchanges. Accordingly, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,[16] to approve the proposed rule change, as amended, prior to the thirtieth day after the date of publication of the notice of filing thereof in the **Federal Register**.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[17] that the proposed rule change (SR–Phlx–2002–71), as amended, is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 02–28990 Filed 11–14–02; 8:45 am]

BILLING CODE 8010–01–P

[12] *Id.*

[13] The Commission notes that such series must have been properly listed by the original options exchange.

[14] 15 U.S.C. 78f(b)(5). In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[15] 15 U.S.C. 78s(b)(2).

[16] *Id.*

[17] *Id.*

[18] 17 CFR 240.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

Statement of Organization, Functions and Delegations of Authority

This statement amends Part T of the Statement of Organization, Functions and Delegations of Authority that covers the Social Security Administration (SSA). Chapter TA covers the Deputy Commissioner for Disability and Income Security Programs. Notice is hereby given that Chapter TA, which covers the Office of the Deputy Commissioner, Disability and Income Security Programs, is being amended to reflect a reorganization. Notice is given that the following Subchapters are being deleted:

Subchapter TAE, The Office of Disability
Subchapter TAS, The Office of Program Support

Notice is further given that the following Subchapters are being established:

Subchapter TA, The Office of Disability Determinations
Subchapter TA, The Office of Disability Programs
Subchapter TA, The Office of Program Development and Research

Also, Subchapter (TAP), "The Office of Program Benefits" is being retitled as "The Office of Income Security Programs." In addition, Subchapter (TAP), The Office of Program Benefits and Subchapter (TAT), the Office of Employment Support Programs are being amended to reflect the realignment and redistribution of functions resulting from the abolishment of the Office of Disability and the Office of Program Support and the establishment of the Office of Program Development and Research. The Office of Hearings and Appeals and the Office of International Programs are excluded from this reorganization. The new material and changes are as follows:

Section TA.00 The Office of the Deputy Commissioner, Disability and Income Security Programs—(Mission)

Add as the 4th sentence, line 10:

"The Office manages SSA's disability and SSI policy and research agendas and long-term disability initiatives."

Delete the 10th sentence, line 21:

"Oversees the collection, use and dissemination of both personal and non-personal information to ensure consistency with Agency objectives, law and the expectations of the American public."

Section TA.10 The Office of the Deputy Commissioner, Disability and Income Security Programs—(Organization)

Delete:

D. The Office of Disability (TAE).
H. The Office of Program Support (TAS).

Establish:

D. The Office of Disability Determinations ( ).
H. The Office of Disability Programs ( ).
J. The Office of Program Development and Research ( ).

Retitle:

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G. "The Office of Program Benefits" to "The Office of Income Security Programs"

Section TA.20 Section (TA–20) The Office of the Deputy Commissioner, Disability and Income Security Programs—(Functions)

Amend C in its entirety to read as follows:

C. "The Immediate Office of the Deputy Commissioner, Disability and Income Security Programs provides the Deputy Commissioner with staff assistance on the full range of his/her responsibilities. The Immediate Office includes the Agency's Regulations Officer and establishes and maintains Agency standards for the development of regulations and rulings. Provides expert advice and support to the Deputy Commissioner and Assistant Deputy Commissioner on Agency-level projects and initiatives that impact the Agency's policymaking processes and the technology that supports them. Provides user support to all its subordinate components. Directs all systems activities supporting the Agency's electronic programmatic instructional system."

Add:

D. The Office of Disability Determinations (TA) provides operational standards, instructions, operational and procedural advice, technical support and management direction to central office, regional and field components and State agencies in support of the SSA-administered disability programs. Processes State agency workloads on a temporary or transitional basis and evaluates the impact of policy and procedural changes in State agency operations.

Retitle:

G. "The Office of Program Benefits" to "The Office of Income Security Programs"

Amend G in its entirety to read as follows:

G. "The Office of Income Security Programs provides SSA-wide leadership and direction to the development, coordination and promulgation of Retirement and Survivors Insurance (RSI) and Supplemental Security Income (SSI) policies and procedures. It develops, coordinates, evaluates and issues the policies, standards and instructions for the RSI and SSI programs. The Office develops agreements with the States and other agencies that govern State supplementation programs, Medicaid eligibility, data exchange programs, food stamps, fiscal reporting processes, and electronic computer matches. The Office of Income Security Programs is responsible for all aspects of SSA's policy process and the migration of RSI and SSI program services to the Internet."

Add:

H. The Office of Disability Programs (TA) plans, develops, evaluates and issues the operational and administrative appeals process policies, standards and instructions for the SSA-administered disability programs. Develops and promulgates policies and guidelines for use by state, federal or private contractor providers which implement the disability provisions of the Social Security Act, as amended. Evaluates the effects of proposed legislation and legislation pending before Congress to determine the impact on the disability programs. Ensures that interrelated policy areas are coordinated.

I. The Office of Employment Support Programs (TAT)

Delete the 4th sentence, line 12: "Evaluates the effects of proposed legislation, policy and regulatory changes to determine the operational impact on employment support programs."

Add as the 4th sentence, line 12: "Implements legislation related to employment support programs."

Add:

J. The Office of Program Development and Research (TA) provides broad program analysis and development in support of the Disability Insurance (DI) and Supplemental Security Income (SSI) programs. Maintains awareness of issues concerning the broad program policy environment including Congress, the private sector and other government agencies, and ensures the Agency's policy and research agendas consider and reflect these points of view. Directs studies of program policy issues related to the development and evaluation of disability and SSI program initiatives and legislative and policy proposals. Identifies trends in the SSI and the disability programs and compiles and analyzes data on various aspects of those programs. Designs, implements and evaluates demonstration projects to target special populations and program issues. Formulates Agency policy regarding crosscutting programs or issues related to disability and/or income assistance programs and works with other agencies, including the Department of Health and Human Services, toward this end.

Add:

Subchapter (TA)

The Office of Disability Determinations

TA.00 Mission
TA.10 Organization
TA.20 Functions

Section (TA .00) The Office of Disability Determinations—(Mission)

The Office of Disability Determinations provides operational standards, instructions, operational and procedural advice, technical support, and management direction to central office, regional office and field components, and State agencies in support of the SSA-administered disability programs. Processes State agency workloads on a temporary or transitional basis and evaluates the impact of policy and procedural changes on State agency operations.

Section (TA .10) The Office of Disability Determinations—(Organization)

The Office of Disability Determinations under the leadership of the Associate Commissioner for Disability Determinations includes:

A. The Associate Commissioner for Disability Determinations (TA).

B. The Deputy Associate Commissioner for Disability Determinations (TA).

C. The Immediate Office of the Associate Commissioner for Disability Determinations (TA).

D. The Office of Federal Disability Determination Services (TA).

E. The Office of Field Disability Operations (TA).

F. The Office of Continuing Disability Reviews Support (TA).

Section (TA .20) The Office of Disability Determinations—(Functions)

A. The Associate Commissioner for Disability Determinations (TA) is directly responsible to the Deputy Commissioner, Disability and Income Security Programs for carrying out its mission and provides general supervision to its major components.

B. The Deputy Associate Commissioner for Disability Determinations (TA) assists the Associate Commissioner in carrying out his/her responsibilities and performs other duties as the Associate Commissioner may prescribe.

C. The Immediate Office of the Associate Commissioner for Disability Determinations (TA) provides the Associate Commissioner and the Deputy Associate Commissioner with advisory services and staff assistance on the full range of their responsibilities and coordinates the administrative and program activities of its components.

D. The Office of Federal Disability Determination Services (TA):

1. The Office of Federal Disability Determination Services develops and adjudicates disability determinations either temporarily as help for one or more Disability Determination Services (DDS) or as a transition until a permanent alternative case processing operation is fully operational in the event that SSA must assume the disability determination function for a State because of noncompliance with regulations and guidelines, or voluntary withdrawal.

2. Pilot tests new work processes, procedures and systems prior to nationwide implementation; validates and conducts usability tests on new and/or revised systems processes; evaluates new or revised disability adjudication policies for national consistency and practical application; and conducts special studies and policy reviews required for management purposes.

3. Reviews and makes disability decisions on applications for disability under Title II and Title XVI of the Social Security Act on initial applications, on reconsideration requests and continuing disability.

4. Screens disability applicants for, and makes referrals to, vocational rehabilitation (VR) agencies, develops and evaluates medical/vocational evidence; and arranges for procurement and payment of such evidence, as required.

5. Reviews state hearing officer and federal hearing officer decisions; prepares decisions on foreign claims and revises hearing officers' determinations in accordance with the regulations at 20 CFR 404.918 and 20 CFR 416.1418; participates in hearing process studies; and prepares statistical and narrative reports and recommendations for training and policy and procedural changes based on case review and analysis or study findings.

6. In conjunction with the Office of Medical Policy and the Office of Disability Evaluation Policy, provides medical consultation required in the formulation of medical evaluation policies and guides. Conducts medical reviews of evidence for purposes of adjudication of medical aspects of claims, as part of an evaluation of the application of policies and procedures and/or as part of a study to develop new medical policies, guides and training.

E. The Office of Field Disability Operations (TA).

1. The Office of Field Disability Operations provides national guidance for the administrative aspects of the disability determination function whether administered through State DDSs, contracted out to the private sector or accomplished by designated SSA organizational components.

2. Develops pertinent policies, regulations and procedures related to DDS performance by establishing standards and guides for performance; monitoring performance, initiating corrective action where needed, coordinating workloads and administering the funds for the DDSs, etc. Conducts such studies and reviews as are necessary to the disability determination function.

3. Plans, coordinates and manages the systems-related activities including DDS and Federal Disability Determination Services automation, information resource management, expert systems, development of user specifications, and installation and testing of hardware, networks and communications links for DDSs.

4. Analyzes, plans, distributes and monitors all DDS funding on a state-by-state basis; this includes establishing and monitoring workload and productivity targets for each DDS.

F. The Office of Continuing Disability Reviews Support (TA).

The Office of Continuing Disability Reviews Support develops guidelines and technical procedures for the continuing disability review (CDR) process and oversees this process. Estimates the number of CDRs that must be processed on an annual basis for SSA to be current in its review responsibilities.

Develops and implements processing strategies based on the currency estimates. The processing strategies include establishing the schedules and processes for CDRs directly released as full medical reviews and those released as mailers to determine if a full medical review is required. Coordinates with all appropriate operational components.

1. Applies sophisticated profiling methodology to "score" every SSDI and SSI beneficiary on the rolls for potential CDRs.

2. On an ongoing annual basis, selects individuals for a CDR medical review or mailer.

3. Designs and maintains databases and extracts in support of the continuing disability review process.

4. Tracks and reports on all medical CDRs and mailers to ensure yearly currency and to meet the requirement for yearly reports to Congress.

5. Conducts yearly integrity checks of the CDR mailer process for Title II and Title XVI.

Add:

Subchapter (TA)

The Office of Disability Programs

TA .00 Mission
TA .10 Organizetion
TA .20 Functions

Section (TA .00) The Office of Disability Programs—(Mission)

The Office of Disability Programs plans, develops, evaluates and issues the operational and administrative appeals process policies, standards and instructions for the SSA administered disability programs. Develops and promulgates policies and guidelines for use by State, Federal or private contractor providers which implement the disability provisions of the Social Security Act as amended. Evaluates the effects of proposed legislation and legislation pending before Congress to determine the impact on the disability programs. Ensures that interrelated policy areas are coordinated.

Section (TA .10) The Office of Disability Programs—(Organization)

The Office of Disability Programs under the leadership of the Associate Commissioner for Disability Programs, includes:

A. The Associate Commissioner for Disability Programs (TA).

B. The Deputy Associate Commissioner for Disability Programs (TA).

C. The Immediate Office of the Associate Commissioner for Disability Programs (TA).

D. The Office of Medical Policy (TA).

E. The Office of Disability Evaluation Policy (TA).

F. The Office of Process Policy (TA).

G. The Office of Disability Program Information and Studies (TA).

H. The Office of Acquiescence and Litigation Coordination (TA).

Section (TA .20) The Office of Disability Programs—(Functions):

A. The Associate Commissioner for Disability Programs (TA) is directly responsible to the Deputy Commissioner, Disability and Income Security Programs for carrying out its mission and providing general supervision to its major components.

B. The Deputy Associate Commissioner(s) for Disability Programs (TA) assists the Associate Commissioner in carrying out his/her responsibilities and performs other duties as the Associate Commissioner may prescribe.

C. The Immediate Office of the Associate Commissioner for Disability Programs (TA) provides the Associate Commissioner and the Deputy Associate

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Commissioner(s) with advisory services and staff assistance on the full range of their responsibilities and coordinates the administrative and program activities of ODP components. Other duties include:

1. Development, coordination and oversight of disability policies, procedures and process requirements supporting creation of a paperless disability claims process; and

2. Development and oversight of a policy framework supporting consistent application of disability program policy through all levels of disability adjudication and the quality assurance process.

D. The Office of Medical Policy (TA)

1. The Office of Medical Policy develops broad medical concepts and policies for the administration of the Title II and Title XVI programs.

2. Develops studies and research evaluating impairment severity and other medical disability issues.

3. Provides leadership and professional direction to Regional Medical Officers and consultants, and to state Disability Determination Services medical personnel engaged in Title II and Title XVI disability program-related activities.

4. Provides medical consultation required in the formulation of medical evaluation policies and guides and develops orientation and training program for all adjudicative personnel in SSA, including state Disability Determination Services.

5. Develops, evaluates, implements and maintains disability program policy for all medical issues, both adults and children, including evaluation policies for all body systems, standards for evaluating medical evidence, the Psychiatric Review Technique, impairment duration, medical diaries and presumptive disability/blindness criteria, to be used in deciding disability claims at all adjudicative levels.

6. Provides medical policy consultation for individual court cases and class actions ensuring that policies and procedures reflect specific court orders and legal precedents.

E. The Office of Disability Evaluation Policy (TA)

1. The Office of Disability Evaluation Policy develops broad vocational and other non-medical concepts and policies for the administration of the Title II and Title XVI disability programs.

2. Develops studies and research evaluating vocational and other non-medical disability issues.

3. Provides leadership and professional direction to regional and State Disability Determination Services personnel engaged in Title II and Title XVI-related activities.

4. Develops orientation and training programs in the vocational and other non-medical areas for all adjudicative personnel in SSA, including State Disability Determination Services.

5. Develops, evaluates, implements and maintains disability program policy for all vocational and other non-medical issues, both adults and children, including age, education, work experience, vocational rules, vocational data and reference materials (e.g., Dictionary of Occupational Titles), work evaluations, disability onset, disability standards, credibility, claimant responsibility, evidence development and evaluation, medical source opinions, residual functional capacity, interview and function forms, medical improvement review standards and Title XVI childhood policy (including functional equivalence, evidence development, age 18 redeterminations, and other issues) to be used at all adjudicative levels.

6. Provides vocational and other non-medical policy consultation for individual court cases and class actions ensuring that policies and procedures reflect specific court orders and legal precedent.

F. The Office of Process Policy (TA)

1. The Office of Process Policy develops procedures and instructions for the disability provisions of other programs including certain Titles XVI and XVIII provisions unique to the disability programs. Maintains the integrity of the consultative examination process by developing regulations and conducting oversight activities.

2. Develops the procedures and instructions that define the administrative appeals process, including policies and procedures for the disability hearing process. Develops notice policy and issues language and forms for use in disability claims and notices including foreign language and Braille notices.

3. Carries out professional relation efforts in support of SSA's efforts to gain support from professional medical associations. Maintains liaison and assists with professional relations efforts to gain the support of non-vocational rehabilitation advocacy groups, federal, state and local agencies and the public and provides guidance and assistance on disability professional relations issues to the SSA regional and DDS field networks.

G. Office of Disability Program Information and Studies (TA)

1. The Office of Disability Program Information and Studies conducts studies on the disabled population and recipients relative to specific operational/administrative program issues.

2. Develops and maintains databases for statistical activities and program information. Provides recurring and specialized reports and coordinates information requirements.

H. Office of Acquiescence and Litigation Coordination (TA)

1. Develops, evaluates, maintains and implements acquiescence regulations and policies. Evaluates all circuit court decisions to assess the need to publish an Acquiescence Ruling.

2. Coordinates litigation activities with respect to class action lawsuits and significant individual cases for all programmatic policy areas.

3. Provides recommendations for policy, regulatory and/or legislative changes to remedy weaknesses identified as a result of litigation. Maintains the Civil Action Tracking System used to monitor activities related to class action lawsuits and acquiescence.

Revise and Retitle:

Subchapter (TAP)

Office of Income Security Programs

TAP.00 Mission
TAP.10 Organization
TAP.20 Functions

Retitle:

Section TAP.00 "The Office of Program Benefits" to "The Office of Income Security Programs"—(Mission)

Amend in its entirety:

"The Office of Income Security Programs provides SSA-wide leadership and direction to the development, coordination and promulgation of Retirement and Survivors Insurance (RSI) and Supplemental Security Income (SSI) policies and procedures. Develops, coordinates, evaluates and issues the policies, standards and instructions for the RSI and SSI programs. Develops agreements with the States and other agencies that govern State supplementation programs, Medicaid eligibility, data exchange programs, food stamps, fiscal reporting processes, electronic computer matches. Is responsible for all aspects of SSA's policy process and the migration of RSI and SSI program services to the Internet."

Retitle:

Section (TAP.10) The Office of Program Benefits" to "The Office of Income Security Programs"—(Organization)

The Office of Income Security Programs under the leadership of the Associate Commissioner for Income Security Programs includes:

Retitle:

D. "The Division of Coverage and Support" to "The Office of Earnings and Information Exchange (TAPB)".

E. "The Division of Eligibility and Enumeration Policy" to "The Office of Eligibility and Enumeration Policy" (TAPJ).

F. "The Division of Representative Payment and Evaluations" to "The Office of Beneficiary Determinations and Services (TAPK).

G. "The Division of Payment Policy" to the "Office of Payment Policy (TAPE)".

Add:

H. The Office of Technology and Services Policy (TAPF).

Retitle:

Section (TAP.20) The Office of Program Benefits" to "The Office of Income Security Programs"—(Functions)

Retitle:

D. "The Division of Coverage and Support" to "The Office of Earnings and Information Exchange (TAPB)".

Amend D in its entirety:

1. "Plans, develops and evaluates the policies, standards and instructions, and provides guidance to field components on issues related to the RSI program, in the areas of coverage earnings records and corrections, and pre-1987 State and local reporting and corrections. Also establishes policy, provides guidance and manages the implementation of the provisions of the Computer Matching and Privacy Protection Act of 1988.

2. Develops and issues guidelines, directives, instructions and procedures for such subject areas as wages, coverage and exceptions, earnings records and earnings records corrections and discrepancies, self-employment status and income, religious exemptions (including determinations as to whether sects meet legal requirements for exemptions to apply), State and local coverage, statutes of limitations, State and local agreements, SSA benefit statements, and territory agreements. Coordinates SSA's interaction with other agencies in negotiating data releases and exchanges and negotiates with these agencies at all levels regarding electronic data sharing and direct terminal access to computer records.

Retitle:

E. The "Division of Eligibility and Enumeration Policy" to "The Office of Eligibility and Enumeration Policy" (TAPJ)

Amend E in its entirety:

1. "Plans, develops and evaluates the policies, standards and instructions and provides guidance to field components on issues related to the RSI and SSI programs in the areas of applications, eligibility and enumeration.

2. Develops and issues guidelines, directives, instructions and procedures for such eligibility and enumeration subject areas as assignment of social security numbers and issuance of cards, non-citizen issues, evidentiary standards, liaison with Immigration and Naturalization Services, insured status, applications for benefits and SSNs, adjudication, claims development, relationships, and inter-program relationships with food stamps."

Retitle:

F. "The Division of Representative Payment and Evaluations" to "The Office of Beneficiary Determinations and Services (TAPK)".

Amend F in its entirety:

1. "Plans, develops and evaluates the policies, standards and instructions and provides guidance to field components on issues related to the RSI and SSI programs in the areas of representative payment, outreach, deeming, income, resources, in-kind support and maintenance, institutions and living arrangements.

2. Develops and issues guidelines, directives, instructions and procedures for such representative payment subject areas as (in)capability assessment, investigation and selection of payees, use and conservation of benefits, misuse of benefits, payment for payee services and payee oversight, inter-program relationship with Medicaid and Medicare, deeming, income, resources, in-kind support and maintenance, institutions and living arrangements."

Retitle:

G. "The Division of Payment Policy" to "The Office of Payment Policy (TAPE)".

Amend G in its entirety:

1. "Plans, develops and evaluates the policies, standards and instructions and provides guidance to field components on issues related to the RSI and SSI programs in the areas of compliance and payment policy.

2. Develops and issues guidelines, directives, instructions and procedures for such payment policy subject areas as payment accuracy, notices, redeterminations, reporting, change of address, computations, offset, overpayments and underpayments, suspensions and terminations, garnishments, administrative finality, res judicata, due process, IRS levies, appeals, retirement earnings test and Agency notice improvement activities."

Add:

H. The Office of Technology and Services Policy (TAPL)

1. Directs the management of all activities supporting production, publication, distribution, indexing and storage of SSA's program operational instructions system (both electronic and hardcopy), programmatic-related documents. Facilitates the migration of RSI and SSI program services to the Internet and to other electronic mediums that enable the public to interact with SSA electronically by developing a foundation for Internet program policy expertise that ensures uniformity and consistency of Internet applications and resources.

2. Oversees SSA's policy process including establishing and maintaining Agency standards for the development of program instructions. Directs the ongoing evaluation and improvement of SSA's policy process and solicits external stakeholder input to the policy process and assists authoring components in developing policy documents. Directs technical research into improved methods of delivering complex policy knowledge and oversees maintenance of SSA's technical documents including the Compilation of the Social Security Act. Directs change management initiatives aimed at achieving more efficient and effective policy-related processes and assists the organization and individual employees in the transition to new work environments. Identifies crosscutting program and authentication issues when implementing Internet applications and recommends changes to meet both program and client needs. Develops and issues guidelines, directives, instructions, and procedures to field components on Internet and electronic services activities.

Revise:

Subchapter (TAT)

The Office of Employment Support Programs

TAT.00 Mission
TAT.10 Organization
TAT.20 Functions

Section (TAT.00) The Office of Employment Support Programs—(Mission)

Delete the 4th sentence, which reads: "Evaluates the effects of proposed legislation, policy, and regulatory changes to determine the operational impact on employment support programs."

Add as the 4th sentence: "Implements legislation and analyzes the effects of policy and regulatory changes to

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determine the operational impact on employment support programs".

Section (TAT.10) The Office of Employment Support Programs—(Organization)

Retitle:

D. "The Division of Employment Policy" to "The Office of Employment Policy (TATB)".

E. "The Division of Employment Support and Program Acquisitions" to "The Office of Employment Support and Program Acquisitions (TATC)".

Section TAT.20 The Office of Employment Support Programs—(Functions)

Retitle:

D. "The Division of Employment Policy" to "The Office of Employment Policy (TATB)".

Delete: the first two words in paragraph #1, "develops, evaluates..."

Add: at the end of paragraph #4, "and operational activities."

Retitle:

E. "The Division of Employment Support and Program Acquisitions" to "The Office of Employment Support and Program Acquisitions (TATC)".

Amend E in its entirety:

1. "Implements the provisions of the Social Security Act which facilitate access to rehabilitation and other forms of employment support services through the Ticket to Work and Self-Sufficiency Program.

2. Evaluates the performance of service-providers in the public and private sectors. Certifies payment to service providers and ensures that beneficiary participation in the program is appropriate.

3. Develops, implements, evaluates and maintains regulations, program operating policies, and instructional and other materials on employment services and service provider operations. Interfaces with the vocational rehabilitation programs administered under the Rehabilitation Act. Develops proposals and plans for new employment support services and other related program changes."

Add:

Subchapter (TA)

The Office of Program Development and Research

TA .00 Mission
TA .10 Organization
TA .20 Functions

Section (TA .00) The Office of Program Development and Research—(Mission)

The Office of Program Development and Research provides broad program analysis and development in support of the Disability and Supplemental Security Income (SSI) programs. The Office maintains awareness of issues concerning the broad program policy environment including Congress, the private sector and other government agencies, and ensures the Agency's policy and research agendas consider and reflect these points of view. Directs studies of program policy issues related to the development and evaluation of disability and the SSI program initiatives and legislative and policy proposals. The Office identifies trends in the SSI and the disability programs and compiles and analyzes data on various aspects of those programs. Designs, implements and evaluates demonstration projects to target special populations and program issues. Formulates Agency policy regarding crosscutting programs or issues related to disability and/or income assistance programs and works with other agencies, including the Department of Health and Human Services, toward this end.

Section (TA .10) The Office of Program Development and Research—(Organization)

The Office of Program Development and Research under the leadership of the Associate Commissioner for Program Development and Research, includes:

A. The Associate Commissioner for Program Development and Research (TA).

B. The Deputy Associate Commissioner for Program Development and Research (TA).

C. The Immediate Office of the Associate Commissioner for Program Development and Research (TA).

D. The Office of Program Development (TA).

E. The Office of Program Evaluation (TA).

F. The Office of Data Analysis (TA).

G. The Office of Program Research (TA).

Section (TA .20) The Office of Program Development and Research—(Functions)

A. The Associate Commissioner for Program Development and Research (TA) is directly responsible to the Deputy Commissioner, Disability and Income Security Programs for carrying out the mission of the office and providing general supervision to its major components.

B. The Deputy Associate Commissioner for Program Development and Research (TA) assists the Associate Commissioner in carrying out his/her responsibilities and performs other duties as the Associate Commissioner may prescribe.

C. The Immediate Office of the Associate Commissioner for Program Development and Research (TA) provides the Associate Commissioner and the Deputy Associate Commissioner with advisory services and staff assistance on the full range of their responsibilities and coordinates the administrative and program activities of OPDR components.

D. The Office of Program Development (TA).

1. Develops and implements disability and SSI-related demonstration projects including projects that would encourage work and self-sufficiency.

2. Administers grants, interagency agreements, contracts and unsolicited proposals for ODISP.

3. Conducts outreach for demonstration projects and other initiatives relevant to program development.

E. The Office of Program Evaluation (TA).

1. Maintains awareness of issues concerning the broad program policy environment including Congress, the private sector and other government agencies, and ensures the Agency's policy and research agendas consider and reflect these points of view.

2. Formulates Agency policy regarding cross-cutting programs or issues related to disability and/or income assistance programs and works with other agencies, including the Department of Health and Human Services, toward this end.

3. Formulates Agency policy regarding crosscutting programs or issues related to disability and/or income assistance programs and works with other agencies, including the Department of Health and Human Services, toward this end.

4. Conducts analyses of international disability and income assistance programs.

F. The Office of Data Analysis (TA).

1. Identifies trends in disability programs and emerging issues and policy implications.

2. Compiles and analyzes data on various aspects of the SSDI and SSI disability programs, including such areas as SSI children, demonstration projects, denied applicants and work incentives.

G. The Office of Program Research (TA).

1. Identifies and develops potential research projects that will support future policy initiatives.

2. Reviews current research and determines SSDI/SSI disability policy implications.

3. Conducts studies and analyses on the national disabled population, applicants for benefits, disability beneficiaries, work incentives and disability assessment tools.

4. Conducts analyses of the interrelationships between SSA's disability programs, the national economy and other income maintenance programs, as well as various socioeconomic factors.

Dated: November 4, 2002.

Jo Anne B. Barnhart,

Commissioner.

[FR Doc. 02–28956 Filed 11–14–02; 8:45 am]
BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 4206]

Bureau of Educational and Cultural Affairs Request for Grant Proposals (RFGPs): The FREEDOM Support Act/ Future Leaders Exchange (FSA/FLEX) Program: Host Family and School Placement

NOTICE: Request for grant proposals.

SUMMARY: The Youth Programs Division of the Bureau of Educational and Cultural Affairs announces an open competition for the placement component of the FREEDOM Support Act/Future Leaders Exchange (FSA/FLEX) program. Public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3) may submit proposals to recruit and select host families and schools for high school students between the ages of 15 and 17 from countries of the former Soviet Union, thereafter referred to as Eurasia. In addition to identifying schools and screening, selecting, and orienting families, organizations will be responsible for: Orienting students at the local level; providing support services for students; arranging enhancement activities and leadership opportunities that reinforce program goals; monitoring students during their stay in the U.S.; providing re-entry training; and assessing student performance and progress. The award of grants and the number of students who will participate is subject to the availability of funding in fiscal year 2003.

Program Information

Overview

Background: Academic year 2003/2004 will be the eleventh year of the FSA/FLEX program, which now includes over 11,000 alumni. This inbound, academic year component was originally authorized under the FREEDOM Support Act of 1992 and is funded by annual allocations from the Foreign Operations and State Department appropriations. The goals of the program are to promote mutual understanding and foster a relationship between the people of Eurasia and the U.S.; to assist the successor generation of Eurasian countries in developing the qualities it will need to lead in their aspirations for transformation in the 21st century; and to promote democratic values and civic responsibility by giving Eurasian youth the opportunity to live in American society and participate in focused activities for an academic year.

Objectives:

- To place approximately 1,400 pre-selected high school students from Eurasian countries in qualified, well-motivated host families.
- To place students in schools that have been accredited by the respective state departments of education.
- To expose program participants to American culture and democracy through homestay experiences and enhancement activities that will enable them to attain a broad view of the society and culture of the U.S.
- To encourage FSA/FLEX program participants to share their culture, lifestyle and traditions with U.S. citizens.
- To provide Eurasian students with leadership opportunities that will foster skills they can take back with them and use in their home countries.

Through participation in the FLEX program, students should:

1. Acquire an understanding of important elements of a civil society. This includes concepts such as volunteerism, the idea that American citizens can and do act at the grassroots level to deal with societal problems, and an awareness of and respect for the rule of law.

2. Acquire an understanding of a free market economy and private enterprise. This includes awareness of privatization and an appreciation of the role of the entrepreneur in economic growth.

3. Develop an appreciation for American culture and an understanding of the diversity of American society.

4. Interact with Americans and generate enduring ties.

5. Teach Americans about the cultures of their home countries.

6. Gain leadership capacity that will enable them to initiate and support activities in their home countries that focus on development and community service in their role as FLEX alumni.

Other Components: One organization has been awarded a grant to perform the following functions: Recruitment and selection of students; targeting recruitment for students with disabilities; assistance in documentation and preparation of DS–2019 visa forms; preparation of cross-cultural materials; predeparture orientation; international travel from home to host community and return; facilitation of ongoing communication between the natural parents and placement organization, as needed; maintenance of a student database and provision of data to the U.S. Department of State; and ongoing follow-up with alumni after their return to the Eurasia. Most of the students with disabilities, as well as a select number of additional students who are identified as needing English language enhancement before entering their host communities, will attend a Language and Cultural Enhancement (LCE) program in July 2003, which will be conducted under a separate grant awarded exclusively for that purpose.

Guidelines: Organizations chosen under this competition are responsible for the following:

(1) Recruitment, screening, selection, and Eurasia/FLEX-specific orientation of host families;

(2) Enrollment in an accredited school;

(3) Local orientation for participants;

(4) Placement of a small number of students with disabilities;

(5) Ensuring that all students identified for the preacademic-year LCE program have their permanent year-long placement by the time they arrive at the LCE program in July;

(6) Specialized training of local staff and volunteers to work with FLEX students from Eurasia;

(7) Preparation and dissemination of materials to students pertaining to the respective placement organization;

(8) Dispersal of program-specific information, such as alumni activity reports and School Administrator handbooks, to respective persons involved with the program (*e.g.*, host families, school administrators, local coordinators);

(9) Program-related enhancement and leadership activities;

(10) Troubleshooting;

(11) Communication with the organizations conducting other program components, when appropriate;

(12) Evaluation of the students' performance;

(13) Quarterly evaluation of the organiation's success in achieving program goals;

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(14) Eurasia-specific re-entry training to prepare students for readjustment to their home environments.

Applicants must request a grant for the placement of at least 40 students. There is no ceiling on the number of students who may be placed by one organization. It is anticipated that approximately 10–15 grants will be awarded for this component of the FLEX program. Placements may be in any region in the U.S. Strong preference will be given to organizations that choose to place participants in clusters of at least three students. Applicants must demonstrate that training of local staff ensures their competence in providing Eurasia-specific orientation programs, appropriate enhancement activities, and quality supervision and counseling of students from Eurasian countries. Please refer to the Solicitation Package, available on request from the address listed below, for details on essential program elements, permissible costs, and criteria used to select students.

We anticipate grants beginning no later than April, 2003, subject to the availability of funds.

Most participants arrive in their host communities during the month of August and remain for 10 or 11 months until their departure during the period mid-May to late June 2004.

Administration of the program must be in compliance with reporting and withholding regulations for federal, state, and local taxes as applicable. Recipient organizations should demonstrate tax regulation adherence in the proposal narrative and budget.

Applicants should submit the health and accident insurance plans they intend to use for students on this program. If use of a private plan is proposed, the State Department will compare that plan with the Bureau plan and make a determination of which will be applicable.

Budget Guidelines: Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000.

Applicants must submit a comprehensive budget for the entire program. *Per capita* costs should not exceed $5,450.

There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification. Allowable costs for the program include the following:

(1) A monthly stipend and a one-time incidentals allowance for participants, as established by the Department of State;

(2) Costs associated with student enhancement activities and orientations;

(3) Health and accident insurance.

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

Announcement Title and Number: All correspondence with the Bureau concerning this RFGP should reference the above title and number ECA/PE/C/PY–03–24.

FOR FURTHER INFORMATION CONTACT: The Office of Youth Programs, ECA/PE/C/PY, Room 568, U.S. Department of State, 301 4th Street, SW., Washington, DC 20547, tel. (202) 619–6299, and fax (202) 619–5311, e-mail *lbeach@pd.state.gov* to request a Solicitation Package. The Solicitation Package contains detailed award criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation. Please specify Bureau of Education and Cultural Affairs Program Officer Anna Mussman on all other inquiries and correspondence.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

To Download a Solicitation Package Via Internet: The entire Solicitation Package may be downloaded from the Bureau's Web site at *http://exchanges.state.gov/education/RFGPs*. Please read all information before downloading.

Deadline for Proposals: All proposal copies must be received at the Bureau of Educational and Cultural Affairs by 5 p.m. Washington, DC time on December 19, 2002. Faxed documents will not be accepted at any time. Documents postmarked the due date but received on a later date will not be accepted. It is the responsibility of each applicant to ensure that the proposals are received by the above deadline. Applicants must follow all instructions in the Solicitation Package. The original and 8 copies of the application should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: ECA/PE/C/PY–03–24, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into the total proposal. Pub. L. 104–319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy," the Bureau "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Pub. L. 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

Adherence to All Regulations Governing the J Visa

Participants will travel on J–1 visas issued by the State Department using a government program number.

The Bureau of Education and Cultural Affairs is placing renewed emphasis on the secure and proper administration of Exchange Visitor (J visa) Programs and adherence by grantees and sponsors to all regulations governing the J visa. Therefore, proposals should demonstrate the applicant's capacity to meet all requirements governing the administration of Exchange Visitor Programs as set forth in 22 CFR 6Z, including the oversight of Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, record-keeping, reporting and other requirements. A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at:

http://exchanges.state.gov/education/jexchanges.

Or from:

United States Department of State, Department Office of Exchange Coordination and Designation, ECA/EC/ECD—SA–44, Room 734, 301 4th Street, SW., Washington, DC 20547. Telephone: (202) 401–9810. FAX: (202) 401–9809.

Review Process

The Bureau will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the State Department's Office for U.S. Assistance to Europe and Eurasia (EUR/ACE) and Public Diplomacy section at the U.S. embassy overseas, where appropriate. Eligible proposals will be forwarded to panels of Bureau officers for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Quality of the program idea:* Proposals should exhibit originality, substance, precision, and relevance to the Bureau's mission.

2. *Program planning:* Detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above.

3. *Ability to achieve program objectives:* Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the organization will meet the program's objectives and plan. Strategies should utilize and reinforce exchange activities creatively to ensure an efficient use of program resources.

4. *Multiplier effect/impact:* Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages. Proposals should include creative ways to involve students in their U.S. communities.

5. *Support of diversity:* Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (selection of participants, host families, schools, program venue and program evaluation) and program content (orientations, program meetings, resource materials and follow-up activities).

6. *Organization's record/institutional capacity:* Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals. Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting and J–1 Visa requirements for past Bureau grants as determined by Bureau Grant Staff. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants.

7. *Project evaluation:* Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. Submission of a sample FLEX-specific draft survey questionnaire, or other technique, plus description of a methodology to use to link outcomes to original project objectives are highly recommended. The final project evaluation should provide qualitative and quantitative data about the project's influence on the participants as well as their surrounding communities. Successful applicants will be expected to submit quarterly reports, which should be included as an inherent component of the work plan.

8. *Cost-effectiveness/cost sharing:* The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Pub. L. 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding authority for the program above is provided through legislation pertaining to the Department of State and FREEDOM Support Act appropriations.

Notice

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures.

Dated: November 7, 2002.

Patricia S. Harrison,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 02–29198 Filed 11–14–02; 8:45 am]

BILLING CODE 4710–05–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Request for Comments and Notice of Public Hearing Concerning Proposed Free Trade Agreement Negotiations With Southern Africa

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of intent to initiate negotiations, request for public comments, and notice of public hearing on negotiation of a free trade agreement between the United States and five southern African countries.

SUMMARY: The United States intends to initiate negotiations on a free trade agreement (FTA) with Botswana, Lesotho, Namibia, South Africa and Swaziland, which collectively comprise the Southern African Customs Union. The interagency Trade Policy Staff Committee (TPSC) will convene a public hearing and seeks public comments to assist the United States Trade Representative (USTR) in amplifying and clarifying negotiating objectives for the proposed FTA and to provide advice on how specific goods and services and other matters should be treated under the proposed agreement.

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DATES: Persons wishing to testify orally at the hearing must provide written notification of their intention, as well as their testimony, by December 6, 2002. A hearing will be held in Washington, DC, beginning on December 16, 2002, and continuing as necessary on subsequent days. Written comments are due by noon on December 20, 2002.

ADDRESSES: Submissions by electronic mail:

FR0046@ustr.gov (notice of intent to testify and written testimony);
FR0047@ustr.gov (written comments).

Submissions by facsimile: Gloria Blue, Executive Secretary, Trade Policy Staff Committee, at (202) 395–6143.

The public is strongly encouraged to submit documents electronically rather than by facsimile. (See requirements for submissions below.)

FOR FURTHER INFORMATION CONTACT: For procedural questions concerning public comments, contact Gloria Blue, at (202) 395–3475. All other questions should be directed to Chris Moore, Director for African Affairs, Office of the United States Trade Representative, at (202) 395–9514.

SUPPLEMENTARY INFORMATION:

1. Background

On February 16, 2002, the USTR met with Trade Ministers and other officials from Botswana, Lesotho, Namibia, South Africa, and Swaziland in Pretoria, South Africa, to discuss the possibility of a free trade agreement. Subsequent discussions with these countries have demonstrated their readiness, individually and collectively, to be free trade partners.

Botswana, Lesotho, Namibia, South Africa and Swaziland constitute the largest U.S. export market in sub-Saharan Africa, with sales valued at $3.1 billion in 2001. Each is a member of the World Trade Organization, and is pursuing regional free trade through the Southern African Development Community (SADC). Namibia and Swaziland are also members of the Common Market for Eastern and Southern Africa (COMESA). South Africa signed a free trade agreement with the European Union in 1999, in which it agreed to eliminate duties on 86 percent of imports from the EU by 2012.

Botswana, Lesotho, Namibia, South Africa and Swaziland are beneficiaries of the African Growth and Opportunity Act (AGOA). Section 116 of the AGOA calls for the negotiation of free trade agreements with interested countries in sub-Saharan Africa, in order to serve as the catalyst for increasing trade between the United States and the region and increasing private sector investment in sub-Saharan Africa.

Under section 2104 of the Trade Act of 2002 (19 U.S.C. 3804), for agreements that will be approved and implemented through Trade Promotion Authority procedures, the President must provide the Congress with at least 90 days' written notice of his intent to enter into negotiations and must identify specific objectives for the negotiations. Before and after the submission of this notice, the President must consult with appropriate Congressional committees and the Congressional Oversight Group regarding the negotiations. Under the Trade Act of 1974, as amended, the President must (a) afford interested persons an opportunity to present their views regarding any matter relevant to any proposed agreement, (b) designate an agency or inter-agency committee to hold a public hearing regarding any proposed agreement, and (c) seek the advice of the U.S. International Trade Commission (ITC) regarding the probable economic effects on U.S. industries and consumers of the removal of tariffs and non-tariff barriers on imports pursuant to any proposed agreement.

On November 4, 2002, after consulting with relevant Congressional committees and the Congressional Oversight Group, the USTR notified the Congress that the President intends to initiate negotiations on an FTA with southern Africa and identified specific objectives for the negotiations. In addition, the USTR has requested the ITC's probable economic effects advice. The ITC intends to provide this advice within five months. This notice solicits views from the public on the proposed FTA and provides information on a hearing which will be conducted pursuant to the requirements of the Trade Act of 1974.

2. Public Comments and Testimony

To assist the Administration as it continues to develop its negotiating objectives for the proposed FTA, the Chairman of the TPSC invites written comments and/or oral testimony of interested parties at a public hearing. Comments and testimony may address the reduction or elimination of tariffs or non-tariff barriers on any article provided for in the Harmonized Tariff Scheduled of the United States (HTS) that is a product of Botswana, Lesotho, Namibia, South Africa or Swaziland, any concession which should be sought by the United States, or any other matter relevant to the proposed FTA. The TPSC invites comments and testimony on all of these matters, and in particular, seeks comments and testimony addressed to:

(a) General and commodity-specific negotiating objectives for the proposed FTA.

(b) Economic benefits and costs to U.S. producers and consumers of the removal of tariffs and non-tariff barriers on trade between the United States and southern Africa.

(c) Treatment of specific goods (described by HTS numbers) under the proposed FTA, including comments on (1) product-specific import and export interests or barriers, (2) experience with particular measures that should be addressed in the negotiations, and (3) in the case of articles for which immediate elimination of tariffs is not appropriate, the recommended staging schedule for such elimination.

(d) Adequacy of existing customs measures to ensure Botswana, Lesotho, Namibia, South Africa or Swaziland origin of imported goods, and appropriate rules of origin for goods entering the United States under the proposed FTA.

(e) Existing sanitary and phytosanitary measures and technical barriers to trade in Botswana, Lesotho, Namibia, South Africa or Swaziland.

(f) Existing barriers to trade in services between the United States and the southern African countries that should be addressed in the negotiations.

(g) Relevant trade-related intellectual property rights issues that should be addressed in the negotiations.

(h) Relevant investment issues that should be addressed in the negotiations.

(i) Relevant government procurement issues that should be addressed in the negotiations.

(j) Relevant environmental and labor issues that should be addressed in the negotiations.

Comments identifying as present or potential trade barriers laws or regulations that are not primarily trade-related should address the economic, political or social objectives of such laws or regulations and the degree to which they discriminate against producers of the other country.

At a later date, the USTR, through the TPSC, will publish notice of reviews regarding (a) the possible environmental effects of the proposed agreement and the scope of the U.S. environmental review of the proposed agreement, and (b) the impact of the proposed agreement on U.S. employment and labor markets.

A hearing will be held on December 16, 2002, in Rooms 1 and 2, 1724 F Street, NW., Washington, DC 20508. If necessary, the hearing will continue on subsequent days.

Persons wishing to testify at the hearing must provide written notification of their intention by December 6, 2002. The notification should include: (1) The name, address, and telephone number of the person presenting the testimony; and (2) a short (one or two paragraph) summary of the presentation, including the subject matter and, as applicable, the product(s) (with HTS number(s)), service sector(s), or other subjects (such as investment, intellectual property and/or government procurement) to be discussed. A copy of the testimony must accompany the notification. Remarks at the hearing should be limited to no more than five minutes to allow for possible questions from the TPSC. Persons with mobility impairments who will need special assistance in gaining access to the hearing should contact Gloria Blue at the number given above.

Interested persons, including persons who participate in the hearing, may submit written comments by noon, December 20, 2002. Written comments may include rebuttal points demonstrating errors of fact or analysis not pointed out at the hearing. All written comments must state clearly the position taken, describe with particularity the supporting rationale, and be in English. The first page of the written comments must specify the subject matter including, as applicable, the product(s) (with HTS number(s)), service sector(s), or other subjects (such as investment, intellectual property and/or government procurement).

3. Requirements for Submissions

To facilitate prompt processing of submissions, the Office of the U.S. Trade Representative strongly urges and prefers electronic (e-mail) submissions in response to this notice. In the event that an e-mail submission is impossible, submissions should be made by facsimile.

Persons making submissions by e-mail should use the following subject line: "Free Trade Agreement with Southern Africa" followed by (as appropriate) "Notice of Intent to Testify," "Testimony," or "Written Comments." Documents should be submitted as either WordPerfect, MSWord, or text (.TXT) files. Supporting documentation submitted as spreadsheets are acceptable as Quattro Pro or Excel. For any document containing business confidential information submitted electronically, the file name of the business confidential version should begin with the characters "BC-", and the file name of the public version should begin with the characters "P-". The "P-" or "BC-" should be followed by the name of the submitter. Persons who make submissions by e-mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. To the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

Written comments, notice of testimony, and testimony will be placed in a file open to public inspection pursuant to 15 CFR 2003.5, except confidential business information exempt from public inspection in accordance with 15 CFR 2003.6. Business confidential information submitted in accordance with 15 CFR 2006.6 must be clearly marked "BUSINESS CONFIDENTIAL" at the top of each page, including any cover letter or cover page, and must be accompanied by a nonconfidential summary of the confidential information. All public documents and nonconfidential summaries shall be available for public inspection in the Reading Room at the Office of the United States Trade Representative. The Reading Room is open to the public, by appointment only, from 10 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday. An appointment to review the file may be made by calling (202) 395–6186. Appointments must be scheduled at least 48 hours in advance.

General information concerning the Office of the United States Trade Representative may be obtained by accessing its Web site (*http://www.ustr.gov*).

Carmen Suro-Bredie,
Chairman, Trade Policy Staff Committee.

[FR Doc. 02–29095 Filed 11–12–02; 3:33 pm]

BILLING CODE 3190–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Review Under 49 U.S.C. 41720 of Delta/Northwest/Continental Agreements

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Notice of access on restricted basis to unredacted agreements.

SUMMARY: Delta Air Lines, Northwest Airlines, and Continental Airlines have submitted code-sharing and frequent-flyer program reciprocity agreements to the Department for review under 49 U.S.C. 41720. That statute requires such agreements between major U.S. passenger airlines to be submitted to the Department at least 30 days before the agreements' proposed effective date. The Department is providing outside parties access on a restricted basis to unredacted copies of the agreements. Comments by interested persons reflecting their review of the unredacted copies may assist the Department in determining whether to extend the waiting period or take other action on the agreements.

ADDRESSES: Comments must be filed with Randall Bennett, Director, Office of Aviation Analysis, Room 6401, U.S. Department of Transportation, 400 7th St. SW., Washington, DC 20590. To facilitate consideration of comments, each commenter should file three copies of its comments.

FOR FURTHER INFORMATION CONTACT: Thomas Ray, Office of the General Counsel, 400 Seventh St. SW., Washington, DC 20590, (202) 366–4731.

SUPPLEMENTARY INFORMATION: On August 23, Delta, Northwest, and Continental submitted code-sharing and frequent-flyer program reciprocity agreements to us for review under 49 U.S.C. 41720. That statute requires such joint venture agreements among major U.S. passenger airlines to be submitted to us at least thirty days before they can be implemented. We may extend the waiting period by 150 days with respect to a code-sharing agreement and by 60 days for other types of agreements. At the end of the waiting period (either the 30 day period or any extended period established by us), the parties are free to implement their agreement, unless we have issued an order under 49 U.S.C. 41712 (formerly section 411 of the Federal Aviation Act) in a formal enforcement proceeding determining that the agreement's implementation would be an unfair or deceptive practice or unfair method of competition that would violate that section.

As required by 49 U.S.C. 47120, Delta, Continental, and Northwest provided us with unredacted copies of their agreements and asked that we give the agreements confidential treatment under 49 CFR 7.13 and rule 12 of the Department's rules of practice for airline industry economic regulatory proceedings, 14 CFR 302.12. Rule 12 sets forth the procedures for objections to the public disclosure of information submitted pursuant to a statutory requirement.

We have been reviewing the agreements submitted by Delta, Continental, and Northwest under 49 U.S.C. 41720 on an informal basis. In our review we are focusing on whether the agreements may constitute unfair methods of competition that would violate 49 U.S.C. 41712. Airline practices that violate the antitrust laws

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or antitrust principles would be unfair methods of competition. *See United Air Lines* v. *CAB*, 766 F.2d 1101 (7th Cir. 1985). Our role under 49 U.S.C. 41720 is analogous to the review of major mergers and acquisitions conducted by the Justice Department and the Federal Trade Commission under the Hart-Scott-Rodino Act, 15 U.S.C. 18a, in that we consider whether we should institute a formal proceeding for determining whether an agreement would violate section 41712.

Although our review has been informal, due to the public interest in the matter, we gave interested persons an opportunity to submit comments on the Delta/Continental/Northwest agreements. To assist outside parties in preparing their comments, we required the three airlines to submit redacted copies of the agreements that could be reviewed by other parties. 67 FR 56340 (September 3, 2002). We took similar action during our review of the code-share and frequent flyer reciprocity agreements filed earlier by United and US Airways. 67 FR 50745 (August 5, 2002). In the course of our review of the Delta/Northwest/Continental agreements, we have thus far extended the waiting periods for a total of 60 days. 67 FR 59328 (September 20, 2002); 67 FR 64960 (October 22, 2002).

Several of the outside parties that wish to comment on the agreements among Delta, Continental, and Northwest have alleged that their lack of access to unredacted copies of the agreements has substantially handicapped their ability to comment on the agreements' potential competitive effects. *See, e.g.*, Joint Motion of Air Tran *et al.* (October 15, 2002).

After considering these comments and the nature of the agreements at issue, we have determined that, as contemplated by rule 12, we should allow other parties to see unredacted copies of the agreements on a restricted basis and that doing so should facilitate our consideration of the issues presented by the agreements. For example, the incentives of Delta, Continental, and Northwest to compete with each other will depend in large part on the applicable financial terms when one airline sells seats under its code on a flight operated by one of the other two airlines. That kind of information has been redacted in the copies of the agreements submitted by Delta, Continental, and Northwest for public review, precluding outside parties from fully analyzing the likely competitive impact of the agreements.

As noted, Delta, Continental, and Northwest have requested confidential treatment of the agreements under rule 12. The rule states that we can make confidential information available to other parties on a restricted basis notwithstanding a request for confidential treatment. Subparagraph (d)(3) of rule 12 thus provides, "During the pendency of such motion, the ruling official may, by notice or order, allow limited disclosure to parties' representatives, for purposes of participating in the proceeding, upon submission by them of affidavits swearing to protect the confidentiality of the documents at issue." Allowing outside parties to review unredacted copies of the Delta/Continental/Northwest agreements under our standard restrictions thus will be consistent with the rule.

Providing this kind of restricted access will also be consistent with our practice in docketed proceedings involving applications for approval and antitrust immunity for international alliance agreements. *See, e.g., Joint Application of American Airlines and British Airways*, Docket OST–2001–10387, notice of August 16, 2001. While we are not conducting a formal review of the Delta/Continental/Northwest agreements and have not established a docketed proceeding, we have determined that we should provide comparable access to the agreements in order to give parties an adequate opportunity to comment.

We will follow our established procedures for providing access on a restricted basis. Only counsel and outside experts may review the unredacted agreements, and they may do so only after submitting affidavits representing that they will maintain confidentiality. Each such affidavit must state, at a minimum, that (i) the affiant is counsel for an interested party or an outside expert providing services to such a party; (ii) the affiant will use the information only for the purpose of participating in the submission of comments on the agreements; (iii) the affiant will disclose such information only to other persons who have filed a valid affidavit respecting the confidentiality of the agreements; and (iv) the affiant will destroy or return all copies of the agreements when the Department has concluded its review. Affiants and interested parties must understand and agree that any filing that includes or discusses information obtained through the review of the unredacted agreements must itself be accompanied by a rule 12 motion requesting confidential treatment. Affidavits must be filed with the Department of Transportation, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590, and must be served on Delta, Continental, and Northwest. Affiants who have filed affidavits may examine the documents at Room PL–401, if they present a stamped copy of the affidavit filed with the Department before examination of the documents.

We will allow persons submitting affidavits to copy the agreements, subject to their representation in the affidavits that they will destroy or return all such copies to Delta, Continental, or Northwest within one week after we have determined that we will or will not institute a formal investigation under 49 U.S.C. 41712 of the agreements. *Cf. Joint Application of American Airlines and British Airways*, Order 2001–9–12 (September 17, 2001) at 4.

We are not setting a deadline for submission of any supplemental comments based on the review of the unredacted agreements. However, any party that wishes to submit such comments should do so promptly, since the three airlines have asked us to decide expeditiously whether to allow them to implement the agreements. We will also be considering whether any additional extension of the waiting period for the code-share agreement would be appropriate.

This notice will be effective at 3 p.m. on November 12. We are serving Delta, Continental, and Northwest with a copy of this notice by FAX.

Issued in Washington, DC on November 8, 2002.

Read C. Van de Water,

Assistant Secretary for Aviation and International Affairs.

[FR Doc. 02–29068 Filed 11–14–02; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed During the Week Ending November 1, 2002

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2002–13694.
Date Filed: October 28, 2002.
Parties: Members of the International Air Transport Association.
Subject:
PTC123 0202 dated September 16, 2002
Mail Vote 240—TC123 Mid Atlantic Resolutions r1–r6
PTC123 0211 dated October 11, 2002 (Affirmative)
PTC123 0203 dated September 16, 2002
Mail Vote 241—TC123 South Atlantic Resolutions r7–r19
PTC123 0212 dated October 11, 2002 (Affirmative)
Minutes—PTC123 0217 dated October 22, 2002
Fares—PTC123 Fares 0073 dated October 11, 2002
PTC123 Fares 0077 dated October 15, 2002 (Technical Correction)
PTC123 Fares 0074 dated October 15, 2002
Intended effective date: March 1, 2003

Docket Number: OST–2002–13709.
Date Filed: October 29, 2002.
Parties: Members of the International Air Transport Association.
Subject:
CBPP/10/Meet/004/2002 dated October 1, 2002
Finally Adopted Resolution 686 r1
Minutes—CBPP/10/Meet/003/2002 dated September 25, 2002
Intended effective date: December 1, 2002

Docket Number: OST–2002–13710.
Date Filed: October 29, 2002.
Parties: Members of the International Air Transport Association.
Subject:
Mail Vote 245
PTC23 ME–TC3 0153 dated October 4, 2002
TC23/TC123 Middle East-South East Asia
Special Passenger Amending Resolution 010d
PTC23 ME–TC3 0158 dated October 29, 2002 (Affirmative)
Intended effective date: November 15, 2002

Docket Number: OST–02–13711.
Date Filed: October 29, 2002.
Parties: Members of the International Air Transport Association.
Subject:
PTC23 EUR–JK 0088 dated October 15, 2002
Europe-Japan/Korea Resolutions r1–r28
Minutes—PTC23 EUR–JK 0089 dated October 25, 2002
Tables—PTC23 EUR–JK Fares 0041 dated October 15, 2002
Intended effective date: April 1, 2003

Docket Number: OST–02–13722.
Date Filed: October 30, 2002.
Parties: Members of the International Air Transport Association.
Subject:
PTC23 ME–TC3 0156 dated October 11, 2002
TC23/TC123 Middle East–TC3 (except South East Asia)
Resolutions r1–r37
Minutes—PTC23 ME–TC3 0157 dated October 15, 2002
Tables—PTC23 ME–TC3 FARES 0063 dated October 18, 2002
Intended effective date: April 1, 2003

Docket Number: OST–02–13726.
Date Filed: October 30, 2002.
Parties: Members of the International Air Transport Association.
Subject:
PTC23 EUR–SWP 0070 dated October 29, 2002.
Europe-South West Pacific Expedited Resolutions r1–r3
Intended effective date: December 15, 2002

Dorothy Y. Beard,

Federal Register Liaison.

[FR Doc. 02–28969 Filed 11–14–02; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Spotsylvania County, VA

AGENCY: Federal Highway Administration, DOT.

ACTION: Notice of intent.

SUMMARY: The Federal Highway Administration (FHWA) is issuing this notice to advise the public of its intent to prepare an Environmental Impact Statement in cooperation with the Virginia Department of Transportation (VDOT) for the Spotsylvania Parkway Location Study in Spotsylvania County.

FOR FURTHER INFORMATION CONTACT: John Simkins, Environmental Protection Specialist, Federal Highway Administration, Post Office Box 10249, Richmond, Virginia 23240–0249, Telephone 804–775–3342.

SUPPLEMENTARY INFORMATION: The Federal Highway Administration (FHWA), in cooperation with the Virginia Department of Transportation (VDOT), will prepare an environmental impact statement (EIS) for the Spotsylvania Parkway Location Study. The study area is located in northeastern Spotsylvania County, southwest of the City of Fredericksburg. The study window is roughly defined by the Ni River, State Route 3 to the north, and Interstate 95 to the east.

Recognizing that the National Environmental Policy Act (NEPA) process requires the consideration of a reasonable range of alternatives that will address the purpose and need, the EIS will consider a range of alternatives for detailed study. These consist of a no-build alternative as well as alternatives consisting of transportation system management strategies, mass transit, improvements to existing facilities, and new alignment facilities. The alternatives will be developed, screened, and carried forward for detailed analysis in the draft EIS based on the ability to address the purpose and need.

The FHWA and VDOT are seeking input as part of the scoping process to assist in determining and clarifying issues relative to the project. Letters describing the proposed study and soliciting input have been sent to the appropriate Federal, State, and local agencies who have expressed an interest or are known to have an interest or legal role in the proposal. A Citizen Information Meeting was held in July 2002 to provide organizations, citizens, and interest groups an opportunity to provide input into the development of the EIS and identify issues that should be addressed. No formal scoping meeting is planned at this time.

A public hearing will be held upon completion of the draft EIS. Notices of the public hearing will be given through various forums providing the time and place of the hearing along with other relevant information. The draft EIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action are identified and taken into account, comments and input are invited from all interested parties. Comments and questions concerning the proposed action and draft EIS should be directed to FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this proposed action.)

Authority: 23 U.S.C. 315; 49 CFR 1.48.

Issued on: November 7, 2002.

John Simkins,

Environmental Protection Specialist.

[FR Doc. 02–28955 Filed 11–14–02; 8:45 am]

BILLING CODE 4910–22–M

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2002–13743; Notice 1]

Continental Tire North America Inc., Receipt of Application for Decision of Inconsequential Noncompliance

Continental Tire North America Inc., (Continental) has determined that a total of 159 P265/70R16 AmeriTrac SUV Radial Passenger Tires and 7,131 P265/70R16 ContiTrac SUV Radial Tires do not meet the labeling requirements mandated by Federal Motor Vehicle Safety Standard (FMVSS) No. 109, "New Pneumatic Tires." The noncompliant tires were produced during the periods March 11–24, 2001, and May 14, 2000–March 24, 2001, respectively.

Pursuant to 49 U.S.C. 30118(d) and 30120(h), Continental has petitioned for a determination that this noncompliance is inconsequential to motor vehicle safety and has filed an appropriate report pursuant to 49 CFR part 573, "Defect and Noncompliance Reports."

This notice of receipt of an application is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the application.

The petitioner argued as follows: FMVSS No. 109 (S4.3.4(b)) requires both the maximum load in kilograms and pounds be molded on the tires sidewall. The rated maximum kilogram load was incorrectly marked 1190 kg rather than 1090 kg. The rated maximum load in pounds was marked correctly. These tires are primarily sold in the domestic replacement market, where the load in pounds would be the predominant consumer unit of measurement.

Continental stated that test results confirm that the subject tires meet other test requirements of FMVSS No. 109 and support the petition of an inconsequential stamping error, which does not effect performance and is not safety related.

Interested persons are invited to submit written data, views, and arguments on the application described above. Comments should refer to the docket number and be submitted to: U.S. Department of Transportation, Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. It is requested that two copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date, will also be filed and will be considered to the extent possible. When the application is granted or denied, the notice will be published in the **Federal Register** pursuant to the authority indicated below. Comment closing date: December 16, 2002.

Authority: (49 U.S.C. 301118, 301120; delegations of authority at 49 CFR 1.50 and 501.8).

Issued on: November 12, 2002.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 02–29066 Filed 11–14–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34274]

Illinois Central Railroad Company—Trackage Rights Exemption—Union Pacific Railroad Company

Union Pacific Railroad Company (UP), pursuant to a written trackage rights agreement to be entered into with Illinois Central Railroad Company (IC),[1] will grant nonexclusive overhead trackage rights to IC over UP's Salem Subdivision extending from milepost 242.85 at Kinmundy, IL, to milepost 252.96 at Salem, IL, a distance of approximately 10.11 miles.

The transaction was scheduled to be consummated no earlier than November 4, 2002, the effective date of the exemption (7 days after the exemption was filed).

The purpose of the trackage rights is to grant IC the right to use the trackage for overhead operation of freight trains between Kinmundy and Salem and for the interchange of carload traffic with UP at Salem.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry. Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

[1] IC is a wholly owned subsidiary of Canadian National Railway Company.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34274, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Michael J. Barron, Jr., 455 North Cityfront Plaza Drive, Chicago, IL 60611–5317.

Board decisions and notices are available on our Web site at *'WWW.STB.DOT.GOV.'*

Decided: November 8, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–29081 Filed 11–14–02; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Bureau of Transportation Statistics

[Docket BTS–2002–13790]

Notice of Request To Renew Approval of Information

AGENCY: Bureau of Transportation Statistics (BTS), DOT

ACTION: Notice and request for comments.

Collection: OMB No. 2139–0003 (Financial and Operating Statistics for Motor Carriers of Passengers).

OMB Control Numbers: 2139–0003 (Form MP–1, Quarterly and Annual Reports).

SUMMARY: This notice announces that the Bureau of Transportation Statistics (BTS) intends to request the Office of Management and Budget (OMB) to renew approval for the information collection, the Annual and Quarterly Reports for Class I Motor Carriers of Passengers (Form MP–1). This information collection is necessary to ensure that motor carriers comply with financial and operating statistics requirements as prescribed in the BTS regulations (49 CFR 1420). This notice is required by the Paperwork Reduction Act (PRA).

DATES: January 14, 2003.

ADDRESSES: Send comments to the U.S. Department of Transportation, Dockets Management System (DMS). You may submit your comments by fax, Internet, in person or via the U.S. mail to the Docket Clerk, Docket No. BTS–2002–13790, Department of Transportation, 400 Seventh Street, SW., Room PL–401, Washington, DC 20590–0001. Please note that in case of delays in the delivery of U.S. mail to Federal offices in Washington, DC, we recommend that persons consider an alternative method (the Internet, fax, or professional delivery service) to submit comments to the docket and to ensure their timely receipt at U.S. DOT. You may fax your comments to the DMS at (202) 493–2251.

If you wish to file comments using the Internet, you may use the DOT DMS Web site at *http://dms.dot.gov*. Please follow the online instructions for submitting an electronic comment. Comments should identify the docket number and be submitted in duplicate. If you would like the Department to acknowledge receipt of your comments, you must submit a self-addressed stamped postcard on which the following statement is made: Comments on Docket BTS–2002–13790. The Docket Clerk will date stamp the postcard prior to returning it to you via the U.S. mail. The DMS is open for examination and copying, at the above address, from 9 a.m. to 5 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: Paula R. Robinson, Compliance Program Manager, Office of Motor Carrier Information, K–13, Bureau of Transportation Statistics, 400 Seventh Street, SW., Washington, DC 20590–0001; (202) 366–2984; fax: (202) 366–3364; e-mail: *paula.robinson@bts.gov*.

SUPPLEMENTARY INFORMATION:

I. The Data Collection

The Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35; as amended) and 5 CFR part 1320 require each Federal agency to obtain an OMB approval to continue an information collection activity for which the agency received prior approval. BTS is seeking OMB approval for the following BTS information collection activity whose prior OMB approval is near the expiration date:

Title: Class I Quarterly and Annual Reports of Motor Carriers of Passengers.

OMB Control Number: 2139–0003.

Form Number: BTS Form MP–1.

Type of Review: Extension of a currently approved collection.

Respondents: Class I Motor Carriers of Passengers.

Number of Respondents: 26.

Estimated Time Per Response: 1.5 hours.

Expiration Date: February 28, 2003.

Frequency: Quarterly and annually.

Total Annual Burden: 195 hours.

Abstract: This report provides financial and operating data. The Department of Transportation uses this information to assess the health of the industry and identify industry changes that may affect national transportation policy. The data also show company financial stability and traffic.

Background: The Quarterly and Annual Reports of Motor Carriers of Passengers (Form MP–1) is a mandated reporting requirement for for-hire Class I motor carriers of passengers. Motor carriers required to comply with the BTS regulations are classified on the basis of their annual gross carrier operating revenues (including interstate and intrastate). Under the financial and operating statistics (F&OS) program the BTS collects balance sheet and income statement data along with information on tonnage, mileage, employees, transportation equipment, and other related data. The data and information collected is made publicly available as prescribed in the BTS regulations (49 CFR 1420). The regulations were formerly administered by Interstate Commerce Commission (ICC), the Interstate Commerce Act, 49 U.S.C. 11145, 49 U.S.C. 11343(d)(1) and the Bus Regulatory Act of 1982 and later transferred to the U.S. Department of Transportation on January 1, 1996, by the ICC Termination Act of 1995 (the Act), 49 U.S.C. 14123.

II. Request for Comments

BTS requests comments on any aspects of these information collections, including (1) the accuracy of the estimated burden; (2) ways to enhance the quality, usefulness, and clarity of the collected information; and (3) ways to minimize the collection burden without reducing the quality of the information collected including additional use of automated collection techniques or other forms of information technology.

Russell B. Capelle, Jr.,

Assistant BTS Director for Motor Carrier Information, Department of Transportation.

[FR Doc. 02–28966 Filed 11–14–02; 8:45 am]

BILLING CODE 4910–FE–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

October 31, 2002.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before December 16, 2002, to be assured of consideration.

Departmental Offices/Office of Foreign Assets Control (OFAC)

OMB Number: 1505–0170.

Form Number: TD F 90–22.54.

Type of Review: Extension.

Title: Form for OFAC License Applications to Unblock Funds Transfers.

Description: Assets blocked pursuant to sanctions administered by Office of Foreign Assets Control (OFAC) may be released only through a specific license issued by OFAC. Since February 2000, use of this form to apply for the unblocking of funds transfers has been mandatory pursuant to 31 CFR 501.801(b)(2). Use of this form greatly facilitates and speeds applicants' submissions and OFAC's processing.

Respondents: Business or other for-profit, individuals or households, not-for-profit institutions.

Estimated Number of Respondents: 3,000.

Estimated Burden Hours Per Respondent: 30 minutes.

Frequency of Response: Other (once).

Estimated Total Reporting Burden: 1,500 hours.

Clearance Officer: Lois K. Holland, Departmental Offices, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220, (202) 622–1563.

OMB Reviewer: Joseph F. Lackey, Jr., Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, (202) 395–7316.

Mary A. Able,

Departmental Reports Management Officer.

[FR Doc. 02–28967 Filed 11–14–02; 8:45 am]

BILLING CODE 4811–16–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent

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burden, invites the general public and other Federal agencies to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury, is soliciting comments concerning the Beer For Exportation.

DATES: Written comments should be received on or before January 14, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Marjorie Ruhf, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8202.

SUPPLEMENTARY INFORMATION:

Title: Beer For Exportation.

OMB Number: 1512–0096.

Form Number: ATF F 5130.12.

Abstract: ATF collects this information in order to monitor export activities by brewers. Certification as to type and quanity of beer exported is analyzed by brewers' operational reports to ensure compliance with tax laws enforced by ATF. The record retention period for this information collection is 3 years.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 392.

Estimated Total Annual Burden Hours: 38,808.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: November 7, 2002.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 02–29043 Filed 11–14–02; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Usual and Customary Business Records Relating to Wine.

DATES: Written comments should be received on or before January 14, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Jennifer Berry, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8210.

SUPPLEMENTARY INFORMATION:

Title: Usual and Customary Business Records Relating to Wine.

OMB Number: 1512–0298.

Recordkeeping Requirement ID Number: ATF REC 5120/1.

Abstract: Usual and customary business records relating to wine are routinely inspected by ATF officers to ensure the payment of alcohol taxes due to the Federal Government. The record retention period for this information collection is 3 years.

Current Actions: The only change to this information collection is an increase in burden hours due to an increase in the number of wine premises.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 3,131.

Estimated Total Annual Burden Hours: 313.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: November 7, 2002.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 02–29044 Filed 11–14–02; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury is soliciting comments concerning the Notification to Fire Marshal and Chief, Law Enforcement Officer of Storage of Explosive Materials.

DATES: Written comments should be received on or before January 14, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Gail Davis, Chief, Public Safety Branch, 800 K Street, NW., Room 710,Washington, DC 20001, (202) 927–7930.

SUPPLEMENTARY INFORMATION:

Title: Notification to Fire Marshall and Chief, Law Enforcement Officer of Storage of Explosive Materials.

OMB Number: 1512–0536.

Abstract: ATF requires all persons who store explosives to notify local law enforcement officials and fire departments orally before the end of the day on which the storage of the explosive materials commenced and in writing within 48 hours from the time such storage commenced. The information is necessary for the safety of emergency response personnel responding to fires at sites where explosives are stored.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit, individuals or households, farms, State, Local or Tribal Government.

Estimated Number of Respondents: 10,057.

Estimated Total Annual Burden Hours: 60,342.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: November 7, 2002.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 02–29045 Filed 11–14–02; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury, is soliciting comments concerning the Bond for Drawback Under 26 U.S.C. 5131.

DATES: Written comments should be received on or before January 14, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Steve Simon, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8210.

SUPPLEMENTARY INFORMATION:

Title: Bond for Drawback Under 26 U.S.C. 5131.

OMB Number: 1512–0537.

Form Number: ATF F 5154.3.

Abstract: ATF F 5154.3 is required pursuant to 26 U.S.C. 5131 from all persons who claim, on a monthly basis, drawback of tax on distilled spirits used in the manufacture of approved nonbeverage products. The form is used to establish eligibility to file drawback claims on a monthly basis and, when necessary, to enforce collection of money owed to the Government.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 60.

Estimated Total Annual Burden Hours: 12.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: November 7, 2002.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 02–29046 Filed 11–14–02; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0610]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This

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notice solicits comments for information needed to review the credentials of chaplain applicants.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before January 14, 2003.

ADDRESSES: Submit written comments on the collection of information to Ann W. Bickoff (193B1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: *ann.bickoff@hq.med.va.gov*. Please refer to "OMB Control No. 2900–0610" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Ann W. Bickoff at (202) 273–8310 or FAX (202) 273–9381.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Ecclesiastical Endorsing Organization Verification/Reverification Information, VA Form 10–0379.

OMB Control Number: 2900–0610.

Type of Review: Extension of a currently approved collection.

Abstract: The information collected on VA Form 10–0379 is used to assure that individuals employed by VA as chaplains are qualified to provide for the constitutional rights of veterans to free exercise of religion. Each applicant submits an official statement ("ecclesiastical endorsement") from their religion or faith group, certifying that the applicant is in good standing with the faith group and is qualified to perform the full range of ministry required in VA setting. VA uses this information to determine (1) who the faith group designates as its endorsing official(s); (2) whether the faith group provides ministry to a lay constituency; and (3) what is the constituency to which person endorsed by this group may minister.

Affected Public: Not-for-profit Institutions.

Estimated Annual Burden: 3 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 10.

Dated: November 6, 2002.

By direction of the Secretary.

Loise Russell,

Acting Director, Records Management Service.

[FR Doc. 02–28974 Filed 11–14–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0358]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to evaluate veterans' and other eligible person's suitability to change their program of education objectives.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before January 14, 2003.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: *irmnkess@vba.va.gov*. Please refer to "OMB Control No. 2900–0358" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C., 3501—3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Supplemental Information for Change of Program or Reenrollment After Unsatisfactory Attendance, Conduct or Progress, VA Form 22–8873.

OMB Control Number: 2900–0358.

Type of Review: Extension of a currently approved collection.

Abstract: Veterans and other eligible persons may change their program of education under conditions prescribed by Title 38 U.S.C., Section 3691. Before VA may approve benefits for a second or subsequent change of program, VA must first determine that the new program is suitable to the claimant's aptitudes, interests, and abilities. VA Form 22–8873 is used to gather the necessary information only if the suitability of the proposed training program cannot be established from information already available in the claimant's VA file.

Affected Public: Individuals or households.

Estimated Annual Burden: 8,750 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 17,500.

Dated: October 30, 2002.

By direction of the Secretary.

Ernesto Castro,

Director, Records Management Service.

[FR Doc. 02–28979 Filed 11–14–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0198]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to determine a veteran's eligibility for clothing allowance payment.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before January 14, 2003.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: *irmnkess@vba.va.gov*. Please refer to "OMB Control No. 2900–0198" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Application for Annual Clothing Allowance, VA Form 21–8678.

OMB Control Number: 2900–0198.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 21–8678 is used by veterans to apply for clothing allowance. Without this information, VA would be unable to determine eligibility for this benefit.

Affected Public: Individuals or households.

Estimated Annual Burden: 1,120 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: Annually.

Estimated Number of Respondents: 6,720.

Dated: October 30, 2002.

By direction of the Secretary.

Ernesto Castro,

Director, Records Management Service.

[FR Doc. 02–28980 Filed 11–14–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0178]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to determine a claimant's continuing eligibility for education benefits.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before January 14, 2003.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: *irmnkess@vba.va.gov*. Please refer to "OMB Control No. 2900–0178" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Monthly Certification of On-the-Job and Apprenticeship Training, VA Form 22–6553d.

Note: A reference to VA Form 22–6553d also includes VA Form 22–6553d–1 unless otherwise specified. VA Form 22–6553d–1 contains the same information as VA Form 22–6553d.

OMB Control Number: 2900–0178.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 22–6553d is used by trainees and employers to report the number of hours worked in on-the-job training programs and apprenticeships, and to report terminations of training in such programs. VA uses the information to determine whether a trainee's education benefits are to be continued, changed or terminated, and the effective date of such action. VA is authorized to pay education benefits to veterans and other eligible persons pursuing approved programs not leading to a standard college degree under Title 38, U.S.C., Chapters 32 and 35, Title 10, U.S.C., Chapter 1606, and Public Law 96–342, Section 903. Benefits are authorized monthly based upon the

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number of hours worked by the trainee and verified by the training establishment.

Affected Public: Individuals or households, business or other for-profit, not-for-profit institutions, Federal Government, and State, Local or Tribal Government.

Estimated Annual Burden: 20,100 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: Monthly.

Estimated Number of Respondents: 13,400.

Number of Responses Annually: 120,600.

Dated: October 30, 2002.

By direction of the Secretary.

Ernesto Castro,

Director, Records Management Service.

[FR Doc. 02–28981 Filed 11–14–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0613]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before December 16, 2002.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov.* Please refer to "OMB Control No. 2900–0613."

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0613" in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Recordkeeping at Flight Schools (38 U.S.C. 21.4263 (h)(3).

OMB Control Number: 2900–0613.

Type of Review: Extension of a currently approved collection.

Abstract: Flight schools are required to maintain records on students to support continued approval of their courses. State approving agencies that approve courses for VA training use these records to determine if courses offered by a flight school should be approved. VA representative inspects the records to determine if payments made to VA students at the flight school are correct.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The Federal Register Notice with a 60-day comment period soliciting comments on this collection of information was published on August 26, 2002, at page 54844.

Affected Public: Business or other for-profit, not-for-profit institutions, and Federal Government.

Estimated Annual Burden: 800 hours.

Estimated Average Burden Per Respondent: 20 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 2,400.

Dated: November 6, 2002.

By direction of the Secretary.

Loise Russell,

Acting Director, Records Management Service.

[FR Doc. 02–28975 Filed 11–14–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0104]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before December 16, 2002.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov.* Please refer to "OMB Control No. 2900–0104."

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0104" in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Report of Accidental Injury in Support of Claim for Compensation or Pension, VA Form 21–4176.

OMB Control Number: 2900–0104.

Type of Review: Extension of a currently approved collection.

Abstract: The form is used in support of claims for disability benefits based on disability which is the result of an accident. The information given by the veteran is used as a source to gather specific data regarding the accident and to afford the veteran an opportunity to provide information from his or her own knowledge regarding the accident. Benefits may be paid if a disability is incurred in line of duty and is not the result of the veteran's own willful misconduct.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on August 23, 2002, at pages 54697–54698.

Affected Public: Individuals or households.

Estimated Annual Burden: 2,200 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 4,400.

Dated: November 6, 2002.

By direction of the Secretary.

Loise Russell,

Acting Director, Records Management Service.

[FR Doc. 02–28976 Filed 11–14–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0098]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before December 16, 2002.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov.* Please refer to "OMB Control No. 2900–0098."

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0098" in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Application for Survivors' and Dependents' Educational Assistance (Under Provisions of Chapter 35, Title 38, U.S.C.), VA Form 22–5490.

OMB Control Number: 2900–0098.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 22–5490 serves as an application for Dependents' Educational Assistance (DEA). Spouses, surviving spouses, and children of veterans must submit evidence to establish eligibility and entitlement to DEA under Title 38, U.S.C., 3513.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on August 26, 2002, at pages 54842—54843.

Affected Public: Individuals or households.

Estimated Annual Burden: 12,500 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 25,000.

Dated: November 6, 2002.

By direction of the Secretary.

Loise Russell,

Acting Director, Records Management Service.

[FR Doc. 02–28977 Filed 11–14–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0002]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before December 16, 2002.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov.* Please refer to "OMB Control No. 2900–0002."

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–7316. Please refer to "OMB Control No. 2900–0002" in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Income—Net Worth and Employment Statement (In support of Claim for Total Disability Benefits), VA Form 21–527.

OMB Control Number: 2900–0002.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 21–527 is used by claimant to submit a supplemental claim for disability pension or disability compensation based on the individual's unemployability. The information requested is necessary to determine veteran's eligibility to these benefits.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on August 26, 2002, at page 54843.

Affected Public: Individuals or households.

Estimated Annual Burden: 104,440 hours.

Estimated Average Burden Per Respondent: 60 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 104,440.

Dated: November 6, 2002.

By direction of the Secretary.

Loise Russell,

Acting Director, Records Management Service.

[FR Doc. 02–28978 Filed 11–14–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0067]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before December 16, 2002.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs,

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810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov*. Please refer to "OMB Control No. 2900–0067."

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0067" in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Application for Automobile or other Conveyance and Adaptive Equipment (under 38 U.S.C. 3901–3904), VA Form 21–4502.

OMB Control Number: 2900–0067.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 21–4502 is used to gather the necessary information to determine a veteran's entitlement to automobile allowance and adaptive equipment.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on August 14, 2002, at pages 53044–53045.

Affected Public: Individuals or households.

Estimated Annual Burden: 375 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 1,500.

Dated: October 30, 2002.

By direction of the Secretary.

Ernesto Castro,

Director, Records Management Service.

[FR Doc. 02–28982 Filed 11–14–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Chiropractic Advisory Committee; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Chiropractic Advisory Committee will meet Wednesday, December 4, 2002, from 8 a.m. until 12:30 p.m. and Thursday, December 5, 2002, from 8 a.m. until 5 p.m. at the Department of Veterans Affairs Central Office, 810 Vermont Avenue NW., Room 230, Washington, DC 20420. The meeting is open to the public.

The purpose of the Committee is to provide direct assistance and advice to the Secretary of Veterans Affairs in the development and implementation of the chiropractic health program. Matters on which the Committee shall assist and advise the Secretary include protocols governing referrals to chiropractors, direct access to chiropractic care, scope of practice of chiropractic practitioners, definitions of services to be provided and such other matters as the Secretary determines to be appropriate.

On December 4, the Committee will discuss chiropractic education, training, licensure, and techniques. On December 5, the Committee will receive an update on matters pending from the September 2002 meeting; begin discussion of scope of chiropractic services; and if time permits, begin discussion of services to be provided in the VA chiropractic program.

Any member of the public wishing to attend the meeting is requested to contact Ms. Sara McVicker, RN, MN, Committee Manager, at (202) 273–8558, by noon on December 3, 2002, in order to facilitate entry to the building. No time will be allocated at this meeting for receiving oral presentations from the public. However, the Committee will accept written comments from interested parties on issues affecting the development and implementation of the chiropractic health program within VA. It is preferred that such comments be transmitted electronically to the Committee at *sara.mcvicker@mail.va.gov* or mailed to: Chiropractic Advisory Committee, Primary and Ambulatory Care SHG (112), U.S. Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420.

Dated: November 8, 2002.

By Direction of the Secretary.

Nora E. Egan,

Committee Management Officer.

[FR Doc. 02–28973 Filed 11–14–02; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

Professional Certification and Licensure Advisory Committee; Notice of Meeting

The Department of Veterans Affairs gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Professional Certification and Licensure Advisory Committee will meet on Wednesday, December 4, 2002, from 8:30 a.m. to 4 p.m. The meeting will be held at the Department of Veterans Affairs, Veterans Benefits Administration Education Conference Room 601V, 1800 G Street, NW., Washington, DC. The meeting is open to the public.

The purpose of the committee is to review the requirements of organizations or entities offering licensing and certification tests to individuals for which payment for such tests may be made under chapters 30, 32, 34, or 35 of Title 38, United States Code. The agenda for this meeting will include discussion of "owning a test" versus "offering a test" as part of an approval criterion; tracking and data reporting; and other related issues the Committee deems appropriate.

Those planning to attend the open meeting should contact Mr. Giles Larrebee or Mr. Michael Yunker at (202) 273–7187. Interested persons may attend, appear before, or file statements with the Committee. Statements, if in written form, may be filed before the meeting, or within 10 days after the meeting. Oral statements will be heard at 2 p.m., Wednesday, December 4, 2002.

Dated: November 8, 2002.

By Direction of the Secretary.

Nora E. Egan,

Committee Management Officer.

[FR Doc. 02–28971 Filed 11–14–02; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on the Readjustment of Veterans; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that a meeting of the Advisory Committee on the Readjustment of Veterans will be held Thursday and Friday, December 12 and 13, 2002, from 8:30 a.m. until 4:30 p.m: on both days, at The American Legion, Washington Office, 1608 K Street, NW., Washington, DC. The meeting is open to the public.

The purpose of the Committee is to review the post-way readjustment needs of veterans and to evaluate the availability and effectiveness of VA programs to meet these needs.

The agenda for December 12 will include a review of the Readjustment Counseling Service Vet Center program and an update on VA medical center treatment programs for post-traumatic stress disorder (PTSD). The Committee will also review the Veterans Health Initiative, a series of in-service training modules for specific veterans' health care programs. A best practices model of VA partnerships for serving homeless veterans will also be presented.

On December 13, the Committee will be provided with an update from the Veterans Benefits Administration on service-connected compensation for PTSD. The Committee will also focus on available information regarding the military-related service needs of returning combatants from the war on terrorism in Afghanistan, and a follow-up on the mental health needs of older veterans one year after the terrorist attacks in the United States.

The agenda for both days will also include strategic planning activities to formulate goals and objectives for the coming year. In addition, the Committee will formulate recommendations for submission to Congress in its annual report.

Those who plan to attend or have questions concerning the meeting may contact Mr. Charles M. Flora, M.S.W., Readjustment Counseling Service, Department of Veterans Affairs Central Office, at (202) 273–8969.

Dated: November 8, 2002.

By Direction of the Secretary.

Nora E. Egan,

Committee Management Officer.

[FR Doc. 02–28972 Filed 11–14–02; 8:45 am]

BILLING CODE 8320–01–M

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Federal Register

Friday,
November 15, 2002

Part II

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Part 405
Medicare Program; Changes to the Medicare Claims Appeal Procedures; Proposed Rule

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 405

[CMS–4004–P]

RIN 0938–AL67

Medicare Program: Changes to the Medicare Claims Appeal Procedures

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule.

SUMMARY: Under sections 1869 and 1879 of the Social Security Act (the Act), Medicare beneficiaries and, under certain circumstances, providers and suppliers of health care services, may appeal adverse determinations regarding claims for benefits under Medicare Part A and Part B. Section 521 of the Medicare, Medicaid and SCHIP Benefits Improvement and Protection Act of 2000 amends section 1869 of the Act to substantially revise the Medicare claim appeals process. The statute mandates a series of structural and procedural changes to the existing appeals process, including: The establishment of a uniform process for handling all Medicare Part A and Part B appeals; revised time limits for filing appeals; reduced decision-making time frames throughout all levels of the Medicare administrative appeals system; the introduction of new entities known as qualified independent contractors (QICs) to conduct reconsiderations of contractors' initial determinations or redeterminations; and the establishment of the right to an expedited determination when an individual disagrees with a provider's decision to discharge the individual or terminate services.

This proposed rule sets forth the regulations that would be needed to implement the new statutory provisions.

DATES: We will consider comments if we receive them at the appropriate address, as provided below, no later than 5 p.m. on January 14, 2003.

ADDRESSES: In commenting, please refer to file code CMS–4004–P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission or e-mail. Mail written comments (one original and three copies) to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–4004–P, P.O. Box 8017, Baltimore, MD 21244–8017.

Please allow sufficient time for mailed comments to be timely received in the event of delivery delays.

If you prefer, you may deliver (by hand or courier) your written comments (one original and three copies) to one of the following addresses:

Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or

Room C5–16–03, 7500 Security Boulevard, Baltimore, MD 21244–1850.

(Because access to the interior of the HHH Building is not readily available to persons without Federal government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for commenters wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and could be considered late.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: Michele Edmondson (410) 786–6478 (for issues relating to appeal rights). Jennifer Eichhorn (410) 786–9531 (for issues relating to initial determinations and redeterminations). Arrah Tabe (410) 786–7129 (for issues relating to QIC reconsiderations). Jennifer Collins (410) 786–1404 (for issues relating to ALJ hearings and DAB reviews). Rhonda Greene-Bruce (410) 786–7579 (for issues relating to expedited determinations).

SUPPLEMENTARY INFORMATION: *Inspection of Public Comments:* Timely comments will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone (410) 786–7197.

To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954. Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 512–1800 (or toll-free at 1–888–293–6498) or by faxing to (202) 512–2250. The cost for each copy is $9. As an alternative, you can view and photocopy the **Federal Register** document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**.

This **Federal Register** document is also available from the **Federal Register** online database through GPO Access, a service of the U.S. Government Printing Office. The Web site address is *http://www.access.gpo.gov/nara/index.html.*

Note: The former name of the Centers for Medicare & Medicaid Services (CMS) was the Health Care Financing Administration (HCFA). The terms CMS and HCFA can be used interchangeably.

Since the Social Security Administration (SSA) became an independent agency in 1995 pursuant to Public Law 103–296, it has continued to provide CMS with support for the administration of the Medicare Parts A and B programs pursuant to a Memorandum of Understanding between SSA and DHHS. That support has involved, among other duties, continuing to provide hearings and decisions in Medicare appeals using SSA administrative law judges (ALJs) as well as utilizing SSA offices to forward various Medicare-related paperwork to CMS. While CMS has greatly appreciated SSA's assistance over the years in these areas, at this time CMS is considering taking over these Medicare responsibilities. Our hope is to have this in place on or before October 1, 2003. Until such time as CMS may take over the function, SSA will continue to provide Medicare claimants with the valuable assistance that it has traditionally provided. Thereafter, CMS will assume such responsibilities. CMS will provide appropriate notice to the public as to when such responsibilities will be assumed and also as to the procedures Medicare claimants will follow in dealing with CMS rather than SSA. Therefore, references in this NPRM to SSA, including SSA, ALJs, and field offices, should be read as references to SSA assistance to CMS up to the point in time when CMS takes over the SSA responsibilities.

I. Background

A. Overview of Existing Medicare Program

The original Medicare program consists of two parts. Part A, known as the hospital insurance program, covers certain care provided to inpatients in hospitals, critical access hospitals, skilled nursing facilities (SNFs), as well as hospice care and some home health care. Part B, the supplementary medical insurance program, covers certain physicians' services, outpatient hospital care, and other medical services that are not covered under Part A. In addition to the original Medicare program, beneficiaries may elect to receive health care coverage under Part C of Medicare, the Medicare+Choice (M+C) program. Under the M+C program, an individual is entitled to those items and services (other than hospice care) for which benefits are available under Part A and Part B. An M+C plan may provide additional health care items and services that are not covered under the original Medicare program.

Under the original Medicare program, a beneficiary may generally obtain health services from any institution, agency, or person qualified to participate in the Medicare program that undertakes to provide the service to the individual. After the care is provided, the provider or supplier (or, in some cases, a beneficiary) would submit a claim for benefits under the Medicare program to the appropriate government contractor, either a fiscal intermediary (for all Part A claims and certain Part B claims) or a carrier (for most claims under Part B). If the claim is for an item or service that falls within a Medicare benefit category, is reasonable and necessary for the individual, and is not otherwise excluded by statute or regulation, then the contractor would pay the claim. However, the Medicare program does not cover all health care expenses. If the Medicare contractor determines that the medical care is not covered under the Medicare program, it denies the claim. In fiscal year 2001, Medicare contractors adjudicated over 930 million initial claims and approximately 6.7 million claim appeals.

When a contractor denies a claim, it notifies the provider, supplier and/or beneficiary of the denial and offers the opportunity to appeal this decision. The existing appeals procedures for original Medicare are set forth in regulations at 42 CFR part 405, subparts G and H. Separate procedures for appealing determinations made under the M+C program are set forth at subpart M of part 422. After an appellant has exhausted the administrative appeals procedures offered under the Medicare program, the Medicare statute provides the opportunity for a dissatisfied individual to seek review in Federal court.

The regulations in part 405 subpart G, beginning at § 405.700, describe reconsiderations and appeals under Medicare Part A. When a Medicare contractor makes a determination with respect to a Part A claim, the beneficiary, or the provider, in some circumstances, may appeal the determination. (Consistent with section 1861(u) of the Act and 400.202, the term "provider" generally includes hospitals, SNFs, home health agencies (HHAs), comprehensive outpatient rehabilitation facilities (CORFs), and hospices.) The contractor then reconsiders the initial determination. If the contractor upholds the original determination, the appellant may request a hearing before an Administrative Law Judge (ALJ), provided that the amount in controversy is at least $100. (ALJs are employed by the Social Security Administration (SSA), but they adjudicate Medicare appeals under a Memorandum of Understanding between SSA and the Department of Health and Human Services (DHHS.) If the appellant is dissatisfied with the ALJ's decision, he or she may request review by the Departmental Appeals Board (DAB). The component within the DAB that is responsible for Medicare claim appeals is the Medicare Appeals Council (MAC). (Note that although the Medicare appeals regulations in part 405 contain some limited provisions regarding ALJ and MAC proceedings, these proceedings are generally governed by existing SSA regulations at 20 CFR part 404, subparts J.) MAC decisions constitute the final decision of the Secretary of DHHS (the Secretary) and may be appealed to Federal court. In each case, the lower level of appeal must be exhausted before the appeal can be elevated to the next level.

Medicare Part B appeal procedures are set forth in part 405 subpart H (§ 405.800 *et seq.*). Under these regulations, beneficiaries and suppliers that accept assignment for Medicare claims may appeal to a Medicare contractor for a review of the contractor's initial determination that a claim should not be paid, either in full or in part. (The term "supplier" is also defined at § 400.202 and means a physician or other practitioner, or an entity other than a "provider," that furnished health care services under Medicare.) If the contractor's review results in a continued denial of the claim, and the amount in controversy is at least $100, the appellant may request a 2nd level appeal known as a "fair hearing." If the hearing officer upholds the denial, the appellant may request a hearing before an ALJ, provided that the amount in controversy is at least $500. Subsequent aspects of the appeals process for a Part B claim are identical to those described above for a Part A claim.

Quality improvement organizations (QIOs), formerly known as peer review organizations, also make certain types of Medicare determinations, mostly involving inpatient hospital discharges under sections 1154 and 1155 of the Act. These decisions are also subject to ALJ hearings, if the amount in controversy is at least $200. Judicial review is also available if the amount in controversy is $2000. Regulations for these appeals are currently found at 42 CFR part 478. Finally, note that appeals under Medicare Part C are also subject to adjudication by ALJs and the MAC, although these appeals follow an entirely separate path before the ALJ level.

B. Changes to the Appeals Process Under BIPA 2000

Section 521 of the Medicare, Medicaid and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA), Public Law 106–554, amends section 1869 of the Act to require revisions to the Medicare appeals process. Among the major changes required by the BIPA amendments are—

- Establishing a uniform process for handling Medicare Part A and B appeals, including the introduction of a new level of appeal for Part A claims.
- Revising the time frames for filing a request for a Part A and Part B appeal.
- Imposing a 30-day timeframe for certain "redeterminations" made by the contractors who made the initial determination.
- Requiring the establishment of a new appeals entity, the qualified independent contractor (QIC), to conduct "reconsiderations" of contractors' initial determinations (including redeterminations) and allowing appellants to escalate cases to an ALJ hearing, if reconsiderations are not completed within 30 days.
- Establishing a uniform amount in controversy threshold of $100 for appeals at the ALJ Level.
- Imposing 90-day time limits for conducting ALJ and MAC appeals and allowing appellants to escalate a case to the next level of appeal if ALJs or the MAC do not meet their deadlines.
- Imposing "de novo" review when the MAC reviews an ALJ decision made after a hearing.

Revised section 1869 also requires that the Secretary establish a process by which an individual may obtain an expedited determination if he/she

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receives a notice from a provider of services that the provider plans to terminate services or discharge the individual from the provider. Currently, this right to an expedited review only exists with respect to hospital discharges (under sections 1154 and 1155 of the Act).

The statute specifies that the new appeals provisions are effective for initial determinations made on or after October 1, 2002. As this proposed rule demonstrates, we are making significant efforts to ensure that the public has an opportunity to comment on the procedures used to implement section 521 and to ensure that a rule is in place for implementing section 521. However, as noted in the CMS ruling published October 7, 2002 (67 FR 62478–62482) on this subject, this rulemaking effort is greatly complicated by the possibility of further changes to the statutory appeals provisions. We need to ensure that this statutory mandate will not risk disruptions to other fundamental functions of the Medicare program, such as processing and payment of Medicare claims. Thus, we seek comments on this proposed rule so that we can be in the best possible position for implementation.

Rather than listing here all the detailed provisions of section 521 of BIPA, we will discuss the individual provisions in detail below in the context of the proposed implementing regulations. However, for the convenience of the reader, we are providing below a detailed chart illustrating the current appeals procedures for both Part A and B claims and the new procedures that are required by BIPA:

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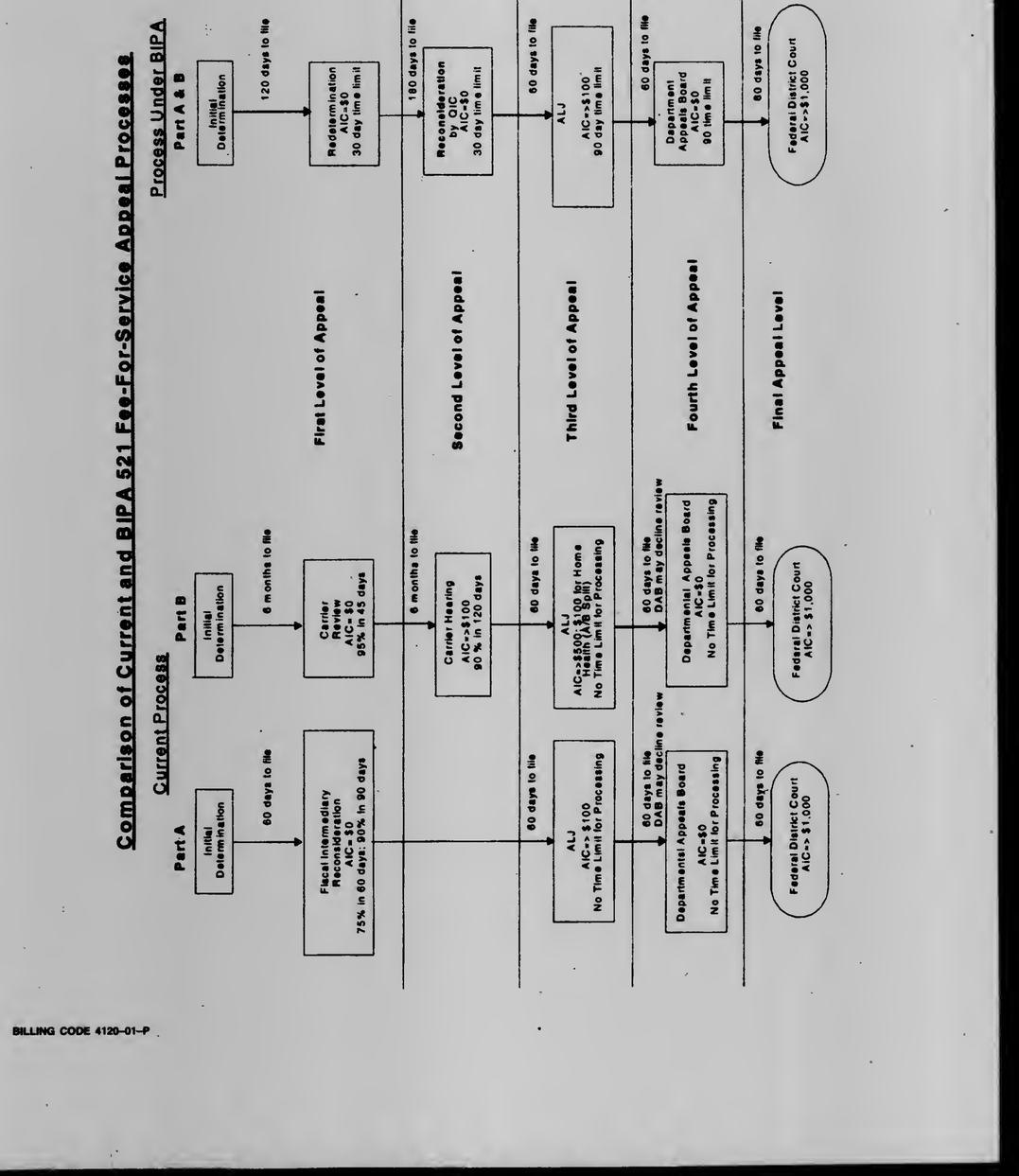

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C. Codification of Regulations

As noted above, the current regulations governing Medicare administrative appeals are set forth in 42 CFR part 405, subparts G and H. These regulations will continue to be needed for an indefinite transition period until all appeals resulting from initial determinations before the implementation of the new procedures required under BIPA are completed. We are considering what rules should apply during the transition period and whether it would be possible or prudent to operate dual appeals systems depending on the date of an initial claim determination. Clearly, the new BIPA provisions make possible a largely uniform set of appeals procedures that can be applied both for part A and B of Medicare. Therefore, this proposed rule would establish a new subpart I of part 405 that will set forth in one location the administrative appeals requirements for Medicare carriers, Fiscal Intermediaries (FIs) and QICs. We note that BIPA section 521 (see 1869(a)(1)(C)) also requires that certain determinations made by QIOs under section 1154(a)(2) be subject to the revised appeals process under section 1869, therefore, we anticipate publishing a separate proposed rule to accommodate needed changes to the existing regulations at 42 CFR parts 476 and 478 regarding QIO determinations and appeals. (In addition, we note that the changes set forth here do not apply for purposes of Part C of Medicare, that is, the Medicare+Choice program. We also intend to address necessary changes to 42 CFR part 422 in future rulemaking.)

We are also proposing to include in new subpart I the provisions needed to govern Medicare claims appeals to ALJs and the MAC. The existing ALJ regulations are quite voluminous and are intended primarily to apply to appeals of SSA disability cases, rather than to Medicare appeals. The need for the Medicare program to establish its own regulations for these upper level appeals has been recognized by many parties, including, most recently, the Office of the Inspector General in its January 2002 report: "Medicare Administrative Appeals—The Potential Impact of BIPA," OEI–04–01–00290. Many of these provisions will effectively carry over the existing requirements with respect to appeals to the ALJ and the MAC, rather than implementing substantive changes. However, both the firm time frames for ALJ and DAB decisions and the opportunity for escalation of cases are provisions that apply only to Medicare claims, and not to SSA disability cases—presenting another compelling argument to take this opportunity to codify the ALJ and MAC requirements for Medicare administrative appeals within the Medicare regulations at Title 42 of the Code of Federal Regulations. Thus, the new subpart I will codify in one location key regulations governing all aspects of Medicare claim appeals, beginning with the statutory requirements that apply to initial determinations and proceeding through all four levels of the administrative appeals process. For the convenience of the reader, regulations contained in existing subparts G and H of part 405 that have not been affected by the changes mandated in section 521 of BIPA generally will be repeated in the new subpart. However, we note that we are not carrying over regulations that deal with challenges to coverage policy (such as §§ 405.732 or 405.860 concerning the review of national coverage decisions), which instead will be dealt with in the regulations implementing section 522 of BIPA concerning the new procedures for appealing coverage policies to ALJs and the DAB. Since we are not eliminating regulations contained in existing subparts G and H, we also will not reflect provisions in subpart I that deal with appeals of carrier decisions that supplier standards are not met, or appeals of a categorization of a device as experimental or investigational (see §§ 405.874–75 and 405.753).

II. General Provisions of the Proposed Rule

A. Overview

Clearly, the changes introduced by section 521 of BIPA are aimed at introducing greater efficiency and accuracy into the Medicare appeals system. The Secretary is equally committed to these goals. However, the introduction of QICs and the establishment of drastically reduced mandatory time frames for appeals decisions do not in themselves provide remedies to the longstanding problems that Congress intended to address in the new BIPA appeals provisions. To make these changes work, we need to examine carefully how the effects of changes at a given level of the appeals process may affect the entire appeals system, as well as to determine how to allocate the limited Medicare resources available to effectuate the changes to the appeals system.

In developing the proposals below, we have carefully considered how best to achieve these goals within the BIPA construct, keeping in mind the limited resources likely available for appeals system changes. We are also acutely aware of the possibility that the volume of appeals could increase significantly with the implementation of BIPA. (The OIG pointed out three reasons that such increases are likely, including the attractiveness of a speedier system, with drastically reduced time frames, the increased control given to appellants through the new escalation provisions, and the reductions in the required amounts in controversy to appeal a denied claim.) We also needed to consider the fact that, although the existing appeals provisions were designed primarily for beneficiary appeals, the overwhelming majority of appeals are now filed by providers and suppliers. We have attempted to reflect this reality by proposing changes that will work efficiently for appellants with some knowledge and experience of the Medicare appeals procedures, while at times incorporating exceptions for beneficiary appellants.

Outlined below are the proposed changes to the Medicare appeals regulations needed to implement section 521 of BIPA. Our general approach is to explain briefly the new statutory provisions, and to point out significant differences with the law or regulations that have been in effect prior to BIPA. For proposed regulations that are substantively unchanged from existing requirements, we have merely consolidated the current regulatory requirements into unified provisions that apply for both Medicare Part A and Part B appeals, consistent with the BIPA approach. In doing so, we have made some editorial changes to increase the clarity and simplicity of the regulations, to the extent that this is possible given the inherent complexity of appeals regulations. The discussion that follows touches only briefly, if at all, on sections of the proposed regulations that do not set forth substantive changes to the existing appeals procedures.

B. Statutory Basis, Definitions, and General Procedures (§§ 405.900–405.902)

Proposed subpart I begins with a brief section (§ 405.900) that sets forth the general statutory authority for the ensuing provisions and establishes that the scope of the subpart is to establish the regulations needed to implement the provisions of section 1869 of the Act concerning initial determinations and appeals. Consistent with section 1869(a)(1) of the Act, § 405.900 (b) specifies that the Secretary shall make initial determinations with respect to whether an individual is entitled to benefits under Medicare Part A or B and with respect to the amount of benefits

available under those parts. Section 405.902 would set forth the definitions for terms used in subpart I that we believe may need clarification. These definitions provide the generally applied meaning for terms that are used throughout the subpart.

For the most part, the definitions presented here are taken directly from the statute, or from existing subparts G or H of part 405, or are essentially self-explanatory. We have not restated in subpart I definitions of terms that are already defined in part 400 of the Medicare regulations, such as "provider" or "supplier" (see § 400.202) and that have the same meaning in the appeals context. Thus, the term "supplier" encompasses physicians, other practitioners, and various entities (such as laboratories or durable medical equipment (DME) suppliers) other than providers that furnish Medicare services. Discussed below are two terms that we believe may need further clarification.

1. Assignment of Appeal Rights

Section 1869(b)(1)(C) provides that an individual's appeal rights may be assigned to the provider or supplier that furnishes the item or service in question. Our proposed definition states that "assignment of appeal rights" means the transfer by a beneficiary (the "assignor") of his or her right to appeal an initial determination to a provider or supplier (the "assignee"). Although this definition is relatively straightforward, it is important that this term not be confused with the term "assignment," as defined under existing § 405.802. In that context, assignment refers to the transfer of a claim for payment under Part B of Medicare from a beneficiary to a physician or other supplier. For purposes of Subpart I, the terms "assignment," "assignor," and assignee" are used to refer only to the transfer of appeal rights, rather than in the more traditional context of payment on an assignment-related basis. A full discussion of our proposals regarding appeal rights is presented below.

2. Party

The meaning of the term "party" also has important implications, mainly for purposes of appeal rights and notification requirements. We would simply define party as an individual or entity with standing to appeal an initial determination or subsequent administrative appeal determination. Then, we list in § 405.906(a) who would be considered a party to an initial determination. Beneficiaries are considered parties. Also, in keeping with our previous regulations, physicians or suppliers who have accepted a valid assignment executed by a beneficiary to transfer his or her claim for payment to the physician or supplier, in return for the physician or supplier's promise not to charge more for his or her services than a carrier finds to be a reasonable charge or other approved amount, would also be considered a party. A party also includes a physician liable for refund under section 1842(l) of the Act, a supplier liable for refund under sections 1834(a)(18) and 1834(j)(4) of the Act, or a provider. Additionally, § 405.906(b) identifies parties for purposes of an appeal. A provider or supplier taking assignment of appeal rights under section 1869(b)(1)(C) would be considered a party to an appeal. Also, in accordance with § 405.908, we note that for dually entitled beneficiaries, States have the right to file appeals on behalf of the beneficiary pursuant to Title XIX of the Act.

Proposed § 405.904 provides a general description of the post-BIPA appeals process, much as existing § 405.801 does for the pre-BIPA, part B process. In addition, § 405.904(b) establishes the general rule that the same appeals procedures that are available to beneficiaries, and to individuals acting as representatives of beneficiaries, are also available to a provider and supplier that is a party to a given determination. This section also explains that in some circumstances, a provider's rights to judicial review are limited, unless the beneficiary has formally assigned his or her appeal rights to the provider. Note that although beneficiary appeals and provider and supplier appeals follow identical paths, we are proposing slightly more lenient evidentiary rules for unrepresented beneficiaries or beneficiaries represented by family or friends, given their likely lack of familiarity with Medicare coverage rules and appeals procedures. We would hold State agencies, providers, suppliers, and attorneys to a higher standard based on their presumed knowledge and experience with the Medicare program. We believe that these individuals and entities are essentially "businesses" and can be held to a reasonableness standard. These proposals are discussed in detail below.

C. Appeal Rights (§§ 405.906–405.912)

Historically, providers have had limited rights to appeal Medicare initial determinations. Consistent with section 1879(d) of the Act, providers may appeal Medicare determinations only when the determination involves a finding that (i) the item or service was not covered because it constituted custodial care, was not reasonable and necessary, or for certain other reasons; and (ii) the provider knew or could reasonably be expected to know that the service in question was not covered under Medicare (that is, a finding with respect to the limitation of liability provision under section 1879 of the Act). Despite these restrictions, providers have routinely accessed the appeals process in situations where they would otherwise not have appeal rights by acting as a beneficiary's appointed representative.

Another underlying principle of BIPA was the establishment of uniform appeal procedures for providers and suppliers. In keeping with this approach we believe the interests of the appeals process would be best served by ensuring that providers are afforded an equal opportunity to be heard with regard to all Medicare initial determinations. In BIPA, we believe it was the intent of the Congress to ensure that Medicare providers, physicians, and other suppliers had easier access to the Medicare administrative appeals system. As discussed below, Congress expanded the appeal rights of providers, physicians and other suppliers with regard to Medicare appeals by authorizing the assignment of appeal rights.

Therefore, in this rulemaking we are proposing to end the distinction limiting the appeal rights of providers to determinations involving the knowledge aspect of the limitation on liability provision. We propose to allow providers to file for administrative appeal of Medicare initial determinations to the same extent as beneficiaries. With this change, we would achieve consistency in our approach to appeals standing under Parts A and B.

We also would continue to maintain current appeals policies with respect to non-participating providers, physicians and other suppliers. We considered extending appeal rights to non-participating physicians and other suppliers to the same extent as providers. However, we believe that such a change would result in a negative impact on Medicare participation rates and, potentially, a contraction of beneficiary access to care. Also, we note that non-participating physicians and other suppliers may attain party status by securing an assignment of appeal rights from beneficiaries as provided in new section 1869(b)(1)(C).

In this proposed rule, we also clarify our policy with regard to the continuation of an appeal when a beneficiary-appellant dies while an appeal is in progress. Under our current

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rules, a substitute entity may be entitled to receive or obligated to make payment for Medicare claims. See 42 CFR part 424 subpart E. If a person becomes financially responsible for Medicare claims under our rules, we are proposing that such person or entity may be made a party to the initial determination and have the right to continue the appeal.

We are proposing to implement these expanded appeal rights in proposed § 405.906, which would clearly identify all individuals or entities that may be a party to an initial determination. This approach identifies parties explicitly and replaces current regulations where party status is conferred to "* * * any other party whose rights with respect to the particular claim being reviewed may be affected by such review." See 42 CFR 405.808. This standard has occasionally led to questions being raised about who should be a party to appeal. In this proposed rule we have attempted to address this issue by generally listing as a party, the individual or entity listed in § 405.906 that has standing to appeal an initial determination and/or a subsequent administrative appeal determination. We believe the list of parties is exhaustive, but welcome comments to rectify any omissions.

Proposed § 405.908 pertains to the right of a Medicaid State agency, which acts as a subrogee, to pursue an appeal on behalf of a beneficiary entitled to benefits under both Medicare and Medicaid. We do not consider a Medicaid State agency to be a party, unless the agency actually pursues a redetermination on behalf of a dually eligible beneficiary. In other words, a Medicaid State agency will not automatically be sent notices on determinations made during the administrative appeals process, nor will the agency be permitted to request reconsiderations or hearings by ALJs or the MAC, unless the agency actually files a request for redetermination for a beneficiary. If a Medicaid State agency files a redetermination it retains party status for the claim throughout the rest of the appeals process. Also, a Medicaid State agency automatically has authorization to file an appeal of a denied claim without following the process prescribed at § 405.910. Section 1912(a) of the Act provides that as a condition of eligibility for medical assistance, an individual must assign the State any rights to payment for medical care from any third party. Thus, to avoid confusion, we have drafted a separate provision acknowledging the right of a Medicaid State agency to pursue an appeal on behalf of a dually eligible individual.

Sections 1869(b)(1)(B) and (C) address provider and supplier representation and assignment issues. To the extent that these provisions represent departures from existing requirements, we believe that they warrant notice and comment rulemaking before they can be implemented. As discussed below, the new statutory provisions include several changes in the existing appointment of representative procedures, which are currently set forth at 20 CFR part 404, subpart R (the provisions that govern SSA disability insurance claims).

Proposed § 405.910 incorporates and modifies several of the current provisions in 20 CFR part 404, subpart R, and 42 CFR part 405, subparts G and H, as they relate to the representation of parties. The proposed provisions would eliminate the need for incorporation of the existing SSA regulations as they apply to appeals. Note that under our existing regulations at §§ 405.701 and 405.801, the appointment of representative provisions set forth in 20 CFR part 404 also apply for purposes of initial determinations. This proposed rule would not change the applicability of those provisions with respect to initial determinations; however, we are considering the extent to which the new provisions should also apply to initial determinations and welcome comments on whether we should apply these provisions uniformly.

Since entities or individuals other than beneficiaries may wish to have someone represent their interests in the appeals process, we have defined a representative as an individual authorized by a party, or under State law, to act on the party's behalf in dealing with any levels of the appeals process. Representatives do not have independent party status and may only take action on behalf of the individual or entity they represent. We note that a party may not designate, as an authorized representative, any individual or entity that has been suspended, or otherwise prohibited by law, from participating in the Medicare program.

We have received numerous requests for clarification on how individuals or entities must make out valid appointments consistent with the Privacy Act. An agency that maintains a system of records must "establish appropriate administrative * * * safeguards to ensure the * * * confidentiality of records and to protect against any anticipated threats or hazards to their security or integrity * * * which could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom the information is maintained." The Privacy Act of 1974, as amended, 5 U.S.C. 552a(e)(10). As is the case under existing procedures, we want to emphasize that in order to be valid, an appointment must be in writing, and signed by both the party making the appointment and the individual agreeing to accept such appointment. However, to ensure consistency in these proposed provisions, we also would make a change in the case of attorney representatives. Under current regulations, only the party making the appointment needs to sign a statement authorizing the representation. In the case of an attorney representative, the attorney does not have to sign a notice of appointment. Instead, in the absence of information to the contrary, an attorney's assertion that he or she has such authority is accepted as evidence of the attorney's authority to represent the party. In establishing procedures that comply with the Privacy Act, we would now require that attorneys also sign a statement to represent a party.

We appreciate that the signature requirements might be perceived as burdensome; however, we believe that a representative's signature is important because it ensures that adjudicators are sharing and disseminating confidential medical information with the appropriate individuals. In addition, it indicates that the individual whom the party has appointed does in fact accept the role and responsibilities associated with being a representative.

We propose to establish a time frame governing the duration of representation. Even under the BIPA time frames, we recognize that there may be substantial lapses in time between a party's request for an appeal at any given stage of this multi-tiered appeals process, and receipt of a final decision. Thus, we propose that under § 405.910(e) the appointment (1) shall be valid for the life of an individual appeal, and (2) for purposes of appeals of other initial determinations, the authorization shall be considered valid for one year from its original effectuation. For example, if a party makes a valid appointment on January 1, 2003, the representative would be authorized to request multiple appeals on the party's behalf until January 1, 2004. Suppose that a representative requests a redetermination of a denied claim on November 1, 2003 and the contractor affirms the denial on November 30, 2003. Since a party has up to 180 days to file a request for a reconsideration, if the representative files an appeal on March 15, 2004, the appointment of representation would still be valid for purposes of this individual appeal because the rights

associated with it have not expired. However, the representative would not be able to initiate any new appeals on other claims because the appointment would have been valid only through January 1, 2004.

We believe that it would be too burdensome to require representatives to renew representation documentation once an appeal has been undertaken; however, we also believe that a representative's ability to file appeals of future claims should continue for an indefinite period of time. While we propose that representation documentation shall be renewed at least annually (for purposes of filing new appeals), we welcome comments on whether another time frame would be more appropriate.

Prior to its amendment by BIPA, section 1869(b)(1)(D) required the Secretary to apply the provisions of section 206(a) governing the representation of beneficiaries. New section 1869(b)(1)(B)(iv) removes section 206(a)(4), which permits the award of attorney fees (not to exceed 25 percent) from a claimant's entitlement to past-due disability benefits. Therefore, in § 405.910(f), we make explicit that no award of attorney fees may be made against the Medicare trust fund. We recognize that section 1869(b)(1)(B)(iv) requires CMS to apply § 205(j) and 206 provisions to the Medicare appeals process; therefore we welcome comments on those provisions. Specifically, we request comments on petitions to ALJs to review and approve attorney fees. We believe that we should not establish such a process since we do not have authority to award attorney fees. We also welcome comments on procedures to govern the conduct of representatives.

Proposed §§ 405.910(g)–(l) are self-explanatory provisions concerning the responsibilities and rights of a representative. For example, a representative must ensure that a party receives information about appeal decisions, and disclose to a beneficiary any financial risk or liability associated with a non-assigned claim. In the past, there has been some confusion about whether the representative or the party should receive information about the appeal, including the decision. We believe that a representative should have the right to obtain any information applicable to the claim at issue since the representative acts on behalf of the party. Section 405.910(i)–(j) would require adjudicators to send notices of their decisions and otherwise communicate with representatives rather than parties. We considered whether beneficiaries that are represented also should receive copies of decision letters, but decided to maintain the existing provision at 20 CFR § 404.1715. Therefore, any communication with a representative would have the same force and effect as if it had been sent to the party.

Proposed section § 405.910(m) deals with the extent to which a representative may delegate responsibilities. A representative may not designate another individual to act as the representative unless the representative notifies the party of the name of the designee, and the designee's acceptance to comply with the requirements of authorized representation. Also, the represented party must evidence its acceptance of this arrangement by a signed, written consent. We believe that these provisions are necessary to protect the privacy and confidentiality of medical records. They would also provide adjudicators with an effective way to resolve any conflicting information as to who has authority to proceed in an appeal.

The decision on whether to have a representative is left with the party, and we neither encourage nor discourage representation. Therefore, proposed § 405.910(n) gives a party the ability to revoke an appointment for any reason, at any time. To ensure a seamless process, a revocation of an appointment is not effective until the entity processing the appeal receives a signed, written statement from the party. We also propose that the death of a party will terminate the authority of the representative. However, when a party dies, we do not intend to terminate an appeal that is in progress since another individual or entity may be entitled to receive or obligated to make payment for Medicare claims.

In section 1869(b)(1)(C) of the Act, Congress added a new provision that permits Medicare beneficiaries to assign their appeal rights to a provider or supplier of services, pursuant to a written agreement using a form developed by the Secretary. This provision appears similar to the provisions that allow a party to an appeal to appoint a person, including the provider or supplier of services, as a representative for the appeal. Under our current rules, though, in acting as the representative, the provider or supplier does not achieve party status to the appeal; the representative simply acts on behalf of the party. With the new assignment provision, we believe the Congress intended the arrangement to differ from the provision enabling a party to appoint a representative.

Proposed § 405.912 creates new regulatory procedures for the assignment of appeal rights by a beneficiary to a supplier or provider of service. Provider/supplier representation rules impose certain limits the provider/supplier cannot charge a representation fee for actions in connection with services it furnished, and the provider/supplier must waive any right to payment from the beneficiary for the services at issue if the representation involves a claim where limitation of liability, under section 1879 of the Act, is an issue. Similarly, we believe that a provider or supplier wishing to take assignment of a beneficiary's appeal rights for a particular claim must waive any right to payment from the beneficiary in order to fully protect beneficiaries when their appeal rights are assigned. We do not intend, however, to prohibit the provider/supplier from recovery of any coinsurance or deductible, or where the beneficiary signed an advance beneficiary notice accepting responsibility for payment. The nature of assignment means that beneficiaries must relinquish their party status in an appeal, as well as any further rights to appeal on their own behalf. Additionally, BIPA expressly requires us to develop the form that will be used to make an assignment valid, thereby giving us the discretion to determine the requirements of a valid assignment. Thus, the proposed waiver provision is necessary to protect beneficiaries from potential liability in the event the supplier or provider is unsuccessful in the appeals process.

As noted above, an appointment of representation would be valid for one year for any appeal by the individual, and for the duration of the administrative review process for an appeal related to specific items or services. Note that a different standard would apply for assignment purposes. Section 1869(b)(1)(c) clearly indicates that the assignment of appeal rights applies with "respect to an item or service." Accordingly, we are proposing that an assignment would be valid for the duration of the appeals process, but only for the items or services listed on the assignment form. Thus, a supplier or provider of service would need to perfect a valid assignment for subsequent appeals of other items or services.

Like in the representation provisions, we also are proposing rules for the revocation of an assignment. We are soliciting comments on whether an assignment should be irrevocable, particularly since it only applies on a per item or service basis, and thus does

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not have any effect on other appeal rights. However, we are concerned about reinstating a beneficiary's appeal rights in the event of abandonment by a provider or supplier. We have proposed that if a beneficiary revokes an assignment, the appeal rights on the item or service at issue would revert to the beneficiary.

D. Initial Determinations (§§ 405.920–405.926)

As noted above, section 1869(a)(1) of the Act continues to provide that the Secretary shall make initial determinations with respect to whether an individual is entitled to benefits under part A or part B and to the amount of benefits available to an individual under those parts. However, section 1869(a)(2)(A) of the Act establishes that, on all claims other than clean claims, the initial determination shall be concluded and a notice of such determination must be mailed by no later than 45 days after receiving the claim, in contrast to the existing 60-day deadline for such non-clean claims. Section 1869(a)(2)(B) currently requires that interest will accrue if clean claims are not processed within 30 days. This standard remains unchanged (as specified in sections 1816(c)(2) and 1842(c)(2) of the Act). Nothing in BIPA, however, requires that interest would accrue on non-clean claims, regardless of whether they are adjudicated within 45 days. The proposed regulations to implement these statutory provisions regarding the timing and notice requirements pursuant to an initial determination are contained in §§ 405.920 and 405.922.

In § 405.920, we require that claims must be filed in the manner and form described in 42 CFR part 424 subpart C, which continues our current policies for filing claims. When a claim is filed with the appropriate carrier or FI, the carrier or FI will determine whether the items and/or services are covered under Part A or Part B of title XVIII. The contractor will then determine any amounts due and make payment accordingly. The parties to the initial determination, as specified in § 405.906, will be notified of the initial determination in writing by the contractor. This notice will also contain the basis for the determination and information on how to request a redetermination. As with our current policy, the Remittance Advice and Medicare Summary Notice will be used as a notice of initial determination.

In accordance with section 1869(a)(2) of the Act, proposed § 405.922 sets forth the time frames for initial Medicare claims determinations. That is, a contractor shall issue initial determinations on clean claims (as defined in § 405.901) within 30 days of receipt and, on all other claims, the contractor shall issue initial determinations within 45 days of receipt.

Our proposed regulations at § 405.922 currently state that all other claims, other than clean claims, must be processed within 45 days of receipt. While we plan to monitor contractors on their compliance with the 45-day standard, we also recognize that 45 days may not be achievable in every case. By definition, non-clean claims are often claims that require additional documentation, and therefore take time to process. Under the current process, providers or suppliers are given 45 days to produce additional medical documentation. Thus, the imposition of a 45-day decision-making time frame on non-clean claims could jeopardize effective medical review. Currently, our plans are to monitor, on average, contractors' compliance with the 45-day standard. However, we do not propose escalation or other remedies when the 45-day deadline is missed.

In existing section 1842(b)(3)(C) of the Act, the Congress provided a special appeals rule in cases where a Part B Medicare claim was not acted upon promptly, defined previously as 60 days following the submission of the claim. The rule provides for an appeal directly to a carrier-hearing officer, bypassing the first level of appeal, the review determination. In BIPA, Congress reduced the time period within which contractors must make initial determinations on claims to 45 days. However, section 1842(b)(3)(C) of the statute was not amended to reflect the change in the appeals process, that is, that the carrier hearing officer appeal was eliminated and effectively replaced by an appeal to the QIC. Our opinion is that the Congress, by implication, repealed this provision as the remedy specified in the statute will no longer exist since the Congress eliminated the carrier fair hearing level of appeal. We considered providing for a reconsideration by the QIC when a claim is not acted upon with reasonable promptness (that is, an initial determination is not issued within 45 days following the date the claim was received by the contractor). However we believe that this is not an economically feasible approach since the QIC will, in essence, simply direct the contractor to process the claim. We also considered the fact that this rule only applies to Part B claims and concluded that it would be confusing and contrary to the general approach mandated by BIPA to have two separate processes. Therefore, we are not carrying over this rule.

Proposed §§ 405.924 and 405.926 list the types of actions that are, and are not, considered initial determinations. In these sections, we have generally maintained current policies concerning initial determinations, although we have unified the existing part A and part B rules. In § 405.924(a) we maintain our longstanding policy that, through a memorandum of understanding with the Secretary, SSA makes initial Part A and Part B entitlement determinations and initial determinations on applications for entitlement. In § 405.924(b), we provide an extensive, but not necessarily exhaustive, list of actions that constitute initial determinations and thus are subject to the administrative appeals rules that follow.

We are proposing to clarify the circumstances under which an appeal may be filed when a beneficiary disputes the computation of coinsurance amounts. Previously our rules stated that beneficiaries could appeal Medicare determinations regarding the "application of the coinsurance feature." We are clarifying this provision to state that the contractor's "computation of coinsurance" is considered an initial determination and, thus, may be appealed. In making this proposal we considered that for most Part B services, beneficiaries are responsible for a 20 percent coinsurance payment and, since the 20 percent is calculated by the contractor, a beneficiary may appeal the contractor's computation of the coinsurance amount to be paid by the beneficiary. In instances where the coinsurance amount is not computed by the contractor, but rather it is an amount prescribed by regulation, for example, outpatient services, the issue of whether the coinsurance amount is appropriate is not appealable since it is not an amount computed by the contractor. Also, we are proposing clarifying language specifying that determinations regarding the timeliness of claims submission are initial determinations. We are also clarifying which Medicare secondary payer (MSP) determinations are initial determinations for purposes of this subpart. A determination regarding the applicability of the MSP provisions to a particular claim is an initial determination. A determination that Medicare has a recovery claim against a provider/supplier or beneficiary with respect to items or services that have already been paid by the Medicare program is also an initial determination except where the recovery claim against the provider/supplier is based upon a failure to file a proper claim as defined in 42 CFR part 411. Finally, under proposed § 405.924(c), we would state that expedited determinations by QIOs under new section 1869(b)(1)(F) are also considered initial determinations.

In proposed § 405.926, we list examples of determinations that are not initial determinations, and therefore not subject to the administrative appeal procedures of this subpart. Again, we continue our longstanding policies in this area, subject to several minor clarifications. First, for certain aspects of initial determinations, there are no administrative appeal rights available. For example, under section 1833(t) of the Social Security Act, administrative appeals are prohibited for issues involving the calculation of coinsurance amounts for outpatient services subject to prospective payment rules, and under 1848(i) of the Act, the values used to calculate allowable amounts under the physician fee schedule may not be the subject of an administrative appeal. In addition, here, too, we have proposed new examples of MSP-related determinations that do not constitute initial determinations for purposes of section 1869 of the Act. We have also clarified that decisions by contractors or QICs with respect to reopenings are not considered initial determinations.

Section 405.928 describes the effects of an initial determination. In proposed § 405.928(a), we would clarify that initial determinations by SSA with respect to an individual's entitlement are binding upon the individual or the individual's estate unless revised or reconsidered under SSA's regulations at 20 CFR 404.907. Then, under § 405.928(b), we would state the general rule that other initial determinations shall be binding upon all parties to the initial determination unless a redetermination is completed in accordance with § 405.940 through §§ 405–950 or the initial determination is revised as a result of a reopening in accordance with proposed § 405.980. Please refer to our discussions on the redetermination and reopenings process below.

E. Redeterminations (§§ 405.940–405.958)

1. Overview of Statute

Section 1869(a)(3) contains certain requirements for redeterminations that are specific to fiscal intermediaries and carriers, and do not apply to the initial determinations made by other entities, such as SSA or QIOs. Section 1869(a)(3) of the Act mandates that FIs and carriers make redeterminations, upon request, with respect to claims for benefits that are denied in whole or in part. Section 1869(a)(3)(B) specifies that an initial determination may not be reconsidered or appealed unless the contractor has made a redetermination of that initial determination and that no redetermination may be made by an individual involved in the initial determination, two requirements that essentially mirror existing policy. The time frames for requesting and carrying out redeterminations are set forth under section 1869(a)(3)(C). A request for a redetermination must be made within 120 days from the date the individual receives the initial determination. The carrier or FI then must make a redetermination decision and notify the parties of the decision within 30 days of receiving the request for redetermination. Under section 1869(a)(3)(D), for purposes of subsequent appeals, a redetermination is considered part of the initial determination. For purposes of contractor performance evaluation, we plan to monitor how effectively fiscal intermediaries and carriers meet the 30-day deadline, on average, for redeterminations. However, we do not propose escalation or other remedies if the carrier or fiscal intermediary does not complete a redetermination within the 30-day time frame.

A critical feature of the new statutory language with respect to redeterminations is that the same provisions apply for these first level appeals of both Part A and Part B claim determinations. Thus, parties wishing to appeal initial determinations will need to meet identical time frames for filing requests for redeterminations and the time frame for redetermination decisions is significantly shorter than the previous time frames for either Part B reviews or Part A reconsiderations. This means, for example, that CMS' contractors must complete all redeterminations within 30 days, even though the cases in need of redetermination may differ considerably in terms of complexity and dollar amounts. (Currently, under sections 1816(f)(2) and 1842(b)(2) of the Act, respectively, contractors now must complete 75 percent of part A reconsiderations within 60 days, and 90 percent within 90 days, while 95 percent of part B reviews must be completed within 45 days.) In developing the proposed regulations needed to implement the new system, we have attempted to construct procedural requirements that can work for all types of redeterminations, while still permitting contractors the flexibility needed to conduct redeterminations using methods that are both efficient and fair to appellants.

2. Redetermination Requests (§§ 405.940–405.946)

Proposed § 405.940 establishes the general rule that any party to an initial determination that is dissatisfied with that determination may request a redetermination. Sections 405.942 and 405.944 then set forth the proposed requirements concerning the time frames and procedures for filing a redetermination request. Consistent with section 1869(a)(3)(C) of the Act, a request for redetermination must be filed within 120 days from the date an individual receives the notice of initial determination. In § 405.942(a)(1), we would establish that the date of receipt of the initial determination is presumed to be 5 days after the date of such notice, unless there is evidence to the contrary. This is consistent with our longstanding policy that we allow 5 days for the individual to receive the notice of initial determination.

Under proposed §§ 405.942(a)(2) and 405.944(a), we propose to continue the current policy of permitting parties to file their requests for a redetermination not only with the appropriate CMS contractor, as indicated on the notice of initial determination, but also at a local SSA or CMS office. In view of the requirement that a contractor must issue a written notice of the redetermination decision within 30 days of a request for redetermination, we strongly considered requiring that all redetermination requests be filed directly with the contractor indicated on the notice of initial determination. Clearly, such a policy would eliminate confusion about where to file appeal requests and promote efficiency—we have often experienced lengthy delays in receiving requests filed with SSA offices, for example. However, we recognize that local SSA offices provide a valuable service to individuals who would like assistance in filing requests for redeterminations. In maintaining this policy for filing requests, we thus propose that the date the redetermination request is considered to be filed means the date the contractor, SSA, or CMS receives the request. As discussed below, however, we also propose under § 405.950 that for purposes of issuing a redetermination decision, the date of timely filing will be considered as the date that the contractor responsible for the redetermination receives the redetermination request. This proposed policy would benefit appellants by promoting flexible access to the appeals system without unfairly reducing the

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time a contractor would have to issue a redetermination decision.

Section 405.942(b) contains the proposed rules concerning request for extensions to the time frames for redetermination requests. In general, a contractor may extend the time frame for requesting a redetermination if a party shows good cause for missing the 120-day deadline. In order to request an extension, the party must file a request for the extension with the contractor. The request for extension and request for redetermination must be in writing and state why the request for redetermination was not filed within the required time frame. In order to determine whether a party has shown good cause for missing the deadline, the contractor considers: The circumstances that kept the party from making the request on time; whether the contractor's actions misled the party; and whether the party had any physical, mental, educational, or language limitations that prevented the party from filing a timely request or from understanding or knowing about the need to file a timely request for redetermination. Proposed § 405.942(b)(3) sets forth examples of "good cause," including serious illness, death or serious illness in the party's immediate family, the destruction or damage of important records due to fire or other accidental cause, incomplete or incorrect information supplied to the party about how or when to request a redetermination from the contractor, lack of notice of initial determination, and evidence of requests made with another Government agency in good faith, within the time limit, where the request did not reach the contractor until after the time period to file a redetermination had expired.

Proposed § 405.944(b) specifies that the request for a redetermination must be in writing and describes the content of the redetermination request. Under our existing regulations, requests for reconsiderations of Part A initial claim determinations have been required to be made in writing (§ 405.711) but request for reviews of Part B initial determinations have been accepted both in writing and orally. However, even for Part B reviews, this policy has never been well understood and has proven very difficult to administer for a number of reasons. First, it is important to recognize that in practice, an oral request for a review generally implied that the review itself would take place over the telephone, usually at the same time as the request. Moreover, although some very simple reviews could be carried out orally, many reviews did not lend themselves to this approach, although the regulations did not limit the availability of oral requests for review. (For example, many cases, such as reviews of DME claims, frequently involve issues that are either too complex to handle in a brief telephone call or require the submission and review of medical documentation and records that are too voluminous to provide over facsimile.) Requests for oral reviews of more complex cases could result in repeated requests for documentation and extended delays in review decisions, even under the longer time frames that were in effect for appeals of Part B initial claim determinations before the implementation of new section 1869 of the Act.

Therefore, in implementing the BIPA provisions, we would require that requests for redeterminations be accepted only in writing. We believe that the best method of accepting requests for redetermination is in writing because it provides a reliable record of the request and promotes the submission of evidence to support the request. (As discussed below, under § 405.946, we propose that parties should present evidence related to the issue in dispute with the request for a redetermination.) This position is consistent with our general belief that an efficient and accurate appeals system will necessitate better notices from CMS concerning the reasons for denials of claims and their appeals and by subsequently encouraging parties to submit relevant evidence as early as possible in the appeals process. Although we recognize that it may be efficient to take some requests by telephone, it would be extremely difficult to offer such a process and still meet the 30-day redetermination decision deadline without severely restricting the types of redeterminations that can be requested over the telephone.

We welcome comments on alternative approaches that are convenient and easy for appellants. We note that providers, suppliers, and beneficiaries can still make inquiries and some adjustments to a claim over the phone, using the telephone number indicated on the Remittance Advice or Medicare Summary Notice. In addition, we are continuing to work with contractors to identify the best methods for conducting redeterminations, such as permitting call back responses to requests for redeterminations. Again, our goals here are to improve the accuracy and efficiency of the appeals process, to make the procedures as accessible and user friendly as possible for appellants, and to avoid causing confusion and dissatisfaction as to the available procedures.

Section 405.944(b) also specifies the required elements of a redetermination request. Requests are to be made on a standard CMS form and when not made on a CMS form must contain the beneficiary's name, the insurance claim (HIC) number, the specific date of service and identification of the item or service with which the party is requesting the redetermination, and the name and signature of the party or appointed representative filing the request. These required elements mirror the requirements contained on the current standard CMS forms to request a review or reconsideration and correspond to the requirements detailed on the Medicare Summary Notice (MSN) that beneficiaries receive. Thus, a beneficiary or beneficiary representative may continue to file a request for an appeal using the instructions on the MSN—that is, he or she could satisfy the requirements by circling an item on the MSN, signing the bottom of the MSN, and returning the MSN to the contractor.

Under proposed § 405.944(c), we would specify that if more than one party files a request for redetermination on the same initial determination, the contractor shall consolidate the separate requests into one proceeding. To the extent that two or more entities may have appeal rights on a single request for payment, there is potential for a duplicate administrative process and differing resolution of the appeal. To prevent this occurrence, we are codifying the longstanding practice that when multiple parties request a redetermination, the requests are to be joined into a single administrative action.

As noted above, proposed § 405.946 specifies that when filing a redetermination request, a party should explain why he or she disagrees with the contractor's initial determination and include any evidence that the party believes should be considered by the contractor in making its redetermination. Although we are not proposing to make presentation of evidence a prerequisite to filing an appeal, we believe that encouraging parties to present evidence to support the redetermination request will facilitate the correction of erroneous initial determinations at the earliest possible stage of the appeals system.

Even when appellants are unable to submit relevant documentation along with the request for redetermination, we still wish to encourage appellants to submit documents and make their case at the earliest possible level. Therefore, proposed § 405.946(b) permits later submission of documentation to be considered as part of the redetermination. However, since it would be difficult to process redeterminations within 30 days when documents are submitted after the request, we propose an automatic 14-day extension of the redetermination decision time frame when an appellant submits evidence after the request.

3. Conduct of Redeterminations (§§ 405.940–405.958)

Section 1869 of the Act provides little or no guidance with respect to the conduct of redeterminations, with the exception of establishing the filing and decision making time frames as noted above. Thus, with few exceptions, we are not proposing major changes to the existing procedures for first level appeals of claim determinations. Proposed § 405.948 simply specifies that in conducting a redetermination the contractor would examine the evidence and findings upon which the initial determination was based and any additional evidence submitted by the parties or obtained by the contractor on its own. As with our current process, the individual who makes the redetermination decision must not have been involved in making the initial determination.

Consistent with section 1869 (a)(3)(C)(ii) of the Act, proposed § 405.950(a) would require contractors to issue a written notice of the redetermination decision to the parties within 30 days of receiving a request for redetermination. In general, we will maintain our current policy in calculating the 30-day time frame for decision-making based on the date the request for redetermination is actually received at the contractor. As discussed above, however, if the request is made to an entity other than the contractor (such as an SSA office), we would use the date the request is actually received by the contractor as the date of the request for a redetermination for purposes of calculating the 30-day decision making time frame.

Proposed § 405.952 contains provisions relating to the withdrawal or dismissal of a request for a redetermination. Under § 405.952(a), a party may withdraw a request for redetermination within 14 days of the original request. The withdrawal request must be made in writing to the redetermination contractor. Currently, a withdrawal request may be made at any time before a contractor mails an appeals decision, but we are proposing the 14-day time frame in order to avoid the confusion and uncertainty that can result from decisions and withdrawal requests crossing in the mail. However, a contractor has the option of accepting a late withdrawal request if it has not issued a redetermination decision. For example, a contractor may accept a withdrawal request at any time when the withdrawal is based upon a party entering into an agreement with CMS to compromise the amount of a debt.

Section 405.952(b) would set forth the reasons a contractor will dismiss a request for a redetermination, including:

- If a person or entity who is not a party to an initial determination files a request for redetermination.
- If a request for redetermination does not contain the minimum elements for a redetermination request set forth in proposed § 405.944.
- If a party to an initial determination files a request for a redetermination more than 120 days following receipt of the initial determination from the contractor and does not establish good cause for late filing in accordance with § 405.942(c).
- If the party filing the request dies and there is no information in the record to determine whether there is another party who may be prejudiced by the determination.
- If the party filing the request submits a request for withdrawal.
- If the contractor has not issued an initial determination on the claim for which a redetermination is requested.

Section 405.942(c) specifies that when a request for redetermination is dismissed, the contractor will mail a written notice to the parties at their last known addresses. Under proposed § 405.952(d), a dismissal may be vacated at any time within 6 months from the date of the notice of dismissal if good and sufficient cause is shown. An appellant may request QIC reconsideration of a redetermination dismissal. The request for a QIC reconsideration of the decision must be made within 180 days of the redetermination dismissal notice. A dismissal is binding unless it is vacated in accordance with § 405.952(d), or is subject to a reconsideration by a QIC.

Proposed §§ 405.954 and 405.956 address redetermination decisions and notification rules. When the contractor concludes its redetermination, it is responsible for issuing a decision that affirms or reverses, in whole or in part, the initial determination in question. When a decision fully reverses the initial determination, we propose to maintain our current policy that proper notification is achieved through the MSN or the remittance advice notices that are sent to beneficiaries, and providers and suppliers, respectively. We welcome comments on maintaining this policy for decisions that are fully favorable to the appellant.

Under proposed § 405.956(b), for decisions that affirm the initial determination either in whole or in part, a redetermination decision notice must contain: (1) A clear statement indicating the extent to which the redetermination is favorable or unfavorable; (2) a summary of the facts; (3) an explanation of how the pertinent laws, regulations, coverage rules, and CMS policies apply to the facts of the case; (4) a summary of the rationale for the decision; (5) notification to the parties of their right to a reconsideration, the procedures that a party must follow in order to request a reconsideration, and the time limit for requesting a reconsideration; (6) a statement of the specific supporting documentation that must be submitted with a request for a reconsideration; (7) an explanation that if the specific supporting documentation indicated in the notice is not submitted with the request for a reconsideration, this evidence will not be considered at an ALJ hearing, unless the appellant demonstrates good cause as to why the evidence was not provided previously; and (8) any other requirements specified by CMS.

To a large extent, these requirements are similar to the current instructions concerning the content of contractor appeals decision (for example, Medicare Carriers Manual, section 12002). However, these policies add more detail to the required elements. They also include one major substantive addition—the requirement that notifications identify any specific supporting documentation that must be submitted with a request for a reconsideration. By setting forth clear, detailed requirements for redetermination notices in the regulations, in concert with the proposed requirement for more information about specific supporting documentation that resulted in an unfavorable determination and redetermination, we believe we are setting the stage for the most accurate and efficient reconsideration process possible. In concert with these changes, we believe that placing a requirement for full and early presentation of evidence at the QIC level is fair to appellants and can stem the volume of cases that are now appealed to ALJs and the MAC. As discussed in further detail below, if available supporting documentation that is identified as needed in the redetermination denial notice is not submitted at the QIC level, an appellant who is dissatisfied with a QIC reconsideration decision and

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desires an ALJ hearing generally would not be able to introduce such evidence at an ALJ hearing, absent good cause for not submitting the evidence to the QIC.

The proposed redetermination provisions end with the straightforward requirement under § 405.958 that the redetermination decision is binding on all parties unless there is a subsequent QIC reconsideration or a reopening by the contractor consistent with § 405.980.

F. QIC Reconsiderations (§§ 405.960–978)

1. Introduction

Section 1869(b)(1) of the Act entitles any individual dissatisfied with an initial determination of a Part A or Part B claim denial, to file a request, within 180 days, for reconsideration of the initial determination, including the redetermination. In accordance with § 1869(c), reconsiderations are to be processed, generally within 30 days, by entities called qualified independent contractors (QICs). Section 1869(c)(4) requires CMS to contract with no fewer than twelve QICs. The introduction of QICs creates an additional appeals level for Part A claim determinations and replaces the Part B carrier hearing level of appeal. We believe that the QIC process, which will entail reviews of medical necessity determinations by health care professionals, routine participation in ALJ hearings, and mandatory development of an appeals-specific database, can result in significant improvements in the Medicare fee-for-service appeals system. The statute gives CMS a great deal of latitude in designing the reconsideration component of the Medicare appeals process, and we have attempted to use this discretion to design a process that will prove to be impartial, efficient, and accurate.

2. Reconsideration Requests (§§ 405.960–405.966)

Section 1869(a)(3)(B)(i) states that initial determinations made by fiscal intermediaries and carriers may be reconsidered only after the fiscal intermediary or carrier has performed a redetermination of the initial determination. Thus, proposed § 405.960 states that any person or entity who is a party to a redetermination, and is dissatisfied with the determination, may file a request for reconsideration of the redetermination in accordance with the requirements set out in §§ 405.962–966.

Consistent with section 1869(b)(1)(D) of the Act, § 405.962(a) specifies that appellants who wish to file a request for reconsideration must do so within 180 days of the date on which they receive the notice of the redetermination, or within such additional time as CMS may allow. For good cause, the QIC may extend the time frame for filing a reconsideration request. Section 405.942(b)(2) describes the process QICs are to use in determining if good cause for late filing exists. Examples of good cause, as provided in § 405.942(b)(3), would include: Circumstances beyond the appellant's control, including mental or physical impairment that prevented timely filing of the reconsideration request; significant communication difficulties; receipt of incorrect or incomplete information about the subject reconsideration from official sources (for example, CMS, the contractor, QIC or SSA); delay in filing caused by destruction of or damage to the appellant's records; and unusual or unavoidable circumstances, the nature of which demonstrate that the appellant could not reasonably be expected to have been able to file timely. The request for an extension of the reconsideration filing deadline must be in writing, signed by the party requesting the appeal, and state the reason(s) why the appellant did not file the request within 180 days. In addition, the appellant's request for reconsideration must accompany the request for an extension, so that if the QIC grants the extension, it may begin a substantive review of the appeal without further delay.

The QICs' 30-day decision-making deadline, to a large extent, dictates the procedural parameters that need to apply to the reconsideration process. Because of the equally challenging time frames for concluding ALJ and DAB appeals (combined with the provision that unresolved appeals can be escalated to the next level of administrative review, including Federal court), it is essential that the QIC procedures be designed to facilitate timely, accurate decision-making by these new administrative review bodies. As we developed the proposed QIC procedures, we have been careful to balance these efficiency concerns with the need to ensure a consistent, fair process for appellants.

We set forth the place and method for filing a request for reconsideration in § 405.964(a). Existing regulations give appellants wide discretion in terms of where an appeal may be filed. For example, under § 405.964, requests for carrier fair hearings may be filed with not only the carrier, but also at any CMS or SSA office. We recognize that some appellants, especially beneficiaries, rely on SSA offices to assist them in filing an appeal request. While we do not want to create a process that might make it difficult for appellants to file appeals, we cannot ignore the stringent decision-making time frames imposed by the statute. Thus, as an accommodation to appellants, we propose in § 405.964 that in addition to filing reconsideration requests with the QICs, parties be permitted to file their requests with the CMS and SSA offices as well (just as they may now for carrier fair hearings). For purposes of establishing whether an appellant has timely filed a request for reconsideration, a request will be considered filed on the date it is received by the QIC, SSA, or CMS. However, to ensure that QICs have adequate time to adjudicate reconsiderations that they do not receive directly, we subsequently propose under § 405.970(b)(1) that for reconsideration requests submitted to CMS or SSA offices, the QIC's 30-day decision-making period would begin on the date such request is received by the QIC. This policy will allow appellants to continue receiving assistance in filing reconsideration requests, without shortening the QIC's decision-making time frame.

Since multiple parties may request reconsideration of the same claim (for example, a beneficiary and a physician, or a beneficiary and a provider), we propose in §§ 405.964(c) and 405.970(b)(3) that QICs consolidate multiple requests for reconsideration into a single proceeding and issue one reconsideration determination to all parties within 30 days of the latest reconsideration request.

Under our existing regulations, a party's request for a Part A reconsideration or Part B fair hearing must be in writing (see §§ 405.711 and 405.821), but we do not require use of a standard form for making the appeal request. In practice, appellants now use a CMS form, a contractor's form, or submit written requests of their own design. In implementing the BIPA provisions, CMS will develop and make available a standard filing form for reconsideration requests and we considered making use of this form mandatory. However, in § 405.964, we are proposing that reconsideration requests either be made on the standard CMS form, or must contain the key elements captured by that form (for example, name, HIC number, date(s) of service and service(s) at issue). We believe that these requirements are not onerous, as they are the same as those listed on existing forms (Form HCFA–2649 and Form HCFA–1965) used to request Part A reconsiderations and Part B hearings. If the reconsideration request does not contain any one of these essential elements referenced above, we propose that the QIC dismiss the reconsideration on the basis that the party failed to make out a valid request.

In addition to the basic information required by § 405.964(a), we believe that it is in the appellant's best interest for a reconsideration request to include additional information, including a statement of evidence and allegations of fact or law related to the issue(s) in dispute and an explanation of why the contractor's determination should be reversed. Therefore, proposed § 405.966(a) describes the type of evidence that should accompany reconsideration requests. Although such documentation is not mandatory, we note that proposed § 405.966(a)(2) specifies that failure to submit documentation that was specified as necessary in a redetermination notice generally would preclude the introduction of such evidence for consideration at subsequent appeal levels. We strongly believe that this requirement for the full and early presentation of relevant evidence is critical for accurate QIC decisions and for avoiding backlogs of appeals at the ALJ level that could have been satisfactorily resolved by QICs. Submission of such evidence should not only lead to a more efficient appeal system, but should also facilitate QIC decisions that pertain directly to the concerns of appellants, as opposed to decisions on reconsideration requests that simply state "I appeal," without elaboration.

In the current appeals process, appellants may continually supplement their initial appeal request with additional evidence. Although we agree that appellants should have an opportunity to provide supplementary evidence to support their initial filing of reconsideration requests, allowing appellants multiple opportunities to submit documentation would make it impossible to adjudicate a case within the 30-day decision-making period. In general, we believe that the 180-day reconsideration filing time frame provides parties with sufficient opportunity to gather the information that they need to complete their requests. However, if appellants need to submit additional documentation after their request for reconsideration has been filed we are proposing under § 405.966(b) that such late submission of evidence would result in an automatic 14-day extension of the QIC's 30-day decision-making time frame.

3. Reconsideration Process (§§ 405.968–405.970)

For existing second level appeals of Part B determinations (the fair hearing level), appellants may request one of three types of hearings: In-person, telephone, or on-the-record. We considered applying this concept to QIC proceedings. However, we concluded that such a system was both impractical and unnecessary under the requirements of new section 1869 of the Act. Instead, we believe that only through on-the-record proceedings could QICs be expected to meet the requirements, under section 1869(c)(3)(C), that reconsideration decisions be issued within 30 days of receipt of a timely filed reconsideration request. In addition, nothing in section 1869 requires a hearing at the QIC level. Also, we note that the requirement for a panel of physicians or other qualified health care professionals to conduct reconsiderations of § 1862(a)(1)(A) denials, makes QIC reconsiderations less like the traditional fee-for-service fair hearings, and more like the independent review process that now applies to Medicare+Choice (M+C) appeals. M+C appeals primarily involve reviews by a physician or other qualified health care professional and are currently conducted within 30 days. Therefore, we elected to apply the existing M+C model to QIC reconsiderations and propose making reconsiderations on-the-record reviews. Thus in § 405.968, we define a reconsideration as "an independent, on-the-record review of an initial determination, including the redetermination, performed by a QIC." In conducting reconsiderations, QICs would be required to review the evidence and findings upon which the initial determination was based and any other evidence the parties submit, or the QIC obtains. The QIC then must make an independent determination affirming or reversing, in whole or in part the initial determination in question. We also specify that if an initial determination involves a finding on whether an item or service is reasonable and necessary for the diagnosis or treatment of illness or injury (under section 1862(a)(1)(A)), a QIC's reconsideration must be based on clinical experience and medical, technical, and scientific evidence, to the extent applicable.

Section 405.968 would also reflect the statutory requirements regarding the relevance of national and local coverage determinations, and who conducts reconsiderations. Section 1869(c)(3)(B)(ii)(I) of the Act states that national coverage determinations (NCDs) shall bind the QIC with respect to issuing reconsiderations. However, unlike intermediaries and carriers (including carrier fair hearing officers) QICs would not be required to follow local coverage determinations (LCDs) in making their determinations. Instead, QICs, like ALJs, would be bound only by law, regulations, CMS Rulings, and NCDs. This constitutes an important change from the current appeals system, which has been marked by high reversal rates at the ALJ level. Often these reversals stem from the different criteria applied by Medicare contractors and ALJs in ruling on Medicare payment and coverage issues. Section 1869(c)(3)(B)(ii)(II) does require that QICs "shall consider" LCDs in issuing reconsideration decisions, but it provides no guidance on the extent to which QICs are bound by CMS manuals or other instructions. Under § 405.968(b)(3), we propose that QICs be required to "give deference" to LCDs, local medical review policies (LMRPs), and CMS program guidance, including manual instructions (for example, the Medicare Coverage Issues Manual, the Medicare Intermediary Manual, the Medicare Carriers Manual). A QIC's decision must explain why it agrees or disagrees with the appellant's reasoning. Although QICs would not be bound by these types of policies, we would require that QIC reconsiderations follow these policies unless the appellant questions the policy and provides a reason that the QIC finds persuasive as to why the policy should not be followed. (See 66 FR 54536 for a detailed explanation of the distinction between LCDs and LMRPs.) We believe that the use of consistent review criteria and the establishment of strong standards to ensure sufficiency of a QIC's rationale for its decisions will serve several important purposes, including better explaining QIC decisions, identifying recurrent problems with CMS policies, and potentially reducing both ALJ appeals volume and the ALJ reversal rate.

Consistent with section 1869(c)(3)(D) of the Act, no physician or health care professional employed by a QIC may review a determination regarding the health care services furnished to a beneficiary if the physician or health care professional was directly responsible for furnishing such services or items. Also, a physician or health care professional may not review a redetermination if the physician or health care professional or a family member of the physician or health care professional has a significant financial

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interest in the institution, organization, or agency that provided the health care services. Family is defined in section 1869(c)(1)(ii) as the spouse (other than a spouse who is legally separated from the physician or health care professional under a decree of divorce or separate maintenance), children (including stepchildren and legally adopted children), grandchildren, parents, and grandparents of the physician or health care professional. Section 405.968(c) would also implement the statutory requirement that reconsiderations involving a determination as to whether an item or service is reasonable and necessary under section 1862(a)(1)(A) of the Act, shall include consideration by a panel of physicians or other appropriate health care professionals. Under proposed § 405.968(c)(2), a QIC would be required to designate a panel to consider the facts and circumstances of any case involving a "reasonable and necessary determination." We note that the estimated workload for QICs is expected to be close to 1 million cases per year, the majority of which we believe will involve medical necessity determinations. Given the prohibitively expensive nature of requiring a sitting panel to review each of these million cases, we plan to define what will constitute a panel. One option we are considering is that, rather than requiring that a panel be made up of at least two physicians or health care professionals simultaneously reviewing the issue, we would allow the physicians or health care professionals to review the issue sequentially. This would allow one professional to propose a determination on the matter and a second professional to then review the proposed reconsideration determination.

Section 405.970 sets forth the general requirement that QICs complete their reconsiderations within 30 days of receiving a timely filed request. Proposed § 405.970(c) specifies that, by no later than the close of the 30-day decision-making period, a QIC must issue the parties either a reconsideration decision or a notice stating that the QIC will not be able to complete its review by the decision-making deadline. This notice must also advise the appellant of the right, pursuant to § 1869(c) of the Act, to request escalation of his or her appeal to an ALJ. Under § 405.970(d), appellants must submit a written request directing the QIC to escalate their appeal. Appellants who are anxious to have their cases escalated clearly could make this request before receiving notice of a delay, that is, on their own, rather than in response to a QIC notice. In all instances, while awaiting the appellant's response, the QIC must continue processing the reconsideration "unless and until it receives a written request from the appellant to escalate the case to an ALJ." Section 1869(c)(3)(C)(ii) makes clear that when a QIC fails to meet its reconsideration deadline, an appellant may request an ALJ hearing. Under any system where escalation is at the appellant's option, we believe it is possible that in some instances, the QIC will complete its reconsideration before receiving an escalation request from an appellant. To avoid confusion and establish an efficient system for processing reconsiderations, we propose that whenever a QIC receives an escalation request, the QIC must take one of two actions within 5 days: (1) Complete its reconsideration and notify the parties of its decision; or (2) acknowledge the escalation request in writing and forward the case file to the ALJ. This provision should lend administrative finality to the QIC process and avoid any uncertainty in the inevitable situations where escalation requests and QIC reconsideration decisions cross in the mail. In cases where such QIC decisions are favorable to appellants, this process will eliminate unnecessary additional delays and administrative burden that appellants would face in ALJ hearings. See the ALJ and DAB portions of this preamble for further discussion of the escalation provisions.

4. Withdrawal or Dismissal of Reconsideration Requests (§ 405.972)

Section 405.972 sets forth provisions for withdrawing and dismissing requests for reconsideration. We are proposing that appellants be able to withdraw their reconsideration request by filing a written request for withdrawal with the QIC within 14 calendar days of filing the reconsideration request. A QIC, however, may accept a withdrawal request at any time when the withdrawal is based upon a party entering into an agreement with CMS to compromise the amount of a debt. A QIC will dismiss a reconsideration request, either entirely or as to any stated issue, pursuant to a timely filed request for withdrawal, or on its own motion. For example, if the person or entity filing for reconsideration does not meet the proper definition of a party, or does not otherwise have a right to reconsideration under § 1869(b) of the Act, the QIC will dismiss the request. The QIC also may dismiss a request for reconsideration where the party fails to file the reconsideration request within 180 days of receipt of the redetermination notice, or if the party fails to make out a valid request consistent with the essential reconsideration requirements identified in § 405.964. In addition, if the party who filed the request dies before the adjudicator renders a decision, and the record does not reflect that some other party may be prejudiced by the redetermination, the QIC will dismiss the reconsideration.

An appellant may request ALJ review of a QIC's dismissal of a request for reconsideration. The request for ALJ review must be filed with an ALJ within 60 days of the date of the QIC's notice of dismissal. Additionally, at any time within 6 months of the date of the QIC's dismissal notice, the QIC may vacate its dismissal of a request for reconsideration if good and sufficient cause is shown.

5. Content and Effect of the Reconsideration Decision (§§ 405.976–978)

With regard to the content of the reconsideration decision notice, we propose in § 405.976 that these decisions be in writing and contain several substantive elements, including: (1) A clear statement as to whether the reconsideration decision is favorable or unfavorable; (2) a summary of the facts; (3) an application of the pertinent laws, regulations, coverage rules, and CMS policies to the facts; (4) an explanation of the medical and scientific rationale for the decision, when the case involves determining whether an item or service is reasonable or necessary for the diagnosis or treatment of an illness or injury; and (5) a clear statement of the QIC's rationale for its decision. Consistent with proposed § 405.968(b)(3), as discussed above, if the QIC's decision conflicts with an LCD, LMRP, or with program guidance, such as a CMS manual instruction, the notice must include the QIC's rationale for doing so. Similarly, consistent with the proposed § 405.976(b)(5), the reconsideration notice must address how any missing documentation affected the reconsideration decision and the evidence limitations at the ALJ hearing level. The notice must also contain key procedural information such as advice to the parties of the right to an ALJ hearing; if appropriate, advice regarding the requirements for use of the expedited appeals process; and a description of the procedure that a party must follow in order to obtain an ALJ hearing or expedited appeal.

Finally, § 405.678 establishes that reconsiderations are final and binding on all parties unless a timely appeal is filed and a higher adjudicative body

overturns the reconsideration decision, or unless the reconsideration is reopened and revised by the QIC.

G. Reopenings of Initial Determinations, Redeterminations, Reconsiderations, Hearings and Reviews (§§ 405.980–405.986)

Section 1869(b)(1)(G) of the Act provides for the reopening and revision of any initial determination or reconsidered determination according to guidelines prescribed by the Secretary. These provisions are needed not only for BIPA purposes but to deal with longstanding concerns over the reopening rules for Medicare claim determinations. Over the years these provisions (existing §§ 405.750(b), 405.841, 405.842, and 405.850) have concerned providers, suppliers, physicians, and contractors. Providers have been vocal about the need for reopening for purposes of recovering underpayments at any point beyond 60 days or the initial timely billing period of 15–27 months.

Some providers have commented that some contractors do not grant requests to reopen claims for underpayments and clerical errors. We believe that the goal of the Medicare payment system should be to pay the correct amount. Thus, we believe that the purpose for conducting a reopening should be to change the determinations or decisions that result in either overpayments or underpayments. The proposed provisions below are intended to establish clear and concise rules to enable contractors to reopen claims and appeals in a fair and consistent manner.

Proposed § 405.980(a) establishes that a reopening is a remedial action taken by a carrier, intermediary, QIC, ALJ, or MAC to change a final determination or decision made with respect to an initial determination, redetermination, reconsideration, hearing, or review, even though the determination or decision may have been correct based upon the evidence of record. (Note that in this section of the proposed rule, we use the term "contractors" to signify carriers, intermediaries, and program safeguard contractors.)

Reopenings often have been misconstrued as a level of the appeals process, so we clarify the conditions for when to use the reopening process instead of the appeals process. We believe that in order to give meaning to the reopening process, we should identify well-defined parameters for how parties must proceed, and how contractors, QICs, ALJs, and the MAC will conduct reopenings. First, unlike the appeals process, a party must establish that good cause exists in order for an adjudicator to grant a request for a reopening. We discuss in detail below the ways that good cause may be established. Because some of the same types of issues may be raised in either process, we believe that a party's appeal rights must be exhausted, or the time limit for appealing must have expired, in order for an adjudicator to grant a request for a reopening and take jurisdiction. A decision on whether to grant a request for reopening is at the sole discretion of the adjudicator and is not subject to appeal.

We also draw the distinction that requests for adjustments to claims resulting from clerical errors must be handled through the reopening process. Therefore, when a contractor makes an adjustment to a claim, the contractor is not processing an appeal, but instead, conducting a reopening. Nevertheless, the revised initial determination that results from the adjustment may be appealed. Finally, some providers argue that contractors will only initiate a reopening for clerical errors when the error can be attributed to the contractor, but not the provider. We make clear in this proposed rule that the clerical error may be that of the contractor or party. We also define clerical error as human and mechanical mistakes such as mathematical, computational, or inaccurate data entry. We welcome comments on other types of mistakes that would warrant reopenings on the basis of clerical errors.

Proposed § 405.980(b)–(e) sets forth the time frames and requirements for reopening initial determinations, redeterminations, reconsiderations, hearing decisions, and reviews, both for those initiated by contractors, QICs, ALJs, the MAC, and those requested by parties. An adjudicator's notice of intent to reopen preserves the time frame by which it is required to initiate a reopening. Either a party may request a reopening, or a contractor may reopen on its own motion, within one year from the date of the notice of the initial determination or redetermination for any reason. We believe that one year is a reasonable time frame for a party to bring issues to the contractor's attention, considering that it is the party's responsibility and obligation to bill and code correctly, discover errors timely, and respond to documentation requests in order to facilitate appropriate payment determinations by the contractors.

A party and a contractor have the same 4-year time frame for initiating reopenings for good cause, but although a party may request a reopening, the contractor may find that there is not adequate reason to reopen the case. A contractor's decision on whether good cause exists is final.

A contractor may reopen within 5 years from the date of the initial determination or redetermination if the contractor discovers a pattern of billing errors or identifies an overpayment. In protecting the Medicare Trust Fund, CMS grants contractors the authority to reopen and revise initial determinations on claims that have been procured through similar fault and/or are believed to have been procured through fraud. Under proposed § 405.980, we are proposing significant revisions to existing rules concerning reopening initial determinations procured through similar fault or fraud.

We are proposing a definition for the term similar fault and outline its evidentiary requirements. Similar fault is intended to cover instances where Medicare payment is obtained by those with no legal rights to the funds, but falls short of outright fraud. In order for the initial determination to be procured by similar fault, Medicare funds must have been obtained, retained, converted, or received by a person who knows, or reasonably should be expected to know, that the person has no legal entitlement to those funds. This covers instances where a provider has been paid twice for the same claim (such as through different payors); where the contractor erroneously pays for codes that should not be paid, and the provider does not refund the money; or manipulation of legitimate codes contrary to Medicare policy to obtain a higher reimbursement. Examples of how knowledge can be shown include: Provider bulletins and educational efforts, standard practices in the community, and previous errors that have been brought to the provider's attention.

A contractor may reopen at any time if reliable evidence shows fraud or similar fault. Evidence is reliable if it is relevant, credible, and material. Since a reopening of an initial determination is an administrative action to correct erroneous payments, there is no requirement for a burden of proof. The contractor only must show that its evidence is reliable. If the reopening results in a revised determination that is unfavorable, the affected party has the right to use the administrative appeals process to rebut the contractor's evidence. In the appeals process, however, the contractor's evidence must satisfy the burden of proof placed upon it.

Proposed §§ 405.980(d)(1) and (e)(3) provide 180 days from the date of a reconsideration decision for either a party to request, or a QIC to initiate, a

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reopening. Similarly, both the parties and adjudicators at the ALJ and MAC levels also would have 180 days from the date of a hearing or review decision to request or initiate a reopening. The party, QIC, ALJ, or the MAC must establish good cause for a reopening. We considered whether a QIC, ALJ, or the MAC should have to establish good cause like parties in order to reopen matters that did not pertain to overpayments, investigations, or fraud. However, in an effort to propose a more equitable process, we believe that a QIC, ALJ, or the MAC should be held to the same standards as a party and should not be able to arbitrarily reopen its decision. We believe that a party should be able to rely on the finality of an appeal decision without undue concern that an adjudicator may reopen and revise its decision.

Proposed § 405.982–.984 would require contractors, QICs, ALJs, or the MAC to mail notices of revisions based on reopened determinations, reconsiderations, or decisions to the appropriate parties at their last known addresses. The notice must state the rationale and basis for the revision, and the parties' right to appeal. The revision of an initial determination, redetermination, or reconsideration shall be binding upon all parties unless a party files a written request for a subsequent appeal. Where a contractor reopens an initial determination, we considered whether it might be more efficient to allow a party to request a reconsideration by a QIC. However, since a redetermination is the first level of the appeals process, we have proposed that a revised initial determination is final unless a party files a written request for a redetermination.

Proposed § 405.986 creates a section on how a party, contractor, QIC, ALJ, or the MAC must establish good cause for a reopening. We modified and incorporated some of the provisions at §§ 405.750(b) and 405.841 of 42 CFR, and § 404.989 of 20 CFR to establish guidelines on what constitutes good cause for a reopening, such as "new and material evidence" and "error on the face of the evidence." The existing provisions have been viewed by some to be ambiguous as to the meaning or context of these terms.

New and material evidence means information that was not available or known at the time the determination or decision was furnished, which, had it been available or known, may have resulted in a different conclusion. Error on the face of the evidence means an obvious mistake in the determination or decision.

We believe that we have exhausted the full range of circumstances that should give rise to good cause, but welcome comments on whether other provisions should be added to apply to good cause. Finally, we would also incorporate the longstanding rule that a change resulting from a judicial decision, legal interpretation, or administrative ruling upon which a determination or decision was made should not constitute a good cause for reopening.

H. Expedited Appeals Process (§ 405.990 Through § 405.992)

We are incorporating the current regulations governing expedited review at §§ 405.718 and 405.853 with only two changes. First, since under BIPA the appeals process is the same for both Part A and B claims, there will be one regulation governing expedited review of cases involving those claims. Second, under BIPA, ALJs are bound by all NCDs rather than only by NCDs based on section 1862(a)(1) of the Act. Therefore, the regulations will no longer limit expedited review to cases involving NCDs based on section 1862(a)(1)(A) of the Act.

In addition, we would establish under proposed § 405.992 the standards that would apply to ALJs and the MAC for policies that are not subject to the expedited appeals process. We are proposing that in general ALJs and the MAC should consider and give deference to an LCD, LMRP, or CMS manual instruction. An ALJ or the MAC may disregard such a policy at a party's request, if the ALJ or the MAC finds the party's explanation of why the policy should be disregarded to be persuasive, finds that the policy has been applied incorrectly, or finds for other reason that the policy is invalid for purposes of the party's appeal. A decision of the ALJ or the MAC would include its rationale for disregarding such a policy. We believe that these provisions will not only lend greater consistency to the appeal decisions, but also ensure that CMS is aware of policies that are being repeatedly overturned by adjudicators.

I. ALJ Hearings

1. Introduction

Consistent with new section 1869 of the Act, this proposed rule contains a series of changes to the existing procedures for ALJ hearings and DAB reviews. In addition, as discussed above, we are proposing in this rule to codify in the Medicare regulations at 42 CFR part 405, subpart I, all the requirements that apply to these proceedings. Most of these regulations have previously been set forth in 20 CFR part 404 of SSA's regulations, which focuses on SSA's disability procedures. These voluminous regulations contain many provisions that are not applicable for Medicare purposes. For the most part, the proposed regulations that are being carried over from part 404 simply incorporate relevant provisions of those rules and do not involve substantive changes. To the extent that the new regulations do make substantive changes, the changes are discussed below.

One of the changes required under section 521 of BIPA is the introduction of an appellant's right to escalate a case to an ALJ if a QIC fails to make a timely reconsideration, or to the DAB if an ALJ hearing does not produce a timely decision on an appeal of a QIC reconsideration. How escalation is implemented will affect all aspects of the ALJ and MAC proceedings discussed below. Therefore, before presenting a detailed discussion of our proposals with respect to ALJ and MAC procedures, we believe it is important to first discuss the issues associated with the new escalation requirements.

2. Escalation

a. General Principles

Section 1869(a)(3)(B)(I) provides that "[n]o initial determination may be reconsidered or appealed under subsection (b) unless the fiscal intermediary or carrier has made a redetermination of that initial determination under [section 1869(a)(3)]." Section 1869(a)(3)(D) provides that for purposes of pursuing appeals beyond the fiscal intermediary or carrier levels, the redetermination is considered an initial determination. Given the above provisions, it is clear that an appellant may not proceed beyond the initial contractor level until he or she has received a redetermination from that contractor, even if the contractor does not issue the initial determination or redetermination within the statutory time frames. This is consistent with the current regulations, which require an appellant to complete all steps of the appeals process in sequence, except when an appellant invokes the expedited review process described at §§ 405.718 [Part A appeals] and 405.853 [Part B appeals].

After the initial contractor has made its redetermination, however, a case may be advanced to the next level of appeal if an adjudicator does not act on the appeal within the statutory deadline. We call this movement of a case to the next level of appeal "escalation." In this section, we

describe how escalation will affect the procedures the adjudicator will conduct at the next level of appeal.

Sections 1869(c) and (d) provide deadlines for QICs, ALJs, and the MAC within the DAB to issue their decisions. If the adjudicator does not meet the specified deadline, the party requesting the appeal (the appellant) "may request" an appeal at the next level without completing the appeal level below. Specifically, the statute allows an appellant to escalate an appeal by (1) requesting an ALJ hearing if the QIC does not decide the appeal within 30 or 44 days (depending on whether the appellant requested additional time to submit evidence to the QIC); (2) requesting a review by the MAC if the ALJ does not decide the appeal within 90 days; and; (3) requesting judicial review in federal district court if the MAC does not complete its review within 90 days. (At the ALJ and MAC levels, the statutory time period for completing the action begins on the date the appeal is timely filed.)

If an appellant does not request escalation to the next level, the case will remain with the current adjudicator until a final action is issued. Because there are different procedures at each of the appeals steps, appellants must carefully consider the type of review that is best to resolve their case before deciding to escalate an appeal. For example, appellants who escalate a case from the QIC level to an ALJ will not have the benefit of a review by health care professionals that the QIC provides before they proceed to a hearing. Similarly, when a case is escalated from the ALJ level to the MAC, an appellant will lose the right to present his or her case during an oral hearing; rather, in most circumstances the MAC will issue its action after reviewing the written record. Therefore, appellants who consider escalating their appeals must carefully weigh whether their case will be better served by completing a particular level of appeal or proceeding to the next level.

In addition, appellants who escalate their appeals will, in essence, be waiving their right to obtain a decision within the statutory deadline at the next level. For example, section 1869(d)(1)(A) provides that unless the appellant waives the statutory adjudication deadline, the ALJ "shall conduct and conclude a hearing on a *decision* of a [QIC]" and issue a decision by the 90th day from the date a request for hearing is timely filed. (Emphasis added.) We interpret this as requiring an ALJ to decide a case within 90 days when the QIC has issued a final action in a case, but not when the appellant has escalated the case to the ALJ level before the QIC issues a decision. A similar distinction is found in the provisions governing MAC review, which provide that the MAC must complete its "review of a decision" within 90 days. Therefore, when an appellant escalates an appeal from the QIC to the ALJ level or from the ALJ level to the MAC, the proceedings before the ALJ or MAC are not subject to the 90-day limit.

We believe this interpretation is not only consistent with the statute, but highlights other factors appellants will have to consider when deciding whether escalation is to their advantage. In our experience, ALJs and the MAC are able to decide cases more quickly and completely when the record below has been fully developed and the determination or decision issued below fully addresses the issues that were considered during the appeal. Because appeals that are escalated to the next level will not include a written determination or decision by the adjudicator below, the ALJ, the MAC, and the courts, as applicable, will require more time to determine what issues are properly before them and how they should be resolved.

As we discuss later in this preamble, we are proposing that CMS or its contractors may enter a case as a party at the ALJ level and be accorded the same rights as any other party to an ALJ decision. However, since we do not believe that the 90-day deadlines for the ALJ or the MAC to adjudicate appeals would apply to CMS, we have specifically noted in the regulation text that CMS would not be permitted to escalate a case, for example, from the ALJ to the MAC level, if the ALJ did not meet its adjudication deadline.

As noted above, section 1869(d)(1)(A) of the statute indicates that the 90-day deadline for an ALJ decision is premised on the existence of a QIC decision, and section 1869(d)(2)(A) specifies that the DAB has 90 days to "conduct and conclude a review of the decision on the hearing" by an ALJ. Neither the statute nor the legislative history provides any guidance with respect to the appropriate processing time frames for ALJ decisions on cases that have not been reconsidered by a QIC, or for DAB decisions on cases that have not been heard by an ALJ. Although the statute is silent in this respect, we recognize that appellants should not have to wait indefinitely for decisions on their appeals in these situations. We have proposed procedures that we believe will enable adjudicators to meet the statutory decision-making time frames in the vast majority of cases, thus minimizing the likelihood that an appellant would have the option of escalation. However, to the extent that such situations do arise, we believe that it may be appropriate to establish in the final rule specific decision-making time frames for both ALJ hearings and DAB reviews for those cases where there was no previous QIC reconsideration decision, or ALJ hearing decision, respectively. We encourage comments on whether the final rule should include such time frames and, if so, the most appropriate adjudication time frames for these cases.

b. Specific Provisions Affected by Escalation—From the QIC to the ALJ Level

Section 1869(c) provides that a QIC must complete its reconsideration within 30 days or 44 days if the appellant requests an extension. The statute also provides that an appellant may escalate the appeal to the ALJ level if the QIC does not complete the reconsideration within the requisite period. The statute does not specify, however, that appeals will automatically be referred from the QIC to the ALJ level once the 30 or 44-day period expires. Rather, the statute leaves it to the appellant to request escalation to the next level. The statute is silent concerning when the appellant must make this request or the precise effect the request will have on any case development or other adjudication efforts that the QIC may be conducting on the appeal when the escalation request is received.

We considered various options for effectuating this provision, including requiring that the QIC immediately cease its consideration of the appeal as soon as the request for escalation is received. As discussed above, we concluded that this option would be counterproductive for both the appellant requesting escalation and for the appeals system as a whole, including appellants whose claims remain at the QIC level and those whose appeals are already pending at the ALJ level. Specifically, because we expect that QICs will make every effort to issue determinations within the 30 or 44-day time frame, we would expect that many of the cases that are not decided by those deadlines will nonetheless be very close to completion. It would not benefit either the appellant who is requesting escalation or those appellants whose appeals are pending at the ALJ level if we require the QIC to cease deciding a case as soon as a request for escalation is received, particularly if the QIC is close to issuing a determination that will be fully favorable to the appellant.

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Therefore, we are proposing that when a QIC receives a request for escalation, the QIC will defer sending the case to the ALJ level for 5 days. If possible, the QIC will complete its adjudication of the case, including issuing a written reconsideration, within the 5-day period. If the determination is fully favorable to all parties, the case will be forwarded to the initial contractor for effectuation. If not, the appellant or another party to the appeal may file a request for ALJ hearing within the 60-day period provided in these regulations. If the QIC is not able to decide the case within the 5-day period, it will notify the appellant and forward the case record to the hearing office that has jurisdiction of the case. The appeal will then be processed according to the rules described in proposed sections 405.1000 *et. seq.*

c. Specific Provisions Affected by Escalation—Escalation at the ALJ and MAC Levels

We are proposing similar procedures when an appellant requests escalation from the ALJ to the MAC level and from the MAC level to federal district court described below.

ALJ Level to the MAC (§ 405.1104)

The appellant must file the request for escalation directly with the ALJ/hearing office assigned to the appeal as well as with the MAC. (The notice that the hearing office issues acknowledging the request for hearing will provide sufficient information for the appellant to direct the escalation request to the appropriate office or ALJ.) Upon receipt of the request for escalation, the ALJ may, if feasible, issue a decision, dismissal or remand if it can be issued within 5 days of the receipt of the request for escalation. (**Note:** a request for escalation to the MAC will be deemed as a waiver of any oral hearing an appellant has requested but not yet received.) If the ALJ's action is fully favorable to all parties to the appeal, the ALJ will forward the case record to the appropriate contractor for effectuation. If the ALJ's action is not fully favorable to all parties, the appellant or another party to the appeal may file a request for MAC review within 60 days of receipt of the ALJ's action.

If the ALJ does not issue an action within the 5-day period, the case record, including the recording of the oral hearing, if any, will be sent to the MAC.

MAC to Federal District Court (§ 405.1132)

Finally, if the MAC does not issue a final action or remand the case to an ALJ for further proceedings within the 90-day adjudication period, the appellant may request that the case be escalated to federal district court if the amount in controversy is $1,000 or more. Similar to the above procedures, the MAC may, if feasible, issue a final action, if it can be issued within 5 days of the request for escalation.

d. Calculating the 90-Day Adjudication Period

Historically, Medicare appeals were conducted using the ALJ and Appeals Council procedures that were devised for appeals of Social Security claims. Those procedures do not mandate any time frames within which either an ALJ or SSA's Appeals Council must complete their actions on an appeal. However, they also provide generous time periods (or none at all) for scheduling or rescheduling hearings at the convenience of the appellant and the adjudicator, opportunities for both prehearing and posthearing conferences, and no limitations on when additional evidence may be submitted to the ALJ, as long as it is received before the decision is issued.

Congress, through BIPA, has now directed us to complete adjudication within specified time frames and, when such time frames are not met, give appellants the option to escalate their cases to the next level of appeal. To provide this level of service to all appellants, we are proposing the following changes to our appeals procedures. First, we are establishing time limits for submission of evidence. Appellants who submit evidence within these limits and comply with other deadlines described elsewhere in this document, will have the right to have their case adjudicated within the specified time period or to escalate it if the time limit is not met. Conversely, we propose to toll the 90-day adjudication period if appellants submit evidence after those specified time periods. For example, the regulations provide that an appellant must submit any additional evidence within 10 days of receiving the notice of hearing. If an appellant submits the evidence on the 20th day, the ALJ may still accept the evidence, but will have an additional 10 days to decide the case. (See § 405.1018)

We believe that this proposal is consistent with the statute and Congressional intent. Congress has clearly indicated that adjudicators must devise procedures compatible with meeting the statutory deadlines. Moreover, we do not believe that Congress meant to allow appellants to escalate appeals if it is the appellant who has delayed the administrative process. We note that such delays, in particular requests for postponement of scheduled hearings, affect the timely resolution of not only the appellant's own case, but our ability to provide timely hearings and decisions for other appellants as well. We believe that by tolling the 90-day adjudication period in those instances in which the appellant causes the delay, we will provide an incentive for more appellants to appear at scheduled hearings and otherwise comply with hearing procedures.

For the same reason, the proposed regulations contain changes to the current process that we anticipate will streamline the hearings and appeals process, thus providing quicker and more focused adjudication. For example, we are proposing to offer appellants at the ALJ level not only in-person hearings, but hearings via telephone and videoconferencing, where available. We are also restricting submission of additional evidence after an oral hearing to the following:

(1) With the permission of the ALJ, provided that the request is made before or during the hearing.

(2) On the ALJ's own motion, if he or she concludes that the evidence is necessary to resolve a material issue in the case.

We are also continuing the current requirement that the notice of hearing must identify the issues to be decided in the case. Although we are requiring appellants to file any objections to the issues within 5 days of the hearing, we encourage parties to alert ALJs as soon as possible if the notice of hearing does not accurately describe the issue to be decided or does not include an issue material to the resolution of the case (see § 405.1024). Similarly, as explained in more detail elsewhere in this preamble, we are proposing to require appellants seeking MAC review to identify those aspects of the ALJ's decision with which they disagree. (We are not proposing this requirement for beneficiaries who are proceeding pro se.) We believe that this requirement will enable the MAC to resolve requests for review more expeditiously. In addition, the MAC will issue final actions after considering the request for review, rather than first advising appellants of a proposed action and providing a comment period. We do not consider it feasible to provide both a proposed and final action within the designated time frame. In addition, because the MAC will now be conducting a de novo review, appellants are on notice that the MAC may alter the ALJ's decision even if it would have been sustained under the pre-BIPA substantial evidence standard (see § 405.1112).

3. Conduct of ALJ Hearing—General Rules (§ 405.1000)

Section 1869(b)(1)(A) of the Social Security Act as amended by BIPA provides that any individual dissatisfied with any initial determination shall be entitled to a reconsideration and, assuming the request for hearing is timely filed and the amount in controversy requirements are met, a hearing to the same extent as is provided in section 205(b) of the Act. Traditionally, the Secretary has granted individuals entitled to a 205(b) hearing an in-person hearing. In addition, current regulations allow an appellant to waive an in-person hearing and request a decision based on the written record. We would continue that policy in this proposed rule. However, given recent technological advances, we will also offer appellants an opportunity for a hearing via telephone or videoconference, as available. (Currently, videoconferencing is only available at selected hearing sites throughout the country. 66 FR 61310 (January 5, 2001)). Recent experience shows that hearings conducted via telephone and videoconferencing advantage both the adjudicator and the appellant, particularly beneficiaries who have difficulty traveling even short distances or providers and suppliers for whom a telephone hearing or a videoconference may be more convenient than a hearing scheduled at a more distant hearing office. We believe that offering these options, where available, will also enable ALJs to complete more cases within the 90-day adjudication period. It may also afford some appellants an opportunity to present their case orally who currently request on-the-record hearings because of transportation or scheduling difficulties.

4. What Actions Are Reviewable by an ALJ? (§ 405.1004)

We have interpreted the current regulations governing the Part A and Part B appeals process as affording a party the right to an ALJ hearing only if the intermediary or carrier hearing officer (CHO), as applicable, has issued a determination or decision on the merits. Consistent with this interpretation, ALJs have dismissed requests for an ALJ hearing when the contractor or CHO has dismissed a request for a reconsideration or carrier hearing.

We propose to revise this policy for appeals filed under BIPA. Specifically, we would give ALJs the authority to decide or review all final actions issued by a QIC including dismissals for untimely filing, failure to exhaust administrative remedies, or res judicata. (We expect that res judicata will most often occur when a party asks for another adjudication of a claim for the same service, that is, the same instance of receiving a service.) However, the proposed regulations also specify that if an ALJ decides that a QIC's dismissal was improper, the ALJ will remand to the QIC for a substantive decision.

5. What Authorities Are Binding on an ALJ?

In our May 12, 1997 final rule, we stated that ALJs are bound by the Medicare statute, CMS regulations, CMS Rulings and NCDs based on section 1862(a)(1) of the Act. Under BIPA, all NCDs, based on section 1862(a)(1) or other grounds, are binding on ALJs. We are revising our regulations, including those governing the expedited appeals process, accordingly.

6. Aggregating Claims To Meet the Amount in Controversy (§ 405.1006)

Prior to the enactment of section 521 of BIPA, the statute and regulations provided different amounts in controversy for Part A and Part B hearings and appeals. Under Part A, an appellant could receive a reconsideration of the initial determination regardless of the monetary value of the claim, but had to meet a $100 threshold to receive a hearing before an ALJ. Similarly, an appellant contesting an initial determination issued on a Part B claim could receive a review determination regardless of the amount in controversy. However, there was a $100 amount in controversy requirement for a Part B carrier hearing and a $500 threshold for an ALJ hearing with respect to a Part B claim determination.

The pre-BIPA aggregations provisions found at former section 1869(b)(2) directed the Secretary to devise a system for allowing appellants to combine claims to meet the amount in controversy as follows: In determining the amount in controversy, the Secretary, under regulations, shall allow two or more claims to be aggregated if the claims involve the delivery of similar or related services to the same individual or involve common issues of law and fact arising from services furnished to two or more individuals. The Secretary implemented the above provision in a final regulation published March 16, 1994. The regulation established two methods of aggregation, one for individual appellants and one for multiple appellants. Individual appellants appealing either Part A and Part B claims were allowed to aggregate two or more claims (within a specified time period), regardless of issue, to meet the jurisdictional minimums for a carrier hearing and ALJ hearing. (Prior to OBRA 1986, this method for aggregating claims had been available to appellants requesting a Part B hearing before a carrier hearing officer.) Multiple appellants, however, were allowed to aggregate their claims only under the statutory requirements, that is, if the claims involved the delivery of similar or related services to the same individual or common issues of law and fact arising from services furnished to two or more individuals.

BIPA 521 changed the amount in controversy requirements. Section 1869(b)(1)(E) provides that the amount in controversy for an ALJ hearing will be $100 for appeals of both Part A and Part B claims. In addition, the aggregation provisions have been altered as follows:

(ii) Aggregation of claims. In determining the amount in controversy, the Secretary, under regulations, shall allow two or more appeals to be aggregated if the appeals involve—

(I) the delivery of similar or related services to the same individual by one or more providers of services or suppliers, or

(II) common issues of law and fact arising from services furnished to two or more individuals by one or more providers of services or suppliers.

We are proposing to limit aggregation of claims under BIPA to those that meet the statutory requirements for aggregation, that is, those that involve the delivery of similar or related services to the same individual or common issues of law and fact. Accordingly, we would no longer allow appellants to aggregate all timely filed claims regardless of issue. We are proposing this change for several reasons. Under the current system, appellants can only appeal beyond the intermediary or carrier levels if their appeal meets the minimum amount in controversy requirements described above. With the creation of the QICs, however, appellants will have access to a review by an independent contractor regardless of a claim's monetary value. We believe that this will provide sufficient due process for those claims that are below the $100 threshold.

Moreover, BIPA has reduced the amount in controversy for a Part B ALJ hearing from $500 to $100. Our experience suggests that the majority of Part A and B appeals that are decided by the QICs will equal or exceed the $100 amount in controversy requirement. Thus, we do not believe that eliminating the more liberal rules

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that individual appellants have used to aggregate claims will alter significantly an appellant's access to an ALJ hearing. We believe that continuing to apply the current aggregation rules would hinder ALJs and the MAC from meeting BIPA's 90-day deadlines for completing appeals. The current system, which allows aggregation of claims regardless of issue, has led to cumbersome and lengthy proceedings at both the ALJ and MAC levels. Adjudication is often delayed when an appellant seeks to aggregate a claim with another previously filed appeal; continuing this practice will impair our ability to meet the statutory deadline for the earlier appeal. Moreover, some of the current inefficiencies in the appeals system are caused by cases in which appellants seek to aggregate numerous claims that concern a variety of unrelated services or supplies, each of which has been denied for a different reason. Based on this experience, we believe that allowing appellants to aggregate claims regardless of issue will make it extremely difficult to provide a meaningful review of each issue within the statutory deadlines.

Therefore, we are proposing to limit aggregation for both individual and multiple appellants to the clear language of the statutory provisions. In order to allow individual beneficiaries, providers and suppliers, as well as multiple appellants to aggregate claims, we will allow appellants to aggregate claims to meet the amount in controversy if the claims involve common issues of law and fact or delivery of similar or related services, regardless of whether the services pertain to just one beneficiary or a number of beneficiaries and regardless of how many providers or suppliers provided the services. We will continue our policy, however, of restricting the claims that may be aggregated to those that are appealed within a limited period; to do otherwise would in essence extend the time to file a request for hearing beyond the 60-day time limit. We are also proposing separate rules for claims that are escalated from the QIC to the ALJ level to ensure that only appeals that clearly meet the amount in controversy requirements are escalated to the ALJ level. Finally, given the reduced amount in controversy threshold and the new adjudication deadlines, which will require adjudicators to resolve issues more quickly, we believe it is reasonable to require appellants to explain in their request for aggregation why they believe the claims involve common issues of law and fact or delivery of similar or related services.

7. When CMS or Its Contractors May Participate in an ALJ hearing (§§ 405.1010 and 405.1012)

Existing regulations do not address whether CMS and its contractors could participate in ALJ hearings. Occasions have arisen, however, in which a contractor or an ALJ has determined that an issue in a case could not be resolved without some input from CMS or the contractor. In some cases, ALJs have requested position papers, testimony, or other evidence from CMS or a contractor, but such proceedings have been cumbersome, because the regulations did not provide specific procedures for such input. After reviewing the outcome of other cases, CMS has concluded that the case might have been more appropriately resolved if CMS or the contractor had been parties to the appeal.

New section 1869(c)(3)(J) provides that the QIC will not only prepare the record of the reconsideration when a hearing before an ALJ is requested, but also will "participate in such hearings as required by the Secretary." Consistent with this provision, we are proposing to revise our regulations concerning the conduct of an ALJ hearing to allow participation of a representative of CMS, or another CMS contractor, either at the request of an ALJ or upon the request of the QIC or CMS. Such participation may include filing position papers or providing testimony to clarify factual or policy issues in a case, but will not include those aspects of full party status such as the right to call witnesses or cross-examine the witnesses of another party. Because the role of a participant is non-adversarial, we would allow participation of the QIC, CMS, or CMS's contractors in cases brought by all appellants, including beneficiaries.

An ALJ will not have the authority to require CMS or a contractor to participate in a case. Nor may the ALJ draw any adverse inferences if CMS or a contractor decides not to participate. For example, an ALJ could not consider a party's allegations as accepted as true if CMS or a contractor decides not to participate and counter such allegations. We anticipate, however, that there will be other cases in which CMS or its contractor will want and need to be a full party in a case in order to ensure that the record before the ALJ is fully developed. Accordingly, we are also revising the current regulations to allow CMS or its contractor to enter an appeal at the ALJ level as a party, unless the appeal is brought by an unrepresented beneficiary. When CMS or its contractor enters the case as a party, it will have all the rights of a party, including the right to call witnesses or cross-examine the witnesses of other parties, as well as the right to seek MAC review of an adverse decision. CMS and the contractor, when acting as parties, may also submit additional evidence to the ALJ. An ALJ would not have the authority to require CMS or a contractor to enter a case as a party, nor would an ALJ be able to draw any inferences if CMS does not participate in the case. We believe that these proposed changes will enable adjudicators at the ALJ and, thereafter, the MAC level to resolve issues of fact and law more quickly and reduce the need for remands for additional development.

8. Filing Requests for ALJ Hearing and MAC Review—Time and Place (§§ 405.1014, 405.1016, 405.1106)

Section 1869(b)(1)(D)(ii) provides that "the Secretary shall establish in regulations time limits for the filing of a request for hearing by the Secretary in accordance with provisions in sections 205 and 206." In addition, section 1869(d)(1)(A) provides that "except as provided in subparagraph (B), an administrative law judge shall conduct and conclude a hearing on a decision of a qualified independent contractor under subsection (c) and render a decision on such hearing by not later than the end of the 90-day period beginning on the date a request for hearing has been timely filed." (Emphasis added.) Similarly, section 1869(d)(2)(A) of the Act provides that the MAC "shall conduct and conclude a review of [an ALJ decision] and make a decision or remand the case to the administrative law judge for reconsideration by not later than the end of the 90-day period beginning on the date a request for review has been timely filed."

Section 205 of the Act gives an appellant 60 days to request a hearing. The current regulations governing appeals of Medicare claims provide the same 60-day period for appealing Medicare cases from the contractor's determination or decision to an ALJ and, thereafter, from the ALJ level to the MAC. We are proposing to continue to require parties to file their appeals to the ALJ level and the MAC within 60 days. As discussed above, for purposes of determining an appellant's right to appeal, we will also continue to use the general principles currently found in 20 CFR 404.933 and 42 CFR 405.722. These regulations provide that an appeal is considered filed on the day it is received by a Social Security office, CMS, including its contractors, an ALJ, or, in the case of a request for MAC review, the MAC. We will also continue to calculate the 60-day period based on the date the appeal is actually received by one of the above offices.

As noted above, ALJs and the MAC must issue their decisions no later than the end of the 90-day period beginning on the date the appeal has been timely filed. Therefore we must determine not only whether an appeal has been timely filed to establish the party requesting review's right to an ALJ hearing or MAC review, but also when the appeal is considered timely filed in order to calculate the 90-day adjudication period. Given these deadlines, we considered requiring all requests for ALJ hearing to be filed directly with the hearing office, and all requests for review to be filed directly with the MAC. This requirement would advantage most parties, since we have experienced significant delays in receiving appeals filed with Social Security and other offices. Again, we recognize that local Social Security offices provide a valuable service to many individuals who want or require assistance in filing their appeals. Similarly, providers and suppliers are accustomed to filing requests for an ALJ hearing or, more rarely, MAC review with CMS's contractors.

Therefore, as with requests for redeterminations and reconsiderations, we are proposing to allow parties to file their appeals with these offices. For purposes of establishing whether the party has filed a timely request, the appeal will be considered filed on the date it is received in one of these offices. However, for purposes of establishing the start date for the 90-day adjudication period, we will define the date that an appeal is timely filed as the date the appeal is received by the ALJ or MAC, as applicable. We believe that this policy will give the parties requesting review access to assistance if needed while not reducing the time the ALJ or MAC will have to decide the case.

In addition, both ALJs and the MAC often receive appeals that have not been filed within the 60-day limit. The current regulations allow parties to ask for an extension of time to file their appeal for "good cause." The regulations further provide examples of circumstances that may establish good cause for late filing, such as a serious illness or death of an immediate family member. In our experience, some parties do not acknowledge that they have filed an appeal after the 60-day period has expired or explain why the appeal is late. In the event that the party requesting review subsequently provides information that establishes good cause for late filing, we will calculate the date the appeal is "timely filed" for purposes of beginning the 90-day adjudication period as the date the ALJ or MAC, as applicable, receives the good cause explanation, assuming the ALJ or MAC determines that the explanation provides good cause for filing the appeal late.

9. Adjudication Deadlines—ALJ Level (§ 405.1016)

Section 1869(d)(1)(A) provides that unless the appellant waives the statutory adjudication deadline, the ALJ "shall conduct and conclude a hearing on a *decision* of a [QIC]" and issue a decision within 90 days from the date a request for hearing is timely filed. (Emphasis added.) We interpret this as requiring an ALJ to decide a case within 90 days only when the QIC has issued a final action in a case. Therefore, when an appellant escalates an appeal from the QIC to the ALJ level, the proceedings before the ALJ are not subject to the 90-day limit.

We are also proposing to toll the 90-day adjudication deadline when an appellant's actions, including delays in submitting evidence or requests for postponement of a hearing, rather than the ALJ's actions, extend the length of the proceedings.

10. Remand Authority (§ 405.1034)

Currently, the regulations governing Medicare appeals do not provide clear guidance concerning if and when an ALJ may remand a case to a contractor for further proceedings. We are proposing including regulations that would require or allow ALJs to remand to the QIC under certain circumstances. First, the regulations would allow an ALJ to review whether or not the QIC erred in dismissing a request for reconsideration and to remand the case to the QIC for a reconsideration determination if the dismissal was improper. The regulations would also require an ALJ to remand a case to the QIC for a new decision if the appellant submits new evidence to the ALJ without providing a good reason for not providing it at the QIC level. (If the ALJ determines that there is good cause for submitting the evidence to the ALJ, the ALJ will include the evidence in the administrative record and decide the case on that record.) As discussed previously, we believe that this requirement will encourage appellants to resolve appeals, if possible, at earlier and less costly steps of the appeals process. Moreover, since most Part A and B appeals pertain to services that have already been provided, most medical and other records relevant to the case should be available during the initial stages in the appeals process. Requiring earlier submission of evidence will also assist ALJs and the MAC to meet their adjudication deadlines, since it will reduce time consuming development of the record. However, because we recognize that the reason for denying a claim may be different at various steps of the appeals process, we would not require an ALJ to remand a case when an appellant submits evidence relevant to an issue that is first identified in the QIC's reconsideration determination.

We would also permit an ALJ to remand the case to a QIC when the record lacks technical information material to resolution of the case that only the contractor, rather than a party, can provide. For example, it may be necessary to examine a contractor's payment history records in order to determine whether a supplier has filed a claim for durable medical equipment that has already been billed for by another supplier. Since such records would not ordinarily be in the possession of a party to the appeal, it may be necessary for the ALJ to remand the case to the QIC, if the initial contractor or the QIC has not included this information in the record submitted to the ALJ.

11. When May an ALJ Consolidate a Hearing? (§ 405.1044)

This proposed rule does not alter the ALJ's ability to consolidate a hearing. However, we have added a provision requiring an ALJ to notify CMS of his or her intent to consolidate hearings (see § 405.1044(c)). We believe that that the consolidation of hearings may affect our decision on whether to participate or invoke party status.

12. When May an ALJ Dismiss a Request for Hearing? (§ 405.1052)

CMS's current regulations do not address this issue; rather, ALJs follow the regulations at 20 CFR 404.957. These regulations were designed to resolve appeals filed by applicants for Social Security retirement and disability benefits. We are proposing new regulations that will address the specific procedural issues that arise in Medicare claims appeals.

a. Effect of the Death of the Beneficiary

The current regulations do not give specific guidance to appellants or adjudicators concerning the effect of the death of a beneficiary on an appeal. We believe that the regulations should provide notice to appellants concerning what will happen to an appeal if the

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beneficiary dies either before it is filed or while it is pending. The proposed provisions would identify those circumstances in which the appeal will continue to be adjudicated on the merits versus those that will be dismissed because there is no longer an interested party who may obtain relief.

We are proposing to continue deciding appeals on the merits under the following circumstances.

The appeal involves a claim for benefits under Part A or B in which the beneficiary obtained the service at issue and the beneficiary either paid for the service or has a spouse or estate who continues to be financially liable for the service. In this circumstance, the beneficiary's spouse or estate may continue to pursue the appeal.

The appeal is filed by another party, including a provider of services or supplier, who continues to have a financial interest in the outcome of the appeal.

The appeal involved a service (such as a skilled nursing facility stay) for which payment was made under waiver of liability, but for which the determination was construed as a notice of noncoverage to deny payment to the beneficiary for subsequent dates of service.

The ALJ would dismiss, upon the beneficiary's death, other requests for hearing that do not meet the above criteria. For example, the ALJ could dismiss if the beneficiary or the beneficiary's representative filed the request for hearing but the beneficiary died before the hearing was held, and the beneficiary was not held liable for the services at issue in the QIC's reconsideration. The ALJ would not be required to inquire whether other potentially affected parties wish to continue the appeal unless they participated in the QIC review below. Similarly, a dismissal would occur if the supplier filed the request for hearing as the representative of the beneficiary, but did not have appeal rights on its own (because, for example, it did not take assignment) and the beneficiary died before the request for hearing was filed.

b. Requests for Withdrawal of a Request for Hearing

SSA's regulations at 20 CFR 404.957 now provide that an ALJ may dismiss a request for hearing if the party that requested the hearing asks to withdraw the request. The request may be submitted in writing or made orally at the hearing. Guidelines issued by SSA's Office of Hearings and Appeals further instruct ALJs that the request must indicate that the party withdrawing the request for hearing is aware of the consequences of the withdrawal. Experience shows that some appellants are in fact unaware of the consequences; for example they may equate a request for withdrawal with a request for postponement of the case. In order to avoid unnecessary remands of these cases, we are adding a requirement that the request for withdrawal must contain a clear statement that the appellant is withdrawing the appeal and does not intend to further proceed with the appeal. If the request for withdrawal is filed by an attorney, or other legal professional on behalf of a beneficiary or other appellant, the ALJ may presume that the representative has advised the appellant of the consequences of the withdrawal and dismissal. (We note that most local rules governing the professional responsibility of attorneys would require that an attorney advise a client of the effects of withdrawing an appeal.)

c. Res Judicata

SSA regulations at 20 CFR 404.957(c)(1) provide that an ALJ may dismiss a request for hearing based on the doctrine of res judicata. We are including this provision in our new regulations but clarifying that in the Medicare context the issue will most often occur when a party asks for another adjudication of a claim for the same date of service based on the same facts and evidence and the previous decision on the claim is either administratively or judicially final.

d. Abandonment

Currently, an ALJ may dismiss a request for hearing if the appellant does not have a good reason for failing to appear at a scheduled hearing. We will continue to allow ALJs to dismiss a request for hearing for this reason. In addition, if the hearing is rescheduled because the ALJ finds that the appellant had a good reason for failing to appear, the number of days that expire between the first and second scheduled hearing will not be counted toward the 90-day time limit for deciding the case.

J. Review by the Medicare Appeals Council and Judicial Review (§§ 405.1100–405.1140)

1. Introduction

The component of the DAB that decides cases brought under section 521 of BIPA is called the Medicare Appeals Council (MAC). Prior to this rulemaking, the MAC has considered requests for review of Medicare cases under the procedures used by the SSA's Appeals Council. Those regulations are found at 20 CFR 404.966 through 404.982. As with the ALJ regulations discussed above, we are now proposing to incorporate these procedures into 42 CFR of the Medicare regulations. These proposed regulations will incorporate the BIPA provisions governing MAC review and establish procedures that will meet the particular needs of the Medicare appeals process.

2. MAC Review of an ALJ's Action/De Novo Review (§ 405.1100)

Under the current regulations, the MAC may deny or dismiss a request for review, or it may grant the request for review and either issue a decision or remand the case to an ALJ. The MAC may also review an ALJ's action in order to dismiss a request for hearing for any reason for which it could have been dismissed by the ALJ. (See Social Security Ruling 95–2c, 60 FR 31753 (June 16, 1985)).

The MAC also has the authority to review an ALJ's action on its own motion, provided that it takes review of the case within 60 days after the date of the hearing decision or dismissal.

In deciding whether to grant a request for review, the MAC considers whether: (1) There appears to be an abuse of discretion by the ALJ; (2) there is an error of law; (3) the actions, findings or conclusions of the ALJ are not supported by substantial evidence; or (4) there is a broad policy or procedural issue that may affect the general public interest. In addition, if new and material evidence is submitted that relates to the period on or before the date of the administrative law judge hearing decision the MAC will review the case if it finds that the administrative law judge's action, findings, or conclusion is contrary to the weight of the evidence currently of record. If the MAC denies review of an ALJ's decision, the ALJ's action, not the denial of review, is the final decision of the Secretary and is reviewable in federal district court on a substantial evidence standard.

BIPA directs the MAC to apply a different standard when reviewing an ALJ's action. Section 1869(d)(2)(B) directs the MAC to conduct a de novo review of an ALJ's decision on a hearing. In addition, section 1869(d)(3)(A) allows parties to request review by the MAC if an ALJ does not issue a decision within the 90-day adjudication period "notwithstanding any requirements for a hearing for purposes of the party's right to such a review."

We are proposing to effectuate the MAC's new review process as follows. The MAC may no longer consider ALJ decisions under a substantial evidence standard nor may it "deny" review.

Rather, it will review the ALJ's decision de novo. If a case requires additional development or proceedings at the ALJ level, the MAC will remand the case to the ALJ for further action. Otherwise, the MAC will communicate its final action on the case by issuing a final decision or order that adopts, modifies or reverses the ALJ's action, as appropriate.

In addition to requiring any MAC review of an ALJ decision to be de novo, BIPA requires the MAC to complete its action on an ALJ decision within 90 days from the date the request for review is timely filed. In a previous section of this preamble, we have discussed the effect of these provisions on such questions as where and when a request for MAC review may be filed. We believe that the changes in the standard of review and the adjudication deadlines will require the following additional changes to the MAC's current procedures as well.

3. Escalation of an Appeal From the ALJ Level to the MAC (§§ 405.1104, 405.1106, and 405.1108)

Section 1869(d)(3)(A) of the Act, as amended by BIPA, provides that if an ALJ does not issue a decision within the 90-day adjudication period, "the party requesting the hearing may request a review by [the MAC], notwithstanding any requirements for a hearing for purposes of the [appellant's] right to such review." As we have explained elsewhere in this preamble, the MAC's consideration of an appeal when it is escalated from the ALJ to the MAC level is not subject to the 90-day adjudication deadline. In addition, we interpret section 1869(d)(3)(A) to mean that only the person or entity who requested the ALJ hearing may escalate the appeal to the MAC if the ALJ does not meet the 90-day adjudication deadline. Where CMS has entered into the case as a party, it may not seek escalation.

Because the statute allows escalation for a MAC review "notwithstanding any requirements for a hearing," the MAC is not required to hold a hearing if the case is escalated to its level. The statute does not describe the type of review that the MAC will conduct when an appeal is escalated before an ALJ action is issued, or what actions the MAC may take upon its review in such circumstances. Because it is possible that the MAC will receive cases escalated both before and after an ALJ hearing has been scheduled or conducted, we believe that the MAC will need the same options for disposing of a case that it would have if in reviewing an ALJ's decision or dismissal order. Therefore, we are proposing that when the MAC reviews a case that is escalated from the ALJ level it may issue a decision, dismiss either the request for hearing or request for review on procedural grounds, or, if the administrative record is insufficient to take any of the above actions, remand the case to the ALJ for specific development and a decision. (We will also continue to allow the MAC to hold a hearing, if warranted.)

4. Own Motion Provisions (§ 405.1110)

Under the current regulations, neither CMS nor its contractors are parties to appeals brought under 42 CFR 405, Subparts G and H. However, the regulations provide that in addition to deciding a case appealed by a beneficiary or other party, the MAC may decide on its own motion to review an ALJ's decision or dismissal anytime within 60 days after the date of the action (20 CFR 404.969). We refer to this as the MAC's own motion authority. The cases that the MAC reviews on its own motion are generally referred to it by CMS and its contractors.

We believe that the MAC's own motion authority should be revised to better accommodate the other changes to the appeals process required by BIPA. Moreover, as discussed above, CMS and its contractors, including the QICs, will now have an opportunity to participate in the hearings and appeals process either as parties or not as parties. In keeping with our proposed policy, that when CMS acts as a party it has the same rights as any other party, CMS would have the right to MAC review, using the same procedures that any other party would use. However, we recognize that the statute's adjudication deadlines could impose significant challenges to the MAC to complete all of the cases appealed to them by beneficiaries, providers, suppliers, and other affected third parties in a timely manner. Therefore, we are proposing that when CMS is not acting as a party to the case, the MAC's own motion authority would be limited as follows.

CMS and its contractors (hereafter: CMS) may refer ALJ decisions and dismissals to the MAC for own motion review when they participated (but did not act as a party) in the ALJ proceedings. When a case is referred in this circumstance, the MAC will accept the case for review if there is an error of law, an abuse of discretion, the decision is not consistent with the preponderance of the evidence or record, or there is a broad policy or procedural issue that may affect the general public interest. In deciding whether to accept review, the MAC will limit its consideration of the ALJ's action to those exceptions raised by CMS.

CMS may also refer ALJ decisions and dismissals to the MAC for own motion review when it did not participate and did not act as a party in the proceedings below. When a case is referred in this circumstance, the MAC will accept the case for review if the decision or dismissal contains a clear error of law or presents a broad policy or procedural issue that may affect the general public interest. In deciding whether to accept review, the MAC will limit its consideration of the ALJ's action to those exceptions raised by CMS.

Cases reviewed under the own motion authority would also be subject to the 90-day adjudication deadline. The deadline will begin when the MAC receives the referral from CMS or its contractors, unless the party who requested the ALJ hearing or another party to the hearing asks for an extension of time to respond to CMS's referral. The regulations will require that CMS send a copy of its own motion referral to all parties to the ALJ's action, as well as the ALJ.

5. New Requirement for Review Requests (§ 405.1112)

The current regulations do not require appellants to include in their requests for review the specific reasons that they disagree with an ALJ's decision or dismissal. As a result, many of the requests for review state only general reasons for appealing, such as "I disagree with the ALJ's decision" or "The decision is not supported by the evidence and is inconsistent with the law." Because these appeals do not identify any specific flaw in the decision, the MAC's consideration of the case is very time and labor intensive, including examination of aspects of the decision with which the party may not actually disagree. For example, if an ALJ's decision rules unfavorably on five claims, the party may only believe that the decision is wrong with respect to one claim rather than all five. However, because the current regulations do not require the party to state the reasons for appealing all claims that it believes were incorrectly decided, the MAC is obligated to consider whether all five claims were property decided.

We believe that the MAC will not be able to conduct a de novo review of an ALJ's action within 90 days of the date the request for review is received unless parties requesting review provide more specific reasons for their disagreement with the ALJ's action. Because many beneficiaries have limited experience with the rules governing Medicare

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coverage and payment policies, we do not propose requiring them to file specific exceptions with their requests for review unless they are represented by an attorney or other legal professional. Providers, suppliers, and CMS (when it has entered the case as a party) however, must not only be aware of Medicare coverage and payment policies in order to support their claims, but, by regulation, are presumed to have constructive notice of CMS notices, including manual issuances, bulletins, or other written guides and directives from Medicare contractors, as well as **Federal Register** publications containing notice of NCDs. See 42 CFR 411.406(e)(1) and (2). Therefore, we believe it is reasonable to require providers, suppliers, and CMS, as well as third-party appellants such as Medicaid State agencies, to include in their request for review the specific reasons they disagree with an ALJ's action. In addition, we believe it is appropriate to extend this requirement to requests for review filed by attorneys or other legal professionals on behalf of a beneficiary or when a provider, supplier or third party files a request for review as the beneficiary's representative.

In proposing this requirement, we wish to reassure parties that the purpose of requiring the exceptions is to enable the MAC to provide an efficient and focused review of those aspects of an ALJ's action with which the party disagrees. Because the MAC is concerned with the content rather than the form of the appeal, we would not require parties to file formal briefs or other pleadings. However, given the statutory limits, we believe that it is reasonable to require parties to state the basis for their disagreement with an ALJ's action and for the MAC to review de novo only those aspects of an ALJ's action with which the party disagrees. If a party other than an unrepresented beneficiary does not file any exceptions, the MAC will adopt the ALJ's action without comment, unless the ALJ's decision or dismissal contains on its face a clear error of law.

6. Discontinuation of Notice to Parties (§ 405.1128)

The current regulations at 20 CFR 404.973 require that when the MAC decides to review a case, it sends a notice to all parties stating the reasons for review and the issues to be considered. In the context of Social Security appeals this regulation has been interpreted as requiring SSA's Appeals Council to give appellants advance notice and opportunity to comment on any proposed action that is not fully favorable to all appellants. The MAC presently follows this regulation as well.

We do not believe, however, that it is possible or necessary to continue this practice under BIPA. When a party requests the MAC to review a case under BIPA, it is requesting the MAC to review the ALJ's action de novo; therefore, parties are on notice that the MAC's action, whether favorable or unfavorable, may differ considerably from the action being appealed. Since this regulation will also require CMS and its contractors to send a copy of own motion referrals to all parties, the parties to an own motion review will also be on notice that the MAC will be reviewing de novo those aspects of the case challenged by CMS, where CMS in not acting as a party, as applicable and will have the opportunity to file a reply with the MAC. We believe these procedures will satisfy due process while maintaining the MAC's ability to adjudicate appeals within 90 days. Therefore, the proposed regulations allow the MAC to adopt, modify, or reverse an ALJ's action without first providing notice and opportunity to comment on its proposed action (see § 405.1128).

7. Judicial Review (§§ 405.1136–405.1140)

These actions of the proposed rule consolidate and generally mirror the existing regulations with respect to judicial review, now found in 42 CFR 405.857, 20 CFR 404.983–404.984, and 20 CFR 422.210. The only substantive change is to provide that an appellant may request escalation to Federal district court if the MAC does not complete its review of an ALJ decision within the 90-day adjudication period, consistent with section 1869(d)(3)(B) of the Act.

J. Expedited Proceedings (§§ 405.1200–405.1206)

1. Overview of the Statute

Section 1869(b)(1)(F) provides for an expedited appeals process when a beneficiary receives notice from a provider of services that such provider plans to: (1) Terminate services provided to an individual and a physician certifies that failure to continue services is likely to place the beneficiary's health at risk; or (2) plans to discharge the individual from the provider of services. The statute mandates that the beneficiary who receives such notice may request an expedited determination. If he or she is dissatisfied with that determination, that beneficiary may request an expedited reconsideration determination by a QIC. Pursuant to sections 1869(c)(3)(C)(iii) and 1869(c)(3)(C)(iv), the QIC must render a decision within 72 hours unless a beneficiary requests an extension. Section 1869(c)(3)(C)(iii)(III) also mandates that a reconsideration of a discharge from a hospital be conducted in accordance with section 1154(e)(2)–(4).

Historically, Medicare beneficiaries have had a right to an expedited review by a Quality Improvement Organization (QIO, formerly a Peer Review Organization) in situations where they disagreed with a hospital's decision to discharge them. However, in the other provider settings, in order for a beneficiary to access the Medicare appeals process, the individual must: (1) Continue to receive the services up to the date in which he or she believed his or her services should be covered; (2) request the provider of such disputed services to file the claim for payment; and (3) have that claim adjudicated by the Medicare contractor, that is, have the Medicare contractor issue its initial determination. Upon receipt, a beneficiary who was dissatisfied with the contractor's determination then could access the appeals process by requesting a "Reconsideration" within 60 days.

Thus, the new BIPA provisions represent a significant change in the existing procedures available to beneficiaries to contest provider decisions to terminate care. Our proposals for implementing these changes are discussed below.

2. Expedited QIO Reviews (§§ 405.1200(a)–(g))

In § 405.1200(a)(1), consistent with the traditional definition of provider at section 1861 of the Act, we propose that the term "providers" used in §§ 405.1200 and 405.1202 applies to the following: hospitals, critical access hospitals, home health agencies (HHAs), skilled nursing facilities (SNFs), and comprehensive outpatient rehabilitation facilities (CORFs). In proposed § 405.1200(a)(2), we would establish that the scope of these provisions includes terminations of services furnished by a non-residential provider and the discharge of a beneficiary from a residential provider of services. This definition would not include reductions in an ongoing course of services.

Consistent with the statute, proposed § 405.1200(b) stipulates that in order for a beneficiary to request an expedited review: the beneficiary must have received notice that a provider intends to terminate services and a physician must certify that termination of services is likely to place the beneficiary's health at significant risk; or the provider intends to discharge the beneficiary from a provider setting.

We reviewed current notices provided to beneficiaries upon termination of services to determine if existing notices would serve the purposes of this section. We determined that the Advance Beneficiary Notice (ABNs) would meet this need. Before a provider may charge a beneficiary for services that could be covered under Medicare but are not covered in the beneficiary's instant case, CMS regulations implementing section 1879 of the Act require that a provider issue an advance written notice to the beneficiary that the provider does not expect Medicare to pay for those services (see § 411.406). Such an advanced written notice explains that the provider does not expect that Medicare will pay and the provider's reason for that expectation. To comply with this existing section 1879 requirement, HHAs are issuing the HHABN (Home Health Advance Beneficiary Notice, form CMS–R–296); CORFs and hospices are issuing the ABN (Advance Beneficiary Notice, form CMS–R–131); and SNFs are using the SNF NONC (Skilled Nursing Facility Notice Of Non-Coverage). There is a similar notice requirement for inpatient hospitals.

We believe that these existing ABNs are the appropriate vehicles to trigger expedited determination under section 1869 of the Act, because the provider may not charge the beneficiary for services for which Medicare does not pay unless an ABN was provided in advance of furnishing those services, and because an ABN, in the case of an impending termination of provider services, must include a termination date. We will revisit the content of these existing notices to conform with the requirements of this proposed rule and submit such notices for clearance to the Office of Management and Budget through the Paperwork Reduction Act process.

We are not proposing any change in the timing of delivery of these existing notices. Although the inpatient hospital notice of noncoverage is already provided in a way that supports the unique beneficiary liability protections included in the current QIO process, the statute provides no parallel liability protections in the other provider settings. Therefore, we believe that the provision of the current advance beneficiary notices prior to termination will fulfill the intent of the statute. Note, however, that a provider's failure to issue an ABN does not eliminate a beneficiary's right to access the expedited appeals process. If, for example, a beneficiary files a request for an expedited determination following a verbal notification from a provider, the QIO must conduct its review as if a written notice had been given. In such a case, the beneficiary would not be responsible for the cost of care provided prior to the delivery of a valid advance beneficiary notice.

Section 405.1200(b)(2) provides that if a beneficiary does not file a timely request for an expedited determination, the beneficiary may not later access this expedited review process. (Note that the regulations assume that QIOs would likely conduct these determinations. We believe QIOs are the appropriate entity to conduct these expedited reviews of provider terminations, given that they already have the professional medical capabilities to review such medical necessity cases and they are located in every State.) Proposed § 405.1200(c) then establishes the procedures a beneficiary must follow in order to make a valid request for an expedited determination. In this section we give beneficiaries the option of making their request either in writing or by telephone no later than noon of the next day after receipt of the provider's notice. To be consistent with the deadline that QIOs are already familiar with, in regards to the current QIO review of inpatient hospital determinations (beneficiaries must request review of the hospital's decision no later than noon of the next working day), we have established that beneficiaries in these provider settings must request a review by noon. In order to facilitate a quick, accurate determination, we propose under § 405.1200(c) that the requesting beneficiary or representative must be available to answer questions by the QIO, upon request.

Section 405.1200(d) sets forth the procedures that the QIO must follow when it receives a beneficiary's request for an expedited review. Under this section, the QIOs must: notify the provider of the disputed services that a expedited review request has been made; request information such as medical records from the provider; examine the requested necessary medical information; solicit the views of the provider and the beneficiary; and make a decision within 72 hours after receipt of the request for the QIO expedited review and of the information requested from the provider. We would require that the provider submit the information requested by the QIO, no later than close of business on the day after the beneficiary request an expedited determination. Proposed § 405.1200(e) then sets forth the notification requirements when a QIO has made its expedited determination. We are proposing that the QIO immediately notify the beneficiary, physician and provider of its expedited determination, first by telephone and then following up with a written notice that would explain the decision and inform the beneficiary of his or her appeal rights.

Proposed § 405.1200(f) provides that the QIO's expedited determination is binding upon the beneficiary and the provider of the disputed services or stay, absent a beneficiary's request for a QIC reconsideration. If a beneficiary misses the deadline for filing a request for an expedited QIC reconsideration, the beneficiary may request a QIC reconsideration under the general QIC Reconsideration process at § 405.960 *et. seq.*

Section 405.1200(g) discusses the financial liability aspects of the QIO expedited review process. In the inpatient hospital setting, when a beneficiary files for an immediate QIO review by noon of the next working day following receipt of the notice of termination, that beneficiary is not responsible for the additional costs of his or her stay while the review takes place. (See section 1154(e) of the Act.) This financial protection does not exist under the expedited review process for other providers. However, proposed § 405.1200(g) provides that a provider cannot bill a beneficiary for the disputed stay or services until the beneficiary has received an expedited QIO determination; or if an expedited QIC reconsideration determination, if requested. In such situation, if the QIO determines that the services or stay in dispute were medically necessary, the beneficiary is not responsible for the services or stay, as stipulated by the QIO. However, if the QIO determines that the services or stay in dispute were not medically necessary, the beneficiary is responsible for services that extend beyond the appropriate covered services or stay, or as otherwise stated by the QIO.

3. Expedited QIC Reconsiderations (§ 405.1202)

Proposed § 405.1202(a) describes the appeals process for an expedited determination—the expedited QIC reconsideration. Under this section, we propose that, upon receipt of a QIO decision, if the beneficiary is dissatisfied and wants to appeal and receive a decision rendered expeditiously, that beneficiary may request an expedited QIC reconsideration. Section 405.1202(b)

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provides that a beneficiary who desires an expedited QIC reconsideration must make that request no later than noon of the next calendar day following receipt of the QIO expedited determination. Consistent with the statute, this section also provides that a beneficiary or representative must be available to talk with the QIC about his or her case when the QIC calls to solicit the beneficiary's views.

Section 405.1202(c) would set forth the procedures that the QIC must follow when conducting its expedited reconsideration. The steps that the QIC must follow are identical to those followed by the QIO except as noted below. Consistent with section 1869(c)(3)(iii), we have established that the QIC render a decision within 72 hours from receipt of the request for an expedited reconsideration and the requested information. In conjunction with this time frame, we would require that if a QIC does not render its decision 72 hours from receipt of the request and information, the QIC must inform the beneficiary of his or her right to have their case escalated to an ALJ; and we set forth the procedures that the beneficiary must follow. In such case, the QIC must immediately notify the provider that such action has been taken. At this point that provider may bill the beneficiary for the services or stay in dispute.

Section 405.1202(d) proposes that the QIC issues a notice of its expedited reconsideration determination after it has notified the beneficiary, provider, and physician responsible for the beneficiary's care of its decision via telephone. The telephone notification must be followed by a written notice that includes the detailed rationale for the decision, a statement that explains the beneficiary's subsequent appeal rights (an ALJ Hearing), and the timeframe for filing for the ALJ hearing request. Section 405.1202(e) would establish that the QIC's reconsideration determination is binding in the beneficiary, subject to an ALJ hearing if the beneficiary is dissatisfied with the QIC's decision. There is no expedited ALJ Hearing. Therefore, such dissatisfied beneficiary will have to request an appeal in accordance with the normal ALJ hearing procedures.

Proposed § 405.1202(f) sets forth the coverage rules for beneficiaries during this review. The beneficiary may not be billed for the disputed services or stay until that beneficiary receives an expedited determination by the QIC. However, if the QIC does not render a decision within 72 hours of receipt of the information and the request, the provider may bill the beneficiary for the services or stay in dispute.

4. Special Rules for Inpatient Hospital Discharges (§§ 405.1204 and 405.1206)

The proposed regulations for these sections are identical to the existing inpatient hospital rules for appealing inpatient hospital determinations with one exception. Upon receipt of a QIO determination, the next level of the appeals process would now be the expedited QIC reconsideration, if the beneficiary makes a timely request for expedited reconsideration and remains in the hospital. If the beneficiary is no longer an inpatient in the hospital, or fails to make a timely request for an expedited reconsideration, but is still dissatisfied with the QIO's determination, he or she retains the right to subsequently appeal that determination under the general QIC reconsideration rules.

III. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, if we proceed with a subsequent document, we will respond to the major comments in the preamble to that document.

IV. Information Collection Requirements

Under the Paperwork Reduction Act of 1995 (PRA), we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

The PRA exempts the majority of the information collection activities referenced in this proposed rule. In particular, 5 CFR 1320.4 excludes collection activities during the conduct of administrative actions such as redeterminations, reconsiderations, and/or appeals. However, the information collection requirement associated with the initial request to seek a redetermination is subject to the PRA. Current supporting regulations set forth at §§ 405.711 and 405.807 outlining a request for redetermination are currently approved under the PRA. However, due to the revision/consolidation of the current redetermination regulations, we are requesting comment on the proposed requirement referenced below.

Section 405.940 Right to a Redetermination

A person or entity that is a party to an initial determination as described under § 405.920 *et seq.* and is dissatisfied with that determination may request a redetermination in accordance with § 405.942 through § 405.946.

The burden associated with this requirement is the time and effort necessary to request a redetermination that is in accordance with the requirements referenced in § 405.942 through § 405.946. Based upon current data, we estimate that contractors will process 6,800,000 requests for Part B redeterminations and 60,000 for Part A on an annual basis and that it will require an average of 15 minutes to submit a request for a total burden of 1,715,000 annual burden hours.

If you comment on these information collection and recordkeeping requirements, please mail copies directly to the following:

Centers for Medicare & Medicaid Services, Office of Strategic Operations and Regulatory Affairs, Attn.: John Burke, Attn: CMS–4004–P, Room N2–14–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Brenda Aguilar, CMS Desk Officer Attn: CMS–4004–P.

V. Regulatory Impact Analysis

A. Introduction

We have examined the impact of this rule under the criteria of Executive Order 12866 (September 1993, Regulatory Planning and Review), section 1102(b) of the Social Security Act, the Regulatory Flexibility Act (RFA), Public Law 96–354, the Unfunded Mandates Reform Act of 1995, Public Law 104–4, and Executive Order 13132. Executive Order 12866

directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more annually). Because Federal costs to implement this rule would exceed the $100 million threshold, this is a major rule. In compliance with Executive Order 12866, we have prepared the RIA below. In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

The RFA requires agencies, in issuing certain proposed rules, to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations and government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $25 million or less annually. For purposes of the RFA, all providers and suppliers affected by this regulation are considered to be small entities. Individuals and States are not included in the definition of a small entity.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis for a proposed rule that may, if adopted, have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds.

We are not preparing analyses for either the RFA or section 1102(b) of the Act. We are uncertain how many small entities will be affected by this rule. The design and purpose of the proposed rule is to improve the accuracy and efficiency of the claims review and appeals process, we are confident that it will reduce rather than add burden on small entities. The impact on small rural hospitals is likely to be negligible or slightly positive. Therefore, we are certifying that the proposed rule will not have a significant impact on a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any proposed rule that would include any Federal mandate that may result in expenditure in any one year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. This rule would not have such an effect on State, local, or tribal governments, or on the private sector.

B. Scope of the Proposed Changes

As discussed in detail above in section II of this preamble, this proposed rule would establish new regulations concerning appeals procedures for Medicare claims determinations, consistent with section 1869 of the Act as amended by section 521 of BIPA 2000. Among the significant changes required by the BIPA amendments are:

- Establishing a uniform process for handling Medicare Part A and B appeals, including the introduction of a new level of appeal for Part A claims.
- Revising the time frames for filing a request for a Part A and Part B appeal.
- Imposing a 30-day time frame for redeterminations made by fiscal intermediaries and carriers.
- Requiring the establishment of a new appeals entity, the qualified independent contractor (QIC), to conduct "reconsiderations" of contractors' initial determination or redeterminations, and allowing appellants to escalate the case to an ALJ hearing, if reconsiderations are not completed within 30 days.
- Establishing a uniform amount in controversy threshold of $100 for appeals at the ALJ level.
- Imposing 90-day time limits for conducting ALJ and DAB appeals and allowing appellants to escalate a case to the next level of appeal if ALJs or the MAC do not meet their deadlines.
- Imposing "de novo" review when the MAC reviews an ALJ decision made after a hearing.
- Requiring that the Secretary establish a process by which an individual may obtain an expedited determination if he/she receives a notice from a provider of services that the provider plans to terminate services or discharge the individual from the provider.

The proposed rule would not establish new rules, or alter existing rules, with respect to the substantive standards for determining whether a Medicare claim is payable. Claims that enter the administrative appeals process represent an extremely small portion of the total number of claims that Medicare processes each year. In FY 2001, for example, Medicare contractors processed almost 932 million claims: of these only about 6 million were appealed. Thus, the number of Medicare claims that enter the administrative appeals system represents only about 0.6 percent of the total number of claims filed with Medicare. Moreover, the 6 million figure represents the total number of claims appealed, not the number of appellants. From our experience, the vast majority of appeal requests are filed by a relatively limited group of appellants. Therefore, the number of providers, physicians and other suppliers, as well as beneficiaries who enter the appeals process is far fewer than the 6 million claims that are appealed. Given the small percentage of claims and appellants involved in the administrative appeals process, we believe that this proposed rule would have little or no effect on most Medicare providers and suppliers. The changes set forth are even less likely to affect beneficiaries, whose appeals are estimated to constitute no more than 3 to 5 percent of total appeals. As discussed in detail below, however, for those providers, suppliers, and beneficiaries who do file appeals of Medicare claim determinations, the effects of this proposed rule should be overwhelmingly positive.

C. Anticipated Effects on Providers, Physicians and Other Suppliers, and Beneficiaries

We expect that the changes set forth in this proposed rule would produce substantial improvements in the accuracy and efficiency of the claims appeal process. For the most part, the anticipated positive impact of the proposed rule on providers, physicians and other suppliers would be similar to the anticipated effects on beneficiary appellants, although again the impact on the provider and supplier communities would be more pronounced due to their much greater likelihood to appeal a claim determination. We include a brief discussion of the anticipated impact of major changes below.

In general, we do not anticipate that the introduction of these new appeals procedures would have a substantive impact on the actual results of claims appeals. That is, there is no reason to believe that the use of QICs, or other changes required by BIPA, would result in any change in the proportion of appeals that result in favorable decisions for providers, suppliers, or beneficiaries. We do believe though that the implementation of requirements that ensure appellants of both the fairness of the decision-making process and the accuracy and consistency of the decisions reached can eventually lead to

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major reductions in the need for the elevation of appeals to the slower, more costly levels of the appeals system, such as ALJ hearings and DAB or Federal court review. We welcome comments on all aspects of this impact analysis.

Most of the major changes set forth in this rule, such as the new time frames for appeals decisions, are mandated by the statute and thus not subject to the Secretary's discretion. To the extent that we have exercised discretion, such as in establishing procedures for conducting appeals, we have attempted to balance the need for accurate, expeditious appeals decisions with our responsibilities to implement these changes in a cost-effective manner.

A discussion of the anticipated impacts of key provisions follows.

1. Decision Making Time Frames and Escalation

Perhaps the most significant change set forth here is the reduction in mandatory time frames for issuing a decision on appeals at all levels. In general, this would mean faster receipt of decisions and, for favorable decisions, faster payment. For example, a provider who appealed a Part A claim determination in FY 2001 waited an average of 64 days for an intermediary to make a decision on a reconsideration request, where under the proposed rule a decision on a Part A redetermination request must be made within 30 days of receipt of the request. If the decision is favorable (that is, the appeal results in a reversal of an initial determination that a claim could not be paid), effectuation of the favorable decision would be initiated as soon as a decision is reached. Given the reduced decision-making time frames, payments would be received substantially sooner than under the current system. Similarly, the time frame for a Part B fair hearing decision would be reduced from 120 days to 30 days, with concomitant fiscal advantages to successful appellants. These benefits to appellants would extend to all levels of the Medicare administrative appeals process.

In addition to the new time frames for making decisions, the proposed rule would allow appellants the option of escalating an appeal to an ALJ if the QIC fails to make a decision timely. Escalation also would be available at the appellants' option from the ALJ level to the DAB if an ALJ fails to issue a hearing decision on a QIC decision within 90 days of a request for an appeal of a QIC reconsideration (or similarly from the DAB to Federal court). Clearly, these options would be a positive change for appellants, who have greater control of their appeals and a viable recourse during the appeals process if, during one stage of the appeals process, their appeal is not decided timely.

2. Review of Claims by a Panel of Health Care Professionals

Another important change included in this proposed rule is the requirement that a QIC panel of physicians or other qualified health care professionals conduct reconsiderations when the initial determination being appealed involved a medical necessity issue. BIPA mandates that when an initial determination involves a finding on whether an item or service is reasonable and necessary for the diagnosis or treatment of an illness or injury, a QIC's reconsideration must be based on clinical experience and medical, technical, and scientific evidence to the extent applicable. We believe that this change would give appellants more confidence that a fair decision has been reached, potentially reducing their need to pursue subsequent appeals. We believe the introduction of physicians and other health care professionals into the appeals process would produce administrative finality at an earlier level of the process and benefit both appellants and the Medicare program.

3. Decision Letters and Documentation Requirements

An important discretionary aspect of the proposed rule concerns the content of the notices sent to parties when a contractor upholds its initial determination. These requirements include a written summary of the rationale for the redetermination decision and the identification of any specific missing documentation that contributed to the decision to deny the claim in question. (Note that the statute establishes specific requirements for notices following QIC reconsiderations, but does not address the content of redetermination notices.) We believe that the proposed policies for more detailed decision notices would provide appellants with the information they need to build their case early in the appeals process. We believe the impact of this requirement would result in more accurate decisions at the QIC reconsideration level, based on all the appropriate medical information, rather than appeals often needing to be raised to an ALJ before needed documentation is produced. This will give beneficiaries, providers, and suppliers more detail about why their claim was denied and allow them to fashion their appeal accordingly.

Since the appellant would be informed about specific documentation that is necessary to make a decision, the proposed rule also requires that such identified information be submitted with the next level appeal request. If the information is not submitted to the QIC, but instead surfaces later in the appeals process, the appellant would need to demonstrate good cause why the information was not submitted to the QIC. We believe the end result of these provisions would be that appeals are resolved at the earliest possible administrative level, which is a positive result for all appellants. As discussed in detail in section II.I.10 of the preamble, ALJs would have the authority to remand cases to a QIC when available evidence is not submitted timely.

4. Party Status

In the current regulations, providers may appeal only in limited circumstances. In order to appeal in other circumstances, providers must act as an appointed representative of a beneficiary.

In the proposed rule, we would permit participating providers to appeal to the same extent as beneficiaries or suppliers who take assignment. We believe this change would have several positive impacts on appellants. For example, it would eliminate any confusion providers may have in determining whether they have standing to appeal an initial determination, and it would remove the burden for the provider of obtaining an appointment of representative from a beneficiary. This should also eliminate confusion beneficiaries had in the past about why providers have sought to represent beneficiaries.

D. Effects on the Medicare Program

In the final analysis, the primary financial impact of implementing these changes falls upon the government agencies responsible for conducting appeals, that is, CMS, SSA, and DHHS. Deciding appeals within shorter time frames and establishing new independent review entities to conduct these appeals entail significant new costs, as does the development of an appeals-specific data system to track the results of these appeals. Section 521 of BIPA not only mandated shorter decision-making time frames and other costly improvements to the already taxed Medicare appeals system, it also created additional opportunities and incentives for providers, suppliers, and beneficiaries to request appeals. Most significantly, the statute no longer provides for any minimum amount in controversy (AIC) below the ALJ level, and lowers the AIC from $500 to $100 for appealing a Part B claim determination to an ALJ. In addition, we anticipate that the new decision-making time frames could make the appeals process more attractive to potential appellants who previously may have been dissuaded from appealing by the potential delays involved in obtaining a decision on their appeal. Thus, in order to forestall large increases in appeals volume at the higher levels of appeal, we have attempted to craft appeals rules that would ensure not only that appellants receive consistent and accurate decisions at the lowest possible appeals level, but also that appellants are made aware of the reasons for these decisions.

Finally, we note that although the impact of these changes would be positive for the provider, physician, supplier, and beneficiary communities, implementing these procedures would generate substantial costs to the Medicare program. Our most recent estimate is that the changes required at the contractor and QIC level would cost at least $100 million, with additional costs to implement the necessary changes at the ALJ and DAB appeals level.

E. Federalism

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This rule would not have a substantial effect on State or local governments.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services proposes to amend 42 CFR chapter IV, part 405 as set forth below:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

1. The authority citation for part 405 continues to read as follows:

Authority: Secs. 1102, 1861, 1862(a), 1869, 1871, 1874, 1881, and 1886(k) of the Social Security Act (42 U.S.C. 1302, 1395x, 1395y(a), 1395ff, 1395hh, 1395kk, 1395rr and 1395ww(k)), and sec. 353 of the Public Health Service Act (42 U.S.C. 263a).

2. Add a new subpart I, consisting of § 405.900 through § 405.1206, to part 405 to read as follows:

Subpart I—Determinations, Redeterminations, Reconsiderations, and Appeals Under Original Medicare (Parts A and B)

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Subpart I—Determinations, Redeterminations, Reconsiderations, and Appeals Under Original Medicare (Parts A and B)

§ 405.900 Basis and scope.

(a) *Statutory basis.* This subpart is based on the provisions of sections 1869(a) through (e) of the Act.

(b) *Scope.* This subpart establishes the requirements for appeals of initial determinations with respect to benefits under Part A or Part B of Medicare, including the following:

(1) The initial determination of whether an individual is entitled to benefits under Part A or Part B. (Regulations governing appeals of these initial determinations are found at 20 CFR part 404, subparts J and R).

(2) The initial determination of the amount of benefits available to an individual under Part A or Part B.

(3) Any other initial determination with respect to a claim for benefits under Part A or Part B, including an initial determination made by a qualified improvement organization under section 1154(a)(2) of the Act or by an entity under contract with the Secretary (other than a contract under section 1852 of the Act) to administer provisions of titles XVIII or XI.

§ 405.902 Definitions.

For the purposes of this subpart, the term—

ALJ stands for an Administrative Law Judge.

Appellant means the beneficiary, assignee or other person or entity that has filed an appeal concerning a particular initial determination. Designation as an appellant does not in itself convey standing to appeal the determination in question.

Assignee means a provider, physician, or other supplier who furnishes items or services to a beneficiary and who has accepted a valid assignment of appeal rights executed by the beneficiary.

Assignment of appeal rights means the transfer by the assignor of his or her right to appeal an initial determination to the assignee.

Assignor means a beneficiary whose provider of services, physician, or supplier has taken assignment of the right to appeal a claim.

Clean claim means a claim that has no defect or impropriety (including any lack of required substantiating documentation) or particular circumstance requiring special treatment that prevents payment from being made on the claim under title XVIII of the Act.

MAC stands for the Medicare Appeals Council within the Departmental Appeals Board of the Department of Health and Human Services.

Party means an individual or entity listed in § 405.906 that has standing to appeal an initial determination and/or a subsequent administrative appeal determination.

Qualified Improvement Organization (QIO) means an entity that contracts with the Secretary in accordance with sections 1152 and 1153 of the Act and 42 CFR chapter IV, subchapter F, to perform the functions described in section 1154 of the Act and 42 CFR chapter IV, subchapter F, including expedited determinations as described in § 405.1200 through § 405.1206.

Qualified Independent Contractor (QIC) means an entity that contracts with the Secretary in accordance with section 1869 of the Act to perform reconsiderations under § 405.960 through § 405.978.

Remand means to vacate a lower level appeal decision and return the case to that level for a new decision.

Vacate means to set aside a previous action.

§ 405.904 Medicare initial determinations, redeterminations and appeals: General description.

(a) *General overview.* The Medicare contractor makes an initial determination when a claim for Medicare benefits under Part A or Part B is submitted. A beneficiary who is dissatisfied with the initial determination may request, and the contractor will perform, a redetermination of the claim. Following the contractor's redetermination, the beneficiary may obtain a reconsideration from the Qualified Independent Contractor (QIC). Following the reconsideration, the beneficiary may obtain a hearing before an Administrative Law Judge (ALJ) if the amount remaining in controversy is at least $100. If the beneficiary is dissatisfied with the decision of the ALJ, he or she may request the Medicare Appeals Council (MAC) to review the case. Following the action of the MAC, the beneficiary may file suit in Federal district court if the amount remaining in controversy is at least $1,000.

(b) *Non-beneficiary appellants.* In general, the procedures described in paragraph (a) of this section are also available to an individual representing beneficiaries and to parties other than beneficiaries or their representatives, consistent with the requirements of this subpart I. However, a provider generally has the right to judicial review only as provided under section 1879(d) of the Act, that is, when a determination involves a finding that services are not covered because—

(1) They were custodial care (§ 411.15(g) of this chapter); they were not reasonable and necessary (§ 411.14(k) of this chapter); they did not qualify as covered home health services because the beneficiary was not confined to the home or did not need skilled nursing care on an intermittent basis (§ 409.42(a) and (c)(1) of this chapter); or they were hospice services provided to a non-terminally ill individual (§ 418.22 of this chapter); and

(2) Either the provider or the beneficiary, or both, knew or could reasonably have been expected to know that those services were not covered under Medicare.

§ 405.906 Parties to the initial determinations, redeterminations, and reconsiderations.

(a) The parties to the initial determination are the following individuals and entities:

(1) A beneficiary who has filed a claim for payment or has had a claim for payment filed on his or her behalf, or in the case of a deceased beneficiary, or when there is no estate, any person obligated to make or entitled to receive payment in accordance with part 424, subpart E of this chapter. However, payment by a third party payer does not entitle that entity to party status.

(2) A participating physician or other supplier who has filed a claim for items or services furnished to a beneficiary.

(3) A provider of services who has filed a claim for items or services furnished to a beneficiary.

(b) The parties to the redetermination, reconsideration, hearing, and MAC review are'

(1) The parties to the initial determination in accordance with paragraph (a) of this section;

(2) A Medicaid State Agency in accordance with § 405.908; and

(3) An assignee who has accepted an assignment of appeal rights from the beneficiary according to § 405.912.

(4) A non-participating physician or other supplier who has accepted assignment in accordance with § 424.55 of this chapter.

(5) A non-participating physician not billing on an assigned basis who, in accordance with section 1842(l) of the Act, is liable to refund monies collected for services furnished to the beneficiary because those services were denied on the basis of section 1862(a)(1) of the Act; and

(6) A non-participating supplier not billing on an assigned basis who, in accordance with sections 1834(a)(18) and 1834(j)(4) of the Act, is liable to refund monies collected for items furnished to the beneficiary.

§ 405.908 Medicaid State Agencies.

When a beneficiary is dually eligible for Medicare and Medicaid, the Medicaid State Agency may file a request for an appeal on behalf of the beneficiary. A Medicaid State Agency will only be considered a party when it files a timely redetermination request on behalf of a beneficiary in accordance with 42 CFR parts 940 through 958. If a Medicaid State Agency files a redetermination, it retains party status at the QIC, ALJ, MAC, and judicial review levels.

§ 405.910 Appointed representatives.

The requirements of this section apply for purposes of all administrative actions described in this subpart, subsequent to an initial determination.

(a) *Representative defined.* A representative means an individual authorized by a party, or under State law, to act on the party's behalf in dealing with any of the levels of the appeals process under this subpart. Representatives do not have party status and may only take action on behalf of the individual or entity they represent.

(b) *Persons authorized by a party.* A party to an initial determination, redetermination, reconsideration, or hearing may appoint another individual to act on the party's behalf in exercising the right to appeal. A representative may be any individual, or individual associated with an entity, that is competent to act on behalf of the party.

(c) *Persons unauthorized.* A party may not name as a representative an individual or entity that has been disqualified, suspended, or otherwise prohibited by law, from participating in the Medicare program.

(d) *Making out a valid appointment.* For purposes of this subpart, an appointment of representation must—

(1) Be in writing and signed by both the party and individual agreeing to the representation.

(2) Provide a statement authorizing the representative to act on behalf of the party;

(3) Include a written explanation of the purpose and scope of the representation;

(4) Contain both the party's and representative's name, phone number, and address;

(5) Identify the beneficiary's health insurance claim number;

(6) Include the representative's professional status or relationship to the party; and

(7) Be filed with the entity processing the party's appeal.

(e) *Duration of appointment.* (1) Unless revoked, an appointment is valid for the life of an individual's appeal of an initial determination.

(2) For purposes of initiation of appeals of other initial determinations, the authorization will be considered valid for 1 year from its original effectuation.

(f) *Representative fees.*

(1) *Attorneys.* No award of attorney fees may be made against the Medicare trust fund.

(2) *Providers and suppliers.* A provider or supplier that furnished items or services to a beneficiary may represent that beneficiary in an appeal under this subpart. That provider or supplier may not charge the beneficiary any fee associated with the representation. In addition, where a provider or supplier furnishes services or items to a beneficiary, the provider or supplier may not represent the beneficiary with respect to the issue described in section 1879(a)(2) of the Act (that is, whether the beneficiary or the provider or supplier, or both, knew or could reasonably have been expected to know that payment would not be made for the items or services), unless the provider or supplier waives the right to payment from the beneficiary with respect to' the services or items involved in the appeal.

(g) *Responsibilities of a representative.* (1) A representative has an affirmative duty to—

(i) Inform the party of how the duty is served;

(ii) Inform the party of the status of the appeal and the results of actions taken on behalf of the party, including, but not limited to, notification of appeal determinations, decisions, and further appeal rights;

(iii) Disclose any beneficiary financial risk and liability of a non-assigned claim;

(iv) Not act contrary to the interest of the party; and

(v) Comply with all CMS regulations, rules, and instructions.

(2) An appeal request filed by a provider or supplier acting as a representative of a beneficiary will also include a statement signed by the provider or supplier stating that no financial liability will be imposed on the beneficiary in connection with that representation.

(h) *Authority of a representative.* A representative may, on behalf of the party—

(1) Obtain information about the claim to the same extent as the party;

(2) Submit evidence;

(3) Make statements about facts and law; and

(4) Make any request, or give, or receive, any notice about the appeal proceedings.

(i) *Notice or request to a representative.* A contractor, QIC, ALJ, or the MAC will send the representative—

(i) Notice and a copy of any administrative action, determination, or decision; and

(ii) Requests for information or evidence.

(j) *Effect of notice or request to a representative.* A notice or request sent to the representative will have the same force and effect as if it had been sent to the party.

(k) *Representative payee.* An appointed representative may not serve as a representative payee unless the appointed representative has satisfied the requirements under title II of the Act.

(l) *Information available to the representative.* The appointed representative may obtain any and all information that is available to the party, applicable to the claim at issue. The representative may not disclose to any one unaffiliated with the appeals process any information about a claim without the party's written consent, except as may be required by law, ordered by a court, or other such authority.

(m) *Delegation of appointment by representative.* An appointed representative may not designate another individual to act as the representative of the party unless—

(1) The representative provides written notice to the party of the representative's intent to delegate to another individual. The notice must include—

(i) The name of the designee; and

(ii) The designee's acceptance to be obligated and comply with the requirements of authorized representation.

(2) The beneficiary accepts the designation as evidenced by a signed, written statement.

(n) *Revoking the appointment of representative.* (1) A party may revoke an appointment of representative without cause at any time.

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(2) Revocation is not effective until the entity processing the appeal receives a signed, written statement from the party.

(3) The death of the party will terminate the authority of the representative. A party's death does not terminate an appeal that is in progress where another individual or entity may be entitled to receive or obligated to make payment for Medicare claims.

§ 405.912 Assignment of appeal rights.

(a) *Assignment of appeal rights defined.* Assignment of appeal rights means the transfer by a beneficiary of his or her right to appeal an initial determination to a provider or supplier.

(b) *Who may be an assignee.* A provider of service, physician, or other supplier who is not considered a party to the initial determination as defined in § 405.906 and who furnished an item or service to a beneficiary may seek assignment from the beneficiary for that item or service.

(c) *Who may not be an assignee.* An individual or entity who is not a provider of service, physician, or other supplier may not be an assignee. A provider of service, physician, or other supplier who furnishes an item or service to a beneficiary may not seek assignment for that item or service when considered a party to the initial determination as defined in § 405.906.

(d) *Requirements for a valid assignment of appeal right.* The assignment of appeal rights must—

(1) Be executed using a CMS standard form;

(2) Be in writing and signed by both the beneficiary assigning his or her appeal rights and by the assignee;

(3) Indicate the item or service for which the assignment of appeal rights is authorized;

(4) Contain a waiver of the assignee's right to collect payment from the assignor; and

(5) Be submitted at the same time the request for redetermination or appeal is filed.

(e) *Waiver of right to collect payment.* (1) The assignee must waive the right to collect payment for the item or service for which the assignment is made. If the assignment is revoked under paragraph (h)(2) of this section, then the waiver of the right to collect payment remains valid.

(2) The assignee is not prohibited from recovering payment associated with coinsurance or deductibles or when an advance beneficiary notice has been properly executed.

(f) *Duration of a valid assignment of appeal rights.* The assignment of appeal rights is valid for all administrative and judicial review associated with the item or service as indicated on the standard CMS form, unless the assignment is revoked.

(g) *Rights of the assignee.* When a valid assignment of appeal rights is executed, the assignor transfers all appeal rights to the assignee. These include, but are not limited to—

(1) Obtaining information about the claim to the same extent as the assignor;

(2) Submitting evidence;

(3) Making statements about facts or law; and

(4) Making any request, or giving, or receiving any notice about appeal proceedings.

(h) *Revocation of assignment.* When an assignment of appeal rights is revoked, the rights to appeal revert to the beneficiary. An assignment of appeal rights may be revoked in any of the following ways:

(1) In writing by the assignor.

(2) By abandonment if the assignee does not file an appeal of an unfavorable decision.

(3) By act or omission that is determined by an adjudicator to be contrary to the financial interests of the beneficiary.

Initial Determinations

§ 405.920 Initial determinations and notice of initial determination.

After a claim is filed with the appropriate contractor in the manner and form described in part 424, subpart C of this chapter, the contractor—

(a) Determines whether the items and services furnished are covered under title XVIII of the Act;

(b) Determines any amounts payable and makes payment accordingly; and

(c) Notifies the parties to the initial determination of the determination.

(1) The notice must be in writing and sent to the last known address of all parties.

(2) The notice will state the basis for the determination and inform the parties of their right to a redetermination if they are dissatisfied with the outcome of the initial determination.

§ 405.922 Time frame for processing initial determinations.

The contractor will issue initial determinations on clean claims within 30 days of receipt if they are submitted by or on behalf of the individual who received the items and/or services; otherwise, interest must be paid at the rate used for purposes of 31 U.S.C. 3902(a) (relating to interest penalties for failure to make prompt payments) for the period beginning on the day after the required payment date and ending on the date payment is made. The contractor will issue initial determinations on all other claims within 45 days of receipt.

§ 405.924 Actions that are initial determinations.

(a) *Applications and entitlement of individuals.* The SSA makes an initial determination with respect to an individual on the following:

(1) A determination with respect to entitlement to hospital insurance or supplementary medical insurance under Medicare.

(2) A disallowance of an individual's application for entitlement to hospital or supplementary medical insurance, if the individual fails to submit evidence requested by SSA to support the application. (SSA will specify in the initial determination the conditions of entitlement that the applicant failed to establish by not submitting the requested evidence).

(3) A denial of a request for withdrawal of an application for hospital or supplementary medical insurance.

(4) A denial of a request for cancellation of a "request for withdrawal."

(5) A determination as to whether an individual, previously determined to be entitled to hospital or supplementary medical insurance, is no longer entitled to those benefits, including a determination based on nonpayment of premiums.

(b) *Claims made by beneficiaries by or on behalf of beneficiaries.* The contractor makes an initial determination regarding claims for benefits under Medicare Part A and Part B. The contractor does not make an initial determination on requests for payment that do not meet the requirements of a claim. An initial determination for purposes of this subpart includes, but is not limited to, determinations with respect to—

(1) Whether the items and/or services furnished are covered under title XVIII of the Act;

(2) In the case of determinations on the basis of section 1879(b) or (c) of the Act, whether the beneficiary, provider, physician, or supplier who accepts assignment under § 424.55 of this chapter knew, or could reasonably have been expected to know at the time the services were furnished, that the services were not covered;

(3) In the case of determinations on the basis of section 1842(l)(1) of the Act, whether the beneficiary or physician knew, or could reasonably have been expected to know at the time the services were furnished, that the services were not covered;

(4) Whether the deductible has been met;

(5) The computation of the coinsurance amount;

(6) The number of days used for inpatient hospital, psychiatric hospital, or post-hospital extended care;

(7) The number of home health visits used;

(8) Periods of hospice care used;

(9) Requirements for certification and plan of treatment for physician services, durable medical equipment, therapies, inpatient hospitalization, skilled nursing care, home health, hospice, and partial hospitalization services;

(10) The beginning and ending of a spell of illness, including a determination made under the presumptions established under § 409.60(c)(2) of this chapter, and as specified in § 409.60(c)(4) of this chapter;

(11) Determinations regarding the medical necessity of services, or the reasonableness or appropriateness of placement of an individual at an acute level of patient care made by the Qualified Improvement Organization (QIO) on behalf of the contractor in accordance with § 476.86(c)(1) of this chapter;

(12) Determinations regarding whether a claim was timely filed;

(13) Any other issues having a present or potential effect on the amount of benefits to be paid under Part A or Part B of Medicare, including a determination as to whether there has been an overpayment or underpayment of benefits paid under Part A or Part B, and if so, the amount thereof;

(14) Whether a waiver of adjustment or recovery under sections 1870(b) and (c) of the Act is appropriate when an overpayment of hospital insurance benefits or supplementary medical insurance benefits (including a payment under section 1814(e) of the Act) has been made with respect to an individual.

(15) Determinations that a particular claim is not payable by Medicare based upon the application of the Medicare Secondary Payer provisions of section 1862(b) of the Act.

(16) Determinations under the Medicare Secondary Payer provisions of sections 1862(b) of the Act that Medicare has a recovery claim against a provider, physician, supplier, or beneficiary with respect to services or items that have already been paid by the Medicare program except when the recovery claim against the provider, physician, or supplier is based upon its failure to file a proper claim as defined in part 411 of this chapter.

(c) *Determinations by QIOs.* An initial determination for purposes of this subpart also includes a determination made by a QIO that:

(1) A provider can terminate services provided to an individual when a physician certified that failure to continue the provision of those services is likely to place the individual's health at significant risk; or

(2) A provider can discharge an individual from the provider of services.

§ 405.926 Actions that are not initial determinations.

Actions that are not initial determinations and are not appealable under this subpart include, but are not limited to—

(a) Any determination for which CMS has sole responsibility, for example, whether an entity meets the conditions for participation in the program, whether an independent laboratory meets the conditions for coverage of services;

(b) The coinsurance amounts prescribed by regulation for outpatient services under the prospective payment system;

(c) Any issue regarding amount of program reimbursement or cost report settlement process under Part A of Medicare;

(d) Whether an individual's appeal meets the qualifications for an expedited appeal provided in § 405.990;

(e) Any determination regarding whether a Medicare overpayment claim should be compromised, or collection action terminated or suspended under the Federal Claims Collection Act of 1966;

(f) Determinations regarding the transfer or discharge of residents of skilled nursing facilities in accordance with § 483.12 of this chapter;

(g) Determinations regarding the readmission screening and annual resident review processes required by part 483, subparts C and E of this chapter;

(h) Determinations with respect to a waiver of Medicare Secondary Payer recovery under section 1862(b) of the Act, because that recovery would defeat the purposes of the Act, or would be against equity and good conscience under section 1870(c) of the Act.

(i) Determinations with respect to a waiver of interest;

(j) Determinations with respect to a finding regarding Medicare Secondary Payer applicability other than with respect to a specific claim when the initial determination on that claim for beneficiary or Medicare's recovery claim is being appealed;

(k) Determinations under the Medicare Secondary Payer provisions of section 1862(b) of the Act that Medicare has a recovery claim against a third party payer with respect to services or items that have already been paid by the Medicare program; and

(l) A contractor's, QIC's, ALJ's, or MAC's decision not to reopen an initial determination, redetermination, reconsideration hearing decision, or review decision.

(m) Determinations that CMS or its contractors may participate in or act as parties in an ALJ hearing or MAC review.

§ 405.928 Effect of the initial determination.

(a) An initial determination under § 405.924(a) involving applications and entitlement of individuals to supplementary medical insurance under Part B or hospital insurance under Part A will be binding upon the individual (or the representative of the estate of a deceased beneficiary) unless it is revised or reconsidered in accordance with 20 CFR 404.907.

(b) The initial determination under § 405.924(b) will be binding upon all parties to the initial determination unless—

(1) A redetermination is completed in accordance with § 405.940 through § 405.958; or

(2) The initial determination is revised as a result of a reopening in accordance with § 405.980.

Redeterminations

§ 405.940 Right to a redetermination.

A person or entity that is a party to an initial determination made by a contractor as described under § 405.920 through § 405.928 and is dissatisfied with that determination may request a redetermination by a contractor in accordance with § 405.940 through § 405.958, regardless of the amount in controversy.

§ 405.942 Time frame for filing a request for a redetermination.

(a) *Time frame for filing a request.* Except as provided in paragraph (b) of this section, a party to an initial determination must file a request for redetermination that meets the requirements of § 405.944 within 120 calendar days from the date the party receives the notice of the initial determination.

(1) For the purposes of this section, the date of receipt of the initial determination will be presumed to be 5 days after the date of the notice of initial determination, unless there is evidence to the contrary.

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(2) The request is considered as filed on the date it is received by the contractor, SSA office, or CMS.

(b) *Extending the time frame for filing a request: General rule.* If the 120-day period in which to file a request for a redetermination has expired and a party shows good cause, the contractor may extend the time frame for filing a request for redetermination.

(1) *How to request an extension.* A party to the initial determination may file a request for an extension of time for filing the redetermination with the contractor. The request for redetermination extension must—

(i) Be in writing;

(ii) State why the request for redetermination was not filed within the required time frame; and

(iii) Meet the requirements of § 405.944.

(2) *How the contractor determines whether good cause exists.* In determining whether a party has good cause for missing a deadline to request a redetermination or reconsideration the contractor considers—

(i) What circumstances kept the party from making the request on time;

(ii) Whether the contractor's action(s) misled the party; and

(iii) Whether the party had any physical, mental, educational, or linguistic limitations, including any lack of facility with the English language, that prevented the party from filing a timely request or from understanding or knowing about the need to file a timely request for redetermination.

(3) *Examples of good cause.* Examples of circumstances when good cause may be found to exist include, but are not limited to, the following situations:

(i) The party was prevented by serious illness from contacting the contractor in person, in writing, or through a friend, relative, or other person; or

(ii) The party had a death or serious illness in his or her immediate family; or

(iii) Important records of the party were destroyed or damaged by fire or other accidental cause; or

(iv) The contractor gave the party incorrect or incomplete information about when and how to request a redetermination; or

(v) The party did not receive notice of the determination or decision; or

(vi) The party sent the request to another Government agency in good faith within the time limit, and the request did not reach the appropriate contractor until after the time period to file a redetermination expired.

§ 405.944 Place and method of filing a request for a redetermination.

(a) *Filing location.* The request for redetermination must be filed with the contractor indicated on the notice of initial determination. Appellants may also file requests for redetermination with SSA offices or CMS.

(b) *Content of redetermination request.* The request for redetermination must be in writing on a standard CMS form. A written request that is not made on a standard CMS form will be accepted if it contains the same required elements as follows:

(1) The beneficiary's name;

(2) The health insurance claim number;

(3) The specific service(s) and/or item(s) for which the redetermination is being requested and the specific date(s) of the service; and

(4) The name and signature of the party or the appointed representative of the party.

(c) *Requests for redetermination by more than one party.* If more than one party timely files a request for redetermination on the same claim, the contractor will consolidate the separate requests into one proceeding and issue one redetermination decision.

§ 405.946 Evidence to be submitted with the redetermination request.

(a) *Evidence submitted with the request.* When filing the request for redetermination, a party must explain why it disagrees with the contractor's determination and include any evidence that the party believes should be considered by the contractor in making its redetermination.

(b) *Evidence submitted after the request.* When a party submits additional evidence after filing the request for redetermination, the contractor's 30-day decision-making time frame will automatically be extended for 14 calendar days.

§ 405.948 Conduct of a redetermination.

A redetermination consists of an independent review of an initial determination. In conducting a redetermination, the contractor will review the evidence and findings upon which the initial determination was based, and any additional evidence the parties submit or the contractor obtains on its own. A redetermination must be made by an individual who was not involved in making the initial determination.

§ 405.950 Time frame for making a redetermination decision.

(a) *General rule.* The contractor will mail, or otherwise transmit, written notice of the redetermination decision or dismissal to the parties at their last known addresses within 30 calendar days of the date the contractor receives a timely filed request for redetermination.

(b) Exceptions. (1) If a timely request for redetermination is filed with an entity other than the contractor, then the 30-day decision-making time frame begins on the date that request is received by the contractor.

(2) If a contractor grants an appellant's request for an extension of the 120-day filing deadline made in accordance with § 405.942(b), the 30-day decision-making time frame begins on the date the contractor receives the late-filed request for redetermination, or the extension, whichever is later

(3) If a contractor receives from multiple parties timely requests for redetermination of a claim determination, consistent with § 405.944(c), the contractor must issue a redetermination decision or dismissal within 30 days of the latest filed request.

(4) If a party submits additional evidence after the request for redetermination has been filed, the contractor's 30-day decision-making time frame will be extended for 14 days, consistent with § 405.946(b).

§ 405.952 Withdrawal or dismissal of a request for a redetermination.

(a) *Withdrawing a request.* A party that files a request for redetermination may withdraw his or her request by filing a written and signed request for withdrawal. The request must be filed with the contractor, within 14 calendar days of the filing of the redetermination request.

(b) *Dismissing a request.* A contractor will dismiss a redetermination request, either entirely or as to any stated issue, under any of the following circumstances:

(1) When the person or entity requesting a redetermination is not a proper party under § 405.906 or does not otherwise have a right to a redetermination under section 1869(a) of the Act;

(2) When the contractor determines the party failed to make out a valid request for redetermination that substantially complies with § 405.944;

(3) When the party fails to file the redetermination request within the proper filing timeframe in accordance with § 405.942;

(4) When the party that filed the request for redetermination dies and there is no information in the record to determine whether there is another party that may be prejudiced by the determination;

(5) When the party filing for the redetermination submits a timely written request of withdrawal with the contractor; or

(6) When the contractor has not issued an initial determination on the claim for which a redetermination is sought.

(c) *Notice of dismissal.* A contractor will mail or otherwise transmit a written notice of the dismissal of the redetermination request to the parties at their last known addresses.

(d) *Vacating a dismissal.* If good and sufficient cause is established, a contractor may vacate a dismissal of a request for redetermination within 6 months from the date of the notice of dismissal.

(e) *Effect of dismissal.* The dismissal of a request for redetermination is binding, unless it is appealed to a QIC under § 405.974(b) or vacated under paragraph (d) of this section.

§ 405.954 Redetermination decision.

Upon the basis of the evidence of record, the contractor will make a decision on the claim(s), and/or issue(s), in dispute and, issue a redetermination decision affirming or reversing, in whole or in part, the initial determination in question.

§ 405.956 Notice of a redetermination decision.

(a) *Notification to parties.* Written notice of the redetermination decision must be mailed or otherwise transmitted to all parties at their last known addresses in accordance with the timeframes established in § 405.950.

(b) *Content of the notice.* For decisions that are affirmations, in whole or in part, of the initial determination, the redetermination must be in writing and contain—

(1) A clear statement indicating the extent to which the redetermination decision is favorable or unfavorable;

(2) A summary of the facts;

(3) An explanation of how pertinent laws, regulations, coverage rules, and CMS policies apply to the facts of the case;

(4) A summary of the rationale for the redetermination decision in clear, understandable language;

(5) Notification to the parties of their right to a reconsideration and a description of the procedures that a party must follow in order to request a reconsideration, including the time frame within which a reconsideration must be requested;

(6) A statement of any specific missing documentation that must be submitted with a request for a reconsideration, if applicable;

(7) A statement that if the specific documentation indicated under paragraph (b)(6) of this section is not submitted with the request for a reconsideration, this evidence will not be considered at an ALJ hearing, unless the appellant demonstrates good cause as to why that evidence was not provided previously; and

(8) Any other requirements specified by CMS.

§ 405.958 Effect of a redetermination decision.

Once a redetermination decision is issued, it becomes part of the initial determination. The redetermination decision is final and binding upon all parties unless—

(a) A reconsideration decision is issued under a request for reconsideration in accordance with § 405.962 and § 405.964; or

(b) The redetermination decision is revised as a result of a reopening in accordance with § 405.980.

Reconsiderations

§ 405.960 Right to a reconsideration.

A person or entity that is a party to a redetermination made by a contractor as described under § 405.940 through § 405.958 and is dissatisfied with that determination may request a reconsideration by a QIC in accordance with § 405.962 through § 405.966, regardless of the amount in controversy.

§ 405.962 Time frame for filing a request for a reconsideration.

(a) *Time frame for filing a request.* Except as provided in paragraph (b) of this section, a party to a redetermination must file a request for a reconsideration that meets the requirements of § 405.964 within 180 calendar days from the date the party receives the notice of the redetermination decision.

(1) For the purposes of this section, the date of receipt of the notice of the redetermination decision will be presumed to be 5 days after the date of the notice of redetermination, unless there is evidence to the contrary.

(2) The request is considered as filed on the date it is received by the QIC, or by an SSA office, or CMS.

(b) *Extending the time for filing a request.—General rule.* If the 180-day period in which to file a request for a reconsideration has expired and a party shows good cause, the QIC may extend the time frame for filing a request for reconsideration.

(1) *How to request an extension.* A party to the redetermination may file a request for an extension of the time for filing the reconsideration with the QIC. The request for reconsideration and request for extension must—

(i) Be in writing;

(ii) State why the request for reconsideration was not filed within the required time frame; and

(iii) Meet the requirements of § 405.964.

(2) *How the QIC determines whether good cause exists.* In determining whether a party has good cause for missing a deadline to request a reconsideration, the QIC will apply the good cause provisions contained in § 405.942(b)(2) and (b)(3).

§ 405.964 Place and method of filing a request for a reconsideration.

(a) *Filing location.* The request for reconsideration must be filed with the QIC indicated on the notice of redetermination. Appellants may also file requests for reconsideration with SSA offices or CMS.

(b) *Content of reconsideration request.* The request for reconsideration must be in writing on a standard CMS form. A request that is not made on a standard CMS form will be accepted if it contains the same required elements, as follows:

(1) The beneficiary's name;

(2) Health insurance claim number;

(3) The specific service(s) and/or item(s) for which the reconsideration is being requested and the specific date(s) of service; and

(4) The name and signature of the party or the appointed representative of the party.

(c) *Requests for reconsideration by more than one party.* If more than one party timely files a request for reconsideration on the same claim, the QIC will consolidate the separate requests into one proceeding and issue one reconsideration decision.

§ 405.966 Evidence to be submitted with the reconsideration request.

(a) *Evidence submitted with the request.* When filing a request for reconsideration, a party should present evidence and allegations of fact or law related to the issue in dispute and explain why it disagrees with the redetermination decision.

(1) This evidence must include any missing documentation identified in the notice of redetermination, consistent with § 405.956(b)(6).

(2) Absent good cause, failure to submit documentation requested in the notice of the redetermination precludes consideration of that evidence at the subsequent appeal level.

(b) *Evidence submitted after the request.* When a party submits additional evidence after filing the

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request for reconsideration, the QIC's 30-day decision-making time frame will automatically be extended for 14 calendar days.

§ 405.968 Conduct of a reconsideration.

(a) *General rule.* A reconsideration consists of an independent, on-the-record review of an initial determination, including the redetermination. In conducting a reconsideration, the QIC will review the evidence and findings upon which the initial determination, including the redetermination, was based, and any additional evidence the parties submit, or the QIC obtains on its own. If the initial determination involves a finding on whether an item or service is reasonable and necessary for the diagnosis or treatment of illness or injury (under section 1862(a)(1)(A) of the Act), a QIC's reconsideration must be based on the clinical experience, and medical, technical, and scientific evidence of record to the extent applicable.

(b) *Authority of the QIC.* (1) National coverage determinations (NCDs) will bind the QIC with respect to issuing reconsiderations.

(2) Local coverage determinations (LCDs) and local medical review policies (LMRPs) will not bind the QIC with respect to issuing reconsiderations.

(3) A QIC must follow LCDs, LMRPs, and CMS program guidance, such as program memoranda and manual instructions unless the appellant questions the policy and provides a reason why the policy should not be followed that the QIC finds persuasive. A QIC's decision must explain why it agrees or disagrees with the appellant's rationale for not following the policy in question.

(c) *Qualifications of the QIC's reviewers.* (1) Members of a QIC's panel who conduct reconsiderations must have sufficient training and expertise in medical science and/or legal matters.

(2) When a redetermination is made with respect to whether an item or service is reasonable and necessary for the diagnosis or treatment of an illness or injury (section 1862(a)(1)(A) of the Act), the QIC designates a panel of physicians or other appropriate health care professionals to consider the facts and circumstances of the redetermination.

(d) *Disqualification of a QIC reviewer.* No physician or health care professional employed by a QIC may review determinations regarding—

(1) Health care services furnished to a patient if the physician or health care professional was directly responsible for furnishing those services; or

(2) Health care services provided in or by an institution, organization, or agency, if the physician or health care professional or any member of the physician's family or health care professional's family has, directly, or indirectly, a significant financial interest in that institution, organization, or agency. Family means the spouse (other than a spouse who is legally separated from the physician or health care professional under a decree of divorce or separate maintenance), children (including stepchildren and legally adopted children), grandchildren, parents, and grandparents of the physician or health care professional.

§ 405.970 Time frame for making a reconsideration decision.

(a) *General rule.* Within 30 calendar days of the date the QIC receives a timely filed request for reconsideration, the QIC will mail to the parties at their last know addresses, or otherwise transmit, written notice of—

(1) The reconsideration decision;

(2) Its inability to complete its review within 30 days in accordance with paragraphs (c) through (e) of this section; or

(3) Dismissal.

(b) *Exceptions.* (1) If a timely request for reconsideration is filed with an entity other than the QIC, then the 30-day decision-making time frame begins on the date the request is received by the QIC.

(2) If a QIC grants an appellant's request for an extension of the 180-day filing deadline made in accordance with § 405.962(b), the QIC's 30-day decision-making time frame begins on the date the QIC receives the request for an extension.

(3) If a QIC receives timely requests from multiple parties for a reconsideration, consistent with § 405.964(c), the QIC must issue a reconsideration decision, dismissal, or notice that it cannot complete its review within 30 days of the latest filed request.

(4) If a party submits additional evidence after the request for reconsideration has been filed, the QIC's 30-day decision-making time frame will be extended for 14 days, consistent with § 405.966(b).

(c) *Responsibilities of the QIC.* (1) Within 30 days of receiving a request for a reconsideration, or any additional time provided for under paragraph (b) of this section, a QIC must take one of the following actions:

(i) Notify all parties of the QIC's reconsideration decision, consistent with § 405.976.

(ii) Notify all parties that it cannot complete the reconsideration within 30 days and offer the appellant the opportunity to escalate the appeal to an ALJ. The QIC continues to process the reconsideration unless it receives a written request from the appellant to escalate the case to an ALJ.

(iii) Notify all parties that it has dismissed the request for reconsideration.

(d) *Responsibilities of the appellant.* If an appellant wishes to exercise the option of escalating the case to an ALJ, the appellant must notify the QIC in writing.

(e) *Actions following appellant's notice.* (1) If the appellant fails to notify the QIC, or notifies the QIC that the appellant does not choose to escalate the case, the QIC completes its reconsideration and notifies the appellant of its action consistent with § 405.976.

(2) If the appellant notifies the QIC that the appellant wishes to escalate the case, the QIC must take one of the following actions within 5 days of receipt of the request:

(i) Complete its reconsideration and notify all parties of its decision consistent with § 405.976.

(ii) Acknowledge the escalation request in writing to all parties and forward the case file to the ALJ.

§ 405.972 Withdrawal or dismissal of a request for a reconsideration.

(a) *Withdrawing a request.* A party that files a request for reconsideration may withdraw its request by filing a written and signed request for withdrawal. The request must be filed with the QIC within 14 calendar days of the filing of the reconsideration request.

(b) *Dismissing a request.* A QIC will dismiss a reconsideration request, either entirely or as to any stated issue, under any of the following circumstances:

(1) When the person or entity requesting a reconsideration is not a proper party under § 405.906 or does not otherwise have a right to a reconsideration under section 1869(b) of the Act;

(2) When the QIC determines that the party fails to make out a valid request for reconsideration that substantially complies with § 405.964(a);

(3) When the party fails to file the reconsideration request within the proper filing time frame in accordance with § 405.970(a);

(4) When the party that filed the request for reconsideration request dies and there is no information in the record to determine whether there is another party that may be prejudiced by the reconsideration;

(5) When the party filing for the reconsideration submits a written request of withdrawal to the QIC; or

(6) When the contractor has not issued a redetermination decision on the claim for which a reconsideration is sought.

(c) *Notice of dismissal.* A contractor will mail or otherwise transmit written notice of the dismissal of the reconsideration request to the parties at their last known addresses.

(d) *Vacating a dismissal.* If good and sufficient cause is established, a QIC may vacate a dismissal of a request for reconsideration within 6 months of the date of the notice of dismissal.

(e) *Effect of dismissal.* The dismissal of a request for reconsideration is binding, unless it is appealed to an ALJ under § 405.1004 or vacated under paragraph (d) of this section.

§ 405.974 Reconsideration decision.

(a) *Reconsideration of a contractor determination.* Upon the basis of the evidence of record, the QIC shall make a decision on the claims and/or issues in dispute and issue a reconsideration decision affirming or reversing, in whole or in part, the initial determination in question.

(b) *Reconsideration of contractor's dismissal of a redetermination request.* (1) A party to a contractor's dismissal of a request for redetermination has a right to have the dismissal reviewed by a QIC, if the party files a written request for review of the dismissal with the QIC within 60 days after receipt of the contractor's notice of dismissal.

(2) If the QIC determines that the contractor's dismissal was in error, it will remand the case to the contractor for a redetermination decision.

(3) A QIC's decision with respect to a contractor's dismissal of a redetermination request is final and not appealable to an ALJ.

§ 405.976 Notice of a reconsideration decision.

(a) *Notification to parties.* Written notice of the reconsideration decision must be mailed or otherwise transmitted to all parties at their last known addresses, in accordance with the time frames established in § 405.970(a). The QIC also must promptly notify the entity responsible for payment of claims under Part A or Part B of its reconsideration decision.

(b) *Content of the notice.* The reconsideration decision must be in writing and contain—

(1) A clear statement indicating whether the reconsideration decision is favorable or unfavorable;

(2) A summary of the facts;

(3) An explanation of how pertinent laws, regulations, coverage rules, and CMS policies, apply to the facts of the case, including the rationale for any conflict with an LCD, LMRP, or CMS program guidance;

(4) In the case of a determination on whether an item or service is reasonable or necessary for the diagnosis or treatment of an illness or injury, an explanation of the medical and scientific rationale for the decision;

(5) A clear statement of the QIC's rationale for its reconsideration decision. If the notice of redetermination indicates that specific documentation be submitted with the reconsideration request, and this documentation was not submitted with the request for reconsideration the statement must—

(i) Indicate how the missing documentation affected the reconsideration decision; and

(ii) Specify that consistent with § 405.956(b)(7), if the documentation requested in the notice of redetermination decision was not submitted with the reconsideration request, this evidence will not be considered at an ALJ hearing, or made part of the administrative record, unless the appellant demonstrates good cause as to why the documentation was not provided with the reconsideration request;

(6) Advice to the parties of their right to an ALJ hearing, including the applicable amount in controversy requirement and aggregation provision;

(7) If appropriate, advice as to the requirements for use of the expedited appeals process set forth in § 405.990;

(8) A description of the procedures that a party must follow in order to obtain an ALJ hearing or an expedited appeal, including the time frames under which a request for an ALJ hearing or expedited appeal must be filed; and

(9) Any other requirements specified by CMS.

§ 405.978 Effect of a reconsideration decision.

A reconsidered determination is final and binding on all parties, unless—

(a) An ALJ decision is issued under either a request for an ALJ hearing made in accordance with § 405.1014 or a request for an expedited appeal under § 405.990; or

(b) The reconsideration decision is revised as a result of a reopening in accordance with § 405.980.

Reopenings

§ 405.980 Reopenings of initial determinations, redeterminations, and reconsiderations, hearings and reviews.

(a) *General rules.* (1) A reopening is a remedial action taken to change a final determination or decision even though the determination or decision may have been correct based on the evidence of record. That action may be taken by—

(i) A contractor to revise the initial determination or redetermination;

(ii) A QIC to revise the reconsideration;

(iii) An ALJ to revise the hearing decision; or

(iv) The MAC to revise the review decision.

(2) A reopening of an initial determination or redetermination may be granted when the following conditions are met:

(i) When good cause is shown as defined in § 405.896; and

(ii) If the time limit to file an appeal has expired; or

(iii) If the issue does not involve a clerical error and appeal rights have been exhausted.

(3) If a contractor issues a denial because it did not receive requested documentation during medical review and the party subsequently requests a redetermination, the contractor must process the request as a reopening.

(4) Notwithstanding paragraph (a)(5) of this section, a contractor must process clerical errors as reopenings, instead of redeterminations as defined in § 405.940. For purposes of this section, "clerical error" includes human and mechanical errors on the part of the party or the contractor such as—

(i) Mathematical or computational mistakes; or

(ii) Inaccurate data entry.

(5) When a party has filed a request for an appeal of an initial determination, redetermination, reconsideration, or hearing, the contractor, QIC, or ALJ no longer has jurisdiction over the claim or appeal and may not reopen it.

(6) The contractor's, QIC's, ALJ's, or MAC's decision on whether to reopen is final and not subject to appeal.

(7) A Medicare secondary payer recovery claim based upon a provider's or supplier's failure to demonstrate that it filed a proper claim as defined in part 411 of this chapter is a reopening.

(b) *Time frames and requirements for reopening initial determinations and redeterminations initiated by a contractor.* A contractor may reopen and revise its initial determination or redetermination decision on its own motion—

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(1) Within 1 year from the date of the initial determination or redetermination for any reason.

(2) Within 4 years from the date of its initial determination or redetermination for good cause as defined in § 405.986.

(3) Within 5 years from the date of the initial determination or redetermination on the claim if—

(i) The contractor discovers a pattern of billing errors; or

(ii) The contractor identifies an overpayment extrapolated from a statistical sample.

(4) At any time if there exists reliable evidence that an initial determination was procured by fraud or similar fault. For the purposes of this section:

(i) "Reliable evidence" means evidence that is relevant, credible, and material.

(ii) "Similar fault" means to obtain, retain, convert, seek, or receive Medicare funds to which a person knows or should reasonably be expected to know that he or she or another for whose benefit Medicare funds are obtained, retained, converted, sought, or received is not legally entitled. This includes, but is not limited to, a failure to demonstrate that it filed a proper claim as defined in part 411 of this chapter.

(c) *Time frame and requirements for reopening initial determinations and redeterminations requested by a party.* (1) A party may request that a contractor reopen its initial determination or redetermination within 1 year from the date of the initial determination or redetermination for any reason.

(2) A party may request that a contractor reopen its initial determination or redetermination within 4 years from the date of the initial determination or redetermination for good cause in accordance with § 405.986.

(d) *Time frame and requirements for reopening reconsiderations, hearing decisions and reviews initiated by a QIC, ALJ, or the MAC.* (1) A QIC may reopen its reconsideration decision on its own motion within 180 days from the date of the reconsideration decision for good cause in accordance with § 405.986.

(2) An ALJ may reopen its reconsideration decision on its own motion within 180 days from the date of the reconsideration decision for good cause in accordance with § 405.986.

(3) The MAC may reopen its review decision on its own motion within 180 days from the date of the review decision for good cause in accordance with § 405.986.

(e) *Time frames and requirements for reopening reconsiderations, hearing decisions, and reviews requested by a party.* (1) A party to a reconsideration may request that a QIC reopen its reconsideration within 180 days from the date of the reconsideration decision for good cause in accordance with § 405.986.

(2) A party to a hearing may request that an ALJ reopen its decision within 180 days from the date of the hearing decision for good cause in accordance with § 405.986.

(3) A party to a review may request that the MAC reopen its decision within 180 days from the date of the review decision for good cause in accordance with § 405.986.

§ 405.982 Notice of a revised determination or decision.

When any determination or decision is reopened and revised as provided in § 405.980, the contractor, QIC, ALJ, or the MAC must mail its revised determination or decision to the parties to that determination or decision at their last known address. The revised determination or decision must state the rationale and basis for the revision and any right to appeal.

§ 405.984 Effect of a revised determination or decision.

(a) *Initial determinations.* The revision of an initial determination will be binding upon all parties unless a party files a written request for a redetermination in accordance with § 405.942 through § 405.946.

(b) *Redeterminations.* The revision of a redetermination will be binding upon all parties unless a party files a written request for a QIC reconsideration in accordance with § 405.962 through § 405.966.

(c) *Reconsiderations.* The revision of a reconsideration decision will be binding upon all parties unless a party files a written request for an ALJ hearing in accordance with § 405.1014.

(d) *ALJ Hearing decisions.* The revision of a hearing decision will be binding upon all parties unless a party files a written request for a MAC review and the request is accepted in accordance with § 405.1110.

(e) *MAC review.* The revision of a MAC review will be binding upon all parties unless a party files an action in Federal district court.

(f) *Appeal of only the portion of the determination modified by the reopening.* Only the portion of the initial determination, redetermination, reconsideration, or hearing decision modified by the reopening may be subsequently appealed.

§ 405.986 Good cause for reopening.

(a) *Establishing good cause.* A party, contractor, QIC, ALJ, or MAC must establish good cause for a reopening. Good cause may be established when—

(1) There is new and material evidence that—

(i) Was not available or known at the time of the determination or decision; and

(ii) May result in a different conclusion; or

(2) The evidence that was considered in making the determination or decision clearly shows on its face that an obvious error existed at the time the determination or decision was made.

(b) *Change in substantive law or interpretative policy.* A contractor or QIC will not find good cause to reopen a claim or appeal if the only reason for reopening is a change resulting from a judicial decision, legal interpretation, or administrative ruling upon which the determination or decision was made.

Expedited Appeals Process

§ 405.990 Expedited appeals process.

(a) *Conditions for use of expedited appeals process (EAP).* A party may use the EAP to request court review in place of an ALJ hearing or Medicare Appeals Council (MAC) review if the following conditions are met:

(1) A QIC has made a reconsideration determination; an ALJ has made a hearing decision; or MAC review has been requested, but a final decision of the MAC has not been issued.

(2) The requestor is a party, as defined in paragraph (d) of this section.

(3) The party has filed a request for an ALJ hearing in accordance with § 405.1002, or MAC review in accordance with § 405.1102.

(4) The amount remaining in controversy is $1,000 or more.

(5) If there is more than one party to the reconsideration determination, hearing decision, or MAC review, each party concurs, in writing, with the request for the EAP.

(b) *Content of the request for EAP.* The request for the EAP must—

(1) Allege that there are no material issues of fact in dispute; and

(2) Assert that the only factor precluding a decision favorable to the requestor is a statutory provision that is unconstitutional or a regulation, national coverage determination, or a CMS Ruling that is invalid.

(c) *Place and time for requesting an EAP.* (1) *Method and place for filing request.* The requestor may include an EAP request in his or her request for an ALJ hearing or MAC review, as applicable, or, if an appeal is already pending with an ALJ or the MAC, file a written EAP request with the hearing or MAC office where the appeal is being considered.

(2) *Time of filing request.* The party may file a request for the EAP—

(i) If the party has requested a hearing, at any time before receipt of the notice of the ALJ's decision; or

(ii) If the party has requested MAC review, at any time before receipt of notice of the MAC's decision.

(d) *Parties to the EAP.* The parties to the EAP are the persons or entities who were parties to the QIC's reconsideration determination and, if applicable, to the ALJ hearing.

(e) *Determination on request for EAP.* (1) For EAP requests initiated at the ALJ level, an ALJ determines whether all conditions of paragraphs (a) and (b) of this section are met.

(2) If a hearing decision has been issued, the MAC determines whether all conditions of paragraphs (a) and (b) of this section are met.

(f) *Certification for the EAP.* If the party meets the requirements for the EAP, the ALJ or the MAC, as appropriate, certifies in writing that—

(1) The facts involved in the claim are not in dispute;

(2) Except as indicated in paragraph (f)(3) of this section, CMS's interpretation of the law is not in dispute;

(3) The sole issue(s) in dispute is the constitutionality of a statutory provision or the validity of a regulation, CMS Ruling, or national coverage determination;

(4) Except for the provision challenged, the right(s) of the requestor is established; and

(5) The decision made by the ALJ or MAC is final for purposes of seeking judicial review.

(g) *Effect of ALJ or MAC certification.* (1) Following the issuance of the certification described in paragraph (f) of this section, the party waives completion of the remaining steps of the administrative appeals process.

(2) The 60-day period for filing a civil suit in a Federal district court begins on the date of receipt of the ALJ or MAC certification.

(h) *Effect of a request for EAP that does not result in certification.* If a request for the EAP does not meet all the conditions for use of the process, the ALJ or MAC so advises the party and treats the request as a request for hearing or MAC review, as appropriate.

§ 405.992 ALJ and MAC deference to policies not subject to the expedited appeals process.

(a) In general, an ALJ or the MAC gives deference to an LCD, LMRP, or CMS program guidance, such as program memoranda and manual instructions.

(b) A party may request that an ALJ or the MAC disregard an LCD, LMRP, or CMS program guidance. The party's request should explain why the policy should not be followed.

(c) The ALJ or MAC may disregard the policy in question if it finds the party's rationale for why the policy should not be followed to be persuasive, finds that the policy has been applied incorrectly, or finds for other reason that the policy is invalid for purposes of the party's appeal.

ALJ Hearings

§ 405.1000 Hearing before an ALJ: General rule.

If a party is dissatisfied with a QIC's reconsideration or if the adjudication period for the QIC to complete its reconsideration has elapsed, the party may request a hearing. A hearing may be conducted in-person, by videoconference, or by telephone. At the hearing the parties may submit new evidence (subject to the restrictions in § 405.1018 and § 405.1028), examine the evidence used in making the determination under review, and present and question witnesses. In some circumstances, a representative of CMS or its contractor, including the QIC, fiscal intermediary or carrier, hereafter in these regulations "CMS or its contractor," may be present. See § 405.1010 and § 405.1012. The ALJ will issue a decision based on the hearing record. If all parties to the hearing waive their right to appear at the hearing in person or by telephone or videoconference, the ALJ will make a decision based on the evidence that is in the file and any new evidence that may have been submitted for consideration. If the ALJ determines that it is necessary to obtain testimony from a non-party, he or she may hold a hearing to obtain that testimony, even if all of the parties have waived the right to appear. In that event, however, the ALJ will notify the parties that he is holding the hearing in their absence.

§ 405.1002 Right to ALJ hearing.

(a) A party to a QIC reconsideration may request a hearing before an ALJ if—

(1) The party files a written request for an ALJ hearing within 60 days after receipt of the notice of the QIC's reconsideration; and

(2) The amount remaining in controversy after the QIC's reconsideration is $100 or more; or

(b) A party who files a timely appeal before a QIC and whose appeal continues to be pending before a QIC at the end of the period described in § 405.970 has a right to a hearing before an ALJ if—

(1) The party files a written request with the QIC to escalate the appeal to the ALJ level after the period described in § 405.970 has expired and the party files the request within the time frame included in § 405.970(d);

(2) The QIC does not issue a final action within 5 days of receiving the request for escalation; and

(3) The amount remaining in controversy after the redetermination was $100 or more.

§ 405.1004 Right to ALJ review of QIC dismissal.

(a) A party to a QIC's dismissal of the request for reconsideration has a right to have the dismissal reviewed by an ALJ if—

(1) The party files a written request for an ALJ review within 60 days after receipt of the notice of the QIC's dismissal; and

(2) The amount in controversy is $100 or more.

(b) If the ALJ determines that the QIC's dismissal was in error, he or she will remand the case to the QIC for a reconsideration determination.

§ 405.1006 Amount in controversy required to request an ALJ hearing and judicial review.

To be entitled to a hearing before an ALJ following a reconsideration by a QIC, the amount remaining in controversy must be $100 or more, and for judicial review, following the ALJ hearing and MAC review, the amount remaining in controversy must be $1,000 or more.

(a) The following rules describe how the amount in controversy is calculated and how individual and multiple appellants may combine claims to meet the minimum amount in controversy needed for an ALJ hearing ($100).

(b) *Calculating the amount in controversy.* (1) The amount in controversy is computed as the actual amount charged the individual for the items and services in question, less any amount for which payment has been made by the initial contractor or ordered by the QIC and less any deductible and coinsurance amounts applicable in the particular case.

(2) Notwithstanding the above, when payment is made for certain excluded services under section 1879 of the Act or § 411.400 of this chapter or the liability of the beneficiary for those services is limited under § 411.402 of this chapter, the amount in controversy is computed as the amount that would have been charged the beneficiary for

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the items or services in question, less any deductible and coinsurance amounts applicable in the particular case, had those expenses not been paid under § 411.400 of this chapter or had that liability not been limited under § 411.402 of this chapter.

(c) *Aggregating claims to meet the amount in controversy*—(1) *Appealing QIC reconsideration determinations to the ALJ level.* Two or more claims may be aggregated by either an individual appellant or multiple appellants to meet the amount in controversy for an ALJ hearing if—

(i) The claims have previously been reconsidered by a QIC; and

(ii) The request for ALJ hearing lists all of the claims to be aggregated and is filed within 60 days after receipt of all of the reconsideration determinations being appealed; and

(iii) The ALJ determines that the claims the appellant(s) seeks to aggregate involve the delivery of similar or related services or common issues of law and fact. An appellant may combine Part A and Part B claims together to meet the amount in controversy requirements.

(2) *Aggregating claims that are escalated from the QIC level to the ALJ level.* Two or more claims may be aggregated by either an individual appellant or multiple appellants to meet the amount in controversy for an ALJ hearing if—

(i) The claims were pending before the QIC in conjunction with the same request for reconsideration; and

(ii) The appellant requests aggregation of the claims to the ALJ level in the same request for escalation; and

(iii) The ALJ determines that the claims the appellant(s) seeks to aggregate involve the delivery of similar or related services or common issues of law and fact. Part A and Part B claims may be combined together to meet the amount in controversy requirements.

(d) *Definitions.* For the purposes of aggregating claims to meet the amount in controversy for an ALJ hearing:

(1) "Common issues of law and fact" means that claims sought to be aggregated are denied or reduced for similar reasons and arise from a similar fact pattern material to the reason the claims are denied.

(2) "Delivery of similar or related services" means like or coordinated services or items provided to one or more beneficiaries.

(e) *Content of request for aggregation.* When an appellant(s) seeks to aggregate claims in a request for an ALJ hearing, the appellant must—

(1) Specify all of the claims the appellant(s) seeks to aggregate; and

(2) State why the appellant(s) believe that the claims involve common issues of law and fact or delivery of similar or related services.

§ 405.1008 Parties to an ALJ hearing.

(a) *Who may request a hearing.* Any party to the QIC's reconsideration may request a hearing before an ALJ. However, only the appellant (that is, the party that filed the request for reconsideration by a QIC) may request that the appeal be escalated to the ALJ level if the QIC does not complete its action within the deadline described in § 405.970.

(b) *Who are parties to the ALJ hearing.* The party who filed the request for hearing and all other parties to the QIC's reconsideration determination are parties to the ALJ hearing. In addition, a representative of CMS or its contractor may be made a party under the circumstances described in § 405.1012.

§ 405.1010 When CMS or its contractors may participate in an ALJ hearing.

An ALJ may request, but may not require, CMS or one of its contractors, to participate in any proceedings before the ALJ, including the oral hearing, if any. CMS and its contractors, including a QIC, may also elect to participate in the hearing process. Participation may include filing position papers or providing testimony to clarify factual or policy issues in a case, but does not include calling witnesses or cross-examining the witnesses of a party to the hearing.

§ 405.1012 When CMS or its contractors may be a party to a hearing.

CMS or its contractors, including a QIC, may be a party to an ALJ hearing unless the request for hearing is filed by an unrepresented beneficiary. CMS or the contractor will advise the ALJ that it intends to participate as a party no later than 10 days after receiving the notice of hearing. When CMS or its contractor participates in a hearing as a party, it may file position papers, provide testimony to clarify factual or policy issues, call witnesses or cross-examine the witnesses of other parties. CMS and the contractor, when acting as parties, may also submit additional evidence to the ALJ. The ALJ may not require CMS or a contractor to enter a case as a party.

§ 405.1014 Request for an ALJ hearing.

(a) *Content of the request.* The request for a hearing must be made in writing. The request should include all of the following—

(1) The name, address, and health insurance claim number of the beneficiary whose claim is being appealed;

(2) The name and address of the appellant, when the appellant is not the beneficiary.

(3) The name and address of any designated representative.

(4) The document control number assigned to the appeal by the QIC, if any.

(5) The dates of service.

(6) The reasons the appellant disagrees with the QIC's reconsideration or other determination being appealed.

(7) A statement of any additional evidence to be submitted and the date it will be submitted.

(b) *When and where to file.* The request for an ALJ hearing after a QIC reconsideration must be filed—

(1) Within 60 days from the date the party receives notice of the QIC's reconsideration;

(2) With the hearing office, the QIC that issued the reconsideration, CMS, or a local Social Security office. If the request for hearing is timely filed with the QIC, CMS or a Social Security office rather than the hearing office, the 90-day deadline for deciding the appeal begins on the date the request for hearing is received by the hearing office.

(c) *Filing request for escalation.* If an appellant files a request to escalate an appeal to the ALJ level because the QIC has not completed its action within the deadline described in § 405.970, the request for escalation must be filed with both the QIC and the hearing office. A case escalated from the QIC to the ALJ level is not subject to the 90-day adjudication deadline.

(d) *Extension of time to request a hearing.* If the request for hearing is not filed within 60 days of receipt of the QIC's reconsideration determination, an appellant may request an extension. The request for an extension of time must be in writing, and it must give the reasons why the request for a hearing was not filed within the stated time period. If a request for hearing is not timely filed, the 90-day adjudication period does not begin until the hearing office receives this explanation in addition to the request for hearing.

§ 405.1016 Requirement to decide appeal in 90 days.

(a) When a request for an ALJ hearing is filed after a QIC has issued a reconsideration, the ALJ must issue a decision, dismissal order, or remand to the QIC, as appropriate, no later than the end of the 90-day period beginning on the date the request for hearing has been timely filed, unless the 90-day period has been extended as provided in this subpart.

(b) The 90-day adjudication period begins on the date that a timely filed request for hearing is received by the hearing office, or, if it is not timely filed, the date that the hearing office receives a written explanation from the appellant that the ALJ accepts as a good reason for the late filing. If the written explanation is received by the hearing office after the request for hearing is received, the 90-day adjudication period begins when the written explanation is received. *See* § 405.942(b)(2).

(c) The 90-day adjudication period does not apply when an appellant requests escalation of an appeal to the ALJ level because the QIC has not issued a reconsideration determination within the period specified in § 405.970.

§ 405.1018 Submitting evidence before the ALJ hearing.

Parties must submit with the request for hearing (or within 10 days of receiving the notice of hearing) all written evidence they wish to have considered at the hearing. If an appellant submits written evidence later than 10 days after receiving the notice of hearing, the period between the time the evidence was required to have been submitted and the time received will not be counted toward the 90-day adjudication deadline. Any submission of new evidence that was not considered by the QIC during its reconsideration must be accompanied by a statement explaining why the evidence was not previously submitted to the QIC. The above requirements do not apply to oral testimony given at a hearing, including expert testimony.

§ 405.1020 Time and place for a hearing before an ALJ.

(a) The ALJ sets the time and place for the hearing, and may change the time and place, if necessary. The ALJ will send a notice of hearing to all parties and the QIC that issued the reconsideration determination advising them of the proposed time and place of the hearing. The notice of hearing will require all parties to the ALJ hearing to reply to the notice as follows:

(1) Acknowledge that the party will attend the hearing at the time and place proposed in the notice of hearing; or

(2) Object to the proposed time and place of the hearing. The party must state the reason for the objection and state the time and place he or she wants the hearing to be held. If at all possible, the request should be in writing. The ALJ will change the time or place of the hearing if the party has good cause, as determined under paragraphs (b) and (c) of this section (section 405.1052(a)(2) provides procedures the ALJ will follow when a party does not respond to a notice of hearing); or

(3) Waive the right to an oral hearing and request that the ALJ issue a decision based on the written evidence in the record. As provided in § 405.1000, if the ALJ determines that it is necessary to obtain testimony from a non-party, he or she may still hold a hearing to obtain that testimony, even if all of the parties have waived the right to appear. In those cases, the ALJ will give the parties the opportunity to appear when the testimony is given but may hold the hearing even if none of the parties decide to appear.

(b) The ALJ will find good cause for changing the time or place of the scheduled hearing and will reschedule the hearing if the information available to the ALJ supports the party's contention that—

(1) The party or his or her representative is unable to attend or to travel to the scheduled hearing because of a serious physical or mental condition, incapacitating injury, or death in the family; or

(2) Severe weather conditions make it impossible to travel to the hearing.

(c) In determining whether good cause exists in circumstances other than those set out in paragraph (b) of this section, the ALJ will consider the party's reason for requesting the change, the facts supporting it, and the impact of the proposed change on the efficient administration of the hearing process. Factors affecting the impact of the change include, but are not limited to, the effect on the processing of other scheduled hearings, delays that might occur in rescheduling the hearing, and whether any prior changes were granted the party. Examples of such other circumstances, which a party might give for requesting a change in the time or place of the hearing, include, but are not limited to, the following:

(1) The party has attempted to obtain a representative but needs additional time.

(2) The party's representative was appointed within 10 days of the scheduled hearing and needs additional time to prepare for the hearing.

(3) The party's representative has a prior commitment to be in court or at another administrative hearing on the date scheduled for the hearing.

(4) A witness who will testify to facts material to a party's case would be unavailable to attend the scheduled hearing and the evidence cannot be otherwise obtained.

(5) Transportation is not readily available for a party to travel to the hearing.

(6) The appellant lives or has his or her principal place of business closer to another hearing site.

(7) The party is unrepresented, and is unable to respond to the notice of hearing because of any physical, mental, educational, or linguistic limitations (including any lack of facility with the English language) that he or she has.

(d) *Effect of rescheduling hearing.* If a hearing is postponed at the request of the appellant for any of the above reasons, the time between the originally scheduled hearing date and the new hearing date will not be counted toward the 90-day adjudication deadline.

§ 405.1022 Notice of a hearing before an ALJ.

After the ALJ sets the time and place of the hearing, notice of the hearing will be mailed to the parties at their last known addresses, or given by personal service, unless the parties have indicated in writing that they do not wish to receive this notice. The notice will be mailed or served at least 20 days before the hearing. The notice of hearing will contain a statement of the specific issues to be decided and tell the parties that they may designate a person to represent them during the proceedings. The notice will also contain an explanation of the procedures for requesting a change in the time or place of the hearing, a reminder that if the appellant fails to appear at the scheduled hearing without good cause the ALJ may dismiss the hearing request, and other information about the scheduling and conduct of the hearing. If a party or his or her representative does not acknowledge receipt of the notice of hearing, the hearing office will attempt to contact the party for an explanation. If the party states that he or she did not receive the notice of hearing, an amended notice will be sent to him or her by certified mail or e-mail, if available. See § 405.1020 and § 405.1052 for the procedures we will follow in deciding whether the time or place of a scheduled hearing will be changed if a party does not respond to the notice of hearing.

§ 405.1024 Objections to the issues.

If a party objects to the issues described in the notice of hearing, he or she must notify the ALJ in writing at the earliest possible opportunity before the time set for the hearing, and no later than 5 days before the hearing. The party must state the reasons for his or her objections and send a copy of the objections to all other parties to the appeal. The ALJ will make a decision on the objections either in writing or at the hearing.

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§ 405.1026 Disqualification of the ALJ.

An ALJ will not conduct a hearing if he or she is prejudiced or partial with respect to any party or has any interest in the matter pending for decision. If a party objects to the ALJ who will conduct the hearing, the party must notify the ALJ within 10 days of the notice of hearing. The ALJ will consider the party's objections and will decide whether to proceed with the hearing or withdraw. If he or she withdraws, another ALJ will be appointed to conduct the hearing. If the ALJ does not withdraw, the party may, after the ALJ has issued an action in the case, present his or her objections to the MAC. The MAC will then consider whether the hearing decision should be revised or a new hearing held before another ALJ. If the case is escalated to the MAC after a hearing is held but before the ALJ issues a decision, the MAC will consider the reasons the party objected to the ALJ during its review of the case and, if the MAC deems it necessary, may remand the case to another ALJ for a hearing and decision.

§ 405.1028 Prehearing case review of evidence submitted to the ALJ by the appellant.

After a hearing is requested but before it is held, the ALJ will examine any new evidence submitted with the request for hearing according to § 405.1018 to determine whether the appellant had good cause for submitting the evidence for the first time at the ALJ level. If the ALJ determines that there was not good cause for submitting the evidence first at the ALJ level, and the evidence is of such probative value that it may have a material outcome on the case, the ALJ will remand the case to the QIC for a revised reconsideration. If the revised reconsideration issued on remand is not fully favorable to all parties, any party to that determination may file a new request for an ALJ hearing.

§ 405.1030 ALJ hearing procedures—General.

A hearing is open to the parties and to other persons the ALJ considers necessary and proper. At the hearing, the ALJ looks fully into the issues, questions the parties and other witnesses, and may accept documents that are material to the issues, if the ALJ determines that the party has shown good cause for not submitting the evidence within the period specified in § 405.1018 and § 405.1028. The ALJ may also stop the hearing temporarily and continue it at a later date if he or she believes that there is material evidence missing at the hearing. If the missing material is in the possession of the appellant, the ALJ will determine whether the appellant had good cause for not producing the evidence earlier. If good cause exists, the ALJ will consider the evidence in deciding the case and the 90-day adjudication period will be tolled from the date of the hearing to the date the evidence is submitted. If the ALJ determines that there was not good cause for submitting the evidence sooner, he may remand the case to the QIC, as provided in § 405.1034. The ALJ may also reopen the hearing at any time before he or she mails a notice of the decision in order to receive new and material evidence. The ALJ may decide when the evidence will be presented and when the issues will be discussed.

§ 405.1032 Issues before an ALJ.

(a) *General.* The issues before the ALJ include all the issues brought out in the initial determination, redetermination, or reconsideration that were not decided entirely in a party's favor. (For purposes of this section, the term "party" does not include a representative of CMS or the QIC who may be participating in the hearing.) However, if evidence presented before the hearing causes the ALJ to question a favorable portion of the determination, he or she will notify the parties before the hearing and may consider it an issue at the hearing.

(b) *New issues*—(1) *General.* The ALJ may consider a new issue at the hearing if he or she notifies all of the parties about the new issue any time between receiving the hearing request and issuing the notice of hearing. The ALJ or any party may raise a new issue; however, the ALJ may only consider a new issue if its resolution—

(i) Will have a material impact on the claim or claims that are the subject of the request for hearing; and

(ii) Is permissible under the rules governing reopening of determinations and decisions.

(2) *Notice of a new issue.* The ALJ will notify all of the parties in the notice of hearing if he or she intends to consider a new issue.

§ 405.1034 When ALJ will remand to the QIC.

(a) The ALJ will remand a case to the QIC that issued the reconsideration in the following circumstances:

(1) The appellant submits new evidence to the ALJ that was not provided to either the contractor or the QIC during their consideration of the appeal, and the appellant does not provide a good reason for first submitting the evidence at the ALJ level. An ALJ will find good cause when the appellant submits new evidence at the ALJ level, the evidence relates to an issue that was the basis for the QIC's unfavorable reconsideration and that issue was not identified as a material issue before the QIC's determination, and the ALJ finds that the appellant had a good reason for submitting the evidence for the first time at the ALJ level, the ALJ will decide the appeal.

(2) The appellant submits new evidence to the ALJ that was not provided to either the contractor or the QIC during its consideration of the appeal, and the appellant acknowledges that he or she does not have a good reason for first submitting the evidence at the ALJ level. In this instance, the appellant may request the ALJ to remand the case to the QIC for further proceedings so that the new evidence may be considered.

(b) An ALJ may also remand a case to the QIC if the written record of the proceedings before the initial contractor or the QIC does not contain information that is essential to resolving the issues on appeal and is information that can only be provided by CMS or its contractors. Examples of that information include claim payment histories or information from the common working file concerning such issues as the number of days remaining in a benefit period.

§ 405.1036 Description of ALJ hearing process.

(a) *The right to appear and present evidence.* Any party to a hearing has the right to appear before the ALJ, either personally or by means of a designated representative, to present evidence and to state his or her position.

(b) *Waiver of the right to appear.* A party may send the ALJ a waiver or a written statement indicating that he or she does not wish to appear at the hearing. The appellant may subsequently withdraw the waiver at any time before the notice of the hearing decision is issued, provided that the appellant agrees to an extension of the 90-day adjudication period that may be necessary to schedule and hold the hearing. Other parties may withdraw the waiver up to the date of the scheduled hearing, if any. Even if all of the parties waive their right to appear at a hearing, the ALJ may require them to attend an oral hearing, if he or she believes that a personal appearance and testimony by the appellant or any other party is necessary to decide the case.

(c) *Presenting written statements and oral arguments.* A party or a person designated to act as a party's representative may appear before the ALJ to state the party's case, to present a written summary of the case, or to enter written statements about the facts and law material to the case in the record. A copy of any written statements should be provided to the other parties to hearing, if any, at the same time they are submitted to the ALJ.

(d) *Waiver of 90-day adjudication period.* At any time during the hearing process, the appellant may waive the 90-day adjudication deadline for issuing a hearing decision.

(e) *What evidence is admissible at a hearing.* The ALJ may receive evidence at the hearing even though the evidence would not be admissible in court under the rules of evidence used by the court.

(f) *Subpoenas.* (1) When it is reasonably necessary for the full presentation of a case, an ALJ may, on his or her own initiative or at the request of a party, issue subpoenas for the appearance and testimony of witnesses and for the production of books, records, correspondence, papers, or other documents that are material to an issue at the hearing.

(2) Parties to a hearing who wish to subpoena documents or witnesses must file a written request for the issuance of a subpoena with the ALJ within 10 days of the notice of hearing. The written request must give the names of the witnesses or documents to be produced; describe the address or location of the witnesses or documents with sufficient detail to find them; state the important facts that the witness or document is expected to prove; and indicate why these facts could not be proven without issuing a subpoena.

(3) The hearing office will pay the cost of issuing the subpoena.

(4) The hearing office will pay subpoenaed witnesses the same fees and mileage they would receive if they had been subpoenaed by a Federal district court.

(g) *Witnesses at a hearing.* Witnesses may appear at a hearing. They will testify under oath or affirmation, unless the ALJ finds an important reason to excuse them from taking an oath or affirmation. The ALJ may ask the witnesses any questions material to the issues and will allow the parties or their designated representatives to do so.

§ 405.1038 Deciding a case without an oral hearing before an ALJ.

(a) *Decision wholly favorable.* If the evidence in the hearing record supports a finding in favor of all the parties on every issue, and neither the QIC nor CMS has given notice of its intention to participate in the hearing, the ALJ may issue a hearing decision without giving the parties prior notice and without holding an oral hearing. However, the notice of the decision will inform the parties that they have the right to an oral hearing and a right to examine the evidence on which the decision is based.

(b) *Parties do not wish to appear in-person.* (1) The ALJ may decide a case on the record and not conduct an oral hearing if—

(i) All the parties indicate in writing that they do not wish to appear before the ALJ at an oral hearing, including a hearing conducted by telephone or videoconferencing, if available; or

(ii) The appellant lives outside the United States and does not inform the ALJ that he or she wants to appear, and there are no other parties who wish to appear.

(2) When an oral hearing is not held, the ALJ will make a record of the evidence. The record will include the claims, written statements, certificates, reports, affidavits, and other documents that were used in making the determination under review and any additional evidence the parties to the hearing present in writing. The decision of the ALJ must be based on this record.

§ 405.1040 Prehearing and posthearing conferences.

The ALJ may decide on his or her own, or at the request of any party to the hearing, to hold a prehearing or posthearing conference to facilitate the hearing or the hearing decision. The ALJ will tell the parties of the time, place, and purpose of the conference at least 7 days before the conference date, unless the parties have indicated in writing that they do not wish to receive a written notice of the conference. At the conference, the ALJ may consider matters in addition to those stated in the notice of hearing, if the parties consent in writing. A record of the conference will be made. The ALJ will issue an order stating all agreements and actions resulting from the conference. If the parties do not object, the agreements and actions become part of the hearing record and are binding on all parties.

§ 405.1042 When a record of a hearing before an ALJ is made.

The ALJ will make a complete record of the hearing proceedings. The tape, other recording, or written transcript, as applicable, will be maintained in the case file, and forwarded with the file to the MAC if a request for MAC review is filed or the case is escalated from the ALJ level to the MAC. The record of the hearing will be prepared as a typed copy of the proceedings if a party seeks judicial review of the case in a Federal district court within the stated time period and all other jurisdictional criteria are met, unless the Secretary requests the court to remand the case.

§ 405.1044 Consolidated hearing before an ALJ.

(a) A consolidated hearing may be held if one or more of the issues to be considered at the hearing are the same issues that are involved in another request for hearing or hearings pending before the same ALJ. It is within the discretion of the ALJ to grant or deny an appellant's request for consolidation. In considering an appellant's request, the ALJ may consider such factors as whether the claims at issue may be more efficiently decided if the requests for hearing are combined. In considering the appellant's request for consolidation, the ALJ will take into account the adjudication deadlines for each case and may require an appellant to waive the 90-day adjudication deadline if consolidation would otherwise prevent the ALJ from deciding all of the appeals at issue within their respective deadlines.

(b) The ALJ may also propose on his or her own motion to consolidate two or more cases in one hearing for administrative efficiency, but may not require an appellant to waive the 90-day adjudication deadline for any of the consolidated cases.

(c) Before consolidating a hearing, the ALJ must notify CMS of his or her intention to do so, and CMS may then elect to participate in the consolidated hearing, as a party, by sending written notice to the ALJ within 10 days after receipt of the ALJ's notice.

(d) If the ALJ decides to hold a consolidated hearing, he or she may make either a consolidated decision and record or a separate decision and record on each claim. The ALJ will ensure that any evidence that is common to all claims and material to the common issue to be decided is included in the consolidated record or each individual record, as applicable.

§ 405.1046 The decision of an ALJ.

(a) *General rule.* The ALJ will issue a written decision that gives the findings of fact, conclusions of law, and the reasons for the decision. The decision must be based on evidence offered at the hearing or otherwise included in the record. The ALJ will mail a copy of the decision to all the parties at their last known address and to the QIC that issued the reconsideration determination.

(b) *Timing of decision.* The ALJ will issue a decision by the end of the 90-day period beginning on the date when the request for hearing is received in the hearing office, unless the 90-day period

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has been extended as provided in this subpart.

(c) *Recommended decision.* An ALJ will issue a recommended decision if he or she is directed to do so in the MAC's remand order. An ALJ may not issue a recommended decision on his or her own motion. The ALJ will mail a copy of the recommended decision to all the parties at their last known address.

§ 405.1048 The effect of an ALJ's decision.

The decision of the ALJ is binding on all parties to the hearing unless—

(a) A party to the hearing requests a review of the decision by the MAC within the stated time period and the MAC either issues a final action in response to the request for review or the appeal is escalated to Federal district court under the provisions at § 405.1132;

(b) The decision is revised by an ALJ or the MAC under the procedures explained in § 405.980;

(c) The expedited appeals process is used;

(d) The ALJ's decision is a recommended decision directed to the MAC; or

(e) In a case remanded by a Federal court, the MAC assumes jurisdiction under the procedures § 405.1138.

§ 405.1050 Removal of a hearing request from an ALJ to the MAC.

If a request for hearing is pending before an ALJ, the MAC may assume responsibility for holding a hearing by requesting that the ALJ send the hearing request to it. If the MAC holds a hearing, it will conduct the hearing according to the rules for hearings before an ALJ. Notice will be mailed to all parties at their last known address informing them that the MAC has assumed responsibility for the case.

§ 405.1052 Dismissal of a request for a hearing before an ALJ.

Dismissal of request for hearings will be in accordance with the following:

(a) An ALJ will dismiss a request for a hearing under any of the following conditions:

(1) At any time before notice of the hearing decision is mailed, the party that requested the hearing asks to withdraw the request. This request may be submitted in writing to the ALJ or made orally at the hearing. The request for withdrawal must contain a clear statement that the appellant is withdrawing the request for hearing and does not intend to further proceed with the appeal. If the request for withdrawal is filed by an attorney, or other legal professional on behalf of a beneficiary or other appellant, the ALJ may presume that the representative has advised the appellant of the consequences of the withdrawal and dismissal.

(2) Neither the party that requested the hearing nor the party's representative appears at the time and place set for the hearing, if—

(i) The party was notified before the time set for the hearing that the request for hearing might be dismissed without further notice;

(ii) The party did not appear at the time and place of hearing and does not thereafter contact the hearing office and provide a good reason for not appearing;

(iii) The ALJ sends a notice to the party asking why the party did not appear; and

(iv) The party does not respond to the ALJ's notice within 10 days or does not give a good reason for the failure to appear. In determining good cause, the ALJ will consider any physical, mental, educational, or linguistic limitations (including any lack of facility with the English language), which the party may have.

(3) The person or entity requesting a hearing has no right to it under § 405.1002.

(4) The party did not request a hearing within the stated time period and has not provided a good reason for extending the time for requesting a hearing, as provided in § 405.942(b)(2).

(5) The beneficiary whose claim is being appealed died either before the request for hearing was filed or while the request for hearing is pending and both of the following criteria apply:

(i) The request for hearing was filed by the beneficiary or the beneficiary's representative, and the beneficiary's surviving spouse or estate has no remaining financial interest in the case. In deciding this issue, the ALJ will consider whether the surviving spouse or estate remains liable for the services that were denied or a Medicare contractor held the beneficiary liable for subsequent similar services under the limitation of liability provisions based on the denial of the services at issue.

(ii) No other parties to the QIC reconsideration determination participated in the proceedings before the QIC. For purposes of applying this provision, participation means that the party either filed the request for QIC reconsideration or submitted evidence or comments to the QIC during its consideration of the case.

(6) The ALJ decides that there is cause to dismiss a hearing request entirely or to refuse to consider any one or more of the issues because the doctrine of *res judicata* applies in that a Medicare contractor, a QIC, an ALJ or the MAC has made a previous determination or decision under this subpart about the appellant's rights on the same facts and on the same issue or issues, and this previous determination or decision has become final by either administrative or judicial action.

(7) The appellant abandons the request for hearing. An ALJ may conclude that an appellant has abandoned a request for hearing when the hearing office attempts to schedule a hearing and is unable to locate the appellant after making reasonable efforts to do so.

(b) *Notice of dismissal.* The ALJ will mail a written notice of the dismissal of the hearing request to all parties at their last known address. The notice will state that there is a right to request that the MAC vacate the dismissal action.

§ 405.1054 Effect of dismissal of a request for a hearing before an ALJ.

The dismissal of a request for a hearing is binding, unless it is vacated by the MAC.

Medicare Appeals Council Review

§ 405.1100 Medicare Appeals Council review: General.

The party who requested an ALJ hearing (the appellant) or any other party to the hearing may request that the Medicare Appeals Council (MAC) review an ALJ's decision or dismissal. Under certain circumstances, the appellant may request that a case be escalated to the MAC for a decision even if the ALJ has not issued a decision or dismissal in his or her case. The MAC reviews an ALJ's decision *de novo.* When reviewing an ALJ's decision, the MAC issues a final action or remands a case to the ALJ within 90 days of receipt of the appellant's request for review, unless the 90-day period has been extended as provided in this subpart.

§ 405.1102 Request for MAC review when ALJ issues decision.

(a) A party to the ALJ hearing may request a MAC review if the party files a written request for a MAC review within 60 days after receipt of the ALJ's decision or dismissal. A party requesting a review may ask that the time for filing a request for MAC review be extended if—

(1) The request for an extension of time is in writing;

(2) It is filed with the MAC; and

(3) It explains why the request for review was not filed within the stated time period. If the appellant shows that he or she had good cause for missing the deadline, the time period will be extended. To determine whether good cause exists, the MAC uses the standards explained in § 405.942(b)(2).

(b) A party does not have the right to seek MAC review of an ALJ's remand to a QIC.

(c) For purposes of requesting MAC review (§ 405.1102 through § 405.1138), unless specifically excepted, the term, "party," includes CMS where CMS has entered into a case as a party according to § 405.1012. The term, "appellant," does not include CMS, where CMS has entered into a case as a party according to § 405.1012.

§ 405.1104 Request for MAC review when an ALJ does not issue a decision timely.

An appellant who files a timely request for hearing before an ALJ and whose appeal continues to be pending before the ALJ at the end of the 90-day adjudication period described in § 405.1016 may request a MAC review if—

(a) The appellant files a written request with the ALJ and the MAC to escalate the appeal to the MAC after the 90-day adjudication period has expired; and

(b) The ALJ does not issue a final action or remand the case to the QIC within 5 days of receiving the request for escalation.

§ 405.1106 Where a request for review or escalation may be filed.

(a) When a request for a MAC review is filed after an ALJ has issued a decision or dismissal, the request for review may be filed with the MAC, the hearing office that issued the ALJ's decision or dismissal or a Social Security office. If the request for hearing is timely filed with the hearing office or a Social Security office rather than the MAC, the MAC's 90-day period to conduct a review begins on the date the request for review is received by the MAC.

(b) If an appellant files a request to escalate an appeal to the MAC level because the ALJ has not completed his or her action on the request for hearing within the 90-day adjudication deadline, the request for escalation must be filed with both the ALJ and the MAC. Appeals that are escalated from the ALJ level to the MAC are not subject to the 90-day MAC adjudication deadline.

§ 405.1108 MAC actions when request for review or escalation is filed.

(a) When a party requests that the MAC review an ALJ's decision, the MAC will review the ALJ's decision *de novo.* The party requesting review does not have a right to a hearing before the MAC. The MAC will consider all of the evidence in the administrative record. Upon completion of its review, the MAC may adopt, modify, or reverse the ALJ's decision or remand the case to an ALJ for further proceedings.

(b) When a party requests that the MAC review an ALJ's dismissal, the MAC may deny review or remand the case to the ALJ for further proceedings.

(c) The MAC will dismiss a request for review when the party requesting review does not have a right to a review by the MAC or dismiss the request for an ALJ hearing for any reason that the ALJ could have dismissed the request for hearing.

(d) When an appellant requests escalation of a case from the ALJ level to the MAC, the MAC may take any of the following actions:

(1) Issue a decision based on the record constructed at the QIC and any additional evidence, including oral testimony, entered in the record by the ALJ before the case was escalated.

(2) Conduct any additional proceedings, including a hearing, that the MAC determines are necessary to issue a decision.

(3) Remand the case to an ALJ for further proceedings, including a hearing.

(4) Dismiss the request for MAC review because the appellant does not have the right to escalate the appeal.

(5) Dismiss the request for ALJ hearing for any reason that the ALJ could have dismissed the request.

§ 405.1110 MAC reviews on its own motion.

(a) *General rule.* The MAC may decide on its own motion to review a decision or dismissal issued by an ALJ. CMS or its contractors may refer a case to the MAC for it to consider reviewing under this authority anytime within 60 days after the date of an ALJ's decision or dismissal.

(b) *Referral of cases.* (1) CMS or its contractors (hereafter: CMS) may refer a case to the MAC if, in their view, the decision or dismissal contains an error of law material to the outcome of the claim or presents a broad policy or procedural issue that may affect the public interest. CMS may also request that the MAC take own motion review of a case if—

(i) CMS or its contractor participated in the appeal at the ALJ level; and

(ii) In its view, the ALJ's decision or dismissal is not supported by the preponderance of evidence in the record or the ALJ abused his or her discretion.

(2) CMS's referral to the MAC will be made in writing and must be filed with the MAC no later than 60 days after the ALJ's decision or dismissal is issued. The written referral will state the reasons why CMS believes that the MAC should review the case on its own motion. CMS will send a copy of its referral to all parties to the ALJ action and to the ALJ. Parties to the ALJ's action may file exceptions to the referral by submitting written comments to the MAC within 20 days of the referral notice. Copies of any comments submitted to the MAC must be sent to CMS and all other parties to the ALJ's decision.

(c) *Standard of review*—(1) *Referral by CMS after participation at ALJ level.* If CMS or its contractor participated in an appeal at the ALJ level, the MAC will exercise its own motion authority if there is an error of law material to the outcome of the case, an abuse of discretion by the ALJ, the decision is not consistent with the preponderance of the evidence of record, or there is a broad policy or procedural issue that may affect the general public interest. In deciding whether to accept review under this standard, the MAC will limit its consideration of the ALJ's action to those exceptions raised by CMS.

(2) *Referral by CMS when CMS did not participate in the ALJ proceedings or appear as a party.* The MAC will accept review if the decision or dismissal contains an error of law material to the outcome of the case or presents a broad policy or procedural issue that may affect the general public interest. In deciding whether to accept review, the MAC will limit its consideration of the ALJ's action to those exceptions raised by CMS.

(d) *MAC's action.* If the MAC decides to review a decision or dismissal on its own motion, it will mail the results of its action to all the parties to the hearing and to CMS. The MAC may adopt, modify, or reverse the decision or dismissal or may remand the case to an ALJ for further proceedings. The MAC must issue its action no later than 90 days after receipt of the CMS referral, unless the 90-day period has been extended as provided in this subpart. The MAC may not, however, issue its action before the 20-day comment period has expired, unless it determines that the agency's referral does not provide a basis for reviewing the case. If the MAC does not act within the 90-day deadline, the ALJ's decision or dismissal remains the final action in the case.

§ 405.1112 Content of request for review.

(a) The request for review should identify the parts of the ALJ action with which the party requesting review disagrees and explain why he or she believes that the ALJ's findings and conclusions are wrong. For example, if the party requesting review believes that the ALJ's action is inconsistent with a

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statute, regulation, ruling, or other authority, the request for review should explain why the appellant believes the action is inconsistent with that authority.

(b) The MAC will limit its review of an ALJ's actions to those exceptions raised by the party in the request for review, unless the appellant is an unrepresented beneficiary. For purposes of this section only, we define a representative as anyone who has accepted an appointment as the beneficiary's representative, except a member of the beneficiary's family, a legal guardian, or an individual who routinely acts on behalf of the beneficiary, such as a family member or friend who has a power of attorney.

§ 405.1114 Dismissal of request for review.

The MAC will dismiss a request for review if the party requesting review did not file the request within the stated period of time and the time for filing has not been extended. The MAC will also dismiss the request for review if—

(a) The party asks to withdraw the request for review;

(b) The party does not have a right to request MAC review; or

(c) The beneficiary whose claim is being appealed died either before the request for review was filed or while the request for review is pending and both of the following criteria apply:

(1) The request for review was filed by the beneficiary or the beneficiary's representative, and the beneficiary's surviving spouse or estate has no remaining financial interest in the case, and, in considering this issue, the MAC will consider whether the surviving spouse or estate remains liable for the services that were denied or a Medicare contractor held the beneficiary liable for subsequent similar services under the limitation of liability provisions based on the denial of the services at issue.

(2) No other parties to the ALJ decision participated in the proceedings before the ALJ. For purposes of applying this provision, participation means that the party either filed the request for an ALJ hearing, submitted evidence or written statements to the ALJ, or appeared at the hearing.

§ 405.1116 Effect of dismissal of request for MAC review or request for hearing.

The dismissal of a request for MAC review or denial of a request for review of a dismissal issued by an ALJ is binding and not subject to further review. The dismissal of a request for hearing by the MAC is also binding and not subject to judicial review.

§ 405.1118 Obtaining evidence from MAC.

A party may request and receive copies or a statement of the documents or other written evidence upon which the hearing decision or dismissal was based and a copy of the transcript of oral evidence. However, the party will be asked to pay the costs of providing these copies unless there is a good reason they should not pay. If a party requests evidence from the MAC and an opportunity to comment on that evidence, the time beginning with the MAC's receipt of the request for evidence through the expiration of the comment period will not count toward the 90-day adjudication deadline.

§ 405.1120 Filing briefs with the MAC.

Upon request, the MAC will give the party requesting review, as well as all other parties a reasonable opportunity to file briefs or other written statements about the facts and law relevant to the case. Any party who submits a brief or statement must send a copy to each of the other parties. Unless the party requesting review files the brief or other statement with the request for review, the time beginning with the receipt of the request to submit the brief and ending with the date the brief is received by the MAC will not count toward the 90-day adjudication deadline. The MAC may also request, but not require, CMS or its contractor to file a brief or position paper if the MAC determines that it is necessary to resolve the issues in the case.

§ 405.1122 What evidence may be submitted to the MAC.

(a) *Appeal before the MAC on request for review of ALJ's decision.* (1) If the MAC is reviewing an ALJ's decision, the MAC will limit its review of the evidence to the evidence contained in the record of the proceedings before the ALJ. However, if the hearing decision decides a new issue that the parties were not afforded an opportunity to address at the ALJ level, the MAC will consider any evidence related to that issue that is submitted with the request for review.

(2) If the MAC determines that additional evidence is needed to resolve the issues in the case and the hearing record indicates that the parties or previous decision-makers have not attempted to obtain the evidence, the MAC may remand the case to an ALJ to obtain the evidence and issue a new decision.

(b) *Appeal before MAC as a result of appellant's request for escalation.* (1) If the MAC is reviewing a case that has been escalated from the ALJ level to the MAC, the MAC will decide the case based on the record constructed at the QIC and any additional evidence, including oral testimony, entered in the record by the ALJ before the case was escalated.

(2) If the MAC receives additional evidence with the request for escalation that is material to the question to be decided, or determines that additional evidence is needed to resolve the issues in the case, and the record provided to the MAC indicates that the parties or previous decision-makers did not attempt to obtain the evidence before escalation, the MAC may remand the case to an ALJ to consider or obtain the evidence and issue a new decision.

§ 405.1124 Oral argument.

A party may request to appear before the MAC to present oral argument. The MAC will grant a request for oral argument if it decides that the case raises an important question of law, policy, or fact that cannot be readily decided based on written submissions alone. In addition, the MAC may decide on its own that oral argument is necessary to decide the issues in the case. If the MAC decides to hear oral argument, it will tell the parties of the time and place of the oral argument at least 10 days before the scheduled date. The MAC may also request, but not require, CMS or its contractor to appear before it if the MAC determines that it would be helpful in resolving the issues in the case.

§ 405.1126 Case remanded by the MAC.

(a) *When the MAC may remand a case.* The MAC may remand a case in which additional evidence is needed or additional action by the ALJ is required. The MAC will designate in its remand order whether the ALJ will issue a final decision or a recommended decision on remand.

(b) *Action by ALJ on remand.* The ALJ will take any action that is ordered by the MAC and may take any additional action that is not inconsistent with the MAC's remand order.

(c) *Notice when case is returned with a recommended decision.* When the ALJ sends a case to the MAC with a recommended decision, a notice is mailed to the parties at their last known address. The notice tells them that the case has been sent to the MAC, explains the rules for filing briefs or other written statements with the MAC, and includes a copy of the recommended decision.

(d) *Filing briefs with the MAC when ALJ issues recommended decision.* (1) Any party to the recommended decision may file briefs or other written statements about the facts and law relevant to the case with the MAC

within 20 days of the date that the recommended decision is mailed. Any party may ask the MAC for additional time to file briefs or statements. The MAC will extend this period, as appropriate, if the party shows that they had good cause for missing the deadline.

(2) All other rules for filing briefs with and obtaining evidence from the MAC follow the procedures explained in this subpart.

(e) *Procedures before the MAC.* (1) The MAC, after receiving a recommended decision, will conduct its proceedings and issue its decision according to the procedures explained in this subpart.

(2) If the MAC believes that more evidence is required, it may again remand the case to an ALJ for further inquiry into the issues, rehearing, receipt of evidence, and another decision or recommended decision. However, if the MAC decides that it can get the additional evidence more quickly, it will take appropriate action.

§ 405.1128 Decision of the MAC.

After it has reviewed all the evidence in the administrative record and any additional evidence received, subject to the limitations on MAC consideration of additional evidence in § 405.1122, the MAC will make a decision or remand the case to an ALJ. The MAC may adopt, modify or reverse the ALJ hearing decision or recommended decision. A copy of the MAC's decision will be mailed to the parties at their last known address.

§ 405.1130 Effect of the MAC's decision.

The MAC's decision is binding on all parties unless the party files an action in Federal district court, or the decision is revised. A party may file an action in a Federal district court within 60 days after the date it receives notice of the MAC's decision.

§ 405.1132 Request for escalation to Federal court.

If the MAC does not issue a final action or remand the case to an ALJ within the 90-day adjudication period as extended as provided in this subpart, the appellant may request that the appeal be escalated to Federal district court. Upon receipt of a request for escalation, the MAC may—

(a) Issue a final action or remand the case to an ALJ, if that action is issued within 5 days of receipt of the request for escalation; or

(b) If the MAC is not able to issue a final action or remand within 5 days of receipt of the request for escalation, it will send a notice to the appellant acknowledging receipt of the request for escalation. A party may file an action in a Federal district court within 60 days after the date it receives notice of the MAC's decision.

§ 405.1134 Extension of time to file action in Federal district court.

Any party to the MAC's decision or to an expedited appeals process certification may request that the time for filing an action in a Federal district court be extended. The request must be in writing, and it must give the reasons why the action was not filed within the stated time period. The request must be filed with the MAC, or if it concerns an expedited appeals process agreement certified by an ALJ, with the ALJ. If the party shows that he or she had good cause for missing the deadline, the time period will be extended. To determine whether good cause exists, we use the standards explained in § 405.942(b)(2).

§ 405.1136 Judicial review.

(a) General rule. To the extent authorized by sections 1869, 1876(c)(5)(B), and 1879(d) of the Act, a party to a MAC decision, or an appellant who requests escalation to Federal district court if the MAC does not complete its review of the ALJ's decision within the 90-day adjudication period, may obtain a court review if the amount remaining in controversy is $1,000 or more. The party, including an appellant who requests escalation to Federal district court if the MAC does not complete its review of the ALJ's decision within the 90-day adjudication period, may obtain court review by filing a civil action in a district court of the United States in accordance with the provisions of section 205(g) of the Act.

(b) *Court in which to file civil action.* Any civil action described in paragraph (a) of this section must be filed in the district court of the United States for the judicial district in which the party resides or where such individual, institution, or agency has its principal place of business. If the party does not reside within any such judicial district, or if such individual, institution, or agency does not have its principal place of business within any such judicial district, the civil action must be filed in the District Court of the United States for the District of Columbia.

(c) *Time for filing civil action.* Any civil action described in paragraph (a) of this section must be filed within the time periods specified in § 405.1130, § 405.1132, or § 405.1134, as applicable. For purposes of these sections, the date of receipt of the notice of the MAC's decision or notice of the MAC's receipt of the appellant's request for escalation shall be presumed to be 5 days after the date of such notice, unless there is a reasonable showing to the contrary. Where a case is certified for judicial review pursuant to the expedited appeals process in § 405.990, the civil action must be filed within 60 days after receipt of the ALJ or MAC certification, except where the time has been extended by the ALJ or MAC, as applicable, upon a showing of good cause.

(d) *Proper defendant.* Where any civil action described in paragraph (a) of this section is filed, the Secretary of HHS, shall, in his or her official capacity, be the proper defendant. Any such civil action properly filed shall survive notwithstanding any change of the person holding the office of Secretary of HHS or any vacancy in such office. If the complaint is erroneously filed against the United States or against any agency, officer, or employee of the United States other than the Secretary, the plaintiff will be notified that he has named an incorrect defendant and will be granted 60 days from the date of receipt of the notice in which to commence the action against the correct defendant, the Secretary.

(e) *Prohibition against judicial review of certain Part B regulations or instructions.* Under section 1869(e)(1) of the Act, a court may not review a regulation or instruction that relates to a method of payment under Part B if the regulation was promulgated, or the instructions issued, before January 1, 1991.

(f) *Standard of review.* Under section 205(g) of the Act, the findings of the Secretary of HHS as to any fact, if supported by substantial evidence, are conclusive. In addition, when the Secretary's decision is adverse to a party due to a party's failure to submit proof in conformity with a regulation prescribed under section 205(a) of the Act (pertaining to the type of proof a party must offer to establish entitlement to payment), the court will review only whether the proof conforms with the regulation and the validity of the regulation.

§ 405.1138 Case remanded by a Federal court.

When a Federal court remands a case to the Secretary for further consideration, the MAC, acting on behalf of the Secretary, may make a decision, or it may remand the case to an ALJ with instructions to take action and issue a decision or return the case to the MAC with a recommended decision. If the case is remanded by the MAC, the procedures explained in § 405.1140 will be followed.

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§ 405.1140 MAC review of ALJ decision in a case remanded by a Federal court.

(a) *General rule.* In accordance with § 405.1138, when a case is remanded by a Federal court for further consideration, the decision of the ALJ will become the final decision of the Secretary after remand on that case unless the MAC assumes jurisdiction of the case. The MAC may assume jurisdiction based on written exceptions to the decision of the ALJ that the party files with the MAC or based on its authority under paragraph (c) of this section. The MAC will either make a new, independent decision based on the entire record that will be the final decision of the Secretary after remand, or remand the case to an ALJ for further proceedings.

(b) *A party files exceptions disagreeing with the decision of the ALJ.* (1) If a party disagrees with the decision of the ALJ, in whole or in part, he or she may file exceptions to the decision with the MAC. Exceptions may be filed by submitting a written statement to the MAC setting forth the reasons for disagreeing with the decision of the ALJ. The exceptions must be filed within 30 days of the date the party receives the decision of the ALJ or an extension of time in which to submit exceptions must be requested in writing within the 30-day period. A timely request for a 30-day extension will be granted by the MAC. A request for an extension of more than 30 days must include a statement of reasons as to why the party needs the additional time.

(2) If written exceptions are timely filed, the MAC will consider the party's reasons for disagreeing with the decision of the ALJ. If the MAC concludes that there is no reason to change the decision of the ALJ, it will issue a notice addressing the exceptions and explaining why no change in the decision of the ALJ is warranted. In this instance, the decision of the ALJ is the final decision of the Secretary after remand.

(3) When a party files written exceptions to the decision of the ALJ, the MAC may assume jurisdiction at any time, even after the 60-day time period which applies when a party does not file exceptions. If the MAC assumes jurisdiction, it will make a new, independent decision based on its consideration of the entire record adopting, modifying, or reversing the decision of the ALJ or remand the case to an ALJ for further proceedings, including a new decision. The new decision of the MAC is the final decision of the Secretary after remand.

(c) *MAC assumes jurisdiction without exceptions being filed.* Any time within 60 days after the date of the decision of the ALJ, the MAC may decide to assume jurisdiction of the case even though no written exceptions have been filed. Notice of this action will be mailed to all parties at their last known address. The parties will be provided with the opportunity to file briefs or other written statements with the MAC about the facts and law relevant to the case. After the briefs or other written statements have been received or the time allowed (usually 30 days) for submitting them has expired, the MAC will either issue a final decision of the Secretary affirming, modifying, or reversing the decision of the ALJ, or remand the case to an ALJ for further proceedings, including a new decision.

(d) *Exceptions are not filed and the MAC does not otherwise assume jurisdiction.* If no exceptions are filed and the MAC does not assume jurisdiction of the case, the decision of the ALJ becomes the final decision of the Secretary after remand.

Expedited Determinations and Reconsiderations

§ 405.1200 A beneficiary's right to an expedited determination.

(a) *Applicability.* (1) For purposes of §§ 405.1200 through 405.1206, *provider of services* is defined, in accordance with section 1861(u) of the Act, as a hospital, critical access hospital, home health agency (HHA), skilled nursing facility (SNF), hospice program, or comprehensive outpatient rehabilitation facility (CORF).

(2) *Scope.* The expedited determination and reconsideration provisions contained in §§ 405.1200 through 405.1206 apply to terminations of services furnished by a non-residential provider and the discharge of a beneficiary from a residential provider of services.

(b) *Beneficiary's right to an expedited determination by the QIO.* (1) A beneficiary who has received notice that a nonresidential provider plans to terminate their services, or that a residential provider plans to discharge the beneficiary, is entitled to an expedited determination by the QIO in the State in which the beneficiary is receiving provider services when—

(i) The beneficiary disagrees with the nonresidential provider of those services that services being furnished should be terminated and a physician who is treating the beneficiary in relation to the services the beneficiary is receiving in the provider certifies that failure to continue the provision of that service(s) may place the beneficiary's health at significant risk; or

(ii) The residential provider notifies the beneficiary of its plans to discharge the beneficiary from that provider of services.

(2) If a beneficiary does not contest the termination decision in a timely manner, that beneficiary may not later assert the expedited review process under this section.

(c) *Procedures the beneficiary must follow.* (1) A beneficiary must submit the request for an expedited determination to the QIO in the State in which the beneficiary is receiving those provider services, in writing or by telephone no later than noon of the next calendar day following receipt of the provider's notice of termination.

(2) The beneficiary or his or her representative must be prepared to answer questions and/or supply information that the QIO may request in order to conduct its review.

(d) *Procedures the QIO must follow.* (1) On the date that the QIO receives the request for an expedited determination under paragraph (c) of this section, it must immediately notify the provider of those services that a request for an expedited determination has been made.

(2) The provider of those services must supply any information the QIO requires to conduct its review and must make it available by phone or in writing, by close of business of the day after the QIO notifies the provider of the request for an expedited determination. This information includes, but is not limited to, medical records and a copy of the provider's written notice of termination if one was issued to the beneficiary.

(3) The QIO must examine the medical records that pertain to the services in dispute.

(4) The QIO must solicit the views of the beneficiary that requested the expedited determination.

(5) The QIO must provide an opportunity for the provider/practitioner to explain why the termination or discharge is appropriate.

(6) The QIO must make its determination no later than 72 hours after receipt of the request for an expedited determination and the requested information.

(e) *Notice of an expedited initial determination.* (1) The QIO must immediately notify the beneficiary, beneficiary's physician, and the provider of services, of its determination. The QIO's initial notification shall be done by telephone and subsequently with a written notice.

(2) A written notice of the expedited determination must contain the following:

(i) The basis for the determination.

(ii) A detailed rationale for the reconsidered determination.

(iii) A statement explaining the Medicare payment consequences of the determination and the beneficiary's date of liability.

(iv) A statement informing the beneficiary of his or her appeal rights including the name and phone number of the qualified independent contractor that he or she must appeal to.

(v) The time period for filing the subsequent appeal.

(f) *Effect of an expedited determination.* The expedited determination is binding upon the beneficiary and provider of those disputed services, absent reconsideration by a QIC in accordance with § 405.1202. A beneficiary who does not file a timely request for an expedited QIC reconsideration subsequently may request a QIC reconsideration under § 405.960 of this subpart, but the coverage protections described in paragraph (g) of this section would not extend through those reconsiderations.

(g) *Coverage during QIO review.* When a beneficiary files an appeal in accordance with paragraph (c) of this section, the beneficiary may not be billed for any disputed services. The QIO decision may result in beneficiary liability, however.

§ 405.1202 Right to an expedited reconsideration by a QIC.

(a) *Beneficiary's right to an expedited QIC reconsideration.* A beneficiary that has received an expedited determination from a QIO as specified in § 405.1200, and is dissatisfied with that determination, may request an expedited reconsideration by the designated QIC.

(b) *Procedures the beneficiary must follow.* (1) A beneficiary must submit the request for an expedited reconsideration to the QIC no later than noon of the next calendar day following receipt of the QIO's written determination notice. This request may be made in writing or by telephone.

(2) The beneficiary or his or her representative must be available to answer questions and/or supply information that the QIO may request to conduct its review.

(c) *Procedures the QIC must follow.* (1) On the date that the QIC receives the request for an expedited reconsideration in accordance with paragraph (b) of this section, it must immediately notify the provider of those disputed services that a request has been made. The QIC must conduct a review regardless of whether the beneficiary will be liable for the services or stay in dispute.

(2) The QIC must request and review any information that it needs to make an expedited reconsideration determination. This information includes, but is not limited to, the beneficiary's medical records.

(3) The QIO and the provider of the disputed services must supply any information that the QIC requires to conduct its review, and must make it available, by telephone or in writing, by the close of business of the day after the beneficiary received the QIO expedited determination notice.

(4) The QIC must solicit the views of the beneficiary that requested the expedited determination.

(5) The QIC must render its reconsideration determination no later than 72 hours from receipt of the request for an expedited reconsideration and the information requested to make its decision.

(6) If the QIC does not render a decision within 72 hours of receipt of the request and the information, the QIC must notify the beneficiary and inform that beneficiary of his or her right to have this case escalated to the ALJ hearing level if—

(i) The beneficiary filed a timely expedited appeal before the QIC; and

(ii) The amount remaining in controversy after the QIO determination is $100 or more.

(7) The QIC must notify the beneficiary, in writing, of the rules for escalation under § 405.1002 (Right to ALJ hearing when QIC does not issue reconsideration determination timely).

(d) *Notice of an expedited reconsideration determination.* The QIC must render its expedited reconsideration determination and notify the beneficiary, the physician of the beneficiary who requested the expedited reconsideration determination, and the provider of those services no later than 72 hours from receipt of the request for review.

(1) The QIC's initial notification shall be done by telephone and followed by a written notice.

(2) A written notice of the expedited reconsideration determination must contain the following:

(i) The basis for the reconsidered determination.

(ii) Detailed rationale for the reconsidered determination.

(iii) A statement explaining the Medicare payment consequences of the reconsidered determination and the beneficiary's date of liability.

(iv) A statement informing the beneficiary of his or her subsequent appeal rights in accordance with § 405.1000 (Right to ALJ hearing when QIC issues reconsideration determination) and the time period for filing that appeal.

(v) The amount in controversy in accordance with the rules at § 405.1004 (Amount in controversy for ALJ hearing and judicial review).

(e) *Effect of an expedited reconsideration.* The reconsidered determination is binding upon the beneficiary and provider of those disputed services and is subject to review in accordance with § 405.1000 (Right to ALJ hearing when QIC issues reconsideration determination).

(f) *Coverage during QIC review.* When a beneficiary files an appeal in accordance with paragraph (b)(1) of this section, the beneficiary may not be billed for any disputed services until a QIC reconsidered determination has been rendered. The QIC decision may result in beneficiary liability, however.

§ 405.1204 Expedited appeals of inpatient hospital discharges.

(a) *Beneficiary's right to an expedited initial determination with respect to an inpatient hospital discharge.* (1) A beneficiary who has received a notice of noncoverage may request an expedited determination by the QIO when a hospital (acting directly or through its utilization review committee) with physician concurrence, determines that inpatient care is no longer necessary. A beneficiary who requests an expedited QIO review may remain in the hospital with no additional financial liability as specified in paragraph (e)(2) of this section.

(2) A beneficiary who fails to request an expedited initial determination in accordance with paragraph (c) of this section and remains in the hospital may still request an expedited initial determination, but the financial liability rules of paragraph (e)(2) of this section do not apply.

(b) *Beneficiary's right to other review.* (1) A beneficiary who fails to request an expedited determination in accordance with paragraph (c)(1)(iii) of this section and remains in the hospital may still request an expedited review at any time during the course of his or her inpatient hospital stay. The QIO will render a decision in accordance with paragraph (d)(5)(ii) of this section and the financial liability rules of paragraph (e)(2) of this section do not apply.

(2) A beneficiary who fails to request an expedited initial determination in accordance with paragraph (c)(1)(iii) of this section, and is no longer an inpatient in the hospital, may still request QIO review within 30 calendar days after receipt of the hospital's written termination notice or at any time for good cause. The QIO will

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render a decision in accordance with paragraph (d)(5)(iii) of this section and the financial liability rules of paragraph (e)(1) of this section do not apply.

(c) *Procedures the beneficiary must follow.* For the expedited appeal process, the following rules apply:

(1) The beneficiary must submit the request for an expedited determination—

(i) To the QIO that has an agreement with the hospital under part 475 of this chapter;

(ii) In writing or by telephone; and

(iii) By noon of the first working day after he or she receives written notice that the hospital has determined that the hospital stay is no longer necessary.

(2) The beneficiary (or his or her representative), upon request by the QIO, must be prepared to discuss his or her case with the QIO.

(d) *Procedures the QIO must follow.* On the date that the QIO receives the beneficiary's request:

(1) The QIO must notify the hospital that the beneficiary has filed a request for immediate review.

(2) The hospital must supply any information, including medical records, that the QIO requires to conduct its review and must make it available, by phone or in writing, by the close of business of the first full working day after the day the beneficiary receives notice of the proposed discharge.

(3) The QIO must examine the pertinent records pertaining to the services.

(4) The QIO must solicit the views of the beneficiary who requested the expedited determination.

(5)(i) The QIO must make a determination and notify the beneficiary, the hospital, and physician of its determination by close of business of the first working day after it receives all requested pertinent information.

(ii) When the beneficiary did not request an expedited initial determination in accordance with paragraph (c)(1)(iii) of this section and remains an inpatient in the hospital, the QIO will make a determination and notify the beneficiary, the hospital, and physician of its determination within 2 working days following receipt of the request and pertinent information.

(iii) When the beneficiary did not request an expedited initial determination in accordance with paragraph (c)(1)(iii) of this section and is no longer an inpatient in the hospital, the QIO will make a determination and notify the beneficiary, the hospital, and physician of its determination within 30 calendar days after receipt of the request.

(e) *Coverage during QIO expedited review.* (1) In general, if the beneficiary remains in the hospital after receiving the advanced written notice of termination, and the hospital, the physician who concurred in the hospital's determination on which the advanced written notice of termination was based, or the QIO subsequently finds that the beneficiary requires an acute level of inpatient hospital care, the beneficiary is not financially responsible for continued care until the hospital once again determines that the beneficiary no longer requires inpatient care, secures concurrence from the physician responsible for the beneficiary's care or the QIO and notifies the beneficiary.

(2) *Timely filing.* If a beneficiary files a request for an expedited determination by the QIO in accordance with paragraph (c)(1)(iii) of this section, the beneficiary is not financially responsible beneficiary for inpatient hospital services furnished before noon of the calendar day after the date the beneficiary (or his or her representative) receives a written expedited determination by the QIO.

(3) *Untimely filing.* (i) When a beneficiary does not file a request for an expedited determination by the QIO in accordance with paragraph (c)(1)(iii) of this section and remains an inpatient in the hospital, that beneficiary may be responsible for charges that extend beyond the date specified on the hospital's advance written notice of termination or as otherwise stated by the QIO.

(4) *Hospital requests expedited review.* When the hospital requests review in accordance with § 405.1206, and the QIO concurs with the hospital's decision, a hospital may not charge a beneficiary until the date specified by the QIO.

(f) *Notice of an expedited determination.* (1) When a QIO renders an expedited determination in accordance with paragraph (d)(5) of this section, it must notify the beneficiary, physician, and hospital of its decision, by telephone and in writing. The QIO's initial notification must be done telephonically and subsequently with a written notice.

(2) A written notice of the expedited initial determination must contain the following:

(i) The basis for the determination.

(ii) A detailed rationale for the determination.

(iii) A statement explaining the Medicare payment consequences of the expedited determination and date of liability, if any.

(iv) A statement informing the beneficiary of his or her appeal rights including the name and phone number of the QIC that he or she must appeal to if he or she disagrees with this decision.

(v) The time period for filing reconsideration review by the QIC.

(g) *Effect of an expedited QIO determination.* The QIO determination is binding upon the beneficiary, physician, and hospital.

(1) *When beneficiary remains in hospital.* If the beneficiary is still an inpatient in the hospital and is dissatisfied with this determination, he or she must request an appeal subject to § 405.1202.

(2) *When beneficiary is no longer an inpatient in the hospital.* If the beneficiary is no longer an inpatient in the hospital and is dissatisfied with this determination, this determination is subject to the general QIC reconsideration rules set forth in §§ 405.960 through 405.978 of this subpart.

§ 405.1206 Hospital requests expedited QIO review.

(a) If the hospital (acting directly or through its utilization review committee) believes that the beneficiary does not require further inpatient hospital care but is unable to obtain the agreement of the physician, it may request an expedited determination by the QIO.

(b) *Procedures hospital must follow.* (1) The hospital must (acting directly or through its utilization review committee) notify the beneficiary (or his or her representative) that it has requested that review.

(2) The hospital must supply any pertinent information the QIO requires to conduct its review and must make it available by phone or in writing, by close of business of the first full working day immediately following the day the hospital submits the request for review.

(c) *Procedures the QIO must follow.* (1) On the date that the QIO receives the request for review by the hospital, it must review any pertinent information submitted by the hospital.

(2) The QIO must examine the pertinent records pertaining to the services.

(3) The QIO must solicit the views of the beneficiary in question.

(4) The QIO must make a determination and notify the beneficiary, the hospital, and physician within 2 working days of either the hospital's request or receipt of any pertinent information submitted by the hospital.

(d) *Notice of an expedited determination.* (1) When a QIO renders an expedited determination as stated in paragraph (c)(4) of this section, it must notify the beneficiary, physician, and hospital of its decision, by telephone and in writing. The QIO's initial notification must be done telephonically and subsequently with a written notice.

(2) A written notice of the expedited initial determination must contain the following:

(i) The basis for the determination.

(ii) A detailed rationale for the determination.

(iii) A statement explaining the Medicare payment consequences of the expedited determination and date of liability, if any.

(iv) A statement informing the beneficiary of his or her appeal rights including the name and phone number of the qualified independent contractor (QIC) that he or she must appeal to if that beneficiary is dissatisfied with the QIO's determination.

(v) The time period for filing the subsequent appeal.

(e) *Effect of an expedited initial determination.* The initial determination is binding upon the beneficiary, physician, and hospital.

(1) *When beneficiary remains in hospital.* If the beneficiary is still an inpatient in the hospital and is dissatisfied with this determination, he or she must request an appeal in accordance with § 405.1204 (QIC expedited reconsideration).

(2) *When beneficiary has been discharged.* When the beneficiary is no longer an inpatient in the hospital and subsequently chooses to appeal this decision, he or she must file an appeal in accordance with §§ 405.960 through 405.978.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: September 25, 2002.

Thomas A Scully,

Administrator, Centers for Medicare & Medicaid Services.

Approved: September 25, 2002.

Tommy G. Thompson,

Secretary.

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Part III

Department of Transportation

14 CFR Parts 255 and 399
Computer Reservations System (CRS) Regulations; Statements of General Policy; Proposed Rule

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DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Parts 255 and 399

[Dockets Nos. OST–97–2881, OST–97–3014, OST–98–4775, and OST–99–5888]

RIN 2105–AC65

Computer Reservations System (CRS) Regulations; Statements of General Policy

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department's rules governing airline computer reservations systems ("CRSs" or "systems") obligate the Department to revisit the need for CRS rules. The Department initiated this proceeding to examine whether its existing CRS rules were still necessary and, if so, whether they should be modified. The Department believes that it may be possible to eliminate some of the rules in ways that may promote competition in the CRS business and that rules regulating the sale of airline service over the Internet appear unnecessary. The Department thus is asking for comments on proposals to reduce its regulations in ways that could give airlines more flexibility in bargaining with the systems. The Department tentatively is proposing to maintain some but not all of the existing rules. The Department is also proposing to review its Statements of General Policy to clarify the requirements for the disclosure of service fees by travel agencies.

DATES: Comments must be submitted by January 14, 2003. Reply comments must be submitted by February 13, 2003.

ADDRESSES: To make sure your comments and related material are not entered more than once in the docket, please submit them (marked with docket numbers OST–97–2881, OST–97–3014, and OST–98–4775) by only one of the following means:

(1) By mail to the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By hand delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) Electronically through the Web Site for the Docket Management System at *http://dms.dot.gov*. Comments must be filed in Dockets OST–97–2881, OST–97–3014, and OST–98–4775, U.S. Department of Transportation, 400 7th St. SW., Washington, DC 20590. Late filed comments will be considered to the extent possible.

Due to security procedures in effect since October 2001 on mail deliveries, mail received through the Postal Service may be subject to delays. Commenters should consider using an express mail firm to ensure the timely filing of any comments not submitted electronically or by hand.

Electronic Access

You can view and download this document by going to the website of the Department's Docket Management System (*http://dms.dot.gov/*). On that page, click on "search." On the next page, type in the last four digits of the docket number shown on the first page of this document. Then click on "search." An electronic copy of this document also may be downloaded by using a computer, modem, and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's database at: *http://www.access.gpo.gov/nara/ index.html*.

FOR FURTHER INFORMATION CONTACT: Thomas Ray, Office of the General Counsel, 400 Seventh St. SW., Washington, DC 20590, (202) 366–4731.

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Glossary

ACAA Air Carrier Association of America, a low-fare airline trade association

Airline system A system owned or controlled by one or more airlines

ASTA American Society of Travel Agents

Board The Civil Aeronautics Board

Booking fees Fees paid by airlines and other travel suppliers when a travel agent makes or changes a booking in a system

CRS Computer reservations system

E-fares (or webfares) Discount fares offered by an airline usually only either on its website or on the airline's website and through one or more on-line travel agencies

IATA International Air Transport Association

ITSA Interactive Travel Services Association

National Commission National Commission to Ensure Consumer Information and Choice in the Airline Industry

Network airlines The large airlines that operate hub-and-spoke route systems

Non-airline system A system that is neither owned nor controlled by any airline

OMB Office of Management and Budget

Participate To make the services of an airline or other travel supplier available for sale through a system under a contract with that system

Parity clauses Clauses in participating airline contracts that required a participating airline to buy at least as high a level of service from the system as it did from any other system

Productivity pricing Pricing formula used in subscriber contracts that enables the subscriber to obtain lower CRS fees or other financial benefits from a system if the travel agency meets minimum monthly booking quotas established by the contract

Screen padding Excessive listings of the same flight under different airline codes

Section 411 49 U.S.C. 41712, recodifying section 411 of the Federal Aviation Act

Subscriber A travel agency that obtains CRS services under a contract with the system

System Computer reservations system

A. Introduction

The Department's existing rules governing computer reservations systems (the "CRSs" or "systems") obligate it to reexamine the need for those rules. Such a reexamination is particularly appropriate at this time due to two developments that may enable us to reduce our regulation of the CRS business. Those developments are the growing role of the Internet in airline distribution and the diminishing airline ownership of the systems.

Historically travel agencies have primarily relied on the systems to investigate what airline services are available, to make bookings, and to issue tickets (although the systems now are also commonly called global distribution systems, or GDSs, we will continue to refer to them as CRSs). Each system was originally developed by an airline for the travel agencies' use. Since travel agencies traditionally have sold most airline tickets, the airlines that controlled the systems had the incentive and ability to use them to prejudice the competitive position of non-owner airlines and to provide information to travel agents that gave an undue preference to the services operated by the owner airlines.

The Civil Aeronautics Board ("the Board") therefore adopted rules governing the systems operated in the United States. 49 FR 32540 (August 15, 1984). After we took over the Board's responsibility for economic regulation in the airline industry, we reexamined the rules and readopted them with changes in 1992 based on the industry circumstances at that time. 14 CFR Part 255 adopted by 57 FR 43780 (September 22, 1992). Our rules contained a sunset date, originally December 31, 1997, to ensure that we would reexamine the need for the rules and their effectiveness. We are carrying out that task in this proceeding. Our staff has also been informally studying CRS issues and other developments in airline distribution, including the Internet's impact during the past few years. *See* 65 FR 45551, 45555 (July 24, 2000).

We began this proceeding by issuing an Advance Notice of Proposed Rulemaking on those issues. 62 FR 47606 (September 10, 1997). We later issued a Supplemental Advance Notice of Proposed Rulemaking asking interested persons to update their comments, to comment on the impact, if any, of the recent changes in the systems' ownership and control, and to comment on whether any of the rules should be applied to the distribution of airline services over the Internet. 65 FR 45551 (July 24, 2000). We have extended the rules' sunset date, most recently to March 31, 2003, to ensure that they would remain in effect until we complete our reexamination. 67 FR 14846 (March 28, 2002).

In this proceeding we have received comments from the four systems, most of the U.S. airlines using large jet aircraft, a number of foreign airlines, many travel agency parties, and other persons interested in the issues, including the Consumers Union and the European Union (in referring to the commenters, we will use their common names, for example, Alaska, United and American Express, rather than Alaska Airlines, United Airlines, and American Express Travel Related Services Company).

On the first major issue—whether the rules should be maintained—a number of parties, primarily smaller airlines and travel agencies, contend that the rules remain necessary to protect airline competition and consumers. These commenters disagree over which rules, if any, should be strengthened or revised.

In their written comments or in meetings with OMB, Orbitz and the major airlines—American, United, Delta, Northwest, and Continental—have contended that the rules are no longer necessary, especially with regard to those rules requiring airlines with system ownership interests to participate in all systems and prohibiting discriminatory booking fees.

The second issue—whether the rules should govern airline distribution through the Internet—generated more disagreement among the parties. A number of parties urge us to prevent on-line travel agencies from providing biased information, and many contend that rules preventing websites operated by two or more airlines from engaging in anticompetitive conduct are necessary. Other parties argue that any rules governing Internet operations would be unjustified.

After we began this proceeding, some parties asked us to resolve specific issues in separate proceedings that would be completed before we made a final decision in this rulemaking. America West Airlines filed a petition for rulemaking on booking fee issues, Docket OST–97–3014, and the Association of Retail Travel Agents filed a rulemaking petition on certain travel agency contract issues, Docket OST–98–4775. Amadeus Global Travel Distribution filed a petition asking that we interpret the existing rules as prohibiting the tying of a travel agency's access to an airline's corporate discount fares to the travel agency's choice of the CRS affiliated with that airline, Docket OST–99–5888. We have included the issues raised by these three petitions in this proceeding. The discussion in this notice also relies on the comments submitted in response to our last proposal to extend the current rules' sunset date, 67 FR 71000 (February 15, 2002), in Docket OST–2002–11577 and discusses ASTA's request in the proceeding for emergency relief on two issues, the systems' use of a pricing structure in their travel agency contracts that keeps travel agents from using the Internet for bookings and the systems' sale to airlines of detailed data on bookings made by individual travel agencies.

The creation of Orbitz, the on-line travel agency owned by the five largest U.S. airlines, generated proposals in this proceeding for rule amendments that would regulate Orbitz' operations. We also received requests to investigate Orbitz and force it and its owner airlines to abandon practices that assertedly would reduce competition in the airline

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and airline distribution industries. The controversy over Orbitz led us to investigate it informally before it began operations to see whether its business plans would reduce competition in the airline and airline distribution businesses. We decided then that we did not have a basis for preventing Orbitz from launching its service or requiring it to change its business plans. *See* Letter dated April 13, 2001, from McDermott and Podberesky to Katz. We began a further investigation of Orbitz earlier this year and submitted a report to Congress on our monitoring of Orbitz thus far. The report did not reach any definitive conclusions, in part because of the continuing changes in the on-line distribution business, and in part because the Department of Justice has not concluded its own investigation into Orbitz. "Report to Congress: Efforts to Monitor Orbitz," Office of Aviation & International Affairs (June 27, 2002).

In addition, Orbitz' plans for giving consumers notice of its $5 fee for buying airline tickets required us to reexamine our rules on travel agency advertisements of airfares. We allowed Orbitz to carry out its plans, subject to several conditions, but stated that we would reexamine our standards for the disclosure of such travel agency fees. Order 2001–12–7 (December 7, 2001). We are considering that issue in this proceeding.

B. Summary of Proposed Rules

In this rulemaking we must decide whether CRS practices still require regulation and, if so, which regulations are necessary, in light of the substantial changes in airline distribution and system ownership since our last reexamination of the rules. We seek comments on whether some of the rules could be eliminated or modified to create more scope for competitive market forces. We are in particular asking for comments on proposals to reduce regulations in ways that could give airlines more flexibility in bargaining with the systems. We are proposing not to adopt regulations covering the sale of airline services through the Internet.

We fully recognize the importance of the on-going changes in airline distribution, particularly the growing importance of the Internet as a vehicle for selling airline tickets. These developments may make these rules unnecessary in the future. It may be that the continuing developments in airline distribution have already given airlines additional bargaining leverage with the systems. Several airlines have argued that the elimination of our mandatory participation rule and the rule barring systems from charging airlines discriminatory fees could enable airlines to bargain for better terms for system participation. While the record appears to suggest that the systems continue to have market power, it may be that the airlines would have some ability to obtain better participation terms through bargaining. We are therefore seeking comments on proposals to eliminate the mandatory participation rule and to end the rule against discriminatory booking fees.

At this time, it seems necessary to maintain at least some rules to prevent practices by firms with apparent market power that would reduce competition and the adoption of alternatives to the systems. We are therefore seeking comment on a tentative proposal to maintain some of the CRS rules and to apply them to all systems, whether or not owned or controlled by airlines. Despite important changes in the industry, there is evidence that each of the systems continues to have market power against most airlines that could be used to distort airline competition and competition in the business of electronically providing airline information and booking capabilities to travel agents. The systems also still appear to have the ability to engage in practices that would mislead travel agents and their customers about the availability, price, and quality of airline service options.

Nevertheless, given that there may be costs associated with maintaining the rules and that the rules may not be effective enough in promoting competition to warrant these costs, we seek comment on the possible benefits versus costs of sunset in March 2003. Specific discussion about the feasibility and costs of transition associated with full and immediate sunset in March 2003 would be helpful. We also seek views on whether this potential for bias and possible prejudicial conduct are sufficient to justify maintaining rules as proposed in this notice.

As was true in our last rulemaking, we are additionally concerned about system practices that seem unreasonably to keep airlines and travel agencies from using alternatives to the systems. These kinds of practices would drive up airline costs, keep travel agencies from using the most efficient means of obtaining information and making bookings, and discourage other firms from developing new technology that could replace the systems' services. We also believe that the large airlines' access to detailed data on each travel agency's route-by-route bookings on individual airlines could reduce competition in the airline industry, particularly by prejudicing the competitive position of the low-fare new entrant airlines. We are therefore proposing rules which would prevent all such practices. In developing our proposals we sought ways to enable market forces to work more effectively in the CRS business, to avoid potentially burdensome regulations, and to allow airline distribution practices to develop in ways that may eliminate the need for the rules.

As stated above, we are convinced that continuing changes in the airline and CRS businesses will likely require another examination of the need for the rules and their effectiveness in several years, if we ultimately decide in this proceeding to readopt the rules, with or without revisions. We will monitor industry developments closely and conduct further proceedings as necessary.

In addition, it may be that the continuing developments in airline distribution have given airlines more bargaining leverage with the systems than has been thought. Several airlines have argued that the elimination of our mandatory participation rule and the rule barring systems from charging airlines discriminatory fees could enable airlines to bargain for better terms for system participation. While the record suggests that the systems may continue to have substantial market power, it may be that the airlines would have some ability to obtain better participation terms through bargaining. We are therefore seeking comments on proposals to eliminate the mandatory participation rule and to ending the rule against discriminatory booking fees.

We have tentatively determined at this time that the rules should not be extended to cover distribution practices by airlines and travel agencies on the Internet. Such regulation seems unnecessary at this time. If on-line agencies engage in deceptive practices that harm consumers, we will consider taking action under our enforcement authority. As stated above, we have been informally investigating allegations that Orbitz and its owner airlines are engaged in anticompetitive conduct and if necessary will take action against them under our enforcement authority.

The findings and conclusions set forth in this notice are tentative. We have not made a final decision on any of the proposals, including the question of whether CRS regulations remain necessary. We ask the parties to submit comments that thoroughly discuss the factual and policy issues raised by our proposals. As to all proposals the parties should provide detailed information on whether the rule would be necessary and beneficial and estimates quantifying its likely benefits and costs.

Comments will be due sixty days after publication of this notice, and reply comments will be due thirty days thereafter. After considering the comments, we will issue a final rule.

C. Procedural Issues

As we have done in all of our CRS rulemakings, we are following the notice-and-comment procedures established by the Administrative Procedure Act for informal rulemakings. 57 FR 43792; 62 FR 59799–59800. These informal rulemaking procedures will give the parties a fair opportunity to present their evidence and policy and legal arguments and will enable us to resolve the issues rationally and efficiently.

We have largely based our proposals on the comments and the published sources cited in this notice. We have also relied on our informal investigations of airline distribution and the CRS business, as we planned to do. *See* 65 FR 45555. This notice reflects the staff's findings in its informal studies to the extent that we are using them. The parties now have the opportunity to comment on those findings as well as present any factual information and analysis of their own.

Some parties have filed motions for leave to file their comments or reply comments. We will grant all such motions.

As noted above, several parties have urged us to resolve some CRS issues before our completion of this proceeding. We have determined that it would be more efficient for us to consider all issues in this proceeding rather than decide issues piecemeal.

During the period since we issued our supplemental advance notice of proposed rulemaking, Department officials and members of the staff have met with a number of parties—Orbitz, Sabre and Travelocity, Expedia, Amadeus, Southwest, the Interactive Travel Services Association ("ITSA"), ASTA, and American Express—on the competitive and fairness questions presented by Orbitz that we have been informally investigating. These discussions focused on our informal investigation but also touched on issues involved in this proceeding. Before we issued the supplemental advance notice, Department officials and staff members met with ITSA, which asserted that the airlines were discriminating against on-line travel agencies. ITSA presented a written document on these issues, which it had filed in another docket, OST–97–3713, and Department officials agreed to have the document treated as a comment in this proceeding and to consider here the concerns expressed by ITSA.

Department officials and staff members also held discussions with other interested parties on airline distribution and CRS issues, including issues related to this rulemaking.

The staff met with the Air Carrier Association of America ("ACAA") and several of its member airlines to discuss their concerns with the systems' sale of marketing and booking data, which the larger airlines allegedly use to deter travel agencies from booking customers on low-fare airline competitors. The ACAA group was particularly concerned with the availability of data on bookings made by individual travel agencies. The ACAA group contended that airlines do not need the marketing and booking data for route planning purposes and legitimate marketing needs in domestic markets, since their own booking data and data available from the Department provide adequate information for those purposes. The ACAA members assert that large airlines to use the domestic data to find out which travel agencies are selling significant amounts of travel on smaller airlines and that they put pressure on those agencies to discourage them from booking those airlines. The ACAA representatives viewed the marketing and booking data as probably useful for planning international routes and marketing strategies, since comparable information may not be readily available from other sources. They suggested that the rules be amended to allow systems to sell data only on airlines willing to have their data be made available for this purpose.

Staff members have also met with Lawton Roberts of Uniglobe Country Place Travel, a travel agency, to discuss the widespread concern among travel agencies about the airlines' refusal to allow all travel agencies to sell fares offered by airline websites and Orbitz.

While our draft notice of proposed rulemaking was under consideration by the Office of Management and Budget ("OMB") pursuant to Executive Order 12866, Sabre, Cendant (Galileo), Worldspan, Amadeus, Orbitz, American, United, and Continental, among others, asked to meet with that agency. OMB met or held conference calls with the named parties. While we did not attend those meetings, OMB provided to us the written material presented at these meetings for inclusion in the docket for this proceeding. We are inviting commenters to address several of the ideas presented by the parties at those meetings.

D. Background

1. The CRS Business

Four systems are operating in the United States: Sabre, originally developed by American; Galileo, the product of a merger between United's Apollo system and a European system; Worldspan, the product of a merger between the PARS system owned by Northwest and TWA and Delta's DATAS II system; and Amadeus, a European firm that entered the United States by buying Continental's System One CRS. In 1999 the number of travel agency locations in the United States using each system was as follows: Sabre, 14, 961; Galileo, 11,840; Worldspan, 8,300; and Amadeus, 6,168. On a worldwide basis in 2001, Sabre was the largest, with about 65,000 locations, while Amadeus had 57,000, Galileo 45,000, and Worldspan 20,000. *Travel Distribution Report* (February 25, 2002) at 26; *Travel Distribution Report* (January 11, 2001) at 4. These figures do not precisely reflect market share, however, because one system may obtain substantially more bookings from its locations than other systems obtain from theirs. Sabre, for example, has claimed that it has a 48 percent share of CRS bookings in North America. *Travel Distribution Report* (May 31, 2001) at 2.

The systems have provided tremendous benefits for airlines, travel agencies, and consumers due to their efficiency. Transportation Research Board, *Entry and Competition in the U.S. Airline Industry* (1999) at 126. *See also* 57 FR 43781. Among other things, when an airline participating in a system enters a new city, the travel agents in that city that use that system will immediately learn of the airline's new service whenever they are checking service options for customers planning to travel on the route.

The practices followed by these systems have been important to airline competition and consumer welfare because of the travel agencies' dominant role in airline distribution and their reliance on CRSs to meet their customers' needs for advice and bookings. In 1999 travel agencies sold almost three-quarters of all airline tickets. Bear, Stearns & Co., "Point, Click, Trip: An Introduction to the On-Line Travel Agency" (April 2000) at 17. Almost every travel agent uses a system to investigate airline service options and make bookings for the agency's customers (a travel agency using a system is called a "subscriber"). One survey reported that travel agencies made 93 percent of their domestic airline bookings and 81 percent of their international airline bookings through a

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system in 1999. "U.S. Travel Agency Survey 2000," *Travel Weekly* (August 24, 2000) at 133. Travel agencies also use the systems to carry out back office functions like bookkeeping and recordkeeping. Both "brick and mortar" and on-line travel agencies depend on the systems, although Orbitz is planning to create direct connections between itself and many of its airline participants.

Travel agents have relied so much on the systems because they efficiently provide comprehensive information and booking capabilities on airlines and other travel suppliers. A CRS presents displays that integrate almost all services offered in a market. Each system shows the schedules and fares offered by airlines in each market that are available for sale through travel agents using that system and whether seats are available on specific flights at specific fares. A travel agent can compare the schedules and fares offered by different airlines and determine which would best meet a customer's needs. The agent can reserve a seat and issue a paper ticket or an E-ticket. While the systems formerly offered almost complete information on airline services, airlines now offer some low fares through their websites (and some on-line travel agencies) that they do not sell through any system. Airline transportation is the most important service sold through a system, but the systems also provide information and booking capabilities for rental cars, hotels, and other travel services. Travel agents usually access a system through computer terminals linked with the system's database.

Each system provides information and booking capabilities on the airlines and other travel suppliers that "participate" in the system, that is, agree to make their services saleable through the system. The system obtains its availability information from the airlines' internal reservations systems, and it makes bookings in those systems, which are used by the airlines' own reservations agents and other staff members. Airlines typically either operate their internal systems themselves or arrange for another firm, often one of the systems, to operate it under contract.

Participation requires the airline to pay fees for each booking transaction (the fees paid by participating airlines and other travel suppliers are usually called "booking fees"). Airlines can participate at different levels. At higher levels the information provided travel agencies will be more timely and so more reliable, and travel agents can carry out tasks like reserving specific seats for their customers. An airline participating at a higher level of participation must pay higher booking fees. 62 FR 59784, 59785 (November 5, 1997).

In 2000 the average airline booking fee for the highest level of system service, the level used by the network airlines, was $3.54 per segment. Testimony of Inspector General Kenneth Mead before the Senate Commerce Committee, July 20, 2000, at 17. Sabre estimates that the network airlines' total booking fee costs equal about two percent of the revenue obtained through CRS bookings. Sabre Supp. Reply Comments at 36. Northwest has estimated that its booking fee costs in 2000 equaled 2.1 percent of its system passenger revenues. *Travel Distribution Report* (June 14, 2001) at 4. The systems usually increase their booking fees annually; Sabre, for example, raised its fees by about nine percent in 2001 and three percent in 2002. *Travel Distribution Report* (January 11, 2001) at 6; *Travel Distribution Report* (December 13, 2001) at 1.

The systems display information on computer screens. Since each screen can display only a limited number of flights, a system must use criteria for ranking the available flights. Display position is important, since travel agents are more likely to book the flights that are displayed first. 61 FR 42208, 42209 (August 14, 1996). The number of flight options available in most markets also requires the systems to edit their displays, since many options will be unattractive to travelers (Los Angeles-San Francisco travelers, for example, will not choose connecting services over Denver or Salt Lake City). Systems display airline services in several different ways. The display traditionally used by travel agencies ranks flights in a market on the basis of the criteria developed by the system and shows whether seats are available on the listed flights. Some systems have ranked flights in this type of display by listing all nonstop flights first, then listing one-stop flights and other direct flights, and ending with connecting services. Others have ranked flights on the basis of relative quality, such as each flight's elapsed time or its displacement time (the time difference between the departure time requested by the traveler and the time of each flight). 61 FR 42210–42211.

Every system also has a display that ranks flights on the basis of price, with the lowest being listed first. Travel agents commonly use that display for customers whose major concern is finding the cheapest fare.

Corporate travel departments and consumers, not just travel agents, use the systems. A corporate travel department, which books travel for its company's employees, benefits from the systems' efficiencies and information. Corporate users can access a system through the Internet or by Intranet. *See, e.g.*, Sabre Comments at 4. Consumers using an on-line travel agency to obtain schedule and fare information and make bookings are indirectly accessing one of the systems; Travelocity uses Sabre as its booking engine, while Expedia uses Worldspan, for example.

The fees charged airlines were not effectively disciplined by competition and may have exceeded system costs by a significant amount. 56 FR 12586, 12595 (March 26, 1991).

In past years the fees paid by airlines and other travel suppliers accounted for about ninety percent of total system revenues, while the fees paid by travel agencies made up only ten percent of the total. 62 FR 59784, 59788 (November 5, 1997); Sabre Holdings 10–K reports for the years 1999 and 2000. The CRS business has economies of scale, so a system's profitability increases when travel agents use it for more bookings. *Study of Airline Computer Reservation Systems*, U.S. Dept. of Transportation (May 1988) at 24–25.

The systems have been able to maintain high booking fees, because most airlines have concluded that participation in each system is necessary. The systems accordingly have had little need to compete for airline participants. Almost every U.S. airline, including most of the low-fare airlines, participates in each of the systems.

Although four systems operate in the United States, each travel agency office has typically relied either exclusively or predominantly on one system. A 1996 survey reported that less than four percent of travel agency offices had more than one system. ASTA Comments at 19. Other commenters allege that few travel agency offices use more than one system. Alaska Supp. Reply at 6; Southwest Supp. Reply at 16. While the services offered by each system are comparable, using multiple systems could improve a travel agency's ability to serve its customers. Travel agents then could acquire more accurate and complete information on available airline flights, and the agencies' ability to use multiple systems would encourage the systems to compete more on the quality and range of their services. 57 FR 43797. Offsetting that factor, a travel agency's use of multiple systems can create some inefficiencies, due to additional training needs and potential difficulties in keeping track of customer records. 56 FR 12607. Each system also offers inducements to travel agency customers to make most or all of their bookings on that system.

Travel agencies, unlike airlines, can usually choose which system to use. The systems' competition for travel agency customers has caused them to continuously improve the range and quality of services offered travel agencies. In addition, many large travel agencies obtain CRS services at little or no cost. Sabre has stated that competition among the systems for travel agency customers "is particularly intense" and that some systems "aggressively pay economic incentives to travel agencies to obtain business." In addition, "certain [Sabre] service contracts with significant subscribers contain booking fee productivity clauses and other provisions which allow subscribers to receive cash payments, and/or various amounts of additional equipment and other services from [Sabre] at no cost." Sabre Holdings 10–K Report for FiscalYear 2000 at 24, 37. Galileo has similarly stated that competition for travel agency customers is intense, that fees are often waived for travel agency customers, and that some obtain incentive payments. Galileo International 10–K Report for Fiscal Year 2000 at 5, 17. AAA and Apollo reportedly signed a five-year term contract that assumed that all AAA member clubs would use Apollo as their only system; AAA expected to earn $75 million from Apollo under the contract. *Travel Weekly* (September 25, 1997) at 46.

A system is willing to pay bonuses to capture a large agency's business in the expectation that it will capture all or almost all of the agency's business for a period of several years and thereby obtain a large and steady stream of airline booking fees. The large agencies have become more dependent on such payments due to the airlines' commission cuts. Sabre Holdings 10–K Report for Fiscal Year 2001 at 31. On the other hand, smaller travel agencies complain that they are overcharged for system services and forced to accept unreasonable contract terms. *See, e.g.*, ASTA Comments at 2–3, 10; ARTA Comments at 4–8; ARTA Emergency Petition. Furthermore, travel agencies located in cities dominated by one airline may feel compelled to use a system affiliated with that airline. These agencies depend on obtaining marketing benefits and access to corporate discount fares from the dominant airline to meet the needs and preferences of their customers. Large Agency Coalition Comments at 9–10.

2. The Travel Agency Distribution System

In the past the systems have been important because most airlines have depended on travel agencies for their distribution. Travel agencies have acted as agents for virtually all airlines and generally held themselves out to the public as sources of impartial advice on airline services and other travel services. 56 FR 12587. The travel agency system has traditionally provided an efficient means of distribution for most airlines. 57 FR 43782. As noted, in 1999 almost three-quarters of all airline tickets were sold by travel agencies, while only one-fourth of all bookings were made directly with an airline. Bear, Stearns & Co., "Point, Click, Trip" at 17. Even many low-fare airlines, the airlines that have tried hardest to distribute their tickets directly to consumers, have relied on travel agencies for a large share of their bookings. In the fourth quarter of 2001, AirTran, for example, obtained 33 percent of its bookings from travel agencies using a system. AirTran 10–K Report for fiscal year 2001 at 8.

Travel agencies historically derived most of their revenue from the commissions paid by airlines and other travel suppliers. Due to the airlines' reductions in commissions in recent years, travel agencies began charging fees to their customers. Almost ninety percent of all travel agencies charge some fees. *Travel Distribution Report* (May 31, 2001); *Travel Weekly* (February 25, 2002) at 27. The fees average $13.21 per ticket. "Web air fares unlevel the playing field," *Chicago Tribune* (February 16, 2002); "Travel Agents Cry Foul over Internet Fare Deals," *Los Angeles Times* (February 16, 2002).

Travel agencies do not operate as franchisees of one or a few airlines. Transportation Research Board, *Entry and Competition in the U.S. Airline Industry* at 125. Individual airlines, however, encourage travel agencies to sell their services rather than their competitors' services. An airline will often offer travel agencies override commissions, a type of incentive commission, that give a travel agency a larger commission on all of its bookings on the airline if the airline's share of the agency's total bookings (or total bookings in specific markets) exceeds a specified percentage, which is often related to the airline's share of all travel agency bookings in the agency's area. Since override commissions enable the agency to obtain a higher commission rate on all its bookings with an airline, the airline dominating a metropolitan area can use override commissions more effectively than can its competitors. Secretary's Task Force on Competition in the U.S. Domestic Airline Industry, U.S. Department of Transportation, *Airline Marketing Practices* (February 1990) at 28.

Beginning in March 2002, the major airlines stopped paying base commissions to travel agencies in the United States and switched entirely to the use of incentive commissions. The incentive commission programs developed by these airlines, and the lack of any alternative pay from those carriers, will likely strengthen the travel agencies' interest in meeting the performance standards set by the airlines.

As discussed below in connection with proposals to bar travel agencies from creating biased CRS displays, some industry commentators and the Department's Inspector General have expressed a concern that override commissions can induce travel agencies to recommend airline services that will increase their commission payments rather than the services that best meet the needs of their customers. Office of the Inspector General, U.S. Dept. of Transportation, "Report on Travel Agent Commission Overrides" (March 2, 1999). The airlines' efforts to encourage travel agencies to give each airline a larger share of their business affect our analysis of several issues, including the systems' sale of marketing and booking data, but we are not addressing the override commission issue in this proceeding.

Not all travel agencies obtain override commission arrangements. In other respects as well, airlines have traditionally not treated all travel agencies the same since deregulation. A travel agency with a preferred supplier relationship with an airline can obtain marketing benefits, such as the ability to waive advance purchase restrictions and to book important clients on oversold flights, that are not available to other agencies. *Airline Marketing Practices* at 26.

3. International CRS Operations

Although U.S. airlines developed the first systems, the CRS business soon became international. European airlines, for example, created Amadeus, and Galileo is the product of the merger between United's Apollo system and the Galileo system developed by several European airlines. Sabre and Worldspan have no foreign airline owners but both compete for travel agency customers overseas.

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The importance of CRS operations overseas has led other governmental entities like the European Union and Canada to adopt rules regulating the CRS business. *See, e.g.*, European Commission Comments. A number of the parties in this proceeding, primarily the European Union and several foreign airlines, have urged us to harmonize our rules with the rules applicable in the European Union.

CRS operations abroad concern the United States, since foreign systems and their owners could engage in practices that would prejudice the competitive position of U.S. airlines in international markets or the ability of U.S. systems to obtain travel agency customers in foreign countries. The United States accordingly has entered into a number of international air services agreements that require each party to ensure that the systems operating in its country and their owners do not subject airlines and systems from the other country to discriminatory treatment.

In addition, the United States has taken action in some cases to ensure that U.S. systems are not denied access to foreign markets by discriminatory conduct by foreign airlines and other travel suppliers that own or market a competing system. *See, e.g.*, Orders 88–7–11 (July 8, 1988) (American complaint against British Airways) and 90–6–21 (June 8, 1990) (American complaint against Iberia).

Congress has stated its interest in preventing discriminatory practices by systems and affiliated airlines that would distort international competition. The Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, Public Law 106–181 (April 5, 2000), includes a provision, section 741, that expanded our authority under 49 U.S.C. 41310 to take countermeasures against an unjustifiably discriminatory or anticompetitive practice against a U.S. CRS or the imposition of unjustifiable restrictions on access by a U.S. system to a foreign market.

4. Our Readoption of CRS Rules

The CRS rules adopted by the Civil Aeronautics Board ("the Board") in 1984 included an expiration date to ensure that we would reexamine the rules after they had been in force for several years. We conducted such a reexamination and, on the basis of the systems' continuing ownership by airlines and the airlines' continuing reliance on travel agencies for distribution, determined in 1992 that CRS rules remained necessary to safeguard airline competition and to help ensure that consumers did not receive inaccurate or misleading information on airline services. We based our decision on the systems' control by airlines and airline affiliates, which could still use their control of the systems to prejudice airline competition if there were no rules. 57 FR 43783–43787, 43794. We reasoned as well that airlines had no practical ability to induce travel agencies to use systems charging lower fees, and we noted that travel agencies did not choose systems on the basis of their treatment of airlines. 57 FR 43831; 56 FR 12586, 12594–12595.

Our revised rules governed the operations of systems owned or marketed by an airline or airline affiliate insofar as the system was providing services to travel agencies. In adopting these rules, we relied on our authority under section 411 of the Federal Aviation Act, later recodified as 49 U.S.C. 41712, to prohibit unfair and deceptive practices and unfair methods of competition in air transportation and the sale of air transportation (we will refer to the statue by its traditional name, section 411). 57 FR 43789–43791.

One of the principal provisions that we readopted barred each system from using carrier identity as a factor for editing and ranking services. We did not, however, prescribe a display algorithm (the set of criteria for constructing displays), so each system was free to choose its own criteria for editing and ranking airline services. Secondly, the rules prohibited systems from charging discriminatory booking fees but did not set limits on the level of fees. Thirdly, each system had to make available to any participating airline the booking and marketing data generated by it from bookings for domestic travel made through the system. Finally, the rules proscribed certain types of restrictive contract provisions that unreasonably limited the travel agencies' ability to switch systems or use more than one system. For example, the rules limited the maximum length of subscriber contracts.

We modified the rules in several respects to strengthen them. Among other things, our revised rules required each system to provide non-owner airlines with information and booking capabilities as accurate and reliable as those provided the owner airline. We gave each travel agency the right to use its own equipment in conjunction with a system and to access other systems and databases from the same terminals used to access its primary system, unless the agency used terminals provided by that system; we adopted this rule in part to spur the development of alternative ways of providing airline information and booking capabilities to travel agencies. We also required each airline with a significant CRS ownership interest to participate in other systems at as high a level of functionality as it does in its own system, if the terms for participation are commercially reasonable (this is the mandatory participation rule). We sought to prevent U.S. airlines from attempting to discourage travel agencies from choosing a competing system by limiting their participation in systems owned by other airlines.

We hoped that our revisions would enable airlines to develop alternative means of access to travel agencies and thereby begin to bring market forces to bear on the systems' terms for airline participation. We avoided rules that involved detailed management of system operations. 57 FR 43781.

We later adopted two additional rules to prevent system practices that distorted competition in the airline and CRS businesses. One rule prohibited systems from enforcing "parity clauses" against airlines that did not own or market a competing system. 62 FR 59784 (November 5, 1997). The parity clauses imposed by most systems on airline participants required each airline to buy at least as high a level of service from the system as it did from any other system. The parity clauses made it unnecessary for systems to compete for airline participation at higher levels of service. While almost all airlines must participate in each system for economic reasons, many airlines do not need to participate at the more expensive higher levels.

The second rule strengthened the rules prohibiting display bias by requiring each system (i) to offer at least one display that does not give on-line connections a preference over interline connections and (ii) to either list one-stop and other direct flights before connecting services or use elapsed time as a significant factor in selecting flight options from the database. 62 FR 63837 (December 3, 1997). We acted in large part because of concerns that United had caused Galileo to create displays that prejudiced United's competitors. 62 FR 63840–63841.

5. Major Developments Since the Last Overall Rulemaking

As we stated in our supplemental advance notice of proposed rulemaking, our decision in this proceeding must take into account two major developments in the CRS business and airline distribution that have occurred in recent years, the airlines' shrinking ownership of the systems and the growth of Internet usage. 65 FR 45556–45557.

As noted above, when we last reexamined the rules, one or more airlines or airline affiliates owned each of the systems. That is no longer true, although the systems without airline ownership still have ties to their former owners.

Sabre, the largest system, which American developed, is now a publicly-owned company. Most of Galileo's airline owners sold their stock to the public by the end of 2000, although United continued to own eighteen percent of Galileo's stock, Swissair eight percent, and five other airlines 1.5 percent. Galileo Supp. Comments at 2. Cendant, a firm that owns Avis and several hotel franchises, bought Galileo in exchange for stock and cash in early October 2001. United received Cendant stock in exchange for its Galileo stock but has sold all of those shares. United April 19, 2002, and February 1, 2002, Press Releases.

Amadeus, a European system, entered the U.S. market by acquiring System One, the system owned by Continental. Continental thereafter sold its Amadeus shares. Amadeus is now controlled by three foreign airlines, Lufthansa, Air France, and Iberia. The public, however, now holds a significant portion of Amadeus' stock.

Worldspan is still owned entirely by airlines and airline affiliates. Its U.S. airline owners are Delta, Northwest, and American, since American acquired TWA's Worldspan stock when it bought TWA's assets.

Although some systems are no longer owned by airlines, every system still has marketing ties with one or more airlines. American and Southwest market Sabre, and United provides some marketing support for Galileo. Amadeus Supp. Comments at 4–5. Since our rules by their terms apply to systems owned or marketed by airlines, 14 CFR 255.2, Sabre and Galileo as well as Amadeus and Worldspan are subject to the rules.

The other major development is the growing use of the Internet for airline distribution. The Internet has given airlines and other travel suppliers new ways to obtain bookings and inform consumers of their services and to do so at significantly lower cost. *See, e.g.*, Statement of A. Bradley Mims, Deputy Assistant Secretary for Aviation and International Affairs, U.S. Department of Transportation, before the Senate Commerce Committee (July 20, 2000); General Accounting Office, "Effects of Changes in How Airline Tickets Are Sold" (July 1999) at 13. A consulting firm estimated that Internet bookings would account for fourteen percent of all airline revenues in calendar year 2001. "Web Sales of Airline Tickets Are Making Hefty Advances," *New York Times* (July 5, 2001).

Most U.S. airlines have websites, and many offer special discount fares (E-fares or webfares) and other benefits to travelers who book seats through the airline's website instead of another distribution channel. For most airlines, their own individual websites have become their cheapest available distribution channel. GAO, "Effects of Changes in How Airline Tickets Are Sold" at 17–18.

While airlines initially offered their E-fares exclusively through their own websites, Delta allows travel agents to book its E-fares through its website for travel agencies, although such bookings are non-commissionable. *Travel Distribution Report* (March 22, 2001) at 9; Delta Comments on Proposed Extension at 6–7. Other airlines have also created websites where travel agents may book their discount fares. Many airlines have agreed to give Orbitz the ability to sell their E-fares in exchange for a rebate of part of the CRS booking fees paid on all of the airline's bookings made through Orbitz.

Travel agents can book Internet fares for their customers even if they are not offered through the system used by the travel agency or an airline website dedicated to travel agents. Some do so. "Travel agents charting other routes to profit," *Philadelphia Inquirer* (March 27, 2002). When travel agents book such fares through an airline website created for consumers or Orbitz, they usually receive no commission and earn no credits towards the minimum monthly booking quota set by the systems' subscriber contracts that use productivity pricing. "Web air fares unlevel the playing field," *Chicago Tribune* (February 16, 2002); "Travel Agents Cry Foul over Internet Fare Deals," *Los Angeles Times* (February 16, 2002). In addition, searching several websites for E-fares is less efficient for travel agents, complicates a travel agency's task of preparing reports for corporate customers, and makes it harder for corporate travel managers to manage travel programs. Susan Parr Travel Comments; NBTA Comments on Proposed Extension at 2. Several firms and the systems themselves are developing software that will enable travel agents to quickly search for fares on multiple websites and systems, however. "Fare game: "Beat the agent"', Travel Weekly (March 4, 2002) at 6. Orbitz" agreement with Aqua should enable travel agents to use a program allowing them to simultaneously see the display of fares offered by a system and the fares available through Orbitz, including E-fares. May 16, 2002, Orbitz press release.

The share of airline bookings produced by airline websites has been growing rapidly. Delta's on-line revenues in the March 2002 quarter were 64 percent higher than in the March 2001 quarter, and Delta expected to obtain fifteen percent of its tickets from its own website in 2002. Delta April 24, 2002, Press Release. The percentage of Alaska's bookings obtained from its website grew from 10 percent in 2000 to 16 percent in 2001. Alaska 10–K Report for the year 2001. Continental reportedly expects forty to fifty percent of its bookings to come from Internet sites, including its own, Orbitz, and Hotwire, by 2005 or 2006. *Travel Distribution Report* (June 14, 2001) at 4. Most of the network airlines, however, have been obtaining a smaller share of their bookings from their websites. Thus, while consumer use of American's website is growing rapidly, the website produced only an estimated three percent of the airline's revenues in the first quarter of 2001. *Aviation Daily* (July 2, 2001).

Some low-fare airlines already obtain a large share of their bookings from their websites. JetBlue obtained 44 percent of its sales from its website in 2001. JetBlue Registration Statement on Form S–1 (filed April 10, 2002) at 41–42. Southwest's website produced forty percent of the airline's revenues in 2001. Southwest Airlines 10–K Report for the year 2001. AirTran was obtaining over half of its bookings through the Internet by the end of 2001. January 29, 2002, AirTran Press Release. Frontier obtained 28 percent of its bookings in the quarter ended December 31, 2001, from its website, and Internet bookings from all sources made up 39 percent of its revenue in that quarter (the comparable figures for the December 31, 2000 quarter were six percent and fifteen percent). February 5, 2002, Frontier Press Release. The two major European low-fare airlines obtain a much larger share of their total sales from on-line bookings. Ryanair obtained 91 percent of its bookings from its website in January 2002, while EasyJet sells tickets only through its own reservations center and website, not through travel agencies. Ryanair February 4, 2002, Press Release; "About Our Fares" at *www.easyjet.com*.

Airlines have created Internet sites for use by travel agencies and corporate customers as well. Delta has websites for travel agencies and corporate customers. Employees of businesses that have corporate sales agreements with Delta can book the negotiated discount

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fares through that website, and corporate travel managers can track the bookings made through the website. *Aviation Daily* (July 2, 2001).

Internet bookings made directly with an airline are less costly. Delta recently stated that the cost of bookings made through its own website is only one-fourth the cost of bookings made through a travel agency using a system. Statement of Scott Yohe before the National Commission to Ensure Consumer Information and Choice in the Airline Industry (the "National Commission") at 11. Similarly, according to a 1999 study, each booking made through traditional travel agencies cost America West $23, a booking made through an electronic travel agency cost $20, a booking made through the airline's reservations agents cost $13, and a booking made through the airline's website cost $6. GAO, "Effects of Changes in How Airline Tickets Are Sold" at 17. Southwest states that a booking costs Southwest $10 when made through a travel agency, $5 when made through a Southwest reservations agent, and $1 when made through Southwest's website. Southwest Supp. Reply at 20.

Airlines have taken other steps to reduce their costs. Airlines encourage passengers to use E-tickets—electronic tickets—instead of paper tickets since E-tickets involve no printing costs and lower handling and processing costs than paper tickets, which are negotiable documents. GAO, "Effects of Changes in How Airline Tickets Are Sold" at 8. Beginning in 1995 airlines also cut the travel agencies' base commissions several times, which led to a decline in the number of travel agencies; forced travel agencies to focus on other travel activities, such as cruise bookings, which are more remunerative; and caused most travel agencies to charge consumers fees for their services. GAO, "Effects of Changes in How Airline Tickets Are Sold" at 6, 9–11. In March 2002 the major airlines eliminated base commissions entirely and began paying travel agencies only incentive commissions.

These developments have significantly reduced airline costs. Delta has stated that its customers' use of the Internet saved Delta $45 million in commissions and booking fees in 2000, when thirteen percent of its tickets were sold through the Internet. "Web Sales of Airline Tickets Are Making Hefty Advances," *New York Times* (July 5, 2001). Similarly, while Alaska's passenger revenue increased by 6.9 percent from the first quarter of 2000 to the first quarter of 2001, its commission expense increased by only 1.9 percent since a smaller share of its bookings were being made by travel agents, 61.6 percent in the first quarter of 2001 compared to 65.9 percent in the first quarter of 2000. Alaska 10–Q Report for the quarter ended March 31, 2001. The GAO has estimated that the cuts in commissions lowered airline commission costs by about $4 billion between 1995 and 1998. GAO, "Effects of Changes in How Airline Tickets Are Sold" at 6–8.

Travel agencies also now provide information and make bookings over the Internet. Many traditional travel agencies— "brick and mortar" agencies—have established websites for use by consumers. Other firms started business as on-line agencies. The two largest on-line travel agencies are Travelocity, owned by Sabre, and Expedia, developed by Microsoft. In addition to selling airline tickets as agents for the airlines, some on-line agencies also buy blocks of airline seats and hotel rooms at negotiated prices substantially below the supplier's published rates. Bear, Stearns, "Point, Click, Trip," at 48, 49.

In addition, five major airlines—United, American, Delta, Northwest, and Continental—created Orbitz to compete in the on-line agency business. Orbitz is initially using Worldspan as its booking engine but will create direct links with many of the airlines participating in Orbitz. "Et tu, Orbitz?" *Travel Weekly* (March 4, 2002) at 6; Orbitz Supp. Comments at 35. Orbitz is offering airlines rebates on their booking fees if they agree, among other things, to give Orbitz access to all of their publicly-available fares, including their Internet fares. Orbitz Supp. Reply at 24–25. Orbitz" plans for gaining access to these fares, which airlines initially at least did not allow other travel agencies to sell, and Orbitz" control by five major airlines have generated substantial controversy.

If an airline refuses to allow Orbitz to sell all of its publicly-available fares, consumers can still book the airline if the airline participates in Worldspan, but the airline will not get a rebate on the CRS fees. Orbitz is unable to make bookings on those airlines, such as Southwest, that neither participate in Worldspan nor provide fare and availability information and booking capabilities to Orbitz through another channel.

Orbitz is currently operating as an on-line travel agency. Orbitz could make its services available to travel agencies for use in making airline bookings. Since it charges participating airlines a fee for such bookings, it would become a system subject to all of the rules applicable to the existing four systems if it offered its services to travel agencies. As noted, under Orbitz" agreement with Aqua, the latter firm will develop a program that would enable travel agencies to access Orbitz" displays and booking capabilities.

Other firms selling travel on-line have created new marketing strategies. Priceline operates a site that allows consumers to "name their own price" for airline seats; a consumer using Priceline, however, only learns which airline is operating the service and the routing and departure time for the trip after the consumer makes a bid and the bid is accepted by Priceline. While giving consumers an opportunity to bid on a ticket price, Priceline only sells seats obtained through negotiated deals with airlines and other suppliers. Airlines use Priceline for selling distressed inventory. Bear, Stearns, "Point, Click, Trip," at 53–55. Several major airlines have created another website, Hotwire, which offers a service like Priceline. Unlike Priceline, Hotwire tells the consumer what the fare will be for the trip before the customer decides whether to buy the ticket; like Priceline, Hotwire does not disclose the name of the airline, the routing, and the departure time until the consumer accepts Hotwire's offered fare. In 2001 Priceline and other opaque sites accounted for about two percent of all airline bookings. "Web Sales of Airline Tickets Are Making Hefty Advances," *New York Times* (July 5, 2001).

While the growing use of the Internet and other changes in distribution practices will likely make it harder for some "brick-and-mortar" travel agencies to remain in business, the travel agency industry will not disappear. A Sabre official has predicted that travel agencies will account for 65 percent of all airline bookings in 2005 (45 percent by traditional travel agencies and 20 percent by travel agency websites). "Sabre: Agents could retain 65% of air sales by 2005," *Travel Weekly* (April 3, 2000) at 10.

Travel agents provide services that benefit many consumers. Many travelers value the personal service provided by travel agents and their expertise with complex itineraries. "Web Sales of Airline Tickets Are Making Hefty Advances," *New York Times* (July 5, 2001). A large proportion of the agencies' customers will probably continue to rely on "brick-and-mortar" agencies because they wish to have personal contact with a travel agent and will not use an Internet site for buying tickets. Bear, Stearns, "Point, Click, Trip," at 17. Many consumers also prefer using a travel agency website rather than an airline website since they believe that they are likely to get a better price from a travel agency website. April 17, 2000, PhoCusWright Press Release. In the past the GAO found that consumers were more likely to obtain the lowest available fare from a travel agent than from other sources of airline information. GAO, "Effects of Changes in How Airline Tickets Are Sold" at 13. And travel agents can offer expert advice not easily available elsewhere (and use the Internet to reach customers interested in taking advantage of an agency's special expertise). *See, e.g.*, Travel Distribution Report (March 11, 2002) at 39.

While the recent continuing changes in airline distribution have provided substantial benefits for airlines (and consumers, when airlines pass on their cost savings), they may not have eliminated the need for CRS regulation, as we discuss next.

E. Considerations That Support Maintaining CRS Rules

In considering whether to readopt the rules with modifications, we must determine the extent to which our past findings remain valid, that is, whether the systems still have the power to distort airline competition and provide inaccurate or misleading information to consumers, and whether a system owned or controlled by an airline will have an incentive to use that power if not blocked by rules. The airlines' growing use of the Internet for distribution and the changes in the systems' ownership require us to reassess the validity of these past findings. We invite the parties to comment on possible alternatives that could reduce the extent of regulation and lead to a phase-out of the rules, as discussed below. In particular, we are proposing to end the mandatory participation rule and to end the ban against discriminatory booking fees. These changes could enable airlines to negotiate for better terms for CRS participation.

When we last reexamined the rules, we thought that a system could prejudice the competitive position of disfavored airlines by biasing its displays so that their flights were omitted or displayed only after the flights of favored airlines, charging some airlines substantially higher fees than those paid by their competitors, or imposing participation terms that disadvantage some airlines, for example. We also found that, without rules, the systems and their owners would be likely to engage in practices meant to distort competition in the CRS business and to prevent airlines from using alternative electronic means of providing information and booking capabilities to travel agencies. We ask the parties to address the current validity of those concerns, particularly in view of the on-going developments in airline distribution.

When we reexamined the rules ten years ago, all of the systems were owned and controlled by one or more airlines or airline affiliates, and we relied on that fact in concluding that the CRS rules should be readopted. Since two of the systems are no longer owned and controlled by airlines, we have considered whether our rules should govern the practices of such a system (we will refer to systems that are not owned and controlled by airlines as "non-airline systems" and systems owned or controlled by airlines as "airline systems"). We tentatively believe that non-airline systems may have market power over airlines and that rules preventing those systems as well as airline systems from engaging in anticompetitive or deceptive practices may be necessary. We ask the parties to comment on whether a non-airline system, despite the lack of airline control, might use its power to distort airline competition or mislead consumers and engage in practices that would unreasonably restrict the ability of airlines and travel agencies to use alternatives to the systems, thereby increasing airline costs (and thus the fares paid by consumers), if we do not regulate such systems.

In addition, the systems' willingness to sell data on the bookings made by individual travel agencies on each airline on a route-by-route basis and flight-by-flight basis, and to do so almost as soon as bookings are made, may give a large airline that dominates a metropolitan area power to take actions undermining the ability of competing airlines, particularly low-fare airlines, to continue serving that area. Among other things, the large airlines may use the data to pressure travel agencies in such a metropolitan area to stop booking travelers with competing airlines. Tentatively, therefore, we are proposing restrictions on the data that airlines may obtain from the systems.

1. Overview

Computer reservations system practices originally presented regulatory concerns because of the potential for consumer injury. *See* 49 FR 32540 (August 15, 1984). After reexamining the need for CRS rules in our last major rulemaking, we decided that the rules remained necessary in view of the systems' ownership by airlines and the structure of airline distribution at that time. At that time, we determined that market forces did not discipline the systems' price and terms for the services offered participating airlines. The systems' practices were not affected by market forces because the systems did not need to compete for airline participants. Airlines relied on travel agents for the great majority of their revenues, travel agencies used systems to make almost all of their airline bookings, and almost all travel agencies relied entirely or predominantly on one system to learn what airline services were available and to make bookings for their customers. 57 FR 43783–43784. Travel agents relied on the systems because they efficiently provide comprehensive information and booking capabilities on participating airlines and other travel suppliers. A CRS presented displays that integrate all participating airline services offered in a market. Each system showed the schedules and fares offered by those airlines in each market and whether seats were available on specific flights at specific fares. A travel agent could compare the schedules and fares offered by different airlines and determine which would best meet a customer's needs. 57 FR 43782; 56 FR 12587.

If an airline failed to participate in one system, the travel agents using that system could neither book its services readily nor find its services in the system's displays. The airline as a result would lose a substantial portion of its bookings from those travel agents.

The economics of the airline industry are such that the addition or loss of a few passengers on a flight will determine whether the flight is profitable. The importance of marginal revenues in the airline business means that airlines cannot afford to lose access to any significant distribution channel. 57 FR 43780, 43783 (September 22, 1992). As one industry economist, Daniel Kasper, stated, Orbitz Supp. Reply, Daniel Kasper Statement at 7:

> Airlines utilize many different distribution channels for the simple reason that they must do so in order to ensure that their products are easily accessible to the broadest possible array of prospective travelers. * * * Because attracting incremental passengers is critically important to an airline's profitability, each airline strives to match or surpass the visibility to purchasers enjoyed by its rivals. That is, airlines must compete for "shelf space" in any channel where consumers prefer to shop.

Cf. Bear, Stearns & Co., "Point, Click, Trip: An Introduction to the On-Line Travel Agency" (April 2000) at 24–25.

Virtually every airline therefore was compelled to participate in each of the four systems operating in the United

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States. The Justice Department thus stated in an earlier rulemaking, quoted at 62 FR 59789,

> Each CRS provides access to a large, discrete group of travel agents, and unless a carrier is willing to forego access to those travel agents, it must participate in every CRS. Thus, from an airline's perspective, each CRS constitutes a separate market and each system possesses market power over any carrier that wants travel agents subscribing to that CRS to sell its airline tickets.

As a result, the systems did not need to compete for airline participants. They could therefore impose costly and burdensome requirements on participating airlines. As American has stated, "This market structure allows CRSs to charge exorbitant fees to airlines." Statement of George Nicoud before the National Commission at 7.

When we most recently reviewed the rules, we found that, while the roles of the travel agents and the systems in airline distribution gave each of the systems market power, the systems also engaged in practices that buttressed their market power by reducing the ability of airlines and travel agencies to use alternative electronic means for the tasks of communicating information and making bookings. Until we revised our rules, the systems refused to allow travel agencies to buy third-party hardware and software, and each system refused to allow travel agencies to use the system equipment to access alternative databases and systems. Each system's contracts with travel agencies generally imposed substantial penalties on travel agencies that did not use that system for a major share of its bookings. The systems additionally required travel agencies to accept five-year contracts. 56 FR 12605, 12621.

It is important to note that substantial changes in the airline distribution business have occurred since our last overall reexamination of the CRS business. The Internet is an increasingly important means of airline distribution, and a number of airlines are obtaining a growing share of their total bookings from their own websites. The airlines' ability to sell tickets through their own websites gives them an inexpensive and efficient alternative to the travel agency system (and to their own reservations agents) and a way to bypass the systems for a significant number of bookings. In addition, two of the four systems operating in the United States are no longer owned by airlines. These developments present the question of whether CRS rules remain necessary.

According to a number of commenters, CRS rules may continue to be necessary to prevent system practices that could prejudice airline competition, although consumer use of the Internet and other on-going changes in airline distribution may in the future eliminate the need for most or all of the rules. In addition, the systems may continue to engage in practices that deter airlines and travel agencies from using alternative electronic means for providing information and making bookings. The changes in airline distribution and system ownership thus far may not have substantially eroded the systems' market power or the rationale for our adoption of rules. In considering whether rules remain necessary, we must also bear in mind that the air services agreements between the United States and many foreign countries obligate the United States to ensure that foreign airlines are not subject to unreasonably discriminatory treatment in the systems operating in this country and that those systems do not bias their displays of international services.

We recognize, however, that on-going developments in the airline distribution and CRS businesses are making participation in each system less necessary than before. In time these and other developments may clearly eliminate the need for many or all of our rules and may already have made some of the rules unnecessary. If we readopt rules governing the CRS business, we will monitor those developments to see whether the rules can be eliminated in whole or in part.

The following discussion analyzes the potential basis for some continued CRS regulation: we first discuss the impact of the Internet, then discuss whether the systems may continue to have market power against most airlines, consider whether the systems (whether or not owned by airlines) would use that power to distort airline competition and harm consumers if the rules were not readopted, discuss whether airlines have any bargaining leverage against the systems, and end by discussing other possible measures that may preclude anti-competitive conduct.

2. The Impact of the Internet on the Systems' Role in Airline Distribution

Despite the high cost of distribution through CRSs, most airlines continue to sell their services through them because they are still the best way to get inventory on travel agent desktops, a distribution channel that is still very important. Airlines "also value the GDSs' ability to reach corporate accounts as well as more remote markets, from Alabama to Zimbabwe." Forrester Research, "Travel: Direct Connect Isn't Enough" (October 2001) at 5–6. The Internet has not changed these two sales objectives. As discussed below, the Internet may have increased the systems' importance for most airlines to date. Many airlines said in a recent survey that they "would not even consider cutting the cord." "Travel: Direct Connect Isn't Enough" at 5–6.

Although the Internet has the potential to introduce more competition with CRS-type services in the future by using new and cheaper technologies to replicate some CRS functions, many believe that in some ways the Internet thus far may have reinforced the power of the CRSs. Indeed, travel became the most successful high-priced product sold over the Internet because the CRSs provided a readily available, consolidated, and integrated electronic source of price and inventory information that could be easily linked to web-based customer user interfaces. Like the customers of traditional travel agents, on-line consumers seek the integrated comparison-shopping and booking functionality that only a CRS can provide. All of the major online travel agencies use a CRS for their booking functionality, and many also use CRSs to search flights and fares for customer displays. Because the CRSs enable online consumers to comparison shop and make bookings for a full range of travel services, CRS performance, both collectively and individually, is even more critical to an airline's success than in the past. Worldspan, for example, serves nearly 20,000 travel agencies and processes more than 50 percent of all online travel agency bookings. Statement of Paul J. Blackney, President and CEO, Worldspan, Testimony before the National Commission June 26, 2002.

PhoCusWright, an Internet research firm, reports that the Internet represented 14 percent of all airline sales for U.S. airlines in 2001, up from 8 percent in 2000, excluding sales made through corporate on-line systems. Airline websites now represent 58 percent of airlines' total Internet sales, while the remaining 42 percent of Internet sales are now made through on-line travel agencies. "Airline Web Sales Soar Despite Sour Year," PhoCusWright, Inc. (May 2002) at 1–2. Thus, in 2001, 42 percent of all U.S. airline Internet sales were made through CRSs. As bookings through on-line agencies grow, bookings made through CRSs will also continue to grow, as long as on-line agencies, like their traditional counterparts, remain dependent on CRSs. Airline website sales were up 50 percent in 2001 compared to 2000, but on-line agency sales also grew rapidly, up 40 percent. *Id.* at 1.

Forrester Research, an Internet research firm, reports that, before the advent of the Internet, about eighty percent of an airline's business came via travel agencies using CRSs, with the remainder coming from direct sales via airline reservation centers or ticket offices. Since 1995, airline websites like delta.com have helped airlines raise their direct sales and cut CRS sales to 70 percent of passenger revenues. Forrester Research, "Travel: Direct Connect Isn't Enough" (October 2001) at 5–6. Northwest Airlines reports that it obtains "nearly 70% of its revenue from traditional travel agents, and nearly 10% from third party travel agents like Travelocity, Expedia, and Orbitz." Testimony of Al Lenza, National Commission (June 12, 2002) at 5. Thus, nearly 80 percent of Northwest's total bookings were made through a CRS.

While the Internet and other new technologies have the potential for reducing airline dependence on CRSs, that development is at an early stage. Airlines have achieved some success in increasing direct sales through better use of the Internet, but an airline's ability to reduce its dependence on a CRS still largely depends on its ability to encourage more customers to book directly with it. More generally, an airline's ability to encourage direct bookings through its own website is limited to the subset of air travel consumers who have readily available Internet access and are willing to send credit card information over the Internet. According to a recent Department of Commerce report, 143 million Americans, or about 54 percent of the population, were using the Internet. Among those using the Internet, only 39 percent are making purchases online. "A Nation Online: How Americans Are Expanding Their Use of the Internet," U.S. Department of Commerce (February 2002) at 1, 2. While Internet usage is expected to continue to grow rapidly as is consumer confidence in using it to make purchases, a substantial portion of the U.S. population still does not use the Internet at all. Thus, despite the Internet, an airline cannot encourage these users to make bookings on its website rather than through a traditional travel agent (using a CRS).

Since many consumers still prefer to use on-line and traditional travel agencies, airlines and other travel suppliers also seek to reduce their dependence on CRSs further by expanding direct sales into "direct connection" where travel agencies and corporate accounts directly access each airline's host central reservations system. In short, travel agents would access an airline's inventory via an enhanced version of each airline's agents-only website. Forrester Research: "Travel: Direct Connect Isn't Enough" (October 2001) at 8. But direct connect is only a first step in transforming CRS-based travel distribution. Forrester Research notes that limited interconnectivity and resistance among high-value travel agents who have significant influence over corporate travel and complex leisure travel are likely to limit the degree to which airline dependence on CRSs can be reduced. Ultimately, most industry observers believe that integrated direct connect is the form of direct connection that has the most promise of reducing airline dependence on CRSs because it would allow travel agents to integrate an airline booking with separately made hotel or car rental reservations and facilitate the integration of various travel elements in a single itinerary in much the same way as the CRSs currently do. *Id.* at 10. Orbitz plans to inaugurate direct connections with several carriers this year. Although this will further reduce those airlines' dependence on the systems, the process will take some time, and substantial additional industry initiatives will be required to reach the scale and scope necessary to have a significant impact on the current CRS-dependent travel distribution model. Orbitz's direct connection program may prompt other on-line agencies to launch similar initiatives in an effort to reduce airline distribution costs in order to gain access to webfare inventory.

Integrated direct connect solutions are extremely complex and require substantial investment by airlines and other travel suppliers. Integrated direct connect on a substantial scale is unlikely for the next several years because an alternative to IBM's transaction processing facility (TPF), the primary high-volume transaction messaging platform, must be developed and is not expected until at least 2004. *Id.* at 13. Because of the significant financial investments involved, some airlines, particularly smaller airlines, may choose not to direct connect at all. Even after integrated direct connect is developed, however, most observers see a continuing need for CRSs to complete complicated transactions, particularly interline transactions and transactions involving smaller carriers and foreign carriers that have not invested in integrated direct connect. Indeed, Forrester Research estimates that full industry-wide implementation of integrated technologies will not be complete until 2008 or beyond. *Id.* at 14.

The fact that major CRS companies have acquired control of on-line agencies could maintain their market power. Sabre recently reacquired complete ownership of Travelocity, and Cendant/Galileo owns Trip.com and Cheaptickets.com. The systems could use these integrated businesses to thwart the introduction of alternative technologies that could perform core CRS functions at a lower cost and thereby provide more competition for CRS services. "Report to Congress: Efforts to Monitor Orbitz" at 19. These on-line travel agencies are captive to their CRS hosts—a relationship which mirrors the central problem in the traditional travel agency marketplace where travel agents are bound to systems by five year contracts. On-line and "brick-and-mortar" travel agents alike have high switching costs.

In sum, it appears possible that several industry characteristics that led to the regulation of the CRSs may continue to exist, notwithstanding Internet-based technologies and innovation. First, most airlines cannot avoid participating in CRSs by creating a new system. Even with new technologies, the fixed investments of time and money to replicate the systems' integrated complexity are prohibitive. Second, because a substantial number of airline Internet sales are made through the CRSs, the Internet has not mitigated the risk that the systems (whether or not owned by airlines) may use that power to distort airline competition. Third, although airlines have increased direct sales through their own websites, the Internet may not yet have given airlines substantial bargaining leverage against the systems. Fourth, on-line and "brick-and-mortar" travel agencies alike appear to be both dependent on and locked into long-term relationships with their CRS providers due to very high switching costs.

3. The Potential Existence of System Market Power

As explained next, the developments in airline distribution may not have eroded the systems' market power as to airlines: travel agents sell most airline tickets, travel agents usually use a system to investigate airline service options and to make bookings, and each travel agency office relies entirely or predominantly on one system. Each of the on-line travel agencies also uses a system for making bookings, and almost all rely on a system for obtaining fare and schedule information as well.

Our tentative belief that the systems continue to have market power is consistent with the comments of a

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number of airlines. While Northwest supports ending the rules, Northwest also asserts:

> Sales to consumers made over the Internet, via both airline websites and online agents, have provided significant new competition to CRSs, but each CRS typically remains the only means by which to reach the travel agents who use that system. Each CRS therefore continues to have significant market power based on the travel agents to which it has exclusive access.

Northwest Comments on Proposed Extension at 5.

(a) The Airlines' Dependence on Travel Agents

The travel agency network traditionally provided an efficient means of distribution for most airlines, and airlines derived most of their revenue from sales made by travel agents. 57 FR 43782. Despite the changes in airline distribution, travel agents continue to sell the majority of tickets for most airlines. In 2000, travel agencies sold over $76 billion worth of air travel. Statement of William A. Maloney before the National Commission at 9. In 1999 travel agencies sold almost three-quarters of all airline tickets. Bear, Stearns & Co., "Point, Click, Trip: An Introduction to the On-Line Travel Agency" (April 2000) at 17. Recent remarks from American Airlines indicate that travel agencies account for 70 percent of that carrier's bookings today. Statement of George A. Nicoud III before the National Commission at 3. Northwest states that 70 percent of its revenue comes from bookings made through "traditional" travel agents with another 10 percent being derived from sales through "third party travel agents like Travelocity, Expedia, and Orbitz." Statement of Al Lenza before National Commission at 5.

Travel agents seem likely to maintain their predominant role in airline distribution despite the growing use of the Internet and other changes in distribution practices. "Brick-and-mortar" travel agents provide expertise and services that many consumers find valuable, as explained in our earlier discussion of the impact of the Internet.

A large portion of consumers buying tickets through the Internet also use on-line travel agencies, not airline websites, for their ticket purchases. In 2001, U.S. airlines sold $11.8 billion worth of tickets through the Internet. Online travel agencies accounted for $4.9 billion, or 42 percent, of those online sales. "Airline Web Sales Soar Despite Sour Year," PhoCusWright Snapshot, May 2002 (2–3).

Travel agents therefore should remain an important part of the airline distribution system. A Sabre official has predicted that travel agencies will account for 65 percent of all airline bookings in 2005 (45 percent by traditional travel agencies and 20 percent by travel agency websites). "Sabre: Agents could retain 65% of air sales by 2005," *Travel Weekly* (April 3, 2000) at 10.

We recognize that some airlines, especially the low-fare airlines and several other airlines that are not among the largest airlines, have been successful in encouraging a growing number of customers to buy tickets through their own websites, as discussed above. As we noted, for example, Alaska obtained sixteen percent of its total bookings from its website in 2001, Southwest's website produced forty percent of the airline's revenues in 2001, and Frontier obtained 28 percent of its bookings in the quarter ended December 31, 2001, from its website.

A few of the largest airlines have succeeded in obtaining a significant number of bookings through the Internet. Delta expected to obtain fifteen percent of its tickets from its own website in 2002. Delta April 24, 2002, Press Release. Delta, however, still derives 47 percent of its tickets and 64 percent of its revenues from traditional travel agents. Statement of Scott Yohe before the National Commission at 8. And most of the network airlines have been obtaining a smaller share of their bookings from their websites. The websites of American and United each produce only five percent of the airline's revenues. "Executive Flight: The Age of 'Wal-Mart' Airlines Crunches the Biggest Carriers," *Wall Street Journal* (June 18, 2002). United has stated that it still derives more than seventy percent of its revenues from travel agency bookings. June 26, 2002, United Press Release.

The Internet does not seem to have markedly undermined each system's market power. Indeed, in some ways the Internet may have reinforced the systems' power. First, as noted above, many Internet bookings are made through on-line travel agencies (42 percent of all on-line bookings in 2001), and those agencies rely on the systems (Orbitz is a partial exception, since it does not use a system to obtain fare and schedule information). Worldspan alone processes more than half of all online agency bookings made today. Statement of Paul J. Blackney before the National Commission at 3.

Second, individual airline websites are unlikely to replace travel agencies as the dominant form of airline distribution for several reasons. As shown, travel agents offer expertise and personal services that many travellers consider invaluable. Those travellers will not be likely to switch to airline websites for their bookings. Many consumers may continue to be unwilling to use the Internet to buy airline tickets, which can be relatively expensive and can require the consumer to choose among a variety of routings and fare options subject to different conditions and restrictions. In addition, while the Internet provides extensive information and buying facilities for consumers, many travel websites do not present this information in a manner that readily enables consumers to obtain a complete or largely complete list of travel options and to compare the suppliers' different prices and service features. Each system has provided efficiency benefits to travel agents and more recently consumers because it displays flight and fare information for all airlines serving a city-pair market that participate in the system. Consumers can access a fairly complete display of airline services through the Internet by logging onto a website that uses a system (or, like Orbitz, that has supplemented a system's information with information obtained through other sources). If a consumer instead views a travel supplier's website, he or she will likely see only the services offered by that airline and any airlines with which it has alliances. In contrast, a travel agent can give a customer advice on most of the available service options in a market, primarily because the integrated displays offered by each system will list the services and most fares offered by every airline participating in a system.

Airlines, moreover, have little ability to encourage most consumers to shift their bookings from travel agents to their own websites. Several have used offers of additional discounts and frequent flyer mile bonuses to increase the number of travellers using websites, but many travellers would presumably continue to use travel agents unless the discounts and bonus offers became so large that they cancelled out the airline's cost savings otherwise achievable from its website.

The existence of one distribution channel that is attractive to a significant and growing number of travellers does not make that channel competitive with another channel that a larger if shrinking share of travellers finds preferable. With a very few exceptions, any airline that uses only one channel will not obtain the business of those travellers that prefer the other channel. Similarly, while the airlines were able in the 1980's to sell a substantial number of tickets through their own

reservations centers, they depended on the travel agency system for the sale of most of their tickets.

We recognize that Southwest has never participated in any system except Sabre and participates even in Sabre at a limited level. While Southwest has thrived without significant system participation, its success does not indicate that other airlines can succeed while avoiding participation in the systems. Southwest has an unusual business plan. Southwest, for example, focuses on operating frequent point-to-point service in dense markets, does not have a hub-and-spoke route system, and has a relatively simple fare structure. Transportation Research Board, *Entry and Competition* at 49–50. Southwest has well-established brand recognition and buys relatively large amounts of advertising. While JetBlue has also prospered thus far while obtaining only a small share of its total revenues from travel agents, its experience similarly does not demonstrate that other airlines can forgo reliance on the travel agency distribution system. Most of the other low-fare airlines, like AirTran and Frontier, have concluded that participation in each system is necessary. 62 FR 47608; Frontier Comments at 4. In the fourth quarter of 2001, AirTran, for example, obtained 33 percent of its bookings from travel agencies using a system. AirTran 10–K Report for fiscal year 2001 at 8. The systems' apparent market power over most of the airlines exists because those airlines do not operate like Southwest or JetBlue, and we have no evidence that other carriers could feasibly adopt Southwest's marketing strategy without incurring substantial costs.

(b) The Travel Agents' Dependence on the Systems

Almost every travel agent has used a system to investigate airline service options and make bookings for the agency's customers (each on-line travel agency, moreover, also uses a system, as noted above). One survey reported that travel agencies made 93 percent of their domestic airline bookings and 81 percent of their international airline bookings through a system in 1999. "U.S. Travel Agency Survey 2000," *Travel Weekly* (August 24, 2000) at 133.

The extensive reliance on the systems by on-line and "brick-and-mortar" travel agencies has stemmed both from the efficiency benefits provided by the systems and from the systems' contractual practices designed to deter travel agents from using alternatives to the systems. Each system offers an integrated display of airline services that enables a travel agent to quickly see the services and fares offered by every airline in a market (except for the few airlines that do not participate in the system) and to book any of those airlines. If a travel agent did not use a system, the agent would have to search a variety of sources to learn what services were available, which would necessarily be more time-consuming and inefficient. Since travel agents typically work under significant time pressure, they have an incentive to use one system, rather than multiple sources of information. Previously, the widespread use of display bias arose from the travel agents' same desire to take as little time as possible acting on customer requests. *See, e.g.*, Mark Pestronk, "Change to GDS 'model' not likely," *Travel Weekly* (July 15, 2002).

Travel agency business practices provide an additional incentive for travel agents to use a system for as many airline bookings as possible. The travel agency back-office systems used for accounting, billing, and record-keeping functions are tied to transactions made through the agency's system. Travel agencies are therefore reluctant to make transactions outside of the system because those transactions will not be automatically entered in most travel agency back-office systems.

As a result, searching several websites for E-fares is less efficient for travel agents, complicates a travel agency's task of preparing reports for corporate customers, and makes it harder for corporate travel managers to manage travel programs. Susan Parr Travel Comments; NBTA Comments on Proposed Extension at 2. Thus, while many travel agents have Internet access and could book airline seats over the web, either through an individual airline site or another travel agency site, it appears they use the Internet for making a relatively small portion of their airline bookings. They have used the Internet primarily for booking hotels, tours, and railroad services. *See Travel Distribution Report* (October 18, 2001) at 1. Travel agents nonetheless are increasingly using the Internet for bookings. "Online travel is booming," *Travel Weekly* (August 26, 2002).

The systems' contract practices, however, also discourage most travel agencies from using more than one system. The systems' productivity pricing structures seem to deter travel agents from using the Internet. When travel agents book E-fares through the Internet, for example, they run the risk of failing to satisfy the minimum monthly booking quota set by the productivity pricing provisions. "Web air fares unlevel the playing field," *Chicago Tribune* (February 16, 2002); "Travel Agents Cry Foul over Internet Fare Deals," *Los Angeles Times* (February 16, 2002); All About Travel Supp. Comments. The potential loss of the lower CRS rates may deter travel agents from booking E-fares when doing so would be in the best interests of their customers. ASTA thus alleges that productivity pricing clauses "have served mainly as a deterrent to the agency's looking to non-CRS sources, such as the Internet, to make bookings that more nearly conform to their clients' needs." ASTA Comments on Proposed Extension at 3.

Our existing rules have furthered several of the developments that may be reducing the systems' market power. Before we revised the rules, for example, the systems generally denied subscribers the ability to use third-party equipment. 56 FR 12605. Our revised rules gave travel agencies the right to use their own equipment. Travel agencies have been taking advantage of that rule, for in 1999 thirty-six percent of all travel agencies used their own terminals. "U.S. Travel Agency Survey 2000," *Travel Weekly* (August 24, 2000) at 131, 132, 133.

As noted, travel agency offices have typically relied entirely or predominantly on just one system for these tasks. While the services offered by each system are comparable, using multiple systems could improve a travel agency's ability to serve its customers. Travel agents then could acquire more accurate and complete information on available airline flights, and the agencies' ability to use multiple systems would encourage the systems to compete more on the quality and range of their services. 57 FR 43797. Offsetting that factor, a travel agency's use of multiple systems can create some inefficiencies, due to additional training needs and potential difficulties in keeping track of customer records. 56 FR 12607. Each system also offers large financial inducements to most travel agency customers to make most or all of their bookings on that system. Since the large majority of travel agencies therefore depend on one system, almost all airlines must participate in each system in order to make its services readily saleable by the travel agencies using that system. Delta Comments at 5; American Supp. Comments at 5; Continental Supp. Comments at 5; Midwest Express Supp. Comments at 3–4.

Customer demands may push travel agencies into using additional sources of information like the Internet. "Online travel is booming," *Travel Weekly* (August 26, 2002). Airlines generally offer many of their lowest fares only on

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their own websites and, for airlines that are Orbitz "charter associates," on Orbitz. Airlines generally do not make these webfares (or E-fares) available for sale through any of the systems used by travel agents. Some airlines like Delta allow travel agents to book these fares on their websites created for travel agency use. Travel agents could also book such fares through Orbitz. Booking an E-fare (or any fare) through an airline website or Orbitz or another on-line travel agency is now an inefficient process for travel agents, as discussed above. Several firms are developing software that will enable travel agents to quickly search for fares on multiple websites and systems, however. "Fare game: 'Beat the agent'", *Travel Weekly* (March 4, 2002) at 6. By agreement with Orbitz, Aqua will also develop a program allowing travel agents to simultaneously see the display of fares offered by a system and the fares offered through Orbitz, including the E-fares sold through Orbitz that airlines do not sell through the systems used by travel agencies. May 16, 2002, Orbitz Press Release.

When travel agents can easily and efficiently access websites that provide information and booking capabilities, they will be more likely to use such alternatives to the systems. A substantial use of such alternatives would reduce each system's market power, since an airline would not necessarily lose a substantial amount of revenue if it ended its participation in one of the systems. The travel agents using that system would have alternative means for obtaining the airline's fare and schedule information and for booking the airline. The programs under development by independent firms will not necessarily achieve that result, however. The developers are focusing on giving travel agents easy access to E-fares. E-fares, however, make up a relatively small share of all airline bookings. PhoCus Wright reports that such fares constitute less than 2 percent of an airline's total ticket sales. "Airline Web Sales Soar Despite Sour Year," PhoCusWright Snapshot, May 2002(3). If the programs do not give travel agents quick access to other fares, or if travel agents only use the programs to investigate whether E-fares are available, they would not cause a substantial shift of bookings away from the systems.

The systems themselves are also responding to travel agency demands for easy access to webfares. Certain systems are developing programs that would enable travel agents to sell webfares without leaving the system. Galileo Press Release dated May 23, 2002. Sabre recently signed an agreement with FareChase, a web automation technology provider, that enables travel agencies using Sabre and subscribing to its eVoya product to have the option of using a FareChase program that searches multiple airline websites for webfares and presents a display of the results alongside fares available for booking through the system. FareChase Press Release April 29, 2002, and FareChase Information Page at Sabre website. These developments will both increase the efficiency and quality of service provided by travel agents but at the same time make it less necessary for them to use alternatives to the system to research and, in some cases, book, airline services. The systems' attempts to provide mechanisms for travel agencies to more easily access webfares may serve to increase agency dependence on the systems and further reduce the incentive for travel agents to use alternative electronic means of obtaining information and making bookings. Such a development could inhibit the introduction of more competition to the systems in the airline distribution arena.

(c) The Airlines' Apparent Lack of Bargaining Leverage Against the Systems

Because most airlines have relied on travel agencies to sell most of their tickets, and because travel agencies have typically relied on one system to learn what airline services are available, airlines (with a few exceptions) generally have not been able to afford not to participate in each of the systems. As discussed, an airline's withdrawal from one system would likely substantially reduce its bookings from travel agents using that system. As a result, airlines have not had significant bargaining leverage against the systems, because the systems have not needed to compete for airline participants.

Despite the advent of the Internet, travel suppliers in general, and most of the airline industry in particular, may continue to depend substantially on the systems to distribute their products. Midwest Express, for example, states that in the first half of 2000, 26 percent of its total bookings came through Sabre, 18 percent through Galileo, and 14 percent through Worldspan. Midwest Express Supp. Comments at Exhibit 1. According to a survey conducted by Forrester Research, 59 percent of travel industry supplier respondents indicate that "more than half of their revenue still comes through a GDS." In 2001, travel industry wide, 55 percent of revenues came through a system while 45 percent resulted from direct sales. However, among airline industry survey respondents only, 70 percent of revenues flowed through a system while only 30 percent were attributable to direct sales. Forrester Research: "Travel: Direct Connect Isn't Enough" October 2001, at 3, 6. Thus, the airline industry remains more dependent than its travel industry counterparts on travel agency sales made through the systems.

In 2000, bookings fees accounted for 82 percent of system revenues. The captivity of the airline industry in particular to the systems is again illustrated by the fact 87 percent of total system travel booking fee revenues were generated by airline reservations. Forrester Research: "Travel: Direct Connect Isn't Enough" October 2001 at 14.

Some parties have argued that the rules, such as the mandatory participation rule, enable the systems to impose unreasonable terms for airline participation because they require the major airlines to participate in each system. As discussed below, we are considering whether the mandatory participation rule may limit the airlines' negotiating power. When we readopted the rules, we found that the airlines' economic needs compelled almost all of them to participate in each system. If airlines had been able to avoid participating in systems whose terms were unreasonable or unduly expensive, we would have allowed the rules to expire. A number of smaller airlines are not subject to the mandatory participation rule, since they have held no ownership interest in any system, yet most participate in each of the systems, as discussed above. However, since several airlines have presented a persuasive argument that they could obtain better terms for participation if we eliminated the mandatory participation rule, we are proposing to do so. If these airline assertions are correct, ending that rule could expose the systems to new competitive discipline.

The systems, however, in the absence of any rules might impose requirements on participating airlines that would further limit the airlines' ability to choose whether to participate in a system and at what level. After our last major rulemaking, for example, we determined that we should prohibit the systems from enforcing "parity clauses" against airlines that did not own or market a competing system. 62 FR 59784 (November 5, 1997). The parity clauses imposed by most systems on airline participants required each airline to buy at least as high a level of service from the system as it did from any other system. The parity clauses made it

unnecessary for systems to compete for airline participation at higher levels of service (while almost all airlines must participate in each system for economic reasons, many airlines do not need to participate at the more expensive higher levels). As we explained then, "[P]arity clauses cause airlines either to buy more CRS services than they wish to buy from some systems or to stop buying services from other systems that they would like to buy, which creates economic inefficiencies and injures airline competition." 62 FR 59784.

If an airline could create its own system, it could obtain some bargaining leverage. In the past we have found that doing so would probably not be feasible. Developing the hardware and software required for a new system would likely be prohibitively expensive. The economies of scale in the CRS business would prevent a new system from operating profitably unless it obtained a substantial number of subscribers. But a new system would encounter great difficulty in obtaining an adequate subscriber base, since virtually all travel agencies already have agreed to use one of the existing systems under long-term contracts that normally will deter the agency from using another system for a significant number of bookings while they remain in effect. *Airline Marketing Practices* at 49–50; 57 FR 43784.

The Internet has likely made it easier to create a competing service that would provide airline information and booking capabilities for travel agents and consumers. Since any such service could be accessed through the Internet, a firm entering the business would not need to create communications links with the users of its service. Any such firm, however, would still incur substantial programming and equipment costs in creating an information and booking service and establishing the computing facilities necessary to handle all requests for information and bookings.

The five largest airlines, of course, may be establishing such a service through Orbitz, though Orbitz was originally developed as an on-line travel agency to be used by consumers. The costs of Orbitz" development demonstrate the great expense of an on-line agency using alternative technologies that would replicate some system functions. As of March 31, 2002, Orbitz' owners had invested $205 million, Orbitz had incurred losses of $153 million, and Orbitz expected to continue incurring operating losses for some time. Amended Registration Statement at 9, 26. By agreement with Orbitz, as noted, Aqua will develop a program that will enable travel agents using a system to simultaneously see and book the airline services available on Orbitz.

Orbitz' entry into the on-line reservations business does not necessarily suggest that entry would be feasible for other firms. Commentators have stated that the on-line travel agency business is likely to be dominated by Orbitz and the two larger on-line travel agencies, Travelocity and Expedia. Further large-scale entry into that business seems unlikely. Orbitz, moreover, was helped by the business and financial resources of its five owners, and its most-favored-nation clause with those airlines and the other charter associate airlines has probably been necessary to its ability to become the third-largest on-line travel agency. "Report to Congress: Efforts to Monitor Orbitz," Office of Aviation & International Affairs (June 27, 2002), at 18–19.

If airlines could practicably persuade travel agencies to use one system rather than another, airlines would have some bargaining leverage against the systems. Airlines could then shift business to systems offering better terms for airline participants and away from systems offering poorer terms. The airlines, however, have not been able to do that thus far. Since travel agencies do not pay booking fees, they have no direct incentive to use the system charging the lowest fees. Airlines have had no effective incentives that they can offer travel agencies to encourage the use of one system rather than another. Most travel agencies have multi-year contracts to use one system. These contracts typically include financial terms that encourage each travel agency to use one system for all or almost all of its airline bookings and deter the agency from using the Internet to book airlines directly.

The growing importance for many travellers of webfares, however, could give airlines some bargaining leverage. Airlines might obtain leverage by selectively giving systems access to their webfares (and perhaps corporate discount fares) according to the relative attractiveness of each system's prices and service quality.

In some cases large airlines can compel travel agencies (and corporate travel departments) to switch from one system to another. Airlines that dominate an area's airline markets, like Delta at Atlanta and American in southern Florida, can achieve this result by denying the disfavored system the ability to sell their corporate discount fares. Dominant airlines have that ability because travel agencies in the area cannot easily succeed without the ability to sell the corporate discount fares demanded by many business travellers. We have not seen evidence, however, that those airlines (or other airlines) have used their leverage in local airline markets as a tool to obtain better terms for participation from one of the systems, and airlines have such leverage only in areas where they account for the largest share of service.

In a more general sense, United's apparent inability thus far to obtain better terms from any system, even though it is no longer subject to the mandatory participation clause, raises the question of whether the largest airlines have bargaining power against the systems. United's sale of its ownership interest in Galileo freed it from the requirements of the mandatory participation rule. Our past experience suggests that airlines might not have much leverage against the systems, given their dependence on travel agency distribution and the travel agents' reliance on the systems, if the rules were eliminated. It is not clear that the on-going developments in airline distribution have proceeded far enough to give the airlines significant bargaining leverage against the systems. Many airlines, however, have become less dependent on the systems, and the systems have become more dependent on the airlines' willingness to provide complete access to their fares, as shown by the systems' efforts to obtain webfares for sale through the CRSs.

The major airlines may obtain such leverage if Aqua succeeds in obtaining a large number of travel agency subscribers to its service giving travel agents ready access to Orbitz' displays. A major airline's lack of participation in a system then might not lead to a substantial loss in bookings from the travel agents using that system if its schedules and fares are displayed in Orbitz. An Orbitz owner (or other major airline) conceivably might then begin denying complete information on its fares and services to one or all of the existing systems (or lower its participation level) until that system agreed to lower the airline's booking fees and improved its other terms for participation. A system might be more likely to give such an airline lower fees if it were not required by our rules to do the same for all participating airlines. A system might have incentives to offer better terms to a major airline, since such an airline's withdrawal from the system would make the system markedly less attractive to travel agencies. A system's inability to offer complete information and full functionality on an airline frequently booked by travel agents in one region

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could undermine the system's ability to obtain subscribers in that area.

None of Orbitz' owner airlines (or any other airline) has said that it intends to bargain with systems by threatening to deny them access to its fares and services. If they did so, they might be able to obtain better terms for participation. That would lower their costs and improve the efficiency of their distribution. Such a result, however, may not benefit competition overall. Any improvement in terms likely would not be shared with smaller airlines, which also depend on travel agents and the systems for distribution. Some on-line travel agencies have alleged that some Orbitz owners have been willing to give them access to E-fares only if the agency ends all efforts to promote the services of competitors in certain markets.

Nonetheless, while in the past some airlines that have had an ownership or marketing relationship with one system may have limited their participation in competing systems in order to create a marketing advantage for their affiliated system, airlines could legitimately limit their participation in a system on the ground that the system's services are unsatisfactory in some respects or are too expensive. We adopted the rule barring parity clauses for this reason, subject to an exception for airlines owning or marketing a system. We also found that airlines seemed to possess some limited ability to obtain better terms, for they could choose not to participate in the more expensive levels of service offered by a system. The parity clause rulemaking itself resulted from Alaska's efforts to downgrade its participation in Sabre. Given the assertions of some airlines that they could obtain better terms by bargaining with the systems if they were not subject to the mandatory participation requirement, we are proposing not to readopt that rule. Eliminating that rule and the rule barring discriminatory fees could serve as an experiment to determine whether airlines can obtain lower fees and better service from the systems and whether the resultant benefits would be offset by the kind of practices that originally caused us to adopt the mandatory participation rule.

4. The Costs Imposed by System Practices

Because market forces in the past have not disciplined the systems' prices and terms for services provided airline participants, it appears that the systems have been able to impose, and have imposed, costly and burdensome requirements on airline participants. It appears that the fees charged airlines have not been effectively disciplined by competition and may well exceed system costs by a significant amount. 56 FR 12586, 12595 (March 26, 1991). In past years the fees paid by airlines and other travel suppliers accounted for about ninety percent of total system revenues, while the fees paid by travel agencies made up only ten percent of the total. 62 FR 59784, 59788 (November 5, 1997); Sabre Holdings 10–K reports for the years 1999 and 2000. Delta's CRS booking fee expenses exceeded $350 million in 2001. Statement of Scott Yohe before the National Commission at 9. Northwest estimates that it will pay over $200 million in booking fees in 2002 despite reduced traffic levels. Statement of Al Lenza before the National Commission at 3.

The systems' market power enabled them to drive up airline costs in other ways as well. The systems' practice of charging airlines for passive bookings was one example (passive bookings are bookings made by a travel agent through a system that do not involve sending a message to the airline's internal reservations system). Travel agents often make passive bookings in order to serve their customers, but such transactions usually do not directly benefit the airlines. The systems nonetheless charged booking fees for passive transactions. In addition, the record suggests that some travel agents may have used the passive booking capability for unnecessary transactions in order to meet the minimum booking quota established by the systems' productivity pricing formulas. The annual fee liability for passive bookings and other bookings considered unnecessary by participating airlines amounted to $5 million to $10 million for some airlines, and such bookings accounted for eight to ten percent of their total fees. Aloha December 23, 1997 Supp. Comments at 2; Alitalia Comments at 4; Qantas Comments at 4. Systems stopped charging participating airlines for passive bookings after we began this proceeding, but their action does not necessarily indicate that participating airlines have any leverage over the price charged for CRS services. Furthermore, the systems that stopped charging for passive bookings raised other fees and appeared to have incurred no reduction in their overall revenues.

In addition, three of the systems adopted and enforced parity clauses against airlines. A system's parity clause required a participating airline to buy at least as high a level of service from that system as the airline bought from any other system, whether or not the airline considered the price and quality of the system's higher level of functionality to be reasonable. Alaska and Midwest Express estimated that Sabre's plan to enforce its parity clause against them would increase their CRS costs by about ten percent. 61 FR 42201.

Finally, Galileo revised its display algorithm several years ago to benefit United by diverting bookings away from some of United's competitors. Galileo's revised display algorithm may have reduced Alaska's annual revenues by $15 million and Midwest Express' annual revenues by several million dollars. Galileo's algorithm often gave United's services a better display position than services offered by competing airlines that better met the needs of travel agency customers, and it was significantly less efficient for travel agents who wished to find the best service for their customers. 61 FR 42212–42213.

The higher costs that may be attributable to system practices (and different distribution costs generally) can make a significant difference in an airline's ability to compete. American states that, due to the differing levels with which it and Southwest rely on travel agents and, by extension, on the systems for distribution, American pays $3 in booking fees per passenger boarded while it estimates that Southwest pays less than 50 cents. Statement of George Nicoud before the National Commission at 4.

5. The Potential for Anti-Competitive Conduct

The sale of air transportation through all four of the systems operating in the United States has been subject to regulation since the Board originally adopted CRS rules. Our rules now cover systems owned or marketed by an airline or airline affiliate. Several airlines own Worldspan and Amadeus, and Sabre and Galileo are each marketed by its principal former airline owner. Ten years ago, when each system was controlled by one or more airlines or airline affiliates, we concluded that the systems' conduct before the rules took effect demonstrated the need for rules to prevent system practices that would deceive consumers and their travel agents and prejudice airline competition.

Two of the systems now have no significant airline ownership, though both are marketed by airlines, and the other two are owned by several airlines rather than being controlled by a single airline. One or more of the systems may cease to be owned or marketed by any airline. We believe, however, that, if the systems continue to have market power, there might be a significant risk that systems would use their market power to distort airline competition, whether or not they are owned or marketed by airlines. Northwest has thus predicted:

> To the extent that any CRS has market power over the distribution of air travel, the CRS will have incentives to exercise that power, with negative consequences for airlines, travel agents, and consumers.

Northwest Comments on Proposed Extension at 5

First, experience has shown that a substantial risk exists that a system with substantial airline ownership would engage in conduct that would violate section 411 but for our rules. Galileo revised its display of airline services within North America in a way that gave United a substantial competitive advantage over airlines like Alaska that operated many single-plane flights and relied less on hub-and-spoke operations. Galileo created displays designed to promote United's interests even though they made it harder for travel agents to serve their customers. 61 FR 42208, 42212–42213 (August 14, 1996).

While the two larger systems, Sabre and Galileo, no longer have significant airline ownership, each continues to rely on its former major airline owner for marketing support. American markets Sabre, and United markets Galileo (Southwest is also marketing Sabre). Amadeus Supp. Comments at 4–5. The systems' retention of the marketing relationships is consistent with our conclusion that a system without any airline ties could not easily compete in the CRS business. *See also* "Editorial: Three fateful mistakes crippled Galileo," *Travel Distribution Reports* (June 28, 2001). Sabre and Galileo have other contractual relationships with American and United, respectively. Galileo hosts United's internal reservations system and provides other technological services. Amadeus Supp. Comments at 4–5. Sabre provides information technology services to American, and American provides management services to Sabre. Sabre Holdings 10–K Report for the Year 2000 at 16. The two systems also depend on their former owners for a substantial share of their total revenue. In 2000 Galileo obtained twelve percent of its total revenue from United. Galileo International 10–K Report for Fiscal Year 2000 at 10. In 1999 Sabre obtained twenty-four percent of its revenues from American. Amadeus Supp. Comments at 4.

It appears that, in the past, systems and their airline affiliates have taken steps to prejudice each other's competitors. Some of those airlines have taken actions that seem likely to injure their own marketing position in an apparent effort to strengthen the marketing position of the affiliated system. According to System One, American, Northwest, and TWA delayed their introduction of E-ticketing in Amadeus in order to benefit their affiliated system. United allegedly denied travel agents using one of Galileo's competitors the ability to reliably grant frequent flyer upgrade requests. System One Comments; System One Reply Comments.

Airlines with only a marketing relationship with a system have similarly made it more difficult for travel agents using another system to obtain complete information and make bookings, thus encouraging the agencies to choose the system marketed by the airline. For example, Amadeus asserts that American has continued to deny travel agents using systems other than Sabre access to some of its discount fares even though American has spun off all of its Sabre stock. Amadeus Supp. Reply at 22.

This apparent willingness of airlines to engage in practices likely to harm the sale of their tickets in order to promote the marketing efforts of an affiliated system indicates the strength of the continuing ties between each system and its owners (or former owners). Even if no airline had a tie with a system, a system might still engage in conduct that would prejudice airline competition and make it difficult for consumers to obtain unbiased or complete information, as Northwest has asserted. One commenter alleges that one system relegated a rental car company to a poor display position because competing rental car companies bought a preferential display position, a move that caused the disfavored car rental company to lose many bookings. Marshall A. Fein Supp. Comments. Whether in fact non-airline systems are likely to engage in conduct that could distort airline competition will be the basis of our decision on whether the rules should treat non-airline systems the same as airline systems.

We note, however, that our rules cover only the sale of airline services through the systems. We do not regulate the systems' treatment of the display and sale of other travel services, such as hotels and rental cars. We invite the parties to present evidence on the systems' participation terms for the suppliers of other travel services. Such evidence would help us determine whether there is still a need for rules governing the systems' treatment of participating airlines.

6. Potential Anti-Competitive Practices in an Unregulated Environment

The original rules focused on regulations that would either prevent display bias or keep the systems' airline owners from using their control of the systems to prejudice the competitive position of rival airlines. While these issues were crucial in our last rulemaking, we also worked on developing rules that would allow market forces to discipline system practices to some extent. We therefore adopted rules giving subscribers the right to use third-party hardware and software and to access any system or airline information source from equipment that was not owned by the system. We additionally prohibited certain types of subscriber contract terms that unreasonably denied travel agencies the ability to use alternative systems or databases. More recently we found it necessary to bar systems from enforcing airline parity clauses.

Every system seems to continue to engage in subscriber contract practices that keep airlines and travel agencies from using alternatives to the systems and thereby entrench each system's market power. The likely result is higher airline costs and thus higher fares for consumers. A number of the parties assert that our rulemaking should focus on these types of contractual provisions. Delta, for example, had contended that our primary objective "should be to increase competition among CRS vendors for information services and booking fees by eliminating contract and other CRS vendor-created barriers that prevent or limit travel agents from using multiple CRS databases and Internet connections to competitive sources of travel information." Delta Comments at 2. Similarly, Alaska states, "[O]ne critical objective * * * should be the elimination of the incentives and disincentives that lock travel agents into a particular CRS and discourage agents' use of alternative means of communicating with participating carriers." Alaska Comments at 7.

Finally, airlines affiliated with a system may engage in conduct that may restrict competition and that would not be outweighed by consumer benefits. As discussed below, they have in the past denied competing systems full access to their fares and withheld some types of functionality in order to give a competitive advantage to their affiliated system. While some argue that the mandatory participation rule inhibits competition between the systems by requiring owner airlines to participate in all systems at the same level as in

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their affiliated systems, this potential disadvantage may be outweighed by the rule's potentially positive impact in fostering effective competition between smaller carriers and the major carriers.

F. The Department's Authority Under Section 411 To Adopt CRS Rules

As discussed, our authority under section 411 of the Federal Aviation Act, recodified as 49 U.S.C. 41712, has provided the basis for our rules governing CRS operations. Section 411 authorizes us to prohibit unfair and deceptive practices and unfair methods of competition by airlines and ticket agents in air transportation and the sale of air transportation. Section 411 states, "[T]he Secretary may investigate and decide whether an air carrier, foreign air carrier, or ticket agent has been or is engaged in an unfair or deceptive practice or an unfair method of competition in air transportation or the sale of air transportation." If the Secretary "finds that an air carrier, foreign air carrier, or ticket agent is engaged in an unfair or deceptive practice or unfair method of competition, the Secretary shall order the air carrier, foreign air carrier, or ticket agent to stop the practice or method."

Thus, to readopt rules governing system operations, we must find that rules are necessary to prevent conduct that would constitute unfair or deceptive practices or unfair methods of competition in violation of section 411. A deceptive practice is one that will tend to deceive a significant number of consumers. *United Air Lines*, 766 F.2d 1107, 1113 (7th Cir. 1985). An unfair method of competition is a practice that violates antitrust laws or antitrust principles. We may therefore prohibit some airline conduct permitted by the antitrust laws. *See, e.g., Pan American World Airways* v. *United States*, 371 U.S. 296, 306–308 (1963); *United Air Lines*, 766 F.2d at 1114.

Section 411, of course, does not give us unlimited authority to regulate the practices of airlines and ticket agents. Airline deregulation has made the airlines generally free to determine how to distribute and sell their services, including sales through travel agencies. The antitrust laws similarly allow individual firms to choose how to distribute their products and services as long as they do not violate one of the provisions of those laws. 65 FR 45554, citing *Paschall* v. *Kansas City Star Co.*, 727 F.2d 692 (8th Cir. 1984) (en banc); and *Auburn News Co.* v. *Providence Journal Co.*, 659 F.2d 273, 278 (1st Cir. 1981).

While section 411 also authorizes us to prohibit unfair practices as well as deceptive practices and unfair methods of competition, we have followed the principle that a practice is "unfair" if it violates public policy, is immoral, or causes substantial consumer injury not offset by any countervailing benefits. *Complaint of Ass'n of Discount Travel Brokers*, Order 92–5–60 (May 29, 1992) at 12, citing *FTC* v. *Sperry & Hutchinson Co.*, 405 U.S. 233, 244, n. 5 (1972). *See also American Financial Services* v. *FTC*, 767 F.2d 957, 971 (D.C. Cir. 1985). We have relied primarily on our authority to prohibit deceptive practices and unfair methods of competition as the basis for our proposed rules.

Maintaining CRS rules would comply with our duty under 49 U.S.C. 40105(b)(1)(A) to exercise our authority consistently with the United States' obligations under international agreements. The United States has a number of international air services agreements that require it to ensure that U.S. systems do not subject foreign airlines to discriminatory treatment.

The public policy provisions of our governing statute, moreover, would support the readoption of CRS rules to the extent that they remain necessary to prevent practices that would unreasonably reduce competition. Congress has stated that we must consider the following matters, among others, to be in the public interest: (i) The prevention of predatory or anticompetitive practices in the airline industry, (ii) the prevention of unreasonable industry concentration, excessive market domination, monopoly powers, and other conditions that would allow an airline unreasonably to increase fares, reduce service, or exclude competition, and (iii) the encouragement of entry by new and existing air carriers. 49 U.S.C. 40101(a)(9), (10), (13).

1. Our Authority To Regulate Non-Airline Systems as Ticket Agents

We have in the past regulated airline systems by making the airlines that own or market a system responsible for ensuring the system's compliance with our rules. That approach made sense, because each system was originally created by an airline, was owned by an airline or airline affiliate, and was marketed by one or more airlines. The change in ownership of Sabre and Galileo, which are no longer owned and controlled by any airline, requires us to reexamine our authority to regulate the systems under section 411. We have tentatively concluded that section 411 empowers us to regulate such systems if necessary to prevent unfair and deceptive practices and unfair methods of competition. We may regulate a firm under section 411 if it is an air carrier or a ticket agent. It appears that a non-airline system (as well as an airline system) is a ticket agent.

We are addressing this question despite the suggestions from several parties that we need not decide here whether we may regulate non-airline systems. First, resolving the issue in this proceeding rather than in a future separate proceeding should be more efficient. Secondly, resolving the issue here would remove any ambiguity about our jurisdiction. After American spun off its remaining Sabre stock, Sabre informally began taking the position that it was no longer subject to our rules since it was no longer owned or controlled by an airline, *see* Orbitz Supp. Reply at 2, notwithstanding the express language in the rules making them applicable to any system marketed by an airline. While Sabre later changed its position, Sabre Supp. Comments at 8, its initial conduct suggests that it believed that we may not regulate a system that is not owned by an airline, even if an airline markets the system. United, moreover, contends that a marketing relationship cannot justify subjecting a non-airline system to the rules. United Supp. Comments at 18, n. 20.

We have therefore determined that we should resolve the question of whether section 411 authorizes us to regulate a non-airline system. We may do so if a system is a ticket agent. By statute a ticket agent is a person "that as a principal or agent sells, offers for sale, negotiates for, or holds itself out as selling, providing, or arranging for, air transportation." 49 U.S.C. 40102(a)(40). Travel agencies are clearly ticket agents, but the statute does not confine the category of ticket agents to travel agents alone. In our view a system's functions bring it within the definition of ticket agent, since each system "offers for sale" and "holds itself out as * * * arranging" air transportation.

A system operates a central computer that collects information on airline schedules and fares and the availability of seats, arranges that information under its own editing and ranking criteria in displays that are provided to travel agents, and provides a booking capability enabling travel agents to make airline reservations for their customers. The systems carry out these functions under contracts with the airlines, which pay the systems for providing the information and booking capabilities to travel agencies and other system users.

By listing airline services in its display and enabling travel agents to book those services, each system is offering air transportation for sale. The system, moreover, is an active participant in any sales transaction, not just a transmitter of messages between travel agent and airline. Systems, for example, may require an airline to accept any booking made by a travel agent using the system. *See* America West Petition at 23, n.12. This requirement indicates that systems view themselves as responsible for the booking transaction itself, not just for providing a communications link.

Because each system does more than just transmit messages between airlines and travel agents, a system is quite different from a straight communications link, the analogy cited by United for its argument that a system cannot be considered a ticket agent. United Comments at 13. When a consumer uses the telephone to buy goods and services, for example, the telephone line links the consumer with the firm selling the product or service, and the consumer conducts the transaction directly with the retailer. In contrast, a travel agent using a system to make a booking communicates exclusively with the system, not the airline, unless the travel agent uses a direct access feature that enables travel agents to obtain information and make bookings directly with an airline's internal reservations system. Even then much of the communication will be with the system. Furthermore, telephone companies do not choose which data will be sent to the listener. The systems, in contrast, edit their displays of airline services. In fact they must edit and rearrange the schedule and fare data obtained by them for their integrated displays of airline services, since the raw information they obtain directly or indirectly from airlines is not in a form that would be useful to travel agents.

The systems also provide other functions to travel agents that enable them to serve their customers when buying airline tickets. The systems' passive booking functionality makes it possible for travel agents to print itineraries for customers participating in a group booking and to issue tickets for customers who earlier reserved their seat directly with the airline. These functions confirm the systems' status as active participants in the sale of air transportation.

We know of no judicial or agency decisions construing the term "ticket agent" in a manner which would preclude treating a system as a ticket agent. When we and the Board determined that the CRS rules should not cover systems not owned or marketed by an airline, neither we nor the Board concluded that our authority under section 411 would not permit us to regulate the practices of a non-airline system. 49 FR 32548; 57 FR 43794.

In addition, we have some power to bar airlines and travel agencies from doing business with systems that do not comply with at least some of the standards set by our rules. Regulating the systems' contractual relationships with airlines and travel agencies could enable us to prohibit some potentially prejudicial practices. We could, for example, bar airlines from purchasing favorable bias in system displays or from acquiring the systems' marketing and booking data. We are proposing some such rules in this proceeding. In other respects, however, regulating CRS practices by regulating airline conduct may not be entirely workable under the terms of section 411. The section authorizes us to adopt rules when necessary to prevent unlawful conduct by an airline or ticket agent, not by a party doing business with an airline or ticket agent. Barring an airline or travel agency from doing business with a system that does not follow the rules' standards would seem to require findings that the airline or travel agency would otherwise be engaged in a deceptive practice or unfair method of competition. Whether such findings could be made as to all of the practices covered by our proposed rules is uncertain.

It appears that rules governing non-airline systems may be necessary due to the potential risk for unfair and deceptive practices and unfair methods of competition. It also appears that extending the rules to such systems may not significantly interfere with their ability to compete and innovate. First, all of the systems are currently bound by the rules, which govern systems owned or marketed by an airline. And, as Galileo has stated, the systems have learned to live with the rules. Galileo Comments at 10–11. Whether or not we maintain our rules, the systems will remain subject to rules in Canada and Europe that are comparable in most respects to our current rules. Secondly, the on-going changes in airline distribution may ultimately make most or all of our rules unnecessary, particularly if the development of alternatives means for accessing travel agencies creates effective competition for the systems.

Furthermore, requiring the airline systems to comply with the rules while allowing the non-airline systems to operate without restriction would create competitive disadvantages for the airline systems. Galileo Supp. Comments at 10–12. The adoption of rules governing non-airline systems would equalize the treatment of all systems, whether or not they have significant airline ownership, and be consistent with the United States' obligations under its bilateral air services agreements. Of course, we ask the parties to address whether we should adopt rules governing non-airline systems, if we find a need for continued CRS regulation, and whether section 411 would authorize our doing so.

2. Antitrust Principles Relevant to System Practices

This section explains our tentative belief that the practices that would be regulated by our proposed rules would violate section 411. It appears that they would either reduce competition in the airline and airline distribution industries and be analogous to antitrust law violations, or would cause consumers and their travel agents to receive biased or inaccurate information on airline services. We believe that the systems can engage in such practices because each system still seems to have market power over airlines. Market forces therefore have not disciplined the price and terms of services offered airlines by the systems. In particular, the systems appear to be charging booking fees that seem to exceed the fees that would be charged in a competitive industry. The record also shows that the systems have engaged in other practices that their customer airlines would likely not accept if the industry were competitive, such as imposing charges for booking fee bills and fees for passive booking transactions that allegedly provide no benefit for the airlines.

In *Eastman Kodak Co.* v. *Image Technical Services*, 504 U.S. 451 (1992), the Supreme Court explained that market power is the power "to force a purchaser to do something that he would not do in a competitive market," 504 U.S. at 464, quoting *Jefferson Parish Hospital* v. *Hyde*, 466 U.S. 2, 14 (1984), and "the ability of a single seller to raise price and restrict output." 504 U.S. at 464, quoting Fortner Enterprises, Inc. v. *United States Steel Corp.*, 394 U.S. 495, 503 (1969). The Court's definition of market power appears to fit each system's relationship with the airlines, since the systems appear to have been able to impose high fees and unattractive terms for participation on airlines. In *Eastman Kodak* the Court also noted that market power is usually inferred from the seller's possession of "a predominant share of the market."

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504 U.S. at 464. Insofar as electronic access to travel agency subscribers is concerned, it appears that each system effectively holds such a predominant market share, as explained above.

We believe that the actions that would be covered by our proposed rules may violate section 411 whether done by airline or non-airline systems. In our last rulemaking, we did not examine whether a non-airline system's operations could harm competition in the airline and airline distribution businesses. At that time, no non-airline systems existed, and we doubted that any non-airline system could operate successfully. We suggested that there should be no need to regulate a non-airline system since, without airline control, such a system would lack incentives to engage in conduct that would distort airline competition. We did not wish to apply the rules to a non-airline system when there appeared to be only a theoretical possibility that such a firm might operate. 57 FR 43794. In light of developments over the past several years, however, as explained above, we now believe that there are reasons to consider applying the rules to non-airline systems as well as airline systems. It is possible that a system that had no ownership or marketing ties with an airline might engage in conduct that would prejudice airline competition and make it difficult for consumers to obtain unbiased or complete information. *See* Northwest Comments on Proposed Extension at 6; Marshall A. Fein Supp. Comments.

Given the systems' market power over airlines, we concluded in our last reexamination of the rules that the practices addressed by those rules constituted unfair methods of competition. Those practices are analogous to conduct prohibited by the antitrust laws: A firm's refusal to allow competitors to obtain access to an essential facility on reasonable terms, and monopoly leveraging (the use of market power in one line of business to obtain unfair competitive advantages in a second line of business). These antitrust analogies were applicable because each of the systems was controlled by airlines that competed with other airlines whose ability to market their services depended on their ability to participate in the systems on reasonable terms. 57 FR 43789–43791.

The Seventh Circuit affirmed the Board's rules, which were based on very similar findings. *United Air Lines* v. *CAB*, 766 F.2d 1107 (7th Cir. 1985). The Court stated that the Board's finding that some of the systems had substantial market power was sufficient to authorize the Board's regulation of CRS practices: That finding "would bring their competitive practices within the broad reach of section 411," for the Board "can forbid anticompetitive practices before they become serious enough to violate the Sherman Act." The court reasoned that the types of conduct prohibited by the Board on antitrust grounds—price discrimination and denying a competitor access to an essential facility on equal terms—were "traditional methods of illegal monopolization" that the Board could prohibit, even though no system had a monopoly under Sherman Act standards. *United Air Lines*, 766 F.2d at 1114.

The antitrust principles underlying our proposed rules include the essential facility and monopoly leveraging doctrines that we relied upon in our earlier rulemakings. In addition, some of our proposed rules derive support from other antitrust principles.

First, we have been concerned by system practices that prevent travel agencies and airlines from bypassing a travel agency's principal system and that thereby entrench each system's existing market power over the airlines. That concern led us ten years ago to adopt the rule giving travel agencies the right to use third-party hardware and software and to access any system or database from the agency's computer terminals, unless the system owned that equipment. Several current system practices that seem problematic to us give systems the ability to obtain all or most of a travel agency's bookings. These practices appear to violate the principle that a firm that dominates a market may not engage in conduct that is designed primarily to maintain or increase its dominance.

The Sherman Act allows a dominant firm to increase its market share by being more efficient or offering better products or services. *See, e.g., Foremost Pro Color* v. *Eastman Kodak Co.*, 703 F.2d 534, 544–546 (9th Cir. 1983). The antitrust laws prohibit dominant firms, however, from using exclusivity agreements when they significantly limit opportunities for other firms to remain in or enter the market by foreclosing "a substantial share of the relevant market." *Tampa Electric Co.* v. *Nashville Coal Co.*, 365 U.S. 320, 328 (1961).

A monopolist generally may not engage in conduct that is economically rational if it eliminates competition. *See, e.g., Aspen Skiing Co.* v. *Aspen Highlands Skiing Corp.*, 472 U.S. 585 (1985). The principle that a dominant firm may not engage in conduct designed to prevent competition will be applicable to both airline and non-airline systems.

Other practices by systems and the airlines owning or marketing a system may be contrary to the antitrust laws' prohibition against tying clauses. We prohibited airline parity clauses because they resembled tying arrangements prohibited by the antitrust laws, and our rules prohibit each system from requiring airlines to buy unrelated services from the system as a condition for participation. 49 FR 32554–32555; 49 FR 11656, 11664; 62 FR 59795–59796. A tying arrangement—a seller's agreement to sell one product only on condition that the buyer purchase a second product from the seller (or promise not to buy the product from another seller)—is a violation of the Sherman Act if the seller has appreciable market power in the tying product and if the arrangement affects a substantial volume of commerce in the tied product. *Eastman Kodak Co.* v. *Image Technical Services, supra*, 504 U.S. at 461–462. Tying arrangements are objectionable because they force buyers to accept conditions that they would not accept in a competitive market. *See, e.g., Jefferson Parish Hospital*, 466 U.S. at 12–15. As the Court has explained, "[T]he essential characteristic of an invalid tying arrangement lies in the seller's exploitation of its control over the tying product to force the buyer into the purchase of a tied product that the buyer either did not want at all, or might have preferred to purchase elsewhere on different terms." When a seller imposes a tying arrangement on a buyer, "competition on the merits in the market for the tied item is restrained * * *" *Jefferson Parish Hospital*, 466 U.S. at 12. A tying arrangement can cause consumers to pay higher prices, a result contrary to the goals of the antitrust laws. *Eastman Kodak Co.*, 504 U.S. at 478. We based our prohibition of the enforcement of the systems' parity clauses on findings that those contract provisions had the harmful effects of tying provisions—they limited competition between the systems, and they increased the prices paid by the systems' customers. 62 FR 59795.

Some types of conduct by airline systems may violate the monopoly leveraging principle: a firm may not illegitimately use its monopoly power in one industry to acquire an unfair competitive advantage in a second industry. Two courts have accepted this principle as a basis for finding a Sherman Act violation. *Berkey Photo, Inc.* v. *Eastman Kodak Co.*, 603 F.2d 263 (2d Cir. 1979); *Kerasotes Michigan Theatres, Inc.* v. *National Amusements, Inc.*, 854 F.2d 135 (6th Cir. 1988). The monopoly leveraging theory is also consistent with the Supreme Court's reasoning in *United States* v. *Griffith*, 334 U.S. 100 (1948). We recognize that other courts have argued that monopoly leveraging is unlawful under the antitrust laws only where the conduct otherwise violates that statute. *See* 57 FR 43790–43791. Monopoly leveraging nonetheless should be a valid basis for finding that a firm has engaged in an unfair method of competition under section 411, since we may prohibit conduct that does not violate the antitrust laws.

In addition, our proposed rules would keep airline systems from engaging in actions that may be proscribed by the essential facility doctrine. That doctrine requires a firm that controls a facility essential for competition to give its competitors access to the facility on reasonable terms. The firm will violate section 2 of the Sherman Act if it denies access (or imposes unreasonable conditions on access). A facility is essential if it cannot be feasibly duplicated by a competitor and if the competitor's inability to use it will severely handicap its ability to compete. 61 FR 42203, citing *Aspen Skiing Co.* v. *Aspen Highlands Skiing Corp.*, 472 U.S. 585 (1985); and *Delaware & Hudson Ry.* v. *Consolidated Rail Corp.*, 902 F.2d 174 (2d Cir. 1990). In our last major rulemaking we determined that each of the systems is comparable to an essential facility and must therefore offer airlines access to its services on reasonable terms. 57 FR 43790. This was an alternative ground for our prohibition of airline parity clauses and our requirements that the systems' terms for airline participation must be non-discriminatory. 62 FR 59796.

Several of these principles are equally applicable to the non-airline system practices regulated by our rules. For example, the essential facility doctrine is applicable when a firm that does not own an essential facility is able to deny reasonable access to its competitors by agreement with the facility's owner. *See, e.g., Hecht* v. *Pro-Football, Inc.*, 570 F.2d 982 (D.C. Cir. 1977). In addition, the Federal Trade Commission has held that its authority to prohibit unfair methods of competition in other industries under section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, which is analogous to section 411, authorizes it to prohibit practices by a monopolist in one industry that unreasonably restrict or distort competition in a second industry, even if the monopolist does not participate in the second industry.

In *LaPeyre* v. *FTC*, 366 F.2d 117 (5th Cir. 1966), the Fifth Circuit affirmed such an FTC order. The FTC had held that a monopolist manufacturer of shrimp peeling machinery had engaged in an unfair method of competition by charging shrimp canners in the Pacific Northwest prices twice as high as those charged Gulf Coast shrimp canners. The manufacturer charged different prices largely because the machinery produced greater cost savings for the Pacific Northwest canners. The Fifth Circuit affirmed the order on the ground that the FTC could bar a monopolist from charging discriminatory prices that affected competition in a second industry. *LaPeyre* thus held that "a monopolist may be required to use uniform and reasonable criteria when dealing with those who compete in an adjacent market," *Fulton* v. *Hecht*, 580 F.2d 1243, 1249, n. 2 (5th Cir. 1978).

The Second Circuit, however, has taken a somewhat narrower view of the FTC's authority. That court held that the FTC could not regulate the conduct of a firm with monopoly power in one industry in order to promote competition in a second industry unless the monopolist either competes in the second industry as well or intends to restrain competition in the second market or acts coercively. *Official Airline Guides, Inc.* v. *FTC*, 630 F.2d 920, 927–928 (2nd Cir. 1980). The Court therefore reversed an FTC order requiring the Official Airline Guide, the publisher of the standard sourcebook for information on airline schedules, to improve its listings of commuter airline flights so that commuter airlines would be better able to compete with the jet airlines. The Court reasoned that allowing the FTC to generally regulate a monopolist's conduct insofar as it affected competition in an industry in which the monopolist did not compete would give the agency too much control over businesses. 630 F.2d at 927. The FTC, however, has stated that the Second Circuit's decision was "erroneous", although the Commission apparently has not since issued a decision holding that a monopolist committed an unfair method of competition due to its business practices with customers in an industry where the monopolist did not operate. *See* Earl Kintner & William Kratzke, VII *Federal Antitrust Law* (1988) at 54–55.

The Second Circuit's opinion suggests that the FTC could regulate a monopolist's conduct in one industry in order to prevent that firm from carrying out intent to restrain competition in a second industry or from acting coercively. 630 F.2d at 927–928. The rules we are proposing to adopt as to non-airline systems (and airline systems) are intended to prevent systems from trying to reduce competition in the airline industry and from engaging in coercive conduct.

We thus have tentatively concluded that there is a legal basis for our proposed rules regulating system practices in established antitrust principles and that the rules would be within our authority under section 411 to prohibit unfair methods of competition.

3. Antitrust Principles Relevant to Airline Practices

We also propose to expand the rules governing the practices of airlines affiliated with a system or using system services. We are proposing to restrict the airlines' ability to obtain some types of marketing and booking information, since we believe that the detailed information now being provided by the systems likely reduces fare competition and enables airlines dominating metropolitan area markets to pressure travel agencies into diverting sales from competing airlines. While we are tentatively proposing to eliminate the mandatory participation rule, we request that parties comment on whether we should maintain or strengthen that rule.

Such airline practices may violate antitrust principles, if the airlines do not have legitimate business reasons for their conduct and the market structure and other factors would cause the practices to significantly reduce competition. An airline's refusal to give travel agencies access to its corporate discount fares unless they use the system affiliated with that airline could be analogous to unlawful tying.

Other possible airline practices that would be covered by our proposed rules appear to be contrary to antitrust principles because they involve the use of an airline's dominant position in some local markets either to maintain or increase that dominance or to distort competition in the area's CRS market. Airlines can obtain a dominant position in some metropolitan area airline markets due to the hub-and-spoke system used by all network airlines. The airline that has a hub at a city usually has a dominant share of the city's airline market. This dominance results in large part from the competitive advantages given it by operating a hub—it serves more cities from the hub, and it offers more frequent service on most of its routes at the hub. Airlines capitalize on the advantages of having a large market share by offering frequent flyer programs and travel agency override commission programs that will be more attractive to travellers and travel agencies, respectively. General

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Accounting Office, "Airline Deregulation: Barriers to Entry Continue to Limit Competition in Several Key Domestic Markets" (October 1996) at 14–19; Findings and Conclusions on the Economic, Policy, and Legal Issues, *Enforcement Policy Regarding Unfair Exclusionary Conduct in the Air Transportation Industry* (January 17, 2001) at 23–24.

The hubbing airline's dominance of the local airline market, however, also enables it to force travel agencies to comply with its wishes. Travel agents in that city will book their customers most often with that airline, and their ability to obtain marketing benefits from that airline, such as the ability to book important customers on oversold flights and to sell its corporate discount fares, may make or break their business. *Cf. Airline Marketing Practices* at 25. As a result, travel agencies cannot easily resist demands by the dominant airline that they stop booking customers with competing airlines or that they use the system affiliated with that airline. *See* Large Agencies Coalition Comments at 9.

An airline's abuse of a dominant position in local airline markets to increase or continue that position would violate the principle that firms with market power may not engage in transactions designed only or primarily to protect such power. When such an airline engages in conduct designed to compel travel agencies to use its affiliated system, it is leveraging its market power in one industry to increase its market share in another industry. Monopoly leveraging is contrary to antitrust principles for purposes of section 411.

4. The Continuation of Rules on Display Bias

Insofar as we have based our rules against display bias on our authority to prohibit unfair and deceptive practices, our authority to readopt those rules is clear. The types of display bias barred by the rules are deceptive practices that would tend to deceive a significant number of consumers. The Seventh Circuit held on review of the Board's rules that the Board's findings sufficed to bring the adoption of the rules prohibiting display bias within the Board's authority under section 411. *United Air Lines*, 766 F.2d at 1113.

Since we believe that the non-airline systems are "ticket agents" within the meaning of section 411, we may require them to comply with the rules barring display bias.

G. Considerations Favoring Fewer Regulations

Some parties have argued that we should consider terminating or phasing out the rules instead of strengthening them. They have questioned the effectiveness of the current CRS rules, most recently in their comments on our proposal to extend the rules for another year. They argue that the continuing growth in on-line distribution of tickets is favorably changing the competitive structure of airline distribution in ways that could make the termination or phasing out of the rules viable. They argue at a minimum that we must carefully analyze the changing structure before we strengthen or perpetuate the existing rules.

Several parties, particularly United, have asserted that the changes in the systems' ownership and the Internet's growing role in airline distribution have made the rules obsolete. We based the current rules on each system's ownership by airlines, but the two largest systems now have no significant airline ownership, and the two smaller systems each have several airline owners. According to these parties, the existing rules may actually cause rather than prevent anti-competitive behavior. They assert, for example, that the dominant systems seem to have decided that coverage of the rules enhances their market power rather than limits it. They argue that the allegedly obsolete rules actually impose substantial hidden costs, citing the systems' sharply escalating booking fees, which they attribute to the current rules that insulate the systems from competition. Since airlines must do business with all of the systems, the latter have no incentive to reform their business practices or lower their prices. Meanwhile, the airlines have no leverage to obtain better terms and conditions through negotiations with the systems. Our rules allegedly inhibit negotiations between the systems and participating airlines over fees and participation levels.

We have set forth our tentative views on these issues elsewhere in this notice. We presently believe that the airlines' inability to obtain better terms from the systems has largely been the result of the systems' market power, not a product of our rules. Nonetheless, we are specifically requesting comment on alternative proposals that would promote competition in the CRS business. The assertions made by United and other airlines about the impact of the mandatory participation rule and the rule prohibiting discriminatory booking fees may be correct. We are therefore proposing to end those rules, as discussed below.

There may be other options that would move in the direction of less regulation of the traditional systems during a period in which we would expect growing competition in the on-line market to improve the overall competitive potential of the airline distribution system. Proposed options have included a suspension option and a phase out of the rules that would be completed when on-line sales constitute a large enough share of the total market.

For example, Worldspan and Delta's comments on our proposed extension of the rules' sunset date suggested that we should suspend the rules for two years as an experiment to see what rules are actually necessary in light of the current operation of the airline and airline distribution industries.

More recently, Continental has suggested that the rules should be phased out with a transitional period beginning immediately and lasting until the systems account for less than forty percent of airline ticket sales. During the transitional period, we should retain only the basic CRS provisions such as the rules on the display of information designed to ensure that an unbiased display remains available to travel agents.

Our current proposals would modify rather than eliminate the rules, however, we acknowledge the possibility that sunset of the rules or more flexible CRS rules might create more effective competition in the CRS sector in relation to growing competition on the Internet. We have tried to take such factors into account in shaping our specific rule proposals, as discussed below. However, we invite comment on all of these proposals aimed at determining how we can make these proposals most effective. For example, as noted above, we are proposing more flexible provisions in areas such as mandatory participation and constraints on fees that could encourage more effective negotiations between participating airlines and the systems.

This leads to one of the more significant generic issues in this proceeding. In the face of largely unregulated Internet competition, one question that arises is whether we should affirmatively consider a package of participation requirements and alternative pricing approaches (booking fees and contract arrangements affecting travel agencies) geared to making the overall distribution network (including the traditional regulated CRS sector) maximally "incentive compatible" with growing competition from diverse marketing arrangements burgeoning in the on-line distribution sector.

If we find appropriate and workable approaches in the context of this proceeding, we will carefully evaluate them. This evaluation will also shape our final proposals for the continuing review of CRS issues over the next several years.

H. The Specific Rule Proposals

While we are looking at a range of options, such as allowing the rules to expire or phasing them out, we are also proposing specific rules in the event that we determine that CRS regulation remains necessary for an additional period. The rules being proposed by us are intended to prevent deceptive practices that could mislead consumers and unfair methods of competition that would reduce competition in the airline and CRS businesses and increase airline costs. If we conclude that rules are necessary, we will prefer to adopt rules that will help enable market forces to discipline the systems' terms for airline participation to the maximum extent possible, as we stated when we began this rulemaking. 62 FR 47609. The development of system competition for airline customers would lessen the need for detailed regulation by us. Enabling market forces to operate effectively in the CRS business, combined with on-going developments in airline distribution, may eventually eliminate the need for most or all CRS rules. For the most part our proposed rules are intended to create more competition in the CRS and airline businesses.

We are not trying to adopt rules that would address all potential problems. Any such comprehensive and detailed set of regulations would necessarily impose significant burdens on the systems, and creating rules designed to eliminate all risk of possible illegal conduct would likely interfere with legitimate business practices. As to each issue we therefore are considering the likelihood and seriousness of the harm that could result in the absence of regulation, along with the benefits and costs likely to result from the adoption of a rule.

Developing rules sometimes requires us to choose among goals that cannot easily be reconciled. Rules proposed to solve one problem may worsen another problem. For example, increased competition between the systems for travel agency customers would be desirable, and a number of parties, particularly the travel agency groups, have proposed rule changes that would give travel agencies more leeway to switch systems and use multiple systems. However, increasing the systems' competition for travel agency customers could drive up the systems' marketing expenses and thus lead to higher fees for their captive customers, the airlines.

We will discuss the major rule proposals in the following order: (i) The scope of the rules, (ii) the use of third-party hardware and software by travel agencies and their ability to use one terminal to access several systems and databases, (iii) mandatory participation, (iv) display bias, (v) booking fees, (vi) booking and marketing information, (vii) travel agency contracts, (viii) Internet regulation, and (ix) international issues.

We will discuss only the more significant issues raised by the comments and our proposed rules. Where we are proposing to readopt existing rules, we will rely on the findings and analysis in our last review of the rules unless we have updated or modified them in this notice.

1. The Scope of the Rules

The current rules cover systems owned or marketed by airlines that are used by travel agencies to obtain information, make bookings, and issue tickets for passenger air transportation. The rules do not cover computer systems that provide some but not all of these functions, systems that are not owned or marketed by an airline or airline affiliate, and system services that are not used by travel agencies (for example, services used by corporate travel departments and consumers accessing a system through the Internet). The rules also do not cover the operations of traditional travel agencies or on-line travel agencies. The description of the rules' applicability is set forth in section 255.2, and the definition of "system" is in section 255.3.

The major issue on the rules coverage is whether the rules should govern non-airline systems. We are proposing to apply the rules to both airline and non-airline systems, as discussed above.

Many parties have urged us to expand the scope of the rules in other respects. We discuss one such request—the proposal that the rules cover at least some of the practices of Internet sites where consumers can obtain information and make bookings on airlines—below in our discussion of Internet rule proposals.

A number of parties contend that the rules should cover the relationships between the systems and corporate users, primarily corporate travel departments. Their major concern is the tying by an airline of access to its corporate discount fares with the use of the system affiliated with that airline. The parties have an opportunity to comment on whether this kind of tying and similar system practices should be considered unfair methods of competition, as discussed below in our discussion of the mandatory participation requirements.

Our current rules do not expressly regulate the terms for airline participation when someone other than a travel agent uses a system. As a result, a system could believe, for example, that it could charge discriminatory booking fees for bookings made by someone other than a travel agent. Given the systems' apparent market power, each system could also impose unreasonable terms for airline participation for non-travel agency sales. The record does not indicate that the systems have imposed prices and terms for system participation in such circumstances that would be contrary to the rules' requirements for travel agency sales. We therefore are not proposing any rule on this issue.

Amtrak and various bus companies contend that the rules should require an improved display of train and bus services. Amtrak wants the systems to be required to list high-speed rail service together with airline flights, while Greyhound and the Airport Ground Transportation Association urge us to require systems to display bus services operated to airports. IATA counters that such expanded displays of non-airline services could impose substantial costs on the airlines, due to the existing coding system's limited capacity to handle a wide variety of non-airline services. We cannot grant the requests to mandate better displays of train and bus services. Our jurisdiction under section 411 is limited to the marketing of air transportation. 56 FR 12604; 57 FR at 43797.

2. Definitions

Our major proposal for revising the rules' definitions involves changes to the definition of "system". First, as discussed above, we propose to include non-airline systems within the scope of the rules. Doing so will require changing the definition of a system by omitting the requirement that the system be offered by an airline or its affiliate.

Secondly, we want to ensure that information and booking services accessed by travel agencies over the Internet are not treated as systems subject to the rules, when they do not present a potential for anticompetitive conduct and deceptive conduct. Our goal is to facilitate the development of alternatives to the systems for both travel agencies and airlines and thereby

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reduce the systems' market power and potentially eliminate or reduce the need to regulate them. The Internet can provide alternatives to the systems for travel agents willing to use them. Individual airlines like Delta have set up websites for travel agent use. A number of travel agents use sites primarily created for consumer use, like Orbitz, to obtain information and make bookings. In addition, firms are developing software products that allow travel agents to search multiple websites and make bookings. *See, e.g.*, "Fare game: 'Beat the Agent,'" *Travel Weekly* (March 4, 2002) at 6. We doubt that such sites should be covered by our rules when used as alternatives to one of the existing systems, either on a transaction-by-transaction basis or on a short-term basis. Defining a "system" as an information and booking tool used by subscribers under a long-term contract might exclude such services, but other changes could more effectively exclude such services while continuing to cover CRS services that should be covered. We ask the parties to comment on how best to exclude Internet sites from the scope of our rules, when their use should not require regulation.

Since we would keep the condition that the system charge airlines for bookings made through its service, the definition would not cover direct connection services offered by individual airlines and other firms that do not charge booking fees. This proposal and the previous proposal thus would exempt firms from being covered as a system if they do not charge booking fees or if they provide services to travel agencies only under short-term contracts or on a transaction-by-transaction basis.

In addition, under the current rules a computer reservations system is not subject to the rules unless it provides airline information and a booking and ticketing capability. We assumed that travel agencies would not choose a system that was unable to perform all of these three functions. 57 FR 43794. Since then the airlines have developed E-ticketing, and most passengers no longer use paper tickets. GAO, "Effects of Changes in How Airline Tickets Are Sold" at 8; March 7, 2002, Press Releases by American and United. Given the growth of E-ticketing, the ability to issue tickets may no longer be a crucial function needed by travel agencies. We therefore propose to redefine the systems subject to the rules as computer reservations systems that provide airline information and a booking capability. A firm that only provides information on airline services, whether electronically or otherwise, will continue to be outside our rules.

The rules currently define a "system owner" as an airline that owns at least five percent of a system's equity, in order to implement the rule requiring each airline with a significant ownership interest in one system to participate in competing systems at the same level at which it participates in its own system and certain similar rules regulating relations between such an airline and travel agency subscribers. While we are proposing to eliminate the mandatory participation rule, the rules impose other obligations on system owners. If we did extend the mandatory participation rule to airlines that market a system, whether or not they have any ownership interest, as has been urged by some commenters, the rule presumably should also cover airlines with any ownership interest in one system. At the same time we doubt that the rules should cover an airline that indirectly holds a small ownership interest in a system because it holds a non-controlling amount of stock in a public company that owns a system. We ask the parties for suggestions on whether and how we should redefine system owner.

We also ask the parties whether we should change the definition of "subscriber," now described as a ticket agent that holds itself out as a neutral source of information about, or tickets for, the air transportation industry and that uses a system. Because many travel agencies obtain incentive commissions from one or more airlines, they may favor the airlines likely to pay them a higher commission. We recognize, however, that virtually all, if not all, travel agencies currently hold themselves out as impartial sources of information for consumers. Since we would like the rules to be consistent with industry developments, we invite the parties to comment on whether the definition should be changed by striking the word "neutral."

Finally, while we are not proposing to base the coverage of the rules on whether a system is owned or marketed by an airline, several of our proposed rules would impose obligations on airlines that market a system (or limit the rights given airlines if they market a system). We are not proposing to define the kind of marketing relationship that would make these provisions applicable. We invite the parties to comment on whether a tighter definition should be used.

3. Third-Party Hardware and Software

When we last reexamined the rules, travel agencies normally used equipment provided by a system, and with rare exceptions no system allowed subscribers to use its equipment to access other systems or other databases providing airline information and booking capabilities. If a travel agency wanted to access another system, it would have to acquire a separate set of computer terminals. That was sufficiently cumbersome and expensive that few agencies took the trouble to do so. 56 FR 12607; 57 FR 43796–43797.

To enable travel agencies to use several systems and have direct links with internal airline reservations systems and other databases, we adopted a rule, section 255.9, that allows travel agencies to obtain their own equipment for CRS access and to access any system or database with airline information from the terminals used by an agency, unless a system owns the equipment. The rule additionally allows travel agencies to use third-party hardware and software in conjunction with system services, except as necessary to protect a system's integrity. Several airlines had stated that they would create direct links between their internal reservations systems and travel agency computer terminals. That would give airlines some opportunity to bypass CRSs and perhaps the ability to decline to participate in every system unless the terms for participation were reasonable. 57 FR 43797.

In proposing the rule, we expected that it would benefit competition in several respects:

> This proposal, if effective, could be the least regulatory means of alleviating the continuing competitive problems created by the systems. Giving agencies the ability to switch easily among systems using the same terminal would encourage vendors to compete on improving the functionality and information of each system in order to encourage subscribers to make greater use of it. It could also enable participating carriers to gain some bargaining power over booking fees by enabling them to encourage agencies to use a system with the lowest booking fees. If so, that would limit booking fees, which are otherwise unrestrained by market forces.

56 FR 12607.

We further noted that giving travel agencies the right to use third-party hardware and software and to use the same terminal to access different systems and databases would be consistent with the trends in other computer service industries, for networking was becoming increasingly important and common. Our proposal was also consistent with the Federal Communications Commission's decisions on telephone access, for the FCC had held that telephone companies could not arbitrarily restrict their

customers from connecting third-party equipment with the telephone system. 56 FR 12605.

The rule has had some impact. In 1999 thirty-six percent of all travel agencies used their own terminals, and twenty-eight percent of all agencies used third-party software as a front-end for a system. About thirty percent of all travel agents used a system to access the Internet, whereas only three percent could do so in 1997. "U.S. Travel Agency Survey 2000," *Travel Weekly* (August 24, 2000) at 131, 132, 133. The rule nonetheless has been less beneficial than expected. Few travel agencies use more than one system, few seem to bypass the systems by using the Internet for a significant number of airline bookings, and airlines have found it impracticable to establish direct links with individual travel agencies.

Technical problems do not block travel agents from accessing different systems and databases from one terminal. Both United and Galileo point out that travel agencies can obtain software enabling them to access multiple systems and databases. Galileo Supp. Comments at 7, n.6; United Supp. Reply at 23. Travel agencies nonetheless rarely make use of this capability. Legitimate business reasons in part explain the agencies' continuing reliance on one system and failure to seek information and make bookings with multiple systems and databases. Before the Internet, creating a direct link between an agency and an airline was relatively expensive. In addition, using multiple systems and databases could increase an agency's training costs and make keeping track of records more difficult. 56 FR 12607.

Notwithstanding the foregoing considerations, we presently believe that the systems' contract practices may be the major reason for the travel agencies' failure to use multiple systems and databases. Our rule allows each system to keep subscribers from using computer terminals owned by the system to access competing systems and databases. The systems have discouraged travel agencies from buying their own equipment by offering them equipment in conjunction with CRS services on very attractive terms. The systems allegedly offer travel agencies a package of system services and equipment at a price barely above the price of system services without equipment. This makes it too costly for agencies to acquire their own equipment. Large Agency Coalition Comments at 3–4; Midwest Agents Selling Travel Comments at 2; Delta Comments at 10. As a result, travel agencies typically have not bought their own equipment. The agencies then cannot take advantage of our rule giving them the right to access multiple systems and databases from equipment owned by any entity other than the system itself.

The systems could, of course, allow subscribers to use system-owned equipment to access other systems and databases, but they apparently rarely grant such permission. Delta Comments at 8–10; Alaska Comments at 10–11. The systems also may have restricted subscriber access to the Internet from system-owned equipment. "U.S. Travel Agency Survey 2000," *Travel Weekly* (August 24, 2000) at 140.

Each system additionally has offered financial incentives to its subscribers that encouraged each to make all or most of its bookings on that system. The most common such incentive is productivity pricing. A productivity pricing structure gives travel agencies large discounts from the standard charges for system services and equipment if the travel agency meets a specified minimum booking level for each terminal. The booking quota is high enough so that the agency as a practical matter cannot afford to make substantial use of another system or database for its bookings. Alaska alleges that the systems' use of productivity pricing (and their restrictions on travel agency use of system-owned equipment) made it difficult for Alaska to establish direct links between its internal reservations system and selected major travel agencies. Alaska Comments at 4–5. ASTA contends that productivity pricing keeps travel agents from using the Internet to book fares lower than those sold through a system. ASTA Comments on Proposed Extension at 3.

As a result of these system practices, few travel agencies have accessed multiple systems and databases from the computer terminals in their offices for airline bookings. *See, e.g.*, Delta Comments at 10. The continuing prevalence and impact of such restrictions is unclear, since travel agents are increasingly using the Internet for airline bookings. "Online travel is booming," *Travel Weekly* (August 26, 2002).

Because the rule's exception for system-owned equipment may have effectively annulled it, a number of parties urge us to revise the rule to allow agencies to access any system or database from equipment owned by the system as well as equipment not owned by the system. These parties include Delta, U.S. Airways, America West, Alaska, Midwest Express, Qantas, Varig, the Asia Pacific airline group, ASTA, and Amtrak.

Worldspan would not oppose this revision as long as the rule stated that any equipment or software connected with the system must be compatible with the system.

Sabre and Galileo oppose any change in this rule. They argue that travel agencies have the option of buying their own equipment if they want to access other databases and that changing the rule would override the system's rights as the owner of the equipment. Sabre also asserts that changing the rule would destroy the economics of the business, since the system could no longer expect to obtain the booking fees generated by the travel agency. Sabre Reply at 36.

We are proposing to readopt the existing rule with one change, the elimination of the provision that allows a system to block travel agencies from using equipment owned by the system to access other systems and databases. We believe that our findings on the potential competitive benefits of such a rule remain valid. Enabling travel agencies to access different systems and databases and travel suppliers from one computer would encourage competition between the systems and between the systems and alternative electronic sources of information and transaction capabilities for travel agencies. That in turn would apply some competitive discipline to booking fee levels. Experience seems to show that making such a rule effective will require both eliminating the exception for system-owned equipment and restricting the use of productivity pricing and other contract provisions that cause travel agencies to use one system for all or most of their bookings (our tentative findings on productivity pricing and related issues are discussed below in connection with the other subscriber contract issues).

These findings are consistent with the recommendations of several parties. Delta's initial comments thus asserted that our primary objective "should be to increase competition among CRS vendors for information services and booking fees by eliminating contract and other CRS vendor-created barriers that prevent or limit travel agents from using multiple CRS databases and Internet connections to competitive sources of travel information." Delta Comments at 2. Similarly, Alaska states, "[O]ne critical objective * * * should be the elimination of the incentives and disincentives that lock travel agents into a particular CRS and discourage agents' use of alternative means of communicating with participating carriers." Alaska Comments at 7.

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Enabling other firms to compete with the systems for a share of each travel agency's business, moreover, would encourage technological innovation. A firm that can develop superior technology should have a competitive advantage in obtaining travel agency customers. This may not occur as long as the systems' contract provisions and restrictions on the use of equipment block travel agencies from choosing a service that better meets their needs. Several firms are already developing more efficient programs that travel agencies can use for searching several systems and websites for information and making bookings in the location with the best fare and service. "Fare game: "Beat the agent' ", *Travel Weekly* (March 4, 2002) at 6.

Moreover, as explained below in our discussion of the airline proposals for rules requiring CRS fees to be reasonable or cost-related, the most practicable and desirable solution for the airlines' complaints about CRS practices is to foster alternatives that airlines can use if the terms for system participation are unacceptable and that airlines can encourage travel agencies to use.

In the last rulemaking, we decided to allow each system to limit the use of its own equipment on the basis that the system providing the equipment should be able to control its property and obtain some compensation for its use. 57 FR 43800. After reexamining the issue, we think that eliminating the exception for system-owned equipment would not treat systems unfairly when they choose to provide equipment. Systems can provide services to travel agencies without providing the equipment, since travel agencies can obtain equipment elsewhere. More importantly, we would not be restricting the systems' ability to charge travel agencies for the use of their equipment. We would only be preventing them from unreasonably restricting the equipment's use.

We believe that the restrictions tend to maintain the systems' ability to obtain monopoly rents from airlines. It appears that the trend in the business world and in the regulatory arena has been to eliminate restrictions that limit access to computer terminals and telephone equipment. Our proposed rule would duplicate the practices already followed in several foreign countries at the time of our last rulemaking. 56 FR 12607; 57 FR 43799.

The record suggests, moreover, that the systems have offered travel agencies equipment at little or no cost, which enables the systems to prevent travel agencies accepting those offers from accessing competing systems and databases from one computer terminal. The systems have done so, notwithstanding our intent that travel agencies be able to use more than one system and that no system should be entitled to obtain all or most of its subscribers' bookings during the terms of their CRS contracts. *See, e.g.*, 57 FR 43827–43828. For this reason we cannot accept Sabre's objection to the proposed rule. Sabre asserts that the systems would likely become unwilling to provide equipment and that the proposal would undermine the systems' assumption that the equipment supplied by a system to a travel agency will generate booking fee income. Sabre Reply at 36. Sabre's position is contrary to our long-standing policy that a subscriber should be free to use multiple systems and databases and that a system therefore should not be entitled to obtain—or expect to obtain—most or all of a subscriber's bookings.

To provide travel agencies some additional assurance that they may use third-party hardware and software we invite comment on additional provisions that would prohibit systems from discriminating against subscribers for using a back-office system in conjunction with bookings outside the system and from charging disproportionately high fees for system services to subscribers that do not use equipment provided by a system. The latter provision would not affect the systems' pricing of equipment. These proposals would add some specificity to the existing rule that bars systems from directly or indirectly prohibiting or restricting subscribers from using third-party hardware and software or using the same equipment for accessing one system and other systems or databases.

4. Contract Clauses Restricting Airline Choices on System Usage

As discussed above, we seek to enable airlines to use alternatives to the systems so that market forces may discipline the prices and terms offered airlines for CRS services. To achieve this goal, airlines must be able to choose whether they will participate in a system and at what level, and to encourage travel agencies to obtain information and make bookings in ways that would bypass the systems. We therefore adopted a rule prohibiting the systems from enforcing parity clauses except as to airlines that owned or marketed a competing system. The parity clauses imposed by most systems required each participating airline to buy at least as high a level of service from the system as it did from any other system (for example, Sabre's parity clause required any airline participating in any competing system at the full availability level to participate in Sabre at that level or a higher level). We prohibited the enforcement of parity clauses because they made it unnecessary for systems to compete for airline participation at higher levels of service (while almost all airlines must participate in each system, as discussed, many airlines do not need to participate at the higher levels, which are more expensive). As we additionally explained, "[P]arity clauses cause airlines either to buy more CRS services than they wish to buy from some systems or to stop buying services from other systems that they would like to buy, which creates economic inefficiencies and injures airline competition." 62 FR 59784.

We recognized, however, that an airline affiliated with one CRS as an owner or marketer might participate in competing systems at a level lower than its level of participation in its own system in order to induce travel agencies in regions where it is the dominant airline to choose its affiliated system rather than a competing system. We therefore allowed a system to enforce parity clauses against airlines that owned or marketed a competing system. A system could not enforce a parity clause, however, until it had given us and the airline fourteen days advance notice of its intent to do so. 62 FR 59797–59799.

None of the parties has asked us to reexamine the rule prohibiting the enforcement of parity clauses, subject to the exception for airlines marketing or owning a system, so we propose to readopt the rule. Our proposal to end the mandatory participation requirement, if adopted, may require that the parity clause rule be changed to eliminate that exception.

Sabre, however, raises two related issues regarding system contract practices that appear to limit airline choices on system participation (a third issue, the tying of participation in the system's services provided to travel agencies with participation in websites using the system, is examined below with the other Internet issues). Sabre states that its contract with participating airlines prohibits them from discriminating against travel agencies using Sabre. If broadly interpreted, the clause arguably could keep airlines from taking steps to encourage travel agencies to use an alternative system that might be more efficient or less costly for the airline. Sabre's contracts also give it the right to limit a participating airline's ability to withhold fares from Sabre; Sabre alleges, for example, that the contract gives it the right to demand that airlines make their E-fares available through Sabre although Sabre "has chosen not to do so at this time." Sabre Reply at 10.

If Sabre's contracts are typical, the systems may be imposing contract terms on airlines that unreasonably restrict airline choices on how to distribute their services. Such contract clauses could keep an airline from pursuing the most efficient and least costly distribution channels. Airlines should be free to choose to offer E-fares only through their own websites, without being obligated by system contracts to make them available through other distribution channels. This kind of contract clause would frustrate our efforts to allow airlines to create ways of bypassing the systems when doing so is more cost-effective and likely to establish competitive discipline for the systems' prices and terms for participation.

In addition, a participating airline should have some ability if practicable to persuade travel agencies to use a system or similar electronic service that provides better service or charges lower fees. Insofar as Sabre's contract would bar this, it would keep an airline from taking steps to reduce its CRS expenses. It would also be directly contrary to our conclusion in the parity clause rulemaking that airlines should normally be free to choose the quantity and quality of service bought from their suppliers. 62 FR 59784–59785, 59792.

We therefore request comment on a rule proposal that would prohibit a system (i) from barring an airline from "discriminating" against the travel agencies using the system, at least if the alleged discrimination results because the system has higher booking fees and poorer service than other systems, and (ii) from requiring any airline as a condition for participation to provide that system with fares that the airline has chosen not to sell through travel agencies or the systems. This proposal should be consistent with our rule prohibiting parity clauses, section 255.6(e).

Parties should comment on whether the rule should create an exception for airlines that own or market a competing system.

We ask the parties to provide additional information on the systems' current practices and on the benefits and harm that could result from such a rule and suggestions on how to implement a rule allowing airlines to favor users of one system over another.

5. The Mandatory Participation Rule

Our mandatory participation rule, section 255.7, requires each airline with an ownership interest of five percent or more in a system (a "system owner") to participate in competing systems at the same level at which it participates in its own system, if the other systems' terms for participation at that level are commercially reasonable. We adopted the rule because some U.S. airlines with an ownership interest in one system limited their participation in competing systems in order to encourage travel agencies in their hub cities to use their own system. Some airlines also denied complete information on their fares and services to competing systems. 56 FR 12608; 57 FR 43800. U.S. systems have encountered similar conduct internationally by foreign travel suppliers that own or market a competing system. 62 FR 59797.

The U.S. airlines now covered by the rule are American, Delta, and Northwest; the rule also applies to Amadeus' European airline owners. As a result of Cendant's acquisition of Galileo and United's sale of its Cendant shares, United is no longer subject to the mandatory participation rule. American, moreover, reportedly plans to sell its Worldspan stock, which it acquired as part of its acquisition of TWA's assets. Although United and potentially American are no longer system owners for purposes of our mandatory participation rule, each continues to market the system that it formerly owned, and Southwest also markets Sabre.

The mandatory participation rule has generated substantial controversy in this proceeding in three respects: (i) Several airlines and Orbitz claim that the rule is counterproductive, since it allegedly enables systems to dictate terms for airline participation; (ii) some airlines and systems insist that the rule should be maintained and extended to airlines that market a system, not just airlines with a significant ownership interest; and (iii) some airlines, systems, and travel agencies contend that the rule must prohibit each system owner from denying access to its corporate discount fares to travel agencies that do not use its system. We will discuss each of these three issues in this section.

(a) Ending the Mandatory Participation Requirement

The larger airlines urge us to abolish or cut back the rule. American, United, and Delta contend that the rule should be eliminated. Northwest asserts that only a basic level of participation should be required of airlines with system ownership interests. United and Delta claim that the systems use the rule to force airlines with an ownership interest in another system to participate in all enhancements, whether or not they benefit the airline. United further claims that abolishing the rule would give large airlines some leverage over the systems, since an airline could refuse to participate in a system (or all of its features) unless the system offered attractive terms for participation. According to United, the airlines' ability to negotiate over the terms for participation would allegedly create competitive discipline for the systems.

Galileo, Worldspan, Amadeus, System One, and America West initially argued that we should maintain the rule. Several of them cite cases where an airline that owns or markets a system allegedly has unreasonably limited its participation in competing systems in order to encourage travel agencies to choose its affiliated system, notwithstanding the rule. For example, System One, which markets Amadeus, alleges that airlines associated with Sabre and Worldspan have denied certain types of transactional capability to Amadeus in order to handicap Amadeus' ability to obtain travel agency subscribers. System One Comments at 5–10. Worldspan has since advised OMB that it believes that the mandatory participation rule should be eliminated.

We are proposing to end the requirement that airlines affiliated with a system must participate in competing systems at the same level that they participate in their own system as long as the terms are commercially reasonable. We believe that ending the requirement may be beneficial, but we invite the parties to discuss further whether the requirement should be maintained.

We adopted the current rule due to our experience that airlines owning or marketing a system have at times limited their participation in competing systems (or denied complete fare and schedule information to competing systems) in order to compel travel agencies in areas dominated by such airlines to choose systems affiliated with those airlines. 56 FR 12608; 61 FR 42206. The rule was also consistent with our decisions finding that a foreign airline had engaged in unfair discriminatory conduct by refusing to participate fully in a U.S. system that was competing with a system owned or marketed by the foreign airline. 57 FR 43800. In addition, the United States' aviation agreements with a number of foreign countries similarly require airline participation in competing systems.

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Nonetheless, the mandatory participation rule may unduly limit the ability of individual airlines to bargain for better terms with the systems. If so, as asserted by several of the airline commenters, ending the requirement could enable market forces to discipline the systems' terms for airline participation to a greater extent than now. While the systems then seemed to have substantial market power, we concluded when we adopted our rule prohibiting parity clauses that airlines had some ability to choose which levels of participation should be purchased. For that reason, we barred the systems from enforcing parity clauses against airlines that did not own or market a system. The large airlines opposing the requirement contend that they could negotiate with other systems for better terms if the rule did not force them to participate at a specified level. Delta claims, for example, that it obtained better terms for some system features before our rule took effect. Delta Comments at 22.

The airlines' potential ability to limit their purchase of system services should enable them to demand better terms in return for participating in higher levels of service. Any additional market discipline would provide significant public benefits by cutting the cost of airline distribution. Further, ending a rule limiting the ability of airlines to choose which services they will buy would be consistent with our overall goal of creating more choices for airlines. Given our past findings on the systems' market power, however, we ask the parties to comment on whether and how this proposal would lead to lower fees and better terms for airlines participating in a system.

We recognize that airlines affiliated with a system have at times limited their participation in competing systems in an effort to prejudice their ability to compete for travel agency subscribers. Indeed, a number of the commenters complain that airlines owning or marketing a system continue to engage in practices that seem to be designed only to create a competitive advantage for their affiliated system. However, in this proceeding we are focusing on proposals that would benefit consumers by promoting airline competition. In the past, when one or more airlines owned each system, competition between the systems had a substantial impact on airline competition. Most of the systems have weaker ties with their former owners, and the more equal functionality offered each participating airline by each system has lessened the impact of competition between systems on competition between airlines. The airlines currently subject to the rule also own a share in Orbitz, and their Orbitz ownership interests may deter them from making marketing decisions on the basis of their ties with one of the systems. Ending the mandatory participation rule may provide a test of the airlines' ability to negotiate better terms for system participation. American submitted to OMB a report by the Association of European Airlines that analyzes in detail the potential advantages and disadvantages of such a change.

In any event, the potential benefits obtainable from ending the rule, according to the proposal's proponents, would outweigh any adverse impact on competition between the systems. The travel agencies' increasing ability to use alternatives to a system may also reduce the anti-competitive effects produced when an airline reduces its participation in competing systems in order to create a competitive advantage for its affiliated system. In addition, even without a rule, section 411 might bar airlines from using their dominance of local airline markets and ability to restrict their participation in unaffiliated systems as a way to compel travel agencies to subscribe to the airlines' affiliated system. The parties should discuss the potential benefits and harms for the travelling public from our proposal to end the mandatory participation rule. They should also address the implications of such a change for the United States' compliance with its international obligations.

We are proposing to eliminate the mandatory participation rule, but a possible alternative would be a readoption or extension of the rule if commenters can show that doing so would provide significant benefits. We are uncertain whether the airlines seeking the rule's end would have much bargaining leverage if we terminated the rule. There may also be some continuing validity to our historical concern that airlines affiliated with a system may limit their participation in competing systems or withhold information from those systems in order to distort CRS competition. Commenters that believe so should present information supporting such a position and address whether and how such conduct could affect airline competition and consumers.

The existing rule requires each airline with a significant ownership interest to participate in competing systems at the same level at which it participates in its affiliated system, if the competing systems' terms for participation are commercially reasonable. We invite parties to comment on an alternative rule that should be less burdensome, if we determine that airlines owning or marketing a system should have some obligation to participate in competing systems. Instead of requiring airlines affiliated with one system to participate in competing systems, such a rule would prohibit airlines from declining to participate in competing systems due to an intent to distort competition in the CRS business. The rule could create a presumption that an airline's refusal to participate at an equivalent level in competing systems was designed to restrict competition, if the systems' terms for participation were commercially reasonable. The basis for the presumption would be the airlines' usual interest in making their services available through all significant distribution channels. Such a rule would allow an airline to show that legitimate business reasons made it unwilling to participate at an equivalent level in the competing systems.

This should provide airlines that own (or market) a system greater flexibility in choosing which services to use in competing systems. On the other hand, as we reasoned in our last reexamination of the rules, such a requirement would require us to resolve potentially difficult issues of intent. 57 FR 43801. The potential advantages of this rule over the existing rule may outweigh this disadvantage, however.

Delta asserts that the rule forces it to participate in features even when their performance and quality do not live up to the system's initial claims. Delta Comments at 22. We believe that an airline covered by the existing mandatory participation rule would not be required to participate in a competing system's enhancement if the same enhancement offered by the airline's own system provides better service at the same price. Our rule requires participation only if the terms are commercially reasonable.

While we are proposing to end the mandatory participation rule, some of the arguments made against it seem unpersuasive. United claims, for example, that the rule causes the systems to match each other's fees. United Comments at 23. The systems, however, were matching each other's fees before we adopted the rule in 1992. *Airline Marketing Practices* at 56–57.

United further asserts that we have no jurisdiction or responsibility for promoting competition in the CRS industry. United Supp. Reply at 30, n. 41. United's argument wrongly assumes that systems are not ticket agents within our jurisdiction under section 411. In addition, airline efforts to distort competition between the systems may help preserve the systems' market power in a manner contrary to antitrust principles. By limiting the travel agencies' ability to choose between systems, they may increase airline distribution costs and travel agency costs. *Cf.* 62 FR 59794. As noted above, however, our focus is on airline competition, and CRS competition now may have less of an impact on airline competition than when we last reexamined the rules.

(b) Extending the Rule

We are proposing to end the mandatory participation requirement. However, parties may comment on whether the requirement, if readopted, should be broadened. As noted, the mandatory participation rule currently covers only airlines with a significant equity interest in a system. American will not be covered if it sells its Worldspan stock, and United is no longer covered. American, United, and Southwest each market a system in the United States, even though they have no ownership interest.

Galileo, Worldspan, Amadeus, Northwest, Continental, and America West have argued that the mandatory participation rule, if kept, should cover airlines marketing a system. Sabre, American, and Southwest oppose any such broadening of the rule.

Parties should comment on whether the mandatory participation rule should cover airlines that market a system, if we determine to readopt the requirement at the conclusion of this proceeding. Such an airline may have incentives to limit its participation in competing systems in order to undermine their ability to compete for travel agency customers, as shown by experience. That may distort competition in the CRS business.

We would, of course, prefer not to interfere with the contracts between systems and marketing airlines, but it is possible that doing so may be necessary to prevent discrimination against some systems designed to give an affiliated system a competitive edge. In addition, we doubt that we could maintain a mandatory participation requirement for airlines with a CRS ownership interest when airlines marketing a system remain free of any such requirement.

A related issue concerns the refusal by some airlines affiliated with a system to give travel agencies (and corporate travel departments) access to their corporate discount fares unless the agency (or corporate travel department) uses the airline's affiliated system. Balboa Travel Management, a San Diego travel agency, states that it lost a potential corporate customer because the airline booked most often by the corporation warned that its discount fares would not be available through the system used by Balboa. Balboa Travel Management Supp. Comments at 1. System One cites cases where American and Delta offered corporate discount fares only if booked through Sabre and Worldspan, respectively, and Galileo describes similar conduct by Northwest and American. System One Comments at 3–4; Galileo Supp. Comments at 12 and Exhibit B. *See also* AAA Comments at 2; American Express Comments at 2; Large Agency Coalition Comments at 7; Midwest Agents Selling Travel Comments at 4.

An airline's denial of access to corporate discount fares to travel agencies that do not use its affiliated system is an effective competitive weapon against rival systems. Amadeus Supp. Comments at 32–34; November 10, 1998, Amadeus Supp. Comments; Continental Response to Amadeus Petition at 3–4.

The existing rules require each airline with a significant CRS ownership interest to make all of its fares and services that are "commonly available to subscribers to its own system" available to competing systems. Section 255.7(b). We did not require system owners to provide all information on their services, since some information, such as information on frequent flyer programs, was traditionally shared only with the airline's own system. We declined to adopt a general prohibition against a system owner's tying of access to special discount fares with the use of the owner's system. We stated, however, that an airline would violate its obligation to provide access to its commonly-available fares to users of all systems if it "widely offers a discount fare to businesses on the condition that they use its CRS for booking the fare." 57 FR 43801.

Some airlines treat their corporate discount fares as fares that are not generally available and so are not subject to the rule. Amadeus filed a petition (Docket OST–99–5888) asking us to declare that the current rules prohibit an airline owning a system from refusing to provide its corporate discount fares to competing systems or, in the alternative, to amend the rules to prohibit the tying of access to the fares with the use of the airline's system.

Galileo (if the mandatory participation rule is kept), Amadeus, System One, Continental, America West, ASTA, AAA, American Express, and the Large Agency Coalition contend that we should prohibit an airline's tying of access to its corporate discount fares with a travel agency's use of the airline's CRS. United, Northwest, and the Asia Pacific airline group oppose any prohibition of such tying.

While we are proposing to eliminate the mandatory participation rule, parties should comment on whether the rule should be kept and, if so, should require airlines affiliated with a system to provide corporate discount fares to competing systems.

6. Rules Barring Display Bias

(a) Background

Our rules prohibit systems from biasing their displays but do not prescribe how a system must display airline services. Section 255.4. As explained above, the systems must determine which flights will be listed in the display of services provided travel agents and the order in which the flights are listed. The rules define display bias as using carrier identity in selecting flights from the database and ordering the listing of flights in the display. Galileo, for example, may not give United's flights a preference just because they are operated by United. Other provisions additionally limit the potential for bias. Each system must, for example, apply its editing and ranking criteria consistently to all markets. It must select connecting points (and double connect points) for constructing connecting flights for each city pair on the basis of criteria that are applied consistently to all airlines and all markets. Participating airlines can designate five points to be used as connecting points in a market. Each system must follow the same standards of care and timeliness for loading information on participating airlines and information on airlines owning the system.

Each participating airline must ensure that it provides complete and accurate information to each system in a form that will enable the systems to display flights in accordance with our rules on display bias. Section 255.4(f).

In our last overall rulemaking we found that display bias would mislead travel agents and their customers. It would also keep non-owner airlines from being able to compete on the basis of the price and quality of their service, since it would shift significant amounts of revenue to the airline benefited by the bias. 57 FR 43786.

When we strengthened our display bias rules in 1997, we noted that a Galileo display, created to prejudice some of United's competitors, might be reducing Alaska's annual revenues by as much as $15 million and Midwest Express' annual revenues by several million dollars. Galileo's display, while

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ostensibly neutral, often and unreasonably gave the flights of United, one of Galileo's owners, a better display position than flights offered by competitors that better met the needs of travellers and travel agents. 61 FR 42212–42213.

Bias could be effective for several reasons. Travel agents tend to book the first flight displayed by a system. Their customers depend on them to extract information from the system display, which consumers do not view themselves. Travel agents generally work under time pressure that often keeps them from taking the trouble to overcome display bias by searching several display screens. The systems also hid the extent of their bias. Furthermore, the systems' contracts with travel agencies limited each agency's ability to offset one system's bias by switching systems or using multiple systems. As a result, consumers were often unable to obtain accurate and complete information on schedules and fares from travel agents relying on a system for their information. 57 FR 43785–43786.

Since the rules do not generally prescribe what criteria must be used for editing and ranking flights, Sabre, for example, could choose criteria for editing and ranking flights that give American's flights a better position due to the characteristics of American's service. *See* 56 FR 12611.

The rules also do not regulate the displays created by travel agencies for their travel agents and thus do not prohibit agencies from biasing those displays. We determined in our last overall rulemaking that such a rule was unnecessary because competition between travel agencies appeared likely to deter them from offering customers misleading or incomplete advice on airline service options. 57 FR 43809.

No party is arguing that we should end the rules against display bias if we conclude that the systems still require some regulation. The rules generally seem to work well, and no party is urging us to drastically revise them. Worldspan, however, told OMB that it sees no need for rules regulating system displays. Several other parties contend that the rules require strengthening. Sabre asserts that we should bar "screen padding," multiple listings of the same flights under different airline codes. The European Union and the European Civil Aviation Conference urge us to conform our rules on display bias with the European rules, at least by specifying in several respects how flights must be ranked. Frontier urges us to prohibit systems from giving connections between code-share partners a preference over interline connections. American and America West seek a rule requiring change-of-gauge flights to be displayed as connecting flights. Air France and Lufthansa contend that systems should be required to use elapsed time as a factor in ranking airline services. Galileo, Amadeus, Delta, Continental, and America West oppose proposals for a rule requiring display criteria to be based on consumer preferences.

In addition, we will also address an issue raised in an enforcement proceeding instituted against American and Sabre in Docket OST–95–430. The case resulted from American's distribution to some Sabre subscribers of software that would rearrange the displays of airline services in favor of American. The program enabled the travel agency to create various displays, including one that would show only American flights.

The major issues requiring discussion are whether we should continue to prohibit bias and whether we should prohibit the systems from screen-padding, prohibit airlines from providing travel agencies with programs that would bias the displays, and prohibit travel agencies from biasing the displays used by their employee travel agents.

(b) Maintaining the Prohibition against Display Bias

We believe there may be a significant risk that systems, whether or not owned by an airline, would engage in display bias if not prohibited from doing so. Some commenters have suggested that airlines could obtain preferential treatment from a system by paying it to discriminate against competitors. Northwest Comments on Proposed Extension at 7; Alaska Supp. Comments at 3–4; ASTA Comments at 8–9; *see also* Marshall A. Fein Supp. Comments (description of one system's bias against a disfavored car rental company).

In our last overall rulemaking we considered in detail whether display bias provided countervailing consumer and competitive benefits and concluded that it did not. 57 FR 43785–43787. We tentatively believe that reasoning remains valid, and we accordingly propose to readopt the prohibition against display bias. Nevertheless, we will consider carefully comments that oppose the readoption of this prohibition.

In that connection, we are not proposing to adopt the suggestions from the European Union and the European Civil Aviation Conference that we make our rules more like theirs, in particular, that we require nonstop flights to be listed first and that other flights be ranked on the basis of elapsed time. We continue to believe that we should not direct how systems must edit and rank airline service options. We do not believe that there is a single best algorithm for displaying airline services (an algorithm is the set of rules for constructing a display). 56 FR 12609. We note as well that the systems have typically offered users several displays of airline services. *See, e.g.*, 61 FR 42210. Travel agents and consumers should benefit from the ability to choose between different displays. We invite comments, however, on whether there is greater merit in those proposals than we discern.

We have adopted a policy statement requiring airlines and travel agents to give adequate notice when flights involve change-of-gauge service. 14 CFR Part 258. We are not proposing additional restrictions on the display of such service.

(c) Screen Padding

The schedule displays offered by the systems, like the Official Airline Guide's schedule listings, identify airline services with two-character codes (the codes for United and Frontier, for example, are UA and F9). When airlines code-share, their nonstop and connecting flights are listed under each partner's code, not just under the code of the airline operating the flight. The Board endorsed code-sharing by prohibiting systems from discriminating against an airline because it was using its code on a flight operated by another airline, 14 CFR Part 256 (the Board acted because United's Apollo system threatened to exclude airlines operating under another airline's code). 49 FR 12675 (March 30, 1984). We have found that code sharing usually benefits consumers by creating more integrated services. 57 FR 43805.

If a system chose to list connecting flights operated under a code-share agreement under all possible combinations of codes, a single connection could occupy a number of lines in the display. A system would, for example, list a Northwest flight connecting with a KLM flight four times: as a Northwest to Northwest connection, a KLM to KLM connection, a Northwest to KLM connection, and a KLM to Northwest connection. If a system listed flights operated under a code-sharing arrangement under all possible combinations, a few such flights would take up substantial space on the display and often move flights with the next highest display ranking into a later screen.

Our rules allow systems to limit the number of listings given code-share services, as long as the service is listed at least once under each partner's code. A system thus would comply with our rules if it listed the Northwest and KLM connecting services as a Northwest to Northwest connection and a KLM to KLM connection. Our rules do not bar a system from displaying all of the possible code combinations for such a flight.

Sabre, American, Amadeus, Continental, Frontier, and Air France contend that the rules should limit the number of times that a code-share flight is displayed. The parties disagree over what the best solution would be, however.

We tentatively believe that limiting the number of times that code-share services are displayed might be beneficial. When code-share services occupy much of the display, travel agents will have more difficulty in finding alternative flights that their customers may prefer, and the airlines competing with the code-sharing airlines will obtain fewer bookings than they would otherwise. The multiple listing of the same connecting service under different codes can push the flights offered by competitors to later screens. This may increase the bookings made on the code-share flights, even in cases where the code-share relationship involves no improvement in service. *See, e.g.*, American Comments at 12–14.

On the other hand, airlines engaged in code-sharing understandably expect their services to be listed under each partner's code. Code-sharing is a significant feature of the international alliances that we have found provide significant consumer benefits. International agreements also provide bilateral rights to offer code-share services.

The European Union's CRS rules allow a code-share flight to be displayed no more than twice, even if the codes of three or more airlines are used on the flight. All four of the systems follow the European rule within the European Union, and some do so as well in other countries. Northwest Reply at 6–7.

American proposes a rule requiring that all airline codes displayed for a flight be displayed in one listing, as is the case for flights operated under one airline code. American Comments at 12–14. Amadeus suggests that we adopt the European rule. Amadeus Reply at 37. Continental suggests that we instead allow one listing of an international nonstop flight or set of connections for each code-share partner. Continental Reply at 15–16.

We will consider all of these options further, after reviewing comments received in this proceeding. We note, however, that Continental asserts that American's proposal is not technically feasible. Continental Reply at 15. Amadeus alleges that our adoption of the European rule would harmonize our regulations with theirs to some extent. Amadeus Reply at 37. It would also reduce the systems' programming expenses. On the other hand, as Continental points out, the European rule could keep the codes of some code-sharing partners from being displayed on a flight. Continental Reply at 16.

Since code-sharing usually benefits consumers, we are not proposing to ban systems from giving any preference to connections between flights operated by two airlines under a common code over interline connections. We are therefore denying Frontier's request for such a rule. Frontier Comments at 4–7. Consumers using code-share connections typically obtain smoother service than they would by using interline connections. 57 FR 43805. We already require systems to offer a display that does not give on-line connections a preference over interline connections, in part due to Frontier's earlier dissatisfaction with code-sharing. 62 FR 63843–63844. We presently are not aware of a substantial reason justifying further regulation on that issue.

(d) Biasing Software Provided by Airlines

As noted above, the Enforcement Office filed a complaint against American and Sabre based on American's distribution to some travel agencies using Sabre of a program that enabled them to bias their displays in favor of American. *American Airlines and Sabre Travel Information Network Enforcement Proceeding*, Docket OST–95–430. The software enabled travel agencies to create several different displays, including one that would show only American flights. At that time American controlled Sabre. In a ruling on cross-motions for summary judgment, an Administrative Law Judge held that American had not violated our rules or section 411. He suggested that we might wish to reexamine the issue.

We have not issued a final decision on the petitions for review filed by the Enforcement Office and Northwest, and those proceedings remain open. If possible, the development of a general rule in this proceeding may be more effective than addressing the issue in the context of the American case.

We prohibit the systems from biasing their displays because bias causes consumer harm and hinders rival airlines from competing on the basis of fares and service quality. In our view, there is little difference between the bias incorporated in system displays and software distributed by the owner airline that enables travel agencies to create displays biased in favor of that airline. The travel agency owner in theory can choose whether or not to use the program offered by an airline, but the relationship between the travel agency and the airline, which is likely to be the airline most important to the agency and its customers, makes it doubtful that the agency's choice will be entirely voluntary. In the last rulemaking, we prohibited the systems from offering secondary displays biased in favor of the owner airline, even though the travel agency could choose between using the biased secondary display and the neutral display required by the rules. 56 FR 12611.

As a result, even though we do not presently plan to prohibit travel agencies from creating biased displays on their own initiative, we are proposing to prohibit any airline from providing software to agencies that would bias the display in favor of that airline. While the major threat might arise from one of the major airlines that owns or markets a system and is likely to dominate a travel agency's regional airline market, we have not yet heard a persuasive reason why any airline should be able to distribute software that enables the agency to bias the displays. This proposal, moreover, would be consistent with our proposal to bar airlines from buying bias from a system. Airline-created screen bias can be just as deceptive to consumers and harmful to airline competition whether it is built in to a system's display or created by software distributed by the airline.

(e) Travel Agency Displays

Our rules do not regulate the displays made by travel agencies. Travel agencies can use the data provided by a system to create their own displays ordered according to criteria chosen by them without violating the rules, including displays biased in favor of an agency's preferred airlines. We refused in our last major rulemaking to bar travel agencies from creating biased displays on the grounds that the agencies' competition for customers would deter them from giving misleading or inaccurate information and that there was no evidence that travel agencies often provided misleading advice. 57 FR 43809.

The Consumers Union asks us to prohibit the use of biased displays by

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travel agencies but does not cite evidence that such displays exist and cause consumer harm. Consumer Union Supp. Comments at 6, 15. Lufthansa alleges that travel agencies commonly negotiate preferred supplier arrangements with some airlines and then use in-house software to bias the displays in favor of those airlines. Lufthansa Supp. Comments at 3. Midwest Express claims that American Express provides biased displays to its travel agents that downgrade the flights offered by Midwest Express and other airlines that are not among American Express' preferred airlines and that American Express will not book a non-preferred airline unless the customer specifically asks to fly on that airline. Midwest Express Comments at 26.

After considering the issues, we are not at this time proposing any rule regulating travel agency displays (or, as discussed below, any rule regulating the displays offered by on-line travel agencies). We are well aware that individual airlines try to encourage travel agencies to give them a larger share of their bookings, usually by offering an override commission program that enables the agency to obtain higher commissions if the airline's share of the agency's bookings exceeds a specified percentage. The major airlines' elimination of base commissions will make incentive commissions more important to travel agencies. Nonetheless, despite the airlines' efforts, and the interests of travel agencies in obtaining override commissions, we presently are not aware of a compelling need to regulate travel agency displays. The travel agency business is intensely competitive. Travel agencies that provide poor or misleading advice to their travellers will lose customers. The competitive pressures on travel agencies should offset incentives to give customers misleading advice. As one travel agency states, "Travel agencies are in the business of building a base of repeat customers—and that requires looking after the best interests of those customers." Balboa Travel Management Supp. Comments at 3. The risk of incurring consumer ill-will and lost revenues should keep travel agencies from giving consumers bad information. To the extent that travel agencies bias their displays, they presumably do so to implement their preferred carrier agreements. 57 FR 43809. While those agreements typically benefit travel agencies by enabling them to obtain override commissions, they may also enable the agency to provide better service on the preferred airlines for their customers. In some such cases displays that give preferred airlines a better display position may also benefit the agency's customers.

The Department's Inspector General conducted a study of travel agency override commissions. Office of the Inspector General, U.S. Dept. of Transportation, "Report on Travel Agent Commission Overrides" (March 2, 1999). Although the report expressed a concern that travel agencies may recommend airline services that will increase their commission payments rather than the services that best meet the needs of their customers, it found no proof that override commissions had caused travel agencies to offer misleading or incomplete advice. *Id.* at 10.

7. Equal Functionality

A number of parties in our last overall rulemaking had complained that each system's architecture was biased in favor of the owner airline in various respects. The availability information provided on the owner airline was likely to be more up-to-date and accurate, each system's functionality for obtaining information and making bookings worked more easily and reliably when they involved the owner airline, and each system had default features that encouraged travel agents to book the owner airline. We were unwilling to adopt the more costly proposals for ending architectural bias, but the significance of the problem caused us to adopt rules requiring systems to provide more equal functionality to all airlines participating at the same level. We required equal access to enhancements and equal treatment on the loading of information, and we barred systems from using default features that favored the airline owning the system. 57 FR 43810–43816.

These rules appear to have been quite effective, for we have received no further complaints that a system is allegedly architecturally biased in favor of its owner airlines. Amadeus supports the retention of these rules, Amadeus Comments at 28–29, and no one contends that they are unduly burdensome or unnecessary. We therefore propose to readopt these rules without change.

8. Booking Fees

The booking fees charged airlines for CRS participation have long been a source of airline complaints. In its rulemaking the Board recognized that discriminatory and excessive fees could prejudice airline competition. The Board accordingly adopted a rule prohibiting each system from charging unreasonably discriminatory booking fees, section 255.6(a). The Board declined to regulate the level of booking fees. 49 FR 11664; 49 FR 32552. In our last major rulemaking we readopted the rule prohibiting discriminatory fees and required systems to provide sufficient supporting information on their booking fee bills so that airlines could audit the bills' accuracy. Like the Board, we did not adopt a rule limiting the level of booking fees, for none of the proposed rules regulating fee levels appeared to be practicable. 57 FR 43816–43818.

We found in earlier proceedings that the price and terms for the systems' services provided airlines have not been significantly disciplined by competition. In contrast, competition disciplines the fees paid by subscribers, so the systems obtain the great majority of their revenues from the fees paid by airlines and other travel supplier participants. Since the systems have not needed to compete for airline participants, their booking fees likely exceed their costs of providing CRS services to airlines. 56 FR 12595–12596.

Many airlines view excessive booking fees as the most important unresolved problem that we should address, both because the fees are so high and because airlines are charged fees for allegedly illegitimate and valueless transactions. Several airlines—US Airways, Alaska, Frontier, Varig, KLM, and America West—urge us to adopt a rule requiring fees to be reasonably related to costs. Midwest Express argues that we must limit fee levels in some way. America West has filed a petition asking us to roll back the systems' recent fee increases and to block them from increasing fees by more than half of the overall rate of inflation.

All four of the systems—Sabre, Galileo, Amadeus, and Worldspan—oppose limits on booking fees.

In their comments United and KLM suggested that market forces would discipline fees if we weakened the rule barring discriminatory fees and, as discussed above, the mandatory participation requirement for system owners. American agrees that eliminating the mandatory participation rule would help discipline fees. Worldspan argued to OMB that the rules regulating fees prevent systems from responding to market demands. America West, however, contends that eliminating the prohibition against discriminatory fees would help only the large airlines with bargaining leverage.

We agree that high booking fees may be imposing burdensome costs on airlines and, if so, higher fares for consumers. As discussed below, however, we presently are unsure whether the various rules proposed for limiting booking fees would be practicable. Rather than focus on proposals that would regulate the level of booking fees, we would prefer to develop rules that would give airlines some opportunity to bypass the systems or to avoid participation in one or more of them or that may give airlines some bargaining flexibility. We are focusing on the latter type of proposals in this proceeding, such as rules giving travel agencies a greater ability to access alternative systems and databases, including the airlines' internal reservations systems.

We will first discuss our proposal to eliminate the prohibition against discriminatory fees. We will then discuss the proposals to limit booking fees: Proposals requiring booking fees to be reasonable or related to costs and that future fee increases be limited by the overall rate of inflation. We will consider any other proposals to limit booking fees that would be effective and practicable. This section ends with a discussion of proposals for excluding certain types of transactions from booking fee liability.

(a) Ending the Prohibition against Discriminatory Booking Fees

The rule prohibiting discriminatory booking fees has kept airlines owning systems from imposing higher booking fees on their competitors than on non-competitors. 49 FR 11651.

United and KLM urged us to terminate the rule barring discriminatory fees. United Comments at 25–26. American, Worldspan, and Orbitz argued to OMB that the prohibition against discriminatory fees should be ended.

United contends that airlines like itself would have some bargaining leverage with the systems on fees. United Comments at 24–26. We wish to consider this issue further, just as we are proposing to end the mandatory participation requirement for airlines with a significant CRS ownership interest. Ending the rule barring discriminatory booking fees in conjunction with eliminating the mandatory participation rule should give some airlines like United some flexibility in negotiating for better terms from the systems. If otherwise warranted by the features of the market, systems could respond to airline demands for lower fees or better service.

In most unregulated industries a firm is free to demand better terms from its suppliers, even if its competitors cannot successfully obtain the same terms. The rule barring discriminatory fees may limit the ability of individual airlines to negotiate for better terms. If so, that would limit the operation of market forces in the CRS business. We are therefore proposing to eliminate the prohibition against discriminatory fees. We note as well that Worldspan has told OMB that the existing rule may interfere with Worldspan's ability to develop a new pricing model for its services and keeps systems from offering lower prices to more efficient, lower-cost new-entrant airlines.

As with our proposal to end the mandatory participation requirement, commenters opposing the continuation of the rule should address how ending the prohibition would provide public benefits and would not injure airline competition. A supplier's agreement to charge one firm prices that are lower than those charged the firm's competitors does not normally constitute a violation of antitrust principles, but commenters should discuss whether the characteristics of the airline industry may undermine the validity of that rule. Commenters should address whether the elimination or weakening of the bar against discriminatory booking fees would create a risk of anti-competitive conduct. Commenters should also discuss whether such a change in the rules would be consistent with the United States' obligations to prevent discriminatory conduct against foreign airlines by systems operating in the United States.

An alternative rule proposed by American to OMB and by the Justice Department would bar all booking fees. Such a "zero fee" rule would effectively require the systems to obtain their revenues from fees paid by travel agencies. As shown, the systems compete for travel agency subscribers but have not competed for airline participants, since most airlines have been compelled by their marketing needs to participate in each system, even if the terms for participation are unattractive and non-negotiable. Because travel agencies can choose between systems, the systems would compete on price. A zero fee rule thus would cause the price for CRS services to be set by competitive market forces. Such a rule, however, could be disruptive, since the systems now obtain the great majority of their revenues from airlines, not from travel agencies. In addition, a zero fee rule would enable airlines to obtain CRS services without payment, except insofar as they increased travel agency compensation to offset the agencies' increased expenses.

(b) Proposals Requiring Reasonable Fees, Fees Based on Costs, or Fees Limited by Overall Inflation Rates

A number of airlines seek rules that would limit booking fees by requiring them to be reasonable or related to costs, or by barring fee increases exceeding the overall rate of inflation. We have tentatively determined not to propose such a rule, since we are not yet persuaded that any of these proposals would be practicable.

We assume, for purposes of this discussion, that the systems' booking fees exceed their costs of providing services to airlines by a significant margin. We have seen no indication that market forces discipline the price or terms for CRS services provided airlines. Nonetheless, a rule requiring fees to be reasonable or related to costs would be so difficult to administer that it would be impracticable, and it would have other undesirable effects.

We would not adopt a rule requiring fees to be reasonable or related to costs unless we were prepared to enforce it. If we did not enforce it, the systems probably would continue their current booking fee practices. A rule regulating booking fee levels would not lead to lower fees unless we held proceedings to determine whether the existing fees complied with the rule. Determining whether a system's fees were reasonable or based on costs would presumably require a hearing before an administrative law judge, the procedure typically followed by other agencies with ratemaking authority. Such a proceeding would be time-consuming. Since each system has different costs and fee structures, a separate proceeding would be required for each system. Moreover, the systems offer a number of different levels of participation and features, each of which has its own price. This variety of service levels and features would make a CRS rate case even more complex.

In addition, determining whether a system's fees were reasonable or related to its costs would present very difficult questions on the allocation of system costs. A system has at least three kinds of users—the airline or airlines using the system as an internal reservations system, participating airlines and other travel suppliers, and travel agencies and other persons who obtain information and make bookings through the system. Allocating costs among these types of users would be almost impossible. Furthermore, since the economies of scale in the CRS business mean that the smaller systems have the highest costs, rates set by us would allow the smaller systems to charge higher fees than the

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largest systems, an anomalous result. For these reasons, when we considered proposals to require reasonable fees or fees based on costs before, we concluded that any such rule would be impracticable. 57 FR 43817–43818; 56 FR 12617–12618.

A rule requiring reasonable fees or cost-based fees would effectively require us to engage in public-utility-type ratemaking. Public-utility ratemaking is disadvantageous because it does not encourage regulated firms to operate efficiently and is burdensome for them and their customers. It also encourages them to pad their costs and investment base. 57 FR 43817; 56 FR 12617.

In an effort to avoid the difficulties presented by rules requiring reasonable or cost-based fees, America West has proposed a rule limiting increases in booking fees after 1997 to half of the overall inflation rate. America West Reply at 25–26. We doubt that we could impose such a restriction on the systems. We have made no finding that each system's booking fees exceed the system's costs of providing services to airlines. We agree that the decline in many computer-related costs suggests that the systems' costs of serving the airlines could be increasing at a rate lower than the general inflation rate. We have no proof, however, that that is true. *See* Worldspan Answer to Am. West Motion to Expedite at 3–4. In these circumstances, the record in this proceeding seems inadequate for imposing limits on booking fees of the kind sought by America West. A rule limiting fee increases to half of the rate of inflation could also be difficult to administer, since systems could create new features and services subject to new fee levels that would not be covered by the rule.

For similar reasons, we are not planning to propose a rule that would require systems to unbundle different services and features, as suggested by Alaska. Alaska complained that the systems bundle services together in a way that forces airlines to pay higher fees. The systems allegedly deny E-ticketing capability to airlines unless they participate at a premium level of service, which forces them to buy services they do not want in order to obtain E-ticketing. Alaska Comments at 17. Determining which services and features could or could not be bundled would involve many of the same difficulties as a rule requiring reasonable or cost-based fees. We are therefore not accepting Alaska's proposal on this issue.

Thus, we are unwilling to regulate the level of booking fees, in large part due to the practical problems that would result from a requirement of reasonable or cost-based fees. We think that the better solution for supracompetitive booking fees would be rules that would enable airlines and other firms to bypass the systems and thereby end the systems' control of the electronic communications between each travel agency and the airlines. While these rules would not lead to any immediate reduction in booking fees, they would likely lead to lower fees over time.

(c) Excluding Transactions From Booking Fee Liability

The rules allow each system to establish its own fee structure as long as its fees are non-discriminatory. Most of the systems charge airlines fees for several types of transactions besides bookings, such as changes to bookings and cancellations of bookings. In our last overall rulemaking we concluded that we would not bar systems from imposing charges for transactions besides bookings. 56 FR at 12619; 57 FR 43818. A fee structure based on charges for different types of transactions could well be economically rational.

When we began this rulemaking, many of the airline parties complained that they had to pay fees for passive bookings that allegedly did not benefit them and that were fraudulently used by some travel agencies to meet their productivity pricing quotas. Passive bookings are bookings made by a travel agent through a system that do not involve sending a message to the airline's internal reservations system. Travel agents often make passive bookings in order to serve their customers. For example, a travel agent will make a passive booking to issue a ticket for customers who made a booking directly with an airline. Travel agents also use the passive booking functionality to serve passengers booked as a group. ASTA Comments at 25–26; Galileo Comments at 31–32. The systems have developed functions that enable travel agents to perform many of these tasks without making a passive booking, *see, e.g.*, Amadeus Reply at 32–33, but travel agents can choose to continue using the passive booking function rather than one of these new features. TWA Reply at 4–5.

While travel agencies assert that passive transactions are required for legitimate business reasons, a number of airlines allege that some travel agencies (but not most) use the passive booking capability to make fraudulent transactions that increase the airlines' booking fee expenses. These travel agencies allegedly are usually trying to meet their minimum booking quotas under their productivity pricing agreements and thereby avoid having to pay the non-discounted charges that they would otherwise owe to the system. Fees for passive bookings allegedly make up a significant proportion of airline booking fee expenses. Aloha and Qantas assert that non-ticketed passive bookings and other allegedly illegitimate or unnecessary bookings accounted for eight to ten percent of their total bookings. Aloha Comments at 2–3; Qantas Comments at 4. Alitalia asserts that eleven percent of its bookings consisted of passive bookings. Alitalia Comments at 4. Amadeus states that a European study indicated that passive bookings constituted 17 percent of Galileo's total bookings and 42 percent of Sabre's total bookings (but a much lower percentage of Amadeus' bookings). Amadeus Comments at 33.

The record demonstrates that some travel agents sometimes rely on the passive booking function to satisfy their productivity pricing formulas, not just to implement transactions necessary for serving their customers. One travel agency stated that her agency's contract with a system "provides us with that [passive segment] capability so that we can meet the productivity requirements of the [subscriber] contract." Travel Agents International Comment, cited by, *e.g.*, Alaska Comments at 8. When American Trans Air tried to debit travel agencies for unacceptable bookings, including most passive bookings, travel agencies told it "that they believed that they were absolutely entitled to make non-productive CRS bookings in order to reach their productivity goals." American Trans Air Comments at 5. *See also* Varig Reply at 24, n.45. A travel agency group stated, "[T]here are some unnecessary transactions being created by travel agencies merely to meet productivity-based contracts, which is not ethically right." Midwest Agents Selling Travel Comments at 3.

In the initial round of comments in this rulemaking, airlines proposed two rules that would reduce or eliminate the fee liability generated by passive bookings: a rule barring systems from charging booking fees for passive bookings unless they resulted in the issuance of a ticket or actual travel and a rule allowing each airline to deny travel agencies the ability to make passive bookings on itself. A large number of airlines, including Delta, Alaska, American Trans Air, U.S. Airways, Midwest Express, America West, Frontier, British Airways, Lufthansa, Qantas, Varig, and the Asia Pacific airline group, sought rules proscribing fees for all passive transactions or allowing fees only for

passive transactions that resulted in actual travel. As an alternative, several airlines, including Lufthansa, Qantas, and America West, suggested that each participating airline should have the right to deny system users the ability to make passive bookings on its flights.

Other parties opposed these suggestions. Sabre argued that the systems incur costs from passive bookings and that airlines themselves should discipline travel agents who commit booking abuses. Amadeus contended that the systems are solving passive booking problems; some systems, for example, have stopped charging fees for such transactions. United asserted that a rule limiting fees for passive bookings would accomplish little, since the systems would likely increase other fees to offset the lost revenues. The Large Agency Coalition would support a prohibition against charging booking fees for passive bookings but contends that airlines should not be able to keep system users from making passive bookings. ASTA also opposes proposals that would deny travel agents the ability to use the passive booking function.

The initial round of comments provided a basis for proposing rules on this issue. However, changes made by the systems as a result of the controversy over passive bookings may have made the issue moot. Midwest Express, which had supported the proposals to limit fees for passive bookings, states that the systems' changes have ended the need for a rule. Midwest Express Supp. Comments at 2. At least two of the systems, Worldspan and Galileo, have stopped charging fees for non-ticketed passive segments. ASTA Response to America West Petition at 2–3. Although America West initially filed a petition seeking a rule limiting fees for passive bookings, its responses to our supplemental advance notice of proposed rulemaking did not mention the issue.

The issue of booking fees for passive bookings thus may not need to be addressed in this rulemaking now (productivity pricing, on the other hand, seems to require regulatory action, as discussed below). If a rule were necessary, we would likely request comments on the complaining airlines' rule proposals. Since passive bookings primarily benefit travel agents, not airlines, charging airlines fees for such transactions seems unfair. More importantly, however, the systems' productivity pricing fee structures encouraged a small number of travel agencies to abuse the passive booking function in order to meet the minimum monthly booking quotas established by their CRS contracts. Since the systems have chosen to base their subscriber contracts on a pricing structure that encourages fraudulent transactions, they should bear any costs created by travel agent abuse of that function. Alternatively, the airlines should be able to deny travel agencies the ability to make passive bookings.

We understand the systems' arguments that travel agents operate as agents of the airlines and that the airlines should discipline their own agents if they engage in abusive transactions. Galileo Comments at 34–40; Amadeus Comments at 34–35. We are not convinced, however, that that would justify allowing the systems to continue charges for passive bookings when their subscriber contracts encourage travel agencies to make excessive passive bookings. The airlines claim that they cannot effectively discipline individual travel agencies, in part due to their number, and in part because some are non-IATA agents who have no formal contractual relationship with the airline. Delta Comments at 33; TWA Comments at 14; Alaska Comments at 25; Qantas Comments at 19. Their inability to do so may additionally result in part from a reluctance to antagonize the firms that they rely upon to distribute their services. America West Petition at 23–25. However, while the airlines' argument does not seem compelling, the systems' choice of a pricing structure that encourages more transactions appears to be the source of the problem. In addition, the systems have refused to allow airlines to deny travel agencies the ability to make passive bookings. If travel agencies are operating as the airlines' agents, however, it appears that each airline should have the right to determine the type of transactions in which they may engage.

We recognize that the passive booking functionality enables travel agencies to better serve their customers. We would be reluctant to create rules that could end system functionality needed by travel agencies. On the other hand, an airline participating in a system should have some control over the services for which it will pay. Any further proceeding on this issue would take into account the travel agencies' needs and possible alternative remedies that would avoid denying them access to important functionality.

United has argued that restricting or prohibiting fees for some types of transactions will not benefit the airlines, since the systems will only increase other airline fees to make up for the lost revenues. United Reply at 17. United's argument has some force. Some systems apparently did increase other airline fees when they stopped charging fees for non-ticketed passive bookings. America West Reply at 17–18. Nonetheless, since fees for passive bookings impose some costs on airlines that appear to be unjustifiable, a rule would likely be appropriate if systems were charging airlines for non-ticketed passive bookings and using pricing structures that encouraged some travel agents to misuse the passive booking function.

(d) Booking Fee Bills

We adopted a rule requiring systems to provide participating airlines with detailed billing information that would enable the airlines to audit the accuracy of their bills. We allowed systems to charge airlines for providing the detailed information on magnetic media. 57 FR at 43818–43819.

Some participating airlines, however, remain dissatisfied with the billing procedures and the adequacy of the information supporting the systems' bills. Qantas thus contends that airlines should not have to pay for the information needed to audit fee bills. Qantas Comments at 20. Continental and Lanyon, a firm that conducts audits for airlines, argue that the bills should include some additional information, such as a statement of which bookings were made over the Internet. Continental Comments at 24; Lanyon Reply at 9.

We are reluctant at this time to propose changes to the rule, since these proposals have not been supported by a significant number of other parties. Qantas admits that the amount of the fees "is not substantial in comparison to total monthly booking fees," but asks us to bar fees for billing data on the ground that requiring customers to pay for billing data is "highly inequitable." Qantas Comments at 20. The rule sought by Qantas would not provide substantial benefits for participating airlines and could easily be cancelled out by booking fee increases. Similarly, Continental and Lanyon have not shown that the additional information sought by them would be essential for an airline's auditing of the bills.

9. Marketing and Booking Data

The data that can be derived from the bookings made through each system are invaluable for marketing purposes, since the system can tell how many bookings are being made by individual travel agencies on individual flights operated by an airline in each of its markets. Delta thus can see, for example, how many passengers are being booked by each Atlanta travel agency on each flight operated by its rival at that hub,

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AirTran, and in which fare category, and will often obtain this information before the agency customers even begin their trip.

Our rule, section 255.10, currently requires each system to make available marketing and booking data that it chooses to generate from bookings made by system users. A system could choose to generate no data. The rule does not bar systems from providing data to anyone outside the airline industry. The rule blocks systems from providing data to any foreign airline that owns or controls a system in a foreign country, if that system does not provide comparable data to U.S. airlines. The rule further prohibits airlines receiving data derived from international bookings from giving anyone access to the data, except to the extent that an airline uses an outside firm to process the data, unless the system provides access to other persons. Each system could sell the data to anyone it pleased under any terms if our rules did not exist.

As a result of the rule, each system allows participating airlines to buy detailed booking and marketing data generated from its bookings (the data are often called MIDT, Marketing Information Data Tapes). Each system's data show how many bookings are made by each travel agency using that system on each airline in individual markets, the fare basis used for each booking, and the flight booked by each passenger. *See, e.g.*, Aloha *et al.* Comments at 3–4. The data tapes usually do not include the passenger's name. Galileo Supp. Reply at 9, n. 14; Sabre Supp. Reply at 42. *But see* Aloha *et al.* Reply at 3. Sabre states that its tapes do not identify corporate purchasers. Sabre Supp. Reply at 43. The systems make the data available almost on a realtime basis.

Airlines use the data for marketing research and route development purposes and to make decisions on pricing and revenue management. They also can use the data to implement their override commission and corporate discount fare programs, which typically require travel agencies and corporate customers to give an airline a certain share of their total business in order to receive the additional commissions or discount fares. While most airlines purchasing the data are the largest airlines, some smaller airlines like Alaska also buy the data. Galileo states that about forty-five airlines buy its data tapes. Galileo Supp. Reply at 11. The systems generate significant revenues from selling the data.

A number of parties are requesting us to change the rule on marketing and booking data. ACAA, a trade association that represents low-fare airlines, demands that the Department bar the systems from making the data available to airlines without the consent of the airline booked by the travel agency.

ASTA, ARTA, AAA, American Express and the Large Agency Coalition contend that systems should be prohibited from releasing the data to any airline. The Large Agency Coalition seeks a ban on the release of the data since airlines use it for implementing their override commission programs. The National Business Travel Association contends that the rule reduces a customer's bargaining leverage, since the data enable an airline to know all about the firm's travel patterns.

Several smaller airlines complain that the costs of purchasing and processing the data are so high that they cannot afford to buy the data. America West, Midwest Express, Aloha, Virgin Atlantic, Varig, and the Asia Pacific airline group contend that we should limit the fees charged for the data. Midwest Express estimated the annual cost of buying and processing the data from the four systems at $1.5 million. Midwest Express Comments at 28.

Several parties contend that airlines use the data to "poach" customers already booked on another airline. Midwest Express makes such a complaint, Midwest Express Comments at 29, as do ASTA and NBTA. ASTA Comments on Proposed Extension at 4.

On the other hand, Sabre, American, Galileo, United, U.S. Airways, Amadeus, Worldspan, Delta, Northwest, America West, and British Airways urge us to maintain the rule. The systems assert that they should be entitled to continue selling the data, since they have invested substantial sums in compiling the information and obtain significant revenues from selling the data. The systems also note that they now sell the data in smaller packages to make the data affordable for smaller airlines. *See, e.g.*, Galileo Supp. Reply at 10. The large airlines assert that access to the data is pro-competitive, because it enables airlines to learn where they need to offer more attractive fares and services. Delta Supp. Comments at 33–34. *See also* Aloha *et al.* Comments. The large airlines have also made large investments in developing the ability to process the data.

The Department's Inspector General has also expressed an interest in the issue. His report on override commissions recommended that travel agencies be required to advise customers of their override commission arrangements. Office of the Inspector General, U.S. Dept. of Transportation, "Report on Travel Agent Commission Overrides" (March 2, 1999) at 4. Rather than propose such a rule, we stated that we would consider ending the airlines' access to the booking and marketing data used to implement override commission programs. June 25, 1999, Letter from A. Bradley Mims to Lawrence H. Weintrob.

Our rule on marketing and booking data has thus generated two issues: whether the systems' fees for the data should be limited, and whether the type of data released by the systems should be restricted.

On the fee issue, we are unwilling to propose a rule regulating the systems' charges for the data tapes. Regulating prices would be contrary to our goal of limiting our involvement in this area except on issues when there is a clear need for rules. The systems obviously have an incentive to provide data in ways that would invite more airlines to buy the tapes. The systems seem to be reshaping the nature of the data tapes to increase their sales, as shown by their efforts to provide data in smaller packages that will be attractive to smaller airlines that do not have worldwide operations. Sabre Reply at 30; Galileo Supp. Reply at 10.

However, we believe that we should restrict the type of data being sold by the systems. As discussed below, the availability of the detailed data now being sold appears to undermine airline competition, at least in domestic markets. We recognize that airlines can and often do use the data for legitimate purposes and that markets usually operate better when firms have more information. Nonetheless the record indicates that the availability of the data has adversely affected airline competition and interfered with the travel agencies' ability to book the services that best meet their customers' needs.

Commenters have shown that airlines use the data to coerce travel agencies into reducing or ending their bookings on competing airlines, and the airlines' access to the data likely limits competition in other respects. The data tapes tell the dominant airline which travel agencies have been selling tickets on competing airlines and so enable it to target travel agencies booking customers with rival airlines. Woodside Supp. Comments at 9. The Savannah Airport Commission thus states,

> [S]ince the dominant area carrier has access to your travel records and bookings (via the CRS) that air carrier can and does penalize the agency for booking travel on rival carriers. The carrier may deny this practice, but it is happening and will continue to happen until some type of safeguards can be implemented.

See also Mon Valley Travel Comments. American Express similarly pointed out that an airline's access to the data can reduce competition:

> An airline can thus obtain up to the minute analysis of competitors' sales, market share and customer information, even on a pre-flight basis. A carrier, so disposed, is able to use this real time (and advance) data for predatory pricing, blocking new entrants from the marketplace, signaling and other anticompetitive activity. What began as a tool to promote competition has become a weapon to eliminate it.

Letter from American Express dated April 12, 2000.

Officials from Legend, the start-up airline based at Dallas' Love Field, informed our staff that American was able to use the data to target travel agencies selling tickets on Legend and thereby undermine Legend's ability to obtain travel agency bookings. *See also* Office of the Inspector General, U.S. Dept. of Transportation, "Report on Travel Agent Commission Overrides" (March 2, 1999) at 7 (example of new airline losing bookings after large airlines had advised travel agencies against booking that airline).

A hubbing airline's dominance of the local airline market may give it power to force travel agencies to comply with its wishes. Travel agents in that city may book their customers most often with that airline, and their ability to obtain marketing benefits from that airline, such as the ability to book important customers on oversold flights and to sell its corporate discount fares, may determine whether or not their business will be successful. Large Agency Coalition Comments at 9; Continental Reply to Amadeus Petition at 3–4; *cf. Airline Marketing Practices* at 24–26. As a result, travel agencies have been unable to easily resist demands by the dominant airline that they stop booking customers with competing airlines. The larger airlines should henceforth have a greater ability to influence travel agencies, since the agencies' only compensation from those airlines will take the form of incentive commissions due to the airlines' elimination of base commissions. *See also* ASTA Comments on Proposed Extension at 2.

The Transportation Research Board expressed concern that the large airlines' access to data on bookings made by travel agencies enabled them to influence agency bookings in ways that could not be matched by smaller airlines. Transportation Research Board, *Entry and Competition in the U.S. Airline Industry* at 129.

The National Business Travel Association similarly complains that the airlines' access to detailed fare information undermines the ability of airline customers to obtain lower fares:

> In the current aviation market, corporations deal with overpriced airfares and single airline dominated markets. The current CRS regulation opens the door for carriers to eliminate the one bargaining tool that corporations still own, and that is data—travel patterns, including destinations, flight numbers, airline flown and class of service.

NBTA Supp. Comments.

Under general economic theory, moreover, the airlines' ability to obtain detailed realtime data on their competitors' sales and fares would not promote competition. In a somewhat different context, the question of the competitive impact of Orbitz and its most-favored-nation clause, Professor Alfred Kahn explained why keeping fares and sales secret from competitors can further competition in the airline industry:

> [T]here is the familiar fact that in an oligopolistic industry, the negotiation of special, preferably secret deals with large buyers or distributors in a position to threaten to supply their own needs or take their business elsewhere is a particularly effective form of competition, reflecting an exercise of countervailing power on the buying side of the market, in an oligopoly whose members will typically be reluctant to cut prices openly and across the board; and that the prohibition of any such special deals or a requirement of their full disclosure and equal availability, in advance, to all comers, will discourage it.

Statement of Alfred Kahn at 20, attached to American Antitrust Institute Supp. Comments.

Markets do not always function better when participants have more information. One group of competitors violated the antitrust laws by informally agreeing to exchange information on the prices charged specific customers, since the effect was to stabilize prices. *United States* v. *Container Corp.*, 393 U.S. 333 (1969). The Board concluded that a requirement that cargo rate changes be filed in advance inhibited price competition. *See National Small Shipments Traffic Conference* v. *CAB*, 618 F.2d 819, 829–830 (D.C. Cir. 1980). And in other circumstances airlines have used data on each other's fares as a vehicle to reduce competition. *United States* v. *Airline Tariff Publishing Co.*, 836 F. Supp. 9 (D.D.C. 1993); and 59 FR 15225 (March 31, 1994) (Justice Department suit on airlines' use of fare information to negotiate fares).

As discussed, the network airlines' dominance at their hubs enables them to pressure travel agencies into reducing or stopping their bookings on competing airlines. Another feature of the airline industry makes it all the more important to block the systems' sale of the data tapes insofar as the data can be used against competing airlines. The competitive advantages created by a hub airline's more comprehensive route network and more frequent flights make it difficult for other airlines to compete at that airline's hub, unless they are serving the city from their own hubs. We have found in the past that airlines will be reluctant to enter another airline's hub. The only airlines likely to do so are the new entrant low-fare airlines, since their low fares can offset the service advantages offered by the hubbing airline. Findings and Conclusions on the Economic, Policy, and Legal Issues, *Enforcement Policy Regarding Unfair Exclusionary Conduct in the Air Transportation Industry* (January 17, 2001) at 22–26, 29. Since competing with the incumbent airline will be tough at best for the entrant, we think it is important that the entrant not suffer the further disadvantage of having the incumbent airline know in advance how many seats are being sold on each of its flights by individual travel agencies. Ensuring vigorous airline competition in domestic markets mandates giving low-fare airlines an opportunity to compete. They will not have such an opportunity if the dominant airlines in their markets can track their travel agency sales in great detail on a realtime basis and use that information to undermine their ability to sell tickets.

To protect competition from the possible misuse of the data tapes by dominant airlines, the type of data sold by the systems should be limited to information which would serve legitimate marketing needs. We appreciate the potential value of the marketing and booking data for legitimate marketing purposes. *See, e.g.*, Aloha *et al.* Comments at 4–6. Our goal is to allow the systems to sell as much data as possible while minimizing the potential harm to airline competition and to enable travel agencies to protect potentially proprietary business data. However, at least in domestic markets, an airline's knowledge of its own bookings should suffice to tell it whether its marketing initiatives are successful (or whether new initiatives should be tried). The availability of much other domestic data from other sources also makes the CRS data less necessary for marketing purposes.

In considering whether to restrict the sale of data, we recognize that the airlines purchasing the data have made significant investments in developing

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the ability to process and analyze the marketing and booking information, that the systems have made significant investments of their own, and that the systems would lose large amounts of revenue if they were barred from selling any data.

Limiting the availability of data generated from system bookings would also make it harder for airlines to implement override commission programs based on the airline's relative share of overall travel agency bookings (or bookings for specific route or markets). Large Agency Coalition Reply at 9. We are not finding that override commission programs are anticompetitive. Firms commonly may reward distributors for producing higher sales. We believe, however, that airlines use override commission programs to take advantage of a dominant position in local airline markets to deter travel agencies in those areas from booking competitors. *See also* General Accounting Office, "Airline Deregulation: Barriers to Entry Continue to Limit Competition in Several Key Domestic Markets" (October 1996) at 15–18. While we are primarily basing our proposed restrictions on the availability of the marketing and booking data on other competitive grounds, the proposed changes could additionally promote competition by weakening the ability of the largest airlines to use incentive commission programs that leverage an existing dominant market share to obtain a larger market share.

The potential use of the data by dominant airlines to deter travel agency bookings on competitors has become more problematic due to the airlines' elimination of base commissions, a development that will make travel agencies more dependent on incentive commissions. When a travel agency's only airline compensation depends on its ability to meet marketing targets set by the airline, the travel agency may consider itself unable to book customers on other airlines that offer comparable or better fares and service. NBTA Second Comments on Proposed Extension; ASTA Comments on Proposed Extension.

We therefore wish to consider several proposals that would restrict the type of data sold to the airlines and thereby achieve our goals. These possible restrictions could prevent most potential competitive abuses while enabling the systems to sell, and airlines to buy, much of the data now being sold. The following are the major proposals we ask the parties to address:

• A ban on the release of data on bookings made by individual travel agencies. The systems could then sell aggregate data for specified geographic areas or markets that would show sales by airline for each route but would not reveal how many tickets were sold on any airline by any individual travel agency. Such a restriction would seem to satisfy the travel agencies' interest in protecting their business data and should prevent larger airlines from using the data to coerce travel agencies into ending their bookings on competitors. Each airline would, of course, know how many bookings it received from each travel agency on a route-by-route basis. This proposed restriction would only deny airlines access to data on bookings made on competing airlines by individual travel agencies. Such a rule would be consistent with Sabre's recently-announced plans to sell each individual travel agency data on its own bookings and the aggregate data on the bookings made by its peers, but not data for individual competitor agencies. *Travel Distribution Report* (May 20, 2002) at 75.

• A ban on the release of data on bookings for airlines that have not consented to the release of data on their bookings. Any such restriction presumably would allow each airline to obtain marketing and booking data from a system only if it had consented to the system's release of data derived from its bookings to other airlines willing to purchase the data. This kind of restriction would protect airlines that did not wish their competitors to know how successful their marketing efforts were with individual travel agencies.

We will, of course, consider other possible restrictions proposed by commenters as supplements or alternatives to these two. Another possible rule would bar the release of data until some period of time had elapsed after the booking, so that no airline could immediately learn from the data how many bookings on its competitors were being made by each travel agency. The delay in the data's availability might prevent misuse while not denying airlines access to the same range of data now being offered by the systems. We could also bar the release of information that would enable anyone to identify the passenger or business buying the ticket. Such a requirement would both protect the privacy interests of the travel agency customers and promote competition.

The complaints about the potential abuse of the airlines' access to data focus on the impact of the use of the data on domestic markets. We will consider limiting any restrictions to data generated from bookings for domestic travel. The airlines serving international markets are generally large airlines, not new entrants. Although travel agencies presumably object to the release of any data, whether for international or domestic travel, the only airlines that have complained that the availability of marketing and booking data has led to abuses are the smaller U.S. airlines. In addition, we believe that airlines can obtain industry data on bookings for domestic travel from other sources, such as our O&D reports, while few if any sources may exist for comparable data on bookings for international travel.

To decide whether restrictions on the availability of the marketing and booking data should be adopted, we request additional information on the costs and benefits of each of the possible alternatives. We ask the parties to provide more detailed information on, among other things, the ways in which the airlines that buy the systems' data tapes are now using the data and the availability of comparable information from other sources.

We note as well that the Board originally required each system to make its data available to all airlines, if it chose to make the data available at all, on the ground that the Board could not practicably keep the owner airline from gaining access to the data. 49 FR 11658. The Board's concern should now be less valid, since two of the systems are no longer controlled by airlines and the other two each have several airline owners.

We propose to impose the restrictions by barring airlines from buying or otherwise obtaining the data, since our authority to bar systems from selling the data is unclear. Section 411 should allow us to prohibit airlines from buying the detailed realtime data now sold by the systems, since dominant airlines can and do use the data to pressure travel agencies into stopping bookings on competing airlines.

10. Travel Agency Contracts

(a) Background

Practices that limit competition between the systems have been a concern because they have affected airline competition. The Board thus included provisions designed to prevent anticompetitive practices affecting competition between the systems in its original CRS rules on two rationales: (i) An airline would be handicapped in entering new markets if its affiliated system could not obtain travel agency customers in the region, and (ii) practices that restrict competition between systems entrench the systems' existing market power and keep airlines from finding alternative ways of conducting the functions provided by the systems. 49 FR 1664–11665. The Board therefore sought to ensure that travel agencies had a reasonable opportunity to switch systems or use multiple systems. The Board's rules accordingly prohibited certain types of travel agency contract clauses that would unreasonably restrict a travel agency's ability to use alternative systems, such as clauses requiring an agency to use an airline's system for all of its bookings on that airline or denying a travel agency commissions for bookings on an airline if not made through the airline's own system.

When we reexamined the rules, we readopted and modestly strengthened the Board's provisions. Our rules allow systems to offer travel agencies a contract with a five-year term as long as they also offer contracts with a term of no more than three years. The rules bar systems from imposing minimum use clauses (clauses stating that an agency's failure to make a certain number of bookings per month per terminal will constitute a breach of contract). On the other hand, we allowed systems to continue offering five-year contracts, and we did not prohibit productivity pricing. We additionally did not bar the tying of access to an airline's marketing benefits to the travel agency's use of the system affiliated with that airline. 57 FR 43822–43828, discussing section 255.8.

(b) Recent Subscriber Contract Practices

As discussed above, the systems compete vigorously for travel agency subscribers. Many travel agencies, unlike airlines, can choose between systems, and the systems' competition for travel agency customers usually disciplines the price and quality of services offered travel agencies. A number of travel agencies in fact obtain system services without charge or even receive cash bonuses for choosing one system rather than another. Many travel agencies, of course, do not get incentive payments; profit margins in the travel agency business have traditionally been thin; and many travel agencies believe that the systems' fees and contractual requirements threaten the agencies' ability to operate profitably. In addition, travel agencies in a city dominated by an airline that owns or markets a system may feel compelled to use that airline's affiliated system, especially when the airline denies access to its corporate discount fares and marketing benefits to travel agencies using a competing system. *Airline Marketing Practices* at 24–26; Large Agency Coalition Comments at 9–10.

Despite the systems' competition for travel agency customers, each system's subscriber contracts typically contain provisions deterring its subscribers from using another system or an alternative electronic means of obtaining airline information and making bookings. The systems continue to use contract terms that limit the travel agencies' ability to switch systems or use multiple systems. Although our rules currently require systems to offer agencies a three-year contract as well as a five-year contract, systems have generally made the terms of the shorter contract so unattractive that most travel agencies have chosen the five-year contract. ASTA Comments at 10–12; Delta Comments at 16–17. In addition, as discussed above, productivity pricing deters travel agencies from using multiple systems or direct connections with an airline's internal reservations system.

Furthermore, when a travel agency terminates its CRS contract before the end of the contract's term, the system will commonly demand that its damages include the booking fees that the system would have obtained if the travel agency had continued using the system during the remainder of the life of the contract. Delta Comments at 18–20; ASTA Comments at 24–25. Some systems impose other financial penalties that deter agencies from switching to another system. AAA Comments at 3–4. Systems have demanded such damages even though we stated in our last rulemaking that our rules assuring travel agencies the ability to use more than one system prevented a system from reasonably expecting a travel agency to use its system for all or most of its bookings during the contract term. 57 FR 43827–43828.

The damages claimed by the systems are commonly so large that they deter travel agencies from terminating a contract before the end of its term. Delta Comments at 19.

Most travel agencies have had contracts that contain these kinds of restrictions. A 1996 survey by the American Society of Travel Agents indicates that 83 percent of all travel agency contracts had a five-year term and that 86 percent of all contracts used productivity pricing. ASTA Comments at 10, 12. The systems, however, have recently begun offering the smaller travel agencies the option of choosing contracts that do not have minimum booking requirements and have shorter terms. *Travel Distribution Report* (April 8, 2002) at 2.

The contractual provisions raise competitive issues, even though the travel agencies have accepted the contracts containing such provisions. The provisions limit competition, maintain the systems' market power, and keep airlines from bypassing the systems in communicating electronically with travel agencies. They also inhibit innovation, by discouraging firms from developing new services and products that travel agents could use as alternatives to the systems.

(c) The Parties' Positions

Many of the parties seek rules that would further prevent systems from imposing allegedly unfair or anticompetitive contract terms on travel agencies. ASTA and Northwest urge the Department to reduce the maximum length of subscriber contracts and to prohibit systems from collecting certain types of damages—lost booking fees—if an agency ends its contract before the contract's expiration date. Amadeus asserts that the maximum length of a subscriber contract should be one year, and Delta suggests that the Department adopt the European rule, which allows travel agencies to cancel an agreement on three months notice at any time after the agreement has been in effect for a year. ASTA seeks a rule requiring systems to offer contracts with one-year, two-year, and three-year terms and barring any contracts with a term longer than three years. The maximum length of subscriber contracts must be shortened, according to ASTA, because agencies need greater flexibility so they can adjust to the rapid changes in distribution, such as the growth of the Internet. ARTA asserts that the rules should reduce the maximum length of subscriber contracts, and AAA wants limits placed on the damages recoverable by a system if an agency breaches its contract. America West thinks that the maximum term of travel agency contracts should be three years, since a shorter maximum term would assertedly cause the systems to increase their booking fees.

Sabre, Galileo, and the Large Agency Coalition contend that no changes should be made in the subscriber contract rules.

After United imposed a cap on commissions for international tickets sold by travel agents, ARTA filed an emergency petition asking us to consider its proposal that travel agencies be given the right to renegotiate their contracts if the airline owning the system used by the agency changes its business practices in ways that make it difficult for the agencies to satisfy their CRS contract obligations. Docket OST 98–4775. Worldspan and Amadeus have opposed ARTA's proposal.

ASTA's response to our proposal to extend the sunset date for the current

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rules asked us to immediately end the systems' productivity pricing provisions that allegedly penalize travel agencies for making bookings on the Internet, even when the airlines offer lower fares through websites than they offer through the systems used by travel agents.

(d) Our Overall Concerns and Policy Approach

In determining which rules, if any, should be adopted, our primary goal will be to prevent practices in the CRS business that would substantially reduce competition in the airline and airline distribution businesses, particularly practices that deny travel agencies and airlines the ability to use alternatives to a travel agency's principal system. To achieve this goal we are proposing to revise the rules regulating the systems' relationships with subscribers.

Our proposed revisions should both protect competition in the airline and airline distribution businesses and protect travel agencies against system contract terms that many regard as unfair and unreasonable. We are not, however, proposing now to accept all of the travel agency parties' proposals for new rules. The subscriber contract issues concern the travel agency parties, because the systems' contract terms affect the profitability of each agency and its ability to serve its customers. We recognize that travel agents provide the public with valuable information and strengthen the ability of airlines to compete on the basis of service and fares. System practices have a significant impact on the travel agencies' costs and their ability to stay in business. Our task in this proceeding, however, is not to develop regulations that will shape the travel distribution system. Congress has deregulated the airline industry. Congress has given us the authority to prohibit unfair methods of competition in the airline industry and the marketing of airline services. That authority, as shown, allows us to prohibit practices that violate the antitrust laws or antitrust principles but does not generally empower us to proscribe business practices because they seem unfair. 57 FR 43828. *Cf. E.I. Du Pont de Nemours & Co.* v. *FTC*, 729 F.2d 128 (2nd Cir. 1984). As a result, in considering proposals to readopt or change the subscriber contract rules—as well as most of the other rules—we are focusing on whether the practices at issue seem to violate antitrust principles.

In addition, we must consider whether proposed rules could be practicably enforced. In the past the systems' incentives to restrict travel agency choice and usage of multiple systems have been great enough that the systems would seek to evade any rules limiting their contract practices and could often do so. 57 FR 43825. We do not wish to adopt rules that could be routinely evaded.

The systems continue to use contract terms that limit the ability of most travel agencies to use multiple systems and other means of obtaining airline information and booking airline seats. We believe that these considerations support the readoption of the rules on the relationships between systems and subscribers. The existing rules prohibit such practices as minimum use clauses, parity clauses, and contracts with a term of more than five years.

Since we last reexamined the rules, moreover, several of the large airlines that own or market a system have been increasingly using their clout as the dominant airline in a metropolitan area to compel travel agencies in that area to use their affiliated system. These airlines, for example, deny travel agencies using a competing system the ability to book corporate discount fares. The largest travel agencies argued in our last overall rulemaking that they should be given the right to exempt themselves from our rules on subscriber contracts. *See* 57 FR 43824. It is telling that these travel agencies now contend that rules are needed to protect them against airline abuses of market power. American Express Comments; AAA Supp. Comments.

We wish to consider the various proposals for shortening the maximum length of subscriber contracts. We are proposing to readopt the other existing rules on the systems' relationships with subscribers. We therefore propose to continue the prohibitions against roll-over clauses and minimum use requirements.

Resolving which subscriber contract rules should be adopted will require more detailed information on the current relationships between travel agencies and the systems and on the systems' business practices. The commenters should address how our proposed rules and those advanced by parties will affect system and travel agency operations. In the past each travel agency office normally relied entirely or predominantly on one system. We ask the parties how much this is still true. Although a growing number of travel agencies have three-year contracts, the record suggests that a large majority of agencies have five-year contracts and that the systems discourage travel agencies from choosing a three-year contract. We would like the parties to provide current data on this matter.

Some parties have suggested that the typical five-year contract term and the accompanying provisions requiring the subscriber to pay damages if the contract is terminated early do not keep travel agencies from switching systems before the end of the five-year term. Other commenters disagee. We ask the commenters to provide information on this issue.

While we believe that rules governing subscriber contracts appear necessary to promote competition between the systems and between the systems and firms offering comparable services, one of the bases for our existing rules on system-subscriber relationships and their effectiveness may have disappeared due to the changes in the systems' ownership. We adopted the rules in part to promote airline competition by making it easier for airlines that owned a system to obtain a significant number of subscribers for that system in markets that the airline wished to enter. We believed that an airline would be reluctant to enter new cities if its affiliated system could not increase the number of subscribers there. 57 FR 43824. Two of the systems no longer have airline owners, and the systems provide all participating airlines with more equal functionality and reliability of information. These ownership changes seem to have made it less necessary for an airline entering a new market to obtain subscribers for its system as a basis for effective competition in the airline market.

(e) Shortening the Maximum Term of Travel Agency Contracts

The current rules fix the maximum term of a subscriber contract at five years but require systems to offer travel agencies a three-year contract if they offer a five-year contract. Section 255.8(a). In our last overall rulemaking, we did not adopt rule proposals that would have shortened the maximum length for subscriber contracts.

Most agencies have chosen five-year contracts, primarily because the systems offer more attractive pricing on those contracts than they do on three-year contracts. In addition, systems often require a travel agency to sign a new contract whenever it adds terminals, which means that travel agencies can operate under a series of long-term contracts that never expire at the same time.

The parties disagree over whether and how our rule should be changed. We are presently considering the following proposals on this issue: readopting our current rule, fixing the maximum term at three years, and adopting the European Union rule. We will choose the option that best satisfies the legitimate business needs of the systems and travel agencies while preventing efforts to deny travel agencies the ability at reasonable intervals to switch systems. Commenters who support or oppose each proposal should provide a detailed analysis showing the benefits and costs likely to result from that proposal.

No clear answer exists on whether we should shorten the maximum permissible length of subscriber contracts, for longer-term contracts offer advantages and disadvantages. On the one hand, long-term contracts can harm travel agencies. If an agency becomes dissatisfied with a system's service, it cannot immediately switch to another system. Long-term contracts also handicap travel agencies if the airline sponsoring a system stops hubbing at a subscriber's city, or if a different airline affiliated with a CRS starts a hub in the agency's city, since agencies prefer to use the system owned by an airline with a substantial market presence. Long-term contracts can provide economic benefits "as an efficient means for the parties to reduce uncertainty and spread risks" and to reduce "contract negotiation costs." 56 FR 12622. In the past, however, travel agencies have not enjoyed the benefit of stability in price and service. 57 FR 43824; ARTA Comments at 7. Systems seem to use long-term contracts, moreover, to block entry by competitors. 56 FR 12622.

A five-year contract for CRS services additionally may be unduly long due to the rapid changes in technology. Travel agencies should not be locked into a long-term contract with one system if other systems or alternative services would meet the agencies' needs more effectively and less expensively.

On the other hand, long-term contracts do reduce the parties' negotiations expenses. Sabre Reply at 40. Systems will be more likely to give travel agencies free equipment and services and other bonuses for signing a new contract if the contract will obligate the travel agency to use the system for a significant length of time. Large Agency Coalition Reply at 8. Maintaining the systems' willingness to provide such benefits, however, is not necessarily a proper public policy goal, for the systems offset the cost of those benefits by charging their captive customers, the airlines, supracompetitive booking fees.

In determining whether to revise our rules, we would like to take into consideration the industry's experience with the European Union's rule on subscriber contracts. That rule allows each subscriber to terminate its CRS contract without penalty on a few months notice after the contract has been in force for at least one year. The parties commenting on our subscriber contract proposals should discuss how effective the European rule has been and how it has affected the travel agencies' ability to switch systems, the systems' ability to operate profitably, and the level of booking fees charged airlines.

We must balance potentially conflicting goals in this area. Enabling travel agencies to use multiple systems and databases and to switch systems promotes competition. When travel agencies can choose among suppliers, they are likely to obtain better prices and service. As shown, however, the systems already compete for travel agency customers. As a result, proposals to give agencies greater freedom to switch systems or use multiple systems have a potential downside—if the systems compete more for travel agency customers, they will offer travel agencies larger bonuses and other benefits than they do now. The systems will attempt to offset the higher costs of marketing their services to travel agencies by charging higher fees to airlines, since they will still have market power over airlines. *Cf.* 56 FR 12629. While in the last rulemaking we found that our revised rules would not likely lead to higher booking fees, 57 FR 43825, we now believe that the additional proposals may do so, especially given the systems' aggressive competition for travel agency customers. *See also* Delta Comments at 5–6; KLM Comments at 12.

We are unwilling to consider ARTA's proposal that a travel agency have the right to terminate its contract for system services when an airline affiliated with the system materially changes the agency's business conditions, for example, by cutting the agency's commission rates. Despite the ties between the systems and their current or former airline owners, the systems and airlines operate independently in most respects. The systems are not responsible for airline decisions on commission levels and should not lose their contract rights because one or more airlines have changed their distribution practices. Travel agencies should seek contract terms giving them some protection if airline decisions on commission levels or other events require them to change the size and scope of their operations.

(f) Contract Clauses Fixing Damages

The systems' travel agency contracts usually impose liquidated damages obligations on any travel agency that terminates the contract before the end of its term. These provisions have been controversial, because they deter travel agencies from switching systems and make the travel agency liable for the booking fees lost by the system when the agency no longer uses it. On the other hand, systems understandably wish to include contract provisions for enforcing travel agency agreements to use a system for the specified term. *See, e.g.*, Sabre Reply at 45–46. Systems do not always rely on liquidated damages clauses to achieve this result. The contracts used by one system make the agency's cost of terminating the contract the same no matter how many months remain before the contract's expiration. AAA Comments at 3–4, whereas the agency's cost for an early termination would decline over the term of the contract if the system were relying on a contractual damages provision to deter breaches.

Several parties have asked us to prohibit contract clauses that allegedly create an excessive liability for damages if the subscriber terminates the contract before the end of its term.

We are proposing a rule limiting a subscriber's damages obligations if it terminates its CRS contract before the end of its term. Our proposed rules are intended to give travel agencies a real ability to use more than one system and to use electronic means for bypassing the systems. We are thereby building on the policy followed by us in our last rulemaking. 57 FR 43827–43828. A system accordingly could not reasonably expect a subscriber to use that system for all or most of its bookings during the term of the contract. We therefore propose to bar systems from demanding liquidated damages that would reflect booking fees allegedly lost by the system due to the subscriber's use of a different system. This limitation on one type of damages should be consistent with a potential decision to allow contracts that may last several years. We are aware that systems may use other contract provisions to enforce a subscriber's contractual obligation to purchase system services over a period of several years, but we wish to eliminate a type of damage clause that seems designed to compel an agency to rely primarily on one system for its bookings.

(g) Travel Agency Equipment Additions

If a travel agency is obtaining CRS services under an existing contract and wishes to obtain additional terminals from the system, the system will commonly require the agency to sign a new contract for the new equipment. As

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a result, travel agencies using system-owned equipment often operate under a series of long-term contracts that never expire at the same time. This could undermine our rules limiting the maximum term of travel agency contracts.

Worldspan and the Large Agency Coalition ask us to end this practice. The Large Agency Coalition suggests that we adopt a rule requiring that new equipment be covered by the same term as the agency's existing contract. Worldspan Comments at 10; Large Agency Coalition Reply at 4. Sabre opposes rules in this area. Sabre Reply at 42–43.

We considered similar requests in the last major CRS rulemaking. At that time we decided that a rule barring systems from requiring a new contract as a condition of providing additional equipment would not be economically rational. If a travel agency requested additional equipment near the end of the contract term, the system might refuse to provide the equipment. Alternatively, the system could impose a high price for providing the additional terminals. In addition, we thought that such a rule would likely be difficult to enforce. 57 FR 43825–43826.

We will reconsider our earlier analysis in this proceeding. The parties should discuss whether a system's insistence on obtaining a new multi-year contract for additional equipment significantly interferes with the travel agencies' ability to switch systems or use multiple systems. However, since our rules give a travel agency the right to buy its equipment, the commenters should also discuss whether an agency's ability to purchase additional equipment itself rather than accept the system's proposal, when it knows that doing so will extend the life of the agency's contractual obligations to the system, makes a rule on this issue unnecessary.

11. Productivity Pricing

To reduce the systems' market power over airlines we wish to consider propoals that may better enable travel agencies and airlines to use alternatives to the systems. As long as the systems have market power, they will continue to charge supracompetitive booking fees that necessarily increase airline costs and the fares paid by passengers. We therefore wish to keep the systems from using contractual practices that deny travel agencies a reasonable opportunity to switch systems or use multiple systems and databases. Accordingly, we presently propose to restrict or potentially prohibit "productivity pricing." Doing so is consistent with our existing general rule, section 255.8(b), which states, "No system may directly or indirectly impede a subscriber from obtaining or using any other system."

The productivity pricing structure gives a travel agency large discounts from the "standard" charges for system services and equipment if the agency meets a specified minimum booking level for each terminal (Midwest Express included an example of such a contract as Exhibit 9 to its comments). Large Agency Coalition Comments at 6. The systems fund the bonuses paid subscribers with the profits they obtain from supracompetitive booking fees. Those profits enable them to offer travel agencies inducements to make most or almost all of their bookings through the agency's principal system. Systems originally used productivity pricing formulas when subscribers used equipment provided by the system. 57 FR 43826–43827. We believe, however, that the systems' subscriber contracts have often included productivity pricing provisions, or very similar provisions, even if the travel agency will use third party equipment. The systems, however, have recently begun offering the smaller travel agencies, but not larger travel agencies, the option of choosing contracts imposing no minimum booking requirements. *Travel Distribution Report* (April 8, 2002) at 2.

Productivity pricing has been widespread. A 1996 survey by the American Society of Travel Agents indicated that 86 percent of travel agency coniracts used productivity pricing. ASTA Comments at 12. By 2001, however, a smaller share—66 percent—of new CRS contracts used productivity pricing. *Travel Distribution Report* (October 18, 2001) at 1.

Productivity pricing on its face operates as a way of rewarding travel agencies that make greater use of the equipment provided by a system. In practice, however, as explained below, it operates as the equivalent of the minimum use clauses that we prohibited when we last reexamined our rules. The minimum use clauses had treated a travel agency's failure to meet its minimum booking quota as a breach of contract. In that rulemaking we reasoned that minimum use clauses seemed "designed to protect the [system's] subscriber base from competition rather than to ensure that the [system] receives adequate compensation for the services and equipment provided the subscriber." 57 FR 43826. While most of the parties commenting on the issue supported our proposal to bar minimum use clauses, those parties supported productivity pricing, which assertedly served legitimate goals and did not deter travel agencies from using multiple systems. We then reasoned that productivity pricing "encourages the agency to make more efficient use of its CRS equipment (and to avoid obtaining more equipment than reasonably needed for its business)." We accordingly did not proscribe productivity pricing. 57 FR 43826–43827.

The industry's experience with the systems' use of productivity pricing since that rulemaking has caused us to reexamine that reasoning. It now appears that the systems have not been using productivity pricing to encourage more efficient use of their equipment. They have instead apparently been using it to encourage travel agencies to use one system for all or almost all of their bookings. As discussed above, systems have used productivity pricing or equivalent pricing formulas even when the travel agency is not using equipment owned by the system.

We believe that productivity pricing may unreasonably restrict travel agency use of multiple systems and databases since the systems use it as they once used minimum use clauses. They set the booking quota high enough that the agency as a practical matter cannot afford to make substantial use of another system or database. As alleged by one travel agency group, all four systems "have instituted de facto minimum use clauses by making the cost of non-use so prohibitive that the agency cannot possibly afford to switch systems or add a second system in mid-contract." Large Agency Coalition Comments at 6.

We would not be concerned with productivity pricing and similar contract terms in subscriber contracts if the only parties affected by these terms were the systems and travel agency subscribers. Productivity pricing, however, may harm consumers both directly and indirectly. It may keep travel agents from booking the best fares for their customers, and it increases airline costs by preventing airlines from using alternative electronic means of communicating with travel agencies.

Productivity pricing may keep travel agents from serving their customers properly by deterring travel agents from using the Internet to book E-fares, which are normally not available through the systems used by travel agents. When travel agents book E-fares through the Internet, they run the risk of failing to satisfy the minimum monthly booking quota set by the productivity pricing provisions. "Web air fares unlevel the playing field," *Chicago Tribune* (February 16, 2002); "Travel Agents Cry Foul over Internet Fare Deals," *Los Angeles Times* (February 16, 2002); All About Travel Supp. Comments. The potential loss of the lower CRS rates may well deter travel agents from booking E-fares when doing so would be in the best interests of their customers. ASTA thus alleges that productivity pricing clauses "have served mainly as a deterrent to the agency's looking to non-CRS sources, such as the Internet, to make bookings that more nearly conform to their clients' needs." ASTA Comments on Proposed Extension at 3.

Insofar as the terms deter travel agencies from using alternative means for obtaining airline information and booking airline seats, they affect the airlines, which lose opportunities to encourage travel agencies to bypass a system by, for example, making bookings directly with airlines through airline websites over the Internet or by a direct link to an airline's internal reservations system. Market forces have not disciplined the price and terms of services offered airlines by the systems, primarily because most airlines have had no readily available alternative means of electronically providing information and booking capabilities to travel agents. An airline could create direct links between individual travel agencies and its internal reservations system, but the cost of doing so apparently has made this an unattractive alternative in most cases. The Internet, however, has made direct bookings much less costly, since a travel agent with Internet access can book seats through airline websites or the special websites created by some airlines for travel agency use. Productivity pricing appears to deter travel agents from using such options for bypassing the systems and so would undermine the policies followed by us in past CRS rulemakings. *See* 56 FR 12622; 57 FR 43823, 43826.

Our present belief that productivity pricing clauses reduce competition for the systems is consistent with the parties' comments. Alaska thus states that productivity pricing prevented Alaska from getting travel agencies to use an alternative to the systems, Alaska Comments at 9–10:

> [P]roductivity pricing provisions have a strong tendency to lock travel agents into the use of a single CRS and to inhibit their use of alternative channels, including other CRSs and direct links to carriers. Alaska's own attempt to establish direct computer links with major agencies in the Pacific Northwest demonstrated that travel agents were extremely loathe to use those links because they would not receive additional productivity credits from their principal CRS and would therefore pay more to (or receive less from) their CRS vendor each month.

Several airlines have made proposals that would bar or restrict productivity pricing. Delta, Aloha, Alaska, American Trans Air, and Qantas contend that we should prohibit it. Continental suggests that we should bar cash payments and bonuses that exceed the cost of the equipment covered by the productivity pricing agreement. Continental Comments at 24–25.

Sabre, Worldspan, and Galileo, on the other hand, oppose any prohibition of productivity pricing. The Large Agency Coalition proposes that productivity pricing be barred only insofar as travel agencies must pay penalties for failing to meet their booking quota.

We ask the parties to comment on proposals that will prohibit or limit the use of productivity pricing. Since the systems are apparently using productivity pricing as a means to keep travel agencies from using a second system or another alternative to the system initially chosen, productivity pricing would operate as an unreasonable restriction on competition. In particular, it would protect each system's market power.

Productivity pricing would enable the travel agency to obtain credit if it efficiently uses the equipment provided by the system. Continental has therefore proposed that we allow systems to offer travel agencies discounts equal to the cost of the equipment if they meet a monthly booking quota. We will consider that proposal, since we prefer to limit contract terms only when necessary to keep the systems from unreasonably restricting competition. Such a proposal would enable travel agencies to obtain equipment at discounted prices while not encouraging them to use one system for all or almost all of their bookings.

Productivity pricing in the traditional sense was tied to the agency's use of equipment provided by a system and so technically may not exist as to subscribers using their own equipment. Travel agencies using their own equipment often operate under comparable contractual provisions rewarding them if they make the majority of their bookings on their primary system. Varig Comments at 7–9. The systems could develop other ways to give travel agencies financial incentives to make all or almost all of its bookings through one system, and one system has advised us that some other systems are doing so.

Therefore, our current proposal covers more than productivity pricing. Providing financial incentives to travel agencies to use one system for all or most of its bookings would appear to frustrate our goal of giving travel agencies more leeway to use multiple systems and databases, including the Internet.

12. The Tying of Marketing Benefits With System Subscriptions

Airlines that have CRS ownership interests or a marketing relationship sometimes tie a travel agency's access to override commissions and marketing benefits, such as the ability to waive advance-purchase restrictions on discount fares, with the agency's choice of the system owned by the airline. Our rules prohibit the tying of override commissions with the agency's use of the airline's system, section 255.8(d). In our last proceeding we did not extend this rule to marketing benefits, even though that would promote competition on the merits, since we doubted that a broader rule would be enforceable. 57 FR 43828.

Sabre, System One, Continental, America West, and the Large Agency Coalition contend that the Department should prohibit the tying of the travel agency's use of an airline's system with the agency's ability to obtain marketing benefits. These parties have cited cases where an airline affiliated with a system took such action. Sabre Comments at 33–34; Galileo Comments, Exhibit B.

Delta opposes any such rule, largely on the ground that any prohibition could not be practicably enforced. United contends that the Department should eliminate all rules limiting an airline's ability to tie commissions and benefits with the use of its system. United Comments at 27–29.

We are concerned about the use of an airline's dominant position in a local airline market to distort CRS competition in the same area. For that reason we are requesting comments on whether we should ban airlines from denying travel agencies access to their corporate discount fares when the agency does not use the system affiliated with the airline offering the fare. We think, as we did during our last overall rulemaking, that this practice unreasonably restricts competition in the CRS business. However, we continue to be concerned that a rule proscribing such tying could not be effectively enforced. Some commenters state that the current rule prohibiting the tying of commissions with use of a particular system has been ineffective, since the airlines owning or marketing a system often violate the rule. Sabre Comments at 33; Large Agency Coalition Comments at 7, n.2.

We wish to explore whether an effective rule prohibiting tying practices would be possible. As Sabre pointed out, Canada's rules had addressed the

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issue of the tying of marketing benefits by requiring each airline affiliated with a system to tell travel agencies that their commissions are not tied to their use of a particular system and to annually certify that the airline had not tied the agency's commissions to its use of the system affiliated with the airline. Sabre Comments at 33 and Attachment I. *See also* Large Agency Coalition Reply at 3.

We ask the parties to comment on whether the Canadian rule was effective and whether it (or other proposals) would make a prohibition against tying effective.

United's claim that a firm should be free to encourage businesses to buy products and services from a company that it owns is usually true. The cited principle is invalid when, as can happen in the airline industry, a firm with market power compels businesses to become customers of its affiliated company when they would rather buy the goods or services from independent companies.

United has also suggested that an airline that owns or markets a system should be able to offer a travel agency higher commissions or other benefits if the agency agrees to use a system that charges airlines lower fees or provides better service. United Reply at 17. The parties should comment on whether any rule should contain an exception allowing an airline to do that and whether an exception of that kind could be written that would not encourage airlines affiliated with a system to use their dominance in regional airline markets as a means of compelling travel agencies in those areas to choose their affiliated system.

13: Regulation of the Internet-Based Airline Distribution Systems

In our last review of the CRS rules, we considered only the need for the rules adopted by the Board and other proposed rules that would govern CRS operations and the systems' relationships with the airlines and travel agencies. At that time, "brick-and-mortar" travel agencies sold about eighty percent of all airline tickets, and consumers bought most of the remainder directly from the airlines. Few travellers bought tickets on-line. 57 FR 43794–43795. Since then the Internet has become a significant avenue of airline distribution. Many consumers research airline services and buy tickets on the Internet, either directly from an airline or through one of the on-line travel agencies or a website operated by one of the "brick-and-mortar" travel agencies, like American Express. As discussed above, some U.S. airlines already obtain more than thirty percent of their bookings from the Internet, and over ten percent of all airline tickets are now bought on-line.

Our rules cover system operations insofar as the systems are providing travel agencies with information and booking capabilities on airline services but do not cover travel agency operations, either on-line or "brick-and-mortar," or sales made directly by a system to consumers. Given the growing importance of the Internet's role in airline distribution, and the possible analogies between Internet practices and the system practices that have been examined in past CRS rulemakings, we stated that we would consider in this rulemaking whether some of the CRS rules (or similar rules) should be applied to websites used by consumers for buying tickets. 65 FR 45557.

Insofar as this proceeding is concerned, the Internet's role in airline distribution presents several major issues. Various parties have asked us to consider the following:

- Whether rules are necessary to prevent consumers from being harmed by websites offering potentially inaccurate or biased information.
- Whether we should adopt rules governing websites like Orbitz and Hotwire that are owned by several airlines.
- Whether on-line travel agencies should be entitled to protection from allegedly discriminatory treatment on such matters as commission rates.
- Whether we should require airlines to allow all travel agencies to sell the discount fares offered on airline websites.
- Whether we should bar systems from requiring airlines to make their services saleable by all system users selling tickets over the Internet.

On the other hand, few parties seek rules regulating individual airline websites.

After considering the parties' arguments, we have tentatively determined that we need not now propose rules that would substantially regulate the Internet's use in airline distribution, as explained below. We appreciate the importance of preventing deceptive practices and anticompetitive conduct that could cause serious harm to consumers and airline competition. However, rather than propose rules on the basis of a relatively short experience, we prefer to see how the Internet's use in airline distribution develops and whether its evolving use threatens airline competition and consumer access to accurate and complete information on airline services. Our experience with the Internet thus far does not confirm that broad regulations are necessary.

We intend to continue watching the Internet distribution practices of airlines and on-line travel agencies and will take action if that becomes necessary. Even if our rules do not specifically regulate on-line displays, on-line travel agencies must comply with section 411, which prohibits unfair and deceptive practices, and our rules, which require travel agencies to provide accurate information on airline services. 14 C.F.R. 399.80. We are ready to take enforcement action against any travel agency (or airline) that provides deceptive information on airline services, and we have done so in several cases. *See, e.g.*, Orders 2001–5–32 (May 30, 2001) and 2001–6–3 (June 7, 2001).

We invite commenters who disagree with our tentative proposal on this issue to present their proposals with information and analysis showing that they would provide public benefits without harming competition or the development of new on-line marketing approaches.

We will, however, propose a policy statement on one Internet-related issue here, the requirements for disclosure of travel agency service fees. Orbitz' decision to charge consumers a fee for making a booking through its website has raised the question of how such a travel agency fee should be displayed in light of our longstanding policy that any fare advertisement must state the full amount that a consumer must pay for the air transportation.

(a) Regulation of Internet Displays of Airline Services

Some parties have expressed a concern that on-line travel agencies may bias their displays in favor of preferred airlines if we do not adopt rules prohibiting them from doing so. Assertedly some on-line travel agencies may find it profitable to sell display bias to individual airlines with the result that the Internet sites will mislead the consumers using them. *See, e.g.*, American Comments at 11.

As a result of this concern, as well as related concerns that on-line travel agencies may operate in other ways that would prejudice airline competition and mislead consumers, a number of parties are urging us to regulate Internet operations in some respects. These parties include Sabre, American, Worldspan, Amadeus, Continental, Alaska, America West, Midwest Express, the European Union and the European Civil Aviation Conference, Qantas, the Asia Pacific Airline Group, ASTA, ARTA, and the Consumers Union. The Consumers Union submitted

a survey of on-line agency websites that it believes indicates that such websites provide incomplete and misleading information. Sabre and others also contend that airlines controlling websites can use them to distort competition. Alaska and others assert that the rules should prevent unfair practices that would allow one firm to dominate travel distribution on the Internet. Some systems contend that they will be competitively handicapped if their operations are subject to the Department's rules while Internet firms are not regulated.

Galileo, United, Delta, Continental, British Airways, Microsoft, Preview Travel, Biztravel.Com., and OAG Worldwide oppose including Internet sites within the scope of the CRS rules. They generally claim that there is no need to regulate Internet sites and no evidence of harm thus far.

American and Northwest contend that websites should be regulated only to the extent of requiring them to give notice of any bias. U.S. Airways and America West suggest that our rules require disclosure if an on-line agency omits some airlines from displays as may happen, for example, if those airlines do not participate in the system used by the on-line agency.

Expedia contends that only websites owned by airlines require regulation, for independent websites have neither the incentive nor the ability to reduce airline competition. Orbitz and OAG Worldwide allege that consumers will avoid biased sites, so no rules are needed. In arguing that rules are unnecessary, Delta and others assert that Northwest was able to compel Lowestfare.com to change practices that allegedly discriminated against Northwest and other non-favored airlines.

Amadeus, in contrast, asserts that consumers are ill-equipped to detect bias and that they could not practicably avoid biased sites if all sites were biased.

Orbitz' entry into the on-line travel agency business has affected the positions taken by some of the parties. In particular, several of the airlines owning Orbitz initially argued that rules were necessary to prevent on-line travel agencies from biasing their displays. After they created Orbitz, they reversed their position and now argue that we should not adopt such rules. *See* Sabre Supp. Reply at 15–18.

After considering the parties' arguments on this issue, we are tentatively proposing not to adopt regulations governing on-line displays of airline services, as stated above. Many of the parties have recommended different treatment for the two major types of websites offering airline tickets: airline sites and on-line travel agencies. While many of the parties urge us to adopt rules regulating the displays offered by on-line travel agencies, few parties seek rules regulating the displays offered by airline websites.

As to airline website displays, most of the commenters agree that consumers do not expect an airline to offer unbiased information on its own website. Consumers instead assume that such a website will favor the airline's own services. While some parties contend that we should regulate any website operated by an individual airline if it enables consumers to book flights on other airlines, we disagree. We are not now willing to extend the reach of our rules against display bias to sites operated by individual airlines, no matter what travel services may be purchased through the site. Consumers cannot reasonably expect to obtain unbiased information from an airline website, since the airline will understandably seek to promote its own services and those of any allied airlines.

The controversy over the regulation of Internet displays of airline services thus essentially involves the question of whether we should regulate the displays offered by on-line travel agencies. We have decided against proposing rules governing on-line travel agency displays at this time for several reasons.

First, we are declining to regulate the displays created by "brick-and-mortar" travel agencies. One rationale for that decision—the travel agencies' interest in keeping customers satisfied—applies to the on-line travel agencies. A consumer dissatisfied with the service offered by one on-line agency can easily switch to another on-line agency. On-line travel agencies should have an additional incentive to avoid biasing their displays since newspapers and magazines conduct surveys of the different websites and report on which site offers the best fares and the best service. *See, e.g.*, "Orbitz Takes Off, in the Spotlight," *New York Times* (June 17, 2001), travel section at 13. An on-line travel agency that biased its displays would likely fare poorly in such surveys. These factors should keep on-line agencies from biasing their displays even though some have agreements with individual airlines giving them incentives to increase an airline's share of the agency's total bookings.

Furthermore, we have not yet seen sufficient evidence to conclude that bias is a serious problem at on-line travel agency websites. Although the Consumers Union submitted a study indicating that on-line agencies often failed to provide the best available fare, a result that it believes suggests the displays may be biased, it concedes that these results do not prove that bias exists. Consumers Union Supp. Comments at 4–6. The on-line agencies, of course, deny they bias their displays, Travelocity Supp. Reply at 14–18; January 17, 2001, Letter from Mark Britton, General Counsel for Expedia. *See also* "Travel Web Sites Say Airline Deals Don't Affect Searches," *Washington Post* (April 3, 2002). No airline has alleged that bias by on-line travel agencies is currently a common problem. Midwest Express, however, asserts that Expedia's displays are unreasonable, since Midwest Express' nonstop service in one market is listed well below the connecting services offered by other airlines. Midwest Express Supp. Comments at 11–14. Expedia has denied this. It contends that its displays rely in part on fare levels in ranking flights and that Midwest Express' tendency to charge higher fares assertedly causes the airline's flights to receive a lower display position.

Parties have cited Northwest's dispute with LowestFare.com on both sides of this issue. Amadeus notes that Northwest considered LowestFare.com's displays biased. Amadeus Supp. Reply at 14–15. Delta, on the other hand, contends that Northwest was able to force LowestFare.com to change its display practices, thereby showing that regulatory intervention is unnecessary. Delta Supp. Reply at 14–15. We believe that Northwest's experience suggests that regulatory intervention is not critical at this time, since Northwest was able to get LowestFare.com to change its display practices.

Furthermore, if some on-line travel agencies present biased information or offer displays that are otherwise inadequate, consumers can easily protect themselves by searching several websites before choosing a flight, and they usually do so. Travelocity Supp. Reply at 5–6. One study indicates that over sixty percent of leisure passengers who buy tickets on-line visit at least two sites before making a purchase and that nearly forty-five percent visit four or more sites. Orbitz Supp. Reply at 5. *See also* Sabre Supp. Reply at 24. Thus many consumers appear to be willing to take time to search for the best option and will be less likely to choose the first option shown on a display (or rely on just one source of information).

We are unconvinced by arguments that regulations are needed because consumers are less experienced than travel agents in searching for airline services and so can be misled more

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easily by an on-line travel agency. Consumers have less experience, but they are more likely to take additional time to research the available airline service options. Although an individual on-line travel agency that wished to deceive consumers could do so with respect to those consumers who do not search multiple sites, most consumers search at least two websites before booking a fare.

A rule requiring on-line travel agencies to follow the rules applicable to the CRS displays provided travel agencies, moreover, could be harmful by discouraging new methods of offering airline tickets on-line. Priceline and Hotwire, for example, have created innovative methods for selling discounted tickets to travellers. Other firms may create other new techniques for providing airline information and tickets. A rule prescribing the displays to be used by on-line travel agencies could discourage such innovation.

Furthermore, some parties define bias in a relatively broad fashion that would call for our review of display practices other than the editing and ranking of flight options. Some parties assert, for example, that posting banner advertisements or giving any preference to one airline is bias, even if the site clearly gives consumers the option of choosing to book other airlines instead of the preferred airline. Orbitz Supp. Reply at 14–15. We do not regard such practices as bias. Travelocity Supp. Comments at 18–19.

Some commenters nonetheless contend that our decision to prohibit systems from biasing the displays provided travel agents supports the prohibition of bias in on-line travel agency websites. *See, e.g.*, Travelocity Supp. Comments at 17. We disagree. In our view, the displays offered consumers by on-line travel agencies and the displays offered travel agencies by systems are not analogous. Substantial differences exist between travel agent use of CRS displays and consumer use of websites. We prohibit the systems from biasing the displays offered travel agents because travel agents are often under time pressures that keep them from searching for the best possible service and make them more likely book one of the first flights listed even if other flights would better meet a customer's needs. Travel agents, moreover, do not usually access more than one system when investigating airline service options. In addition, the customer never sees the CRS display and must rely on the travel agent's expertise and diligence. In contrast, as shown, consumers using the Internet can and do easily look at alternative websites before choosing a flight. Thus many consumers take time to search for the best option and will be less likely to choose the first option shown on a display (or rely on just one source of information).

To obtain comprehensive on-line information on airline services, consumers should search several sites, even if all are unbiased, since no site will offer complete information on available airline services. Individual on-line travel agencies have been negotiating special deals with airlines and offering those fares to travellers visiting their websites. Bear, Stearns, "Point, Click, Trip," at 48, 49. Any such fare would be available only from the on-line travel agency that obtained the special deal. Thus consumers cannot expect to obtain reasonably complete information on available fares by viewing only one on-line travel agency website. And surveys of on-line travel agencies show that different agencies often show somewhat different fares. *See, e.g.*, "Orbitz Takes Off, in the Spotlight," *New York Times* (June 17, 2001), travel section at 13.

On-line agencies are additionally unable to enable consumers to book every airline. For example, consumers can buy Southwest tickets on-line only at Southwest's website. Southwest's refusal to participate in any system at a high enough level creates the risk of errors in bookings by consumers, and Southwest has refused to guarantee that it will provide seats to consumers affected by such booking errors. Southwest has therefore refused to allow on-line agencies to sell its tickets. "Southwest stops selling tickets in Travelocity.com," *Travel Distribution Reports* (March 8, 2001). Consumers now are normally able to obtain information on the airlines' discount E-fares only by viewing the website of each airline or Orbitz, to the extent that airlines have agreed to make their E-fares available through Orbitz (whether Orbitz should have preferential access to such fares is an issue discussed below).

The on-line travel distribution business thus has so far developed in a way that does not enable consumers to obtain comprehensive information from a single website. Applying display bias rules to on-line travel agencies would not change this.

We do not intend to foreclose further discussion of this issue, and will consider all proposals for rules governing Internet displays of airline services. However, to justify the adoption of such rules, we would need evidence that they were necessary to protect consumers, and would not impose undue burdens on the firms being regulated. One possibility would be a requirement that each on-line travel agency provide information on which airlines are or are not saleable through its website and the criteria used in editing and ranking the airline services displayed in response to a consumer's request. Alternatively, commenters may submit proposals that would set out general principles for on-line displays without prescribing in detail how displays must be constructed. Parties suggesting rules in this area should address the issue of why on-line agencies may require regulation when we have not generally regulated "brick-and-mortar" agencies. Examples of any analogous regulation of Internet services might also prove helpful.

(b) The Airlines' Differing Treatment of Travel Agencies

The airlines do not treat all on-line travel agencies the same and do not treat them the same as "brick-and-mortar" travel agencies (nor do they treat all "brick-and-mortar" travel agencies the same). For example, airlines were generally paying lower commissions for on-line bookings than they do for bookings made at "brick-and-mortar" travel agencies, and at least four airlines—Continental, Northwest, KLM, and Southwest—stopped paying commissions for on-line bookings well before they eliminated base commissions for "brick-and-mortar" travel agencies. In addition, most U.S. airlines have agreed with Orbitz that Orbitz may sell their E-fares even though airlines generally have not allowed other travel agencies (on-line or off-line) to sell their E-fares through the systems used by travel agents. Some airlines negotiate special fares with individual on-line travel agencies that other on-line travel agencies cannot sell.

"Brick-and-mortar" travel agencies can book E-fares for their customers only by going to an airline website or Orbitz, and they are unlikely to receive a commission for any such booking. Searching for fares and booking tickets outside the travel agent's system is more inefficient, as explained above. The travel agency also earns no credits under a productivity pricing clause when it makes bookings through the Internet rather than its system.

Travelocity and Expedia generally do not have access to the E-fares available on airline websites and Orbitz, except to the extent that individual airlines have agreed to make such fares available to them.

The Interactive Travel Services Association, the on-line travel agencies' trade association, urges us to adopt rules

that would stop the airlines from discriminating against on-line travel agencies. ARTA, American Express, and RADIUS, formerly called Woodside Travel, a large travel agency, contend that we should stop airlines from making discount fares available only through an airline website. The National Business Travel Association contends that we should require airlines to make their E-fares available through all distribution channels. Amadeus asserts that an airline should be required to make available to every website all of the fare information provided by that airline to any website with which it is affiliated. Other parties contend that we should block the airlines from giving special treatment to Orbitz. A large number of travel agencies request a rule requiring airlines to allow them to sell the discount fares sold on airline websites and Orbitz, since they allegedly cannot compete when travellers can routinely obtain lower fares from other distribution channels.

United, Northwest, Southwest, America West, and other airlines argue that airlines should be able to offer discount fares through their websites without making them available through other distribution channels. They assert that only the low distribution costs incurred when travellers book seats through airline websites make it possible for the airlines to offer their E-fare discounts.

We are not inclined to propose, on the basis of current information, a requirement that airlines treat all types of travel agencies the same, to treat on-line travel agencies the same as off-line travel agencies, or to give all travel agencies access to fares that the airline has chosen to sell through limited channels. We recognize the danger that airlines affiliated with one on-line travel agency may seek to use any market power they have in airline markets to distort competition in the airline distribution business, but we currently believe that the enforcement process, not the adoption of general rules, would be the most effective method for addressing such conduct that involves unfair methods of competition.

Travel agencies offer services valued by many travellers, and they often find better fares than travellers can obtain from airlines or Internet sites. Nonetheless, given our limited role in regulating the airline and airline distribution industries, we presently doubt that we could require airlines to offer their most attractive fares to all distribution channels. As discussed above, in this proceeding we are primarily relying on our authority under section 411 to prohibit unfair methods of competition. Unfair methods of competition, as shown, are practices that violate the antitrust laws or antitrust principles. The antitrust laws generally allow individual firms to choose how to distribute their products and services. The Robinson-Patman Act, 15 U.S.C. 13, restricts a seller's ability to offer lower prices to some buyers than to others without justification, but it does not cover the sale of services. It appears that an airline's decision to provide higher commissions or better treatment to one type of distribution channel (or to some but not all firms within the same channel) would not ordinarily conflict with antitrust principles.

Requiring airlines to treat all travel agencies the same also seems contrary to the industry's established distribution practices. Individual airlines have always given some types of travel agencies benefits not given others, and have given different distribution channels different terms for selling tickets. GAO, "Effects of Changes in How Airline Tickets Are Sold" at 15; *Airline Marketing Practices* at 25, 26; American Supp. Reply at 25–26. Airlines have varied their terms for the sale of their tickets on the basis of such factors as the relative cost and effectiveness of using different firms and distribution channels. The systems similarly offer different travel agencies different terms depending on such factors as the agency's location and probable volume of business. Individual on-line travel agencies have negotiated special arrangements with individual airlines and other travel suppliers. Travel agencies may also give their best customers offers not made available to other customers. *See, e.g.*, American Reply at 7.

The systems, travel agencies, and software firms are developing programs that will enable travel agents to easily access airline E-fares. *See, e.g., Travel Distribution Report* (May 6, 2002) at 66, 68; *Travel Weekly* (April 29, 2002) at 61; *Travel Weekly* (May 27, 2002) at 1. Orbitz, as noted above, has also arranged for the development of such a program. These efforts should reduce the need for any Government intervention.

Congress, however, also determined that the issue of travel agency access to Internet fares and related travel agency issues should be studied by a commission, the National Commission to Ensure Consumer Information and Choice in the Airline Industry. The commission is due to submit its report on these issues to the President and Congress by November 16, 2002.

(c) Regulation of Joint Airline Websites

To a great extent, of course, the parties' concern with the airlines' different treatment of different agencies is attributable to Orbitz, the on-line travel agency owned by five major airlines, and Orbitz' ability to sell many discount fares that are not available for sale through other travel agencies. A number of parties broadly assert that any site owned by two or more airlines, such as Orbitz and Hotwire, may well be operated in a manner which will reduce competition and lead to consumers receiving biased or inaccurate information. *See, e.g.*, Expedia Supp. Comments at 11–12; Travelocity Supp. Comments at 10–11; Southwest Supp. Reply.

We are not proposing rules on the conduct of joint airline websites at this time. The only jointly-managed airline websites are Orbitz and Hotwire, except to the extent that the partners in airline alliances may have created joint websites (the parties seeking rules covering jointly-operated websites have not asserted that websites operated by alliance partners inherently require regulation). We do not know whether more such websites will be created and, if so, how they would operate. In the present circumstances, we believe the enforcement process would be the best means for addressing any problems with deceptive practices and unfair methods of competition created by such a site. An enforcement proceeding could effectively take into account the characteristics of an individual website while a rule might be unable to do so, especially when any rules would necessarily be based on predictions about how such a website would operate.

Insofar as this issue involves concerns presented by Orbitz' business plan and strategy, we have been addressing those concerns through our informal examination of Orbitz. We have been investigating Orbitz' operations to see whether it may be engaged in deceptive practices or unfair methods of competition. One subject of that investigation has been whether Orbitz has been given unfair preferential access to the airlines' discount fares, especially their E-fares. We have submitted a progress report to Congress on that investigation. "Report to Congress: Efforts to Monitor Orbitz'. We have not reached any definitive conclusions on whether Orbitz, operations may violate antitrust principles, in part because of the continuing changes in the on-line distribution business, and in part because the Justice Department has not concluded its own antitrust

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investigation into Orbitz. We are continuing to monitor Orbitz' operations. If Orbitz or its owner airlines engage in unlawful conduct, we can and will use our authority to end any unlawful practices. *See, e.g.*, April 13, 2001, Letter from Susan McDermott and Samuel Podberesky to Jeffrey Katz, at 6.

In addition, Orbitz and any other website operated jointly by two or more airlines are subject to the antitrust laws and section 411, which authorizes us to prohibit conduct that violates antitrust principles or the antitrust laws. The antitrust laws themselves prohibit competing firms from operating a joint venture in ways that unreasonably restrict competition. Any restrictions on the participating firms' conduct must be reasonably necessary for the accomplishment of the joint venture's legitimate goals, and conditions on access to the joint venture, or denials of access, are subject to the rule of reason or, if the joint venture has market power, can be unlawful *per se*. *See, e.g.*, *Northwest Wholesale Stationers* v. *Pacific Stationery & Printing Co.*, 472 U.S. 284 (1985); *NCAA* v. *Board of Regents*, 468 U.S. 85 (1984); *Associated Press* v. *United States*, 326 U.S. 1 (1945); *United States* v. *Realty Multi-List, Inc.*, 629 F.2d 1351 (5th Cir. 1980). Firms cannot agree among themselves to boycott a firm competing with one or more of them. *Toys "R" Us* v. *FTC*, 221 F. 3d 928, 934–936 (7th Cir. 2000). We will apply these principles if necessary through enforcement action taken under section 411.

A number of parties contend that we must at least require airlines to enable other travel agencies, both on-line and off-line, to sell the E-fares that they are authorizing Orbitz to sell. They claim that the inability of other travel agencies to sell the low fares available to Orbitz will undermine their competitive position. *See, e.g.*, the comments filed by several Uniglobe agencies.

We are reluctant to adopt a regulation that would require airlines to give other travel agencies the ability to sell their E-fares if they allow Orbitz to sell them. As explained above, section 411 does not empower us to dictate to the airlines how they will distribute their tickets, unless they are engaged in practices that violate the antitrust laws or antitrust principles. An airline's decision to make E-fares available to Orbitz but not other on-line travel agencies would not necessarily violate the antitrust laws or antitrust principles, just as, for example, an airline's decision to give special deals to one of the largest on-line travel agencies, Travelocity or Expedia, but not other travel agencies would not necessarily violate section 411. "Brick-and-mortar" agencies, moreover, can book E-fares through an airline website or, in many cases, Orbitz, though other on-line travel agencies cannot.

We recognize that the Department's Inspector General has also suggested requiring airlines to provide their E-fares to other on-line travel agencies if the agencies agree to the same terms as Orbitz, that is, promise each airline to rebate a portion of the CRS fees for all bookings on that airline made through the on-line agency. Testimony of Inspector General Kenneth Mead before the Senate Commerce Committee, July 20, 2000, at 22–23. However, we are not presently proposing to impose such a requirement in this rulemaking. Despite its attractive features, his recommendation would require us to dictate how the airlines would treat different distribution channels, a kind of intervention that would usually be outside our authority under section 411.

While we are not proposing now to adopt a rule on this issue, we recognize that Orbitz' ability to sell E-fares that other on-line travel agencies cannot sell does raise legitimate concerns. Our investigation of Orbitz is therefore examining, among other things, whether Orbitz' access to the airlines' E-fares violates antitrust principles and thus constitutes an unfair method of competition. As indicated, if Orbitz and any airlines are engaging in conduct contrary to antitrust principles, we have the power to address those violations in enforcement proceedings.

The commenters seeking a rule requiring at least Orbitz' owner airlines to make their E-fares available to other on-line travel agencies rely on an analogy with our mandatory participation rule for airlines with an ownership interest in a system. *See, e.g.*, Amadeus Supp. Comments at 23–28; Travelocity Supp. Comments at 21–22. These situations do not appear to us to be analogous. We adopted the mandatory participation rule due to our experience with cases where U.S. and foreign airlines that owned or marketed a system restricted their participation in competing systems in order to give their affiliated system a competitive advantage. 56 FR 12608. In the case of Orbitz, our initial investigation indicated that airlines were providing Orbitz with access to their E-fares in exchange for booking fee rebates not provided by other on-line travel agencies. Orbitz itself had an interest in obtaining access to the E-fares because of its need for a marketing advantage that might offset the strengths of the existing on-line travel agencies. April 13, 2001, Letter from Susan McDermott and Samuel Podberesky to Jeffrey Katz. As a result, there may have been legitimate business reasons for the arrangement between Orbitz and the airline charter associates whereby Orbitz has gained access to the airlines' E-fares. In contrast, the refusals by airlines affiliated with one system to participate in competing systems at an equivalent level appeared to reflect a goal of restricting rather than promoting competition. Our continuing examination of Orbitz will include the issue of whether the airlines' decisions restricting access to their E-fares may be unlawful.

14. Prohibit Tying of Internet Participation

Orbitz presents the question of whether in some circumstances the major airlines would violate antitrust principles if each decides to allow only its preferred distribution channel to sell its best fares. Each system's arrangements for providing service to participating airlines raise a similar question, whether a distribution firm with market power may deny airlines the ability to choose which of the firm's customers may sell the airlines' tickets. The systems' practices present this issue, for their participating airline contracts typically require the airline to allow its services to be booked by every user of the system, including both on-line and off-line travel agencies. Some airlines cite as well Sabre's insistence that participating airlines sell their services through Travelocity, the on-line travel agency controlled by Sabre.

We wish to consider whether participating airlines should have a greater ability to choose which websites may sell their services, a change sought by a number of participating airlines. They assert that an airline should be able to choose which on-line sites can sell its services. Delta Comments 28–30; United Reply at 11–15; Continental Supp. Comments at 16–17; Midwest Express Supp. Comments at 23–27.

Each system currently requires each airline or other travel supplier to participate in the system on a worldwide basis—the airline or travel supplier must agree that its services will be saleable through the system by anybody using the system, whether the user is an accredited travel agency, a non-accredited travel agency, a corporate travel department, an on-line computer service, or a consumer accessing the system through a website operated by a traditional travel agency or an on-line agency. Airlines may have little ability to keep system users from being able to sell their tickets. TWA Comments at 14.

Delta, Northwest, U.S. Airways, Continental, Alaska, America West, Midwest Express, Air France, the Asia Pacific airline group, KLM, Lufthansa, Qantas, and Varig assert that the rules should prohibit systems from tying access to traditional travel agency subscribers with access to Internet sites. A ban on such tying would allegedly enable airlines to decide whether such access was attractive, and they could conceivably bargain over the fees and terms on which such participation was offered. Many airlines also initially claimed that giving consumers access to a booking capability over the Internet and on-line computer services has increased the number of fraudulent bookings.

Sabre, Preview Travel, and Biztravel.Com. contend that we should not prohibit such tying.

In this proceeding we will consider a proposal that would prohibit such tying. In general, an airline should be able to determine how its services should be distributed and which firms should be able to sell its tickets. The rule proposed by the airline parties would be consistent with our decision to prohibit parity clauses, except as to airlines that owned or marketed a system, since parity clauses unreasonably restricted the ability of participating airlines to choose the level of service they would buy from each system. A rule barring tying could enable market forces to discipline the systems' terms for participation in the services they offer to on-line travel agencies and other Internet users, since airlines might be able to decline participation if the terms were unreasonable.

We therefore ask the parties to comment further on whether we should prohibit the tying of participation in a system's "brick-and-mortar" travel agency services with participation in its services to on-line travel agencies and other Internet sites selling airline tickets. In theory the proposal could help enable market forces to discipline the terms for airline participation in the systems, a desirable goal.

The present record contains comments indicating that the rule may not be essential. Northwest was able to stop LowestFare.com from selling its tickets when Northwest concluded that LowestFare.com's website did not fairly present Northwest's fares. Delta Supp. Reply at 13–15. Southwest, as noted, is keeping on-line agencies that use Sabre from selling tickets on Southwest. In addition, the airlines initially claimed that the proposed prohibition was needed due to the alleged need to prevent abusive bookings by some consumers. That concern appears to be moot. Sabre Supp. Comments at 26.

Moreover, it is possible that such a rule could lead to anticompetitive results if misused by airlines with ties to other systems or on-line travel distributors. Some airlines, such as Orbitz" owners, might decline to participate in the services offered Internet users by some systems in order to promote the competitive position of an affiliated system or on-line travel agency. The risk of similar types of conduct led us to adopt the mandatory participation rule and to allow systems to enforce parity clauses against airlines that owned or marketed a competing system. We are, of course, proposing to eliminate the mandatory participation rule, which suggests that the policies underlying that rule might not justify making exceptions in any rule barring the tying of participation in websites with participation in travel agency services. We ask the parties to comment on whether a rule prohibiting the tying of participation in travel agency services with participation in services for all website customers of a system should include an exception for airlines owning or marketing a competing website (other than an airline's own website).

We also determined in our last overall rulemaking that system contracts requiring airlines to participate in a system on a worldwide basis were not unlawful. 57 FR 43819. We reasoned that such contract provisions might avoid disputes over a foreign airline's refusal to participate in a U.S. system in countries where that airline preferred to support the marketing efforts of an affiliated system. We conditioned our acceptance of such contract clauses on the system's compliance with the principles requiring unbiased displays and prohibiting discriminatory treatment of participating airlines, to the extent that U.S. and foreign rules do not regulate the system's operations.

To enable us to decide whether we should prohibit tying, we ask the parties to comment on whether a prohibition against tying would be technologically feasible. We also ask the parties to comment on an individual airline's ability, if any, to block any Internet site or a "brick-and-mortar" travel agency from selling its tickets, including whether the systems' contracts with participating airlines bar airlines from taking such action against a firm using the system and whether a travel agency can evade an airline's termination of the agency's authority to sell the airline's tickets. The parties should comment on whether the result would be different from their ability to terminate "brick-and-mortar" agencies and, if different, the basis for the distinction sought by these airlines. We also invite the parties to raise any other issues relevant to our decision on this issue.

15. Harmonization With Foreign Rules

The European Union, Canada, Australia, and other foreign countries have adopted their own CRS rules. In many respects, our rules are similar to the European and Canadian rules. For example, all of the rules prohibit display bias, though there are differences on the precise terms of the prohibition, and all bar systems from discriminating unreasonably between airline participants. However, there are also significant differences between our rules and those adopted, for example, by the European Union. The European rules, for example, require booking fees to be related to system costs and prescribe a display algorithm.

The European Union, ECAC, and several foreign airlines ask us to harmonize our rules with the European rules.

We recognize that a greater similarity between our rules and the European rules would provide benefits, especially by avoiding the need for the systems to follow potentially different business practices in different jurisdictions.

We are unable, however, to make our rules substantially identical to the European rules. Congress has not given us open-ended authority to regulate the CRS business. Any rules adopted by us must be within our authority under section 411 to prohibit unfair and deceptive practices and unfair methods of competition by airlines and ticket agents. Our statute imposes procedural requirements on our enforcement of rules that may not apply in Europe. We must also follow Congressional and Executive mandates that we carefully consider the costs and benefits of our proposed rules.

We wish to prevent conflicts with the rules of the European Union and other foreign governments, to use their rules as possible models for our rule revisions and to review their experience with those rules, and to give careful consideration to the comments submitted by foreign airlines and governments.

16. Retaliation Against Discrimination by Foreign Airlines and Systems

In the past, as discussed above, we have seen cases where a foreign airline limited its participation in a U.S. system (or imposed restrictions on travel agencies using a U.S. system in its homeland) to deter travel agencies in its homeland from choosing a U.S. system instead of the system owned or

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marketed by the foreign airline. In a few cases of such apparent discriminatory conduct, we proposed countermeasures to encourage the foreign airline to end its discriminatory conduct. We acted under the International Air Transportation Fair Competitive Practices Act, recodified as 49 U.S.C. 41310, which has authorized us to impose countermeasures when a foreign airline or other firm engages in discriminatory conduct against a U.S. airline. To further deter discriminatory treatment, our rules authorize a system to engage in discriminatory conduct against a foreign airline that operates a foreign system, if that system subjects a U.S. airline to discriminatory treatment and the system has given us and the foreign airline fourteen days advance notice of its plan to take countermeasures. Section 255.11(b).

As noted, Congress amended 49 U.S.C. 41310 to give us broader authority to take countermeasures against an unjustifiably discriminatory or anticompetitive practice against a U.S. CRS or the imposition of unjustifiable restrictions on access by a U.S. system to a foreign market. This broadens the statute by authorizing us to take action when a U.S. system is subject to discriminatory conduct by a foreign firm.

Sabre asked us to strengthen the rules by imposing an obligation on ourselves to impose mandatory sanctions if, at the end of an enforcement proceeding, we determined that a foreign system or foreign airline affiliated with a system had engaged in unjust discrimination against a U.S. system. Sabre Comments at 35–37.

We are not proposing to adopt Sabre's requested rule. If we determine that a foreign airline has engaged in unlawful conduct, we will continue to take appropriate action when a U.S. airline or system is subject to discriminatory treatment by a foreign firm designed to prejudice the U.S. firm's ability to compete, whether or not we adopt Sabre's proposed rule.

17. Enforcement Mechanisms

A person who believes that our rules are being violated may seek enforcement of the rules by filing a third-party enforcement complaint under 14 CFR Part 302, Subpart D. We may also initiate enforcement action when we have reason to believe that the rules are being violated. Any enforcement proceeding resulting in a Department decision would usually require a hearing before an administrative law judge. Parties may not use the courts to enforce our rules, although a court would follow our rules when applicable in contract cases and other proceedings involving a system.

In our last rulemaking, we considered proposals to provide additional avenues for enforcement, including arbitration and requiring the systems' contracts with airlines and travel agencies to incorporate many rule provisions. We ultimately decided that these proposals were unnecessary or not likely to be beneficial overall. 57 FR 43829.

A number of commenters complain in this proceeding that the rules' enforcement has not been effective. They assert that private parties have little ability to enforce the rules if we do not. Since the courts generally will not hear private suits to enforce the rules, a firm injured by a rule violation can only obtain relief if we take enforcement action against the offender. Airlines and travel agencies have allegedly had little success defending their rights in private lawsuits. Airline participants have complained in particular that they are unable to obtain refunds from the systems for booking fees charged for allegedly improper or abusive transactions by travel agents. *See, e.g.*, Alaska Comments at 21–23; Aloha Comments at 9–10. The courts have also held that suits brought by travel agencies or airlines against a system under state law are generally preempted by federal statute. While parties may enforce their state law contract rights, they may not enforce non-contractual rights created by state law. *See, e.g.*, Amadeus Petition at 8–9.

Continental, Northwest, Aloha, Alaska, American Trans Air, ARTA, the Large Agency Coalition, and, as to fee disputes, Qantas contend that we should develop better enforcement procedures, for example, by giving parties the right to obtain arbitration of disputes. Northwest and Continental suggest that we should impose a ninety-day deadline for our action on petitions to change the CRS rules or enforcement complaints involving violations of those rules.

Sabre, American, Galileo, and Amadeus oppose any change in enforcement mechanisms.

We are not planning to propose the rules suggested by commenters for better enforcement of the rules. We retain discretion to pursue an enforcement policy that is appropriate in individual circumstances. We note that our Enforcement Office has added a significant number of attorneys and other staff members, and it will be prepared to vigorously pursue act on complaints of violations of the CRS rules and section 411 in the future.

We also do not appear to have the authority to require arbitration of disputes over compliance with the rules. A statute cited by United, 5 U.S.C. 572(a) and 575(a), seems to prohibit agencies from requiring parties to resolve disputes through arbitration unless all of the parties consent.

We fully recognize the importance of enforcing our CRS rules, and intend to do so vigorously in the future. We will consider suggestions by the parties for additional enforcement mechanisms that may be within our authority.

18. Sunset Date for the Rules

Our rules have a sunset date, originally December 31, 1997, to ensure that we would reexamine the need for the rules and their effectiveness. Section 255.12. We have not been able to complete our reexamination of the rules by the original sunset date and so have extended the rules to ensure that they would remain in effect while we conducted our reexamination. *See* 67 FR 7100 (February 15, 2002).

Many of the parties urge us to establish a new sunset date, although they disagree over what the new date should be.

We have tentatively decided not to propose a new sunset date for the rules at this time. Current options under consideration are to sunset the rules in March 20003, to establish a new sunset date, or to reexamine the rules when industry developments warrant doing so. We recognize that developments such as the recent changes in the systems' ownership and the rapid growth in the Internet's use for airline distribution may well require a reexamination of need for and effectiveness of the rules within a few years. As noted earlier, these changes and other changes in airline distribution may even eliminate the need for some or most of the CRS rules. We can also amend the rules in part if necessary, as we did after we completed our last major CRS rulemaking.

We concur with the view that further consideration of the generic alternatives to traditional CRS regulation discussed above and the on-going developments in airline distribution may warrant a review of the effectiveness of our traditional CRS regulation after the completion of this proceeding. We will be consulting with other agencies, including the Department of Justice and OMB, on how best to accomplish such a review. We actively encourage comments from the public on the scope of such a review and its timing.

19. Effective Date of the Rules

Normally new rules take effect thirty days after their publication. Some commenters, however, may contend that one or more provisions of our proposed CRS rules should take effect on a delayed schedule due to the expense or difficulty of compliance within thirty days of the rules' publication date. Commenters who believe that additional time would be needed for compliance with a proposal should so state in their comments and explain why. We are willing to consider proposals to phase in some rules, since several of our proposals may change the systems' expectations on the likely profitability of some of their subscriber contract practices, for example.

20. Proposed Revisions to the Department's Policy on Fare Advertising

Section 411 prohibits unfair or deceptive practices in the sale of air transportation. To provide guidance on the meaning of this statutory prohibition, we have published a policy statement on fare advertisements, 14 CFR 399.84, that states that we will consider an advertisement by an airline or travel agency to be an unfair or deceptive practice if it states a price that is not the complete price that must be paid by the traveler for the air transportation.

As we have interpreted the policy statement, section 399.84 requires an airline or travel agency to include in any advertised or quoted fare any charge imposed by the airline, such as a fuel surcharge, and most governmental charges. *See, e.g.*, Orders 2001–12–1 (December 3, 2001) and 2001–5–32 (May 30, 2001) (consent orders based on failure to include fuel surcharges in fare amounts). The governmental charges that may be omitted from the fare amount are charges like passenger facilities charges and departure taxes that are not ad valorem in nature and are imposed on a per-passenger basis. Any advertisement must clearly specify such government charges so that the consumer can calculate the total amount to be paid for the transportation.

We are proposing two amendments to this policy statement. The first revision would make it clear that each system has an obligation to ensure that its displays of fare information follow section 399.84's standards. Our second proposed revision would clarify the policy statement to allow travel agents to state service fees separately from the price of the air transportation, if they comply with conditions ensuring that their customers will understand their obligation to pay a fee for the travel agency service and will know the total price for the transportation, including any travel agency service fee. Any fare quotation must continue to include all charges attributable to the air transportation, including any airline fuel surcharges. Our proposals reflect the development of Internet booking sites created for consumer use.

(a) Accurate Display of Fare Information

Our first proposed revision will make it clear that the policy statement covers the systems as well as airlines and travel agencies. We wish to extend the policy statement's reach to ensure that the fare displays often used by travel agents accurately set forth the total fare being charged by each airline.

Travel agents often use system displays that rank airline flights by fares, beginning with the flight with the lowest fare. The fares listed in these displays have sometimes omitted government taxes and fees, passenger facility charges imposed by airports, and surcharges imposed by the airlines, such as fuel surcharges. Obviously a fare display that does not include items such as fuel surcharges would mislead consumers, since the display would suggest that some airlines are offering lower fares than other airlines when in fact the former may be offering higher fares. The displays thus deceive consumers and distort competition as well. Order 2002–3–12 (March 15, 2002) at 7.

Our policy statement on fare advertisements expressly covers airlines and travel agents but by its terms may not apply to the systems' display of airline fares. We therefore propose to require the systems to include all charges in their displays of airline fares. Participating airlines, of course, have an obligation to provide information on their schedules and fares in a manner that enables the systems to comply with our rules on displays and the airlines' obligations under section 399.84

(b) Travel Agency Service Fees

Our second proposal would modify the policy statement to set forth standards for the travel agencies' disclosure of their own service fees to their customers. We have applied the policy statement on fare advertising to prevent the separate listing of surcharges which confuse consumers, preclude them from making accurate fare comparisons before making ticket purchase decisions, and, arguably, constitute a form of bait-and-switch marketing tactics. The Enforcement Office has traditionally interpreted the policy statement as barring the separate listing of a travel agency's service fee and instead requiring the agency to include the fee in the fare amount quoted the customer.

Our examination of the policy statement's application is appropriate given overall trends in the travel distribution business. Section 399.84 requires that an airline or agent of an airline must state the entire price that the customer must pay the agent or airline for air transportation. In recent years, as airlines have cut travel agent commissions, travel agencies have moved to a greater reliance on charging their customers fees for their services and expertise. There is also a trend toward more widespread use of Internet travel agencies. Like their off-line counterparts, some on-line agents have also begun charging service fees. Thus travel agency fees are far more prevalent today than they were when the Board adopted section 399.84 in 1984. We should therefore reevaluate our interpretation of what constitutes the "price for such air transportation" in light of these changes.

We recently addressed the policy statement's application to a travel agency service fee, because Orbitz wished to list its recently-adopted service fee separately from the fare amount in its initial display of available airfares. We granted Orbitz a conditional exemption from the policy statement so that its initial display of available fares need not include Orbitz' planned $5 service fee. Our exemption order, Order 2001–12–7 (December 7, 2001), allows Orbitz to omit the fee from its first quotation of fares but requires Orbitz to include the amount of the fee whenever it presents an itinerary that can be purchased. The order imposed several other conditions on the exemption, including a requirement that Orbitz place a notice advising consumers of the fee just above its display of possible itineraries. The Enforcement Office thereafter stated that it would apply the Orbitz exemption order's standards to all Internet agencies. Order 2002–3–12 at 1, citing Notice of the Office of Aviation Enforcement and Proceedings (December 19, 2001).

Our exemption order stated that we would further consider what disclosures should be required for travel agency fees in a rulemaking. We are now asking all interested persons to comment on our proposal to amend the policy statement to require all travel agencies as an initial matter to state the fare and any travel agency fee separately, subject to certain conditions designed to protect consumers.

Under our proposal, both on-line and off-line agents must fully disclose to the consumer the fare, the agency service fee, and the total price—and do so in a way that is useful and practical to the consumer—early in the transaction process. We tentatively conclude that consumers would benefit by requiring

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separate listings of the amount of service fees being charged by all sellers of air transportation, as long as standards are in place to protect consumers from potential deception. We therefore propose to define the "price for such air transportation" in 14 CFR 399.84 to include all taxes, government and airport fees (including PFCs), and all other charges which in economic terms constitute a direct cost of the air transportation itself (including, but not limited to, fuel, security, and insurance charges). These charges, by definition and in practice, are unavoidable and the same no matter where the consumer actually purchases the ticket. We propose, however, to continue allowing the separate listing of certain governmental fees.

We propose that the dollar amounts of fees levied by and for services provided by a travel agency or travel distribution organization must be listed separately from the total cost of the air transportation (as defined above). Our proposal includes conditions to protect consumers. First, the consumer must be provided with a total cost of the entire air ticket transaction. Furthermore, the separate agency service fees themselves may not be *ad valorem* in nature, since percentages are difficult for consumers to calculate and would seriously hinder price comparisons. In addition, we are imposing a limit on service fee amounts to ensure that they are not used merely to make the advertised fare seem lower. Service fees (including dollar amounts) must be prominently disclosed and be placed proximate to the advertised fare wherever they appear and service fees must be included in the total price displayed or quoted before the customer decides whether to purchase the ticket.

Our proposal is consistent with the policy statement's purpose and the Orbitz exemption order. Service fees are distinguishable from the component costs of air transportation itself, including such fees as fuel and security surcharges that must be paid by travellers, no matter where they buy their tickets. We have repeatedly made it clear that such direct air transportation costs must be included in the fare quoted and that a change in that policy would not be appropriate or beneficial. A travel agency service fee, however, represents the cost of a separate service in a separate market. The consumer does not have the option of buying the ticket without the fuel surcharge, taxes, or the government security fee. The consumer does have the option of buying the ticket without the agency service fee (or with a different agency service fee) by making the purchase through a different channel. Consumers need this information to make informed choices both in the airfare market and in the agency service fee market.

Our proposal should benefit consumers, since every travel agency, off-line or on-line, will be giving a consumer notice of the amount required by the airline for the purchase of a ticket and the amount of any travel agency service fee; the consumer will understand that he or she can book a seat for less money by buying the ticket directly from the airline or from another agency that charges no service fee. As we observed when we granted the exemption to Orbitz, consumers would likely benefit if a travel agency quoted the fare separately from any travel agency service fee. Order 2001–12–7 at 4.

Competition among airlines as well as among travel distribution outlets is clearly in the interest of consumers. Separate disclosure of travel agency fees from the direct cost of the air transportation—which usually does not vary depending on the outlet through which the consumer actually purchases an airline ticket—would arguably foster competition among airlines and among travel distribution firms by providing more transparent information to consumers.

Our proposal also agrees with a recommendation made by *Consumer Reports*, which questioned the practice of travel agencies including their service fees in fare quotations. "Is your travel agency playing 'fare'", *Consumer Reports Travel Letter* (June 2001). *Consumer Reports* contends that the separate disclosure of both the service fee and the fare is preferable to combining the two.

We think our clarification should govern service fees charged by "brick-and-mortar" travel agencies as well. Many of those agencies are now charging service fees. Our proposal would require them to state orally their service fees and the airfare and the total amount for the fare and fees. This should enable on-line and off-line travel agencies to operate under comparable rules, as requested by RADIUS, a large travel agency, in comments that it filed in the Orbitz exemption order docket.

We ask the parties to comment on an alternative proposal as well: a policy allowing travel agencies to choose between listing their fees separately and including the fees in the price quoted for air transportation.

Regulatory Process Matters

Regulatory Assessment and Unfunded Mandates Reform Act Assessment

1. Unfunded Mandates Reform Act Assessment

The Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531–1538, requires Federal agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditures by State, local, or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually.

The legal authority for the proposed rule is provided by 49 U.S.C. 41712, which authorizes the Department to prohibit unfair or deceptive practices and unfair methods of competition in air transportation or the sale of air transportation. The Department is authorized by 49 U.S.C. 40113(a) to implement that authority by adopting rules defining and prohibiting unfair or deceptive practices and unfair methods of competition.

The proposed rule would not result in expenditures by State, local, or tribal governments because no such government operates a system or airline subject to the proposed regulation. The proposed rule may cost the private sector more than $100 million in the first year of effectiveness due to the need for systems, airlines, and potentially travel agencies to modify their operations to conform to the rule. The Regulatory Assessment below provides detailed discussion of the costs and benefits for the proposed rule. The Regulatory Assessment also presents alternatives to the proposed rule.

2. Introduction to Regulatory Assessment

Executive Order 12866, Regulatory Planning and Review (58 FR 51735, October 4, 1993), defines a significant regulatory action as one that is likely to result in a rule that may have an annual effect on the economy of $100 million or more or adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. Regulatory actions are also considered significant if they are likely to create a serious inconsistency or interfere with the actions taken or planned by another agency or if they materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of the recipients of such programs.

The Department's Regulatory Policies and Procedures (44 FR 11034, February 26, 1979) outline similar definitions and requirements with the goal of simplifying and improving the quality of the Department's regulatory process.

The Department has determined that these proposed regulations are an economically significant regulatory action under the Executive Order and the Department's Regulatory Policies and Procedures, since the proposed rules could conceivably have an annual impact on the economy of $100 million or more and because of the amount of public interest they are likely to generate. This rule proposal has been reviewed by the Office of Management and Budget under the Executive Order.

This preliminary regulatory impact assessment seeks to assess the potential economic and competitive consequences of our proposed rules on computer reservations systems, airlines, and travel agencies and to evaluate the benefits to the industry and the travelling public.

As background, the Civil Aeronautics Board adopted rules to govern airline-owned CRSs that became effective on November 14, 1984. The Board's rules barred systems from biasing their primary displays, charging airlines discriminatory booking fees, using subscriber contracts with a term of more than five years, and imposing certain types of contract restrictions on travel agencies that denied them a reasonable opportunity to use multiple systems or switch systems. The Board rules also required each system to make available to any participating airline on non-discriminatory terms any data that the system chose to generate from the bookings for domestic travel made through the system.

After the Board's sunset on December 31, 1984, we assumed the Board's responsibilities for airline regulation, including its regulation of CRSs. We subsequently conducted a study of the CRS business, a study of airline marketing practices, and a rulemaking proceeding to reexamine the rules to see whether they remained necessary and were effective. We issued a final rule on September 22, 1992, that maintained the Board's rules and strengthened them in some respects. We decided the rules were necessary to preserve airline competition and to prevent consumers from receiving incomplete and biased information on airline services.

Among other things, our revised rules require each system to provide non-owner airlines with information and booking capabilities as accurate and reliable as those provided the owner airline. We gave each travel agency the right to use its own equipment in conjunction with a system and to access other systems and databases from the same terminals used to access its primary system, unless the agency uses terminals provided by that system. Our current rules also require each airline with a significant CRS ownership interest to participate in other systems at as high a level of functionality as it does in its own system, if the terms for participation are commercially reasonable; impose requirements ensuring that the functionality provided for participating airlines was generally equivalent to the functionality provided the owner airline; and strengthen the rules on subscriber contracts.

In two later proceedings, we amended the rules to strengthen the rules against display bias and to prohibit systems from enforcing parity clauses against airlines that do not own or market a competing system (a parity clause requires the airline to participate in the system at at least as high a level as it did in any other system).

The rules govern systems that are owned or marketed by one or more airlines. All four systems now operating in the United States have been owned or marketed by one or more airlines since the Board originally adopted the rules (the only independent system was acquired by one of the airline systems before we conducted our last overall rulemaking). The systems accordingly have had to operate in compliance with the rules' requirements for some time.

This notice of proposed rulemaking proposes to adopt the current rules with several changes designed to strengthen them. In discussing the benefits and costs of our proposed rule changes, we will generally focus on the competitive aspects of issues that our proposed rule changes are intended to address. Ideally, in a perfectly competitive marketplace, the various components of the airline distribution network would reflect a balance of market power to the extent that no individual component could exert undue influence or exact monopoly rents in any aspect of the distribution system. As we know from our past and current examinations, however, there have been competitive dislocations because of the misuse of market power. Our proposed rules are meant to address such problems, to the extent that they continue to exist.

This preliminary regulatory impact assessment discusses the likely costs and benefits of our proposed rules. However, we do not have information of the kind and detail that would enable us to quantify the proposals' benefits to air travellers, airlines, and travel agencies, or to estimate the costs of complying with our proposed rules for the systems, airlines and travel agencies with accuracy. We are also not able to estimate the long-term consequences of our rules on CRS competition, including incentives for technological innovation and improved productivity. The overriding benefit of greater competition and higher productivity in the air travel industry is, of course, its downward pressure on air fares and the benefits consumers enjoy as a result.

This preliminary analysis is necessarily relying on a qualitative assessment of the costs and benefits of the rules. We specifically request that interested parties provide us with detailed information about the possible consequences of our proposed rules, especially their benefits, costs, and economic and competitive impacts.

3. The Systems' Market Power

We are proposing to readopt the rules with revisions, because we have tentatively found that rules are necessary to keep systems and airlines that own or market systems from engaging in conduct that would reduce competition in the airline and airline distribution industries, increase airline costs and thus the fares charged airline travellers, and lead to travel agents and their customers receiving incomplete or biased information on airline service options.

This notice of proposed rulemaking explains our tentative view that the systems might engage in such conduct if not checked by regulations. As discussed in detail earlier, the systems appear to have market power against airlines, because travel agencies sell seventy percent of all airline tickets, travel agents rely on a system for booking over ninety percent of their domestic tickets and eighty percent of their international tickets, and because most travel agency offices use one system for all or almost all of their bookings.

Since relatively few travel agency offices make extensive use of more than one system, most airlines have had to participate in every system in order to make their services readily saleable by the travel agents using each system. No airline can afford to lose access to a significant number of distribution outlets, as explained elsewhere in this notice. As a result, competition and market forces have not disciplined the price or quality of services offered airline participants. The systems accordingly have established booking fees for airlines that exceed their costs of providing CRS services to the airlines. The systems in contrast compete vigorously for travel agency

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subscribers (with the exception of certain areas dominated by an airline affiliated with a system), and travel agencies often receive CRS services at little or no cost. Some travel agencies obtain large cash bonuses for choosing one system rather than another.

The Internet's growing importance in airline distribution does not seem to have significantly eroded each system's market power thus far. Most airlines continue to obtain a large majority of their revenues from bookings made through travel agencies using a system, both on-line travel agencies and "brick-and-mortar" agencies. As discussed earlier in this notice, many consumers will continue to prefer using travel agents, and airlines will have a limited ability to shift consumers into on-line bookings.

The systems' market power has been reflected in their fees and other terms for airline participation. The fees paid by airlines and other travel suppliers provide about ninety percent of the systems' revenues. Travel agencies, the other main user of system services, produce no more than ten percent of the systems' revenues. The average booking fee in 2000 was $3.54 per segment for airlines using the highest level of CRS service. Booking fees equal about two percent of the revenue obtained by airlines through the systems. This is a significant level of expense in an industry that historically has had thin margins of profitability as a percentage of sales.

Another example of the systems' market power was their recently-discontinued practice of charging booking fees for passive transactions. Travel agents often make passive bookings in order to properly serve their customers, but such bookings usually do not directly benefit the airlines, which nonetheless are charged fees for them. In addition, the record indicates that some travel agents use the passive booking capability to make unnecessary bookings in order to meet the minimum-booking quota established under their productivity pricing formulas. The systems have not taken effective action in response to complaints by participating airlines about abusive transactions. The annual fee liability for passive bookings and other bookings considered unnecessary by participating airlines amounted to $5 million to $10 million for some airlines, and such bookings accounted for eight to ten percent of their total fees. Aloha December 23, 1997 Supp. Comments at 2; Alitalia Comments at 4; Qantas Comments at 4. The systems stopped charging participating airlines for passive bookings after we began this proceeding, but their action does not indicate that participating airlines have any bargaining leverage over the price and terms for participation. Furthermore, because the systems that stopped charging airlines fees for passive bookings raised their other fees, they apparently suffered no loss in revenues.

An additional instance of the systems' use of their market power was the adoption and enforcement of parity clauses by three of the systems before we banned that practice. Parity clauses required a participating airline to participate in a system at at least as high a level as they participated in any other system, whether or not the airline considered the terms and quality of that system's functionality of value. When we were considering our proposal to prohibit parity clauses, Alaska and Midwest Express estimated that compliance with Sabre's demands would increase their CRS costs by about ten percent. We adopted a rule barring systems from enforcing such clauses against airlines that do not own or market a competing system.

System actions like this that increase airline costs over time will lead to higher fares for consumers.

4. Proposed Rules

We will broadly discuss the potential benefits and costs of the major elements of our proposed rules, especially from the perspective of their potential to enhance competition or to remove barriers to competition. One of the main objectives of our regulatory policy is to promote consumer welfare by reducing the cost of airline transportation by proposing and adopting rules that will result in more efficient and competitive airline, CRS, and travel agency industries. We find it preferable to propose and adopt rules that rely upon marketplace forces to ensure and invigorate competition, discipline competitive problems, and inspire technological innovations rather than rules that require direct, detailed, and burdensome oversight by the Department. We hope to promote consumer benefits while imposing few, if any, additional costs on those industries. We are also inviting comments on some proposals that would eliminate such regulatory requirements on the ground that such action would promote the operation of market forces in the CRS business. Preliminarily, we believe that it is possible that our proposed rules may raise costs or lower revenues in varying degrees for some firms in the air travel distribution industry. However, we believe that our overall efforts to promote a more competitive industry will result in greater efficiency and substantial benefits to the traveling public.

The following discussion describes our current beliefs about the desirability of continuing the CRS rules and their applicability to airline and non-airline systems, the use of third-party hardware and software by travel agencies and their ability to use one terminal to access several systems and databases, the mandatory participation requirement of the current rules, display bias, booking fees, the availability of marketing and booking data information, and travel agency contracts. To the extent that we are proposing to readopt existing rules, we will partly rely on the findings and analysis made in our last review of the rules unless we have updated or modified them in this notice. The body of the notice sets forth in detail the basis for our proposed rules. Our intent here is to focus generally on the impact on competition.

(a) Continuing Need for the CRS Rules and Their Applicability

The Department is proposing to readopt the CRS rules with some important modifications. Two such proposed modifications are the elimination of the mandatory participation requirement and the prohibition against discriminatory booking fees. Despite changes in CRS ownership and the growing use of the Internet as a distribution tool, the structural and competitive conditions of the CRS industry that prompted the Department to readopt regulations seem to continue to exist today. Neither the Internet nor other developments in the airline and airline distribution industries have substantially changed those conditions. On-going developments in airline distribution, however, may make the rules largely unnecessary in the future.

Without the rules, we tentatively believe that the systems would have the power and incentive to distort airline competition, to provide inaccurate or misleading information to consumers, and to charge discriminatory fees, as they did prior to the implementation of the current rules. The systems would also engage in contract practices and other actions that would restrict or eliminate the ability of each travel agency to make significant use of any alternative to the principal CRS used by that agency. Alternatives could include a second system, direct links to airline internal reservations systems, and the Internet. Thus, we believe that continued regulation of the CRS industry may be necessary.

A related issue is whether the CRS rules should govern the practices of reservations systems that are not owned or controlled by airlines. In this regard, we are proposing to apply the CRS rules to these non-airline systems as well as to airline systems. As with the airline systems, the non-airline systems apparently have market power over airlines. A non-airline system could use its power to distort airline competition or mislead consumers, and such a system is as likely as the airline systems to engage in practices that would unreasonably restrict the ability of airlines and travel agencies to use alternatives to the systems, thereby increasing airline costs (and thus the fares paid by consumers).

Our proposal to readopt some of the existing rules should not generally impose additional burdens on the systems, since they have been subject to the rules since the Board first promulgated them. Our proposed elimination of the mandatory participation rule and modification of the rule barring discriminatory booking fees should reduce regulatory burdens for the industry. Since the systems have already taken steps to comply with them, the other rules generally should not impose additional costs on the systems. We believe that our modifications should not impose substantial costs on the systems. The systems would have to revise their subscriber contract practices and pricing policies, however. If our proposed revisions lead to greater competition for the systems, the systems' revenues from participating airlines and other travel suppliers could decline. That impact would be offset by lower costs and greater efficiencies for airlines and travel agencies.

Some commenters have maintained that, notwithstanding the relatively minor costs associated with possible incremental changes in the current rules, the existing rules do involve significant costs. They maintain that the existing rules contribute directly to the high costs of airline distribution (in the form of booking fees) by insulating the systems from competitive market forces. In today's market environment, the requirements for mandatory participation and non-discriminatory booking fees have allegedly transformed a purported pro-competitive shield into an anti-competitive one because the rules insulate the systems from having to negotiate with airlines about the terms for participation in a system.

We do not believe that the rules increased the costs of airline distribution. In our view the systems' market power stemmed from the structure of the airline and airline distribution businesses, not the consequences of our rules. We invite the parties, however, to comment on this issue. We are also proposing to end the mandatory participation requirement and the prohibition against discriminatory booking fees, since doing so may enable airlines to obtain better terms for system participation. These changes may give airlines additional flexibility and some bargaining leverage that could be used to obtain more favorable prices and improved service.

(b) The Use of Third-Party Hardware and Software

Most travel agents use personal computers to obtain airline information and make reservations. The systems have commonly provided equipment to their travel agency subscribers, often at little or no cost. Travel agents could easily access any system or travel database or the information and booking services available through the Internet from the same computer.

We adopted a rule giving travel agencies the right to use third-party hardware and software and to access any system or database from their equipment unless the equipment was owned by one of the systems. This rule kept systems from denying their subscribers the ability to use the equipment to access another system or database. Many travel agencies have taken advantage of that rule. In 1999 thirty-six percent of all travel agencies used their own terminals, and about thirty percent of all travel agents used their computer terminals to access the Internet as well as a system.

The systems, however, have commonly offered travel agencies contracts for CRS services with equipment at prices comparable to their contracts for CRS services without equipment. This practice has made it uneconomical for many agencies to purchase their own equipment. Travel agencies that chose the system's equipment are usually denied permission to access another system or airline database from that equipment.

We are proposing to readopt the existing rule on third-party hardware and software and to eliminate the provision that allows a system to block travel agencies from using equipment owned by the system to access other systems and databases.

This proposal (and the related proposals on subscriber contracts) should decrease airline costs, since they would make it practicable for airlines to persuade travel agents to book airline seats by a direct link with the airline's internal reservations system or through an airline website. The airlines' ability to bypass the systems would create competitive discipline for the systems' prices and terms for airline participation. The proposal would also give travel agencies more flexibility in using alternatives to the systems and make them better able to serve their customers. The travel agencies' greater ability to use alternatives to the systems should foster technological innovation, for other firms may develop alternative services that would duplicate many of the functions now provided travel agents by the systems.

The proposal would not keep systems from charging travel agencies for the use of their equipment. The proposal, if effective, would lead to lower revenues for the systems, if travel agents bypass the systems for bookings, since that would weaken the systems' ability to charge supracompetitive booking fees. Travel agencies obtaining their equipment from a system, however, might face higher charges for the equipment.

(c) The Mandatory Participation Rule

Our mandatory participation rule, section 255.7, has required each airline with an ownership interest of five percent or more in a system (a "system owner") to participate in competing systems at the same level at which it participates in its own system, if the other systems' terms for participation at that level are commercially reasonable. We adopted the rule because some U.S. airlines with an ownership interest in one system limited their participation in competing systems, or denied those systems complete information on their fares and services, in order to encourage travel agencies in their hub cities to use their own system. U.S. systems competing overseas at times encountered similar discriminatory treatment from foreign airlines; when such an airline refused to participate in a U.S. system (or participated at a low level or denied important information on fares and services), the U.S. system found it almost impossible to obtain subscribers in that airline's home country.

We are proposing not to readopt this rule. The mandatory participation rule may impose significant costs on some airlines, since it requires them to participate in competing systems when they may prefer for legitimate business reasons not to participate. We are uncertain whether the rule imposes significant costs. The airlines that own or market a system (with one exception) already participate in competing

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systems at a high level. However, the major airlines assert that they would obtain some bargaining leverage against the systems if they were not restricted by the mandatory participation rule and the rules did not bar discriminatory booking fees.

(d) Bias

The systems' display of airline flights and fares has a profound effect on airline competition. Travel agents tend to book one of the first flights displayed on the screen by a system. Changes in CRS display algorithms can increase or decrease an airline's revenues by millions of dollars annually. The systems' conduct demonstrate that a flight's position on a CRS display continues to affect how often travel agents will book customers on that flight. For example, in our last display bias rulemaking, Alaska alleged that Galileo was using a display algorithm designed to benefit its major owner, United, and that the resultant displays would reduce Alaska's annual revenues by about $15 million. Midwest Express estimated its annual revenue loss from the display at several million dollars.

We propose to maintain the rule against display bias to give airlines an opportunity to compete on the merits. This would also enable travel agents to operate efficiently and provide good service to their customers.

(e) Booking Fees

Our current rules prohibit each system from charging unreasonably discriminatory booking fees. The booking fees charged airlines for CRS participation have long been a source of airline complaints. In our past analyses of the industry, we have found that the systems have the market power to charge participating airlines supracompetitive booking fees, since they are not disciplined by competition.

We still believe that high booking fees are probably imposing burdensome costs that most airlines have not been able to avoid and that are likely to increase the fares paid by consumers. We propose to eliminate the prohibition against discriminatory fees but not to attempt to regulate the level of fees. A rule requiring systems to charge only reasonable fees, or fees related to costs, would be costly to administer and difficult to apply. Determining whether a system's fees were reasonable, or justified by system costs, would demand, among other things, an allocation of the system's costs between three users: Airlines and other travel suppliers participating in the system, airlines using the system as their internal reservations system, and travel agency subscribers. Moreover, each system offers different levels of participation and features, each with its own price. We are therefore focusing on rule proposals that would give airlines some opportunity to bypass the systems and to avoid participation in one or more systems. Our proposed ending of the mandatory participation requirement and the prohibition against discriminatory booking fees may enable some airlines at least to bargain for better terms for system participation. These changes may also enable the systems to offer better terms to airlines that might otherwise choose not to participate (or choose to participate only at a low level), like some new-entrant airlines.

(f) Marketing and Booking Data

Section 255.10 of our rules requires each system to make available to all participating airlines on non-discriminatory terms any marketing and booking data that the system chooses to generate from its bookings. In practice, each system sells detailed booking and marketing data that show how many bookings are made by each travel agency on each airline in each markets and on each flight and that show the fare basis used for each booking. The systems make the data available almost on a realtime basis.

Due to the cost of buying and processing the data (often called MIDT tapes), most of the airlines buying the data are the larger airlines. They use the data for marketing research and route development purposes and for implementing their override commission and corporate discount fare programs. They also use the data to deter travel agencies from booking competitors. In addition, each airline's knowledge of the number of bookings and the fare bases for those bookings likely dampens fare competition. In an oligopolistic industry like the airline industry, fare competition often depends on firms in the industry not knowing the prices being charged by their competitors.

We are proposing to restrict the amount of detailed data that can be bought by airlines. We are considering, among other things, whether we should bar airlines from obtaining information on the bookings made by individual travel agencies and information on bookings for airlines that have not consented to the release of such information. Our goal is to allow the systems to sell as much data as possible while minimizing the harm that might be caused airline competition, because we recognize as well that the airlines purchasing the data have made significant investments in developing the ability to process and analyze the marketing and booking information, that the systems have made significant investments of their own, and that the systems obtain large amounts of revenue from selling the data.

Our proposals would benefit consumers by increasing airline competition. Restricting the data available to airlines would benefit travel agencies by enabling them to book customers on smaller airlines without fear that the dominant airline will find out.

The proposals could reduce the systems' revenues, since they would not be able to sell as much data as before, and the airlines buying the data may be unwilling to pay as much since an airline dominating a metropolitan area would no longer be able to use the data to compel travel agencies in that city to reduce or end its bookings on competing airlines.

(g) Subscriber Contracts and Productivity Pricing

Our current rules seek to give travel agencies a reasonable opportunity to switch systems or use multiple systems. The rules therefore prohibit certain types of travel agency contract clauses that unreasonably restrict the use of alternative systems. For example, the rules prohibit systems from treating an agency's failure to meet minimum booking quotas as a breach of contract, since such "minimum use" clauses keep travel agencies from using more than one system. Our current proposals seek to strengthen those rules in several respects.

We are asking the parties to comment on proposals to shorten the maximum permissible term of subscriber contracts. The rules allow systems to offer travel agencies five-year contracts as long as the agencies are also offered contracts with a term of no more than three years. In practice, the systems typically made the three-year contract offers unattractive in order to force travel agencies to choose the five-year contract. Some travel agencies nonetheless have three-year contracts for system services, and more recently systems have been offering the smaller travel agencies (but not larger travel agencies) the option of choosing contracts with shorter terms and no minimum booking requirements.

The long-term subscriber contracts handicap travel agencies, because they cannot switch to another system if the system that they are currently using lowers the quality of its service. Long-term contracts may additionally prevent travel agencies from keeping up with

technological developments. The long-term contracts would not deny subscribers flexibility in responding to technological developments and changes in service quality if they did not deter subscribers from making significant use of more than one system. The contracts' damages clauses, which we are not proposing to regulate, typically require a travel agency to pay substantial damages if it terminates the contract before the end of its term. Long-term contracts can be beneficial insofar as they give the parties some assurance of stability in the contractual relationship, but the systems' contracts with travel agencies seemingly give subscribers little protection against changes in price and quality of service. We are therefore requesting the parties to comment on whether the rules should fix the maximum contract term at three years or adopt the European rule allowing subscribers to terminate a contract on several months notice after the contract has been in effect for one year.

We are also proposing to restrict or prohibit the systems' use of productivity pricing, a pricing structure that gives travel agencies CRS services at discounted rates when they meet a monthly minimum booking quota, and similar provisions that effectively deter travel agencies from using alternative systems and databases. In our last rulemaking we determined to allow the systems to use productivity pricing, unlike minimum use clauses, because productivity pricing appeared to be a rational mechanism for encouraging travel agents to use equipment provided by a system more effectively. Experience has shown that the systems may be using productivity pricing as a tool to keep travel agencies from bypassing their principal system for any significant number of bookings.

Insofar as productivity pricing deters subscribers from using alternatives to their principal system, it would reinforce the systems' existing market power against the airlines. It would thereby enable the systems to continue imposing supracompetitive booking fees on airlines, which leads to higher airfares. Productivity pricing would similarly discourage technological innovation. It would make travel agency operations less responsive to consumer needs and undercut airline competition, because it would keep travel agents from using alternative sources of airline information and booking capabilities, such as airline websites, that might provide better fares for agency customers.

The proposed rule could reduce the systems' marketing costs. The systems' competition for subscribers causes them to offer travel agencies CRS services at little or no cost, and they offer some agencies large cash bonuses in the expectation of capturing the lion's share of the agency's bookings. The systems can afford these incentives because they are able to charge supracompetitive booking fees to airlines and other travel suppliers. The proposal could also lead to lower airline costs by enabling airlines and travel agencies to bypass the systems, a step which would create competitive discipline for booking fees. Ending productivity pricing would, however, reduce the revenues of many travel agencies, especially the larger travel agencies, although at least one travel agency group supports proposals for restricting (but not prohibiting) productivity pricing.

(h) On-Line Distribution Systems

We are not proposing to adopt rules regulating distribution systems that utilize the Internet, although we propose to clarify the application of our full-fare advertising policy insofar as it involves the systems' display of airfares and the listing by travel agencies of their service fees separately from the airfare.

Consumers are increasingly using the Internet for obtaining information on airline services and other travel information and for buying airline tickets. On-line bookings are significantly less costly for airlines, and many consumers see the Internet as the most efficient and convenient way to investigate airline services and to make bookings. Consumers can use airline websites and on-line travel agencies.

The parties seeking rules that would regulate airline distribution over the Internet have focused on two issues: The potential for bias in the displays offered by on-line travel agencies and the airlines' alleged discrimination in favor of Orbitz, the on-line travel agency created by five of the largest airlines, and against the other on-line travel agencies. We have tentatively concluded that it would be premature to adopt rules on these issues. If on-line travel agencies engage in conduct that would deceive consumers, we can and will use our enforcement authority under section 411 to stop any such practices. We have already done so with respect to certain displays of fares by airline and on-line travel agency websites. We are similarly investigating Orbitz to see whether its operations involve potential violations of section 411. If its operations appear to be unlawful, we have the authority to address those issues.

5. Preliminary Summary of the Rules' Costs and Benefits

Our rules should make the airline and CRS businesses more competitive. The traveling public will be the ultimate beneficiary of our proposed rules.

These issues are complex in their potential competitive effects and their likely role as incentives and disincentives. Furthermore, they are so closely tied together that a change designed to correct a problem in one segment of the industry might create a problem in another segment. In some instances, the cost impact might be short-term but the benefits might be realized only over the long run, especially if our rule proposals would result in a more competitive and more efficient distribution system. We therefore believe that our proposals would lead to a more efficient airline distribution system, lower costs for airlines, and greater flexibility for most travel agencies. We ask the parties to provide additional information on the costs and benefits of our proposals.

As discussed in the notice of proposed rulemaking, we have considered alternatives to our proposed rules. In general, we have concluded that more extensive regulation would not provide benefits outweighing its costs and that it would unduly interfere with the flexibility and efficiency of the systems, travel agencies, and airlines. Less extensive regulation, on the other hand, would tend to leave the systems' market power in place, thereby allowing the systems to continue to operate free of market discipline with respect to the services provided airlines.

Initial Regulatory Flexibility Statement

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601 *et seq.*, was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. The act requires agencies to review proposed regulations that may have a significant economic impact on a substantial number of small entities. For purposes of this rule, small entities include smaller U.S. and foreign airlines and smaller travel agencies. This notice of proposed rulemaking sets forth the reasons for our rule proposals and their objectives and legal basis.

Our proposed rules would have a significant economic impact on a substantial number of small business entities. In particular, the rules would affect travel agencies and air carriers, including regional air carriers. The proposal to give travel agencies a greater ability to use third-party hardware and

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software and to use a CRS terminal to access other databases would benefit small business entities. To the extent that airlines can operate more efficiently and reduce their costs, the rules would also affect all small entities that purchase airline tickets, since airline fares may be somewhat lower than they would otherwise be, although the difference may be small.

The travel agency industry is relatively unconcentrated, although the larger agencies have been increasing their market share. The industry, however, remains very competitive.

Our proposed rules should increase the efficiency of the travel agency industry. For example, agencies would have a greater ability to use multiple systems and databases. Travel agencies should be able to obtain better information and booking capabilities on carriers than is possible using a single system. New firms may enter the business of providing information and transaction capabilities on airline services.

The proposal to eliminate certain restrictive subscriber contract provisions—productivity pricing provisions and five-year contracts—would benefit travel agencies by giving them more flexibillty in switching systems and in using multiple systems. As a result, there should be increased competition among the systems for agency subscribers. Since the travel agency industry is so competitive, most of the benefit of improved CRS pricing and services would be passed on to agency customers.

Our proposed rule blocking airlines from obtaining marketing and booking information disclosing bookings by specific travel agencies would be consistent with the agencies' wish for confidential treatment of the data.

We have not adopted several proposals that could raise travel agency costs. If we had adopted a rule limiting the booking fees paid by airlines, the vendors would have increased subscriber charges in order to offset the lower revenues from air carriers. We are not proposing to limit the level of booking fees, however.

Our proposals to prohibit or restrict productivity pricing may lead to increased CRS costs for some travel agencies, but the affected travel agencies would be the larger agencies.

The existing rules affect the operations of smaller travel agencies, primarily by prohibiting certain CRS practices that could unreasonably restrict the travel agencies' ability to use more than one system or to switch systems. The rules prohibit CRS contracts that have a term longer than five years, give travel agencies the right to use third-party hardware and software, and prohibit certain types of contract clauses, such as minimum use and parity clauses, that restrict an agency's ability to use multiple systems. By prohibiting display bias based on carrier identity, the rules also enable travel agencies to obtain more useful displays of airline services.

Our new rule proposals should benefit most airlines. Our rule giving travel agencies the right to access other databases from agency-owned CRS terminals will enable carriers to establish direct links between their internal systems and agencies, thereby making it possible for them to obtain some bookings from agencies without paying booking fees. Our proposal to restrict the kind of marketing and booking data provided by the systems would protect smaller airlines against efforts by large airlines to pressure travel agencies into ending their bookings with competing airlines.

Continuing the rules would protect smaller non-owner airlines from several potential system practices that could injure their ability to operate profitably and compete successfully. No smaller airline has a CRS ownership interest. Market forces do not significantly influence the systems' treatment of airline participants. As a result, if there were no rules, the airlines affiliated with the systems could use them to prejudice the competitive position of other airlines. The rules provide important protection to smaller airlines. For example, by prohibiting systems from ranking and editing displays of airline services on the basis of carrier identity, they limit the ability of each system to bias its displays in favor of its owner airlines and against other airlines. The rules, on the other hand, impose no significant costs on smaller airlines.

Another group of beneficiaries of our proposed rules would be firms providing services and databases that compete with those offered by the systems. Many of these firms are small business entities. Our proposed rules would increase the subscribers' ability to access other databases and give firms providing such information and transaction capabilities a much greater opportunity to market their services.

Our proposed rule contains no direct reporting, record-keeping, or other compliance requirements that would affect small entities. There are no other federal rules that duplicate, overlap, or conflict with our proposed rules.

Interested persons may address our tentative conclusions under the Regulatory Flexibility Act in their comments submitted in response to this notice of proposed rulemaking.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121, we want to assist small entities in understanding the proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult Thomas Ray at (202) 366–4731.

Paperwork Reduction Act

The proposed rules contain no collection-of-information requirements subject to the Paperwork Reduction Act, Public Law 96–511, 44 U.S.C. Chapter 35. *See* 57 FR at 43834.

Federalism Implications

This request for comments will have no substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, dated August 4, 1999, we have determined that it does not present sufficient federalism implications to warrant consultations with State and local governments.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Government Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Consultation and Coordination With Tribal Governments

This proposed rule will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not preempt tribal law. Therefore, it is exempt from the consultation requirements of Executive Order 13175. If tribal implications are identified during the comment period, we will undertake appropriate consultations with the affected Indian tribal officials.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that this is not classified as a "significant energy action" under that order because it is a "significant regulatory action" under Executive Order 12866 and it would not have a significant adverse effect on the supply, distribution, or use of energy.

Environment

The rule would have no significant impact on the environment.

List of Subjects

14 CFR Part 255

Air carriers, Antitrust, Consumer protection, Reporting and record keeping requirements, Travel agents.

14 CFR Part 399

Administrative practice and procedure, Air carriers, Air rates and fares, Consumer protection.

1. 14 CFR Part 255 is proposed to be revised to read as follows:

PART 255—AIRLINE COMPUTER RESERVATIONS SYSTEMS

Sec.
255.1 Purpose.
255.2 Applicability.
255.3 Definitions.
255.4 Display of information.
255.5 Defaults and service enhancements.
255.6 Contracts with participating carriers.
255.7 Contracts with subscribers.
255.8 Use of third-party hardware, software and databases.
255.9 Marketing and booking information.
255.10 Exceptions.
255.11 Prohibition against carrier bias.

Authority: 49 U.S.C. 40101, 40102, 40105, 40113, 41712.

§ 255.1. Purpose.

(a) The purpose of this part is to set forth requirements for the marketing and operation of computer reservations systems used by travel agents and certain related air carrier distribution practices so as to prevent unfair, deceptive, predatory, and anticompetitive practices in air transportation and the sale of air transportation.

(b) Nothing in this part operates to exempt any person from the operation of the antitrust laws set forth in subsection (a) of the first section of the Clayton Act (15 U.S.C. 12).

§ 255.2. Applicability.

This part applies to firms that operate computerized reservations systems for travel agents in the United States, and to the sale in the United States of interstate, overseas, and foreign air transportation and of other airline services through such systems. Each carrier that owns, controls, operates, or markets a system shall ensure that the system's operations comply with the requirements of this part.

§ 255.3. Definitions.

Affiliate means any person controlling, owned by, controlled by, or under common control with a carrier.

Availability means information provided in displays with respect to the seats a carrier holds out as available for sale on a particular flight.

Carrier means any air carrier, any foreign air carrier, and any commuter air carrier, as defined in 49 U.S.C. 40102 (3), 49 U.S.C. 40102 (22), and 14 CFR 298.2(f), respectively, that is engaged directly in the operation of aircraft in passenger air transportation.

Discriminate, discrimination, and *discriminatory* mean, respectively, to discriminate unjustly, unjust discrimination, and unjustly discriminatory.

Display means the system's presentation of carrier schedules, fares, rules or availability to a subscriber by means of a computer terminal.

Integrated display means any display that includes the schedules, fares, rules, or availability of all or a significant proportion of the system's participating carriers.

On-time performance code means a single-character code supplied by a carrier to the system in accordance with the provisions of 14 CFR Part 234 that reflects the monthly on-time performance history of a nonstop flight or one-stop or multi-stop single plane operation held out by the carrier in a CRS.

Participating carrier means a carrier, including a system owner, that has an agreement with a system for display of its schedules, fares, or seat availability, or for the making of reservations or issuance of tickets through a system.

Service enhancement means any product or service offered to subscribers or participating carriers in conjunction with a system other than the basic display of information on schedules, fares, rules, and availability, and the basic ability to make reservations or issue tickets for air transportation.

Subscriber means a ticket agent, as defined in 49 U.S.C. 40102 (40), that holds itself out as a neutral source of information about, or reservations for, the air transportation industry and that uses a system.

System means a computerized reservations system offered to subscribers for use in the United States that contains information about schedules, fares, rules or availability of carriers and provides subscribers with the ability to make reservations, if it charges any other carrier a fee for system services, and if it is used by a subscriber under a formal contract with the system.

System owner means a carrier that holds any of the equity of a system or that has one or more affiliates that hold such an equity interest.

§ 255.4 Display of information.

(a) All systems shall provide at least one integrated display that includes the schedules, fares, rules, and availability of all participating carriers in accordance with the provisions of this section. This display shall be at least as useful for subscribers, in terms of functions or enhancements offered and the ease with which such functions or enhancements can be performed or implemented, as any other displays maintained by the system vendor. No system shall make available to subscribers any integrated display unless that display complies with the requirements of this section.

(1) Each system must offer an integrated display that uses the same editing and ranking criteria for both on-line and interline connections and does not give on-line connections a system-imposed preference over interline connections. This display shall be at least as useful for subscribers, in terms of functions or enhancements offered and the ease with which such functions or enhancements can be performed or implemented, as any other display maintained by the system vendor.

(2) Each integrated display offered by a system must either use elapsed time as a significant factor in selecting service options from the database or give single-plane flights a preference over connecting services in ranking services in displays.

(b) In ordering the information contained in an integrated display, systems shall not use any factors

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directly or indirectly relating to carrier identity.

(1) Systems may order the display of information on the basis of any service criteria that do not reflect carrier identity and that are consistently applied to all carriers, including each system owner, and to all markets.

(2) When a flight involves a change of aircraft at a point before the final destination, the display shall indicate that passengers on the flight will change from one aircraft to another.

(3) Each system shall provide to any person upon request the current criteria used in editing and ordering flights for the integrated displays and the weight given to each criterion and the specifications used by the system's programmers in constructing the algorithm.

(c) Systems shall not use any factors directly or indirectly relating to carrier identity in constructing the display of connecting flights in an integrated display.

(1) Systems shall select the connecting points (and double connect points) to be used in the construction of connecting flights for each city pair on the basis of service criteria that do not reflect carrier identity and that are applied consistently to all carriers, including each system owner, and to all markets.

(2) Systems shall select connecting flights for inclusion ("edit") on the basis of service criteria that do not reflect carrier identity and that are applied consistently to all carriers, including each system owner.

(3) Systems shall provide to any person upon request current information on:

(i) All connecting points and double connect points used for each market;

(ii) All criteria used to select connecting points and double connect points;

(iii) All criteria used to "edit" connecting flights; and

(iv) The weight given to each criterion in paragraphs (c)(3)(ii) and (iii) of this section.

(4) Participating carriers shall be entitled to request that a system use up to five connect points (and double connect points) in constructing connecting flights for the display of service in a market. The system may require participating carriers to use specified procedures for such requests, but no such procedures may be unreasonably burdensome, and any procedures required of participating carriers also must be used by any system owner when it requests or causes its system to use specific points as connect points (or double connect points).

(5) When a system selects connecting points and double connect points for use in constructing connecting flights it shall use at least fifteen points and six double connect points for each city-pair, except that a system may select fewer such connect or double connect points for a city-pair where:

(i) Fewer than fifteen connecting points and six double connect points meet the service criteria described in paragraph (c)(1) of this section; and

(ii) The system has used all the points that meet those criteria, along with all additional connecting points and double connect points requested by participating carriers.

(6) If a system selects connecting points and double connect points for use in constructing connecting flights it shall use every point requested by itself or a participating carrier up to the maximum number of points that the system can use. The system may use fewer than all the connect points requested by itself and participating carriers to the extent that:

(i) Points requested by the system and participating carriers do not meet the service criteria described in paragraph (c)(1) of this section; and

(ii) The system has used all the points that meet those criteria.

(7) If a connecting service is sold under the codes of two or more carriers, each system shall ensure that the service is displayed only once under the code of each carrier.

(d) Each system shall apply the same standards of care and timeliness to loading information concerning participating carriers as it applies to the loading of its own information or the information of a system owner. Each system shall display accurately information submitted by participating carriers. No system owner may use procedures for providing information on its own services to its system that are not available to participating carriers. Each system shall provide to any person upon request all current data base update procedures and data formats.

(e) Systems shall use or display information concerning on-time performance of flights as follows:

(1) Within 10 days after receiving the information from participating carriers or third parties, each system shall include in all integrated schedule and availability displays the on-time performance code for each nonstop flight segment and one-stop or multi-stop single plane flight, for which a participating carrier provides a code.

(2) A system shall not use on-time flight performance as a ranking factor in ordering information contained in an integrated display.

(f) Each participating carrier shall ensure that complete and accurate information is provided each system in a form such that the system is able to display its flights in accordance with this section.

(g) A system may make available to subscribers the internal reservations system display of a system owner or other participating carrier, provided that all participating carriers are offered the ability to make their internal reservations displays available to subscribers, and provided further that a subscriber and its employees may see any such display only by requesting it for a specific transaction.

§ 255.5 Defaults and service enhancements.

(a) In the event that a system offers a service enhancement to a system owner or other participating carrier, it shall offer the enhancement to all participating carriers on nondiscriminatory terms, except to the extent that such service enhancement is still in the development stage or that participation is not immediately feasible for technical reasons, in which event the system shall make it available to all participating carriers as soon as possible.

(b) No system may create or maintain a default in any system feature that automatically prefers one or more system owners or airlines that directly or indirectly market the system over other participating carriers.

§ 255.6 Contracts with participating carriers.

(a) No system may condition participation in its system on the purchase or sale of any other goods or services.

(b) Notwithstanding paragraph (a) of this section, a system may condition participation in its system in the United States on a participating carrier's agreement to participate in the system or affiliated systems in other countries, if the system and such affiliates agree:

(1) That the display of services in such system and its affiliates will not use any factors related to carrier identity and

(2) That any fees charged the carrier shall not be discriminatory.

(c) A system shall provide upon request to carriers current information on its fee levels and fee arrangements with other participating carriers. A system's bill to a participating carrier for any fee must contain adequate information and be on magnetic media so that the participating carrier can determine whether the bill is accurate. At a minimum, booking fee bills must include the following information for each segment: PNR record locator number, passenger name, booking status, agency ARC number, pseudo-city code, CRS transaction date, city-pair information, flight number, flight date, class of service, and type of CRS booking.

(d) No system may require a carrier (other than a carrier that owns or markets, or is an affiliate of a person that owns or markets, a foreign or domestic computerized reservations system) to maintain any particular level of participation or buy any enhancements in its system on the basis of participation levels or enhancements selected by that carrier in any other foreign or domestic computerized reservations system. A system may not compel a carrier that owns or markets, or is an affiliate of a person that owns or markets, a foreign or domestic computerized reservations system, to maintain a particular level of participation or buy an enhancements in its system on the basis of participation levels or enhancements selected by that carrier in another foreign or domestic computerized reservations system, until 14 days after it has given the Department and such carrier written notice of its intent to take such action.

(e) No system may bar a carrier from treating its subscribers differently from subscribers to other systems, if the difference in treatment is based on the system charging higher booking fees or offering poorer service to participating airlines than other systems, unless that carrier owns or markets, or is an affiliate of a person that owns or markets, a foreign or domestic computerized reservations system. No system may require any carrier as a condition to participation to provide it with fares that the carrier has chosen not to sell through any other system.

§ 255.7 Contracts with subscribers.

(a) No subscriber contract may have a term in excess of five years. No system may offer a subscriber or potential subscriber a subscriber contract with a term in excess of three years unless the system simultaneously offers such subscriber or potential subscriber a subscriber contract with a term no longer than three years. No contract may contain any provision that automatically extends the contract beyond its stated date of termination, whether because of the addition or deletion of equipment or because of some other event. No contract may require a subscriber to pay damages for breach that are based upon any estimate or expectation that the subscriber would have used the system for any specified number of bookings during the remainder of the contract term.

(b) No system may directly or indirectly impede a subscriber from obtaining or using any other system. Among other things, no subscriber contract or contract offer may require the subscriber to use a system for a minimum volume of transactions, and no subscriber contract or contract offer may require the subscriber to lease a minimum number or ratio of system components based upon or related to:

(1) The number of system components leased from another system vendor or

(2) The volume of transactions conducted on any other system.

(c) No system may offer a subscriber either a payment of any kind or a discount from its fees for a subscriber's use of system services or equipment that is conditioned upon such subscriber's use of the system for a minimum share of the subscriber's total transactions. No system may directly or indirectly offer a subscriber any financial inducement designed or intended to encourage the subscriber to use a system for a minimum share of the subscriber's total transactions. No system may impose a penalty or liability of any kind on a subscriber as a result of such subscriber's failure to use the system for a minimum share of the subscriber's total transactions.

(d) No system owner or carrier that directly or through an affiliate markets a system in the United States may require use of its system by the subscriber in any sale of its air transportation services.

(e) No system owner or carrier that directly or through an affiliate markets a system in the United States may require that a travel agent use or subscribe to its system as a condition for the receipt of any commission for the sale of its air transportation services.

(f) No system may charge prices to subscribers conditioned in whole or in part on the identity of carriers whose flights are sold by the subscriber.

§ 255.8 Use of third-party hardware, software and databases.

(a) No system may prohibit or restrict, directly or indirectly:

(1) The use of third-party computer hardware or software in conjunction with CRS services, except as necessary to protect the integrity of the system,

(2) The use of a CRS terminal to access directly any other system or database providing information on airline services, or

(3) The use of a back-office accounting system in conjunction with bookings made outside that system.

(b) This section prohibits, among other things:

(1) A system's imposition of fees in excess of commercially reasonable levels to certify third-party equipment;

(2) A system's undue delays or redundant or unnecessary testing before certifying such equipment;

(3) A system's refusal to provide any services normally provided subscribers because of a subscriber's use of third-party equipment or because of the subscriber's using the same equipment for access to both the system and to another system or database;

(4) The system's termination of a subscriber contract because of the subscriber's use of third-party equipment or use of the same equipment for access to the system and to another system or database; and

(5) The pricing of system services for subscribers using third-party hardware and software at a level which is disproportionately high in relation to the pricing of services for subscribers that do not use third-party hardware and software.

(c) A system shall make available to developers of third-party hardware and software on commercially reasonable terms the nonproprietary system architecture specifications and other nonproprietary technical information needed to enable such developers to create products that will be compatible with the system.

(d) Nothing in this section shall be construed to require any system or system owner:

(1) To develop or supply any particular product, device, hardware or software to enable a subscriber to use another system, or

(2) To provide service or support with respect to any product, device, hardware, software, or service not provided to a susbscriber by the system or system owner.

§ 255.9 Marketing and booking information.

(a) Each system shall make available to all U.S. participating carriers on nondiscriminatory terms all marketing, booking, and sales data relating to carriers that it elects to generate from its system. The data made available shall be as complete and accurate as the data provided a system owner.

(b) Each system shall make available to all foreign participating carriers on nondiscriminatory terms all marketing, booking, and sales data relating to bookings on international services that it elects to generate from its system, provided that no system may provide such data to a foreign carrier if the foreign carrier or an affiliate owns, operates, or controls a system in a foreign country, unless such carrier or

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system provides comparable data to all U.S. carriers on nondiscriminatory terms. Before a system provides such data to a foreign carrier, it shall give written notice to each of the U.S. participating carriers in its system that it will provide such data to such foreign carrier. The data made available by a system shall be as complete and accurate as the data provided a system owner.

(c) Any U.S. or foreign carrier receiving data on international bookings from a system must ensure that no one has access to the data except its own personnel and the personnel of any outside firm used for processing the data on its behalf, except to the extent that the system or a system owner provides such access to other persons.

(d) Notwithstanding paragraphs (a) and (b) of this section, no system may sell, and no carrier may buy or obtain, directly or indirectly, any marketing, booking, or sales data relating to carriers generated by a system insofar as the data include data identifying sales by individual subscribers, provided, that a system may sell, and a carrier may buy, data on sales or bookings in which that carrier will provide all or part of the transportation that identifies the individual subscriber making that sale or booking.

(e) Notwithstanding paragraphs (a) and (b) of this section, no system may sell, and no carrier may buy or obtain, directly or indirectly, any marketing, booking, or sales data relating to carriers generated by a system insofar as the data include data generated from sales or bookings on any carrier that has not consented to the inclusion of data on its sales or bookings in the data being sold under this section.

§ 255.10 Exceptions.

(a) The obligations of a system under § 255.4 shall not apply with respect to a carrier that refuses to enter into a contract that complies with this part or fails to pay a nondiscriminatory fee. A system shall apply its policy concerning treatment of non-paying carriers on a uniform basis to all such carriers, and shall not receive payment from any carrier for system-related services unless such payments are made pursuant to a contract complying with this part.

(b) The obligations of a system under this part shall not apply to any foreign carrier that operates or whose affiliate operates an airline computer reservations system for travel agents outside the United States, if that system discriminates against the display of flights of any United States carrier or imposes discriminatory terms for participation by any United States carrier in its computer reservations system, provided that a system must continue complying with its obligations under this part until 14 days after it has given the Department and such foreign carrier written notice of its intent to deny such foreign carrier any or all of the protections of this part.

§ 255.11 Prohibition against carrier bias.

(a) No carrier may induce or attempt to induce a system to create a display that would not comply with the requirements of § 255.4.

(b) No system or carrier may make available to subscribers (by itself or in conjunction with a third party) any computer hardware or software that reorders an integrated system display on the basis of carrier identity.

2. The authority citation for 14 CFR Part 399 continues to read as follows:

Authority: 49 U.S.C. 40101 *et seq.*

3. 14 CFR 399.84 is proposed to be revised to read as follows:

§ 399.84. Price advertising

(a) The Department considers any advertising or solicitation by a direct air carrier, indirect air carrier, or an agent of either, or a system (as defined by 14 CFR 255.3) for passenger air transportation, a tour *i.e.*, a combination of air transportation and ground accommodations), or a tour component (*e.g.*, a hotel stay) that states a price for such air transportation, tour, or tour component to be an unfair or deceptive practice, unless the price stated is the entire price to be paid by the customer to the air carrier, or agent, for such air transportation, tour, or tour component.

(b) In any advertising or solicitation by an agent of an air carrier or indirect air carrier, the agent must separately list its service fees, if any, from the price for the air transportation, tour, or tour component, provided, that any offer to sell specific air transportation, tour, or tour component services must also state the entire price to be paid by the customer to the agent for such air transportation, tour, or tour component, including any service fee charged by the agent, and provided further, that such separate listing of a service fee will be considered an unfair and deceptive practice if the service fee is ad valorem in nature, if the fee exceeds the greater of $20 or ten percent of the price for the air transportation, tour, or tour component, and if the amount of the fee is not prominently disclosed and placed near the advertised fare or price.

Issued in Washington, DC on October 29, 2002.

Norman Y. Mineta,

Secretary of Transportotion.

[FR Doc. 02–28645 Filed 11–12–02; 8:45 am]

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November 15, 2002

Part IV

Securities and Exchange Commission

17 CFR Parts 240, 245 and 249
Insider Trades During Pension Fund Blackout Periods; Proposed Rule

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 240, 245 and 249

[Release No. 34–46778; IC–25795; File No. S7–44–02]

RIN 3235–AI71

Insider Trades During Pension Fund Blackout Periods

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: We are proposing rules to clarify the application and prevent evasion of section 306(a) of the Sarbanes-Oxley Act of 2002. Section 306(a) prohibits the directors and executive officers of an issuer from directly or indirectly purchasing, selling, or otherwise acquiring or transferring any equity security of the issuer during a pension plan blackout period that prevents plan participants or beneficiaries from engaging in equity securities transactions, if the equity security was acquired in connection with the director or executive officer's service or employment as a director or executive officer. In addition, the proposed rules would specify the content and timing of the notice that issuers must provide to their directors and executive officers and to the Commission about a blackout period.

DATES: Comments must be received on or before December 16, 2002.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, United States Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments also may be submitted electronically at the following electronic mail address: rule-comments@sec.gov. To help us process and review your comments more efficiently, comments should be submitted by one method only. All comment letters should refer to File No. S7–44–02; this file number should be included in the subject line if electronic mail is used. Comment letters will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Electronically submitted comment letters will be posted on the Commission's Internet Web site (*http://www.sec.gov*).[1]

[1] We do not edit personal identifying information, such as names or electronic mail addresses, from electronic submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Mark A. Borges, Special Counsel, or Elizabeth M. Murphy, Chief, Office of Rulemaking, Division of Corporation Finance, at (202) 942–2910, at the United States Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0312.

SUPPLEMENTARY INFORMATION: We are proposing new Regulation BTR[2] under the Securities Exchange Act of 1934 ("Exchange Act")[3] and amendments to Exchange Act rules 13a–11[4] and 15d–11[5] and to forms 20–F,[6] 40–F[7] and 8–K[8] under the Exchange Act.

I. Introduction

On July 30, 2002, the Sarbanes-Oxley Act of 2002 (the "Act") was enacted.[9] Section 306(a) of the Act, entitled "Prohibition of Insider Trading During Pension Fund Blackout Periods," expressly prohibits any director or executive officer of an issuer of any equity security, directly or indirectly, from purchasing, selling or otherwise acquiring or transferring any equity security of the issuer during any blackout period with respect to such equity security, if the director or executive officer acquired the equity security in connection with his or her service or employment as a director or executive officer.[10] Section 306(a) further directs us, in consultation with the Secretary of Labor, to issue rules to clarify the application of this provision and to prevent evasion thereof.[11]

Pension plan "blackout periods" occur for a variety of administrative purposes. Their occurrence and timing are often, but not always, within the control of the plan administrator.[12] The most common reasons for imposing a blackout period include:

- Changes in investment alternatives;
- Changes in the frequency of portfolio valuations;
- Changes in plan record-keepers or other service providers;
- Changes in plan trustees; and
- Corporate mergers, acquisitions and spin-offs that affect the pension coverage of groups of participants.[13]

Generally, during a blackout period, plan participants can contribute to their accounts, but cannot switch their account funds between investment options. Understandably, plan participants often are troubled by the prospect of a blackout, which may lock them into their existing investment choices for an extended period of time. Even participants who view their plan accounts as part of an overall long-term investment strategy may be uncomfortable with the possibility of being unable to change investment choices when an unforeseen event, such as a sudden stock price decline, occurs during a blackout period.

In the past year, several highly-publicized cases have demonstrated the catastrophic consequences that can befall employees who have invested substantially all of their retirement savings in their employer's equity securities when the issuer's securities fall sharply during a blackout period.[14] There also have been allegations that, at the time that rank-and-file employees were precluded from selling their employer's equity securities in their individual pension plan accounts, corporate executives were exercising and cashing out their employee stock options and selling other securities acquired through the company's equity compensation plans.

Section 306(a) is intended to address this problem. It prohibits an issuer's directors and executive officers from trading in equity securities of the issuer when a substantial number of the issuer's employees are unable to engage in transactions involving equity securities of the issuer through their individual pension plan accounts. Section 306(a) is designed to address the apparent unfairness of an issuer's directors and executive officers being able to sell their equity securities when the issuer's employees cannot. The statute's trading prohibition should mitigate the risk that corporate executives are putting their personal

[2] 17 CFR 245.100–104.

[3] 15 U.S.C. 78a *et seq.*

[4] 17 CFR 240.13a–11.

[5] 17 CFR 240.15d–11.

[6] 17 CFR 249.220f.

[7] 17 CFR 249.240f.

[8] 17 CFR 249.308.

[9] Pub. L. 107–204, 116 Stat. 745 (2002).

[10] Section 306(a)(1) uf the Act.

[11] Section 306(a)(3) of the Act.

[12] These periods during which plan participants or beneficiaries are not permitted to access their accounts are sometimes also referred to as "lockdowns," transition periods" or "quiet periods." Blackout periods can range from a few days to several months in duration.

[13] For example, in the case of a change in plan record-keepers, the "blackout period" is intended to give the old record-keeper time to perform final reconciliation of participant and beneficiary records and plan assets and to transfer the plan records to the new record-keeper. The new record-keeper then is given time to enter participant and beneficiary accounts into its administration system and to verify the accuracy of the plan records.

[14] See, for example, Ellen E. Schultz & Theo Francis, *Why Company Stock is a Burden for Many—And Less So for a Few*, Wall St. J., Nov. 2, 2001, at A1; Elizabeth Wine, *Enron Faces Lawsuits Over Handling of Pension Plan*, Fin. Times, Nov. 28, 2002, at 30.

interests ahead of their responsibilities to their companies, their employees and their companies' security holders. The required notice should ensure that directors and executive officers of an issuer, as well as investors, are aware of an impending blackout period on a timely basis.

Section 306(a) becomes effective on January 26, 2003, 180 days after the date of enactment of the Act.[15] We are proposing new Regulation Blackout Trading Restriction ("BTR") to clarify the scope and application of section 306(a).[16]

II. Regulation BTR

A. Statutory Trading Prohibition

Section 306(a) of the Act seeks to equalize the treatment of corporate executives and rank-and-file employees with respect to their ability to engage, during a pension plan blackout period, in transactions in an issuer's equity securities that were acquired in connection with their service to, or employment with, the issuer. As proposed, Regulation BTR would clarify, and seek to prevent evasion of, section 306(a)'s statutory trading prohibition as follows:

- Proposed Exchange Act rule 100 would define terms used in the regulation.
- Proposed Exchange Act rule 101 would clarify the operation of the general statutory prohibition on trading by directors and executive officers during a pension plan blackout period and set forth exceptions to the prohibition.
- Proposed Exchange Act rule 102 would set forth exceptions to the definition of "blackout period."
- Proposed Exchange Act rule 103 would clarify the operation of the general statutory private remedy for violation of section 306(a).
- Proposed Exchange Act rule 104 would set forth the content and delivery requirements for the notice that an issuer must provide in connection with a blackout period.

In order to give effect to section 306(a) in a manner consistent with Congressional intent, we propose to use a number of concepts that have been developed under section 16 of the Exchange Act.[17] This approach provides an appropriately broad scope to the statutory trading prohibition of section 306(a), seeks to prevent evasion of the prohibition, takes advantage of a well-established body of rules and interpretations concerning the trading activities of corporate insiders and facilitates enforcement of the trading prohibition of section 306(a) by generally allowing reference to trading reports filed pursuant to section 16(a) of the Exchange Act.[18] A discussion of each of these proposed rules and related issues follows.

B. Discussion

1. Issuers Subject to Trading Prohibition

Section 306(a) of the Act applies to directors and executive officers of issuers as defined in the Act. Section 2(a)(7) of the Act provides that the term "issuer" means an issuer (as defined in section 3(a)(8) of the Exchange Act):[19]

- The securities of which are registered under section 12 of the Exchange Act;[20]
- That is required to file reports under section 15(d) of the Exchange Act;[21] or
- That files, or has filed, a registration statement that has not yet become effective under the Securities Act of 1933 (the "Securities Act")[22] and that has not been withdrawn.[23]

Accordingly, section 306(a) applies, and proposed Regulation BTR would apply, to the directors and executive officers of domestic issuers, foreign private issuers, banks and savings associations, small business issuers and, in rare instances, to registered investment companies.[24]

(a) *Foreign Private Issuers*

Section 306(a) of the Act, by its terms, applies to foreign private issuers.[25] Under proposed Regulation BTR, the statutory trading prohibition of section 306(a) would apply to equity security transactions by directors and executive officers of a foreign private issuer when 50% or more of the participants or beneficiaries in pension plans maintained by the issuer who are located in the United States and its territories and possessions[26] are subject to a blackout period, and the affected employees represent a significant portion of the issuer's plan participants.[27] It would not apply if a blackout period affected only plan participants or beneficiaries located outside the United States.

This approach is consistent with the purposes of the statute. We believe that, in enacting section 306(a), Congress was seeking principally to protect pension plan participants and beneficiaries located in the United States, and generally leaving to foreign authorities issues related to the interests of plan participants located outside the United States. It also conforms to our policy of focusing the protections of the federal securities laws on U.S.-based investors.

Request for Comment

- What impact would section 306(a) and proposed Regulation BTR have on

[15] *See* section 306(c) of the Act.

[16] Section 306(b) of the Act directs the Secretary of Labor to issue initial guidance and a model notice pursuant to section 101(i)(6) of ERISA (requiring 30-day advance notice of a pension plan blackout period to the plan's participants and beneficiaries) not later than January 1, 2003. In addition, the Secretary of Labor must promulgate interim final rules not later than October 13, 2002 (75 days after the date of enactment of the Act). These interim final rules were issued by the Department of Labor on October 11, 2002 (67 FR 64766). For purposes of section 306(b), the term "blackout period" is defined more expansively than in section 306(a) of the Act and includes any period of more than three consecutive business days in which any ability to change investments in any assets, to obtain distributions or to obtain loans is suspended, limited or restricted. In addition, section 306(b) applies to pension plans regardless of whether the plans invest in an issuer's equity securities.

[17] 15 U.S.C. 78p. Because the purposes of section 306(a) of the Act and section 16 are not identical, however, we do not mean to suggest that section 306(a) and proposed Regulation BTR will always be interpreted the same as section 16 if the purposes diverge or the interests of investors require.

[18] 15 U.S.C. 78p(a).

[19] 15 U.S.C. 78c(a)(8). Section 3(a)(8) defines the term "issuer" to mean "any person who issues or proposes to issue any security; except that with respect to certificates of deposit for securities, voting-trust certificates, or collateral-trust certificates, or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors or of the fixed, restricted management, or unit type, the term "issuer" means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which such securities are issued; and except that with respect to equipment-trust certificates or like securities, the term "issuer" means the person by whom the equipment or property is, or is to be, used."

[20] 15 U.S.C. 78*l*.

[21] 15 U.S.C. 78o(d).

[22] 15 U.S.C. 77a *et seq.*

[23] This definition of "issuer" would be set forth in proposed Exchange Act rule 100(k).

[24] Section 306(a) does not, and proposed Regulation BTR would not, apply to entities that do not issue equity securities, such as issuers of asset-backed securities.

[25] For purposes of the Exchange Act, a "foreign private issuer" is defined to mean "any foreign issuer other than a foreign government except an issuer meeting the following conditions: (1) More than 50 percent of the issuer's outstanding voting securities are directly or indirectly held of record by residents of the United States; and (2) any of the following: (i) The majority of the executive officers or directors are United States citizens or residents; (ii) more than 50 percent of the assets of the issuer are located in the United States; or (iii) the business of the issuer is administered principally in the United States." See Exchange Act Rule 3b–4(c) (17 CFR 240.3b–4(c)).

[26] Proposed Regulation BTR would use the term "state" to identify the participants or beneficiaries located in the United States and its territories and possessions. Under proposed Exchange Act rule 100(m), the term "state" would have the meaning set forth in section 3(a)(16) of the Exchange Act (15 U.S.C. 78c(a)(16)). Section 3(a)(16) defines the term "state" to mean "any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, or any other possession of the United States."

[27] *See* section II.B.5(c) below.

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the willingness of foreign private issuers to raise capital in the public U.S. capital markets, to list on U.S. markets and to register their securities under the Securities Act or the Exchange Act?

• Will the application of proposed Regulation BTR to foreign private issuers unduly discourage these issuers from implementing equity-based compensation plans for the benefit of their U.S.-based employees?

• Should section 306(a) and proposed Regulation BTR apply more broadly to foreign private issuers? If so, explain how.

(b) *Banks and Saving Associations*

The statutory trading prohibition of section 306(a) of the Act applies to directors and executive officers of banks and savings associations that satisfy the definition of "issuer" under section 2(a)(7) of the Act. The Act amended section 12(i) of the Exchange Act [28] to make it clear that the federal banking agencies have the authority to administer and enforce various provisions of the Act, including the statutory trading prohibition of section 306(a), with respect to banks and savings associations.[29]

(c) *Small Business Issuers*

Section 306(a) of the Act generally does not distinguish between large and small issuers. Accordingly, section 306(a)'s trading prohibition applies to any entity that satisfies the definition of "issuer" under section 2(a)(7) of the Act without regard to the entity's size, including small business issuers.[30] We note, however, that because many small companies do not file Exchange Act reports or registration statements under the Securities Act, not all small companies would be subject to section 306(a) and proposed Regulation BTR.

Request for Comment

• Is the compliance burden for small business issuers disproportionate to the benefits to be obtained from compliance with section 306(a) and proposed Regulation BTR? If so, should we exclude them from section 306(a) and proposed Regulation BTR? Would some other threshold for exclusion be more appropriate than the small business issuer definition?

• Is there any basis for treating pension plans sponsored by small business issuers differently than other pension plans? If blackout periods imposed on pension plans sponsored by small business issuers were excluded from proposed Regulation BTR, what would be the impact on plan participants?

(d) *Registered Investment Companies*

The statutory trading prohibition of section 306(a) of the Act applies to directors and executive officers of registered investment companies that register a class of securities under section 12 of the Exchange Act or that are required to file reports under section 15(d) of the Exchange Act or that file, or have filed, a registration statement that has not yet become effective under the Securities Act and that has not been withdrawn. Investment companies, however, typically do not have employees because they are externally managed, with investment advisory and other services provided by affiliated and unaffiliated parties pursuant to contracts with the investment company. Without employees, investment companies typically do not maintain employee pension plans, and, as a practical matter, there would generally be no blackout periods triggering the statutory trading prohibition. Nonetheless, there are some cases, for example, internally managed investment companies, where a registered investment company that compensates its officers and directors with its own shares may have employees of its own and the statutory trading prohibition could apply in practice.[31]

Under proposed Exchange Act rule 104, the required notice to the Commission of a blackout period must be filed on form 8–K. However, Exchange Act rules 13a–11(b) [32] and 15d–11(b) [33] exempt registered management investment companies from form 8–K filing requirements. Accordingly, we are proposing an amendment to those rules that would subject such investment companies to form 8–K filing requirements for the sole purpose of meeting any filing obligation that might arise under proposed Regulation BTR.

Request for Comment

• Should we exclude investment companies from proposed Regulation BTR? If so, what would be the rationale for the exclusion?

• With regard to the proposed form 8–K filing requirement, we request public comment on feasible alternatives that minimize the reporting burdens on registered investment companies. In addition, we request comment on the utility to investors of the reports to the Commission in relation to the costs to registered investment companies and their affiliated persons of providing those reports.

2. Persons Subject to Trading Prohibition

Section 306(a) of the Act applies to directors and executive officers of issuers subject to the Act. Proposed Exchange Act rule 100 would define these terms for purposes of section 306(a).

(a) *Directors*

Under proposed Exchange Act rule 100(c)(1), for purposes of section 306(a) of the Act and proposed Regulation BTR, the term "director" would have the meaning set forth in section 3(a)(7) of the Exchange Act.[34] In determining whether an individual would be a director of an issuer for purposes of section 306(a) and proposed Regulation BTR, the individual's title would not be dispositive as to whether he or she is a director.[35] An individual may be a director without holding the title, if he or she functions as a director.[36]

Request for Comment

• Is it appropriate to use the definition in section 3(a)(7) of the Exchange Act to define the term "director" for purposes of section 306(a) and proposed Regulation BTR? If not, what definition should we use?

(b) *Executive Officers*

Under proposed Exchange Act rule 100(h)(1), for purposes of section 306(a) of the Act and proposed Regulation BTR, the term "executive officer" would be defined in the same manner as the term "officer" is defined in Exchange Act rule 16a–1(f).[37] While the Exchange Act rules contain a separate definition of the term "executive officer," [38] we believe that, for purposes of section 306(a) and proposed Regulation BTR, the broader definition in Exchange Act rule 16a–1(f) is more appropriate because of its focus on the policy-making functions of the subject individual.[39] In addition, by using this definition, issuers that are subject to section 16 of the Exchange Act would be better able to coordinate the operation of their insider trading programs and to monitor the individuals subject to the provisions of both section 16 and section 306(a).

Request for Comment

• Is it appropriate to use the definition of the term "officer" in Exchange Act Rule 16a–1(f) to define the term "executive officer" for purposes of section 306(a) and proposed Regulation BTR?

• If not, should we use the definition in Exchange Act rule 3b–7, or some other definition? Should the scope of the definition be broader or narrower? If so, explain why.

(c) *Foreign Private Issuers*

Under proposed Exchange Act rule 100(c)(2), for purposes of section 306(a) of the Act and proposed Regulation BTR, in the case of a foreign private issuer, the term "director" would mean a director who is a management employee of the issuer. Under proposed Exchange Act rule 100(h)(2), for purposes of section 306(a) and proposed Regulation BTR, in the case of a foreign private issuer, the term "executive officer" would mean the principal executive officer or officers, the principal financial officer or officers and the principal accounting officer or officers (or, if there is none, the controller) of the issuer. Because foreign private issuers are not subject to section 16 of the Exchange Act,[40] we believe that it is appropriate to specifically enumerate the directors and executive officers of a foreign private issuer who would be subject to section 306(a) and proposed Regulation BTR rather than relying on a section 16 definition. This would assist foreign private issuers in identifying the individuals who would be subject to section 306(a) and proposed Regulation BTR. In addition, many foreign private issuers have lower-level employee representatives on their boards of directors, and we do not believe that section 306(a) and proposed Regulation BTR should be extended to these individuals or to other non-employee directors of foreign companies.

Request for Comment

• Is it appropriate to use a different definition of the terms "director" and "executive officer" for foreign private issuers than for domestic issuers?

• Is it appropriate to limit the individuals who would be considered the directors and executive officers of a foreign private issuer for purposes of section 306(a) and proposed Regulation BTR? If not, explain why.

• Should the proposed definition cover other executive officers of a foreign private issuer in addition to the three enumerated officers? Should we exclude the principal accounting officer from the definition? In each case, explain why.

• Are there other directors of a foreign private issuer who should be included in the definition other than management directors? If so, explain who and why.

(d) *Termination of Status*

Because of the definitions described above, the statutory trading prohibition of section 306(a) of the Act and the provisions of proposed Regulation BTR would no longer apply to an individual who ceases to be a director or executive officer of an issuer.

3. Securities Subject to Trading Prohibition

Section 306(a) of the Act applies to any equity security of an issuer other than an exempt security.[41] To effectuate the intended purpose of section 306(a) and to prevent evasion of the statutory trading prohibition, proposed Exchange Act rule 100(f) would define "equity security of the issuer" to include any equity security or derivative security relating to an issuer, whether or not issued by that issuer.[42] Thus, section 306(a) and proposed Regulation BTR would apply to any equity security that

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[28] 15 U.S.C. 78*l*(i).

[29] *See* section 3(b)(4) of the Act.

[30] Under regulation S–B (17 CFR 228.10 *et seq.*), a "small business issuer" is defined to mean "a company that meets all of the following criteria: (i) Has revenues of less than $25,000,000; (ii) is a U.S. or Canadian issuer; (iii) is not an investment company; and (iv) if a majority-owned subsidiary, the parent corporation is also a small business issuer. *Provided however*, that an entity is not a small business issuer if it has a public float (the aggregate market value of the issuer's outstanding securities held by non-affiliates) of $25,000,000 or more." *See* item 10(a)(1) of Regulation S–B (17 CFR 228.10).

[31] *See Baker, Fentress & Company, et al.*, Release Nos. 40–23571 (Nov. 24, 1998) (notice) and 40–23619 (Dec. 22, 1998) (order) (permitting internally managed closed-end investment company to provide equity-based compensation, including stock, stock options, and stock appreciation rights to its officers, directors, and employees); *Association of Publicly Traded Investment Funds*, Release Nos. 40–14541 (May 28, 1985) (notice) and 40–14594 (June 21, 1985) (order) ("1985 APTIF Order") (permitting internally managed closed-end investment companies to offer their employees deferred compensation in the form of stock options and stock appreciation rights); *Association of Publicly Traded Investment Funds*, Release Nos. 40–15439 (Nov. 26, 1986) (notice) and 40–15496 (Dec. 23, 1986) (order) (amending 1985 APTIF Order to permit profit-sharing retirement plans qualified under section 401(a) of the Internal Revenue Code). See also *Interpretive Matters Concerning Independent Directors of Investment Companies*, Release No. 40–24083 (Oct. 14, 1999) (release stating that the staff would not recommend enforcement action against registered open-end investment companies that compensate directors with their shares, provided that a fixed dollar value is assigned to directors' services prior to the time that the compensation in shares is payable).

[32] 17 CFR 240.13a–11(b).

[33] 17 CFR 240.15d–11(b).

[34] 15 U.S.C. 78c(a)(7). Section 3(a)(7) defines the term "director" to mean "any director of a corporation or any person performing similar functions with respect to any organization, whether incorporated or unincorporated." As we recently noted, this definition reflects a functional and flexible approach to determining whether a person is a director of an entity. *See* Release No. 34–46685 (Oct. 18, 2002) (67 FR 65325) at n. 7.

[35] As under section 16 of the Exchange Act, in determining whether an advisory, emeritus or honorary director would be a director for purposes of section 306(a) and proposed Regulation BTR, attention would be given to the individual's underlying responsibilities or privileges with respect to the issuer and whether he or she has a significant policy-making role with the issuer. *See* Release No. 34–28869 (Feb. 21, 1991) (56 FR 7242), at section II.A.1. An individual may hold the title "director" and yet, because he or she is not acting as such, not be deemed a director. Release No. 34–26333 (Dec. 2, 1988) (53 FR 49997), at section III.A.2. ("In general, honorary directors need not be treated as directors for purposes of Section 16, because they usually do not take part in formulating and deciding policy issues concerning the issuer, and do not have general access to material, non-public information.")

[36] See the Commission's *omicus curiae* brief filed in *Gryl* versus *Shire Pharmaceuticals Group PLC*, 298 F.3d 136 (2d Cir. 2002). Where the individual does not have the title, however, he or she must have more than access to non-public information about the issuer, and must do more than assist the board in formulating policy.

[37] 17 CFR 240.16a–1(f). Exchange Act rule 16a–1(f) defines the term "officer" to mean "an issuer's president, principal financial officer, principal accounting officer (or, if there is no such accounting officer, the controller), any vice-president of the issuer in charge of a principal business unit, division or function (such as sales, administration or finance), any other officer who performs a policy-making function, or any other person who performs similar policy-making functions for the issuer. Officers of the issuer's parent(s) or subsidiaries shall be deemed officers of the issuer if they perform such policy-making functions for the issuer. In addition, when the issuer is a limited partnership, officers or employees of the general partner(s) who perform policy-making functions for the limited partnership are deemed officers of the limited partnership. When the issuer is a trust, officers or employees of the trustee(s) who perform policy-making functions for the trust are deemed officers of the trust."

[38] See Exchange Act rule 3b–7 (17 CFR 240.3b–7). This definition differs from the definition in Exchange Act rule 16a–1(f) in that it does not expressly include a registrant's principal financial officer or principal accounting officer (or controller). It also does not expressly address officers of a parent corporation or how to identify a registrant's executive officers when a registrant is a limited partnership or a trust.

[39] Thus, the standard for determining whether an individual is an "executive officer" for purposes of section 306(a) of the Act and proposed Regulation BTR would be the same as those applicable under Exchange Act rule 16a–1(f). For example, the term "policy-making functions" would not include policy-making functions that are not significant. Similarly, if pursuant to item 401(b) of Regulation S–K (17 CFR 229.401(b)), an issuer identifies an individual as an "executive officer," it would be presumed that the board of directors of the issuer has made that judgment and that the individuals so identified are executive officers of the issuer for purposes of section 306(a) and proposed Regulation BTR, as are such other persons enumerated in Exchange Act rule 16a–1(f) but not in item 401(b). *See* the note to Exchange Act rule 16a–1(f).

[40] *See* Exchange Act rule 3a12–3 (17 CFR 240.3a12–3).

[41] For purposes of section 306(a) of the Act, proposed Exchange Act rule 100(i) would define the term "exempt security" by reference to the definition in section 3(a)(12) of the Exchange Act (15 U.S.C. 78c(a)(12)).

[42] For example, this would include a security-based swap agreement, a standardized option, a security future on an equity security and a security future on a narrow-based security index. *See*, for example, Release No. 34–28869 (Feb. 8, 1991) (56 FR 7242) and Release No. 33–8107 (Jun. 21, 2002) (67 FR 43234). A "security-based swap agreement" is defined in section 206B of the Gramm-Leach-Bliley Financial Modernization Act of 1999, as amended by H.R. 4577, Pub. L. 106–554, 114 Stat. 2763.

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relates to an equity security of the director or executive officer's company, even if the security is issued by a third party.[43]

(a) *Equity Security*

Under proposed Exchange Act Rule 100(e), for purposes of section 306(a) of the Act and proposed Regulation BTR, the term "equity security" would have the same meaning as in the definition set forth in section 3(a)(11) of the Exchange Act[44] and Exchange Act rule 3a11–1.[45] In the case of foreign issuers, this definition would include depositary shares evidenced by American Depositary Receipts ("ADRs").[46]

Request for Comment

- Is it appropriate to use the definitions in section 3(a)(11) of the Exchange Act and Exchange Act rule 3a11–1 to define the term "equity security" for purposes of section 306(a) and proposed Regulation BTR? If not, what definition should we use?

(b) *Derivative Securities*

Under proposed Exchange Act rule 100(d), for purposes of section 306(a) of the Act and proposed Regulation BTR, the term "derivative security" would have the same meaning as the definition of the term "derivative security" set forth in Exchange Act rule 16a–1(c).[47] As previously indicated, this definition would be interpreted in a manner consistent with the rules and interpretations that have developed under section 16 of the Exchange Act. For example, an interest that may be settled only in cash, but the value of which is denominated or based on an equity security, such as phantom stock, would be considered a derivative security for purposes of section 306(a) and proposed Regulation BTR. Consequently, an acquisition of a "cash-only" derivative security or the exercise, sale or other transfer of the security during a blackout period would be subject to the statutory trading prohibition unless pursuant to an exempt transaction.

Request for Comment

- Is it appropriate to use the Exchange Act Rule 16a–1(c) definition of "derivative security" for purposes of section 306(a) and proposed Regulation BTR? If not, what definition should we use?
- Are there instruments included in the definition of "derivative security" for purposes of section 16 of the Exchange Act that we should exclude from the definition of "derivative security" for purposes of section 306(a) and proposed Regulation BTR?

—Should we exclude an interest that may be settled solely in cash, the value of which is denominated or based on an equity security, from the definition of "derivative security" used for purposes of section 306(a) and proposed Regulation BTR?

- Are there instruments excluded from the definition of "derivative security" for purposes of section 16 of the Exchange Act that we should include in the definition of "derivative security" for purposes of section 306(a) and proposed Regulation BTR?

—Should we include derivative securities without a fixed exercise price in the definition of "derivative security" used for purposes of section 306(a) and proposed Regulation BTR?

4. Transactions Subject to Trading Prohibition

Section 306(a) of the Act prohibits a director or executive officer from purchasing, selling or otherwise acquiring or transferring any equity security of an issuer during a pension plan blackout period, if the equity security was acquired in connection with the director or executive officer's service or employment as a director or executive officer. Thus, the scope of the statutory trading prohibition is limited to:

- An acquisition of equity securities during a blackout period if the acquisition is in connection with service or employment as a director or executive officer; and
- A disposition of equity securities during a blackout period if the disposition involves equity securities acquired in connection with service or employment as a director or executive officer.[48]

Proposed Regulation BTR would clarify how section 306(a) is intended to apply to each of these two categories of transactions.

(a) *"Acquired in Connection with Service or Employment"*

Section 306(a) of the Act limits the statutory trading prohibition to equity securities that a director or executive officer acquires in connection with his or her service or employment as a director or executive officer.[49] To implement this limitation, proposed

[43] This would follow the approach that the Commission has taken under section 16 of the Exchange Act. See Exchange Act rule 16a–1(d) (17 CFR 240.16a–1(d)).

[44] 15 U.S.C. 78c(a)(11). Section 3(a)(11) defines the term "equity security" to mean "any stock or similar security; or any security future on any such security; or any security convertible, with or without consideration, into such a security, or carrying any warrant or right to subscribe to or purchase such a security; or any such warrant or right; or any other security which the Commission shall deem to be of similar nature and consider necessary or appropriate, by such rules and regulations as it may prescribe in the public interest or for the protection of investors, to treat as an equity security."

[45] 17 CFR 240.3a11–1. Exchange Act rule 3a11–1 defines the term "equity security" to mean "any stock or similar security, certificate of interest or participation in any profit sharing agreement, preorganization certificate or subscription, transferable share, voting trust certificate or certificate of deposit for an equity security, limited partnership interest, interest in a joint venture, or certificate of interest in a business trust; any security future on any such security; or any security convertible, with or without consideration into such a security, or carrying any warrant or right to subscribe to or purchase such a security; or any such warrant or right; or any put, call, straddle, or other option or privilege of buying such a security from or selling such a security to another without being bound to do so."

[46] An ADR is a negotiable certificate of interest representing American depositary shares that represent an ownership interest in a specified number or fraction of securities that have been deposited with a depositary. Section 306(a) of the Act and proposed Regulation BTR would apply in the same manner whether the transaction or the benefit plan in question involved ADRs or the deposited securities that they represent. Likewise, section 306(a) and proposed Regulation BTR would apply to purchases, sales, acquisitions and transfers that occur in the United States or outside the United States.

[47] 17 CFR 240.16a–1(c). Exchange Act rule 16a–1(c) defines the term "derivative securities" to mean "any option, warrant, convertible security, stock appreciation right, or similar right with an exercise or conversion privilege at a price related to an equity security, or similar securities with a value derived from the value of an equity security, but shall not include: (1) Rights of a pledgee of securities to sell the pledged securities; (2) rights of all holders of a class of securities of an issuer to receive securities pro rata, or obligations to dispose of securities, as a result of a merger, exchange offer, or consolidation involving the issuer of the securities; (3) rights or obligations to surrender a security, or have a security withheld, upon the receipt or exercise of a derivative security or the receipt or vesting of equity securities, in order to satisfy the exercise price or the tax withholding consequences of receipt, exercise or vesting; (4) interests in broad-based index options, broad-based index futures, and broad-based publicly traded market baskets of stocks approved for trading by the appropriate federal governmental authority; (5) interests or rights to participate in employee benefit plans of the issuer; or (6) rights with an exercise or conversion privilege at a price that is not fixed; or (7) options granted to an underwriter in a registered public offering for the purpose of satisfying over-allotments in such offering."

[48] While section 306(a) of the Act uses the word "acquires" to describe the equity securities that are subject to the statutory trading prohibition, we believe that Congress intended to cover equity securities whenever acquired, whether before or during a pension plan blackout period. The nature of the transactions that are subject to the trading prohibition confirm this conclusion. The language in proposed Exchange Act rule 101(a) reflects this interpretation.

[49] Section 306(a)(1) of the Act expressly limits the scope of the statutory trading prohibition to equity securities that a director or executive officer acquires "in connection with his or her service or employment as a director or executive officer." Accordingly, equity securities of an issuer that are not acquired in connection with service or employment as a director or executive officer would not be subject to section 306(a) or proposed Regulation BTR.

Exchange Act rule 100(a) defines this term to include equity securities acquired by a director or executive officer:

- At a time when he or she was a director or executive officer of the issuer, under a compensatory plan, contract, authorization or arrangement, including, but not limited to, plans relating to options, warrants or rights, pension, retirement or deferred compensation or bonus, incentive or profit-sharing (whether or not set forth in any formal plan document), including a compensatory plan, contract, authorization or arrangement with a parent, subsidiary or affiliate of the issuer;
- At a time when he or she was a director or executive officer of the issuer, as a result of any transaction or business relationship that is described in paragraph (a) or (b) of item 404 of Regulation S–K[50] or, in the case of foreign private issuers, item 7.B of form 20–F[51] (but without application of the disclosure thresholds of such provisions), to the extent that he or she has a pecuniary interest[52] in the equity securities;
- As "director's qualifying shares" or other securities that he or she must hold to meet an issuer's minimum ownership requirements for directors or executive officers; or
- Prior to becoming, or while, a director or executive officer of the issuer if the equity security was acquired as an inducement to service or employment with the issuer or a parent, subsidiary or affiliate of the issuer or as a result of a merger, consolidation or other acquisition transaction involving the issuer.

While it is clear that Congress intended section 306(a) to cover transactions involving equity securities that are acquired through grants and awards under employee stock option, restricted stock and other common equity compensation plans, we believe that the broad language of the statute encompasses any plan, contract, authorization or arrangement that results in the acquisition of issuer equity securities in exchange for the performance of services for, or employment with, an issuer. The definition in proposed Exchange Act rule 100(a)(1) is intended to reach these types of plans and arrangements. This would ensure that issuers do not shift the form of their compensation programs to enable directors and executive officers to evade the application of section 306(a).

The definition in proposed Exchange Act rule 100(a)(2) would include equity securities that have been acquired solely or primarily as a result of an individual's status as a director or executive officer. While this definition may reach equity securities that were, in fact, acquired in arms-length commercial transactions, we believe that inclusion of these transactions is necessary to prevent evasion of the statutory trading prohibition.

The definition in proposed Exchange Act rule 100(a)(3) would include securities that an individual has acquired to satisfy requirements that the individual be a security holder of the issuer in order to serve on the issuer's board of directors (so-called "directors' qualifying shares") and securities that a director or executive officer has acquired to satisfy an issuer's minimum ownership guidelines or requirements for directors or executive officers, including equity securities acquired on the open market for such purposes. Finally, the definition in proposed Exchange Act rule 100(a)(4) would include equity securities acquired at a time when an individual has not yet become a director or executive officer of the issuer, but which are clearly related to his or her service or employment, such as a grant or award made to induce an individual to join an issuer's board of directors or to become an employee of the issuer or as a result of a merger, consolidation or other acquisition transaction involving the issuer.

Request for Comment

- Are the transactions involving the acquisition of equity securities described in proposed Exchange Act rule 100(a) consistent with purposes of section 306(a) and proposed Regulation BTR? Should any of the described transactions be excluded from the definition of "acquired in connection with service or employment"? If so, what would be the rationale for the exclusion?
- Are there any other situations where equity securities acquired by a director or executive officer should be considered "acquired in connection with service or employment" as a director or executive officer?
- For purposes of determining whether equity securities received under a compensatory plan, contract or arrangement were "acquired in connection with service or employment," would it be helpful to reference the existing definition of an "employee benefit plan" under the federal securities laws?
- In the case of equity securities acquired by an individual as result of a merger, consolidation or other acquisition transaction involving the issuer, should such equity securities be considered "acquired in connection with service or employment as a director or executive officer" only where they replace equity securities that otherwise would satisfy the requirements of the definition? For example, where an employee of a target company becomes an executive officer of an acquiring company and, in connection with the merger, consolidation or other acquisition transaction of the two entities, is issued equity securities of the acquiring company to replace equity securities of the target company, should these equity securities received be considered "acquired in connection with service or employment as a director of executive officer" only to the extent that they were otherwise acquired in connection with service or employment as a director or executive officer of the target company?
- Should proposed Regulation BTR contain a "safe harbor" provision specifying acquisitions of an issuer's equity securities by directors and executive officers of the issuer that are not "acquired in connection with service or employment" as a director or executive officer? If so, what acquisitions of an issuer's equity securities should fall within the "safe harbor"?

(b) *Indirect Interests*

The statutory trading prohibition of section 306(a) of the Act applies to both indirect, as well as direct, purchases, sales or other acquisitions or transfers of equity securities of the issuer by a director or executive officer.[53] Similarly, to prevent evasion of the statutory trading prohibition, the definition of "acquired in connection with service or employment" in proposed Exchange Act rule 100(a) would apply to indirect, as well as direct, acquisitions of equity securities for the benefit of a director or executive officer. For purposes of section 306(a), an acquisition or disposition of equity securities would be considered an acquisition or disposition by a director or executive officer if the director or

[50] 17 CFR 229.404(a) and (b).

[51] 17 CFR 249.220f.

[52] For purposes of section 306(a) of the Act, proposed Exchange Act rule 100(l) would define the terms "pecuniary interest" and "indirect pecuniary interest" by reference to the definitions in Exchange Act rule 16a–1(a)(2) (17 CFR 240.16a–1(a)(2)). Exchange Act rule 16a–1(a)(2)(i) (17 CFR 240.16a–1(a)(2)(i)) defines the term "pecuniary interest" to mean "the opportunity, directly or indirectly, to profit or share in any profit derived from a transaction in the subject securities." The definition in proposed Exchange Act rule 100(l) also would encompass the portfolio exclusion of Exchange Act rule 16a–1(a)(2)(iii) (17 CFR 240.16a–1(a)(2)(iii)).

[53] See proposed Exchange Act rule 101(e).

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executive officer has a pecuniary interest [54] in the transaction.

To promote consistency and to simplify compliance, the term "pecuniary interest" would be interpreted in a manner consistent with the rules and interpretations that have developed under section 16 of the Exchange Act. Accordingly, a purchase, sale or other acquisition or transfer of equity securities by immediate family members [55] sharing the same household, a partnership, corporation, limited liability company or trust would be attributable to a director or executive officer for purposes of the statutory trading prohibition of section 306(a)(1) and proposed Exchange Act rule 101(a) if he or she is deemed to have an indirect pecuniary interest [56] in the equity securities in question. An acquisition of equity securities by an immediate family member sharing the same household, a partnership, corporation, limited liability company or trust would be attributable to a director or executive officer for purposes of determining whether the acquisition is "in connection with service or employment" if the acquisition otherwise satisfies the definition in proposed Exchange Act rule 100(a) and he or she is deemed to have an indirect pecuniary interest in the equity securities in question.

Request for Comment

- Is it appropriate to use the definition in Exchange Act rule 16a-1(a)(2) to define the term "pecuniary interest" for purposes of section 306(a) and proposed Regulation BTR? If not, what definition should we use?
—Are the definitions that determine the operation of the definition of the term "pecuniary interest" for purposes of section 16 of the Exchange Act appropriate for determining the application of section 306(a) and proposed Regulation BTR to indirect acquisitions of equity securities?
—Instead, should the application of section 306(a) and proposed Regulation BTR to indirect acquisitions of equity securities use a different standard, such as the beneficial ownership rules under section 13(d) of the Exchange Act,[57] for purposes of determining whether equity securities were acquired "in connection with service or employment" as a director or executive officer? If so, explain why.
—Should the application of section 306(a) and proposed Regulation BTR to indirect acquisitions and dispositions of equity securities use a different standard, such as the beneficial ownership rules under section 13(d) of the Exchange Act, for purposes of determining whether an acquisition or disposition of equity securities during a blackout period is subject to the statutory trading prohibition? If so, explain why.

(c) *Service or Employment Presumption*

Since the statutory trading prohibition of section 306(a) of the Act applies only to equity securities acquired in connection with service or employment as a director or executive officer, the statute, by its terms, does not completely preclude a director or executive officer from engaging in an acquisition or disposition of the equity securities of the issuer during a blackout period. This possibility may present difficulties in determining whether a particular transaction during a blackout period, such as a sale on the open market, involves equity securities that are subject to section 306(a) or other equity securities.

To simplify identification and eliminate tracing the source of equity securities involved in a disposition transaction and to prevent possible evasion of the statute, proposed Exchange Act rule 101(b) establishes an irrebuttable presumption that any equity securities sold or otherwise transferred during a blackout period were acquired in connection with service or employment as a director or executive officer to the extent that the director or executive officer holds such securities, without regard to the actual source of the securities disposed. To avoid an overly-broad application of the presumption, however, in a given blackout period, equity securities held by a director or executive officer that were acquired in connection with service or employment could only count against a single disposition transaction during that blackout period.

For example, if an executive officer owned 1,000 shares of the issuer's common stock, 250 of which were acquired as the result of the exercise of an employee stock option, a sale of 250 shares of common stock during a blackout period would be presumed to be a sale of the option shares and therefore subject to the statutory trading prohibition of section 306(a) and proposed Exchange Act rule 101(a), without regard to the actual source of the shares sold. A subsequent sale of 250 shares of common stock during the same blackout period, however, would not trigger the statutory trading prohibition since the option shares would have been deemed sold in the first transaction.

Request for Comment

- Is it appropriate to presume that any equity securities acquired or disposed of during a blackout period were acquired in connection with service or employment as a director or executive officer? If not, is there an alternative way to determine the source of equity securities acquired or disposed of during a blackout period that effectively prevents evasion of the statutory trading prohibition of section 306(a) and proposed Regulation BTR?
- Where the presumption is applied, should the equity securities acquired in connection with service or employment as a director or executive officer that were deemed sold or otherwise disposed of be excluded for purposes of applying the presumption to a sale or other disposition of equity securities in a subsequent blackout period? If so, explain why.
- Should the presumption that equity securities acquired or disposed of during a blackout period were acquired in connection with service of employment as a director or executive officer be rebuttable? If so, under what circumstances?

(d) *Transitional Matters*

Except as provided in proposed Exchange Act rule 100(a), equity securities acquired by an individual before he or she became a director or executive officer of an issuer would not be subject to section 306(a) of the Act or proposed Regulation BTR.[58] This would exclude from the statutory trading prohibition any equity securities acquired under a plan, contract, authorization or arrangement while the individual was an employee, but not a director or executive officer, of the issuer.

On the other hand, equity securities acquired by an individual in connection with service or employment as a director or executive officer before a company constituted an "issuer" under the definition contained in section 2(a)(7) of the Act would be subject to the statutory trading prohibition of section 306(a) and proposed Regulation BTR. Similarly, equity securities acquired in connection with an individual's service or employment as a director or executive officer before the effective date of the Act would be subject to

[54] *See* n. 52 above.

[55] As defined in Exchange Act rule 16a-1(e) (17 CFR 240.16a-1(e)) to include "any child, stepchild, grandchild, parent, stepparent, grandparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law, and shall include adoptive relationships."

[56] *See* proposed Exchange Act rule 100(l).

[57] 15 U.S.C. 78m(d).

[58] *See* section II.B.4(a) above.

section 306(a) and proposed Regulation BTR.

Request for Comment

- Should we exclude equity securities acquired by an individual before he or she became a director or executive officer of an issuer from section 306(a) of the Act and proposed Regulation BTR?
- Is it necessary or appropriate to treat equity securities acquired by a director or executive officer before a company became an "issuer" as defined in section 2(a)(7) of the Act as equity securities subject to section 306(a) and proposed Regulation BTR to prevent evasion of the statutory trading prohibition?

(e) *Exempt Transactions*

Section 306(a)(3) of the Act permits us to provide appropriate exemptions from the statutory trading prohibition of section 306(a), including purchases pursuant to an automatic dividend reinvestment program or purchases or sales made pursuant to an advance election. Because we believe that there are a number of transactions involving the acquisition or disposition of an equity security of an issuer that do not appear to present the concerns that section 306(a) is intended to remedy, we propose to exempt several types of transactions from the statutory trading prohibition if adequate safeguards exist. Proposed Exchange Act rule 101(c) would exempt:

- Acquisitions of equity securities under dividend or interest reinvestment plans;
- Purchases or sales of equity securities pursuant to a contract, instruction or written plan that satisfies the affirmative defense conditions of Exchange Act rule 10b5–1(c); [59]
- Purchases or sales of equity securities pursuant to certain "tax-conditioned" plans,[60] other than discretionary transactions; [61] and
- Increases or decreases in the number of equity securities held as a result of a stock split or stock dividend applying equally to all equity securities of that class, including a stock dividend in which equity securities of a different issuer are distributed, and acquisitions of rights, such as shareholder or pre-emptive rights, pursuant to a pro rata grant to all holders of the same class of equity securities registered under section 12 of the Exchange Act.

In the case of the acquisition of an equity security pursuant to a dividend or interest reinvestment plan, under proposed Exchange Act rule 101(c)(1) the acquisition would be exempt from the statutory trading prohibition of section 306(a) and proposed Regulation BTR if made under a broad-based plan providing for the regular reinvestment of dividends or interest that does not discriminate in favor of employees of the issuer and operates on substantially the same terms for all plan participants.[62] Similarly, under proposed Exchange Act rule 101(c)(4), an increase or decrease in the number of equity securities held by a director or executive officer resulting from a stock split or stock dividend would be exempt where the transaction applies equally to all equity securities of that class, including a stock dividend in which equity securities of a different issuer are distributed, as would an acquisition of rights, such as shareholder or pre-emptive rights, pursuant to a pro rata grant to all holders of the same class of equity securities registered under section 12 of the Exchange Act.[63]

Because a purchase or sale of equity securities pursuant to a contract, instruction or written plan for the purchase or sale of equity securities of the issuer that satisfies the affirmative defense conditions of Exchange Act rule 10b5–1(c) is made pursuant to an advance election, such a transaction does not necessarily give rise to the problem that section 306(a) is intended to address as long as the individual was not aware of the impending blackout.[64] Under proposed Exchange Act rule 101(c)(2), transactions that satisfy the affirmative defense conditions of Exchange Act rule 10b5–1(c) would be exempt from the statutory trading prohibition of section 306(a) and proposed Regulation BTR as long as the advance election was not made or modified during the blackout period or at the time the director or executive officer was aware of the impending blackout. To be eligible for the exemption, the binding contract must have been executed, the instruction must have been given or the written plan must have been adopted, before the director or executive officer received notice of the imposition of the blackout period. In addition, a director or executive officer must not be aware of the impending blackout at the time the contract is executed, the instruction is given or the plan is adopted, including any modifications to the contract, instruction or plan.

Under proposed Exchange Act rule 101(c)(3), a purchase or sale of equity securities pursuant to a Qualified Plan,[65] Excess Benefit Plan [66] or Stock Purchase Plan [67] would be exempt from the statutory trading prohibition of section 306(a) and proposed Regulation BTR.[68] These plans must satisfy specified provisions of the Internal Revenue Code that are designed to ensure non-discriminatory treatment of plan participants and generally involve automatic, periodic acquisitions of equity securities made pursuant to advance elections. Foreign private issuers may have employee benefit plans that are not required to satisfy the Internal Revenue Code, but instead satisfy foreign tax and other laws. As proposed, these plans would not come within the exemption under proposed Exchange Act rule 101(c)(3).

Generally, the exemption would not extend to "discretionary transactions," [69] such as an intra-plan transfer involving an issuer equity securities fund or a cash distribution funded by a volitional disposition of an issuer equity security, that occurred during a blackout period. Except as described in the following sentence, these transactions would be considered

[59] 17 CFR 240.10b5–1(c).

[60] *See* Exchange Act rule 16b–3(c) (17 CFR 240.16b–3(c)). These include Qualified Plans, Excess Benefit Plans and Stock Purchase Plans as defined in Exchange Act rule 16b–3(b) (17 CFR 240.16b–3(b)). *See* nn. 65, 66 and 67 below.

[61] As defined in Exchange Act rule 16b–3(b)(1) (17 CFR 240.16b–3(b)(1)).

[62] This exemption would be similar to the exemption for dividend and interest reinvestment plans under Exchange Act rule 16a–11 (17 CFR 240.16a–11).

[63] This exemption would be similar to the exemption for stock splits, stock dividends and pro rata rights under Exchange Act rule 16a–9 (17 CFR 240.16a–9).

[64] Awareness of an impending blackout period would be considered awareness of material, nonpublic information that would render the affirmative defense unavailable. *See* Exchange Act rule 10b5–1(c)(1)(i)(A) (17 CFR 240. 10b5–1(c)(1)(i)(A)).

[65] As defined in Exchange Act rule 16b–3(b)(4) (17 CFR 240.16b–3(b)(4)).

[66] As defined in Exchange Act rule 16b–3(b)(2) (17 CFR 240.16b–3(b)(2)).

[67] As defined in Exchange Act rule 16b–3(b)(5) (17 CFR 240.16b–3(b)(5)).

[68] Accordingly, as proposed an acquisition or disposition of equity securities made in connection with death, disability, retirement or termination of employment or a transaction involving a diversification or distribution required by the Internal Revenue Code to be made available to plan participants would be exempt from the statutory trading prohibition of section 306(a) of the Act because these transactions are not discretionary transactions.

[69] 17 CFR 240.16b–3(b)(1). Exchange Act rule 16b–3(b)(1) defines the term "discretionary transaction" to mean "a transaction pursuant to an employee benefit plan that: (i) Is at the volition of a plan participant; (ii) is not made in connection with the participant's death, disability, retirement or termination of employment; (iii) is not required to be made available to a plan participant pursuant to a provision of the Internal Revenue Code; and (iv) results in either an intra-plan transfer involving an issuer equity securities fund, or a cash distribution funded by a volitional disposition of an issuer equity security."

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a purchase or sale of equity securities of the issuer subject to the statutory trading prohibition of section 306(a) and proposed Regulation BTR. Notwithstanding the foregoing, a discretionary transaction that occurred during a blackout period pursuant to an advance election that satisfies the affirmative defense conditions of Exchange Act rule 10b5–1(c) as described above would be eligible for exemption from the statutory trading prohibition of section 306(a) and proposed Regulation BTR.

Request for Comment

- Is it appropriate to exempt the described transactions from the statutory trading prohibition of section 306(a) and proposed Regulation BTR? If not, explain why.
- Should we consider other transactions for exemption from the statutory trading prohibition of section 306(a) and proposed Regulation BTR? If so, what would be the rationale for the exemption?

—Should we exempt a transfer of equity securities without the receipt of consideration, such as a bona fide gift, from the statutory trading prohibition of section 306(a) and proposed Regulation BTR? If so, what would be the rationale for the exemption?

—Should we exempt an acquisition or disposition of equity securities resulting from an involuntary event, such as the death of a director or executive officer or pursuant to an order of a court or other judicial or administrative authority, from the statutory trading prohibition of section 306(a) and proposed Regulation BTR? If so, what would be the rationale for the exemption?

—Should we exempt the closing of a derivative security position as a result of its exercise or conversion, and the acquisition of underlying securities at a fixed exercise price due to the exercise or conversion of a call equivalent position, such as an employee stock option, from the statutory trading prohibition of section 306(a) and proposed Regulation BTR? If so, what would be the rationale for the exemption? Commenters are requested to justify their views in light of the express statutory prohibition against acquiring equity securities of an issuer in connection with service or employment as a director or executive officer during a blackout period. Should such an exemption be limited to situations where the position was established without awareness of an impending blackout period? Should such an exemption be limited to situations where the position would expire, mature or otherwise terminate during the blackout period?

—Should we exempt the closing of a derivative security position as a result of its exercise or conversion, and the disposition of underlying securities at a fixed exercise price due to the exercise of a put equivalent position, from the statutory trading prohibition of section 306(a) and proposed Regulation BTR? If so, what would be the rationale for the exemption? Should such an exemption be limited to situations where the position was established without awareness of an impending blackout period?

- Should we provide an express exemption for the exercise of a put equivalent position during a blackout period written by a director or executive officer before a blackout period that is exercised by a counterparty during the blackout period? Should such an exemption be limited to circumstances where the director or executive officer does not exercise any influence over the timing of the exercise?
- Should we provide an express exemption for a sale or other transfer of the equity security by a director or executive officer that is compelled by the laws or other requirements of an applicable jurisdiction? If so, what should be the scope of the exemption?
- Is it appropriate to exempt a discretionary transaction from the statutory trading prohibition of section 306(a) and proposed Regulation BTR where the transaction occurs pursuant to an advance election that satisfies the affirmative defense conditions of Exchange Act rule 10b5–1(c)? If not, should a discretionary transaction that otherwise would occur during a blackout period be deferred until the end of the blackout period rather than prohibited?
- Should an acquisition or disposition of equity securities made in connection with death, disability, retirement or termination of employment or transactions involving a diversification or distribution required by the Internal Revenue Code to be made available to plan participants be subject to the statutory trading prohibition of section 306(a) and proposed Regulation BTR? If so, explain why.
- Do foreign private issuers have employee benefit plans that are substantially similar to Qualified Plans, Excess Benefit Plans and Stock Purchase Plans that should be exempt from the statutory trading prohibition of section 306(a) and proposed Regulation BTR? If so, what would be the rationale for the exemption?
- Because there may be a variety of employee benefit plans and other compensatory arrangements under foreign law that may not be eligible for the exemption under proposed Exchange Act rule 100(c)(3) because they do not satisfy the requirements of the Internal Revenue Code, should we exempt purchases and sales of equity securities pursuant to compensatory plans and arrangements of a foreign private issuer that are substantially similar to Qualified Plans, Excess Benefit Plans and Stock Purchase Plans? Alternatively, because of the potential number of variations in plans and arrangements, should we address exemptions in this area on a case-by-case basis?

5. Blackout Period

Section 306(a)(4)(A) of the Act defines the term "blackout period" to mean any period of more than three consecutive business days during which the ability of not fewer than 50% of the participants or beneficiaries under all individual account plans maintained by the issuer to purchase, sell or otherwise acquire or transfer an interest in any equity security of such issuer held in such an individual account plan is temporarily suspended by the issuer or by a fiduciary of the plan. Proposed Exchange Act rule 100(b) would clarify the scope of this provision and address the application of this definition to both domestic and foreign private issuers.

Request for Comment

- Should we define the term "blackout period" to be shorter than the three consecutive business days specified in the statute? If so, how long should the period be and why? Are there particular types of abuses that we should consider in determining the appropriate length of the period?

—In view of the fact that the statutory definition will automatically become effective on January 26, 2003, would there be any adverse consequences from having a more restrictive definition in our rules than the definition that will become effective under the statute?

—If we were to define the term "blackout period" to be shorter than three consecutive business days, how should we harmonize the definition with the definition of "blackout period" contained in the interim final rule recently issued by the Department of Labor under section 306(b) of the Act?

(a) *Individual Account Plans*

Section 306(a)(5) of the Act defines the term "individual account plan" by reference to section 3(34) of the Employee Retirement Income Security Act of 1974 ("ERISA").[70] Section 3(34) defines the term "individual account plan" to mean "a pension plan which provides for an individual account for each participant and for benefits based solely upon the amount contributed to the participant's account, and any income, expenses, gains and losses, and any forfeitures of accounts of other participants which may be allocated to such participant's account."[71] This definition encompasses a variety of pension plans, including section 401(k) plans, profit-sharing and savings plans, stock bonus plans and money purchase pension plans. Proposed Exchange Act rule 100(j) would clarify that, for purposes of section 306(a) of the Act, this definition also includes non-qualified deferred compensation arrangements that reflect the elements described in the definition. As provided under section 306(a)(5), proposed Exchange Act rule 100(j) would exclude a one-participant retirement plan from the definition.[72]

Request for Comment

- Does the general statement about non-qualified deferred arrangements provide sufficient guidance as to when these arrangements would be considered "individual account plans" for purposes of section 306(a)(5) and proposed Exchange Act rule 100(j)? If not, what additional guidance should we give in this area?

(b) *50% Test*

Under section 306(a)(4)(A) of the Act, a blackout period occurs only where at least 50% of the participants or beneficiaries under all individual account plans maintained by the issuer are subject to a temporary suspension by the issuer or by a fiduciary of the plan of more than three consecutive business days that prevents the participants or beneficiaries from purchasing, selling or otherwise acquiring or transferring an interest in any equity security of the issuer held in the individual account plans. Proposed Exchange Act rule 100(b) would clarify that, for purposes of making this calculation, the individual account plans "maintained by the issuer" would include only individual account plans in which participants or beneficiaries held or could hold equity securities of the issuer, whether or not the account plan actually contained equity securities of the issuer at the time of the calculation. This would include individual account plans that:

- Permit participants or beneficiaries to invest their plan contributions in the equity securities of the issuer;
- Include an "open brokerage window" that permit participants or beneficiaries to invest in the equity securities of any publicly-traded company, including the issuer;
- Match employee contributions with equity securities of the issuer; or
- Reallocate forfeitures that included equity securities of the issuer to the remaining plan participants.

The proposed rule also would provide that, for purposes of determining the individual account plans "maintained by the issuer," the rules under section 414(b), (c), (m) and (o) of the Internal Revenue Code[73] with respect to entities treated as a single employer with respect to an issuer would apply.[74] The "single employer" rules of section 414 are designed to aggregate the employees of an affiliated group of businesses to ensure compliance with the limitations on the absolute and relative amounts of benefits that can be provided to individual employees or groups of employees under tax-qualified employee benefit programs.[75] While each business within a controlled group[76] may have its own employee benefit plan or plans, and each plan can provide different benefit structures, profiles of the covered employee groups, including the compensation and benefit levels for each participant, must be maintained and monitored to enable the single employer, deemed to exist for the controlled group, to determine that the plans are in compliance with the applicable requirements. We believe that these rules reflect the appropriate principles for determining the individual account plans of an issuer and its parent, subsidiary and affiliated entities that should be aggregated for purposes of determining whether a blackout period affects 50% or more of the individual account plans maintained by an issuer.

Request for Comment

- Is it necessary or appropriate to apply the "single employer" rule of section 414(b), (c), (m) and (o) of the Internal Revenue Code for purposes of determining the individual account plans "maintained by the issuer" for purposes of the 50% test? If not, why not? Should some of the provisions be applied, but not others? If so, which ones? For example, is it necessary or appropriate to apply the rules under section 414(m), which address whether separate service organizations constitute an affiliated group, for purposes of identifying individual account plans maintained by the issuer?
- Is there an alternative "control group" concept that we should use to determine the individual account plans that are to be considered "maintained by the issuer" for purposes of the 50% test? For example, would it be appropriate to use the definition of an "affiliate" set forth in section 407(d)(7) of the Employee Retirement Income Security Act of 1974 to determine which individual account plans are "maintained by the issuer" for purposes of section 306(a)(4)(A)?
- Is it necessary or appropriate to include individual account plans that merely provide for an "open brokerage window" that permit participants or beneficiaries to invest in the equity securities of any publicly-traded company in the description of individual account plans that should be considered in the 50% test? If not, explain why.

(c) *Application of 50% Test*

For purposes of section 306(a) of the Act, once an issuer identified the relevant individual account plans for purposes of the 50% test, it would apply the test by comparing the number of participants or beneficiaries located in the United States and its territories and possessions under all individual account plans maintained by the issuer that will be subject to a temporary

[70] 29 U.S.C. 1002(34).

[71] *Id.*

[72] A "one-participant retirement plan" is defined under section 101(i)(8)(B) of ERISA (29 U.S.C. 1021(i)(8)(B)) to mean "a retirement plan that: (i) On the first day of the plan year: (I) covered only the employer (and the employer's spouse) and the employer owned the entire business (whether or not incorporated), or (II) covered only one or more partners (and their spouses) in a business partnership (including partners in an S or C corporation (as defined in section 1361(a) of the Internal Revenue Code of 1986)), (ii) meets the minimum coverage requirements of section 410(b) of the Internal Revenue Code of 1986 (as in effect on the date of the enactment of this paragraph) without being combined with any other plan of the business that covers the employees of the business, (iii) does not provide benefits to anyone except the employer (and the employer's spouse) or the partners (and their spouses), (iv) does not cover a business that is a member of an affiliated service group, a controlled group of corporations, or a group of businesses under common control, and (v) does not cover a business that leases employees."

[73] 26 U.S.C. 414(b), (c), (m) and (o). Section 414(b) provides that, for purposes of various provisions of the Internal Revenue Code, all employees of all corporations that are members of a "controlled group" of corporations are to be treated as employed by a single employer. Section 414(c) provides "single-employer" treatment for certain groups of partnerships and proprietorships under common control, while section 414(m) provides "single-employer" treatment for organizations that provide services for one another.

[74] See proposed Exchange Act rule 100(b)(3).

[75] These include prohibitions against discriminating in favor of highly compensated employees, vesting requirements and benefit limits.

[76] A "controlled group" of corporations is defined in section 1563(a) of the Internal Revenue Code (26 U.S.C. 1563(a)).

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suspension of trading in such equity securities to the overall number of participants or beneficiaries located in the United States and its territories and possessions under all individual account plans maintained by the issuer.[77] If this percentage is at least 50%, the statutory trading prohibition would apply to the directors and executive officers of a domestic issuer.

In the case of a foreign private issuer, however, a concurrent second calculation would be applied to determine if the statutory trading prohibition was triggered. This calculation would compare the number of participants or beneficiaries located in the United States and its territories and possessions under all individual account plans maintained by the issuer subject to the temporary suspension of trading in such equity securities to the overall number of participants or beneficiaries under all individual account plans maintained by the issuer worldwide.[78] If this percentage is greater than 15% and the concurrent 50% test also is met, the statutory trading prohibition would apply to the directors and executive officers of the foreign private issuer. As previously discussed, although this second calculation is not reflected in section 306(a), we believe that such a test should be applied to ensure that the statutory trading prohibition is limited to the directors and executive officers of foreign private issuers where a significant portion of their overall plan participants or beneficiaries are located in the United States.

The application of these principles is illustrated by the following examples:

- *Example 1.* Company X is a foreign private issuer with 100,000 employees worldwide who participate in pension plans maintained by the issuer. 30,000 participants are located in the United States. A fiduciary of the issuer's U.S. pension plan initiates a blackout that will affect 16,000 of the U.S. participants. Since plan participants located in the United States who are subject to the blackout comprise 50% or more of the total number of participants located in the United States (16,000/30,000), and plan participants located in the United States who are subject to the blackout represent more than 15% of the total number of plan participants worldwide (16,000/100,000), the statutory trading prohibition of section 306(a) would apply to the foreign private issuer's directors and executive officers.
- *Example 2.* Company X is a foreign private issuer with 100,000 employees worldwide who participate in pension plans maintained by the issuer. 10,000 participants are located in the United States. A fiduciary of the issuer's U.S. pension plan initiates a blackout that will affect 7,000 of the U.S. participants. Although plan participants located in the United States who are subject to the blackout comprise 50% or more of the total number of participants located in the United States (7,000/10,000), because plan participants located in the United States who are subject to the blackout represent less than 15% of the total number of plan participants worldwide (7,000/100,000), the statutory trading prohibition of Section 306(a) would not apply to the directors and executive officers of the foreign private issuer.

Request for Comment

- Is it appropriate to limit the scope of the definition of the term "blackout period" to situations where the participants or beneficiaries under individual account plans that are affected by the temporary trading suspension represent 50% or more of the participants or beneficiaries under individual account plans located in the United States and its territories and possessions?
- Is it appropriate to limit the scope of the definition of the term "blackout period" in the case of a foreign private issuer to situations where the participants or beneficiaries located in the United States under all individual account plans maintained by the issuer subject to the temporary trading suspension also represent a significant portion of the overall number of the participants or beneficiaries under all individual account plans maintained by the issuer worldwide? If so, should the threshold for applying section 306(a) be higher or lower (such as 20% or 10%) than 15% of worldwide individual account plan participants or beneficiaries? If not, what would be the rationale for applying section 306(a) to a broader group of foreign private issuers?
- What would be an appropriate measurement date for determining the number of participants or beneficiaries in an individual account plan for purposes of conducting the 50% test? Should this number be determined as of the end of the most recent plan fiscal year, the end of the most recent fiscal quarter or some other date? What are the relevant considerations in selecting an appropriate measurement date?
- Is it necessary or appropriate for the proposed rules to ensure that the 50% test considers plan participants or beneficiaries who are United States citizens or residents who are on temporary assignment abroad?
- Would it be helpful for us to provide additional examples of the application of the 50% test? If so, are there specific fact patterns that we should address in the examples?

(d) *Exceptions to Definition of Blackout Period*

Section 306(a)(4)(B) of the Act expressly excludes two categories of transactions from the definition of "blackout period." These exceptions include:

- A regularly scheduled period in which the participants and beneficiaries may not purchase, sell or otherwise acquire or transfer an interest in any equity security of an issuer, if such period is:

—Incorporated into the individual account plan; and

—Timely disclosed to employees before they become participants under the individual account plan or as a subsequent amendment to the plan; and

—Any suspension described in the general definition of "blackout period" that is imposed solely in connection with persons becoming participants or beneficiaries, or ceasing to be participants or beneficiaries, in an individual account plan by reason of a corporate merger, acquisition, divestiture or similar transaction involving the plan or plan sponsor.[79]

Section 306(a)(4)(B) further directs us to prescribe regulations to implement these exceptions. Accordingly, proposed Exchange Act rule 102 clarifies the application of the exceptions.[80] Proposed Exchange Act rule 102(a) would address the exception for regularly scheduled blackout periods by providing that the requirement that the blackout period be incorporated in the individual account plan could be satisfied by including a description of the regularly scheduled blackout period, including the plan transactions to be suspended during, or otherwise affected by, the blackout and its frequency and duration, in the documents or instruments under which the plan operates. The proposed rule also would provide that disclosure of the blackout period to an employee would be timely if the employee was provided notice of the blackout period at any time prior to when, or within 30 calendar days after, he or she formally enrolled in the plan, or, in the case of a subsequent amendment to the plan, within 30 calendar days after the adoption of the amendment. The notice could be in any graphic form that is reasonably accessible to the intended recipient.

In the case of a blackout imposed to consolidate plans following a merger acquisition, divestiture or similar transaction, proposed Exchange Act rule 102(b) would clarify that the blackout period would not trigger the statutory trading prohibition of section 306(a) if its principal purpose is to enable individuals to become participants or beneficiaries in the plan, or to terminate participation in the plan, even though the blackout also is used to effect other administrative actions that are incidental to the admission or withdrawal of plan participants or beneficiaries. In addition, the proposed rule would provide that the exception would be available only with respect to the participants or beneficiaries of the acquired or divested entity.

Request for Comment

- Is it necessary or appropriate to clarify in proposed Exchange Act rule 102(a) that a regularly scheduled blackout period will be considered "incorporated" into an individual account plan if it is included in any of the documents or instruments, such as the summary plan description, under which the account plan operates? If so, explain why.
- Is it necessary or appropriate to clarify in proposed Exchange Act rule 102(a) that disclosure of a regularly scheduled blackout period to an employee would be timely if the employee was provided notice of the blackout period at any time prior to when, or within 30 calendar days after, he or she formally enrolls in the plan? If not, explain why. Should the timeliness of disclosure be measured with respect to an event other than formal enrollment in an individual account plan?
- Is it necessary or appropriate to clarify in proposed Exchange Act rule 102(a) that disclosure of a regularly scheduled blackout period to an employee would be timely in the event of a subsequent amendment to an individual account plan if the employee was provided notice of the blackout period within 30 calendar days after the adoption of the amendment? If not, explain why. Should the timeliness of disclosure be measured with respect to an event other than formal enrollment in an individual account plan?
- Is it necessary or appropriate to clarify in proposed Exchange Act rule 102(a) the method by or form in which an issuer may timely disclose to employees the existence of a regularly scheduled blackout period? If so, explain why.
- Should the exception in proposed Exchange Act rule 102(a) contain a *de minimis* threshold that would not cause the loss of the exception in the event that some plan participants or beneficiaries failed to receive timely notice of the regularly scheduled blackout period? If so, should the *de minimis* threshold be a number (such as fewer than 5 or 10) or a percentage (such as fewer than 1% or 2%) of participants or beneficiaries that have individual account plans? What should the threshold be?
- Is it necessary or appropriate to clarify in proposed Exchange Act rule 102(b) that a blackout period following a merger, acquisition, divestiture or similar transaction would be excepted if it principally involves the enrollment of individuals in an individual account plan? If not, why not? Should we identify the type of administrative activities that would be considered incidental to the principal purpose of the blackout period?
- Is it necessary or appropriate to limit the exception in proposed Exchange Act rule 102(b) to the participants or beneficiaries of the acquired or divested entity? If not, why not?

6. Remedies

Section 306(a) of the Act contains two distinct remedies. First, a violation of the statutory trading prohibition of section 306(a) is subject to a possible Commission enforcement action.[81] In addition, where a director or executive officer realizes a profit from a prohibited transaction during a blackout period, an issuer, or a security holder of the issuer on its behalf, may bring an action to recover the profit.[82] Accordingly, liability under section 306(a) of the Act is not limited solely to recovery of the profit realized by a director or executive officer from a prohibited transaction.[83] Proposed Regulation BTR embodies both of these contemplated remedies.

(a) *Commission Enforcement*

Section 306(a)(1) of the Act provides that it is unlawful for a director or executive officer of an issuer of any equity security, directly or indirectly, to purchase, sell or otherwise acquire or transfer any equity security of the issuer during a blackout period with respect to the equity security if the director or executive officer acquired the equity security in connection with his or her service or employment as a director or executive officer. This express prohibition against the trading of equity securities during a blackout period, as contemplated by section 306(a)(1) of the Act, provides the necessary predicate for enforcement actions and sanctions under the Exchange Act.[84]

Consequently, a director or executive officer who violates the statutory trading prohibition of section 306(a) would be subject to possible civil injunctive actions, cease-and-desist proceedings, civil penalties and all other remedies available to the Commission to redress violations of the Exchange Act.[85] Under appropriate circumstances, a director or executive officer also could be subject to possible criminal liability.[86]

(b) *Private Right of Action*

Section 306(a)(2) of the Act provides that any profit realized by a director or executive officer subject to the statutory trading prohibition of section 306(a)(1) of the Act inures to, and is recoverable by, the issuer, irrespective of the director or executive officer's motive or intention upon entering into the transaction. This remedy reflects a strict standard of liability for prohibited transactions that is similar to the standard that forms the basis for a private right of action under section 16(b) of the Exchange Act.[87]

Under section 306(a)(2)(B) of the Act, the issuer may institute an action to recover a director or executive officer's realized profits from a prohibited transaction at law or in equity in any court of competent jurisdiction. If the issuer fails or refuses to bring an action within 60 days after the date of request, or fails diligently to prosecute the action

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[77] *See* proposed Exchange Act rule 100(b)(1).

[78] *See* proposed Exchange Act rule 100(b)(2).

[79] *See* section 306(a)(4)(B)(i) and (ii) of the Act.

[80] These clarifications are necessary to resolve ambiguities that might otherwise require literal compliance with the conditions of the exceptions in order to avoid having the temporary trading suspension constitute a blackout period for purposes of section 306(a)(1).

[81] *See* sections 3(b)(1) and 306(a)(1) of the Act.

[82] *See* section 306(a)(2)(A) and (B) of the Act.

[83] In this respect, section 306(a) of the Act differs from section 16(b) of the Exchange Act, where the statute provides solely a private right of action (and profit disgorgement can be the only consequence). In addition, a transaction that is subject to the statutory trading prohibition of section 306(a) may, under some circumstances, also result in the operation of the "short-swing profits" recovery provision of section 16(b) of the Exchange Act and form the basis for an action under Exchange Act rule 10b–5 (17 CFR 240.10b–5).

[84] Section 3(b)(1) of the Act provides that "[a] violation of any provision of the Act, any rule or regulation of the Commission issued under this Act, or any rule of the Board shall be treated for all purposes in the same manner as a violation of the Securities Exchange Act of 1934 * * *" or the rules and regulations issued thereunder, consistent with the provisions of this Act, and any such person shall be subject to the same penalties, and to the same extent, as for a violation of that Act or such rules and regulations." Thus, a violation of section 306(a) of the Act, although not codified in the Exchange Act, would be subject to the same penalties as an Exchange Act violation.

[85] *See* sections 21 and 21C of the Exchange Act (15 U.S.C. 78u and 78u–3).

[86] *See* section 32 of the Exchange Act (15 U.S.C. 78ff).

[87] As under section 16(b) of the Exchange Act, issues of scienter and materiality, which are necessary elements of an anti-fraud action under the Exchange Act, would not be relevant to a private action under section 306(a) and proposed Regulation BTR.

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thereafter, the owner of any equity security of the issuer may bring such an action in the name, and on behalf of, the issuer.

Because section 306(a) protects pension plan participants or beneficiaries, we believe that Congress intended to provide standing to bring an action to all holders of the equity securities of the issuer, including plan participants and beneficiaries who hold equity securities of the issuer in their individual account plans, as of the date of the subject transaction. Proposed Exchange Act rule 103 would reflect this approach. As set forth in section 306(a)(2)(B), no suit may be brought more than two years after the date on which the recoverable profits were realized.

Request for Comment

- Where a transaction involving the equity securities of an issuer gives rise to both private right of action under section 306(a) and section 16(b) of the Exchange Act, should a recovery under one provision be offset against a recovery under the other provision? If so, explain why.
- Similarly, where a transaction involving the equity securities of an issuer gives rise to both private right of action under section 306(a) and an action under Exchange Act rule 10b–5, should a recovery under one provision be offset against a recovery under the other provision? If so, explain why.

As noted above, the private right of action under section 306(a)(2) serves a remedial purpose that is similar to the purpose of section 16(b). While foreign private issuers would be subject to section 306(a)(2), they are not subject to the profit recovery and other provisions of section 16. This treatment reflects foreign private issuers' concerns relating to the strict liability nature of section 16(b), as well as jurisdictional issues that would likely arise in connection with applying section 16(b) to offshore transactions involving the equity securities of foreign private issuers by non-U.S. resident directors and officers.

Request for Comment

- Should foreign private issuers be exempt from the private right of action under section 306(a)(2)? If so, what are the jurisdictional and policy reasons that would support such an exemption? Are there other ways to address the jurisdictional issues and other matters relating to foreign private issuers in this area? Is the potential for Commission enforcement action under section 306(a) a sufficient remedy with respect to foreign private issuers?

(c) *Realized Profits*

For purposes of section 306(a) of the Act, a security holder could initiate a private action only if a director or executive officer realized a profit as a result of a purchase, sale or other acquisition or transfer of an equity security during a blackout period. As under section 16(b) of the Exchange Act, this concept of realized profit would mean that the director or executive officer received a direct or indirect pecuniary benefit from the transaction.[88] The question of whether a transaction has resulted in the realization of recoverable profits is complex. It is further complicated where the prohibited transaction is a purchase or other acquisition of equity securities during a blackout period.

There are several possible ways to calculate realized profits. In the case of a sale or other disposition of equity security during a blackout period, this includes:

- The difference between the purchase or acquisition price, if any, of the equity security and (a) the actual amount received in the case of a sale or (b) the market value of the equity security at the time of transfer in the case of a transfer without receipt of consideration;
- The difference between the most recent purchase or acquisition price, if any, of an equity security acquired in connection with service or employment as a director or executive officer before the commencement of the blackout period and (a) the actual amount received in the case of a sale or (b) the market value of the equity security at the time of transfer in the case of a transfer without receipt of consideration;
- The difference between the lowest purchase or acquisition price, if any, of an equity security acquired in connection with service or employment as a director or executive officer during a specified period before the commencement of the blackout period and (a) the actual amount received in the case of a sale or (b) the market value of the equity security in the case of a transfer without receipt of consideration;
- The difference between the average market value of the equity securities of the issuer during a specified period before the commencement of the blackout period and (a) the actual amount received in the case of a sale or (b) the market value of the equity security at the time of transfer in the case of a transfer without receipt of consideration; and
- The difference between the actual amount received as a result of the sale or other transfer of the equity security and the market value of the equity securities of the issuer on the first date after the end of the blackout period.[89]

In the case of a purchase or other acquisition of an equity security during a blackout period, this includes:

- The difference between the purchase or acquisition price, if any, of the equity security and (a) the actual amount received in the case of a sale of the equity security or (b) the market value of the equity security at the time of transfer in the case of a transfer without receipt of consideration;
- The difference between the purchase or acquisition price, if any, of the equity security and the market value of the equity securities of the issuer on the first date after the end of the blackout period;
- The difference between the purchase or acquisition price, if any, of the equity security and (a) the actual amount received or (b) the market value of the equity security at the time of transfer without receipt of consideration in the case of a sale or other transfer of any equity security (whether or not the security purchased or acquired) after the end of the blackout period; and
- The difference between the purchase or acquisition price, if any, of the equity security and the earlier of (a) the actual amount received upon the sale or other disposition of the equity security or (b) the market value of the equity security on the first anniversary of the last day of the blackout period.

In view of the complexity associated with this issue, we are not proposing a specific approach for calculating realized profits at this time. Instead, we solicit comment on the various approaches described above, as well as any other approaches that would be consistent with the purposes of section 306(a).

Request for Comment

- Should we propose a specific formula for the calculation of "realized profits" that are recoverable under the private right of action provided in section 306(a)?

—If so, what would be an appropriate calculation for a transaction involving a sale or other transfer of equity securities during a blackout period?

—Similarly, what would be an appropriate calculation for a transaction involving a purchase or other acquisition of equity securities during a blackout period? In either case, explain how the suggested calculation specifically relates to the ability to profit by trading during the blackout period.

- Should we refrain from providing guidance, and instead leave profit calculations to the courts based on the facts and circumstances of the particular case?

[88] *See* Exchange Act rule 16a–1(a)(2)(i) (17 CFR 240.16a–1(a)(2)(i)). *See* also *Feder* v. *Frost*, 220 F.3d 29, 34 (2d Cir. 2000).

[89] In addition, where the prohibited transaction involves the disposition of a derivative security, the profit recovery guidelines of Exchange Act rule 16b–6(c) and (d) (17 CFR 240–16b–6(c) and (d)) could possibly apply.

7. Notice

Section 306(a)(3) of the Act requires an issuer to provide timely notice to its directors and executive officers and to the Commission of the imposition of a blackout period that would trigger the statutory trading prohibition of section 306(a)(1). Proposed Exchange Act rule 104 would clarify how issuers would satisfy this statutory directive.

(a) *Notice Requirement*

Proposed Exchange Act rule 104(a) would reflect the general requirement of section 306(a)(3) of the Act that, in any case in which a director or executive officer of an issuer of any equity security is subject to the statutory trading prohibition of section 306(a) and proposed Regulation BTR, the issuer of the equity securities must provide notice of the blackout period to the director or executive officer, as well as to the Commission.[90]

(b) *Content of Notice*

The required content of the notice would be set forth in proposed Exchange Act rule 104(b)(1).[91] As proposed, the notice would include the following information:

- The reason or reasons for the blackout period;
- A description of the plan transactions to be suspended during, or otherwise affected by, the blackout period;
- The description of the class of equity securities subject to the blackout period;
- The actual or expected beginning and ending dates of the blackout period; and
- The name, address and telephone number of the person designated by the issuer to respond to inquiries about the blackout period, or, in the absence of such a designation, the issuer's human resources director or person performing equivalent functions.

An indication of the beginning and ending dates of the blackout period is intended to enable directors and executive officers to factor the anticipated duration of the blackout into their pre-blackout period investment activities and decisions and to apprise them as to when they would be able to recommence their trading activities. Given the potential impact of a blackout period on a director or executive officer's ability to engage in transactions involving equity securities of the issuer, it is likely that they may have questions about a blackout period. For this reason, the proposed notice would have to contain the name, address and telephone number of the person designated by the issuer to answer questions concerning the blackout period.

Request for Comment

- Is the information proposed to be included in the required notice useful? Should the required notice include additional or different information?

(c) *Notice to Directors and Executive Officers*

Proposed Exchange Act rule 104(b)(2) would require notice to directors and executive officers to be provided at least 15 calendar days in advance of commencement of the blackout period. The notice could be in any graphic form that is reasonably accessible to the intended recipient. For purposes of the proposed rule, notice would be considered provided as of the date of mailing, if mailed by first class mail, or as of the date of electronic transmission, if transmitted electronically.

In some instances, it may not be practicable for an issuer to provide the required notice to its directors and executive officers within the time period specified in the proposed rule. For example, where commencement of the blackout period was due to events that were unforeseeable, or to circumstances that were beyond the reasonable control of, the issuer, such as a major computer or other technical failure, a 15-day advance notice requirement may be impracticable.[92] The proposed rule would excuse an issuer from the 15-day notice requirement where the issuer makes a written determination that the circumstances preclude compliance with the requirement and notifies the affected directors and executive officers as soon as reasonably practicable. We anticipate that issuers would need to rely on this exception only in rare circumstances.

If there was a subsequent change in the beginning or ending dates of the blackout period, an issuer would be required to provide directors and executive officers with an updated notice explaining the reasons for the change in the date or dates and identifying all material changes in the information contained in the prior notice. The updated notice would be required to be provided as soon as reasonably practicable, unless such notice in advance of the termination of a blackout period is impracticable.

Request for Comment

- Is 15 days advance notice sufficient? Should the advance notice period be longer or shorter (such as 30 days or 10 days)? Should the reference to days be "business," rather than "calendar," days? Should we adopt a more flexible "reasonable time" standard?
- For purposes of the notice requirement as it applies to directors and executive officers, should we establish an outside maximum period (such as 30 days) in which to provide the notice to ensure that notice is not provided so far in advance of the blackout period commencement date as to undermine its importance to directors and executive officers?
- Is the proposed exception to the 15-day notice requirement of proposed Exchange Act rule 104 appropriate? Is the proposed exception too broad? If so, how should it be revised to ensure that issuers provide timely notice while still providing flexibility for unforeseeable events?
- Does a general exception for "unforeseeable circumstances" and "circumstances that are beyond the control of the issuer" provide issuers with sufficient guidance as to the types of situations that would not be subject

[90] Although notice is required by section 306(a)(6) of the Act, an issuer's failure to provide notice would not be an affirmative defense to an enforcement action for a violation of section 306(a)(1) or proposed Exchange Act rule 101(a) or to a private action to recover profits under section 306(a)(2) or proposed Exchange Act rule 103(a). In addition, an issuer's failure to provide notice where a director or executive subsequently violated the statutory trading prohibition of section 306(a)(1) may result in an enforcement action against the issuer for causing the director or executive officer's violation.

[91] While section 306(a)(3) of the Act does not require a notice to contain any specific information, we believe that it is essential to fulfilling the purpose of the provision to ensure that the notice contain certain minimum information about the blackout that would be of value to affected directors and executive officers and the public.

[92] We note that, for purposes of section 306(b) of the Act, the 30-day advance notice requirement does not apply if deferral of the blackout period would result in a violation of the exclusive purpose and prudence requirements of section 404(1)(A) and (B) of ERISA or where commencement of the blackout period is due to events that were unforeseeable or circumstances that were beyond the control of the issuer or the plan administrator. *See* section 306(b)(1)(i)(2)(C) of the Act.

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to the 15-day notice requirement? If not, what additional guidance should we give in this area?

• Is there a better means of ensuring that directors and executive officers receive timely notification of an impending blackout period? Does the required notice need to be in graphic form or would directors and executive officers find oral notice sufficient?

(d) *Notice to the Commission*

While section 306(a)(6) of the Act merely requires that an issuer provide notice of an impending blackout period to the Commission, we believe that the principal purpose of this requirement is to ensure that an issuer's security holders have notice of the blackout period so that they can monitor compliance with the statutory trading prohibition. This objective is best achieved by requiring that the notice to the Commission be provided in a publicly-available document. Accordingly, proposed Exchange Act rule 104(b)(3) would require that notice to the Commission be provided on form 8–K. The content of the required report on form 8–K would be the same as the content of the required notice to directors and executive officers.

The proposed new disclosure item under form 8–K would require an issuer to disclose the imposition of a blackout period (as defined in proposed Exchange Act rule 100(b)) upon the earlier of receipt of notice of the blackout from the plan administrator [93] or actual knowledge of the blackout period by the person designated by the issuer to oversee the issuer's pension plans, or, in the absence of such a designation, the issuer's human resources director or person performing equivalent functions.[94]

Foreign private issuers are not required to file current reports on form 8–K.[95] We are not proposing to change this reporting requirement at this time. Instead, we are proposing changes to forms 20–F and 40–F that would require a foreign private issuer to file as an exhibit to the report copies of all notices provided to directors and executive officers pursuant to section 306(a)(3) of the Act and proposed Exchange Act rule 104 during the previous fiscal year, unless the notices previously have been provided to the Commission in a report on form 6–K. Of course, a foreign private issuer may make the required disclosure under cover of form 6–K, and we encourage foreign private issuers to do so.

Request for Comment

• Should the required notice to the Commission have to be filed on form 8–K? Is another approach for filing the required notice with the Commission, such as a posting on an issuer's Internet web site, more appropriate? If so, how would the imposition of the blackout period be communicated to investors?

• Is the information in the proposed form 8–K item useful? Should the proposed form 8–K item include additional or different information?

• Is the proposed triggering event for the form 8–K filing appropriate? Is the person designated by the issuer to oversee the issuer's pension plans the proper person to whom the issuer should look for determining when a form 8–K is required? Would another person, such as the agent for service of legal process for the issuer, be more appropriate?

• Should we require foreign private issuers to file the notice required under section 306(a)(3) and proposed Exchange Act rule 104 under cover of form 6–K? Should we otherwise require a foreign private issuer to make such notices public before the filing of an annual report on form 20–F or 40–F? If so, how?

• Where the pension plan of a foreign private issuer is subject to section 15(d) of the Exchange Act and files reports on form 11–K,[96] should the plan be required to file a form 8–K disclosing the blackout period? If so, should such a requirement be in addition to, or replace, the requirement that the foreign private issuer provide notice to the Commission?

(e) *Transition Period*

Section 306(c) of the Act provides that section 306 will take effect on January 26, 2003. Consequently, for purposes of proposed Regulation BTR, the notice requirement would apply to blackout periods commencing on or after January 26, 2003. For blackout periods occurring between January 26, 2003 and February 10, 2003 (the date 15 days after the effectiveness of the statute), issuers should furnish notice as soon as reasonably possible. This approach is intended to ensure that the statutorily-required notice is provided with respect to blackout periods that commence before February 11, 2003.

III. General Request for Comment

We are proposing Regulation BTR to implement section 306(a) of the Sarbanes-Oxley Act. We solicit comment, both specific and general, upon each aspect of the proposed rules. If you would like to submit written comments on the proposed rules, to suggest changes or to submit comments on other matters that might affect the proposed rules, we encourage you to do so.

We also solicit comment on the following general aspects of the proposed rules:

• Are there aspects of the proposed rules that we should eliminate? Are there aspects that we should supplement?

• Are there aspects of the proposed rules where the concepts developed under section 16 of the Exchange Act should not be used as a guide to clarify the scope and application of section 306(a)?

• Are the proposed transition provisions with respect to the required notice to directors and executive officers and the Commission appropriate? Should different transition provisions be considered?

In addition, we request comment on whether any further changes to our rules and forms are necessary or appropriate to implement the objectives of section 306(a) of the Act and proposed Regulation BTR.

IV. Paperwork Reduction Act

The proposed rules and form amendments contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 ("PRA").[97] We are submitting the proposed rules and form amendments to the Office of Management and Budget ("OMB") for review in accordance with the PRA.[98] The title for the proposed collection of information with respect to the proposed rules will be "Regulation BTR." The title for the collections of information with respect to the proposed form amendments are "Form 20–F," "Form 40–F" and "Form 8–K."

Form 20–F (OMB Control No. 3235–0288) is used by foreign private issuers to either register a class of securities under the Exchange Act or provide an annual report required under the Exchange Act. Form 40–F (OMB Control Number 3235–0381) is used by foreign private issuers to file reports under the Exchange Act after having registered securities under the Securities Act and by certain Canadian registrants.

Form 8–K (OMB Control No. 3235–0060) prescribes information, such as material events or corporate changes, that an issuer that is subject to the reporting requirements of sections 13(a) or 15(d) of the Exchange Act must disclose on a current basis. Form 8–K also may be used, at an issuer's option, to report any events that the issuer deems to be of importance to security holders. Issuers also may use the form to satisfy the public disclosure requirements of Regulation FD.[99] An agency may not conduct or sponsor, and a person is not required to respond to, an information collection unless it displays a currently valid OMB control number.

A. Summary of Proposed Rules

The proposed rules would clarify the application and prevent evasion of section 306(a) of the Sarbanes-Oxley Act. Section 306(a) prohibits the directors and executive officers of an issuer from, directly or indirectly, purchasing, selling or otherwise acquiring or transferring any equity security of the issuer during a pension plan blackout period that prevents plan participants or beneficiaries from engaging in equity securities transactions, if the equity security was acquired in connection with the director's or executive officer's service or employment as a director or executive officer. Section 306(a) also requires an issuer to provide timely notice to its directors and executive officers and to the Commission of the commencement of a blackout period. The proposed rules would specify the content and timing of this notice. The required notice is a "collection of information" requirement.

Compliance with the proposed rules would be mandatory. The information required by the proposed rules would not be kept confidential.

B. Reporting and Cost Burden Estimates

In order to estimate the potential compliance burden for the proposed collection of information, we have made the following assumptions. The notice requirements of section 306(a) of the Act apply to issuers that have a class of securities registered under section 12 of the Exchange Act. These requirements also apply, via section 15(d) of the Exchange Act, to issuers with an effective registration statement under the Securities Act that are not otherwise subject to the registration requirements of section 12 of the Exchange Act, and to issuers that have filed a registration statement that has not yet become effective under the Securities Act and that has not been withdrawn. We estimate that there are approximately 18,200 entities that fit these descriptions.[100]

We then calculated the number of issuers that are likely to maintain participant-directed individual account plans and the likely number of plans maintained by these issuers. Based on statistics tabulated by the Department of Labor with respect to the number of individual account plans currently in existence, we estimate that 30% of issuers maintain individual account plans and that, on average, these issuers maintain 1.5 plans each.[101]

We then developed an assumption to account for the fact that not all potentially affected plans will impose blackout periods that would trigger the notice requirement, and not all of those imposing blackout periods would do so in a given year. Based on research conducted by the Department of Labor to estimate the frequency of the imposition of blackout periods that would trigger the notice requirement,[102] as adjusted to reflect the narrower definition of the term "blackout period" for purposes of section 306(a),[103] we estimate that potentially affected plans will impose blackout periods on average once every five years. Among these, some plans will not impose blackout periods, some will impose blackout periods that do not trigger the notice requirement (that is, a temporary suspension for a period of three or fewer consecutive business days) and some may have blackout periods more frequently.

We therefore assume that 20% of potentially affected plans will impose a blackout period in any given year. We request comment and any additional information that would confirm or otherwise inform this assumption. The resulting number of plans assumed to be affected by the notice requirement is approximately 1,230 plans per year.[104]

In developing burden estimates, we estimated that it will take an issuer, on average, two hours to draft the notice to directors and executive officers and three hours to draft a current report on form 8–K which must be filed to provide the required notice to the

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[93] Such notice is required to be provided to the issuer under section 306(b)(1)(i)(2)(E) of the Act.

[94] *See* proposed item 5.04 of form 8–K. This proposed amendment to form 8–K would supersede the proposal adding an item requiring disclosure of any known event that would have the effect of materially limiting, restricting or prohibiting participants in an employee benefit, retirement or stock ownership plan from acquiring, disposing or converting their holdings, other than a periodic or other limitation, restriction or prohibition based on presumed or actual knowledge of or access to material non-public information, if that plan is broadly available to the issuer's employees. *See* proposed item 5.04 to form 8–K, Release No. 33–8106 (June 17, 2002) (67 FR 42914). While today's proposal is narrower than the June proposal, it is consistent with section 306(a) of the Act.

[95] Foreign private issuers are required to file under the cover of form 6–K (17 CFR 249.306) copies of all material information that the foreign private issuer makes, or is required to make, public under the laws of its jurisdiction of incorporation, files, or is required to file, under the rules of any stock exchange or otherwise distributes to its security holders.

[96] 17 CFR 249.311.

[97] 44 U.S.C. 3501 *et seq.*

[98] 44 U.S.C. 3507(d) and 5 CFR 1320.11.

[99] 17 CFR 243.100–103.

[100] This estimate is based, in part, on the total number of issuers that are operating companies that filed annual reports on form 10–K (8,484), form 10–KSB (3,820), form 20–F (1,194) or form 40–F (134) during the 2001 fiscal year, which are required of all operating company issuers with a class of securities registered under section 12 of the Exchange Act and all such companies subject to section 15(d) of the Exchange Act, and an estimate of the average number of issuers that may have a registration statement filed under the Securities Act pending with the Commission at any time (100). In addition, we estimate that approximately 4,500 investment companies currently file periodic reports on Form N–SAR, and these entities are included in our estimate of the number of entities that would be subject to the requirements of proposed Regulation BTR. With regard to investment companies, because these entities generally do not have employees, and therefore typically do not maintain pension plans, there generally would be no blackout periods that would trigger the statutory trading prohibition of section 306(a) and proposed Regulation BTR. Therefore, while there may be instances in which the proposed regulation would apply, we would expect the burden on investment companies as a group to be negligible. We request comment or additional information that might confirm or otherwise inform this assumption.

[101] Although the entities subject to the requirements of proposed Regulation BTR include registered investment companies, because it is unlikely that an investment company would maintain a pension plan and, as a practical matter, there would generally be no blackout periods triggering the statutory trading prohibition of section 306(a) of the Act, we excluded these entities from our subsequent calculations. (18,200 entities—4,500 investment companies × 30% × 1.5 plans = 6,155 plans.) This number is consistent with the Department of Labor's estimate of the number of participant-directed individual account plans that filed form 5500 for fiscal year 1998 (6,145 plans).

[102] In conducting its research, the Department of Labor reviewed available literature in an effort to establish a reasonable estimate of the frequency of the imposition of blackout periods that would trigger notice requirements. One small survey of administrators of very large plans indicated that their largest plans had undergone a blackout period at a rate of once each three to four years. A different survey indicated a lower frequency of blackout periods, at a rate in the area of about 7% of plans per year. No comprehensive statistics on this frequency are available. *See* Department of Labor Release (Oct. 11, 2002) (67 FR 64766), at section D, Paperwork Reduction Act Analysis.

[103] While the Department of Labor estimated that, on average, a pension plan would experience a blackout period once every four years, we have adjusted this estimate to reflect the fact that, for purposes of section 306(a) of the Act, the definition of a "blackout period" is limited to a temporary trading suspension involving issuer equity securities, while, for purposes of section 306(b), the definition of a "blackout period" includes a temporary suspension, limitation or restriction affecting the direction or diversification of account assets, plan loans or plan distributions.

[104] 8,165 plans × 20% = 1,233 plans. Based on the number of annual reports filed on forms 10–K, 10–KSB, 20–F and 40–F, we estimate that 90% of these plans are maintained by operating issuers (12,304/13832), 9% by foreign private issuers that file on form 20–F (1,194/13,832) and 1% by foreign private issuers that file on form 40–F (134/13,632).

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Commission.[105] We then estimated that 75% of the burden associated with the preparation of the required notices will be borne by the issuer and that 25% of the burden will be borne by outside counsel retained by the issuer to assist in preparing the notices to directors and executive officers and to the Commission.[106] Preparation of the required notice for directors and executive officers is estimated to require approximately 1,845 hours [107] and cost approximately $250,000 annually,[108] and preparation of current reports on form 8–K to provide the required notice to the Commission is estimated to require approximately 2,490 hours [109] and cost approximately $336,000 annually.[110] The inclusion of the required information in annual reports on form 20–F is estimated to require approximately 249 hours [111] and cost approximately $33,625 annually,[112] and the inclusion of the required information in annual reports on form 40–F is estimated to require approximately 28 hours [113] and cost approximately $3,735 annually.[114]

The estimated burden for distribution of the notices takes several factors into account, including an assumed number of blackout periods triggering required notices, an assumed number of directors and executive officers affected annually, the number of notices that will be provided electronically and on paper and the differential costs of electronic and paper distribution methods.[115] Notices provided to the Commission on a current report on form 8–K and in the annual reports on form 20–F and 40–F would be transmitted electronically via the Commission's Electronic Data Gathering, Analysis and Retrieval ("EDGAR") system. Those directors and executive officers not estimated to receive notice electronically are assumed to receive the notice on paper. No time or direct cost is attributed to electronic distribution methods other than the time required to prepare the notice or form, as the case may be, because it is assumed that notices are drafted in electronic form, issuers use existing infrastructure to communicate electronically and the cost of electronic transmission is negligible. Paper notice distribution to directors and executive officers is estimated to require approximately 512 hours [116] and cost approximately $3,075 annually.[117]

The total burden of providing the required notice to an issuer's directors and executive officers are estimated to be approximately 2,357 hours [118] and approximately $253,075 annually.[119] The total burden hours of complying with form 8–K, revised to include the burden hours expected from providing the required notice to the Commission, are estimated to be 733,990 hours, an increase of 2,490 hours [120] from the current annual burden of 731,500 hours. The total burden hours of complying with form 20–F, revised to include the burden hours expected from providing the required notice to the Commission, are estimated to be 652,472 hours, an increase of 249 hours [121] from the current annual burden of 652,223 hours. The total burden hours of complying with form 40–F, revised to include the burden hours expected from providing the required notice to the Commission, are estimated to be 1,134 hours, an increase of 28 hours [122] from the current annual burden of 1,106 hours.

The total dollar cost of complying with form 8–K, revised to include outside counsel costs expected from providing the required notice to the Commission, is estimated to be $73,492,000, an increase of $336,000 [123] from the current annual burden of $73,156,000. The total dollar cost of complying with form 20–F, revised to include outside counsel costs expected from providing the required notice to the Commission, is estimated to be $587,033,625, an increase of $33,625 [124] from the current annual burden of $587,000,000. The total dollar cost of complying with form 40–F, revised to include outside counsel costs expected from providing the required notice to the Commission, is estimated to be $998,736, an increase of $3,736 [125] from the current annual burden of $995,000. Comments concerning the accuracy of these burden estimates, and any suggestions for reducing the burden, should be directed to the Commission as described below.

C. Request for Comment

We request comment in order to: (a) Evaluate whether the proposed information collection is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (b) evaluate the accuracy of our estimate of the burden of the proposed rules; (c) determine whether there are ways to enhance the quality, utility and clarity of the information to be collected; and (d) evaluate whether there are ways to minimize the burden of the proposed rules on those who respond, including through the use of automated collection techniques or other forms of information technology.[126]

Any member of the public may direct to us any comments concerning the accuracy of these burden estimates and any suggestions for reducing the burdens. Persons who desire to submit comments on the proposed collection of information requirement should direct their comments to the OMB, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and send a copy of the comments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0609, with reference to File No. S7–44–02. Requests for materials submitted to the OMB by us with regard to this collection of information should be in writing, refer to File No. S7–44–02 and be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services, 450 Fifth Street NW., Washington, DC 20549. Because the OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication, your comments are best assured of having their full effect if the OMB receives them within 30 days of publication.

[105] These estimates are based on consultations with several issuers, law firms and other persons who regularly assist issuers in preparing and disseminating communications to directors and executive officers and filing Exchange Act reports with the Commission.

[106] These percentages are based on consultations with several issuers, law firms and other persons who regularly assist issuers in preparing and filing Exchange Act reports with the Commission. We have used an estimated hourly rate of $300.00 to determine the estimated cost to issuers of having the required notice reviewed by outside counsel. We arrived at this hourly rate estimate after consulting with several private law firms. We then have multiplied this hourly rate by a factor of 1.35 to reflect appropriate overhead charges.

[107] 1,230 plans × 2 hours × .75 = 1,845 hours.

[108] 1,230 plans × 2 hours × .25 x $405 = $249,075.

[109] 1,230 plans × 3 hours × .75 × .90 = 2,491 hours.

[110] 1,230 plans × 3 hours × .25 × $405 × .90 = $336,251.

[111] 1,230 plans × 3 hours × .75 x .09 = 249 hours. We note that, because under proposed Regulation BTR the statutory trading prohibition of Section 306(a) of the Act would be triggered, in the case of a foreign private issuer, only where number of plan participants or beneficiaries affected by a temporary trading suspension exceeds 15% of all participants or beneficiaries under plans maintained by the issuer, these estimates may overstate the actual compliance burden.

[112] 1,230 plans × 3 hours × .25 × $405 × .09 = $33,625.

[113] 1,230 plans × 3 hours × .75 × .01 = 28 hours.

[114] 1,230 plans × 3 hours × .25 × $405 × .01 = $3,736.

[115] For purposes of this estimate, we have assumed that the number of blackout periods triggering the notice requirement is 1,230 each year, the average number of directors and executive officers of an issuer is 10, 50% of the notices would be provided electronically and that paper distribution would require five minutes per notice for copying and mailing, plus $0.50 for paper and postage. These estimates are based on consultations with several issuers, law firms and other persons who regularly assist issuers in preparing and disseminating communications to directors and executive officers.

[116] 1,230 blackout periods × five notices × five minutes per notice = 512.5 hours.

[117] 1,230 blackout periods × five notices x $0.50 per notice = $3,075.

[118] 1,845 hours + 512 hours = 2,357 hours.

[119] $250,000 + $3,075 = $253,075.

[120] *See* n. 109 above.

[121] *See* n. 111 above.

[122] *See* n. 113 above.

[123] *See* n. 110 above.

[124] *See* n. 112 above.

[125] *See* n. 114 above.

[126] Comments are requested pursuant to 44 U.S.C. 3506(c)(2)(B).

V. Cost-Benefit Analysis

Section 306(a) of the Act prohibits directors and executive officers of an issuer from purchasing, selling or otherwise acquiring or transferring any equity security of the issuer during a pension plan blackout period that prevents plan participants or beneficiaries from engaging in equity security transactions, if the equity security was acquired by the director or executive officer in connection with his or her service or employment as a director or executive officer. In addition, section 306(a) requires an issuer to provide timely notice to its directors and executive officers, and the Commission, of the imposition of a pension plan blackout period. The statute is intended to restrict the ability of corporate insiders to trade in the equity securities of an issuer at a time when a substantial number of the issuer's employees are unable to engage in transactions involving equity securities of the issuer through their individual pension plan accounts.

The proposed rules would, upon adoption, clarify the application of section 306(a) and prevent evasion of its statutory trading prohibition. We recognize that any implementation of the Sarbanes-Oxley Act likely will result in costs as well as benefits and have an effect on the economy. We are sensitive to the costs and benefits of proposed rules that would specify the content and timing of the notice that issuers are required to provide to their directors and executive officers and that would mandate the required notice to the Commission to be provided on a form 8–K or, in the case of foreign private issuers, in their annual reports on form 20–F or 40–F. We discuss these costs and benefits below.

A. Benefits

Section 306(a) will, and the proposed rules would, have several important benefits. By restricting the ability of directors and executive officers to trade in an issuer's equity securities when plan participants are unable to do so, the proposed rules would mitigate the differential treatment between plan participants and beneficiaries and the directors and executive officers of the issuer with respect to such securities. This should tie the interests of directors and executive officers more closely to that of other security-holders.

The content and timing requirements for the notice contemplated by section 306(a) would help ensure that directors and executive officers of an issuer have all relevant information about an impending blackout period. This will enable these individuals to conform their activities to the statutory trading prohibition and to avoid any appearance of a conflict of interest between their corporate responsibilities and their personal trading activities. In addition, requiring that notice to the Commission be provided on form 8–K or, in the case of a foreign private issuer, on form 20–F or 40–F, will help ensure that an issuer's security holders have notice of an impending blackout period. In turn, this will enable security holder to monitor compliance with the statutory trading prohibition of section 306(a). These benefits are difficult to quantify.

B. Costs

The costs associated with the proposed rules are primarily attributable to the statutory requirement to prepare and distribute advance notice of the imposition of a blackout period to directors and executive officers and to the Commission. For purposes of the Paperwork Reduction Act, we estimated the aggregate costs for issuers required to provide this notice to be approximately $625,000 per year and the related burden to be approximately 5,125 hours.[127]

While compliance with the statute and the proposed rules is the individual obligation of an issuer's directors and executive officers, it is likely that issuers will incur costs in assisting these individuals in observing the proposed trading restriction. Accordingly, issuers may incur costs associated with assisting their directors and executive officers in determining whether transactions in equity securities of the issuer are exempt from the insider trading prohibition of the proposed rules and in identifying and tracking the equity securities that are subject to the insider trading prohibition. These costs are difficult to quantify, but all are imposed by the statute.

We believe that many U.S. issuers already maintain internal procedures for assisting their directors' and officers' compliance with the provisions of section 16 of the Exchange Act and preventing violations of section 10(b) of the Exchange Act and Exchange Act rule 10b–5. It is likely that these issuers will enhance these internal procedures to address the trading restrictions of section 306(a) of the Act and proposed Regulation BTR. Some issuers may need to institute appropriate internal procedures. Other issuers may need to modify existing procedures. Because the scope and sophistication of these internal procedures are likely to vary among issuers, it is difficult to provide an accurate estimate of the incremental cost of enhancing existing systems. Because we do not have data to quantify the cost of implementing, or upgrading and strengthening existing, internal insider trading procedures, we seek comments and supporting data on these costs.

Section 306(a) also imposes costs on directors and executive officers of an issuer that is subject to section 306(a)'s trading prohibition. Restrictions on trading activities increase the financial exposure to directors and executive officers during blackout periods and reduce their financial flexibility. This may result in losses in their portfolios. In addition, because the directors and executive officers of issuers that are subject to the reporting requirements of the Exchange Act are already subject to restrictions on their trading activities, such as restrictions that confine their trading to designated "window" periods, the introduction of an additional trading restriction to this existing framework may, in some instances, limit the ability of a director or executive officer to trade for significant periods. This also may result in losses in their portfolios. These costs are difficult to quantify, but are mitigated somewhat by the timely notice required by the statute.

C. Request for Comments

We request comment on all aspects of this cost-benefit analysis, including identification of any additional costs or benefits of, or suggested alternatives to, the proposed rules. Commenters are requested to provide empirical data and other factual support for their views to the extent possible.

[127] *See* the discussion in section IV.B above.

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VI. Initial Regulatory Flexibility Analysis

This Initial Regulatory Flexibility Analysis, or IRFA, has been prepared in accordance with the Regulatory Flexibility Act.[128] The IRFA pertains to new rules that we are proposing to clarify the application of section 306(a) of the Act and to prevent evasion of its statutory trading prohibition. The proposed rules also would specify the content and timing of notice that issuers are required to provide to their directors and executive officers and the Commission about the imposition of a pension plan blackout period.

A. Reasons for, and Objectives of, New Rules

Section 306(a) of the Act prohibits directors and executive officers of an issuer from purchasing, selling or otherwise acquiring or transferring any equity security of the issuer during a pension plan blackout period that prevents plan participants or beneficiaries from engaging in equity security transactions, if the equity security was acquired in connection with the director or executive officer's service or employment as a director or executive officer. In addition, section 306(a) requires issuers to provide timely notice to their directors and executive officers and the Commission of the imposition of a blackout period. The proposed rules, which would clarify the application of section 306(a) and prevent evasion of its statutory trading prohibition, are intended to further the statute's purpose of mitigating the differential treatment between an issuer's directors and executive officers and its employees who participate in pension plans maintained by the issuer at a time when a substantial number of those participants are unable to engage in transactions involving issuer equity securities through their individual pension plan accounts.

B. Legal Basis

We are proposing the new rules under the authority set forth in sections 3, 13, 23(a) and 36 of the Exchange Act, sections 30 and 38 of the Investment Company Act and sections 3(a) and 306(a) of the Act.

C. Small Entities Subject to the Proposed Rules

Section 306(a) of the Act affects, and the proposed rules would affect, small entities the securities of which are registered under section 12 of the Exchange Act, that are required to file reports under section 15(d) of the Exchange Act or that file, or have filed, a registration statement that has not yet become effective under the Securities Act and that has not been withdrawn. For purposes of the Regulatory Flexibility Act, the Exchange Act[129] defines the term "small business," other than an investment company, to be an issuer that, on the last day of its most recent fiscal year, has total assets of $5 million or less.[130] The statute and proposed rules apply only to issuers with pension plans; we do not have data to indicate the number of small issuers that maintain pension plans, but according to available data, only 30% of all issuers maintain such plans. Furthermore, our data indicates that temporary trading suspensions that would be subject to section 306(a) occur to a plan once every five years. If these percentages are accurate regardless of an issuer's size, the proposed rules should only affect approximately 150 small entities per year. We estimate that there are approximately 2,500 issuers that are subject to the Act that are not investment companies and that have assets of $5 million or less.[131] There are approximately 225 registered investment companies that may be considered small entities. However, as noted above,[132] we anticipate that the burden imposed on investment companies by section 306(a) and the proposed rules would be negligible.

D. Reporting, Record Keeping and Other Compliance Requirements

Section 306(a) of the Act requires issuers, including "small businesses," to provide timely notice to directors and executive officers and the Commission of a blackout period. The proposed rules would specify the content and timing of this notice. The statute's basic prohibition against trading during blackout periods is largely self-executing and does not afford us with substantial discretion to exercise regulatory flexibility with respect to small businesses.

While a cost will be incurred in complying with the notice requirement, we believe that these costs will be minimal for small businesses. A required notice is likely to be prepared once for each blackout period and distributed to affected directors and executive officers. In addition, a current report on form 8–K would be prepared and filed with the Commission. The cost of preparing and distributing the required notice to directors and executive officers is estimated to be approximately $590 annually for both large and small businesses.[133] The notice requirement involves a design standard in that the content of the proposed notice to directors and executive officers and the form and content of the notice to the Commission is dictated by the proposed rules and would be comparable for all issuers, including small, as well as large, entities. We do not believe that excepting small businesses from making the notice would be in the interests of their directors and executive officers, or consistent with the statute.

While we are proposing the specific content of the required notice to directors and executive officers, we do not dictate the specific form of the notice. In addition, we are proposing that the notice to the Commission be provided electronically through the filing of a current report on form 8–K. Nonetheless, we wish to address in our final rulemaking any special issues facing small businesses with respect to blackout period notices, and any alternatives consistent with the objectives of section 306(a) of the Act that may serve to facilitate compliance.

E. Duplicative, Overlapping or Conflicting Federal Rules

We believe that there are no rules that duplicate, overlap or conflict with the proposed rules.

F. Agency Action To Minimize Effect on Small Entities

The Regulatory Flexibility Act directs us to consider significant alternatives that would accomplish the stated objectives, while minimizing any significant adverse impact on small entities. In that regard, we are considering the following alternatives: (a) Establishing different compliance or reporting requirements that take into account the resources of small entities, (b) clarifying, consolidating or simplifying compliance and reporting requirements under the rules for small entities and (c) exempting small entities from all or part of the proposed rules. The proposed rules are intended to ensure that corporate insiders do not trade in an issuer's equity securities during periods when the ability of participants or beneficiaries in the issuer's pension plans to purchase, sell or otherwise acquire or transfer equity securities of the issuer has been temporarily suspended. We do not currently believe that an exemption is

[128] 5 U.S.C. 603.

[129] 17 CFR 240.0–10(a).

[130] A similar definition is provided under Securities Act rule 157 (17 CFR 230.157).

[131] This estimate is based on filings with the Commission.

[132] *See* the discussion in section IV.B above.

[133] ($253,073 + (2,357 × $200 per hour)/1,230 blackouts = $589. *See also* section IV.B above.

necessary (since the cost of compliance is low) or appropriate (since Congress did not indicate that there should be different treatment for small businesses). Nevertheless, we solicit comment as to whether small business issuers should be excluded from the proposed rules. We also seek comment on the scope of the proposed disclosure, the cost of preparing it and whether the obligation can be simplified or clarified. If the cost is disproportionately large for small businesses, we will consider appropriate modifications to the proposed rules.

G. Request for Comments

We encourage the submission of comments with respect to any aspect of the IRFA. In particular, we request comment on the number of small businesses that would be affected by the proposed rules, the nature of the impact, how to quantify the number of small businesses that would be affected and how to quantify the impact of the proposed rules. Commenters are requested to describe the nature of any effect and provide empirical data and other factual support for their views to the extent possible. These comments will be considered in the preparation of the Final Regulatory Flexibility Analysis, if the proposed rules are adopted, and will be placed in the same public file as comments on the proposed rules.

VII. Consideration of Impact on the Economy

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, or "SBREFA," [134] we must advise the Office of Management and Budget as to whether the proposed rules constitute a "major" rule. Under SBREFA, a rule is considered "major" where, if adopted, it results or is likely to result in:

- An annual effect on the economy of $100 million or more (either in the form of an increase or a decrease);
- A major increase in costs or prices for consumers or individual industries; or
- Significant adverse effects on competition, investment or innovation.

Where a rule is "major," its effectiveness will generally be delayed for 60 days pending Congressional review. We request comment on the potential impact of the proposed rules on the economy on an annual basis. Commenters are requested to provide empirical data and other factual support for their views to the extent possible.

[134] Pub. L. 104–121, title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C., 15 U.S.C. and as a note to 5 U.S.C. 601).

VIII. Consideration of Burden on Competition

Section 23(a)(2) of the Exchange Act [135] requires us, when adopting rules under the Exchange Act, to consider the impact that any new rule would have on competition. In addition, section 23(a)(2) prohibits us from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

The proposed rules would clarify the application and prevent evasion of section 306(a) of the Act. Section 306(a) prohibits the directors and executive officers of an issuer from purchasing, selling or otherwise acquiring or transferring any equity security of the issuer during a pension plan blackout period that prevents plan participants or beneficiaries from engaging in equity security transactions, if the equity security was acquired by the director or executive officer in connection with his or her service or employment as a director or executive officer. In addition, under section 306(a) an issuer is required to provide timely notice to its directors and executive officers and the Commission of the imposition of a pension plan blackout period.

The proposed rules, which would clarify the application of section 306(a), are intended to further the statute's purpose of mitigating the differential treatment between an issuer's directors and executive officers and its employees who participate in pension plans maintained by the issuer at a time when a substantial number of these participants are unable to engage in transactions involving issuer equity securities through their individual pension plan accounts. While the statute may have an impact on competition by placing restrictions on the ability of directors and executive officers of issuers with pension plans to trade that are not placed on issuers without such plans, we do not believe that the proposed rules would impose any burden on competition. Issuers would incur some costs in complying with the proposed rules. These costs would include preparing the required notice to include the information specified in the proposed rules and providing notice to the Commission on a current report on form 8–K or, in the case of a foreign private issuer, on form 20–F or 40–F. We request comment on whether the proposed rules, if adopted, would impose a burden on competition. Commenters are requested to provide empirical data and other factual support for their views to the extent possible.

[135] 15 U.S.C. 78w(a)(2).

IX. Promotion of Efficiency, Competition and Capital Formation

Section 3(f) of the Exchange Act [136] requires us, when engaging in rulemaking where we are required to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition and capital formation. The proposed rules would clarify the application and prevent evasion of section 306(a) of the Act. Section 306(a) prohibits directors and executive officers of an issuer from purchasing, selling or otherwise acquiring or transferring any equity security of the issuer during a pension plan blackout period that prevents plan participants or beneficiaries from engaging in equity security transactions, if the equity security was acquired in connection with the director or executive officer's service or employment as a director or executive officer. In addition, section 306(a) requires issuers to provide timely notice to their directors and executive officers and the Commission of the imposition of a pension plan blackout period.

The proposed rules, which would clarify the application of section 306(a), are intended to further the statute's purpose of mitigating the differential treatment between an issuer's directors and executive officers and its employees who participate in pension plans maintained by the issuer at a time when a substantial number of these participants are unable to engage in transactions involving issuer equity securities through their individual pension plan accounts. While the statute may have an impact on competition, we do not believe that the proposed rules would impose any burden on competition, other than some burden on the efficiency of the market on an issuer's equity securities during a pension plan blackout period. This burden is imposed by the statute. We are not aware of any impact on capital formation that would result from the proposed rules. Issuers would incur some costs in complying with the proposed rules. These costs would include preparing the required notice to include the information specified in the proposed rules and providing notice to the Commission on a current report on form 8–K or, in the case of a foreign private issuer, on form 20–F or 40–F. We request comment on whether the

[136] 15 U.S.C. 78c(f).

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proposed rules, if adopted, would impose a burden on competition. Commenters are requested to provide empirical data and other factual support or their views to the extent possible.

X. Statutory Authority

The rules contained in this release are being proposed under the authority set forth in sections 3, 13, 23(a) and 36 of the Exchange Act, sections 30 and 38 of the Investment Company Act and sections 3(a) and 306(a) of the Sarbanes-Oxley Act of 2002.

List of Subjects in 17 CFR Parts 240, 245 and 249

Reporting and record keeping requirements, Securities.

Text of Proposed Rules and Forms

In accordance with the foregoing, title 17, chapter II, of the Code of Federal Regulations is proposed to be amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for part 240 is amended by adding the following citations in numerical order to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*, 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

Section 240.13a–11 is also issued under secs. 3(a) and 306(a), Pub. L. 107–204, 116 Stat. 745.

* * * * *

Section 240.15d–11 is also issued under secs. 3(a) and 306(a), Pub. L. 107–204, 116 Stat. 745.

* * * * *

2. Section 240.13a–11 is amended by:

a. Removing the sectional authority following § 240.13a–11; and

b. Revising paragraph (b).

The revision reads as follows:

§ 240.13a–11 Current reports on Form 8–K (§ 249.308 of this chapter).

* * * * *

(b) This section shall not apply to foreign governments, foreign private issuers required to make reports on form 6–K (17 CFR 249.306) pursuant to § 240.13a–16, issuers of American Depositary Receipts for securities of any foreign issuer, or investment companies required to file reports pursuant to § 270.30b1–1 of this chapter under the Investment Company Act of 1940, except where such investment companies are required to file notice of a blackout period pursuant to § 245.104 of this chapter.

3. Section § 240.15d–11 is amended by:

a. Removing the sectional authority following § 240.15d–11; and

b. Revising paragraph (b).

The revision reads as follows:

§ 240.15d–11 Current reports on Form 8–K (§ 249.308 of this chapter).

* * * * *

(b) This section shall not apply to foreign governments, foreign private issuers required to make reports on form 6–K (17 CFR 249.306) pursuant to § 240.15d–16, issuers of American Depositary Receipts for securities of any foreign issuer, or investment companies required to file periodic reports pursuant to § 270.30b1–1 of this chapter under the Investment Company Act of 1940, except where such investment companies are required to file notice of a blackout period pursuant to § 245.104 of this chapter.

4. Part 245 is added to read as follows:

PART 245—REGULATION BLACKOUT TRADING RESTRICTION

[Regulation BTR—Blackout Trading Restriction]

Sec.

245.100 Definitions.
245.101 Prohibition of insider trading during pension fund blackout periods.
245.102 Exceptions to definition of blackout period.
245.103 Remedy.
245.104 Notice.

Authority: 15 U.S.C. 78w(a), unless otherwise noted.

Sections 245.100—245.104 are also issued under secs. 3(a) and 306(a), Pub. L. 107–204, 116 Stat. 745.

§ 245.100 Definitions.

As used in Regulation BTR (§§ 245.100 through 245.104), unless the context otherwise requires:

(a) The term *acquired such equity security in connection with service or employment as a director or executive officer*, when applied to a director or executive officer, means that he or she acquired, directly or indirectly, an equity security of the issuer:

(1) At a time when he or she was a director or executive officer of the issuer, under a compensatory plan, contract, authorization or arrangement, including, but not limited to, plans relating to options, warrants or rights, pension, retirement or deferred compensation or bonus, incentive or profit-sharing (whether or not set forth in any formal plan document), including a compensatory plan, contract, authorization or arrangement with a parent, subsidiary or affiliate of the issuer;

(2) At a time when he or she was a director or executive officer of the issuer, as a result of any transaction or business relationship that is described in paragraph (a) or (b) of item 404 of Regulation S–K (§ 229.404 of this chapter) or, in the case of a foreign private issuer, item 7.B of form 20–F (§ 249.220f of this chapter) (but without application of the disclosure thresholds of such provisions), to the extent that he or she has a pecuniary interest (as defined in paragraph (l) of this section) in the equity securities;

(3) As directors' qualifying shares or other securities that he or she must hold to meet an issuer's minimum ownership requirements for directors or executive officers; or

(4) Prior to becoming, or while, a director or executive officer of the issuer if the equity security was acquired as an inducement to service or employment with the issuer or a parent, subsidiary or affiliate of the issuer or as a result of a merger, consolidation or other acquisition transaction involving the issuer.

(b) Except as provided in § 245.102, the term *blackout period*:

(1) With respect to the equity securities of any issuer (other than a foreign private issuer), means any period of more than three consecutive business days during which the ability to purchase, sell or otherwise acquire or transfer an interest in any equity security of such issuer held in an individual account plan is temporarily suspended by the issuer or by a fiduciary of the plan with respect to not fewer than 50% of the participants or beneficiaries under all individual account plans (as defined in paragraph (j) of this section) maintained by the issuer that permit participants or beneficiaries located in any State (as defined in paragraph (m) of this section) to acquire or hold equity securities of the issuer;

(2) With respect to the equity securities of any foreign private issuer (as defined in § 240.3b–4(c) of this chapter), means any period of more than three consecutive business days during which both:

(i) The conditions the paragraph (b)(1) of this section are met; and

(ii) The participants or beneficiaries so restricted comprise more than 15% of the participants or beneficiaries under all individual account plans maintained by the issuer that permit participants or beneficiaries to acquire or hold equity securities of the issuer.

(3) In determining the individual account plans (as defined in paragraph (j) of this section) maintained by the issuer for purposes of this paragraph (b), the rules under Section 414(b), (c), (m) and (o) of the Internal Revenue Code (26 U.S.C. 414(b), (c), (m) and (o)) are to be applied.

(c) (1) The term *director* has, except as provided in paragraph (c)(2) of this section, the meaning set forth in section 3(a)(7) of the Exchange Act (15 U.S.C. 78c(a)(7)).

(2) In the case of a foreign private issuer (as defined in § 240.3b–4(c) of this chapter), the term *director* means those individuals within the definition set forth in section 3(a)(7) of the Exchange Act who are management employees of the issuer.

(d) The term *derivative security* has the meaning set forth in § 240.16a–1(c) of this chapter.

(e) The term *equity security* has the meaning set forth in section 3(a)(11) of the Exchange Act (15 U.S.C. 78c(a)(11)) and § 240.3a11–1 of this chapter.

(f) The term *equity security of the issuer* means any equity security or derivative security relating to an issuer, whether or not issued by that issuer.

(g) The term *Exchange Act* means the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

(h) (1) The term *executive officer* has, except as provided in paragraph (h)(2) of this section, the meaning set forth in § 240.16a–1(f) of this chapter.

(2) In the case of a foreign private issuer (as defined in § 240.3b–4(c) of this chapter), the term *executive officer* means the principal executive officer or officers, the principal financial officer or officers and the principal accounting officer or officers (or, if there is none, the controller) of the issuer.

(i) The term *exempt security* has the meaning set forth in section 3(a)(12) of the Exchange Act (15 U.S.C. 78c(a)(12)).

(j) The term *individual account plan* means a pension plan which provides for an individual account for each participant and for benefits based solely upon the amount contributed to the participant's account, and any income, expenses, gains and losses, and any forfeitures of accounts of other participants which may be allocated to such participant's account, including a deferred compensation arrangement that contains the aforementioned features, except that such term does not include a one-participant retirement plan (within the meaning of section 101(i)(8)(B) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1021(i)(8)(B))).

(k) The term *issuer* means an issuer (as defined in section 3(a)(8) of the Exchange Act (15 U.S.C. 78c(a)(8))), the securities of which are registered under section 12 of the Exchange Act (15 U.S.C. 78*l*) or that is required to file reports under section 15(d) of the Exchange Act (15 U.S.C. 78o(d)) or that files or has filed a registration statement that has not yet become effective under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) and that it has not withdrawn.

(l) The term *pecuniary interest* has the meaning set forth in § 240.16a–1(a)(2)(i) of this chapter and the term *indirect pecuniary interest* has the meaning set forth in § 240.16a–1(a)(2)(ii) of this chapter. § 240.16a–1(a)(2)(iii) of this chapter also shall apply to determine pecuniary interest for purposes of this regulation.

(m) The term *State* has the meaning set forth in section 3(a)(16) of the Exchange Act (15 U.S.C. 78c(a)(16)).

§ 245.101 Prohibition of insider trading during pension fund blackout periods.

(a) Except to the extent otherwise provided in paragraph (c) of this section, it is unlawful under section 306(a)(1) of the Sarbanes-Oxley Act of 2002 (Pub. L. 107–204, 116 Stat. 745) for any director or executive officer of an issuer of any equity security (other than an exempt security), directly or indirectly, to purchase, sell or otherwise acquire or transfer any equity security of the issuer (other than an exempt security) during any blackout period with respect to such equity security, if such director or executive officer acquires or previously acquired such equity security in connection with his or her service or employment as a director or executive officer.

(b) For purposes of section 306(a)(1) of the Sarbanes-Oxley Act of 2002, any purchase, sale or other acquisition or transfer of an equity security of the issuer during a blackout period will be deemed to be a transaction involving an equity security "acquired in connection with service or employment as a director or executive officer" (as defined in § 245.100(a)) to the extent that the director or executive officer has a pecuniary interest (as defined in § 245.100(l)) in such an equity security and the equity security has not previously been subject to the operation of section 306(a)(1) during the same blackout period.

(c) The following transactions are exempt from section 306(a)(1) of the Sarbanes-Oxley Act of 2002:

(1) Any acquisition of equity securities resulting from the reinvestment of dividends in, or interest on, equity securities of the same issuer if the acquisition is made pursuant to a plan providing for the regular reinvestment of dividends or interest and the plan provides for broad-based participation, does not discriminate in favor of employees of the issuer and operates on substantially the same terms for all plan participants;

(2) Any purchase or sale of equity securities of the issuer pursuant to a contract, instruction or written plan that satisfies the affirmative defense conditions of § 240.10b5–1(c) of this chapter; provided that, for purposes of this section, awareness of an impending blackout period (as defined in § 245.100(b)) will constitute awareness of material, non-public information;

(3) Any purchase or sale of equity securities pursuant to a Qualified Plan (as defined in § 240.16b–3(b)(4) of this chapter), an Excess Benefit Plan (as defined in § 240.16b–3(b)(2) of this chapter) or a Stock Purchase Plan (as defined in § 240.16b–3(b)(5) of this chapter) other than a Discretionary Transaction (as defined in § 240.16b–3(b)(1) of this chapter) unless such Discretionary Transaction meets the conditions of paragraph (c)(2) of this section; and

(4) The increase or decrease in the number of securities held as a result of a stock split or stock dividend applying equally to all securities of that class, including a stock dividend in which equity securities of a different issuer are distributed; and the acquisition of rights, such as shareholder or pre-emptive rights, pursuant to a pro rata grant to all holders of the same class of equity securities registered under section 12 of the Exchange Act.

§ 245.102 Exceptions to definition of blackout period.

The term "blackout period," as defined in § 245.100(b), does not include:

(a) A regularly scheduled period in which the participants and beneficiaries may not purchase, sell or otherwise acquire or transfer an interest in any equity security of an issuer, if a description of the blackout period, including the plan transactions to be suspended during, or otherwise affected by the blackout and its frequency and duration, is:

(1) Included in the documents or instruments under which the individual account plan operates; and

(2) Disclosed to an employee before he or she formally enrolls, or within 30 days following formal enrollment, as a participant under the individual account plan or within 30 days after the adoption of an amendment to the plan. For purposes of this paragraph (a)(2), the disclosure may be provided in any

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graphic form that is reasonably accessible to the employee; or

(b) Any suspension described in § 245.100(b) the principal purpose of which is to permit persons affiliated with the acquired or divested entity to become participants or beneficiaries, or to cease to be participants or beneficiaries, in an individual account plan following a corporate merger, acquisition, divestiture or similar transaction involving the plan or plan sponsor.

§ 245.103 Remedy.

(a) *Recovery of Profits.* Section 306(a)(1) of the Sarbanes-Oxley Act of 2002 (Pub. L. 107–204, 116 Stat. 745) provides that any profit realized by a director or executive officer from any purchase, sale or other acquisition or transfer of any equity security of an issuer in violation of section 306(a)(1) will inure to and be recoverable by the issuer, regardless of any intention on the part of the director or executive officer in entering into the transaction.

(b) *Actions to recover profit.* Section 306(a)(2) of the Sarbanes-Oxley Act of 2002 provides that an action to recover profit in accordance with may be instituted at law or in equity in any court of competent jurisdiction by the issuer, or by the owner of any equity security of the issuer in the name and on behalf of the issuer if the issuer fails or refuses to bring such action within 60 days after the date of request, or fails diligently to prosecute the action thereafter, except that no such suit may be brought more than two years after the date on which such profit was realized.

§ 245.104 Notice.

(a) In any case in which a director or executive officer is subject to section 306(a)(1) of the Sarbanes-Oxley Act of 2002 (Pub. L. 107–204, 116 Stat. 745) in connection with a blackout period (as defined in § 245.100(b)) with respect to any equity security, the issuer of the equity security must timely notify each director or officer and the Commission of the blackout period.

(b) For purposes of this section:

(1) The notice must include:

(i) The reason or reasons for the blackout period;

(ii) A description of the plan transactions to be suspended during, or otherwise affected by, the blackout period;

(iii) A description of the class of equity securities subject to the blackout period;

(iv) The actual or expected beginning and ending dates of the blackout period; and

(v) The name, address and telephone number of the person designated by the issuer to respond to inquiries about the blackout period, or, in the absence of such a designation, the issuer's human resources director or person performing equivalent functions; and

(2) (i) Notice to an affected director or executive officer will be considered timely if the notice described in paragraph (b)(1) of this section is provided (in graphic form that is reasonably accessible to the recipient) at least 15 calendar days in advance of the commencement of the blackout period;

(ii) Notwithstanding paragraph (b)(2)(i) of this section, the requirement to give at least 15 days advance notice will not apply in any case in which the inability to provide advance notice of the blackout period is due to events that were unforeseeable to or circumstances that were beyond the reasonable control of the issuer, and the issuer reasonably so determines in writing. Determinations described in the preceding sentence must be dated and signed by an authorized representative of the issuer. In any case in which this exception to the 15-day advance notice requirement applies, the issuer must provide the notice described in paragraph (b)(1) of this section, as well as a copy of the written determination, to all affected directors and executive officers as soon as reasonably practicable before the blackout period commences; and

(3) Notice to the Commission will be considered timely if:

(i) The issuer, except as provided in paragraph (b)(3)(ii) of this section, files a current report on form 8–K (§ 249.308 of this chapter) within the time prescribed for filing the report under the instructions for the form; or

(ii) In the case of a foreign private issuer (as defined in § 240.3b–4(c) of this chapter), the issuer includes the information set forth in paragraph (b)(1) of this section in the first annual report on form 20–F (§ 249.220f of this chapter) or 40–F (§ 249.240f of this chapter) required to be filed after the receipt of the notice of a blackout period required by 29 CFR 2520.101–3(c) within the time prescribed for filing the report under the instructions for the form.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

5. The authority citation for part 249 is amended by revising the sectional authority for § 249.308 to read as follows:

Authority: 15 U.S.C. 78a, *et seq.*, unless otherwise noted.

* * * * *

Section 249.308 is also issued under 15 U.S.C. 80a–29, 15 U.S.C. 80a–37 and secs. 3(a), 302 and 306(a), Pub. L. 107–204, 116 Stat. 745.

* * * * *

6. Form 20–F (referenced in § 249.220f) is amended by:

a. Renumbering paragraph (10) as paragraph (11) under "Instructions as to Exhibits"; and

b. Adding paragraph (10) under "Instructions as to Exhibits."

The addition reads as follows:

Note: The text of Form 20–F does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 20–F

* * * * *

Instructions As To Exhibits

* * * * *

10. Any notice required by rule 104 of Regulation BTR (17 CFR 245.104 of this chapter) that you sent during the past fiscal year to a director or executive officer (as defined in 17 CFR 245.100(d) and (h) of this chapter) concerning any equity security subject to a blackout period (as defined in 17 CFR 245.100(c) of this chapter) under rule 101 of Regulation BTR (17 CFR 245.101 of this chapter) if the director or executive officer acquired the equity security in connection with his or her service or employment as a director or executive officer (as defined in 17 CFR 245.100(a)). Each notice must have included the information specified in 17 CFR 245.104(b) of this chapter.

Note: The exhibit requirement in paragraph (10) applies only to an annual report, and not to a registration statement, on form 20–F. The Commission will consider the attachment of any rule 104 notice as an exhibit to a timely filed Form 20–F annual report to satisfy an issuer's duty to notify the Commission of a blackout period in a timely manner. Although an issuer need not submit a rule 104 notice under cover of a form 6–K, if an issuer has already submitted this notice under cover of form 6–K, it need not attach the notice as an exhibit to a form 20–F annual report.

* * * * *

7. Form 40–F (referenced in § 249.240f) is amended by adding new paragraph (7) to general instruction B to read as follows:

Note: The text of form 40–F does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 40–F

* * * * *

General Instructions

* * * * *

B. Information To Be Filed On This Form

* * * * *

(7) An issuer must attach as an exhibit to an annual report filed on form 40–F a copy of any notice required by rule 104 of Regulation BTR (17 CFR 245.104 of this chapter) that it sent during the past fiscal year to a director or executive officer (as defined in 17 CFR 245.100(d) and (h) of this chapter) concerning any equity security subject to a blackout period (as defined in 17 CFR 245.100(c) of this chapter) under rule 101 of Regulation BTR (17 CFR 245.101 of this chapter) if the director or executive officer acquired the equity security in connection with his or her service or employment as a director or executive officer (as defined in 17 CFR 245.100(a)). Each notice must have included the information specified in 17 CFR 245.104(b) of this chapter.

Note: The Commission will consider the attachment of any rule 104 notice as an exhibit to a timely filed form 40–F annual report to satisfy an issuer's duty to notify the Commission of a blackout period in a timely manner. Although an issuer need not submit a rule 104 notice under cover of a form 6–K, if an issuer has already submitted this notice under cover of form 6–K, it need not attach the notice as an exhibit to a form 40–F annual report.

* * * * *

8. Form 8–K (referenced in § 249.308) is amended by:

a. Revising General Instruction 1; and

b. Adding item 5.04 under "Information to be Included in the Report."

The revision and addition read as follows:

Note: The text of form 8–K does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 8–K

* * * * *

General Instructions

* * * * *

B. Events to be Reported and Time for Filing of Reports

1. * * * A report on this form pursuant to item 5.04 is required to be filed within two business days after the earlier of receipt of notice of the blackout period (as defined in § 245.100(b)) from the plan administrator or actual knowledge of the blackout period by the person designated by the issuer to oversee the issuer's pension plans, or, in the absence of such a designation, the issuer's human resources director or person performing equivalent functions.

* * * * *

Information To Be Included in the Report

* * * * *

Item 5.04. Temporary Suspension of Trading Under Registrant's Employee Benefit Plans

Upon the earlier of receipt of notice of a blackout period (as defined in § 245.100(b)) from the plan administrator or actual knowledge of the blackout period by the person designated by the issuer to oversee the issuer's pension plans, or, in the absence of such a designation, the issuer's human resources director or person performing equivalent functions, provide the information specified in § 245.104(b) of this chapter.

* * * * *

Dated: November 6, 2002.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–28869 Filed 11–14–02; 8:45 am]

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Friday,
November 15, 2002

Part V

Department of Education

34 CFR Chapter I
Boy Scouts of America Equal Access Act; Proposed Rule

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DEPARTMENT OF EDUCATION

34 CFR Chapter I

RIN 1870–AA12

Boy Scouts of America Equal Access Act

AGENCY: Office for Civil Rights, Department of Education.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: We are soliciting comments from interested parties on the Boy Scouts of America Equal Access Act. This Act directs the Secretary of Education, through the Office for Civil Rights, to ensure compliance with this new law. We will consider comments received from interested parties in developing proposed regulations.

DATES: We must receive your comments on or before December 16, 2002.

ADDRESSES: Address all comments about the Boy Scouts of America Equal Access Act to Gerald A. Reynolds, Assistant Secretary for Civil Rights, U.S. Department of Education, 400 Maryland Avenue, SW., room 5000 MES, Washington, DC 20202–1100. If you prefer to send your comments through the Internet, use the following address: *boyscoutscomments@ed.gov*. You must include the term "Boy Scouts" in the subject line of your electronic message.

FOR FURTHER INFORMATION CONTACT: Doreen Dennis, Office for Civil Rights, U.S. Department of Education, 400 Maryland Avenue, SW., room 5038 MES, Washington, DC 20202–1100. Telephone: (202) 205–8635 or 1–800–421–3481.

If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (877) 521–2172.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION:

Background

On January 8, 2002, the President signed into law the "No Child Left Behind Act of 2001" (NCLB), Public Law 107–110, amending the Elementary and Secondary Education Act of 1965 (ESEA). Included in the amendments to the ESEA is the "Boy Scouts of America Equal Access Act" (Boy Scouts Act). The Boy Scouts Act applies to public elementary and secondary schools, local educational agencies (LEAs), and State educational agencies (SEAs) that are recipients of funds made available through the Department of Education (the Department). Under this law, no covered elementary or secondary school that provides an opportunity for one or more outside youth or community groups to meet on school premises or in school facilities before or after school hours shall deny equal access or a fair opportunity to meet to, or discriminate against, any group officially affiliated with the Boy Scouts of America or any other youth group listed in title 36 of the United States Code as a patriotic society.

The Boy Scouts Act directs the Secretary of Education, through the Office for Civil Rights, to enforce this law in a manner consistent with the procedure used under section 602 of the Civil Rights Act of 1964, with respect to public elementary and secondary schools, LEAs, and SEAs that receive funds made available through the Department. If a public school or agency does not comply with the Boy Scouts Act, it would be subject to the Department's enforcement actions.

Invitation To Comment

We invite you to submit comments concerning issues for which you believe regulations would be necessary or helpful. Your questions and concerns will provide valuable information in developing any proposed regulations.

In particular, we are seeking comments and information on the following questions:

1. Which entities make the decisions about the use of school facilities for non-school purposes? If the entities making the decisions are not schools, LEAs, or SEAs, what is the relationship between these entities and the schools, LEAs, or SEAs?

2. Are fees charged for the use of school facilities? If so, how are the fees determined? Are all groups that want to use the school facilities charged the same fee? Do the entities that have control over use of school facilities have the authority to waive fees? Do schools, LEAs, or SEAs (or other entities that have control over use of school facilities) consider an organization's membership or leadership criteria when determining whether to grant access, charge a fee, or waive a fee?

3. Do schools, LEAs, or SEAs (or other entities that have control over use of school facilities) have formal procedures that explicitly discuss the criteria used to determine whether a request for use or a fee waiver will be granted?

4. Are distinctions drawn between "outside" groups and school groups, with respect to the use of school facilities? If so, what criteria are used to determine whether an entity is considered an "outside" group? Are associations such as parent teacher associations (PTAs) considered "outside" groups?

5. If "outside" groups have access to school facilities for meetings, do those groups have access to any other school benefits or services as well, such as school bulletin boards, school newsletters, school public address systems, or other means of distributing information on school premises?

6. What does it mean for schools, LEAs, or SEAs to sponsor any group? How does a school sponsor a group? Are school-sponsored groups considered "outside" groups?

While we have suggested these issues for your consideration, we welcome comments on any issues relating to the Boy Scouts Act.

During and after the comment period, you may inspect all public comments submitted in response to this notice in room 5036, 330 C Street, SW., Washington, DC, between the hours of 10 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Comments

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

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Authority: Public Law 107–110.

Dated: October 30, 2002.

Rod Paige,

Secretary of Education.

[FR Doc. 02–29037 Filed 11–14–02; 8:45 am]

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Presidential Documents

Title 3—

The President

Proclamation 7626 of November 13, 2002

To Implement Modifications to the Caribbean Basin Economic Recovery Act and the African Growth and Opportunity Act

By the President of the United States of America

A Proclamation

1. Section 3107 of the Trade Act of 2002 (Public Law 107–210) amended the Caribbean Basin Economic Recovery Act (Title II of the Trade Act of 2000, Public Law 106–200) (CBERA) to modify the type and quantity of textile and apparel articles eligible for the preferential tariff treatment now accorded to designated beneficiary Caribbean Basin Trade Partnership Act (CBTPA) countries.

2. Section 3108 of the Trade Act of 2002 amended the African Growth and Opportunity Act (Title I of the Trade Act of 2000, Public Law 106–200) (AGOA) to modify the type and quantity of textile and apparel articles eligible for the preferential tariff treatment now accorded to designated beneficiary sub-Saharan African countries.

3. In order to implement the tariff treatment provided under sections 3107 and 3108 of the Trade Act of 2002, it is necessary to modify the Harmonized Tariff Schedule of the United States (HTS).

4. Section 604 of the Trade Act of 1974 (19 U.S.C. 2483) (1974 Trade Act) authorizes the President to embody in the HTS the substance of the relevant provisions of that Act, and of other acts affecting import treatment, and actions thereunder, including the removal, modification, continuance, or imposition of any rate of duty or other import restriction.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States, including section 604 of the 1974 Trade Act, do proclaim that:

(1) In order to provide the preferential treatment provided for in section 213(b)(2)(A) of the CBERA (19 U.S.C. 2703(b)(2)(A)), as amended by section 3107(a) of the Trade Act of 2002, the HTS is modified as provided in Annex I to this proclamation.

(2) In order to provide for the preferential treatment provided for in section 112(b) of the AGOA (19 U.S.C. 3721(b)), as amended by section 3108(a) of the Trade Act of 2002, the HTS is modified as provided in Annex II to this proclamation.

(3) Any provisions of previous proclamations and Executive Orders that are inconsistent with this proclamation are superseded to the extent of such inconsistency.

(4) This proclamation is effective with respect to eligible articles entered, or withdrawn from warehouse for consumption, on or after August 6, 2002; except that section I of Annex I to this proclamation relating to the dyeing, printing, and finishing of fabrics shall be effective with respect to eligible articles entered, or withdrawn from warehouse for consumption, on or after September 1, 2002; and except that section II of Annex I and Annex II relating to increases in the amount of certain articles eligible for duty-free treatment shall be effective with respect to articles entered, or withdrawn

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from warehouse for consumption, on or after the dates provided in such annex sections.

IN WITNESS WHEREOF, I have hereunto set my hand this thirteenth day of November, in the year of our Lord two thousand two, and of the Independence of the United States of America the two hundred and twenty-seventh.

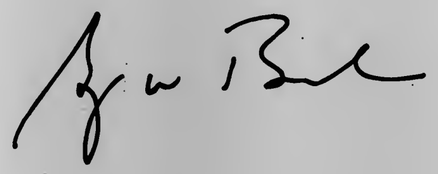

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ANNEX I

Subchapters II and XX of chapter 98 of the Harmonized Tariff Schedule of the United States (HTS) are modified as provided in the annex sections set forth below.

Section I. Effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after September 1, 2002, chapter 98 of the HTS is modified as follows:

A. U.S. note 7(b) to subchapter II of such chapter is modified–

(i) by inserting in subdivision (i) of such note, immediately after "States)", the phrase "provided they otherwise comply with the provisions of this note";

(ii) by inserting after the sentence which ends "quantitative limitations." the following new sentence:

> "Apparel articles entered on or after September 1, 2002, that are assembled in a beneficiary CBTPA country from knitted or crocheted fabrics or from woven fabrics shall be eligible to receive the duty treatment provided for in this note only if all dyeing, printing and finishing of such fabrics from which the articles are assembled is carried out in the United States."

B. U.S. note 2(a) to subchapter XX of such chapter is modified by deleting "9820.11.30" and by inserting in lieu thereof "9820.11.33", and by inserting at the end of such note subdivision the following new sentence:

> "For purposes of subheadings 9820.11.03, 9820.11.06, 9820.11.18, and 9820.11.33, apparel articles entered on or after September 1, 2002, that are assembled in a beneficiary CBTPA country from knitted or crocheted fabrics or from woven fabrics shall be eligible to receive the duty treatment provided for in this note only if all dyeing, printing and finishing of such fabrics from which the articles are assembled is carried out in the United States."

C. The article description of subheading 9820.11.03 is modified by deleting "and" appearing immediately before "(2)" and by inserting after the word "schedule" the following phrase ", and (3) meet the requirements of U.S. note 2(a) to this subchapter".

D. The article description of subheading 9820.11.06 (as modified by section III of this annex) is further modified by inserting at the end thereof the phrase ", under the terms of U.S. note 2(a) to this subchapter".

E. The article description of subheading 9820.11.18 is modified by inserting at the end thereof the phrase ", and under the terms of U.S. note 2(a) to this subchapter".

F. U.S. note 3(a) to subchapter XX of such chapter is modified by deleting the final period at the end of subdivision (iii) and by inserting in lieu thereof "; or", and by inserting the following new subdivision:

> "(iv) thread, used to assemble such apparel article, that is dyed, printed or finished in one or more CBTPA beneficiary countries."

G. The article description of subheading 9820.11.33 (as added by section III of this annex) is modified by inserting at the end thereof the phrase ", under the terms of U.S. note 2(a) to this subchapter".

Section II. Effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after October 1, 2002, chapter 98 of the HTS is modified as follows:

A. The tabulation in U.S. note 2(b) to subchapter XX of such chapter is modified by deleting "336,400,000" and by inserting in lieu thereof "500,000,000"; by deleting "and subsequent 12-

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month periods"; by deleting "390,224,000" and by inserting in lieu thereof "850,000,000"; and by inserting at the end thereof the following item:

"October 1, 2004 through September 30, 2005 and subsequent 12-month periods..... 970,000,000".

B. U.S. note 2(d) to subchapter XX of such chapter is modified by deleting from at each instance the phrase "fabric components" and by inserting in lieu thereof the phrase "fabrics (exclusive of all findings and trimmings)"; by inserting between "fabric" and "contained" at each instance the phrase "(exclusive of all findings and trimmings)"; by inserting between "entity" and "during" at each instance the phrase "that are entered and eligible under subheading 9820.11.15"; by inserting between the words "entered" and "during" at each instance the phrase "and eligible under subheading 9820.11.15"; and by deleting the phrase "in the preceding 12-month period" and inserting in lieu thereof the phrase "entered during the preceding 12-month period".

Section III. Effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after August 6, 2002, chapter 98 of the HTS is modified as follows:

A. U.S. note 7(b)(i) to subchapter II of such chapter is modified by inserting in subdivision (b)(i) before "assembled" the words "sewn or otherwise", and by inserting after the first appearance of the word "cut" the phrase ", or from components knit-to-shape,".

B. The tabulation in U.S. note 2(c) to subchapter XX of such chapter is modified by deleting "5,651,520" and by inserting in lieu thereof "9,000,000"; by deleting "and subsequent 12-month periods"; by deleting "6,555,763" and by inserting in lieu thereof "10,000,000"; and by inserting at the end thereof the following item:

"October 1, 2004 through September 30, 2005 and subsequent 12-month periods..... 12,000,000"

C. The article description of subheading 9820.11.03 is modified by inserting after "62" the words "sewn or otherwise", and by inserting after "cut" the phrase ", or from components knit-to-shape,".

D. The article description of subheading 9820.11.06 is deleted and the following new article description is inserted in lieu thereof:

"Apparel articles sewn or otherwise assembled in one or more such countries with thread formed in the United States from fabrics wholly formed in the United States and cut in one or more such countries from yarns wholly formed in the United States, or from components knit-to-shape in the United States from yarns wholly formed in the United States, or both (including fabrics not formed from yarns, if such fabrics are classifiable under heading 5602 or 5603 of the tariff schedule and are wholly formed in the United States)".

E. The following new subheading is inserted in numerical sequence in subchapter XX of such chapter, with the material inserted in the columns entitled "Heading/Subheading", "Article Description", and "Rates of Duty 1-Special":

	[Articles...:]		
"9820.11.33	Apparel articles sewn or otherwise assembled in one or more such countries with thread formed in the United States, the foregoing (i) from components cut in the United States and in one or more such countries from fabric wholly formed in the United States from yarns wholly formed in the United States (including fabrics not formed from yarns, if such fabrics are classifiable under heading 5602 or 5603 of the tariff schedule), or (ii) from components knit-to-shape in the United States and one or more such countries from yarns wholly formed in the United States, or (iii) from any combination of two or more of the foregoing knitting-to-shape or cutting operations.....		Free"

ANNEX II

Subchapters II and XIX of chapter 98 of the Harmonized Tariff Schedule of the United States (HTS) are modified as provided in the annex sections set forth below.

Section I. Effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after August 6, 2002, chapter 98 of the HTS is modified as follows:

A. U.S. note 7(a) to subchapter II of such chapter is modified by inserting in the first sentence immediately after "apparel articles" the phrase "sewn or otherwise", and by inserting after "cut" the phrase ", or from components knit-to-shape,".

B. U.S. note 2(d) to subchapter XIX of such chapter is modified by inserting in alphabetical sequence the following countries: "Republic of Botswana" and "Republic of Namibia".

C. U.S. note 3(b) to subchapter XIX of such chapter is modified by deleting the comma after the word "zippers" and inserting parentheses around the phrase "including zipper tapes".

D. The article description of subheading 9819.11.03 is modified by inserting after "62" the words "sewn or otherwise", and by inserting after the first appearance of the word "cut" the phrase ", or from components knit-to-shape,".

E. The article description of subheading 9819.11.06 is deleted and the following new article description is inserted in lieu thereof:

"Apparel articles sewn or otherwise assembled in one or more such countries with thread formed in the United States from fabrics wholly formed in the United States and cut in one or more such countries from yarns wholly formed in the United States, or from components knit-to-shape in the United States from yarns wholly formed in the United States, or both (including fabrics not formed from yarns, if such fabrics are classifiable under heading 5602 or 5603 of the tariff schedule and are wholly formed in the United States)".

F. The article description of subheading 9819.11.09 is modified by inserting after "countries)," the phrase "or from components knit-to-shape in one or more such countries from yarns originating either in the United States or in one or more such countries, or apparel articles wholly formed on seamless knitting machines in such a country from yarns originating either in the United States or one or more such countries,".

G. The article description of subheading 9819.11.12 is modified by inserting after "assembled" the phrase ", or knit-to-shape and wholly assembled, or both,"; by deleting "a lesser developed such country" and by inserting in lieu thereof "in one or more such lesser developed countries"; and by inserting before "if entered" the phrase "regardless of the country of origin of the fabric or the yarn used to make such articles,".

H. The article description of subheading 9819.11.18 is modified by deleting "18.5" and by inserting in lieu thereof "21.5".

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I. The following new subheading is inserted in numerical sequence in subchapter XIX, with the material inserted in the columns entitled "Heading/Subheading", "Article Description", and "Rates of Duty 1-Special":

	:[Articles...:]	:	:
"9819.11.30	: Apparel articles sewn or otherwise assembled in one or more such countries with thread formed in the United States, the foregoing (i) from components cut in the United States and in one or more such countries from fabric wholly formed in the United States from yarns wholly formed in the United States (including fabrics not formed from yarns, if such fabrics are classifiable under heading 5602 or 5603 of the tariff schedule), or (ii) from components knit-to-shape in the United States and one or more such countries from yarns wholly formed in the United States, or (iii) from any combination of two or more of the foregoing knitting-to-shape or cutting operations.....	:	: Free" :

Section II. Effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after October 1, 2002, chapter 98 of the HTS is modified as follows:

A. U.S. note 2(b) to subchapter XIX of such chapter is modified by deleting from the tabulation "2.0714" and by inserting in lieu thereof "4.2414", by deleting "2.3571" and by inserting in lieu thereof "4.7931", by deleting "2.6428" and by inserting in lieu thereof "5.3448", by deleting "2.9285" and by inserting in lieu thereof "5.8965", by deleting "3.2142" and by inserting in lieu thereof "6.4482", and by deleting "3.5" and by inserting in lieu thereof "7.0"; and

B. Such U.S. note 2(b) is further modified by deleting "subheadings" and by inserting in lieu thereof the "subheading", by deleting the phrase "and 9819.11.12", and by inserting below the tabulation the following new material and tabulation:

"Apparel articles from a lesser developed beneficiary sub-Saharan African country enumerated in subdivision (d) of this note, when such articles are described in and entered under subheading 9819.11.12, shall be counted toward the limit set forth in this note for apparel articles described in and entered under subheading 9819.11.09 and shall, in each of the one-year periods beginning on October 1, 2002, and October 1, 2003, be limited to an aggregate quantity not to exceed the applicable percentage set forth herein of aggregate square meter equivalents of all apparel articles imported into the United States in the preceding 12-month period for which data are available:

12-month Period	Applicable Percentage
October 1, 2002 through September 30, 2003	2.0714
October 1, 2003 through September 30, 2004	2.3571

Such apparel articles described in subheading 9819.11.12 during the 12-month periods enumerated above shall be allowed to enter regardless of the country of origin of the fabric or yarn used to make such articles."

[FR Doc. 02-29372
Filed 11-15-02; 8:45 am]
Billing code 3190-01-C

Presidential Documents

Memorandum of November 13, 2002

Notification to Congress of Trade Negotiation

Memorandum for the United States Trade Representative

You are authorized and directed to notify the Congress, consistent with section 2104(a)(1) of the Trade Act of 2002 (19 U.S.C. 3804(a)(1)), of my intention to enter into negotations on a Free Trade Agreement with Australia.

You are also authorized and directed to publish this memorandum in the **Federal Register**.

THE WHITE HOUSE,
Washington, November 13, 2002.

[FR Doc. 02-29373
Filed 11-15-02; 8:45 am]
Billing code 3190-01-M

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Rules and Regulations

Federal Register
Vol. 67, No. 222
Monday, November 18, 2002

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

FEDERAL RESERVE SYSTEM

12 CFR Part 201

[Regulation A]

Extensions of Credit by Federal Reserve Banks; Change in Discount Rate

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors has amended its Regulation A on Extensions of Credit by Federal Reserve Banks to reflect its approval of a decrease in the basic discount rate at each Federal Reserve Bank. The Board acted on requests submitted by the Boards of Directors of the twelve Federal Reserve Banks.

DATES: The amendments to part 201 (Regulation A) were effective November 6, 2002. The rate changes for adjustment credit were effective on the dates specified in 12 CFR 201.51.

FOR FURTHER INFORMATION CONTACT: Jennifer J. Johnson, Secretary of the Board, at (202) 452–3259, Board of Governors of the Federal Reserve System, 20th and C Streets NW., Washington, DC 20551; for users of Telecommunications Device for the Deaf (TDD) only, contact (202) 263–4869.

SUPPLEMENTARY INFORMATION: Pursuant to the authority of sections 10(b), 13, 14, 19, *et al.*, of the Federal Reserve Act, the Board has amended its Regulation A (12 CFR part 201) to incorporate changes in discount rates on Federal Reserve Bank extensions of credit. The discount rates are the interest rates charged to depository institutions when they borrow from their district Reserve Banks.

The "basic discount rate" is a fixed rate charged by Reserve Banks for adjustment credit and, at the Reserve Banks' discretion, for extended credit for up to 30 days. In decreasing the basic discount rate from 1.25 percent to .75 percent, the Board acted on requests submitted by the Boards of Directors of the twelve Federal Reserve Banks. The new rates were effective on the dates specified below. The 50-basis-point decrease in the discount rate was associated with a similar decrease in the federal funds rate approved by the Federal Open Market Committee (FOMC) and announced at the same time.

In a joint press release announcing these actions, the FOMC and the Board stated that the FOMC continues to believe that an accommodative stance of monetary policy, coupled with still-robust underlying growth in productivity, is providing important ongoing support to economic activity. However, incoming economic data have tended to confirm that greater uncertainty, in part attributable to heightened geopolitical risks, is currently inhibiting spending, production, and employment. Inflation and inflation expectations remain well contained. In these circumstances, the FOMC believes that this additional monetary easing should prove helpful as the economy works its way through this current soft spot. With its recent action, the FOMC believes that, against the background of its long-run goals of price stability and sustainable economic growth and of the information currently available, the risks are balanced with respect to the prospects for both goals in the foreseeable future.

Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Board certifies that the change in the basic discount rate will not have a significant adverse economic impact on a substantial number of small entities. The rule does not impose any additional requirements on entities affected by the regulation.

Administrative Procedure Act

The provisions of 5 U.S.C. 553(b) relating to notice and public participation were not followed in connection with the adoption of the amendment because the Board for good cause finds that delaying the change in the basic discount rate in order to allow notice and public comment on the change is impracticable, unnecessary, and contrary to the public interest in fostering price stability and sustainable economic growth.

The provisions of 5 U.S.C. 553(d) that prescribe 30 days prior notice of the effective date of a rule have not been followed because section 553(d) provides that such prior notice is not necessary whenever there is good cause for finding that such notice is contrary to the public interest. As previously stated, the Board determined that delaying the changes in the basic discount rate is contrary to the public interest.

List of Subjects in 12 CFR Part 201

Banks, Banking, Credit, Federal reserve system.

For the reasons set out in the preamble, 12 CFR part 201 is amended as set forth below:

PART 201—EXTENSIONS OF CREDIT BY FEDERAL RESERVE BANKS (REGULATION A)

1. The authority citation for 12 CFR part 201 continues to read as follows:

Authority: 12 U.S.C. 343 *et seq.*, 347a, 347b, 347c, 347d, 348 *et seq.*, 357, 374, 374a and 461.

2. Section 201.51 is revised to read as follows:

§ 201.51 Adjustment credit for depository institutions.

The rates for adjustment credit provided to depository institutions under § 201.3(a) are:

Federal Reserve Bank	Rate	Effective
Boston	.75	Nov. 7, 2002.
New York	.75	Nov. 6, 2002.
Philadelphia	.75	Nov. 7, 2002.
Cleveland	.75	Nov. 7, 2002.
Richmond	.75	Nov. 7, 2002.
Atlanta	.75	Nov. 7, 2002.
Chicago	.75	Nov. 7, 2002.
St. Louis	.75	Nov. 7, 2002.
Minneapolis	.75	Nov. 7, 2002.
Kansas City	.75	Nov. 7, 2002.
Dallas	.75	Nov. 6, 2002.
San Francisco	.75	Nov. 6, 2002.

Dated: November 12, 2002.

By order of the Board of Governors of the Federal Reserve System.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 02–29193 Filed 11–15–02; 8:45 am]

BILLING CODE 6210–01–P

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 9022]

RIN 1545–BB40

Information Reporting Relating to Taxable Stock Transactions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations under section 6043(c) requiring information reporting by a corporation if control of the corporation is acquired or if the corporation has a recapitalization or other substantial change in capital structure. This document also contains temporary regulations under section 6045 concerning information reporting requirements for brokers with respect to transactions described in section 6043(c). The text of these temporary regulations also serves as the text of proposed regulations set forth in the Proposed Rules section of this issue of the **Federal Register**.

DATES: *Effective Date:* These regulations are effective November 18, 2002.

Applicability Dates: For dates of applicability, see §§ 1.6043–4T(i) and 1.6045–3T(f).

FOR FURTHER INFORMATION CONTACT: Nancy Rose at (202) 622–4910 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

These regulations are being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in these regulations has been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget under control number 1545–1812. Responses to this collection of information are mandatory.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

For further information concerning this collection of information, and where to submit comments on the collection of information and the accuracy of the estimated burden, and suggestions for reducing this burden, please refer to the preamble to the cross-referencing notice of proposed rulemaking published in the Proposed Rules section of this issue of the **Federal Register**.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background and Explanation of Provisions

Section 6043(c) provides that if any person acquires control of a corporation, or if there is a recapitalization or other substantial change in capital structure of a corporation, the corporation, when required by the Secretary, shall make a return setting forth the identity of the parties to the transaction, the fees involved, the changes in the capital structure involved, and such other information as the Secretary may require with respect to such transaction.

Proposed regulations under section 6043(c) were previously published in the **Federal Register** on July 5, 1990 (55 FR 27648) (the 1990 proposed regulations). After considering issues raised in public comments and the reporting burdens placed on corporate taxpayers under the 1990 proposed regulations, the Internal Revenue Service decided to withdraw the 1990 proposed regulations on October 16, 1992 (57 FR 47428). At that time, the IRS stated that the value of the information that would be collected under the 1990 proposed regulations did not justify the burden to the public in complying with the rules. The IRS further stated that it might promulgate regulations under section 6043(c) if it became apparent that the information would be needed to administer the tax system properly.

At this time, the IRS believes that information reporting under section 6043(c) for certain large corporate transactions is appropriate. The transactions covered by this reporting requirement are acquisitions of control and substantial changes in the capital structure of a corporation. The temporary regulations require a corporation to attach a form to its income tax return describing these transactions, and to file information returns with respect to certain shareholders in such transactions. Duplicate reporting is not intended; thus, the regulations provide that no reporting is required under this section where reporting is required under another section. The text of these temporary regulations also serves as the text of the proposed regulations set forth in the cross-referencing notice of proposed rulemaking published in the proposed rules section of this issue of the **Federal Register**. The preamble to that notice of proposed rulemaking invites public comments with respect to the potential for duplicate reporting under this section. That preamble also invites comments with respect to the burden of compliance with the reporting requirements.

These temporary regulations require a domestic corporation involved in certain large taxable transactions to file form 8806 reporting and describing such transactions. The corporation must attach form 8806 to its timely filed income tax return. If form 8806 is not available at least 90 days prior to the due date (including extensions) of the corporation's income tax return for the year in which the acquisition of control or the substantial change in capital structure occurs or at least 90 days before such return is timely filed (whichever is sooner), the regulation allows a corporation to make the report by attaching an interim statement to its return containing certain required information.

The temporary regulations define an acquisition of control of a corporation as a transaction or series of related transactions in which stock representing control of that corporation is distributed by a second corporation or in which stock representing control of that corporation is acquired (directly or indirectly) by a second corporation and the shareholders of the first corporation receive cash, stock or other property. For these purposes, control is determined in accordance with the first sentence of section 304(c)(1). With certain limitations, the constructive ownership rules of section 318(a) apply to determine ownership. Acquisitions of control within an affiliated group are excepted from this definition, as are acquisitions in which the fair market value of the stock acquired in the transaction or series of related transactions is less than $100,000,000.

Under the temporary regulations, a corporation has a substantial change in its capital structure if the corporation in a transaction or series of related transactions (a) undergoes a recapitalization with respect to its stock, (b) redeems its stock, (c) merges, consolidates or otherwise combines with another entity or transfers substantially all of its assets to one or more entities, (d) transfers all or part of its assets to another corporation in a title 11 or similar case and, in pursuance of the plan, distributes stock or securities of that corporation, or (e)

changes its identity, form or place of organization. Transactions in which the amount of any cash plus the fair market value of any property (including stock) provided to shareholders of the corporation is less than $100,000,000 are excepted from this definition, as are transactions within an affiliated group.

The temporary regulations also require a domestic corporation involved in the specified transactions to issue, with respect to each of its shareholders, a form 1099–CAP reporting the amount of any cash plus the fair market value of any property (including stock) provided to the shareholder in the transaction. Corporations are not required to report amounts distributed to certain exempt recipients or the fair market value of any stock provided to a shareholder if the corporation reasonably determines that the receipt of such stock would not cause the shareholder to recognize gain (if any). Further, transactions and distributions already reported under other sections are not subject to reporting under these regulations.

Penalties under section 6652(l) may be imposed for failing to file required returns under section 6043(c) (including failure to file on magnetic media, as required under section 6011(e) and § 1.6011–2). The penalty under section 6652(l) is $500 for each day the failure continues, but the total amount imposed with respect to a return cannot exceed $100,000. The temporary regulations provide that the information returns required under these regulations shall be treated as one return for purposes of the section 6652(l) penalty, so that the penalty shall not exceed $500 per day ($100,000 in total) with respect to any acquisition of control or change in capital structure. Further, as provided in section 6652(l), such penalty does not apply if the failure is due to reasonable cause. Until regulations are promulgated under section 6652(l) to set forth specific standards for determining reasonable cause, the IRS will use the reasonable cause standards set forth in § 301.6724–1 of this chapter as a guideline for determining reasonable cause.

Section 1.6045–3T requires a broker who, as the record holder of stock, receives a form 1099–CAP from a corporation pursuant to the reporting requirements of § 1.6043–4T, to file a form 1099–CAP with respect to the actual owner and furnish such form 1099–CAP to the actual owner.

The temporary regulations are effective only for acquisitions of control and substantial changes of capital structure that occur after December 31, 2001, and for which the reporting corporation or any shareholder is required to recognize gain (if any) as a result of the application of section 367(a). The cross-referencing proposed regulations published in proposed rules section of this issue of the **Federal Register** will apply to all acquisitions of control and substantial changes in capital structure occurring after the date that such regulations are published as final regulations (regardless of whether section 367(a) applies).

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. For the applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6), refer to the Special Analyses section of the preamble to the cross-referencing notice of proposed rulemaking published in the proposed rules section of this issue of the **Federal Register**. Pursuant to section 7805(f) of the Internal Revenue Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

Drafting Information

The principal author of these temporary regulations is Nancy L. Rose, Office of Associate Chief Counsel (Procedure and Administration). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.6043–4T is added to read as follows:

§ 1.6043–4T Information returns relating to certain acquisitions of control and changes in capital structure (temporary).

(a) *Information returns for an acquisition of control or a substantial change in capital structure*—(1) *General rule.* If there is an acquisition of control (as defined in paragraph (c) of this section) or a substantial change in the capital structure (as defined in paragraph (d) of this section) of a domestic corporation ("reporting corporation"), the reporting corporation must file a completed form 8806 (or any successor form) in accordance with the instructions to that form. Form 8806 will request the information required in paragraphs (a)(1)(i) through (v) of this section.

(i) *Reporting corporation.* Provide the name, address, and taxpayer identification number (TIN) of the reporting corporation;

(ii) *Common parent, if any, of the reporting corporation.* If the reporting corporation was a subsidiary member of an affiliated group filing a consolidated return immediately prior to the acquisition of control or the substantial change in capital structure, provide the name, address, and TIN of the common parent of that affiliated group;

(iii) *Acquiring corporation.* Provide the name, address and TIN of any corporation that acquired control of the reporting corporation within the meaning of paragraph (c) of this section or combined with or received assets from the reporting corporation pursuant to a substantial change in capital structure within the meaning of paragraph (d) of this section ("acquiring corporation"). State whether the acquiring corporation is foreign (as defined in section 7701(a)(5)) or is a dual resident corporation (as defined in § 1.1503–2(c)(2)). In either case, state whether the acquiring corporation was newly formed prior to its involvement in the transaction.

(iv) *Common parent, if any, of acquiring corporation.* If the acquiring corporation named in paragraph (a)(1)(iii) of this section was a subsidiary member of an affiliated group filing a consolidated return immediately prior to the acquisition of control or the substantial change in capital structure, provide the name, address, and TIN of the common parent of that affiliated group.

(v) *Information about acquisition of control or substantial change in capital structure.* Provide—

(A) A description of the transaction or transactions that gave rise to the acquisition of control or the substantial change in capital structure of the corporation;

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(B) The date or dates of the transaction or transactions that gave rise to the acquisition of control or the substantial change in capital structure;

(C) A description of and a statement of the fair market value of any stock provided to the reporting corporation's shareholders in exchange for their stock if the reporting corporation reasonably determines that the shareholders are not required to recognize gain (if any) from the receipt of such stock for U.S. Federal income tax purposes; and

(D) A statement of the aggregate amount of cash plus the fair market value of any property (including stock if the reporting corporation reasonably determines that its shareholders would be required to recognize gain (if any) on the receipt of such stock, but excluding stock described in paragraph (a)(1)(v)(C) of this section) provided to the reporting corporation's shareholders in exchange for their stock.

(2) *Time for making return.* Form 8806 (or an interim statement, as set forth in paragraph (a)(3) of this section) must be attached to the reporting corporation's timely filed income tax return (taking extensions into account) for the year in which the acquisition of control or substantial change in capital structure occurs.

(3) *Interim statement.* If form 8806 has not been made available at least 90 days before the due date (including extensions) of the reporting corporation's income tax return for the year in which the acquisition of control or substantial change in capital structure occurs or at least 90 days before such return is timely filed (whichever is sooner), the reporting corporation shall attach a statement to its return containing the information described in paragraphs (a)(1)(i) through (v) of this section.

(4) *Coordination with other sections.* (i) No reporting is required under paragraph (a) of this section with respect to a transaction for which information is required to be filed pursuant to §§ 1.351–3(b), 1.355–5(a), or 1.368–3(a), provided the transaction is properly reported in accordance with those sections.

(ii) No reporting is required under paragraph (a) of this section with respect to a transaction for which information is required to be reported pursuant to section 6043(a), provided the transaction is properly reported in accordance with that section.

(5) *Exception where shareholders are exempt recipients.* No reporting is required under paragraph (a) of this section if the reporting corporation reasonably determines that all of its shareholders who receive cash, stock or other property pursuant to the acquisition of control or substantial change in capital structure are exempt recipients under paragraph (b)(6) of this section.

(b) *Information returns regarding shareholders*—(1) *General rule.* A corporation that is required to file form 8806 pursuant to paragraph (a)(1) of this section (or an interim statement under paragraph (a)(3) of this section) shall file a return of information on forms 1096 and 1099–CAP with respect to each shareholder of record in the corporation (before or after the acquisition of control or the substantial change in capital structure) who receives cash, stock, or other property pursuant to the acquisition of control or the substantial change in capital structure.

(2) *Additional requirement for information returns.* A corporation that would have been required to file form 8806 pursuant to paragraph (a) of this section (or an interim statement under paragraph (a)(3) of this section) but for the application of paragraph (a)(4)(i) of this section (relating to information provided under §§ 1.351–3(b), 1.355–5(a), or 1.368–3(a)) shall file a return of information on forms 1096 and 1099–CAP with respect to each shareholder of record in the corporation (before or after the acquisition of control or the substantial change in capital structure) who receives cash, stock, or other property pursuant to the acquisition of control or the substantial change in capital structure.

(3) *Time for making information returns.* Forms 1096 and 1099–CAP must be filed on or before February 28 (March 31 if filed electronically) of the year following the calendar year in which the acquisition of control or the substantial change in capital structure occurs.

(4) *Contents of return.* A separate form 1099–CAP must be filed with respect to amounts received by each shareholder (who is not an exempt recipient as defined in paragraph (b)(6) of this section) showing—

(i) The name, address, telephone number and TIN of the reporting corporation;

(ii) The name, address and TIN of the shareholder;

(iii) The number and class of shares in the reporting corporation exchanged by the shareholder;

(iv) The amount of cash and the fair market value of any stock (other than stock described in paragraph (a)(1)(v)(C)) of this section or other property provided to the shareholder in exchange for its stock; and

(v) Such other information as may be required by the instructions to form 1099–CAP.

(5) *Furnishing of forms to shareholders.* The form 1099–CAP filed with respect to each shareholder must be furnished to such shareholder on or before January 31 of the year following the calendar year in which the shareholder receives cash, stock, or other property as part of the acquisition of control or the substantial change in capital structure.

(6) *Exempt recipients.* A corporation is not required to file a form 1099–CAP pursuant to this paragraph (b) of this section with respect to the following shareholders:

(i) Any shareholder who receives solely stock described in paragraph (a)(1)(v)(C) of this section in exchange for its stock in the corporation.

(ii) Any shareholder who is required to recognize gain (if any) as a result of the receipt of cash, stock, or other property if the corporation reasonably determines that the amount of such cash plus the fair market value of such stock and other property does not exceed $1,000. Stock described in paragraph (a)(1)(v)(C) of this section is not taken into account for purposes of this paragraph (b)(6)(ii).

(iii) Any shareholder described in paragraphs (b)(6)(iii)(A) through (K) of this section if the corporation has actual knowledge that the shareholder is described in one of paragraphs (b)(6)(iii)(A) through (K) of this section or if the corporation has a properly completed exemption certificate from the shareholder (as provided in § 31.3406(h)-3 of this chapter). The corporation also may treat a shareholder as described in paragraphs (b)(6)(iii) (A) through (J) of this section based on the applicable indicators described in § 1.6049–4(c)(1)(ii).

(A) A tax-exempt organization, as described in § 1.6049–4(c)(1)(ii)(B)(1).

(B) An individual retirement plan, as described in § 1.6049–4(c)(1)(ii)(C).

(C) The United States, as described in § 1.6049–4(c)(1)(ii)(D).

(D) A state, as described in § 1.6049–4(c)(1)(ii)(E).

(E) A foreign government, as described in § 1.6049–4(c)(1)(ii)(F).

(F) An international organization, as described in § 1.6049–4(c)(1)(ii)(G).

(G) A foreign central bank of issue, as described in § 1.6049–4(c)(1)(ii)(H).

(H) A real estate investment trust, as described in § 1.6049–4(c)(1)(ii)(J).

(I) An entity registered under the Investment Company Act of 1940, as described in § 1.6049–4(c)(1)(ii)(K).

(J) A common trust fund, as described in § 1.6049–4(c)(1)(ii)(L).

(K) A corporation, as defined in section 7701(a)(3) (except for corporations for which an election under section 1362(a) is in effect), if the reporting corporation reasonably determines that such corporation is not a broker (as defined in § 1.6045–1(a)(1)) or a record holder for the actual owner of the stock.

(iv) Any shareholder that the corporation, prior to the transaction, associates with documentation upon which the corporation may rely in order to treat payments to the shareholder as made to a foreign beneficial owner in accordance with § 1.1441–1(e)(1)(ii) or as made to a foreign payee in accordance with § 1.6049–5(d)(1) or presumed to be made to a foreign payee under § 1.6049–5(d)(2) or (3). For purposes of this paragraph (b)(6)(iv), the provisions in § 1.6049–5(c) (regarding rules applicable to documentation of foreign status and definition of U.S. payor and non-U.S. payor) shall apply. The provisions of § 1.1441–1 shall apply by substituting the terms "corporation" and "shareholder" for the terms "withholding agent" and "payee" and without regard to the fact that the provisions apply only to amounts subject to withholding under chapter 3 of the Internal Revenue Code. The provisions of § 1.6049–5(d) shall apply by substituting the terms "corporation" and "shareholder" for the terms "payor" and "payee". Nothing in this paragraph (b)(6)(iv) shall be construed to relieve a corporation of its withholding obligations under section 1441.

(v) Any shareholder if, on January 31 of the year following the calendar year in which the shareholder receives cash, stock, or other property, the corporation did not know and did not have reason to know that the shareholder received such cash, stock, or other property in a transaction or series of related transactions that would result in an acquisition of control or a substantial change in capital structure.

(7) *Coordination with other sections.* No reporting is required under paragraph (b) of this section with respect to amounts that are required to be reported under section 6042 or section 6045, unless the corporation knows or has reason to know that such amounts are not properly reported in accordance with those sections.

(c) *Acquisition of control of a corporation*—(1) *In general.* For purposes of this section, an acquisition of control of a corporation ("first corporation") occurs if, in a transaction or series of related transactions, either—

(i) Stock representing control of the first corporation is distributed by a second corporation to shareholders of the second corporation and the fair market value of such stock on the date of distribution is $100,000,000 or more; or

(ii) (A) Before an acquisition of stock of the first corporation (directly or indirectly) by a second corporation, the second corporation does not have control of the first corporation;

(B) After the acquisition, the second corporation has control of the first corporation;

(C) The fair market value of the stock acquired in the transaction and in any related transactions as of the date or dates on which such stock was acquired is $100,000,000 or more; and

(D) The shareholders of the first corporation (determined without applying the constructive ownership rule of section 318(a)) receive cash, stock, or other property pursuant to the acquisition.

(2) *Control.* For purposes of this section, control is determined in accordance with the first sentence of section 304(c)(1).

(3) *Constructive ownership.* (i) Except as otherwise provided in this section, the constructive ownership rules of section 318(a) (except for section 318(a)(4), providing for constructive ownership through an option to acquire stock), modified as provided in section 304(c)(3)(B), shall apply for determining whether there has been an acquisition of control.

(ii) The determination of whether there has been an acquisition of control shall be made without regard to whether the person or persons from whom control was acquired retain indirect control of the first corporation under section 318(a).

(iii) For purposes of paragraph (c)(1)(ii) of this section, section 318(a) shall not apply to cause a second corporation to be treated as owning, before an acquisition of stock in a first corporation (directly or indirectly) by the second corporation, any stock that is acquired in the first corporation. For example, if the shareholders of a domestic corporation form a new holding company and then transfer their shares in the domestic corporation to the new holding company, the new holding company shall not be treated as having control of the domestic corporation before the acquisition. The new holding company acquires control of the domestic corporation as a result of the transfer. Similarly, if the shareholders of a domestic parent corporation transfer their shares in the parent corporation to a subsidiary of the parent in exchange for shares in the subsidiary, the subsidiary shall not be treated as having control of the parent before the transaction. The subsidiary acquires control of the parent as a result of the transfer.

(4) *Corporation includes group.* For purposes of this paragraph (c), if two or more corporations act pursuant to a plan or arrangement with respect to acquisitions of stock, such corporations will be treated as one corporation for purposes of this section. Whether two or more corporations act pursuant to a plan or arrangement depends on the facts and circumstances.

(5) *Section 338 election.* For purposes of this paragraph (c), an acquisition of stock of a corporation with respect to which an election under section 338 is made is treated as an acquisition of stock (and not as an acquisition of the assets of such corporation).

(d) *Substantial change in capital structure of a corporation*—(1) *In general.* A corporation has a substantial change in capital structure if it has a change in capital structure (as defined in paragraph (d)(2) of this section) and the amount of any cash and the fair market value of any property (including stock) provided to the shareholders of such corporation pursuant to the change in capital structure, as of the date or dates on which the cash or other property is provided, is $100,000,000 or more.

(2) *Change in capital structure.* For purposes of this section, a corporation has a change in capital structure if the corporation in a transaction or series of transactions—

(i) Undergoes a recapitalization with respect to its stock;

(ii) Redeems its stock (including deemed redemptions);

(iii) Merges, consolidates or otherwise combines with another corporation or transfers all or substantially all of its assets to one or more corporations;

(iv) Transfers all or part of its assets to another corporation in a title 11 or similar case and, in pursuance of the plan, distributes stock or securities of that corporation; or

(v) Changes its identity, form or place of organization.

(e) *Reporting by successor entity.* If a corporation ("transferor") transfers all or substantially all of its assets to another entity ("transferee") in a transaction that constitutes a substantial change in the capital structure of transferor, transferor must satisfy the reporting obligations in paragraph (a) or (b) of this section. If transferor does not satisfy the reporting obligations in paragraph (a) or (b) of this section, then transferee must satisfy those reporting obligations. If neither transferor nor transferee satisfies the reporting obligations in paragraphs (a) and (b) of

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this section, then transferor and transferee shall be jointly and severally liable for any applicable penalties (see paragraph (g) of this section).

(f) *Receipt of property.* For purposes of this section, a shareholder is treated as receiving property (or as having property provided to it) pursuant to an acquisition of control or a substantial change in capital structure if a liability of the shareholder is assumed in the transaction and, as a result of the transaction, an amount is realized by the shareholder from the sale or exchange of stock.

(g) *Penalties for failure to file.* For penalties for failure to file as required under this section, see section 6652(l). The information returns required to be filed under paragraphs (a) and (b) of this section shall be treated as one return for purposes of section 6652(l) and, accordingly, the penalty shall not exceed $500 for each day the failure continues (up to a maximum of $100,000) with respect to any acquisition of control or any substantial change in capital structure. Failure to file as required under this section also includes the requirement to file on magnetic media as required by section 6011(e) and § 1.6011–2. In addition, criminal penalties under sections 7203, 7206 and 7207 may apply in appropriate cases.

(h) *Examples.* The following examples illustrate the application of the rules of this section. For purposes of these examples, assume the transaction is not reported under §§ 1.351–3(b), 1.355–5(a), 1.368–3(a), and sections 6042, 6043(a) or 6045, unless otherwise specified, and assume that the fair market value of the consideration provided to the shareholders exceeds $100,000,000.

Example 1. The shareholders of X, a domestic corporation and parent of an affiliated group, exchange their X stock for stock in Y, a newly-formed foreign holding corporation. After the transaction, Y owns all the outstanding X stock. The X shareholders must recognize gain (if any) on the exchange of their stock as a result of the application of section 367(a). Because the transaction results in an acquisition of control of X, X must comply with the rules in paragraphs (a) and (b) of this section. If a statement is filed in accordance with § 1.351–3(b) with respect to the transaction, X is not required to attach form 8806 (or an interim statement) to its return. Regardless of whether a statement is filed in accordance with § 1.351–3(b), X must file a form 1099–CAP with respect to each shareholder who is not an exempt recipient showing the fair market value of the Y stock received by that shareholder, and X must furnish a copy of the form 1099–CAP to that shareholder.

Example 2. C, a domestic corporation, and parent of an affiliated group merges into D, an unrelated domestic corporation. Pursuant to the transaction, the C shareholders exchange their C stock for D stock or for a combination of short term notes and D stock. The transaction does not satisfy the requirements of section 368, and the C shareholders must recognize gain (if any) on the exchange. Because the transaction results in a substantial change in the capital structure of C, C (or D as the successor to C) must comply with the rules in paragraphs (a) and (b) of this section. C must attach form 8806 (or an interim statement) to its final income tax return. C (or D as the successor to C) also must file a form 1099–CAP with respect to each shareholder who is not an exempt recipient showing the fair market value of the short term notes (if any) and the fair market value of the D stock provided to that shareholder, and C (or D) must furnish a copy of the form 1099–CAP to that shareholder.

Example 3. (i) The facts are the same as in example (2), except that C reasonably determines that—

(A) The transaction satisfies the requirements of section 368;

(B) The C shareholders who exchange their C stock solely for D stock will not be required to recognize gain (if any) on the exchange; and

(C) The C shareholders who exchange their C stock for a combination of short term notes and D stock will be required to recognize gain (if any) on the exchange solely with respect to the receipt of the short term notes.

(ii) If a statement is filed in accordance with § 1.368–3(a) with respect to the transaction, C is not required to attach form 8806 (or an interim statement) to its return under paragraph (a) of this section. Regardless of whether a statement is filed in accordance with § 1.368–3(a), C (or D as the successor to C) must comply with the rules in paragraph (b) of this section. With respect to each shareholder who receives a combination of short term notes and D stock, and who is not an exempt recipient, C or D must file a form 1099–CAP showing the fair market value of the short term notes provided to the shareholder, and C (or D) must furnish a copy of the form 1099–CAP to that shareholder. The form 1099–CAP should not show the fair market value of the D stock provided to the shareholder. C and D are not required to file and furnish forms 1099–CAP with respect to shareholders who receive only D stock in exchange for their C stock.

Example 4. The facts are the same as in *example 3*, except the C shareholders receive cash instead of short term notes. The C shareholders exchange their shares through a transfer agent. Under section 6045, the transfer agent is required to report the amount of cash paid to the C shareholders in the transaction. C and D are not required to file information returns under paragraph (b) of this section, unless C or D knows or has reason to know that the transfer agent did not file the required information returns under section 6045.

(i) *Effective date.* This section applies to any acquisition of control and any substantial change in capital structure occurring after December 31, 2001, if the reporting corporation or any shareholder is required to recognize gain (if any) as a result of the application of section 367(a) as a result of the transaction. If a reporting corporation described in the preceding sentence files its income tax return for the year in which the acquisition of control or the substantial change in capital structure occurs on or before January 13, 2003, such reporting corporation (or successor entity) shall file an interim statement (as described in paragraph (a)(3) of this section) on or before January 31, 2003. The applicability of this section expires on November 14, 2005.

Par. 3. Section 1.6045–3T is added to read as follows:

§ 1.6045–3T Information reporting for an acquisition of control or a substantial change in capital structure (temporary).

(a) *In general.* Any broker (as defined in § 1.6045–1(a)(1)) who receives a form 1099–CAP from a corporation pursuant to § 1.6043–4T as the record holder of stock in such corporation but who is not the actual owner thereof shall file a return of information with respect to the actual owner unless the actual owner is an exempt recipient as defined in § 1.6045–1(c)(3)(i).

(b) *Form, manner and time for making information returns.* The return required by paragraph (a) of this section must be on forms 1096 and 1099–CAP, or on an acceptable substitute statement. Such forms must be filed on or before February 28 (March 31 if filed electronically) of the year following the calendar year in which the acquisition of control or the substantial change in capital structure occurs.

(c) *Contents of return.* A separate form 1099–CAP must be prepared for each owner showing—

(1) The name, address and taxpayer identification number of the actual owner;

(2) The number and class of shares in the corporation exchanged by the actual owner;

(3) The amount of cash and the fair market value of stock or other property provided to the actual owner in exchange for its stock, that would have been reported by the corporation under § 1.6043–4T if the corporation had provided the form 1099–CAP directly to the actual owner (rather than to the broker as nominee); and

(4) Such other information as may be required by form 1099–CAP.

(d) *Furnishing of forms to actual owners.* The form 1099–CAP prepared for each actual owner must be furnished to the actual owner on or before February 28 of the year following the calendar year in which the actual owner receives stock, cash or other property.

(e) *Single Form 1099.* If a broker is required to file a form 1099 with respect to an owner under both this § 1.6045–3T and § 1.6045–1(b), the broker may satisfy the requirements of both sections by filing and furnishing one form 1099 that contains all the relevant information, as provided in the instructions to form 1099–CAP.

(f) *Effective date.* This section applies with respect to any form 1099–CAP received by a broker after November 13, 2002. The applicability of this section expires on November 14, 2005.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 4. The authority citation for part 602 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 5. In § 602.101, paragraph (b) is amended by adding the following entries in numerical order to the table to read as follows:

§ 602.101 OMB Control numbers

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
* * *	*
1.6043–4T	1545–1812
* * *	*
1.6045–3T	1545–1812
* * *	*

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Approved: November 8, 2002.

Pamela F. Olson,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 02–29199 Filed 11–13–02; 4:24 pm]

BILLING CODE 4830–01–P

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

RIN 1024–AD06

Special Regulations; Areas of the National Park System

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: The National Park Service (NPS) is postponing the implementation of some existing snowmobile regulations in Yellowstone National Park, the John D. Rockefeller, Jr., Memorial Parkway, and Grand Teton National Park for one year. This additional time is needed because the NPS has not had sufficient time to plan for and implement the NPS-managed, mass-transit, snowcoach-only system outlined in the existing Winter Use Plan and Record of Decision and to complete the Supplemental Environmental Impact Statement (SEIS).

DATES: This rule becomes effective December 18, 2002.

FOR FURTHER INFORMATION CONTACT: Kym Hall, Regulations Program Manager, National Park Service, 1849 C Street, NW., Room 7248, Washington, DC 20240. Phone: (202) 208–4206. Email: *Kym_Hall@nps.gov*.

SUPPLEMENTARY INFORMATION: The NPS published the proposed rule on March 29, 2002 (67 FR 15145). Background information on this rulemaking is in the proposed rule.

Analysis of Public Comments

We provided 60 days for public comment on our proposal, through May 28, 2002. By midnight of that day, we had received 7,709 comments in the form of individual letters, form letters, petitions and e-mails. Of the comments, 3,693 supported postponing the implementation of existing snowmobile regulations (the proposed rule) and 4,016 opposed the proposed rule. We received 403 comments from Gateway communities (Gardner and West Yellowstone, Montana, and Jackson and Cody, Wyoming), 1,195 from the surrounding states of Idaho, Montana and Wyoming (outside the Gateway communities) and 6,111 comments from the remainder of the United States.

The comment period for this rule ran concurrently with the comment period for the Draft SEIS. It is likely that many of the comments received during the rulemaking comment period were more likely intended to apply to the SEIS. Many of the comments went beyond the narrow focus of the proposed rule and opined on whether the NPS should alter its decision from November, 2000, to allow continued recreational snowmobile use in the three park units. The pending SEIS process will result in a determination of whether such use will occur. At this time the NPS believes it can accommodate some level of recreational use in the three park units.

The following is a summary of all substantive comments we received on the proposed rule and our responses to them.

Issue—Over 2,400 comments specifically supported the continued use of snowmobiles, objecting to any. prohibitions, and encouraging proper management and use of new technology to solve snowmobile related problems.

NPS Response—These comments go beyond the narrow scope of the proposed rule and address issues under consideration in the SEIS process. In that process, NPS is considering alternatives that would allow some level of snowmobile use and include several elements of snowmobile management that will help to mitigate or resolve existing concerns related to snowmobile use. During the winter use season 2002–2003, NPS is implementing management measures to mitigate the effects of continued snowmobile use in the parks.

Issue 2—Several comments supported alternative 2 developed by the cooperating agencies.

NPS Response—These comments also go beyond the scope of the proposed rule. The NPS continues to evaluate the substance of alternative 2 in the SEIS process.

Issue 3—A few commentors said that they believe snowmobiles do not harm wildlife or the environment.

NPS Response—Studies cited in the FEIS document disturbance to wildlife and the potential harm to the environment from inadequately managed snowmobile use. The pilot program in Yellowstone National Park during the winter of 2001–2002 lessened these impacts to some extent. If the winter use plan for the three parks includes continued recreational use of snowmobiles, the plan will include features to further reduce and monitor these impacts.

Issue 4—Some commentors said that the ban on snowmobiles would be too devastating on the economy of local communities.

NPS Response—Again, these comments go beyond the scope of the proposed rule. The FEIS and draft SEIS disclosed potential adverse economic consequences from a ban of recreational snowmobile use. The NPS chose to phase out such use, rather than implement an immediate ban, in part based on those adverse impacts. Consequently, we are striving to develop a winter use management plan that continues to provide winter access to a variety of visitors while still protecting the parks as required by applicable law.

Issue 5—A few commentors said they wanted to continue to have the ability to access the park on their own snowmobile at their own pace and that this is the best way to experience the park.

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NPS Response—This is beyond the scope of the proposed rule, but the issue is being considered as part of the SEIS process. The proposed rule allows personally owned snowmobiles to be used during the winter of 2002–2003.

Issue 6—Several commentors supported the idea of adaptive management so the parks could be responsive to new technology with regards to snowmobile management.

NPS Response—These comments are beyond the scope of the proposed rule. The draft SEIS, however, considered two alternatives that featured adaptive management strategies.

Issue 7—Nearly 900 commentors said they do not support any proposal for snowmobile access only with a guide.

NPS Response—Again, these comments are beyond the scope of the proposed rule. This issue will be addressed in the SEIS process. Current regulations do not require the use of snowmobile guides during the winter use season 2002–2003.

Issue 8—Several commentors expressed support for a 35 mph speed limit between West Yellowstone and Old Faithful.

NPS Response—The speed limit reduction (from 45 to 35 mph) between West Yellowstone and Old Faithful during last winter's pilot program administratively addressed winter issues in this corridor and is being evaluated. It is likely that a similar speed limit reduction will be utilized during this coming winter.

Issue 9—Several commentors supported the idea of partnerships between the NPS and private sector to expand winter use education with an emphasis on ethics, rules, safety and park appreciation.

NPS Response—The NPS will consider these ideas when implementing a final winter use decision.

Issue 10—Some commentors said that 4-stroke technology would sufficiently curb perceived environmental concerns.

NPS Response—These comments are beyond the scope of the proposed rule but this issue will be addressed in the SEIS process.

Issue 11—Over 900 commentors believe that snowmobiles and snowcoaches can coexist and that one should not be banned in favor of the other.

NPS Response—These comments were beyond the scope of the proposed rule. The NPS is using the SEIS process to consider whether to allow both kinds of snowmachine use on park routes.

Issue 12—Nearly 900 commentors supported interim daily entry limits based on historic daily averages. Others believe historic annual use levels should be maintained.

NPS Response—These comments are beyond the scope of the proposed rule but this issue will be addressed in the SEIS process. One of the goals of the NPS is to maintain historic levels of visitation. The SEIS process will result in a decision on how to accomplish that goal.

Issue 13—Several commentors supported the advance sale of park permits off-site.

NPS Response—This implementation feature is beyond the scope of the proposed rule. However, based on the results of the pilot program instituted during the 2001–2002 winter use season, it is planned that advance sale of park permits off-site will continue to occur throughout West Yellowstone this coming winter in order to reduce congestion at the entrances and to reduce NPS employee exposure to exhaust emissions.

Issue 14—Some commentors supported reasonable restrictions on snowmobiles rather than an outright ban.

NPS Response—Again, these comments are beyond the narrow scope of the proposed rule and address the decision NPS will make at the conclusion of the SEIS process. Different alternatives in the final SEIS will consider such restrictions (hours of operation, limited numbers of entries, speed limits, guided tours or specialized training, etc.) in order to mitigate impacts to resources and reduce conflicts between user groups. During winter use season 2002–2003, snowmobile use in Yellowstone and Grand Teton National Parks will continue at its current level.

Issue 15—Nearly 900 commentors said that travel by snowmobile should be discouraged between the hours of 9 pm and 8 am.

NPS Response—Current snowmobile regulations prohibit operations of snowmobiles between the hours of 9 pm and 8 am. For the winter use season 2002–2003, the park will be amending the hours of operation to prohibit use between the hours of 9 pm and 7 am. This additional hour of use in the morning should help alleviate congestion at the West Yellowstone entrance. Adjustments in the times of operation for snowmobiles and/or snowcoaches may be addressed in the final SEIS.

Issue 16—Over 1,300 commentors supported the delay of the implementation of the existing regulations until the SEIS is complete.

NPS Response—We agree and expect to have the SEIS complete by spring 2003. This delay will enable us to complete the process without implementing the 50% reduction that is due to go into effect during the winter use season 2002–2003 under the current regulations.

Issue 17—Nearly 4,000 commentors supported the existing regulations and/or a complete prohibition of snowmobiles in the three parks.

NPS Response—The NPS believes that implementing the 50% reduction in the winter of 2002–2003, as originally scheduled, is undesirable. One purpose of the staged phase-out of snowmobile use was to allow NPS, and local communities, sufficient time to convert to a mass-transit system within the park units. Both entities need additional time to accomplish this conversion. Additionally, under the ongoing SEIS process, the NPS is considering whether new snowmobile technology and some travel restrictions (such as guided trips and operator training) would allow recreational snowmobile use to continue in the park units.

Issue 18—Some commentors supported the use of mass-transit snowcoaches.

NPS Response—We agree that the use of mass-transit snowcoaches may be an effective way to allow the maximum amount of visitors with less impact to park resources. Snowcoach use is unaffected by this regulation and will continue under the existing regulations.

Issue 19—A few commentors said that further public comment was not warranted and that the original decision/rulemaking process was sound.

NPS Response—On June 29, 2001, the NPS entered into a settlement agreement with the International Snowmobile Manufacturers Association, State of Wyoming, and others to complete a Supplemental Environmental Impact Statement to the original EIS completed in October 2000. The SEIS was to incorporate "any significant new or additional information or data submitted with respect to a winter use plan." Additionally, the NPS was to consider new information and data submitted regarding new snowmobile technologies. Because of the terms of the settlement agreement, and because the SEIS must follow the process established by the National Environmental Policy Act, soliciting additional public comment was legally required. Most importantly, the Secretary of the Interior and the Director of the NPS both agree that consultation with affected parties is the most productive way to facilitate the decision making process.

Issue 20—A few commentors said the NPS should not be pressured by the snowmobile industry or business concerns.

NPS Response—We believe that it is in the public interest for the NPS to understand and communicate with all affected stakeholders, including the tourism businesses. However, our ability to balance the needs of all stakeholders is constrained by the following considerations: (1) Resource protection is the highest priority of any park; (2) the mandate of preserving park resources unimpaired for future generations may limit our ability to meet the desires of the commercial tourism industry; (3) the Service must consider the negative as well as the positive impacts that tourism may have on park neighbors. Additionally, the Service strives to understand the goals, capabilities, and limitations of the tourism industry and recognize that tourism businesses have financial obligations to meet and investments to protect.

Finally, the Regulatory Flexibility Act requires us to consider the economic impact to businesses from our rulemaking decisions. These businesses could be anything from snowmobile manufacturers to the hotel that provides a room for an out-of-town visitor coming to ride a snowmobile.

Issue 21—A few commentors believe that snowmobiles destroy the solitude of the winter experience.

NPS Response—Within the Final SEIS, we will consider whether and how to provide separate areas of use, or vary the use times, for different types of winter activities such as snowmobiling, snowcoach touring and cross-country skiing. This would allow each user group to enjoy the particular kind of experience for which they come to the park units.

Issue 22—Some commentors said that snowmobiles harm wildlife and wildlife habitat, threaten human health and safety, and pollute the air, ground and water with emissions.

NPS Response—During the winter use season 2002–2003, we will institute management measures that will help address some of these concerns. In the SEIS process, we are considering, among other options, management strategies to mitigate these impacts through guided tours and training to reduce conflicts with wildlife, provide off-site sales of passes to alleviate inhalation of emissions by NPS employees at the entrance gates, and use of new snowmobile technology to reduce emissions into the air, ground and water. Those strategies likely will include a monitoring program to evaluate these impacts and ensure that such visitor use does not cause unacceptable impacts.

Issue 23—Some commentors said that snowmobiles destroy natural peace and quiet and that they are concerned about the noise.

NPS Response—Although beyond the scope of this rulemaking the final SEIS is considering whether we can lessen the noise impacts from snowmobiles and snowcoaches to a point where such use in parks is appropriate. Additionally, the monitoring program we anticipated developing for the final SEIS will help determine the appropriate long-term use level to protect the visitor experience in the park units. The NPS is not making any changes to snowmobile use requirements as a method of reducing noise impacts during the winter use season 2002–2003. However, the increase in cleaner and quieter technology snowmobile engines within rental and administrative fleets may have beneficial affects on noise impacts in the park units.

Issue 24—A few commentors said that snowmobiles ruin the park experience for other visitors.

NPS Response—As previously indicated in this rulemaking, under the SEIS process the NPS is considering how to provide a variety of uses to allow different user groups each a chance for a unique experience. The objective in the SEIS is, in part, to reduce conflicts between user groups and allow for more enjoyable experiences regardless of the recreational activity. The NPS will continue to implement portions of the pilot program started in 2001 including such measures as increased grooming of roads, increased presence of NPS staff, and off-site sales of entrance passes in order to make the park experience more enjoyable for everyone.

Issue 25—A few commentors believe the NPS is in violation of laws and/or the Executive Orders pertaining to park management and off-road vehicle use.

NPS Response—We are cognizant of the legal and policy parameters guiding the management of visitor use in the park units. These requirements guide this decision as well as the development of any future plan for recreational snowmobile use in the parks.

The one year extension of the phase-out of certain provisions of the existing regulation is justified on the same basis as that stated with the publication of that regulation in January 2001:

> Under our Management Policies 2000, if there is an impairment of park resources and values from ongoing activities, as here, we must eliminate it as soon as reasonably possible. If the impairment is not from permanent impacts, as here, in determining how soon that is, we may make due allowance for avoiding unacceptable social, economic, or environmental effects of the action eliminating the impairment. (66 FR 7259, January 22, 2001)

As stated previously, NPS has not had sufficient time to implement the NPS-managed, mass-transit, snowcoach-only decision under the existing regulation and Record of Decision, and additional time is still needed to complete the SEIS. The impacts during the winter of 2002–03 are, in any event, anticipated to be less than those identified in the previous planning effort as a result of the various regulatory changes that will go into effect this winter, and the planned enhanced pilot project developed on the basis of our experience the past winter.

Issue 26—Some commentors said that snowmobiles belong on other lands (such as National Forests) and that there are plenty of other places for them to operate rather than in national parks.

NPS Response—We agree that there are a number of areas where snowmobiles can operate on other lands outside the national parks. We also know that visitors to the West Yellowstone area already spend the majority of their snowmobile visits utilizing lands outside the park units. NPS policy commits us to provide appropriate, high quality opportunities for visitors to enjoy parks. We also strive to maintain within parks an open, inviting atmosphere accessible to every segment of American society.

Issue 27—More than 1,700 commentors said that the NPS should listen to the EPA who said alternative 1a is the best alternative for the parks.

NPS Response—The NPS acknowledges that the presence of snowmobiles in these parks, whether operated by the public or the Park Service for administrative purposes, will have some level of negative impacts on park resources, just as the presence of any motorized vehicle, including snowcoaches, will also have negative impacts. We may allow such visitor uses so long as we manage them to minimize the impacts and ensure the impacts do not impair park resources and values.

Issue 28—Nearly 2,200 commentors said that they had concern for the protection of the park values and that the NPS should be providing a refuge away from machines and the other issues of city life.

NPS Response—NPS can and does allow a variety of recreational uses so long as those uses do not cause unacceptable impacts to park resources and values. Within the final SEIS, the NPS is considering how to provide various use areas throughout the parks

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in order to allow for motorized and non-motorized activities. Each person characterizes his or her "refuge" and expectations of the ideal park visit in a different way. What one person values in the park experience may be contrary to another's. The NPS hopes to provide a wide spectrum of experiences to visitors from around the country and around the world.

Issue 29—One commentor said they thought the NPS was pre-decisional in proposing to implement alternative 1b from the draft SEIS and that public comments would not properly be considered within that process.

NPS Response—The basis for our determination to continue the phase-out of recreational snowmobile use in the parks is explained in our responses to issues 4, 17, and 25. This decision is supported by the environmental analysis conducted in the FEIS and explained in the Record of Decision. As indicated within this final rule, all public comments were read and considered.

Snowplanes

Over 1,200 other letters were received supporting on the continued use of snowplanes on Jackson Lake. The NPS specifically indicated in the proposed rule that snowplane use would not be reconsidered since it was not an element of the SEIS. The use of snowplanes on Jackson Lake continues to be prohibited.

Compliance With Other Laws

Regulatory Planning and Review (Executive Order 12866)

This document is a significant rule and has been reviewed by the Office of Management and Budget under Executive Order 12866.

(1) This rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

This rule would delay most adverse economic impact from the existing rule for potentially two winter seasons, and there may be economic benefits resulting from the proposed extension. In the economic report "Proposed Restrictions on Snowmobile Riding in the Greater Yellowstone Area Under the Delay Rule" (MACTEC Engineering and Consulting of Georgia, Inc., BBL Sciences, and RTI International, November 2002) net economic gains are estimated to be between $3.0 million and $7.3 million. These estimates only include the monetized impacts of this rule, and do not include non-monetized values such as environmental effects. The full economic analysis can be viewed at *http://www.nps.gov/yell.*

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

Implementing actions under this rule will not interfere with other agencies or local government plans, policies, or controls. This is an agency specific change.

(3) This rule does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients.

This rule will only postpone the phase out of snowmobiles for one year within specific park units. No grants or other forms of monetary supplements are involved.

(4) This rule may raise novel legal or policy issues.

The issue of prohibiting snowmobiles or allowing their continued use has generated local as well as national interest on the subject in the greater Yellowstone area. Previously, tens of thousands of public comments were received and analyzed in the development of the FEIS, Winter Use Management Plan, and existing regulations.

Regulatory Flexibility Act

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

After considering the economic impacts of the delay rule on small entities, NPS concludes the delay rule will mitigate the impacts on small businesses during the winters of 2002–2003 and 2003–2004 relative to the impacts under the January 2001 rule. The NPS projects higher total levels of revenue for firms providing unguided and guided snowmobile rentals and snowcoach tours in those winters.

Small Business Regulatory Enforcement Fairness Act (SBREFA).

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of $100 million or more.

This rule would delay most adverse economic impact from the existing rule for one year, there may be economic benefits resulting from the proposed extension.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

Delaying the implementation of current snowmobile regulations for one year will have little effect on costs or prices for consumers, individual industries or any government agency.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

This rulemaking has no effect on methods of manufacturing or production and specifically influences only the Greater Yellowstone region of Wyoming, Montana and Idaho, not national or U.S. based enterprises.

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local or tribal governments or the private sector.

This rule postpones the implementation of existing snowmobile regulations for one year. It imposes no other requirements on other agencies, governments, or the private sector.

Takings (Executive Order 12630)

In accordance with Executive Order 12630, the rule does not have significant takings implications.

This rule proposes to delay the implementation of certain existing snowmobile regulation for one year. Owners of private property within the boundaries of Grand Teton National Park will still be afforded access to their private property during the winter use season. No other property is affected.

Federalism (Executive Order 13132)

In accordance with Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

This proposed rule effects use by the public of NPS administered lands. It has no outside effects on other areas and only addresses a portion of the use within parks.

Civil Justice Reform (Executive Order 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

This regulation does not require an information collection from 10 or more parties and a submission under the Paperwork Reduction Act is not required. An OMB form 83–I is not required.

National Environmental Policy Act

In 2000, NPS completed a Final Environmental Impact Statement and issued a Record of Decision. That Record of Decision was the basis for the existing rule, and the rationale in that document supports the decision set forth in this rule. A Draft Supplemental Environmental Impact Statement (DSEIS) has been prepared to reconsider the Record of Decision.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government to Government Relations with Native American Tribal Governments" (59 FR 22951) and 512 DM 2:

We have evaluated potential effects on federally recognized Indian tribes and have determined that there are no potential effects.

Numerous tribes surrounding the greater Yellowstone area were consulted in the development of the Winter Use Plan and FEIS. The main concerns expressed by the tribes were the effects on wildlife by snowmobiles while operating inside the park units. The National Park Service is currently studying how to minimize adverse snowmobile-wildlife interactions in the SEIS. During the winter use season 2002–2003, the NPS will again provide additional staff presence to enforce existing regulations and educate visitors about proper snowmobile use in order to reduce conflicts between snowmobiles and wildlife. This rule has no effect on tribal lands or trusts.

Drafting Information: The principal contributors to this final rule are Robert J. Maguire, North District Ranger, Grand Teton National Park; Kym A. Hall, NPS Regulations Program Manager; and Barry Roth and Debra Hecox, Attorney-Advisors, Solicitor's Office.

List of Subjects in 36 CFR Part 7

District of Columbia, National Parks, Reporting and recordkeeping requirements.

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

1. The authority for part 7 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 460(q), 462(k); Sec. 7.96 also issued under D.C. Code 8–137(1981) and D.C. Code 40–721 (1981).

2. In § 7.13, remove and reserve paragraph (l)(2), revise the introductory text of paragraph (l)(5), revise the introductory text of paragraph (l)(7), revise paragraph (l)(11)(i) , and revise the dates in the first sentence of (l)(11)(viii) to read as follows:

§ 7.13 Yellowstone National Park.

* * * * *

(l)(5) *What routes are designated for snowmobile use in the park during the winter seasons of 2002–2003 and 2003–2004?* During the winter use seasons of 2002–2003 and 2003–2004, the following routes are designated for snowmobile use:

* * * * *

(l)(7) *What limits are established for the number of snowmobiles permitted to use the park each day?* For the winter use season 2003–2004, the numbers of snowmobiles allowed to use the park each day are listed in the following table:

* * * * *

(l)(11)(i) Snowcoaches , and during the winter use seasons of 2002–2003 and 2003–2004 snowmobiles, may not be operated in the park between the hours of 9 p.m. and 7 a.m. except by authorization.

* * * * *

(l)(11)(viii) During the winter season of 2003–2004, snowmobiles must be accompanied by an NPS permitted guide and may not travel in groups of more than 11 snowmobiles.

* * * * *

3. In § 7.21, revise paragraph (a)(1), remove and reserve paragraph (a)(2), revise paragraph (a)(4) introductory text, revise paragraph (a)(5) introductory text, and revise paragraph (a)(9)(vi) to read as follows:

§ 7.21 John D. Rockefeller, Jr., Memorial Parkway.

* * * * *

(a)(1) *May I operate a snowmobile in the Parkway?* You may operate a snowmobile in the Parkway in compliance within the public use limits and operating conditions established in this section until the end of the winter use season of 2003–2004 at which time snowmobile use in the Parkway is prohibited except for essential administrative use and in emergency situations as determined by the Superintendent.

* * * * *

(a)(4) *What routes are designated for snowmobile use in the Parkway in the winter use seasons of 2002–2003 and 2003–2004?* During the winter use seasons of 2002–2003 and 2003–2004, the following routes are designated for snowmobile use:

* * * * *

(a)(5) *What limits are established for the number of snowmobiles permitted to use the Parkway each day?* For the winter use season 2003–2004, the numbers of snowmobiles allowed to use the Parkway each day are listed in the following table:

* * * * *

(a)(9)(vi) Snowcoaches, and during the winter use seasons of 2002–2003 and 2003–2004 snowmobiles, may not be operated in the park between the hours of 9 p.m. and 7 a.m. except by authorization.

* * * * *

4. In § 7.22, revise paragraph (g)(1), remove and reserve paragraphs (g)(2) and (g)(3), revise paragraph (g)(4), revise paragraph (g)(6), and revise paragraph (g)(7)(vi) to read as follows:

§ 7.22 Grand Teton National Park.

* * * * *

(g)(1) *May I operate a snowmobile in Grand Teton National Park?* During the winter use seasons of 2002–2003 and 2003–2004, you may operate a snowmobile on the routes and areas designated in paragraphs (g)(4) and (g)(6) of this section in compliance with public use limits and operating standards established by the Superintendent. Effective the winter use season of 2004–2005, snowmobile use will be restricted to the routes and purposes in paragraphs (g)(10), (11), (12), and (13) of this section. All other snowmobile use is prohibited, except for essential administrative use and in emergency situations as determined by the Superintendent.

* * * * *

(g)(4) Effective until the end of the winter use season 2002–2003, the following water surface is designated for snowmobile use: The frozen surface of Jackson Lake.

* * * * *

(g)(6) *What routes and limits are designated for snowmobile use in the park during the winter use seasons of 2002–2003 and 2003–2004?* For the winter use seasons of 2002–2003 and 2003–2004, the Continental Divide Snowmobile Trail along U.S. 26/287 from Moran to the eastern park boundary and along U.S. 89/287 from Moran to the north park boundary is designated for snowmobile use. The Superintendent may open or close this route after taking into consideration the location of wintering wildlife, appropriate snow cover, and other factors that may relate to public safety. During the winter use season of 2003–

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2004 a maximum of 25 snowmobiles are allowed to use this route each day.

* * * * *

(g)(7)(vi) Snowcoaches, and during the winter use seasons of 2002–2003 and 2003–2004 snowmobiles, may not be operated in the park between the hours of 9 p.m. and 7 a.m.

* * * * *

Dated: November 8, 2002.

J. Steven Griles,

Deputy Secretary of the Interior.

[FR Doc. 02–29028 Filed 11–15–02; 8:45 am]

BILLING CODE 4310–70–P

POSTAL SERVICE

39 CFR Part 501

Authorization To Manufacture and Distribute Postage Meters

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This final rule amends the regulations for inspecting postage meter production facilities that are located outside the continental United States. This rule requires the manufacturer to reimburse the Postal Service for certain costs incurred by required inspections of production facilities located outside the continental United States.

DATES: The rule is effective November 18, 2002.

FOR FURTHER INFORMATION CONTACT: Wayne Wilkerson, manager of Postage Technology Management, at 703–292–3782, or by fax at 703–292–4050.

SUPPLEMENTARY INFORMATION: Title 39, Code of Federal Regulations (CFR) part 501, Authorization to Manufacture and Distribute Postage Meters, requires the Postal Service to inspect meter production facilities to determine if the facilities satisfy Postal Service requirements for meter and component security and production quality. A manufacturer may have valid business reasons for selecting a particular location for its production facilities. However, when a manufacturer chooses to locate these facilities outside the continental United States, conducting the required inspections of such facilities places an undue cost burden on the Postal Service. The Postal Service is requiring the manufacturer to reimburse the travel-related costs.

The proposed rule was published in the **Federal Register** on May 9, 2002 [Vol. 67, No. 90, page 31168], with a request for submission of comments by June 10, 2002. We received two submissions from postage meter manufacturers in response to the solicitation of public comments. The Postal Service gave thorough consideration to the comments it received, modified the proposed rule as appropriate, and now announces the adoption of the final rule.

Discussion of Comments

1. Both commenters opposed having the provider become responsible for the costs incurred by the Postal Service when it conducts required inspections of provider facilities located outside the continental U.S. One commenter claimed that this requirement is both unfair and unreasonable, since it puts an undue burden on a company with production facilities outside the U.S., and therefore places non-U.S.-based companies at a disadvantage. The commenter also noted that in the global economy, it is unreasonable to expect products to be sourced from a single country. The other commenter noted that even though providers have maintained facilities in Europe for years, the Postal Service has not asked that the providers pay postal expenses for travel to these European locations. The commenter requested that European production facilities be exempt from the new rule.

The Postal Service understands the concern about having providers pay the costs incurred for Postal Service personnel who travel outside the continental United States to inspect production facilities. The initially approved foreign manufacturing and production facilities were located in Europe. The Postal Service was able to minimize its cost by conducting periodic, routine, security inspections of multiple production locations on a single trip. Ongoing routine inspections of these long-established locations have resolved many of the security issues that can arise during facility startup. Although the final rule includes no exemption from the requirement for manufacturers to pay for Postal Service inspections of European production facilities, the Postal Service plans to continue its policy of funding the cost of certain inspection trips, as it has in the past, at its discretion. Postal Service funding will be limited to trips for routine inspections when the Postal Service can conduct multiple inspections and costs are not excessive. The Postal Service must limit its cost exposure by requiring manufacturers to pay the travel-related costs for inspections outside the continental United States whenever the costs are associated with particular security issues related to the manufacturer's products, or with the startup or implementation of a new plant or of a new or substantially changed manufacturing process. The Postal Service revised the proposed rule in response to this comment.

2. One commenter noted that when the Postal Service inspected overseas facilities in the past, the inspection team often visited more than one manufacturer or facility on a given trip. The other commenter noted that it is unreasonable to require the provider to pay travel expenses for inspections, which are conducted in the interests of the Postal Service. The commenter suggested that each organization consider whether the expense of travel is justified by the benefit gained. If it is not, then the trip should be postponed and not billed to another organization. The commenter noted that requirement for providers to reimburse the Postal Service also raises the issue of who is to decide the specifics of travel, including the number of Postal Service representatives.

Although the decision on where to locate production facilities for meter products or components is not one in which the Postal Service would expect to participate, such decisions may have the effect of increasing Postal Service costs incurred in the administration of the postage meter program. Given the financial constraints under which the Postal Service must operate, and our determination to avoid additional revenue security issues, the Postal Service cannot allow the business decisions of providers to determine the security of Postal Service revenues or to increase Postal Service costs indiscriminately. However, in recognition of the concerns expressed, the Postal Service is adding paragraph 501.2(c)(i) to clarify the final rule by defining how the Postal Service will control the costs allocated to the manufacturer. For example, the Postal Service will combine trips to more than one facility whenever possible and will limit the number of Postal Service representatives on the inspection team to the minimum number required to conduct the inspection.

3. It has come to the attention of the Postal Service that companies are considering using production facilities in certain foreign countries where political or other impediments may prevent the Postal Service from conducting security evaluations of these facilities. Postal Service approval to distribute meters produced in such facilities may be suspended until such time as satisfactory inspections may be conducted. In recognition of this concern, the Postal Service is adding paragraph 501.2(c)(ii) to clarify the final rule.

List of Subjects in 39 CFR Part 501

Administrative practice and procedure, Postal Service.

The Amendment

For the reasons set out in this document, the Postal Service is amending 39 CFR part 501 as follows:

PART 501—AUTHORIZATION TO MANUFACTURE AND DISTRIBUTE POSTAGE METERS

1. The authority citation for part 501 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 410, 2601, 2605; Inspector General Act of 1978, as amended (Public Law 95–452, as amended); and 5 U.S.C. App. 3.

2. Amend § 501.2 by revising the introductory text and paragraphs (c) and (d) to read as follows:

§ 501.2 Manufacturer qualification.

Any concern wanting authorization to manufacture and/or lease postage meters for use by licensees under *Domestic Mail Manual* P030 must:

* * * * *

(c) Have, or establish, and keep under its supervision and control, adequate production facilities suitable to carry out the provisions of §§ 501.15 through 501.21 to the satisfaction of the Postal Service. The production facilities must be subject to unannounced inspection by representatives of the Postal Service. If the provider's production facilities are located outside the continental United States, the provider will be responsible for all reasonable and necessary travel-related costs incurred by the Postal Service to conduct the inspections. Travel-related costs are determined in accordance with Postal Service Handbook F–15, *Travel and Relocation*. At its discretion, the Postal Service may continue to fund routine inspections outside the continental United States as it has in the past, provided the costs are not associated with particular security issues related to a manufacturer's product, or with the start-up or implementation of a new plant or of a new or substantially changed manufacturing process.

(i) When conducting an inspection outside the continental United States, the Postal Service will make every effort to combine the inspection with other inspections in the same general geographic area in order to enable affected manufacturers to share the costs. The Postal Service team conducting such inspections will be limited to the minimum number necessary to conduct the inspection. All air travel will be contracted for at the rates for official government business, when available, under such rules respecting class of travel as apply to those Postal Service representatives inspecting the facility at the time the travel occurs.

(ii) If political or other impediments prevent the Postal Service from conducting security evaluations of meter manufacturing facilities in foreign countries, Postal Service approval to distribute meters produced in those facilities may be suspended until such time as satisfactory inspections may be conducted.

(d) Have, or establish, and keep under its active supervision and control adequate facilities for the control, distribution, and maintenance of meters and their replacement or secure disposal or destruction when necessary.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 02–29097 Filed 11–15–02; 8:45 am]

BILLING CODE 7710–12–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 600 and 660

[Docket No. 020606142–2234–02; I.D. 041802F]

RIN 0648–AP39

Magnuson-Stevens Act Provisions; Fisheries Off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Groundfish Fishery Management Measures; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Correction to final rule.

SUMMARY: This document contains a correction to a final rule published on October 29, 2002. It removes an amendatory instruction that was inadvertently published in the October 29, 2002 document.

DATES: November 18, 2002.

SUPPLEMENTARY INFORMATION:

Background

On October 29, 2002, (67 FR 65902) NMFS published a final rule in the **Federal Register** to amend tier qualifications to include sablefish landings taken under the provisions of an exempted fishing permit (EFP) from 1984–1985 with setnet gear north of 38° N. lat. Setnet EFP landings will be added to the current pot (trap) and longline landings to qualify a sablefish-endorsed permit for its tier assignment. This rule is intended to recognize historical sablefish landings made by current primary season participants.

Correction

In the FR Doc. 02–27360 in the issue of Tuesday, October 29, 2002 (67 FR 65902) make the following correction:

1. On page 65906, in the third column, under instruction 7.(i), remove " and (g)(2)."

Dated: November 12, 2002.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 02–29183 Filed 11–15–02; 8:45 am]

BILLING CODE 3510–22–S

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Proposed Rules

Federal Register
Vol. 67, No. 222
Monday, November 18, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF ENERGY

10 CFR Parts 1021 and 1022

RIN 1901–AA94

Compliance With Floodplain and Wetland Environmental Review Requirements

AGENCY: Department of Energy.

ACTION: Proposed rule; opportunity for public comment.

SUMMARY: This proposed rule would revise the Department of Energy's (DOE's) floodplain and wetland environmental review requirements to add flexibility and remove unnecessary procedural burdens by: Simplifying DOE public notification procedures for proposed floodplain and wetland actions; exempting additional actions from the floodplain and wetland assessment provisions of these regulations; providing for immediate action in an emergency; expanding the existing list of sources that may be used in determining the location of floodplains and wetlands; and allowing floodplain and wetland assessments for actions proposed to be taken under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) to be coordinated with the CERCLA environmental review process rather than the National Environmental Policy Act (NEPA) process. In addition, the proposed revisions would make the rule easier to use by reordering sections, clarifying requirements, and eliminating provisions that are no longer necessary. The proposed revisions would streamline existing procedures and add no new or additional requirements. This proposed revision also would provide a conforming change to 10 CFR part 1021 to allow for issuance of a floodplain statement of findings in a final environmental impact statement (EIS) or separately.

DATES: Interested persons should submit comments by January 14, 2003.

ADDRESSES: You should address written comments on the proposed revisions to Carolyn Osborne, U.S. Department of Energy, Office of NEPA Policy and Compliance, 1000 Independence Avenue SW., Washington, DC 20585–0119. You also may e-mail written comments to: *carolyn.osborne@eh.doe.gov* or submit them by facsimile to (202) 586–7031.

FOR FURTHER INFORMATION CONTACT: For information regarding DOE's regulations for compliance with floodplain and wetland environmental review requirements or these proposed revisions, contact Carolyn Osborne at the above address. Telephone (202) 586–4600 or leave a message at (800) 472–2756.

For information on DOE's NEPA process, contact Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance, at the above address and telephone numbers.

SUPPLEMENTARY INFORMATION:

I. Background
A. Executive Orders 11988 and 11990
B. 10 CFR Part 1022
II. Purpose of the Revisions to 10 CFR Parts 1021 and 1022
III. Description of Proposed Revisions to the Existing Rules
A. Proposed Changes to 10 CFR Part 1021
B. Proposed Changes to 10 CFR 1022 Subpart A—General
C. Proposed Changes to 10 CFR 1022 Subpart B—Procedures for Floodplain and Wetland Reviews
IV. Procedural Review Requirements
A. Review Under Executive Order 12866
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C. Review Under Executive Order 13132
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E. Reviews Under the Regulatory Flexibility Act
F. Review Under the Paperwork Reduction Act
G. Review Under the National Environmental Policy Act
H. Review Under the Unfunded Mandates Reform Act
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J. Review Under the Treasury and General Government Appropriations Act
V. Public Comment Procedures

I. Background

We published our regulations entitled "Compliance with Floodplain/Wetlands Environmental Review Requirements" (10 CFR Part 1022) on March 7, 1979 (44 FR 12596) to implement the requirements of Executive Order 11988, "Floodplain Management" (42 FR 2951, May 24, 1977), and Executive Order 11990, "Protection of Wetlands" (42 FR 26961, May 24, 1977).

A. Executive Orders 11988 and 11990

Executive Orders 11988 and 11990 direct Federal agencies to consider and protect the beneficial values of floodplains and wetlands, and Executive Order 11988 also requires Federal agencies to consider, and implement protection from, the risk of loss from floods. The Executive Orders direct that Federal agencies evaluate the potential impacts of, and look for alternatives to, actions proposed in a floodplain or wetland. The Executive Orders also direct that agencies locate any new development outside floodplains and any new construction outside wetlands whenever there is a practicable alternative for doing so. When the action must proceed in a floodplain or wetland, the responsible agency is to implement steps to mitigate any potential harm. The assessment process under the Executive Orders is to include an opportunity for public review, and the Executive Orders are to be implemented through existing procedures, including those used to comply with NEPA, to the extent possible. The Executive Orders contain other informational requirements, including that Federal agencies notify the White House Office of Management and Budget (OMB) when new budget requests involve actions proposed to be in a floodplain or wetland and that Federal agencies provide certain information during transfers of property to non-Federal parties.

While this basic framework is the same in both Executive Orders, they differ in three important ways. First, Executive Order 11988 requires an assessment for any action proposed in a floodplain, whereas Executive Order 11990 only requires an assessment for new construction in a wetland. Second, Executive Order 11988 directs that if an agency finds that there is no practicable alternative to undertaking the action in a floodplain, then the agency will circulate a brief notice explaining the basis for its finding. Executive Order 11990 contains no similar provision for actions in wetlands. Finally, Executive Order 11988 requires the use of certain building standards and related measures for development in a floodplain. There is nothing comparable in Executive Order 11990 related to construction in a wetland.

B. 10 CFR Part 1022

Central to our implementation of Executive Orders 11988 and 11990 are the floodplain and wetland assessment processes contained in subpart B of 10 CFR part 1022. The assessments ensure that we fulfill the substantive provisions of the Executive Orders to examine alternatives to undertaking actions in a floodplain or wetland, potential impacts on the beneficial values of floodplains and wetlands, and possible mitigation measures. As required by the Executive Orders, we look for practicable alternatives to locating a proposed action in a floodplain or wetland and only conduct a floodplain or wetland assessment when no alternative location is practicable. Our processes also ensure that we fulfill the procedural provisions of the Executive Orders to allow early public review of our proposals for certain activities in a floodplain or wetland, provide notice of a finding that there are no practicable alternatives to undertaking an action in a floodplain, and make use of existing processes, including those used to implement NEPA.

Our floodplain and wetland assessment process has five steps. First, we determine early in the planning process for all proposals if a floodplain or wetland assessment is required, based on the location of the proposed action and the applicability provisions in our regulation, which are taken from the Executive Orders. As noted above, Executive Order 11988 requires an assessment for a broader set of actions proposed in a floodplain than Executive Order 11990 requires for actions proposed in a wetland. Our requirements in part 1022 reflect this difference. When an action is proposed in a wetland that is located in a floodplain, we apply the more encompassing requirements for an action proposed in a floodplain.

Second, if a floodplain or wetland assessment is required, we provide public notice and allow at least 15 days for public review of our proposal. If we are preparing an EIS for the proposal, then we may incorporate this announcement into the EIS notice of intent required under applicable NEPA regulations. Otherwise, we announce the opportunity for early public review through a public notice that describes the proposed action and its location and is published in the **Federal Register** as soon as practicable after we determine that an assessment is required. The public review process itself is integrated with the NEPA process to the extent possible or else conducted separately.

Third, we prepare the floodplain or wetland assessment. If we are also preparing an EIS or environmental assessment (EA), then we usually incorporate the floodplain or wetland assessment into the NEPA documentation. Otherwise, we separately document the floodplain or wetland assessment. In either case, we describe the proposed action and include a map showing the location of the proposed action with respect to the floodplain or wetland. We discuss the positive and negative, direct and indirect, and long- and short-term effects of the proposed action on the floodplain or wetland. For actions proposed in a floodplain, the assessment evaluates effects of the proposed action on lives and property and evaluates natural and beneficial floodplain values. For actions proposed in a wetland, the assessment evaluates effects on the survival, quality, and natural and beneficial values of the wetland. The floodplain or wetland assessment also considers alternatives that may avoid adverse effects and incompatible development in floodplains or wetlands and addresses mitigation measures.

Fourth, we determine whether there are any practicable alternatives to locating the proposed action in a floodplain or wetland. If we find that there are not, then before taking action in a floodplain we publish a brief statement of findings describing the proposed action, explaining why the action is proposed in a floodplain, listing alternatives considered, stating whether the action conforms to state or local floodplain protection standards, and describing steps to be taken to minimize potential harm to or within the floodplain. The statement of findings may be incorporated into the finding of no significant impact (FONSI) or final EIS, as appropriate, or issued separately. Where no EA or EIS is required, we publish the statement of findings in the **Federal Register** and distribute copies to appropriate government agencies and to those who commented during the public review of our proposal. We endeavor to allow at least 15 days of public review of the statement of findings before implementing a proposed action in a floodplain. There is no similar format or procedure for findings regarding whether there are any practicable alternatives to locating a proposed action in a wetland.

Fifth, we follow up decisions to locate actions in a floodplain or wetland through methods appropriate for the circumstances of each action.

The current rule contains one exemption from the requirement to prepare a floodplain or wetland assessment, which is for routine maintenance of existing facilities and structures on DOE property within a floodplain or wetland. By routine maintenance, we mean those activities needed as a normal part of operations to maintain and preserve facilities and structures in a condition suitable for continued use for their designated purpose. Routine maintenance does not include upgrades, improvements, or replacements that significantly extend the originally intended useful life of a facility or structure or that change its purpose. Where unusual circumstances indicate the possibility of adverse impacts on a floodplain or wetland, though, we will consider the need for a floodplain or wetland assessment even for routine maintenance activities.

Other requirements in 10 CFR part 1022 that implement aspects of Executive Orders 11988 and 11990 address building standards, providing floodplain and wetland information to external parties, property management, and budget requests. Although these requirements are designed to promote awareness of the values of floodplains and wetlands and the risks of flood loss, they are not part of the floodplain and wetland assessment process.

II. Purpose of the Revisions to 10 CFR Parts 1021 and 1022

The Secretary of Energy has approved issuance and publication of this notice of proposed rulemaking.

We propose to revise 10 CFR part 1022 to add flexibility to our implementation of the Executive Orders, remove unnecessary procedural burdens, and make the rule easier to use by reordering sections, clarifying requirements, and eliminating provisions that are no longer needed. These changes stem from our experience implementing the existing requirements over the past 20 years. We expect these changes to improve our ability to meet our goals for floodplain and wetland protection in a timely and cost-effective manner. We propose to revise 10 CFR part 1021 to allow floodplain statements of findings to be issued in a final EIS or separately.

The major revisions we propose would: (1) Simplify our public notification procedures for proposed floodplain and wetland actions by emphasizing local publication as opposed to publication in the **Federal Register**, (2) exempt additional actions from the floodplain and wetland

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assessment provisions of these regulations, (3) provide for immediate action in an emergency with documentation to follow, (4) expand the existing list of credible sources that may be used in determining the location of floodplains and wetlands, and (5) allow floodplain and wetland assessments for actions proposed to be taken under CERCLA to be coordinated with the CERCLA environmental review process rather than the NEPA process. The proposed revisions would make the rule easier to use by reordering sections to parallel the assessment process, clarifying requirements (such as the differences between floodplain and wetland actions and their respective assessment requirements), and simplifying the rule by deleting provisions that are no longer applicable. The proposed revisions would streamline existing procedures and add no new requirements.

Rather than require publication in the **Federal Register** of every public notice announcing a proposed action in a floodplain or wetland or describing the findings of our floodplain assessment, we propose to allow case-by-case decisions on how to issue notices to best meet local needs (in proposed sections 1022.12 and 1022.14). We would continue to integrate our floodplain and wetland notices with other public notices related to the proposed action, such as a notice of intent to prepare an EIS on the proposal. We also would continue to distribute notices directly to interested parties, such as government and non-government agencies, as appropriate. We would, however, only require publication of a notice and a floodplain statement of findings in the **Federal Register** if our proposal may result in effects of national concern on a floodplain or wetland. A hypothetical example of an action that could have effects of national concern because of its national prominence and ecological function and the potential environmental effects of such a proposal would be a proposal for a project in the Everglades.

As noted above, part 1022 currently does not ordinarily require a floodplain or wetland assessment for routine maintenance of existing facilities and structures on DOE property in a floodplain or wetland. We propose to exempt four additional classes of floodplain and wetland actions from subpart B, Procedures for Floodplain and Wetland Reviews. At proposed section 1022.5(d)(2), we would add exemptions for three similar classes of activities (site characterization, environmental monitoring, and environmental research activities) on DOE or non-DOE property in a floodplain or wetland, unless the activities would involve building a structure; involve draining, dredging, channelizing, filling, diking, impounding, or related activities; or result in long-term change to the ecosystem. At proposed section 1022.5(d)(3), we would add an exemption for minor modification of an existing facility or structure in a floodplain or wetland to improve safety or environmental conditions, unless the modification would result in a significant change in the expected useful life of the facility or structure or would involve building a structure or draining, dredging, channelizing, filling, diking, impounding, or related activities. Our experience with these classes of actions is that they are of short duration with very small intrusion in a floodplain or wetland and have very small or no adverse impact on a floodplain or wetland. Additionally, these classes of actions typically lead to improved environmental protection or public and worker safety. For each of these exemptions, if unusual circumstances arise, we would consider the need for a floodplain or wetland assessment in order to consider any unusual circumstances associated with a particular proposal that indicate the possibility of adverse impact on a floodplain or wetland (proposed section 1022.5(e)).

We propose to clarify our provision for immediate action in the event of an emergency (proposed section 1022.16(a)). The existing rule allows minimum time periods prior to implementation of a proposal to be waived in response to emergency circumstances. We propose that action may be taken during an emergency without complying with provisions of these regulations. We also propose, however, that after taking action, we would assess the environmental impacts of our emergency actions and consider potential mitigation in conjunction with our NEPA regulations for emergency actions (10 CFR 1021.343(a)) or our CERCLA procedures.

The existing rule establishes a 15-day waiting period between issuance of the notice of proposed floodplain action and issuance of the floodplain statement of findings, and another 15-day waiting period after issuance of the floodplain statement of findings before implementing the proposed floodplain action. For a proposed wetland action, the existing rule requires a 15-day waiting period after issuance of the notice of proposed action before implementing the action. In the event of statutory deadlines or overriding considerations of program or project expense or effectiveness, the existing rule provides for waiving any of the waiting periods except the 15-day period between issuing a notice of proposed floodplain action and the floodplain statement of findings. We propose to add a provision allowing the waiver of all minimum waiting periods under the same exigent circumstances (*i.e.*, in the event of statutory deadlines or overriding considerations of program or project expense or effectiveness) (proposed section 1022.16(b)). This change would allow us additional flexibility when a floodplain assessment is not being prepared as part of a NEPA or CERCLA review. The waiver of a waiting period under this rule would not affect timing requirements of our NEPA regulations or of CERCLA procedures.

We propose to expand the existing list of sources that may be used in determining the location of floodplains and wetlands (proposed sections 1022.11(b) and (c)). For floodplain determinations we have relied upon Flood Insurance Rate Maps, Flood Hazard Boundary Maps, and information from the relevant land administering agency or from agencies with floodplain determination expertise. We propose to also use information in safety basis documents as defined at 10 CFR part 830 and in DOE environmental documents, *e.g.*, NEPA and CERCLA documents. For wetland determinations, we have relied upon the U.S. Fish and Wildlife Service National Wetlands Inventory, other government-sponsored wetland or land-use inventories, U.S. Department of Agriculture Natural Resources Conservation Service Local Identification Maps, and U.S. Geological Survey Topographic Maps. We propose to also use the U.S. Army Corps of Engineers "Wetlands Delineation Manual" (Wetlands Research Program Technical Report Y–87–1, January 1987) or successor document and DOE environmental documents, *e.g.*, NEPA and CERCLA documents. These changes would allow us to take advantage of information sources that were not available when this regulation was first promulgated and to use better the considerable research and documentation completed for safety, planning, and other purposes at DOE sites. When there are differences among these information sources, we will use the most authoritative information available relative to site conditions.

We propose adding provisions acknowledging that floodplain and wetland assessments for actions proposed to be taken under CERCLA would be coordinated with the CERCLA environmental review process, not the NEPA process (proposed sections 1022.2(b), 1022.11(a), and 1022.13(c)). As we first promulgated our 10 CFR Part 1022 requirements approximately two years before CERCLA became law, this change would update the rule to be consistent with our current policy and practice regarding environmental reviews under CERCLA.

To make the rule simpler and easier to use, we propose to reorder sections, add clarifications, delete text, and make numerous stylistic changes. These proposed changes would not alter applicable requirements. The existing rule has two subparts, A and B. We propose reordering sections in Subpart B to only address provisions associated with floodplain and wetland assessment processes. All other requirements currently in Subpart B would be moved to a proposed new subpart (Subpart C, Other Requirements).

We propose to clarify how this regulation applies differently to actions proposed in a floodplain, and actions proposed in a wetland but not in a floodplain, consistent with provisions in Executive Orders 11988 and 11990 and our existing regulation. We would not change any requirements in this regard; rather we propose to revise definitions of floodplain, floodplain action, and wetland action (proposed section 1022.4) to better describe our intent and the way we implement this regulation. These changes, and related changes to maintain consistency throughout the regulation, clarify that we treat a proposal that would be located in both a wetland and a floodplain as we would any other action proposed to be located in a floodplain.

We propose to delete text that is repeated between sections in the existing rule, and in one case, we would delete an entire section (existing section 1022.21) that specifies we will periodically review these regulations and make revisions. Existing section 1022.21 is not required for us to propose additional changes to this rule at a future date, and therefore, we propose deleting it as unnecessary. We also propose to delete language that was needed to transition the rule into effect but that is no longer needed (proposed section 1022.5).

The details of these and other proposed changes are described below in section III, Description of Proposed Revisions to the Existing Rule. Because we often reference our existing rule to describe our proposed changes, you may want to refer to it. Our existing 10 CFR Part 1022 regulations are available on the Internet at *http://tis.eh.doe.gov/nepa/tools/tools.htm* under the heading "NEPA Regulations" or you may request a copy from Carolyn Osborne at either of the telephone numbers listed above under **FOR FURTHER INFORMATION CONTACT.**

III. Description of Proposed Revisions to the Existing Rules

A. Proposed Changes to 10 CFR Part 1021

We propose to revise section 1021.313 to make it consistent with our proposed new section 1022.14(c), as described above in section II, Purpose of the Revisions to 10 CFR Parts 1021 and 1022, and below. Currently, section 1021.313(c) requires a DOE final EIS to include any floodplain statement of findings required by Part 1022. This requirement is overly prescriptive and is inconsistent with the flexibility afforded under existing section 1022.15 and proposed section 1022.14(c) to include a floodplain statement of findings in a final EIS or to issue the statement of findings separately. Under our proposal, section 1021.313(c) would track the language at the new section 1022.14(c).

B. Proposed changes to 10 CFR 1022 Subpart A—General

Section 1022.1 Background

To provide guidance on implementing Executive Order 11988, Floodplain Management, we propose adding a reference to the Federal Interagency Floodplain Management Taskforce document, "A Unified National Program for Floodplain Management" (FEMA 248, June 1994). We also propose adding words from Executive Orders 11988 and 11990 emphasizing two purposes of the regulation: That Federal agencies are to avoid development in a floodplain or new construction in a wetland wherever there is a practicable alternative and to ensure the evaluation of potential impacts associated with proposed new construction in wetlands. These changes would add no new requirements.

Section 1022.2 Purpose and Scope

As described above in section II, we propose identifying the CERCLA review process as an alternative mechanism for implementing the regulation. Sections 1022.11(a) and 1022.13(c) (detailed below) would be revised to reflect this additional flexibility.

Section 1022.3 Policy

To better group floodplain and wetland policy statements, we propose reordering paragraphs within this section. We also propose updating the reference to construction requirements in proposed paragraph (a)(4) from "regulations promulgated by the Federal Insurance Administration pursuant to the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4001 *et seq.*" to "the Federal Emergency Management Agency's (FEMA) National Flood Insurance Program building standards." Also, we propose moving a requirement concerning transactions to a new section 1022.21(b) in a new Subpart C, Other Requirements, discussed below, so that proposed paragraph (a)(6) would only state policy: "Inform parties during transactions guaranteed, approved, regulated, or insured by DOE of the hazards associated with locating facilities and structures in a floodplain."

Section 1022.4 Definitions

We propose to change our definition of "action" to clarify that it includes any activity necessary to carry out DOE's responsibilities for the tasks listed in Executive Orders 11988 and 11990, rather than that it includes any activity "including, but not limited to," those tasks listed in the Executive Orders. This proposed language more closely parallels the Executive Orders.

We propose deleting the definition of "base flood" and incorporating it into the definition of "base floodplain."

We propose to revise the definitions of "environmental assessment," "environmental impact statement," and "finding of no significant impact" to reference the Council on Environmental Quality's (CEQ's) and DOE's NEPA regulations at 40 CFR parts 1500–1508 and 10 CFR part 1021, respectively. Our NEPA regulations were not in place when 10 CFR part 1022 was promulgated.

We propose to simplify the definition of "floodplain" by creating separate definitions for "base floodplain" and "critical action floodplain." We also propose to define the critical action floodplain as, at a minimum, the 500-year floodplain. While for most proposed actions, we prepare a floodplain assessment if the action would be located in the 100-year floodplain, for a proposed critical action (*i.e.*, an action for which even a slight chance of flooding poses an unacceptable risk) we prepare a floodplain assessment if it would be located in the critical action floodplain. We normally define the critical action floodplain in terms of the estimated 500-year flood for an area. We would add the option to define the critical action floodplain in terms of a less frequent (and therefore more severe) flood when another requirement applicable to the proposal requires consideration of the less frequent flood event. For example, if the hazard

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assessment for a proposal considers the consequences of a less frequent flood (*e.g.*, the 10,000-year flood), then we would use that less frequent flood to define the critical action floodplain for the proposal.

We propose to clarify the definition of "floodplain action" by adding "including any DOE action in a wetland that is also within the floodplain."

We propose to add a definition for "floodplain and wetland values" to describe the range of issues to be addressed in a floodplain or wetland assessment under the existing section 1022.12(a)(2) and proposed section 1022.13(a)(2). We adapted the proposed definition from that used by FEMA (44 CFR 9.4) and terms used in Executive Orders 11988 and 11990.

We propose to delete the definition of "floodproofing," because the term is not used in the rule.

We propose simplifying our definition of "new construction" by deleting the reference to October 1, 1977, as the starting point for applicability of the definition. That clause appropriately exempted certain actions underway before Executive Order 11990 became effective, but it is no longer necessary.

We propose to change the name and definition of "public notice." We would call the notice a "notice of proposed floodplain action" or a "notice of proposed wetland action" to better reflect its purpose to announce that a proposed action would be in a floodplain or wetland, respectively, the location of the floodplain or wetland, and the opportunity for public review. We also propose to delete any requirements on how to issue the notice from the definition and instead to include such requirements in proposed section 1022.12, Notice of proposed action.

We propose to change the name "statement of findings" to "floodplain statement of findings" and to delete any requirements from the definition and instead to include such requirements in proposed section 1022.14, Findings.

We propose changing our definition of "wetland" to make it consistent with the Clean Water Act implementing regulations of both the U.S. Army Corps of Engineers (33 CFR 328.3(b)) and the U.S. Environmental Protection Agency (40 CFR 230.41(a)(1)), as the definition in the existing rule was taken from Executive Order 11990. This proposed revision would involve deleting the examples of "similar areas such as sloughs, potholes, wet meadows, river outflow, mudflats and natural ponds." An important note about the proposed definition is that it is more broadly defined than the wetlands over which the U.S. Army Corps of Engineers has regulatory jurisdiction (33 CFR 328.3(a) and 328.4). The broader definition we use for this rule is consistent with Executive Order 11990 in order to ensure that we apply appropriate protections to valuable wetlands that might not qualify as wetlands subject to the Corps' jurisdiction (*e.g.*, some wet meadows, forested wetlands, playas, Carolina bays).

We propose to modify the definition of "wetland action" to specify that it applies to any DOE action "related to new construction" that takes place in a wetland not located in a floodplain. This change would make the definition consistent with Executive Order 11990, which requires a wetland assessment only for activities related to new construction in a wetland.

Section 1022.5 Applicability

We propose deleting a significant portion of text from the existing section 1022.5 because it is outdated or redundant of other sections of the rule. The result would be a more concise section, reduced from eight to four paragraphs, which is easier to read. We propose deleting text from existing paragraphs (b) and (c) that exempts actions that were underway when the rule was issued. Any such actions have since been completed, and the text is no longer necessary. We would delete text from existing paragraphs (d), (e), and (f) that repeats parts of the definition of "action" (proposed section 1022.4); this results in deletion of the entirety of paragraph (f). We would also delete existing paragraph (h) since it is repetitive of the definition of floodplain action (proposed section 1022.4).

We propose relocating requirements regarding license, easement, lease, transfer, or disposal of property to non-Federal public or private parties from existing section 1022.5(d) to proposed section 1022.21(a), Property management, in a new Subpart C, Other Requirements. From existing section 1022.5(e), we propose moving the requirements for applicants for assistance into proposed section 1022.23, Applicant responsibilities (proposed redesignation from existing section 1022.13), described below.

We propose adding four exemptions from the requirements for preparing a floodplain or wetland assessment to paragraph (d). These proposed exemptions are described above in section II, Purpose of the Revisions to 10 CFR parts 1021 and 1022.

Section 1022.6 Public Inquiries

We propose moving this section from Subpart B (where it had been designated section 1022.20) to Subpart A because it is more appropriately a part of general statements related to this rule. We also propose updating the contact to which inquiries may be directed from the Assistant Secretary for Environment to the Office of NEPA Policy and Compliance.

C. Proposed Changes to 10 CFR 1022 Subpart B—Procedures for Floodplain and Wetland Reviews

We propose reordering the sections in this subpart to better reflect the sequence of events in our process for preparing a floodplain or wetland assessment and to relocate to subparts A and C those requirements not directly related to the preparation of a floodplain or wetland assessment. The particular changes are described below for each section in proposed subpart B.

Section 1022.11 Floodplain or Wetland Determination

We propose to change section 1022.11(a) by adding a reference to environmental review requirements under the CERCLA process to conform to the proposed change in section 1022.2(b), discussed above in section II, Purpose of the Revisions to 10 CFR parts 1021 and 1022.

As also discussed above in section II, we propose to expand the list of information sources that may be used to determine if a proposed action would be located in a floodplain or wetland (proposed sections 1022.11(b) and (c)). We also propose to update references to two information sources. FEMA, rather than the Federal Insurance Administration of the Department of Housing and Urban Development, would be cited because FEMA currently maintains primary responsibility for interagency planning to address Federal floodplain management requirements (proposed section 1022.11(b)). We also propose to change the existing reference to the Soil Conservation Service to the Natural Resources Conservation Service to reflect the agency's current name (proposed sections 1022.11(b) and (c)).

We propose to add a new section (proposed 1022.11(d)) that would specify whether a floodplain or wetland assessment is required based on the location of the proposed action. This paragraph would clarify existing requirements by associating the determination made pursuant to sections 1022.11(b) and (c) with the definitions of critical action, floodplain action, and wetland action.

Section 1022.12 Notice of Proposed Action (Proposed Redesignation From Section 1022.14 Public Review)

We propose to change, in proposed section 1022.12 and throughout the rule, all references to "public notice" to "notice of proposed floodplain action" or "notice of proposed wetland action" to better reflect the purpose of the notice.

We propose to change existing sections 1022.14(b) and (c) by deleting the requirement that DOE always publish a notice in the **Federal Register** for floodplain or wetland actions for which no EIS is required. This proposal is explained above in section II, Purpose of the Revisions to 10 CFR parts 1021 and 1022. We also propose to move the requirement regarding timing for issuance of a notice of proposed action from existing section 1022.14(b) to proposed section 1022.15, Timing. This would consolidate requirements related to timing of steps in the floodplain and wetland assessment processes, as discussed below.

Section 1022.13 Floodplain or Wetland Assessment (Proposed Redesignation From Existing Section 1022.12)

We propose emphasizing in proposed paragraph (a)(2) that the assessment shall incorporate floodplain and wetland values that are appropriate to the location under evaluation. This would underscore the need to focus only on those values most appropriate to local conditions and also to clarify that when evaluating a proposal for an action within a wetland located in a floodplain, we consider both floodplain and wetland values, as appropriate. This proposed revision would reference a new definition of floodplain and wetland values (described above for proposed section 1022.4) that lists several topics that might be included in the assessment. Although these changes do not add any new requirement, they do add further guidance about how the assessment should be performed.

We propose adding to proposed paragraph (c) that when an EA or EIS is not being prepared for the proposed floodplain or wetland action, the assessment "shall be prepared separately or incorporated when appropriate into another environmental review process (*e.g.*, CERCLA)." This revision highlights our flexibility to incorporate compliance with these regulations within processes other than NEPA, as appropriate and as discussed in other sections above.

Section 1022.14 Findings (Proposed Redesignation From Section 1022.15 Notification of Decision)

We propose a new section (1022.14(c)) to describe how to issue a statement of findings for floodplain actions for which no EA or EIS is being prepared. For these floodplain actions, we would distribute copies of the floodplain statement of findings to government agencies and to others who submitted comments on the proposed action. We propose to publish the floodplain statement of findings in the **Federal Register** only when the proposed floodplain action may result in effects of national concern to a floodplain or wetland or both. The proposed change would parallel the process described in the CEQ regulations on Public Involvement (40 CFR 1506.6(b)(2)) and is reflected in the proposed changes to section 1022.4. We also propose that when a floodplain statement of findings is published in the **Federal Register** the statement does not need to contain a map (as otherwise required) but that the statement should indicate where a location map is available. A wetland finding may be prepared and distributed at DOE's discretion.

We also propose a new section (1022.14(d)) regarding the distribution of floodplain statements of findings to state governments. We propose to update the existing reference to Office of Management and Budget Circular A–95 (from the existing section 1022.15) and refer instead to Executive Order 12372, Intergovernmental Review of Federal Programs, and DOE's implementing regulations at 10 CFR part 1005, Intergovernmental Review of *Department of Energy Programs*. Executive Order 12372 directs Federal agencies to rely on state and local processes for state and local government coordination and for review of proposed Federal financial assistance and direct Federal development.

Section 1022.15 Timing (Proposed Redesignation From Section 1022.18 Timing of Floodplain/Wetlands Actions)

We propose to relocate the requirements regarding timing in sections 1022.14(c) and 1022.18 of the existing rule to proposed section 1022.15. This would consolidate references to the time periods for DOE to consider public comments after issuing a notice of proposed floodplain action or a notice of proposed wetland action or a floodplain statement of findings.

Section 1022.16 Variances

We propose to add a section providing a variance for emergency actions (proposed section 1022.16(a)) that would, as described above in section II, Purpose of the Revisions to 10 CFR Parts 1021 and 1022, reflect provisions in our NEPA procedures (10 CFR 1021.343(a)). We also propose to incorporate into this section as paragraph (b) the existing variance (1022.18(c) in the existing rule) that allows abbreviated schedules in some circumstances and to broaden the applicability of this variance as described above in section II, Purpose of the Revisions to 10 CFR Parts 1021 and 1022. We also propose to add a section 1022.16(c) requiring consultation with the Office of NEPA Policy and Compliance whenever this section is being implemented.

Subpart C—Other Requirements

We propose adding a new subpart to consolidate requirements that are not general policy (subpart A) nor a part of the floodplain and wetland assessment processes (subpart B).

Section 1022.21 Property Management

We propose a new section that would consolidate existing requirements from sections 1022.5(d) and 1022.3(b)(8) of the existing rule. These sections address property in a floodplain or wetland that is proposed for license, easement, lease, transfer, or disposal to non-Federal public or private parties and any transaction that DOE guarantees, approves, regulates, or insures that is related to an area located in a floodplain. There are no substantive changes in this new consolidated section.

Section 1022.22 Requests for Authorizations or Appropriations (Proposed Redesignation From Section 1022.16)

We propose to move this section into Subpart C, Other Requirements, for the reasons stated above.

Section 1022.23 Applicant Responsibilities (Proposed Redesignated From Section 1022.13)

We propose revising this section to allow flexibility in what information we request of applicants for any use of real property (*e.g.*, license, easement, lease, transfer, or disposal), permits, certificates, loans, grants, contract awards, allocations, or other forms of assistance or other entitlement related to activities in a floodplain or wetland. The section currently states that DOE may require the applicant to prepare a report that satisfies the floodplain or

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wetland assessment provisions of this regulation. We propose revising this section to state that we may require applicants to provide information necessary for DOE to comply with the requirements of this regulation. This change emphasizes that we will ask for that information necessary and appropriate for us to comply with the requirements of this regulation relative to each particular application.

Section 1022.24 Interagency Cooperation (Proposed Redesignation From

Section 1022.19 Selection of a Lead Agency and Consultation Among Participating Agencies)

No substantive changes to this section are proposed.

IV. Procedural Review Requirements

A. Review Under Executive Order 12866

Today's proposed regulatory action has been determined not to be a "significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), as amended by Executive Order 13258 (67 FR 9385, February 26, 2002). Accordingly, today's proposed regulatory action would not be subject to review under that Executive Order by the Office of Information and Regulatory Affairs of the Office of Management and Budget.

B. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform" (61 FR 4779, February 7, 1996) imposes on Federal agencies the general duty to adhere to the following requirements: eliminate drafting errors and needless ambiguity, write regulations to minimize litigation, provide a clear legal standard for affected conduct rather than a general standard, and promote simplification and burden reduction. Section 3(b) requires Federal agencies to make every reasonable effort to ensure that a regulation, among other things: clearly specifies the preemptive effect, if any, adequately defines key terms, and addresses other important issues affecting the clarity and general draftsmanship under guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. The Assistant Secretary for Environment, Safety and Health has completed the required review and determined that, to the extent permitted by law, the proposed rule meets the relevant standards of Executive Order 12988.

C. Review Under Executive Order 13132

Today's regulatory action has been determined not to be a "policy that has federalism implications," that is, it does not have substantial direct effects on the states, on the relationship between the national government and the states, nor on the distribution of power and responsibility among the various levels of government under Executive Order 13132 (64 FR 43255, August 10, 1999). Accordingly, no "federalism summary impact statement" was prepared or subjected to review under the Executive Order by the Director of the Office of Management and Budget.

D. Review Under Executive Order 13175

Under Executive Order 13175 (65 FR 67249, November 6, 2000) on "Consultation and Coordination with Indian Tribal Governments," DOE may not issue a discretionary rule that has "tribal implications" and imposes substantial direct compliance costs on Indian tribal governments. DOE's Assistant Secretary for Environment, Safety and Health has determined that the proposed rule would not have such effects and concluded that Executive Order 13175 does not apply to this proposed rule.

E. Reviews Under the Regulatory Flexibility Act

The proposed revisions to the existing regulations have been reviewed under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*). The Act requires preparation of an initial regulatory flexibility analysis for any regulation that is likely to have a significant economic impact on a substantial number of small entities. Today's proposed revisions to 10 CFR Parts 1021 and 1022 would amend DOE policies and streamline existing procedures for environmental review of actions proposed in a floodplain or wetland under two Executive Orders. The proposed actions would neither increase the incidence of floodplain and wetland assessments nor increase burdens associated with carrying out such an assessment. Therefore, DOE certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities, and therefore, no regulatory flexibility analysis has been prepared.

F. Review Under the Paperwork Reduction Act

No additional information or recordkeeping requirements are imposed by this proposed rulemaking. The proposed changes would actually reduce paperwork requirements by eliminating a requirement that public notices always be published in the **Federal Register** and by adding to the number of exemptions from requirements for preparing a floodplain or wetland assessment. Accordingly, no clearance by the Office of Management and Budget is required under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

G. Review Under the National Environmental Policy Act

DOE has concluded that promulgation of these proposed revisions to existing regulations falls into a class of actions that would not individually or cumulatively have a significant impact on the human environment, as determined by DOE's regulations implementing the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Specifically, the proposed revisions to 10 CFR parts 1021 and 1022 would amend DOE's policies to streamline and simplify existing procedures for environmental review of actions proposed in a floodplain or wetland under two Executive Orders. The proposed regulations are covered under the categorical exclusion in paragraph A6, "Rulemakings, Procedural" (rulemakings that are strictly procedural) to Appendix A to Subpart D, 10 CFR part 1021. Accordingly, neither an EA nor an EIS is required.

H. Review Under the Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency regulation that may result in the expenditure by states, tribal, or local governments, on the aggregate, or by the private sector, of $100 million in any one year. The Act also requires a Federal agency to develop an effective process to permit timely input by elected officials of state, tribal, or local governments on a proposed "significant intergovernmental mandate," and requires an agency plan for giving notice and opportunity to provide timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. DOE has determined that the proposed revisions to 10 CFR parts 1021 and 1022 published today do not contain any Federal mandates affecting small governments, so these requirements do not apply.

I. Review Under Executive Order 13211

Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) requires Federal agencies to prepare and submit to the Office of Information and Regulatory Affairs in the Office of Management and Budget a Statement of Energy Effects for any significant energy action. Today's proposed rule is not a significant energy action, as that term is defined in the Executive Order. Accordingly, DOE has not prepared a Statement of Energy Effects.

J. Review Under the Treasury and General Government Appropriations Act

Section 654 of the Treasury and General Government Appropriations Act of 1999 (Pub. L. 105–277) requires Federal agencies to issue a "Family Policymaking Assessment" for any proposed rule that may affect family well-being. The proposed rule has no impact on the autonomy or integrity of the family as an institution. Accordingly, DOE's Assistant Secretary for Environment, Safety and Health has concluded that it is not necessary to prepare a Family Policymaking Assessment.

V. Public Comment Procedures

You should submit comments by January 17, 2003, but we will consider comments received after that date to the extent practicable. We continue to experience occasional mail delays due to extra processing required for the delivery of mail to Federal agencies, and we will take this into consideration. However, you are encouraged to submit comments electronically or via a service offering a guaranteed delivery date. Comments should be submitted to the street address, e-mail address, or fax number indicated in the **ADDRESSES** section of this notice. Written comments should be identified on the documents themselves and on the outside of the envelope, on the fax cover page, or in the e-mail message with the designation "Compliance with Floodplain and Wetland Environmental Review Requirements." We are not scheduling any public meetings on the proposed revisions, but we will arrange a public meeting if the public expresses sufficient interest. Comments will not be accepted on provisions of 10 CFR part 1021 that are not subject to change by this revision.

All comments received will be available for public inspection as part of the administrative record on file for this rulemaking in the DOE Freedom of Information Office Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–3142, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

If you submit information that you believe to be exempt by law from public disclosure, you should submit one complete copy, as well as two copies from which the information claimed to be exempt by law from public disclosure has been deleted. The Department is responsible for the final determination with regard to disclosure or non-disclosure of the information and for treating it accordingly under the Freedom of Information Act section on "Handling Information of a Private Business, Foreign Government, or an International Organization" (10 CFR 1004.11).

List of Subjects in 10 CFR Part 1022

Flood plains, Wetlands.

Issued in Washington, DC, on November 12, 2002.

Beverly A. Cook,

Assistant Secretary, Environment, Safety and Health.

For the reasons set forth in the preamble, parts 1021 and 1022 of chapter III of title 10, Code of Federal Regulations are proposed to be amended as follows:

PART 1021—NATIONAL ENVIRONMENTAL POLICY ACT IMPLEMENTING PROCEDURES

1. The authority citation for part 1021 continues to read as follows:

Authority: 42 U.S.C. 7254; 42 U.S.C. 4321 *et seq.*

§ 1021.313 [Amended]

2. In § 1021.313, paragraph (c), the last sentence is amended as follows:

a. Remove the word "shall" and insert in its place the word "may".

b. Remove the period and add the words ", or may be issued separately." at the end of the sentence.

PART 1022—COMPLIANCE WITH FLOODPLAIN/WETLANDS ENVIRONMENTAL REVIEW REQUIREMENTS

3. Part 1022 is revised to read as follows:

PART 1022—COMPLIANCE WITH FLOODPLAIN AND WETLAND ENVIRONMENTAL REVIEW REQUIREMENTS

Subpart A—General

Sec.
1022.1 Background.
1022.2 Purpose and scope.
1022.3 Policy.
1022.4 Definitions.
1022.5 Applicability.
1022.6 Public inquiries.

Subpart B—Procedures for Floodplain and Wetland Reviews

1022.11 Floodplain or wetland determination.
1022.12 Notice of proposed action.
1022.13 Floodplain or wetland assessment.
1022.14 Findings.
1022.15 Timing.
1022.16 Variances.
1022.17 Follow-up.

Subpart C—Other Requirements

1022.21 Property management.
1022.22 Requests for authorizations or appropriations.
1022.23 Applicant responsibilities.
1022.24 Interagency cooperation.

Authority: E.O. 11988, 42 FR 26951, 3 CFR, 1977 Comp., p. 117; E.O. 11990, 42 FR 26961, 3 CFR, 1977 Comp., p. 121.

Subpart A—General

§ 1022.1 Background.

(a) Executive Order (E.O.) 11988—Floodplain Management (May 24, 1977) directs each Federal agency to issue or amend existing regulations and procedures to ensure that the potential effects of any action it may take in a floodplain are evaluated and that its planning programs and budget requests reflect consideration of flood hazards and floodplain management. Guidance for implementation of the E.O. is provided in the floodplain management guidelines of the U.S. Water Resources Council (40 FR 6030, February 10, 1978) and in "A Unified National Program for Floodplain Management" prepared by the Federal Interagency Floodplain Management Taskforce (Federal Emergency Management Agency, FEMA 248, June 1994). E.O. 11990—Protection of Wetlands (May 24, 1977) directs all Federal agencies to issue or amend existing procedures to ensure consideration of wetlands protection in decisionmaking and to ensure the evaluation of the potential impacts of any new construction proposed in a wetland.

(b) It is the intent of the E.O.s that Federal agencies implement both the floodplain and the wetland provisions through existing procedures such as those established to implement the National Environmental Policy Act

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(NEPA) of 1969 (42 U.S.C. 4321 *et seq.*). In those instances where the impacts of the proposed action are not significant enough to require the preparation of an environmental impact statement (EIS) under section 102(2)(C) of NEPA, alternative floodplain or wetland evaluation procedures are to be established. As stated in the E.O.s, Federal agencies are to avoid direct or indirect support of development in a floodplain or new construction in a wetland wherever there is a practicable alternative.

§ 1022.2 Purpose and scope.

(a) This part establishes policy and procedures for discharging the Department of Energy's (DOE's) responsibilities under E.O. 11988 and E.O. 11990, including:

(1) DOE policy regarding the consideration of floodplain and wetland factors in DOE planning and decisionmaking; and

(2) DOE procedures for identifying proposed actions located in a floodplain or wetland, providing opportunity for early public review of such proposed actions, preparing floodplain or wetland assessments, and issuing statements of findings for actions in a floodplain.

(b) To the extent possible, DOE shall accommodate the requirements of E.O. 11988 and E.O. 11990 through applicable DOE NEPA procedures or, when appropriate, the environmental review process under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 U.S.C. 9601 *et seq.*).

§ 1022.3 Policy.

DOE shall exercise leadership and take action to:

(a) Incorporate floodplain management goals and wetland protection considerations into its planning, regulatory, and decisionmaking processes, and shall to the extent practicable:

(1) Reduce the risk of flood loss;

(2) Minimize the impact of floods on human safety, health, and welfare;

(3) Restore and preserve natural and beneficial values served by floodplains;

(4) Require the construction of DOE structures and facilities to be, at a minimum, in accordance with FEMA National Flood Insurance Program building standards;

(5) Promote public awareness of flood hazards by providing conspicuous delineations of past and probable flood heights on DOE property that has suffered flood damage or is in an identified floodplain and that is used by the general public;

(6) Inform parties during transactions guaranteed, approved, regulated, or insured by DOE of the hazards associated with locating facilities and structures in a floodplain;

(7) Minimize the destruction, loss, or degradation of wetlands; and

(8) Preserve and enhance the natural and beneficial values of wetlands.

(b) Undertake a careful evaluation of the potential effects of any proposed floodplain or wetland action.

(c) Avoid to the extent possible the long- and short-term adverse impacts associated with the destruction of wetlands and the occupancy and modification of floodplains and wetlands, and avoid direct and indirect support of development in a floodplain or new construction in a wetland wherever there is a practicable alternative.

(d) Identify, evaluate, and as appropriate, implement alternative actions that may avoid or mitigate adverse floodplain or wetland impacts.

(e) Provide opportunity for early public review of any plans or proposals for floodplain or wetland actions.

§ 1022.4 Definitions.

The following definitions apply to this part:

Action means any DOE activity necessary to carry out its responsibilities for:

(1) Acquiring, managing, and disposing of Federal lands and facilities;

(2) Providing DOE-undertaken, -financed, or -assisted construction and improvements; and

(3) Conducting activities and programs affecting land use, including but not limited to water- and related land-resources planning, regulating, and licensing activities.

Base floodplain means the 100-year floodplain that is a floodplain with a 1.0 percent chance of flooding in any given year.

Critical action means any DOE action for which even a slight chance of flooding would be too great. Such actions may include, but are not limited to, the storage of highly volatile, toxic, or water reactive materials.

Critical action floodplain means, at a minimum, the 500-year floodplain that is a floodplain with a 0.2 percent chance of flooding in any given year.

Environmental assessment (EA) means a document prepared in accordance with the requirements of 40 CFR 1501.4(b), 40 CFR 1508.9, 10 CFR 1021.320, and 10 CFR 1021.321.

Environmental impact statement means a document prepared in accordance with the requirements of section 102(2)(C) of NEPA and its implementing regulations at 40 CFR parts 1500–1508 and 10 CFR part 1021.

Facility means any human-made or -placed item other than a structure.

FEMA means the Federal Emergency Management Agency.

Finding of no significant impact means a document prepared in accordance with the requirements of 40 CFR 1508.13 and 10 CFR 1021.322 that briefly presents the reasons why an action will not have a significant effect on the human environment and for which an EIS therefore will not be prepared.

Flood or flooding means a temporary condition of partial or complete inundation of normally dry land areas from the overflow of inland or tidal waters, or the unusual and rapid accumulation or runoff of surface waters from any source.

Floodplain means the lowlands adjoining inland and coastal waters and relatively flat areas and floodprone areas of offshore islands including, at a minimum, that area inundated by a 1.0 percent or greater chance flood in any given year.

Floodplain action means any DOE action that takes place in a floodplain, including any DOE action in a wetland that is also within the floodplain, subject to the exclusions specified at section 1022.5(c) and (d) of this part.

Floodplain and wetland values means the qualities of or functions served by floodplains and wetlands that can include, but are not limited to, water resource values (*e.g.*, natural moderation of floods, water quality maintenance, groundwater recharge), living resource values (*e.g.*, conservation and long-term productivity of existing flora and fauna, species and habitat diversity and stability), cultural resource values (*e.g.*, open space, natural beauty, scientific study, outdoor education, archeological and historic sites, recreation), and cultivated resource values (*e.g.*, agriculture, aquaculture, forestry).

Floodplain or wetland assessment means an evaluation consisting of a description of a proposed action, a discussion of its potential effects on the floodplain or wetland, and consideration of alternatives.

Floodplain statement of findings means a brief document issued pursuant to section 1022.14(b) and (c) of this part that describes the results of a floodplain assessment.

High-hazard areas means those portions of riverine and coastal floodplains nearest the source of flooding that are frequently flooded and where the likelihood of flood losses and adverse impacts on the natural and beneficial values served by floodplains is greatest.

Minimize means to reduce to the smallest degree practicable.

New construction, for the purpose of compliance with E.O. 11990 and this part, means the building of any structures or facilities, draining, dredging, channelizing, filling, diking, impounding, and related activities.

Notice of proposed floodplain action and notice of proposed wetland action mean a brief notice that describes a proposed floodplain or wetland action, respectively, and its location and that affords the opportunity for public review.

Practicable means capable of being accomplished within existing constraints, depending on the situation and including consideration of many factors, such as the existing environment, cost, technology, and implementation time.

Preserve means to prevent modification to the natural floodplain or wetland environment or to maintain it as closely as possible to its natural state.

Restore means to reestablish a setting or environment in which the natural functions of the floodplain or wetland can again operate.

Structure means a walled or roofed building, including mobile homes and gas or liquid storage tanks.

Wetland means an area that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions, including swamps, marshes, bogs, and similar areas.

Wetland action means any DOE action related to new construction that takes place in a wetland not located in a floodplain, subject to the exclusions specified at section 1022.5(c) and (d) of this part.

§ 1022.5 Applicability.

(a) This part applies to all organizational units of DOE, including the National Nuclear Security Administration, except that it shall not apply to the Federal Energy Regulatory Commission.

(b) This part applies to all proposed floodplain or wetland actions, including those sponsored jointly with other agencies.

(c) This part does not apply to the issuance by DOE of permits, licenses, or allocations to private parties for activities involving a wetland that are located on non-Federal property.

(d) Subject to paragraph (e) of this section, subpart B of this part does not apply to:

(1) Routine maintenance of existing facilities and structures on DOE property in a floodplain or wetland;

(2) Site characterization, environmental monitoring, or environmental research activities in a floodplain or wetland, unless these activities would involve building any structure; involve draining, dredging, channelizing, filling, diking, impounding, or related activities; or result in long-term change to the ecosystem; and

(3) Minor modification of an existing facility or structure in a floodplain or wetland to improve safety or environmental conditions unless the modification would result in a significant change in the expected useful life of the facility or structure or involve building any structure or draining, dredging, channelizing, filling, diking, impounding, or related activities.

(e) Although the actions listed in paragraphs (d)(1), (d)(2), and (d)(3) of this section normally have very small or no adverse impact on a floodplain or wetland, where unusual circumstances indicate the possibility of adverse impact on a floodplain or wetland, DOE shall determine the need for a floodplain or wetland assessment.

§ 1022.6 Public inquiries.

Inquiries regarding DOE's floodplain and wetland environmental review requirements may be directed to the Office of NEPA Policy and Compliance, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0119, or a message may be left at 1–800–472–2756, toll free.

Subpart B—Procedures for Floodplain and Wetland Reviews

§ 1022.11 Floodplain or wetland determination.

(a) Concurrent with its review of a proposed action to determine appropriate NEPA or CERCLA process requirements, DOE shall determine the applicability of the floodplain management and wetland protection requirements of this part.

(b) DOE shall determine whether a proposed action would be located within a base or critical action floodplain consistent with the most authoritative information available relative to site conditions from the following sources, as appropriate:

(1) Flood Insurance Rate Maps or Flood Hazard Boundary Maps prepared by FEMA;

(2) Information from a land-administering agency (*e.g.*, Bureau of Land Management, Natural Resources Conservation Service) or from other government agencies with floodplain-determination expertise (*e.g.*, U.S. Army Corps of Engineers);

(3) Information contained in safety basis documents as defined at 10 CFR part 830; and

(4) DOE environmental documents, *e.g.*, NEPA and CERCLA documents.

(c) DOE shall determine whether a proposed action would be located within a wetland consistent with the most authoritative information available relative to site conditions from the following sources, as appropriate:

(1) U.S. Army Corps of Engineers "Wetlands Delineation Manual," Wetlands Research Program Technical Report Y–87–1, January 1987, or successor document;

(2) U.S. Fish and Wildlife Service National Wetlands Inventory or other government-sponsored wetland or land-use inventories;

(3) U.S. Department of Agriculture Natural Resources Conservation Service Local Identification Maps;

(4) U.S. Geological Survey Topographic Maps; and

(5) DOE environmental documents, *e.g.*, NEPA and CERCLA documents.

(d) Pursuant to § 1022.5 of this part and paragraphs (b) and (c) of this section, DOE shall prepare:

(1) A floodplain assessment for any proposed floodplain action in the base floodplain or for any proposed floodplain action that is a critical action located in the critical action floodplain; or

(2) A wetland assessment for any proposed wetland action.

§ 1022.12 Notice of proposed action.

(a) For a proposed floodplain or wetland action for which an EIS is required, DOE shall use applicable NEPA procedures to provide the opportunity for early public review of the proposed action. A notice of intent to prepare the EIS may be used to satisfy the requirement for DOE to publish a notice of proposed floodplain or wetland action.

(b) For a proposed floodplain or wetland action for which no EIS is required, DOE shall take appropriate steps to send a notice of proposed floodplain or wetland action to appropriate government agencies and to persons or groups known to be interested in or potentially affected by the proposed floodplain or wetland action. DOE also shall distribute the notice in the area where the proposed action is to be located (*e.g.*, by publication in local newspapers, through public service announcements,

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by posting on- and off-site). In addition, for a proposed floodplain or wetland action that may result in effects of national concern to the floodplain or wetland or both, DOE shall publish the notice in the **Federal Register**.

§ 1022.13 Floodplain or wetland assessment.

(a) A floodplain or wetland assessment shall contain the following information:

(1) *Project Description.* This section shall describe the proposed action and shall include a map showing its location with respect to the floodplain and/or wetland. For actions located in a floodplain, the nature and extent of the flood hazard shall be described, including the nature and extent of hazards associated with any high-hazard areas.

(2) *Floodplain or Wetland Impacts.* This section shall discuss the positive and negative, direct and indirect, and long- and short-term effects of the proposed action on the floodplain and/or wetland. This section shall include impacts on the natural and beneficial floodplain and wetland values (§ 1022.4) appropriate to the location under evaluation. In addition, the effects of a proposed floodplain action on lives and property shall be evaluated. For an action proposed in a wetland, the effects on the survival, quality, and function of the wetland shall be evaluated.

(3) *Alternatives.* DOE shall consider alternatives to the proposed action that avoid adverse impacts and incompatible development in the floodplain and/or wetland, including alternate sites, alternate actions, and no action. DOE shall evaluate measures that mitigate the adverse effects of actions in a floodplain and/or wetland including, but not limited to, minimum grading requirements, runoff controls, design and construction constraints, and protection of ecologically-sensitive areas.

(b) For proposed floodplain or wetland actions for which an EA or EIS is required, DOE shall prepare the floodplain or wetland assessment concurrent with and included in the appropriate NEPA document.

(c) For floodplain or wetland actions for which neither an EA nor an EIS is prepared, DOE shall prepare the floodplain or wetland assessment separately or incorporated when appropriate into another environmental review process (*e.g.*, CERCLA).

§ 1022.14 Findings.

(a) If DOE finds that no practicable alternative to locating or conducting the action in the floodplain or wetland is available, then before taking action DOE shall design or modify its action in order to minimize potential harm to or within the floodplain or wetland, consistent with the policies set forth in E.O. 11988 and E.O. 11990.

(b) For actions that will be located in a floodplain, DOE shall issue a floodplain statement of findings, normally not to exceed three pages, that contains:

(1) A brief description of the proposed action, including a location map;

(2) An explanation indicating why the action is proposed to be located in the floodplain;

(3) A list of alternatives considered;

(4) A statement indicating whether the action conforms to applicable floodplain protection standards; and

(5) A brief description of steps to be taken to minimize potential harm to or within the floodplain.

(c) For floodplain actions that require preparation of an EA or EIS, DOE may incorporate the floodplain statement of findings into the finding of no significant impact or final EIS, as appropriate, or issue such statement separately.

(d) DOE shall send copies of the floodplain statement of findings to appropriate government agencies and to others who submitted comments on the proposed floodplain action.

(e) For proposed floodplain actions that may result in effects of national concern, DOE shall publish the floodplain statement of findings in the **Federal Register**, describing the location of the action and stating where a map is available.

(f) For floodplain actions subject to E.O. 12372—Intergovernmental Review of Federal Programs (July 14, 1982, 47 FR 30959), DOE shall send the floodplain statement of findings to the State in accordance with 10 CFR Part 1005—Intergovernmental Review of Department of Energy Programs and Activities.

§ 1022.15 Timing.

(a) For a proposed floodplain action, DOE shall allow 15 days for public comment following issuance of a notice of proposed floodplain action. DOE shall reevaluate the practicability of alternatives to the proposed floodplain action and the mitigating measures, taking into account all substantive comments received, after the close of the public comment period and before issuing a floodplain statement of findings. After issuing a floodplain statement of findings, DOE shall endeavor to allow at least 15 days of public review before implementing a proposed floodplain action. If a **Federal Register** notice is required, the 15-day period begins on the date of publication in the **Federal Register**.

(b) For a proposed wetland action, DOE shall allow 15 days for public comment following issuance of a notice of proposed wetland action. After the close of the public comment period, DOE shall reevaluate the practicability of alternatives to the proposed wetland action and the mitigating measures, taking into account all substantive comments received, before implementing a proposed wetland action. If a **Federal Register** notice is required, the 15-day period begins on the date of publication in the **Federal Register**.

§ 1022.16 Variances.

(a) *Emergency actions.* DOE may take actions without observing all provisions of this part in emergency situations that demand immediate action. To the extent practicable prior to taking an emergency action, or as soon as possible after taking such an action, DOE shall document the emergency actions in accordance with NEPA procedures at 10 CFR 1021.343(a) or CERCLA procedures in order to identify any adverse impacts from the actions taken and any further necessary mitigation.

(b) *Timing.* If statutory deadlines or overriding considerations of program or project expense or effectiveness exist, DOE may waive the minimum time periods in § 1022.15 of this subpart.

(c) *Consultation.* To the extent practicable prior to taking an action pursuant to paragraphs (a) or (b) of this section, or as soon as possible after taking such an action, the cognizant DOE program or project manager shall consult with the Office of NEPA Policy and Compliance.

§ 1022.17 Follow-up.

For those DOE actions taken in a floodplain or wetland, DOE shall verify that the implementation of the selected alternative, particularly with regard to any adopted mitigation measures, is proceeding as described in the floodplain or wetland assessment and the floodplain statement of findings.

Subpart C—Other Requirements

§ 1022.21 Property management.

(a) If property in a floodplain or wetland is proposed for license, easement, lease, transfer, or disposal to non-Federal public or private parties, DOE shall:

(1) Identify those uses that are restricted under applicable floodplain or wetland regulations and attach other appropriate restrictions to the uses of the property; or

(2) Withhold the property from conveyance.

(b) Before completing any transaction that DOE guarantees, approves, regulates, or insures that is related to an area located in a floodplain, DOE shall inform any private party participating in the transaction of the hazards associated with locating facilities or structures in the floodplain.

§ 1022.22 Requests for authorizations or appropriations.

It is DOE policy to indicate in any requests for new authorizations or appropriations transmitted to the White House Office of Management and Budget, if a proposed action is located in a floodplain or wetland and whether the proposed action is in accord with the requirements of E.O. 11988 and E.O. 11990 and this part.

§ 1022.23 Applicant responsibilities.

DOE may require applicants for any use of real property (*e.g.*, license, easement, lease, transfer, or disposal), permits, certificates, loans, grants, contract awards, allocations, or other forms of assistance or other entitlement related to activities in a floodplain or wetland of the requirements of this part to provide information necessary for DOE to comply with this part.

§ 1022.24 Interagency cooperation.

If DOE and one or more agencies are directly involved in a proposed floodplain or wetland action, in accordance with DOE's NEPA or CERCLA procedures, DOE shall consult with such other agencies to determine if a floodplain or wetland assessment is required by Subpart B of this part, identify the appropriate lead or joint agency responsibilities, identify the applicable regulations, and establish procedures for interagency coordination during the environmental review process.

[FR Doc. 02–29071 Filed 11–15–02; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–200–AD]

RIN 2120–AA64

Airworthiness Directives; Saab Model SAAB 340B Series Airplanes Equipped With Hamilton Sundstrand Propellers

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Saab Model SAAB 340B series airplanes equipped with Hamilton Sundstrand propellers. This proposal would require a one-time inspection of two remote controlled circuit breakers (RCCB), located in specific electrical compartments, to identify the part number, and replacement of the RCCBs with new RCCBs having a different part number if necessary. This action is necessary to ensure removal of 35-ampere (amp) RCCBs on a 50-amp electrical circuit. Incorrect RCCBs on an electrical circuit could result in erroneous tripping of the RCCBs (even though an overload condition does not exist), premature failure of the RCCBs, loss of power to the feather pump system, and consequent reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by December 18, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–200–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2002–NM–200–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Saab Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Rosanne Ryburn, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2139; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–200–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate,

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ANM–114, Attention: Rules Docket No. 2002–NM–200–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Luftfartsverket (LFV), which is the airworthiness authority for Sweden, notified the FAA that an unsafe condition may exist on certain Saab Model SAAB 340B series airplanes. The LFV advises that these airplanes were manufactured with 50-ampere (amp) remote controlled circuit breakers (RCCB) installed. However, the illustrated parts catalog incorrectly references a 35-amp RCCB, which is specific to Dowty propellers. A 35-amp RCCB on a 50-amp electrical circuit, if not corrected, could result in erroneous tripping of the RCCBs (even though an overload condition does not exist), premature failure of the RCCBs, loss of power to the feather pump system, and consequent reduced controllability of the airplane.

Explanation of Relevant Service Information

Saab has issued Service Bulletin 340–61–038, dated January 30, 2002, which describes procedures for a one-time inspection to identify the part number of the RCCB located in electrical compartment 407VU and the RCCB located in electrical compartment 408VU, and replacement of RCCBs with certain part numbers with new RCCBs having different part numbers if necessary. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The LFV classified this service bulletin as mandatory and issued Swedish airworthiness directive 1–172, dated January 31, 2002, in order to assure the continued airworthiness of these airplanes in Sweden.

FAA's Conclusions

This airplane model is manufactured in Sweden and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LFV has kept the FAA informed of the situation described above. The FAA has examined the findings of the LFV, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

The FAA estimates that 251 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed inspection on U.S. operators is estimated to be $15,060 or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

SAAB Aircraft AB: Docket 2002–NM–200–AD.

Applicability: Model SAAB 340B series airplanes equipped with Hamilton Sundstrand propellers, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent erroneous tripping of the remote controlled circuit breakers (RCCB) (even though an overload condition does not exist), premature failure of the RCCBs, loss of power to the feather pump system, and consequent reduced controllability of the airplane, accomplish the following:

Inspection and Replacement, If Necessary

(a) Within 6 months after the effective date of this AD, perform a one-time inspection of RCCB 29KFC located in electrical compartment 407VU, and RCCB 30KFC located in electrical compartment 408VU, to identify the part number, per the Accomplishment Instructions of Saab Service Bulletin 340–61–038, dated January 30, 2002.

(1) If both RCCBs are identified as part number (P/N) M83383–01–09, no further action is required by this paragraph.

(2) If any RCCB is identified as P/N M83383–02–07, prior to further flight, replace the RCCB with an RCCB having P/N M83383–01–09, per the service bulletin.

Part Installation

(b) As of the effective date of this AD, no person shall install an RCCB, P/N M83383–02–07, in electrical compartment 407VU or electrical compartment 408VU, on any airplane.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in Swedish airworthiness directive 1–172, dated January 31, 2002.

Issued in Renton, Washington, on November 8, 2002.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–29116 Filed 11–15–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–295–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 777–200 and 777–300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 777–200 and 777–300 series airplanes. This proposal would require application of high-temperature sealant to the strut aft dry bay. This action is necessary to prevent leakage of hydraulic fluid into the strut aft dry bay, where high temperatures associated with the adjacent primary exhaust nozzle may ignite the fluid, resulting in an uncontrolled fire in the strut aft dry bay. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by January 2, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–295–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2001–NM–295–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: John Vann, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1024; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001–NM–295–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–295–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received a report indicating that one operator had found coked hydraulic fluid in the strut aft dry bay, which is located directly above the primary exhaust nozzle. Investigation revealed that hydraulic fluid had leaked from the strut aft fairing through an unsealed gap between the strut aft bulkhead, the diagonal brace fitting, and the cowl fairing. This unsealed gap, if not corrected, permits leakage of hydraulic fluid into the strut aft dry bay, where high temperatures associated with the adjacent primary exhaust nozzle may ignite the fluid. The result would be an uncontrolled fire in the strut aft dry bay, which lacks fire detection or fire extinguishing equipment.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 777–54A0016, dated January 25, 2001, which describes procedures for application of high temperature sealant to fill the gap between the strut aft bulkhead, the diagonal brace fitting, and the aft cowl fairing. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

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Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

There are approximately 298 airplanes of the affected design in the worldwide fleet. The FAA estimates that 95 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 4 work hours per airplane to accomplish the proposed application of sealant, and that the average labor rate is $60 per work hour. Required materials would cost approximately $20 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $24,700, or $260 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

The manufacturer may cover the cost of required materials and labor associated with this NPRM, subject to warranty conditions. As a result, the costs attributable to the proposed AD may be less than stated above.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 2001–NM–295–AD.

Applicability: Model 777–200 and 777–300 series airplanes having line numbers 2 through 297 inclusive, 299, and 300; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent leakage of hydraulic fluid into the strut aft dry bay, where high temperatures associated with the adjacent primary exhaust nozzle may ignite the fluid, resulting in an uncontrolled fire in the strut aft dry bay; accomplish the following:

Application of Sealant

(a) Within 1,000 flight hours after the effective date of this AD: Apply high-temperature sealant to the strut aft dry bays, in accordance with Boeing Alert Service Bulletin 777–54A0016, dated January 25, 2001.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on November 8, 2002.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certificotion Service.

[FR Doc. 02–29117 Filed 11–15–02; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–170–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–10, –20, –30, –40, and –50 Series Airplanes; and DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), and MD–88 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all McDonnell Douglas transport category airplanes listed above. This proposal would require a check of the slant pressure panels of the wheel wells of the left and right main landing gear (MLG) for water leakage, and repair of any leaks found. This action is necessary to prevent the accumulation of water in the wheel wells of the MLG during flight, which could freeze on the lateral control mixer and control cables, resulting in restricted lateral control and consequent reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by January 2, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–170–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2001–NM–170–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Wahib Mina, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5324; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001–NM–170–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–170–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received numerous reports indicating water leakage from the slant pressure panel into the wheel well of the main landing gear (MLG) on certain McDonnell Douglas Model DC–9 series airplanes. The water froze on the lateral control mixer and control cables. If the slant pressure panel drain valve is clogged, or a drain system is not installed, any water that accumulates during flight will be squeezed out of the panel into the wheel well due to damaged sealant. Accumulation of water in the wheel wells of the MLG could freeze on the lateral control mixer and control cables, resulting in restricted lateral control and consequent reduced controllability of the airplane.

Explanation of Relevant Service Information

We have reviewed and approved Boeing Alert Service Bulletin DC9–53A295, Revision 01, including Appendix A, dated February 28, 2002, which describes procedures for a check of the slant pressure panels of the wheel wells of the left and right MLG for water leakage, and repair of any leaks found. The leak check includes the following:

- Pressurizing the airplane to 1 pound per square inch gage and checking the panels for leaks;
- Marking any leaks found;
- Pressurizing the airplane to 3 pounds per square inch gage and checking the panels for additional leaks;
- Marking any leaks found and depressurizing the airplane; and
- Repairing all leaks found and pressurizing the airplane to 3 pounds per square inch gage to verify that all leaks are repaired.

The service bulletin also recommends reporting initial leak check findings to the manufacturer. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Difference Between Service Information and Proposed AD

Although the service bulletin recommends that operators report findings to the manufacturer after doing the initial leak check, this proposed AD does not include such a reporting requirement.

Cost Impact

There are approximately 1,919 airplanes of the affected design in the worldwide fleet. The FAA estimates that 1,159 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 4 work hours per airplane to accomplish the proposed leak check, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $278,160, or $240 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up,

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planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket 2001–NM–170–AD.

Applicability: All Model DC–9–14, DC–9–15, DC–9–15F, DC–9–21, DC–9–31, DC–9–32, DC–9–32 (VC–9C), DC–9–32F, DC–9–32F (C–9A, C–9B), DC–9–33F, DC–9–34, DC–9–34F, DC–9–41, and DC–9–51 airplanes; and DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), and MD–88 airplanes; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent the accumulation of water in the wheel wells of the left and right main landing gear (MLG), which could freeze on the lateral control mixer and control cables, resulting in restricted lateral control and consequent reduced controllability of the airplane; accomplish the following:

Leak Check/Repair

(a) Prior to the accumulation of 40,000 flight hours since date of manufacture, or within 18 months after the effective date of this AD, whichever is later: Do a check of the slant pressure panels of the wheel wells of the left and right MLG for water leakage (including pressurizing the airplane and checking the panels for leaks; depressurizing the airplane to repair leaks; and pressurizing the airplane again to verify that all leaks are repaired), per the Accomplishment Instructions of Boeing Alert Service Bulletin DC9–53A295, Revision 01, including Appendix A, dated February 28, 2002. If any leaks are found, before further flight, repair per the service bulletin. If no leaks are found, no further action is required by this AD.

Credit for Actions Done per Previous Issue of Service Bulletin

(b) Accomplishment of the check for water leakage and repair of leaks found, before the effective date of this AD, per Boeing Alert Service Bulletin DC9–53A295, including Appendix A, dated May 8, 2001, is acceptable for compliance with paragraph (a) of this AD.

Note 2: Although Boeing Alert Service Bulletins DC9–53A295, including Appendix A, dated May 8, 2001; and Revision 01, including Appendix A, dated February 28, 2002; recommend that operators report findings to the manufacturer after doing the initial leak check, this AD does not contain such a reporting requirement.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permit

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on November 8, 2002.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–29118 Filed 11–15–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–143321–02]

RIN 1545–BB60

Information Reporting Relating to Taxable Stock Transactions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing.

SUMMARY: In the rules and regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations relating to information reporting relating to taxable stock transactions. This document contains proposed regulations under section 6043(c) requiring information reporting by a corporation if control of the corporation is acquired or if the corporation has a recapitalization or other substantial change in capital structure. This document also contains proposed regulations under section 6045 concerning information reporting requirements for brokers with respect to transactions described in section 6043(c). The text of the temporary regulations serves as the text of these proposed regulations. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by February 18, 2003. Outlines of topics to be discussed at the public hearing scheduled for March 5, 2003, at 10 a.m., must be received by February 12, 2003.

ADDRESSES: Send submissions to: CC:ITA:RU (REG–143321–02), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:ITA:RU (REG–143321–02), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit electronic comments directly to the IRS Internet site at *www.irs.gov/regs*. The public hearing will be held in room 4718, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Nancy L. Rose (202) 622–4910; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Treena Garrett at (202) 622–7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, W:CAR:MP:FP:S, Washington, DC 20224. Comments on the collection of information should be received by January 17, 2003. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility; The accuracy of the estimated burden associated with the proposed collection of information (*see* below); How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of service to provide information.

The collection of information in this proposed regulation is in 26 CFR 1.6043–4(a) and (b) and in 26 CFR 1.6045–3. The information is required to be reported to ensure that shareholders properly recognize gain from corporate acquisitions and changes in capital structure. The collection of information is mandatory. The likely respondents are large corporations.

The estimated total annual reporting and recordkeeping burden in proposed § 1.6043–4(a), requiring the filing of form 8806, is 2 hours. The estimated total annual reporting and recordkeeping burden in proposed §§ 1.6043–4(b) and 1.6045–3 is 15 minutes for each form 1099-CAP and 10 minutes for form 1096.

The estimated annual burden per respondent and/or recordkeeper will vary dependent on the number of forms 1099–CAP required to be filed.

The estimated number of respondents under the proposed regulations is 350. The estimated number of respondents under the temporary regulations, for transactions occurring after December 31, 2001, is 5.

The estimated annual frequency of reporting on form 8806 and form 1096 is 1. The estimated annual frequency of reporting on form 1099–CAP is 1 for each shareholder.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background and Explanation of Provisions

Temporary regulations in the rules and regulations section of this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR part 1) relating to sections 6043 and 6045. The temporary regulations set forth information reporting requirements relating to acquisitions of control and substantial changes in capital structure. The text of those regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the amendments and these proposed regulations.

As set forth in the preamble to the temporary regulations, public comments are specifically invited with regard to the potential for duplicate reporting under these proposed regulations and with regard to the burden of compliance with the reporting requirements under the proposed regulations.

Proposed Effective Date

The provisions of these regulations under section 6043 are proposed to be applicable for any acquisition of control and change in capital structure occurring after the date on which these regulations are published in the **Federal Register** as final regulations. The provisions of these regulations under section 6045 are proposed to be applicable for any form 1099–CAP received by a broker after the date on which these regulations are published in the **Federal Register** as final regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any electronic or written comments (a signed original and eight copies) that are submitted timely to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying. A public hearing has been scheduled for March 5, 2003, beginning at 10 a.m. in room 4718, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** portion of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish

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to present oral comments must submit electronic or written comments by February 18, 2003, and an outline of the topics to be discussed and the time to be devoted to each topic (a signed original and eight copies) by February 12, 2003. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for reviewing outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of this notice of proposed rulemaking is Nancy L. Rose, Office of Associate Chief Counsel (Procedure and Administration).

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.6043–4 is added to read as follows:

§ 1.6043–4 Information returns relating to certain acquisitions of control and changes in capital structure.

(The text of proposed § 1.6043–4 is the same as the text of § 1.6043–4T published elsewhere in this issue of the **Federal Register**.)

Par. 3. Section 1.6045–3 is added to read as follows:

§ 1.6045–3 Information reporting for acquisitions of control or substantial changes in capital structure.

(The text of proposed § 1.6045–3 is the same as the text of § 1.6045–3T published elsewhere in this issue of the **Federal Register**.)

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 02–29200 Filed 11–13–02; 4:24pm]

BILLING CODE 4830–01–P

LEGAL SERVICES CORPORATION

45 CFR Part 1602

Procedures for Disclosure of Information Under the Freedom of Information Act

AGENCY: Legal Services Corporation (LSC).

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This NPRM proposes several revisions to the LSC regulations implementing the Freedom of Information Act. The proposed revisions would add provisions detailing the submitter's rights process, provide LSC with express authority to defer action on pending and additional requests and appeals when a requester has an outstanding fee balance, and clarify the applicable fee waiver standards. LSC also proposes to revise the applicable fee structure to better reflect LSC's costs in complying with FOIA. Finally, the NPRM contains proposed technical changes to reflect current LSC nomenclature.

DATES: Comments on this NPRM are due on January 2, 2003.

ADDRESSES: Written comments may be submitted by mail, fax or email to Mattie C. Condray Senior Assistant General Counsel, Office of Legal Affairs, Legal Services Corporation, 750 First Street, NE., Washington, DC 20002–4250; (202) 336–8817 (phone); (202) 336–8952 (fax); *mcondray@lsc.gov*.

FOR FURTHER INFORMATION CONTACT: Mattie C. Condray, (202) 336–8817 (phone).

SUPPLEMENTARY INFORMATION: LSC is subject to the Freedom of Information Act (FOIA) by the terms of the Legal Services Corporation Act. 42 U.S.C. 2996d(g).[1] LSC has implemented FOIA by adopting regulations which contain the rules and procedures the Corporation follows in making agency records available to the public under FOIA. As part of an overall review of LSC's regulations, LSC determined that a variety of amendments to LSC's FOIA regulation are in order and part 1602 was assigned a high priority for rulemaking. In light of the above, at the August 24, 2002, meeting of the Board of Directors, the Board identified Part 1602 as an appropriate subject for rulemaking and LSC subsequently announced that it was initiating a Notice and Comment rulemaking to consider revisions to its FOIA regulations.

Submitter's Rights Process

Pursuant to current LSC practice, if a request is received for the grant application records of a current or prospective recipient, LSC provides that applicant with an opportunity to request that some or all of the records requested be withheld from disclosure prior to LSC sending its response to the requester. This practice, which is consistent with current FOIA law, is not described or discussed in the regulations. The submitter's rights process affords important rights to grant applicants and also impacts requesters who have to wait until the submitter's rights process has been completed to obtain releasable records subject to this process. LSC believes that it is important, therefore, for this process to be explicitly set forth in Part 1602. Accordingly, LSC proposes to add a new section 1602.14, Submitter's rights process, which would formally incorporate the Corporation's current practice into the regulations.

At the outset, LSC notes that its submitter's rights process is based on the submitter's rights process outlined in Federal Executive Order No. 12,600 (June 23, 1987). E.O. 12,600 required Federal agencies to "establish procedures to notify submitters of records containing confidential information [information arguably subject to FOIA Exemption 4] * * * when those records are requested under the Freedom of Information Act * * *." (Emphasis added) Although LSC is not a Federal agency, and, therefore, not subject to E.O. 12,600, LSC chose to develop a policy consistent with the Order. LSC believes that grant application records are the only records likely to contain "confidential information," the release of which could cause competitive harm. Thus, the current submitter's rights process is only invoked in relation to requests for grant application information, but not other records submitted by recipients. LSC is, at this time, proposing to keep the process limited to requests for grant application materials, but specifically invites comment on whether there are other records submitted by recipients which would likely be subject to withholding under Exemption 4.

Under the proposed new section, when the Corporation receives a FOIA request seeking the release of a submitter's grant application(s), or portions thereof, the Corporation would provide prompt written notice of the request to the submitter in order to afford the submitter with an opportunity to object to the disclosure of the requested records (or any portion thereof). If a submitter who has received notice of a request for the submitter's records objects to the disclosure of the records (or any portion thereof), the submitter would have to submit a written detailed statement identifying the information for which disclosure is objected to and specifying the grounds for withholding the information under the confidential information exemption of FOIA or this Part. The submitter's statement would have to be provided to LSC within seven business days of the date of the notice from the Corporation and if the submitter failed to respond to the notice from LSC within that time, LSC would deem the submitter to have no objection to the disclosure of the information.

Upon receipt of written objection to disclosure by a submitter, LSC would be required to consider the submitter's objections and specific grounds for withholding in deciding whether to release the disputed information. Whenever LSC decided to disclose information over the objection of the submitter, LSC would be required to give the submitter written notice that the Corporation was rejecting the submitter's withholding request (including an explanation of why the request was being rejected) and informing the submitter that the submitter shall have 5 business days from the date of the notice of proposed release to appeal that decision to the LSC President, whose decision would be final.

Under proposed paragraph (d), the submitter's rights process would not apply if (1) LSC determines, upon initial review, that the information requested is exempt from disclosure; (2) the information has been previously published or officially made available to the public; or (3) disclosure of the information is required by statute (other than FOIA) or LSC regulations.

In addition, LSC proposes to include provisions requiring that: (1) Whenever a requester files a lawsuit seeking to compel disclosure of a submitter's information, LSC would have to promptly notify the submitter; (2) whenever LSC provides a submitter with notice and opportunity to object to disclosure under this section, LSC would also notify the requester; and (3) whenever a submitter files a lawsuit seeking to prevent the disclosure of the submitter's information, LSC would notify the requester.

LSC also proposes to add a definition of the term "submitter" as that term would be used in this section. The definition proposed to be added at section 1602.2(k) would define "submitter" as any person or entity from whom the Corporation receives a grant application.

Authority to Defer Action Pending Receipt of Payment of Fees

Many, if not most, agency FOIA regulations contain a provision permitting the agency to suspend continuing work on any pending requests and appeals from requesters who are 30 or more days in arrears on FOIA fees which they have been charged. Our regulations provide LSC with the authority to require anticipated fees for new requests be paid in advance for requesters with outstanding overdue bills, but do not expressly contain the authority to cease processing other existing requests, including appeals. Having this express authority would be helpful to the Corporation to avoid wasting resources on "nuisance" requesters who chronically have several requests and/or appeals pending before the Corporation at the same time, while being in arrears on properly assessed fees from prior requests to the Corporation. Accordingly, LSC proposes to add a new paragraph to section 1602.13, Fees, to provide for this authority. Specifically, the proposed new language would provide express authority to the Corporation to cease processing existing requests, including action on appeals, from a requester who is more than 30 days late in paying a properly assessed FOIA fee. This new language would appear as a new paragraph (j) and the current paragraphs (j), (k) and (l) would be redesignated as paragraphs (k), (l), and (m), respectively.

Fee Waiver Criteria

Requesters of records under FOIA are generally expected to pay reasonable fees related to the processing of FOIA requests. However, the statute also provides for waivers or reductions of fees when certain enumerated criteria are met. Section 1602.13(f) of the current regulation restates the basic fee waiver criteria as set forth in the statute. By way of contrast, the Department of Justice (DOJ) FOIA regulations on fee waiver criteria are more detailed, providing more guidance, based on long standing case law in this area, on the meaning of each of the factors to be considered in assessing fee waiver requests. LSC believes it would be helpful to both LSC and requesters for the LSC FOIA regulations to provide additional guidance in this area. By having a better understanding of the criteria, requesters can better prepare fee waiver requests and there will be less opportunity for disagreements and confusion as to when a fee waiver or reduction is appropriate. LSC is, accordingly, proposing to add language to each of the subparagraphs setting forth the factors upon which fee waiver determinations are made that provides a greater explanation of that factor.

Specifically, 1602.13(f)(1) of the current regulation lists the factors that the Corporation assesses in order to determine whether disclosure of information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Corporation or Federal government. The first factor currently reads:

(i) The subject of the request: Whether the subject of the requested records concerns "the operations or activities of the Corporation or Federal government."

LSC proposes to add a sentence to this subparagraph explaining that the subject of the requested records must concern identifiable operations or activities of the Corporation or the Federal government, with a connection that is direct and clear, not remote or attenuated.

The second factor currently reads:

(ii) The informative value of the information to be disclosed: Whether the disclosure is "likely to contribute" to an understanding of Corporation or Federal government operations or activities.

LSC proposes to add language noting that the requested records must be meaningfully informative about government operations or activities in order to be likely to contribute to an increased public understanding of those operations or activities and that the disclosure of information that is already in the public domain, in either a duplicative or a substantially identical form, would not be likely to contribute to such understanding where nothing new would be added to the public's understanding.

The third factor currently reads:

(iii) The contribution to an understanding of the subject by the public likely to result from disclosure: Whether disclosure of the requested records will contribute to "public understanding."

LSC proposes to provide additional guidance on the meaning of this factor by adding language explaining that: The disclosure must contribute to a reasonably broad audience of persons interested in the subject, as opposed to the personal interest of the requester; a requester's expertise in the subject area and ability and intention to effectively convey information to the public shall be considered; and that it shall be presumed that a representative of the

[1] Absent this authority, LSC would not otherwise be subject to FOIA since LSC is not an agency, department or instrumentality of the Federal government. 42 U.S.C. 2996d(e)(1).

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news media will satisfy this consideration.

The fourth factor currently reads:

(iv) The significance of the contribution to public understanding: Whether the disclosure is likely to contribute "significantly" to public understanding of Corporation or Federal government operations or activities.

LSC proposes to include additional guidance in this factor that the public's understanding of the subject in question, as compared to the level of public understanding existing prior to the disclosure must be enhanced by the disclosure to a significant extent.

Section 1602.13(f)(2) sets forth the factors used by LSC to determine whether disclosure of the information is not primarily in the commercial interest of the requester. The first factor currently reads:

(i) The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure.

LSC proposes to add a sentence to this subparagraph explaining that LSC shall consider any commercial interest of the requester (with reference to the definition of "commercial use" in this Part) or of any person on whose behalf the requester may be acting, that would be furthered by the requested disclosure.

The second factor reads:

(ii) The primary interest in disclosure: Whether the magnitude of the identified commercial interest is sufficiently large, in comparison with the public interest in disclosure, that disclosure is "primarily" in the commercial interest of the requester.

LSC proposes to add language specifying that a fee waiver or reduction is justified where the public interest standard is greater in magnitude than that of any identified commercial interest in disclosure and that LSC ordinarily shall presume that where a news media requester has satisfied the public interest standard, the public interest will be the interest primarily served by disclosure to that requester. That is, if the public interest standard has been satisfied, the fact that a news media requester has a commercial interest (*i.e.*, in selling newspapers, etc.) will not ordinarily serve to prevent that requester from getting a fee waiver or reduction. LSC further proposes to add language providing that disclosure to data brokers or others who merely compile and market government information for direct economic return shall not be presumed primarily to serve a public interest.

In each of these cases, the language proposed to be added is consistent with the current regulations and LSC practice, FOIA case law and government-wide FOIA practice. As noted above, LSC believes the additions will aid in public understanding of the meaning and application of the fee waiver criteria.

Miscellaneous Amendments

There are several instances throughout the regulation where the regulation makes reference to the "Office of the General Counsel." The Office of the General Counsel was renamed the Office of Legal Affairs in 1999. LSC, therefore, proposes to substitute the name "Office of Legal Affairs" for "Office of the General Counsel" each time it appears in sections 1602.6 and 1602.8 of the regulations.

Section 1602.5, Public reading room, sets forth, among other things, the address of LSC's public reading room. The address listed, 750 First Street, NE., Washington, DC, 20002, is currently correct. However, LSC will be moving in June 2003 to new permanent headquarters. LSC proposes to add language to this section providing the address of the LSC public reading room in LSC's new home: 3333 K St., NW., Washington, DC 20007.

In accordance with FOIA, LSC charges fees for processing FOIA requests and providing copies of requested documents. LSC's schedule of applicable fees is set forth in section 1602.13(e). The current schedule of fees was adopted in 1998 and no longer accurately reflects LSC's costs in responding to FOIA requests. LSC, therefore, proposes to increase fees for search and review time and for copying.

LSC's fees for search and review time are based on LSC's pay schedule, which is divided into broad "pay bands." In the four years since the regulation was last amended, LSC's pay bands have increased to keep up with inflation. The current midpoint of each band is now:

Band 1: $16.15
Band 2: $26.66
Band 3: $39.15
Band 4: $51.41
Band 5: $54.99

LSC proposes to amend the search and review rates to reflect these current 2002 pay rates. LSC notes that the current regulation provides for one blended rate, for Bands 4 and 5. LSC is proposing to separate these rates, providing separate search and review time rates for Bands 4 and 5. These changes will permit LSC to recover fees that are more in line with its actual costs relating to search and review activities.

Under the current regulation, LSC charges $0.10 per page for standard paper photocopying. LSC's actual costs for photocopying are now closer to $0.15 per page. LSC proposes to increase copying costs to $0.13 per page so as to better reflect LSC's costs, while still providing a small discount to requesters. In addition, LSC proposes to substitute the term "Express mail" for "special delivery" where it appears in section 1602.13(e)(7) to reflect current terminology.

List of Subjects in 45 CFR Part 1602

Freedom of information, Reporting and recordkeeping requirements.

For reasons set forth above, LSC proposes to amend 45 CFR part 1602 as follows:

PART 1602—PROCEDURES FOR DISCLOSURE OF INFORMATION UNDER THE FREEDOM OF INFORMATION ACT

1. The authority citation for part 1602 continues to read as follows:

Authority: 42 U.S.C. 2996d(g); 5 U.S.C. 552.

2. Section 1602.2, would be amended by adding a new paragraph (k) to read as follows:

§ 1602.2 Definitions.

* * * * *

(k) *Submitter* means any person or entity from whom the Corporation receives grant application records.

3. Paragraph (a) of § 1602.5 would be revised to read as follows:

§ 1602.5 Public reading room.

(a) The Corporation will maintain a public reading room at its office at 750 First Street, NE., Washington, DC, 20002. After June 1, 2003, the Corporation's public reading room will be located at its office at 3333 K Street, NW., Washington, DC, 20007. This room will be supervised and will be open to the public during the regular business hours of the Corporation for inspecting and copying records described in paragraph (b) of this section.

* * * * *

§ 1602.6 [Amended]

4. Section 1602.6 would be amended by replacing the words "Office of the General Counsel" in the second sentence with the words "Office of Legal Affairs."

§ 1602.8 [Amended]

5. Paragraph (b) of § 1602.8, would be amended by replacing the words "Office of the General Counsel" each of the three times that phrase appears in the paragraph with the words "Office of Legal Affairs."

6. Section 1602.3 would be amended by:

a. Revising paragraphs (e) and (f);

b. Redesignating paragraphs (j) through (l) as paragraphs (k) through (m) respectively; and

c. Adding a new paragraph (j).

§ 1602.13 Fees.

* * * * *

(e) The schedule for charges for services regarding the production or disclosure of the Corporation's records is as follows:

(1) Manual search for and review of records will be charged as follows:

(i) Band 1: $16.15
(ii) Band 2: $26.66
(iii) Band 3: $39.15
(iv) Band 4: $51.41
(v) Band 5: $54.59

(vi) Charges for search and review time less than a full hour will be billed by quarter-hour segments;

(2) Computer time: actual charges as incurred;

(3) Duplication by paper copy: 13 cents per page;

(4) Duplication by other methods: actual charges as incurred;

(5) Certification of true copies: $1.00 each;

(6) Packing and mailing records: no charge for regular mail;

(7) Express mail: actual charges as incurred.

(f) *Fee waivers.* A requester may seek a waiver or reduction of fees below the fees established under paragraph (e) of this section. A fee waiver or reduction request will be granted where LSC has determined that the requester has demonstrated that disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations of the Corporation or Federal government and is not primarily in the commercial interest of the requester.

(1) In order to determine whether disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Corporation or Federal government, the Corporation shall consider the following four factors:

(i) The subject of the request: Whether the subject of the requested records concerns "the operations or activities of the Corporation or Federal government." The subject of the requested records must concern identifiable operations or activities of the Corporation or Federal government, with a connection that is direct and clear, not remote or attenuated.

(ii) The informative value of the information to be disclosed: Whether the disclosure is "likely to contribute" to an understanding of Corporation or Federal government operations or activities. The requested records must be meaningfully informative about government operations or activities in order to be likely to contribute to an increased public understanding of those operations or activities. The disclosure of information that is already in the public domain, in either a duplicative or a substantially identical form, would not be likely to contribute to such understanding where nothing new would be added to the public's understanding.

(iii) The contribution to an understanding of the subject by the public likely to result from disclosure: Whether disclosure of the requested records will contribute to "public understanding." The disclosure must contribute to a reasonably broad audience of persons interested in the subject, as opposed to the personal interest of the requester. A requester's expertise in the subject area and ability and intention to effectively convey information to the public shall be considered. It shall be presumed that a representative of the news media will satisfy this consideration.

(iv) The significance of the contribution to public understanding: Whether the disclosure is likely to contribute "significantly" to public understanding of Corporation or Federal government operations or activities. The public's understanding of the subject in question, as compared to the level of public understanding existing prior to the disclosure, must be enhanced by the disclosure to a significant extent.

(2) In order to determine whether disclosure of the information is not primarily in the commercial interest of the requester, the Corporation will consider the following two factors:

(i) The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure. LSC shall consider any commercial interest of the requester (with reference to the definition of "commercial use" in this part) or of any person on whose behalf the requester may be acting, that would be furthered by the requested disclosure.

(ii) The primary interest in disclosure: Whether the magnitude of the identified commercial interest is sufficiently large, in comparison with the public interest in disclosure, that disclosure is "primarily" in the commercial interest of the requester. A fee waiver or reduction is justified where the public interest is greater in magnitude than that of any identified commercial interest in disclosure. LSC ordinarily shall presume that where a news media requester has satisfied the public interest standard, the public interest will be the interest primarily served by disclosure to that requester. Disclosure to data brokers or others who merely compile and market government information for direct economic return shall not be presumed primarily to serve a public interest.

(3) Where LSC has determined that a fee waiver or reduction request is justified for only some of the records to be released, LSC shall grant the fee waiver or reduction for those records.

(4) Requests for fee waivers and reductions shall be made in writing and must address the factors listed in this paragraph as they apply to the request.

* * * * *

(j) When a requester has previously failed to pay a properly charged FOIA fee within 30 days of the date of billing, the Corporation may require the requester to pay the full amount due, plus any applicable interest, and to make an advance payment of the full amount of any anticipated fee before the Corporation begins to process a new request or continues to process a pending request (including appeals) from that requester.

* * * * *

7. A new 1602.14, would be added to read as follows:

§ 1602.14 Submitter's rights process.

(a) When the Corporation receives a FOIA request seeking the release of a submitter's grant application(s), or portions thereof, the Corporation shall provide prompt written notice of the request to the submitter in order to afford the submitter with an opportunity to object to the disclosure of the requested records (or any portion thereof). The notice shall reasonably describe the records requested and inform the submitter of the process required by paragraph (b) of this section.

(b) If a submitter who has received notice of a request for the submitter's records desires to object to the disclosure of the records (or any portion thereof), the submitter must identify the information for which disclosure is objected and provide LSC with a written detailed statement to that effect. The statement must be submitted to the FOIA Officer in the Office of Legal Affairs and must specify the grounds for withholding the information under FOIA or this part. In particular, the submitter must demonstrate why the information is commercial or financial information that is privileged or confidential. The submitter's statement

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must be provided to LSC within seven business days of the date of the notice from the Corporation. If the submitter fails to respond to the notice from LSC within that time, LSC will deem the submitter to have no objection to the disclosure of the information.

(c) Upon receipt of written objection to disclosure by a submitter, LSC shall consider the submitter's objections and specific grounds for withholding in deciding whether to release the disputed information. Whenever LSC decides to disclose information over the objection of the submitter, LSC shall give the submitter written notice which shall include:

(1) A description of the information to be released and a notice that LSC intends to release the information;

(2) A statement of the reason(s) why the submitter's request for withholding is being rejected; and

(3) Notice that the submitter shall have 5 business days from the date of the notice of proposed release to appeal that decision to the LSC President, whose decision shall be final.

(d) The requirements of this section shall not apply if:

(1) LSC determines upon initial review of the requested records they should not be disclosed;

(2) The information has been previously published or officially made available to the public; or

(3) Disclosure of the information is required by statute (other than FOIA) or LSC regulations.

(e) Whenever a requester files a lawsuit seeking to compel disclosure of a submitter's information, LSC shall promptly notify the submitter.

(f) Whenever LSC provides a submitter with notice and opportunity to oppose disclosure under this section, LSC shall notify the requester that the submitter's rights process under this section has been triggered. Whenever a submitter files a lawsuit seeking to prevent the disclosure of the submitter's information, LSC shall notify the requester.

Victor M. Fortuno,

General Counsel and Vice President for Legal Affairs.

[FR Doc. 02–29123 Filed 11–15–02; 8:45 am]

BILLING CODE 7050–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[I.D. 110502B]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper Grouper Fishery of the South Atlantic Region; Amendment 13; Public Hearing; Spiny Lobster Fishery of the Gulf of Mexico and South Atlantic; Scoping Meeting

AGENCY: National Marine Fisheries Service (NOAA Fisheries), National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of public hearing and scoping meeting.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold a public hearing to address findings from the SAW/SARC (Stock Assessment Workshop/Stock Assessment Review Committee) process for the red porgy stock assessment. The hearing will include an overview of the recent Stock Assessment Workshop findings and the conclusions from the Stock Assessment Review Committee. In addition, the Council will conduct a public scoping meeting addressing issues affecting the spiny lobster fishery.

DATES: The red porgy public hearing and the public scoping meeting for spiny lobster will be held on Monday, December 2, 2002. See **SUPPLEMENTARY INFORMATION** for specific times for the public hearing and the scoping meeting.

ADDRESSES: The public hearing and scoping meeting will be held in New Bern, NC (see **SUPPLEMENTARY INFORMATION**).

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407–4699; telephone: 843–571–4366; fax: 843–769–4520; email address: *kim.iverson@safmc.net*.

SUPPLEMENTARY INFORMATION: A 1999 stock assessment showed red porgy stocks to be overfished and emergency action was taken to restrict both the commercial and recreational fishery, including a one fish per person recreational bag limit, a 50–pound (22.7–kg) incidental catch limit for the commercial sector, and a closed commercial season from January through April. A subsequent stock assessment and review through the SAW/SARC process concluded that red porgy stocks remain overfished and the current management measures are warranted at this time. The Council is conducting the hearing in order to receive input from the public regarding these findings and obtain information regarding the effects of the current regulations. This information will be considered as the Council moves forward with the development of Amendment 13 to the Snapper Grouper Fishery Management Plan.

The scoping meeting will address issues affecting the spiny lobster fishery. These issues will include defining overfishing, possible federal regulation changes regarding the use of "shorts" or undersized lobsters used for bait by commercial harvesters, allowing the expansion of the commercial fishery north of Florida, and the distribution of tailing permits for spiny lobster.

The public hearing will be held at 6 p.m. with the public scoping meeting immediately following at the following location and date:

1. *December 2, 2002*: Sheraton Grand New Bern, 100 Middle Street, New Bern, NC 28560, telephone: 1–800–326–3745 or 252- 638–8112.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council (see **ADDRESSES**) by November 29, 2002.

Dated: November 8, 2002.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–29184 Filed 11–15–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[I.D. 110102J]

Atlantic Highly Migratory Species Fisheries; Atlantic Bluefin Tuna; Petition for Rulemaking

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of receipt of a petition for rulemaking; request for comments.

SUMMARY: NMFS announces receipt of, and requests public comment on, a petition from the North Carolina Division of Marine Fisheries (Petitioner) to initiate rulemaking to amend the current Atlantic bluefin tuna (BFT) allocation criteria and to create a winter time-period subquota. The Petitioner has requested that NMFS commence the rulemaking process as soon as possible.

DATES: Comments must be received no later than 5 p.m., Eastern Standard Time, on December 18, 2002.

ADDRESSES: Written comments on the petition should be sent to Brad McHale, Highly Migratory Species Management Division, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930–2298. Mark on the outside of the envelope: "Comments on Petition for Rulemaking." Comments may also be sent via a facsimile (fax) to (978) 281–9340. Comments will not be accepted if submitted via e-mail or the Internet. Copies of the letter constituting the petition are available upon request at the address mentioned above.

FOR FURTHER INFORMATION CONTACT: Brad McHale, Fishery Management Specialist, (978) 281–9260.

SUPPLEMENTARY INFORMATION:

Petition for Rulemaking

On October 16, 2002, the Petitioner submitted a request to NMFS to initiate rulemaking for a regulatory amendment to 50 CFR 635.27 that would allocate 23 percent of the General category BFT quota to a new December 1 through January 31 time-period subquota. In 2002, the initial General Category quota equaled 647 mt, thus 23 percent would equal 150 mt. The Petitioner states that the quota allocated to the late season General category fishery does not provide reasonable opportunity to harvest BFT when they appear off the South Atlantic coast. The Petitioner believes that there is inequity in the current General category BFT management scheme and that it is necessary to create a General category December through January subquota to ensure fair and equitable treatment to all General category permit holders. The Petitioner explains that the current allocation of General category quota disadvantages General category permit holders who wish to commercially pursue BFT in the South Atlantic, confounds the collection of fishery data, and confounds management for optimum yield.

The Petitioner notes that the proposed amendment could remedy the above inequities, address concerns over National Standard 4, benefit all U.S. BFT fishermen, and have significant economic benefits to South Atlantic fishing communities. The Petitioner also recognizes the proposed amendment could have some negative effects on participants who exploit available quota during earlier time-period subquotas. However, the Petitioner believes that the negative impacts could be mitigated if New England fishermen elect to pursue the BFT as they move south of the South Atlantic states.

The Petitioner acknowledges that operating under the National Standards set forth in the Magnuson-Stevens Fishery Conservation and Management Act is a NOAA priority and policy. To that end, the Petitioner believes that the proposed amendment addresses serious issues related to several National Standards. The Petitioner also believes that the proposed amendment is consistent with specific objectives contained in the Fishery Management Plan for Atlantic Tunas, Swordfish and Sharks (HMS FMP), including improved coordination of domestic conservation and management of the highly migratory species fisheries, considering the multi-species nature of these fisheries, overlapping regional and individual participation, international management concerns, and other relevant factors, as well as maintaining the fishing season and geographic range of the fishery within its historic context to improve scientific monitoring and enhance fishing opportunities. In addition, the Petitioner notes that the 2002 quota specifications and General category effort controls acknowledge that the BFT fishery has changed in recent years with higher catch rates in the fall/winter. According to Petitioner, the proposed amendment would allow more time to harvest the General category subquota and minimize the need to increase harvest limits to levels that could negatively affect prices to U.S. fishermen in international markets.

Issue Background

The request made by the Petitioner has been recently discussed in several public forums. During the development of the issue of opening a southern commercial handgear BFT fishery, the HMS Advisory Panel and public extensively discussed establishing a set-aside quota for a North Carolina General category fishery. However, the HMS AP did not reach consensus on whether or not to allow a new southern commercial fishery. At that time, NMFS maintained its position that allowing new gear types and large scale fisheries for BFT would not be consistent with rebuilding overfished stocks and preventing overfishing. In analyzing a variety of long-term effort controls in the BFT fishery, the HMS FMP concluded that the status quo management regime for the General category would assist attainment of optimum yield and address allocation issues by lengthening the season over time and space in a category with high participation and catch rates.

During the 2002 HMS AP meeting, representatives from North Carolina presented a proposal to allocate General category BFT quota during a time and/or in an area so that North Carolina fishermen would have local access to the commercial handgear fishery. The HMS AP again extensively discussed the issue but did not reach consensus.

During the comment period for the 2002 BFT Quota Specifications and General Category Effort controls, NMFS received numerous comments, stating that North Carolina should have its own winter General category set-aside quota. These comments also stated that the current General category allocation scheme discriminates between residents of different states and fails to provide equitable fishing opportunities across different geographical areas. Commenters also requested that there be a December through January time-period subquota established for southern states.

At that time, NMFS maintained the current quota allocation scheme and did not implement a specific set-aside quota for North Carolina. NMFS stated it would continue to assess the order of magnitude and scope of the fishing activities that would be associated with a North Carolina General category BFT fishery and would continue to work with the HMS AP to address potential solutions.

Request for Comments

This document solicits comments from the public regarding the need to proceed with rulemaking to amend the current General category BFT quota allocation schedule and the provision that closes the General category BFT fishery on December 31 of each year. NMFS is specifically requesting that the public provide comments on the social, economic, and biological impacts this regulatory amendment would have on the General category BFT Fishery. NMFS will consider this information in determining whether to proceed with the development of amended regulations requested by the petition.

Dated: November 12, 2002.

John H. Dunnigan,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–29215 Filed 11–15–02; 8:45 am]

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Notices

Federal Register
Vol. 67, No. 222
Monday, November 18, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Del Norte County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Del Norte County Resource Advisory Committee (RAC) will meet on December 3, 2002 in Crescent City, California. The purpose of the meeting is to discuss the selection of Title II projects under Pub. L. 106–393, H.R. 2389, the Secure Rural Schools and Community Self-Determination Act of 2000, also called the "Payments to States" Act.

DATES: The meeting will be held at the Del Norte County Unified School District Board Room, 301 West Washington Boulevard, Crescent City, California.

FOR FURTHER INFORMATION CONTACT: Laura Chapman, Committee Coordinator, USDA, Six Rivers National Forest, 1330 Bayshore Way, Eureka, CA 95501. Phone: (707) 441–3549. E-mail: *lchapman@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Agenda items include presentations on Title II projects from project proponents, and a discussion of legacy Title II projects. The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the committee at that time.

Dated: November 8, 2002.

S.E. 'Lou' Woltering,

Forest Supervisor.

[FR Doc. 02–29115 Filed 11–15–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DoC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Minority Business Development Agency.

Title: Performance Database (formerly the Business Development Report (BDR) System), Phoenix (formerly Automated Business Enterprise Locator System (ABELS)) and the Opportunity Database Systems.

Agency Form Number: None.

OMB Approval Number: Formerly 0640–0002.

Type of Request: Revision, with change, of a previously approved collection for which approval has expired.

Burden: 50, 1050 and 1,570 hours annually, respectively.

Number of Respondents: 50, 1,050 and 1,570, respectively.

Avg. Hours per Response: 3–15 minutes.

Needs and Uses: The purpose of the Performance, Phoenix and Opportunity databases is to provide an electronic system for (1) entering the accomplishments (Performance) of MBDA's funded organizations, (2) entering minority-owned businesses doing business in the United States (Phoenix), and matching contract opportunities with eligible minority companies listed in the Phoenix database (Opportunity).

Specific uses of the on-line Performance Database include:

The documentation of actual performance accomplishments of each funded organization compared with stated goals in its cooperative agreement with MBDA. The Performance database permits tracking of each funded organization's goals using a number of general and specific variables. The flexibility of the database permits new variables to be added as needed.

The verification of the summary performance accomplishments cited in narrative reports. Based on the results, performance data and other qualitative information obtained during MBDA quarterly monitoring will determine whether a specific cooperative agreement should be terminated or other actions are needed to improve performance.

The advantage of daily tracking of performance is that it will enable managers not only to terminate non-performing funded organizations but, more importantly, to address performance problems early in their development.

Identifies minority business clients receiving Agency-sponsored business development services in the form of management and technical assistance, the kind of assistance each receives, and the impact of that assistance on the growth and profitability of the client firms.

The preparation of special reports analyzing program activities and services by business types, industry trends, business starts, geographic profiles, successful capital and marketing opportunities, and other program elements.

The system permits client identification using a unique computer-assigned identifier for each funded organization. This identification is related to all client data fields. Number of clients assisted, types of assistance, number of hours of assistance, dollar amounts of loans, bonds and contracts, as well as a number of other variables are available for analysis on each client and funded organization.

MBDA requires this information to monitor, evaluate, and plan Agency programs which effectively enhance the development of the minority business sector.

Using information collected, MBDA produces *ad hoc* and recurring reports on its funded organizations, client services activities and accomplishments. Because MBDA's major funded activity is client service, the reports generated are a primary agency reporting and planning mechanism.

The purpose of this collection will be to establish a framework for assessing and evaluating projects' performance.

The Phoenix database constitutes the Minority Business Development Agency's (MBDA) listing of minority-owned businesses doing business in the United States. The Opportunity database contains public and private contract and other opportunities. The system matches contract opportunities with eligible minority companies listed in the Phoenix database. The information entered in the Phoenix database will be used to assist minority enterprises with marketing of goods and services.

The purpose for collecting this information is to enable entities with an interest in contracting with a minority firm to identify potential minority contractors according to various criteria. MBDA uses the Phoenix database in conjunction with the Opportunity database to refer listed minority companies contracts and other business opportunities via email and fax. The Opportunity database matches contract opportunities with eligible minority companies listed in the Phoenix database. Specific information on the Opportunity form, such as "key words" and NAICS codes, are compared with like information contained in the Phoenix database of minority companies. When a match is made, the eligible minority companies will be notified of any contract opportunity and the offeror of the opportunity will be notified of any eligible minority companies. These systems reside on Y2K (year 2000) compliant platforms connected to the service-provider network via the Internet.

Affective Public: Individuals, businesses or other for-profit and not-for-profit institutions.

Frequency: Annually.

Respondents Obligation: Voluntary.

OMB Desk Officer: Mr. David Rostker (202) 395–3895.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek , Departmental Paperwork Clearance Officer, (202) 482–3129, U.S. Department of Commerce, Electronic Government Division, Office of the Chief Information Officer, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Dave Rostker at OMB.

Dated: November 5, 2002.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02–29202 Filed 11–15–02; 8:45 am]

BILLING CODE 3510–21–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

[Case No. 02–BXA–07]

Action Affecting Export Privileges; Oerlikon Schweisstechnik AG

Order

The Bureau of Industry and Security, United States Department of Commerce ("BIS"), has notified Oerlikon Schweisstechnik AG (also known in Switzerland as Oerlikon-Welding Ltd.) ("Oerlikon"), of its intention to initiate an administrative proceeding against it pursuant to Section 13(c) of the Export Administration Act of 1979, as amended (50 U.S.C. app. 2401–2420 (1994 & Supp. V 1999)) ("Act"),[1] and the Export Administration Regulations (currently codified at 15 CFR parts 730–774 (2002)) ("Regulations"),[2] based on allegations in a charging letter issued to Oerlikon that alleged that Oerlikon committed three violations of the Regulations. Specifically, the charges are that Oerlikon violated Sections 764.2(c), 764.2(d), and 764.2(e) of the Regulations by soliciting the export of cellulose from the U.S. to Iran and conspiring to export cellulose from the U.S. to Iran without the required authorization from the Office of Foreign Assets Control, Department of the Treasury, as required by the Regulations, and taking an action that Oerlikon knew to be a violation of the Regulations.

BIS and Oerlikon having entered into a Settlement Agreement pursuant to Section 766.18(b) of the Regulations whereby they agreed to settle this matter in accordance with the terms and conditions set forth therein, and the terms of the Settlement Agreement having been approved by me;

It is therefore ordered:

First, that, for a period of one year from the date of this Order, Oerlikon Schweisstechnik AG (also known in Switzerland as Oerlikon-Welding Ltd.), Neumbrunnerstrasse 50, CH–8050 Zurich, Switzerland, shall be denied its U.S. export privileges as described herein (hereinafter the "denial period"). Oerlikon, and all of its successors, assigns, officers, representatives, agents, and employees, may not participate, directly or indirectly, in any way in any transaction involving any commodity, software, or technology (hereinafter collectively referred to as "item") exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the EAR, or in any other activity subject to the EAR; or

C. Benefiting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the EAR, or in any other activity subject to the EAR.

Second, that no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of a person subject to this order any item subject to the EAR;

B. Take any action that facilitates the acquisition or attempted acquisition by a person subject to this order of the ownership, possession, or control of any item subject to the EAR that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby a person subject to this order acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisitjon from a person subject to this order of any item subject to the EAR that has been exported from the United States;

D. Obtain from a person subject to this order in the United States any items subject to the EAR with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the EAR that has

[1] From August 21, 1994 through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 12924, which had been extended by successive Presidential Notices, the last of which was issued on August 3, 2000 (3 CFR 2000 Comp. 397 (2001)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701–1706 (1994 & Supp. V 1999)) (IEEPA). On November 13, 2000, the Act was reauthorized and it remained in effect through August 20, 2001. Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), as extended by the Notice of August 14, 2002 (67 FR 53721 (August 16, 2002)), has continued the Regulations in effect under IEEPA.

[2] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR parts 730–774 (2002). The violations charged occurred in 2000. The Regulations governing the violations are codified at 15 CFR parts 730–774 (2000). They are substantially the same as the 2002 version of the Regulations which govern the procedural aspects of this case.

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been or will be exported from the United States and which is owned, possessed or controlled by a person subject to this order, or service any item, or whatever origin, that is owned, possessed or controlled by a person subject to this order if such service involves the use of any item subject to the EAR that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, that after notice and opportunity for comment as provided in section 766.23 of the EAR, any other person, firm, corporation, or business organization related to the denied person by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of this order.

Fourth, that this order does not prohibit any export, reexport, or other transaction subject to the EAR where the only items involved that are subject to the EAR are the foreign-produced direct product of U.S.-orgin technology.

Fifth, that, as authorized by Section 766.18(c) of the Regulations, the final six months of the denial period set forth above shall be suspended for one year from the date of entry of this Order, and shall thereafter be waived, provided that, during the period of suspension, Oerlikon has not committed a violation of the Act or any regulation, order or license issued thereunder.

Sixth, that a civil penalty of $33,000 is assessed against Oerlikon which shall be paid to the U.S. Department of Commerce within thirty days from the date of entry of this Order. Payment shall be made in the manner specified in the attached instructions.

Seventh, that, pursuant to the Debt Collection Act of 1982, as amended (31 U.S.C. 3701–3720E (1993 and Supp. 2000)), the civil penalty owned under this Order accrues interest as more fully described in the attached Notice, and, if payment is not made by the due date specified herein, Oerlikon will be assessed, in addition to the full amount of the civil penalty and interest, a penalty charge and an administrative charge, as more fully described in the attached Notice.

Eighth, that the timely payment of the civil penalty set forth above is hereby made a condition to the granting, restoration, or continuing validity of any export license, license exception, permission, or privilege granted, or to be granted, to Oerlikon. Accordingly, if Oerlikon should fail to pay the civil penalty in a timely manner, the undersigned may enter an Order denying all of Oerlikon's export privileges for a period of one year from the date of entry of this Order.

Ninth, that the charging letter, the Settlement Agreement, and this Order shall be made available to the public.

Tenth, that a copy of this Order shall be delivered to the United States Coast Guard ALJ Docketing Center, 40 Gay Street, Baltimore, Maryland 21202–4022, notifying that office that case number 02–BXA–07 naming Oerlikon as a respondent is withdrawn from adjudication, as provided by Section 766.18(b) of the Regulations.

This Order, which constitutes the final agency action in this matter, is effective immediately.

Entered this 12th day of November 2002.

Michael J. Garcia,

Assistant Secretary of Commerce for Export Enforcement.

[FR Doc. 02–29192 Filed 11–15–02; 8:45 am]

BILLING CODE 3510–DT–M

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Regulations and Procedures Technical Advisory Committee; Notice of Open Meeting

The Regulations and Procedures Technical Advisory Committee will meet on December 3, 2002, 9 a.m., Room 3884, in the Herbert C. Hoover Building, 14th Street between Constitution and Pennsylvania Avenues, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration on implementation of the Export Administration Regulations (EAR) and provides for continuing review to update the EAR as needed.

Agenda

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Update on pending regulations.
4. Discussion on status/plans for TSR MTOP limit regulation.
5. Discussion on deemed export license processing and standard conditions.
6. Review and discussion of encryption regulation recommendations.
7. Discussion on AES/SED issues.
8. Status of CCL user friendliness recommendations.
9. Discussion on enforcement/red flag recommendations.
10. Working group reports.
11. Election of Chair.

The meeting will be open to the public and a limited number of seats will be available. Reservations are not accepted. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the Committee suggests that presenters forward the public presentation materials, two weeks prior to the meeting date, to the following address: Ms. Lee Ann Carpenter, OSIES/EA/BIS, MS: 3876, U.S. Department of Commerce, 14th St. & Constitution Ave., NW., Washington, DC 20230.

For more information contact Lee Ann Carpenter on (202) 482–2583.

Dated: November 13, 2002.

Lee Ann Carpenter,

Committee Liaison Officer.

[FR Doc. 02–29159 Filed 11–15–02; 8:45 am]

BILLING CODE 3510–JT–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 111302B]

Proposed Information Collection; Comment Request; Vessel Monitoring System for Atlantic Highly Migratory Species

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506 (c)(2)(A)).

DATES: Written comments must be submitted on or before January 17, 2003.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue NW, Washington DC 20230 (or via Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Chris Rilling, Highly Migratory Species Management Division (F/SF1), Office of Sustainable Fisheries, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910 (phone 301–713–2347).

SUPPLEMENTARY INFORMATION:

I. Abstract

Under the proposed information requirement, vessels fishing for Atlantic highly migratory species (HMS) with pelagic longline gear on board would be required to install and operate a vessel monitoring system (VMS). On May 28, 1999, the National Marine Fisheries Service (NMFS) issued a regulation, 50 CFR 635.69(a), requiring all commercial pelagic longline vessels fishing for Atlantic HMS to install a NMFS-approved VMS.

The Bluewater Fisherman's Association filed a lawsuit challenging the VMS requirement, and the U.S. District Court for the District of Columbia remanded the regulation to the Secretary of Commerce for further consideration. On August 29, 2001 NMFS submitted a reconsideration memorandum to the court analyzing alternatives to and reaffirming the need for fleetwide implementation of VMS in the Atlantic pelagic longline fishery. On October 15, 2002, the U.S. District Court for the District of Columbia issued a final order that denied plaintiff's objections to the VMS regulation. Based on this ruling, NMFS is seeking to reinstate OMB approval for this information collection as required by the Paperwork Reduction Act.

If approved, automatic position reports would be submitted on an hourly basis whenever the vessel is at sea. The information would aid in the enforcement of fishery regulations and could allow for delayed offloading after a closure.

Vessel operators would also be required to follow an equipment installation checklist and submit it to NMFS. The checklist provides information on the hardware and communications service selected by each vessel. NMFS would use the returned checklists to ensure that position reports are received and to aid NMFS in troubleshooting problems.

II. Method of Collection

Checklists would be submitted in paper form. Position reports would be automatically sent electronically by the vessel monitoring system units.

III. Data

OMB Number: 0648–0372.
Form Number: None.
Type of Review: Regular submission.
Affected Public: Business and other for-profit organizations.
Estimated Number of Respondents: 320.

Estimated Time Per Response: 4 hours for installation of equipment; 2 hours for annual maintenance of the equipment (beginning in the second year); 0.033 seconds per automated position report from the automated equipment; and 5 minutes to complete and return a one-time installation checklist.

Estimated Total Annual Burden Hours: 1,101.

Estimated Total Annual Cost to Public: $654,423.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: November 8, 2002.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02–29182 Filed 11–15–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 102902A]

Atlantic Highly Migratory Species; Advisory Panel Meetings.

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notification of Advisory Panel meetings.

SUMMARY: NMFS will hold joint meetings of the Atlantic Highly Migratory Species Advisory Panel (HMS AP) and the Atlantic Billfish Advisory Panel (Billfish AP), February 10 through 12, 2003, in Silver Spring, MD. The intent of these meetings is to consider alternatives for the conservation and management of highly migratory species.

DATES: The joint HMS-Billfish AP meetings will be held from 1 p.m. to 5 p.m. on Monday, February 10; from 8 a.m. to 5 p.m. on Tuesday, February 11; and from 8 a.m. to 5 p.m. on Wednesday, February 12, 2003.

ADDRESSES: The AP meetings will be held in the Holiday Inn, 8777 Georgia Ave. (Rt. 97), Silver Spring, MD 20910. Phone: 301–589–0800.

An agenda and materials related to the AP meeting will be available after January 2, 2003. Please contact Carol Douglas or Othel Freeman, Highly Migratory Species Management Division, 1315 East-West Highway, Silver Spring, MD 20910, 301–713–2347, for meeting logistics or materials.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald G. Rinaldo, 301–713–2347.

SUPPLEMENTARY INFORMATION: The actions to be discussed by the APs are necessary to address requirements of the Magnuson-Stevens Fishery Conservation and Management Act and to implement recommendations of the International Commission for the Conservation of Atlantic Tunas as required by the Atlantic Tunas Convention Act, for the conservation and management of highly migratory species.

Special Accomodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Dr. Rinaldo (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days prior to the meetings.

Authority: 16 U.S.C. 961 *et seq.*, and 16 U.S.C. 1801 *et seq.*

Dated: November 8, 2002.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–29185 Filed 11–15–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 111202C]

Mid-Atlantic Fishery Management Council (MAFMC); Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

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ACTION: Notice of public meeting.

SUMMARY: The Joint Mid-Atlantic Fishery Management Council (MAFMC) and the Atlantic States Marine Fisheries Commission's (ASMFC) Summer Flounder, Scup, and Black Sea Bass Industry Advisors will hold a public meeting.

DATES: Wednesday, December 4, 2002, from 9 a.m. until 4 p.m.

ADDRESSES: The meeting will be held at the Renaissance Hotel Philadelphia Airport, 500 Stevens Drive, Philadelphia, PA, telephone 610–521–5900.

Council address: Mid-Atlantic Fishery Management Council, Room 2115, 300 S. New Street, Dover, DE 19904. ASMFC, 1444 Eye Street, NW, 6th Floor, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Daniel T. Furlong, Executive Director, MAFMC, telephone 302–674–2331, ext. 19. Vince O'Shea, Executive Director, ASMFC, telephone 202–289–6400, ext. 304.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to discuss the 2003 recreational management measures for summer flounder, scup, and black sea bass.

Although non-emergency issues not contained in this agenda may come before the Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal Council action during these meetings. Action will be restricted to those issues specifically listed in this notice and any issue arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address this emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at the Mid-Atlantic Council Office at least 5 days prior to the meeting date.

Dated: November 12, 2002.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–29186 Filed 11–15–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 111202E]

New England Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce

ACTION: Notice of a public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Groundfish Oversight in December, 2002. Recommendations from the committee will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meeting will held on Monday, December 2, 2002, at 9:30 a.m.

ADDRESSES: The meeting will be held at the Holiday Inn, 31 Hampshire Street, Mansfield, MA 02048; telephone: (508) 339–2200.

Council address: New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; (978) 465–0492.

SUPPLEMENTARY INFORMATION: The Groundfish Oversight Committee will meet to review the Draft Amendment 13 and accompanying Supplemental Environmental Impact Statement (SEIS) prior to its submission to NMFS. This document is being prepared for submission in December based on a court order in the case of Conservation Law Foundation et al. v. Secretary of Commerce. NMFS has petitioned the court to allow a delay in submitting the document, and the Council has sent a letter for the court asking for at least a one year delay. If a delay is granted by the court, further work will be completed before the Amendment is submitted.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: November 13, 2002.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–29217 Filed 11–15–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 111202D]

North Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The North Pacific Fishery Management Council (Council) and its advisory committees will hold public meetings December 2–9, 2002, in Anchorage, Alaska.

DATES: The meetings will be held on December 2, 2002 through December 9, 2002. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The Anchorage Hilton Hotel, 500 W 3rd Avenue, Anchorage, Alaska 99501.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Council staff, Phone: 907–271–2809.

SUPPLEMENTARY INFORMATION: The Council's Advisory Panel (AP) will begin at 8 a.m., Monday, December 2, and continue through Friday, December 6, 2002. The Scientific and Statistical Committee (SSC) will begin at 8 a.m. on Monday, December 2, and continue through Wednesday, December 4, 2002. Other Committees to be held during the week: Joint Protocol/Council/Board of Fish, 6 p.m. on Tuesday, December 3 in the King Salmon Room. Ecosystem Panel (Council, SSC, AP) 1 p.m.–5 p.m. on Tuesday, December 3 in the Aspen/Spruce Room.

The Council will begin its plenary session at 8 a.m. on Wednesday, December 4, continuing through Tuesday December 9. All meetings are open to the public except executive sessions.

Council Plenary Session: The agenda for the Council's plenary session will include the following issues. The Council may take appropriate action on any of the issues identified.

1. Report:
   (a) Executive Director's Report
   (b) NMFS Management Report
   (c) Alaska Department of Fish &Game (ADF&G) Management Report
   (d) Coast Guard Report
   (e) United States Fish & Wildlife Service Report
   (f) National Academy of Science Steller Sea Lion report
   (g) Vessel Monitoring System (VMS) National Committee report (if available)
2. Crab Rationalization: Receive Committee reports and determine preferred alternatives for completed trailing amendments. Discuss Environmental Impact Statement (EIS) progress and alternatives. Provide direction/alternatives on Pribilof blue king crab rebuilding plan.
3. Gulf of Alaska (GOA) Rationalization; Receive report from GOA Work Group, discuss alternatives for formal analysis, and provide direction to staff and work group.
4. Essential Fish Habitat (EFH): Receive Committee report and clarify mitigation alternatives for analysis.
5. American Fisheries Act Issues: Final action on Pacific cod sideboard issues (T). Review initial co-op reports and agreements (full reports in February).
6. Improved Retention/Improved Utilization (IR/IU): Receive Committee report and clarify mitigation alternatives for analysis.
7. Groundfish Issues: Final report from F40 review. Review NMFS discussion paper on Bering Sea and Aleutian Islands (BSAI) rockfish management. Review alternative for total allowable catch (TAC)-setting process amendment package. Review and approve BSAI and GOA Stock Assessment and Fishery Evaluation(SAFE) report and recommend final catch specifications and bycatch apportionments for 2003. Review discussion paper on Amendment 64 (BSI fixed gear Pacific cod allocations) and finalize alternatives for analysis.
8. Staff Tasking: Review tasking and committees and provide direction to staff.
9. Other Business: Approve AP and SSC appointments for 2003

Scientific and Statistical Committee: The SSC agenda will include the following issues:

(a) C–3 EFH
(b) Review Halibut log book data
(c) C–1 Rationalization (T)
(d) D–1(a) F40 Final Report
(e) D–1(b,c) BSAI Rockfish and TAC setting
(f) D–1(d,e) BSAI/GOA SAFE
(g) American Fisheries Act

Advisory Panel: The Advisory Panel will address the same agenda issues as the Council, with the exception of the Reports under Item #1 of the Council agenda.

Although non-emergency issues not contained in this agenda may come before the discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal Council action during these meetings. Action will be restricted to those issues specifically listed in this notice and any issue arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address this emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen at 907–271–2809 at least 7 working days prior to the meeting date.

Dated: November 12, 2002.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–29216 Filed 11–15–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 111202B]

South Atlantic Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold meetings of its Snapper Grouper Committee, Finance Committee, Highly Migratory Species Committee, Advisory Panel Selection Committee (closed session), Habitat Committee and Dolphin Wahoo Committee. A joint meeting will also be held between the Snapper Grouper Committee and the Snapper Grouper Advisory Panel. A public hearing will be held on the red porgy stock assessment and review. Additional public comment periods will be held to address lobster issues and the final Dolphin Wahoo Fishery Management Plan. There will also be a full Council Session.

DATES: The meetings will be held in December 2002. See SUPPLEMENTARY INFORMATION for specific dates and times.

ADDRESSES: The meetings will be held at the Sheraton Grand New Bern, 100 Middle Street, New Bern, NC 28560; telephone: (1–800) 326–3745 or (252) 638–8112.

Copies of documents are available from Kim Iverson, Public Information Officer, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407–4699.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer; telephone: 843–571–4366 or toll free at 866/SAFMC–10; fax: 843–769–4520; email: kim.iverson@safmc.net.

SUPPLEMENTARY INFORMATION:

Meeting Dates

1. *Joint Snapper Grouper Committee and Advisory Panel Meeting: December 2, 2002, 1:30 p.m.- 5:30 p.m. and continued on December 3, 2002, from 8:30 a.m. until 10 a.m.*

The Snapper Grouper Committee will meet jointly with the Advisory Panel (AP) to receive updates on red porgy management including a presentation on the SAW/SARC (Stock Assessment Workshop/Stock Assessment Review Committee) findings and the status of the North Carolina observer work on red porgy bycatch. The Committee and AP will also receive updates on the snapper/grouper electronic logbook study and the economic data collection program using logbooks. Following the presentations, the Committee and AP will receive an overview of draft Amendment 13 to the Snapper Grouper Fishery Management Plan (FMP) and will provide input for the document.

2. *Public Hearing for Red Porgy followed immediately by a public scoping meeting on issues affecting the spiny lobster fishery: December 2, 2002, 6 p.m.*

3. *Snapper Grouper Committee Meeting: December 3, 2002, 10 a.m. until 6 p.m. and continued December 4, 2002, from 8:30 a.m. until 3 p.m.*

The Snapper Grouper Committee will meet to receive an update on the SEDAR (Southeastern Data, Assessment and

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Review) process as it currently relates to the status of vermilion snapper and black sea bass and also hear from NOAA Fisherie's Southeast Regional Office regarding the status of their capacity work for the snapper grouper and black sea bass fisheries. The Snapper Grouper Committee will also review draft Amendment 13 and develop recommendations for the Council.

4. *Finance Committee Meeting: December 4, 2002, 3 p.m. until 4 p.m.*

The Finance Committee will meet to review and approve the Calendar Year (CY) 2003 budget.

5. *Highly Migratory Committee Meeting: December 4, 2002, 4 p.m. until 5 p.m.*

The Highly Migratory Species Committee will meet to discuss bluefin tuna allocation issues and hear a report on the fall ICCAT (International Commission for the Conservation of Atlantic Tunas) Advisory Committee meeting and a summary of the ICCAT meeting.

6. *Habitat Committee Meeting: December 5, 2002, 8:30 a.m. until 10:30 a.m.*

The Habitat Committee will meet to review Advisory Panel recommendations. The Committee will also address revisions of its Policy Statement.

7. *Advisory Panel Selection Committee Meeting (CLOSED): December 5, 2002, 10:30 a.m. until 12 noon.*

The Advisory Panel Selection Committee will meet in to review current applications for advisory panel positions and develop recommendations.

8. *Dolphin Wahoo Committee Meeting: December 5, 2002, 1:30 p.m. until 3:30 p.m.*

The Dolphin Wahoo Committee will meet to develop recommendations on submission of the Dolphin Wahoo FMP for formal Secretarial review.

9. *Council Session: December 5, 2002, 4 p.m. until 6 p.m.*

From 4 p.m. 4:15 p.m., the Council will have a Call to Order, introductions and roll call, adoption of the agenda, and approval of the September 2002 meeting minutes.

From 4:15 p.m. 5 p.m., the Council will hear recommendations from the Dolphin Wahoo Committee and take action for final approval of the Dolphin Wahoo FMP for submission for formal Secretarial review. Beginning at 4:15 p.m., a public comment period will be held on the final Atlantic Dolphin Wahoo FMP.

From 5 p.m. 6 p.m., the Council will receive a legal briefing on litigation affecting the Council (CLOSED SESSION).

10. *Council Session: December 6, 2002, 8:30 a.m. 12 Noon.*

From 8:30 a.m. 9 a.m., the Council will hear a report from the Snapper Grouper Committee and take into consideration recommendations regarding draft Amendment 13 to the Snapper Grouper FMP.

From 9 a.m. 9:15 a.m., the Council will receive a report from the Habitat Committee.

From 9:15 a.m. 9:30 a.m., the Council will hear recommendations from the Advisory Panel Selection Committee and appoint new advisory panel members.

From 9:30 a.m. 9:45 a.m., the Council will hear a report from the Highly Migratory Species Committee.

From 9:45 a.m. 10 a.m., The Council will hear a report from the Finance Committee and approve the CY 2003 budget.

From 10 a.m. until 10:15 a.m., the Council will develop recommendations to the Regional Administrator for NOAA Fisheries on Expempted Fisheries Permits for the North Carolina Aquariums and the South Carolina Aquarium.

From 10:15 a.m. until 10:45 a.m., the Council will receive a report on the Marine Fishery Stock Assessment Improvement Plan.

From 10:45 a.m. until 11 a.m., the Council will receive a status report on Amendment 6 to the Shrimp FMP.

From 11 a.m. until 11:30 a.m., the Council will hear NOAA Fisheries status reports on the Golden/Red Crab FMP management unit issue, Shrimp Amendment 5 implementation, the Sargassum FMP, the SEDAR Committee Process and implementation of the ACCSP (Atlantic Coast Cooperative Statistics Program) in the Southeast Region. NOAA Fisheries will also give status reports on landings for Atlantic king mackerel, Gulf king mackerel (eastern zone), Atlantic Spanish mackerel, snowy grouper & golden tilefish, wreckfish, greater amberjack and south Atlantic octocorals.

From 11:30 a.m. 12 noon, the Council will hear agency and liaison reports, discuss other business and upcoming meetings.

Documents regarding these issues are available from the Council office (see **ADDRESSES**).

Although non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subjects of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305 (c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) by November 29, 2002.

Dated: November 13, 2002.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–29218 Filed 11–15–02; 8:45 am]

BILLING CODE 3510–22–S

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY: Commodity Futures Trading Commission.

Sunshine Act Meetings

TIME AND DATE: 11 a.m., Friday, December 6, 2002.

PLACE: 1155 21st NW., Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

FOR MORE INFORMATION CONTACT: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 02–29318 Filed 11–14–02; 12:10 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY: Commodity Futures Trading Commission.

TIME AND DATE: 11 a.m., Friday, December 13, 2002.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

FOR MORE INFORMATION CONTACT: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of Commission.

[FR Doc. 02–29319 Filed 11–14–02; 12:10 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY: Commodity Futures Trading Commission.

TIME AND DATE: 11 a.m., Friday, December 20, 2002.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

FOR MORE INFORMATION CONTACT: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 02–29320 Filed 11–14–02; 12:10 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11 a.m., Friday, December 27, 2002.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

FOR MORE INFORMATION CONTACT: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 02–29321 Filed 11–14–02; 12:10 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY: Commodity Futures Trading Commission.

TIME AND DATE: 10 a.m., Thursday, December 5, 2002.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Adjudicatory Matters.

FOR MORE INFORMATION CONTACT: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 02–29322 Filed 11–14–02; 12:11 pm]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission of OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by December 18, 2002.

Title and OMB Number: Information Collection in Support of DoD Acquisition Process (Solicitation Phase); OMB Number 0704–0187.

Type of Request: Extension.

Number of Respondents: 161,355.

Responses Per Respondent: 12.1 (average).

Annual Responses: 1,954,238.

Average Burden Per Response: 5.05 hours.

Annual Burden Hours: 9,870,858.

Needs and Uses: This information collection requirement pertains to information that an offeror must submit to the Department of Defense in response to a request for proposals or an invitation for bids and not covered separately by another OMB clearance. DoD uses this information to evaluate offers; determine whether the offered price is fair and reasonable; and determine which offeror to select for contract award. DoD also uses this information in determining whether to provide precious metals as Government-furnished material; whether to accept alternate preservation, packaging, or packing; and whether to trade in existing personal property toward the purchase of new items. Specific DFARS requirements were discussed in 67 FR 46180, dated July 12, 2002.

Affected Public: Business or Other For-Profit; Not-For-Profit Institutions.

Frequency: On Occasion.

Respondent's Obligation: Required to Obtain or Retain Benefits.

OMB Desk Officer: Ms. Jackie Zeiher.

Written comments and recommendations on the proposed information collection should be sent to Ms. Zeiher at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: November 12, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 02–29100 Filed 11–5–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Defense Policy Board Advisory Committee

AGENCY: Department of Defense, Defense Policy Board Advisory Committee.

ACTION: Notice.

SUMMARY: The Defense Policy Board Advisory Committee will meet in closed session at the Pentagon on December 5–6, 2002, from 0900 to 1800.

The purpose of the meeting is to provide the Secretary of Defense, Deputy Secretary of Defense and Under Secretary of Defense for Policy with independent, informed advice on major matters of defense policy. The Board will hold classified discussions on national security matters.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law No. 92–463, as amended [5 U.S.C. App II (1982)], it has been determined that this meeting concerns matters listed in 5 U.S.C. 552B (c)(1)(1982), and that accordingly this meeting will be closed to the public.

Dated: November 12, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 02–29099 Filed 11–15–02; 8:45 am]

BILLING CODE 5001–08–M

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DEPARTMENT OF DEFENSE

Office of the Secretary

Draft Department of Defense Directive 5500.17, "Role and Responsibilities of the Joint Service Committee (JSC) on Military Justice"

AGENCY: General Counsel of the Department of Defense.

ACTION: Notice of availability.

SUMMARY: Executive Order 12473, July 13, 1984, states that the Secretary of Defense shall cause the Manual for Courts-Martial to be reviewed annually and recommend to the President any appropriate amendments. Under the direction of the General Counsel of the Department of Defense, a Joint Service Committee on Military Justice (JSC) has been established to accomplish this review and make recommendations for amendments to the Manual. Department of Defense Directive 5500.17, "Role and Responsibilities of the Joint Service Committee (JSC) on Military Justice" provides for the organization, functions, and procedures applicable to the JSC and the annual review process. The Office of Management and Budget (OMB) has provided all government agencies guidelines for ensuring and maximizing the quality, objectivity, utility, and integrity of information disseminated to the public. OMB has directed the agencies to publish a notice in the **Federal Register** by May 1, 2002, that their draft policies complying with the OMB requirement are available for public view and comment on their public Web sites. The draft Department of Defense Directive is available on the Deputy General Counsel (Personnel and Health Policy), Office of the General Counsel public Web site located at *http://www.defenselink.mil/dodgc/php.*

DATES: Consideration will be given to all comments received on or before January 17, 2003.

ADDRESSES: Submit comments to Robert E. Reed. ODGC (P&HP), Office of the General Counsel of the Department of Defense, 1600 Defense Pentagon, Room 3E999, Washington, DC 20301–1600.

FOR FURTHER INFORMATION CONTACT: Mr. Robert E. Reed, ODGC (P&HP), 703–695–1055, *reedr@osdgc.osd.mil.*

Dated: September 24, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–29127 Filed 11–15–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF ENERGY

Waste Isolation Pilot Plant Disposal Phase Supplemental Environmental Impact Statement

AGENCY: U.S. Department of Energy.

ACTION: Amendment to a Record of Decision.

SUMMARY: The U.S. Department of Energy (DOE) has decided to revise its approach for managing approximately 0.97 metric tons (MT) of plutonium-bearing materials (containing about 0.18 MT of surplus plutonium) that are currently located at the Rocky Flats Environmental Technology Site (RFETS). The Department has decided to repackage and transport these materials for direct disposal as transuranic waste (TRUW) at the Waste Isolation Pilot Plant (WIPP) near Carlsbad, New Mexico instead of shipping them to the Savannah River Site (SRS) in South Carolina for storage pending possible disposition. These materials will be repackaged to meet the WIPP waste acceptance criteria (WAC) for TRUW and safeguards termination requirements. DOE has prepared a supplement analysis for this action pursuant to 10 CFR 1021.314, entitled *Supplement Analysis for the Disposal of Certain Rocky Flats Plutonium-Bearing Materials at the Waste Isolation Pilot Plant* (WIPP SA) (DOE/EIS–0026–SA–3, November 2002). On the basis of that document, DOE has concluded this action would not result in significant environmental impacts or in impacts significantly different from those analyzed in the *Waste Isolation Pilot Plant Disposal Phase Supplemental Environmental Impact Statement* (SEIS–II) (DOE–EIS–0026–FS2, September 1997).

ADDRESSES: Copies of the SEIS–II, the WIPP SA, this Amended Record of Decision, and other documents referenced herein, can be obtained by contacting the Center for Environmental Management Information, P.O. Box 23769, Washington, DC 20026–3769, telephone 1–800–736–3282 (in Washington, DC: 202–863–5084).

FOR FURTHER INFORMATION CONTACT: For information concerning the management of plutonium-bearing materials currently stored at Rocky Flats, contact: Dr. W. Eric Huang, Program Manager, Rocky Flats Office (EM–33), Office of Site Closure, Environmental Management, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874, Telephone: 301–903–4630.

For information concerning DOE's National Environmental Policy Act (NEPA) process, contact: Ms. Carol Borgstrom, Director, Office of NEPA Policy and Compliance (EH–42), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone (202) 586–4600, or leave a message at 1–800–472–2756.

SUPPLEMENTARY INFORMATION:

Background

Historically, Rocky Flats has used a material identification system that segregated plutonium-bearing materials by process origin and/or to designate the subsequent process steps for plutonium recovery and recycle. The categorization is known as Item Description Codes (IDCs). In January 1993, these IDCs were grouped into two major categories, Product and Residue, in order to plan and manage the future disposition of the Site's plutonium-bearing materials. The characterization of plutonium-bearing materials as Product or Residue was based on the average plutonium concentration of each IDC, the relative ease or difficulty of recovery, and/or whether an IDC was traditionally considered Product or Residue. In general, the Product category was comprised of IDCs with average plutonium concentrations greater than 50 percent by weight. However, an IDC could be designated as residue material although some individual items within this IDC exceed 50 percent by weight. Similarly, an IDC could be designated as Product material although some individual items within this IDC are less than 50 percent by weight.

DOE has already decided to dispose of the Residue materials at WIPP as transuranic waste (TRUW).[1] *See* "Record of Decision on the Management of Certain Plutonium Residues and Scrub Alloy Stored at the Rocky Flats Environmental Technology Site," 63 FR 66136 (December 1, 1998) and "Amended Record of Decision on Management of Certain Plutonium Residues and Scrub Alloy Stored at the Rocky Flats Environmental Technology Site," 66 FR 4803 (January 18, 2001). The Product materials were originally part of a set of materials destined to be repackaged and sent to the Savannah River Site (SRS) for storage and possible subsequent disposition. *See* "Record of Decision on the Storage and Disposition of Weapons-Usable Fissile Materials," 62 FR 3014 (January 21, 1997) and "Amended Record of Decision on the Surplus Plutonium Disposition Program," 67 FR 19432 (April 19, 2002). However, as the Rocky Flats closure plans matured, a more detailed review has been undertaken of the items within the Product oxide IDCs. This evaluation revealed that a significant quantity of the materials in the Product oxide IDCs contained plutonium concentrations comparable to the Residue materials. Additionally, these items contained the same plutonium compounds and many of the same impurities and physical characteristics as the materials in the Residue IDCs. In fact, these low assay oxides from the Product IDCs:

- Originated from the same aqueous recovery processes and/or contain impurities similar to the Wet Residue category; or
- Originated from the same pyrochemical processes and/or contained impurities similar to the Salt Residue category; or
- Originated from the same process lines and/or contained impurities comparable to the Ash Residue category.

DOE has therefore concluded that by reason of their similarity to the materials already slated for disposal at WIPP, an additional approximately 0.97 MT of low assay oxides (containing about 0.18 MT of surplus plutonium) from the Product IDCs should be disposed of in the same fashion after being repackaged to meet the requirements for safeguards termination and the WIPP waste acceptance criteria (WAC).

[1] For waste classification, DOE specifically defines TRUW as waste containing more than 100 nanocuries of alpha emitting transuranic isotopes per gram of waste with half-lives greater than 20 years except as noted in Chapter III of DOE Guide 435.1–1.

Additional NEPA Review

DOE has prepared a supplement analysis for this proposed action, entitled *Supplement Analysis for the Disposal of Certain Rocky Flats Plutonium-Bearing Materials at the Waste Isolation Pilot Plant* (DOE/EIS–0026–SA–3, November 2002). This supplement analysis was prepared to determine whether the activities associated with repackaging approximately 0.97 MT of plutonium-bearing materials (containing about 0.18 MT of surplus plutonium) at RFETS, shipping the materials to WIPP, and disposal at WIPP would present any significant new information or circumstances relevant to environmental concerns. The supplement analysis indicated that the potential impacts of the proposed action were small and not significantly different from the impacts evaluated in the SEIS–II.

With respect to repackaging, the impacts of ordinary operations would be bounded by the analysis in the SEIS–II, even when adding the very small impacts from repackaging the proposed action material to those of repackaging the other Rocky Flats material currently slated for disposal at WIPP. This is due to the fact that the SEIS–II contemplated the repackaging of considerably more plutonium than the total amount of plutonium that will actually be repackaged at RFETS. The SEIS–II analyzed repackaging and sending to WIPP 17,000 cubic meters of TRUW, but DOE projects that no more than approximately 12,500 cubic meters will eventually be sent. With regard to the most severe accident scenario, an earthquake, the impacts would be greater than predicted in the SEIS–II because the proportion of plutonium in the containers being repackaged is larger than in the containers analyzed in the SEIS–II. But the difference is not significant because the impacts are still small, and because the earthquake scenario has a predicted frequency of less than once over 100,000 years.

The impacts from transporting and disposing of the proposed action materials are small and bounded by those predicted in the SEIS–II. With respect to transportation, the impacts are bounded by the analysis contained in the SEIS–II for two reasons. First, once the material has been repackaged for shipment, the shipments containing those packages will be in all applicable respects similar to the shipments analyzed in the SEIS–II. Second, the actual number of shipments from RFETS to WIPP will be fewer than the number of shipments analyzed in the SEIS–II, even when the shipments of the proposed action materials are included. The SEIS–II assumed that approximately 2,100 shipments would be sent from RFETS to WIPP, but DOE projects that no more than 1,700 shipments, including the 45 shipments for the proposed action, will be sent. With respect to disposal, once the material at issue has been repackaged, it will meet the WIPP waste acceptance criteria, the relevant consideration used in analyzing the impacts of disposing of the material analyzed in the SEIS II. Furthermore, the volume (and impacts) of material slated for disposal from all sites, including the proposed action material, will remain well below the total analyzed in the SEIS–II.

Other Considerations

This proposed action will reduce the technical uncertainty associated with removing these materials from RFETS and thus will enhance DOE's ability to meet the RFETS site closure schedule: In order to send these materials to SRS as originally planned, they would need to be stabilized and repackaged to meet DOE–STD–3013 requirements. Because of their low density, it would be difficult to efficiently repackage these materials to meet these requirements. The 3013 containers are relatively small and were developed for high density plutonium metal and oxides. Also, these materials contain impurities which present a significant technical challenge to maintaining the moisture specifications of the DOE–STD–3013 requirements. Sending these materials to WIPP as TRUW eliminates this technical risk.

Conclusion

DOE has determined that repackaging and transporting approximately 0.97 MT of RFETS plutonium-bearing materials (containing about 0.18 MT of surplus plutonium) for direct disposal at the WIPP would not constitute a substantial change in actions previously analyzed. Furthermore, this proposed action would not constitute significant new circumstances or information relevant to environmental concerns and bearing on the previously analyzed action or its impacts. The potential impacts associated with the new action are encompassed within the activities and impacts analyzed under Action Alternative 1 of the SEIS–II. Therefore, DOE does not need to undertake additional NEPA analysis before issuing this amendment.

Decision

After consideration of the potential environmental impacts identified in the SEIS–II and the WIPP SA, DOE has decided to dispose of at WIPP approximately 0.97 MT of the plutonium-bearing materials (containing about 0.18 MT of surplus plutonium) currently located at RFETS. These materials would be repackaged to meet the WIPP WAC and safeguards termination requirements.

This Amended Record of Decision is effective upon being made public. in accordance with DOE's NEPA implementation regulations (10 CFR 1021.315).

Issued in Washington, DC, on November 8, 2002.

Jessie Hill Roberson,

Assistant Secretary for Environmental Management.

[FR Doc. 02–29161 Filed 11–15–02; 8:45 am]

BILLING CODE 6450–01–P

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DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Agency Information Collection Activities: Submission for OMB Review; Comment Request.

SUMMARY: The EIA has submitted the energy information collections listed at the end of this notice to the Office of Management and Budget (OMB) for review and a three-year extension under section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) (44 U.S.C. 3501 *et seq.*).

DATES: Comments must be filed within 30 days of publication of this notice. If you anticipate that you will be submitting comments but find it difficult to do so within that period, you should contact the OMB Desk Officer for DOE listed below as soon as possible.

ADDRESSES: Send comments to Bryon Allen, OMB Desk Officer for DOE, Office of Information and Regulatory Affairs, Office of Management and Budget. To ensure receipt of the comments by the due date, submission by FAX (202–395–7285) or e-mail (*BAllen@omb.eop.gov*) is recommended. The mailing address is 726 Jackson Place NW., Washington, DC 20503. The OMB DOE Desk Officer may be telephoned at (202) 395–3087. (A copy of your comments should also be provided to EIA's Statistics and Methods Group at the address below.)

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Herbert Miller, Statistics and Methods Group, (EI–70), Forrestal Building, U.S. Department of Energy, Washington, DC 20585–0670. Mr. Miller may be contacted by telephone at (202) 426–1103, Fax at (202) 426–1081, or e-mail at *Herbert.Miller@eia.doe.gov*.

SUPPLEMENTARY INFORMATION: This section contains the following information about the energy information collections submitted to OMB for review: (1) The collection numbers and title; (2) the sponsor (*i.e.*, the Department of Energy component); (3) the current OMB docket number (if applicable); (4) the type of request (i.e, new, revision, extension, or reinstatement); (5) response obligation (*i.e.*, mandatory, voluntary, or required to obtain or retain benefits); (6) a description of the need for and proposed use of the information; (7) a categorical description of the likely respondents; and (8) an estimate of the total annual reporting burden (*i.e.*, the estimated number of likely respondents times the proposed frequency of response per year times the average hours per response).

1. Forms EIA–800–804, 807, 810–814, 816, 817, 819M, and 820, "Petroleum Supply Reporting System".
2. Energy Information Administration.
3. OMB Number 1905–0165.
4. One-year extension.
5. Mandatory.
6. EIA's Petroleum Supply Reporting System collects information needed for determining the supply and disposition of crude oil, petroleum products, and natural gas liquids. The data are published by EIA and are used by public and private analysts. Respondents are operators of petroleum refineries, blending plants, bulk terminals, crude oil and product pipelines, natural gas plant facilities, tankers, barges, and oil importers.

With respect to its currently approved PSRS survey forms, EIA is proposing a few changes that would be implemented in surveys for the 2003 reporting period. When soliciting public comments, EIA proposed additional changes for the 2003 reporting period as well as changes that would have been implemented beginning in 2004. EIA received a large number of comments. EIA needs additional time to adequately consider the comments and to ensure that changes in the information collections fully address concerns raised by the public. For that reason, EIA has decided to propose only a few changes for the 2003 reporting period and to request approval for collecting information only for 2003. During 2003, EIA will again solicit comments on the PSRS surveys and request OMB approval before conducting any surveys for the 2004 report period.

An additional reason for delaying the majority of the proposed changes is EIA's development of a new processing system for EIA's PSRS surveys. Significant changes to the surveys in 2003 could have severe negative impacts on timely development of the new processing system which in turn would interfere with EIA's on-going weekly, monthly, and annual information products on the petroleum industry.

The only PSRS survey changes proposed for 2003 are:

- EIA–807, Propane Telephone Report—This survey is currently conducted on a monthly basis for six months and on a weekly basis for the remaining six months. EIA is proposing to conduct this survey on a weekly basis throughout the year and to add an element on non-fuel propylene stocks.
- EIA–816, Monthly Natural Gas Liquids Report—EIA will add four items to collect natural gas information (*i.e.*, receipts, inputs to other products, shipments, and plant fuel use).

7. Business or other for-profit; State, local or tribal government; Federal government.
8. 60,006 hours (2,240 respondents × 21.03 responses per year × 1.27 hours).

Statutory Authority: Section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

Issued in Washington, DC, November 12, 2002.

Jay Casselberry,

Forms Clearance Officer, Statistics and Methods Group, Energy Information Administration.

[FR Doc. 02–29162 Filed 11–15–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[IC03–583–000, FERC–583]

Commission Information Collection Activities, Proposed Collection; Comment Request; Extension

November 8, 2002.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice.

SUMMARY: In compliance with the requirements of section 3506(c)(2)(a) of the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A), the Federal Energy Regulatory Commission (Commission) is soliciting public comment on the specific aspects of the information collection described below.

DATES: Consideration on the collection of information is due by January 13, 2003.

ADDRESSES: Information on the proposed energy information collection can be obtained from and written comments may be submitted to the Federal Energy Regulatory Commission, Attn: Michael Miller, Office of the Chief Information Officer, CI–1, 888 First Street NE., Washington, DC 20426. Comments may be filed either in paper format or electronically. Those persons filing electronically do not need to make a paper filing. For paper filings, the original and 14 copies of such comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 and should refer to Docket No. IC03–583–000. Documents filed electronically via the Internet must be prepared in WordPerfect, MS Word, Portable Document Format, or ASCII format. To file the document, access the Commission's Web site at *http://www.ferc.gov* and click on "Make an E-filing," and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgment to the sender's E-mail address upon receipt and comments. User assistance for electronic filings is available at 202–208–0258 or by e-mail to *efiling@ferc.fed.us*. Comments should not be submitted to the e-mail address.

All comments may be viewed, printed or downloaded remotely via the Internet through FERC's homepage using the "FERRIS" link. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202) 502–8415, by fax at (202) 208–2425, and by e-mail at *michael.miller@ferc.gov*.

SUPPLEMENTARY INFORMATION:

Abstract

The information collected under the requirements of FERC–583 "Annual Kilowatt Generating Report (Annual Charges)" (OMB No. 1902–0136) is used by the Commission to implement the statutory provisions of section 10(e) of the Federal Power Act (FPA), part I, 16 U.S.C. 803(e) which requires the Commission to collect annual charges from hydropower licensees for, among other things, the cost of administering part I of the FPA and for the use of United States dams. In addition, the Omnibus Budget Reconciliation Act of 1986 (OBRA) authorizes the Commission to "assess and collect fees and annual charges in any fiscal year in amounts equal to all of the costs incurred by the Commission in that fiscal year." The information is collected annually and used to determine the amounts of the annual charges to be assessed licensees for reimbursable government administrative costs and for the use of government dams. The Commission implements these filing requirements in the Code of Federal Regulations (CFR) under 18 CFR part 11.

Action: The Commission is requesting a three-year extension of the current expiration date, with no changes to the existing collection of data.

Burden Statement: Public reporting burden for this collection is estimated as:

Number of respondents annually	Number of responses per respondent	Average burden hours per response	Total annual burden hours
(1)	(2)	(3)	(1)×(2)×(3)
660	1	2	1,320

Estimated cost burden to respondents: 1,320 hours/2,080 hours per year × $117,041 per year = $74,276. The cost per respondent = $113.

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology *e.g.* permitting electronic submission of responses.

Magalie R. Salas,

Secretary.

[FR Doc. 02–29160 Filed 11–15–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2197–056]

Alcoa Power Generating Inc.; Notice Granting Late Intervention

November 8, 2002.

On September 6, 2002, the Commission issued a notice of the request for a temporary license amendment to deviate from reservoir drawdown schedules and refill requirements, filed August 29, 2002, by Alcoa Power Generating Inc., for the Yadkin Project No. 2197, located on the Yadkin/Pee Dee River in Montgomery, Stanley, Davidson, Rowan, and Davie Counties, North Carolina. The notice established October 7, 2002, as the deadline for filing motions to intervene in the proceeding.

On October 16, 2002, a motion to intervene was filed late by Mr. Jim L. Shuping. Granting the late motion to intervene will not unduly delay or disrupt the proceeding or prejudice other parties to it. Therefore, pursuant to Rule 214,[1] the late motion to intervene filed in this proceeding by Mr.

[1] 18 CFR 385.214 (2001).

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Jim L. Shuping is granted, subject to the Commission's rules and regulations.

Magalie R. Salas,

Secretary.

[FR Doc. 02–29138 Filed 11–15–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–45–000]

ANR Pipeline Company; Notice of Tariff Filing

November 12, 2002.

Take notice that on October 29, 2002, ANR Pipeline Company (ANR), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Third Revised Sheet No. 148, with an effective date of December 1, 2002.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–29149 Filed 11–18–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER02–1656–009 and ER02–2576–001]

California Independent System Operator Corporation; Notice of Technical Conference

November 8, 2002.

The Federal Energy Regulatory Commission Staff is convening a technical conference regarding the Comprehensive Market Redesign 2002 of the California Independent System Operator Corporation (CAISO) to assess the progress of the Stakeholder Working Groups, and to facilitate continued discussions between the CAISO and stakeholders regarding the development of the remaining elements of the CAISO market redesign and to identify related implementation issues. The conference will be held on December 9, 2002 in a hearing room at the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC beginning at 9 am.

In preparation for this technical conference, the MD02 Stakeholder Working Groups should file by November 25, 2002, a Stipulation of Issues identifying which issues have been resolved and any issues that remain unresolved. For those issues that remain open, each party should prepare its own Statement of Position. The CAISO should file in the above captioned dockets by December 2, 2002, the presentation referenced in its October 29, 2002 Request for Technical Conference, including slides and accompanying narrative. The CAISO should include software development requirements as part of the presentation. The presentation should also be posted on the CAISO website. To make the most efficient use of the time allotted, all parties should be prepared to discuss the CAISO's posted presentation. The CAISO and its software vendors should be prepared to address technical requirements associated with implementation of revised market design elements.

For additional information concerning the conference, interested persons may contact Susan G. Pollonais at (202) 502–6011 or by electronic mail at *susan.pollonais@ferc.gov*. No telephone communication bridge will be provided at this technical conference.

Magalie R. Salas,

Secretary.

[FR Doc. 02–29135 Filed 11–15–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–65–000]

Cove Point LNG Limited Partnership; Notice of Tariff Filing

November 12, 2002.

Take notice that on November 6, 2002, Cove Point LNG Limited Partnership (Cove Point) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, First Revised Tariff Sheet No. 103; First Revised Tariff Sheet No. 105; First Revised Tariff Sheet No. 115; First Revised Tariff Sheet No. 117; and Second Revised Tariff Sheet No. 153, with an effective date of December 4, 2002.

Cove Point states that the proposed revised sheets are submitted to comply with the Commission's (Order No. 587–O). Order No. 587–O requires Cove Point to adopt Version 1.5 of the North American Energy Standards Board's (NAESB) standards.

Cove Point states that copies its filing has been served upon all of Cove Point's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions

on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–29152 Filed 11–18–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–994–003]

Duke Energy Corporation; Notice of Filing

November 12, 2002.

Take notice that on October 31, 2002, Duke Energy Corporation (Duke), on behalf of Duke Electric Transmission (Duke ET), tendered for filing (i) a Generation Interconnection and Operating Agreement between Duke ET and South Carolina Public Service Authority (SCPSA), and (ii) an Amendment to the Restated Interchange Agreement between Duke Power Company and SCPSA dated February 10, 1992. Duke requests an effective date of January 1, 2003.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's web site at http://www.ferc.gov, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: November 21, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–29144 Filed 11–18–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–64–000]

Gulf South Pipeline Company, LP; Notice of Proposed Changes in Gas Tariff

November 12, 2002.

Take notice that on November 5, 2002, Gulf South Pipeline Company, LP (Gulf South) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following tariff sheets, to become effective December 5, 2002.

First Revised Sheet No. 301
First Revised Sheet No. 601
First Revised Sheet No. 714
Second Revised Sheet No. 1200
Third Revised Sheet No. 1201
First Revised Sheet No. 1202
First Revised Sheet No. 1203
Original Sheet No. 1204
Original Sheet No. 1205
Original Sheet No. 1206
Reserved Sheet Nos. 1207—1299
Second Revised Sheet No. 1413
Third Revised Sheet No. 1416
Second Revised Sheet No. 2502
First Revised Sheet No. 3605
First Revised Sheet No. 3615
First Revised Sheet No. 3702
Fourth Revised Sheet No. 3706
Third Revised Sheet No. 4000

Gulf South is proposing to revise its credit requirements to enable it to manage the risks inherent in today's marketplace. This proposal establishes clear creditworthy standards, shorter notice periods, and increased security requirements.

Copies of this filing have been served upon Gulf South's customers, state commissions and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–29151 Filed 11–18–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–8–000]

Regent Resources Ltd.; Notice of Application

November 8, 2002.

Take notice that on October 29, 2002, Regent Resources Ltd., (Regent), 1200, 603–7th Avenue SW., Calgary, Alberta Canada T2P 2T5, filed an application seeking Section 3 authorization and a Presidential Permit pursuant to Executive Order No. 10485, as amended by Executive Order No. 12038, to site, construct, operate and maintain facilities at the United States—Canada border (International Boundary) for the importation of natural gas into the United States from Alberta, Canada, all as more fully set forth in the application on file with the Commission and open to public inspection. This filing may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659.

Specifically, Regent proposes to construct and operate a gas meter station at an existing wellsite and a 2300-foot, 4-inch O.D. pipeline (Regent

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Pipeline) extending directly south of the meter station in the Coutts area of the Province of Alberta. The last 30 foot section of the Regent Pipeline (border crossing) will interconnect with a new 4-inch pipeline (Connector Pipeline) to be constructed in the NW ¼ Section 1, Township 37N, Range 5W in Glacier County, Montana, by Regent Resources Inc., a Montana subsidiary of Regent. The Connector Pipeline will extend from the border crossing in an southeasterly direction for a distance of approximately 19,400 feet and tie in with EnCana Corporation's existing gathering system and processing facility located in Northern Montana.

Regent states that the proposed construction will allow unprocessed gas from existing shut-in wells in the Alberta Province to be imported into the existing U.S. gathering and processing system, thereby providing increased Canadian resource development with accompanying local, state and provincial socio-economics benefits.

Any questions regarding the application should be directed to Shaun Hedges, Operations Manager, Regent Resources Ltd, at (406) 264–0018.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before November 29, 2002, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and instructions on the Commission's Web site under the "e-Filing" link.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Magalie R. Salas,

Secretary.

[FR Doc. 02–29134 Filed 11–15–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 309]

Reliant Energy Mid-Atlantic Power Holdings, LLC; Notice of Authorization for Continued Project Operation

November 12, 2002.

On October 11, 2000, Reliant Energy Mid-Atlantic Power Holdings, LLC, licensee for the Piney Project No. 309, filed an application for a new or subsequent license pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. Project No. 309 is located on the Clarion River in Clarion County, Pennsylvania.

The license for Project No. 309 was issued for a period ending October 12, 2002. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year to year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in Section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of Section 15 of the FPA, then, based on Section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to Section 15 of the FPA, notice is hereby given that an annual license for Project No. 309 is issued to Reliant Energy Mid-Atlantic Power Holdings, LLC for a period effective October 13, 2002, through October 12, 2003, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before October 13, 2003, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under Section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to Section 15 of the FPA, notice is hereby given that Reliant Energy Mid-Atlantic Power Holdings, LLC is authorized to continue operation of the Piney Project No. 309 until such time as the Commission acts on its application for subsequent license.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–29147 Filed 11–18–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–58–000]

Texas Eastern Transmission, LP; Notice of Proposed Changes in FERC Gas Tariff

November 12, 2002.

Take notice that on October 31, 2002, Texas Eastern Transmission, LP (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, and First Revised Volume No. 2, revised tariff sheets as listed on Appendix A to the filing, to become effective December 1, 2002. In addition, Texas Eastern submitted its Annual Interruptible Revenue Reconciliation Report pursuant to its Amended Global Settlement.

Texas Eastern states that the revised tariff sheets and the Annual Interruptible Revenue Reconciliation Report contained in the filing are being filed (i) pursuant to Section 15.6, Applicable Shrinkage Adjustment (ASA), and Section 15.8, Periodic Reports, of the General Terms and Conditions of Texas Eastern's FERC Gas Tariff, Seventh Revised Volume No. 1, (ii) in compliance with the Stipulation and Agreement (Global Settlement) approved by the Commission in its order issued May 12, 1994 [67 FERC ¶ 61,170, reh'g denied, 68 FERC ¶ 61,062 (1994)], and (iii) in compliance with the Joint Stipulation and Agreement Amending Global Settlement (Amended Global Settlement) approved by the Commission in its order issued August 28, 1998 [84 FERC ¶ 61,200 (1998)].

Texas Eastern states that by this filing, it is reducing by approximately 25% the level of its ASA Usage Surcharge included in its rates, and reflecting minor changes in its ASA Percentages, which are designed to retain in-kind the projected quantities of gas required for the operation of Texas Eastern's system in providing service to its customers. These adjustments are effective for the twelve month period beginning December 1, 2002.

Texas Eastern states that copies of its filing have been mailed to all affected customers of Texas Eastern and interested state commissions, as well as to all parties to the Settlement in Docket No. RP85–177–119, *et al.*

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–29150 Filed 11–18–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP01–236–008, RP00–553–011, and RPoo–481–008]

Transcontinental Gas Pipe Line Corporation; Notice of Compliance Filing

November 8, 2002.

Take notice that on October 30, 2002, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing, as part of its FERC Gas Tariff, Third Revised Volume No. 1, the revised tariff sheets listed on Appendix A to the filing.

Transco states that the purpose of this filing is to comply with the Commission's Order on Rehearing and Clarification issued on August 29, 2002 in the referenced proceeding.

Transco states that it will serve copies of the instant filing on its affected customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–29143 Filed 11–15–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 719]

Trinity Conservancy Inc.; Notice of Authorization for Continued Project Operation

November 12, 2002.

On October 31, 2000, Trinity Conservancy Inc., licensee for the Trinity Project No. 719, filed an application for a new or subsequent license pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. Project No. 719 is located on Phelps and James Creeks in Chelan County, Washington.

The license for Project No. 719 was issued for a period ending November 1, 2002. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year to year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in Section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of Section 15 of the FPA, then, based on Section 9(b) of the

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Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to Section 15 of the FPA, notice is hereby given that an annual license for Project No. 719 is issued to Trinity Conservancy Inc. for a period effective November 2, 2002, through November 1, 2003, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before November 2, 2003, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under Section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to Section 15 of the FPA, notice is hereby given that Trinity Conservancy Inc. is authorized to continue operation of the Trinity Project No. 719 until such time as the Commission acts on its application for subsequent license.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–29148 Filed 11–18–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER97–1523–071, et al.]

Central Hudson Gas & Electric Corporation, et al.; Electric Rate and Corporate Filings

November 7, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Central Hudson Gas & Electric, Consolidated Edison Company of New York, Inc., Long Island Lighting Company, New York State Electric and Gas Corporation, Niagara Mohawk Power Corporation, Orange and Rockland Utilities, Inc., Rochester Gas and Electric Corporation, New York Power Pool, New York Independent System Operator, Inc.

[Docket Nos. ER97–1523–071, OA97–470–066, and ER97–4234–064]

Take notice that on October 30, 2002, the New York Independent System Operator, Inc. (NYISO) filed an analysis of its current method of addressing storm watch conditions and of alternative options for cost recovery.

The NYISO has served a copy of this filing on each party designated on the official service list in Docket Nos. ER97–1523–003, –004, –005, –006, –052, –061, OA97–470–004, –005, –006, ER97–4234–002, –003, –004 and EC99–31–001 in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure, 18 CFR 2010 (2002).

Comment Date: November 20, 2002.

2. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1420–006]

Take notice that on November 1, 2002, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted a First Revised, Volume No. 1 Resulting Company Tariff in compliance with the Commission's Order issued on May 31, 2002 in Midwest Independent Transmission System Operator, Inc., Docket No. ER02–1420–000, 99 FERC ¶ 61,250 (2002). In addition, the Midwest ISO also submitted the Second Revised Resulting Company Agreement in compliance with the Commission's Order issued on October 11, 2002 in Midwest Independent Transmission System Operator, Inc., Docket No. ER02–1420–001, 101 FERC ¶ 61,044 (2002).

The Midwest ISO has requested waiver of the requirements set forth in 18 CFR 385.2010. The Midwest ISO has electronically served a copy of this filing upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, Policy Subcommittee participants, as well as all state commissions within the region. In addition, the filing has been electronically posted on the Midwest ISO's Web site at *www.midwestiso.org* under the heading "Filings to FERC" for other interested parties in this matter. The Midwest ISO will provide hard copies to any interested parties upon request.

Comment Date: November 22, 2002.

3. Williams Energy Marketing & Trading Company

[Docket Nos. ER03–132–000]

Take notice that on November 1, 2002, Williams Energy Marketing & Trading Company (Williams) tendered for filing pursuant to Section 205 of the Federal Power Act (FPA), 16 U.S.C. 824d, and part 35 of the Commission's Regulations, 18 CFR 35, revised pages to the Reliability Must-Run Service Agreements (RMR Agreements) between Williams and the California Independent System Operator Corporation (ISO) for certain RMR units located at the Alamitos and Huntington Beach Generating Stations.

The purpose of the filing is to update Williams' existing RMR Agreements to reflect an extension of the two existing RMR Agreements and certain annual updates to Schedules A, B, C D and J of the RMR Agreements. Copies of the filing were served upon the ISO and Southern California Edison Company.

Comment Date: November 22, 2002.

4. New England Power Pool

[Docket No. ER03–133–000]

Take notice that on November 1, 2002, the New England Power Pool (NEPOOL) Participants Committee submitted (1) the Eighty-Ninth Agreement Amending New England Power Pool Agreement, which changes how NEPOOL Votes are calculated at NEPOOL Technical Committees, and (2) the Ninetieth Agreement Amending New England Power Pool Agreement, which reduces the financial assurance requirement of a Non-Municipal Participant in certain circumstances under the Financial Assurance Policy for NEPOOL Members. A January 1, 2003 effective date was requested for each of these Agreements.

The NEPOOL Participants Committee states that copies of these materials were sent to the NEPOOL Participants, Non-Participant Transmission Customers and the New England state governors and regulatory commissions.

Comment Date: November 22, 2002.

5. New England Power Pool

[Docket No. ER03–134–000]

Take notice that on November 1, 2002, the New England Power Pool (NEPOOL) Participants Committee filed for acceptance materials to permit NEPOOL to expand its membership to include Citadel Energy Products LLC (Citadel), and to terminate the

memberships of Enron Energy Services, Inc. (EESI). The Participants Committee requests a November 1, 2002 effective date for commencement of participation in NEPOOL by Citadel and for the termination of EESI.

The NEPOOL Participants Committee states that copies of these materials were sentthe New England state governors and regulatory commissions and the Participants in NEPOOL.

Comment Date: November 22, 2002.

6. Sierra Pacific Power Company

[Docket No. ER03–137–000]

Take notice that on November 1, 2002, Sierra Pacific Power Company (Sierra) filed a revision to the General Transfer Agreement (GTA) between Sierra and Bonneville Power Administration (BPA).

Sierra states that the revision would increase the total monthly facilities charge from $130,755 to $133,289 to reflect a change in the percentage of initial capital investment used to calculate the Estimated O&M Charge. Sierra requests that the increased charge be made effective at 2400 hours on November 30, 2002.

Copies of this filing were served on the Public Utilities Commission of Nevada, the Public Utilities Commission of California, the Nevada Bureau of Consumer Protection and Bonneville Power Administration.

Comment Date: November 22, 2002.

7. PacifiCorp

[Docket No. ER03–138–000]

Take notice that on November 1, 2002 PacifiCorp, tendered for filing in accordance with 18 CFR 35 of the Commission's Rules and Regulations, Notice of Cancellation of Service Agreement No. 63 under PacifiCorp's FERC Electric Tariff, Volume No. 12 for service between Hinson Power Company and PacifiCorp.

Copies of this filing were supplied to Hinson Power Company, the Public Utility Commission of Oregon and the Washington Utilities and Transportation Commission.

Comment Date: November 22, 2002.

8. California Power Exchange Corporation

[Docket No. ER03–139–000]

Take notice that on November 1, 2002, the California Power Exchange Corporation (CalPX) tendered for filing an amendment to its Rate Schedule FERC No. 1. CalPX files this amendment pursuant to the Commission's August 8, 2002 order in Docket No. ER02–2234–000 (100 FERC ¶ 61,178), which required CalPX to make a new rate filing every six months to recover current expenses. The amendment therefore covers expenses projected for the period January 1 through June 30, 2003, and CalPX requests an effective date of January 1, 2003.

CalPX states that it has served copies of the filing on its participants, on the California ISO, and on the California Public Utilities Commission.

Comment Date: November 22, 2002.

9. Concord Electric Company, Exeter & Hampton Electric Company, Unitil Energy Systems, Inc.

[Docket No. ER03–140–000]

Take notice that on November 1, 2002, Concord Electric Company (CECo), Exeter & Hampton Electric Company (E&H), and Unitil Energy Systems, Inc. (UES), filed with the Federal Energy Regulatory Commission, pursuant to Section 205 of the Federal Power Act and 18 CFR 35.13, the amended Open Access Transmission Tariffs (OATT) of CECo and E&H. The Companies request an effective date of December 1, 2002, for the changes to the OATTs. The Companies also requested approval for the reclassification of transmission facilities as distribution facilities.

The Companies have requested a waiver of the Commission's regulations to permit the changes to become effective as of December 1, 2002.

Comment Date: November 22, 2002.

10. Public Service Electric and Gas Company

[Docket No. ER03–141–000]

Take notice that on November 1, 2002, Public Service Electric and Gas Company (PSE&G) submitted for filing a revised Interconnection Agreement, reflecting revisions to an existing Interconnection Agreement dated August 2000 between PSE&G and the Joint Owners of the Salem Generating Station and Switchyard. Copies of this filing were served on the Joint Owners and on PJM Interconnection, L.L.C.

Comment Date: November 22, 2002.

11. Southern California Edison Company

[Docket No.ER03–142–000]

Take notice, that on November 1, 2002, Southern California Edison Company (SCE) tendered for filing a revision to its Transmission Owner Tariff (TO Tariff), FERC Electric Tariff, Substitute First Revised Original Volume No. 6, to reflect a change to SCE's Reliability Services Rates, and revisions to certain Existing Transmission Contracts (ETC) to provide for the assessment of a charge for Reliability Services to SCE's ETC customers with loads in SCE's historic control area.

Copies of this filing were served upon the Public Utilities Commission of the State of California, the California Independent System Operator, the California Electricity Oversight Board, Pacific Gas and Electric Company, San Diego Gas & Electric Company, and the wholesale customers with loads in SCE's historic control area.

Comment Date: November 22, 2002.

12. Public Service Company of New Hampshire, New Hampton Village Precinct

[Docket No. ER03–143–000]

Take Notice that Public Service Company of New Hampshire, on November 1, 2002, tendered for filing a revised rate for delivery service provided to the New Hampton (New Hampshire) Village Precinct under its Interconnection and Delivery Service Agreement, Original Service Agreement No. 25 under FERC Electric Tariff, First Revised Volume No. 1. This revision represents a decrease from the current rate of $1.55 per Kva/month to $0.98 per Kva/month for all bills rendered on or after January 1, 2003.

Copies of this filing were served upon the Office of the Attorney General for the State of New Hampshire, and the Executive Director and Secretary of the New Hampshire Public Utilities Commission and the State of New Hampshire Office of Consumer Advocate.

Comment Date: November 22, 2002.

13. Public Service Company of New Hampshire Town of Ashland, Electric Light Dept.

[Docket No. ER03–144–000]

Take Notice that Public Service Company of New Hampshire, on November 1, 2002, tendered for filing a revised rate for delivery service provided to the Town of Ashland (New Hampshire), Electric Light Department under its Interconnection and Delivery Service Agreement, FERC Original Service Agreement No. 24 under FERC Electric Tariff, First Revised Volume No.1. This revision represents a decrease from the current rate of $1.55 per Kva/month to $0.98 per Kva/month for all bills rendered on or after January 1, 2003.

Copies of this filing were served upon the Office of the Attorney General for the State of New Hampshire, and the Executive Director and Secretary of the New Hampshire Public Utilities Commission and the State of New Hampshire Office of Consumer Advocate.

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Comment Date: November 22, 2002.

14. Public Service Company of New Hampshire, New Hampton Village Precinct

[Docket No. ER03–145–000]

Take Notice that Public Service Company of New Hampshire, on November 1, 2002, tendered for filing a revised rate for delivery service provide to the New Hampton (New Hampshire) Village Precinct under its Interconnection and Delivery Service Agreement, FERC Original Service Agreement No. 25. This revision represents a decrease from the current rate of $1.55 per Kva/month to $0.98 per Kva/month for all bills rendered on or after January 1, 2003.

Copies of this filing were served upon the Office of the Attorney General for the State of New Hampshire, and the Executive Director and Secretary of the New Hampshire Public Utilities Commission and the State of New Hampshire Office of Consumer Advocate.

Comment Date: November 22, 2002.

15. Portland General Electric Company

[Docket No. ER03–146–000]

Take notice that on November 1, 2002, Portland General Electric Company (PGE) filed with the Federal Energy Regulatory Commission a proposed revision to PGE's Energy Imbalance Service tariff sheets of its Open Access Transmission Tariff.

PGE requests that the Commission make the amended tariff sheets effective as of January 1, 2003.

Comment Date: November 22, 2002.

16. ISO New England Inc.

[Docket No. ER03–147–000]

Take notice that on November 1, 2002, ISO New England Inc. (ISO) made a filing under Section 205 of the Federal Power Act of revised tariff sheets for recovery of its administrative costs for 2003. The ISO requests that these sheets be allowed to go into effect on January 1, 2003.

Copies of the transmittal letter were served upon all Participants in the New England Power Pool ("NEPOOL") and all non-Participant entities that are customers under the NEPOOL Open Access Transmission Tariff, as well as on the governors and utility regulatory agencies of the six New England States, and NECPUC. Participants were also served with the entire filing electronically. The entire filing is posted on the ISO's Web site *www.iso-ne.com.*

Comment Date: November 22, 2002.

17. ISO New England Inc.

[Docket No. ER03–148–000]

Take notice that on November 1, 2002, ISO New England Inc. (ISO) made a filing under Section 205 of the Federal Power Act of changes to its Capital Funding Tariff. The ISO requests that the changes to the Capital Funding Tariff be allowed to go into effect on January 1, 2003.

Copies of the transmittal letter were served upon all Participants in the New England Power Pool ("NEPOOL"), as well as on the governors and utility regulatory agencies of the six New England States, and NECPUC. Participants were also served with the entire filing electronically. The entire filing is posted on the ISO's Web site *www.iso-ne.com.*

Comment Date: November 22, 2002.

18. Duke Energy Corporation

[Docket No.ER03–149–000]

Take notice that on November 1, 2002, Duke Energy Corporation (Duke) tendered for filing the Sixth Amendment to the Interconnection Agreement between Duke and North Carolina Municipal Power Agency Number 1. Duke requests an effective date of January 1, 2003 for the Sixth Amendment.

Comment Date: November 22, 2002.

19. Commonwealth Edison Company

[Docket No. ER03–150–000]

Take notice that on November 1, 2002, Commonwealth Edison Company (ComEd) submitted for filing four unexecuted Service Agreements entered into between ComEd and NRG Power Marketing Inc. under ComEd's Open Access Transmission Tariff (OATT). ComEd requests an effective date of January 1, 2003 for all of the Service Agreements. Copies of the filing were served upon NRG Power Marketing Inc. and the Illinois Commerce Commission.

Comment Date: November 22, 2002.

20. New York Independent System Operator, Inc.

[Docket No. ER03–151–000]

Take notice that on November 1, 2002, the New York Independent System Operator, Inc. (NYISO) filed a revision to its Market Administration and Control Area Services Tariff (Services Tariff) to extend the effective date of the Emergency Demand Response Program.

The NYISO has served a copy of this filing to all parties that have executed Service Agreements under the NYISO's Open-Access Transmission Tariff or Services Tariff, the New York State Public Service Commission and to the electric utility regulatory agencies in New Jersey and Pennsylvania.

Comment Date: November 22, 2002.

21. Wisconsin Public Service Corporation

[Docket No. ER03–152–000]

Take notice that Wisconsin Public Service Corporation (WPSC) and Upper Peninsula Power Company (UPPCO), on November 1, 2002, each tendered for filing a power purchase agreement (PPA) with each other, pursuant to Section 205 of the Federal Power Act (FPA). WPSC and UPPCO each requests that the Commission accept the PPA to become effective on January 1, 2003, sixty days after the date of this filing.

Copies of the filing were served upon the Public Service Commission of Wisconsin and the Michigan Public Service Commission.

Comment Date: November 22, 2002.

22. Consumers Energy Company

[Docket No. ER03–153–000]

Take notice that on November 1, 2002, Consumers Energy Company (Consumers) tendered for filing a service agreement for unbundled wholesale power service to Edison Sault Electric Company (Customer) pursuant to Consumers' Cost-Based Power Sales Tariff (Tariff No. 7) accepted for filing in Docket No. ER97–964–000. The service agreement has an effective date of January 1, 2003. The service agreement supercedes the Customer's current sales Rate Schedule (Consumers Rate Schedule FERC No. 85) but retains some terms from the Rate Schedule.

Copies of the filing have been served on the Michigan Public Service Commission and the Customer.

Comment Date: November 22, 2002.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502–8222 or TTY, (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 02–29136 Filed 11–15–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. P 11797–000]

Grande Pointe Power Corporation; Notice of Availability of Environmental Assessment

November 8, 2002.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission (Commission or FERC) regulations contained in the Code of Federal Regulations (CFR) (18 CFR part 380 [FERC Order No. 486, 52 FR 47897]), the Office of Energy Projects staff (staff) reviewed the application for an original minor license for the Three Rivers Project, located on the St. Joseph River in the city of Three Rivers, St. Joseph County, Michigan, and has prepared an environmental assessment (EA) for the project. In this EA, the staff has analyzed the potential environmental effects of the existing project and concluded that licensing the project, with staff's recommended measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

A copy of the EA is available for review at the Commission in the Public Reference Room, or it may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY,contact (202)502–8659.

Any comments should be filed within 45 days from the date of this notice and should be addressed to Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please affix "Three Rivers Project No. 11797–000," to all comments. For further information, please contact Sean Murphy at (202) 502–6145 or at *sean.murphy@ferc.gov.*

Comments may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 02–29139 Filed 11–15–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11887–000]

Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

November 8, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No:* 12388–000.

c. *Date Filed:* October 7, 2002.

d. *Applicant:* The City of Austin Electric Utility Department d/b/a Austin Energy.

e. *Name and Location of Project:* The Austin Energy Hydroelectric Project would be located at the existing Longhorn Dam owned by the City of Austin, on the Colorado River in Travis County, Texas.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

g. *Applicant Contact:* Bob Kahn, Vice President, Austin Energy, 721 Barton Springs Road, Austin, TX 78704–1194, (512) 322–6572.

h. *FERC Contact:* Mr. Lynn R. Miles, (202) 502–8763.

i. *Deadline for filing motions to intervene, protests and comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings. Please include the project number (P–12388–000) on any comments or motions filed.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

PacifiCorp—Bear River Projects; Soda Project No. 20–019, Caribou and Franklin Counties, Idaho Grace-Cove Project No. 2401–007, Oneida Project No. 472–017; Notice of Intention To Hold Public Meeting for Discussion of the Draft Environmental Impact Statement for the Bear River Hydroelectric Projects

November 8, 2002.

On October 23, 2002, the Commission staff mailed the Bear River Projects Draft Environmental Impact Statement (DEIS) to the Environmental Protection Agency, resource and land management agencies, and interested organizations and individuals.

The DEIS was noticed in the **Federal Register** on November 1, 2002 (61 FR 6243), and comments are due December 31, 2002. The DEIS evaluates the environmental consequences of the construction, operation, and maintenance of the Bear River Projects in Idaho. The DEIS also evaluates the environmental effects of implementing the comprehensive settlement that replaces the applicant's proposal and agency recommendations, as well as evaluates staff's recommendations, and the no-action alternative. The projects are partially located on United States lands administered by the Bureau of Land Management.

A public meeting, which will be recorded by an official stenographer, is scheduled on Thursday, December 12, 2002, starting at 7:00 pm at the Caribou County Senior Center, 60 S. Main Street, Soda Springs, Idaho.

At this meeting, resource agency personnel and other interested persons will have the opportunity to provide oral and written comments and recommendations regarding the DEIS for the Commission's public record.

For further information, please contact Susan O'Brien at (202) 502–8449, or *susan.obrien@ferc.gov*, Federal Energy Regulatory Commission, Office of Energy Projects, 888 First St. NE., Washington, DC 20426.

Magalie R. Salas,

Secretary.

[FR Doc. 02–29137 Filed 11–15–02; 8:45 am]

BILLING CODE 6717–01–P

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The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Competing Application:* Project No. 12244–000, *Date Filed:* June 17, 2002, *Due Date:* October 7, 2002.

k. *Description of Project:* The proposed project would consist of: (1) The existing Longhorn Dam, a 506-foot-long, gated, concrete-gravity structure, which is 416 feet at the crest of the dam, (2) the existing Town Lake which has a surface area of 525 acres with a storage capacity of 6,000 acre-feet at a normal maximum water surface elevation of 428 msl, (3) a powerhouse containing one generating unit with an installed capacity of 2 MW, (4) an existing 69 kv transmission line approximately 0.5 mile long, and (5) appurtenant facilities. The project would have an annual generation of 8 GWh.

l. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov* . For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item g. above.

m. Competing Applications—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit applications or notices of intent. Any competing preliminary permit or development application or notice of intent to file a competing preliminary permit or development application must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intent to file competing applications may be filed in response to this notice. A competing license application must conform with 18 CFR 4.30 (b) and 4.36.

n. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

o. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

p. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Compliance and Administration, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

q. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 02–29142 Filed 11–15–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

November 12, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New License.

b. *Project No.:* 2516–026–WV.

c. Date filed: December 17, 2001.

d. *Applicant:* Allegheny Energy Supply Company, LLC.

e. *Name of Project:* Dam No. 4 Hydro Station.

f. *Location:* On the Potomac River, near the Town of Shepherdstown, in Berkeley and Jefferson Counties, West Virginia.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791 (a)—825(r).

h. *Applicant Contact:* Charles L. Simons, Allegheny Energy Supply Company, LLC, 4350 Northern Pike, Monroeville, PA 15146, (412) 858–1675.

i. *FERC Contact:* Peter Leitzke, (202) 502–6059 or *peter.leitzke@ferc.gov.*

j. *Cooperating agencies:* We are asking Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing documents described in item k below.

k. Deadline for filing motions to intervene and protests and requests for cooperating agency status: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Motions to intervene and protests and requests for cooperating agency status may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site (*http://www.ferc.gov*) under the "e-Filing" link. Please include the project number (P–2516–026) on any comments or motions filed.

l. This application has been accepted, but is not ready for environmental analysis at this time.

m. The existing Dam No. 4 Hydro Station Project consists of: (1) a 200-foot-long, 80-foot-wide headrace; (2) a stone and concrete powerhouse containing three generating units with a total installed capacity of 1,900 kilowatts; (3) a 350-foot-long, 90-foot-wide tailrace; (4) a substation; (5) a 4.5-mile-long, 34.5-kilovolt transmission line; and (6) appurtenant facilities. The applicant estimates that the total average annual generation would be 7,886 megawatthours. All generated power is sold to Allegheny Power for use in the existing electric grid system serving West Virginia and Maryland. The project dam and reservoir are owned by the United States and operated by the National Park Service.

n. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call 1–866–208–3676 or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

o. Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

All filings must (1) bear in all capital letters the title "PROTEST" or "MOTION TO INTERVENE;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant.

A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

p. Procedural schedule and final amendments: The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate.

Issue Scoping Document for comments—December 2002

Notice of application is ready for environmental analysis—March 2003

Notice of the availability of the EA—September 2003

Ready for Commission's decision on the application—November 2003

Unless substantial comments are received in response to the EA, staff intends to prepare a single EA in this case. If substantial comments are received in response to the EA, a final EA will be prepared with the following modifications to the schedule.

Notice of the availability of the final EA—December 2003

Ready for Commission's decision on the application—December 2003

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–29145 Filed 11–18–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

November 12, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New License.

b. *Project No.:* 2517–012–WV.

c. Date filed: December 17, 2001.

d. *Applicant:* Allegheny Energy Supply Company, LLC.

e. *Name of Project:* Dam No. 5 Hydro Station.

f. *Location:* On the Potomac River, near the Town of Hedgesville, in Berkeley County, West Virginia.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Charles L. Simons, Allegheny Energy Supply Company, LLC, 4350 Northern Pike, Monroeville, PA 15146, (412) 858–1675.

i. *FERC Contact:* Peter Leitzke, (202) 502–6059 or *peter.leitzke@ferc.gov.*

j. *Cooperating agencies:* We are asking Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing documents described in item k below. k. Deadline for filing motions to intervene and protests and requests for cooperating agency status: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Motions to intervene and protests and requests for cooperating agency status may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site (*http://www.ferc.gov*) under the "e-Filing" link. Please include the project number (P–2517–012) on any comments or motions filed.

l. This application has been accepted, but is not ready for environmental analysis at this time.

m. The existing Dam No. 5 Hydro Station Project consists of: (1) a 100-foot-long, 80-foot-wide headrace; (2) a brick and concrete powerhouse containing two generating units with a total installed capacity of 1,210 kilowatts; (3) a 250-foot-long, 90-foot-wide tailrace; (4) a substation; and (5) appurtenant facilities. The applicant estimates that the total average annual generation would be 5,945 megawatthours. All generated power is sold to Allegheny Power for use in the existing electric grid system serving West Virginia and Maryland. The project dam and reservoir are owned by the United States and operated by the National Park Service.

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n. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call 1–866–208–3676 or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

o. Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

All filings must (1) bear in all capital letters the title "PROTEST" or "MOTION TO INTERVENE;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

p. *Procedural schedule and final amendments:* The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate.

Issue Scoping Document for comments—December 2002
Notice of application is ready for environmental analysis—March 2003
Notice of the availability of the EA—September 2003
Ready for Commission's decision on the application—November 2003

Unless substantial comments are received in response to the EA, staff intends to prepare a single EA in this case. If substantial comments are received in response to the EA, a final EA will be prepared with the following modifications to the schedule.

Notice of the availability of the final EA—December 2003
Ready for Commission's decision on the application—December 2003

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–29146 Filed 11–18–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12114–001]

Big Rock Power Partners; Notice of Surrender of Preliminary Permit

November 8, 2002.

Take notice that Big Rock Power Partners, permittee for the proposed Old Campbell Project, has requested that its preliminary permit be terminated. The permit was issued on February 12, 2002, and would have expired on January 31, 2005. The project would have been located on Old Campbell Creek in Humboldt County, California.

The permittee filed the request on September 24, 2002, and the preliminary permit for Project No. 12114 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday, or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR part 4, may be filed on the next business day.

Magalie R. Salas,

Secretary.

[FR Doc. 02–29141 Filed 11–15–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11843–002]

Gene Arlin Shanks; Notice of Surrender of Preliminary Permit

November 8, 2002.

Take notice that Gene Arlin Shanks, permittee for the proposed Elfin Inian Project, has requested that its preliminary permit be terminated. The permit was issued on December 6, 2000, and would have expired on November 30, 2003. The project would have been located on Elfin Cove near the town of Elfin Cove, Alaska.

The permittee filed the request on August 20, 2002, and the preliminary permit for Project No. 11843 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday, or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under18 CFR part 4, may be filed on the next business day.

Magalie R. Salas,

Secretary.

[FR Doc. 02–29140 Filed 11–15–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7409–6]

Availability of FY 01 Grant Performance Reports for States of Alabama, Florida, Georgia, Mississippi, South Carolina, and Tennessee, and the Commonwealth of Kentucky

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of grantee performance evaluation reports.

SUMMARY: EPA's grant regulations (40 CFR 35.150) require the Agency to evaluate the performance of agencies which receive grants. EPA's regulations for regional consistency (40 CFR 56.7) require that the Agency notify the public of the availability of the reports of such evaluations. EPA performed end-of-year evaluations of seven state air pollution control programs (Alabama Department of Environmental Management; Florida Department of Environmental Protection; Georgia Department of Natural Resources; Kentucky Department for Environmental Protection; Mississippi Department of Environmental Quality; South Carolina Department of Health and Environmental Control; and Tennessee Department of Environment & Conservation) and 15 local programs (Jefferson County Department of Health, AL; City of Huntsville Department of Natural Resources, AL; Broward County Environmental Quality Control Board, FL; Jacksonville Air Quality Division, FL; Hillsborough County Environmental Protection Commission, FL; Dade County Environmental Resources Management, FL; Palm Beach County Public Health Department, FL; Pinellas County Department of Environmental Management, FL; Jefferson County, KY; Forsyth County Environmental Affairs Department, NC; Mecklenburg County Department of Environmental Protection, NC; Western North Carolina Regional Air Pollution Control Agency, NC; Chattanooga-Hamilton County Air Pollution Control Bureau, TN; Knox County Department of Air Pollution Control, TN; and Nashville-Davidson County Metropolitan Health Department, TN). The 22 evaluations were conducted to assess the agencies' performance under the grants awarded by EPA under authority of section 105 of the Clean Air Act. EPA Region 4 has prepared reports for each agency identified above and these reports are now available for public inspection. The evaluations for the remainder of the State and local governments will be published at a later date.

ADDRESSES: The reports may be examined at the EPA's Region 4 office, 61 Forsyth Street, SW., Atlanta, Georgia 30303, in the Air, Pesticides, and Toxics Management Division.

FOR FURTHER INFORMATION CONTACT: Marie Persinger (404) 562–9048, for information concerning the States of Alabama and Georgia and the Commonwealth of Kentucky; Gloria Knight, (404) 562–9064, for information concerning the States of Florida and Mississippi; or Rayna Brown for the States of North Carolina, South Carolina, and Tennessee. They may be contacted at the above Region 4 address.

Dated: November 6, 2002.

J.I. Palmer, Jr.,

Regional Administrator, Region 4.

[FR Doc. 02–29173 Filed 11–15–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7409–7]

National Environmental Justice Advisory Council; Notification of Meeting and Public Comment Period; Open Meetings

Pursuant to the Federal Advisory Committee Act (FACA), Public Law 92–463, we now give notice that the National Environmental Justice Advisory Council (NEJAC), along with the various subcommittees, will meet on the dates and times described below. All times noted are eastern standard time. All meetings are open to the public. Due to limited space, seating at the NEJAC meeting will be on a first-come basis. Documents that are the subject of NEJAC reviews are normally available from the originating EPA office and are *not* available from the NEJAC. The NEJAC and the subcommittee meetings will take place at the Marriot Inner Harbor Hotel, 110 South Eutaw Street, Baltimore, MD 21201. The meeting dates are as follows: December 9, 2002, through December 12, 2002. This is the fifth in a series of focused policy issue meetings for the NEJAC. To help prepare for this specific focused policy issue meeting the following background information is provided:

Request and Policy Issue

The Charter for the NEJAC states that the advisory committee shall provide independent advice to the Administrator on areas that may include, among other things, "advice on EPA's progress, quality and adequacy in planning, developing and implementing environmental justice strategies, projects and programs" relating to environment justice. In order to provide such independent advice, the Agency requests that the NEJAC convene a focused, issue-oriented public meeting in Baltimore, MD. The meeting shall be used to receive comments on, discuss, and analyze issues related to water quality, fish consumption and environmental justice. The Agency, furthermore, requests that the NEJAC produce a comprehensive report on the differing views, interests, concerns, and perspectives expressed by the stakeholder participants on the focused policy issue, and provide advice and recommendations for the Agency's review and consideration. In order to fulfill this charge, the NEJAC is being asked to discuss and provide recommendations regarding the following broad public policy question: "How can EPA better promote innovation in the field of pollution prevention, waste minimization, and related areas to more effectively ensure clean, healthy and sustainable environment for all people, including low income, minority and tribal communities?"

Meeting

Registration for the NEJAC meeting will begin on Monday, December 9, 2002, at 12 noon. The NEJAC will convene Monday, December 9, 2002, from 3 p.m. to 6 p.m. On Monday from 4 p.m. to 6 p.m. there will be Pollution Prevention Case Study Presentation. The NEJAC will reconvene on Tuesday, December 10, 2002, from 8:30 a.m. to 5 p.m. The meeting on Tuesday will be organized to create the best environment for a deliberative process. The meeting will be conducted in a round table fashion, except during the public comment session. A public comment period dedicated to the focused policy issue is scheduled for Tuesday evening, December 10, 2002, from 7 p.m. to 9 p.m. General environmental justice public comment issues will be heard on Tuesday evening, following the focus policy public comment issues. The following Subcommittees will meet on Wednesday, December 11, 2002, from 9 a.m. to 6 p.m.: Air and Water; Enforcement; Health and Research; Indigenous Peoples; International; and Waste and Facility Siting. The full NEJAC will reconvene Thursday, December 12, 2002, from 9 a.m. to 5 p.m. to wrap up all business requiring Executive Council action. All times shown are local time.

Any member of the public wishing additional information on the subcommittee meetings should contact the specific Designated Federal Official at the telephone number listed below.

Subcommittee	Federal official	Telephone number
Enforcement	Ms. Shirley Pate	202/564–2607
Health & Research	Ms. Brenda Washington	202/564–6781
	Ms. Aretha Brockett	202/564–0911
International	Ms. Wendy Graham	202/564–6602
Indigenous Peoples	Mr. Danny Gogal	202/564–2576
Waste/Facility Siting	Mr. Kent Benjamin	202/566–0185
Air & Water	Mr. Wil Wilson	202/564–1954

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Subcommittee	Federal official	Telephone number
	Ms. Alice Walker	202/564–0498

Members of the public who wish to participate in the public comment period should pre-register by November 29, 2002. Members of the public are encouraged to provide comments relevant to the focus issue being deliberated by the NEJAC. Individuals or groups making oral presentations during the public comment period will be limited to a total time of five minutes. Only one representative from a community, organization, or group will be allowed to speak. Any number of written comments can be submitted for the record. The suggested format for individuals making public comment should be as follows:

Request to Make Public Comment Speaker's Template:

Name of Speaker: _____
Name of Organization/Community: ____
Address/Phone/Fax/Email: _____
Description of Concern: _____
Relationship to the Policy Issue: _____
Recommendations/Desired Outcome: __

If you wish to submit written comments of any length (at least 50 copies), they should also be received by November 29, 2002. Comments received after that date will be provided to the Council as logistics allow. All information should be sent to the address or fax number cited below.

Registration

Pre-registration for all attendees is recommended. To receive a registration form, call the number listed below or visit the web site. Correspondence concerning registration should be sent to Ms. Victoria Robinson of Tetra Tech Environmental Management, Inc. at: 1881 Campus Commons, Suite 200, Reston, VA 20191, phone: 703/390–0641 or fax: 703/391–5876. Hearing-impaired individuals or non-English speaking attendees wishing to arrange for a sign language or foreign language interpreter, may make appropriate arrangements using these numbers also. In addition, NEJAC offers a toll-free Registration Hotline at 1–888/335–4299 or send an e-mail to *nejac@ttemi.com*. For on-line registration, you may visit the Internet site: *http://www.epa.gov/compliance/environmentaljustice/nejac/next_meeting.html*.

Dated: November 8, 2002.

Charles Lee,

Designated Federal Officer, National Environmental Justice Advisory Council.

[FR Doc. 02–29174 Filed 11–15–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7409–5]

Interstate Lead Company (ILCO) Superfund Site/Leeds, AL; Notice of Proposed Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of Proposed Settlement.

SUMMARY: Under Section 122(g) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), Voltex Batteries, Inc. *et al.*, d/b/a/ Steve Drive Enterprises, Inc. (Respondent) entered into a *de minimis* administrative order on consent with the Environmental Protection Agency (EPA), whereby the Respondent, in exchange for the United States' covenant not to sue, agrees to pay EPA $8,700 and the ILCO Site Remediation Group $21,300 for its share of the past and future response costs, including a premium, for the ILCO Superfund Site located in Leeds, Jefferson County, Alabama. EPA will consider public comments on the proposed settlement for thirty days. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper, or inadequate. Copies of the proposed settlement are available from: Ms. Paula V. Batchelor, U.S. Environmental Protection Agency, Region IV, CERCLA Program Services Branch, Waste Management Division 61 Forsyth Street, S.W., Atlanta, Georgia 30303, (404) 562–8887.

Written comment may be submitted to Ms. Brenita Richardson at the above address within 30 days of the date of publication.

Dated: October 21, 2002.

Anita L. Davis,

Acting Chief, CERCLA Program Services Branch, Waste Management Division.

[FR Doc. 02–29175 Filed 11–15–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7409–4]

Prestige Chemical Company Superfund Site; Notice of Proposed Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed administrative order on consent.

SUMMARY: The Environmental Protection Agency is proposing to enter into an administrative order on consent pursuant to Section 122(g) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended, regarding the Prestige Chemical Company Superfund Site located in Senoia, Coweta County, Georgia, with the following parties: Brett, Inc.; Clayton Collision Center, Inc.; Heng's, Inc.; M & G Auto Enterprises, Inc.; Perdue's Paint and Body Shop, Inc.; Stone Mountain Body Shop, Inc.; Tony Infinger, Inc., and Wade Industries, Inc. The settlement is designed to resolve fully each settling *de minimis* party's liability at the Site through a covenant not to sue under Sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607, and provides contribution protection. EPA will consider public comments on the proposed settlement for thirty (30) days. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper, or inadequate. Copies of the proposed settlement are available from: Ms. Paula Batchelor, U.S. EPA, Region 4, Sam Nunn Atlanta Federal Center, Waste Management Division, CERCLA Enforcement Section, 61 Forsyth Street, SW., Atlanta, Georgia 30303, (404) 562–8887.

Written comments may be submitted to Ms. Batchelor within thirty (30) calendar days of the date of this publication.

Dated: October 25, 2002.

Anita L. Davis,

Acting Chief, CERCLA Program Services Branch, Waste Management Division.

[FR Doc. 02–29176 Filed 11–15–02; 8:45 am]

BILLING CODE 6560–50–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

SES Performance Review Board

AGENCY: Equal Employment Opportunity Commission (EEOC).

ACTION: Notice.

SUMMARY: Notice is hereby given of the appointment of members of the EEOC Performance Review Board.

FOR FURTHER INFORMATION CONTACT: Angelica E. Ibarguen, Director, Office of Human Resources, Equal Employment Opportunity Commission, 1801 L Street, NW., Washington, DC 20507, (202) 663–4306.

SUPPLEMENTARY INFORMATION: Pursuant to the requirements of section 4314(c)(1) through (5) of Title 5, U.S.C., notice is given that the following employees will serve as members of the EEOC Performance Review Board: Ms. Angelica E. Ibarguen, Director, Office of Human Resources (Chairperson); Mr. Chester V. Bailey, Director, Milwaukee District Office (Member); Ms. H. Joan Ehrlich, Acting Director, Office of Communications and Legislative Affairs (Member); Ms. Gwendolyn Young Reams, Associate General Counsel for Appellate Services (Member); Mr. Michael Dougherty, Director, State and Local Programs, Office of Field Programs (Member); and Ms. Sallie T. Hsieh, Director, Office of Information Technology (Alternate).

Signed at Washington, DC, on this 7th day of November 2002.

For the Commission.

Cari M. Dominguez,

Chair.

[FR Doc. 02–29163 Filed 11–15–02; 8:45 am]

BILLING CODE 6570–01–M

EXPORT-IMPORT BANK OF THE UNITED STATES

Notice of Open Special Meeting of the Renewable Energy Exports Advisory Committee of the Export-Import Bank of the United States (Ex-Im Bank)

SUMMARY: The Renewable Energy Exports Advisory Committee was established by the Board of Directors at Ex-Im Bank to assist the Bank in meeting its objective of supporting U.S. exporters in renewable energy industries. In addition, the goal is to seek advice from the private sector about best practices when addressing renewable energy export.

Time and Place: Friday, December 6, 2002, at 9:30 a.m. to 12 p.m. The meeting will be held at Ex-Im Bank in Room 1143, 811 Vermont Avenue, NW., Washington, DC 20571.

Agenda: Agenda items include a discussion of the Committee's recommendations to Ex-Im Bank.

Public Participation: The meeting will be open to public participation, and the last 10 minutes will be set aside for oral questions or comments. If any person wishes auxiliary aids (such as a sign language interpreter) or other special accommodations, please contact, prior to June 4, 2002, Nichole Westin, Room 1257, 811 Vermont Avenue, NW., Washington, DC 20571, Voice: (202) 565–3542 or TDD (202) 565–3377.

FURTHER INFORMATION: For further information, contact Nichole Westin, Room 1237, 811 Vermont Ave., NW., Washington, DC 20571, (202) 565–3542.

David C. Chavern,

Deputy General Counsel

[FR Doc. 02–29102 Filed 11–18–02; 8:45 am]

BILLING CODE 6690–01–M

EXPORT-IMPORT BANK OF THE UNITED STATES

Notice of Open Special Meeting of the Sub-Saharan Africa Advisory Committee (SAAC) of the Export-Import Bank of the United States (Export-Import Bank)

SUMMARY: The Sub-Saharan Africa Advisory Committee was established by P.L. 105–121, November 26, 1997, to advise the Board of Directors on the development and implementation of policies and programs designed to support the expansion of the Bank's financial commitments in Sub-Saharan Africa under the loan, guarantee and insurance programs of the Bank. Further, the committee shall make recommendations on how the Bank can facilitate greater support by U.S. commercial banks for trade with Sub-Saharan Africa.

Time and Place: Wednesday, December 4, 2002, at 9:30 a.m. to 12:30 p.m. The meeting will be held at the Export-Import Bank in Room 1143, 811 Vermont Avenue, NW., Washington, DC 20571.

Agenda: This meeting will focus on improving deal flow for transactions in sub-Saharan Africa. SAAC members and the Bank staff will discuss potential committee recommendations and the industry-specific experience of particular SAAC members.

Public Participation: The meeting will be open to public participation, and the last 10 minutes will be set aside for oral questions or comments. Members of the public may also file written statement(s) before or after the meeting. If any person wishes auxiliary aids (such as a sign language interpreter) or other special accommodations, please contact, prior to November 25, 2002, Teri Stumpf, Room 1215, 811 Vermont Avenue, NW., Washington, DC 20571, Voice: (202) 565–3502 or TDD (202) 565–3377.

FURTHER INFORMATION: For further information, contact Teri Stumpf, Room 1215, 811 Vermont Avenue, NW., Washington, DC 20571, (202) 565–3502.

David C. Chavern,

Deputy General Counsel.

[FR Doc. 02–29103 Filed 11–15–02; 8:45 am]

BILLING CODE 6690–01–M

FEDERAL COMMUNICATIONS COMMISSION

[DA 02–2752]

Verification of ITFS, MDS, and MMDS Pending Legal Matters

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document the Federal Communications Commission, (Commission), Wireless Telecommunications Bureau, seeks to verify ITFS, MDS, and MMDS legal matters pending in the Broadband Licensing System. The Commission is requesting that all ITFS, MDS and MMDS licensees, applicants, and other parties with pending legal pleadings review and verify the legal pleadings information in the released Appendix. Also, the Commission is requesting that ITFS, MDS, and MMDS licensees and applicants submit written requests for continued processing for all legal pleadings filed prior to March 25, 2002. Finally, at the Commission will close the review and verification period on December 17, 2002.

DATES: Comments are due on or before December 18, 2002 and reply comments are due on or before January 2, 2003.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., TW–A325, Washington, DC 20554. *See* Supplementary Information for filing instructions.

FOR FURTHER INFORMATION CONTACT: John J. Schauble, Chief, Policy and Rules Branch, Kim Varner, Esq., Policy and Rules Branch, Public Safety and Private Wireless Division, or Stephen Svab, Esq., Policy and Rules Branch, Public Safety and Private Wireless Division at (202) 418–0680

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Public*

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Notice, DA 02–2752, released on October 18, 2002. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the Commission's copy contractor, Qualex International, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The full text may also be downloaded at: *http://www.fcc.gov*. Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365 or at *bmillin@fcc.gov*.

On March 25, 2002, the Wireless Telecommunications Bureau (WTB) became responsible for the administration of the Instructional Television Fixed Service (ITFS), the Multipoint Distribution Service (MDS), and the Multichannel Multipoint Distribution Service (MMDS) (collectively, the Services). Prior to March 25, 2002, the Services were administered by the former Mass Media Bureau using the Broadband Licensing System (BLS) as the licensing database for the Services. As part of the transition process, WTB seeks to ensure that it has a complete and accurate list of all pending ITFS, MDS, and MMDS pending legal matters. In order to facilitate this process WTB is requesting that all ITFS, MDS and MMDS licensees, applicants and other parties with pending pleadings relating to those services review and verify the information contained in the attached appendix. In addition, in order to process efficiently all pending petitions, and other requests, WTB is requesting that applicants and petitioners re-affirm, in writing, that continued processing of certain petitions and other legal matters, as detailed below is desired.

It is very important that all ITFS, MDS, and MMDS licensees and applicants carefully review this public notice and the appendix hereto. Failure to follow the instructions in this public notice may result in the dismissal of pending applications and other matters.

WTB is attaching to the Public Notice an appendix concerning legal matters. The Appendix lists all pending ITFS/MDS/MMDS legal matters such as petitions to deny, petitions for reconsideration, petitions for reinstatement, applications for review, informal complaints, petition for declaration for forfeiture, informal requests for action and waiver requests. This list of the type of legal matters is not exhaustive, but rather is representative of the type of actions on file with WTB.

Within sixty days of the release of this public notice, petitioners with legal pleadings regarding the Services that are pending before the Commission (including those pending before its delegated authorities) are requested to verify and to act, where appropriate, by reviewing the attached Appendix for the following: (1) That its pending pleading(s) is/are listed in the Appendix, (2) for petitions with a filing date prior to March 25, 2002, that action on the pending pleading(s) is still requested, (3) identify those legal proceedings for which the Commission's files are incomplete, and (4) verify that all outstanding responsive pleadings in a specific matter have been filed.

If the pleading information listed in the Appendix is accurate, has a filing date after March 25, 2002, and there is no indication in the Appendix that pleadings are missing from the Commission's files, no further action is required. If a pending petition is not listed in the Appendix and processing is requested, the petitioner shall submit within sixty days of the release of this public notice two date-stamped copies of the omitted petition and all related pleadings to the Commission, as well as a copy to the opposing party(ies). If sent by United States Postal Service first-class mail, Express Mail, and Priority Mail, the pleadings should be sent to the following address: Office of the Secretary, Attention: MDS/ITFS Legal Matters, Federal Communications Commission, 445 12th Street SW., TW–325, Washington, DC 20554.

Hand-delivered or messenger-delivered documents for the Commission's Secretary are accepted only by the Commission's contractor, Vistronix, Inc., at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering 236 Massachusetts Avenue, NE. Other messenger-delivered documents, including documents sent by overnight mail (other than United States Postal Service Express Mail and Priority Mail) should be addressed for delivery to 9300 East Hampton Drive, Capitol Heights, MD 20743. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

In addition, for all pending legal matters with a filing date prior to March 25, 2002, the party that filed such pleading or request (or its successor-in-interest) must request within sixty days of the release date of this public notice, in writing, that we continue processing such legal matter. Such party(ies) shall file a letter indicating their continued interest in prosecuting the matter to the addresses indicated above in this subsection. Otherwise, the matter will be deemed dismissed with prejudice.

Also, the Appendix lists certain legal proceedings for which the Commission does not have complete files. With respect to those proceedings, both the petitioner and the respondent are required within sixty days of the release of this public notice to submit two date-stamped copies of all missing pleadings within their possession because the Commission's files in these cases are incomplete. Copies of pleadings should be filed to the addresses indicated previously in this paragraph.

Finally, if a responsive pleading to a legal matter remains outstanding, the respondent must file said pleading within sixty days from the date of this public notice. We are taking this action because we note that there are several pending motions for extension of time to file oppositions or replies to various pleadings. We believe the public interest would best be served by requiring the submission of all responsive pleadings in order to expedite the resolution of those pending matters. By this public notice, we hereby set sixty days from the release date of this public notice as the date for filing all responsive pleadings in cases involving ITFS/MDS/MMDS applications or licenses for which pending motions for extension of time have been filed. Such parties shall file the responsive pleading(s) to the addresses indicated above in this subsection. Absent highly unusual circumstances, no further extensions of time are contemplated.

Termination of Review Period

At the end of the sixty-day review period, WTB will evaluate and update, where appropriate, all information received in response to this public notice. For any legal matters for which written affirmations requesting further processing have not been received, those legal matters will be dismissed with prejudice.

Contact Information

For all questions relating to this Public Notice, contact John J. Schauble, Chief, Policy and Rules Branch, Kim Varner, Esq., Policy and Rules Branch, Public Safety and Private Wireless Division, or Stephen Svab, Esq., Policy and Rules Branch, Public Safety and Private Wireless Division at (202) 418–0680.

FCC Notice Required by the Paperwork Reduction Act

The public reporting for this collection of information is estimated to average .50 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the required data, and completing and reviewing the collection of information. If you have any comments on this burden estimate, or how we can improve the collection and reduce the burden it causes you, please write to the Federal Communications Commission, AMD–PERM, Paperwork Reduction Project (3060–0893), Washington, DC 20554. We will also accept your comments regarding the Paperwork Reduction Act aspects of this collection via the Internet if you send them to *jboley@fcc.gov*. Please Do Not Send Your Response To This Address.

Remember—You are not required to respond to a collection of information sponsored by the Federal government, and the government may not conduct or sponsor this collection, unless it displays a currently valid OMB control number or if we fail to provide you with this notice. This collection has been assigned an OMB control number of 3060–0893.

The Foregoing Notice is Required by the Paperwork Reduction Act of 1995, Public Law 104–13, October 1, 1995, 44 U.S.C. 3507.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–28891 Filed 11–15–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 2, 2002.

A. Federal Reserve Bank of Minneapolis (Julie Stackhouse, Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. David A. Beito 2002 GST Trust A, Kathryn A. Beito 2002 GST Trust A, Laura E. Beito 2002 GST Trust A, David A. Beito 2002 GST Trust B, Kathryn A. Beito 2002 GST Trust B, Laura E. Beito 2002 GST Trust B, and David A. Beito, as trustee of these trusts; a group acting in concert, all of Thief River Falls, Minnesota; to acquire voting shares of GATO Holdings, Inc., Thief River Falls, Minnesota, and thereby indirectly acquire voting shares of Northern State Bank of Thief River Falls, Thief River Falls, Minnesota.

2. Patrick A. Wick, Turtle Lake, Wisconsin; to acquire voting shares of Turtle Bancshares, Inc., Turtle Lake, Wisconsin, and thereby indirectly acquire voting shares of Bank of Turtle Lake, Turtle Lake, Wisconsin.

B. Federal Reserve Bank of Kansas City (Susan Zubradt, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Central of Kansas, LP and Edward C. Rolfs and Thomas Rolfs as co-Trustees of CKI Management Trust, dated January 1, 2003, all of Junction City, Kansas; to acquire voting shares of Central of Kansas, Inc., Junction City, Kansas, and thereby indirectly acquire voting shares of Central National Bank, Junction City, Kansas.

Board of Governors of the Federal Reserve System, November 12, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–29114 Filed 11–15–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *http://www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 12, 2002.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. Central Missouri Shares, Inc., Lebanon, Missouri; to become a bank holding company by acquiring 100 percent of Central Shares, Inc., Lebanon, Missouri, and thereby indirectly acquire Central Bank, Lebanon, Missouri.

2. First Federal Financial Corporation of Kentucky, Elizabethtown, Kentucky; to become a bank holding company by acquiring 100 percent of First Federal Savings Bank of Elizabethtown, Elizabethtown, Kentucky, upon its conversion from a federally chartered savings bank to a state chartered bank.

3. Tate Interim, Inc., Senatobia, Mississippi; to become a bank holding company by acquiring 100 percent of the voting shares of Tate Financial Corporation, Senatobia, Mississippi, and thereby indirectly acquire Senatobia Bank, Senatobia, Mississippi.

Board of Governors of the Federal Reserve System, November 12, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–29113 Filed 11–15–02; 8:45 am]

BILLING CODE 6210–01–S

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors, National Center for Infectious Diseases: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Board of Scientific Counselors, National Center for Infectious Diseases (NCID).

Time and Date: 8:30 a.m.—3:30 p.m., December 12–13, 2002.

Place: CDC, Auditorium B, Building 1, Clifton Road, Atlanta, Georgia 30333.

Status: Open to the public, limited only by the space available.

Purpose: The Board of Scientific Counselors, NCID, provides advice and guidance to the Director, CDC, and Director, NCID, in the following areas: Program goals and objectives; strategies; program organization and resources for infectious disease prevention and control; and program priorities.

Matters to be Discussed: Agenda items will include:

1. Opening Session: NCID Update
   a. Institute of Medicine
   b. Global Strategy
   c. Budget
2. Program Update:
   a. West Nile
   b. Prion Disease
   c. Influenza Pandemic Planning
   d. Polio Lab Survey
3. Bioterrorism Updates and Discussion
   a. Organizational Update
   b. Smallpox
   c. Quarantine
   d. Global Health Security
4. Board meets with Director, CDC
5. Discussions and Recommendations

Other agenda items include announcements/introductions; follow-up on actions recommended by the Board May 2002; consideration of future directions, goals, and recommendations.

Agenda items are subject to change as priorities dictate.

Written comments are welcome and should be received by the contact person listed below prior to the opening of the meeting.

Contact Person for More Information: Tony Johnson, Office of the Director, NCID, CDC, M/S C–19, 1600 Clifton Road, NE., Atlanta, Georgia 30333, email *tjohnson3@cdc.gov;* telephone 404/639–0100.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: November 12, 2002.

Burma Burch,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 02–29154 Filed 11–15–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifiers: CMS–843 and CMS–841, 842, 844–853]

Agency Information Collection Activities: Proposed Collection; Comment Request

Agency: Centers for Medicare and Medicaid Services.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Durable Medicare Equipment Regional Carrier, Certificate of Medical Necessity and Supporting Documentation Requirements; *Form No.:* CMS–843 (OMB# 0938–0875); *Use:* This information is needed to correctly process claims and ensure that claims are properly paid. These forms contain medical information and supporting documentation necessary to make appropriate claims determinations. Suppliers and physicians will complete these forms and as needed supply additional routine supporting documentation necessary to process claims; *Frequency:* On occasion; *Affected Public:* Business or other for-profit, Federal Government, Not-for-profit institutions; *Number of Respondents:* 2,700; *Total Annual Responses:* 129,000; *Total Annual Hours:* 32,250.

2. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Durable Medical Equipment Regional Carrier, Certificate of Medical Necessity and Supporting Documentation Requirements; *Form No.:* CMS–841, 842, 844–853 (OMB# 0938–0679); *Use:* This information is needed to correctly process claims and ensure that claims are properly paid. These forms and supporting documentation contain medical information necessary to make appropriate claims determinations. Suppliers and physicians will complete these forms and as needed supply additional routine supporting documentation necessary to process claims; *Frequency:* On occasion; *Affected Public:* Business or other for-profit, Not-for-profit institutions, Federal Government; *Number of Respondents:* 137,300; *Total Annual Responses:* 6.7 million; *Total Annual Hours:* 1.13 million.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web Site address at *http://cms.hhs.gov/regulations/pra/default.asp,* or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov,* or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the CMS Paperwork Clearance Officer designated at the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances, Attention: Dawn Willinghan, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: November 7, 2002.

John P. Burke, III,

Paperwork Reduction Act Team Leader, , CMS Reports Clearance Officer, Office of Strategic Operations and Strategic Affairs, Division of Regulations Development and Issuances.

[FR Doc. 02–29129 Filed 11–15–02; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02E–0024]

Determination of Regulatory Review Period for Purposes of Patent Extension; GLEEVEC

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for GLEEVEC and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent that claims that human drug product.

ADDRESSES: Submit written comments and petitions to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments.*

FOR FURTHER INFORMATION CONTACT: Claudia V. Grillo, Office of Regulatory Policy (HFD–013), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3460.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted, as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product GLEEVEC (imatinib mesylate). GLEEVEC is indicated for the treatment of patients with chronic myeloid leukemia (CML) in blast crisis, accelerated phase, or in chronic phase after failure of interferon-alpha therapy. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for GLEEVEC (U.S. Patent No. 5,521,184) from Novartis Corp., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated February 14, 2002, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of GLEEVEC represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for GLEEVEC is 1,098 days. Of this time, 1,025 days occurred during the testing phase of the regulatory review period, while 73 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355) became effective:* May 10, 1998. The applicant claims April 9, 1998, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was May 10, 1998, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the act:* February 27, 2001. FDA has verified the applicant's claim that the new drug application (NDA) for GLEEVEC (NDA 21–335) was initially submitted on February 27, 2001.

3. *The date the application was approved:* May 10, 2001. FDA has verified the applicant's claim that NDA 21–335 was approved on May 10, 2001.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 599 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments and ask for a redetermination by January 17, 2003. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by May 19, 2003. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (see **ADDRESSES**). Three copies of any information is to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: September 24, 2002.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 02–29187 Filed 11–15–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01E–0405]

Determination of Regulatory Review Period for Purposes of Patent Extension; EVOXAC

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for EVOXAC and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of

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Patents and Trademarks, Department of Commerce, for the extension of a patent that claims that human drug product.

ADDRESSES: Submit written comments and petitions to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments.*

FOR FURTHER INFORMATION CONTACT: Claudia V. Grillo, Office of Regulatory Policy (HFD–013), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3460.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted, as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product EVOXAC (Cevimeline HCl). EVOXAC is indicated for the treatment of symptoms of dry mouth in patients with Sjogren's Syndrome. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for EVOXAC (U.S. Patent No. 4,855,290) from the State of Israel, Israel Institute for Biological Research, and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated February 14, 2002, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of EVOXAC represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for EVOXAC is 1,733 days. Of this time, 1,230 days occurred during the testing phase of the regulatory review period, while 503 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355) became effective:* April 16, 1995. The applicant claims March 17, 1995, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was April 16, 1995, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the act:* August 27, 1998. The applicant claims August 26, 1998, as the date the new drug application (NDA) for EVOXAC (NDA 20–989) was initially submitted. However, FDA records indicate that NDA 20–989 was submitted on August 27, 1998.

3. *The date the application was approved:* January 11, 2000. FDA has verified the applicant's claim that NDA 20–989 was approved on January 11, 2000.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S: Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,133 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may submit to the Dockets Management Branch (*see* **ADDRESSES**) written or electronic comments and ask for a redetermination by January 17, 2003. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by May 19, 2003. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (*See* H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch. Three copies of any information is to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: September 24, 2002.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 02–29188 Filed 11–15–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Peripheral and Central Nervous System Drugs Advisory Committee; Amendment of Notice

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

The Food and Drug Administration (FDA) is announcing an amendment to the notice of a meeting of the Peripheral and Central Nervous System Drugs Advisory Committee. This meeting was announced in the **Federal Register** of October 18, 2002 (67 FR 64400). The amendment is being made to reflect a change in the *Date and Time* and *Agenda* portions of the meeting. The meeting was originally scheduled for November 18 and 19, 2002. However, due to administrative complications, the discussions on November 19, 2002, will be postponed until a later date. There are no other changes.

FOR FURTHER INFORMATION CONTACT: Sandra Titus, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–7001, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12543. Please call the Information Line for up-to-date information on this meeting.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 18, 2002 (67

FR 64400), FDA announced that a meeting of the Peripheral and Central Nervous System Drugs Advisory Committee would be held on November 18 and 19, 2002. On page 64400, in the second column, the *Date and Time* and *Agenda* portions of the meeting are amended to read as follows:

Date and Time: The meeting will be held on November 18, 2002, from 8 a.m. to 5 p.m.

Agenda: On November 18, 2002, the committee will discuss the role of brain imaging as an outcome measure in phase 3 trials of putative therapeutic drugs for Alzheimer's disease; the discussions will not focus on specific drugs or on specific applications to the agency. The agency is considering whether brain imaging modalities can be utilized as surrogate markers; that is, as primary outcomes in definitive clinical trials to measure drug effect in lieu of clinical outcomes. The committee will specifically discuss the following issues in reference to each imaging modality:

1. How is the surrogate imaging modality best validated?

2. If one uses an imaging modality to support a disease-modifying effect claim, how does one establish that such an effect occurs?

3. Has any surrogate imaging modality been validated at the present time?

4. Even if no surrogate imaging modality has currently been validated, is it appropriate to use one or more such modalities as primary or ancillary outcome measures of efficacy in phase 3 clinical trials?

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: November 13, 2002.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 02–29294 Filed 11–14–02; 1:54 pm]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

Program Exclusions: October 2002

AGENCY: Office of Inspector General, HHS.

ACTION: Notice of program exclusions.

During the month of October 2002, the HHS Office of Inspector General imposed exclusions in the cases set forth below. When an exclusions is imposed, no program payment is made to anyone for any items or services (other than an emergency item or service not provided in a hospital emergency room) furnished, ordered or prescribed by an excluded party under the Medicare, Medicaid, and all Federal Health Care programs. In addition, no program payment is made to any business or facility, *e.g.*, a hospital, that submits bills for payment for items or services provided by an excluded party. Program beneficiaries remain free to decide for themselves whether they will continue to use the services of an excluded party even though no program payments will be made for items and services provided by that excluded party. The exclusions have national effect and also apply to all Executive Branch procurement and non-procurement programs and activities.

Subject city, state	Effective date
PROGRAM-RELATED CONVICTIONS	
BARNABAS, RAVI EGLIN AFB, FL	11/20/2002
BERSHATSKI, FANYA STUDIO CITY, CA	11/20/2002
BOYKIN, LATRICE LITTLE ROCK, AR	11/20/2002
BURNETTE, MARILYN RICHTON, MS	11/20/2002
CARVAJAL, JOSE MIGUEL COLEMAN, FL	11/20/2002
CHYORNY, ANNE BEVERLY HILLS, CA	11/20/2002
CORDOVA, SANDRA CHIMAYO, NM	11/20/2002
CRAIG, CHERYL CALEDONIA, MS	11/20/2002
CRUMPTON, TERLESA M MARIANNA, FL	11/20/2002
DARUKA, PATRICIA A WARWICK, RI	11/20/2002
DAVIS, TRACEY DESHON LITTLE ROCK, AR	11/20/2002
DAVIS, LINDA LITTLE ROCK, AR	11/20/2002
DAVIS, ERNESIA LASHAWN N LITTLE ROCK, AR	11/20/2002
DECAPOTE, ONELIA MIAMI, FL	11/20/2002
DUCKETT, BRUCE DEVLON FLINT, MI	11/20/2002
FERGUSON, PATRICIA M VANCLEAVE, MS	11/20/2002
FISHER, SHERRY LYNNE SPOKANE, WA	11/20/2002
GARCIA, MARTIZA MIAMI, FL	11/20/2002
GARCIA, MARITZA MIAMI, FL	11/20/2002
GINN, AARON C ASHLAND, KY	11/20/2002
HARDY, ANDREW JR OAK PARK, MI	11/20/2002
HIPPOLYTE, JOSEPH WABUZOH JR LOMPOC, CA	11/20/2002
JRAGATSBANYAN, ART LOS ANGELES, CA	11/20/2002
LANGINIKORO, HAROLD J LYNNWOOD, WA	11/20/2002
NELMS, ANGELA DAYTON, OH	11/20/2002
OSMAN, MOHAMED AWAD RICHMOND, VA	11/20/2002
PATTON, PATRICIA ANN MARIANNA, AR	11/20/2002
PEREZ, JESUS MIAMI, FL	11/20/2002
PRESTON, KENDA L CANTON, OH	11/20/2002
RESPIRATORY DRUGGIST, INC FOLEY, AL	11/20/2002
REYES, RAMON HIALEAH, FL	11/20/2002
ROSS, SHAMEKEA COLUMBUS, OH	11/20/2002
SCHMIDT, KATHLEEN LYNN ALEXANDRIA, MN	11/20/2002
SOILEAU, JOSEPH L CAMERON, LA	11/20/2002
STEINBERG, EDWARD M N MIAMI BEACH, FL	11/20/2002
SWIATEK, DAWN M CHICAGO, IL	11/20/2002
TAGUMASI, ABNER CARSON, CA	11/20/2002
VAUGHN, TRACY ALLEN FOLEY, MN	11/20/2002
WALTZ, DAVID MATHEW BEAVERTON, MI	11/20/2002
WATTS, VICKIE LANELL TEMPLE, TX	11/20/2002
FELONY CONVICTION FOR HEALTH CARE FRAUD	
SODERSTROM, RITA MARLENE CLIFTON, CO	11/20/2002
STROM, JOHN DAVID STOW, OH	11/20/2002
FELONY CONTROL SUBSTANCE CONVICTION	
BAYBO, KAREN A ST LOUIS, MO	11/20/2002
BURNS, JOANNE KLINA PROSPECT PARK, PA	11/20/2002
DE LA FLOR, RICHARD TOLEDO, OH	11/20/2002
HEMMERLING, BONNIE DEE FRANKFORT, IN	11/20/2002
KENTER, BARBARA SUSAN OMAHA, NE	11/20/2002
MAGGARD-ISON, EDNA LOUISE KING CITY, MO	11/20/2002
PETRY, SAMANTHA L ALDERSON, WV	11/20/2002
ROSENAUER, JENNIFER A CHESTERFIELD, MO	11/20/2002
SANTISTEVAN, KELLY K HELPER, UT	11/20/2002
SMITH, PAMELA M SINKING SPRING, PA	11/20/2002
PATIENT ABUSE/NEGLECT CONVICTIONS	
EDWARDS, JACQUELINE RENEE	11/20/2002

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Subject city, state	Effective date
DETROIT, MI	
FERNANDEZ, EDNA L MARINA, CA	11/20/2002
FIGURES, SANDRA DERMOTT, AR	11/20/2002
HARRIS, YOLANDA CHARLESTON, MS	11/20/2002
HENRY, PAUL PARMA HGTS, OH	11/20/2002
HOPPE, JUDITH PHILOMENE EDEN VALLEY, MN	11/20/2002
JOHNSON, MATTHEW PAUL AZURE BEMIDJI, MN	11/20/2002
MCNEAL, CAROL G ALEXANDRIA, LA	11/20/2002
NANCE, BENJAMIN BRENT, AL	11/20/2002
PROEHL, ARDY RENEE MAPLETON, MN	11/20/2002
STAFFEN, RANDY JEFFERSON, OH	11/20/2002
STONE, BRIAN L CONWAY, AR	11/20/2002
WILSON, NATASHA CLEVELAND, OH	11/20/2002
LICENSE REVOCATION/SUSPENSION/ SURRENDERED	
ABRAHAM, JANIS NATCHITOCHES, LA	11/20/2002
ACOSTA, FANNY GLENDORA, CA	11/20/2002
BAILES, WILLIAM HUBERT FRESNO, CA	11/20/2002
BAILEY, JEFFREY DEAN SAN DIEGO, CA	11/20/2002
BLANK, NOELLE M EL PASO, TX	11/20/2002
BLANKENSHIP, RAMONA OVIEDO, FL	11/20/2002
BOONE, CHRISTY WILLIAMS ROCKY MOUNT, NC	11/20/2002
BROOKS, JANICE YVONNE UPLAND, CA	11/20/2002
BROUSSARD, SHANNON L FORT WORTH, TX	11/20/2002
BROWN, JAMES R ENFIELD, CT	11/20/2002
BUKOWSKY, KELLY SUZANNE LOCKHART, TX	11/20/2002
BUSTER, PATRICIA LOUISE TEXARKANA, TX	11/20/2002
CAINE, MARY-ELIZABETH OLIVE BRANCH, MS	11/20/2002
CANTERBERRY, JANE ARMSTRONG HASTINGS, NE	11/20/2002
CARRIL, ANTHONY MIAMI, FL	11/20/2002
CESENA, ALBERTO BLYTHE, CA	11/20/2002
CROWL, BARBARA M HASTINGS, NE	11/20/2002
CUBILLOS, MARY CHRISTINA NORFOLK, NE	11/20/2002
DAVIS, JUDY K BAYTOWN, TX	11/20/2002
DEAN, BARBARA FARLEY HOUSTON, TX.	11/02/2002
DELCAMBRE, TAMMY BILOXI, MS	11/20/2002
DEROUEN, TAMARA SACRAMENTO, CA	11/20/2002
DUSTIN, DANYA D BYLAS, AZ	11/20/2002
EDWARDS, SHANDA L ROCK ISLAND, IL	11/20/2002
EENHUIS, DAWN BARNES BARNESVILLE, MN	11/20/2002
EGGERS, AUTUMN MARIE LITTLE ROCK, AR	11/20/2002
ELLIG, MICHAEL HOWARD ODESSA, TX	11/20/2002
ERDMAN, DENNIS PAYSON, AZ	11/20/2002
ERNST, LAURA LEE SIMI VALLEY, CA	11/20/2002
FARRAN, KALEEN ROSE WICHITA, KS	11/20/2002
FEELEY, RACHEL G MANVILLE, RI	11/20/2002
FORTUNATO, JOSE IGNACIO VALLEJO, CA	11/20/2002
FREDERICK, EDMOND GUINN MAURICEVILLE, TX	11/20/2002
FREY, KATHRYN ANN PALM DESERT, CA	11/20/2002
FRONICK, KAREN MARIE HOUSTON, TX	11/20/2002
GARCIA, RANDAL LEE BLACK BUTTE RANCH, OR	11/20/2002
GARCIA, NANCY PARE TUSCON, AZ	11/20/2002
GEMMELL, WILLIAM S BRATTLEBORO, VT	11/20/2002
GIFFORD, CRAIG P SALT LAKE CITY, UT	11/20/2002
GILL, MISSY L APPALACHIA, VA	11/20/2002
GORDON, MARCIA G ARLINGTON HGTS, IL	11/20/2002
GREENWELL, JOSIANNE MARIE GOFF MORGANFIELD, KY	11/20/2002
GRIDDINE, WILLIAM ERWIN VAN NUYS, CA	11/20/2002
GRIER, LISHA D VIRGINIA BEACH, VA	11/20/2002
GRIFFIN, CONSTANCE ROBINSON NEWPORT NEWS, VA	11/20/2002
HARRIS, JAMES E LAS VEGAS, NV	11/20/2002
HARWELL, CHERYL EVANS WOODVILLE, TX	11/20/2002
HIGGENBOTTOM, CAROL DENISE FARMERSBURG, IN	11/20/2002
HILLER, DONALD JOHN PHOENIX, AZ	11/20/2002
HOLLAND, DOUGLAS THOMAS JR ELK GROVE, CA	11/20/2002
JONES, MICHAEL LYNN NEW CASTLE, IN	11/20/2002
KIMBLE, LLOYD SAN ANTONIO, TX	11/20/2002
KOSTEL, JEFFRY P CHICAGO, IL	11/20/2002
LAKE, STEPHEN BEVERLY HILLS, CA	11/20/2002
MALONE, EVELYN DEMETRA HOUSTON, TX	11/20/2002
MAROUCHOC, LORRAINE M JIM THORPE, PA	11/20/2002
MATTHEWS, HAZEL VALLEJO, CA	11/20/2002
MCCASH, SHARLIE F AZLE, TX	11/20/2002
MCDERMOTT, DONNA LYNN ANGLETON, TX	11/20/2002
MIGLIN, ROBERT ANTHONY ENCINO, CA	11/20/2002
MILLER, JUDITH COGAN STATION, PA	11/20/2002
MITCHELL, GINA M N KINGSTOWN, RI	11/20/2002
MOMAH, CLEMENT I BEL AIR, MD	11/20/2002
MONTIGNY, HOLLY WESTPORT, MA	11/20/2002
MORALES, ALMARIO VALLEJO, CA	11/20/2002
MORRIS, ANNE MARTIN VICKSBURG, MS	11/20/2002
MUNSON, MILTON ANDREW OMAHA, NE	11/20/2002
MURRAY, LAWRENCE FRANKLIN LUCERNE, CA	11/20/2002
NODA, CARLOS M MIAMI, FL	11/20/2002
PERRINO, PAMELA SUZANNE PHOENIX, AZ	11/20/2002
PURVIN, JONATHAN MARK SANDY, UT	11/20/2002
RAFFIELD, MICHAEL CORBETT FLORENCE, AL	11/20/2002
RASCO, LINDA M C MARIETTA, GA	11/20/2002
RECTOR, BRENDA LEE ORO VALLEY, AZ	11/20/2002
RESENDIZ, ROLAN TURLOCK, CA	11/20/2002
RHOADES, KAROLYN S OKEECHOBEE, FL	11/20/2002
RILEY, KACHINA SU HOLLY HILL, FL	11/20/2002
ROWLAND, KEVIN A BRAYMER, MO	11/20/2002
RUTZ, CATHERINE DOUGHERTY LINCOLN, NE	11/20/2002
SANTOS, ANA PAULA PHILADELPHIA, PA	11/20/2002
SCHLEUGER, LAURA ANN LINCOLN, NE	11/20/2002
SCHMITZ, E HEATHER BISMARCK, ND	11/20/2002
SHANNON, PENNY M VIRGINIA BEACH, VA	11/20/2002
SPENCE, JASON KEITH SAN FRANCISCO, CA	11/20/2002
STEVENS, DORSIE MAE TULSA, OK	11/20/2002
TUSING, TRACEY L FLORISSANT, MO	11/20/2002
WHITE, HELEN L OAKLAND, CA	11/20/2002
FEDERAL/STATE EXCLUSION/ SUSPENSION	
BROWN, LOWELL JEROME	11/20/2002
SPRINGFIELD, IL	
MINOR, PANDORA M NEW ORLEANS, LA	11/20/2002
OKWUJE, PHILLIP CHICAGO, IL	11/20/2002
OWNED/CONTROLLED BY CONVICTED ENTITIES	
AMG MEDICAL SERVICES, INC N MIAMI BEACH, FL	11/20/2002
GARSON & GARSON CHARTERED MIAMI, FL	11/20/2002
S FLORIDA HEARING SVC, INC PITTSBURGH, PA	11/20/2002
SOUTH FLORIDA THERAPEUTIC, INC MIAMI, FL	11/20/2002
DEFAULT ON HEAL LOAN	
DREYER, FRANK J SPOKANE, WA	10/10/2002
RIIS, MARK L GRAND PRAIRIE, TX	11/20/2002

Dated: November 6, 2002.

Katherine B. Petrowski,

Director, Exclusions Staff, Office of Inspector General.

[FR Doc. 02–29130 Filed 11–15–02; 8:45 am]

BILLING CODE 4150–04–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4736–N–17]

Notice of Proposed Information Collection for Public Comment on the Low-Income Public Housing Operating Budget, Supporting Schedules and Board Resolution

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments Due Date: January 17, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control number and should be sent to: Mildred M. Hamman, Reports Liaison Officer, Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4249, Washington, DC 20410–5000.

FOR FURTHER INFORMATION CONTACT: Mildred M. Hamman, (202) 708–0614, extension 4128. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Low-Income Public Housing Operating Budget, Supporting Schedules and Board Resolution.

OMB Control Number: 2577–0026.

Description of the need for the information and proposed use: The operating budget and supporting forms are submitted by the Public Housing Agency (PHA) for the low-income housing program. The operating budget provides a summary of proposed/budget receipts and expenditures by major category, as well as blocks for indicating approval of budget receipts and expenditures by the PHA and HUD. The supporting forms provide the detail of how the amount shown on the operating budget were arrived at, as well as justification of certain specified amounts. The information is reviewed by HUD to determine if the plan of operation adopted by the PHA and amounts included therein are reasonable for the efficient and economical operation of the development(s), and the PHA is in compliance with HUD procedures to assure that sound management practices will be followed in the operation of the development. A small number of PHAs (200) are still required to submit their operating budget packages to HUD, namely those that are troubled, those that are recently out of troubled status of at risk of becoming troubled, or those that are at risk of fiscal insolvency. PHAs are still required to prepare their operating budgets and submit them to their Board for approval prior to their operating subsidy being approved by HUD. The operating budgets must be kept on file for review, if requested.

Agency form numbers, if applicable: HUD–52564, HUD–52566, HUD–52567, HUD–52571, HUD–52573, HUD–52574.

Members of affected public: State, or Local Government.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: 200 troubled PHAs, annual, 116 hours = 23,000 hours. 3300 PHAs submitting operating budgets to their Boards and keeping them on file, annual, 116 hours = 382,800. The total burden hours for this collection are 405,800.

Status of the proposed information collection: Reinstatement, without change.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: November 8, 2002.

Michael Liu,

Assistant Secretary for Public and Indian Housing.

BILLING CODE 4210–33–M

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Operating Budget

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0026 (exp. 6/30/2001)

See page four for instructions and the Public reporting burden statement

a. Type of Submission: ☐ Original ☐ Revision No.: ____
b. Fiscal Year Ending
c. No. of months (check one): ☐ 12 mo. ☐ Other (specify)____
d. Type of HUD assisted project(s):
01 ☐ PHA/IHA-Owned Rental Housing
02 ☐ IHA Owned Mutual Help Homeownership
03 ☐ PHA/IHA Leased Rental Housing
04 ☐ PHA/IHA Owned Turnkey III Homeownership
05 ☐ PHA/IHA Leased Homeownership
e. Name of Public Housing Agency / Indian Housing Authority (PHA/IHA)
f. Address (city, State, zip code)
g. ACC Number
h. PAS / LOCCS Project No.
i. HUD Field Office
j. No. of Dwelling Units
k. No. of Unit Months Available
m. No. of Projects

Line No.	Acct. No.	Description (1)	Actuals Last Fiscal Yr. 19____ PUM (2)	☐ Estimates ☐ or Actual Current Budget Yr. 19____ PUM (3)	Requested Budget Estimates: PHA/IHA Estimates PUM (4)	PHA/IHA Estimates Amount (to nearest $10) (5)	HUD Modifications PUM (6)	HUD Modifications Amount (to nearest $10) (7)
Homebuyers Monthly Payments for								
010	7710	Operating Expense						
020	7712	Earned Home Payments						
030	7714	Nonroutine Maintenance Reserve						
040	**Total**	Break-Even Amount (sum of lines 010, 020, and 030)						
050	7716	Excess (or deficit) in Break-Even						
060	7790	Homebuyers Monthly Payments - Contra						
Operating Receipts								
070	3110	Dwelling Rental						
080	3120	Excess Utilities						
090	3190	Nondwelling Rental						
100	**Total**	Rental Income (sum of lines 070, 080, and 090)						
110	3610	Interest on General Fund Investments						
120	3690	Other Income						
130	**Total**	Operating Income (sum of lines 100, 110, and 120)						
Operating Expenditures - Administration								
140	4110	Administrative Salaries						
150	4130	Legal Expense						
160	4140	Staff Training						
170	4150	Travel						
180	4170	Accounting Fees						
190	4171	Auditing Fees						
200	4190	Other Administrative Expenses						
210	**Total**	Administrative Expense (sum of line 140 thru line 200)						
Tenant Services								
220	4210	Salaries						
230	4220	Recreation, Publications and Other Services						
240	4230	Contract Costs, Training and Other						
250	**Total**	Tenant Services Expense (sum of lines 220, 230, and 240)						
Utilities								
260	4310	Water						
270	4320	Electricity						
280	4330	Gas						
290	4340	Fuel						
300	4350	Labor						
310	4390	Other utilities expense						
320	**Total**	Utilities Expense (sum of line 260 thru line 310)						

Name of PHA / IHA
Fiscal Year Ending

Line No.	Acct. No.	Description (1)	Actuals Last Fiscal Yr. 19____ PUM (2)	☐ Estimates ☐ or Actual Current Budget Yr. 19____ PUM (3)	Requested Budget Estimates: PHA/IHA Estimates PUM (4)	PHA/IHA Estimates Amount (to nearest $10) (5)	HUD Modifications PUM (6)	HUD Modifications Amount (to nearest $10) (7)
Ordinary Maintenance and Operation								
330	4410	Labor						
340	4420	Materials						
350	4430	Contract Costs						
360	**Total**	Ordinary Maintenance & Operation Expense (lines 330 to 350)						
Protective Services								
370	4460	Labor						
380	4470	Materials						
390	4480	Contract costs						
400	**Total**	Protective Services Expense (sum of lines 370 to 390)						
General Expense								
410	4510	Insurance						
420	4520	Payments in Lieu of Taxes						
430	4530	Terminal Leave Payments						
440	4540	Employee Benefit Contributions						
450	4570	Collection Losses						
460	4590	Other General Expense						
470	**Total**	General Expense (sum of lines 410 to 460)						
480	**Total**	Routine Expense (sum of lines 210, 250, 320, 360, 400, and 470)						
Rent for Leased Dwellings								
490	4710	Rents to Owners of Leased Dwellings						
500	**Total**	Operating Expense (sum of lines 480 and 490)						
Nonroutine Expenditures								
510	4610	Extraordinary Maintenance						
520	7520	Replacement of Nonexpendable Equipment						
530	7540	Property Betterments and Additions						
540	**Total**	Nonroutine Expenditures (sum of lines 510, 520, and 530)						
550	**Total**	Operating Expenditures (sum of lines 500 and 540)						
Prior Year Adjustments								
560	6010	Prior Year Adjustments Affecting Residual Receipts						
Other Expenditures:								
570		Deficiency in Residual Receipts at End of Preceding Fiscal Yr.						
580	**Total**	Operating Expenditures, including prior year adjustments and other expenditures (line 550 plus or minus line 560 plus line 570)						
590		Residual Receipts (or Deficit) before HUD Contributions and provision for operating reserve (line 130 minus line 580)						
HUD Contributions								
600	8010	Basic Annual Contribution Earned - Leased Projects-Current Year						
610	8011	Prior Year Adjustments - (Debit) Credit						
620	**Total**	Basic Annual Contribution (line 600 plus or minus line 610)						
630	8020	Contributions Earned - Op. Sub - Cur. Yr.(before year-end adj)						
640		Mandatory PFS Adjustments (net)						
650		Other (specify)						
660		Other (specify)						
670		Total Year-end Adjustments/Other (plus or minus lines 640 thru 660)						
680	8020	Total Operating Subsidy-current year (line 630 plus or minus line 670)						
690	**Total**	HUD Contributions (sum of lines 620 and 680)						
700		Residual Receipts (or Deficit) (sum of line 590 plus line 690) Enter here and on line 810						

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Name of PHA / IHA	Fiscal Year Ending

		Operating Reserve	PHA/IHA Estimates	HUD Modifications
		Part I - Maximum Operating Reserve - End of Current Budget Year		
740	2821	**PHA / IHA-Leased Housing - Section 23 or 10(c)** 50% of Line 480, column 5, form HUD-52564		

		Part II - Provision for and Estimated or Actual Operating Reserve at Fiscal Year End		
780		Operating Reserve at End of Previous Fiscal Year - Actual for FYE (date)		
790		Provision for Operating Reserve - Current Budget Year (check one) ☐ Estimated for FYE ☐ Actual for FYE		
800		Operating Reserve at End of Current Budget Year (check one) ☐ Estimated for FYE ☐ Actual for FYE		
810		Provision for Operating Reserve - Requested Budget Year Estimated for FYE Enter Amount from line 700		
820		Operating Reserve at End of Requested Budget Year Estimated for FYE (Sum of lines 800 and 810)		
830		Cash Reserve Requirement - _____ % of line 480		

Comments

PHA / IHA Approval Name _____

Title _____

Signature _____ Date _____

Field Office Approval Name _____

Title _____

Signature _____ Date _____

Public reporting burden for this collection of information is estimated to average 118 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless that collection displays a valid OMB control number.

This information is required by Section 6(c)(4) of the U.S. Housing Act of 1937. The information is the operating budget for the low-income housing program and provides a summary of proposed/budgeted receipts and expenditures, approval of budgeted receipts and expenditures, and justification of certain specified amounts. HUD reviews the information to determine if the operating plan adopted by the PHA and the amounts are reasonable and that the PHA is in compliance with procedures prescribed by HUD. Responses are required to obtain benefits. This information does not lend itself to confidentiality.

Instructions for Preparing Form HUD-52564, Operating Budget

Separate Operating Budgets must be prepared for each separate Annual Contributions Contract (ACC). However, the supporting documentation can be combined for each Turnkey III project within an ACC, provided it clearly separates the cost by program and/or ACC number. Prepare all of the supporting documentation (Forms HUD-52573, HUD-52566 and HUD-52571) prior to finalizing the Operating Budget.

The headings for items a. through m. are self-explanatory.

Columns:

Column (2): Obtain actual P.U.M. amounts from the Statement(s) of Operating Receipts and Expenditures (Form HUD-52599) for the year preceding the current budget year.

Column (3): Include the actual (if available) or estimated PUM amounts for the current budget year.

Columns (4) and (5): Enter amounts on applicable lines from HUD Schedules and/or HA worksheets in column (5). After completing column (5) compute the P.U.M. amounts for Column (4) by dividing each figure in Column (5) by the No. of Unit Months of Availability, item k.

Columns (6) and (7): Leave blank. If HUD modifies the HA estimates as a condition for approval, HUD will complete these columns and return a copy to the HA.

Line Items

Lines 010 through 060 are specific to the Turnkey III Owned Homeownership Program. These lines correspond to accounts 7710 through 7790, see Accounting Handbook 7510.1.

Line 460: Use this line, if applicable, for showing estimated interest on Administrative and Sundry Loans.

Line 490: This line is specific to the Section 23, Leased Rental Program.

Line 560: Use this line, if applicable, only in connection with budget revisions.

Line 570: Use this line, if applicable, for such items as carry-overs of unabsorbed deficiencies in residual receipts from prior years.

Line 630: Operating Subsidy Eligibility for the requested year before year end adjustments.

Lines 640 to 660: Year end adjustments to be funded in the requested budget year.

Line 700: An estimated decrease cannot be more than the amount available in the operating reserve at the beginning of the requested budget year (line 800).

Special Instructions, Budget Revisions

Budget revisions must be approved by the end of the PHA fiscal year.

When using this form for budget revisions, the following additional instructions are applicable:

No changes are to be made to Column (2) or Column (3).

No changes are to be made in the amount for Operating Subsidy Eligibility before year end adjustments (Line 630, or in Part I - Maximum Operating Reserve-End of Current Budget Year.

Operating Reserves

Operating reserves are calculated by individual Annual Contributions Contract except that the operating reserves for Section 23 Leased Housing Projects, Turnkey III Homeownership Projects (HA Owned or Leased) must be separately calculated and reported by project.

Line 780: Enter amount as of the last previous fiscal year (year preceding current budget year).

Line 790:

a. Enter estimated amount, if original budget, or actual amount, if revised budget.

b. Enter negative balance in parentheses. (The negative balance may not exceed the amount on line 780.)

Line 800: Enter sum of lines 780 and 790

Line 810:

a. Enter estimated amount.

b. Enter negative balance in parentheses. (The negative balance may not exceed the amount on line 800.)

Line 820: Enter sum of lines 800 and 810.

Line 830: Enter percent of routine operating expenses (or minimum dollar amount) currently used by HUD as a performance measure to evaluate the cash requirements and/or operating reserve adequacy.

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Operating Budget
Schedule of All Positions and Salaries

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0026 (Exp.

See back of page for instructions and Public reporting burden statement

Name of Housing Authority	Locality	Fiscal Year End

Position Title and Name By Organizational Unit and Function		Present Salary Rate As of (date)	Requested Budget Year: Salary Rate	Estimated Payment: No. Months	Estimated Payment: Amount	Allocation of Salaries by Program: Management	Modernization	Development	Section 8 Programs	Other Programs	Longevity	Method of Allocation
(1)	(1a)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)

To the best of my knowledge, all the information stated herein, as well as any information provided in the accompaniment herewith, is true and accurate.
Warning: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802)

Executive Director or Designated Official — Date

Page 1 of 2

form HUD-52566 (3/96)
ref Handbook 7475.1

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless that collection displays a valid OMB control number.

This information is required by Section 6(c)(4) of the U.S. Housing Act of 1937. The information is the operating budget for the low-income housing program and provides a summary of proposed/budgeted receipts and expenditures, approval of budgeted receipts and expenditures, and justification of certain specified amounts. HUD reviews the information to determine if the operating plan adopted by the PHA and the amounts are reasonable and that the PHA is in compliance with procedures prescribed by HUD. Responses are required to obtain benefits. This information does not lend itself to confidentiality.

Instructions for Preparation of Form HUD-52566

This form is to be prepared to show proposed staffing for the Requested Budget Year. All employees of the Housing Authority must be listed.

Identification: The identification boxes at the top of the form are self-explanatory.

Position Title and Name by Organizational Unit and Function:

Column (1): List each position title according to Organizational Unit, i.e., Central Office, Central Maintenance, Project or Project Management Group, Section 8, Modernization, and Function within each organization unit, i.e., Office of Director, Accounting and Purchasing Section, Leasing and Occupancy Section, General Maintenance, etc. All seasonal temporary labor may be combined on a single line designated "Casual Labor" or "Temporary Labor."

Column (1a): For each position or group of positions as appropriate, enter an account designation as follows:

- AN-T Administrative-Nontechnical positions
- A-T Administrative-Technical positions
- M Maintenance positions
- U Utilities Labor positions
- O Other positions such as staff attorneys and architectural and engineering personnel employed for the sole purpose of preparing plans and specifications for extraordinary maintenance jobs or for betterments and additions.

Column (2) Present Salary Rate: Enter closing data of latest completed payroll in heading. Then, for each position listed in Column (1), enter the present annual salary rate in accordance with the latest payroll record. For new positions to be established in the Requested Budget Year, leave this column blank.

Columns (3), (4), (5) Requested Budget Year:

Salary Rate: For each position listed, enter the proposed salary rate for the Requested Budget Year.

Estimated Payment:

No. Months: For each position listed, enter the estimated equivalent number of full months of employment in the Requested Budget Year.

Amount: For each position listed, enter the estimated amount of salary to be paid during the Requested Budget Year.

Allocation of Salaries by Program: Columns (6) through (11) are to be completed by Housing Authorities who administer programs other than Management.

Column (6)–Management: For each position listed enter the amount of salary allocable to management related activities.

Column (7)–Modernization Programs: For each position listed enter the amount of salary allocable to Modernization (CIAP/Comprehensive Grant Program) related activities. The Housing Authority must have an approved CIAP/Comprehensive Plan budget with funds approved under Development Accounts 1410.1 and 1410.2.

Column (8)–Development: For each position listed, enter the amount of salary allocable to activities related to projects in development. Include in one amount the amount chargeable to Development Cost Accounts 1410 and 1425.

Column (9)–Section 8 Programs: For each position listed, enter the amount of salary allocable to activities related to Section 8 programs.

Column (10)–Other Programs: For each position listed, enter the amount of salary allocable to activities related to projects which are locally-owned, State-aided, etc., and to all other programs with which the Local Authority is concerned such as Urban Renewal, etc.

Note: This Column should also include the allocation of salary costs of shared resources, i.e., where staff or other resources are shared between a HA program and a program administered by an identity-of-interest non-profit entity, the salary cost must be equitably allocated to each program.

Column (11)–Other: For each position listed, enter the amount of salary allocable as a result of longevity compensation.

Column (12)–Method of Allocation: For each position or group of positions listed, show the method used for allocating the salaries listed.

On the basis of information shown on this schedule complete Form HUD-52573, Summary of Budget Data and Justifications, **Summary of Staffing and Salary Data** section, and Form HUD-52564, Operating Budget.

Page 2 of 2

form HUD-52566 (3/96)
ref Handbook 7475.1

Operating Budget
Schedule of Nonroutine Expenditures

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0026 (Exp. 6/30/2001)

See back of page for instructions and Public reporting burden statement

Local Housing Authority	Locality	Fiscal Year Ending

Extraordinary Maintenance and Betterments and Additions (Excluding Equipment Additions)						Equipment Requirements			
				Requested Budget Year			Requested Budget		
Work Project Number (1)	Description of Work Project [List Extraordinary Maintenance and Betterments and Additions separately] (2)	Housing Project Number (3)	Total Estimated Cost (4)	Percent Complete Current Budget Year End (5)	Estimated Expenditure in Year (6)	Percent Complete Year End (7)	Description of Equipment Items (List Replacements and Additions separately) (8)	No. of Items (9)	Item Cost (10)	Estimated Expenditure in Year (11)

Warning: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802)

form HUD-52567 (3/96)
ref Handbook 7475.1

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless that collection displays a valid OMB control number.

This information is required by Section 6(c)(4) of the U.S. Housing Act of 1937. The information is the operating budget for the low-income housing program and provides a summary of proposed/budgeted receipts and expenditures, approval of budgeted receipts and expenditures, and justification of certain specified amounts. HUD reviews the information to determine if the operating plan adopted by the PHA and the amounts are reasonable and that the PHA is in compliance with procedures prescribed by HUD. Responsee are required to obtain benefits. This information does not lend itself to confidentiality.

Instructions for Preparation of Form HUD-52567

Prepare this form to describe each work project, or job, of extraordinary maintenance, property betterments and additions, and replacement or addition of nonexpendable equipment scheduled for accomplishment in whole or in part during the Requested Budget Year.

Identification: The identification boxes at the top of the form are self-explanatory.

Extraordinary Maintenance and Betterments and Additions

Column (1) Work Project Numbers: For work projects to be started during the Requested Budget Year assign consecutive numbers to identify them with the classification of work and the LHA Fiscal Year, and enter the numbers in this column. For example: For Extraordinary Maintenance jobs to be started during the LHA Fiscal Year 1966, the number would be EM-66-1, EM-66-2, etc. and for Betterments and Additions jobs the numbers would be BA-66-1, BA-66-2, etc.

Column (2) Description: Describe each work project concisely, but sufficiently to give a full understanding of its nature and scope. For work projects started in previous years, point out any significant changes in nature and scope.

Column (3) Housing Project Number: Opposite each work project number and description enter the number of the Housing Projects at which the work is located.

Column (4) Total Estimated Cost: Enter a realistic estimate of the total cost of each work project based, to the extent practicable, on a thorough study of detailed specification of the work. If any part of the work is to be performed by Project staff the estimated cost should include the appropriate portion of their salaries. If there has been a change in the total estimated cost of work started in previous years, the revised total estimate should be entered and note to this effect included in the description column.

Column (5) Percent Complete Current Budget Year End: For work projects started in previous years, enter a realistic estimate of the percentage of work that will have been completed at the end of the Current Budget Year. This percentage may or may not correspond to the percentage of total estimated cost that will have been expended at that time.

Requested Budget Year:

Column (6) Estimated Expenditure in Year: For each work project enter a realistic estimate of the portion of Total Estimated Cost that will be expended during the Requested Budget Year. These estimates should include the appropriate portion of salaries of Project staff which is to perform any of the work.

Column (7) Percent Complete Year End: For each work project enter a realistic estimate of the percentage of work that will have been completed at the end of the Requested Budget Year. This percentage may or may not correspond to the percentage of total estimated cost that will have been expended at that time.

Equipment Requirements

Column (8) Description: Under a heading "Replacement of Equipment" list each type of nonexpendable equipment to be replaced, and separately under a heading "Property Additions" list each new type of nonexpendable equipment to be acquired. Give a brief description of each type and identify the Housing Project to which it is to be assigned.

Column (9) Number of Items: Enter the number of items of each type of equipment to be purchased for each Housing Project designated in Column (8).

Column (10) Item Cost: Enter estimated net cost of each item of equipment, e.g. purchase price, less discounts, trade-in allowances, and/or proceeds from disposition of equipment being replaced.

Column (11) Estimated Expenditure in Year: For each type of equipment, enter the estimated cost obtained by multiplying the number of items in Column 9 by the item cost in Column 10. Also, enter total cost of equipment listed under each of the headings "Replacement of Equipment" and "Property Additions."

Totals

a. The total in Column 6 for Extraordinary Maintenance should be entered on Line 510, Column 5, of form HUD-52564.

b. The total in Column 11 for Replacement of Equipment should be entered on Line 520, Column 5, of form HUD-52564.

c. The sum of the totals in Columns 6 and 11 for Property Betterments and Additions should be entered on Line 530, Column 5, of form HUD-52564.

form HUD-52567 (3/96)
ref Handbook 7475.1

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Operating Budget
Schedule of Administration
Expense Other Than Salary

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0026 (Exp. 6/30/2001)

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless that collecton displays a valid OMB control number.

This information is required by Section 6(c)(4) of the U.S. Housing Act of 1937. The information is the operating budget for the low-income housing program and provides a summary of proposed/budgeted receipts and expenditures, approval of budgeted receipts and expenditures, and justification of certain specified amounts. HUD reviews the information to determine if the operating plan adopted by the PHA and the amounts are reasonable and that the PHA is in compliance with procedures prescribed by HUD. Responses are required to obtain benefits. This information does not lend itself to confidentiality.

Name of Housing Authority	Locality	Fiscal Year End

	(1) Description	(2) Total	(3) Management	(4) Development	(5) Section 8	(6) Other
1	Legal Expense (see Special Note in Instructions)					
2	Training (list and provide justification)					
3	Travel Trips To Conventions and Meetings (list and provide justification)					
4	Other Travel Outside Area of Jurisdiction					
5	Within Area of Jurisdiction					
6	Total Travel					
7	Accounting					
8	Auditing					
9	Sundry Rental of Office Space					
10	Publications					
11	Membership Dues and Fees (list organization and amount)					
12	Telephone, Fax, Electronic Communications					
13	Collection Agent Fees and Court Costs					
14	Administrative Services Contracts (list and provide justification)					
15	Forms, Stationary and Office Supplies					
16	Other Sundry Expense (provide breakdown)					
17	Total Sundry					
18	Total Administration Expense Other Than Salaries					

To the best of my knowledge, all the information stated herein, as well as any information provided in the accompaniment herewith, is true and accurate.
Warning: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802)

Signature of authorized representative & Date

X

form HUD-52571 (3/95)
ref Handbook 7475.1

Justification/Breakdown:

Instructions for Preparation of Form HUD-52571

Prepare this form to reflect detailed estimates of Administration Expense, other than salaries, and the distribution to all programs administered by the Housing Authority.

The identification boxes in the upper right hand corner are self-explanatory.

1. **Legal Expense:** Enter in Column (2), Line 1 the estimated cost of legal service. Enter in Columns (3) through (6) the pro rata shares of amounts in Column (2) chargeable to programs administered by the Housing Authority.

Special Note: The amount entered on Form HUD-52564 should also include salaries of Staff Attorneys as shown on Form HUD-52566 and included on line for "Other" in the Summary of Staffing and Salary Data section of Form HUD-52573.

2. **Training:** List and provide justification for all training.

Travel Expense: Justification must be provided for travel.

3. **Trips to Conventions and Meetings:** Under Justification/Breakdown, List each convention and meeting to be attended by commissioners and staff, with the location. Enter the number of persons expected to attend and show the aggregate number of travel days and the estimated total cost of each trip including subsistence allowance, cost of transportation, and reimbursable miscellaneous expenses. Enter the sum of the total costs of all trips in Column (2). Enter in Columns (3) through (6) the pro rata shares of amounts in Column (2) chargeable to programs administered by the Housing Authority.

4. **Other Travel: Outside Area of Jurisdiction:** Enter in Column (2), Line 4 the estimated cost for travel by commissioners and staff, including subsistence, transportation, and reimbursable miscellaneous expenses. Follow instructions 3 above for columns (3) through (6).

5. **Other Travel: Within Area of Jurisdiction:** Enter in Column (2), Line 5 the estimated cost for travel, including fixed monthly allowances for reimbursement on a mileage basis for use of privately owned automobiles; and reimbursement for authorized use of local public transportation. Follow Instructions 3 above for columns (3) through (6).

6. **Total Travel:** Sum Lines 3, 4, and 5 for Columns (2) through (7) and enter total for each on Line 6 "Total Travel."

7, thru 16. **Accounting, Auditing and Sundry:** Enter the estimated total for all programs in Column (2) for each item of expense in Lines 7 through 16. In Columns (3) through (6) enter the pro rata share of amounts shown in Column (2) chargeable to all programs administered by the Housing Authority.

14. **Administrative Services Contracts:** List and provide justification for all contracts (excluding accounting contracts).

16. **All Other Sundry Expense:** List all items identified under this expense.

18. **Total Administration Expense Other Than Salaries:**

Add the amounts on the following Lines:

Line 1	Legal Expense
Line 2	Training
Line 6	Total Travel
Line 7	Accounting
Line 8	Auditing
Line 17	Total Sundry

On Line 18 enter the appropriate totals in Columns (2) through (6). The amount shown in Column (3), lines 1, 2, 6, 7, 8, and 17, should be carried forward to Lines 150 through 200 of Form HUD-52564, Operating Budget

form HUD-52571 (3/95)
ref Handbook 7475.1

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Operating Budget
Summary of Budget Data and Justifications

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0026 (Exp. 6/30/2001)

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless that collection displays a valid OMB control number.

This information is required by Section 6(c)(4) of the U.S. Housing Act of 1937. The information is the operating budget for the low-income housing program and provides a summary of proposed/budgeted receipts and expenditures, approval of budgeted receipts and expenditures, and justification of certain specified amounts. HUD reviews the information to determine if the operating plan adopted by the PHA and the amounts are reasonable and that the PHA is in compliance with procedures prescribed by HUD. Responses are required to obtain benefits. This information does not lend itself to confidentiality.

Name of Local Housing Authority	Locality	Fiscal Year Ending

Operating Receipts

Dwelling Rental. Explain basis for estimate. For HUD-aided low-rent housing, other than Section 23 Leased housing, state amount of latest available total HA monthly rent roll, the number of dwelling units available for occupancy and the number accepted for the same month and. Cite HA policy revisions and economic and other factors which may result in a greater or lesser average monthly rent roll during the Requested Budget Year. For Section 23 Leased housing, state the number of units under lease, the PUM lease price, and whether or not the cost of utilities is included. If not included, explain method for payment at utility costs by HA and/or tenant.

Excess Utilities. (Not for Section 23 Leased housing.) Check appropriate spaces in item 1, and explain "Other". Under item 2, explain basis for determining excess utility consumption. For example, Gas; individual check meters at OH-100-1, proration of excess over allowances at OH-100-2, etc. Cite effective date of present utility allowances. Explain anticipated changes in allowances or other factors which will cause a significant change in the total amount of excess utility charges during the Requested Budget Year.

1. Utility Services Surcharged: Gas ☐ Electricity ☐ Other ☐ (Specify) _____

2. Comments

Nondwelling Rent. (Not for Section 23 Leased housing.) Complete item 1, specifying each space rented, to whom, and the rental terms. For example: Community Building Space - Nursery School - $50 per month, etc. Cite changes anticipated during the Requested Budget Year affecting estimated Non-dwelling Rental Income.

1.

Space Rented	To Whom	Rental Terms

2. Comments

Interest on General Fund Investments. State the amount of present General Fund investment and the percentage of the General Fund it represents. Explain circumstances such as increased or decreased operating reserves, dwelling rent, operating expenditures, etc., which will affect estimated average monthly total investments in the Requested Budget Year. Explain basis for distribution of interest income between housing programs.

Other Comments On Estimates of Operating Receipts. Give comments on all other significant sources of income which will present a clear understanding of the HA's prospective Operating Receipts situation during the Requested Budget Year. For Section 23 Leased housing explain basis for estimate of utility charges to tenants.

Operating Expenditures

Summary of Staffing and Salary Data

Complete the summary below on the basis of information shown on form HUD-52566, Schedule of All Positions and Salaries, as follows:

Column (1) Enter the total number of positions designated with the corresponding account line symbol as shown in Column (1), form HUD-52566.

Column (2) Enter the number of equivalent full-time positions allocable to HUD-aided housing in management. For example: A HA has three "A-NT" positions allocable to such housing at the rate of 80%, 70%, and 50% respectively. Thus, the equivalent full-time positions is two. (8/10 + 7/10 + 5/10).

Column (3) Enter the portion of total salary expense shown in Column (5) or Column (6), form HUD-52566, allocable to HUD-aided housing in management, other than Section 23 Leased housing.

Column (4) Enter the portion of total salary expense shown in Column (5) or Column (10), form HUD-52566, allocable to Section 23 Leased housing in management.

Column (5) Enter the portion of total salary expense shown in Column (5) or Column (7), form HUD-52566, allocable to Modernization programs (Comprehensive Improvement Assistance Program or Comprehensive Grant Program).

Column (6) Enter the portion of total salary expense shown in Column (5) or Column (9), form HUD-52566, allocable to Section 8 Programs.

Note: The number of equivalent full-time positions and the amount of salary expense for all positions designated "M" on form HUD-52566 must be equitably distributed to account lines **Ordinary Maintenance and Operation—Labor, Extraordinary Maintenance Work Projects,** and **Betterments and Additions Work Projects.**

Account Line	Total Number of Positions (1)	HUD-Aided Management Program				
		Equivalent Full-Time Positions (2)	Salary Expense			
			Management (3)	Section 23 Leased Housing Only (4)	Modernization Programs (5)	Section 8 Program (6)
Administration—Nontechnical Salaries[1]						
Administration—Technical Salaries[1]						
Ordinary Maintenance and Operation—Labor[1]						
Utilities—Labor[1]						
Other (Specify) (Legal, etc.)[1]						
Extraordinary Maintenance Work Projects[2]						
Betterments and Additions Work Projects[2]						

1 Carry forward to the appropriate line on HUD-52564, the amount of salary expense shown in Column (3) on the corresponding line above. Carry forward to the appropriate line on HUD-52564 (Section 23 Leased Housing Budget), the amount of salary expense shown in Column (4) on the corresponding line above.
2 The amount of salary expense distributed to Extraordinary Maintenance Work Projects and to Betterments and Additions Work Projects is to be included in the cost of each individual project to be performed by the HA Staff, as shown on form HUD-52567

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Specify all proposed new positions and all present positions to be abolished in the Requested Budget Year. Cite prior HUD concurrence in proposed staffing changes or present justification for such changes. Cite prior HUD concurrence in proposed salary increases for Administration Staff or give justification and pertinent comparability information. Cite effective date for current approved wage rates (form HUD-52158) and justify all deviations from these rates.

Travel, Publications, Membership Dues and Fees, Telephone and Telegraph, and Sundry. In addition to "Justification for Travel to Conventions and Meetings" shown on form HUD-52571, give an explanation of substantial Requested Budget Year estimated increases over the PUM rate of expenditures for these accounts in the Current Budget Year. Explain basis for allocation of each element of these expenses.

Utilities. Give an explanation of substantial Requested Budget Year estimated increases over the PUM rate of expenditures for each utility service in the Current Budget Year. Describe and state estimated cost of each element of "Other Utilities Expense."

Ordinary Maintenance & Operation—Materials. Give an explanation of substantial Requested Budget Year estimated increases over the PUM rate of expenditures for materials in the Current Budget Year.

Ordinary Maintenance & Operation—Contract Costs. List each ordinary maintenance and operation service contracted for and give the estimated cost for each. Cite and justify new contract services proposed for the Requested Budget Year. Explain substantial Requested Budget Year increases over the PUM rate of expenditure for Contract Services in the Current Budget Year. If LHA has contract for maintenance of elevator cabs, give contract cost per cab.

Insurance. Give an explanation of substantial Requested Budget Year estimated increases in the PUM rate of expenditures for insurance over the Current Budget Year. Cite changes in coverage, premium rates, etc.

Employee Benefit Contributions. List all Employee Benefit plans participated in. Give justification for all plans to be instituted in the Requested Budget Year for which prior HUD concurrence has not been given.

Collection Losses. State the number of tenants accounts receivable to be written off and the number and total amount of all accounts receivable for both present and vacated tenants as of the month in which the estimate was computed.

Extraordinary Maintenance, Replacement of Equipment, and Betterments and Additions. Cite prior HUD approval or give justification for each nonroutine work project included in the Requested Budget and for those for future years which make up the estimate on form HUD-52570. Justifying information incorporated on or attached to form HUD-52567 need not be repeated here.

Contracts. List all contracts, other than those listed on page 3 of this form under Ordinary Maintenance & Operation (OMO). Cite the name of the contractor, type of contract, cost of contract, and contract period. Justification must be provided for all contract services proposed for the Requested Budget Year (RBY). Explain substantial RBY increases over the PUM rate of expenditure for these contracts in the Current Budget Year.

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PHA/IHA Board Resolution

Approving Operating Budget or Calculation of Performance Funding System Operating Subsidy

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0026 (Exp. 6/30/2001)

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless that collecton displays a valid OMB control number.

This information is required by Section 6(c)(4) of the U.S. Housing Act of 1937. The information is the operating budget for the low-income housing program and provides a summary of proposed/budgeted receipts and expenditures, approval of budgeted receipts and expenditures, and justification of certain specified amounts. HUD reviews the information to determine if the operating plan adopted by the PHA and the amounts are reasonable and that the PHA is in compliance with procedures prescribed by HUD. Responses are required to obtain benefits. This information does not lend itself to confidentiality.

Acting on behalf of the Board of Commissioners of the below-named Public Housing Agency (PHA)/Indian Housing Authority (IHA), as its Chairman, I make the following certifications and agreements to the Department of Housing and Urban Development (HUD) regarding the Board's approval of (check one or more as applicable):

(date)

- ☐ Operating Budget Submitted on: _____
- ☐ Operating Budget Revision Submitted on: _____
- ☐ Calculation of Performance Funding System Submitted on: _____
- ☐ Revised Calculation of Performance Funding System Submitted on: _____

I certify on behalf of the: (PHA/IHA Name) _____ that:

1. All regulatory and statutory requirements have been met;
2. The PHA has sufficient operating reserves to meet the working capital needs of its developments;
3. Proposed budget expenditures are necessary in the efficient and economical operation of the housing for the purpose of serving low-income residents;
4. The budget indicates a source of funds adequate to cover all proposed expenditures;
5. The calculation of eligibility for Federal funding is in accordance with the provisions of the regulations;
6. All proposed rental charges and expenditures will be consistent with provisions of law;
7. The PHA/IHA will comply with the wage rate requirements under 24 CFR 968.110(e) and (f) or 24 CFR 905.120(c) and (d);
8. The PHA/IHA will comply with the requirements for access to records and audits under 24 CFR 968.110(i) or 24 CFR 905.120(g); and
9. The PHA/IHA will comply with the requirements for the reexamination of family income and composition under 24 CFR 960.209, 990.115 and 905.315.

I hereby certify that all the information stated within, as well as any information provided in the accompaniment herewith, is true and accurate.
Warning: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802)

Board Chairman's Name (type)	Signature	Date

Previous edition is obsolete

form HUD-52574 (10/95)
ref. Handbook 7575.1

[FR Doc. 02–29110 Filed 11–15–02; 8:45 am]
BILLING CODE 4210–33–C

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4734–N–68]

Notice of Submission of Proposed Information Collection to OMB: Requisition for Disbursement of Sections 202 and 811 Capital Advance/ Loan Funds

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* December 18, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2502–0178) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax No. (202) 395–6974; E-mail *Lauren_Wittenberg@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). This Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, an hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Requisition for disbursement of Sections 202 & 811 Capital Advance/Loan Funds.

OMB Approval Number: 2502–0187.

Form Numbers: HUD 92403–CA, HUD 92403–EH.

Description of the Need for the Information and Its Proposed Use: Owner entities submit requisitions periodically (generally monthly) during construction to obtain Section 202/811 capital advance/loan funds. This collection identifies the owner, project, type of disbursement, items covered, name of the depository, and account number.

Respondents: Not-for-profit institutions.

Frequency of Submission: On occasion, Monthly.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	664	9.5		0.5		3,168

Total Estimated Burden Hours: 3,168.

Status: Reinstatement, with change, of previously approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: November 12, 2002

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 02–29108 Filed 11–15–02; 8:45 am]
BILLING CODE 4210–72–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4572–D–28]

Revocation of Delegation of Authority to Execute Legal Instruments Pertaining to Section 312 Rehabilitation Loans

AGENCY: Office of the General Counsel, HUD.

ACTION: Notice of Revocation of Delegation of Authority.

SUMMARY: This notice advises the public that the Secretary, on May 22, 2002, revoked the delegation of authority of the President of the Government National Mortgage Association (Ginnie Mae), to execute legal instruments pertaining to Section 312 loans, and to redelegate the authority to execute such legal instruments.

FOR FURTHER INFORMATION CONTACT: Mary Kolesar, Office of Affordable Housing Programs, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone number (202) 708–2470 (this is not a toll free number). This number may be accessed via TTY by calling the Federal Information Relay Service a 1–800–877–8339.

SUPPLEMENTARY INFORMATION: On May 28, 1997 (62 FR 28889), the Secretary delegated to the President, Ginnie Mae the authority to execute in the name of the Secretary certain written instruments relating to Section 312 Rehabilitation Loans, including but not limited to: Deeds of release, quit claim deeds and deeds of reconveyance; substitutions of trustees; compromises; write-offs; close outs; releases related to insurance policies; assignments or satisfactions of notes, mortgages, deeds of trust and other security instruments; and any other written instrument or document related to, or necessary for, servicing or collection of a Section 312 loan, including any such instrument related to Section 312 loan servicing-related property management and disposition functions that were not delegated to the Assistant Secretary for Housing. The May 28, 1997 delegation of authority also authorized the President of Ginnie Mae to redelegate this authority.

This notice advises the public that on May 22, 2002, the Secretary revoked the delegation of authority to the President, Ginnie Mae that was published on May 28, 1997 (62 FR 28889) and that

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revocation of this delegation is published in today's **Federal Register**.

Dated: November 8, 2002.

Aaron Santa Anna,

Assistant General Counsel for Regulations.

[FR Doc. 02–29106 Filed 11–15–02; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4572–D–29]

Revocation of Delegation of Authority to Execute Legal Instruments Pertaining to Section 312 Rehabilitation Loans

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of revocation of delegation of authority.

SUMMARY: In this notice, the Secretary revokes the delegation of authority delegated to the President of the Government National Mortgage Association (Ginnie Mae), to execute legal instruments pertaining to Section 312 loans, and to redelegate the authority to execute such legal instruments.

EFFECTIVE DATE: May 22, 2002.

FOR FURTHER INFORMATION CONTACT: Mary Kolesar, Office of Affordable Housing Programs, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone number (202) 708–2470 (this is not a toll free number). This number may be accessed via TTY by calling the Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: On May 28, 1997 (62 FR 28889), the Secretary delegated to the President, Ginnie Mae the authority to execute in the name of the Secretary certain written instruments relating to Section 312 Rehabilitation Loans, including but not limited to: Deeds of release, quit claim deeds and deeds of reconveyance; substitutions of trustees; compromises; write-offs; close outs; releases related to insurance policies; assignments or satisfactions of notes, mortgages, deeds of trust and other security instruments; and any other 2 written instruments or documents related to, or necessary for, servicing or collection of a Section 312 loan, including any such instrument related to Section 312 loan servicing-related property management and disposition functions that were not delegated to the Assistant Secretary for Housing. The May 28, 1997 delegation of authority also authorized the President, Ginnie Mae, to redelegate this authority.

This notice published in today's **Federal Register** revokes the delegation of authority to the President, Ginnie Mae, that was published on May 28, 1997 (62 FR 28889). This action is necessary because the Office of Community Planning and Development's Section 312 loans have been sold and the Government National Mortgage Association (Ginnie Mae) is no longer involved in servicing Section 312 loans.

Today's **Federal Register** notice does not affect delegations of authority to the Assistant Secretary for Community Planning and Development and to the Assistant Secretary for Housing—Federal Housing Commissioner.

Authority: Section 312 of the Housing Act of 1964, 42 U.S.C. 1452b; 12 U.S.C. 1701g–5C; and section C. Delegation of Authority, 48 FR 49384, October 25, 1983; Section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: May 22, 2002.

Mel Martinez,

Secretary of Housing and Urban Development.

[FR Doc. 02–29107 Filed 11–15–02; 8:45 am]

BILLING CODE 4210–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–030–00–1020–24]

Mojave Southern Great Basin Resource Advisory Council; Notice of Meeting Location and Time

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting location and time for the Mojave Southern Great Basin Resource Advisory Council (Nevada).

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Mojave Southern Great Basin Resource Advisory Council (RAC), Nevada, will be held as indicated below. Topics for discussion will include managers' reports of field office activities; an update on the Southern Nevada Public Land Management Act of 1998; and other topics the council may raise.

All meetings are open to the public. The public may present written and/or oral comments to the council. Individuals who need special assistance such as sign language interpretation or other reasonable accommodations should contact Phillip Guerrero at (702) 515–5046.

Date and Time: The RAC will meet January 9 and 10, 2003, April 3 and 4, 2003, June 19–21, 2003, and September 4 and 5, 2003. Please contact Phillip Guerrero RAC coordinator for specific times and locations, as the meetings move throughout the year. Contact Mr. Guerrero at 702–515–5046.

FOR FURTHER INFORMATION CONTACT: Phillip L. Guerrero, Public Affairs Officer, BLM Las Vegas Field Office, 4701 North Torrey Pines Drive, Las Vegas NV 89130–2301, or by phone at (702) 515–5046.

Dated: November 1, 2002.

Phillip L. Guerrero,

Public Affairs Officer, Las Vegas Field Office.

[FR Doc. 02–28899 Filed 11–15–02; 8:45 am]

BILLING CODE 4310–HC–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–957–00–1420–BJ: GP03–0016]

Filing of Plats of Survey: Oregon/Washington

AGENCY: Bureau of Land Management.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands were officially filed in the Oregon State Office, Portland, Oregon, on August 15, 2002.

Willamette Meridian

Oregon

T. 28 S., R. 10 W., accepted May 29, 2002.
T. 1 N., R. 36 E., accepted June 21, 2002.
T. 4 S., R. 5 W., accepted June 28, 2002.
T. 40 S., R. 6 E., accepted July 23, 2002.
T. 30 S., R. 2 W., accepted July 24, 2002.
T. 1 S., R. 33 E., accepted July 24, 2002.

Washington

T. 3 N., R. 19 E., accepted August 1, 2002.

The plats of survey of the following described lands were officially filed in the Oregon State Office, Portland, Oregon, on September 26, 2002.

Oregon

T. 1 N., R. 33 E., accepted September 23, 2002.
T. 1 S., R. 5 W., accepted September 23, 2002.
T. 3 S., R. 5 W., accepted September 23, 2002.
T. 25 S., R. 11 W., accepted September 23, 2002.
T. 28 S., R. 11 W., accepted September 23, 2002.
T. 30 S., R. 3 W., accepted September 23, 2002.
T. 31 S., R. 4 W., accepted September 23, 2002.

T. 39 S., R. 3 W., accepted September 23, 2002.
T. 40 S., R. 4 E., accepted September 23, 2002.

Washington

T. 28 N., R. 38 E., accepted August 28, 2002.
T. 28 N., R. 39 E., accepted August 28, 2002.

The plat of survey of the following described lands is scheduled to be officially filed in the Oregon State Office, Portland, Oregon, 30 calendar days from the date of this publication.

Washington

T. 4 N., R. 23 E., accepted October 2, 2002.

A copy of the plats may be obtained from the Oregon State Office, Bureau of Land Management, 333 SW. 1st Avenue, Portland, Oregon 97204, upon required payment. A person or party who wishes to protest against a survey must file with the State Director, Bureau of Land Management, Portland, Oregon, a notice that they wish to protest.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, (333 SW. 1st Avenue) PO Box 2965, Portland, Oregon 97208.

Robert D. DeViney, Jr.,

Branch of Realty and Records Services.

[FR Doc. 02–29125 Filed 11–15–02; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Submitted for Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of extension of an information collection (1010–0072).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are notifying the public that we have submitted to OMB an information collection request (ICR) to renew approval of the paperwork requirements in the regulations under 30 CFR part 280, "Prospecting for Minerals other than Oil, Gas, and Sulphur on the Outer Continental Shelf," and related documents. This notice also provides the public a second opportunity to comment on the paperwork burden of these regulatory requirements.

DATES: Submit written comments by December 18, 2002.

ADDRESSES: You may submit comments directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (1010–0072), 725 17th Street, NW., Washington, DC 20503. Mail or hand-carry a copy of your comments to the Department of the Interior; Minerals Management Service; Attention: Rules Processing Team; Mail Stop 4024; 381 Elden Street; Herndon, Virginia 20170–4817. If you wish to E-mail your comments to MMS, the address is: *rules.comments@MMS.gov*. Reference Information Collection 1010–0072 in your subject line and mark your message for return receipt. Include your name and return address in your message text.

FOR FURTHER INFORMATION CONTACT: Alexis London, Rules Processing Team, telephone (703) 787–1600. You may also contact Alexis London to obtain a copy, at no cost, of the regulations that require the subject collection of information.

SUPPLEMENTARY INFORMATION: *Title:* 30 CFR part 280, Prospecting for Minerals other than Oil, Gas, and Sulphur on the Outer Continental Shelf.

OMB Control Number: 1010–0072.

Abstract: The Outer Continental Shelf (OCS) Lands Act, as amended (43 U.S.C. 1331 *et seq.* and 43 U.S.C. 1801 *et seq.*), authorizes the Secretary of the Interior (Secretary) to prescribe rules and regulations to administer leasing of the OCS. Section 1337(k) of the OCS Lands Act authorizes the Secretary "* * * to grant to the qualified persons offering the highest cash bonuses on a basis of competitive bidding leases of any mineral other than oil, gas, and sulphur in any area of the outer Continental Shelf not then under lease for such mineral upon such royalty, rental, and other terms and conditions as the Secretary may prescribe at the time of offering the area for lease." An amendment to the OCS Lands Act (Pub. L. 103–426) authorizes the Secretary to negotiate agreements (in lieu of the previously required competitive bidding process) for the use of OCS sand, gravel, and shell resources for certain specified types of public uses. The specified uses will support construction of governmental projects for beach nourishment, shore protection, and wetlands enhancement; or any project authorized by the Federal Government.

Section 1340 states that "* * * any person authorized by the Secretary may conduct geological and geophysical explorations in the [O]uter Continental Shelf, which do not interfere with or endanger actual operations under any lease maintained or granted pursuant to this Act, and which are not unduly harmful to aquatic life in such area." The section further requires that permits to conduct such activities may only be issued if it is determined that: the applicant is qualified; the activities are not polluting, hazardous, or unsafe; they do not interfere with other users of the area; and do not disturb a site, structure, or object of historical or archaeological significance.

Section 1352 further requires that certain costs be reimbursed to the parties submitting required G&G information and data. Under the Act, permittees are to be reimbursed for the costs of reproducing any G&G data required to be submitted. Permittees are to be reimbursed also for the reasonable cost of processing geophysical information required to be submitted when processing is in a form or manner required by the Director and is not used in the normal conduct of the business of the permittee.

Regulations implementing these responsibilities are under 30 CFR part 280. On July 17, 2002, MMS published final regulations (67 FR 46855) with an effective date of August 16, 2002. Responses are mandatory or required to obtain or retain a benefit. No questions of a "sensitive" nature are asked. The MMS protects information considered proprietary according to 30 CFR 280.70 and applicable sections of 30 CFR parts 250 and 252, and the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR part 2).

MMS OCS Regions collect information required under part 280 to ensure there is no environmental degradation, personal harm or unsafe operations and conditions, damage to historical or archaeological sites, or interference with other uses; to analyze and evaluate preliminary or planned drilling activities; to monitor progress and activities in the OCS; to acquire G&G data and information collected under a Federal permit offshore; and to determine eligibility for reimbursement from the Government for certain costs. Respondents are required to submit form MMS–134 to provide the information necessary to evaluate their qualifications. The information is necessary for MMS to determine if the applicants for permits or filers of notices meet the qualifications specified by the Act. The MMS uses the information collected to understand the G&G characteristics of hard mineral-bearing physiographic regions of the OCS. It aids MMS in obtaining a proper balance among the potentials for environmental damage, the discovery of hard minerals, and adverse impacts on affected coastal States. Information from permittees is necessary to determine the propriety and amount of reimbursement.

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Frequency: On occasion, annual; and as required in the permit.

Estimated Number and Description of Respondents: Approximately 1 permittee, 1 notice filer, and 1 adjacent State.

Estimated Reporting and Recordkeeping "Hour" Burden: The estimated annual "hour" burden for this information collection is a total of 108 hours. The following chart details the individual components and estimated hour burdens. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

Citation 30 CFR part 280	Reporting and recordkeeping requirement	Hour burden	Average number annual responses	Annual burden hours
10; 11(a); 12; 13; Permit Forms	Apply for permit (form MMS–134) to conduct prospecting or G&G scientific research activities, including prospecting/scientific research plan and environmental assessment or required drilling plan.	8	1 permit	8
11(b); 12(c)	File notice to conduct scientific research activities related to hard minerals, including notice to MMS prior to beginning and after concluding activities.	8	1 notice	8
21(a)	Report to MMS if hydrocarbon/other mineral occurrences or environmental hazards are detected or adverse effects occur.	1	1 report	1
22	Request approval to modify operations	1	1 request	1
23(b)	Request reimbursement for expenses for MMS inspection.	1	1 request	1
24	Submit status and final reports quarterly or on specified schedule and final report.	8	4 reports	32
28	Request relinquishment of permit	1	1 relinquish	1
31(b); 73(a), (b)	Governor(s) of adjacent State(s) submission to MMS: Comments on activities involving an environmental assessment; request for proprietary data, information, and samples; and disclosure agreement.	1	1 submissions	1
33, 34	Appeal penalty, order, or decision—burden covered under 1010–0121			0
40; 41; 50; 51; Permit Forms	Notify MMS and submit G&G data/information collected under a permit and/or processed by permittees or 3rd parties, including reports, logs or charts, results, analyses, descriptions, etc.	4	2 submissions	8
42(b); 52(b)	Advise 3rd party recipient of obligations. Part of licensing agreement between parties; no submission to MMS			0
42(c), 42(d); 52(c), 52(d)	Notify MMS of 3rd party transactions	1	1 notice	1
60; 60(a)	Request reimbursement for costs of reproducing data/information & certain processing costs.	20	2 requests	40
72(b)	Submit in not less than 5 days comments on MMS intent to disclose data/information.	1	1 response	1
72(d)	Contractor submits written commitment not to sell, trade, license, or disclose data/information.	1	1 submission	1
Part 280	General departure and alternative compliance requests not specifically covered elsewhere in part 280 regulations.	2	1 request	2
Permit Forms	Request extension of permit time period	1	1 extension	1
Permit Forms	Retain G&G data/information for 10 years and make available to MMS upon request.	1	1 recordkeeper	1
Total Hour Burden			21	108

Estimated Reporting and Recordkeeping "Non-Hour Cost" Burden: We have identified no paperwork "non-hour cost" burdens associated with the collection of information.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3501, *et seq.*) requires each agency "* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *" Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

To comply with the public consultation process, on August 6, 2002, we published a **Federal Register** notice (67 FR 50895) announcing that we would submit this ICR to OMB for approval. The notice provided the required 60-day comment period. In addition, § 250.80 (formerly § 280.0) provides the OMB control number for the information collection requirements imposed by the 30 CFR part 280 regulations and forms. The regulation also informs the public that they may comment at any time on the collections of information and provides the address to which they should send comments. We have received no comments in response to these efforts.

If you wish to comment in response to this notice, you may send your comments to the offices listed under the **ADDRESSES** section of this notice. OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by December 18, 2002.

Public Comment Policy: Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by the law. There may be circumstances in which we would withhold from the record a respondent's identity, as allowable by the law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach, (202) 208–7744.

Dated: October 30, 2002.

John V. Mirabella,

Acting Chief, Engineering and Operations Division.

[FR Doc. 02–29157 Filed 11–15–02; 8:45 am]

BILLING CODE 4310–MR–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–752 (Review)]

Crawfish Tail Meat From China

AGENCY: United States International Trade Commission.

ACTION: Notice of Commission determination to conduct a full five-year review concerning the antidumping duty order on crawfish tail meat from China.

SUMMARY: The Commission hereby gives notice that it will proceed with a full review pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) to determine whether revocation of the antidumping duty order on crawfish tail meat from China would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. A schedule for the review will be established and announced at a later date. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

EFFECTIVE DATE: November 4, 2002.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at *http://dockets.usitc.gov/eol/public.*

SUPPLEMENTARY INFORMATION: On November 4, 2002, the Commission determined that it should proceed to a full review in the subject five-year review pursuant to section 751(c)(5) of the Act. The Commission found that both the domestic and respondent interested party group responses to its notice of institution (67 FR 50459, August 2, 2002) were adequate. A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's web site.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.62 of the Commission's rules.

By order of the Commission.

Issued: November 13, 2002.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 02–29221 Filed 11–15–02; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. TA–421–1]

Pedestal Actuators

Determination

On the basis of information developed in the subject investigation, the United States International Trade Commission determines, pursuant to section 421(b)(1) of the Trade Act of 1974,[1] that pedestal actuators[2] from the People's Republic of China are being imported into the United States in such increased quantities or under such conditions as to cause market disruption to the domestic producers of like or directly competitive products.[3]

Proposals With Respect to Remedy[4]

Vice Chairman Jennifer A. Hillman and Commissioner Marcia E. Miller

[1] 19 U.S.C. 2451(b)(1).

[2] For purposes of this investigation, pedestal actuators consist of electromechanical linear actuators, imported with or without motors, or as part of scooter subassemblies, all the foregoing used for lifting and lowering, or for pushing or pulling. The products under investigation include any subassembly of pedestal actuator parts and components. Pedestal actuators are powered by fractional horsepower DC or AC motors, which drive a ball bearing screw or acme screw through a gear reducer to convert rotary to linear motion. The products are designed for flat or base mounting, have telescoping members, with bearings or bearing surfaces, and rigidly support the load and provide anti-rotation. Pedestal actuators are provided for in subheadings 8483.40.50 and 8483.40.80 and in heading 8501 of the Harmonized Tariff System of the United States.

[3] Chairman Deanna Tanner Okun and Commissioner Lynn M. Bragg make a negative determination.

[4] Chairman Deanna Tanner Okun and Commissioner Lynn M. Bragg, having made

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propose that the President impose a quantitative restriction for a three-year period on imports of the subject pedestal actuators from China, in the amount of 5,626 units in the first year; 6,470 units in the second year; and 7,440 units in the third year.

Commissioner Stephen Koplan proposes that the President impose a quantitative restriction on pedestal actuators imported into the United States from China in the amount of 4,425 units in the first year; 4,514 units in the second year; and 4,604 units in the third year.

The Commissioners find that the respective actions that they propose are necessary to remedy the market disruption found to exist.

Background

Following receipt of a petition filed on August 19, 2002 on behalf of Motion Systems Corporation, the Commission instituted investigation No. TA–421–1, Pedestal Actuators From China, under section 421 of the Trade Act of 1974 to determine whether pedestal actuators from China are being imported into the United States in such increased quantities or under such conditions as to cause or threaten to cause market disruption to the domestic producers of like or directly competitive products.

Notice of the institution of the Commission's investigation and of the scheduling of a public hearing to be held in connection therewith was given by posting a copy of the notice on the Commission's Web site (*www.usitc.gov*) and by publishing the notice in the **Federal Register** of August 26, 2002 (67 FR 54822). The hearing was held on October 1, 2002 in Washington, DC; all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination to the President and U.S. Trade Representative on October 18, 2002; it transmitted its remedy proposals to the President and U.S. Trade Representative on November 7, 2002. The views of the Commission are contained in USITC Publication 3557 (November 2002), entitled Pedestal Actuators from China: Investigation No. TA–421–1.

By order of the Commission.

Issued: November 13, 2002.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 02–29220 Filed 11–15–02; 8:45 am]

BILLING CODE 7020–02–P

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negative determinations regarding market disruption, were not eligible to vote on remedy.

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Immigration and Naturalization Service, DOJ.

ACTION: 30-Day Notice of Information Collection Under Review: Inspection of Persons Applying for Admission; Transit Without Visa (TWOV) and International-to-International Agreements; Liquidated Damages.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on August 28, 2002 at 67 FR 55276, allowing for a 60-day public comment period. No comments were received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until December 18, 2002. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Room 10235, Washington, DC 20530; 202–395–7316.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a current information collection.

(2) *Title of the Form/Collection:* Inspection of Persons Applying for Admission; Transit Without Visa (TWOV) and International-to-International Agreements; Liquidated Damages.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* No Agency Form Number (File No. OMB–19). Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. The Service will use the data collected by the carrier to query the Interagency Border Inspection System (IBIS) to electronically access manifest and query results in advance of each flight's arrival. This information collection facilitates rapid inspection at ports-of-entry.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 400 carrier agreements at 5 hours per response and 1,500,000 queries at 1 minute (.016 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 26,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Regulations and Forms Services Division, Immigration and Naturalization Service, U.S. Department of Justice, Room 4304, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, 601 D Street, NW., Patrick Henry Building, Suite 1600, Washington, DC 20530.

Dated: November 7, 2002.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 02–29189 Filed 11–15–02; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Immigration and Naturalization Service, DOJ.

ACTION: 30-Day Notice of Information Collection Under Review: Application to Replace Alien Registration Card; Form I–90.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on September 4, 2002 at 67 FR 56592, allowing for a 60-day public review and comment period. No comments were received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until December 18, 2002. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, 725—17th Street, NW., Room 10235, Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of currently approved collection.

(2) *Title of the Form/Collection:* Application to Replace Alien Registration Card.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–90. Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Not-for-profit institutions. The information collected will be used by the INS to determine eligibility for an initial Alien Registration Card, or to replace a previously issued card.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 410,799 responses at 55 minutes (.916) hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 376,292 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Regulations and Forms Services Division, Immigration and Naturalization Service, U.S. Department of Justice, Room 4304, 425 I Street, NW., Washington, DC 20536.

Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, 601 D Street, NW., Patrick Henry Building, Suite 1600, Washington, DC 20530.

Dated: November 7, 2002.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 02–29190 Filed 11–15–02; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: 60-day notice of information collection under review: New collection; 2002 Census of Publicly Funded Forensic Crime Laboratories.

The Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. This proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until January 17, 2003.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Cynthia J. Schwimer, Comptroller, 202–307–0623, Office of Justice Programs, U.S. Department of Justice, 810 7th Street, NW., Washington, DC 20531.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other

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technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information

(1) *Type of information collection:* New collection.

(2) *The title of the form/collection:* 2002 Census of Publicly Funded Forensic Crime Laboratories.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The form number is CFCL–1, Bureau of Justice Statistics, Office of Justice Programs, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State, Local or Tribal. Other: None. This information collection is a census of public crime laboratories that perform forensic analyses on criminal evidence. The information will provide statistics on laboratories' capacity to analyze forensic crime evidence, the number, types, and sources of evidence received per year, the number, types, and cost of analyses completed.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 400 respondents will complete a 1 hour form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total hour burden to complete the data collection is 400 annual burden hours.

If additional information is required contact: Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1600, 601 D Street, NW., Washington, DC 20004.

Dated: November 13, 2002.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 02–29203 Filed 11–15–02; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Labor Research Advisory Council; Notice of Meetings and Agenda

The Fall meetings of committees of the Labor Research Advisory Council will be held on December 9, 10, and 11, 2002. All of the meetings will be held in the Conference Center, of the Postal Square Building (PSB), 2 Massachusetts Avenue, NE., Washington, DC.

The Labor Research Advisory Council and its committees advise the Bureau of Labor Statistics with respect to technical matters associated with the Bureau's programs. Membership consists of union research directors and staff members. The schedule and agenda of the meetings are as follows:

Monday, December 9, 2002 9:30 a.m.—Committee on Employment and Unemployment Statistics—Meeting Room 9

1. Review of the new Job Openings and Labor Turnover Survey (JOLTS) data.
2. Review of the new quarterly Covered Employment and Wages (CEW, or ES–202) data release.
3. Review of past and current approaches, and discussion of possible future approaches to benchmarking State and area labor force estimates to the Current Population Survey (CPS).
4. Review of the estimated impact of Census 2000 population weights and new race/ethnicity standards on CPS estimates.
5. Topics for next meeting.

1:30 p.m.—Committee on Occupational Safety and Health Statistics—Meeting Room 9

1. 2001 Census of Fatal Occupational Injuries Briefing.
2. Hispanic Workers in the United States, an Analysis of Employment Distribution, Fatal Occupational Injuries, and Non-Fatal Occupational Injuries and Illnesses (Paper prepared for the National Academy of Sciences).
3. Follow-Back Surveys.
   a. Respiratory chemical disease agents.
   b. Workplace violence.
   c. Truck Drivers.
4. Analysis of New Data on Hours at Work from 2002 Recordkeeping Change.
5. Internet data collection.
6. Other Survey of Occupational Injuries and Illnesses changes and updates
7. Upcoming publications
8. Budget update
9. Topics for next meeting

Tuesday, December 10, 2002 *9:30 a.m.—Committee on Compensation and Working Conditions—Meeting Room 9*

1. Contract expirations and work stoppages.
2. Discussion of paper on hours of work and paid time off.
3. Current data on Family and Medical Leave.
4. New data releases from the BLS compensation office.
5. New business.
6. Topics for next meeting.

1:30 p.m.—Committee on Prices and Living Conditions—Meeting Room 9

1. Analysis of the behavior of the new, superlative Consumer Price Index (CPI) that the Bureau first released this past August.
2. Discussion of efforts to adjust prices of telecommunications equipment for quality change in the Producer Price Index,

Wednesday, December 11, 2002 *9:30 a.m.—Committee on Productivity, Technology and Growth—Meeting Room 9*

1. Review of the assumptions underlying the aggregate economic projections
2. Revisions to major sector productivity series
3. Topics for next meeting

Committee on Foreign Labor Statistics—Meeting Room 9

1. International Comparisons of Hours Worked.
2. Technical cooperation activities.
3. Topics for next meeting.

The meetings are open to the public. Persons planning to attend these meetings as observers may want to contact Wilhelmina Abner on 202–691–5970.

Signed at Washington, DC, this 8th day of November, 2002.

Kathleen P. Utgoff,

Commissioner.

[FR Doc. 02–29104 Filed 11–15–02; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D–10995, *et al.*]

Proposed Exemptions; A Northern Trust Company and Affiliates

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions,

unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** notice. Comments and requests for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and requests for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration (PWBA), Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. _____, stated in each Notice of Proposed Exemption. Interested persons are also invited to submit comments and/or hearing requests to PWBA via e-mail or FAX. Any such comments or requests should be sent either by e-mail to: *"moffittb@pwba.dol.gov"*, or by FAX to (202) 219–0204 by the end of the scheduled comment period. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

A Northern Trust Company and Affiliates; Located in Chicago, Illinois

[Application No. D–10995]

Proposed Exemption

Section I—Exemption for In-Kind Redemption of Assets

If the proposed exemption is granted, the restrictions of section 406(a) and 406(b) of ERISA and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (F) of the Code shall not apply,[1] to the in-kind redemption (the Redemption) by the Northern Trust Company Thrift-Incentive Plan (the Plan) (the Applicant) of shares (the Shares) of proprietary mutual funds currently offered by or offered in the future by investment companies for which the Northern Trust Company (Northern) or an affiliate thereof provides investment advisory and other services (the Mutual Funds), provided that the following conditions are met:

(A) The Plan pays no sales commissions, redemption fees, or other similar fees in connection with the Redemption (other than customary transfer charges paid to parties other than Northern and any affiliates of Northern (Northern Affiliates);

(B) The assets transferred to the Plan pursuant to the Redemptions consist entirely of cash and Transferable Securities. Notwithstanding the foregoing, Transferable Securities which are odd lot securities, fractional shares and accruals on such securities may be distributed in cash;

(C) With certain exceptions defined below, the Plan receives a pro rata portion of the securities of the Mutual Fund upon a Redemption that is equal in value to the number of Shares redeemed for such securities, as determined in a single valuation performed in the same manner and as of 3 p.m. Chicago time (local time for the closing of the exchanges) on the same day in accordance with Rule 2a–4 under the Investment Company Act of 1940, as amended ("1940 Act") and the then-existing procedures established by the Board of Trustees of the Mutual Fund (using sources independent of Northern and Northern Affiliates);

(D) Northern or any affiliates thereof, does not receive any fees, including any fees payable pursuant to Rule 12b–1 under the 1940 Act in connection with any redemption of the Shares;

(E) Prior to a Redemption, Northern provides in writing to an independent fiduciary, as such term is defined in Section II (an Independent Fiduciary), a full and detailed written disclosure of information regarding the Redemption:

(F) Prior to a Redemption, the Independent Fiduciary provides written authorization for such Redemption to Northern, such authorization being terminable at any time prior to the date of Redemption without penalty to the Plan, and such termination being effectuated by 3 p.m. Chicago time following the date of receipt by Northern of written or electronic notice regarding such termination (unless circumstances beyond the control of Northern delay termination for no more than one additional business day);

(G) Before authorizing a Redemption, based on the disclosures provided by the Mutual Fund to the Independent Fiduciary, the Independent Fiduciary determines that the terms of the Redemption are fair to the participants of the Plan, and comparable to and no less favorable than terms obtainable at arms-length between unaffiliated parties, and that the Redemption is in the best interest of the Plan and its participants and beneficiaries;

(H) Not later than thirty (30) business days after the completion of a Redemption, the relevant Fund will provide to the Independent Fiduciary a written confirmation regarding such Redemption containing:

(i) The number of Shares held by the Plan immediately before the Redemption (and the related per Share net asset value and the total dollar value of the Shares held),

(ii) The identity (and related aggregate dollar value) of each security provided to the Plan pursuant to the Redemption, including each security valued in accordance with Rule 2a–4 under the Investment Company Act of 1940, as amended ("1940 Act") and the then-existing procedures established by the Board of Trustees of the Mutual Fund (using sources independent of Northern and Northern Affiliates);

[1] Section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996) generally transferred the authority of the Secretary of the Treasury to issue exemptions under section 4975(c)(2) of the Code to the Secretary of Labor. For purposes of this exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

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(iii) The current market price of each security received by the Plan pursuant to the Redemption, and

(iv) The identity of each pricing service or market-maker consulted in determining the value of such securities;

(I) The value of the securities received by the Plan for each redeemed Share equals the net asset value of such Share at the time of the transaction, and such value equals the value that would have been received by any other investor for shares of the same class of the Mutual Fund at that time;

(J) Subsequent to a Redemption, the Independent Fiduciary performs a post-transaction review which will include, among other things, testing a sampling of material aspects of the Redemption deemed in its judgment to be representative, including pricing;

(K) Each of the Plan's dealings with: the Mutual Funds, the investment advisors to the Mutual Funds (the Investment Advisers), the principal underwriter for the Mutual Funds, or any affiliated person thereof, are on a basis no less favorable to the Plan than dealings between the Mutual Funds and other shareholders holding shares of the same class as the Shares;

(L) Northern will maintain, or cause to be maintained, for a period of six years from the date of any covered transaction such records as are necessary to enable the persons described in paragraph (M) below to determine whether the conditions of this exemption have been met, except that (i) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of Northern, the records are lost or destroyed prior to the end of the six year period, (ii) no party in interest with respect to the Plan other than Northern shall be subject to the civil penalty that may be assessed under section 502(i) of the Act or to the taxes imposed by section 4975(a) and (b) of the Code if such records are not maintained or are not available for examination as required by paragraph (M) below;

(M)(1) Except as provided in subparagraph (2) of this paragraph (M), and notwithstanding any provisions of section 504(a)(2) and (b) of the Act, the records referred to in paragraph (L) above are unconditionally available at their customary locations for examination during normal business hours by (i) any duly authorized employee or representative of the Department of Labor, the Internal Revenue Service, or the Securities and Exchange Commission, (ii) any fiduciary of the Plan or any duly authorized representative of such fiduciary, (iii) any participant, beneficiary, or union employee covered by the Plan or duly authorized representative of such participant, beneficiary, or union employee, (iv) any employer whose employees are covered by Plan and any employee organization whose members are covered by such Plan.

(2) None of the persons described in paragraphs (M)(1)(ii), (iii) and (iv) shall be authorized to examine trade secrets of Northern or the Mutual Funds, or commercial or financial information which is privileged or confidential; and

(3) Should Northern or the Mutual Funds refuse to disclose information on the basis that such information is exempt from disclosure pursuant to paragraph (2) above, Northern shall, by the close of the thirtieth (30th) day following the request, provide a written notice advising that person of the reasons for the refusal and that the Department may request such information.

Section II—Definitions

For purposes of this proposed exemption,

(A) The term "affiliate" means:

(1) Any person (including corporation or partnership) directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person;

(2) Any officer, director, employee, relative, or partner in any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner, or employee.

(B) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(C) The term "net asset value" means the amount for purposes of pricing all purchases and sales calculated by dividing the value of all securities, determined by a method as set forth in the Mutual Fund's prospectus and statement of additional information, and other assets belonging to the Mutual Fund, less the liabilities charged to each such Mutual Fund, by the number of outstanding shares.

(D) The term "Independent Fiduciary" means a fiduciary who is: (i) Independent of and unrelated to Northern and its affiliates, and (ii) appointed to act on behalf of the Plan with respect to the in-kind transfer of assets from one or more Mutual Funds to or for the benefit of the Plan. For purposes of this exemption, a fiduciary will not be deemed to be independent of and unrelated to Northern if: (i) Such fiduciary directly or indirectly controls, is controlled by or is under common control with Northern, (ii) such fiduciary directly or indirectly receives any compensation or other consideration in connection with any transaction described in this exemption; except that an independent fiduciary may receive compensation from Northern in connection with the transactions contemplated herein if the amount or payment of such compensation is not contingent upon or in any way affected by the independent fiduciary's ultimate decision, and (iii) more than 2 percent (2%) of such fiduciary's gross income, for federal income tax purposes, in its prior tax year, will be paid by Northern and its affiliates in the fiduciary's current tax year.

(E) The term "Transferable Securities" shall mean securities (1) for which market quotations are readily available (as determined under in Rule 2a–4 of the 1940 Act) and (2) which are not: (i) Securities which, if distributed, would require registration under the 1933 Act: (ii) securities issued by entities in countries which (a) restrict or prohibit the holding of securities by non-nationals other than through qualified investment vehicles, such as the Mutual Funds, or (b) permit transfers of ownership of securities to be effected only by transactions conducted on a local stock exchange; (iii) certain portfolio positions (such as forward foreign currency contracts, futures and options contracts, swap transactions, certificates of deposit and repurchase agreements) that, although they may be liquid and marketable, involve the assumption of contractual obligations, require special trading facilities or can only be traded with the counter-party to the transaction to effect a change in beneficial ownership; (iv) cash equivalents (such as certificates of deposit, commercial paper and repurchase agreements) which are not readily distributable; (v) other assets which are not readily distributable (including receivables and prepaid expenses), net of all liabilities (including accounts payable); and (vi) securities subject to "stop transfer" instructions or similar contractual restrictions on transfer.

(F) The term "relative" means a "relative" as that term is defined in section 3(15) of ERISA (or a "member of the family" as that term is defined in section 4975(e)(6) of the Code), or a brother, sister, or a spouse of a brother or a sister.

Summary of Facts and Representations

1. Northern Trust Corporation (Holding Company) is a bank holding company headquartered in Chicago, Illinois and organized as a Delaware corporation. Northern, Northern Trust Investments, Inc. (NTI), and Northern Trust Global Investments-Europe (NTGI) are each direct or indirect wholly-owned subsidiaries of the Holding Company. NTI is registered under the Investment Advisers Act of 1940 (the Advisers Act).

2. Northern is the trustee of the Trust. The Plan is a defined contribution profit sharing plan and includes a section 401(k) arrangement maintained by Northern for certain current and former employees of Northern and Northern Affiliates. As of December 31, 2001, the Plan had approximately 8,817 participants and $854,420,878 in assets.

3. The Plan's Investment Committee (the Committee) determined that the Plan would benefit from the investment of the Trust's assets in certain mutual fund portfolios organized within Northern Institutional Funds (NIF), which is a Delaware business trust and an open-end diversified investment company registered under the 1940 Act. Both NTI and NTGI act as investment advisors of mutual funds offered by NIF.

4. At the time, the Committee considered the Mutual Funds to be an appropriate vehicle for diversifying the Plan's assets. In addition, the Committee determined that investment in the Mutual Funds by the Plan would allow the Plan to continue to use certain in-house investment management services which otherwise might not have been available. As a result, the Committee decided to invest the Plan's assets in the Mutual Funds in accordance with Prohibited Transaction Exemption 77–3 (PTE 77–3, 42 FR 18734 (1977)).[2]

[2] The Applicant has not requested exemptive relief with respect to any investment in the Mutual Funds by the Plan. The Applicant notes that the Plan may acquire or redeem shares in the Mutual Funds pursuant to PTE 77–3. In this regard, PTE 77–3 permits the acquisition or sale of shares of a registered, open-end investment company by an employee benefit plan covering only employees of such investment company, employees of the investment adviser or principal underwriter for such investment company, or employees of any affiliated person (as defined therein) of such investment adviser or principal underwriter, provided certain conditions are met. The Department is expressing no opinion in this proposed exemption regarding whether any of the transactions with the Mutual Funds by the Plan is covered by PTE 77–3. Also, the Applicant is not requesting any exemptive relief for the subsequent reinvestment of the Transferable Securities in a collective trust fund maintained by Northern (or one of its affiliates). In this regard, section 408(b)(8) of ERISA allows for the purchase of an interest in such a fund maintained by a party in interest which is a bank or at trust company if the requirements of section 408(b)(8) are satisfied. The Department is expressing no opinion in this proposed exemption regarding whether the reinvestment of the Transferable Securities is covered by section 408(b)(8) of ERISA.

5. One of the mutual funds in which the Plan is currently invested is the Northern Institutional Equity Index Portfolio (S&P 500 Index Portfolio). As of October 30, 2002 the Plan held approximately 18.75 percent of the shares of this Fund. The Committee now believes that the S&P 500 Fund under the Collective Trust is a more appropriate equity index option for the participants under the Plan than the S&P 500 Index Portfolio.[3] Northern estimates that once the Plan's *pro rata* share of the securities the S&P Index Portfolio are used to purchase shares in the S&P 500 fund under the Collective Trust, the Plan's interest in the S&P 500 fund under the Collective Trust will be less than 2 percent.

6. The Applicant represents that the Redemption, as proposed, is the appropriate means of effectuating this shift in investment strategy. In this regard, the Applicant represents that effecting a redemption of the Shares for cash, as provided for in PTE 77–3, followed by the reinvestment of such cash in securities similar to the securities underlying the redeemed Shares, would cause the Plan to incur certain costs, including potentially large brokerage expenses. As a result, the Committee represents that the proposed Redemption, being on an in-kind basis having no associated brokerage commission or other fees or expenses (other than customary transfer charges paid to parties other than Northern Affiliates), is a cost-effective means of implementing the investment strategy sought by Northern.[4]

[3] Collective investment funds have historically been valued monthly or quarterly and have not permitted daily additions or transfers. In addition, it has historically been difficult to transmit pricing information on collective investment funds to investors. Recently, the assets in the Collective Trust have been valued daily. Further, investors directing investments into the Collective Trust are able to transfer among investments on any trading day and are able to access daily pricing information using a toll-free telephone number. Because of these developments, the advantages of using a mutual fund investment option have dissipated when a comparable collective fund investment is available. Finally, the Plan will benefit financially from the change in investment because (i) unlike the S&P 500 Index portfolio under the Mutual Fund, the S&P 500 Index Fund in the Collective Trust charges no fund-level management fees and (ii) at this time, Northern does not plan to charge the Plan any account-level management fees in connection with its investment in the S&P 500 Index Fund in the Collective Trust.

[4] The Applicant represents that should there be additional in-kind transactions under this exemption involving the mutual funds advised by Northern or its affiliates, such in-kind transactions will only be effectuated where the independent fiduciary concludes that an in-kind transactions is in the best interests of the plan. Should the situation arise where the mutual fund intends to distribute securities rather than cash and the Plan intends to sell the majority of the securities once distributed, Northern will assume responsibility for any additional costs incurred as a result of this in-kind distribution and subsequent sale of securities from the mutual fund advised by Northern or its affiliates.

7. If this proposed exemption is granted, Northern anticipates the Redemption of certain Shares offered by the S&P 500 Index Portfolio in the near future. This Mutual Fund is advised by NTI. Northern represents that it is possible that the Plan fiduciaries may at a later date determine that it is in the best interest of the Plan and its participants and beneficiaries to redeem the Plan's interest in other Mutual Funds for which Northern, NTI, NTGI or an affiliate of Northern provides investment advisory services. Consequently, in the event that this proposed exemption is granted, and to the extent that all of the terms and conditions of the exemption, as granted, are met, the relief requested herein shall apply to any such future redemption.[5]

8. The Applicant states that the proposed Redemption involves ministerial transactions to be performed in accordance with pre-established objective procedures. As a result, the Applicant represents that the proposed transactions do not permit the trustee or any affiliate of the trustee to use its influence or control to acquire particular securities from the Mutual Funds. In addition, the Applicant states that all Mutual Fund Shares are offered and sold exclusively through the use of prospectuses and materials provided pursuant to the requirements of the Securities Act of 1933 and the 1940 Act and the rules and regulations thereunder.

9. The Applicant states that, to the extent possible, the Plan will transfer Shares to a Mutual Fund in return for a proportionate share of the securities held by such Mutual Fund. According to the Applicant, the Plan will receive only cash and Transferable Securities pursuant to any Redemption. In this regard, each Transferable Security subject to a Redemption will be

[5] As previously noted, the Department is expressing no opinion regarding the applicability of PTE 77–3 to the acquisition of the Shares by the Plan. In addition, the Department is expressing no opinion as to the applicability of section 404 of ERISA to the acquisition of the Shares by the Plan. In this regard, the Department directs the Applicant's attention to an advisory opinion issued to Federated Investors (Advisory Opinion 98–06A July 30, 1998), in which the Department noted that "if the decision by a plan fiduciary to enter into a transaction is not "solely in the interest" of the plan's participants and beneficiaries, *e.g.*, if the decision is motivated by the intent to generate seed money that facilitates the marketing of the mutual fund, then the plan fiduciary would be liable for any loss resulting from such breach of fiduciary responsibility, even if the acquisition of mutual fund shares was exempt by reason of PTE 77–3."

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transferred in-kind to the Plan, except those permitted to be distributed in cash. However, assets that are not Transferable Securities will not be distributed, but the Plan's proportionate interest in these assets will be transferred in cash. The Applicant states that the proposed Redemption will be therefore carried out, to the extent possible, on a pro rata basis as to the number and kind of securities transferred to the Plan.[6] Notwithstanding the foregoing, cash may be paid for securities not amounting to round lots (including the amount of any fixed income security that is less than the minimum amount permitted to be traded [7]) or which would not amount to round lots if included in the distribution, fractional shares and accruals on such securities.

10. The Applicant represents that the Board of Trustees of the Mutual Funds has adopted a procedure for the distribution of in-kind redemption requests in conformance with the no action letter issued by the staff of the Securities and Exchange Commission in Signature Financial Group Inc.[8] The Applicant represents that pricing methodology included in this procedure complies with section 2a–4 of the 1940 Act.

11. With the exception noted in footnote 9, the Applicant represents that, for purposes of the Redemption, the values of the Mutual Fund securities will be determined based on the current market price of such securities as of 3:00 p.m. Chicago time on the date of the Redemption request (the Valuation Date). The value of the securities in each Mutual Fund will be determined by using the then-existing valuation procedures established by the Board of Trustees for the Mutual Fund that will comply with Rule 2a–4 of the 1940 Act. In this regard, the Applicant represents that the "current market price" for exchange-traded securities held by the Mutual Funds are generally determined by using the closing prices of the security on its "primary exchange" for that trading day.[9]

12. The Applicant represents that, not later than 30 business days after completion of a Redemption, the Mutual Funds will confirm in writing to the Independent Fiduciary the following: (i) The number of Mutual Fund shares held by the Plan immediately before the Redemption (and the related per Share net asset value and the aggregate dollar value of the shares held); (ii) the identity (and related aggregate dollar value) of each security provided to the Plan upon the Redemption as described above; (iii) the price of each such security for purposes of the Redemption: and (iv) the identity of each pricing service or market-maker consulted in determining the value of such securities. In accordance with the conditions of this proposed exemption, similar procedures will be implemented with respect to any future Redemption of Shares of the Mutual Funds by an employee benefit plan maintained by Northern for the benefit of certain of its employees or the employees of its affiliates.

13. Northern represents that Consulting Fiduciaries, Inc. (CFI), a registered investment adviser under the 1940 Act, has confirmed its independence from Northern and is qualified to serve as an independent fiduciary as that term is defined in Section II. CFI, in turn, represents that it understands and will accept the duties, responsibilities and liabilities in acting as a fiduciary under the Act for the Plan. CFI represents that, if it is appointed as the Independent Fiduciary, it will be responsible for: (i) Analyzing, from an investment perspective, the fairness and reasonableness of the methodology used with respect to the Redemption, (ii) giving its opinion as to the fairness and reasonableness of such methodology, as compared with a redemption for cash and subsequent reinvestment of such cash, based on such analysis. This determination and opinion is set forth in a written report dated April 1, 2002 (the "Report"). Specifically, in the Report, CFI concludes that:

(a) The Redemption would likely avoid certain transaction costs otherwise incurred in a cash redemption; [10]

(b) The Shares and cash associated with the proposed Redemption will be calculated based on the Mutual Fund's respective statements of assets and liabilities, valued in accordance with the pricing procedures established by the Board of Trustees. In this regard, CFI has reviewed a sample spreadsheet developed by Northern to calculate the exact number of Shares and the residual cash to be transferred, and believes the information provided to be conceptually and mathematically correct;

(c) All securities held by the Mutual Funds, other than the non-Transferable Securities, are qualifying securities;

(d) The proposed transactions would be in compliance with the Plan's investment guidelines;

(e) The methodology used to conduct the Redemptions would be comparable to and no less favorable than a similar in-kind redemption reached at arms' length between unaffiliated parties. The Independent Fiduciary represents that, if this proposed exemption is granted and the Redemption is thereafter undertaken, it will be responsible for updating its findings and opinions to confirm whether such findings and opinions are applicable as of the anticipated date(s) of the Redemption. In this regard, CFI states that it will review the Redemption and confirm in writing whether such Redemption was effectuated consistent with the required criteria and procedures set forth in the Report. In carrying out this duty, CFI represents that, if the proposed exemption is granted and the Redemption occurs, it will conduct a post-exemption review, which will include: (i) Reviewing the Plan's current investment policy guidelines, (ii) reviewing the Plan's investment portfolio and the Mutual Fund's assets as of the most recent common date for which such data is available, (iii) estimating whether the Excluded Assets are consistent with the types of securities so defined, and whether the amount of these securities might be material, and (iv) ascertaining whether the policies, procedures and controls established for effectuating the transfers remain unchanged. Moreover, CFI represented that it will conduct a post-transfer review to provide an additional safeguard to the Plan. In this regard, CFI will evaluate and test whether the transfer was effectuated consistent with the required criteria and procedures and confirm this in writing. Consistent with this, CFI represents that if the exemption is granted and the redemption occurs, it will update the findings and opinions as set forth in the Report so as to confirm whether they still apply as of the expected date(s) of the transfer(s). CFI will provide its opinion that the proposed Redemption methodologies are fair to the Plan and reasonable in all material respects. In addition, CFI will state that the proposed Redemption is in the interest of the participants and beneficiaries of the Plan since the anticipated costs savings is likely to be material. CFI will conclude that if the exemption is granted, and all other essential facts and circumstances of the Redemption remain materially unchanged at the time Northern seeks to effectuate the Redemption, it will issue a favorable recommendation regarding the commencement of such effectuation.

14. In summary, it is represented that the proposed Redemption satisfies the statutory criteria for an exemption under section 408(a) of the Act for the following reasons:

(A) The Plan pays no sales commissions, redemption fees, or other similar fees in connection with the Redemption (other than customary transfer charges paid to parties other than Northern and Northern Affiliates);

(B) The assets transferred to the Plan pursuant to the Redemption consist entirely of cash and Transferable Securities. If the proposed transaction from one of the Mutual Funds does not consist entirely of Transferable Securities, the cash distributed would include an amount equal to the Plan's value of assets that are not Transferable Securities and the Plan's value of certain Transferable Securities permitted to be distributed in cash.

(C) With certain exceptions defined below, the Plan receives a pro rata portion of the securities of the Mutual Fund upon a Redemption that is equal in value to the number of Shares redeemed for such securities, as determined in a single valuation performed in the same manner and as of 3:00 p.m. Chicago time on the same day in accordance with the then-existing procedures established by the Board of Trustees of the Mutual Fund which will comply with Rule 2a–4 of the 1940 Act (using sources independent of Northern and Northern Affiliates);

(D) Northern, or any affiliate thereof, does not receive any fees, including any fees payable pursuant to Rule 12b–1 under the 1940 Act, in connection with any redemption of the Shares;

(E) Prior to a Redemption, Northern provides in writing to the Independent Fiduciary a full and detailed written disclosure of information regarding the Redemption;

(F) Prior to a Redemption, the Independent Fiduciary provides written authorization for such Redemption to Northern, such authorization being terminable at any time prior to the date of the Redemption without penalty to the Plan, and such termination being effectuated by the close of business following the date of receipt by Northern of written or electronic notice regarding such termination (unless circumstances beyond the control of Northern delay termination for no more than one additional business day);

(G) Before authorizing a Redemption, based on the disclosures provided by the Mutual Funds to the Independent Fiduciary, the Independent Fiduciary determines that the terms of the Redemption are fair to the participants of the Plan, and comparable to and no less favorable than terms obtainable at arm's length between unaffiliated parties, and that the Redemption is in the best interest of the Plan and its participants and beneficiaries;

(H) Not later than 30 business days after the completion of a Redemption, the relevant Fund will provide to the Independent Fiduciary a written confirmation regarding such Redemption containing:

(i) The number of Shares held by the Plan immediately before the Redemption (and the related per Share net asset value and the total dollar value of the Shares held),

(ii) The identity (and related aggregate dollar value) of each security provided to the Plan pursuant to the Redemption, including each security valued in accordance with the procedures established by the Board of Trustees for the Mutual Funds,

(iii) The current market price of each security received by the Plan pursuant to the Redemption, and

(iv) The identity of each pricing service or market-maker consulted in determining the value of such securities;

(I) The value of the securities received by the Plan for each redeemed Share equals the net asset value of such Share at the time of the transaction, and such value equals the value that would have been received by any other investor for shares of the same class of the Mutual Fund at that time;

(J) Subsequent to a Redemption, the Independent Fiduciary performs a post-transaction review which will include, among other things, a random sampling

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[6] According to NTI, the securities actually transferred from the Mutual Fund will have a relative aggregate income tax basis which is approximately equal to (within 1%) the relative aggregate income tax basis of the securities which are not being distributed in the proposed Redemption.

[7] The minimum tradeable denomination of any fixed income security is determined by the issuer or by the depository company appointed by the issuer to custody the indicia of ownership of the fixed income security. The minimum tradeable denomination is an attribute of any particular bond issue, and neither the Mutual Funds nor the Plan has any discretion to modify it. The typical minimum tradeable denomination of a fixed income security ranges from $1,000 to $100,000.

[8] In the no action letter to Signature Financial Group, Inc., the Division of Investment Management of the SEC states that it will not recommend enforcement action pursuant to section 17(a) of the Investment Company Act of 1940 for certain in-kind distributions of portfolio securities to an affiliate of a mutual fund. Funds seeking to use this "safe harbor" must value the securities to be distributed to an affiliate in an in-kind distribution "in the same manner as they are valued for purposes of computing the distributing fund's net asset value." The Applicant represents that, the Mutual Funds having adopted procedures in accordance with the Signature Financial Letter for use in affiliate transactions, and the Applicant must follow those procedures for transactions with its in-house plans, as these in-house plans are affiliates of the Mutual Funds. The Department agreed to the use of procedures consistent with the Signature Financial Letter for determining the value of the securities in this in-kind transaction, with the limitations described herein.

The Signature Financial Letter does not address the marketability of securities distributed in-kind. The range of securities distributed pursuant to this "safe harbor" may therefore be broader than the range of securities covered by SEC Rule 17a–7, 17 CFR 270.17a–7. In granting past exemptive relief with respect to in-kind transactions involving mutual funds, the Department has required that the securities being distributed in-kind fell within Rule 17a–7. One of the requirements of Rule 17a–7 is that the securities are those for which "market quotations are readily available." SEC Rule 17a–7(a). The Department has determined, and the Applicant agrees, that exemptive relief in this case will also be limited to in-kind distribution of securities for which market quotations are readily available. The value of any other securities will be paid to the plan in cash. Under the exemption requested by the Applicant, the Plan will receive only securities for which market quotations are readily available (as determined pursuant to the Funds' procedures described above) or cash. The Applicant represents that, although the Signature Financial Letter does not necessarily require pro rata distributions, the procedures adopted by the Mutual Funds do require pro rata distributions for the transactions contemplated herein.

[9] The pricing procedures for the S&P 500 Index in the Mutual Fund and the S&P 500 Portfolio under the Collective Trust are identical, and the same prices are used daily to calculate the net asset value for both funds. For an exchange-traded security, Northern uses the closing price of the security on its "primary exchange" for that trading day, requesting such information from independent third-party vendors. Non-exchange traded securities, which would be bonds not traded on an exchange or the NASDAQ National Market System, are generally valued at the most recent quoted bid price. However, the independent pricing systems may use "evaluated prices" if they believe such prices more accurately reflect the fair market value of these securities, taking into account such factors as prices, yields, maturities, call features, ratings, institutional size, trading in similar groups of securities and developments related to specific securities. Northern's primary pricing vendor for the securities in S&P 500 indices is Interactive Data Systems, Inc. If timely information is not received from IDSI, Northern's price determination defaults to a secondary pricing vendor, e.g., J. J. Kenny Co., Inc. Northern generally receives pricing information from vendors by 3:45 p.m. Chicago time on each trading day.

[10] With respect to the Redemption involving S&P 500 Index securities, CFI has concluded that the underlying securities are expected to be identical since the two investment funds are essentially identical and the in kind approach avoids the realization of trading commissions and exposure to market fluctuation. If the Northern proposes a future Redemption, it will request that the Independent Fiduciary determine whether the distributed securities will be appropriate investments in the collective investment trust into which the Plan will be investing. The Applicant represents that if the Independent Fiduciary determines that all of the distributed securities will be appropriate investments into the collective investment trust into which the Plan will invest, no further action will be required. If the Independent Fiduciary determines that some of the distributed securities will not be appropriate investments into the collective investment trust into which the Plan will invest, these securities would then be sold by the Plan on the relevant exchange for cash, and the cash would then be invested in the relevant collective fund. In this regard, the Department notes that the fiduciaries must determine, consistent with their fiduciary duties under section 404 of ERISA, whether it is prudent to accept an in-kind redemption of shares where the in-house plan may incur transaction costs in connection with the disposition of such redeemed securities shortly after receipt.

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of the pricing information supplied by Northern; and

(K) Each of the Plan's dealings with: The Mutual Funds, the Investment Advisers, the principal underwriter for the Mutual Funds, or any affiliated person thereof, is on a basis no less favorable to the Plan than dealings between the Mutual Funds and other shareholders holding shares of the same class as the Shares.

Notice to Interested Persons: Every participant and beneficiary of the Plan will be notified within 30 days after publication of this proposed exemption in the **Federal Register**, including beneficiaries of deceased employees and alternate payees. The notice to employee organizations defined in section 3(4) of ERISA is not applicable, as none exist. Notice to current employees with electronic mail access will be provided in accordance with the requirements of DOL Reg. section 2520.104b–1(c). Notice to current employees without electronic mail access will be provided by interoffice delivery to their worksite. Notice to current employees on long-term disability or extended leave, terminated employees with account balances under the Plan, alternate payees and beneficiaries of deceased employees and former employees will be provided by first-class mail. The notice will contain a copy of the **Federal Register**, and will inform interested persons of their right to comment on and request a hearing with respect to the proposed exemption. All relevant persons will be notified within one month of the publication of this proposed exemption in the **Federal Register**. The notices will inform interested persons of their right to comment and/or request a hearing. Comments and requests for a hearing must be received by the Department not later than 60 days from the date of publication of this notice of proposed exemption in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ms. Andrea W. Selvaggio of the Department, telephone (202) 693–8540. (This is not a toll-free number.)

Michigan Conference of Teamsters Welfare Fund (the Plan); Located in Detroit, MI

[Application No. L–11058]

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting an exemption under the authority of section 408(a) of the Act (or ERISA) and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of section 406(a)(1)(A) and (D) of the Act shall not apply to the cash sale, by the Plan, of certain parcels of real estate (the Property) to the Detroit Teamsters Temple Association (DTTA), a party in interest with respect to the Plan and a lessee of a portion of such Property, provided that the following conditions are satisfied:

(a) DTTA pays the fair market value as determined by a qualified, independent appraiser on the date of the transaction.

(b) The sale transaction has been reviewed and approved by an Independent Fiduciary (the Independent Fiduciary), who was appointed by the United States District Court for the Eastern District of Michigan, Southern Division (the Court) for purposes of enforcing a settlement agreement dated January 21, 1998 (the Settlement Agreement).

(c) The sale is a one-time transaction for cash.

(d) The Plan pays no fees or commissions in connection with the sale.

Summary of Facts and Representations

1. The Plan (or the Applicant) is a multiemployer welfare plan established in 1949. It is maintained pursuant to collective bargaining agreements between the Michigan Teamsters Joint Council No. 43 (the Union) and the Motor Carriers Employers Association of Michigan and Michigan Cartagemen's Association (the Associations). The Plan is administered by a board consisting of six trustees (the Trustees), three of whom are appointed by the Union (the Union Trustees) and three of whom are appointed by the Associations (the Association Trustees).

The Plan provides health, disability and death benefits to approximately 17,590 employees of employers that contribute to the Plan, as well as the employees' estimated 30,000 beneficiaries. Most of the Plan's 17,590 participants are covered by collective bargaining agreements between their employers and a local union affiliated with the Union (the Local Union). As of March 31, 2001, the Plan had total assets of $259.9 million.

2. In the past, the Plan has been the subject of scrutiny by the Department. In this regard, after an investigation of the Plan in 1995, the Department concluded that the then-Trustees had violated their fiduciary duties to the Plan. Based on the investigation results, the Department filed an action against the Trustees and the Plan's executive director on February 29, 1996 in the United States District Court for the Eastern District of Michigan in *Reich* v. *Holmes*, Case No. 96–60051 (E.D. Mich.). In March 1996, the defendants agreed to a consent order and judgment in the action and paid $724,717 to the Plan for reimbursement of excessive administrative expenses and restoration of losses resulting from prohibited transactions during the period from April 1, 1989 through March 31, 1994, plus $125,283 in civil penalties under section 502(l) of the Act.

Several months later, in July 1996, a group of Plan participants sued the then-Trustees and others in *Jordan* v. *Michigan Conference of Teamsters Welfare Fund*, Case No. CIV 96–73113 (E.D. Mich.). In that action, the Court appointed a Special Fund Counsel to investigate the allegations in the complaint. Based on the report and recommendations of the Special Fund Counsel, the parties entered into the Settlement Agreement effective January 21, 1998, which was reviewed and approved by the Court.

3. The Settlement Agreement provided for the appointment of an Independent Fiduciary who would serve for a term of four years from the date of the Settlement Agreement (*i.e.*, until January 21, 2002), unless otherwise agreed or ordered by the Court. The Independent Fiduciary had broad authority under the Settlement Agreement to review all actions of the Trustees and all of the Plan's policies. Such Independent Fiduciary was responsible for overseeing the implementation of the terms of the Settlement Agreement and for making recommendations to the Trustees concerning the prudent operation of the Plan.

Mr. Marc Gertner, a partner with the firm of Shumaker, Loop and Kendrick, was appointed Independent Fiduciary under the Settlement Agreement. Mr. Gertner has practiced law in the multiemployer area since ERISA was enacted. He is also the editor of the *Trustee Handbook*, a guide for multiemployer plan trustees, and a speaker on fiduciary issues.

4. DTTA is a non-profit, "membership" corporation under Michigan law. DTTA has no stockholders, and its members are Local Unions affiliated with the Union. The Union lists DTTA as a subsidiary organization on its form "LM–2" filed with the Department. DTTA serves as the "landlord" for the Union, acquiring and renting property for use by the Union, the Local Unions and their members. DTTA is also an employer whose employees are covered by the Plan.

Robert Rayes, one of the Plan's Union Trustees, is the President of DTTA. The other Union Trustees, William Bernard and H.R. Hillard, are officers of the Local Unions affiliated with the Union.

5. Among the assets of the Plan are two parcels of unimproved, commercial land (Parcel A and Parcel B), located in Detroit, Michigan, and totaling approximately 2.05 acres. Parcel A is located at 2702–2744 Cochrane Street and consists of 24,800 square feet of land that is fully landscaped and fenced. Parcel B consists of 64,480 square feet of land located at 1538–1576 Spruce Street and 1535–1571 Perry Street. Approximately 39% of Parcel B is landscaped and fenced, while the remaining portion is an asphalt parking lot.

The Property is contiguous to other real estate owned by DTTA.[11] Since July 1999, DTTA has been leasing a portion of the Property (located at 1535, 1541 and 1547 Perry Street) from the Plan to provide parking space in connection with space leased to DTTA at 2700 Trumbull Avenue. Under a month-to-month lease agreement, DTTA pays the Plan $66.25 per month for the use of such property at 1535, 1541 and 1547 Perry Street.[12] The rent charged is intended to cover the Plan's costs for the Perry Street properties, with monthly rent representing one twelfth of the Plan's annual costs for taxes ($645), insurance ($50) and maintenance ($100) for the leased property. The lease will be terminated upon DTTA's purchase of the subject Property.

6. The Plan purchased the lots comprising the Property over a long period of time,[13] with the majority of the lots being acquired in 1964 and the final lots being purchased in 1992.[14] The total acquisition cost for the Property was $196,000 and it is represented that no financing arrangements were ever involved. Over that same period of time, the Plan made certain improvements to the Property, such as landscaping and fencing, and it incurred demolition expenses to remove unwanted structures. These improvements cost the Plan an additional $29,875. Further, the Plan expended approximately $21,435 in real estate taxes between 1996 and 2001, based on what information was available, thereby bringing its total acquisition and holding costs with respect to the Property to approximately $242,978.[15]

7. The Property is located in a section of Detroit where property values, according to Signature Associates (Signature), the Plan's real estate broker, are declining. There is abundant, vacant property and vacant or derelict buildings in the area, including Tiger Stadium. In this regard, the Casino, which opened in 2000, also is located in the general area and has purchased some vacant property for parking and other uses. Although the Casino has approached the Plan in the past about purchasing other real estate that the Plan owns on the east side of Trumbull Avenue, the Casino has not shown any interest in the Property or any other real estate on the west side of Trumbull Avenue.

8. In addition to the Property's declining value, the Applicant represents that the Plan continues to pay property taxes that are a drain on its assets, except for that portion of the Property covered by the lease with DTTA (which includes real estate taxes and other expenses associated with the leased portion). By selling the Property, the Applicant represents that the Plan will be able to convert this asset into cash and then invest the cash in a vehicle more appropriate to the Plan's investment needs. However, the Applicant states that selling the Property is a problem because, although Signature has actively marketed the Property since September 17, 2001 at an asking price of $175,000, only one potential buyer has made an inquiry and no offers have been made.[16] The only other entity that has shown any interest in buying the Property is DTTA, according to the Applicant. Therefore, the Applicant requests an administrative exemption from the Department to permit the proposed sale of such Property to DTTA.

9. DTTA proposes to purchase the Property from the Plan for cash consideration, to be payable at closing. The purchase price for the Property will reflect the fair market value of such Property, as determined by a qualified, independent appraiser, on the date of the sale. The Plan will not be required to pay any real estate fees or commissions in connection with the transaction. In addition, Mr. Rayes has and will continue to recuse himself as President of DTTA from participating in any of the Plan's decisions concerning the Property to avoid violating the self-dealing and conflict of interest prohibitions under section 406(b)(1) and (b)(2) of the Act.

10. The Property has been appraised by Mr. Laurence G. Allen, a qualified, independent appraiser and President of Allen & Associates, a real estate valuation and consulting firm located in Birmingham, Michigan. Mr. Allen is a member of the American Institute of Real Estate Appraisers and is currently licensed in Michigan as a State Certified Real Estate Appraiser.

Initially, Mr. Allen performed an appraisal of the Property in fee simple on November 15, 2000 and issued a "restricted"[17] appraisal report, dated December 19, 2000, for use of internal decision-making by the Trustees. Mr. Allen's appraisal was based on the Sales Comparison Approach to valuation. The scope of the appraisal included research into market trends that would affect the value of the Property.

Based on the initial appraisal report, Mr. Allen placed the fair market value of Parcel A at $1.70 per square foot on November 15, 2000. He determined that Parcel A would be worth $42,160 as if vacant, and that the improvements were worth $4,112. Thus, Mr. Allen

[11] In this regard, DTTA owns lots at 2741, 2723 and 2715 Trumbull Avenue, which are separated from the Property by an alley. In addition, DTTA owns lots at 1520 and 1546 Perry Street, which are adjacent to the Property.

[12] The Applicant represents that the lease between the Plan and DTTA for a portion of the Property is covered under Prohibited Transaction Exemptions (PTEs) 76–1 (41 FR 12740, March 26, 1976) and 77–10 (42 FR 33918, July 1, 1977). The Department, however, expresses no opinion herein on whether the leasing arrangement complies with the provisions of PTEs 76–1 and 77–10. Accordingly, the Department is not proposing any exemptive relief beyond that offered by these class exemptions.

[13] The Department is expressing no opinion herein on whether the acquisition and holding of the Property by the Plan violated any of the provisions of Part 4 of Title I of the Act.

[14] The Applicant represents that from the 1960s through the 1980s, the Trustees purchased abandoned lots, such as the Property, in order to create a buffer zone around the Plan's building, protect the Plan's investment in its building, and ensure the safety of Plan employees. The Applicant indicates that while the Plan does not regularly use the Property, the Trustees considered the purchases a reasonable response to the urban blight in the surrounding neighborhood. The Applicant further indicates that the more recent purchases of lots in the 1990s were made on behalf of the Plan by L. Keith Taylor, a former Plan employee. The Trustees concluded that the 1992 purchases of lots 2702, 2710, 2716, 2720, and 2727 Cochrane Street by Mr. Taylor were improper and commenced an action against him and a real estate company involved in the sales to recover amounts the Plan had paid for the lots. In 1998, the Plan settled the action, recovering approximately $4,200 plus interest from Mr. Taylor and the real estate company.

[15] Although the Plan has received rental income totaling $2,186 on that portion of the Property which is leased to DTTA, the lease payments are intended to cover the Plan's costs with respect to this property. Therefore, the Plan's net income on this portion of the Property is $0.

[16] The Property has also been entered into the CoStar database, which provides commercial real estate information to its members in the commercial real estate community.

[17] Mr. Allen considered the appraisal report to be restrictive because reliance on the report was limited to the client. Also, without other information contained in the appraiser's work file, Mr. Allen thought the report would not be understood properly.

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concluded that the total fair market value of Parcel A was $46,000.

Similarly, Mr. Allen determined that Parcel B had a fair market value of $1.70 per square foot on November 15, 2000. He concluded that Parcel B was worth $109,616 as if vacant, and calculated the value of the improvements at $19,397, for a total fair market value of $129,000. Therefore, Mr. Allen placed the total appraised value of the Property, including the improvements, at $175,000 as of November 15, 2000.

In an updated appraisal report dated March 4, 2002, Mr. Allen again utilized the Sales Comparison Approach to valuation in order to calculate the value of the Property in fee simple in an "as is" condition.[18] The "as is" date of value for the appraisal was February 25, 2002, which was the date Mr. Allen states that the Property was last inspected.

Mr. Allen determined that Parcel A had a fair market value of $1.62 per square foot, or $40,176 as if vacant. With the addition of site improvements (*i.e.*, 100% landscaping and fencing around Parcel A) costing $2,863, Mr. Allen placed the total fair market value of Parcel A at $43,000 as of February 25, 2002.

With respect to Parcel B, Mr. Allen determined that the fair market value of this tract was $1.62 per square foot as of February 25, 2002. Mr. Allen concluded that Parcel B was worth $104,458 as if vacant, and calculated the value of the improvements (*i.e.*, 61% asphalt parking, 39% landscaping and partial fencing around Parcel B) at $13,565, for a total fair market value of $118,000. Thus, Mr. Allen placed the total appraised value of the Property including the improvements at $161,000 as of February 25, 2002.

Mr. Allen also concluded that the highest and best use of the Property is to provide parking for DTTA, an adjacent owner. In his analysis, Mr. Allen confirmed that the Property has special value to DTTA, and that the $161,000 appraised value takes into account a premium in the value of the Property to DTTA. Prior to the date of closing, Mr. Allen will again reevaluate the Property to determine whether or not there has been a change in the fair market value.

11. As stated above in Representation 2, the Settlement Agreement provided that Mr. Marc Gertner would continue to serve on behalf of the Plan as Independent Fiduciary until as late as January 21, 2002. However, Mr. Gertner concluded before that date that the terms of the Settlement Agreement had been implemented and that his involvement as Independent Fiduciary was no longer necessary. Accordingly, Mr. Gertner asked for and received the Court's permission to resign as Independent Fiduciary, effective October 31, 2001.

Mr. Gertner states that, prior to his resignation, he suggested to the Trustees that all unneeded, undeveloped real estate in the area of the Plan's office be listed for sale because he believed that it would be imprudent for an employee welfare plan to own land in the quantity held by the Plan. Although the Trustees authorized the sale of one parcel of real estate, Mr. Gertner states that his suggestion was met by resistance from some of the Trustees who felt that it was the wrong time to sell the remaining parcels of land comprising the Property, following the initial success of the nearby Motor City Casino (the Casino) and after the Mayor's announcement that he was working on a redevelopment plan for the general area, which included finding a developer and a new use for Tiger Stadium, as well as the rumored addition of motels and restaurants to the area. Mr. Gertner further indicates that, based on this information, he went along with the position of a majority of the Trustees to require that the Plan hold onto the Property because he did not believe it would be prudent or proper to miss out on a major upward surge in property values over the next year or two.

In the 18 months following the October 1999 decision to take the Property off the market, Mr. Gertner represents that messages were sent to the Casino stating that the Trustees were thinking of relisting the Property. In addition, Mr. Gertner indicates that he held discussions with real estate firms, lawyers, accountants and business people in the Greater Detroit area in order to determine what action to take with respect to the Property. After these discussions, Mr. Gertner determined that there was little hard, demonstrable evidence to support an expectation that the value of the Property would appreciate and, by the summer of 2001, he said he concluded that the proposed sale transaction would be in the Plan's best interests.

12. In a letter dated September 26, 2002 (the 2002 Letter), Mr. Gertner provided the Department with an updated and current opinion regarding the appropriateness of the proposed transaction. Mr. Gertner represents in the 2002 Letter that, at the August 28, 2002 meeting of the Trustees, he was redesignated as the Independent Fiduciary for the purpose of evaluating the proposed exemption transaction on behalf of the Plan. Aside from providing additional insight into fluctuating real estate values in the vicinity of the Property, as Independent Fiduciary, Mr. Gertner certifies in the 2002 Letter that it is prudent, proper and in the best interests of the Plan, its participants and their beneficiaries to effect the proposed sale of the Property as soon as possible to the highest responsible third-party offeror or, if none, to DTTA. Mr. Gertner states that he has based this conclusion on his review of the exemption application, as well as on Mr. Allen's independent appraisal of the Property. In addition, Mr. Gertner states that he held discussions with the Plan's Executive Director and the Plan's Counsel. Further, Mr. Gertner represents that he made inquiries of the listing realtor and the Detroit counsel who represented him and the Plan on real estate issues during his tenure as Independent Fiduciary. Based on this due diligence and after consideration of the matters at hand, Mr. Gertner explains that it remains his firm and unequivocal opinion that it is prudent, proper and in the best interests of the Plan participants and beneficiaries to proceed with the proposed sale transaction.

Moreover, Mr. Gertner states that the issue concerning undeveloped property, such as the Property, is how soon it can be sold and converted into investable cash at the highest obtainable price, but at all times in a prudent and proper, ERISA-compliant manner. He opines that following an apparent spurt in values, fanned by hopes of a city plan of revitalization and a rampant rumor-mill, values have trended downward, and that it appears from his due diligence, there is no reason to presume a change in this trend.

Mr. Gertner also asserts that since the Property produces minimal rental income, it is a net cash drain on the Plan due to taxes, insurance and maintenance. Because the Plan has no apparent nor imminent need or use for any of the Property, Mr. Gertner believes that the sale of such Property to a third party or to DTTA will convert a cash-draining asset into cash which can be invested by one or more of the Plan's investment managers in accordance with the Plan's investment objectives in order to produce income to provide benefits to the participants and their beneficiaries. Mr. Gertner notes that the Plan's corpus could always use additional funds and that now appears to be an opportune time for reinvestment.

[18] Although the restriction was removed from the updated appraisal, Mr. Allen noted that the appraisal report had been prepared solely for the Trustees and the Department as part of the proposed sale transaction.

13. The Applicant represents that the proposed transaction is administratively feasible since the sale will be completed at closing, and no ongoing involvement by the Department is required to safeguard the interests of the Plan's participants and beneficiaries. Furthermore, the Applicant states that the transaction is in the best interests of the Plan's participants and their beneficiaries because it will permit the Plan to convert an asset with a declining value and an annual out-of-pocket tax expense into cash proceeds that can be invested to provide a better return. The Applicant also states that this, in turn, will benefit the Plan's participants and beneficiaries by increasing the Plan's assets and enhancing the Plan's ability to provide benefits and improve benefits. Finally, the Applicant asserts that the transaction is protective of the rights of the participants and beneficiaries because the transaction will be for cash with no deferred payments, involves only a small percentage of the Plan's total assets, and has been reviewed by the Plan's Independent Fiduciary who has determined that such transaction is protective of the interests of the Plan's participants and beneficiaries.

14. In summary, it is represented that the proposed transaction will satisfy the statutory criteria for an exemption under section 408(a) of the Act because:

(a) DTTA will pay the most current appraised value as determined by a qualified, independent appraiser.

(b) The sale transaction has been reviewed and approved by an Independent Fiduciary who was appointed by the Court for purposes of enforcing the terms of the Settlement Agreement.

(c) The sale will be a one-time transaction for cash.

(d) The Plan will pay no fees or commissions in connection with the sale.

Notice to Interested Persons

The Trustees will provide notice of the proposed exemption to all Plan participants as interested parties, by personal delivery or by first class mail within 10 days of the date of publication of the notice of pendency in the **Federal Register**. The notice will include a copy of the proposed exemption and a supplemental statement in substantially the same form as set forth in 29 CFR 2570.43(b)(2), which will inform interested persons of their right to comment on the proposed exemption. Comments regarding the proposed exemption are due within 40 days of the date of publication of the notice of pendency in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ms. Anna M.N. Mpras of the Department, telephone (202) 693–8565. (This is not a toll-free number.)

The Profit Sharing Trust of Dr. Ferdinand G. Mainolfi (the Plan) Located in Baltimore, MD

[Exemption Application No. D–11108]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code[19] shall not apply to the proposed sale of parcels of improved real property (the Property) by the Plan to Ferdinand G. Mainolfi (Dr. Mainolfi), a disqualified person with respect to the Plan; provided that: (1) The sale will be a one-time transaction for cash; (2) as a result of the sale, the Plan will receive the fair market value of the Property, as determined by an independent, qualified appraiser, as of the date of the transaction; (3) the Plan will pay no commissions, fees, or other expenses in connection with the sale; and (4) the terms of the sale will be no less favorable to the Plan than terms it would have received under similar circumstances in arm's length negotiations with unrelated third parties.

Summary of Facts and Representations

1. The Plan is a defined contribution profit sharing plan sponsored by Ferdinand G. Mainolfi, Inc. (the Employer). The Employer is engaged in the practice of medicine in Baltimore, Maryland. Dr. Mainolfi is the sole shareholder of the Employer, the only participant in the Plan, and serves as the trustee of the Plan. The Plan had, as of August 31, 2001, total assets of approximately $940,992.

2. The Property which is the subject of this exemption is located in the northeastern quadrant of Carroll County Maryland, less than two miles from the center of Manchester, Maryland, approximately two miles south of the Pennsylvania State Line, and three miles from the Baltimore County line. The neighborhood consists of a diversity of housing styles ranging from larger homes on farms and very large lots to older more modest houses and cottages interspersed with active agricultural operations and forest.

The Property consists of two (2) parcels which border each other. The parcels are known respectively as the Mainolfi Farm (Parcel 1) and the Benjamin Lot (Parcel 2). The Plan acquired these parcels in two transactions with sellers unrelated to Dr. Mainolfi. It is represented that the Plan purchased the Property for long term investment.

It is represented that a sharecropper, who is unrelated to Dr. Mainolfi, has been farming the tillable land on the Property, retaining the income, and paying all related expenses, in exchange for being responsible for the care and maintenance of the Property. It is represented that the Property has never been used personally by Dr. Mainolfi or any other party in interest. Dr. Mainolfi represents that he has made periodic inspections of the Property in satisfaction of his responsibility as trustee.

The Plan acquired Parcel 1 on August 10, 1971, for a purchase price of $32,000 from Mr. and Mrs. William Ensor, Jr. The Plan financed the purchase with a mortgage obtained from the sellers. Parcel 1 is comprised of 37.48 acres of land traversed by a stream. There are open spaces and large, mature shade trees throughout the parcel. A residence and outbuildings are located on an elevated section on the western edge of Parcel 1. There is proximity to a lake with facilities for boating and swimming. Parcel 1 is bounded on the east by woods, on the west by several large tracts of farmland, on the north by a floodplain, and on the south by Parcel 2.

The Plan acquired Parcel 2 on May 9, 1974, for a purchase price of $29,000 from Mr. Donald Benjamin. It is represented that the Plan financed the purchase with a mortgage from Baltimore Federal Savings and Loan. Parcel 2, consisting of 9.3119 acres, is entirely wooded, and is traversed by two streams.

3. This exemption is requested to permit the Plan to sell the Property to Dr. Mainolfi for the appraised fair market value of the Property on the date of sale. Dr. Mainolfi, acting as trustee for the Plan, wishes to sell the Property, which is illiquid.

It is represented that the proposed transaction is feasible in that it involves a one-time sale of the Property for cash. In addition, the Plan will be able to sell the Property without incurring any

[19] Pursuant to 29 CFR 2510.3–2(d), the Plan is not within the jurisdiction of Title I of the Act. However, there is jurisdiction under Title II of the Act, pursuant to section 4975 of the Code.

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further expense of searching for a buyer and without paying brokerage commissions, fees, or other expenses as a result of the sale. It is anticipated that once the Property is sold the cash proceeds will be invested so as to diversify the assets of the Plan.

In the opinion of Dr. Mainolfi, the proposed transaction is protective of the participant and beneficiaries of the Plan in that the sale price would be based on the fair market value of the Property, as determined by an independent, qualified appraiser, as of the date of the sale.

4. An appraisal of the Property was prepared by Herbert A. Davis, GRI (Mr. Davis) and Donna D. Fried, SRA (Ms. Fried), of Appraisal Connection, Inc., in Baltimore, Maryland. It is represented that Mr. Davis and Ms. Fried are qualified to perform the appraisal of the Property. In this regard, Mr. Davis is a graduate of the Realtors Institute of Maryland and has attended courses offered by the American Institute of Real Estate Appraisers. Ms. Fried has, from 1991 to the present, been licensed by the State of Maryland as a certified residential real estate appraiser. Ms. Fried is a member of the National Association of Real Estate Appraisers, the Maryland Association of Appraisers, Inc., and the Appraisal Institute, SRA.

It is further represented that both appraisers are independent in that neither has a present or prospective interest in the Property, nor any personal interest or bias with respect to the participants in the proposed transaction. It is represented that neither the employment nor the compensation of the appraisers was conditioned upon the appraised value of the Property, nor were the appraisers required to report a predetermined value or base the appraisal on a requested minimum value for the Property.

After physically inspecting the Property, the appraisers concluded the Property is not currently suited to subdivision due to location, zoning, and expense considerations. Taking into account the sales of similar properties in the recent past and having made adjustment to the reported sale prices of these comparable properties, it was determined by the sales comparison method of appraisal that the fair market value of the Property was $400,000, as of February 5, 2002.

5. In summary, the applicant represents that the proposed transaction meets the statutory criteria for an exemption under section 4975(a) of the Code because:

(a) The sale of the Property will be a one-time transaction for cash;

(b) As a result of the sale, the Plan will receive the fair market value of the Property, as determined by an independent, qualified appraiser, as of the date of the sale;

(c) The Plan will pay no commissions, fees, or other expenses as a result of the transaction;

(d) The terms of the sale will be no less favorable to the Plan than those it would have received in similar circumstances when negotiated at arm's length with unrelated third parties;

(e) The Plan will be able to invest the proceeds from the sale of the Property in order to diversify the assets of the Plan; and

(f) The Plan will be able to dispose of the Property which is illiquid.

Notice to Interested Persons

Because Dr. Mainolfi is the only participant in the Plan, it has been determined that there is no need to distribute the notice of proposed exemption to interested persons. Comments and requests for a hearing are due thirty (30) days after publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Angelena C. Le Blanc of the Department, telephone (202) 693–8540 (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 13 day of November, 2002.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 02–29197 Filed 11–15–02; 8:45 am]

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DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 2002–49; Exemption Application No. L–10929 *et al.*]

Grant of Individual Exemptions; Twin City Iron Workers Apprenticeship and Training Fund (the Trust Fund)

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

A notice was published in the **Federal Register** of the pendency before the Department of a proposal to grant such exemption. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, DC. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicant has represented that it has complied with the requirements of the notification to interested persons. No requests for a hearing were received by the Department. Public comments were received by the Department as described in the granted exemption.

The notice of proposed exemption was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemption is administratively feasible;

(b) The exemption is in the interests of the plan and its participants and beneficiaries; and

(c) The exemption is protective of the rights of the participants and beneficiaries of the plan.

Twin City Iron Workers Apprenticeship and Training Fund (the Trust Fund) Located in St. Paul, Minnesota

[Prohibited Transaction Exemption No. 2002–49; Exemption Application No. L–10929]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act shall not apply effective May 22, 2000 to the past purchase of a certain parcel of unimproved real property (the Property) by the Trust Fund from the Twin City Union No. 512 of Bridge, Structural and Ornamental Workers, Inc. (the Building Corporation), a party in interest with respect to the Trust Fund. This exemption is conditioned upon the adherence to the material facts and representations described in the proposed exemption and upon the satisfaction of the following conditions:

(a) The purchase of the Property by the Trust Fund was a one-time transaction for cash;

(b) The Trust Fund paid no more than the lesser of: (i) $48,000; or (ii) the fair market value of the Property as determined at the time of the transaction;

(c) The fair market value of the Property was established by an independent, qualified, real estate appraiser that was unrelated to the Building Corporation or any other party in interest with respect to the Trust Fund;

(d) The Trust Fund did not pay any commissions or other expenses with respect to the transaction;

(e) Standard Valuations, Inc. (SVI), acting as an independent, qualified fiduciary for the Trust Fund, determined that the transaction was in the best interest of the Trust Fund and its participants and beneficiaries;

(f) SVI monitored various aspects of the purchase of the Property until closing, including the environmental reports concerning the Property, and took whatever action was necessary to protect the interests of the Trust Fund; and

(g) The purchase price paid by the Trust Fund for the Property represented no more than 25 percent of the Trust Fund's total assets at the time of the transaction.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the Notice of Proposed Exemption published on August 9, 2002 at 67 FR 51878.

FOR FURTHER INFORMATION CONTACT: Khalif Ford of the Department, telephone (202) 693–8540 (this is not a toll-free number).

Child Health Corporation America (CHCA) Located in Shawnee Mission, KS

[Prohibited Transaction Exemption 2002–50; Exemption Application No. L–10939]

Exemption

The restrictions of sections 406(a) and 406(b) of the Act shall not apply to the (1) purchase, by a welfare plan (the Plan), whose hospital sponsor (the Hospital) is a member of CHCA, of third party insurance, through CHCA, the broker of record and a party in interest with respect to such Plan; and

(2) the receipt of an insurance sales commission by CHCA from the third party insurance company, in connection with the purchase of an insurance policy with the assets of the Plan.

This exemption is subject to the following conditions:

(a) The transactions are effected by CHCA in the ordinary course of its business.

(b) Each Plan pays no more than adequate consideration for an insurance policy that is brokered by CHCA.

(c) Prior to the execution of the transactions, CHCA provides each Hospital, which serves as the independent fiduciary of a Plan it sponsors, with the following written documentation:

(1) A statement setting forth the insurance sales commissions, expressed as a percentage of the gross annual premium payments that will be paid by the insurance company to CHCA with respect to the purchase of the insurance policy;

(2) A description of the charges, fees, discounts, penalties or adjustments which may be imposed under the insurance policy in connection with the purchase, holding, exchange, termination or sale of such policy; and

(3) A full description of CHCA's procedure for offsetting a Plan's allocable portion of insurance sales commissions that are received by CHCA and which are attributable to participant (*i.e.*, employee) contributions for welfare benefits paid through a Plan (the Participant Paid Premiums) against the amounts otherwise payable by such Plan for future premium contributions (the Premium Adjustment; the Premium Adjustment Procedure).

(d) Following the receipt of such information, the Hospital independent fiduciary acknowledges receipt of such information to CHCA, in writing, and approves the transactions on behalf of the respective Plan.

(e) On an annual basis, CHCA discloses all direct expenses it has incurred to independent Plan fiduciaries of its member Hospitals, including any Premium Adjustments that have been made.

(f) The transactions are on terms that are at least as favorable to a Plan as those available in arm's length transactions with an unrelated party.

(g) The combined total of all fees, insurance sales commissions and other consideration received by CHCA in connection with the purchase of insurance policies issued by a third party insurer or the provision of services to a Plan is not in excess of "reasonable compensation" within the contemplation of section 408(b)(2) and 408(c)(2) of the Act.

(h) There is no increased cost to a Plan nor any diminution in any benefit received by a Plan participant or beneficiary as a result of CHCA's receipt of insurance sales commissions.

(i) The Plan receives a Premium Adjustment based upon the excess of insurance sales commissions received that are attributable to Participant Paid Premiums over direct costs related to Participant Paid Premiums, if any, incurred by CHCA, in accordance with

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the Premium Adjustment Procedure, the steps of which are as follows:

(1) At the end of each calendar year, CHCA separates the total premiums paid between each Hospital and its respective Plan and the Participant Paid Premium portion of each total.

(2) CHCA calculates the commissions that are paid based on the Participant Paid Premiums.

(3) CHCA calculates the amount available for the patronage dividend by subtracting aggregate direct expenses incurred under its insurance program from the total commissions.

(4) CHCA calculates a breakdown of the commissions on a percentage basis based upon the ratio of Hospital paid premiums to Participant Paid Premiums.

(5) CHCA allocates the amounts available for the patronage dividend based upon the percentages determined above in subparagraph (i)(4).

(6) CHCA sends a check to the insurer with instructions to allocate such amount of Premium Adjustments attributable to commissions paid on Participant Paid Premiums on a per Hospital basis to be applied against a Plan participant's insurance rate schedule.

(7) CHCA requests written confirmation from the insurer that the Premium Adjustment has been made.

(j) CHCA establishes and maintains a system of internal and external accounting controls for the Premium Adjustment Procedure.

(k) CHCA retains an independent auditor to audit, on an annual basis, the Premium Adjustments made to the affected Plans.

(l) Within 90 days following the publication, in the **Federal Register**, of the notice granting the final exemption, CHCA makes full restitution to the participants of each affected Plan whose assets are attributed to CHCA's past fee arrangement with an independent broker and its subsequent compensation arrangement with the UNUM Life Insurance Company.

(m) CHCA maintains for a period of six years, in a manner that is accessible for audit and examination, the records necessary to enable the persons described in paragraph (n) to determine whether the conditions of this exemption have been met, except that—

(1) A prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of CHCA, such records are lost or destroyed prior to the end of such six year period; and

(2) No party in interest, other than CHCA, shall be subject to the civil penalty that may be assessed under section 502(i), or the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by paragraph (m).

(n)(1) Except as provided in subparagraph (n)(2) and notwithstanding anything to the contrary in sections 504(a)(2) and (b) of the Act, the records referred to in paragraph (m) are unconditionally available for examination during normal business hours by—

(A) Any duly authorized employees or representatives of the Department or the Internal Revenue Service;

(B) Any fiduciary of a Plan which has the authority to purchase an insurance policy by or on behalf of a Plan or any duly authorized employee or representative of such fiduciary; and

(C) Any participant or beneficiary of a Plan or any duly authorized employee or representative of such participant or beneficiary.

(2) None of the persons described above in subparagraph (n)(1)(B) or (C) shall be authorized to examine the trade secrets of CHCA or commercial or financial information which is privileged or confidential.

For a more complete statement of the facts and representations supporting the Department's decision to grant this proposed exemption, refer to the notice of proposed exemption published on August 9, 2002 at 67 FR 51880.

Written Comments

The Department received one written comment with respect to the proposed exemption and no requests for a public hearing. The written comment, which was submitted by CHCA, clarifies the operative language of the notice in the following areas:

1. *Deletion of the Phrase "Attributed to Participant (i.e., Employee) Contributions."* In describing the transactions that will be covered by the exemption, the initial paragraph of the proposal refers to CHCA's receipt of an insurance sales commission from a third party insurer, in connection with the purchase of an insurance policy with Plan assets that are "attributed to participant (*i.e.*, employee) contributions." CHCA suggests the deletion of the phrase "attributed to participant (*i.e.*, employee) contributions" because it believes that the language implies that there are assets other than employee premium payments that will be subject to the exemption.

2. *Deletion of the Phrase "Plan Assets" and Substitution with the Phrase "Participant Paid Premiums."* In the general conditions section of the proposed exemption, subparagraph (c)(3) states, in part, that prior to the execution of the transactions covered by the exemption, CHCA will provide each Hospital, which serves as the independent fiduciary of the Plan that it sponsors, with a full description of CHCA's procedure for offsetting a Plan's allocable portion of insurance sales commissions that CHCA receives and which are attributable to "Plan assets" against amounts otherwise payable by such Plan for future premium contributions.

CHCA requests that subparagraph (c)(3) of the proposal be modified by deleting the term "Plan assets" and substituting language to denote that the reference is meant to include employee contributions (*i.e.*, premiums) that are paid through each Hospital Plan. CHCA represents that it is important from its internal administrative perspective that individuals who perform the Premium Adjustment calculations can follow the exemption in detail and understand the type of information they should provide to insurance companies and to its member Hospitals.

Therefore, CHCA suggests that subparagraph (c)(3) of the final exemption be revised to read as follows:

(c)(3) A full description of CHCA's procedure for offsetting a Plan's allocable portion of insurance sales commissions that are received by CHCA and which are attributable to participant (*i.e.*, employee) contributions for welfare benefits paid through a Plan (the Participant Paid Premiums) against the amounts otherwise payable by such Plan for future premium contributions (the Premium Adjustment; the Premium Adjustment Procedure).

3. *Other Clarifications.* In the proposal, paragraph (i) of the conditions states that a Plan will receive a Premium Adjustment based upon the excess of insurance sales commissions over direct costs, if any, incurred by CHCA, in accordance with the Premium Adjustment Procedure, the steps of which are also set forth therein. In order to clarify that this condition pertains to "Participant Paid Premiums," CHCA recommends that paragraph (i) and subparagraphs (1), (4) and (6) of paragraph (i) be revised to read as follows:

(i) The Plan receives a Premium Adjustment based upon the excess of insurance sales commissions received that are attributable to Participant Paid Premiums over direct costs related to Participant Paid Premiums, if any, incurred by CHCA, in accordance with the Premium Adjustment Procedure, the steps of which are as follows:

(1) At the end of each calendar year, CHCA separates the total premiums paid between each Hospital and its respective Plan and the Participant Paid Premium portion of each total.

(2) CHCA calculates the commissions that are paid based on the Participant Paid Premiums.

* * * * *

(4) CHCA calculates a breakdown of the commissions on a percentage basis based upon the ratio of Hospital paid premiums to Participant Paid Premiums.

* * * * *

(6) CHCA sends a check to the insurer with instructions to allocate such amount of Premium Adjustments attributable to commissions paid on Participant Paid Premiums on a per Hospital basis to be applied against a Plan participant's insurance rate schedule.

* * * * *

CHCA believes that without these changes, there would be room for misunderstanding.

The Department concurs with the aforementioned clarifications to the proposal that have been provided by CHCA and it has made the suggested changes to the operative language of the final exemption. The Department also notes the corresponding changes to the Summary of Facts and Representations of the proposed exemption. Accordingly, after giving full consideration to the entire record, including CHCA's written comment, the Department has decided to grant the exemption subject to the modifications and clarifications described above.

For further information regarding the comment and other matters discussed herein, interested persons are encouraged to obtain copies of the exemption application file (Exemption Application No. L–10939) the Department is maintaining in this case. The complete application file, as well as all supplemental submissions received by the Department, are made available for public inspection in the Public Disclosure Room of the Pension and Welfare Benefits Administration, Room N–1513, U.S. Department Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 693–8556. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) This exemption is supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of this exemption is subject to the express condition that the material facts and representations contained in the application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 13th day of November, 2002.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 02–29196 Filed 11–15–02; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL CREDIT UNION ADMINISTRATION

Notice of Meeting

TIME AND DATE: 10 a.m., Thursday, November 21, 2002.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Request from a Federal Credit Union to Convert to a Community Charter.

2. *Final Rule:* Part 702 of NCUA's Rules and Regulations, Prompt Corrective Action (PCA).

3. *Proposed Rule:* Section 702.206 of NCUA's Rules and Regulations, PCA, Net Worth Restoration Plans.

4. *Proposed Rule:* Interpretive Ruling and Policy Statement (IRPS) 02–4, Amending the Regulatory Flexibility Act Provisions of IRPS 87–2.

5. *Proposed Rule:* Interpretive Ruling and Policy Statement (IRPS) 02–3, Section 701.1 of NCUA's Rules and Regulations, Amendments to NCUA's Chartering and Field of Membership Policies.

6. NCUA's Annual Performance Plan for 2003.

7. NCUA's Operating Budget for 2003/2004.

8. NCUA's Operating Fee Scale for 2003.

RECESS: 11:15 a.m.

TIME AND DATE: 11:30 a.m., Thursday, November 21, 2002.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Closed.

MATTERS TO BE CONSIDERED: 1. Three (3) Insurance Appeals. Closed pursuant to Exemptions (6) and (7).

FOR FURTHER INFORMATION CONTACT: Becky Baker, Secretary of the Board. Telephone: 703–518–6304.

Beckey Baker,

Secretary of the Board.

[FR Doc. 02–29323 Filed 11–14–02; 12:10 pm]

BILLING CODE 7535–01–M

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: National Science Foundation.

ACTION: Notice.

SUMMARY: Under the paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3501 *et seq.*), and as part of its continuing effort to reduce paperwork and respondent burden, the National Science Foundation (NSF) is inviting the general public or other Federal agencies to comment on this proposed continuing information collection.

DATES: Written comments (see below for details) on this notice must be received by January 17, 2003 to be assured of consideration. Comments received after that date will be considered to the extent practicable. Send comments to the address below.

Comments: Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to respondents, including through the use of automated

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collection techniques or other forms of information technology; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: For further information or for a copy of the collection instruments and instructions contact Ms. Suzanne H. Plimpton, Reports Clearance Officer, via surface mail: National Science Foundation, ATTN: NSF Reports Clearance Officer, Suite 295, 4201 Wilson Boulevard, Arlington, VA 22230; telephone (703) 292–7556; e-mail *splimpto@nsf.gov;* or FAX (703) 292–9188.

SUPPLEMENTARY INFORMATION:

Title of Collection: 2003 National Survey of College Graduates.

OMB Approval Number: 3145–0141.

Expiration Date of Approval: April 30, 2001.

Type of Request: Intent to seek approval to reinstate an information collection for three years.

1. *Abstract:* The National Survey of College Graduates (NSCG), formerly called the National Survey of Natural and Social Scientists and Engineers, has been conducted biennially since the 1970s. The 2003 NSCG will consist of a sample of individuals under the age 76 with at least a bachelor's degree as of April 1, 2000, the day of Census 2000. The 2003 NSCG will be the baseline survey for NSCG surveys for the rest of the decade. The purpose of this longitudinal study is to provide national estimates on the science and engineering workforce and changes in employment, education, and demographic characteristics. The study is one of three components of the Scientists and Engineers Statistical Data System (SESTAT), which produces national estimates of the size and characteristics of the nation's science and engineering population.

The National Science Foundation Act of 1950, as subsequently amended, includes a statutory charge to "* * * provide a central clearinghouse for the collection, interpretation, and analysis of data on scientific and engineering resources, and to provide a source of information for policy formulation by other agencies of the Federal Government." The NSCG is designed to comply with these mandates by providing information on the supply and utilization of the nation's scientists and engineers. Collected data will be used to produce estimates of the characteristics of these individuals. They will also provide necessary input into the SESTAT labor force data system, which produces national estimates of the size and characteristics of the country's science and engineering population. The Foundation uses this information to prepare congressionally mandated reports such as Women, Minorities and Persons with Disabilities in Science and Engineering and Science and Engineering Indicators. A public release file of collected data, designed to protect respondent confidentiality, will be made available to researchers on CD–ROM and on the World Wide Web.

The Bureau of the Census, as in the past, will conduct the study for NSF. Questionnaires will be mailed in October 2003 and nonrespondents to the mail questionnaire will be followed by computer-assisted interviewing. The survey will be collected in conformance with the Privacy Act of 1974 and the individual's response to the survey is voluntary. NSF will insure that all information collected will be kept strictly confidential and will be used only for research or statistical puposes, analyzing data, and preparing scientific reports and articles.

2. *Expected Respondents:* A sample of approximately 180,000 persons identified as having at least a bachelor's degree will receive the mail questionnaire. The sample will be selected according to generally accepted probability sampling procedures.

3. *Burden on the Public:* The amount of time to complete the questionnaire may vary depending on an individual's circumstances; however, on average it will take approximately 25 minutes to complete the survey. NSF estimates that the total annual burden will be 75,000 hours during the year.

Dated: November 12, 2002.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 02–29105 Filed 11–15–02; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Notice of Intent To Seek Approval To Reinstate an Information Collection

AGENCY: National Science Foundation.

ACTION: Notice and request for comments.

SUMMARY: The National Science Foundation (NSF) is announcing plans to request clearance of this collection. In accordance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), we are providing opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting that OMB approve clearance of this collection for no longer than 1 year.

DATES: Written comments on this notice must be received by January 17, 2003, to be assured of consideration. Comments received after that date will be considered to the extent practicable.

FOR FURTHER INFORMATION CONTACT: Contact Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230; telephone 703–292–7556; or send e-mail to *splimpton@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday. You also may obtain a copy of the data collection instrument and instructions from Ms. Plimpton.

SUPPLEMENTARY INFORMATION: *Title of Collection:* Evaluation of NSF Support for Undergraduate Research Opportunities (URO).

OMB Number: 3145–0121.

Expiration Date of Approval: Not applicable.

Type of Request: Intent to seek approval to reinstate an information collection for one year.

Abstract: "Evaluation of NSF Support for Undergraduate Research Opportunities (URO)."

Proposed Project: The National Science Foundation (NSF) manages a number of programs that provide meaningful research experiences for undergraduate students. This suite of programs include: Research Experiences for Undergraduates (REU), both the Site and Supplement components; Research in Undergraduate Institutions (RUI); the undergraduate research components in several of NSF's large research centers programs, *e.g.*, Engineering Research Centers (ERC) Programs, Science and Technology Centers (STCs); and several institution-wide resources development programs in which undergraduate research experiences are often one component.

These Programs provide a wide range of US undergraduate students with opportunities to conduct hands-on research under the mentorship of graduate students, postdoctoral fellows, and faculty in various types of higher education institutions, including small liberal arts colleges, minority-serving institutions, research universities, as well as non-profit institutions in which science or engineering research is conducted.

The purpose of the proposed evaluation is to examine the impact of undergraduate research experiences supported by NSF on the undergraduate student and faculty and other mentors who participate. Study questions include: Why do undergraduates choose to participate in research activities? What are the perceived advantages and disadvantages to faculty for mentoring undergraduates in research activities? What are the criteria for selecting students for research activities? What kinds of activities comprise undergraduate "research" experiences? How do undergraduate research experiences affect students' decisions about their academic and work future?

Use of the Information: The information will allow NSF to review its portfolio of programs in which a substantial number of undergraduates participate in research projects of faculty and other mentors to determine whether there needs to be any rebalancing. In addition, it will include an inventory of undergraduate research opportunities around the US and contribute to the literature on best practices in undergraduate research experiences.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 20 minutes per response.

Respondents: Individuals.

Estimated Number of Respondents: 9000.

Estimated Total Annual Burden on Respondents: 3000 hours—9000 respondents at 20 minutes each.

Frequency of Responses: One time.

Comments: Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents; and (d) ways to minimize the burden of the collection of information on those who are to respond.

Dated: November 13, 2002.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 02–29214 Filed 11–15–02; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 30–33887–CivP (EA 01–302), ASLBP No. 03–805–01–CivP]

High Mountain Inspection Service, Inc.; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28,710 (1972), and sections 2.205, 2.700, 2.702, 2.714, 2.714a, 2.717, 2.721, and 2.772(j) of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established to preside over the following proceeding: High Mountain Inspection Service, Inc., Mills, Wyoming; Order Imposing Civil Monetary Penalty.

This Board is being established pursuant to the request of High Mountain Inspection Service, Inc., for a hearing regarding an order issued by the NRC staff, dated September 30, 2002, entitled "Order Imposing Civil Monetary Penalty" (67 FR 63,170 (Oct. 10, 2002)).

The Board is comprised of the following administrative judges:

Ivan W. Smith, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Dr. Charles N. Kelber, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Dr. Peter S. Lam, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

All correspondence, documents and other materials shall be filed with the Panel Judges in accordance with 10 CFR 2.701.

Issued at Rockville, Maryland, this 12th day of November, 2002.

G. Paul Bollwerk, III,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 02–29213 Filed 11–15–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–17]

Portland General Electric Company Trojan Independent Spent Fuel Storage Installation; Notice of Docketing of Materials License SNM–2509 Amendment Application

By letter dated October 18, 2002, Portland General Electric Company (PGE) submitted an application to the Nuclear Regulatory Commission (NRC or the Commission), in accordance with 10 CFR part 72, requesting the amendment of the Trojan Independent Spent Fuel Storage Installation (ISFSI) license (SNM–2509) and the Technical Specifications for the ISFSI located at Columbia County, Oregon. PGE is seeking Commission approval to amend the materials license and the ISFSI Technical Specifications to reflect a change in the Holtec International Multi-Purpose Canister (MPC) helium backfill pressure upper limit.

This application was docketed under 10 CFR part 72; the ISFSI Docket No. is 72–17 and will remain the same for this action. The amendment of an ISFSI license is subject to the Commission's approval.

The Commission may issue either a notice of hearing or a notice of proposed action and opportunity for hearing in accordance with 10 CFR 72.46(b)(1) or, if a determination is made that the amendment does not present a genuine issue as to whether public health and safety will be significantly affected, take immediate action on the amendment in accordance with 10 CFR 72.46(b)(2) and provide notice of the action taken and an opportunity for interested persons to request a hearing on whether the action should be rescinded or modified.

For further details with respect to this amendment, see the application dated October 18, 2002, which is available for public inspection at the Commission's Public Document Room, One White Flint North Building, 11555 Rockville Pike, Rockville, MD or from the publically available records component of NRC's Agencywide Documents Access and Management System (ADAMS). The NRC maintains ADAMS, which provides text and image files of NRC's public documents. These documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by email to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 7th day of November 2002.

For the Nuclear Regulatory Commission.

Christopher M. Regan,

Project Manager, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 02–29209 Filed 11–15–02; 8:45 am]

BILLING CODE 7590–01–P

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NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Subcommittee Meeting on Planning and Procedures; Notice of Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on December 4, 2002, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c) (2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Wednesday, December 4, 2002—9:30 a.m. until 12 Noon

The Subcommittee will discuss proposed ACRS activities and related matters. The purpose of this meeting is to gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Persons desiring to make oral statements should notify the Designated Federal Official named below five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted only during those portions of the meeting that are open to the public.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been canceled or rescheduled, and the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the Designated Federal Official, Mr. Sam Duraiswamy (telephone: 301/415–7364) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes in the proposed agenda.

Dated: November 12, 2002.

Howard J. Larson,

Acting Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 02–29211 Filed 11–15–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Subcommittee Meeting on Safety Research Program

Notice of Meeting

The ACRS Subcommittee on Safety Research Program will hold a meeting on December 4, 2002, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, December 4, 2002—1:00 p.m. until the conclusion of business

The Subcommittee will continue to discuss the ACRS 2003 report on the NRC-sponsored research programs. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Persons desiring to make oral statements should notify the Designated Federal Official named below five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted only during those portions of the meeting that are open to the public.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, and the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the Designated Federal Official, Dr. Richard P. Savio (telephone 301/415–7363) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes in the proposed agenda.

Dated: November 12, 2002.

Howard J. Larson,

Acting Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 02–29212 Filed 11–15–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 050–00400]

License No. NPF–63; Carolina Power and Light Company; Notice of Issuance of Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission (NRC), has issued a Director's Decision with regard to a Petition dated November 5, 2001, filed by Mr. Jim Warren from NC WARN, hereinafter referred to as the "Petitioner." The Petition was supplemented on February 12, 2002, with another letter on the same topic. The Petition concerns the rail transport of spent nuclear fuel by Carolina Power and Light Company (CP&L).

The Petitioner requested that NRC take immediate action to halt the rail shipments of spent nuclear fuel by CP&L due to the terrorist attacks on September 11, 2001, and the continuing threat of terrorism.

As the basis for the request, the Petitioner raised concerns stemming from recent terrorist attacks, and the fact the Petitioner believes the trains transporting the spent nuclear fuel are slow-moving targets. The Petitioner considers such transport to be potentially unsafe for the citizens in his state and especially for those along the transport route.

On January 16, 2002, the NRC Petition was reviewed by a Petition Review Board (PRB). During the review, the PRB decided not to grant the part of the Petition that requested immediate halting of the rail shipments of spent nuclear fuel. Additionally, the letter dated February 12, 2002, supplementing the initial position taken by Mr. Warren and further requesting that NRC halt the rail shipments of spent nuclear fuel, did not change the decision of the PRB.

The NRC sent a copy of the proposed Director's Decision to the Petitioner and to CP&L for comment on August 29, 2002. The Petitioner responded with comments on September 27, 2002, and the licensee responded on September 24, 2002. The comments and the NRC staff's response to those comments are included in the Director's Decision.

The Director of the Office of Nuclear Material Safety and Safeguards has determined that the requests to immediately halt rail shipments of spent nuclear fuel shipments by CP&L be denied. The reasons for this decision are explained in the Director's Decision pursuant to 10 CFR 2.206 [DD–02–05], the complete text of which is available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and via the NRC's Web site (*http://www.nrc.gov*) on the World Wide Web, under the "Public Involvement" icon.

NRC staff has determined that the established system of existing regulations for spent nuclear fuel transport, coupled with the additional security measures from the recently issued transportation Orders, adequately protect the transportation of spent nuclear fuel. Thus, the Petition sent by Mr. Warren of NC WARN to halt CP&L rail shipments of spent nuclear fuel has been denied.

A copy of the Director's Decision will be filed with the Secretary of the Commission for the Commission's review in accordance with 10 CFR 2.206 of the Commission's regulations. As provided for by this regulation, the Director's Decision will constitute the final action of the Commission 25 days after the date of the Decision, unless the Commission, on its own motion, institutes a review of the Director's Decision in that time.

Dated at Rockville, Maryland, this 12th day of November, 2002.

For the Nuclear Regulatory Commission.

Martin J. Virgilio,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 02–29210 Filed 11–15–02; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: (67 FR 68702, November 12, 2002).

STATUS: Closed meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

ANNOUNCEMENT OF MEETINGS: Additional meetings.

The Securities and Exchange Commission held a closed meeting on Tuesday, November 12, 2002. The subject matter of that meeting was a regulatory matter bearing enforcement implications.

The Commission will hold an open meeting on Tuesday, November 19, 2002, at 2 p.m., in Room 1C30, the William O. Douglas Room.

Commissioner Glassman, as duty officer, determined that no earlier notice thereof was possible.

The Commission will also hold a closed meeting on Wednesday, November 20, 2002, at 10 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meetings. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(5), (7), (9)(A), (9)(B), and (10) and 17 CFR 200.402(a)(5), (7), 9(i), 9(ii) and (10), permit consideration of the scheduled matters at the closed meetings.

The subject matter of the open meeting scheduled for Tuesday, November 19, 2002, at 2 p.m., will be:

1. The Commission will consider whether to propose amendments to implement section 802 of the Sarbanes-Oxley Act of 2002. These proposed rules would specify the information that must be retained by auditors for a five-year period subsequent to the completion of an audit or review of a registrant's financial statements. In particular, the proposed rules would specify that auditors should retain workpapers and other documents that form the basis of the audit or review and memoranda, correspondence, communications, other documents, and records (including electronic records), which are created, sent or received in connection with the audit or review and contain conclusions, opinions, analyses, or financial data related to the audit or review.

2. The Commission will consider proposing amendments to its existing requirements regarding auditor independence to enhance the independence of accountants that audit and review financial statements and prepare attestation reports filed with the Commission. As directed by section 208(a) of the Sarbanes-Oxley Act of 2002, the Commission is considering proposing rules to:

- Revise its regulations related to the non-audit services that, if provided to an audit client, would impair an accounting firm's independence;
- Require that an issuer's audit committee pre-approve all audit and non-audit services provided to the issuer by the auditor of an issuer's financial statements;
- Prohibit partners on the audit engagement team from providing audit services to the issuer for more than five consecutive years;
- Prohibit an accounting firm from auditing an issuer's financial statements if certain members of management of that issuer had been members of the accounting firm's audit engagement team within the one-year period preceding the commencement of audit procedures;
- Require that the auditor of an issuer's financial statements report certain matters to the issuer's audit committee, including "critical" accounting policies used by the issuer; and
- Require disclosures to investors of information related to the audit and non-audit services provided by, and fees paid by the issuer to, the auditor of the issuer's financial statements.

In addition, under the proposed rules to be considered by the Commission, an accountant would not be independent from an audit client if any partner, principal or shareholder of the accounting firm who is a member of the engagement team received compensation based directly on any service provided or sold to that client other than audit, review and attest services.

3. The Commission will consider a recommendation to issue jointly, with the Department of the Treasury and the Board of Governors of the Federal Reserve System, a report to Congress on applying the anti-money laundering requirements of the Bank Secrecy Act to investment companies, as required by section 356(c) of the USA Patriot Act. The proposed report recommends regulations to apply the requirements of the Bank Secrecy Act to investment companies, including certain unregistered investment companies.

The subject matter of the closed meeting scheduled for Wednesday, November 20, 2002, at 10 a.m., will be:

Formal orders of investigation;

Institution and settlement of injunctive actions; and

Institution and settlement of administrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if

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any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942–7070.

Dated: November 13, 2002.

Jonathan G. Katz,

Secretary.

[FR Doc. 02–29310 Filed 11–14–02; 11:44 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

800America.com, Inc.; Order of Suspension of Trading

November 13, 2002.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of 800America.com, Inc. ("800America"), because of questions regarding: The accuracy of assertions by 800America, and by others, in press releases and/or in 800America's public filings, concerning, among other things, the earnings, revenues, expenses, and assets reported by 800America in its public filings since at least January 1, 2000; unregistered offerings being conducted by, among others, 800America's Chief Executive Officer; the criminal history of 800America's Chief Executive Officer; the identity of persons in control of the operations and management of 800America; and the criminal history of a person in control of the operations and management of 800America.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

Therefore, it is ordered, pursuant to section 12(k) of the Securities Exchange Act of 1934, that trading in the above-listed company is suspended for the period from 11:00 a.m. EST, on Wednesday, November 13, 2002 through 11:59 p.m. EST, on Tuesday, November 26, 2002.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 02–29239 Filed 11–13–02; 4:58 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46785; File No. SR–Amex–2002–55]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto by the American Stock Exchange LLC Instituting a Pilot Program To Amend the Listing Standards for Closed-End Management Investment Companies Registered Under the Investment Company Act of 1940

November 7, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and rule 19b–4 thereunder,[2] notice is hereby given that on June 14, 2002, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I, II, and III below, which items have been prepared by the Exchange. On November 1, 2002, the Amex filed amendment no. 1 to the proposed rule change with the Commission.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and to grant accelerated approval to the proposed rule change on a five-month pilot basis ("pilot").

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend sections 101 and 1003 of the Amex Company Guide on a five-month pilot basis to include specific initial and continued listing standards applicable to closed-end funds.

Below is the text of the proposed rule change. Proposed new language is *italicized.*

* * * * *

Section 101

(a)–(d)—No Change.

(e) Closed-End Management Investment Companies—The Exchange will generally authorize the listing of a closed-end management investment company registered under the Investment Company Act of 1940 (a "Closed-End Fund") that meets the following criteria:

(1) Size—market value of publicly held shares or net assets of at least $20,000,000; or

(2) A Closed-End Fund which is part of a group of Closed-End Funds which are or will be listed on the Exchange, and which are managed by a common investment adviser or investment advisers who are "affiliated persons" as defined in Section 2(a)(3) of the Investment Company Act of 1940 as amended (the "Group"), is subject to the following criteria:

i. *The Group has a total market value of publicly held shares or net assets of at least $75,000,000;*

ii. *The Closed-End Funds in the Group have an average market value of publicly held shares or net assets of at least $15,000,000; and*

iii. *Each Closed-End Fund in the Group has a market value of publicly held shares or net assets of at least $10,000,000.*

(3) Distribution—See section 102(a).

Commentary .01—No Change.

Section 1003

(a)—No Change.

(b) Limited Distribution—Reduced Market Value—The Exchange will normally consider suspending dealings in, or removing from the list, a security when any one or more of the following conditions exist:

(i)–(iv)—No Change.

(v) Closed-End Funds:

(A) If the total market value of publicly held shares and net assets are each less than $5,000,000 for more than 60 consecutive days; or

(B) It ceases to qualify as a closed-end fund under the Investment Company Act of 1940 (unless the resultant entity otherwise qualifies for listing).

* * * * *

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Claudia Crowley, Assistant General Counsel, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated October 31, 2002 ("amendment no. 1"). In amendment no. 1, among other things, the Exchange: (1) Amended proposed section 101(e)(2) of the Amex Company Guide to remove duplicative language and to explicitly provide that the listing standards applicable to a group of closed-end funds will apply to all listed funds with a common investment adviser or investment advisers who are "affiliated persons" as defined in section 2(a)(3) of the Investment Company Act of 1940; (2) clarified that all closed-end funds listed on Amex with a common investment adviser or investment advisers who are affiliated persons will be considered part of a "fund family," regardless of when the individual funds were listed; (3) represented that the Amex will not have discretion to list a closed-end fund that does not satisfy the quantitative criteria set forth in section 101(e) of the Amex Company Guide, but will have discretion to exclude a closed-end fund that otherwise satisfies the criteria; and (4) requested accelerated approval of the proposed rule change on a five-month pilot basis.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change, as amended, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to incorporate initial and continued listing standards specifically applicable to closed-end management investment companies registered under the Investment Company Act of 1940 ("closed-end funds") into the *Amex Company Guide.* Currently, closed-end funds are evaluated for listing pursuant to the general listing standards contained in section 101 of the *Amex Company Guide,* as well as specialized internal procedures applicable to closed-end funds.

In order to provide greater clarity to listing applicants and investors, the Exchange is proposing to incorporate revised closed-end fund listing standards into section 101 of the *Amex Company Guide.* These standards would permit the initial listing of a closed-end fund with a market value of publicly held shares or net assets of at least $20,000,000, which also satisfies the distribution criteria specified in section 102(a) of the *Amex Company Guide.*[4] Because closed-end funds are subject to extensive federal regulation, the Exchange proposes not to require a review of a fund's investment objective and asset diversification, as had been included in the Exchange's internal procedures, as that could unnecessarily limit the listing of specialized funds. Similarly, the Exchange believes that registration of the fund under the Investment Company Act of 1940, as amended ("1940 Act"), which requires the fund adviser to be a registered investment adviser, obviates the need for the Exchange to subjectively evaluate the fund adviser.

In addition, the Exchange is proposing to permit the listing of a group of funds listed by a single "fund family" (*i.e.,* funds with a common investment adviser or investment advisers who are "affiliated persons" as defined in section 2(a)(3) of the 1940 Act)[5] subject to the following standards:

- The group has a total market value of publicly held shares or net assets of at least $75,000,000;
- The closed-end funds in the Group have an average market value of publicly held shares or net assets of at least $15,000,000; and
- Each closed-end fund in the group has a market value of publicly held shares or net assets of at least $10,000,000.[6]

The Exchange represents that the group standards would be applicable to any fund that is part of a "fund family" even if the fund is not listed concurrently with other funds in the family, as long as at the time of listing the individual fund, the entire "fund family" is in compliance with the group standards.[7] Each fund will also be individually subject to the distribution criteria specified in section 102(a) of the Amex Company Guide.[8]

The Exchange believes that the "fund family" standards will enable the Exchange to accommodate the needs of fund sponsors, which often prefer to offer, issue and list funds in groups. The Exchange believes that when a fund is part of a larger family, compliance with a $20 million market value of publicly held shares or net asset requirement is not necessary for the fund to be suitable for listing, since the size of the fund family indicates that there is sufficient investor interest in the sponsor's funds.[9]

The Exchange is also proposing to amend section 1003 of the *Amex Company Guide* to specify that each closed-end fund (regardless of whether it is part of a "fund family") will be subject to delisting if its market value of public held shares and net assets are each less than $5,000,000 for 60 consecutive trading days, or if it ceases to qualify as a closed-end fund (unless the resultant entity otherwise qualifies for listing).

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with section 6(b) of the Act,[10] in general, and furthers the objectives of section 6(b)(5),[11] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Specifically, the Exchange believes that the proposed rule change will provide greater transparency with respect to the listing of closed-end funds, and potentially provide a larger number of such funds and their investors with the benefits inherent in an Amex listing of comprehensive regulation, transparent price discovery and trade reporting to facilitate best execution, and increased depth and liquidity resulting from the confluence of order flow found in an auction market environment.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change, as amended, will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received any written comments with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

[4] Section 102(a) of the Amex Company Guide requires a minimum public distribution of (i) 500,000 shares and 800 shareholders; or (ii) 1,000,000 shares and 400 shareholders; or (iii) 500,000 shares and 400 shareholders and average daily trading volume of approximately 2,000 shares.

[5] 15 U.S.C. 80a–2(a)(3); *See* amendment no. 1. *supra* note 3.

[6] *See* Amendment No. 1, *supra* note 3.

[7] The Exchange represents that all such funds will thus be evaluated in determining whether a fund applicant is eligible for listing. *See* amendment no. 1, *supra* note 3.

[8] *See supra* note 4.

[9] The Exchange represents that it will not have discretion to list a closed-end fund that does not satisfy the quantitative criteria set forth in section 101(e) of the Amex Company Guide, but will have discretion to exclude a closed-end fund that otherwise satisfies the criteria. *See* amendment no. 1, *supra* note 3.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

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(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal offices of the Amex. All submissions should refer to File No. SR–Amex–2002–55 and should be submitted by December 9, 2002.

V. Commission Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change, as amended, relating to the establishment of the pilot is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission believes the proposal is consistent with the requirements under section 6(b)(5) of the Act [12] that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public.[13] Specifically, the Commission believes that the proposed rule change will provide greater transparency to the Exchange's listing process for closed-end funds.

The Commission finds good cause for approving the pilot prior to the 30th day after publication in the **Federal Register**. The Amex has represented that it desires to promptly implement the proposed rule change and that accelerated approval will enable the Exchange to more quickly accommodate the listing of closed-end funds.[14] The Commission believes that accelerated approval on a five-month basis will permit the Exchange to continue listing funds and accommodate the desire of fund families to list groups of closed-end funds on one marketplace without undue delay.[15] Accordingly, the Commission finds it appropriate and consistent with sections 6(b)(5) and 19(b)(2) of the Act [16] to approve the proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[17] the proposed rule change, as amended, (File No. SR–Amex–2002–55) is approved on a pilot basis until April 7, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–29169 Filed 11–15–02; 8:45 am]

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[12] 15 U.S.C. 78f(b)(5).

[13] In approving this pilot, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[14] *See* amendment no. 1, *supra* note 3.

[15] Approval of the five-month pilot period should not be interpreted as suggesting that the Commission is predisposed to approving the proposal on a permanent basis.

[16] 15 U.S.C. 78f(b)(5) and 78s(b)(2).

[17] 15 U.S.C. 78s(b)(2).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46803; File No. SR–PCX–2002–36]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Pacific Exchange, Inc. Relating to the Exchange's New Trading Platform for Options, PCX Plus

November 8, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and rule 19b–4 thereunder,[2] notice is hereby given that on June 27, 2002, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in items I, II, and III below, which items have been prepared by the PCX. On November 6, 2002, the PCX filed amendment no. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX proposes to adopt new rules for the implementation of its new trading platform for options, PCX Plus. The PCX's proposal includes new rules on priority and allocations of orders, rule changes to permit options Market Makers to conduct their trading activities from locations away from the trading floor, and proposed system changes to accommodate new order handling procedures and automated trade processing.

The text of the proposed rule change is available at the Office of the Secretary, PCX, at the Commission, and on the Commission's website.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PCX included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The PCX has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

a. Introduction

The Exchange's new trading platform for options, PCX Plus, has been designed to enhance the PCX's current marketplace in several respects. The Exchange believes that this new hybrid model combines the best features of traditional floor-based markets and new electronic trading systems, while preserving a single marketplace with a single book. It allows PCX members to trade as Market Makers from locations away from the trading floor. It replaces the PCX's current priority rules with new ones that the Exchange believes would provide greater incentives for Market Makers to quote aggressively, with tighter markets and greater

[3] Amendment No. 1 replaces the PCX's original rule 19b–4 filing in its entirety.

liquidity. PCX Plus expands upon the Exchange's current trading rules by permitting the entry of eligible orders of all account types into the Exchange's Consolidated Book. The Exchange believes that the new trading platform would greatly enhance the PCX's options market by accommodating independent quotations from numerous market participants. Also, the Exchange represents that PCX Plus provides intermarket price protection and would operate in a manner consistent with the Options Intermarket Linkage Plan.[4]

The Exchange believes that the proposed new PCX Plus rules would foster aggressive quote competition and would reward market participants who improve PCX quotes with deep and liquid markets. Under the proposal, orders would be allocated to Market Makers on a "size *pro rata*" basis. The Exchange believes that this formula would reward larger-sized bids and offers with greater participation in trades. In addition, the Exchange believes that the proposal would grant significant trade participation rights to market participants who are first to improve the PCX quote. Under this proposed rule change, a member who improves the quote and stands alone at that price for three seconds would receive First Improved Quote ("FIQ") status. Those with FIQ status would be guaranteed, at least, the greater of: (1) 40% of the next order(s) to buy or sell the same series (for a minimum of 20 contracts), or (2) the total size that it would receive pursuant to a size pro rata allocation. Market Makers must establish the best bid or offer ("BBO") or quote at the BBO to participate in automated trades. As the Exchange phases in PCX Plus, the current Auto-Ex allocation methodology, involving Market Makers participating on a rotating "wheel," would be phased out and replaced with a new model in which each PCX Market Maker's trading interest would be independently generated and continuously represented in the Consolidated Book.

Under the proposal, member firms would be able to effect crossing transactions on the Exchange in two different ways—either manually on the trading floor or electronically through PCX Plus. The Exchange represents that these proposed rules are designed to assure that no one market participant receives a disproportionate share of a transaction in relation to other market participants who are bidding or offering at the same price. The Exchange represents that the proposed rules are also designed to assure that market participants who display significant trading interest "up front" are rewarded with participation in the trade.

The proposed new structure would involve four types of Market Makers on the Exchange: [5]

(1) Lead Market Makers ("LMMs") would continue to provide two-sided markets throughout the trading day, while conducting their trading activities on the trading floor of the Exchange; [6]

(2) The Exchange would permit Remote Market Makers ("RMMs") to enter quotes and effect trades from off-site locations. RMMs would be permitted to select their appointed issues;

(3) Floor Market Makers ("FMMs"), who are registered Market Makers with basic obligations on the Options Floor, would continue to trade as they do today and would supply independently generated Quotes with Size; [7] and

(4) The Exchange would permit members to act as Supplemental Market Makers ("SMMs"), who would be provided with tools that allow them to add liquidity at the same price that is then being disseminated by the LMM.

The Exchange believes that the aggregation of quotes from Market Makers on and off the trading floor would result in greater liquidity and narrower bid-ask spreads for all market participants. The Exchange also notes that the proposed changes to its rules are non-discriminatory in that they would permit all Market Makers to submit their quotations via their own proprietary auto-quoting devices if they choose to do so.

The Exchange believes that the proposed new PCX Plus rules are designed to assure fair trade allocation among market participants. LMMs would be eligible to receive up to 40% in guaranteed participation on trades occurring at their disseminated markets. Members would also be entitled to receive up to 40% trade participation if they maintain FIQ status. Although members may receive more than 40% participation by virtue of a pro rata allocation, no member would be eligible to receive more than 40% participation as a guarantee by rule. The proposal is also designed to assure that firms interacting with their customers' orders would receive no more than a 40% share of such orders before the orders are exposed to further competition. Finally, no member would be allocated option contracts in excess of their expressed trading interest.

The Exchange represents that PCX Plus has been designed so that available trading interest on the Exchange can be aggregated by price and size, both of which would be displayed promptly. Currently, only orders for the accounts of Public Customers are eligible to be represented in the PCX order book. Under the proposal, orders for all account types " including Public Customer, Firm, Market Maker and Non-Member Market Maker—may be represented in the Consolidated Book, along with Quotes with Size of PCX Market Makers (which would be entered for handling as if they were orders). Public Customer orders displayed at the best price would continue to receive first priority on the Exchange.[8]

Market and marketable limit orders routed electronically to PCX Plus would receive immediate executions against bids and offers in the Consolidated Book, unless a specified condition applies, in which case the order (or a portion of it) would be routed to a Floor Broker Hand Held Terminal for execution. The order execution rules and automated processes set forth in proposed PCX rule 6.76 are designed to place limitations on the internalization of order flow while providing added opportunities for competition. The Exchange believes that the proposed order execution rules and automated processes would enhance market efficiency and fairness by offering incentives to all market participants who provide liquidity on the Exchange.

The proposal also establishes new procedures for Market Makers' trading interest that interact electronically with orders in the Consolidated Book. In such situations, a Market Maker who initiates a transaction would be limited

[4] *See* Securities Exchange Act Release Nos. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000) (order approving Options Intermarket Linkage Plan submitted by American Stock Exchange LLC, Chicago Board Options Exchange, Inc. and International Securities Exchange LLC); 43574 (November 16, 2000), 65 FR 70850 (November 28, 2000) (order approving the PCX as participant in Options Intermarket Linkage Plan); and 43573 (November 16, 2000), 65 FR 70851 (November 28, 2000) (order approving Philadelphia Stock Exchange, Inc. as participant in Options Intermarket Linkage Plan).

[5] *See* proposed PCX rule 6.32(a) (definition of "Market Maker").

[6] LMMs will also be responsible for performing certain functions under the Options Intermarket Linkage Plan. *See supra* note 4.

[7] *See* proposed PCX rule 6.1(b)(33) (which defines "Quote with Size" as a quotation to buy or sell a specific number of option contracts at a specific price that a Market Maker has entered into PCX Plus through an electronic interface).

[8] Under the proposal, inbound orders are allocated based on the following priority sequence: Public Customer orders have first priority to trade against such orders; quotes with FIQ status have second priority (subject to a 40% cap); the portion of the order subject to LMM guaranteed participation will be allocated next; followed by any trading interest for the accounts of non-Public Customers. *See* proposed PCX rule 6.76(a).

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to 40% of the available customer contracts at the execution price or the Market Maker's size pro rata share, whichever amount is greater. The Market Maker would then be eligible to trade the remaining option contracts at the execution price once other Crowd Participants [9] have had an opportunity to participate.

While the proposal is intended to further automate options trading on the Exchange, the Exchange represents that the proposed new system would continue to facilitate open outcry trading as currently practiced today, particularly for large transactions and executions of complex orders and contingency orders. When an order is entered by phone or re-routed to a Hand Held Terminal for execution, a Floor Broker would represent it at the appropriate trading post and would afford priority first to Public Customer interest in the Consolidated Book, then to bids or offers in the trading crowd, and finally to any Firm or Market Maker interest in the Consolidated Book.[10]

The Exchange proposes to phase in the use of PCX Plus in particular issues, while simultaneously phasing out the current Auto-Ex "wheel" functionality. During the phase-in period, the Exchange represents that it would have two sets of trading rules in operation, each applying to a different set of option issues traded on the Exchange.

The PCX believes that the proposed rule change would promote efficiency by reducing the costs associated with transactions on the Exchange, and would promote liquidity and competition on the Exchange by permitting Market Makers to independently make markets either on or off of the PCX's physical trading floor. By allowing PCX Market Makers to conduct their activities off the Options Floor, while retaining the availability of on-floor market making, the Exchange believes that the proposal would permit PCX Market Makers to choose the most efficient and cost-effective way to conduct their businesses. The Exchange believes that the proposal is also designed to assure that the Exchange would attract greater liquidity and improved pricing, thereby making the PCX a more competitive market for all investors.

[9] See proposed PCX rule 6.1(b)(38) (which defines "Crowd Participants" as the Market Makers appointed to an option issue under rule 6.35, and any Floor Brokers actively representing orders at the best bid or offer on the Exchange for a particular option series.)

[10] See proposed PCX rule 6.76(d).

b. Summary of Proposed Change to PCX's Rules

i. PCX Rule 4. General Rules

The Exchange proposes to modify its general rules in PCX rule 4 as follows:

Proposed PCX Rule 4.2—RMMs trading from a location off the Options Floor are subject to the same prohibitions against trading prior to the official opening of the PCX for options trading.

Proposed PCX Rule 4.2, Commentary .01—This proposed rule change permits RMMs to effect transactions through the facilities of the Exchange until 1:02 p.m. (PST) for equity options and until 1:15 p.m. (PST) for index options on each business day.

ii. PCX Rule 6.1. Applicability, Definitions and References

In connection with the implementation of PCX Plus, the Exchange proposes to adopt the following definitions:

Proposed PCX Rule 6.1(b)(33)—The term "Quote with Size" means a quotation to buy or sell a specific number of option contracts at a specific price that a Market Maker has entered into PCX Plus through an electronic interface.

Proposed PCX Rule 6.1(b)(35)—The term "Non-Member Market Maker" includes, but is not limited to, specialists, designated primary market makers, lead market makers, market makers, registered options traders, primary market makers, and competitive market makers registered on an exchange other than the PCX.

Proposed PCX Rule 6.1(b)(36)—The term "Firm" means a broker-dealer that is not registered as a dealer-specialist or market maker on a registered national securities exchange or association.

Proposed PCX Rule 6.1(b)(37)—The term "Consolidated Book" means the Exchange's electronic book of limit orders for the accounts of Public Customers and broker-dealers, and Quotes with Size. The Exchange represents that all orders and Quotes with Size that are entered into the Consolidated Book would be ranked and maintained in accordance with the rules of priority as provided in proposed PCX rule 6.76.

Proposed PCX Rule 6.1(b)(38)—The term "Crowd Participants," means the Market Makers appointed to an option issue under PCX Rule 6.35, and any Floor Brokers actively representing orders at the best bid or offer on the Exchange for a particular option series.

Proposed PCX Rule 6.1(c)(2)—For purposes of the PCX rules, the term "Market Maker" includes LMMs, RMMs, SMMs, and FMMs, unless the context otherwise indicates.

iii. Fast Markets and Unusual Conditions

Proposed PCX Rule 6.28(c)(6)—This proposed rule change provides that the PCX Plus execution mechanism as set forth in proposed PCX rule 6.76(b) may be suspended for a period of time not to exceed 5 minutes because of an influx of orders or other unusual market conditions.

iv. Market Makers

Proposed PCX Rule 6.32(a)—The proposed rule change specifies that an RMM whose transactions are executed through the facilities of the Exchange would be deemed to be a "Market Maker" for all purposes under the Act and the rules and regulations thereunder.

PCX Market Makers would be one of the following types: LMM, RMM, SMM, or a FMM. Each type of Market Maker is defined in the following subsections:

Proposed PCX Rule 6.32(a)(1)—An LMM is a registered Market Maker who makes transactions as a dealer-specialist while on the Floor of the Exchange and who meets the qualification requirements of PCX rule 6.82(b).

Proposed PCX Rule 6.32(a)(2)—An RMM is an individual who is registered with the Exchange for the purpose of making transactions as dealer-specialist from a location off the Floor of the Exchange. An RMM may also execute transactions while on the Floor of the Exchange. Transactions of an RMM that are executed through the facilities of the Exchange are deemed to be Market Maker transactions for purposes of PCX rule 6.32.

Proposed PCX Rule 6.32(a)(3)—An SMM is a registered Market Maker who makes transactions as a dealer-specialist while on the Floor of the Exchange and who provides quotations:

(A) Manually, by public outcry; or

(B) Automatically, through an electronic interface device at the LMM's prevailing bid or offering price, with a size to be designated by the SMM.

Proposed PCX Rule 6.32(a)(4)—A FMM is a registered Market Maker who makes transactions as a dealer-specialist while on the Floor of the Exchange and provides quotations:

(A) Manually, by public outcry; or

(B) Automatically through a proprietary auto quoting device.

Proposed PCX Rule 6.32(b)—This proposed rule change provides that those transactions initiated by RMMs through the facilities of the Exchange, as well as those initiated on the Options Floor, would count as Market Maker transactions and be entitled to special margin treatment, pursuant to the net capital requirements of rule 15c3–1 under the Act and Regulation T of the Board of Governors of the Federal Reserve system.[11]

Proposed PCX Rule 6.32(c)—RMMs may enter opening orders from off the Options Floor for execution by a Floor Broker and receive special margin treatment for them as long as the entry of such orders is consistent with the RMM's duty to maintain fair and orderly markets, and such orders are entered for the purpose of hedging, reducing the risk of, or rebalancing open positions of the RMM.

Proposed PCX Rule 6.34, Commentary .01—This proposed rule change clarifies that a Floor Broker, unless otherwise prohibited in this PCX rule or PCX rules 6.38 or 6.52(a),[12] may enter an order for its proprietary account in the Consolidated Book for the purpose of liquidating a position resulting from a bona fide error made in the course of its floor brokerage business.

v. Appointment of Market Makers

Proposed PCX Rule 6.35(g)(1)—Each RMM must select a primary appointment comprising a maximum number of option issues per seat. RMMs may select from among any option issues traded on the Exchange for inclusion in their primary appointments, which must be approved by the Options Allocation Committee ("OAC"). In considering the approval of the appointment of an RMM in each security, the OAC would consider:

(A) The financial resources available to the RMM;

(B) The RMM's experience, expertise and past performance in making markets, including the RMM's performance in other securities;

(C) The RMM's operational capability; and

(D) The maintenance and enhancement of competition among Market Makers in each security in which they are appointed.

Proposed PCX Rule 6.35(g)(2)—Except as provided in proposed PCX rule 6.35(h), the following rules apply to the primary appointments of RMMs:

[11] This proposed rule change also provides that transactions entered from off the Options Floor, except those executed for the account of an RMM and those that are permissible under proposed PCX rule 6.32(c), must be placed in the Market Maker's investment account and be subject to applicable customer margin.

[12] Pursuant to PCX rule 6.52(a), the Exchange will determine, on an issue-by-issue basis, the account types of orders that will be placed in the Consolidated Book. Such orders may include limit orders for the accounts of Public Customers, broker-dealers or Market Makers.

(A) RMMs with a single seat may have up to eight option issues within their primary appointments.

(B) RMMs with two seats may have up to 18 option issues within their primary appointments.

(C) RMMs with three seats may have up to 30 option issues within their primary appointments.

(D) RMMs with four seats may have up to 44 option issues within their primary appointments:

(E) RMMs with five seats may have up to 60 option issues within their primary appointments.

(F) RMMs with six seats may have up to 78 option issues within their primary appointments.

(G) RMMs with seven seats may have up to 98 option issues within their primary appointment zones.

(H) RMMs with eight seats may have up to 120 option issues within their primary appointments.

The Options Floor Trading Committee would determine uniform limits on the number of issues applicable to RMMs with more than eight seats.

Proposed PCX Rule 6.35(g)(3)—RMMs may change the option issues that are included in their primary appointments, subject to the approval of the OAC. Such requests must be made in a form and manner prescribed by the Exchange. In considering whether to approve an RMM's request to change their primary appointments, the OAC would consider the factors set forth in proposed PCX rule 6.35(g)(1).

Proposed PCX Rule 6.35(g)(4)—RMMs may withdraw from trading an option issue that is within their primary appointments by providing the Exchange with a three-business day written notice of such withdrawal. RMMs who fail to give advance written notice of withdrawal to the Exchange may be subject to formal disciplinary action pursuant to PCX rule 10. Subsequent to withdrawal, the RMM may not be re-appointed as an RMM in that option issue for a period of one full calendar quarter.

Proposed PCX Rule 6.35(g)(5)—This proposed rule change provides that the Exchange may suspend or terminate any appointment of an RMM in one or more option issues whenever, in the Exchange's judgment, the interests of maintaining a fair and orderly market are best served by such action.

Proposed PCX Rule 6.35(g)(6)—An RMM may seek review of any action taken by the Exchange pursuant to subsection (g), including the denial of the appointment for, or the termination or suspension of, an RMM's appointment in an option issue or issues, in accordance with PCX rule 10 or 11, as applicable.

Proposed PCX Rule 6.35(h)—This proposed rule change provides that a Member Firm acting as an LMM firm may trade up to four issues as an RMM. These four issues are not required to be located at posts that are contiguous with the existing primary appointments of the Member Firm's individual Members. The LMM may enter quotations electronically in such issues from a location away from the trading post.

vi. Letters of Guarantee

Proposed PCX Rule 6.36(a)—This proposed rule change provides that RMMs must have a Letter of Guarantee that has been issued for such members by a Clearing Member and approved by the Options Clearing Corporation and the Exchange in order to effect transactions through the facilities of the Exchange. This requirement is the same for all other types of Market Makers effecting transactions on the Options Floor.

vii. Quoting Obligations of Market Makers

Proposed PCX Rule 6.37, Commentary .07—Former PCX rule 6.37, Commentary .07 is being renumbered as new proposed PCX rule 6.37(d).

Proposed PCX Rule 6.37(g)(1)—This proposed rule change sets forth the quoting obligations of LMMs. Specifically, LMMs must provide continuous two-sided quotations that meet the legal quote width requirements of PCX rule 6.37(b) throughout the trading day in each of their appointed issues. LMMs must also specify a size for each of their quotations applicable to:

(A) Orders for Public Customers; and

(B) Orders and Quotes with Size for broker-dealers.

LMMs must enter their quotations through an electronic interface with the Exchange, but may also provide quotations by public outcry.

Proposed PCX Rule 6.37(g)(2)—This proposed rule change sets forth a requirement that RMMs must provide continuous two-sided quotations in each issue in which they are appointed during 60% of all times during which the Exchange is open for options trading. Such quotations must meet the legal width requirements of PCX rule 6.37(b). In addition, RMMs must specify a size for each of their quotations applicable to:

(A) Orders for Public Customers; and

(B) Orders and Quotes with Size for broker-dealers.

These obligations would apply to all of the RMM's appointed issues

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collectively, rather than on an issue-by-issue basis. Compliance with these obligations would be determined on a per-calendar-quarter basis. RMMs must enter all of their quotations through an electronic interface with the Exchange. Finally, the public outcry requirements of PCX rule 6.73 do not apply to RMMs.

Proposed PCX Rule 6.37(g)(3)—SMMs must provide the sizes of their quotations through an electronic interface with the Exchange, but may also provide quotations by public outcry.

Proposed PCX Rule 6.37(g)(4)—This proposed rule change provides that FMMs must provide quotations in accordance with PCX rule 6.37 (which sets forth basic obligations of Market Makers) and may enter such quotations by public outcry or through an electronic interface with the Exchange.

viii. Obligations of RMMs

Proposed PCX Rule 6.37(h)(1)—This proposed rule change indicates that all PCX rules applicable to Market Makers would also apply to RMMs unless otherwise provided or unless the context clearly indicates otherwise. The following PCX rules do not apply to RMMs who are not present on the Options Floor: PCX rule 6.2(b)–(f) and (h) (Admission to and Conduct on the Options Trading Floor); PCX rule 6.35(a) (Appointment of Market Makers); PCX rule 6.37(d) and Commentaries .03 and .05 (Obligations of Market Makers); PCX rule 6.53, Commentary .01 (Issuing a Call for Market Makers); PCX rule 6.66 (Order Identification); PCX rule 6.73 (Manner of Bidding and Offering); PCX rule 6.74 (Bid and Offers in Relation to Units of Trading); and PCX rule 6.100 (Evaluation of Options Trading Crowd Performance).

Proposed PCX Rule 6.37(h)(2)—This proposed rule change provides that, for the purposes of the following rules, RMMs are deemed not to be members of the trading crowd: PCX rule 6.8, Commentary .08(c)(2) (the firm facilitation exemption procedures relating to position limits); PCX rule 6.47(a)–(f) (Crossing Orders and Stock/Option Orders); and PCX rule 6.66 (trading crowd participants to whom order identification information must be provided).

Proposed PCX Rule 6.37(h)(3)—Under this proposed rule change, each RMM must meet its quoting obligations as set forth in proposed PCX rule 6.37(g). Failure to comply with the 60% quoting requirement may result in a fine pursuant to PCX rule 10.13; however, if aggravating circumstances are present, formal disciplinary action may be taken pursuant to PCX rule 10.4. The Exchange may consider exceptions to this quoting requirement based on demonstrated legal or regulatory requirements or other mitigating circumstances (*e.g.*, excused leaves of absence, personal emergencies, or equipment problems).

Proposed PCX Rule 6.37(h)(4)—This proposed new rule provides that an RMM may be called upon by an Exchange official designated by the Board of Governors to submit a single quote or maintain continuous quotes in one or more series of an option issue to which the RMM is appointed whenever, in the judgment of such official, it is necessary to do so in the interest of maintaining fair and orderly markets.

Proposed PCX Rule 6.37(h)(5)—Under this proposed rule change, RMMs must trade at least 75% of their average daily trading volume per quarter in issues included in their primary appointments pursuant to proposed PCX rule 6.35(g). RMMs may trade up to 25% of their quarterly contract volume in option issues that are not included within their primary appointments.

Proposed PCX Rule 6.37(h)(6)—If the Exchange finds any failure by an RMM to engage in a course of dealings as specified in subsections (3)–(5) of this PCX rule, such RMM would be subject to disciplinary action or suspension or revocation of registration by the Exchange in one or more of the option issues in which the RMM holds a primary appointment. Nothing in this proposed rule change would limit any other power of the Board of Governors under the Constitution, rules, or procedures of the Exchange with respect to the registration of an RMM or with respect to any violation by an RMM of the provisions of this PCX rule.

Proposed PCX Rule 6.37(h)(7)—This proposed rule change establishes procedures for evaluating the performance of RMMs. Under the proposal, the OAC would periodically conduct an evaluation of RMMs to determine whether they have fulfilled performance standards relating to, among other things, quality of markets, competition among Market Makers, observance of ethical standards, and administrative factors. The OAC would consider any relevant information including, but not limited to, the results of an RMM evaluation, trading data, an RMM's regulatory history and such other factors and data as may be pertinent in the circumstances.

If the OAC finds any failure by an RMM to meet minimum performance standards, the OAC would be permitted to take the following actions, after written notice and after opportunity for hearing pursuant to PCX rule 11: (i) Restriction of appointments to additional option issues in the RMM's primary appointment; (ii) suspension, termination, or restriction of an appointment in one or more option issues; or (iii) suspension, termination, or restriction of the RMM's registration in general.

Pursuant to the proposal, if an RMM's appointment in an option issue or issues has been terminated pursuant to this subsection (7) of this PCX rule, the RMM may not be re-appointed as an RMM in that option issue or issues for a period not to exceed six months.

Proposed PCX Rule 6.37, Commentary .03—This proposed rule change clarifies that the obligations set forth in PCX rule 6.37 (regarding the removal of bids and offers) do not apply to RMMs. Under the proposed rule change, when a Market Maker, other than an RMM, displays a market on the screen that is the best market in that crowd, the Market Maker is obligated to ensure that the Market Maker's market is removed from the screen when the Market Maker leaves the crowd.

Proposed PCX Rule 6.37, Commentary .07(a)—An RMM would be permitted to request a leave of absence when he or she seeks to withdraw temporarily from entering quotations into the PCX Plus system for periods in excess of two weeks.

Proposed PCX Rule 6.37, Commentary .07(c)—This proposed rule change provides that RMMs, while on leave, may not enter opening transactions in Exchange listed options, in their Market Maker accounts, through the use of Floor Brokers, except as provided in proposed PCX rule 6.32(c).

viii. Restrictions on Acting as Market Maker and Floor Broker

Proposed PCX Rule 6.38(a)(1)—This proposed rule change clarifies that the restrictions set forth in subsection (b) of PCX rule 6.38 (relating to members acting as both Market Maker and Floor Broker) do not apply to LMMs who are performing the functions of Floor Brokers pursuant to PCX rule 6.82(h)(3).

Proposed PCX Rule 6.38(a)(2)—This proposed rule change provides that RMMs, trading from a location off the Floor of the Exchange, are not eligible to perform the functions of the Floor Brokers.

ix. Consolidated Book

The Exchange represents that, in PCX Plus, the Consolidated Book would be opened up to accept not only customer orders, but also broker-dealer orders, Market Maker orders and Market Maker Quotes with Size. All orders and Quotes with Size at the best price would be aggregated and disseminated via the Options Price Reporting Authority ("OPRA").

Proposed PCX Rule 6.52(a)—This proposed rule change states that the Exchange would determine, on an issue-by-issue basis, the account types of orders that would be placed in the Consolidated Book. Such orders may include limit orders for the accounts of Public Customers, broker-dealers or Market Makers. In addition, Quotes with Size of Market Makers would be permitted to be included in the Consolidated Book. There would be no limit to the size of orders or quotes that may be entered into the Consolidated Book. The Exchange would determine whether any or all types of contingency orders (as defined in PCX rule 6.62(c)) would be eligible to be included in the Consolidated Book.[13] The Exchange, with the approval of the Options Floor Trading Committee, would determine the types of contingency orders that would be eligible for entry into the Consolidated Book and would periodically issue bulletins to notify its Members which contingency orders would be permitted.

Proposed PCX Rule 6.52(c)—Members submitting orders or Quotes with Size to the Order Book Official for execution or for entry into the Consolidated Book would be required to comply with such procedures and format requirements as may be prescribed by the Exchange.[14]

Proposed PCX Rule 6.57—The Exchange proposes to renumber current PCX rule 6.57 as PCX rule 6.57(b), and to apply it to option issues not traded under PCX Plus during the phase-in period (proposed PCX rule 6.57(a) is an explanatory preface). During the phase-in period, proposed new PCX rule 6.57(c) would apply to those issues traded on PCX Plus, and would require that all Crowd Participants be able to access at the same time the same information in regard to orders and Quotes with Size placed through PCX Plus.

x. Automated Opening Rotations

The Exchange currently conducts Automated Opening Rotations ("AORs") pursuant to PCX Rule 6.64(c). Under this PCX rule, only Public Customer orders are eligible to participate in AORs. If a broker-dealer order is eligible to trade at the opening, the applicable series is opened manually, pursuant to PCX rule 6.64(b). The Exchange now proposes to expand the account types of orders eligible for participation in an AOR to include orders for the accounts of broker-dealers and Quotes with Size.[15] Accordingly, the Exchange proposes to phase in its new proposed PCX rule 6.64(d) on Enhanced Automated Opening Rotations (which would accommodate broker-dealer orders) while simultaneously phasing out the existing AOR process pursuant to PCX rule 6.64(c).

Proposed PCX Rule 6.64(c)—This proposed rule change states that the Exchange would designate option issues that are eligible for automated opening rotations pursuant to this PCX rule and proposed PCX rule 6.64(d) ("Enhanced Automated Opening Rotations"). If an option series has not been designated as eligible for AOR pursuant to proposed PCX rule 6.64(d), and if that series is not opened automatically pursuant to PCX rule 6.64(c), then that series would be opened manually pursuant to PCX rule 6.64(b).

Proposed PCX Rule 6.64(d)—This proposed rule change sets forth the manner in which AOR would operate in those options issues designated for trading in PCX Plus.

Proposed PCX Rule 6.64(d)(1)—"Establishing a Market for the Opening Rotation." This proposed rule change sets forth the method for establishing a market for the opening rotation. Prior to the opening rotation in a particular option series, the Order Book Official would determine whether there are any manual orders being represented in the trading crowd to be executed during the opening rotation and would designate the option series in which there are such orders for manual opening. In doing so, the Order Book Official would call for bids and offers from the trading crowd once the underlying security has opened. The trading crowd may determine that the bids and offers then being displayed on the overhead screens are accurate, or alternatively, may modify those bids and offers by public outcry.

Proposed PCX Rule 6.64(d)(2)—"Designating Series that are Not Eligible for the Automated Opening Rotation." Under this proposed rule change, the Order Book Official must identify, prior to the opening, all option series that are not eligible for the AOR and that would be opened manually. The Exchange would provide Crowd Participants with notice of those options series that would be opened manually. The series that are not eligible for the AOR include:

(A) Series for which there are no market or marketable limit orders in PCX Plus.

(B) Series for which there are one or more manual orders being represented in the trading crowd that are likely to be executed during the opening rotation, as determined by an Order Book Official.

(C) Series for which one or more members of the trading crowd has reasonably requested that a manual opening rotation be conducted. Two Floor Officials may deny member requests for manual opening rotations in the absence of reasonable justification for doing so.

(D) Series in which the "imbalance threshold" has been exceeded. Prior to the opening, the Order Book Official, in conjunction with the LMM in the issue, would set for each option issue a number of contracts that constitutes an imbalance threshold, *i.e.*, a specific number of option contracts to buy in excess of the number of contracts to sell or a specific number of contracts to sell in excess of the number of contracts to buy. The Exchange represents that PCX Plus would not automatically open any series with an imbalance exceeding the threshold for that issue.

Proposed PCX Rule 6.64(d)(3)—This proposed rule change states that series eligible for AOR would be opened automatically based on the following principles and procedures. First, PCX Plus would verify that a Quote with Size has been received from the LMM before a series is eligible for AOR. Second, PCX Plus would determine a single price at which a particular option series would be opened, as provided in Commentary .01 to this PCX rule. Third, orders in the PCX Plus system would maintain priority over Market Maker bids and offers that are not being represented in the Consolidated Book as Quotes with Size. Orders in the PCX Plus system would be matched up with one another, based on the priority rules as set forth in proposed PCX rule 6.76(a); provided, however, that: (i) Market Maker Quotes with Size would have priority over orders for Firms, Market Makers, and Non-Member Market Makers during the AOR, and (ii) orders for the accounts of Firms, Market Makers, and Non-Member Market Makers would be executed based on price/time priority. Finally, following the opening, any unexecuted

[13] The Exchange proposes to delete current PCX rule 6.52(a), which addresses the account types of orders eligible for acceptance and entry into the Order Book. Under the current PCX rule, only non-broker-dealer customer orders may be placed with an Order Book Official.

[14] The Exchange proposes to delete current PCX rule 6.52(c), which describes the circumstances and procedures to be followed by Floor Brokers for the entry, cancellation and changes of orders held by the Order Book Official.

[15] The Exchange represents that the Commission has previously expressed a view that the Exchange should modify AOR to accommodate broker-dealer orders in the automated opening process. *See* Securities Exchange Act Release No. 41970 (September 30, 1999), 64 FR 54713 (October 7, 1999). The Exchange believes this proposed rule change is responsive to the Commission's concern.

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contracts would be represented as bids and offers on the Exchange.

Proposed PCX Rule 6.64(d)(4)—This proposed rule change states that contingency orders would not be entitled to participate in the AOR.

xi. Manner of Bidding and Offering

Proposed PCX Rule 6.73—This proposed rule change provides that to be effective, a bid or offer must either be represented electronically in the Consolidated Book or be made by public outcry at the trading post where the option is traded. This PCX rule previously stated that to be effective, a bid or offer must be made by public outcry at the trading post where the option is traded.

xii. Priority Rules

The Exchange's priority rules for options trading are currently set forth in PCX rule 6.75. Proposed rule 6.75(h) has been renumbered from former rule 6.76 and does not apply to PCX Plus Executions. Once PCX Plus has been completely phased-in, the PCX intends to submit a filing to delete this provision, along with the remainder of rule 6.75, as it would no longer be necessary.

Proposed PCX Rule 6.75(d)—This proposed rule change clarifies that PCX rules 6.75(a)–(c), relating to priority, would only apply in connection with manual opening rotations.

Proposed PCX Rule 6.76—This proposed rule change sets forth the priority and allocation procedures of orders and Quotes with Size for option issues designated to be traded in PCX Plus. The proposed rule change also provides that the maximum size of an inbound order that may be eligible for execution on PCX Plus (the "Maximum Order Size") pursuant to proposed PCX rule 6.76(b) below would be established by the LMM in the issue, subject to the approval of two Floor Officials,[16] whose approval must be further ratified by the Options Floor Trading Committee.

Proposed PCX Rule 6.76(a)(1)—This proposed rule change states that the highest bid has priority over all other bids; and the lowest offer has priority over all other offers.

Proposed PCX Rule 6.76(a)(2)—This proposed rule change states that multiple bids or offers at the same price are afforded priority based on account type and other principles, as set forth below:

(A) *Public Customer Orders.* First, bids and offers in the Consolidated Book for Public Customer accounts would have priority over other bids or offers at the same price.

If there is more than one highest bid for a Public Customer account or more than one lowest offer for a Public Customer account, then such bids or offers, respectively, would be ranked based on time priority.

(B) *FIQ Status.* Next, orders and Quotes with Size in the Consolidated Book with FIQ status, as provided in proposed PCX rule 6.76(a)(3), would have second priority over bids or offers at the same price, but only for up to 40% of the order against which the orders or Quotes with Size that have FIQ status would be executed.

(C) *LMM Guaranteed Participation.* Bids and offers in the Consolidated Book for the account of the LMM would have third priority if the LMM is eligible to receive guaranteed participation on such bid or offer pursuant to PCX rule 6.82. LMMs would not receive any portion of an inbound order if their bids or offers were not at the trade price. The LMM's guaranteed participation would be expressed as a percentage of the remaining quantity after all Public Customer orders and quotes with FIQ status (to the extent of their 40% participation), if any, have first been executed. The LMM would not be allocated a number of contracts greater than the size of the LMM's bid or offer. If the LMM receives guaranteed participation on a trade and there are contracts remaining to be executed, the remaining portion of the LMM's bid or offer would be permitted to participate in the "size pro rata" allocation, as provided in proposed PCX rule 6.76(a)(4).

(D) *Non-Customer Orders and Quotes with Size.* Orders and Quotes with Size in the Consolidated Book for the accounts of non-customers (including Firms and Market Makers) would have last priority. If there is more than one highest bid or more than one lowest offer in the Consolidated Book for the account of a non-customer, then such bids or offers would be afforded priority on a "size pro rata" basis, as provided in proposed PCX rule 6.76(a)(4).

xiii. FIQ Status

The Exchange believes that PCX Plus is designed to reward market participants for quoting at the best price with size. The Exchange further believes that PCX Plus encourages quote competition in the Exchange's marketplace at all times—not just upon the entry of an order into the PCX market. Accordingly, the Exchange proposes to adopt new PCX rule 6.76(a)(3), which directly rewards market participants for improving the PCX quote by allocating to them a significant portion of inbound orders.

Proposed PCX Rule 6.76(a)(3)(A)—This proposed rule change states that a non-customer order[17] or Quote with Size that improves the best bid or offer on the Exchange and that is disseminated via OPRA would have "FIQ status" with respect to other bids or offers at the same price, unless it has been matched or further improved within three seconds. If it were matched within three seconds, then no FIQ status would apply to that order or quote. If it is improved, then the order or Quote with Size that improved the previous price would have priority and would itself receive FIQ status. If a market participant increases the size of a quote with FIQ status, the additional quantity would not be afforded FIQ status. If a market participant decreases the size of a quote with FIQ status, that revised quote would retain FIQ status. For purposes of this PCX rule, orders and Quotes with Size may be matched or improved only through an electronic interface device.

Proposed PCX Rule 6.76(a)(3)(B)—This proposed rule change sets forth the order allocation process for participants with FIQ status, as follows.

(i) Once the available Public Customer interest in the Consolidated Book has been filled, an order or Quote with Size that has FIQ status would be entitled to trade against the greater of:

(a) 40% of the next inbound electronic order or orders to buy or sell the same series; or

(b) The total size to which the order or Quote with Size with FIQ status would receive pursuant to a size pro rata allocation.

The 40% allocation would be applied to the quantity remaining after all Public Customer orders have first been executed. In addition, an order or Quote with Size with FIQ status would not be allocated a number of contracts greater than the size of the bid or offer with FIQ status.

(ii) An order or Quote with Size would continue to maintain FIQ status until either:

(a) The entire commitment size has been filled by the execution of a single inbound order;

(b) A portion of the commitment size has been filled by the execution of a single inbound order and the number of contracts executed based on the applicable allocation method as set forth in subsection (B)(i) of proposed PCX rule is at least 20 contracts (*e.g.*, FIQ status for 100 contracts would no longer apply once a Market Maker has been allocated 40 contracts based on an allocation of 40% of a single 100-contract order); or

(c) A portion of the commitment size has been filled by the execution of multiple inbound orders and the aggregate number of contracts allocated as a result of such executions equals or exceeds 20 contracts (*e.g.*, FIQ status for 100 contracts would no longer apply once a Market Maker has been allocated a total of 24 contracts based on three subsequent allocations of 8 contracts, each of which are based on allocations of 40% of 20 contracts).

Proposed PCX Rule 6.76(a)(3)(C)—An LMM's Quote with Size with FIQ status would be entitled to an allocation representing the greater of: (i) The number of contracts to which the LMM would be entitled as guaranteed participation pursuant to subsection (a)(2)(C) of proposed PCX rule 6.76; or (ii) the number of contracts to which the LMM would be entitled for having FIQ status.

Proposed PCX Rule 6.76(a)(3)(D)—This proposed rule change states that if a non-customer order or Quote with Size has FIQ status but a Public Customer order on the same side of the market is later entered with a price matching that non-customer's order or Quote with Size, the Public Customer order would gain priority over the non-customer's order or Quote with Size. In such circumstances, inbound orders would be allocated as follows: (i) The customer order would first be executed up to its designated size; and (ii) the non-customer order or Quote with Size with FIQ status would then be eligible to participate in the balance of the order.

xiv. Size Pro Rata Allocation

The Exchange believes that another incentive for market participants to show their best prices and deepest markets at all times is the "size *pro rata*" allocation method. Under this method, the greater the size of a member's market, the greater the share of an order that the member would be allocated. This proposed rule change explains the manner in which orders are allocated pursuant to this formula. This proposed rule change would apply to issues traded under PCX Plus. Issues not traded under PCX Plus and orders allocated manually in the trading crowd would be subject to PCX rule 6.75, which PCX intends to delete once PCX Plus is rolled out for all issues.

Proposed PCX Rule 6.76(a)(4)(A)—This proposed rule change sets forth the formula for orders that are subject to allocation on a "size *pro rata*" basis:

$$\frac{\text{(Size of Order to be Allocated)}}{\text{(Aggregated Quote Size)}} \times \text{(Participant's Quote Size)} = \text{Size } \textit{Pro Rata} \text{ Allocation}$$

Under this formula, a participant's size pro rata allocation would be calculated as follows: The size of the order to be allocated is divided by the aggregated quote size. That result is then multiplied by the participant's quote size and the resulting number is the size pro rata allocation.

For example, if there are 200 contracts to be allocated among three Market Makers quoting with the following sizes:

MM1	100
MM2	200
MM3	500
Aggregated Quote Size	800

MM1 receives (200/800) × (100) = 25 contracts
MM2 receives (200/800) × (200) = 50 contracts
MM3 receives (200/800) × (500) = 125 contracts

Proposed PCX Rule 6.76(a)(4)(B)—This proposed rule change provides that the *pro rata* share allocated to each participant in the pool would be rounded down to a whole number, if applicable. If there are residual contracts to be filled after the *pro rata* calculation has been completed, such contracts would be allocated, with no more than one contract per participant, in the following sequence:

(i) The participant in the pool who has the largest fractional amount (based on the pro rata calculation) would receive the first contract, and each successive contract (if any) would be allocated to each subsequent participant who has the next largest fractional share.

(ii) If the last residual contracts are to be allocated between two or more participants having the same fractional amount, then the participant with the largest initial quote size in the *pro rata* pool would be allocated the next contract. Each successive contract (if any) would be allocated in the same manner.

(iii) If the last residual contracts are to be allocated between two or more participants with the same fractional amount and initial quote size, then the participant with the first time priority in the *pro rata* pool would be allocated the next contract. Each successive contract (if any) would be allocated in the same manner.

xv. PCX Plus Executions

The PCX's POETS system currently executes incoming orders automatically in two ways. First, if an inbound order is a market or marketable limit order and there is an order in the PCX order book to trade at the same price, the two orders would execute against each other. Second, if there were no order with priority in the PCX order book at the appropriate price (or there is an insufficient number of contracts at that price), then the incoming order (or a portion of it) would execute against the accounts of Market Makers who are logged onto the Auto-Ex "wheel."[18] Under the proposal, the Auto-Ex "wheel" would be phased out so that under PCX Plus, an incoming order would be instantaneously matched against trading interest in the Consolidated Book.

Proposed PCX Rule 6.76(b)—This proposed rule change addresses situations in which orders or Quotes with Size are executed through PCX Plus.

Proposed PCX Rule 6.76(b)(1)—This proposed rule change states that an inbound order that is marketable would be immediately executed against bids and offers in the Consolidated Book unless one of the following conditions applies:

(A) The size of the inbound order exceeds the Maximum Order Size established pursuant to rule 6.76; or

(B) The inbound order is for the account of a Firm or Non-Member Market Maker and more than 50% of the aggregate trading interest in the Consolidated Book at the execution price is for the account (or accounts) of Public Customers.

If the conditions specified in subsections (A) or (B) apply, the order

[16] See Securities Exchange Act Release No. 45930 (May 15, 2002), 67 FR 36281 (May 23, 2002) (order approving file no. SR–PCX–2001–13).

[17] The Exchange represents that, under the proposed priority rules, customer orders would always have priority and precedence over non-customer orders and Quotes with Size at the same price. The Exchange further represents that FIQ status would not apply to customer orders.

[18] See Securities Exchange Act Release No. 27633 (January 18, 1990), 55 FR 2466 (January 24, 2002) (order approving POETS system); *see also* Securities Exchange Act Release No. 44847 (September 24, 2001), 66 FR 50237 (October 2, 2001) (order granting accelerated approval to PCX's Auto-Ex Incentive Program).

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would be represented in the trading crowd pursuant to proposed PCX rule 6.76(d).

Proposed PCX Rule 6.76(b)(2)—The Exchange proposes to eliminate some of the Exchange's current system limitations regarding the automatic execution of incoming customer orders. Currently, if an incoming customer order cannot be filled in its entirety because of the maximum automatic execution size threshold, then the entire inbound order is routed to a Floor Broker Hand Held Terminal for representation in the trading crowd. The proposed rule change provides for partial electronic execution of an order before routing to a Floor Broker Hand Held Terminal or to the new Consolidated Book, as applicable. This proposed rule change provides that an inbound order would be either fully or partially executed based on the following procedures:

(A) If more than 40% of the size in the Consolidated Book is comprised of a single Firm or Non-Member Market Maker order at the price at which the inbound order would trade, and such Firm or Non-Member Market Maker order was entered less than one minute before the inbound order the inbound order would be processed as follows:

(i) The inbound order would first be matched against all available Public Customer interest in the Consolidated Book;

(ii) The inbound order, if not entirely filled, would then satisfy any available interest based on FIQ status and LMM guaranteed participation pursuant to proposed PCX rule 6.76(a);

(iii) The inbound order, if not entirely filled, would then match, on a size *pro rata* basis, with the interest of the Market Makers, Firms and Non-Member Market Makers in the Consolidated Book; provided that the size *pro rata* share interest of each individual Firm and each Non-Member Market Maker would be limited to 40% of the size of the remaining inbound order; and

(iv) The balance of the order, if any, would then be routed to a Floor Broker Hand Held Terminal.

(B) If the same conditions set forth in subsection (b)(2)(A) apply but the Firm or Non-Member Market Maker order was entered more than one minute before the inbound order, then:

(i) The inbound order would first be matched against all available Public Customer interest in the Consolidated Book;

(ii) The inbound order, if not entirely filled, would then satisfy any available interest based on FIQ status and LMM guaranteed participation pursuant to proposed PCX rule 6.76(a);

(iii) The inbound order, if not entirely filled, would then match, on a size *pro rata* basis, with the interest of the Market Makers, Firms and Non-Member Market Makers in the Consolidated Book; provided that the size *pro rata* share interest of each individual Firm and each Non-Member Market Maker would be limited to 40% of the size of the remaining inbound order;

(iv) The inbound order, if not entirely filled, would then match, on a size *pro rata* basis, with all other remaining volume in the Consolidated Book of Firms and Non-Member Market Makers who were previously limited to 40%;, and

(v) The balance of the order, if any, would then be either:

(a) Routed to a Floor Broker Hand Held Terminal in the case where the order locks or crosses the national best bid or offer ("NBBO"); or

(b) Executed at the next available price level based on split-price execution.

If neither of the conditions specified in subsection (a) or (b) apply, and the order is no longer marketable, then such order would be represented in the Consolidated Book.

xvi. Split-Price Executions

Proposed PCX Rule 6.76(b)(3)—This proposed rule change governs the manner in which inbound electronic orders would be subject to split-price executions. An inbound electronic order would receive an execution at multiple prices if there were some, but insufficient, trading interest at a price and the remainder of the order can be filled at one (or more) other prices based on available trading interest in the Consolidated Book. Orders would not be executed at a price that trades through another market. The balance of the order, if any, would be represented in the Consolidated Book, provided that if such order locks or crosses the NBBO, then the order would be routed to a Floor Broker Hand Held Terminal. Proposed subsection (b)(3) of PCX rule 6.76 would not apply to orders that are executed pursuant to proposed PCX rule 6.769(b)(2)(A) or Quotes with Size that are executed pursuant to proposed PCX rule 6.76(b)(4).[19]

xvii. Electronic Book Execution

Currently, a Member on the Options Floor may trade against orders in the Consolidated Book by vocalizing a bid or offer and consummating a transaction with the Order Book Official.[20] Under the proposal, Members would be permitted to execute trades electronically with orders in the Consolidated Book as provided in proposed PCX rule 6.76(b)(4).

Proposed PCX Rule 6.76(b)(4)—This proposed rule change addresses situations in which Market Makers interact electronically with orders in the Consolidated Book. When a Quote with Size initiates a trade with the Consolidated Book (the "initiating Quote with Size"), an Electronic Book Execution would occur as follows:

(A) The initiating Quote with Size would immediately execute against the Consolidated Book if the percentage of the transaction involving Public Customer interest (as represented in the Consolidated Book) would comprise no more than 40% of the transaction (*e.g.*, if the initiating Quote with Size is for 20 contracts and the size in the Consolidated Book at the execution price is 50 contracts, six contracts of which are the Public Customer interest (6 ÷ 20 = 30%), then the initiating Quote with Size for 20 contracts would be executed in full)).

(B) If the initiating Quote with Size would effect a transaction against the Consolidated Book and the percentage of the transaction involving Public Customer interest would comprise more than 40% of the transaction, then the initiating Quote with Size would be processed as follows:

(i) The Market Maker's initiating Quote with Size would receive an execution comprising the greater of:

(a) 40% of the Public Customer interest in the Consolidated Book at that price; or

(b) The total size to which the inbound initiating Quote with Size would receive pursuant to a size *pro rata* allocation.

(ii) The balance of the Consolidated Book at that price would be displayed for three seconds (via a System Alert Message—SAM) to all Crowd Participants.

(iii) The balance of the Public Customer interest in the Consolidated Book would then be allocated on size *pro rata* basis to all Crowd Participants, if any, who have entered bids or offers to trade at the execution price within the three seconds provided.

(iv) After the Public Customer interest has been allocated, the initiating Quote with Size would match against all remaining interest in the Consolidated Book. If the initiating Quote with Size does not fill the Consolidated Book, then all Crowd Participants would be matched on a size *pro rata* basis with the remaining interest in the Consolidated Book at that price.

(v) If the remaining Quotes with Size are executable at the next price level, they would be matched against the Consolidated Book on a size *pro rata* basis.

xviii. NBBO Step-Up

The Exchange currently uses NBBO Step-Up functionality in designated option issues pursuant to PCX rule 6.87(i). PCX rule 6.87(i) permits members on the Auto-Ex system who are quoting at a price inferior to the NBBO, to step-up to the NBBO price in executing incoming orders. This proposal would modify this feature as set forth below. PCX rule 6.87(i) would continue to apply to orders in issues not designated for PCX Plus (during the phase-in period).

Proposed PCX Rule 6.76(b)(5)(A)—This proposed rule change states that the LMM in an issue may Step-Up and execute inbound orders at the NBBO price when the NBBO is better than the PCX's disseminated quote. Subject to the approval of two Floor Officials,[21] the LMM would have sole discretion to determine whether the NBBO Step-Up feature:

(i) Would be engaged or disengaged;

(ii) Would be set to execute inbound orders when the NBBO is crossed or locked; and

(iii) Would be set to execute inbound orders at prices that are one or more trading increments better than the LMM's best bid or offer.

Proposed PCX Rule 6.76(b)(5)(B)—Under this proposed rule change, LMMs using the NBBO Step-Up feature may, at their discretion, disseminate Quotes with Size at the NBBO price when the NBBO price is better than the LMM's own disseminated price. If the LMM chooses to do so, then quotes at the NBBO would be disseminated via OPRA on the LMM's behalf. Such quotes would include the aggregate quotation size of the LMM and any SMMs who choose to participate in the NBBO Step-Up feature. LMMs may not use the NBBO Step-Up feature to match quotations of other PCX participants who are quoting at the NBBO. Accordingly, if another PCX participant enters an order or Quote with Size at the NBBO, then the LMM's original quote would prevail and the LMM's NBBO Step-Up quote would be removed from the PCX Plus system. The Exchange proposes to surveil for quoting abuses by its Members.

Proposed PCX Rule 6.76(b)(5)(C)—This proposed rule change states that inbound orders executed based on NBBO Step-Up would be allocated to SMMs who choose to participate in the NBBO Step-Up feature and the LMM on a size pro rata basis.

xviv. Crossing Orders

Under proposed PCX rule 6.76(c), PCX Plus would permit the execution of a "Cross Order", which is defined as two orders with instructions to match the identified buy-side with the identified sell-side at a specified price ("Cross Price"). The proposed rule establishes a crossing mechanism that automates the process that occurs on the Options Floor currently by which a Floor Broker may facilitate orders or cross two orders, regardless of size, via public outcry. The Exchange believes that this new mechanism, in conjunction with the order execution algorithm as described earlier, would foster competition and enhance market efficiency and fairness by offering incentives to all market participants that provide liquidity. The Exchange believes that the proposed crossing mechanism strikes a balance between allowing members to interact with their customer orders that they bring to the market, and providing Market Makers and other market participants with a fair opportunity and incentive to compete on an equal basis with such orders brought to the Exchange. The process in which a Cross Order is matched for execution is described below.

Proposed PCX Rule 6.76(c)(1)—For purposes of proposed PCX rule 6.76(c), the following terms would have the meanings specified below:

(A) "Cross Order" means two orders with instructions to match the identified buy-side with the identified sell-side at the Cross Price.

(B) "Facilitation Order" means an order as defined in PCX rule 6.47(b).

(C) "PCX Broker" means a Member, Member Organization or Associated Person who enters orders as agent for accounts other than for Market Makers.

(D) "Exposed Order" means the buy or sell side of a Cross Order that has been designated by a PCX Broker as the side to be exposed to the market and that is eligible for execution against all trading interest. Public Customer orders would always be deemed to be the Exposed Order in a Cross Order. In the case of a Cross Order involving a non-customer on both the buy side and sell side, the PCX Broker must designate one side of the Cross Order as the Exposed Order.

(E) "Shadow Order" means an order that is submitted by a PCX Broker to buy or sell a stated number of contracts at a specified price and that is to be executed in whole or in part against an Exposed Order. Any unexecuted portion of a Shadow Order would be canceled.

Proposed PCX Rule 6.76(c)(2)—This proposed rule change sets forth the steps involved in the Crossing Mechanism, as follows:

(A) A PCX Broker would be required to enter into PCX Plus the terms of each Cross Order to be executed electronically on the Exchange. The required terms include the terms of the order for a Public Customer or a broker-dealer and the proposed Facilitation Order (or two orders to be crossed neither one of which is a Facilitation Order ("non-facilitation cross")), the proposed crossing price, the quantity of the order that the PCX Broker is willing to facilitate (in case of a facilitation cross), and an indication of which order is the Exposed Order. If the proposed Cross Price were outside the BBO at the time of order entry, PCX Plus would reject the Cross Order.

(B) After accepting the Cross Order, PCX Plus would execute the Cross Order in the following sequence.

(i) If the Cross Price is between the BBO:

(a) PCX Plus would immediately display the Exposed Order's price and quantity for 30 seconds. During the 30-second exposure period, there would be no indication that the order is part of an impending cross. PCX Plus places the Shadow Order on hold and such order is not visible except to the PCX Broker that entered the Cross Order.

(b) As long as the Exposed Order is the highest priority order at the best price, other Members and Member Organizations may trade against the Exposed Order during the exposure period. If at any time during the exposure period, the Exposed Order were entirely filled, PCX Plus would cancel the remaining quantity of the Shadow Order and send the PCX Broker a message that the crossing transaction has been completed.

(c) At the end of the exposure period, if the Exposed Order has not been entirely filled, but it is at the best price and has the highest priority, then PCX Plus would execute the remainder of the order against the Shadow Order. PCX Plus would then cancel the remainder of the Shadow Order and send the crossing firm a message that the crossing transaction has been completed.

[19] Proposed PCX rule 6.76(b)(3) is applicable to order execution and describes how individual orders will interact with the Consolidated Book at multiple price levels. Proposed PCX rule 6.76(b)(4) describes how Quotes with Size interact at different price levels based on a size *pro rata* allocation after trading at the initial price.

[20] *See generally* PCX rules 6.51—6.58.

[21] A proposed rule change to current PCX rule 6.87(i) to grant two Floor Officials, rather than the Options Floor Trading Committee, the supervisory authority over the NBBO Step-Up feature is pending Commission approval. *See* file no. SR–PCX–2002–09.

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(d) At the end of the exposure period, if the Exposed Order has quantity remaining and it is not the highest priority order at the market, then PCX Plus would automatically cancel the remainder of the Exposed Order and the Shadow Order and would send the PCX Broker a message that the crossing transaction has been completed.

(ii) If the Cross Price is at the BBO:

(a) The Exposed Order would be matched at the displayed price against all pre-existing trading interest in the Consolidated Book with priority in accordance with proposed rule 6.76(a).

(b) The remainder of the Exposed Order, if any, would be exposed at the limit price for 30 seconds. As long as the Exposed Order has the highest priority at the best price, other Members and Member Organization may trade against the Exposed Order during the 30-second exposure period. If at any time during the exposure period, the Exposed Order were entirely filled, PCX Plus would cancel the remaining quantity of the Shadow Order and send the PCX Broker a message that the crossing transaction has been completed.

(c) At the end of the exposure period, if the Exposed Order has not been entirely filled, but it is at the best price and has the highest priority, then PCX Plus would execute the remainder of the order against the Shadow Order. PCX Plus would then cancel the remainder of the Shadow Order and send the crossing firm a message that the crossing transaction has been completed.

(d) At the end of the exposure period, if the Exposed Order has quantity remaining and it is not the highest priority order at the market, then PCX Plus would automatically cancel the remainder of the Exposed Order and the Shadow Order and would send the PCX Broker a message that the crossing transaction has been completed.

Proposed PCX Rule 6.76(c)(3)—This proposed rule change sets forth certain prohibited conduct related to Crossing Orders. The proposed rule change, as described below, is designed to place limitations on the internalization of order flow and to provide added opportunities for competition. Under the proposed rule change, it would be a violation of proposed PCX rule 6.76(c) for a PCX Broker to be a party to any arrangement designed to circumvent this PCX rule by providing an opportunity for a customer or a broker-dealer to execute against agency orders handled by the PCX Broker immediately upon their entry into PCX Plus.

In addition, PCX Brokers would not be permitted to execute as principal orders they represent as agent unless: (i) Agency orders are first exposed on the Exchange for at least 30 seconds; (ii) the PCX Broker utilizes the Crossing Mechanism pursuant to proposed PCX rule 6.76(c)(2); or (iii) the PCX Broker executes the orders pursuant to PCX rule 6.47.

xx. Orders Executed Manually

The Exchange represents that, to effectively combine the benefits of open outcry trading with those of PCX Plus, it has defined specific priority rules for handling manual executions in the trading crowd.

Proposed PCX Rule 6.76(d)(1)—This proposed rule change provides that Floor Brokers manually representing orders in the trading crowd must comply with the order execution and priority principles set forth in PCX rule 6.75 and, in addition, with the following provisions establishing priority for bids and offers by account type:

(A) Public Customer orders in the Consolidated Book have first priority. Multiple customer orders at the same price are ranked based on time priority.

(B) Bids and offers of the members of the trading crowd have second priority. These bids and offers include those made by Market Makers and Floor Brokers (on behalf of customer and broker-dealer orders they are representing).

(C) Bids and Offers of broker-dealers (including Quotes with Size and orders of Market Makers) in the Consolidated Book have last priority. Multiple bids and offers of broker-dealers would be executed on a size pro rata basis pursuant to proposed PCX rule 6.76(a).

Proposed PCX Rule 6.76(d)(1), Commentary .01—This proposed commentary states that the provisions of proposed PCX rule 6.90 would apply to transactions automatically executed pursuant to proposed PCX rule 6.76(b).

xxi. Cabinet Trades

The Exchange's rules for cabinet trading are currently set forth in PCX rule 6.80. The Exchange proposes to retain this PCX rule (renumbered as proposed PCX rule 6.80(b)) and to apply it to issues not traded under PCX Plus during the phase-in period. During that time, proposed PCX rule 6.80(c) would govern cabinet trading applicable to all issues traded on PCX Plus.

Proposed PCX Rule 6.80(a)—This proposed rule change states that the Exchange would designate option issues that are eligible for cabinet trading pursuant to this PCX rule. If an option issue has not been designated as eligible for cabinet trading on PCX Plus, the provisions of proposed PCX rule 6.80(b) would apply. If an option issue has been designated as eligible for cabinet trading on PCX Plus, then the provisions of subsection (c) would apply.

Proposed PCX Rule 6.80(b)—This proposed rule change sets forth the manner in which cabinet trading would be conducted in option issues not traded on PCX Plus during the phase-in period. Except for minor changes in terminology and references, the proposed rule is substantially the same as the existing rule.

Proposed PCX Rule 6.80(c)—The following provisions of proposed subsection (c) would apply to option issues designated for cabinet trading on PCX Plus:

(1) Cabinet trading under the following terms and conditions would be available in each series of option contracts open for trading on the Exchange.

(2) Trading shall be conducted in accordance with other Exchange Rules except as otherwise provided herein.

(3) Limit orders at a price of $1 per option contract must be placed on the Exchange in such form and manner as may be prescribed by the Exchange.

(4) Orders for cabinet trading may be placed for the accounts of Public Customers, Firms, and Market Makers, with priority based upon the sequence in which such orders are placed on the Exchange.

(5) Market Makers shall not be subject to the requirements of rule 6.37 for orders placed pursuant to this PCX Rule.

(6) Members submitting opening orders priced at $1 per option contract must comply with the order entry procedures and format requirements as may be prescribed by the Exchange. Opening orders priced at $1 per option contract may be placed on the Exchange for execution only to the extent that the order book in cabinet trades contains unexecuted contract closing orders with which the opening orders immediately may be matched.

xxii. Clarification of LMM Definition

Proposed PCX Rule 6.82(a)(1)—This proposed rule change defines LMM and provides that RMMs are not eligible to act as LMMs from a location off the trading floor.

xxiii. Firm Quote Rule

Proposed PCX Rule 6.86(a)(2)—This proposed rule change clarifies the application of the Exchange's Firm Quote rule for option issues traded on PCX Plus. Specifically, LMMs and any registered Market Makers who are quoting at the disseminated bid or offering price and who are constituting the trading crowd in such option series would collectively be the Responsible Broker or Dealer to the extent of the sizes of their respective bids and offers. For option issues not designated for trading on PCX Plus, the LMM and any registered Market Makers constituting the trading crowd in a particular option series would collectively be the Responsible Broker or Dealer to the extent of the aggregate quotation size specified.

xxiv. PCX Plus

The Exchange represents that proposed new PCX Rule 6.90, which describes the operational requirements of PCX Plus,[22] is substantially similar to current PCX rule 6.87 relating to the Exchange's Auto-Ex system, except for:

(1) Stylistic and minor conforming word changes made to reflect the new market structure; and

(2) The omission of rules relating to Eligible Orders, Order Entry Firm Registration, Market Maker Requirements and Eligibility, Market Maker Restrictions on Redirecting Auto-Ex Trades, Price Adjustments, the Auto-Ex Incentive Program, the Auto-Ex Book functions, and the Auto-Ex Between-the Quotes (current PCX rules 6.87(a), 6.87(c)(1), 6.87(e), 6.87(f), 6.87(g), 6.87(k), 6.87(l), and 6.87(m), respectively)[23] because these provisions are not applicable to PCX Plus.

As stated earlier, during the phase-in period, the Exchange would designate option issues that are eligible for trading on PCX Plus. If an option issue has not been designated as eligible for execution on PCX Plus pursuant to this PCX rule, the provisions of PCX rule 6.87 would continue to apply.

The following provisions of PCX rule 6.87 are being incorporated into proposed PCX rule 6.90:

Proposed PCX Rule 6.90(c)—PCX proposes to adopt the following definitions from current PCX rule 6.87(a).

(1) The term "User" means any person or broker-dealer that obtains electronic access to PCX Plus through an Order Entry Firm.

(2) The term "Order Entry Firm" means a member organization of the Exchange that is able to route orders to the Exchange.

Proposed PCX Rule 6.90(d)—This proposed rule change, which sets forth the obligations of Order Entry Firms regarding the proper use of PCX Plus, has been adapted from current PCX rule 6.87(c). Order Entry Firms would be required to: comply with all applicable PCX options trading rules and procedures; provide written notice to all Users regarding the proper use of PCX Plus; and maintain adequate procedures and controls that would permit the Order Entry Firm to effectively monitor and supervise the entry of electronic orders by all Users.

Proposed PCX Rule 6.90(e)—This proposed rule change has been adapted from current PCX rule 6.87(d) and codifies what practices are prohibited on PCX Plus. Except for minor changes in terminology, the proposed rule is substantially similar to the existing rule.

Proposed PCX Rule 6.90(g)—Proposed PCX rule 6.90(g) includes provisions regarding the suspension of the PCX Plus system in the event of any disruption or malfunction in the use or operation of system, as well as any other unusual market conditions not involving a system malfunction. This proposed rule change has been adapted from current PCX rule 6.87(h). Under this proposed rule change, if a PCX Plus system disruption or malfunction occurs but the Exchange is able to process and disseminate quotes accurately, then any orders received by the Exchange would be routed to Floor Broker Hand Held Terminals for representation in the trading crowd. Regular trading procedures would be resumed by the Exchange when two Floor Officials determine that the disruption or malfunction is corrected. If there are other unusual market conditions not involving a PCX Plus system disruption or malfunction, two Floor Officials may suspend the PCX Plus system in accordance with PCX rule 6.28. Whenever such action is taken, any orders received by the Exchange would be routed to Floor Broker Hand Held Terminals for representation in the trading crowd.

Proposed PCX Rule 6.90(h)—Under this proposed rule change, the Options Floor Trading Committee may designate, for an option issue, that an order would default for manual representation in the trading crowd if the NBBO is crossed or locked. Proposed PCX rule 6.90(h) has been adapted from current PCX rule 6.87(j).

xv. PCX Rule 10—Minor Rule Plan

The Exchange proposes to amend PCX rule 10.13 to include violations of proposed PCX rule 6.37(g)(2) in the Minor Rule Plan. Proposed new PCX rule 6.37(g)(2) requires that each RMM provide continuous two-sided quotations in each issue in which they are appointed during 60% of all times during which the Exchange is open for options trading. This obligation would apply to all of the RMM's appointed issues collectively, rather than on an issue-by-issue basis. Compliance with this obligation would be determined on a per-calendar-quarter basis. The Exchange believes that the proposed fine schedule is consistent with the fines established for violations by a Market Maker involving the 75% primary appointment zone requirement and the 60% in-person trading requirement.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with section 6(b) of the Act,[24] in general, and furthers the objectives of section 6(b)(5) of the Act,[25] in particular, in that it is designed to facilitate transactions in securities; to prevent fraudulent and manipulative acts and practices; to promote just and equitable principles of trade; to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; to remove impediments to and perfect the mechanism of a free and open market and a national market system; and in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such

[22] PCX Plus is defined in proposed PCX rule 6.90(e) as the Exchange's electronic order delivery, execution and reporting system for designated option issues through which orders and Quotes with Size of members are consolidated for execution and/or display. This trading system includes the electronic communications network that enables registered Market Makers to enter orders/Quotes with Size and execute transactions from remote locations or the Trading Floor.

[23] The manner in which orders will be subject to split-price executions in PCX Plus are set forth in proposed PCX rule 6.76(b)(3), which have been adapted from current PCX rule 6.87(p).

[24] 15 U.S.C. 78f(b).

[25] 15 U.S.C. 78f(b)(5).

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longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the PCX consents, the Commission will:

(A) By order approve such proposed rule change, or

(A) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–2002–36 and should be submitted by December 9, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[26]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–29170 Filed 11–15–02; 8:45 am]

BILLING CODE 8010–01–P

[26] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Zero Stage Capital SBIC VII, L.P. ("ZSCVII"), 101 Main Street, 17th Floor, Cambridge, Massachusetts 02142, a Federal Licensee under the Small Business Investment Act of 1958, as amended ("the Act"), in connection with the financing of a small concern, has sought an exemption under section 312 of the Act and section 107.730, Financings which Constitute Conflicts of Interest, of the Small Business Administration ("SBA") rules and regulations (13 CFR 107.730 (2002)). ZSCVII proposes to provide equity financing to NetKey, Inc. ("NetKey"), 32 Park Drive East, Branford, Connecticut 06405. The financing is contemplated for product development, sales and marketing, and working capital.

The financing is brought within the purview of Section 107.730(a)(1) of the Regulations because Zero Stage Capital VI, L.P., an Associate of ZSCVII, currently owns greater than 10 percent of NetKey, and therefore NetKey is considered an Associate of ZSCVII as defined in Section 107.50 of the Regulations.

Notice is hereby given that any interested person may submit written comments on the transaction to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

Dated: November 12, 2002.

Jeffrey D. Pierson,

Associate Administrator for Investment.

[FR Doc. 02–29164 Filed 11–15–02; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Zero Stage Capital SBIC VII, L.P. ("ZSCVII"), 101 Main Street, 17th Floor, Cambridge, Massachusetts 02142, a Federal Licensee under the Small Business Investment Act of 1958, as amended ("the Act"), in connection with the financing of a small concern, has sought an exemption under section 312 of the Act and section 107.730, Financings which Constitute Conflicts of Interest, of the Small Business Administration ("SBA") rules and regulations (13 CFR 107.730 (2002)). ZSCVII proposes to provide equity financing to First Service Networks, Inc. ("FSN"), 849 International Drive, Linthicum, Maryland 21090. The financing is contemplated for product development and working capital.

The financing is brought within the purview of Section 107.730(a)(1) of the Regulations because Zero Stage Capital VI, L.P., an Associate of ZSCVII, currently owns greater than 10 percent of FSN, and therefore FSN is considered an Associate of ZSCVII as defined in Section 107.50 of the Regulations.

Notice is hereby given that any interested person may submit written comments on the transaction to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

Dated: November 12, 2002.

Jeffrey D. Pierson,

Associate Administrator for Investment.

[FR Doc. 02–29165 Filed 11–15–02; 8:45 am]

BILLING CODE 8025–01–U

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3459]

State of Texas (Amendment #1)

In accordance with a notice received from the Federal Emergency Management Agency, dated November 8, 2002, the above numbered declaration is hereby amended to include Aransas, Hardin, Harris, Jefferson, Orange and San Patricio Counties in the State of Texas as disaster areas due to damages caused by severe storms, tornadoes, and flooding occurring on October 24, 2002, and continuing.

In addition, applications for economic injury loans from small businesses located in Bee, Brazoria, Calhoun, Chambers, Fort Bend, Galveston, Jasper, Liberty, Live Oak, Montgomery, Newton, Polk, Refugio, Tyler and Waller Counties in Texas; and Calcasieu and Cameron Parishes in Louisiana may be filed until the specified date at the previously designated location. All other counties contiguous to the above named primary county have been previously declared.

The economic injury number assigned to Louisiana is 9S5100.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is January 6, 2003, and for economic injury the deadline is August 5, 2003.

[Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: November 12, 2002.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 02–29167 Filed 11–15–02; 8:45 am]

BILLING CODE 8025–01–U

SMALL BUSINESS ADMINISTRATION

Small Business Investment Companies; Increase in Maximum Leverage Ceiling

13 CFR 107.1150(a) sets forth the maximum amount of Leverage (as defined in 13 CFR 107.50) that a Small Business Investment Company may have outstanding at any time. The maximum Leverage amounts are adjusted annually based on the increase in the Consumer Price Index published by the Bureau of Labor Statistics. The cited regulation states that SBA will publish the indexed maximum Leverage amounts each year in a Notice in the **Federal Register**.

Accordingly, effective the date of publication of this Notice, and until further notice, the maximum Leverage amounts under 13 CFR 107.1150(a) are as stated in the following table:

If your leverage capital is:	Then your maximum leverage is:
(1) Not over $18,900,000	300 percent of Leverageable Capital.
(2) Over $18,900,000 but not over $37,800,000	$56,700,000 + [2 × (Leverageable Capital − $18,900,000)].
(3) Over $37,800,000 but not over $56,700,000	$94,500,000 + (Leverageable Capital − $37,800,000).
(4) Over $56,700,000	$113,400,000.

(Catalog of Federal Domestic Assistance Program No. 59.011, small business investment companies)

Dated: November 4, 2002.

Jeffrey D. Pierson,

Associate Administrator for Investment.

[FR Doc. 02–29166 Filed 11–15–02; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Multiple Counties

AGENCY: Federal Highway Administration (FHWA), Department of Transportation.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed highway project that will traverse the southeastern section of the State of Alabama.

FOR FURTHER INFORMATION CONTACT: Mr. Joe D. Wilkerson, Division Administrator, Federal Highway Administration, 500 Eastern Boulevard, Suite 200, Montgomery, Alabama 36117–2018, Telephone (334) 223–7370.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the State of Alabama Department of Transportation, will prepare an Environmental Impact Statement (EIS) for Project JPP–1602(507). The proposal is to construct a multi-lane, limited-access roadway from the Alabama/Florida State line at US–231 to the City of Dothan and connecting to US–231 north of the City, a distance of approximately 40 miles.

Alternatives under consideration include: (1) Alternate route locations; and, (2) a no-action or no-build alternative.

The Alabama Department of Transportation and the Alabama Division Office of the Federal Highway Administration had begun the corridor study as an environmental assessment. Letter describing the proposed action and soliciting comments were sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who previously expressed or were known to have interest in this proposal. A series of public meetings have been held. Based upon objections raised through this early coordination, the determination was made that an environmental impact statement is the appropriate level of documentation.

In addition to the early coordination already accomplished, additional meetings will be held as appropriate, and formal public hearings will be held. Public notice will be given of the time and place for the meetings and hearings. The Draft Environmental Impact Statement will be available for public and agency review and comment prior to the public hearings.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Joe D. Wilkerson,

Division Administrator, Montgomery, Alabama.

[FR Doc. 02–29126 Filed 11–15–02; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF THE TREASURY

Office of the Assistant Secretary for International Affairs; Treasury International Capital (TIC) Forms BC/BC(SA), BL–1/BL–1(SA), BL–2/BL–2(SA), BQ–1, BQ–2, and BQ–3

AGENCY: Departmental Offices, Department of the Treasury.

ACTION: Notice of reporting requirements.

SUMMARY: By this Notice, the Department of the Treasury is informing the public that it has revised the mandatory data collections conducted through reporting on the Treasury International Capital (TIC) B-forms. The revisions are effective for all reports beginning with reporting periods ending February 28, 2003 and thereafter; until that time, the current mandatory TIC B-forms and instructions remain in force. The revisions include one new form, BQ–3, revised instructions, and five revised forms: BC/BC(SA), BL–1/BL–1(SA), BL–2/BL–2(SA), BQ–1, and BQ–2. This Notice constitutes legal notification to all United States persons, as defined below, who meet the reporting requirements set forth in this Notice that they must respond to, and comply with, these data collections. United States persons who meet the reporting requirements but who do not receive a set of the revised B-forms and instructions should contact the Federal Reserve Bank of New York, acting as fiscal agent for the Department of the Treasury, to obtain copies. Additional copies of the reporting forms and instructions may be printed from the Internet at: *http://www.treas.gov/tic/forms.html*.

Definition: A U.S. person is any individual, branch, partnership, associated group, association, estate, trust, corporation, or other organization (whether or not organized under the laws of any state), and any government (including a foreign government, the United States Government, a state, provincial, or local government, and any agency, corporation, financial institution, or other entity or instrumentality thereof, including a government-sponsored agency), who resides in the United States or is subject to the jurisdiction of the United States.

Who must Report: U.S. persons who are (a) depository institutions, bank holding companies, financial holding companies, or securities brokers and dealers; and (b) whose reportable

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amounts exceed established exemption levels must: Report on Form BC/BC(SA) if the total of reporter's own dollar claims on all foreigners is $50 million or more, or if the total of such claims is $25 million or more for any individual country; report on Form BL–1/BL–1(SA) if the total of reporter's own dollar liabilities to all foreigners is $50 million or more, or if the total of such liabilities is $25 million or more for any individual country; report on Form BL–2/BL–2(SA) if the total of reporter's domestic customers' dollar liabilities to all foreigners is $50 million or more, or if the total of such liabilities is $25 million or more for any individual country; report on Form BQ–1 if the total of reporter's domestic customers' dollar claims on all foreigners is $50 million or more, or if the total of such claims is $25 million or more for any individual country; report on Form BQ–2, Part 1 if the total of foreign currency-denominated liabilities and claims of reporter and its domestic customers vis-á-vis all foreigners is $50 million or more, or the total of such liabilities and claims is $25 million or more for any individual country; report on Form BQ–2, Part 2 if the total of reporter's domestic customers' foreign currency-denominated liabilities to all foreigners is $50 million or more; and report on Form BQ–3 if the total of the maturities of selected own dollar and foreign currency-denominated liabilities of the reporter vis-á-vis all foreigners is $4,000 million or more.

What to Report: These reports collect timely information on international portfolio capital movements vis-á-vis foreign countries and international and regional organizations as follows: Form BC/BC(SA) collects information on reporter's own U.S. dollar claims on foreigners; Form BL–1/BL–1(SA) collects information on reporter's own U.S. dollar liabilities to foreigners; Form BL–2/BL–2(SA) collects information on U.S. dollar liabilities of reporter's domestic customers to foreigners; Form BQ–1 collects information on U.S. dollar claims of reporter's domestic customers on foreigners; Form BQ–2, Part 1 collects information on liabilities and claims of reporter and on claims of reporter's domestic customers vis-á-vis foreigners, that are denominated in foreign currencies; Form BQ–2, Part 2 collects information on foreign currency-denominated liabilities of reporter's domestic customers to foreigners; and Form BQ–3 collects information on maturities of selected U.S. dollar and foreign currency-denominated liabilities of reporter vis-á-vis foreigners.

How to Report: Copies of the reporting forms and instructions, which contain complete information on reporting procedures and definitions, can be obtained by contacting the statistics unit of the Federal Reserve Bank of New York at (212) 720–8037, email: *Patrica.Selvaggi@ny.frb.org.* The mailing address is: Federal Reserve Bank of New York, Statistics Function, 4th Floor, 33 Liberty Street, New York, NY 10045–0001.

When to Report: Data on the revised TIC B-forms should be submitted to the reporter's District Federal Reserve Bank, acting as fiscal agent for the Department of the Treasury, beginning with reporting periods as of February 28, 2003 and thereafter.

Paperwork Reduction Act Notice: These data collections have been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act and assigned control numbers: 1505–0016 for BQ–1; 1505–0017 for BC/BC(SA); 1505–0018 for BL–2/BL–2(SA), 1505–0019 for BL–1/BL–1(SA); 1505–0020 for BQ–2; and 1505–0189 for BQ–3. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

Dwight Wolkow,

Administrator, International Portfolio Investment Data Reporting Systems.

[FR Doc. 02–29121 Filed 11–15–02; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–105606–99]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing notice of proposed rulemaking, Credit for Increasing Research Activities (§ 41(f)).

DATES: Written comments should be received on or before January 17, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of regulations should be directed to Carol Savage, (202) 622–3945, or through the Internet (*CAROL.A.SAVAGE@irs.gov.*), Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION: *Title:* Credit for Increasing Research Activities.

OMB Number: 1545–1670.

Regulation Project Numbers: REG–105606–99.

Abstract: The regulation addresses the computation of the credit for increasing research activities for members of a controlled group and the allocation of the credit under section 41(f) of the Internal Revenue Code.

Current Actions: There is no change to this existing regulation.

Type of review: Extension of OMB approval.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 10.

Estimated Time Per Respondent: 20 hours.

Estimated Total Annual Burden Hours: 200.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 12, 2002.

Carol Savage,

Program Analyst.

[FR Doc. 02–29205 Filed 11–15–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–113572–99]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, REG–113572–99 (TD 8933), Qualified Transportation Fringe Benefits (§ 1.132–9(b)).

DATES: Written comments should be received on or before January 17, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of regulations should be directed to Carol Savage, (202) 622–3945, or through the Internet (*CAROL.A.SAVAGE@irs.gov.*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Qualified Transportation Fringe Benefits.

OMB Number: 1545–1676.

Regulation Project Number: REG–113572–99.

Abstract: These regulations provide guidance to employers that provide qualified transportation fringe benefits under section 132(f), including guidance to employers that provide cash reimbursement for qualified transportation fringes and employers that offer qualified transportation fringes in lieu of compensation. Employers that provide cash reimbursement are required to keep records of documentation received from employees who receive reimbursement. Employers that offer qualified transportation fringes in lieu of compensation are required to keep records of employee compensation reduction elections.

Current Actions: There is no change to this existing final regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, individual or households, and not-for-profit institutions.

The burden is reflected in the burden for Form W–2.

Estimated total annual recordkeeping burden: 7,020,000.

Estimated average annual recordkeeping burden per recordkeeper: The average annual recordkeeping burden will vary depending on the size of the employer. The estimated average annual recordkeeping burden per recordkeeper is 26.5 hours.

Estimated number of recordkeepers: 265,343.

Estimated total annual reporting burden: 5,948,728 hours.

Estimated average annual reporting burden per respondent: .8 hours.

Estimated number of respondents: 7,264,970.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 12. 2002.

Carol Savage,

Program Analyst.

[FR Doc. 02–29206 Filed 11–15–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–105606–99; REG–107184–00 REG–161424–01]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing notice of proposed rulemaking, REG–105316–98, Credit for Increasing Research Activities; REG–105316–98; REG–161424–01; and final regulation, REG–107184–00 (TD 8992), Information Reporting for Qualified Tuition and Related Expenses; Magnetic Media Filing Requirements for Information Returns (§§ 1.6050S–1, and 1.6050S–3).

DATES: Written comments should be received on or before January 17, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

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FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of regulations should be directed to Carol Savage, (202) 622–3945, or through the Internet (*CAROL.A.SAVAGE@irs.gov.)*, Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION: *Title:* REG–105316–98, Credit for Increasing Research Activities; REG–105316–98; REG–161424–01; and REG–107184–00 (TD 8992), Information Reporting for Qualified Tuition and Related Expenses; Magnetic Media Filing Requirements for Information Returns.

OMB Number: 1545–1678.

Regulation Project Numbers: REG–105316–98; REG–161424–01; and REG–107184–00.

Abstract: These regulations relate to the information reporting requirements in section 6050S of the Internal Revenue Code for payments of qualified tuition and related expenses and interest on qualified education loans. These regulations provide guidance to eligible education institutions, insurers, and payees required to file information returns and to furnish information statements under section 6050S.

Current Actions: There is no change to this existing regulation.

Type of review: Extension of OMB approval.

Affected Public: Business or other for-profit organizations, and not-for-profit institutions.

The burden is reflected in the burdens for Form 1098–T and Form 1098E.

Estimated total annual reporting burden for 2002 for Form 1098–T: 4,848,090 hours.

Estimated average annual burden hours per response for Form 1098–T: 13 minutes.

Estimated number of responses for 2002 for Form 1098–T: 21,078,651.

Estimated total annual reporting burden for 2002 for Form 1098–E: 1,051,357 hours.

Estimated average annual burden hours per response for Form 1098–E: 7 minutes.

Estimated number of responses for 2002 for Form 1098–E: 8,761,303.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 12, 2002.

Carol Savage,

Program Analyst.

[FR Doc. 02–29207 Filed 11–15–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Tip Rate Determination Agreement (Gaming Industry)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning the Tip Rate Determination Agreement (Gaming Industry).

DATES: Written comments should be received on or before January 17, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the Tip Rate determination Agreement (Gaming Industry) should be directed to Carol Savage, (202) 622–3945, or through the Internet (*CAROL.A.SAVAGE@irs.gov.*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION: *Title:* Tip Rate Determination Agreement (Gaming Industry).

OMB Number: 1545–1530.

Abstract: Information is required by the Internal Revenue Service in its compliance efforts to assist employers and their employees in understanding and complying with Internal Revenue Code section 6053(a), which requires employees to report all their tips monthly to their employers.

Current Actions: There is no change to this existing information collection.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 100.

Estimated Average Time Per Respondent: 43 hr., 40 min.

Estimated Total Annual Burden Hours: 4,367.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 12, 2002.

Carol Savage,

Program Analyst.

[FR Doc. 02–29208 Filed 11–15–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[AC–9: OTS Nos. H–3917 and 01680]

Sound Federal Bancorp, Inc., Mamaroneck, New York; Approval of Conversion Application

Notice is hereby given that on November 12, 2002, the Director, Supervision, Office of Thrift Supervision ("OTS"), or her designee, acting pursuant to delegated authority, approved the application of Sound Federal Savings and Loan Association, Mamaroneck, New York, to convert to the stock form of organization. Copies of the application are available for inspection by appointment (phone number: 202–906–5922 or e-mail: *Public.Info@OTS.Treas.gov*) at the Public Reading Room, OTS, 1700 G Street, NW., Washington, DC 20552, and the OTS Northeast Regional Office, 10 Exchange Place, 18th Floor, Jersey City, New Jersey 07302.

Dated: November 13, 2002.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 02–29191 Filed 11–15–02; 8:45 am]

BILLING CODE 6720–01–M

UNITED STATES INSTITUTE OF PEACE

Announcement of the Spring 2003 Solicited Grant Competition Grant Program

AGENCY: United States Institute of Peace.

ACTION: Notice.

SUMMARY: The Agency announces its Upcoming Spring 2003 Solicited Grant Competition. The solicited grant competition is restricted to projects that fit specific themes and topics identified in advance by the Institute of Peace.

The themes and topics for the Spring 2003 solicited competition are:

- *Solicitation A:* Democracy and governance in Muslim countries.
- *Solicitation B:* Education, conflict, and peacebuilding in ethnically divided societies and regions.

Deadline (Receipt of Application Material): March 1, 2003.

Notification of Awards: September 30, 2003.

Applications Material: Available upon request.

ADDRESSES: For more information and an application package: United States Institute of Peace, Grant Program, Solicited Grants, 1200 17th Street, NW., Suite 200, Washington, DC 20036–3011, (202) 429–3842 (phone), (202) 833–1018 (fax), (202) 457–1719 (TTY), E-mail: *grant_program@usip.org.*

Application material available on-line now at: *http://www.usip.org/grants.html.*

FOR FURTHER INFORMATION CONTACT: The Grant Program, phone (202) 429–3842.

Dated: November 12, 2002.

Bernice J. Carney,

Director, Office of Administration.

[FR Doc. 02–29111 Filed 11–15–02; 8:45 am]

BILLING CODE 6820–AR–M

UNITED STATES INSTITUTE OF PEACE

Announcement of the Spring Unsolicited Grant Competition Grant Program

AGENCY: United States Institute of Peace.

ACTION: Notice.

SUMMARY: The Agency announces its Upcoming Unsolicited Grant Program, which offers support for research, education and training, and the dissemination of information on international peace and conflict resolution. The unsolicited competition is open to any project that falls within the Institute's broad mandate of international conflict resolution.

Deadline (Receipt of Application Material): March 1, 2003.

Notification of Awards: September 30, 2003.

Applications Material: Available upon request.

ADDRESSES: For more information and an application package: United States Institute of Peace, Grant Program, 1200 17th Street, NW., Suite 200, Washington, DC 20036–3011. (202) 429–3842 (phone). (202) 833–1018 (fax). (202) 457–1719 (TTY). Email: *grant_program@usip.org.*

Application material available on-line now at *http://www.usip.org/grants.html.*

FOR FURTHER INFORMATION CONTACT: The Grant Program, phone (202) 429–3842. E-mail: grant_program@usip,org.

Dated: November 12, 2002.

Bernice J. Carney,

Director, Office of Adminsitration.

[FR Doc. 02–29112 Filed 11–15–02; 8:45 am]

BILLING CODE 6820–AR–M

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Corrections

Federal Register
Vol. 67, No. 222
Monday, November 18, 2002

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 4

Commodity Pool Operators and Commodity Trading Advisors; Exemption From Requirement To Register for CPOs of Certain Pools and CTAs Advising Such Pools

Correction

In proposed rule document 02–28820 beginning on page 68785 in the issue of Wednesday November 13, 2002, make the following correction:

On page 68785, in the third column, in the **DATES** section, in the second line, " January 13, 2002" should read "January 13, 2003".

[FR Doc. C2–28820 Filed 11–15–02; 8:45 am]
BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 02–ACE–8]

Proposed Establishment of Class E2 and Class E4 Airspace and Modification of Existing Class E5 Airspace; Ainsworth, NE; Correction

Correction

In proposed rule document 02–28832 appearing on page 68785 in the issue of Wednesday, November 13, 2002, make the following correction:

On page 68785, in the first column, under the **DATES** heading, in the third line, "December 5, 2002" should read "December 15, 2002".

[FR Doc. C2–28832 Filed 11–15–02; 8:45 am]
BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent to Rule on Application 02–01–C–00–JLN To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Joplin Regional Airport, Joplin, MO

Correction

In notice document 02–27729 beginning on page 66450 in the issue of Thursday, October 31, 2002 make the following correction:

On page 66451, in the first column, in the ninth line from the bottom, "$.50 " should read "$4.50 ".

[FR Doc. C2–27729 Filed 11–15–02; 8:45 am]
BILLING CODE 1505–01–D

Federal Register

Monday,
November 18, 2002

Part II

Department of Transportation

National Highway Traffic Safety Administration

49 CFR Parts 567, 571, 574, 575, and 597
Tire Safety Information; Final Rule

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 567, 571, 574, 575, and 597

[Docket No. NHTSA–02–13678]

RIN 2127–AI32

Tire Safety Information

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule.

SUMMARY: In response to the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act of 2000, this document establishes a new Federal Motor Vehicle Safety Standard to improve the information readily available to consumers about tires. The new information will assist consumers in identifying tires that may be the subject of a safety recall. It will also increase public awareness of the importance and methods of observing motor vehicle tire load limits and maintaining proper tire inflation levels for the safe operation of a motor vehicle. This rule applies to all new and retreaded tires for use on vehicles manufactured after 1975 with a gross vehicle weight rating of 10,000 pounds or less and to all new vehicles with a gross vehicle weight rating of 10,000 pounds or less, except for motorcycles and low speed vehicles.

DATES: This final rule is effective September 1, 2003. Voluntary compliance is permitted before that time. If you wish to submit a petition for reconsideration of this rule, your petition must be received by January 2, 2003.

ADDRESSES: Petitions for reconsideration should refer to the docket number and be submitted to: Administrator, Room 5220, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: For technical and policy issues: Mr. Roger Kurrus, Office of Planning and Consumer Programs. Telephone: (202) 366–2750. Fax: (202) 493–2290. Mr. Joseph Scott, Office of Crash Avoidance Standards, Telephone: (202) 366–2720. Fax: (202) 366–4329.

For legal issues: Nancy Bell, Attorney Advisor, Office of the Chief Counsel, NCC–20. Telephone: (202) 366–2992. Fax: (202) 366–3820.

All of these persons may be reached at the following address: National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590.

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I. Executive Summary

A. Highlights of the Notice of Proposed Rulemaking

In the Notice of Proposed Rulemaking (NPRM) (66 FR 65536, Docket No. NHTSA–01–11157) published on December 19, 2001, the agency proposed to establish a new standard that would revise the agency's existing tire labeling requirements, as well as its current regulations to improve tire information for light vehicles (vehicles other than motorcycles and low speed vehicles (LSVs) with a gross vehicle weight rating (GVWR) of 10,000 pounds or less) and light vehicle tires and its availability and understandability to consumers. The proposal was substantially based on NHTSA's activities undertaken in response to the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act of 2000, including publication of an ANPRM, consideration of comments in response to the ANPRM, data gathering and analysis, and NHTSA sponsored focus groups. The highlights of the proposal were as follows:

(1) *Tire Markings*—the TIN, size designation, maximum permissible inflation pressure, and maximum load rating would have been placed on both sides of light vehicle tires;

(2) *Tire Identification Number (TIN)*—(a) information in the TIN would have been reordered so that the first six characters would have contained the information required for determining whether a particular tire is subject to a recall and, (b) each TIN character would have been at least 6 mm (¼") high;

(3) *Vehicle Placard Content and Format*—(a) the tire inflation pressure information would have been visually separated by a red colored border on the vehicle placard or, alternatively, would have been placed on a separate tire inflation pressure label, (b) the tire inflation pressure information on the placards would have been in color (red, yellow, and black on a white background), (c) a black and white tire symbol icon (13 millimeters (.51 inches) wide and 14 millimeters (.55 inches) high) would have been in the upper left corner of the placard and label, (d) the placard and label would have both included the phrases "Tire Information" and "See Owner's Manual For Additional Information" in yellow text on a black background, (e) the statement of "vehicle capacity weight" on the vehicle placard would have been replaced with the following sentence: "[t]he combined weight of occupants and cargo should never exceed XXX pounds," and, (f) the vehicle's recommended tire size designation would have been replaced with the tire size designation for the tire installed as original equipment on the vehicle by the vehicle manufacturer;

(4) *Placard Location*—the placard or placard and label containing tire inflation pressure by tire size and other required information specified in S4.3 of FMVSS No. 110 would have been located on the driver's side B-pillar. If a vehicle did not have a B-pillar, then the placard or placard and label would have been placed on the edge of the driver's door; and

(5) *Owner's Manual Information*—owner's manuals for light vehicles would have discussed the following five subject areas: (a) Tire labeling, (b) recommended tire inflation pressure, (c) glossary of tire terminology, (d) tire care, and (e) vehicle load limits.

Also, the agency proposed revising FMVSS No. 110, *Tire selection and rims*, for passenger cars, 49 CFR 571.110, and FMVSS No. 120 *Tire selection and rims for motor vehicles other than passenger cars*, 49 CFR 571.120, to reflect the applicability of the proposed light vehicle tire standard to vehicles with a GVWR of 10,000 pounds or less, and revising FMVSS No. 117, *Retreaded pneumatic tires*, 49 CFR 571.117, and FMVSS No. 129, *New non-pneumatic tires for passenger cars*, 49 CFR 571.129, to replace the labeling requirements contained therein with those specified in the proposed new light vehicle tire standard.

The agency proposed compliance dates for tires according to the following schedule: all passenger car ("P-metric") tires manufactured on or after September 1, 2003, and all light truck ("LT") tires manufactured on or after September 1, 2004, would have had to meet the new requirements. Additionally, all light vehicles manufactured on or after September 1, 2003, would have had to comply with the final rule. The agency proposed that lead-time to be consistent with the lead-time proposed for the tire performance upgrade. The aforementioned proposals are summarized more fully in section IV. of this document.

B. Highlights of the Final Rule

The final rule establishes a single standard for light vehicle tires, FMVSS No. 139, *New Pneumatic Tires for Light Vehicles*. It also contains provisions for labeling requirements that address the following aspects of tire and vehicle labeling: tire markings, the Tire Identification Number (TIN), vehicle placard content and format, placard location, and owner's manual information. The rule applies to all new and retreaded tires for passenger cars, multipurpose passenger vehicles, trucks, buses and trailers with a gross vehicle weight rating (GVWR) of 4,536 kg (10,000 pounds) or less, manufactured after 1975, and to all passenger cars, multipurpose passenger vehicles, trucks, buses and trailers with a gross vehicle weight rating (GVWR) of 4,536 kg (10,000 pounds) or less.[1] The requirements are fully summarized in section VII.A of this document.

In response to the NPRM, NHTSA received comments from tire and vehicle manufacturers and associations, consumer advocacy groups, and the general public. After considering the public comments and other available information, the agency is modifying certain aspects of its proposal.

In particular, the agency is persuaded, for the reasons explained in section VII.C.1.d. of this document, that there are worker safety and costs issues associated with placement of the full TIN on both sidewalls of the tire. Additionally, there are technical difficulties associated with the reordering of the TIN. These amendments were proposed to aid consumers in determining whether their tires were subject to a recall. Instead, the agency is addressing the visibility of the TIN by requiring that the full TIN, as currently ordered, appear on the "intended outboard sidewall," if there is one, and that either the full TIN or a partial TIN, *i.e.*, a TIN from which the date code has been deleted, appear on the opposite side of the tire. "Intended outboard sidewall" is defined in FMVSS No. 139 as the sidewall that contains a whitewall, bears white lettering, or bears a manufacturer or model name molding which is higher or deeper than on the other sidewall of the tire. If a tire does not have an intended outboard sidewall, the tire must be labeled with the full TIN on one sidewall and with either the full TIN or a partial TIN on the other sidewall.

The major changes to the standard (or deviations from the proposal) are as follows:

(1) The agency is not reordering the contents of the TIN.

(2) The agency is requiring the full TIN on the "intended outboard sidewall" of the tire and either the full TIN or a partial TIN, containing all aspects of the TIN except for the date code, on the opposite sidewall.

(3) The agency is eliminating size and format requirements for the vehicle placard and label, except for those specifying certain headings, use of the tire icon, and a limited use of color.

(4) If the vehicle does not have a driver's side-B-pillar and the driver's door edge is too narrow or does not exist, the agency is requiring that the placard or placard and label be affixed to the inward facing surface of the vehicle next to the driver's seating position.

(5) For tires, the agency is providing additional time for compliance with the new requirements as follows: 40% of all covered tires between September 1, 2004, and August 31, 2005, 70% of all covered tires between September 1, 2005, and August 31, 2006, and 100% of all covered tires beginning on September 1, 2006.

NHTSA has decided to adopt the effective date of September 1, 2003, for vehicle labeling. The effective date reflects NHTSA's desire for expedited action on this issue. In view of the urgent need to alert the public to tire and loading information and because the labeling revisions to light vehicles constitute format changes, not performance or vehicle design changes, NHTSA finds that an effective date of September 1, 2003, is reasonable and is in the public interest. The extension of the effective date for tires and the phase-in reflect the reality that the tire manufacturers will need to rework, retool, and replace the tire molds currently utilized. NHTSA believes that this phase-in will permit tire manufacturers to continue to use existing molds while they acquire new ones that reflect the new tire information requirements. Also, by only requiring that 40% of tires comply with the requirements during the first stage of the phase-in, the agency is providing the industry and its mold shops with an achievable task of reworking molds that would not exceed their capacity for such work. By not requiring full

[1] Therefore, this standard is applicable to LT tires up to load range E. This load range is typically used on large SUVs, vans, and trucks.

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compliance until September 1, 2006, NHTSA is providing the tire industry with ample time to accomplish the task.

The agency estimates that one-time costs of up to $23.4 million will occur for the tire industry during the phase-in period. These costs will add up to $0.08 per tire during this period. The recurring annual costs are believed to be very minor.

Retread tires are a small part of the market for light vehicles. Because the cost to change the mold to add a second TIN or partial TIN is spread over a smaller market, the cost increase per retread tires will be higher by an unknown amount.

The agency estimates that vehicle costs will increase about $0.15 per vehicle, based on $0.04 per label and $0.11 for adding about 8 pages of information to the owner's manual. With approximately 17 million light vehicles and light trailers being sold annually, the vehicle costs will be about $2.6 million per year on a recurring annual basis.

Thus, total overall costs will be up to $26 million initially, with $2.6 million estimated to occur on a recurring annual basis.

NHTSA believes that this rule will be effective in increasing public awareness of tire safety, particularly, the understanding and maintenance of proper tire inflation and load limits. This rule will also enable consumers to identify the TIN and other tire information more easily for recalls and other notifications. The rule will standardize the location and content of important information relating to proper inflation and load limits and other tire safety concerns. By increasing consumer knowledge and awareness, this rule will lead to reduced tire failures and tire related crashes, and therefore fewer deaths and injuries.

II. Background

A. The Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act

The Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act of 2000, Pub. L. 106–414, requires the agency to address numerous matters through rulemaking. One of these matters, set forth in section 11 of the Act, is the improvement of the labeling of tires required by section 30123 of title 49, United States Code, to assist consumers in identifying tires that may be the subject of a recall. Section 11 provides that the agency must initiate a rulemaking proceeding for that purpose within 30 days after the enactment of the Act and must complete it not later than June 1, 2002.

Additionally, that section provides that the agency may take whatever additional action it deems appropriate to ensure that the public is aware of the importance of observing motor vehicle tire load limits and maintaining proper tire inflation levels for the safe operation of a motor vehicle. Section 11 states that such additional action may, for example, include a requirement that the manufacturer of motor vehicles provide the purchasers of the motor vehicles information on appropriate tire inflation levels and load limits if the agency determines that requiring such manufacturers to provide that information is the most appropriate way the information can be provided.

B. Safety Problem

1. Difficulty Locating the Tire Identification Number (TIN)

The Firestone tire recalls in 2000 highlighted the difficulty that consumers experience when attempting to determine whether a tire is subject to a recall if the tire is mounted so that the sidewall bearing the TIN and size designation faces inward, *i.e.*, underneath the vehicle.

The side of a tire bearing the TIN is often mounted so that it faces inward. In the case of whitewall tires, this occurs because the TIN is almost always molded on the blackwall (*i.e.*, inside sidewall) of the tire. Whitewall tires account for a small and declining percentage (currently about 5 percent or less) of original equipment tire sales in this country, but about 40 percent of replacement tires. There are about three times as many replacement tires as original equipment tires sold each year. Blackwall tires, which have the TIN on one sidewall, are as likely to be mounted with the number side facing in as out. Based on this information, we estimate that approximately 65 percent of all tires are mounted with their TINs not readily visible.

When tires are mounted so that the TINs appear on the inward facing sidewalls, motorists have three inconvenient options for finding and recording the TINs. They must either: (1) Slide under the vehicle with a flashlight, pencil and paper and search the inside sidewalls for the TINs; (2) remove each tire, find and record the TIN, and then replace the tire; or (3) enlist the aid of a garage or service station that can perform option 1 or place the vehicle on a vehicle lift so that the TINs can be found and recorded.

As a result of the difficulty and inconvenience of checking the TINs, the percentage of people who respond to a tire recall campaign is reduced and motorists unknowingly continue to drive their vehicles with potentially unsafe tires.

2. Misunderstanding and Dangers Associated With Inflation Pressure

As discussed in the NPRM, surveys indicate that consumers often do not realize that the recommended inflation pressure, which provides the cold tire inflation pressure for the maximum loaded vehicle weight based upon vehicle specification and operation as determined by the vehicle manufacturer, is labeled on the vehicle on a placard or the vehicle certification label by the vehicle manufacturer. Surveys also indicate that a significant number of vehicles are being operated with underinflated, overloaded and/or damaged tires and that the public needs to be reminded to inspect and properly maintain their tires.

The sidewalls of a tire used while significantly under-inflated flex more and the air temperature inside it increases, making the tire more prone to failure. In addition, a significantly under-inflated tire loses lateral traction, making handling and stopping more difficult. Under-inflated tires can contribute to various types of crashes in addition to those resulting from blow outs or tire failure, including crashes which result from: An increase in stopping distance; skidding and/or a loss of control of the vehicle in a curve or in a lane change maneuver; or hydroplaning on a wet surface.

Additionally, under-inflation contributes to tire overloading. Tire overloading describes a condition in which the vehicle is carrying more weight than the tire is rated to carry at a specified inflation pressure. For instance, for every 1-pound per square inch (psi) reduction in inflation pressure, a vehicle's tires suffer a 1.6% reduction in vehicle capacity weight (passenger plus cargo capacity). Overloading can result in handling or steering problems, brake failure, and tire failure.

As discussed in the NPRM, several crash files contain information on "general" tire related problems that precipitate crashes. The more recent of these files are The National Automotive Sampling System—Crashworthiness Data System (NASS–CDS) and the Fatality Analysis Reporting System (FARS). For instance, the NASS–CDS data demonstrate that about one half of one percent of all crashes are caused by these tire problems. The rate of blowout-caused crashes for light trucks (0.99 percent) is more than three times the rate of those crashes for passenger cars (0.31 percent). Blowouts cause a much higher proportion of rollover crashes (4.81) than non-rollover crashes (0.28); and again more than three times the rate in light trucks (6.88 percent) than in passenger cars (1.87 percent). FARS data for 1995 through 1998 show that 1.10 percent of all light vehicles in fatal crashes were coded with tire problems. Light trucks had slightly higher rates of tire problems (1.20 percent) than passenger cars (1.04 percent). The annual average number of vehicles with tire problems in FARS was 535 (313 passenger cars and 222 light trucks).

C. Existing Labeling Requirements

1. Tire Sidewall Labeling

NHTSA's existing labeling requirements for new passenger car tires are set forth in Federal Motor Vehicle Safety Standard (FMVSS) No. 109, *New Pneumatic Tires—Passenger Cars* (49 CFR 571.109). Specifically, section S4.3 of FMVSS No. 109 sets forth information labeling requirements for tires, including requirements regarding the positioning of the information on the sidewall to ensure that it is readily visible and to minimize the possibility that it will be scuffed off if the sidewall hits a curb or similar object. It provides that the information listed in paragraphs S4.3 (a) through (e) (*e.g.*, number of plies and maximum permissible inflation pressure) must appear, on at least one sidewall, in an area between the maximum section width and the bead of the tire, unless the maximum section width of the tire falls between the bead and one-fourth of the distance from the bead to the shoulder of the tire.

NHTSA's labeling requirement for retreaded passenger car tires is set forth in FMVSS No. 117, *Pneumatic Retreaded Tires* (49 CFR 571.117). FMVSS No. 117 requires that each newly retreaded passenger car tire have molded into its sidewalls information similar to that required in FMVSS No. 109, plus the words "bias," or "bias belted," or "radial," as applicable. FMVSS No. 117 does not, though, require that the name of the manufacturer or brand name and number assigned to the manufacturer be placed on retreaded tires as is required on new passenger vehicle tires by FMVSS No. 109.

NHTSA's labeling requirements for new tires for vehicles other than passenger cars are set forth in FMVSS No. 119, *New Pneumatic Tires for Vehicles other than Passenger Cars* (49 CFR 571.119). Paragraph S6.5 of FMVSS No. 119 specifies that all tires for vehicles other than passenger cars must have certain markings on the sidewalls. Among other things, these tires must show the actual number of plies in the tire, the composition of the ply cord material (S6.5(f)), and a letter designating the load range (S6.5(j)). S6.5 also provides that the designated information must appear, on at least one sidewall, in an area between the maximum section width and bead of the tire, unless the maximum section width of the tire falls between the bead and one-fourth of the distance from the bead to the shoulder of the tire. For tires for which the maximum section width falls in that area, all required labeling must be located between the bead and a point one-half the distance from the bead to the shoulder of the tire. Additionally, section S6.5(b) requires that each tire be marked with the tire identification required by part 574 of this chapter and that this number may be marked on only one sidewall.

NHTSA's labeling requirements for new temporary spare non-pneumatic tires for passenger cars are set forth in FMVSS No. 129, *New non-pneumatic tires for passenger cars* (49 CFR 571.129). The FMVSS No. 129 labeling requirements are similar to those set forth in section S4.3 in FMVSS No. 109 for size designation, load, rating, rim size and type designation, manufacturer or brand name, certification, and tire identification number. Paragraph S.4 of FMVSS No. 129 specifies that each non-pneumatic tire must have certain markings on the sidewalls including the non-pneumatic tire identification code (NPTIC), the load rating, and the tire identification number required in Part 574. These labeling requirements also specify that the labeling information must appear on both sides of the tire, except, in the case of a tire that has a particular side that must always face outward where the information must appear on the outward facing side.

2. Tire Identification Number (TIN)

Section 574.5 of Title 49, CFR, *Tire Identification Requirements*, sets forth the methods by which new tire manufacturers and new tire brand name owners must identify tires for use on motor vehicles. The section also sets forth the methods by which tire retreaders and retreaded tire brand name owners must identify tires for use on motor vehicles. The purpose of these requirements is to facilitate efforts by tire manufacturers to notify purchasers of defective or nonconforming tires and by such purchasers to identify those tires so that purchasers can take appropriate action in the interest of motor vehicle safety.

Specifically, § 574.5 requires each new tire manufacturer and each tire retreader to mold a TIN into or onto the sidewall of each tire produced, in the manner and location specified in the section and as depicted in Figures 1 and 2 of that section. The TIN is composed of four groups:

1. The first group represents the manufacturer's identification mark assigned to such manufacturer by this agency in accordance with § 574.6;
2. The second group represents the tire size for new tires; for retreaded tires, the second group represents the retread matrix in which the tire was processed or, if no matrix was used, a tire size code;
3. The third group may, at the option of the manufacturer, be used as a descriptive code for identifying significant characteristics of the tire. If the tire is produced for a brand name owner, the third grouping must identify such brand name owner; and
4. The fourth group identifies the week and year of manufacture. The first two figures identify the week, starting with "01" to represent the first full week of the calendar year; the second two figures represent the year. For example, "2198" represents the 21st week of 1998.

3. Vehicle Labeling

Labeling requirements are also contained in 49 CFR part 567, *Certification*, 49 CFR part 575, *Consumer Information Regulations*, FMVSS No. 110, *Tire Selection and Rims*, applicable to passenger cars and to non-pneumatic spare tire assemblies for use on passenger cars, and FMVSS No. 120, *Tire Selection and Rims for Motor Vehicles Other Than Passenger Cars*.

Section 567.4 requires vehicle manufacturers to affix to each vehicle a label bearing, among other things, the Gross Vehicle Weight Rating (GVWR), which must not be less than the sum of the unloaded vehicle weight, rated cargo load, and 150 pounds times the vehicles rated seating capacity; and the Gross Axle Weight Rating (GAWR), which is the value specified by the manufacturer as the load carrying capacity of a single axle system.

Paragraph S4.3 of FMVSS No. 110 requires manufacturers to affix a placard to each passenger car's glove compartment door or an equally accessible location showing the vehicle's capacity weight, designated seating capacity, the manufacturer's recommended cold tire inflation pressure for maximum loaded vehicle weight, the manufacturer's recommended tire size designation, and,

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for a vehicle equipped with a non-pneumatic spare tire assembly, the non-pneumatic identification code required by FMVSS No. 129, *New Non-Pneumatic Tires for Passenger Cars*. The required information is intended to promote the vehicle's safe performance by preventing the overloading of the tires or the vehicle itself.

FMVSS No. 120 requires that each vehicle show, on the label required by 567.4, or on a tire information label (S5.3.2(b)), the recommended tire size designation appropriate for the GAWR, the size and type designation of rims appropriate for those tires, and the recommended cold inflation pressure for those tires such that the sum of the load ratings of the tires on each axle (when the tires load carrying capacity at the specified pressure is reduced by dividing 1.10, in the case of a tire subject to FMVSS No. 109, *i.e.*, a passenger car tire) is appropriate for the GAWR.

III. December 2000 Advance Notice of Proposed Rulemaking (ANPRM)

On December 1, 2000, this agency initiated rulemaking, as required by the TREAD Act, by publishing an Advance Notice of Proposed Rulemaking (ANPRM) (65 FR 75222, Docket No. NHTSA–00–8296), which announced our plans to (1) improve the labeling of tires, (2) assist consumers in identifying tires that may be the subject of a recall, and (3) ensure that the public is aware of the importance of observing motor vehicle tire load limits and maintaining proper tire inflation levels for the safe operation of a motor vehicle.

The ANPRM discussed NHTSA's existing tire information labeling and marking requirements, tire identification number requirements, and other labeling requirements such as those contained within its Consumer Information Regulations, *e.g.*, Uniform Tire Quality Grading System ("UTQGS"). Also discussed in the ANPRM were prior rulemaking actions and petitions pertinent to the tire labeling issues addressed by the TREAD. Act, particularly those relevant to the location of the TIN, and underinflation and overloading concerns.

NHTSA solicited comments in areas such as general consumer knowledge and behavior, availability of information to consumers, TIN information, and other tire labeling information. The agency also asked many specific questions related to such matters such as TIN content, readability and location, worker safety and costs issues associated with labeling the TIN on both sidewalls of the tire, loading, plies and cord material, tread wear indicators, UTQGS, speed rating, run-flat and extended mobility tires, tire inflation pressure, and the dissemination of tire safety information.

IV. December 2001 Notice of Proposed Rulemaking

On December 19, 2001, the agency published an NPRM proposing to establish a new standard that would revise the agency's existing tire labeling requirements, as well as revise its current regulations to improve tire information for light vehicles (vehicles other than motorcycles and low speed vehicles (LSVs) with a GVWR of 10,000 pounds or less) and light vehicle tires and its availability and understandability to consumers.

The NPRM's proposed amendments addressed the following aspects of tire and vehicle labeling: tire markings, the Tire Identification Number (TIN), vehicle placard content and format, placard location, and owner's manual information. The proposal would have extended all passenger car labeling requirements, including those requiring the labeling of combined occupant and cargo weight capacity and designated seating positions, to light trucks and multipurpose passenger vehicles (MPVs) with a GVWR or 10,000 pounds or less. The proposed revisions were based on consideration of comments in response to the ANPRM, data gathering and analysis, and NHTSA sponsored focus groups.

NHTSA proposed that the TIN, size designation, maximum permissible inflation pressure, and maximum load rating be placed on both sides of light vehicle tires. Requiring the TIN and size designation to be on both sides would have ensured that that information would be on the sidewall facing outward, regardless of how the tire is mounted. We also proposed requiring that the TIN appear on both sides of the tire because dual-side labeling was suggested during the congressional hearings concerning the Firestone recall. Also, based on responses to the ANPRM by the tire industry claiming a general "safety hazard" due to unspecified "changes in the manufacturing process," and reasons provided in the NPRM, we were not then persuaded that there were significant worker safety concerns associated with this proposal. Requiring that the other items of information be on both sidewalls would have aided consumers in maintaining their tires and loading their vehicles.

NHTSA proposed two changes to the TIN. First, the agency proposed to require a re-ordering of information in the TIN so that the first six characters would have contained the information required for determining whether a particular tire is subject to a recall. The first two characters would have reflected the plant code, and the next four characters would have reflected the date code. Second, the agency proposed to require that each character be 6 mm (¼") high. The agency believed that a requirement for a uniform TIN font size would have significantly improved the readability of the TIN.

The agency proposed four sets of revisions for the presentation of tire inflation pressure and load limit information on the vehicle placard currently required for passenger cars by S4.3 of § 571.110 and to be required for all light vehicles with a GVWR of 10,000 pounds or less.[2] The NPRM contained figures illustrating the proposed revisions to the placard. This placard, permanently affixed to the glove compartment door or an equally accessible location, currently displays the vehicle capacity weight, the designated seating capacity (expressed in terms of total number of occupants and in terms of occupants for each seat location), the vehicle manufacturer's recommended cold tire inflation pressure for maximum loaded vehicle weight, and the manufacturer's recommended tire size designation.

First, the agency proposed that tire inflation pressure information would have been visually separated by a red colored border on the vehicle placard or, alternatively, been placed on a separate tire inflation pressure label. The vehicle placard would have contained only the information that would have been required in the proposed version of S4.3 (paragraphs (a)–(e)).[3] This information would not have been combined with other labeling or certification requirements. The

[2] FMVSS No. 120 currently requires that each motor vehicle other than a passenger car show, on the label required by § 567.4, or on a tire information label (S5.3.2(b)), the recommended tire size designation appropriate for the GAWR, the tire size and type designation of rims appropriate for those tires, and the recommended cold inflation pressure for those tires such that the sum of the load ratings on the tires on each axle (when the tire's load carrying capacity at the specified pressure is reduced by dividing 1.10, in the case of a tire subject to FMVSS No. 109, *i.e.*, a passenger car tire) is appropriate for the GAWR.

[3] (a) Vehicle capacity weight expressed as "THE COMBINED WEIGHT OF OCCUPANTS AND CARGO SHOULD NEVER EXCEED XXX POUNDS";

(b) Designated seating capacity (expressed in terms of total number of occupants and in terms of occupant for each seat location);

(c) Vehicle manufacturer's recommended cold tire inflation pressure;

(d) Tire size designation for the tire installed as original equipment on the vehicle by the vehicle manufacturer; and

(e) "SEE OWNER'S MANUAL FOR ADDITIONAL INFORMATION".

vehicle placard also would have had to meet the proposed color and content requirements as discussed below.

Second, the agency also proposed that the tire inflation pressure label and vehicle placard would have had to meet the following three requirements: (1) The tire inflation pressure information on the placards would have been in color—red, yellow, and black on a white background, (2) contained a black and white tire symbol icon in the upper left corner of the placards, 13 millimeters (.51 inches) wide and 14 millimeters (.55 inches), and (3) the placard and label would have both include the phrases "Tire Information" and "See Owner's Manual For Additional Information" in yellow text on a black background.

Third, the agency proposed to replace the vehicle capacity weight statement on the vehicle placard with the following sentence: "[t]he combined weight of occupants and cargo should never exceed XXX pounds." The "XXX" amount would equal the "vehicle capacity weight" of the vehicle as defined in FMVSS No. 110. The information was the same as that currently required to be placed on the vehicle placard by manufacturers. However, the agency believed that the statement "the combined weight of occupants and cargo should never exceed * * *" would have been easier for consumers to comprehend than a technical phrase such as "vehicle capacity weight." "Vehicle capacity weight" is not intuitive to consumers and would have required a vehicle operator to look to the owner's manual or standard to understand which factors are included in the calculation of the sum/amount on the placard.

Fourth, the agency proposed to replace the vehicle's recommended tire size designation with the tire size designation for the tire installed as original equipment on the vehicle by the vehicle manufacturer. While in most instances these two numbers would have been identical, this minor revision would have insured that the consumer is provided with the correct tire inflation pressure information for the tire size actually installed on his vehicle as original equipment by the manufacturer.

We proposed these placard changes in response to survey and focus group data which indicated that consumers needed assistance in locating recommended tire pressures for their vehicle's tires and understanding load limits. The use of colors and a visual cue, such as a tire symbol icon, would have aided drivers in noticing and locating this imperative information. By expressing the vehicle's load limit in easily recognizable terms such as "passenger and cargo weight", as opposed to "vehicle capacity weight" the proposed placard revisions would have also aided consumers in understanding and adhering to load limit guidelines.

The agency proposed that the placard or placard and label containing tire inflation pressure by tire size and other required information specified in S4.3 of FMVSS No. 110 would have been located on the driver's side B-pillar. If a vehicle did not have a B-pillar, then the placard or placard and label would have been placed on the edge of the driver's door. Currently, S4.3 of 571.110 specifies that the vehicle placard be affixed to the glove compartment door or an equally accessible location. A standardized location for tire information placards and labels would have contributed to consumer awareness of recommended tire inflation pressures and load limits.

The agency proposed that owner's manuals for light vehicles contain discussion of the following five subject areas: (1) Tire labeling, (2) recommended tire inflation pressure, (3) glossary of tire terminology, (4) tire care, and (5) vehicle load limits. A single, reliable source containing the proposed required information for the tires and tire safety information listed above would have aided consumers by providing to them, in one centralized location, the information that they needed to properly maintain their tires and adhere to recommended load limits.

Finally, the agency proposed revising FMVSS Nos. 110, *Tire selection and rims*, for passenger cars, 49 CFR 571.110, and 120 *Tire selection and rims for motor vehicles other than passenger cars*, 49 CFR 571.120, which would have reflected the applicability of the proposed light vehicle tire standard to vehicles with a GVWR of 10,000 pounds or less, and revising FMVSS Nos. 117, *Retreaded pneumatic tires*, 49 CFR 571.117, and 129, *New non-pneumatic tires for passenger cars*, 49 CFR 571.129, which would have replaced the labeling requirements contained therein with those specified in the proposed new light vehicle tire standard.

The agency proposed compliance dates for tires according to the following schedule: all P-metric tires manufactured on or after September 1, 2003, and all LT tires manufactured on or after September 1, 2004 would have had to meet the new requirements. Additionally, all light vehicles manufactured on or after September 1, 2003 would have had to comply with the final rule.

NHTSA believed that this proposal would have resulted in minimal costs for tire and manufacturers. NHTSA estimated that the added cost for labeling tires under this proposal would have equaled $0.01 per tire or less and a minimal cost for vehicle labeling (one-time costs to change production for the new vehicle placard and/or tire inflation pressure label, the application of the vehicle placard and/or tire inflation pressure label to all light vehicles, not only passenger cars, and the new owner's manual pages). NHTSA estimated that, adding the total tire and vehicle manufacturing costs together, the total annual costs would have equaled approximately $5.5 million.

V. Summary of Public Comments on NPRM

NHTSA received over 30 comments on the December 2001 NPRM. The comments were submitted by: vehicle and tire manufacturers and associations, consumer advocacy organizations and individual members of the public. The comments are summarized below.

A. Tire Sidewall Labeling

1. Maximum Permissible Inflation Pressure

• Consumers Union ("CU"), General Motors North America ("GM"), DaimlerChrysler ("DC"), International Tire & Rubber Association ("ITRA") and Tire Association of North America ("TANA") support maintaining the maximum inflation pressure on the tire sidewalls to prevent overinflation, to provide a level of inflation that is not a durability concern. CU and DC also suggest adding additional wording to the sidewall to direct one to the vehicle placard or owner's manual to the recommended inflation pressure.

• Rubber Manufacturers Association ("RMA"), Japan Automobile Tyre Manufacturers Association, Inc. ("JATMA"), Ford Motor Company ("Ford"), and UN/ECE Group for Global Technical Regulations for Vehicle Tyres ("GRRF") support removing the maximum inflation pressure from the sidewall. JATMA and Ford state that different inflation pressures indicated by tire and vehicle manufacturers would cause confusion. Ford recommends that the maximum inflation pressure information be replaced with "See Vehicle Placard for Recommended Tire Pressure." RMA and GRRF believe that the revised vehicle placard and owner's manual information is a better way of communicating correct inflation pressure and removal would encourage users to seek out the correct inflation pressure.

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• RMA states that the NHTSA proposal would require establishment of new maximum permissible inflation pressures for light truck tires that are higher than the current marked pressure and are the minimum pressures required for the maximum load rating, not maximum pressures that are increased for operation at specific service conditions (Tire and Rim Association 2001 Yearbook, page 2–04). Also, RMA states that the requirement to stamp "Maximum permissible inflation pressure" on the sidewall of all light truck tires would require the reworking of all existing light truck tire molds. RMA suggests that, for LT tires, "the terminology and definition of "maximum permissible inflation pressure" be replaced by "reference inflation pressure". RMA recommends that NHTSA adopt the following definition of this term: "*Reference inflation pressure* means the pressure marked on the tire sidewall associated with the tire load range."

2. Maximum Load Rating

• RMA, GRRF, JATMA, and European Tyre and Rim Technical Organisation ("ETRTO") suggest that the maximum load rating is of no use to consumers and that it be replaced by a load index as the best way to present information to aid the consumer in choosing a suitable replacement tire for the vehicle. RMA says that the proposed maximum combined weight limit statement to be added to the vehicle placard would help consumers safely manage their vehicle/tire load capabilities.

3. Cord Material and Number of Plies

• RMA, JATMA and ETRTO suggest that information about cord material and number of plies should not be required because they are of no safety benefit to consumers. RMA also says that elimination of these labeling requirements for light vehicle tires would simplify sidewall imagery and provide for better communication of essential information and that this information is not critical to the repair, retread or recycling of passenger car tires which are rarely retreaded today. RMA comments that type and number of plies may be useful for retreading purposes for LT tires and JATMA comments that this information is relevant for consumers purchasing rayon carcass tires.

• ITRA and TANA believe it is important to leave that information on both sidewalls of the tire for the retread, repair and recycling industries. They say that this information enables the retreader or repair technician to select the proper repair materials or procedures for retreading or repairing the tires. Also, if information regarding the number of plies and cord material is removed from the sidewall, technicians cannot determine if the tire has a steel cord sidewall. This information is critical when determining if the tire is a candidate for a zipper rupture and very important in normal handling by a tire technician.

4. Speed Rating and Load Index (Service Description)

• The Alliance of Automobile Manufacturers ("Alliance") suggests that tire sidewall labeling for tire speed rating and load index be allowed.

• RMA and Volkswagen state that the agency should require the service description to become part of the tire size information to be placed on the tire sidewall for consumer reference when ordering replacement tires. RMA states that tires are universally labeled with the service description, as illustrated on the agency's proposed tire information placard and label, and that it is very easy for consumers to match the recommended service description on their original equipment tires with the service description on replacement tires. RMA also states that for individuals who might want to see the correlation of load index numbers to pounds and kilograms, simple charts could be included in owner's manuals or made available through tire dealerships and web sites.

5. Placement of TIN

• CU, Charles West, Ford, and CIMS agree with the agency that improved access to the TIN would enhance customers' ability to determine whether their tires are covered by a recall or customer satisfaction campaign. CIMS says that the only realistic way to determine if tires are recalled is to locate a dealer who is willing to inspect the tires by putting the vehicle on an overhead lift and rotating all four tires to read the TIN. According to CIMS, this process costs conservatively $100.00 per inspection and could cost consumers hundreds of millions of dollars.

• RMA, JATMA, ITRA, TANA, Rubber Association of Canada ("RAC"), and GRRF oppose the agency's mandating that the TIN be required on both sidewalls of a tire for the following reasons: (1) The current practice in the tire industry is to locate the TIN in the bottom half of the mold and the front portion of the press to enable workers to change the weekly date code with reasonable safety without having to climb into a 350 degree upper press. If the TIN were located in a mold in the upper press as well, then to change the date code in that mold, a manufacturer would require the physical removal of the mold from the press in order to comply with OSHA's lockout/tagout regulation, 29 CFR 1910.147. This process would cause up to eight hours of downtime per press/per week. (2) The initial costs to modify all 101,148 molds for the addition of the second DOT code would be $113.5 million. The ongoing cost of changing the DOT code in the top mold would be an estimated $224.1 million per year. Further, there is insufficient global mold shop capacity to accomplish such a modification in the specified time. (3) The addition of the second TIN is a matter of very occasional convenience, not directly affecting tire safety. There are no other auto products/parts on which a part/serial number must be placed on both sides or in more than one location. (4) Marking the TIN on one sidewall could be accompanied by a requirement to identify which way the tire is to be fitted on vehicles. (5) The TIN is only necessary once the user has established whether a particular manufacturer's tire and size designation are subject to recall.

• RMA suggests three alternatives to the agency's proposal. (1) Require a partial TIN (manufacturer's identification, tire size, and optional information, but not weekly date code) on the opposite sidewall from the regular TIN. (2) Require the TIN on only one side of the tire and also show the TIN for the original equipment tires in an appropriate section of the vehicle owner's manual by means of an adhesive label. (3) Require placement of the TIN on the intended outboard side of P-metric and LT tires as indicated by the tire manufacturers.

• Specialty Tires of America and Coker Tire ("Coker") request that specialty tires, *e.g.*, bias-ply and tires for classic and antique cars, be excluded from the requirement to mark the TIN on both sides of the tire. Coker notes that the process of producing a tire that contains a wide whitewall involves grinding a large section of the sidewall, which would result in removal of the TIN.

6. Reordering of TIN

• All commenters, except for CU, object to the rearrangement of the TIN.

• The Alliance, American Honda Motor Co., Inc. ("Honda"), RMA, ITRA, TANA, CIMS, ETRTO, RAC, and GRRF request that NHTSA maintain the current TIN groupings, format, and order for the following reasons: (1) A reordering of the TIN would confuse consumers and would require NHTSA to launch a new tire information campaign, (2) a reordering of the TIN would confuse consumers because tires would be in circulation, for up to 12 years, with two different TIN code sequences, (3) high costs (RMA members—$83.9 million) due to need to rework tire molds, retrain dealership personnel, revise printed materials, and revise databases, (4) the agency's proposed requirements for owner's manual information would necessarily improve consumer knowledge about TIN groupings, (5) the three-digit plant code (instead of two characters for a new tire) for retreaders could not be accommodated in the newly ordered TIN, (6) the proposed positioning of the date code would not conform to foreign regulations and would be contrary to the spirit of international harmonization.

7. Height of TIN

• Advocates for Highway & Auto Safety ("Advocates") does not support the agency's proposal to require each character of the TIN to be 6 mm or ¼" high because they state it is a capricious choice and because the agency has not gathered information on the readability of this height of low characters. Additionally, they repeat their concern with this character size for individuals with Contrast Sensitivity Function (CFS).

• CU, RMA, ITRA and TANA support the proposed TIN height of 6mm.

• GRRF also stated that the proposed TIN height is not consistent with the draft GTR proposed height requirements.

B. Vehicle Placard and Label

1. Content

• ITRA and TANA commend NHTSA for its proposal and believe that all of these changes would help the consumer better understand their tire pressure requirements and load limits.

• RMA supports the proposed content, layout, and placement of placard, including both options. RMA also states that the agency should require a service description (load index and speed rating) as part of the tire size information shown on the vehicle placard and tire inflation pressure label because the information is important to consumers and provides the agency an opportunity for global harmonization of tire regulations.

• CU believes that tire pressure should be listed in "psi" first and "kpa" second. Additionally, CU states that the placard should (1) make clear that the combined weight of occupants and cargo or vehicle capacity weight does not include the vehicle's towing capacity and (2) should define "cold tire pressure."

• The Alliance, Mitsubishi Motors Corporation ("MMC"), GM, Volkswagen, and Subaru of America, Inc. ("Subaru") state that vehicle manufacturers should be allowed to provide tire information in addition to the required fields to accommodate different speed and loading conditions, sales practices, tire/rim optional equipment, and more than one set of recommended tire pressures. The Alliance states that it is common practice to exchange tires and wheels between vehicles in a dealership's inventory and distribution of labels with original tire sizes listed would be difficult to distribute so different tire sizes should be listed on the placard. Subaru suggests permitting an additional optional tire size label or notation on the placard to indicate to see the owner's manual for optional tire size tire information.

• MMC requests that additional manufacturer production information be acceptable at the bottom part of the placard.

• The Alliance suggests that manufacturers should be permitted to provide a multi-lingual label if space permits.

• The Alliance and GM suggest that the agency use the ISO approved symbol for "owner's manual" in place of the phrase "See Owner's Manual for Additional Information." Volkswagen recommends that the tire icon not be required on the vehicle label that shows only seating capacity and vehicle capacity weight because of space limitations and because they believe this information is not tire related.

• Subaru suggests that the placard use the heading "original tire size" instead of just "tire size" and that the text is more legible with upper and lower case lettering and that abbreviations for pounds and kilograms be permitted.

• GRRF states that only the inflation pressure at the maximum loading condition is quoted and that consumers would be better informed by recommended pressures at both a normal loading condition, *e.g.*, driver or driver and front seat passenger only, and maximum loading condition. The group, however, supports using the maximum loading condition if only one condition is chosen by the agency.

2. Format

• The Alliance supports the option to provide a single placard with all required information. It recommends that, based upon the limited space available for the location requirements, a manufacturer opting to provide tire pressure on a stand-alone label should be permitted to place the remaining information (seating capacity and loading) on the certification label. In support of this recommends, the Alliance says that the label already contains maximum loading capacity information for the vehicle and is required to be located in the driver's door area.

• MMC and GM request that NHTSA not regulate placard design, direction, and dimensions.

• ETRTO suggests that a font size equivalent to Times New Roman 20 be required in the format requirements for the placard since recommended tire inflation pressure information is vital for safety and would, it is hoped, be consulted monthly by consumers.

3. Location

• The Alliance, GM, Honda suggest that the agency adopt the same location requirement that exists in Part 567.4(c) because flexibility is needed to accommodate vehicles that do not have a conventional B-pillar or do not have enough room on the B-pillar nor sufficient room on the driver's door edge or vehicles which are right-hand drive for postal and special use.

• The Alliance also suggests that the agency include a provision that permits the manufacturer to place the Part 567 certification label on the passenger side if both the required placard and certification label cannot be accommodated on the driver's side.

• Subaru agrees with the agency that the placard should be on the B-pillar, preferably on the driver's side, and suggests that this be specified in the regulatory text.

• GRRF supports the agency's proposed location of the placard and label on the vehicle and the location of the placard/label in relation to each other.

4. Color

• The Alliance and GM oppose a multi-color requirement, arguing that it presents a significant cost burden, offers no apparent benefits, and is not a caution or warning label. They argue further that the addition of color would not aid the consumer in locating information on the placard/label or the placard/label itself.

• Volkswagen states that it would need to institute separate production and processing of the placard and tire information label because its vehicle information labels are printed on sheets of material with a uniform background color and black print.

5. Multistage Manufacturer

• The Alliance and the National Truck Equipment Association ("NTEA")

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suggest that the agency address issues related to vehicles that are manufactured in two or more stages and vehicles that are modified after primary manufacture. They state that the primary manufacturer in many cases would not have sufficient information regarding final configuration and vehicle equipment to designate seating capacity and weight limitations for occupants and cargo. NTEA further requests that actual and individual weighing not be required in order to certify the vehicle properly. NTEA also suggests that, in the event that NHTSA determines that multistage manufacturers should label each truck with information concerning seating capacity and combined occupant and cargo weight rating, there be provisions to allow for the updating of such information, through removing or covering original information with a new label, to ensure that consumers are receiving current information.

C. Owner's Manual

• CU supports the agency's proposals and rationale and suggests that it would be useful to consumers for manufacturers to provide recommended optional tire size designations in the manual.

• The Alliance urges the agency to develop tire and tire safety information with standardized language that is to be provided with a vehicle as a brochure or in an owner's manual.

• GM recommends that the agency not require actual recommended inflation pressures in the owner's manual.

• Honda comments that the glossary of tire terminology is unclear as to what terms are non-technical in S3 of Nos. 110 and 139 and suggests that NHTSA not require verbatim text in the owner's manual or that it improve the regulatory text to reflect manufacturers communications with consumers.

• Honda and the Alliance recommend that vehicle manufacturers provide an explanation of the TIN in the owner's manual to achieve improved owner understanding.

• Volkswagen suggests that owner's manual not be required to identify a specific tire size for the vehicle because owner's manuals are printed at the beginning of the production year and available tire sizes can change during the production cycle. Volkswagen also notes that manufacturers should not be restricted from adding additional information to the owner's manual.

• RMA supports the owner's manual requirements and, along with ITRA and TANA, support the requirement that the statements made in Figure 5 for "Steps for Determining Correct Load Limit" of the preamble appear verbatim in the owner's manual. RMA, however, along with GRRF, express concern with the statement suggesting that a pressure higher than the recommended pressure may be needed to support certain loads incorrectly indicates that tires can be loaded above their maximum capacity by increasing pressure and suggest the deletion of this statement.

• RMA recommends that the owner's manual contain instructions on the proper use of the spare tire and that it explain that correct tire inflation is vehicle specific and not contained on the sidewall. RMA also recommends that the owner's manual should define "tire service description" and provides a suggested definition.

D. Applicability of FMVSS Nos. 110 and 120

• The Alliance suggests that NHTSA drop the proposal to amend the applicability of FMVSS No. 110 and 120 from this rulemaking and instead incorporate them into the NPRM to be published on tire performance requirements.

• RMA and RAC state that the agency, in applying FMVSS No. 110 to light vehicles other than passenger cars, should not relax the current standards for tire selection and that load service factor of 1.10, applicable to passenger car tires for use on light trucks, vans, SUVs, and trailers, contained in S5.1.2 of FMVSS No. 120 be maintained in the new rule.

E. Costs

1. Placard and Label

• NTEA disagrees with NHTSA's estimate that there are only 4 small passenger car and light truck vehicle manufacturers in the U.S. It states that its members include close to 1,000 final stage manufacturers. NTEA also states that NHTSA's cost estimates for production and installation of the new placards and labels are not accurate for multi-stage produced vehicles and it estimates that the proposed placard would cost at least $0.25 in addition to scales and other equipment needed to determine the correct vehicle weight.

• GM states that the proposed placard/label would cost 20 cents more per label in addition to an acquisition cost of special color printers at $300,000.

2. Tires

• CU agrees with NHTSA's cost assessments of this rulemaking.

• The Alliance states that NHTSA has not accounted for the costs for computer programming code and software revisions necessary to implement changes to the TIN, including tracking dual formats, lost time, labor and resources due to errors and complexities associated with dual TIN orderings.

• RMA, GRRF, ITRA, TANA, and ETRTO believe that NHTSA substantially underestimated the costs to the tire industry. They say that these costs include loss of production, costs of modifications, and time and production costs to take molds out of production weekly to add second date code.

• RMA estimates the global cost to reorder the TIN on existing molds would be $83.9 million. The cost to add a second TIN to approximately 100,000 relevant molds (not including truck and motorcycle molds) is estimated at $113.5 million. GRRF estimates costs to U.S. tire industry at $100 million annually.

• ETRTO estimates that the costs of reworking up to 250,000 molds at $150 million and the total costs at $220 million, taking into account loss of production associated with adding a second TIN.

• ITRA and TANA note that the economic impact of this proposal, which they estimate would cost retreaders a minimum of $250 per mold, would be especially detrimental to retreaders as small business and would leave only the largest retreaders in business.

F. Effective Dates

• The Alliance recommends that NHTSA establish a uniform September 1, 2004 effective date for all vehicle requirements to permit individual vehicle manufacturers to phase-in the labeling and owner's manual information changes on a practicable and cost effective timetable. The Alliance and other vehicle industry members note that the agency should allow optional early compliance.

• GM states that an appropriate phase-in schedule cannot be determined for the changes in applicability of FMVSS Nos. 110 and 120 until they have been given an opportunity to assess the impact of the tire performance NPRM.

• RMA, RAC, ITRA, TANA and GRRF suggest that a phase-in of more than five years would be necessary to implement the changes proposed in the NPRM because the mold life expectancy is up to five years and there is not enough mold shop capacity in the world to rework the existing molds to comply with the proposed labeling. GRRF specifically requests that the effective dates be revised to apply to new tire designs, but not to existing designs,

until, at the latest, September 1, 2007 for P-metric and September 1, 2008 for LT tires.

G. Defining "Reasonable Amount of Luggage"

• The Alliance and GM state that providing such a definition would serve no safety need and would interfere with what is a competitive matter among manufacturers. Further, they state that the agency's efforts to specify load limits on the vehicle placard and discussing load limits in the owner's manual adequately address the safety aspects of vehicle loading and obviate any need for agency to define "reasonable amount of luggage.

• ERTRO suggests that the agency consider specifying "maximum luggage capacity" instead of a "reasonable amount of luggage" to avoid possibility of overloading.

• GRRF opposes the agency's deferring to vehicle manufacturers the responsibility for ensuring that a vehicle is equipped with tires which have a load capacity that are suitable for the declared maximum permissible mass of the vehicle or each axle of the vehicle.

H. Foreign/International Standards

• CU states that it supports NHTSA's decision to forego harmonizing or adopting foreign or international provisions because of the overriding need for providing safety information in a timely manner.

• The Alliance requests that NHTSA allow the inclusion of load indexes and speed ratings on tires.

• RMA states that the only labeling requirement in foreign standards to be including for consideration is the service description that is required by many governments around the world.

• GRRF asks NHTSA to reconsider the content of the draft harmonized regulation for tires. GRRF states that the draft is based on a global industry review of existing standards and regulations in many countries, including USA, most of Europe, Japan, China, Brazil, and Saudi Arabia and that it does not reflect the lowest common denominator in terms of performance requirements but instead seeks to move forward in the area of harmonization of tire markings in order to inform and aid the consumer.

• ETRTO suggests that complete harmonization of labeling requirements with those of ECE 30 and 54 are essential and that the safety aspects of these regulations are self-explaining since they supply a complete description of the performance characteristics of the tire and therefore allow all information necessary for an informed choice of replacement tires.

I. Prohibition on Non-Required Information

• The Alliance, GM, RMA, ITRA, TANA, GRRF and ETRTO oppose a prohibition on non-required information being placed on tires because of the global nature of the industry, because manufacturers use unique markings for marketing and production purposes, and because this action would possibly incur retaliation from other countries or constitute a technical barrier to trade.

VI. Summary of Post-Comment Period Firestone Plant Visits by NHTSA Officials

On March 13 and April 11, 2002, NHTSA personnel visited the Bridgestone-Firestone (BFS) tire manufacturing plant in Aiken, SC. This plant is the newest and most technologically advanced BFS plant and is said to be representative of the future in tire manufacturing technology. NHTSA's visit included hearing an overview of plant operations and an explanation of the tire manufacturing process, and being taken on a plant tour. During the discussion and tour, the NHTSA personnel were shown and heard descriptions of all of the key steps in the manufacturing processes, as well as quality control and safety measures. Of particular interest to the NHTSA personnel was the process of changing the TIN in the tire molds.

The presses used by BFS at this plant are the segmented hydraulic vertical lift machines. Prior to this visit, NHTSA personnel had only witnessed clam-shell presses first-hand in operation at older tire plants. These segmented presses, along with the older clam-shell presses, are the most widely used in the industry. According to RMA, the segmented machines represent an increasing percentage of presses used in the U.S. and are today considered the industry standard. Additionally, the segmented machines are more versatile than other types of presses since they can be used for molding all tires, including the higher speed rated tires requiring nylon caps that the older types of presses, including the clam-shell, cannot accommodate.

The segmented machines seen by NHTSA during the tour have a lower press and an upper press. The lower press is fixed in place directly below the upper press that is raised and lowered on a hydraulic lift. The height of the upper press at the full open position is approximately 6–7 feet above from the ground. The presses are hydraulic so they must either be in the closed or open position, they cannot be positioned in between these two extremes.

BFS provided NHTSA with a demonstration of the changing of the TIN date code in the lower mold. Workers change the TIN date by quickly leaning over the lower press and, using a hand tool, replace the old plug and/or plate with a new plate or plug. The process is not automated, according to BFS, due to the fragility of the mold.

On this type of machine, it appeared to NHTSA that any changes to the upper molds would need to be done with the molds removed from the upper press because the heat and inaccessibility of the upper mold would make it too dangerous or simply impossible, to change upper mold TINs in the upper press. This is because changing the TIN in the upper molds while the machine is in use would entail the technician's standing on the lower press while placing his head and arms directly up into the upper press. This could not be done while the machine is in use because the molds heat to approximately 350 F degrees and operate under up to 185,000 pounds of pressure. Further, the molds weigh up to 5,000 pounds each. To remove the upper mold from the machine, the upper press must be placed in the lowered position and the mold must be lifted from above using a small forklift. According to BFS, the down time necessary to enable workers to replace the date code is estimated at 4 to 6 hours. This covers allowing the mold to cool, removing the mold from the press, replacing the mold in the press, and reheating the mold. In this particular plant, there are 153 presses. This large number would, in BFS's view, make the replacement of the full TIN on a weekly basis, to accommodate the weekly changing of date code, logistically impossible. According to BFS, molds are currently removed from the upper press approximately every 20 to 30 days for cleaning.

VII. Agency Decision Regarding Final Rule

A. Summary of Final Rule and Rationale

The final rule establishes a single standard for light vehicle tires, FMVSS No. 139, *New PneumaticRadial Tires for Light Vehicles.* The final rule contains labeling requirements that address the following aspects of tire and vehicle labeling: tire markings, the Tire Identification Number (TIN), vehicle placard content and format, placard location, and owner's manual information. NHTSA will also be

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establishing upgraded safety performance requirements for tires in a forthcoming final rule, which would also be included in the new standard.

The rule applies to all new and retreaded tires for passenger cars, multipurpose passenger vehicles, trucks, buses and trailers with a gross vehicle weight rating (GVWR) of 4,536 kg (10,000 pounds) or less, manufactured after 1975, and to all passenger cars, multipurpose passenger vehicles, trucks, buses and trailers with a gross vehicle weight rating (GVWR) of 4,536 kg (10,000 pounds) or less.[4] The requirements are summarized below.

NHTSA has decided that the size designation, maximum permissible inflation pressure, and maximum load rating must be placed on both sides of light vehicle tires. The full TIN will be required on the "intended outboard side" of the tire and either the full TIN or a partial TIN, containing all aspects of the TIN except for the date code, will be required on the opposite side." "Intended outboard sidewall" is defined in FMVSS No. 139 as the sidewall that contains a whitewall, bears white lettering, or bears manufacturer or model name molding that is higher or deeper than that on the other sidewall of the tire. If a tire does not have an intended outboard sidewall, the tire must be labeled with the full TIN on one sidewall and with either the full TIN or a partial TIN on the other sidewall. Requiring that a form of the TIN, whether the full or partial TIN, be on both sides will ensure that important consumer information will be on the outward facing sidewall, regardless of how the tire is mounted. Requiring that the other items of information be on both sidewalls will aid consumers in properly maintaining their tires and loading their vehicles.

NHTSA is making another change to the TIN. The rule requires that each character in the TIN be 6 mm (¼") high. The agency believes that a requirement for a uniform TIN font size will significantly improve the readability of the TIN.

The agency is making four sets of revisions to the presentation of tire inflation pressure and load limit information on the vehicle placard required for passenger cars by S4.3 of § 571.110 and to be required for all light vehicles with a GVWR of 10,000 pounds or less under this proposal.[5] This placard, permanently affixed to the glove compartment door or an equally accessible location, currently displays the vehicle capacity weight, the designated seating capacity (expressed in terms of total number of occupants and in terms of occupants for each seat location), the vehicle manufacturer's recommended cold tire inflation pressure for maximum loaded vehicle weight, and the manufacturer's recommended tire size designation.

First, the agency is requiring that tire inflation pressure information be visually separated by a red colored border from the other information on the existing vehicle placard or, alternatively, be placed on a separate tire inflation pressure label. The vehicle placard will contain only the information specified in the proposed version of S4.3 (paragraphs (a)–(e)).[6] This information will not be combined with other labeling or certification requirements. The vehicle placard will also have to meet the proposed color and content requirements as discussed below.

Second, the agency is requiring that the tire inflation pressure label and vehicle placard meet the following three requirements: (1) The tire inflation pressure information is in color—red, yellow, and black on a white background, (2) contain a black and white tire symbol icon in the upper left corner, 13 millimeters (.51 inches) wide and 14 millimeters (.55 inches) tall/high, and (3) include the phrases "Tire and Loading Information" and "Tire Information" and "See Owner's Manual For Additional Information" in yellow text on a black background.

Third, the agency is replacing the vehicle capacity weight statement on the vehicle placard with the following sentence: "[t]he combined weight of occupants and cargo should never exceed XXX kg or XXX pounds." The "XXX" amount equals the "vehicle capacity weight" of the vehicle as defined in FMVSS No. 110. The information is the same as that currently required to be placed on the vehicle placard by manufacturers.

Fourth, the agency is replacing the vehicle's recommended tire size designation with the tire size designation for the tire installed as original equipment on the vehicle by the vehicle manufacturer. While in most instances these two numbers would be identical, this minor revision ensures that the consumer is provided with the correct tire inflation pressure information for the tire size actually installed on his vehicle as original equipment by the vehicle manufacturer. The original tire size designation and accompanying recommended inflation pressure will be indicated by the headings "original tire size" or "original size" on the placard or label

This rule requires that the placard or placard and label be located on the driver's side B-pillar. If a vehicle does not have a B-pillar, then the placard and label will be placed on the edge of the driver's door. If the vehicle does not have a driver's side B-pillar and the driver's side door edge is too narrow or does not exist, the placard or placard and label are required to be affixed to the inward facing surface of the vehicle next to the driver's seating position. Standardizing the location for tire information placards and labels will contribute to consumer awareness of recommended tire inflation pressures and load limits.

The agency is requiring that owner's manuals for light vehicles discuss the following five subject areas: (1) Tire labeling, (2) recommended tire inflation pressure, (3) glossary of tire terminology, (4) tire care, and (5) vehicle load limits. A single, reliable source containing the information listed above will aid consumers by providing the information that they need to properly maintain their tires and adhere to recommended load limits.

NHTSA believes that this rule will be effective in increasing public awareness of tire information and the understanding and maintenance of proper tire inflation and load limits. This rule will also enable consumers to more easily identify the TIN and other tire information for recalls and other notifications. The rule standardizes the location and content of important information relating to proper inflation and load limits and other tire safety concerns. These measures, by increasing consumer knowledge and awareness, will result in reduced tire failures and tire related crashes, and therefore fewer deaths and injuries.

[4] Therefore, this standard is applicable to LT tires up to load range E. This load range is typically used on large SUVs, vans, and trucks.

[5] FMVSS No. 120 currently requires that each motor vehicle other than a passenger car show, on the label required by § 567.4, or on a tire information label (S5.3.2(b)), the recommended tire size designation appropriate for the GAWR, the tire size and type designation of rims appropriate for those tires, and the recommended cold inflation pressure for those tires such that the sum of the load ratings on the tires on each axle (when the tire's load carrying capacity at the specified pressure is reduced by dividing 1.10, in the case of a tire subject to FMVSS No. 109, *i.e.*, a passenger car tire) is appropriate for the GAWR.

[6] (a) Vehicle capacity weight expressed as "THE COMBINED WEIGHT OF OCCUPANTS AND CARGO SHOULD NEVER EXCEED XXX POUNDS";

(b) Designated seating capacity (expressed in terms of total number of occupants and in terms of occupant for each seat location);

(c) Vehicle manufacturer's recommended cold tire inflation pressure;

(d) Tire size designation for the tire installed as original equipment on the vehicle by the vehicle manufacturer; and

(e) "SEE OWNER'S MANUAL FOR ADDITIONAL INFORMATION".

B. Summary of Key Differences Between NPRM and Final Rule

In response to the comments, the agency is modifying aspects of its proposal. Most important, the agency was persuaded, for the reasons explained below, that there are technical difficulties and safety concerns associated with placement of the full TIN on both sidewalls of the tire and the reordering of the TIN which were proposed to aid consumers in determining whether their tires are subject to a recall. Instead the agency is addressing the readability of the TIN by requiring only that the full TIN, as currently ordered, appear on the "intended outboard sidewall," and either the full TIN or a partial TIN, same as full TIN currently ordered without date code, appear on the opposite side of the tire. If a tire does not have an intended outboard sidewall, the tire must be labeled with the full TIN on one sidewall and with either the full TIN or a partial TIN on the other sidewall.

The major changes to the standard (or deviations from the proposal) are summarized below.

(1) The agency is not reordering the contents of the TIN.

(2) Except as noted above, the agency is requiring the full TIN on the "intended outboard sidewall" of the tire and either the full TIN or a partial TIN, containing all aspects of the TIN except for the date code, on the opposite sidewall.

(3) The agency is eliminating size and format requirements for the vehicle placard and label, except for those specifying use of the tire icon and a limited use of color.

(4) If the vehicle does not have a driver's side B-pillar and the driver's side door edge is too narrow or does not exist, the agency is requiring that the placard or placard and label to be affixed to the inward facing surface of the vehicle next to the driver's seating position.

(5) For tires, the agency is extending the lead time and instituting a phase-in compliance according to the following schedule: 40% of all covered tires between September 1, 2004 and August 31, 2005, 70% of all covered tires between September 1, 2005 and August 31, 2006, and 100% of all covered tires beginning on September 1, 2006.

(6) The agency is delineating requirements for placarding and labeling of multistage manufactured and altered vehicles.

C. Labeling Requirements

1. Tire Sidewall Labeling

a. *Maximum Permissible Inflation Pressure.* Commenters on the ANPRM and NPRM and survey data conveyed that misunderstanding concerning the meaning of maximum permissible inflation pressure exists among consumers. Nevertheless, most commenters supported retaining this requirement. The commenters and focus group participants also expressed that the maximum inflation pressure provides a failsafe guideline for tire inflation. The agency concurs that the greatest likelihood of tire failure results from underinflation, therefore, the agency is not deleting or revising the requirement for the maximum permissible inflation pressure marking on the tire, except to extend this requirement to tires for use on all light vehicles with a GVWR of 10,000 pounds or less, except LSVs and motorcycles.[7]

Several commenters to the docket suggested adding information to the tire to distinguish the maximum permissible inflation pressure from the recommended inflation pressure. The agency believes that adding additional language to the sidewall to clarify the distinction between maximum inflation pressure and recommended inflation pressure is not feasible. Sidewalls are becoming progressively smaller with the advent of low profile tires and requiring additional information in this already crowded space will cause clutter and greater consumer confusion. The agency anticipates that improvements in the tire placard, standardization of the placard location, and an expanded consumer information program will reduce the number of consumers who mistake the maximum inflation pressure for the recommended inflation pressure.

RMA commented that NHTSA's proposal would require establishment of new maximum permissible inflation pressures for LT tires that are higher than the current marked pressures because LT tires are now marked with a maximum load rating and corresponding inflation pressure per 571.119. NHTSA has considered these comments. While the agency agrees that the requirement might necessitate manufacturers' determining and labeling a new maximum permissible inflation pressure on LT tires, NHTSA has concluded that the establishment of maximum permissible inflation pressures for LT tires should not be more complicated than the process by which manufacturers currently label LT tires with inflation pressures that correspond with the maximum load of the tire.

Currently, LT tires are labeled with an inflation pressure that corresponds to the maximum load to be carried by the tire. These values are included in industry yearbooks, such as the "Tire and Rim Association" ("T&RA") Year Book, but are considered minimum cold pressures for the maximum loads listed. The yearbooks provide guidelines for using higher inflation pressures, which are based on speed and loading conditions. Under certain conditions, the inflation pressure could be increased by as much as 10 psi (69 kPa), although the maximum load that can be carried by the tire under normal operating conditions would not increase.

Although the agency acknowledges that the inflation pressures corresponding to the maximum loads in publications such as the TRA Yearbook are not absolute maximum inflation pressure values, we believe that it is appropriate to label these pressures on the tire as the maximum permissible inflation pressure for the maximum load specified. This information would then correspond with the information labeled on passenger car tires and would ensure that the consumer is provided with an upper threshold failsafe value that would ensure safe operation of the vehicle in a maximum loading condition or in the absence of the consumer's using recommended inflation pressure information from the vehicle placard or owner's manual. The agency will allow manufacturers, at their discretion, to label maximum permissible inflation pressures above those listed, up to 10 psi higher, on their LT tires to accommodate design prerogatives and anticipated operational usages.

b. Maximum Load Rating. Several tire industry commenters suggested that the maximum load rating is of no use to consumers, especially in light of the load information proposed to be placed on the vehicle placard, and that it should be replaced by the load index requirement contained in GTS–2000 and ECE Regulation Nos. 30 and 54. The agency disagrees that the maximum load rating is of no use for consumers. The maximum load rating provides information that enables consumers to make informed decisions about towing capacity and loading conditions under certain vehicle applications. In contrast, the load index recommended by industry commenters provides a code number, not provide an actual weight

[7] FMVSS No. 119 does not contain a requirement that the maximum permissible inflation pressure be labeled on new pneumatic tires for vehicles other than passenger cars.

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value, to consumers. This code number does not provide readily apparent or available information to consumers and would make it necessary for a vehicle operator to look to an index in the owner's manual or a tire industry publication to determine the actual tire maximum load. The agency does not dispute that a load index value may aid consumers when purchasing replacement tires, but it believes that a maximum load rating is more informative and necessary for consumer reference when attempting to safely load their vehicles. Further, manufacturers are welcome to add, in addition to the maximum load rating, the load index to the tire sidewall and most already do so.

c. Cord Material and Number of Plies. With regard to the number of plies and generic name of cord material used in the plies, most respondents believed that information to be of limited safety value to consumers and suggested its removal from the sidewall. The ITRA and TANA, however, expressed the view that the cord and ply material is very important to the tire retread, repair and recycling industries because this information enables consumers and industry professionals to determine the level of risk when inflating, repairing, retreading or servicing a specific tire.

NHTSA believes that it is sufficient to require that this information appear on one sidewall. Requiring that ply, cord, and tube type information only be present on one sidewall would reduce the stringency required of tires currently subject to FMVSS No. 119 (which currently requires that light truck and MPV tires display the information on both sidewalls) and would result in cost savings to manufacturers that would offset some of the increased costs resulting from changes to the TIN and the labeling of LT tires. Further, there is no known advantage that would arise from requiring this information on both sides of the tire. Therefore, cord and material and number of plies labeling will be required to be labeled on only one sidewall of the tire.

d. Placement of TIN. The agency's proposal to require the TIN to be placed on both sidewalls of the tire elicited a range of different viewpoints. Consumer commenters, CIMS and Ford stated that requiring the TIN to be placed on the outside wall of the tire was desirable since it was the only realistic way for ensuring that consumers could determine if a tire were subject to a recall without having to take the vehicle to a dealer for examination. However, all tire industry respondents object to requiring the full TIN on both sides of the tire because of the manufacturing costs and safety issues discussed above.

The agency has decided to adopt a combination of two suggestions put forth by the tire industry. The agency has decided to require that the full TIN be labeled on the "intended outboard sidewall" of the tire and that either the full TIN or a partial TIN, without the date code, is to be labeled on the opposite sidewall. In this rulemaking, "intended outboard sidewall" is defined in FMVSS No. 139 as a tire sidewall that contains a whitewall, white lettering, or manufacturer or model name molding which is higher, deeper, or than on the other side of the tire. If a tire does not have an "intended outboard sidewall," the manufacturer is required to mark the full TIN on any sidewall of the tire and either the full TIN or the partial TIN on the other sidewall. In consideration of the existence of tires that do not have an "intended outboard sidewall," the agency may, in a future rulemaking, consider requiring tire manufacturers to indicate, through permanent or temporary labeling of those tires, that the side of the tire containing the full TIN is to be mounted facing outward.

After reviewing comments submitted to this rulemaking and after visiting the Firestone plant, the agency concludes that it now has a factual basis for concurring with the tire industry commenters that requiring a second full TIN be molded on tires presents both significant safety and cost concerns. Today, based on the advent of the seven day-a-week operation of tire manufacturing combined with the increasingly widespread use of the segmented press, the complexion of worker safety and costs issues is different than the one that existed in 1980 during our previous rulemaking on this issue.

The agency noted in the NPRM that responses to a special order in 1980 indicated that neither costs nor worker safety were major issues because presses were non-operational 1 or 2 days a week at which time the molds could be safety worked on and, even for presses that were operational seven days a week, workers could access the upper molds by placing insulated blankets over the bottom molds. When the NPRM was issued, the agency did not have any specific factual information from the tire industry that delineated its concerns regarding worker safety or explained why worker safety would currently be an issue, as compared to in 1980.

Based on tire industry and association responses to the NPRM, and the visit to the tire plant, it now appears that, since 1980, however, plant practices have changed such that virtually all plants and their presses operate 7 days a week. Because there is no "down time" for the presses workers must change the TIN in the hot press or remove the mold from the presses.

Additionally, there has been technological change in the types of presses used at the plants. In 1980, the industry standard was the clam-shell press. This press opens so that the upper press opens vertically at a hinge and can be accessed relatively easily by technicians. Today, the more technologically advanced type of press is the segmented press. This press is the most common type of press used by tire manufacturers today and it has become the industry standard. As discussed above, NHTSA witnessed first-hand the serious safety concerns presented for technicians who would be changing a TIN in a hot upper mold. Because of the danger to the worker, a significant amount of down time would be needed to change the date code of the TIN on the upper mold by removing, cooling, reinstalling, and reheating the mold.

The agency, after reviewing other options than requiring the full TIN on both sidewalls, including those suggested by RMA, has decided that a partial TIN on the "intended inboard sidewall" of the tire would address industry safety and cost concerns and, acting as a failsafe, aid consumers in determining whether their tires are subject to a recall. According to NHTSA's records of recent recalls, 80% of tires potentially subject to a "typical" recall could be eliminated from the recall based on the plant code and information other than the date code contained within the TIN. NHTSA notes that a partial TIN would not have been able to eliminate a large percentage of tires from the Firestone recall because several BSFS plants were involved in that recall. NHTSA is aware of the possibility that a partial TIN code may confuse consumers ("where are the rest of the numbers?") or that the residual 20% of consumers whose tires may be subject to a recall based on the date code may decide to "take their chances" with regard to taking the car into a service station to locate the date code. NHTSA, however, believes that its increased efforts to educate consumers about tire information will help remedy these potential situations and in the unlikely event that consumers needed the date code to determine whether their tires were subject to the recall and could readily view the partial TIN only, it would be in the interest of consumers to have their tires checked by a service technician if the partial TIN code matched the recall information.

The agency stated in the NPRM that most tires are symmetrical or reversible, meaning that they can be mounted

facing either direction. In practice, a majority of tires have certain aesthetic features, *e.g.*, whitewall lettering, name brand molding, that denote an "intended outboard sidewall." Thus, "intended outboard sidewall" is defined in FMVSS No. 139 as the sidewall that contains a whitewall, bears white lettering, or bears a manufacturer or model name molding which is higher or deeper than on the other sidewall of the tire.

As discussed above, the agency learned during its visit to Firestone and subsequent information gathering that changing the TIN number plates in the tire molds would not present insurmountable safety problems if workers did not have to change the date code in the upper mold of the press on a weekly basis. NHTSA believes that advances in tire manufacturing technology, such as removable stencil plates, will allow for a significant reduction in the costs and time associated with revising the molds to contain a partial TIN on molds that do not currently accommodate a TIN plate or plug. Further, the costs associated with changing molds to implement this requirement are not considered to be onerous because technicians will be able to change partial TIN labeling information on the molds outside of the tire press during the routine cleaning and reworking of the molds that occurs every 20–30 days.

e. Reordering of TIN. All commenters who addressed this issue, except for CU, opposed a reordering of the TIN. This opposition was based mostly on concerns about the confusion for consumers and tire dealership personnel that would result from having tires in circulation, for up to 12 years from now, with two different TIN code sequences. Opponents also cited the costs of revising printed materials and databases and reeducate consumers and technicians. Commenters on the NPRM argued that the agency had provided no proven benefits for reordering of the TIN.

The agency had based its proposal on the comments on the ANPRM and the results of the focus groups that showed consistent support for making the TIN more user-friendly and readable. To that end, the agency believed that proposed revisions to the sequence of information in the TIN would have made the TIN easier for consumers to read and understand for recall and other purposes.

The arguments of the tire industry commenters, however, have merit. The agency agrees that the suggested revisions to the TIN have no proven benefit to consumers and may, in fact, prove counterproductive to its efforts to improve consumer information. NHTSA has therefore decided not to reorder the TIN. Instead, it will work to make the TIN more understandable to consumers through its consumer education efforts.

f. Height of TIN. The agency has decided to require a 6 mm (1/4") uniform height font size to enhance the readability of the TIN. Tire manufacturer commenters and consumer commenters, except for Advocates, support the 6 mm TIN height. Advocates continues to express concern for individuals with CFS. Advocates, however, does not suggest an alternative font size.

The agency disagrees with Advocates' assertions and notes that Advocates did not provide data supporting their assertions or alternatives to the agency's proposal. The agency's proposal for a 6 mm uniform TIN height was based on previous rulemakings and comments to the ANPRM, which indicated that 4 mm was not a sufficient font size for the TIN, particularly for individuals with visual impairment. Comments on the ANPRM and NPRM and results from the focus groups concerning the readability of the TIN did not specify a particular font size and commenters, except for Advocates, did not disagree with the agency's suggestion that a uniform 6 mm TIN font height will make the TIN easier to read and would not impose a significant burden on tire manufacturers. Therefore, 6mm will be the minimum required font size and there will be no restriction that will prevent tire manufacturers from using a larger font size for the TIN characters.

g. Other. Several commenters suggested adding additional information to the tire sidewall, *e.g.*, specifying what the digits of the TIN represent, a marking requirement directing the vehicle operator to use the information contained on the vehicle placard or in the owner's manual, defining maximum permissible inflation pressure.

As stated in the NPRM, NHTSA does not believe that these suggestions are feasible. As low-profile tires are developed and become more common, there is a consequential decrease in sidewall heights. The ever-decreasing space on tire sidewalls for displaying necessary and required information will become even more important in the future and will need to be reserved for essential information. NHTSA believes the decision to add the additional items, explanations, and warnings suggested by the commenters is better left to the discretion of the tire and vehicle manufacturers and are more effectively addressed through consumer information campaigns rather than through requirements for additional on-tire information.

2. Vehicle Placard and Label

a. Revision and Upgrade of Placard and Optional Label. NHTSA has decided to amend the existing 571.110 vehicle placard requirement, including providing vehicle manufacturers two options for presenting the required placard information on their vehicles. Manufacturers will either choose to affix vehicles with the vehicle placard proposed in the NPRM or a vehicle placard and tire information label combination as proposed in the NPRM. The agency believes the modifications made by this final rule will make the tire and load information contained on vehicles more noticeable and understandable to consumers and, therefore, increase the chance that this labeling requirement can affect driver behavior to reduce tire failure and thus fatalities and injuries.

NHTSA's proposal would have required labels to conform in content, format, size, and color to the proposed placard and label. Vehicle manufacturers agreed that NHTSA should specify the label content, however, they asked for more flexibility in the areas of format and size. Vehicle manufacturers also asked to be allowed to present the text not only in English, but also in other languages.

The purpose of the improved placard and label is to make them more noticeable and more explicit. NHTSA believes that arrangement and shape of the labels is irrelevant to these purposes, and therefore, is amending the regulatory language to allow such changes. NHTSA has also re-examined the placard and label and has decided to adopt the suggestion to specify only limited format requirements with minor modifications to the proposal based on comments. These modifications and the agency's rationale for its decisions regarding the placard and the label are discussed below. The following are examples of the vehicle placard and tire inflation pressure label:

BILLING CODE 4910-59-P

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Vehicle Placard

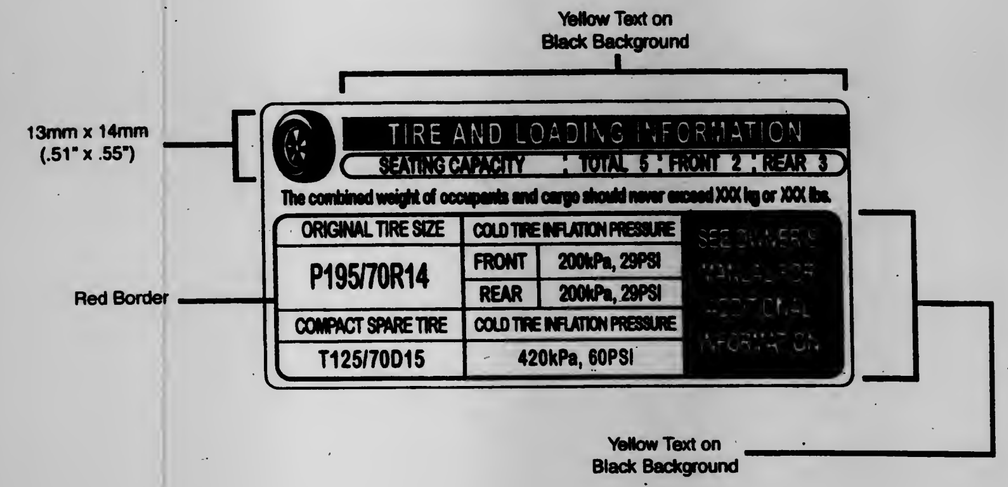

FIGURE 1

Tire Inflation Pressure Label

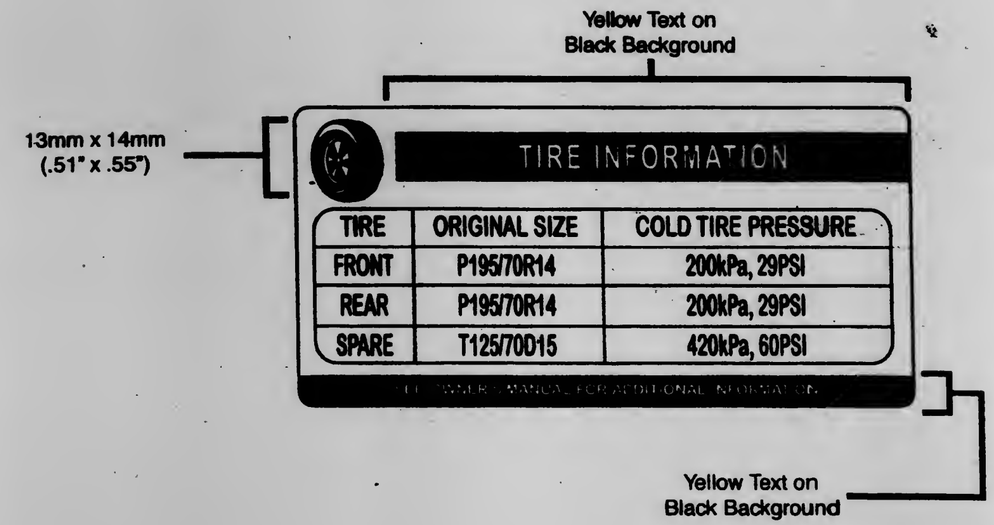

FIGURE 2

BILLING CODE 4910–59–C

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The proposed placard and label contained a black and white tire symbol icon that was in the upper left hand corner of the placard and label and was 13 millimeters (.51 inches) wide and 14 millimeters (.55 inches) high. Vehicle manufacturer commenters did not state a general objection to the icon although Volkswagen commented that the icon should not be required on a placard if it only shows seating capacity and vehicle capacity weight.

Focus group participants strongly believed that a visual cue, such as a tire symbol icon, would aid drivers in identifying and locating tire information. NHTSA agrees with the participants' judgment that the icon will attract the driver's attention and will aid the driver in recognizing that the placard and label contain tire safety information. Because tire information contained on the placard and label is so critical to the safe operation of motor vehicles, NHTSA has decided to retain the tire icon requirement as specified in the proposal. NHTSA believes that consistency in graphics will prevent any confusion about the meaning of the placard and label.

With regard to Volkswagen's suggestion that the icon only appear on the label if that option is chosen, NHTSA believes the loading information remaining on the placard, which pertains to the load that can be carried at the recommended inflation pressure of the tires, is tire related and should be identified by the icon on the placard. Retaining the icon on the placard will assist participants in understanding the overall meaning/purpose of the placard even if the recommended inflation pressure is located on the label rather than on the placard. Therefore, the rule requires that the black and white tire icon symbol, as represented in Figures 1 and 2, appear on both the placard and label.

Several vehicle manufacturers opposed the use of color on the placard and label claiming high costs and lack of benefits, and that the placard and label are not caution or warning labels and therefore do not follow ANSI protocol. The agency, however, has decided to specify limited color requirements on both the placard and the label to highlight certain information. Yellow on a black background is required for the headings of the placard and label and for the phrase "see owner's manual for additional information." On the vehicle placard, a red border must differentiate the tire inflation pressure information. Notwithstanding the border shown in Figures 1 and 2, manufacturers are not required to place a border around the entire placard and label.

In response to start-up and production costs for colored placards and labels asserted by certain vehicle manufacturers, the agency notes that vehicle manufacturers are already required to provide colored labels for air bag warnings and for rollover warnings for utility vehicles. Further cost issues regarding colorization of the labels will be addressed in the Costs section of this document.

With regard to the assertion that the agency's use of colors on the placard and label does not follow the American National Standards Institute ("ANSI") protocol,[8] the agency believes the use of colors on the placard and label will draw attention to the safety information contained on the labels. This belief is supported by survey results and focus group recommendations to add color to the placard.

Survey data indicate that most individuals are unaware of the existence and/or location of the tire inflation pressure and load limit information placards. Surveys also confirm that maximum tire pressure is often confused with recommended inflation pressure. Surveys have not addressed load limit issues, but the results from NHTSA's focus groups and comments received in response to the ANPRM indicate that consumers are unaware that these limits exist, where they are located, and how to use them.

NHTSA's focus groups tested different versions of existing and proposed tire placards to help determine the most effective way of attracting the attention of consumers to this information and making it more understandable to them. In response to the testing, focus group participants overwhelmingly preferred color formats with contrasting colors, *e.g.*, yellow on black, instead of black and white formats because the color attracted their attention and aided in their comprehension of the material. Participants also strongly believed that a visual cue, such as a tire symbol icon, would aid drivers in identifying and locating this imperative information.

NTHSA recognizes that ANSI's mission in developing and issuing its standard for communicating information about a comprehensive hierarchy of hazards differs somewhat from that of the agency's in designing an effective label to convey specific information and that their conclusions about the manner of communication may differ. Given that agency's labeling decisions are highly dependent on the facts regarding the specific information being addressed, the agency will make case by case determinations of the extent to which NHTSA should follow voluntary standards versus information from other sources. As it has in this rulemaking, NHTSA will rely on its own expertise and judgment in making its determinations under statutory provisions regarding vehicle safety standards.

Vehicle manufacturer commenters suggested that the label should include the International Organization for Standardization ("ISO")[9] symbol for owner's manual in place of a statement urging the driver to look in the vehicle owner's manual for further information. NHTSA disagrees. The statement directing consumers to the owner's manual is a very important aspect of the agency's safety message to consumers. Instead of requiring a symbol that a driver may or may not recognize, the agency believes that it is both important and appropriate to have a statement on the label reminding the driver to read the information in the owner's manual and is requiring that it be included. The agency considered allowing the ISO symbol to be included on the placard or the placard and label in addition to the statement but decided against this option because of the space constraints on the placard and the label and the need to express the required information and statements as clearly as possible.

The agency has decided to adopt the statement "the combined weight of occupants and cargo should never exceed XXX kg or XXX pounds" to replace the phrase "vehicle capacity weight." The "XXX" amount will equal the vehicle capacity weight of the vehicle as defined in FMVSS No. 110. Commenters stated that the new phrase will aid consumers recognizing what factors comprise the vehicle capacity weight and what significance that weight has for the operation of a vehicle. As discussed in the NPRM, the information is the same as that currently required to be placed on the vehicle placard by manufacturers.

Today's rule requires manufacturers to label the placard and label with the tire size designation for the tire installed as original equipment on the vehicle by the vehicle manufacturer. In response to a suggestion by Subaru, the placard or label will specify that the tire size designation and accompanying

[8] ANSI is a private, non-profit organization (501(c)3) that administers and coordinates the U.S. voluntary standardization and conformity assessment system.

[9] The ISO is a worldwide federation of national standards bodies from some 140 countries, one from each country.

recommended inflation pressure be indicated by the heading "original tire size" or "original size." This new requirement replaces that which specifies that the placard and label contain the vehicle's recommended tire size designation. While in most instances these two numbers would be identical, this minor revision insures that the consumer is provided with the correct tire inflation pressure information for the tire size actually installed on his vehicle as original equipment by the vehicle manufacturer.

As discussed in the NPRM, the agency considered adding a requirement for the vehicle manufacturer to label all recommended optional tire size designations on the vehicle placard and/or tire inflation pressure label. Additionally, some commenters, in response to the proposal, requested that the agency allow additional/optional tire sizes be listed on the placard and label.

The agency continues to believe that that allowing the addition of optional tire sizes, as well as other non-required information, to the placard and label is not appropriate, primarily because listing more than one tire size designation and the corresponding recommended inflation pressure or any additional information would require more information to be added to the already crowded vehicle placard. The agency believes that overcrowding the vehicle placard and/or tire inflation pressure label with information would discourage use of tire inflation pressure information on the placard and/or the label. Additionally, vehicle manufacturers may label this additional information on the certification label. Therefore, this rule will specify a prohibition about "other information" being added to the vehicle placard and label.

Manufacturers also asked to be allowed to present the label text not only in English, but also in other languages. NHTSA's current policy is to allow a required message to be stated in additional languages once the required English language message was provided. In a March 10, 1994 notice, NHTSA stated:

> NHTSA interprets the labeling requirements * * * as requiring manufacturers to supply the information in English. Once this requirement is met, manufacturers may supply the same information in other languages, so long as it does not confuse consumers. As long as the non-English language label is a translation of the required information, NHTSA does not interpret it to be "other information." (59 FR 11200, at 11201–202).

As stated above, the placard and label requirements will include a prohibition against "other information." NHTSA will not consider translations of the required placard and label message to be "other information." However, all the requirements for the English label message must be met, including the requirement, as discussed below, that the content must be "legible, visible, and prominent."

The agency also concurs with this commenter's suggestion to allow abbreviations for measurements, *e.g.*, "lbs." and "kg." and will permit manufacturers to provide abbreviations for measurements at their discretion.

b. Location and Size. NHTSA, continues to believe that an important and overriding consumer information element of the placard and label is that they are located in an accessible and predictable location in motor vehicles. This belief was strongly supported by a focus group consensus and by comments to the NPRM.

NHTSA, in viewing a uniform location of the placard and label as a preeminent concern, has re-examined the labels, and the proposed vehicle locations for the labels, and agrees that there would be issues at some locations about the sufficiency of the space for the placement of the labels of the proposed specifications. In response to comments from manufacturers that some unspecified vehicles do not contain B-pillars or door edges, NHTSA has added a second alternative requirement to the requirement that the vehicle placard and tire inflation pressure label be located on the driver's side B-pillar. As proposed in the NPRM, the rule requires that if a vehicle does not have a B-pillar, then the placard or placard and label would be placed on the edge of the driver's door. Also with this rule, if a vehicle does not have a driver's side B-pillar and the driver's side door edge is too narrow or does not exist, the placard or placard and label are required to be affixed to the inward facing surface of the vehicle next to the driver's seating position. The agency believes that this will allow manufacturers two alternatives if it is not possible to place the placard or placard and label on the B-pillar. Allowing manufacturers to place the placard or placard and label on the inward facing surface next to the driver accommodates vehicles that do not have a driver's side B-pillar or driver's side door edge or have a driver's side door edge that is too narrow and is similar to one of the alternative placement specifications for Certification Labels in § 567.8.

In response to manufacturer concerns that it will not be feasible to fit the placard or placard and label on the B-pillar or door edge, NTHSA is not specifying a particular size, dimension or shape for the label. Despite the absence of any current requirement about placard or label size, no commenter provided an example of a vehicle placard that the commenter regarded as too small.

With respect to the size of the text on the placard and label, NHTSA learned from focus groups that the public generally prefers larger fonts in label text because it is easier to read. This helps ensure the placard and label will effectively convey the message to the reader. NHTSA, in its proposal, considered mandating a minimum font size for the text, but has not done so for two reasons. First, it is hard to specify a single font size that would assure ease of reading with all possible typefaces. Second, NHTSA does not think it necessary to specify a regulatory requirement for font size to assure that manufacturers will make the message large enough to be easily read. Additionally, NHTSA has not required any particular font face, size, or case for the vehicle placard. Manufacturers who choose the option to use both the placard and label may wish to use the same font face, size, and case in both labels. Today's rule allows them the flexibility to do so. NHTSA has, therefore, decided not to specify either a particular font face or font size or case for the placard and label. As other label sizes (*e.g.*, rollover, air bag) have not been a problem for the agency in the past, the final rule will similarly specify that the text on the placard and label be "legible, visible, and prominent" to the driver. If the agency becomes aware of cases in which the size of the placard's and label's text is too small, we will revise the rule to specify label and font size.

This rule also recognizes that the tire inflation pressure label will be placed proximate to the vehicle placard. A standardized location for placard and label will contribute to consumer awareness of recommended tire inflation pressure and load limits by providing a consistent and predictable place for this information. Vehicle manufacturers provided a number of alternative locations for the placard and label citing difficulties in fitting the placard or label on the B-pillar or door edge. The agency, however, notes that it has provided manufacturers with great flexibility concerning the size, shape and dimension of the placard and label. This flexibility provides manufacturers great latitude to design the placard and

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label in a manner that can be configured to virtually every vehicle design. Furthermore, there would be no prohibition on placing additional tire inflation pressure labels on the vehicle in locations other than the B-pillar, except as precluded by other safety standards.

c. Multistage Manufacturer/Alterer Issues. NTEA and the Alliance commented that the proposed requirement for all light vehicles to be labeled with the vehicle capacity weight (expressed as "the combined weight of occupants and cargo should never exceed * * *") would create problems for manufacturers, both primary, secondary, and final, of multistage vehicles. More specifically, these commenters expressed concern that the vehicle capacity weight labeled on the placard by the primary manufacturer would be rendered invalid by subsequent modifications and, additionally, that there would be excessive costs associated with the secondary manufacturers being required to physically weigh the finished vehicle to determine the vehicle capacity weight. Additionally, NTEA suggested that alterers be permitted to replace or cover over original placards with those containing updated and accurate information for the altered vehicle.

NHTSA notes that final stage manufacturers are already required to know, before certifying the vehicle, the GVWR, the unloaded vehicle weight, and the passenger weight for the vehicle. With this information, final-stage manufacturers should be able to calculate easily the vehicle capacity weight of the vehicle. NHTSA, however, agrees with commenters that the issues regarding the placarding responsibility for multi-stage manufactured and altered vehicles need to be addressed. The agency has decided that (1) incomplete and intermediate manufacturers need not affix a placard to an incomplete vehicle, (2) alterers must affix a new placard, containing accurate information for the altered vehicle, over the placard installed by the vehicle manufacturer, so as to obscure the original placard and (3) final stage manufacturers must label vehicles with vehicle capacity weight and seating designations "as finally manufactured," utilizing information contained in the document ("IVD") required by § 568.4 to be provided by incomplete and intermediate vehicle manufacturers and the information particular to their role in the manufacture of the vehicle.

3. Owner's Manual

All commenters concurred that the owner's manual, as a single, reliable source containing the proposed required information for the tires and tire safety information listed above would aid consumers in properly maintaining their tires and adhering to load limits.

Today's rule requires owner's manuals to include the following statements and information:

1. Tire labeling, including a description and explanation of—
(a) Each marking on the tire,
(b) Locating information that will aid consumers in identifying tires subject to a recall campaign, and
(c) The TIN;
2. Recommended tire inflation pressure, including a description and explanation of—
(a) Recommended cold tire inflation pressure,
(b) The vehicle placard and tire inflation pressure label required in Federal Motor Vehicle Safety Standard No. 110 and their location in the vehicle,
(c) The adverse safety consequences of underinflation (including tire failure), and
(d) Measuring and adjusting air pressure to achieve proper inflation;
3. Glossary of tire terminology, including "cold tire pressure," "maximum inflation pressure," and "recommended inflation pressure," and all non-technical terms defined in S3 of FMVSS Nos. 110 & 139;
4. Tire care, including maintenance and safety practices; and
5. Vehicle load limits, including a description and explanation of—
(a) Locating and understanding load limit information, total load capacity, seating capacity, towing capacity, and cargo capacity,
(b) Calculating total and cargo load capacities with varying seating configurations including quantitative examples showing/illustrating how the vehicle's cargo and luggage capacity decreases as the combined number and/or size of occupants increases,
(c) Determining compatibility of tire and vehicle load capabilities,
(d) The adverse safety consequences of overloading on handling and stopping and on tires, and
(e) "Steps for Determining Correct Load Limit—
(1) Locate the statement "The combined weight of occupants and cargo should never exceed XXX kg or XXX pounds" on your vehicle's placard.
(2) Determine the combined weight of the driver and passengers that will be riding in your vehicle.
(3) Subtract the combined weight of the driver and passengers from XXX kilograms or XXX pounds.
(4) The resulting figure equals the available amount of cargo and luggage load capacity. For example, if the "XXX" amount equals 1400 lbs. and there will be five—150 lb passengers in your vehicle, the amount of available cargo and luggage load capacity is 650 lbs. (1400—750 (5 x 150) = 650 lbs.)
(5) Determine the combined weight of luggage and cargo being loaded on the vehicle. That weight may not safely exceed the available cargo and luggage load capacity calculated in Step 4.
(6) If your vehicle will be towing a trailer, load from your trailer will be transferred to your vehicle. Consult this manual to determine how this may reduce the available cargo and luggage load capacity of your vehicle."

The agency believes that the general nature of the requirements about discussions of tire labeling, tire care, and load limit information will allow manufacturers to tailor language to their specific vehicles. At the same time, the requirements are specific enough to ensure that critical topics are included.

These statements and information are the same as those proposed in the NPRM with minor modification. NHTSA believes that the need for uniformity in 5(e) requires verbatim "Steps for Determining Correct Load Limit" in order to underscore that the message contained in determining the correct load limit is important for safe operation of vehicle. Number 7 in the list of steps has been deleted. RMA and GRRF expressed concern that this statement, which suggests that a pressure higher than the recommended pressure may be needed to support certain loads, incorrectly indicates that tires can be loaded above their maximum loading capacity as specified in FMVSS No. 110. The agency agrees with RMA and GRRF's concern and has deleted the statement.

Some vehicle manufacturers suggested that the agency more specifically delineate or define aspects of the information to be included in the owner's manual. The agency, however, believes that uniformity is not needed with respect to the discussion of tire safety issues other than "Steps for Determining Correct Load Limit." The agency believes that manufacturers are in a better position to provide drivers with adequate explanations of tire labeling, recommended tire inflation pressure, a glossary of tire terminology, and tire care.

D. Vehicle Applicability and Effective Dates

Section 11 of the TREAD Act requires the agency to issue a final rule on this tire labeling proposal by June 1, 2002. This rule establishes that its labeling revisions apply, except where noted, to new pneumatic tires for use on motor vehicles with a GVWR of 10,000 pounds or less, manufactured after 1975, except for motorcycles and LSVs, and for new motor vehicles with a GVWR of 10,000 pounds or less.

Given the increasing consumer preference for using light trucks for passenger purposes, the agency is requiring that the tire information requirements for passenger car tires also apply to LT tires (load C, D, E) used on light trucks. No commenters dissented with the agency's statement in the NPRM that LT tires are increasingly used in the same type of on-road service as P-metric tires on light vehicles or with the agency's statement that the use of these tires on passenger vehicles will continue to increase in the near future.

As proposed in the NPRM and in response to comments suggesting technical difficulties applying labeling revisions to motorcycle tires and specialty tires produced for antique vehicles, NHTSA is not requiring that FMVSS No. 139 apply to motorcycle tires and tires for vehicles produced before 1975. The agency is currently not aware of any consumer information concerns or problems associated with motorcycle tires or tires used on antique motor vehicles.

To maintain consistent labeling requirements for all tires for use on light vehicles, the labeling requirements are also applicable to retreaded pneumatic passenger car tires and new non-pneumatic tires for passenger cars. No comments were received on the applicability of this rule to these tires.

Most vehicle manufacturer commenters requested longer lead time, until September 1, 2004. NHTSA has decided to adopt the effective date of September 1, 2003 for vehicle labeling. The proposed effective date reflected NHTSA's desire for expedited action on this issue. In view of the immediate need to alert the public to tire and loading information and because the labeling revisions to light vehicles constitute format changes, not performance or vehicle design changes, NHTSA finds that an effective date of September 1, 2003 is reasonable and is in the public interest.

All tire manufacturers requested longer lead time, up to five years, to account for reworking molds and replacing current molds, which last up to five years, with new molds reflecting the new labeling requirements. The agency agrees that providing some level of compliance flexibility improves the chances that ways can be found to improve safety as well as reduce costs. Accordingly, we have structured a phase-in to facilitate those efforts. For tires, the agency has decided to extend the lead time and institute a phase-in compliance according to the following schedule: 40% of all applicable tires between September 1, 2004 and August 31, 2005, 70% of all applicable tires between September 1, 2005 and August 31, 2006, and 100% of all applicable tires beginning on September 1, 2006. This extension of the effective date for tires and the phase-in reflects the reality that the tire manufacturers will need to rework, retool, and replace the tire molds currently being utilized. NHTSA believes that this phase-in will permit tire manufacturers to continue to use existing molds while they acquire new ones that reflect the new tire information requirements. Also, by requiring that only 40% of tires comply with the requirements during the first stage of the phase-in, the agency is providing the industry and its mold shops with an achievable task of reworking a number of molds that would not exceed their capacity for such work. By not requiring full compliance until September 1, 2006, NHTSA is providing the tire industry with ample time to accomplish the task at hand.

Finally, to encourage the earliest possible application of the new tire information requirements, NHTSA is allowing manufacturers to institute the new requirements before the required dates.

E. Other Issues and Concerns

1. Permission To Change Labeling

Today's rule does not permit manufacturers to make changes to the labeling upon seeking and receiving special permission from the Administrator. NHTSA believes that it is important that people see the same message on all covered tires and vehicles and that this message appears, where specified, in a standardized format and location. The agency believes that inconsistency with regard to the content, format, and placement of the labeling mandated in this rule could cause confusion and undermine the effectiveness of the improved tire information.

2. Modification to FMVSS Nos. 110 and 120

The purpose of FMVSS Nos. 110 and 120 is to provide safe operational performance by ensuring that vehicles to which they apply are equipped with tires of adequate load rating and rims of appropriate size and type designation. FMVSS No. 110 currently applies to passenger cars and FMVSS No. 120 currently applies to vehicles other than passenger cars including motorcycles and trailers.

This rule specifies that the applicability of FMVSS Nos. 110 and 120 will correspond with the applicability of the new light vehicle tire. FMVSS No. 110 will include passenger cars and other light vehicles with a GVWR of 10,000 pounds or less. Therefore, most SUVs, vans, trailers, and pickup trucks will be required to comply with the same tire selection and rim requirements as passenger cars. FMVSS No. 120 will continue to apply to vehicles over 10,000 pounds GVWR and motorcycles.

With regard to the revised applicability of FMVSS No. 110 and 120, the Alliance suggested that NHTSA drop the proposal to amend the applicability from this docket and instead incorporate them into the NPRM to be published on tire performance requirements. RMA and RAC urged the agency in applying FMVSS No. 110 to light vehicles other than passenger cars it should not relax the current standards for tire selection and the load service factor of 1.10 contained in S5.1.2 of FMVSS No. 120. No commenters, however, objected to the revised applicability of FMVSS No. 110 and 120.

The agency empathizes with the Alliance's wanting to comment on the applicability of performance-oriented aspects in conjunction with the NPRM on tire performance requirements. NHTSA has incorporated a discussion regarding the revised applicability of FMVSS Nos. 110 and 120 and the ensuing performance-oriented issues, including the 1.10 service factor, into the NPRM on tire performance requirements, and has provided an opportunity to comment on these issues. NHTSA will make its final decision with regard to these performance aspects of the FMVSS No. 110 and 120 applicability in the tire performance upgrade final rule.

The proposal discussed that certain performance-oriented requirements of FMVSS No. 110 would have been retained, including S4.2.2, which establishes a linkage between the

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vehicle normal load [10] and the load specified for the high-speed test in FMVSS No. 109.[11] S4.2.2 would have been extended to cover SUVs, vans, trailers, and pickup trucks for the first time, which means that P-metric and LT tires used on these vehicles would have a load reserve similar to P-metric tires used on passenger cars. The proposal also noted that it would have extended S4.4.1(b) of FMVSS No. 110, which requires that each rim shall retain a deflated tire in the event of a rapid loss of inflation pressure from a vehicle speed of 97 km/h until the vehicle is stopped with a controlled braking operation, to light trucks and vans for the first time. The agency is not issuing a decision on these performance aspects in this final rule. Vehicle and tire manufacturers may comment on this issue after having an opportunity to consider the tire performance upgrade proposal.

3. Certification Label

Vehicle certification label requirements, contained in Part 567, will not be revised by this rule except to reference FMVSS No. 110, as well as FMVSS No. 120, in § 567.4 concerning tire rim combinations for light trucks and MPVs, and to require that the label contain the tire-rim combination installed as original equipment on the vehicle by the vehicle manufacturer.[12] Rim information will not, however, appear on the proposed vehicle placard or tire inflation pressure label.

4. Analysis of Responses to Agency Questions in NPRM

Should NHTSA define or specify what a "reasonable amount of luggage is for a vehicle with an occupant in every designated seating position"?

Currently, our statute requires that a motor vehicle be equipped with tires that meet maximum load standards when the vehicle is loaded with a reasonable amount of luggage and the total number of passengers the vehicle is designed to carry.

The Alliance and GM opposed providing a definition for "reasonable amount of luggage" stating that it serves no safety need and would interfere with what they characterize as a "competitive matter among manufacturers." ETRTO states that the agency should consider specifying "maximum luggage capacity" rather than a "reasonable amount of luggage" to avoid overloading. GRRF opposes the agency deferring to vehicle manufacturers the responsibility for ensuring that a vehicle is equipped with tires that have a load capacity suitable for the declared maximum permissible load of the vehicle or its axes.

NHTSA has decided, at this point, to rely upon its efforts in this rule and in its consumer education program to address the safety aspects of vehicle loading. In addition, consistent with their comments, the agency expects the industry to undertake educational efforts to inform the public properly with regard to particular vehicles. Whether or not these efforts will obviate the need for the agency to define "reasonable amount of luggage" may be evaluated by the agency at some future time.

NHTSA requests comments on which, if any, labeling requirements in any foreign or international standard should be considered by NHTSA and why.

NHTSA generally supports international harmonization in cases where such harmonization is consistent with its statutory mandate to ensure motor vehicle safety. Several vehicle industry and tire industry commenters suggested adding the service description to tires and vehicles as a labeling requirement, stating that this information aids consumers when purchasing replacement tires. The agency continues to believe the two labeling requirements contained in the service description, speed-category symbol and load index[13], have not been shown to communicate everyday tire maintenance and safety information effectively to the U.S. public. Both provide a value that is not intuitive to consumers and would require a vehicle operator to look to the owner's manual or standard to determine the actual tire maximum load and maximum rated speed of the tire. Manufacturers may continue labeling tires with this optional information but the agency will not make the service description a tire labeling requirement. Additionally, the agency will prohibit this information from being placed on the vehicle placard and label and has deleted the service description from the examples of the placard and label.

Should the agency consider prohibiting some or all non-required information from being labeled on the tire sidewalls?

All tire and vehicle industry commenters oppose a prohibition on non-required information being placed on tires. They argue that this action would generally conflict with harmonization efforts, would incur retaliation from other countries, would restrict manufacturers use of unique markings for marketing and production purposes, would restrict global marketing and therefore raise costs, and could constitute a technical barrier to trade. The agency agrees that such a prohibition would precipitate unintended consequences due to the global nature of the tire industry and give rise to greater costs for the industry and consumers. Therefore, with this rule, the agency will not prohibit non-required information on applicable tires.

VIII. Benefits

For a fuller discussion of the benefits, see the agency's Final Regulatory Evaluation (FRE). A copy of the FRE has been placed in the docket.

NHTSA believes that this final rule will be effective in increasing public awareness of tire safety, particularly the understanding and maintenance of proper tire inflation and load limits. This final rule will also enable consumers to more easily locate and identify the TIN and other tire information for recalls and other notifications. The rule will standardize the location and content of important information relating to proper inflation and load limits and other tire safety concerns. These measures, by increasing consumer knowledge and awareness, will result in reduced tire failures and tire related crashes, and therefore fewer deaths and injuries.

IX. Costs

The following is a summary of the costs associated with the final rule. For a more detailed analysis, see the agency's FRE.

The agency estimates that one-time costs of up to $23.4 million will occur for the tire industry during the phase-in period. These costs will add up to $0.08 per tire during this period. The recurring annual costs are believed to be very minor.

Estimates for retread manufacturers are projected sales figures provided from ITRA and incorporated cost estimates from RMA. Since retread manufacturers produce about 5.47 million retread tires that will be covered by this rule, only a percentage of the approximately $23.4 million will be applicable to retreaders. This percent is calculated to be 1.93% (5.47 million (number of tread tires produced)/283 million (number of tires produced by the tire industry) × 100%). Thus, the total one-time investment cost to retread manufacturers is $451,895 (1.93% × $23,379,600) or about $0.08 per tire ($451,895/5,470,000 tires). Given that there are about 750 retread manufacturers that produce retreads for passenger cars and light trucks, the cost per manufacturer is about $603 ($451,895/750 manufacturers). The $603 per manufacturer may be a substantial underestimation, since most retread manufacturers are small companies with fewer sales over which to allocate costs than the larger tire manufacturers. However, even if costs were ten times higher for retread manufacturers ($6,030) than for other manufacturers, this amount would still represent a minimal impact to retread manufacturers.

The agency estimates that vehicle costs will increase about $0.15 per vehicle, based on $0.04 per label and $0.11 for adding about 8 pages of information to the owner's manual. With approximately 17 million light vehicles and light trailers being sold annually, the vehicle costs are over $2.6 million per year on a recurring annual basis.

Thus, total overall costs are up to $26 million initially, with $2.6 million estimated to occur on a recurring annual basis.

X. Effective Date

The Agency discusses the effective date and the phase-in requirements for this rule in section VII.D. of this document.

XI. Rulemaking Notices and Analyses

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), provides for making determinations whether a regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and to the requirements of the Executive Order. The Order defines a "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President=s priorities, or the principles set forth in the Executive Order.

NHTSA has considered the impact of this rulemaking action under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. At the time of the NPRM, this rulemaking was regarded as nonsignificant. However, due to concerns raised during a Congressional hearing in late February 2002 regarding the agency's proposals to require the full TIN on both sides of each tire and to reorder the TIN, this rulemaking was reclassified as significant. Accordingly, the Office of Management and Budget reviewed the final rule under Executive Order 12866, "Regulatory Planning and Review." (As noted above, the final rule does not adopt either of those proposals, thus eliminating the sources of those concerns.) The rule is likely to result in expenditure by tire and automobile manufacturers of $26 million initially, with $2.6 million estimated to occur on a recurring annual basis. NHTSA is placing in the public docket a Final Regulatory Evaluation (FRE) describing the costs and benefits of this rulemaking action. The costs and benefits are summarized earlier in this document.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires agencies to evaluate the potential effects of their proposed and final rules on small business, small organizations and small governmental jurisdictions. I hereby certify that the amendments would not have a significant economic impact on a substantial number of small entities.

The final rule affects motor vehicle manufacturers and tire manufacturers. The agency does not believe that any of the tire manufacturers are small businesses. However, there are about 1,000 retread manufacturers in the United States, of which about 750 deal with light vehicle tires that will in some small way be impacted by this rule. Most of these retreaders are small businesses. As discussed in Section IX. Costs, the agency estimates the cost burden imposed on retread manufacturers at approximately $600 per retread manufacturer if costs are similar to those for other tire manufacturers. Costs may be higher due to economies of scale but the agency believes that these impacts will not be economically significant. For instance, even if the costs to retread manufacturers were ten times higher than for the other manufacturers ($6,000), this figure would represent a minimal impact to retread manufacturers.

NHTSA estimates that there are only about four small passenger car and light truck vehicle manufacturers in the United States. These manufacturers serve a niche market. The agency believes that small manufacturers manufacture less than 0.1 percent of total U.S. passenger car and light truck production per year.

C. National Environmental Policy Act

NHTSA has analyzed this final rule for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action does not have any significant impact on the quality of the human environment.

D. Executive Order 13132 (Federalism)

The agency has analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 13132 and has determined that it does not have sufficient federal implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. The final rule will not have any substantial impact on the States, or on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various local officials.

E. Unfunded Mandates Act

The Unfunded Mandates Reform Act of 1995 (Public Law 104–4) requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted annually for inflation with base year of 1995). Adjusting this amount by the implicit gross domestic product price deflator for the year 2000 results in $109 million (106.99/98.11 = 1.09). The assessment may be included in conjunction with other assessments, as it is here.

This final rule will not result in expenditures by State, local, or tribal

[10] Vehicle normal load on the tire means that load on an individual tire that is determined by distributing to each axle its share of the curb weight, accessory weight, and normal occupant weight and dividing by 2.

[11] This, under the proposed high speed test, would ensure at least a 15 percent load reserve (high speed test load proposed is 85 percent) when the vehicle is operated at normal load.

[12] Currently, the rim size and type designation label information requirements for light trucks and multipurpose passenger vehicles (MPVs) (which include SUVs) are specified in S5.3.2 of FMVSS No. 120. Light trucks and MPVs, unlike passenger cars, may be outfitted with different sized rims which would require different size tires and recommended inflation pressures for those tires.

[13] Under these regulations, the speed-category symbol and the load index are to be placed together near the size designation. For example, the sidewall would contain the size designation "P215/65R15 89H" where "H" is the speed-category symbol and "89" is the load index.

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governments or tire suppliers of more than $109 million annually.

F. Civil Justice Reform

This final rule does not have any retroactive effect. Under 49 U.S.C. 21403, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 21461 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

G. Paperwork Reduction Act

This final rule contains the following "collections of information," as that term is defined in 5 CFR part 1320 *Controlling Paperwork Burdens on the Public:*

Tire and Vehicle Placard Labeling Requirements—The Department of Transportation is submitting the following information collection request to OMB for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35).

Agency: National Highway Traffic Safety Administration (NHTSA).

Title: Tires and Rims Labeling, and Vehicle Placard Requirements.

Type of Request: Additional collection of information for an existing collection.

OMB Clearance Number: 2127–0503.

Affected Public: The tire-labeling respondents are manufacturers and retreaders of tires.

The agency estimates that there are about 8 such new tire manufacturers and 1000 retread manufacturers. The placard labeling respondents are manufacturers of MPVs covered by FMVSS 571.120. The agency estimates that there are 935 vehicle manufacturers affected by this collection.

Estimate of the Total Annual Reporting and Record Keeping Burden Resulting from the Collection of Information: NHTSA estimates that the total annual hour burden is 111,539 hours for tire labeling and 25,184 for vehicle placard requirements.

Estimated Costs: NHTSA estimates the initial cost burden for tire labeling to be $23.4 million and the annual cost burden for tire labeling to be $0. The estimated total annual cost burden for vehicle placards is approximately $0.7 million. Manufacturers will not expend any additional resources to gather additional information because they already compile this data for their own uses.

Summary of the Collection of Information: The provisions of the final rule requiring manufacturers to provide certain information on both sidewalls of tires, *e.g.*, the TIN, and certain information on a placard or label for vehicles other than passenger cars, *e.g.*, vehicle capacity weight, seating capacity, for the benefit of consumers are considered to be third-party information collection requirements as defined by the Office of Management and Budget (OMB) in 5 CFR part 1320.

Description of the Need for the Information and Proposed Use of the Information: The provisions of the final rule requiring manufacturers to provide certain information on both sidewalls of tires, *e.g.*, the TIN, and certain information on a placard or label for vehicles other than passenger cars, *e.g.*, vehicle capacity weight, seating capacity, are for the benefit of consumers. NHTSA requests comments on the agency's estimates of the total annual hour and cost burdens resulting from this collection of information. These comments must be received on or before January 17, 2003.

Vehicle Owner's Manual Requirements—The Department of Transportation is submitting the following information collection request to OMB for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35).

Agency: National Highway Traffic Safety Administration (NHTSA).

Title: Consolidated Vehicle Owner's Manual Requirements of Motor Vehicles and Motor Vehicle Equipment.

Type of Request: Additional collection of information for an existing collection.

OMB Clearance Number: 2127–0541.

Affected Public: The respondents are manufacturers of motor vehicles with a gross vehicle weight rating of 10,000 pounds or less, except for motorcycles and LSVs. The agency estimates that there are 50 model lines for which there are owner's manuals. It is estimated that about 25 vehicle manufacturers are affected by this collection.

Estimate of the Total Annual Reporting and Record Keeping Burden Resulting from the Collection of Information: NHTSA estimates that the total annual hour burden is 400 hours for this information collection.

Estimated Costs: NHTSA estimates the total cost annual burden for revising the owner's manuals to be approximately $1.9 million.

Summary of the Collection of Information: The provisions of the final rule herein requiring manufacturers to provide information in owners' manuals explaining tire and vehicle load-limit information for the benefit of consumers are considered to be third-party information collection requirements as defined by the Office of Management and Budget (OMB) in 5 CFR part 1320.

Description of the Need for the Information and Proposed Use of the Information: The provisions of the final rule requiring manufacturers to provide information in owners' manuals explaining tire and vehicle load limit information are for the benefit of consumers. NHTSA requests comments on the agency's estimates of the total annual hour and cost burdens resulting from this collection of information. These comments must be received on or before January 17, 2003.

Tire Manufacturer Phase-In Reporting Requirements—The Department of Transportation is submitting the following information collection request to OMB for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35).

Agency: National Highway Traffic Safety Administration (NHTSA).

Title: Phase-In Production Reporting Requirements for new pneumatic tires for use on vehicle with a gross vehicle weight rating of 10,000 pounds or less.

Type of Request: Routine.

OMB Clearance Number: 2127–[XXXX].

Affected Public: The respondents are manufacturers of tires. The agency estimates that there are slightly over 1,000 such manufacturers.

Estimate of the Total Annual Reporting and Recordkeeping Burden Resulting from the Collection of Information: NHTSA estimates that the total annual hour burden is 6048 (6 man hours × 1008) hours.

Estimated Costs: NHTSA estimates that the total cost burden in dollars to be $0. Manufacturers will not expend any additional resources to gather annual production information because they already compile this data for their own uses.

Summary of the Collection of Information: This collection would require manufacturers of new pneumatic tire to provide tire production data yearly from September 1, 2004 through September 1, 2006.

Description of the Need for the Information and Proposed Use of the Information: The purpose of the reporting requirements would be to aid the National Highway Traffic safety Administration in determining whether a manufacturer of tires has complied with the requirements of this rule during the phase-in of those requirements. NHTSA requests comments on the agency's estimates of the total annual hour and cost burdens resulting from this collection of information. The comments must be received on or before January 17, 2003.

H. Plain Language

Executive Order 12866 requires each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

- Have we organized the material to suit the public's needs?
- Are the requirements in the rule clearly stated?
- Does the rule contain technical language or jargon that isn't clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rule easier to understand?

XII. Regulatory Text

List of Subjects in 49 CFR Parts 567, 571, 574, 575, and 597

Imports, Certification, Consumer information, Motor vehicle safety, Motor vehicles, Rubber and rubber products, and Tires.

In consideration of the foregoing, we amend 49 CFR parts 567, 571, 574, 575 and 597 as follows:

PART 567—CERTIFICATION

1. The authority citation for part 567 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, 30166, 32502, 32504, 33101–33104, 33108, and 33109; delegation of authority at 49 CFR 1.50.

2. Section 567.4 is amended by revising paragraph (h)(2) as follows:

§ 567.4 Requirements for manufacturers of motor vehicles.

* * * * *

(h) * * *

(2) (For multipurpose passenger vehicles, trucks, buses, trailers, and motorcycles) The manufacturer may, at its option, list more than one GVWR–GAWR-tire-rim combination on the label as long as the listing contains the tire-rim combination installed as original equipment on the vehicle by the vehicle manufacturer and conforms in content and format to the requirements for the tire-rim-inflation information set forth in § 571.110, § 571.120, § 571.129 and § 571.139 of this chapter.

* * * * *

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

3. The authority citation for part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 2011, 30115, 30166 and 30177; delegation of authority at 49 CFR 1.50.

4. Section 571.109 is amended by revising S2 to read as follows:

§ 571.109 Standard No. 109; New pneumatic tires.

* * * * *

S2. *Application.* This standard applies to new pneumatic tires for use on passenger cars manufactured after 1948. However, it does not apply to any tire that has been altered so as to render impossible its use, or its repair for use, as motor vehicle equipment. In addition, S4.3 does not apply to tires certified to comply with S5.5 of § 571.139 and S4.4. does not apply to tires certified to comply with S4 of § 571.139.

* * * * *

5. Section 571.110 is amended by revising its heading and S2, S4.3, S4.3.1, and S7.2(a), by adding S4.3.2, S4.3.3, and S4.3.4, and by adding Figure 1 and Figure 2 at the end of Section 571.110, to read as follows:

§ 571.110 Standard No. 110; Tire selection and rims for motor vehicles with a GVWR of 4,536 kilograms (10,000 pounds) or less.

* * * * *

S2 *Application.* This standard applies to motor vehicles with a gross vehicle weight rating (GVWR) of 10,000 pounds or less, except for motorcycles, and to non-pneumatic spare tire assemblies for use on those vehicles.

* * * * *

S4.3 *Placard.* Each vehicle, except for an incomplete vehicle, shall show the information specified in S4.3 (a) through (g) on a placard permanently affixed to the driver's side B-pillar. If the vehicle lacks a B-pillar on the driver's side, the placard shall be permanently affixed to the edge of the driver's side door. If the vehicle lacks a driver's side B-pillar and either has a driver's side door whose edge is too narrow to permit the affixing of the placard or lacks a driver's side door, the placard shall be affixed to the inward facing surface of the vehicle next to the driver's seating position. This information shall be in the English language and conform in color and format, not including the border surrounding the entire placard, as specified in the example set forth in Figure 1 in this standard. At the manufacturer's option, the information specified in S4.3 (c) and (d) may be shown, alternatively, on a tire inflation pressure label, and conform in color and format, not including the border surrounding the entire label, as specified in the example set forth in Figure 2 in this standard. The label shall be permanently affixed and proximate to the placard required by this paragraph. The information specified in S4.3 (e) shall be shown on both the vehicle placard and on the tire inflation pressure label (if such a label is affixed to provide the information specified in S4.3 (c) and (d)) in the format and color scheme set forth in Figures 1 and 2.

(a) Vehicle capacity weight expressed as "The combined weight of occupants and cargo should never exceed XXX kilograms or XXX pounds";

(b) Designated seated capacity (expressed in terms of total number of occupants and number of occupants for each seat location);

(c) Vehicle manufacturer's recommended cold tire inflation pressure, subject to the limitations of 4.3.4;

(d) Tire size designation, indicated by the headings "original tire size" or "original size," for the tire installed as original equipment on the vehicle by the vehicle manufacturer;

(e) On the vehicle placard, "Tire and Loading Information" and, on the tire inflation pressure label, "Tire Information";

(f) "See Owner's Manual for Additional Information"; and

(g) For a vehicle equipped with a non-pneumatic assembly, the tire identification code with which that assembly is labeled pursuant to the requirements of S4.3(a) of 571.129, New Non-Pneumatic Tires for Passenger Cars.

S4.3.1 *Requirements for vehicles manufactured in two or more stages.* A placard or placard and label shall be affixed to the completed vehicle by the final-stage manufacturer in accordance with S4.3 and with the vehicle capacity weight and seating designations as finally manufactured.

S4.3.2 *Requirements for altered vehicles.* A new placard or placard and label shall be affixed, so as to obscure the original placard, to an altered vehicle that has previously been certified in accordance with § 567.4 or § 567.5, other than by the addition, substitution, or removal of readily attachable components such as mirrors or tire and rim assemblies, or minor

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finishing operations such as painting, or who alters the vehicle in such a manner that its stated weight ratings are not longer valid, before the first purchase of the vehicle in good faith for purposes other than resale, containing accurate information for the altered vehicle, in accordance with S4.3.

S4.3.3 *Additional labeling information for vehicles other than passenger cars.* Each vehicle shall show the size designation and, if applicable, the type designation of rims (not necessarily those on the vehicle) appropriate for the tire appropriate for use on that vehicle, including the tire installed as original equipment on the vehicle by the vehicle manufacturer, after each GAWR listed on the certification label required by § 567.4 or § 567.5 of this chapter. This information shall be in the English language, lettered in block capitals and numerals not less than 2.4 millimeters high and in the following format:

Truck Example—Suitable Tire-Rim Choice

GVWR: 2,441 kilograms (5381 pounds).

GAWR: Front—1,299 kilograms (2,864 pounds) with P265/70R16 tires, 16 × 8.0 rims at 240 kPa (36 psi) cold single.

GAWR: Rear—1,142 kilograms (2,864 pounds) with P265/70R16 tires, 16 × 8.00 rims, at 245 kPa (36 psi) cold single.

S4.3.4 No inflation pressure other than the maximum permissible inflation pressure may be shown on the placard and, if any, tire inflation pressure label unless—

(a) It is less than the maximum permissible inflation pressure;

(b) It is appropriate for the load limits as calculated in accordance with S4.2; and

(c) The tire load rating specified in a submission by an individual manufacturer, pursuant to S4.1.1(a) of § 571.139 or contained in one of the publications described in S4.1.1.(b) of § 571.139, for the tire size at that inflation pressure is not less than the vehicle maximum load and the vehicle normal load.

* * * * *

S7.2 * * *

(a) A statement indicating the information related to appropriate use for the non-pneumatic spare tire including at a minimum the information set forth in S6 (a) and (b) and either the information set forth in S4.3(g) or a statement that the information set forth in S4.3(g) is located on the vehicle placard and on the non-pneumatic tire;

* * * * *

BILLING CODE 4910–59–P

Vehicle Placard

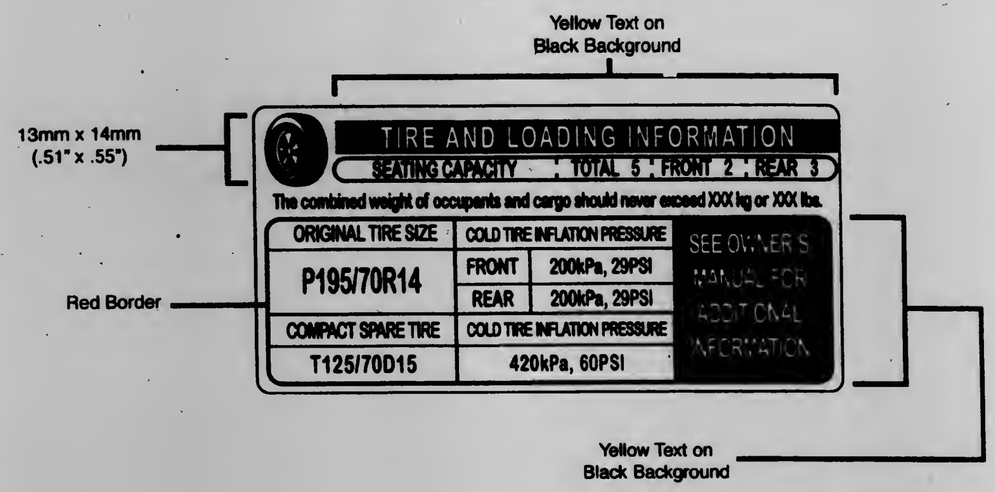

FIGURE 1

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Tire Inflation Pressure Label

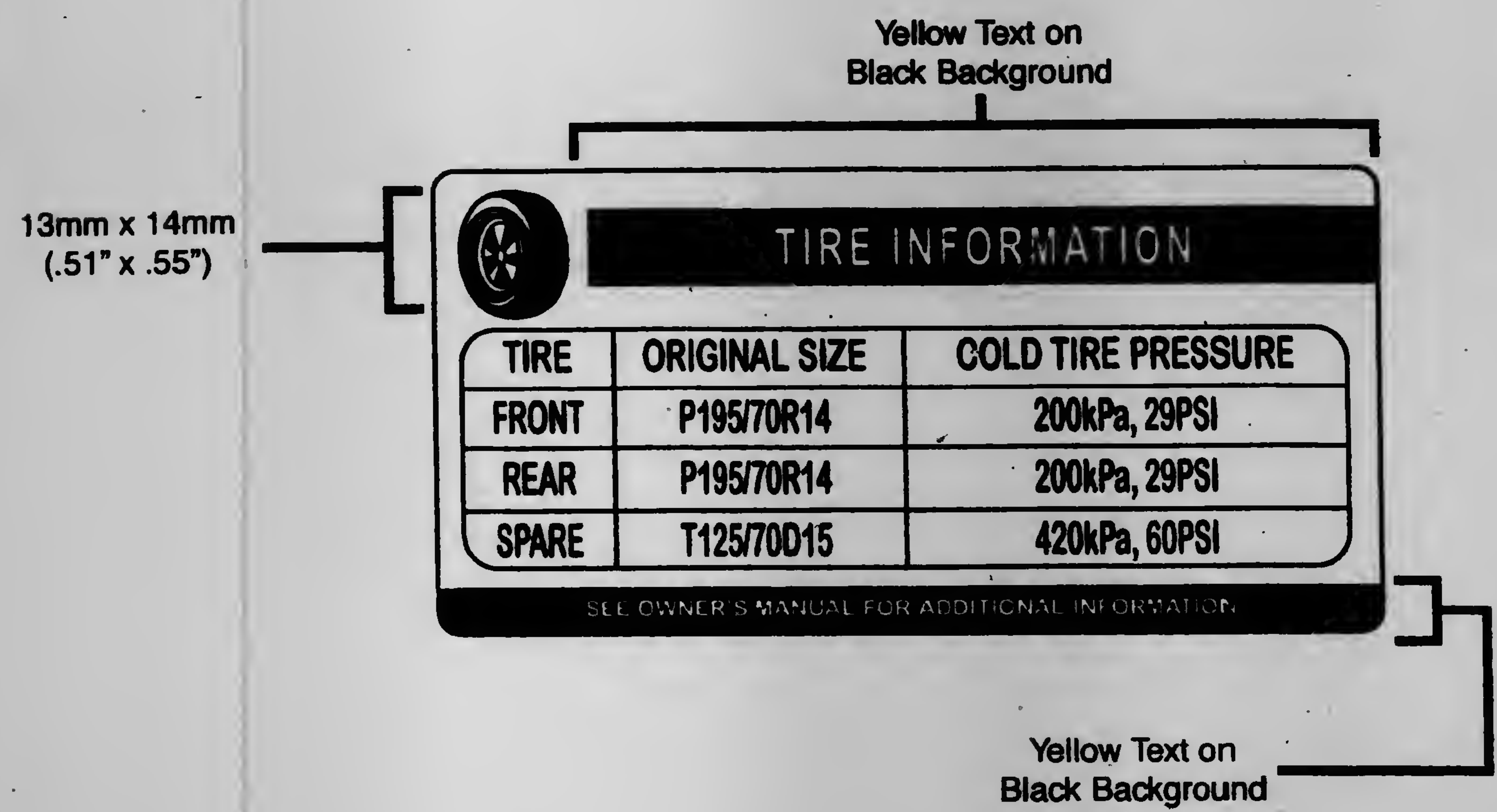

FIGURE 2

BILLING CODE 4910-59-C

6. Section 571.117 is amended by revising S6.3 (including removing Table 1 and the undesignated paragraph following S6.3(h)) and adding S7, S7.1, S7.2, and S7.3 to read as follows:

§ 571.117 Standard No. 117; Retreaded pneumatic tires.

* * * * *

S6.3 *Labeling.* Each retreaded tire shall comply, according to the phase-in schedule specified in S7 of this standard, with the requirements of S5.5. of § 571.139.

S7. *Phase-In Schedule for labeling*

S7.1 *Tires retreaded on or after September 1, 2004 and before September 1, 2005.* For tires manufactured on or after September 1, 2004 and before September 1, 2005, the number of tires complying with S6.3 of this standard must be equal to not less than 40% of the retreader's production during that period.

S7.2 *Tires retreaded on or after September 1, 2005 and before September 1, 2006.* For tires manufactured on or after September 1, 2005 and before September 1, 2006, the number of tires complying with S6.3 of this standard must be equal to not less than 70% of the retreader's production during that period.

S7.3 *Tires retreaded on or after September 1, 2006.* Each tire must comply with S6.3 of this standard.

7. Section 571.120 is amended by revising its heading, and S3 to read as follows:

§ 571.120 Standard No. 120; Tire selection and rims for motor vehicles with a GVWR of more than 4,536 kilograms (10,000 pounds).

* * * * *

S3. *Application.* This standard applies to motor vehicles with a gross vehicle weight rating (GVWR) of more than 10,000 pounds and motorcycles, to rims for use on those vehicles, and to non-pneumatic spare tire assemblies for use on those vehicles.

* * * * *

8. Section 571.129 is amended by revising S4.3 and adding S7, S7.1, S7.2, and S7.3 to read as follows:

§ 571.129 Standard No. 129; New non-pneumatic tires for passenger cars.

* * * * *

S4. * * *

S4.3. *Labeling Requirements.* Each new non-pneumatic tire shall comply, according to the phase-in schedule specified in S7 of this standard, with the requirements of S5.5 of § 571.139.

* * * * *

S7. *Phase-In Schedule for labeling requirements.*

S7.1 *Tires manufactured on or after September 1, 2004 and before September 1, 2005.* For tires manufactured on or after September 1, 2004 and before September 1, 2005, the number of tires complying with S4.3 of this standard must be equal to not less than 40% of the manufacturer's production during that period.

S7.2 *Tires manufactured on or after September 1, 2005 and before September 1, 2006.* For tires manufactured on or after September 1, 2005 and before September 1, 2006, the number of tires complying with S4.3 of this standard must be equal to not less than 70% of the manufacturer's production during that period.

S7.3 *Tires manufactured on or after September 1, 2006.* Each tire must comply with S6.3 of this standard.

* * * * *

9. Section 571.139 is added to read as follows:

§ 571.139 Standard No. 139; New pneumatic tires for light vehicles.

S1. *Scope and purpose.* This standard specifies tire dimensions, test requirements, labeling requirements, and defines tire load ratings.

S2. *Application.* This standard applies to new pneumatic tires for use on motor vehicles (other than motorcycles and low speed vehicles) that have a gross vehicle weight rating (GVWR) of 10,000 pounds or less and that were manufactured after 1975.

S3. *Definitions.*

Intended outboard sidewall means:

(1) The sidewall that contains a whitewall, bears white lettering or bears manufacturer, brand, and/or model name molding that is higher or deeper than the same molding on the other sidewall of the tire, or

(2) The outward facing sidewall of an asymmetrical tire that has a particular side that must always face outward when mounted on a vehicle.

S4. *Tire and rim matching information.*

S4.1. Each manufacturer of tires must ensure that a listing of the rims that may be used with each tire that it produces is provided to the public in accordance with S4.1.1 and S4.1.2.

S4.1.1 Each rim listing for a tire must include dimensional specifications and a diagram of the rim and must be in one of the following forms:

(a) Listed by manufacturer name or brand name in a document furnished to dealers of the manufacturer's tires, to any person upon request, and in duplicate to: Docket Section, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590; or

(b) Contained in publications, current at the date of manufacture of the tire or any later date, of at least one of the following organizations:

(1) The Tire and Rim Association.

(2) The European Tyre and Rim Technical Organization.

(3) Japan Automobile Tire Manufacturers' Association, Inc.

(4) Tyre & Rim Association of Australia.

(5) Associacao Latino Americana de Pneus e Aros (Brazil).

(6) South African Bureau of Standards.

S4.1.2 A listing compiled in accordance with paragraph (a) of S4.1.1 need not include dimensional specifications or a diagram of a rim whose dimensional specifications and diagram are contained in a listing published in accordance with paragraph (b) of S4.1.1.

S4.2. Information contained in a publication specified in S4.1.1(b) that lists general categories of tires and rims by size designation, type of construction, and/or intended use, is considered to be manufacturer's information required by S4.1 for the listed tires, unless the publication itself or specific information provided according to S4.1(a) indicates otherwise.

S5. *General requirements.* [Reserved]

S5.5 *Tire Markings.* Except as specified in paragraphs (a) through (h) of S5.5, each tire must be marked on each sidewall with the information specified in S5.5 (a) through (d) and on one sidewall with the information specified in S5.5 (e) through (h) according to the phase-in schedule specified in S7 of this standard. The markings must be placed between the maximum section width and the bead on at least one sidewall, unless the maximum section width of the tire is located in an area that is not more than one-fourth of the distance from the bead to the shoulder of the tire. If the maximum section width falls within that area, those markings must appear between the bead and a point one-half the distance from the bead to the shoulder of the tire, on at least one sidewall. The markings must be in letters and numerals not less than 0.078 inches high and raised above or sunk below the tire surface not less than 0.015 inch. The tire identification and DOT symbol labeling must comply with part 574 of this chapter.

(a) The symbol DOT, which constitutes a certification that the tire conforms to applicable Federal motor vehicle safety standards;

(b) The tire size designation as listed in the documents and publications specified in S4.1.1;

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(c) The maximum permissible inflation pressure, subject to the limitations of S5.5.4 through S5.5.6;

(d) The maximum load rating;

(e) The generic name of each cord material used in the plies (both sidewall and tread area) of the tire;

(f) The actual number of plies in the sidewall, and the actual number of plies in the tread area, if different;

(g) The term "tubeless" or "tube type," as applicable; and

(h) The word "radial," if the tire is a radial ply tire.

S5.5.1 Each tire must be labeled with the tire identification number required by 49 CFR part 574 on the intended outboard sidewall of the tire. Either the tire identification number or a partial tire identification number, containing all characters in the tire identification number, except for the date code, must be labeled on the other sidewall of the tire. If a tire does not have an intended outboard sidewall, the tire must be labeled with the tire identification number required by 49 CFR part 574 on one sidewall and with either the tire identification number or a partial tire identification number, containing all characters in the tire identification number except for the date code, on the other sidewall.

S5.5.2 [Reserved]

S5.5.3 Each tire must be labeled with the name of the manufacturer, or brand name and number assigned to the manufacturer in the manner specified in 49 CFR part 574.

S5.5.4 If the maximum inflation pressure of a tire is 240, 280, 290, 300, 330, 340, 350 or 390 kPa, then:

(a) Each marking of that inflation pressure pursuant to S5.5(c) must be followed in parenthesis by the equivalent psi, rounded to the next higher whole number; and

(b) Each marking of the tire's maximum load rating pursuant to S5.5(d) in kilograms must be followed in parenthesis by the equivalent load rating in pounds, rounded to the nearest whole number.

S5.5.5 If the maximum inflation pressure of a tire is 420 kPa (60 psi), the tire must have permanently molded into or onto both sidewalls, in letters and numerals not less than ½ inch high, the words "Inflate to 60 psi" or "Inflate to 420 kPa (60 psi)." On both sidewalls, the words must be positioned in an area between the tire shoulder and the bead of the tire. However, the words must be also positioned on the tire so that they are not obstructed by the flange of any rim designated for use with that tire in this standard or in Standard No. 110 (§ 571.110 of this part).

S5.5.6 For LT tires, the maximum permissible inflation pressure shown must be the inflation pressure that corresponds to the maximum load of the tire for the tire size as specified in one of the publications described in S4.1.1.(b) of § 571.139. At the manufacturer's option, the shown inflation pressure may be as much as 10 psi (69 kPa) greater than the inflation pressure corresponding to the specified maximum load.

S6. *Test procedures, conditions and performance requirements.* [Reserved]

S7. *Phase-in schedule for tire markings.*

S7.1 *Tires manufactured on or after September 1, 2004 and before September 1, 2005.* For tires manufactured on or after September 1, 2004 and before September 1, 2005, the number of tires complying with S4 and S5.5 of this standard must be equal to not less than 40% of the manufacturer's production during that period.

S7.2 *Tires manufactured on or after September 1, 2005 and before September 1, 2006.* For tires manufactured on or after September 1, 2005 and before September 1, 2006, the number of tires complying with S4 and S5.5 of this standard must be equal to not less than 70% of the manufacturer's production during that period.

S7.3 *Tires manufactured on or after September 1, 2006.* Each tire must comply with S6.3 of this standard.

PART 574—TIRE IDENTIFICATION AND RECORDKEEPING

10. The authority citation for 49 CFR part 574 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407, 1411–1420, 1421; delegation of authority at CFR 1.50.

11. Section 574.5 is amended by revising paragraph (d), and Figures 1 and 2 to read as follows:

§ 574.5 Tire identification requirements.

* * * * *

(d) *Fourth grouping.* For tires produced or retreaded according to the phase-in schedules specified in S7 of §§ 571.117, 571.129, 571.139 of this chapter, the fourth grouping, consisting of four numerical symbols, must identify the week and year of manufacture. The first two symbols must identify the week of the year by using "01" for the first full calendar week in each year, "02" for the second full calendar week, and so on. The calendar week runs from Sunday through the following Saturday. The final week of each year may include not more than 6 days of the following year. The third and fourth symbols must identify the year. Example: 0101 means the 1st week of 2001, or the week beginning Sunday, January 7, 2001, and ending Saturday, January 13, 2001. The symbols signifying the date of manufacture shall immediately follow the optional descriptive code (paragraph (c) of this section). If no optional descriptive code is used, the symbols signifying the date of manufacture must be placed in the area shown in Figures 1 and 2 of this section for the optional descriptive code.

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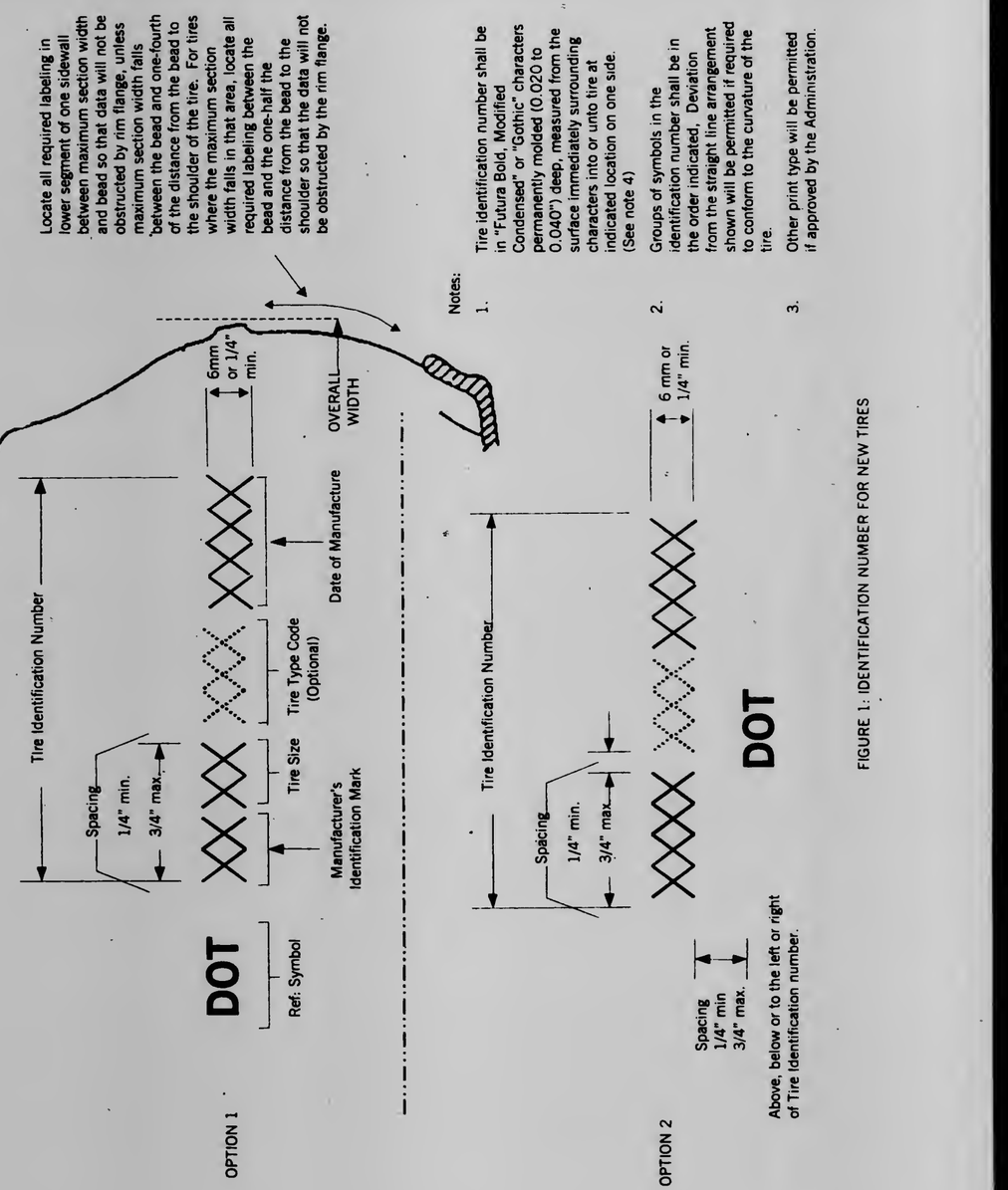

FIGURE 1: IDENTIFICATION NUMBER FOR NEW TIRES

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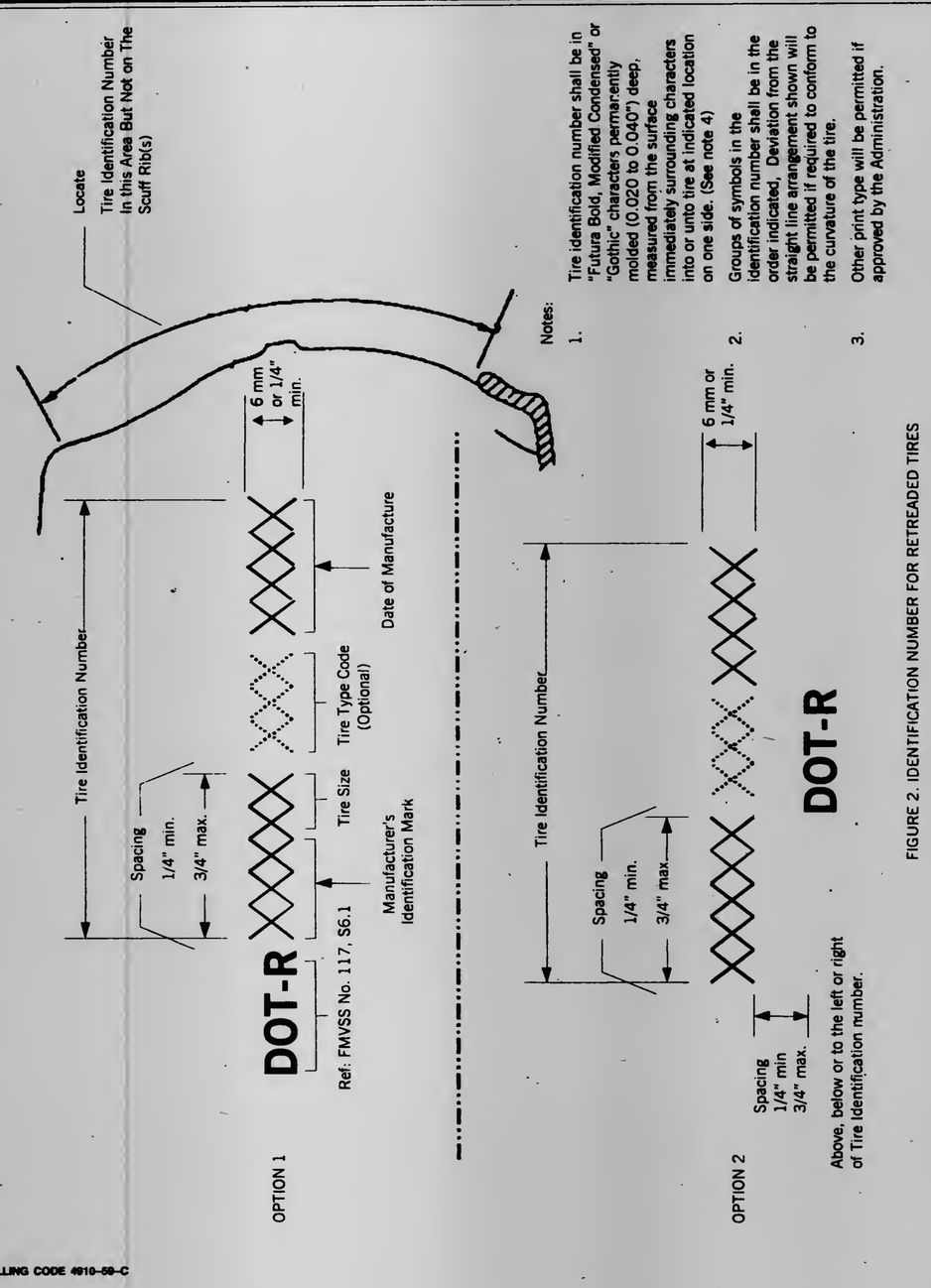

FIGURE 2. IDENTIFICATION NUMBER FOR RETREADED TIRES

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* * * * *

PART 575—CONSUMER INFORMATION REGULATIONS

12. The authority citation for part 575 continues to read as follows:

Authority: 15 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at CFR 1.50.

13. Section 575.6 is amended by adding paragraphs (a)(4) and (a)(5) to read as follows:

§ 575.6 Requirements.

* * * * *

(a) * * *

(4) When a motor vehicle that has a GVWR of 10,000 pounds or less, except a motorcycle or low speed vehicle, and that is manufactured on or after September 1, 2003, is delivered to the first purchaser for purposes other than resale, the manufacturer shall provide to the purchaser, in writing in the English language and not less than 10 point type, a discussion of the items specified in paragraphs (a)(4) (i) through (v) of this section in the owner's manual, or, if there is no owner's manual, in a document.

(i) Tire labeling, including a description and explanation of each marking on the tires provided with the vehicle, and information about the location of the Tire Identification Number (TIN);

(ii) Recommended tire inflation pressure, including a description and explanation of:

(A) Recommended cold tire inflation pressure,

(B) The vehicle placard and tire inflation pressure label specified in Federal Motor Vehicle Safety Standard No. 110 and their location in the vehicle,

(C) Adverse safety consequences of underinflation (including tire failure), and

(D) Measuring and adjusting air pressure to achieve proper inflation;

(iii) Glossary of tire terminology, including "cold tire pressure," "maximum inflation pressure," and "recommended inflation pressure," and all non-technical terms defined in S3 of FMVSS Nos. 110 & 139;

(iv) Tire care, including maintenance and safety practices;

(v) Vehicle load limits, including a description and explanation of:

(A) Locating and understanding load limit information, total load capacity, seating capacity, towing capacity, and cargo capacity,

(B) Calculating total and cargo load capacities with varying seating configurations including quantitative examples showing/illustrating how the vehicle's cargo and luggage capacity decreases as the combined number and size of occupants increases,

(C) Determining compatibility of tire and vehicle load capabilities,

(D) Adverse safety consequences of overloading on handling and stopping and on tires.

(5) When a motor vehicle that has a GVWR of 10,000 pounds or less, except a motorcycle or low speed vehicle, and that is manufactured on or after September 1, 2003, is delivered to the first purchaser for purposes other than resale, the manufacturer shall provide to the purchaser, in writing in the English language and not less than 10 point type, the following verbatim statement in the owner's manual, or, if there is no owner's manual, in a document:

Steps for Determining Correct Load Limit—

(1) Locate the statement "The combined weight of occupants and cargo should never exceed XXX pounds" on your vehicle's placard.

(2) Determine the combined weight of the driver and passengers that will be riding in your vehicle.

(3) Subtract the combined weight of the driver and passengers from XXX kilograms or XXX pounds.

(4) The resulting figure equals the available amount of cargo and luggage load capacity. For example, if the "XXX" amount equals 1400 lbs. and there will be five 150 lb. passengers in your vehicle, the amount of available cargo and luggage load capacity is 650 lbs. (1400 – 750 (5 × 150) = 650 lbs.)

(5) Determine the combined weight of luggage and cargo being loaded on the vehicle. That weight may not safely exceed the available cargo and luggage load capacity calculated in Step 4.

(6) If your vehicle will be towing a trailer, load from your trailer will be transferred to your vehicle. Consult this manual to determine how this reduces the available cargo and luggage load capacity of your vehicle.

14. Part 597 is added to read as follows:

PART 597—TIRES FOR MOTOR VEHICLES WITH A GVWR OF 10,000 POUNDS OR LESS PHASE-IN REPORTING REQUIREMENTS

Sec.

597.1 Scope.
597.2 Purpose.
597.3 Applicability.
597.4 Definitions.
597.5 Response to inquiries.
597.6 Reporting requirements.
597.7 Records.
597.8 Petition to extend period to file report.

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

§ 597.1 Scope.

This part establishes requirements for manufacturers of new pneumatic tires for motor vehicles with a gross vehicle weight rating of 10,000 pounds or less to submit reports, and maintain records related to the reports, concerning the number of such tires that meet the requirements of Standard No. 139, *New Pneumatic Tires for Light Vehicles* (49 CFR 571.139).

§ 597.2 Purpose.

The purpose of these reporting requirements in this part is to assist the National Highway Traffic Safety Administration in determining whether a manufacturer has complied with Standard No. 139 (49 CFR 571.139).

§ 597.3 Applicability.

This part applies to manufacturers of tires for motor vehicles with a gross vehicle weight rating of 10,000 pounds or less.

§ 597.4 Definitions.

(a) All terms defined in 49 U.S.C. 30102 are used in their statutory meaning.

(b) "Motor vehicle" and "gross vehicle weight rating" are used as defined in 49 CFR 571.3.

(c) "Production year" means the 12-month period between September 1 of one year and August 31 of the following year, inclusive.

§ 597.5 Response to inquiries.

Each manufacturer shall, upon request from the Office of Vehicle Safety Compliance, provide information identifying the tires (by make, model, brand and tire identification number) that have been certified as complying with Standard No. 139 (49 CFR 571.139). The manufacturer's designation of a tire as a certified tire is irrevocable.

§ 597.6 Reporting requirements.

(a) *General reporting requirements.* Within 60 days after the end of the production years ending August 31, 2005 and August 31, 2006, each manufacturer shall submit a report to the National Highway Traffic Safety Administration concerning its compliance with Standard No. 139 (49 CFR 571.139) for its tires produced in that year for motor vehicles with a GVWR of 10,000 pounds or less. Each report shall—

(1) Identify the manufacturer;

(2) State the full name, title, and address of the official responsible for preparing the report;

(3) Identify the production year being reported on;

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(4) Contain a statement regarding whether or not the manufacturer complied with Standard No. 139 (49 CFR 571.139) for the period covered by the report and the basis for that statement;

(5) Provide the information specified in paragraph (b) of this section;

(6) Be written in the English language; and

(7) Be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

(b) *Report Content*—(1) *Basis for phase-in production goals.* Each manufacturer shall provide the number of tires for motor vehicles with a gross vehicle weight rating of 10,000 pounds or less manufactured for sale in the United States for each of the three previous production years, or, at the manufacturer's option, for the production year for which the report is filed. A new manufacturer that has not previously manufactured these tires for sale in the United States shall report the number of such tires manufactured during the current production year.

(2) *Production.* Each manufacturer shall report for the production year for which the report is filed: the number of new pneumatic tires for motor vehicles with a GVWR of 10,000 pounds or less that meet Standard No. 139 (49 CFR 571.139).

§ 597.7 Records.

Each manufacturer must maintain records of the tire identification number for each tire for which information is reported under 49 CFR 590.6(b)(2) until December 31, 2007.

§ 597.8 Petition to extend period to file report.

A manufacturer may petition for extension of time to submit a report under this part. A petition will be granted only if the petitioner shows good cause for the extension and if the extension is consistent with the public interest. The petition must be received not later than 15 days before expiration of the time stated in § 597.6(a). The filing of a petition does not automatically extend the time for filing a report. The petition must be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

Issued: November 6, 2002.

Jeffrey W. Runge,

Administrator.

[FR Doc. 02–28682 Filed 11–15–02; 8:45 am]

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Federal Register

Monday,
November 18, 2002

Part III

General Services Administration

41 CFR Chapter 301

Federal Travel Regulation; Maximum Per Diem Rates for Indiana, Kansas, Minnesota, Missouri, and Pennsylvania; Final Rule

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GENERAL SERVICES ADMINISTRATION

41 CFR Chapter 301

[FTR Amendment 110]

RIN 3090–AH73

Federal Travel Regulation; Maximum Per Diem Rates for Indiana, Kansas, Minnesota, Missouri, and Pennsylvania

AGENCY: Office of Governmentwide Policy, General Services Administration (GSA).

ACTION: Final rule.

SUMMARY: The General Services Administration (GSA) is amending the Federal Travel Regulation (FTR) to improve the ability of the *per diem* rates to meet the lodging demands of Federal travelers to high cost travel locations. GSA has integrated the contracting mechanism of the new Federal Premier Lodging Program (FPLP) into the *per diem* rate-setting process. An analysis of FPLP contracting actions and the lodging rate survey data reveals that the maximum *per diem* rate for the State of Indiana, city of Indianapolis, including Marion County and Fort Benjamin Harrison; State of Kansas, cities of Kansas City/Overland Park, including Wyandotte and Johnson Counties; State of Minnesota, cities of Minneapolis/St. Paul, including Hennepin County and Fort Snelling Military Reservation and Navy Astronautics Group (Detachment BRAVO), and Ramsey County; State of Missouri, city of Kansas City, including Jackson and Clay Counties and Kansas City International Airport, and city of Platte, including Platte County (except Kansas City International Airport); and State of Pennsylvania, cities of King of Prussia/Ft. Washington/Bala Cynwyd, including Montgomery County, and city of Philadelphia, including Philadelphia County, should be changed to provide for the reimbursement of Federal employees' lodging expenses covered by the *per diem*. This final rule amends the final rule published in the **Federal Register** on August 30, 2002, by changing the maximum lodging amounts in the prescribed areas. It also eliminates seasonal rates for the cities of King of Prussia/Ft. Washington/Bala Cynwyd, Pennsylvania.

DATES: This final rule is effective November 8, 2002, and applies to travel performed on or after that date.

FOR FURTHER INFORMATION CONTACT: The Regulatory Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 208–7312, for information pertaining to status or publication schedules. For clarification of content, contact Joddy P. Garner, Office of Governmentwide Policy, Travel Management Policy, at (202) 501–4857. Please cite FTR Amendment 110.

SUPPLEMENTARY INFORMATION:

A. Background

In the past, properties in high cost travel areas have been under no obligation to provide lodging to Federal travelers at the prescribed *per diem* rate. Thus, GSA established the FPLP to contract directly with properties in high cost travel markets to make available a set number of rooms to Federal travelers at contract rates. FPLP contract results along with the lodging survey data are integrated together to determine reasonable *per diem* rates that more accurately reflect lodging costs in these areas. In addition, the FPLP will enhance the Government's ability to better meet its overall room night demand and allow travelers to find lodging close to where they need to conduct business. After an analysis of this additional data, the maximum lodging amounts published in the **Federal Register** on August 30, 2002 (67 FR 56160), are being changed in Indianapolis, Indiana; Kansas City/Overland Park, Kansas; Minneapolis/St. Paul, Minnesota; Kansas City and Platte, Missouri; and King of Prussia/Ft. Washington/Bala Cynwyd, and Philadelphia, Pennsylvania.

B. Executive Order 12866

This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

C. Regulatory Flexibility Act

This final rule is not required to be published in the **Federal Register** for notice and comment; therefore, the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, does not apply.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FTR do not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

E. Small Business Regulatory Enforcement Fairness Act

This final rule is also exempt from congressional review prescribed under 5 U.S.C. 801 since it relates solely to agency management and personnel.

List of Subjects in 41 CFR Chapter 301

Government employees, Travel and transportation expenses.

Dated: October 31, 2002.

Stephen A. Perry,

Administrator of General Services.

For the reasons set forth in the preamble, under 5 U.S.C. 5701–5709, GSA amends 41 CFR chapter 301 as set forth below:

CHAPTER 301—TEMPORARY DUTY (TDY) TRAVEL ALLOWANCES

1. Amend the table in appendix A to chapter 301 as follows:

a. Under the State of Indiana, city of Indianapolis, including Marion County and Fort Benjamin Harrison, amend the maximum lodging amount by removing "70" and adding "83" in its place; and amend the maximum *per diem* rate by removing "116" and adding "129" in its place;

b. Under the State of Kansas, cities of Kansas City/Overland Park, including Wyandotte and Johnson Counties, amend the maximum lodging amount by removing "85" and adding "84" in its place; and amend the maximum *per diem* rate by removing "127" and adding "126" in its place;

c. Under the State of Minnesota, cities of Minneapolis/St. Paul, including Hennepin County and Ft. Snelling Military Reservation and Navy Astronautics Group (Detachment BRAVO), and Ramsey County, amend the maximum lodging amount by removing "95" and adding "110" in its place; and amend the maximum *per diem* rate by removing "145" and adding "160" in its place;

d. Under the State of Missouri, city of Kansas City, including Jackson and Clay Counties and Kansas City International Airport, amend the maximum lodging amount by removing "85" and adding "84" in its place; and amend the maximum *per diem* rate by removing "131" and adding "130" in its place;

e. Under the State of Missouri, city of Platte, including Platte County (except Kansas City International Airport), amend the maximum lodging amount by removing "61" and adding "84" in its place; and amend the maximum *per diem* rate by removing "99" and adding "122" in its place;

f. Amend the entry under the State of Pennsylvania, cities of King of Prussia/Ft. Washington/Bala Cynwyd, including Montgomery County, by removing the two rows of season rates and adding "124" under maximum lodging amount; "46" under M&IE rate; and "170" under maximum *per diem* rate; and

g. Under the State of Pennsylvania, city of Philadelphia, including Philadelphia County, amend the maximum lodging amount by removing "118" and adding "124" in its place;

and amend the maximum *per diem* rate by removing "168" and adding "174" in its place.

The revised pages containing the amendments to the table set forth above read as follows:

Appendix A to Chapter 301—Prescribed Maximum Per Diem Rates for CONUS

* * * * *

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Per diem locality: Key city[1]	County and/or other defined location [2, 3]	Maximum lodging amount (room rate only—no taxes) (a)	+	M&IE rate (b)	=	Maximum per diem rate [4] (c)
(April 16-December 14))		59		34		93
GEORGIA						
Albany	Dougherty	57		38		95
Athens	Clarke	69		38		107
Atlanta	Fulton	112		42		154
Clayton County	Clayton	89		34		123
Cobb County	Cobb	112		42		154
Columbus	Muscogee	63		38		101
Conyers	Rockdale	69		38		107
DeKalb County	DeKalb	112		42		154
Dublin	Laurens	57		34		91
Gwinnett County	Gwinnett	69		42		111
Savannah	Chatham	89		42		131
IDAHO						
Boise	Ada	61		42		103
Coeur d'Alene	Kootenai	56		38		94
Ketchum	Blaine (except Sun Valley)					
(May 1-November 30)		84		42		126
(December 1-April 30)		74		42		116
McCall	Valley	62		42		104
Sun Valley	City limits of Sun Valley (see Blaine County)	149		42		191
ILLINOIS						
Aurora	Kane (except Elgin)	66		34		100
Chicago	Cook and Lake	155		50		205
Du Page County	Du Page	89		42		131
Elgin	City limits of Elgin (see Kane County)	60		34		94
Rockford	Winnebago	60		34		94
INDIANA						
Carmel	Hamilton	65		42		107
Ft. Wayne	Allen	58		34		92
Indianapolis	Marion County; Fort Benjamin Harrison	83		46		129
Lafayette	Tippecanoe	59		34		93
Michigan City	La Porte	65		38		103
Nashville	Brown					
(April 1-November 15)		75		42		117
(November 16-March 31)		59		42		101
South Bend	St. Joseph	61		38		99
Valparaiso/Burlington Beach	Porter	89		38		127
IOWA						
Cedar Rapids	Linn	60		30		90
Des Moines	Polk	67		34		101
KANSAS						
Kansas City/Overland Park	Wyandotte and Johnson	84		42		126
Wichita	Sedgwick	59		42		101

Per diem locality: Key city[1]	County and/or other defined location [2, 3]	Maximum lodging amount (room rate only—no taxes) (a)	+	M&IE rate (b)	=	Maximum per diem rate [4] (c)
Midland	Midland	72		38		110
Mount Pleasant	Isabella	65		38		103
Muskegon	Muskegon					
(May 1-August 31)		79		34		113
(September 1-April 30)		59		34		93
Ontonagon	Ontonagon	65		34		99
Petoskey	Emmet					
(June 1-October 31)		65		42		107
(November 1- May 31)		55		42		97
Pontiac/Troy/Auburn Hills	Oakland	94		42		136
Sault Ste Marie	Chippewa					
(May 15-October 15)		63		38		101
(October 16-May 14)		55		38		93
South Haven	Van Buren	76		38		114
Traverse City	Grand Traverse	125		46		171
Warren	Macomb	79		38		117
MINNESOTA						
Anoka County	Anoka	65		38		103
Dakota County	Dakota	80		38		118
Duluth	St. Louis					
(June 1-October 31)		85		42		127
(November 1-May 31)		56		42		98
Minneapolis/St. Paul	Hennepin County and Fort Snelling Military Reservation and Navy Astronautics Group (Detachment BRAVO), and Ramsey County	110		50		160
Rochester	Olmsted	73		38		111
MISSISSIPPI						
Bay St. Louis	Hancock					
(April 1-October 31)		69		38		107
(November 1-March 31)		55		38		93
Biloxi/Gulfport	Harrison	61		42		103
Robinsonville	Tunica	59		34		93
MISSOURI						
Branson	Taney					
(April 1-December 31)		62		38		100
(January 1-March 31)		55		38		93
Hannibal	Marion	57		34		91
Jefferson City	Cole	60		34		94
Kansas City	Jackson, Clay and Kansas City International Airport	84		46		130
Osage Beach	Camden	89		34		123
Platte	Platte (except Kansas City International Airport)	84		38		122
Springfield	Greene	63		34		97
St. Louis	St. Louis and St. Charles	90		50		140
St. Robert/Ft. Leonardwood	Pulaski	74		34		108

Per diem locality: Key city[1]	County and/or other defined location [2, 3]	Maximum lodging amount (room rate only—no taxes) (a)	+	M&IE rate (b)	=	Maximum per diem rate [4] (c)
Geneva	Ashtabula	59		38		97
Hamilton	Butler	59		38		97
Lancaster	Fairfield	66		34		100
Port Clinton/Oak Harbor	Ottawa					
(June 1-September 5)		95		38		133
(September 6-May 31)		69		38		107
Sandusky	Erie					
(May 1-September 5)		85		42		127
(September 6-April 30)		55		42		97
Toledo	Lucas	69		34		103
OKLAHOMA						
Oklahoma City	Oklahoma	65		42		107
OREGON						
Ashland	Jackson	59		46		105
Beaverton	Washington	59		42		101
Bend	Deschutes					
(June 1-September 30)		69		42		111
(October 1-May 31)		59		42		101
Clackamas	Clackamas	66		38		104
Crater Lake	Klamath	74		34		108
Eugene	Lane (except Florence)	62		42		104
Florence	City limits of Florence (see Lane County)	80		38		118
Gold Beach	Curry	58		34		92
Lincoln City/Newport	Lincoln	65		38		103
Portland	Multnomah	91		42		133
Seaside	Clatsop					
(July 1-August 31)		79		38		117
(September 1-June 30)		59		38		97
PENNSYLVANIA						
Allentown	Lehigh	62		34		96
Chester/Radnor/Essington	Delaware (except Wayne)	75		38		113
Easton	Northampton	69		34		103
Erie	Erie	65		34		99
Gettysburg	Adams					
(May 1-October 31)		82		38		120
(November 1-April 30)		55		38		93
Harrisburg	Dauphin (except Hershey)	79		46		125
Hershey	City limits of Hershey (see Dauphin County)					
(June 1-September 15)		125		42		167
(September 16-May 31)		55		42		97
King of Prussia/Ft. Washington/Bala Cynwyd	Montgomery	124		46		170
Lancaster	Lancaster					
(May 1-October 31)		70		42		112
(November 1-April 30)		60		42		102
Malvern/Downington/Valley Forge	Chester	83		42		125

Per diem locality: Key city[1]	County and/or other defined location [2, 3]	Maximum lodging amount (room rate only—no taxes) (a)	+	M&IE rate (b)	=	Maximum per diem rate [4] (c)
Mechanicsburg	Cumberland	74		34		108
Philadelphia	Philadelphia	124		50		174
Pittsburgh	Allegheny	79		46		125
Reading	Berks	75		42		117
Scranton	Lackawanna	60		34		94
Warminster	Bucks County; Naval Air Development Center	75		38		113
Wayne	City limits of Wayne (see Delaware County)	100		46		146
RHODE ISLAND						
East Greenwich	Kent County; Naval Construction Battalion Center, Davisville	79		42		121
Newport	Newport					
(April 1-December 31)		111		46		157
(January 1-March 31)		79		46		125
North Kingstown	Washington	89		30		119
Providence	Providence	89		46		135
SOUTH CAROLINA						
Aiken	Aiken	65		34		99
Charleston/Berkeley County	Charleston and Berkeley	106		42		148
Columbia	Richland	65		34		99
Greenville	Greenville	65		42		107
Hilton Head	Beaufort					
(March 15-September 30)		95		46		141
(October 1-March 14)		75		46		121
Myrtle Beach	Horry County; Myrtle Beach AFB					
(March 1-November 30)		99		46		145
(December 1-February 28)		59		46		105
SOUTH DAKOTA						
Custer	Custer					
(June 15-August 19)		70		34		104
(August 20-June 14)		55		34		89
Hot Springs	Fall River					
(June 15-October 15)		108		34		142
(October 16-June 14)		79		34		113
Rapid City	Pennington					
(May 15-September 30)		99		34		133
(October 1-May 14)		55		34		89
Sturgis	Meade					
(June 15-August 15)		79		30		109
(August 16-June 14)		55		30		85
TENNESSEE						
Alcoa/Townsend	Blount	63		34		97
Gatlinburg	Sevier					
(May 1-October 31)		78		42		120
(November 1-April 30)		70		42		112
Memphis	Shelby	75		42		117
Murfreesboro	Rutherford	57		34		91

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[FR Doc. 02–28917 Filed 11–15–02; 8:45 am]
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Part IV

Department of Housing and Urban Development

HUD Final Information Quality Guidelines; Notice

VOL 67 ISS 222 NO 18 2002 UMI

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4769–N–02]

HUD Final Information Quality Guidelines

AGENCY: Office of the Assistant Secretary for Administration/Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: This notice announces HUD's final guidelines for ensuring and maximizing the quality, objectivity, utility, and integrity of information disseminated to the public by HUD ("Information Quality Guidelines"). The notice follows publication of a May 30, 2002, **Federal Register** notice inviting public comment on HUD's draft Information Quality Guidelines, and takes into consideration the public comments received on the earlier notice.

DATES: *Effective Date:* November 18, 2002.

FOR FURTHER INFORMATION CONTACT: Linda Ciancio, Office of Departmental Grants Management and Oversight, Office of Administration, Department of Housing and Urban Development, Room 3156, 451 Seventh Street, SW., Washington, DC 20410–0500; telephone: (202) 708–0667 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 800–877–8399.

SUPPLEMENTARY INFORMATION:

I. Background

Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554) directed the Office of Management and Budget (OMB) to issue government-wide guidelines that "provide policy and procedural guidance to federal agencies for ensuring and maximizing the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by federal agencies." Within one year after OMB issues its guidelines, agencies must issue their own guidelines that will describe internal mechanisms by which agencies will ensure that their information meets the standards of quality, objectivity, utility, and integrity. The mechanism also must allow affected persons to seek and obtain correction of information maintained and disseminated by the agency that does not comply with the guidelines.

OMB issued its final guidelines on September 28, 2001 (66 FR 49718), but requested additional comment on one component of the OMB guidelines.The OMB guidelines addressing additional public comment were published on January 3, 2002 (67 FR 369), and republished on February 22, 2002 (67 FR 6452). In accordance with the statute, agencies must issue their final guidelines by October 1, 2002. The agencies' draft guidelines need not be published in the **Federal Register** but agencies should provide notification in the **Federal Register** that the draft guidelines are available on agencies' Web sites.

II. HUD's Information Quality Guidelines

HUD announced the availability of its draft guidelines for review and comment on HUD's website through a **Federal Register** notice published on May 30, 2002 (67 FR 37851). The May 30, 2002, notice solicited public comments through July 1, 2002. HUD announced the extension of this public comment period by **Federal Register** notice published on June 17, 2002, (67 FR 41255). The June 17, 2002, notice solicited public comments through July 17, 2002. This notice makes HUD's final guidelines available to the public. This notice also notifies the public of the significant changes made as a result of internal HUD review, the public comments received on HUD's draft guidelines, and OMB comments received on HUD's proposed final guidelines.

III. Discussion of Public Comments on HUD's Draft Information Quality Guidelines

In response to the draft guidelines, HUD received five public comments. The comments received involved a number of different sections of the draft guidelines. Comments were received from: A public interest group, a legal services organization, a coalition of organizations representing health, safety, civil rights, and environmental concerns, a mortgage company, and an association of home builders. A more detailed discussion of these comments follows:

A. General Comments

Several general comments were received urging HUD to use, or adhere more strictly to the statutory terms, language, and definitions contained in OMB's interagency guidelines, including the definition and treatment of the terms "quality" and "affected persons." Various sections of the final guidelines were modified to address these comments.

Three comments were received generally urging HUD to avoid incorporating existing policies and procedures into new information quality requirements but rather to establish new, stand-alone policies and procedures to apply to the quality, objectivity, utility, and integrity of information HUD disseminates to the public. Another comment urged HUD to retain maximum flexibility in implementing OMB guidelines by incorporating the standards and procedures required by these guidelines into existing information resource management and administrative practices. In developing its final guidelines, HUD noted that OMB generally states in its guidelines to federal agencies that it designed its guidelines to be adaptable to a wide variety of government information dissemination activities, generic, and non-prescriptive, thus allowing agencies the flexibility to incorporate the requirements of the OMB guidelines into the agencies' own information resource management and administrative practices. HUD considered this when addressing the above comments by slight modifications that make it explicit that the Department's existing clearance and approval procedures for information disseminated to the public clearly address the requirements of section 515 and the OMB guidelines. Therefore, the guidelines do not replace existing HUD procedures but rather reaffirm HUD's existing procedures and the agency's adherence to them.

B. Designated Official

Four comments were received generally urging HUD to provide more detailed contact information for the designated official, to more clearly define the responsible parties and the procedures they will use to ensure quality, and to assign the General Counsel the responsibility for compliance with OMB's final guidelines. With the exception of the latter comment, numerous modifications were made throughout the guidelines to address these comments.

C. Performance Measurement

Three comments were received concerning adopting the guidelines as performance standards. In response to these comments, HUD revised the section of the guidelines titled "Purpose," to state "HUD reviews the standards defined in these guidelines as performance measures and will seek to attain the standards as defined. In implementing these guidelines, HUD acknowledges that ensuring the quality of information is a management objective as important as any other for the Department, including the success of agency missions and observing budget and resources priorities and restraints. HUD will implement these guidelines so that they complement and support all other Departmental objectives."

D. Administrative Correction Mechanism

Approximately fifteen comments were received from three respondents concerning the mechanism for requesting information dissemination corrections and the mechanism for processing information dissemination corrections requests. Seven of the comments received generally recommended that HUD's guidelines should provide more clarity and/or add more structure to the process by: (1) Designating an official through which complaints and responses to complaints could be submitted; (2) establishing a formal, independent board to review and act on appeals in an "ombudsman" capacity; (3) more clearly defining terms to ensure that affected persons consistently receive corrections in a timely manner; (4) defining an objective standard for HUD decision-makers to follow when determining the degree and manner in which the disseminated information will be corrected; (5) expressly stating that separate HUD offices and officials shall resolve initial decisions and disagreements on appeals for correcting information; (6) notifying the public or establishing a running public docket of correction requests and changes; and, (7) providing detailed descriptions about how correction requests will be reviewed, who will conduct the reviews, what standards will be used, and how such reviews will be supervised.

One respondent submitted the remaining eight comments on this topic and all eight comments strongly urged HUD to construct these mechanisms cautiously with adequate procedural safeguards to protect the agency from becoming mired down in minor data disputes, bad faith, frivolous, repetitive, or non-timely requests. Further, the respondent recommended limiting the mechanism to only what is required in the Data Quality Act so as to avoid any possibility of creating new rights under administrative law. The eight comments stated that HUD: (1) Should clearly state that the burden of proof lies squarely with the requestor to demonstrate both that they are an affected party and that the challenged information does not comply with OMB's guidelines; (2) limit the administrative mechanism to corrections of factual data and information, and explicitly state that administrative mechanisms will not consider interpretations of data and information, or requests for de-publishing; (3) should limit complaints to information that is not already subject to existing data quality programs and measures; (4) state that similar requests previously responded to may be rejected as frivolous or duplicative; (5) should establish a timeliness requirement for requests after which the agency has the option to reject a request; (6) should limit complaints for any data quality standard that presents a potential moving target (*i.e.*, best available evidence) to information available at the time of dissemination; (7) should specifically state that responses to correction requests will be proportional to the significance and importance of the information in question; and (8) should establish a fairly informal reconsideration process consistent with the fact that neither the initial consideration nor the agency's reconsideration is a legally enforceable process as the Data Quality Act does not address reconsideration of complaints and that such a requirement is far outside the scope of the statutory requirements.

In response to these 15 comments, the guidelines were modified under the section titled "Designated Official" to include specific language stating that HUD Assistant Secretaries are responsible for ensuring implementation of the guidelines within their respective areas of responsibility. The guidelines were further modified under the section titled "Process for Requesting Correction to Disseminated Information" by adding subsections titled "Submitting Requests," "Rejecting Requests," "Processing Requests," and "Appealing Corrective Decisions." These subsections set forth specific requirements for the information to be submitted in an information dissemination request, the criteria HUD will use for determining valid correction requests, the process HUD will follow for processing requests determined to be valid, the process for appealing corrective decisions, and the procedures HUD will use for processing requests appealing corrective decisions. Further, these subsections specifically designate the responsible HUD official(s) at each stage of the described process.

E. Definition and Standard for "Dissemination"

Four commenters submitted comments on the definition and standard for "dissemination." One comment stated that the exemptions were too broad and encompassing to be consistent with the new Information Quality Guidelines and that the guidelines should explain what is meant by "statutorily mandated issuances." Two other comments generally stated that Congress intended the Data Quality Act standards to apply to all public information despite OMB's exemption of some types and categories of information in its interagency guidelines. Other comments stated that HUD should: (1) Make every effort to clearly assert the limits of these guidelines and preserve the agency's flexibility to accomplish core mandates unfettered; (2) clearly state that the agency does not consider the guidelines judicially reviewable, and that they do not provide any new adjudicatory authority, and (3) clearly state that the guidelines apply to information disseminated from the agency itself and not when the agency is merely acting as a conduit of information. Two commenters stated some uncertainty concerning the applicability of the guidelines to staff working papers made available to the public, including working papers posted on the HUD website. These comments argued that such papers are subject to the guidelines if made available to the public, unless an explicit disclaimer is included in the papers.

In response to these comments and further direction received from OMB on its interagency guidelines, the guidelines were modified under the section titled "Definitions and Standards," subsection titled "Dissemination" by: (1) Adding specificity to the exemptions listed; (2) adding two exemptions for (a) information presented to Congress as part of the legislative or oversight processes (*e.g.*, testimony of HUD officials, information or drafting assistance provided to Congress in connection with pending proposed legislation) that is not simultaneously disseminated to the public, and (b) procedural, operational, policy, and internal manuals prepared for the management and operations of HUD that are not primarily intended for public dissemination; (3) providing an example of a statutorily mandated issuance; (4) adding language explicitly stating that the guidelines do not impose any additional requirements on HUD during adjudicative proceedings and do not provide parties to such adjudicative proceedings any additional rights of challenge or appeal; and (5) adding new requirements in the guidelines for working papers

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disseminated or otherwise made available to the public to carry a clear legend indicating that the papers represent the opinions of the author and are not the agency's official views.

F. Influential Information

Several comments were received concerning "influential information." One comment concerned the quality standards to be applied to information deemed "influential." Another comment recommended that the guidelines set clear standards for "influential" information and explain how the requisite criteria for "transparency" and "reproducibility" would be achieved. Related to these comments were comments concerning the need for the guidelines to discuss how the agency will implement enhanced standards for influential information, including "transparency" and "reproducibility" or internal "robustness checks" if privacy, confidentiality, or proprietary concerns prevent disclosure of certain information, making transparency and reproducibility infeasible. Another comment suggested that the agency adopt procedures for identifying influential information. Finally, one comment urged HUD to avoid labeling information as "influential."

Several areas of the guidelines were modified to address these comments. The "quality" definition and standard was enhanced by including transparency and reproducibility under the "objectivity" aspect of this standard. Peer review was more thoroughly defined to include ensuring that such reviews meet the general criteria recommended by OMB to the President's Management Council on September 20, 2001. A definition and standard was added for robustness checks for disseminated influential information when transparency and reproducibility are infeasible. A definition and standard was added for influential information setting forth specific guidelines for determining whether scientific, financial, or statistical information is influential within the meaning of OMB's guidelines, thus determining the level of scrutiny and pre-dissemination review afforded such information. Finally, the guidelines were modified to reflect that each HUD Assistant Secretary is responsible for determining what constitutes influential information, for developing and documenting specific review and approval procedures for information deemed influential, and to state that these responsibilities and authorities may not be delegated.

G. Risk Assessment Information Relating to Human Health, Safety, or the Environment

Two comments from different respondents were received concerning inclusion of the quality principles of the Safe Drinking Water Act (SDWA) for risk assessment information relating to human health, safety, or the environment. One comment suggested that HUD either adopt or adapt the quality principles of the SDWA as required by the OMB guidelines, while the other comment urged HUD to "adapt" the SDWA standards, further stating that OMB exceeded the congressional mandate and inappropriately asked agencies to either adopt or adapt the SDWA principles. These comments were addressed in the guidelines under the "reproducibility" definition and standard by stating that HUD will use the best available, peer-reviewed science and supporting studies conducted in accordance with sound and objective scientific practices, and data collected by the accepted methods or best available methods (if the reliability of the method and the nature of the decision justifies use of the data).

IV. HUD's Final Information Quality Guidelines

HUD's final Information Quality Guidelines are as follows—

U.S. Department of Housing and Urban Development Final Guidelines for Ensuring and Correcting the Quality of Information (Information Quality Guidelines)

I. Purpose

These guidelines fulfill the requirements of Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Public Law 106–554, H.R. 5658, hereafter referred to as section 515), requiring federal agencies to issue implementing guidelines for ensuring and maximizing the quality, objectivity, utility, and integrity of information they disseminate.

The Department of Housing and Urban Development is committed to ensuring and maximizing the quality, utility, objectivity, and integrity of all information it disseminates to the public. To accomplish this objective, HUD is issuing these guidelines that the Department will follow for reviewing and substantiating the quality of information before it is disseminated to the public. In addition, these guidelines establish an administrative correction procedure by which an affected person may seek and obtain the correction of any information disseminated by HUD that does not comply with these guidelines or the existing clearance and approval procedures the guidelines reference.

HUD views the standards defined in these guidelines and those of the Office of Management and Budget as performance measures and will strive to meet these standards. In implementing these guidelines, HUD acknowledges that ensuring the quality of information is a management objective as important as any other for the Department including the success of agency missions and observing budget and resource priorities and restraints. HUD will implement these guidelines so that they complement and support all other Departmental objectives.

The Department's existing clearance and approval procedures for information disseminated to the public clearly address the requirements of section 515 and the OMB guidelines. Therefore, these guidelines do not replace existing HUD procedures. Rather, these guidelines simply reaffirm HUD's existing clearance and approval procedures for easy reference, to help ensure adherence to them, and thus ensure quality information products. Where HUD's existing clearance and approval procedures do not meet the intent of section 515, new pre-dissemination clearance and approval procedures are described. These new procedures are identified as such.

II. Authority

Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Public Law 106–554; 114 Stat. 2763).

III. Background

Section 515 directs OMB to issue government-wide guidelines that "provide policy and procedural guidance to federal agencies for ensuring and maximizing the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by federal agencies." Agencies are required to issue their own implementing guidelines within one year after OMB issues its guidelines. For the convenience of the reader, OMB's final guidelines can be found on: *http://www.whitehouse.gov/omb/fedreg/final_information_quality_guidelines.html.*

Section 515 also requires that agency guidelines include "administrative mechanisms allowing affected persons to seek and obtain correction of information maintained and disseminated by the agency." OMB required agencies to prepare a draft report including their implementing guidelines no later than May 1, 2002. HUD developed these guidelines to meet this requirement. The goal of these guidelines is to ensure that information disseminated by HUD will be:

- Useful to the intended users;
- Presented in an accurate, reliable, and unbiased manner as a matter of substance and presentation; and,
- Protected from unauthorized access or revision.

IV. Designated Official

HUD's Assistant Secretary for Administration/Chief Information Officer serves as the agency official charged with overseeing HUD's compliance with OMB guidelines for the quality of information disseminated. HUD Assistant Secretaries, individuals of equivalent rank, or Assistant Secretary designates (hereinafter "HUD Assistant Secretaries"), are responsible for ensuring implementation of these guidelines within their respective areas of responsibility. With respect to Office of Inspector General (OIG) information, however, the Inspector General is ultimately responsible for ensuring OIG information is objective, useful, and has integrity, and for determining whether such information should be corrected.

V. Effective Date

As provided in OMB's guidelines, these guidelines apply only to information HUD disseminates on or after October 1, 2002, including the review of information to ensure quality before it is disseminated to the public. While previously released materials will continue to be used for decision-making and relied upon by the Department and the public as official, authoritative, government information, the materials are, in effect, constantly being re-disseminated and thus subject to these guidelines. Previously released information materials that do not meet these criteria are considered archived information and thus are not subject to these guidelines or to the request for correction process.

VI. Policy

HUD will ensure that the information it disseminates to the public is objective (accurate, clear, complete, and unbiased), useful, and has integrity. Additional levels of quality standards may be adopted, as appropriate, for specific categories of disseminated information.

VII. Definitions and Standards

A. Information

Any communication or representation of knowledge such as facts or data, conveyed in any form or medium, including textual, numerical, graphic, cartographic, narrative, or audiovisual, whether on paper, film, or electronic media, and whether disseminated via facsimile (fax), recording, machine-readable data, or website. This does not include hyperlinks provided to information originated by or in the custody of someone other than HUD. Information does not include opinion, unless that opinion is HUD's official point of view.

B. Dissemination

Affirmative distribution to the public initiated or sponsored by HUD acting as a publisher, rather than release of information in response to a request from the public. HUD "sponsors" distribution of information if HUD collects the information, causes another agency to collect the information, contracts or enters into a cooperative agreement with a person to collect the information, or requires a person to provide information to someone else. HUD also sponsors information if HUD causes someone else to obtain, solicit, or require disclosure of information by or for HUD to third parties or to the public.

The standards of these guidelines apply not only to information that HUD generates, but also to information that other parties provide to HUD, if the other parties seek to have the Department rely upon or disseminate this information or the Department decides to do so. For example, in commenting on a proposed rule, a trade association supplies a scientific or technical analysis in support of its position on what the final rule should say. In order for HUD to rely upon this information in a subsequent HUD dissemination of information (e.g., as part of the basis cited for decisions in the final rule), the quality of the trade association's information would have to be consistent with these guidelines. Likewise, if the Department disseminates information originally created by a non-HUD party (e.g., contractor or consultant), this disseminated information would be subject to these guidelines.

Dissemination does NOT include the following types of information and hence this information is not subject to these guidelines:

- Release of information to government employees, agency contractors, or grantees, where such information is restricted or limited to these entities;
- Dissemination intended for intra- or interagency use or sharing of government information;
- Information released under the Freedom of Information Act (FOIA), the Privacy Act, the Federal Advisory Committee Act, or similar law;
- Dissemination limited to correspondence with individuals or persons (regardless of media, example electronic mail);
- Press releases and other information of an ephemeral nature, advising the public of an event or activity of a finite duration—regardless of medium;
- Archival records disseminated by federal agency libraries or similar federal data repositories (e.g., inactive or historical materials in HUD libraries and other data collections—including bibliographies or responses to reference requests pertaining to such materials);
- Library holdings;
- Public filings;
- Distributions intended to be limited to subpoenas or adjudicative processes and decisions;
- Information presented to Congress as part of the legislative or oversight processes (e.g., testimony of HUD officials, information or drafting assistance provided to Congress in connection with pending or proposed legislation) that is not simultaneously disseminated to the public;
- Statutorily mandated issuances (e.g., HUD's Five Year Strategic Plan);
- HUD's release of third party information, views, or opinions, that are clearly identified as information that is not produced or sponsored by HUD; and,
- Procedural, operational, policy, and internal manuals prepared for the management and operations of HUD that are not primarily intended for public dissemination.

These guidelines do not impose any additional requirements on HUD during adjudicative proceedings and do not provide parties to such adjudicative proceedings any additional rights of challenge or appeal.

C. Quality

Encompasses three main aspects of information—utility, objectivity, and integrity, as described below.

1. *Utility.* Usefulness of the information to its intended users, including the public, measured by reference to established criteria, such as accessibility or timeliness.

2. *Objectivity.* Accuracy, completeness, reliability, clarity, and lack of bias in the collection, manipulation, contextual presentation

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of information, and substance with appropriate levels of statistical or scientific objectivity for the type and importance of the information disseminated.

Objective presentation means that information is presented within a proper context to ensure an accurate, clear, complete, and unbiased presentation. Objective substance means the information, data, the analytical process, and the resulting reports are accurate, reliable, and unbiased.

HUD aims to provide objective information but it is important to note that HUD must sometimes rely on outside data that it is unable to duplicate or control due to certain circumstances (*e.g.*, cost). Nonetheless, HUD will seek to make publicly available the sources (to the extent possible, consistent with confidentiality protections), data, and methods/models used to develop the information so that the public can judge for itself whether there may be some reason to question the objectivity of the sources. This will ensure a high degree of transparency about the data and methods such that an independent reanalysis could be undertaken by a qualified member of the public. Making the data and methods publicly available will assist in determining whether analytic results are reproducible. However, the objectivity standard does not override other compelling interests such as privacy, trade secrets, intellectual property, and other confidentiality protections.

Scientific or statistical information should be presented with supporting data and models to allow intended users to assess the objectivity of the information sources without revealing trade secrets or violating confidentiality and privacy.

Disseminated analytical results that do, or may, have an important effect on development of governmental or private sector policies, or have important consequences for specific technologies, substances, products, or firms, must be capable of being substantially reproduced. This means that independent reanalysis of original or supporting data using the same methods would generate similar analytical results, within an acceptable range of error or imprecision.

In situations involving influential scientific, financial, or statistical information, where public access to data and methods will not occur due to other compelling interests, HUD Assistant Secretaries shall apply especially rigorous robustness checks to analytic results and document the checks that were undertaken.

Results already subjected to formal, independent peer review, before dissemination, are generally considered to be acceptably objective. Nonetheless, this presumption is rebuttable based on a persuasive showing by a petitioner in a particular instance. That is, the burden of proof is on the affected person petitioning HUD for a correction to disseminated information. If HUD uses a peer review, the review process used will meet the general criteria for competent and credible peer review recommended by OMB to the President's Management Council on September 20, 2001. Namely, that (a) peer reviewers be selected primarily on the basis of necessary technical expertise, (b) peer reviewers be expected to disclose to agencies prior technical/policy positions they may have taken on the issues at hand, (c) peer reviewers be expected to disclose to agencies their sources of personal and institutional funding (private or public sector), and (d) peer reviews be conducted in an open and rigorous manner.

3. *Integrity.* Refers to protection of information from corruption or falsification by unauthorized access or revision.

D. Robustness Checks

Refers to influential scientific, financial, or statistical information where public access to data and methods will not occur due to other compelling interests. In these situations, HUD Assistant Secretaries shall ensure that the data and methods used to develop the information product are reviewed for: (1) Appropriateness of the methodology; (2) soundness of the analysis and specific analytic methods; (3) soundness of hypotheses and assumptions; (4) statistical procedures; (5) sources of bias or other error, and (6) programmatic and policy implications.

E. Influential Information

The following discussion is intended as guidance to HUD Assistant Secretaries and other interested persons in determining whether scientific, financial, or statistical information is influential within the meaning of OMB's guidelines. This definition is important because it determines the level of scrutiny and pre-dissemination review afforded to information. It is important to emphasize that this term applies only to scientific, financial, or statistical information. The definition does not address other types of information, no matter how important the information may seem to be. It should also be noted that the definition applies to "information" itself, not to HUD decisions that the information may support. That is, even if a decision or action by HUD is itself very important, a particular piece of information supporting it may or may not be "influential."

The OMB guidelines define "influential" information as information that the agency reasonably can determine "will have or does have a clear and substantial impact on important public policies or important private sector decisions." The OMB guidelines assign to HUD the task of defining this term in ways appropriate to the agency and its various programs.

HUD emphasizes that, to be influential, information must have a clear and substantial impact. A clear and substantial impact, first of all, is one that has a high probability of occurring. If it is arguable that an impact will occur, or if it is a close judgment call, then the impact is probably not clear and substantial. The impact must be on "important" public policy or private sector decisions. Even if information has a clear and substantial impact, it is not influential if the impact is not on a public or private decision that is important to policy, economic, or other decisions.

Additionally, in determining if information has a clear and substantial impact, HUD will consider two factors—breadth and intensity—in determining whether information is influential.

Every decision that HUD makes based on disseminated information is important to someone. That does not mean that disseminated information used for each decision is influential, as the term is used in the guidelines.

In determining whether information is influential, HUD Assistant Secretaries shall consider whether information affects a broad range of parties. Information that affects a broad, rather than a narrow, range of parties (*e.g.*, an entire industry or a significant part of an industry) is more likely to be influential.

HUD Assistant Secretaries shall also consider whether information has an intense impact or high cost. Information that has a low cost or modest impact on affected parties is less likely to be influential than information that can have a very costly or crucial impact. In considering whether information has a high-intensity impact, HUD Assistant Secretaries shall use the definition of "economic significance" provided in Executive Order (E.O.) 12866, Section 2.f.1, thus using the $100 million figure, as well as other criteria sited in the E.O. definition, to determine the degree of impact. HUD Assistant Secretaries may, however, find this level of intensity in information materials that fall below the benchmark figure.

In most cases, information that has an intense impact on a broad range of parties is regarded as influential. Information that affects a broad range of parties with a low-intensity impact, or information that affects a narrow range of parties with a high-intensity impact, may or may not be influential.

HUD Assistant Secretaries may designate certain classes of information as "influential" or not, in the context of their specific programs. Absent such designations, HUD Assistant Secretaries will determine whether information is influential on a case-by-case basis, using the principles articulated in these guidelines.

The "influential" designation is intended to be applied to information where clearly appropriate. HUD Assistant Secretaries should not designate information products or types of information as influential on a regular or routine basis. Nor should an "influential" label be placed on the title page or text of an information product.

F. Reproducibility

The information is capable of being substantially reproduced, subject to an acceptable degree of imprecision. With respect to analytic results, "capable of being substantially reproduced" means that an independent analysis of the original and supporting data using identical methods would generate similar analytic results, subject to an acceptable degree of imprecision or error. For influential information regarding risks to human health, safety, and the environment, HUD will use the best available, peer-reviewed science and supporting studies conducted in accordance with sound and objective scientific practices, and data collected by the accepted methods or best available methods (if the reliability of the method and the nature of the decision justifies use of the data).

G. Affected Persons

Any person or group who may benefit or be harmed by information disseminated by HUD. This includes persons who are seeking to address information about themselves as well as persons who use information. As defined by the Paperwork Reduction Act of 1995, affected persons include groups, organizations, and corporations.

VIII. Guidelines

A. Scope

HUD will review all information to be disseminated to the public for quality, objectivity, utility, and integrity before the information is disseminated to the public. These guidelines apply to information disseminated by HUD on or after October 1, 2002, regardless of when the agency first disseminated the information. Likewise, the agency's administrative mechanisms for correcting information shall apply to information the agency disseminates on or after October 1, 2002, regardless of when the agency first disseminated the information.

HUD will ensure that the quality of its disseminated information, and its pre-dissemination review process, can be substantiated through documentation or other means appropriate to the information.

These guidelines apply to HUD information dissemination products in all media and formats, including printed, electronic, and audio/visual. Information dissemination products include books, papers, CD–ROMs, electronic documents, or other documentary material disseminated to the public by HUD. The guidelines apply to information disseminated to the public by HUD from a web page, but they do not apply to hyperlinks from the HUD website to information that others disseminate. Nor do the guidelines apply to opinions if it is clear that what is being offered is someone's opinion, rather than fact or the agency's official views. For example, the guidelines do not apply to staff working papers that are preliminary in nature and do not represent the official views of the agency.

B. Process for Ensuring Quality of Information at the Basic Standard

The Section 515 guidelines issued by OMB focus primarily on the dissemination of substantive information (*i.e.*, reports, studies, summaries) rather than information pertaining to basic agency operations. HUD reviews all information dissemination products prior to dissemination and all products are expected to meet the basic OMB and HUD quality standards (see definitions and standards for objectivity, utility, and integrity). HUD currently has few information products that would require a standard of quality higher than the "basic" standard described by the OMB guidelines.

As stated in the "Policy" section of these guidelines, HUD's basic quality standard for information involves objectivity, utility, and integrity. Objectivity has two distinct elements—presentation and substance. First, the information must be presented in an accurate, clear, and unbiased manner. Second, as a matter of substance, the information must be accurate, reliable, and unbiased. To the extent possible, and consistent with confidentiality protections, HUD will identify the source of disseminated information so that the public can assess whether the information is objective. The utility of information refers to its usefulness to its intended users, including the public. Integrity refers to the security of information (*i.e.*, the protection of information from unauthorized access or revision). Security of information helps ensure that the information is not compromised through corruption or falsification.

HUD Assistant Secretaries shall ensure that all information they disseminate to the public meets the basic quality standard. In that regard, they are responsible for ensuring that the pre-dissemination review and clearance process is performed and documented at a level appropriate for the type of information disseminated and in accordance with existing HUD clearance and approval policies and procedures. They will consider the costs and benefits of using a higher quality standard or a more extensive review process in deciding the appropriate level of quality for a given type of information, and the resulting appropriate level of review and documentation. Additionally, when developing information, HUD offices will treat information quality as integral to every step of information development, including creation, collection, maintenance, and dissemination. This will enable the agency to substantiate the quality of the information it has disseminated through documentation or other means appropriate to the information.

With respect to draft information collection packages to be used to generate information products subject to these guidelines, HUD Assistant Secretaries shall ensure that such draft information collection packages submitted for OMB approval result in the information being collected, maintained, and used in a manner that is consistent with these and OMB's guidelines.

C. Disseminating Information That Establishes Program Procedures or Processing Requirements

1. *Existing procedures and processing requirements.* The policies and procedures outlined below are existing HUD policies and procedures and were designed to ensure the quality of information HUD disseminates to the public. To the extent they apply to disseminated information as defined previously in these guidelines, HUD will assure they meet the standards set forth in these and OMB guidelines.

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HUD Directives Handbook, 000.2 REV–2, issued April 18, 2001, entitled "HUD Directives System" outlines the requirements for issuing information that establishes program procedures or processing requirements, whether binding on HUD staff or HUD program participants. It is HUD's policy that HUD Directives must go through Departmental clearance, whether issued as handbooks, direct notices, mortgagee letters, or memoranda, and whether issued in paper or electronic format or posted on HUD's website. HUD Directives advise staff and/or program participants about how to carry out their respective responsibilities under HUD programs or advise potential program participants how to participate in HUD programs. Directives supplement statutes, regulations, and other **Federal Register** documents. Consistent with HUD policies, HUD Directives will not be used to issue new or revised policy or binding requirements unless there is statutory or regulatory authority to do so. At a minimum, all handbooks, supplements, notices, special directives, and letters clarifying or elaborating on existing procedures or policy and used to issue guidance, are subject to the procedures in the Directives Handbook. HUD Assistant Secretaries are responsible for ensuring compliance with the Directives Handbook. In determining the applicability of, and the requirement for a pre-dissemination review, HUD Assistant Secretaries must ensure that, at a minimum, HUD Directives originating in their offices are cleared in accordance with HUD existing Directives policy. Changes to the Government National Mortgage Association (Ginnie Mae) mortgage-backed securities guide and the multiclass guides shall continue to be issued in accordance with its program procedures.

Furthermore, Chapter 7 of HUD Handbook 2400.1 (revision currently in Departmental clearance) establishes policy for the use of electronic mail (e-mail), limiting its use to (1) brief, informal communications (*e.g.*, an exchange of ideas related to government businesses); (2) coordination (*e.g.*, meetings); and, (3) in place of the telephone and interoffice mail. The General Counsel affirmed this policy in a memorandum dated May 20, 2002, noting that e-mail should not be used to clear a document(s) that evidences policies, decisions, procedures, operations, or other activities of the government. Assistant Secretaries must ensure compliance with this policy.

Questions about whether particular issuances constitute a HUD Directive should be referred to the Office of Administration, which oversees the Departmental clearance of HUD Directives.

The Office of Administration is responsible for ensuring that the pre-dissemination review and clearance process outlined above, and in HUD Handbook 000.2 REV–2, is conducted in accordance with the standards contained in the Handbook and adequately documented.

2. *New Procedures and Processing Requirements.* Dissemination of information, via automated systems and system user guides and manuals, that creates new procedures or processing requirements or expands upon existing procedures and requirements, is covered by existing HUD policy governing issuances that establish program procedures and processing requirements (see HUD Directives Handbook 000.2 REV 2). As such, these issuances must be approved through the existing clearance and approval processes noted in the guidelines in item "1" immediately above.

D. Disseminating Information That Establishes New HUD Policy or Revises HUD Policy

The policies and procedures outlined in the following paragraph are existing HUD policies and procedures and were designed to ensure the quality of information HUD disseminates to the public. To the extent they apply to disseminated information as defined previously in these guidelines, HUD will assure they meet the standards set forth in these and OMB guidelines. Changes to the Ginnie Mae mortgage-backed securities guide and the multiclass guides shall continue to be issued in accordance with its program procedures.

The Administrative Procedure Act and HUD's Regulations in 24 CFR part 10 require the Department to publish in the **Federal Register** substantive rules and statements of policy and interpretations of general applicability. The **Federal Register** is used to announce new or revised policy or binding and enforceable requirements. The Office of General Counsel has responsibility for Departmental pre-dissemination review and clearance procedures for **Federal Register** publications. **Federal Register** notices provide the necessary information and instructions to the public for providing comments.

E. Disseminating Information via Press Conferences, Press-Related Events, Editorials, Columns, Letters to the Editor, Speeches, Publications, Newsletters, Reports, Brochures, Videos, the Daily HUD Focus Message, Public Service Announcements and Advertisements, and News Media Contact

1. *Existing procedures and processing requirements.* The policies and procedures outlined in the following paragraph are existing HUD policies and procedures designed to ensure the quality of information HUD disseminates to the public. To the extent they apply to disseminated information as defined previously in this guidance, HUD will assure they meet the standards set forth in these and OMB guidelines.

All such information is approved by and/or coordinated with the Headquarters' Office of Public Affairs. The "Public Affairs Protocol," as well as the Office's procedures (both are available on HUD's intranet at the Public Affairs Web page) provides information regarding clearance of the above-mentioned issuances.

With respect to OIG Audit Reports, the OIG has standards and review procedures in place that assure that information disseminated to the public is reviewed for objectivity, utility, integrity, the use of sound statistical methods, and transparency of methods, sources, assumptions, and outcomes. In that regard, the OIG adheres to the Government Auditing Standards, issued by the Comptroller General of the United States (the Yellow Book), and the OIG Audit Operations Manual (IG Manual). The Yellow Book prescribes generally accepted government auditing standards, including auditee review and comment on draft findings and recommendations. The IG Manual establishes the policies and procedures to be followed by the OIG, including the supervisory review of audit working papers and reports and the independent referencing of all audit reports prior to issuance. Headquarters staff also reviews audit reports prior to issuance. Further, the OIG undergoes both management and peer reviews on a recurring basis.

2. *New procedures and processing requirements.* All working papers disseminated or otherwise made available to the public (*e.g.*, posted on HUD's public web site) are to carry a clear legend indicating that the "papers represent the opinions of the author only and are not the agency's official views."

F. Disseminating Information via HUD's Public Web Site

As previously noted, these guidelines apply to information disseminated to the public by HUD from a web page, but they do not apply to hyperlinks from the HUD website to information that others disseminate.

1. *Existing procedures and processing requirements.* The policies and procedures outlined in the paragraph below are existing HUD policies and procedures designed to ensure the quality of information HUD disseminates to the public. To the extent that they apply to disseminated information as defined previously in this guidance, HUD will assure they meet the standards set forth in these and OMB guidelines.

HUD's existing web procedures dated April 30, 1998, and revised September 2, 2001, are available to the public at *http://www.hud.gov/library/bookshelf15/policies/wwwpol.cfm*. They establish clear responsibility at the Assistant Secretary and Regional Director level for developing and maintaining relevant program information, processes, and local office materials on HUD's Web sites. These policies also require web managers to ensure that materials are properly approved prior to posting, including program policies and procedures.

2. *New procedures and processing requirements.* HUD is currently formalizing its web posting procedures (including requirements on the types of information that may be posted, publication standards, design guidelines, and accessibility guidelines). These new procedures will be made available to the public.

Meanwhile, it is HUD's policy that the Office of Public Affairs review and provide pre-dissemination approval of all website content of a political or policy nature. It is the responsibility of the appropriate Assistant Secretary or Regional Director to ensure that this[3] review and approval occurs. Additionally, all working papers posted on HUD's public website are to carry a clear legend indicating that the "papers represent the opinions of the author only and are not the agency's official views."

Text which establishes program procedures, processing requirements, new or revised policy, or binding and enforceable requirements will not be posted to the web without first being approved through the established clearance and approval processes (see "Disseminating Information that Establishes Program Procedures or Processing Requirements" and "Disseminating Information that Establishes New HUD Policy or Revises HUD Policy"). The procedures for removing web postings that are not properly approved will be included in HUD's formal web posting procedures. HUD Assistant Secretaries may request that the responsible posting office remove any Web site content that has not been approved through established clearance and approval processes.

Each Assistant Secretary and Regional Director is responsible for ensuring adherence to these policies. Each must submit written certification that the content of HUD's public website and kiosks for which his/her organization is responsible is both current and accurate. These certifications must be made to the Deputy Secretary on a quarterly basis.

G. Protecting the Integrity of Information via HUD Automated Systems

The policies and procedures outlined in this section are existing HUD policies and procedures designed to ensure the quality of information HUD disseminates to the public. To the extent they apply to disseminated information as previously defined in these guidelines, HUD will assure they meet the standards set forth in these and OMB guidelines.

HUD's information integrity standards ensure that appropriate safeguards are in place to prevent unauthorized access or revision, thus helping to ensure that the information is not compromised through corruption or falsification. HUD's existing information integrity standards are set forth in the following issuances:

1. *National Security Information (HUD Handbook 1750.1 Rev–4, CHG–3) dated April 18, 1991.* This Handbook identifies methods for ensuring that information disseminated by or on behalf of HUD remains protected. It is available via HUD's Web site at *http://www.hudclips.org/subscriber/cgi/legis.cgi?legis.*

2. *Common Data Element Cleanup Method, A Guidebook Version 1.1* (currently being revised). This Guidebook provides the concepts, step-by-step processes, examples of application, and worksheet forms to guide and assist with a data element cleanup process. It also assists in the information quality management of internal HUD systems and data, including information utility, objectivity, and integrity.

3. *Enterprise Security Program Plan.* The Plan establishes the framework for developing and implementing a HUD-wide Enterprise Security Program. The Plan outlines the requirements for complying with federal guidelines to protect HUD's critical infrastructure and implementing the HUD Remediation Plan.

4. *The Information Systems Security Program Policy.* The Policy ensures that adequate security is provided for the information collected, processed, transmitted, stored, or disseminated in HUD's general support systems and major applications. It does this by requiring each HUD office and program area to implement policies, standards, and procedures consistent with government-wide policies, standards, and procedures issued by OMB, the Department of Commerce, the General Services Administration, and the Office of Personnel Management.

H. Process for Ensuring Quality of Information at a Level Higher Than the Basic Standard

The OMB guidelines for implementing Section 515 recognize that some government information may need to meet higher quality standards than the basic standard. The more important the information, the higher the quality standards to which it should be held. In particular, the OMB guidelines require "influential scientific, financial, or statistical information" to meet a high standard of quality. The OMB definition of "influential" is set forth in Section VII, Paragraph E of these guidelines.

HUD is committed to the standards stated in OMB's information quality guidelines, specifically with respect to applying especially rigorous robustness checks to analytic results and to document the checks that were undertaken. At this time, HUD is not prepared to identify the kinds of original and supporting data to be subject to the reproducibility standard. Nonetheless, HUD shall assure reproducibility for those kinds of original and supporting data according to commonly accepted scientific, financial, or statistical standards. Additionally, the standards of these and OMB guidelines apply not only to information that HUD generates, but also to information that other parties provide to HUD, if the other parties seek to have the Department rely upon or disseminate this information or the Department decides to do so.

1. *New Procedures and Processing Requirements for Influential Information.* The responsibility for determining what constitutes influential information to be disseminated, and hence the quality standards to which the information should be held rests with each HUD Assistant Secretary. Each HUD Assistant Secretary is

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currently developing and documenting, and will make available upon written request, specific review and approval procedures for information he/she determines will have or does have a clear and substantial impact on important public policies or important private sector decisions. These procedures will include references to the types of issuances covered, as well as examples of such issuances. These procedures may include independent peer reviews (internal and/or external) of the information to ensure statistical and/or analytical integrity. Finally, each HUD Assistant Secretary is responsible for ensuring that this type of information is reviewed and approved, prior to dissemination, according to the written procedures he/she has established, and that the review and approval of each issuance is adequately documented. The above-mentioned responsibilities and authorities may not be delegated.

Any issuance of information that has not been subjected to the procedures identified in the previous paragraph, but which, in the view of the responsible HUD Assistant Secretary, requires a higher quality standard than outlined under the procedures for ensuring quality of information at the basic standard, must be cleared through Departmental clearance.

I. Administrative Correction Mechanisms

To facilitate review by affected persons, this section establishes administrative mechanisms allowing affected persons to seek and obtain, where appropriate, timely correction of information maintained and disseminated by HUD. These administrative mechanisms have been designed to be flexible, appropriate to the nature and timeliness of the disseminated information, and incorporated into HUD's existing information resources management and administrative practices.

An affected person (see Section VII, Paragraph G under "Definitions and Standards") may request the timely correction of information disseminated by HUD. This includes persons who are seeking to address information about themselves as well as persons who use information.

In determining whether to respond to a complaint, the Department will consider whether the information or the request for correction is "stale." If HUD did not disseminate this information recently (*i.e.*, within one year of the information correction request), or it does not have a continuing impact on HUD projects or policy decisions or on important private sector decisions, the Department may regard the information as "stale" for purposes of responding to a correction request, unless the complainant demonstrates that the information has an impact on the affected person.

The correction process is designed to address the genuine and valid needs of HUD and its constituents without disrupting agency operations. HUD, in making a determination of whether or not to correct information, may reject claims made in bad faith or without justification. HUD will explain decisions to deny or limit corrective actions in annual reports to OMB on complaints regarding agency compliance with these guidelines.

Documents and information disseminated, but not sponsored, by HUD are not covered by these guidelines. In disseminating such materials, HUD assumes no responsibility for their accuracy and is simply ensuring that the public has quicker and easier access to such materials.

Rulemakings and Other Public Comment Procedures—HUD will consider requests for correction of a study, analysis or other information prior to the final agency action or information product if: (1) HUD determines that its response would not unduly delay final issuance of the HUD action or information product, and (2) the complainant shows a reasonable likelihood of suffering actual harm from HUD's dissemination if HUD does not resolve the complaint prior to the final agency action or information product.

With respect to the correction of OIG information, as used below: "Office of the Assistant Secretary for Administration" shall be understood to mean the Office of Inspector General, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Room 8256, Washington, DC 20410; the "Assistant Secretary of the office that originated the subject information," the "responsible Assistant Secretary" and/or the "Assistant Secretary" shall be understood to mean the Assistant Inspector General for Audit; and the "Assistant Secretary for Administration" shall be understood to mean the Deputy Inspector General.

J. Process for Requesting Correction to Disseminated Information

1. *Submitting Requests.* If an affected person believes that disseminated information does not comply with the standards set forth in these guidelines, he/she may submit a written request for correction to the Office of the Assistant Secretary for Administration which will assign the request to the Assistant Secretary of the office that disseminated the subject information. The request may be submitted by letter or by e-mail through HUD's website and should contain the following items:

a. A statement that a request for correction of information is submitted under HUD's Information Quality Guidelines;

b. The complainant's name, mailing address, e-mail address, telephone number, facsimile (fax) number, and organizational affiliation, if any. HUD will not respond to anonymous requests;

c. A clear identification of the information dissemination source (*e.g.*, report, data set, or other document) and the information asserted to be incorrect;

d. A description of how the information in question affects the complainant or the affected person(s) for whom the correction request is being submitted (*e.g.*, how an alleged error causes harm, and/or how the correction will be of benefit or use);

e. A description of the specific information that the complainant wants the Department to correct. Where possible, the request should include such identifying characteristics as the name of the HUD office that originated the data, title, date, etc.;

f. A description of why the complainant believes the information in question is inconsistent with the Department's or OMB's information quality guidelines (*i.e.*, how the information fails to meet standards of integrity, utility, and/or objectivity);

g. Specific recommendations for what corrections HUD should make to the information in question and reasons for believing that these recommended corrections would make the information consistent with the Department's information quality guidelines; and,

h. Documentary evidence believed to be relevant to the request (*e.g.*, comparable data or research results on the same topic).

Written requests sent via letter should be addressed to: U.S. Department of Housing and Urban Development, Assistant Secretary for Administration, Seventh Street, SW., Washington, DC 20410.

HUD currently is evaluating both new and existing e-mail response software to further facilitate implementing these final procedures for responding to information correction requests received via HUD's web mail system. HUD's internal operating procedures and associated responsibilities/authorities for appropriately responding to and tracking information correction requests will be included in HUD's formal web posting procedures. These procedures will be available to the public.

2. *Rejecting Requests.* Once the responsible Assistant Secretary receives a request for correction of information, he/she will review the request to determine if it is valid using the following guidelines:

a. Did HUD (as opposed to some other person or organization) actually disseminate the information HUD is being asked to correct?

b. Is the complainant affected by the information in question or is the person(s) for whom the correction request is being submitted affected by the information in question?

c. Did HUD disseminate this information recently (*i.e.*, within one year of the request), or does the information have a continuing impact on HUD projects or policy decisions, on important private sector decisions, or on affected persons?

d. With respect to information in a final rule, final environmental impact statement, or other final document where there was an opportunity for public comment or participation, could interested persons have requested the correction of the information in question at the proposed stage and, if so, has the complainant shown a reasonable likelihood of an affected person suffering actual harm from HUD's dissemination if HUD does not resolve the complaint prior to the final agency action or information product?

e. Is the information in question exempt from these Guidelines?

f. Is the request frivolous or not germane to the substance of the information in question?

g. Has HUD responded previously to a request that is the same or substantively very similar?

If the responsible Assistant Secretary determines that the answer to Question a, b, c, or d is "no" or that the answer to Question e, f, or g is "yes," then HUD will reject the request. If the request is rejected, the responsible Assistant Secretary will respond in writing within 60 calendar days of receiving the request. Written responses may be sent via letter, e-mail or facsimile (fax).

3. *Processing Requests.* If a request is not rejected, the responsible Assistant Secretary will review the request to determine if it contains sufficient information to address items "a" through "h" above under "Submitting Request." If it does not, he/she will either advise the requester of the additional information required or otherwise state why the request is insufficient. The responsible Assistant Secretary will respond to a request within 60 calendar days from the date of receipt. However, if the request requires more than 60 calendar days to respond, the responsible Assistant Secretary will inform the complainant that more time is required, and indicate the reason why and an estimated decision date. All responses will be in writing and may be done via letter, e-mail or facsimile (fax). Circumstances warranting an extension may include, but are not limited to, a need to: review many records identified in a single request; consult with another federal agency having a substantial interest in the request; or, consult with two or more HUD offices having a substantial interest in the request.

The responsible Assistant Secretary will coordinate with HUD officials as appropriate to determine whether or not to correct information. HUD will correct information and disseminate the corrected information only to the degree and in the manner that the responsible Assistant Secretary, in consultation with HUD officials as he/she deems appropriate, concludes is appropriate for the nature and timeliness of the information involved. Each Assistant Secretary will maintain a record of all information dissemination correction requests and decisions for a period of at least five years. Each Assistant Secretary will aggregate the data for his/her area annually, and provide the aggregated data to the Assistant Secretary for Administration, who is responsible for preparing HUD's annual report to OMB regarding requests for correcting information (see "Submitting Annual Reports to OMB"). The report prepared by the Assistant Secretary should differentiate between requests for correction to website information and corrections requested to other information disseminated under the jurisdiction of the Assistant Secretary.

4. *Appealing Corrective Decisions.* If the affected person requesting a correction does not agree with HUD's decision (including the corrective action, if any), the person may petition for reconsideration. The written request for reconsideration must be submitted within 60 calendar days of the date of the decision letter. Generally, the Assistant Secretary for Administration (or his/her designee), in consultation with such other HUD Assistant Secretaries as appropriate, and the office from which the information was disseminated, will review HUD's decision and basis thereof and respond to requests for appeal within 60 calendar days of the date of receiving the petition for reconsideration. Additionally, if the Assistant Secretary for Administration believes that another agency(ies) may have an interest in the resolution of an appeal, he/she should consult with those other agencies about their possible interest in the matter. If the request requires more than 60 calendar days to resolve, the Assistant Secretary for Administration will inform the complainant that more time is required, indicating the reason why and an estimated decision date. The Assistant Secretary for Administration will notify the Assistant Secretary and the complainant of the final decision and what corrective action, if any, the agency will take. Decisions on petitions for reconsideration are final and further petitions or appeals will be disregarded.

Appeals for reconsideration must be in writing. The envelope and the reconsideration request both should be clearly marked "Information Correction Reconsideration Request" and addressed to: U.S. Department of Housing and Urban Development, Assistant Secretary for Administration, 451 Seventh Street, SW., Washington, DC 20410.

K. Submitting Annual Reports to OMB

HUD will submit annual reports to the Director of OMB on the number and nature of complaints received concerning agency compliance with these guidelines beginning January 1, 2004. Reports, prepared by the Assistant Secretary for Administration, will contain complaint and correction information dealt with during each fiscal year and will be submitted no later than January 1 of the following year. The report is to contain both quantitative and qualitative information about the complaints received, the nature of the complaints, and the resolution of those complaints. The report is to include an explanation of agency decisions to deny or limit corrective action. HUD will develop a uniform process for tracking, collecting, and reporting on the disposition of information correction requests.

The first report will cover Fiscal Year 2003 and be submitted to OMB by January 1, 2004.

Dated: November 8, 2002.

Alphonso Jackson,

Deputy Secretary.

[FR Doc. 02–29195 Filed 11–13–02; 1:53 pm]

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Part V

Department of Education

34 CFR Parts 36 and 668
Adjustment of Civil Monetary Penalties for Inflation; Final Rule

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DEPARTMENT OF EDUCATION

34 CFR Parts 36 and 668

Adjustment of Civil Monetary Penalties for Inflation

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Department of Education (Department) issues these final regulations to adjust the Department's civil monetary penalties (CMPs) for inflation. These are the first such adjustments made by the Department, and all of the increases are limited to 10 percent.

DATES: These regulations are effective November 18, 2002.

FOR FURTHER INFORMATION CONTACT: Kenneth C. Depew, Office of the General Counsel, U.S. Department of Education, 400 Maryland Avenue, SW., room 6E227, Washington, DC 20202–2241. Telephone: (202) 401–8300.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION: The Federal Civil Penalties Adjustment Act of 1990 (Inflation Adjustment Act) (28 U.S.C. 2461 note), as amended by the Debt Collection Improvement Act of 1996 (DCIA) (31 U.S.C. 3701 note), provides for the regular evaluation of CMPs to ensure that they continue to maintain their deterrent value. As amended by the DCIA, the Inflation Adjustment Act requires that each agency issue regulations to adjust its CMPs beginning in 1996 and at least every 4 years thereafter. The first adjustment of any CMP is limited to 10 percent of the amount of the penalty.

A CMP is defined in the statute as any penalty, fine, or other sanction that is (1) for a specific monetary amount as provided by Federal law, or has a maximum amount provided for by Federal law; (2) assessed or enforced by an agency pursuant to Federal law; and (3) assessed or enforced pursuant to an administrative proceeding or a civil action in the Federal courts.

The formula for the amount of a CMP inflation adjustment is prescribed by law and is not subject to the exercise of discretion by the Secretary of the Department of Education (Secretary). The adjustment reflects the percentage increase in the Consumer Price Index for all urban consumers (CPI–U) published by the Department of Labor from June of the calendar year in which the amount was last set or adjusted pursuant to law, to June of the calendar year preceding the adjustment.

The Department did not adjust its CMPs for inflation in 1996 and since then has not adjusted the CMPs that were in effect in 1996. By statute the Department's first adjustment of a CMP may not exceed 10 percent of such a penalty, and, therefore, we are adjusting those CMPs by no more than 10 percent. The Department is precluded from making subsequent adjustments to these CMPs until 2004, and even then, the Department may adjust these CMPs only for percentage increases in the CPI-U after June 2002.[1]

Two of the Department's CMPs were enacted as part of the Higher Education Amendments of 1998 (Pub. L. 105–244). These CMPs are 20 U.S.C. 1015(c)(5), which provides for a fine of up to $25,000 for failure by an institution of higher education (IHE) to provide information on the cost of higher education to the Commissioner of Education Statistics, and 20 U.S.C. 1027(f)(3), which provides for a fine of up to $25,000 for failure by an IHE to provide information to the State and the public regarding its teacher preparation programs. Although 4 years have passed since enactment of these penalties, not enough inflation has occurred to require an adjustment under the Inflation Adjustment Act.

Two additional points regarding the Department's adjustments are worth noting. First, the Department is using the following CPI-U figures: 109.5 for June 1986; 124.1 for June 1989; 163 for June 1998; and 178 for June 2001. And second, the increases to the Department's CMPs due to these inflation adjustments apply only to violations that occur after the effective date of the adjustments.

Waiver of Proposed Rulemaking

Under the Administrative Procedure Act (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these regulations merely implement the statutory mandate to adjust CMPs for inflation. The regulations reflect administrative computations performed by the Department as prescribed by the statute and do not establish or affect substantive policy. Therefore, under 5 U.S.C. 553(b)(B), the Secretary has determined that public notice and comment are impracticable, unnecessary, and contrary to the public interest.

Regulatory Flexibility Act Certification

The Secretary certifies that these regulations will not have a significant economic impact on a substantial number of small entities. The formula for the amount of the inflation adjustments is prescribed by statute and is not subject to the exercise of discretion by the Secretary. These CMPs are infrequently imposed by the Secretary, and the regulations do not involve any special considerations that might affect the imposition of CMPs on small entities.

Paperwork Reduction Act of 1995

These regulations do not contain any information collection requirements.

Assessment of Educational Impact

Based on our own review, we have determined that these final regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

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(Catalog of Federal Domestic Assistance Number does not apply)

List of Subjects

34 CFR Part 36

Administrative practice and procedure, Claims, Fraud, Penalties.

[1] It will be 2004 before the Department can determine whether the percentage of the CPI-U for June of the calendar year preceding the adjustment exceeds that for June of 2002, which would be the June of the calendar year in which the CMPs' amount was last set or adjusted pursuant to law. Until 2004, any adjustment by the Department would be unable to compare the CPI-U for June of 2002 with that for a subsequent year.

34 CFR Part 668

Administrative practice and procedure, Colleges and universities, Education, Loan programs-education, Student aid.

Dated: November 12, 2002.

Rod Paige,

Secretary of Education.

For the reasons discussed in the preamble, the Secretary establishes a new part 36 and amends part 668 in title 34 of the Code of Federal Regulations as follows:

1. A new part 36 is added to title 34 to read as follows:

PART 36—ADJUSTMENT OF CIVIL MONETARY PENALTIES FOR INFLATION

Sec.
36.1 Purpose.
36.2 Penalty adjustment.

Authority: 28 U.S.C. 2461 note and 31 U.S.C. 3701 note, unless otherwise noted.

§ 36.1 Purpose.

The purpose of this part is to make inflation adjustments to the civil monetary penalties within the jurisdiction of the Department of Education. These penalties are subject to review and adjustment as necessary at least once every 4 years in accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended.

(Authority: 28 U.S.C. 2461 note and 31 U.S.C. 3701 note)

§ 36.2 Penalty adjustment.

The citations for the adjusted penalty provisions, a brief description of the penalty, and the adjusted maximum (and minimum, if applicable) penalty amounts are listed in Table I.

TABLE I, SECTION 36.2—CIVIL MONETARY PENALTY INFLATION ADJUSTMENTS

Statute	Description	New maximum (and minimum, if applicable) penalty amount
20 U.S.C. 1082(g)	Provides for a civil penalty of up to $25,000 for violations by lenders and guaranty agencies of Title IV-B of the Higher Education Act of 1965, as amended (HEA), which authorizes the Federal Family Education Loan Program.	$27,500.
20 U.S.C. 1094(c)(3)(B)	Provides for a civil penalty of up to $25,000 for an institution of higher education's violation of Title IV of the Higher Education Act of 1965, as amended, which authorizes various programs of student financial assistance.	$27,500.
31 U.S.C. 1352(c)(1) and (c)(2)(A).	Provides for a civil penalty of $10,000 to $100,000 for recipients of Government grants, contracts, etc. that lobby Congress or the Executive Branch with respect to the award of Government grants and contracts.	$11,000 to $110,000.
31 U.S.C. 3802(a)(1) and (a)(2)	Provides for a civil penalty of up to $5,000 for false claims and statements made to the Government.	$5,500.

(Authority: 28 U.S.C. 2461 note and 31 U.S.C. 3701 note)

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

2. The authority citation for part 668 continues to read as follows:

Authority: 20 U.S.C. 1001, 1002, 1003, 1085, 1091, 1091b, 1092, 1094, 1099c, and 1099c–1, unless otherwise noted.

3. Section 668.84 is amended by removing "$25,000" in paragraph (a)(1) introductory text, and adding, in its place, "$27,500[1]" and adding footnote 1 following the section to read as follows:

§ 668.84 Fine proceedings.

* * * * *

As adjusted in accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended (28 U.S.C. 2461 note).

[FR Doc. 02–29219 Filed 11–15–02; 8:45 am]

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S. 1210/P.L. 107–292
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S. 2690/P.L. 107–293
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2001, through January 1, 2002. The CFR volume issued as of January 1, 2001 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2001. The CFR volume issued as of April 1, 2000 should be retained.

[6] No amendments to this volume were promulgated during the period April 1, 2001, through April 1, 2002. The CFR volume issued as of April 1, 2001 should be retained.

[7] No amendments to this volume were promulgated during the period July 1, 2000, through July 1, 2001. The CFR volume issued as of July 1, 2000 should be retained.

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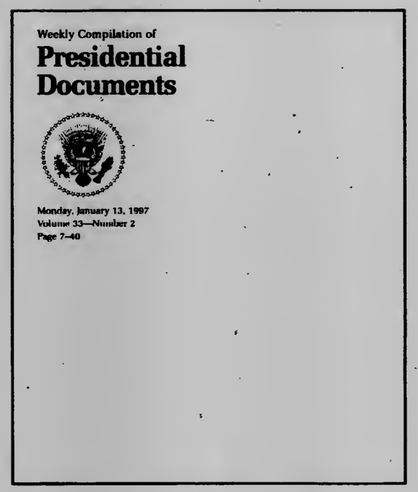

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